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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV00–930–6 FIR]

Tart Cherries Grown in the States of Michigan, et al.; Suspension of Provisions Under the Federal Marketing Order for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule suspending indefinitely a portion of an order provision concerning the release of reserve cherries. The suspension continues to allow cherries held in inventory reserves to be released for exempt uses such as exports. The Cherry Industry Administrative Board (Board) recommended this action to allow reserve cherries to be used in outlets other than normal commercial outlets. The Board is responsible for local administration of the marketing order which regulates the handling of tart cherries grown in the production area.

EFFECTIVE DATE: May 30, 2001.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 2AO4, Unit 155, 4700 River Road, Riverdale, Maryland 20737, telephone: (301) 734–5243, Fax: (301) 734–5275 or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on compliance with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 930, both as amended (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The order authorizes the use of volume regulation. In years when volume regulation is implemented to stabilize supplies, a certain percentage of the cherry crop is required to be set aside as restricted tonnage, and the balance may be marketed freely as free tonnage. The restricted tonnage is required to be maintained in handler-owned inventory reserve pools. Handlers in volume regulated States may fulfill their restricted tonnage requirements with diversion credits earned by diverting cherries or cherry products. Handlers are permitted to divert (at plant or with grower-diversion certificates from growers choosing not to deliver their crop) as much of their restricted percentage (reserve pool) requirements as they deem appropriate. Handlers also may divert cherries by using cherries or cherry products for exempt purposes, including the development of export markets. Presently, these markets do not include Canada and Mexico.

Section 930.62 of the order (Exemptions) provides that cherries which are diverted in accordance with § 930.59, which are used for new product and new market development, which are used for experimental purposes, or which are used for any other purposes designated by the Board, including cherries processed into products for markets for which less than 5 percent of the preceding 5-year average production of cherries was utilized, may be exempted from the assessment, quality control, volume regulation, and reserve provisions of the order.

Handlers can receive exemptions and diversion credits to offset their restricted percentage obligation during years of volume regulation. One of the exempt uses is the export of cherries to markets other than Canada and Mexico. Cherries used for exempt uses, including export, are exempt from assessments, and handlers pay growers less for such cherries than cherries for normal commercial outlets. This lowers handlers' costs and allows them to price export cherries competitively.

The Board held a teleconference meeting on June 1, 2000, and recommended that the word "normal" be suspended from § 930.54(a) of the order. That section of the order

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provided that if the Board determined that the total available supplies for use in normal commercial outlets did not at least equal the amount needed to meet the demand in such outlets, the Board should recommend to the Secretary that all or a portion of the reserve be released for such uses. Normal commercial outlets, as that term is used in the order, means the primary market which is mainly the domestic market for tart cherries. Therefore, under § 930.54(a), reserve release could not have been used to fulfill exempt needs.

During the 1999–2000 crop year when no volume regulation was established, the Board found that the export market was not adequately supplied due to short supplies of tart cherries, but could not make reserve cherries from the previous season available to meet export needs because export markets were not considered normal commercial outlets. Because of this limitation, the industry was not able to maintain a presence in many export markets, or further develop others. Export sales are a function of many different factors, including the size of the crop in Europe, the size of the U.S. crop, and the strength of the U.S. dollar.

Exports need to be sustained each year, whether or not volume control is implemented. It is important for buyers of tart cherries to know that product will be available from year to year from sources in the United States. The Board believes that failure to properly supply these markets will result in lost market share. In years with no volume regulation, growers and handlers have little economic incentive to move tart cherries or tart cherry products to the lower return markets, like export. In such years, growers seek to maximize profits by selling in the higher return "free" domestic market. Consequently, market opportunities are lost in the short term and quite possibly the long term. Development of export markets is important to the long term viability of the tart cherry industry.

This rule continues to suspend indefinitely a portion of § 930.54 of the order to allow the release of reserve cherries for exempt uses such as exports. This will encourage handlers to purchase additional cherries from growers at lower prices in years of volume regulation for placement in the reserve during harvest for future export use, rather than having the grower divert them in the orchard. Thus, additional lower-priced cherries would be available in a year of no regulation to continuously supply the export market. This will enable the industry to maintain market share in these markets in volume and non-volume regulated seasons, which is important in developing and maintaining these markets.

In non-volume regulated years, when expected supplies and primary market needs are closely aligned, lower-priced supplies are not available for export. This action will provide the industry with a means of maintaining exports by allowing lower-priced reserves from a previous season or seasons to be used for this purpose.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this final regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) allows AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities.

However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opt for such certification, but rather performs regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 900 producers of tart cherries in the production area and approximately 40 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of tart cherry producers and handlers may be classified as small entities.

Data from the National Agricultural Statistics Service (NASS) states that for 1999, tart cherry utilization for juice, wine, or brined uses was 34.5 million pounds for all districts covered under the order. The total processed amount for 1999 was 252.3 million pounds. Juice, wine, and brined tart cherries represented about 14 percent of the total processed crop, and about 10 percent over the last three seasons (1997 through 1999).

This rule continues an interim final rule which allows markets that have been developed and sustained by the use of the exemption and diversion provisions of the order in years of volume regulation to be sustained in years with no volume regulation. In the long run, market growth for tart cherry products will be increased, grower returns will be improved, and less fruit will be abandoned in the orchard by growers. Handlers will have an incentive to put cherries in the reserve to supply the export market in years of no regulation, and therefore, not as many growers will have to in-orchard divert.

All businesses, whether large or small, will benefit from this suspension action through increased sales during years of no regulation because they will be able to continue to supply the export markets. In years of volume regulation, handlers tend to put more cherries in reserve instead of diverting them because they expect to use those cherries during periods of short supply to assure a continuous supply of cherries. Previously, those cherries could only be released for normal commercial outlets; i.e., the domestic market. This action allows the reserve cherries to be released for export, as well as the domestic market, when needed.

During the 1999–2000 crop year, when no volume regulation was established, the Board found that the export market was not adequately supplied, but could not make lower-valued reserve cherries from the previous season available to meet export needs because export markets were not considered normal commercial outlets. Export sales are a function of many different factors, including the size of the crop in Europe, the size of the U.S. crop and the strength of the U.S. dollar.

The industry recognizes, however, that exports need to be sustained each year, whether or not volume control is implemented. It is important for buyers of tart cherries to know that product will be available from year to year from sources in the United States. The Board believes that failure to properly supply these markets from year to year will result in lost market share, which is not conducive to further strengthening the industry.

This rule continues to suspend indefinitely a portion of § 930.54 of the order to allow the release of reserve

cherries for exempt uses such as exports. This will provide the industry with flexibility to meet market needs in domestic and export outlets from year to year which is in the interest of growers and handlers, whether small or large. Market development and expansion is important to the long-term strength of the industry.

One alternative to this action would be to continue the status quo. However, this would not be favorable to cherry growers and handlers and could delay the long-term development of export markets.

This action imposes no additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements imposed by this order have been previously approved by OMB and assigned OMB Number 0581–0177.

The Board's telephone meeting was publicized and all Board members and alternate Board members, representing both large and small entities, were invited to attend the meeting and participate in Board deliberations. The Board itself is composed of 18 members, of which 17 members are growers and handlers and one represents the public. Also, the Board has a number of appointed committees to review certain issues and make recommendations.

Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

An interim final rule concerning this action was published in the **Federal Register** on January 3, 2001 (66 FR 229). Copies of the rule were mailed by the Board's staff to all Board members and handlers. In addition, this rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended March 5, 2001. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following website: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that the word "normal" in § 930.54(a) no longer tends to effectuate the declared policy of the Act and should be indefinitely suspended. Accordingly, this action finalizes the interim final rule, without change, as published in the **Federal Register** will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

Accordingly, the interim final rule amending 7 CFR part 930 which was published at 66 FR 229 on January 3, 2001, is adopted as a final rule without change.

Dated: April 24, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–10661 Filed 4–27–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV01–930–1 FIR]

Tart Cherries Grown in the States of Michigan, et al.; Decreased Assessment Rates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, an interim final rule which decreased the assessment rate for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from $0.0017 to $0.0012 per pound. It also decreased the assessment rate for cherries utilized for juice, juice concentrate, or puree from $0.00085 to $0.0006 per pound. Both assessment rates were recommended by the Cherry Industry Administrative Board (Board) under Marketing Order No. 930 for the 2000–2001 and subsequent fiscal periods. The Board is responsible for local administration of the marketing order which regulates the handling of tart cherries grown in the production area. Authorization to assess tart cherry handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The fiscal period began July 1 and ends June 30. The assessment rates continue to remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: May 30, 2001.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, MD 20737, telephone: (301) 734–5243, Fax: (301) 734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, tart cherry handlers are subject to assessments. Funds to administer the order are derived from such

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assessments. It is intended that the assessment rates as issued herein will be applicable to all assessable tart cherries beginning July 1, 2000, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues the interim final rule which decreased the assessment rate established for the Board for the 2000–2001 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from $0.0017 to $0.0012 per pound of cherries. The assessment rate decrease for cherries utilized for juice, juice concentrate, or puree from $0.00085 to $0.0006 per pound also is continued.

The tart cherry marketing order provides authority for the Board, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of tart cherries. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rates. The assessment rates are formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2000–2001 fiscal period, the Board recommended, and the Department approved, assessment rates that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other information available to the Secretary.

The Board met on March 2, 2000, and unanimously recommended, and the Department approved, 2000–2001 expenditures of $455,000 and assessment rate decreases from $0.00225 to $0.0017 per pound for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree and from $0.001125 to $0.00085 per pound for cherries utilized for juice, juice concentrate, or puree.

The Board met again on September 8, 2000, and unanimously recommended a further decrease in the assessment rates to $0.0012 per pound for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree, and to $0.0006 per pound for cherries utilized for juice, juice concentrate, or puree. Further decreased assessment rates have been recommended by the Board because the cherry industry has experienced record high crops for the past two seasons and again this season. In addition, the Board wants to further reduce handler costs while maintaining a monetary reserve which is adequate to cover approximately six months' operational expenses (based on an annual operating budget of approximately $455,000). Section 930.42(a) of the order authorizes a reserve sufficient to cover one year's operating expenses. The decreased rates are expected to generate enough income to meet the Board's reduced operating expenses in 2000–2001.

The order provides that when an assessment rate based on the number of pounds of tart cherries handled is established, it should provide for differences in relative market values for various cherry products. The discussion of this provision in the order's promulgation record indicates that proponents testified that cherries utilized in high value products such as frozen, canned, or dried cherries should be assessed one rate while cherries used to make low value products such as juice concentrate or puree should be assessed at one-half that rate.

Data from the National Agricultural Statistics Service (NASS) states that for 1999, tart cherry utilization for juice, wine, or brined uses was 34.5 million pounds for all districts covered under the order. The total processed amount of tart cherries for 1999 was 252.3 million pounds. Juice, wine, and brined tart cherries represented less than 14 percent of the total processed crop, and about 10 percent over the last three seasons (1996 through 1998).

In deriving the recommended assessment rates, the Board determined assessable tart cherry production for the crop year at 280 million pounds. It further estimated that about 265 million pounds of the assessable poundage would be utilized in the production of high-valued products, like frozen, canned, or dried cherries, and that about 15 million pounds would be utilized in the production of low-valued products, like juice, juice concentrate, or puree. Potential assessment income from the high valued products would be approximately $318,000 (265 million pounds × $0.0012 per pound). The potential income from tart cherries utilized for juice, juice concentrate, or puree would be $9,000 (15 million pounds × $0.0006 per pound). Therefore, total assessment income for 2000–2001 is estimated at $327,000. This amount plus funds in the reserve and interest income will be adequate to cover budgeted expenses. Funds in the reserve (approximately $374,000) will be kept within the approximately six months' operating expenses as recommended by the Board which would be consistent with the order (7 CFR 930.42(a)).

The assessment rates will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other available information.

Although the assessment rates are effective for an indefinite period, the Board will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rates. The dates and times of Board meetings are available from the Board or the Department. Board meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Board recommendations and other available information to determine whether modifications of the assessment rates are needed. Further rulemaking will be undertaken as necessary. The Board's 2000–2001 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this final regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) allows AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opts for such certification, but rather performs regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of tart cherries who are subject to regulation under the order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $5,000,000, and small agricultural producers are those whose annual receipts are less than $500,000. The majority of tart cherry handlers and producers may be classified as small entities.

The Board unanimously recommended, and the Department approved, 2000–2001 expenditures of $455,000 and assessment rate decreases from $0.00225 to $0.0017 per pound for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate or puree and from $0.001125 to $0.0085 per pound for cherries utilized for juice, juice concentrate, or puree.

This rule continues the interim final rule which further decreased the assessment rate established for the Board and collected from handlers for the 2000–2001 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from $0.0017 to $0.0012 per pound, and the assessment rate for cherries utilized for juice, juice concentrate, or puree from $0.00125 to $0.0006 per pound. The Board unanimously recommended 2000–2001 expenditures of $455,000 and the further reduced assessment rates. The quantity of assessable tart cherries expected to be produced during the 2000–2001 crop year is estimated at 280 million pounds. Assessment income, based on this crop, along with interest income and reserves should be adequate to cover budgeted expenses.

The Executive Committee of the Board, after discussing the budget and assessment rates in executive session, recommended the continuation of the current rates. It concluded that it was prudent for the Board to have an operating reserve of approximately one year's operating expenses.

However, after considerable discussion, the Board concluded it should further reduce handlers' assessment costs and that the reserve should not exceed one-half year's budget amount. Also, the cherry industry has experienced record large crops for the past two seasons, and again this season. The Board discussed the alternative of continuing the existing assessment rates, but concluded that would cause the amount in the operating reserve to exceed what is actually needed.

After the discussion, the Board voted unanimously to further decrease the assessment rates. In deriving the recommended assessment rates, the Board estimated assessable tart cherry production for the crop year at 280 million pounds. It further estimated that about 265 million pounds of the assessable poundage would be utilized in the production of high-valued products, like frozen, canned, or dried cherries, and that about 15 million pounds would be utilized in the production of low-valued products, like juice, juice concentrate, or puree. Potential assessment income from the high valued products would be approximately $318,000 (265 million pounds × $0.0012 per pound). The potential income from the tart cherries utilized for juice, juice concentrate, or puree would be $9,000 (15 million pounds × $0.0006 per pound). Therefore, total assessment income for 2000–2001 is estimated at $327,000. This amount plus funds in the reserve and interest income should be adequate to cover budgeted expenses. Funds in the reserve (approximately $374,000) will be kept within the approximately six months' operational expenses as recommended by the Board which would be consistent with the order (7 CFR 930.42(a)).

This action continues the interim final rule which decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, the assessment rate decreases reduce the burden on handlers, and may reduce the burden on producers. In addition, the Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 8, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on January 3, 2001 (66 FR 232). Copies of the rule were mailed by the Board's staff to all Board members and handlers. In addition, this rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended March 5, 2001. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: http://www.ams.usda.gov/fv/moab/html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

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PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

Accordingly, the interim final rule amending 7 CFR part 930 which was published at 66 FR 232 on January 3, 2001, is adopted as a final rule without change.

Dated: April 24, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–10663 Filed 4–27–01; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–45–AD; Amendment 39–12209; AD 2001–09–04]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–300 Series Airplanes Equipped with Motive Flow Check Valves Having Part Number 106–0007–01

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–300 series airplanes. This action requires repetitive inspections of motive flow check valves and adjacent parts for fuel leaks, and replacement of the valves, if leaks are detected. This action is necessary to prevent leakage of fuel from the motive flow check valves, which could result in fuel vapors coming into contact with fuel ignition sources. This action is intended to address the identified unsafe condition.

DATES: Effective May 15, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 15, 2001.

Comments for inclusion in the Rules Docket must be received on or before May 30, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–45–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–45–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain Dornier Model 328–300 series airplanes. The LBA advises that three incidents have been reported of cracks on the motive flow check valves, which have resulted in leakage of fuel. The cause of the cracking is not yet known. This condition, if not corrected, could result in fuel vapors coming into contact with fuel ignition sources.

Explanation of Relevant Service Information

Dornier has issued Alert Service Bulletin ASB 328J–28–007, dated September 20, 2000, which describes procedures for an initial general visual inspection of the lower inboard leading edge/pylon area and the pylon drain tube for signs of fuel droplets or fuel staining. The alert service bulletin also describes procedures for repetitive general visual inspections around the motive flow check valve for fuel leaks, and replacement of the valves with new valves, if leaks are detected. The LBA classified this service bulletin as mandatory and issued German airworthiness directive 2001–058, dated March 8, 2001, in order to assure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent leakage of fuel from the motive flow check valves, which could result in fuel vapors coming into contact with fuel ignition sources. This AD requires accomplishment of the actions specified in the service bulletin described previously.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–45–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–09–04 Dornier Luftfahrt GMBH: Amendment 39–12209. Docket 2001–NM–45–AD.

Applicability: Model 328–300 series airplanes, certificated in any category, equipped with a motive flow check valve which has part number (P/N) 106–0007–01.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent leakage of fuel from the motive flow check valve, which could result in fuel vapors coming into contact with fuel ignition sources, accomplish the following:

Initial Inspection

(a) Prior to the accumulation of 800 total flight cycles on the motive flow check valve P/N 106–0007–01, or within 3 days after the effective date of this AD, whichever occurs later: Perform a general visual inspection of the lower inboard leading edge/pylon area and the pylon drain tube to detect fuel droplets or fuel staining, in accordance with paragraph 2.B of the Accomplishment Instructions of Dornier Alert Service Bulletin ASB 328J–28–007, dated September 20, 2000. If any fuel droplet or fuel staining is detected, prior to further flight, perform an additional inspection and operational test, in accordance with paragraphs 2.C and 2.D of the Accomplishment Instructions of Dornier Alert Service Bulletin ASB 328J–28–007, dated September 20, 2000.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Repetitive Inspections

(b) Within 15 days or 60 flight hours after the effective date of this AD, whichever occurs first: Perform a general visual inspection of the motive flow check valve to detect fuel leaks, in accordance with paragraph 2.C of the Accomplishment Instructions of Dornier Alert Service Bulletin ASB 328J–28–007, dated September 20, 2000.

(1) If no fuel leaks are detected, repeat the general visual inspection of the motive flow check valve at least every 15 days or 60 flight hours, whichever occurs first.

(2) If any fuel leak is detected, prior to further flight, replace the motive flow fuel valve with a new valve, in accordance with the alert service bulletin. After the new valve has accumulated 800 flight cycles, do the general visual inspection of the valve required by paragraph (b) of this AD, including the repetitive inspection, at least every 15 days or 60 flight hours, whichever occurs first.

(c) Within 400 flight hours after the effective date of this AD: Perform an engine operational test and a general visual inspection of the motive flow check valve to detect a fuel leak, in accordance with paragraphs 2.C and 2.D of the Accomplishment Instructions of Dornier Alert Service Bulletin ASB 328J–28–007, dated September 20, 2000.

(1) If no fuel leaks are detected, repeat the engine operational test and the general visual inspection of the motive flow check valve at least every 400 flight hours.

(2) If any fuel leak is detected, prior to further flight, replace the motive flow fuel valve with a new valve, in accordance with the alert service bulletin. After the new valve has accumulated 800 flight cycles, do the general visual inspection of the valve required by paragraph (c) of this AD, including the repetitive inspections, at least every 400 flight hours.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of

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compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Incorporation by Reference

(e) The actions must be done in accordance with Dornier Alert Service Bulletin ASB 328J–28–007, dated September 20, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in German airworthiness directive 2001–058, dated March 8, 2001.

Effective Date

(f) This amendment becomes effective on May 15, 2001.

Issued in Renton, Washington, on April 23, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–10592 Filed 4–27–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–75–AD; Amendment 39–12211; AD 2001–09–06]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 206H and T206H Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Cessna Aircraft Company (Cessna) Models 206H and T206H airplanes. This AD requires you to visually inspect the horizontal stabilizer attachment reinforcement brackets for the existence of seam welds and replace any reinforcement bracket found without seam welds. This AD is the result of a report that these parts were manufactured without seam welds. The actions specified by this AD are intended to detect and replace structurally deficient horizontal stabilizer attachment brackets. Continued use of such brackets could result in structural failure of the horizontal stabilizer with reduced or loss of control of the airplane.

DATES: This AD becomes effective on May 18, 2001.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of May 18, 2001.

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before June 15, 2001.

ADDRESSES: Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–75–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

You may get the service information referenced in this AD from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may examine this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–75–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Eual Conditt, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4128; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? Cessna recently notified FAA of a defect in the manufacturing of the horizontal stabilizer attachment reinforcement brackets. Cessna manufactured certain reinforcement brackets without seam welds. The seam welds help provide the required structural integrity for the horizontal stabilizer attachment bracket.

What are the consequences if the condition is not corrected? This condition, if not corrected, could result in structural failure of the horizontal stabilizer with reduced or loss of control of the airplane.

Is there service information that applies to this subject? Cessna has issued Service Bulletin SB00–55–03, dated August 28, 2000. This service bulletin includes procedures for:

—visually inspecting the right and left horizontal stabilizer attachment reinforcement brackets for the existence of seam welds along the lower inboard and outboard wall/flange; and

—removing and replacing the horizontal stabilizer assemblies with new parts.

The FAA's Determination and an Explanation of the Provisions of This AD

What has FAA decided? The FAA has reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document likely exists on Cessna Models 206H and T206H airplanes within the listed serial number range;

—The actions specified in the previously-referenced service information (as specified in this AD) should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What does this AD require? This AD requires you to accomplish the actions previously specified in accordance with Cessna Service Bulletin SB00–55–03, dated August 28, 2000.

Will I have the opportunity to comment prior to the issuance of the rule? Because the unsafe condition described in this document could result in structural failure of the horizontal stabilizer with possible reduced or loss of control of the airplane, FAA finds that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

Comments Invited

How do I comment on this AD? Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, we invite your comments on the rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date specified above. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of the AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may examine all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

We are reviewing the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on whether the style of this document is clear, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.plainlanguage.gov.*

How can I be sure FAA receives my comment? If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000–CE–75–AD." We will date stamp and mail the postcard back to you.

Regulatory Impact

Does this AD impact various entities? These regulations will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

2001–09–06 Cessna Aircraft Company: Amendment 39–12211; Docket No. 2000–CE–75–AD.

(a) *What airplanes are affected by this AD?* This AD applies to the following airplane models and serial numbers that are certificated in any category:

Model	Serial Numbers
206H	20608001 through 20608053, 20608055 through 20608086, 20608088 and 20608089.
T206H	T20608001 through T20608093, T20608095 through T20608145, T20608147, T20608149, T20608150, T20608152, T20608156, T20608157, and T20608160.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and replace structurally deficient horizontal stabilizer attachment brackets. Continued use of such brackets could result in structural failure of the horizontal stabilizer with reduced or loss of control of the airplane.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following actions:

Action	Compliance time	Procedures
(1) Visually inspect the right and left horizontal stabilizer attachment reinforcement brackets, part number (P/N) 1232624–1, for the existence of seam welds along both the lower inboard and outboard wall/flange..	Within the next 20 hours time-in-service (TIS) after May 18, 2001 (the effective date of this AD), unless already accomplished..	In accordance with the Accomplishment Instructions in Cessna Service Bulletin SB00–55–03, dated August 28, 2000, and the applicable maintenance manual.
(2) If no seam weld is found along both the lower inboard and outboard wall/flange on the right and left horizontal stabilizer attachment reinforcement bracket during the inspection required in paragraph (d)(1) ot this AD, replace with a new or airworthy P/N 1232624–1 horizontal stabilizer attachment reinforcement bracket..	Accomplish any necessary replacements prior to further flight after the inspection required by this AD, unless already accomplished..	In accordance with the Accomplishment Instructions in Cessna Service Bulletin SB00–55–03, dated August 28, 2000, and the applicable maintenance manual.
(3) If the right and left horizontal stabilizer attachment reinforcement bracket has seam welds along both the lower inboard and outboard wall/flange, no further action is required..	Not applicable.	Not applicable.
(4) Do not install any P/N 1232624–1 horizontal stabilizer attachment reinforcement bracket (or FAA-approved equivalent part) unless the bracket: (i) is inspected as required in paragraph (d)(1) of this AD; and (ii) has seam welds along both the lower inboard and outboard wall/flange..	Not applicable	Not applicable.

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(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Eual Conditt, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4128; facsimile: (316) 946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Cessna Service Bulletin SB00–55–03, dated August 28, 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277. You can look at copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on May 18, 2001.

Issued in Kansas City, Missouri, on April 20, 2001.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–10590 Filed 4–27–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AAL–20]

Revision of Class E Airspace; Bethel, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Bethel, AK, in two ways: The FAA will cancel the Bethel Very High Frequency (VHF) Omnidirectional Range (VOR) instrument approach to runway (RWY) 36 at Bethel, AK, and simultaneously reduce the Class E (surface area extension) airspace at Bethel, AK; the FAA will correct an administrative error by revising the Class E (surface area) airspace with an exclusion area for Hanger Lake seaplane base operations. This rule will accomplish two actions: Allow for the Napakiak airport to be outside of the Bethel Class E (surface area extension) airspace and reduce the required controlled airspace for aircraft flying Instrument Flight Rules (IFR) operations at Bethel, AK; and fix an administrative oversight by adding the Hanger Lake exclusion area to the Class E airspace description at Bethel, AK.

EFFECTIVE DATE: 0901 UTC, July 12, 2001.

FOR FURTHER INFORMATION CONTACT: Robert Durand, Operations Branch, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: Bob.Durand@faa.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

History

On February 20, 2001, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace at Bethel, AK, was published in the **Federal Register** (66 FR 10861). This proposal was necessary to accomplish two actions: (1) Allow for the Napakiak airport to be outside of the Bethel Class E (surface area extension) airspace and reduce the required controlled airspace for aircraft flying Instrument Flight Rules (IFR) operations at Bethel, AK; and (2) fix an administrative oversight by adding the Hanger Lake exclusion area to the Class E airspace description at Bethel, AK.

On November 11, 2000, the FAA initiated Airspace Study Number 00–AAL–077NR, Notice of Proposed Revocation of the VOR RWY 36 Approach Procedure at Bethel, Alaska. Comments during several meetings over the last year with airspace users in the Bethel area indicated that they would like to have Napakiak Airport (WNA) excluded from the Class E (surface area extension) airspace at Bethel, AK. The Bethel Airport has four approaches to RWY 36: (1) Localizer (LOC)/Distance Measuring Equipment (DME) Back Course (BC) RWY 36, (2) VOR/DME RWY 36, (3) Global Positioning System (GPS) RWY 36, and (4) the VOR RWY 36. The Bethel VOR RWY 36 instrument approach, with a procedure turn at 1,600 feet, allows aircraft to descend to 700 feet after the procedure turn is completed. The FAA protects airspace from the point an aircraft may legally descend below 1,000 feet with Class E (surface area) airspace. For aircraft going to Bethel Airport, the Napakiak Airport, located 7.1 nautical miles on a 200° true bearing from Bethel VORTAC, is an alternate place to land and wait for weather to improve when the Bethel surface area is restricted due to weather.

The FAA received favorable comments from Craig Air Incorporated, US Coast Guard District 17, Kusko Aviation Incorporated, Alaska Airlines, and the US Fish and Wildlife Service—Bethel. With the adoption of this proposal, the FAA intends to simultaneously cancel the VOR RWY 36 instrument approach and shorten the Class E airspace to the southwest of Bethel. There would be three remaining instrument approaches to the Bethel RWY 36: (1) LOC/DME BC RWY 36, (2) VOR/DME RWY 36, and (3) GPS RWY 36. This proposal would allow Visual Flight Rules (VFR) operations to continue at Napakiak Airport during Special VFR operations at Bethel Airport, AK.

Additionally, this proposal would fix an administrative oversight by including an exclusion area for the Hanger Lake seaplane base operations to the Class E (surface area) airspace description. Changes to the Bethel airspace would incorporate an exclusion below 1,100 feet MSL between the 061° radial and the 081° radial from 2.9 nautical miles northeast of the Bethel VORTAC.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments to the proposal were received, thus the rule is adopted as written.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83.

The Class E airspace areas designated as surface areas are published in paragraph 6002 and the Class E airspace areas designated as an extension to a Class D or Class E surface area are published in paragraph 6004 in FAA Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 revises the Class E airspace at Bethel, AK, in two ways: (1) Reduces the amount of controlled airspace required southwest of the Bethel airport; and (2) modifies the Class E (surface area) airspace description to exclude the Hanger Lake seaplane base operations. The area will be depicted on aeronautical charts for pilot reference. The intended effects of this rule are: (1) To reduce the controlled airspace for IFR operations at Bethel, AK, thus allowing for VFR operations at Napakiak Airport during Special VFR operations at Bethel Airport and (2) fix an administrative oversight by adding the Hanger Lake exclusion area to the Class E airspace description.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9H, *Airspace Designations and Reporting Points*, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

* * * * *

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

AAL AK E2 Bethel, AK [REVISED]

Bethel Airport, AK
(Lat. 60°46'47" N., long. 161°50'17" W.)
Bethel VORTAC
(Lat. 60°47'05" N., long. 161°49'27" W.)

Within a 4.1-mile radius of the Bethel Airport, excluding that portion below 1,100 feet MSL between the 061° radial and the 081° radial from 2.9 miles northeast of the Bethel VORTAC. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E airspace designated as an Extension to a Class D or Class E surface area.

* * * * *

AAL AK E4 Bethel, AK [REVISED]

Bethel Airport, AK
(Lat. 60°46'47" N., long. 161°50'17" W.)
Bethel VORTAC
(Lat. 60°47'05" N., long. 161°49'27" W.)

That airspace extending upward from the surface within 3 miles each side of the 022° radial from the Bethel VORTAC, extending from the 4.1-mile radius of the Bethel Airport to 8.2 miles northeast of the airport, excluding that portion below 1,100 feet MSL between the 061° radial and the 081° radial from 2.9 miles northeast of the Bethel VORTAC, within 3.4 miles each side of the Bethel VORTAC 006° radial, extending from the 4.1-mile radius of the Bethel Airport to 11 miles north of the Bethel VORTAC and within 3.5 miles each side of the Bethel VORTAC 213° radial extending from the 4.1-mile radius of the Bethel Airport to 5 miles southwest of the airport.

* * * * *

Issued in Anchorage, AK, on April 23, 2001.

Trent S. Cummings,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 01–10669 Filed 4–27–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Oxytetracycline Hydrochloride Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Alpharma, Inc. The NADA which provides for a revised withdrawal time for use of oxytetracycline hydrochloride soluble powder in the drinking water of turkeys and swine.

DATES: This rule is effective April 30, 2001.

FOR FURTHER INFORMATION CONTACT: Janis R. Messenheimer, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7578.

SUPPLEMENTARY INFORMATION: Alpharma, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed a supplement to NADA 130–435 that provides for use of Oxytet (oxytetracycline HCl) Soluble for making medicated drinking water for the treatment of various bacterial diseases of livestock. The NADA provides for a zero-day slaughter withdrawal time after the use of the product in drinking water of turkeys and swine. The supplemental application is approved as of November 29, 2000, and the regulations are amended in 21 CFR 520.1660d to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug

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Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subject in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.1660d [Amended]

2. Section 520.1660d *Oxytetracycline hydrochloride soluble powder* is amended in the sixth sentence in paragraphs (d)(1)(ii)(A)(*3*), (d)(1)(ii)(B)(*3*), and (d)(1)(ii)(C)(*3*) by removing "046573"; in the last sentence in paragraphs (d)(1)(ii)(A)(*3*), (d)(1)(ii)(B)(*3*), and (d)(1)(ii)(C)(*3*) by removing "No. 053389" and by adding in its place "Nos. 046573 and 053389"; and in the fourth sentence in paragraph (d)(1)(iii)(C) by removing "Nos. 046573 and 057561" and by adding in its place "No. 057561 and zero days those products sponsored by No. 046573."

Dated: April 16, 2001.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 01–10621 Filed 4–27–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520, 522, and 556

Animal Drugs, Feeds, and Related Products; Sarafloxacin for Poultry; Withdrawal of Approval of NADAs

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations by removing the portions reflecting approval of two new animal drug applications (NADAs) for which the sponsor has requested withdrawal of approval. The NADAs provide for use of sarafloxacin to treat poultry. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of two NADAs sponsored by Abbott Laboratories.

DATES: This rule is effective April 30, 2001.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0159.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of two NADAs held by Abbott Laboratories, North Chicago, IL 60064. The NADAs provide for use of sarafloxacin to treat poultry. NADA 141–017 provides for the use of SaraFlox® (sarafloxacin hydrochloride) WSP and is under § 520.2095 (21 CFR 520.2095) and NADA 141–018 provides for the use of SaraFlox® (sarafloxacin hydrochloride) Injection and is under § 522.2095 (21 CFR 522.2095). Relevant information concerning tolerances for residues of sarafloxacin in edible tissues of poultry is under § 556.594 (21 CFR 556.594).

Abbott Laboratories requested withdrawal of approval in response to safety questions raised by FDA regarding the products.

No other NADAs for use of sarafloxacin have been approved. Therefore, in accordance with the notice of withdrawal of approvals, FDA is amending the regulations to remove §§ 520.2095, 522.2095, and 556.594 effective April 30, 2001.

The agency has determined under 21 CFR 25.33(g) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Parts 520 and 522

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Food and Drug Administration and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520, 522, and 556 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.2095 [Removed]

2. Section 520.2095 *Sarafloxacin soluble powder* is removed.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.2095 [Removed]

4. Section 522.2095 *Sarafloxacin solution for injection* is removed.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

5. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

§ 556.594 [Removed]

6. Section 556.594 *Sarafloxacin* is removed.

Dated: April 17, 2001.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 01–10069 Filed 4–27–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Ceftiofur Sterile Powder for Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pharmacia and Upjohn Co. The supplemental NADA provides for intramuscular injection of a solution of reconstituted ceftiofur sodium powder for treatment of caprine respiratory disease (goat pneumonia).

DATES: This rule is effective April 30, 2001.

FOR FURTHER INFORMATION CONTACT: Naba K. Das, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7569.

SUPPLEMENTARY INFORMATION: Pharmacia and Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001–0199, filed supplemental NADA 140–338 that provides for use of Naxcel® (ceftiofur sodium) sterile powder for injection for treatment by intramuscular injection of caprine respiratory disease (goat pneumonia) associated with *Pasteurella haemolytica* and *P. multocida*.

The supplemental NADA is approved as of March 7, 2001, and the regulations are amended in 21 CFR 522.313 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this supplemental application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(d)(4) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FOR NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 522.313 is amended by revising the section heading and by adding paragraph (d)(8) to read as follows:

§ 522.313 Ceftiofur sodium powder for injection.

* * * * *

(d) * * *

(8) *Goats*—(i) *Amount.* 0.5 to 1.0 milligram per pound of body weight by intramuscular injection at 24-hour intervals for a total of 3 consecutive days. Additional treatments may be given on days 4 and 5 for animals that do not show satisfactory response.

(ii) *Indications for use.* For treatment of caprine respiratory disease (goat pneumonia) associated with *Pasteurella haemolytica* and *P. multocida*.

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: April 16, 2001.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 01–10620 Filed 4–27–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Ractopamine and Tylosin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Elanco Animal Health. The NADA provides for use of ractopamine and tylosin single-ingredient Type A medicated articles to make combination drug Type C medicated feeds used for increased rate of weight gain, improved feed efficiency, increased carcass leanness, and prevention and/or control of porcine proliferative enteropathies (ileitis) in swine.

DATES: This rule is effective April 30, 2001.

FOR FURTHER INFORMATION CONTACT: Charles J. Andres, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1600.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, filed NADA 141–172 that provides for use of Paylean® (9 grams per pound (g/lb) ractopamine hydrochloride) and Tylan® (10, 40, or 100 g/lb tylosin phosphate) Type A medicated article to make combination drug Type C medicated feeds used for increased rate of weight gain, improved feed efficiency, and increased carcass leanness, and for prevention and/or control of porcine proliferative enteropathies (ileitis) associated with *Lawsonia intracellularis* in swine. The NADA is approved as of February 20, 2001, and the regulations are amended in 21 CFR 558.500 and 558.625 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

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List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.500 is amended by revising paragraph (d)(1) to read as follows:

§ 558.500 Ractopamine.

* * * * *

(d) *Conditions of use.*

(1) *Swine.*

Ractopamine in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(i) 4.5		For increased rate of weight gain, improved feed efficiency, and increased carcass leanness.	Feed continuously as sole ration. Feed in a complete ration containing at least 16 percent crude protein to finishing swine from 150 to 240 pounds body weight. Not for use in breeding swine.	000986
(ii) 4.5 to 18		For improved feed efficiency and increased carcass leanness.	Feed continuously as sole ration. Feed in a complete ration containing at least 16 percent crude protein to finishing swine from 150 to 240 pounds body weight. Not for use in breeding swine.	000986
(iii) 4.5	Tylosin 100	For increased rate of weight gain, improved feed efficiency, and increased carcass leanness; and for prevention and/or control of porcine proliferative enteropathies (ileitis) associated with *Lawsonia intracellularis*.	Feed continuously as sole ration for 21 days. Feed in a complete ration containing at least 16 percent crude protein to finishing swine from 150 to 240 pounds body weight. Not for use in breeding swine.	000986
(iv) 4.5 to 18	Tylosin 100	For improved feed efficiency and increased carcass leanness; and for prevention and/or control of porcine proliferative enteropathies (ileitis) associated with *Lawsonia intracellularis*.	Feed continuously as sole ration for 21 days. Feed in a complete ration containing at least 16 percent crude protein to finishing swine from 150 to 240 pounds body weight. Not for use in breeding swine.	000986

* * * * *

3. Section 558.625 is amended by adding paragraph (f)(2)(vii) to read as follows:

§ 558.625 Tylosin.

* * * * *

(f) * * *

(2) * * *

(vii) Ractopamine hydrochloride as in § 558.500.

Dated: April 16, 2001.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 01–10622 Filed 4–27–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1–01–021]

RIN 2115–AA97

Safety Zone: McArdle Bridge Repairs—Boston, Massachusetts

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for repairs to the McArdle Bridge; during nine 3½ day closure periods between April 2, 2001 and September 21, 2001, in Boston, MA. The safety zone temporarily closes all waters of Boston Inner Harbor one hundred (100) yards upstream and downstream from the McArdle Bridge. The safety zone prohibits entry into or movement within this portion of Boston Inner Harbor during the closure periods without Captain of the Port authorization and is needed to allow The Middlesex Corporation (TMC) to conduct repairs on the McArdle Bridge.

DATES: This rule is effective from sunrise Monday, April 2 until sunset Friday, September 21, 2001.

ADDRESSES: Documents as indicated in this preamble are part of docket CGD01–01–21 and are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Dave Sherry, Marine Safety Office Boston, Waterways Management Division, at (617) 223–3006.

SUPPLEMENTARY INFORMATION:

Regulatory History

A notice of proposed rulemaking (NPRM) was published for this regulation on March 8, 2001 in 66 FR 13867, with the comment period ending March 15, 2001. Good cause exists for making this regulation effective in less than 30 days after **Federal Register** publication. Dates for this closure were not received by the Coast Guard until January 13, 2001. An NPRM was published with an abbreviated comment period with the intent of providing time for publication prior to the effective date of the regulation. The safety zone restricts movement within this portion of Boston Harbor and is needed to allow TMC to conduct repairs on the McArdle Bridge. The Captain of the Port anticipates minimal negative impact on vessel traffic due to this event. Notifications will be made prior to the effective period via safety marine information broadcasts, and local notice to mariners. Captain of the Port, Boston, will consider requests for passage through the zone of small vessels that can safely navigate the bridge during construction. If a request is granted, operators permitted to pass through the zone are requested to provide a four hour notice to the contractor at (617–660–9102). During the 10 day intervals between bridge closures when the safety zone is not in effect, operators are permitted to pass through the zone with a four hour notice provided to the contractor at (617–660–9102).

Background and Purpose

This regulation establishes a safety zone one hundred (100) yards upstream and downstream of the McArdle Bridge in Boston Harbor. The safety zone will be in effect for nine 3½ day periods from sunrise to sunset spaced between 10 day channel openings on the following dates and times: April 2 to April 6, 2001; June 11 to June 15, 2001; June 25 to June 29, 2001; July 9 to July 13, 2001; July 23 to July 27, 2001; August 6 to August 10, 2001; and August 20 to August 24, 2001. Two contingency closures are scheduled for September 3 to September 7, 2001; and September 17 to September 21, 2001; and will be used if previously scheduled closures need to be cancelled due to weather or other unavoidable events.

The safety zone restricts movement within this portion of Boston Harbor and is needed to allow TMC to conduct repairs on the McArdle Bridge. The Captain of the Port anticipates minimal negative impact on vessel traffic due to this event. Notifications will be made prior to the effective period via safety marine information broadcasts and local notice to mariners. Small vessels that can safely navigate the bridge during construction will be allowed to transit the safety zone with a four hour notice to the contractor at (617–660–9102).

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation will prevent traffic from transiting a portion of Boston Harbor during the effective periods, the effects of this regulation will not be significant due to the extensive planning that took place between marine and cargo stakeholders and Coast Guard Marine Safety Office Boston representatives. The Coast Guard hosted planning meetings with the City of Boston Department of Public Works, Massachusetts Highway Department, TMC, Chelsea River vessel operators, local barge companies, Massachusetts Port Authority, Logan Airport representatives and fuel suppliers, and Chelsea River marine terminals. These entities, which represent the majority of users of the waterway, have adjusted their respective schedules around the bridge repair and channel closure. Other elements reducing vessel impact include: The minimal time that vessels will be restricted from the area, the opportunity for small vessels that can safely navigate the bridge during construction to transit the bridge with a four hour notice, and the advance notifications which will be made to the local maritime community by safety marine information broadcasts and local notice to mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Chelsea River between April 2, 2001 and September 21, 2001, during the designated 3½ day closures. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The minimal time that vessels will be restricted from the area, the opportunity for small vessels that can safely navigate the bridge during the construction to transit the safety zone with a four hour notice, and the advance notifications which will be made to the local maritime community by safety marine information broadcasts and local notice to mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. The Coast Guard coordinated meetings on November 30, 2000, December 14, 2000, January 4, 2001, and March 1, 2001.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247)

Discussion of Comments and Changes

Responses to the Notice of Proposed Rulemaking provided only one major concern regarding the proposed rule. Chelsea River terminal managers, barge companies, and pilots remained confident small barges could navigate the bridge during the 3½ day closure periods. This is due to the fact that the bridge leafs will at times be partially or fully open and the Middlesex barges will not fully block the channel at these times. Any barge traffic small enough to make the transit would be welcome relief to the terminals and Logan International Airport during the closure periods. No changes were made to the regulation in response to this comment, however, as discussed in the Regulatory History section of the Preamble of this regulation, it was clarified to the individuals raising the comments that the COTP will consider requests on a case by case basis for vessels desiring to transit the safety zone. Additionally, the comments revealed one typographical error in § 165.T01–021 (b), which has been corrected.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard analyzed this rule under E.O. 13132 and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal

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government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not pose an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.lC, this proposed rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.

2. Add temporary § 165.T01–021 to read as follows:

§ 165.T01–021 Safety Zone: McArdle Bridge Repairs—Boston, Massachusetts.

(a) *Location.* The following area is a safety zone: All waters of Boston Inner Harbor one hundred (100) yards upstream and downstream of the McArdle Bridge, Boston, MA.

(b) *Effective Date.* This section is effective from sunset on Monday until sunrise on Friday for the following dates: April 2 until April 6, 2001; June 11 until June 15, 2001; June 25 until June 29, 2001; July 9 until July 13, 2001; July 23 until July 27, 2001; August 6, until August 10, 2001; August 20 until August 24, 2001, September 3, until September 7, 2001; and September 17, until September 21, 2001.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

Dated: March 15, 2001.

J.R. Whitehead,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 01–10574 Filed 4–27–01; 8:45 am]

BILLING CODE 4910–15–U

POSTAL SERVICE

39 CFR Part 20

International Customized Mail Service

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service adopts the proposed changes to its International Customized Mail Service to reduce the volume or revenue requirements.

DATES: Effective April 30, 2001.

FOR FURTHER INFORMATION CONTACT: Robert E. Michelson, (703) 292–3605.

SUPPLEMENTARY INFORMATION: On March 8, 2001, the Postal Service published in the **Federal Register** (66 FR 13868) a notice of proposed changes to International Customized Mail Service. These proposed changes would reduce the required volume or revenue that a mailer of non-letter-post items (including Global Priority Mail) must meet to qualify for International Customized Mail service. The volume requirement would be reduced from 1 million pounds of international mail to 600 pieces, on an annualized basis. The revenue requirement would be reduced from $2 million in international postage to $12,000, on an annualized basis.

The Postal Service invited public comment by April 9, 2001. The Postal Service did not receive any comments by that date. Accordingly, the Postal Service is adopting the proposed rule.

The Postal Service adopts the following amendments to the International Mail Manual (IMM), which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations.

PART 20—[AMENDED]

1. The authority citations for 39 CFR part 20 continue to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. The International Mail Manual (IMM) is amended to incorporate the following changes:

2 CONDITIONS FOR MAILING

* * * * *

290 Commercial Services

* * * * *

297 International Customized Mail

* * * * *

297.2 Qualifying Mailers

To qualify for ICM service, a mailer must tender all of its ICM mail to the Postal Service and must be capable, on an annualized basis, of either:

a. Tendering at least 1 million pounds of international letter-post mail (excluding Global Priority Mail) to the Postal Service, or paying at least $2 million in international letter-post postage to the Postal Service.

b. Tendering at least 600 pieces of international non-letter-post mail (including Global Priority Mail) to the Postal Service, or paying at least $12,000 in international non-letter-post postage to the Postal Service.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 01–10553 Filed 4–27–01; 8:45 am]

BILLING CODE 7710–12–U 7710–12

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 90

[WT Docket No. 99–87; RM–9332; RM–9405; RM–9705; FCC 00–403]

Revised Competitive Bidding Authority; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On January 2, 2001, (66 FR 33), the Commission published final rules in the Report and Order, which revised the rules governing which wireless telecommunications services licenses are potentially auctionable and its determinations of the appropriate licensing scheme for new and existing services. This document corrects the instructional paragraph.

DATES: Effective March 2, 2001.

FOR FURTHER INFORMATION CONTACT: Leora Hochstein or William Huber, Attorneys, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: The Commission published a document amending part 90 in the **Federal Register** of January 2, 2001 (66 FR 33). This document corrects the **Federal Register** as it appeared. In rule FR Doc. 01–00040 published on January 2, 2001 (66 FR 33), the Commission is correcting § 90.179 to reflect the correct paragraph designation and replace text that was inadvertently omitted.

In rule FR Doc. 01–00040 published on January 2, 2001 (66 FR 33) make the following correction:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

§ 90.179 [Corrected]

1. On page 55, in the first column, instruction number 4, and the regulatory text is corrected to read as follows:

4. Section 90.179 is amended by revising paragraph (i) to read as follows:

§ 90.179 Shared use of radio stations.

* * * * *

(i) The provisions of this section do not apply to licensees authorized to provide commercial mobile radio service under this part, including licensees authorized to use channels transferred or assigned pursuant to § 90.621(e)(2).

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–10630 Filed 4–27–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[WT Docket No. 99–168; FCC 00–330]

Service Rules for the 746–764 and 776–794 MHz Bands; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On February 15, 2001, (66 FR 10374), the Commission published final rules in the Second Memorandum Opinion and Order. This document dismissed a petition for reconsideration as moot and adopted a special rule on default payments for auctions of licenses in the 746–764 and 776–794 MHz bands that would use a package bidding design.

DATES: Effective April 30, 2001.

FOR FURTHER INFORMATION CONTACT: Howard Davenport, Attorney, Auctions Legal Branch at (202) 418–0660.

SUPPLEMENTARY INFORMATION: The Commission published a document amending part 27 in the **Federal Register** of February 15, 2001 (66 FR 10374). This document corrects the **Federal Register** as it appeared. In rule FR Doc. 01–3786 published February 15, 2001 (66 FR 10374), the Commission is correcting paragraph 16 and § 27.501 to include text that was inadvertently omitted.

In rule FR Doc. 01–3786 published on February 15, 2001 (66 FR 10374) make the following corrections:

1. On page 10377, in the first column and starting on line 7, paragraph 16 is corrected by adding a sentence at the end of the paragraph to reads as follows:

In determining whether the defaulted bid(s) or the subsequent winning bid(s) is the lesser amount, we will compare the defaulted and subsequent bid(s) according to the same rules we set forth in paragraph 15 for calculation of the deficiency portion of the default payment.

§ 27.501 [CORRECTED]

2. On page 10377, in the first and second column in § 27.501 the addition of paragraph (b) introductory text is corrected to read as follows:

§ 27.501 746–764 MHz and 776–794 MHz bands subject to competitive bidding.

* * * * *

(b) For auctions of licenses in the 747–762 and 777–792 MHz Bands using a package bidding design, the payments imposed on bidders who default on payments due after an auction closes or who are disqualified, set forth in § 1.2104(g) of this chapter, shall be calculated as follows. The default payment consists of a deficiency portion and an additional payment. The additional payment shall be 25 percent of the subsequent winning bid or the defaulted bid, whichever is less. In the case that either the subsequent winning bid or the defaulted bid is subject to bidding credits, the additional payment will be calculated in an analogous manner to that used in § 1.2104(g)(2) of this chapter. The deficiency portion of the default payment shall be calculated as set forth in § 27.501(b)(1) through (b)(4). In the case that any of the relevant bids are subject to bidding credits, the default payment will be adjusted in an analogous manner to that used in § 1.2104(g)(1) of this chapter. In calculating the additional payment portion of the default payment, to determine whether the defaulted bid(s) or the subsequent winning bid(s) is the lesser amount, the defaulted and subsequent bid(s) will be compared according to the rules set forth in paragraphs (b)(1) through (4) of this section for calculation of the deficiency portion of the default payment.

* * * * *

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–10629 Filed 4–27–01; 8:45 am]

BILLING CODE 6712–01–M

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Proposed Rules

Federal Register
Vol. 66, No. 83
Monday, April 30, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 955

[Docket No. FV01–955–2]

Vidalia Onions Grown in Georgia; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible growers of Vidalia onions in Georgia, to determine whether they favor continuance of the marketing order regulating the handling of Vidalia onions grown in the production area.

DATES: The referendum will be conducted from June 4 through 22, 2001. To vote in this referendum, growers must have been producing Vidalia onions within the designated production area in Georgia during the period January 1, 2000, through December 31, 2000.

ADDRESSES: Copies of the marketing order may be obtained from the office of the referendum agents at the Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 2276, Winter Haven, FL 33883–2276, or the Office of the Docket Clerk, U.S. Department of Agriculture, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 2276, Winter Haven, FL 33883–2276; telephone (863) 229–4770; fax (863) 299–5169; or Melissa Schmaedick, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, room 2522–S, Washington, DC 20090–6456; telephone (202) 720–2491; fax (202) 720–5698.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Agreement and Order No. 955 (7 CFR part 955), hereinafter referred to as the "order," and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act," it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by the growers. The referendum shall be conducted from June 4 through 22, 2001, among Vidalia onion growers in the production area. Only growers that were engaged in the production of Vidalia onions in Georgia, during the period of January 1, 2000, through December 31, 2000, may participate in the continuance referendum.

The Secretary of Agriculture has determined that continuance referenda are an effective means for determining whether growers favor continuation of marketing order programs. The Secretary would consider termination of the order if less than two-thirds of the growers voting in the referendum, and growers of less than two-thirds of the volume of Vidalia onions represented in the referendum, favor continuance. In evaluating the merits of continuance versus termination, the Secretary will consider the results of the referendum and other relevant information regarding operation of the order. The Secretary will evaluate the order's relative benefits and disadvantages to growers, handlers, and consumers to determine whether continuing the order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the ballot materials to be used in the referendum herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0178. It has been estimated that it will take an average of 20 minutes for each of the approximately 136 growers of Vidalia onions in Georgia to cast a ballot. Participation is voluntary. Ballots postmarked after June 22, 2001, will not be included in the vote tabulation.

Christian D. Nissen and William G. Pimental of the Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, are hereby designated as the referendum agents of the Secretary of Agriculture to conduct such referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR part 900.400 *et seq.*).

Ballots will be mailed to all growers of record and may also be obtained from the referendum agents, or from their appointees.

List of Subjects in 7 CFR Part 955

7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Dated: April 24, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–10662 Filed 4–27–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 502

[No. OTS–2001–30]

RIN 1550–AB47

Assessments and Fees

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing to amend its assessments rule to more accurately reflect the increased costs of supervising 3-, 4-, and 5-rated institutions. OTS proposes to set the condition component of its assessments regulation at 50 percent of the size component for 3-rated institutions, and 100 percent of the size component for 4- and 5-rated institutions.

DATES: Comments must be received on or before May 30, 2001.

ADDRESSES: *Mail:* Send comments to Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 2001–30.

Delivery: Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9:00 a.m. to 4:00 p.m. on business days, Attention Regulation Comments, Chief Counsel's Office, Docket No. 2001–30.

Facsimiles: Send facsimile transmissions to FAX Number (202) 906–6518, Attention Docket No. 2001–30.

E-Mail: Send e-mails to "regs.comments@ots.treas.gov", Attention Docket No. 2001–30, and include your name and telephone number.

Public Inspection: Comments and the related index will also be posted on the OTS Internet Site at "www.ots.treas.gov". In addition, interested persons may inspect comments at the Public Reference Room, 1700 G St. NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) Appointments will be scheduled on business days between 10:00 a.m. and 4:00 p.m. In most cases, appointments will be available the next business day following the date a request is received.

SUPPLEMENTARY INFORMATION:

I. Description of Proposed Rule

OTS is charged with examining, regulating, and providing for the safe and sound operation of savings associations.[1] OTS funds its operations through assessments on savings associations and through other fees. The Home Owners' Loan Act (HOLA) specifically authorizes the Director to assess such fees to fund its direct and indirect expenses, as the Director deems necessary or appropriate.[2]

Under 12 CFR part 502, OTS determines each institution's assessment by adding together three components reflecting the size, condition and complexity of an institution. OTS computes the size component by multiplying an institution's total assets (as reported on the Thrift Financial Report (TFR)) by the applicable assessment rate. The condition component is a percentage of the size component and is imposed on institutions that have a 3-, 4-, or 5-composite rating under the Uniform Financial Institutions Rating System (UFIRS) (also referred to as the CAMELS rating system).[3] OTS imposes a complexity component if: (1) A thrift administers more than $1 billion in trust assets; (2) the outstanding balance of assets fully or partially covered by recourse obligations or direct credit substitutes exceeds $1 billion; or (3) the thrift services over $1 billion of loans for others. OTS calculates the complexity component by multiplying set rates times the amounts by which an association exceeds each particular threshold.

Today's proposed rule would revise how OTS calculates the condition component. Under the current rules, the condition component equals 25 percent of the thrift's size component for 3-rated institutions, and 50 percent of the thrift's size component for 4- or 5-rated institutions.[4] This premium was designed to reflect the greater supervisory resources demanded by these lower-rated institutions.

OTS data shows that there is a significant increase in the supervisory demands on the regulator once an institution's rating moves to a "3," and an even greater increase when a thrift's rating moves to a "4" or a "5." OTS experience since 1998, when it last adjusted this component, has shown that the current premium for these institutions does not adequately compensate OTS for the additional demands on its resources given the substantial level of supervision required by these institutions. Accordingly, OTS proposes to raise the condition component to 50 percent for 3-rated institutions and 100 percent for 4- and 5-rated institutions.[5]

OTS plans to expeditiously publish a final rule in this proceeding. OTS anticipates that the final rule will be effective for the July 31, 2001 semi-annual assessment.

II. Comment Solicitation

Under the current regulation and the proposed rule, the condition component is set at a percentage of the size component, which reflects total assets reported on the TFR. Currently, OTS does not directly consider the complexity of an institution's operations in its calculation of the condition component.[6] It is concerned that the complex off-balance sheet portfolio of an institution with a 3-, 4- or 5-rating may impose significantly greater demands on the agency's supervisory resources. Accordingly, OTS specifically seeks comment whether it should consider the complexity of an institution's operations in its calculation of the condition component. OTS also seeks comment on how it should calculate the assessment if it elects to factor complexity into the condition component. Should OTS, for example, multiply the amount of the existing complexity component by 50 or 100 percent, or use some other calculation?

OTS also seeks comment on all other aspects of this rule. In addition, section 722 of the Gramm-Leach-Bliley Act requires federal banking agencies to use "plain language" in all proposed and final rules published after January 1, 2000. OTS also invites your comments on how to make this proposed rule easier to understand. For example:

Do we clearly state the requirements in the rule? If not, how could the rule be more clearly stated?

Does the rule contain technical language or jargon that is not clear? If so, what language requires clarification?

Would a different format make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

What else could we do to make the rule easier to understand?

III. Executive Order 12866

The Director of OTS has determined that this proposed rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

IV. Regulatory Flexibility Act Analysis

Under section 605(b) of the Regulatory Flexibility Act of 1980,[7] OTS has evaluated the effects this proposed rulemaking would have on small businesses, small organizations, and small governmental jurisdictions. As required, OTS has prepared the

[1] 12 U.S.C. 1463(a).

[2] 12 U.S.C. 1467(k). *See also* 12 U.S.C. 1462a, 1463, 1467(a), 1467a.

[3] The UFIRS rating system was developed jointly by all of the Federal banking regulators in an effort to establish a uniform system using standard criteria and definitions for rating in six different rating areas: capital, assets, management, earnings, liquidity, and sensitivity to market risk. *See* 61 FR 67021 (December 19, 1996). UFIRS is an effective supervisory tool for evaluating the soundness of financial institutions on a uniform basis, and for identify those institutions requiring special supervisory attention or concern.

[4] OTS has assessed a 50 percent premium on 4- and 5-rated institutions since 1990. 55 FR 34519 (August 23, 1990). OTS began to impose a 25 percent premium on 3-rated institutions in 1998. 63 FR 65663 (November 30, 1998).

[5] OCC has proposed a similar increase to its surcharge on 3-, 4- and 5-rated national banks. *See* 66 FR 17821 (April 4, 2001).

[6] As noted above, however, OTS does separately consider the complexity of an institution's operations under the complexity component.

[7] 5 U.S.C. 605(b).

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following initial regulatory flexibility analysis.

A. Reasons for and Objectives of the Proposed Rule; Legal Basis for the Proposed Rule

OTS funds its operations through assessments on savings associations and through other fees. The Director of OTS is authorized by the HOLA to impose assessments.[8] OTS is specifically authorized to assess such fees to fund the direct and indirect expenses of OTS, as the Director deems necessary or appropriate. 12 U.S.C. 1467(k).

As described above, OTS has found that there is significant increase in supervisory demands on the agency when an institution's rating moves to a "3" rating, and an even greater increase when a thrift's rating moves to a "4" or a "5" rating. Accordingly, the current OTS assessments regulation imposes a premium on these institutions to reflect the increased supervision costs.

OTS experience since 1998, when it last revised its condition component, has shown that the current premium for 3-, 4-, and 5-rated institutions does not adequately compensate it for the additional demands on its resources. Therefore, OTS is attempting, through this proposed rulemaking, to more closely associate its costs and assessments.

B. Effect of the Proposed Rule on Small Savings Associations

The proposed rule could affect small savings associations. The proposal would have no effect on small businesses or small organizations other than small savings associations, and would not affect small governmental jurisdictions. Small savings associations are generally defined, for Regulatory Flexibility Act purposes, as those with assets under $100 million.[9]

As discussed above, the proposed rule would impose a premium equal to 50 percent of an association's size component for each 3-rated association, and a 100 percent of an association's size component on each 4- or 5-rated institution. OTS would assess this premium regardless of the institution's size. As of April 10, 2001, 43 savings associations were 3-rated and had assets under $100 million. Currently, the semi-annual assessment for a 3-rated institution with $100 million in assets is $19,380, exclusive of any complexity component. Under the proposed rule, this institution's semi-annual assessment would be $23,256—an increase of $3,876. Other 3-rated small savings associations would see their assessments increase a lesser amount depending on their asset size.

As of April 10, 2001, six institutions were 4- or 5-rated and had assets under $100 million. Currently, the semi-annual assessment for a 4- or 5-rated institution with $100 million in assets is $23,256, exclusive of any complexity component. Under the proposed rule, this institution's semi-annual assessment would be $31,008—an increase of $7,752. Other 4- and 5-rated institutions would see their assessments increase a lesser amount depending on their asset size.

C. Alternatives

As discussed earlier, 3-, 4- and 5-rated savings associations require more supervisory attention than 1- or 2-rated associations. Therefore, OTS has three alternatives: impose extra assessments on all 3-, 4- and 5-rated associations; impose extra assessments on some sub-category of 3-, 4- and 5-rated institutions; or require 1- and 2-rated institutions to subsidize these extra supervisory costs of 3-, 4- and 5-rated institutions.

OTS believes it is most equitable to match assessments with OTS's supervisory costs as far as possible. Therefore, it proposes to increase the amount of the condition component for 3-, 4-, and 5-rated associations. OTS believes that requiring these institutions to pay for their extra supervisory costs would provide an incentive for those institutions to improve their condition and their ratings. OTS also believes that the proposed condition component best accomplishes OTS's objective of closely tailoring assessment rates to OTS's increased costs in supervising 3-, 4- and 5-rated institutions.

D. Other Matters

The proposed rule would impose no reporting, recordkeeping, or other compliance requirements. Assessments would continue to be based on Thrift Financial Reports that savings associations otherwise must file with OTS. OTS would continue to use its current collection procedures. Therefore, the proposed rule would impose no new or additional reporting, recordkeeping, or compliance requirements.

There are no federal rules that duplicate, overlap, or conflict with this proposed rule.

V. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires an agency to prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OTS has determined that the proposed rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

List of Subjects in 12 CFR Part 502

Assessments, Federal home loan banks, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thrift Supervision proposes to amend part 502, chapter V, title 12, Code of Federal Regulations as set forth below.

PART 502—ASSESSMENTS AND FEES

1. The authority citation for part 502 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1467, 1467a.

2. Section 502.20 is revised to read as follows:

§ 502.20 How does OTS determine my condition component?

OTS uses the following chart to determine your condition component.

If your component rating is:	Then your condition component is:
1 or 2	Zero.
3	50 percent of your size component.
4 or 5	100 percent of your size component.

Dated: April 20, 2001.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 01–10618 Filed 4–27–01; 8:45 am]

BILLING CODE 6720–01–U

[8] 12 U.S.C. 1462a, 1463, 1467, 1467a.

[9] 13 CFR 121.201 Division H (1998).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–415–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes, that currently requires modification of the forward and aft evacuation slide systems by replacing the Velcro restraints for the support logs with frangible link restraints. This action would reduce the time to accomplish the modification from 3 years to 9 months. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent the ingestion of sill support-log material into the aspirator of the evacuation slide, which could result in failure of the slide to inflate.

DATES: Comments must be received by May 30, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–415–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–415–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, ANM–116, FAA, International Branch, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–415–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–415–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On February 15, 2000, the FAA issued AD 2000–04–06, amendment 39–11588 (65 FR 9212, February 24, 2000), applicable to certain Airbus Model A319, A320, and A321 series airplanes, to require modification of the forward and aft evacuation slide systems by replacing the Velcro restraints for the support logs with frangible link restraints. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to prevent the ingestion of sill support-log material into the aspirator of the evacuation slide, which could result in failure of the slide to inflate.

Actions Since Issuance of Previous Rule

Since the issuance of AD 2000–04–06, there have been additional incidents of the evacuation slide failing to inflate, due to the ingestion of sill support-log material into the aspirator of the slide.

French Airworthiness Directives

After receiving additional reports of failure of the evacuation slide to inflate, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, issued Revision 1 to French airworthiness directive 2000–359–152(B), dated November 29, 2000, to reduce the compliance time for accomplishment of the modification in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 2000–04–06 to continue

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to require modification of the forward and aft evacuation slide systems by replacing the Velcro restraints for the support logs with frangible link restraints. The proposed AD would shorten the compliance time from 3 years after the effective date of AD 2000–04–06 to 9 months after the effective date of the proposed AD. All other requirements of AD 2000–04–06 would remain the same.

Cost Impact

There are approximately 202 airplanes of U.S. registry that would be affected by this proposed AD.

The modification that is currently required by AD 2000–04–06 and retained in this proposed AD was previously reported to take approximately 1 work hour per airplane to accomplish. That modification, however, is now estimated to take approximately 5 work hours per airplane to accomplish. The average labor rate is $60 per work hour. There is no charge for required parts. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $60,600, or $300 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11588 (65 FR 9212, February 4, 2000), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 2000–NM–415–AD. Supersedes AD 2000–04–06, Amendment 39–11588.

Applicability: Model A319, A320, and A321 series airplanes; certificated in any category; equipped with any emergency evacuation slide having a part number (P/N) listed as:

D31516–103
D31516–105
D31516–107
D31516–109
D31517–103
D31517–105
D31517–107
D31517–109

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the ingestion of sill support-log material into the aspirator of the escape slide which could result in failure of the escape slide to inflate, accomplish the following:

Modification

(a) Within 9 months after the effective date of this AD, modify the forward and aft emergency evacuation slides by replacing the Velcro restraints for the support logs with frangible link restraints, in accordance with Airbus Service Bulletin A320–25–1215, dated April 29, 1999.

Note 2: Airbus Service Bulletin A320–25–1215 refers to Air Cruisers Service Bulletin 004–25–51, dated February 26, 1999, as an additional source of service information for accomplishment of the modification.

Spares

(b) As of the effective date of this AD, no person shall install on any airplane an emergency evacuation slide having P/N D31516–103, D31516–105, D31516–107, D31516–109, D31517–103, D31517–105, D31517–107, or D31517–109.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directive 2000–359–152(B) R1, dated November 29, 2000.

Issued in Renton, Washington, on April 23, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–10595 Filed 4–27–01; 8:45 am]

BILLING CODE 4910–39–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–390–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 F4–605R Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300 F4–605R airplanes. This proposal would require installation of external doublers at frames 29 and 33. This action is necessary to prevent fatigue cracking of certain circumferential joints, which could result in reduced structural integrity of the fuselage in the vicinity of the upper deck cargo door. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 30, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–390–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–390–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket 2000–NM–390–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket 2000–NM–390–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300 F4–605R airplanes. The DGAC advises that fatigue and damage tolerance analysis conducted on airplanes converted from passenger to freighter configuration indicated that the upper areas of certain fuselage circumferential joints may not reach the airplane design life goal without reinforcement. Additional analysis extended this result to include production Model A300–600 series airplanes equipped with an upper deck cargo door. Premature fatigue cracking could result in reduced structural integrity of the fuselage in the vicinity of the upper deck cargo door.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A300–53–6119, Revision 01, dated September 25, 2000. The service bulletin describes procedures for installing external doublers at frames 29 and 33. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 2000–456–323(B), dated November 15, 2000, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 32 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 85 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $1,820 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $221,440, or $6,920 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time

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required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 2000–NM–390–AD.

Applicability: Model A300F4–605R airplanes, certificated in any category, except those on which Airbus production Modification 12081 or the modification specified by Service Bulletin A300–53–6119, Revision 01, dated September 25, 2000, has been installed.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of certain circumferential joints, which could result in reduced structural integrity of the fuselage in the vicinity of the upper deck cargo door, accomplish the following:

Installation of Doublers

(a) Before the airplane accumulates 10,000 total flight cycles, or within 6 months after the effective date of this AD, whichever occurs later: Install external doublers at frames 29 and 33, in accordance with Airbus Service Bulletin A300–53–6119, Revision 01, dated September 25, 2000.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 2000–456–323(B), dated November 15, 2000.

Issued in Renton, Washington, on April 23, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–10594 Filed 4–27–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–230–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A330 and A340 series airplanes. This proposal would require installation of a retainer device on the attachment pin of the brake torque rod of the main landing gear (MLG). This action is necessary to prevent the attachment pin from fully migrating from the brake torque rod and to prevent the collar from detaching from the MLG; these conditions could result in loss of braking on two wheels and the inability to extend the MLG. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 30, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–230–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–230–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–230–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket 2000–NM–230–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A330 and A340 series airplanes. The DGAC advises that it has received a report of a failed crossbolt of the the brake rod attachment pin and a partially migrated attachment pin on the main landing gear (MLG) of a Model A330 series airplane. After the airplane landed, a walkaround inspection revealed that the attachment pin had migrated nearly half its length. The collar and the head and tail of the crossbolt, which retain the attachment pin in position, were missing. The complete migration of an attachment pin will result in the loss of braking on two wheels. It is also possible that the free movement of a disconnected brake torque rod could restrict the extension of the MLG.

The MLG on Model A330 and A340 series airplanes is similar; therefore, both airplane models are subject to the unsafe condition identified in this proposed AD.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A330–32–3119 (for Model A330 series airplanes) and A340–32–4157 (for Model A340 series airplanes), both dated July 13, 2000. The service bulletins describe procedures for installing a retainer device on the attachment pin of the brake torque rods of the MLG. The retainer will:

- Prevent the attachment pin from fully migrating if the crossbolt fails and the collar moves out of position;
- Allow for easier detection of a failed crossbolt and a loose collar; and
- Prevent the collar from becoming detached from the MLG.

The DGAC classified these service bulletins as mandatory and issued French airworthiness directives 2000–478–130(B) and 2000–479–157(B), both dated November 29, 2000, to ensure the continued airworthiness of these airplanes in France. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

The service bulletins refer to Messier-Dowty Service Bulletins A33/34–32–163 and A33/34–32–164, both dated March 1, 2000, as additional sources of service information for accomplishment of the installation required by this AD.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

The FAA estimates that 7 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 4 work hours per airplane to accomplish the proposed retainer installation, at an average labor rate of $60 per work hour. There would be no charge for required parts. Based on these figures, the cost impact on U.S. operators of the retainer installation proposed by this AD is estimated to be $1,680, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if

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promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 2000–NM–230–AD.

Applicability: Model A330 and A340 series airplanes, certificated in any category; except those on which Airbus Modification 47917 (Airbus Service Bulletin A330–32–3119 or A340–32–4157) has been incorporated in production.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the attachment pin from fully migrating from the brake torque rod and the collar from detaching from the main landing gear (MLG), which could result in loss of braking on two wheels and the inability to extend the MLG, accomplish the following:

Installation of Retainer Device

(a) Within 5 months after the effective date of this AD, install a retainer device on the attachment pin of the brake torque rods of the MLG, in accordance with Airbus Service Bulletin A330–32–3119 (for Model A330 series airplanes) or A340–32–4157 (for Model A340 series airplanes), both dated July 13, 2000.

Note 2: The Airbus service bulletins refer to Messier-Dowty Service Bulletins A33/34–32–163 and A33/34–32–164, both dated March 1, 2000, as additional sources of service information for accomplishment of the installation required by this AD.

Spares

(b) As of the effective date of this AD, no person may install an MLG on any airplane unless it has been modified in accordance with the requirements of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directives 2000–478–130(B) and 2000–479–157(B), both dated November 29, 2000.

Issued in Renton, Washington, on April 23, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–10593 Filed 4–27–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ASO–4]

Proposed Amendment of Class D Airspace and Establishment of Class E4 Airspace; Homestead, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend Class D airspace and establish Class E4 airspace at Dade County—Homestead Regional Airport. After reviewing airspace requirements for containing instrument approach procedures within controlled airspace at the Dade County—Homestead Regional Airport, it was determined that the Class D airspace be amended from a 5.5—mile radius of Homestead Airport to a 5—mile radius with establishment of Class E airspace extentions that are 3 miles wide and extend 7 miles northeast and southwest of the airport.

DATES: Comments must be received on or before May 30, 2001.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 01–ASO–4, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 01–ASO–4." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class D airspace and establish Class E4 airspace at Homestead, FL. Class D airspace designations for airspace areas extending upward from the surface of the earth and Class E airspace designations for airspace areas designated as an extension to a Class D airspace area are published in Paragraphs 5000 and 6004 respectively of FAA Order 7400.9H, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO FL D Homestead, FL [REVISED]

Dade County—Homestead Regional Airport, FL

(Lat. 25°29′18″N, long. 80°23′01″W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 5-mile radius of the Dade County—Homestead Regional Airport.

* * * * *

Paragraph 6004 Class E4 Airspace Areas Designated as an Extension to a Class D Airspace Area.

* * * * *

ASO FL E4 Homestead, FL [NEW]

Dade County—Homestead Regional Airport, FL

(Lat. 25°29′18″N, long. 80°23′01″W)

That airspace extending upward from the surface within 1.5 miles each side of a 050° bearing and a 230° bearing from the Dade County—Homestead Regional Airport extending from the 5-mile radius to 7 miles northeast and southwest of the airport.

* * * * *

Issued in College Park, Georgia, on April 18, 2001.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 01–10568 Filed 4–27–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–115560–99]

RIN 1545–AX66

Equity Options With Flexible Terms; Qualified Covered Call Treatment; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations providing guidance on the application of the rules governing qualified covered calls, and writing equity call options.

DATES: The public hearing originally scheduled for Wednesday, May 9, 2001, at 10 a.m., is canceled.

FOR FURTHER INFORMATION CONTACT: Guy R. Traynor of the Regulations Unit, Office of Special Counsel, (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on January 18, 2001, (66 FR 4751) announced that a public hearing was scheduled for May 9, 2001, at 10 a.m., in the auditorium of the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The subject of the public hearing is proposed regulations under section 1092 of the Internal Revenue Code. The public comment period for these proposed regulations expired on April 18, 2001.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of April 20, 2001, no one has requested to speak. Therefore, the public hearing scheduled for May 9, 2001, is canceled.

LaNita VanDyke,

Acting Chief, Regulations Unit, Office of Special Counsel (Modernization & Strategic Planning).

[FR Doc. 01–10549 Filed 4–27–01; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 21

[DA 01–1072]

Multipoint Distribution Service (MDS); Two-Way Transmissions

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Mass Media Bureau ("Bureau") seeks comment on a proposal to extend the current five-year build-out requirement imposed upon Basic Trading Area ("BTA") authorization holders in the Multipoint Distribution Service ("MDS") by two years. BTA authorization holders currently have five years from the grant date of the initial BTA authorization to construct, develop and expand MDS station operations in their respective protected service areas. On August 16, 1996, the Commission granted 334 of the 493 BTA authorizations to 54 different entities. By this proposed rule, the Bureau seeks comment on its proposal to extend the build-out requirement by two years.

DATES: Comments due on or before May 9, 2001. Reply comments are due on or before May 16, 2001.

FOR FURTHER INFORMATION CONTACT: Brad Lerner (202) 418–7066, Video Services Division, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Mass Media Bureau's Public Notice entitled, *In the Matter of Extension of the Five-year Build-out Period for BTA Authorization Holders in the Multipoint Distribution Service*, DA 01–1072, released April 25, 2001. The full text of this Public Notice is available for inspection and copying during normal business hours in the FCC Reference Room, Room CY–A257, Portals II, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. ("ITS"), Portals II, 445 12th Street, SW. Room CY–B402, Washington, DC 20554.

Synopsis of Public Notice

Traditionally, MDS spectrum has been used to deliver multichannel video programming services similar to cable television. As noted above, the Commission auctioned 493 BTAs for the provision of these wireless cable services. Since the 1996 auction, the MDS industry has been rapidly evolving. In October 1996, the Commission allowed MDS operators to use their spectrum for high-speed digital data applications, including Internet access. In March 1997, the Wireless Cable Association International, Inc., along with over 100 participants, petitioned the Commission to grant the industry the right to use MDS and Instructional Television Fixed Service ("ITFS") spectrum for two-way services. Two-way authorization would effectively enable voice, video, and data over the spectrum. In 1998, the Commission approved the use of two-way transmissions on MDS and ITFS frequencies.

In the initial filing window for two-way service, which was held August 14–18, 2000, MDS and ITFS licensees filed approximately 2,267 applications. On April 6, 2001, the Bureau released its first Public Notice announcing the grant of 1,024 of these applications. The Bureau will continue to grant additional two-way applications and on April 16, 2001, the Bureau began the transition to the rolling one-day filing window procedure. Section 21.930(c)(1) of the Commission's rules provides that within five years of the grant of a BTA authorization, the authorization holder must construct MDS stations to provide signals pursuant to section 21.907, 47 CFR 21.907, that are capable of reaching at least two-thirds of the population of the applicable service area, excluding the populations within protected service areas of incumbent stations. The build-out benchmarks were originally established in order to ensure that BTA authorization holders would promptly deliver their anticipated video programming service to the public.

The Bureau proposes to extend the five-year build-out requirement as set forth in § 21.930(a)(1) of the Commission's rules, 47 CFR 21.930(a)(1), by two years. In light of the service rule changes, the timing of the initial filing window, the recent two-way application grants allowing BTA authorization holders to provide broadband service, the forthcoming grants of other pending two-way applications, and the upcoming August 16, 2001 build-out deadline for many BTAs, we tentatively conclude that extension of the five-year build-out requirement by two years for all BTAs will promote the maximization of efficient and effective use of this service. The Bureau believes that it would be inequitable to require authorization holders to follow build-out criteria applicable to rules governing wireless cable operations since many of them are now providing high-speed broadband services.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01–10768 Filed 4–27–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AH79

Migratory Bird Hunting; Proposed 2001–02 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter Service or we) proposes to establish annual hunting regulations for certain migratory game birds for the 2001–02 hunting season. We annually prescribe outside limits (frameworks) within which States may select hunting seasons. We also request proposals from Indian tribes that wish to establish special migratory bird hunting regulations on Federal Indian reservations and ceded lands. Migratory game bird hunting seasons provide hunting opportunities for recreation and sustenance; aid Federal, State, and tribal governments in the management of migratory game birds; and permit harvests at levels compatible with migratory bird population status and habitat conditions.

DATES: You must submit comments for proposed early-season frameworks by July 30, 2001, and for proposed late-season frameworks by September 7, 2001. Tribes should submit proposals and related comments by June 1, 2001.

ADDRESSES: Send your comments on the proposals to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634-ARLSQ, 1849 C Street, NW, Washington, DC 20240. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel at: Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634-ARLSQ, 1849 C Street, NW, Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Background and Overview

Migratory game birds are those bird species so designated in conventions between the United States and several foreign nations for the protection and management of these birds. Under the Migratory Bird Treaty Act (16 U.S.C. 703–712), the Secretary of the Interior is authorized to determine when "hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage, or export of any * * * bird, or any part, nest or egg" of migratory game birds can take place and to adopt regulations for this purpose. These regulations must be written based on "the zones of temperature and the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds" and must be updated annually. This responsibility has been delegated to the Fish and Wildlife Service (Service) of the Department of the Interior as the lead Federal agency for managing and conserving migratory birds in the United States.

The Service develops migratory bird hunting regulations by establishing the frameworks, or outside limits, for season lengths, bag limits, and areas for migratory game bird hunting. Acknowledging regional differences in hunting conditions, the Service has administratively divided the nation into four Flyways for the primary purpose of managing waterfowl and obtaining assistance in the formulation of these regulations. Each Flyway (Atlantic, Mississippi, Central, and Pacific) has a Flyway Council, a formal organization generally composed of one member from each State and Province in that Flyway. The Flyway Councils also assist in researching and providing management techniques for Federal, State, and Provincial Governments, as well as private conservation agencies and the general public.

The migratory bird hunting regulations, located at 50 CFR 20, are constrained by three primary factors. Legal and administrative considerations dictate how long the rulemaking process will last. Most importantly though, the biological cycle of migratory birds controls the timing of data-gathering activities and thus the date on which results are available for consideration. The process includes two separate regulations-development schedules, based on early-and late-hunting season regulations. Early seasons pertain to all migratory game bird species in Alaska, Hawaii, Puerto Rico, and the Virgin Islands, migratory game birds other than waterfowl (i.e., dove, woodcock, etc.) and special early waterfowl seasons, such as teal or resident Canada geese. The early season generally begins prior to October 1. Late seasons generally start on or after October 1 and include most waterfowl seasons not already established.

There are basically no differences in the processes for establishing either early- or late-hunting seasons. For each cycle, Service biologists gather, analyze, and interpret survey data and provide this information to all those involved in the process through a series of published status reports and presentations to Flyway Councils and other interested parties. Because the Service is required to take abundance of migratory birds and other factors into consideration, the Service undertakes a number of surveys throughout the year in conjunction with Service Regional Offices, the Canadian Wildlife Service, and State and Provincial wildlife-management agencies. Factors such as population size and trend, geographical distribution, annual breeding effort, the condition of breeding, wintering habitat, the number of hunters, and the anticipated harvest are considered to determine the appropriate frameworks for each species.

After frameworks, or outside limits, are established for season lengths, bag limits, and areas for migratory game bird hunting, migratory game bird management becomes a cooperative effort of State and Federal governments. The Service works together with the States by allowing them certain authority to regulate hunting of migratory birds. After Service establishment of final frameworks for hunting seasons, the States may select season dates, bag limits, and other regulatory options for the hunting seasons. States may be more conservative in their selections than the Federal frameworks but never more liberal.

Consolidation of Notices

For administrative purposes, this document consolidates the notice of intent to establish open migratory bird hunting seasons and the request for tribal proposals with the preliminary proposals for the annual hunting regulations-development process. We will publish the remaining proposed and final rulemaking documents separately. For inquiries on tribal guidelines and proposals, tribes should contact the following personnel:

Region 1—Brad Bortner, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; (503) 231–6164

Region 2—Jeff Haskins, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103; (505) 248–7885

Region 3—Steve Wilds, U.S. Fish and Wildlife Service, Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111–4056; (612) 713–5432

Region 4—Frank Bowers, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, Georgia 30345; (404) 679–4000

Region 5—George Haas, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589; (413) 253–8576

Region 6—John Cornely, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Building, Denver, Colorado 80225; (303) 236–8145

Region 7—Robert Leedy, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503; (907) 786–3423

Notice of Intent To Establish Open Seasons

This notice announces our intent to establish open hunting seasons and daily bag and possession limits for certain designated groups or species of migratory game birds for 2001–02 in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands, under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K of 50 CFR part 20.

For the 2001–02 migratory game bird hunting season, we will propose regulations for certain designated members of the avian families Anatidae (ducks, geese, and swans); Columbidae (doves and pigeons); Gruidae (cranes); Rallidae (rails, coots, moorhens, and gallinules); and Scolopacidae (woodcock and snipe). We describe these proposals under Proposed 2001–02 Migratory Game Bird Hunting Regulations (Preliminary) in this document. We published definitions of waterfowl flyways and mourning dove management units, as well as a description of the data used in and the factors affecting the regulatory process, in the March 14, 1990, **Federal Register** (55 FR 9618).

Regulatory Schedule for 2001–02

This document is the first in a series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations. In supplemental proposed rulemakings, we will make proposals relating to the harvest of migratory game birds initiated after this publication is available for public review. Also, we will publish additional supplemental proposals for public comment in the **Federal Register** as population, habitat, harvest, and other information become available.

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Because of the late dates when certain portions of these data become available, we anticipate abbreviated comment periods on some proposals. Special circumstances limit the amount of time we can allow for public comment on these regulations. Specifically, two considerations compress the time for the rulemaking process: The need, on one hand, to establish final rules early enough in the summer to allow resource agencies to select and publish season dates and bag limits prior to the beginning of hunting seasons and, on the other hand, the lack of current status data on most migratory game birds until later in the summer. Because the regulatory process is strongly influenced by the times when information is available for consideration, we divide the regulatory process into two segments: early seasons and late seasons.

Major steps in the 2001–02 regulatory cycle relating to open public meetings and **Federal Register** notifications are illustrated in the diagram at the end of this proposed rule. All publication dates of **Federal Register** documents are target dates.

All sections of this and subsequent documents outlining hunting frameworks and guidelines are organized under numbered headings. These headings are:

1. Ducks
2. Sea Ducks
3. Mergansers
4. Canada Geese
5. White-fronted Geese
6. Brant
7. Snow and Ross's (Light) Geese
8. Swans
9. Sandhill Cranes
10. Coots
11. Moorhens and Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-tailed Pigeons
16. Mourning Doves
17. White-winged and White-tipped Doves
18. Alaska
19. Hawaii
20. Puerto Rico
21. Virgin Islands
22. Falconry
23. Other

Later sections of this and subsequent documents will refer only to numbered items requiring your attention. Therefore, it is important to note that we will omit those items requiring no attention and remaining numbered items will be discontinuous and appear incomplete.

Requests for Tribal Proposals

Background

Beginning with the 1985–86 hunting season, we have employed guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467) to establish special migratory bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. We developed these guidelines in response to tribal requests for our recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal and nontribal members throughout their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks, but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, tribal regulations established under the guidelines must be consistent with the annual March 10 to September 1 closed season mandated by the 1916 Convention Between the United States and Great Britain (for Canada) for the Protection of Migratory Birds (Convention). The guidelines are capable of application to those tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. They also are capable of application to the establishment of migratory bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such hunting, or where the tribes and affected States otherwise have reached agreement over hunting by nontribal members on non-Indian lands.

Tribes usually have the authority to regulate migratory game bird hunting by nonmembers on Indian-owned reservation lands, subject to our approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing migratory bird hunting by non-Indians on these lands. In such cases, we encourage the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, we will consult with a tribe and State with the aim of facilitating an accord. We also will consult jointly with tribal and State officials in the affected States where tribes may wish to establish special hunting regulations for tribal members on ceded lands. As explained in previous rulemaking documents, it is incumbent upon the tribe and/or the State to request consultation as a result of the proposal being published in the **Federal Register**. We will not presume to make a determination, without being advised by either a tribe or a State, that any issue is or is not worthy of formal consultation.

One of the guidelines provides for the continuation of tribal members' harvest of migratory game birds on reservations where such harvest is a customary practice. We do not oppose this harvest, provided it does not take place during the closed season required by the Convention, and it is not so large as to adversely affect the status of the migratory bird resource. For several years, we have reached annual agreement with tribes for migratory bird hunting by tribal members on their lands or on lands where they have reserved hunting rights. We will continue to consult with tribes that wish to reach a mutual agreement on hunting regulations for on-reservation hunting by tribal members.

Tribes should not view the guidelines as inflexible. Nevertheless, we believe that they provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount. Use of the guidelines is not required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

Details Needed in Tribal Proposals

Tribes that wish to use the guidelines to establish special hunting regulations for the 2001–02 hunting season should submit a proposal that includes:

(1) The requested hunting season dates and other details regarding regulations;

(2) Harvest anticipated under the requested regulations;

(3) Methods that will be employed to measure or monitor harvest (mail-questionnaire survey, bag checks, etc.);

(4) Steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would seriously impact the migratory bird resource; and

(5) Tribal capabilities to establish and enforce migratory bird hunting regulations.

A tribe that desires the earliest possible opening of the waterfowl season should specify this request in their proposal, rather than request a date that might not be within the final Federal frameworks. Similarly, unless a tribe wishes to set more restrictive regulations than Federal regulations will permit, the proposal should request the same daily bag and possession limits and season length for ducks and geese that Federal regulations are likely to permit the States in the Flyway in which the reservation is located.

Tribal Proposal Procedures

We will publish details of tribal proposals for public review in later **Federal Register** documents. Because of the time required for our and public review, Indian tribes that desire special migratory bird hunting regulations for the 2001–02 hunting season should submit their proposals as soon as possible, but no later than June 1, 2001. Tribes should direct inquiries regarding the guidelines and proposals to the appropriate Service Regional Office listed under the caption **SUPPLEMENTARY INFORMATION**. Tribes that request special migratory game bird hunting regulations for tribal members on ceded lands should send a courtesy copy of the proposal to officials in the affected State(s).

Public Comments Solicited

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. We invite interested persons to participate in this rulemaking by submitting written comments to the address indicated under the caption **ADDRESSES**.

You may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room 634, 4401 North Fairfax Drive, Arlington, Virginia. For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments received during the comment period and respond to them after the closing date in any final rules.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with the Environmental Protection Agency on June 9, 1988. We published Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the address indicated under the caption **ADDRESSES**.

Endangered Species Act Consideration

Prior to issuance of the 2001–02 migratory game bird hunting regulations, we will consider provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531–1543; hereinafter the Act) to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in this and future supplemental proposed rulemaking documents.

Executive Order (E.O.) 12866

This rule is economically significant and was reviewed by the Office of Management and Budget (OMB) under E.O. 12866. E.O. 12866 requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections?

(5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule?

(6) What else could we do to make the rule easier to understand?

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail, and the Service issued a Small Entity Flexibility Analysis (Analysis) in 1998. The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis utilized the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns from which it was estimated that migratory bird hunters would spend between $429 million and $1,084 million at small businesses in 1998. Copies of the Analysis are available upon request from the Division of Migratory Bird Management.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 09/30/2001). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned clearance number 1018–0023 (expires 07/30/2003). The information from this survey is used to estimate the magnitude and the geographical and

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temporal distribution of the harvest, and the portion it constitutes of the total population.

A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that these regulations meet the applicable standards found in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2001–02 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742a–j.

Dated: April 19, 2001.

Joseph E. Doddridge,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Proposed 2001–02 Migratory Game Bird Hunting Regulations (Preliminary)

Pending current information on populations, harvest, and habitat conditions, and receipt of recommendations from the four Flyway Councils, we may defer specific framework proposals (including opening and closing dates, season lengths, and bag limits). Unless otherwise specified, we are proposing no change from the final 2000–01 frameworks of August 23 and September 27, 2000 (65 FR 51496 and 58152). Specific preliminary proposals that vary from the 2000–01 frameworks and issues requiring early discussion, action, or the attention of the States or tribes are contained below:

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/ Species Management. The categories correspond to previously published issues/discussion, and only those containing substantial recommendations are discussed below.

A. General Harvest Strategy

All of our success in duck-harvest management notwithstanding, we continue to be faced with uncertainty about the biological and sociological impacts of hunting regulations. In 1995, we embarked on a regulatory approach known as adaptive harvest management (AHM), which is intended to help address that uncertainty. The AHM approach recognizes that we cannot predict the consequences of hunting regulations with certainty, and provides a means for making objective decisions despite this uncertainty. In addition, a tightly integrated cycle of monitoring, assessment, and decision-making is required under AHM to better understand the relationships among hunting regulations, harvests, and waterfowl abundance. More detailed information about AHM can be found on the Internet at: http://www.fws.gov/r9mbmo/homepg.html.

Since 1995, AHM regulatory strategies have been based on the status of midcontinent mallards, which are defined as those breeding from South Dakota to Alaska (Federal survey strata 1–18, 20–50, and 75–77), and in Minnesota, Wisconsin, and Michigan. An optimal regulatory alternative for midcontinent mallards is based on breeding population size and water conditions in the Canadian prairies, and on empirical weights assigned to four competing models of population dynamics. The same regulatory alternative is applied in all four Flyways, although season lengths and bag limits are Flyway-specific.

The first application of the AHM process involved midcontinent mallards because of their ubiquitous distribution, their importance in the harvest, and because the data and understanding associated with mallards surpassed that of all other species. In the last few years, however, we have begun to examine other populations of mallards, as well as other species, in a search for an appropriate AHM approach to these stocks.

A growing concern relates to how all these stock-specific applications ultimately will fit together in a coherent approach to duck harvest management. For example:

- How much biological variation among duck stocks should we account for in the design of regulatory strategies?
- Should the traditional Flyway-based approach to duck harvest management be modified to take advantage of new information and capabilities?
- What monitoring and assessment capabilities will be needed to support these refinements?
- What are realistic expectations of our ability to reduce uncertainty through the experience of management?
- Even more fundamentally; should sustainable harvest be the sole or even principal currency by which we measure success?

These questions and others suggest that the time has arrived to contemplate the basic goals and overall framework of duck harvest management, and how we might use the AHM process to help us steer an appropriate course. Moreover, the last Supplemental Environmental Impact Statement (SEIS) on migratory bird hunting was issued in 1988, and our approach to duck harvest management has evolved beyond the preferred alternative identified at that time. Therefore, it is our intent to begin the process of preparing a new EIS that will describe new alternatives brought to light by our experience with AHM.

In beginning the dialogue, we suggest the need to focus on three key themes:

(1) Goal setting—AHM can produce optimal regulatory decisions in the face of uncertainty, but, if and only if, there is agreement about the goals and objectives of harvest management. Clearly, the goals of duck harvest management extend well beyond simple measures of hunter success and population size, and many of the difficulties in duck harvest management today probably relate more to ambiguity in objectives, rather than to uncertainty about biological impacts. Tacit disagreement over management objectives poses a serious threat to the long-term viability of AHM.

(2) Limits to system control—There are both theoretical and practical limits to our ability to predict, control, and measure the size of waterfowl populations and harvests and, as a consequence, operational constraints on short-term hunting opportunity and on the learning needed to increase long-term performance. The waterfowl management community needs to better explore, understand, and acknowledge these limits, and to develop regulatory alternatives and strategies that avoid the most undesirable consequences of those limits, while meeting reasonable demands for hunting opportunity.

(3) Management scale—The history of duck harvest management has been characterized by efforts to account for increasingly more spatial, temporal, and organizational variability in waterfowl demographics. We have begun to question the wisdom of this approach, given the inevitable tradeoff between harvest benefits and the direct and indirect costs of managing at progressively finer scales. It remains to be seen what level of resolution ultimately will be most appropriate in the AHM process, but we are increasingly concerned about what we see as unrealistic expectations for accommodating small-scale variation in waterfowl population dynamics.

We look forward to exploring these and other duck-harvest management issues with the Flyway Councils and other stakeholders in the coming year. We hope these discussions will culminate in the issuance of a new EIS for migratory bird hunting sometime in 2004.

AHM for Eastern Mallards

For the purposes of harvest regulation, eastern mallards are defined as those breeding in southern Ontario and Quebec (Federal survey strata 51–54 and 56), and in New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, New Jersey, Delaware, Maryland, and Virginia. In 2000, with assistance from the Atlantic Flyway Council, we proposed mechanisms by which the status of eastern mallards could be considered in the development of a regulatory strategy for the Atlantic Flyway. However, the Service has not made a final decision about whether the Atlantic Flyway regulatory strategy also should be solely based on the status of eastern mallards. This decision was deferred pending further analyses of the implications of this decision for midcontinent mallards and other species. We also have concerns about the timing of this decision in the face of previous comments about the future of duck harvest management. Therefore, we consider the approach used last year to consider only eastern mallard status in the selection of Atlantic Flyway regulations as provisional. It is our recommendation, however, to continue this approach for the 2001–02 hunting season.

C. Zones and Split Seasons

In 1990, because of concerns about the proliferation of zones and split seasons for duck hunting, a cooperative review and evaluation of the historical use of zone/split options was conducted. This review did not show that the proliferation of these options had increased harvest pressure; however, the ability to detect the impact of zone/split configurations was poor because of unreliable response variables, the lack of statistical tests to differentiate between real and perceived changes, and the absence of adequate experimental controls. Consequently, guidelines were established to provide a framework for controlling the proliferation of changes in zone/split options. The guidelines identified a limited number of zone/split configurations that could be used for duck hunting and restricted the frequency of changes in these configurations to 5-year intervals. In 1996, the guidelines were revised to provide States greater flexibility in using their zone/split arrangements. Open seasons for changes occurred in 1991 for the 1991–1995 period and in 1996 for 1996–2000. The third open season will occur this year when zone/split configurations will be established for the 2001–2005 period.

In response to recommendations from the Flyway Councils, we considered changes to the current zone/split guidelines during last year's late-season regulations cycle. We believe that the guidelines implemented in 1996 (61 FR 38000) have achieved their intended objectives while allowing States sufficient flexibility to address differences in physiography, climate, and other factors. Accordingly, as announced in last year's **Federal Register** (65 FR 51176), we made no changes in the 1996 guidelines. A copy of the guidelines is included herein for information and use in selecting zone/split configuration for 2001–2005.

As indicated in the guidelines, States that made changes during the last open season should provide us a review of pertinent data (e.g., estimates of harvest, hunter numbers, hunter success, etc.) by April 15, 2001. However, it would be in the interest of each affected State to complete this report as soon as possible for internal consideration of any changes they might wish to make for the next 5-year period. We reiterate that this review does not have to be the result of a rigorous experimental design, but nonetheless should assist us in ascertaining whether major changes in harvest or hunter activity occurred as a result of zone/split regulations.

We also request that by April 15, 2001, States notify us whether or not they plan to change their zone/split configurations for the next 5-year period (2001–2005). Those States wishing to change their configuration should submit a proposal for the change by this date.

Guidelines for Duck Zones and Split Seasons, 2001–2005

The following zone/split-season guidelines apply only for the *regular* duck season:

1. A zone is a geographic area or portion of a State, with a contiguous boundary, for which independent dates may be selected for the regular duck season.

2. Consideration of changes for management-unit boundaries is not subject to the guidelines and provisions governing the use of zones and split seasons for ducks.

3. Only minor (less than a county in size) boundary changes will be allowed for any grandfather arrangement, and changes are limited to the open season.

4. Once a zone/split option is selected during an open season, it must remain in place for the following 5 years.

For the 2001–2005 period, any State may continue the configuration used in

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1996–2000. If changes are made, the zone/split-season configuration must conform to one of the following options:

1. Three zones with no splits,
2. Split seasons (no more than 3 segments) with no zones, or
3. Two zones with the option for 2-way split seasons in one or both zones.

At the end of 5 years after any changes in splits or zones, States will be required to provide the Service with a review of pertinent data (e.g., estimates of harvest, hunter numbers, hunter success, etc.). This review does not have to be the result of a rigorous experimental design, but nonetheless should assist the Service in ascertaining whether major undesirable changes in harvest or hunter activity occurred as a result of split and zone regulations. The next open season for changes in zone/split configurations will be in 2006.

Grandfathered Zone/Split Arrangements

When the zone/split guidelines were first implemented in 1991, several States had completed experiments with zone/split arrangements different from Options 1–3 above. Those States were offered a one-time opportunity to continue those arrangements, with the stipulation that only minor changes could be made to zone boundaries; and if they ever wished to change their zone/split arrangement, the new arrangement would have to conform to one of the 3 options identified above. If a grandfathered State changed its zoning arrangement, it could not go back to the grandfathered arrangement it previously had. Current grandfathered arrangements are:

Atlantic Flyway:
- Massachusetts, New Jersey—3 zones with 2-segment splits in each zone
- New York—5 zones with 2-segment splits in each zone
- Pennsylvania—4 zones with 2-segment splits in each zone

Mississippi Flyway:
- Michigan, Ind ana, Ohio—3 zones with 2-segment splits in each zone

Central Flyway:
- Nebraska—5 zones with 2-segment splits in each zone
- South Dakota—4 zones with 2-segment splits in each zone

Pacific Flyway:
- Alaska—5 zones with 2-segment splits in 1 zone
- California—5 zones with 2-segment splits in each zone

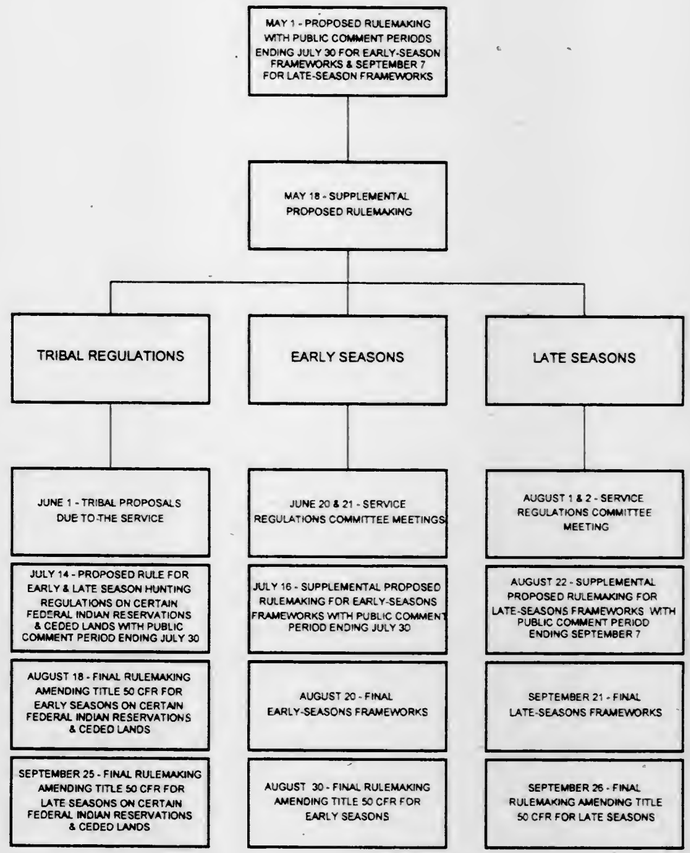
D. Special Seasons/Species Management

iii. September Teal/Wood Duck Seasons

The Wood Duck Population Monitoring Initiative showed that current wood duck monitoring efforts resulted in information that was capable of being used to manage wood ducks at no finer resolution than the Flyway level. Current databases do not allow proper evaluation of special September wood duck seasons on a State-by-State basis. In 1998, we stated that, after September 2000, the special wood duck seasons in Florida, Kentucky, and Tennessee would be discontinued (August 28, 1998; 63 FR 46126); the year 2000 was the last permitted for these seasons. The Service, in cooperation with the Atlantic and Mississippi Flyway Councils, is in the process of developing wood duck population models that will guide regular-season harvest management in the future. These models, and the accompanying evaluations of potential Flyway-wide expansions in harvest opportunity, will be developed prior to Spring 2001.

BILLING CODE 4310–55–P

2001 SCHEDULE OF REGULATIONS MEETINGS AND FEDERAL REGISTER PUBLICATIONS



DATES SHOWN RELATIVE TO PUBLICATION OF FEDERAL REGISTER DOCUMENTS ARE TARGET DATES

VOL 66 ISS 83 AP 30 2001 UMI

[FR Doc. 01–10696 Filed 4–27–01; 8:45 am]
BILLING CODE 4310–55–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 041801B]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Applications for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), has received a proposal to conduct experimental fishing and has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. A preliminary determination has also been made that the activities authorized under the EFP will be consistent with the goals and objectives of the Northeast Multispecies Fishery Management Plan (FMP) and within the scope of earlier analyses of impacts. However, further review and consultation may be necessary before a final determination is made to issue an EFP. Therefore, NMFS announces that the Regional Administrator is considering whether to issue an EFP that would allow a single vessel to conduct fishing operations otherwise restricted by regulations governing the fisheries of the Northeastern United States. The University of Massachusetts at Dartmouth and Manomet Center for Conservation Sciences (Manomet) have submitted an application for an EFP to allow them to target multispecies in order to investigate the selectivity of various shapes and sizes of knotless trawl mesh, and the selectivity of finfish excluder grates with two different bar-spacings and configurations.

DATES: Comments must be received by May 15, 2001.

ADDRESSES: Comments should be sent to Patricia Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark on the outside of the envelope "Comments on Proposed Experimental Fishery."

FOR FURTHER INFORMATION CONTACT: Tom Warren, Fishery Management Specialist, 978–281–9347.

SUPPLEMENTARY INFORMATION: The regulations that govern exempted experimental fishing, at 50 CFR 600.745, allow the Regional Administrator to authorize for certain purposes the targeting or incidental harvest of managed species that would otherwise be prohibited. An EFP to authorize such activity may be issued, provided there is adequate opportunity for the public to comment on the EFP application, and the conservation goals and objectives of the FMP are not compromised.

The University of Massachusetts at Dartmouth and Manomet, submitted to NMFS on April 5, 2001, an application for an EFP to conduct research in the multispecies fishery on Georges Bank. The research would target multispecies in the Georges Bank Seasonal Closure area, with the objective of investigating the selectivity of various shapes and sizes of knotless trawl mesh, and the selectivity of finfish excluder grates with two different bar-spacings and configurations. Specifically, the research would utilize a standard 6.0–inch (15.3–cm) diamond mesh as control, and compare its selectivity to 6.5–inch (16.5–cm) hexagon, 6.5-inch (16.5-cm) square, and 6.0–inch (15.3-cm) hexagon, knotless mesh. The two configurations of finfish excluder grates to be tested on separate tows would be horizontal bars spaced at 3 inches (7.6–cm) and vertical bars spaced at 4 inches (10.2–cm). A double cod-end trawl design will be utilized on both the mesh and excluder grate trials. The goal of the research is to develop trawl gear designed to target flatfish that allows greater escapement of gadoids (e.g., cod and haddock), than the flatfish trawls that are currently utilized by the industry.

A single vessel would be issued an EFP to allow a total of 42 tows. EFPs would be required to exempt the vessel from the Days-at-Sea, closed area, and mesh restrictions of the FMP. The proposed timing and location of the research, and the applicant's justification for requesting an exemption to the Georges Bank Seasonal Closure Area is that the relatively high numbers of flatfish and gadoids that are available in that area would allow conclusive results to be obtained in a cost-effective manner. The applicant estimates that the research will take 6 to 8 days to complete.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 24, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–10653 Filed 4–27–01; 8:45 am]
BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 66, No. 83
Monday, April 30, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Federal Invention Available for Licensing and Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that the table grape variety designated "Princess" is available for licensing and that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to the California Table Grape Commission of Fresno, California, an exclusive license to this variety in selected countries outside the United States where breeder's rights are available.

DATES: Comments must be received on or before July 30, 2001.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1158, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5257.

SUPPLEMENTARY INFORMATION: The Federal Government's intellectual property rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as the California Table Grape Commission has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety (90) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Michael D. Ruff,

Assistant Administrator.

[FR Doc. 01–10605 Filed 4–27–01; 8:45 am]
BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Circle One Global, Inc., of Cuthbert, Georgia, an exclusive license to the inventions disclosed in U.S. Patent No. 5,292,661 issued on March 8, 1994, entitled "Non-Aflatoxigenic Aspergillus Parasiticus Strains and Their Use in Controlling Aflatoxin Contamination;" U.S. Patent No. 6,027,724 issued on February 22, 2000, entitled "Biological Control of Aflatoxin and Cyclopiazonic Acid Contamination of Crops Using a Nontoxigenic Strain of Aspergillus Flavus;" and U.S. Patent Application Serial No. 09/621,466 filed on July 21, 2000, entitled "Biological Control Formulations Containing Spores of Non-Toxigenic Strains of Fungi for Toxin Control of Foods." Notice of Availability for U.S. Patent No. 5,292,661 was published in the **Federal Register** on December 17, 1991, Notice of Availability for U.S. Patent No. 6,027,724 was published in the **Federal Register** on November 3, 1999, and Notice of Availability for U.S. Patent Application Serial No. 09/621,466 was published in the **Federal Register** on March 13, 2001.

DATES: Comments must be received on or before June 29, 2001.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1158, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license the U.S. Government's rights in this invention as Circle One Global, Inc., has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty (60) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Michael D. Ruff,

Assistant Administrator.

[FR Doc. 01–10603 Filed 4–27–01; 8:45 am]
BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Federal Invention Available for Licensing and Intent To Grant Coexclusive Licenses

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that U.S. Patent No. 6,061,875 entitled "Powered Roll Gin Stand," issued May 16, 2000, is available for licensing and that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to J&F Saw and Gin Machinery, Inc. and to Scott Gin Machinery, Inc., both of Lubbock, Texas, coexclusive licenses to this invention.

DATES: Comments must be received on or before July 30, 2001.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1158, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5257.

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SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as J&F Saw and Gin Machinery, Inc. and Scott Gin Machinery, Inc. have submitted complete and sufficient applications for a license. The prospective coexclusive licenses will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective coexclusive license may be granted unless, within ninety (90) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Michael D. Ruff,

Assistant Administrator.

[FR Doc. 01–10604 Filed 4–27–01; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Commodity Supplemental Food Program: Elderly Income Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the adjusted income guidelines to be used by State agencies in determining the eligibility of elderly persons applying to participate in the Commodity Supplemental Food Program. These guidelines are to be used in conjunction with the regulations found at 7 CFR part 247.

EFFECTIVE DATE: April 30, 2001.

FOR FURTHER INFORMATION CONTACT: Lillie F. Ragan, Assistant Branch Chief, Household Programs Branch, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302–1594, or telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

Paperwork Reduction Act

This notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.565 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, 48 FR 29112).

Description

The Food Security Act of 1985 (Pub. L. 99–198) amended section 5 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note) to require that the Secretary permit agencies administering the Commodity Supplemental Food Program (CSFP) to serve low-income elderly persons if such service can be provided without reducing service levels for women, infants, and children. The law also mandates establishment of income eligibility requirements for elderly participation. Prior to enactment of Pub. L. 99–198, elderly participation was restricted by law to three designated pilot projects which served the elderly in accordance with agreements with the Department.

To implement the CSFP mandates of Pub. L. 99–198, the Department published an interim rule on September 17, 1986 at 51 FR 32895 and a final rule on February 18, 1988, at 53 FR 4831. These regulations defined "elderly persons" as persons who are 60 years of age or older (7 CFR 247.2). The final rule further stipulates that elderly persons certified on or after September 17, 1986 must have "household income at or below 130 percent of the Federal Poverty Income Guidelines published annually by the Department of Health and Human Services." (7 CFR 247.7(a)(3)).

The Federal Poverty Income Guidelines are revised annually to reflect changes in the Consumer Price Index. The revision for 2001 was published by the Department of Health and Human Services in the **Federal Register** on February 16, 2001 at 66 FR 10695. To establish income limits of 130 percent, the guidelines were multiplied by 1.30 and the results rounded up to the next whole dollar.

At this time, the Department is publishing the income limits of 130 percent of the poverty income guidelines. The table in this notice contains the income limits by household size to be used for elderly certification in the CSFP. These income guidelines will be effective on the date that they are published in the **Federal Register** and will remain in effect until notification of revised guidelines in 2002.

FNS INCOME ELIGIBILITY GUIDELINES FOR THE ELDERLY IN CSFP (130 PERCENT OF POVERTY INCOME GUIDELINES)

[Effective April 30, 2001]

Family size	Annual	Month	Week
1	11,167	931	215
2	15,093	1,258	291
3	19,019	1,585	366
4	22,945	1,913	442
5	26,871	2,240	517
6	30,797	2,567	593
7	34,723	2,894	668
8	38,649	3,221	744
For each additional family member add	+3,926	+328	+76

Authority: Pub. L. 93–86 (7 U.S.C. 612c note)

Dated: April 24, 2001.

George A. Braley,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 01–10627 Filed 4–27–01; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Stimson Access Project, Idaho Panhandle National Forests, Pend Oreille County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) to disclose the potential environmental effects of authorizing an easement across National Forest System lands to private property owned by Stimson Lumber Company. The project is located on the Priest Lake Ranger District, Idaho Panhandle National Forests, Pend Oreille County, Washington.

The proposed action includes issuing an easement for the purpose of road building to access the private inholding. Specific activities would include removal of road right-of-way timber, surfacing of the road, installation of drainage structures, seeding, noxious weed treatment and installation of a barrier to limit access. These management activities will be administered by the Priest Lake Ranger District of the Idaho Panhandle National Forests in Bonner County, Idaho. This EIS will tier to the Idaho Panhandle National Forests Forest Plan (September 1987).

DATES: On February 28, 2001, the Forest Service produced an Environmental Assessment (EA) and provided a 30-day comment period. Instead of providing another comment period following the publication of this notice, we will incorporate the comments we received on the EA into the Draft EIS. There will be a 45-day review and comment period on the Draft EIS prior to the completion of a Final EIS.

ADDRESSES: Submit written comments and suggestions on the proposed management activities or request to be placed on the project mailing list to Stimson Access Project, c/o David Asleson, Priest Lake Ranger District, 32203 Highway 57, Priest River, Idaho 83856.

FOR FURTHER INFORMATION CONTACT: Debbie Butler, Project Team Leader, Priest Lake Ranger District, 32203 Highway 57, Priest River, ID 83856; send e-mail to dabutler@fs.fed.us.

SUPPLEMENTARY INFORMATION: Based on policy established in the Final Rule for the Forest Transportation System (36 CFR part 212), it was determined that an EIS should be prepared.

The project includes approximately 4 acres on National Forest System land. The area is situated totally within Pend Oreille County, Washington, approximately 12 miles northwest of the Priest Lake Ranger District. The legal description for the project is as follows: Sections 8; Township 36 North; Range 45 East and Sections 4; Township 36 North, Range 45 East.

As Deciding Officer, I will decide what action will occur on National Forest lands. I also will decide specific project mitigation measures, as necessary, to achieve Forest Plan objectives and standards for affected resources.

Public participation plays an important role in the environmental analysis process. The initial public participation process for this analysis began April 7, 1998. An environmental assessment was produced in February 2001. The decision to prepare an EIS occurred on April 12, 2001. The mailing list for public scoping will include those individuals who have previously expressed interest in this project as well as those responding to the Idaho Pandhandle National Forests Quarterly Schedule of Proposed Actions. In addition, the public is encouraged to visit with Forest Service officials during the analysis and prior to the decision. The Forest Service will also be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations that may be interested in or affected by the proposed actions.

Comments from the public and other agencies will be used in preparation of the Draft EIS. Some public concerns have already been expressed through earlier scoping and the following significant issues have been identified: threatened and endangered wildlife habitat, inventoried roadless area values, watershed concerns, and fisheries concerns. This list will be verified, expanded, or modified based on public scoping and interdisciplinary review for this proposal.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review June 1, 2001. The final environmental impact statement is expected to be completed in July 2001. The comment period on the draft environmental impact will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early state, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental statement stage but that are not raised until after completion of the final environmental statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concern on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviews may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The United States Department of Agriculture (USDA) prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, and marital or familial status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means of communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center ad (202) 720–2600 (voice and TDD).

To file a complaint, write the Secretary of Agriculture, U.S. Department of Agriculture, Washington, DC 20250, or call 1–800–245–6340 (voice) or 202–720–1127 (TDD). USDA is an equal employment opportunity employer.

Dated: April 16, 2001.

Dale N. Bosworth,

Regional Forester, Northern Region.

[FR Doc. 01–10537 Filed 4–27–01; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, May 4, 2001, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of April 13, 2001 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Committee Report
- Race Relations and Des Moines' New Immigrants (Iowa)
- Equal Educational Opportunity for Native American Students in Montana Public Schools (Montana)

VI. Future Agenda Items

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CONTACT PERSON FOR FURTHER INFORMATION: David Aronson, Press and Communications (202) 376–8312.

Edward A. Hailes, Jr.,

General Counsel.

[FR Doc. 01–10753 Filed 4–25–01; 4:57 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

[I.D. 042401B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northeast Red Crab Authorization and Notification.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Emergency submission.

Burden Hours: 1.

Number of Respondents: 10.

Average Hours Per Response: 5 minutes for a request for a Letter of Authorization, 2 minutes for a trip notification.

Needs and Uses: Fishermen must obtain a Letter of Authorization in order to fish for, catch, possess, transport, land, or process at sea more than 100 pounds of red crab from the U.S. Exclusive Economic Zone of the western Atlantic Ocean. A person holding such a Letter of Authorization may be required to call NOAA prior to fishing trips to arrange for the deployment of observers on their vessels. These requirements are needed to manage the fishery.

Affected Public: Business or other for-profit organizations, individuals or households.

Frequency: Weekly for IVR report, monthly for a Vessel Trip Report.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: April 24, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–10654 Filed 4–27–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 042401C]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northeast Red Crab Vessel Trip and IVR Reports.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Emergency submission.

Burden Hours: 26.

Number of Respondents: 10.

Average Hours Per Response: 5 minutes for a Vessel Trip Report, 4 minutes for a Interactive Voice Response Report.

Needs and Uses: Fishermen who have obtained a Letter of Authorization in order to fish for, catch, possess, transport, land, or process at sea more than 100 pounds of red crab from the U.S. Exclusive Economic Zone of the western Atlantic Ocean must submit Vessel Trip Reports (logbooks) on their fishing catch and effort and Interactive Voice Response (IVR) system reports on their catch. IVR reports are made weekly to allow closer monitoring of catch than is possible through the monthly submission of the Vessel Trip Reports. These requirements are needed to manage the fishery and prevent overfishing.

Affected Public: Business or other for-profit organizations, individuals or households.

Frequency: Weekly for IVR report, monthly for a Vessel Trip Report.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: April 24, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–10655 Filed 4–27–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with March anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: April 30, 2001.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2000), for administrative reviews of various antidumping and countervailing duty orders and findings with March anniversary dates.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than March 31, 2002.

	Period to be reviewed
Antidumping Duty Proceedings	
Canada: Iron Construction Castings, A–122–503	3/1/00–2/28/01
Canada Pipe Company, Ltd.	
India: Certain Forged Stainless Steel Flanges, A–533–809	2/1/00–1/31/01
Snowdrop Trading Pvt. Ltd.*	
Countervailing Duty Proceedings	
Pakistan: Shop Towels, C–535–001	1/1/00–12/31/00
Aqil Textile Industries	
Bita Textile Corporation	
Fine Fabrics	
Iftikhar Corporation	
Ishaq Towel Factory	
Jawad Brothers	
Jawad Industries	
Mehtabi Towel Mills (Pvt.) Ltd.	
Pakistan Textile Corporation (Pvt) Ltd.	
Quality Linen Supply Corporation	
R.I. Weaving/ Ranjha Linen	
Salimah International	
Shaheen Textiles	
Shahi Textiles	
Silver Textile Factory	
Sultex Industries	
United Towel Exporters	
Universal Linen	
Nisar (Textiles) Corporation	
Khaksar Impex (Pvt) Ltd.	
Saasoh Textile Corporation	
Faisalabad Cotton Product (Pvt) Ltd.	
Shaheen International	
Ranjha Linen	
Suspension Agreements	
None.	

* Inadvertently omitted from previous initiation notice.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under § 351.211 or a determination under § 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: April 24, 2001.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Group II for Import Administration.

[FR Doc. 01–10689 Filed 4–27–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration A–201–805

Circular Welded Non-Alloy Steel Pipe From Mexico: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review of circular welded non-alloy steel pipe from Mexico.

SUMMARY: On December 12, 2000, the Department of Commerce ("Department") published the preliminary results of the administrative review of the antidumping duty order on circular welded non-alloy steel pipe from Mexico. *See Circular Welded Non-Alloy Steel Pipe From Mexico: Preliminary Results and Partial Recission of Antidumping Duty Administrative Review*, 65 FR 77560 (December 12, 2000) ("Preliminary Results"). This review covers one manufacturer/exporter of the subject merchandise, Tuberia Nacional S.A. de C.V. ("TUNA"). The period of review ("POR") is November 1, 1998 through October 31, 1999.

We gave interested parties an opportunity to comment on the preliminary results. Based upon our verification of the data and analysis of the comments received, we have made changes in the margin calculation. Therefore, the final results differ from the preliminary results of this review. The final weighted-average dumping margin is listed below in the section titled "Final Results of the Review."

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EFFECTIVE DATE: April 30, 2001.

FOR FURTHER INFORMATION CONTACT: John Drury or Steve Bezirganian, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230, at telephone 202–482–0195 or 202–482–1131, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 ("Act") are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (1999).

Background

The Department published an antidumping duty order on circular welded non-alloy steel pipe and tube from Mexico on November 2, 1992 (57 FR 49453). The Department published a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order for the 1998/99 review period on November 16, 1999 (64 FR 62167). Respondents TUNA and Hylsa S.A. de C.V. ("Hylsa"), as well as petitioners, requested that the Department conduct an administrative review of the antidumping duty order on circular welded non-alloy steel pipe and tube from Mexico. We initiated this review on December 21, 1999. *See* 64 FR 72644 (December 28, 1998).

The Department received a timely request for withdrawal from the administrative review from the respondent Hylsa on March 15, 2000. On March 22, 2000, petitioners also withdrew their request for a review of Hylsa. In accordance with 19 CFR 351.213(d)(1), the Department terminated this review for respondent Hylsa. *See* Preliminary Results.

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for issuing a preliminary determination in an administrative review if it determines that it is not practicable to complete the preliminary review within the statutory time limit of 245 days. On August 11, 2000, the Department published a notice of extension of the time limit for the preliminary results in this case to November 29, 2000. *See* Extension of Time Limit: Circular Welded Non-Alloy Pipe From Mexico; Antidumping Administrative Review, 65 FR 49223 (August 11, 2000).

We gave interested parties an opportunity to comment on our Preliminary Results. TUNA and petitioners filed briefs on January 11 and January 12, 2001. On January 16, 2001, TUNA and petitioners filed rebuttal briefs. No hearing was requested or held.

Period of Review

The review covers the period November 1, 1998 through October 31, 1999. The Department is conducting this review in accordance with section 751 of the Act.

Scope of the Review

The products covered by these orders are circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low pressure conveyance of water, steam, natural gas, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses, and generally meet ASTM A–53 specifications. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and related industries. Unfinished conduit pipe is also included in these orders. All carbon steel pipes and tubes within the physical description outlined above are included within the scope of these orders, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled that enters the United States as line pipe of a kind used for oil or gas pipelines is also not included in these orders.

Imports of the products covered by these orders are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

Analysis of Comments Received

All issues raised in the case briefs, as well as the Department's findings, in this administrative review are addressed in the Issues and Decision Memorandum for the Administrative Review of Circular Welded Non-Alloy Steel Pipe From Mexico: November 1, 1998, through October 31, 1999 ("Decision Memorandum"), from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to Bernard T. Carreau, Deputy Assistant Secretary, Import Administration (April 11, 2001), which is hereby adopted by this notice. A list of the issues raised and to which we have responded, all of which are in the Decision Memorandum, and a list of our changes, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file at the U.S. Department of Commerce, in the Central Records Unit, in room B–099. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov. The paper copy and electronic version of the public version of the Decision Memorandum are identical in content.

Sales Below Cost in the Home Market

As discussed in more detail in the Preliminary Results, the Department disregarded home market below-cost sales that failed the cost test in the final results of review.

Changes Since the Preliminary Results

Based on our verification and analysis of the comments received, we have made certain changes in the margin calculation, as discussed in the Decision Memorandum. We have corrected our calculation of U.S. indirect selling expenses ("DINDIRSU"), made changes to our level of trade analysis, adjusted our cost calculations with respect to the B10 inflation adjustment, and consolidated the reported G&A expenses for TUNA.

Final Results of the Review

We determine that the following percentage weighted-average margin exists for the period November 1, 1998 through October 31, 1999:

CIRCULAR WELDED NON-ALLOY STEEL PIPE

Producer/manufacturer/exporter	Weighted-average margin (percent)
TUNA	3.48

The Department shall determine, and the U.S. Customs Service ("Customs") shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates by dividing the total dumping margins calculated for the U.S. sales to the importer by the total entered value of these sales. This rate will be used for the assessment of antidumping duties on all entries of the subject merchandise by that importer during the POR. The Department's decision applies to all entries of subject merchandise produced and exported by TUNA, entered, or withdrawn from warehouse, for consumption on or after November 1, 1998 and on or before October 31, 1999.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of circular welded non-alloy steel pipe entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for TUNA will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any previous reviews conducted by the Department, the cash deposit rate will be the "all others" rate, which is 36.62 percent.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction. We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: April 11, 2001.

Timothy J. Hauser,

Acting Under Secretary for International Trade.

Appendix—Issues in Decision Memorandum

(1) Level of Trade/CEP Offset
  A. Methodology
  B. Fact pattern of the case—
  C. Overstatement of indirect selling expenses
(2) G&A Ratio
(3) Inflation Adjustments in the Mexican Market
(4) CEP Ratio

[FR Doc. 01–10683 Filed 4–27–01; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–862]

Notice of Postponement of Final Determination of Antidumping Duty Investigation: Foundry Coke From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of postponement of final determination of antidumping duty investigation.

EFFECTIVE DATE: April 30, 2001.

FOR FURTHER INFORMATION CONTACT: Doreen Chen or James Doyle, Office IX, DAS Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–0408 and (202) 482–0159, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR part 351 (2000).

Background

This investigation was initiated on October 10, 2000. *See Initiation of Antidumping Duty Investigation: Foundry Coke Products From the People's Republic of China*, 65 FR 61303 (October 17, 2000). The period of investigation (POI) is January 1, 2000 through June 30, 2000. On March 8, 2001, the Department published the notice of preliminary determination. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Foundry Coke From the People's Republic of China*, 66 FR 8338 (March 8, 2001).

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

In a March 12, 2001 request which was thereafter amended on April 10, 2001, Shanxi Grand Coalchem Industrial Company, Ltd., Sinochem International, CITIC Trading Company Ltd. and Minmetals Development Co. Ltd. ("respondents"), requested that the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register** and requested an extension of the provisional measures. *See Notice of the Preliminary Determination of Sales at Less Than Fair Value*, 66 FR 13855 (March 8, 2001). In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) respondents requesting the postponement account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondent's request and are postponing the final determination until no later than 135 days after the publication of preliminary determination in the **Federal Register**.

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Suspension of liquidation will be extended accordingly.

This notice is published in accordance with section 735(a)(2) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of Assistant Secretary for Import Administration.

Dated: April 23, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–10690 Filed 4–27–01; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–864]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Pure Magnesium in Granular Form From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 30, 2001.

FOR FURTHER INFORMATION CONTACT: James Nunno or Christopher Priddy, AD/CVD Enforcement Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0783 or (202) 482–1130, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2000).

Preliminary Determination

We preliminarily determine that pure magnesium in granular form (granular pure magnesium) from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation (*Initiation of Antidumping Duty Investigations: Pure Magnesium from Israel, the Russian Federation, and the People's Republic of China*, 65 FR 68121 (Nov. 14, 2000)) (*Notice of Initiation*), the following events have occurred:

On December 1, 2000, the United States International Trade Commission (ITC) issued an affirmative preliminary injury determination in this case (*see* ITC Investigation No. 731–TA–895–897).

Also on December 1, 2000, the petitioners in this case (*i.e.*, the Magnesium Corporation of America (Magcorp) and the United Steel Workers of America, Locals 482 and 8319) requested that the Department modify the scope of this investigation to exclude certain magnesium products that are prepared solely for use as a desulfurizer in steel-making from the scope of the investigation. On December 4, 2000, we received comments on the scope of the investigation from ESM Group, Inc. (ESM), a U.S. manufacturer of magnesium powder and desulfurizing reagents. In its submission, ESM requested that the Department exclude from the scope: (1) Magnesium-based reagents, in accordance with the petitioners' intention not to capture such products; and (2) pure magnesium in granular form, because it is a separate class or kind of merchandise from magnesium ingots. For further discussion, see the "Scope of Investigation" and "Comments on Scope" sections of the notice, below.

On December 11, 2000, the Department issued an antidumping questionnaire to the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) and requested that MOFTEC forward the questionnaire to all companies which manufactured and/or exported the subject merchandise during the period of investigation (POI). We also sent courtesy copies of the antidumping duty questionnaire to the China Chamber of Commerce of Metals, Minerals, and Chemicals Importers and Exporters, and to each of the companies identified in the petition as possible exporters/producers of the subject merchandise during the POI. The letters provided to MOFTEC and those companies identified in the petition as producers and/or exporters of pure magnesium provided deadlines for responses to the different sections of the questionnaire.

On January 9, 2001, the Department received a section A questionnaire response from Minmetals Precious & Rare Minerals Import and Export (Minmetals/CNNMIT).[1] On January 23, 2001, the Department received section C and D questionnaire responses from Minmetals/CNNMIT and its suppliers, Taiyuan Shi Geng Yang Enterprise Company, Ltd. (Taiyuan) and Wealth (HEBI) Co., Ltd. (HEBI). We issued supplemental questionnaires to Minmetals/CNNMIT, Taiyuan, and HEBI and received responses to these supplemental questionnaires in February and March 2001.

On January 19, 2001, the Department invited interested parties to comment on surrogate country selection and to provide publicly available information for valuing the factors of production. We received responses from both the petitioners and Minmetals/CNNMIT on February 13, 2001. The petitioners and Minmetals/CNNMIT filed rebuttal comments on surrogate values in February and March 2001.

On March 1, 2001, pursuant to 19 CFR 351.205(e), the petitioners made a timely request to postpone the preliminary determination. We granted this request and, on March 6, 2001, postponed the preliminary determination until no later than April 23, 2001. *See Notice of Postponement of Preliminary Determinations of Sales at Less Than Fair Value: Pure Magnesium From Israel, the Russian Federation, and the People's Republic of China and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determinations: Pure Magnesium From Israel*, 66 FR 14546, 14547 (Mar. 13, 2001).

Postponement of the Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On April 12, 2001, Minmetals/CNNMIT requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until 135 days after the publication of the preliminary determination. Minmetals/CNNMIT also included a request to extend the provisional measures to not more than six months. Accordingly, since we have made an affirmative preliminary determination, we have postponed the final determination until not later than 135 days after the date of the publication of the preliminary determination.

[1] As of February 15, 2001, Minerals Precious & Rare Minerals Import and Export changed the name of its company to China National Nonferrous Metals Industry Trading Group Corp.

Scope of Investigation

There is an existing antidumping duty order on pure magnesium from the PRC. *See Notice of Antidumping Duty Orders: Pure Magnesium From the People's Republic of China, the Russian Federation and Ukraine; Notice of Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium From the Russian Federation*, 60 FR 25691 (May 12, 1995). The scope of this investigation excludes pure magnesium that is already covered by the existing order, and classifiable under 8104.11.00 and 8104.19.00 of the Harmonized Tariff Schedule of the United States (HTSUS).

The scope of this investigation includes imports of pure magnesium products, regardless of chemistry, including, without limitation, raspings, granules, turnings, chips, powder, and briquettes, except as noted above.

Pure magnesium includes: (1) Products that contain at least 99.95 percent primary magnesium, by weight (generally referred to as "ultra-pure" magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent pure magnesium, by weight (generally referred to as "pure" magnesium); (3) chemical combinations of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, and that do not conform to an "ASTM Specification for Magnesium Alloy"[2] (generally referred to as "off-specification pure" magnesium); and (4) physical mixtures of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, except that mixtures containing 90 percent or less pure magnesium, by weight, when mixed with lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon slag coagulants, and/or fluorspar, are excluded.

The merchandise subject to this investigation is classifiable under 8104.30.00 of the HTSUS. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Comments on Scope

In accordance with our regulations, we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit such comments within 20 calendar days of publication of the *Notice of Initiation*. *See Notice of Initiation*, 65 FR at 68123. On December 1, 2000, the petitioners requested that the Department clarify that the scope of this investigation excludes finished mixtures containing pure magnesium and/or off-specification pure magnesium prepared solely for use as a desulfurizer in steel-making, unless such mixtures contain only minimal amounts of non-magnesium materials in order to circumvent an antidumping order. On December 4, 2000, ESM submitted a letter supporting the petitioners' position that magnesium-based reagents should not be included in the scope of the Department's investigation. On January 30, 2001, the petitioners submitted proposed language to further clarify their intent with respect to the scope of this investigation. Based on this submission, we have revised the scope to exclude reagent magnesium.

In its December 4 submission, ESM also argued that pure magnesium ingot and granular magnesium constitute separate classes or kinds of merchandise and that the Department should exclude granular magnesium from the scope of the investigation. However, we note that the scope of the investigation includes only granular magnesium. As a consequence, ESM's comments provide no basis for altering the scope.

On April 10, 2001, Rossborough Manufacturing Co., L.P., requested that the Department amend the scope of this investigation to exclude certain additional reagent mixtures and imports of granular magnesium used for making reagent mixtures. Rossborough's submission was filed too late to be given proper consideration for purposes of the preliminary determination, but we will consider these issues for the final determination.

Period of Investigation

Pursuant to 19 CFR 351.204(b)(1), the POI for an investigation involving merchandise from a non-market economy is the two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, October 2000). Therefore, in this case, the POI is April 1, 2000, through September 30, 2000.

Nonmarket Economy Country Status

The Department has treated the PRC as a nonmarket economy (NME) country in all past antidumping investigations. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255, 72256 (Dec. 31, 1998) (Mushrooms). A designation as a NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act.

When the Department is investigating imports from a NME country, section 773(c)(1) of the Act directs us to base normal value (NV) on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the "Normal Value" section of the notice, below.

No party in this investigation has requested a revocation of the PRC's NME status. We have, therefore, preliminarily continued to treat the PRC as a NME.

Separate Rates

Minmetals/CNNMIT is owned by "the whole people" and has provided the separate rates information in its section A response. Minmetals/CNNMIT has stated that there is no element of government ownership or control and has requested a separate company-specific rate.

As stated in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 25586 (May 2, 1994) (*Silicon Carbide*) and *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 25545 (May 8, 1995) (*Furfuryl Alcohol*), ownership of the company by "all the people" does not require the application of a single rate. Accordingly, Minmetals/CNNMIT is eligible for consideration of a separate rate.

The Department's separate rate test is not concerned, in general, with macroeconomic/border-type controls (*e.g.*, export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See Certain*

[2] The meaning of this term is the same as that used by the American Society for Testing and Materials in its *Annual Book of ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.*

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Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value, 62 FR 61754, 61757 (Nov. 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (Nov. 17, 1997); and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less than Fair Value*, 60 FR 14725, 14726 (Mar. 20, 1995).

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991), as modified by *Silicon Carbide*. Under the separate rates criteria, the Department assigns separate rates in NME cases only if the respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities. *See Silicon Carbide* and *Furfuryl Alcohol*.

1. Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

Minmetals/CNNMIT has placed on the record a number of documents to demonstrate absence of de jure control, including the "Law of the People's Republic of China on Industrial Enterprises Owned By the Whole People," and the 1992 regulations that supplemented it, "Provisions on Changing the Systems of Business Operations for State Owned Enterprises."

In prior cases, the Department has analyzed these laws and found that they establish an absence of de jure control. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Partial-Extension Steel Drawer Slides With Rollers From the People's Republic of China*, 60 FR 29571, 29573 (June 5, 1995); [3] *Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal From the People's Republic of China*, 60 FR 56045, 56046 (Nov. 6, 1995). We have no new information in this proceeding which would cause us to reconsider this determination. For the purposes of this investigation and in prior cases, the Department has also analyzed the "Industrial Enterprises Law" and found that this law establishes mechanisms for private control of companies which indicate an absence of de jure control. *See Pure Magnesium from the People's Republic of China: Final Results of New Shipper Review*, 63 FR 3085, 3086 (Jan. 21, 1998).

According to Minmetals/CNNMIT, pure magnesium exports are not affected by export licensing provisions or export quotas. Minmetals/CNNMIT claims to have autonomy in setting the contract prices for sales of granular pure magnesium through independent price negotiations with its foreign customers without interference from the PRC government. Based on the assertions of Minmetals/CNNMIT, we preliminarily determine that there is an absence of de jure government control over the pricing and marketing decisions of Minmetals/CNNMIT with respect to its granular pure magnesium export sales.

2. Absence of De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Mushrooms*, 63 FR at 72257. Therefore, the Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether each respondent is subject to de facto governmental control of its export functions: (1) Whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Id.*

Minmetals/CNNMIT has asserted the following: (1) It establishes its own export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. Additionally, Minmetals/CNNMIT's questionnaire responses indicate that it does not coordinate with other exporters in setting prices or in determining which companies will sell to which markets. This information supports a preliminary finding that there is an absence of de facto governmental control of the export functions of these companies. Consequently, we preliminarily determine that Minmetals/CNNMIT has met the criteria for the application of separate rates.

PRC-Wide Rate and Use of Facts Otherwise Available

As in all NME cases, the Department implements a policy whereby there is a rebuttable presumption that all exporters or producers located in the NME comprise a single exporter under common government control, the "NME entity." The Department assigns a single NME rate to the NME entity unless an exporter can demonstrate eligibility for a separate rate.

Information on the record of this investigation indicates that there are numerous producers/exporters of the subject merchandise in the PRC. As noted in the "Case History" section above, all exporters were given the opportunity to respond to the Department's questionnaire. Based upon our knowledge of PRC exporters and the fact that U.S. import statistics show that responding companies did not account for all imports into the United States from the PRC, we have preliminarily determined that PRC exporters of granular pure magnesium failed to respond to our questionnaire.

Section 776(a)(2) of the Act provides that if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title.

Section 776(b) of the Act further provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. The producers/exporters that decided not to respond to the Department's questionnaire failed to act to the best of their ability in this investigation. Absent a response, we must presume government control of these companies. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026, 19028 (Apr. 30, 1996); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation*, 65 FR 5510, 5518 (Feb. 4, 2000). Moreover, the Department has determined that, in selecting from among the facts otherwise available, an adverse inference is warranted.

In accordance with our standard practice, as adverse facts available, we are assigning as the PRC-wide rate the higher of: (1) The highest margin stated in the notice of initiation; or (2) the highest margin calculated for any respondent in this investigation. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Quality Steel Products from the People's Republic of China*, 64 FR 34660 (May 31, 2000) and accompanying decision memorandum at *Comment 1*. In this case, the preliminary adverse facts available margin is 305.56 percent, which is the highest margin stated in the notice of initiation. *See Notice of Initiation*, 65 FR at 68124.

Section 776(b) of the Act states that an adverse inference may include reliance on information derived from the petition. *See* also SAA at 870. Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics, and customs data, and information obtained from interested parties during the particular investigation. *See* SAA at 870.

In order to determine the probative value of the margins in the petition for use as adverse facts available for purposes of this determination, we examined evidence supporting the calculations in the petition. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price (EP) and NV calculations on which the margins in the petitions were based.

In order to corroborate the petition's EP calculations, we compared the prices in the petition for granular pure magnesium to the prices submitted by Minmetals/CNNMIT. In order to corroborate the petitioners' NV calculation, we compared the petitioners' factor consumption and surrogate value data for granular pure magnesium to the data reported by Taiyuan and HEBI for the most significant factors—material inputs, energy, labor, factory overhead, and selling, general, and administrative (SG&A) expenses, and profit—and to the values selected for the preliminary determination, as discussed below.

As discussed in the April 23, 2001, memorandum from the team to the file entitled "Corroboration of Data Contained in the Petition for Assigning an Adverse Facts Available Rate," we found that the U.S. price and factors of production information in the petition to be reasonable and of probative value. As a number of the surrogate values selected for the preliminary determination differed from those used in the petition, notably the values for ferrosilicon, dolomite, electricity, and coal, we compared the petition margin calculations to the calculations based on the selected surrogate values wherever possible and found they were reasonably close. Therefore, we preliminarily determine that the petition information continues to have probative value. Accordingly, we find that the highest margin stated in the notice of initiation, 305.56 percent, is corroborated within the meaning of section 776(c) of the Act.

Fair Value Comparisons

To determine whether sales of the subject merchandise by Minmetals/CNNMIT for export to or within the United States were made at LTFV, we compared the EP to the NV, as described in the "Export Price," and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs to the NV.

Export Price

For Minmetals/CNNMIT, we used EP methodology in accordance with section 772(a) of the Act because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and constructed export price methodology was not otherwise appropriate. We calculated EP based on packed CIF prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price for foreign inland freight from the plant to the port of export, foreign brokerage and handling, marine insurance, and ocean freight. As certain of these movement services were provided by NME suppliers, we valued them using Indian rates. For further discussion of our use of surrogate data in an NME proceeding, as well as selection of India as the appropriate surrogate country, see the "Normal Value" section of this notice, below.

For foreign inland freight we used price quotes obtained by the Department from Indian truck freight companies in November 1999. These price quotes were recently used in the administrative review of persulfates from the PRC, and were also used in the investigation of bulk aspirin from the PRC. *See Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, and Partial Rescission of Administrative Review*, 66 FR 18439, 18441 (Apr. 9, 2001) *(Persulfates 1999–2000 Preliminary Results); Notice of Preliminary Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 116, 118 (Jan. 3, 2000).

With respect to foreign brokerage and handling, marine insurance and ocean freight, Minmetals/CNNMIT asserted that it used market-economy suppliers for its shipments of granular pure magnesium. However, based on the submitted information, we could not establish that the brokerage and handling and marine insurance expenses Minmetals/CNNMIT paid reflect prices set by market-economy carriers. Specifically, we found that Minmetals/CNNMIT was unable to demonstrate that its brokerage and handling expenses were invoiced in a market-economy currency. Furthermore, marine insurance was paid to a PRC company, not a market-economy supplier. Regarding ocean freight, while Minmetals/CNNMIT did provide an invoice from a market-economy supplier in a market-economy currency, it was

[3] This was unchanged in the final determination. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 54472, 54474 (Oct. 24, 1995)

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unable to demonstrate that it paid for this expense in such currency.[4] For further discussion, see the April 23, 2001, concurrence memorandum from the team. Therefore, in accordance with our practice, we based these charges on surrogate values. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China*, 65 FR 19873 (Apr. 13, 2000) and accompanying decision memorandum at *Comment 3;* and *Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 65 FR 49537 (Aug. 14, 2000) (*Sebacic Acid 1998–1999 Final Results*) and accompanying decision memorandum at *Comment 8.*

Accordingly, we valued foreign brokerage and handling expenses using public information reported in the new shipper review of stainless steel wire rod from India. *See Certain Stainless Steel Wire Rod From India; Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews*, 63 FR 48184, 48185 (Sept. 9, 1998); *see also* the "Preliminary Determination Factors Valuation Memorandum from the Team to the File," dated April 23, 2001, at page 6 (*Factors Memorandum*). For marine insurance we used the June 1998 marine insurance data used in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of 1998–1999 Administrative Review, Partial Rescission of Review, and Notice of Intent To Revoke Order in Part*, 65 FR 41944, 41948 (July 7, 2000).[5] For ocean freight we used the freight expense reported by the respondent as a surrogate value, for the reasons noted above. Where appropriate, we adjusted the values to reflect inflation up to the POI using the wholesale price indices (WPI) or producer price indices (PPI) published by the International Monetary Fund (IMF).

[4] Nonetheless, we have used this information as a surrogate value because it is a price set by a market-economy supplier in U.S. dollars for transporting the subject merchandise during the POI. As such, we find that it represents a better surrogate value than the other surrogate information on the record of this case (*i.e.*, the 1996 data obtained from the Federal Maritime Commission found in the IA website and used in the petition).

[5] This was unchanged in the final results. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of 1998–1999 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part*, 66 FR 1953 (Jan. 10, 2001) (*TRBs 1998–1999 Final Results*).

Normal Value

A. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) Are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. The Department has determined that India, Pakistan, Indonesia, Sri Lanka, and the Philippines are countries comparable to the PRC in terms of overall economic development. *See* Memorandum from Jeffrey May to Louis Apple, dated January 18, 2001.

According to the available information on the record, we have determined that both India and Indonesia meet the statutory requirements for an appropriate surrogate country for the PRC. For purposes of the preliminary determination, we have selected India as the surrogate country, based on the quality and contemporaneity of the currently available data. Accordingly, we have calculated NV using Indian values for the PRC producers' factors of production. We have obtained and relied upon publicly available information wherever possible.

B. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by Minmetals/CNNMIT for the POI. To calculate NV, the reported per-unit factor quantities were multiplied by publicly available Indian surrogate values.

For purposes of calculating NV, we valued PRC factors of production, in accordance with section 773(c)(1) of the Act. Factors of production include, but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital cost, including depreciation. In examining surrogate values, we selected, where possible, the publicly available value which was: (1) An average non-export value; (2) representative of a range of prices within the POI or most contemporaneous with the POI; (3) product-specific; and (4) tax-exclusive. For a more detailed explanation of the methodology used in calculating various surrogate values, see the *Factors Memorandum*. In accordance with this methodology, we valued the factors of production as follows:

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. We added to Indian surrogate values surrogate freight costs using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corporation v. United States*, 117 F. 3d 1401, 1407–08 (Fed. Cir. 1997). For foreign inland freight on inputs we used price quotes obtained by the Department from Indian truck freight companies in November 1999. As noted above, these price quotes were used in *Persulfates 1999–2000 Preliminary Results*, and were also used in the investigation of bulk aspirin from the PRC. With regard to rail freight, we based our calculation on information from the *Indian Railway Conference Association*. Where appropriate, we adjusted the values to reflect inflation up to the POI using the WPI published by the IMF.

We valued fluorite powder using 1998 Indian import statistics as published by the United Nations. We valued ferrosilicon and dolomite using price quotes obtained by Minmetals/CNNMIT from Tata International Limited, an Indian producer of ferro-alloys. Where appropriate, we adjusted the values to reflect inflation up to the POI using the WPI published by the IMF.

We valued labor based on a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3).

To value coal, we relied on import prices contained in the March 1999 issue of *Monthly Statistics of the Foreign Trade of India*. These data were used in the antidumping duty administrative review of persulfates from the PRC. *See Persulfates 1999–2000 Preliminary Results*, 66 FR at 18442. We adjusted the values to reflect inflation up to the POI using the WPI published by the IMF. For electricity, we derived a surrogate value based on 1998/1999 electricity price data published by Tata Energy Research Institute. These data were used in the antidumping duty administrative review of manganese metal from the PRC. *See Notice of Final Results of Antidumping Duty Administrative Review of Manganese Metal from the People's Republic of China*, 66 FR 15076 (Mar. 15, 2001) and accompanying decision memorandum at *Comment 10. See also Persulfates 1999–2000 Preliminary Results*, 66 FR at 18442. We adjusted the electricity values to reflect inflation up to the POI using the electricity-specific price index published by the Reserve Bank of India.

We valued grinding services provided by a subcontractor using the factors of production reported for this company, because we were unable to obtain a surrogate value for its services. Specifically, we valued the labor and electricity factors of production using the same sources noted above. In addition, we added amounts for factory overhead, depreciation, SG&A expenses, and interest expenses derived from the financial statements of Southern Magnesium and Chemicals Ltd., an Indian magnesium metal producer. This information was supplied by the petitioners in the petition. Because these financial statements showed a loss, we calculated a profit ratio using the 1998/1999 financial aggregates and ratios data published by the Economic Intelligence Service and the Centre for Monitoring Indian Economy. This information was supplied by Minmetals/CNNMIT in its February 13, 2001, surrogate value submission. For further discussion, see the April 23, 2001, concurrence memorandum from the team.

To value plastic bags, plastic wrapper, and wooden pallets (*i.e.*, the packing materials reported by the respondent), we used import values from the *Monthly Statistics*.

To determine factory overhead, depreciation, SG&A expenses, and interest expenses, and profit for the finished product, we relied on rates derived from the financial statements noted above.

Verification

As provided in section 782(i) of the Act, we intend to verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the Customs Service to suspend liquidation of any entries of pure magnesium from PRC entered, or withdrawn from warehouse, for consumption on or after the date on which this notice is published in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

Manufacturer/exporter	Percent margin
Minmetals Precious & Rare Minerals Import and Export/China National Nonferrous Metals Industry Trading Group Corp	8.76
PRC-wide	305.56

The PRC-wide rate applies to all entries of the subject merchandise except for entries from exporters/producers that are identified individually above.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding within five days of the publication of this notice. *See* 19 CFR 351.224(b).

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by 135 days after the publication of this notice in the **Federal Register**.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–10684 Filed 4–27–01; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–813]

Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 30, 2001.

FOR FURTHER INFORMATION CONTACT: James Nunno or Christopher Priddy, AD/CVD Enforcement Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0783 or (202) 482–1130, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2000).

Preliminary Determination

We preliminarily determine that pure magnesium from the Russian Federation (Russia) is not being, nor is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Act.

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Case History

Since the initiation of this investigation (*Initiation of Antidumping Duty Investigations: Pure Magnesium from Israel, the Russian Federation, and the People's Republic of China*, 65 FR 68121 (Nov. 14, 2000) (*Notice of Initiation*)). the following events have occurred:

On December 1, 2000, the United States International Trade Commission (ITC) issued an affirmative preliminary injury determination in this case. *See* ITC Investigation No. 731–TA–895–897 (December 2000).

Also on December 1, 2000, the petitioners in this case (*i.e.*, the Magnesium Corporation of America (Magcorp) and the United Steel Workers of America, Locals 482 and 8319) requested that the Department modify the scope of this investigation to exclude certain magnesium products that are prepared solely for use as a desulfurizer in steel-making from the scope of the investigation. On December 4, 2000, we received comments on the scope of the investigation from ESM Group, Inc. (ESM), a U.S. manufacturer of magnesium powder and desulfurizing reagents. In its submission, ESM requested that the Department should exclude from the scope: (1) Magnesium-based reagents, in accordance with the petitioners' intention not to capture such products; and (2) pure magnesium in granular form, because it is a separate class or kind of merchandise from magnesium ingots. For further discussion, see the "Scope of Investigation" and "Comments on Scope" sections of the notice, below.

On December 11, 2000, we issued an antidumping questionnaire to the Trade Representative of the Russian Federation in the United States and requested that the Trade Representative forward the questionnaire to all companies which manufactured and/or exported the subject merchandise during the period of investigation (POI). We also sent courtesy copies of the questionnaire to all companies which were identified in the petition as possible exporters/producers of the subject merchandise during the POI. The letters provided to the Trade Representative and those companies identified in the petition as producers and/or exporters of pure magnesium set out the deadlines for responses to the different sections of the questionnaire.

In January 2001, the Department received responses from two U.S. trading companies which are exporters of Russian magnesium (*i.e.*, Greenwich Metals Inc. (Greenwich) and Interlink Metals, Inc. (Interlink)), and two Russian producers/exporters of magnesium (*i.e.*, Avisma Titanium Magnesium Works (Avisma) and Solikamsk Magnesium Works (SMW)). In January, February, and March 2001, we issued supplemental questionnaires to Avisma, Greenwich, and SMW and received responses to these supplemental questionnaires during January, February, and March 2001.

Also in January 2001, the Department requested that Interlink provide additional information concerning the proper date of sale for its U.S. sales. On January 24, 2001, we received a response to this supplemental questionnaire. In addition, we received comments from the petitioners and SMW regarding the appropriate date of sale in this case. Based on this information, we concluded that Interlink had no sales of subject merchandise during the POI. Consequently, we have not analyzed Interlink's response for purposes of this investigation. *See* the "Period of Investigation" section of the notice, below, for further discussion.

On January 19, 2001, the Department invited interested parties to comment on surrogate country selection and to provide publicly available information for valuing the factors of production. We received responses to this letter from the petitioners, Avisma, and Interlink on February 9, 2001. Each of these parties filed rebuttal comments on surrogate country and surrogate value information on February 20, 2001.

On March 1, 2001, pursuant to 19 CFR 351.205(e), the petitioners made a timely request to postpone the preliminary determination. We granted this request and, on March 6, 2001, postponed the preliminary determination until no later than April 23, 2001. *See Notice of Postponement of Preliminary Determinations of Sales at Less Than Fair Value: Pure Magnesium From Israel, the Russian Federation, and the People's Republic of China and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determinations: Pure Magnesium From Israel*, 66 FR 14546 (Mar. 13, 2001).

Scope of Investigation

The scope of this investigation includes imports of pure magnesium products, regardless of chemistry, form, or size, including, without limitation, ingots, raspings, granules, turnings, chips, powder, and briquettes.

The scope of this investigation includes: (1) Products that contain at least 99.95 percent primary magnesium, by weight (generally referred to as "ultra-pure" magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent pure magnesium, by weight (generally referred to as "pure" magnesium); (3) chemical combinations of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, that do not conform to an "ASTM Specification for Magnesium Alloy"[1] (generally referred to as "off-specification pure" magnesium); and (4) physical mixtures of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, except that mixtures containing 90 percent or less pure magnesium, by weight, when mixed with lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon slag coagulants, and/or fluorspar, are excluded.

The merchandise subject to this investigation is classifiable under 8104.11.00, 8104.19.00, and 8104.30.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Comments on Scope

In accordance with our regulations, we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit such comments within 20 calendar days of publication of the *Notice of Initiation*. *See Notice of Initiation*, 65 FR at 68123. On December 1, 2000, the petitioners requested that the Department clarify that the scope of this investigation excludes finished mixtures containing pure magnesium and/or off-specification pure magnesium prepared solely for use as a desulfurizer in steel-making, unless such mixtures contain only minimal amounts of non-magnesium materials in order to circumvent an antidumping order. On December 4, 2000, ESM submitted a letter supporting the petitioners' position that magnesium-based reagents should not be included in the scope of the Department's investigation. On January 30, 2001, the petitioners submitted proposed language to further clarify their intent with respect to the scope of this investigation. Based on this submission, we have revised the scope to exclude reagent magnesium.

[1] The meaning of this term is the same as that used by the American Society for Testing and Materials in its *Annual Book of ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.*

In its December 4 submission, ESM also argued that pure magnesium ingot and granular magnesium constitute separate classes or kinds of merchandise and that the Department should exclude granular magnesium from the scope of the investigation. However, because (1) the respondents only sold pure magnesium ingot during the POI, and (2) we have made a preliminary finding of no sales at less than fair value, we have not addressed this issue for purposes of the preliminary determination. In the event that we make an affirmative final determination, we will consider this issue then.

On April 10, 2001, Rossborough Manufacturing Co., L.P., requested that the Department amend the scope of this investigation to exclude certain additional reagent mixtures and imports of granular magnesium used for making reagent mixtures. Rossborough's submission was filed too late to be given proper consideration for purposes of the preliminary determination, but we will consider these issues for the final determination.

Period of Investigation

Pursuant to 19 CFR 351.204(b)(1), the POI for an investigation involving merchandise from a non market economy is the two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, October 2000). Therefore, in this case, the POI is April 1, 2000, through September 30, 2000.

Both Interlink and SMW requested that the Department extend the POI to cover shipments of pure magnesium made pursuant to long-term contracts signed in the fourth quarter of 1999 and the first quarter of 2000. Pursuant to 19 CFR 351.204(b)(1), the Department may examine merchandise sold during any additional or alternate period that the Department concludes is appropriate. However, based on the arguments and evidence presented on this issue, the Department does not believe it is appropriate to extend the POI in this investigation. Thus, we have continued to use the six-month period defined by 19 CFR 351.204(b)(1). For further discussion, see the March 23, 2001, memorandum from Christopher Priddy to Richard W. Moreland entitled "Date of Sale for Long-Term Contracts and Period of Investigation."

Nonmarket Economy Country Status for Russia

The Department has treated Russia as a nonmarket economy (NME) country in all past antidumping duty investigations and administrative reviews. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 64 FR 38626 (July 19, 1999); *Titanium Sponge from the Russian Federation: Final Results of Antidumping Administrative Review*, 64 FR 1599 (Jan. 11, 1999); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the Russian Federation*, 62 FR 61787 (Nov. 19, 1997); *Notice of Final Determination of Sale at Less Than Fair Value: Pure Magnesium and Alloy Magnesium from the Russian Federation*, 60 FR 16440 (Mar. 30, 1995) (*Magnesium from Russia Original Investigation Final Determination*). A designation as a NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act.

When the Department is investigating imports from a NME country, section 773(c)(1) of the Act directs us to base normal value (NV) on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the "Normal Value" section, below.

No party in this investigation has requested a revocation of Russia's NME status. We have, therefore, preliminarily continued to treat Russia as a NME.

Separate Rates

It is the Department's policy to assign all exporters of subject merchandise in an NME country a single rate, unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Avisma and SMW have submitted separate rates information in their section A responses, have stated that there is no element of government ownership or control, and have requested a separate, company-specific rate.

Regarding Greenwich, this exporter is located in a market-economy country and is not affiliated with a Russian producer or exporter. Consequently, we do not need to perform a separate rates test for Greenwich, and we are calculating a separate rate for it in accordance with our practice. *See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026, 19027 (Apr. 30, 1996).

The Department's separate rate test is unconcerned, in general, with macroeconomic/ border-type controls (*e.g.*, export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61757 (Nov. 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (Nov. 17, 1997); and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less than Fair Value*, 60 FR 14725, 14726 (Mar. 20, 1995).

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991), as modified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under the separate rates criteria, the Department assigns separate rates in NME cases only if the NME respondents can demonstrate the absence of both de jure and de facto governmental control over export activities. *See Silicon Carbide* and *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22545 (May 8, 1998).

1. Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

Regarding Avisma and SMW, these companies have placed on the record a number of documents to demonstrate absence of de jure control, including: (1) The Federal Law on Joint Stock Companies (Nov. 24, 1995); (2) the Russian Federation Federal Act on State Regulation of Foreign Trade Activity (July 7, 1995) (amended as Federal Law No. 32-FZ (Feb. 10, 1999)); (3) the President of the Russian Federation's Decree No. 721 (July 1, 1992); and (4) the Russian Federation Civil Code (Oct. 21, 1994) at Articles 49 and 50.

In prior cases, the Department has analyzed these laws and found that they establish an absence of de jure control. *See, e.g., Notice of Preliminary*

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Determination of Sales at Less Than Fair Value: Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation, 64 FR 61261, 61268 (Nov. 10, 1999); *see* also *Notice of Preliminary Determination of Sales at Less Than Fair Value: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation*, 65 FR 1139, 1142 (Jan. 7, 2000).[2] We have no new information in this proceeding Federation, 65 FR 1139, 1142 (Jan. 7, 2000).[3] We have no new information in this proceeding which would cause us to reconsider this determination.

According to Avisma and SMW, pure magnesium exports are not affected by export licensing provisions or export quotas. Avisma and SMW claim to have autonomy in setting the contract prices for sales of pure magnesium through independent price negotiations with their foreign customers without interference from the Russian government. Based on the assertions of Avisma and SMW, we preliminarily determine that there is an absence of de jure government control over the pricing and marketing decisions of Avisma and SMW with respect to these companies' pure magnesium export sales.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to de facto governmental control of its export functions: (1) Whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

Avisma and SMW have asserted the following: (1) Each company establishes its own export prices; (2) each company negotiates contracts without guidance from any governmental entities or organizations; (3) each company makes its own personnel decisions; and (4) each company retains the proceeds of its export sales and uses profits according to its business needs. Additionally, Avisma's and SMW's questionnaire responses indicate that company-specific pricing during the POI does not suggest coordination among exporters. This information supports a preliminary finding that there is an absence of de facto governmental control of the export functions of these companies. Consequently, we preliminarily determine that Avisma and SMW have met the criteria for the application of separate rates.

Russia-Wide Rate

As in all NME cases, the Department implements a policy whereby there is a rebuttable presumption that all exporters or producers located in the NME comprise a single exporter under common government control, the "NME entity." The Department assigns a single NME rate to the NME entity unless an exporter can demonstrate eligibility for a separate rate.

Information on the record of this investigation indicates that Avisma and SMW were the only Russian producers and/or exporters of the subject merchandise with sales or shipments to the United States during the POI. Based upon our examination and clarification of Customs data, we have determined that there are no other Russian producers and/or exporters of the subject merchandise and consequently none which were required to respond to the Department's questionnaire. *See* the memorandum from Christopher Priddy to the file entitled "Examination of Customs Data for Pure Magnesium Russian Imports During the Period of Investigation" dated April 23, 2001. For this reason, we have not assigned a Russia-wide rate in this investigation.

Fair Value Comparisons

To determine whether sales of the subject merchandise by Avisma, Greenwich, and SMW to or within the United States were made at LTFV, we compared the export price (EP) or the constructed export price (CEP), as appropriate, to NV based on an NME analysis, as described below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs and CEPs to the NVs.

Export Price and Constructed Export Price

A. Avisma

For Avisma, we used EP methodology in accordance with section 772(a) of the Act because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and CEP methodology was not otherwise appropriate. We made no deduction from the starting price to account for either export taxes paid by Avisma to the Russian government or export procedure fees because (a) the actual amounts paid are an internal expense within an NME country and (b) there is no quantifiable good or service factor for which a surrogate value can be determined. *See Notice of Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations: Pure and Alloy Magnesium From the Russian Federation*, 59 FR 55427, 55430 (Nov. 7, 1994) (*Pure and Alloy Magnesium from Russia*).[4]

We calculated EP based on packed CFR[5] prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price for inland freight from the factory to the port of export, foreign brokerage and handling, third-country freight, third-country warehousing, ocean freight, and marine insurance, in accordance with section 772(c)(2)(A) of the Act. We valued Avisma's movement provided by NME suppliers using South African freight rates; for those freight services provided by market-economy companies, we used the actual prices which Avisma paid to the freight supplier in our EP calculation. For further discussion of our use of surrogate data in an NME proceeding, as well as selection of South Africa as the appropriate surrogate country, see the "Normal Value" section of this notice, below.

B. Greenwich

For Greenwich, we used CEP methodology in accordance with section 772(b) of the Act, because sales to the first unaffiliated purchaser in the United States took place after importation. In accordance with our practice, we excluded trial shipments from our analysis for purposes of the preliminary determination because they were made in small quantities. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan*, 64 FR 8291, 8295 (Feb. 19, 1999). For further discussion, see "Preliminary Determination of Antidumping Duty Investigation of Pure Magnesium from the Russian Federation Concurrence Memorandum" (*Concurrence Memorandum*) dated April 23, 2001.

We calculated CEP based on ex-dock, ex-warehouse, CIF, or delivered prices to unaffiliated purchasers in the United States. We deducted from the starting price amounts for foreign inland freight from the Russian plant to the reseller's warehouse, foreign inland freight in the country of exportation, foreign brokerage and handling, ocean freight, marine insurance, U.S. inland freight, U.S. warehousing, U.S. inland insurance, U.S. terminal charges, and U.S. customs brokerage fees and duties in accordance with section 772(c)(2)(A) of the Act. We valued Greenwich's movement expenses provided by NME suppliers using South African freight rates; for those freight services provided by market-economy companies, we used the actual prices which Greenwich paid to the freight supplier in our CEP calculation.

We made additional deductions from CEP for credit expenses, and U.S. indirect selling expenses, including U.S. inventory carrying costs and other indirect selling expenses, in accordance with section 772(d)(1) of the Act. We recalculated credit expenses for one sale for which Greenwich had not received payment as of the date of its last questionnaire response. As the date of payment for this sale, we used the date of the preliminary determination.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. We calculated the CEP profit ratio for Greenwich based on the financial data reported in its income statement for the year ended June 30, 2000.

C. SMW

For SMW, we used CEP methodology in accordance with section 772(b) of the Act, because sales to the first unaffiliated purchaser in the United States took place after importation. We made no deduction from the starting price to account for either export taxes paid by SMW to the Russian government or export procedure fees because (a) the actual amounts paid are an internal expense within an NME country and (b) there is no quantifiable good or service factor for which a surrogate value can be determined. *See Pure and Alloy Magnesium from Russia*, 59 FR at 55430. We calculated CEP based on ex-dock, ex-warehouse, CIF or delivered prices to unaffiliated purchasers in the United States. Where appropriate, we adjusted the starting price for billing adjustments. We also deducted from the starting price amounts for foreign inland freight, foreign brokerage and handling, foreign inland insurance, ocean freight, marine insurance, U.S. inland freight, U.S. warehousing, U.S. terminal charges, U.S. customs brokerage fees and duties, and U.S. warehousing, in accordance with section 772(c)(2)(A) of the Act. We valued SMW's movement provided by NME suppliers using South African freight rates; for those freight services provided by market-economy companies, we used the actual prices which SMW paid to the freight supplier in our CEP calculation. With respect to ocean freight and marine insurance, we note that SMW used a freight forwarder located in Russia to ship certain of its products. Because SMW was unable to establish that the expenses incurred for these transactions were set by a market-economy supplier in a market-economy currency, we have not used them for purposes of the preliminary determination. Rather, we have based the amount of these expenses on the amounts incurred by SMW on its other transactions arranged by freight forwarders located in a market-economy. For further discussion, see *Concurrence Memorandum*.

We made additional deductions for credit expenses and U.S. indirect selling expenses, including U.S. inventory carrying costs and other indirect selling expenses, in accordance with section 772(d)(1) of the Act. We based the amount for indirect selling expenses incurred by SMW's U.S. affiliate on facts available because SMW did not report these expenses on a POI-basis, despite requests in two supplemental questionnaires that it do so. As facts available, we used the total indirect selling expense amount reported by SMW, which represents all indirect expenses incurred during 2000. For further discussion, see *Concurrence Memorandum*.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. We calculated the CEP profit ratio using the financial data reflected on the income statement of a South African producer of zinc. For further discussion of the financial statements of this surrogate producer, see the "Normal Value" section of this notice, below.

Normal Value

A. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market-economy countries that: (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. The Department has determined that Poland, Venezuela, South Africa, Turkey, Colombia, and Tunisia are countries comparable to Russia in terms of overall economic development. *See* the January 12, 2001, memorandum from Jeffrey May to Louis Apple.

According to the available information on the record, we have determined that South Africa meets the statutory requirements for an appropriate surrogate country for Russia. For purposes of the preliminary determination, we have selected South Africa as the surrogate country, based on the quality and contemporaneity of the currently available data. Accordingly, we have calculated NV using South African values for Russian producers' factors of production except, as noted below, in certain instances where an input was sourced from a market economy country and purchased with a market-economy currency. We have obtained and relied upon publicly available information wherever possible.

B. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by Avisma and SMW for the POI. To calculate NV, the reported per-unit factor quantities were multiplied by publicly available South African surrogate values.

For purposes of calculating NV, we valued Russian factors of production, in accordance with section 773(c)(1) of the Act. Factors of production include, but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital cost, including depreciation. In examining surrogate values, we selected, where possible, the publicly available value which was: (1) An average non-export value; (2) representative of a range of prices within the POI or most contemporaneous with the POI; (3) product-specific; and (4) tax-exclusive.

[2] The Department's findings in the preliminary determinations of these proceedings were unchanged in the final determinations. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation*, 65 FR 5510, 5518 (Feb. 4, 2000) (*Russian Cold-Rolled Final Determination*) and *Notice of Final Determination of Sales at Less Than Fair Value; Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation*, 65 FR 42669, 42671 (July 11, 20000).

[3] The Department's findings in the preliminary deterininations of these proceedings were unchanged in the final determinations. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation*, 65 FR 5510, 5518 (Feb. 4, 2000) (*Russian Cold-Rolled Final Determination*) and *Notice of Final Determination of Sales at Less Than Fair Value; Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation*, 65 fr 42669, 42671 (July 11, 2000).

[4] This was unchanged in the final determination. *See Magnesium from Russio Original Investigation Final Determination*, 60 FR 16442.

[5] "CFR," an official INCO Term for international trade and shipping, denotes that the seller is responsible for the cost of the freight expenses to the named port of destination but is not responsible for insurance expenses.

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For a more detailed explanation of the methodology used in calculating various surrogate values, see the "Preliminary Determination Factors Valuation Memorandum from the Team to the File," dated April 23, 2001. In accordance with this methodology, we valued the factors of production as follows:

In selecting the surrogate values, we considered the availability, quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. We added to South African surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corporation* v. *United States*, 117 F. 3d 1401, 1407–08 (Fed. Cir. 1997). Where a producer did not report the distance between the material supplier and the factory, we used as facts available the longest distance reported (*i.e.*, the distance between the Russian seaport and the producer's location). To value rail freight rates, we used a rate for aluminum slabs or ingots provided by Spoornet, a South African rail company. As we were unable to identify a surrogate value for freight by truck, we valued trucking freight expenses using the surrogate value for rail freight. For those values not contemporaneous with the POI, we adjusted for inflation using producer price indices or wholesale price indices published in the International Monetary Fund's International Financial Statistics.

We valued the following inputs using United Nation's Harmonized System import data for South Africa: sodium chloride, magnesium chloride, calcium flouric (flourspar), barium chloride, potassium chloride, potash, and shaped timber/sawn wood.

We valued technical salt, sulphur, and slag using data from the World Trade Atlas of the South African Revenue Service. We valued carnallite concentrate using a price quote provided by a South African raw dolomite producer, and we multiplied the dolomite price quote by a factor of 20 as an estimated value for dehydrated carnallite. We valued sulfuric acid using United Nations commodity trade statistics for imports. The surrogate value for petroleum coke was based on an average of data obtained from the World Trade Atlas of the South African Revenue Service and United Nations commodity trade statistics. We valued magnesium scrap using Customs Union trade import statistics for aluminum scrap. We valued boric acid using data from the U.S. Geological Survey.

We valued both natural gas and heavy oil using data from the International Energy Agency. We valued electricity using the 1999 average electricity rate charged to industrial users by Eskom, a South African electric utility company.

We valued the following packing materials using data from the World Trade Atlas of the South African Revenue Service: nails, tape, labels, wire, thermo-shrinking bags, and silica gel. The surrogate value for steel strips/metal straps was based on United Nations Commodity Trade Statistics. We used the Monthly Abstract of Trade Statistics from the Republic of South Africa in order to value polyethylene film/plastic.

We valued labor based on a regression-based wage rate in accordance with 19 CFR 351.408(c)(3).

To determine factory overhead, SG&A expenses, and profit, we relied on rates derived from the 1998 financial statements of Zinc Corporation of South Africa, a South African producer of comparable merchandise.

Based on the information submitted by Avisma and SMW, we have determined that chlorine gas and potassium chloride flux are by-products. Because they are by-products, we subtracted the sales revenue of chlorine gas and potassium chloride flux from the estimated production costs of pure magnesium. This treatment of by-products is consistent with generally accepted accounting principles. *See Cost Accounting: A Managerial Emphasis (1991)* at pages 539–544. We used a South African price quote to value chlorine and United Nation's Harmonized System data to value potassium chloride.

Currency Conversions

We made currency conversions, in accordance with section 773A(a) of the Act, based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York.

Verification

As provided in section 782(i) of the Act, we intend to verify all information relied upon in making our final determination.

Suspension of Liquidation

Because the estimated weighted-average dumping margins for all the examined companies are 0.00 percent, we are not directing the Customs Service to suspend liquidation of entries of pure magnesium from Russia.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, pursuant to section 735(b)(3) of the Act, the ITC will determine within 75 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding within five days of the publication of this notice. *See* 19 CFR 351.224(b).

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination within 75 days of this preliminary determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: April 23, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–10685 Filed 4–27–01; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–508–809]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Pure Magnesium from Israel

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 30, 2001.

FOR FURTHER INFORMATION CONTACT: Craig Matney or Andrew Covington, Office 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1778, or (202) 482–3534, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to the regulations codified at 19 CFR Part 351 (April 2000).

Preliminary Determination

We preliminarily determine that pure magnesium from Israel is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins are shown in the Suspension of Liquidation section of this notice.

Case History

Since the publication of the notice of initiation of this investigation in the **Federal Register** (*see Initiation of Antidumping Duty Investigations: Pure Magnesium from Israel, the Russian Federation, and the People's Republic of China*, 65 FR 68121 (November 14, 2000) (*Initiation Notice*)), the following events have occurred:

On December 1, 2000, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of pure magnesium from Israel are materially injuring the United States industry. See 65 FR 77910 (December 13, 2000). On December 4, 2000, the Department requested comments from interested parties regarding the criteria to be used for model matching purposes. The parties submitted comments on our proposed model matching criteria on December 8, 2000. On December 12, 2000, the Department issued an antidumping questionnaire to Dead Sea Magnesium (DSM).

DSM submitted its initial responses to the questionnaire on January 25 and February 1, 2001. The petitioners in this case (*i.e.*, the Magnesium Corporation of America (Magcorp) and the United Steel Workers of America, Locals 482 and 8319) filed comments on the questionnaire responses on February 12, 2001. After analyzing the initial responses and the petitioners' comments, we issued a supplemental questionnaire to DSM on February 22, 2001. We received DSM's response to this supplemental questionnaire on March 15, 2001.

On February 8, 2001, the petitioners requested that the Department initiate an investigation of sales below the cost of production (COP) for DSM. On February 20, 2001, based on our review of the petitioners' below cost allegation, we initiated a cost investigation for DSM and requested that DSM respond to Section D of the antidumping questionnaire concerning COP and constructed value (CV) (*see* Memorandum dated February 20, 2001, to Senior Office Director Susan Kuhbach, which is on file in Import Administration's Central Records Unit (*Cost Initiation Memo*)). DSM filed its Section D response on March 21, 2001. On April 2, 2001, we issued a Section D supplemental questionnaire to DSM. DSM submitted supplemental section D information on April 10 and 16, 2001.

On March 1, 2001, the petitioners made a timely request for a postponement of the preliminary determination pursuant to section 733(c)(1)(A) of the Act. On March 6, 2001, the Department postponed the preliminary determination until no later than April 23, 2001 (*see Notice of Postponement of Preliminary Determinations of Sales at Less Than Fair Value: Pure Magnesium From Israel, the Russian Federation, and the People's Republic of China and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determinations: Pure Magnesium From Israel*, 66 FR 14546 (March 13, 2001) (*Postponement Notice*)).

Scope of the Investigation

The scope of this investigation includes imports of pure magnesium products, regardless of chemistry, form, or size, including, without limitation, ingots, raspings, granules, turnings, chips, powder, and briquettes.

Pure magnesium includes: (1) Products that contain at least 99.95 percent primary magnesium, by weight (generally referred to as "ultra-pure" magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent pure magnesium, by weight (generally referred to as "pure" magnesium); and (3) chemical combinations of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, that do not conform to an "ASTM Specification for Magnesium Alloy"[1] (generally referred to as "off-specification pure" magnesium); and (4) physical mixtures of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, except that mixtures containing 90 percent or less pure magnesium, by weight, when mixed with lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon slag coagulants, and/or fluorspar, are excluded.

The merchandise subject to this investigation is classifiable under 8104.11.00, 8104.19.00, and 8104.30.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Comments on Scope

In accordance with our regulations, we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit such comments within 20 calendar days of publication of the *Initiation Notice* (*see* 65 FR at 68123). On December 1, 2000, the petitioners requested that the Department clarify that the scope of this investigation excludes finished mixtures containing pure magnesium and/or off-specification pure magnesium prepared solely for use as a desulfurizer in steel-making, unless such mixtures contain only minimal amounts of non-magnesium materials in order to circumvent an antidumping order. On

[1] The meaning of this term is the same as that used by the American Society for Testing and Materials in its *Annual Book of ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.*

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December 4, 2000, an interested party in this investigation, ESM, submitted a letter supporting the petitioners' position that magnesium-based reagents should not be included in the scope of the Department's investigation. On January 30, 2001, the petitioners submitted proposed language to further clarify their intent with respect to the scope of this investigation. Based on this submission, we have revised the scope to exclude reagent magnesium.

In its December 4, 2000, submission, ESM also argued that pure magnesium ingot and granular magnesium constitute separate classes or kinds of merchandise and that the Department should exclude granular magnesium from the scope of the investigation. While ESM claimed that magnesium ingot and granular magnesium constitute separate classes or kinds of merchandise, it did not address the criteria for determining separate classes or kinds as set forth in 19 CFR 351.225(k) (*i.e.*, the physical characteristics of the products, the expectations of the ultimate purchasers, the ultimate use of the product, the channels of trade in which the product is sold, and the manner in which the product is advertised or displayed). Instead, ESM addressed the criteria relating to designation of like products. The Department determined prior to initiating this investigation that ingot and granular magnesium are a single like product (*see Initiation Notice* 65 FR at 68122 and Memorandum from the team to Richard W. Moreland, Deputy Assistant Secretary, Office of AD/CVD Enforcement, Group I entitled "Like Product and Industry Support Determinations in the Antidumping Duty Investigations of Pure Magnesium from Israel, the People's Republic of China, and the Russian Federation and the Countervailing Duty Investigation of Pure Magnesium from Israel," dated November 6, 2000 (*Like Product/ Industry Support Memo*).

On April 10, 2001, Rossborough Manufacturing Co., L.P., requested that the Department amend the scope of this investigation to exclude certain additional reagent mixtures and imports of granular magnesium used for making reagent mixtures. Rossborough's submission was filed too late to be given proper consideration for purposes of the preliminary determination, but we will consider these issues for the final determination.

Period of Investigation

The period of investigation (POI) is October 1, 1999, through September 30, 2000. This period corresponds to the respondent's four most recently completed fiscal quarters prior to the filing of the petition (*see* 19 CFR 351.204(b)).

Normal Value

A. Selection of Comparison Market

Pursuant to section 771(16) of the Act, all products produced and sold by the respondents in the comparison market that fit the definition contained in the Scope of the Investigation section of this notice and were sold during the POI comprise the foreign like product. In accordance with section 773(a)(1)(C)(ii) of the Act, in order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value (NV), we compared the respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise.

DSM reported that its home market sales of pure magnesium during the POI were less than 5 percent of its sales of pure magnesium in the United States. Therefore, DSM did not have a viable home market for purposes of calculating normal value. However, DSM reported that Germany was its largest viable third country market and, therefore, DSM reported its sales to Germany for purposes of calculating normal value. Because all of DSM's German sales failed the cost test, we have disregarded all comparison market sales (*see* the Results of the COP Test section below). Accordingly, we compared the merchandise sold in the United States to CV, in accordance with section 773(a)(4) of the Act.

B. Cost of Production Analysis

Based on a timely cost allegation, and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that DSM's pure magnesium sales made in Germany were made at prices below COP (see *Cost Initiation Memo*). As a result, the Department has conducted an investigation to determine whether the respondent made sales in its comparison market at prices below the COP during the POI within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP for pure magnesium, based on the sum of the cost of materials and fabrication (COM) for the foreign like product, plus amounts for interest expenses, general and administrative expenses (G&A) and packing costs. We adjusted DSM's reported COM data by treating certain joint products as by-products rather than as co-products. This required the reallocation of manufacturing costs. We also recalculated DSM's reported interest and G&A expenses based on this revised COM. See April 23, 2001 memorandum to Neal Halper regarding adjustments to the COP and CV.

2. Test of Comparison Market Sales Prices

We compared the adjusted, weighted-average, COP for DSM to its prices for German market sales of the foreign like product. The prices were exclusive of billing adjustments, movement expenses, commissions, and other direct and indirect selling expenses. This is in accordance with 773(b) of the Act, and was done to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.*, a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determine such sales to have been made in substantial quantities within an extended period of time. *See also* section 773(b)(2)(B) of the Act. The Department next compares prices from the comparison market to the POI average COP in order to determine whether such sales were made at prices which would permit recovery of all costs within a reasonable period of time. *See* section 773(b)(2)(D) of the Act.

We found that all of DSM's comparison market sales were made within an extended period of time at prices less than the COP. In addition, the prices did not provide for the recovery of costs within a reasonable period of time. Therefore, because there were no comparable comparison market sales in the ordinary course of trade, we compared EP/CEP to CV in accordance with section 773(a)(4) of the Act. *See* the section on Calculation of Normal Value Based on Constructed Value below.

C. Calculation of Normal Value Based on Comparison Market Prices

Because all of DSM's sales of comparable merchandise in the comparison market failed the cost test, we did not calculate NV based on comparison market prices.

D. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where normal value cannot be based on comparison market sales, normal value may be based on the constructed value. Accordingly, because all sales of comparison products failed the COP test, we based NV on CV.

Sections 773(e)(1) and (e)(2)(A) of the Act provide that the CV shall be based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling expenses, G&A, profit, and U.S. packing costs. We calculated the cost of materials and fabrication based on the methodology described in the Calculation of COP section, above.

Because DSM does not have any above cost comparison market sales of subject merchandise, the Department has not determined selling expenses, G&A expenses, and profit under section 773(e)(2)(A) of the Act, which requires sales by the respondent in question in the ordinary course of trade in a comparison market. In situations where we cannot calculate selling expenses, G&A expenses, and profit under section 773(e)(2)(A), section 773(e)(2)(B) of the Act sets forth three alternatives. The Statement of Administrative Action at 840 (H.R. Doc. 103–316 (1994)) states that "section 773(e)(2)(B) does not establish a hierarchy or preference among these alternative methods."

Section 773(e)(2)(B)(i) specifies that selling expenses, G&A expenses, and profit may be calculated based on "actual amounts incurred by the specific exporter or producer * * * on merchandise in the same general category" as subject merchandise. DSM also produces alloy magnesium, which could be considered as the same general category of merchandise as pure magnesium. However, there is insufficient information on the record for us to determine the selling and G&A expenses or the profit rate for DSM's sales of alloy magnesium.

Alternative (ii) of this section provides that selling expenses, G&A expenses, and profit may be calculated based on "the weighted average of the actual amounts incurred and realized by {other} exporters or producers that are subject to the investigation." However, because there are no other respondents in this case, the Department cannot calculate selling expenses, G&A expenses, and profit based on alternative (ii) of this section.

Therefore, the only statutory option available to the Department to calculate the CV selling expenses, G&A expenses, and profit for DSM is under section 773(e)(2)(B)(iii). Alternative (iii) of this section allows the Department to use "any other reasonable method" to calculate the CV selling expenses, G&A expenses, and profit, provided that the amount for profit does not "exceed the amount normally realized by exporters or producers * * * in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise."

With respect to selling expenses, lacking more suitable information, we calculated CV selling expenses based on DSM's reported comparison market sales. We calculated G&A based on DSM's reported information as applied to a revised COM (see the Calculation of COP section, above), as we have no reason to believe DSM's reported G&A expenses are unreliable as a result of all of its comparison market sales being made at prices below the cost of production.

We calculated amounts for the CV profit based on the profit earned by Dead Sea Periclase (DSP). DSP produces periclase (*i.e.*, magnesium oxide) and other magnesium-based compounds. These magnesium-based products, like subject merchandise, are manufactured from the Dead Sea brine. Periclase is primarily used to manufacture refractories and other flame retardant materials. The other magnesium-based compounds are used in pharmaceuticals, food mineral supplements, rubbers, plastics, and to produce specialty steel for transformers. Because we do not have any further information regarding profit on the same general category of merchandise, we have not been able to quantify the "profit cap" described in section 773(e)(2)(B)(iii) of the Act. The SAA, at 841, anticipates such situations and directs that where the Department cannot calculate a profit cap, the Department may apply 773(e)(2)(B)(iii) of the Act on the basis of the facts available. Therefore, we have not calculated a "profit cap" for the instant determination. As facts available, we have used DSP's profit rate of 3.12 percent in calculating CV as a reasonable surrogate for DSM's home market profit.

In addition, we added U.S. packing costs. Lastly, we made adjustments to CV for differences in circumstances of sale (COS) (*i.e.*, imputed credit) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments for both EP and CEP sales.

Fair Value Comparisons

To determine whether sales of pure magnesium from Israel to the United States were made at less than fair value, we compared the export price (EP) or constructed export price (CEP) to NV, as described in the Export Price and Normal Value sections, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs and CEPs to the NVs.

Date of Sale

DSM reported that it made a number of its sales based on term contracts in which the terms of sale (*e.g.*, price, quantity, delivery schedule) purportedly were set at the time the contract was signed. In an April 19, 2001 supplemental questionnaire, the Department requested that DSM provide further information on these sales and report the contract date and other necessary information for all term contract sales negotiated during the POI. The current due date for this questionnaire response is May 2, 2001. For purposes of this preliminary determination, the Department has used the reported invoice date as the date of sale. However, we intend to examine DSM's response to our outstanding supplemental questionnaire and consider this issue further for the final determination.

Export Price

In accordance with section 772 of the Act, we based U.S. price on EP for certain sales. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold before the date of importation by the exporter or producer outside the United States to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States. Consistent with this definition, we found that some of the respondent's sales during the POI were EP sales. For these sales, we calculated EP based on prices charged to the first unaffiliated customer in the United States.

As the starting U.S. price, we relied on the reported gross unit price. These prices were delivered and FOB prices to unaffiliated customers in the United States. In accordance with section 772(c)(2) of the Act, we reduced the EP, where appropriate, by billing adjustments and movement expenses, including foreign inland freight, foreign

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brokerage charges, insurance, international freight and U.S. inland freight.

Constructed Export Price

For certain sales, we used CEP methodology in accordance with sections 772(b), (c) and (d) of the Act, because sales to the first unaffiliated purchaser in the United States took place after importation. Consistent with these definitions, we found that some of the respondent's sales during the POI were CEP sales. For these sales, we calculated CEP based on prices charged to the first unaffiliated customer in the United States.

As the starting U.S. price, we relied on the reported gross unit price. These prices were delivered and FOB prices to unaffiliated customers in the United States. In accordance with section 772(c)(2) of the Act, we reduced the CEP, where appropriate, by billing adjustments and movement expenses, including foreign inland freight, foreign brokerage charges, insurance, international freight and U.S. inland freight. Also, where appropriate, we deducted direct and indirect selling expenses related to commercial activity in the United States. Pursuant to section 772(d)(3) of the Act, where applicable, we made an adjustment for CEP profit.

Currency Conversions

We made currency conversions in accordance with section 773A(a) of the Act.

Verification

In accordance with section 782(i) of the Act, we intend to verify information to be used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise from Israel entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/producer	Weighted-average margin (in percent)
Dead Sea Magnesium	12.68
All-others	12.68

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding within five days of the publication of this notice. *See* 19 CFR 351.224(b).

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

If this investigation proceeds normally, we will make our final determination within 75 days of this preliminary determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: April 23, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–10686 Filed 4–27–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–838]

Notice of Initiation of Antidumping Duty Investigation: Certain Softwood Lumber Products From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 30, 2001.

FOR FURTHER INFORMATION CONTACT: Valerie Ellis or Charles Riggle at (202) 482–2336 and (202) 482–0650, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Initiation of Investigation

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations are references to the provisions codified at 19 CFR part 351 (2001).

The Petition

On April 2, 2001, the Department received a petition filed in proper form by the Coalition for Fair Lumber Imports Executive Committee,[1] the United Brotherhood of Carpenters and Joiners, and the Paper, Allied-Industrial, Chemical and Energy Workers International Union (collectively, the petitioners). On April 20, 2001, the petition was amended to include the following four companies individually as petitioners: Moose River Lumber Co., Shearer Lumber Products, Shuqualak Lumber Co. and Tolleson Lumber Co., Inc. The Department received information supplementing the petition during the twenty-day initiation period. In accordance with section 732(b) of the Act, the petitioners allege that imports of certain softwood lumber products from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring an industry in the United States.

The Department finds that the petitioners have standing to file this petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C), (D) and (E) of the Act and have demonstrated sufficient industry support with respect to the antidumping investigation that they are requesting the Department to initiate. *See Determination of Industry Support for the Petition*, below.

Scope of the Investigation

The products covered by this investigation are softwood lumber, flooring and siding (softwood lumber products). Softwood lumber products include all products classified under headings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the HTSUS, and any softwood lumber, flooring and siding described below. These softwood lumber products include:

(1) Coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding six millimeters;

(2) Coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed;

(3) Other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood mouldings and wood dowel rods) whether or not planed, sanded or finger-jointed; and (4) Coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed.

Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioners to ensure that it accurately reflects the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (62 FR 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments within twenty days after the date of publication of this notice in the **Federal Register**. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period for scope comments is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, when determining the degree of industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[2]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The petition covers softwood lumber as defined in the *Scope of the Investigation* section, above, a single class or kind of merchandise. The petitioners define the domestic like product as the class or kind of merchandise covered by the scope of the investigation. The Department has no basis on the record to find the petitioners' definition of the domestic like product to be inaccurate.

The Department, therefore, has adopted the domestic like product definition set forth in the petition.

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Finally, section 732(c)(4)(D) of the Act provides that if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the administering agency shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

In this case, the Department has determined that the petition (and subsequent amendments) contain adequate evidence of industry support; therefore, polling is unnecessary. *See* Attachment I to *AD Investigation Initiation Checklist: Certain Softwood Lumber Products from Canada* (April 23, 2001) (*Initiation Checklist*). To

[1] The Coalition for Fair Lumber Imports Executive Committee is comprised of Hood Industries, International Paper Company, Moose River Lumber Company, New South Incorporated, Plum Creek Timber Company, Polatch Corporation, Seneca Sawmill Company, Shearer Lumber Products, Shuqualak Lumber Company, Sierra Pacific Industries, Swift Lumber Incorporated, Temple-Inland Forest Products, and Tolleson Lumber Company, Incorporated.

[2] *See Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

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estimate total domestic production of softwood lumber products, the petitioners relied on year 2000 production figures published by the American Forest and Paper Association (AF&PA). The petitioners also made an upward adjustment to this figure to account, conservatively, for flooring and siding that may or may not otherwise be included in the AF&PA total production figure, but which is included in the definition of domestic like product. In a letter dated April 20, 2001, the Government of Canada attempted to show that this upward adjustment to the year 2000 total production figure was inadequate, and argued that numerous other product categories should also be added to the total production figure. We analyzed the claim made by the Government of Canada and have concluded that it would result in significant double-counting. Further, we have found no other evidence through independent research that would indicate that the petitioners' figure for total U.S. production is in any way understated. We therefore conclude that 67 percent of the U.S. softwood lumber-producing industry supports the petition. Because the petition has support from more than 50 percent of the entire domestic industry, we are not required to consider any expression of opposition in our determination to initiate this investigation. Accordingly, the Department determines that this petition is filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Export Price and Normal Value

The petitioners based export price (EP) on affidavits containing price quotes from Canadian lumber producers in British Columbia and Quebec. These quotes reflect prices to unaffiliated U.S. purchasers for different types and sizes of the subject merchandise commonly exported to the United States. In addition, the petitioners provided prices contained in the industry publication *Random Lengths*.[3] Both POI-average and week-specific prices were provided from Random Lengths. Because the terms of these prices are delivered, the petitioners calculated a net U.S. price by subtracting an estimated amount for international freight. In addition, for the price quote from British Columbia, the petitioners deducted a trading company mark-up.

For initiation purposes, we relied only on the estimated margins based on the POI-average *Random Lengths* prices and actual price quotes from Canadian producers. The petitioners argue that the week-specific *Random Lengths* prices should be used by the Department because they are indicative of actual sales that occurred during that week for a specific product with identical sales terms, and they are akin to an individual-price transaction.[4] However, since the POI-average prices from *Random Lengths* and price quotes from Canadian lumber producers are sufficient for the purposes of this initiation, it is not necessary to consider the petitioners' alternative methodology at this time.

With respect to normal value (NV), the petitioners provided a home-market price that was obtained from *Random Lengths* for the eastern-spruce-pine-fir (ESPF) commonly produced in Quebec, and from the British Columbia Ministry of Forest's published market pricing system (MPS) lumber values for western-spruce-pine-fir (WSPF). Inland freight was deducted from the delivered price for ESPF. The prices for WSPF were considered by the petitioners to be ex-mill prices and no deductions were made. For a more detailed discussion of the deductions and adjustments relating to home market price, U.S. price and sources of data, see *Initiation Checklist*. Should the need arise to use any of this information in our preliminary or final determinations as facts available under section 776 of the Act, we may re-examine the information and revise the margin calculations, if appropriate.

Although the petitioners provided information on home market prices, they also provided information demonstrating reasonable grounds to believe or suspect that sales of softwood lumber in Canada were made at prices below the fully absorbed cost of production (COP), within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

We note that the WSPF prices provided appear not to be Canada-specific prices. The MPS lumber values are obtained by the British Columbia Ministry of Forests from B.C. lumber producers. However, the petition does not indicate that these prices are in any way restricted to sales in Canada. The petitioners acknowledge this, but contend the MPS lumber values represent conservative prices based on anecdotal evidence that a Canada-specific price would be lower. For purposes of examining the below-cost allegation, we have not considered the WSPF prices. However, we note that they are unnecessary, as the petitioners were able to demonstrate sales below cost using other domestic prices contained in the petition.

Pursuant to section 773(b)(3) of the Act, cost of production (COP) includes cost of manufacturing, selling, general and administrative expenses, and packing. The petitioners based the cost of materials, fabrication and packing on the experience of certain petitioning companies, adjusted for known differences in costs between the United States and Canada, and publicly available Canadian industry data. The petitioners estimated per-unit selling, general and administrative expenses using data from Tembec Industries Inc."s (Tembec) 2000 financial statements.[5] The petitioners estimated the per-unit financial expense using data from the 2000 financial statements of Tembec's parent company, Tembec Inc. We adjusted the petitioners' calculation of depreciation by using the amount from Tembec's forest products line of business rather than the company as a whole, which includes results from non-subject merchandise such as pulp, publishing paper, paperboard products, and chemicals. *See Initiation of Cost Investigation* section, below.

Based upon the comparison of the home market prices of the foreign like product to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Because the NV petitioners used for the softwood lumber sales is below the COP, the petitioners based NV on CV. The petitioners calculated CV incorporating the same costs used for the COP. We made the same depreciation adjustment for CV that was made for COP. The petitioners included an amount for CV profit which was based on the profit of the Canadian producer's financial statements. We adjusted the petitioner's calculation of profit by using profit from the forest products line of business rather than the company as a whole, which includes results from non-subject merchandise such as pulp, publishing paper, paperboard products, and chemicals. Based upon the comparison of EP to CV, the estimated dumping margins, as adjusted by the Department, range from 0.60 to 37.64 percent.

[3] *Random Lenths* is a weekly newsletter that is received by subscribers int he U.S., Canada, and forty-one other countries. The publication reports prices, analyzes markets, and examines issues affecting markets for the North American softwood lumber industry.

[4] The margins calculated using these prices, revised by the Department as described in the *Initiation Checklist*, would range from 31.52–49.44 percent.

[5] The petitioners chose Tembec because it is one of the largest softwood lumber producers within Canada and operates mills in british Columbis, Quebec, and Ontario.

Initiation of Cost Investigation

As noted above, pursuant to section 773(b) of the Act, the petitioners provided specific factual information demonstrating reasonable grounds to believe or suspect that sales in the Canadian home market were made at prices below the fully absorbed COP and, accordingly, requested that the Department conduct a country-wide sales-below-COP investigation. The Statement of Administrative Action accompanying the URAA, H.R. Doc.103–412 (SAA), states that an allegation of sales below COP need not be specific to individual exporters or producers. The SAA states that "Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation." *See* SAA at 833.

Further, the SAA provides that "new section 773(b)(2)(A) retains the current requirement that Commerce have 'reasonable grounds to believe or suspect' that below cost sales have occurred before initiating such an investigation. 'Reasonable grounds' * * * exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices." *Id.* Based upon the comparison of the adjusted prices from the petition for the representative foreign like products to their costs of production, we find the existence of "reasonable grounds to believe or suspect" that sales of the foreign like product in Canada were made below the COP within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating the requested country-wide cost investigation.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of certain softwood lumber products from Canada are being, or are likely to be, sold at less than fair value.

Critical Circumstances

In their submission, the petitioners claim that, following the March 31, 2001, expiration of the U.S.-Canada Softwood Lumber Agreement (SLA), there is a reasonable basis to believe or suspect that critical circumstances will exist with regard to imports of softwood lumber from Canada.

Section 733(e)(1) of the Act states that, if a petitioner alleges critical circumstances, the Department will find that such circumstances exist, at any time after the date of initiation, when there is a reasonable basis to believe or suspect that under subparagraph (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h) of the Department's regulations defines "massive imports" as imports that have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration. Section 351.206(i) of the regulations states that "relatively short period" will normally be defined as the period beginning on the date the proceeding begins and ending at least three months later.

The petitioners allege that importers knew, or should have known, that lumber was being sold at less than its fair value. Specifically, the petitioners allege margins, as adjusted by the Department, as high as 37.64 percent, a level high enough to impute importer knowledge that merchandise was being sold at less than its fair value. Additionally, they state that there is likely to be material injury by reason of such sales, and have submitted numerous documents, including news articles in the lumber trade press published over the past several months, that warn of antidumping and countervailing duty cases and discuss the threat of additional price declines and substantial material injury to the U.S. industry.

The petitioners request that the Department immediately begin reviewing import data of the subject merchandise and that the Department request the U.S. Customs Service to compile information on an expedited basis regarding entries of subject merchandise. We note that section 732(e) of the Act states that when there is a reasonable basis to believe or suspect (1) there is a history of dumping in the United States or elsewhere of the subject merchandise, or (2) the person by whom, or for whose account, the merchandise was imported knew, or should have known, that the exporter was selling the subject merchandise at less than its fair value, the Department may request the Commissioner of Customs to compile information on an expedited basis regarding entries of the subject merchandise.

Taking into consideration the foregoing, we will analyze this matter further and continue to monitor imports of softwood lumber from Canada. If, at any time, the criteria for a finding of critical circumstances are established, we will issue a critical circumstances finding at the earliest possible date. *See Policy Bulletin 98/4*, 63 FR 55364, (October 15, 1998) (determination of critical circumstances may be made any time after initiation).

Allegations and Evidence of Material Injury, Causation and Threat of Material Injury

The petitions allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than NV. The petitioners contend that the industry's injured condition is evident in the declining trends in production, employment, sales, and income. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales and revenues, and pricing information. The petitioners also allege the imminent threat of material injury, based on the likely increases in production volume of Canadian softwood lumber and the inventory levels of such merchandise, the likelihood of substantially increased imports, and the prices of these imports having the likely effect of depressing or suppressing domestic prices of softwood lumber. We have assessed the allegations and supporting evidence regarding material injury, causation, and the threat of material injury, and we have determined that these allegations are properly supported by accurate and adequate evidence and meet the statutory requirements for initiation. *See* Attachment II of the *Initiation Checklist*.

Initiation of Antidumping Investigation

Based upon our examination of the petition on certain softwood lumber products from Canada, and the petitioners' response to our supplemental questionnaire clarifying the petition, we have found that the petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether

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imports of certain softwood lumber products from Canada are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determination no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the Government of Canada.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine, no later than May 17, 2001, whether there is a reasonable indication that imports of certain softwood lumber products from Canada are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

April 23, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–10688 Filed 4–27–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–839]

Notice of Initiation of Countervailing Duty Investigation: Certain Softwood Lumber Products from Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 30, 2001.

FOR FURTHER INFORMATION CONTACT: Eric B. Greynolds at (202) 482–6071 or James Terpstra at (202) 482–3965, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Initiation of Investigation

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations are references to the provisions codified at 19 CFR part 351 (2001).

The Petition

On April 2, 2001, the Department received a petition filed in proper form by the Coalition for Fair Lumber Imports Executive Committee,[1] the United Brotherhood of Carpenters and Joiners, and the Paper, Allied-Industrial, Chemical and Energy Workers International Union (collectively, the petitioners). On April 20, 2001, the petition was amended to include the following four companies individually as petitioners: Moose River Lumber Co., Shearer Lumber Products, Shuqualak Lumber Co. and Tolleson Lumber Co., Inc. The Department received information supplementing the petition during the twenty-day initiation period. In accordance with section 702(b) of the Act, petitioners allege that Canadian producers of softwood lumber products received countervailable subsidies within the meaning of section 701 of the Act, and that such imports are materially injuring an industry in the United States.

The Department finds that the petitioners have standing to file this petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C), (D) and (E) of the Act and have demonstrated sufficient industry support with respect to the countervailing duty investigation that they are requesting the Department to initiate. *See Determination of Industry Support for the Petition*, below.

Scope of Investigation

The products covered by this investigation are softwood lumber, flooring and siding (softwood lumber products). Softwood lumber products include all products classified under headings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS), and any softwood lumber, flooring and siding described below. These softwood lumber products include:

(1) Coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding six millimeters;

(2) Coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed;

(3) Other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood mouldings and wood dowel rods) whether or not planed, sanded or finger-jointed; and

(4) Coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed.

Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioners to ensure that it accurately reflects the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (62 FR 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments within twenty days after the date of publication of this notice in the **Federal Register**. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period for scope comments is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

[1] The Coalition for Fair Lumber Imports Executive Committee is comprised of Hood Industries, International Paper Company, Moose River Lumber Company, New South Incorporated, Plum Creek Timber Company, Polatch Corporation, Seneca Sawmill Company, Shearer Lumber Products, Shuqualak Lumber Company, Sierra Pacific Industries, Swift Lumber Incorporated, Temple-Inland Forest Products, and Tolleson Lumber Company, Incorporated.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Government of Canada (GOC) for consultations with respect to the countervailing duty investigation. The Department held consultations with representatives of the GOC on April 18, 2001. *See* the April 19, 2001, memorandum to the file regarding these consultations (public documents on file in the Central Records Unit (CRU) of the Department of Commerce, Room B–099). In addition, on April 19 and 20, 2001, the Government of Canada submitted additional written comments pursuant to the consultations.

Determination of Industry Support for the Petition

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, when determining the degree of industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[2]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The petition covers softwood lumber as defined in the *Scope of Investigation* section, above, a single class or kind of merchandise. The petitioners define the domestic like product as the class or kind of merchandise covered by the scope of the investigation. The Department has no basis on the record to find the petitioners' definition of the domestic like product to be inaccurate.

The Department, therefore, has adopted the domestic like product definition set forth in the petition.

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Finally, section 702(c)(4)(D) of the Act provides that if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the administering agency shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

In this case, the Department has determined that the petition (and subsequent amendments) contain adequate evidence of industry support; therefore, polling is unnecessary. *See* Attachment I to *Initiation of Countervailing Duty Investigation: Certain Softwood Lumber Products from Canada* (April 23, 2001) (*Initiation Checklist*), a public document on file in the CRU. To estimate total domestic production of softwood lumber products, the petitioners relied on year 2000 production figures published by the American Forest and Paper Association (AF&PA). The petitioners also made an upward adjustment to this figure to account, conservatively, for flooring and siding that may or may not otherwise be included in the AF&PA total production figure, but which is included in the definition of domestic like product. In a letter dated April 20, 2001, the Government of Canada attempted to show that this upward adjustment to the year 2000 total production figure was inadequate, and argued that numerous other product categories should also be added to the total production figure. We analyzed the claim made by the Government of Canada and have concluded that it would result in significant double-counting. Further, we have found no other evidence through independent research that would indicate that the petitioners' figure for total U.S. production is in any way understated. We therefore conclude that 67 percent of the U.S. softwood lumber-producing industry supports the petition. Because the petition has support from more than 50 percent of the entire domestic industry, we are not required to consider any expression of opposition in our determination to initiate this investigation. Accordingly, the Department determines that this petition is filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

Injury Test

Because Canada is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, section 701(a)(2) applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from Canada materially injure, or threaten material injury to, a U.S. industry.

Allegations of Subsidies

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files, on behalf of an industry, a petition that: (1) Alleges the elements necessary for an imposition of a duty under section 701(a); and (2) is accompanied by information reasonably available to petitioners supporting the allegations.

We are initiating an investigation of the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in Canada (a full description of each program is provided in the *Initiation Checklist*):

A. Federal and Provincial Timber Management Systems

This includes stumpage provided for less than adequate remuneration in the Provinces of British Columbia, Quebec, Ontario, Alberta, Manitoba, Saskatchewan, and the Yukon Territory and Northwest Territories. With respect to the Provinces of British Columbia, Quebec, Ontario, and Alberta, if we determine that cross-border is not an appropriate benchmark, we will also examine log export restrictions under the criteria of 771(5)(B). *See Initiation Checklist.*

[2] *See Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

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B. Programs Administered by the Government of Canada

1. Non-Repayable Grants and Conditionally Repayable Contributions from the Department of Western Economic Diversification
2. Canadian Forest Service: Industry, Trade and Economics Program
3. Federal Economic Development Initiative in Northern Ontario

C. Programs Administered by the Province of British Columbia

1. Grants, Loans and Loan Guarantees Provided from Forest Renewal B.C.
2. Job Protection Act
3. Subsidies to Skeena Cellulose Inc.

D. Programs Administered by the Province of Quebec

1. Societe de Recuperation, d'Exploitation et Developpement Forestiers du Quebec (REXFOR)
2. Assistance under Article 7 of the Societe de Developpement Industriel du Quebec (SDI)
3. Export Assistance under SDI
4. Export Assistance from Investissement Quebec
5. Redemption by Tembec, Inc. of Preferred Stock Held by SDI
6. Private Forest Development Program
7. Funds to Create Jobs in Forest Industry under Budget of Quebec

E. Programs Administered by the Province of Ontario

1. Development Corporations of the Government of Ontario: Export Support Loan Program
2. Sales Tax Exemption for Seedlings

F. Program Administered by the Province of Alberta

1. Loan Guarantees to Attract New Mills

We are not initiating an investigation of the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in Canada (a full description of each program and the reason for not initiating an investigation of the program is provided in the *Initiation Checklist*):

A. Programs Administered by the Government of Canada

1. Loan Gurantees, Loan Insurance and Credit Insurance from the Department of Western Economic Diversification
2. Northern Ontario Business Development Loan Fund for Small to Medium Sized Businesses
3. Logging Tax Deduction

B. Progroms Administered by the Province of British Columbia

1. B.C. Rail Volume Incentive Program for Lumber
2. Forest Science Program
3. Identified Wildlife Management Strategy and Landscape Unit Planning
4. B.C. Council of Forest Industries Marketing Plan
5. Toleration of Timber Theft
6. Excessive Contract Payments to Producers from Forest Renewal B.C.

C. Programs Administered by the Province of Quebec

1. Small-Wood Subsidy
2. Timber Under-Scaling
3. Financing Assistance from Investissement Quebec
4. Preferential Loans to Tembec, Inc.
5. APEX Program
6. Refinancing of Domtar Inc: New Share Subscription by Crown Corporations
7. Refinancing of Domtar Inc: Conversion of SDI Loan into Preferred Shares

D. Programs Administered by the Province of Alberta

1. Industrial Electricity Rebate Program
2. Infrastructure Grants to Attract New Mills

Critical Circumstances

In their submission, the petitioners claim that, following the March 31, 2001, expiration of the U.S.-Canada Softwood Lumber Agreement (SLA), there is a reasonable basis to believe or suspect that critical circumstances will exist with regard to imports of softwood lumber from Canada.

Section 703(e)(1) of the Act states that the Department will find that critical circumstances exist, at any time after the date of initiation, when there is a reasonable basis to believe or suspect that under paragraph (A) the alleged countervailable subsidies are inconsistent with the Subsidies Agreement and that under paragraph (B) there have been massive imports of the subject merchandise over a relatively short period of time. Section 351.206(h) of our regulations defines "massive imports" as imports that have increased by at least by 15 percent over the imports during an immediately preceding period of comparable duration. Section 351.206(i) of the regulations states that "relatively short period" will normally be defined as the period beginning on the date the proceeding begins and ending at least three months later.

In the petition, petitioners allege various export subsidy programs. We have initiated investigations on the following alleged export subsidy programs: (1) Export Assistance from the SDI, (2) Export Assistance from Investissement Quebec, and (3) the Development Corporations of the Government of Ontario Export Support Loan Program. Petitioners have alleged that these programs are inconsistent with the Subsidies Agreement.

The petitioners request that the Department immediately begin reviewing import data of the subject merchandise and that the Department request the U.S. Customs Service to compile information on an expedited basis regarding entries of subject merchandise. We note that section 702(e) of the Act states that when there is a reasonable basis to believe or suspect that the alleged countervailable subsidies are inconsistent with the Subsidies Agreement, the Department may request the Commissioner of Customs to compile information on an expedited basis regarding entries of the subject merchandise.

Taking into consideration the foregoing, we will analyze this matter further and continue to monitor imports of softwood lumber from Canada. If at any time, the criteria for a finding of critical circumstances are established, we will issue a critical circumstances finding at the earliest possible date. *See Policy Bulletin 98/4*, 63 FR 55364, (October 15, 1998) (determination of critical circumstances may be made any time after initiation).

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the subsidization of individual and cumulated imports of the subject merchandise. Petitioners contend that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, profit-to-sales ratios, and capacity utilization. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and have determined that these allegations are properly supported by accurate and adequate evidence and meet the statutory requirements for initiation. *See* Attachment II of the *Initiation Checklist*.

Initiation of Countervailing Duty Investigation

The Department has examined the countervailing duty petition on certain softwood lumber products from Canada, and found that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of certain softwood lumber products from Canada receive countervailable subsidies.

Exclusion Requests

Due to the extraordinarily large number of Canadian producers, the Department anticipates that it will conduct this countervailing duty investigation on an aggregate basis consistent with section 777A(e)(2)(B) of the Act. If so, the Department expects that it will receive numerous requests for exclusions during the course of this investigation. In light of petitioners' allegation that 75 percent of timber harvest in the Maritime Provinces are from private lands, we anticipate a particularly large percentage of exclusion requests from the Maritimes. The circumstances that warranted a general exclusion for the Maritimes in the past are not present in this case. Therefore, the Department anticipates creating a system that will allow us to expeditiously process and rule on these exclusion requests without compromising the integrity of the CVD law, while, at the same time, ensuring fairness and transparency in the treatment of the exclusion requests. We will seek the cooperation of the Government of Canada and the provincial governments in Canada in implementing any such system, which could involve, for example, province and/or company certifications. Comments on this issue should be submitted to the Department within 15 days of the publication of this notice in the **Federal Register**. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Distribution of Copies of the Petitions

In accordance with section 702(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the GOC.

ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine, no later than May 17, 2001, whether there is a reasonable indication that imports of certain softwood lumber products from Canada are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: April 23, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–10687 Filed 4–27–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration, Commerce

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended Export Trade Certificate of Review, Application No. 88–4A012.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to The National Tooling and Machining Association ("NTMA") on April 5, 2001. Notice of issuance of the original Certificate was published in the **Federal Register** on October 25, 1988 (53 FR 43140).

FOR FURTHER INFORMATION CONTACT: Vanessa M. Bachman, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2000).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate:

Export Trade Certificate of Review No. 88–00012, was originally issued to NTMA on October 18, 1988 (53 FR 43140, October 25, 1988).

NTMA's Export Trade Certificate of Review has been amended so that the attached list will constitute the "Members" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)).

Effective Date: December 5, 2000.
Dated: April 23, 2001.

Vanessa M. Bachman,

Acting Director, Office of Export Trading Company Affairs.

BILLING CODE 3510–D–R–F

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012

Name	Location
A & A Industries, Inc	Peabody, MA.
A & A Machine Company, Inc	Southampton, PA.
A & A Machine Shop, Inc	La Marque, TX.
A & B Machine	Van Nuys, CA.
A & B Machine Shop	Rockford, IL.
A & B Tool & Manufacturing Corp	Toledo, OH.
A & D Precision	Fremont, CA.
A & E Custom Manufacturing	Kansas City, KS.
A & E Machine Shop, Inc	Lone Star, TX.
A & G Machine, Inc	Auburn, WA.
A & S Tool & Die Company, Inc	Kernersville, NC.
A A Precisioneering, Inc	Meadville, PA.
A B A Division	Manchester, CT

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NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
A B C 0 Tool & Engineering	Phoenix, AZ.
A B Heller, Inc	Milford, MI.
A B N Industrial Co., Inc	Buena Park, CA.
A B R Enterprises Inc	South Pasadena, CA.
A. C. Cut-Off, Inc	Azusa, CA.
A C Machine, Inc	Akron, OH.
A E Machine Works, Inc	Houston, TX.
A F C Tool Company, Inc	Dayton, OH.
A I M Tool & Die	Grand Haven, MI.
AMA Plastics	Corona, CA.
A M C Precision, Inc	N. Tonawanda, NY.
A M Design	E. Canton, OH.
A M Machine Company, Inc	Baltimore, MD.
A Mfg	Grand Terrace, CA.
APEC, LLC	Hingham, MA.
A S C Corporation Owings	Mills, MD.
ATC Distribution Group	Louisville, KY.
A+ Engineering	Ipswich, MA.
A-G Tool & Die	Miamitown, OH.
A-Line Tool & Die, Inc	Louisville, KY.
A-RanD, Inc	Phoenix, AZ.
ABBEC Manufacturing	Rochester, NY.
Abbott Machine & Tool, Inc	Toledo, OH.
Abbott Tool, Inc	Toledo, OH.
Ability Tool Company	Rockford, IL.
Able Wire EDM, Inc	Brea, CA.
Abrams Airborne Manufacturing	Tucson, AZ.
Absolute Manufacturing	N. Chelmsford, MA.
Acadiana Hydraulic Works, Inc	New Iberia, LA.
Accu Die & Mold Inc	Stevensville, MI.
Accu-Roll, Inc	Rochester, NY.
Harrison Enterprise, Inc	Phoenix, AZ.
AccuCraft	New Haven, MO.
Accudynamics, Inc	Middleboro, MA.
Accudyne Aerospace & Defense	Palm Bay, FL.
Accura Industries, Inc	Rochester, NY.
Accurate Grinding Corp	Warwick, RI.
Accurate Grinding & Mfg. Corp	Los Angeles, CA.
Accurate Machining	Mukilteo, WA.
Accurate Manufacturing Company	Glendale, CA.
Accurate Manufacturing-Company	Alsip, IL.
Accurate Products Co	Tucson, AZ.
Accurite Machine & Mfg. Inc	Louisville, KY.
Accutronics, Inc	Littleton, CO.
Ace Manufacturing Company	Cincinnati, OH.
Ace Specialty Company, Inc	Tonawanda, NY.
Ackley Machine Corporation	Moorestown, NJ.
Acme Brass & Machine Works, Inc	Kansas City, MO.
ACMT, Inc dba A C Tool & Machine	Louisville, KY.
Acraloc Corporation	Oak Ridge, TN.
Acro Industries, Inc	Rochester, NY.
Acro Tool & Die Company, Inc	Akron, OH.
Actco Tool & Mfg. Co	Meadville, PA.
Action Die & Tool Inc	Wyoming, MI.
Action Mold & Machining, Inc	Grand Rapids, MI.
Action Precision Grinding Inc	North Tonawanda, NY.
Action SuperAbrasive Products	Brimfield, OH.
Action Tool & Die Inc	Rockford, IL.
Active Tool Company	Meadville, PA.
Acucut, Inc	Southington, CT.
Acutec Precision Machining Inc	Saegertown, PA.
Ada Machine Company, Inc	Santa Clara, CA.
Adams Engineering, Division of	South Bend, IN.
Adaptive Technologies Inc	Springboro, OH.
Addison Precision Mfg. Corp	Rochester, NY.
Adena Tool Corporation	Dayton, OH.
Admill Machine Company	Newington, CT.
Adron Tool Corporation	Menomonee Falls, WI.
Advance Gear & Machine Corp	Gardena, CA.
Advance Manufacturing Corp	Cleveland, OH.
Advance Manufacturing Technology	Salt Lake City, UT.
Advanced Ceramic Technology	Orange, CA.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Advanced Composite Products	Huntington Beach, CA.
Advanced Cutting Tools, Inc	Clio, MI.
Advanced Machine & Eng. Co	Rockford, IL.
Advanced Machine Programming	Morgan Hill, CA.
Advanced Machining Corporation	Salisbury, NC.
Advanced Measurement Labs, Inc	Sun Valley, CA.
Advanced Mold & Tooling Inc	Rochester, NY.
Advanced Tooling Systems, Inc	Comstock Park, MI.
Advantage Mold & Design	Meadville, PA.
Aero Comm Machining	Wichita, KS.
Aero Design & Manufacturing Co	Phoenix, AZ.
Aero Engineering & Mfg. Company	Valencia, CA.
Aero Gear, Inc	Windsor, CT.
Aero Machining Company	Garden Grove, CA.
Aero Mechanical Engineering, Inc	Huntington Beach, CA.
Aero-Tech Engineering, Inc	Wichita, KS.
Aerofab, Inc	Tucson, AZ.
Aerostar Aerospace Inc	Phoenix, AZ.
Aetna Machine Company	Cochranton, PA.
Aggressive Tool & Die, Inc	Buckner, KY.
Agrimson Tool Company	Brooklyn Park, MN.
Ahaus Tool & Engineering, Inc	Richmond, IN.
Aimco Precision, Inc	Phoenix, AZ.
Airfoil Technology, Inc	Gilbert, AZ.
Airmetal Corporation	Jackson, MI.
Ajax Tool, Inc	Fort Wayne, IN.
Akro Tool Co., Inc	Cincinnati, OH.
Akron Steel Fabricators Company	Akron, OH.
Akron Tool & Die Company, Inc	Akron, OH.
Alamance Machine Company, Inc	Burlington, NC.
Alart Tool & Die, Inc	Houston, TX.
Albertson & Hem, Inc	Wichita, KS.
Albion Machine & Tool Company	Albion, MI.
Alco Manufacturing, Inc	Santa Ana, CA.
Alfred Manufacturing Company	Denver, CO.
Alfro Custom Manufacturing	Waterbury, CT.
Alger Machine Company, Inc	Rochester, NY.
Alignment Engineering Co., Inc	Knoxville, TN.
ALKAB Contract Manufacturing, Inc	New Kensington, PA.
All Five Tool Company, Inc	Bristol, CT.
All Tool Company	Union, NJ.
All Tools Company	Oklahoma City, OK.
All Tools Texas, Inc	Houston, TX.
All Weld Machine	Milpitas, CA.
All-Tech Machine & Eng., Inc	San Jose, CA.
All-Tech Machining, Inc	Wilmer, AL.
Allen Aircraft Products, Inc	Ravenna, OH.
Allen Precision Industries, Inc	Asheboro, NC.
Allen Precision Machining Co	Angleton, TX.
Allen Randall Enterprises, Inc	Akron, OH.
Alliance Machine Tool Co., Inc	Louisville, KY.
Allied Mechanical Products	Ontario, CA.
Allied Screw Products, Inc	Mishawaka, IN.
Allied Tool & Die Company, LLC	Phoenix, AZ.
Allied Tool & Die, Inc	Cleveland, OH.
Allied Tool & Machine, Inc	Saginaw, MI.
Allied Tool & Machine Company	Kernersville, NC.
Allied Tools of Texas	Houston, TX.
Alloy Metal Products	Hayward, CA.
Allstate Tool & Die, Inc	Rochester, NY.
Almar Mfg. & Engineering, Inc	Garden Valley, CA.
Alpha Mold Inc., LLC	Huber Heights, OH.
Alpha Mold West Inc	Broomfield, CO.
Alpha Precision Machining Inc	Kent, WA.
Alpha Tool & Machine Company	Bellmawr, NJ.
Alpha Tooling, Inc	Santa Fe Springs, CA.
Alpine Precision, Inc	North Billerica, MA.
Alro Specialty Metals	St. Louis, MO.
Alt's Tool & Machine, Inc	Santee, CA.
Alton Products, Inc	Maumee, OH.
Alves Precision Engineered	Watertown, CT.
Amatrol, Inc	Jeffersonville, IN.

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NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Ambel Precision Mfg. Corp	Bethel, CT.
Ambox, Inc	Houston, TX.
American Machine & Gundrilling, Co	Maple Grove, MN.
American Metal Masters, Inc	Plantsville, CT.
American Mfg. & Machining, Inc	Racine, WI.
American Mold & Engineering Co	Fridley, MN.
American Precision Machining	Phoenix, AZ.
American Precision Technologies	San Fernando, CA.
American Tool & Die, Inc	Toledo, OH.
American Wire EDM, Inc	Orange, CA.
Amerimold, Inc	Mogadore, OH.
Ameritech Die & Mold, Inc	Mooresville, NC.
Amity Mold Company	Tipp City, OH.
Ampswiss Engineering	Fremont, CA.
Anchor Lamina Inc	Madison Heights, MI.
Anchor Tool & Die Company	Cleveland, OH.
Anchor Tool & Die Company	Warren, MI.
Anders Machine and Engraving	Rochester, NY.
Anderson Tool & Engineering Co	Anderson, IN.
Andrew Tool Company, Inc	Plymouth, MN.
Anglo-American Mold, Inc	Louisville, KY.
Angus LLC	Indianapolis, IN.
Anmar Precision Components Inc	North Hollywood, CA.
Anoplate Corporation	Syracuse, NY.
Apex Precision Technologies, Inc	Camby, IN.
Apex Machine Company	Ft. Lauderdale, FL.
Apex Manufacturing, Inc	Phoenix, AZ.
Apex Tool & Manufacturing, Inc	Evansville, IN.
Apollo E.D.M. Company	Fraser, MI.
Apollo Precision, Inc	Plymouth, MN.
Apollo Products Inc	Willoughby, OH.
Applegate EDM, Inc	Dallas, TX.
Applied Engineering, Inc	Yankton, SD.
Applied Technology Manufacturing	Rochester, NY.
Aram Precision Tool & Die, Inc	Chatsworth, CA.
Arc Drilling Inc	Garfield Heights, OH.
Arca Systems	Tacoma, WA.
Arco Industries, Inc	Dayton, OH.
Arco Metals Corporation	Baltimore, MD.
Ardekin Machine Company	Rockford, IL.
Area Tool & Manufacturing, Inc	Meadville, PA.
Aremco, Inc	Grand Rapids, MN.
Argo Tool Corporation	Twinsburg, OH.
Argus Machine, Inc	Tucson, AZ.
Aries Tool, Inc	New Berlin, WI.
Arkansas Tool & Die, Inc	North Little Rock, AR.
Arken Manufacturing, Inc	Cleveland, OH.
Arlington Machine & Tool Company	Fairfield, NJ.
Arma Tool & Die Company, Inc	Ridgefield, CT.
Armin Tool & Manufacturing Co	South Elgin, IL.
Armstrong-Blum Mfg. Co	Mt. Prospect, IL.
Armstrong Machine Works, Inc	Rogersville, TN.
Armstrong Mold, Machining Div	East Syracuse, NY.
Armstrong Technology, Inc	Sunnyvale, CA.
Arnett Tool, Inc	New Paris, OH.
Arrington Supply House, Inc	Tuscaloosa, AL.
Arro Tool & Die, Inc	Lakewood, NY.
Arrow Diversified Tooling, Inc	Ellington, CT.
Arrow Grinding, Inc	Tonawanda, NY.
Arrowsmith International, Inc	Southfield, MI.
Artisan Machining, Inc	Bohemia, NY.
Ascension Industries	North Tonawanda, NY.
Ash Machine Corporation	Pataskala, OH.
Aspen Precision Technologies	Petaluma, CA.
Associated Electro-Mechanics	Springfield, MA.
Associated Gear, Inc	Santa Fe Springs, CA.
Associated Technologies	Brea, CA.
Associated Toolmakers, Inc	Keokuk, IA.
Associates Commercial Corp	Irving, TX.
Astley Precision Machine Co	Irwin, PA.
Astro Automation, Inc	Irwin, PA.
Astro Machine Works Inc	Ephrata, PA.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Astrotronics Inc	Mesa, AZ.
AT Engineering & Mfg., Inc	Chatsworth, CA.
Atec Engineering	Phoenix, AZ.
Atec Tool & Engineering, Inc	Santa Clara, CA.
Athens Industries	Southington, CT.
Atkins Tool Company	Riverton, NJ.
Atlantic Alloys, Inc	Bristol, RI.
Atlantic Precision Products Inc	Biddeford, ME.
Atlantic Tool & Die Company	Strongsville, OH.
Atlas Die & Manufacturing Co	Rockford, IL.
Atlas Machine & Supply, Inc	Louisville, KY.
Atlas Tool, Inc	Roseville, MI.
August Machine, Inc	Phoenix, AZ.
Austin Machine Company Inc	O'Fallon, MO.
Austinburg Machine, Inc	Austinburg, OH.
Austro Mold Incorporated	Rochester, NY.
Autocam Corporation	Kentwood, MI.
Automated Cells & Equipment, Inc	Painted Post, NY.
Automated EDM Incorporated	Ramsey, MN.
Automatic Stamp Products, Inc	Cleveland, OH.
Automation Tool & Die, Inc	Brunswick, OH.
Automation Tool Company	Cookeville, TN.
Axian Technology	Phoenix, AZ.
Axis Mfg. Inc	Tempe, AZ.
Ay Machine Company	Ephrata, PA.
Ay-Mac Precision, Inc	Yorba Linda, CA.
Azbill Tool & Die, Inc	Huntington Beach, CA.
B & A Design Inc	Vernon, CT.
B & B Machine & Grinding Service	Denver, CO.
B & B Manufacturing Company	Largo, FL.
B & B Precision Mfg., Inc	Avon, NY.
B & B Tool Company, Inc	Rockford, IL.
B & E Tool Company, Inc	Southwick, MA.
B & G Quality Machine & Tool	Baltimore, MD.
B & H Fabricators, Inc	Wilmington, CA.
B & H Tool Co. Inc	San Marcos, CA.
B & H Tool Works, Inc	Richmond, KY.
B & K Engineering, Inc	Mountain View, CA.
B & L Tool and Machine Company	Plainville, CT.
B & M Machine Corporation of Racine	Racine, WI.
B & R Mold, Inc	Simi Valley, CA.
B C D Metal Products Inc	Malden, MA.
B J Williams Machining Co	Edinboro, PA.
BMCO Industries Inc	Cranston, RI.
B P I Corporation	Santa Clara, CA.
BT Laser, Inc	Santa Clara, CA.
B-W Grinding Service, Inc	Houston, TX.
Babbitt Bearing, Inc	Syracuse, NY.
Bachman Machine Company, Inc	St. Louis, MO.
Bachmann Precision Machine	South El Monte, CA.
Badge Machine Products, Inc	Canandaigua, NY.
Baham & Sons Machine Works, Inc	Houston, TX.
Bahrs Die & Stamping Company	Cincinnati, OH.
Baker Hill Industries, Inc	Coral Springs, FL.
Banner Machine Inc	Phoenix, AZ.
Banner Tool & Die, Inc	Rockford, IL.
Barberie Mold	Gardena, CA.
Barile Precision Grinding Inc	Cleveland, OH.
Basic VI	San Jose, CA.
Bass Machining Inc	Baltimore, MD.
Bateman Manufacturing Co., Inc	Hayward, CA.
The Baughman Group	Louisville, KY.
Baumann Engineering	Claremont, CA.
Bawden Industries, Inc	Romulus, MI.
Baxter Machine Products, Inc	Huntingdon, PA.
Bay Industrial Machine	Green Bay, WI.
Bayport Machine, Inc	La Porte, TX.
Beach Mold & Tool, Inc	New Albany, IN
Beacon Tool Company, Inc	Whittier, CA.
Beaver Fab Inc	Cedar Hill, TX.
Beaver Tool & Machine Company, Inc	Feastervile, PA.
The Bechdon Company, Inc	Upper Marlboro, MD.

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Name	Location
Bechier Cams, Inc	Anaheim, CA.
Becker, Inc	Kenosha, WI.
Becksted Machine, Inc	Tucson, AZ.
Bedard Machine, Inc	Brea, CA.
Bel-Kur, Inc	Temperance, MI.
Belco Tool & Mfg. Inc	Meadville, PA.
Belgian Screw Machine Products	Jackson, MI.
Bell Engineering, Inc	Saginaw, MI.
Beilco Precision Manufacturing	McKinney, TX.
Beloit Precision Die Co. Inc	Beloit, WI.
Benda Tool & Model Works	Hercules, CA.
Bendon Gear Machine	Rockland, MA.
Bennett Tool & Machine	Fremont, CA.
Bennett Tool & Die Company	Nashville, TN.
Benning Inc	Blame, MN.
Bent River Machine Inc	Clarkdale, AZ.
Berman Tool & Die	Waldorf, MD.
Bermar Associates, Inc	Troy, MI.
Bertram Tool & Machine Co., Inc	Farrell, PA.
Best Tool & Manufacturing Co	Kansas City, MO.
Best Way Stamping Inc	La Mirada, CA.
Bestway Industries, Inc	Cleveland, OH.
Beta Machine Co. Inc	Cleveland, OH.
Beta Tool & Mold/Dyna-Tech	Wadsworth, OH.
Bilar Tool & Die Corporation	Warren, MI.
Billet Industries, Inc	York, PA.
Bishop Steering Technology, Inc	Indianapolis, IN.
Blackburn Melton Mfg. Company	Houston, TX.
Blackwood Grinding Inc	Hurst, TX.
Blandford Machine & Tool Co	Louisville, KY.
Blue Chip Mold, Inc	Rochester, NY.
Blue Chip Tool Company, Inc	New Castle, PA.
Bluegrass Forging, Tool & Die	Shelbyville, KY.
Bob's Tool & Cutter Grinding	Indianapolis, IN.
Boice Industrial Corporation	Ruffsdale, PA.
Boittech Inc	West Newton, PA.
Boring, Inc	Rockford, IL.
Bosma Machine & Tool	Tipp City, OH.
Boston Centerless Inc	Woburn, MA.
Bowden Manufacturing Corp	Willoughby, OH.
Boyce Machine, Inc	Cuyahoga Falls, OH.
Boyle, Inc	Freeport, PA.
Bra-Vor Tool & Die Company, Inc	Meadville, PA.
Bradford Machine Company Inc	Brattleboro, VT.
Bradhart Products, Inc	Brighton, MI.
Bramko Tool & Engineering, Inc	O' Fallon, MO.
Brimar Products Inc	Fontana, CA.
Brinkman Tool & Die, Inc	Dayton, OH.
Bristol Instrument Gears, Inc	Forestville, CT.
Britt Tool Inc	Brazil, IN.
Brittain Machine, Inc	Wichita, KS.
Broadway Companies, Inc	Englewood, OH.
Brogdon Tool & Die, Inc	Blue Springs, MO.
Brookfield Machine, Inc	West Brookfield, MA.
Brooklyn Machine & Mfg. Co. Inc	Cuyahoga Heights, OH.
Brooklyn Scraping & Re-Machining	W. Lafayette, IN.
Brown-Covey, Inc	Kansas City, MO.
Brownstown Quality Tool & Design	Brownstown, IN.
The Budd Company	Shelbyville, KY.
Budney Overhaul & Repair, LTD	Berlin, CT.
Buerk Tool & Machine Corporation	Buffalo, NY.
Buiter Tool & Die, Inc	Grand Rapids, MI.
Bundy Manufacturing Inc	El Segundo, CA.
Burckhardt America, Inc	Greensboro, NC.
Burco Precision Products, Inc	Denton, TX.
Burger Engineering, Inc	Olathe, KS.
Burgess Brothers, Inc	Canton, MA.
Burkland Textron Inc	Goodrich, MI.
Burton Industries Inc	Mentor, OH.
C + H Manufacturing Inc	Ontario, CA.
C & C Machine Company	Akron, OH.
C & C Manufacturing Corporation	Englewood, CO.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
C & G Machine & Tool Co., Inc	Granby, MA.
C & J Industries Inc	Meadville, PA.
C & M Machine Products, Inc	Willoughby, OH.
C & R Manufacturing, Inc	Shawnee, KS.
C & S Machine & Manufacturing	Louisville, KY.
C A R Engineering & Mfg	Victor, NY.
C B Enterprises	Manchester, CT.
C B S Manufacturing Company, Inc	Windsor, CT.
C D M Tool & Mfg. Co., Inc	Hartford, WI.
C F A Company, Inc	Milford, CT.
CG Manufacturing Company	Willoughby, OH.
C J Winter Machine Technologies	Rochester, NY.
C K Tool	Harborcreek, PA.
C M Gordon Industries Inc	Santa Fe Springs, CA.
C M Industries, Inc	Old Saybrook, CT.
C M Smillie & Company	Ferndale, MI.
C N C Machine & Engineering	Colorado Springs, CO.
C N C Precision Machining, Inc	Comstock Park, MI.
C.N.C. Tool & Mold	Naples, FL.
C R E Enterprises, Inc	Phoenix, AZ.
C T D Machines, Inc	Los Angeles, CA.
C T M, Inc	Grand Rapids, MI.
C V Tool Company, Inc	Southington, CT.
C. G. Tech, Inc	Phoenix, AZ.
C–P Mfg. Corp.	Van Nuys, CA.
Caco Pacific Corporation	Covina, CA.
Cadco Program & Machine	St. Charles, MO.
Cal-Weld	Fremont, CA.
Calder Machine Co. (C M C)	Florence, SC.
California Mold	Fullerton, CA.
Calmax Machining, Inc	Santa Clara, CA.
Cambridge Specialty Company, Inc	Kensington, CT.
Cambridge Tool & Die Corp	Cambridge, OH.
Cameron Machine Shop, Inc	Richardson, TX.
Campbell Grinding & Machine, Inc	Lewisville, TX.
Campbell Machinery, Inc	Stow, OH.
CAMtech Precision Manufacturing	Jupiter, FL.
CamTech Systems Inc	Alhambra, CA.
Canto Tool Corporation	Meadville, PA.
Capitol Technologies, Inc	South Bend, IN.
Capitol Tool & Die, L. P	Madison, TN.
Carbi-Tech, Inc	Apollo, PA.
Carbide Probes, Inc	Dayton, OH.
Cardinal Machine Company, Inc	Strongsville, OH.
Carius Tool Co., Inc	Cleveland, OH.
Carlin Machine Company, Inc	Southborough, MA.
Carlson Capital Manufacturing Co.	Rockford, IL.
Carlson Industrial Grinding Inc	Erie, PA.
Carlson Tool & Manufacturing	Cedarburg, WI.
Cascade Mold & Die, Inc	Portland, OR.
Cass Screw Machine Products	Brooklyn Center, MN.
Castle Precision Products	Stockton, CA.
Catalina Precision Engineering, LLC	Orange, CA.
Catalina Tool & Mold, Inc	Tucson, AZ.
Cates Machine Shop, Inc	Tyler, TX.
Cee-San Machine & Fabrication	Houston, TX.
Cempi Industries Inc	Huntington Beach, CA.
Centaur Tool & Die, Inc	Bowling Green, OH.
Centennial Technologies, Inc	Saginaw, MI.
Center Line Machine Company	Lafayette, CO.
Center Line Tool	Freeport, PA.
Center Line Industries, Inc	West Springfield, MA.
Central Industrial Supply	Grand Prairie, TX.
Central Mass. Machine, Inc	Holyoke, MA.
Central States Machine Service	Elkhart, IN.
Central Tool & Machine Co., Inc	Bridgeport, CT.
Central Tool Company, Inc	Fortville, IN.
Central Tools, Inc	Cranston, RI.
Centric Machine & Instrument	Tampa, FL.
Century Die Company	Fremont, OH.
Century Mold Company, Inc	Rochester, NY.
Century Tool & Engr., Inc	Indianapolis, IN.

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Name	Location
Certified Grinding & Machine	Rochester, NY.
Certified Industries, II, LLC	Phoenix, AZ.
Challenger Worldwide (USA), LLC	Chandler, AZ.
Chalmers & Kubeck, Inc	Aston, PA.
Chamtek Mfg., Inc	Rochester, NY.
Chandler Tool & Design Inc	Rockford, IL.
Chance Tool & Die Co., Inc	Cincinnati, OH.
Chapman Engineering, Inc	Santa Ana, CA.
Charmilles Technologies	Lincolnshire, IL.
Chase Machine & Mfg. Co	Rochester, NY.
Chelar Tool & Die, Inc	Belleville, IL.
Cherokee Industries	Hampshire, IL.
Cherry Valley Tool & Machine Inc	Belvidere, IL.
The Chesapeake Machine Co	Baltimore, MD.
Chicago Grinding & Machine Co	Melrose Park, IL.
Chicago Mold Engineering Co., Inc	St. Charles, IL.
Chickasha Manufacturing Company	Chickasha, OK.
Chippewa Tool & Manufacturing Co	Woodville, OH.
CHIPSCO, Inc	Meadville, PA.
Christie Manufacturing, Inc	Gainesville, TX.
Christopher Tool & Manufacturing	Solon, OH.
Circle-K-Industries	Sterling, VA.
City Industrial Tool & Die	Harbor City, CA.
Clarion Tech. Caledonia Tool	Caledonia, MI.
Clark & Wheeler Engineering, Inc	Cerritos, CA.
Clark-Reliance Corporation	Strongsville, OH.
Clarke Engineering, Inc	North Hollywood, CA.
Class Machine & Welding, Inc	Akron, OH.
Classic Tool	Saegertown, PA.
Classic Tool, Inc	Macedonia, OH.
Clay & Bailey Mfg. Co	Kansas City, MO.
Cleveland Electric Laboratories	Twinsburg, OH.
Clifton Automatic Screw	Lake City, PA.
Cloud Company	San Luis Obispo, CA.
Coast Cutters Company, Inc	South El Monte, CA.
Coastal Machine Company	Branford, CT.
Cobak Tool & Manufacturing Co	St. Louis, MO.
Coffey Associates	Washington, DC.
Colbrit Manufacturing Co., Inc	Chatsworth, CA.
A E Cole Die & Engraving	Columbus, OH.
Collins Instrument Company	Angleton, TX.
Collins Machine & Tool Co., Inc	Madison, TN.
Collins Machine Works, Inc	Weilford, SC.
Collins Manufacturing, Inc	Essex, MA.
Colonial Machine Company	Kent, OH.
Colonial Machine & Tool Co., Inc	Coventry, RI.
Colorado Laser Marking, Inc	Colorado Springs, CO.
Colorado Surface Grinding, Inc	Denver, CO.
Columbia Machine Works, Inc	Columbia, TN.
Columbia Products, Inc	Dallastown, PA.
Comac Manufacturing Corporation	Oroville, CA.
Comet Tool, Inc	Hopkins, MN.
Comfab, Inc	Spartanburg, SC.
Command Tooling Systems	Ramsey, MN.
Commerce Grinding, Inc	Dallas, TX.
Commonwealth Machine Co., Inc	Danville, VA.
Competition Tooling, Inc	High Point, NC.
Competitive Engineering Inc	Tucson, AZ.
Composidie, Inc	Apollo, PA.
Compu Die, Inc	Wyoming, MI.
Compumachine Incorporated	Wilmington, MA.
Computech Manufacturing Co., Inc	North Kansas City, MO.
Computerized Machining Service,	Englewood, CO.
Concept Tool & Die Company	Euclid, OH.
Conco Systems, Inc	Verona, PA.
Condor Engineering, Inc	Colorado Springs, CO.
Connecticut Jig Grinding, Inc	New Britain, CT.
Connelly Machine Works	Santa Ana, CA.
Connolly Tool & Machine Co	Dallas, TX.
Connor Formed Metal Products	Grand Prairie, TX.
Conroy & Knowlton, Inc	Los Angeles, CA.
Consolidated Mold & Mfg. Inc	Kent, OH.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Consulting-Design-Construction, Inc	Phoenix, AZ.
Conti Machine Tool Company, Inc	Haverhill, MA.
Conti Tool & Die Company	Akron, OH.
Continental Precision, Inc	Phoenix, AZ.
Continental Tool & Machine	Strongsville, OH.
Continental Tool & Manufacturing	Lenexa, KS.
Contour Metrological & Mfg., Inc	Troy, MI.
Converse Industries Inc	Kenosha, WI.
Convex Mold, Inc	Sterling Heights, MI.
R F Cook Manufacturing Co	Stow, OH.
Cook Machine and Engineering	Gardena, CA.
Cook Specialty Company	Green Lane, PA.
Coorstek	Livermore, CA.
Corbitt Mfg. Company	St. Louis, MO.
Cornerstone Screw Machine	Burbank, CA.
Corrigan Manufacturing Co., Inc	Rockford, IL.
Corrugated Roller & Machine Inc	Santa Fe Springs, CA.
Corry Custom Machine	Corry, PA.
Corver Engineering Company, Inc	Detroit, MI.
Cosar Mold, Inc	Brimfield, OH.
Costa Machine, Inc	Akron, OH.
Country Machine & Tool, Inc	Tipp City, OH.
Covert Manufacturing, Inc	Galion, OH.
Cox Mfg. Co. Inc	San Antonio, TX.
Cox Tool Company, Inc	Excelsior Springs, MO.
Craft Tech, Inc	Carrollton, TX.
Craft-Tech Enterprises, Inc	Troy, MI.
Craig Machinery & Design, Inc	Louisville, KY.
Creative Precision, West	Phoenix, AZ.
Creb Engineering, Inc	Pascoag, RI.
Crenshaw Die & Manufacturing	Irvine, CA.
Crest Manufacturing Company	Lincoln, RI.
Criterion Tool & Die, Inc	Brook Park, OH.
Crossland Machinery	Kansas City, MO.
CrossRidge Precision	Oak Ridge, TN.
Crown Machine, Inc	Rockford, IL.
Crown Mfg. Co., Inc	Newark, CA.
Crown Mold & Machine	Streetsboro, OH.
Crown Tool & Die Co., Inc	Bridgeport, CT.
Crucible Materials Corporation	Camillus, NY.
Crush Master Grinding Corp	Walnut, CA.
Cumberland Machine Company	Nashville, TN.
Custom Engineering, Inc	Evansville, IN.
Custom Gear & Machine, Inc	Rockford, IL.
Custom Machine, Inc	Woburn, MA.
Custom Machine, Inc	Cleveland, OH.
Custom Mold & Design, Inc	New Hope, MN.
Custom Tool & Design, Inc	Erie, PA.
Custom Tool & Grinding Inc	Washington, PA.
Custom Tool & Model Corp	Frankfort, NY.
Cut-Right Tools Corporation	Willoughby, OH.
D & B Industries, Inc	Dayton, OH.
D & H Manufacturing Company	Fremont, CA.
D & J Precision Machining, Inc	Hayward, CA.
D & K Industries, Inc	Chatsworth, CA.
D & N Precision, Inc	San Jose, CA.
D & R Precision Machining	San Jose, CA.
D & S Manufacturing Corporation	Southwick, MA.
D. F. O'Brien Precision Machining	Santa Fe Springs, CA.
D K Mold & Engineering, Inc	Wyoming, MI.
D M E Company	Madison Heights, MI.
D M Machine & Tool	Kennerdell, PA.
D M Machine Company, Inc	Willoughby, OH.
D P I, Inc	Southampton, PA.
D P Tool & Machine Inc	Avon, NY.
D S A Precision Machining, Inc	Livonia, NY.
D S Greene Company, Inc	Wakefield, MA.
D S Mfg., Inc	Ventura, CA.
DT Scheu & Kniss	Louisville, KY.
D-Velco Manufacturing	Phoenix, AZ.
D-K Manufacturing Corporation	Fulton, NY.
DaCo Precision Manufacturers	Sandy, UT.

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Name	Location
Dadeks Machine Works Corporation	Houston, TX.
Daily Industrial Tools	Costa Mesa, CA.
Dan's Precision Grinding	Sun Valley, CA.
Danco Precision, Inc	Phoenixville, PA.
Dane Systems, Inc	Stevensville, MI.
Danly IEM	Middleburg Heights, OH.
Data Mold & Tool, Inc	Walbridge, OH.
Dave Jones Machinists	Mishawaka, IN.
David Engineering & Mfg	Corona, CA.
Davis Machine & Manufacturing	Arlington, TX.
Davken Inc	Brea, CA.
Dayton Progress Corporation	West Carrollton, OH.
Dayton Reliable Tool & Mfg. Co	Dayton, OH.
De King Screw Products Inc	Burbank, CA.
De Long Manufacturing Co., Inc	Santa Clara, CA.
De-Lux Mold & Machine, Inc	Brady Lake, OH.
Dean Machine	Cranston, RI.
Dearborn Precision Tubular	Fryeburg, ME
Deck Brothers, Inc.	Buffalo, NY.
Dekalb Tool & Die, Inc	Tucker, GA.
Delco Corporation	Akron, OH.
Delco Machine & Gear	No.Long Beach, CA.
Dell Tool	Penfield, NY.
Delltronics, Inc	Englewood, CO.
Delta Machine & Tool Company	Cleveland, OH.
Delta Machining, Inc	Niles, MI.
Delta Tech, Inc	Mentor, OH.
Demaich Industries, Inc	Johnston, RI.
Dependable Machine Company, Inc	Indianapolis, IN.
Dependable Tool & Manufacturing	Cleveland, OH.
Desert Precision Mfg., Inc	Tucson, AZ.
Designs For Tomorrow, Inc	St. Louis, MO.
Detail Technologies, Inc	Grandville, MI.
Detroit Tool & Engineering Co	Lebanon, MO.
Deutsch ECD	Hemet, CA.
Devtek Engineering	Colorado Springs, CO.
Di-Matrix	Phoenix, AZ.
Dial Machine Company	Andalusia, PA.
Diamond Lake Tool, Inc	Anoka, MN.
Diamond Machine Works, Inc	Seattle, WA.
Diamond Tool & Die Co., Inc	Euclid, OH.
Diamond Tool & Engineering, Inc	Bertha, MN.
Dickey & Son Machine & Tool Co	Indianapolis, IN.
Dickson Machine & Tool, Inc	Dickson, TN.
Die Cast Die and Mold, Inc	Perrysburg, OH.
Die Dimensions	Kentwood, MI.
Die Matic Corporation	Brooklyn Heights, OH.
Die-Namic Inc	Taylor, MI.
Die Products Corporation	Minneapolis, MN.
Die Quip Corp	Bethel Park, PA.
Die Tech Industries, Ltd	Providence, RI.
The Die Works Inc	Hillsboro, MO.
Die-Matic Tool and Die, Inc	Grand Rapids, MI.
Die-Mension Corporation	Brunswick, OH.
Die-Namic Tool & Mfg., Inc	Rockford, IL.
Diemaster Tool & Mold, Inc	Macedonia, OH.
Dietooling, Div. of Diemolding	Wampsville, NY.
Digital Tool & Die, Inc	Grandville, MI.
Dimac Manufacturing Co., Inc	Alexander, AR.
Distinctive Machine Corporation	Grand Rapids, MI.
Diversified Engraving Stamp	Akron, OH.
Diversified Manufacturing	Lockport, NY.
Diversified Tool & Die	Vista, CA.
Diversified Tool, Inc	Mukwonago, WI.
Dixie Tool & Die Co., Inc	Gadsden, AL.
Dixon Automatic Tool, Inc	Rockford, IL.
Double D Machine & Tool Company	Fremont, OH.
Douglas Machine & Engineering Co	Davenport, IA.
Downey Grinding Company, Inc	Downey, CA.
Dowty's Machine Works, Inc	Baton Rouge, LA.
Doyle Manufacturing, Inc	Holland, OH.
Drabik Tool and Die, Inc	Brook Park, OH.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Drewco Corporation	Franksville, WI.
Drill Masters Inc	Hamden, CT.
Du-Well Grinding Company, Inc	Milwaukee, WI.
Dugan Tool & Die Company	Toledo, OH.
Dugan Tool & Die, Inc	Cottage Hills, IL.
Dun-Rite Fabricating, Inc	Saginaw, MI.
Dun-Rite Industries, Inc	Monroe, MI.
Dunn & Bybee Tool Company, Inc	Sparta, TN.
Duplicate Parts Company, Inc	San Marcos, CA.
Dura-Metal Products Corporation	Irwin, PA.
Durivage Pattern & Mfg. Co. Inc	Williston, OH.
DuWest Tool & Die, Inc	Cleveland, OH.
Dwyer Instruments, Inc	Grandview, MO.
DynaGrind Precision, Inc	New Kensington, PA.
Dynamic Engineering, Inc	Minneapolis, MN.
Dynamic Fabrication, Inc	Santa Ana, CA.
Dynamic Machine & Fabricating	Phoenix, AZ.
Dynamic Technologies and Design	Grand Rapids, MI.
Dynamic Tool & Design, Inc	Menomonee Falls, WI.
Dysinger Incorporated	Dayton, OH.
E & C Manufacturing Company, Inc	Toledo, OH.
E B & Sons Machine Inc	Aliquippa, PA.
E. C. M. Mold & Die, Inc	Tucson, AZ.
E C M Of Florida	Jupiter, FL.
E. D. M. Exotics, Inc	Hayward, CA.
E F Precision Inc	Willow Grove, PA.
EISC/CME	Toledo, OH.
E J Codd Co. of Baltimore City	Baltimore, MD.
E K L Machine Company, Inc	Andalusia, PA.
E–M-Solutions, Inc	Fremont, CA.
E R C Concepts Company, Inc	Sunnyvale, CA.
E. T. Tool, Inc	Racine, WI.
E W Johnson Company, Inc	Lewisville, TX.
E-Fab, Inc	Santa Clara, CA.
Eagle Mold Company, Inc	Carlisle, OH.
Eagle Technology Group	St. Joseph, MI.
Eagle Tool & Machine Company	Springfield, OH.
Eason & Wailer	Phoenix, AZ.
East Coast Tool & Mfg., Inc	Orchard Park, NY.
East Side Machine, Inc	Webster, NY.
East Texas Machine Works, Inc	Longview, TX.
Eaton Manufacturing, Inc	Fremont, CA.
Ebway Corporation	Fort Lauderdale, FL.
Eckert Enterprises Ltd.	Tempe, AZ.
Eckert Machining, Inc	San Jose, CA.
Eclipse Mold, Inc	Clinton Township, MI.
Eclipse Tool & Die, Inc	Wayland, MI.
Ed Brown Products, Inc	Perry, MO.
Edco, Inc	Toledo, OH.
EDM Supplies, Inc	Downey, CA.
Edwardsville Machine & Welding	Edwardsville, IL.
Efficient Die & Mold Inc	Cleveland, OH.
Egli Machine Company, Inc	Sidney, NY.
Ehlert Tool Co., Inc	New Berlin, WI.
Ehrhardt Tool & Machine Company	Granite City, IL.
Eicom Corporation	Moraine, OH.
86 Tool Company	Cambridge Springs, PA.
Ejay's Machine Co., Inc	Fullerton, CA.
Elcam Tool & Die, Inc	Wilcox, PA.
Electra Form Industries Inc	Vandalia, OH.
Electric Enterprise Inc	Stratford, CT.
Electro Form Corporation	Binghamton, NY.
Electro-Freeto Manufacturing Co	Wayland, MA.
Electro-Mechanical Products, Inc	Denver, CO.
Electro-Tech Machining	Long Beach, CA.
Electroform Co. Inc	Machesney Park, IL.
Elgin Machine Corporation	Inwood, NY.
Elite Tool & Machinery Systems, Inc	O'Fallon, MO.
Elizabeth Carbide Die Co., Inc	McKeesport, PA.
Elizabeth Carbide of North	Lexington, NC.
Elkhart Machine Group	Elkhart, IN.
Elliot Tool & Manufacturing Co.	St. Louis, MO.

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Name	Location
Elliott's Precision, Inc	Peoria, AZ.
Ellison Machine Company	Laurens, SC.
Elrae Industries	Alden, NY.
Emig Machine and Tool	Warwick, PA.
Emmert Welding & Manufacturing	Independence, MO.
Empire Manufacturing Corporation	Bridgeport, CT.
Engineered Machine Tool, Inc	Wichita, KS.
Engineered Pump Services, Inc	Pasadena, TX.
Entek Corporation	Norman, OK.
Enterprise Tool & Die	Brooklyn Heights, OH.
Ephrata Precision Parts, Inc	Denver, PA.
Epicor Software Corporation	Minneapolis, MN.
Erca Tool Die & Stamping Company	Richmond Hill, NY.
Erickson Tool & Machine Company	Rockford, IL.
Erie Shore Machine Co., Inc	Cleveland, OH.
Erie Specialty Products, Inc	Erie, PA.
Ermco, Inc	Cleveland, OH.
Estee Mold & Die, Inc	Dayton, OH.
Esterle Mold & Machine Co.	Stow, OH.
Estul Tool & Manufacturing Co.	Matthews, NC.
Evans Tool & Die, Inc	Conyers, GA.
Ever Fab, Inc	East Aurora, NY.
Ever-Ready Tool, Inc	Largo, FL.
Everett Pattern and Mfg., Inc	Middleton, MA.
Everite Machine Products	Philadelphia, PA.
Arthur J. Evers Corporation	Riverton, NJ.
Ewart-Ohison Machine Company	Cuyahoga Falls, OH.
Ex-Cel Machine & Tool, Inc	Louisville, KY.
Exact Cutting Service, Inc	Brecksville, OH.
Exact Tool & Die, Inc	Brook Park, OH.
Exacta Tech Inc	Livermore, CA.
Exacto, Inc of South Bend	South Bend, IN.
Excalibur Precision Machine Co.	Hampstead, NH.
Excel Machine Company	Philadelphia, PA.
Excel Manufacturing, Inc	Valencia, CA.
Excel Manufacturing Inc	Seymour, IN.
Excel Stamping & Manufacturing	Houston, TX.
Executive Mold Corporation	Huber Heights, OH.
Ezell Precision Tool Company	Clearwater, FL.
F & F Machine Specialties	Mishawaka, IN.
F & G Tool & Die Company	Dayton, OH.
F & L Tools Corporation	Corona, CA.
F & S Tool, Inc	Erie, PA.
F C Machine Tool & Design, Inc	Cuyahoga Falls, OH.
F D T Precision Machine Co., Inc	Taunton, MA.
F G A Inc	Baton Rouge, LA.
F K Instrument Co., Inc	Clearwater, FL.
FMF Racing	Rancho Dominguez, CA.
F M Machine Company	Akron, OH.
F N Smith Corporation	Oregon, IL.
F P Pla Tool & Manufacturing Co.	Buffalo, NY.
F R B Machine Inc	Emlenton, PA.
F S G Inc	Mishawaka, IN.
F. S. Machining, Inc	Englewood, CO.
F T T Manufacturing Inc	Geneseo, NY.
F Tinker & Sons Company	Pittsburgh, PA.
F W Gartner Thermal Spraying Co.	Houston, TX.
F–Squared, Inc	Tarentum, PA.
Fab Lab, Inc	Maryland Heights, MO.
FabCorp, Inc	Houston, TX.
Fairbanks Machine & Tool	Raytown, MO.
Fairview Machine Company, Inc	Topsfield, MA.
Faith Tool & Manufacturing, Inc	Willoughby, OH.
Falcon Precision Machining Co	West Springfield, MA.
Falls City Machine Technology	Louisville, KY.
FallsMold & Die, Inc	Stow, OH.
Fame Tool & Manufacturing Co	Cincinnati, OH.
Fantasy Manufacturing, Inc	Windsor, CA.
Fargo Machine Company, Inc	Ashtabula, OH.
Farzati Manufacturing Corp	Greensburg, PA.
Fast Physics Inc	Tempe, AZ.
Fay & Quartermaine Machining	El Monte, CA.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Fay Tool & Die, Inc	Orlando, FL.
Feedall, Inc	Willoughby, OH.
Feilhauer's Machine Shop, Inc	Cincinnati, OH.
Feller Tool Co., Inc	Elyria, OH.
Fenton Manufacturing, Inc	Ashtabula, OH.
Fenwick Machine & Tool	Piedmont, SC.
Feral Productions LLC	Newark, CA.
Ferriot Inc	Akron, OH.
First International Bank	Hartford, CT.
Fischer Precision Spindles, Inc	Berlin, CT.
Fischer Tool & Die Corporation	Temperance, MI.
Fitzwater Engineering Corp	Scituate, RI.
Five Star Industries LLC	Dayton, OH.
Five Star Tool Company, Inc	Rochester, NY.
Flasche Models & Patterns, Inc	Cleveland, OH.
Fleck Machine Company, Inc	Hanover, MD.
Foriska Machine Shop	Saegertown, PA.
Forster Tool & Mfg., Inc	Bensenville, IL.
Forte Company	Kansas City, MO.
The Foster Group	Rochester, NY.
Foster-Tobin Corp	Meadville, PA.
4 Axis Machining, Inc	Denver, CO.
Fox Valley Tool & Die, Inc	Kaukauna, WI.
Franchino Mold & Engineering	Lansing, MI.
Frank J. Stolitzka & Son, Inc	Akron, OH.
Frasal Tool Co., Inc	Newington, CT.
Frazier Aviation, Inc	San Fernando, CA.
Fre-Mar Industries, Inc	Brunswick, OH.
J F Fredericks Tool Company, Inc	Farmington, CT.
Fredon Corporation	Mentor, OH.
Freeport Welding & Fabricating	Freeport, TX.
Frost & Company	Charlestown, RI.
Fulcrum Group, LLC	Hayward, CA.
Fulton Industries, Inc	Rochester, IN.
Furno Co. Inc	Pomona, CA.
Future Fabricators	Phoenix, AZ.
Future Tool & Die Company, Inc	Cleveland, OH.
Future Tool & Die, Inc	Grandville, MI.
Fyco Tool & Die, Inc	Houston, TX.
G & G Tool Company, Inc	Sidney, OH.
G & K Machine Company	Denver, CO.
G & L Tool Corp	Agawam, MA.
G B F Enterprises, Inc	Santa Ana, CA.
G B Tool Company	Warwick, RI.
G F T Manufacturing Company	Vandergrift, PA.
G H Tool & Mold, Inc	Washington, MO.
G M T Corporation	Waverly, IA.
G R McCormick, Inc	Burbank, CA.
G S C Manufacturing Inc	Indianapolis, IN.
G S G Tool and Manufacturing	Meadville, PA.
G S Precision, Inc	Brattleboro, VT.
Gadsden Tool, Inc	Gadsden, AL.
Gainesville Machining Inc	Gainesville, TX.
Gales Manufacturing Corporation	Racine, WI.
Galgon Industries, Inc	Fremont, CA.
Gambar Products Company, Inc	Warwick, RI.
Garcia Associates	Arlington, VA.
Gatco, Inc	Plymouth, MI.
Gauer Mold & Machine Company	Talimadge, OH.
Gaum, Inc	Robbinsville, NJ.
Gear Manufacturing, Inc	Anaheim, CA.
Gebhardt Machine Works, Inc	Portland, OR.
Geiger Manufacturing, Inc	Stockton, CA.
Gem City Engineering Company	Dayton, OH.
Gene's Gundri 11 ing Inc	Alahambra, CA.
General Aluminium Forgings	Colorado Springs, CO
General Die Engraving, Inc	Twinsburg, OH.
General Engineering Company	Toledo, OH.
General Grinding, Inc	Oakland, CA.
General Machine-Diecron, Inc	Griffin, GA.
General Machine Shop, Inc	Cheverly, MD.
General Tool & Die Company, Inc	Racine, WI.

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Name	Location
General Tool Company	Cincinnati, OH.
Genesee Manufacturing Company	Rochester, NY.
Genesee Precision Mfg., Inc	Avon, NY.
Genesis Plastics & Engineering	Scottsburg, IN.
Gentec Manufacturing Inc	San Jose, CA.
Geometric Tool & Machine Co	Piedmont, SC.
German Machine, Inc	Rochester, NY.
Germantown Tool & Machine	Huntingdon Valley, PA.
Gibbs Die Casting Corporation	Henderson, KY.
Gibbs Machine Company, Inc	Greensboro, NC.
Gilbert Engineering Company	Glendale, AZ.
Gilbert Machine & Tool Company	Greene, NY.
Gill Tool & Die, Inc	Grand Rapids, MI.
Gillette Machine & Tool Company	Rochester, NY.
Girard Tool & Die/Jackburn Mfg	Girard, PA.
Gischel Machine Company Inc	Baltimore, MD.
Givmar Precision Machining	Mountain View, CA.
Glaze Tool & Engineering, Inc	New Haven, IN.
Glendale Machine Company, Inc	Solon, OH.
Glendo Corporation	Emporia, KS.
Glidden Machine & Tool, Inc	North Tonawanda, NY.
Global Mfg. & Assembly	Phoenix, AZ.
Global Precision, Inc	Davie, FL.
Golis Machine, Inc	Montrose, PA.
Goodwin-Bradley Pattern Co., Inc	Providence, RI.
Graham Tech, Inc	Cochranton, PA.
Granby Mold, Inc	Walled Lake, MI.
Graybill's Tool & , Inc	Manheim, PA.
Great Lakes E.D.M., Inc	Clinton Twp., MI.
Great Lakes Metal Treating, Inc	Tonawanda, NY.
Great Lakes Precision Machine	Niles, MI.
Great Western Grinding & Eng	Huntington Beach, CA.
Grind All Precision Tool Co	Warren, MI.
Grind-All, Inc	Cleveland, OH.
GrindC/O, Inc	Chelmsford, MA.
Grinding Service & Mfg. Co	Bristol, CT.
Grindworks Inc	Glendale, AZ.
Grosmann Precision	Baliwin, MO.
Grover Gundrilling, Inc	Norway, ME.
Guill Tool & Engineering Co	West Warwick, RI.
Gulf Machining	Pinellas Park, FL.
Gulf South Machine/Drilex Corp	Houston, TX.
Gurney Precision Machining	Saint Petersburg, FL.
H & H Machine Company	Whittier, CA.
H & H Machine Shop Of Akron, Inc	Akron, OH.
H & H Machined Products, Inc	Erie, PA.
H & K Machine Service Co., Inc	O'Fallon, MO.
H & M Precision Machining	Santa Clara, CA.
H & S Enterprises, Inc	Monrovia, CA.
H & W Machine Company	Broomfield, CO.
H & W Tool Company, Inc	Dover, NJ.
H B Machine, Inc	Phoenix, AZ.
HB Molding, Inc	Louisville, KY.
H–B Tool & Cutter Grinding, Inc	Willow Grove, PA.
H Brauning Company, Inc	Manassas, VA.
H H Mercer, Inc	Mesquite, TX.
H R M Machine, Inc	Costa Mesa, CA.
Haberman Machine, Inc	St. Paul, MN.
Hackett Precision Company	Nashville, TN.
Hager Machine & Tool, Inc	Houston, TX.
Haig Precision Mfg. Corp	Campbell, CA.
Hal-West Technologies, Inc	Kent, WA.
Hamblen Gage Corporation	Indianapolis, IN.
Hamill Manufacturing Company	Trafford, PA.
Hamilton Industries, Inc	Tempe, AZ.
Hamilton Machine Co., Inc	Nashville, TN.
Hamilton Mold & Machine, Inc	Cleveland, OH.
Hamilton Tool Company, Inc	Meadville, PA.
Hamlin Steel Products, Inc	Akron, OH.
Hammill Manufacturing Company	Toledo, OH.
Hammon Precision Technologies	Hayward, CA.
Hanks Pattern Company	Montrose, MN.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Hanover Machine Company	Ashland, VA.
Hans Rudolph, Inc	Kansas City, MO.
Hansen Engineering	Harbor City, CA.
Hansford Manufacturing Corp	Rochester, NY.
The Hanson Group, LTD	Ludlow, MA.
Hanson Mold	St. Joseph, MI.
Har-Phill Machine Products, Inc	Tempe, AZ.
Hardy Machine Inc	Hatfield, PA.
Hardy-Reed Tool & Die Co	Manitou Beach, MI.
Harley & Son, Inc	Yorba Linda, CA.
Hartup Tool Inc	Columbus, IN.
J W Harwood Company	Cleveland, OH.
Haserodt Machine & Tool, Inc	Cleveland, OH.
Haskell Machine & Tool, Inc	Homer, NY.
Haumiller Engineering Company	Elgin, IL.
Hawkeye Precision, Inc	Gilbert, AZ.
Hawkins Machine Company, Inc	Coventry, RI.
Hawkinson Mold Engineering Co	Alhambra, CA.
Hayden Corporation West	Springfield, MA.
Heatherington Machine Corp	Orlando, FL.
Heinhold Engineering & Machine	Salt Lake City, UT.
Heisey Machine Co., Inc	Lancaster, PA.
Heitz Machine & Manufacturing	Maryland Heights, MO.
Hellebusch Tool & Die, Inc	Washington, MO.
Helm Precision, Ltd	Phoenix, AZ.
Henman Engineering & Machine	Muncie, IN.
Herman Machine, Inc	Tallmadge, OH.
Herrick & Cowell Company	Hamden, CT.
Hetrick Mfg., Inc	Lower Burrell, PA.
Heyden Mold & Bench Company	Tallmadge, OH.
Heyl Engraving, Inc	North Canton, OH.
Hi Tech Manufacturing, LLC	Greensboro, NC.
Hi-Tech Machining & Engineering LLC	Tucson, AZ.
Hi-Tech Tool Industries, Inc	Troy, MI.
Hi-Tech Tool, Inc	Lower Burrell, PA.
Hiatt Metal Products Company	Muncie, IN.
Hickory Machine Company, Inc	Newark, NY.
High Tech Turning Co.	Watertown, MA.
High-Tech Industries	Holland, MI.
Highldnd Mfg. Inc	Manchester, CT.
Hill Engineering, Inc	Villa Park, IL.
Hillcrest Precision Tool Co. Inc	Haverhill, MA.
Hillcrest Tool & Die, Inc	Titusville, PA.
Hilton Tool & Die Corporation	Rochester, NY.
Hittle Machine & Tool Company	Indianapolis, IN.
Hobson & Motzer, Inc	Durham, CT.
Hodon Manufacturing, Inc	Willoughby, OH.
Hoercher Industries, Inc	East Rochester, NY.
Hoffman Custom Tool & Die	Newport Beach, CA.
Hoffstetter Tool & Die	Clearwater, FL.
Hole Specialists, Inc	Ludlow, MA.
Holland Hitch Co.	Wylie, TX.
Hollis Line Machine Co., Inc	Hollis, NH.
Holmes Manufacturing Corporation	Cleveland, OH.
Holton Mold & Engineering	Upland, CA.
Homeyer Tool and Die Co.	Marthasville, MO.
Honemasters, Inc	Huntington Beach, CA.
Hoop's Machine & Welding, Inc	Denton, TX.
Hope Manufacturing, Inc	Greensboro, NC.
Hoppe Tool, Inc	Chicopee, MA.
Horizon Industries	Lancaster, PA.
Horizon Tool & Die Corp.	Grandville, MI.
Houston Cutting Tools, Inc	Houston, TX.
Howell Tool & Machine	Flower Mound, TX
Howland Machine Corporation	Colorado Springs, CO.
Hubbell Machine Company, Inc	Cleveland, OH.
Humboldt Instrument Company	San Leandro, CA
Hunt Machine & Manufacturing Co	Tallmadge, OH.
Huron Machine Products, Inc	Fort Lauderdale, FL.
HydraWedge Corporation	El Segundo, CA.
Hydro Aluminum Cedar Tools	Cedar Springs, MI.
Hydrodyne Division Of FPI, Inc	Burbank, CA.

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Name	Location
Hydromat, Inc	St. Louis, MO.
Hygrade Precision Technologies	Plainville, CT.
Hytron Manufacturing Company	Huntington Beach, CA.
ILM Tool, Inc	Hayward, CA.
IQC, Inc	Vandalia, OH.
ISO Machining, Inc	Pleasanton, CA.
I T M, Inc	Shertz, TX.
ITW CIP Tool and Die	Santa Fe Springs, CA.
Ideal Grinding Technologies, Inc	Chatsworth, CA.
Imperial Die & Manufacturing Co	Cleveland, OH.
Imperial Machine & Tool Company	Wadsworth, OH.
Imperial Machining Co	Denver, CO.
Imperial Mfg	Santa Fe Springs, CA.
Imperial Newbould	Meadville, PA.
Imperial Tool & Manufacturing Co	Lexington, KY.
IndTool, Inc	Burlington, NC.
Indiana Tool & Die Company	Indiana, PA.
Industrial Babbitt Bearing	Gonzales, LA.
Industrial Custom Automatic	Dayton, OH.
Industrial Grinding, Inc	Dayton, OH.
Industrial Machine Company	Oklahoma City, OK.
Industrial Machine & Tool Co., Inc	Nashville, TN.
Industrial Machining Corporation	Santa Clara, CA.
Industrial Maintenance	Lavergne, TN.
Industrial Mold + Machine	Twinsburg, OH.
Industrial Molds, Inc	Rockford, IL.
Industrial Precision, Inc	Westfield, MA.
Industrial Precision Products	Oswego, NY.
Industrial Tool & Machine Co.	Cuyahoga Falls, OH.
Industrial Tool, Die	Tucson, AZ.
Industrial Tool, Inc	Minneapolis, MN.
Industrial Tooling Technologies	Muskegon, MI.
Ingersoll Contract Manufacturing	Loves Park, IL.
Injection Mold & Machine Company	Akron, OH.
Inland Tool & Manufacturing Co	Kansas City, KS.
Inline Inc	Phoenix, AZ.
Innex Industries, Inc	Rochester, NY.
Innovative E D M, LLC	Troy, MI.
Innovative Systems Machine	Toledo, OH.
Insulate Inc	Auburn, WA.
Integrated Machine Systems	Bethel, CT.
Integrity Mfg. L.L.C.	Farmington, CT.
International Stamping Inc	Warwick, RI.
International Tooling & Stamping	Mt. Juliet, TN.
Interscope Manufacturing Inc	Middletown, OH.
Intrex Corporation	Louisville, CO.
Iverson Industries, Inc	Wyandotte, MI.
J & A Tool Company, Inc	Franklin, PA.
J & F Machine Company	Cleveland, OH.
J & F Machine Inc	Cypress, CA.
J & J Tool Co., Inc	Louisville, KY.
J & L EDM	Sunnyvale, CA.
J & M Machine, Inc	Fairport Harbor, OH.
J & M Unlimited	Ashland City, TN.
J.B.A.T. t/a Cherry Hill	Cherry Hill, NJ.
JBK Manufacturing & Development	Dayton, OH.
J B Tool Die & Engineering, Inc	Fort Wayne, IN.
J B Tool, Inc	Placentia, CA.
J C B Precision Tool & Mold, Inc	Commerce City, CO.
J. C. Milling Co., Inc	Rockford, IL.
J D Kauffman Machine Shop, Inc	Christiana, PA.
J D Machining	Santa Clara, CA.
J I Machine Company, Inc	San Diego, CA.
J K Tool & Die, Inc	Apollo, PA.
J M Fabrication Corporation	Arlington, TX.
J M Mold South	Easley, SC.
J M Mold, Inc	Piqua, OH.
J M P Industries, Inc	Cleveland, OH.
J M S Mold & Engineering Co	South Bend, IN.
J R Custom Metal Products, Inc	Wichita, KS.
JRM Machine Company	St. Paul, MN.
J Ross Miller & Sons, Inc	Kimberton, PA.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
J S Die & Mold, Inc	Byron Center, MI.
Jackman Machining	Corona, CA.
Jackson & Heit Machine Company	Southampton, PA.
Jacksonville Machine Inc	Jacksonville, IL.
Jaco Engineering	Anaheim, CA.
Jaco Tool & Die, Inc	Grand Rapids, MI.
Jadco Inc	Springfield, MA.
Jamison Mfg. Co	North Royalton, OH
Jason Tool & Engineering, Inc	Garden Grove, CA.
Jatco Machine & Tool Company	Pittsburgh, PA.
Jena Tool Corporation	Dayton, OH.
Jenkins Machine, Inc	Bethlehem, PA.
Jenn Manufacturing Company, Inc	Warminster, PA.
Jennison Corporation	Carnegie, PA.
Jergens Tool and Mold	Englewood, OH.
Jergens, Inc	Cleveland, OH.
Jesel, Inc	Lakewood, NJ.
Jesse Industries, Inc	Sparks, NV.
Jet Products Co., Inc	Phoenix, AZ.
Jewett Machine Mfg. Co., Inc	Richmond, VA.
Jig Grinding Service Company	Cleveland, OH.
Jirgens Modern Tool Corporation	Kalamazoo, MI.
John Ramming Machine Company	St. Louis, MO.
Johnson Engineering Company	Indianapolis, IN.
Johnson Precision, Inc	Buffalo, NY.
Johnson Tool, Inc	Fairview, PA.
Joint Production Technology, Inc	Macomb, MI.
Joint Venture Tool & Mold	Saegertown, PA.
Jonco Tool Company	Racine, WI.
T R Jones Machine Company, Inc	Crystal Lake, IL.
Joseph Alziebler Company	Arleta, CA.
Juell Machine Company, Inc	Pomona, CA.
Just in Time CNC Machining, Inc	Dansville, NY.
K & A Tooling	Santa Ana, CA.
K & E Mfg. Company	Lee's Summit, MO.
K & H Mold & Machine Division	Akron, OH.
K & H Precision Products, Inc	Honeoye Falls, NY.
K & M Machine-Fabricating, Inc	Cassopolis, MI.
K & M Precision Machining, Inc	Signal Hill, CA.
K & S Tool & Die, Inc	Meadville, PA.
K & S Tool & Mfg. Company, Inc	Jamestown, NC.
K.C.K. Tool & Die Co., Inc	Ferndale, MI.
K-Form, Inc	Tustin, CA.
K L H Industries, Inc	Germantown, WI.
K L N Precision Machining	Fremont, CA.
K M F, Inc	Fairdale, KY.
K M S Machine Works, Inc	Taunton, MA.
K Mold & Engineering, Inc	Granger, IN.
K V, Inc	Huntingdon Valley, PA.
Ka-Wood Gear & Machine Company	Madison Heights, MI.
Kahre Brothers, Inc	Evansville, IN.
Kalman Manufacturing	Morgan Hill, CA.
Kamashian Engineering, Inc	Bellf lower, CA.
Kanis Machine & Manufacturing, Inc	Tewksbury, MA.
Kansas City Screw Products, Inc	Kansas City, MO.
T. J. Karg Company, Inc	Akron, OH.
Karlson Machine Works, Inc	Phoenix, AZ.
Karsten Precision	Phoenix, AZ.
Kaskaskia Tool & Machine, Inc	New Athens, IL.
Kaufhold Machine Shop, Inc	Lancaster, PA.
C B Kaupp & Sons, Inc	Maplewood, NJ.
Kearflex Engineering Company	Warwick, RI.
Keck-Schmidt Tool & Die	South El Monte, CA.
Kell-Strom Tool Company, Inc	Wethersfield, CT.
Kellems & Coe Tool Corporation	Jeffersonville, IN.
Keller Technology Corporation	Tonawanda, NY.
Kelley Industries, Inc	Eighty Four, PA.
Kelitech Precision Machining, Inc	San Jose, CA.
Keim Manufacturing Company	Benton Harbor, MI.
Kelmar, Inc	Midland, VA.
Kem-Mu-Co	Hayward, CA.
Kemco Tool & Machine Company	Fenton, MO.

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Name	Location
Kenlee Precision Corporation	Baltimore, MD.
Kennametal Inc	Latrobe, PA.
Kennebec Tool & Die Co., Inc	Augusta, ME.
Kennedy & Bowden Machine Company	La Vergne, TN.
Kennick Mold & Die, Inc	Cleveland, OH.
Kentucky Machine & Tool Company	Louisville, KY.
Kern Special Tools Company, Inc	New Britain, CT.
Ketcham Diversified Tooling Inc	Cambridge, PA.
Kewill ERP, Inc	Edina, MN.
Keyes Machine Works, Inc	Gates, NY.
Keystone Machine, Inc	Littlestown, PA.
Kimberly Gear & Spline, Inc	Phoenix, AZ.
King Machine & Engineering Co	Indianapolis, IN.
King-Tek EDM & Precision Machining	Fullerton, CA.
Kipp Group	Ontario, CA.
Kirby Risk Precision Machining	Lafayette, IN.
Kirca Precision	Rochester, NY.
Kiwanda Machine Works, Inc	Clackamas, OR.
Klein Steel Service, Inc	Rochester, NY.
Klix Tool Corporation	Syracuse, NY.
Knowlton Manufacturing Company	Norwood, OH.
Knust—S B O	Houston, TX.
Kolar, Inc	Ithaca, NY.
Kolenda Tool & Die, Inc	Wyoming, MI.
Kordenbrock Tool & Die Company	Cincinnati, OH.
Kovacs Machine & Tool Company	Wallingford, CT.
Krause Tool, Inc	Golden, CO.
Kuester Tool & Die Co., Inc	Quincy, IL.
Kuhn Tool & Die Co	Meadville, PA.
Kurt J. Lesker Company	Pittsburgh, PA.
Kurt Manufacturing Company	Minneapolis, MN.
L & L Machine, Inc	Ludlow, MA.
L & P Machine, Inc	Santa Clara, CA.
L A I Southwest, Inc	Phoenix, AZ.
L H Carbide Corporation	Fort Wayne, IN.
L P I Corporation	Hollywood, FL.
L R G Corporation	Jeannette, PA.
L R W Cutting Tools, Inc	Phoenix, AZ.
L T L Company, Inc	Rockford, IL.
LaBarge Products, Inc	St. Louis, MO.
Lake Manufacturing Co., Inc	Newburyport, MA.
Lakeside Manufacturing Company	Stevensville, MI.
Lamb Machine & Tool Company	Indianapolis, IN.
Lamina, Inc	Oak Park, MI.
Lampin Corporation	Uxbridge, MA.
Lancaster Machine Shop	Lancaster, TX.
Lancaster Metal Products Company	Lancaster, OH.
Lancaster Mold, Inc	Lancaster, PA.
Land Specialties Manufacturing	Raytown, MO.
Lane Enterprise	Rochester, NY.
Lane Punch Corporation	Salisbury, NC.
Laneko Engineering Company	Ft. Washington, PA.
Laneko Roll Form, Inc	Hatfield, PA.
Lange Precision, Inc	Fullerton, CA.
Langenau Manufacturing Company	Cleveland, OH.
Laser Automation, Inc	Chagrin Falls, OH.
Laser Beam Technology	Hayward, CA.
Laser Fare, Inc	Smithfield, RI.
Laser Tool, Inc	Saegertown, PA.
LaserFab, Inc	Concord, CA.
Lathe Tool Works, Inc	Richmond, CA.
Lavelle Machine	Westford, MA.
Lavigne Manufacturing, Inc	Cranston, RI.
Layke Incorporated	Phoenix, AZ.
Layke Tool & Manufacturing, Inc	Meadville, PA.
LeBlanc Grinding Company	Anaheim, CA.
Ledford Engineering Company, Inc	Cedar Rapids, IA.
Lee's Grinding, Inc	Cleveland, OH.
Leech Industries, Inc	Meadville, PA.
Lees Enterprise	Chatsworth, CA.
Leese & Co., Inc	Greensburg, PA.
Leggett & Platt, Inc	Whittier, CA.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Leicester Die & Tool, Inc	Leicester, MA
Lemco-Miller Corporation	Danvers, MA.
Lenz Technology, Inc	Mountain View, CA.
Leonardi Manufacturing Co., Inc	Weedsport, NY.
Lewis Aviation	Phoenix, AZ.
Lewis Machine and Tool Company	Milan, IL.
Lewis Machine & Tool Co. Inc	Cuba, MO.
Liberty Precision Industries, Ltd.	Rochester, NY.
Libra Precision Machining	Tecumseh, MI.
Light & Medium Fabricating, Inc	Willoughby, OH.
Light Machines Corporation	Manchester, NH.
Ligi Tool & Engineering, Inc	Pompano Beach, FL.
Lilly Software Associates, Inc	Hampton, NH.
Limmco, Inc	New Albany, IN.
Linco, Inc	Phoenix, AZ.
Lindberg Heat Treating	Paramount, CA.
Linmark Machine Products, Inc	Union, MO.
Little Rhody Machine Repair, Inc	Coventry, RI.
Littlecrest Machine Shop, Inc	Houston, TX.
Lloyd Company	Houston, TX.
Lobart Company	Pacoima, CA.
Loecy Precision Mfg.	Mentor, OH.
LOMA Automation Technologies, Inc	Louisville, KY.
Lordon Engineering	Gardena, CA.
Louis C. Morin Co. Inc	N. Billerica, MA.
Loyal Machine Company, Inc	Chelsea, MA.
Luick Quality Gage & Tool, Inc	Muncie, IN.
Lunar Tool & Machinery Company	St. Louis, MO.
Lunar Tool & Mold, Inc	North Royalton, OH.
Lunquist Manufacturing Corp	Rockford, IL.
Lux Manufacturing, Inc	Sunnyvale, CA.
Lynn Welding Co. Inc	Newington, CT.
Lyons Tool & Die Company	Meriden, CT.
M & D Loe Manufacturing, Inc	Benicia, CA.
M & H Engineering Company, Inc	Danvers, MA.
M & H Tool & Die, Inc	Gadsden, AL.
M & J Grinding & Tool Co.	Holland, OH.
M & J Valve Services, Inc	Latayette, LA.
M & S Holes Corporation	New Brunswick, NJ.
M C I Tool & Die, Inc	Saginaw, MI.
M C Mold & Machine, Inc	Talimadge, OH.
M D F Tool Corporation	North Royalton, OH.
M F Engineering Co. Inc	Bristol, RI.
M J C Machine Tooling	Hudson, NH.
M J K Precision	Woodland Park, CO.
M. J. Machining, Inc	Morgan Hill, CA.
M P Components	Grand Rapids, MI.
M P E Machine Tool Inc	Corry, PA.
M P Technologies, Inc	Brecksville, OH.
MRC Technologies	Buffalo, NY.
M. R. Mold & Engineering Corp	Brea, CA.
M S Willett, Inc	Cockeysville, MD.
M T E, Inc	San Jose, CA.
M T M Grinding	Thorndike, MA.
M–C Fabrication, Inc	Olathe, KS.
M–Ron Corporation	Glendale, AZ.
M–Tron Manufacturing Company,	San Fernando, CA.
Mac Machine and Metal Works, Inc	Connersville, IN.
Mac-Mold Base, Inc	Romeo, MI.
Machine Incorporated	Stoughton, MA.
Machine Mastery	Santa Clara, CA.
Machine Specialties, Inc	Greensboro, NC.
Machine Tooling, Inc	Cleveland, OH.
Machinist Cooperative	Gilroy, CA.
Machinists, Inc	Seattle, WA.
MacKay Manufacturing	Spokane, WA.
Maddox Metal Works, Inc	Dallas, TX.
Madgett Enterprises Inc	Milipitas, CA.
Magdic Precision Tooling, Inc	East McKeesport, PA.
Maghielse Tool Corporation	Grand Rapids, MI.
Magic Manufacturing, Inc	Sunnyvale, CA.
Magna Machine & Tool Company	New Castle, IN.

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NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Magnum Manufacturing Center, Inc	Colorado Springs, CO.
Magnus Mfg. Corp	Shortsville, NY.
Mahuta Tool Corp	Germantown, WI.
Main Tool & Mfg. Co., Inc	Minneapolis, MN.
Maine Machine Products	South Paris, ME.
Mainline Machine, Inc	Broussard, LA.
Majer Precision Engineering, Inc	Tempe, AZ.
Major Tool & Machine, Inc	Indianapolis, IN.
Makino	Mason, OH.
Malmberg Engineering, Inc	Livermore, CA.
Manda Machine Company, Inc	Dallas, TX.
Manetek, Inc	Broussard, LA.
Manheim Special Machine Shop	Manheim, PA.
Mann Tool Company, Inc	Pacific, MO.
Manor Research, Inc	Hayward, CA.
Manufactured Technical Solutions	Jenison, MI.
Manufacturing Machine Corp	Pawtucket, RI.
Manufacturing Service Corp	West Hartford, CT.
Marberry Machine, Inc	Houston, TX.
Marco Manufacturing Company	Akron, OH.
Marcy Machine, Inc	Grandview, MO.
Mardon Tool & Die Company, Inc	Rochester, NY.
Marini Tool & Die Company, Inc	Racine, WI.
Mans Systems Design, Inc	Spencerport, NY.
Markham Machine Co. Inc	Akron, OH.
Marlin Tool, Inc	Cuyahoga Falls, OH.
Marquette Tool & Die Company	St. Louis, MO.
Marshall Manufacturing Company	Minneapolis, MN.
Martinek Manufacturing	Fremont, CA.
Martinelli Machine	San Leandro, CA.
Masco Machine, Inc	Cleveland, OH.
Massachusetts Machine Works, Inc	Westwood, MA.
Massey Industries, Inc	Houston, TX.
Master Cutting & Engineering,	Santa Fe Springs, CA.
Master Industries Inc	Piqua, OH.
Master Precision Tool Corp	Sterling Heights, MI.
Master Research & Manufacturing	Norwalk, CA.
Master Tool & Die	Anaheim, CA.
Master Tool & Mold, Inc	Grafton, WI.
Mastercraft Mold, Inc	Phoenix, AZ.
Mastercraft Tool Co	St. Louis, MO.
Mastercraft Tool & Machine Co	Southington, CT.
Masterman Engineering	Kent, WA.
MaTech Machining Technologies	Salisbury, MD.
Matthews Gauge, Inc	Santa Ana, CA.
Maudlin & Son Manufacturing Co	Kemah, TX.
May Tool & Die, Inc	North Royalton, OH.
May Tool & Mold Company, Inc	Kansas City, MO.
Mayf ran International	Cleveland, OH.
McCurdy Tool & Machine Inc	Caledonia, IL.
McAfee Tool & Die, Inc	Uniontown, OH.
McDowell Enterprises, Inc	Elkhart, IN.
Dan McEachern Company	Alameda, CA.
McGill Manufacturing Company	Flint, MI.
McGough & Kilguss	Providence, RI.
McIvor Manufacturing, Inc	Buffalo, NY.
McKee Carbide Tool Division	Olanta, PA.
McKenzie Automation Systems, Inc	Rochester, NY.
McNeal Enterprises, Inc	San Jose, CA.
McNeill Manufacturing Company	Oakland, CA.
McSwain Manufacturing Corp.	Cincinnati, OH.
Meadows Manufacturing Co., Inc	Sunnyvale, CA.
Meadville Plating Company, Inc	Meadville, PA.
Meadville Tool Grinding	Meadville, PA.
Mechanical Manufacturing Corp	Sunrise, FL.
Mechanical Metal Finishing Co	Gardena, CA.
Mechanized Enterprises, Inc	Anaheim, CA.
Medved Tool & Die Company	Milwaukee, WI.
Menegay Machine & Tool Company	Canton, OH.
Mercer Machine Company, Inc	Indianapolis, IN.
Mercier Tool & Die Company	Canton, OH.
Meriden Manufacturing	Meriden, CT.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Merritt Tool Company, Inc	Kilgore, TX.
Metal Cutting Specialists, Inc	Houston, TX.
Metal Form Engineering	Redlands, CA.
Metal Processors Inc	Stevensville, MI.
Metallon, Inc	Thomaston, CT.
Metals USA, Flagg Steel Co., Inc	St. Louis, MO.
Metco Manufacturing Company, Inc	Warrington, PA.
Metplas, Inc	Natrona Heights, PA.
Metric Machining	Monrovia, CA.
Metric Precision Inc	Spartanburg, SC.
Metro Manufacturing, Inc	Phoenix, AZ.
Miami Tool & Die, Inc	Huntington, IN.
Michigan Machining Inc	Mt. Morris, MI.
Micro Chrome & Lapping, Inc	San Jose, CA.
Micro Engineering Inc	Caledonia, MI.
Micro Instrument Corporation	Rochester, NY.
Micro Matic Tool, Inc	Youngstown, OH.
Micro Precision Company	Houston, TX.
Micro Precision Corporation	Lancaster, PA.
Micro Punch & Die Company	Rockford, IL.
Micro Surface Engineering, Inc	Los Angeles, CA.
Micro Tool & Manufacturing, Inc	Meadville, PA.
Micro-Tec	Chatsworth, CA.
Micro-Tech Machine Inc	Newark, NY.
Micro-Tronics, Inc	Tempe, AZ.
Microfinish	Clayton, OH.
Micropulse West, Inc	Tempe, AZ.
Mid-Central Manufacturing, Inc	Wichita, KS.
Mid-Continent Engineering, Inc	Minneapolis, MN.
Mid-State Manufacturing, Inc	Milldale, CT.
Mid-States Forging Die & Tool	Rockford, IL.
Middle River Machine Services	Baltimore, MD.
Midland Precision Machining, Inc	Tempe, AZ.
Midway Mfg. Inc	Elyria, OH
Midwest Machine & Manufacturing Co.	Muskegon, MI.
Midwest Tool & Die Corporation	Fort Wayne, IN.
Midwest Tool & Engineering Co.	Dayton, OH.
Mikana Manufacturing Co., Inc	San Dimas, CA.
Mikron Machine, Inc	Cranesville, PA.
Mikron Manufacturing, Inc	Colorado Springs, CO.
Mu-Tool & Plastics Inc	Zephyrhills, FL.
Milco Wire EDM, Inc	Huntington Beach, CA.
Millat Industries Corp.	Dayton, OH.
Miller Equipment Corporation	Richmond, VA.
Miller Machine & Design, Inc	Charlotte, NC.
Miller Mold Company	Saginaw, MI.
Millrite Machine Inc	Westfield, MA.
Milrose Industries	Cleveland, OH.
Miltronics, Inc	Painesville, OH.
Milwaukee Precision Corporation	Milwaukee, WI.
Milwaukee Punch Corporation	Greendale, WI.
Minco Tool & Mold Inc	Dayton, OH.
Mission Tool & Manufacturing Co.	Hayward, CA.
Mitchell Machine, Inc	Springfield, MA.
Mitchum Schaefer, Inc	Indianapolis, IN.
Mittler Brothers Machine & Tool	Foristell, MO.
Mod Tech Industries, Inc	Shawano, WI.
Model Machine Company, Inc	Baltimore, MD.
Model Mold & Machine Company,	Noblesville, IN.
Modern Industries Inc	Phoenix, AZ.
Modern Machine Company	San Jose, CA.
Modern Machine Company	Bay City, MI.
Modern Mold, Inc	Grand Rapids, MI.
Modern Technologies Corp.	Xenia, OH.
Modular Mining Systems, Inc	Tucson, AZ.
Mold Threads, Inc	Branford, CT.
Moldcraft, Inc	Depew, NY.
Monks Manufacturing Co., Inc	Wilmington, MA.
Monsees Tool & Die, Inc	Rochester, NY.
Montgomery Machine Company	Houston, TX.
Moon Tool & Die, Inc	Conneaut Lake, PA.
Moore Gear Mfg. Co., Inc	Hermann, MO.

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NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Moore Machine, Inc	Walkerton, IN.
Moore Quality Tooling, Inc	Dayton, OH.
Morlin Incorporated	Erie, PA.
Morris Machine Co., Inc	Indianapolis, IN.
Morton & Company, Inc	Wilmington, MA.
Moseys' Production Machinists	Anaheim, CA.
Moss Machine/Module	San Francisco, CA.
Motor Machine Co., Inc	Edison, NJ.
Mountain States Automation, Inc	Englewood, CO.
Mt. Sterling Industries	Mt. Sterling, KY.
MTI Engineering Corp./Mitutoyo	Huntington Beach, CA.
Mueller Machine & Tool Company	Berkeley, MO.
Muller Tool, Inc	Cheektowaga, NY.
Multi Dimensional Machining Inc	Englewood, CO.
Multi-Tool, Inc	Saegertown, PA.
Mustang-Major Tool & Die Co	Eden, NY.
Mutual Precision, Inc	West Springfield, MA.
Mutual Tool & Die, Inc	Dayton, OH.
Myers Industries	Akron, OH.
MyersPrecision Grinding Company	Warrensville Hts., OH.
Myles Tool Co., Inc	Sanborn, NY.
N C Dynamics, Inc	Long Beach, CA.
N D T Industries, Inc	Dayton, OH.
N E T & Die Company, Inc	Fulton, NY.
Nashville Machine Company, Inc	Nashville, TN.
National Carbide Die	McKeesport, PA.
National Jet Company, Inc	LaVale, MD.
National Tool & Machine Co. Inc	East St. Louis, IL.
Nationwide Precision Products	Rochester, NY.
Neal Manufacturing, Inc	Greensboro, NC.
Nel-Mac Tool & Mfg. Inc	McKinney, TX.
Nelson Bros. & Strom Co., Inc	Racine, WI.
Nelson Engineering	Garden Grove, CA.
Nelson Grinding, Inc	Fullerton, CA.
Nelson Precision Drilling Co	Glastonbury, CT.
Nemes Machine Co	Cuyahoga, OH.
Nerjan Development Company	Stamford, CT.
Neutronics, Inc	Phoenix, AZ.
New Age Plastics, Inc	San Jose, CA.
New Century Fabricators, Inc	New Iberia, LA.
New Century Remanufacturing, Inc	Santa Fe Springs, CA.
New Coy Fabrication, Inc	Rochester, NY.
New England Die Co., Inc	Waterbury, CT.
New Standard Corporation	York, PA.
Newman Machine Company, Inc	Greensboro, NC.
Newton Tool & Manufacturing Co	Swedesboro, NJ.
Niagara Punch & Die Corporation	Buffalo, NY.
Nifty Bar, Inc	Penfield, NY.
Niles Machine & Tool Works, Inc	Livermore, CA.
Nixon Tool Co., Inc	Richmond, IN.
Noble Tool Corporation	Dayton, OH.
Norbert Industries, Inc	Sterling Heights, MI.
Nordon Tool & Mold, Inc	Rochester, NY.
Norman , Inc	Cleveland, OH.
Normike Industries, Inc	Plainville, CT.
North Canton Tool Company, Inc	Canton, OH.
North Central Tool & Die, Inc	Houston, TX.
North Coast Tool & Mold Corp	Cleveland, OH.
North Easton Machine Co., Inc	North Easton, MA.
North Florida Tool Engineering	Jacksonville, FL.
Northeast E D M	Newburyport, MA.
Northeast Manufacturing Co., Inc	Stoneham, MA.
Northeast Tool & Manufacturing	Indian Trail, NC.
Northern Machine Tool Company	Muskegon, MI.
Northland Extension Drills	Grove City, MN.
Northmont Tool & Gage Inc	Clayton, OH.
Northwest Machine Works, Inc	Grand Junction, CO.
Northwest Tool Corporation	Tucson, AZ.
Northwest Tool & Die, Inc	Saegertown, PA.
Northwest Tool & Die Company	Grand Rapids, MI.
Northwood Industries, Inc	Perrysburg, OH.
Norv's Molds, Inc	Nyssa, OR.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Norwood Tool Company	Dayton, OH.
Nova Manufacturing Company	North Hollywood, CA.
Now-Tech Industries Inc	Lackawanna, NY.
Nu-Tool Industries, Inc	North Royalton, OH.
Nu-Tech Industries	Grandview, MO.
Numeric Machine	Fremont, CA.
Numeric Machining Co., Inc	West Springfield, MA.
Numerical Precision, Inc	Wheeling, IL.
Numerical Productions, Inc	Indianapolis, IN.
Numet Machine	Stratford, CT.
NuTec Tooling Systems, Inc	Meadville, PA.
O & S Machine Company, Inc	Latrobe, PA.
O–A, Inc	Agawam, MA.
OEM Controls Inc	Shelton, CT.
O E M Industries, Inc	Dallas, TX.
O E M, Inc	Corvallis, OR.
O-D Tool & Cutter Inc	Mansfield, IvIA.
O'Keefe Ceramics	Woodland Park, CO
O'Neal Tool & Machine Co., Inc	DeSoto, MO.
Oakley Die & Mold Company, Inc	Mason, OH.
Obars Machine & Tool Company	Toledo, OH.
Oberg Industries Inc	Freeport, PA.
Oconee Machine & Tool Company	Westminster, SC.
Oconnor Engineering Laboratories	Costa Mesa, CA.
Ohio Gasket & Shim Company	Akron, OH.
Ohio Transitional Machine & Tool	Toledo, OH.
Ohlemacher Mold & Die	Strongsville, OH.
Oilfield Die Manufacturing Co	Lafayette, LA.
Okuma America Corporation	Charlotte, NC.
Olson Mfg. & Distribution Inc	Shawnee, KS.
Omax Corporation	Kent, WA.
Omega One, Inc	Maple Heights, OH.
Omega Tool, Inc	Menomonee Falls, WI.
Omni Tool, Inc	Winston Salem, NC.
Orenda National Aerospace, LLC	Glendale, AZ.
Osborn Products, Inc	Phoenix, AZ.
Osley & Whitney, Inc	Westfield, MA.
Overland Boiling	Dallas, TX.
Overton & Sons Tool & Die Co	Mooresville, IN.
Overton Corporation	Willoughby, OH.
P & N Machine Company, Inc	Houston, TX.
P & P Mold & Die, Inc	Tallmadge, OH.
P & A Tool & Die, Inc	Rochester, NY.
P & R Industries, Inc	Rochester, NY.
PDQ Machine, Inc	Machesney Park, IL.
PDT Tooling, Inc	Lincolnshire, IL.
P. J. M. Machine Inc	North Canton, OH.
PMR, Inc	Avon, OH.
PR Machine Works, Inc	Mansfield, OH.
P. Tool & Die Company, Inc	N. Chili, NY.
P–K Tool & Manufacturing Company	Chicago, IL.
Pacific Bearing Company	Rockford, IL.
Pacific Precision Machine, Inc	San Carlos, CA.
Pacific Tool & Die, Inc	Brunswick, OH.
Pahl Tool Services	Cleveland, OH.
Palma Tool & Die Company, Inc	Lancaster, NY.
Palmer Machine Company Inc	Conway, NH.
Palmer Manufacturing Company	Maiden, MA.
Parallax, Inc	Largo, FL.
Paramount Machine & Tool Corp	Fairfield, NJ.
Park Hill Machine, Inc	Lancaster, PA.
Parker Plastics Corporation	Pittsburgh, PA.
Parr-Green Mold and Machine Co	North Canton, OH.
Parris Tool & Die Company	Goodlettsville, TN.
Parrish Machine, Inc	South Bend, IN.
Pasco Tool & Die, Inc	Meadville, PA.
Patco Machine & Fab, Inc	Houston, TX.
Path Technologies, Inc	Mentor, OH.
Patkus Machine Company	Rockford, IL.
Patriot Machine, Inc	St. Charles, MO.
Patriot Precision Products	North Canton, OH.
Patten Tool & Engineering, Inc	Kittery, ME.

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NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Paul E. Seymour Tool & Die Co	North East, PA.
Peerless Precision, Inc	Westfield, MA.
Peffen Machine Company	Nashville, TN.
Peko Precision Products	Rochester, NY.
Pell Engineering & Manufacturing	Peiham, NH.
Penco Precision	Fontana, CA.
Pendleton Tool Company, Inc	Erie, PA.
Peninsula Screw Machine Products	Belmont, CA.
Penn State Tool & Die Corp	North Huntingdon, PA.
Penn United Tech, Inc	Saxonburg, PA.
Pennoyer-Dodge Company	Glendale, CA.
Pennsylvania Crusher	Cuyahoga Falls, OH.
Pennsylvania Tool & Gages, Inc	Meadville, PA.
Perfection Mold & Machine Co	Akron, OH.
Perfection Tool & Mold Corp	Dayton, OH.
Perfecto Tool & Engineering Co	Anderson, IN.
Perfekta, Inc	Wichita, KS.
Performance Grinding	Tempe, AZ.
Performance Machining, Inc	Irwin, PA.
Perry Tool & Research, Inc	Hayward, CA.
Petersen Precision Engineering, LLC	Redwood City, CA.
F H Peterson Machine Corporation	Stoughton, MA.
Peterson Jig & Fixture, Inc	Rockford, MI.
Petro-Chem Industries, Inc	Stafford, TX.
Pettey Machine Works, Inc	Trinity, AL.
Petty Enterprises	Hollister, CA.
Phil-Coin Machine & Tool Co	Hudson, MA.
Philips Enabling Technologies Group	South Plainfield, NJ.
Philips Machining Company, Inc	Coopersville, MI.
Phoenix Gear, Inc	Phoenix, AZ.
Phoenix Grinding	Phoenix, AZ.
Phoenix Tool & Gage, Inc	Phoenix, AZ.
Phoenix, Inc	Seekonk, MA.
Piece-Maker Company	Troy, MI.
Pierce Products, Inc	Cleveland, OH.
Pierson Precision, Inc	Campbell, CA.
Pinehurst Tool & Die	Conneaut Lake, PA.
Pinnacle Engineering Co., Inc	Manchester, MI.
Pinnacle Manufacturing Co., Inc	Chandler, AZ.
Pioneer Industries	Seattle, WA.
Pioneer Precision Grinding, Inc	West Springfield, MA.
Pioneer Tool & Die Company	Akron, OH.
Pioneer Tool & Die, Inc	Meadville, PA.
Pioneer Tool Die & Machine Co	Ivyland, PA.
Pitt-Tex	Latrobe, PA.
Plainfield Stamping Illinois, Inc	Plainfield, IL.
Piano Machine & Instrument Inc	Gainesville, TX.
Plas Tool Co	Niles, IL.
Plastic Mold Technology Inc	Grand Rapids, MI.
Plastipak Packaging, Inc	Medina, OH.
Plating Technology, Inc	Columbus, OH.
Pleasant Precision, Inc	Kenton, OH.
Plesh Industries, Inc	Buffalo, NY.
Pocal Industries Inc	Scranton, PA.
Pol-Tek Industries, Ltd	Cheektowaga, NY.
Polynetics, Inc	Fullerton, CA.
Polytec Products Corporation	Menlo Park, CA.
Ponderosa Industries, Inc	Denver, CO.
Popp Machine & Tool, Inc	Louisville, KY.
Port City Machine & Tool Company	Muskegon Heights, MI.
Portage Knife Company, Inc	Mogadore, OH.
Post Products, Inc	Kent, OH.
Powder Metallurgy Company	Lewisville, TX.
Powers Bros. Machine, Inc	Montebello, CA.
Powill Manufacturing	Phoenix, AZ.
PQ Enterprise, L.L.C	Grand Rapids, MI.
Practical Machine Company	Barberton, OH.
Pre Tech Manufacturing	Schaumburg, IL.
Pre-Mec Corporation	Clinton Township, MI.
Precise Products Corporation	Minneapolis, MN.
Precise Technologies Inc	Largo, FL.
Precise Tool & Die, Inc	Leechburg, PA.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Precision Aircraft Components	Dayton, OH.
Precision Aircraft Machining	Sun Valley, CA.
Precision Automated Machining	Englewood, CO.
Precision Automation Co., Inc	Clarksville, IN.
Precision Balancing & Analyzing	Mentor, OH.
Precision Boring Company	Detroit, MI.
Precision Deburring Enterprises	Sun Valley, CA.
Precision Die & Stamping Inc	Tempe, AZ.
Precision Engineering, Inc	Uxbridge, MA.
Precision Engineering & Mfg. Co	Haymarket, VA.
Precision Gage & Tool Company	Dayton, OH.
Precision Gage, Inc	Tempe, AZ.
Precision Grinding & Mfg. Corp	Rochester, NY.
Precision Grinding, Inc	Birmingham, AL.
Precision Grinding, Inc	Phoenix, AZ.
Precision Identity Corporation	Campbell, CA.
Precision Industries, Inc	Providence, RI.
Precision Industries, Inc	Baton Rouge, LA.
Precision Machine & Instrument	Houston, TX.
Precision Machine & Tool Co	Longview, TX.
Precision Machine & Engineering	Phoenix, AZ.
Precision Machine Rebuilding	Rogers, MN.
Precision Machine Company	Lancaster, PA.
Precision Manufacturing	Grand Junction, CO.
Precision Metal Crafters, Ltd	Greensburg, PA.
Precision Metal Fabrication	Dayton, OH.
Precision Metal Tooling, Inc	San Leandro, CA.
Precision Mold & Engineering	Warren, MI.
Precision Mold Base Corporation	Tempe, AZ.
Precision Mold Welding, Inc	Little Rock, AR.
Precision Mold, Inc	Kent, WA.
Precision Piece Parts Inc	Mishawaka, IN.
Precision Products Inc	Greenwood, IN.
Precision Resource	Huntington Beach, CA.
Precision Resource Tool & Machine	Shelton, CT.
Precision Resources	Hawthorne, CA.
Precision Specialties	San Jose, CA.
Precision Specialists, Inc	West Berlin, NJ.
Precision Stamping & Tool, Inc	Irvine, CA.
Precision Stamping, Inc	Farmers Branch, TX.
Precision Technology, Inc	Chandler, AZ.
Precision Tool & Die, Inc	Derry, NH.
Precision Tool Work, Inc	New Iberia, LA.
Precision Tool & Mold, Inc	Clearwater, FL.
Precision Wire EDM Service Inc	Grand Rapids, MI.
Precision Wire Cut Corporation	Waterbury, CT.
Preferred Grinding Co., Inc	Dallas, TX.
Preferred Tool & Die Co., Inc	Comstock Park, MI.
Preferred Tool Company, Inc	Seymour, IN.
Prescott Aerospace, Inc	Prescott Valley, AZ.
Pressco Products	Kent, WA.
Prestige Mold Incorporated	Rancho Cucamonga, CA.
Price Products, Inc	Escondido, CA.
Pride	Champlin, MN.
Prima Die Castings, Inc	Clearwater, FL.
Prime-Co Tool Inc	East Rochester, NY.
Primeway Tool & Engineering Co	Madison Heights, MI.
Pro-Tech Machine, Inc	Burton, MI.
Pro-Mold, Inc	Spencerport, NY.
Process Equipment Company	Tipp City, OH.
Product Engineering Company	Columbus, IN.
Production Saw Works, Inc	North Hollywood, CA.
Production Tool & Mfg. Co	Portland, OR.
Producto Machine Company	Bridgeport, CT.
Professional Grinding, Inc	Akron, OH.
Professional Instruments Co., Inc	Hopkins, MN.
Professional Machine & Tool, Inc	Valley Center, KS.
Professional Machine & Tool Co	Gallatin, TN.
Proficient Machining Co., Inc	Mentor, OH.
Profile Grinding, Inc	Cleveland, OH.
Proformance Manufacturing, Inc	Corona, CA.
Progressive Concepts Machining	Pleasanton, CA.

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NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Progressive Metallizing	Akron, OH.
Progressive Tool Company	Waterloo, IA.
Progressive Tool & Die, Inc	Meadville, PA.
Progressive Tool & Die, Inc	Gardena, CA.
Promax Tool Co.	Rancho Cordova, CA.
ProMold, Inc	Cuyahoga Falls, OH.
Prompt Machine Products, Inc	Chatsworth, CA.
Proper Cutter, Inc	Guys Mills, PA.
Proper Mold & Engineering, Inc	Center Line, MI.
Proteus Manufacturing Co., Inc	Woburn, MA.
Proto-Design, Inc	Redmond, WA.
Proto Machine & Manufacturing	Kent, OH.
Proto-Cam, Inc	Grand Rapids, MI.
Protonics Engineering Corp	Cerritos, CA.
Prototype & Plastic Mold Co	Middletown, CT.
Puehler Tool Company	Valley View, OH.
Pulibrite, Inc	Fremont, CA.
Punch Press Products, Inc	Los Angeles, CA.
Punchcraft Company—Subsidiary of	Warren, MI.
Q K Mold & Manufacturing, Inc	Kent, OH.
Q M C Technologies, Inc	Depew, NY.
Qualfab Machining	Redwood City, CA.
Quality Centerless Grinding Corp	Middlefield, CT.
Quality Engineering Services	Wallingford, CT.
Quality Grinding & Machining	Bridgeport, CT.
Quality Machine Engineering, Inc	Santa Rosa, CA.
Quality Machining Technology, Inc	Oakdale, CA.
Quality Mold & Die, Inc	Santa Ana, CA.
Quality Mold & Engineering	Baroda, MI.
Quality Mold Shop, Inc	McMinnville, TN.
Quality Precision, Inc	Hayward, CA.
Quality Tool Company	Toledo, OH.
Quantum Manufacturing, Inc	Burbank, CA.
Quick-Way Stampings	Euless, TX.
R & D Machine Shop	Dallas, TX.
R & D Specialty/Manco	Phoenix, AZ.
R & D Tool & Engineering	Lee's Summit, MO.
R & G Precision Tool Inc	Thomaston, CT.
R & H Manufacturing Inc	Kingston, PA.
R & J Tool, Inc	Brookville, OH.
R & M Machine Tool	Freeland, MI.
R & M Manufacturing Company	Niles, MI.
R & M Mold Manufacturing Co	Bloomsbury, NJ.
R & R Precision Machine, Inc	Wichita, KS.
R & S EDM, Inc	W. Springfield, MA.
R & S Machining, Inc	Oakville, MO.
RB Machine Co., Inc	Phoenix, AZ.
R D C Machine, Inc	Santa Clara, CA.
R Davis EDM	Anaheim, CA.
R E F Machine Company, Inc	Middlefield, CT.
REO Hydro-Pierce Inc	Detroit, MI.
R G F Machining Technologies	Canon City, CO.
R J S Corporation	Akron, OH.
R M I	Van Nuys, CA.
R 0 C Carbon Company	Houston, TX.
R S Precision Industries, Inc	Farmingdale, NY.
P. T R Slotting & Machine Inc	Cuyahoga Falls, OH.
RTS Wright Industries, Inc	Nashville, TN.
R W Machine, Inc	Houston, TX.
P. W. Smith Company, Inc	Dallas, TX.
B. Radtke & Sons, Inc	Round Lake Park, IL.
Rainbow Tool & Machine Co., Inc	Gadsden, AL.
Rabid Corporation	Reisterstown, MD.
Ram Tool, Inc	Grafton, WI.
Ranger Tool & Die Company	Saginaw, MI.
Rapid-Line Inc	Grand Rapids, MI.
Rapidac Machine Corporation	Rochester, NY.
Ratnik Industries, Inc	Victor, NY.
Rawlings Engineering	Macon, GA.
Ray Paradis Machine, Inc	Jackson, CA.
Re-Del Engineering	Campbell, CA.
Realco Diversified, Inc	Meadville, PA.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Reardon Machine Co., Inc	St. Joseph, MO.
Reber Machine & Tool Company	Muncie, IN.
Rectack of America	Los Angeles, CA.
Reed Instrument Company	Houston, TX.
Reese Machine Company, Inc	Ashtabula, OH.
Reichert Stamping Company	Toledo, OH.
Reid Industries, Inc	Roseville, MI.
Reitz Tool & Die Company, Inc	Walbridge, OH.
Reitz Tool, Inc	Cochranton, PA.
Reliable EDM, Inc	Houston, TX.
Remarc Manufacturing Inc	Hayward, CA.
Remmele Engineering, Inc	St. Paul, MN.
Remtex, Inc	Longview, TX.
Reny & Company Inc	El Monte, CA.
Repairtech International, Inc	Van Nuys, CA.
Repko Tool Inc	Meadville, PA.
Republic Industries	Louisville, KY.
Republic-Lagun	Carson, CA.
Research Tool, Inc	East Haven, CT.
Reuther Mold & Manufacturing Co	Cuyahoga Falls, OH.
Reynolds Manufacturing Co., Inc	Rock Island, IL.
Rhode Island Centerless, Inc	Johnston, RI.
Rich Tool & Die Company	Scarborough, ME.
Richard Manufacturing Company	Milford, CT.
Richard 0. Schulz Company	Elmwood Park, IL.
Richard Tool & Die Corporation	New Hudson, MI.
Richard's Grinding, Inc	Cleveland, OH.
Richards Machine Tool Company	Lancaster, NY.
Richsal Corporation	Elyria, OH.
Rick Sanford Machine Company	San Leandro, CA.
Rid-Lom Precision Tool Corp	Rochester, NY.
Ridge Machine & Welding Company	Toronto, OH.
Riggins Engineering, Inc	Van Nuys, CA.
Right Tool & Die, Inc	Toledo, OH.
Riima Enterprises	Huntington Beach, CA.
Rite-Way Industries, Inc	Louisville, KY.
Riverview Machine Company, Inc	Holyoke, MA.
Riviera Tool Company	Grand Rapids, MI.
Robert C. Reetz Company, Inc	Pawtucket, RI.
Roberts Aerospace Mfg. & Eng	Gardena, CA.
Roberts Tool & Die Company	Chillicothe, MO.
Roberts Tool Company, Inc	Northridge, CA.
Robrad Tool & Engineering	Mesa, AZ.
Rochester Gear, Inc	Rochester, NY.
Rochester Manufacturing	Wellington, OH.
Rockburl Industries, Inc	Rochester, NY.
Rockford Process Control, Inc	Rockford, IL.
Rockford Tool & Manufacturing	Rockford, IL.
Rockford Toolcraft, Inc	Rockford, IL.
Rockhill Machining Industries	Barberton, OH.
Rockstedt Tool & Die	Brunswick, OH.
Rocon Manufacturing Corporation	Rochester, NY.
Rogers Associates Machine Tool	Rochester, NY.
Romac Electronics, Inc	Plainview, NY.
Romold Inc	Rochester, NY.
Ron Grob Company	Loveland, CO.
Ronart Industries, Inc	Detroit, MI.
Ronlen Industries, Inc	Brunswick, OH.
Rons Racing Products, Inc	Tucson, AZ.
Royal Wire Products, Inc	N. Royalton, OH.
Royalton Manufacturing, Inc	Cleveland, OH.
Royster's Machine Shop, LLC	Henderson, KY.
Rozal Industries, Inc	Farmingdale, NY.
RREN Manufacturing & Engineering	Springfield, MA.
Rubbermaid, Inc., Mold Division	Wooster, OH.
Ruoff & Sons, Inc	Runnemede, NJ.
Russing Machining Corp	Glendale, CA.
Ryan Industries Inc	York, PA.
S & B Tool & Die Co., Inc	Lancaster, PA.
S & R CNC Machining	Arleta, CA.
S & R Precision Company, LLC	Fremont, CA.
S & S Precision Company, LLC	San Jose, CA.

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NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
S. C. Machine	Chatsworth, CA.
S C Manufacturing	Akron, OH.
S D S Machine, Inc	Hayward, CA.
S G S Tool Company	Munroe Falls, OH.
S L P Machine, Inc	Ham Lake, MN.
S M K Fabricators, Inc	May, TX.
S P M/Anaheim	Anaheim, CA.
S P S Technologies	Santa Ana, CA.
Saeibo Manufacturing Industries	Blauvelt, NY.
Sage Machine & Fabricating	Houston, TX.
Sagehill Engineering, Inc	Menlo Park, CA.
Saginaw Products Corporation	Saginaw, MI.
Salomon Smith Barney	Washington, DC.
Samax Precision, Inc	Sunnyvale, CA.
San Diego Swiss Machining, Inc	Chula Vista, CA.
Sanders Tool & Mould Company	Hendersonville, TN.
Sandor Tool & Manufacturing Co	Lawrence, MA.
Sandy Bay Machine	Rockport, MA.
Santin Engineering, Inc	West Peabody, MA.
Sattler Machine Products, Inc	Sharon Center, OH.
Sawing Services Co	Chatsworth, CA.
Sawtech	Lawrence, MA.
Schaffer Grinding Company, Inc	Montebello, CA.
Schill Corp	Toledo, OH.
Schlitter Tool	Warren, MI.
Schmald Tool & Die, Inc	Burton, MI.
Schmiede Corporation	Tullahoma, TN.
Schneider & Marguard, Inc	Newton, NJ.
Schober's Machine & Engineering	Alhambra, CA.
Schoitz Engineering, Inc	Waterloo, IA.
Schroeder Tool & Die Corporation	Van Nuys, CA.
Schuetz Tool & Die, Inc	Hiawatha, KS.
Schulze Tool Company	Independence, MO.
Schwab Machine, Inc	Sandusky, OH.
Schwartz Industries, Inc	Warren, MI.
Scott County Machine & Tool Co	Scottsburg, IN.
Seabury & Smith, Inc	Miami, FL.
Sebewaing Tool & Engineering Co	Sebewaing, MI.
Seemcor Inc	Englewood, NJ.
Albert Seisler Machine Corp	Mohnton, PA.
Select Industrial Systems Inc	Fairborn, OH.
Select Tool & Eng., Inc	Elkhart, IN.
Select Tool & Die Tool Div	Dayton, OH.
SelfLube	Coopersville, MI.
Selzer Tool & Die, Inc	Elyria, OH.
Sematool Mold & Die Co	Santa Clara, CA.
Serrano Industries Inc	Santa Fe Springs, CA.
Service Manufacturing and	Anaheim, CA.
Service Tool & Die, Inc	Henderson, KY.
Setters Tools, Inc	Piedmont, SC.
Sharon Center Mold & Die	Sharon Center, OH.
Shaw Industries, Inc	Franklin, PA.
Shear Tool, Inc	Saginaw, MI.
Sheets Tool & Manufacturing, Inc	Saegertown, PA.
Shelby Engineering Company, Inc	Indianapolis, IN.
Sherer Manufacturing	Clearwater, FL.
Sherlock Machine Company	Clearwater, FL.
The Sherman Corporation	Inglewood, CA.
Sherman Tool & Gage	Erie, PA.
Shiloh Industries	Wellington, OH.
Shookus Special Tools, Inc	Raymond, NH.
Shop Tech Industrial Software Corp	Rocky Hill, CT.
Sibley Machine & Foundry Corp	South Bend, IN.
Sieger Engineering, Inc	S. San Francisco, CA.
Sigma Precision Mfg., Inc	Aston, PA.
Signa Molds & Engineering	Sylmar, CA.
Signal Machine Company	New Holland, PA.
Silicon Valley Mfg	Fremont, CA.
Sipco, Inc	Meadville, PA.
Sirius Enterprises, Inc	Dallas, TX.
Six Sigma	Louisville, KY.
Ski-Way Machine Products Company	Euclid, OH.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Skillcraft Machine Tool Company	West Hartford, CT.
Skulsky, Inc	Gardena, CA.
Skyfab, Inc	Denton, TX.
Skyline Manufacturing Corp	Nashville, TN.
Skylon Mold & Machining	Sugar Grove, PA.
Skyway Manufacturing Corporation	Phoenix, AZ.
Smith-Renaud, Inc	Cheshire, CT.
Smith's Machine	Cottondale, AL.
Smithfield Manufacturing, Inc	Clarksville, TN.
Snyder Systems	Benicia, CA.
Solar Tool & Die, Inc	Kansas City, MO.
Sonic Machine & Tool, Inc	Tempe, AZ.
Sonoma Precision Mfg. Co	Santa Rosa, CA.
Sonora Precision Molds, Inc	Mi Wuk Village, CA.
South Bay Machining	Santa Clara, CA.
South Bend Form Tool Company	South Bend, IN.
South Eastern Machining, Inc	Piedmont, SC.
Southampton Manufacturing, Inc	Feasterville, PA.
Southeastern Technology, Inc	Murfreesboro, TN.
Southern Mfg. Technologies, Inc	Tampa, FL.
Southwest Industrial Services	Ft. Worth, TX.
Southwest Manufacturing, Inc	Wichita, KS.
Southwest Metalcraft Corporation	Tucson, AZ.
Southwest Mold, Inc	Tempe, AZ.
Space City Machine & Tool Co	Houston, TX.
Spalding & Day Tool & Die Co	Louisville, KY.
Spark Technologies, Inc	Schenley, PA.
Spartak Products, Inc	Houston, TX.
Spartan Manufacturing Company	Garden Grove, CA.
Specialty Machine & Hydraulics	Pleasantville, PA.
Spenco Machine & Manufacturing	Temecula, CA.
Spike Industries	North Lima, OH.
Spin Pro Inc	Sunnyvale, CA.
Spiral Grinding Company	Culver City, CA.
Spirex Southwest	Gainesville, TX.
Springfield Tool & Die, Inc	Greenville, SC.
Sprint Tool & Die, Inc	Meadville, PA.
Spun Metals, Inc	Phoenix, AZ.
St. Louis Tool & Mold	Valley Park, MO.
Stadco	Los Angeles, CA.
Standard Jig Boring Service, Inc	Akron, OH.
Standard Machine Inc	Cleveland, OH.
Standard Welding & Steel	Medina, OH.
Stanek Tool Corporation	New Berlin, WI.
Stanley Machining & Tool Corp	Carpentersville, IL.
Star Tool & Die, Inc	Elkhart, IN.
Star Tool & Engineering, Inc	Redwood City, CA.
Starn Tool & Manufacturing Co	Meadville, PA.
State Industrial Products, Inc	Phoenix, AZ.
Stauble Machine & Tool Company	Louisville, KY.
Stelted Manufacturing, Inc	Tempe, AZ.
Sterling Engineering Corporation	Winsted, CT.
Sterling Tool Company	Racine, WI.
Stevens Manufacturing Co., Inc	Milford, CT.
Stewart Manufacturing Company	Phoenix, AZ.
Stieg Grinding Corporation	Rockford, IL.
Stillion Industries	Ann Arbor, MI.
Stillwater Technologies, Inc	Troy, OH.
Stines' Machine, Inc	Vista, CA.
Ralph Stockton Valve Products	Houston, TX.
Stoney Crest Regrind Service	Bridgeport, MI.
Strobel Machine, Inc	Worthington, PA.
Studwell Engineering, Inc	Sun Valley, CA.
Subsea Ventures, Inc	Houston, TX.
Suburban Manufacturing Company	Euclid, OH.
The Sullivan Corporation	Hartland, WI.
Summit Machine Company	Scottdale, PA.
Summit Precision, Inc	Phoenix, AZ.
Sun Polishing Corporation	North Royalton, OH.
Sun Tool Company	Houston, TX.
Sun Valley Tool, Inc	Tempe, AZ.
Sunbelt Plastics, Inc	Frisco, TX.

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NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Sunrise Tool & Die, Inc	Henderson, KY.
Sunset Tool, Inc	Saint Joseph, MI.
Super Finishers II	Phoenix, AZ.
Superior Die Set Corporation	Oak Creek, WI.
Superior Die Tool Machine Co	Columbus, OH.
Superior Gear Box Company	Stockton, MO.
Superior Jig, Inc	Anaheim, CA.
Superior Mold Company	Ontario, CA.
Superior Mold, Inc	Clearwater, FL.
Superior Roll Forming Company	Valley City, OH.
Superior Thread Rolling Company, Inc	Arleta, CA.
Superior Tool & Die Company	Bensalem, PA.
Superior Tool & Die Company, Inc	Elkhart, IN.
Superior Tool, Inc	Willow Street, PA.
Supreme Tool & Die Company	Fenton, MO.
Surface Manufacturing	Auburn, CA.
Svedala Pumps & Process	Colorado Springs, CO.
Swiss Wire E D M	Costa Mesa, CA.
Swissco, Inc	Bell Gardens, CA.
Synergis Technologies Group	Grand Rapids, MI.
Synergy Machine, Inc	Kent, WA.
Syst-A-Matic Tool & Design	Meadville, PA.
Systems 3, Inc	Tempe, AZ.
T & S Industrial Machining Corp	Woburn, MA.
TCI Aluminum North	Hayward, CA.
T C I Precision Metals	Gardena, CA.
T J Tool and Mold	Guys Mills, PA.
T–K & Associates, Inc	La Porte, IN.
T M Industries, Inc	East Berlin, CT.
T M Machine & Tool, Inc	Toledo, OH.
T M S Inc	Lincoln, RI.
T–M Manufacturing Corporation	Sunnyvale, CA.
TAE Corporation	Kent, WA.
Tag Engineering, Inc	Tucson, AZ.
Tait Design & Machine Company, Inc	Manheim, PA.
Talbar, Inc	Meadville, PA.
Talcott Machine Products, Inc	Meriden, CT.
Talent Tool & Die, Inc	Berea, OH.
Tana Corporation	Toledo, OH.
Tangent Tool, Inc	Fraser, MI.
Tanner Oil Tools Inc	Houston, TX.
Tapco USA, Inc	Loves Park, IL.
Taurus Tool & Engineering, Inc	Muncie, IN.
Tebben Enterprises	Clara City, MN.
Tech-Etch, Inc	Plymouth, MA.
Tech Industries, Inc	Cleveland, OH.
Tech Manufacturing Company	Wright City, MO.
Tech Mold, Inc	Tempe, AZ.
Tech Ridge, Inc	South Chelmsford, MA.
Tech Tool & Mold, Inc	Meadville, PA.
Tech Tool and Machine Inc	Toledo, OH.
Tech Tool, Inc	Detroit, MI.
Tech-Machine, Inc	Colorado Springs, CO.
Techmetals, Inc	Dayton, OH.
Techni-Cast Corporation	South Gate, CA.
Techni-Products, Inc	East Longmeadow, MA.
Technics 2000 Inc	Olathe, KS.
Technodic, Inc	Providence, RI.
TecoMetrix, LLC	Tempe, AZ.
Tedco, Inc	Cranston, RI.
Teke Machine Corp	Rochester, NY.
Tell Tool, Inc	Westfield, MA.
Temco Corporation	Danvers, MA.
Tenk Machine & Tool Company	Cleveland, OH.
Tennessee Metal Works, Inc	Nashville, TN.
Tennessee Tool Corporation	Charlotte, TN.
Terrell Manufacturing Inc	Strongsville, OH.
Testand Corporation	Pawtucket, RI.
Tetco, Inc	Plainville, CT.
Teter Tool & Die, Inc	La Porte, IN.
Texas Honing, Inc	Pearland, TX.
Thaler Machine Company	Dayton, OH.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
The Goforth Corp	Fremont, CA.
Therm, Inc	Ithaca, NY.
Thiel Tool & Engineering Co	St. Louis, MO.
Thomas Machine Works, Inc	Newburyport, MA.
Pleasanton Tool and Manufacturing	Pleasanton, CA.
Thompson Gundrilling, Inc	Van Nuys, CA.
Thor Tool Corporation	San Leandro, CA.
Thornhurst Manufacturing, Inc	Tampa, FL.
Three-Way Pattern, Inc	Wichita, KS.
Time Machine & Stamping, Inc	Phoenix, AZ.
The Timken Company	Canton, OH.
Timon Tool & Die Co	Toledo, OH.
Tipco Punch, Inc	Hamilton, OH.
Tipp Machine & Tool, Inc	Tipp City, OH.
Tisza Industries, Inc	Niles, MI.
Titan, Inc	Sturtevant, WI.
TLT-Babcock, Inc	Akron, OH.
TMK Manufacturing Inc	Campbell, CA.
Toledo Blank, Inc	Toledo, OH.
Toledo Molding & Die Inc	Toledo, OH.
Tolerance Masters, Inc	Circle Pines, MN.
Tomak Precision	Lebanon, OH.
TomKen Tool & Engineering, Inc	Muncie, IN.
Tool Gauge & Machine Works, Inc	Tacoma, WA.
Tool Mate Corporation	Cincinnati, OH.
Tool Specialties Company	Hazelwood, MO.
Tool Specialty Company	Los Angeles, CA.
Tool Steel Service of	Los Angeles, CA.
Tool Tech Corporation	San Jose, CA.
Tool Tech, Inc	Springfield, OH.
Tool Technology, Inc	Danvers, MA.
Tool Technology, Inc	Cookeville, TN.
Tool-Matic Company, Inc	City of Commerce, CA.
Toolcomp Tooling & Components	Toledo, OH.
Toolcraft of Phoenix, Inc	Glendale, AZ.
Toolcraft Products, Inc	Dayton, OH.
Toolex, Inc	Houston, TX.
Tools, Inc	Sussex, WI.
Tools Renewal Company	Birmingham, AL.
Top Tool & Die, Inc	Cleveland, OH.
Top Tool Company	Minneapolis, MN.
Totally Radical Associates, Inc	Placentia, CA.
Toth Industries, Inc	Toledo, OH.
Toth Technologies	Cherry Hill, NJ.
Tower Tool & Engineering, Inc	Machesney Park, IL.
Trace-A-Matic Corporation	Brookfield, WI.
Tracer Tool & Die Company Inc	Grand Rapids, MI.
Trademark Die & Engineering	Belmont, MI.
Tram Tek Inc	Phoenix, AZ.
Trans-World Electric Inc	Port Arthur, TX.
Treblig, Inc	Greenville, SC.
Trec Industries, Inc	Brooklyn Heights, OH.
Tree City Mold & Machine Co., Inc	Kent, OH.
Treffers Precision, Inc	Phoenix, AZ.
Tresco Tool, Inc	Guys Mills, PA.
Tri Craft, Inc	Middleberg Heights, OH.
Tri J Machine Company, Inc	Gardena, CA.
Tri-City Machine Products, Inc	Peoria, IL.
Tri-City Tool & Die, Inc	Bay City, MI.
Tri-M-Mold, Inc	Stevensville, MI.
Tri-Wire, Inc	Rockford, IL.
Triad Plastic Technologies	Reno, NV.
Triangle Mold & Machine Co. Inc	Hartville, OH.
Triangle Tool Company	Erie, PA.
Tricon Machine & Tool, Inc	Rochester, NY.
Tricore Mold & Die	Machesney Park, IL.
Tridecs Corporation	Hayward, CA.
Trident Precision Manufacturing	Webster, NY.
Trig Aerospace	Santa Ana, CA.
Trimac Manufacturing, Inc	Santa Clara, CA.
Trimetric Specialties, Inc	Newark, CA.
Trimline Tool, Inc	Grandville, MI.

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NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Trinity Tools, Inc	North Tonawanda, NY.
Trio Tool & Die, Inc	Hawthorne, CA.
Triple Quality Tool & Die, Inc	Bell, CA.
Triple-T Cutting Tools Inc	West Berlin, NJ.
Triplett Machine, Inc	Phelps, NY.
Triumph Precision, Inc	Phoenix, AZ.
Trojan Mfg. Co. Inc	Piqua, OH.
Trotwood Corporation	Trotwood, OH.
Tru Cut, Inc	Sebring, OH.
Tru Form Manufacturing Corp	Rochester, NY.
Tru Tool, Inc	Sturtevant, WI.
True Cut EDM Inc	Garland, TX.
True Position, Inc	Chatsworth, CA.
True-Tech Corporation	Fremont, CA.
Trueline Tool & Machine, Inc	Springfield, OH.
Trust Technologies	Willoughby, OH.
Trutron Corporation	Troy, MI.
Tschida Engineering, Inc	Napa, CA.
Tucker Machine Company	North Branford, CT.
Turbo Machine & Tool, Inc	Cleveland, OH.
Turn-Tech, Inc	Decker Prairie, TX.
Turner and Walima Mfg. Co., Inc	Essex, MA.
Turner's Machine Shop	Phoenix, AZ.
Twin City Plating Company	Minneapolis, MN.
Two-M Precision Co., Inc	Willoughby, OH.
Tymar Precision Inc	Santa Clara, CA.
U C 0 Tool & Die, Inc	Union City, OH.
U F E Incorporated	Stillwater, MN.
U M C, Inc	Hamel, MN.
U P Machine & Engineering Co.	Powers, MI.
USAeroteam	Dayton, OH.
U S Machine & Tool, Inc	Murfreesboro, TN.
Uddeholm	Santa Fe Springs, CA.
Ugm, Inc	Santa Clara, CA.
Ultra Precision, Inc	Freeport, PA.
Ultra Stamping & Assembly, Inc	Rockford, IL.
Ultra Tool & Manufacturing, Inc	Menomonee Falls, WI.
Ultra-Tech, Inc	Kansas City, KS.
Ultramation, Inc	Waco, TX.
Ultron	Long Beach, CA.
Uneco Manufacturing, Inc	Chicopee, MA.
Unigraphics Solutions	Brookfield, WI.
Unique Machine Company	Montgomeryville, PA.
Unique Tool & Manufacturing	Randleman, NC.
Unitech, Inc	Kansas City, MO.
United Centerless Grinding	East Hartford, CT.
United Engineering Company	Kernersville, NC.
United Machine Co., Inc	Wichita, KS.
The United Plastics Group, Inc	Ludlow, MA.
United States Fittings, Inc	Warrensville Heights, OH.
United Tool & Engineering Co	South Beloit, IL.
United Tool & Engineering, Inc	Mishawaka, IN.
United Tool & Mold Inc	Holland, MI.
Universal Brixius Inc	Milwaukee, WI.
Universal Custom Process, Inc	Streetsboro, OH.
Universal Precision Products Inc	Akron, OH.
Universal Tool Company	Dayton, OH.
Universal Tools & Manufacturing	Springfield, NJ.
Universe Industries	Irvine, CA.
Upland Fab, Inc	Ontario, CA.
V & M Tool Company, Inc	Perkasie, PA.
V & S Die & Mold, Inc	Lakewood, OH.
V A Machine & Tools, Inc	Broussard, LA.
V Ash Machine Company	Cleveland, OH.
V I Mfg.	Webster, NY.
V P. C, Inc	Berea, OH.
Valley Machine Works, Inc	Phoenix, AZ.
Valley Tool & Die, Inc	North Royalton, OH.
Valley Tool Room, Inc	Phoenix, AZ.
Valv-Trol Company	Stow, OH.
Van Engineering	Cincinnati, OH.
Van Os Machine Works, Inc	St. Louis, MO.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Van Reenen Tool & Die, Inc	Rochester, NY.
Van-Am Tool & Engineering, Inc	St. Joseph, MO.
Vanderveer Industrial Plastics	Placentia, CA.
Vanpro, Inc	Cambridge, MN.
Vaughn Manufacturing Company	Nashville, TN.
Vektek, Inc	Emporia, KS.
Venango Machine Products, Inc	Reno, PA.
Venture Precision Machining Co	Champaign, IL.
Venture Tool, Inc	Erie, PA.
Ver-Sa-Til Associates, Inc	Chanhassen, MN.
VersaTool & Die Machining	Beloit, WI.
Vi-Tec Manufacturing Inc	Livermore, CA.
Viking Tool & Engineering	Whitehall, MI.
Viking Tool & Gage, Inc	Conneaut Lake, PA.
Vistek Precision Machine Company	Ivyland, PA.
Vitron Manufacturing, Inc	Phoenix, AZ.
Vitullo & Associates, Inc	Warren, MI.
Vobeda Machine & Tool Company	Racine, WI.
Vulcan Tool Corporation	Dayton, OH.
W + D Machinery Company, Inc	Overland Park, KS.
W & H Stampings & Fineblanking, Inc	Hauppauge, NY.
W D & J Machine & Engineering Inc	Fullerton, CA.
W E C Technologies Corporation	Amityville, NY.
W G Strohwig Tool & Die, Inc	Richfield, WI.
WSI Industries, Inc	Minneapolis, MN.
W W G, Inc	Indianapolis, IN.
WADKO Precision, Inc	Houston, TX.
Wagner Engineering, Inc	Gilbert, AZ.
Waiteco Machine	Acton, MA.
Wajo Tool and Die, Inc	East Hampstead, NH.
Walker Corporation	Ontario, CA.
Walker Tool & Machine Company	Perrysburg, OH.
Wallner Tooling/Expac, Inc	Rancho Cucamonga, CA.
Waltco Engineering, Inc	Gardena, CA.
Walter Tool & Mfg. Inc	Elgin, IL.
Walter Waukesha, Inc	Waukesha, WI.
Walz & Krenzer, Inc	Rochester, NY.
Warmelin Precision Products	Hawthorne, CA.
Waukesha Tool & Stamping Inc	Sussex, WI.
Wausau Insurance Companies	Wausau, WI.
Wayne Manufacturing, Inc	Boulder, CO.
Webco Machine Products, Inc	Valley View, OH.
Weco Metal Products	Ontario, NY.
Weiss-Aug Co. Inc	East Hanover, NJ.
Wejco Instruments Inc	Houston, TX.
George Welsch & Son Company	Cleveland, OH.
Weltek-Swiss	Englewood, CO.
Wemco Precision Tool, Inc	Meadville, PA.
Wentworth Company	Glastonbury, CT.
Werkema Machine Company, Inc	Grand Rapids, MI.
Wes Products	Madison Heights, MI.
West Hartford Tool & Die Company	Newington, CT.
West Pharmaceutical Services	Erie, PA.
West Tool & Manufacturing, Inc	Cleveland, OH.
West Valley Milling, Inc	Chatsworth, CA.
West Valley Precision Inc	Santa Clara, CA.
Westbrook Manufacturing, Inc	Dayton, OH.
Western Mass. MechTech, Inc	Ware, MA.
Western Steel Cutting, Inc	San Jose, CA.
Western Tap Manufacturing Co	Buena Park, CA.
Westfield Gage Company, Inc	Westfield, MA.
Westfield Tool & Die, Inc	Westfield, MA.
Westlake Tool & Die Mfg.	Avon, OH.
Westtool Inc	Phoenix, AZ.
White Machine, Inc	North Kingstown, RI.
White Machine, Inc	North Royalton, OH.
Whitehead Tool & Design, Inc	Guys Mills, PA.
Wiegel Tool Works, Inc	Wood Dale, IL.
Wightman Engineering Services	Santa Clara, CA.
Wilco Die Tool Machine Company	Maryland Heights, MO.
Wilkinson Mfg., Inc	Santa Clara, CA.
The Will-Burt Company	Orrville, OH.

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NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Willer Tool Corporation	Jackson, WI.
William Sopko & Sons Co., Inc	Cleveland, OH.
Williams Engineering	Chatsworth, CA.
Williams Machine, Inc	Lake Elsinore, CA.
Windsor Tool & Die, Inc	Cleveland, OH.
Winter's Grinding Service	Menomonee Falls, WI.
Wire Cut Company, Inc	Buena Park, CA.
Wire Tech E D M, Inc	Los Alamitos, CA.
WireCut E D M, Inc	Dallas, TX.
Wirecut Technologies Inc	Indianapolis, IN.
Wiretec, Inc	Delmont, PA.
Wisconsin Engraving Company	New Berlin, WI.
Wisconsin Metalworking Machinery	Waukesha, WI.
Wisconsin Mold Builders, LLC	Waukesha, WI.
Wise Machine Co., Inc	Butler, PA.
Wolfe Engineering, Inc	Campbell, CA.
Wolverine Bronze Company	Roseville, MI.
Wolverine Tool & Engineering	Belmont, MI.
Wolverine Tool Company	St. Clair Shores, MI.
Woodruff Corporation	Torrance, CA.
Wright Brothers Welding	Hollister, CA.
Wright Industries, Inc	Gilbert, AZ.
Wright-K Technology, Inc	Saginaw, MI.
X L I Corporation	Rochester, NY.
Yates Tool, Inc	Medina, OH.
Yoder Die Casting Corporation	Dayton, OH.
Youngberg Industries, Inc	Belvidere, IL.
Youngers and Sons Manufacturing	Viola, KS.
Youngstown Plastic Tooling	Youngstown, OH.
Z & Z Machine Products Inc	Racine, WI.
Z M D Mold & Die Inc	Mentor, OH.
Zip Tool & Die Co., Inc	Cleveland, OH.
Zircon Precision Products, Inc	Tempe, AZ.
Zuelzke Tool & Engineering	Milwaukee, WI

[FR Doc. 01–10646 Filed 4–27–01; 8:45 am]
BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration, Commerce.

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended Export Trade Certificate of Review, Application No. 97–4A0003.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to The Association for the Administration of Rice Quotas, Inc. ("AARQ") on April 10, 2001. Notice of issuance of the original Certificate was published in the **Federal Register** on January 28, 1998 (63 FR 4220).

FOR FURTHER INFORMATION CONTACT: Vanessa M. Bachman, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2000).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 97–00003, was originally issued to AARQ on January 21, 1998 (63 FR 4220, January 28, 1998).

AARQ's Export Trade Certificate of Review has been amended to:

1. Delete the following company as a "Member" of the Certificate within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): ContiGroup Companies, Inc., New York, New York;

2. Add the following companies as new "Members" of the Certificate within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): Alliance Grain, Inc., Voorhees, NJ (Controlling Entity: ConAgra Foods, Inc., Omaha); Associated Rice Marketing Cooperative, Durham, CA; California Rice Marketing, LLC, Sacramento, CA; The Sun Valley Rice Co., LLC, Arbuckle; and

3. Change the listings of the current Members as follows: "AC HUMKO, Corp., Cordova, Tennessee" to "ACH Food Companies, Inc., Cordova, Tennessee;" California Commodity Traders, LLC, Sacramento, California" to "California Commodity Traders, LLC, Robbins, California and its affiliate, American Commodity Company, LLC, Robbins, California;" "ConAgra, Inc. for the activities of KBC Trading and Processing Company, Stockton, California" to "ConAgra Foods, Inc., Omaha, Nebraska, and its subsidiary, Alliance Grain, Inc., Voorhees, New Jersey;" "Kennedy Rice Dryers, Inc., Mer Rouge, Louisiana" to"Kennedy Rice Dryers, L.L.C., Mer Rouge, Louisiana;" "Kitoku America, Inc., Davis, California (a subsidiary of Kitoku Co., Ltd.)" to "Kitoku America, Inc., Davis, California (a subsidiary of Kitoku Shinryo Co., Ltd.);" "Newfield Partners Ltd., Miami, Florida" to "Newfieldrice, Inc., Miami, Florida;" "The Connell Company, Westfield, New Jersey" to "The Connell Company, Berkeley Heights, New Jersey."

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Effective Date: January 10, 2001.
Dated: April 23, 2001.

Vanessa M. Bachman,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 01–10647 Filed 4–27–01; 8:45 am]
BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042501A]

Dr. Nancy Foster Scholarship Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 29. 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Joanne Flanders, N, Room 13154, 1305 East-West Highway, Silver Spring, MD 20910–3282 (phone 301–713–3074, ext. 133).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Dr. Nancy Foster Scholarship Program recognizes outstanding scholarship by providing financial support to graduate students pursuing masters and doctoral degrees in the areas of marine biology, oceanography, and maritime archaeology. Applicants must submit documentation that NOAA uses to select candidates, including three letters of recommendation. Persons receiving scholarships will be required to submit certain reports and other information detailed below.

II. Method of Collection

No forms are used. Respondents meet solicitation or award requirements with paper submissions. Electronic submissions are being considered.

III. Data

OMB Number: 0648–0432.
Form Number: None.
Type of Review: Regular submission.
Affected public: Individuals or households.
Estimated Number of Respondents: 400.
Estimated Time Per Response: 5 hours per application, 45 minutes for a letter of recommendation, 15 minutes for an employment/non-employment certification, 15 minutes for a Selective Service Statement from a male awardee, 30 minutes for an academic progress report, 30 minutes for an approved study/research plan certification from the awardee's school advisor, 30 minutes for an annual financial request, and 90 minutes for a biography and photo from each awardee.
Estimated Total Annual Burden Hours: 747.
Estimated Total Annual Cost to Public: $44.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 24, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–10658 Filed 4–27–01; 8:45 am]
BILLING CODE 3510–JT–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042501B]

Saltonstall-Kennedy Grant Program (S-K Program) Applications and Reports

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 29, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Alicia Jarboe, F/SF2, Room 13112, 1315 East-West Highway, Silver Spring, MD 20910–3282 (phone 301–713–2358, ext. 199).

SUPPLEMENTARY INFORMATION:

I. Abstract

The S–K Program provides financial assistance on a competitive basis for research and development projects that benefit U.S. fishing communities. In addition to standard Federal government grant application requirements, S–K applications must provide a project summary form (NOAA Form 88–204), use NOAA Form 88–0205 instead of SF–424A for budget information, and provide nine copies of applications. Successful grants applicants are required to submit semi-annual progress reports and a final report.

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II. Method of Collection

Final reports must be submitted in electronic form unless an exemption is granted. The other documentation is in paper form.

III. Data

OMB Number: 0648–0135.
Form Number: None.
Type of Review: Regular submission.
Affected public: Not-for-profit institutions, business or other for-profit organizations, individuals or households, and state, local, or tribal government.
Estimated Number of Respondents: 210.
Estimated Time Per Response: 1 hour for a project summary form, 1 hour for a budget form, 2.5 hours for a semi-annual report, and 13 hours for a final report.
Estimated Total Annual Burden Hours: 985.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 24, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–10659 Filed 4–27–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.041801A]

Marine Mammals; File No.782-1613

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that The National Marine Mammal Laboratory, NMFS, 7600 Sand Point Way, N.E., Seattle, Washington 98115-0070, has been issued a permit to take California sea lions (*Zalophus californianus*), harbor seals (*Phoca vitulina*), and northern elephant seals (*Mirounga angustirostris*), and to incidentally harass northern fur seals (*Callorhinus ursinus*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713-2289).

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: On February 14, 2001, notice was published in the Federal Register (66 FR 10272) that a request for a scientific research permit to take California sea lions (*Zalophus californianus*), harbor seals (*Phoca vitulina*), and northern elephant seals (*Mirounga angustirostris*), and to incidentally harass northern fur seals (*Callorhinus ursinus*) had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Dated: April 24, 2001.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–10656 Filed 4–27–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041801D]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) will hold a workshop to review market squid stock assessment methods.

DATES: The workshop is scheduled for Monday, May 14, 2001, from 8 a.m to 5 p.m.; Tuesday, May 15, 2001, from 8 a.m. to 5 p.m.; Wednesday, May 16, 2001, from 8 a.m. to 5 p.m.; and Thursday, May 17, 2001, from 8 a.m. until business for the day is completed.

ADDRESSES: The meeting will be held at NMFS Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, La Jolla, CA 92038.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Waldeck, Pacific Fishery Management Council, (503) 326–6352.

SUPPLEMENTARY INFORMATION: A workshop will be held to review market squid stock assessment methods. The workshop is, in part, to address disapproved provisions in the Council's Coastal Pelagic Species (CPS) Fishery Management Plan (FMP); specifically, maximum sustainable yield (MSY) for market squid. Since the development of the FMP, research conducted on squid life history along with enhanced fishery data (port sampling and logbooks) have provided significant new information. A principal goal of the stock assessment review (STAR) is to integrate the ongoing squid research into the Council's CPS FMP. Terms of reference for the STAR Panel address the MSY issue as well as control rules for practical management of the squid fishery.

Draft Agenda

Monday, May 14, 2001

A. Welcome, introductions, and logistics.

B. Review terms of reference and agenda. Assignment of rapporteurs.

C. Presentation of working papers.

Lunch

D. Presentation of working papers–continued.

E. Discussion of recent biological findings as they relate to stock assessment and management (Section 2 of the STAR Panel Report).

F. Requests for additional information and/or data from working paper authors (as necessary).

Tuesday, May 15, 2001

G. Discussion of newly developed fisheries-related data as they relate to stock assessment and management (Section 3 of the STAR Panel Report). Requests for additional information and/or data from working paper authors (as necessary).

H. Discussion of MSY estimation for squid and the SFA requirements (Section 4). Requests for additional analysis and/or data from authors (as necessary).

Lunch

I. Discussion of management measures including operationally-practical control rules, long-term monitoring programs, and inseason adjustment mechanisms (Section 5). Requests for additional analysis and/or data from authors (as necessary).

J. Review additional data and analyses, as requested from working paper authors.

Wednesday, May 16, 2001

K. Review additional data and analyses, as requested from working paper authors.

L. Review draft rapporteur's report on biology and life history findings (Section 2).

M. Review draft rapporteur's report on fisheries-related data (Section 3).

N. Continue review of additional data and analyses, as requested from working paper authors.

O. Review draft rapporteur's report on MSY estimation (Section 4).

P. Review draft of rapporteur's report on control rules and other management measures (Section 5).

Q. Drafting session for full STAR Panel draft report.

Thursday, May 17, 2001

R. Drafting session for full STAR Panel draft report– continued.

S. Discussion of research and data needs (Section 6 of the STAR Panel Report).

T. Review full STAR Panel draft report.

U. Discuss procedures for completion of the final STAR Panel report.

Adjournment

Although non-emergency issues not contained in this notice may arise during the workshop, those issues may not be the subject of formal action during this meetings. Formal action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: April 25, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–10660 Filed 4–27–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041801F]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Management Council's Crustaceans Plan Team and the 77th meeting of the Council's Scientific and Statistical Committee (SSC) will hold public meetings.

DATES: The meetings will be held between Monday, May 14, 2001, and Thursday, May 17, 2001. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Western Pacific Fishery Management Council office conference room, 1164 Bishop St., Suite 1400, Honolulu, HI; telephone: (808–522–8220).

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI, 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone 808–522–8220.

SUPPLEMENTARY INFORMATION:

Meeting Dates, Times, and Agendas

9–5 p.m.- Monday, May 14, 2001

The Crustaceans Plan Team will discuss and may make recommendations to the Council on the agenda items shown here. The order in which agenda items will be addressed can change.

1. Annual report/status of the stocks

2. Status of the fishery closures

A. Court actions
B. NMFS actions
C. Executive Orders for Northwestern Hawaiian Islands (NWHI) Reserve
D. Impacts/Fishery Disaster Relief

3. NMFS plans for research and charter cruises

4. Recommendations of Monk Seal Recovery Team

5. Status of the Draft Environmental Impact Statement (EIS)/Biological Opinion (BO)

6. Scope-of-Work for 5–year Review of Fishery Management Plan (FMP)

A. Reasons for implementing Amendment 9
B. Basic elements of Amendment 9
C. Modification since Amendment 9
D. Future considerations and needs
E. Overcapitalization study
F. Previous SSC and Council recommendations
G. Technical Review Panel/assessment model

7. Research priorities for lobster fisheries

8. Other business

9–5 p.m.- Tuesday May 15, 2001

The SSC will discuss and may make recommendations to the Council on the agenda items below. The order in which agenda items will be addressed can change.

1. Precious corals fisheries

A. Gold coral growth rates and minimum (possibly maximum) size
B. Framework adjustment regarding the exploratory area and the management of undiscovered sites
C. Current and future research on precious corals
D. Refinement of Maximum Sustainable Yield (MSY) models
E. Status of Draft Environmental Impact Statement (DEIS)
F. Precious Corals Plan Team recommendations

2. Crustaceans fisheries (NWHI lobsters)

A. Crustaceans Plan Team recommendations

3. Bottomfish fisheries

A. Summary of 2000 annual report modules and recommendations
B. Plan Team recommendations
C. Status of litigation, BO, observer program
D. DEIS public comments (if available)

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4. Monk seals

A. Current population trends and factors affecting monk seal populations

B. U. S. Coast Guard Environmental Risk Assessment

C. Recommendations of the Monk Seal Recovery Team

D. Bottomfish/monk seal mitigation measures

5. Observer program

A. Archipelago Marine Research Ltd.

B. Digital Observer Project

6. Proposed Oceanic Fisheries Research Program for American Samoa

8:30–5 p.m.- Wednesday May 16, 2001.

1. Pelagic fisheries

A. First quarter 2001 Hawaii and American Samoa longline reports

B. Turtle conservation and management

(1) Overview of litigation, EIS, BO

(2) Biological Opinion

(3) Turtle population models

i. Turtle simulation model

ii. Other models

(4) Status of turtle recovery plans

(5) Council Turtle Conservation Plan

(6) Turtle research

i. Fishing experiment

ii. Other research (biology, tagging, US/Mexico research etc.)

C. Seabird conservation and management

i. EIS measures and the US Fish & Wildlife Service BO

ii. National Plan of Action

iii. Fishers Forum

iv. Underwater setting chute

D. Marine Mammal Protection Act reclassification of Hawaii longline fishery

E. International Management Multilateral High Level Conference, Inter-American Tropical Tuna Commission, Committee on Fisheries

8:30–5 p.m.- Thursday, May 17, 2001

1. Ecosystem and Habitat

A. Ecosystem management plans (demersal, pelagics)

B. Public/agency comments on Draft Coral Reef Ecosystem FMP/DEIS

C. Coral Reef Ecosystem Plan Team recommendations

2. Overfishing definitions/MSY

3. Report on Best Available Science Workshop

4. Alternative for turtle conservation plan

5. Other business

6. Schedule for next meeting

Although non-emergency issues not contained in this agenda may come before the Council for discussion, these issues may not be the subject of formal Council action during these meetings. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final actions to address such emergencies.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: April 23, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–10657 Filed 4–27–01; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

April 25, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: May 1, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 66 FR 11003, published on February 21, 2001.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 25, 2001.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on February 15, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on May 1, 2001, you are directed to adjust the current limits for the following categories, as provided for under the terms of the current bilateral textile agreement:

Category	Adjusted twelve-month limit [1]
Group I 200–224, 225/317/326, 226, 227, 229, 300/301/607, 313–315, 360–363, 369–L/670–L/870 [1], 369–S [2], 369–O [3], 400–414, 464–469, 600–606, 611, 613/614/615/617, 618, 619/620, 621, 623, 624, 625/626/627/628/629, 665, 666, 669–P [4], 669–T [5], 669–O [6], 670–H [7] and 670–O [8], as a group.	619,934,870 square meters equivalent.
Sublevels in Group I 225/317/326	43,221,719 square meters.

Category	Adjusted twelve-month limit [1]
300/301/607	1,890,609 kilograms of which not more than 1,575,508 kilograms shall be in Category 300; not more than 1,575,508 kilograms shall be in Category 301; and not more than 1,575,508 kilograms shall be in Category 607.
363	13,126,649 numbers.
611	3,509,832 square meters.
619/620	15,999,546 square meters.
625/626/627/628/629.	20,819,189 square meters.
Group II 237, 239, 330–332, 333/334/335, 336, 338/339, 340–345, 347/348, 349, 350/650, 351, 352/652, 353, 354, 359–C/659–C [9], 359–H/659–H [10], 359–O [11], 431–444, 445/446, 447/448, 459, 630–632, 633/634/635, 636, 638/639, 640, 641–644, 645/646, 647/648, 649, 651, 653, 654, 659–S [12], 659–O [13], 831–844 and 846–859, as a group.	725,479,292 square meters equivalent.
Sublevels in Group II	
336	130,968 dozen.
338/339	1,031,939 dozen.
340	1,290,612 dozen.
345	126,645 dozen.
347/348	1,493,018 dozen of which not more than 1,288,567 dozen shall be in Categories 347–W/348–W [14].
435	27,171 dozen.
436	5,359 dozen.
438	30,247 dozen.
442	46,018 dozen.
445/446	144,335 dozen.
638/639	6,483,811 dozen.
640	946,682 dozen of which not more than 281,710 dozen shall be in Category 640–Y [15].
642	831,532 dozen.
647/648	5,351,981 dozen of which not more than 5,088,804 dozen shall be in Categories 647–W/648–W [16].
659–S	1,713,821 kilograms.
Within Group II Subgroup	
342	229,491 dozen.
351	381,798 dozen.
447/448	22,304 dozen.
636	418,610 dozen.
651	478,801 dozen.

[1] Category 870; Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091 and 6307.90.9905; Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907.

[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 369–O: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091, 6307.90.9905 (Category 369–L); and 6307.10.2005 (Category 369–S).

[4] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[5] Category 669–T: only HTS numbers 6306.12.0000, 6306.19.0010 and 6306.22.9030.

[6] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 6306.12.0000, 6306.19.0010 and 6306.22.9030 (Category 669–T).

[7] Category 670–H: only HTS numbers 4202.22.4030 and 4202.22.8050.

[8] Category 670–O: all HTS numbers except 4202.22.4030, 4202.22.8050 (Category 670–H); 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[9] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[10] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060; Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[11] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6505.90.1540 and 6505.90.2060 (Category 359–H).

[12] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[13] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[14] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[15] Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[16] Category 647–W: only HTS numbers 6203.23.0060, 6203.23.0070, 6203.29.2030, 6203.29.2035, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.43.4030, 6203.43.4040, 6203.49.1500, 6203.49.2015, 6203.49.2030, 6203.49.2045, 6203.49.2060, 6203.49.8030, 6210.40.5030, 6211.20.1525, 6211.20.3820 and 6211.33.0030; Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–10648 Filed 4–27–01; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection; Comment Request—Recordkeeping Requirements Under the Safety Regulations for Non-Full-Size Cribs

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C.

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Chapter 35), the Consumer Product Safety Commission requests comments on a proposed extension of approval through August 31, 2004, of information collection requirements in the safety regulations for non-full-size cribs codified at 16 CFR 1500.18(a)(14) and Part 1509. These regulations were issued to reduce hazards of strangulation, suffocation, pinching, bruising, laceration, and other injuries associated with non-full-size cribs. (A non-full-size crib is a crib having an interior length greater than 55 inches or smaller than 49¾ inches; or an interior width greater than 30⅝ inches or smaller than 25⅜ inches; or both.) The regulations prescribe performance, design, and labeling requirements for non-full-size cribs. They also require manufacturers and importers of those products to maintain sales records for a period of three years after the manufacture or importation of non-full-size cribs. If any non-full-size cribs subject to provisions of 16 CFR 1500.18(a)(14) and Part 1509 fail to comply in a manner severe enough to warrant a recall, the required records can be used by the manufacturer or importer and by the Commission to identify those persons and firms who should be notified of the recall. The Commission will consider all comments received in response to this notice before requesting approval of this collection of information from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary not later than June 29, 2001.

ADDRESSES: Written comments should be captioned "Collection of Information—Requirements Under the Safety Regulations for Non-Full-Size Cribs" and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: For information about the proposed collection of information call or write Linda L. Glatz, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; (301) 504–0416, Ext. 2226.

SUPPLEMENTARY INFORMATION:

A. Estimated Burden

The Commission staff estimates that there are 16 firms required to annually maintain sales records of non-full-size cribs. The staff further estimates that the average number of hours per respondent is five per year, for a total of 80 hours of annual burden (16 × 5 = 80). The annualized cost to respondents for the collection of information is $1,080, based on a total of 80 hours at $13.50 per hour (the average hourly non-farm wage figure, U.S. Statistical Abstract, 2000).

B. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: April 25, 2001.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 01–10692 Filed 4–27–01; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection; Comment Request—Recordkeeping Requirements Under the Safety Regulations for Full-Size Cribs

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed extension of approval through August 31, 2004, of information collection requirements in the safety regulations for full-size cribs codified at 16 CFR 1500.18(a)(13) and Part 1508. These regulations were issued to reduce hazards of strangulation, suffocation, pinching, bruising, laceration, and other injuries associated with full-size cribs. (A full-size crib is a crib having an interior length of 52⅜ ± ⅝ inches and an interior width of 28 ± ⅝ inches.) The regulations prescribe performance, design, and labeling requirements for full-size cribs. They also require manufacturers and importers of those products to maintain sales records for a period of three years after the manufacture or importation of full-size cribs. If any full-size cribs subject to provisions of 16 CFR 1500.18(a)(13) and Part 1508 fail to comply in a manner severe enough to warrant a recall, the required records can be used by the manufacturer or importer and by the Commission to identify those persons and firms who should be notified of the recall. The Commission will consider all comments received in response to this notice before requesting approval of this collection of information from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary not later than June 29, 2001.

ADDRESSES: Written comments should be captioned "Collection of Information—Requirements Under the Safety Regulations for Full-Size Cribs" and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: For information about the proposed collection of information call or write Linda L. Glatz, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; (301) 504–0416, Ext. 2226.

SUPPLEMENTARY INFORMATION:

A. Estimated Burden

The Commission staff estimates that there are 54 firms required to annually maintain sales records of full-size cribs. The staff further estimates that the average number of hours per respondent is five per year, for a total of 270 hours of annual burden (54 × 5 = 270). The annualized cost to respondents for the hour burden for the collection of information is $3,645, based on 270 hours times $13.50 per hour (the average hourly non-farm wage figure, U.S. Statistical Abstract, 2000.)

B. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: April 25, 2001.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 01–10693 Filed 4–27–01; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection; Comment Request—Procedures for Export of Noncomplying Products

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed extension of approval through August 31, 2004, of information collection requirements in regulations codified at 16 CFR part 1019, which establish procedures for export of noncomplying products. These regulations implement provisions of the Consumer Product Safety Act, the Federal Hazardous Substances Act, and the Flammable Fabrics Act that require persons and firms to notify the Commission before exporting any product that fails to comply with an applicable standard or regulation enforced under provisions of those laws. The Commission is required by law to transmit the information relating to the proposed exportation to the government of the country of intended destination. The Commission will consider all comments received in response to this notice before requesting approval of this collection of information from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary not later than June 29, 2001.

ADDRESSES: Written comments should be captioned "Collection of Information—Procedures for Export of Noncomplying Products" and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: For information about the proposed collection of information call or write Linda L. Glatz, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; (301) 504–0416, Ext. 2226.

SUPPLEMENTARY INFORMATION:

A. Estimated Burden

The Commission staff estimates that there are 65 firms required to annually submit information to the Commission on proposed exports of noncomplying products. The staff further estimates that these 65 firms will submit 75 responses with one hour for each response needed, for a total of 75 hours of annual burden. At a cost of $13.50 per hour, the average hourly non-farm wage figure, U.S. Statistical Abstract, 2000, the annualized cost to respondents would be $1,012.50.

B. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: April 25, 2001.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 01–10694 Filed 4–27–01; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection; Comment Request—Testing and Recordkeeping Requirements Under the Standard for the Flammability of Mattresses and Mattress Pads

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed extension of approval through August 31, 2004, of information collection requirements in the Standard for the Flammability of Mattresses and Mattress Pads (16 CFR part 1632). The standard is intended to reduce unreasonable risks of burn injuries and deaths from fires associated with mattresses and mattress pads. The standard prescribes a test to assure that a mattress or mattress pad will resist ignition from a smoldering cigarette. The standard requires manufacturers to perform prototype tests of each combination of materials and construction methods used to produce mattresses or mattress pads and to obtain acceptable results from such testing. Sale or distribution of mattresses without successful completion of the testing required by the standard violates section 3 of the Flammable Fabrics Act (15 U.S.C. 1192). An enforcement rule implementing the standard requires manufacturers to maintain records of testing performed in accordance with the standard and other information about the mattresses or mattress pads that they produce. The Commission will consider all comments received in response to this notice before requesting approval of this collection of information from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary not later than June 29, 2000.

ADDRESSES: Written comments should be captioned "Collection of Information—Mattress Flammability Standard" and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330

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East-West Highway, Bethesda, Maryland 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: For information about the proposed collection of information call or write Linda L. Glatz, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; (301) 504–0416, Ext. 2226.

SUPPLEMENTARY INFORMATION:

A. Estimated Burden

The Commission staff estimates that there are 850 firms required to test mattresses and keep records. The staff further estimates that each respondent will spend 26 hours for testing and recordkeeping annually for a total of 22,100 hours of annual burden. At a cost of $13.50 per hour, the average hourly non-farm wage figure, U.S. Statistical Abstract, 2000, the annualized cost to respondents would be $298,350.

B. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: April 25, 2001.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 01–10695 Filed 4–27–01; 8:45 am]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 01–C0006]

Cosco, Inc., a Corporation, and Safety 1st, Inc., a Corporation, Subsidiaries of Dorel U.S.A., Inc., Provisional Acceptance of a Settlement Agreement and Order; Correction

AGENCY: Consumer Product Safety Commission.

ACTION: Notice; correction.

SUMMARY: The Consumer Product Safety Commission published a document in the **Federal Register** of April 9, 2001, concerning a provisionally accepted settlement agreement and order with Cosco, Inc. and Safety 1st, Inc. The Summary paragraph of the document contained incomplete information about the two civil penalties contained in the agreement.

FOR FURTHER INFORMATION CONTACT: Ronald G. Yelenik or Patricia Kennedy, Trial Attorneys, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone 301–504–0626.

Correction

In the **Federal Register** issue of April 9, 2001, 66 FR 18450, in the Summary, add before the period of the final sentence the words "for Cosco and a civil penalty of $450,000 for Safety 1st."

Dated: April 24, 2001.

Sadye E. Dunn,

Secretary.

[FR Doc. 01–10691 Filed 4–27–01; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–157–000]

Georgia-Pacific Corp.; Notice of Petition for Declaratory Order

April 24, 2001.

Take notice that on April 16, 2001, Georgia-Pacific Corporation (Georgia-Pacific) filed a petition for a declaratory order in the above-styled proceeding, requesting that the Federal Energy Regulatory Commission issue an order declaring that a prospective lease or other long-term arrangement under which a third-party owner of an industrial facility has the right to a portion of the capacity of Georgia-Pacific's pipeline that crosses the Arkansas/Louisiana border: (1) Shall not constitute the transportation of natural gas in interstate commerce; and (2) shall not subject such pipeline to any greater Commission regulation or oversight than currently in place.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with §§ 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before May 15, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–10584 Filed 4–27–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

April 24, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11942–000.

c. *Date filed:* April 3, 2001.

d. *Applicant:* Hammond Hydroelectric Company.

e. *Name of Project:* Big Creek Hydroelectric Project.

f. *Location:* On Big Creek, on the border between Custer and Lemhi Counties, Idaho. The project would utilize lands of the United States within Challis National Forest, as well as lands administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. Jack S. Hammond, PO Box 1070, Challis, ID 83226, (208) 879–5333.

FERC Contact: James Hunter, (202) 219–2839.

j. *Deadline for filing comment, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and motions to intervene may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Please include the project number (P–11942–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) An 8-foot-high, 16-foot-long concrete diversion structure, crest elevation 6,560 feet, on Big Creek; (2) an adjacent 8-foot-wide intake structure and a 16,000-foot-long, 48-inch-diameter steel penstock; (3) a power plant containing a generating unit with an installed capacity of 2,000 kilowatts; (4) two 500-foot-long, 48-inch-diameter corrugated metal pipes returning flows to Big Creek at elevation 6,260 feet; (5) a 4-mile-long transmission line; and (6) appurtenant facilities. The project would have an annual generation of 9.4 GWh that would be sold to Utah Power & Light Company.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings msut bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application of motion to intervene must also be served each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–10588 Filed 4–27–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2000–010—New York]

Power Authority of the State of New York; Notice of Meetings To Discuss Settlement for Relicensing of the St. Lawrence-FDR Power Project

April 24, 2001.

The establishment of the Cooperative Consultation Process (CCP) Team and the Scoping Process for relicensing of the St. Lawrence-FDR Power Project was identified in the NOTICE OF MEMORANDUM OF UNDERSTANDING, FORMATION OF COOPERATIVE CONSULTATION PROCESS TEAM, AND INITIATION OF

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SCOPING PROCESS ASSOCIATED WITH RELICENSING THE ST. LAWRENCE-FDR POWER PROJECT issued May 2, 1996, and found in the **Federal Register** dated May 8, 1996, Volume 61, No. 90, on page 20813.

The following is a list of the tentative meetings for the CCP Team to continue settlement negotiations on ecological and local issues. The meetings will be conducted at the New York Power Authority (NYPA) Robert Moses Powerhouse, at 10:00 a.m., located in Massena, New York.

The CCP Team will meet:

June 21 and 22, 2001
July 17, 2001
August 21, 2001
September 12, 2001

If you would like more information about the CCP Team and the relicensing process, please contact any one of the following individuals:

Mr. Thomas R. Tatham, New York Power Authority, (212) 468–6747, fax (212) 468–6141, e-mail: *Tatham,T@NYPA. Gov.*

Mr. Bill Little, Esq., New York State Dept. of Environmental Conservation, (518) 457–0986, fax (518) 457–3978, e-mail: *WGLittle@GW.DEC.State.NY.US*

Dr. Jennifer Hill, Federal Energy Regulatory Commission, (202) 219–2797, fax (202) 219–2152, e-mail: *Jennifer.Hill@FERC.Fed.US.*

Further information about NYPA and the St. Lawrence-FDR Power Project can be obtained through the Internet at *http://www.stl.nypa.gov/index.htm.* Information about the Federal Energy Regulatory Commission can be obtained at *http://www.ferc.fed.us.*

David P. Boergers,

Secretary.

[FR Doc. 01–10586 Filed 4–27–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Proposed Change in Project Boundary and Soliciting Comments, Motions to Intervene, and Protests

April 24, 2001.

a. *Application Type:* Change in Project Boundary

b. *Project No:* 2576–025

c. *Date Filed:* July 18, 2000

d. *Applicant:* Northeast Generation Services

e. *Name of Project:* Housatonic Project

f. *Location:* On Candlewood Lake, Town of New Milford, County of Hartford, State of Connecticut. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Robert Gates, Northeast Generation Services, 41 Park Lane, New Milford, Connecticut 06776, telephone 860–354–8840.

i. *FERC Contact:* James T. Griffin, (202) 219–2799, james.griffin@ferc.fed.us.

j. *Deadline for filing comments and or motions:* May 20, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.200(a)(1)(iii) and the instructions on the Commission's web site at http:www.ferc.fed.us/efi/doorbell.htm.

Please include the project number (P–2576–025) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Filing:* Northeast Generation Services proposes to convey to the Town of New Milford and remove from the project boundary two parcels of land on Lake Candlewood that are part of the project lands for the Housatonic Project, Rocky River Development, for the expansion of Lynn Deming Municipal Park.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling 202–208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments, filed, but only those who file a motion to intervene in accordance with the Commission's Rules may became a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date above. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant.

David P. Boergers,

Secretary.

[FR Doc. 01–10587 Filed 4–27–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–495–000 and RP01–97–000]

Texas Gas Transmission Corporation; Notice of Change in Technical Conference

April 24, 2001.

The technical conference in the above-captioned dockets which was previously scheduled to begin at 9 a.m. on May 24, 2001, by notice issued April 19, 2001, will instead begin at 10 a.m. on the same day, in order to accommodate the travel arrangements of theparties.

David P. Boergers

Secretary.

[FR Doc. 01–10589 Filed 4–27–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG01–141–000, et al.]

Effingham County Power, LLC, et al.; Electric Rate and Corporate Regulation Filings

April 23, 2001.

Take notice that the following filings have been made with the Commission:

1. Effingham County Power, LLC

[Docket No. EG01–141–000]

Take notice that on April 17, 2001, Effingham County Power, LLC, 411 Fayetteville Street Mall, Raleigh, NC 27601, tendered for filing the Federal Energy Regulatory Commission (Commission) an amendment to Part III of its application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant is a limited liability company that will engage directly or indirectly and exclusively in the business of owning and/or operating eligible facilities in the United States and selling electric energy at wholesale. The applicant proposes to own and operate an approximately 537 megawatt gas-fired combustion turbine. All electric energy sold by the applicant will be sold exclusively at wholesale.

Comment date: May 14, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Rowan County Power, LLC

[Docket No. EG01–142–000]

Take notice that on April 17, 2001, Rowan County Power, LLC, 411 Fayetteville Street Mall, Raleigh, NC 17602, tendered for filing with the Federal Energy Regulatory Commission (Commission), an amendment to Part III of its application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. The applicant is a limited liability company that will engage directly or indirectly and exclusively in the business of owning and/or operating eligible facilities in the United States and selling electric energy at wholesale. The applicant proposes to own and operate an approximately 500 megawatt gas-fired combustion turbine. All electric energy sold by the applicant will be sold exclusively at wholesale.

Comment date: May 14, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. ManChief Power Company, LLC

[Docket No. EG01–194–000]

Take notice that on April 19, 2001, ManChief Power Company, LLC , 1001 Louisiana Street, Houston, Texas 77002, filed with the Federal Energy Regulatory Commission (Commission), an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

ManChief Power Company, LLC is a Delaware limited liability company formed by El Paso ManChief Power Company, LLC (El Paso ManChief), a Delaware limited liability company and wholly owned subsidiary of Fulton Cogeneration Associates L.P., a New York limited partnership, to acquire, own and maintain a natural gas-fired single-cycle electric generation plant with a maximum capacity of approximately 301.8 MW, located near Brush, Colorado.

Comment date: May 14, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Indigo Generation LLC

[Docket No. EG01–195–000]

Take notice that on April 19, 2001, Indigo Generation LLC (Indigo Generation) filed with the Commission an application for determination of exempt wholesale generator (EWG) status pursuant to Part 365 of the Commission's regulations.

Comment date: May 14, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Larkspur Energy LLC

[Docket No. EG01–196–000]

Take notice that on April 19, 2001, Larkspur Energy LLC (Larkspur Energy) filed with the Commission an application for determination of exempt wholesale generator (EWG) status pursuant to Part 365 of the Commission's regulations.

Comment date: May 14, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Wildflower Energy LP

[Docket No. EG01–197–000]

Take notice that on April 19, 2001, Wildflower Energy LP (Wildflower Energy) filed with the Commission an application for determination of exempt wholesale generator (EWG) status pursuant to Part 365 of the Commission's regulations.

Comment date: May 14, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. Entergy Louisiana, Inc., Entergy Gulf States, Inc., and Entergy Mississippi, Inc.

[Docket Nos. OA97–337–002, OA97–342–002; OA97–346–002; and OA97–348–002]

Take notice that on April 18, 2001, Entergy Services, Inc., on behalf of Entergy Louisiana, Inc., Entergy Gulf States, Inc., and Entergy Mississippi, Inc., tendered for filing its revised compliance filing in response to the Commission's order in Entergy Louisiana, Inc., 94 FERC & 61,330 (2001).

Comment date: May 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Entergy Services, Inc.

[Docket Nos. ER95–112–013 and ER96–586–008]

Take notice that on April 18, 2001, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Mississippi, Inc., Entergy Louisiana, Inc., and Entergy New Orleans, Inc., tendered for filing Substitute Original Sheet No. 153 to its Order No. 614 compliance Open Access Transmission Tariff in the above-captioned dockets.

Comment date: May 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Connecticut Energy Cooperative, Inc.

[Docket No. ER01–1279–001]

Take notice that on April 18, 2001 Connecticut Energy Cooperative, Inc. (the Aco-op) tendered for filing Co-op's amended Rate Schedule FERC No. 1; the amended Rate Schedule FERC No. 1 contains the designation format required by Order No. 614, FERC Stats. & Regs. ¶ 31,096 (2000).

Comment date: May 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

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10. Whiting Clean Energy, Inc.

[Docket No. ER01–1300–001]

Please take notice that on April 18, 2001, Whiting Clean Energy, Inc. (WCE), an indirect wholly owned subsidiary of NiSource Inc., tendered for filing tariff sheets in compliance with the April 12, 2001 Order of the Federal Energy Regulatory Commission. The April 12, 2001 Order required WCE to modify the designations on certain tariff sheets to comply with Order No. 614; FERC Stats. & Regs. ¶ 31,096 (2000). WCE states that the tariff sheets filed pursuant to the April 12, 2001 Order comply with Order No. 614. Specifically, WCE is filing:

Original Sheet No. 6
FERC Electric Tariff, Original Volume No. 1
Original Sheet No. 7
FERC Electric Tariff, Original Volume No. 1
Original Sheet No. 8
FERC Electric Tariff, Original Volume No. 1

Comment date: May 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Whiting Clean Energy, Inc.

[Docket No. ER01–1300–002]

Please take notice that on April 18, 2001, Whiting Clean Energy, Inc. (WCE), an indirect wholly owned subsidiary of NiSource Inc., tendered for filing tariff sheets in compliance with the April 12, 2001 Order of the Federal Energy Regulatory Commission. The April 12, 2001 Order required WCE to modify the designations on certain tariff sheets to comply with Order No. 614, FERC Stats. & Regs. ¶ 31,096 (2000). WCE states that the tariff sheets filed pursuant to the April 12, 2001 Order comply with Order No. 614. Specifically, WCE is filing:

Original Sheet No. 6
FERC Electric Tariff, Original Volume No. 1
Original Sheet No. 7
FERC Electric Tariff, Original Volume No. 1
Original Sheet No. 8
FERC Electric Tariff, Original Volume No. 1

Comment date: May 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER01–1815–000]

Take notice that on April 18, 2001, Wolverine Power Supply Cooperative, Inc. (Wolverine), tendered for filing proposed changes to its Rate Schedule FERC No. 4—Wholesale Service to Member Distribution Cooperatives. The proposed changes amend Rate Schedule FERC No. 4 by adding Rider MOS—Member Owned Substation Credit to account for Wolverine member distribution cooperatives purchasing from Wolverine distribution substations dedicated to the member's use.

Copies of the filing were served on the public utility's jurisdictional customers and the Public Utility Commission of Michigan.

Comment date: May 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Cinergy Services, Inc.

[Docket No. ER01–1816–000]

Take notice that on April 18, 2001, Cinergy Services, Inc. (Cinergy) tendered for filing a Notice of Cancellation of MP Energy, Inc. for the Cost-Based Power Sales, Market-Based Power Sales, and the Resale, Assignment or Transfer of Transmission Rights and Ancillary Service Rights. Cinergy respectfully requests waiver of any applicable regulation to the extent necessary to make the tariff changes effective as of the date of each of the listed name changes.

A copy of the filing has been served to MP Energy, Inc.

Comment date: May 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Exelon Generation Company, LLC

[Docket No. ER01–1817–000]

Take notice that on April 18, 2001, Exelon Generation Company, LLC (Exelon Generation) tendered for filing a service agreement for wholesale power sales transactions between Exelon Generation and Consumers Energy Company under Exelon Generation's wholesale power sales tariff, FERC Electric Tariff, Original Volume No. 1.

Comment date: May 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Allegheny Energy Service Corporation, on Behalf of Monongahela Power Company The Potomac Edison Company, and West Penn Power Company, (Allegheny Power)

[Docket No. ER01–1818–000]

Take notice that on April 18, 2001, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Service Agreement No. 351 to add Calpine Energy Services, L.P. to Allegheny Power's Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000. The proposed effective date under the Service Agreement is April 17, 2001 or a date ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: May 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Cogentrix Lawrence County, LLC

[Docket No. ER01–1819–000]

Take notice that on April 18, 2001, Cogentrix Lawrence County, LLC (Lawrence County), an electric power developer organized under the laws of Delaware, tendered for filing acceptance of its market-based rate tariff, waiver of certain requirements under Subparts B and C of Part 35 of the Commission's regulations, and preapproval of transactions under Part 34 of the regulations. Lawrence County is developing an 810 MW (summer rated) gas fired generating facility in Lawrence County, Indiana.

Copies of this filing are on file with the Commission and are available for public inspection.

Comment date: May 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Cinergy Services, Inc.

[Docket No. ER01–1820–000]

Take notice that on April 18, 2001, Cinergy Services, Inc. (Cinergy Services), on behalf of The Cincinnati Gas & Electric Co. (CG&E) and PSI Energy, Inc. (PSI) (together, the Operating Companies) tendered for filing a short-form market-based rate tariff (Proposed MR Tariff), which included a form of umbrella service agreement. The proposed market based rate tariff does not replace Cinergy Services's existing market-based rate tariff, FERC Electric Tariff, Original Volume No. 7. Cinergy Services requests waiver of the Commission's notice of filing requirements to allow the proposed tariff to become effective on April 19, 2001, the day after filing.

Cinergy Services has served this filing upon the Indiana Utility Regulatory Commission, the Kentucky Public Service Commission and the Public Utilities Commission of Ohio.

Comment date: May 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Power Dynamics, Inc.

[Docket No. ER01–1821–000]

Take notice that on April 18, 2001, Power Dynamics, Inc. (PDI) petitioned the Commission, pursuant to section 205 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205 (1999), tendered for filing an order accepting its Rate Schedule FERC No. 1; for the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and for the waiver of certain Commission regulations.

PDI intends to engage in wholesale electric power and energy purchases and sales as a marketer. PDI is not in the business of generating or transmitting electric power.

Comment date: May 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. Midwest Generation, LLC

[Docket No. ER01–1827–000]

Take notice that on April 18, 2001, Midwest Generation, LLC (Midwest) tendered for filing a long-term service agreement for the sale of power under Midwest's market-based rate tariff, FERC Electric Rate Tariff, Original Volume No. 1 accepted in Docket No. ER99–3693–000.

Comment date: May 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–10644 Filed 4–27–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1263–001, et al.]

Mirant Zeeland, LLC, et al.; Electric Rate and Corporate Regulation Filings

April 24, 2001.

Take notice that the following filings have been made with the Commission:

1. Mirant Zeeland, LLC ,Mirant Neenah, LLC, Mirant Americas Energy Marketing, LP, Mirant Bowline, LLC, Mirant California, LLC, Mirant Canal, LLC, Mirant Chalk Point, LLC, Mirant Delta, LLC, Mirant Kendall, LLC, Mirant Lovett, LLC, Mirant Mid-Atlantic, LLC, Mirant New England, LLC, Mirant NY-Gen, LLC, Mirant Peaker, LLC, Mirant Potomac River, LLC, and Mirant Potrero, LLC

[Docket Nos. ER01–1263–001–ER01–1278–001]

Take notice that on April 12, 2001, Mirant Zeeland, LLC, Mirant Neenah, LLC, Mirant Americas Energy Marketing, LP, Mirant Bowline, LLC, Mirant California, LLC, Mirant Canal, LLC, Mirant Chalk Point, LLC, Mirant Delta, LLC, Mirant Kendall, LLC, Mirant Lovett, LLC, Mirant Mid-Atlantic, LLC, Mirant New England, LLC, Mirant NY-Gen, LLC, Mirant Peaker, LLC, Mirant Potomac River, LLC, Mirant Potrero, LLC tendered for filing Electric Tariff Sheets with amended header designations (placed in accordance with Order 614). These were corrections, rather than true amendments and do not change our status in any way.

Comment date: May 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. PJM Interconnection, L.L.C.

[Docket No. ER00–3513–004]

Take notice that on April 19, 2001, PJM Interconnection, L.L.C. (PJM) tendered for filing revised sheets to PJM's Open Access Transmission Tariff that were filed April 13, 2001 in the above-referenced docket, pursuant to the Commission's March 14, 2001 order in PJM Interconnection, L.L.C., 94 FERC ¶ 61,251 (March 14 Order), to replace the previously filed Tariff sheets that were misdesignated.

PJM states that it served copies of this filing on all parties of record, all PJM Members and the state electric regulatory commissions in the PJM control area.

Comment date: May 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Indigo Generation LLC, Larkspur Energy LLC, and Wildflower Energy LP

[Docket Nos. ER01–1822–000]

Take notice that on April 19, 2001, Indigo Generation LLC, Larkspur Energy LLC, and Wildflower Energy LP (together, the Wildflower Entities) tendered for filing: (1) Accept for filing the Wildflower Entities' proposed FERC Electric Tariffs, and grant their requests for blanket authority to make market-based sales of energy, capacity and certain ancillary services; and (2) grant the Wildflower Entities such waivers and authorizations as have been granted by the Commission to other entities authorized to transact at market-based rates.

Comment date: May 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Virginia Electric and Power Company

[Docket No. ER01–1823–000]

Take notice that on April 19, 2001, Virginia Electric and Power Company (Dominion Virginia Power or the Company) tendered for filing the following Service Agreements with Sempra Energy Trading Corporation (Transmission Customer):

1. Executed Third Amended Service Agreement for Firm Point-to-Point Transmission Service designated Fifth Revised Service Agreement No. 253 under the Company's FERC Electric Tariff, Second Revised Volume No. 5;

2. Executed Third Amended Service Agreement for Non-Firm Point-to-Point Transmission Service designated Fifth Revised Service Agreement No. 49 under the Company's FERC Electric Tariff, Second Revised Volume No. 5.

The foregoing Service Agreements are tendered for filing under the Company's Open Access Transmission Tariff to Eligible Purchasers effective June 7, 2000. Under the tendered Service Agreements, Dominion Virginia Power will provide point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff. The Company requests waiver of the Commission's regulations to permit an effective date of February 12, 2001.

Copies of the filing were served upon Sempra Energy Trading Corporation, the

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Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: May 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Alliant Energy Corporate Services, Inc.

[Docket No. ER01–1824–000]

Take notice that on April 19, 2001, Alliant Energy Corporate Services Inc., tendered for filing a signed Service Agreement under ALTM's Market Based Wholesale Power Sales Tariff (MR–1) between itself and Constellation Power Source, Inc. ALTM respectfully requests a waiver of the Commission's notice requirements, and an effective date of April 10, 2001.

Comment date: May 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Louisville Gas and Electric Company/ Kentucky Utilities Company

[Docket No. ER01–1825–000]

Take notice that on April 19, 2001, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an executed unilateral Service Sales Agreement between Companies and Detroit Edison Company under the Companies' Rate Schedule MBSS.

Comment date: May 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Louisville Gas and Electric Company/ Kentucky Utilities Company

[Docket No. ER01–1826–000]

Take notice that on April 19, 2001, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an executed unilateral Service Sales Agreement between Companies and Williams Energy Marketing and Trading Company under the Companies' Rate Schedule MBSS.

Comment date: May 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Arizona Public Service Company

[Docket No. ER01–463–004]

Take notice that on April 19, 2001, Arizona Public Service Company (APS) tendered for filing its Compliance to FERC's Order on Compliance Filing in Docket No. ER01–463–002.

A copy of this filing has been served on all parties on the official service list.

Comment date: May 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Cargill-Alliant, LLC

[Docket No. ER97–4273–011]

Take notice that on April 19, 2001, Cargill-Alliant, LLC, tendered for filing an updated market analysis.

Comment date: May 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. ONEOK Power Marketing Company

[Docket No. ER98–3897–008]

Take notice that on April 19, 2001, ONEOK Power Marketing Company (OPMC) tendered for filing Electric Tariff, Original Volume No.1, which will supercede Rate Schedule No. 2, in compliance with Commission Order No. 614 and Commission Order dated April 2, 2001 in the referenced proceeding.

OPMC requests an effective date of April 1, 2001.

Comment date: May 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. American Electric Power Service Corporation

[Docket No. ER00–2413–005]

Take notice that on April 19, 2001, American Electric Power Service Corporation tendered for filing, on behalf of the operating companies of the American Electric Power System, proposed amendments to the Open Access Transmission Tariff, in compliance with the Commission's February 21, 2001 Order Granting Clarification and Denying Rehearing.

AEP requests an effective date of sixty (60) days from the date of filing. Copies of AEP's filing have been served upon AEP's transmission customers and the public service commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Tennessee, Texas, Virginia and West Virginia and the Oklahoma Corporation Commission.

Comment date: May 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http:/ /www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–10645 Filed 4–27–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2634–007]

Great Northern Paper, Inc.; Availability of Draft Environmental Assessment

April 24, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a new license for the existing and operating Storage Project, located on Ragged Stream, Caucomgomoc Stream, West Branch and South Branch of the Penobscot River in the Counties of Somerset and Piscataquis, Maine and has prepared a Draft Environmental Assessment (EA) for the project.

Copies of the EA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426. The EA may also be viewed on the web at *http://www.ferc.us/online/rims.htm*. Please call (202) 208–2222 for assistance.

Any comments should be filed within 30 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

Please affix "Storage Project No. 2634–007" to the top page of all comments. For further information, contact John Costello at (202) 219–2914 or *john.costello@ferc.fed.us*.

David P. Boergers,

Secretary.

[FR Doc. 01–10585 Filed 4–27–01; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

April 24, 2001.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 30, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by.this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–XXXX.

Title: Implementation of the Satellite Home View Improvement Act, Broadcast Signal Carriage Issues, Retransmission Consent Issues, CS Docket Nos. 00–96 and 99–363.

Form Number: N/A.

Type of Review: New collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 452.

Estimated Time per Response: 1 to 5 hrs.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 2,700 hrs.

Totol Annual Costs: $90,000.

Needs and Uses: Congress directed the FCC to adopt regulations that apply broadcast signal carriage requirements to satellite carriers pursuant to the changes outlined in the Satellite Home Viewer Improvement Act of 1999. The availability of such information is to inform the public of the method of broadcast signal carriage. In addition, the information is needed so that local broadcast stations can assert their carriage rights within their local markets.

OMB Control Number: 3060–XXXX.

Title: 1998 Biennial Review—Streamlining of Cable Television Services Part 76 Public File and Notice Requirements.

Form Number: N/A.

Type of Review: New collection.

Respondents: Businesses or other for-profit entities; State, local, or tribal government.

Number of Respondents: 10,800.

Estimated Time per Response: 30 mins. to 3 hrs.

Frequency of Response: Recordkeeping; On occasion, semi-annual, and annual reporting requirements; Third party disclosure.

Total Annual Burden: 43,200 hrs.

Total Annual Costs: None.

Needs and Uses: Pursuant to Section 631 of the Communications Act, as amended, 47 U.S.C. 551, upon subscribing to cable or other services, and at least once a year thereafter, a cable operator shall provide a separate, written statement to the subscriber informing the subscriber of: (a) The personally identifiable information to be collected about them; (b) the nature, frequency, and purpose of any disclosure and to whom the disclosure may be made; (c) the period during which such information will be maintained by the cable operator; (d) the times and places at which the subscriber may have access to such information in accordance with Section 631(d); (e) the limitations provided by Section 631 with respect to the collection and disclosure of information by a cable operator; and (f) the right of the subscriber under Sections 631(f) and 631(h) to enforce such limitations. The Report and Order also amends the Commission's cable television rules so that: (1) This subscriber notice is now referenced at the end of various new rule sections; and (2) this filing is now referenced at the end of new 47 CFR 76.1800 pursuant to the Copyright Act, 17 U.S.C. 111(d)(1), which requires cable operators to file, semi-annually, a statement of account with the Licensing Division of the Copyright Office, Library of Congress.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–10628 Filed 4–27–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

[Notice 2001–4]

Filing Dates for the Virginia Special Election in the 4th Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Virginia has scheduled a special election on June 19, 2001, to fill the U.S. House of Representatives seat in the Fourth Congressional District held by the late Congressman Norman Sisisky.

Committees participating in the Virginia special election are required to file pre- and post-election reports.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory J. Scott, Information Division, 999 E Street, NW., Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION: All principal campaign committees of candidates who participate in the Virginia Special General and all other political committees that support candidates in the Special General shall file a 12-day Pre-General Report on June 7, 2001, with coverage dates from the close of the last report filed, or the day of the committee's first activity, whichever is later, through May 30, 2001; and a consolidated 30-day Post-General and Mid-Year Report on July 19, 2001, with coverage dates from May 31 through July 9, 2001.

Committees filing monthly that support candidates in the Virginia Special General should continue to file according to the non-election year monthly reporting schedule.

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CALENDAR OF REPORTING DATES FOR VIRGINIA SPECIAL ELECTION

[Committees involved in the special general (06/19/01) must file]

Report	Close of books[1]	Reg./cert. mailing date[2]	Filing date
Pre-General	05/30/01	06/04/01	06/07/01
Post-General & Mid-Year[3]	07/09/01	07/19/01	07/19/01

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.
[2] Reports sent registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.
[3] Committees should file a consolidated Post-General and Mid-Year Report by the filing date of the Post-General Report.

Dated: April 24, 2001.

David M. Mason,

Vice-Chairman, Federal Election Commission.

[FR Doc. 01–10575 Filed 4–27–01; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Radiological Preparedness Coordinating Committee Meeting

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: The Federal Radiological Preparedness Coordinating Committee (FRPCC) advises the public that the FRPCC will next meet on May 8, 2001 in Washington DC.

DATES: The meeting will be held on May 8, 2001, at 9 a.m.

ADDRESSES: The meeting will be held at the Federal Emergency Management Agency Conference Center in the lobby of 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Pat Tenorio, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, telephone (202) 646–2870; fax (202) 646–3508; or e-mail *pat.tenorio@fema.gov.*

SUPPLEMENTARY INFORMATION: The role and functions of the FRPCC are described in 44 CFR 351.10(a) and 351.11(a). The Agenda for the upcoming FRPCC meeting is expected to include: (1) a review of the FRPCC meetings held on January 17, 2001 and March 7–8, 2001, (2) a report on the National Radiological Emergency Preparedness Conference, (3) reports from FRPCC subcommittees, and (4) old and new business.

The meeting is open to the public, subject to the availability of space. Reasonable provision will be made, if time permits, for oral statements from the public not more than five minutes in length. Any member of the public who wishes to make an oral statement at the May 8, 2001 FRPCC meeting should request time in writing from Russell Salter, FRPCC Chair, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472. The request should be received at least five business days before the meeting. Any member of the public who wishes to file a written statement with the FRPCC should mail the statement to: Federal Radiological Preparedness Coordinating Committee, c/o Pat Tenorio, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Dated: April 24, 2001.

Russell Salter,

Chair, Federal Radiological Preparedness Coordinating Committee.

[FR Doc. 01–10666 Filed 4–27–01; 8:45 am]

BILLING CODE 6718–06–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System

TIME AND DATE: Approximately 4 p.m., Wednesday, May 2, 2001, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Michelle A. Smith, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: April 25, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–10754 Filed 4–25–01; 4:57 pm]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 3 p.m., Wednesday, May 2, 2001.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Discussion Agenda

1. Proposals regarding sections 23A and 23B of the Federal Reserve Act:

a. Publication for comment of proposed new Regulation W (Transactions between Banks and their Affiliates) to simplify compliance with sections 23A and 23B and to implement provisions of the Gramm-Leach-Bliley Act;

b. Proposed interim final rule under the Board's Miscellaneous Interpretations regarding the application of sections 23A and 23B to derivative transactions with affiliates and intraday extensions of credit to affiliates and to implement provisions of the Gramm-Leach-Bliley Act; and

c. Proposed final rule granting certain exemptions from section 23A. (Proposed earlier for public comment; Docket Numbers R–1015 and R–1016).

2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $6 per cassette by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Michelle A. Smith, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: April 25, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–10755 Filed 4–25–01; 4:58 pm]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System Federal Register Citation of Previous Announcement: Unavailable.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 3 p.m., Wednesday, May 2, 2001.

Changes in the Meeting: *The following open item has been moved to the Summary Agenda:* (Because of its routine nature, no discussion of the item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion item.)

Proposed final rule granting certain exemptions from section 23A of the Federal Reserve Act. (Proposed earlier for public comment; Docket Numbers R–1015 and R–1016)

CONTACT PERSON FOR MORE INFORMATION: Michelle A. Smith, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: April 25, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–10758 Filed 4–26–01; 10:18 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01101]

Health Promotion and Disease Prevention Research Centers Cooperative Agreement; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program to fund up to two Health Promotion and Disease Prevention Research Centers (PRCs). This program addresses the "Healthy People 2010" focus area of Educational and Community-Based Programs.

The purpose of the PRC program is to support health promotion and disease prevention research that (1) focuses on the major causes of death and disability; (2) improves public health practice within communities; and (3) cultivates more effective state and local public health programs.

B. Eligible Applicants

Applications may be submitted by schools of public health, schools of medicine or osteopathy with an accredited Preventive Medicine Residency that have:

1. A multidisciplinary faculty with expertise in public health and which has working relationships with relevant groups in such fields as medicine, psychology, nursing, social work, education and business;

2. Graduate training programs relevant to disease prevention;

3. A core faculty in epidemiology, biostatistics, social sciences, behavioral and environmental sciences, and health administration; and

4. A demonstrated curriculum in disease prevention.

Note: Title 2 of the United States Code, Chapter 26, Section 1611 states that an organization described in section of the 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $1,434,000 is available in FY 2001 to fund up to two PRCs at approximately $717,000 per center. It is expected that the awards will begin on or about September 30, 2001, and will be made for a 12-month budget period within a project period of up to two years. Funding estimates may change. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Direct Assistance

You may request Federal personnel, in lieu of a portion of financial assistance (see Application Content).

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipients will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities under 2. (CDC Activities).

1. Recipient Activities

a. Select a research theme that will serve as a focus for Prevention Research activities.

b. Develop the administrative structure and recruit staff to implement a Prevention Research Center plan.

c. Conduct and evaluate a research or demonstration project in health promotion and disease prevention or preventive health services research, within a defined community or special population. The project must reflect the needs of the community within the applicant's jurisdiction and show evidence of having used an appropriate, collaborative planning process with community partners in determining project selection and implementation.

d. Specify how the research project will advance the translation of research into improved public health practice.

e. Establish an advisory committee to provide input on the major program activities. Membership may include but is not limited to a variety of local health-care providers, health and education agency officials, community leaders and organizers, and representatives of local businesses, religious organizations, voluntary organizations, and consumers.

f. Establish collaborative activities with appropriate organizations, individuals, and State and local health departments.

g. Establish the capacity to implement and evaluate multidisciplinary, professional training programs in prevention research or to conduct applied community-based training in

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research methods to foster community involvement and build community capacity for participatory research. If appropriate, this training may include a distance-learning-based format.

h. Establish a plan to ensure translation of research results and program findings to appropriate constituencies (beyond publication in peer-reviewed journals).

i. Designate a core staff member with expertise in research dissemination and information management to assist in the following types of activities: (1) the development of bibliographies and other archives pertaining to research publications and other documents; (2) training and other research and translation activities etc.

2. CDC Activities

a. Assist the recipient in all stages of the program by providing programmatic and technical assistance.

b. Assist in improving program performance through consultation based on information and activities of other projects.

c. At the request of the applicant, assign Federal personnel in lieu of a portion of the financial assistance to assist with developing the curriculum, training, or conducting other specific necessary activities.

d. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

E. Content

Letter of Intent (LOI)

An LOI is required for this program. The narrative should be no more than 2 double-spaced pages, printed on one side, with one inch margins, and 12" font. Your letter of intent will be used to plan the external peer reivew panel, and should briefly describe the proposed theme for the prospective Prevention Research Center (maximum of one paragraph), the applicant's experience and expertise on the proposed theme (maximum of one paragraph), and a brief description of the propose community partners (maximum of one paragraph). The LOI must also include the name, address, telephone number, facsimile (fax) number, and E-mail address for a contact person from the applicant institution. Attachments, booklets, or other documents will not be accepted with the LOI.

Applications

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 90 double-spaced paged, printed on one side, with one inch margins, and 12" font, excluding appendixes and PHS Form 398. Appendices must not exceed 25 pages and must be hard copy documents (i.e., no audiovisual materials, posters, etc.). Instructions contained here regarding font and page length supersede those in the PHS Form 398.

1. Research Theme

Identify a research theme and describe activities designed to focus on the theme that will result in innovative approaches to prevention research. Clearly identify the needs of the partner communities and describe the PRC's experience working with communities in selecting or revising/focusing the research theme. The applicant may wish to refer to products from the Task Force Community Preventive Services when considering their research theme. (For detailed information, visit the Guide to Community Preventive Services on the Web at *http://www.communityguide.org*).

Examples of research themes from current Research Prevention Centers include:

a. Bridging the Gap Between Public Health Science and Practice in Undeserved Populations.

b. Promoting the Health of Multiethnic Communities of the Southwest.

c. Putting Health Promotion into Action: Community Collaboration.

d. Reduction of Excess Morbidity and Mortality in the Harlem Community.

e. Promoting Health Through Physical Activity.

f. Community-based Marketing.

2. Prevention Research Center Plan

Identify and submit a plan for a prevention research center with specified goals, objectives, activities, and timeliness to include:

a. A description of goals and objectives of the PRC for the budget period that are consistent with the research theme.

b. A description of the use of other federal funds that will impact on stated program objectives.

c. A description of any financial and in-kind contributions from non-federal sources.

d. Describe a plan for building the identity of the PRC within the university and local community.

e. Documentation describing the composition, membership, rationale for membership, and objectives for a Community Advisory Committee. Documentation of how the Advisory Committee will collaborate in the selection and implementation of priority activities for the centers as well as facilitate collaboration with community organizations, state and local health or education departments. Documentation of dissemination activities to these constituencies.

f. Either a description of plans for conducting community-based applied training or a description of capacity to provide prevention research training for professionals.

g. Documentation of commitment to minority and undeserved populations, or other defined populations or communities (Be sure to give an operational definition of community).

h. A description of significant factors that may favorably or adversely impact on program performance and how these will be addressed during implementation of the center.

3. Management and Staffing Plan

Provide a management plan that includes a description of all organizational units and functions in the PRC. The plan should reflect the ability of the PRC to carry out the chosen research theme. Describe how the applicant will integrate the PRC within the parent institution. The following areas should be considered in developing a management and staffing plan:

a. Describe the PRC's personnel infrastructure.

1. Describe proposed leadership roles including how they complement one another.

2. Describe how staff filling each role will be actively engaged in the PRC.

b. Describe how proposed staffing will support center activity. Current resumes must be included.

c. Describe how the proposed staff meet the goal of establishing a multidisciplinary prevention research center.

d. No less than two full-time positions (FTE's) must be allocated for the following functions:

(Percentages of an FTE may be used for several positions:)

(1) Center Leadership: Responsible for overall center functions and the final authority for decision making about program and project activities/issues.

(2) Scientific oversight: Accountable for center research and development, design, methodology, project evaluation, and publications.

(3) Community Development: Community liaison, advisory committee, community training activities, and community dissemination.

(4) Program and Project Management: Oversight of center supported research and Institutional Review Board (IRB) protocols, coordination of center studies, mentorship of junior investigators, dissemination activities, and professional training in prevention research.

(5) Center Administration: Responsible for communication with CDC's Prevention Research Centers Program staff and Procurement and Grants Office. Responsibilities will include submission of fiscal reports, fiscal tracking and reports, personnel, and center procurement.

4. Research Project

Provide a description of a research or demonstration project that is consistent with the PRC Program objectives and selected PRC theme. The narrative for specific project should contain:

a. A description of the project including goals, objectives, time-line, research questions and target population.

b. A description of the methods including methods for participant recruitment, data collection, evaluation design, and data analysis.

c. A description of the extent of community and other research collaborations in the proposed project.

d. A description of project staff (number and types of positions).

e. A project budget.

f. A description of the plans to translate research findings onto public health practice or policy.

g. A description of how the project addresses the requirements of title 45 CFR Part 46 for the protection of human subjects.

5. Evaluation Plan

Describe a plan to evaluate PRC program and activities with regard to program progress and process; fulfillment of outcome objectives; impact, and community involvement; the PRC's community-based objectives; and any other indicators, such as cost benefit analyses. Describe a plan to evaluate the scientific methods utilized or described in center research projects, publications, and protocols. Specify staff responsible for the plans and their background and experience in center level evaluation.

6. Budget Information

Provide a line-item budget and narrative justification for all requested costs that are consistent with the goals, objectives, and proposed research activities, to include:

a. Line-item breakdown and justification for all personnel, i.e., name, position title, annual salary, percentage of time and effort, and amount requested.

b. Line-item breakdown and justification for all contracts and consultants, to include:

(1) Name of contractor or consultant
(2) Period of performance
(3) Method of selection (e.g., competitive or sole source)
(4) Scope of work
(5) Method of accountability
(6) Itemized budget

c. To request new direct assistance assignees, include:

(1) number of assignees requested;
(2) description of the position and proposed duties for each assignee;
(3) ability or inability to hire locally with financial assistance;
(4) justification for request;
(5) organizational chart and the name of intended supervisor;
(6) opportunities for training, education, and work experiences for assignees; and
(7) description of assignee's access to computer equipment for communication with (e.g., personal computer at home, personal computer at workstation, shared computer at workstation on site, shared computer at a central office).

F. Submission and Deadline

Letter of Intent (LOI)

On or before May 24, 2001, submit an original and 2 copies of the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the original and five copies of the application PHS Form 398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available in the application kit and at the following Internet address: www.cdc.gov/od/pgo/forminfo.htm

On or before June 15, 2001, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an external peer review panel: (1) PRC Theme; (2) Center Plan; (3) Management and Staffing Plan; (4) Research Project; and (5) Evaluation. The Budget and Human Subjects sections are reviewed but not scored. The review panel will score each of the 5 criteria listed above on a 1–5 scale (with increments of 0.1) with 1=highest (best) and 5-lowest. The review panel will also score the application overall, based on the same scale. the reviewers' scores are then averaged and multiplied by 100 to attain a priority score for the application. The review panel will compile a summary and recommendations including the strengths and weaknesses of the application.

1. PRC Theme

(a) To what extent does the research theme meet health priorities and emerging public health needs of identified communities or special groups?

(b) To what extent has there been community involvement in the selection of the theme?

2. Center Plan

(a) To what extent does the plan have objectives that are clear, specific, measurable, attainable, realistic and time-phased?

(b) Does the plan make effective use of both PRC and community resources to advance the PRC theme?

(c) Is the plan consistent with the PRC purpose, and does it include a two-year time-line?

(d) Does the plan describe the composition of a Community Advisory Committee and rationale for its membership, relevance and feasibility of committee objectives and its role within the PRC?

(e) Is a plan included to establish collaborative activities with appropriate organizations, individuals, State, and local health departments?

(f) Is a plan included to conduct community-based training in research methods to foster community involvement and build community

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capacity for participatory research or does the plan contain a description of the Center's capacity for providing professional, multidisciplinary prevention research training in the area of health promotion and disease prevention?

(g) Does the plan address dissemination of findings to the community?

3. Management and Staffing Plan

(a) To what extent does the applicant demonstrate the ability, capacity, organizational structure, and staffing to carry out the overall theme, objectives, and specific project plans?

(b) Does the applicant demonstrate well-defined and active leadership roles for the center?

4. Research Project

(a) Does the applicant demonstrate an understanding of the community contexts, current scientific literature, as well as other information sources relevant to the proposed project?

(b) Are the conceptual framework, design, methods, analyses, and translation plan adequately developed, well-integrated, scientifically strong, and appropriate to the aims of the project?

(c) Does the proposed approach allow for flexibility or change in research methods or focus as necessary?

(d) Does the applicant acknowledge potential problem areas and consider alternative tactics?

(e) Is there an appropriate work plan included?

(f) Does the project include plans to measure progress toward achieving the stated objectives?

(g) Does the applicant propose research translation approaches or methods from the project?

(h) The degree to which the applicant has met the CDC policy requirements regarding the inclusion of women, ethnic and racial groups in the proposed research. This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

5. Evaluation

(a) To what extent are the plan and methodology proposed to evaluate the PRC program and activities with regard to program progress and process; fulfillment of outcome objectives; impact, and community involvement; the PRCs community-based objectives; and any other indicators, such as cost-benefit analyses feasible and of scientific merit?

(b) Are there adequate plans for periodic evaluation of the technical and scientific merit of research projects and publications?

6. Budget (Reviewed But Not Scored)

The extent to which the budget and justification are consistent with the program objectives and purpose.

7. Human Subjects (Reviewed But Not Scored)

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. annual reports;
2. financial status report, no more than 90 days after the end of the budget period; and
3. final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 1 of the announcement.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a), 317(k)(2) and 1706 [42 U.S.C. 241(a), 247b(k)(2) and 300u–5] of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance number is 983.135.

J. Where to Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov Click on "Funding" then "Grants and Cooperative Agreements."

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Program Announcement number of interest.

Should you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Robert Hancock, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone number (770) 488–2746, E-mail address: rnh2@cdc.gov.

For program technical assistance, contact: David Elswick, Deputy Program Director, Prevention Research Centers Office, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Highway, Northeast, Atlanta, GA 30341–3724, Telephone number: 404–488–5395, E-mail address: dcel@cdc.gov.

Dated: April 23, 2001.

John L. Williams,

Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–10481 Filed 4–27–01; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Grant Program for Strategies for Improving Health Risk Communication Related to Military Deployments Among Military Personnel, Veterans, Their Family Members, and Their Health Care Providers, PA# 01021

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Grant Program for Strategies for Improving Health Risk Communication Related to Military Deployments among Military Personnel, Veterans, their Family Members, and their Health Care Providers, PA# 01021.

Times and Dates: 8 a.m.–9:15 a.m., June 4, 2001 (Open), 9:15 a.m.–4:30 p.m., June 4, 2001 (Closed), 8:30 a.m.–4:30 p.m., June 5, 2001 (Closed).

Place: Holiday Inn Select Conference Center, 130 Clairemont Avenue, Decatur, GA 30030.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Deputy Director for Program Management, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to PA# 01021.

Contact Person for More Information: Drue Barrett, Ph.D., Chief, Veterans' Health Activity Working Group, National Center for Environmental Health, CDC, 1600 Clifton Rd, NE, MS E–19, Atlanta, Ga. 30333. Telephone 404/639–4862, e-mail dhb1@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for the both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 12, 2001.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 01–10612 Filed 4–27–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACYF–PA–CCB–2001–03]

Early Learning Opportunities Act Discretionary Grants

AGENCY: Administration on Children, Youth and Families (ACYF), ACF, DHHS.

ACTION: Announcement of the availability of competitive grants to Local Councils.

SUMMARY: The purpose of this program announcement is to announce the availability of Fiscal Year 2001 Discretionary Funds, authorized by Congress under the FY 2001 Consolidated Appropriations Act, for grants to Local Councils.

DATES: The closing date for submission of applications is June 14, 2001. Mailed applications postmarked after the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date, or sent on or before the deadline date and received by ACF in time for the independent review to: Administration on Children, Youth and Families, Child Care Bureau Program Announcement No. ACYF–PA–CCB–2001–03, 1815 North Fort Myer Drive, Suite 300, Arlington, VA 22209, Telephone: 1–800–351–2293.

Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as a proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications hand carried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., EST, Monday through Friday (excluding Federal holidays) at the address above. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or through other electronic media, regardless of date or time of submission and receipt. Therefore, applications transmitted to ACF electronically will not be accepted.

Late Applications. Applications that do not meet the criteria stated above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of Deadlines. ACF may extend an application deadline for applicants affected by acts of God such as floods and hurricanes, when there is widespread disruption of mail service, or for other disruptions of services, such as a prolonged blackout, that affect the public at large. A determination to extend or waive deadline requirements rests with the Chief Grants Management Officer.

Notice of Intent to Submit Application: If you intend to submit an application, please contact ACYF's Operations Center at 1–800–351–2293 with the following information: the number and title of this announcement; your organization's name and address; and your contact person's name, phone number, fax number, and e-mail address. The information will be used to determine the number of expert reviewers needed to evaluate applications and to update the mailing list for program announcements.

FOR FURTHER INFORMATION CONTACT: Administration on Children, Youth and Families, Child Care Bureau, Room 2046, Mary E. Switzer Building, 330 C Street, Southwest, Washington, DC 20447, Phone: 202–690–6243 or 202–401–5130, Fax: 202–690–5600.

SUPPLEMENTARY INFORMATION: The ACF Uniform Discretionary Grant Application, covering all ACF announcements contained in the Application Kit, and this Supplementary Information section, contains all the forms and instructions needed to apply for a grant under this announcement. No additional application materials are needed.

The Supplementary Information section consists of seven parts. Part I includes general information about funding requirements, and application procedures for child care grants under this program announcement. Part II provides background information on the Child Care Bureau and the Early Learning Opportunities Act as well as relevant definitions. Part III describes goals and priorities related to this announcement. Part IV provides instructions for the Uniform Project Description. Part V describes the evaluation criteria and selection process. Part VI describes the application process. Part VII provides information on the content of the application and submission instructions. The contents are outlined below:

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Part I. General Information

A. Purpose

The purpose of this program announcement is to announce the availability of fiscal year 2001 funds, authorized under the Early Learning Opportunities Act (ELOA), for early learning programs likely to produce sustained gains in early learning.

B. Citations

1. *Sponsorship.* Grants being awarded under this announcement are sponsored by the Child Care Bureau (the Bureau) of the Administration on Children, Youth and Families (ACYF) in the Administration for Children and Families (ACF), U.S. Department of Health and Human Services (DHHS). The Bureau will manage the projects.

2. *Funding Authority.* Funding is provided by ACF under the Consolidated Appropriations Act, 2001 (Pub. L. 106–554).

3. *Catalog of Federal Domestic Assistance.* The Catalog of Federal Domestic Assistance Number is 93.577.

C. Number of Awards

Up to 25 projects will be funded in fiscal year 2001 (by September 30, 2001) subject to the availability of funds and the results of the review process.

D. Project Duration

The project period will be 17 months. It is anticipated that the project period will be September 23, 2001 to February 28, 2003.

E. Funding Levels and Budget Periods

Awards will be for 17-month project and budget periods. Individual awards will be between $250,000 and $1,000,000 depending on the size of the population to be served as well as geographic area to be served and the reasonableness of the budget in relationship to the services to be provided. While this will vary depending on the scope of the applications submitted, awards are expected to average $700,000.

The Act (section 809) provides that the Secretary shall reserve a portion of each year's total appropriation for the Early Learning Opportunities Act (ELOA) for Indian Tribes, Regional Corporations, and Native Hawaiian entities. ACF anticipates competitively awarding funds to at least one Local Council designated by an Indian Tribe and one Local Council designated by an Alaska Native Regional Corporation or Native Hawaiian entity, subject to receipt of applications meeting the requirements of the Act as reflected in this announcement. ACF intends to award no less than one percent of the FY 2001 ELOA appropriation in grants to Indian Tribes, Alaska Natives, and Native Hawaiians.

F. Non-Federal Share of Project Costs

Grantees must provide at least 15 percent of the total approved project cost. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $500,000 in Federal funds must include a match of at least $88,236 (15 percent total project cost). The non-Federal share may be contributed in cash or in-kind, fairly evaluated, including facilities, equipment, or services, which may be provided from State or local public sources, or through donations from private entities. For the purposes of this paragraph, the term "facilities" includes the use of facilities, but the term "equipment" means donated equipment and not the use of equipment. Grantees will be held accountable on the grant award for commitments of non-Federal resources even if the approved amount exceeds the minimum match required. Failure to provide the amount specified on the grant award can result in a disallowance of Federal funds.

G. Other Financial Requirements

Amounts received shall be used to supplement and not supplant other Federal, State, and local public funds expended to promote early learning. No funds provided shall be used to carry-out an activity funded under another provision of law providing for Federal child care or early learning programs, unless an expansion of such activity is identified in the local needs assessment and performance goals.

Not more than three percent of the Federal funds received by the Local Council through this announcement shall be used to pay for the administrative costs (as defined in Part II.C.) of the Local Council in carrying out activities funded under the grant.

H. Eligibility

An eligible applicant for these grants must be designated by a local government entity (or Indian Tribe, Regional Corporation, or Native Hawaiian entity) as a "Local Council" to serve one or more localities. Applicants must include a letter from the designating entity in their application (see Part V, Evaluation Criteria, Criterion 4). Membership of the governing body of the applicant organization must include representatives as follows:

1. Local agencies that will be directly affected by early learning programs assisted under the Early Learning Opportunities Act and this announcement;
2. Parents;
3. Other individuals concerned with early learning issues in the locality, such as representatives of entities providing elementary education, child care resource and referral services, early learning opportunities, child care, and health services; and
4. Other key community leaders.

Local Councils that have been formed prior to the date of enactment of the Early Learning Opportunities Act and have similar membership will also be considered eligible. It is critical that Councils be able to demonstrate organizational and fiscal capabilities. Further, it is not recommended that Local Councils provide direct services to the children and families in their communities.

A Local Council may enter into an agreement with an entity with a demonstrated capacity for administering grants that is affected by, or concerned with, early learning issues, including the State, to serve as fiscal agent for the administration of grant funds received by the Local Council under this program. The Local Council, however, must be the applicant under this announcement, and if selected for a grant, must be responsible for ensuring compliance with the activities and terms of the grant.

Non-profit organizations submitting an application must submit proof of their non-profit status in their applications at the time of submission. This can be accomplished by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code *or* by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

I. Protections

1. No person, including a parent, shall be required to participate in any program of early childhood education, early learning, parent education, or developmental screening pursuant to the provisions of the Early Learning Opportunities Act.

2. Nothing in the Early Learning Opportunities Act shall be construed to affect the rights of parents otherwise established in Federal, State, or local law.

3. No entity that receives funds under this title shall be required to provide services under this title through a particular instructional method or in a particular instructional setting to comply with this title.

Part II. Background and Context

A. The Child Care Bureau

The Child Care Bureau was established in 1994 to provide leadership to efforts to enhance the quality, affordability, and supply of child care. The Child Care Bureau administers the Child Care and Development Fund (CCDF), a $4.6 billion child care program that includes funding for child care subsidies and activities to improve the quality and availability of child care. CCDF was created after amendments to ACF child care programs by Title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 consolidated four Federal child care funding streams including the Child Care and Development Block Grant, AFDC/JOBS Child Care, Transitional Child Care, and At-Risk Child Care.

The Bureau works closely with ACF Regions, States, Territories and Tribes to assist with, oversee, and document implementation of new policies and programs in support of State, local and private sector administration of child care services and systems. In addition, the Bureau collaborates extensively with other offices throughout the Federal government to promote integrated, family-focused services and coordinated child care delivery systems. In all of these activities, the Bureau seeks to enhance the quality, availability, and affordability of child care services, support children's healthy growth and development in safe child care environments, enhance parental choice and involvement in their children's care, and facilitate the linkage of child care with other community services.

B. The Early Learning Opportunities Act

The Early Learning Opportunities Act (ELOA) was passed by Congress to award grants to States to enable them to increase, support, expand and better coordinate early learning opportunities for children and their families through local community organizations. The purposes of the Act are to: (1) Increase the availability of voluntary programs, services, and activities that support early childhood development, increase parent effectiveness, and promote the learning readiness of young children so that young children enter school ready to learn; (2) support parents, child care providers, and caregivers who want to incorporate early learning activities into the daily lives of young children; (3) remove barriers to the provision of an accessible system of early childhood learning programs in communities throughout the United States; (4) increase the availability and affordability of professional development activities and compensation for caregivers and child care providers; and (5) facilitate the development of community-based systems of collaborative service delivery models characterized by resource sharing, linkages between appropriate supports, and local planning for services.

The Act provides that if the amount appropriated for this program in any fiscal year is less than $150 million, the Department of Health and Human Services (DHHS) shall award grants on a competitive basis directly to Local Councils. DHHS is administering the program under this special provision in FY 2001.

C. Definitions

Administrative Costs—Administrative costs are defined as costs related to the overall management of the program which do not directly relate to the provision of program services. These costs can be in both the personnel and non-personnel budget categories and include, but are not limited to: salaries of managerial and administrative staff, indirect costs, and other costs associated with administrative functions such as accounting, payroll services or auditing.

Caregiver—The term "caregiver" means an individual, including a relative, neighbor, or family friend, who regularly or frequently provides care, with or without compensation, for a child for whom the individual is not the parent.

Child Care Provider—The term "child care provider" means a provider of non-residential child care services (including center-based, family-based, and in-home child care services) for compensation who or that is legally operating under State law, and complies with applicable State and local requirements for the provision of child care services.

Early Learning—used with respect to a program or activity, means learning designed to facilitate the development of cognitive, language, motor, and social-emotional skills for, and to promote learning readiness in, young children (see definition of young child).

Early Learning Program—is a program of services or activities that helps parents, caregivers, and child care providers to incorporate early learning into the daily lives of young children; or a program that directly provides early learning to young children.

Indian Tribe—The term "Indian Tribe" has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

Local Council—The term "Local Council" means a Local Council established or designated by a local government, Indian Tribe, Regional Corporation, or Native Hawaiian entity to serve as applicant under this announcement and that serves one or more localities.

Locality—The term "locality" means a city, county, borough, township, or area served by another general purpose unit of local government, an Indian Tribe, a Regional Corporation, or a Native Hawaiian entity.

Native Hawaiian Entity—A private non-profit organization that serves the interests of Native Hawaiians, and is recognized by the Governor of Hawaii for the purpose of planning, conducting, or administering programs (or parts of programs) for the benefit of Native Hawaiians.

Parent—"parent" means a biological parent, an adoptive parent, a stepparent, a foster parent, or a legal guardian of, or

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a person standing in loco parentis to a child.

Regional Corporation—Native Alaska Regional Corporation; an entity listed in section 419(4)(B) of the Social Security Act (42 U.S.C. 619(4)(B)).

Young Child—for purposes of this program, the term "young child" means any child from birth to the age of mandatory school attendance in the State where the child resides.

Part III. Early Learning Opportunities Act Grants—Goals and Priorities

For FY 2001, grants will be awarded directly to Local Councils that can best assess their community needs and create a plan to facilitate the development of community-based systems and collaborative service delivery models.

These grants will be available to Local Councils that have been so designated by a local government, Indian Tribe, Regional Corporation, or Native Hawaiian entity. Multiple applications from the same locality and applications that cover overlapping geographic areas will not be considered. Local Councils will be required to submit a current needs and resources assessment, documenting the needs of the young children and families in their locality, as well as a local plan that addresses the most significant needs. The plan will include three or more of the required Early Learning Activities (listed below) and clarify the outcome measures for each activity being proposed. Grants will be awarded to Councils for seventeen months through a competitive process.

Local Councils must include three or more of the following activities in their implementation plan to be eligible for grants.

1. Helping parents, caregivers, child care providers, and educators increase their capacity to facilitate the development of cognitive, language comprehension, expressive language, social-emotional, and motor skills, and promote learning readiness.
2. Promoting effective parenting.
3. Enhancing early childhood literacy.
4. Developing linkages among early learning programs within a community and between early learning programs and health care services for young children.
5. Increasing access to early learning opportunities for young children with special needs including developmental delays, by facilitating coordination with other programs serving such young children.
6. Increasing access to existing early learning programs by expanding the days or times that the young children are served, by expanding the number of young children served, or by improving the affordability of the programs for low-income families.
7. Improving the quality of early learning programs through professional development and training activities, increased compensation, and recruitment and retention incentives, for early learning providers.
8. Removing ancillary barriers to early learning, including transportation difficulties and absence of programs during nontraditional work times.

Part IV. General Instructions for the Uniform Project Description

The following ACF Uniform Project Description has been approved under OMB Control Number 0970–0139. This format is to be used to submit an application under this announcement.

A. Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

B. Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated); some of which may be outside the scope of the program announcement.

C. Results or Benefits Expected

Identify the results and benefits to be derived. For example, describe who will receive early learning services, where and how these services will be provided, the anticipated numbers of children and families to be served, and how the services will benefit the young children, families and community to be served.

D. Approach

Outline a plan of action, which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others.

Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement. Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information that is conducted or sponsored by ACF."

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

E. Evaluation

Provide a narrative addressing how the results of the project and the conduct of the project will be evaluated. In addressing the evaluation of results, state how you will determine the extent to which the project has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the project. Discuss the criteria to be used to evaluate results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. With respect to the conduct of the project, define the procedures to be employed to determine whether the project is being conducted in a manner consistent with the work plan presented and discuss the impact of the project's various activities on the project's effectiveness.

F. Geographic Location

Describe the precise location of the project and boundaries of the area to be served by the proposed project. Maps or other graphic aids may be attached.

G. Additional Information

Following are requests for additional information that need to be included in the application.

1. *Staff and Position Data:* Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

2. *Plan for Project Continuance Beyond Grant Support:* Provide a plan for securing resources and continuing project activities after Federal assistance has ceased.

3. *Organizational Profiles:* Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code, *or* by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

4. *Third-Party Agreements:* Include written agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

5. *Letters of Support:* Provide statements from community, public and commercial leaders that support the project proposed for funding. All submissions should be included in the application *OR* by application deadline.

H. Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

General: The following guidelines are for proposing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, "Federal resources" refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

1. *Personnel:* Description: Costs of employee salaries and wages. Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

2. *Fringe Benefits:* Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate. Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

3. *Travel:* Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel). Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

4. *Equipment:* Description: "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (Note: Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.) Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use in the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

5. *Supplies:* Description: Costs of all tangible personal property other than that included under the Equipment category. Justification: Specify general categories of supplies and their costs. Show computations and provide other information that supports the amount requested.

6. *Contractual:* Description: Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category. Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceeds $100,000. Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc. Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

7. *Non-Federal Resources:* Description: Amounts of non-Federal

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resources that will be used to support the project as identified in Block 15 of the SF–424. Justification: The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each funding source.

8. *Program Income:* Description: The estimated amount of income, if any, expected to be generated from this project. Justification: Describe the nature, source and anticipated use of program income in the budget or refer to the pages in the application which contain this information.

Part V. Evaluation Criteria

The six evaluation criteria that follow will be used to review and evaluate each application. Each of the criteria should be addressed in the project description section of the application. The point values indicate the maximum numerical weight each criterion will be accorded in the review process. Note that the highest possible score an application can receive is 100 points.

A. Evaluation Criteria

Criterion 1. Objectives and Need for Assistance (20 Points)

1. The extent to which the applicant specifies the goals and objectives of the project and describes how implementation will fulfill the purposes of the Early Learning Opportunities Act. The applicant must demonstrate a thorough understanding of the importance of early learning services and activities that help parents, caregivers, and child care providers incorporate early learning into the daily lives of young children, as well as programs that directly provide early learning to young children.

2. The extent to which the applicant demonstrates the need for assistance including identification and discussion of its needs and resources assessment concerning early learning services. Relevant data from the assessment should be included. Participant and beneficiary information must also be included.

3. The extent to which the applicant demonstrates how it will give preference to supporting activities/projects that maximize the use of resources through collaboration with other early learning programs, provide continuity of services for young children across the age spectrum, and help parents and other caregivers promote early learning with their young children. The applicant must provide information about how decisions will be made about who will provide each early learning service and/or activity funded through this grant.

4. The extent to which the applicant demonstrates that it has worked with local education agencies to identify cognitive, social, and emotional, and motor developmental abilities which are necessary to support children's readiness for school; that the programs, services, and activities assisted under this title will represent developmentally appropriate steps toward the acquisition of those abilities; and, that the programs, services, and activities assisted provide benefits for children cared for in their own homes as well as children placed in the care of others.

Criterion 2. Results and Benefits Expected (10 Points)

The extent to which the applicant:

1. Specifies the number of children and families to be served and how the services to be provided will be funded consistent with the assessment.

2. Explains how the expected results will benefit the population to be served in meeting its needs for early learning services and activities.

3. Describes how it will assess the effects that services provided under this grant have had in addressing the needs identified under its needs and resources assessment. Particular attention must be paid to discussing how the effectiveness of the activities included in their implementation plan (approach) will be assessed.

4. Demonstrates that completion of the proposed objectives will result in specific, measurable results. The specific information provided in the narrative and plan on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of the project period (i.e., 17 months).

Criterion 3. Approach (35 Points)

The extent to which the applicant:

1. Includes a detailed plan that identifies goals and objectives, relates those goals and objectives to the findings of its needs and resources assessment, and provides a work plan identifying specific activities necessary to accomplish the stated goals and objectives. The plan must demonstrate that each of the project objectives and activities supports the current needs and resource assessment and can be accomplished with the available or expected resources during the proposed project period. In addition, the plan must:

- Indicate when the objective and major activities under each objective will be accomplished (a timeline is recommended);
- Specify who will conduct the activities under each objective;
- Describe how subcontractors will be chosen and held accountable for carrying out activities in compliance with this application and grant terms and conditions;
- Describe how actual and perceived conflict of interest will be avoided if the Local Council is also a direct service provider; and,
- Indicate how programs, services, and activities are provided based on the family's ability to pay (for services that customarily require a payment).

2. Describes how the project will form collaborations among local early learning, youth, social service, and educational providers to maximize resources and concentrate efforts on areas of greatest need.

3. Includes a feasible plan for securing resources and continuing early learning activities after Federal assistance has ended.

Criterion 4. Geographic Location (5 Points)

1. The applicant must describe the precise location of the project and boundaries of the area to be served. Maps or other graphic aids that are easily duplicated may be attached. Applications from multiple applicants proposing to serve the same or overlapping geographic areas will be disqualified.

2. The applicant must include a letter from an entity of local government (or Indian Tribe, Regional Corporation, or Native Hawaiian entity) designating the applicant as a "Local Council" to serve one or more localities.

Criterion 5. Staff and Position Data and Organizational Profiles (20 Points)

The extent to which the applicant:

1. Demonstrates its staff and organizational experience particularly in areas of facilitating needs and resources assessments and collaborative activities as they relate to early learning services. The applicant must also document its experience in facilitating such activities and the length of time the applicant has been involved in these activities. Evidence of the applicant's ability to manage a project of the proposed scope is demonstrated. The application clearly shows the successful management of projects of similar scope by the organization, and/or by the individuals designated to manage the project.

2. Provides position descriptions and/or resumes of key personnel, including those of consultants. The position descriptions and/or resumes relate specifically to the staff proposed in the applicant's plan and proposed budget. Position descriptions must clearly describe each position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes and/or proposed position descriptions demonstrate that the proposed staff are or will be qualified to carry out the project activities. Either the position descriptions or the resumes contain the qualifications and/or specialized skills necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application. Resumes must indicate what position the individual will fill and position descriptions must specifically describe the job as it relates to the proposed project. The applicant must also list organizations and consultants who will work on the program along with a short description of the nature of their effort or contribution.

3. Describes the applicant agency including the types, quantities and costs of services it provides. The applicant must discuss the role of other organizations that will be involved in providing direct services to children and families through this grant. This discussion must include information about the written agreements that will be executed with subgrantees, subcontractors, or other cooperating entities. These agreements, or proposed agreements, must detail the scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

4. If the Local Council will work with a fiscal agent, that entity, its qualifications, and its relationship to the Council must be described. List all sites, including addresses, phone numbers and staff contacts. Organizational charts must be provided.

Criterion 6. Budget and Budget Justification (10 Points)

The extent to which the applicant demonstrates:

1. That the funds requested will be used for early learning services that will be provided under this announcement. The discussion must refer to (1) the budget information presented on Standard Forms 424 and 424A and the applicant's budget justification and (2) the results or benefits identified under Criterion 2 above. Funds must be designated to allow two representatives from the Local Council to attend one grantee meeting in Washington D.C.

2. That the project's costs are reasonable in view of the activities to be carried out, that the funds are appropriately allocated across component areas, and that the budget is sufficient to accomplish the objectives.

3. That it has sufficient fiscal and accounting capacity to ensure prudent use, proper disbursement, and accurate accounting of funds, and that unanticipated problems can be resolved and that the project will be completed on time and with a high degree of quality.

Part VI. Application Process

A. Assistance to Prospective Grantees

Potential grantees can direct questions about application forms to the Administration on Children, Youth and Families, Child Care Bureau Program Announcement, 1815 North Fort Myer Drive, Suite 300, Arlington, VA 22209; Telephone: 1–800–351–2293; electronic mail: CCB@lcgnet.com. Questions about program requirements may be directed to the Child Care Bureau at 202–690–6243 or 202–401–5130, Fax: 202–690–5600.

B. Application Requirements

To be considered for a grant, each application must be submitted on the forms provided in the Application Kit and in accordance with the guidance provided in Part VII below.

C. Paperwork Reduction Act of 1995 (Public Law 104–13)

The Uniform Project Description information collection within this Program Announcement is approved under Uniform Project Description (0970–0139) which expires 12/31/2003.

Public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. An agency may not conduct or sponsor and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

D. Notification Under Executive Order 12372

This program announcement is not covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Program and Activities."

E. Availability of Forms and Other Materials

A copy of the forms that must be submitted as part of an application and instructions for completing the application are provided in the Application Kit. Legislation referenced in Part I, section B.2 of this announcement may be found in major public libraries and on the Child Care Bureau's website at http://www.acf.dhhs.gov/programs/ccb/policy1/index.htm. Additional copies of this announcement may be obtained by calling 1–800–351–2293. Many standard forms can also be downloaded and printed from the following ACF webpage: http://www.acf.dhhs.gov/programs/oa/form.htm.

An Application Kit containing the necessary forms may be obtained from: Administration on Children, Youth and Families, Child Care Bureau Program Announcement, No. ACYF–PA–CCB 2001–03, 1815 North Fort Myer Drive, Suite 300, Arlington, VA 22209, Telephone: 1–800–351–2293, Electronic Mail: CCB@lcgnet.com.

F. Application Consideration and Selection

Each application will undergo an eligibility and conformance review by Federal Child Care Bureau staff. Applications that pass the eligibility and conformance review will be evaluated on a competitive basis according to the evaluation criteria listed in Part V of this program announcement. This review will be conducted in Washington, DC, by panels of Federal and non-Federal experts knowledgeable in the areas of early learning, child care, early childhood education and other relevant areas.

Application review panels will assign a score to each application, identifying its strengths and weaknesses. The Child Care Bureau will conduct an administrative review of the applications and results of the competitive review panels and make recommendations for funding to the Commissioner, ACYF.

The Commissioner, ACYF, will make the final selection of the applications to be funded. Applications may be funded in whole or in part depending on: (1) The ranked order of applicants resulting from the competitive review; (2) staff review and consultations; (3) the combination of projects that best meets the Bureau's objectives; (4) the funds available; (5) the statutory requirement that reserves funds for Indian Tribes, Alaska Native Regional Corporations, and Native Hawaiian entities; and (6)

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other relevant considerations. The Commissioner may also elect not to fund any applicants having known management, fiscal, reporting, program, or other problems which make it unlikely that they would be able to provide effective services.

Successful applicants will be notified through the issuance of a Financial Assistance Award that sets forth the amount of funds granted, the terms and conditions of the grant award, the effective date of the award, and the budget period for which support is given, and the total project period for which support is provided. Organizations whose applications will not be funded will be notified in writing by the Commissioner, ACF. Every effort will be made to notify all unsuccessful applicants as soon as possible after final decisions are made.

Part VII. Application Content and Submission Instructions

A. Application Content

Each application must contain the following items in the order listed:

1. A signed cover letter. The application must include a cover letter that includes the announcement number, contact information for the applicant, and information about the entity that has designated the Local Council (local government, Indian Tribe, Regional Corporation, or Native Hawaiian entity). The letter must be signed by an individual authorized to act for the applicant agency and to assume responsibility for the obligations imposed by terms and conditions of the grant award.

2. Application for Federal Assistance (Standard Form 424, REV 4–92). Follow the instructions in the Application Kit. In Item 8 of Form 424, check "New." In Item 10 of the 424, clearly identify the *Catalog of Federal Domestic Assistance* (CFDA) program title and number: Early Learning Opportunities Act, 93.577.

3. Budget and Budget Justification (Standard Form 424A, REV 4–92). Follow the instructions in the Application Kit. The budget justification should be typed on standard size plain white paper, provide breakdowns for major budget categories and justify significant costs. List amounts and sources of all funds, both Federal and non-Federal, to be used for this project.

4. Standard Form 424B, "Assurances: Non-Construction Programs." A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances and certifications.

5. Assurances/Certifications. The applicant must certify its compliance with: (1) Drug-Free Workplace Requirements; (2) Debarment and Other Responsibilities; (3) Pro-Children Act of 1994 (Certification Regarding Environmental Tobacco Smoke). A signature on the SF 424 indicates compliance with the Drug Free Workplace Requirements, Debarment and Other Responsibilities and Environmental Tobacco Smoke Certifications. A signature on the application constitutes an assurance that the applicant will comply with the pertinent Departmental regulations contained in 45 CFR Part 74. In addition, applicants must provide a certification concerning Lobbying. Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certification. Applicants must sign and return the certification with their applications.

6. Table of Contents.

7. Project Summary/Abstract (one page maximum). Clearly mark this page with the applicant name as shown on item 5 of the SF 424, identify the title of the proposed project as shown in item 11 and the service area as shown in item 12 of the SF 424. The summary description should not exceed 300 words. Care should be taken to produce a summary that accurately and concisely reflects the proposed project. It should describe the objectives of the project, the approach to be used and the results and benefits expected.

8. The Project Description. The applicant is strongly encouraged to use the evaluation criteria in Part V to organize its response to Part IV, the Uniform Project Description. Specific information should be provided that addresses all components of each criterion. It is in the applicant's best interest to ensure that the project description is easy to read, logically developed in accordance with the evaluation criteria, and adheres to page limitations. In addition, the applicant should be mindful of the importance of preparing and submitting applications using language, terms, concepts, and descriptions that are generally known to the field of early learning as defined under this announcement.

9. The pages of the project description must be numbered and are limited to 40 typed pages, double spaced, printed on only one side, with at least 1/2 inch margins. Pages over the limit will be removed from the application and will not be reviewed. In addition, please note that previous attempts by applicants to circumvent space limitations or to exceed page limits by using small print have resulted in negative responses from reviewers because of the difficulty in reviewing the application.

10. Documents of Support. The maximum number of pages for supporting documentation is 30 pages, double-spaced, exclusive of letters of support or agreement. These documents must be numbered and might include excerpts from the needs and resources assessment, resumes, photocopies of news clippings, evidence of the program's efforts to coordinate child care services at the local level, etc. Documentation over the 30-page limit will not be reviewed. The applicant may, however, include as many letters of support or agreement as are appropriate.

B. Application Submission

To be considered for funding, the applicant must submit one signed original and two additional copies of the application, including all attachments, to the application receipt point specified above. The original copy of the application must have original signatures, signed in *black* ink. Each copy must be stapled (back and front) in the upper left corner. All copies of an application must be submitted in a single package.

Because each application will be duplicated, do not use or include separate covers, binders, clips, tabs, plastic inserts, maps, brochures or any other items that cannot be processed easily on a photocopy machine with an automatic feed. Do not bind, clip, staple, or fasten in any way separate subsections of the application, including supporting documentation. Applicants are advised that the copies of the application submitted, not the original, will be reproduced by the Federal government for review.

Dated: April 24, 2001.

Gail E. Collins,

Acting Deputy Commissioner, Administration on Children, Youth and Families.

[FR Doc. 01–10640 Filed 4–27–01; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0176]

Agency Information Collection Activities; Proposed Collection; Comment Request; Good Laboratory Practices (GLP) Regulations for Nonclinical Laboratory Studies

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the GLP for Nonclinical Laboratory Studies regulations.

DATES: Submit written or electronic comments on the collection of information by June 29, 2001.

ADDRESSES: Submit electronic comments on the collection of information via the Internet at http://www.accessdata.fda.gov/scripts/oc/dockets/comments/commentdocket.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Good Laboratory Practices (GLP) Regulations for Nonclinical Laboratory Studies—(21 CFR Part 58)—(OMB Control Number 0910–0119)—Extension

Sections 409, 505, 512, and 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348, 355, 360b, and 360e) and related statutes require manufacturers of food additives, human drugs and biological products, animal drugs, and medical devices to demonstrate the safety and utility of their product by submitting applications to FDA for research or marketing permits. Such applications contain, among other important items, full reports of all studies done to demonstrate product safety in man and/or other animals. In order to ensure adequate quality control for these studies and to provide an adequate degree of consumer protection, the agency issued the GLP regulations. The regulations specify minimum standards for the proper conduct of safety testing and contain sections on facilities, personnel, equipment, standard operating procedures (SOPs), test and control articles, quality assurance, protocol and conduct of a safety study, records and reports, and laboratory disqualification.

The GLP regulations contain requirements for the reporting of the results of quality assurance unit inspections, test and control article characterization, testing of mixtures of test and control articles with carriers, and an overall interpretation of nonclinical laboratory studies. The GLP regulations also contain recordkeeping requirements relating to the conduct of safety studies. Such records include: (1) Personnel job descriptions and summaries of training and experience; (2) master schedules, protocols and amendments thereto, inspection reports, and SOPs; (3) equipment inspection, maintenance, calibration, and testing records; (4) documentation of feed and water analyses and animal treatments; (5) test article accountability records; and (6) study documentation and raw data.

The information collected under GLP regulations is generally gathered by testing facilities routinely engaged in conducting toxicological studies and is used as part of an application for a research or marketing permit that is voluntarily submitted to FDA by persons desiring to market new products. The facilities that collect this information are typically operated by large entities, e.g., contract laboratories, sponsors of FDA-regulated products, universities, or government agencies. Failure to include the information in a filing to FDA would mean that agency scientific experts could not make a valid determination of product safety. FDA receives, reviews and approves hundreds of new product applications each year based on information received. The recordkeeping requirements are necessary to document the proper conduct of a safety study, to assure the quality and integrity of the resulting final report, and to provide adequate proof of the safety of regulated products. FDA conducts onsite audits of records and reports, during its inspections of testing laboratories, to verify reliability of results submitted in applications.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
58.35(b)(7)	300	60.25	18,075	1	18,075
58.185	300	60.25	18,075	27.65	499,774
Total					517,849

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

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TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
58.29(b)	300	20	6,000	.21	1,260
58.35(b)(1) through (b)(6) and (c)	300	270.56	81,228	3.36	279,926
58.63(b) and (c)	300	60	18,000	.09	1,620
58.81(a) through (c)	300	301.8	90,540	.14	12,676
58.90(c) and (g)	300	62.7	18,810	.13	2,445
58.105(a) and (b)	300	5	1,500	11.8	17,700
58.107(d)	300	1	300	4.25	1,275
58.113(a)	300	15.33	4,599	6.8	31,273
58.120	300	15.38	4,614	32.7	150,878
58.195	300	251.5	75,450	3.9	294,255
Total					793,308

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: April 24, 2001.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 01–10623 Filed 4–27–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0178]

Agency Information Collection Activities; Proposed Collection; Comment Request; Premarket Notification 510(k) Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for premarket notification 510(k) submissions.

DATES: Submit written or electronic comments on the collection of information by June 29, 2001.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Premarket Notification 510(k) Submissions (21 CFR Part 807) (OMB Control No. 0910–0120)—Extension

Section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(k)) requires a person who intends to market a medical device to submit a premarket notification submission to FDA at least 90 days before proposing to begin the introduction, or delivery for introduction into interstate commerce, for commercial distribution of a device intended for human use. The definition of "person" has been expanded to include hospitals who reuse or remanufacture single-use medical devices. The estimated submissions below include those submitted by hospitals remanufacturing single-use medical devices.

Section 510(k) of the act allows for exemptions to the 510(k) submissions (i.e., a premarket notification submission would not be required if FDA determines that premarket notification is not necessary for the protection of the public health, and they are specifically exempted through the regulatory process). Under 21 CFR 807.85, "Exemption from premarket notification," a device is exempt from premarket notification if the device intended for introduction into commercial distribution is not generally available in finished form for purchase and is not offered through labeling and advertising by the manufacturer, importer, or distributor for commercial distribution. In addition, the device must meet one of the following conditions: (1) It is intended for use by a patient or dentist (or other specially qualified persons), or (2) it is intended solely for use by a physician or dentist and is not generally available to other physicians or dentists.

A commercial distributor who places a device into commercial distribution for the first time under their own name and a repackager who places their own name on a device, and does not change any other labeling or otherwise affect the device, shall be exempted from premarket notification if the device was legally in commercial distribution before May 28, 1976, or a premarket notification was submitted by another person.

The information collected in a premarket notification is used by the medical, scientific, and engineering staffs of FDA in making determinations as to whether or not devices can be allowed to enter the U.S. market. The premarket notification review process allows for scientific and/or medical review of devices, subject to section 510(k) of the act, to confirm that the new devices are as safe and as effective as legally marketed predicate devices. This review process, therefore, prevents potentially unsafe and/or ineffective devices, including those with fraudulent claims, from entering the U.S. market. This information will allow FDA to collect data to ensure that the use of the device will not present an unreasonable risk for the subject's rights. The respondents to this information collection will primarily be medical device manufacturers and businesses.

FDA Form 3514 was developed to assist respondents in organizing 510(k) data for submission to FDA. This form also assists respondents in organizing and submitting data for other FDA medical device programs such as premarket approval applications, investigational device exemptions, and humanitarian device exemptions.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
807.81 and 807.87 (part 807, subpart E)	FDA 3514	4,000	1	4,000	80	320,000
		2,000	1	2,000	.5	1,000
Total						321,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
807.93	2,000	10	20,000	0.5	10,000
Total					10,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA has based these estimates on conversations with industry and trade association representatives, and from internal review of the documents listed in tables 1 and 2 of this document. The total burden for using voluntary FDA Form 3514 is estimated to be approximately 1,000 hours and has been included in this information collection. Once this information collection has been approved, the burden for FDA Form 3514 will be reported and approved in each of the following OMB information collections: 0910–0078, Investigational Device Exemption Reports and Records; 0910–0231, Premarket Approval of Medical Devices; and 0910–0332, Medical Devices, Humanitarian Devices.

Dated: April 24, 2001.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 01–10624 Filed 4–27–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0175]

Agency Information Collection Activities; Proposed Collection; Comment Request; Survey of Single-Use Medical Device Reuse and Reprocessing In Hospitals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the proposed voluntary survey of hospitals to collect information on the extent and nature of current practice of reprocessing of single-use medical devices by these institutions.

DATES: Submit written or electronic comments on the collection of information by June 29, 2001.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management

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Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–26, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

Survey of Single-Use Medical Device Reuse and Reprocessing in Hospitals

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes FDA to conduct research relating to health information. The "Survey of Single-Use Medical Device Reuse and Reprocessing in Hospitals" will provide information on the frequency, nature, and scope of reuse and reprocessing of single-use medical devices by U.S. hospitals. The survey will provide statistically reliable estimates of the number of U.S. hospitals that are currently reusing and internally reprocessing single-use medical devices, whether they have registered with FDA, whether they are aware of the FDA educational materials on the reuse of single-use medical devices, and, if they are not currently internally reprocessing single-use devices, whether they have reused and reprocessed single-use medical devices in the past 3 years.

FDA will use these results to estimate the number of U.S. hospitals that reused and reprocessed single-use medical devices in the past, and those that currently reuse and internally reprocess single-use medical devices. This information will help FDA design its inspection plan, modify its education program, and evaluate the economic impact of current and future policies regarding single-use medical devices. The respondents to this collection of information will be U.S. hospitals.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN FOR TELEPHONE SURVEY[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
4,480	1	4,480	0.125	560

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

This is a one-time survey. The burden estimate for the telephone survey is based on a pretest of a preliminary survey instrument administered to nine hospitals.

Dated: April 24, 2001.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 01–10626 Filed 4–27–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0170]

Abbott Laboratories' Sarafloxacin for Poultry; Withdrawal of Approval of NADAs

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of two new animal drug applications (NADAs) sponsored by Abbott Laboratories. The NADAs provide for use of sarafloxacin to treat poultry. In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations by removing the portions reflecting approval of these NADAs.

DATES: Withdrawal of approval is effective April 30, 2001.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0159.

SUPPLEMENTARY INFORMATION: Abbott Laboratories, North Chicago, IL 60064, is sponsor of the following NADAs: (1) NADA 141–017 SaraFlox® (sarafloxacin hydrochloride) WSP, a water-soluble powder used in the drinking water of broiler chickens and growing turkeys for control of mortality associated with *Escherichia coli* in (21 CFR 520.2095); and (2) NADA 141–018 SaraFlox® (sarafloxacin hydrochloride) Injection, an injectable solution used in 18-day embryonated broiler eggs and day-old broiler chickens for control of early chick mortality associated with *E. coli* (21 CFR 522.2095).

The sponsor was informed by FDA that, on the basis of new data and information before it, there is a question of human food safety, due to the use of fluoroquinolones such as sarafloxacin in poultry. After being informed by FDA of this question, Abbott Laboratories requested voluntary withdrawal of approval of NADAs 141–017 and 141–018. By doing so, the firm waived its opportunity for hearing.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADAs 141–017 and 141–018, and all supplements and amendments thereto is hereby withdrawn effective April 30, 2001. Any new animal drug product that is not the subject of an approved application is subject to regulatory action at any time.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations to reflect the withdrawal of approval of these NADAs.

Dated: April 17, 2001.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 01–10067 Filed 4–27–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00P–0788]

Neurological Devices; Reclassification of the Totally Implanted Spinal Cord Stimulator; Denial of Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it has denied a petition submitted by Advanced Neuromodulation Systems, Inc. (ANS), to reclassify the totally implanted spinal cord stimulator (SCS) for treatment of chronic intractable pain of the trunk or limbs from class III into class II. FDA had previously made available for public comment the recommendation of the Neurological Devices Panel (the Panel) on the reclassification petition and FDA's tentative findings on the Panel's recommendation. After considering all the available information, including the public comments on the Panel's recommendation, FDA denied the reclassification petition by order in a letter to the petitioner.

ADDRESSES: A copy of the denial order is available at the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mark N. Melkerson, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1184.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et. seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act of 1990 (Public Law 101–629), and the Food and Drug Administration Modernization Act of 1997 (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the 1976 amendments enactment date), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. A postamendment device remains in class III and requires premarket approval, unless and until the device is reclassified into class I or II or FDA issues an order finding the device substantially equivalent, under section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the regulations.

Reclassification of classified postamendments devices is governed by section 513(f)(3) of the act. This section allows FDA to initiate reclassification of a postamendments class III device under section 513(f)(1) of the act, or a manufacturer or importer of a device may petition the Secretary of Health and Human Services (the Secretary) for the issuance of an order reclassifying the device in class I or class II.

FDA's regulations in 21 CFR 860.134 set forth the procedures for the filing and review of a petition for reclassification of such postamendment class III devices. To change the classification of the device, it is necessary that the proposed new class have sufficient regulatory controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use.

Under section 513(f)(3)(B)(i) of the act, the Secretary may, for good cause shown, refer a reclassification petition to a device panel for a recommendation on the subject device's classification. The panel shall make a recommendation to the Secretary respecting approval or denial of the petition. Any such recommendation shall contain: (1) A summary of the reasons for the recommendation, (2) a summary of the data upon which the recommendation is based, and (3) an identification of the risks to health (if any) presented by the device with respect to which the petition was filed.

II. Regulatory History of the Device

The totally implanted SCS intended for treatment of chronic intractable pain of the trunk or limbs is a postamendments device classified into class III under section 513(f)(2) of the act. Therefore, the device cannot be placed in commercial distribution for treatment of chronic intractable pain of the trunk or limbs unless it is reclassified under section 513(f)(2) of the act, or subject to an approved PMA under section 515 of the act.

On June 16, 1999, ANS submitted a petition to FDA that requested reclassification of the totally implanted SCS intended for treatment of chronic intractable pain of the trunk or limbs from class III into class II. Consistent with the act and the regulation, FDA referred the petition to the Panel for its recommendation on the requested reclassification.

III. Device Description

The following device description is based on the Panel's recommendations and the agency's review: The totally implanted spinal control stimulator consists of an implanted pulse generator (IPG), leads, and electrodes. The IPG contains the internal power source that is implanted in the patient. The electrodes are placed on the patient's spinal cord and the leads from the electrodes are connected subcutaneously to the IPG.

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IV. Recommendation of the Panel

At a public meeting held on September 16 and 17, 1999, the Panel recommended that the totally implanted SCS intended for aid in the treatment of chronic intractable pain of the trunk or limbs be reclassified from class III into class II. In the **Federal Register** of September 6, 2000 (65 FR 54053), FDA published for public comment a notice of the Panel's recommendation and FDA's tentative findings on the Panel recommendation. FDA invited interested persons to comment by October 6, 2000. In response to a request, FDA later extended the comment period to November 4, 2000.

V. FDA's Decision

FDA received 22 comments in response to the September 6, 2000, notice of panel recommendation. The comments are discussed in detail in the order denying the reclassification petition and in an attachment to that order. Although FDA's earlier tentative findings supported reclassification, the agency has now concluded that class II controls are not adequate to address the risks associated with the device. The most serious risk to health presented by the device is the risk of device failure. Device failure is frequently the result of improper device design. Device failure always requires reoperation with all of the attendant risks of secondary surgery. Many of the comments suggested that general controls and special controls could not adequately control the risk of device failure.

After carefully reviewing the information in the petition, the information presented at the Panel meeting, the Panel's deliberations, the published literature, the Medical Device Reports, and the comments on the notice of panel recommendation, FDA has completed its evaluation of the risks to health associated with the use of the totally implanted SCS intended for treatment of chronic intractable pain of the trunk or limbs.

FDA determined that the petitioner had not demonstrated that special controls would provide reasonable assurance of the safety and effectiveness of the device. Specifically, FDA determined that special controls, such as bench and animal testing, cannot substitute for actual clinical trials designed to demonstrate the safety and effectiveness of these devices. FDA also determined that the risks to health associated with the manufacturing process could only be addressed through the degree of regulatory oversight applied to class III devices. Therefore, on February 23, 2001, FDA issued an order to the petitioner denying the petition for reclassification.

FDA has placed a copy of the order denying the petition on display at the Dockets Management Branch (address above) in the above referenced docket. A copy of the order may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 18, 2001.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 01–10619 Filed 4–27–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Technical Electronic Product Radiation Safety Standards Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Technical Electronic Product Radiation Safety Standards Committee.

General Function of the Committee: To provide advice on technical feasibility, reasonableness, and practicality of performance standards for electronic products to control the emission of radiation under 21 U.S.C. 360kk(f).

Date and Time: The meeting will be held on May 17, 2001, 8:30 a.m. to 5 p.m..

Location: Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD.

Contact Person: Orhan H. Suleiman, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12399. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will hear an informal review of ongoing activities associated with electronic products. Following the overview, FDA will specifically discuss its concern about radiation doses associated with x-ray computed tomography, digital x-ray imaging systems, and its current thinking about amending the U.S. performance standard for these systems. In the afternoon, FDA will briefly review the history and current program for products for which performance standards exist. This review will include discussion of microwave ovens, television receivers, and laser products. Following this review, FDA will discuss current research and public health concerns associated with cellular telephones.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 10, 2001. On May 17, 2001, oral presentations from the public will be scheduled between approximately 10:30 a.m. and 11 a.m., and between 2 p.m. and 2:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 10, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 23, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–10625 Filed 4–27–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–3067–N]

Medicare Program; Request for Nominations for Members for the Medicare Coverage Advisory Committee (MCAC)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice requests nominations for consideration for members of the Medicare Coverage Advisory Committee.

DATES: Nominations will be considered if we receive them at the designated address, as provided below, no later than 5 p.m. on May 30, 2001.

ADDRESSES: You may mail or deliver nominations for membership to the following address: Health Care Financing Administration, Attention: Constance Conrad, 7500 Security Blvd., Mail Stop: South Building 3–02–01, Baltimore, MD 21244.

A request for a copy of the Secretary's Charter for the Medicare Coverage Advisory Committee (MCAC) should be submitted to Maria Ellis, Office of Clinical Standards and Quality, Health Care Financing Administration, 7500 Security Blvd., Mail Stop: South Building 3–02–01, Baltimore, MD 21244, or by e-mail to mellis@hcfa.gov. The charter is also posted on the web at www.hcfa.gov/coverage, and can be readily printed from that site.

FOR FURTHER INFORMATION CONTACT: Constance A. Conrad, Health Care Financing Administration, 7500 Security Blvd., Baltimore, MD 21244, 410–786–4631.

SUPPLEMENTARY INFORMATION:

Background

The Medicare Coverage Advisory Committee (MCAC) is governed by provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 USC Appendix 2), which sets forth standards for the formulation and use of advisory committees, and authorized by section 222 of the Public Health Service Act as amended (42 U.S.C. 217A).

The MCAC consists of no more than 120 appointed members from among authorities in clinical and administrative medicine, biologic and physical sciences, public health administration, health care data and information management and analysis, the economics of health care, medical ethics, and other related professions. A maximum of 9 members are standard voting members, and 24 are nonvoting members, 12 of which are representatives of consumer interests, and 12 of which are representatives of industry interests.

The MCAC functions on a panel basis. The panels review and evaluate medical literature, review technical assessments, and examine data and information on the effectiveness and appropriateness of medical items and services that are covered or eligible for coverage under Medicare. Panel meetings generally follow an agenda that we provide that lists specific issues. The panels develop technical advice to aid us in determining reasonable and necessary applications of medical services and technology when we make national coverage decisions for Medicare.

A few vacancies exist on the current MCAC panel rosters, and terms for some members currently serving will expire before January 1, 2002. Accordingly, we are requesting nominations for both voting and nonvoting members to serve on the MCAC. Nominees are selected based upon their individual qualifications and not as representatives of professional associations or societies. We have a special interest in ensuring that women, minority groups, and physically challenged individuals are adequately represented on the MCAC. Therefore, we encourage nominations of qualified candidates from these groups.

All nominations and curricula vitae for the MCAC should be sent to Constance Conrad at the address above.

Criteria for Members

Nominees should have expertise in one or more of the following fields: clinical and administrative medicine, biologic and physical sciences, public health administration, health care data and information management and analysis, the economics of health care, medical ethics, and other related professions.

We are also seeking nominations for nonvoting consumer and industry representatives. Nominees for these positions must possess appropriate qualifications to understand and contribute to the MCAC's work.

Nominations must state that the nominee is willing to serve as a member of the MCAC and appears to have no conflict of interest that would preclude membership. Potential candidates will be asked to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts in order to permit evaluation of possible sources of conflict of interest.

Members are invited to serve for overlapping 4-year terms; terms of more than 2 years are contingent upon the renewal of the MCAC by appropriate action before its termination on November 23, 2002. A member may serve after the expiration of the member's term until a successor has taken office.

Any interested person may nominate one or more qualified persons. Self-nominations are also accepted.

Authority: 5 U.S.C. App. 2, section 10(a)(1) and (a)(2).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 6, 2001.

Jeffrey L. Kang,

Director, Office of Clinical Standards and Quality, Health Care Financing Administration.

[FR Doc. 01–10639 Filed 4–27–01; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–3066–N]

Medicare Program; Meeting of the Diagnostic Imaging Panel of the Medicare Coverage Advisory Committee—June 19, 2001

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting of the Diagnostic Imaging Panel (the Panel) of the Medicare Coverage Advisory Committee. The Panel provides advice and recommendations to the agency about clinical issues. The Panel will hear and discuss presentations from interested persons regarding FDG Positron Emission Tomography imaging for breast cancer diagnosis and staging.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)).

DATES: *The Meeting:* The meeting will be held on June 19, 2001 from 8 a.m. until 4:30 p.m., E.D.T.

Deadline for Presentations and Comments: June 5, 2001, 5 p.m., E.D.T.

Special Accommodations: Persons attending the meeting who are hearing or visually impaired, or have a condition that requires special assistance or accommodations, are asked to notify the Executive Secretary by May 26, 2001.

ADDRESSES: *The Meeting:* The meeting will be held at the Baltimore Convention Center, Room 321 and 322, One West Pratt Street, Baltimore, MD 21201.

Presentations and Comments: Submit formal presentations and written comments to Janet A. Anderson, Executive Secretary; Office of Clinical Standards and Quality; Health Care Financing Administration; 7500 Security Boulevard; Mail Stop S3–02–01; Baltimore, MD 21244.

Website: You may access up-to-date information on this meeting at *www.hcfa.gov/coverage*.

Hotline: You may access up-to-date information on this meeting on the HCFA Advisory Committee Information Hotline, 1–877–449–5659 (toll free) or in the Baltimore area (410) 786–9379.

FOR FURTHER INFORMATION CONTACT: Janet A. Anderson, Executive Secretary, 410–786–2700.

SUPPLEMENTARY INFORMATION: On August 13, 1999, we published a notice (64 FR

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44231) to describe the Medicare Coverage Advisory Committee (MCAC), which provides advice and recommendations to us about clinical issues. This notice announces the following public meeting of the Diagnostic Imaging Panel (the Panel) of MCAC.

Current Panel Members

Frank Papatheofanis, MD, PhD; Barbara McNeil, MD, PhD; Carole Flamm, MD, MPH; Jeffrey Lerner, PhD; Michael Manyak, MD; Donna Novak, BA; Manuel Cerqueira, MD; Kim Burchiel, MD; Steven Guyton, MD; Sally Hart, JD; Michael Klein, MBA

Meeting Topic

The Panel will hear and discuss presentations from interested persons regarding FDG Positron Emission Tomography imaging for breast cancer diagnosis and staging.

Procedure and Agenda

This meeting is open to the public. The Panel will hear oral presentations from the public for approximately 1.5 hours. The Panel may limit the number and duration of oral presentations to the time available. If you wish to make formal presentations, you must notify the respective Executive Secretary listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, and submit the following by the Deadline for Presentations and Comments date listed in the **DATES** section of this notice: A brief statement of the general nature of the evidence or arguments you wish to present, and the names and addresses of proposed participants. A written copy of your presentation must be provided to each panel member prior to offering your public comments. We will request that you declare at the meeting whether or not you have any financial involvement with manufacturers of any items or services being discussed (or with their competitors).

After the public and HCFA presentations, the Panel will deliberate openly on the topic. Interested persons may observe the deliberations, but the Panel will not hear further comments during this time except at the request of the chairperson. The Panel will also allow approximately a 30-minute open public session for any attendee to address issues specific to the topic. At the conclusion of the day, the members will vote and the Panel will make its recommendation.

Authority: 5 U.S.C. App. 2, section 10(a)(1) and (a)(2).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 6, 2001.

Jeffrey L. Kang,

Director, Office of Clinical Standards and Quality, Health Care Financing Administration.

[FR Doc. 01–10638 Filed 4–27–01; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Extended Lung Cancer Incidence Follow-Up for the Mayo Lung Project Participants

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Center Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Extended Lung Cancer Incidence Follow-Up for the Mayo Lung Project Participants. Type of Information Collection Request: NEW. Need and Use of Information Collection: The Mayo Lung Project (MLP) was an NCI-funded randomized collection trial (RCT) of lung cancer screening conducted among 9,211 male smokers from 1971 to 1983. No reduction in lung cancer mortality was observed in the MLP with an intense regimen of x-ray and sputum cytology screening. Recent analysis of updated mortality and case survival data (through 1996) suggests that lesions with little-to-no clinical relevance (over-diagnosis) may have been detected through screening in the MLP intervention arm. Over-diagnosis leads to unnecessary medical interventions, including diagnostic and treatment procedures that carry with them varying degrees of risk. Consequently, over-diagnosis can result in considerable harm, including premature death, which would not have occurred in the absence of screening. The persistence, after screening ends, of an excess of lung cancer cases in the intervention arm is the strongest evidence in support of over-diagnosis, but this information cannot be adequately obtained with available MLP data. Therefore, we propose to re-contact the MLP participants and/or their next-of-kin to determine the participants who were diagnosed with lung cancer after the formal end of the Project. These data will allow the NCI to either more-convincingly state or perhaps refute the possibility of over-diagnosis in lung cancer screening, and may be used to guide future research agendas and lung cancer screening policies. Frequency of response: Once. Affected public: Individuals. Type of respondents: MLP participants or their next-of-kin. The annual reporting burden is as follows: Maximum number of respondents: 9200; Estimated number of Responses per Respondent: 1. Average Burden Hours Per Response: 0.25; Estimated Maximum Total Annual Burden Hours Requested: 2300. The annualized cost to respondents is estimated at zero. There are no Capital Costs to report. There are no Operating or Maintenance Costs; to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Pamela Marcus, Epidemiologist, Biometry Research Group, Division of Cancer Prevention, National Cancer Institute, Suite 344 EPN, 6130 Executive Blvd, Bethesda, MD 20892–7354; or call non-tool free 301–496–7468; or email *pm145q@nih.gov.*

Comments due date: Comments regarding this information collection are best assured of having their full effect if received on or before June 29, 2001.

Dated: April 20, 2001.

Reesa L. Nichols,

NCI Project Clearance Liaison.

[FR Doc. 01–10582 Filed 4–27–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Enhanced Homologous Recombination Mediated by Lambda Recombination Proteins

Drs. E. Lee, N. Copeland, N. Jenkins, and D. Court (NCI)
DHHS Reference No. E–077–01/0 filed Feb 26, 2001
Licensing Contact: John Rambosek; 301/496–7056 ext. 270; e-mail: rambosej@od.nih.gov

The present invention concerns a method to enhance homologous recombination in bacteria using the Red recombination system derived from a defective lambda prophage. This lambda system, like the RecET system, uses homologous recombination proteins to protect and recombine the electroporated linear DNA. However, the lambda system is at least 50 to 100 times more efficient than the RecET system. The high recombination efficiency offered by this system makes it possible to manipulate DNA without drug selection. Point mutations, deletions, or insertions can be engineered into any gene on plasmids or bacterial artificial chromosomes (BACs) for gene functional analysis. This recombination system also can be used to subclone DNA fragments as large as 80 kb from BACs by gap repair. Targeting vectors for embryonic stem cells or transgenic constructs by BAC engineering can now be subcloned with ease, and virtually any region of the engineered BAC may be included in the final subclone. The ability to efficiently and precisely modify genes or regulatory sequences on BACs, combined with the ability to include or exclude them during the subcloning process, should make it possible to dissect the function of these sequences in the whole animal at a high-throughput level not previously possible.

This lambda recombination system has been used to introduce a Cre recombinase gene into the coding region of the mouse neural-specific enolase gene carried on a 250 kb mouse BAC after transfer of the mouse BAC into DY380 E. coli cells which carry the lambda recombination system. Transgenic mice that were subsequently generated which carry this modified BAC specifically expressed Cre in all mature neurons and Cre expression mirrored that of the mouse neural-specific enolase gene.

This abstract modifies an abstract for this technology published in the **Federal Register** on Thursday, April 5, 2001 (66 FR 18098).

Use of Endogenous Vertebrate Phytase to Increase Capacity To Utilize Phytic Acid in Livestock Feed

Stephen Shears (NIEHS), Paul Reynolds, Jim Petitte
DHHS Reference No. E–139–00/0 filed Aug 11, 2000
Licensing Contact: John Rambosek; 301/496–7056 ext. 270; e-mail: rambosej@od.nih.gov

This invention discloses the concept of creating transgenic farm animals that secrete a native phytase enzyme into their digestive tracts. It has long been recognized that monogastric animals (e.g. pigs and chickens) do not utilize dietary phosphorus as efficiently as possible. This is because a high percentage of total phosphorus (70% in cereals, 50% in legume seeds) is present as phytic acid and its salts—phytate. Monogastric animals utilize phytate inefficiently because they lack the enzyme phytase in their digestive systems. Phytase liberates the phosphorus from phytate, thereby making dietary phosphorus available to the animals. This has the dual effect of both promoting more efficient growth of the animals, as well as imposing less of an environmental burden in the form of excess phosphorus in water streams.

Use of phytase as a growth feed supplement is well known. However, in the past the focus has always been on adding exogenous phytase to animal feed, or to increase the level of phytase expression in the seeds making up the feed. The inventors' novel concept is to redirect expression of a naturally occurring phytase gene so that the enzyme will be secreted into the intestinal lumen. This will create farm animals that can more efficiently utilize unsupplemented feeds. Another problem with existing phytases that the present invention overcomes is that phytase tends to be unstable during the heat treatment used to process feed. This invention overcomes this limitation because the phytase does not have to incorporated into feed at all.

Cloning of the Human Nuclear Receptor Co-Repressor Gene

Dr. Johnson M. Liu (NHLBI)
DHHS Reference Number E–088–99/0 filed Aug 3, 1999
Licensing Contact: John Rambosek; 301/496–7056 ext. 270; e-mail: rambosej@od.nih.gov

Alteration in the expression of human genes is critical to the development and progression of many diseases. These include, among others, cancer, inflammation, cardiovascular disease, hypercholesterolemia, blood pressure, and diabetes. The Human Nuclear Receptor Co-Repressor (HuN-Cor) gene represents a technology that may be used to alter the transcription of genes. It provides a general mechanism by which many genes may be modulated throughout the entire range of being turned on to being completely turned off. The HuN-Cor gene encodes for a ubiquitously expressed protein that silences other genes. It does this by specifically recruiting an enzyme complex that causes local folding of chromatin, not allowing other transcription factors to access the DNA. HuN-Cor represents a powerful research tool that can be used to study gene expression and characterization of many different genes. It may ultimately have great utility in controlling gene expression via gene therapy technology, and may also be useful as a target for the isolation of pharmaceutical compounds that enhance or inhibit expression of genes. For example, it may be possible to engineer mutations of the HuN-Cor gene that dominantly inhibit its function; these mutants could then be expressed in appropriate target tissues or cells in order to control gene expression. Finally, the gene product may have utility in the discovery of therapeutic compounds that modulate gene expression via HuN-Cor.

Antibodies That Selectively Detect the Human Nestin Protein

Conrad Messam et al. (NINDS)

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DHHS Reference Nos. E–145–99/0 and E–009–01/0

Licensing Contact: Norbert Pontzer; 301/496–7736, ext. 284; e-mail: pontzern@od.nih.gov

Nestin is an intermediate filament protein first described in early embryonic neuroepithelial stem cells. Although not found in most cells of the mature CNS, nestin is the predominant marker used to detect the small population of undifferentiated cells. The presence of nestin identifies stem, progenitor and some tumor cells in the CNS, and also labels areas of reactive gliosis in the CNS. Available methods to detect nestin use antibodies generated against rat nestin protein. Since rat and human nestin have only about fifty percent sequence homology, these antibodies may not be optimal for detecting nestin in human cells.

NIH scientists used a novel human nestin immunogen to generate polyclonal and monoclonal antibodies that bind with high affinity and specificity to human nestin. The immunogen was expressed from a 450 base-pair segment of human nestin mRNA, which has 11 nucleotide differences from previously published human nestin. These antibodies increase the specificity to accurately detect human nestin in all stages of brain development and will increase our understanding of glial differentiation. In addition, this technology may be useful for detecting glioblastomas or other early stage neuroectodermal tumors and for following transplanted stem cells.

Dated: April 20, 2001.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 01–10580 Filed 4–27–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Statement of Organization, Functions, and Delegations of Authority

Part N, National Institutes of Health, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859), May 27, 1975, as amended most recently at 66 FR 6617, January 22, 2001, and redesignated from Part HN as Part N at 60 FR 56605, November 9, 1995), is amended as set forth below to reorganize the Office of the Director, NIH, as follows: (1) Abolish the Office of Bioengineering, Bioimaging, and Bioinformatics.

Section N–B, Organization and Functions, under the heading Office of the Director (NA, formerly HNA), is amended as follows:

(1) Immediately following the statement for the Executive Office (NAR, formerly HNAR), the title and functional statement of the Office of Bioengineering, Bioimaging, and Bioinformatics (NAC, formerly HNAC) as deleted in their entirety.

DELEGATIONS OF AUTHORITY STATEMENT: All delegations and redelegations of authority to officers and employees of NIH which were in effect immediately prior to the effective date of this reorganization and are consistent with this reorganization shall continue in effect, pending further redelegation.

Dated: March 6, 2001.

Ruth L. Kirschstein,

Acting Director, National Institutes of Health.

[FR Doc. 01–10581 Filed 4–27–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Bacteriophage Having Multiple Host Range

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a an exclusive license to practice the invention embodied in: United States Patent Application 60/220,987 entitled "Bacteriophage Having Multiple Host Range" filed on July 25, 2000, to BioPhage, Inc., having a place of business in Montreal, Quebec. The patent rights in this invention have been assigned to the United States of America.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before June 29, 2001 will be considered.

ADDRESSES: Requests for a copy of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Peter Soukas, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Email: ps193c@nih.gov; Telephone: (301) 496–7056, ext. 268; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: This invention concerns bacteriophage with specificity to more than one bacterial species and the ability to make such bacteriophages. The specificity is broadened and/or changed by genetic engineering of the phage tail proteins. The phage can be used to kill pathogenic bacteria in both animals and humans. The use of phages as antibacterials may be one answer to the problem of antibiotic resistant bacteria.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use may be limited to prophylaxis and/or treatment of bacterial infections in non-human animals and treatment and/or prophylaxis of antibiotic resistant bacteria in humans.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: April 20, 2001.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 01–10576 Filed 4–27–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: MHC Class II Restricted Melanoma Antigens and Their Use in Therapeutic Methods

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in U.S. Patent Application S/N 08/533,895, filed on September 26, 1995, entitled "MHC Class II Restricted Melanoma Antigens and Their Use in Therapeutic Methods", to Therion Biologics Corporation of Cambridge, Massachusetts. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory will be worldwide and the field of use may be limited to recombinant poxvirus-based vaccines for human cancer immunotherapy, said poxviruses encoding Class II-restricted melanoma antigens, or modifications, derivatives, or immunogenic peptides thereof, and vaccination protocols comprising the administration of one or more Class II-restricted melanoma peptides in addition to a recombinant poxvirus-based vaccine (for example, in a prime and boost protocol), but specifically excluding the use of these peptides in any context other than a recombinant poxvirus-based vaccination protocol.

DATES: Only written comments and/or license applications which are received by the National Institutes of Health on or before June 29, 2001 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Elaine White, M.B.A., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD. 20852–3804. Telephone: (301) 496–7056, X282; Facsimile (301) 402–0220; E-mail eg46t@nih.gov.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: April 23, 2001.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 01–10578 Filed 4–27–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Human Papilloma Inhibition by Antisense Oligonucleotides

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the invention embodied in: Korean Patent Application 10–2000–7002392 entitled "Human Papilloma Inhibition by Antisense Oligonucleotides" filed on June 30, 2000, to Gyn-Gen Bio, Inc., having a place of business in Seoul, Korea. The patent rights in this invention have been assigned to the United States of America.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before June 29, 2001 will be considered.

ADDRESSES: Requests for a copy of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Peter Soukas, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Email: ps193c@nih.gov; Telephone: (301) 496–7056, ext. 268; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: The present invention relates to the use of antisense oligonucleotides to inhibit Human Papilloma Virus (HPV). The antisense oligonucleotides have a phosphorothioate backbone structure and sequences complimentary to portions of the human papilloma virus 16 E6 gene. See the equivalent United States patent number 6,084,090 and Alvarez-Salas et al., "Growth inhibition of cervical tumor cells by antisense oligodeoxynucleotides directed to the human papillomavirus type 16 E6 gene," Antisense Nucleic Acid Drug Dev 1999 Oct;9(5):441–50 for further details.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use may be limited to treatment and prevention of Human Papilloma Virus infection with antisense oligonucleotides. The licensed territory is expected to be limited to Korea, China, Malaysia and Thailand.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: April 20, 2001.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer

[FR Doc. 01–10577 Filed 4–27–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Identification of TRP–2 as a New Human Tumor Antigen Recognized by Cytotoxic T Lymphocytes

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in U.S. Patent Applications S/N 08/725,736, filed on October 4, 1996, and now U.S. Patent 5,831,016 which issued on November 3, 1998; S/N 09/161,877 (DIV of 08/725,736), filed on September 28, 1998, and now U.S. Patent 6,132,980 which issued on October 17, 2000; S/N 09/162,368 (DIV of 08/725,736), filed on September 28,

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1998, and now U.S. Patent 6,083,703 which issued on July 4, 2000; and S/N 09/651,210 (DIV of 08/725,736), filed on August 30, 2000, all entitled "Identification of TRP–2 as a New Human Tumor Antigen Recognized by Cytotoxic T Lymphocytes'; and PCT Patent Application PCT/US97/02186 (based upon U.S. Patent Applications S/N 08/599,602 and 08/725,736) filed on February 6, 1997, entitled "Human Cancer Antigen of Tyrosinase-Related Protein 1 and 2 and Genes Encoding Same", to Therion Biologics Corporation of Cambridge, Massachusetts. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory will be worldwide and the field of use may be limited to recombinant poxvirus-based vaccines for human cancer immunotherapy, said poxviruses encoding TRP–2 or modifications, derivatives, or immunogenic peptides thereof, and vaccination protocols comprising the administration of one or more immunogenic TRP–2 peptides in addition to a recombinant poxvirus-based vaccine (for example, in a prime and boost protocol), but specifically excluding the use of TRP–2 peptides in any context other than a recombinant poxvirus-based vaccination protocol.

DATES: Only written comments and/or license applications which are received by the National Institutes of Health on or before June 29, 2001 will be considered.

ADDRESSES: Requests for copies of the patents/patent applications, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Elaine White, M.B.A., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD. 20852–3804. Telephone: (301) 496–7056, X282; Facsimile (301) 402–0220; E-mail eg46t@nih.gov.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: April 23, 2001.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 01–10579 Filed 4–27–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2001 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of Funding Availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) announces the availability of FY 2001 funds for cooperative agreements for the following activity. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of the Guidance for Applicants (GFA), including Part I, Cooperative Agreements for Addiction Technology Transfer Centers, and Part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, before preparing and submitting an application.

Activity	Application deadline	Est. funds FY 2001	Est. No. of awards	Project period
Addiction Technology Transfer Centers	June 19, 2001	$7 million*	14*	5 years.

*See the text below for more detailed information on the estimated funds available and the estimated number of awards. The actual amount available for the awards may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2001 funds for the activities discussed in this announcement were appropriated by the Congress under Public Law No. 106–310. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

GENERAL INSTRUCTIONS:

Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from: National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD 20847–2345, Telephone: 1–800–729–6686.

The PHS 5161–1 application form and the full text of the activity are also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov*

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose

The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT) announces the availability of Fiscal Year 2001 funds for cooperative agreements to support the creation or continuation of Addiction Technology Transfer Centers. This program, referred to as "ATTCs," solicits applications to:

(1) develop and maintain an interdisciplinary consortium of health care and related professionals, educators, organizations, and State and local governments knowledgeable about research-based, effective, culturally appropriate approaches to substance abuse treatment and recovery;

(2) shape systems of care by replicating and testing science and translating substance abuse treatment research into clinical practice;

(3) develop a workforce of competent health care and related professionals reflective of the treatment population and who are prepared to function in managed care settings; and,

(4) upgrade standards of professional practice for addictions workers in various settings.

The ATTC program is comprised of 13 regions that together form a national resource. (**Note:** This 13 region organization is a new feature of the ATTC Program.) Each ATTC Site applicant must focus its services on the region it proposes to serve. Each ATTC Site may work with other ATTC Sites and with other organizations within or outside of the region. The ATTC regions are listed in an Appendix in the full funding announcement.

This is a modified reissuance of SAMHSA/CSAT's Fiscal Year 1998 GFA No. TI 98–009, entitled "Addiction Technology Transfer Centers (ATTCs). This announcement solicits applications for two types of awards: (1) ATTC Sites, and (2) an ATTC National Office.

Eligibility

Applications may be submitted by public and domestic private non-profit entities such as units of State or local government, recovery and other community-based organizations, faith-based organizations, and State or private, non-profit universities, colleges, and hospitals. Current CSAT ATTC grantees with a project period that ends on or before September 30, 2001, excluding extensions in time without additional funds and who meet the above requirements, are also eligible to apply.

An organization may submit an application for an ATTC Site and/or the ATTC National Office. A separate application is required for each function. Although the ATTC National Office may be established by an organization which also has an ATTC Site, it must be set up as a separate entity with dedicated staff, a separate and independent project director, a separate budget, audit, and specific responsibilities.

Availability of Funds

Approximately $7,000,000 will be available to fund 13 ATTC Sites and one National Office. The average award for an ATTC Site is expected to range from $450,000 to $550,000 per year in total costs (direct and indirect). The award for the ATTC National Office is expected to be approximately $500,000 in total costs (direct and indirect).

Period of Support

Cooperative agreements will be awarded for a period of 5 years. Annual awards will be made subject to continued availability of funds to SAMHSA/CSAT and progress achieved by the grantee.

Criteria for Review and Funding

General Review Criteria: Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteria for Scored Applications: Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number

93.230.

Program Contact

For questions concerning program issues, contact: Susanne R. Rohrer, RN, Office of Evaluation, Scientific Analysis, and Synthesis, CSAT/SAMHSA, Rockwall II, Suite 840, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–8521, E-Mail: srohrer@samhsa.gov

For questions regarding grants management issues, contact: Kathleen Sample, Division of Grants Management, OPS/SAMHSA, Rockwall II, 6th floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9667, E-Mail: ksample@samhsa.gov

Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular FY 2001 activity is subject to the Public Health System Reporting Requirements.

PHS Non-Use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372

Applications submitted in response to the FY 2001 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60

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days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: April 24, 2001.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 01–10635 Filed 4–27–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–30]

Notice of Submission of Proposed Information Collection to OMB; Public Housing Development and Mixed-Finance Development of Units; Proposal, Financial Feasibility, Site Information Turnkey Method, Evidentiary Materials

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting pubic comments on the subject proposal.

DATES: *Comments Due Date:* May 30, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0033) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Public Housing Development and Mixed-Finance Development of Units; Proposal, Financial Feasibility, Site Information Turnkey Method, Evidentiary Materials.

OMB Approval Number: 2577–0033.

Form Numbers: HUD–51971–I, HUD–51971–II, HUD–54282, HUD–52483–A, HUD–52485, HUD–52651–A.

Description of the Need for the Information and Its Proposed Use: Public Housing Agencies (PHAs) must provide information to HUD before a proposal can be approved for development or mixed-finance development. Information on HUD-prescribed forms provides HUD with sufficient information to enable a determination that funds should or should not be reserved or a contractual commitment made.

Respondents: Business or other for-profit, State, Local or Tribal Government.

Frequency of Submission: Annually.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting burden	334		1		22		7,595

Total Estimated Burden Hours: 7,595.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 23, 2001.

Wayne Eddins,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 01–10598 Filed 4–27–01; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–29]

Notice of Submission of Proposed Information Collection to OMB; Requirements for Designating Housing Projects Plan

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 30, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0192) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department. This Notice also lists the following information:

Title of Proposal: Requirements for Designation Housing Projects Plan.

OMB Approval Number: 2577–0192.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: This information collection is required by the Housing and Community Development Act of 1992. Public Housing Agencies (PHAs) will submit an application which is composed of an Allocation Plan and a Supportive Services Plan to designate a project for occupancy by elderly and disabled families. HUD will use the information in the Plans to evaluate a PHA's request for designated housing.

Respondents: State, Local or Tribal Government.

Frequency of Submission: On occasion.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting burden	176		1		19.0		3,358

Total Estimated Burden Hours: 3,358.

Status: Reinstatement, with change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 20, 2001.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 01–10597 Filed 4–27–01; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4655–N–12]

Submission for OMB Review: Review of Health Care Facility Portfolios

AGENCY: Office of Assistant Secretary for Housing, HUD.

ACTION: Notice of proposed information collection requirement.

SUMMARY: The Department of Housing and Urban Development (HUD) will be publishing a Notice which establishes classifications of owners and or operators of health care facilities: owners of large portfolios of health care facilities; owners of mid-size portfolios, and owners of small portfolios. The mid-size and large owners who intend to finance or refinance 11 or more health care facilities, with a combined estimated mortgage amount equal to or in excess of $75 million, in an 18-month period of time are required to submit additional information to a rating agency for evaluation and submission to HUD. The additional information, covering a variety of corporate-related information such as a strategic management plan, is designed to enable HUD to determine the financial and management strength of the proposed sponsor.

DATES: *Comments Due Date:* May 7, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–2374 (This is not a toll-free number) or e-mail to Wayne_Eddins@HUD.gov. Copies of the available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review as required by the Paperwork Reduction Act (44 USC Chapter 35). HUD has requested OMB approval by May 7, 2001.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless collection displays a valid control number.

This notice contains the following information:

(1) The title for the collection of information;

(2) A summary of the collection of information;

(3) A brief description of the need for the information and proposed use of the information;

(4) A description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information;

(5) An estimate of the total annual reporting and recordkeeping burden that will result from the collection of information;

Title: Review of Health Care Facility Portfolios

OMB Control Number: 2502–

Type of submission: An owner and/or an operator of health care facilities (nursing homes, intermediate care facilities, board and care facilities, or assisted living facilities) may wish to finance or refinance large groups of those facilities. If it intends to seek FHA mortgage insurance for loans for these facilities, and it is planning to finance or refinance a minimum of 11 health care facilities, with combined estimated mortgage amount of $75 million or more, during an 18 month period, then the owner/operator must furnish information that has not been previously required with the application for mortgage insurance. The owner and/or operator will be acting with an FHA-approved lender, or, if the application is to be processed with Multifamily Accelerated Processing (MAP), the lender must be MAP-approved.

The information includes a Corporate Credit Analysis, to be submitted to a credit rating agency (Standard & Poor's, Moody's Investor Services, Fitch IBCA, Duff & Phelps) and the Analysis

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includes detailed financial information, management policies, and corporate strategy. Owners/operators with 50 or more projects, with estimated combined mortgage amount of $250 million or more must file, in addition to the Corporate Credit Analysis, more detailed information that is required for non-Portfolio owners in connection with the site visit. These large-size owners/operators must also provide information on their other properties and lines of business not being financed with FHA mortgage insurance.

Need and Use of the information

The information is collected and evaluated, first by a rating agency and then by HUD. The purpose is to determine the financial strength and management reliability of the owner/operator. If the owner and/or the operator should go into bankruptcy or be unable to continue management of its large group of properties, the ability of the individual properties to keep operating successfully would be severely jeopardized. The failure of the owner/operator could lead to assignments to HUD of large numbers of health care facilities, and a serious resulting charge to the mortgage insurance fund.

Respondents:

Reporting Burden:

Number of respondents	X	Frequency of response	X	Hours per response	=	Total burden hours

Contact: Eric Stevenson, HUD (202) 708–0614, ext. 2544), Joseph Lackey, OMB, (202) 395–7316

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 20, 2001.

Wayne Eddins,

Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 01–10599 Filed 4–27–01; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–030–01–1610–DO]

Notice of Intent To Prepare the Lower Potomac River Coordinated Management Plan/Environmental Assessment

AGENCY: Bureau of Land Management, Milwaukee Field Office, DOI.

ACTION: Notice of intent to prepare a coordinated management plan.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM), Milwaukee Field Office, intends to prepare a coordinated management plan (CMP) for the purpose of determining whether and where to acquire land in the Lower Potomac River project area located in Charles County, Maryland. No specific tracts have been targeted for acquisition.

The planning efforts will follow the procedures set forth in title 43 of the Code of Federal Regulations, Subpart 1600. The EA will be prepared under the National Environmental Policy Act of 1969 regulations (40 CFR 1500, et seq.).

The public has 30 days from the date of publication of this notice to send its ideas regarding the proposal described below in the "Supplementary Information" and in the preliminary planning criteria sections. These comments should be written to help focus the plan on substantive issues and develop appropriate management alternatives. These comments may include specific resource data or information or locations where these data or information may be found.

DATES: The public scoping period commences with the publication of this notice. Comments must be postmarked no later than May 30, 2001 to ensure the issues they raise are considered in the plan.

ADDRESSES: Comments may be mailed to the following addresses: James W. Dryden, Field Office Manager, Milwaukee Field Office, P.O. Box 631, Milwaukee, Wisconsin 53201–0631 or Ed Ruda, Project Leader Manager, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153.

FOR FURTHER INFORMATION CONTACT: Ed Ruda, Project Leader at (703) 440–1663, or by electronic mail at ed_ruda@es.blm.gov, or Howard Levine, Planning and Environmental Coordinator at (414) 297–4463, or by electronic mail at howard_levine@es.blm.gov.

SUPPLEMENTARY INFORMATION: Congress has appropriated a total of $3 million in Land and Water Conservation Funds (LWCF) for the acquisition of lands by the BLM in the "Douglas Point" region of southwestern Charles County, Maryland. The planning area has been renamed Lower Potomac River Project Area.

Prior to expending Federal money for acquisition, BLM must fulfill the requirements of Sections 202 and 205(b) of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701, *et seq.*) (FLPMA). Under these requirements, any land acquisitions by BLM must conform with applicable land use plans. Currently, BLM has no land use plans in the State of Maryland. The Lower Potomac River Coordinated Management Plan/Environmental Assessment will fulfill that requirement. The plan will not identify any specific tracts for acquisition by the Federal Government, but will instead develop a set of criteria to evaluate proposals for acquisition in the future.

The Lower Potomac River CMP will be developed cooperatively with Maryland Department of Natural Resources (MDNR) and Charles County. By preparing a single plan, each agency's needs will be met and potential acquisitions can be evaluated within an overall conservation strategy for the region.

The planning regulations require that BLM release for review a list of planning criteria that will guide development of the land use plan. The public is invited to review, comment and propose amendments to any of the following planning criteria:

1. The plan will be completed in compliance with FLPMA and other applicable laws.

2. The plan will include an Environmental Assessment (EA) prepared under the National Environmental Policy Act. If scoping reveals the potential for significant impact, BLM will prepare an environmental impact statement.

3. The final plan will include a set of acquisition criteria that will be used to evaluate specific proposals either by Bureau motion or raised by willing sellers. Although land acquisition can be defined as fee title acquisition criteria, conservation easement acquisition, or mineral estate acquisition (less than fee), the terms of BLM's LWCF proposal, as approved by Congress, envision full fee acquisition.

4. The economic benefits and costs of potential Federal acquisitions will be evaluated in the plan.

5. Potential Federal acquisitions will be evaluated in the context of other land acquisitions made by the State of Maryland or not-for-profit groups.

6. Any lands acquired by BLM will be managed consistent with objectives developed as a result of the plan and FLPMA.

7. Lands purchased with LWCF money will be managed consistent with the BLM policies guiding such acquisitions, which includes limiting development. The construction of capital improvements (such as visitor centers, pavilions, and electricity, water or phone lines) are not anticipated at this time.

8. Decisions in the plan will be consistent, to the maximum extent possible, with the policies, plans and programs of local Governments, State agencies and other Federal agencies, and the goals of the Chesapeake Bay Program.

In addition, the Maryland State legislature has required certain information and analyses in any plans prepared for potential State acquisitions in the region. Given the fact that this will be a CMP, it will include the following items: Purchase Plan, Management Oversight Plan, Operating Plan, Public Access Plan, Forestry Management Plan, Wildlife Management Plan, and Water Management Plan.

Complete records of all phases of the planning process will be available at the Milwaukee Field Office and are available upon request.

Dated: April 9, 2001.

Chris Hanson,

Acting Milwaukee Field Manager.

[FR Doc. 01–10611 Filed 4–27–01; 8:45 am]

BILLING CODE 4310–PN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 1205–5]

Proposed Modifications to the Harmonized Tariff Schedule of the United States

AGENCY: International Trade Commission.

ACTION: Additional proposed amendments.

EFFECTIVE DATE: April 23, 2001.

SUMMARY: On November 18, 1999, the Commission instituted investigation No. 1205-5, Proposed Modifications to the Harmonized Tariff Schedule for the United States, pursuant to section 1205 of the Omnibus Trade and Competitiveness Act of 1988. Section 1205 directs the Commission to keep the Harmonized Tariff Schedule of the United States (HTS) under continuous review and to recommend modifications to the HTS (1) when amendments to the International Convention on the Harmonized Commodity Description and Coding System (Harmonized System), and the Protocol thereto, are recommended by the World Customs Organization (Harmonized System), and the Protocol thereto, are recommended by the World Customs Organization (WCO) (formerly known as the Customs Cooperation Council) for adoption, and (2) as other circumstances warrant. The Commission's final report will set forth the proposed changes and indicate the necessary changes in the HTS that would be needed to conform the HTS to the international nomenclature structure; the report will also include other appropriate explanatory information on the proposed changes. A preliminary report was submitted to the Office of the United States Trade Representative in March 2000. Since that time, the Commission has been informed of additional proposed amendments to the HTS that should be included in the final report.

FOR FURTHER INFORMATION CONTACT: Eugene A. Rosengarden, Director (202–205–2592), Office of Tariff Affairs and Trade Agreements, U.S. International Trade Commission, Washington, DC 20436. Hearing impaired individuals are advised that information on this investigation can be obtained by contacting the TDD terminal on (202) 205–1810.

Background

The majority of the changes proposed in the Commission's preliminary report are the result of the work of the WCO and its Harmonized System Committee (HSC) to update and clarify the Harmonized System nomenclature, as part of the WCO's long-term program to review the nomenclature structure on a formal basis. These proposed changes, which are to become effective in January 2002, are available in the Office of the Secretary, Room 112, United States International Trade Commission, 500 E Street SW., Washington, DC 20436 (telephone 202–205–2000) and are posted on the Commission's website (*http://www.usitc.gov*). These changes encompass all decisions taken by the HSC since the implementation of the last set of WCO modifications to the Harmonized System, which were effective as of January 1, 1996.

Other proposed changes included in this investigation have been requested by the U.S. Customs Service, in order to clarify the proper tariff classification and duty treatment of particular goods due to decisions of the Court of International Trade, the HSC, or the U.S. Customs Service. These changes, including those which are the subject of this notice, will be treated separately in the Commission's final report.

The Commission prepared non-authoritative cross-reference tables in its preliminary report to provide guidance to potentially affected parties and to show the likely existing and future tariff classifications of the goods concerned. The Customs Service has domestic legal authority for tariff classification and may provide information, both during the course of the investigation and after the Commission's report is submitted, that indicates different or additional tariff classifications of some goods. Moreover, the WCO has recently issued a cross-reference table under Article 16 of the Harmonized System Convention, indicating the international classifications (existing and future) of the goods affected by the proposed changes. Thus, the classifications shown in the Commission's preliminary cross-reference tables may be subject to change in the final report in light of WCO's cross-reference table.

Additional Proposed Amendments to the HTS

In addition to the changes to the HTS already proposed in the Commission's preliminary report and in the **Federal Register** of December 29, 2000 (65 F.R. 83032), February 16, 2001 (66 FR 10743) and March 8, 2001 (66 FR 13963), the following changes are proposed to clarify proposals already set forth in the Commission's preliminary report to the U.S. Trade Representative, Proposed Modifications to the Harmonized Tariff Schedule of the United States, Investigation No. 1205–5 (Preliminary) (USITC Publication 3295). These new proposed changes are set out below.

Chapter 8

Subheadings 0805.30, 0805.30.20 and 0805.30.40 are superseded by the following:

	[Citrus fruit, fresh or dried:]			
"0805.50	Lemons (*Citrus limon, Citrus limonum*) and limes (*Citrus aurantifolia, Citrus latifolia*):			
0805.50.20	Lemons	2.2¢/kg	Free (A+,CA,E,IL,J) 0.2¢/kg (MX)	5.5¢/kg
	Limes:.			

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0805.50.30	Tahitian limes, Persian limes and other limes of the *Citrus latifolia* variety.	0.8%	Free (A*,CA,E,IL,J,MX)	35%
0805.50.40	Other	1.8¢/kg	Free (A,CA,E,IL,J) 0.2¢/kg (MX)"	4.4¢/kg

[This proposed amendment replaces item 08–1 in Appendix B of USITC Pub. 3295.]

Chapter 85

Note 6 to chapter 85 is superseded by the following:

"6. Records, tapes and other media of heading 8523 or 8524 remain classified in those headings, when entered with the apparatus for which they are intended.

This note does not apply to such media when they are entered with articles other than the apparatus for which they are intended.

For the purposes of this note, the term "apparatus for which they are intended" refers to apparatus which reads or plays the media or which records or writes on the media."

[This proposed amendment replaces item 85–3 in Appendix B of USITC Pub. 3295.]

Chapter 98

The following new heading 9817.64.01 is inserted in numerical sequence:

"9817.64.01	Footwear, other than goods of heading 9021, of a kind for supporting or holding the foot following an illness, operation or injury, provided that such footwear is (1) made to measure and (2) presented singly and not in pairs and designed to fit either foot equally.	Free	The rate applicable in the absence of this heading."

Written Submissions

Interested parties are invited to submit written statements concerning the proposed changes outlined above. Commercial or financial information that a submitter desires to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the proposed changes above should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on May 11, 2001. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or by electronic means.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at http://dockets. usitc.gov/eol/public.

List of Subjects

Tariffs/HTS, Harmonized System, WCO, and imports.

By order of the Commission.

Issued: April 24, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–10697 Filed 4–27–01; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0132(2001)]

Standard on Specifications for Accident Prevention Signs and Tags; Extension of the Office of Management and Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning its proposal to decrease the existing burden-hour estimates, and to extend OMB approval of the collection-of-information requirements, of the standard on Specifications for Accident Prevention Signs and Tags; this standard regulates the design, working and application of signs and tags that inform employees of workplace safety and health hazards.

DATES: Submit written comments on or before June 29, 2001.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0132(2001), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2222. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections contained in the standard on Specifications for Accident Prevention Signs and Tags (29 CFR 1910.145) is available for inspection and copying in the Docket Office or by requesting a copy from Theda Kenney at (202) 693–2222. For electronic copies of the ICR contact OSHA on the Internet at http://www.osha.gov/comp-links.html and select "Information Collection Requests."

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and cost) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information-collection burden is correct.

In determining the paperwork requirements specified in the standard on Specifications for Accident Prevention Signs and Tags (§ 1910.145; hereafter the "Standard"), the Agency finds that paragraph (a)(2) requires employers to use signs and tags that conform to the design and wording specifications contained in paragraphs (d)(1) through (d)(10), (e)(2), (f)(4)(i) through (f)(4)(iv), (f)(7), and (f)(8)(ii) of the Standard. OSHA believes that, as a usual and customary practice, employers meet this requirement by purchasing a supply of appropriate signs and tags. Therefore, the Agency concludes that no burden results from this requirement because appropriate signs and tags are readily available from commercial sources. This conclusion holds even for employers who don't make such purchases because OSHA provides them with the specific wording to use when fabricating their own signs and tags.

The Agency notes that the Standard does not contain requirements for employers to post signs and tags. Instead, other OSHA standards in part 1910 directly specify the posting requirements for the signs and tags described by this Standard. Therefore, the Agency is removing the burden hours previously attributed to posting signs or tags under this Standard, and will assign these burden hours more appropriately to the standards that directly require such posting.

OSHA is recognizing an additional paperwork requirement that it previously overlooked. The Standard requires employers to select signs and tags that are appropriate to the dangers and hazards identified in the workplace; paragraphs (c)(1)(i), (c)(2)(i), (c)(3), (e)(4), (f)(3), (f)(5) through (f)(7), and (f)(8)(i) specify the signs and tags that employers must select for these dangers and hazards. In addition, paragraphs (d)(l) through (d)(10), (e)(2), (f)(4)(i) through (f)(4)(iv), (f)(7), and (f)(8)(ii) provide the design and wording requirements for these signs and tags. Therefore, employers must ensure that the signs and tags selected are appropriate for the identified dangers and hazards and meet the design and wording requirements of the Standard. Accordingly, selecting appropriate signs and tags represents a paperwork requirement that incurs employer burden hours and cost. However, the Agency believes that this requirement imposes minimal burden on most employers because, after they initially identify workplace dangers and hazards and select the appropriate signs and tags, the types of dangers and hazards do not change significantly in most workplaces (i.e., new or additional signs and tags are necessary only for new facilities or new or additional dangers or hazards).

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and cost) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and-transmission techniques.

III. Proposed Actions

OSHA proposes to decrease the existing burden-hour estimate, and to extend OMB approval, of the collection-of-information requirements specified by the Standard. In this regard, the Agency is proposing to decrease the current burden-hour estimate from 30,225 hours to 5,600 hours, a total reduction of 24,625 hours. The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of these information-collection requirements.

Type of Review: Extension of currently approved information-collection requirement.

Title: Specifications for Accident Prevention Signs and Tags (29 CFR 1910.145).

OMB Number: 1218–0132.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local or tribal governments.

Number of Respondents: 112,000.

Frequency of Response: On occasion.

Average Time per Response: 3 minutes (.05 hours).

Estimated Total Burden Hours: 5,600.

Estimated Cost (Operation and Maintenance): $0.

IV. Authority and Signature

R. Davis Layne, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 3–2000 (65 FR 50017).

Signed at Washington, DC on April 24, 2001.

R. Davis Layne,

Acting Assistant Secretary of Labor.

[FR Doc. 01–10636 Filed 4–27–01; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0113(2001)]

Cranes and Derricks Standard for Construction; Extension of the Office of Management of Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits public comment concerning its request to extend OMB approval of the information-collection requirements specified the Cranes and Derricks Standard for Construction; this paragraph requires employers to establish and maintain a record of the dates and results of the annual inspection conducted on each hoisting machine and piece of equipment.

DATES: Submit written comments on or before June 29, 2001.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0113(2001), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to: (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Martinez, Directorate of Policy, Office of Regulatory Analysis, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1953. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified by the Cranes and Derricks Standard is available for inspection and copying in the Docket Office, or by requesting a copy from Todd Owen at (202) 693–2444. For electronic copies of the ICR contact OSHA on the Internet at *http://www.osha.gov/comp-links.html* and select "Information Collection Requests."

SUPPLEMENTARY INFORMATION:

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I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and cost) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information-collection burden is correct.

Paragraph (a)(6) of the Standard requires employers to perform annual inspections of cranes and derricks and to establish and maintain a written record of the dates and results of these inspections. The inspections identify problems such as deterioration caused by exposure to adverse weather conditions, worn components and other flaws and defects that develop during use, and accelerated wear resulting from misalignments of connecting systems and components. A competent person or a government or private agency recognized by the U.S. Department of labor must perform the inspections.

Establishing and maintaining a written record of the annual inspections alerts the equipment mechanics to servicing or repair problems. Prior to returning the equipment to service, employers can review the records to ensure that the mechanics performed the necessary repairs and maintenance. Accordingly, by using only equipment that is in safe working order, employers will prevent severe injury and death to the equipment operators and other employees who use or work near the equipment. In addition, these records provide the most efficient means for an OSHA compliance officer to determine that an employer performed the required inspections and that the equipment is safe.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and cost) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

III. Proposed Actions

OSHA proposes to extend OMB's previous approval of the recordkeeping (paperwork) requirement specified in paragraph (a)(6) of the Cranes and Derricks Standard for Construction (29 CFR 1926.550). The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of this information-collection requirement.

Type of Review: Extension of currently approved information-collection requirements.

Title: Annual Inspection Record Specified in the Cranes and Derricks Standard for Construction.

OMB Number: 1218–0113.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local or tribal governments.

Number of Respondents: 32,900.

Frequency of Response: Annually.

Total Responses: 32,900.

Average Time per Response: Either 2.75 hours or 3.5 hours depending on the capacity of the crane/derrick.

Estimated Total Burden Hours: 115,167.

Estimated Cost (Operation and Maintenance). $3,271,894.

IV. Authority and Signature

R. Davis Layne, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 3–2000 (65 FR 50017).

Signed at Washington, DC, on April 24, 2001.

R. Davis Layne,

Acting Assistant Secretary of Labor.

[FR Doc. 01–10637 Filed 4–27–01; 8:45 am]

BILLING CODE 4510–26–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

April 25, 2001.

TIME AND DATE: 10:00 a.m., Wednesday, May 2, 2001.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

STATUS: Closed in Part [Pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a majority vote of the Commission that part of the Commission meeting to consider and act upon the following take place in closed session:

1. Eagle Energy, Inc., Docket No. WEVA 98–123 (Issues include whether substantial evidence supports the judge's finding that the operator violated the regulations governing preshift and onshift mine examinations by failing to observe unsupported kettle bottoms; whether the judge properly concluded that the violations found were the result of the operator's unwarrantable failure; whether the judge properly imposed penalties that were double in amounts from those initially assessed; and whether the judge's frequent questioning of witnesses improperly interfered with the operator's presentation of its case and reflected bias).

Any person attending the open portion of the meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 01–10804 Filed 4–26–01; 12:32 pm]

BILLING CODE 6735–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 01–054]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Advanced Cybernetics Group (ACG), of Cupertino, CA has applied for an exclusive license to practice the invention disclosed in U.S. Patent No. 5,774,669 entitled "Scalable Hierarchical Network Management System for Displaying Network Information in Three Dimensions" which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Ames Research Center.

DATES: Responses to this notice must be received by June 29, 2001.

FOR FURTHER INFORMATION CONTACT: Robert Padilla, Chief Patent Counsel, NASA Ames Research Center, M/S 202A–3, Moffett Field, CA 94035–1000, telephone 650–604–5104.

Dated: April 23, 2001.

Edward A. Frankle,

General Counsel.

[FR Doc. 01–10614 Filed 4–27–01; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Design Arts Section (Creativity, Organizational Capacity, and New Public Works categories) to the National Council on the Arts will be held on May 31–June 1, 2001, in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506. A portion of this meeting, from 11:00 a.m. to 12:00 p.m. on June 1st, will be for policy discussion and will be open to the public. The remaining portions of the meeting, from 9:00 a.m. to 6:00 p.m. on May 31st and from 9:00 a.m. to 11:00 a.m. and 12:00 p.m. to 5:00 p.m. on June 1st, will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 2000, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: April 23, 2001.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 01–10634 Filed 4–27–01; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Fellowships Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Fellowships Advisory Panel (American Jazz Masters category) will be held by teleconference from 3:00 p.m.—4:30 p.m. on Tuesday May 22, 2001 from Room 703 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of May 12, 2000, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: April 23, 2001.

Kathy Plowitz-Worden,

Panel Operations, Panel Coordinator, National Endowment for the Arts.

[FR Doc. 01–10633 Filed 4–27–01; 8:45 am]

BILLING CODE 7537–01–U

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (P.L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit modification received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of a requested permit modification.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by June 1, 2001. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

Description of Permit Modification Requested

The Foundation issued a permit (2000–001) to Dr. Steven D. Emslie on September 21, 1999. The issued permit allows the applicant access to certain Antarctic Specially Protected Areas in order to conduct surveys and excavations of modern and abandoned penguin colonies by surveying ice-free areas to locate evidence of a breeding colony (pebble and/or bone

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concentrations, and rich vegetation). Not all sites will be visited in single season and access depends upon research vessel cruise tracks and accessibility to the site(s). The sites visited would be sampled by placing a test pit, no more than 1x1 meter in size, in the colony and excavating in 5–10 cm level until bedrock or non-ornithogenic sediments are encountered. To minimize impacts, test pits will be placed in areas with little or no vegetation when possible. Upon completion of the excavation, test pits would be refilled and any vegetation disturbed on the surface replaced. Collected sediments will be taken to the laboratory for processing. Sediments will be washed through fine-mesh screens; all organic remains will be sorted from the sediments and preserved for identification and analysis.

The applicant proposes access additional Antarctic Specially Protected Areas only on an opportunity basis depending upon vessel cruise tracks and schedules. The additional ASPA's are listed under Location, below:

Location

ASPA 102—Rookery Islands, Holme Bay
ASPA 103—Ardery Island and Odbert Island, Budd Coast
ASPA 104—Sabrina Island, Balleny Islands
ASPA 109—Moe Island, South Orkneys
ASPA 110—Lynch Island, South Orkneys
ASPA 111—Southern Powell Island and adjacent islands, South Orkneys
ASPA 114—North Coronation Island, South Orkneys
ASPA 127—Haswell Island
ASPA 135—Bailey Peninsula, Budd Coast
ASPA 136—Clark Peninsula, Budd Coast

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 01–10674 Filed 4–27–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Conservation Act of 1978; Notice of Permit Modification

AGENCY: National Science Foundation.

SUMMARY: The Foundation modified a permit to conduct activities regulated under the Antarctic Conservation Act of 1978 (Public Law 95–541; Code of Federal Regulation Title 45, Part 670).

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Officer, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Description of Permit and Modification

On September 25, 1998, the National Science Foundation issued a permit (ACA #99–009) to Dr. William R. Fraser after posting a notice in the August 27, 1998 **Federal Register.** Public comments were not received. A request to modify the permit was posted in the **Federal Register** on March 13, 2001. No public comments were received. The modification, issued by the Foundation on April 20, 2001, allows the permit holder to capture, study and release up to 50 Emperor penguins, 100 Gentoo penguins, 100 Chinstrap penguins, and 100 each of Snow, Cape and Antarctic Petrels. The data collected will help to access how annual environmental variability affects seabird diets, breeding success, growth rates, and population trends.

Location: Antarctic Peninsula.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 01–10675 Filed 4–27–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (1189).

Date/Time: May 15, 2001, 8:30 am–5 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 360, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Fred Thompson, Program Director, Environmental Technology Program, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 292–8320.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals and proposals received under the Information Technology Research (ITR) Program Solicitation (Announcement Number NSF 00–126), as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and person information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) or the Government in the Sunshine Act.

Dated: April 25, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–10676 Filed 4–27–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date/Time: May 17 and 18, 2001, 8 a.m. to 5 p.m.

Place: NSF, 4121 Wilson Boulevard, Room 575, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Alison Flatau, Program Director, Dynamic Systems and Control. National Science Foundation, 4201 Wilson Blvd., Room 545, Arlington, VA 22230. (703) 292–8360.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY'01 IIA Control Review Panel as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 25, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–10677 Filed 4–27–01; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–8]

Notice of Issuance of Amendment to Materials License SNM–2505, Calvert Cliffs Nuclear Power Plant Independent Spent Fuel Storage Installation

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued Amendment 3 to Materials License No. SNM–2505 held by Calvert Cliffs Nuclear Power Plant (CCNPP) for

the receipt, possession, storage, and transfer of spent fuel at the Calvert Cliffs independent spent fuel storage installation (ISFSI), located in Calvert County, Maryland. The amendment is effective as of the date of issuance.

By application dated November 16, 2000, CCNPP requested an amendment to its ISFSI license to revise License Conditions 9, 12, and 16 and the License Technical Specifications to eliminate unnecessary regulatory requirements.

This amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

In accordance with 10 CFR 72.46(b)(2), a determination has been made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected. Therefore, the publication of a notice of proposed action and an opportunity for hearing or a notice of hearing is not warranted. Notice is hereby given of the right of interested persons to request a hearing on whether the action should be rescinded or modified.

The Commission has determined that, pursuant to 10 CFR 51.22(c)(11), an environmental assessment need not be prepared in connection with issuance of the amendment.

For further details with respect to this action, see the amendment application dated November 16, 2000. In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of the application will be available electronically for public inspection in the NRC Public Document Room, One White Flint North Building, 11555 Rockville Pike, Rockville, Maryland 20852, or from the publicly available records component of the NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/NRC/ADAMS/index.html* (the Public Electronic Reading Room).

Dated at Rockville, Maryland, this 17th day of April 2001.

For the Nuclear Regulatory Commission.

Susan M. Frant,

Deputy Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01–10615 Filed 4–27–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–73]

Notice of Renewal of Facility Operating License for the General Electric Nuclear Test Reactor

The U. S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 21 to Facility Operating License No. R–33 issued to the General Electric Company (the licensee). This license amendment renews the license for the General Electric Nuclear Test Reactor in Sunol, California. The facility is a non-power reactor that has been operating at power levels not in excess of 100 kilowatts (thermal). The renewed Operating License will expire 20 years from the date of amendment issuance.

Opportunity for hearing on this amendment was afforded in the notice of the proposed issuance of this renewal in the **Federal Register** on September 22, 1999, at 64 FR 51340. No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The amended license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's Rules and regulations in 10 CFR Chapter I. Those findings are set forth in the license amendment.

The Commission has prepared a safety evaluation for the renewal of the license, which is attached to the amendment. The Commission has, based on that safety evaluation, concluded that the facility can continue to be operated by the licensee without endangering the health and safety of the public.

The Commission also has prepared an environmental assessment and finding of no significant impact for the renewal of the license. The environmental assessment and finding of no significant impact was published in the **Federal Register** on April 20, 2001, at 66 FR 20339. Continued operation of the reactor will not require alteration of buildings or structures, will not lead to significant changes in effluents released from the facility to the environment, will not increase the probability or consequences of accidents, and will not involve any unresolved issues concerning alternative uses of available resources. The Commission has concluded that this action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see (1) the application for amendment dated September 30, 1997, as supplemented on June 18, 1999, August 23, 1999, June 1, 2000, and October 5, 2000, (2) the notice of the proposed issuance, (3) Amendment No. 21 to Facility Operating License R–33, (4) the Commission's related safety evaluation report, and (5) the environmental assessment and finding of no significant impact. These documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will also be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this April 20, 2001.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Chief, Events Assessment, Generic Communications, and Non-Power Reactors Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 01–10616 Filed 4–27–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–336]

Northeast Nuclear Energy Company, et al., Millstone Nuclear Power Station, Unit No. 2; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance; correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on April 23, 2001 (66 FR 20485), that considers issuance of an amendment to Facility Operating License No. DPR–65, issued to Northeast Nuclear Energy Company, et al. This action is necessary to correct an erroneous date.

FOR FURTHER INFORMATION CONTACT: Daniel S. Collins, Office of Nuclear Reactor Regulation, Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–1427, e-mail: DXC1@nrc.gov.

SUPPLEMENTARY INFORMATION: On page 20485, in the third column, in the first complete paragraph, the date is changed

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from "May 21, 2001." to read "May 23, 2001."

Dated in Rockville, Maryland, this 24th day of April 2001.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 01–10617 Filed 4–27–01; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Notification Under Regulation E; Form 1–E; Rule 604 and Rule 605; SEC File No. 270–221; OMB Control No. 3235–0232

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), ("PRA"), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collections of information discussed below.

Rule 604—Filing of Notification on Form 1–E

Rule 604 of Regulation E [17 CFR 230.604] under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] ("Securities Act") requires a small business investment company ("SBIC") or a business development company ("BDC") claiming an exemption from registering its securities under the Securities Act to file a notification with the Commission on Form 1–E.

Rule 605—Filing and Use of the Offering Circular

Rule 605 of Regulation E [17 CFR 230.605] under the Act requires an SBIC or BDC claiming an exemption from registering its securities under the Securities Act to file an offering circular with the Commission that must also be provided to persons to whom an offer is made.

Form 1–E—Notification Under Regulation E

Form 1–E is the form that an SBIC or BDC uses to notify the Commission that it is claiming an exemption under Regulation E from registering its securities under the Securities Act. Form 1–E requires an issuer to provide the names and addresses of the issuer, its affiliates, directors, officers, and counsel; a description of events which would make the exemption unavailable; the jurisdiction in which the issuer intends to offer its securities; information about unregistered securities issued or sold by the issuer within one year before filing the notification on Form 1–E; information as to whether the issuer is presently offering or contemplating offering any other securities; and exhibits, including copies of the offering circular and any underwriting contracts.

The Commission uses the information provided in the notification on Form 1–E and the offering circular to determine whether an offering qualifies for the exemption under Regulation E. It is estimated that approximately three issuers file with the Commission approximately two notifications on Form 1–E annually, including offering circulars. The Commission estimates that the total burden hours for preparing these notifications would be 600 hours in the aggregate. Estimates of the burden hours are made solely for the purposes of the PRA, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

SBICs or BDCs wishing to claim an exemption under Regulation E from registering securities under the Securities Act are required to file a notification on Form 1–E and offering circular. The information provided on Form 1–E and in the offering circular will not be kept confidential. The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 24, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–10642 Filed 4–27–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension

Form U–6B–2; SEC File No. 270–169; OMB Control No. 3235–0163.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

The Public Utility Holding Company Act of 1935 [15 U.S.C. Section 79A et seq.] requires the filing of an application and/or declaration on Form U–1 for prior Commission approval both for the issue and sale of a security and its acquisition by a company in a registered holding company system.[1] Section 6(b) provides that the Commission shall exempt from the requirement of filing a declaration on Form U–1, by rules and regulations or orders and subject to such terms and conditions, as it deems appropriate in the public interest or for the protection of investors or consumers, certain security issuances and sales.

Section 6(b) also contains a reporting requirement. It directs the issuer of securities exempted under section 6(b) to file with the commission within ten days of the issue or sale of a certificate notification and directs the Commission to prescribe the from of and information required in this certificate. Rule 20(d) prescribes Form U–6B–2 as the form of certificate of notification to be filed pursuant to section 6(b). Form U–6B–2 is also prescribed by Rule 52(c) (17 CFR 250.52(c)) and Rule 47(b) (17 CFR 250.47(b)) as the form of certificate of notification to be filed by a public utility subsidiary company of a registered holding company to notify the Commission of exempt issuances and sales of securities under Rule 52 Exemption of Issue and Sale of Certain Securities approved by state commissions and Rule 47 Exemption of Public Utility Subsidiaries as to Certain Securities Issued to the Rural Electrification Administration. The Commission receives about 89 Form U–6B–2s per year from 89 respondents who each file once, which imposes an annual burden of about 89 hours.

The estimates of the average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 23, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–10643 Filed 4–27–01; 8:45 am]

BILLING CODE 8010–01–M

[1] *See* section 6(a) (requiring prior Commission approval under the standards of section 7 for the issue and sale of securities) and section 9(a)(1) (requiring prior Commission approval under the standards of section 10 for the acquisition of securities).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44211; File No. SR–AMEX–2001–14]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the American Stock Exchange LLC Relating to Members' Written Proposals to List Equity Option Classes

April 23, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 8, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange submitted an amendment to the proposed rule change on April 17, 2001.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to adopt Commentary .08 to Amex Rule 915 to provide procedures for members to submit written proposals requesting the listing for trading on the Amex of any equity option class. The text of the proposed rule change is set forth below. All language is being added.

* * * * *

Rule 915 Criteria for Underlying Securities

* * * * *

Commentary

* * * * *

.08 Members or member organizations may submit written proposals requesting the Exchange to review listing and trading any equity option class. The written proposal should include a discussion of how the proposed option and its underlying security comply with the criteria set forth in paragraph (a) below and with the considerations set forth in paragraph (b). Written proposals received prior to 1:00 p.m. will be considered to be received on that business day and proposals received after 1:00 p.m. will be deemed to have been received on the next business day.

(a) Listing Criteria—To be eligible to be considered for listing on the Exchange, the underlying security must meet the criteria and guidelines set forth in Rule 915 and its Commentary for options on equity securities.

(b) Listing Considerations—In determining whether to list and trade an option class proposed pursuant to Commentary, the Exchange may consider any or all of the following factors:

(i) If the proposed option is already traded on another exchange, the consolidated trading volume and trends in such volume over near and long-term;

(ii) The level and nature of the share and/or trade volume for the underlying security and trends in such volume over near and long-term;

(iii) If the underlying security is listed (or is a prospective listed security) on the Amex, or an affiliated of the Amex, the views of the issuer of such security;

(iv) The price, price volatility, and spread of the underlying security, its "short interest" (i.e., the total amount of the underlying equity security that has been sold short and has not yet been repurchased to close out short positions in the security) and the ability of members and investors to borrow the underlying security;

(v) The industry the underlying security represents in order to: (i) maintain diversity among various industries and issuers selected for options trading; or (ii) provide investors with the ability to use standardized options in industry sectors with growing and developing investor interest; and

(vi) The impact the listing could have on bona fide strategies or businesses of the Exchange or any of its affiliates.

The Exchange shall review and make a determination regarding a member's listing proposal within twenty-five days of receipt of the proposal. If the determination is not to list the proposed option class or to limit or condition the listing of the option in any way, then the Exchange shall, in writing within the twenty-five day period, inform the member submitting the proposal the basis for denial of the proposal or the basis for any limitation or condition put on its acceptance. If the Exchange relies upon the impact the listing could have on bona fide strategies or businesses of the Exchange or its affiliates as a factor for denying, limiting or conditioning the proposed listing, the Exchange shall maintain a record of the bona fide business or strategic considerations supporting its decision.

These procedures will not alter or have any impact on the Exchange's rules, procedures or decisions for allocating and/or reallocating to a specialist unit those options the Exchange determines to list and trade.

In addition, the Exchange's interpretation regarding threats, harassment and retaliation set forth in Rule 16, Commentary .01 shall apply to the listing proposals made by members pursuant to this Commentary .08.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from Claire P. McGrath, Vice President and Special Counsel, Derivative Securities, Amex, to Elizabeth King, Associate Director, Division of Market Regulation, Commission, dated April 16, 2001 ("Amendment No. 1"). Amendment No. 1 revises proposed Commentary .08 to Amex Rule 915 to require the Amex to maintain a record of any bona fide business considerations it relies upon in denying or placing limitations or conditions upon a proposed listing.

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statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt Commentary .08 to Amex Rule 915 to provide procedures for members to submit written proposals requesting the listing for trading on the Exchange of any equity option class.[4] Commentary .08 would require the underlying security to meet the criteria and guidelines set forth in Amex Rule 915 and its Commentary before it can be considered for listing on the Exchange. The written proposal would be required to include a discussion of how the proposed listing complies with the criteria set forth in Amex Rule 915 and its Commentary and the factors set forth below. If a proposal is submitted after 1:00 p.m. on a business day, it would be considered submitted on the following business day. If the underlying security meets the eligibility criteria and guidelines, the Exchange would consider the following factors in determining to list the proposed option:

- If the proposed option is already traded on another exchange, the consolidated trading volume and trends in such volume over the near and long-term;
- The level and nature of the share and/or trade volume for the underlying security and trends in such volume over the near and long-term;
- If the underlying security is listed (or is a prospective listed security) on the Exchange, or on an affiliate of the Exchange, the views of the issuer of such security;
- The price, price volatility, and spread of the underlying security, its "short interest" (*i.e.*, the total amount of the underlying equity security that has been sold short and has not yet been repurchased to close out short positions in the security) and the ability of members and investors to borrow the underlying security.
- The industry the underlying security represents in order to: (i) Maintain diversity among various industries and issuers selected for options trading; or (ii) provide investors with the ability to use standardized options in industry sectors with growing and developing investor interest; and
- The impact the listing could have on bona fide strategies or businesses of the Exchange or any of its affiliates. The Amex would be required to maintain a record of any bona fide business considerations it relies upon in denying or placing limitations or conditions upon a proposed listing.[5]

The Exchange would be required to review and make a determination regarding a member's listing proposal within 25 days of receipt of the proposal. If the Exchange decides not to list the proposed option class or to limit or condition the listing of the option in any way, the Exchange would be required, in writing and within the 25 day period, to inform the member of the basis for denial of the proposal or the basis for any limitation or condition put on its acceptance.

The proposed rule change would not limit the Exchange's right on its own determination to research, identify, and propose to the Stock Selection Committee, as it does today, the listing of options on securities that meet the listing criteria set forth in Amex Rule 915 and its Commentary. The proposed procedures would not alter or have any impact on the Exchange's rules, procedures or decisions for allocating and/or reallocating to a specialist unit those options the Exchange determines to list. In addition, proposed Commentary .08 would reference the anti-harassment rule set forth in Amex Rule 16, Commentary .01, to prohibit threats, harassment, and retaliation against any person or entity making or advocating a listing proposal or beginning to make markets in any option class on any exchange or other market.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act[6] in general and furthers the objectives of section 6(b)(5)[7] in particular in that it is designed to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Amex did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR–Amex–2001–14 and should be submitted by May 21, 2001.

[4] As part of a settlement of an enforcement action by the Commission, four of the five options exchanges, including the Amex, are required to adopt rules to codify listing procedures to be carried out when a member or member organization requests the exchange to list options not currently trading on the exchange. *See* Order Instituting Public Administrative Proceeding Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000).

[5] *See* Amendment No. 1, *supra* note 3.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–10609 Filed 4–27–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44208; File No. SR–ISE–01–02]

Self-Regulatory Organizations; International Securities Exchange LLC; Order Granting Approval to Proposed Rule Change Relating to Anticipatory Hedging Activity

April 20, 2001.

On January 12, 2001, the International Securities Exchange LLC ("ISE" or "Exchange") field with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to anticipatory hedging activity.

The proposed rule change would prohibit a member or a person associated with a member who has knowledge of all the terms and conditions concerning the imminent execution of (1) an order and a solicited order, (2) an order being facilitated, or (3) two orders being crossed, to enter, based on that knowledge, an order to buy or sell an option of the same class, shares in the underlying security, or any related instrument, before the same information is disclosed to the trading crowd.

The proposed rule change was published for comment in the **Federal Register** on February 27, 2001.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of section 6 of the Act[5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act,[6] because it is designed to maintain the integrity of the ISE's market by preventing the misuse of non-public information and affording the trading crowd a fair and full opportunity to make informed trading decisions. It also conforms to similar rules at other options exchanges relating to anticipatory hedging.[7]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–ISE–01–02) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–10608 Filed 4–27–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44214; File No. SR–NASD–2001–21)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Amendments to the Fee Structure of the Code of Arbitration Procedure

April 24, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder, [2] notice is hereby given that on March 23, 2001, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. ("NASD Dispute Resolution") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Dispute Resolution. On April 20, 2001, the NASD filed Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Dispute Resolution is proposing to amend the Code of Arbitration of Procedure ("Code") to clarify or simplify several fee-related provisions of the Code. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

10306. Settlements

[All settlements upon any matter shall be at the election of the parties.]

(a) *Parties to an arbitration may agree to settle their dispute at any time.*

(b) *The terms of a settlement agreement do not need to be disclosed to NASD Dispute Resolution. However, the parties will remain responsible for payment of fees incurred, including fees for previously scheduled hearing sessions. If the parties fail to agree on the allocation of outstanding fees, the fees shall be divided equally among all parties.*

* * * * *

10319. Adjournments

(a) The arbitrator(s) may, in their discretion, adjourn any hearing(s) either upon their own initiative or upon the request of any party to the arbitration.

(b) [Unless waived by the Director of Arbitration upon a showing of financial need,] *If an adjournment requested by a party is granted after arbitrators have been appointed, the* [a] party requesting the adjournment [after arbitrators have been appointed shall deposit with the request for an adjournment,] *shall pay* a fee equal to the initial deposit of hearing session fees for the first adjournment and twice the initial deposit of hearing session fees, not to exceed [$1,000] *1,500* for a second or subsequent adjournment requested by that party. [If the adjournment is granted, the arbitrator(s) may direct the return of the adjournment fee.] *The arbitrators may waive these fees in their discretion. If more than one party requests the adjournment, the arbitrators shall allocate the fees among the requesting parties.*

(c) Upon receiving a third request consented to by all parties for an adjournment, the arbitrator(s) may dismiss the arbitration without prejudice to the Claimant filing a new arbitration.

* * * * *

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43983 (February 20, 2001), 66 FR 12576 (February 27, 2001).

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] *See, e.g.*, American Stock Exchange Rule 950(d), Commentary .04., Chicago Board Options Exchange Rule 6.9(e).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Laura Gansler, Counsel, NASD Dispute Resolution, to Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, dated April 19, 2001 ("Amendment No. 1"). In Amendment No. 1, the NASD changed the first sentence of NASD Rule 10306 to indicate that the terms of a settlement agreement do not need to be disclosed to NASD Dispute Resolution, rather than the NASD as originally proposed.

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10328. Amendments

(a) After the filing of any pleadings, if a party desires to file a new or different pleading, such change must be made in writing and filed with the Director of Arbitration with sufficient additional copies of each arbitrator. The party filing a new or different pleading shall serve on all other parties, a copy of the new or different pleading in accordance with the provisions set forth in Rule 10314(b). The other parties may, within ten (10) business days from the receipt of service, file a response with all other parties and the Director of Arbitration in accordance with Rule 10314(b).

(b) *If a new or amended pleading increases the amount in dispute, all filing fees, surcharges, and process fees required under Rules 10332 and 10333 will be recalculated based on the amended amount in dispute.*

(c) After a panel has been appointed, no new or different pleading may be filed except for a responsive pleading as provided for in (a) above or with the panel's consent.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Dispute Resolution included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Dispute Resolution has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Dispute Resolution has identified several provisions of the Code relating to the assessment or payment of fees that have generated confusion for the staff and parties, or otherwise require simplification or clarification. The general purpose of the proposed rule change is to clarify or simplify these provisions. The proposed amendment to Rule 10319 would also harmonize the rule with recent changes to other parts of the Code.

a. *Settlement Default for the Allocation of Forum Fees.* Rule 10306 of the Code provides that parties to arbitrations may settle their dispute at any time. The terms of any settlement agreement need not be disclosed to the NASD Dispute Resolution.[4] However, settling parties remain responsible for payment of outstanding fees, including fees for previously held hearing sessions. NASD Dispute Resolution encourages parties to agree on how any outstanding fees shall be divided among the parties as part of the settlement agreement. Unfortunately, this often does not happen.

When the parties fail to allocate fees in settlements, the staff must present this issue to the arbitrator(s) for resolution. This is a time-consuming process that is an unnecessary burden to the arbitrator(s) and can result in surprises to the parties. To eliminate any ambiguity in this area, the proposed rule change would amend Rule 10306 to provide that if settling parties fail to agree on the allocation of outstanding fees, the fees will be divided equally among all parties by default.

b. *Adjournment Fees.* The proposed rule change would modify the timing of the payment of adjournment fees. Rule 10319 of the Code currently requires parties requesting adjournment of an arbitration hearing to deposit a fee at the time the adjournment is requested. If the adjournment is not granted, the deposit is returned; if it is granted, the arbitrators may return the deposit in their direction.

The proposed rule change would minimize the burden this rule places on parties, arbitrators, and staff by providing that payment of the adjournment fee is required only if an adjournment is granted, rather than requiring a deposit of fees when a request for adjournment is made. This would eliminate the need for parties to deposit funds that may be returned to them, as well as the need for the staff to track the deposits and issue refunds if necessary. It would also help to expedite the resolution of adjournment requests.

The proposed rule change would also address a technical imperfection in the current adjournment fee rule. The current rule provides that, for initial adjournment requests, the fee is equal to the amount of the initial hearing session fee; for second or subsequent adjournment requests, the amount is twice the initial hearing session fee, but not more than $1,000. The intent of the portion of the current rule is to discourage repeat adjournments, by having second and subsequent adjournments cost substantially more than the first adjournment. When the NASD's new fee schedule went into effect in March 1999, hearing session fees were generally increased.[5] For several claim categories, the hearing session fee now exceeds $1,000, meaning that the rule as presently written can result in a *lower* fee for second and subsequent adjournments. To address this anomaly, the proposed rule change would increase the current $1,000 cap to $1,500.

c. *Recalculating Fees When Amount in Dispute is Amended.* Finally, the proposed rule change would amend Rule 10328 of the Code, governing amendments to pleadings, to clarify that when a claim is amended to increase the amount in dispute, NASD Dispute Resolution will recalculate filing fees, hearing session deposits, surcharges, and process fees based on the new, increased claim. This will present parties from avoiding higher filing fees and surcharges by initially claiming an artificially low amount in dispute in their statement of claim.

2. Statutory Basis

NASD Dispute Resolution believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Dispute Resolution believes that the proposed rule change will protect investors and the general public by simplifying and clarifying various fee-related provisions of the Code.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Dispute Resolution does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i)

[4] *See* Amendment No. 1, *supra* note 3.

[5] See Securities Exchange Act Release No. 41056 (February 16, 1999), 64 FR 10041 (March 1, 1999) (File No. SR–NASD–97–79).

[6] 15 U.S.C. 78o-3(b)(6).

as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to SR–NASD–2001–21 in the caption above and should be submitted by May 21, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–10641 Filed 4–27–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44212; File No. SR–OCC–2001–05]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Clearing Security Futures

April 23, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 21, 2001, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") and on April 16, 2001, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend OCC's By-Laws to provide that OCC may clear transactions in security futures effected on any national securities exchange or association registered under section 6(a) or 15A(a) of the Act, as amended, or any "designated contract market" (as that term is used in the Commodity Exchange Act ("CEA") that is registered as a national securities exchange under section 6(g) of the Act.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Commodity Futures Modernization Act ("CFMA"), which became law on December 21, 2000, eliminated the preexisting ban on trading in future contracts on individual securities and narrow-based stock indices. Such "security futures" will be permitted to be traded on a principal to principal basis between "eligible contract participants" on August 21, 2001, and by other classes of customers on December 21, 2001. The purpose of this proposed rule change is to identify the kinds of markets from which OCC will accept transactions in security futures for clearance.

OCC anticipates that some or all of OCC's five participant exchanges will trade security futures, either on the participant exchange itself or on an affiliated futures exchange. OCC expects that it will therefore enter into the business of clearing security futures. However, the types of entities that can provide a marketplace for security futures include markets in addition to the options exchanges that are OCC's participant exchanges. These include other national securities exchanges and national securities associations as well as any "board of trade" that has been designated as a "contract market" under the CEA. An SEC-regulated market that wishes to trade security futures is required to obtain a limited-purpose registration as a marketplace under the CEA through a notice filing with the Commodity Futures Trading Commission ("CFTC"). A CFTC-regulated market trading security futures is required to obtain a limited-purpose registration with the Commission as a national securities exchange under a similar procedure. Each market will be regulated primarily by the agency (*i.e.*, the Commission or the CFTC) with which it is fully registered.

OCC believes that it is in a uniquely favorable position to clear security futures for any of these types of markets. OCC's role as the common clearinghouse for equity options offers opportunities for margin offsets and other efficiencies that would not be available if positions in security futures were carried with other clearinghouses. OCC's settlement interface with the National Securities Clearing Corporation gives OCC the ready ability to effect delivery of underlying stocks with respect to physically settled security futures. Because of OCC's experience and expertise in adjusting equity option contracts to compensate for various corporate actions, OCC is uniquely prepared to perform the same necessary function for security futures. Finally, OCC is legally able to clear security futures transactions originating on any type of market whereas a futures clearinghouse cannot clear security futures transactions originating on national securities exchanges that are registered with the Commission pursuant to section 6(a) of the Act without registering as a securities clearing agency.

Clearing members have conveyed to OCC their desire to consolidate clearance, settlement, and collateralization of similar or hedgeable products. This need grows in urgency with the sale of the collateral necessary to support the growing security derivatives markets.

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

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OCC believes that the interests of minimizing the scale and cost of collateral, maximizing the efficiency of clearance and settlement, reducing systemic risk, providing the best possible service to clearing members at the lowest possible price, and ultimately reducing costs to investors all argue that OCC's policy should be to clear stock futures transactions for any national securities exchange or association registered under section 6(a) or 15(A)(a) of the Act or any "designated contract market" (as that term is used in the CEA) that is registered as a national securities exchange under section 6(g) of the Act.

OCC will, of course, need to adopt additional rules governing security futures. Additionally, as described below, OCC proposed to cover security futures under separate clearing agreements between it and the markets desiring to clear security futures transactions through OCC rather than to incorporate security futures in the Restated Participant Exchange Agreement ("RPEA"). Because these products and the systems and other infrastructure needed to clear them are still being designed and developed, it is too early for OCC to be able to file a complete set of rules for clearing security futures. These rules, including a proposed form of clearing agreement for security futures, will be the subject of one or more future filings under Rule 19b-4. However, it is important to resolve now the question of which markets OCC will clear for in order that both those markets and OCC can prepare for the start of security futures trading, which can begin in less than six months.

Considerations of fairness dictate that markets other than participant exchanges and their affiliates be required to market some form of "investment" in OCC analogous to the redeemable equity investments required of participant exchange. However, such markets should not be offered OCC common stock. Increasing the number of OCC's common stockholders would dilute the interest of OCC's existing stockholders and unnecessarily complicate issues of corporate governance.

Accordingly, the proposed amendment to Article I of OCC's By-Laws would define a separate category of market—a "security futures market—"—from which OCC would accept transactions in security futures for clearance. The definition of "security futures market" would include certain entities, other than participant exchanges, that can be marketplaces for security futures under the provisions of the CFMA.[3] A security futures market would not be defined as an "exchange," and OCC would be simply a provider of clearing services to such markets. For convenience, however, the terms "exchange transaction," "exchange rules," and "exchange member" would be redefined to include transactions on the rules and members of, as the case may be, a security futures market.

OCC anticipates that it would clear security futures transactions on security futures markets on the same terms and subject to the same clearing fees that will apply to security futures transactions originating on the exchanges. OCC proposes to create a new Article XII of its By-Laws that will be applicable to security futures. For the reasons stated, the present filing contains only the first section of Article XII, which establishes the conditions on which OCC will clear transactions in security futures for an exchange or a security futures market. Section 1 distinguishes between participant exchanges and security futures markets that are affiliated with an exchange, on the one hand, and non-affiliated security futures markets on the other hand.

For the sake of fairness to its participant exchanges, which are required to purchase and hold shares of OCC stock and to provide additional capital to OCC to support the preparation for clearing transactions for new security futures markets, OCC proposes that non-affiliated security futures markets be required to make a "good faith" deposit with OCC of $250,000. That deposit will be refunded to the security futures market in whole or in part if it ceases clearing security futures through OCC. OCC is considering a formula that would fix the amount of the refund at the lesser of the full amount of the original deposit or 50% of the amount of clearing fees received by OCC from clearing members as a result of transactions on that market (*i.e.*, a kind of "earn out" provision).

OCC would not be obligated to undertake security futures clearing for any non-affiliated security futures market if it determined that to do so would tax OCC's resources in a way that would jeopardize OCC's ability to fully perform its other responsibilities.

The proposed By-Law provision would also require an exchange or security futures market that wishes OCC to clear its transactions in security futures to enter into a clearing agreement with OCC that would define the business relationship between OCC and such market with respect to security futures. OCC anticipates that there will be separate but uniform (except for provisions relating to the good faith deposit required of non-affiliated security futures market) clearing agreements with each exchange and security futures market that clears security futures through OCC. These agreements would cover some of the same matters covered in the RPEA but would omit inapplicable provisions relating to the registration statement on which OCC registers options, registration under state securities laws, and the options disclosure document. The clearing agreement would also contain appropriate indemnification of OCC and its officers and directors. The clearing agreement would terminate if the exchange or security futures market is no longer eligible to list security futures, no longer lists security futures despite being eligible to do so, or is in material breach of the clearing agreement.

The proposed rule change is consistent with the purposes and requirements of section 17A of the Act[4] and the rules and regulations thereunder applicable to OCC because it fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, removes impediments to and perfects the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and in general protects investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–2001–05 and should be submitted by May 21, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–10607 Filed 4–27–01; 8:45 am]

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[3] The term "security futures market" does not include an "alternative trading system" or a "derivatives transaction execution facility" even though such markets may also trade security futures under provisions of the CEMA. Under section 6(h) of the Act, alternative trading systems would be permitted to trade only those security futures that are listed on a national securities exchange or national securities association and even then not until certain additional action is taken by such an exchange or association as provided in section 6(h)(5) of the Act. "Derivatives transaction facility" is a newly created regulatory category under the CEA. OCC believes that clearance of transactions for either of these types of entities could involve additional considerations not raised by its current proposal.

[4] 15 U.S.C. 78q–1.

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44203; File No. SR–Phlx–2001–10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. To Amend Phlx Rule 237 To Expand the Securities Eligible for eVWAP Trading

April 19, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 5, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On April 13, 2001, the Exchange amended the proposal.[3] The Exchange has designated this proposal as one affecting a change in an existing order entry or trading system of the Phlx that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system under Section 19(b)(3)(A) of the Act,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 237, eVWAP Morning Session,[5] to expand the securities eligible for eVWAP trading to include additional exchange traded component issues of the Standard and Poor's ("S&P") 500 index. Specifically, the Exchange proposes to adopt paragraph (b), which states the following:

(b) Eligible Securities. The following securities will be eligible for execution in the System:

(i) Exchange listed component issues of the Standard & Poor's 500 index and any exchange listed issue that has been designated by the compiler of such index for inclusion in such index.

(ii) Any of 300 New York Stock Exchange (NYSE) issues selected as follows: the 400 NYSE issues with the highest market capitalization excluding the 100 issues that have the lowest average daily dollar trading volume over 20 days preceding the eligibility determination, with eligibility determined at least semiannually.

The Exchange also proposes technical amendments to Phlx Rule 237 relating to decimal reporting and a minor change to the calculation methodology, as described further below. The complete text of the proposal is available at the Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to expand the number of highly capitalized and actively traded securities eligible to participate in eVWAP pursuant to Phlx Rule 237. The eVWAP is a pre-opening order matching session for the electronic execution of large-sized stock orders at a standardized volume weighted average price ("eVWAP Price").

The proposed expansion of eligible securities would include those exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* April 12, 2001 letter and attachments from Murray L. Ross, Phlx to Nancy Sanow, Division of Market Regulation, SEC ("Amendment No. 1"). In Amendment No. 1, the Phlx limited the new securities eligible for eVWAP to exchange traded component issues of the Standard & Poor's 500 index, and made other technical, non-substantive changes to the original proposal. For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on April 13, 2001, the date the Phlx filed Amendment No. 1.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] eVWAP was developed by Universal Trading Technologies Corporation, and was approved by the Commission to operate as a facility of the Exchange. *See* Securities Exchange Act Release No. 41210 (March 24, 1999), 64 FR 15857 (April 1, 1999)(SR–Phlx–96–14). The original pilot program was extended until November 30, 2001. *See* Securities Exchange Act Release No. 43477 (October 23, 2000), 65 FR 64734 (October 30, 2000)(SR–Phlx–00–84).

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listed and Consolidated Tape Association ("CTA") reported securities that are component issues of the S&P 500 index. This expansion would increase the number of securities available for eVWAP participation by 169 exchange listed securities that are not presently eVWAP eligible, but are component issues of the S&P 500 index. A number of eVWAP participants have requested that the Exchange make these issues eligible for inclusion in the system pursuant to Phlx Rule 237 issue eligibility procedures.

The Exchange notes that the additional eligible securities may not be securities that the Exchange otherwise trades on its equity floor. These securities may instead only be traded through the eVWAP System; thus, they would be traded on an unlisted trading privileges basis, but without trading during regular trading hours pursuant to regular trading rules and thus without the concomitant quoting obligations. Nevertheless, these eVWAP trades will be reported pursuant to the applicable reporting channel, the CTA Tape.

The Exchange notes that the additional securities that it has requested to be eligible for eVWAP matching are all high capitalization issues, enjoying active trading volume. The S&P 500 index is a key benchmark of large capitalization securities followed actively by institutional money managers and investment fiduciaries that seek to trade component issues relative to their index weightings. Certain of these market participants, among others, have indicated that they see considerable utility in extending the benefits now afforded to a limited group of listed issues to a more expansive eVWAP eligibility list, including all exchange listed component issues of the S&P 500 index. Additionally, the eligibility of these additional issues is critical to developing eVWAP order flow connected with certain index-linked stock basket transactions.

The Exchange also notes that it has eliminated the exclusion of issues that have a market price of $200 or more per share in determining eligibility for listed issues. Originally the $200 market price exclusion was designed to eliminate very highly priced issues such as Washington Post and Berkshire Hathaway. The Exchange believes that the existing dollar volume criteria has and will continue to eliminate very highly priced issues which possess limited trading activity outside of the system while permitting certain actively traded high priced issues to be eVWAP eligible.

The Exchange notes that several major broker-dealers sponsor alternative trading systems, which currently provide crossing networks that offer the opportunity to trade any listed or Nasdaq reported securities. For example, ITG (POSIT) and Instinet operate crossing systems that offer trade matching in thousands of reported securities without regard to capitalization or dollar volume. As a competitive matter, the Phlx believes that eVWAP needs to offer, at a minimum, the component securities of the S&P 500 index and those issues among the largest NYSE securities by market capitalization weight.

The Exchange also has amended paragraph (g) of Phlx Rule 237 to reflect decimalization of price reporting as well as the ability to recognize and include only those trades occurring during the regular primary market trading session in the eVWAP calculation. In this regard, recent modifications to the CTA Networks A and B now distinguish trade reports reflective of executions during regular trading hours as differentiated from those occurring in after hours trading sessions, which are reported with "T" indicators. The latter trades are not intended to be included in the eVWAP calculation. Additionally minor technical amendments to Phlx Rule 237 to eliminate references to UTS and insert eVWAP have been made.[6]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)[7] of the Act in general, and Section 6(b)(5)[8] in particular in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices and protect investors and the public interest by expanding the number of highly capitalized, actively traded securities eligible for eVWAP trading.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

[6] Previously all references to UTS were to be eliminated and replaced by eVWAP, however, two references were not changed. *See* Securities Exchange Act Release No. 42702 (April 19, 2000), 65 FR 24528 (April 26, 2000)(SR–Phlx 00–19).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and subparagraph (f)(5) of Rule 19b–4 thereunder,[10] because it effects a change in an existing order entry or trading system of the Phlx that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–Phlx 2001–10, and should be submitted by May 21, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–10606 Filed 4–27–01; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(5).

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3320, Amendment #5]

State of Washington

In accordance with a notice received from the Federal Emergency Management Agency, dated April 19, 2001, the above-numbered Declaration is hereby amended to include Chelan and Kittitas counties in the State of Washington as disaster areas due to damages caused by the earthquake beginning on February 28, 2001 and continuing through March 16, 2001. In addition the Declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to May 31, 2001.

In addition, applications for economic injury loans from small businesses located in Douglas County in the State of Washington may be filed until the specified date at the previously designated location. Any counties contiguous to the above named primary counties and not listed here have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for economic injury the deadline is November 30, 2001.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 19, 2001.

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 01–10672 Filed 4–27–01; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974 as Amended; Computer Matching Program (SSA/Department of Health and Human Services, Administration on Children and Families, Office of Child Support Enforcement (OCSE) Match Number 1074

AGENCY: Social Security Administration (SSA).

ACTION: Notice of computer matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a computer matching program that SSA plans to conduct with the Department of Health and Human Services, Administration on Children and Families, Office of Child Support Enforcement (OCSE).

DATES: SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House of Representatives, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 966–2935 or writing to the Associate Commissioner, Office of Program Support, 2–Q–16 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program Support as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. (Public Law) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records.

It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the Data Integrity Boards' approval of the match agreements;

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: April 11, 2001.

Glenna Donnelly,

Acting Deputy Commissioner for Disability and Income Security Programs.

Notice of Computer Matching Program, (OCSE) With the Social Security Administration (SSA)

A. Participating Agencies

SSA and OCSE.

B. Purpose of the Matching Program

To identify Title XVI recipients who have quarterly wages, new hire, or unemployment insurance information.

The matching program is designed to assist SSA in establishing or verifying eligibility and/or payment amounts under the Supplemental Security Income (SSI) program, as authorized by the Social Security Act and by the Privacy Act.

Under the matching program, SSA will obtain data provided by OCSE.

C. Categories of Records and Individuals Covered by the Matching Program

On the basis of certain identifying information as provided by SSA to OCSE, OCSE will provide SSA with electronic files containing Quarterly Wage, New Hire and Unemployment Insurance information in National Directory of New Hires of its' Federal Parent Locator Service system of records. SSA will then match the OCSE data with Title XVI payment information maintained in Supplemental Security Record system of records.

D. Inclusive Dates of the Match

The matching program shall become effective no sooner than 40 days after notice for the program is sent to Congress and OMB, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 01–10631 Filed 4–27–01; 8:45am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 3651]

Bureau of Oceans and International Environmental and Scientific Affairs (OES); Public Meeting To Discuss Progress on International Harmonization of Chemical Hazard Classification and Labeling Systems

SUMMARY: The United States Government is preparing for a series of

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international meetings to further develop a globally harmonized system (GHS) of chemical hazard classification and labeling. The Department of State will hold a public meeting to report on recent activities and preview upcoming meetings.

The public meeting will take place on Tuesday, May 8, 2001, from 1:00–3:00 PM in Room N4437 A,B&C at the Department of Labor, 200 Constitution Avenue NW., Washington, DC. Attendees should use the entrance at C and Third Streets NW. and should bring picture identification with them. No advance registration is necessary. For further information, please contact Marie Ricciardone, Department of State, Office of Environmental Policy; telephone (202)736–4660; fax (202)647–5947; email *ricciardonemd@state.gov*.

SUPPLEMENTARY INFORMATION: The Department of State is issuing this notice to help ensure that interested organization and individuals are aware of and knowledgeable about the effort to internationally harmonize chemical hazard classification and labeling, and have an opportunity to offer comments. Agencies participating in the U.S. Government interagency group include: Department of State, Environmental Protection Agency, Department of Transportation, Occupational Safety and Health Administration, Consumer Product Safety Commission, Food and Drug Administration, Department of Commerce, Department of Agriculture, Office of the U.S. Trade Representative, and National Institute of Environmental Health Sciences. For more complete information on the GHS process, please refer to State Department Public Notice 2526, pages 15951–15957 of the **Federal Register** of April 3, 1997.

This public meeting will provide an update on GHS activities and international meetings since the previous public meeting on October 24, 2000 (see Department of State Public Notice 3341 on pages 61019–61020 of the **Federal Register** of October 13, 2000), including:

- Sixth Meeting of the International Labor Organization Working Group for the Harmonization of Chemical Hazard Communication, October 30–November 2, 2000, Rome, Italy.
- Seventeenth Consultation of the Inter-Organization Program for the Sound Management of Chemicals (IOMC) Coordinating Group for the Harmonization of Chemical Classification Systems, November 2–3, 2000, Rome, Italy.
- Twenty-first Session of the United Nations Committee of Experts on the Transport of Dangerous Goods, December 5–14, 2000, Geneva, Switzerland.
- Activities of the Organization for Economic Cooperation and Development (OECD) Task Force on Harmonization of Classification and Labeling. The Task Force is completing classification criteria for aquatic toxicity and skin/eye irritation/corrosion for chemical mixtures. It is also initiating work on aspiration hazards, water-activated toxicity, and respiratory irritation.

Members of the interagency group will also provide an overview of the U.S. preparations for upcoming international meetings, including:

- Seventh Meeting of the International Labor Organization Working Group for the Harmonization of Chemical Hazard Communication, May 21–24, 2001, Geneva, Switzerland. At this group's final meeting, participants will try to achieve consensus on GHS hazard communication, including standardized label elements (*e.g.*, symbols and signal words) and a standardized format for material safety data sheets used in the workplace.
- Eighteenth Consultation of the Inter-Organization Program for the Sound Management of Chemicals (IOMC) Coordinating Group for the Harmonization of Chemical Classification Systems, May 24–25, 2001, Geneva, Switzerland. The IOMC will develop GHS guidance and try to achieve consensus on the initial GHS package. The group will also discuss plans for the first organizational meeting of the GHS subcommittee of experts, under the UN Economic and Social Council, July 9–11, 2001, in Geneva, Switzerland.
- Nineteenth Session of the United Nations Subcommittee of Experts on the Transport of Dangerous Goods, July 2–6, Geneva, Switzerland. This meeting will focus on classification criteria for aerosol flammability.

Interested organizations and individuals are invited to present their views orally and/or in writing at the public meeting. Those organization/individuals that cannot attend the May 8 meeting may submit written comments to Marie Ricciardone, Department of State, OES/ENV Room 4325, 2201 C Street NW., Washington, DC 20520. Comments will be placed in the OSHA public docket (H–022H), which is open from 10 AM until 4 PM, at the Department of Labor, Room 2625, 200 Constitution Avenue NW., Washington, DC. (Telephone: (202) 219–7894; Fax: (202) 219–5046). Interested organizations/individuals that wish to receive future notifications of GHS-related developments by email should contact Mary Frances Lowe at *lowe.maryfrances@epa.gov*.

Dated: April 24, 2001.

Daniel T. Fantozzi,

Director, Office of Environmental Policy, Department of State.

[FR Doc. 01–10665 Filed 4–27–01; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice #3605]

Advisory Committee on Labor Diplomacy; Notice of Meeting

The Advisory Committee on Labor Diplomacy (ACLD) will hold a meeting from 9:30 a.m. to 4:00 p.m. on May 9, 2001, in room 1105, U.S. Department of State, 2201 C Street, NW, Washington, DC 20520. Committee Chairman Thomas Donahue, former President of the AFL–CIO, will chair the meeting.

The ACLD is comprised of prominent persons with expertise in the area of international labor policy and labor diplomacy. The ACLD advises the Secretary of State and the President on the resources and policies necessary to implement labor diplomacy programs efficiently, effectively and in a manner that ensures U.S. leadership before the international community in promoting the objectives and ideals of U.S. labor policies in the 21st century. The ACLD will make recommendations on how to strengthen the Department of State's ability to respond to the many challenges facing the United States and the federal government in international labor matters. These challenges include the protection of worker rights, the elimination of exploitative child labor, and the prevention of abusive working conditions.

The agenda for the May 9 meeting includes discussion of the interagency process on international labor policy formulation.

Members of the public are welcome to attend the meeting as seating capacity allows. As access to the Department of State is controlled, persons wishing to attend the meeting must be pre-cleared by calling or faxing the following information, by open of business May 8, to Eric Barboriak at (202) 647–3664 or fax (202) 647–0431 or email barboriakem@state.gov: name; company or organization affiliation (if any); date of birth; and social security number. Pre-cleared persons should use the C Street entrance to the State Department and have a driver's license with photo, a passport, a U.S. Government ID or other valid photo identification.

Members of the public may, if they wish, submit a brief statement to the Committee in writing. Those wishing further information should contact Mr. Barboriak at the phone and fax numbers provided above.

Dated: April 16, 2001.

Michael E. Parmly,

Acting Assistant Secretary, Bureau of Democracy, Human Rights and Labor, U.S. Department of State.

[FR Doc. 01–10825 Filed 4–27–01; 8:45 am]

BILLING CODE 4710–18–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2001–9516]

Secretarial Authorization for Certain Members and Employees of the U.S. Coast Guard To Serve on the Board of Control, Coast Guard Mutual Assistance

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: The Commandant of the Coast Guard, exercising authority delegated by the Secretary of Transportation, has authorized certain military members and employees to serve, without compensation, on the Board of Control of Coast Guard Mutual Assistance, a non-federal military-welfare entity. He has so authorized them for the purpose of providing coordination, oversight, and advice to the management of the Coast Guard's Mutual Assistance Program. Participation of the designated officials in the activities of Coast Guard Mutual Assistance will not extend to participation in day-to-day operations.

Discussion

The Secretary of Transportation, through the Commandant, has authorized the following members and employees of the Coast Guard to serve, without compensation, on the Board of Control of Coast Guard Mutual Assistance [see 10 U.S.C. 1033 and 1589]. Officers: Commandant of the Coast Guard, Admiral James M. Loy, USCG (President); Assistant Commandant for Human Resources, Rear Admiral Fred L. Ames, USCG (Executive Vice President); Captain James E. Evans, USCG (Second Vice President); Lieutenant Commander Anthony J. Vogt, USCG (Treasurer); Chief Warrant Officer Jeffrey M. Alm, USCG (Secretary). Members: Commander Pat Hannifin USCG (Commissioned Officer); Lieutenant Commander Anthony J. Vogt USCG (Commissioned Officer); Petty Officer First Class Jay H. Fowler, USCG (RET), (Retired Member); Master Chief Petty Officer Vincent W. Patton, USCG (Master Chief Petty Officer of the Coast Guard); Chief Warrant Officer Christine B. Figueroa, USCG (Chief Warrant Officer); Senior Chief Petty Officer Mark A. Lewack, USCG (Enlisted, E–7 or above); Petty Officer First Class Petra A. Wolford, USCG (Enlisted, E–6 or below); Petty Officer Third Class Craig E. Trusevitch, USCG (Enlisted, E–6 or below); Ms. Maureen Melton (Civilian employee); Mrs. Jennifer Rechsteiner (Enlisted Person's Spouse); Lieutenant Commander Charles E. Martin, USCG (RET) (USCG Auxiliary); Lieutenant Commander Kevin M. Pratt, USCGR (Reserve); Chief Warrant Officer Jeffrey M. Alm, USCG (Medical and TRICARE Specialist); Lieutenant Carla J. Grantham, USCG (Family Support Specialist); Mrs. Kathleen M. B. Gibson (Commissioned Officer's Spouse), Chief Petty Officer Rockwood Ennis, USCG (Alternate: MCPO–CG); Master Chief Petty Officer Alex Keenan, USCG (Alternate: CPO); Petty Officer First Class Marie F. G. Hope, USCG (Alternate: Enlisted, E–6 or below).

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contract Mr. Carl Mursch, Coast Guard Mutual Assistance, (202) 267–1566.

Authority: 10 U.S.C. 1033 and 1589; 49 CFR 1.46(ooo)

Dated: March 29, 2001.

F.L. Ames,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Human Resources.

[FR Doc. 01–10573 Filed 4–27–01; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance Manchester Airport, Manchester, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for Public Comments. Notice of intent of waiver with respect to land.

SUMMARY: The FAA is considering a proposal that a portion of airport property (approximately .854 acres located in the approach to Runway 17) is no longer needed for aeronautical use, as shown on the Airport Layout Plan. There appear to be no impacts to the airport by allowing the disposal of the property. The land was acquired under FAA Project No. 3–33–0011–29 (portion of Parcel 98 as shown on the Exhibit "A" Property Map) on October 27, 1995.

In accordance with Section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** thirty (30) days before modifying the land-use assurance which requires that the property be used for an aeronautical purpose. The land will be utilized by the U.S. Postal Service for an access road and employee parking. In return the U.S. Postal Service will deed an amount of land equal in area and value to the Airport in the Runway 17 Runway Protection Zone (RPZ). The swap will guarantee compatible land use on the land to be disposed of and the Airport will gain fee title to land in the RPZ.

DATES: Comments must be received on or before May 30, 2001.

FOR FURTHER INFORMATION CONTACT: Donna R. Witte, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803. Telephone No. 781–238–7624/Fax 781–238–7608. Documents reflecting the proposed FAA action may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts or the office of the Assistant Director of Aviation, Engineering and Planning at Manchester Airport, Manchester, New Hampshire.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA in considering the release of the subject airport property at Manchester Airport, Manchester, New Hampshire.

Issued in Burlington, Massachusetts on April 20, 2001.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 01–10668 Filed 4–27–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–33]

Petitions for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain

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petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before May 21, 2001.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on April 24, 2001.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2001–9101.
Petitioner: Associated Air Center.
Section of 14 CFR Affected: 14 CFR 25.813(e).
Description of Relief Sought: To provide AAC with relief from the requirements of 14 CFR 25.813(e) pertaining to the installation of interior doors between passenger compartments on a Boeing Model 737–2H4 airplane.

Docket No.: FAA–2001–9283.
Petitioner: Atlantic Coast Airlines.
Section of 14 CFR Affected: 14 CFR 121.434, 121.440, and 121.441.
Description of Relief Sought: To allow ACA to employ and use pilots currently employed by ACA's sister air carrier, Atlantic Coast Jet, Inc. (ACJet) without requiring these pilots to repeat the 328Jet checking and experience requirements, which they already have accomplished at ACJet.

[FR Doc. 01–10569 Filed 4–27–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement on Transit Improvements in Miami, Florida

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Federal Transit Administration (FTA), the Florida Department of Transportation (FDOT), and Miami-Dade Transit (MDT) in issuing this notice to advise that an Environmental Impact Statement (EIS) is being prepared on the proposed Airport/Earlington Heights Connector Project in Miami-Dade County, Florida. The EIS will be prepared in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended.

The EIS will evaluate the following alternatives: a no build alternative; a transportation systems management alternative; three Metrorail extension alternatives from Earlington Heights to the Airport, and a People Mover extension alternative. Scoping will be accomplished through meetings and correspondence with interested persons, organizations, the general public, Federal, State and local agencies.

DATES: *Comment Due Date:* Written comments on the scope of the alternatives and impacts to be considered should be sent to Aurelio Rodriguez, Project Manager by May 30, 2001. See **ADDRESSES** below.

Scoping Meetings: Miami-Dade Transit public scoping meetings will be held on Tuesday May 15, 2001 at 12 p.m. and at 7 p.m. at the Miami-Dade Transit office located at 3300 NW 32nd Avenue, First Floor Conference Room, Miami, Florida.

ADDRESSES: Written comments on the project scope should be sent to Mr. Aurelio Rodriguez, Director, Miami-Dade Transit, 111 NW First Street, Suite 910, Miami, Florida 33128–1970. See **DATES** section above for the location of scoping meeting.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Martin, Community Planner, Federal Transit Administration, (404) 562–3509.

SUPPLEMENTARY INFORMATION:

I. Scoping

The MDT and FTA invite interested individuals, organizations, and federal, state, and local agencies to participate in refining the Airport/Earlington Heights Connector DEIS, including alignment and project locations. Comments should focus on identifying any significant social, economic, or environmental issues related to the alignments. Specific suggestions related to additional alternatives to be examined and issues to be addressed are welcome and will be considered in the final scope for the project. Scoping comments should focus on the issues and alternative for analysis, and not on preference for particular alternatives. Individual preference for particular alternatives should be communicated during the comment period for Draft EIS. Comments may be made at the meeting or in writing no later than May 30, 2001 (see **DATES** and **ADDRESSES** above for meeting times and locations and the address for written comments). A scoping information packet is available from Mr. Aurelio Rodriguez of MDT at the address given above in the **ADDRESS** section or on the MDT internet webpage at http://www.co.miami-dade.fl.us/mdta.

II. Description of Study Area and Project Need

The project area is located in central Miami-Dade County. The limits for the project area extend from NW 42nd Avenue (LeJeune Road) eastward to NW 22nd Avenue and from NW 46th Street southwards to NW 20th Street. The study area is traversed diagonally by the Miami River, in a northwest to southeast direction.

The project proposes a 2.5-mile elevated heavy rail connection from the existing Earlington Heights Metrorail station to the MIC–MIA connector in the proposed MIC transfer station. The project involves planning and environmental investigations, travel demand forecasting, traffic impact analysis, operations and maintenance planning, and financial assessments for the alignment alternatives.

Steady growth in South Florida in recent years has led to increasingly congested streets and highways in Miami-Dade County. Heavy congestion is especially significant during travel destined to MIA and the large employment centers surrounding the airport. Vehicles traveling from south and west Miami-Dade County heading to downtown Miami must travel the same route as vehicles bound for the airport. This traffic congestion will steadily worsen as the streets and highways of Miami-Dade County surpass their carrying capacity. Based on this traffic condition, there is a need to provide an alternative transportation mode between downtown Miami and the airport that offers convenient, rapid and safe travel in place of the automobile.

This project was developed as a means to ease severe congestion on area expressways resulting from increasing passenger travel to and from MIA. The specific goal of the Airport/Earlington Heights Connector project is to provide a public transit connection between the existing Earlington Heights Metrorail station and MIA. The alignments under consideration would connect to the airport via the intermodal transfer center being proposed under the Miami Intermodal Center (MIC) project.

This new connection to the Metrorail system will provide a critical link in passenger travel throughout Miami-Dade County. Passengers traveling to and from MIA will be able to avoid highway congestion through use of the new Airport Connector. By connecting to the Earlington Heights Metrorail Station, passengers will then be able to travel to northern and southern portions of Miami-Dade County. This critical link will also allow passengers to travel directly between MIA and downtown Miami by rail.

The MIA area is one of the largest employment centers in Miami-Dade County. The Earlington Heights connector to the MIC will provide critical access to employment opportunities for transit dependent populations in adjacent residential areas and the cities of Hialeah, Brownsville and Liberty City.

III. Alternatives

The transporation alternatives proposed for consideration in this project area include:

No-Project Alternative—The No-Project Alternative includes the existing street, highway, and transit facilities and services and those transit and highway improvements planned and programmed to be implemented by 2020. This alternative provides the baseline for establishing the environmental impacts of the project, and assumes the following projects will be completed:

- Extension of the Stage 1 Metrorail Line to a new station just west of the Palmetto Expressway, a new park-and-ride facility at that location, and access ramps to and from the north on the Palmetto expressway.
- Increase in Tri-Rail frequencies to 20-minute headways during peak periods between MIA and Mangonia Park Station in West Palm Beach.

Transportation System Management Alternative—The Transportation Systems Management (TSM) Alternative is defined as low cost, operationally oriented improvements to address the identified transportation problems in the corridor. It also provides a baseline against which all of the Build alternatives are evaluated.

- Additional Metrorail service from Dadeland South to the Palmetto Station. The additional service would decrease headways on that segment of the line from 7.5 minutes to 3.75 minutes in peak periods and from 20 minutes to 7.5 minutes in off-peak periods.
- Increased Tri-Rail Service between the MIC and the Tri-Rail/Metrorail Transfer station at NW 79th Street. The train would operate every 15 minutes during peak periods and every 20 minutes during off-peak periods.
- The operation of a bus service between the MIC and the Earlington Heights Metrorail station.

The TSM alternative also includes all improvements identified under the No-Project alternative.

Three Metrorail extension Alternatives—The Metrorail Extension option consists of extending the Stage 1 Metrorail line from the Earlington Heights Station to the Airport. The existing Stage 1 line heads westward from the Earlington Heights Station to NW 27th Avenue at which point it turns northwards and continues along NW 27th Avenue to the Brownsville Station.

Three potential alignments have been proposed to connect the Earlington Heights Station to MIA via the MIC hub:

NW 27th Avenue Alignment—The branch would start from the existing Stage 1 line at Earlington Heights and begin a gradual turn to the south at approximately NW 25th Avenue. The line crosses over SR 112 at NW 26th Avenue and follow a southward path in the median of NW 27th Avenue. The line begins a westerly turn at NW 26th Street and runs westward along NW 24th Street. The line crosses the Miami River in the 3100 block of North River Drive, continues westward north of NW 21st Street, and terminates at the MIC.

NW 32nd Avenue Alignment—This branch would commence at the existing Metrorail line at Earlington Heights, continue westward across NW 27th Avenue, and cross SR 112 at approximately NW 31st Avenue. The line continues southward along NW 32nd Avenue and turn in a southwesterly direction at approximately NW 28th Street. The line crosses the Miami River in the 3200 block of NW North River Drive, heads westwards along NW 22nd Street, and terminates at the MIC.

South Florida Rail Corridor (SFRC) Alignment—The extension of this branch heads westwards from Earlington Heights over NW 27th Avenue, and crosses SR 112 between NW 27th and NW 28th Avenues. The line parallels SR 112 and the proposed SR 112/SR 836 Interconnector to the south and begins its southward path just west of NW 37th Avenue. The line would cross the Miami River just downstream of the existing SFRC Bridge continuing its southward path and terminating at the MIC.

One People Mover Extension Alternative

The People Mover Extension alternative involves the extension of the MIC/MIA Interconnecter Automatic People Mover (APM) system. The alignment would proceed northbound from the MIC, following the alignment that was previously described for the SFRC Metrorail Extension alternative. However, this alternative features the option to terminate at either the Earlington Heights or the Brownsville Metrorail Stations. In the Brownsville Station alternative, the line would turn northwards just west of NW 27th Avenue and follow the existing line to the station.

IV. Probable Effects

The FTA, FDOT, and MDT will evaluate all significant environmental, social, and economic impacts of the alternatives analyzed in the EIS. Primary Structural environmental issues include: environmental justice, neighborhood protection, aesthetics, the bridge crossing over the Miami River, flight path clear zones and glide slopes, recreational greenways, alternative modes of transportation, hydrology and storm water management, archaeological and historic resources, ecological issues. Environmental and social impacts proposed for analysis include land use, zoning, and economic development; secondary development; land acquisition, displacements, and relocation of existing uses; historic; visual and aesthetic qualities; neighborhoods and communities; environmental justice; air quality; noise and vibration; hazardous materials; ecosystems; water resources; energy; safety and security; utilities; traffic and transportation impacts. Impacts on natural areas, rare and endangered species, ground water and potentially contaminated sites, wetlands, and

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floodplain areas. Potential impacts will be assessed for the long-term operation of each alternative and the short-term construction period. Measures to avoid, minimize, or mitigate any significant adverse impacts will be identified.

V. FTA Procedures

The EIS process will be performed in accordance with applicable laws and Federal Transit Administration regulations and guidelines for preparing an Environmental Impact Statement. The impacts of the project will be assessed, and, if necessary, the scope of the project will be revised or refined to minimize and mitigate any adverse impacts. After its publication, the draft EIS will be available for public review and comment. One or more public hearings will be held during the draft EIS public comment period. On the basis of the draft EIS and comments received, the project will be revised or further refined as necessary and the final EIS prepared.

Issued On: April 24, 2001.

Jerry Franklin,

Regional Administrator.

[FR Doc. 01–10670 Filed 4–27–01; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Innovative Grants To Support Increased Seat Belt Use Rates

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Announcement of grants to support innovative and effective projects designed to increase seat belt use rates.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces the third year of a grant program under Section 1403 of the Transportation Equity Act for the 21st Century (TEA–21) to provide funding to States for innovative projects to increase seat belt use rates. Consistent with last year, the goal of this program is to increase seat belt use rates across the nation in order to reduce the deaths, injuries, and societal costs that result from motor vehicle crashes. This notice solicits applications from the States, the District of Columbia and Puerto Rico, through their Governors' Representatives for Highway Safety, for funds to be made available in FY 2002. Detailed application instructions are provided in the Application Contents and Grant Criteria section of this Notice. The Section 157 Innovative grants will be awarded to States that comply with the criteria set out in the Application Contents and Grant Criteria Section of this Notice.

DATES: Applications must be received by the office designated below on or before June 29, 2001.

ADDRESSES: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Traffic Injury Control Programs, Occupant Protection Division, (NTS–12), ATTN: Janice Hartwill-Miller, 400 Seventh Street, SW., Room 5118, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Questions relating to this grant program should be directed to Janice Hartwill-Miller, Office of Traffic Injury Control Programs, Occupant Protection Division (NTS–12), NHTSA, 400 Seventh Street, SW., Room 5118, Washington, DC 20590, by e-mail at jhartwill-miller@nhtsa.dot.gov, or by phone at (202) 366–2684. For legal issues contact Mr. John Donaldson, Office of Chief Counsel, NCC–30, NHTSA, 400 Seventh Street, SW., Room 5118, Washington, DC 20590, by phone at (202) 366–1834. Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

SUPPLEMENTARY INFORMATION:

Background

The Transportation Equity Act for the 21st Century (TEA–21), Pub.L. 105–178, was signed into law on June 9, 1998. Section 1403 of TEA–21 contained a safety incentive grant program regarding seat belt usage rates in the States. Under this program, funds are allocated each fiscal year from 1999 until 2003 to States that exceed the national average seat belt use rate or that improve their State seat belt use rate, based on certain required determinations and findings. Section 1403 provided that, beginning in fiscal year 2000, any funds remaining unallocated in a fiscal year after the determinations and findings related to seat belt use rates have been made are to be used to "make allocations to States to carry out innovative projects to promote increased seat belt use rates." Today's notice solicits applications for funds that will become available in fiscal year 2002 under this provision.

TEA–21 imposes several requirements under the innovative projects funding provision. Specifically, to be eligible to receive an allocation, a State must develop a plan for innovative projects to promote increased seat belt use rates statewide and submit the plan to the Secretary of Transportation (by delegation, to NHTSA). NHTSA was directed to establish criteria governing the selection of State plans that are to receive allocations and was further directed to "ensure, to the maximum extent practicable, demographic and geographic diversity and a diversity of seat belt use rates among the States selected for allocations." Finally, subject to the availability of funds, TEA–21 provides that the amount of each grant under a State plan is to be not less than $100,000.

In the following sections, the agency describes the application and award procedures for receipt of funds under this provision, including requirements related to the contents of a State's plan for innovative projects and the criteria the agency will use to determine whether a State will receive an award. To assist the States in formulating plans that meet these criteria, we have provided an extensive discussion of strategies for increasing seat belt use and of the ways in which States might meet the criteria for an award.

Objective of This Grant Program

The objective of this grant program is to increase State seat belt use rates, for both adults and children, by supporting the implementation of innovative projects that build upon strategies known to be effective in increasing seat belt use rates. Because one of the best ways to ensure that children develop a habit of buckling up is for parents to properly restrain them in child safety seats, efforts to increase the use of child safety seats, in addition to seat belts, may be included among the innovative efforts in a State's plan. However, efforts to increase seat belt use rates must remain the focus of the State's plan. (For a discussion of Strategies that have proven effective in increasing seat belt use, see Appendix A.)

As in previous years, to be considered for an award of funds under this program in FY 2002, the State's innovative project plan must be based on a core component of highly visible enforcement of its seat belt use law or on a non-enforcement approach that has the potential of increasing the seat belt use rate statewide. The project plan also must have a media program designed to make the public aware of this enforcement effort and it must include a comprehensive plan to evaluate the program in terms of changes in both public awareness and observed seat belt use. In addition, the State's efforts must be statewide. If a State is already pursuing a significant and visible enforcement effort, the innovative aspects of the plan must detail components that support, expand, complement, and evaluate the existing enforcement effort.

States submitting a proposal designed to increase seat belt use in only a limited number of jurisdictions, one that lacks a strong enforcement or media effort, or one that does not include an evaluation component designed to measure both public awareness and changes in seat belt usage will be rejected in the evaluation process, unless the non-enforcement strategy provides a strong rationale for the proposed approach, preferably research based. This alternative should address how this proposed approach can be expected to increase seat belt use. NHTSA will carefully review this rationale in its evaluation of the proposal.

A State may demonstrate innovation in its enforcement efforts in a number of ways. If a State is not currently engaged in any form of highly visible enforcement of its occupant protection laws, implementation of such a program, in and of itself, would be innovative to that State. Finding new and more effective ways to make the public aware of the enforcement effort (e.g. a paid media effort) would demonstrate innovation. Additionally, innovation may be demonstrated by using new methods for gaining essential support (e.g. of the Governor or other key officials); by establishing statewide coordination groups to plan, implement and monitor the enforcement, media, outreach, or evaluation efforts; by implementing statewide enforcement training or orientation programs; or by proposing comprehensive ways to determine the impact of the program on diverse and low use groups. For States that already are engaged in substantial enforcement efforts, innovation can be demonstrated by expanding these efforts. This might include finding more effective ways to reach rural, urban, or diverse groups with strategies designed to address the problem of low seat belt use among those groups. States that have upgraded their laws recently to allow for primary enforcement may wish to initiate innovative ways to implement, enforce, and publicize their newly enacted law. For States with secondary enforcement laws, where a motorist must be stopped for another offense before being cited for failure to buckle up, innovation may be demonstrated by integrating the enforcement of the seat belt law with enforcement of other traffic safety laws (e.g., speed limits or right-of-way violations). Many opportunities for innovation exist, regardless of the State's current seat belt use rate or its ongoing efforts to increase it.

Specific examples of various innovative activities that can be used in support of a core component of enforcement include:

—Expanding participation in the semi-annual national seat belt enforcement mobilizations (i.e., Operation ABC conducted in May and November);
—Implementing efforts to train, motivate, and recognize law enforcement officers for participation in the program;
—Implementing a training or orientation program for prosecutors and judges to make them aware of the program and of the importance of consistently prosecuting and adjudicating occupant protection law violations;
—Mounting a highly visible program to implement newly enacted legislation that upgrades the State's seat belt or child passenger safety law;
—Initiating or expanding public information and education programs designed to complement newly upgraded legislation and/or enhanced enforcement efforts;
—Strengthening public information efforts by adding a paid advertising component to support earned (i.e., news) and public service media efforts;
—Adopting a more focused message that brings attention to the ongoing enforcement effort (e.g., adopting a "Click It or Ticket" campaign message);
—Establishing new partnerships and coalitions to support ongoing implementation of legislation or enforcement efforts (e.g., health care and medical groups, partnerships with diverse groups, businesses and employers);
—Initiating or expanding public awareness and outreach efforts to reach specific populations that have low seat belt use (e.g., part-time users; parents of children 0–15 years old; minority populations, including Native Americans; rural communities; males 15–24 years old; occupants of light trucks and sport utility vehicles, etc.);
—Initiating or expanding standardized child passenger safety training of police officers and/or child passenger safety checks and/or clinics across broad geographical areas (e.g., statewide, in major metropolitan areas, and/or in rural areas of the State);
—Initiating or expanding enforcement of other traffic laws (e.g., driving while intoxicated laws) as a means for implementing highly visible enforcement of seat belt use laws.

Self-Evaluations of Programs, Management and Resources

Meaningful and timely self-evaluations of each State's innovative programs, management, and associated resources are essential to improving the effectiveness of programs supported by this grant program. On an annual basis, grantees and NHTSA will generate and report objective documentation of the effectiveness (or lack of effectiveness) of the various program elements (particularly enforcement, paid media, enforcement-related messaging, etc.) supported under this grant program. Proposed program evaluation and reporting will be important factors in the evaluation of each State's application for funding (See Application Contents and Grant Criteria Section of this **Federal Register** Notice.) Program evaluation should constitute 10–20 percent of requested grant funds. An overall evaluation model must include efforts to measure changes in public awareness and use rates at various stages of the program. It also must include the use of pre/post statewide observational and telephone surveys and must include the use of periodic mini-observational surveys (which constitute sub-samples of the statewide survey sampling plan) and motorist surveys (e.g., Department of Motor Vehicles (DMV) surveys) during the various program phases. These components allow for an assessment of change at each phase of the program. Protocols and templates specific to the telephone and motorist surveys are available from NHTSA, upon request. It is strongly suggested that grantees consider using the complete model, with each of the components described above, in the evaluation of their innovative programs. Other evaluation approaches will be considered, but they must be described and justified.

NHTSA Involvement

In support of the activities undertaken by this grant program, NHTSA will:

1. Provide a Regional Office Point of Contact (POC) to coordinate activities between the Grantee and NHTSA during grant performance, and to serve as a liaison between NHTSA Headquarters, NHTSA Regional offices and the grantee.

2. Provide information and technical assistance from government sources within available resources and as determined appropriate by the POC.

3. Provide suggestions, protocols, and templates for evaluation components.

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Availability of Funds and Period of Support

The efforts solicited in this announcement will be supported through the award of grants to a number of States, on the basis of the Grant Criteria identified below. The number of grants awarded will depend upon the number of applications that meet the requirements of this notice. The amount of the awards available in fiscal year 2002, will be based upon the formula described below. However, the minimum amount of an individual grant award to a State will be no less than $400,000, subject to availability of funds. The $400,000 minimum is derived from experience gained over the first two years of this innovative grant program, and reflects NHTSA's best judgment of the resources needed to implement effective statewide seat belt campaigns.

In fiscal year 2001, forty-three Innovative grants were awarded and grants ranged from $204,000 to $2.9 million. At this time, neither the exact amount of funds available nor the number and proposed costs of qualifying State applications can be determined. There is no assurance that the number of grant awards in FY 2002 will be the same or similar to the number of awards in FY 2000 or FY 2001, nor is there any assurance that those States that received awards in FY 2000 and FY 2001 will receive awards in FY 2002. There is no cost-sharing requirement under this program. The period of support for a grant under this program will be a total of 15 months, with 12 months of plan implementation, and three months for evaluation and preparation of the annual report.

This year's grant proposals will be reviewed based solely on whether or not the State's proposal complies with all of the required Grant Criteria specified in this **Federal Register** Notice. Only applicants who comply with all of the required elements, will be considered for award. Once it is determined by the evaluation committee that an applicant has met all of the criteria and the State has satisfied any additional clarification questions about the proposal, a State will qualify for an award. Since this year's awards will be determined on a formula basis, a State must prepare and submit a budget, in support of the proposed plan. The dollar amount of these awards will be based on the same formula that applies to the annual award for Section 402 funds (i.e., 75% based on population and 25% on roadway miles), subject to any adjustment needed to ensure compliance with the requirement to award at least $400,000 to every qualifying State. Appendix B shows the approximate amount that is expected to be awarded to each State, assuming (1) current estimates of available funds for FY 2002 and (2) all fifty-two eligible jurisdictions apply and qualify for an award. NHTSA estimates that the award of Section 157 Innovative Grants for fiscal year 2002 will occur during January 2002.

Allowable Uses of Federal Funds

Funds provided to a State under this grant program shall be used to carry out the activities described in the State's plan for which the grant is awarded. In addition, allowable uses of Federal funds shall be governed by the relevant allowable cost section and cost principles referenced in 49 CFR part 18—Department of Transportation Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

Eligibility Requirements

Only the 50 States, the District of Columbia, and Puerto Rico, through their Governors' Representatives for Highway Safety, will be considered eligible to receive funding under this grant program.

Application Procedures

Each applicant must submit one original and two copies of the application package to: NHTSA, Office of Traffic Injury Control Programs, Occupant Protection Division (NTS–12), ATTN: Janice Hartwill-Miller, 400 Seventh Street, SW., Room 5118, Washington, DC 20590. An additional three copies will facilitate the review process, but are not required.

Applications must be typed on one side of the page only and adhere to the requirements of the Application Contents and Grant Criteria Section below. Only application packages submitted by a State's Governor's Representative for Highway Safety and received on or before June 29, 2001, will be considered.

Application Contents and Grant Criteria

To be eligible for a grant under the section 157 (b) statute, a State must include a description and/or documentation that all of the following elements are included, and will be implemented, as part of the State's section 157 (b) grant program. This year, each State's application must include the following information and a budget based on State estimates for award as specified in Appendix B, regardless of previous awards.

1. Introduction—

A brief general description of the State's population geographic distribution, any unique population characteristics, a short summary of the status of the seat belt use law in the State, and the pattern of estimated seat belt use rates for the State.

2. Certifications—

A signed statement by the State that: (i) It will use the funds awarded under this grant program exclusively to implement an innovative program in accordance with the requirements of Section 157(b) of Pub Law 105–178 (TEA–21); (ii) It will administer the funds in accordance with 49 CFR part 18 and OMB Circular A–87; (iii) It will provide to the NHTSA Regional Administrator no later than 15 months after the grant award a report of activities carried out with grant funds and accomplishments to date; and (iv) The State will comply with all applicable laws and regulations, financial and programmatic requirements.

3. Program Elements

(a) *Seat Belt Use Goals*—During the 12 month period (to be covered by these grant funds), set a goal to increase seat belt use by: (1) At least 8–10 percentage points, if the seat belt use rate is currently less than 75%; or (2) at least 3–5 percentage points, or higher if the seat belt use rate is currently between 75% and 85%; or (3) at least 1–3 percentage points, if the seat belt use rate is currently 85% or higher.

(b) *Law Enforcement Participation*—Obtain a commitment from the State Patrol/Police (if any) and the local and/or county law enforcement agencies that serve at least 75% of the State's population to participate actively in highly visible seat belt enforcement efforts consisting of checkpoints, saturation patrols or other enforcement tactics.

(c) *Strategies to Increase Seat Belt Use*—(Minimum of one):

(1) Conduct no fewer than 2-four week high-visibility seat belt enforcement campaigns, which include at least 7 days of aggressive enforcement during each campaign. These campaigns should complement and support the BUA/Operation ABC National Mobilizations (May and November) to the maximum extent possible;

(2) Conduct continuous high-visibility seat belt enforcement year round (i.e. 7 days week/24 hours per day model); or

(3) Implement a non-enforcement program that has the potential to reach the safety belt use goals as stated above in Program Element 3a. If a State selects this option, it must provide a strong rationale for the proposed approach, preferably, research based rationale (e.g., a summary of evidence of effectiveness in the related areas) regarding the potential for the overall program to increase the State's seat belt use rate.

(d) *Personnel*—A full-time program coordinator to manage the planning, implementation, and evaluation of enforcement, media, outreach, training and diversity efforts and if a law enforcement strategy is proposed, one or more law enforcement liaison(s) on staff or under contract to coordinate the seat belt enforcement (or other proposed) efforts and data collection.

(e) *Public Information and Education Strategy*—A statewide public information and education (PI&E) strategy for focusing public attention on the enforcement (or other proposed) effort. A combination of paid, public service and earned media may be considered as meeting this requirement, for the overall PI&E strategy.

4. Evaluation Elements

A technically competent evaluator must be on staff or under contract to manage and coordinate the following required activities:

(a) *Observational Surveys*—a minimum of three statewide observational surveys conducted throughout the year (e.g., before the first mobilization, at mid-year, and following the last mobilization) to assess statewide changes in observed seat belt usage;

(b) *Telephone Surveys*—a minimum of three statewide telephone surveys conducted throughout the year (e.g., before the first mobilization, at mid-year, and following the last mobilization) to assess statewide changes in public awareness and acceptance of program activities;

(c) *Intermediate Measures*—Intermediate measures of observed usage and motorist awareness of the program must also be obtained or an alternative means for assessing program impact at various phases must be used. These measures must consist of conducting sub-samples of the State's observational survey and conducting motorist awareness and opinion surveys (e.g. surveys of license applicants, Appendix C) during the various phases of the program (e.g., before and after the paid media begins if paid media is being used and during the enforcement effort.) The results of the sub-sample observational surveys conducted during the program should be combined with the observations for these same sites in the pre/post statewide surveys to obtain a continuous index of changes in usage rates beginning before the program is implemented and continuing through its completion. The motorist awareness and opinion surveys, usually conducted in the same general locations (e.g. counties) as the sub-sample observational surveys, should be used to provide continuous information regarding public awareness and perceptions.

(d) *Media Analysis*—Documentation regarding the characteristics of the media component of the program including quantitative and qualitative information regarding the mix of paid, earned, and public service media employed, the message used, media markets and groups targeted, exposure levels, etc.; and

(e) *Enforcement Analysis*—Documentation regarding the characteristics of the enforcement component of the program, including quantitative and qualitative information regarding the mix of enforcement approaches employed (e.g., checkpoints, saturation patrols), the number of waves and/or enforcement events, the number and amount of mini-grants awarded, agency recognition efforts, the number of agencies actively participating; number of hours of enforcement involved; the number of contacts made; warnings and citations issued for seat belt and child passenger safety violations for each of the mobilization periods; pertinent training received by law enforcement personnel to assist in enforcing the occupant protection laws; and PI&E activities conducted by law enforcement.

(f) *Other Components (Not Required)*—Other innovative and/or key components of your overall program, most notably innovative outreach efforts to reach special lower-use groups.

5. Reporting Requirements and Deliverables

(a) *Quarterly Reports*—The quarterly reports should include a summary of enforcement and other activities and accomplishments for the preceding period, significant problems encountered or anticipated, a brief itemization of expenditures made during this 6 month time period, and proposed activities for the upcoming reporting period. Any decisions and actions required in the upcoming program period should be included in the report.

(b) *Draft Final Report*—A Draft Final Report that includes a summary of the impact of program efforts in the preceding period as well as an assessment of the year-long program. It should include a complete description of the innovative projects conducted, including partners, overall program implementation, evaluation methodology and findings from the program evaluation. In terms of information transfer, it is important to know what worked and what did not work, under what circumstances, and what can be done to avoid potential problems in future projects. The grantee shall submit the Draft Final Report to the Regional POC 60 days prior to the end of the performance period. The Regional POC will review the draft report and provide comments to the grantee within 30 days of receipt of the document.

(c) *Final Report*—A Final Report to reflect the Regional POC's comments. The final report shall be delivered to the Regional POC 15 days before the end of the performance period. The grantee shall supply the Regional POC:

—A camera ready version of the document as printed.

—A copy, on appropriate media (diskette, Syquest disk, etc.), of the document in the original program format that was used for the printing process. Note: Some documents require several different original program languages (e.g., PageMaker for the general layout and design, Power point for charts, and yet another format for photographs, etc.). Each of these component parts should be available on disk, properly labeled with the program format and the file names. For example, Power point files should be clearly identified by both a descriptive name and file name (e.g., 1994 Fatalities—chart1.ppt).

—A complete version of the assembled document in portable document format (PDF) for placement of the report on the world wide web (WWW). This will be a file usually created with the Adobe Exchange program of the complete assembled document in the PDF format that will actually be placed on the WWW. The document would be completely assembled with all colors, charts, side bars, photographs, and graphics. This can be delivered to NHTSA on a standard 1.44 diskette (for small documents) or on any appropriate archival media (for large documents) such as a CD ROM, TR–1 Mini cartridge, Syquest disk, etc.

—Four additional hard copies of the final document.

Application Review Procedures

All applications will be reviewed by an Evaluation Committee to ensure that the application contains all of the information required by the Application Contents and Grant Criteria section of

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the **Federal Register** notice. This evaluation process may include submission of technical or program questions from the evaluation committee to the applicants, to determine eligibility. This process could extend over the course of several months, and applicants may expect correspondence of this nature throughout this time period. Once it has been determined which applicants have met the grant criteria, NHTSA will determine the final award amounts based on the amount of remaining funds from the general incentive portion of the Section 157 Grant program and the formula as described under the Availability of Funds and Period of Support Section. It is anticipated that awards will be made in January 2002.

Rose A. McMurray,

Associate Administrotor for Traffic Safety Programs.

Appendix A

Strategies That Have Proven Effective in Increasing Seat Belt Use

In previous years, the **Federal Register** Notice for the Section 157 Innovative Grants provided a history of programs that have been documented to increase seat belt usage in the United States and Canada over the past two decades (for copies of those **Federal Register** notices contact person listed below). In those summaries of the seat belt history, the agency explained that nearly every example of significant increases in statewide usage rates since 1984 resulted from: (a) Enactment and implementation of a State seat belt usage law; (b) a legislative upgrade from a secondary to a primary (i.e., standard) enforcement law; or (c) a highly visible effort to enforce such laws.

The intent of the section 157 innovative grant legislation was to provide support for innovative programs that would be effective in increasing seat belt usage rates in the States. Since all States but one already have enacted seat belt use laws, and since the intent of this legislation was not to support lobbying efforts to obtain primary enforcement laws, the focus of this grant program has been on innovative and effective ways to develop, implement, support, and evaluate highly visible enforcement programs.

Again, aside from the implementation of seat belt use laws, these programs are the only efforts that have consistently been shown to be effective in increasing seat belt usage rates statewide (e.g., as in the national 70% by '92 program and in specific statewide efforts undertaken in North Carolina, Georgia, Maryland, New York, Michigan, and several other States). These documented successes generally have involved Special Traffic Enforcement Programs (or STEPs), in which waves of enforcement and media are carefully scheduled to gain maximum public awareness. The potential effectiveness of these STEP programs recently has been enhanced as a result of the ability of States to use paid media, in addition to news stories and public service announcements, to increase public awareness. Their potential for success has also been increased by the national enforcement mobilizations (i.e. Operation ABC) conducted twice annually by the private-sector funded Air Bag & Seat Belt Safety Campaign (AB&SBSC), in cooperation with NHTSA. These mobilizations involve extensive efforts to contact and obtain the participation of State and local police agencies in all of the States and to initiate focused media efforts in major markets to make the public aware of the mobilizations. This innovative grant program greatly increases the potential effectiveness of the national enforcement mobilizations and the overall Buckle Up America program, and vice versa.

Since 1999, there have been several notable successes in which large States, such as Michigan and New York, have significantly increased seat belt usage. In Michigan, the increases resulted from a combination of enacting a primary seat belt usage law and implementing a highly visible program to enforce that law. In New York, which already had a primary seat belt law, significant increases in seat belt usage resulted from a highly visible statewide enforcement program, funded in part by the AB&SBSC and coordinated by the New York State Police. Maryland enacted a primary seat belt law and following a 3 month Chiefs' Challenge enforcement program, experienced a major increase in seat belt use. Oklahoma enacted a primary seat belt law and experienced a modest increase in seat belt usage. Later, a paid media program resulted in an additional increase. Florida, which has introduced but failed to enact primary seat belt legislation, has enhanced its statewide seat belt enforcement program and its use of law enforcement liaisons (LELs). As a result, Florida recently experienced a 5 percentage point increase in usage statewide. These examples represent some of the most significant recent increases in usage in the States and they represent a mixture of private sector, Section 402, and Section 157 funded efforts.

One of the clearest examples of a fully-implemented, innovative and effective statewide program is the South Carolina "Click It or Ticket" program, implemented in November 2000. The term "fully implemented" refers to the fact that the combination of enforcement and media efforts was sufficient to make 75–80 percent of the public aware of the program. The South Carolina program included several innovative and effective components, including statewide management of more than 3,000 enforcement events (i.e., checkpoints) over a two-week period, use of an explicit enforcement message (i.e., Click It or Ticket) delivered by means of a combination of earned and paid media, full coordination with the Operation ABC mobilization periods, a diversity outreach program that reached African Americans via churches and schools to make them aware of the enforcement effort, and a comprehensive evaluation program, which included measurement of both the public awareness of the program and changes in observed seat belt usage at each phase of the program (e.g. during the kickoff and news media phase, the paid media phase), and the enforcement phase, as well as before and after the program was implemented. As a result of this effort, South Carolina was able to document a 9 percentage point increase in seat belt usage statewide. Further, it was able to show that the paid media effort contributed significantly to public awareness and changes in seat belt usage. The State was able to document the extent to which groups with traditionally lower seat belt usage rates (e.g., male, rural, and African American motorists) were impacted.

Currently, more than a dozen States are using Section 157 Innovative grant funds, each in slightly different ways, to fully implement and evaluate similar STEP programs during the May 2001 mobilization period. These States are establishing statewide coordinating committees for enforcement, media, outreach, and evaluation efforts; making selective use of paid media efforts; using unambiguous enforcement messages; finding innovative ways to reach high risk groups such as young males and occupants of light trucks to make them aware of the planned enforcement activity; and implementing comprehensive evaluation efforts, similar to those used in the South Carolina program, to measure impact at each phase of the program. This evaluation model consists of statewide observational and telephone surveys conducted before and after the program, as well as mini-observational surveys and motorist surveys during each phase of the program. NHTSA will provide, upon request, protocols and templates for both the telephone surveys and the motorist surveys, as well as descriptions of how these surveys are being used in conjunction with the State's approved observational surveys to evaluate Section 157 program efforts. You may contact Janice Hartwill-Miller, Office of Traffic Injury Control Programs, Occupant Protection Division (NTS–12), NHTSA, 400 7th Street, S.W., Room 5118, Washington, DC 20590, by e-mail at jhartwill-miller@nhtsa.dot.gov, or by phone at (202) 366–2684, for this information.

The dramatic recent successes in the States add further credibility to NHTSA's position that highly visible enforcement is an important foundation upon which any effective program funded under Section 157 should be based. In addition, the recent examples of States focusing on fully-implemented enforcement and public information efforts, designed to reach 75–80 percent of the populace and selectively using paid media to make the public aware of the enforcement activity are very encouraging. Also encouraging is the recent focus in the States on developing a comprehensive evaluation effort to measure changes in both public awareness and seat belt use at various stages of the program.

Appendix B

FY2002 State Estimates for Section 157 Innovative Awards

State	FY2002 estimates
Alabama	$810,000
Alaska	400,000
Arizona	650,000
Arkansas	595,000
California	4,480,000
Colorado	685,000
Connecticut	500,000
Delaware	400,000
District of Columbia	400,000
Florida	2,070,000
Georgia	1,195,000
Hawaii	400,000
Idaho	400,000
Illinois	1,930,000
Indiana	1,015,000
Iowa	695,000
Kansas	715,000
Kentucky	710,000
Louisiana	740,000
Maine	400,000
Maryland	730,000
Massachusetts	910,000
Michigan	1,600,000
Minnesota	965,000
Mississippi	555,000
Missouri	1,040,000
Montana	400,000
Nebraska	480,000
Nevada	400,000
New Hampshire	400,000
New Jersey	1,140,000
New Mexico	400,000
New York	2,740,000
North Carolina	1,175,000
North Dakota	400,000
Ohio	1,790,000
Oklahoma	745,000
Oregon	575,000
Pennsylvania	1,940,000
Rhode Island	400,000
South Carolina	655,000
South Dakota	400,000
Tennessee	905,000
Texas	3,140,000
Utah	400,000
Vermont	400,000
Virginia	1,035,000
Washington	885,000
West Virginia	400,000
Wisconsin	980,000
Wyoming	400,000
Puerto Rico	515,000

Appendix C

The Division of Motor Vehicles is assisting in a study about seat belts in (insert State name). Your answers to the following questions are voluntary and anonymous. Please complete the survey and then put it in the drop box.

1. Your sex: ☐ Male ☐ Female
2. Your age: ☐ Under 21 ☐ 21–25 ☐ 26–39 ☐ 40–49 ☐ 50–59 ☐ 60 Plus
3. Your race: ☐ White ☐ Black ☐ Asian ☐ Native American ☐ Other
4. Are you of Spanish/Hispanic origin? ☐ Yes ☐ No
5. Your Zip Code: _____
6. About how many miles did you drive last year?
   ☐ Less than 5,000 ☐ 5,000 to 10,000 ☐ 10,001 to 15,000 ☐ More than 15,000
7. What type of vehicle do you drive most often?
   ☐ Passenger car ☐ Pickup truck ☐ Sport utility vehicle ☐ Mini-van ☐ Full-van ☐ Other
8. How often do you use seat belts when you drive or ride in a car, van, sport utility vehicle or pick up?
   ☐ Always ☐ Nearly always ☐ Sometimes ☐ Seldom ☐ Never
9. What do you think the chances are of getting a ticket if you don't wear your seat belt?
   ☐ Always ☐ Nearly Always ☐ Sometimes ☐ Seldom ☐ Never
10. Do you think the Highway Patrol enforce the seat belt law:
    ☐ Very strictly ☐ Somewhat strictly ☐ Not very strictly ☐ Rarely ☐ Not at all
11. Do you think local police enforce the seat belt law:
    ☐ Very strictly ☐ Somewhat strictly ☐ Not very strictly ☐ Rarely ☐ Not at all
12. Have you ever received a ticket for not wearing your seat belt?
    ☐ Yes ☐ No
13. In the past month, have you seen or heard about a checkpoint where police were looking at seat belt use?
    ☐ Yes ☐ No
14. In the past month, have you gone through a checkpoint where police were looking at seat belt use?
    ☐ Yes ☐ No
15. Have you recently read, seen or heard anything about seat belts in (insert State name)?
    ☐ Yes
    If *yes*, where did you see or hear about it? (Check *all* that apply):
    ☐ Newspaper ☐ Radio ☐ TV ☐ Poster ☐ Brochure ☐ Police checkpoint ☐ Other
    If *yes*, what did it say?_____
    ☐ No
16. Do you know the name of any seat belt enforcement program(s) in (insert State name)? (check *all* that apply):
    ☐ No Excuses, Buckle Up ☐ Buckle Up (insert State Name) ☐ Click It or Ticket ☐ Operation 35, Buckle Up Stay Alive

[FR Doc. 01–10667 Filed 4–27–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number on the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before May 30, 2001.

Address Comments to: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC 20590 or at http://dms.dot.gov.

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on April 24, 2001.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approval.

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NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12668–N	RSPA–01–9385	Tri-Wall, Butler, IN	49 CFR 173.12(b)(2)(i)	To authorize the manufacture, mark, sale and use of certain UN 11G flexible intermediate bulk container for use as the outer packaging for lab pack applications in accordance with 49 CFR 173.12(b)(2)(i) as well as 49 CFR 173.240–243. (Mode 1)
12669–N	RSPA–01–9386	Aristech Chemical Corporation, Pittsburgh, PA.	49 CFR 177.834(i)(4)	To authorize an alternative attendance requirement of cargo tanks during loading and unloading of Class 9 material. (Mode 1)
12670–N	RSPA–01–9387	Taylor-Wharton, Theodore, AL.	49 CFR 178.57(l)(1)(2)(3), 178.57, (f).	To manufacture, mark, sale and use DOT–4L specification cylinders using an alternative lot size at the time of manufacturing. (Mode 1)
12671–N	RSPA–01–9370	Carleton Technologies Inc., Orchard Park, NY.	49 CFR 173.302(a)(4), 175.3, 178.65.	To authorize the transportation in commerce of non-DOT specification cylinders for use in transporting helium. (Modes 1, 2, 4)
12672–N	RSPA–01–9372	Safety-Kleen Corp., Columbia, SC.	49 CFR 173.28(b)(7)(iv)(B)	To authorize the transportation in commerce of 30 gallon open-head plastic drums without performing leakproofness test prior to reuse. (Modes 1, 2)
12674–N	RSPA–01–9373	G&S Aviation, Donnelly, ID	49 CFR 172.101(Col. 9A), 175.75(a)(1) & (a)(2).	To authorize the transportation in commerce of propane in 4BA/4BW type cylinders aboard small passenger-carrying aircraft to remote locations. (Mode 5)
12675–N	RSPA–01–9383	Toyota Motor Manufacturing, North America, Inc., Erlanger, KY.	49 CFR 173.166(e)(4)	To authorize the transportation in commerce of non-specification reusable high-strength plastic or metal containers or other dedicated handling devices for use in transporting air bag modules and seat-belt pretensioners. (Mode 1)
12676–N	RSPA–01–9376	Environmental Management, Inc., Guthrie, OK.	49 CFR 173.201, 173.202, 173.203, 173.302, 173.304, 173.309.	To authorize the transportation in commerce of non-DOT specification full open head, steel salvage cylinder for use in transporting damaged or leaking cylinders containing certain hazardous materials. (Modes 1, 3)
12677–N	RSPA–01–9375	Austin Powder Co., Cleveland, OH.	49 CFR 173.202, 177.835(c)(3), 177.848(e)(2).	To authorize the transportation in commerce of certain Division 1.1D, 1.4B, 1.4S, and 1.5D explosives with certain Division 5.1 oxidizers, combustible liquids, and certain Class 8 corrosive liquids on a specially designed motor vehicle. (Mode 1)
12679–N	RSPA–01–9416	Applied Companies, Santa Clarita, CA.	49 CFR 173.302(a), 178.65	To authorize the transportation in commerce of non-DOT specification cylinders comparable to Specification 39 non-reusable for use in transporting oxygen. (Mode
12680–N	RSPA–01–9414	GATX Rail Corporation, Chicago, IL.	49 CFR 180.509(1)(2)	To authorize alternative retest/qualification criteria for DOT Specification 111A100W6 in glacial acetic acid service. (Mode 2)
12686–N	RSPA–01–9481	Carleton Technologies Inc., Orchard Park, NY.	49 CFR 173.302(a), 175.3	To authorize the manufacture, marking, sale and use of a nonrefillable non-DOT specification cylinder conforming to DOT specification 39 cylinder for use in transporting Division 2.2 non-flammable compressed gas. (Modes 1, 2, 4)

[FR Doc. 01–10571 Filed 4–27–01; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before May 15, 2001.

Address Comments to: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW., Washington, DC or at http://dms.dot.gov.

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on April 23, 2001.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

Application No.	Docket No.	Applicant	Modification of exemption
8308–M		American Courier Express Corporation, Miramar, FL (See Footnote 1).	8308
10441–M		Battelle, Richland, WA (See Footnote 2)	10441
11226–M		E.R. Carpenter, L.P. Pasadena, TX (See Footnote 3)	11226
11344–M		E.I. DuPont de Nemours and Company, Inc., Wilmington, DE (See Footnote 4).	11344
11473–M		Astaris, LLC, St. Louis, MO (See Footnote 5)	11473
12003–M	RSPA–97–3231	Degussa Corporation, Parisippany, NJ (See Footnote)	12003
12084–M	RSPA–98–3941	Honeywell International, Inc., Morristown, NJ (See Footnote 7)	12084
12606–M	RSPA–01–8608	Toyota Motor Sales, U.S.A., Inc., Torrance, CA (See Footnote 8).	12606
12663–M	RSPA–01–9381	Skolnik Industries, Chicago, IL (See Footnote 9)	12663
12664–M	RSPA–01–9474	Myers Container Corporation, Huntington, Park, CA (See Footnote 10).	12664
12665–M	RSPA–01–9475	Packaging Specialties, Inc., Medina, OH (See Footnote 11)	12665

(1) To modify the exemption to authorize a change to the reporting requirements which assess radiation exposure to employees working under the exemption.

(2) To modify the exemption to allow for the transportation of Class 3, 8, 9, Division 4.1, 4.2, 4.3, and 5.1 materials in lab-packs on the same vehicle with non-lab packed acidic materials.

(3) To modify the exemption to authorize tank cars to be unloaded using an alternative monitoring system.

(4) To modify the exemption to allow for the transportation of Division 4.3, Class 9 and additional Class 3, 8 and Division 6.1 materials in tank cars.

(5) To modify the exemption to remove language for tank cars with a safety relief device having a start-to-discharge pressure of 44.1 percent of the tank test pressure.

(6) To modify the exemption to authorize the inclusion of four additional DOT specification IM 101 steel portable tanks for the transportation of hydrogen peroxide, stabilized, that exceeds the 72 percent maximum concentration.

(7) To modify the exemption to allow for the transportation of Division 2.1 and 2.3 materials in DOT Specification 4B, 4BA and 4BW cylinders that have alternative retest requirements.

(8) To reissue the exemption originally issued on an emergency basis for the one-way transportation of certain Class 9 materials by motor vehicle from port of entry to a distribution facility, within 60 miles, without "EX" number on the shipping papers.

(9) The reissue the exemption originally issued on an emergency basis authorizing the use of UN standard steel drums that do not conform to the markeing requirements of the hazardous materials regulations.

(10) To reissue the exemption originally issued on an emergency basis authorizing the use of UN standard steel drums that do not conform to the marking requirements of the hazardous materials regulations.

(11) To reissue the exemption originally issued on an emergency basis authorizing the use of UN standard steel drums that do not conform to the marking requirements of the hazardous materials regulations.

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[FR Doc. 01-10570 Filed 4-27-01; 8:45am]
BILLING CODE 4910-60-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepeth, Director, Office of Hazardous Materials, Exemptions and Approvals, Research and special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590-0001, (202) 366-4535.

Key to "Reasons for Delay"

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of exemption applications

Meaning of Application Number Suffixes

N—New application
M—Modification request
PM—Party to application with modification request

Issued in Washington, DC, on April 24, 2001.

J. Suzanne Hedgepeth,
Director, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTION APPLICATIONS

Application	Applicant	Reason for delay	Estimated date of completion
11862-N	The BOC Group, Murray Hill, NJ	4	05/31/2001
11927-N	Alaska Marine Lines, Inc., Seattle, WA	4	05/31/2001
12142-N	Aristech Chemical Corp., Pittsburgh, PA	4	05/31/2001
12158-N	Hickson Corporation, Conley, GA	4	05/31/2001
12181-N	Aristech, Pittsburgh, PA	4	05/31/2001
12248-N	Ciba Specialty Chemicals Corp., High Point, NC	1, 4	05/31/2001
12290-N	Savage Industries, Inc., Pottstown, PA	4	05/31/2001
12339-N	BOC Gases, Murray Hill, NJ	4	05/31/2001
12353-N	Monson Companies, South Portland, ME	4	05/31/2001
12355-N	Union Tank Car Company, East Chicago, IN	4	05/31/2001
12381-N	Ideal Chemical & Supply Co., Memphis, TN	4	05/31/2001
12406-N	Occidental Chemical Corporation, Dallas, TX	4	05/31/2001
12412-N	Great Western Chemical Company, Portland, OR	4	05/31/2001
12422-N	Connecticut Yankee Atomic Power Co., East Hampton, CT	1, 4	06/29/2001
12434-N	Salmon Air, Salmon, ID	4	05/31/2001
12440-N	Luxfer Inc., Riverside, CA	4	06/29/2001
12454-N	Ethyl Corp., Richmond, VA	4	06/29/2001
12456-N	Baker Hughes, Houston, TX	4	06/29/2001
12476-N	Fisher-Rosemount Petroleum, Tulsa, OK	4	06/29/2001
12497-N	Henderson International Technologies, Inc., Richardson, TX	4	06/29/2001
12516-N	Poly-Coat Systems, Inc., Houston, TX	4	05/31/2001
12518-N	Air Products & Chemicals, Inc., Allentown, PA	4	05/31/2001
12544-N	LKQ Corporation, Lecanto, FL	4	05/31/2001
12566-N	General Atomics, San Diego, CA	4	06/29/2001
12571-N	Air Products & Chemicals, Inc., Allentown, PA	4	06/29/2001
12574-N	Weldship Corporation, Bethlehem, PA	4	06/29/2001
12590-N	US Airways, Pittsburgh, PA	4	06/29/2001
12591-N	SGL Carbon, LLC, Morgantown, NC	1	06/29/2001
12592-N	Matson Navigation Co., San Francisco, CA	4	06/29/2001

MODIFICATIONS TO EXEMPTIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
7060-M	Federal Express, Memphis, TN	4	05/31/2001
8013-M	Praxair, Inc., Danbury, CT	4	05/31/2001
8086-M	The Boeing Co (Mil Aircraft & Missiles Sys Group), Seattle, WA	4	05/31/2001
8308-M	Tradewind Enterprises, Inc., Hillsboro, OR	4	05/31/2001
8554-M	Orica USA Inc., Englewood, CO	4	05/31/2001
9884-M	Mallinckrodt, Inc. (Puritan Bennett Corp), Indianapolis, IN	4	06/29/2001
10656-M	Conf. of Radiation Control Program Directors, Inc., Frankfort, KY	4	06/29/2001
10915-M	Luxfer Gas Cylinders (Composite Cylinder Div), Riverside, CA	4	05/31/2001
11202-M	Newport News Shipbuilding & Dry Dock Co, Newport News, VA	4	06/29/2001
11316-M	TRW Automotive, Queen Creek, AZ	4	05/31/2001

MODIFICATIONS TO EXEMPTIONS—Continued

Application No.	Applicant	Reason for delay	Estimated date of completion
11526-M	BOC Gases, Murray Hill, NJ	4	05/31/2001
11237-M	JCI Jones Chemicals, Inc., Milford, VA	4	05/31/2001
11769-M	Great Western Chemical Company, Portland, OR	4	05/31/2001
11769-M	Great Western Chemical Company, Portland, OR	4	05/31/2001
11769-M	Hydrite Chemical Company, Brookfield, WI	4	05/31/2001
11798-M	Air Products and Chemicals, Inc., Allentown, PA	4	05/31/2001
11798-M	Anderson Development Company, Adrian, MI	4	06/29/2001
11911-M	Transfer Flow, Inc., Chico, CA	4	06/29/2001
12178-M	STC Technologies, Inc., Bethlehem, PA	1	06/29/2001

[FR Doc. 01-10572 Filed 4-27-01; 8:45 am]
BILLING CODE 4910-60-M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34016]

Livonia, Avon & Lakeville Railroad Corporation-Continuance in Control Exemption-Western New York & Pennsylvania Railroad, LLC

Livonia, Avon & Lakeville Railroad Corporation (LAL), a Class III rail carrier, has filed a verified notice of exemption to continue in control of Western New York & Pennsylvania Railroad, LLC (WNYP), upon WNYP's becoming a carrier.

This transaction is related to STB Finance Docket No. 34017, *Western New York & Pennsylvania Railroad, LLC—Lease and Operation Exemption—Norfolk Southern Railway Company and Pennsylvania Lines LLC*, wherein WNYP seeks to sublease and operate a line of railroad approximately 145.2 miles long in Steuben, Allegany, Cattaraugus and Chautauqua Counties, NY, and Erie County, PA.

According to the verified notice of exemption, LAL expects to continue in control of WNYP once WNYP becomes a rail carrier after approval or exemption of that transaction. The earliest the transaction could have been consummated was April 19, 2001, the effective date of the exemption (7 days after the exemption was filed).

At the time it filed the notice, LAL owned and controlled one existing Class III rail carrier: Ontario Central Railroad Corporation, which operates in New York.

LAL states that: (i) LAL will not connect with the rail lines of any existing carrier in the LAL family; (ii) the continuance in control is not part of a series of anticipated transactions that would result in such a connection; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34016, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Kevin M. Sheys, Esq., Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue, Second Floor, Washington, DC 20036.

Board decisions and notices are available on our website at "www.stb.dot.gov."

Dated: April 23, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 01-10552 Filed 4-27-01; 8:45 am]
BILLING CODE 4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34017]

Western New York & Pennsylvania Railroad, LLC—Lease and Operation Exemption—Norfolk Southern Railway Company and Pennsylvania Lines LLC

Western New York & Pennsylvania Railroad, LLC (WNYP), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to sublease (except for a 0.3-mile segment over which it will have trackage rights as described below) from Norfolk Southern Railway Company (NS) and operate a rail line in Steuben, Allegany, Cattaraugus and Chautauqua Counties, NY, and Erie County, PA (subject line).[1] The subject line extends between approximately milepost 332, at Hornell, NY, and approximately milepost 60.5, at Corry, PA, a total distance of approximately 145.2 route miles.[2] WNYP will acquire incidental trackage rights on the 0.3-mile portion of the subject line between approximately milepost 394.9 and approximately milepost 395.2. In addition, WNYP will acquire incidental trackage rights over 2.7 additional miles of passing track between milepost 395.1 and approximately milepost 397.8.

The parties report that they intend to consummate the transaction on the effective date of the exemption. The earliest the transaction could have been consummated was April 19, 2001 (7 days after the exemption was filed).

This transaction is related to STB Finance Docket No. 34016, *Livonia, Avon & Lakeville Railroad—*

[1] The subject line is owned by the Chautauqua, Cattaraugus, Allegany and Steuben Southern Tier Extension Railroad Authority, currently leased by Pennsylvania Lines LLC, and operated by NS.

[2] According to the verified notice, the portions of the rail line east of Olean, NY, approximately milepost 394.9, and west of Lakewood, NY, approximately milepost 36.9, are presently out of service.

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Continuance in Control Exemption—Western New York & Pennsylvania Railroad, LLC, wherein Livonia, Avon & Lakeville Railroad has concurrently filed a verified notice to continue in control of WNYP upon its becoming a Class III rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34017, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kevin M. Sheys, Kirkpatrick & Lockhart, LLP, 1800 Massachusetts Avenue, NW., Second Floor, Washington, DC 20036.

Board decisions and notices are available on our website at "www.stb.dot.gov."

Decided: April 23, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–10551 Filed 4–27–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 586X)]

CSX Transportation, Inc.—Abandonment Exemption—in McMinn County, TN

On April 10, 2001, CSX Transportation, Inc. (CSXT) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a portion of its line of railroad known as the Athens & Tellico Branch,[1] extending from milepost OKW 333.40 to milepost OKW 334.24 in Athens, McMinn County, TN, a distance of .84 mile. The line traverses U.S. Postal Service Zip Code 37303. There are no stations on the line.

The line does not contain federally granted rights-of-way. Any documentation in UP's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by July 27, 2001.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than May 21, 2001. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–55 (Sub-No. 586X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Natalie S. Rosenberg, 500 Water Street, Jacksonville, FL 32202. Replies to the CSXT petition are due on or before May 21, 2001.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. (TDD for the hearing impaired is available at 1–800–877–8339.)

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition.

The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at www.stb.dot.gov.

Decided: April 23, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–10550 Filed 4–27–01; 8:45 am]

BILLING CODE 4915–00–P

[1] The line is formally designated as Central Region, Appalachian Division, Athens & Tellico Branch, KD Subdivision.

DEPARTMENT OF THE TREASURY

Departmental Offices; Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on an information collection that is due for reinstatement approval by the Office of Management and Budget. The Office of Program Services within the Department of the Treasury is soliciting comments concerning the Survey of U.S. Ownership of Foreign Securities as of December 31, 2001.

DATES: Written comments should be received on or before June 29, 2001.

ADDRESSES: Direct all written comments to: Dwight Wolkow, Administrator, International Portfolio Investment Data Systems, Department of the Treasury, Room 5205 MT, 1500 Pennsylvania Ave. NW, Washington DC 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Dwight Wolkow, Administrator, International Portfolio Investment Data Systems at the above address, or by emailing dwight/wolkow@do.treas.gov, or by faxing (202) 622–7448, or by calling (202) 622–1276.

SUPPLEMENTARY INFORMATION:

Title: Survey of U.S. Ownership of Foreign Securities as of December 31, 2001.

OMB Number: 1505–0146.

Abstract: These forms are used to conduct periodic surveys of holdings by U.S. residents of foreign securities for portfolio investment purposes. These data are used by the U.S. Government in the formulation of international and financial policies and for the computation of the U.S. balance of payments and U.S. international investment position. The last such survey was conducted as of December 31, 1997, and clearly demonstrated the need for such periodic surveys by significantly altering the previously estimated level of U.S. holdings of foreign long-term securities.

This survey is also part fon an internationally coordinated effort under the auspices of the International Monetary Fund to improve data on securities worldwide. These data are believed to be in serious error on a worldwide basis. Most of the major industrial and financial countries will be participating in this survey.

Current Actions: Data will be collected on short-term securities as well as long-term securities to conform to IMF survey standards. The exemption level for reporting will be raised from $20 million to $50 million of holdings by U.S. residents of foreign securities. Financial derivatives will be excluded. The exchange rate item will be replaced with requests for some items valued both in U.S. dollars and in foreign currency to improve data quality without significantly increasing respondent burden. The forms and instructions will be restructured to improve clarity. Data will be collected primarily from custodians of securities, and from major investors if they do not employ U.S. custodians. Investors employing U.S. custodians need only identify their custodians and the amounts entrusted to them.

Type of Review: Reinstatement with change.

Affected Public: Business/Financial Institutions.

Forms: OMB No. 1505–0146, Schedule 1, Schedule 2, and Schedule 3.

Estimated Number of Respondents: 2,360.

Estimated Time per Respondent: 384 hours on average for custodians of securities providing detailed information, 104 hours on average for end-investors providing detailed information, 40 hours on average for reporters employing U.S. custodians, and 16 hours on average for reporters claiming exemptions. Custodians with less than $50 million foreign long-term securities are exempt from reporting on the survey. The amount of time required to complete the survey will vary depending on the amount of data to report.

Estimated Total Burden: 108,300 hours.

Frequency of Response: At least once every three years.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: (a) Whether the Survey is necessary for the proper performance of the functions of the Office, including whether the information shall have practical uses; (b) the accuracy of the above estimate of the burdens; (c) ways to enhance the quality, usefulness and clarity of the information to be collected; (d) ways to minimize the reporting and/or record keeping burdens on respondents, including the use of information technologies to automate the collection of the data; and (e) estimates of capital or start-up costs of operation, maintenance and purchase of services to provide information.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Systems.

[FR Doc. 01–10610 Filed 4–27–01; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0365]

Agency Information Collection Activities Under OMB Review

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the National Cemetery Administration (NCA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 30, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0365" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Request for Disinterment, VA Form 40–4970.

OMB Control Number: 2900–0365.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: VA Form 40–4970 allows a person who has a sincere wish and cogent reason to request removal of remains from a national cemetery for interment at another location. VA Form 40–4970 is an affidavit that requires signatories to execute the document before a notary. Interments made in national cemeteries are permanent and final. Disinterments will be permitted for cogent reasons, and then with prior written authorization only, usually by the Cemetery Director. Approval can be granted when all immediate family members of the decedent, including the person who initiated the interment, give their written consent. An order from a court of local jurisdiction can be accepted in lieu of submitting VA form 40–4970.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 31, 2000, at pages 53090–53091.

Affected Public: Individuals or households.

Estimated Annual Burden: 55 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On Occasion.

Estimated Number of Respondents: 329.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7613. Please refer to "OMB Control No. 2900–0365" in any correspondence.

Dated: April 20, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–10680 Filed 4–27–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0578]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 et seq.), this notice announces that the Veterans Health

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Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 30, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0578."

SUPPLEMENTARY INFORMATION:

Title: Provision of Health Care to Vietnam Veterans' Children with Spina Bifida.

OMB Control Number: 2900–0578.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The information collected will be used to determine appropriate payment for medical care rendered to Vietnam veterans' children with spina bifida. Without the information, VA will be unable to determine the correct amount to reimburse providers for their services.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 11, 2001, at pages 2480–2481.

Affected Public: Individuals or households and Business or Other For-Profit.

Estimated Annual Burden: 1,584 hours.

Estimated Average Burden Per Respondent: 8 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 12,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0578" in any correspondence.

Dated: April 20, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–10681 Filed 4–27–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0583]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 30, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0583."

SUPPLEMENTARY INFORMATION:

Title: Regulation for Informed Consent for Patient Care (Title 38 CFR 17.32).

OMB Control Number: 2900–0583.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The information collection subject to this rulemaking concerns disclosure requirements that non-VA physicians contracting to perform services for VA must follow in conducting informed consent procedures. The information provided is designed to ensure that patients (or in some cases, others) have sufficient information to provide informed consent.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 11, 2001, at page 2481.

Affected Public: Individuals or households.

Estimated Annual Burden: 60,000 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 240,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0583" in any correspondence.

Dated: April 20, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–10682 Filed 4–27–01; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 66, No. 83

Monday, April 30, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

[TD 8927]

RIN 1545-AW34

Conversion to the Euro

Correction

In rule document 01–252 beginning on page 2215 in the issue of Thursday, January 11, 2001, make the following correction:

PART 1 [CORRECTED]

On page 2217, second and third columns, *Example 1* and *Example 2* of §1.985–8 (c)(3)(ii) is reprinted to include the missing euro signs.

§1.985–8 [Corrected]

* * * * *

(c)(3)(ii) * * *

Example 1. X, a calendar year QBU on the cash method of accounting, uses the deutschmark as its functional currency. X is not described in section 1281(b). On July 1, 1998, X converts 10,000 deutschmarks (DM) into Dutch guilders (fl) at the spot rate of fl1 = DM1 and loans the 10,000 guilders to Y (an unrelated party) for one year at a rate of 10% with principal and interest to be paid on June 30, 1999. On January 1, 1999, X changes its functional currency to the euro pursuant to this section. Assume that the euro/deutschmark conversion rate is set by the European Council at €1= DM2. Assume further that the euro/guilder conversion rate is set at €1 = fl2.25. Accordingly, under the terms of the note, on June 30, 1999, X will receive €4444.44 (fl10,000/2.25) of principal and €444.44 (fl1,000/2.25) of interest. Pursuant to this paragraph (c)(3), X will realize an exchange loss on the principal computed under the principles of § 1.988–2(b)(5). For this purpose, the exchange rate used under § 1.988–2(b)(5)(i) shall be the guilder/euro conversion rate. The amount under § 1.988–2(b)(5)(ii) is determined by translating the fl10,000 at the guilder/deutschmark spot rate on July 1, 1998, and translating that deutschmark amount into euros at the deutschmark/euro conversion rate. Thus, X will compute an exchange loss for 1999 of €555.56 determined as follows: [€4444.44 (fl10,000/2.25)–5000 ((fl10,000/1)/2) = – €555.56]. Pursuant to this paragraph (c)(3), the character and source of the loss are determined pursuant to section 988 and regulations thereunder. Because X uses the cash method of accounting for the interest on this debt instrument, X does not realize exchange gain or loss on the receipt of that interest.

Example 2. (i) X, a calendar year QBU on the accrual method of accounting, uses the deutschmark as its functional currency. On February 1, 1998, X converts 12,000 deutschmarks into Dutch guilders at the spot rate of fl1 = DM1 and loans the 12,000 guilders to Y (an unrelated party) for one year at a rate of 10% with principal and interest to be paid on January 31, 1999. In addition, assume the average rate (deutschmark/guilder) for the period from February 1, 1998, through December 31, 1998 is fl1.07 = DM1. Pursuant to § 1.988–2(b)(2)(ii)(C), X will accrue eleven months of interest on the note and recognize interest income of DM1028.04 (fl1100/1.07) in the 1998 taxable year.

(ii) On January 1, 1999, the euro will replace the deutschmark as the national currency of Germany pursuant to the Treaty on European Union signed February 7, 1992. Assume that on January 1, 1999, X changes its functional currency to the euro pursuant to this section. Assume that the euro/deutschmark conversion rate is set by the European Council at €1 = DM2. Assume further that the euro/guilder conversion rate is set at €1 = fl2.25. In 1999, X will accrue one month of interest equal to €44.44 (fl100/2.25). On January 31, 1999, pursuant to the note, X will receive interest denominated in euros of €533.33 (fl1200/2.25). Pursuant to this paragraph (c)(3), X will realize an exchange loss in the 1999 taxable year with respect to accrued interest computed under the principles of § 1.988–2(b)(3). For this purpose, the exchange rate used under § 1.988–2(b)(3)(i) is the guilder/euro conversion rate and the exchange rate used under § 1.988–2(b)(3)(ii) is the deutschmark/euro conversion rate. Thus, with respect to the interest accrued in 1998, X will realize exchange loss of €25.13 under § 1.988–2(b)(3) as follows: [€488.89 (fl1100/2.25)– €514.02 (DM1028.04/2) =– €25.13]. With respect to the one month of interest accrued in 1999, X will realize no exchange gain or loss since the exchange rate when the interest accrued and the spot rate on the payment date are the same.

(iii) X will realize exchange loss of €666.67 on repayment of the loan principal computed in the same manner as in Example 1 [€5333.33 (fl12,000/2.25)– €6000 fl12,000/1)/2)]. The losses with respect to accrued interest and principal are characterized and sourced under the rules of section 988.

[FR Doc. C1–252 Filed 4–27–01; 8:45 am]

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Federal Register

Monday,
April 30, 2001

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Determination of Critical Habitat for the Bay Checkerspot Butterfly (Euphydryas editha bayensis); Final Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH61

Endangered and Threatened Wildlife and Plants; Final Determination of Critical Habitat for the Bay Checkerspot Butterfly (*Euphydryas editha bayensis*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the bay checkerspot butterfly (*Euphydryas editha bayensis*) (bay checkerspot), pursuant to the Endangered Species Act of 1973, as amended (Act). A total of approximately 9,673 hectares (23,903 acres) in San Mateo and Santa Clara counties, California, is designated as critical habitat.

Critical habitat identifies specific areas that have the physical and biological features that are essential to the conservation of a listed species, and that may require special management considerations or protection. The primary constituent elements for the bay checkerspot are one or more of the following: stands of *Plantago erecta, Castilleja exserta,* or *Castilleja densiflora;* spring flowers providing nectar; pollinators of the bay checkerspot's food and nectar plants; soils derived from serpentinic rock; and space for dispersal between habitable areas. In addition, the following are each primary constituent elements to be conserved when present in combination with one or more of the primary constituent elements above: areas of open grassland, topography with varied slopes and aspects providing surface conditions with warm and moderate to cool temperatures during sunny spring days, stable holes or cracks in the soil and surface rocks or rock outcrops, wetlands providing moisture during times of spring drought.

In addition, the following are each primary constituent elements to be conserved when present in combination with one or more of the primary constituent elements above: areas of open grassland, topography with varied slopes and aspects, stable holes or cracks in the soil and surface rocks or rock outcrops, and wetlands providing moisture during times of spring drought.

Section 7 of the Act prohibits destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat. We solicited data and comments from the public on all aspects of the proposed rule and economic analysis. We revised the proposal to incorporate or address new information received during the comment periods.

DATES: This rule becomes effective on May 30, 2001.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, will be available for public inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W2605, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: David Wright or Chris Nagano at the address above (telephone 916/414–6600; facsimile 916/414–6712).

SUPPLEMENTARY INFORMATION:

Background

The bay checkerspot is a medium-sized butterfly with a wingspan of about 5 centimeters (2 inches (in.)). The forewings have black bands along all the veins on the upper wing surface, contrasting sharply with bright red, yellow, and white spots. The bay checkerspot is 1 of about 20 subspecies of *Euphydryas editha* (Miller and Brown 1981), and differs in physical appearance from other subspecies in a variety of size, wing coloration, larval, and pupal characteristics (Howe 1975; Mattoni *et al.* 1997). It differs from LuEsther's checkerspot (*Euphydryas editha luestherae*), (a later-flying, *Pedicularis*-feeding subspecies of Inner Coast Range chaparral in central California), by being darker, and lacking a relatively uninterrupted red band demarcating the outer third of the wing. The black banding on the forewings of the bay checkerspot gives a more checkered appearance than the smaller quino checkerspot butterfly (*Euphydryas editha quino*) of southern California (Service 1998).

Recent publications have advocated renaming the bay checkerspot, *Euphydryas editha bayensis,* as *Euphydryas editha editha* for reasons of historical precedence (Mattoni *et al.* 1997; Emmel *et al.* 1998). Mattoni and co-authors (1997) have also suggested that *Euphydryas editha editha* ranges from the San Francisco Bay area south to northern Santa Barbara County in California, and includes both the populations commonly known as the bay checkerspot and several populations south of Santa Clara County whose subspecific status has been uncertain. If this expanded subspecific assignment is accepted by the scientific community, it would represent a range extension for the bay checkerspot. Until such time as we make any new or revised determination on the taxonomy, in this final rule, we treat the threatened bay checkerspot as occurring in San Francisco Bay area counties, notably the counties of San Mateo and Santa Clara, as described in the final rule for the subspecies (52 FR 35378).

The bay checkerspot formerly occurred around San Francisco Bay, from Twin Peaks and San Bruno Mountain (west of the Bay) and Contra Costa County (east of the Bay), south through Santa Clara County. Before the introduction of invasive Eurasian grasses and other weeds in the 1700s, its distribution may have been wider (Service 1998). In the decades preceding listing, the decline of the bay checkerspot was primarily attributed to loss of habitat and fragmentation of habitat due to increasing urbanization. Drought and other extremes of weather have also been implicated in bay checkerspot population declines (Ehrlich *et* al. 1980; Service 1998). Recent research has identified excess nitrogen deposition from polluted air as a threat to bay checkerspot habitats, due to its fertilizing effect enhancing the growth of invasive nonnative plants even in serpentine soil areas (Weiss 1999).

Habitat of the bay checkerspot most commonly is found on shallow, serpentine-derived or similarly droughty or infertile soils, which support the butterfly's larval food plants and also includes nectar sources for adults that may also occur on other adjacent soil types. Serpentine soils are high in magnesium and low in calcium, and are a strong indicator of habitat value for the bay checkerspot. The primary larval host plant of the bay checkerspot is *Plantago erecta* (dwarf plantain), an annual, native plantain. The bay checkerspot usually is found associated with *Plantago erecta* in grasslands on serpentine soils, such as soils in the Montara series. In Santa Clara County, the Inks and Climara soil series are related soils and often have inclusions of Montara (U.S. Soil Conservation Service 1974). Henneke and other serpentine soils also occur within the range of the bay checkerspot. Populations of the bay checkerspot formerly occurred on San Bruno Mountain and other locations with soils that are not serpentine. We believe this

indicates that, with otherwise suitable habitat conditions, the bay checkerspot is capable of living in nonserpentine soil areas.

Serpentine soils are well known for harboring rare and endemic plant species, and because the bay checkerspot inhabits serpentine areas, our critical habitat designation for the bay checkerspot overlaps habitat of several federally listed plant species: the San Mateo thornmint (*Acanthomintha obovata* ssp. *duttonii*), Santa Clara Valley dudleya (*Dudleya setchellii*), Coyote ceanothus (*Ceanothus ferrisae*), Tiburon paintbrush (*Castilleja affinis* ssp. *neglecta*), fountain thistle (*Cirsium fontinale* var. *fontinale*), Marin dwarf flax (*Hesperolinon congestum*), white-rayed pentachaeta (*Pentachaeta bellidiflora*), and Metcalf Canyon jewelflower (*Streptanthus albidus* ssp. *albidus*) (Service 1998). However, bay checkerspot critical habitat does not include all the habitat essential to any of these plant species. Bay checkerspot critical habitat is also coincident with habitat for a number of rare plants and animals that are not federally listed (Service 1998).

In many years, bay checkerspot larvae may use a secondary host plant species, for instance, when dwarf plantain dries up while prediapause larvae are still feeding. *Castilleja* (*Orthocarpus*) *densiflora* (purple owl's-clover) and *Castilleja exserta* (*Orthocarpus purpurascens*) (exserted paintbrush) are known secondary host plants that often remain edible later in the season than dwarf plantain. Bay checkerspot adults also visit flowers for nectar. Nectar plants commonly visited include *Lomatium* spp. (desert parsley), *Lasthenia californica* (= *chrysostoma*) (California goldfields), *Layia platyglossa* (tidy-tips), *Muilla maritima,* and others. Moderate grazing is normally compatible with habitat for the bay checkerspot, since grazing can reduce the density and height of nonnative plants that compete with the native plants supporting the butterfly.

The bay checkerspot's life cycle is closely tied to host plant biology. Host plants germinate anytime from early October to late December, and senesce (dry up and die) from early April to mid May. Most of the active parts of the bay checkerspot life cycle also occur during this period. Adults emerge from pupae (a transitional stage between caterpillar and adult butterfly) in early spring, and feed on nectar, mate, and lay eggs during a flight season that typically lasts for 4 to 6 weeks in the period between late February to early May. The eggs hatch and the tiny larvae feed for about 2 to 3 weeks before entering diapause (a temporary cessation of development) in mid to late spring. The postdiapause larvae emerge after winter rains stimulate germination of *Plantago,* and feed and bask until they are large enough to pupate and emerge as adults (Service 1998). If insufficient food is available, a post-diapause checkerspot larva can re-enter diapause and emerge again one year or more later (Singer and Ehrich 1979; Mattoni *et al.* 1997).

Most *Euphydryas editha* subspecies exhibit generally sedentary behavior, with adults frequently remaining in the same habitat patch in which they developed as larvae (Ehrlich 1961, 1965; Boughton 1999, 2000). Female bay checkerspots were found to be more likely to emigrate than males (Ehrlich *et al.* 1984). When female *Euphydryas editha* butterflies fail to encounter preferred host plants, the likelihood of emigration to other suitable habitat patches increases (Thomas and Singer 1987). Adult dispersal by the bay checkerspot is typically less than 150 meters (490 feet) between recaptures (Ehrlich 1961, Ehrlich 1965, Gilbert and Singer 1973). However, Harrison (1989) recaptured bay checkerspots greater than 1 kilometer (0.6 mile) from the point of release in 5 percent of cases. Long-distance dispersal in bay checkerspot butterflies has been documented as far as 7.6 km (4.7 miles) (D. Murphy pers. comm.), 5.6 km (3.5 miles) (1 male), and 3 km (2 miles) (1 female) (Harrison 1989). The butterflies are likely to be capable of dispersing even longer distances. In all dispersal observations and experiments, long-distance movements are hard to detect, and thus their frequency and importance are difficult to quantify. Qualitative observations suggest that bay checkerspots move readily over suitable grassland habitat, but are more reluctant to cross scrub, woodland or other unsuitable habitat. Roads, especially, those traveled more heavily and at higher speeds, present a risk of death or injury to dispersing butterflies. Where corridors that facilitate dispersal exist, they may support the persistence of bay checkerspot populations.

Long-distance habitat patch colonization may be achieved within a single season through long-distance dispersal of individual butterflies, or over several seasons through stepping-stone habitat patch colonization and dispersal events. In one study of the Santa Clara County bay checkerspot metapopulation, no colonizations of unoccupied habitat patches farther than 4.5 kilometers (2.8 miles) from the source population were detected over a 10-year period (Harrison *et al.* 1988). A mathematical model of unknown accuracy predicted satellite habitat patches at a distance greater than 7 to 8 kilometers (4 to 5 miles) from a primary source population were not likely to support populations (Harrison *et al.* 1988).

The known range of the bay checkerspot is now reduced to Santa Clara and San Mateo counties, and it is patchily distributed in these locales. Studies of the bay checkerspot have described its distribution as an example of a metapopulation (see literature cited in Service 1998). A metapopulation is a group of spatially separated populations that can occasionally exchange dispersing individuals. The populations in a metapopulation are usually thought of as undergoing interdependent extinction and colonization, where individual populations may go extinct, but later recolonize from another population. That is, although member populations may change in size independently, their probabilities of existing at a given time are not independent of one another because they are linked by processes of extinction and mutual recolonization, processes that occur on the order of every 10 to 100 generations (Harrison *et al.* 1988). The ability and propensity of larvae to undergo multiple-year diapause in the field, and survival rates during repeated diapause, all currently unquantified, will also affect the persistence time of local populations. Bay checkerspot populations may also exhibit "'pseudo-extinction,'" where the species is not found, but nonetheless continues to inhabit a site and reappears in a subsequent year. Since the early stages of the bay checkerspot are extremely difficult or impossible to locate in surveys (White 1987), the failure to discover caterpillars that diapause for more than 1 year may be responsible for pseudo-extinctions. Because of pseudo-extinction and metapopulation dynamics, even sites that in some years apparently lack the bay checkerspot are important to the survival and recovery of the species.

The timescale of bay checkerspot metapopulation dynamics, which includes boom and bust fluctuations of site populations, effects of California's variable climate, extirpations (loss of local populations) and recolonizations, is on the scale of decades to centuries, much longer than typical human planning efforts. Adequacy of designated critical habitat lands for conservation of the bay checkerspot depends on long-term persistence of the species' Santa Clara and San Mateo metapopulations, through conservation of many habitat patches and opportunity for dispersal/

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recolonization /gene flow events that link populations in the metapopulations. Such dispersal events must include long-distance colonizations that are rare because they occur during unusually favorable years or sequences of years for the bay checkerspot, resulting in population booms and many more dispersing butterflies.

Bay checkerspot populations vary greatly from year to year. Many or most individuals of the species live only a single year, and with high fecundity (fertility), high mortality, and sensitivity to weather and perhaps other ecological conditions, large population swings are common for the bay checkerspot. Fluctuations of more than 100-fold have been observed. These fluctuations are not always in synchrony among populations at different sites.

Weiss *et al.* (1988) and Murphy and Rehm (1992) found that the populations of the bay checkerspot butterfly take refuge during dry years largely on cool north- and northeast-facing serpentine grassland slopes. However, they reported that during years of above-average rainfall the species expands its population on warmer slopes, including more xeric south- and west-facing slopes. Although infrequent and short-term, such expansions can contribute to the long-term metapopulation persistence, especially for a species like the bay checkerspot, whose numbers are regulated more by environmental factors than population density. Murphy and White (1984) stated that long-distance dispersal events associated with population outbreaks may contribute significantly to colonization or recolonization of unoccupied areas and hence to long-term survival of the checkerspot butterflies.

Habitat areas that appear to be low quality or are temporarily low quality, therefore, can be essential to the long-term persistence of bay checkerspot populations, which reside in habitats vulnerable to highly variable or catastrophic environmental phenomena, such as drought, or habitat destruction caused by urban development. Patches of habitat, whether of high or marginal quality, can serve as "stepping stones" for regional metapopulations. These patches can facilitate gene flow between small populations and can provide routes for individuals to colonize surrounding habitats that have been subject to local extinction. Loss of temporarily empty "stepping stone" habitat patches would disrupt the dynamics of the entire bay checkerspot metapopulation. According to Murphy (1990) "* * * the necessity of protecting remnants of once extensive metapopulations will demand the protection of both presently occupied habitat patches and those which may be presently unoccupied, but which can support the bay checkerspot under certain climatic conditions."

Previous Federal Action

On October 21, 1980, we were petitioned by Dr. Bruce O. Wilcox, Dennis D. Murphy, and Dr. Paul R. Ehrlich to list the bay checkerspot as an endangered species. We published a Notice of Status Review on February 13, 1981 (46 FR 12214). Following our status review, we found that listing the bay checkerspot was warranted but precluded by other pending listing actions (49 FR 2485). We proposed the bay checkerspot for listing as endangered with critical habitat on September 11, 1984 (49 FR 35665), and listed the subspecies as threatened on September 18, 1987 (52 FR 35366). At the time of listing, because of difficulty in resolving the value of specific habitats to the subspecies and assessing the activities being conducted in those areas, we concluded that critical habitat was not determinable. We published a Recovery Plan for Serpentine Soil Species of the San Francisco Bay Area (Recovery Plan) in September 1998 that includes the bay checkerspot (Service 1998), as required under section 4(f) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*).

On June 30, 1999, the Center for Biological Diversity filed a complaint against us challenging our critical habitat findings for seven species, including the bay checkerspot butterfly. On August 30, 2000, the United States District Court for the Northern District of California (Southwest Center for Biological Diversity v. Bruce Babbitt, *et al.*, CIV 99–3202 SC) ruled on several of the species involved, including the bay checkerspot butterfly. The court ordered us to propose critical habitat within 60 days of the ruling and to finalize the designation within 120 days of the proposed designation. A subsequent settlement agreement with the Center for Biological Diversity extended the date for the final decision to April 20, 2001.

We proposed critical habitat for the bay checkerspot butterfly on October 16, 2000 (65 FR 61218). The original comment period closed on December 15, 2000. A notice of availability for the draft economic analysis and reopening of the public comment period was published in the **Federal Register** on February 9, 2001 (66 FR 9683). The second comment period closed on March 12, 2001.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered species or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as "* * * the direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species." Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional protections under the Act against such activities.

To be included in a critical habitat designation, the habitat must first be "essential to the conservation of the species." Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 requires that we designate critical habitat at the time of listing and based on what we know at the time of the designation. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we will often not have sufficient information to identify all areas of critical habitat. We are required, nevertheless, to make a decision and, thus, must base our designations on what, at the time of designation, we know to be critical habitat.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation. Within the geographic area occupied by the species, we will not designate areas that do not now have the primary constituent elements, as defined at 50 CFR 424.12(b), that provide essential life cycle needs of the species.

Our regulations state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species" (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (Vol. 59, p. 34271), identifies criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires Service biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information is the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, unpublished materials, and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, because of the information available for us at the time of designation, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1), and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the take prohibitions of section 9 of the Act, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

In identifying areas that are essential to conserve the bay checkerspot, we used the best scientific information available. This included habitat suitability and site-specific species information. We have emphasized areas of current and historical bay checkerspot occurrences, especially larger sites in proximity to known occurrences. To maintain genetic and demographic interchange that will help maintain the viability of a regional metapopulation, we included corridor areas that allow movement between populations. Dispersal is a crucial function for a species with metapopulation dynamics like the bay checkerspot.

We used data on known and historic locations and maps of serpentine soils to identify potentially important areas. Then, through the use of 1990s digital orthophotos available through the Bay Area Digital GeoResource (BADGER) website (http://badger.parl.com), and limited ground checking, we estimated the current extent of suitable breeding habitat. We included in critical habitat both suitable habitat and areas that link suitable breeding habitat, since these links facilitate movement of individuals between habitat areas and are important for dispersal and gene flow and, thus, to the conservation of the subspecies. For the final rule, we checked the critical habitat boundaries we proposed for the subspecies against 1999 SPOT satellite imagery and removed identifiable developed areas.

Our 1984 proposal to list the bay checkerspot with critical habitat (49 FR 35665) proposed five critical habitat zones. Four of the five are included in this designation, with modifications based on improved knowledge of the biology and habitat of the subspecies. Since publication of the original proposal, the fifth zone (Woodside Zone) has been mostly converted to housing. Therefore, it is not included in the critical habitat designation. Since 1984, a great deal of literature on the bay checkerspot butterfly, both published and unpublished, has added to our understanding of the subspecies (see literature cited in Service 1998; Weiss 1999; Weiss and Launer 2000). Based on this expanded information and other information in the Recovery Plan (Service 1998), we have been able to identify habitats and populations that were poorly documented before the mid-1980s, and assess their significance. Besides the four previously identified critical habitat zones, this final rule identifies 11 additional habitat units essential to the conservation of the bay checkerspot, for a total of 15 critical habitat units. Further, information provided in comments on the proposed designation and draft economic analysis were evaluated and taken into consideration in the development of this final designation.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas to designate as critical habitat, we must consider those physical and biological features (primary constituent elements) essential to the conservation of the species and that may require special management considerations and protection. These include, but are not limited to, space for individual and population growth and for normal behavior; food, water, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of

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offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The primary constituent elements of critical habitat for the bay checkerspot are those habitat components that are essential for the primary biological needs of foraging, sheltering, breeding, maturation, and dispersal. The areas we are designating as critical habitat provide some or all of the known primary constituent elements for the subspecies, which include: stands of *Plantago erecta*, *Castilleja exserta*, or *Castilleja densiflora*; spring flowers providing nectar; pollinators of the bay checkerspot's food and nectar plants; soils derived from serpentinic rock; and space for dispersal between habitable areas. In addition, the following are each primary constituent elements to be conserved when present in combination with one or more of the primary constituent elements above: areas of open grassland, topography with varied slopes and aspects providing surface conditions with warm and moderate to cool temperatures during sunny spring days, stable holes or cracks in the soil and surface rocks or rock outcrops, wetlands providing moisture during times of spring drought.

Appropriate grassland vegetation provides cover for larvae, pupae and adults, egg-laying stimuli and sites for females, and adequate open ground for larvae to be able to crawl efficiently in search of foraging, basking, diapause, or pupation sites (Service 1998). Stands of food plants, including nectar plants, are important in the bay checkerspot's life cycle. The bay checkerspot's primary larval food plant is *Plantago erecta*, an annual, native plantain. The larvae also often use a secondary food plant species, usually either *Castilleja (Orthocarpus) densiflora* (purple owl's-clover) or *Castilleja exserta (Orthocarpus purpurascens)* (exserted paintbrush). These secondary food plants tend to remain edible later in the season than the plantain. Bay checkerspot adults benefit from visiting flowers for nectar. Nectar plants commonly visited include *Lomatium* spp. (desertparsley), *Lasthenia californica* (= chrysostoma) (California goldfields), *Layia platyglossa* (tidy-tips), *Muilla maritima* (sea muilla), and others.

Adequate native pollinators to sustain populations of *Castilleja* and nectar species, including, but not limited to, such groups as bumblebees and solitary bees, are important to the value of critical habitat because these plants are dependent on pollinators to reproduce and perpetuate their populations in the area. *Plantago erecta* is thought to be self-pollinating.

The bay checkerspot usually is found associated with grasslands on serpentine soils, such as the Montara soil series. In Santa Clara County, the Inks and Climara soil series are related soils and often have inclusions of Montara (U.S. Soil Conservation Service 1974). Henneke and other serpentine soils also occur within the range of the bay checkerspot. Serpentine soils often support other primary constituent elements, but they are not limited to serpentine soils. Soil structure with stable holes or cracks and surface rocks or rock outcrops provide cover and shelter for bay checkerspot larvae seeking diapause sites and basking sites.

Bay checkerspot adults have been observed to fly considerable distances during drought conditions to draw water or solutes from moist soils around wetlands ("puddling," Launer *et al.* 1993). Triggering of the puddling behavior by drought conditions suggests it is a directed, adaptive behavior, and that the butterflies are seeking out moist areas during times of water or heat stress to obtain essential nutrients or water (Launer *et al.* 1993).

Adult bay checkerspots are capable of dispersing over long distances. Movements of more than 5.6 kilometers (km) (3.5 miles (mi)) have been documented (see Service 1998), and longer movements are possible. Adult dispersal, especially by fertilized females carrying eggs, is vital to the maintenance of natural bay checkerspot metapopulation structure, which requires reestablishment or replenishment of populations that are at or near local extinction. Roads, especially those traveled more heavily and at higher speeds, present a risk of death or injury to dispersing bay checkerspots. Where open spaces exist that facilitate dispersal, they support the persistence of bay checkerspot populations and metapopulations. Some habitats or land uses are thought to be more suitable for dispersal than others; for example, grassland may be more readily crossed than woodland or landscaped areas. But documented long-distance movements demonstrate that the bay checkerspot is sometimes capable of crossing a variety of substrates (Service 1998).

Topographic diversity provides opportunities for early season warmth as well as cool north-and east-facing slopes that are a refuge for the subspecies during droughts. Bay checkerspot larvae develop more rapidly when they can bask in sunlight that penetrates short-statured grassland vegetation. Adults also use warm exposures for basking, and find early-season nectar plants on warm south-and west-facing slopes (Weiss *et al.* 1988).

Criteria Used To Identify Critical Habitat

In an effort to map areas that have the features essential to the conservation of the subspecies, we used data on known bay checkerspot locations, and conservation planning areas that were identified in the Recovery Plan (Service 1998) as essential for the recovery of the subspecies.

We also considered the existing status of lands in designating areas as critical habitat. The bay checkerspot is known to occur on State, county, and private lands. The range of critical habitat extends in the south from the San Martin area, in Santa Clara County, north to San Bruno Mountain in San Mateo County. We could not depend on Federal lands for critical habitat designation because we are not currently aware of any Federal lands within the range of the bay checkerspot that can be inhabited by the butterfly. We are also not aware of any Tribal lands in or near the critical habitat units for the bay checkerspot.

Section 10(a) of the Act authorizes us to issue permits to take listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. One small, short-term HCP covers the bay checkerspot on about 4 hectares (ha) (10 acres (ac)) of critical habitat through November 2001. This HCP permits temporary project-related impacts from electric transmission line work. To date, project construction anticipated to affect the bay checkerspot is substantially complete (see the Relationship to Habitat Conservation Plans section below for additional information on the relationship between HCPs and critical habitat designation).

In selecting areas of critical habitat, we made an effort to avoid developed areas, such as towns and other similar lands, that are unlikely to contribute to bay checkerspot conservation. However, the information available to us did not allow us to exclude all recently developed areas, such as towns, housing developments, or other lands unlikely to contain the primary constituent elements essential for conservation of the bay checkerspot. Existing features and structures within the boundaries of the mapped units, such as buildings, roads, aqueducts, railroads, airports,

other paved areas, lawns, and other urban landscaped areas are not likely to contain primary constituent elements essential for the conservation of the bay checkerspot. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

Critical Habitat Designation

The areas we are designating as critical habitat currently provide some or all of those habitat components necessary to meet the primary biological needs of the bay checkerspot butterfly. Table 1 shows the approximate area of critical habitat by county and land ownership. Lands designated are under private and State and local ownership. The subspecies is not known to occur, or to have historically occurred, on Federal lands. Lands designated as critical habitat have been divided into 15 Critical Habitat Units. Critical habitat designated for the bay checkerspot includes 9,673 ha (23,903 ac), with 806 ha (1,992 ac) in San Mateo County and 8,867 ha (21,911 ac) in Santa Clara County. Because the bay checkerspot is nearly confined to island-like patches of habitat, its critical habitat is easily categorized into separate areas or units (see maps). We present brief descriptions of each unit, and our reasons for designating it as critical habitat, below.

Conserving the bay checkerspot includes the need to reestablish historic populations of the subspecies to areas within several of the units, in order to secure the butterfly in representative sites in its former range, and in a range of habitat and climate conditions. Returning the bay checkerspot to good representatives of its former diversity of sites and habitat and climate conditions is necessary to reduce the long-term risk of range-wide extinction of the subspecies (Service 1998).

The long-term probability of the survival and recovery of the bay checkerspot butterfly is dependent on the maintenance of its metapopulation dynamics through the protection of existing serpentine habitat, the movement of individuals between these sites, and the ability of the butterflies to recolonize habitat where they have become extirpated. Recolonization of sites with suitable habitat that contained populations that have become extinct and the maintenance of genetic diversity within existing populations is dependent upon "stepping stones" of habitat, including habitat that may appear marginal, that the bay checkerspot can colonize and disperse from during rare periods of very favorable climatic conditions.

TABLE 1.—APPROXIMATE CRITICAL HABITAT IN HECTARES (HA) AND ACRES (AC) BY COUNTY AND OWNERSHIP

[Area estimates reflect critical habitat unit boundaries; however, not all the areas within those broad boundaries, such as cities, towns, or other developments, contain habitat features considered essential to the survival of the bay checkerspot]

County	Federal	Local/State	Private	Total
San Mateo	0	520 ha (1,285 ac)	286 ha (707 ac)	806 ha (1,992 ac).
Santa Clara	0	922 ha (2,278 ac)	7,945 ha (19,633 ac)	8,867 ha (21,911 ac).
Total	0	1,442 ha (3,563 ac)	8,231 ha (20,340 ac)	9,673 ha (23,903 ac).

Unit 1. Edgewood Park/Triangle Unit

Occurring in San Mateo County, this unit comprises 217 ha (535 ac) in T.5 S., R.4 W. (Mount Diablo meridian/base line). Included is most of Edgewood Natural Preserve, a county park southeast of the junction of Edgewood Road, and I–280, and watershed lands of the San Francisco Public Utilities Commission, Water Supply and Treatment Division, within the triangle formed by I–280, Edgewood Road, and Canada Road, as well as a small additional area of serpentine soil on the west side of Canada Road. Much of this area also falls within the San Francisco State Fish and Game Refuge. The area supports the Edgewood population of the bay checkerspot discussed in the subspecies' Recovery Plan, which is the main population of the San Mateo metapopulation of the bay checkerspot (Service 1998). Without the Edgewood population the San Mateo metapopulation would almost certainly go extinct, resulting in the loss of one of only two metapopulations of the bay checkerspot and a significant range reduction for the subspecies. This population is also the northernmost remaining population of the subspecies. The unit contains considerable areas of good habitat, although additional management attention may be needed for the bay checkerspot to thrive here. The unit is 7 km (4 mi) northwest of the Jasper Ridge unit.

Unit 2. Jasper Ridge Unit

Occurring within San Mateo County, the unit covers 287 ha (709 ac) in Stanford University's Jasper Ridge Biological Preserve, in T.6 S., R.3 W. (Mount Diablo meridian/base line). Decades of data and dozens of published scientific papers about the Jasper Ridge population of the bay checkerspot exist. The population has severely declined in recent years, and may now be extirpated (Service 1998). However, we are confident that a stable population of the subspecies can be restored to Jasper Ridge because the area is protected and managed as a biological preserve by Stanford University and suitable habitat continues to be present. The Jasper Ridge population is essential as a supporting element of the San Mateo metapopulation, and a backup to the Edgewood and prospective San Bruno Mountain populations. The unit is 34 km (21 mi) west-northwest of the Communications Hill unit, the closest connection to units in the Santa Clara County metapopulation.

Unit 3. San Bruno Mountain Unit

This unit also occurs in San Mateo County, with approximately 303 ha (748 ac) in T.3 S., R.5 W. (Mount Diablo meridian/base line), above the 152 m (500 ft) elevation contour, and east of the western Pacific Gas and Electric transmission corridor on San Bruno Mountain. This unit is mostly within San Bruno Mountain State and County Park, and is inside the boundaries of the San Bruno Mountain Area Habitat Conservation Plan area. The bay checkerspot formerly inhabited this area, but is believed to have been extirpated around 1986 by a combination of factors, including over-collection and a fire that burned its habitat. However, this unit has supported a substantial bay checkerspot population in the past, and it is reasonable to expect that the butterfly can be reestablished here.

San Bruno Mountain represents the most northerly part of the subspecies' former range on the San Francisco peninsula with reasonably good conditions to support the bay checkerspot. The San Bruno Mountain

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unit is essential as a supporting element of the San Mateo metapopulation, and a backup to the Edgewood and Jasper Ridge populations. The unit lies 25 km (16 mi) north-northwest of the Edgewood Park/Triangle unit.

Unit 4. Bear Ranch Unit

The Bear Ranch unit, totaling 250 ha (617 ac), lies west of Coyote Lake (Coyote Reservoir) in the eastern hills of the Santa Clara Valley, in southern Santa Clara County (T.9 S., R.4 E. and T.10 S., R.4 E., Mount Diablo meridian/base line). The unit is named for a ranching property that partly occurs in the unit. The ranch and lands, including and surrounding the unit, are now owned and managed by the Santa Clara County Parks and Recreation Department. This location represents one of the most recent population discoveries of the bay checkerspot, and has been documented for several years as a persistent population. The population is also one of the most southerly occurrences of the bay checkerspot. It lies about 10 km (6 mi) southeast of the Kirby core population area described in the Recovery Plan (Service 1998), with some intervening habitable areas and adequate dispersal corridors. Over 40 ha (100 ac) of mapped and an unquantified acreage of unmapped serpentine soils in several large to small patches occur within the unit. In addition to the significance of its position establishing the outer perimeter of the range of the subspecies, the Recovery Plan makes the protection of large, good-quality habitat areas near core populations, such as this, a high priority (Service 1998).

Unit 5. San Martin Unit

This unit includes 237 ha (586 ac) west of San Martin, in the western foothills of the Santa Clara Valley in southern Santa Clara County (T.9 S., R.3 E). Included in the designated critical habitat are extensive areas of serpentine soils and intervening areas that support habitat or are used for dispersal. Regular occupation of the unit by the bay checkerspot has been documented, although no quantitative surveys are available of this population. The unit lies entirely on private lands in unincorporated Santa Clara County, about 6.4 km (4 mi) west-southwest of the Bear Ranch unit and 11 km (7 mi) south of the Kirby core area. This is the second population at the southern periphery of the range. The Recovery Plan makes the protection of large, good-quality habitat areas near core populations, such as this, a high priority (Service 1998). We are not aware of any public lands in the unit.

Unit 6. Communications Hill Unit

Communications Hill, and adjacent hilltops in south-central San Jose, are formed by outcroppings of serpentine rock, with grasslands capable of supporting the bay checkerspot. This unit occurs in Santa Clara County and covers 179 ha (443 ac) of mostly undeveloped land. It also crosses a major road and railroad tracks, and includes a quarry that we believe, after appropriate reclamation, could be restored to bay checkerspot habitat. The bay checkerspot has been documented on Communications Hill in the past. A survey of a limited portion of the hill conducted in the spring of 2000, but which missed the early weeks of the butterflies' flight season, did not detect the subspecies (Arnold 2000). Whether the unit is currently occupied is not known. We believe this unit functions as habitat of the species, functions in its regional metapopulations dynamics, and functions as a "stepping stone" for bay checkerspot dispersal. The Recovery Plan (Service 1998) calls for conservation of larger habitat areas currently or historically occupied by the bay checkerspot. Conservation of habitat at Communications Hill is identified in the Recovery Plan as a priority 2 action, i.e., a recovery action that must be taken to prevent decline or other negative impact short of extinction (Table IV–1, task 2.1.19 in the Recovery Plan). This location also represents the northwestern-most remnant of the Santa Clara County metapopulation. The unit is surrounded by Curtner Avenue, Almaden Expressway, Hillsdale Avenue, and Monterey Road (T.7 S., R.1 E., Mount Diablo meridian/base line), and lies 3 km (2 mi) west of the Silver Creek unit.

Much of this unit lies on private lands within unincorporated lands, with a smaller area in the City of San Jose. Portions of a Santa Clara County communications facility, a San Jose water company facility, and recently developed lands may fall within the unit. Only currently undeveloped areas supporting the primary constituent elements of habitat for the bay checkerspot would be subject to regulatory oversight of any Federal actions.

Unit 7. Kalana Hills Unit

The Kalana Hills unit in Santa Clara County comprises 99 ha (244 ac) on the southwest side of the Santa Clara Valley between Laguna Avenue and San Bruno Avenue (T.9 S., R.2 E, Mount Diablo meridian/base line). Four serpentine outcrops form hills or hillsides in this area. At least one population of the bay checkerspot has been documented on one or all of these outcrops in recent surveys. This unit also includes some intervening areas that connect the closer outcrops. The Coyote Ridge unit lies about 3.2 km (2 mi) to the northeast, the Santa Teresa unit about 2 km (1.2 mi) to the northwest, the San Vicente-Calero unit about 3.2 km (2 mi) to the west, and the Morgan Hill unit about 3.2 km (2 mi) to the southeast. Because of its proximity to several other, large population centers for the bay checkerspot, we expect the Kalana Hills unit to be regularly occupied by the subspecies. If, as is possible given the bay checkerspot's large population swings, the butterfly's population in the unit were to die out, it is likely to be quickly reestablished by bay checkerspots immigrating from adjacent sites. We are not aware of any public lands in the unit. A portion of the largest and northernmost serpentine outcrop is within the limits of the City of San Jose; the remainder of the unit is on private lands in unincorporated Santa Clara County.

Unit 8. Kirby Unit

The Kirby critical habitat unit includes 2,797 ha (6,912 ac) along the southern portion of "Coyote Ridge" in Santa Clara County (T.8 S., R.2 E., T.8 S., R.3 E., and T.9 S., R.3 E., Mount Diablo meridian/base line). It contains the Kirby area for the bay checkerspot discussed in the subspecies' Recovery Plan (Service 1998). The ridge, informally known as Coyote Ridge, runs northwest to southeast, parallel to and east of Highway 101 from Yerba Buena Road to Anderson Reservoir in Santa Clara County, and forms the eastern slope of the Santa Clara Valley (U.S. Geological Survey (USGS) 7.5 minute quadrangles San Jose East, Lick Observatory, Santa Teresa Hills, and Morgan Hill. The ridge is not named on these maps). Coyote Ridge also parallels the Silver Creek Fault and Silver Creek itself. Extensive serpentine soil areas, and four population areas for the bay checkerspot (Kirby, Metcalf, San Felipe, and Silver Creek Hills) lie on, or adjacent to, this ridge and fault system (Service 1998). Metcalf Canyon, Silver Creek, and nonserpentine soil areas create natural divisions among these four population areas. The Kirby unit is the southernmost of four critical habitat units corresponding to the four population areas along Coyote Ridge, and runs along this ridge east of Highway 101 and Coyote Creek from Metcalf Canyon south to Anderson Lake. The northern boundary of the Kirby unit abuts the Metcalf unit. The northwest tip of the Kirby unit also connects to the Tulare Hill Corridor unit.

The Kirby critical habitat unit regularly supports one of the largest populations of the bay checkerspot, and is considered one of the centers of the subspecies' Santa Clara County metapopulation. The Recovery Plan (Service 1998) considers protection of the area of the highest priority for conservation of the subspecies. The unit contains several hundred acres of diverse serpentine grassland habitat as well as nectaring areas, seasonal wetlands, and dispersal areas. The unit includes lands within the limits of the City of San Jose, private lands in unincorporated Santa Clara County, and small areas in the City of Morgan Hill. Public lands in this unit include the Santa Clara County Field Sports Park and portions of Santa Clara County Motorcycle Park, Anderson Lake County Park, Coyote Creek Park, and lands of the Santa Clara Valley Water District. A 101 ha (250 ac) reserve, leased by Waste Management Inc. on behalf of the Kirby Conservation Trust to further conservation of the bay checkerspot, also falls within the unit. The Kirby Conservation Trust has funded extensive research on the bay checkerspot for more than a decade at the lease site, greatly improving our understanding of the ecology, population dynamics, and conservation needs of the subspecies (see literature cited in Service 1998). We removed approximately 57 ha (141 ac), all nonserpentine lands, from the unit as it was proposed on October 16, 2000.

Unit 9. Morgan Hill Unit

The Morgan Hill unit in Santa Clara County includes 293 ha (724 ac) northwest of the City of Morgan Hill in Santa Clara County (T.9 S., R.2 E., T.9 S., R.3 E., Mount Diablo meridian/base line). It lies less than 3.2 km (2 mi) southwest of the Coyote Ridge unit and about 3.2 km (2 mi) southeast of the Kalana Hills unit. This is the area described as "north of Llagas Avenue" in our 1998 Recovery Plan. The unit is partly within the limits of the City of Morgan Hill and partly on private lands in unincorporated Santa Clara County. Murphy Springs Park, a small city park, is within the unit. The Morgan Hill unit has large areas of serpentine soils and grassland with a variety of slope exposures, suitable for the bay checkerspot. The unit has been documented to be occupied by the bay checkerspot in the past, as well as in more recent surveys in the past 2 to 3 years. Because of its large habitat area and proximity to core populations of the bay checkerspot, the Recovery Plan considers protection of this area essential to the conservation of the subspecies (Service 1998). We removed approximately 81 ha (201 ac), mostly residential development, from the unit as it was proposed.

Unit 10. Metcalf Unit

This unit includes 1,356 ha (3,351 ac) in Santa Clara County, east of Highway 101, south of Silver Creek Valley Road, north of Metcalf Canyon, and west of Silver Creek (T.8 S., R.2 E., Mount Diablo meridian/base line). The unit contains the Metcalf area for the bay checkerspot, one of the four largest habitat areas and three largest current population centers for the bay checkerspot (Service 1998). As of the spring of 2000, this area supported the bay checkerspot's densest population (Weiss *in litt.* 2000). Hundreds of acres of serpentine soils, and thousands of bay checkerspot butterflies, occur within the unit. This area is considered one of the centers of the subspecies' Santa Clara County metapopulation. The Recovery Plan (Service 1998) considers protection of the area of the highest priority for conservation of the bay checkerspot. This unit adjoins the Kirby unit to the south, San Felipe unit to the east, Silver Creek Hills unit to the north, and Tulare Hill Corridor unit to the west, and provides crucial habitat connectivity for bay checkerspot dispersal among these areas. The Metcalf unit lies in the City of San Jose and on private lands in unincorporated Santa Clara County. Portions of Santa Clara County Motorcycle Park, Coyote Creek Park, and lands of Santa Clara Valley Water District fall within the unit. We removed approximately 260 ha (643 ac), mostly commercial and residential development, from the unit as it was proposed.

Unit 11. San Felipe Unit

This unit includes 404 ha (998 ac) in Santa Clara County, southwest of San Felipe Road and north of Metcalf Road (T.8 S., R.2 E., Mount Diablo meridian/base line), primarily on private lands in unincorporated county lands, but also within San Jose city limits. The unit contains the San Felipe population area for the bay checkerspot, one of the four largest habitat areas and three largest current population centers for the bay checkerspot (Service 1998). This area is considered one of the centers of the subspecies' Santa Clara County metapopulation. The Recovery Plan (Service 1998) considers protection of the area of the highest priority for conservation of the bay checkerspot. Several hundred acres of serpentine soils occur within the unit with nectaring and dispersal areas. We are not aware of any public lands in the unit.

Unit 12. Silver Creek Unit

The Silver Creek unit comprises 318 ha (787 ac), primarily within the limits of the City of San Jose, but with some area on private lands in unincorporated Santa Clara County (T.7 S., R.1 E., T.7 S., R.2 E., T.8 S., R.2 E., Mount Diablo meridian/base line). This unit is surrounded by Highway 101 and Coyote Creek on the west, Yerba Buena Road on the north, Silver Creek on the east and northeast, and Silver Creek Valley Road on the south. The unit includes the Silver Creek Hills population area for the bay checkerspot (Service 1998). It includes nearly 405 ha (1,000 ac) of contiguous serpentine soils, other scattered serpentine outcrops, and also habitat less suitable for breeding but needed for nectar-feeding or dispersal. Approximately 382 ha (943 ac) of developed areas and graded lands permitted for development have been removed from the unit as it was proposed. Included in our final designation for this unit is a roughly 162 ha (400 ac) nature preserve owned by William Lyon Homes (former Presley Homes) and managed by the non-profit Silver Creek Preserve. Several electric transmission lines and two major natural gas lines cross the unit.

In the last several years, a small population of the bay checkerspot has been documented in the Silver Creek unit, and the area has a long history of much larger populations. Portions of the unit known to have been inhabited by the bay checkerspot in the past are currently in degraded condition. With the management being implemented by Lyon Homes and Silver Creek Preserve, we believe that the Silver Creek Hills population is likely to increase, and that much of the degraded area will be restored to useful breeding habitat. The Silver Creek unit has extensive, diverse, and high-quality habitat, and represents the northernmost unit of the Santa Clara County metapopulation. The Silver Creek unit provides a population reservoir critical to the survival of the Santa Clara County metapopulation of bay checkerspot—the larger and more viable of the two remaining metapopulations (Service 1998).

Unit 13. San Vicente-Calero Unit

The San Vicente-Calero unit contains 759 ha (1,875 ac) within and to the west of Calero County Park, Santa Clara County (T.8 S., R.1 E., T.8 S., R.2 E., T.9 S., R.1 E., and T.9 S., R.2 E., Mount Diablo meridian/base line). This area supports a known population of the bay

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checkerspot in a large area of good-quality habitat; other areas within the unit that are suitable for the bay checkerspot have not been surveyed. The unit is also within bay checkerspot dispersal distance of the Santa Teresa Hills unit (see below), which we consider to be capable of supporting a very large population of the bay checkerspot, and the Kalana Hills unit (number 9, above), which are themselves accessible to and from other units. Therefore, we believe the San Vicente-Calero population can contribute significantly to maintaining the Santa Clara County metapopulation of the bay checkerspot. For all these reasons, the Recovery Plan (Service 1998) considers protection of this area essential to the conservation of the subspecies. The unit is south of McKean Road and east of the town of New Almaden, Almaden Road, and Alamitos Creek. It lies about 1.6 km (1 mi) south of the Santa Teresa unit and about 3.2 km (2 mi) west of the Kalana Hills unit. Portions of the unit outside the county park are within the limits of the City of San Jose.

Unit 14. Santa Teresa Hills Unit

The Santa Teresa Hills unit includes 1,821 ha (4,500 ac) in Santa Clara County (T.8 S., R.1 E. and T.8 S., R.2 E., Mount Diablo meridian/base line) with extensive areas of serpentine soils. Portions of the Santa Teresa Hills are known to support the bay checkerspot now, and have supported the subspecies in the past, but no current comprehensive survey of the bay checkerspot in the area is available. We believe that the Santa Teresa Hills could support a significant population of bay checkerspots. In addition to adding a fifth substantial population to the Santa Clara County metapopulation, conservation and management of the Santa Teresa Hills population would support development of a strong population of the bay checkerspot in a slightly cooler, moister area of the county, at a site that may experience less air pollution than the more eastern units. The Santa Teresa Hills critical habitat unit is intended to include most undeveloped habitat in the area, as well as intervening areas that are unsurveyed or less suitable but needed for dispersal among higher-quality areas. The unit lies north of Bailey Avenue, McKean Road, and Almaden Road, south of developed areas of the city of Santa Clara, and west of Santa Teresa Boulevard. The unit abuts the Tulare Hill Corridor unit.

Unit 15. Tulare Hill Corridor Unit

The Tulare Hill Corridor unit, 355 ha (876 ac) in Santa Clara County, connects the Coyote Ridge (Kirby and Metcalf, and through them, San Felipe and Silver Creek) and Santa Teresa units. Tulare Hill is a prominent serpentine hill that rises from the middle of the Santa Clara Valley in southern San Jose, west of the crossing of Metcalf Road and Highway 101 (T.8 S., R.2 E., Mount Diablo meridian/base line). Extensive habitat on the hill is currently occupied by the bay checkerspot, and is essential both as a population center and for dispersal across the valley. The Metcalf and Kirby populations of the bay checkerspot lie less than 1 km (0.6 mi) to the northeast, separated by a major highway (U.S. 101) and a narrow band of other unfavorable uses (another large road, railroad tracks, an electrical substation, a large open reservoir with artificially hardened banks, and agricultural area). The Santa Teresa Hills population area for the subspecies lies about 2 km (1.2 mi) to the southwest, with dispersal habitat in between. We believe the long-term viability of the bay checkerspot depends on the presence of a corridor for dispersal of adults to and from the Santa Teresa Hills and Coyote Ridge (Service 1998). Tulare Hill is an ideal location for such a corridor because of the narrowness of the valley at this location and the limited amount of development currently present, the presence of high elevations on the hill that may attract butterflies over busy roads and developed areas, and the presence of suitable habitat on Tulare Hill itself. Migrant butterflies from either Santa Teresa Hills or Coyote Ridge may settle on Tulare Hill, contributing individuals and genetic diversity to the population there, and adults from Tulare Hill may migrate to the adjacent habitat areas.

Public lands within the designated unit include parts of Coyote Creek Park, Metcalf Park, and Santa Teresa County Park. Roughly half of Tulare Hill itself is within the limits of the City of San Jose, the remainder on private lands in unincorporated Santa Clara County. Several major electrical transmission lines cross the unit. Some areas within the unit are not inhabited by bay checkerspot individuals but can function as dispersal corridors.

Effect of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) and regulations at 50 CFR 402.10 requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, we would ensure that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also seek to provide reasonable and prudent alternatives to the project, if any are identifiable. "Reasonable and prudent alternatives" are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or

relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated, and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat, or adversely modify or destroy proposed critical habitat. Conference reports assist the agency in eliminating conflicts that may be caused by the proposed action, and may include recommendations on actions to eliminate conflicts with or adverse modifications to proposed critical habitat. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

Activities on Federal lands that may affect the bay checkerspot or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (*e.g.*, Federal Highway Administration (FHA), Federal Aviation Administration, or Federal Emergency Management Agency (FEMA)), will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that appreciably reduce the value of critical habitat for both the survival and recovery of the bay checkerspot. Within critical habitat, this pertains only to those areas containing the primary constituent elements. We note that such activities may also jeopardize the continued existence of the species.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to "jeopardize the continued existence" of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to "destroy or adversely modify" critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. Designation of critical habitat in areas occupied by the bay checkerspot is not likely to result in a regulatory burden above that already in place due to the presence of the listed subspecies.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and require that a section 7 consultation be conducted include, but are not limited to:

(1) Ground disturbance, including but not limited to, grading, discing, ripping and tilling;

(2) Removing, destroying, or altering vegetation (*e.g.*, altering grazing practices or seeding);

(3) Water contracts, transfers, diversion, impoundment, application, or conveyance, groundwater pumping, irrigation, or other activity that wets or inundates habitat, creates barriers or deterrents to dispersal, or results in critical habitat being converted to lower values for the bay checkerspot (*e.g.*, conversion to urban development, vineyards, landscaping, etc.);

(4) Sale, exchange, or lease of critical habitat that is likely to result in the habitat being destroyed or degraded;

(5) Recreational activities that significantly deter the use of critical habitat by bay checkerspots or alter habitat through associated maintenance activities (*e.g.*, off-road vehicle parks, golf courses, trail construction or maintenance);

(6) Construction activities that destroy or degrade critical habitat (*e.g.*, urban and suburban development, building of recreational facilities such as off-road vehicle parks and golf courses, road building, drilling, mining, quarrying and associated reclamation activities); and

(7) Application or drift onto critical habitat of pesticides, herbicides, fertilizers, or other chemicals or biological agents.

(8) Deposition or release onto critical habitat of pollutants, other chemicals or biological agents.

Any of the above activities that appreciably diminish the value of critical habitat, once established, to the degree that they affect the survival and recovery of the bay checkerspot may be considered an adverse modification of critical habitat. We note that such activities may also jeopardize the continued existence of the subspecies.

If you have questions regarding whether specific activities will constitute destruction or adverse modification of critical habitat resulting from a Federal action, contact the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 N.E. 11th Ave, Portland, Oregon 97232 (telephone 503/231–2063; facsimile 503/231–6243).

Relationship to Habitat Conservation Plans (HCPs)

Section 4(b)(2) of the Act allows us broad discretion to exclude from critical habitat designation areas where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We believe that, in most instances, the benefits of excluding HCPs from critical habitat designations will outweigh the benefits of including them.

The benefits of including HCP lands in critical habitat are normally small. Federally authorized, funded, or permitted activities in designated

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critical habitat that may affect critical habitat require consultation under section 7 of the Act. This is the major benefit of designating lands as critical habitat. Consultation would ensure that adequate protection is provided to avoid adverse modification of critical habitat. However, our experience indicates that where HCPs are in place, this benefit is small or non-existent. Currently approved and permitted HCPs are designed to ensure the long-term survival of covered species within the plan area. The lands that we would find essential for the conservation of the species, and thus be considered for designation of critical habitat would, where we have approved HCPs and the species is a covered species under the HCP, normally be protected in reserves and other conservation lands. HCPs, and their associated implementation agreements, outline management measures and protections for conservation lands that are crafted to protect, restore, and enhance their value as habitat for covered species.

In addition, an HCP application must itself be consulted upon by the Service. While this consultation will not look specifically at the issue of adverse modification of critical habitat, it will look at the very similar concept of jeopardy to the listed species in the plan area. HCPs, particularly large regional HCPs, address land use within the plan boundaries; habitat issues within the plan boundaries are thoroughly addressed in the HCP and the consultation on the HCP. Our experience is that, under most circumstances, consultations under the jeopardy standard will reach the same result as consultations under the adverse modification standard. Additional measures to protect the habitat from adverse modification are not likely to be required.

Further, HCPs typically provide for greater conservation benefits to a covered species than section 7 consultations because HCPs assure the long-term protection and management of a covered species and its habitat, and funding for such management through the standards found in the 5-Point Policy for HCPs (64 FR 35242) and the HCP No Surprises regulation (63 FR 8859). Such assurances are typically not provided by section 7 consultations which, in contrast to HCPs, often do not commit the project proponent to long-term special management or protections. Thus, the lands covered by a consultation typically will not provide the extensive benefits of an HCP.

The development and implementation of HCPs provide other important conservation benefits, including the development of biological information to guide conservation efforts and assist in species recovery and the creation of innovative solutions to conserve species while allowing for development. The educational benefits of critical habitat, including informing the public of areas that are important for the conservation of the species, are essentially the same as those that would occur from the public notice and comment procedures required to establish an HCP, as well as the public participation that occurs in the development of many regional HCPs. For these reasons, then, we believe that designation of critical habitat has little benefit in areas covered by HCPs.

In contrast, the benefits of excluding HCPs from being designated as critical habitat are more significant. In response to other critical habitat proposals, we have received comments about the additional regulatory and economic burden of designating critical habitat. These include the need for additional consultation with us and the need for additional surveys and information gathering to complete these consultations. HCP applicants have also stated that they are concerned that third parties may challenge HCPs on the basis that they result in adverse modification or destruction of critical habitat.

The benefits of excluding HCPs from critical habitat include relieving landowners, communities, and counties of any additional minor regulatory review that might be imposed by critical habitat. This benefit is important given our past representations that once an HCP is negotiated and approved by us after public comment, activities consistent with the plan will satisfy the requirements of section 10(a)(1)(B) of the Act. Many HCPs, particularly large regional HCPs, take many years to develop and, upon completion, become regional conservation plans that are consistent with the recovery of covered species. Many of these regional plans benefit many species, both listed and unlisted. Imposing an additional regulatory review after HCP completion not only results in minor, if any, additional benefit to the species, it may jeopardize conservation efforts and partnerships in many areas and could be viewed as a disincentive to those developing HCPs. Excluding HCPs provides us with an opportunity to streamline regulatory compliance and confirms regulatory assurances for HCP participants.

Another benefit of excluding HCPs is that it would encourage the continued development of partnerships with HCP participants, including States, local governments, conservation organizations, and private landowners, that together can implement conservation actions we would be unable to accomplish alone. By excluding areas covered by HCPs from critical habitat designation, we preserve these partnerships, and, we believe, set the stage for more effective conservation actions in the future.

In general, then, we believe the benefits of critical habitat designation to be small in areas covered by approved HCPs. We also believe that the benefits of excluding HCPs from designation are small, but significant. We believe that the small benefits of inclusion, when weighed against the benefits of exclusion, including the benefits of relieving property owners of an additional layer of approvals and regulation, together with the encouragement of conservation partnerships, would generally result in HCPs being excluded from critical habitat designation under section 4(b)(2) of the Act.

Given this general analysis, we expect to analyze the specific benefits in each particular critical habitat designation because not all HCPs are alike with regard to species coverage and design. Within this designation, we need to evaluate completed and legally operative HCPs in the range of the bay checkerspot to determine whether the benefits of excluding these particular areas outweigh the benefits of including them.

The San Bruno Mountain Area HCP overlaps with the critical habitat designation on San Bruno Mountain. The bay checkerspot is believed to have been extirpated from the mountain since about 1986. The San Bruno Mountain Area HCP does not discuss the bay checkerspot in detail, and the Incidental Take Permit for this HCP currently does not include the subspecies. Therefore, we have not excluded the area covered by this HCP from the critical habitat designation. Any future Service or other Federal agency involvement in activities on San Bruno Mountain, such as habitat restoration, may require section 7 consultation if there are likely to be effects on bay checkerspot critical habitat.

The Pacific Gas and Electric (PG & E) Metcalf-Edenvale/Metcalf-Monte Vista HCP covers only about 4 ha (10 ac) in the Santa Teresa Hills, San Vicente-Calero, and Tulare Hill Corridor critical habitat units. Because the HCP expires in November 2001, and the permitted project is substantially complete within critical habitat areas, we are not excluding lands covered under this short-term HCP from our critical habitat proposal. We believe that no formal consultation on any remaining work covered by the HCP will be necessary.

In the event that future HCPs covering the bay checkerspot are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of the bay checkerspot by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the bay checkerspot. The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of the subspecies in the context of constructing a biologically configured system of interlinked habitat blocks.

We will provide technical assistance and work closely with applicants throughout the development of future HCPs to identify lands essential for the long-term conservation of the bay checkerspot and appropriate management for those lands. Preliminary HCPs are being discussed for listed and non-listed species within the range of the bay checkerspot in areas designated herein as critical habitat. These HCPs, coupled with appropriate adaptive management, should provide for the conservation of the subspecies. If these HCPs, or others, that address the bay checkerspot are ultimately approved, we will reassess the critical habitat boundaries in light of the HCPs. We will seek to undertake this review when an HCP is approved, but funding constraints may influence the timing of such a review.

Summary of Comments and Recommendations

In the October 16, 2000, proposed rule (65 FR 61218), we requested all interested parties to submit comments on the specifics of the proposal including information, policy, treatment of HCPs, and proposed critical habitat boundaries as provided in the proposed rule. The first comment period closed on December 15, 2000. The comment period was reopened from February 9, 2001, to March 12, 2001, (66 FR 9683) to allow for additional comments on both the proposed rule and the draft economic analysis. Although not stated in the **Federal Register** notice of February 9, 2001, we accepted all comments received from October 16, 2000, to March 12, 2001, and entered them into the administrative record for the rule.

We contacted all appropriate State and Federal agencies, Tribes, county governments, elected officials, and other interested parties and invited them to comment. In addition, we invited public comment through the publication of notices and display ads to announce the public hearing in the following newspapers in California: the San Mateo County Times and the Palo Alto Weekly. These announcements were published on October 20 and October 25, 2000, respectively. In these notices and the proposed rule, we announced the date and time of one public hearing that was held on the proposed rule. This hearing was in Newark, California, on October 30, 2000. A transcript of this hearing is available for inspection (see **ADDRESSES** section).

When the comment period was re-opened, we sent out notices of the re-opening to all parties on a mailing list for the bay checkerspot. Additionally, we held one informational meeting on February 22, 2001, in San Jose, California.

We requested four professional ecologists, who have familiarity with bay checkerspot butterflies and/or butterfly metapopulation dynamics, to peer review the proposed critical habitat designation. Three of the peer reviewers submitted comments on the proposed critical habitat designation, and one did not respond.

One peer reviewer stated that the proposed rule was "* * * formulated utilizing technically accurate and up-to-date information * * *" about the bay checkerspot, and that "* * * the criteria or primary constituent elements * * *" used to identify and propose critical habitat "* * * are appropriate to identify the large-scale boundaries of critical habitat units." He found that the maps and descriptions of the 15 proposed critical habitat units we prepared "* * * accurately delimit the approximate boundaries of potential habitat at every location."

He recommended we review the status of *Euphydryas editha* populations of uncertain subspecific status in San Benito and San Luis Obispo counties. We note that we will continue to review and consider scientific data and peer consensus on the subspecific status of uncertain *Euphydryas editha* populations as it becomes available. We believe that the best information available at this time supports proceeding with this rule substantially as proposed. The Act provides procedures under section 4 for modifying species listings and critical habitat designations as may be appropriate in light of any new information that may be developed.

The reviewer agreed with our assessment of the value of the Tulare Hill unit as a dispersal corridor for the bay checkerspot butterfly to connect populations that lie east and west of that unit. He contrasted Tulare Hill with more isolated sites such as San Bruno Mountain and Communications Hill, where the distance to existing bay checkerspot butterfly populations may be more than a butterfly normally disperses, and intervening areas are urbanized. We agree that the San Bruno Mountain site may require introduction in order to establish and perhaps to maintain a bay checkerspot population; however, we believe Communications Hill is within normal flight range of other Santa Clara Valley metapopulation units.

A second peer reviewer generally supported the rule, stating that "* * * it does an excellent job of reviewing and interpreting bay checkerspot population biology, habitat requirements, and distribution." In particular, she noted that the ridge including the Kirby and Metcalf units [which we call Coyote Ridge] is very important to the persistence of the Santa Clara County metapopulation, supporting multiple demographic units. In her research Coyote Ridge appeared to be a stable "source" that plays a major role in sustaining the species in the region. The reviewer suggested that the Edgewood unit serves the same "source role" in the San Mateo County metapopulation, and stated that it is important to protect Edgewood as the last remainder of whatever unique genetic variants of the bay checkerspot may exist in that region.

The second reviewer mentioned Silver Creek, Santa Teresa Hills, and Morgan Hill as having especially good potential for strong populations of the bay checkerspot butterfly, but that the Santa Teresa Hills, such as the ungrazed Santa Teresa County Park, may need more grazing to achieve its full potential as a large block of habitat. She stated that during her field studies, the only critical habitat unit she did not think had much potential as bay checkerspot habitat was Communications Hill, recalling it as being disturbed and grassy with few native forb-dominated meadows. We note that we have received a recent host plant survey of a portion of Communications Hill that documents substantial areas of larval food plants and adult nectar plants (Arnold 2000).

The third reviewer also generally supported the rule, finding it "carefully

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constructed, comprehensive, and well justified. * * * Importantly, the critical habitat areas contain important dispersal corridors between serpentine patches, and account for the dynamic nature of bay checkerspot metapopulations, with local extinctions and recolonizations."

This reviewer made extensive comments about nitrogen deposition, stating that the preponderance of scientific evidence and opinion is that the serpentine grasslands in question are highly sensitive to nitrogen additions, that nitrogen deposition can lead to degradation of habitat, and that excess nitrogen deposition from smog may be the single biggest immediate threat to the bay checkerspot.

The reviewer also stated that well-managed grazing is vital to the recovery of the bay checkerspot, specifically mentioning public lands in the Santa Teresa Hills unit as being in need of grazing to reverse deteriorating habitat quality. He estimated that one formerly degraded site in the Silver Creek unit recovered and greatly increased host plant and nectar plant density in about five years of grazing. We concur that recovery of habitat quality with grazing is feasible and documented.

The reviewer stated that Communications Hill in its current state is unlikely to support bay checkerspot populations, but also stated that the proposed unit boundaries "contain the remaining habitat." He considers the Communications Hill habitat relatively warm and dry, with few north-facing slopes, degraded by lack of grazing, and generally of low priority relative to higher quality habitats elsewhere. The Service believes that Communications Hill is likely to be occupied by the bay checkerspot, and we discuss why in detail in our responses to public comment regarding Communications Hill, below. The reviewer suggested one additional unit in the vicinity of Canada Garcia and Manzanita Ridge (west of Chesbro Reservoir, Santa Clara County), with more than 100 ha (247 ac) of serpentine and a good mix of slopes and aspects. However, we lack adequate information about this area to justify including it in the critical habitat designation at this time. The Act provides opportunity for later revision of critical habitat designation through petition procedures under section 4(b)(3)(D). Further unit-specific comments by the third reviewer are covered below.

We received a total of 1,037 oral and written comments during the comment periods. In total, oral and written comments were received from 1 State office, 5 local governments, and 1,031 private individuals or organizations. We reviewed all comments received for substantive issues and new information regarding critical habitat and the bay checkerspot. Of the comments we received, 1,006 supported designation, 24 were opposed to it, and 7 provided information or declined to oppose or support the designation. Similar comments were grouped into four general issues relating specifically to the proposed critical habitat determination and draft economic analysis on the proposed determination. These are addressed in the following summary.

Issue 1: Biological Justification, Methodology, and Regulatory Comments

(1) *Comment:* One commenter stated that the Service should concentrate its critical habitat efforts for the bay checkerspot on those sites where the bay checkerspot exists and which, therefore, truly provide potential conservation benefits to the subspecies.

Our Response: We did concentrate on occupied sites, and have only included unoccupied sites where they are essential to the conservation of the subspecies. The unoccupied sites are essential, as described in the bay checkerspot's Recovery Plan (Service 1998), because of the metapopulation dynamics exhibited by the bay checkerspot, and because they are representative of the historic geographical and ecological distribution of the subspecies.

(2) *Comment:* A commenter was concerned that the activities described in the proposed rule that may affect critical habitat under section 7 consultation were broadly defined and, combined with other species listings and critical habitat designations, have the net effect of establishing the Service as the sole arbiter of land use decisions. It was suggested that the Service narrow the defined activities that may affect critical habitat. The commenter also stated that water contracting and operations carried out by Federal agencies are not a direct or indirect cause of loss of habitat or cause for endangerment of the subspecies and, therefore, should not require section 7 consultation. It was also stated that sale or lease of private property does not result in habitat loss and should be deleted from the rule.

Our Response: We provide the list of activities that may affect critical habitat to assist Federal agencies when they review their actions and determine whether critical habitat may be affected. The list is wide-ranging because diverse Federal agencies have broad responsibilities under the Act to protect and conserve listed species and critical habitat. The list in no way conveys land use jurisdiction to the Service. The trigger for section 7 consultation is whether a Federal action may affect a listed species or critical habitat. Federal water contracts and operations that meet this criterion are required to consult. Sales or leasing of property will only be subject to consultation on critical habitat when a Federal agency is funding, authorizing, or carrying out the action, and the sale or lease may affect critical habitat.

(3) *Comment:* One commenter said that if the Service is going to use fragmentation as a reason for designating critical habitat (Background section), it should develop a quantitative assessment of how much fragmentation has taken place. Are the urban developments replacing woodlands, chaparral, or other habitats between areas of serpentine grassland a detriment or a benefit to the bay checkerspot? These developments may be a detriment, because of reduced resting area, increased obstacles, and pesticide; however, they could be a benefit by reducing predatory birds. The commenter also asked the Service to consider and insert why butterflies may be avoiding wooded or scrub habitats, as this may be a predator avoidance behavior.

Our Response: A quantitative analysis of habitat fragmentation is not required to designate critical habitat, and is beyond the scope of this rulemaking. It is not known why bay checkerspot butterflies appear to avoid wooded or scrub habitats. We are not aware of any scientific reports of bay checkerspots exhibiting predator avoidance behavior.

(4) *Comment:* One commenter said the indirect effects of added nitrogen deposition from increased automobile traffic on plant community structure need to be addressed. Concerns about the effects of nitrogen deposition on the bay checkerspot were also expressed by a peer reviewer.

Our Response: Nitrogen oxides from increased automobile traffic contribute to excess nitrogen deposition on surrounding habitats. Nitrogen deposition and its effects are briefly addressed in the Background section. We agree that scientific studies, such as those summarized in our Recovery Plan (Service 1998), show that automobiles and many other air pollution sources produce excess nitrogen oxides. A recent study found that nitrogen deposition from air pollution on Coyote Ridge, which includes the Kirby, Metcalf, and Silver Creek units, is already likely to be at levels adversely affecting serpentine plant community

structure, with negative effects on the bay checkerspot (Weiss 1999). We have modified the list of activities that may affect critical habitat in the section 7 Consultation section to address excess nitrogen deposition more clearly, by listing deposition as well as application of fertilizers, pollutants, and other chemicals. In ongoing consultation and discussions with the Corps of Engineers, the Federal Highway Administration, the City of San Jose, and the County of Santa Clara, we are currently seeking to address the risk that excess nitrogen deposition poses to the bay checkerspot butterfly.

(5) *Comment:* One commenter said that a higher proportion of the outcrops on the peninsula than in Santa Clara County might reasonably be proposed for critical habitat.

Our Response: We are aware of, and considered, several serpentine outcrop areas on the San Francisco peninsula when developing the proposed rule. However, the remaining undeveloped area of each of these sites is small, the topographic diversity is generally poor, and most are degraded and exposed to significant threats, such as lying directly adjacent to an eight-lane freeway. All are considered to have been unoccupied by the bay checkerspot for one or more decades.

(6) *Comment:* One commenter asked what percentage of total bay checkerspot habitat is included in the critical habitat designation and how much area outside this designated area is likely to contain bay checkerspot.

Our Response: We do not currently have comprehensive figures on the total area or location of bay checkerspot habitat or the status of all bay checkerspot populations. In our estimation, this critical habitat designation includes the majority of remaining bay checkerspot habitat in Santa Clara and San Mateo counties, and an even higher proportion of currently existing bay checkerspot populations. However, bay checkerspot populations and suitable habitat do exist outside of designated critical habitat. For example, bay checkerspot butterflies exist in a locality on serpentine soils near Uvas Reservoir in Santa Clara County, and at several other serpentine outcrops west of the foothills of the Santa Clara Valley. We did not include these areas in critical habitat because available data do not indicate they are essential to the conservation of the subspecies, or because we lack sufficient information on the localities to make a determination.

(7) *Comment:* One commenter said that if assessor's parcel numbers were identified or assessor's maps were used to identify parcel ownership, then information on land use on those parcels would also be available. The designation of critical habitat appears to have skipped an important part of the analysis and this information should be included and reviewed.

Our Response: We did not use assessor's parcel maps in developing our designation. Instead, subsequent to the bay checkerspot critical habitat proposal on October 16, 2000 (65 FR 61218), the County of Santa Clara sent us a list of property owners potentially interested in the designation. We contacted these landowners by mail and provided them the opportunity to comment about the proposed rule and draft economic analysis. Several landowners commented on these two documents and provided information that helped us refine our final critical habitat designation.

(8) *Comment:* Several commenters felt that the critical habitat designation should encourage viable grazing activities.

Our Response: We agree that sustainable grazing practices are generally compatible with bay checkerspot habitat and conservation, and that in some areas or at certain times the removal of grazing may actually be a threat. The rule states this in the Background and the Effects of Critical Habitat Designation sections.

(9) *Comment:* A commenter asked what types of development would typically be allowed in critical habitat areas, what would be the threshold that would trigger a Federal permit, what Federal agencies would be involved in issuance of these permits, to which agencies would the county refer development applications, and what typical mitigation measures would be required in a development proposal to ensure adequate habitat protection.

Our Response: There is no such thing as a Federal permit for development in critical habitat units. Critical habitat identifies specific areas that have the physical and biological features that are essential to the conservation of a listed species, and that may require special management considerations or protection. Federal agencies are required to consult with us only if an action they are authorizing, funding, or carrying out, in whole or in part, may affect critical habitat. We do not believe any new county procedures for critical habitat would be required beyond what the county should already have in place to protect the threatened bay checkerspot butterfly. Refer to the section above that discusses section 7 or the Regulatory Planning and Review and Regulatory Flexibility Act sections under Required Determinations below for more information as to what potential Federal agencies may initiate a section 7 consultation and the types of activities that may be involved.

(10) *Comment:* One commenter asked why we had proposed so many contiguous units. He recommended a single unit should be proposed for the Coyote Ridge area.

Our Response: These units have distinct bay checkerspot populations and are connected by dispersal habitat. Separate units allow us to evaluate the effects resulting from any Federal actions on unit populations individually, rather than lumping them all together.

(11) *Comment:* One commenter requested that information on the distances the Edgewood Park/Triangle, Jasper Ridge, and San Bruno Mountain units are from other units be provided.

Our Response: We added distance information to the narrative discussion of these units. Please see that section.

(12) *Comment:* One commenter stated that the Service should provide quantitative or qualitative measures for the primary constituent elements. The commenter proposed additions to and omissions from the primary constituent elements, adding: minimum size areas such as at least 1.6 ha (4 ac), north-facing serpentine slopes with dense stands of *Plantago erecta*, a diversity of north and nearby south- and west-facing slopes, at least 152 m (500 ft) in elevation, and serpentine soil; and omitting pollinators, stable holes, or cracks in soil, and wetlands.

Our Response: The "may affect" criterion that triggers Federal agencies to consult under section 7 of the Act is a broad, qualitative standard. We believe that precise quantitative standards for habitat are unnecessary and would overstate the scientific understanding of the bay checkerspot, its environments, and its needs. For example, *Plantago erecta* densities vary greatly from year to year, and what bay checkerspot larvae need for a "dense" stand of *Plantago erecta* has not been documented. We have reviewed and made alterations in the wording of the primary constituent elements designation, and we believe the final language suitably captures the needs of the subspecies in a manner that will be useful to Federal agencies in determining whether actions they fund, authorize, or carry out may affect critical habitat.

(13) *Comment:* One commenter felt some of the primary constituent elements were either difficult to measure, or are considered generally

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unimportant for the subspecies, such as wetlands.

Our Response: We provide justification for the primary constituent elements stated above (see Background section). We also provided citations stating the importance of wetlands to the bay checkerspot. For example, the article cited regarding occasional wetland use by bay checkerspot (Launer *et al.* 1993) is co-authored by six well-known ecologists and biologists, and states "our observations are consistent with the hypothesis that (bay checkerspot) butterflies are visiting moist areas in order to replenish essential nutrients or water expended during mating, gamete (egg or sperm) production, or general metabolism." They go on to say that local population persistence may be enhanced by moist areas, and that canyon bottoms and moist areas may need to be considered in conservation planning for the bay checkerspot.

(14) *Comment:* One commenter objected that the size of patches of host plants and the average density of *Plantago erecta* are not provided for any of the units, even though data exist for many. The minimum patch size of Plantago erecta necessary to support a population of bay checkerspot should also be provided.

Our Response: While we would be interested in reviewing the data on *Plantago erecta* referred to in the comment, *Plantago erecta* is an annual plant whose year-to-year abundance is strongly affected by abiotic and biotic environmental conditions. As such, information on its present abundance is not necessarily a good indicator of conditions next year or over the long run. Regarding the minimum amount of *Plantago erecta* needed to support a population of bay checkerspot, we are not aware of any studies in the literature of what this amount might be. Also, the mobility and metapopulation dynamics of the bay checkerspot would need to be considered in evaluating the relevance of the size of any particular patch of food plants.

(15) *Comment:* One commenter asked whether the Service will require all of the proposed primary constituent elements to be present, or only one or two to qualify a site as critical habitat.

Our Response: We clarified the language regarding the primary constituent elements in the final rule (see the Primary Constituent Elements section of this rule). All areas within the legal descriptions are considered critical habitat except for existing manmade features and structures, such as buildings, roads, railroads, and urban development. All critical habitat areas contain one or more of the primary constituent elements.

(16) *Comment:* A commenter stated that many farmers and ranchers are concerned that their current agricultural practices could be impacted. They fear cropping patterns, water conservation, and other practices may be limited with the critical habitat designation because these practices may now impact the bay checkerspot.

Our Response: With the changes made from the proposed rule, very little, if any, crop land remains within the critical habitat boundaries. Normal ranching practice will be unaffected by bay checkerspot critical habitat designation.

(17) *Comment:* A commenter representing certain landowners in the area of the proposed Kalana Hills unit said substantial areas were included within the borders of the proposed critical habitat area that clearly lack any of the primary constituent elements for the bay checkerspot. For instance, the Service included area that is non-serpentine and presently in cultivation in Kalana Hills unit.

Our Response: There is no requirement that all of the area within critical habitat boundaries support the primary constituent elements; to the contrary, critical habitat regulations explicitly state that intervening or surrounding areas not capable of supporting the subspecies may be included within designated critical habitat for purposes of describing a readily identifiable boundary and providing adequate consideration to a spatially complex mix of area with and without habitat (50 CFR 424.12(c), (d)). Furthermore, space for dispersal between habitable areas is a primary constituent element of bay checkerspot critical habitat. Nevertheless, within these requirements under the Act and with more detailed information provided during the comment period, we have modified the Kalana Hills unit boundary, eliminating over 80 ha (200 ac) of agricultural lands lacking the primary constituent elements from the unit.

(18) *Comment:* Many commenters mentioned possible benefits of designating critical habitat. Items suggested include facilitating proper evaluation of development proposals and plans, helping with acquiring more lands to be protected, increasing the chances of funding of scientific projects, and furthering the development of an HCP for Santa Clara County.

Our Response: While none of these items are required by critical habitat, we acknowledge that critical habitat designation can serve as an important public information function. Non-Federal parties may also elect to use critical habitat maps to inform their decision-making, direct funding, or guide large-scale planning and conservation efforts. Critical habitat designation does not set aside lands or funds to acquire lands.

(19) *Comment:* One commenter stated that it is important that the Service use the Act to exercise control over Federal projects and analyze the direct and indirect impacts on the bay checkerspot, especially for those projects that only indirectly impact the bay checkerspot and its habitat.

Our Response: We, and other Federal agencies, are required under the Act to consider all effects, direct and indirect, to listed species and critical habitat of actions subject to Federal authorization, funding, or control, including the indirect effects of those actions.

(20) *Comment:* One commenter believed that it is important for the Service and the U.S. Department of Agriculture's Natural Resource Conservation Service (NRCS) to coordinate on use of plants for landscaping of projects.

Our Response: If the NRCS is placing, funding, or recommending the placement of plants in or near bay checkerspot critical habitat, it must consider whether its actions may affect the subspecies or critical habitat. We are prepared to consult informally or formally with NRCS on their plant recommendations.

(21) *Comment:* One commenter stated that critical habitat designation will facilitate proper evaluation of development proposals and plans. One commenter stated the Service inaccurately downplayed the difficulty of the normal regulatory process and that the critical habitat designation requires additional regulatory review and analysis under State and local laws. The commenter stated that this should be acknowledged in the rule.

Our Response: Critical habitat designation does not provide for a wholesale environmental evaluation of proposed development projects. If a Federal agency funds, authorizes, or carries out an action that may affect critical habitat for the bay checkerspot, the Act requires that the agency consult with us under section 7 of the Act. For a project to affect critical habitat, it must affect the habitat features important to the bay checkerspot, which are defined in the regulation section in this final rule. Projects lacking a Federal nexus do not require any additional regulatory review and analysis under Federal laws, and we are not aware of any additional regulatory review and analysis under State or local laws for designated critical habitat.

(22) *Comment:* A commenter stated that the section on Relationship to Habitat Conservation Plans does not explain a benefit to the Santa Clara Valley Water District or to the subspecies if the District develops an HCP. He recommended we rewrite the section to establish good linkage to the benefits to the subspecies and the use of HCPs.

Our Response: HCPs reduce conflicts between listed species and the economic use or development activities of a particular piece of land. By developing an HCP, an individual, agency, or organization can reduce the burden of the Act by providing an efficient mechanism for compliance with it, while at the same time, providing for the conservation of one or more species. One of the great strengths of the HCP process is its flexibility, as they can vary greatly in size and scope. Each HCP is unique, with its own set of issues and objectives.

As mentioned in the Relationship to Habitat Conservation Plans section, section 4(b)(2) of the Act allows us broad discretion to exclude from critical habitat designation areas where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We believe that in most instances, the benefits of excluding HCPs from critical habitat designations will outweigh the benefits of including them. For a species, an approved HCP would provide certain measures to benefit the species and its habitat. For the landowner, it would ensure that no additional land use restriction or financial compensation would be required for the term of the permit.

Our rationale for excluding HCPs is provided in the Relationship to Habitat Conservation Plans. For additional information regarding the specifics of developing an HCP, please contact our Sacramento Fish and Wildlife Office (see **ADDRESSES**) section.

Issue 2: Legal and Procedural Comments

(23) *Comment:* The Service failed to consult with citizens affected by the designation during preparation of the proposed rule and gave deference to environmental groups.

Our Response: Following the publication of the proposed critical habitat determination on October 16, 2000, we opened a 60-day comment period, which closed on December 15, 2000. We held one public hearing on October 30, 2000, and one public information meeting on February 22, 2001. We conducted outreach by notifying affected elected officials, local jurisdictions, interested groups, and property owners. We conducted much of this outreach through legal notices in regional newspapers, telephone calls, letters, and news releases faxed and/or mailed to affected officials, local jurisdictions, and interest groups, and publication of the proposed determination and associated material on our Regional Internet page. We announced the availability of the draft economic analysis in the **Federal Register** on February 9, 2001, and opened a public comment period from February 9, 2001, to March 12, 2001, to allow for comments on the draft economic analysis and additional comments on the proposed determination itself. We provided notification of the draft economic analysis through telephone calls, letters, and news releases faxed and/or mailed to affected officials, local jurisdictions, and interest groups. Due to the court ordered deadline, we were not able to reopen the comment period a third time. We prepared the proposed and final rules based upon the best scientific and commercial information available to us from all sources at the time. We reviewed and treated, with equal weight, all of the oral and written comments received from various parties, regardless of their affiliation. Also, see our response to comment 7.

(24) *Comment:* Several commenters requested that the proposal be withdrawn and reissued. One commenter stated the withdrawn proposal should be redrafted after completion of the economic analysis. Another commenter stated that withdrawal and reissuance of the proposal was needed to be in compliance with the Act and the Administrative Procedure Act (APA).

Our Response: We have complied with the APA and Act during this rulemaking. We prepared and published a proposed rule and a draft economic analysis and solicited comments from private parties and public agencies on both documents. We reviewed all comments received either in writing or at public hearings and have responded to these comments in the preparation of this final rule. Where site-specific documentation was submitted to us providing a rationale as to why an area should not be designated critical habitat, we evaluated that information in accordance with the definition of critical habitat pursuant to section 3 of the Act and made a determination as to whether modifications to the proposal were appropriate. While not actually deleting any of the proposed critical habitat areas originally proposed, we changed the boundaries of certain critical habitat areas and excluded lands from the final designation that we determined to be nonessential to the conservation of the bay checkerspot. We also complied with the District Court's order, which required us to make a final decision on critical habitat for the bay checkerspot by April 20, 2001.

(25) *Comment:* One commenter stated that the public hearing location chosen by the Service in Newark, California, limited public input compared to having a public hearing closer to property owners affected by the critical habitat designation. Another commenter requested the Service hold a public hearing in San Jose to address local comments and questions.

Our Response: We recognize that the location selected for a public hearing may be more problematic for some individuals who may want to attend than another location. In this case, we attempted to select a central location for the public hearing that was roughly equally accessible to all parties potentially interested in the proposed critical habitat designation, including parties from San Francisco and the East Bay, south to San Martin and southern Santa Clara County; so we held the public hearing in Alameda County. In addition to the public hearing, we held a public information meeting in San Jose, Santa Clara County, and the comment period was re-opened from February 9 to March 12, 2001. Due to the time constraint under the court order, we could schedule only one public hearing in Newark, California, on October 30, 2000.

(26) *Comment:* Several commenters requested the Service to reopen the comment period for a sufficient time period to allow meaningful comment on the proposed designation or the economic analysis.

Our Response: While we may have preferred to extend or reopen the comment period, if requested, we have complied with the regulations under 50 CFR 424.16(c) (2) and (3) where it states that we shall have the comment period open for at least 60 days and we shall hold one public hearing. Given the constraints imposed by the Court, we made an effort to exceed our statutory obligations. Following the publication of the proposed critical habitat determination on October 16, 2000, we opened a 60-day comment period which closed on December 15, 2000. We conducted outreach by notifying affected elected officials, local jurisdictions, interested groups, and property owners. We conducted much of this outreach through legal notices in

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regional newspapers, telephone calls, letters, and news releases faxed and/or mailed to affected officials, local jurisdictions, and interest groups, and publication of the proposed determination and associated material on our Regional Internet page. We announced the availability of the draft economic analysis in the **Federal Register** on February 9, 2001, and re-opened the public comment period from February 9, 2001, to March 12, 2001, to allow for comments on the draft economic analysis as well as additional comments on the proposed determination itself. During this time, we also held one informational meeting. We provided notification of the draft economics analysis through telephone calls, letters, and new releases faxed and/or mailed to affected elected officials, local jurisdictions, property owners, and interest groups. Since this rule is under a court ordered deadline, we were not able to reopen the comment period a third time. We believe that we provided the interested parties sufficient time to comment on this rule and we conducted sufficient outreach on this notice.

(27) *Comment:* Several commenters stated that the Service violated the National Environmental Policy Act of 1969 (NEPA) by failing to prepare an Environmental Impact Statement for the designation of critical habitat for the bay checkerspot butterfly.

Our Response: We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by NEPA need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act as amended. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

(28) *Comment:* Three commenters said that in order to comply with the statutory definition of critical habitat, the Service should specifically exclude those portions of the proposed designation that are not essential to the conservation of the subspecies in the final rule.

Our Response: We have determined that the areas designated as critical habitat within this final rule are essential to the conservation of the bay checkerspot. With improved information since the proposed rule, however, we did exclude lands that are not essential to the conservation of the bay checkerspot in this final rule from five units.

(29) *Comment:* A commenter stated that only the four areas originally proposed as critical habitat in 1984 (Edgewood, Jasper Ridge, San Bruno Mountain, and Kirby) should be considered, because critical habitat designations should be based only on bay checkerspot occupancy, information about the subspecies and habitats, and economic considerations existing "at the time of listing."

Our Response: We did not designate critical habitat at the time of listing because we found that it was not determinable at that time. The courts have now ruled we must finalize a critical habitat determination for the subspecies. Restricting our consideration of critical habitat to what was known about the subspecies in 1984 (the first proposed rule) or 1987 (the time of listing) would return us to the situation in which we found critical habitat undeterminable, and would ignore the intervening 16 years of accumulation of extensive scientific data about the bay checkerspot. We are required by the Act (sections 4(b)(2) and 4(b)(6)(C)(ii)) to base our determination on the best scientific data available at the present moment of critical habitat designation.

(30) *Comment:* One commenter stated that the rule does not provide sufficient information on which a critical habitat determination can be premised. The proposed designation is not properly supported by the best scientific and commercial data available. The Service makes numerous and varied unsupported assertions regarding the biology and habitat requirements of the bay checkerspot. In proposing several "primary constituent elements" of critical habitat for the bay checkerspot, the Service offers no evidentiary support for the elements chosen (except in isolated instances). The Service failed to specify what lands are "occupied" based on best scientific data available.

Our Response: The descriptions of the primary constituent elements for the bay checkerspot are based on a compilation of data from peer reviewed published literature, unpublished or non-peer reviewed survey or research reports, the Recovery Plan (Service 1998), and biologists knowledgeable about the subspecies and its habitat. The primary constituent elements, as described, represent our best estimate of those habitat features that are essential to the subspecies. In our response to specific comments, and in other pertinent areas, we have listed citations where it is necessary or appropriate. Also, a copy of all supporting documentation used in the development of this determination is in the administrative record and available for inspection at the Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

(31) *Comment:* One commenter stated the critical habitat designation for the bay checkerspot is based on the wrong standard (i.e., a "recovery" standard) by including suitable and potential habitat that the Service deems is useful for the subspecies' recovery. The commenter stated that this "recovery" standard is much broader than the standard that Congress contemplated in enacting the Act and subsequent amendments.

Our Response: We have used the correct standard for critical habitat as defined in section 3(5)(A) of the Act—(i) the specific areas within the geographic area occupied by a species, at the time of listing in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. The term "conservation" as defined in section 3(3) of the Act, means "the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary" (i.e., the species is recovered and removed from the list of endangered and threatened species). The Recovery Plan for the bay checkerspot provides a description of habitat attributes that are essential to the survival and recovery of the subspecies (Service 1998).

(32) *Comment:* One commenter stated the Act requires the Service to designate adequate habitat for conservation of the subspecies. The Act defines conservation as recovery. Since the Recovery Plan (Service 1998) for the bay checkerspot identifies the need for populations in Contra Costa and Alameda Counties, the Service should add critical habitat in those counties.

Our Response: We considered proposing critical habitat in Contra Costa and Alameda Counties. However, while the Recovery Plan (Service 1998) identifies the need to reestablish populations of the bay checkerspot butterfly in the east bay to fully recover the species, it does not identify specific areas where such populations should be reestablished. We lacked sufficient information to indicate which particular areas in the east bay are essential for the conservation of the species. We believe it is not appropriate to designate critical habitat in areas without such information. The Act provides for revisions to critical habitat designations when necessary, and we intend to continue working with the California Department of Parks and Recreation and other stakeholders on opportunities to possibly reintroduce the bay checkerspot butterfly in appropriate locations in the east bay. Should these efforts identify additional areas that may meet the definition of critical habitat (i.e., areas that are both essential to the conservation of the species and that require special management), we will consider proposing a revision to this critical habitat designation at that time or when our resources allow.

(33) *Comment:* One commenter stated that the Service failed to make findings required by law before including unoccupied areas as designated critical habitat for the bay checkerspot. The commenter said that the Service appears to have designated the entire geographical area that can be occupied by the bay checkerspot without making the findings required by law for making an exception to the statutory prohibition against making such a broad designation. Another commenter urged the Service to respect the Act's distinction between critical habitat and the geographic habitat of the bay checkerspot.

Our Response: In proposing critical habitat for the bay checkerspot, we identified those areas that are essential to the conservation of the subspecies. The areas we proposed to designate as critical habitat provide all of those habitat components essential for the primary biological needs of the bay checkerspot described in the Recovery Plan (Service 1998), and defined by the primary constituent elements.

The definition of critical habitat in section 3(5)(A) of the Act includes, "specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species." After weighing the best available information, including the Recovery Plan (Service 1998), we conclude that the areas designated by this final rule that lie outside the geographic area occupied by the subspecies at the time it was listed are essential for the recovery of the subspecies and its subsequent removal from the List of Endangered and Threatened Species. As is stated in this final rule, we have not designated all areas currently occupied, potentially occupied, or historically occupied by the bay checkerspot as critical habitat.

(34) *Comment:* One commenter stated that the Service did not identify and discuss the cumulative impacts of critical habitat designation.

Our Response: The commenter appears to be using the term "cumulative impacts" in the context of NEPA. This is not appropriate in determining the critical habitat needs of the listed species. We are required to consider the effect of the proposed government action, which in this case is the designation of critical habitat for the bay checkerspot. The appropriate baseline to use in an analysis of a Federal action, which in this case is the designation of critical habitat for the bay checkerspot, is the way the world would look absent the proposed regulation. Against this baseline, we attempt to identify and measure the incremental costs and benefits associated with the government action. Because the bay checkerspot is already a federally protected species, any effect this listing has on the regulated community is considered part of the baseline scenario, which remains unaffected by our critical habitat designation.

(35) *Comment:* One commenter requested that the critical habitat proposal be withdrawn and reissued with more precisely delineated critical habitat area boundaries, including deletion of improperly proposed units, after completion of the economic analysis. The boundaries include developed areas, which are not bay checkerspot butterfly habitat. Two other commenters asserted that the proposed critical habitat boundaries were not described in sufficient detail for landowners to locate them precisely. One stated that the proposed designation failed to designate "specific areas" as critical habitats required by the Act. One commenter stated that the Service failed to precisely describe the lands to be designated as critical habitat and thus violated the notice and comment provisions of the Administrative Procedure Act.

Our Response: All critical habitat boundaries were specific and precisely delineated in the proposed rule and were publicly available as text descriptions and printed maps. In addition, we provided the boundaries in geographic information systems (GIS) format to anyone who requested them. All units were properly proposed and were presented in detail allowing anyone with a standard topographic map to locate the boundary (50 CFR 424.12(c)). It should be noted that the precise boundaries are given in the legal descriptions at the end of the rule, not in the narrative comments in the preamble. The draft economic analysis was made available after some of the comments were received; all earlier commenters were provided a copy of the draft economic analysis and notified of the opportunity to comment again. We believe the information that we made available and provided to the public was sufficiently detailed for informed public comment.

(36) *Comment:* Several commenters stated the Service avoided a statutory obligation to determine whether the benefits of excluding particular areas from critical habitat designation outweigh the benefits of including each area.

Our Response: Section 4(b)(2) of the Act allows us to exclude from critical habitat designation areas where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We base our decision to exclude an area from critical habitat designation on the best scientific data available, and taking into consideration the economic impact of specifying any particular area as critical habitat. We completed an economic analysis, and considered the results of this analysis and comments received on the analysis and the critical habitat proposal in the section 4(b)(2) weighing process. We used the section 4(b)(2) process in evaluating whether the areas covered by the San Bruno Mountain and PG & E HCPs should be excluded from this critical habitat designation. The San Bruno Mountain HCP area was included because the HCP does not cover bay checkerspot butterfly, and the PG & E HCP area was included because the HCP is due to expire in November 2001. These HCPs are discussed further in the Relationship to Habitat Conservation Plans section.

Issue 3: Site-Specific Comments

(37) *Comment:* Several commenters felt that the bay checkerspot butterfly does not inhabit Communications Hill and, therefore, this unit should not be designated as critical habitat. They said that surveys at the site between the mid-1980s and 2000 have failed to locate any of the subspecies. Some commenters noted that, although a single bay checkerspot was observed in 1992, by a bay checkerspot butterfly specialist, they believed it was either misidentified or a transient individual. Seven commenters believed that there is no suitable habitat for the bay checkerspot on Communications Hill and it should, therefore, not be designated as critical habitat. Five commenters believed that the quarry on Communications Hill was not historic bay checkerspot butterfly habitat nor could it be restored to suitable habitat.

Our Response: We do not concur with the belief that the bay checkerspot butterfly does not inhabit

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Communications Hill. In the past, the bay checkerspot has been observed at the site, as well as both of its foodplants and adult nectar plants. While a number of surveys of widely varying duration and quality were conducted between the mid-1980s to 2000, it does not appear possible to definitively conclude the subspecies is not present at Communications Hill. This is because adequate surveys have not been conducted over the entire flight season in all suitable areas on Communications Hill for an adequate time period, and thus likely would have missed the subspecies if they emerged early, late, or had a short adult flight season. The *Draft Supplemental Environmental Impact Report for the Communications Hill Kaufman Brood Residential Project,* dated November 2000, stated that "A check with biologists monitoring the bay checkerspot butterfly during its 2000 flight season revealed that the earliest adults were observed on March 10th at other locations, with adults being most active at most locations sometime during the week of March 13th. No butterflies were seen after the week of April 17th." Given the tardiness in initiating the field work in 2000, the most recent survey on Communications Hill may have missed adult bay checkerspot butterflies at the site.

Populations of the bay checkerspot butterfly undergo dramatic fluctuations that may be unexpected by entomologists and other biologists. For example, based on the results of a survey conducted in 1987, an entomologist concluded that a proposed residential development at Silver Creek would not adversely affect the bay checkerspot butterfly, given its "low" population size (Dennis Murphy *in litt.;* D. Murphy, pers. comm.). However, in the time period from 1987 to 1990, the bay checkerspot dramatically increased the size and extent of their population at this location, and more comprehensive studies at the site determined that the serpentine habitat at that location was very important for the subspecies.

The eggs, larvae, and pupae of the bay checkerspot butterfly are difficult to locate in the field (R. White 1986 (87)). In addition, the ability of larvae of a related taxa, the endangered quino checkerspot butterfly (*Euphydryas editha quino*), to become dormant during adverse environmental conditions (aestivate) is well documented and they likely are able to survive long periods of time in this state (Mattoni *et al.* 1997). In judging whether a population of the quino checkerspot butterfly has been extirpated, it is important to know that even a robust population may generate no adults at all under poor environmental conditions (Service 2001). It is likely the bay checkerspot butterfly, a subspecies of the same species, possesses this same life-history trait (Service 1998).

There are numerous studies documenting that the bay checkerspot butterfly possesses a "metapopulation type" of distribution and population structure. A metapopulation is a network of semi-isolated populations with some level of regular or intermittent migration and gene flow among them, in which populations may disappear, but then are recolonized by dispersing individuals from other populations. Other populations of this subspecies are known from the immediate vicinity at Santa Teresa County Park, Tulare Hill, Silver Creek, Kirby Canyon, and the Morgan Hill area. The bay checkerspot butterfly also was intentionally released at 38 sites that contain serpentine grassland in Santa Clara County (Harrison 1989). It is not known if any of these releases resulted in the establishment of permanent populations, however, individuals were observed at four of the 38 sites two years after the releases occurred (Harrison 1989).

Communications Hill contains all of the primary constituent elements of critical habitat for the bay checkerspot butterfly: open grassland, larval foodplants, adult nectar sources, soils derived from serpentinic rock, stable holes or cracks in the soil, wetlands that may provide moisture during times of spring drought, space for dispersal, and relatively varied topography (Arnold 2000). Communications Hill is only 3.2 km (2 mi) from the Silver Creek unit and 5 km (3 mi) from the Santa Teresa Hills unit, both recently documented to be occupied by the bay checkerspot. Both are within documented dispersal distances of the subspecies. The bay checkerspot seen on Communications Hill in 1992 was identified by an experienced biologist with extensive field research on the bay checkerspot. It is much more probable that this butterfly was a member of a low-density resident population than that it was a "transient," given that dispersal is a rare event and the chances of one biologist observing one transient butterfly on one day are very small, whereas the chances of seeing a member of a low-density resident population is quite reasonable.

Therefore, given the presence of suitable serpentine habitat and other primary constituent elements of critical habitat on Communications Hill, the observation of an adult bay checkerspot butterfly at the site, the lack of adequate surveys for this subspecies that may provide data conclusively demonstrating it is not present, its biology, as well as the mobility of the subspecies and the presence of nearby populations, we believe that it is highly likely that Communications Hill is inhabited by the subspecies.

In reference to the quarry, we are unaware of any specific data indicating if the quarry site was inhabited by the bay checkerspot prior or subsequent to the substantial earth-removing operations, but the area does contain some of the primary constituent elements (serpentine soils, areas of *Plantago,* and nectar plants). Efforts and experiments involving the restoration of similar, severely disturbed serpentine habitat for the bay checkerspot and plants have been underway at the sanitary landfill at Kirby Canyon for several years and are showing promising results.

(38) *Comment:* One commenter stated that Communications Hill should be analyzed in terms of its connection to other proposed critical habitat units and the ability of the bay checkerspot butterfly to disperse to it over time.

Our Response: Normal within-habitat movements by bay checkerspot butterflies are typically less than 150 meters (490 feet) between recaptures (Ehrlich 1961, 1965; Gilbert and Singer 1973). Harrison (1989) recaptured 5 percent of bay checkerspot butterflies at distances greater than 1 km (0.6 mi) from the point of release of the individuals marked/recaptured. However, long-distance dispersal has been documented as far as 7.6 km (4.7 mi) (Service 2001), and 5.6 km (3.5 mi) for one male, and 3.2 km (2 mi) for one female (Harrison 1989).

Long-distance habitat patch colonization may be achieved within a single season through the long-distance dispersal of individual butterflies, or over several seasons through stepping-stone habitat patch colonization events. In a study of the Morgan Hill bay checkerspot butterfly island-mainland type metapopulation, no colonizations of unoccupied habitat patches further than 4.5 km (2.8 m) from the source population were detected over a 10-year period (Harrison *et al.* 1988). A mathematical model, of unknown accuracy, predicted satellite habitat patches at a distance greater than 6 to 8 km (4 to 5 mi) from large source populations were not likely to support populations of the bay checkerspot butterfly (Harrison *et al.* 1988). Communications Hill is approximately 3 km (2 mi) from the Silver Creek critical habitat unit, which contains the closest known bay checkerspot butterfly population. Therefore, we believe that this habitat is suitable, reachable, and is used by the bay checkerspot butterfly, and warrants critical habitat designation.

(39) *Comment:* Several commenters felt that Communications Hill should be deleted because the site was not mentioned in the Recovery Plan for the bay checkerspot butterfly.

Our Response: Communications Hill is ranked as "other current or historic localities or suitable habitat areas" on page II–203 of the Recovery Plan (Service 1998). In addition, the site is listed on Table IV–1 of the Recovery Plan as a site that is targeted for the protection of the bay checkerspot, the endangered Santa Clara Valley dudleya (*Dudleya setchellii*), and other species. Thus, we determined that this unit is essential for the conservation of the bay checkerspot butterfly.

(40) *Comment:* The area west of State Route 87, Communications Hill unit, should be deleted from critical habitat designation. The area south of the water tanks has been developed into houses.

Our Response: We requested, but did not receive, more precise information on the location of the developed area the commenter discusses. This development was begun after the 1999 SPOT satellite imagery we used to refine our proposed boundaries. We believe, based on a visit to the site vicinity, that useful habitat likely remains west of route 87. In the absence of specific data allowing us to redraw the boundary in an informed manner, and because the rule explicitly states that existing developed areas do not provide the primary constituent elements and will not be subject to consultation, we believe it is most appropriate to leave the boundary unchanged in this area.

(41) *Comment:* A commenter stated that habitat restoration is needed in the Edgewood Park/Triangle unit.

Our Response: We have sought to encourage and facilitate appropriate native habitat restoration efforts in this and other units, and will continue to do so.

(42) *Comment:* We received comments stating that the proposed Kalana Hills unit should be eliminated entirely, because it is not listed as either a "core habitat area" or "potential core area" within the Recovery Plan (Service 1998), or because it is not certain to be presently occupied. If not eliminated, the commenters requested that the boundaries of the proposed Kalana Hills Unit should be refined to conform to natural land features and to a voter-approved urban growth boundary initiative.

Our Response: We have modified the Kalana Hills unit boundary based on a site visit and specific information provided by the landowners and their consultant. The remaining critical habitat area contains substantial occupied areas of good-quality bay checkerspot habitat close to core areas and contributes to the Santa Clara County metapopulation. We, therefore, consider this area essential to the conservation of the bay checkerspot.

(43) *Comment:* One commenter suggested we expand the Kalana Hills unit southward to include an area of habitat south of San Bruno Canyon that supports *Plantago erecta* and nectar plants. Another commenter recommended that the western boundary of the San Bruno Mountain unit should extend west to just before the summit area; some of the best remaining stands of *Plantago* are in large native grassland patches west of the western transmission line. Historical records along the ridgetop may not fully describe the bay checkerspot's distribution on San Bruno Mountain. The 500-foot contour limit also needs to be investigated; some grasslands below that contour may have *Plantago* stands, especially in Owl and Buckeye canyons. Also, a commenter suggested that the southeast boundary of the San Vicente-Calero unit excludes a finger of serpentine with unknown habitat value. There is a California Department of Fish and Game Natural Diversity Data Base record for the bay checkerspot on a nearby serpentine outcrop of nearly equal size.

Our Response: We lack adequate information about these areas to allow a critical habitat designation at this time. The Act provides opportunity for later revision of critical habitat designation through petition procedures under section 4(b)(3)(D).

(44) *Comment:* Several commenters requested that the Service adjust the eastern boundary of the Kirby Unit of the critical habitat designation. The landowner provided specific, identifiable coordinates for an adjusted boundary and information confirming that the area excluded by their adjustment does not support the primary constituent elements.

Our Response: We believe the recommended boundary changes to the Kirby Unit is reasonable and would not remove any useful areas containing primary constituent elements. We have incorporated these changes in the final rule.

(45) *Comment:* A commenter requested that the Service change the Silver Creek unit, to allow development in the 340-acre portion and exclude development in the 240-acre preserve area as stated in the Service's biological opinion for the Ranch on Silver Creek project.

Our Response: We have adjusted the boundary using information provided by the commenter, information present in our files, and based on site visits. See the narrative description of the unit, above, and the map and legal description of the unit, below, for specifics.

(46) *Comment:* One commenter requested we remove approximately 365 ha (900 ac) actively being used as a golf course and a landfill in the Kirby unit from the final critical habitat designation. These properties have been the subject of previous understandings with various resource agencies including the Service. The landfill is highly disturbed, and the golf course is not high-quality bay checkerspot habitat.

Our Response: We requested but did not receive information from the commenter regarding the exact boundaries of the golf course. The final rule explicitly states that existing developed areas will not be subject to consultation on critical habitat because they do not contain the primary constituent elements, so in the absence of information we felt it was most appropriate to leave the unit boundary as proposed in this area. The landfill is ultimately to be restored to bay checkerspot habitat and still retains substantial habitat within its permitted borders, so critical habitat designation in this area would ensure that any Federal involvement considers bay checkerspot habitat. We will work with the landowner and the landfill operator to evaluate the status of prior biological opinions and complete further consultation if any is required.

(47) *Comment:* A commenter noted that the northwest boundary of the San Felipe unit excludes some serpentine, and if deemed good grassland habitat, it should be included.

Our Response: We believe, based on serpentine soils mapping, satellite imagery, and visits to the vicinity, that the excluded area referred to has been developed for housing.

(48) *Comment:* A commenter stated that it is unknown whether any part of units 7 (Kalana Hills), 13 (San Vicente-Calero), or 14 (Santa Teresa Hills) currently support bay checkerspots, let alone a large and viable persistent population. Neither the proposed rule nor economic analysis state how much area within the Kalana Hills unit is currently occupied by the bay checkerspot, and the majority of it is likely unoccupied.

Our Response: Bay checkerspots have been found in all three units. Especially

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considering the dramatic population swings that are normal for this subspecies, present population size or extent are not the only relevant, or even particularly important, factors in assessing the conservation value of a given habitat area. Each of these units has extensive areas of good habitat, is close to other habitat areas, has a record of occupation, and can serve as a "stepping stone" in bay checkerspot metapopulation dynamics, which is why the Recovery Plan (Service 1998) and this rule consider them essential to the conservation of the subspecies.

Issue 4: Economic Comments

(49) *Comment:* Many commenters believed that we failed to properly consider the economic and other impacts of designating particular areas as critical habitat.

Our Response: We disagree. We believe that the draft economic analysis made a reasonable attempt to identify all current and future planned activities within proposed critical habitat. Our draft economic analysis assessed potential economic impacts from critical habitat designation by first identifying current and future land uses within the proposed critical habitat. Our analysis then considered whether these activities were likely to involve a Federal nexus and, if so, the likelihood that Service biologists would want to consult on the activity over concern for the activity's impact on the bay checkerspot or its critical habitat. For activities identified by Service biologists as likely to cause a concern, we attempted to differentiate between consultations that would take place because such activities could jeopardize the continued existence of a listed species versus those that would likely take place solely because of critical habitat designation.

We characterized these effects by proposed critical habitat unit and were able to estimate the number of likely incremental consultations by unit despite the uncertainties that affect generating reliable estimates for specific areas. It is difficult to estimate whether a potential future activity would require a consultation and to determine the degree to which critical habitat designation influences that outcome. Given these limitations, we were, however, able to develop a general estimate of the number of future consultations that potentially could result from the designation of the proposed rule; we assumed a worst case scenario for our analysis. We believe that this estimate, along with the characterization of activities by unit, provides us with enough information to make an informed decision concerning the designation of the final rule.

(50) *Comment:* Several commenters stated that the draft economic analysis is flawed because it is based on an improper definition of occupied lands.

Our Response: The determination of whether or not proposed critical habitat is within the geographic range occupied by the bay checkerspot is part of the biological decision-making process and lies beyond the scope of an economic analysis. For a discussion of the biological justification of why we believe the areas being designated are within the geographical areas occupied by the bay checkerspot, see our response to comments on Issue 1: Biological Justification, Methodology, and Regulatory Issues, above.

(51) *Comment:* Commenters stated that the draft economic analysis underestimated impacts to the regional housing market in relation to northern California's current housing crisis. Specifically, a few commenters believed that we failed to fully recognize the cost of project delays to homebuilders and consumers that would result from the designation due to an expected increase in section 7 consultations. One commenter also stated that the draft economic analysis ignored various other financial losses homebuilders would incur as a result of an expected reduction in the number of housing units that would be allowed to be built in designated critical habitat areas. Also, several commenters questioned why the draft economic analysis failed to provide an estimate of costs associated with potential reductions in property values.

Our Response: We are aware that some of the land that we proposed as critical habitat for the bay checkerspot butterfly faces significant development pressure. Development activities can have a significant effect on the land and the species dependent on the habitat being developed. We also recognize that many large-scale development projects are subject to some type of Federal nexus before work actually begins. As a result, we expect that future consultations, in part, will include planned and future real estate development.

However, we believe that these resulting consultations will not take place solely with respect to critical habitat issues. While some project delays may occur out of concern for a project's impact on the bay checkerspot, large real estate projects are often delayed for numerous other reasons that include compliance with various state and local ordinances and zoning regulations. It would be improper to attribute all such changes in the scope of a development project, along with associated project delay costs, to critical habitat when numerous other factors frequently contribute to these changes. While it is true that development activities can adversely affect designated critical habitat, we believe that our future consultations regarding new housing development will take place because such actions have the potential to adversely affect a federally listed species. We believe that such planned projects would require a section 7 consultation, regardless of the critical habitat designation. Again, as we have previously mentioned, section 7 of the Act requires Federal agencies to consult with us whenever actions they fund, authorize, or carry out can jeopardize a listed species or adversely modify its critical habitat.

We also recognize that in some instances, the designation of critical habitat could result in a distorted real estate market because participants may believe that land within critical habitat designation is subject to additional constraints. In truth, this is not the case because critical habitat designation for the bay checkerspot is not adding any extra protection, nor impacting landowners beyond that associated with the listing of the subspecies as threatened under the Act. As a result, we believe that any resulting distortion will be temporary and have a relatively insignificant effect on the real estate market as it should become readily apparent to market participants that critical habitat for the bay checkerspot is not imposing any additional constraints on landowner activities beyond those currently associated with the listing.

We have also found little evidence to date to support claims by some developers that critical habitat designation would have significant regional economic impacts. In areas where critical habitat has been designated, economic growth has continued to grow. For example, a study released by the Coalition for Sonoran Desert Protection examined the impact of designating habitat for the cactus ferruginous pygmy-owl in southern Arizona (McKenney 2000). Performed 1 year after the designation, the study found that dire predictions made by developers in that region have not materialized. Specifically, high-density housing development has not slowed, the value of vacant land has risen, land sales have continued, and the construction sector has continued its steady growth.

Similarly, in a study conducted by Oliver Houck, the author reviewed over 71,560 informal and 2,000 formal consultations conducted under the Act and found that only 18 projects, or 0.02 percent of the projects we consulted on, were ultimately terminated (Houck 1993, p. 318). Furthermore, of the 99 jeopardy opinions issued by the Service, the author found that we issued "reasonable and prudent alternatives" in nearly all of these opinions, which allowed the projects to proceed (Houck 1993, p. 319).

The economic analysis estimated, for the Communications Hill unit, that given the City of San Jose's specific plan, the unit will include between 2,500 and 4,000 new residential units, additional commercial activities, parks, and schools. Based on this plan, the economic analysis estimated that between three and five large-scale developments may take place on this unit and assumed that each of these development projects could entail a section 7 consultation. The economic analysis noted, however, that it was not clear whether planned development would require a Federal permit, which then could trigger a section 7 consultation. The economic analysis also noted that several other federally protected species inhabit the area, and as a result, could trigger section 7 consultations, assuming a Federal nexus exists, regardless of bay checkerspot critical habitat designation. As a result, the economic analysis most likely overestimated the number of section 7 consultations that would be attributable to critical habitat designation.

We believe that the economic analysis adequately considered all the potential economic costs likely to be associated with potential development and provides sufficient information for the Secretary to make a determination under section 4(b)(2) of the Act.

(52) *Comment:* Some commenters stated that they believed that we understated the cost of section 7 consultations, and that the findings in the draft economic analysis concerning potential associated real estate development costs are significant enough to warrant a withdrawal of these units.

Our Response: In preparing the economic analysis, we estimated the potential effects from critical habitat designation resulting from section 7 consultations that could be attributable to the designation. As previously stated, we believe that many of the effects perceived by the public to be attributable to critical habitat would actually occur, regardless of critical habitat designation, because the bay checkerspot is a federally protected species and other listed species occupy some of the same habitat. This would trigger consultations, regardless of bay checkerspot critical habitat designation. Because we are attempting to estimate potential future effects from critical habitat designation, our estimates are based on potential future activities that are typical for the areas proposed for designation.

In practice, the costs associated with section 7 consultations can vary widely depending on the activity, its scope, and areas actually affected. In our Addendum to the draft economic analysis, we have used some of the information provided by commenters to revise the expected section 7 consultation costs for some areas being designated. This revised estimate, however, is further adjusted in our Addendum to better estimate the allocation of the section 7 consultation cost that represents the incremental effect of this designation. Overall, we believe we have reasonably estimated the potential future impacts of critical habitat designation for the bay checkerspot.

(53) *Comment:* We received several comments stating that the costs associated with including the Dairy Hill (located on the northeast portion of the Communications Hill unit) and Communications Hill project sites significantly outweighed the benefit of designating the sites as critical habitat.

Our Response: Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the subspecies.

As our economic analysis indicated there are potential economic costs of including this area in the final critical habitat designation, we considered whether it should be excluded under section 4(b)(2). The benefits of excluding these areas would be the avoidance of these additional costs, which we estimate could range up to $6.5 million over the next 10 years. Actual costs are likely to be significantly lower, given the historic presence of bay checkerspot butterflies on the site, the presence of other listed species, and the expected overlap of any measures implemented to protect these species with measures necessary to protect bay checkerspot butterfly habitat. In addition, much of the potential cost associated with section 7 consultations will already be required by the presence of these other listed species. Further, this maximum cost estimate is derived from a planning assumption that no habitat would be preserved within the units; the high costs are associated with off-site mitigation. Depending on the actual extent of mitigation required, and the actual final level of residential development within the unit, we estimate that mitigation costs associated with critical habitat designation for the bay checkerspot could range between 0.07 percent and 0.6 percent of the total value of future residential development within the unit.

In contrast, the conservation benefits of including these units in the final designation are considerable. The Communications Hill critical habitat unit historically has been occupied by the bay checkerspot and contains all of the primary constituent elements essential for the conservation of the subspecies. It also represents the northwestern-most remnant of the Santa Clara metapopulation. Such warmer, lower elevation sites as this are likely to be especially important to the subspecies during rare episodes of great population increase, dispersal, gene flow, and recolonization of extirpated sites. Loss of the Communications Hill unit would likely preclude recovery and delisting of the subspecies, and could reduce or eliminate the viability of this metapopulation, ultimately diminishing or eliminating the long-term survivability of the bay checkerspot. Including the unit in this critical habitat designation will have important informational benefits, reinforcing to our Federal partners and other stakeholders the importance of this area to the conservation of the bay checkerspot butterfly in the future, with likely low overall costs. To the degree that the higher costs in our range of cost estimates are realized, we expect additional conservation benefits. That is, where increased costs result from avoidance of impacts that may destroy or adversely modify designated critical habitat, we expect real, on-the-ground benefits (in addition to these informational benefits) to the conservation of the bay checkerspot butterfly. As a result, we conclude that, even at the highest range of potential costs identified in our economic analysis, the benefits of including these areas in this final designation as critical habitat outweigh the possible benefits of excluding them.

(54) *Comment:* We received several comments stating that the draft economic analysis mis-characterized the

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potential land use activities on the Kalana Hills unit by omitting future real estate development.

Our Response: According to the city of San Jose's General Plan, portions of the Kalana Hills unit are planned for future real estate development, which was overlooked in the draft economic analysis. Because this unit is occupied and because real estate development in this area lacks any clear Federal nexus, it is unlikely that critical habitat designation would have any significant effect. In this final rule, however, we significantly modified this unit to withdraw the majority of lands considered suitable for development, and we do not expect real estate development activities to be significantly impacted within this unit.

(55) *Comment:* One commenter stated that the draft economic analysis failed to consider the incremental costs associated with additional California Environmental Quality Act (CEQA) compliance as a result of the critical habitat rule.

Our Response: We disagree. Landowners in the state of California must comply with CEQA whether or not their land is within the area designated as critical habitat for a federally-listed species. The draft economic analysis discusses the effect that existing state and local regulations have on current activities in proposed critical habitat units. Specifically, CEQA requires identification of significant environmental effects of proposed projects that have the potential to harm the environment. The lead agency (typically the California State agency in charge of the oversight of a project) must determine whether a proposed project would have a "significant" effect on the environment.

Review of the CEQA statute, and conversations with the California Resources Agency (one of the agencies responsible for administering CEQA), revealed that when a species is known to occupy a parcel of land, the designation of critical habitat alone does not require a lead agency to pursue any incremental actions. In the case of the bay checkerspot, the Recovery Plan (Service 1998) for serpentine soil species in the San Francisco Bay area includes a description of the habitat areas needed by the bay checkerspot. Impacts to such previously identified areas would likely result in the need for compliance with CEQA by project proponents. Therefore, economic impacts generated by CEQA on bay checkerspot habitat areas are part of the baseline and not attributable to bay checkerspot critical habitat designation.

Summary of Changes From the Proposed Rule

Based on a review of public comments received on the proposed determination of critical habitat for the bay checkerspot butterfly, we reevaluated our proposed designation of critical habitat. This resulted in some changes that are reflected in this final determination. These are: (1) the exclusion of some lands where new information revealed that lands were not essential to the conservation of the bay checkerspot; (2) refining of the critical habitat boundaries; and (3) clarification of the primary constituent elements.

Based on comments received, we excluded those areas where new information revealed that lands were not essential. This included the exclusion of approximately 141 ha (348 ac) of primarily agricultural lands from unit 7, 57 ha (141 ac) of nonserpentine lands from unit 8, 81 ha (201 ac) of mostly residential development from unit 9, 260 ha (643 ac) of mostly commercial development from unit 10, and 382 ha (943 ac) of developed areas and graded lands permitted for development from unit 12.

These changes resulted in a reduction of approximately 923 ha (2,279 ac) in the critical habitat designation from the proposed rule to the final rule. We originally had proposed 10,597 ha (26,182 ac) of critical habitat for the bay checkerspot, and in this final rule, we are designating 9,673 ha (23,903 ac). Certain unit acreages have changed slightly from the proposed rule, and these reflect errors in rounding.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of the exclusions outweigh the benefits of specifying the areas as critical habitat. We cannot exclude the areas from critical habitat when the exclusion will result in the extinction of the subspecies.

Economic effects caused by listing the bay checkerspot as a federally protected threatened species, and by other statutes, are the baseline against which the effects of critical habitat designation are evaluated. The economic analysis must then examine the incremental economic and conservation effects and benefits of the critical habitat designation. Economic effects are measured as changes in national income, regional jobs, and household income. An analysis of the economic effects of the proposed bay checkerspot critical habitat designation was prepared (Industrial Economics, Incorporated, 2001) and made available for public review (February 9 to March 12, 2001; 66 FR 9683). The final analysis, which reviewed and incorporated public comments, concluded that no significant economic impacts are expected from critical habitat designation above and beyond that already imposed by listing the bay checkerspot.

The most likely economic effects of critical habitat designation are on activities funded, authorized, or carried out by a Federal agency. The analysis examined the effects of the proposed designation on: (1) re-initiation of section 7 consultations; (2) length of time in which section 7 consultations are completed; and (3) new consultations resulting from the determination. The draft economic analysis reported that, although difficult to assess because the bay checkerspot's critical habitat overlapped with the habitat of other federally protected species, impacts could be as high as $1.2 to $6.5 million dollars over the next 10 years.

Potential impacts that were identified included consultations with Federal agencies in the Communications Hill unit regarding proposed real estate development projects. Specifically, the draft economic analysis estimated that between three and five section 7 consultations could occur based on the City of San Jose's estimate and with costs up to a total of $50,000 for all the consultations and with associated mitigation costs that could range between $0.96 and $3.74 million, based on a previous consultation recently completed in the area for another large-scale development project. However, based on comments we received on the draft analysis, we recognized that the draft may have underestimated the consultation costs on Communications Hill (due to the large scale of development planned for the hill) and thus revised the estimates of consultation costs in the final addendum to the economic analysis. The revised estimates for these consultation costs are $50,000 per consultation (estimated as 50 percent of the maximum suggested cost of $100,000 to account for the impact of additional listed species within the unit) or a total of $250,000 for the five potential consultations. However, due to the existence of other federally protected species within the area which could trigger consultations regardless of bay checkerspot critical habitat, much of the survey work associated with the consultation, and the consultation itself would already be required. Therefore, a substantial portion of the costs associated with these consultations most likely would also be attributable to factors or species other than the bay checkerspot critical habitat designation, and thus we believe that this estimate most likely overstates the actual impacts of this critical habitat designation.

We believe that any project that would adversely modify or destroy critical habitat would also jeopardize the continued existence of the species, and that reasonable and prudent alternatives to avoid jeopardizing the species would also avoid adverse modification of critical habitat. Within the analysis, we determined there would be costs associated with the designation, however, these costs were determined to be negligible, except as discussed above. Thus, little regulatory burden or associated significant additional costs would accrue because of critical habitat above and beyond that resulting from listing. Our economic analysis does recognize that there may be costs from delays associated with reinitiating completed consultations after the critical habitat designation is made final. There may also be economic effects due to the reaction of the real estate market to critical habitat designation, as real estate values may be lowered due to perceived increase in the regulatory burden. However, we believe this impact will be short-term.

In summary, in our economic analysis, we estimate that, over the next 10 years, the total cost of this rulemaking will range between $1.2 and $6.5 million. This estimate is primarily attributable to costs associated with section 7 consultations and potential modifications to future residential and commercial real estate development projects. The high end of the estimate was a result of assuming no on-site habitat were preserved in the Communications Hill unit and 312 acres of off-site habitat would need to be purchased to mitigate this loss. However, the analysis compared this cost to the estimated value of the residential development proposed to be built within the unit. Depending on the extent of mitigation required, and the actual final level of residential development within the unit, we estimate that mitigation costs associated with critical habitat designation for the bay checkerspot could range between 0.07 percent and 0.6 percent of the total value of future residential development within the unit. A copy of the final economic analysis and description of the exclusion process with supporting documents are included in our administrative record and may be obtained by contacting the Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Required Determinations

1. Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is a significant regulatory action and has been reviewed by the Office of Management and Budget (OMB).

(a) This rule will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The bay checkerspot butterfly was listed as a threatened subspecies in 1987. In fiscal years 1987 through 2000, the Sacramento Fish and Wildlife Office conducted, or is in the process of conducting, 4 formal section 7 consultations with other Federal agencies to ensure their actions would not jeopardize the continued existence of the bay checkerspot.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; the Act does not impose any restrictions through critical habitat designation on non-Federal persons unless they are conducting activities funded or otherwise sponsored, authorized, or permitted by a Federal agency. Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we conclude that any Federal action or authorized action that could potentially cause adverse modification of designated critical habitat would currently be considered as "jeopardy" under the Act (see Table 2).

TABLE 2.—IMPACTS OF BAY CHECKERSPOT BUTTERFLY LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by species listing only	Additional activities potentially affected by critical habitat designation [1]
Federal Activities Potentially Affected [2].	Activities conducted by the Army Corps of by Engineers, Bureau of Reclamation, Environmental Protection Agency, Federal Highway Administration.	Activities by these Federal Agencies in any unoccupied critical habitat areas.
Private or other non-Federal Activities Potentially Affected [3].	Activities that require a Federal action (permit, authorization, or funding) and may remove or destroy bay checkerspot habitat by mechanical, chemical, or other means (*e.g.*, grading, discing, ripping, and tilling, water diversion, impoundment, groundwater pumping, irrigation, construction, road building, herbicide application, recreational use, etc.) or appreciably decrease habitat value or quality through indirect effects (*e.g.*, edge effects, invasion of exotic plants or animals, fragmentation of habitat).	Funding, authorization, or permitting actions by Federal Agencies in any unoccupied critical habitat areas.

[1] This column represents activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the subspecies.
[2] Activities initiated by a Federal agency.
[3] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

Accordingly, the designation of areas within the geographic range occupied by the bay checkerspot butterfly has little, if any, incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal entities that receive Federal authorization or funding. Non-Federal entities that do not have a Federal "sponsorship" of their actions are not restricted by the designation of critical habitat (however, they continue to be bound by the provisions of the Act concerning "take" of the species).

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Designation of areas of unknown occupancy as critical habitat may have impacts on what actions may or may not be conducted by Federal agencies or non-Federal entities that receive Federal authorization or funding. Based on our understanding of the threats to the species, the prohibition against adverse modification of critical habitat in areas of unknown occupancy is not expected to impose any additional restrictions to federally sponsored projects or activities occurring in these areas, unless we make a determination that the proposed activity would result in an appreciable reduction of the value of the critical habitat for both the survival and recovery of the bay checkerspot. As discussed in the final addendum to the economic analysis, we determined that the costs of any additional consultations and any resulting project modifications will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government.

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the bay checkerspot butterfly since the listing in 1987. The prohibition against adverse modification of critical habitat is not expected to impose any substantial additional restrictions to those that currently exist. Because of the potential for impacts on other Federal agencies' activities, we will continue to review this action for any inconsistencies with other Federal agencies' actions.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the subspecies, and as discussed above, we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have any significant incremental effects.

(d) OMB has determined that this rule will raise novel legal or policy issues and, as a result, this rule has undergone OMB review.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis, we determined that designation of critical habitat will not have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, and in this final determination, this rule is not expected to result in any restrictions in addition to those currently in existence. Although small entities may carry out activities within designated critical habitat, many of these activities lack a Federal nexus and therefore their impacts on critical habitat do not need to be considered. For those actions requiring federal funding or authority, we believe that the incremental impacts attributable to this rule are not significant for reasons explained above and in the draft economic analysis. Therefore, we are certifying that the designation of critical habitat for the bay checkerspot butterfly will not have a significant economic impact on a substantial number of small entities. As indicated in Table 1 (see Critical Habitat Designation section), we designated property owned by State and local governments, and private property. Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Corps of Engineers under section 404 of the Clean Water Act;

(2) Regulation of water flows, execution of water contracts, water delivery, transfer of Federal project water, damming, diversion, and channelization by the Bureau of Reclamation or the Corps of Engineers;

(3) Pesticide and air quality regulation by the Environmental Protection Agency; and

(4) Funding and regulation of road construction by the FHWA.

Many of the activities sponsored by Federal agencies within critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed above, these actions are already currently required to comply with the protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities.

For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of the subspecies remain in effect, and this final rule will have no additional restrictions.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we determined that designation of critical habitat would not cause: (a) any effect on the economy of $100 million or more; (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Please refer to the final economic analysis for a discussion of the effects of this determination.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the subspecies, and few, if any, further restrictions are anticipated.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal actions. The rule will not increase or decrease the current restrictions on private property concerning take of the bay checkerspot butterfly. Due to current public knowledge of the subspecies' protections, the prohibition against take of the subspecies both within and outside of the designated areas, and the fact that critical habitat provides no substantial incremental restrictions, we do not anticipate that property values will be affected by the critical habitat designation. While real estate market values may temporarily decline following designation, due to the perception that critical habitat designation may impose additional regulatory burdens on land use, we expect any such impacts to be short term.

Additionally, critical habitat designation does not preclude development of HCPs and issuance of incidental take permits. Owners of areas that are included in the designated critical habitat will continue to have the opportunity to utilize their property in ways consistent with the survival of the bay checkerspot butterfly.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by the bay checkerspot butterfly imposes no substantial additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the subspecies are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the subspecies are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We designated critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the bay checkerspot butterfly.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule references permits for HCPs which contain information collection activity. The Fish and Wildlife Service has OMB approval for the collection under OMB Control Number 1018–0094. The Service may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act as amended. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), E.O. 13175, and 512 DM 2, we understand that federally recognized Tribes must be related to on a Government-to-Government basis. We are not aware of any Tribal lands essential for the conservation of the bay checkerspot. Therefore, we are not designating critical habitat for the bay checkerspot on Tribal lands.

References Cited

A complete list of all references cited in this final rule is available upon request from the Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Authors

The primary authors of this rule are the staff of the Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h), by revising the entry for "Butterfly, bay checkerspot," under "INSECTS," to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
•	•	•	•	•	•		•
INSECTS							
•	•	•	•	•	•		•
Butterfly, bay checkerspot.	*Euphydryas editha bayensis.*	U.S.A. (CA)	Entire	T	288	17.95(i)	NA
•	•	•	•	•	•		•

3. Amend § 17.95(i) by adding critical habitat for the bay checkerspot butterfly (*Euphydryas editha bayensis*) in the same alphabetical order as this subspecies occurs in § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(i) *Insects.*

Bay Checkerspot Butterfly (*Euphydryas editha bayensis*)

1. Critical habitat units are depicted for San Mateo and Santa Clara Counties, California, on the maps below.

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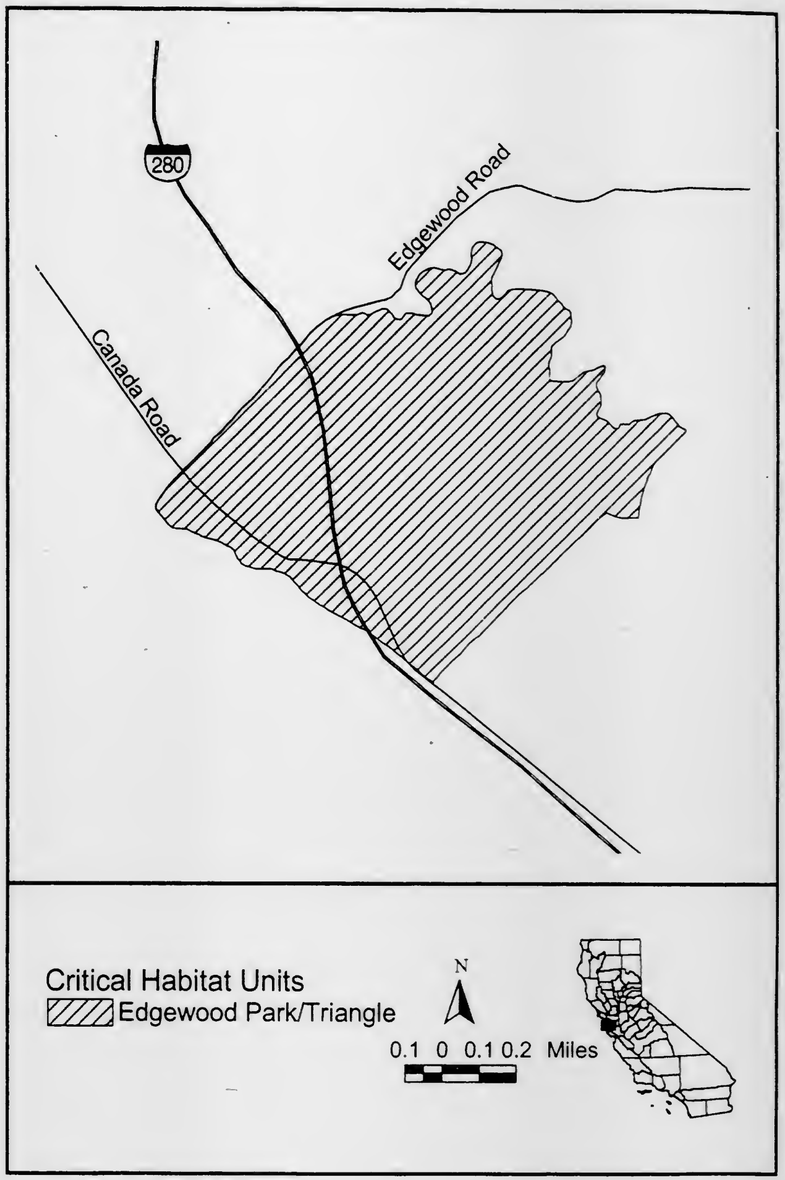
2. Within these areas, the primary constituent elements are those habitat components that are essential for the primary biological needs of foraging, sheltering, breeding, maturation, and dispersal. The primary constituent elements are one or more of the following: stands of *Plantago erecta, Castilleja exserta,* or *Castilleja densiflora;* spring flowers providing nectar; pollinators of the bay checkerspot's food and nectar plants; soils derived from serpentinic rock; and space for dispersal between habitable areas. In addition, the following are each primary constituent elements to be conserved when present in combination with one or more of the primary constituent elements above: areas of open grassland, topography with varied slopes and aspects providing surface conditions with warm and moderate to cool temperatures during sunny spring days, stable holes or cracks in the soil and surface rocks or rock outcrops, wetlands providing moisture during times of spring drought.

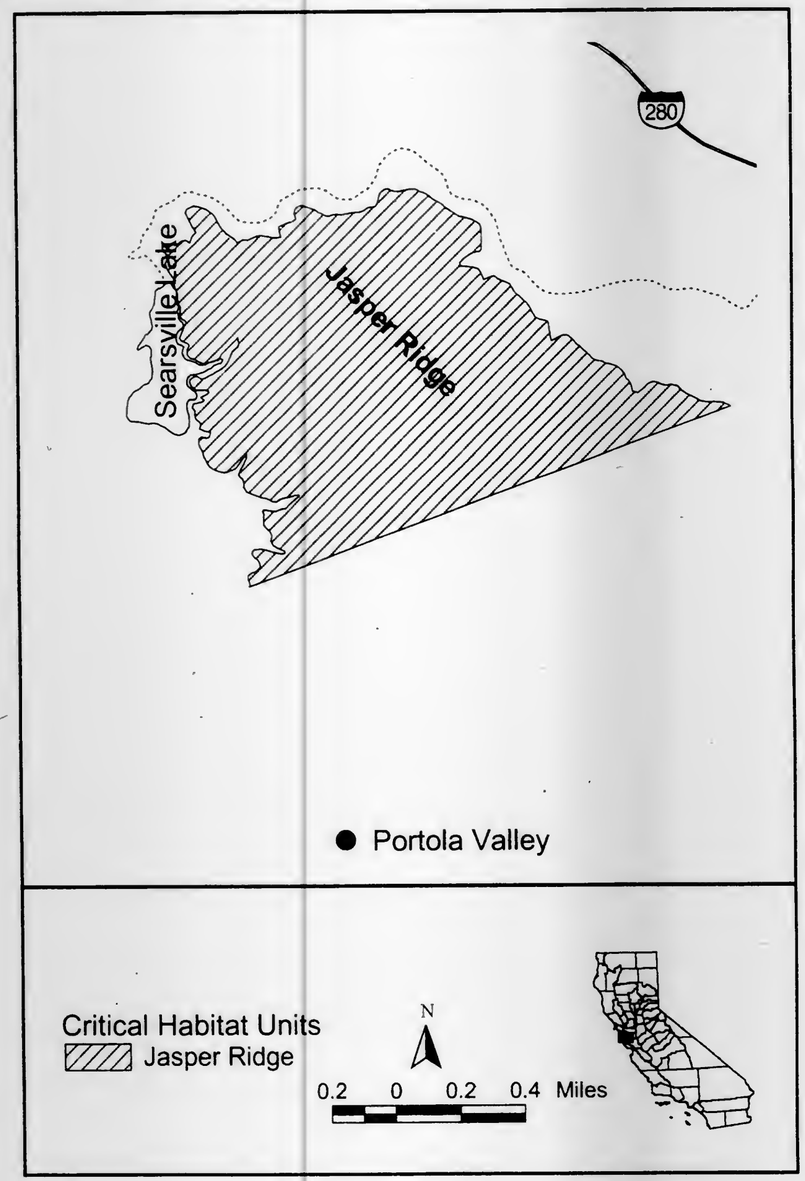
3. Within these areas, existing human-constructed features and structures, such as buildings, roads, railroads, urban development, and other human-constructed features not containing any primary constituent elements, are not considered critical habitat and are not included in the designation.

Unit 1 (Edgewood Park/Triangle Unit): San Mateo County, California. Bounded as follows: beginning at the intersection of Edgewood Road and Canada Road; southwesterly, south, and southeasterly along the light-duty extension of Edgewood Road southwest of Canada Road to its intersection with an unnamed intermittent drainage tributary to Upper Crystal Springs Reservoir as shown on the USGS Woodside 7.5 minute quadrangle (1961, photorevised 1968 and 1973); then southwesterly along this drainage to its intersection with I–280; then southeasterly along the eastern edge of pavement of I–280 to a point due southwest of the southernmost corner of Edgewood Natural Preserve (this just south of a substation shown on the Woodside quadrangle, where the State Fish and Game Refuge boundary meets Canada Road and an elevation of 161 m (528 ft) is marked); then due northeast to the southernmost corner of Edgewood Natural Preserve; then northeast along the southeast boundary of Edgewood Natural Preserve to the 159 m (520 ft) elevation contour as shown on the Woodside quadrangle; then northwesterly along this contour to its intersection with Edgewood Road; then southwesterly along the south edge of pavement of Edgewood Road to the starting point.

Unit 2 (Jasper Ridge Unit): San Mateo County, California. Bounded as follows: to the east, north, and west by the 110 m (360 ft) elevation contour around Jasper Ridge (USGS Palo Alto 7.5 minute quadrangle, 1991); and to the south by the current boundary of the Jasper Ridge Biological Reserve, which is largely coincident with the northern boundary of the town of Portola Valley.

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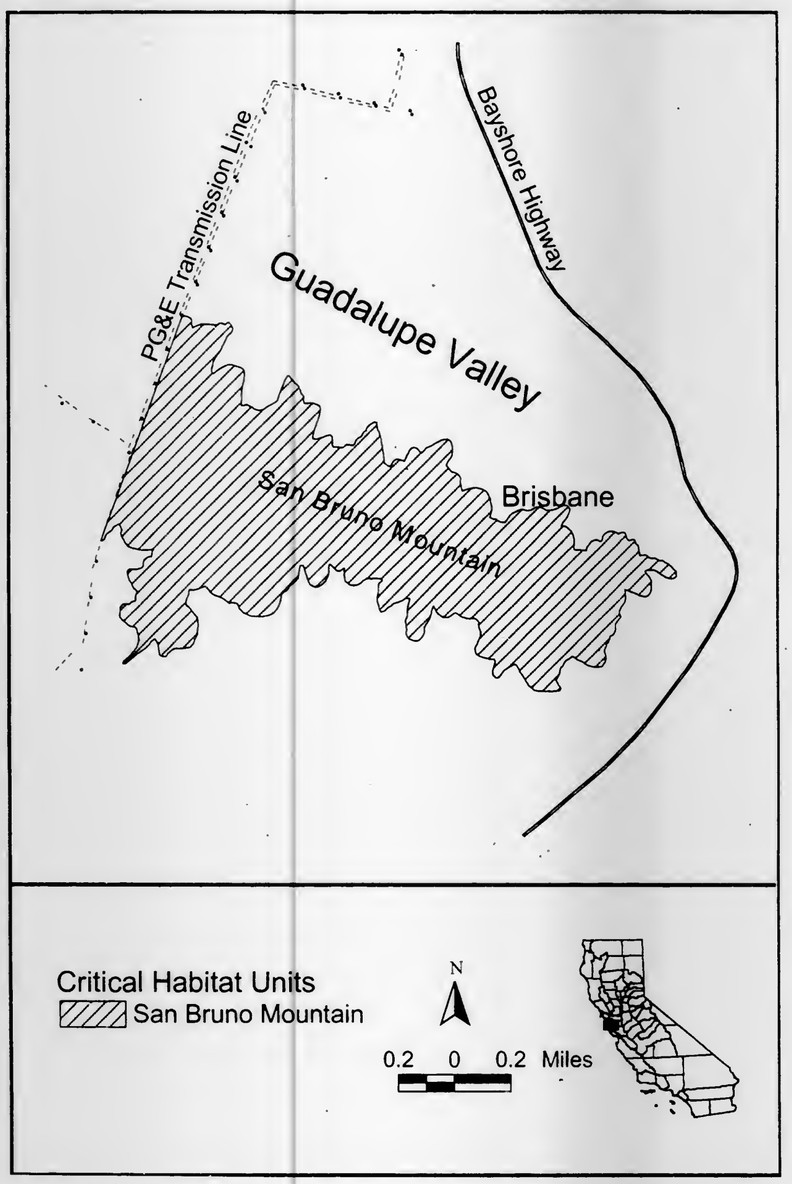
Unit 3 (San Bruno Mountain Unit): San Mateo County, California. All area on San Bruno Mountain above the 152 m (500 ft) elevation contour and east of the western Pacific Gas and Electric transmission corridor (this transmission corridor runs south to southwesterly from the west end of Guadalupe Valley to the South San Francisco/Colma City border) as shown on the USGS San Francisco South 7.5 minute quadrangle, 1956).

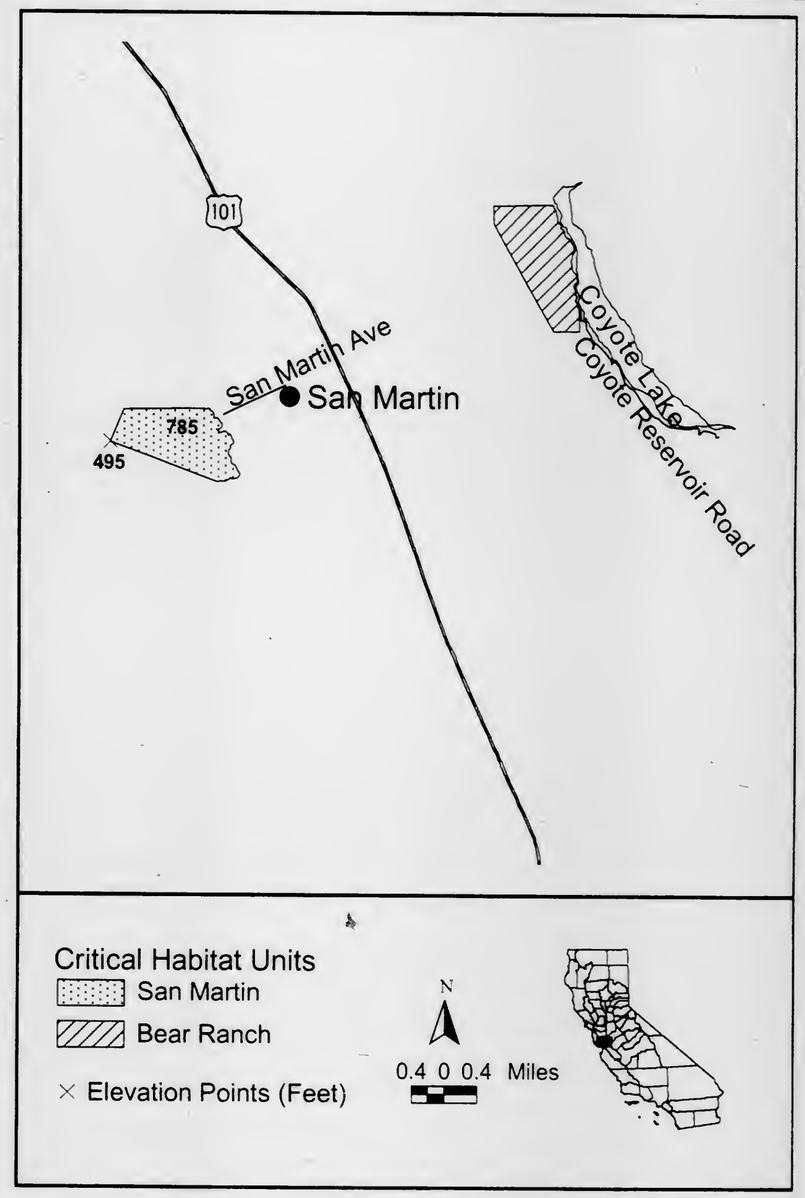
Unit 4 (Bear Ranch Unit): Santa Clara County, California. Those portions of section 32, T.9 S., R.4 E. and section 5, T.10 S., R.4 E., westerly of Coyote Reservoir Road—a light-duty road shown but not named on the USGS Gilroy 7.5 minute quadrangle (1955, photorevised 1968 and 1973).

Unit 5 (San Martin Unit): Santa Clara County, California. Bounded on the north by a line running due east-west through a point 305 m (1000 ft) due north of a hilltop marked 239 m (785 ft) in elevation on the USGS Mt. Madonna 7.5 minute quadrangle (1955, photorevised 1968). This hilltop is near latitude 37 degrees 4 minutes 42 seconds north, longitude 121 degrees 38 minutes 19 seconds west (Hayes Lane, not shown on the Mt. Madonna quadrangle, also runs in the vicinity of this hilltop). The north boundary runs as far east as its intersection with the 97 m (320 ft) elevation contour west of Coolidge Avenue as shown on the Mt. Madonna quadrangle. From this point the boundary runs southeasterly, southerly, and westerly following this contour, continuing onto the USGS Gilroy 7.5 minute quadrangle (1955, photorevised 1968 and 1973) and back to its intersection with longitude 121 degrees 37 minutes 30 seconds west (the junction between the two quadrangles). The unit is bounded on the south-southwest by a straight line running from this latter point for a distance of about 2,228 m (7,310 ft) slightly south of west-northwest (bearing 291.5 degrees) to a hilltop labeled 151 m (495 ft) in elevation on the Mt. Madonna quadrangle. The west boundary of the unit runs from this hilltop due north-northeast (bearing 22.5 degrees) to the north boundary.

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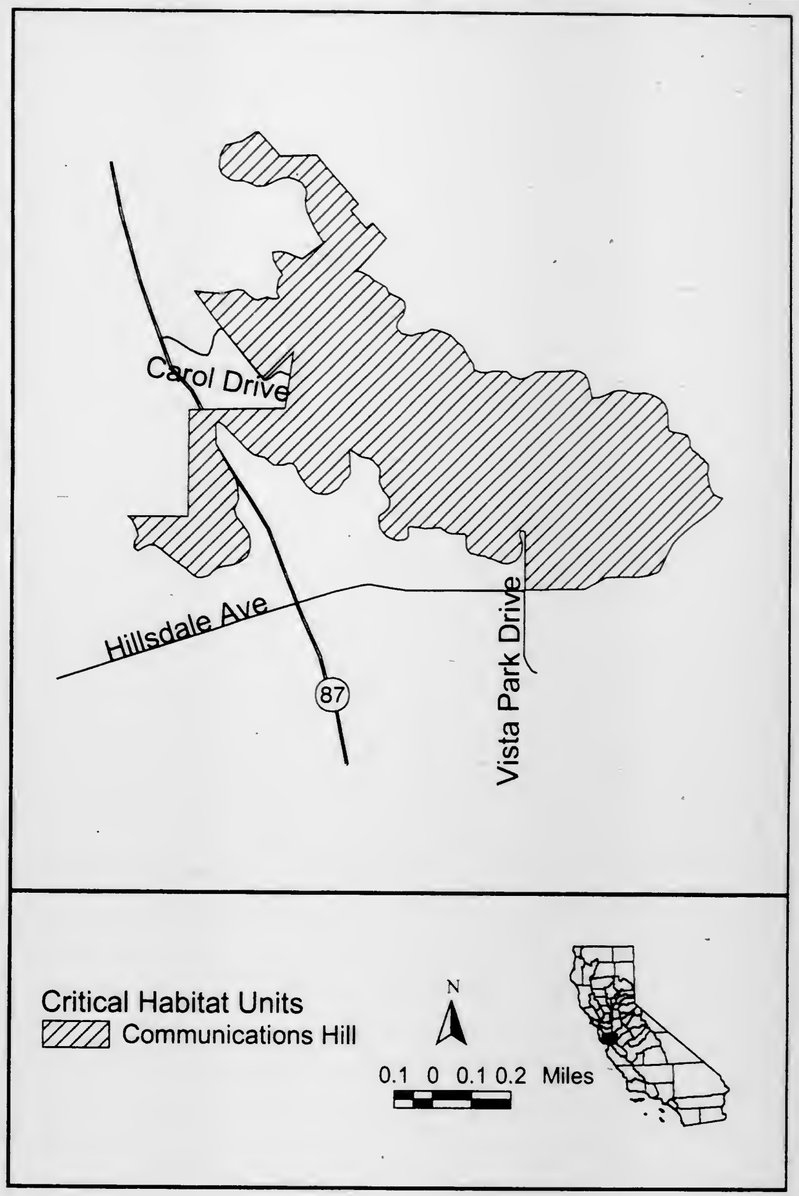


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Unit 6 (Communications Hill Unit): Santa Clara County, California. Starting at a point on the 73 m (240 ft) elevation contour due south of the 133 m (435 ft) summit of Communications Hill, the Communications Hill unit is bounded to the south by the 73 m (240 ft) elevation contour as shown on the USGS San Jose East 7.5 minute quadrangle map (1961, photorevised 1980; the hill is not named on this map but the county communications center is shown), as far west as its intersection with Highway 87 (this highway is not shown on the San Jose East quadrangle); then south along Highway 87 (west edge of pavement) to the 55 m (180 ft) elevation contour (all contours in this description are as shown on the San Jose East quadrangle); then south, west, and north along this contour to a point due west of the southernmost point of the southern of the two water tanks on the top of the hill west of Highway 87; then due east for a distance of about 238 m (780 ft) to a point due south of the easternmost point of the eastern of the two water tanks; then due north for about 439 m (1,440 ft) to the intersection with the 85 m (280 ft) elevation contour; then slightly north of east on a straight line to the southern corner of the property of the county communications facility; then on a line to the northern corner of this property; then due southwest to Carol Drive (not named on the San Jose East quadrangle); then slightly north of northwest (bearing 322 degrees) to the 55 m (180 ft) elevation contour; then along this contour easterly and northeasterly until it reaches the second dirt road as shown on the San Jose East quadrangle; then due northeast across the Southern Pacific railroad tracks to the 55 m (180 ft) elevation contour; then northwesterly and northeasterly along this contour to the boundary of Oak Hill Memorial Park cemetery; then following the cemetery boundary southeasterly, skirting a hill summit marked 98 m (323 ft) on the San Jose East quadrangle, to the first 67 m (220 ft) elevation contour southeast of this summit; then due southwest to the 49 m (160 ft) elevation contour immediately west of the railroad tracks; then southeasterly along this contour as shown on the 1961 San Jose East quadrangle to its intersection with Hillsdale Avenue; then southwesterly along Hillsdale Avenue (north edge of pavement) to its intersection with Vista Park Drive (not shown on the San Jose East quadrangle); then due north to the 73 m (240 ft) elevation contour; then westerly along this contour to the starting point.

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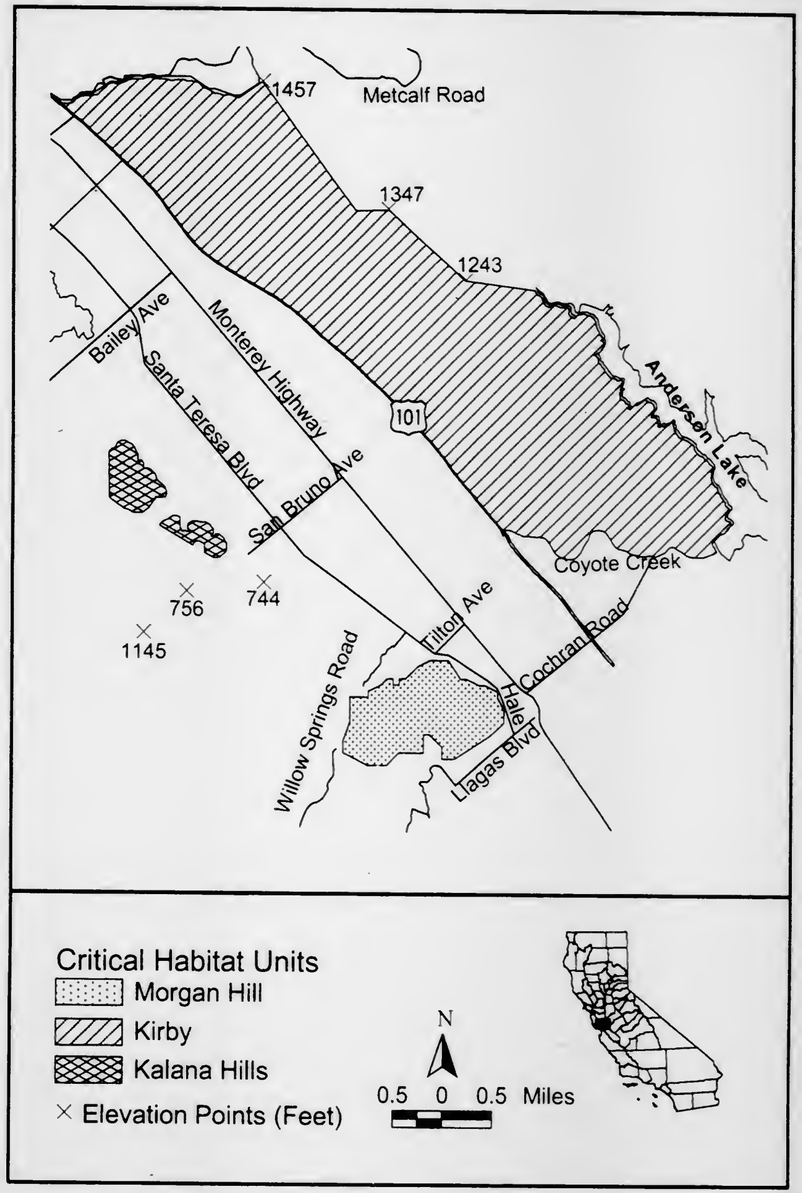
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Unit 7 (Kalana Hills Unit): Santa Clara County, California. From USGS 1:24,000 quadrangle map Morgan Hill, lands bounded by the following UTM Zone 10 NAD83 Coordinates (E,N): 612000, 4115810; 612070, 4115810; 612090, 4115790; 612170, 4115750; 612210, 4115700; 612240, 4115640; 612270, 4115590; 612270, 4115490; 612330, 4115490; 612360, 4115460; 612360, 4115370; 612430, 4115370; 612470, 4115360; 612550, 4115280; 612580, 4115190; 612630, 4115150; 612670, 4115110; 612710, 4115060; 612710, 4115050; 612730, 4115000; 612730, 4114960; 612710, 4114910; 612550, 4114910; 612550, 4114880; 612510, 4114840; 612510, 4114820; 612480, 4114790; 612450, 4114740; 612400, 4114700; 612350, 4114660; 612180, 4114660; 612130, 4114700; 612110, 4114700; 612080, 4114720; 612060, 4114720; 611960, 4114790; 611810, 4114900; 611800, 4115630; 611850, 4115680; 611880, 4115680; 611900, 4115700; 611940, 4115770; 612000, 4115810 Including lands bounded by: 612830, 4114610; 612900, 4114610; 612950, 4114590; 612950, 4114520; 612940, 4114510; 612940, 4114500; 612950, 4114490; 612950, 4114470; 612960, 4114460; 612960, 4114410; 612970, 4114410; 612970, 4114380; 612990, 4114360; 613000, 4114360; 613000, 4114370; 613040, 4114370; 613080, 4114360; 613090, 4114360; 613090, 4114410; 613080, 4114410; 613080, 4114480; 613150, 4114530; 613230, 4114530; 613280, 4114510; 613290, 4114510; 613370, 4114510; 613440, 4114470; 613460, 4114440; 613490, 4114400; 613490, 4114340; 613460, 4114300; 613460, 4114290; 613500, 4114290; 613530, 4114320; 613580, 4114320; 613610, 4114300; 613660, 4114260; 613710, 4114160; 613710, 4114090; 613700, 4114040; 613590, 4113950; 613500, 4113940; 613350, 4114030; 613350, 4114160; 613270, 4114210; 613200, 4114200; 613160, 4114140; 612630, 4114460; 612630, 4114470; 612680, 4114530; 612770, 4114560; 612830, 4114610.

Unit 8 (Kirby Unit): Santa Clara County, California. Beginning at the intersection of the intermittent creek draining Metcalf Canyon (Metcalf Canyon on the USGS Morgan Hill 7.5 minute quadrangle, 1955, photorevised 1980) with Highway 101 (current alignment, not shown on Morgan Hill quadrangle), the unit is bounded on the east, southeast, and south by Highway 101 (east edge of pavement, current alignment, not shown on the Morgan Hill quadrangle), south to where it crosses Coyote Creek. From there the boundary runs southeasterly up along Coyote Creek to the Anderson Lake dam; then east-northeasterly up the face of the dam to Anderson Lake (Anderson Reservoir). The unit is bounded on the southeast by Anderson Lake. From the northernmost tip of Anderson Lake (at latitude 37 degrees 12 minutes 15 seconds north) the boundary runs slightly north of west for a distance of about 1,097 m (3,600 ft) to a hilltop marked 379 m (1,243 ft) in elevation on the Morgan Hill quadrangle; then slightly west of northwest for a distance of about 1,707 m (5,600 ft) to a hilltop marked 411 m (1,347 ft) in elevation on the Morgan Hill quadrangle; then nearly due west for a distance of about 500 m (1,640 ft) to a hilltop marked 430 m (1,412 ft) in elevation on the Morgan Hill quadrangle; then north of northwest (bearing 325 degrees) for a distance of about 2,551 m (8,370 ft) to a hilltop marked 444 m (1,457 ft) in elevation on the Morgan Hill quadrangle; then on a line running from this hilltop south of west-southwest (bearing 237 degrees) to the intersection of the Metcalf Canyon drainage with the 354 m (1,160 ft) elevation contour as shown on the Morgan Hill quadrangle. The north boundary of the unit then continues westerly down the Metcalf Canyon drainage to the starting point.

Unit 9 (Morgan Hill Unit): Santa Clara County, California. From USGS 1:24,000 quadrangle map Morgan Hill, lands bounded by the following UTM Zone 10 NAD83 Coordinates (E,N): 617000, 4112300; 617300, 4112300; 617500, 4112000; 617600, 4112000; 617800, 4111900; 617900, 4111900; 618100, 4111800; 618100, 4111700; 618200, 4111500; 618200, 4111300; 618000, 4111100; 617700, 4110900; 617400, 4110700; 617200, 4110700; 617200, 4110900; 617000, 4111100; 616900, 4111100; 616900, 4110800; 616500, 4110800; 616300, 4110600; 616000, 4110600; 615600, 4110800; 615600, 4111000; 615700, 4111300; 615700, 4111700; 616000, 4111700; 616000, 4111800; 616200, 4111900; 616300, 4112000; 616400, 4112000; 616400, 4111900; 616500, 4111900; 616500, 4112000; 616600, 4112000; 616800, 4112200; 617000, 4112300.

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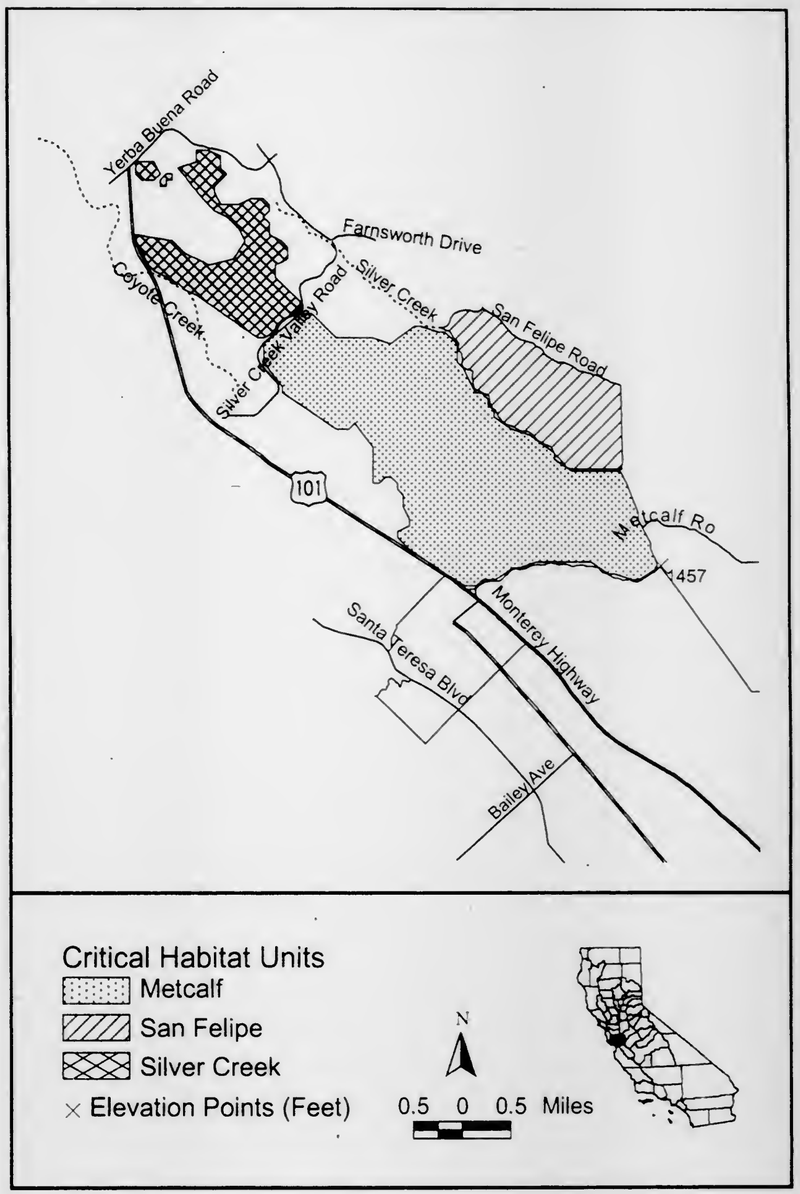
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Unit 10 (Metcalf Unit): Santa Clara County, California. From USGS 1:24,000 quadrangle maps Lick Observatory, Morgan Hill, San Jose East, and Santa Teresa Hills, lands bounded by the following zone 10 NAD83 Coordinates (E,N): 608300, 4125800; 608500, 4125800; 608900, 4125400; 609500, 4125400; 609800, 4125300; 610200, 4125600; 610300, 4125600; 610600, 4125500; 610700, 4125500; 610900, 4125300; 610900, 4125000; 611000, 4124900; 611200, 4124500; 611300, 4124500; 611400, 4124400; 611400, 4124300; 611500, 4124200; 611500, 4124100; 611800, 4123900; 612100, 4123800; 612500, 4123500; 612500, 4123400; 612800, 4123200; 613600, 4123200; 613700, 4123000; 613900, 4122500; 613900, 4122400; 614100, 4122000; 614100, 4121900; 614200, 4121700; 614200, 4121600; 613900, 4121400; 613800, 4121400; 613500, 4121500; 613400, 4121500; 613100, 4121700; 612200, 4121700; 611900, 4121600; 611800, 4121600; 611500, 4121400; 611300, 4121400; 611200, 4121300; 611000, 4121300; 610700, 4121500; 610400, 4121700; 610100, 4121900; 609900, 4122100; 609900, 4122200; 610100, 4122300; 610100, 4122400; 610000, 4122600; 610000, 4122800; 609900, 4122900; 609900, 4123000; 609800, 4123100; 609700, 4123100; 609600, 4123000; 609500, 4123000; 609500, 4123600; 609200, 4124000; 609100, 4123900; 608900, 4123900; 608000, 4124500; 608000, 4124600; 607700, 4125000; 607700, 4125300; 608300, 4125800.

Unit 11 (San Felipe Unit): Santa Clara County, California. The east boundary of the San Felipe critical habitat unit begins at the 440 m (1,445 ft) hilltop identified in the northeast boundary of the Metcalf unit (this peak is labeled on the USGS Morgan Hill 7.5 minute quadrangle (1955, photorevised 1980), near latitude 37 degrees 15 minutes north, longitude 121 degrees 43 minutes west); and proceeds from that hilltop due north to San Felipe Road at an elevation of about 296 m (970 ft) (USGS Lick Observatory 7.5 minute quadrangle, 1955, photorevised 1968); then west-northwesterly along San Felipe Road (southwest edge of pavement) for a distance of about 2.7 km (1.7 mi) to Silver Creek Road (sic). The north boundary is formed by Silver Creek Road (south edge of pavement) from San Felipe Road to Silver Creek (the creek crossing is on the USGS San Jose East 7.5 minute quadrangle, 1961, photorevised 1980). The west boundary, which abuts the Metcalf unit, runs from Silver Creek Road southeasterly along Silver Creek (mostly on Lick Observatory quadrangle). The south boundary also abuts the Metcalf unit, and runs from Silver Creek (Morgan Hill quadrangle) due east to the starting point.

Unit 12 (Silver Creek Hills Unit): Santa Clara County, California. From USGS 1:24,000 quadrangle maps San Jose East, lands bounded by the following UTM Zone 10 NAD83 Coordinates (E,N): 606600, 4128500; 606800, 4128500; 607000, 4128400; 607000, 4128200; 607100, 4128100; 606900, 4127900; 606900, 4127800; 607000, 4127600; 607300, 4127600; 607500, 4127700; 607700, 4127700; 607800, 4127600; 607800, 4127500; 607700, 4127400; 607800, 4127300; 607800, 4127100; 608000, 4127000; 608100, 4126900; 608100, 4126700; 607900, 4126600; 607900, 4126400; 608300, 4126000; 608300, 4125900; 608200, 4125800; 608000, 4125700; 607900, 4125600; 607900, 4125500; 607700, 4125400; 607600, 4125400; 606600, 4126100; 606400, 4126200; 606300, 4126300; 606200, 4126300; 606100, 4126400; 605900, 4126500; 605800, 4126600; 605600, 4127000; 605600, 4127100; 606200, 4127000; 606400, 4126800; 606800, 4126600; 607200, 4126700; 607400, 4127000; 607300, 4127200; 607100, 4127400; 606900, 4127500; 606700, 4127700; 606300, 4128200; 606600, 4128300; 606600, 4128500, including lands bounded by: 605600, 4128300; 605900, 4128300; 606000, 4128100; 605900, 4128000; 605700, 4128000; 605600, 4128100; 605600, 4128300 and lands bounded by: 606200, 4128100; 606200, 4128000; 606100, 4128000; 606100, 4127900; 606000, 4127900; 606000, 4128000; 606100, 4128100; 606200, 4128100.

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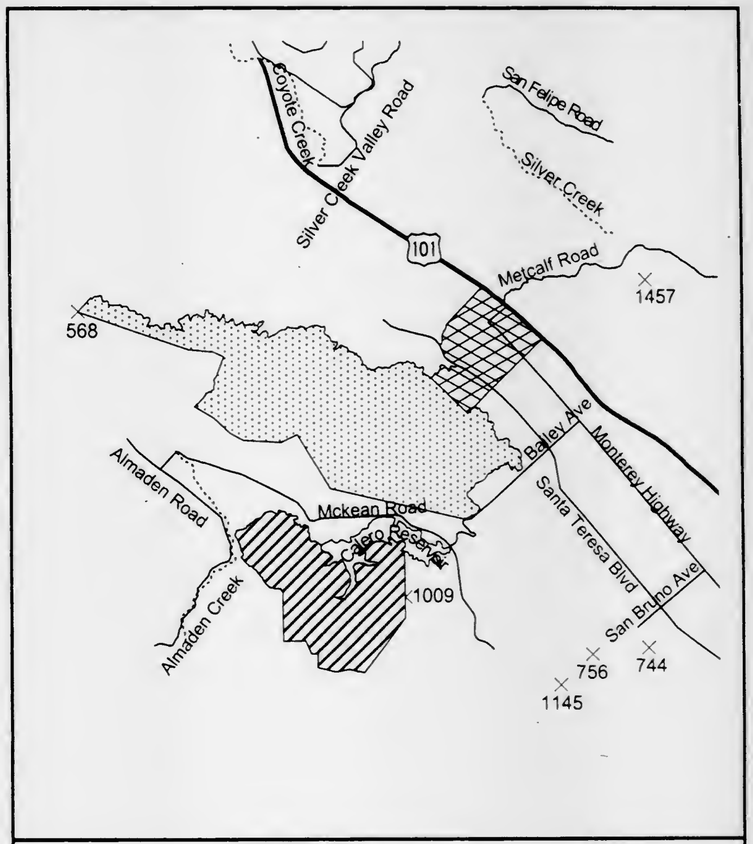
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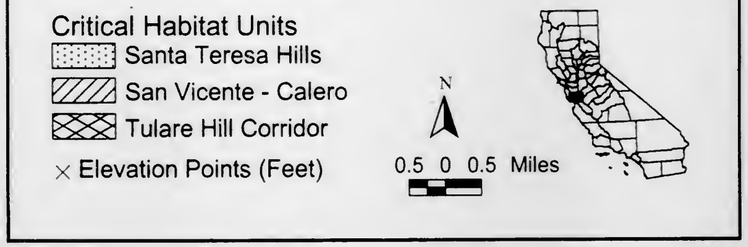
Unit 13 (San Vicente-Calero Unit): Santa Clara County, California. Bounded on the north and northwest by Calero Reservoir, by the canal and siphon running westerly of the main reservoir dam (dam on the Arroyo Calero), and by the city boundary of the City of San Jose, which follows the canal at an elevation of roughly 152 m (500 ft), as far as its intersection with Chilanian Gulch. The boundary then runs generally southeast following Chilanian Gulch to its intersection with the R.1 E./R.2 E. (Mount Diablo meridian/base line) dividing line, then due south to the Calero County Park border. The park boundary forms the rest of the western, southern, and southeastern border of the unit. The eastern border of the unit is formed by a line running due north from the southern Calero County Park boundary through a hilltop elevation labeled 307 m (1,009 ft) on the USGS Santa Teresa Hills 7.5 minute quadrangle (1953, photorevised 1980) to Calero Reservoir. This hilltop is near latitude 37 degrees 10 minutes 15 seconds north, longitude 121 degrees 46 minutes 15 seconds west.

Unit 14 (Santa Teresa Hills Unit): Santa Clara County, California. The east and southeast boundary runs as follows, beginning at the westernmost corner of the Tulare Hill Corridor unit: due southeast and then northeast along the Tulare Hill Corridor unit boundary, to the 85 m (280 ft) elevation contour (USGS Santa Teresa Hills 7.5 minute quadrangle, 1953, photorevised 1980); then southeasterly, south, and southwesterly along this elevation contour (continues onto USGS Morgan Hill 7.5 minute quadrangle, 1955, photorevised 1980, and back) to its intersection with Bailey Avenue. The south, southwest, and western border of the unit then continues from this point, along a line running west-southwesterly (bearing 248 degrees) for a distance of about 325 m (1,065 ft) to a bench mark north of Bailey Avenue labeled 108 m (354 ft) in elevation on the Santa Teresa Hills quadrangle; then north of east (bearing 284 degrees) for a distance of about 3,030 m (9,940 ft) to the intersection of a land grant boundary with a transmission line shown on the 1980 photorevised Santa Teresa Hills quadrangle at an elevation of about 152 m (500 ft); then north-northwesterly along this land grant line to the intersection with Fortini Road; then generally west-southwest and west along Fortini Road to the intersection with San Vicente Avenue (these road names do not appear on the Santa Teresa quadrangle); then westerly along San Vicente Avenue to where it turns south south-west; then continuing westerly and northwesterly from this point along a land grant boundary shown on the Santa Teresa Hills quadrangle to its intersection with both Henwood Drive (road name does not appear on the Santa Teresa quadrangle) and an unnamed intermittent drainage (tributary to Arroyo Calero); then northeasterly and northerly up this drainage as marked on the Santa Teresa Hills quadrangle to the 183 m (600 ft) elevation contour; then due north-northeast for a distance of about 424 m (1,390 ft) to the first intersection with the 280 m (920 ft) elevation contour; then west-northwest for a distance of about 265 m (870 ft) to a hilltop over 280 m (920 ft) in elevation, then slightly north of west (bearing 276 degrees) for a distance of about 543 m (1,780 ft) to the end of a dirt road as marked on the 1980 photorevised Santa Teresa Hills quadrangle; then slightly south of west-northwest (bearing 290 degrees) for a distance of about 2,551 m (8,370 ft) to a hilltop marked 173 m (568 ft) in elevation on the Santa Teresa Hills quadrangle; then due northeast to the 73 m (240 ft) elevation contour as shown on the Santa Teresa Hills quadrangle. The northern boundary of the unit is formed by the 73 m (240 ft) elevation contour as shown on the Santa Teresa Hills quadrangle.

Unit 15 (Tulare Hill Corridor Unit): Santa Clara County, California. Bounded on the northeast by the most northeasterly edge of pavement of Highway 101 (i.e., the highway itself is included, and the unit abuts the Kirby and Metcalf units). Bounded on the northwest, west, and southwest by a line extending due southwest from the northeast boundary to the corner of Cheltenham Way and Coburn Court, then southwesterly along Cheltenham Way from Coburn Court to the intersection with Santa Teresa Boulevard, then southeasterly along Santa Teresa Boulevard to the 73 m (240 ft) elevation contour as shown on the USGS Santa Teresa Hills 7.5 minute quadrangle (1953, photorevised 1980), then southwesterly along this contour to the border of Santa Teresa County Park, then along a line due southeast to the southeast border of the unit. Bounded on the southeast by a line running due northeast-southwest through the southeastern-most point of the 85 m (280 ft) contour of Tulare Hill, as shown on the Morgan Hill quadrangle.

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* * * * *

Dated: April 20, 2001.

Joseph E. Doddridge,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 01–10333 Filed 4–27–01; 8:45 am]

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Federal Register

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April 30, 2001

Part III

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Coast Guard
46 CFR Parts 4, 5, and 16

Research and Special Programs Administration
49 CFR Part 199

Federal Railroad Administration
49 CFR Part 219

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49 CFR Part 382

Federal Transit Administration
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Workplace Drug and Alcohol Testing Programs; Amendments to DOT Agency Rules Conforming to Department of Transportation Final Rule; Proposed Rules

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DEPARTMENT OF TRANSPORTATION

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Federal Motor Carrier Safety Administration

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Federal Transit Administration

49 CFR Parts 653, 654, and 655

RINs 2105–AC49, 2120–AH15, 2115–AG00, 2137–AD55, 2130–AB43, 2126–AA58, 2132–AA71

Transportation Workplace Drug and Alcohol Testing Programs; Amendments to DOT Agency Rules Conforming to Department of Transportation Final Rule

AGENCIES: Federal Aviation Administration, Coast Guard, Research and Special Programs Administration, Federal Railroad Administration, Federal Motor Carrier Safety Administration; Federal Transit Administration; Office of the Secretary, DOT.

ACTION: Notices of Proposed Rulemaking; Common Preamble.

SUMMARY: In a rule published December 19, 2000, the Department of Transportation has revised its drug and alcohol testing procedures regulation. The purposes of these proposed amendments is to make DOT agency drug and alcohol testing regulations consistent with the revised testing procedures regulation, avoid duplication and inconsistency, and make certain other changes to update and clarify the operating administration rules.

DATES: Comments should be submitted by June 14, 2001, except comments on the Coast Guard notice of proposed rulemaking, which should be submitted by June 29, 2001. Late-filed comments will be considered to the extent practicable.

ADDRESSES: See each individual DOT agency proposed rule for information on the docket number and address to use when commenting on each agency's proposed rule.

FOR FURTHER INFORMATION CONTACT: For information concerning the relationship of the proposed DOT agency amendments to the revised 49 CFR Part 40, Robert C. Ashby (400 7th St., SW., Washington DC, 20590; 202–366–9310). For information on the individual DOT agency proposed rules, see the **FOR FURTHER INFORMATION CONTACT** persons listed in each DOT agency proposed rule.

SUPPLEMENTARY INFORMATION: On December 19, 2000 (65 FR 79462), the Department of Transportation published a comprehensive revision to our drug and alcohol testing procedural rules (49 CFR part 40). The new Part 40 makes numerous changes in the way that drug and alcohol testing will be conducted in the future. While some provisions of the new rules will be made effective more quickly, as amendments to the existing Part 40, the entire revised part is scheduled to go into effect on August 1, 2001.

Part 40 is one element of a Department-wide set of regulations designed to deter and detect the use of illegal drugs and the misuse of alcohol by employees performing safety-sensitive transportation functions. It is important that the six DOT agency rules that cover specific transportation industries be consistent with the revised Part 40, to avoid duplication, conflict, or confusion among DOT regulatory requirements. For these reasons, we are proposing amendments to each of the six DOT agency drug and alcohol testing regulations connected to Part 40. We intend to issue final versions of these "conforming amendments" in time to be effective on August 1, 2001, the same date that the revised Part 40 takes effect.

There are several actions that all or some of the DOT agencies propose to take in order to ensure consistency with the revised Part 40. The next section of this preamble discusses each of these items in turn. In addition, there are some provisions of the proposed rules that are DOT agency-specific. These items are discussed in a subsequent section of the preamble.

Common Proposals

Substance Abuse Professionals and the Return-to-Duty Process

Currently, most of the DOT agency drug and alcohol testing rules have their own similar, but not identical, provisions concerning the return-to-duty (RTD) process for employees who have tested positive or otherwise violated the rules. These provisions also include (with the exception of the Coast Guard) material on the qualifications and role of the substance abuse professional (SAP).

The new Part 40 centralizes the material concerning the RTD process and the qualifications and role of SAPs. Among the provisions in new Part 40 are requirements for the qualification and training of SAPs, requirements for follow-up tests in all cases of violations, and clarification of the scope of the RTD process (i.e., that it applies following any violation, including a violation arising from a pre-employment test; that the RTD requirements follow an employee to subsequent employers).

To avoid potential duplication and inconsistency, we are proposing to remove RTD and SAP provisions from the six DOT agency rules. All six DOT agency programs would use the RTD and SAP provisions of Part 40 beginning August 1, 2001.

Pre-Employment Alcohol Testing

For several years, as the result of a court decision and subsequent legislation (§ 342 of the National Highway Systems Act of 1995), pre-employment alcohol testing requirements in the FTA, FMCSA, FRA, and FAA rules have been suspended. (Parallel pre-employment alcohol testing requirements did not exist in the RSPA and Coast Guard rules.) Section 342 deleted former provisions of the Omnibus Transportation Employee Testing Act of 1991 requiring pre-employment alcohol testing and substituted a sentence providing that "The [Secretary of Transportation's] regulations shall permit [employers] to conduct pre-employment testing of such employees for the use of alcohol."

The practical effect of the suspension of pre-employment alcohol testing requirements has been to give employers the discretion to conduct DOT pre-employment alcohol testing. However, the Department has never amended its rules to specifically reflect the legislation. In these proposed rules, we would formalize the existing situation and make the requirements consistent throughout all DOT agency rules. That is, in all six DOT agency programs, the proposed rules would authorize, but not require, employers to conduct pre-employment alcohol testing. If an employer chose to conduct pre-employment alcohol testing under Federal authority, the employer would have to conduct the testing in accordance with all Part 40 requirements.

Split Specimen Testing

At the present time, FTA, FMCSA, FRA, and FAA are required by statute to collect split specimens for drug testing. Employees have the right, within 72 hours of being notified of a verified positive test, to request a test of the split specimen at a second HHS-certified laboratory. The statute in question does not apply to the Coast Guard and RSPA programs, in which split specimen testing is currently discretionary with employers.

As noted in the Part 40 rulemaking, this situation has caused some confusion among employers, employees, and service agents. Consequently, the revised Part 40 requires split specimen testing for all DOT collections. In these proposed rules, RSPA and Coast Guard propose conforming to the Part 40 requirement to use split specimen collections in all cases. The split specimen testing rules of Part 40 (including their application to validity testing) would apply to all DOT collections, including those under RSPA and Coast Guard rules. RSPA would remove a provision allowing requests for split specimens to be made within 60 days, which is inconsistent with the 72-hour provision of Part 40 and the other operating administration rules.

Stand-Down Waivers

The new Part 40 permits employers to petition DOT agencies for a waiver allowing the employer to stand employees down following a report of a laboratory confirmed positive test or refusal, pending the outcome of the verification process. The stand-down provision contains the substantive requirements for obtaining a waiver, but does not include specific waiver procedures.

Each of the operating administrations has, or will add, its own process for granting waivers from its regulations. In each of today's proposed rules, the DOT agency involved proposes to connect its own waiver process with the stand-down waiver provision of new Part 40. Doing so will inform employers how they should frame stand-down waiver requests and to whom the requests should be sent.

Definitions

The revised Part 40 includes a number of new or altered definitions of terms. Examples of new terms are affiliate, adulterated specimen, consortium/third-party administrator (C/TPA), continuing education, designated employer representative, dilute specimen, initial and confirmatory validity test, error correction training, qualification and refresher training, service agent, stand-down, and substituted specimen. Other terms have altered definitions (e.g., employer, which now specifies that service agents are not employers).

In the interest of consistency and the convenience of having a definition in only one place, the DOT agencies are proposing to delete definitions of terms that duplicate terms defined in Part 40 (except where differences or greater specificity are needed in the agency rules). The DOT agency rules will make use of the terms defined in Part 40, and in some cases would be amended to use those terms.

Qualifications and Training

The revised Part 40 contains new or modified qualification and training requirements for testing personnel, such as collectors, breath alcohol technicians (BATs) and screening test technicians (STTs), medical review officers (MROs), and SAPs. These include requirements for qualification training, refresher training, continuing education, and error correction training.

The DOT agency rules do not need to retain provisions related to the qualifications and training of these personnel that are now covered in Part 40. Therefore, these proposed rules would delete any references to the qualifications and training of collectors, BATs and STTs, MROs, and SAPs.

Enforcement Matters

Each of the DOT agency rules incorporates Part 40 by reference. A violation of a Part 40 provision automatically becomes a violation of the DOT agency rule, and is subject to the same kinds of sanctions as other violations of the agency's rules. In some cases, the DOT agencies have predetermined sanctions for different kinds of rule violations (*e.g.*, a "penalty table"). These agencies, as part of their proposed rules, will work Part 40 violations into their sanctions systems.

Each of the proposed rules would make clear that a violation of Part 40 is a violation of DOT agency rules. In some cases, existing DOT agency rule language says that in the event of inconsistency or conflict between Part 40 and the DOT agency rule, the latter controls. This language has created confusion about the enforceability of Part 40, and the proposed rules would delete it. Where there is a difference between Part 40 and another DOT agency rule (*i.e.*, one required by a special circumstance of a particular industry or agency program), the agency rule will state the difference explicitly.

Role of C/TPAs, MROs, and Service Agents

The new Part 40 makes a significant change in the role of C/TPAs, permitting them, for the first time, to transmit some test results and other information from MROs to employers and persons designated by an employer, as permitted by Part 40, to receive information on behalf of a specified employer. Some provisions of DOT agency rules are inconsistent with this new provision, and these proposed rules would change such provisions to be consistent with new Part 40. The new Part 40 also elaborates roles and responsibilities of service agents to a greater degree than the present Part 40, and the proposed rules, where necessary, alter DOT agency rules to be consistent with these provisions.

The new Part 40 also provides more details concerning the duties and responsibilities of MROs (*e.g.*, in the validity testing process, with respect to conflicts of interest and supervision of staff). To the extent that any DOT agency rule has provisions that are inconsistent or overlapping with these provisions, the agency proposals would make appropriate changes to ensure consistency.

Employer Checks on Test Results of Applicants and Employees

Previously, only FMCSA rules had a provision requiring employees to check on the previous drug and alcohol testing results of applicants for jobs involving safety-sensitive duties. The new Part 40 applies a requirement of this kind to all the DOT agency programs. The Part 40 provision is not identical to the current FMCSA rule. For example, the new provision requires employers to ask applicants whether there were any situations in which they tested positive on a pre-employment test for an employer that subsequently did not hire them. To ensure consistency, FMCSA would delete its current pre-employment check provision. The Part 40 provision would apply to employers by virtue of the incorporation of Part 40 in the DOT agency regulations. We seek comment on whether any additional reference to the Part 40 provision is needed in the DOT agency rules.

C/TPA Reports of Refusals

Section 40.355(i) of the revised Part 40 provides that, as a general matter, service agents, including C/TPAs, must not make a determination that an employee has refused a drug or alcohol test. Section 40.355(j)(1) creates an exception to this general prohibition, permitting a service agent to make a

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determination that an employee has refused a drug or alcohol test if "You are authorized by a DOT agency regulation to do so, you schedule a required test for an owner-operator, and the individual fails to appear for the test without a legitimate reason."

This section was drafted in response to a situation that sometimes occurs, in which a C/TPA directs an owner-operator or other self-employed individual to appear for a random or other test and the individual is a "no show." Because this individual is self-employed, there is usually no party (like an employer in a larger business) who can determine that the individual has refused to test and cause the individual to be removed from performing safety-sensitive functions. Section 40.355(j)(1) contemplates that, where DOT agency regulations permit, C/TPAs could make a refusal determination in this situation, since there basically is no one else in position to do it.

At present, DOT agency regulations do not address this issue. In some cases (e.g., FRA, FTA), the provision is irrelevant, because these agencies do not regulate any owner-operators. The Department seeks comment, however, on whether DOT agencies that do regulate owner-operators or other self-employed safety-sensitive personnel should add a provision to their final conforming rules authorizing this action by C/TPAs. DOT agency rule provisions could also permit or require C/TPAs, in this situation, to report the refusals to the applicable DOT agency. The Department seeks comment on whether such a reporting authorization or requirement is advisable. Another alternative would be for Part 40 to authorize reporting of this kind on a Department-wide basis, obviating the need for amendments to individual operating administration rules.

Rulemaking Process Matters

In addition to these common provisions of the NPRMs, the individual DOT agencies, in some cases, have agency-specific provisions they wish to propose. These agency-specific provisions are discussed in the preambles to each DOT agency rule.

Each of the DOT agencies involved with this rulemaking will be reviewing one another's dockets, so that suggestions that may have been made in response to only one agency's proposed rule will be available to all the agencies. Any or all of the six agencies may make changes to their proposed rules based on comments that came into the docket of another of the agencies. In addition, in some cases one agency has proposed an idea (e.g., an FMCSA proposal to issue notices concerning random testing rates only when there is a change, rather than every year) that, after reviewing the dockets, other agencies may choose to adopt.

Regulatory Analyses and Notices

These proposed rules have been designated as non-significant under Executive Order 12886 and the Department of Transportation's Regulatory Policies and Procedures. They are non-significant because they merely make conforming changes to the revised 49 CFR Part 40, which has already been subject to extensive comment and analysis. The proposed changes would not have any incremental economic impacts on their own. The economic impacts of the underlying Part 40 changes were analyzed in connection with the Part 40 rulemaking.

Because these proposals have no incremental economic impacts, the Department certifies, under the Regulatory Flexibility Act, that these proposals, if adopted, would not have a significant economic impact on a substantial number of small entities. These proposals likewise have no incremental Federalism impacts for purposes of Executive Order 13132, so no further analysis is needed for Federalism purposes. All the information collection requirements of Part 40 have been analyzed and approved by OMB. These proposed rules would impose no information collection requirements that have not already been reviewed in context of the Part 40 rulemaking, so no further Paperwork Reduction Act review is necessary.

There are a number of other Executive Orders that can affect rulemakings. These include Executive Orders 13084 (Consultation and Coordination with Indian Tribal Governments), 12988 (Civil Justice Reform), 12875 (Enhancing the Intergovernmental Partnership), 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights), 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations), 13045 (Protection of Children from Environmental Health Risks and Safety Risks), and 12889 (Implementation of North American Free Trade Agreement). We have considered these Executive Orders in the context of this NPRM, and we believe that the proposed rules do not directly affect the matters that the Executive Orders cover.

Issued this 9th day of April 2001, at Washington, D.C.

Jon L. Jordan,

Federal Air Surgeon, Federal Aviation Administration.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

Stacy L. Gerard,

Associate Administrator for Pipeline Safety, Research and Special Programs Administration.

S. Mark Lindsey,

Acting Deputy Administrator, Federal Railroad Administration.

Julie Anna Cirillo,

Acting Deputy Administrator, Federal Motor Carrier Safety Administration.

Hiram J. Walker,

Acting Deputy Administrator, Federal Transit Administration.

Kenneth C. Edgell,

Acting Director, Office of Drug and Alcohol Policy and Compliance, Office of the Secretary.

[FR Doc. 01–9409 Filed 4–27–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA–2000–8431; Notice No. 00–14]

RIN 2120–AH15

Antidrug and Alcohol Misuse Prevention Programs for Personnel Engaged in Specified Aviation Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes amendments to the industry drug and alcohol testing regulations to conform with the changes in the Department of Transportation's revision of its drug and alcohol testing procedures regulation, Procedures for Transportation Workplace Drug and Alcohol Testing Programs. We also propose to change the antidrug and alcohol misuse prevention program regulations in light of the amendments that have been made to the medical standards and certification requirements. We further propose eliminating certain requirements under reasonable suspicion and post-accident alcohol testing because these requirements are outdated and no longer valid. These proposals are intended to update and clarify the regulations based on the Department of Transportation's revisions and previous FAA rulemakings.

DATES: Send your comments on or before June 14, 2001.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–8431 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Diane J. Wood, Manager, Drug Abatement Division, AAM–800, Office of Aviation Medicine, Federal Aviation Administration, Washington, DC 20591, telephone number (202) 267–8442.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

The Administrator will consider all comments received on or before the closing date before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals in this document may be changed in light of the comments received.

Commentators wishing the FAA to acknowledge receipt of their comments submitted in response to this document must include a pre-addressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. FAA–2000–8431." The postcard will be date stamped and mailed to the commenter.

Availability of Rulemaking Documents

You can get an electronic copy of this document using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view. You can also get an electronic copy using the Internet through FAA's web page at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or the **Federal Register**'s web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Background

On April 29, 1996, the Department of Transportation issued an advance notice of proposed rulemaking (ANPRM) (61 FR 18713) asking for suggestions in changing 49 CFR part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs. Subsequently, on December 9, 1999, a notice of proposed rulemaking (NPRM) (64 FR 69076) was issued proposing a comprehensive revision to 49 CFR part 40. The Department of Transportation (DOT) published its final rule on December 19, 2000 (65 FR 79462). As a consequence of the DOT's action, the FAA is proposing to amend its drug and alcohol testing regulations to integrate, as appropriate, the new DOT procedures.

In addition, on March 19, 1996, the FAA published a final rule, Revision of Airman's Medical Standards and Certification Procedures and Duration of Medical Certificates (54 FR 11238). This final rule amended requirements for 14 CFR part 67 medical certificate holders. Since the publication of this final rule the FAA has identified some inconsistencies between 14 CFR part 121 and 14 CFR part 67 that require modification. Changes in 14 CFR part 121 are being proposed at this time because the revision of 49 CFR part 40 is causing modifications to the portions of 14 CFR part 121 that are not consistent with the 1996 changes to 14 CFR part 67. Rather than reissuing inconsistent provisions in 14 CFR part 121, appendices I and J, this notice proposes to update the regulations consistent with 14 CFR part 67.

Two sections of 14 CFR part 121, appendix J, refer to a requirement for employers to submit information to the FAA on March 15, 1996, 1997, and 1998. Specifically, 14 CFR part 121, appendix J, sections III.B.2(b) and III.D.4(b) require employers to submit to the FAA notice of any post-accident test or reasonable suspicion test that was not completed within the eight hour period required for such tests. The reporting requirements were imposed only for the first three years after the final rule on alcohol misuse prevention became effective. Those requirements have expired, therefore we propose to eliminate those paragraphs.

The Common Preamble

A common preamble to all of the modal NPRMs proposing changes to the drug and alcohol testing rules is being published in the same issue of this **Federal Register** with this NPRM. This common preamble contains an overview of general issues related to drug and alcohol testing requirements in the transportation industry.

Section by Section Analysis

The following discusses only those portions of 14 CFR part 121, appendices I and J, which the FAA is proposing to change.

Appendix I

I. General

By this action FAA proposes to add a "General" section (I. General) and a "Purpose" section (A. Purpose) to the beginning of 14 CFR part 121, appendix I for clarity and organizational purposes. This section would include paragraph "B. DOT Procedures" and paragraph "C. Employer Responsibility." These proposed changes are necessary to clarify the responsibility of employers to follow the requirements and procedures of this appendix and 49 CFR part 40. These proposed changes also reinforce that employers are responsible for all actions

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of their officials, representatives, and service agents in carrying out the requirements of 14 CFR part 121, appendix I and 49 CFR part 40.

II. Definitions

This action proposes to change the definition of "prohibited drug" to limit the definition to the five drugs that are prohibited under 49 CFR 40.85. In addition we propose adding the phrase "except as permitted in 49 CFR part 40." The current language in 14 CFR part 121, appendix I, could be misread to mean that the use of certain prohibited drugs is permitted if authorized under state law (such as medical use of marijuana that may be recommended or prescribed by physicians in certain states that have legalized its use for the treatment of some conditions). We expect that the proposed changes would eliminate any such confusion.

We propose to change the definition of "refusal to submit" to refer to 49 CFR part 40. This would be a clarifying change.

In addition, we propose to change the definitions in 14 CFR part 121, appendix I for "verified negative test result" and "verified positive test result." These definitions are necessary because these terms are used in this appendix. The proposed definitions are intended to be consistent with the broader language for verified tests used in 49 CFR 40.3.

IV. Substances for Which Testing Must Be Conducted

This action proposes eliminating the second sentence of this section because it allows the employer to test for drugs in addition to those specified in 14 CFR part 121, appendix I with approval of the FAA under 49 CFR part 40 and for substances for which the Department of Health and Human Services has established an approved testing protocol. This action is proposed because 49 CFR 40.85 prohibits testing for additional drugs.

V. Types of Drug Testing

F. Return-to-Duty Testing. This action proposes to change the requirements of return to duty testing to conform with 49 CFR part 40, which requires the Substance Abuse Professional (SAP), not the Medical Review Officer (MRO), to determine that the employee has successfully complied with the prescribed education and/or treatment prior to allowing the person to perform safety-sensitive functions.

G. Follow-up Testing. This proposed action changes the requirements of follow-up testing to conform with 49 CFR part 40, which requires the SAP, instead of the MRO, to determine the number of follow-up tests an employee should have. This action also proposes language to conform with the 49 CFR part 40 requirement that an employee who tests positive is subject to at least six follow-up tests after returning to duty.

VI. Administrative and Other Matters

With regard to documents that an employer must maintain, this action proposes to alter this section to refer to 49 CFR part 40. 14 CFR part 121, appendix I would include those documents that are currently specified in this appendix, but which have not been moved to 49 CFR part 40.

We propose to delete current paragraphs A. and B. titled "Collection, Testing, and Rehabilitation Records" and "Laboratory Inspections" respectively. These requirements are now addressed in 49 CFR part 40.

This action proposes to eliminate parts of paragraph "C. Employee Request for Test of a Split Specimen" because 49 CFR part 40 sets out these requirements for split specimens. We propose moving paragraph C.3. to the MRO section, 14 CFR part 121, appendix I, section VII.A. because it is an MRO responsibility. This change is proposed for clarity and organizational purposes.

We propose to add a new paragraph A, "MRO Record Retention Requirements." These are not new requirements but have been consolidated here from current section VII.C. because they were not included in 49 CFR part 40. Specifically, this paragraph would include two paragraphs dealing with MRO contracting services and transfer of records.

This action proposes to include paragraph B. "Access to Records." This is not a new requirement and is currently in section VII.C.4. Moving the access to records requirement would consolidate the record requirements in one section.

This action proposes to include paragraph C. "Service Agent." This would be a conforming change to 49 CFR part 40 and would specify when service agents must have records available for inspections and investigations of the employer's antidrug program. This action proposes to change paragraph D. "Release of Drug Testing Information" to conform with 49 CFR part 40.

VII. Medical Review Officer, Substance Abuse Professional, and Employer Responsibilities

We propose to rename this section from "MRO and Substance Abuse Professional" to "Medical Review Officer, Substance Abuse Professional, and Employer Responsibilities." We also propose to rename "A. MRO and Substance Abuse Professional Duties" to "A. Medical Review Officer" and to rename "B. MRO Determinations" to "B. Substance Abuse Professional." These changes are proposed to better organize the information in this appendix and to conform to changes to 49 CFR part 40.

We propose to delete the majority of MRO and SAP responsibilities in this appendix and instead refer the reader to 49 CFR part 40. We propose to keep the MRO and employer responsibilities for 14 CFR part 67 airman medical certificate holders because these requirements are specific to the FAA. We propose to move some responsibilities from the MRO to the SAP because 49 CFR part 40 has given SAPs some duties that formerly belonged to the MROs.

In addition, we propose keeping the provision in this appendix that prohibits the MRO from delaying the verification of the primary test result pending the outcome of the split-specimen test. It will be in the section titled "VII. A. Medical Review Officer."

For organizational purposes the MRO, SAP, and Employer Responsibilities regarding 14 CFR part 67 airman certificate holders have been combined under one section. We propose titling this paragraph "C. Additional Medical Review Officer, Substance Abuse Professional, and Employer Responsibilities Regarding 14 CFR part 67 Airman Medical Certificate Holders."

The 14 CFR part 67 final rule, dated March 1996, made a verified positive drug test result a disqualifying condition for the issuance or retention of a medical certificate. Prior to this change, the MRO was required to evaluate whether a 14 CFR part 67 airman medical certificate holder was dependent on drugs following a verified positive drug test result. If an MRO determined that an individual was dependent or could not determine drug dependency, the MRO could not recommend that the individual return to duty until the individual was found to be nondependent by, or had received a special issuance from, the Federal Air Surgeon. If the MRO determined the individual to be nondependent, the MRO could recommend that the individual be returned to duty or hired to perform safety-sensitive functions with a negative test result on a return to duty drug test.

This action proposes a change to paragraph "VII.B. MRO Determinations" to reflect the 1996 amendment to 14 CFR part 67. Since the March 1996 final rule on 14 CFR part 67, the MROs have not been permitted to "make a determination of probable drug dependence or nondependence as specified in 14 CFR part 67." This proposed action would remove paragraphs 1 and 2. The proposal would alter paragraph 3, and move that paragraph to become paragraph C.3. The proposed new paragraph C.3. would delete any reference to the MRO determining dependency for persons holding an FAA medical certificate to ensure the current requirements are consistent with 14 CFR part 67. Clarifying language in paragraph C.3. would change the requirement from the MRO to the employer to forward SAP evaluations to the Federal Air Surgeon to reflect the changes in MRO duties in 49 CFR part 40.

Under current 14 CFR part 121, appendix I, the ability of the MRO to return an individual to duty is restricted if that individual is a 14 CFR part 67 medical certificate holder. Because of the changes to 49 CFR part 40, the SAP has now assumed the return to duty role. Therefore, in paragraph C.2. we propose to similarly restrict the SAP's ability to return a 14 CFR part 67 medical certificate holder to a safety-sensitive function if that medical certificate is necessary for the performance of those functions.

Because the requirements for employers are now divided between this appendix and 49 CFR part 40, there could be confusion for an employer about the steps to follow when dealing with an employee who is required to hold a 14 CFR part 67 airman medical certificate in order to perform safety-sensitive functions. Specifically, there might be confusion as to how to return such an employee to duty after a positive test result or a refusal to test.

The FAA would like to note that an employer would not be able to use an

employee who would be required to hold a 14 CFR part 67 airman medical certificate to perform safety-sensitive duties following a positive test result until and unless the Federal Air Surgeon has issued a special issuance medical certificate. This proposal continues the requirement that the employer ensure that the employee who is required to hold a 14 CFR part 67 medical certificate meets the return to duty and follow-up testing requirements in accordance with 49 CFR part 40, once the Federal Air Surgeon has recommended that the employee who holds a 14 CFR part 67 medical certificate be permitted to perform safety-sensitive duties. These are not new concepts, and have been implicit requirements under the existing regulations. The FAA requests comments on whether these requirements to follow both 14 CFR part 67 and 49 CFR part 40 should be made explicit for clarity purposes, or whether the concepts are clear enough as implied by 49 CFR part 40 and this appendix.

If an individual is not required to hold a 14 CFR part 67 medical certificate to perform safety-sensitive functions, the SAP may return the individual to duty. The individual's 14 CFR part 67 medical certificate is subject to review by the Federal Air Surgeon, but this review would not affect the SAP's ability to return the individual to duty as long as the individual did not need a 14 CFR part 67 medical certificate to perform his/her duties.

As indicated previously this action proposes to move "C. MRO Records." Anything pertinent to MRO records can be found in section VI.D.1. "Administrative and Other Matters." This proposal would place all record retention responsibilities under one section.

This action proposes to eliminate paragraph VII.D. "Evaluations and Referrals" and replace it with paragraph B. "Substance Abuse Professional." These proposed changes to Paragraph B. would refer the reader to 49 CFR part 40, Subpart O, for SAP requirements and would conform with 49 CFR part 40, which contains the specific SAP requirements. There would be no need to list the same requirements in this appendix because they are included in 49 CFR part 40.

IX. Employer's Antidrug Program

This action proposes to eliminate the requirement for an entity seeking to operate as a consortium to first seek the approval of the FAA. The terms upon which the FAA granted its approval to consortia have now been changed by the requirements of 49 CFR part 40.

Also, in the common preamble published today by DOT, it is emphasized that the six DOT agencies that cover specific transportation industries needed to revise their rules to be consistent with 49 CFR part 40. It would be inappropriate for the FAA to separately grant consortium approvals when the DOT and the other modal administrations do not grant such approvals. Retaining the provision for consortium approvals by the FAA could cause confusion among the DOT regulated entities that DOT is trying to avoid.

If consortium approvals are eliminated within this appendix, then any reference to an "FAA-approved consortium" or "consortium" would be replaced with "consortium/third party administrator" as defined by 49 CFR part 40. We are seeking public comment on the elimination of the consortium approval process and the substitution of the 49 CFR part 40 term "consortium/third party administrator" at any point that consortia are referenced, as appropriate.

XII. Employees Located Outside the Territory of the United States

This action proposes a change to the title of the section to "XII. Testing Outside the Territory of the United States." While 49 CFR part 40 authorizes laboratory and MRO functions to occur outside the United States in Canada and Mexico, we are proposing to clarify that this authorization would not apply to entities regulated by this appendix. We are proposing to change paragraph A. to make it explicit that no part of the testing process, including specimen collection, laboratory processing, and MRO actions, shall be conducted outside the territory of the United States.

It is important to note that, unlike DOT agencies that require drug testing by entities outside the United States, the FAA's regulations apply only to United States' entities and testing is confined to the soil of the United States and its territories. We acknowledge that it may be more convenient and practical for entities conducting testing outside the United States to use local laboratories and MROs, however, the situation is different in aviation because testing is prohibited outside the United States and its territories. The FAA has consistently declined to take a unilateral approach to testing outside the United States, and instead has been working productively with the International Civil Aviation Organization (ICAO) to develop a multilateral approach to drug and alcohol testing consistent with the Chicago Convention. The FAA's efforts through ICAO have been successful in supporting an aviation environment free of substance abuse. However, if the threat to aviation safety posed by substance abuse increases, or requires additional efforts and the international community has not adequately responded, the FAA will consider taking appropriate rulemaking action. The proposed change conforms to past FAA guidance on this section, to past practice, and to our commitment to continue to work with the International Civil Aviation Organization to address all aspects of international substance abuse testing.

XIII. Waivers From 49 CFR 40.21

This action proposes to add this section to address a new provision introduced in 49 CFR part 40, which would permit waivers from 49 CFR 40.21. Under 49 CFR 40.21, an employer is prohibited from temporarily removing an employee from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or a drug metabolite, an adulterated test, or a substituted test before the MRO has completed verification of the test result. This practice is described in 49 CFR 40.21 as "stand down." However, 49 CFR 40.21 (b) permits an employer to seek a waiver from 49 CFR 40.21 (a), thereby permitting the employer to stand down its employees.

In order to implement the waiver provision of 49 CFR 40.21, the FAA proposes to add a new section to this appendix. There has been no past practice of granting waivers to the FAA's drug testing regulations. Therefore, this provision is proposed to create a process to address the requests for waiver from the stand down provisions of 49 CFR 40.21. Consistent with the requirements for seeking a waiver under 49 CFR 40.21(b), this section proposes to place the responsibility upon the applicant to provide sufficient factual information, analysis and justification to obtain a waiver from the stand down provision. The FAA is given discretion, by 49 CFR 40.21(b), to grant, deny, grant with conditions, modify, and revoke waivers. Because this is detailed in 49 CFR 40.21(b), the proposed language does not address the FAA's discretion on these matters.

Appendix J

I. General

This change proposes to add a paragraph "C. Employer Responsibility." The reason for this proposed change would be to ensure that employers understand that they are responsible for all applicable requirements and procedures of this appendix and 49 CFR part 40. These proposed changes would also reinforce that employers are responsible for all actions of their officials, representatives, and service agents in carrying out the requirements of the DOT agency regulations. These proposed changes would also conform to 49 CFR part 40.

This action proposes to reletter paragraph "C. Definitions" to paragraph "D. Definitions." This action also proposes the following changes to paragraph "D. Definitions."

- Delete the definition of "Consortium" because the definition is provided in 49 CFR part 40.
- Delete the definition of "Confirmation Test" because the definition is provided in 49 CFR part 40. It is redundant to list it again in this appendix.
- Change the definition of "refusal to submit to an alcohol test" to refer to 49 CFR part 40. This would be a clarifying change.
- Delete the definition of "Screening Test" since the definition is provided in 49 CFR part 40. There is no need to repeat the definition in the appendix.
- The remaining paragraphs will be relettered accordingly.

III. Tests Required

A. Pre-employment Testing. In order to standardize the pre-employment alcohol testing requirements, all of the Department of Transportation modal administrations are proposing the same rule language. For a discussion of the proposal, see the Department of Transportation's common preamble that is being published concurrently with this proposal.

B. Post-accident Testing. This action proposes the elimination of paragraph 2(b) in its entirety. This paragraph requires specific data to be submitted to the FAA by March

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15, 1996, 1997, and 1998. The timeframes have expired and submission of the data is no longer required.

D. Reasonable Suspicion Testing. This change proposes the elimination of paragraph 4(b) in its entirety. This paragraph requires specific data to be submitted to the FAA by March 15, 1996, 1997, and 1998. The timeframes have expired and submission of the data is no longer required.

This action also proposes to eliminate in paragraph 4(d) the words "Except as provided in paragraph (b)" since paragraph (b) has been eliminated.

E. Return to Duty Testing. This action proposes to change the requirements of return to duty testing to conform with 49 CFR part 40, which now requires the SAP to determine that the employee has successfully complied with the prescribed education and/or treatment prior to allowing the person to perform safety-sensitive functions.

F. Follow-up Testing. This action proposes to change the requirements of follow-up testing to conform with 49 CFR part 40, which requires the SAP to determine the number of follow-up tests an employee should have. This change would conform with the 49 CFR part 40 requirement that any employee who receives an alcohol violation is subject to at least six follow-up tests after returning to duty. In addition, this paragraph would be reorganized for clarity.

IV. Handling of Test Results, Record Retention and Confidentiality

A. Retention of Records. This action proposes to specify the records employers must continue to retain in addition to the records required by 49 CFR part 40.

Specifically, this action proposes to eliminate the reference to recordkeeping requirements, except annual reports submitted to the FAA, because these recordkeeping requirements are included in 49 CFR part 40. For clarity, we moved all existing record requirements throughout paragraphs 2 and 3 into the appropriate sections of the proposed paragraph 2 and noted the specific retention period for the records. We eliminated 2(c) because all of the 1-year requirements are included in 49 CFR part 40.

C. Access to Records and Facilities. This action proposes the elimination of most of this section because 49 CFR part 40 sets out the confidentiality and release of information requirements. We propose to retain the current paragraph number 8, which would now be renumbered as paragraph 2, because it reinforces to the employer the requirement to comply with this appendix regarding access to all facilities.

V. Consequences for Employees Engaging in Alcohol-Related Conduct

C. Notice to Federal Air Surgeon. In light of the changes to 49 CFR part 40 and the changes that were made to 14 CFR part 121, appendix I, because of the 1996 amendment to 14 CFR part 67, this action proposes to change paragraph 4 to parallel the changes to 14 CFR part 121, appendix I. In addition, this action proposes to add a new paragraph 5, which would clarify the employer's obligation to ensure that the employee met the return to duty requirements, following the recommendation of the Federal Air Surgeon. This is a current requirement that is being clarified. Also, this requirement conforms to 49 CFR part 40.

VI. Alcohol Misuse Information, Training, and Substance Abuse Professional

This action proposes to change the title from "VI. Alcohol Misuse Information, Training, and Referral" to "VI. Alcohol Misuse Information, Training, and Substance Abuse Professional" for clarity and organizational purposes.

This action proposes to change the title of "C. Referral, Evaluation, and Treatment" to "C. Substance Abuse Professional Duties" for clarity purposes and to conform to 49 CFR part 40. We propose the elimination of the majority of this paragraph because the SAP requirements are detailed in 49 CFR part 40, Subpart O. This paragraph would now refer the reader to 49 CFR part 40 for SAP requirements.

VII. Employer's Alcohol Misuse Prevention Program

This action proposes to eliminate the requirement for an entity seeking to operate as a consortium to first submit to the FAA an alcohol misuse prevention program (AMPP) certification statement. For the same reasons that we propose to eliminate consortium approvals in section IX of this appendix, we propose to eliminate the requirement for consortia to submit AMPPs to the FAA.

Also, we propose that any references to an "FAA-approved consortium" or "consortium" would be replaced with "consortium/ third party administrator" as defined by 49 CFR part 40, as appropriate. We propose to strike the definition of "consortium" in section I, paragraph C of this appendix.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has determined that there are no new requirements for information collection associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Executive Order 12866 and DOT Regulatory Policies and Procedures

The DOT prepared a regulatory analysis indicating that the modal proposals due to the changes in 49 CFR part 40 would not have any incremental economic impacts on their own. DOT also indicated that the modal proposed rules have been designated as non-significant under Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. See the Department of Transportation's common preamble, "Transportation Workplace Drug and Alcohol Testing Programs; Amendments to DOT Agency Rules Conforming to 49 CFR Part 40" for the regulatory evaluation of the actions that the FAA is proposing due to 49 CFR part 40.

In addition to the FAA's proposed changes that are directly due to changes in 49 CFR part 40, the FAA is proposing certain clarifying changes to 14 CFR part 121, appendices I and J that are not directly due to 49 CFR part 40. Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both the costs and benefits of a regulatory change. The FAA is not allowed to propose or adopt a regulation unless a reasoned determination is made that the benefits of the intended regulation justify the costs. The FAA's assessment of this Notice of Proposed Rulemaking indicates that its economic impact would be minimal. Since the costs and benefits of this proposed rule do not make it a "significant regulatory action" as defined in the Order, the FAA has not prepared a "regulatory evaluation," which is the written cost/benefit analysis ordinarily required for all rulemaking proposals under the DOT Regulatory Policies and Procedures. The FAA does not need to do the latter analysis where the economic impact of a proposal is minimal. The changes that are being proposed because of changes to 49 CFR part 40 would have no incremental economic impacts on their own, and the additional clarifying changes that are being proposed would impose no new requirements; they would merely clarify existing requirements.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Because the changes proposed in this action are a reworking of existing requirements and have been subject to extensive comment and analysis in the 49 CFR part 40 rulemaking or are merely clarifying changes and should not have incremental economic impacts on their own, the FAA certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this proposed rule and has determined that it would have no affect on any trade-sensitive activity.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private section; such a mandate is deemed to be a "significant regulatory action."

This proposed rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this notice of proposed rulemaking would not have federalism implications.

Environmental Analysis

FAA order 1050.1d defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1d, appendix 4, paragraph 4(j), regulations, standards, and exemptions (excluding those which, if implemented, may cause a significant impact on the human environment) qualify for a categorical exclusion. The FAA proposes that this action qualifies for a categorical exclusion because no significant impacts to the environment are expected to result from its finalization or implementation.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the notice is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Aircraft pilots, Airmen, Alcohol abuse, Aviation safety, Charter flights, Drug abuse, Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 121 of Title 14, Code of Federal Regulations, as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

2. Amend appendix I to part 121 as follows:

A. Revise section I;

B. In section II, revise the definitions of "Prohibited drug" and "Refusal to submit"; remove the definitions of "Verified negative drug test result" and "Verified positive drug test result"; and add new definitions of "Verified negative drug test" and "Verified positive drug test" in alphabetical order;

C. Revise section IV;

D. In section V, revise paragraphs F. and G.2., G3., and G.4;

E. In section VI, revise paragraphs A, B, C and D.

F. In section VII, revise the heading of the section, and revise paragraphs A, B, and C;

G. In section XII, revise the heading of the section and the introductory text in paragraph A; and

H. Add section XIII.

The revisions and additions read as follows:

Appendix I to Part 121—Drug Testing Program

* * * * *

I. General

A. *Purpose.* The purpose of this appendix is to establish a program designed to help prevent accidents and injuries resulting from the use of prohibited drugs by employees who perform safety-sensitive functions.

B. *DOT Procedures.* Each employer shall ensure that drug testing programs conducted pursuant to 14 CFR parts 65, 121, and 135 of this chapter comply with the requirements of this appendix and the "Procedures for Transportation Workplace Drug Testing Programs" published by the Department of Transportation (DOT) (49 CFR part 40). An employer may not use or contract with any drug testing laboratory that is not certified by the Department of Health and Human Services (HHS) under the National Laboratory Certification Program.

C. *Employer Responsibility.* As an employer, you are responsible for all actions of your officials, representatives, and service agents in carrying out the requirements of this appendix and 49 CFR part 40.

II. *Definitions.* * * *

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Prohibited drug means marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines, except as permitted by 49 CFR part 40.

* * * * *

Refusal to submit means that a covered employee engages in conduct specified in 49 CFR 40.191.

* * * * *

Verified negative drug test means a drug test result from an HHS-certified laboratory that has undergone review by an MRO and has been determined by the MRO to be a negative result.

Verified positive drug test means a drug test result from an HHS-certified laboratory that has undergone review by an MRO and has been determined by the MRO to be a positive result.

* * * * *

IV. *Substances for Which Testing Must Be Conducted.* Each employer shall test each employee who performs a safety-sensitive function for evidence of marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines during each test required by section V. of this appendix.

V. *Types of Drug Testing Required.* * * *

* * * * *

F. *Return to Duty Testing.* Each employer shall ensure that before an individual is returned to duty to perform a safety-sensitive function after refusing to submit to a drug test required by this appendix or receiving a verified positive drug test result on a test conducted under this appendix the individual shall undergo a return to duty drug test. No employer shall allow an individual required to undergo return to duty testing to perform a safety-sensitive function unless the employer has received a verified negative return to duty drug test result for the individual. The test cannot occur until after the SAP has determined that the employee has successfully complied with the prescribed education and/or treatment.

G. *Follow-up Testing.* * * *

* * * * *

2. The number and frequency of such testing shall be determined by the employer's Substance Abuse Professional, but shall consist of at least six tests in the first 12 months following the employee's return to duty.

3. The employer may direct the employee to undergo testing for alcohol in accordance with appendix J of this part, in addition to drugs, if the Substance Abuse Professional determines that alcohol testing is necessary for the particular employee. Any such alcohol testing shall be conducted in accordance with the provisions of 49 CFR part 40.

4. Follow-up testing shall not exceed 60 months after the date the individual begins to perform or returns to the performance of a safety-sensitive function. The Substance Abuse Professional may terminate the requirement for follow-up testing at any time after the first six tests have been conducted, if the Substance Abuse Professional determines that such testing is no longer necessary.

VI. *Administrative and Other Matters.* A. *MRO Record Retention Requirements.* 1. Records concerning drug tests confirmed positive by the laboratory shall be maintained by the MRO for 5 years. Such records include the MRO copies of the custody and control form, medical interviews, documentation of the basis for verifying as negative test results confirmed as positive by the laboratory, any other documentation concerning the MRO's verification process.

2. Should the employer change MROs for any reason, the MRO shall forward all records maintained pursuant to this rule to the new MRO within ten working days of receiving notice from the employer of the new MRO's name and address.

3. Any employer obtaining MRO services by contract, including a contract through a consortium, shall ensure that the contract includes a recordkeeping provision that is consistent with this paragraph, including requirements for transferring records to a new MRO.

B. *Access to Records.* The employer and the MRO shall permit the Administrator or the Administrator's representative to examine records required to be kept under this appendix and 49 CFR part 40. The Administrator may require that all records maintained by the service agent for the employer must be produced at the employer's place of business.

C. *Service Agents.* In accordance with 49 CFR part 40, service agents may maintain records for the employer. If requested by the Administrator or the Administrator's representative, all records maintained by the service agent for the employer must be produced at the service agent's place of business by the first day of a scheduled inspection or investigation of the employer's antidrug program.

D. *Release of Drug Testing Information.* An employer shall release information regarding an employee's drug testing results, evaluation, or rehabilitation to a third party in accordance with 49 CFR part 40. Except as required by law, this appendix, or 49 CFR part 40, no employer shall release employee information.

* * * * *

VII. *Medical Review Officer, Substance Abuse Professional, and Employer Responsibilities.* * * *

A. *Medical Review Officer (MRO).* The MRO must perform the functions set forth in 49 CFR part 40, Subpart G, and this appendix. The MRO shall not delay verification of the primary test result following a request for a split specimen test unless such delay is based on reasons other than the fact that the split specimen test result is pending. If the primary test result is verified as positive, actions required under this rule (e.g., notification to the Federal Air Surgeon, removal from safety-sensitive position) are not stayed during the 72-hour request period or pending receipt of the split specimen test result.

B. *Substance Abuse Professional (SAP).* The SAP must perform the functions set forth in 49 CFR part 40, Subpart O.

C. *Additional Medical Review Officer, Substance Abuse Professional, and Employer Responsibilities Regarding 14 CFR part 67 Airman Medical Certificate Holders.*

1. As part of verifying a confirmed positive test result, the MRO shall inquire, and the individual shall disclose, whether the individual is or would be required to hold a medical certificate issued under 14 CFR part 67 of this chapter to perform a safety sensitive function for the employer. If the individual answers in the negative, the MRO shall then inquire, and the individual shall disclose, whether the individual currently holds a medical certificate issued under 14 CFR part 67. If the individual answers in the affirmative to either question, the MRO must forward to the Federal Air Surgeon, at the address listed in paragraph 4, the name of the individual, along with identifying information and supporting documentation, within 12 working days after verifying a positive drug test result.

2. The SAP shall inquire, and the individual shall disclose, whether the individual is or would be required to hold a medical certificate issued under 14 CFR part 67 of this chapter to perform a safety sensitive function for the employer. If the individual answers in the affirmative, the SAP cannot recommend that the individual be returned to a safety-sensitive function that requires the individual to hold a 14 CFR part 67 medical certificate unless and until such individual has received a special issuance medical certificate from the Federal Air Surgeon. The receipt of a special issuance medical certificate does not alter any obligations otherwise required by 49 CFR part 40 or this appendix.

3. The employer must forward to the Federal Air Surgeon a copy of any report provided by the SAP, if available, regarding an individual for whom the MRO has provided a report to the Federal Air Surgeon under section VII.C.1 of this appendix, within 12 working days of the employer's receipt of the report.

4. All reports required under this section shall be forwarded to the Federal Air Surgeon, Federal Aviation Administration, Attn: Drug Abatement Division (AAM–800), 800 Independence Avenue, SW., Washington, DC 20591.

* * * * *

XII. *Testing Outside the Territory of the United States.* A. No part of the testing process (including specimen collection, laboratory processing, and MRO actions) shall be conducted outside the territory of the United States.

* * * * *

XIII. *Waivers from 49 CFR 40.21.* An employer subject to this part may petition the Drug Abatement Division, Office of Aviation Medicine, for a waiver allowing the employer to stand down an employee following a report of a laboratory confirmed positive drug test or refusal, pending the outcome of the verification process.

A. Each petition for a waiver must be in writing and include substantial facts and justification to support the waiver. Each petition must satisfy the substantive requirements for obtaining a waiver, as provided in 49 CFR 40.21.

B. Each petition for a waiver must be submitted to the Federal Aviation Administration, Office of Aviation Medicine, Drug Abatement Division (AAM–800), 800 Independence Avenue, SW., Washington, D.C. 20591.

C. The Administrator may grant a waiver subject to 49 CFR 40.21(d).

3. In appendix J to part 121:

A. In section I, redesignate paragraphs C through F as paragraphs D through G, add new paragraph C, and amend redesignated paragraph D by removing the definitions for "Consortium", "*Refuse to submit*", and by adding a definition for "*Refusal to submit (to an alcohol test)*" in alphabetical order;

B. In section III, revise paragraphs A, B heading, and B.2; remove paragraph D.4.(b); redesignate paragraphs D.4. (c) and D.4.(d) as paragraphs D.4. (b) and D.4. (c); revise redesignated paragraph D. 4. (c); and revise paragraphs E, and F;

C. In section IV, revise paragraphs A.1, A.2, and C.2, and remove paragraphs C.3 through C.8;

D. In section V, revise paragraph C.4 and add paragraph C.5; and

E. In section VI, revise the heading and paragraph C.

The revisions and additions read as follows:

Appendix J to Part 121—Alcohol Misuse Prevention Program

* * * * *

I. General

* * * * *

C. *Employer Responsibility.* As an employer, you are responsible for all actions of your officials, representatives, and service agents in carrying out the requirements of the DOT agency regulations.

D. *Definitions*

* * * * *

Refusal to submit (to an alcohol test) means that a covered employee engages in conduct specified in 49 CFR 40.261.

* * * * *

III. Tests Required

A. Pre-employment testing

As an employer, you may, but are not required to, conduct pre-employment alcohol testing under this part. If you choose to conduct pre-employment alcohol testing, you must comply with the following requirements:

1. You must conduct a pre-employment alcohol test before the first performance of safety-sensitive functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of safety-sensitive functions).

2. You must treat all safety-sensitive employees performing safety-sensitive functions the same for the purpose of pre-employment alcohol testing (i.e., you must not test some covered employees and not others).

3. You must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test.

4. You must conduct all pre-employment alcohol tests using the alcohol testing procedures of 49 CFR Part 40.

5. You must not allow a covered employee to begin performing safety-sensitive functions unless the result of the employee's test indicates an alcohol concentration of less than 0.04.

B. Post-Accident Testing

* * * * *

2. If a test required by this section is not administered within 2 hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within 8 hours following the accident, the employer shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. Records shall be submitted to the FAA upon request of the Administrator or his or her designee.

* * * * *

D. Reasonable Suspicion Testing

* * * * *

4. * * *

(c) No employer shall take any action under this appendix against a covered employee based solely on the employee's behavior and appearance in the absence of an alcohol test. This does not prohibit an employer with authority independent of this appendix from taking any action otherwise consistent with law.

E. Return to Duty Testing

Each employer shall ensure that before a covered employee returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited in § 65.46a, § 121.458, or § 135.253 of this chapter, the employee shall undergo a return to duty alcohol test with a result indicating an alcohol concentration of less than 0.02. The test cannot occur until after the SAP (See paragraph V. C. 4 of this appendix) has determined that the employee has successfully complied with the prescribed education and/or treatment.

F. Follow-up Testing

1. Each employer shall ensure that the employee who engages in conduct prohibited by § 65.46a, § 121.458, or § 135.253 of this chapter is subject to unannounced follow-up alcohol testing as directed by a substance abuse professional.

2. The number and frequency of such testing shall be determined by the employer's Substance Abuse Professional, but must consist of at least six tests in the first 12 months following the employee's return to duty.

3. The employer may direct the employee to undergo testing for drugs, if the SAP determines that drug testing is necessary for the particular employee. Any such drug testing shall be conducted in accordance with the provisions of 49 CFR part 40.

4. Follow-up testing shall not exceed 60 months after the date the individual begins to perform or returns to the performance of a safety-sensitive function. The SAP may terminate the requirement for follow-up testing at any time after the first six tests have been conducted, if the SAP determines that such testing is no longer necessary.

5. A covered employee shall be tested for alcohol under this paragraph only while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions.

* * * * *

IV. Handling of Test Results, Record Retention, and Confidentiality

A. Retention of Records

1. *General Requirement.* In addition to the records required to be maintained under 49 CFR part 40, employers must maintain records required by this appendix in a secure location with controlled access.

2. *Period of retention.*

(a) *Five years.*

(1) Copies of any annual reports submitted to the FAA under this appendix for a minimum of 5 years.

(2) Records of notifications to the Federal Air Surgeon of violations of the alcohol misuse prohibitions in this chapter by covered employees who hold medical certificates issued under part 67 of this chapter.

(3) Documents presented by a covered employee to dispute the result of an alcohol test administered under this appendix.

(4) Records related to other violations of § 65.46a, § 121.458, or § 135.253 of this chapter.

(b) *Two years.* Records related to the testing process and training required under this appendix.

(1) Documents related to the random selection process.

(2) Documents generated in connection with decisions to administer reasonable suspicion alcohol tests.

(3) Documents generated in connection with decisions on post-accident tests.

(4) Documents verifying existence of a medical explanation of the inability of a covered employee to provide adequate breath for testing.

(5) Materials on alcohol misuse awareness, including a copy of the employer's policy on alcohol misuse.

(6) Documentation of compliance with the requirements of section VI, paragraph A of this appendix.

(7) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol testing based on reasonable suspicion.

(8) Certification that any training conducted under this appendix complies with the requirements for such training.

* * * * *

C. Access to Records and Facilities

* * * * *

2. Each employer shall permit access to all facilities utilized in complying with the requirements of this appendix to the Secretary of Transportation or any DOT agency with regulatory authority over the employer or any of its covered employees.

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V. Consequences for Employees Engaging in Alcohol-Related Conduct

* * * * *

C. Notice to the Federal Air Surgeon

* * * * *

4. No covered employee who is required to hold a medical certificate under part 67 of this chapter to perform a safety-sensitive duty shall perform that duty following a violation of this appendix until and unless the Federal Air Surgeon has recommended that the employee be permitted to perform such duties.

5. Once the Federal Air Surgeon has recommended under paragraph C.4. of this section that the employee be permitted to perform safety-sensitive duties, the employer cannot permit the employee to perform those safety-sensitive duties until the employer has ensured that the employee meets the return-to-duty requirements in accordance with 49 CFR part 40.

* * * * *

VI. Alcohol Misuse Information, Training, and Substance Abuse Professional

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C. Substance Abuse Professional Duties (SAP)

The SAP must perform the functions set forth in 49 CFR part 40, Subpart O and this appendix.

* * * * *

Issued in Washington, DC on April 11, 2001.

Jon L. Jordan,

Federal Air Surgeon.

[FR Doc. 01–9410 Filed 4–27–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 4, 5, and 16

[USCG–2000–7759]

RIN 2115–AG00

Chemical Testing

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise its chemical drug testing regulations to conform with the Department of Transportation's (DOT) final rule on drug testing procedures published in the **Federal Register** on December 19, 2000. The Coast Guard proposes to amend the regulations on Marine Casualties and Investigations and Chemical Testing by removing obsolete sections and sections duplicating the DOT regulations; adding new definitions; and modifying existing text to incorporate new terms and procedures contained in the DOT procedural requirements. This rulemaking would conform Coast Guard rules to the new requirements established by the December 19, 2000, DOT final rule.

DATES: Comments and related material must reach the Docket Management Facility on or before June 29, 2001.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2000–7759), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call LT Jennifer Ledbetter, Coast Guard, telephone 202–267–0684. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–2000–7759), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On December 19, 2000 (65 FR 79462), the Department of Transportation (DOT) published a comprehensive revision to their drug and alcohol testing procedural rules (49 CFR Part 40). The revised Part 40 makes numerous changes in the way that drug and alcohol testing will be conducted in the future. While some provisions of the new rule will be made effective more quickly, as amendments to the existing Part 40, the entire revised part is scheduled to go into effect on August 1, 2001.

Part 40 is one element of a One-DOT set of regulations designed to deter and detect the use of illegal drugs and the misuse of alcohol by employees performing safety-sensitive transportation functions. DOT has published a summary of the major changes affecting the modal drug testing rules. These major changes include changes to the "return to duty" process (49 CFR 40.21); a requirement that all modes collect "split specimens" for drug testing (49 CFR 40.71 and subpart H); a new DOT process for employers to request waiver of the policy against stand down of employees pending completion of the test verification process (49 CFR 40.21); changes in qualifications and training requirements for testing personnel, medical review officers, and other technicians and substance abuse professionals (49 CFR 40.33,121 and 281); revised role of consortium/third-party administrators (C/TPA) (49 CFR 40.345 and 347); and a requirement that employers check with previous employers for drug and alcohol testing results of applicants for safety sensitive jobs (49 CFR 40.25).

It is important that the six DOT agency rules that cover specific transportation industries be consistent with the revised Part 40 to avoid duplication, conflict, or confusion among DOT regulatory requirements. For these reasons, the Coast Guard is proposing revisions to our drug and alcohol testing regulations affected by Part 40. We intend to issue final versions of these "conforming amendments" in time to be effective on August 1, 2001, the same date that the revised Part 40 takes effect.

There are several changes that we propose to make to ensure consistency with the revised Part 40. The next section of this preamble discusses each of these items in turn.

Discussion of Proposed Rule

The Coast Guard proposes to revise its chemical drug testing regulations to conform with the Department of Transportation's (DOT) final rule on drug testing procedures published on December 19, 2000 **Federal Register** (65 FR 79462). This NPRM would conform Coast Guard rules to the new requirements established today by 49 CFR Part 40. The Coast Guard proposes to revise 46 CFR Parts 4, 5, and 16 by removing obsolete sections and sections duplicating the DOT regulations; adding new definitions; and modifying existing text to incorporate new terms and procedures contained in the DOT procedural requirements

Some new DOT requirements, such as the requirement for split specimens, can be implemented without a revision or conforming amendment to Coast Guard regulations. In this case, the requirement is in 49 CFR Part 40, and our regulations require employers to follow the procedures in that part when conducting required chemical tests for dangerous drugs.

The DOT revisions include new qualification and training requirements for Medical Review Officers (MROs) and Substance Abuse Professionals (SAPs). The Coast Guard is not proposing to change the current dual role of the MRO in the return-to-duty decision process. However, where an individual performs both SAP and MRO functions. Part 40 requires the individual to meet the qualification and training requirements for individuals performing each of these functions. We request comments on how these changes should be implemented by the Coast Guard. Should an MRO, in order to perform SAP functions, separately have to meet the SAP training requirements? Should fulfillment of the MRO training requirements satisfy the requirements for SAP training? Should the MRO, performing what are called SAP functions in Part 40, have to follow the same Part 40 procedures as SAPs in the return to duty process?

Other DOT changes, such as the minimum number of follow-up drug tests required during the first year after return to work in a safety-sensitive position, would require a conforming amendment to add this requirement to our existing regulatory text.

The following is a brief discussion of how the Coast Guard proposes to amend its regulations affected by DOT's final rule.

46 CFR Part 4

Throughout this part, we propose to update cross-references to point to the revised sections in 49 CFR Part 40 and the proposed revisions to 46 CFR Part 16.

46 CFR Part 5

Table 5.569. We propose to clarify the Table of Appropriate Orders in § 5.569 to distinguish between a Chemical test for dangerous drugs and for alcohol, because Part 40 treats them separately.

46 CFR Part 16

Definitions. We propose to change some definitions in § 16.105 by removing terms that are no longer used in 46 CFR Part 16 or 49 CFR Part 40; by revising terms to conform to the definitions in 49 CFR Part 40; and by adding terms found in 49 CFR Part 40 that are currently not found in 46 CFR Part 16.

New Sections

We would add § 16.107 *Waivers.* This section would contain existing waivers as well as the new DOT waiver for stand-down of crewmembers following a confirmed positive test.

We propose adding a § 16.109 describing DOT's new Public Interest Exclusion (PIE) in 49 CFR Part 40, subpart R.

We propose adding § 16.115 *Penalties.* to inform the public of the penalties prescribed by 46 U.S.C. 2115 for violation of dangerous drug and alcohol testing regulations.

We also propose adding § 16.203 *Employer responsibilities.* to restate DOT's general requirements for employers in 49 CFR Part 40, subpart B.

Revisions

Section 16.201 Application. In § 16.201 we propose revising paragraph (a) by requiring all chemical drug tests to be conducted as detailed in the procedures found in 49 CFR 40. We would revise paragraph (c) to require a sponsoring organization, like employers and prospective employers, to report a mariner's positive chemical drug test to the nearest Coast Guard Officer in Charge, Marine Inspection. We would update the cross-reference to § 16.370 in paragraph (e).

Section 16.207 Conflict with foreign laws. We propose to remove the section heading and paragraph (a) of this section because it is obsolete. The delayed date for testing vessels operating in foreign jurisdictions has expired and this paragraph is no longer needed.

Section 16.260 Records. We propose to revise § 16.260(a) by adding a cross-reference to DOT recordkeeping requirements in 49 CFR 40.333.

Subpart C. Most of the requirements in Subpart C are now covered in detail by the revised 49 CFR Part 40 and these sections are no longer needed in Part 16. In Subpart C, § 16.301, § 16.350(b), and § 16.370(d) are not covered in detail by 49 CFR Part 40. We propose to redesignate these paragraphs.

Section 16.370(d) currently requires an MRO to determine when an individual is ready to return to work after testing positive and allows the MRO to prescribe follow-up testing for up to 60 months as appropriate. In order to ensure intermodal consistency, DOT has prescribed a mandatory minimum number of follow-up tests after return to work. We propose to revise § 16.370(d) to include the new DOT requirement for a minimum of 6 follow-up drug tests during the first year after an individual returns to work. This new requirement would be in addition to all other Coast Guard requirements for rehabilitation and education following a positive drug test. Revised § 16.370(d) would be redesignated and we propose to remove the remaining provisions in Subpart C.

Regulatory Evaluation

DOT has assessed the economic impacts of this proposed rulemaking. Because this proposed rule makes conforming changes to align Coast Guard regulations with the revised 49 CFR Part 40, DOT determined that it has no additional costs to industry. Their analysis is published in their December 19, 2000, final rule, Procedures for Transportation Workplace Drug and Alcohol Testing Programs [OST 1999–6578].

Analyses Under Other Executive Orders

DOT also found no significant impact that would warrant further analysis of this rulemaking in accordance to the Small Business Regulatory Enforcement

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Fairness Act of 1996, the Paperwork Reduction Act of 1995, Federalism impacts under Executive Order 13132, the Unfunded Mandates Reform Act of 1995, Enhancing the Intergovernmental Partnership under Executive Order 12875, Taking of Private Property under Executive Order 12630, Civil Justice Reform under Executive Order 12988, and the Protection of Children from Environmental Health Risks and Safety Risks under Executive Order 13045.

It is well settled that States are precluded from regulation in categories that are reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703(a), 7101 and 8101 (design, construction, repair, alteration, maintenance, operation, equipping, personnel qualification and manning of vessels) as well as casualty reporting and any other categories where Congress intended the Coast Guard to be the sole source of a vessel's obligations are within the field foreclosed from State regulation. (See the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke and Intertanko* v. *Locke, 529 U.S. 89, 120 S.Ct 1135 (March 6, 2000).* Rules regarding drug and alcohol testing for merchant marine personnel fall into the covered category of personnel certification rules, with the Coast Guard intended to be the sole source of those rules, thereby precluding States from regulation. Because States may not promulgate rules within these categories, preemption is not an issue under Executive Order 13132.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult LT Jennifer Ledbetter, Coast Guard, telephone 202–267–0684.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraphs (34)(a), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. The proposed rule would be promulgated to comply with new DOT regulations. The promulgation of new regulations by the Coast Guard would be editorial or procedural in nature. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects

46 CFR Part 4

Administrative practice and procedure, Alcohol abuse, Drug abuse, Drug testing, Investigations, Marine safety, National Transportation Safety Board, Nuclear vessels, Reporting and recordkeeping requirements, Safety, Transportation.

46 CFR Part 5

Administrative practice and procedure, Alcohol abuse, Drug abuse, Investigations, Seamen.

46 CFR Part 16

Drug testing, Marine safety, Penalties, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR Parts 4, 5, and 16 as follows:

PART 4—MARINE CASUALTIES AND INVESTIGATIONS

1. The citation of authority for part 4 continues to read as follows:

Authority: 33 U.S.C. 1231; 43 U.S.C. 1333; 46 U.S.C. 2103, 2306, 6101, 6301, 6305; 50 U.S.C. 198; 49 CFR 1.46. Authority for subpart 4.40: 49 U.S.C. 1903(a)(1)(E); 49 CFR 1.46.

§ 4.06 [Amended]

2. In § 4.06–1(f) remove "and 16.207".

3. In § 4.06–20(b) revise "§ 16.330 of this part" to read "49 CFR part 40".

4. In § 4.06–40(b) revise "§ 16.310" to read "§ 16.113" and revise "§ 16.320" to read "49 CFR part 40, subpart D,".

5. In § 4.06–50(b) in the first sentence revise "49 CFR 40.33" to read "49 CFR 40.121" and in the second sentence revise "49 CFR 40.33" to read "49 CFR part 40, subpart G,".

PART 5—MARINE INVESTIGATION REGULATIONS—PERSONNEL ACTION

6. The citation of authority for part 5 continues to read as follows:

Authority: 46 U.S.C. 2103, 7101, 7301, and 7701; 49 CFR 1.46.

7. In § 5.569 in Table 5.569 revise the entry for "Violation of Regulation:" to read as follows:

§ 5.569 Selection of an appropriate order.

* * * * *

TABLE 5.569.—SUGGESTED RANGE OF AN APPROPRIATE ORDER

Type of offense	Range of order (in months)
. . . . .	
Violation of Regulation:	
Refusal to take chemical drug test	12–24.
Refusal to take required alcohol test	12–24.
. . . . .	

PART 16—CHEMICAL TESTING

8. The citation of authority for part 16 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 7101, 7301, and 7701; 49 CFR 1.46.

9. In § 16.105 remove the definition for "Dangerous drug level", "Intoxicant", and "Medical Review Officer", revise the definitions for "Fails a chemical test for dangerous drugs" and "Refuse to submit", and add in alphabetical order definitions for "Consortium/Third party administrator", "Medical Review Officer (MRO)", "Service agent", and "Stand down" to read as follows:

§ 16.105 Definitions of terms used in this part.

* * * * *

Consortium/Third party administrator (C/TPA) means a service agent who provides or coordinates the provision of a variety of drug and alcohol testing services to employers. C/TPAs typically perform administrative tasks concerning the operation of the employers' drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members.

* * * * *

Fails a chemical test for dangerous drugs means that the result of a chemical test conducted in accordance with 49 CFR 40 was reported as "positive" by a Medical Review Officer because the chemical test indicated the presence of a dangerous drug at a level equal to or exceeding the levels established in 49 CFR part 40.

* * * * *

Medical Review Officer (MRO) means a person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results.

* * * * *

Refuse to submit means you refused to take a drug test as set out in 49 CFR 40.191.

* * * * *

Service agent means any person or entity that provides services specified under this part or 49 CFR part 40 to employers and/or crewmembers in connection with DOT drug and alcohol testing requirements. This includes, but is not limited to, collectors, BATs and STTs, laboratories, MROs, substance abuse professionals, and C/TPAs. To act as service agents, persons and organizations must meet the qualifications set forth in applicable sections of 49 CFR part 40. Service agents are not employers for purposes of this part.

* * * * *

Stand-down means the practice of temporarily removing a crewmember from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test result.

10. Add § 16.107 to subpart A to read as follows:

§ 16.107 Waivers.

(a) To obtain a waiver from 49 CFR 40.21 or from this part you must send your request for a waiver to the Commandant (G–MOA).

(b) Employers for whom compliance with this part would violate the domestic laws or policies of another country may request an exemption from the drug testing requirements of this part by submitting a written request to Commandant (G–MOA), at the address listed in § 16.500(a).

(c) An employer may request a waiver from the Coast Guard in order to stand-down a crewmember following the Medical Review Officer's receipt of a laboratory report of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test pertaining to the crewmember. Consistent with 49 CFR 40.21, the request for a waiver must include as a minimum: information about the organization and the proposed written company policy concerning stand-down. Specific elements required in the written waiver request are contained in 49 CFR 40.21(c).

11. Add § 16.109 to subpart A to read as follows:

§ 16.109 Public Interest Exclusion (PIE).

Service agents are subject to Public Interest Exclusion (PIE) actions in accordance with 49 CFR part 40, subpart R. The PIE is an action which excludes from participation in DOT's drug and alcohol testing program any service agent who, by serious noncompliance with this part or with 49 CFR part 40, has shown that it is not currently acting in a responsible manner.

12. Add § 16.115 to subpart A to read as follows:

§ 16.115 Penalties.

Violation of this part is subject to the civil penalties set forth in 46 U.S.C. 2115. Any person who fails to implement or conduct, or who otherwise fails to comply with the requirements for chemical testing for dangerous drugs as prescribed under this part, is liable to the United States Government for a civil penalty of not more than $5,000 for each violation. Each day of a continuing violation will constitute a separate violation.

13. In § 16.201 revise paragraphs (a), (c), and (e), and add paragraph (f) to read as follows:

§ 16.201 Application.

(a) Chemical testing of personnel must be conducted as required by this subpart and in accordance with the procedures detailed in 49 CFR part 40.

* * * * *

(c) If an individual holding a license, certificate of registry, or merchant mariner's document fails a chemical test for dangerous drugs, the individual's employer, prospective employer, or sponsoring organization must report the test results in writing to the nearest Coast Guard Officer in Charge, Marine Inspection (OCMI). The individual must be denied employment as a crewmember or must be removed from duties which directly affect the safe operation of the vessel as soon as practicable and is subject to suspension and revocation proceedings against his or her license, certificate of registry, or merchant mariner's document under 46 CFR part 5.

* * * * *

(e) An individual who has failed a required chemical test for dangerous drugs may not be re-employed aboard a vessel until the requirements of paragraph (g) of this section and 46 CFR Part 5, if applicable, have been satisfied.

(f) Medical Review Officers (MRO) may report positive test results of unemployed, self-employed, or individual mariners to the Coast Guard.

14. Add § 16.203 to read as follows:

§ 16.203 Employer responsibilities.

(a) Employers must ensure that they and their crewmembers meet the requirements of this part.

(b) Employers are responsible for all the actions of their officials, representatives, and agents in carrying out the requirements of this part.

(c) All agreements and arrangements, written or unwritten, between and among employers and service agents concerning the implementation of DOT drug testing requirements are deemed, as a matter of law, to require compliance with all applicable provisions of this part and DOT agency drug testing regulations. Compliance with these provisions is a material term of all such agreements and arrangements.

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§ 16.207 [Removed]

15. Remove § 16.207.

16. In § 16.260 revise paragraph (a) to read as follows:

§ 16.260 Records.

(a) Employers must maintain records of chemical tests as provided in 49 CFR 40.333 and must make these records available to Coast Guard officials upon request.

* * * * *

§ 16.301 [Redesignated as § 16.113]

17. Redesignate § 16.301 as § 16.113 and transfer it to subpart A.

§ 16.310 [Removed]

18. Remove § 16.310.

§ 16.320 [Removed]

19. Remove § 16.320.

§ 16.330 [Removed]

20. Remove § 16.330.

§ 16.340 [Removed]

21. Remove § 16.340.

22. In newly redesignated § 16.113, revise the section heading, designate the existing text as paragraph (a), and add paragraph (b) to read as follows:

§ 16.113 Chemical drug testing.

* * * * *

(b) Each specimen collected in accordance with this part will be tested, as provided in 49 CFR 40.85, for the following:

(1) Marijuana;
(2) Cocaine;
(3) Opiates;
(4) Phencyclidine (PCP); and
(5) Amphetamines.

§ 16.350 [Removed]

23. Remove § 16.350.

§ 16.360 [Removed]

24. Remove § 16.360.

25. Redesignate § 16.370(d) as § 16.201(g) and revise it to read as follows:

§ 16.201 Application.

* * * * *

(g) Before an individual who has failed a required chemical test for dangerous drugs may return to work aboard a vessel, the MRO must determine that the individual is drug-free and the risk of subsequent use of dangerous drugs by that person is sufficiently low to justify his or her return to work. In addition, the individual must agree to be subject to increased unannounced testing—

(1) For a minimum of six (6) tests in the first year after the individual returns to work as required in 49 CFR part 40; and

(2) For any additional period as determined by the MRO up to a total of 60 months.

§ 16.370 [Removed]

26. Remove § 16.370.

§ 16.380 [Removed]

27. Remove § 16.380.

28. Remove and reserve subpart C.

Dated: November 22, 2000.

Joseph J. Angelo,

Director of Standards, Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 01–9411 Filed 4–27–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[Docket No. RSPA–00–8417; Notice 1]

RIN 2137–AD55

Drug and Alcohol Testing for Pipeline Facility Employees

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to conform the pipeline facility drug and alcohol testing regulations with corresponding DOT regulations (Procedures for Transportation Workplace Drug and Alcohol Testing Programs). We also propose miscellaneous changes to the pipeline facility drug and alcohol testing regulations to make them easier to apply and understand. The proposals are intended to ensure the pipeline facility drug and alcohol testing regulations are clear and consistent with the DOT regulations.

DATES: Persons interested in submitting written comments on the proposed rules must do so by June 14, 2001. Late filed comments will be considered so far as practicable.

ADDRESSES: You may submit written comments by mailing or delivering an original and two copies to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The Dockets Facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays when the facility is closed. Or you may submit written comments to the docket electronically at the following Web address: http://dms.dot.gov. See the **SUPPLEMENTARY INFORMATION** section for additional filing information.

FOR FURTHER INFORMATION CONTACT: L. M. Furrow by phone at 202–366–4559, by fax at 202–366–4566, by mail at U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC, 20590, or by e-mail at buck.furrow@rspa.dot.gov.

SUPPLEMENTARY INFORMATION:

Filing Information, Electronic Access, and General Program Information

All written comments should identify the docket and notice numbers stated in the heading of this notice. Anyone who wants confirmation of mailed comments must include a self-addressed stamped postcard. To file written comments electronically, after logging onto http://dms.dot.gov, click on "Electronic Submission." You can read comments and other material in the docket at this Web address: http://dms.dot.gov. General information about our pipeline safety program is available at this address: http://ops.dot.gov.

Background

On April 29, 1996, DOT issued an advance notice of proposed rulemaking (61 FR 18713) concerning changes to its regulations called Procedures for Transportation Workplace Drug and Alcohol Testing Programs (49 CFR Part 40). These regulations prescribe requirements applicable to all employers who must conduct drug and alcohol testing under separate regulations administered by DOT agencies such as RSPA. Subsequently, on December 9, 1999, DOT issued a notice of proposed rulemaking (64 FR 69076) to change Part 40 comprehensively. The Final Rule document revising Part 40 has now been published (65 FR 79462; December 19, 2000). Consequently, we are proposing to amend the drug and alcohol testing regulations for pipeline facilities (49 CFR Part 199) to conform them to revised Part 40.

Common Preamble

Elsewhere is today's **Federal Register**, DOT is publishing a preamble related to the notices of proposed rulemaking that RSPA and other DOT agencies are publishing to conform their drug and alcohol testing regulations to revised Part 40. This common preamble provides an overview of the issues involved.

Proposed Amendments to Part 199

Structure and Organization

When the rules in Subpart B-Alcohol Misuse Prevention Program were added to Part 199, the drug testing requirements in §§ 199.1 through 199.25 were designated as Subpart A. However, § 199.1, "Scope and compliance," § 199.3, "Definitions," and § 199.5, "DOT procedures," are relevant to Part 199 in general. So we propose to designate § 199.1 through § 199.5 as Subpart A—General. Sections 199.7 through 199.25 would be designated as Subpart B—Drug Testing and redesignated as §§ 199.101 through 199.119, respectively. The heading "Subpart B-Alcohol Misuse Prevention Program" would be redesignated as "Subpart C—Alcohol Misuse Prevention Program."

Another section that relates to Part 199 in general is § 199.207, "Preemption of state and local laws." We propose to transfer this section to Subpart A—General as § 199.7.

In § 199.1, the first sentence of paragraph (a) would be revised to state that the scope of Part 199 includes both drug and alcohol testing. And the second sentence of paragraph (a), concerning the exclusion from Part 199 of master meter and petroleum gas systems, would be clarified and transferred to new § 199.2. In view of these proposed changes concerning the scope and applicability of Part 199 in general, § 199.201, concerning the applicability of Subpart B, would be removed as superfluous.

Sections 199.1(b) and 199.213, which provide compliance dates, would be removed because the dates have expired.

The first sentence of § 199.5 now provides that the "anti-drug program" required by Part 199 must be conducted according to the requirements of Part 199 and DOT Procedures (or 49 CFR part 40). To make this sentence apply to the Part 199 alcohol program as well, we propose to change "anti-drug program" to "anti-drug and alcohol programs." In view of this proposed change, § 199.203, which makes DOT Procedures applicable to alcohol tests under Part 199, would be removed as superfluous. The definition of "DOT Procedures" in § 199.3 would be revised similarly.

Under § 199.9(b)(2) [or redesignated § 199.103(b)(2)], a medical review officer's recommendation for return to duty is one of three conditions an employee must meet to escape the consequences of failing or refusing a drug test. We propose to make this condition consistent with § 199.11(e) [or redesignated § 199.105(e)] and DOT Procedures. First, the reference to the medical review officer's recommendation for return to duty would be deleted. Under Part 40 substance abuse professionals, not medical review officers, play the lead role in the return to duty process. Secondly, this point would be emphasized by adding that a substance abuse professional must have determined that the employee has successfully completed any required education or treatment.

Sections 199.225(a)(2)(ii) and 199.225(b)(4)(ii) require operators to submit certain post-accident and reasonable-suspicion test records for the years 1995, 1996, and 1997. Because the deadlines for compliance with these reporting requirements have expired, we propose to remove §§ 199.225(a)(2)(ii) and 199.225(b)(4)(ii).

Definitions

The definitions in Part 199 are now stated in two sections: §§ 199.3 and 199.205. To make it easier to find and use Part 199 definitions and to eliminate unnecessary repetition within Part 199 and with Part 40, we propose to transfer to § 199.3 those definitions in § 199.205 that are not duplicated in either § 199.3 or Part 40. Section 199.205 would then be removed.

Section 199.205 contains definitions of the following terms that also are defined in § 199.3: accident, administrator, covered employee, covered function, operator, and state agency. The proposed transfer would make this repetition unnecessary. In addition, § 199.205 defines the following terms that also are defined in 49 CFR 40.3: alcohol, alcohol concentration, alcohol use, confirmation test, consortium, DOT agency, employer, and screening test. Because § 199.5 provides that terms and concepts used in Part 199 have the same meaning as in Part 40, it is unnecessary to transfer these definitions to § 199.3. Consequently, only definitions of the following two terms in § 199.205 would be transferred to § 199.3: performing a covered function, and refuse to submit to an alcohol test. The definition of "performing a covered function" would be revised for clarity.

The definitions of "covered employee" and "covered function" included in §§ 199.3 and 199.205 may be unclear because similar terms are used in both definitions. So we propose to clarify these definitions. The term "covered employee" (and "employee" or "individual to be tested") would be defined as a person who performs a covered function, including persons employed by operators, contractors engaged by operators, and persons employed by such contractors. The term "covered function" would be defined as an operations, maintenance, or emergency-response function regulated by [49 CFR] part 192, 193, or 195 that is performed on a pipeline or LNG facility. The statement in the present definition of "covered employee" that covered functions do not include clerical, truck driving, accounting, or other functions not subject to part 192, 193, or 195 would be deleted as unnecessary.

The definition of "prohibited drug" in § 199.3 would be revised by removing the second sentence, which authorizes operators, under certain conditions, to test for drugs other than marijuana, cocaine, opiates, amphetamines, and phencyclidine. This revision is necessary because specimens collected for purposes of drug testing under Part 199 may not be tested for any other drugs (49 CFR 40.85). As indicated by 49 CFR 40.13, operators may collect other specimens to test for other drugs.

The definition of "refuse to submit" in § 199.3 would be clarified to explain that it applies equally to the terms "refuse" and "refuse to take" a drug test. Moreover, the definition would be revised to refer to DOT procedures on refusal to take a drug test (49 CFR 40.191(b)). Under these procedures, refusal to take a drug test includes submission of an adulterated or substituted specimen. The definition would be further revised to include a similar definition proposed to be transferred from § 199.205 regarding alcohol testing and to refer to DOT procedures on refusal to take an alcohol test (49 CFR 40.261).

Enforcing DOT Procedures

Part 199 refers to the drug and alcohol testing procedures in Part 40 as "DOT Procedures" and incorporates these procedures by reference (§ 199.5). Our practice is to enforce compliance with Part 40 as if it were a Part 199 regulation. To remove any uncertainty about this enforcement practice, we propose to amend § 199.5 to make it clear that a violation of Part 40 is a violation of Part 199. In addition, to further the enforceability of Part 40, we propose to remove from § 199.5 the statement that in the event of conflict with Part 40, Part 199 prevails. If there is a substantive difference between Part 40 and Part 199, we will state the difference explicitly in Part 199.

Drug Tests Required

DOT Procedures (49 CFR 40.61) cover the appropriate steps to collect urine specimens from employees who need medical attention. Moreover, § 40.61(b)(3) specifically forbids collection from an unconscious employee. Therefore, we propose to delete the following sentence from

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§ 199.11(b) [or redesignated § 199.105(b)]: "If an employee is injured, unconscious, or otherwise unable to evidence consent to the drug test, all reasonable steps must be taken to obtain a urine sample."

Section 199.11(e) prescribes the role of a substance abuse professional in returning to duty a covered employee who refuses or fails a drug test. For consistency with Part 40, § 199.11(e) [or redesignated § 199.105(e)] would be revised to refer to DOT Procedures.

Medical Review Officers

Section 199.15(b) loosely defines the qualifications required of a medical review officer (MRO). To assure consistency and compliance with the detailed MRO qualifications stated in 49 CFR 40.121, we propose to revise § 199.15(b) [or redesignated § 199.109(b)] to refer to those qualifications.

Section 199.15(c) states a few functions of medical review officers, focusing primarily on the review of positive and negative test results. In contrast, Part 40 covers MRO functions comprehensively, including the review of reports of tests not performed for reasons including adulterated or substituted specimens. Therefore, we propose to amend § 199.15(c) [or redesignated § 199.109(c)] to state that the MRO must provide functions for the operator as required by DOT Procedures.

Section 199.15(d)(1) provides that MROs are not required to take further action if they determine there is a legitimate medical explanation for a confirmed positive test result other than the unauthorized use of prohibited drugs. However, Part 40 does require MROs to take further action in these circumstances. Under § 40.163, MROs must report all test results to employers. Also, § 199.15(d)(2) is jumbled and could be misinterpreted to require MROs to refer individuals with verified positive test results to a substance abuse professional, when under Part 40 employers make such referrals. So we propose to amend § 199.15(d) [or redesignated § 199.109(d)] to state that MROs must report all test results to operators in accordance with DOT Procedures. Because other Part 40 requirements describe what employers must do after receiving MRO reports, the existing provisions in § 199.15(d) regarding further proceedings and evaluation by a substance abuse professional would be deleted as superfluous.

Retention of Samples and Retesting

Under § 199.17(b), if an MRO determines there is no legitimate medical explanation for a confirmed positive test result other than the unauthorized use of a prohibited drug, the "original sample" must be retested if the employee makes a written request for retesting within 60 days of receipt of the final test result from the MRO. This provision is inconsistent with 49 CFR 40.153(b), which allows employees only 72 hours to make a timely request for an additional test, and the request need not be in writing. So we propose to revise § 199.17(b) [or redesignated § 199.111(b)] to require additional testing if the employee makes a timely request for additional testing according to DOT Procedures.

Revised Part 40 requires split specimen collections (49 CFR 40.71(a)). And the reference to DOT Procedures in §§ 199.5 and 199.7 will make split specimen collections mandatory under Part 199. Under the Part 40 split specimen collection process, employers divide each collected urine specimen into a primary specimen and a split specimen. If a covered employee requests additional testing, Part 40 requires that the test be done only on the split specimen (49 CFR 40.153).

In view of this requirement, we are concerned about the appropriateness of the term "original sample" in § 199.17(b). We believe "original sample" could be misunderstood to mean "primary specimen." We propose to amend § 199.17(b) [or redesignated § 199.111(b)] to indicate that the split specimen must be tested when a covered employee requests additional testing. Also, since the concept of "retesting" is no longer suitable under this section, the term would be dropped and replaced by "testing" or "additional testing".

Pre-Employment Alcohol Testing

Part 199 does not require operators to conduct pre-employment tests for alcohol. However, § 199.209 makes it clear that Part 199 does not affect the authority of operators to conduct tests for alcohol that are not required by Part 199. We are proposing to amend § 199.209 to require that if operators conduct pre-employment tests for alcohol, the tests must be done according to DOT Procedures.

Stand-Down Waivers

Revised Part 40 prohibits employers from temporarily removing employees from performing safety-sensitive functions based on an unverified positive drug test result (49 CFR 40.21(a)). At the same time, Part 40 permits employers to petition DOT agencies to waive this stand-down restriction (49 CFR 40.21(b)). To facilitate this waiver process, we are proposing a new procedural rule, § 199.9, for operators to follow when seeking from RSPA a waiver of the Part 40 stand-down restriction. The proposed rule advises operators how they should prepare stand-down waiver requests and to whom the requests should be sent.

Checking Previous Test Results

Under revised Part 40, employers may not hire or use any person in a safety-sensitive position unless they seek to obtain from previous DOT-regulated employers of the person certain drug and alcohol testing information (49 CFR 40.25). To call attention to this new requirement, we propose to refer to it in new § 199.11. In addition, consistent with § 40.25, we propose to require operators to remove employees from covered functions, pending successful completion of the return-to-duty process, if after reviewing the information the operator learns the employee violated a DOT agency drug or alcohol testing rule.

Release of Information

New Part 40 authorizes employers to release employee-specific drug and alcohol testing information without the employee's consent in connection with certain legal proceedings (§ 40.323). However, § 199.23(b) does not permit releases of drug information in legal proceedings without employee consent. And although § 199.231(g) permits releases of alcohol information without employee consent in certain legal proceedings, § 199.231(g) is not consistent with § 40.323 in several respects. In addition, § 199.23(b) limits the drug test information operators must furnish RSPA or a state pipeline safety agency regardless of employee consent to information related to accident investigations. A similar limitation is not in § 199.231(d) governing the release to RSPA and state agencies of alcohol test information, nor is it in § 40.331 governing the release of name-specific alcohol and drug information to DOT and state agencies. Consequently, we propose to amend § 199.23(b) [redesignated § 199.117(b)] to provide that operators may or are required to release information without the employee's consent as provided by DOT Procedures. Section 199.231(g) would be amended to permit releases without consent in legal proceedings as provided by DOT Procedures.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Policies and Procedures

RSPA does not consider this proposed rulemaking to be a significant regulatory action under Section 3(f) of Executive Order 12866 (58 FR 51735; Oct. 4, 1993). Therefore, the Office of Management and Budget (OMB) has not received a copy of this rulemaking to review. RSPA also does not consider this proposed rulemaking to be significant under DOT regulatory policies and procedures (44 FR 11034: February 26, 1979).

The proposed rules are non-significant because they would merely change Part 199 to conform it to revised 49 CFR part 40, which has already had extensive comment and analysis. The economic impacts of the underlying Part 40 changes were analyzed in connection with the Part 40 rulemaking, and the proposed rules would not have any incremental economic impacts on their own. Regarding the clarifying and organizational changes we are proposing that are not directly due to revised Part 40, our assessment of these changes is that the economic impact would be too minimal to warrant the preparation of a Regulatory Evaluation.

Regulatory Flexibility Act

The proposed rules are consistent with revised Part 40 and have no incremental economic impacts of their own. Therefore, based on the facts available about the anticipated impacts of this proposed rulemaking, I certify, pursuant to Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that the proposed rules, if adopted as final, would not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

All the information collection requirements of Part 40 have been analyzed and approved by OMB. These proposed rules would impose no information collection requirements that have not already been reviewed in the Part 40 rulemaking. So no further Paperwork Reduction Act review is necessary.

Executive Order 12612

The proposed rules would not have a substantial direct effect on states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of Government. Therefore, in accordance with Executive Order 12612 (52 FR 41685; October 30, 1987), we have determined that the proposed rules would not have sufficient federalism implications to warrant preparation of a federalism assessment.

Executive Order 13084

The proposed rules have been analyzed in accordance with the principles and criteria contained in Executive Order 13084, "Consultation and Coordination with Indian Tribal Governments." Because the proposed rules would not significantly or uniquely affect the communities of the Indian tribal governments and would not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

Executive Order 13132

Revised Part 40 has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). The proposed rules have no incremental Federalism impacts for purposes of Executive Order 13132. So no further analysis is needed for Federalism purposes.

Impact on Business Processes and Computer Systems

We do not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to "Y2K" or related computer problems. The proposed rules would not mandate business process changes or require modifications to computer systems. Because the proposed rules would not affect the ability of organizations to respond to those problems, we are not proposing to delay the effectiveness of the requirements.

Unfunded Mandates Reform Act of 1995

The proposed rules would not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. The rules would not result in costs of $100 million or more to either state, local, or tribal governments, in the aggregate, or to the private sector, and would be the least burdensome alternative that achieves the objective of the rules.

National Environmental Policy Act

We have analyzed the proposed rules for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). Because the proposed rules parallel present requirements of revised Part 40 or involve clarifying or organizational changes, we have preliminarily determined that the proposed rules would not significantly affect the quality of the human environment. A final determination on environmental impact will be made after the end of the comment period.

List of Subjects in 49 CFR Part 199

Drug testing, Pipeline safety, Reporting and recordkeeping requirements, Safety, Transportation.

In consideration of the foregoing, we propose to amend 49 CFR Part 199 as follows:

PART 199—DRUG AND ALCOHOL TESTING

1. The authority citation for part 199 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60117, and 60118; 49 CFR 1.53.

2. The heading for subpart A is revised to read as follows:

Subpart A—General

3. In § 199.1, paragraph (a) is revised, paragraph (b) is removed, and paragraphs (c) and (d) are redesignated as paragraphs (b) and (c), respectively, to read as follows:

§ 199.1 Scope and compliance.

(a) This part requires operators of pipeline facilities subject to part 192, 193, or 195 of this chapter to test covered employees for the presence of prohibited drugs and alcohol.

* * * * *

4. Section 199.2 is added to read as follows:

§ 199.2 Applicability.

This part does not apply to covered functions performed on—

(a) Master meter systems, as defined in § 191.3 of this chapter; or

(b) Pipeline systems that transport only petroleum gas or petroleum gas/air mixtures.

5. In § 199.3, the introductory text is revised, the definitions of "Covered employee" and "Refuse to submit" are removed, the definitions of "Covered function," "DOT Procedures," and "Prohibited drug" are revised, and definitions of "Covered employee, employee, or individual to be tested," "Performs a covered function," and "Refuse to submit, refuse, or refuse *to take* are added in alphabetical order, to read as follows:

§ 199.3 Definitions.

As used in this part—

* * * * *

Covered employee, employee, or *individual to be tested* means a person who performs a covered function, including persons employed by operators, contractors engaged by

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operators, and persons employed by such contractors.

Covered function means an operations, maintenance, or emergency-response function regulated by part 192, 193, or 195 of this chapter that is performed on a pipeline or LNG facility.

DOT Procedures means the Procedures for Transportation Workplace Drug and Alcohol Testing Programs published by the Office of the Secretary of Transportation in part 40 of this title.

* * * * *

Performs a covered function includes actually performing, ready to perform, or immediately available to perform a covered function.

* * * * *

Prohibited drug means any of the following substances specified in Schedule I or Schedule II of the Controlled Substances Act (21 U.S.C. 812): marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP).

* * * * *

Refuse to submit, refuse, or *refuse to take* means behavior consistent with DOT Procedures concerning refusal to take a drug test or refusal to take an alcohol test.

* * * * *

6. Section 199.5 is revised to read as follows:

§ 199.5 DOT procedures.

The anti-drug and alcohol programs required by this part must be conducted according to the requirements of this part and DOT Procedures. Terms and concepts used in this part have the same meaning as in DOT Procedures. Violations of DOT Procedures with respect to anti-drug and alcohol programs required by this part are violations of this part.

6a. Subpart B is redesignated as subpart C.

7. Existing §§ 199.7, 199.9, 199.11, 199.13, 199.15, 199.17, 199.19, 199.21, 199.23, and 199.25 are redesignated as §§ 199.101, 199.103, 199.105, 199.107, 199.109, 199.111, 199.113, 199.115, 199.117, and 199.119, respectively, in new subpart B, and a subpart B heading is added to read as follows:

Subpart B—Drug Testing

8. New § 199.9 is added to subpart A to read as follows:

§ 199.9 Stand-down waivers.

(a) Each operator who seeks a waiver under § 40.21 of this title from the stand-down restriction shall submit an application for waiver in duplicate to the Associate Administrator for Pipeline Safety, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590.

(b) Each application must:

(1) Identify § 40.21 of this title as the rule from which the waiver is sought;

(2) Explain why the waiver is requested and describe the employees to be covered by the waiver;

(3) Contain the information required by § 40.21 of this title and any other information or arguments available to support the waiver requested; and

(4) Unless good cause is shown in the application, be submitted at least 60 days before the proposed effective date of the waiver.

(c) No public hearing or other proceeding is held directly on an application before its disposition under this section. If the Associate Administrator determines that the application contains adequate justification, he or she grants the waiver. If the Associate Administrator determines that the application does not justify granting the waiver, he or she denies the application. The Associate Administrator notifies each applicant of the decision to grant or deny an application.

9. New § 199.11 is added to subpart A to read as follows:

§ 199.11 Checking Previous Test Results.

(a) As required by DOT Procedures, no operator may hire or use any person to perform a covered function unless the operator has sought to obtain from previous DOT-regulated employers of the person certain drug and alcohol testing information.

(b) If, after reviewing the information, the operator learns the employee violated a DOT agency drug or alcohol testing rule, the operator shall remove the employee from covered functions, pending successful completion of the return-to-duty process.

10. In redesignated § 199.103, paragraph (a)(1) is amended by removing the term "§ 199.15(d)(2)" and adding "DOT Procedures" in its place, and by revising paragraph (b)(2) to read as follows:

§ 199.103 Use of persons who fail or refuse a drug test.

* * * * *

(b) * * *

(2) Been considered by the medical review officer in accordance with DOT Procedures and been determined by a substance abuse professional to have successfully completed required education or treatment; and

* * * * *

11. In redesignated § 199.105, paragraph (b) is revised, paragraphs (c)(3) and (c)(4) are amended by removing the term "§ 199.25" and adding "§ 199.119" in its place wherever the term appears, and paragraph (e) is revised, to read as follows:

§ 199.105 Drug tests required.

* * * * *

(b) *Post-accident testing.* As soon as possible but no later than 32 hours after an accident, an operator shall drug test each employee whose performance either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. An operator may decide not to test under this paragraph but such a decision must be based on the best information available immediately after the accident that the employee's performance could not have contributed to the accident or that, because of the time between that performance and the accident, it is not likely that a drug test would reveal whether the performance was affected by drug use.

* * * * *

(e) *Return to duty testing.* A covered employee who refuses to take or has a positive drug test may not return to duty in the covered function until the covered employee has complied with DOT Procedures on return to duty and the role of a substance abuse professional.

* * * * *

12. In redesignated § 199.109, paragraphs (b), (c), and (d) are revised to read as follows:

§ 199.109 Review of drug testing results.

* * * * *

(b) *MRO qualifications.* Each MRO must be a licensed physician who has the qualifications required by DOT Procedures.

(c) *MRO duties.* The MRO shall perform functions for the operator as required by DOT Procedures.

(d) *MRO reports.* The MRO shall report all drug test results to the operator in accordance with DOT Procedures.

* * * * *

13. In redesignated § 199.111, the section heading and the first sentence of paragraph (b) are revised, the second sentence of paragraph (b) and paragraph (c) are amended by removing the term "retesting" and adding "testing" in its place wherever the term appears, and the last sentence of paragraph (b) is amended by removing the term "retest" and adding "additional test" in its place, to read as follows:

§ 199.111 Retention of samples and additional testing.

* * * * *

(b) If the medical review officer (MRO) determines there is no legitimate medical explanation for a confirmed positive test result other than the unauthorized use of a prohibited drug, and if timely additional testing is requested by the employee according to DOT Procedures, the split specimen must be tested. * * *

* * * * *

14. The first sentence of redesignated § 199.117(b) is revised to read as follows:

§ 199.117 Recordkeeping.

* * * * *

(b) Information regarding an individual's drug testing results or rehabilitation may be released only upon the written consent of the individual, except as provided by DOT Procedures. * * *

§ 199.201 [Removed and Reserved]

15. Section 199.201 is removed and reserved.

16. In § 199.202, the first sentence is revised to read as follows:

§ 199.202 Alcohol misuse plan.

Each operator shall maintain and follow a written alcohol misuse plan that conforms to the requirements of this part and DOT Procedures concerning alcohol testing programs. * * *

§§ 199.203, 199.205 [Removed and Reserved]

17. Sections 199.203 and 199.205 are removed and reserved.

18. Section 199.207 is redesignated as new § 199.7 and transferred to subpart A, and redesignated § 199.7 is amended by removing the term "subpart" and adding "part" in its place wherever the term appears.

19. In § 199.209, the existing text is designated as paragraph (a) and new paragraph (b) is added to read as follows:

§ 199.209 Other requirements imposed by operators.

* * * * *

(b) As an operator, you may, but are not required to, conduct pre-employment alcohol testing under this part. If you choose to conduct pre-employment alcohol testing, you must comply with the following requirements:

(1) You must conduct a pre-employment alcohol test before the first performance of covered functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of covered functions).

(2) You must treat all covered employees the same for the purpose of pre-employment alcohol testing (i.e., you must not test some covered employees and not others).

(3) You must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test.

(4) You must conduct all pre-employment alcohol tests using the alcohol testing procedures in DOT Procedures.

(5) You must not allow a covered employee to begin performing covered functions unless the result of the employee's test indicates an alcohol concentration of less than 0.04.

§ 199.213 [Removed and Reserved]

20. Section 199.213 is removed and reserved.

§ 199.225 [Amended]

21. In § 199.225, paragraphs (a)(2)(ii) and (b)(4)(ii) are removed and reserved.

22. Section 199.231(g) is revised to read as follows:

§ 199.231 Access to facilities and records.

* * * * *

(g) An operator may disclose information without employee consent as provided by DOT Procedures concerning certain legal proceedings.

* * * * *

Issued in Washington, DC, on March 30, 2001.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 01–9412 Filed 4–27–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[FRA Docket No. RSOR–6, Notice No. 48]

RIN 2130–AB43

Control of Alcohol and Drug Use: Proposed Changes To Conform With New DOT Transportation Workplace Testing Procedures

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT or Department).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: On December 19, 2000, DOT published a final rule comprehensively changing its procedures for transportation workplace drug and alcohol testing programs. These amendments to the DOT drug and alcohol testing rule became effective on January 18, 2001; the revised DOT testing rule will become effective on August 1, 2001. The new DOT testing rule uses a plain language, question-and-answer format to make the Department's procedures clearer, more comprehensive, and more up-to-date.

FRA and the other DOT agencies with substance abuse programs governed by DOT testing procedures (the Federal Aviation Administration (FAA), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Transit Administration (FTA), the Research and Special Programs Administration (RSPA), and the United States Coast Guard (USCG)) are publishing NPRMs in today's **Federal Register** proposing changes that would conform their individual regulations to the new DOT procedures. See the Department's Common Preamble to this NPRM for an additional discussion of the changes proposed in this NPRM.

DATES: Written comments must be received by June 14, 2001. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

ADDRESSES: Anyone wishing to file a comment should refer to the FRA docket and notice numbers (FRA Docket No. RSOR–6, Notice No. 48). You may submit your comments and related material by only one of the following methods:

By mail to the Docket Management System, U.S. Department of Transportation, room PL–401, 400 7th Street, SW., Washington, DC 20590–0001; or Electronically through the Web site for the Docket Management System at http://dms.dot.gov. For instructions on how to submit comments electronically, visit the Docket Management System Web site and click on the "Help" menu.

The Docket Management Facility maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401 on the plaza level of the Nassif Building at the same address during regular business hours. You may also obtain access to this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Lamar Allen, Alcohol and Drug Program Manager, FRA Office of Safety, RRS–11, 1120 Vermont Avenue, NW., Mail Stop

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25, Washington, DC 20590 (telephone 202–493–6313); or Patricia V. Sun, Trial Attorney, Office of the Chief Counsel, RCC–11, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone 202–493–6038).

SUPPLEMENTARY INFORMATION:

Background

In this NPRM, FRA proposes changes that would conform its drug and alcohol testing regulations (49 CFR part 219) to the recently published revision of DOT's procedures for transportation workplace drug and alcohol testing programs (49 CFR part 40) (December 19, 2000, 65 FR 79462). FRA (concurrently with FAA, FMCSA, FTA, RSPA, and USCG, which also have programs governed by part 40 procedures), is publishing an NPRM that would reference the new part 40 in its own drug and alcohol testing rule.

FRA will not hold a public hearing on this proposal. This NPRM is nonsignificant and proposes only changes to update this part and conform it to the new part 40. The changes in part 40 were fully discussed at three Department listening sessions held earlier this year.

FRA proposes to delete from part 219 provisions that are also covered in the new part 40. Railroad employers and employees, along with others affected by part 219, have always been required to read and understand *both* part 219 and part 40 to comply with FRA's drug and alcohol workplace requirements. Referring the reader directly to part 40 instead of duplicating part 40 rule text in part 219 would promote both drafting economy and consistency of interpretation.

Deleting part 40 material from part 219 would affect only certain subparts of FRA's rule. Part 40 procedures do not cover FRA post-accident toxicological testing (subpart C of part 219), which predates part 40, has always used separate procedures, and is explicitly exempted from the new part 40 in § 40.1. Most of the general requirements (subpart A) and prohibitions (subpart B) in part 219 would remain unchanged since they are specific to the rail industry (with the exception of the return-to-duty, follow-up testing and Substance Abuse Professional (SAP) requirements in § 219.104, which would be deleted since they now duplicate those in part 40). Employee referral and assistance (subpart E), annual report (subpart I) and recordkeeping (subpart J) requirements would remain in part 219, but most of the procedural provisions in subparts D, F, G, and H (respectively, mandatory reasonable suspicion, Federal reasonable cause, pre-employment, and random testing) would be deleted from part 219 since these types of testing use part 40 procedures.

Although the primary purpose of this NPRM is to conform part 219 with the new part 40, FRA would also make corrections to comply with **Federal Register** format requirements and delete outdated rule text references (e.g., past implementation dates, former accident reporting thresholds, old contact information) that can currently be found throughout part 219. FRA would also delete Appendix D, which reprints the Management Information System (MIS) reporting forms for railroad drug and alcohol programs; these forms have been in use since 1994 and are now available electronically. Following plain language principles, FRA would also substitute "must" for "shall" throughout this document, to make clear that FRA intends for the word "shall," as currently used in part 219, to impose a requirement, not to express futurity or any other notion. Because part 40 already authorizes saliva alcohol testing, and may eventually authorize other testing methodologies, FRA would also remove the references in subparts D, F, G, and H to "urine drug testing" and "breath alcohol testing" and replace these, where appropriate, with more generic terms such as "alcohol testing," "drug testing," and "breath or body fluid testing."

Finally, part 219 contains citations to the Federal Railroad Safety Act of 1970 and the Hours of Service Act, which were repealed in 1994 as part of a broad recodification of the transportation laws and then reenacted without substantive change as positive law in title 49 of the United States Code. *See* Public Law 103–272. Throughout this document, FRA would replace these references to repealed statutes with references to the proper sections or chapters in title 49 of the United States Code. FRA does not intend to alter the substantive meaning of a provision by making technical changes to its statutory citations.

For ease of reference, FRA is publishing part 219 in its entirety with the proposed amendments discussed below. FRA intends to time publication of the final rule so that its conforming changes to part 219 become effective concurrently with most of part 40 on August 1, 2001.

Section-by-Section Analysis

Subpart A—General

Section 219.5 Definitions

Since part 219 would incorporate by reference all of part 40, FRA proposes to delete from part 219 those definitions that can now be found in § 40.3: *Alcohol, Alcohol concentration, Alcohol use, Consortium, DOT agency, Drug(s),* and *Medical Review Officer;* FRA would also delete *Refuse to submit* (to a drug test) and *Refuse to submit* (to an alcohol test), which are defined in §§ 40.191 and 40.261, respectively. Definitions specific to part 219, the rail industry, or both, such as *Covered employee* and *Railroad* would remain in this rule.

The definition of *Class I, Class II,* and *Class III* has been revised by deleting ", as those regulations may be revised and applied by order of the Board (including modifications in class thresholds based on revenue deflator adjustments)." The purpose of this change is to conform to **Federal Register** requirements; no substantive change is intended.

FRA would also delete the outdated references to the 1991 through 1999 accident reporting thresholds from these definitions: *Impact accident, Reporting threshold,* and *Train accident.* See the discussion of § 219.201 for a further discussion of the proposed changes to these definitions.

Section 219.7 Waivers

Paragraph (b)

Section 40.21 maintains the Departmental policy of prohibiting employers from standing employees down; that is, removing employees from safety-sensitive service after the Medical Review Officer (MRO) has received a laboratory report of confirmed positive test results, adulterated test results, or substituted test results, before the results have been verified by the MRO. DOT agencies may, however, waive this prohibition if an employer can demonstrate that a waiver would effectively enhance safety while protecting employee fairness and confidentiality. FRA's Railroad Safety Board would determine each petition for stand down in accordance with § 40.21 and subpart C of 49 CFR part 211, which subpart contains the rules of practice governing petitions for waiver of FRA safety rules, regulations or standards.

Section 219.11 General Conditions for Chemical Tests

Paragraph (b)

In § 219.11, FRA would delete the last two sentences of (b)(2), which address the use of catheterization to obtain urine samples for testing, and would delete subparagraph (b)(4), which makes tampering with a sample through adulteration, dilution, or substitution a refusal to provide a sample. DOT addresses the use of catheterization in § 40.61(b)(3), what constitutes a refusal to provide a sample in § 40.191, and what an employer must do following a verified adulterated or substituted test result in § 40.23.

Section 219.21 Information Collection

FRA would update the list of information collection requirements in this section by adding §§ 219.801, 219.803, 219.901, and 219.903 from the annual report and recordkeeping requirements found in subparts I and J, respectively, of this part; which were approved by the Office of Management and Budget before their implementation in 1994. FRA would also add an information collection requirement for § 219.502, which authorizes pre-employment alcohol testing, and would delete the requirements for §§ 219.307 and 219.309, which have already been deleted from this rule, and §§ 219.703, 219.705, 219.707, 219.709, 219.711, and 219.713, which FRA proposes to delete in this rulemaking.

Section 219.23 Railroad Policies

Paragraph (b)

FRA would add new language reiterating the prohibition in § 40.47 against the use of DOT custody and control forms for non-DOT testing. Section 219.23 would otherwise remain the same.

Subpart B—Prohibitions

Section 219.102 Prohibitions on Abuse of Controlled Substances

FRA would delete the 1989 implementation date from this section.

Section 219.104 Responsive Action

Paragraph (d)

FRA would delete its return-to-service and follow-up testing requirements, and its Substance Abuse Professional (SAP) conflict-of-interest prohibitions, and instead reference the sections in part 40 that cover these requirements (§§ 40.305, 40.307, and 40.299, respectively) in amended paragraph (d). FRA would also delete paragraphs (e) and (f) of this section, which would then be made unnecessary, and paragraph (g) of this section, which mandated a 1995 implementation date for certain requirements in this section.

Subpart C—Post-Accident Toxicological Testing

As stated above, part 40 procedures do not apply to FRA post-accident toxicological testing, which has always followed its own unique procedures. Section 40.1(c) explicitly states that nothing in part 40 supersedes or conflicts with FRA's post-accident testing program. Since this subpart does not need to be conformed to part 40, the only proposals are minor technical changes to update this subpart.

One change would streamline FRA's procedures for notification after post-accident events. One-stop notification to the National Response Center (NRC) would be sufficient for problems in obtaining samples from an injured employee (§ 219.203(d)(2)) or an employee fatality (§ 219.207(b)), although FRA would still require railroads to notify both the NRC and FRA whenever post-accident testing is conducted (§ 219.209). The remaining technical changes are discussed below.

Section 219.201 Events for Which Testing Is Required

Paragraph (a)

In its annual adjustment of the accident reporting threshold, FRA decided to leave the $6,600 accident reporting threshold unchanged for calendar year 2001 (November 21, 2000, 65 FR 69884). The reporting threshold final rule, which becomes effective January 1, 2001, amends this section and the definitions of *Impact accident, Reporting Threshold,* and *Train Accident* found in § 219.5.

In this NPRM, FRA proposes to "clean up" part 219 by removing the outdated references to the accident reporting thresholds listed for the years 1991–1999. To streamline this part, FRA would incorporate the accident reporting threshold set annually in § 225.19(e) of its accident reporting rule (49 CFR part 225) instead of listing the threshold for each year in this section and in the definitions listed above in § 219.5.

Section 219.211 Analysis and Follow-up

Paragraph (i)

FRA would amend this paragraph, which currently allows an employee the right to request a retest of his or her post-accident samples. This right no longer exists, since FRA incorporated split sample testing into its post-accident testing procedures in 1994; the employee would still have up to 60 days from the date of the toxicology report (instead of 72 hours from notification by the MRO as in § 40.171) to request that his or her split samples be tested.

Subpart D—Testing for Cause

Section 219.300 Mandatory Reasonable Suspicion Testing

Paragraph (a)

FRA would remove the 1995 implementation date from this paragraph.

Paragraph (d)(2)

FRA would delete this paragraph which contains reporting requirements that expired on March 15, 1998.

Section 219.303 Alcohol Test Procedures and Safeguards

FRA would delete this section, since alcohol testing conducted under this subpart now follows part 40 procedures.

Section 219.305 Urine Test Procedures and Safeguards

FRA would delete this section since it would be made unnecessary by revised § 219.701, which would combine all of the sections in the current rule that require tests conducted under part 219 authority (except for subpart C post-accident testing) to follow part 40 procedures.

Subpart E—Identification of Troubled Employees

Other than the proposed amendment to § 219.403 discussed below, this subpart would remain unchanged.

Section 219.403 Voluntary Referral Policy

Subparagraph (b)(5)

With respect to a certified locomotive engineer and a candidate for certification, § 240.119(e) of FRA's regulations on qualification and certification of locomotive engineers (49 CFR part 240) requires the railroad to waive its policy of confidentiality and suspend or revoke the engineer's certificate if the SAP reports that the engineer has failed to cooperate with a course of recommended treatment. For ease of reference, FRA would add a new subparagraph cross-referencing this requirement, which applies to all voluntary referral policies.

Subpart F—Pre-Employment Tests

Section 219.501 Pre-Employment Drug Testing

Section 219.502 Pre-Employment Alcohol Testing

FRA would revise this subpart to delete an outdated implementation schedule and separately address pre-employment drug testing and pre-employment alcohol testing. Section 219.501 would be revised to address only pre-employment drug testing requirements, which would remain unchanged. FRA would create a new § 219.502 to incorporate Departmental language reauthorizing pre-employment alcohol testing, which was suspended in May 1995 (May 10, 1995, 60 FR 24766). Pre-employment alcohol testing, unlike pre-employment drug testing, would be authorized but not mandatory.

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See the Common Preamble to this NPRM for a discussion of § 40.25, which requires employers to ask applicants whether there were any situations in which they tested positive on a pre-employment test for an employer that subsequently did not hire them.

Section 219.503 Notification; Records

For the reasons discussed above, FRA proposes to remove the references in this section to "urine and breath tests" and replace these with more generic references to "drug and alcohol tests."

Subpart G—Random Alcohol and Drug Testing Programs

Section 219.601 Railroad Random Drug Testing Programs

Paragraph (a) and Subparagraph (d)(2)

FRA would delete the outdated implementation schedule from this section because random drug testing is fully implemented in the rail industry. New railroads must submit a random testing program for FRA approval within 60 days after commencing operations, and implement the program as approved within 60 days of receiving approval.

Section 219.605 Positive Drug Test Results; Procedures

Paragraph (a) of this section would be removed and reserved, since it has been superseded by the MRO verification requirements in § 40.129. FRA would also delete the now unnecessary reference to a "retest" from paragraph (b) of this section.

Section 219.607 Railroad Random Alcohol Testing Programs

Paragraph (a) and Subparagraph (c)(2)

As with § 219.601, FRA would delete the outdated implementation schedule and specify the implementation requirements for new railroads.

Section 219.608 Administrator's Determination of Random Alcohol Testing Rate

Subparagraph (b)(1)(i)

This subparagraph specifies the implementation requirements for new railroads.

Subpart H—Drug and Alcohol Testing Procedures

Section 219.701 Standards for Drug and Alcohol Testing

FRA would revise this section to consolidate in one section the requirement that testing under subparts B, D, F, and G of this part comply with part 40 procedures. In new paragraph (c) of this section, FRA would expand the requirement (currently found in § 219.715(a), which would be deleted) that an employee proceed to the testing site immediately upon notification of selection apply to random drug testing as well as to random alcohol testing. FRA would delete the rest of this subpart (§§ 219.703–219.715), since it has been superseded by part 40.

Subpart I—Annual Report

FRA does not propose to change the reporting requirements of its Management Information System (MIS).

Subpart J—Recordkeeping Requirements

Section 219.901 Retention of Alcohol Testing Records

Section 219.903 Retention of Drug Testing Records

FRA would streamline these sections by deleting any recordkeeping requirements that duplicate those contained in various sections of part 40. In addition to the employer recordkeeping requirements in § 40.333, part 40 now requires service agents to maintain copies of records that were formerly required to be kept by employers (e.g., SAPs are now required to maintain copies of their evaluation and follow-up reports to employers for five years), so that some of the recordkeeping responsibilities currently in §§ 219.901 and 219.903 would shift from railroads to their service agents.

Appendix A to Part 219—Schedule of Civil Penalties

FRA proposes to clarify its schedule of civil penalties by reorganizing the schedule and listing more guideline penalty amounts for violations of part 219. The examples provided are illustrative, not comprehensive, as stated in footnote 1, FRA reserves the right to assess a penalty of up to $22,000 for any violation of this rule, including violations not listed in this penalty schedule.

For the most part, FRA does not propose to raise its guideline penalty amounts above their current levels. The additional violations listed have proposed assessments equivalent to violations already listed in the penalty schedule. The only exceptions are those violations currently listed at the statutory minimum of $500 (see § 209.409 in FRA's railroad safety enforcement procedures (49 CFR part 209)); FRA would raise the penalties for these violations to $1,000.

Appendix D to Part 219—Management Information System Collection Forms

As discussed above, FRA would delete Appendix D, which reprints MIS forms that have been in use since 1994.

Regulatory Analyses and Notices

While the Department's final rule amending part 40 is significant for purposes of Executive Order 12866, this NPRM is not. Although the part 40 rule contains major policy changes, the proposed amendments in this NPRM would make policy changes only to the extent necessary to conform this rule to the changes already made in part 40. The other purpose of this NPRM is to update part 219 by deleting outdated references.

The Department's regulatory analysis of part 40 determined that the final rule is not economically significant since its reworking of existing requirements would not result in significant new costs. This NPRM, which would conform part 219 to part 40, is likewise not economically significant. FRA has therefore not prepared a Regulatory Evaluation of the costs and benefits of this proposal.

See the Department of Transportation's common preamble, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs," for a regulatory evaluation summary of this and the other operating administration NPRMs proposing changes to conform to the new part 40.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, FRA has determined that there are no new requirements for information collection associated with this proposed rule.

Request for Public Comment

In accordance with Executive Order 12866, FRA is allowing members of the public 60 days to comment on this proposed rule. FRA may make changes to the final rule based on comments received in response to this NPRM.

List of Subjects in 49 CFR Part 219

Alcohol abuse, Drug abuse, Drug testing, Penalties, Railroad safety, Reporting and recordkeeping requirements, Safety, Transportation.

The Proposal

For the reasons stated above, FRA proposes to revise part 219 to read as follows:

PART 219—CONTROL OF ALCOHOL AND DRUG USE

Subpart A—General

Sec.
219.1 Purpose and scope.
219.3 Application.
219.5 Definitions.
219.7 Waivers.
219.9 Responsibility for compliance.
219.11 General conditions for chemical tests.
219.13 Preemptive effect.
219.15 [Reserved]
219.17 Construction.
219.19 [Reserved]
219.21 Information collection.
219.23 Railroad policies.

Subpart B—Prohibitions

219.101 Alcohol and drug use prohibited.
219.102 Prohibition on abuse of controlled substances.
219.103 Prescribed and over-the-counter drugs.
219.104 Responsive action.
219.105 Railroad's duty to prevent violations.
219.107 Consequences of unlawful refusal.

Subpart C—Post-Accident Toxicological Testing

219.201 Events for which testing is required.
219.203 Responsibilities of railroads and employees.
219.205 Sample collection and handling.
219.206 FRA access to breath test results.
219.207 Fatality.
219.209 Reports of tests and refusals.
219.211 Analysis and follow-up.
219.213 Unlawful refusals; consequences.

Subpart D—Testing for Cause

219.300 Mandatory reasonable suspicion testing.
219.301 Testing for reasonable cause.
219.302 Prompt sample collection; time limitation.

Subpart E—Identification of Troubled Employees

219.401 Requirement for policies.
219.403 Voluntary referral policy.
219.405 Co-worker report policy.
219.407 Alternate policies.

Subpart F—Pre-employment Tests

219.501 Pre-employment drug testing.
219.502 Pre-employment alcohol testing.
219.503 Notification; records.
219.505 Refusals.

Subpart G—Random Alcohol and Drug Testing Programs

219.601 Railroad random drug testing programs.
219.602 FRA Administrator's determination of random drug testing rate.
219.603 Participation in drug testing.
219.605 Positive drug test results; procedures.
219.607 Railroad random alcohol testing programs.
219.608 FRA Administrator's determination of random alcohol testing rate.
219.609 Participation in alcohol testing.
219.611 Test result indicating prohibited alcohol concentration; procedures.

Subpart H—Drug and Alcohol Testing Procedures

219.701 Standards for drug and alcohol testing.

Subpart I—Annual Report

219.801 Reporting alcohol misuse prevention program results in a management information system.
219.803 Reporting drug misuse prevention program results in a management information system.

Subpart J—Recordkeeping Requirements

219.901 Retention of alcohol testing records.
219.903 Retention of drug testing records.
219.905 Access to facilities and records.
Appendix A to Part 219 Schedule of Civil Penalties
Appendix B to Part 219 Designation of Laboratory for Post-Accident Toxicological Testing
Appendix C to Part 219 Post-Accident Testing Sample Collection

Authority: 49 U.S.C. 20103, 20107, 20140, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49(m).

Subpart A—General

§ 219.1 Purpose and scope.

(a) The purpose of this part is to prevent accidents and casualties in railroad operations that result from impairment of employees by alcohol or drugs.

(b) This part prescribes minimum Federal safety standards for control of alcohol and drug use. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

§ 219.3 Application.

(a) Except as provided in paragraphs (b) and (c) of this section, this part applies to—

(1) Railroads that operate rolling equipment on standard gage track which is part of the general railroad system of transportation; and (2) Railroads that provide commuter or other short-haul rail passenger service in a metropolitan or suburban area (as described by 49 U.S.C. 20102). (b)(1) This part does not apply to a railroad that operates only on track inside an installation which is not part of the general railroad system of transportation.

(2) Subparts D, E, F and G of this part do not apply to a railroad that employs not more than 15 employees covered by the hours of service laws at 49 U.S.C. 21103, 21104, or 21105, and that does not operate on tracks of another railroad (or otherwise engage in joint operations with another railroad) except as necessary for purposes of interchange.

(3) Subpart I of this part does not apply to a railroad that has fewer than 400,000 total manhours.

(c) Subparts E, F and G of this part do not apply to operations of a foreign railroad conducted by covered service employees whose primary place of service ("home terminal") for rail transportation services is located outside the United States. Such operations and employees are subject to subparts A, B, C, and D of this part when operating in United States territory.

§ 219.5 Definitions.

As used in this part—

Class I, Class II, and *Class III* have the meaning assigned by regulations of the Surface Transportation Board (49 CFR part 1201; General Instructions 1–1).

Controlled substance has the meaning assigned by 21 U.S.C. 802, and includes all substances listed on Schedules I through V as they may be revised from time to time (21 CFR parts 1301–1316).

Covered employee means a person who has been assigned to perform service subject to the hours of service laws (49 U.S.C. ch. 211) during a duty tour, whether or not the person has performed or is currently performing such service, and any person who performs such service. (An employee is not "covered" within the meaning of this part exclusively by reason of being an employee for purposes of 49 U.S.C. 21106.) For the purposes of pre-employment testing only, the term "covered employee" includes a person applying to perform covered service.

Co-worker means another employee of the railroad, including a working supervisor directly associated with a yard or train crew, such as a conductor or yard foreman, but not including any other railroad supervisor, special agent, or officer.

DOT Agency means an agency (or "operating administration") of the United States Department of Transportation administering regulations requiring alcohol or controlled substance testing (14 CFR parts 61, 63, 65, 121 and 135; 49 CFR parts 199, 219, 382 and 655) in accordance with part 40 of this title.

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Drug means any substance (other than alcohol) that has known mind- or function-altering effects on a human subject, specifically including any psychoactive substance and including, but not limited to, controlled substances.

FRA means the Federal Railroad Administration, United States Department of Transportation.

FRA representative means the Associate Administrator for Safety of FRA, the Associate Administrator's delegate (including a qualified State inspector acting under part 212 of this chapter), the Chief Counsel of FRA, or the Chief Counsel's delegate.

Hazardous material means a commodity designated as a hazardous material by part 172 of this title.

Impact accident means a train accident (i.e., a rail equipment accident involving damage in excess of the current reporting threshold (see § 225.19(e) of this chapter)) consisting of a head-on collision, a rear-end collision, a side collision (including a collision at a railroad crossing at grade), a switching collision, or impact with a deliberately-placed obstruction such as a bumping post. The following are not impact accidents:

(1) An accident in which the derailment of equipment causes an impact with other rail equipment;

(2) Impact of rail equipment with obstructions such as fallen trees, rock or snow slides, livestock, etc.; and

(3) Raking collisions caused by derailment of rolling stock or operation of equipment in violation of clearance limitations.

Independent with respect to a medical facility, means not under the ownership or control of the railroad and not operated or staffed by a salaried officer or employee of the railroad. The fact that the railroad pays for services rendered by a medical facility or laboratory, selects that entity for performing tests under this part, or has a standing contractual relationship with that entity to perform tests under this part or perform other medical examinations or tests of railroad employees does not, by itself, remove the facility from this definition.

Medical facility means a hospital, clinic, physician's office, or laboratory where toxicological samples can be collected according to recognized professional standards.

Medical practitioner means a physician or dentist licensed or otherwise authorized to practice by the state.

NTSB means the National Transportation Safety Board.

Passenger train means a train transporting persons (other than employees, contractors, or persons riding equipment to observe or monitor railroad operations) in intercity passenger service, commuter or other short-haul service, or for excursion or recreational purposes.

Positive rate means the number of positive results for random drug tests conducted under this part plus the number of refusals of random tests required by this part, divided by the total number of random drug tests conducted under this part plus the number of refusals of random tests required by this part.

Possess means to have on one's person or in one's personal effects or under one's control. However, the concept of possession as used in this part does not include control by virtue of presence in the employee's personal residence or other similar location off of railroad property.

Railroad means any form of nonhighway ground transportation that runs on rails or electromagnetic guideways, and any person providing such transportation, including—

(1) Commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and

(2) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

Railroad property damage or *damage to railroad property* refers to damage to railroad property, including railroad on-track equipment, signals, track, track structures (including bridges and tunnels), or roadbed, including labor costs and all other costs for repair or replacement in kind. Estimated cost for replacement of railroad property must be calculated as described in the FRA Guide for Preparing Accident/Incident Reports. (See § 225.21 of this chapter.) However, replacement of passenger equipment is calculated based on the cost of acquiring a new unit for comparable service.

Reportable injury means an injury reportable under part 225 of this chapter.

Reporting threshold means the amount specified in § 225.19(e) of this chapter, as adjusted from time to time in accordance with appendix B to part 225 of this chapter.

Supervisory employee means an officer, special agent, or other employee of the railroad who is not a co-worker and who is responsible for supervising or monitoring the conduct or performance of one or more employees.

Train, except as context requires, means a locomotive, or more than one locomotive coupled, with or without cars. (A locomotive is a self-propelled unit of equipment which can be used in train service.)

Train accident means a passenger, freight, or work train accident described in § 225.19(c) of this chapter (a "rail equipment accident" involving damage in excess of the current reporting threshold), including an accident involving a switching movement.

Train incident means an event involving the movement of railroad on-track equipment that results in a casualty but in which railroad property damage does not exceed the reporting threshold.

Violation rate means the number of covered employees (as reported under § 219.801) found during random tests given under this part to have an alcohol concentration of .04 or greater, plus the number of employees who refuse a random test required by this part, divided by the total reported number of employees in the industry given random alcohol tests under this part plus the total reported number of employees in the industry who refuse a random test required by this part.

§ 219.7 Waivers.

(a) A person subject to a requirement of this part may petition the FRA for a waiver of compliance with such requirement.

(b) Each petition for waiver under this section must be filed in a manner and contain the information required by part 211 of this chapter. A petition for waiver of the part 40 prohibition against stand down of an employee before the Medical Review Officer has completed the verification must also comply with § 40.21 of this title.

(c) If the FRA Administrator finds that waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any necessary conditions.

§ 219.9 Responsibility for compliance.

(a) Any person (an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing

goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $500 and not more than $11,000 per violation, except that: Penalties may be assessed against individuals only for willful violations; where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury, or has caused death or injury, a penalty not to exceed $22,000 per violation may be assessed; and the standard of liability for a railroad will vary depending upon the requirement involved. See, e.g., § 219.105, which must be construed to qualify the responsibility of a railroad for the unauthorized conduct of an employee that violates §§ 219.101 or 219.102 (while imposing a duty of due diligence to prevent such conduct). Each day a violation continues constitutes a separate offense. See appendix A to this part for a statement of agency civil penalty policy.

(b)(1) In the case of joint operations, primary responsibility for compliance with this part with respect to determination of events qualifying for breath or body fluid testing under subparts C and D of this part rests with the host railroad, and all affected employees must be responsive to direction from the host railroad consistent with this part. However, nothing in this paragraph (b)(1) restricts the ability of the railroads to provide for an appropriate assignment of responsibility for compliance with this part as among those railroads through a joint operating agreement or other binding contract. FRA reserves the right to bring an enforcement action for noncompliance with applicable portions of this part against the host railroad, the employing railroad, or both.

(2) Where an employee of one railroad is required to participate in breath or body fluid testing under subpart C or D of this part and is subsequently subject to adverse action alleged to have arisen out of the required test (or alleged refusal thereof), necessary witnesses and documents available to the other railroad must be made available to the employee on a reasonable basis.

(c) Any independent contractor or other entity that performs covered service for a railroad has the same responsibilities as a railroad under this part, with respect to its employees who perform covered service. The entity's responsibility for compliance with this part may be fulfilled either directly by that entity or by the railroad's treating the entity's employees who perform covered service as if they were its own employees for purposes of this part. The responsibility for compliance must be clearly spelled out in the contract between the railroad and the other entity or in another document. In the absence of such a clear delineation of responsibility, FRA will hold the railroad and the other entity jointly and severally liable for compliance.

§ 219.11 General conditions for chemical tests.

(a) Any employee who performs covered service for a railroad is deemed to have consented to testing as required in subparts B, C, D, and G of this part; and consent is implied by performance of such service.

(b)(1) Each such employee must participate in such testing, as required under the conditions set forth in this part by a representative of the railroad.

(2) In any case where an employee has sustained a personal injury and is subject to alcohol or drug testing under this part, necessary medical treatment must be accorded priority over provision of the breath or body fluid sample(s).

(3) Failure to remain available following an accident or casualty as required by company rules (i.e., being absent without leave) is considered a refusal to participate in testing, without regard to any subsequent provision of samples.

(c) A covered employee who is required to be tested under subpart C or D of this part and who is taken to a medical facility for observation or treatment after an accident or incident is deemed to have consented to the release to FRA of the following:

(1) The remaining portion of any body fluid sample taken by the treating facility within 12 hours of the accident or incident that is not required for medical purposes, together with any normal medical facility record(s) pertaining to the taking of such sample;

(2) The results of any laboratory tests for alcohol or any drug conducted by or for the treating facility on such sample;

(3) The identity, dosage, and time of administration of any drugs administered by the treating facility prior to the time samples were taken by the treating facility or prior to the time samples were taken in compliance with this part; and

(4) The results of any breath tests for alcohol conducted by or for the treating facility.

(d) An employee required to participate in body fluid testing under subpart C of this part (post-accident toxicological testing) or testing subject to subpart H of this part shall, if requested by the representative of the railroad or the medical facility (including, under subpart H of this part, a non-medical contract collector), evidence consent to taking of samples, their release for toxicological analysis under pertinent provisions of this part, and release of the test results to the railroad's Medical Review Officer by promptly executing a consent form, if required by the medical facility. The employee is not required to execute any document or clause waiving rights that the employee would otherwise have against the employer, and any such waiver is void. The employee may not be required to waive liability with respect to negligence on the part of any person participating in the collection, handling or analysis of the specimen or to indemnify any person for the negligence of others. Any consent provided consistent with this section may be construed to extend only to those actions specified in this section.

(e) Nothing in this part may be construed to authorize the use of physical coercion or any other deprivation of liberty in order to compel breath or body fluid testing.

(f) Any railroad employee who performs service for a railroad is deemed to have consented to removal of body fluid and/or tissue samples necessary for toxicological analysis from the remains of such employee, if such employee dies within 12 hours of an accident or incident described in subpart C of this part as a result of such event. This consent is specifically required of employees not in covered service, as well as employees in covered service.

(g) Each supervisor responsible for covered employees (except a working supervisor within the definition of co-worker under this part) must be trained in the signs and symptoms of alcohol and drug influence, intoxication and misuse consistent with a program of instruction to be made available for inspection upon demand by FRA. Such a program shall, at a minimum, provide information concerning the acute behavioral and apparent physiological effects of alcohol and the major drug groups on the controlled substances list. The program must also provide training on the qualifying criteria for post-accident testing contained in subpart C of this part, and the role of the supervisor in post-accident collections described in subpart C and appendix C of this part. The duration of such training may not be less than 3 hours.

(h) Nothing in this subpart restricts any discretion available to the railroad to request or require that an employee

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cooperate in additional body fluid testing. However, no such testing may be performed on urine or blood samples provided under this part. For purposes of this paragraph (h), all urine from a void constitutes a single sample.

§ 219.13 Preemptive effect.

(a) Under section 20106 of title 49, United States Code, issuance of the regulations in this part preempts any State law, rule, regulation, order or standard covering the same subject matter, except a provision directed at a local hazard that is consistent with this part and that does not impose an undue burden on interstate commerce.

(b) FRA does not intend by issuance of the regulations in this part to preempt provisions of State criminal law that impose sanctions for reckless conduct that leads to actual loss of life, injury or damage to property, whether such provisions apply specifically to railroad employees or generally to the public at large.

§ 219.15 [Reserved]

§ 219.17 Construction.

Nothing in this part—

(a) Restricts the power of FRA to conduct investigations under sections 20107, 20108, 20111, and 20112 of title 49, United States Code; or

(b) Creates a private right of action on the part of any person for enforcement of the provisions of this part or for damages resulting from noncompliance with this part.

§ 219.19 [Reserved]

§ 219.21 Information collection.

(a) The information collection requirements of this part have been reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and have been assigned OMB control number 2130–0526.

(b) The information collection requirements are found in the following sections: 219.7, 219.23, 219.104, 219.201, 219.203, 219.205, 219.207, 219.209, 219.211, 219.213, 219.303, 219.401, 219.403, 219.405, 219.407, 219.501, 219.502, 219.503, 219.601, 219.605, 219.701, 219.801, 219.803, 219.901, and 219.903.

§ 219.23 Railroad policies.

(a) Whenever a breath or body fluid test is required of an employee under this part, the railroad must provide clear and unequivocal written notice to the employee that the test is being required under FRA regulations. Use of the mandated DOT form for drug or alcohol testing satisfies the requirements of this paragraph (a).

(b) Whenever a breath or body fluid test is required of an employee under this part, the railroad must provide clear, unequivocal written notice of the basis or bases upon which the test is required (e.g., reasonable suspicion, violation of a specified operating/safety rule enumerated in subpart D of this part, random selection, follow-up, etc.). Completion of the DOT alcohol or drug testing form indicating the basis of the test (prior to providing a copy to the employee) satisfies the requirement of this paragraph (b). Use of the DOT form for non-Federal tests is prohibited.

(c) Use of approved forms for mandatory post-accident toxicological testing under subpart C of this part provides the notifications required under this section with respect to such tests. Use of those forms for any other test is prohibited.

(d) Each railroad must provide educational materials that explain the requirements of this part, and the railroad's policies and procedures with respect to meeting those requirements.

(1) The railroad must ensure that a copy of these materials is distributed to each covered employee prior to the start of alcohol testing under the railroad's alcohol misuse prevention program and to each person subsequently hired for or transferred to a covered position.

(2) Each railroad must provide written notice to representatives of employee organizations of the availability of this information.

(e) *Required content.* The materials to be made available to employees must include detailed discussion of at least the following:

(1) The identity of the person designated by the railroad to answer employee questions about the materials.

(2) The classes or crafts of employees who are subject to the provisions of this part.

(3) Sufficient information about the safety-sensitive functions performed by those employees to make clear that the period of the work day the covered employee is required to be in compliance with this part is that period when the employee is on duty and is required to perform or is available to perform covered service.

(4) Specific information concerning employee conduct that is prohibited under subpart B of this part.

(5) In the case of a railroad utilizing the accident/incident and rule violation reasonable cause testing authority provided by this part, prior notice (which may be combined with the notice required by §§ 219.601(d)(1) and 219.607(d)(1)), to covered employees of the circumstances under which they will be subject to testing.

(6) The circumstances under which a covered employee will be tested under this part.

(7) The procedures that will be used to test for the presence of alcohol and controlled substances, protect the employee and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct employee.

(8) The requirement that a covered employee submit to alcohol and drug tests administered in accordance with this part.

(9) An explanation of what constitutes a refusal to submit to an alcohol or drug test and the attendant consequences.

(10) The consequences for covered employees found to have violated subpart B of this part, including the requirement that the employee be removed immediately from covered service, and the procedures under § 219.104.

(11) The consequences for covered employees found to have an alcohol concentration of .02 or greater but less than .04.

(12) Information concerning the effects of alcohol misuse on an individual's health, work, and personal life; signs and symptoms of an alcohol problem (the employee's or a coworker's); and available methods of evaluating and resolving problems associated with the misuse of alcohol, including utilization of the procedures set forth in subpart E of this part and the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.

(f) *Optional provisions.* The materials supplied to employees may also include information on additional railroad policies with respect to the use or possession of alcohol and drugs, including any consequences for an employee found to have a specific alcohol concentration, that are based on the railroad's authority independent of this part. Any such additional policies or consequences must be clearly and obviously described as being based on independent authority.

Subpart B—Prohibitions

§ 219.101 Alcohol and drug use prohibited.

(a) *Prohibitions.* Except as provided in § 219.103—

(1) No employee may use or possess alcohol or any controlled substance while assigned by a railroad to perform covered service.

(2) No employee may report for covered service, or go or remain on duty in covered service while—

(i) Under the influence of or impaired by alcohol;

(ii) Having .04 or more alcohol concentration in the breath or blood; or

(iii) Under the influence of or impaired by any controlled substance.

(3) No employee may use alcohol for whichever is the lesser of the following periods:

(i) Within four hours of reporting for covered service; or

(ii) After receiving notice to report for covered service.

(4) No employee tested under the provisions of this part whose test result indicates an alcohol concentration of .02 or greater but less than .04 may perform or continue to perform covered service functions for a railroad, nor may a railroad permit the employee to perform or continue to perform covered service, until the start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.

(5) If an employee tested under the provisions of this part has a test result indicating an alcohol concentration below 0.02, the test must be considered negative and is not evidence of alcohol misuse. A railroad may not use a federal test result below 0.02 either as evidence in a company proceeding or as a basis for subsequent testing under company authority. A railroad may take further action to compel cooperation in other breath or body fluid testing only if it has an independent basis for doing so.

(b) *Controlled substance.* "Controlled substance" is defined by § 219.5. Controlled substances are grouped as follows: marijuana, narcotics (such as heroin and codeine), stimulants (such as cocaine and amphetamines), depressants (such as barbiturates and minor tranquilizers), and hallucinogens (such as the drugs known as PCP and LSD). Controlled substances include illicit drugs (Schedule I), drugs that are required to be distributed only by a medical practitioner's prescription or other authorization (Schedules II through IV, and some drugs on Schedule V), and certain preparations for which distribution is through documented over the counter sales (Schedule V only).

(c) *Railroad rules.* Nothing in this section restricts a railroad from imposing an absolute prohibition on the presence of alcohol or any drug in the body fluids of persons in its employ, whether in furtherance of the purpose of this part or for other purposes.

(d) *Construction.* This section may not be construed to prohibit the presence of an unopened container of an alcoholic beverage in a private motor vehicle that is not subject to use in the business of the railroad; nor may it be construed to restrict a railroad from prohibiting such presence under its own rules.

§ 219.102 Prohibition on abuse of controlled substances.

No employee who performs covered service may use a controlled substance at any time, whether on duty or off duty, except as permitted by § 219.103.

§ 219.103 Prescribed and over-the-counter drugs.

(a) This subpart does not prohibit the use of a controlled substance (on Schedules II through V of the controlled substance list) prescribed or authorized by a medical practitioner, or possession incident to such use, if—

(1) The treating medical practitioner or a physician designated by the railroad has made a good faith judgment, with notice of the employee's assigned duties and on the basis of the available medical history, that use of the substance by the employee at the prescribed or authorized dosage level is consistent with the safe performance of the employee's duties;

(2) The substance is used at the dosage prescribed or authorized; and

(3) In the event the employee is being treated by more than one medical practitioner, at least one treating medical practitioner has been informed of all medications authorized or prescribed and has determined that use of the medications is consistent with the safe performance of the employee's duties (and the employee has observed any restrictions imposed with respect to use of the medications in combination).

(b) This subpart does not restrict any discretion available to the railroad to require that employees notify the railroad of therapeutic drug use or obtain prior approval for such use.

§ 219.104 Responsive action.

(a) *Removal from covered service.* (1) If the railroad determines that an employee has violated § 219.101 or § 219.102, or the alcohol or controlled substances misuse rule of another DOT agency, the railroad must immediately remove the employee from covered service and the procedures described in paragraphs (b) through (e) of this section apply.

(2) If an employee refuses to provide breath or a body fluid sample or samples when required to by the railroad under a mandatory provision of this part, the railroad must immediately remove the employee from covered service, and the procedures described in paragraphs (b) through (e) of this section apply.

(3)(i) This section does not apply to actions based on breath or body fluid tests for alcohol or drugs that are conducted exclusively under authority other than that provided in this part (e.g., testing under a company medical policy, for-cause testing policy wholly independent of subpart D of this part, or testing under a labor agreement).

(ii) This section and the information requirements listed in § 219.23 do not apply to applicants who refuse to submit to a pre-employment test or who have a pre-employment test with a result indicating the misuse of alcohol or controlled substances.

(b) *Notice.* Prior to or upon withdrawing the employee from covered service under this section, the railroad must provide notice to the employee of the reason for this action.

(c) *Hearing procedures.* (1) If the employee denies that the test result is valid evidence of alcohol or drug use prohibited by this subpart, the employee may demand and must be provided an opportunity for a prompt post-suspension hearing before a presiding officer other than the charging official. This hearing may be consolidated with any disciplinary hearing arising from the same accident or incident (or conduct directly related thereto), but the presiding officer must make separate findings as to compliance with § 219.101 and § 219.102.

(2) The hearing must be convened within the period specified in the applicable collective bargaining agreement. In the absence of an agreement provision, the employee may demand that the hearing be convened within 10 calendar days of the suspension or, in the case of an employee who is unavailable due to injury, illness, or other sufficient cause, within 10 days of the date the employee becomes available for hearing.

(3) A post-suspension proceeding conforming to the requirements of an applicable collective bargaining agreement, together with the provisions for adjustment of disputes under sec. 3 of the Railway Labor Act (49 U.S.C. 153), satisfies the procedural requirements of this paragraph (c).

(4) Nothing in this part may be deemed to abridge any additional procedural rights or remedies not inconsistent with this part that are available to the employee under a collective bargaining agreement, the Railway Labor Act, or (with respect to employment at will) at common law with respect to the removal or other adverse action taken as a consequence of a positive test result in a test authorized or required by this part.

(5) Nothing in this part restricts the discretion of the railroad to treat an employee's denial of prohibited alcohol

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or drug use as a waiver of any privilege the employee would otherwise enjoy to have such prohibited alcohol or drug use treated as a non-disciplinary matter or to have discipline held in abeyance.

(d) The railroad must comply with the return-to-service and follow-up testing requirements, and the Substance Abuse Professional conflict-of-interest prohibitions, contained in §§ 40.305, 40.307, and 40.299 of this title, respectively.

§ 219.105 Railroad's duty to prevent violations.

(a) A railroad may not, with actual knowledge, permit an employee to go or remain on duty in covered service in violation of the prohibitions of § 219.101 or § 219.102. As used in this section, the knowledge imputed to the railroad must be limited to that of a railroad management employee (such as a supervisor deemed an "officer," whether or not such person is a corporate officer) or a supervisory employee in the offending employee's chain of command.

(b) A railroad must exercise due diligence to assure compliance with § 219.101 and § 219.102 by each covered employee.

§ 219.107 Consequences of unlawful refusal.

(a) An employee who refuses to provide breath or a body fluid sample or samples when required to by the railroad under a mandatory provision of this part must be deemed disqualified for a period of nine (9) months.

(b) Prior to or upon withdrawing the employee from covered service under this section, the railroad must provide notice of the reason for this action, and the procedures described in § 219.104(c) apply.

(c) The disqualification required by this section applies with respect to employment in covered service by any railroad with notice of such disqualification.

(d) The requirement of disqualification for nine (9) months does not limit any discretion on the part of the railroad to impose additional sanctions for the same or related conduct.

(e) Upon the expiration of the 9-month period described in this section, a railroad may permit the employee to return to covered service only under the same conditions specified in § 219.104(d), and the employee must be subject to follow-up tests, as provided by that section.

Subpart C—Post-Accident Toxicological Testing

§ 219.201 Events for which testing is required.

(a) *List of events.* Except as provided in paragraph (b) of this section, post-accident toxicological tests must be conducted after any event that involves one or more of the circumstances described in paragraphs (a)(1) through (4) of this section:

(1) *Major train accident.* Any train accident (i.e., a rail equipment accident involving damage in excess of the current reporting threshold) that involves one or more of the following:

(i) A fatality;

(ii) A release of hazardous material lading from railroad equipment accompanied by—

(A) An evacuation; or

(B) A reportable injury resulting from the hazardous material release (e.g., from fire, explosion, inhalation, or skin contact with the material); or

(iii) Damage to railroad property of $1,000,000 or more.

(2) *Impact accident.* An impact accident (i.e., a rail equipment accident defined as an "impact accident" in § 219.5) that involves damage in excess of the current reporting threshold, resulting in—

(i) A reportable injury; or

(ii) Damage to railroad property of $150,000 or more.

(3) *Fatal train incident.* Any train incident that involves a fatality to any on-duty railroad employee.

(4) *Passenger train accident.* Reportable injury to any person in a train accident (i.e., a rail equipment accident involving damage in excess of the current reporting threshold) involving a passenger train.

(b) *Exceptions.* No test may be required in the case of a collision between railroad rolling stock and a motor vehicle or other highway conveyance at a rail/highway grade crossing. No test may be required in the case of an accident/incident the cause and severity of which are wholly attributable to a natural cause (e.g., flood, tornado, or other natural disaster) or to vandalism or trespasser(s), as determined on the basis of objective and documented facts by the railroad representative responding to the scene.

(c) *Good faith determinations.* (1)(i) The railroad representative responding to the scene of the accident/incident must determine whether the accident/incident falls within the requirements of paragraph (a) of this section or is within the exception described in paragraph (b) of this section. It is the duty of the railroad representative to make reasonable inquiry into the facts as necessary to make such determinations. In making such inquiry, the railroad representative must consider the need to obtain samples as soon as practical in order to determine the presence or absence of impairing substances reasonably contemporaneous with the accident/incident. The railroad representative satisfies the requirement of this section if, after making reasonable inquiry, the representative exercises good faith judgement in making the required determinations.

(ii) The railroad representative making the determinations required by this section may not be a person directly involved in the accident/incident. This section does not prohibit consultation between the responding railroad representative and higher level railroad officials; however, the responding railroad representative must make the factual determinations required by this section.

(iii) Upon specific request made to the railroad by the Associate Administrator for Safety, FRA (or the Associate Administrator's delegate), the railroad must provide a report describing any decision by a person other than the responding railroad representative with respect to whether an accident/incident qualifies for testing. This report must be affirmed by the decision maker and must be provided to FRA within 72 hours of the request. The report must include the facts reported by the responding railroad representative, the basis upon which the testing decision was made, and the person making the decision.

(iv) Any estimates of railroad property damage made by persons not at the scene must be based on descriptions of specific physical damage provided by the on-scene railroad representative.

(v) In the case of an accident involving passenger equipment, a host railroad may rely upon the damage estimates provided by the passenger railroad (whether present on scene or not) in making the decision whether testing is required, subject to the same requirement that visible physical damage be specifically described.

(2) A railroad must not require an employee to provide blood or urine specimens under the authority or procedures of this subject unless the railroad has made the determinations required by this section, based upon reasonable inquiry and good faith judgment. A railroad does not act in excess of its authority under this subpart if its representative has made such reasonable inquiry and exercised such good faith judgment, but it is later determined, after investigation, that one or more of the conditions thought to have required testing were not, in fact, present. However, this section does not excuse the railroad for any error arising from a mistake of law (e.g., application of testing criteria other than those contained in these regulations).

(3) A railroad is not in violation of this subpart if its representative has made such reasonable inquiry and exercised such good faith judgment but nevertheless errs in determining that post-accident testing is not required.

(4) An accident/incident with respect to which the railroad has made reasonable inquiry and exercised good faith judgment in determining the facts necessary to apply the criteria contained in paragraph (a) of this section is deemed a qualifying event for purposes of sample analysis, reporting, and other purposes.

(5) In the event samples are collected following an event determined by FRA not to be a qualifying event within the meaning of this section, FRA directs its designated laboratory to destroy any sample material submitted and to refrain from disclosing to any person the results of any analysis conducted.

§ 219.203 Responsibilities of railroads and employees.

(a) *Employees tested.* (1)(i) Following each accident and incident described in § 219.201, the railroad (or railroads) must take all practicable steps to assure that all covered employees of the railroad directly involved in the accident or incident provide blood and urine samples for toxicological testing by FRA. Such employees must cooperate in the provision of samples as described in this part and appendix C to this part.

(ii) If the conditions for mandatory toxicological testing exist, the railroad may also require employees to provide breath for testing in accordance with the procedures set forth in part 40 of this title and in this part, if such testing does not interfere with timely collection of required samples.

(2) Such employees must specifically include each and every operating employee assigned as a crew member of any train involved in the accident or incident. In any case where an operator, dispatcher, signal maintainer or other covered employee is directly and contemporaneously involved in the circumstances of the accident/incident, those employees must also be required to provide samples.

(3) An employee must be excluded from testing under the following circumstances: In any case of an accident/incident for which testing is mandated only under § 219.201(a)(2) (an "impact accident"), § 219.201(a)(3) ("fatal train incident"), or § 219.201(a)(4) (a "passenger train accident with injury") if the railroad representative can immediately determine, on the basis of specific information, that the employee had no role in the cause(s) or severity of the accident/incident. The railroad representative must consider any such information immediately available at the time the qualifying event determination is made under § 219.201.

(4) The following provisions govern accidents/incidents involving non-covered employees:

(i) Surviving non-covered employees are not subject to testing under this subpart.

(ii) Testing of the remains of non-covered employees who are fatally injured in train accidents and incidents is required.

(b) *Timely sample collection.* (1) The railroad must make every reasonable effort to assure that samples are provided as soon as possible after the accident or incident.

(2) This paragraph (b) must not be construed to inhibit the employees required to be tested from performing, in the immediate aftermath of the accident or incident, any duties that may be necessary for the preservation of life or property. However, where practical, the railroad must utilize other employees to perform such duties.

(3) In the case of a passenger train which is in proper condition to continue to the next station or its destination after an accident or incident, the railroad must consider the safety and convenience of passengers in determining whether the crew is immediately available for testing. A relief crew must be called to relieve the train crew as soon as possible.

(4) Covered employees who may be subject to testing under this subpart must be retained in duty status for the period necessary to make the determinations required by § 219.201 and this section and (as appropriate) to complete the sample collection procedure. An employee may not be recalled for testing under this subpart if that employee has been released from duty under the normal procedures of the railroad, except that an employee may be immediately recalled for testing if—

(i) The employee could not be retained in duty status because the employee went off duty under normal carrier procedures prior to being contacted by a railroad supervisor and instructed to remain on duty pending completion of the required determinations (e.g., in the case of a dispatcher or signal maintainer remote from the scene of an accident who was unaware of the occurrence at the time the employee went off duty);

(ii) The railroad's preliminary investigation (contemporaneous with the determination required by § 219.201) indicates a clear probability that the employee played a major role in the cause or severity of the accident/incident; and

(iii) The accident/incident actually occurred during the employee's duty tour. An employee who has been transported to receive medical care is not released from duty for purposes of this section. Nothing in this section prohibits the subsequent testing of an employee who has failed to remain available for testing as required (i.e., who is absent without leave); but subsequent testing does not excuse such refusal by the employee timely to provide the required specimens.

(c) *Place of sample collection.* (1) Employees must be transported to an independent medical facility where the samples must be obtained. The railroad must pre-designate for such testing one or more such facilities in reasonable proximity to any location where the railroad conducts operations. Designation must be made on the basis of the willingness of the facility to conduct sample collection and the ability of the facility to complete sample collection promptly, professionally, and in accordance with pertinent requirements of this part. In all cases blood may be drawn only by a qualified medical professional or by a qualified technician subject to the supervision of a qualified medical professional.

(2) In the case of an injured employee, the railroad must request the treating medical facility to obtain the samples.

(d) *Obtaining cooperation of facility.* (1) In seeking the cooperation of a medical facility in obtaining a sample under this subpart, the railroad shall, as necessary, make specific reference to the requirements of this subpart.

(2) If an injured employee is unconscious or otherwise unable to evidence consent to the procedure and the treating medical facility declines to obtain blood samples after having been acquainted with the requirements of this subpart, the railroad must immediately notify the duty officer at the National Response Center (NRC) at (800) 424–8801 or (800) 424–8802, stating the employee's name, the medical facility, its location, the name of the appropriate decisional authority at the medical facility, and the telephone number at which that person can be reached. FRA will then take appropriate measures to assist in obtaining the required sample.

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(e) *Discretion of physician.* Nothing in this subpart may be construed to limit the discretion of a physician to determine whether drawing a blood sample is consistent with the health of an injured employee or an employee afflicted by any other condition that may preclude drawing the specified quantity of blood.

§ 219.205 Sample collection and handling.

(a) *General.* Urine and blood samples must be obtained, marked, preserved, handled, and made available to FRA consistent with the requirements of this subpart, and the technical specifications set forth in appendix C to this part.

(b) *Information requirements.* In order to process samples, analyze the significance of laboratory findings, and notify the railroads and employees of test results, it is necessary to obtain basic information concerning the accident/incident and any treatment administered after the accident/incident. Accordingly, the railroad representative must complete the information required by Form FRA 6180.73 (revised) for shipping with the samples. Each employee subject to testing must cooperate in completion of the required information on Form FRA F 6180.74 (revised) for inclusion in the shipping kit and processing of the samples. The railroad representative must request an appropriate representative of the medical facility to complete the remaining portion of the information on each Form 6180.74. One Form 6180.73 must be forwarded in the shipping kit with each group of samples. One Form 6180.74 must be forwarded in the shipping kit for each employee who provides samples. Forms 6180.73 and 6180.74 may be ordered from the laboratory specified in appendix B to this part; the forms are also provided to railroads free of charge in the shipping kit. (See paragraph (c) of this section.)

(c) *Shipping kit.* (1) FRA and the laboratory designated in appendix B to this part make available for purchase a limited number of standard shipping kits for the purpose of routine handling of toxicological samples under this subpart. Whenever possible, samples must be placed in the shipping kit prepared for shipment according to the instructions provided in the kit and appendix C to this part.

(2) Kits may be ordered directly from the laboratory designated in appendix B to this part.

(3) FRA maintains a limited number of kits at its field offices. A Class III railroad may utilize kits in FRA's possession, rather than maintaining such kits on its property.

(d) *Shipment.* Samples must be shipped as soon as possible by pre-paid air express or air freight (or other means adequate to ensure delivery within twenty-four (24) hours from time of shipment) to the laboratory designated in appendix B to this part. Where express courier pickup is available, the railroad must request the medical facility to transfer the sealed toxicology kit directly to the express courier for transportation. If courier pickup is not available at the medical facility where the samples are collected or for any other reason prompt transfer by the medical facility cannot be assured, the railroad must promptly transport the sealed shipping kit holding the samples to the most expeditious point of shipment via air express, air freight or equivalent means. The railroad must maintain and document secure chain of custody of the kit from release by the medical facility to delivery for transportation, as described in appendix C to this part.

§ 219.206 FRA access to breath test results.

Documentation of breath test results must be made available to FRA consistent with the requirements of this subpart, and the technical specifications set forth in appendix C to this part.

§ 219.207 Fatality.

(a) In the case of an employee fatality in an accident or incident described in § 219.201, body fluid and/or tissue samples must be obtained from the remains of the employee for toxicological testing. To ensure that samples are timely collected, the railroad must immediately notify the appropriate local authority (such as a coroner or medical examiner) of the fatality and the requirements of this subpart, making available the shipping kit and requesting the local authority to assist in obtaining the necessary body fluid or tissue samples. The railroad must also seek the assistance of the custodian of the remains, if a person other than the local authority.

(b) If the local authority or custodian of the remains declines to cooperate in obtaining the necessary samples, the railroad must immediately notify the duty officer at the National Response Center (NRC) at (800) 424–8801 or (800) 424–8802 by providing the following information:

(1) Date and location of the accident or incident;

(2) Railroad;

(3) Name of the deceased;

(4) Name and telephone number of custodian of the remains; and

(5) Name and telephone number of local authority contacted.

(c) A coroner, medical examiner, pathologist, Aviation Medical Examiner, or other qualified professional is authorized to remove the required body fluid and/or tissue samples from the remains on request of the railroad or FRA pursuant to this part; and, in so acting, such person is the delegate of the FRA Administrator under §§ 20107 and 20108 of title 49, United States Code (but not the agent of the Secretary for purposes of the Federal Tort Claims Act (chapter 171 of title 28, United States Code). Such qualified professional may rely upon the representations of the railroad or FRA representative with respect to the occurrence of the event requiring that toxicological tests be conducted and the coverage of the deceased employee under these rules.

(d) Appendix C to this part specifies body fluid and tissue samples required for toxicological analysis in the case of a fatality.

§ 219.209 Reports of tests and refusals.

(a)(1) A railroad that has experienced one or more events for which samples were obtained must provide prompt telephonic notification summarizing such events. Notification must immediately be provided to the duty officer at the National Response Center (NRC) at (800) 424–8802 and to the Office of Safety, FRA, at (202) 493–6313.

(2) Each telephonic report must contain:

(i) Name of railroad;

(ii) Name, title and telephone number of person making the report;

(iii) Time, date and location of the accident/incident;

(iv) Brief summary of the circumstances of the accident/incident, including basis for testing; and

(v) Number, names and occupations of employees tested.

(b) If the railroad is unable, as a result of non-cooperation of an employee or for any other reason, to obtain a sample and cause it to be provided to FRA as required by this subpart, the railroad must make a concise narrative report of the reason for such failure and, if appropriate, any action taken in response to the cause of such failure. This report must be appended to the report of the accident/incident required to be submitted under part 225 of this chapter.

(c) If a test required by this section is not administered within four hours following the accident or incident, the railroad must prepare and maintain on file a record stating the reasons the test was not promptly administered. Records must be submitted to FRA upon request

of the FRA Associate Administrator for Safety.

§ 219.211 Analysis and follow-up.

(a) The laboratory designated in appendix B to this part undertakes prompt analysis of samples provided under this subpart, consistent with the need to develop all relevant information and produce a complete report. Samples are analyzed for alcohol and controlled substances specified by FRA under protocols specified by FRA, summarized in appendix C to this part, which have been submitted to Health and Human Services for acceptance. Samples may be analyzed for other impairing substances specified by FRA as necessary to the particular accident investigation.

(b) Results of post-accident toxicological testing under this subpart are reported to the railroad's Medical Review Officer and the employee. The MRO and the railroad must treat the test results and any information concerning medical use or administration of drugs provided under this subpart in the same confidential manner as if subject to subpart H of this part, except where publicly disclosed by FRA or the National Transportation Safety Board.

(c) With respect to a surviving employee, a test reported as positive for alcohol or a controlled substance by the designated laboratory must be reviewed by the railroad's Medical Review Officer with respect to any claim of use or administration of medications (consistent with § 219.103) that could account for the laboratory findings. The Medical Review Officer must promptly report the results of each review to the Associate Administrator for Safety, FRA, Washington, DC 20590. Such report must be in writing and must reference the employing railroad, accident/incident date, and location, and the envelope must be marked "ADMINISTRATIVELY CONFIDENTIAL: ATTENTION ALCOHOL/DRUG PROGRAM MANAGER." The report must state whether the MRO reported the test result to the employing railroad as positive or negative and the basis of any determination that analytes detected by the laboratory derived from authorized use (including a statement of the compound prescribed, dosage/frequency, and any restrictions imposed by the authorized medical practitioner). Unless specifically requested by FRA in writing, the Medical Review Officer may not disclose to FRA the underlying physical condition for which any medication was authorized or administered. The FRA is not be bound by the railroad Medical Review Officer's determination, but that determination will be considered by FRA in relation to the accident/incident investigation and with respect to any enforcement action under consideration.

(d) To the extent permitted by law, FRA treats test results indicating medical use of controlled substances consistent with § 219.103 (and other information concerning medically authorized drug use or administration provided incident to such testing) as administratively confidential and withholds public disclosure, except where it is necessary to consider this information in an accident investigation in relation to determination of probable cause. (However, as further provided in this section, FRA may provide results of testing under this subpart and supporting documentation to the National Transportation Safety Board.)

(e) An employee may respond in writing to the results of the test prior to the preparation of any final investigation report concerning the accident or incident. An employee wishing to respond may do so by letter addressed to the Alcohol/Drug Program Manager, Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 within 45 days of receipt of the test results. Any such submission must refer to the accident date, railroad and location, must state the position occupied by the employee on the date of the accident/incident, and must identify any information contained therein that the employee requests be withheld from public disclosure on grounds of personal privacy (but the decision whether to honor such request will be made by the FRA on the basis of controlling law).

(f)(1) The toxicology report may contain a statement of pharmacological significance to assist FRA and other parties in understanding the data reported. No such statement may be construed as a finding of probable cause in the accident or incident.

(2) The toxicology report is a part of the report of the accident/incident and therefore subject to the limitation of 49 U.S.C. 20903 (prohibiting use of the report for any purpose in a civil action for damages resulting from a matter mentioned in the report).

(g)(1) It is in the public interest to ensure that any railroad disciplinary actions that may result from accidents and incidents for which testing is required under this subpart are disposed of on the basis of the most complete and reliable information available so that responsive action will be appropriate. Therefore, during the interval between an accident or incident and the date that the railroad receives notification of the results of the toxicological analysis, any provision of collective bargaining agreements establishing maximum periods for charging employees with rule violations, or for holding an investigation, may not be deemed to run as to any offense involving the accident or incident (i.e., such periods must be tolled).

(2) This provision may not be construed to excuse the railroad from any obligation to timely charge an employee (or provide other actual notice) where the railroad obtains sufficient information relating to alcohol or drug use, impairment or possession or other rule violations prior to the receipt to toxicological analysis.

(3) This provision does not authorize holding any employee out of service pending receipt of toxicological analysis; nor does it restrict a railroad from taking such action in an appropriate case.

(h) Except as provided in § 219.201 (with respect to non-qualifying events), each sample (including each split sample) provided under this subpart is retained for not less than three months following the date of the accident or incident (two years from the date of the accident or incident in the case of a sample testing positive for alcohol or a controlled substance). Post-mortem specimens may be made available to the National Transportation Safety Board (on request).

(i) An employee (donor) may, within 60 days of the date of the toxicology report, request that his or her split sample be tested by the designated laboratory or by another laboratory certified by Health and Human Services under that Department's Guidelines for Federal Workplace Drug Testing Programs that has available an appropriate, validated assay for the fluid and compound declared positive. Since some analytes may deteriorate during storage, detected levels of the compound shall, as technically appropriate, be reported and considered corroborative of the original test result. Any request for a retest shall be in writing, specify the railroad, accident date and location, be signed by the employee/donor, be addressed to the Associate Administrator for Safety, Federal Railroad Administration, Washington, DC 20590, and be designated "ADMINISTRATIVELY CONFIDENTIAL: ATTENTION ALCOHOL/DRUG PROGRAM MANAGER." The expense of any employee-requested split sample test at a laboratory other than the laboratory designated under this subpart shall be borne by the employee.

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§ 219.213 Unlawful refusals; consequences.

(a) *Disqualification.* An employee who refuses to cooperate in providing breath, blood or urine samples following an accident or incident specified in this subpart must be withdrawn from covered service and must be deemed disqualified for covered service for a period of nine (9) months in accordance with the conditions specified in § 219.107.

(b) *Procedures.* Prior to or upon withdrawing the employee from covered service under this section, the railroad must provide notice of the reason for this action and an opportunity for hearing before a presiding officer other than the charging official. The employee is entitled to the procedural protection set out in § 219.104(d).

(c) *Subject of hearing.* The hearing required by this section must determine whether the employee refused to submit to testing, having been requested to submit, under authority of this subpart, by a representative of the railroad. In determining whether a disqualification is required, the hearing official shall, as appropriate, also consider the following:

(1) Whether the railroad made a good faith determination, based on reasonable inquiry, that the accident or incident was within the mandatory testing requirements of this subpart; and

(2) In a case where a blood test was refused on the ground it would be inconsistent with the employee's health, whether such refusal was made in good faith and based on medical advice.

Subpart D—Testing for Cause

§ 219.300 Mandatory reasonable suspicion testing.

(a) *Requirements.* (1) A railroad must require a covered employee to submit to an alcohol test when the railroad has reasonable suspicion to believe that the employee has violated any prohibition of subpart B of this part concerning use of alcohol. The railroad's determination that reasonable suspicion exists to require the covered employee to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee.

(2) A railroad must require a covered employee to submit to a drug test when the railroad has reasonable suspicion to believe that the employee has violated the prohibitions of subpart B of this part concerning use of controlled substances. The railroad's determination that reasonable suspicion exists to require the covered employee to undergo a drug test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee. Such observations may include indications of the chronic and withdrawal effects of drugs.

(b)(1) With respect to an alcohol test, the required observations must be made by a supervisor trained in accordance with § 219.11(g). The supervisor who makes the determination that reasonable suspicion exists may not conduct testing on that employee.

(2) With respect to a drug test, the required observations must be made by two supervisors, at least one of whom is trained in accordance with § 219.11(g).

(c) Nothing in this section may be construed to require the conduct of alcohol testing or drug testing when the employee is apparently in need of immediate medical attention.

(d)(1) If a test required by this section is not administered within two hours following the determination under this section, the railroad must prepare and maintain on file a record stating the reasons the test was not properly administered. If a test required by this section is not administered within eight hours of the determination under this section, the railroad must cease attempts to administer an alcohol test and must state in the record the reasons for not administering the test. Records must be submitted to FRA upon request of the FRA Administrator.

(2) [Reserved].

§ 219.301 Testing for reasonable cause.

(a) *Authorization.* A railroad may, under the conditions specified in this subpart, require any covered employee, as a condition of employment in covered service, to cooperate in breath or body fluid testing, or both, to determine compliance with §§ 219.101 and 219.102 or a railroad rule implementing the requirements of §§ 219.101 and 219.102. This authority is limited to testing after observations or events that occur during duty hours (including any period of overtime or emergency service). The provisions of this subpart apply only when, and to the extent that, the test in question is conducted in reliance upon the authority conferred by this section. Section 219.23 prescribes the notice to an employee that is required when an employee is required to provide a breath or body fluid sample under this part. A railroad may not require an employee to be tested under the authority of this subpart unless reasonable cause, as defined in this section, exists with respect to that employee.

(b) *For cause breath testing.* In addition to reasonable suspicion as described in § 219.300, the following circumstances constitute cause for the administration of alcohol tests under this section:

(1) [Reserved]

(2) *Accident/incident.* The employee has been involved in an accident or incident reportable under part 225 of this chapter, and a supervisory employee of the railroad has a reasonable belief, based on specific, articulable facts, that the employee's acts or omissions contributed to the occurrence or severity of the accident or incident; or

(3) *Rule violation.* The employee has been directly involved in one of the following operating rule violations or errors:

(i) Noncompliance with a train order, track warrant, timetable, signal indication, special instruction or other direction with respect to movement of a train that involves—

(A) Occupancy of a block or other segment of track to which entry was not authorized;

(B) Failure to clear a track to permit opposing or following movement to pass;

(C) Moving across a railroad crossing at grade without authorization; or

(D) Passing an absolute restrictive signal or passing a restrictive signal without stopping (if required);

(ii) Failure to protect a train as required by a rule consistent with § 218.37 of this chapter (including failure to protect a train that is fouling an adjacent track, where required by the railroad's rules);

(iii) Operation of a train at a speed that exceeds the maximum authorized speed by at least ten (10) miles per hour or by fifty percent (50%) of such maximum authorized speed, whichever is less;

(iv) Alignment of a switch in violation of a railroad rule, failure to align a switch as required for movement, operation of a switch under a train, or unauthorized running through a switch;

(v) Failure to apply or stop short of derail as required;

(vi) Failure to secure a hand brake or failure to secure sufficient hand brakes, as required;

(vii) Entering a crossover before both switches are lined for movement; or

(viii) In the case of a person performing a dispatching function or block operator function, issuance of a train order or establishment of a route that fails to provide proper protection for a train.

(c) *For cause drug testing.* In addition to reasonable suspicion as described in § 219.300, each of the conditions set forth in paragraphs (b)(2) ("accident/incident") and (b)(3) ("rule violation") of this section as constituting cause for alcohol testing also constitutes cause with respect to drug testing.

(d) [Reserved]

(e) *Limitation for subpart C events.* The compulsory drug testing authority conferred by this section does not apply with respect to any event subject to post-accident toxicological testing as required by § 219.201. However, use of compulsory breath test authority is authorized in any case where breath test results can be obtained in a timely manner at the scene of the accident and conduct of such tests does not materially impede the collection of samples under subpart C of this part.

§ 219.302 Prompt sample collection; time limitation.

(a) Testing under this subpart may only be conducted promptly following the observations or events upon which the testing decision is based, consistent with the need to protect life and property.

(b) No employee may be required to participate in alcohol or drug testing under this section after the expiration of an eight-hour period from—

(1) The time of the observations or other events described in this section; or

(2) In the case of an accident/incident, the time a responsible railroad supervisor receives notice of the event providing reasonable cause for conduct of the test.

(c) An employee may not be tested under this subpart if that employee has been released from duty under the normal procedures of the railroad. An employee who has been transported to receive medical care is not released from duty for purposes of this section. Nothing in this section prohibits the subsequent testing of an employee who has failed to remain available for testing as required (i.e., who is absent without leave).

(d) As used in this subpart, a "responsible railroad supervisor" means any responsible line supervisor (e.g., a trainmaster or road foreman of engines) or superior official in authority over the employee to be tested.

(e) In the case of a drug test, the eight-hour requirement is satisfied if the employee has been delivered to the collection site (where the collector is present) and the request has been made to commence collection of the drug testing specimens within that period.

(f) [Reserved]

(g) Section 219.23 prescribes the notice to an employee that is required to provide breath or a body fluid sample under this part.

Subpart E—Identification of Troubled Employees

§ 219.401 Requirement for policies.

(a) The purpose of this subpart is to prevent the use of alcohol and drugs in connection with covered service.

(b) Each railroad must adopt, publish and implement—

(1) A policy designed to encourage and facilitate the identification of those covered employees who abuse alcohol or drugs as a part of a treatable condition and to ensure that such employees are provided the opportunity to obtain counseling or treatment before those problems manifest themselves in detected violations of this part (hereafter "voluntary referral policy"); and

(2) A policy designed to foster employee participation in preventing violations of this subpart and encourage co-worker participation in the direct enforcement of this part (hereafter "co-worker report policy").

(c) A railroad may comply with this subpart by adopting, publishing and implementing policies meeting the specific requirements of §§ 219.403 and 219.405 or by complying with § 219.407.

(d) If a railroad complies with this part by adopting, publishing and implementing policies consistent with §§ 219.403 and 219.405, the railroad must make such policies, and publications announcing such policies, available for inspection and copying by FRA.

(e) Nothing in this subpart may be construed to—

(1) Require payment of compensation for any period an employee is out of service under a voluntary referral or co-worker report policy;

(2) Require a railroad to adhere to a voluntary referral or co-worker report policy in a case where the referral or report is made for the purpose, or with the effect, of anticipating the imminent and probable detection of a rule violation by a supervising employee; or

(3) Limit the discretion of a railroad to dismiss or otherwise discipline an employee for specific rule violations or criminal offenses, except as specifically provided by this subpart.

§ 219.403 Voluntary referral policy.

(a) *Scope.* This section prescribes minimum standards for voluntary referral policies. Nothing in this section restricts a railroad from adopting, publishing and implementing a voluntary referral policy that affords more favorable conditions to employees troubled by alcohol or drug abuse problems, consistent with the railroad's responsibility to prevent violations of §§ 219.101 and 219.102.

(b) *Required provisions.* A voluntary referral policy must include the following provisions:

(1) A covered employee who is affected by an alcohol or drug use problem may maintain an employment relationship with the railroad if, before the employee is charged with conduct deemed by the railroad sufficient to warrant dismissal, the employee seeks assistance through the railroad for the employee's alcohol or drug use problem or is referred for such assistance by another employee or by a representative of the employee's collective bargaining unit. The railroad must specify whether, and under what circumstances, its policy provides for the acceptance of referrals from other sources, including (at the option of the railroad) supervisory employees.

(2) Except as may be provided under paragraph (c) of this section, the railroad treats the referral and subsequent handling, including counseling and treatment, as confidential.

(3) The railroad will, to the extent necessary for treatment and rehabilitation, grant the employee a leave of absence from the railroad for the period necessary to complete primary treatment and establish control over the employee's alcohol or drug problem. The policy must allow a leave of absence of not less than 45 days, if necessary for the purpose of meeting initial treatment needs.

(4) Except as may be provided under paragraph (c)(2) of this section, the employee will be returned to service on the recommendation of the substance abuse professional. Approval to return to service may not be unreasonably withheld.

(5) With respect to a certified locomotive engineer or a candidate for certification, the railroad must meet the requirements of § 240.119(e) of this chapter.

(c) *Optional provisions.* A voluntary referral policy may include any of the following provisions, at the option of the railroad:

(1) The policy may provide that the rule of confidentiality is waived if—

(i) The employee at any time refuses to cooperate in a recommended course of counseling or treatment; and/or

(ii) The employee is later determined, after investigation, to have been involved in an alcohol or drug-related disciplinary offense growing out of subsequent conduct.

(2) The policy may require successful completion of a return-to-service medical examination as a further condition on reinstatement in covered service.

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(3) The policy may provide that it does not apply to an employee who has previously been assisted by the railroad under a policy or program substantially consistent with this section or who has previously elected to waive investigation under § 219.405 (co-worker report policy).

(4) The policy may provide that, in order to invoke its benefits, the employee must report to the contact designated by the railroad either:

(i) During non-duty hours (i.e., at a time when the employee is off duty); or

(ii) While unimpaired and otherwise in compliance with the railroad's alcohol and drug rules consistent with this subpart.

§ 219.405 Co-worker report policy.

(a) *Scope.* This section prescribes minimum standards for co-worker report policies. Nothing in this section restricts a railroad from adopting, publishing and implementing a policy that affords more favorable conditions to employees troubled by alcohol or drug abuse problems, consistent with the railroad's responsibility to prevent violations of §§ 219.101 and 219.102.

(b) *Employment relationship.* A co-worker report policy must provide that a covered employee may maintain an employment relationship with the railroad following an alleged first offense under these rules or the railroad's alcohol and drug rules, subject to the conditions and procedures contained in this section.

(c) *General conditions and procedures.* (1) The alleged violation must come to the attention of the railroad as a result of a report by a co-worker that the employee was apparently unsafe to work with or was, or appeared to be, in violation of this part or the railroad's alcohol and drug rules.

(2) If the railroad representative determines that the employee is in violation, the railroad may immediately remove the employee from service in accordance with its existing policies and procedures.

(3) The employee must elect to waive investigation on the rule charge and must contact the substance abuse professional within a reasonable period specified by the policy.

(4) The substance abuse professional must schedule necessary interviews with the employee and complete an evaluation within 10 calendar days of the date on which the employee contacts the professional with a request for evaluation under the policy, unless it becomes necessary to refer the employee for further evaluation. In each case, all necessary evaluations must be completed within 20 days of the date on which the employee contacts the professional.

(d) *When treatment is required.* If the substance abuse professional determines that the employee is affected by psychological or chemical dependence on alcohol or a drug or by another identifiable and treatable mental or physical disorder involving the abuse of alcohol or drugs as a primary manifestation, the following conditions and procedures apply:

(1) The railroad must, to the extent necessary for treatment and rehabilitation, grant the employee a leave of absence from the railroad for the period necessary to complete primary treatment and establish control over the employee's alcohol or drug problem. The policy must allow a leave of absence of not less than 45 days, if necessary for the purpose of meeting initial treatment needs.

(2) The employee must agree to undertake and successfully complete a course of treatment deemed acceptable by the substance abuse professional.

(3) The railroad must promptly return the employee to service, on recommendation of the substance abuse professional, when the employee has established control over the substance abuse problem. Return to service may also be conditioned on successful completion of a return-to-service medical examination. Approval to return to service may not be unreasonably withheld.

(4) Following return to service, the employee, as a further condition on withholding of discipline, may, as necessary, be required to participate in a reasonable program of follow-up treatment for a period not to exceed 60 months from the date the employee was originally withdrawn from service.

(e) *When treatment is not required.* If the substance abuse professional determines that the employee is not affected by an identifiable and treatable mental or physical disorder—

(1) The railroad must return the employee to service within 5 days after completion of the evaluation.

(2) During or following the out-of-service period, the railroad may require the employee to participate in a program of education and training concerning the effects of alcohol and drugs on occupational or transportation safety.

(f) *Follow-up tests.* A railroad may conduct return-to-service and/or follow-up tests (as described in § 219.104) of an employee who waives investigation and is determined to be ready to return to service under this section.

§ 219.407 Alternate policies.

(a) In lieu of a policy under § 219.403 (voluntary referral) or § 219.405 (co-worker report), or both, a railroad may adopt, publish and implement, with respect to a particular class or craft of covered employees, an alternate policy or policies having as their purpose the prevention of alcohol or drug use in railroad operations, if such policy or policies have the written concurrence of the recognized representatives of such employees.

(b) The concurrence of recognized employee representatives in an alternate policy may be evidenced by a collective bargaining agreement or any other document describing the class or craft of employees to which the alternate policy applies. The agreement or other document must make express reference to this part and to the intention of the railroad and employee representatives that the alternate policy applies in lieu of the policy required by § 219.403, § 219.405, or both.

(c) The railroad must file the agreement or other document described in paragraph (b) of this section with the Associate Administrator for Safety, FRA. If the alternate policy is amended or revoked, the railroad must file a notice of such amendment or revocation at least 30 days prior to the effective date of such action.

(d) This section does not excuse a railroad from adopting, publishing and implementing the policies required by §§ 219.403 and 219.405 with respect to any group of covered employees not within the coverage of an appropriate alternate policy.

Subpart F—Pre-employment Tests

§ 219.501 Pre-employment drug testing.

(a) Prior to the first time a covered employee performs covered service for a railroad, the employee must undergo testing for drugs. No railroad may allow a covered employee to perform covered service, unless the employee has been administered a test for drugs with a result that did not indicate the misuse of controlled substances. This requirement applies to final applicants for employment and to employees seeking to transfer for the first time from non-covered service to duties involving covered service.

(b) As used in subpart H of this part with respect to a test required under this subpart, the term covered employee includes an applicant for pre-employment testing only. In the case of an applicant who declines to be tested and withdraws the application for employment, no record may be maintained of the declination.

§ 219.502 Pre-employment alcohol testing.

(a) A railroad may, but is not required to, conduct pre-employment alcohol testing under this part. If a railroad chooses to conduct pre-employment alcohol testing, the railroad must comply with the following requirements:

(1) It must conduct a pre-employment alcohol test before the first performance of safety-sensitive functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of safety-sensitive functions).

(2) It must treat all safety-sensitive employees performing safety-sensitive functions the same for the purpose of pre-employment alcohol testing (i.e., it must not test some covered employees and not others).

(3) It must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test.

(4) It must conduct all pre-employment alcohol tests using the alcohol testing procedures of part 40 of this title.

(5) It must not allow a covered employee to begin performing safety-sensitive functions unless the result of the employee's test indicates an alcohol concentration of less than 0.04.

(b) As used in subpart H of this part, with respect to a test authorized under this subpart, the term covered employee includes an applicant for pre-employment testing only. In the case of an applicant who declines to be tested and withdraws the application for employment, no record may be maintained of the declination.

§ 219.503 Notification; records.

The railroad must provide for medical review of drug test results as provided in subpart H of this part. The railroad must notify the applicant of the results of the drug and alcohol tests in the same manner as provided for employees in subpart H of this part. Records must be maintained confidentially and be retained in the same manner as required under subpart J of this part for employee test records, except that such records need not reflect the identity of an applicant whose application for employment in covered service was denied.

§ 219.505 Refusals.

An applicant who has refused to submit to pre-employment testing under this section may not be employed in covered service based upon the application and examination with respect to which such refusal was made. This section does not create any right on the part of the applicant to have a subsequent application considered; nor does it restrict the discretion of the railroad to entertain a subsequent application for employment from the same person.

Subpart G—Random Alcohol and Drug Testing Programs

§ 219.601 Railroad random drug testing programs.

(a) *Submission.* Each railroad must submit for FRA approval a random testing program meeting the requirements of this subpart. A railroad commencing operations must submit such a program not later than 30 days prior to such commencement. The program must be submitted to the Associate Administrator for Safety, FRA, for review and approval by the FRA Administrator. If, after approval, a railroad desires to amend the random testing program implemented under this subpart, the railroad must file with FRA a notice of such amendment at least 30 days prior to the intended effective date of such action. A railroad already subject to this subpart that becomes subject to this subpart with respect to one or more additional employees must amend its program not later than 60 days after these employees become subject to this subpart and file with FRA a notice of such amendment at least 30 days prior to the intended effective date of such action. A program responsive to the requirements of this section or any amendment to the program may not be implemented prior to approval.

(b) *Form of programs.* Random testing programs submitted by or on behalf of each railroad under this subpart must meet the following criteria, and the railroad and its managers, supervisors, officials and other employees and agents must conform to such criteria in implementing the program:

(1) Selection of covered employees for testing must be made by a method employing objective, neutral criteria which ensure that every covered employee has a substantially equal statistical chance of being selected within a specified time frame. The method may not permit subjective factors to play a role in selection, i.e., no employee may be selected as the result of the exercise of discretion by the railroad. The selection method must be capable of verification with respect to the randomness of the selection process, and any records necessary to document random selection must be retained for not less than 24 months from the date upon which the particular samples were collected.

(2)(i) The program must select for testing a sufficient number of employees so that, during the first 12 months—

(A) The random testing program is spread reasonably through the 12-month period.

(B) [Reserved]

(ii) During the subsequent 12-month period, the program must select for testing a sufficient number of employees so that the number of tests conducted will equal at least 50 percent of the number of covered employees. Annualized percentage rates must be determined by reference to the total number of covered employees employed by the railroad at the beginning of the particular twelve-month period or by an alternate method specified in the plan approved by the Associate Administrator for Safety, FRA. If the railroad conducts random testing through a consortium, the annual rate may be calculated for each individual employer or for the total number of covered employees subject to random testing by the consortium.

(3) Railroad random testing programs must ensure to the maximum extent practicable that each employee perceives the possibility that a random test may be required on any day the employee reports for work.

(4) Notice of an employee's selection may not be provided until the duty tour in which testing is to be conducted, and then only so far in advance as is reasonably necessary to ensure the employee's presence at the time and place set for testing.

(5) The program must include testing procedures and safeguards, and procedures for action based on positive test results, consistent with this part.

(6) An employee must be subject to testing only while on duty. Only employees who perform covered service for the railroad are subject to testing under this part. In the case of employees who during some duty tours perform covered service and during others do not, the railroad program must specify the extent to which, and the circumstances under which they are be subject to testing. To the extent practical within the limitations of this part and in the context of the railroad's operations, the railroad program must provide that employees are subject to the possibility of random testing on any day they actually perform covered service.

(7) Each time an employee is notified for random drug testing the employee will be informed that selection was made on a random basis.

(c) *Approval.* The Associate Administrator for Safety, FRA, will

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notify the railroad in writing whether the program is approved as consistent with the criteria set forth in this part. If the Associate Administrator for Safety determines that the program does not conform to those criteria, the Associate Administrator for Safety will inform the railroad of any matters preventing approval of the program, with specific explanation as to necessary revisions. The railroad must resubmit its program with the required revisions within 30 days of such notice. Failure to resubmit the program with the necessary revisions will be considered a failure to implement a program under this subpart.

(d) *Implementation.* (1) No later than 45 days prior to commencement of random testing, the railroad must publish to each of its covered employees, individually, a written notice that he or she will be subject to random drug testing under this part. Such notice must state the date for commencement of the program, must state that the selection of employees for testing will be on a strictly random basis, must describe the consequences of a determination that the employee has violated § 219.102 or any applicable railroad rule, and must inform the employee of the employee's rights under subpart E of this part. A copy of the notice must be provided to each new covered employee on or before the employee's initial date of service. Since knowledge of Federal law is presumed, nothing in this paragraph (1) creates a defense to a violation of § 219.102.

(2) A railroad commencing operations must submit a random testing program 60 days after doing so. The railroad must implement its approved random testing program not later than the expiration of 60 days from approval by the Administrator.

§ 219.602 FRA Administrator's determination of random drug testing rate.

(a) Except as provided in paragraphs (b) through (d) of this section, the minimum annual percentage rate for random drug testing must be 50 percent of covered employees.

(b) The FRA Administrator's decision to increase or decrease the minimum annual percentage rate for random drug testing is based on the reported positive rate for the entire industry. All information used for this determination is drawn from the drug MIS reports required by this part. In order to ensure reliability of the data, the Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from railroads, and may make appropriate modifications in calculating the industry positive rate. Each year, the Administrator will publish in the **Federal Register** the minimum annual percentage rate for random drug testing of covered employees. The new minimum annual percentage rate for random drug testing will be applicable starting January 1 of the calendar year following publication.

(c) When the minimum annual percentage rate for random drug testing is 50 percent, the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 219.803 for two consecutive calendar years indicate that the reported positive rate is less than 1.0 percent.

(d) When the minimum annual percentage rate for random drug testing is 25 percent, and the data received under the reporting requirements of § 219.803 for any calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random drug testing to 50 percent of all covered employees.

(e) Selection of covered employees for testing must be made by a method employing objective, neutral criteria which ensures that every covered employee has a substantially equal statistical chance of being selected within a specified time frame. The method may not permit subjective factors to play a role in selection, i.e., no employee may be selected as a result of the exercise of discretion by the railroad. The selection method must be capable of verification with respect to the randomness of the selection process.

(f) The railroad must randomly select a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random drug testing determined by the Administrator. If the railroad conducts random drug testing through a consortium, the number of employees to be tested may be calculated for each individual railroad or may be based on the total number of covered employees covered by the consortium who are subject to random drug testing at the same minimum annual percentage rate under this part or any DOT drug testing rule.

(g) Each railroad must ensure that random drug tests conducted under this part are unannounced and that the dates for administering random tests are spread reasonably throughout the calendar year.

(h) If a given covered employee is subject to random drug testing under the drug testing rules of more than one DOT agency for the same railroad, the employee must be subject to random drug testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the employee's function.

(i) If a railroad is required to conduct random drug testing under the drug testing rules of more than one DOT agency, the railroad may—

(1) Establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or

(2) Randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the railroad is subject.

§ 219.603 Participation in drug testing.

A railroad shall, under the conditions specified in this subpart and subpart H of this part, require a covered employee selected through the random testing program to cooperate in urine testing to determine compliance with § 219.102, and the employee must provide the required sample and complete the required paperwork and certifications. Compliance by the employee may be excused only in the case of a documented medical or family emergency.

§ 219.605 Positive drug test results; procedures.

(a) [Reserved]

(b) Procedures for administrative handling by the railroad in the event a sample provided under this subpart is reported as positive by the MRO are set forth in § 219.104. The responsive action required in § 219.104 is not stayed pending the result of a retest or split sample test.

§ 219.607 Railroad random alcohol testing programs.

(a) Each railroad must submit for FRA approval a random alcohol testing program meeting the requirements of this subpart. A railroad commencing operations must submit a random alcohol testing program not later than 30 days prior to such commencement. The program must be submitted to the Associate Administrator for Safety, FRA, for review and approval. If, after approval, a railroad desires to amend the random alcohol testing program implemented under this subpart, the railroad must file with FRA a notice of such amendment at least 30 days prior to the intended effective date of such action. A program responsive to the requirements of this section or any amendment to the program may not be implemented prior to approval.

(b) *Form of programs.* Random alcohol testing programs submitted by or on behalf of each railroad under this subpart must meet the following criteria, and the railroad and its managers, supervisors, officials and other employees and agents must conform to such criteria in implementing the program:

(1) Selection of covered employees for testing must be made by a method employing objective, neutral criteria which ensures that every covered employee has a substantially equal statistical chance of being selected within a specified time frame. The method may not permit subjective factors to play a role in selection, i.e., no employee may be selected as the result of the exercise of discretion by the railroad. The selection method must be capable of verification with respect to the randomness of the selection process, and any records necessary to document random selection must be retained for not less than 24 months from the date upon which the particular samples were collected.

(2) The program must include testing procedures and safeguards, and, consistent with this part, procedures for action based on tests where the employee is found to have violated § 219.101.

(3) The program must ensure that random alcohol tests conducted under this part are unannounced and that the dates for administering random tests are spread reasonably throughout the calendar year.

(4) The program must ensure to the maximum extent practicable that each covered employee perceives the possibility that a random alcohol test may be required at any time the employee reports for work and at any time during the duty tour (except any period when the employee is expressly relieved of any responsibility for performance of covered service).

(5) An employee may be subject to testing only while on duty. Only employees who perform covered service for the railroad may be subject to testing under this part. In the case of employees who during some duty tours perform covered service and during others do not, the railroad program may specify the extent to which, and the circumstances under which they are subject to testing. To the extent practical within the limitations of this part and in the context of the railroad's operations, the railroad program must provide that employees are subject to the possibility of random testing on any day they actually perform covered service.

(6) Testing must be conducted promptly, as provided in § 219.701(b)(1).

(7) Each time an employee is notified for random alcohol testing the employee must be informed that selection was made on a random basis.

(8) Each railroad must ensure that each covered employee who is notified of selection for random alcohol testing proceeds to the test site immediately; provided, however, that if the employee is performing a safety-sensitive function at the time of the notification, the railroad must instead ensure that the employee ceases to perform the safety-sensitive function and proceeds to the testing site as soon as possible.

(c) *Implementation.* (1) No later than 45 days prior to commencement of random alcohol testing, the railroad must publish to each of its covered employees, individually, a written notice that the employee will be subject to random alcohol testing under this part. Such notice must state the date for commencement of the program, must state that the selection of employees for testing will be on a strictly random basis, must describe the consequences of a determination that the employee has violated § 219.101 or any applicable railroad rule, and must inform the employee of the employee's rights under subpart E of this part. A copy of the notice must be provided to each new covered employee on or before the employee's initial date of service. Since knowledge of Federal law is presumed, nothing in this paragraph (c)(1) creates a defense to a violation of § 219.101. This notice may be combined with the notice or policy statement required by § 219.23.

(2) A railroad commencing operations must submit a random testing program 60 days after doing so. The railroad must implement its approved random testing program not later than the expiration of 60 days from approval by the Administrator.

§ 219.608 FRA Administrator's determination of random alcohol testing rate.

(a) Except as provided in paragraphs (b) through (d) of this section, the minimum annual percentage rate for random alcohol testing must be 25 percent of covered employees.

(b) The Administrator's decision to increase or decrease the minimum annual percentage rate for random alcohol testing is based on the violation rate for the entire industry. All information used for the determination is drawn from the alcohol MIS reports required by this part. In order to ensure reliability of the data, the Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry violation rate. Each year, the Administrator will publish in the **Federal Register** the minimum annual percentage rate for random alcohol testing of covered employees. The new minimum annual percentage rate for random alcohol testing will be applicable starting January 1 of the calendar year following publication.

(c)(1) When the minimum annual percentage rate for random alcohol testing is 25 percent or more, the Administrator may lower this rate to 10 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 219.801 for two consecutive calendar years indicate that the violation rate is less than 0.5 percent.

(2) When the minimum annual percentage rate for random alcohol testing is 50 percent, the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 219.801 for two consecutive calendar years indicate that the violation rate is less than 1.0 percent but equal to or greater than 0.5 percent.

(d)(1) When the minimum annual percentage rate for random alcohol testing is 10 percent, and the data received under the reporting requirements of § 219.801 for that calendar year indicate that the violation rate is equal to or greater than 0.5 percent, but less than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random alcohol testing to 25 percent of all covered employees.

(2) When the minimum annual percentage rate for random alcohol testing is 25 percent or less, and the data received under the reporting requirements of § 219.801 for any calendar year indicate that the violation rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random alcohol testing to 50 percent of all covered employees.

(e) The railroad must randomly select and test a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random alcohol testing determined by the Administrator. If the railroad conducts random alcohol testing through a consortium, the number of employees to

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be tested may be calculated for each individual employer or may be based on the total number of covered employees covered by the consortium who are subject to random testing at the same minimum annual percentage rate under this part or any DOT alcohol testing rule.

(f) If a railroad is required to conduct random alcohol testing under the alcohol testing rules of more than one DOT agency, the railroad may—

(1) Establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or

(2) Randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the railroad is subject.

§ 219.609 Participation in alcohol testing.

A railroad must, under the conditions specified in this subpart and subpart H of this part, require a covered employee selected through the random testing program to cooperate in breath testing to determine compliance with § 219.101, and the employee must provide the required breath and complete the required paperwork and certifications. Compliance by the employee may be excused only in the case of a documented medical or family emergency.

§ 219.611 Test result indicating prohibited alcohol concentration; procedures.

Procedures for administrative handling by the railroad in the event an employee's confirmation test indicates an alcohol concentration of .04 or greater are set forth in § 219.104.

Subpart H—Drug and Alcohol Testing Procedures

§ 219.701 Standards for drug and alcohol testing.

(a) Drug testing required or authorized by subparts B, D, F, and G of this part must be conducted in compliance with all applicable provisions of the Department of Transportation Procedures for Transportation Workplace Drug and Alcohol Testing Programs (part 40 of this title).

(b) Alcohol testing required or authorized by subparts B, D, F, and G of this part must be conducted in compliance with all applicable provisions of the Department of Transportation Procedures for Transportation Workplace Drug and Alcohol Testing Programs (part 40 of this title).

(c) Each covered employee who is notified of selection for testing and who is not performing covered service at the time of notification must proceed to the testing site immediately. The railroad must ensure that an employee who is performing covered service at the time of notification shall, as soon as possible without affecting safety, cease to perform covered service and proceed to the testing site.

Subpart I—Annual Report

§ 219.801 Reporting alcohol misuse prevention program results in a management information system.

(a) Each railroad that has 400,000 or more total manhours shall submit to FRA by March 15 of each year a report covering the previous calendar year (January 1–December 31), summarizing the results of its alcohol misuse prevention program.

(b) A railroad that is subject to more than one DOT agency alcohol regulation must identify each employee covered by the regulations of more than one DOT agency. The identification will be by the total number and category of covered functions. Prior to conducting any alcohol test on a covered employee subject to the regulations of more than one DOT agency, the railroad must determine which DOT agency regulation or rule authorizes or requires the test. The test result information must be directed to the appropriate DOT agency or agencies.

(c) Each railroad must ensure the accuracy and timeliness of each report submitted. The report must be submitted on one of the two forms specified by the FRA.

(d) Each report required by this section that contains information on an alcohol screening test result of .02 or greater or a violation of the alcohol misuse provisions of subpart B of this part must include the following elements:

(1) Number of covered employees by employee category (i.e., train service, engine service, dispatcher/operator, signal, other).

(2) Number of covered employees in each category subject to alcohol testing under the alcohol misuse regulation of another DOT agency, identified by each agency.

(3)(i) Number of screening tests by type of test (i.e., pre-employment and covered service transfer, random, post-positive return to service, and follow-up) and employee category.

(ii) Number of confirmation tests, by type of test and employee category.

(4) Number of confirmation alcohol tests indicating an alcohol concentration equal of .02 or greater but less than .04, by type of test and employee category.

(5) Number of confirmation alcohol tests indicating an alcohol concentration of .04 or greater, by type of test and employee category.

(6) Number of persons denied a position as a covered employee following a pre-employment alcohol test indicating an alcohol concentration of .04 or greater.

(7) Number of covered employees with a confirmation alcohol test indicating an alcohol concentration of .04 or greater, or who have violations of other alcohol misuse provisions, who were returned to service in covered positions (having complied with the recommendations of a substance abuse professional as described in § 219.104(d)).

(8) For cause breath alcohol testing under railroad authority, by reason for test (accident/injury or rules violation), the number of screening tests conducted, the number of confirmation tests conducted, the number of confirmation tests of .02 or greater but less than .04, and the number of confirmation test results of .04 or greater.

(9) For cause breath alcohol testing under FRA authority, by reason for test (reasonable suspicion, accident/injury or rules violation), the number of screening tests conducted, the number of confirmation tests conducted, the number of confirmation tests of .02 or greater but less than .04, and the number of confirmation test results of .04 or greater.

(10) Number of covered employees who were found to have violated other provisions of subpart B of this part, and the action taken in response to the violation.

(11) Number of covered employees who were administered alcohol and drug tests at the same time, with both a positive drug test result and an alcohol test result indicating an alcohol concentration of .04 or greater.

(12) Number of covered employees who refused to submit to a random alcohol test required under this part.

(13) Number of covered employees who refused to submit to a non-random alcohol test required under this part.

(14) Number of supervisory personnel who have received the required initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use during the reporting period.

(e) Each report required by this section that contains information on neither a screening test result of 0.02 or greater nor a violation of the alcohol misuse provisions of subpart B of this part must include the following informational elements:

(1) Number of covered employees by employee category (i.e., train service, engine service, dispatcher/operator, signal, other).

(2) Number of covered employees in each category subject to alcohol testing under the alcohol misuse regulation of another DOT agency, identified by each agency.

(3) Number of screening tests by type of test (i.e., pre-employment and covered service transfer, random, post-positive return to service, and follow-up) and employee category.

(4) Number of covered employees with a confirmation alcohol test indicating an alcohol concentration of .04 or greater, or who have violations of other alcohol misuse provisions, who were returned to service in covered positions (having complied with the recommendations of a substance abuse professional as described in § 219.104(d)).

(5) For cause breath alcohol testing under railroad authority, by reason for test (accident/injury or rules violation), the number of screening tests conducted.

(6) For cause breath alcohol testing under FRA authority, by reason for test (reasonable suspicion, accident/injury or rules violation), the number of screening tests conducted.

(7) Number of covered employees who refused to submit to a random alcohol test required under this part.

(8) Number of covered employees who refused to submit to a non-random alcohol test required under this part.

(9) Number of supervisory personnel who have received the required initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use during the reporting period.

§ 219.803 Reporting drug misuse prevention program results in a management information system.

(a) Each railroad that has 400,000 or more total manhours shall submit to FRA an annual report covering the calendar year, summarizing the results of its drug misuse prevention program.

(b) A railroad that is subject to more than one DOT agency drug regulation must identify each employee covered by the regulations of more than one DOT agency. The identification will be by the total number and category of covered functions. Prior to conducting any drug test on a covered employee subject to the regulations of more than one DOT agency, the railroad must determine which DOT agency regulation or rules authorizes or requires the test. The test result information must be directed to the appropriate DOT agency or agencies.

(c) Each railroad must ensure the accuracy and timeliness of each report submitted by the railroad or a consortium.

(d) Each railroad must submit the required annual reports no later than March 15 of each year. The report must be submitted on one of the forms specified by the FRA. A railroad with no positive test result must submit the "Drug Testing Management Information System Zero Positives Data Collection Form." All other railroads must submit the "Drug Testing Management Information System Data Collection Form."

(e) A railroad submitting the "Drug Testing Management Information System Data Collection Form" must address each of the following data elements:

(1) Number of covered employees by employee category (i.e., train service, engine service, dispatcher/operator, signal service, other).

(2) Number of covered employees in each category subject to testing under the anti-drug regulations of more than one DOT agency, identified by each agency.

(3) Number of specimens collected by type of test (i.e., pre-employment and covered service transfer, random, post-positive return to service, and follow-up), and employee category.

(4) Number of specimens verified negative by a Medical Review Officer (MRO) by type of test, and employee category.

(5) Number of specimens verified positive for one or more of the five drugs by a MRO by type of test, employee category, and type of drug. If a test has been verified positive by a MRO for multiple drugs, the employer should report the result as a positive for each type of drug.

(6) Number of applicants or transfers denied employment or transfer to a covered service position following a verified positive pre-employment drug test.

(7) Number of employees, currently in or having completed rehabilitation or otherwise qualified to return to duty, who have returned to work in a covered position during the reporting period.

(8) For cause drug testing, the number of specimens collected by reason for test (i.e., accident/injury, rules violation, or reasonable suspicion), type of authority (railroad or FRA), employee category and type of drug, including drugs tested for under railroad authority only.

(9) For cause drug testing, the number of specimens verified negative by a MRO by reason for test, type of authority, employee category and type of drug, including drugs tested for under railroad authority only.

(10) For cause drug testing, the number of specimens verified positive by a MRO by reason for test, type of authority, employee category and type of drug, including drugs tested for under railroad authority only.

(11) For cause breath alcohol testing under railroad authority, by reason for test, the number of tests conducted, the number of tests with a positive result (i.e., breath alcohol concentration (BAC) = or > .02), and the number of refusals.

(12) For cause urine alcohol testing under railroad authority, by reason for test, the number of tests conducted, the number of tests with a positive result, and the number of refusals.

(13) For cause breath alcohol testing under FRA authority, by reason for test, the number of tests conducted, the number of tests with a positive result, and the number of refusals.

(14) Total number of covered employees observed in documented operational tests and inspections related to enforcement of the railroad's rules on alcohol and drug use.

(15) Based on the tests and inspections described in paragraph (e)(14) of this section, the number of covered employees charged with a violation of the railroad's Rule G or similar rule or policy on drugs.

(16) Based on the tests and inspections described in paragraph (e)(14) of this section, the number of covered employees charged with a violation of the railroad's Rule G or similar rule or policy on alcohol.

(17) Number of specimens verified positive for more than one drug, by employee category and type of drug.

(18) Number of covered employees who refused to submit to a random drug test required under FRA authority.

(19) Number of covered employees who refused to submit to a non-random drug test required under FRA authority.

(20) Number of supervisory personnel who have received the required initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use during the reporting period.

(f) A railroad authorized to submit the "Drug Testing Management Information System Zero Positives Data Collection Form" must address each of the following data elements:

(1) Number of covered employees by employee category (i.e., train service, engine service, dispatcher/operator, signal service, other).

(2) Number of covered employees in each category subject to testing under the anti-drug regulations of more than

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one DOT agency, identified by each agency.

(3) Number of specimens collected and verified negative by type of test (i.e., pre-employment and covered service transfer, random, for cause due to accident/incident, for cause due to rules violation, reasonable suspicion, post-positive return to service, and follow-up), and employee category.

(4) For cause breath alcohol testing under railroad authority, the number of tests conducted by reason for test (i.e., accident/injury, rules violation, or reasonable suspicion).

(5) For cause urine alcohol testing under railroad authority, the number of tests conducted by reason for test.

(6) For cause breath alcohol testing under FRA authority, the number of tests conducted by reason for test.

(7) Total number of covered employees observed in documented operational tests and inspections related to enforcement of the railroad's rules on alcohol and drug use.

(8) Based on the tests and inspections described in paragraph (f)(7) of this section, the number of covered employees charged with a violation of the railroad's Rule G or similar rule or policy on drugs.

(9) Based on the tests and inspections described in paragraph (f)(7) of this section, the number of covered employees charged with a violation of the railroad's Rule G or similar rule or policy on alcohol.

(10) Number of covered employees who refused to submit to a random drug test required under FRA authority.

(11) Number of covered employees who refused to submit to a non-random drug test required under FRA authority.

(12) Number of supervisory personnel who have received the required initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use during the reporting period.

Subpart J—Recordkeeping Requirements

§ 219.901 Retention of alcohol testing records.

(a) General requirement. In addition to the records required to be kept by part 40 of this title, each railroad must maintain alcohol misuse prevention program records in a secure location with controlled access as set out in this section.

(b) Each railroad must maintain the following records for a minimum of five years:

(1) A summary record of each covered employee's test results; and

(2) A copy of the annual report summarizing the results of its alcohol misuse prevention program (if required to submit the report under § 219.801(a)).

(c) Each railroad must maintain the following records for a minimum of two years:

(1) Records related to the collection process:

(i) Collection logbooks, if used.

(ii) Documents relating to the random selection process.

(iii) Documents generated in connection with decisions to administer reasonable suspicion alcohol tests.

(iv) Documents generated in connection with decisions on post-accident testing.

(v) Documents verifying the existence of a medical explanation of the inability of a covered employee to provide an adequate sample.

(2) Records related to test results:

(i) The railroad's copy of the alcohol test form, including the results of the test.

(ii) Documents related to the refusal of any covered employee to submit to an alcohol test required by this part.

(iii) Documents presented by a covered employee to dispute the result of an alcohol test administered under this part.

(3) Records related to other violations of this part.

(4) Records related to employee training:

(i) Materials on alcohol abuse awareness, including a copy of the railroad's policy on alcohol abuse.

(ii) Documentation of compliance with the requirements of § 219.23.

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol testing based on reasonable suspicion.

(iv) Certification that any training conducted under this part complies with the requirements for such training.

§ 219.903 Retention of drug testing records.

(a) General requirement. In addition to the records required to be kept by part 40 of this title, each railroad must maintain drug abuse prevention program records in a secure location with controlled access as set forth in this section.

(b)(1) Each railroad must maintain the following records for a minimum of five years:

(i) A summary record of each covered employee's test results; and

(ii) A copy of the annual report summarizing the results of its drug misuse prevention program (if required to submit under § 219.803(a)).

(2) Each railroad must maintain the following records for a minimum of two years.

(c) *Types of records.* The following specific records must be maintained:

(1) Records related to the collection process:

(i) Documents relating to the random selection process.

(ii) Documents generated in connection with decisions to administer reasonable suspicion drug tests.

(iii) Documents generated in connection with decisions on post-accident testing.

(iv) Documents verifying the existence of a medical explanation of the inability of a covered employee to provide a sample.

(2) Records related to test results:

(i) The railroad's copy of the drug test custody and control form, including the results of the test.

(ii) Documents presented by a covered employee to dispute the result of a drug test administered under this part.

(3) Records related to other violations of this part.

(4) Records related to employee training:

(i) Materials on drug abuse awareness, including a copy of the railroad's policy on drug abuse.

(ii) Documentation of compliance with the requirements of § 219.23.

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol testing based on reasonable suspicion.

(iv) Certification that any training conducted under this part complies with the requirements for such training.

§ 219.905 Access to facilities and records.

(a) Release of covered employee information contained in records required to be maintained under §§ 219.901 and 219.903 must be in accordance with part 40 of this title and with this section. (For purposes of this section only, urine drug testing records are considered equivalent to breath alcohol testing records.)

(b) Each railroad must permit access to all facilities utilized in complying with the requirements of this part to the Secretary of Transportation, United States Department of Transportation, or any DOT agency with regulatory authority over the railroad or any of its covered employees.

(c) Each railroad must make available copies of all results for railroad alcohol and drug testing programs conducted under this part and any other information pertaining to the railroad's alcohol and drug misuse prevention program, when requested by the Secretary of Transportation or any DOT agency with regulatory authority over the railroad or covered employee.

Appendix A to Part 219—Schedule of Civil Penalties [1]

The following chart lists the schedule of civil penalties:

Section [2]	Violation	Willful violation
Subpart A—General		
219.3 Application.		
Railroad does not have required program	$5,000	$7,500
219.11 General conditions for chemical tests.		
A. Employee unlawfully refuses to participate in testing	$2,500	$5,000
B. Employer fails to give priority to medical treatment	3,000	8,000
C. Employee fails to remain available	2,500	5,000
D. Employee tampers with sample	2,500	5,000
E. Failure to meet supervisory training requirements	2,500	5,000
F. Program of instruction not available	2,500	5,000
G. Program not complete	2,500	5,000
219.23 Railroad policies.		
A. Failure to provide written notice of FRA test	$1,000	$4,000
B. Failure to provide written notice of basis for FRA test	1,000	4,000
C. Use of subpart C form for other test	1,000	4,000
D. Failure to provide educational materials	1,000	4,000
E. Educational materials fail to explain requirements of this part and/or include required content	1,000	4,000
F. Non-Federal provisions not clearly described as independent authority	1,000	4,000
Subpart B—Prohibitions		
219.101 Alcohol and drug use prohibited.		
Employee violates prohibition(s)		$10,000
219.103 Prescribed and over-the-counter drugs.		
A. Failure to train employee properly on requirements	$2,500	$5,000
B. Employee failure to comply	2,500	5,000
219.104 Responsive action.		
A. Failure to remove employee from covered service immediately	$3,000	$8,000
B. Failure to provide notice for removal	1,000	4,000
C. Failure to provide prompt hearing	2,000	7,000
D. Employee improperly returned to service	2,000	7,000
E. Failure to administer proper number of follow-up tests	2,500	5,000
219.105 Railroad's duty to prevent violations.		
A. Employee improperly permitted to remain in covered service	$7,000	$10,000
B. Failure to exercise due diligence to assure compliance with prohibition	2,500	5,000
219.107 Consequences of unlawful refusal.		
A. Employee not disqualified for nine months	$5,000	$7,500
B. Employee unlawfully returned to service	5,000	7,500
Subpart C—Post-Accident Toxicological Testing		
219.201 Events for which testing is required.		
A. Failure to test after qualifying event	$5,000	$7,500
B. Testing performed after non-qualifying event	5,000	10,000
C. Failure to make good faith determination	2,500	5,000
D. Failure to provide requested decision report to FRA	1,000	3,000
219.203 Responsibilities of railroads and employees.		
A. Failure to properly test/exclude from testing	$2,500	$5,000
B. Non-covered service employee tested	2,500	5,000
C. Delay in obtaining samples due to failure to make every reasonable effort	2,500	5,000
D. Testing not conducted in accordance with Appendix C requirements	2,500	5,000
E. Independent medical facility not utilized	2,500	5,000
F. Failure to report event or contact FRA when FRA intervention required	1,000	3,000
219.205 Sample collection and handling.		
A. Failure to observe requirements with respect to sample collection, marking and handling	$2,500	$5,000
B. Failure to provide properly prepared forms with samples	1,000	2,000
C. Failure to promptly or properly forward samples	2,500	5,000
219.207 Fatality.		
A. Failure to test	$5,000	$7,500
B. Failure to request assistance when necessary	2,500	5,000
C. Failure to ensure timely collection and shipment of required specimens	2,500	5,000
219.209 Reports of tests and refusals.		
A. Failure to provide telephonic report	$1,000	$2,000
B. Failure to provide written report of refusal to test	1,000	2,000
C. Failure to maintain report explaining why test not conducted within 4 hours	1,000	2,000
219.211 Analysis and follow-up.		
A. Failure to promptly forward specimens to designated FRA laboratory	$2,500	$5,000
B. Failure of MRO to report review of positive results to FRA	2,500	5,000
Subpart D—Testing for Cause		
219.300 Mandatory reasonable suspicion testing.		
A. Failure to test when reasonable suspicion criteria met	$5,000	$7,500

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Section [2]	Violation	Willful violation
B. Tested when reasonable suspicion criteria not met	5,000	7,500
C. Testing did not comply with part 40 procedures	5,000	7,500
219.301 Testing for reasonable cause.		
A. Tested when accident/incident criteria not met	$5,000	$7,500
B. Tested when operating rules violation criteria not met	5,000	7,500
C. Testing did not comply with part 40 procedures	5,000	7,500
D. Event did not occur during duty tour	2,500	5,000
E. Employee not provided with notice	2,500	5,000
219.302 Prompt sample collection.		
Sample collection not conducted promptly	$2,500	$5,000
Subpart E—Identification of Troubled Employees		
219.401 Requirement for policies.		
A. Failure to publish and/or implement required policy	$2,500	$5,000
B. Failure to implement policy with respect to individual employee	2,500	5,000
219.407 Alternate policies.		
Failure to file agreement or other document or provide timely notice of revocation	$2,500	$5,000
Subpart F—Pre-Employment Tests		
219.501 Pre-employment tests.		
A. Failure to perform pre-employment drug test before first time employee performs covered service	$2,500	$5,000
B. Failure to give proper notice	2,500	5,000
Subpart G—Random Testing Programs		
219.601 Railroad random drug programs.		
A. Failure to file a random program	$2,500	$5,000
B. Failure to file amendment to program	2,500	5,000
C. Failure to meet random criteria	2,500	5,000
D. Failure to use a neutral selection process	2,500	5,000
E. Testing not spread throughout the year	2,500	5,000
F. Total number of tests below minimum random drug testing rate	2,500	5,000
G. Testing not distributed throughout the day	2,500	5,000
H. Advance notice provided to employee	2,500	5,000
I. Testing when employee not on duty	2,500	5,000
J. Testing continued after employee's duty tour expired	2,500	5,000
K. Failure to provide proper notice	2,500	5,000
L. Failure to include covered service employee in pool	2,500	5,000
M. Random testing not performed in a timely manner	2,500	5,000
219.603 Participation in drug testing.		
Failure to document reason for not testing selected employee	$2,500	$5,000
219.607 Railroad random alcohol programs.		
A. Failure to file a random alcohol program	$2,500	$5,000
B. Failure to file amendment to program	2,500	5,000
C. Failure to meet random criteria	2,500	5,000
D. Failure to use a neutral selection process	2,500	5,000
E. Total number of tests below minimum random alcohol testing rate	2,500	5,000
F. Advance notice provided to employee	2,500	5,000
G. Testing when employee not on duty	2,500	5,000
H. Testing continued after employee's duty tour expired	2,500	5,000
I. Failure to provide proper notice	2,500	5,000
J. Failure to include covered service employee in pool	2,500	5,000
K. Random testing not performed in a timely manner	2,500	5,000
219.609 Participation in alcohol testing.		
Failure to document reason for not testing selected employee	$2,500	$5,000
Subpart H—Drug and Alcohol Testing Procedures		
219.701 Standards for drug and alcohol testing.		
A. Failure to comply with part 40 procedures in subpart B, D, F, or G testing	$2,500	$5,000
	−5,000	−7,500
B. Failure to perform timely notification and testing	2,500	5,000
Subpart I—Annual Report		
219.801 Reporting alcohol misuse prevention program results in a management information system.		
A. Failure to submit MIS report on time	$2,500	$5,000
B. Failure to submit accurate MIS report	2,500	5,000
C. Failure to include required data	2,500	5,000
219.803 Reporting drug misuse prevention program results in a management information system.		
A. Failure to submit MIS report on time	$2,500	$5,000
B. Failure to submit accurate MIS report	2,500	5,000
C. Failure to include required data	2,500	5,000
Subpart J—Recordkeeping Requirements		
219.901 Retention of Alcohol Testing Records.		
A. Failure to keep records for required period	$2,500	$5,000
B. Failure to keep required documentation, materials or certification	2,500	5,000
219.903 Retention of Drug Testing Records.		
A. Failure to keep records for required period	$2,500	$5,000
B. Failure to retain required documentation, materials or certification	2,500	5,000
219.905 Access to facilities and records.		
A. Failure to release records in this subpart in accordance with part 40	$2,500	$5,000
B. Failure to permit access to appropriate authorities	2,500	5,000
C. Failure to provide access to results of railroad alcohol and drug testing programs	2,500	5,000

[1] A penalty may be assessed against an individual only for a willful violation. The FRA Administrator reserves the right to assess a penalty of up to $22,000 for any violation, including ones not listed in this penalty schedule, where circumstances warrant. See 49 CFR part 209, appendix A.

[2] The penalty schedule uses section numbers from 49 CFR part 219; and if more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code" (e.g., "A"), which is used to facilitate assessment of civil penalties. For convenience, penalty citations will cite the CFR section and the penalty code, if any (e.g., "§ 219.11A") FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation.

Appendix B to Part 219—Designation of Laboratory for Post-Accident Toxicological Testing

The following laboratory is currently designated to conduct post-accident toxicological analysis under subpart C of this part: NWT Inc., 1141 E. 3900 South, Suite A–110, Salt Lake City, UT 84124, Telephone: (801) 268–2431 (Day), (801) 483–3383 (Night/Weekend).

Appendix C to Part 219—Post-Accident Testing Sample Collection

1.0 General

This appendix prescribes procedures for collection of samples for mandatory post-accident testing pursuant to subpart C of this part. Collection of blood and urine samples is required to be conducted at an independent medical facility.

(Surviving Employees)

2.0 Surviving Employees

This unit provides detailed procedures for collecting post-accident toxicological samples from surviving employees involved in train accidents and train incidents, as required by subpart C of this part. Subpart C of this part specifies qualifying events and employees required to be tested.

2.1 Collection Procedures; General

a. All forms and supplies necessary for collection and transfer of blood and urine samples for three surviving employees can be found in the FRA post-accident shipping box, which is made available to the collection site by the railroad representative.

b. Each shipping box contains supplies for blood/urine collections from three individuals, including instructions and necessary forms. The railroad is responsible for ensuring that materials are fresh, complete and meet FRA requirements.

2.1.1 Responsibility of the Railroad Representative

a. In the event of an accident/incident for which testing is required under subpart C of this part, the railroad representative shall follow the designated set of instructions, and, upon arrival at the independent medical facility, promptly present to the collection facility representative a post-accident shipping box or boxes with all remaining sets of instructions. (Each box contains supplies to collect samples from three employees.) The railroad representative shall request the collection facility representative to review the instructions provided and, through qualified personnel, provide for collection of the samples according to the procedures set out.

b. The railroad representative shall undertake the following additional responsibilities—

1. Complete Form FRA 6180.73 (revised), Accident Information Required for Post-Accident Toxicological Testing (49 CFR part 219), describing the testing event and identifying the employees whose samples are to be deposited in the shipping box.

2. As necessary to verify the identity of individual employees, affirm the identity of each employee to the medical facility personnel.

3. Consistent with the policy of the collection facility, monitor the progress of the collection procedure.

Warning: Monitor but do not directly observe urination or otherwise disturb the privacy of urine or blood collection. Do not handle sample containers, bottles or tubes (empty or full). Do not become part of the collection process.

2.1.2 Employee Responsibility

a. An employee who is identified for post-accident toxicological testing shall cooperate in testing as required by the railroad and personnel of the independent medical facility. Such cooperation will normally consist of the following, to be performed as requested:

1. Provide a blood sample, which a qualified medical professional or technician will draw using a single-use sterile syringe. The employee should be seated for this procedure.

2. Provide, in the privacy of an enclosure, a urine sample into a plastic collection cup. Deliver the cup to the collector.

3. Do not let the blood and urine samples that you provided leave your sight until they have been properly sealed and initialed by you.

4. Certify the statement in Step 4 of the Post-Accident Testing Blood/Urine Custody and Control Form (49 CFR 219) (Form FRA F 6180.74 (revised)).

5. If required by the medical facility, complete a separate consent form for taking of the samples and their release to FRA for analysis under the FRA rule.

Note: The employee may not be required to complete any form that contains any waiver of rights the employee may have in the employment relationship or that releases or holds harmless the medical facility with respect to negligence in the collection.

2.2 The Collection

Exhibit C–1 contains instructions for collection of samples for post-accident toxicology from surviving employees. These instructions shall be observed for each collection. Instructions are also contained in each post-accident shipping box and shall be provided to collection facility personnel involved in the collection and/or packaging of samples for shipment.

(Post Mortem Collection)

3.0 Fatality

This unit provides procedures for collecting post-accident body fluid/tissue samples from the remains of employees killed in train accidents and train incidents, as required by subpart C of this part. Subpart C specifies qualifying events and employees required to be tested.

3.1 Collection

In the event of a fatality for which testing is required under subpart C of this part, the railroad shall promptly make available to the custodian of the remains a post-accident shipping box. The railroad representative shall request the custodian to review the instructions contained in the shipping box and, through qualified medical personnel, to provide the samples as indicated.

(Surviving Employees and Fatalities)

4.0 Shipment

a. The railroad is responsible for arranging overnight transportation of the sealed shipping box containing the samples. When possible without incurring delay, the box should be delivered directly from the collection personnel providing the samples to an overnight express service courier. If it becomes necessary for the railroad to transport the box from point of collection to point of shipment, then—

1. Individual kits and the shipping box shall be sealed by collection personnel before the box is turned over to the railroad representative;

2. The railroad shall limit the number of persons handling the shipping box to the minimum necessary to provide for transportation;

3. If the shipping box cannot immediately be delivered to the express carrier for transportation, it shall be maintained in secure temporary storage; and

4. The railroad representatives handling the box shall document chain of custody of the shipping box and shall make available such documentation to FRA on request.

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Exhibit C–1—Instructions for Collection of Blood and Urine Samples: Mandatory Post-Accident Toxicological Testing

A. Purpose

These instructions are for the use of personnel of collection facilities conducting collection of blood and urine samples from surviving railroad employees following railroad accidents and casualties that qualify for mandatory alcohol/drug testing. The Federal Railroad Administration appreciates the participation of medical facilities in this important public safety program.

B. Prepare for Collection

a. Railroad employees have consented to provision of samples for analysis by the Federal Railroad Administration as a condition of employment (§ 219.11). A private, controlled area should be designated for collection of samples and completion of paperwork.

b. Only one sample should be collected at a time, with each employee's blood draw or urine collection having the complete attention of the collector until the specific sample has been labeled, sealed and documented.

c. Please remember two critical rules for the collections:

d. All labeling and sealing must be done in the sight of the donor, with the sample never having left the donor's presence until the sample has been labeled, sealed and initialed by the donor.

e. Continuous custody and control of blood and urine samples must be maintained and documented on the forms provided. In order to do this, it is important for the paperwork and the samples to stay together.

f. To the extent practical, blood collection should take priority over urine collection. To limit steps in the chain of custody, it is best if a single collector handles both collections from a given employee.

g. You will use a single Post-Accident Testing Blood/Urine Custody and Control Form (FRA Form 6108.74 (revised)), consisting of six Steps to complete the collection for each employee. We will refer to it as the Control Form.

C. Identify the Donor

a. The employee donor must provide photo identification to each collector, or lacking this, be identified by the railroad representative.

b. The donor should remove all unnecessary outer garments such as coats or jackets, but may retain valuables, including a wallet. Donors should not be asked to disrobe, unless necessary for a separate physical examination required by the attending physician.

D. Draw Blood

a. Assemble the materials for collecting blood from each employee: two 10 ml grey-stoppered blood tubes and the Control Form.

b. Ask the donor to complete STEP 1 on the Control Form.

c. With the donor seated, draw two (2) 10 ml tubes of blood using standard medical procedures (sterile, single-use syringe into evacuated gray-top tubes provided).

CAUTION: Do not use alcohol or an alcohol-based swab to cleanse the venipuncture site.

d. Once both tubes are filled and the site of venipuncture is protected, immediately—

1. Seal and label each tube by placing a numbered blood sample label from the label set on the Control Form over the top of the tube and securing it down the sides.

2. Ask the donor to initial each label. Please check to see that the initials match the employee's name and note any discrepancies in the "Remarks" block of the Control Form.

3. As collector, sign and date each blood tube label at the place provided.

4. Skip to STEP 5 and initiate chain of custody for the blood tubes by filling out the first line of the block to show receipt of the blood samples from the donor.

5. Complete STEP 2 on the form.

6. Return the blood tubes into the individual kit. Keep the paperwork and samples together. If another collector will be collecting the urine sample from this employee, transfer both the form and the individual kit with blood tubes to that person, showing the transfer of the blood tubes on the second line of STEP 5 (the chain of custody block).

E. Collect Urine

a. The urine collector should assemble at his/her station the materials for collecting urine from each employee: one plastic collection cup with temperature device affixed enclosed in a heat-seal bag (with protective seal intact), two 90 ml urine sample bottles with caps and one biohazard bag (with absorbent) also enclosed in a heat-seal bag (with protective seal intact), and the Control Form. Blood samples already collected must remain in the collector's custody and control during this procedure.

b. After requiring the employee to wash his/her hands, the collector should escort the employee directly to the urine collection area. To the extent practical, all sources of water in the collection area should be secured and a bluing agent (provided in the box) placed in any toilet bowl, tank, or other standing water.

c. The employee will be provided a private place in which to void. Urination will not be directly observed. If the enclosure contains a source of running water that cannot be secured or any material (soap, etc.) that could be used to adulterate the sample, the collector should monitor the provision of the sample from outside the enclosure. Any unusual behavior or appearance should be noted in the remarks section of the Control Form or on the back of that form.

d. The collector should then proceed as follows:

e. Unwrap the collection cup in the employee's presence and hand it to the employee (or allow the employee to unwrap it).

f. Ask the employee to void at least 60 ml into the collection cup (at least to the line marked).

g. Leave the private enclosure.

IF THERE IS A PROBLEM WITH URINATION OR SAMPLE QUANTITY, SEE THE "TROUBLE BOX" AT THE BACK OF THESE INSTRUCTIONS.

h. Once the void is complete, the employee should exit the private enclosure and deliver the sample to the collector. Both the collector and the employee must proceed immediately to the labeling/sealing area, with the sample never leaving the sight of the employee before being sealed and labeled.

i. Upon receipt of the sample, proceed as follows:

1. In the full view of the employee, remove the wrapper from the two urine sample bottles. Transfer the urine from the collection cup into the sample bottles (at least 30 ml in bottle A and at least 15 ml in bottle B).

2. As you pour the sample into the sample bottles, please inspect for any unusual signs indicating possible adulteration or dilution. Carefully secure the tops. Note any unusual signs under "Remarks" at STEP 3 of the Control Form.

3. Within 4 minutes after the void, measure the temperature of the urine by reading the strip on the bottle. Mark the result at STEP 3 of the Control Form.

IF THERE IS A PROBLEM WITH THE URINE SAMPLE, SEE THE "TROUBLE BOX" AT THE BACK OF THESE INSTRUCTIONS.

4. Remove the urine bottle labels from the Control Form. The labels are marked "A" and "B." Place each label as marked over the top of its corresponding bottle, and secure the label to the sides of the bottle.

5. Ask the donor to initial each label. Please check to see that the initials match the employee name and note any discrepancy in the "Remarks" block of STEP 3.

6. As collector, sign and date each urine label.

7. Skip to STEP 5 and initiate chain-of-custody by showing receipt of the urine samples from the donor. (If you collected the blood, a check under "urine" will suffice. If someone else collected the blood, first make sure transfer of the blood to you is documented. Then, using the next available line, show "Provide samples" under purpose, "Donor" under "released by," check under "urine" and place your name, signature and date in the space provided.)

8. Complete the remainder of STEP 3 on the Control Form.

9. Have the employee complete STEP 4 on the Control Form.

10. Place the filled urine bottles in the individual employee kit. Keep the paperwork and samples together. If another collector will be collecting the blood sample from this employee, transfer both the form and the kit to that person, showing the transfer of the urine samples on the next available line of STEP 5 (the chain of custody block).

F. Seal the Individual Employee Kit

a. The blood and urine samples have now been collected for this employee. The blood/urine samples will now be sealed into the individual employee kit, while all paperwork will be retained for further completion. After rechecking to see that each sample is properly labeled and initialed, close the plastic bag to contain any leakage in transportation, and apply the kit security seal to the small individual kit. As collector, sign and date the kit seal.

b. Before collecting samples from the next employee, complete the next line on the chain-of-custody block showing release of the blood and urine by yourself for the purpose of "Shipment" and receipt by the courier service or railroad representative that will provide transportation of the box, together with the date.

G. Complete Treatment Information

Complete STEP 6 of the Control Form. Mark the box if a breath alcohol test was conducted under FRA authority.

H. Prepare the Box for Shipment

a. Sealed individual employee kits should be retained in secure storage if there will be a delay in preparation of the shipping box. The shipping box shall be prepared and sealed by a collection facility representative as follows:

1. Inspect STEP 5 of each Control Form to ensure chain-of-custody is continuous and complete for each fluid (showing samples released for shipment). Retain the medical facility copy of each Control Form and the Accident Information form for your records.

2. Place sealed individual employee kits in the shipping box. Place all forms in zip-lock bag and seal securely. Place bag with forms and unused supplies in shipping box.

3. Affix the mailing label provided to the outside of the shipping box.

I. Ship the Box

a. The railroad must arrange to have the box shipped overnight air express or (if express service is unavailable) by air freight, prepaid, to FRA's designated laboratory. Whenever possible without incurring delay, the collector should deliver the box directly into the hands of the express courier or air freight representative.

b. Where courier pickup is not immediately available at the collection facility where the samples are taken, the railroad is required to transport the shipping box for expeditious shipment by air express, air freight or equivalent means.

c. *If the railroad is given custody of the box to arrange shipment,* please record the name of the railroad official taking custody on the copy of Form 6180.73 retained by the collection site.

"TROUBLE BOX"

1. Problem: *The employee claims an inability to urinate, either because he/she has recently voided or because of anxiety concerning the collection.*

Action: The employee may be offered moderate quantities of liquid to assist urination. If the employee continues to claim inability after 4 hours, the urine collection should be discontinued, but the blood samples should be forwarded and all other procedures followed. Please note in area provided for remarks what explanation was provided by the employee.

2. Problem: *The employee cannot provide approximately 60 ml. of sample.*

Action: The employee should remain at the collection facility until as much as possible of the required amount can be given (up to 4 hours). The employee should be offered moderate quantities of liquids to aid urination. The first bottle, if it contains any quantity of urine, should be sealed and securely stored with the blood tubes and Control Form pending shipment. A second bottle should then be used for the subsequent void (using a second Control Form with the words "SECOND VOID—FIRST SAMPLE INSUFFICIENT" in the remarks block and labels from that form). However, if after 4 hours the donor's second void is also insufficient or contains no more than the first insufficient void, discard the second void and send the first void to the laboratory.

3. Problem: *The urine temperature is outside the normal range* of 32 deg.-38 deg.C/ 90 deg.-100 deg.F, and a suitable medical explanation cannot be provided by an oral temperature or other means; or

4. Problem: *The collector observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the sample* (e.g., substitute urine in plain view, blue dye in sample presented, etc.) and a collection site supervisor or the railroad representative agrees that the circumstances indicate an attempt to tamper with the sample.

Action (for either Problem No. 3 or Problem No. 4): Document the problem on the Control Form. i. If the collection site supervisor or railroad representative concurs that the temperature of the sample, or other clear and unequivocal evidence, indicates a possible attempt to substitute or alter the sample, another void must be taken under direct observation by a collector of the same gender.

ii. If a collector of the same sex is not available, do NOT proceed with this step.

iii. If a collector of the same gender is available, proceed as follows: A new Control Form must be initiated for the second void. The original suspect sample should be marked "Void" and the follow-up void should be marked "Void 2," with both voids being sent to the laboratory and the incident clearly detailed on the Control Form.

Exhibit C–2—Instructions for Collection of Post Mortem Samples: Employee Killed in a Railroad Accident/Incident

To the Medical Examiner, Coroner, or Pathologist:

a. In compliance with Federal safety regulations (49 CFR part 219), a railroad representative has requested that you obtain samples for toxicology from the remains of a railroad employee who was killed in a railroad accident or incident. The deceased consented to the taking of such samples, as a matter of Federal law, by performing service on the railroad (49 CFR 219.11(f)).

b. Your assistance is requested in carrying out this program of testing, which is important to the protection of the public safety and the safety of those who work on the railroads.

A. *Materials:*

The railroad will provide you a post-accident shipping box that contains necessary supplies. If the box is not immediately available, please proceed using supplies available to you that are suitable for forensic toxicology.

B. *Samples requested, in order of preference:*

a. Blood—20 milliliters or more. Preferred sites: intact femoral vein or artery or peripheral vessels (up to 10 ml, as available) and intact heart (20 ml). Deposit blood in gray-stopper tubes individually by site and shake to mix sample and preservative.

Note: If uncontaminated blood is not available, bloody fluid or clots from body cavity may be useful for qualitative purposes: but do not label as blood. Please indicate source and identity of sample on label of tube.

b. Urine—as much as 100 milliliters, if available. Deposit into plastic bottles provided.

c. Vitreous fluid—all available, deposited into smallest available tube (e.g., 3 ml) with 1% sodium fluoride, or gray-stopper tube (provided). Shake to mix sample and preservative.

d. If available at autopsy, organs—50 to 100 grams each of two or more of the following in order preference, as available: liver, bile, brain, kidney, spleen, and/or lung. Samples should be individually deposited into zip-lock bags or other clean, single use containers suitable for forensic samples.

e. If vitreous or urine is not available, please provide—

1. Spinal fluid—all available, in 8 ml container (if available) with sodium fluoride or in gray-stopper tube; or, if spinal fluid cannot be obtained,

2. Gastric content—up to 100 milliliters, as available, into plastic bottle.

C. *Sample collection:*

a. Sampling at time of autopsy is preferred so that percutaneous needle puncturing is not necessary. However, if autopsy will not be conducted or is delayed, please proceed with sampling.

b. Blood samples should be taken by sterile syringe and deposited directly into evacuated tube, if possible, to avoid contamination of sample or dissipation of volatiles (ethyl alcohol).

Note: If only cavity fluid is available, please open cavity to collect sample. Note condition of cavity.

c. Please use smallest tubes available to accommodate available quantity of fluid sample (with 1% sodium fluoride).

D. *Sample identification, sealing:*

a. As each sample is collected, seal each blood tube and each urine bottle using the respective blood tube or urine bottle using the identifier labels from the set provided with the Post-Accident Testing Blood/Urine Custody and Control Form (49 CFR part 219) (Form FRA F 6180.74 (revised)). Make sure the unique identification number on the labels match the pre-printed number on the Control Form. Please label other samples with name and sample set identification numbers. You may use labels and seals from any of the extra forms, but annotate them accordingly.

b. Annotate each label with sample description and source (as appropriate) (e.g., blood, femoral vein).

c. Please provide copy of any written documentation regarding condition of body and/or sampling procedure that is available at the time samples are shipped.

E. *Handling:*

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a. If samples cannot be shipped immediately as provided below, samples other than blood may be immediately frozen. Blood samples should be refrigerated, but not frozen.

b. All samples and documentation should be secured from unauthorized access pending delivery for transportation.

F. *Information:*

a. If the railroad has not already done so, please place the name of the subject at the top of the Control Form (STEP 1). You are requested to complete STEP 2 of the form, annotating it by writing the word "FATALITY," listing the samples provided, providing any further information under "Remarks" or at the bottom of the form. If it is necessary to transfer custody of the samples from the person taking the samples prior to preparing the box for shipment, please use the blocks provided in STEP 5 to document transfer of custody.

b. The railroad representative will also provide Accident Information Required for Post-Accident Toxicological Testing (49 CFR part 219), Form FRA 6180.73 (revised). Both forms should be placed in the shipping box when completed; but you may retain the designated medical facility copy of each form for your records.

G. *Packing the shipping box:*

a. Place urine bottles and blood tubes in the sponge liner in the individual kit, close the biohazard bag zipper, close the kit and apply the kit custody seal to the kit. You may use additional kits for each tissue sample, being careful to identify sample by tissue, name of deceased, and specimen set identification number. Apply kit security seals to individual kits and initial across all seals. Place all forms in the zip-lock bag and seal securely.

b. Place the bag in the shipping box. Do not put forms in with the specimens. Seal the shipping box with the seal provided and initial and date across the seal.

c. Affix the mailing label to the outside of the box.

H. *Shipping the box:*

a. The railroad must arrange to have the box shipped overnight air express or (if express service is unavailable) by air freight, prepaid, to FRA's designated laboratory. When possible, but without incurring delay, deliver the sealed shipping box directly to the express courier or the air freight representative.

b. If courier pickup is not immediately available at your facility, the railroad is required to transport the sealed shipping box to the nearest point of shipment via air express, air freight or equivalent means.

c. *If the railroad receives the sealed shipping box to arrange shipment,* please record under "Supplemental Information" on the Control Form, the name of the railroad official taking custody.

I. *Other:*

FRA requests that the person taking the samples annotate the Control Form under "Supplemental Information" if additional toxicological analysis will be undertaken with respect to the fatality. FRA reports are available to the coroner or medical examiner on request.

Issued in Washington, D.C., on April 11, 2001.

S. Mark Lindsey,

Acting Deputy Administrator, Federal Railroad Administration.

[FR Doc. 01–9413 Filed 4–27–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 382

[Docket No. FMCSA–2000–8456]

RIN 2126–AA58

Controlled Substances and Alcohol Use and Testing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The Department of Transportation published a revision of its drug and alcohol testing procedures regulations on December 19, 2000. Consequently, the FMCSA is proposing to amend its controlled substances and alcohol testing regulations to ensure consistency with DOT's revised testing procedures and to avoid duplication. In addition, the FMCSA is proposing to amend its drug and alcohol testing regulations to update outdated provisions and clarify existing rules.

DATES: You must submit comments on or before June 14, 2001.

ADDRESSES: You can mail or hand deliver written comments to the US Department of Transportation, Docket Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, or submit on-line at *http://dmses.dot.gov/submit.* You must include the docket number that appears in the heading of this document in your comment. You can examine and copy all comments from 9 a.m. to 5 p.m. e.t., Monday through Friday, except Federal holidays. If you want notification of receipt of comments, please include a self-addressed, stamped envelope or postcard, or after submitting comments electronically, print the acknowledgment page.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Rodgers, Transportation Specialist, MC–ECE, (202) 366–4016, or Mr. Michael Falk, Attorney-Advisor, MC–CC, (202) 366–0834, FMCSA, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 8:30 a.m. to 5:00 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The Department of Transportation published a comprehensive revision to the drug and alcohol testing procedural rules (49 CFR Part 40) (December 19, 2000, 65 FR 79462). The new Part 40 makes numerous changes regarding the way that drug and alcohol testing will be conducted in the future. The majority of the changes in the rule will become effective August 1, 2001. However, some changes will become effective prior to August 1, 2001.

Part 40 is one element of a One-DOT set of regulations designed to deter and detect the use of illegal drugs and the misuse of alcohol by employees performing safety-sensitive transportation functions. It is important that the six DOT agency rules that cover specific transportation industries be consistent with the revised Part 40, to avoid duplication, conflict, or confusion among DOT regulatory requirements. Therefore, we are proposing to amend our drug and alcohol testing regulations to conform with Part 40.

Background

In this NPRM, the FMCSA proposes changes that would conform its drug and alcohol testing regulations (49 CFR Part 382) to the revised DOT procedures for transportation workplace drug and alcohol testing programs (49 CFR Part 40) published on December 19, 2000 (65 FR 79462).

The FMCSA proposes to delete from part 382 provisions that are also covered in the new part 40. Motor carrier employers and employees affected by part 382 have always been required to read and adhere *both* part 382 and part 40 to comply with the FMCSA's drug and alcohol testing requirements. Referring the reader directly to part 40 instead of duplicating part 40 rule text in part 382 would promote both drafting economy and consistency of interpretation. This NPRM proposes to delete from part 382 regulatory text regarding referral, evaluation and treatment requirements; follow-up testing; inquiries for alcohol and controlled substances information from previous employers; and substance abuse professionals. Instead, the regulations would reference the appropriate provisions of part 40 which deal with these issues.

Although the primary purpose of this NPRM is to conform part 382 with the new part 40, FMCSA would also delete outdated rule text references (e.g., past implementation dates and reporting requirements) that can currently be found throughout part 382. This includes replacing references to the Federal Highway Administration with the Federal Motor Carrier Safety Administration.

For ease of reference, FMCSA is publishing part 382 in its entirety with the proposed amendments discussed below. FMCSA intends to time publication of the final rule so that its conforming changes to part 382 become effective concurrently with most of part 40 on August 1, 2001.

Subpart A—General

Section 382.107 Definitions

The following definitions have been added or modified in part 382 in order to conform to the definitions in revised part 40:

Confirmation or confirmatory test
Confirmed drug test
Consortium/Third party administrator
Controlled substances
Designated employer representative (DER)
Employer
Refuse to submit
Screening test (or initial test)
Stand-down

Section 382.115 Starting Date for Testing Programs

The starting date for testing programs has been modified to reflect that all implementation dates have elapsed. This section now requires all motor carriers, both domestic and foreign to implement the testing program requirements when they begin operating commercial motor vehicles in the United States. The implementation dates for large foreign employers and small foreign employers have been removed.

Section 382.117 Public Interest Exclusion

This section has been included to ensure consistency with 49 CFR Part 40, subpart R. In an attempt to protect the public interest, and transportation employers and employees, the Department is incorporating the public interest exclusion (PIE) into its regulations. The FMCSA has included this section to inform motor carriers subject to the controlled substances and alcohol testing regulations that they may not use a service agent who has had a PIE issued against it. The Department uses public interest exclusions to exclude service agents who are in serious noncompliance with the drug and alcohol testing regulations from participating in DOT's drug and alcohol testing program.

Section 382.119 Stand-Down Waiver Provision

This section has been added to include the stand-down waiver provision contained in 49 CFR Part 40. Section 40.21 maintains the departmental policy of prohibiting employers from standing an employee down, that is, removing the employee from safety-sensitive service after the medical review officer (MRO) has received a laboratory report of either a confirmed positive test result, adulterated test result, or substituted test result before the result has been verified by the MRO. The new section 40.21(d) authorizes each Administrator (or his or her designee) to waive this prohibition if doing so would effectively enhance safety while protecting employee fairness and confidentiality. Therefore, the new § 382.119 stand-down waiver provision outlines the procedures for applying for a waiver to the FMCSA. The FMCSA would review petitions for a waiver and decide to grant or deny the petition based on the requirements established in § 40.21.

Section 382.217 Actual Knowledge

The FMCSA is proposing to add a new section to the regulations to clarify the term "actual knowledge." Published regulatory guidance previously provided by the FMCSA indicates that actual knowledge may result from the employer's direct observation of the employee, the driver's previous employer(s), the employee's admission of alcohol use, or other occurrences. Some entities believe the reference to an employee's admission or other occurrences are too ambiguous and prevents an employee from coming forward to self-identify that a drug or alcohol problem exists. Since our primary purpose is to deter alcohol misuse or controlled substance use, we encourage employers to have self-identification programs. As a result, we propose to include in the regulations language similar to that in the regulatory guidance, but have provided an exception in proposed § 382.219.

Section 382.219 Employee Admission of Alcohol and Controlled Substances Use

This section has been developed to allow employers to establish self-identification programs that permit employees to self-identify without DOT consequences. The self-identification program does not allow employees to self-identify in order to avoid DOT testing. The program must prohibit employers from taking adverse actions against an employee making a voluntary admission. Lastly, the program must preserve the intent of the controlled substance and alcohol testing regulations by ensuring that problem drivers are removed from safety-sensitive positions until the employee has successfully completed an educational or treatment program, as determined by a qualified substance abuse professional.

Section 382.301 Pre-employment Testing

Since mandatory pre-employment alcohol testing has been suspended as a result of a court decision and subsequent legislation, the FMCSA would eliminate paragraphs (b), (b)(1), (b)(2) and (e), which address pre-employment alcohol testing. Paragraphs (c) and (d) would be redesignated as paragraphs (b) and (c), respectively. The FMCSA would permit, but not require, employers to conduct pre-employment alcohol testing. If an employer chooses to conduct pre-employment alcohol testing, the employer would have to do so in accordance with 49 CFR part 40 and the proposed new paragraph (d) of this section.

Section 382.303 Post-Accident Testing

This section has been modified to include changes, deletions and updates to the post accident testing requirements. In many instances, motor carriers have conducted either alcohol or controlled substances tests, instead of conducting both tests as required by the regulations. Consequently, we are proposing to modify paragraph (a), which requires an employer to test for alcohol and controlled substances following an occurrence involving a commercial motor vehicle. The change removes controlled substances from paragraph (a) and places the post-accident controlled substances testing requirements in the proposed redesignated paragraph (b). The table previously codified as paragraph (a)(3) is proposed to be redesignated as paragraph (c). The requirements in paragraphs (b)(2) and (b)(3) of the current regulations are obsolete. Therefore, the FMCSA is proposing to delete these paragraphs, which required that certain information be submitted to the FHWA by March 15, 1996, March 15, 1997, and March 15, 1998. Other paragraphs in this section will be redesignated to accommodate the proposed changes.

Section 382.305 Random Testing

Currently, the random testing regulations require the Administrator to annually publish a Federal Register notice of the minimum annual percentage rates for random alcohol and controlled substances testing. The FMCSA is proposing to revise its random testing regulations to require the Administrator to publish notice of

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the minimum annual percentage rates for random testing only in the event of a change in the annual percentage rates.

The FMCSA is seeking comments on the random testing regulations related to motor carriers testing at the applicable rates. Motor carriers may either administer their own random testing programs or rely on consortia/third party administrators (C/TPAs) to provide that service. There appears to be rising concern over how to calculate the testing rates when the motor carrier is in a consortium, especially if the consortium is not testing at the minimum rates, but the motor carrier is. The agency seeks comment whether the regulations codified in § 382.305(j) are sufficiently clear, or do they need clarification?

Section 382.307 Reasonable Suspicion Testing

The FMCSA is proposing to remove the regulatory test in 382.307(e)(2) requiring employers to submit MIS reports from March 15 1996 through March 15, 1998 respectively. This section will be renumbered accordingly to adjust for the deletion of this paragraph.

Section 382.309 Return-to-Duty Testing

The FMCSA is proposing to remove the regulatory text regarding return-to-duty testing requirements from part 382 in order to avoid potential duplication and inconsistency with the requirements in part 40. Please refer to the Common Preamble, Transportation Workplace Drug and Alcohol Testing Programs; Amendments to DOT Agency Rules Conforming to the Department of Transportation Final Rule, published elsewhere in this issue of the **Federal Register**.

Section 382.311 Follow-Up Testing

The FMCSA is proposing to remove the regulatory text regarding follow-up testing requirements from part 382 in order to avoid potential duplication and inconsistency with the requirements in part 40. Please refer to the Common Preamble, Transportation Workplace Drug and Alcohol Testing Programs; Amendments to DOT Agency Rules Conforming to 49 CFR Part 40, published elsewhere in this issue of the **Federal Register**.

Section 382.401 Retention of Records

The FMCSA is proposing that employers maintain semi-annual laboratory statistical summaries of urinalysis instead of quarterly summaries, to be consistent with the new part § 40.111(a).

Section 382.403 Reporting of Results in a Management Information System

The FMCSA is proposing to amend the reporting requirements in paragraphs (c)(8) and (d)(5) to include substituted or adulterated specimens. This would be consistent with part 40 and will provide clarifying information on positive drug test results that are accounted for in the MIS reports.

Section 382.405 Access to Facilities and Records

The FMCSA is proposing to amend the requirements in paragraph (g) regarding disclosure of information arising from a positive DOT drug or alcohol test or refusal to test also include disclosure of adulterated and substituted test results, consistent with § 40.323(a)(1). Additionally, this section allows an employer to disclose information in criminal or civil actions as provided in § 40.323(a)(2).

Section 382.407 Medical Review Officer Notifications to the Employer

The FMCSA is proposing to remove the regulatory text regarding requirements for medical review officer notifications to the employer from part 382 in avoid potential duplication and inconsistency with the requirements of part 40. Please refer to the Common Preamble, Transportation Workplace Drug and Alcohol Testing Programs; Amendments to DOT Agency Rules Conforming to 49 CFR Part 40, published elsewhere in this issue of the **Federal Register**.

Section 382.409 Medical Review Officer Record Retention for Controlled Substances

This section requires the medical review officer to maintain dated records and employer notifications for a period of time. The FMCSA proposes to amend paragraphs (a),(b) and (c) to include third party administrators within this requirement since part 40 now permits third party administrators to transmit the MRO's findings to the employer.

Section 382.411 Employer Notifications

Paragraphs (b) and (c) has been modified to replace the term designated management official with designated employer representative. In addition, we propose to amend paragraph (c) to require the designated employer representative to immediately notify the medical review officer that the driver has been notified to contact the medical review officer within 72 hours, in order to be consistent with § 40.131.

Section 382.413 Inquiries for Alcohol and Controlled Substances Information from Previous Employers

The FMCSA is proposing to remove the regulatory text regarding requirements for inquiries for alcohol and controlled substances information from previous employers from Part 382 in order to avoid potential duplication and inconsistency with Part 40. Please refer to the Common Preamble, Transportation Workplace Drug and Alcohol Testing Programs; Amendments to DOT Agency Rules Conforming to 49 CFR Part 40, published elsewhere in this issue of the **Federal Register**.

Section 382.507 Penalties

The FMCSA is proposing to add a provision stating that an employer who violates the requirements of part 40 will be subject to the penalties in 49 U.S.C. 521(b). This is a clarification of existing law. Section 382.105 makes the provisions of Part 40 applicable to employers and a violation of Part 40 is treated like a violation of part 382 for enforcement purposes.

Section 382.605 Referral, Evaluation, and Treatment

The FMCSA is proposing to remove the regulatory text regarding the requirements for referral, evaluation, and treatment from Part 382 in order to avoid potential duplication and inconsistency with the requirements of Part 40. Please refer to the Common Preamble, Transportation Workplace Drug and Alcohol Testing Programs; Amendments to DOT Agency Rules Conforming to 49 CFR Part 40, published elsewhere in this issue of the **Federal Register**.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

These proposed rules have been designated as non-significant under Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. They are non-significant because they merely make changes to conform to the revised 49 CFR part 40, which has already been subject to extensive comment and analysis, or seek to remove obsolete provisions or clarify existing law. The proposed changes would not have any incremental economic impacts on their own. The economic impacts of the underlying part 40 changes were analyzed in connection with the part 40 rulemaking.

Regulatory Flexibility Act

Because these proposals have no incremental economic impacts, the FMCSA certifies, under the Regulatory Flexibility Act, that these proposals, if adopted, would not have a significant economic impact on a substantial number of small entities.

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999. The FMCSA has determined this proposed rule would not have a substantial direct effect on, or sufficient federalism implications for, the States, nor would it limit the policymaking discretion of the States.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FMCSA has determined that there are no new requirements for information collection associated with this proposed rule. All the information collection requirements of part 40 have been analyzed and approved by OMB. These proposed rules would impose no information collection requirements that have not already been reviewed in the context of the part 40 rulemaking, so no further Paperwork Reduction Act review is necessary.

Unfunded Mandates Reform Act

This proposed rule would not impose a Federal mandate resulting in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1531 *et seq.*).

Executive Order 12988 (Civil Justice Reform)

This proposed action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this proposal under Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks". This proposed rule would not be economically significant and would not concern an environmental risk to health or safety that would disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

The FMCSA certifies that this proposed rule has no taking implications under the Fifth Amendment or Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

National Environmental Policy Act

The agency has analyzed this proposal for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have an adverse effect on the quality of the environment.

List of Subjects in 49 CFR Part 382

Administrative practice and procedure, Alcohol abuse, Alcohol testing, Drug abuse, Drug testing, Highway safety, Motor carriers, Penalties, Reporting and recordkeeping requirements, Safety, Transportation.

Accordingly, the FMCSA proposes to revise Part 382 of 49 CFR to read as follows:

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

Subpart A—General

Sec.
382.101 Purpose 382.103 Applicability.
382.105 Testing procedures.
382.107 Definitions.
382.109 Preemption of State and local laws.
382.111 Other requirements imposed by employers.
382.113 Requirements for notice.
382.115 Starting date for testing programs
382.117 Public interest exclusion.
382.119 Stand-down waiver provision.

Subpart B—Prohibitions

382.201 Alcohol concentration.
382.205 On-duty use.
382.207 Pre-duty use.
382.209 Use following an accident.
382.211 Refusal to submit to a required alcohol or controlled substances test.
382.213 Controlled substances use.
382.215 Controlled substances testing.
382.217 Actual knowledge.
382.219 Employee admission of alcohol and controlled substances use.

Subpart C—Tests Required

382.301 Pre-employment testing.
382.303 Post-accident testing.
382.305 Random testing.
382.307 Reasonable suspicion testing.
382.309 Return-to-duty testing.
382.311 Follow-up testing.

Subpart D—Handling of Test Results, Record Retention, and Confidentiality

382.401 Retention of records.
382.403 Reporting of results in a management information system.
382.405 Access to facilities and records.
382.407 Medical review officer notifications to the employer.
382.409 Medical review officer record retention for controlled substances.
382.411 Employer notifications.
382.413 Inquiries for alcohol and controlled substances information from previous employers.

Subpart E—Consequences for Drivers Engaging in Substance Use-Related Conduct

382.501 Removal from safety-sensitive function.
382.503 Required evaluation and testing.
382.505 Other alcohol-related conduct.
382.507 Penalties.

Subpart F—Alcohol Misuse and Controlled Substances Use Information, Training, and Referral

382.601 Employer obligation to promulgate a policy on the misuse of alcohol and use of controlled substances.
382.603 Training for supervisors.
382.605 Referral, evaluation, and treatment.

Authority: 49 U.S.C. 31133, 31136, 31301 *et seq.*, 31502; and 49 CFR 1.73.

Subpart A—General

§ 382.101 Purpose.

The purpose of this part is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of commercial motor vehicles.

§ 382.103 Applicability.

(a) This part applies to every person and to all employers of such persons who operate a commercial motor vehicle in commerce in any State, and is subject to:

(1) The commercial driver's license requirements of part 383 of this subchapter;

(2) The Licencia Federal de Conductor (Mexico) requirements; or

(3) The commercial driver's license requirements of the Canadian National Safety Code.

(b) An employer who employs himself/herself as a driver must comply with both the requirements in this part that apply to employers and the requirements in this part that apply to drivers. An employer who employs only himself/herself as a driver shall implement a random alcohol and controlled substances testing program of

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two or more covered employees in the random testing selection pool.

(c) The exceptions contained in § 390.3(f) of this subchapter do not apply to this part. The employers and drivers identified in § 390.3(f) of this subchapter must comply with the requirements of this part, unless otherwise specifically provided in paragraph (d) of this section.

(d) *Exceptions.* This part shall not apply to employers and their drivers:

(1) Required to comply with the alcohol and/or controlled substances testing requirements of parts 653 and 655 of this title (Federal Transit Administration alcohol and controlled substances testing regulations); or

(2) Who a State must waive from the requirements of part 383 of this subchapter. These individuals include active duty military personnel; members of the reserves; and members of the national guard on active duty, including personnel on full-time national guard duty, personnel on part-time national guard training and national guard military technicians (civilians who are required to wear military uniforms), and active duty U.S. Coast Guard personnel; or

(3) Who a State has, at its discretion, exempted from the requirements of part 383 of this subchapter. These individuals may be:

(i) Operators of a farm vehicle which is:

(A) Controlled and operated by a farmer;

(B) Used to transport either agricultural products, farm machinery, farm supplies, or both to or from a farm;

(C) Not used in the operations of a common or contract motor carrier; and

(D) Used within 241 kilometers (150 miles) of the farmer's farm.

(ii) Firefighters or other persons who operate commercial motor vehicles which are necessary for the preservation of life or property or the execution of emergency governmental functions, are equipped with audible and visual signals, and are not subject to normal traffic regulation.

§ 382.105 Testing procedures.

Each employer shall ensure that all alcohol or controlled substances testing conducted under this part complies with the procedures set forth in part 40 of this title. The provisions of part 40 of this title that address alcohol or controlled substances testing are made applicable to employers by this part.

§ 382.107 Definitions.

Words or phrases used in this part are defined in §§ 386.2 and 390.5 of this subchapter, and § 40.3 of this title, except as provided in this section—

Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

Alcohol concentration (or content) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this part.

Alcohol use means the drinking or swallowing of any beverage, liquid mixiture or preparation (including any medication), containing alcohol.

Commerce means:

(1) Any trade, traffic or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State, including a place outside of the United States; and

(2) Trade, traffic, and transportation in the United States which affects any trade, traffic, and transportation described in paragraph (1) of this definition.

Commercial motor vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle—

(1) Has a gross combination weight rating of 11,794 or more kilograms (26,001 or more pounds) inclusive of a towed unit with a gross vehicle weight rating of more than of 4,536 kilograms (10,000 pounds); or

(2) Has a gross vehicle weight rating of 11,794 or more kilograms (26,001 or more pounds); or

(3) Is designed to transport 16 or more passengers, including the driver; or

(4) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR Part 172, subpart F).

Confirmation (or confirmatory) drug test means a second analytical procedure performed on a urine specimen to identify an dquantify the presence of a specific drug or drug metabolite.

Confirmation (or confirmatory) validity test means a second test performed on a urine specimen to further support a validity test result.

Confirmed drug test means a confirmation test result received by an MRO from a laboratory.

Consortium/Third party administrator (C/TPA) means a service agent that provides or coordinates one or more drug and/or alcohol testing services to DOT-regulated employers. C/TPAs typically provide or coordinate the provision of a number of such services and perform administrative tasks concerning the operation of the employers' drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members (e.g., having a combined random testing pool). C/TPAs are not "employers" for purposes of this part.

Controlled substances mean those substances identified in § 40.85 of this title.

Designated employer representative (DER) is an individual identified by the employer as able to receive communications and test results from service agents and who is authorized to take immediate actions to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes. The individual must be an employee of the company. Service agents cannot serve as DERs.

Disabling damage means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

(1) *Inclusions.* Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

(2) *Exclusions.* (i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts.

(ii) Tire disablement without other damage even if no spare tire is available.

(iii) Headlight or taillight damage.

(iv) Damage to turn signals, horn, or windshield wipers which make them inoperative.

DOT Agency means an agency (or "operating administration") of the United States Department of Transportation administering regulations requiring alcohol and/or drug testing (14 CFR parts 61, 63, 65, 121, and 135; 49 CFR parts 199, 219, 382, 653 and 654), in accordance with Part 40 of this title.

Driver means any person who operates a commercial motor vehicle. This includes, but is not limited to: Full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent owner-operator contractors who are either directly employed by or under lease to an employer or who operate a commercial motor vehicle at the direction of or with the consent of an employer.

Employer means an entity employing one or more employees (including an individual who is self-employed) that is subject to DOT agency regulations requiring compliance with this part. The term, as used in these regulations, refers to the entity responsible for overall implementation of DOT drug and alcohol program requirements, as well as those individuals employed by the entity who take personnel actions resulting from violations of this part and any applicable DOT agency regulations. Service agents are not employers for the purposes of this part.

Licensed medical practitioner means a person who is licensed, certified, and/or registered, in accordance with applicable Federal, State, local, or foreign laws and regulations, to prescribe controlled substances and other drugs.

Performing (a safety-sensitive function) means a driver is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

Positive rate means the number of positive results for random controlled substances tests conducted under this part plus the number of refusals of random controlled substances tests required by this part, divided by the total of random controlled substances tests conducted under this part plus the number of refusals of random tests required by this part.

Refuse to submit (to an alcohol or controlled substances test) means that a driver:

(1) Fails to show up for any test within a reasonable time after being directed to do so by the employer or to remain at the testing site until the testing process is complete. This includes the failure of an employee (including an owner-operator) to appear for a test when called by a C/TPA (see § 40.61(a) of this title);

(2) Fails to provide a urine specimen for any drug test required by this part;

(3) In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the provision of a specimen (§§ 40.67(k) and 40.69(g) of this title);

(4) Fails to provide a sufficient amount of urine when directed, unless it has been determined, through a required medical evaluation, that there was an adequate medical explanation for the failure (see § 40.193(d)(2) of this title);

(5) Fails or declines to take a second test the employer has directed following a negative dilute result (see § 40.197(g) of this title);

(6) Fails to undergo an additional medical examination, as directed by the MRO as part of the verification process, or as directed by the DER concerning the evaluation as part of the "shy bladder" procedures in part 40, subpart I, of this title; or

(7) Fails to cooperate (e.g., leaves the test site before the collection process is completed, refuses to empty pockets) with any part of the testing process.

Safety-sensitive function means all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:

(1) All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;

(2) All time inspecting equipment as required by §§ 392.7 and 392.8 of this subchapter or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;

(3) All time spent at the driving controls of a commercial motor vehicle in operation;

(4) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth (a berth conforming to the requirements of § 393.76 of this subchapter);

(5) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and

(6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Screening test (or initial test) means:

(1) In drug testing, a test to eliminate "negative" urine specimens from further analysis or to identify a specimen that requires additional testing for the presence of drugs.

(2) In alcohol testing, an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.

Stand-down means the practice of temporarily removing an employee from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test results.

Violation rate means the number of drivers (as reported under § 382.305) found during random tests given under this part to have an alcohol concentration of 0.04 or greater, plus the number of drivers who refuse a random test required by this part, divided by the total reported number of drivers in the industry given random alcohol tests under this part plus the total reported number of drivers in the industry who refuse a random test required by this part.

§ 382.109 Preemption of State and local laws.

(a) Except as provided in paragraph (b) of this section, this part preempts any State or local law, rule, regulation, or order to the extent that:

(1) Compliance with both the State or local requirement in this part is not possible; or

(2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this part.

(b) This part shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees, employers, or the general public.

§ 382.111 Other requirements imposed by employers.

Except as expressly provided in this part, nothing in this part shall be construed to affect the authority of employers, or the rights of drivers, with respect to the use of alcohol, or the use of controlled substances, including authority and rights with respect to testing and rehabilitation.

§ 382.113 Requirement for notice.

Before performing an alcohol or controlled substances test under this part, each employer shall notify a driver that the alcohol or controlled substances test is required by this part. No employer shall falsely represent that a test is administered under this part.

§ 382.115 Starting date for testing programs.

(a) All domestic-domiciled employers must implement the requirements of this part on the date the employer begins commercial motor vehicle operations.

(b) All foreign-domiciled employers must implement the requirements of this part on the date the employer begins commercial motor vehicle operations in the United States.

§ 382.117 Public interest exclusion.

No employer shall use the services of a service agent who is subject to a

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public interest exclusion in accordance with 49 CFR part 40, subpart R.

§ 382.119 Stand-down waiver provision.

(a) An employer subject to this part who seeks a waiver from the prohibition against standing down an employee before the MRO has completed the verification process shall follow the procedures in 49 CFR 40.21. The employer must send a written request which includes all of the information required by that section to the Federal Motor Carrier Safety Administrator (or the Administrator's designee), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

(b) The final decision whether to grant or deny the application for a waiver will be made by the Administrator or the Administrator's designee.

(c) After a decision is signed by the Administrator or the Administrator's designee, the employer will be sent a copy of the decision, which will include the terms and conditions for the waiver or the reason for denying the application for a waiver.

(d) Questions regarding waiver applications should be directed to the Office of Enforcement and Compliance, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. The telephone number is (202) 366–5720.

Subpart B—Prohibitions

§ 382.201 Alcohol concentration.

No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. No employer having actual knowledge that a driver has an alcohol concentration of 0.04 or greater shall permit the driver to perform or continue to perform safety-sensitive functions.

§ 382.205 On-duty use.

No driver shall use alcohol while performing safety-sensitive functions. No employer having actual knowledge that a driver is using alcohol while performing safety-sensitive functions shall permit the driver to perform or continue to perform safety-sensitive functions.

§ 382.207 Pre-duty use.

No driver shall perform safety-sensitive functions within four hours after using alcohol. No employer having actual knowledge that a driver has used alcohol within four hours shall permit a driver to perform or continue to perform safety-sensitive functions.

§ 382.209 Use following an accident.

No driver required to take a post-accident alcohol test under § 382.303 shall use alcohol for eight hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.

§ 382.211 Refusal to submit to a required alcohol or controlled substances test.

No driver shall refuse to submit to a post-accident alcohol or controlled substances test required under § 382.303, a random alcohol or controlled substances test required under § 382.305, a reasonable suspicion alcohol or controlled substances test required under § 382.307, or a follow-up alcohol or controlled substances test required under § 382.311. No employer shall permit a driver who refuses to submit to such tests to perform or continue to perform safety-sensitive functions.

§ 382.213 Controlled substances use.

(a) No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance, except when the use is pursuant to the instructions of a licensed medical practitioner, as defined in § 382.107, who has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle.

(b) No employer having actual knowledge that a driver has used a controlled substance shall permit the driver to perform or continue to perform a safety-sensitive function.

(c) An employer may require a driver to inform the employer of any therapeutic drug use.

§ 382.215 Controlled substances testing.

No driver shall report for duty, remain on duty or perform a safety-sensitive function, if the driver tests positive or has adulterated or substituted a test specimen for controlled substances. No employer having actual knowledge that a driver has tested positive or has adulterated or substituted a test specimen for controlled substances shall permit the driver to perform or continue to perform safety-sensitive functions.

§ 382.217 Actual knowledge.

For the purposes of this subpart, an employer can obtain actual knowledge that a driver has used alcohol or controlled substances based on the employer's direct observation of the employee, information provided by the driver's previous employer(s), a traffic citation for driving a CMV while under the influence of alcohol or controlled substances or an employee's admission of alcohol or controlled substances use, except as provided in § 382.219.

§ 382.219 Employee admission of alcohol and controlled substances use.

(a) Employees who admit to alcohol misuse or controlled substances use are not subject to the referral, evaluation and treatment requirements of this part and part 40 of this title, provided that:

(1) The admission is in accordance with a written employer-established voluntary self-identification program or policy which meets the requirements of paragraph (b) of this section;

(2) The driver does not self-identify in order to avoid testing under the requirements of this part;

(3) The driver makes the admission of alcohol misuse or controlled substances use before performing a safety sensitive function; and

(4) The driver does not perform a safety sensitive function until the employer is satisfied that the employee has been evaluated and has successfully completed education or treatment requirements in accordance with the self-identification program guidelines.

(b) A qualified voluntary self-identification program or policy must contain the following elements:

(1) It must prohibit the employer from taking adverse action against an employee making a voluntary admission of alcohol misuse or controlled substances use within the parameters of the program or policy and paragraph (a) of this section;

(2) It must allow the employee sufficient opportunity to seek evaluation, education or treatment to establish control over the employee's drug or alcohol problem; and

(3) It must permit the employee to return to safety sensitive duties only upon successful completion of an educational or treatment program, as determined by a substance abuse professional.

Subpart C—Tests Required

§ 382.301 Pre-employment testing.

(a) Prior to the first time a driver performs safety-sensitive functions for an employer, the driver shall undergo testing for controlled substances as a condition prior to being used, unless the employer uses the exception in paragraph (b) of this section. No employer shall allow a driver, who the employer intends to hire or use, to perform safety-sensitive functions unless the employer has received a controlled substances test result from the MRO or C/TPA indicating a verified negative test result for that driver.

(b) An employer is not required to administer a controlled substances test required by paragraph (a) of this section if:

(1) The driver has participated in a controlled substances testing program that meets the requirements of this part within the previous 30 days; and

(2) While participating in that program, either—

(i) Was tested for controlled substances within the past 6 months (from the date of application with the employer), or

(ii) Participated in the random controlled substances testing program for the previous 12 months (from the date of application with the employer); and

(3) The employer ensures that no prior employer of the driver of whom the employer has knowledge has records of a violation of this part or the controlled substances use rule of another DOT agency within the previous six months.

(c)(1) An employer who exercises the exception in paragraph (b) of this section shall contact the controlled substances testing program(s) in which the driver participates or participated and shall obtain and retain from the testing program(s) the following information:

(i) Name(s) and address(es) of the program(s).

(ii) Verification that the driver participates or participated in the program(s).

(iii) Verification that the program(s) conforms to part 40 of this title.

(iv) Verification that the driver is qualified under the rules of this part, including that the driver has not refused to be tested for controlled substances.

(v) The date the driver was last tested for controlled substances.

(vi) The results of any tests taken within the previous six months and any other violations of subpart B of this part.

(2) An employer who uses, but does not employ, a driver more than once a year to operate commercial motor vehicles must obtain the information in paragraph (c)(1) of this section at least once every six months. The records prepared under this paragraph shall be maintained in accordance with § 382.401. If the employer cannot verify that the driver is participating in a controlled substances testing program in accordance with this part and part 40 of this title, the employer shall conduct a pre-employment controlled substances test.

(d) An employer may, but is not required to, conduct pre-employment alcohol testing under this part. If an employer chooses to conduct pre-employment alcohol testing, it must comply with the following requirements:

(1) It must conduct a pre-employment alcohol test before the first performance of safety-sensitive functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of safety-sensitive functions).

(2) It must treat all safety-sensitive employees performing safety-sensitive functions the same for the purpose of pre-employment alcohol testing (i.e., it must not test some covered employees and not others).

(3) It must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test.

(4) It must conduct all pre-employment alcohol tests using the alcohol testing procedures of part 40 of this title.

(5) It must not allow a covered employee to begin performing safety-sensitive functions unless the result of the employee's test indicates an alcohol concentration of less than 0.04.

§ 382.303 Post-accident testing.

(a) As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, each employer shall test for alcohol for each surviving driver:

(1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or

(2) Who receives a citation under State or local law for a moving traffic violation arising from the accident, if the accident involved:

(i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(b) As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, each employer shall test for controlled substances for each surviving driver:

(1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or (2) Who receives a citation under State or local law for a moving traffic violation arising from the accident, if the accident involved:

(i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(c) The following table notes when a post-accident test is required to be conducted by paragraphs (a)(1), (a)(2), (b)(1), and (b)(2) of this section:

TABLE FOR § 382.303(a) AND (b)

Type of accident involved	Citation issued to the CMV driver	Test must be performed by employer
i. Human fatality	Yes	Yes.
	No	Yes.
ii. Bodily injury with immediate medical treatment away from the scene.	Yes	Yes.
	No	No.
iii. Disabling damage to any motor vehicle requiring tow away.	Yes	Yes.
	No	No.

(d)(1) *Alcohol tests.* If a test required by this section is not administered within two hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly

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administered. If a test required by this section is not administered within eight hours following the accident, the employer shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. Records shall be submitted to the FMCSA upon request.

(2) *Controlled substance tests.* If a test required by this section is not administered within 32 hours following the accident, the employer shall cease attempts to administer a controlled substances test, and prepare and maintain on file a record stating the reasons the test was not promptly administered. Records shall be submitted to the FMCSA upon request.

(e) A driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the employer to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

(f) An employer shall provide drivers with necessary post-accident information, procedures and instructions, prior to the driver operating a commercial motor vehicle, so that drivers will be able to comply with the requirements of this section.

(g)(1) The results of a breath or blood test for the use of alcohol, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable Federal, State or local alcohol testing requirements, and that the results of the tests are obtained by the employer.

(2) The results of a urine test for the use of controlled substances, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable Federal, State or local controlled substances testing requirements, and that the results of the tests are obtained by the employer.

(h) *Exception.* This section does not apply to:

(1) An occurrence involving only boarding or alighting from a stationary motor vehicle; or

(2) An occurrence involving only the loading or unloading of cargo; or

(3) An occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle (as defined in § 571.3 of this title) by an employer unless the motor vehicle is transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be marked or placarded in accordance with § 177.823 of this title.

§ 382.305 Random testing.

(a) Every employer shall comply with the requirements of this section. Every driver shall submit to random alcohol and controlled substance testing as required in this section.

(b)(1) Except as provided in paragraphs (c) through (e) of this section, the minimum annual percentage rate for random alcohol testing shall be 10 percent of the average number of driver positions.

(2) Except as provided in paragraphs (f) through (h) of this section, the minimum annual percentage rate for random controlled substances testing shall be 50 percent of the average number of driver positions.

(c) The FMCSA Administrator's decision to increase or decrease the minimum annual percentage rate for alcohol testing is based on the reported violation rate for the entire industry. All information used for this determination is drawn from the alcohol management information system reports required by § 382.403. In order to ensure reliability of the data, the FMCSA Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry violation rate. In the event of a change in the annual percentage rate, the FMCSA Administrator will publish in the **Federal Register** the new minimum annual percentage rate for random alcohol testing of drivers. The new minimum annual percentage rate for random alcohol testing will be applicable starting January 1 of the calendar year following publication in the **Federal Register**.

(d)(1) When the minimum annual percentage rate for random alcohol testing is 25 percent or more, the FMCSA Administrator may lower this rate to 10 percent of all driver positions if the FMCSA Administrator determines that the data received under the reporting requirements of § 382.403 for two consecutive calendar years indicate that the violation rate is less than 0.5 percent.

(2) When the minimum annual percentage rate for random alcohol testing is 50 percent, the FMCSA Administrator may lower this rate to 25 percent of all driver positions if the FMCSA Administrator determines that the data received under the reporting requirements of § 382.403 for two consecutive calendar years indicate that the violation rate is less than 1.0 percent but equal to or greater than 0.5 percent.

(e)(1) When the minimum annual percentage rate for random alcohol testing is 10 percent, and the data received under the reporting requirements of § 382.403 for that calendar year indicate that the violation rate is equal to or greater than 0.5 percent, but less than 1.0 percent, the FMCSA Administrator will increase the minimum annual percentage rate for random alcohol testing to 25 percent for all driver positions.

(2) When the minimum annual percentage rate for random alcohol testing is 25 percent or less, and the data received under the reporting requirements of § 382.403 for that calendar year indicate that the violation rate is equal to or greater than 1.0 percent, the FMCSA Administrator will increase the minimum annual percentage rate for random alcohol testing to 50 percent for all driver positions.

(f) The FMCSA Administrator's decision to increase or decrease the minimum annual percentage rate for controlled substances testing is based on the reported positive rate for the entire industry. All information used for this determination is drawn from the controlled substances management information system reports required by § 382.403. In order to ensure reliability of the data, the FMCSA Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry positive rate. In the event of a change in the annual percentage rate, the FMCSA Administrator will publish in the **Federal Register** the new minimum annual percentage rate for controlled substances testing of drivers. The new minimum annual percentage rate for random controlled substances testing will be applicable starting January 1 of the calendar year following publication in the **Federal Register**.

(g) When the minimum annual percentage rate for random controlled substances testing is 50 percent, the FMCSA Administrator may lower this rate to 25 percent of all driver positions if the FMCSA Administrator determines that the data received under the reporting requirements of § 382.403 for two consecutive calendar years indicate that the positive rate is less than 1.0 percent.

(h) When the minimum annual percentage rate for random controlled substances testing is 25 percent, and the data received under the reporting requirements of § 382.403 for any calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent, the FMCSA Administrator will increase the minimum annual percentage rate for random controlled substances testing to 50 percent of all driver positions.

(i) The selection of drivers for random alcohol and controlled substances testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with drivers' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each driver shall have an equal chance of being tested each time selections are made.

(j) The employer shall randomly select a sufficient number of drivers for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random alcohol and controlled substances testing determined by the FMCSA Administrator. If the employer conducts random testing for alcohol and/or controlled substances through a C/TPA, the number of drivers to be tested may be calculated for each individual employer or may be based on the total number of drivers covered by the C/TPA who are subject to random alcohol and/or controlled substances testing at the same minimum annual percentage rate under this part or any DOT alcohol or controlled substances random testing rule may be calculated for the employer.

(k) Each employer shall ensure that random alcohol and controlled substances tests conducted under this part are unannounced and that the dates for administering random alcohol and controlled substances tests are spread reasonably throughout the calendar year.

(l) Each employer shall require that each driver who is notified of selection for random alcohol and/or controlled substances testing proceeds to the test site immediately; provided, however, that if the driver is performing a safety-sensitive function, other than driving a commercial motor vehicle, at the time of notification, the employer shall instead ensure that the driver ceases to perform the safety-sensitive function and proceeds to the testing site as soon as possible.

(m) A driver shall only be tested for alcohol while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

(n) If a given driver is subject to random alcohol or controlled substances testing under the random alcohol or controlled substances testing rules of more than one DOT agency for the same employer, the driver shall be subject to random alcohol and/or controlled substances testing at the annual percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the driver's function.

(o) If an employer is required to conduct random alcohol or controlled substances testing under the alcohol or controlled substances testing rules of more than one DOT agency, the employer may—

(1) Establish separate pools for random selection, with each pool containing the DOT-covered employees who are subject to testing at the same required minimum annual percentage rate; or

(2) Randomly select such employees for testing at the highest minimum annual percentage rate established for the calendar year by any DOT agency to which the employer is subject.

§ 382.307 Reasonable suspicion testing.

(a) An employer shall require a driver to submit to an alcohol test when the employer has reasonable suspicion to believe that the driver has violated the prohibitions of subpart B of this part concerning alcohol. The employer's determination that reasonable suspicion exists to require the driver to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver.

(b) An employer shall require a driver to submit to a controlled substances test when the employer has reasonable suspicion to believe that the driver has violated the prohibitions of subpart B of this part concerning controlled substances. The employer's determination that reasonable suspicion exists to require the driver to undergo a controlled substances test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. The observations may include indications of the chronic and withdrawal effects of controlled substances.

(c) The required observations for alcohol and/or controlled substances reasonable suspicion testing shall be made by a supervisor or company official who is trained in accordance with § 382.603. The person who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not conduct the alcohol test of the driver.

(d) Alcohol testing is authorized by this section only if the observations required by paragraph (a) of this section are made during, just preceding, or just after the period of the work day that the driver is required to be in compliance with this part. A driver may be directed by the employer to only undergo reasonable suspicion testing while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

(e)(1) If an alcohol test required by this section is not administered within two hours following the determination under paragraph (a) of this section, the employer shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by this section is not administered within eight hours following the determination under paragraph (a) of this section, the employer shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

(2) Notwithstanding the absence of a reasonable suspicion alcohol test under this section, no driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the driver is under the influence of or impaired by alcohol, as shown by the behavioral, speech, and performance indicators of alcohol misuse, nor shall an employer permit the driver to perform or continue to perform safety-sensitive functions, until:

(i) An alcohol test is administered and the driver's alcohol concentration measures less than 0.02; or

(ii) Twenty four hours have elapsed following the determination under paragraph (a) of this section that there is reasonable suspicion to believe that the driver has violated the prohibitions in this part concerning the use of alcohol.

(3) Except as provided in paragraph (e)(2) of this section, no employer shall take any action under this part against a driver based solely on the driver's behavior and appearance, with respect to alcohol use, in the absence of an alcohol test. This does not prohibit an employer with independent authority of this part from taking any action otherwise consistent with law.

(f) A written record shall be made of the observations leading to a controlled substance reasonable suspicion test, and signed by the supervisor or company

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official who made the observations, within 24 hours of the observed behavior or before the results of the controlled substances test are released, whichever is earlier.

§ 382.309 Return-to-duty testing.

The requirements for return-to-duty testing must be performed in accordance with 49 CFR part 40, Subpart O.

§ 382.311 Follow-up testing.

The requirements for following-up testing must be performed in accordance with 49 CFR part 40, Subpart O.

Subpart D—Handling of Test Results, Record Retention, and Confidentiality

§ 382.401 Retention of records.

(a) *General requirement.* Each employer shall maintain records of its alcohol misuse and controlled substances use prevention programs as provided in this section. The records shall be maintained in a secure location with controlled access.

(b) *Period of retention.* Each employer shall maintain the records in accordance with the following schedule:

(1) *Five years.* The following records shall be maintained for a minimum of five years:

(i) Records of driver alcohol test results indicating an alcohol concentration of 0.02 or greater,

(ii) Records of driver verified positive controlled substances test results,

(iii) Documentation of refusals to take required alcohol and/or controlled substances tests,

(iv) Driver evaluation and referrals,

(v) Calibration documentation,

(vi) Records related to the administration of the alcohol and controlled substances testing programs, and

(vii) A copy of each annual calendar year summary required by § 382.403.

(2) *Two years.* Records related to the alcohol and controlled substances collection process (except calibration of evidential breath testing devices).

(3) *One year.* Records of negative and canceled controlled substances test results (as defined in part 40 of this title) and alcohol test results with a concentration of less than 0.02 shall be maintained for a minimum of one year.

(4) *Indefinite period.* Records related to the education and training of breath alcohol technicians, screening test technicians, supervisors, and drivers shall be maintained by the employer while the individual performs the functions which require the training and for two years after ceasing to perform those functions.

(c) *Types of records.* The following specific types of records shall be maintained. "Documents generated" are documents that may have to be prepared under a requirement of this part. If the record is required to be prepared, it must be maintained.

(1) Records related to the collection process:

(i) Collection logbooks, if used;

(ii) Documents relating to the random selection process;

(iii) Calibration documentation for evidential breath testing devices;

(iv) Documentation of breath alcohol technician training;

(v) Documents generated in connection with decisions to administer reasonable suspicion alcohol or controlled substances tests;

(vi) Documents generated in connection with decisions on post-accident tests;

(vii) Documents verifying existence of a medical explanation of the inability of a driver to provide adequate breath or to provide a urine specimen for testing; and

(viii) Consolidated annual calendar year summaries as required by § 382.403.

(2) Records related to a driver's test results:

(i) The employer's copy of the alcohol test form, including the results of the test;

(ii) The employer's copy of the controlled substances test chain of custody and control form;

(iii) Documents sent by the MRO to the employer, including those required by part 40, subpart G, of this title;

(iv) Documents related to the refusal of any driver to submit to an alcohol or controlled substances test required by this part;

(v) Documents presented by a driver to dispute the result of an alcohol or controlled substances test administered under this part; and

(vi) Documents generated in connection with verifications of prior employers' alcohol or controlled substances test results that the employer:

(A) Must obtain in connection with the exception contained in § 382.301, and

(B) Must obtain as required by § 382.413.

(3) Records related to other violations of this part.

(4) Records related to evaluations:

(i) Records pertaining to a determination by a substance abuse professional concerning a driver's need for assistance; and

(ii) Records concerning a driver's compliance with recommendations of the substance abuse professional.

(5) Records related to education and training:

(i) Materials on alcohol misuse and controlled substance use awareness, including a copy of the employer's policy on alcohol misuse and controlled substance use;

(ii) Documentation of compliance with the requirements of § 382.601, including the driver's signed receipt of education materials;

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol and/or controlled substances testing based on reasonable suspicion;

(iv) Documentation of training for breath alcohol technicians as required by § 40.213(a) of this title; and

(v) Certification that any training conducted under this part complies with the requirements for such training.

(6) Administrative records related to alcohol and controlled substances testing:

(i) Agreements with collection site facilities, laboratories, breath alcohol technicians, screening test technicians, medical review officers, consortia, and third party service providers;

(ii) Names and positions of officials and their role in the employer's alcohol and controlled substances testing program(s);

(iii) Semi-annual laboratory statistical summaries of urinalysis required by § 40.111(a) of this title; and

(iv) The employer's alcohol and controlled substances testing policy and procedures.

(d) *Location of records.* All records required by this part shall be maintained as required by § 390.31 of this subchapter and shall be made available for inspection at the employer's principal place of business within two business days after a request has been made by an authorized representative of the Federal Motor Carrier Safety Administration.

(e) *OMB control number.* (1) The information collection requirements of this part have been reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 2126–0012.

(2) The information collection requirements of this part are found in the following sections: Sections 382.105, 382.113, 382.301, 382.303, 382.305, 382.307, 382.401, 382.403, 382.405, 382.409, 382.411, 382.601, 382.603.

§ 382.403 Reporting of results in a management information system.

(a) An employer shall prepare and maintain a summary of the results of its alcohol and controlled substances testing programs performed under this part during the previous calendar year, when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer or any of its drivers.

(b) If an employer is notified, during the month of January, of a request by the Federal Motor Carrier Safety Administration to report the employer's annual calendar year summary information, the employer shall prepare and submit the report to the FMCSA by March 15 of that year. The employer shall ensure that the annual summary report is accurate and received by March 15 at the location that the FMCSA specifies in its request. The report shall be in the form and manner prescribed by the FMCSA in its request. When the report is submitted to the FMCSA by mail or electronic transmission, the information requested shall be typed, except for the signature of the certifying official. Each employer shall ensure the accuracy and timeliness of each report submitted by the employer or a consortium.

(c) *Detailed summary.* Each annual calendar year summary that contains information on a verified positive controlled substances test result, an alcohol screening test result of 0.02 or greater, or any other violation of the alcohol misuse provisions of subpart B of this part shall include the following informational elements:

(1) Number of drivers subject to this part;

(2) Number of drivers subject to testing under the alcohol misuse or controlled substances use rules of more than one DOT agency, identified by each agency;

(3) Number of urine specimens collected by type of test (e.g., pre-employment, random, reasonable suspicion, post-accident);

(4) Number of positives verified by a MRO by type of test, and type of controlled substance;

(5) Number of negative controlled substance tests verified by a MRO by type of test;

(6) Number of persons denied a position as a driver following a pre-employment verified positive controlled substances test and/or a pre-employment alcohol test that indicates an alcohol concentration of 0.04 or greater;

(7) Number of drivers with tests verified positive by a medical review officer for multiple controlled substances;

(8) Number of drivers who refused to submit to an alcohol or controlled substances test required under this subpart, including those who submitted substituted or adulterated specimens;

(9)(i) Number of supervisors who have received required alcohol training during the reporting period; and

(ii) Number of supervisors who have received required controlled substances training during the reporting period;

(10)(i) Number of screening alcohol tests by type of test; and

(ii) Number of confirmation alcohol tests, by type of test;

(11) Number of confirmation alcohol tests indicating an alcohol concentration of 0.02 or greater but less than 0.04, by type of test;

(12) Number of confirmation alcohol tests indicating an alcohol concentration of 0.04 or greater, by type of test;

(13) Number of drivers who were returned to duty (having complied with the recommendations of a substance abuse professional as described in § 382.503 and part 40, subpart O, of this title), in this reporting period, who previously:

(i) Had a verified positive controlled substance test result, or

(ii) Engaged in prohibited alcohol misuse under the provisions of this part;

(14) Number of drivers who were administered alcohol and drug tests at the same time, with both a verified positive drug test result and an alcohol test result indicating an alcohol concentration of 0.04 or greater; and

(15) Number of drivers who were found to have violated any non-testing prohibitions of subpart B of this part, and any action taken in response to the violation.

(d) *Short summary.* Each employer's annual calendar year summary that contains only negative controlled substance test results, alcohol screening test results of less than 0.02, and does not contain any other violations of subpart B of this part, may prepare and submit, as required by paragraph (b) of this section, either a standard report form containing all the information elements specified in paragraph (c) of this section, or an "EZ" report form. The "EZ" report shall include the following information elements:

(1) Number of drivers subject to this part;

(2) Number of drivers subject to testing under the alcohol misuse or controlled substance use rules of more than one DOT agency, identified by each agency;

(3) Number of urine specimens collected by type of test (e.g., pre-employment, random, reasonable suspicion, post-accident);

(4) Number of negatives verified by a medical review officer by type of test;

(5) Number of drivers who refused to submit to an alcohol or controlled substances test required under this subpart, including those who submitted substituted or adulterated specimens;

(6)(i) Number of supervisors who have received required alcohol training during the reporting period; and

(ii) Number of supervisors who have received required controlled substances training during the reporting period;

(7) Number of screen alcohol tests by type of test; and

(8) Number of drivers who were returned to duty (having complied with the recommendations of a substance abuse professional as described in § 382.503 and part 40, subpart O, of this title), in this reporting period, who previously:

(i) Had a verified positive controlled substance test result, or

(ii) Engaged in prohibited alcohol misuse under the provisions of this part.

(e) Each employer that is subject to more than one DOT agency alcohol or controlled substances rule shall identify each driver covered by the regulations of more than one DOT agency. The identification will be by the total number of covered functions. Prior to conducting any alcohol or controlled substances test on a driver subject to the rules of more than one DOT agency, the employer shall determine which DOT agency rule or rules authorizes or requires the test. The test result information shall be directed to the appropriate DOT agency or agencies.

(f) A C/TPA may prepare annual calendar year summaries and reports on behalf of individual employers for purposes of compliance with this section. However, each employer shall sign and submit such a report and shall remain responsible for ensuring the accuracy and timeliness of each report prepared on its behalf by a C/TPA.

§ 382.405 Access to facilities and records.

(a) Except as required by law or expressly authorized or required in this section, no employer shall release driver information that is contained in records required to be maintained under § 382.401.

(b) A driver is entitled, upon written request, to obtain copies of any records pertaining to the driver's use of alcohol or controlled substances, including any records pertaining to his or her alcohol or controlled substances tests. The employer shall promptly provide the records requested by the driver. Access to a driver's records shall not be contingent upon payment for records other than those specifically requested.

(c) Each employer shall permit access to all facilities utilized in complying

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with the requirements of this part to the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer or any of its drivers.

(d) Each employer shall make available copies of all results for employer alcohol and/or controlled substances testing conducted under this part and any other information pertaining to the employer's alcohol misuse and/or controlled substances use prevention program, when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer or any of its drivers.

(e) When requested by the National Transportation Safety Board as part of an accident investigation, employers shall disclose information related to the employer's administration of a post-accident alcohol and/or controlled substance test administered following the accident under investigation.

(f) Records shall be made available to a subsequent employer upon receipt of a written request from a driver. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the driver's request.

(g) An employer may disclose information required to be maintained under this part pertaining to a driver to the decision maker in a lawsuit, grievance, or administrative proceeding initiated by or on behalf of the individual, and arising from a positive DOT drug or alcohol test or a refusal to test (including, but not limited to, adulterated or substituted test results) of this part (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the driver.) Additionally, an employer may disclose information in criminal or civil actions in accordance with § 40.323(a)(2) of this title.

(h) An employer shall release information regarding a driver's records as directed by the specific, written consent of the driver authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's consent.

§ 382.407 Medical review officer notifications to the employer.

Medical review officers shall report the results of controlled substances tests to employers in accordance with the requirements of part 40, subpart G, of this title.

§ 382.409 Medical review officer record retention for controlled substances.

(a) A medical review officer or third party administrator shall maintain all dated records and notifications, identified by individual, for a minimum of five years for verified positive controlled substances test results.

(b) A medical review officer or third party administrator shall maintain all dated records and notifications, identified by individual, for a minimum of one year for negative and canceled controlled substances test results.

(c) No person may obtain the individual controlled substances test results retained by a medical review officer or third party administrator, and no medical review officer or third party administrator shall release the individual controlled substances test results of any driver to any person, without first obtaining a specific, written authorization from the tested driver. Nothing in this paragraph (c) shall prohibit a medical review officer or third party administrator from releasing, to the employer or to officials of the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the controlled substances testing program under this part, the information delineated in part 40, Subpart G, of this title.

§ 382.411 Employer notifications.

(a) An employer shall notify a driver of the results of a pre-employment controlled substances test conducted under this part, if the driver requests such results within 60 calendar days of being notified of the disposition of the employment application. An employer shall notify a driver of the results of random, reasonable suspicion and post-accident tests for controlled substances conducted under this part if the test results are verified positive. The employer shall also inform the driver which controlled substance or substances were verified as positive.

(b) The designated employer representative shall make reasonable efforts to contact and request each driver who submitted a specimen under the employer's program, regardless of the driver's employment status, to contact and discuss the results of the controlled substances test with a medical review officer who has been unable to contact the driver.

(c) The designated employer representative shall immediately notify the medical review officer that the driver has been notified to contact the medical review officer within 72 hours.

§ 382.413 Inquiries for alcohol and controlled substances information from previous employers.

Employers shall request alcohol and controlled substances information from previous employers in accordance with the requirements of part 40, subpart B, of this title.

Subpart E—Consequences for Drivers Engaging in Substance Use-Related Conduct

§ 382.501 Removal from safety-sensitive function.

(a) Except as provided in subpart F of this part, no driver shall perform safety-sensitive functions, including driving a commercial motor vehicle, if the driver has engaged in conduct prohibited by subpart B of this part or an alcohol or controlled substances rule of another DOT agency.

(b) No employer shall permit any driver to perform safety-sensitive functions, including driving a commercial motor vehicle, if the employer has determined that the driver has violated this section.

(c) For purposes of this subpart, commercial motor vehicle means a commercial motor vehicle in commerce as defined in § 382.107, and a commercial motor vehicle in interstate commerce as defined in part 390 of this subchapter.

§ 382.503 Required evaluation and testing.

No driver who has engaged in conduct prohibited by subpart B of this part shall perform safety-sensitive functions, including driving a commercial motor vehicle, unless the driver has met the requirements of part 40, subpart O, of this title. No employer shall permit a driver who has engaged in conduct prohibited by subpart B of this part to perform safety-sensitive functions, including driving a commercial motor vehicle, unless the driver has met the requirements of part 40, subpart O, of this title.

§ 382.505 Other alcohol-related conduct.

(a) No driver tested under the provisions of subpart C of this part who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall perform or continue to perform safety-sensitive functions for an employer, including driving a commercial motor vehicle, nor shall an employer permit the driver to perform or continue to perform safety-sensitive functions, until the start of the driver's next regularly scheduled duty period, but not less than 24 hours following administration of the test.

(b) Except as provided in paragraph (a) of this section, no employer shall take any action under this part against a driver based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an employer with authority independent of this part from taking any action otherwise consistent with law.

§ 382.507 Penalties.

Any employer or driver who violates the requirements of this part shall be subject to the penalty provisions of 49 U.S.C. 521(b). In addition, any employer or driver who violates the requirements of 49 CFR part 40 shall be subject to the penalty provisions of 49 U.S.C. 521(b).

Subpart F—Alcohol Misuse and Controlled Substances Use Information, Training, and Referral

§ 382.601 Employer obligation to promulgate a policy on the misuse of alcohol and use of controlled substances.

(a) *General requirements.* Each employer shall provide educational materials that explain the requirements of this part and the employer's policies and procedures with respect to meeting these requirements.

(1) The employer shall ensure that a copy of these materials is distributed to each driver prior to the start of alcohol and controlled substances testing under this part and to each driver subsequently hired or transferred into a position requiring driving a commercial motor vehicle.

(2) Each employer shall provide written notice to representatives of employee organizations of the availability of this information.

(b) *Required content.* The materials to be made available to drivers shall include detailed discussion of at least the following:

(1) The identity of the person designated by the employer to answer driver questions about the materials;

(2) The categories of drivers who are subject to the provisions of this part;

(3) Sufficient information about the safety-sensitive functions performed by those drivers to make clear what period of the work day the driver is required to be in compliance with this part;

(4) Specific information concerning driver conduct that is prohibited by this part;

(5) The circumstances under which a driver will be tested for alcohol and/or controlled substances under this part, including post-accident testing under § 382.303(d);

(6) The procedures that will be used to test for the presence of alcohol and controlled substances, protect the driver and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver, including post-accident information, procedures and instructions required by § 382.303(d);

(7) The requirement that a driver submit to alcohol and controlled substances tests administered in accordance with this part;

(8) An explanation of what constitutes a refusal to submit to an alcohol or controlled substances test and the attendant consequences;

(9) The consequences for drivers found to have violated subpart B of this part, including the requirement that the driver be removed immediately from safety-sensitive functions, and the procedures under part 40, subpart O, of this title;

(10) The consequences for drivers found to have an alcohol concentration of 0.02 or greater but less than 0.04;

(11) Information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled substances problem (the driver's or a co-worker's); and available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to any employee assistance program and or referral to management.

(c) *Optional provision.* The materials supplied to drivers may also include information on additional employer policies with respect to the use of alcohol or controlled substances, including any consequences for a driver found to have a specified alcohol or controlled substances level, that are based on the employer's authority independent of this part. Any such additional policies or consequences must be clearly and obviously described as being based on independent authority.

(d) *Certificate of receipt.* Each employer shall ensure that each driver is required to sign a statement certifying that he or she has received a copy of these materials described in this section. Each employer shall maintain the original of the signed certificate and may provide a copy of the certificate to the driver.

§ 382.603 Training for supervisors.

Each employer shall ensure that all persons designated to supervise drivers receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on controlled substances use. The training will be used by the supervisors to determine whether reasonable suspicion exists to require a driver to undergo testing under § 382.307. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

§ 382.605 Referral, evaluation, and treatment.

The requirements for referral, evaluation, and treatment must be performed in accordance with 49 CFR part 40, subpart O.

Date Issued: March 16, 2001.

Julie Anna Cirillo,

Acting Deputy Administrator, Federal Motor Carrier Safety Administration.

[FR Doc. 01–9414 Filed 4–27–01; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Parts 653, 654, and 655

[Docket No. FTA–2000–8513]

RIN 2132–AA71

Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations

AGENCY: Federal Transit Administration, Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Transit Administration (FTA) proposes to combine its drug and alcohol testing regulations. FTA believes this action will make the rules more "user-friendly" and easier to understand. Also, the new rule will take into account the guidance that FTA has issued in the past several years, including technical assistance, letters of interpretation, audit findings, newsletters, training classes, safety seminars, and public speaking engagements. In addition, this NPRM conforms FTA's rule to the Department of Transportation's (DOT) revised drug and alcohol testing rule published on December 19, 2000.

DATES: Comments on this proposed rule must be submitted by June 14, 2001.

ADDRESSES: Written comments must refer to the docket number appearing above and must be submitted to the United States Department of Transportation (U.S. DOT), Central Docket Office, PL–401, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for inspection at the above address from 10 a.m. to 5 p.m., Monday through Friday, except Federal holidays. Those desiring

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the agency to acknowledge receipt of their comments should include a self-addressed stamped postcard with their comments.

Commenters may also submit their comments electronically. Instructions for electronic submission may be found at the following web address: *http://dms.dot.gov/submit/*. The public may also review docketed comments electronically. The following web address provides instructions and access to the DOT electronic docket: *http://dms.dot.gov/search/*.

FOR FURTHER INFORMATION CONTACT: For program issues, Mark Snider, Office of Safety and Security, (202) 366–2896 (telephone); (202) 366–7951 (fax); or mark.snider@fta.dot.gov (e-mail). For legal issues, Bruce Walker, Office of the Chief Counsel, (202) 366–4011 (telephone); (202) 366–3809 (fax); or Bruce.Walker@fta.dot.gov (e-mail).

SUPPLEMENTARY INFORMATION:

Electronic Access

Electronic access to this rule and other safety rules may be obtained through the FTA Office of Safety and Security home page at *http://transit-safety.volpe.dot.gov*.

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the Government Printing Office's (GPO) Electronic Bulletin Board Service at (202) 512–1661. Internet users may download this document from the **Federal Register**'s homepage at *http://www.nara.gov/fedreg* and from the GPO database at *http://www.access.gpo.gov/nara*.

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, via the Dockets Management System (DMS) on the DOT home page at *http://dms.dot.gov*. The DMS is available 24 hours each day, 365 days each year. Please follow the online instructions for more information and help.

I. Background

The Omnibus Transportation Employee Testing Act of 1991 (the Act) mandated the Secretary of Transportation to issue regulations to combat prohibited drug use and alcohol misuse in the transportation industry. (Public Law 102–143, October 28, 1991, FTA sections codified at 49 U.S.C. 5331). In December 1992, FTA issued two NPRMs to prevent prohibited drug use and alcohol misuse by "safety-sensitive" employees in the transit industry. In February 1994, FTA adopted drug and alcohol testing rules, which were promulgated at 49 CFR parts 653 and 654.

Omnibus Transportation Employee Testing Act of 1991

The Act requires FTA to issue regulations requiring recipients of funds under 49 U.S.C. 5307, 5309, and 5311, and 23 U.S.C. 103(e)(4) to test safety-sensitive employees for the use of alcohol or drugs in violation of law or federal regulation. The Act allows FTA to defer to regulations issued by the Federal Railroad Administration (FRA), for operations covered by that agency.

As a condition of FTA funding, the Act requires recipients to establish alcohol and drug testing programs. The Act mandates four types of testing: Pre-employment, random, reasonable suspicion, and post-accident. In addition, the Act permits return-to-duty and follow-up testing under specific circumstances. The Act requires that recipients follow the testing procedures set out by the Department of Health and Human Services (DHHS).

The Act does not require recipients to follow a particular course of action when they learn that a safety-sensitive employee has violated a law or Federal regulation concerning alcohol or drug use. Rather, the Act directs FTA to issue regulations establishing consequences for the use of alcohol or drugs in violation of FTA regulations. Possible consequences include education, counseling, rehabilitation programs, and suspension or termination from employment.

In authorizing this regulatory scheme, the Act has pre-empted inconsistent State or local laws, rules, regulations, ordinances, standards, or orders. However, provisions of State criminal law, which impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, are not pre-empted by the Act.

Previous Action by FTA

On December 15, 1992, FTA issued two NPRMs to prevent prohibited drug use and alcohol misuse (49 CFR parts 653 and 654). The rules established a scheme whereby safety-sensitive employees would be tested on a pre-employment, random, reasonable suspicion, post-accident, return-to-duty, and follow-up basis.

In the December 1992 **Federal Register** notice, FTA stated that it was "considering combining the final FTA alcohol and drug testing regulations into one part in the Code of Federal Regulations." At that time, FTA noted that while the drug and alcohol testing rules shared many similarities, there were still enough differences to warrant two distinct CFR Parts. On February 15, 1994, FTA adopted two separate rules—the drug testing rule, 49 CFR part 653, and the alcohol testing rule, 49 CFR part 654.

Since the rules were first published, there have been two notable amendments as well as several minor (technical) amendments. In December 1998, FTA amended its post-accident regulation to allow an employer to seek post-accident test results from law enforcement agencies in the limited circumstance when the employer has been unable to perform such a test itself. FTA has stressed the limited applicability of this amendment.

In January 1999, FTA amended its definition of "[m]aintaining a revenue service vehicle or equipment," located under safety-sensitive function (§ 653.7 and § 654.7). The new definition includes persons that perform overhaul and rebuilding services of engines, parts, and vehicles. This was a shift from FTA's previous position of not including employees who performed those services. FTA has stressed that this amendment applies both to employees working directly for FTA grantees and to FTA grantees' contractors performing such safety-sensitive work.

When the drug and alcohol rules became effective, FTA began an aggressive outreach effort to assist affected entities in complying with the new rules. FTA offered numerous courses throughout the country on implementation. In addition, in April 1994, FTA published Implementation Guidelines for Drug and Alcohol Regulations in Mass Transit and made them available to any party seeking help in implementing the rules. The Guidelines, which were published virtually concurrently with the rules in the **Federal Register** and several months prior to the effective date of the rule, are a step-by-step manual on how to most effectively comply with Parts 653 and 654. FTA envisions an update to the Guidelines in the near future, to assist employers in implementing Part 655.

FTA has issued hundreds of letters of interpretation on the rules. Public response to these letters, especially since they became available on FTA's external Web page, has been highly favorable. Employers and employees have found that the letters more fully explain the rules, FTA's implementation of the rules, and FTA's reasons for that implementation of the rules. FTA will continue to offer such guidance and to amend its guidance, if necessary, based on the final publication of the rule.

To determine compliance with the rules, FTA's Office of Safety and Security began auditing grantee drug and alcohol testing programs in March 1997. The audits quickly evolved into opportunities for FTA to provide extensive technical assistance. Through the audits, FTA has gained a better understanding of the difficulties that grantees encounter when implementing the rules. In addition, audits have shown FTA where the rules can be strengthened and improved. The impetus to combine Parts 653 and 654 is due, in no small part, to the audit program.

II. Overview of Proposed Rule

In its broadest sense, proposed Part 655 should be read as a combination of Parts 653 and 654. FTA decided to combine the drug and alcohol testing rules based on its experience since the rules have been implemented. FTA believes that this change will allow the program to be implemented more efficiently and will bring FTA into line with the three other operating administrations that fall under the Omnibus Transportation Employee Testing Act of 1991 (Federal Aviation Administration, Federal Railroad Administration, Federal Motor Carrier Safety Administration [formerly the Office of Motor Carrier and Highway Safety within the Federal Highway Administration]), as well as the two other operating administrations that have drug and alcohol testing regulations (Research and Special Programs Administration and U.S. Coast Guard).

The rule, as proposed, applies to recipients of funds under 49 U.S.C. 5307, 5309, and 5311, and 23 U.S.C. 103(e)(4). It requires each transit operator (employer) who receives these funds to establish and conduct a multi-faceted anti-drug and alcohol misuse testing program. The regulation conditions financial assistance on the implementation of a program. Failure of an employer to develop a program and implement the program in compliance with this regulation will result in the suspension of Federal transit funding.

A basic component of the regulation requires the testing of safety-sensitive employees for the use of controlled substances and the misuse of alcohol; however the regulation also requires education and awareness about the problems associated with prohibited drug use and alcohol misuse. In addition, the regulation mandates that each employer have a policy statement describing its program policies and procedures. The statement must include the consequences for prohibited drug use and alcohol misuse.

The regulation specifies that safety-sensitive employees are prohibited from using five illegal substances (marijuana, cocaine, opiates, amphetamines, and phencyclidine) and are prohibited from misusing alcohol. The NPRM proposes the testing of safety-sensitive employees in five situations: (1) Pre-employment (including transfer to a safety-sensitive position within the organization); (2) Reasonable suspicion; (3) Random; (4) Post-accident; and (5) Return to duty/follow-up (periodic). Drug testing is required in all five situations. Alcohol testing is required for all situations except for pre-employment, in which it is only encouraged.

This NPRM requires the use of the Department-wide drug and alcohol testing procedures contained in 49 CFR part 40 (December 19, 2000, 65 FR 79462). Part 40 is consistent with the Department of Health and Human Services (DHHS) regulation, "Scientific and Technical Guidelines for Drug Testing Programs," which was originally issued on April 11, 1988 and then re-issued on June 9, 1994. The DHHS regulation, which includes the chain of custody procedures to be used when collecting urine samples, provides procedures for ensuring the integrity of the test and maximizing the privacy of the individual being tested.

If a covered employee tests positive for illegal drug use or alcohol misuse or otherwise violates the rule, the employee must be removed from his or her safety-sensitive position. Therefore, the employee must be told, at a minimum, about education and rehabilitation programs. Should the employer decide to retain a covered employee whose test result has been verified positive, the employee must be evaluated by a substance abuse professional. Prior to returning an employee to a safety-sensitive function, the employer must ensure that the employee has successfully completed rehabilitation; the rule does not require the employer to pay for rehabilitation.

This NPRM applies to recipients of federal transit funds, i.e., transit systems, metropolitan planning organizations (MPOs), and States; any enforcement action for noncompliance is against such recipients. MPOs and States are affected by this regulation if (1) they provide transit service or they provide money to a subrecipient who provides transit service and (2) are required to provide certifications of compliance on behalf of the subrecipient. MPO's or States that provide transit service must develop and implement a program, like any other recipient. MPO's or States that fund or manage transit providers, but do not provide transit service, must ensure that transit provider employers provide certifications of compliance.

FTA has its primary relationship with grantees. Many grantees both receive transit funds and operate mass transit services. Typical among these are large transit entities that receive funds under sections 49 U.S.C. 5307, 5309, and 5311. In addition, some grantees (typically States) pass the money they receive to smaller subrecipients within their States. In these situations, the FTA recipient is not the transit operator.

This NPRM eliminates the distinction between large and small operators. The term "employer" is now used to include both small and large operators, as well as entities providing service under contract or other arrangement with the transit operator.

III. General Discussion about the Rule

Today's Proposed Rule

This rule combines 49 CFR Parts 653 and 654. Both its rule text and its preamble incorporate views expressed in letters of interpretation, policy determinations, amendments, newsletters, and audits. In addition, this NPRM conforms the new part 655 with the new Department of Transportation procedures for drug and alcohol testing, 49 CFR Part 40 (December 19, 2000, 65 FR 79462).

The Common Preamble

Procedures for Transportation Workplace Drug and Alcohol Testing Programs, promulgated at 49 CFR part 40, have been revised. As a result, the modal administrations' have proposed amendments to their drug and alcohol regulations that conform accordingly. A common preamble that outlines the proposed amendments is published elsewhere in the **Federal Register**.

IV. Section-by-Section Analysis

In this section, FTA will discuss the differences between the existing rules in Parts 653 and 654 and the proposed rules in Part 655. There is no discussion for sections that have remained substantially the same. In addition to seeking comments on the NPRM overall, FTA also requests comments on the specific issues indicated below.

Subpart A—General

A. Definitions (§ 655.4).

Employer: FTA is clarifying the definition of employer. FTA believes that, in addition to direct recipients of FTA funding, the term "employer" includes State recipients that pass the money to subrecipients and grantees that have contractors performing transit operations. State recipients and grantees (that have contractors performing transit operations) are considered employers

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under this expanded definition, they will now have access to individual's test records. States need access to an individual's test records, because States are required to certify compliance with all of their subrecipients' drug and alcohol testing programs. Without a comprehensive review of their subrecipients' programs, States cannot, in good faith, sign the certification of compliance. This is also true for grantees whose operations are performed by contractors. The grantee is responsible for ensuring compliance, and without the ability to take a comprehensive look at its contractors' drug and alcohol programs, the grantee is unable to certify compliance.

Second chance policy: FTA is adding this definition to the rule; however, FTA would like to clarify that it has no position on whether grantees must adopt a second chance policy, i.e., a policy allowing an employee (who has previously violated the employer's drug and/or alcohol policy) to return to a safety-sensitive position after completing rehabilitation.

Taxi cab drivers and other transportation providers: The duties performed by taxicab drivers and other transportation providers can be considered safety-sensitive functions, pursuant to (1) the definition of safety-sensitive function, "operating a revenue service vehicle, including when not in revenue service."

FTA has expressed its policy regarding taxicab drivers and other transportation providers in a series of interpretation letters (see, e.g., Letter to Florida Commission for the Transportation Disadvantaged dated 26 April 1999, Letter to King County in Washington dated 4 February 1999, Letter to AC Transit in Oakland, California dated 30 September 1998). According to the policy, drug and alcohol testing rules do not apply to taxi cab drivers when patrons (using publicly subsidized vouchers) or transportation providers can choose from a variety of taxi cab companies. Alternatively, the rules do apply when a transit patron has to contact one or two specific companies in order to take advantage of certain publicly-financed transportation benefits. This policy is based on the practical difficulty of administering a drug and alcohol testing program to taxi companies that only incidentally provide transit service. FTA proposes to incorporate this reasoning when implementing Part 655.

FTA specifically seeks comment on whether there is a difference between the transit patron choosing the transportation provider from a variety of choices, and the grantee (or its contracted broker) choosing from a limited number of choices. In the former, the patron chooses, while in the latter, the grantee (or its contracted broker) chooses.

Dispatchers: The current rules defines "safety-sensitive function" to include any individual "controlling dispatch or movement of a revenue service vehicle." At least one individual has questioned whether the duties of certain types of transit dispatchers implicate safety. Therefore, FTA welcomes comment on the duties and responsibilities of dispatchers in the different transit systems. FTA seeks to determine whether the duties and responsibilities vary significantly enough to warrant modification of the current blanket rule.

Maintenance contractors: The current rules include maintenance work in their definition of safety-sensitive function. In January 1999, FTA amended its definition of maintenance duties. FTA is now clarifying that amendment. The amendment expanded the definition of maintenance work to include all workers (including contractors) who overhaul and rebuild engines, vehicles, and parts. There were few objections to the amendment during the comment period. However, shortly after the rule change became effective, grantees expressed concern that, because overhaul and rebuild work is often contracted out, a particular category of maintenance workers (i.e. contractors who perform overhaul and rebuilding), who were previously not subject to the rules, would now be subject to the rules.

In response, FTA explained that the rules should extend to contractors that perform any type of maintenance work (i.e., the rules should cover both direct recipient employees and contract employees equally). FTA took this position, and maintains that position, for the reasons stated in the preamble to the 1999 rule change, i.e., fairness and safety (64 FR 425, January 5, 1999).

B. Stand-Down Waivers for Drug Testing (§ 655.5)

In accordance with changes made to 49 CFR part 40, FTA has added a subsection on stand-down waivers. Section 655.5 provides the specific FTA waiver procedures. The DOT-wide regulation, 49 CFR part 40, contains the substantive requirements for obtaining a waiver.

Subpart B—Program Requirements

A. Policy Statement Contents (§ 655.15)

In response to current industry practices and FTA audit procedures, FTA is clarifying its Policy Statement requirement. FTA has had numerous questions as to what is required in a policy. FTA would like to emphasize that the only information required in a Policy Statement is the information listed in § 655.15. A grantee may choose, however, to include additional requirements not mandated by FTA. If a grantee does so, the grantee's policy shall indicate that those additional requirements are the employer's, and not FTA's.

Moreover, in order to comply with § 655.15(e), employers may incorporate by reference 49 CFR Part 40 in their Policy Statements, provided that 49 CFR Part 40 is available for review by employees when requested.

Finally, FTA is clarifying who must approve the policy. In most instances, a grantee will have a governing board that can adopt the policy. However, where there is no governing board or the governing board does not have approval authority, the highest-ranking official with authority to approve the policy can do so, and that will satisfy the regulatory intent.

Subpart E—Types of Testing

A. Pre-employment Drug Testing (§ 655.41)

FTA is changing the pre-employment drug testing requirement concerning hiring. In the past, employers had to administer a test and receive a negative test result before they could hire an employee. FTA believes that this provision is too restrictive on employers. FTA will no longer use the word "hire." In the new rule, FTA will instead require that an employer administer the pre-employment test and receive a negative drug test prior to the first time that an employee performs a safety-sensitive function. This change has taken place to better satisfy the intent of this section, which is to ensure that an employer knows that an employee can successfully pass a drug test before allowing the employee to perform a safety-sensitive function.

FTA is also clarifying another pre-employment provision. Numerous affected entities have asked how long an employee can be off from work before he or she must take another pre-employment test; this issue arises most often for seasonal workers. FTA proposes that an employee who is off for more than 90 consecutive calendar days and plans to return to a safety-sensitive function must first successfully pass another pre-employment drug test before returning to work. Likewise, an applicant, who has not commenced performing a safety-sensitive function within 90 consecutive calendar days of the employer's receipt of a negative test result for that applicant, must successfully pass another pre-employment drug test before performing such safety-sensitive functions. It is FTA's intention that employers assure themselves that employees can successfully pass a drug test before returning them to safety-sensitive functions.

B. Pre-Employment Alcohol Testing (§ 655.42)

For several years, due to a court decision and subsequent legislation, the pre-employment alcohol testing requirements in FTA's rule have been suspended. In order to better reflect the legislation and to conform with the other DOT agency drug and alcohol testing programs, all six DOT agencies with testing programs are adding this subsection to their respective rules. This subsection allows, but does not require, employers to conduct pre-employment alcohol testing. If an employer chooses to conduct pre-employment alcohol testing, the employer would have to conduct the testing in accordance with all of the requirements of 49 CFR Part 40.

C. Post-Accident Testing (§ 655.44)

In December 1998, FTA amended its post-accident testing regulation to allow, in extremely limited circumstances, an employer to use the test results from a local law enforcement-administered post-accident test. FTA wants to reiterate that such results may be used only when an employer has been unable to perform a post-accident test within the required time frame. FTA wishes to dispel the idea that employers can simply "count on" local law enforcement to administer post-accident tests and provide test results.

D. Random Testing (§ 655.45)

FTA is clarifying section 655.45(g), which is concerned with ensuring that random tests are spread reasonably throughout the calendar year. In the course of conducting its audits, FTA has learned that current industry practice is to conduct random testing when it is convenient, *e.g.*, random tests are only performed every Thursday afternoon. The purpose of random testing is deterrence, and the most effective way to achieve the highest level of deterrence is to conduct random drug and alcohol tests in an unpredictable manner. FTA reiterates that the rule requires random testing to be spread out throughout the calendar year. At a minimum, random testing shall be conducted at least quarterly. Random tests must be spread throughout all days and all hours of service. The testing should be completely unpredictable and encompass all safety-sensitive employees.

Subpart H—Administrative Requirements

A. Reporting Results In A Management Information System (§ 655.72)

FTA is changing its Management Information System (MIS) reporting requirement from census reporting to stratified random sampling. FTA has required census reports for six years and believes it now has an accurate portrait of the current state of drug and alcohol testing (including positive rates) in the transit industry. By using sampling, FTA will reduce the paperwork burden on a portion of the industry while still maintaining a high confidence level in the results. Although transit employers will still be required to prepare an MIS form annually, they will only be required to submit an MIS form when requested by FTA. FTA will officially notify employers when they must submit an MIS form and will provide employers with all necessary forms and instructions to prepare an MIS form.

B. Access to Facilities And Records (§ 655.73)

FTA seeks comment on access to facilities and records. This request has arisen in the context of grantees that, in attempting to exercise oversight responsibility, have been denied access to employee records for confidentiality reasons. On one hand, FTA does not want employee records made available to a potentially unlimited number of individuals. On the other hand, FTA does not want to impede a grantee (such as a State) from properly exercising its oversight role.

FTA seeks comment on a related issue, i.e., whether state regulatory agencies should have access to drug and alcohol testing results. Another DOT agency, the Federal Motor Carrier Safety Administration (FMCSA), has included such a provision in its regulation for quite some time. See 49 CFR 382.405(d). Grantees have expressed concern about the undesirable consequences that result when state regulatory agencies do not have access to drug and alcohol test results. For example, a Department of Motor Vehicles, which is responsible for issuing Commercial Drivers Licenses (CDLs), is not able to obtain the drug and alcohol testing results from transit agencies performing such tests for CDL holders. Thus, a transit employee with a CDL who tests positive on a test and is discharged from his job, can simply find another job requiring a CDL. Therefore, FTA seeks comment on whether employers should be permitted to release employee data from its drug and alcohol testing programs to State or local officials with regulatory authority over the employer or any of its employees.

Similarly, FTA seeks comment on whether employers should be permitted to release employee data from its drug and alcohol testing programs to local law enforcement officials.

V. Effect of the Americans With Disabilities Act of 1990 on Alcohol Testing Programs

Title I of the Americans With Disabilities Act of 1990 (ADA) focuses on employers' responsibilities toward employees with disabilities. According to Title I, an employer must provide reasonable accommodations for work for persons with disabilities. Some covered workers are considered persons with disabilities for purposes of protection under the ADA. This issue was treated more fully in the 1994 DOT-wide preamble (59 FR 7302, 7311–14, February 15, 1994).

VI. Regulatory Process Matters

A. Executive Order 12866

FTA has evaluated the industry costs and benefits of this rule, which requires that transit industry personnel who perform safety-sensitive functions be covered by a program to control illegal drug abuse and alcohol misuse in mass transportation operations. This rule makes no noteworthy substantive changes. Any incremental costs are negligible, and the policy and economic impact will have no significant effect.

B. Departmental Significance

This rule is a "non-significant regulation" as defined by the Department's Regulatory Policies and Procedures, because, while it involves an important Departmental policy that is likely to generate a great deal of public interest, in the larger scheme, it is simply a combination of two existing regulations (49 CFR parts 653 and 654). It also conforms FTA's drug and alcohol testing regulations with the Department's drug and alcohol testing regulations (49 CFR part 40), to which FTA grantees already are subject.

C. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), FTA has made a preliminary assessment of the possible effects of the rule on small businesses. To the extent possible, FTA has made efforts to acknowledge the differences between small and large entities, and has endeavored to make

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accommodations when possible. Experience with Parts 653 and 654 has shown that the rule has a significant impact on a substantial number of small entities. FTA believes that this new rule will provide greater clarity and ease of implementation for small entities.

D. Paperwork Reduction Act

This rule includes information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*) The Office of Management and Budget has approved FTA's PRA request for Parts 653 and 654. This rule includes the same information collection devices; therefore, FTA believes it already has OMB approval. The management information system (MIS) forms currently required by Parts 653 and 654 may be modified in the future, but will continue to be required by FTA, without changes, under Part 655.

E. Executive Order 13132

This action has been reviewed under Executive Order 13132, on Federalism. FTA has determined that this action has significant federalism implications to warrant a federalism assessment, however, this rulemaking is mandated by Congress in the Omnibus Transportation Employee Testing Act of 1991. FTA has limited discretion.

The 1991 legislation mandates FTA to issue regulations requiring grantees of funds under 49 U.S.C. 5307, 5309, and 5311, and 23 U.S.C. 103(e)(4) to test their safety-sensitive employees for the use of drugs and the misuse of alcohol in violation of law or federal regulation.

Before passage of the Omnibus Transportation Employee Testing Act of 1991, safety issues were largely handled as a local matter. This Act clarifies the Federal role by including specific Federal pre-emption language. This Act also makes it clear that, in the area of substance abuse testing, Federal regulations are to take precedence over any inconsistent State or local specifications.

Although Congress has pre-empted state or local law, FTA has preserved the role of local entities in mass transit safety. This regulation does not disturb testing programs which were created by virtue of a grantee's own authority and which are not inconsistent with this regulation.

List of Subjects

49 CFR Part 653

Drug abuse, Drug testing, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 654

Alcohol abuse, drug testing, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 655

Alcohol abuse, Drug abuse, Drug testing, grant programs—transportation, Mass transportation, reporting and recordkeeping requirements, Safety, Transportation.

For the reasons set forth in the preamble and under the authority of 49 U.S.C. 5331, the agency proposes to amend Chapter VI of Title 49 of the Code of Federal Regulations as set forth below:

PART 653—[REMOVED]

1. Remove part 653.

PART 654—[REMOVED]

2. Remove part 654.

3. Add part 655 to read as follows:

PART 655—PREVENTION OF ALCOHOL MISUSE AND PROHIBITED DRUG USE IN TRANSIT OPERATIONS

Subpart A—General

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Appendix A to Part 655 Drug Testing Management Information System (MIS) Data Collection Form
Appendix B to Part 655 Drug Testing Management Information System (MIS) "EZ" Data Collection Form
Appendix C to Part 655 Alcohol Testing Management Information System (MIS) Data Collection Form
Appendix D to Part 655 Alcohol Testing Management Information System (MIS) "EZ" Data Collection Form

Authority: 49 U.S.C. 5331; 49 CFR 1.51.

Subpart A—General

§ 655.1 Purpose.

The purpose of this part is to establish programs, to be implemented by employers that receive financial assistance from the Federal Transit Administration (FTA) and by contractors of those employers, that are designed to help prevent accidents, injuries, and fatalities resulting from the misuse of alcohol and use of prohibited drugs by employees who perform safety-sensitive functions.

§ 655.2 Overview.

(a) This part includes nine Subparts. Subpart A of this part covers the general requirements of FTA's drug and alcohol testing programs. Subpart B of this part specifies the basic requirements of each employer's alcohol misuse and prohibited drug use program, including the elements required to be in each employer's testing program. Subpart C of this part describes prohibited drug use. Subpart D of this part describes prohibited alcohol use. Subpart E of this part describes the types of alcohol and drug tests to be conducted. Subpart F of this part addresses the testing procedural requirements mandated by the Omnibus Transportation Employee Testing Act of 1991, and as required in 49 CFR Part 40. Subpart G of this part lists the consequences for covered employees who engage in alcohol misuse or prohibited drug use. Subpart H of this part contains administrative matters, such as reports and recordkeeping requirements. Subpart I of this part specifies how a recipient certifies compliance with the rule.

(b) This part must be read in conjunction with 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs.

§ 655.3 Applicability.

(a) Except as specifically excluded in paragraph (b) of this section, this part applies to:

(1) Each recipient and subrecipient receiving federal assistance under:

(i) 49 U.S.C. 5307, 5309, or 5311; or

(ii) 23 U.S.C. 103(e)(4); and

(2) Any contractor of a recipient or subrecipient of federal assistance under:

(i) 49 U.S.C. 5307, 5309, or 5311; or

(ii) 23 U.S.C. 103(e)(4).

(b) A recipient operating a railroad regulated by the Federal Railroad Administration (FRA) shall follow 49 CFR Part 219 and § 655.83 for its railroad operations, and shall follow this part for its non-railroad operations, if any.

§ 655.4 Definitions.

For this part, the terms listed in this section have the following definitions. The definitions of additional terms used in this part but not listed in this section can be found in 49 CFR Part 40.

Accident means an occurrence associated with the operation of a vehicle, if as a result:

(1) An individual dies; or

(2) An individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident; or

(3) With respect to an occurrence in which the mass transit vehicle involved is a bus, electric bus, van, or automobile, one or more vehicles (including non-FTA funded vehicles) incurs disabling damage as the result of the occurrence and such vehicle or vehicles are transported away from the scene by a tow truck or other vehicle; or

(4) With respect to an occurrence in which the mass transit vehicle involved is a rail car, trolley car, trolley bus, or vessel, the mass transit vehicle is removed from operation.

Administrator means the Administrator of the Federal Transit Administration or the Administrator's designee.

Anti-drug program means a program to detect and deter the use of prohibited drugs as required by this part.

Certification means a recipient's written statement, authorized by the organization's governing board or other authorizing official, that the recipient has complied with the provisions of this part. (See § 655.82 and § 655.83 for certification requirements.)

Contractor means a person or organization that provides a safety-sensitive service for a recipient, subrecipient, employer, or operator consistent with a specific understanding or arrangement. The understanding can be a written contract or an informal arrangement that reflects an ongoing relationship between the parties.

Covered employee means a person, including an applicant or transferee, who performs a safety-sensitive function for an entity subject to this part. A volunteer is a covered employee if:

(1) The volunteer is required to hold a commercial driver's license to operate the vehicle; or

(2) The volunteer performs a safety-sensitive function for an entity subject to this part and works in the expectation of receiving some type of in-kind or tangible benefit. *Disabling damage* means damage that precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

(1) *Inclusion.* Damage to a motor vehicle, where the vehicle could have been driven, but would have been further damaged if so driven.

(2) *Exclusions.* (i) Damage that can be remedied temporarily at the scene of the accident without special tools or parts.

(ii) Tire disablement without other damage even if no spare tire is available.

(iii) Headlamp or taillight damage.

(iv) Damage to turn signals, horn, or windshield wipers, which makes the vehicle inoperable.

DOT or *The Department* means the United States Department of Transportation.

DOT agency means an agency (or "operating administration") of the United States Department of Transportation administering regulations requiring drug and alcohol testing. See 14 CFR part 121, appendices I and J; 33 CFR part 95; 46 CFR parts 4, 5, and 16; and 49 CFR parts 199, 219, 382, and 655.

Employer means a recipient or other entity that provides mass transportation service or which performs a safety-sensitive function for such recipient or other entity. This term includes subrecipients, operators, and contractors.

FTA means the Federal Transit Administration, an agency of the U.S. Department of Transportation.

Large operator means a recipient or subrecipient primarily operating in an urbanized area of 200,000 or more in population.

Performing (a safety-sensitive function) means a covered employee is considered to be performing a safety-sensitive function and includes any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.

Positive rate means the annual number of positive results for random drug tests conducted under this part divided by the total annual number of random drug tests conducted under this part.

Railroad means:

(1) All forms of non-highway ground transportation that run on rails or electromagnetic guideways, including:

(i) Commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service that was operated by the Consolidated Rail Corporation as of January 1, 1979; and

(ii) High speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads.

(2) Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

Recipient means an entity receiving Federal financial assistance under 49 U.S.C. 5307, 5309, or 5311; or under 23 U.S.C. 103(e)(4).

Refuse to submit means any circumstance outlined in 49 CFR 40.191 and 40.261.

Safety-sensitive function means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:

(1) Operating a revenue service vehicle, including when not in revenue service;

(2) Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;

(3) Controlling dispatch or movement of a revenue service vehicle;

(4) Maintaining (including repairs, overhaul and rebuilding) a revenue

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service vehicle or equipment used in revenue service. This provision does not apply to the following: an employer who receives funding under 49 U.S.C. 5309, is in an area under 50,000 in population, and contracts out such services; and an employer who receives funding under 49 U.S.C. 5311 and contracts out such services;

(5) Carrying a firearm for security purposes.

Small operator means a recipient or subrecipient primarily operating in a nonurbanized area or in an urbanized area of less than 200,000 in population.

Second chance policy means that an employer's substance abuse policy permits employees who have previously violated that policy to return to work (including performance of a safety-sensitive function) after complying with the return-to-work testing requirements.

Vehicle means a bus, electric bus, van, automobile, rail car, trolley car, trolley bus, or vessel. A mass transit vehicle is a vehicle used for mass transportation or for ancillary services.

Violation rate means the number of covered employees found during random tests given annually under this part to have an alcohol concentration of .04 or greater, plus the number of employees who refuse a random test required by this part, divided by the total reported number of employees in the transit industry annually given random alcohol tests under this part plus the total reported number of employees in the transit industry who refuse a random test required by this part.

§ 655.5 Stand-down waivers for drug testing.

(a) An employer subject to this part may petition the Federal Transit Administration for a waiver allowing the employer to stand down an employee following a report of a laboratory confirmed positive drug test or refusal, pending the outcome of the verification process.

(b) Each petition for a waiver must be in writing and include facts and justification to support the waiver. Each petition must satisfy the substantive requirements for obtaining a waiver, as provided in 49 CFR 40.21.

(c) Each petition for a waiver must be submitted to the Office of Safety and Security, Federal Transit Administration, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590.

(d) The Administrator may grant a waiver subject to 49 CFR 40.21(d).

§ 655.6 Preemption of state and local laws.

(a) Except as provided in paragraph (b) of this section, this part preempts any State or local law, rule, regulation, or order to the extent that:

(1) Compliance with both the State or local requirement and any requirement in this Part is not possible; or

(2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this part.

(b) This part shall not be construed to preempt provisions of State criminal laws that impose sanctions for reckless conduct, attributed to prohibited drug use or alcohol misuse, leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees or employers or to the general public.

§ 655.7 Starting date for testing programs.

An employer must have an anti-drug and alcohol misuse testing program in place by the date the employer begins operations.

Subpart B—Program Requirements

§ 655.11 Requirement to establish an anti-drug use and alcohol misuse program.

Each employer shall establish an anti-drug use and alcohol misuse program consistent with the requirements of this part.

§ 655.12 Required elements of an anti-drug use and alcohol misuse program.

An anti-drug use and alcohol misuse program shall include the following:

(a) A statement describing the employer's policy on prohibited drug use and alcohol misuse in the workplace, including the consequences associated with prohibited drug use and alcohol misuse. This policy statement shall include all of the elements specified in § 655.15. Each employer shall disseminate the policy consistent with the provisions of § 655.16.

(b) An education and training program which meets the requirements of § 655.14.

(c) A testing program, as described in Subparts C and D of this part, which meets the requirements of this part and 49 CFR part 40.

(d) Procedures for referring a covered employee who has a verified positive drug test result or an alcohol concentration of 0.04 or greater to a Substance Abuse Professional, consistent with 49 CFR Part 40.

§ 655.13 Other requirements imposed by an employer.

An employer may not impose requirements that are inconsistent with, contrary to, or frustrate the provisions of this part.

§ 655.14 Education and training programs.

Each employer shall establish an employee education and training program for all covered employees, including:

(a) *Education.* The education component shall include display and distribution to every covered employee of: informational material and a community service hot-line telephone number for employee assistance, if available.

(b) *Training*—(1) *Covered employees.* Covered employees must receive at least 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use.

(2) *Supervisors.* Supervisors who may make reasonable suspicion determinations shall receive at least 60 minutes of training on the physical, behavioral, and performance indicators of probable drug use and at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

§ 655.15 Policy statement contents.

The local governing board of the employer or operator shall adopt an anti-drug and alcohol misuse policy statement. The statement must be made available to each covered employee, and shall include the following:

(a) The identity of the person designated by the employer to answer employee questions about the employer's anti-drug use and alcohol misuse programs.

(b) The categories of employees who are subject to the provisions of this part.

(c) Specific information concerning the behavior and conduct that is prohibited by this part.

(d) The specific circumstances under which a covered employee will be tested for prohibited drugs or alcohol misuse under this part.

(e) The procedures that will be used to test for the presence of illegal drugs or alcohol misuse, protect the employee and the integrity of the drug and alcohol testing process, safeguard the validity of the test results, and ensure the test results are attributed to the correct covered employee.

(f) The requirement that a covered employee submit to drug and alcohol testing administered in accordance with this part.

(g) A description of the kind of behavior that constitutes a refusal to take a drug or alcohol test, and a statement that such a refusal constitutes a violation of the employer's policy.

(h) The consequences for a covered employee who has a verified positive drug or a confirmed alcohol test result with an alcohol concentration of 0.04 or greater, or who refuses to submit to a test under this part, including the mandatory requirements that the covered employee be removed immediately from his or her safety-sensitive function and be evaluated by a substance abuse professional, as required by 49 CFR part 40.

(i) The consequences, as set forth in § 655.35, for a covered employee who is found to have an alcohol concentration of 0.02 or greater but less than 0.04.

(j) If the employer implements elements of an anti-drug use or alcohol misuse program that are in addition to this part, the employer shall give each covered employee specific information concerning which provisions are mandated by this part and which are not.

§ 655.16 Requirement to disseminate policy.

Each employer shall provide written notice to every covered employee and to representatives of employee organizations of the employer's anti-drug and alcohol misuse policies and procedures.

§ 655.17 Notice requirement.

Before performing a drug or alcohol test under this part, each employer shall notify a covered employee that the test is required by this part. No employer shall falsely represent that a test is administered under this part.

Subpart C—Prohibited Drug Use

§ 655.21 Drug testing.

(a) An employer shall establish a program that provides testing for prohibited drugs and drug metabolites in the following circumstances: pre-employment, post-accident, reasonable suspicion, random, and return to duty/follow-up.

(b) When administering a drug test, an employer shall ensure that the following drugs are tested for:

(1) Marijuana;
(2) Cocaine;
(3) Opiates;
(4) Amphetamines; and
(5) Phencyclidine.

(c) Consumption of these products is prohibited at all times.

Subpart D—Prohibited Alcohol Use

§ 655.31 Alcohol testing.

(a) An employer shall establish a program that provides for testing for alcohol in the following circumstances: post-accident, reasonable suspicion, random, and return to duty/follow-up. An employer may also conduct pre-employment alcohol testing.

(b) Each employer shall prohibit a covered employee, while having an alcohol concentration of 0.04 or greater, from reporting for duty to perform a safety-sensitive function or remaining on duty while performing a safety-sensitive function.

§ 655.32 On duty use.

Each employer shall prohibit a covered employee from using alcohol while performing safety-sensitive functions. No employer having actual knowledge that a covered employee is using alcohol while performing safety-sensitive functions shall permit the employee to perform or continue to perform safety-sensitive functions.

§ 655.33 Pre-duty use.

(a) *General.* Each employer shall prohibit a covered employee from using alcohol within 4 hours prior to performing safety-sensitive functions. No employer having actual knowledge that a covered employee has used alcohol within four hours of performing a safety-sensitive function shall permit the employee to perform or continue to perform safety-sensitive functions.

(b) *On-call employees.* An employer shall prohibit the consumption of alcohol for the specified on-call hours of each covered employee who is on-call. The procedure shall include:

(1) The opportunity for the covered employee to acknowledge the use of alcohol at the time he or she is called to report to duty and the inability to perform his or her safety-sensitive function.

(2) The requirement that the covered employee take an alcohol test, if the covered employee has acknowledged the use of alcohol, but claims ability to perform his or her safety-sensitive function.

§ 655.34 Use following an accident.

Each employer shall prohibit alcohol use by any covered employee required to take a post-accident alcohol test under § 655.44 for eight hours following the accident or until he or she undergoes a post-accident alcohol test, whichever occurs first.

§ 655.35 Other alcohol-related conduct.

(a) No employer shall permit a covered employee tested under the provisions of subpart E of this part who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 to perform or continue to perform safety-sensitive functions, until:

(1) The employee's alcohol concentration measures less than 0.02; or (2) The start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.

(b) Except as provided in paragraph (a) of this section, no employer shall take any action under this part against an employee based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an employer with authority independent of this part from taking any action otherwise consistent with law.

Subpart E—Types of Testing

§ 655.41 Pre-employment drug testing

(a)(1) Before allowing a covered employee or applicant to perform a safety-sensitive function for the first time, the employer must ensure that the employee takes a pre-employment drug test administered under this part with a verified negative result. An employer may not allow a covered employee, including an applicant, to perform a safety-sensitive function unless the employee takes a drug test administered under this part with a verified negative result.

(2) When a covered employee or applicant has previously failed a pre-employment drug test administered under this part, the employee must present to the employer proof of successfully having completed a referral, evaluation and treatment plan as described in § 655.62.

(b) An employer may not transfer an employee from a nonsafety-sensitive function to a safety-sensitive function until the employee takes a pre-employment drug test administered under this part with a verified negative result.

(c) If a pre-employment drug test is canceled, the employer shall require the covered employee or applicant to take another pre-employment drug test administered under this part with a verified negative result.

(d) When a covered employee or applicant has not performed a safety-sensitive function for 90 consecutive calendar days regardless of the reason, and the employee has not been in the employer's random selection pool during that time frame, the employer shall ensure that the employee takes a pre-employment drug test with a verified negative result.

§ 655.42 Pre-employment alcohol testing.

As an employer, you may, but are not required to, conduct pre-employment alcohol testing under this part. If you choose to conduct pre-employment alcohol testing, you must comply with the following requirements:

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(a) You must conduct a pre-employment alcohol test before the first performance of safety-sensitive functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of safety-sensitive functions).

(b) You must treat all safety-sensitive employees performing safety-sensitive functions the same for the purpose of pre-employment alcohol testing (i.e., you must not test some covered employees and not others).

(c) You must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test.

(d) You must conduct all pre-employment alcohol tests using the alcohol testing procedures of 49 CFR part 40.

(e) You must not allow a covered employee to begin performing safety-sensitive functions unless the result of the employee's test indicates an alcohol concentration of less than 0.04.

§ 655.43 Reasonable suspicion testing.

(a) An employer shall conduct a drug and/or alcohol test when the employer has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse.

(b) An employer's determination that reasonable suspicion exists shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee. A supervisor who is trained in detecting the signs and symptoms of drug use and alcohol misuse must make the required observations.

(c) The decision to refer an employee for a reasonable suspicion test shall be made by one trained supervisor. Employers are prohibited from requiring two or more trained supervisors to participate and/or agree on such a referral.

§ 655.44 Post-accident testing.

(a) Accidents. (1) *Fatal accidents.* As soon as practicable following an accident involving the loss of human life, an employer shall conduct drug and alcohol tests on each surviving covered employee operating the mass transit vehicle at the time of the accident. The employer shall also drug and alcohol test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

(2) *Nonfatal accidents.* (i) As soon as practicable following an accident not involving the loss of human life, in which a mass transit vehicle is involved, the employer shall drug and alcohol test each covered employee operating the mass transit vehicle at the time of the accident unless the employer determines, using the best information available at the time of the decision, that the covered employee's performance can be completely discounted as a contributing factor to the accident. The decision not to administer a drug and/or alcohol test under this paragraph (a)(2)(i) shall be based on the employer's determination, using the best available information at the time of the determination, that the employee's performance could not have contributed to the accident. Such a decision must be documented in detail, including the decision-making process used to reach the decision not to test. The employer shall also drug and alcohol test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

(ii) If an alcohol test required by this section is not administered within two hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by this paragraph (a)(2)(ii) is not administered within eight hours following the accident, the employer shall cease attempts to administer an alcohol test and shall maintain the same record. Records shall be submitted to FTA upon request of the Administrator.

(b) An employer shall ensure that a covered employee required to be drug tested under this section is tested as soon as practicable but within 32 hours of the accident.

(c) A covered employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the employer or the employer representative of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed by the employer to have refused to submit to testing.

(d) Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

(e) The results of a blood, urine, or breath test for the use of prohibited drugs or alcohol misuse, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such test conforms to the applicable Federal, State, or local testing requirements, and that the test results are obtained by the employer.

§ 655.45 Random testing.

(a) Except as provided in paragraphs (b) through (d) of this section, the minimum annual percentage rate for random drug testing shall be 50 percent of covered employees; the random alcohol testing rate shall be 25 percent. As provided in paragraph (b) of this section, this rate is subject to annual review by the Administrator.

(b) The Administrator's decision to increase or decrease the minimum annual percentage rate for random drug and alcohol testing is based, respectively, on the reported positive drug and alcohol violation rates for the entire industry. All information used for this determination is drawn from the drug and alcohol Management Information System (MIS) reports required by this part. In order to ensure reliability of the data, the Administrator shall consider the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry's verified positive results and violation rates. Each year, the Administrator will publish in the **Federal Register** the minimum annual percentage rates for random drug and alcohol testing of covered employees. The new minimum annual percentage rate for random drug and alcohol testing will be applicable starting January 1 of the calendar year following publication.

(c) Rates for drug testing. (1) When the minimum annual percentage rate for random drug testing is 50 percent, the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 655.72 for the two preceding consecutive calendar years indicate that the reported positive rate is less than 1.0 percent.

(2) When the minimum annual percentage rate for random drug testing is 25 percent, and the data received under the reporting requirements of § 655.72 for the calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random drug or random alcohol testing to 50 percent of all covered employees.

(d) Rates for alcohol testing. (1)(i) When the minimum annual percentage rate for random alcohol testing is 25 percent or more, the Administrator may lower this rate to 10 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 655.72 for two consecutive calendar years indicate that the violation rate is less than 0.5 percent.

(ii) When the minimum annual percentage rate for random alcohol testing is 50 percent, the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 655.72 for two consecutive calendar years indicate that the violation rate is less than 1.0 percent but equal to or greater than 0.5 percent.

(2)(i) When the minimum annual percentage rate for random alcohol testing is 10 percent, and the data received under the reporting requirements of § 655.72 for that calendar year indicate that the violation rate is equal to or greater than 0.5 percent, but less than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random alcohol testing to 25 percent of all covered employees.

(ii) When the minimum annual percentage rate for random alcohol testing is 25 percent or less, and the data received under the reporting requirements of § 655.72 for that calendar year indicate that the violation rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random alcohol testing to 50 percent of all covered employees.

(e) The selection of employees for random drug and alcohol testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with employees' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made.

(f) The employer shall randomly select a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rates for random drug and alcohol testing determined by the Administrator. If the employer conducts random drug and alcohol testing through a consortium, the number of employees to be tested may be calculated for each individual employer or may be based on the total number of covered employees covered by the consortium who are subject to random drug and alcohol testing at the same minimum annual percentage rate under this part.

(g) Each employer shall ensure that random drug and alcohol tests conducted under this part are unannounced and unpredictable, and that the dates for administering random tests are spread reasonably throughout the calendar year. Random testing must be conducted during all time periods when safety-sensitive functions are performed.

(h) Each employer shall require that each covered employee who is notified of selection for random drug or random alcohol testing proceeds to the test site immediately; provided, however, that if the employee is performing a safety-sensitive function at the time of the notification, the employer shall instead ensure that the employee ceases to perform the safety-sensitive function and proceeds to the testing site immediately.

(i) A covered employee shall only be randomly tested for prohibited drug use or alcohol misuse while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.

(j) If a given covered employee is subject to random drug and alcohol testing under the testing rules of more than one DOT agency for the same employer, the employee shall be subject to random drug and alcohol testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the employee's function.

(k) If an employer is required to conduct random drug and alcohol testing under the drug and alcohol testing rules of more than one DOT agency, the employer may—

(1) Establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or

(2) Randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the employer is subject.

§ 655.46 Return to duty testing following refusal to submit to a test, verified positive drug test result and/or breath alcohol test result greater than 0.04.

Where a covered employee refuses to submit to a test, has a verified positive drug test result, and/or has a confirmed alcohol test result greater than 0.04, the employer, before returning the employee to duty to perform a safety-sensitive function, shall follow the procedures outlined in 49 CFR part 40.

§ 655.47 Follow-up testing after returning to duty.

An employer shall conduct follow-up testing of each employee who returns to duty, as specified in 49 CFR part 40, subpart O. The substance abuse professional may terminate the requirement for follow-up testing, as provided in 49 CFR 40.307.

§ 655.48 Retesting of covered employees with an alcohol concentration of 0.02 or greater but less than 0.04.

Each employer shall retest a covered employee to ensure compliance with the provisions of § 655.35, if the employer chooses to permit the employee to perform a safety-sensitive function within 8 hours following the administration of an alcohol test indicating an alcohol concentration of 0.02 or greater but less than 0.04. The employee may not perform safety-sensitive functions unless the confirmation alcohol test result is less than 0.02.

§ 655.49 Refusal to submit to a drug or alcohol test.

(a) Each employer shall require a covered employee to submit to a post-accident drug and alcohol test required under § 655.44, a random drug and alcohol test required under § 655.45, a reasonable suspicion drug and alcohol test required under § 655.43, or a follow-up drug and alcohol test required under § 655.47. No employer shall permit an employee who refuses to submit to such a test to perform or continue to perform safety-sensitive functions.

(b) Where an employee refuses to submit to a test, the employer shall follow the procedures outlined in 49 CFR part 40.

Subpart F—Drug and Alcohol Testing Procedures

§ 655.51 Compliance with testing procedures requirements.

The drug and alcohol testing procedures in 49 CFR part 40 apply to employers covered by this part, and must be read together with this part, unless expressly provided otherwise in this part.

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§ 655.52 Substance abuse professional (SAP).

The SAP must perform the functions in 49 CFR part 40, subpart O.

§ 655.53 Supervisor acting as collection site personnel.

An employer shall not permit an employee with direct or immediate supervisory responsibility or authority over another employee to serve as the urine collection person, breath alcohol technician, or saliva-testing technician for a drug or alcohol test of the employee.

Subpart G—Consequences

§ 655.61 Action when an employee has a verified positive drug test result or has a confirmed alcohol test result of 0.04 or greater, or refuses to submit to a test.

(a)(1) Immediately after receiving notice from a medical review officer (MRO) or a consortium/third party administrator (C/TPA) that a covered employee has a verified positive drug test result, the employer shall require that the covered employee cease performing a safety-sensitive function.

(2) Immediately after receiving notice from a Breath Alcohol Technician (BAT) that a covered employee has a confirmed alcohol test result of 0.04 or greater, the employer shall require that the covered employee cease performing a safety-sensitive function.

(3) If an employee refuses to submit to a drug or alcohol test, the employer shall require that the covered employee cease performing a safety-sensitive function.

(b) Before allowing the covered employee to resume performing a safety-sensitive function, the employer shall ensure that the covered employee meets the requirements of 49 CFR part 40 for returning to duty, including taking a return to duty drug and/or alcohol test.

§ 655.62 Referral, evaluation, and treatment.

(a) If a covered employee has a verified positive drug test result, or has a confirmed alcohol test of 0.04 or greater, or refuses to submit to a drug or alcohol test, the employer shall advise the employee of the resources available for evaluating and resolving problems associated with prohibited drug use and alcohol misuse, including the names, addresses, and telephone numbers of substance abuse professionals (SAPs) and counseling and treatment programs.

(b) A covered employee under a second chance agreement, who has had a verified positive drug test result, or had a confirmed alcohol test of 0.04 or greater, or refused to submit to a drug or alcohol test, shall not resume performing safety-sensitive functions until the covered employee has met all the requirements of 49 CFR part 40, including a substance abuse professional (SAP) evaluation, referral, and education treatment process.

Subpart H—Administrative Requirements

§ 655.71 Retention of records.

(a) *General requirement.* An employer shall maintain records of its anti-drug and alcohol misuse program as provided in this section. The records shall be maintained in a secure location with controlled access.

(b) *Period of retention.* In determining compliance with the retention period requirement, each record shall be maintained for the specified period of time, measured from the date of the document's or data's creation. Each employer shall maintain the records in accordance with the following schedule:

(1) *Five years.* Records of covered employee verified positive drug or alcohol test results, documentation of refusals to take required drug or alcohol tests, and covered employee referrals to the substance abuse professional, and copies of annual MIS reports submitted to FTA.

(2) *Two years.* Records related to the collection process and employee training.

(3) *One year.* Records of negative drug or alcohol test results.

(c) *Types of records.* The following specific records must be maintained:

(1) Records related to the collection process:

(i) Collection logbooks, if used.

(ii) Documents relating to the random selection process.

(iii) Documents generated in connection with decisions to administer reasonable suspicion drug or alcohol tests.

(iv) Documents generated in connection with decisions on post-accident drug and alcohol testing.

(v) MRO documents verifying existence of a medical explanation of the inability of a covered employee to provide an adequate urine or breathe sample.

(2) Records related to test results:

(i) The employer's copy of the custody and control form.

(ii) Documents related to the refusal of any covered employee to submit to a test required by this part.

(iii) Documents presented by a covered employee to dispute the result of a test administered under this part.

(3) Records related to referral and return to duty and follow-up testing: Records concerning a covered employee's entry into and completion of the treatment program recommended by the substance abuse professional.

(4) Records related to employee training:

(i) Training materials on drug use awareness and alcohol misuse, including a copy of the employer's policy on prohibited drug use and alcohol misuse.

(ii) Names of covered employees attending training on prohibited drug use and alcohol misuse and the dates and times of such training.

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for drug and alcohol testing based on reasonable suspicion.

(iv) Certification that any training conducted under this part complies with the requirements for such training.

(5) Copies of annual MIS reports submitted to FTA.

§ 655.72 Reporting of results in a management information system.

(a) Each recipient shall annually prepare and maintain a summary of the results of its anti-drug and alcohol misuse testing programs performed under this part during the previous calendar year.

(b) When requested by FTA, each recipient shall submit to FTA's Office of Safety and Security, or its designated agent, by March 15, a report covering the previous calendar year (January 1 through December 31) summarizing the results of its anti-drug and alcohol misuse programs.

(c) Each recipient shall be responsible for ensuring the accuracy and timeliness of each report submitted by an employer, contractor, consortium or joint enterprise or by a third party service provider acting on the recipient's or employer's behalf.

(d) *Drug use information: Long Form.* Each report that contains information on verified positive drug test results shall be submitted on the FTA Drug Testing Management Information System (MIS) Data Collection Form (Appendix A of this part) and shall include the following informational elements:

(1) Number of FTA covered employees by employee category.

(2) Number of covered employees subject to testing under the anti-drug regulations of the United States Coast Guard.

(3) Number of specimens collected by type of test (i.e., pre-employment, follow-up, random, etc.) and employee category.

(4) Number of positives verified by a Medical Review Officer (MRO) by type of test, type of drug, and employee category.

(5) Number of negatives verified by an MRO by type of test and employee category.

(6) Number of persons denied a position as a covered employee following a verified positive drug test.

(7) Number of covered employees verified positive by an MRO or who refused to submit to a drug test, who were returned to duty in covered positions during the reporting period (having complied with the recommendations of a substance abuse professional as described in § 655.61).

(8) Number of employees with tests verified positive by a MRO for multiple drugs.

(9) Number of covered employees who were administered drug and alcohol tests at the same time, with both a verified positive drug test result and an alcohol test result indicating an alcohol concentration of 0.04 or greater.

(10) Number of covered employees who refused to submit to a random drug test required under this part.

(11) Number of covered employees who refused to submit to a non-random drug test required under this part.

(12) Number of covered employees and supervisors who received training during the reporting period.

(13) Number of fatal and nonfatal accidents which resulted in a verified positive post-accident drug test.

(14) Number of fatalities resulting from accidents which resulted in a verified positive post-accident drug test.

(15) Identification of FTA funding source(s).

(e) *Drug Use Information: Short Form.* If all drug test results were negative during the reporting period, the employer must use the "EZ form" (Appendix B of this part). It shall contain:

(1) Number of FTA covered employees.

(2) Number of covered employees subject to testing under the anti-drug regulation of the United States Coast Guard.

(3) Number of specimens collected and verified negative by type of test and employee category.

(4) Number of covered employees verified positive by an MRO or who refused to submit to a drug test prior to the reporting period and who were returned to duty in covered positions during the reporting period (having complied with the recommendations of a substance abuse professional as described in § 655.62).

(5) Number of covered employees who refused to submit to a non-random drug test required under this part.

(6) Number of covered employees and supervisors who received training during the reporting period.

(7) Identification of FTA funding source(s).

(f) *Alcohol misuse information: Long Form.* Each report that contains information on an alcohol screening test result of 0.02 or greater or a violation of the alcohol misuse provisions of this part shall be submitted on the FTA Alcohol Testing Management (MIS) Data Collection Form (Appendix C of this part) and shall include the following informational elements:

(1) Number of FTA covered employees by employee category.

(2)(i) Number of screening tests by type of test and employee category.

(ii) Number of confirmed tests, by type of test and employee category.

(3) Number of confirmed alcohol tests indicating an alcohol concentration of 0.02 or greater but less than 0.04, by type of test and employee category.

(4) Number of confirmed alcohol tests indicating an alcohol concentration of 0.04 or greater, by type of test and employee category.

(5) Number of covered employees with a confirmed alcohol test indicating an alcohol concentration of 0.04 or greater who were returned to duty in covered positions during the reporting period (having complied with the recommendation of a substance abuse professional as described in § 655.61).

(6) Number of fatal and nonfatal accidents which resulted in a confirmed post-accident alcohol test indicating an alcohol concentration of 0.04 or greater.

(7) Number of fatalities resulting from accidents which resulted in a confirmed post-accident alcohol test indicating an alcohol concentration of 0.04 or greater.

(8) Number of covered employees who were found to have violated other provisions of subpart B of this part and the action taken in response to the violation.

(9) Number of covered employees who were administered alcohol and drug tests at the same time, with a positive drug test result and an alcohol test result indicating an alcohol concentration of 0.04 or greater.

(10) Number of covered employees who refused to submit to a random alcohol test required under this part.

(11) Number of covered employees who refused to submit to a non-random alcohol test required under this part.

(12) Number of supervisors who have received training during the reporting period in determining the existence of reasonable suspicion of alcohol misuse.

(13) Identification of FTA funding source(s).

(g) *Alcohol Misuse Information: Short Form.* If an employer has no screening test results of 0.02 or greater and no violations of the alcohol misuse provisions of this part, the employer must use the "EZ" form (Appendix D of this part). It shall contain: (This report may only be submitted if the program results meet these criteria.)

(1) Number of FTA covered employees.

(2) Number of alcohol tests conducted with results less than 0.02 by type of test and employee category.

(3) Number of employees with confirmed alcohol test results indicating an alcohol concentration of 0.04 or greater prior to the reporting period and who were returned to duty in a covered position during the reporting period.

(4) Number of covered employees who refused to submit to a random alcohol test required under this part.

(5) Number of supervisors who have received training during the reporting period in determining the existence of reasonable suspicion of alcohol misuse.

(6) Identification of FTA funding source(s).

§ 655.73 Access to facilities and records

(a) Except as required by law, or expressly authorized or required in this section, no employer may release information pertaining to a covered employee that is contained in records required to be maintained by § 655.71.

(b) A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the covered employee's use of prohibited drugs or misuse of alcohol, including any records pertaining to his or her drug or alcohol tests. The employer shall provide promptly the records requested by the employee. Access to a covered employee's records shall not be contingent upon the employer's receipt of payment for the production of those records.

(c) An employer shall permit access to all facilities utilized and records compiled in complying with the requirements of this part to the Secretary of Transportation or any DOT agency with regulatory authority over the employer or any of its employees or to a State oversight agency authorized to oversee rail fixed guideway systems.

(d) An employer shall disclose data for its drug and alcohol testing programs, and any other information pertaining to the employer's anti-drug and alcohol misuse programs required to be maintained by this part, to the Secretary of Transportation or any DOT agency with regulatory authority over the employer or covered employee or to a State oversight agency authorized to oversee rail fixed guideway systems,

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upon the Secretary's request or the respective agency's request.

(e) When requested by the National Transportation Safety Board as part of an accident investigation, employers shall disclose information related to the employer's drug or alcohol testing related to the accident under investigation.

(f) Records shall be made available to a subsequent employer upon receipt of a written request from the covered employee. Subsequent disclosure by the employer is permitted only as expressly authorized by the terms of the covered employee's request.

(g) An employer may disclose information required to be maintained under this part pertaining to a covered employee to the employee or the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of a drug or alcohol test under this part (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the covered employee.)

(h) An employer shall release information regarding a covered employee's record as directed by the specific, written consent of the employee authorizing release of the information to an identified person.

Subpart I—Certifying Compliance

§ 655.81 Grantee oversight responsibility

A grantee shall ensure that the recipients of funds under 49 U.S.C. 5307, 5309, or 5311 comply with this part.

§ 655.82 Compliance as a condition of financial assistance.

(a) *General.* A recipient may not be eligible for federal financial assistance under 49 U.S.C. 5307, 5309, or 5311 or under 23 U.S.C. 103(e)(4), if a recipient fails to establish and implement an anti-drug and alcohol misuse program as required by this part. Failure to certify compliance with these requirements, as specified in § 655.83, may result in the suspension of a grantee's eligibility for federal funding.

(b) *Criminal violation.* A recipient is subject to criminal sanctions and fines for false statements or misrepresentations under 18 U.S.C. 1001.

(c) *State's role.* Each State shall certify compliance on behalf of its section 5307, 5309, or 5311 subrecipients, as applicable, whose grant the State administers. In so certifying, the State shall ensure that each subrecipient is complying with the requirements of this part. A section 5307, 5309, or 5311 subrecipient, through the administering State, is subject to suspension of funding from the State if such subrecipient is not in compliance with this part.

§ 655.83 Requirement to certify compliance

(a) A recipient of FTA financial assistance shall annually certify compliance, as set forth in § 655.82, to the applicable FTA Regional Office.

(b) A certification must be authorized by the organization's governing board or other authorizing official, and must be signed by a party specifically authorized to do so.

(c) A recipient will be ineligible for further FTA financial assistance if the recipient fails to establish and implement an anti-drug and alcohol misuse program in accordance with this part.

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APPENDIX A TO PART 655 - DRUG TESTING MANAGEMENT INFORMATION SYSTEM (MIS) DATA COLLECTION FORM

INSTRUCTIONS

The following instructions are to be used as a guide for completing the drug testing information in the Federal Transit Administration (FTA) Drug Testing MIS Data Collection Form. These instructions outline and explain the information requested and indicate the probable sources for this information. A sample testing results table with a narrative explanation is provided on pages ii-v as an example to facilitate the process of completing the form correctly.

This reporting form includes six sections. Collectively, these sections address the data elements required in the FTA and the U.S. Department of Transportation (DOT) drug testing regulations. The six sections, the page number for the instructions, and the page location on the reporting form are:

Section	Instructions Page	Reporting Form Page
A. EMPLOYER INFORMATION	i	1
B. COVERED EMPLOYEES	i	2
C. DRUG TESTING INFORMATION	ii-v	3-4
D. OTHER DRUG TESTING/PROGRAM INFORMATION	v	5
E. DRUG TRAINING/EDUCATION	vi	5
F. FTA FUNDING SOURCES	vi	5

Page 1 **EMPLOYER INFORMATION** (Section A) requires the name of the employer for which the report is done, a current address, contact name, and phone number. Below this, information must be entered for the consortium used (if applicable). Finally, a signature, title and date are required certifying the correctness and completeness of the form. Note: A separate report must be submitted by each FTA recipient for each of its contract service and contract maintenance providers covered by the FTA drug testing regulation.

Page 2 **COVERED EMPLOYEES** (Section B) requires a count for each employee category that must be tested under the FTA drug testing regulation. The employee categories are: Revenue Service Vehicle Operation, Revenue Service Vehicle and Equipment Maintenance, Revenue Service Vehicle Control/Dispatch, Commercial Driver License (CDL) Holders who operate Non-Revenue Service Vehicles, and Security Personnel who carry Firearms. The most likely source for this information is the employer's personnel department. These counts should be based on the

recipient's or contractor's records for the reported year. The TOTAL is a count of all covered employees for all categories combined, i.e., the sum of the columns.

Additional information must be completed if the employer has personnel who perform duties also covered by the anti-drug rule of the United States Coast Guard (USCG). **NUMBER OF EMPLOYEES COVERED BY THE USCG**, requires that you identify the number of employees in each employee category.

Section C is used to summarize the drug testing results for applicants and covered employees. There are six categories of testing to be completed. The first part of the table is where you enter the data on pre-employment testing. The following five parts are for entering drug testing data on random, post-accident, reasonable suspicion, return to duty and follow-up testing, respectively. Items necessary to complete these tables include:

1) the number of specimens collected in each employee category;
2) the number of specimens tested which were verified negative and verified positive for any drug(s); and
3) individual counts of those specimens which were verified positive for each of the five drugs

Do not include results of quality control (QC) samples submitted to the testing laboratory in any of the tables.

A sample table with detailed instructions is provided for the first part, **PRE-EMPLOYMENT** testing information. The format and explanations used for the sample apply to all six parts of the table in Section C.

Information on actions taken with those persons testing positive is required at the end of both pages. Specific instructions for providing this latter information are given after the instructions for completing the table in Section C.

Page 3 **DRUG TESTING INFORMATION** (Section C) requires information for drug testing by category of testing. All numbers entered into the pre-employment category section of the table should be separated into the category of employment for which the person was applying or transferring. The other categories are for employee testing and require information for employees in **covered positions** only. Each part of this table must be completed for each category of testing. These categories include: (1) random, (2) post-accident, (3) reasonable suspicion, (4) return to duty, and (5) follow-up testing. These numbers **do not** include refusals for testing. A sample section of the table with example numbers is presented on page iv.

Three types of information are necessary to complete the left side of this table. The first blank column with the heading "**NUMBER OF SPECIMENS COLLECTED**," requires a count for all collected specimens by employee category. The second blank column with the heading "**NUMBER OF SPECIMENS VERIFIED NEGATIVE**," requires a count for all completed tests by employee category that were verified negative by your Medical Review Officer (MRO).

The third blank column with the heading "**NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS**," refers to the number of specimens provided by applicants or employees that were verified positive. "Verified positive" means the results were verified by your MRO.

The right hand portion of this table, with the heading "**NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG**," requires counts of positive tests for each of the five drugs for which tests were done, i.e., marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines. The number of specimens positive for each drug should be entered in the appropriate column for that drug type. Again, "verified positive" refers to test results verified by your MRO.

If an applicant or employee tested positive for more than one drug; for example, both marijuana and cocaine, that person's positive results would be included once in each of the appropriate columns (marijuana and cocaine).

Each column in the table should be added and the answer entered in the row marked "**TOTAL**".

A sample table is provided on page iv with example numbers.

Page 3 Below the part of the table containing pre-employment testing information is a box with the heading "**Number of persons denied a position as a covered employee following a verified positive drug test**". This is simply a count of those persons who were not placed in a covered position because they tested positive for one or more drugs.

SAMPLE APPLICANT TEST RESULTS TABLE

The following example is for Section C, **DRUG TESTING INFORMATION**, which summarizes pre-employment testing results. The procedures detailed here also apply to the other categories of testing in Section C which require you to summarize testing results for employees. This example uses the categories "Revenue Vehicle Operation" and "Armed Security Personnel" to illustrate the procedures for completing the form.

A Urine specimens were collected for 157 applicants for revenue service vehicle operation positions during the reporting year. This information is entered in the first blank column of the table in the row marked "Revenue Vehicle Operation".

B The Medical Review Officer (MRO) for the employer reported that 153 of those 157 specimens from applicants for revenue service vehicle operation positions were negative (i.e., no drugs were detected). Enter this information in the second blank column of the table in the row marked "Revenue Vehicle Operation".

C The MRO for the employer reported that 4 of those 157 specimens from applicants for revenue service vehicle operation positions were positive (i.e., a drug or drugs

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were detected). Enter this information in the third blank column of the table in the row marked "Revenue Vehicle Operation".

D With the 4 specimens that tested positive, the following drugs were detected:

Specimen	Drugs
#1	Marijuana
#2	Amphetamines
#3	Marijuana and Cocaine (Multi-drug specimen)
#4	Marijuana

Marijuana was detected in three (3) specimens, cocaine in one (1), and amphetamines in one (1). This information is entered in the columns on the right hand side of the table under each of these drugs. Two different drugs were detected in specimen #3 (multi-drug) so an entry is made in both the marijuana and the cocaine column for this specimen. Information on multi-drug specimens must also be entered in Section D, OTHER DRUG TESTING/PROGRAM INFORMATION, on page 5 of the reporting form.

Please note that the sample data collection form also has information for armed security personnel on line two. The same procedures outlined for revenue service vehicle operation should be followed for entering the data on armed security personnel. With applicants for armed security personnel positions, 107 specimens were collected resulting in 105 verified negatives and 2 verified positives – 1 for marijuana and 1 for opiates. This information is entered in the row marked "Armed Security Personnel".

E The last row, marked "TOTAL", requires you to add the numbers in each of the columns. With this example, 157 specimens from applicants for revenue service vehicle operation positions were collected and 107 for applicants for armed security personnel positions. The total for that column would be 264 (i.e., 157+107). The same procedure should be used for each column, i.e., add all the numbers in that column and place the answer in the last row.

PRE-EMPLOYMENT								
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				MARIJUANA (THC)	COCAINE	PHENCYCLIDINE (PCP)	OPIATES	AMPHETAMINES
REVENUE VEHICLE OPERATION	157	153	4	3	1	0	0	1
ARMED SECURITY PERSONNEL	107	105	2	1	0	0	1	0
TOTAL	264	258	6	4	1		1	1

A B C D E

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Note that adding up the numbers for each type of drug in a row ("NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG") will not always match the number entered in the third column, "NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS". The total for the numbers on the right hand side of the table may differ from the number of specimens testing positive since some specimens may contain more than one drug.

Remember that the same procedures indicated above are to be used for completing all of the categories for testing in Section C.

Page 4 — Following the table that summarizes **DRUG TESTING INFORMATION**, you must provide counts of fatal and non-fatal accidents and fatalities which resulted in positive post-accident drug tests for any employee involved in the accident. This information should be available from the safety program manager or the drug program manager.

Page 4 — Also following the table that summarizes **DRUG TESTING INFORMATION**, you must provide a count of employees returned to duty during this reporting period who had a verified positive drug test or refused a drug test required under the FTA rule. This information should be available from the personnel office and/or drug program manager.

Page 5 — **OTHER DRUG TESTING/PROGRAM INFORMATION** (Section D) requires that you complete a table dealing with specimens positive for more than one drug, employees testing positive for both drugs and alcohol, and a table dealing with employees who refused to submit to a drug test.

Page 5 — **SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG** requires information on specimens that contained more than one drug. Indicate the **EMPLOYEE CATEGORY** and the **NUMBER OF VERIFIED POSITIVES**. Then specify the combination of drugs reported as positive by placing the number in the appropriate columns. For example, if marijuana and cocaine were detected in 3 revenue vehicle operator specimens, then you would write "Revenue Vehicle Operation" as the employee category, "3" as the number of verified positives, and "3" in the columns for "Marijuana" and "Cocaine". If marijuana and opiates were detected in 2 revenue vehicle operator specimens, then you would write "Revenue Vehicle Operation" as the employee category, "2" as the number of verified positives, and "2" in the columns for "Marijuana" and "Opiates".

Page 5 — Next you must provide a count of **employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater.**

Page 5 — **EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST** requires information on the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a random or non-random (pre-employment, post-accident, reasonable suspicion, return to duty, or follow-up) drug test required under the FTA regulation.

Page 5 — **DRUG TRAINING/EDUCATION** (Section E) requires information on the number of covered employees and supervisory personnel who have received drug training during the current reporting period.

Page 5 — **FTA FUNDING SOURCES** (Section F) asks for the sources of FTA funds for your organization. Simply place a check mark by each applicable funding section(s).

For FTA Use Only

FTA DRUG TESTING MIS DATA COLLECTION FORM

OMB No. 2132-0556

YEAR COVERED BY THIS REPORT: 20 __

A. EMPLOYER INFORMATION

Name _____

Address _____

_____

Contact _____

Phone _____

Consortium Used (if applicable)

Name _____

Address _____

_____

Contact _____

Phone _____

I, the undersigned, certify that the information provided on this Federal Transit Administration Drug Testing Management Information System Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

_____ Signature

_____ Date of Signature

_____ Title

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

The Federal Transit Administration estimates that the average burden for this report form is 8 hours. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Office of Safety and Security (TPM-30), Federal Transit Administration; 400 7th St., S.W.; Washington, D.C. 20590; OR Office of Management and Budget, Paperwork Reduction Project (2132-0556); Washington, D.C. 20503.

B. COVERED EMPLOYEES

COVERED EMPLOYEES		
EMPLOYEE CATEGORY	NUMBER OF FTA COVERED EMPLOYEES	NUMBER OF EMPLOYEES COVERED BY THE USCG
Revenue Vehicle Operation		
Revenue Vehicle and Equipment Maintenance		
Revenue Vehicle Control/Dispatch		
CDL/Non-Revenue Vehicle		
Armed Security Personnel		
TOTAL		

READ BEFORE COMPLETING THE REMAINDER OF THIS FORM:

1. All items refer to the **current** reporting period **only** (for example, January 1, 1994 - December 31, 1994).

2. This report is only for testing **REQUIRED BY THE FEDERAL TRANSIT ADMINISTRATION (FTA) AND THE U.S. DEPARTMENT OF TRANSPORTATION (DOT)**:

   - Results should be reported only for employees in **COVERED POSITIONS** as defined by the FTA drug testing regulation.
   - The information requested should only include testing for marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines using the standard procedures required by DOT regulation 49 CFR Part 40.

3. Information on refusals for testing should only be reported in Section D ["OTHER DRUG TESTING INFORMATION"]. Do not include refusals for testing in other sections of this report.

4. Do not include the results of any quality control (QC) samples submitted to the testing laboratory in any of the tables.

5. Complete all items; DO NOT LEAVE ANY ITEM BLANK. If the value for an item is zero (0), place a zero (0) on the form.

This part of the form requires information on VERIFIED POSITIVE and VERIFIED NEGATIVE drug tests. Those are the results that are reported to you by your Medical Review Officer (MRO).

C. DRUG TESTING INFORMATION

EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
PRE-EMPLOYMENT								
Revenue Vehicle Operation								
Revenue Vehicle and Equipment Maintenance								
Revenue Vehicle Control/Dispatch								
CDL/Non-Revenue Vehicle								
Armed Security Personnel								
Total								
RANDOM								
Revenue Vehicle Operation								
Revenue Vehicle and Equipment Maintenance								
Revenue Vehicle Control/Dispatch								
CDL/Non-Revenue Vehicle								
Armed Security Personnel								
Total								
POST-ACCIDENT								
Revenue Vehicle Operation								
Revenue Vehicle and Equipment Maintenance								
Revenue Vehicle Control/Dispatch								
CDL/Non-Revenue Vehicle								
Armed Security Personnel								
Total								

Number of persons denied a position as a covered employee following a verified positive drug test:	

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C. DRUG TESTING INFORMATION (cont.)

EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
REASONABLE SUSPICION								
Revenue Vehicle Operation								
Revenue Vehicle and Equipment Maintenance								
Revenue Vehicle Control/Dispatch								
CDL/Non-Revenue Vehicle								
Armed Security Personnel								
Total								
RETURN TO DUTY								
Revenue Vehicle Operation								
Revenue Vehicle and Equipment Maintenance								
Revenue Vehicle Control/Dispatch								
CDL/Non-Revenue Vehicle								
Armed Security Personnel								
Total								
FOLLOW-UP								
Revenue Vehicle Operation								
Revenue Vehicle and Equipment Maintenance								
Revenue Vehicle Control/Dispatch								
CDL/Non-Revenue Vehicle								
Armed Security Personnel								
Total								

	FATAL	NON-FATAL
Number of accidents, as defined by the FTA drug testing regulation, which resulted in a positive post-accident drug test:		

Number of fatalities resulting from accidents which resulted in a positive post-accident drug test:	
Number of employees returned to duty during this reporting period who had a verified positive drug test or refused a drug test required under the FTA rule:	

D. OTHER DRUG TESTING/PROGRAM INFORMATION

SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG						
EMPLOYEE CATEGORY	NUMBER OF VERIFIED POSITIVES	Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines

Number of employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater:	

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST	Number
Covered employees who refused to submit to a random drug test required under the FTA regulation:	
Covered employees who refused to submit to a non-random drug test required under the FTA regulation:	

E. DRUG TRAINING/EDUCATION

TRAINING DURING CURRENT REPORTING PERIOD	Number
Covered employees who have received at least 60 minutes of initial training on the consequences, manifestations, and behavioral cues of drug use as required by the FTA drug testing regulation:	
Supervisory personnel who have received 60 minutes of initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use as required by the FTA drug testing regulation:	

F. FTA FUNDING SOURCES

FTA FUNDING SOURCES				
Check all sections that apply:	5307	5309	5310	5311

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APPENDIX B TO PART 655 - DRUG TESTING MANAGEMENT INFORMATION SYSTEM (MIS) "EZ" DATA COLLECTION FORM

INSTRUCTIONS

The following instructions are to be used as a guide for completing the Federal Transit Administration (FTA) **Drug Testing MIS "EZ" Data Collection Form**. This form should only be used if there **are no positive tests** to be reported by your company. These instructions outline and explain the information requested and indicate the probable sources for this information. This reporting form includes four sections. These sections address the data elements required in the FTA and the U.S. Department of Transportation (DOT) drug testing regulations.

SECTION A - EMPLOYER INFORMATION requires the company name for which the report is done, a current address, contact name, and phone number. Below this, information must be entered for the consortium used (if applicable). Finally, a signature, title, and date are required certifying the correctness and completeness of the form. Also indicate the year covered by this report. Note: A separate report must be submitted by each FTA recipient for each of its contract service and contract maintenance providers covered by the FTA drug testing regulation.

SECTION B - COVERED EMPLOYEES requires a count for each employee category that must be tested under the FTA drug testing regulation. The employee categories are: Revenue Service Vehicle Operation, Revenue Service Vehicle and Equipment Maintenance, Revenue Service Vehicle Control/Dispatch, Commercial Driver License (CDL) Holders who operate Non-Revenue Service Vehicles, and Security Personnel who carry Firearms. The most likely source for this information is the employer's personnel department. These counts should be based on the recipient's or contractor's records for the reported year. The **TOTAL** is a count of **all** covered employees for **all** categories combined, i.e., the sum of the columns.

Additional information must be completed if the employer has personnel who perform duties also covered by the anti-drug rule of the United States Coast Guard (USCG). **NUMBER OF EMPLOYEES COVERED BY THE USCG**, requires that you identify the number of employees in each employee category.

SECTION C - DRUG TESTING INFORMATION requires information for drug testing, refusal for testing, and training. The first table requests information on the **NUMBER OF SPECIMENS COLLECTED AND VERIFIED NEGATIVE** in each category for testing. All numbers entered into the pre-employment category section of the table should be separated into the category of employment for which the person was applying or transferring. The other categories are for employee testing and require information for employees in **covered positions** only. Each part of this table must be completed for each category of testing. These categories include: (1) random, (2) post-accident, (3) reasonable suspicion, (4) return to duty, and (5) follow-up testing. "COLL" requires the number of specimens collected in each employee category for each category of testing. "NEG" requires a count for all completed tests by employee category that were verified negative by your Medical Review Officer (MRO). Do not include results of quality control (QC) samples submitted to the testing laboratory in any of the categories. Each column in the table should be added and the answer entered in the row marked "TOTAL".

Following the table that summarizes **DRUG TESTING INFORMATION**, you must provide a count of **employees returned to duty during this reporting period who had a verified positive drug test or refused a drug test required under the FTA rule**. This information should be available from the personnel office and/or drug program manager.

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST requires a count of the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a **random** or **non-random** (pre-employment, post-accident, reasonable suspicion, return to duty, or follow-up) drug test required under the FTA regulation.

DRUG TRAINING/EDUCATION DURING CURRENT REPORTING PERIOD requires information on the number of covered employees and supervisory personnel who have received drug training during the current reporting period.

SECTION D - FTA FUNDING SOURCES asks for the sources of FTA funds for your organization. Simply place a check mark by each applicable funding section(s).

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For FTA Use Only

FTA DRUG TESTING MIS "EZ" DATA COLLECTION FORM OMB No. 2132-0556

YEAR COVERED BY THIS REPORT: 20 __

A. EMPLOYER INFORMATION

Company Name _____

Address _____

_____

Contact _____

Phone _____

Consortium Used (if applicable)

Name _____

Address _____

_____

Contact _____

Phone _____

I, the undersigned, certify that the information provided on the attached Federal Transit Administration Drug Testing Management Information System "EZ" Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

_____ _____

Signature Date of Signature

_____

Title

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

The Federal Transit Administration estimates that the average burden for this report form is 8 hours. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Office of Safety and Security TPM-30, Federal Transit Administration; 400 7th St., S.W.; Washington, D.C. 20590; OR Office of Management and Budget, Paperwork Reduction Project (2132-0556); Washington, D.C. 20503.

B. COVERED EMPLOYEES

COVERED EMPLOYEES		
EMPLOYEE CATEGORY	NUMBER OF FTA COVERED EMPLOYEES	NUMBER OF EMPLOYEES COVERED BY THE USCG
Revenue Vehicle Operation		
Revenue Vehicle and Equipment Maintenance		
Revenue Vehicle Control/Dispatch		
CDL/Non-Revenue Vehicle		
Armed Security Personnel		
TOTAL		

C. DRUG TESTING INFORMATION

NUMBER OF SPECIMENS COLLECTED AND VERIFIED NEGATIVE												
EMPLOYEE CATEGORY	PRE-EMPLOYMENT		RANDOM		POST-ACCIDENT		REASONABLE SUSPICION		RETURN TO DUTY		FOLLOW-UP	
	COLL	NEG	COLL	NEG	COLL	NEG	COLL	NEG	COLL	NEG	COLL	NEG
Revenue Vehicle Operation												
Revenue Vehicle and Equipment Maintenance												
Revenue Vehicle Control/Dispatch												
CDL/Non-Revenue Vehicle												
Armed Security Personnel												
TOTAL												

Number of employees returned to duty during this reporting period who had a verified positive drug test or refused a drug test required under the FTA rule:	
EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST	Number
Covered employees who refused to submit to a *random* drug test required under the FTA regulation:	
Covered employees who refused to submit to a *non-random* drug test required under the FTA regulation:	
DRUG TRAINING/EDUCATION DURING CURRENT REPORTING PERIOD	Number
Covered employees who have received at least 60 minutes of initial training on the consequences, manifestations, and behavioral cues of drug use as required by the FTA drug testing regulation:	
Supervisory personnel who have received 60 minutes of initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use as required by the FTA drug testing regulation:	

D. FTA FUNDING SOURCES

FTA FUNDING SOURCES				
Check all sections that apply:	5307	5309	5310	5311

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APPENDIX C TO PART 655 - ALCOHOL TESTING MANAGEMENT INFORMATION SYSTEM (MIS) DATA COLLECTION FORM

INSTRUCTIONS

The following instructions are to be used as a guide for completing the alcohol testing information in the Federal Transit Administration (FTA) **Alcohol Testing MIS Data Collection Form**. These instructions outline and explain the information requested and indicate the probable sources for this information. A sample testing results table with a narrative explanation is provided on pages iii-iv as an example to facilitate the process of completing the form correctly.

This reporting form includes six sections. Collectively, these sections address the data elements required in the FTA and the U.S. Department of Transportation (DOT) alcohol testing regulations. The six sections, the page number for the instructions, and the page location on the reporting form are:

Section	Instructions Page	Reporting Form Page
A. EMPLOYER INFORMATION	i	1
B. COVERED EMPLOYEES	i	2
C. ALCOHOL TESTING INFORMATION	ii-iv	3-4
D. OTHER ALCOHOL TESTING/PROGRAM INFORMATION	v	5
E. ALCOHOL TRAINING/EDUCATION	v	5
F. FTA FUNDING SOURCES	v	5

Page 1 **EMPLOYER INFORMATION** (Section A) requires the year covered by this report, the agency name for which the report is done, a current address, a person's name and phone number to contact if there are any questions about the report. Below this, information must be entered for the consortium used (if applicable). Finally, a signature, title and date are required certifying the correctness and completeness of the form. Note: A separate report must be submitted by each FTA recipient for each of its contract service and contract maintenance providers covered by the FTA alcohol testing regulation.

Page 2 **COVERED EMPLOYEES** (Section B) requires a count for each employee category that must be tested under the FTA alcohol testing regulation. The employee categories are: Revenue Service Vehicle Operation, Revenue Service Vehicle and Equipment Maintenance, Revenue Service Vehicle Control/Dispatch, Commercial Driver License (CDL) Holders who operate Non-Revenue Service Vehicles, and Security Personnel who carry Firearms. The most likely source for this information is the employer's personnel department. These counts should be based on the recipient's or contractor's records for the reported year. The **TOTAL** is a count of **all** covered employees for **all** categories combined, i.e., the sum of the columns.

Page 3 **ALCOHOL TESTING INFORMATION** (Section C) requires information for alcohol testing by category of testing. All numbers entered into the pre-employment category section of the table should be separated into the category of employment for which the person was applying or transferring. The other categories are for employee testing and require information for employees in **covered positions** only. Each part of this table must be completed for each category of testing. These categories include: (1) random, (2) post-accident, (3) reasonable suspicion, (4) return to duty, and (5) follow-up testing. These numbers **do not** include refusals for testing. A sample section of the table with example numbers is presented on page iv.

Four types of information are necessary to complete this table. The first blank column with the heading "**NUMBER OF SCREENING TESTS,**" requires a count for all screening tests conducted for each employee category. The second blank column with the heading "**NUMBER OF CONFIRMATION TESTS,**" requires a count for all confirmation alcohol tests performed for each employee category.

The third blank column with the heading "**NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO 0.02, BUT LESS THAN 0.04,**" requires a count for each employee category of completed alcohol tests that resulted in an alcohol concentration equal to or greater than 0.02, but less than 0.04.

The fourth blank column with the heading "**NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.04,**" requires a count for each employee category of completed alcohol tests that resulted in an alcohol concentration equal to or greater than 0.04. **Note: For return to duty testing, a confirmation result equal to or greater than 0.02 is a violation of the alcohol rule. Therefore, if the number of results equal to or greater than 0.04 is unknown, you may report all results in the third column of the table.**

Each column in the table should be added and the answer entered in the row marked "**TOTAL**".

A sample table is provided on page iv with example numbers.

Page 3 Below the part of the table containing pre-employment testing information are three boxes. This information should be available from the safety program manager or the alcohol program manager.

1) "**Number of persons denied a position as a covered employee following a pre-employment alcohol test indicating an alcohol concentration of 0.04 or greater**". This is a count of those persons who were not placed in a covered position because they took a breath test that resulted in an alcohol concentration of 0.04 or higher.

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2) "Number of accidents, as defined by the FTA alcohol testing regulation, which resulted in a post-accident alcohol test indicating an alcohol concentration of 0.04 or greater". This is a count of fatal and non-fatal accidents which resulted in post-accident breath alcohol tests indicating a concentration of 0.04 or greater for any employees involved in the accident.

3) "Number of fatalities resulting from accidents which resulted in a post-accident alcohol test indicating an alcohol concentration of 0.04 or greater". This is a count of fatalities in accidents which resulted in post-accident alcohol tests indicating a concentration of 0.04 or greater for any employees involved in the fatal accidents.

Page 4 Following the table that summarizes ALCOHOL TESTING INFORMATION, you must provide the number of employees who engaged in alcohol misuse who were returned to duty in a covered position during this reporting period (having complied with the recommendations of a substance abuse professional as described in FTA regulations). This information should be available from the personnel office and/or alcohol program manager.

SAMPLE APPLICANT TEST RESULTS TABLE

The following example is for Section C, ALCOHOL TESTING INFORMATION, which summarizes pre-employment testing results. The procedures detailed here also apply to the other categories of testing in Section C which require you to summarize testing results for employees. This example uses the categories "Revenue Vehicle Operation" and "Armed Security Personnel" to illustrate the procedures for completing this section.

[A] Screening tests were performed on 157 job applicants for revenue vehicle operator positions during the reporting year. This information is entered in the first blank column of the table in the row marked "Revenue Vehicle Operation".

[B] Confirmation tests were necessary for 6 of the 157 applicants for revenue vehicle operator positions. Enter this information in the second blank column of the table in the row marked "Revenue Vehicle Operation". The confirmation test results for these 6 applicants were the following:

Applicant	Confirmation Result
#1	0.06
#2	0.01
#3	0.11
#4	0.04
#5	0.03
#6	0.02

[C] The confirmation test results for 2 of the applicants for revenue vehicle operator positions were equal to or greater than 0.02, but less than 0.04. Enter this information in the fourth blank column of the table in the row marked "Revenue Vehicle Operation".

[D] The confirmation test results for 3 of the applicants for revenue vehicle operator positions were equal to or greater than 0.04. Enter this information in the third blank column of the table in the row marked "Revenue Vehicle Operation".

[E] The last row, marked "TOTAL", requires you to add the numbers in each of the columns. With this example, 157 applicants for revenue vehicle operator positions and 107 applicants for armed security personnel positions were subjected to screening tests. The total for that column would be 264 (i.e., 157+107). The same procedure should be used for each column. (i.e., add all the numbers in that column and place the answer in the last row).

Please note that our sample data collection form also has information for armed security personnel on line two. The same procedures outlined for revenue vehicle operators should be followed for entering the data on armed security personnel. With applicants for armed security personnel positions, 107 screening tests were conducted resulting in 3 confirmation tests. No confirmation results were equal to or greater than 0.02, but less than 0.04; and the confirmation test result for 1 of the armed security personnel applicants was equal to or greater than 0.04. This information is entered in the row marked "Armed Security Personnel".

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PRE-EMPLOYMENT				
EMPLOYEE CATEGORY	NUMBER OF SCREENING TESTS	NUMBER OF CONFIRMATION TESTS	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.04
Bervice Vehicle Operation	157 →	6 →	2 →	3 →
Armed Security Personnel	107	3	0	1
TOTAL	264	9	2	4 ←
	A	B	C	D E

Note that adding up the numbers for confirmation results in columns three and four will not always match the number entered in the second column, "NUMBER OF CONFIRMATION TESTS". These numbers may differ since some confirmation test results may be less than 0.02.

Remember that the same procedures indicated above are to be used for completing all of the categories for testing in Section C.

Page 5 **OTHER ALCOHOL TESTING/PROGRAM INFORMATION** (Section D) requires information on employees tested for drugs and alcohol at the same time and that you complete a table dealing with violations of other alcohol provisions/prohibitions of the regulation and a table dealing with employees who refused to submit to an alcohol test.

Page 5 **Number of employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater,** requires that a count of all such employees be entered in the indicated box.

Page 5 **VIOLATIONS OF OTHER ALCOHOL PROVISIONS/PROHIBITIONS OF THIS REGULATION** requires supplying the number of covered employees who used alcohol prior to performing a safety-sensitive function, while performing a safety-sensitive function, and before taking a required post-accident alcohol test. The action taken with covered employees who violate any of these FTA alcohol regulation provisions is also to be supplied. Other violations not delineated in this table may also be provided.

Page 5 **EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST** requires information on the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a **random** or **non-random** (pre-employment, post-accident, reasonable suspicion, return to duty, or follow-up) alcohol test required under the FTA regulation.

Page 5 **ALCOHOL TRAINING/EDUCATION** (Section E) requires information on the number of supervisory personnel who have received alcohol training during the current reporting period.

Page 5 **FTA FUNDING SOURCES** (Section F) asks for the sources of FTA funds for your organization. Simply place a check mark by each applicable funding section.

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For FTA Use Only

FTA ALCOHOL TESTING MIS DATA COLLECTION FORM OMB No. 2132-0557

YEAR COVERED BY THIS REPORT: 20 __

A. EMPLOYER INFORMATION

Name _____

Address _____

_____

Contact _____

Phone _____

Consortium Used (if applicable)

Name _____

Address _____

_____

Contact _____

Phone _____

I, the undersigned, certify that the information provided on this Federal Transit Administration Alcohol Testing Management Information System Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

_____ _____

Signature Date of Signature

_____

Title

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

The Federal Transit Administration estimates that the average burden for this report form is 8 hours. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Office of Safety and Security TPM-30 Federal Transit Administration; 400 7th St., S.W.; Washington, D.C. 20590; OR Office of Management and Budget, Paperwork Reduction Project (2132-0557); Washington, D.C. 20503.

B. COVERED EMPLOYEES

COVERED EMPLOYEES	
EMPLOYEE CATEGORY	NUMBER OF FTA COVERED EMPLOYEES
Revenue Vehicle Operation	
Revenue Vehicle and Equipment Maintenance	
Revenue Vehicle Control/Dispatch	
CDL/Non-Revenue Vehicle	
Armed Security Personnel	
TOTAL	

READ BEFORE COMPLETING THE REMAINDER OF THIS FORM:

1. All items refer to the current reporting period only (for example, January 1, 1994 - December 31, 1994).

2. This report is only for testing REQUIRED BY THE FEDERAL TRANSIT ADMINISTRATION (FTA) AND THE U.S. DEPARTMENT OF TRANSPORTATION (DOT):

   - Results should be reported only for employees in COVERED POSITIONS as defined by the FTA alcohol testing regulation.
   - The information requested should only include testing for alcohol using the standard procedures required by DOT regulation 49 CFR Part 40.

3. Information on refusals for testing should only be reported in Section D ["OTHER ALCOHOL TESTING INFORMATION"]. Do not include refusals for testing in other sections of this report.

4. Complete all items; DO NOT LEAVE ANY ITEM BLANK. If the value for an item is zero (0), place a zero (0) on the form.

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C. ALCOHOL TESTING INFORMATION

EMPLOYEE CATEGORY	NUMBER OF SCREENING TESTS	NUMBER OF CONFIRMATION TESTS	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.04
PRE-EMPLOYMENT				
Revenue Vehicle Operation				
Revenue Vehicle and Equipment Maintenance				
Revenue Vehicle Control/Dispatch				
CDL/Non-Revenue Vehicle				
Armed Security Personnel				
Total				
RANDOM				
Revenue Vehicle Operation				
Revenue Vehicle and Equipment Maintenance				
Revenue Vehicle Control/Dispatch				
CDL/Non-Revenue Vehicle				
Armed Security Personnel				
Total				
POST-ACCIDENT				
Revenue Vehicle Operation				
Revenue Vehicle and Equipment Maintenance				
Revenue Vehicle Control/Dispatch				
CDL/Non-Revenue Vehicle				
Armed Security Personnel				
Total				

Number of persons denied a position as a covered employee following a pre-employment alcohol test indicating an alcohol concentration of 0.04 or greater:	

Number of accidents, as defined by the FTA alcohol testing regulation, which resulted in a post-accident alcohol test indicating an alcohol concentration of 0.04 or greater:	FATAL	NON-FATAL

Number of fatalities resulting from accidents which resulted in a post-accident alcohol test indicating an alcohol concentration of 0.04 or greater:	

C. ALCOHOL TESTING INFORMATION (cont.)

EMPLOYEE CATEGORY	NUMBER OF SCREENING TESTS	NUMBER OF CONFIRMATION TESTS	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.04
REASONABLE SUSPICION				
Revenue Vehicle Operation				
Revenue Vehicle and Equipment Maintenance				
Revenue Vehicle Control/Dispatch				
CDL/Non-Revenue Vehicle				
Armed Security Personnel				
Total				
RETURN TO DUTY				
Revenue Vehicle Operation				
Revenue Vehicle and Equipment Maintenance				
Revenue Vehicle Control/Dispatch				
CDL/Non-Revenue Vehicle				
Armed Security Personnel				
Total				
FOLLOW-UP				
Revenue Vehicle Operation				
Revenue Vehicle and Equipment Maintenance				
Revenue Vehicle Control/Dispatch				
CDL/Non-Revenue Vehicle				
Armed Security Personnel				
Total				

Number of employees who engaged in alcohol misuse who were returned to duty in a covered position during this reporting period (having complied with the recommendations of a substance abuse professional as described in FTA regulations):	

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D. OTHER ALCOHOL TESTING/PROGRAM INFORMATION

Number of employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater:	

VIOLATIONS OF OTHER ALCOHOL PROVISIONS/PROHIBITIONS OF THIS REGULATION		
NUMBER OF COVERED EMPLOYEES	VIOLATION	ACTION TAKEN
	Covered employee used alcohol while performing safety-sensitive function.	
	Covered employee used alcohol within 4 hours of performing safety-sensitive function.	
	Covered employee used alcohol before taking a required post-accident alcohol test.	

EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST	Number
Covered employees who refused to submit to a random alcohol test required under the FTA regulation:	
Covered employees who refused to submit to a non-random alcohol test required under the FTA regulation:	

E. ALCOHOL TRAINING/EDUCATION

TRAINING DURING CURRENT REPORTING PERIOD	Number
Supervisory personnel who have received at least 60 minutes of initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use as required by FTA alcohol testing regulations:	

F. FTA FUNDING SOURCES

FTA FUNDING SOURCES				
Check all sections that apply:	5307	5309	5310	5311

APPENDIX D TO PART 655 - ALCOHOL TESTING MANAGEMENT INFORMATION SYSTEM (MIS) "EZ" DATA COLLECTION FORM

INSTRUCTIONS

The following instructions are to be used as a guide for completing the Federal Transit Administration (FTA) **Alcohol Testing MIS "EZ" Data Collection Form**. This form should only be used if there is **no alcohol misuse** to be reported by your company. These instructions outline and explain the information requested and indicate the probable sources for this information. This reporting form includes four sections. These sections address the data elements required in the FTA and the U.S. Department of Transportation (DOT) alcohol testing regulations.

SECTION A - EMPLOYER INFORMATION requires the year covered by this report, the agency name for which the report is done, a current address, and a person's name and phone number to contact if there are any questions about the report. Below this, information must be entered for the consortium used (if applicable). Finally, a signature, title, and date are required certifying the correctness and completeness of the form. Note: A separate report must be submitted by each FTA recipient for each of its contract service and contract maintenance providers covered by the FTA alcohol testing regulation.

SECTION B - COVERED EMPLOYEES requires a count for each employee category that must be tested under the FTA alcohol testing regulation. The employee categories are: Revenue Service Vehicle Operation, Revenue Service Vehicle and Equipment Maintenance, Revenue Service Vehicle Control/Dispatch, Commercial Driver License (CDL) Holders who operate Non-Revenue Service Vehicles, and Security Personnel who carry Firearms. The most likely source for this information is the employer's personnel department. These counts should be based on the recipient's or contractor's records for the reported year. The TOTAL is a count of **all** covered employees for **all** categories combined, i.e., the sum of the columns.

SECTION C - ALCOHOL TESTING INFORMATION requires information for alcohol testing, refusals for testing, and training/education. The first table requests information on the **NUMBER OF ALCOHOL SCREENING TESTS CONDUCTED** in each category for testing. All numbers entered into the pre-employment category section of the table should be separated into the category of employment for which the person was applying or transferring. The other categories are for employee testing and require information for employees in **covered positions** only. Enter the number of alcohol screening tests conducted by employee category for each category of testing. Testing categories include: (1) random, (2) post-accident, (3) reasonable suspicion, (4) return to duty, and (5) follow-up testing. Each column in the table should be added and the answer entered in the row marked "TOTAL".

Following the table that summarizes **ALCOHOL TESTING INFORMATION**, you must provide a count of **employees who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in the FTA regulation)**. This information should be available from the personnel office and/or alcohol program manager.

EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST requires a count of the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a **random** or **non-random** (pre-employment, post-accident, reasonable suspicion, return to duty, or follow-up) alcohol test required under the FTA regulation.

ALCOHOL TRAINING/EDUCATION DURING CURRENT REPORTING PERIOD requires information on the number of supervisory personnel who have received alcohol training during the current reporting period.

SECTION D - FTA FUNDING SOURCES asks for the sources of FTA funds for your organization. Simply place a check mark by each applicable funding section.

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For FTA Use Only

FTA ALCOHOL TESTING MIS "EZ" DATA COLLECTION FORM OMB No. 2132-0557
(No Alcohol Misuse)

YEAR COVERED BY THIS REPORT: 20 __

A. EMPLOYER INFORMATION

Company Name _____

Address _____

_____

Contact _____

Phone _____

Consortium Used (if applicable)

Name _____

Address _____

_____

Contact _____

Phone _____

I, the undersigned, certify that the information provided on the attached Federal Transit Administration Alcohol Testing Management Information System "EZ" Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

_____ Signature _____ Date of Signature

_____ Title

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

The Federal Transit Administration estimates that the average burden for this report form is 8 hours. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Office of Safety and Security TPM-30 Federal Transit Administration; 400 7th St., S.W.; Washington, D.C. 20590; OR Office of Management and Budget, Paperwork Reduction Project (2132-0557); Washington, D.C. 20503.

B. COVERED EMPLOYEES

COVERED EMPLOYEES	
EMPLOYEE CATEGORY	NUMBER OF FTA COVERED EMPLOYEES
Revenue Vehicle Operation	
Revenue Vehicle and Equipment Maintenance	
Revenue Vehicle Control/Dispatch	
CDL/Non-Revenue Vehicle	
Armed Security Personnel	
TOTAL	

C. ALCOHOL TESTING INFORMATION

NUMBER OF ALCOHOL SCREENING TESTS CONDUCTED						
EMPLOYEE CATEGORY	PRE-EMPLOYMENT	RANDOM	POST-ACCIDENT	REASONABLE SUSPICION	RETURN TO DUTY	FOLLOW-UP
Revenue Vehicle Operation						
Revenue Vehicle and Equipment Maintenance						
Revenue Vehicle Control/Dispatch						
CDL/Non-Revenue Vehicle						
Armed Security Personnel						
Total						

Number of employees who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in the FTA regulation):	

EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST	Number
Covered employees who refused to submit to a random alcohol test required under the FTA regulation:	
Covered employees who refused to submit to a non-random alcohol test required under the FTA regulation	
ALCOHOL TRAINING/EDUCATION DURING CURRENT REPORTING PERIOD	**Number**
Supervisory personnel who have received at least 60 minutes of initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use as required by FTA alcohol testing regulations:	

D. FTA FUNDING SOURCES

FTA FUNDING SOURCES				
Check all sections that apply.	5307	5309	5310	5311

Issued on: April 2, 2001.

Hiram J. Walker,

Acting Deputy Administrator, Federal Transit Administration.

[FR Doc. 01–9415 Filed 4–27–01; 8:45 am]

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Federal Register

Monday,
April 30, 2001

Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1210
Watermelon Research and Promotion Plan: Referendum Procedures; Proposed Rule

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1210

[FV–01–701 PR]

Watermelon Research and Promotion Plan: Referendum Procedures

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rule would establish procedures which the U.S. Department of Agriculture (USDA or the Department) would use to conduct referenda under the Watermelon Research and Promotion Plan (Plan). Initially, they will be used in a referendum on whether watermelon producers, handlers, and importers approve an amendment to the Plan which would require all handlers to pay assessments on all watermelons they handle, including any watermelons handled after their importation into the United States.

DATES: Comments must be received by June 29, 2001.

ADDRESSES: Interested persons are invited to submit written comments concerning the proposed rule to the Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs (FV), Agricultural Marketing Service (AMS), USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535 South Building, Washington, DC 20250–0244. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours, or on the Internet at www.ams.usda.gov/fv/rpdocketlist.htm. Comments may also be submitted electronically to: malinda.farmer@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A copy of this rule may be found at the above Internet address.

Pursuant to the Paperwork Reduction Act of 1995 (PRA), also send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to the above address. Comments concerning the information collection under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Daniel R. Manzoni, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535 South Building, Washington, DC 20250–0244; telephone (202) 720–9915; facsimile (202) 205–2800; or Daniel.Manzoni@usda.gov.

SUPPLEMENTARY INFORMATION: The National Watermelon Promotion Board (Board) administers the Watermelon Research and Promotion Plan (Plan) under the supervision of the U.S. Department of Agriculture (USDA). The Plan was issued under the Watermelon Research and Promotion Act (Act) in 1989.

The Board conducts promotional, consumer information, and industry information programs. To fund these activities, producers and first handlers pay 2 cents per hundredweight (cwt.) on the watermelon that they produce or handle, respectively, and importers pay 4 cents per cwt. on the foreign watermelons they import into the United States. First handlers collect the assessments from producers of fewer than 10 acres of watermelons and send the producer assessment to the Board along with their handler assessments. The assessments on imported watermelons are collected by the U.S. Customs Service (Customs) at the time the watermelons enter the United States. Customs remits the assessments to the Board. Importers of less than 150,000 pounds of watermelons annually may request reimbursement of their assessments.

The Board has recommended amending the Plan be amended to cover all handlers of domestic watermelons—not just first handlers—and that these handlers pay assessments on all watermelons they handle, including any watermelons handled after their importation into the United States. The additional handlers would be wholesalers, persons who arrange the sale or transfer of watermelons (such as brokers), and fresh-cut processors. Watermelon producers, handlers, and importers will vote in a referendum on whether the amendment will be adopted.

A proposed rule on the amendment is published separately in this issue of the **Federal Register**.

Question and Answer Overview

Why Are These Referendum Procedures Being Proposed?

USDA will conduct rulemaking and a national referendum on an amendment to the Plan. In order to conduct the referendum, procedures need to be established. Publishing this proposed rule provides the opportunity for public input on the procedures before they are finalized.

How Long Do I Have To Comment on the Proposed Rule?

You have 60 days to submit written comments to USDA on the proposed procedures or to OMB on the paperwork burden associated with the procedures. You may submit your comments by mail, fax, or e-mail as indicated above.

Who Is Eligible To Vote in the Referendum?

If the following persons produced, handled, or imported watermelons in calendar year 2000, they may vote in the referendum: Current producers of 10 or more acres of watermelons; watermelon handlers (including first handlers, wholesalers, fresh-cut processors, and anyone who arranges the sale or transfer of watermelons); and watermelon importers of 150,000 or more pounds of watermelons annually.

How Will the Vote in the Referendum Be Tabulated?

Each eligible producer, handler, and importer will be allowed one vote in the referendum. In order to be implemented, the amendment must be approved by a majority of the producers, handlers, and importers voting in the referendum.

When Will the Referendum Be Held?

After we have analyzed the comments on this rule and the comments on the proposed rule on the amendments to the Plan, we will issue final referendum procedures and a second proposed rule on amendments. The second proposed rule on the amendments will include a Referendum Order, which will announce the voting period for the referendum. The voting period will last 30 days and be announced 30 days in advance.

How Can I Vote in the Referendum?

Voting will take place by mail. All known eligible producers, handlers, and importers will receive a ballot and voting instructions in the mail from USDA. Producers, handlers, and importers who believe they are eligible to vote and who do not receive a ballot in the mail may request a ballot by calling a toll-free telephone number. The ballot must be received by USDA by close of business on the last day of the voting period.

How Will USDA Make Certain That Only Eligible Persons Vote in the Referendum?

USDA will use Board records to verify voter eligibility and may request evidence of eligibility from persons unknown to the Board.

How Will USDA Make Certain That Every Eligible Person Has the Opportunity To Vote?

USDA will have a toll-free telephone number for persons to call to request a ballot if they do not receive a ballot and they believe they are eligible to vote. These persons will be required to provide documentation of their eligibility to vote.

Executive Orders 12866 and 12988

This proposed rule has been determined to be not significant for purposes of Executive Order (E.O.) 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

This proposed rule has been reviewed under E.O. 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

Under Section 1650 of the Act, non-exempt producers, handlers, and importers of watermelons may file a written petition with the Secretary of Agriculture (Secretary) if they believe that the Plan, any provision of the Plan, or any obligation imposed in connection with the Plan, is not in accordance with law. In the petition, the person may request a modification of the Plan or an exemption from the Plan. The petitioner will have the opportunity for a hearing on the petition. Afterwards, an Administrative Law Judge (ALJ) will issue a decision. If the petitioner disagrees with the ALJ's decision, the petitioner has 30 days to appeal to the Judicial Officer, who will issue a ruling on behalf of the Secretary. If the petitioner disagrees with the Secretary's ruling, the petitioner may file, within 20 days, an appeal in the U.S. District Court for the district where the petitioner resides or conducts business.

Regulatory Flexibility Act and Paperwork Reduction Act

Initial Regulatory Flexibility Analysis

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agricultural Marketing Service (AMS) is required to examine the impact of this proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

In 13 CFR 121.201, the Small Business Administration defines small agricultural service firms (handlers and importers) as those having annual receipts of less than $5 million and small agricultural producers as those having annual receipts of not more than $500,000.

There would be approximately 2,220 domestic watermelon producers, 1,170 domestic watermelon handlers, and 280 importers of foreign watermelons who would be eligible to vote under these referendum procedures. Currently, there are approximately 620 first handlers who are subject to the provisions of the Plan. An additional estimated 480 wholesalers and persons who arrange the sale or transfer of watermelons (such as brokers) and 70 fresh-cut processors would also be subject to the Plan if the amendment is approved in the referendum. A majority of these producers, handlers, and importers may be classified as small entities.

This proposed rule would create a new Subpart D-Referendum Procedures [7 CFR 1210.600–1210.607] under the Plan. The procedures would be used in conducting referenda under the Act and the Plan. Initially, the proposed procedures will be used for a referendum during which eligible watermelon producers, handlers, and importers will vote on a proposed amendment to the Plan. The amendment would revise the Plan and the regulations under the Plan to include all handlers. A proposed rule on the amendment is published separately in this issue of the **Federal Register**.

USDA will keep the watermelon industry informed throughout the referendum process to ensure that they are aware of and are able to participate in the referendum. USDA will also publicize information regarding the referendum process, so that trade associations and related industry media can be kept informed.

Voting in the referendum is optional. However, if producers, handlers, and importers choose to vote, the burden of casting a ballot would be offset by the benefits of having the opportunity to vote on whether the Plan should be amended.

The information collection requirements contained in this proposed rule are designed to minimize the burden on producers, handlers and importers voting in referenda. The estimated additional annual cost of providing the information by the estimated 3,670 persons eligible to vote in referenda would be $2,290 or $0.62 per voter.

The Secretary considered requiring eligible voters vote in person at various USDA offices across the country. The Secretary also considered electronic voting, but the use of computers is not universal. Conducting the referendum from one central location by mail ballot will be more cost-effective and reliable. The Department will provide easy access to information for potential voters through a toll-free telephone line.

There are no federal rules that duplicate, overlap, or conflict with this rule.

AMS has performed this initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities. However, in order to have additional data that may be helpful in evaluating the effects of this rule on small entities, we are inviting comments concerning potential effects. In particular, we are interested in determining the number of wholesalers, fresh-cut processors, and persons who arrange the sale or transfer of watermelons. In the past, these persons have not been eligible to vote in referenda on the watermelon program.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulation [5 CFR 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the referendum ballot represents the information collection that may be imposed by this rule.

Approximately 2,220 watermelon producers, 1,170 domestic watermelon handlers, and 280 importers of foreign watermelons would be eligible to vote in the referendum.

The ballot has been previously approved for use under OMB Number 0581–0093. However, the number of producers, handlers, and importers eligible to vote in referenda has changed. Therefore, the new burden has been submitted to OMB.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581–0093.

Expiration Date of Approval: January 31, 2001.

Type of Request: Revision of a currently approved information collection for advisory committees and boards and for research and promotion programs.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act. The new burden associated with the ballot is as follows:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per response.

Respondents: Eligible producers, handlers, and importers.

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Estimated Number of Respondents: 3,670.

Estimated Number of Responses per Respondent: 1 every 8 years (0.125).

Estimated Total Annual Burden on Respondents: 229 hours.

The estimated additional annual cost of providing the information by the estimated 3,670 persons eligible to vote in referenda would be $2,290 or $0.62 per voter. The currently approved burden for the ballot is 149.5. Therefore, the new burden estimate represents an increase of 79.5 hours which would be added under OMB No. 0581–0093.

Comments are invited on: (a) Whether the proposed additional collection of information is necessary and whether it will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed increase in the collection of information, including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments concerning the information collection requirements contained in this action should reference OMB No. 0581–0093, the docket number, and the date and page number of this issue of the **Federal Register**. Comments should be sent to the USDA Docket Clerk and OMB Desk Officer for Agriculture at the addresses and within the time frames specified above. All comments received will be available for public inspection during regular business hours at the same address. All responses to this notice will be summarized and included in the request for OMB approval.

OMB is required to make a decision concerning the increase in the collection of information contained in this rule between 30 and 60 days after publication. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Background

The Board conducts promotional, consumer information, and industry information programs. To fund these activities, producers and handlers pay 2 cents per hundredweight (cwt.) on the watermelon that they produce or handle, respectively, and importers pay 4 cents per cwt. on the foreign watermelons they import into the United States. Handlers collect the assessments from producers of 10 acres or more of watermelons and send the producer assessment to the Board along with their handler assessments. The assessments on imported watermelons are collected by the U.S. Customs Service (Customs) at the time the watermelons enter the United States. Customs remits the assessments to the Board. Importers of less than 150,000 pounds of watermelons annually may request reimbursement of their assessments.

The Board has recommended that the Plan and its rules and regulations be amended to cover all handlers of watermelons. A proposed rule on the amendment is published separately in this issue of the **Federal Register**.

Section 1655(a) of the Act requires that amendments to the Plan must be approved by the industry in a referendum. Section 1653(b) provides that amendments will not take effect unless they are approved by a majority of eligible voters who vote. Therefore, a referendum is required for the proposed amendment.

The proposed referendum procedures provide that the following persons would be eligible to vote in referenda: producers of 10 or more acres of watermelons; all handlers; and importers of 150,000 pounds or more annually. In the referendum to determine whether the industry favors expanding coverage of the Plan to all handlers (not just first handlers), the additional handlers will be allowed to vote as if this amendment were in place during the representative period and at the time of the referendum. The additional handlers include wholesalers, anyone who arranges the sale or transfer of watermelons (such as brokers), and fresh-cut processors. If the proposed amendment is approved in the referendum, the additional handlers would vote in subsequent referenda. If the proposed amendment is not approved in the referendum, the additional handlers would not vote in future referenda.

This proposed rule would add a new Subpart D—Referendum Procedures [7 CFR 1210.600–1210.607] to 7 CFR part 1210. The proposed procedures cover definitions, voting, instructions, subagents, ballots, referendum report, and confidential information.

In addition, this rule would: (1) Redesignate Subpart—Watermelon Research and Promotion Plan [7 CFR 1210.301–1210.367] as Subpart A; (2) redesignate and rename Subpart—Procedures for Nominating Members to the National Watermelon Promotion Board [7 CFR 1210.400–1210.405] as Subpart B—Nomination Procedures; and redesignate Subpart—Rules and Regulations [7 CFR 1210.500–1210.540] as Subpart C.

All written comments received in response to this proposal by the date specified will be considered prior to finalizing this action. The industry is asked to pay particular attention to the definitions to be sure that they are appropriate for purposes of determining voter eligibility. The industry is also encouraged to comment on any other practical considerations with regard to conducting the referendum within the parameters set forth in this proposed rule and the Act.

List of Subjects in 7 CFR Part 1210

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Reporting and recordkeeping requirements, Watermelon promotion.

For the reasons set forth in the preamble, it is proposed that Title 7, chapter XI of the Code of Federal Regulations, be amended as follows:

PART 1210—WATERMELON RESEARCH AND PROMOTION

1. The authority citation for 7 CFR part 1210 continues to read as follows:

Authority: 7 U.S.C. 4901–4912.

2. Revise the subpart heading for "Subpart—Watermelon Research and Promotion Plan" to read as follows:

Subpart A—Watermelon Research and Promotion Plan

3. Revise the subpart heading for "Subpart—Procedures for Nominating Members to the National Watermelon Promotion Board" to read as follows:

Subpart B—Nominating Procedures

4. Revise the subpart heading for "Subpart—Rules and Regulations" to read as follows:

Subpart C—Rules and Regulations

5. Add a new Subpart D—Referendum Procedures to read as follows:

Subpart D—Referendum Procedures

Sec.

1210.600 General.
1210.601 Definitions.
1210.602 Voting.
1210.603 Instructions.
1210.604 Subagents.
1210.605 Ballots.
1210.606 Referendum report.
1210.607 Confidential information.

Subpart D—Referendum Procedures

§ 1210.600 General.

Referenda to determine whether eligible producers, handlers, and importers favor the continuation, suspension, termination, or amendment of the Watermelon Research and Promotion Plan shall be conducted in accordance with this subpart.

§ 1210.601 Definitions.

Unless otherwise defined below, the definition of terms used in these procedures shall have the same meaning as the definitions in the Plan.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Department* means the United States Department of Agriculture.

(c) *Eligible handler* means any person (except a common contract carrier of watermelons owned by another person) who handles watermelons, including a producer who handles watermelons of the producer's own production, subject to the provisions of § 1210.602(a), who handles watermelons as a person performing a handling function and either:

(1) Takes title or possession of watermelons from a producer and directs the grading, packing, transporting, and selling of the watermelons in the current of commerce;

(2) Purchases watermelons from producers;

(3) Purchases watermelons from handlers;

(4) Purchases watermelons from importers; or

(5) Arranges the sale or transfer of watermelons from one party to another and takes title or possesssion of the watermelons: *Provided,* That harvest crews and common carriers who collect and transport watermelons from the field to a handler are not handlers and that retailers, wholesale retailers, foodservice distributors, and foodservice operators are not handlers.

(d) *Eligible importer* means any person who imports 150,000 pounds or more watermelons annually into the United States as principal or as an agent, broker, or consignee for any person who produces watermelons outside the United States for sale in the United States. An importer who imports less than 150,000 pounds of watermelons annually and did not apply for and receive reimbursement of assessments is also an eligible importer.

(e) *Eligible producer* means any person who is engaged in the growing of 10 or more acres of watermelons, including any person who owns or shares the ownership and risk of loss of such watermelon crop. A person who shares the ownership and risk of loss includes a person who:

(1) Owns and farms land, resulting in ownership, by said producer, of the watermelons produced thereon;

(2) Rents and farms land, resulting in ownership, by said producer, of all or a portion of the watermelons produced thereon; or

(3) Owns land which said producer does not farm and, as rental for such land, obtains the ownership of a portion of the watermelons produced thereon. Ownership of, or leasehold interest in land, and the acquisition, in any manner other than set forth in this subpart, of legal title to the watermelons grown on said land, shall not be deemed to result in such owners or lessees becoming producers. Persons who produce watermelons for non-food uses are not producers for the purposes of this subpart.

(f) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity. For the purpose of this definition, the term partnership includes, but is not limited to:

(1) A husband and wife who have title to, or leasehold interest in, land as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and

(2) So-called *joint ventures* wherein one or more parties to the agreement, informal or otherwise, contributed land and others contributed capital, labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in the production, handling, or importation of watermelons for market and the authority to transfer title to the watermelons so produced, handled, or imported.

(g) *Referendum agent* or *agent* means the individual or individuals designated by the Secretary to conduct the referendum.

(h) *Representative period* means the period designated by the Secretary pursuant to the Act.

§ 1210.602 Voting.

(a) Each person who is an eligible producer, handler, or importer as defined in this subpart, at the time of the referendum and who also was a producer, handler, or importer during the representative period, shall be entitled to one vote in the referendum: *Provided,* That each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce watermelons in which more than one of the parties is a producer, shall be entitled to one vote in the referendum covering only that producer's share of the ownership: *Provided further,* That the vote of a person who both produces and handles watermelons will be counted as a handler vote if the producer purchased watermelons from other producers, in a combined total volume that is equal to 25 percent or more of the producer's own production; or the combined total volume of watermelon handled by the producer from the producer's own production and purchased from other producer's production is more than 50 percent of the producer's own production: *Provided further,* That the vote of a person who both imports and handles watermelons will be counted as an importer vote if that person imports 50 percent or more of the combined total volume of watermelons handled and imported by that person.

(b) Proxy voting is not authorized, but an officer or employee of a corporate producer, handler, or importer, or an administrator, executor, or trustee of a producing, handling, or importing entity may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that the individual is an officer, employee of the producer, handler, or importer, or an administrator, executor, or trustee of a producing, handling, or importing entity and that the individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) *Casting of ballots.* All ballots are to be cast as instructed by the Secretary.

§ 1210.603 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the

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person voting, or on whose behalf the vote is cast, is an eligible voter.

(c) Give reasonable public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the voting period, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as said agent may deem advisable.

(d) Mail to eligible producers; importers; and in the case of an order assessing handlers, handlers whose names and addresses are known to the referendum agent; the instructions on voting; a ballot; and a summary of the terms and conditions to be voted upon. No person who claims to be eligible to vote shall be refused a ballot. However, such persons may be required to submit evidence of their eligibility.

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.

(f) Prepare a report on the referendum.

(g) Announce the results to the public.

§ 1210.604 Subagents.

The referendum agent may appoint any individual or individuals necessary to assist the agent in performing such agent's functions hereunder. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1210.605 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be questioned for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was questioned, by whom questioned, why the ballot was questioned, the results of any investigation made with respect to the questionable ballot, and the disposition of the questionable ballot. Ballots invalid under this subpart shall not be counted.

§ 1210.606 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 1210.607 Confidential information.

All ballots cast and their contents and all other information or reports furnished to, compiled by, or in possession of, the referendum agent or subagents that reveal, or tend to reveal, the identity or vote of any producer, handler, or importer of watermelons shall be held strictly confidential and shall not be disclosed.

Dated: April 23, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–10601 Filed 4–27–01; 8:45 am]

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Monday,
April 30, 2001

Part V

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1210

Watermelon Research and Promotion Plan; Amendment To Cover All Handlers; Proposed Rule

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1210

[FV–01–702 PR1]

Watermelon Research and Promotion Plan; Amendment To Cover All Handlers

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rule would amend the Watermelon Research and Promotion Plan (Plan) and the regulations issued under the Plan to cover all handlers of watermelons—including wholesalers, persons who arrange the sale or transfer of watermelons, and fresh-cut processors in addition to the first handlers who are currently covered. Under this rule, all handlers would pay assessments and file reports on all watermelons they handle, including any watermelons handled domestically after their importation. All handlers would also be eligible to seek nomination to the National Watermelon Promotion Board and vote in referenda. The amendment would increase assessment income under the watermelon program. In order to become effective, the amendment must be approved by a majority of the watermelon producers, handlers, and importers voting in a referendum.

DATES: Comments must be received by June 29, 2001.

ADDRESSES: Interested persons are invited to submit written comments concerning the proposed rule to the Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs (FV), Agricultural Marketing Service (AMS), USDA, Stop 0244, 1400 Independence Avenue, S.W., Room 2535 South Building, Washington, DC 20250–0244. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours, or on the Internet at www.ams.usda.gov/fv/rpdocketlist.htm. Comments may also be submitted electronically to: malinda.farmer@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A copy of this rule may be found at the above Internet address.

Pursuant to the Paperwork Reduction Act of 1995 (PRA), also send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to the above address. Comments concerning the information collection under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Daniel R. Manzoni, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535 South Building, Washington, DC 20250–0244; telephone (202) 720–9915; facsimile (202) 205–2800; or e-mail Daniel.Manzoni@USDA.GOV.

SUPPLEMENTARY INFORMATION: The National Watermelon Promotion Board (Board) administers the Watermelon Research and Promotion Plan (Plan) [7 CFR part 1210] under the supervision of the U.S. Department of Agriculture (USDA or the Department). The Plan was implemented in June 1989 under the Watermelon Research and Promotion Act (Act) [Pub. L. 99–198; enacted January 1, 1986; 7 U.S.C. 4901–4916, as amended].

Under the Plan, the National Watermelon Promotion Board (Board) conducts promotional, consumer information, and industry information programs. To fund these activities, producers and handlers pay 2 cents per hundredweight (cwt.) on the domestic watermelons that they produce or handle, respectively, and importers pay 4 cents per cwt. on the foreign watermelons they import into the United States. Handlers collect the assessments from producers of 10 or more acres of watermelons and send the producer assessment to the Board along with their handler assessments. The assessments on imported watermelons are collected by the U.S. Customs Service (Customs) at the time the watermelons enter the United States. Customs remits the assessments to the Board. Importers of less than 150,000 pounds of watermelons annually may request the Board to reimburse them for the assessments collected by Customs and remitted to the Board.

Question and Answer Overview

Why Should All Handlers of Watermelons Pay Assessments Under the Plan?

Between the farm and retail markets, watermelons are handled several times. The Plan currently only covers first handlers of watermelons—those who first put watermelons into the marketing chain. However, wholesalers, fresh-cut processors, and other persons who arrange the sale or transfer of watermelons perform similar functions and benefit from the Board's promotion of watermelons. Therefore, the Board recommended that these additional handlers also be covered by the Plan. Including all handlers would simplify the assessment process because all—not just some—handlers would be required to pay assessments.

What Would Be the Overall Impact of This Rule?

Currently, there are approximately 619 first handlers required to pay assessments to the Board on the domestic watermelons they handle. If this amendment is approved, first handlers would be required by pay assessments on all watermelons they handle, including any watermelons handled domestically after their importation.

Also, an additional estimated 550 handlers—wholesalers, fresh-cut processors, and persons who arrange the sale or transfer of watermelons (such as brokers)—would be required to pay assessments for the first time. The additional handlers would not include retailers, wholesale retailers, foodservice distributors, or foodservice operators. If you are one of these handlers, you would be expected to pay an assessment to the Board of 2 cents per cwt. on the watermelons they handle, including any watermelons handled domestically after their importation into the United States. The assessment would be due not later than 30 days after the end of the month in which the watermelons were handled. You would also be required to submit to the Board with your assessments a report containing your name, address, and telephone number, the period covered by the report, and the total quantity of watermelons handled during the reporting period. If assessments are not paid on time, late payment charges and interest would be applied to the amount due, and you might be subject to civil penalties.

On the other hand, you will be eligible to be nominated and to serve as a handler member of the Board for the district in which you reside. This provides the opportunity to participate in the development and implementation of marketing and research projects which can impact all aspects of the industry, from field to store. You will also be eligible to vote in referenda relating to the Plan—including the referendum on this amendment.

How Will This Change Affect Board Operations?

The main impact on the Board would be the availability of an additional $900,000 in assessment income which would be used to benefit the watermelon industry as a whole through more marketing, public relations, education, and research activities. This has the potential to increase demand for watermelons.

How Can I Express My Opinion—Either For or Against—the Proposed Amendment?

You have 60 days to submit a comment in writing to the address listed at the beginning of this rule Comments may be submitted by mail, fax, or e-mail. In addition, if you are a watermelon producer, handler, or importer, you will have the opportunity to vote either "yes" or "no" in the national referendum which will be held on the amendment.

Why Is There Going To Be a National Referendum on the Amendment?

The Act requires USDA to conduct a referendum on amendments to the Plan. Conducting a referendum allows the persons affected or potentially affected by the amendments the opportunity to vote on whether it should be adopted.

When Will the Vote Be Taken?

It is expected that the referendum will be held in Fall 2001.

How Can I Vote in the Referendum?

Referendum voting on this program normally takes place by mail. However, USDA is exploring the possibility of providing watermelon producers, handlers, and importers the opportunity to vote electronically. If adequate reliability and security can be obtained, voting will take place by mail and electronically. If adequate reliability and security cannot be obtained, voting will take place by mail. Regardless, all known eligible producers, handlers, and importers will receive a ballot and voting instructions in the mail from USDA. Producers, handlers, and importers who believe they are eligible to vote and who do not receive a ballot in the mail will be able to request a ballot by calling the USDA referendum agent at a toll-free telephone number. The voting period will last about one month.

What Criteria Will USDA Use To Decide Whether the Industry Wants the Amendment or Not?

The amendment must be approved by a simple majority of the voters in the referendum.

If the Watermelon Industry Approves This Amendment, When Will It Become Effective?

Most likely, the amendment would become effective for the 2002 marketing year which begins on April 1, 2002.

Executive Orders 12866 and 12988

This proposed rule has been determined to be not significant for purposes of Executive Order (E.O.) 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

This proposed rule has been reviewed under E.O. 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

Section 1645 of the Act allows producers, handlers, and importers of watermelons who are subject to the Plan to file a written petition with the Secretary of Agriculture (Secretary) if they believe that the Plan, any provision of the Plan, or any obligation imposed in connection with the Plan, is not in accordance with law. In the petition, the person may request a modification of the Plan or an exemption from the Plan. The petitioner will have the opportunity for a hearing on the petition. Afterwards, an Administrative Law Judge (ALJ) will issue a decision. If the petitioner disagrees with the ALJ's decision, the petitioner has 30 days to appeal to the Judicial Officer, who will issue a ruling on behalf of the Secretary. If the petitioner disagrees with the Secretary's ruling, the petitioner may file, within 20 days, an appeal in the U.S. District Court for the district where the petitioner resides or conducts business.

Regulatory Flexibility Act and Paperwork Reduction Act

Initial Regulatory Flexibility Analysis

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agricultural Marketing Service (AMS) is required to examine the impact of this proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

In 13 CFR 121.201, the Small Business Administration defines small agricultural service firms (handlers and importers) as those having annual receipts of less than $5 million and small agricultural producers as those having annual receipts of not more than $500,000.

Currently, there are approximately 2,220 producers of 10 or more acres of watermelons, 620 handlers, and 280 importers of more than 150,000 pounds of watermelons annually. If this rule is implemented, there would be an additional 550 handlers subject to the Plan: 480 wholesalers and persons who arrange the sale or transfer of watermelons and 70 fresh-cut processors. A majority of the producers, handlers, and importers may be classified as small entities.

This proposed rule would amend the Plan to cover all handlers of watermelons. If it is adopted, wholesalers, persons who arrange the sale or transfer of watermelons, and fresh-cut processors of watermelons-in addition to first handlers—would pay an assessment of 2 cents per cwt. on all watermelons they handle (including any watermelons handled domestically after their importation), file reports with the Board, keep records on their handling transactions, and be subject to penalties for noncompliance with the Plan. These additional handlers will also be eligible to be nominated to serve as handler members on the Board and to vote in referenda.

The watermelon industry as a whole could benefit from this rule. Covering all handlers under the Plan would simplify the assessment process and provide more income to the Board. The assessment process would be simplified because all handlers would be treated equally. No longer would the first handler be the only person paying the handler assessment. Covering all handlers is more workable in an actual business setting. Also, an additional 550 handlers paying assessments is likely to increase the income of the Board from $1.3 million to $2.2 million annually. As a result, there would be more funds available to the Board to increase the demand for watermelons, which would benefit producers, handlers, and importers alike, without increasing the rate of assessment.

The Board would use the additional revenue to increase post harvest research and to enhance its category management project. Category management is a new system used by major supermarket chains to manage supplies of the various products they sell. Each section of a supermarket is considered a category, and some sections—such as the produce section—contain several categories. With category management, the supermarket chains are less flexible in how much of a given product they want within a given time frame. In order to maintain or increase market share, the suppliers to the retail chains need to develop their

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own category management plans. It is much more difficult for producers and suppliers of perishable items to fit into this system than producers and suppliers of non-perishable goods. This means that an effective category management program may be essential for a perishable agricultural commodity group. However, developing an effective category management program is expensive. The Board began developing its category management program in 2000. The Board's goal is to position watermelons as the leader in the melon category of the produce section. In order to maintain its category management program, the Board needs to purchase additional sales data and conduct additional consumer research. An effective category management plan has the potential to increase demand for watermelons. This would benefit producers, handlers, and importers.

The Board considered raising the assessment rate for producers, handlers, and importers by 50 percent in order to generate additional funds to grow demand for watermelons. However, watermelon producers are not in the position to increase their burden under the program, given the state of the industry. Therefore, this alternative was not considered viable. In the watermelon industry, just as in other fruit and vegetable industries, there are handlers that cover the assessment cost as a business expense, handlers that pass the cost back to producers, and handlers that pass the cost along to retailers and, hence, consumers. Therefore, it is likely that some of the additional assessments collected from the newly covered handlers would be passed back to first handlers, who may pass it back to producers. However, it is not anticipated that this will represent a majority of the additional assessments that would be collected. Any increased cost for producers is expected to be less than an overall increase in the producer assessment. In addition, any increased cost for producers or handlers is likely to be offset by the benefit of increased demand for watermelons.

The information collection requirements contained in this proposed rule are designed to minimize the burden on handlers covered by the watermelon research and promotion program. The estimated additional annual cost of providing the information by 550 new handlers would be $2,750 or $5 per new handler as discussed below.

There are no federal rules that duplicate, overlap, or conflict with this rule.

AMS has performed this initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities. However, in order to have additional data that may be helpful in evaluating the effects of this rule on small entities, we are inviting comments concerning potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this proposed rule and information on the expected benefits and costs.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulation [5 CFR 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection and recordkeeping requirements that would be imposed by this rule have been submitted to OMB.

The information collection burden associated with current producers, handlers, and importers is already reflected in the information collection approved for use under OMB Number 0581–0093.

This proposed rule would add an information collection burden on the additional 550 handlers who would be subject to the Plan. The information collection burden includes filing reports and maintaining books and records under the Plan. Handlers are required to maintain such records for two fiscal years beyond the fiscal period of their applicability. The additional handlers would also be eligible to vote in referenda under the Plan, but the voting burden is associated with the ballot which is included in the proposed referendum procedures which are being published separately in this issue of the **Federal Register**.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581–0093.

Expiration Date of Approval: March 31, 2001.

Type of Request: Revision of a currently approved information collection for research and promotion programs.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act.

The increase in burden associated with this rule is as follows:

1. Handler's Report

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .75 hours per response.

New Respondents: Handlers.

Estimated Number of New Respondents: 550.

Estimated Number of Responses per New Respondent: 4 times a year.

Estimated Total Annual Burden on New Respondents: 1,650 hours

2. A Requirement to Maintain Records Sufficient to Verify Reports Submitted Under the plan

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .50 hours per response.

New Respondents: Handlers.

Estimated Number of New Respondents: 550.

Estimated Total Annual Burden on New Respondents: 275 hours.

The estimated additional annual cost of providing the information by 550 new handlers would be $2,750 or $5 per new handler. The increase of 275 total burden hours would be added to the previous burden total of 314.5 hours under OMB No. 0581–0093.

Comments are invited on: (a) Whether the proposed additional collection of information is necessary and whether it will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed increase in the collection of information, including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments concerning the information collection requirements contained in this action should reference OMB No. 0581–0093, the docket number, and the date and page number of this issue of the **Federal Register**. Comments should be sent to the USDA Docket Clerk and the OMB Desk Officer for Agriculture at the addresses and within the time frames specified above. All comments received will be available for public inspection during regular business hours at the same address. All responses to this notice will be summarized and included in the request for OMB approval.

OMB is required to make a decision concerning the increase in the collection of information contained in this rule between 30 and 60 days after publication. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Background

The National Watermelon Promotion Board (Board) has recommended that the Watermelon Research and Promotion Plan (Plan) be amended to include all handlers of domestic watermelons due to an increased need to promote watermelons. In 1999, domestic production of watermelons totaled 4.1 billion pounds. This was a 12-percent increase over 1998. At the same time, the season average price of watermelons fell from $7.71 per hundredweight (cwt.) in 1998 to $6.49 per cwt. in 1999. This indicates that additional promotion of watermelons is needed.

The proposed amendment would increase the Board's assessment income by approximately $900,000 to approximately $2.2 million annually. It would also streamline the assessment payment and collection processes because all handlers would be covered—not just the first handler—because they perform similar functions in the marketing chain.

Section 1210.305 of the Plan currently defines a handler as any person (except a common or contract carrier of watermelons owned by another person) who handles watermelons, including a producer who handles watermelons of the producer's own production. This means the first person who performs the handling function. Under § 1210.307 of the Plan, to handle means to grade, pack, process, sell, transport, purchase, or in any other way to place or cause watermelons to which one has title or possession to be placed in the current of commerce. The handling function does not include the transportation or delivery of field run watermelons by a producer to a handler for grading, sizing, or processing.

Currently, 691 first handlers pay an assessment of 4 cents per cwt. on the watermelons that they handle, file reports with the Board for the months in which they handle watermelons, and maintain records of their handling transactions for a period of two years after the year in which they occurred. In 1999, the average handler assessment was $1,640.

Assessment payments and a report must be postmarked not later than 30 days after the end of the month in which the watermelons are handled. If a handler does not remit the assessments to the Board on time, the Board imposes a one-time late payment charge of 10 percent. In addition, handlers are charged 1.5 percent per month interest on the outstanding balance. The failure to pay assessments is considered a violation of the Act and the Plan. If a handler does not pay the assessments which are due, the Board may audit the handler's records and request USDA to take legal action against the handler. If USDA takes legal action, the handler may be subject to civil penalties from $550 to $5,500 per violation.

The Board has identified additional 550 handlers who would be required to pay the same assessment, file the same reports, and maintain the same records as first handlers on all they handle, including any watermelons handled domestically after their importation, if this amendment is adopted. The additional handlers are wholesalers, fresh-cut processors, and other persons who arrange the sale or transfer of watermelons. These handlers would also be subject to the same penalties for non-payment of assessments.

The additional handlers would also be eligible to serve as handler members on the Board and vote in referenda. Serving on the Board provides the opportunity to participate in the development and implementation of marketing and research projects which can impact all aspects of the industry, from the field to the consumer's table. Voting in referenda provides the right to vote on changes in the program—including the current proposed amendment—and on whether the program should continue or be terminated.

To include all handlers under the Plan, this proposed rule would revise § 1210.305 by eliminating the reference to the first person who performs the handling function and by adding a statement that handler does not mean a retailer, wholesale retailer, foodservice distributor, or foodservice operator.

In addition, this rule would amend §§ 1210.308 and 1210.341(a) of the Plan, §§ 1210.402(b) and 1210.404(d) of the nominating procedures issued under the Plan, and §§ 1210.515(a) and 1210.518(a) and (b) of the rules and regulations issued under the Plan in order to remove references to first handlers. It is also necessary to amend §§ 1210.341(c) and 1210.350(a) of the Plan to clarify the assessment and reporting requirements for all handlers. Since § 1210.517 (which concerns determining first handlers) would no longer be necessary if all handlers are covered by the Plan, that section would be removed and reserved. In addition, this rule would add a new § 1210.518(b)(3) to state that the handling party is responsible for the payment of assessments on any handling of watermelons.

This rule would also redesignate §§ 1210.301 through 1210.314 of the Plan as necessary to arrange the definitions in alphabetical order.

A proposed rule to establish procedures for the referendum on these amendments to the Plan and future referenda is published separately in this issue of the **Federal Register**.

The proposed rule on referendum procedures also adds letter designations to the various subparts of the watermelon research and promotion program as follows: the Plan (§§ 1210.301 through 1210.367) would become Subpart A; the Procedures for Nominating Members to the National Watermelon Promotion Board (§§ 1210.400 through 1210.405) would become Subpart B; the Rules and Regulations (§§ 1210.500 through 1210.540) would become Subpart C; and the proposed Referendum Procedures (proposed §§ 1210.600 through 1210.607) would become Subpart D.

The Act requires a referendum for all amendments to the Plan (Subpart A) except a change in the rate of assessment, which may be made after notice-and-comment rulemaking. The Act does not require a referendum for changes to Subparts B, C, and D. Therefore, the proposed amendments to the Plan which are contained in this rule would be the subject of the upcoming referendum. The proposed amendments to Subpart B (nominating procedures) and Subpart C (rules and regulations) which are contained in this rule can be made without a referendum. However, since they are needed only if the amendments to the Plan are approved in the referendum, they will be adopted only if the amendments to the Plan are approved in the referendum.

List of Subjects in 7 CFR Part 1210

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Reporting and recordkeeping requirements, Watermelon promotion.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 1210 be amended as follows:

PART 1210—WATERMELON RESEARCH AND PROMOTION

1. The authority citation for 7 CFR part 1210 continues to read as follows:

Authority: 7 U.S.C. 4901–4916.

2. Redesignate §§ 1210.301 through 1210.314 as follows:

Old section	New section
1210.301	1210.313
1210.302	1210.301
1210.303	1210.308

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1210.313	1210.312
1210.314	1210.306

3. Newly designated § 1210.305 is revised to read as follows:

§ 1210.305 Handler.

Handler means any person (except a common or contract carrier of watermelons owned by another person) who handles watermelons, including a producer who handles watermelons of the producer's own production. *Handler* shall not mean a retailer, wholesale retailer, foodservice distributor, or foodservice operator.

4. In § 1210.341, paragraphs (a) and (c) are revised to read as follows:

§ 1210.341 Assessments.

(a) Assessments shall be levied on all watermelons produced and handled in and imported into the United States for consumption as human food. Producers shall be assessed 2 cents per hundredweight on the watermelons that they produce. Handlers shall be assessed 2 cents per hundredweight on all watermelons that they handle, including any watermelons handled after their importation into the United States. If a person performs both a producing and a handling function on any lot of domestic watermelons, the person shall pay both the producer assessment and the handler assessment on those watermelons. Importers shall be assessed 4 cents per hundredweight on the watermelons they import at the time of entry of the watermelons into the United States.

* * * * *

(c) Each handler is responsible for payment of the handler assessment to the Board, and each handler who purchases watermelons from a producer is responsible for the collection and payment to the Board of both the producer assessment and the handler's own assessment. A handler who purchases watermelons from a producer may collect the producer assessment from the producer or deduct the assessment from the proceeds paid to the producer on whose watermelons the assessments are made. A handler who purchases from a producer shall maintain separate records for each producer's watermelons handled, including watermelons produced by the handler. In addition, all handlers shall maintain records that indicate the total quantity of watermelons handled by the handler, including those that are exempt under this Plan, and such other information as may be prescribed by the Board.

* * * * *

5. In § 1210.350, paragraph (a) introductory text is revised to read as follows:

§ 1210.350 Reports.

(a) Handlers shall report to the Board at such times and in such manner as the Board may prescribe by regulations whatever information may be necessary in order for the Board to perform its duties. In addition, each handler who purchases watermelons from a producer shall maintain a record with respect to each producer for whom watermelons were handled and for watermelons produced and handled by the handler. Such reports may include, but shall not be limited to, the following information:

* * * * *

6. In § 1210.402, paragraph (b) is revised to read as follows:

§ 1210.402 Voter and board member nominee eligibility.

* * * * *

(b) Any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity which is engaged in the production or handling of watermelons is considered a person and as such is entitled to only one vote, except that such person may cast proxy votes as provides in § 1210.403 and § 1210.404 of this subpart.

* * * * *

7. In § 1210.404, paragraph (d) is revised to read as follows:

§ 1210.404 Importer member nomination and selection.

* * * * *

(d) Any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity which is engaged in the importing of watermelons is considered a person and as such is entitled to only one vote, except that such person may cast proxy votes as provided in paragraph (e)(1) of this section.

* * * * *

8. In § 1210.515, paragraph (a) is revised to read as follows:

§ 1210.515 Levy of assessments.

(a) An assessment of 2 cents per hundredweight shall be levied on all watermelon produced in the United States for ultimate consumption as human food. An assessment of 2 cents per hundredweight shall be levied on all watermelons handled for ultimate consumption as human food. An assessment of 4 cents per hundredweight shall be levied on all watermelons imported into the United States for ultimate consumption as human food at the time of entry into the United States.

* * * * *

9. Section 1210.517 is removed and reserved.

10. In § 1210.518, paragraphs (a) and (b)(1) are revised and a new paragraph (b)(3) is added to read as follows:

§ 1210.518 Payment of assessments.

(a) *Time of payment.* The assessment of domestically produced watermelons shall become due at the time of each handling of the watermelons for non-exempt purposes. The assessment on imported watermelons shall become due at the time of entry, or withdrawal, into the United States and at the time of each subsequent handling.

(b) *Responsibility of payment.* (1) A handler who purchases watermelons from a producer is responsible for collection and payment of both the producer's and the handler's assessment. A handler may collect the producer's assessment from the producer or deduct the producer's assessment from the proceeds paid to the producer on whose watermelons the producer assessment is made. Any such collection or deduction of producer assessment shall be made not later than the time when the handler handles the watermelons.

* * * * *

(3) The payment of assessments on any handling of watermelons is the responsibility of the handling party.

* * * * *

Dated: April 23, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–10600 Filed 4–27–01; 8:45 am]

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Federal Register

Monday,
April 30, 2001

Part VI

Department of Agriculture

7 CFR Part 26

Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program; Proposed Rule and Notice

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 26

RIN#0503–AA22

Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program

AGENCY: Office of Outreach, Office of the Secretary, USDA.

ACTION: Proposed rule.

SUMMARY: The United States Department of Agriculture (USDA or the Department) is proposing to add regulations at 7 CFR part 26 to govern the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program whereby the 1890 Land Grant Colleges, including Tuskegee University, Indian tribal community colleges and Alaska native cooperative colleges, Hispanic serving post-secondary educational institutions and or other qualifying educational institutions and community-based organizations are eligible to compete for grants and cooperative agreements to provide outreach and technical assistance to socially disadvantaged farmers and ranchers. The program's objective is to reverse the decline of socially disadvantaged farmers and ranchers across the United States. The recipients of these awards will provide services to encourage and assist socially disadvantaged farmers and ranchers to own and operate their own farms and ranches, participate in agricultural programs, and thus allow them to become an integral part of the agricultural community and strengthen the rural economy.

DATES: Comments on the proposed rule must be received on or before May 30, 2001.

ADDRESSES: Submit written comments, in duplicate, to Director, USDA Office of Outreach, Ag STOP 1710, 1400 Independence Avenue, SW., Washington, DC 20250–1710, fax number (202) 720–7489, or via e-mail to *2501rfp@usda.gov*. Comments hand-delivered or those delivered by overnight express mail or courier service should be brought to the following address: USDA Office of Outreach, 501 School Street, SW., First Floor, Washington, DC 20024 between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday, excluding Federal holidays. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Geraldine Herring, Special Outreach Program Coordinator, USDA Office of Outreach, telephone (202) 720–6350 or 1–800–880–4183, fax number (202) 720–7489, e-mail: *2501rfp@usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12988

The Office of Management and Budget (OMB) has determined that the proposed rule is not a "significant regulatory action" as defined in Executive Order 12866 because the proposed rule will not have an annual effect on the economy of $100 million or more or have any other adverse affects on the economy or any sector thereof, will not create a serious inconsistency or otherwise interfere with prior or intended actions of another agency, will not materially alter the budgetary impact of grants or similar programs or the rights or recipients thereof, and does not raise novel legal or policy issues. Therefore, Executive Order 12866 does not require review of the proposed rule by OMB, and such review has not occurred.

USDA has reviewed this proposed rule in accordance with Executive Order 12998, Civil Justice Reform. The proposed rule meets the applicable standards in section 3 of Executive Order 12988.

Executive Order 12372

For the same reasons contained in the Final rule related notice to 7 CFR part 3015, subpart V (48 FR 29114, June 24, 1983), the Secretary has determin ed that this program does not directly affect State and local governments, and thus is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 13132

Executive Order 13132, Federalism, imposes requirements on USDA in the development of regulatory policies that have Federalism implications. USDA has determined that the proposed rule will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule also will not impose substantial costs on States and localities. Accordingly, the proposed rule is not subject to the requirements of Executive Order 13132.

Executive Order 13175

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, imposes requirements on USDA in the development of regulatory policies that have tribal implications or preempt tribal law. USDA has determined that the proposed regulation does not have a substantial direct effect on one or more Indian tribes or on either the relationship or the distribution of powers and responsibilities between the Federal Government and the Indian Tribes. Thus, the proposed rule is not subject to the requirements of Executive Order 13175.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), the undersigned has determined and certified by signature of this document that the proposed rule will not have a significant economic impact on a substantial number of small entities. Eligibility and guidelines for this program are dictated by statute. Educational institutions are not small entities as defined in the Regulatory Flexibility Act. Community-based organizations may or may not qualify as small entities. The amount of annual funding for this program thus far typically ranges from $3 million to $6 million, including awards to both educational institutions and community-based organizations, and thus does not have a large economic impact on small entities. This program does not impose requirements on small entities which are not eligible and do not affirmatively elect to apply for a competitive award under this program, and imposes on small entities receiving applying for and receiving awards only minimal requirements necessary for proper administration, oversight, and fiscal accountability of this program. Therefore, a regulatory flexibility analysis is not required and was not performed.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, established requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector. Under section 202 of the UMRA, 2 U.S.C. 1532, agencies must prepare a written statement, including a cost benefit analysis, before promulgating a notice of proposed rulemaking that includes any Federal mandates that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. The proposed rule contains no Federal mandates that would result in such expenditures for State, local, and Tribal governments or the private sector. Therefore, no written statement, including cost-benefit analysis, is required under the UMRA for this proposed rule.

National Environmental Policy Act

It is the determination of USDA that this action is not a major Federal action significantly affecting the quality of the human environment. Therefore, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Paperwork Reduction Act

This proposed rule does not impact existing approved collections. This rule contains no new reporting or recordkeeping burdens under OMB control number 0560–0163 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Discussion of Proposed Rule

Background

The Department is proposing regulations in 7 CFR Part 26 to reflect the transfer of the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program to the USDA Departmental Administration, Office of Outreach. The USDA Office of Outreach administers the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program pursuant to section 2501(a) of the Food, Agriculture, Conservation, and Trade Act of 1990, 7 U.S.C. 2279(a) (the FACT Act). Congress intended to make funds available to provide outreach and technical assistance to encourage and assist socially disadvantaged farmers and ranchers to own and operate farms and ranches and to participate in agricultural programs. This outreach and assistance should enable socially disadvantaged farmers and ranchers to obtain information on application and bidding procedures, farm management, and other essential information to participate in agricultural programs.

Prior to 1997, USDA administered this program through other agencies. When USDA last competed awards under this program, the predecessor to the Farm Service Agency (FSA) administered the competition in conjunction with its administration of other outreach, training and technical assistance programs. In August 1997, the Secretary delegated to the USDA Office of Outreach responsibility solely for the section 2501 Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program. Therefore, the new regulations proposed by the USDA Office of Outreach are limited exclusively to the section 2501 authority and thus narrower in scope than the prior combination of program authorities administered by the predecessor to FSA.

The definition of "Agricultural programs" contained in § 26.4 of this subpart is based on the programs authorized by the statutes referenced in Section 2501 (e)(3) (7 U.S.C. 2279 (e)(3)). Section 2501 (e)(3)(G) also authorizes the Secretary of Agriculture, who has delegated this authority to the Office of Outreach, to designate additional USDA programs as "Agricultural programs" for purposes of this program as appropriate. The USDA Office of Outreach bases the designation of additional Acts, and thereby the programs in those Acts on a belief that the participation of socially disadvantaged farmers and ranchers in such programs will serve an important public purpose. The definition of "Agricultural programs" references many USDA programs, however, the list is not intended to be all inclusive. Rather, the regulation intends to increase participation by socially disadvantaged farmers and ranchers in all relevant USDA agricultural programs. The public may request the Director, USDA Office of Outreach to include additional Acts and programs within this definition. Requests must be submitted in writing and include an explanation of the reasons for inclusion. The Director will make determinations on a case-by-case basis. During the project period, the USDA Office of Outreach will need to work with USDA field offices to provide information to the recipients regarding each USDA Agency's relevant agricultural programs within the scope of the funded project.

Specific Agricultural programs include but are not limited to the following, identified by the Catalog of Federal Domestic Assistance number and program title: (10.054) Emergency Conservation Program; (10.055) Production Flexibility Payments for Contract Commodities; (10.064) Forestry Incentives Program; (10.069) Conservation Reserve Program; (10.404) Emergency Loans; (10.406) Farm Operating Loans; (10.407) Farm Ownership Loans; (10.900) Great Plains Conservation; and (10.903) Soil Survey.

Program Description

The program's objective is to reverse through the use of the outreach and assistance the decline of socially disadvantaged farmers and ranchers throughout the United States. This outcome will be reached by encouraging and assisting socially disadvantaged farmers and ranchers to own and operate their own farms, participate in agricultural programs, and thus allow them to become an integral part of the agricultural community.

The recipients of the Federal assistance will provide services to socially disadvantaged farmers and ranchers through such means as outreach and technical assistance in farm and ranch management, recordkeeping, marketing techniques, and testing innovative solutions to existing or anticipated issues or problems that these farmers and ranchers may encounter.

When funds are available, the USDA Office of Outreach will publish a request for proposals for the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program. The USDA Office of Outreach will make competitive awards to eligible organizations and institutions to implement a one-year plan for outreach and technical assistance to encourage and assist socially disadvantaged farmers and ranchers to own and operate farms and ranches and to participate in agricultural programs.

The USDA Office of Outreach will select peer reviewers to evaluate individually the technical merit of responsive proposals. The peer reviewers are necessary to evaluate what is expected to be a variety of very technical proposals. The USDA Office of Outreach staff will use these evaluations to make recommendations for funding to the Director, USDA Office of Outreach. The Director will make final funding decisions. To assure consistency and fairness in the evaluation process, the proposed rule establishes proposal guidelines, evaluation criteria and the decision-making process for reviewing responsive proposals.

The accounting for the funds awarded under the section 2501 program is subject to the applicable rules for USDA assistance awards in parts 3015 and 3019 of this title. The proposal content and format regulations are intended to assure that applicants provide sufficient information to evaluate proposals and make awards. The application format and evaluation process is similar to that used by other USDA agencies for their competitive assistance programs.

Section by Section analysis

Section 26.1 states the general purpose of the program pursuant to section 2501 (a) of the FACT Act and explains what the implementing regulations are intended to accomplish and why compliance is necessary. The USDA Office of Outreach has no

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discretion regarding the purpose of the program and is repeating the terms of the statute.

Section 26.2 states the objectives of assistance awards under this program. These objectives come from the statute and legislative history for this program.

Section 26.3 addresses the project period for awards under this program. Awards under this program previously were for five-year periods, with funding provided for the first year and annual renewal of each award based on the progress of the awardee and the availability of funds. Because of the substantial fluctuation in the amount of funding available for this program from year to year, the USDA Office of Outreach made an administrative determination that the limiting of the project periods for a duration of one year with full funding for each project at the time of award would carry out this program in the most effective and efficient manner. The USDA Office of Outreach considers a shorter period with full funding to provide more certainty to the awardees and to ensure that projects will be carried out in their entireties. Shorter project periods also allow the USDA Office of Outreach to fund more projects and provide greater flexibility to respond better to ever-changing societal needs in terms of socially disadvantaged groups, geographic areas, and agricultural programs.

Section 26.4 defines relevant terms for purposes of this program. These definitions are limited to this program. Many terms are defined by statute. The USDA Office of Outreach has no discretion regarding the definitions of statutorily-defined terms and has merely repeated the statutory definitions. The statutorily-defined terms are "socially disadvantaged group" and "socially disadvantaged farmer or rancher." The definition of "socially disadvantaged group" establishes the criteria for a group to qualify. The Secretary determines which groups meet the criteria. The proposed regulation allows the public to submit requests for the designation of additional groups for purposes of this program. The term "agricultural programs" also is defined by statute, but that definition too still provides limited discretion to the Secretary of Agriculture to expand the definition to include similar programs. Again, the proposed regulation provides for the public to submit requests for inclusion of additional Acts and programs, with case-by-case determinations by the USDA Office of Outreach on such requests.

The USDA Office of Outreach used statutory definitions applicable to U.S. Department of Education programs to define the various educational institutions eligible to compete for awards under this program. Use of the same definitions as the Department of Education promotes uniformity and consistency among Federal programs, which is intended to benefit the public. Furthermore, those statutory definitions, while not directly applicable to this program, shed light on the congressional intent in using these terms. The USDA Office of Outreach found no indication in the section 2501 program authority or legislative history to suggest that the Congress intended for these terms to have a distinct meaning for this program. The definitions are 1890 Land Grant Colleges, Indian tribal community college, Alaska Native cooperative college, Alaska Native, Hispanic serving post-secondary educational institution, post secondary educational institution, full-time equivalent student, junior or community college, and low-income individual. Grant and cooperative agreement are defined by statute at 31 U.S.C. 6304 and 6305. The remaining definitions in section 26.4 reflect terms and definitions commonly used for USDA competitive assistance programs.

Section 26.5 lists the eligible entities as set by the statute. The USDA Office of Outreach has no discretion regarding eligibility for this program. The proposed regulations describe the type of documentary evidence required from a community-based organization to show prior relevant experience.

Section 26.6 discusses substantial involvement on cooperative agreements. As noted in section 26.1, USDA Office of Outreach has the authority to award assistance through grants or cooperative agreements under this program. USDA Office of Outreach may determine that the responsibility for the management, control, or direction of the project will be shared both by the USDA Office of Outreach and the awardee. If so, the USDA Office of Outreach will award a cooperative agreement as the instrument to distribute the award and will be substantially involved in the implementation and performance of the project. It is important to understand that such an agreement will be a cooperative venture in which each party has a substantial role to play. Being substantially involved can enable a better understanding and knowledge of how well the project is performing, whether it is meeting its goals and objectives, and what types of assistance the recipient needs to do a better job.

Section 26.7 is reserved.

Section 26.8 addresses solicitation of proposals through the program announcement. USDA Office of Outreach has decided to publish program announcements soliciting proposals in the **Federal Register** which is consistent with general USDA practice for competitive assistance programs. The USDA also reserves the right to publish the program announcement in other publications as appropriate which will be determined for each new competition.

Section 26.9 provides guidance on how to prepare a proposal for this program. This section sets guidelines for the proposal format and content. The proposed requirements are similar to those established for other USDA assistance programs. Uniform proposal format and content are necessary for fair comparative evaluation and review of competitive proposals.

Section 26.10 outlines the proposal review process, including the evaluation criteria. The USDA Office of Outreach will specify the weight of the evaluation criteria in the program announcement. Not indicating the weight in the regulations allows the USDA Office of Outreach the ability to vary the relative weights of these criteria for each competition as necessary to best achieve the program objectives. The USDA Office of Outreach decided to use peer reviewers to assess the merits of applications. Peer reviewers contribute expert judgment and objectivity to the proposal review process. Prior to any technical review, USDA Office of Outreach staff will review each proposal for responsiveness to the request for proposals. The USDA Office of Outreach will review for technical merit only those proposals submitted by eligible entities for projects within the scope of this program.

Section 26.11 discusses the fundamental aspects of the award procedure. USDA Office of Outreach staff will use the evaluations by the individual reviewers to rank the proposals and make recommendations to the Director, USDA Office of Outreach for funding. The USDA Office of Outreach reserves the right to make awards to ensure the necessary variety among funded projects to best achieve the program objectives. Necessary variety refers to both types of entities receiving award and types of projects, including targeted populations and regions. Based on the limited resources available for this program, the USDA Office of Outreach also reserves the right to negotiate with applicants the scope of projects recommended for funding. For example, a proposal may have substantial merit, but at a very high cost. Funding of that one proposal would preclude funding of several other meritorious proposals. The Director, USDA Office of Outreach, could negotiate with that applicant in an effort to reduce the scope and funding requirements of that proposal, perhaps focusing on one or two discrete components of the project. The Director, USDA Office of Outreach will take great care during any such negotiations not to engage in any actions that would undermine the competitive nature of this program. All revisions must be within the scope of the original proposal. No revisions will be allowed to enlarge the project or funding originally proposed.

Sections 26.12–26.14 are reserved.

Section 26.15 discusses the authorized use of funds. The statute limits the purposes for which USDA can award funds. Once USDA awards a grant or cooperative agreement, the awardee can use those funds only in accordance with the terms of the agreement, i.e. for the identified project and as specified in the approved budget.

Sections 26.16 through 26.25 are reserved.

Section 26.26 lists some of the other applicable Federal statutes and regulations that govern the actions of the awardee and the Federal agency for assistance programs. The USDA Office of Outreach has no discretion regarding the mandated laws and regulations governing the USDA assistance programs.

Section 26.27 discusses the payment mechanism and payment method. The U.S. Department of the Treasury regulations at 31 CFR part 208 establish the payment mechanism for recipients of Federal funds. These regulations implement the Debt Collection Improvement Act of 1996 (P.L. 104–134, Title III, Chapter 10) which amended 31 U.S.C. 3332 to require federal agencies to convert their payments (including assistance payments) from check to electronic funds transfer (EFT) beginning January 1, 1999. The USDA Office of Outreach has decided to require the SF–270, Request for Advance or Reimbursement, be used by the recipients to request payments under this program pursuant to their awards and reimbursement will be by EFT.

Section 26.28 sets forth the procedures for monitoring and reporting on the awardee's financial management systems and program performance and the necessary standard reporting forms. The USDA Office of Outreach proposes the frequency for the financial management and program performance reporting to be quarterly.

Sections 26.29 through 26.36 are reserved.

Section 26.37 discusses the monitoring process to assure compliance with the terms and conditions of the award, including compliance with applicable Federal statutes and regulations. The USDA Office of Outreach has chosen to monitor performance of the recipient and assess compliance with laws, regulations, and policies by conducting site visits to monitor business management capability and performance. The monitoring methods will also include the reviews of audit reports, performance reports, financial status reports, recipient correspondence and information received from USDA field offices, the intended project beneficiaries and the public. These are standard methods used in administering similar USDA assistance programs to meet the provisions of pertinent statutes, regulations, agency administrative requirements, and relevant OMB circulars to ensure project success.

Sections 26.38 through 26.40 are reserved.

Section 26.41 notifies the applicant of the applicable USDA policies and regulations on nondiscrimination. Whenever an individual or organization accepts federal funds under an assistance award, there are certain public requirements, established by Congress or the President, with which the recipient must comply. The USDA Office of Outreach has no discretion regarding these requirements and has a duty to enforce compliance.

Sections 26.42 through 26.50 are reserved.

List of Subjects in 7 CFR Part 26

Grant programs—agriculture.

For reasons set out in the preamble, USDA proposes to add 7 CFR part 26 as set forth below.

Sec.

PART 26—OUTREACH AND ASSISTANCE FOR SOCIALLY DISADVANTAGED FARMERS AND RANCHERS PROGRAM

26.1 General.
26.2 Objectives.
26.3 Project period.
26.4 Definitions.
26.5 Eligible entities.
26.6 Substantial Federal Involvement.
26.7 [Reserved].
26.8 Program announcement.
26.9 Proposal content. [save]proposal.xml
26.10 Proposal review.
26.11 Award process.
26.12–26.14 [Reserved].
26.15 Authorized use of funds.
26.16–26.25 [Reserved].
26.26 Other applicable Federal statutes and regulations.
26.27 Fund disbursement.
26.28 Financial management systems and reporting requirements.
26.29–26.36 [Reserved].
26.37 Monitoring compliance and penalty for noncompliance.
26.38–26.40 [Reserved].
26.41 Nondiscrimination.
26.42–26.50 [Reserved].

Authority: 5 U.S.C. 301; 7 U.S.C. 2279(a); 7 CFR 2.24.

PART 26—OUTREACH AND ASSISTANCE FOR SOCIALLY DISADVANTAGED FARMERS AND RANCHERS PROGRAM

§ 26.1 General.

This part establishes procedures for the administration of the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program whereby eligible entities enter into a grant or cooperative agreement with the USDA Office of Outreach (OR) to provide outreach and technical assistance to encourage and assist socially disadvantaged farmers and ranchers to own and operate farms and ranches and to participate in agricultural programs. The Catalog of Federal Domestic Assistance (CFDA) number for this program is 10.443.

§ 26.2 Objectives.

OR will fund grant agreements or cooperative agreements with eligible entities for outreach and assistance to socially disadvantaged farmers and ranchers projects, which are determined to meet the following program objectives:

(a) To encourage and assist members of socially disadvantaged groups to own and operate farms and ranches and to participate in agricultural programs.

(b) To keep socially disadvantaged farmers and ranchers on the farm and to ensure diversified ownership of agricultural land and farm operations throughout the United States, thus strengthening the rural economy.

§ 26.3 Project period.

An agreement under this program will specify a project period for a duration not to exceed one year, subject to the availability of funds or termination of the project either by mutual agreement or for material noncompliance with the terms and conditions of an award.

§ 26.4 Definitions.

For the purpose of the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program, the following definitions apply:

1890 Land-Grant Colleges means one of those institutions eligible to receive funds under the Act of August 30, 1890, as amended (7 U.S.C. 321 *et seq.*), including Tuskegee University.

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Agricultural programs means those activities established or authorized by the Agricultural Act of 1949; the Consolidated Farm and Rural Development Act; the Agricultural Adjustment Act of 1938; the Soil Conservation Act; the Domestic Allotment Assistance Act; the Food Security Act of 1985; and other such Acts as determined by the Director, USDA Office of Outreach, on a case-by-case basis either at the Director's initiative or in response to a written request with supporting explanation for inclusion of an Act. Covered programs include, but are not limited to, agricultural conservation program, programs comprising the environmental conservation acreage reserve program (ECARP), conservation technical assistance program, emergency conservation program, forestry incentives program, Great Plains Conservation Program, integrated farm management option program, price support and production adjustment programs, rural environmental conservation program, soil survey program, and water bank program; and USDA farm loan programs (farm ownership, operating, soil and water, and emergency loans).

Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community) Eskimo, or Aleut blood, or combination thereof. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or Native group of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any village or group.

Alaska Native cooperative colleges means any post-secondary education institution that at the time of application, has an enrollment of undergraduate students that is at least 20 percent Alaska Native students.

Authorized organizational representative means the president or chief executive officer of the applicant organization or the official, designated by the president or chief executive officer of the applicant organization, who has the authority to commit the resources of the organization.

Awardee means the recipient designated in the grant award document as the responsible legal entity to which the Federal assistance is awarded.

Awarding official means the Director of the USDA Office of Outreach or the Director's designee, who has been delegated the authority to issue or modify program agreements on behalf of the Secretary of Agriculture for this program.

Budget period means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

Community-based organization means a nonprofit, nongovernmental organization with a well-defined constituency that includes all or part of a particular community, *e.g.*, communities consisting of socially disadvantaged farmers and ranchers.

Cooperative agreement means an award of funds to an eligible entity with the following characteristics:

(1) The principal purpose of the award is to transfer a thing of value to the awardee to accomplish a public purpose of support or stimulation authorized by statute, rather than acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and

(2) At the time of award, substantial involvement is anticipated between OR and the awardee in performing the activity under the agreement.

Department or USDA means the United States Department of Agriculture.

Enrollment of needy students means an enrollment at an institution with respect to which:

(1) At least 50 percent of the degree students so enrolled are receiving need-based Federal financial assistance, including the Federal work-study program, in the second fiscal year preceding the fiscal year for which the determination is made (other than loans for which an interest subsidy is paid pursuant to 20 U.S.C. 1078); or

(2) A substantial percentage of the students so enrolled are receiving Federal Pell Grants in the second fiscal year preceding the fiscal year for which determination is made, compared to the percentage of students receiving Federal Pell Grants at all such institutions in the second fiscal year preceding the fiscal year for which the determination is made.

Full-time equivalent students means the sum of the number of students enrolled full time at an institution, plus the full-time equivalent of the number of students enrolled part time (determined on the basis of the quotient of the sum of the credit hours of all part-time students divided by 12) at such institution.

Grant means an award of funds to an eligible entity with the following characteristics:

(1) The principal purpose of the award is to transfer a thing of value to the awardee to accomplish a public purpose of support or stimulation authorized by statute, rather than acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and

(2) At the time an award is made, no substantial involvement is anticipated between OR and the awardee in performing the activity under the agreement.

Hispanic serving post-secondary educational institutions means a post-secondary educational institution that:

(1) At the time of application, has an enrollment of undergraduate full-time equivalent students that is at least 25 percent Hispanic students; and

(2) Provides assurances that not less than 50 percent of the institution's Hispanic students are low-income individuals.

Indian Tribal Community Colleges means a post-secondary educational institution which:

(1) Is formally controlled, or has been formally sanctioned, or chartered, by the governing body of an Indian tribe or tribes, except that no more than one such institution shall be recognized with respect to any such tribe; and

(2) Includes an institution listed in the Equity in Educational Land Grant Status Act of 1994, as amended (7 U.S.C. 301 note). The 1994 Land-Grant Institutions are: Bay Mills Community College, Blackfeet Community College, Cankdeska Cikana Community College, Cheyenne River Community College, Dine Community College, D-Q University, Dullknife Memorial College, Fond Du Lac Community College, Fort Belknap Community College, Fort Berthold Community College, Fort Peck Community College, LacCourte Orielles Ojibwa Community College, Little Big Horn Community College, Little Priest Community College, Nebraska Indian Community College, Northwest Indian College, Oglala Lakota College, Salish Kootenai College, Sinte Gleska University, Sisseton Wahpeton Community College, Sitting Bull College, Stonechild Community College, Turtle Mountain Community College, United Tribes Technical College, Southwest Indian Polytechnic Institute, Institute of American Indian Arts, Crownpoint Institute of Technology, Haskell Indian Nations University, Leech Lake Tribal College, and College of the Menominee Nation.

Junior or community college means an institution of higher education:

(1) That admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution;

(2) That does not provide an educational program for which the institution awards a bachelor's degree (or an equivalent degree); and

(3) That—

(i) Provides an educational program of not less than 2 years in duration that is acceptable for full credit toward such a degree; or

(ii) Offers a 2-year program in engineering, mathematics, or the physical or biological sciences, designed to prepare a student to work as a technician or at the semiprofessional level in engineering, scientific, or other technological fields requiring the understanding and application of basic engineering, scientific, or mathematical principles of knowledge.

Low-income individual means an individual from a family whose taxable income for the preceding year did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the Bureau of the Census.

Peer reviewers means experts from the public and private sectors qualified by training and experience in particular fields and designated by the Director, USDA Office of Outreach or other designated official to evaluate eligible proposals.

Post-secondary educational institutions means an institution of higher education in any State which:

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is a public or other nonprofit institution;

(3) Which has an enrollment of needy students as defined in the definition of "low-income individual";

(4) The average educational and general expenditures of which are low, per full-time equivalent undergraduate student, in comparison with the average educational and general expenditures per full-time equivalent undergraduate student of institutions that offer similar instruction;

(5) Which is—

(i) Legally authorized to provide, and provides within the State, an educational program for which such institution awards a bachelor's degree;

(ii) A junior or community college; or

(iii) The College of the Marshall Islands, the College of Micronesia/Federated States of Micronesia, and Palau Community College;

(6) Which is accredited by a nationally recognized accrediting agency or association determined by the Secretary to be reliable authority as to the quality of training offered or which is, according to such an agency or association, making reasonable progress toward accreditation;

(7) Which meets such other requirements as the Secretary may prescribe; and

(8) Located in a State. Any branch of any institution of higher education described above which satisfies the criteria in paragraphs (3) and (4) of this definition. For purposes of the determination of whether an institution is an eligible institution under this paragraph, the factor in paragraph (3) of this definition shall be given twice the weight of the factor in paragraph (4) of this definition.

Prior approval means written, prior consent by the awarding official.

Project means the total activities within the scope of the program as identified in the grant or cooperative agreement.

Project director means the individual responsible for the direction and management of the project, as designated by the awardee in the project proposal and approved by the awarding official. The project director will devote full time to the administration of the project.

Project period means the total time approved by the awarding official for conducting the proposed project as outlined in an approved project proposal or the approved portions thereof and as specified in the grant or cooperative agreement.

Recipient means an entity as defined in § 26.5 of this part that has entered into a grant or cooperative agreement with OR.

Requests for Proposals (RFP) means an invitation to submit proposals for consideration for funding under this program.

Socially disadvantaged farmer or rancher means a farmer or rancher who is a member of a socially disadvantaged group.

Socially disadvantaged group means a group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities. Socially disadvantaged groups include, but are not limited to, African-Americans, Native Americans, Alaskan Natives, Hispanics, Asians, and Pacific Islanders. The Secretary will determine on a case-by-case basis whether additional groups qualify under this definition, either at the Secretary's initiative or in response to a written request with supporting explanation.

§ 26.5 Eligible entities.

The statute limits eligibility under this program to the following institutions and organizations:

(a) 1890 Land-Grant Colleges, including Tuskegee University;

(b) Indian tribal community colleges;

(c) Alaska Native cooperative colleges;

(d) Hispanic-serving post-secondary educational institutions;

(e) Other post-secondary educational institutions with demonstrated experience in providing agricultural education or other agriculturally-related services to socially disadvantaged family farmers or ranchers in their region; and

(f) Any community-based organization that:

(1) Has demonstrated experience in providing agricultural education or other agriculturally-related services to socially disadvantaged farmers and ranchers;

(2) Provides documentary evidence of its past experience in working with socially disadvantaged farmers and ranchers during the 2 years preceding its application for assistance. Documentary evidence shall include a narrative providing specific information regarding the scope of past projects (including the number of socially disadvantaged farmers and ranchers served or the area served by the organization), activities conducted, and community involvement and copies of prior agreements, press releases, news articles, and other contemporaneous documents supporting the narrative; and

(3) Does not engage in activities prohibited under Section 501 (c)(3) of the Internal Revenue Code of 1986.

§ 26.6 Substantial federal involvement.

The USDA Office of Outreach may award cooperative agreements under this program. By statute, the Federal awarding agency must be substantially involved in the project to enter into a cooperative agreement to provide assistance. The USDA Office of Outreach anticipates the following involvement, which it has deemed substantial, in carrying out projects funded with Federal assistance provided through a cooperative agreement under this program:

(a) The USDA Office of Outreach will serve as liaison and coordinate the close collaboration between awardees and USDA agencies that administer agricultural programs targeted for outreach under the project;

(b) The USDA Office of Outreach will facilitate and coordinate training and continuing updates for awardees regarding the regulatory requirements,

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application procedures, and compliance for targeted agricultural programs;

(c) USDA Office of Outreach will assist awardees in planning workshops for targeted socially disadvantaged groups, including coordinating the provision of available information (e.g., application forms and instructions) from USDA necessary to accomplish workshop objectives;

(d) The USDA Office of Outreach must approve position descriptions and the selection of key personnel as identified in the project proposal if such personnel are hired or replaced during the project period;

(e) The USDA Office of Outreach will work closely with awardees to obtain the significant amounts of information necessary for the USDA Office of Outreach to comply with its statutory requirements to provide reports regarding this program to the Congress; and

(f) The USDA Office of Outreach will monitor projects closely and may request changes in project direction as necessary.

§ 26.7 [Reserved]

§ 26.8 Program announcement.

A program announcement for each new competition will be published in the Federal Register and such other publication(s) as deemed appropriate.

§ 26.9 Proposal content.

The project proposal must contain at a minimum the following information:

(a) *Background and need for the project.* Explain the circumstances that necessitate an Outreach and Technical Assistance Project within a county, region, State or other geographic area to serve socially disadvantaged farmers and ranchers.

(b) *Objectives and goals proposed to meet the objectives.* Clearly state the objectives of the project and explain the goals proposed to meet the objectives. Identify all important project milestones and dates as they relate to project start-up, execution, evaluation, dissemination, and close out. Indicate the specific agricultural programs for which the proposed project will provide outreach and assistance.

(c) *Statement of Work, including staffing.* Describe the plan of action for meeting the objectives of the Outreach and Technical Assistance Program and the necessary staffing. Describe and explain the nature of any proposed collaborative or subcontractural arrangements necessary to carry out the project.

(d) *Proposed budget.*

(1) Submit a detailed budget accompanied by a narrative description outlining and justifying the listed costs, for one year (12 months).

(2) Show all funding sources and itemize costs by the following line items: Personnel costs, equipment, material and supplies, travel, and all other costs.

(3) Salaries of project personnel who will be working on the project may be requested in proportion to the effort that they will devote to the project.

(4) Funds may be requested under any of the line items listed above provided that the item or source for which support is requested is identified as necessary for the successful conduct of the project, is allowable under the authorizing legislation and applicable Federal cost principles, and is not prohibited under any applicable Federal statute or regulation.

(5) The program announcement will specify any limitations on indirect costs under this program. The General Provisions of the annual Appropriations Act funding USDA ordinarily limit indirect costs under cooperative agreements between USDA and non-profit institutions, including institutions of higher education, to ten percent of the total direct costs of the agreement, with an exception when an institution computes its direct cost rates on a similar basis for all agencies covered by that Act (typically referred to as the Federal negotiated indirect cost rate).

(e) *Personnel.* Include the resumes of all anticipated personnel, including the Project Director in the proposal package. Also discuss the experience, qualifications, and availability of all personnel, including the Project Director, to direct and carry out the project.

§ 26.10 Proposal review.

(a) Prior to the technical examination, a preliminary review will be made by the USDA Office of Outreach staff for responsiveness to this solicitation. Proposals that do not fall within the solicitation guidelines will be eliminated from competition. All responsive proposals will be reviewed by peer reviewers using the evaluation criteria stated below. The peer reviewers will be selected to provide maximum expertise and objective judgment in the evaluation of proposals.

(b) To assist in the evaluation and obtain the best possible balance of viewpoints for funding consideration, peer reviewers will evaluate responsive proposals. The proposal review panel will be selected and organized to provide maximum expertise and objective judgment in the evaluation of proposals. The peer reviewers will evaluate each proposal using the following evaluation criteria. The weight of each criterion will be specified in the program announcement:

(1) *Institutional commitment and resources.* Degree to which the institution or organization is committed to the project. Experience, qualifications, competence, and availability of personnel and resources to direct and carry out the project.

(2) *Feasibility and policy consistency.* Degree to which the proposal clearly describes its objectives and evidences a high level of feasibility and consistency with the USDA policy and mission. This criterion relates to the adequacy, soundness of the proposed approach to the solution of the problem and evaluates the plan of operation, timetable, evaluation and dissemination plans.

(3) *Number of socially disadvantaged farmers and ranchers served and collaboration.* Degree to which the proposal reflects partnerships and collaborative initiatives with other agencies or organizations to enhance the quality and effectiveness of the program. Additionally, the areas and number of socially disadvantaged farmers and ranchers who would benefit from the services offered.

(4) *Socially disadvantaged applicants-outreach.* Degree to which the proposal contains efforts to reach persons identified as socially disadvantaged farmers and ranchers in targeted counties. Potential for encouraging and assisting socially disadvantaged farmers and ranchers to own and operate farms and ranches and to participate in agricultural programs. Elements considered include impact, continuation plans, innovation, and expected products and results.

(5) *Preparatory features—statement of work.* Degree to which the proposal reflects innovative strategies for reaching the population targeted in the proposal and achieving the project objectives. Elements evaluated include originality, practicality, and creativity in developing and testing innovative solutions to existing or anticipated issues or problems of socially disadvantaged farmers and ranchers. Responsiveness to the need to provide socially disadvantaged farmers and ranchers with information and assistance on application and bidding procedures, farm management, other essential information to enhance participation of agricultural programs and conducting a successful farming operation.

(6) *Overall quality of the proposal.* Degree to which the proposal complies with the Application Guidelines and is of high quality. Elements considered include adherence to instructions, accuracy and completeness of forms, clarity and organization of ideas, thoroughness and sufficiency of detail in the budget narrative, specificity of allocations between targeted areas if the proposal addresses more than one area, and completeness of vitae for all key personnel associated with the project.

§ 26.11 Award process.

(a) OR will use the views of the individual reviewers to determine which proposals to recommend to the awarding official for funding. Evaluated proposals will be ranked by OR based on merit. The awarding official reserves the right to make awards to ensure the variety among successful applicants and the nature of the projects funded in order to accomplish the program objectives. The awarding official also reserves the right to negotiate with applicants recommended for funding regarding project revisions (e.g., reductions in scope of work), funding level, or period of support prior to an award, based on the amount of resources available to achieve the broad program objectives. Revisions to proposals recommended for funding may not increase the proposed scope of or funding for a project or otherwise undermine or circumvent the competitive nature of the award process.

(b) The final decision to award is at the discretion of the awarding official. The awarding official shall consider the peer reviewers' comments and the recommendations by the OR staff and any other pertinent information before making a final decision.

(c) After a decision regarding funding is made, OR and the awardee which is selected will enter into a grant or cooperative agreement. The awarding official will notify the awardee of approval and inform it of the necessary documents needed to execute the agreement.

(d) Once all award decisions are made, OR will notify all unsuccessful applicants that their proposals did not receive an award.

§§ 26.12–26.14 [Reserved]

§ 26.15 Authorized use of funds.

Any funds authorized by the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers program must be used only for the project under the grant or cooperative agreement. There is no other authorized use of the funds. Eligible costs are limited to those line items specified in the approved budget.

§§ 26.16—26.25 [Reserved]

§ 26.26 Other applicable Federal statutes and regulations.

Several other Federal statutes and regulations apply to this program. These include, but are not limited to, the following:

(a) 7 CFR part 1b—USDA Implementation of the National Environmental Policy Act;

(b) 7 CFR part 3—USDA implementation of OMB Circular A–129 regarding debt collection;

(c) 7 CFR part 1.1—USDA implementation of the Freedom of Information Act;

(d) 7 CFR part 15, Subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964;

(e) 7 CFR part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB Directives (*i.e.*, Circular Nos. A–110, A–21, and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 as well as general policy requirements applicable to awardees of Departmental financial assistance;

(f) 7 CFR part 3017—USDA implementation of Government-wide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);

(g) 7 CFR part 3018—USDA implementation of New Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on awardees of Federal contracts, grants, cooperative agreements, and loans;

(h) 7 CFR part 3019—USDA Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations;

(i) 29 U.S.C. 794, Section 504 of the Rehabilitation Act of 1973, and 7 CFR part 156 (USDA implementation of the statute)—Prohibits discrimination based upon physical or mental handicap in Federally assisted programs; and

(j) 35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

§ 26.27 Fund disbursement.

The method of payment will be by reimbursement by Electronic Fund Transfer (EFT), and payment will be requested on Standard Form (SF) 270, "Request for Advance or Reimbursement." Payments will be processed in accordance with 7 CFR parts 3015 and 3019, as applicable.

§ 26.28 Financial management systems and reporting requirements.

(a) Awardees must comply with standards for the financial management and reporting and program performance reporting found in 7 CFR parts 3015 and 3019, as applicable.

(b) Awardees must provide to the OR quarterly financial and program performance reports. The reports are due 30 days after the reporting period, and an original and two copies of each report will be submitted. The financial report will be presented on SF–269, "Financial Status Report," and the financial and program performance reports will be prepared in accordance with 7 CFR parts 3015 and 3019, as applicable.

(c) The program performance report should also address progress on the activities under each of the areas of outreach and technical assistance, as stipulated in the grant or cooperative agreement.

§§ 26.29–26.36 [Reserved]

§ 26.37 Monitoring compliance and penalty for noncompliance.

(a) *OR monitoring.* OR will monitor compliance of the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers projects through the reports received in accordance with § 26.28 of this part, through information received from USDA field offices and the public, and through on-site visits to observe the operation and administration of the program.

(b) *Audits.* Awardees are subject to the audit requirements of 7 CFR parts 3015 and 3019, as applicable. An audit report will be submitted to OR annually in accordance with OMB Circular A–133. All records of the awardees will be subject to audit by appropriate USDA Office of Outreach staff or other responsible authority.

(c) *Penalty for noncompliance.* If the Director, OR determines that a project does not meet or no longer meets the objective of the program, that there has been a violation of the grant or cooperative agreement, that reporting requirements are not being met, or that funds are not being used only for the operation and administration of the authorized project, the awarding official is authorized to impose any penalties or sanctions established in 7 CFR parts 3015 and 3019, as applicable. Penalties may include withholding payments, suspension of the grant or cooperative agreement, or termination for cause. If a penalty for noncompliance is enforced, the reason(s) will be stated in a letter to →

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the awardee along with appeal procedures.

§§ 26.38–26.40 [Reserved]

§ 26.41 Nondiscrimination.

The policies and regulations contained in 7 CFR parts 15, 15a, and 15b apply to grants and cooperative agreements made under this part.

§§ 26.42–26.50 [Reserved]

Done at Washington, DC, this 23rd day of April, 2001.

Ann M. Veneman,

Secretary of Agriculture.

[FR Doc. 01–10523 Filed 4–27–01; 8:45 am]

BILLING CODE 3410–01–U

DEPARTMENT OF AGRICULTURE

Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program

AGENCY: Office of Outreach, USDA.

ACTION: Notice

SUMMARY: The USDA Office of Outreach announces the availability of Grants for the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program for Fiscal Year (FY) 2001. Proposals are hereby requested from eligible institutions and organizations for competitive consideration of Outreach and Assistance cooperative agreement awards. This program aims to promote diversified ownership of agricultural land and farm operations by encouraging and assisting socially disadvantaged farmers and ranchers to participate in Federal technical and financial assistance programs. The intended outcome is to encourage and assist socially disadvantaged farmers and ranchers to own and operate farms and ranches, participate in agricultural programs, and thus allow them to become an integral part of the agricultural community.

This notice sets out the objectives for the cooperative agreement funds, the eligibility criteria for projects and applicants, the application procedures and instructions, and the project selection process and evaluation criteria.

DATES: Proposals must be received on or before June 29, 2001. Proposals received after June 29, 2001 will not be considered for funding.

ADDRESSES: Submit proposals to the U.S. Department of Agriculture, Office of Outreach, Ag STOP 1710, 1400 Independence Avenue, SW., Washington, DC 20250. Applicants may request application packages from the above address marked to the attention of: Geraldine Herring, by telephone on 1–800–880–4183, or by E-mail at *2501rfp@usda.gov*.

FOR FURTHER INFORMATION CONTACT: Director, USDA Office of Outreach, Telephone 202–720–6350, Facsimile (202) 720–7489 or Geraldine Herring, Special Outreach Program Coordinator, Telephone 202–720–1637, Facsimile 202–720–7489.

SUPPLEMENTARY INFORMATION:

Stakeholder Input:

The USDA Office of Outreach is soliciting comments regarding this request for proposals from any interested party. These comments will be considered in the development of the next request for proposals for this program. Such comments will be forwarded to the Secretary or her designee for use in meeting the requirements of section 2501 of the Food, Agriculture, Conservation and Trade Act of 1990. Written comments should be submitted by first-class mail to: USDA Office of Outreach, 1400 Independence Avenue, SW., Ag Stop 1710, Washington, DC 20250, or via e-mail to *2501rfp@usda.gov*. In your comments, please include the name of the program and the fiscal year of the request for proposals to which you are responding. Comments are requested within six months from the issuance of the request for proposals. Comments received after that date will be considered to the extent practicable.

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Part I—General Information

A. Authority

Section 2501 (a) of the Food, Agriculture, Conservation, and Trade Act of 1990, 7 U.S.C. 2279 (a), authorizes the Secretary of Agriculture, who has delegated the authority to the Director of the USDA Office of Outreach, to make awards to eligible institutions and organizations for outreach and technical assistance to encourage and assist socially disadvantaged farmers and ranchers to own and operate farms and ranches and to participate in agricultural programs. The program is administered by the U.S. Department of Agriculture, Office of Outreach under the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program.

USDA Office of Outreach published in this same edition of the **Federal Register** proposed regulations governing the administration of this program. The proposed regulations set forth how the USDA Office of Outreach will administer this program, including procedures to be followed when submitting proposals, rules governing the evaluation of proposals and the awarding of cooperative agreements, and regulations relating to the post-award administration of projects. The USDA Office of Outreach anticipates finalizing the proposed regulations prior to the award of cooperative agreements under this Notice of Request for Proposals (RFP). Awards resulting from this RFP will be subject to the final regulations.

Currently, the RFP and the proposed regulations are consistent. Because of the nature of the rule making process, these requirements are subject to change based upon comments received. Applicants whose proposals are recommended for funding must agree to be bound by the final rule as a condition of receiving an award under this program.

B. Definitions

For this program, the following definitions apply:

1890 Land-Grant Colleges means one of those institutions eligible to receive funds under the Act of August 30, 1890, as amended (7 U.S.C. 321 *et seq.*), including Tuskegee University.

Agricultural programs means those activities established or authorized by: The Agricultural Act of 1949; the Consolidated Farm and Rural Development Act; the Agricultural Adjustment Act of 1938; the Soil Conservation Act; the Domestic Allotment Assistance Act; the Food Security Act of 1985; and other such Acts as determined by the Director, USDA Office of Outreach, on a case-by-case basis either at the Director's initiative or in response to a written request with supporting explanation for inclusion of an Act. Covered programs include, but are not limited to, agricultural conservation program,

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programs comprising the environmental conservation acreage reserve program (ECARP), conservation technical assistance program, emergency conservation program, forestry incentives program, Great Plains Conservation Program, integrated farm management option program, price support and production adjustment programs, rural environmental conservation program, soil survey program, and water bank program; and the farm loan programs (farm ownership, operating, soil and water, and emergency loans).

Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community) Eskimo, or Aleut blood, or combination thereof. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or Native group of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any village or group.

Alaska Native cooperative colleges means any post-secondary education institution that at the time of application, has an enrollment of undergraduate students that is at least 20 percent Alaska Native students.

Authorized organizational representative means the president or chief executive officer of the applicant organization or the official, designated by the president or chief executive officer of the applicant organization, who has the authority to commit the resources of the organization.

Awardee means the recipient designated in the cooperative agreement as the responsible legal entity to which the Federal assistance is awarded.

Awarding official means the Director of the USDA Office of Outreach or the Director's designee, who has been delegated the authority to issue or modify program agreements on behalf of the Secretary of Agriculture for this program.

Budget Period means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

Community-based organization means a nonprofit, nongovernmental organization with a well-defined constituency that includes all or part of a particular community, *e.g.*, communities consisting of socially disadvantaged farmers and ranchers.

Cooperative agreement means an award of funds to an eligible entity with the following characteristics:

(1) The principal purpose of the award is to transfer a thing of value to the awardee to accomplish a public purpose of support or stimulation authorized by statute, rather than acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and

(2) At the time of award, substantial involvement is anticipated between the USDA Office of Outreach and the awardee in performing the activity under the agreement.

Department or USDA means the United States Department of Agriculture.

Enrollment of needy students means an enrollment at an institution with respect to which:

(1) At least 50 percent of the degree students so enrolled are receiving need-based Federal financial assistance, including the Federal work-study program, in the second fiscal year preceding the fiscal year for which the determination is made (other than loans for which an interest subsidy is paid pursuant to section 1078 of this title); or

(2) A substantial percentage of the students so enrolled are receiving Federal Pell Grants in the second fiscal year preceding the fiscal year for which determination is made, compared to the percentage of students receiving Federal Pell Grants at all such institutions in the second fiscal year preceding the fiscal year for which the determination is made.

Full-time equivalent students means the sum of the number of students enrolled full time at an institution, plus the full-time equivalent of the number of students enrolled part time (determined on the basis of the quotient of the sum of the credit hours of all part-time students divided by 12) at such institution.

Grant means an award of funds to an awardee with the following characteristics:

(1) The principal purpose of the award is to accomplish a public purpose authorized by statute, rather than acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and

(2) At the time an award is made, no substantial involvement is anticipated between OR and the awardee.

Hispanic Serving Post-Secondary Educational Institutions means a post-secondary educational institution that:

(1) At the time of application, has an enrollment of undergraduate full-time equivalent students that is at least 25 percent Hispanic students; and

(2) Provides assurances that not less than 50 percent of the institution's Hispanic students are low-income individuals.

Indian Tribal Community Colleges means a post-secondary educational institution which:

(1) Is formally controlled, or has been formally sanctioned, or chartered, by the governing body of an Indian tribe or tribes, except that no more than one such institution shall be recognized with respect to any such tribe; and

(2) Includes an institution listed in the Equity in Educational Land Grant Status Act of 1994, as amended (7 U.S.C. 301 note). The 1994 Land-Grant Institutions are: Bay Mills Community College, Blackfeet Community College, Cankdeska Cikana Community College, Cheyenne River Community College, Dine Community College, D-Q University, Dullknife Memorial College, Fond Du Lac Community College, Fort Belknap Community College, Fort Berthold Community College, Fort Peck Community College, LacCourte Orielles Ojibwa Community College, Little Big Horn Community College, Little Priest Community College, Nebraska Indian Community College, Northwest Indian College, Oglala Lakota College, Salish Kootenai College, Sinte Gleska University, Sisseton Wahpeton Community College, Sitting Bull College, Stonechild Community College, Turtle Mountain Community College, United Tribes Technical College, Southwest Indian Polytechnic Institute, Institute of American Indian Arts, Crownpoint Institute of Technology, Haskell Indian Nations University, Leech Lake Tribal College, and College of the Menominee Nation.

Junior or community college means an institution of higher education:

(1) That admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution;

(2) That does not provide an educational program for which the institution awards a bachelor's degree (or an equivalent degree); and

(3) That—

(i) provides an educational program of not less than 2 years in duration that is acceptable for full credit toward such a degree; or

(ii) offers a 2-year program in engineering, mathematics, or the physical or biological sciences, designed to prepare a student to work as a technician or at the semiprofessional level in engineering, scientific, or other technological fields requiring the understanding and application of basic

engineering, scientific, or mathematical principles of knowledge.

Low-income individual means an individual from a family whose taxable income for the preceding year did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the Bureau of the Census.

Peer Reviewers means experts from public and private sectors qualified by training and experience in particular fields and designated by the Director, USDA Office of Outreach or other designated official to evaluate eligible proposals.

Post-Secondary Educotional Institutions means an institution of higher education in any State which:

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is a public or other nonprofit institution;

(3) Has an enrollment of needy students as defined above;

(4) The average educational and general expenditures of which are low, per full-time equivalent undergraduate student, in comparison with the average educational and general expenditures per full-time equivalent undergraduate student of institutions that offer similar instruction;

(5) Is—

(i) legally authorized to provide, and provides within the State, an educational program for which such institution awards a bachelor's degree;

(ii) a junior or community college; or

(iii) the College of the Marshall Islands, the College of Micronesia/ Federated States of Micronesia, and Palau Community College;

(6) Is accredited by a nationally recognized accrediting agency or association determined by the Secretary to be reliable authority as to the quality of training offered or which is, according to such an agency or association, making reasonable progress toward accreditation;

(7) Meets such other requirements as the Secretary may prescribe; and

(8) Is located in a State. Any branch of any institution of higher education described above which satisfies criteria (3) and (4) above. For purposes of the determination of whether an institution is an eligible institution under this paragraph, the factor (3) shall be given twice the weight of the factor (4).

Prior approval means written, prior consent by the awarding official.

Project means the total activities within the scope of the program as identified in the grant or cooperative agreement.

Project Director means the individual responsible for the technical direction and management of the project, as designated by the awardee in the proposal and approved by the awarding official. The project director will devote full time to the administration of the project.

Project Period means the total time approved by the awarding official for conducting the proposed project as outlined in an approved project proposal or the approved portions thereof and as specified in the cooperative agreement.

Recipient means an entity as defined in § 26.5 of this part that has entered into a grant or cooperative agreement with the USDA Office of Outreach.

Requests for Proposals (RFP) means an invitation to submit proposals for consideration for funding under this program.

Socially Disadvantaged Farmer or Rancher means a farmer or rancher who is a member of a socially disadvantaged group.

Socially Disadvantaged Group means a group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities. Socially disadvantaged groups include, but are not limited to, African Americans, Native Americans, Alaskan Natives, Hispanics, Asians, and Pacific Islanders. The Secretary will determine on a case-by-case basis whether additional groups qualify under this definition, either at the Secretary's initiative or in response to a written request with supporting explanation.

C. Eligibility

1. Proposals may be submitted by:

a. 1890 Land-Grant Colleges, including Tuskegee University, Indian tribal community colleges and Alaska native cooperative colleges, Hispanic serving post-secondary educational institutions, and other post-secondary educational institutions with demonstrated experience in providing agricultural education or other agriculturally related services to socially disadvantaged family farmers and ranchers in their region; and

b. Any community-based organization that:

(i) has demonstrated experience in providing agricultural education or other agriculturally related services to socially disadvantaged farmers and ranchers;

(ii) provides documentary evidence of its past experience in working with socially disadvantaged farmers and ranchers during the two years preceding its application for assistance. Documentary evidence shall include a narrative providing specific information regarding the scope of past projects (including the number of socially disadvantaged farmers and ranchers served or in the area served by the organization), activities conducted, and community involvement and copies of prior agreements, press releases, news articles, and other contemporaneous documents supporting the narrative; and

(iii) does not engage in activities prohibited under section 501(c)(3) of the Internal Revenue Code of 1986.

2. In addition to the above, an applicant must qualify as a responsible applicant. Applicants not qualifying as responsible may be subject to special award conditions pursuant to 7 CFR 3019.14. To qualify as responsible, an applicant must meet the following standards:

(a) Adequate financial resources for performance, the necessary experience, organizational and technical qualifications, and facilities, or a firm commitment, arrangement, or ability to obtain same (including any to be obtained through sub-agreement(s));

(b) Ability to comply with the proposed or required completion schedule for the project;

(c) Adequate financial management system and audit procedures that provide efficient and effective accountability and control of all funds, property, and other assets;

(d) Satisfactory record of integrity, judgment, and performance, including, in particular, any prior performance under grants and contracts from the Federal government; and

(e) Otherwise be qualified and eligible to receive an award under the applicable laws and regulations.

Although an applicant may be eligible to compete for an award based on its status as an eligible entity, other factors may exclude an applicant from receiving Federal assistance under this program (e.g., debarment and suspension, a determination of non-responsibility based on the information submitted).

D. Program Application Materials

Program application materials will be made available upon request. These materials include information on the purpose of the program, how the program will be conducted, the required contents of a proposal, and the forms needed to prepare and submit applications.

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Part II—Program Description

A. Purpose of Program

Proposals are requested for cooperative agreements for outreach and assistance to socially disadvantaged farmers and ranchers. Cooperative agreements will be awarded competitively to eligible organizations and institutions for a one-year project to conduct outreach and technical assistance to encourage and assist socially disadvantaged farmers and ranchers to own and operate farms and ranches, and to provide information on application and bidding procedures, farm management, and other essential information to participate in agricultural programs.

Agricultural programs include but are not limited to the following, identified by the Catalog of Federal Domestic Assistance number and program title: (10.054) Emergency Conservation Program; (10.055) Production Flexibility Payments for Contract Commodities; (10.064) Forestry Incentives Program; (10.069) Conservation Reserve Program; (10.404) Emergency Loans; (10.406) Farm Operating Loans; (10.407) Farm Ownership Loans; (10.900) Great Plains Conservation; and (10.903) Soil Survey.

B. Available Funding

For fiscal year (FY) 2001, $3 million has been appropriated for this program. An additional $3 million has been authorized from the Fund for Rural America. Therefore, the total funds available for this program in FY 2001 are about $6 million and the total of all awards will not exceed this amount. The amount of funds available for this program in subsequent years is not fixed and may vary considerably from the current funding level.

C. Indirect Costs

Section 708 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001, Public Law 106–387, limits indirect costs under cooperative agreements between USDA and non-profit institutions, including institutions of higher education, to ten percent of the total direct costs of the agreement. Section 708 authorizes an exception to the ten percent limit for institutions that compute indirect cost rates on a similar basis for all agencies for which the Act makes appropriations.

If requested, indirect costs must be justified and may not exceed the ten percent limitation or the current rate negotiated with the cognizant Federal-negotiating agency. Applications from colleges and universities must provide a statement in the budget narrative verifying that the indirect costs requested are in accordance with institutional policies.

D. Substantial Federal Involvement

The USDA Office of Outreach will award cooperative agreements under this RFP. By statute, the Federal awarding agency must be substantially involved in the project to enter into a cooperative agreement to provide assistance. The USDA Office of Outreach anticipates the following involvement, which it has deemed substantial, in carrying out projects funded with Federal assistance provided through a cooperative agreement under this program:

(a) The USDA Office of Outreach will serve as liaison and coordinate the close collaboration between awardees and USDA agencies that administer agricultural programs targeted for outreach under the project;

(b) The USDA Office of Outreach will facilitate and coordinate training and continuing updates for awardees regarding the regulatory requirements, application procedures, and compliance for targeted agricultural programs;

(c) USDA Office of Outreach will assist awardees in planning workshops for targeted socially disadvantaged groups, including coordinating the provision of available information (e.g., application forms and instructions) from USDA necessary to accomplish workshop objectives;

(d) The USDA Office of Outreach must approve position descriptions and the selection of key personnel as identified in the project proposal if such personnel are hired or replaced during the project period;

(e) The USDA Office of Outreach will work closely with awardees to obtain the significant amounts of information necessary for the USDA Office of Outreach to comply with its statutory requirements to provide reports regarding this program to the Congress; and

(f) The USDA Office of Outreach will monitor projects closely and may request changes in project direction as necessary.

Part III—Proposal Content

A. Cover Page

1. Complete the "Application for Funding" form in its entirety.

2. Note that providing a Social Security Number is voluntary.

3. One copy of the "Application for Funding" form must contain the pen and ink signatures of the project director and authorized organizational representative for the applicant organization.

4. Note that by signing the "Application for Funding" form the applicant is providing the required certifications set forth in 7 CFR Part 3017 regarding Debarment and Suspension and Drug-Free Workplace, and 7 CFR Part 3018, regarding Lobbying.

5. Provide the name, address, telephone and fax numbers of applicant and project director.

6. The title of the proposal must be brief (80-character maximum) yet represent the major thrust of the project.

B. Project Summary

Each proposal must contain a concise project summary, which may not exceed two (2) pages in length. The project summary should contain the following:

1. Brief summary of the needs (including the estimated numbers expected to be served) of socially disadvantaged farmers and ranchers in the area to be served to enhance their ability to participate in agricultural programs;

2. Goals of the one-year plan and overall project goal(s) and supporting objectives with proposed outcomes; and

3. Relevance or significance of the one-year plan to enhancing the participation of socially disadvantaged farmers and ranchers in agriculture and USDA agricultural programs.

C. Project Narrative

The specific aims of the project must be included in all proposals. The text of the project narrative may not exceed fifteen (15) pages and must contain the following components:

1. *Introduction:* A clear statement of the goal(s) and supporting objectives with proposed outcomes of the proposed project should preface the project description.

2. *Background and Existing Situation:* Provide a detailed description of the circumstances giving rise to the need for the proposed activity to assist socially disadvantaged farmers and ranchers within the State or region.

3. *Objectives:* The objectives of the one-year plan should be clear, complete, and logically arranged. The statements should detail the major steps necessary to develop the plan with specific milestones and planned accomplishments. The objectives should contain details of how the accomplishments will advance the goal for assisting socially disadvantaged farmers and ranchers in obtaining information on application and bidding procedures, farm management, and other essential information to participate in agricultural programs. List the specific agricultural programs for which the proposed project will provide outreach and assistance.

4. *Procedures.* Describe the steps necessary to implement the proposed one-year plan including the methods or plan of action to attain the stated objectives.

5. *Evaluation:* Describe the evaluation plan for the proposed activity, including impact factors and indicators of effectiveness and efficiency in accomplishing objectives.

D. Scope of Program

All projects must contain explicit information indicating how results from the project will be measured, evaluated, and reported. The indicators used to measure results of the project should be clear and objective and focus on the anticipated impacts on socially disadvantaged farmers and ranchers.

E. Program Delivery

Program delivery is providing instruction and materials directly to the socially disadvantaged farmers and ranchers. A successful proposal will include the use of strong organizational skills to reach the socially disadvantaged farmers and ranchers in a specific region. Proposals should show how public or private sector (or both) delivery points would be used to reach socially disadvantaged farmers and ranchers.

F. Collaborative Arrangements

If the nature of the proposed project requires collaboration or subcontractural arrangements with other entities, the applicant must identify the collaborator or subcontractor and provide a full explanation of the nature of the relationship.

G. Budget

A budget and a detailed narrative in support of the budget are required for the overall project period. Show all funding sources and itemized costs by the following line items on the budget form: personnel, equipment, material and supplies, travel and all other costs. Funds may be requested under any of the line items listed above provided that the item or service for which support is requested is identified as necessary for successful conduct of the proposed project, is allowable under the authorizing legislation and the applicable Federal cost principles, and is not prohibited under any applicable Federal statute. Salaries of project personnel who will be working on the project may be requested in proportion to the effort that they will devote to the project.

H. Personnel

Summarize the relevant experience of key project personnel that will enable them to successfully complete the project. Include brief vitae, which provide enough information so that proposal reviewers can make an informed judgment as to their capabilities and experience. An organizational chart for the project should be provided, if available.

I. Current and Pending Support

All proposals must list any other current public or private support to which key personnel identified in the proposal have committed portions of their time, whether or not salary support for person(s) involved is included in the budget. Analogous information must be provided for any pending proposals that are being considered by, or that will be submitted in the near future to, other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar proposals to other possible sponsors will not prejudice proposal review or evaluation for this program.

Part IV—Submission of Proposal

A. What To Submit

An original and two (2) copies of the proposal must be submitted. Each copy of each proposal must be stapled securely in the upper left-hand corner (Do Not Bind). All copies of the proposal including all necessary forms must be submitted in one package.

B. When and Where To Submit

Proposals must be received by close of business on (DATE). A proposal's postmark date is not a factor in whether an application is timely received. The applicant assumes the risk of any delays in proposal delivery. Proposals sent by First Class mail must be sent to the following address: U.S. Department of Agriculture, Office of Outreach, Ag STOP 1710, 1400 Independence Avenue, SW., Washington, DC 20250. Hand-delivered proposal and those delivered by overnight express mail or courier service should be brought to the following address: U.S. Department of Agriculture, Office of Outreach, 501 School Street, SW., 1st Floor, Washington, DC 20024.

C. Acknowledgment of Proposals

The receipt of all proposals will be acknowledged in writing and this acknowledgment will contain an identifying proposal number. Once a proposal has been assigned an identification number, the number should be referred to in future correspondence.

Part V—Proposal Review, Selection Process and Evaluation Criteria

A. Proposal Review

Prior to technical examination, a preliminary review will be made by the USDA Office of Outreach staff for responsiveness to this solicitation. Proposals that do not fall within the solicitation guidelines will be eliminated from competition. All responsive proposals will be reviewed by peer reviewers using the evaluation criteria stated below. The peer reviewers will be selected to provide maximum expertise and objective judgment in the evaluation of proposals.

The USDA Office of Outreach staff will use the views of the individual reviewers to determine which proposals to recommend to the Director, USDA Office of Outreach for funding. Evaluated proposals will be ranked by the USDA Office of Outreach staff based on merit. Final approval for those proposals will be made by the Director.

B. Evaluation Criteria and Weight

The USDA Office of Outreach considers all applications received in response to this solicitation as outreach, training and technical assistance project applications. All responsive proposals will be reviewed based on the following criteria:

1. Institutional Commitment and Resources (20 points)

Degree to which the institution or organization is committed to the project. Experience, qualifications, competence, and availability of personnel and resources to direct and carry out the project.

2. Feasibility and Policy Consistency (20 points)

Degree to which the proposal clearly describes its objectives and evidences a high level of feasibility and consistency with the USDA policy and mission. This criterion relates to the adequacy, soundness of the proposed approach to the solution of the problem and evaluates the plan of operation, timetable, evaluation and dissemination plans.

3. Number of Socially Disadvantaged farmers and Ranchers Served and Collaboration (20 points)

Degree to which the proposal reflects partnerships and collaborative initiatives with other agencies or organizations to enhance the quality and effectiveness of the program. Additionally, the areas and number of

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socially disadvantaged farmers and ranchers who would benefit from the services offered.

4. Socially Disadvantaged Applicants—Outreach (20 points)

Degree to which the proposal contains efforts to reach persons identified as socially disadvantaged farmers and ranchers in targeted counties. Potential for encouraging and assisting socially disadvantaged farmers and ranchers to own and operate farms and ranches and to participate in agricultural programs. Elements considered include impact, continuation plans, innovation, and expected products and results.

5. Preparatory Features—Statement of Work (15 points)

Degree to which the proposal reflects innovative strategies for reaching the population targeted in the proposal and achieving the project objectives. Elements evaluated include originality, practicality, and creativity in developing and testing innovative solutions to existing or anticipated issues or problems of socially disadvantaged farmers and ranchers. Responsiveness to the need to provide socially disadvantaged farmers and ranchers with information and assistance on application and bidding procedures, farm management, other essential information to enhance participation of agricultural programs and conducting a successful farming operation.

6. Overall Quality of the Proposal (5 points)

Degree to which the proposal complies with the Application Guidelines and is of high quality. Elements considered include adherence to instructions, accuracy and completeness of forms, clarity and organization of ideas, thoroughness and sufficiency of detail in the budget narrative, specificity of allocations between targeted areas if the proposal addresses more than one area, and completeness of vitae for all key personnel associated with the project.

C. Selection Process

When the peer reviewers have completed their individual evaluations, the USDA Office of Outreach staff, based on the individual reviews will make recommendations to the Director, USDA Office of Outreach that each responsive proposal be (a) approved for support from currently available funds or (b) declined due to insufficient funds or unfavorable review (low evaluation score). The Director, USDA Office of Outreach, reserves the right to make awards to ensure variety among both successful applicants and the nature of the projects funded in order to accomplish the program objectives. The Director, USDA Office of Outreach also reserves the right to negotiate with an applicant whose project is recommended for funding regarding project revisions (e.g., reductions in scope of work), funding level, or period of support prior to any award. A proposal may be withdrawn at any time before a final funding decision is made.

Part VI—Program Administration

A. Access to Peer Review Information

After the final decisions have been announced, the Director, USDA Office of Outreach will, upon request, inform the applicant of the basis for the decision on a proposal. Copies of summary reviews, not including the identity of the reviewers, will be made available to respective project directors.

B. Cooperative Agreement Awards

1. General

Within the limit of funds available for such purpose, the Director, USDA Office of Outreach shall enter into cooperative agreements with successful applicants. The date specified by the Director, USDA Office of Outreach as the effective date of the award shall not be later than September 30 of the federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project period need not be initiated on the award effective date, but as soon as practicable thereafter so that project goals may be attained within the funded project period. All funds awarded and administered by the USDA Office of Outreach under this request for proposals shall be expended solely for the purpose for which the funds are awarded in accordance with the approved application and budget, the terms and conditions of any resulting award, the applicable Federal cost principles, and the USDA Federal assistance regulations. Funds for fiscal year 2001 are limited to proposals with a one-year plan for outreach and technical assistance to socially disadvantaged farmers or ranchers.

2. Cooperative Agreement Award Document

The cooperative agreement shall include at a minimum the following:

(a) Legal name and address of performing organization or institution to whom the Director, USDA Office of Outreach has entered into a cooperative agreement under the terms of this request for proposals;

(b) Title of Project;

(c) Name(s) and address(es) of project director(s) chosen to direct and control approved activities;

(d) Identifying cooperative agreement number assigned by the USDA Office of Outreach;

(e) Project period; specifying the amount of time the USDA Office of Outreach intends to support the project without requiring recompetition for funds;

(f) Total amount of the financial assistance approved by the USDA Office of Outreach during the project period.

(g) Legal authority(ies) under which the cooperative agreement is awarded.

(h) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the cooperative agreement; and

(i) Other information or provisions deemed necessary by the USDA Office of Outreach to carry out its assistance activities or to accomplish the purpose of a particular cooperative agreement.

3. Notice of Award

The notice of award, in the form of a letter, will be prepared and will provide pertinent instructions or information to the awardee that is not included in the cooperative agreement.

C. Use of Funds; Changes

1. Delegation of Fiscal Responsibility

The awardee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of cooperative agreement award funds.

2. Changes in Project Plans

(a) The permissible changes by the awardee, project director(s), or other key project personnel in the approved project cooperative agreement shall be limited to changes to aspects of the project to expedite achievement of the project's approved goals. If the awardee is uncertain as to whether a change complies with this provision, the question must be referred to the Director, USDA Office of Outreach for final determination.

(b) Changes in approved goals or objectives shall be requested by the awardee and approved in writing by the Director, USDA Office of Outreach prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

(c) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the awardee and approved in writing by the Director, USDA Office of Outreach prior to effecting such changes.

(d) Changes in Project Period: An awardee is obligated to complete the proposed project within the specified project period. However, if additional time is needed to complete activities under the agreement, the Director, USDA Office of Outreach has authority to extend one time the duration of an agreement for an additional period of up to 12 months. Entities desiring an extension of the agreement project period must request such extensions in writing at least ten (10) days prior to the expiration of the agreement project period. The request will include the reason for the requested extension, the requested period of extension, a description of the effect(s) on the program if the extension is not granted, and a statement that no additional federal funds would be necessary to support the agreement activities during the extension period. No additional Federal funds will be provided for the extension period. This one-time extension is not available merely for this purpose of using unobligated balances.

(e) Changes in Approved Budget: Changes in an approved budget must be requested by the awardee and approved in writing by the Director, USDA Office of Outreach prior to instituting such changes if the revision will:

(1) Involve transfers of amounts budgeted for indirect costs to absorb an increase in direct costs.

(2) Involve transfers of amounts budgeted for direct costs to accommodate changes in indirect cost rates negotiated during a budget period and not approved when a cooperative agreement was awarded; or

(3) Involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or the cooperative agreement.

D. Obligation of the Federal Government

Neither the approval of any application nor the award of any cooperative agreement commits or obligates the United States to provide further support of a project or any portion thereof. Acceptance by the USDA Office of Outreach of any proposal pursuant to this program does not ensure further support of a project or any portion thereof.

E. Environmental and Other Applicable Federal Statutes and Regulations

1. Environmental requirements: The policies and regulations contained in 7 CFR part 1b apply to cooperative agreements made under this RFP.

2. Several other Federal statutes and regulations apply to this program. These include, but are not limited to the following:

7 CFR Part 3—USDA implementation of OMB Circular A–129 regarding debt collection;

7 CFR Part 1, subpart A—USDA implementation of the Freedom of Information Act;

7 CFR Part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964;

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A–110, A–21, and A–122) and incorporating provisions of 31 U.S.C. 6301–6308, as well as general policy requirements applicable to recipients of Departmental financial assistance;

7 CFR Part 3017—USDA implementation of Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);

7 CFR Part 3018—USDA implementation of New Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans;

7 CFR Part 3019—USDA Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations;

29 U.S.C. 794, section 504 of the Rehabilitation Act of 1973, and 7 CFR Part 15b (USDA implementation of the statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs;

48 CFR Part 31—Contract Cost Principles and Procedures of the Federal Acquisition Regulation; and

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR Part 401).

F. Confidential Aspects of Proposals and Awards

When a proposal results in a cooperative agreement, it becomes a part of the record of the Agency's transactions, available to the public upon specific request. Information that the Director, USDA Office of Outreach determines to be of a privileged nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as privileged should be clearly marked as such and sent in a separate statement, two copies of which should accompany the proposal.

The original copy of each proposal that is not selected for funding (including those that are withdrawn) will be retained by the USDA Office of Outreach for one year. Other copies will be destroyed. After one year, the retained copy will be destroyed.

G. Standards of Conduct for Employees of Awardee

1. Awardees must establish safeguards and guidelines for the award and administration of contracts in order to prevent employees, consultants, or members of governing bodies from using their positions for purposes that are, or give the appearance of being, motivated by a desire for private financial gain for themselves or others such as those with whom they have family, business, or other ties. Therefore, awardees receiving financial support must have written policy guidelines on conflict of interest and the avoidance thereof. These guidelines should reflect State and local laws and must cover financial interests, gifts, gratuities and favors, nepotism, and other areas such as political participation and bribery. These rules must also indicate the conditions under which outside activities, relationships, or financial interests are proper or improper, and provide for notification of these kinds of activities, relationships, or financial interests to a responsible and objective awardee official. For the requirements of a code of conduct applicable to procurements under grants and cooperative agreements, see the procurement standards prescribed by 7 CFR 3015.181 and 7 CFR 3019.42.

2. The rules of conduct must contain a provision for prompt notification of violations to a responsible and objective awardee official and must specify the type of administrative action that may be taken against an individual for violations.

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3. A copy of the rules of conduct must be given to each officer, employee, board member, and consultant of the awardee who is working on the USDA Office of Outreach financed project, and the rules must be enforced to the extent permissible under State and local law or to the extent to which the awardee determines it has legal and practical enforcement capacity. The rules need not be formally submitted and approved by the awarding official; however, they must be made available for review upon request, for example, during a site visit.

Done at Washington, DC, this 23rd day of April 2001.

Ann M. Veneman,

Secretary of Agriculture.

[FR Doc. 01–10524 Filed 4–27–01; 8:45 am]

BILLING CODE 3410–01–U



Federal Register

Monday,
April 30, 2001

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 121, et al.
Service Difficulty Reports; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125, 135, and 145

[Docket No. 28293 (FAA–2000–7952); Amendment No. 121–284, 125–37, 135–81 and 145–26]

RIN 2120–AF71

Service Difficulty Reports

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: The Federal Aviation Administration (FAA) is further delaying the effective date of a final rule that amends the reporting requirements for air carriers and certificated domestic and foreign repair station operators concerning failures, malfunctions, and defects of aircraft, aircraft engines, systems, and components. This action was prompted by questions being raised by industry on the reporting in the new requirements.

DATES: The effective date of the rule amending 14 CFR parts 121, 125, 135, and 145 published at 65 FR 56192, September 15, 2000, is delayed until January 16, 2002.

FOR FURTHER INFORMATION CONTACT: Jose Figueroa, AFS–300, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591, 202–267–3797.

SUPPLEMENTARY INFORMATION:

Background

The FAA requested that comments on the information collection requirements of the Service Difficulty Reporting (SDR) final rule (65 FR 56192, September 15, 2000) be submitted by November 14, 2000. The FAA has received extensive written comments on the SDR reporting requirements and duplicate reporting of certain failures, malfunctions, and defects. On November 30, 2000 (65 FR 71247), the FAA announced that a public meeting on this rulemaking would be held on December 11, 2000. As a result of this public meeting, novel issues were presented that the FAA was not aware of during the comment period to the supplemental notice of proposed rulemaking.

The SDR final rule, as published, had an effective date of January 16, 2001. On December 22, 2000, (65 FR 80743), the FAA published a notice of delay of the effective date of the final rule. In that notice, the effective date of the final rule was delayed until July 16, 2001.

The FAA has determined that it will need more time to further evaluate the commenter's concerns. Therefore, the FAA is delaying the effective date of the final rule until January 16, 2002. The existing rules will remain in effect until the new effective date.

Since this delay of the effective date is not a new requirement and does not impose any additional burden, I find that notice and public procedures thereon are unnecessary and that good cause exists for extending the effective date on less than 30 days notice.

Issued in Washington DC, on April 24, 2001.

Jane F. Garvey,

Administrator.

[FR Doc. 01–10567 Filed 4–27–01; 8:45 am]

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Federal Register

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Part VIII

The President

Proclamation 7429—Loyalty Day, 2001

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Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 7429 of April 25, 2001

Loyalty Day, 2001

By the President of the United States of America

A Proclamation

Two hundred and twenty-five years ago, America's founders faced a decisive crossroads. Thomas Jefferson later remembered "the bold and doubtful election we were to make for our country, between submission or the sword." They chose the sword, and a Nation was born.

Today, we celebrate our loyalty to this country and to the principles for which America stands. Americans demonstrate their dedication by protecting our Nation and its people, promoting our commonly held ideals, and passing these values on to future generations.

Many Americans display their loyalty through careers in public service. Members of our Armed Forces ensure that our Nation remains strong and secure, as well as defend democracy around the world. Domestically, law enforcement officers and the professionals working in our judicial system maintain the peace and uphold the rule of law on which our society depends. Countless other Americans also work to protect us from dangers that threaten our safety and resources.

Americans have not let the dream of "a more perfect Union" fade with the passing of time. Rather, each new generation, along with millions of immigrants, has promoted ideals that lead to the archetype that the founders envisioned. Heroes have risen to fight for freedom, abolition of slavery, universal suffrage, civil rights, and other principles that form the foundation of our Nation. Today, citizens across the country continue this tradition by giving their time and effort to causes greater than themselves. Whether through charitable, civic, or church activities, Americans demonstrate their loyalty by working to improve our country and the lives of its people.

Perhaps the most basic and important means by which we display loyalty to our country is by passing on to our children the hope and idealism that is an important part of the American spirit. Parents have the important task in ensuring that our Nation's future leaders are prepared to assume the responsibilities they will face. Teachers play essential roles in molding our young people, and they deserve our gratitude and respect for their dedication. Ministers and other mentors also give of themselves by introducing children to the vast opportunities that our Nation holds. By spending time with a child, Americans invest in the future of our country.

Loyalty Day recognizes the solemn bond between America and its citizens. It provides an opportunity to recognize those who demonstrate their loyalty every day and challenges all of us to find more ways to contribute to the greater good of our country.

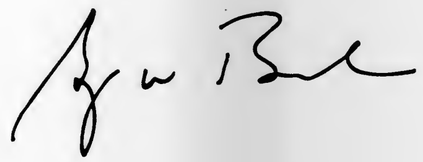
The Congress, by Public Law 85–529, has designated May 1 of each year, as "Loyalty Day," and I encourage all Americans to join me this day in reaffirming our allegiance to our blessed Nation.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States of America, do hereby proclaim May 1,

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2001, as Loyalty Day. I call upon all the people of the United States in support of this national observance.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of April, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-fifth.



[FR Doc. 01–10935
Filed 4–27–01; 8:45 am]
Billing code 3195–01–P

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H.R. 132/P.L. 107–6
To designate the facility of the United States Postal Service located at 620 Jacaranda Street in Lanai City, Hawaii, as the "Goro Hokama Post Office Building". (Apr. 12, 2001; 115 Stat. 8)

H.R. 395/P.L. 107–7
To designate the facility of the United States Postal Service located at 2305 Minton Road in West Melbourne, Florida, as the "Ronald W. Reagan Post Office of West Melbourne, Florida". (Apr. 12, 2001; 115 Stat. 9)

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2000, through January 1, 2001. The CFR volume issued as of January 1, 2000 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 1999, through April 1, 2000. The CFR volume issued as of April 1, 1999 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1999, through July 1, 2000. The CFR volume issued as of July 1, 1999 should be retained..

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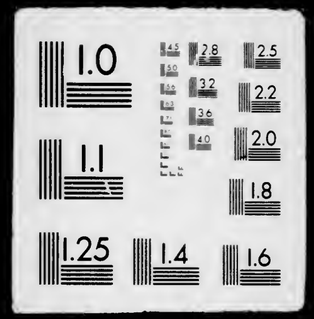
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Rules and Regulations

Federal Register
Vol. 66, No. 84
Tuesday, May 1, 2001

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 362 and 381

[Docket No.01–045IF]

RIN 0583–AC84

Mandatory Inspection of Ratites and Squabs

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Interim final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Poultry Products Inspection Regulations (Part 381) and the Voluntary Poultry Inspection Regulations (Part 362) to include ratites and squabs under the mandatory poultry products inspection regulations. The Agency is responding to the FY 2001 Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act (the Appropriations Act), signed by the President on October 28, 2000, which provides that 180 days after the date of its enactment, U.S. establishments slaughtering or processing ratites or squabs for distribution into commerce as human food will be subject to the requirements of the Poultry Products Inspection Act (PPIA), rather than the voluntary poultry inspection program under section 203 of the Agricultural Marketing Act of 1946 (AMA). The provision of the Appropriations Act specifying that ratites and squabs come under the Agency's mandatory inspection requirements is effective on April 26, 2001. Interested parties may comment on this interim final rule.

DATES: This interim final rule will be effective April 26, 2001. Comments must be received on this interim final rule by July 2, 2001.

ADDRESSES: Submit one original and two copies of written comments within the scope of the rulemaking to FSIS Docket Clerk, Docket #01–045IF, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. All comments submitted in response to this proposal will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For information about the interim final rule, contact Dr. Arshad Hussain, Director, Inspection and Enforcement Standards Development Staff, Office of Policy, Program Development, and Evaluation, FSIS, U.S. Department of Agriculture, Room 202, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700, (202) 720–3219.

SUPPLEMENTARY INFORMATION:

Background

On October 28, 2000, the President signed the Appropriations Act, which provides that 180 days after the date of its enactment, U.S. establishments that slaughter or process ratites (such as ostriches, emus, and rheas) or squabs for distribution into commerce as human food will be subject to the requirements of the PPIA (21 U.S.C. 451, *et seq.*), rather than the voluntary poultry inspection program under section 203 of the AMA (7 U.S.C. 1622). This provision of the Appropriation Act is effective on April 26, 2001.

Ratites are members of a superorder (Ratitae) of flightless birds that have small or rudimentary wings and flat breastplates, e.g., ostriches, emus, and rheas. Squabs are young pigeons that have not yet flown.

Ratites are currently inspected under the Voluntary Poultry Inspection Regulations as an experimental program. Operators who wish to continue to slaughter or process ratites or squabs after April 26, 2001, for transport or sale in commerce must apply to FSIS for a grant of inspection for mandatory inspection service (§§ 381.6 and 381.16). As of April 26, 2001, grants of voluntary inspection for ratites and squabs will no longer be valid. Fees for ratite and squab inspection services will no longer be charged, except for overtime and holiday inspection services.

Applications for mandatory inspection must be submitted on an FSIS application form available from any FSIS District Office or from FSIS Headquarters, Washington, DC 20250. FSIS will give notice in writing to each applicant granted (or denied) inspection.

Under the regulations that implement the PPIA, before being granted Federal inspection, an establishment must have written Sanitation Standard Operating Procedures (SOPs) (§ 381.22(a)) and a Hazard Analysis and Critical Control Point (HACCP) plan that the establishment has validated (§ 381.22 (b) and (c)). Establishments can receive conditional grants of inspection for a period of not more than 90 days while they validate their HACCP plans (§ 381.22(b)).

Import Inspection

This interim final rule will be effective on April 26, 2001. Within 18 months of that date, imported ratite or squab products will have to originate in countries that are eligible to export poultry to the United States and will have to be processed in establishments certified by the government of the foreign country as eligible to export to the United States. Currently, these countries include Canada, France, Great Britain, and Israel. Hong Kong and Mexico have not yet been approved by the United States to slaughter poultry; therefore, they are only eligible to export to the United States processed poultry products that originate from Canada, France, Great Britain, Israel, or the United States (§ 381.196).

All countries exporting or wanting to export ratite and squabs products to the United States, regardless of their current eligibility status regarding meat and poultry product exports to the United States, may do so for the next 18 months subject to the following. Countries already eligible to export poultry to the United States will be able to export ratites and squabs as soon as they certify to FSIS those establishments eligible to export to the United States. These countries are Canada, Israel, Great Britain, and France. Animal health restrictions continue to apply so there is no change with regard to the eligibility of specific products based on APHIS regulations.

Countries eligible to export meat to the United States will be permitted to export ratites to the United States

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provided the animals are slaughtered in an establishment certified to export to the Unites States and provided the countries submit a request for establishing equivalency. Certified establishments are required to meet FSIS HACCP and Pathogen Reduction requirements. At this point, Australia and New Zealand, which are both eligible to export meat to the United States, have indicated that they want to export ratites.

Countries not eligible to export meat or poultry to the United States will need to submit a request for equivalency and FSIS will need to make an equivalency determination according to 9 CFR Part 327.

As indicated above, however, each country desiring to begin or continue exporting such products to the United States will have to apply for an equivalence determination of its ratite and squab inspection system. Countries' ratite and squab export inspection systems must be found to be equivalent with the U.S. domestic inspection system within 18 months of the effective date of the Agency's new mandatory ratite and squab inspection requirements (April 26, 2001).

After the 18 month period has ended, all shipments of ratites and squabs from eligible countries must be accompanied with the appropriate veterinary health certificate (§ 381.197) and must be presented to FSIS for import reinspection prior to entry (§ 381.199).

Countries wanting to export ratites and squab to the United States should make a written request to export poultry to FSIS through the United States Embassy located in the country. FSIS will conduct both a document review and an on-site audit to determine if the country operates an equivalent poultry inspection system.

During the review, FSIS will work cooperatively with the Animal and Plant Health Inspection Service, which approves the entry of poultry products according to the disease status of the exporting country.

If the country's export inspection system is found to be equivalent with the U.S. domestic inspection system, FSIS will publish a proposal in the **Federal Register** to list the country as eligible to export poultry products to the United States. After the public has had 60 days to comment on this proposed rule, FSIS will review all of the public comments and make a final determination of equivalence. The determination to list a country as equivalent, and, therefore, eligible to export poultry products to the United States, is published as a final rule in the **Federal Register**, along with FSIS's responses to the public comments. At that time, the country's inspection service may certify establishments for export of poultry products, including ratites and squabs, to the United States.

Summary of Interim Final Rule

FSIS is making a number of technical changes in its regulations, which it believes are noncontroversial, to provide for the inspection of ratites and squabs. The Agency is amending 9 CFR 362.1(d) to remove squab from the definition of "Poultry" in the Voluntary Poultry Inspection Regulations. FSIS is also amending § 362.1(e) to include ratites and squabs with chickens, turkeys, ducks, geese, and guineas in the definition of "Poultry Product." The Agency is also amending § 381.1(b) to include ratites and squabs within the definition of "Poultry" in the Poultry Products Inspection Regulations.

FSIS is amending § 381.36(b) to require a pen for the ante mortem inspection of ratites. It is necessary to specify that a pen be available for ratites because ante mortem inspection of ratites is done on an individual bird basis, rather than a lot basis as is done for other amenable poultry.

The Agency is amending § 381.66 to exempt ratites from the chilling requirements of § 381.66 paragraphs (b), (c), and all of (d), except for (d)(1). Ratites are air-chilled rather than water-chilled, as is the case with most amenable poultry.

FSIS is amending § 381.67 to include squabs with young chickens under traditional inspection procedures. The two types of birds are of similar size and weight and thus can be inspected in a similar manner.

The Agency is amending § 381.70 to permit an exception to examining and inspecting ratites on the day of slaughter for humane reasons or, for low volume establishments, under certain conditions. This amendment allows the humane handling of ratites to be the same as that for livestock.

FSIS is amending § 381.71 to provide information on how suspect and condemned ratites are to be handled. This amendment is necessary because the treatment of suspect and condemned ratites is different than the treatment of suspect and condemned birds of other amenable species.

FSIS is amending § 381.72 to reflect the fact that ratites showing disease symptoms at ante mortem will be handled differently than other diseased poultry.

The Agency is amending § 381.76 to add Ratite Inspection as the fifth post mortem poultry inspection system. This amendment is necessary because inspection of ratites must be done in a different manner than inspection of other amenable poultry species. Thus, inspection of ratites cannot be done under the existing four inspection systems.

FSIS is amending § 381.96 to provide that ratite carcasses and parts that are shipped unpacked must bear the official brand. This addition is necessary because ratites are the only species of amenable species that are likely to be shipped unpacked.

Finally, FSIS is proposing to make some editorial changes to § 362.1 to correct inaccuracies and to provide for greater clarity.

Regulatory Impact Analysis

Basis for Regulatory Action

Currently, ratites and squabs are inspected on a voluntary, fee-for-service basis under section 203 of the AMA. The interim final rule will amend § 362.1(d) to remove squab from the definition of poultry in the Voluntary Poultry Inspection Regulations and will amend § 381.1 to include ratites and squabs under the Agency's mandatory poultry inspection requirements.

Congress mandated, in the FY 2001 Agriculture Appropriation Act, that 180 days from the date of enactment (April 26, 2001) U.S. establishments that slaughter or process ratites or squabs will come under mandatory inspection by FSIS.

Baseline

Ratites and squabs are considered non-amenable species and are currently inspected by the Agency on a voluntary, fee-for-service basis.[1] These species are also inspected on a mandatory or voluntary basis under State programs. Ratites are an order of flightless birds that includes ostriches, emus, rheas, cassowaries, and kiwis. The most economically important species of ratites are the ostrich and the emu. Squabs are young domesticated pigeons that have never flown. Ratite and squab meat is valued for its flavor and nutritional characteristics.

Since 1992, when FSIS first granted a request for voluntary inspection for ostriches, approximately 166 establishments have been issued a grant of inspection for ratite operations.

[1] The FMIA and PPIA do not mandate the inspection of ratites and squabs. FSIS provides, on a fee-for-service basis, voluntary inspection services under the Agricultural Marketing Act of 1946 for these species and others such as reindeer, elk, deer, antelope, water buffalo, bison, migratory water fowl, game birds, and rabbits. The Food and Drug Administration has primary statutory authority over all food animals and birds not covered by the FMIA and the PPIA.

Currently 99 establishments possess a grant of inspection. In 1999, there were a total of 48,286 (76%) ratites inspected in Federal establishments and 14,427 (24%) ratites inspected in State establishments, or a total of 62,713 ratites inspected (Table 1). Ostriches made up the largest share (69%) of the ratites inspected under the Federal program, whereas emus made up the largest share (56%) of the ratites inspected under State programs.

TABLE 1.—RATITES AND SQUAB INSPECTION VOLUME AND ESTABLISHMENTS, FY 1999

Species	Federal establishments		State establishments		Total inspected
	Number inspected	% of total	Number inspected	% of total	
Ratites					
Ostrich	33,521	86	5,254	14	38,775
Emu	14,745	64	8,068	36	22,813
Other	20	2	1,105	98	1,125
Ratites Total	48,286	76	14,427	24	62,713
Squabs	175,496	14	1,122,131	86	1,297,627
Totals	223,782	16	1,136,558	84	1,360,240
Ests.	Number		Number		
Squabs	2		2		
Ratites	99		95		

In 1999, states with a large share of ratites inspected under the Federal program were California, Georgia, Illinois, Louisiana, Oklahoma, and Texas. Alabama, California, Mississippi, North Carolina, Ohio, and Texas inspected a large share of ratites under State programs. There were almost an equal number of establishments involved in slaughter of ratites under the Federal (99) and State (95) inspection programs.

Ostriches

Ostrich is the largest bird in the world, standing about seven to eight feet tall and weighing 300–400 pounds when fully grown. Industry representatives indicate that there were about 600 ostrich growers 1998, down from 1000 growers in 1996. There is significant uncertainty about the annual production of ostriches and other ratites at this time. The Agency requests reliable information on the annual number of ratites and squab produced and the number of producers.

Ostriches are slaughtered at an average age of 12 months. The average weight at slaughter is 350 pounds. Ostrich meat is sold as steaks, fillets, medallions, roasts, and ground meat. Currently, ostriches are processed in establishments that are equipped to process other red meat species such as cattle, sheep, goats, and swine.

Emus

A mature emu reaches a height of 5 to 6 feet tall, weighing 90 to 120 pounds. In 1999, 22,813 emus were inspected under Federal and State programs (Table 1). There are a number of valuable products derived from emus in addition to their meat.

There is also significant uncertainty about the annual production of emus. Some source indicate that there may be as many as 500,000 birds on 5,000 to 6,000 farms in the U.S., with the majority of them in Texas, Oklahoma, and elsewhere in the Southwest.

Squabs

Squabs are young domesticated pigeons that have never flown. Squabs usually weigh 1 pound or less at the time of slaughter (about 4 weeks old). In 1999, California and Oregon were the only two states that inspected squabs under the Federal voluntary inspection program. In that year, 175,496 squabs were inspected (Table 1). During that same period 1,122,131 squabs were inspected under the inspection programs of California and South Carolina.

Regulatory Alternatives

FSIS considered two options in developing its interim final rule. The first option the Agency considered was to only change the definition of poultry in the Poultry Products Inspection Regulations to include ratites and squabs. This approach may have caused confusion in the industry because it would be difficult to apply some of the current poultry regulations to ratites and squabs, e.g., chilling and certain handling requirements.

The Agency's second option was to make the changes required by statute and other changes as noted above. FSIS selected this option because it will provide a more orderly transition from voluntary inspection to mandatory inspection of ratites and squabs than the first option at little or no additional cost.

Benefits

There are three primary benefits that may result from extending mandatory inspection services to ratites and squabs: industry growth, public health, and industry cost savings.

Having the inspection mark on the ratite and squab products could lead to greater consumer confidence and acceptability of the products. Demand could be expected to increase as a result. Establishments that are able to capitalize on the change in consumer preference may realize increased sales of these products. To the extent that inspection promotes growth in the ratite and squab industry, society could benefit also from the increased employment and earnings of workers in these establishments. Studies are not available to identify the potential growth in the industry that may occur.

The public health benefits of inspection are related to the reduction in risk associated with consumption of all ratite and squab meat that must be inspected using the same procedures employed in the meat and poultry industries. HACCP systems, Sanitation SOPs, and process control practices have been shown to reduce contamination by harmful foodborne pathogens.

A shift to the mandatory inspection system will eliminate the payment of

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fees for inspection services. This is not a benefit from an economic perspective as the costs of inspection are transferred elsewhere in the economy. Since FSIS will recover these costs through appropriated funds, the change to a mandatory inspection system results in an income transfer from the public to the ratite and squab industry. The total cost savings to the industry would be about $2 million in 2001, with the possibility of increasing over time with the expansion of the industry.

Industry Costs

The compliance cost of extending mandatory inspection to ratite and squab species will be negligible. All establishments involved in slaughtering amenable species, as of January 25, 2000, must be in compliance with the provisions of Pathogen Reduction/ Hazard Analysis Critical Control Point (PR/HACCP) final rule. Under the provisions of the rule, all slaughter establishments under mandatory inspection are required to have HACCP plans and meet process control requirements. Nearly all establishments that slaughter and process ratites and squabs because they also slaughter other species under mandatory inspection have already implemented HACCP, Sanitation SOPs, and other measures consistent with the requirements of this rule. These establishments will still be required to make changes to their HACCP or sanitation procedures to include ratites and squabs. Establishments that have not included ratites and squabs in their HACCP plans [2] would incur minimal costs associated with HACCP plan modification.

As poultry is subject to mandatory Federal inspection, ratites and squabs will be subject to *E. coli* testing requirements. Establishments that slaughter more than one kind of poultry and livestock are required to test the kind of species slaughtered in the greatest number. The number of establishments where ratites and squabs will be the species being slaughtered in the greatest number is very low. Consequently, very few establishments will be required to perform additional *E. coli* testing for process control verification. The costs per establishment for *E. coli* testing are shown in Table 2. The Agency is requesting information on the number of establishments where ratites or squabs are, or would become, the major species for slaughter.

For those establishments slaughtering and processing ratites and squabs under voluntary inspection, the transition to mandatory inspection will not require changes in equipment and processing methods. Ratites are currently being slaughtered and processed in establishments that are equipped to process cattle, sheep, goats, and swine. Squabs are processed using the same equipment and procedures as those used for young chickens.

The Agency estimates that 50% of the Federal establishments (50 establishments) and 25% of the State establishments (24 establishments) may be required to make minor changes in their HACCP plan to accommodate mandatory inspection requirements for ratites.

TABLE 2.—POTENTIAL COSTS FOR MANDATORY FEDERAL INSPECTION

Costs	Per est. (dollars)	Industry ($thousand)
Start up Cost:		
HACCP Plan Modification	500	37.0
SSOP Modification	100	7.4
Recurring Cost: *E. coli Sampling* (26 samples@$20 per sample per establishment)	520	38.5
Recordkeeping	300	22.2
Total	1,420	105.1

The Agency seeks comment or further information pertaining to its cost figures for mandatory inspection.

Other additional costs that would apply to all establishments applying for Federal mandatory inspection will be the application cost. This cost will be negligible, as it is limited to a one-time cost for filling out an application, about $10. The total compliance cost to the establishments identified above are estimated to be $105,100.

FSIS is aware that some State inspected ratite product may contain sodium nitrite and/or sodium nitrate even though the Food and Drug Administration (FDA) regulations do not authorize such use of these substances for ratite products. However, once ratites are officially defined as poultry under PPIA regulations, such use will not be allowed in FSIS inspected products. FSIS does not have information on the types or amounts of product affected by this change, but is seeking information.

FSIS Costs

The Agency anticipates the need to conduct baseline microbiological and chemical residue studies. These studies constitute the major costs to the Agency totaling $600,000.

Microbiological Testing

The microbiological studies would help the Agency determine the prevalence of harmful bacteria or pathogens in ratites and squabs. These studies can also be used to develop performance standards for pathogen reduction. The costs of a microbiological baseline testing for ratites are $110,000 and for squabs, $95,000 (Tables 3 and 4).

Chemical Residue Testing

Chemical residue studies would help the Agency determine the presence of violative chemical and drug residues in ratites and squabs. Chemical residue testing would be necessary to determine how these additional species would be incorporated in the Agency's annual residue testing program. FSIS' one-time costs for chemical residue studies for ratites and squabs are $210,000 and $185,000, respectively (Tables 3 and 4).

[2] HACCP plans are not required to cover non-amenable species.

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establishments that specialize in exotic species may seek to broaden their markets by exporting to the United States. The Agency may need to evaluate the equivalence of a greater number of foreign food regulatory inspection systems.

Executive Order 12866 and Regulatory Flexibility Act

Because this interim final rule has been determined to be significant, the Office of Management and Budget (OMB) has reviewed it under Executive Order 12866.

The Administrator, FSIS, has determined that this interim final rule would not have a significant economic impact, as defined by the Regulatory Flexibility Act (5 U.S.C. 601), on a substantial number of small entities.

Small establishments will not be adversely affected by this interim final rule. Few establishments slaughter and process ratites or squabs exclusively. They usually slaughter and process both amenable and non-amenable species. For small slaughtering establishments as well as large ones, ratites and squabs do not comprise all or even most of their business. Of the 100 establishments that slaughter or process ratites and squabs, only two slaughter over 90% of the squabs consumed in the market. There are no establishments that dominate the slaughtering of ratites. Small entities will benefit along with the rest of the industry with the increased marketability of their product and the cost savings realized because they will no longer have to pay fees to either FSIS or the state for voluntary inspection service.

Executive Order 12988

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This interim final rule: (1) Preempts State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 306.5, 381.35, and 590.320 through 590.370, respectively, must be exhausted before any judicial challenge of the application of the provisions of this proposed rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the PPIA.

Executive Order 13132

Executive Order 13132, "Federalism," requires that Agencies assess the federalism implications of their policy statements and actions, i.e., the effects of those statements and actions on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) preempt State and local laws in regard to the manufacture and distribution of meat and poultry products. Therefore, FSIS policy statements and actions impact federalism within the context of these statutory preemptions.

States and local jurisdictions are preempted by the FMIA and PPIA from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA and the PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are within their jurisdiction and outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA and PPIA, or, in the case of imported articles, that are not at such an establishment, after their entry into the United States.

Specifically, under section 301 of the FMIA and section 5 of the PPIA, a State may administer State meat and poultry inspection programs provided that it has developed and is effectively enforcing State meat and poultry inspection requirements at least equal to those imposed under titles I and IV of the FMIA and sections 1–4, 6–10, and 12–22 of the PPIA. These titles contemplate continuous ongoing programs. When States can no longer effectively enforce meat and poultry inspection requirements at least equal to Federal requirements, they must be "designated" by the Secretary to receive Federal inspection.

When FSIS revises its meat and poultry inspection requirements, States that administer their own inspection programs may be impacted, since they must continue to enforce requirements equal to those of FSIS. To minimize any additional costs States must incur to modify their inspection programs, FSIS grants the States significant flexibility under the "equal to" provisions of the FMIA and PPIA. Further, States are eligible to receive up to 50 percent Federal matching funds to cover the costs of their inspection programs.

Paperwork Reduction Act Requirements

Title: Mandatory Inspection of Ratites and Squabs.

Type of Collection: New.

The paperwork and recordkeeping requirements in this final rule will be approved on an emergency basis by OMB under control number 0583–01120. FSIS is seeking comments on the paperwork and recordkeeping requirements in this interim final rule so that the Agency may receive a three-year approval for these requirements.

Abstract: FSIS has reviewed the paperwork and record keeping requirements in this interim final rule in accordance with the Paperwork Reduction Act. Under this proposed rule, FSIS is requiring several information collection and record keeping activities. FSIS is requiring that establishments slaughtering and processing ratites and squabs apply for Federal Inspection. Also, these establishments will need to develop and maintain Sanitation SOPs, HACCP plans, and perform testing for *E. coli*.

Estimate of Burden: FSIS estimates that the time to apply for inspection would be two hours. The time to develop a Sanitation SOP will be two days (16 hours) and five minutes to file. FSIS estimates that an establishment will spend about 5 minutes a day developing an average of eight monitoring records, per Sanitation SOP, and two minutes a day filing each record. The time to develop a HACCP plan or process schedule would take an average of two days (16 hours) and five minutes to file. FSIS estimates that an establishment will spend about five minutes a day developing an average of eight monitoring records, per HACCP plan or process schedule, and two minutes a day filing each record. The time to record *E. coli* testing results would be five minutes a day.

Respondents: Meat and poultry product establishments and irradiation facilities.

Estimated Number of Respondents: 105 (100 ratite and 5 squab establishments).

Estimated Number of Responses per Respondent: 8,252.

Estimated Total Annual Burden on Respondents: 54,758 hours.

Copies of this information collection assessment can be obtained from Lee Puricelli, Paperwork Specialist, Food Safety and Inspection Service, USDA, 112 Annex, 300 12th SW., Washington, DC 20250.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used: (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments are requested by July 2, 2001. To be most effective, comments should be sent to OMB within 30 days of the publication date.

List of Subjects

9 CFR Part 362

Poultry and poultry products.

9 CFR Part 381

Poultry and poultry products.

PART 362—VOLUNTARY POULTRY INSPECTION REGULATIONS

For the reasons stated in the preamble, FSIS is amending 9 CFR chapter III as follows:

1. The authority citation for part 362 is revised to read as follows:

Authority: 7 U.S.C. 1622; 7 CFR 2.18 (g) and (i) and 2.53.

2. Sections 362.1 and 362.2 are revised to read as follows:

§ 362.1 Definitions.

The definitions in § 381.1 are incorporated in this part except for the definitions excluded in § 362.2(a). In addition to those definitions, the following definitions will be applicable to the regulations in this part.

(a) *Act.* "Act" means the Agricultural Marketing Act of 1946, as amended (60 Stat. 1087, as amended; 7 U.S.C. 1621 et seq.).

(b) *Inspector.* "Inspector" means any officer or employee of the Department authorized to perform any duties under the regulations in this part.

(c) *Person.* "Person" means any individual, corporation, company, association, firm, partnership, society, or joint stock company, or other organized business unit.

(d) *Poultry.* "Poultry" means any migratory water fowl or game bird, whether dead or alive.

(e) *Poultry Product.* "Poultry product" means any poultry carcass or part thereof; or any human food product which is made wholly or in part from the carcass of any domesticated bird (as defined in § 381.1(b) of this chapter) and is excepted from the inspection requirements of the Poultry Products Inspection Act (21 U.S.C. 451 et seq.).

§ 362.2 Types and availability of service.

Upon application, in accordance with § 362.3, the following types of service may be furnished under the regulations in this part:

(a) Inspection service. An inspection and certification service for wholesomeness relating to the slaughter and processing of poultry and the processing of poultry products. All provisions of Part 381 and §§ 416.1 through 416.6 of this chapter shall apply to the slaughter of poultry, and the preparation, labeling, and certification of the poultry and poultry products processed under this poultry inspection service except for the following provisions: the definitions of "Act," "animal food manufacturer," "Inspection Service," "inspector," "Inspector in Charge," "poultry," "poultry product," "poultry food product," "poultry products broker," "renderer," and "U.S. Refused Entry" in §§ 381.1 (b), 381.3 (a), 381.6, 381.10, 381.13–381.17, 381.21, 381.29, 381.39–381.42, 381.175 (a)(2), 381.175 (a)(3), 381.179, 381.185–381.187, 381.192, and 381.195–381.225.

(b) Export certification service. At the request of any person intending to export any slaughtered poultry or poultry product, inspectors may make certification regarding products for human food purposes, to be exported, as meeting conditions or standards that are not imposed or are in addition to those imposed by the regulations in this chapter and the laws under which such regulations were issued.

(c) Identification Service. (1) Poultry or other product that is federally inspected and passed at an official establishment, or upon importation, under the Poultry Products Inspection Act, is officially marked to identify it as federally inspected and passed. In order to facilitate the division of such poultry or other product into smaller portions or its combination into larger units and still maintain its identify as product which has been federally inspected and passed and so marked, inspectors may supervise the handling and weighing of the product and mark such portions and units with the official mark of inspection when they determine that identify has been maintained.

(2) At the time service is furnished, product must be sound, wholesome, and fit for human food. The service will be available only on premises other than those of an official establishment. The sanitation of the place or area where service is furnished must comply with provisions of §§ 416.1 through 416.6 of this chapter.

(3) The mark of inspection shall be applied only under the immediate supervision of an inspector.

(4) This service does not cover further cutting and processing of products. These activities must take place at an official establishment.

(5) The registration and recordkeeping requirements enumerated in Part 381, subpart Q, of this chapter shall apply to persons requesting voluntary identification service under this paragraph (c).

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

3. The authority citation for Part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 USC 451–470; 7 CFR 2.18, 2.53.

4. Section 381.1 (b) is amended by revising the definition of poultry to read as follows:

Poultry. "Poultry" means any domesticated bird (chickens, turkeys, ducks, geese, guineas, ratites, or squabs, also termed young flightless pigeons), whether live or dead.

* * * * *

5. Amend § 381.36 by revising the first sentence of paragraph (b) to read as follows:

§ 381.36 Facilities required.

(b) *Facilities for ante mortem inspection.* A suspect pen is required for adequate ratite inspection. * * *

* * * * *

6. Amend § 381.66 by revising the headings of paragraphs (b) and (c), and by revising paragraph (d)(1) to read as follows:

§ 381.66 Temperatures and chilling and freezing procedures.

* * * * *

(b) *General chilling requirements, except for ratites.* * * *

(c) *Ice and water chilling requirements, except for ratites.* * * *

(d) (1) *Moisture absorption and retention limits.*

(1) Poultry washing, chilling, and draining practices and procedures shall be such as will minimize moisture absorption and retention at time of packaging. Ratites must meet the requirements of this paragraph but are exempt from the rest of § 381.66(d).

* * * * *

7. Amend § 381.67, by revising the text preceding the table and the heading of the table, to read as follows:

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§ 381.67 Young chicken and squab slaughter inspection rate maximums under traditional inspection procedure under traditional inspection procedure.

The maximum number of birds to be inspected by each inspector per minute under the traditional inspection procedure for the different young chicken and squab slaughter line configurations are specified in the following table. These maximum rates will not be exceeded. The inspector in charge will be responsible for reducing production line rates where in the inspector's judgment the prescribed inspection procedure cannot be adequately performed within the time available, either because the birds are not presented by the official establishment in such a manner that the carcasses, including both internal and external surfaces and all organs, are readily accessible for inspection, or because the health conditions of a particular flock dictate a need for a more extended inspection procedure. The standards in 381.170(a) of this part specify which classes of birds constitute young chickens and squabs. Section 381.76(b) specifies when either the traditional inspection procedure or the modified traditional inspection procedure can or must be used.

Maximum Production Line Rates—Chickens and Squabs-Traditional Inspection Procedures

* * * * *

8. Amend § 381.70 by designating the text as paragraph (a) and by adding paragraph (b) to read as follows:

§ 381.70 Ante mortem inspection; when required; extent.

* * * * *

(b) The examination and inspection of ratites will be on the day of slaughter, except:

(1) When it is necessary for humane reasons to slaughter an injured animal at night or on a Sunday or holiday, and the FSIS veterinary medical officer cannot be obtained; or

(2) In low volume establishments, when ante mortem inspection cannot be done on the day of slaughter, and the birds to be slaughtered have received ante mortem inspection in the last 24 hours, provided the establishment has an identification and control system over birds that have received ante mortem inspection.

9. Amend § 381.71 by designating the text as paragraph (a) and by adding paragraphs (b), (c), (d), (e), and (f) to read as follows:

§ 381.71 Condemnation on ante mortem inspection.

* * * * *

(b) Dead-on-arrival ratite carcasses and ratites condemned on ante mortem inspection will be tagged "U.S. Condemned" by an establishment employee under FSIS supervision and disposed of by one of the methods prescribed in § 381.95.

(c) All seriously crippled ratites and non-ambulatory ratites, commonly termed "downers," shall be identified as "U.S. Suspects."

(d) Ratites exhibiting signs of drug or chemical poisoning shall be withheld from slaughter.

(e) Ratites identified as "U.S. Suspects" or "U.S. Condemned" may be set aside for treatment. The "U.S. Suspect" or "U.S. Condemned" identification device will be removed by an establishment employee under FSIS supervision following treatment if the bird is found to be free of disease. Such a bird found to have recovered from the condition for which it was treated may be released for slaughter or for purposes other than slaughter, provided that in the latter instance permission is first obtained from the local, State, or Federal sanitary official having jurisdiction over movement of such birds.

(f) When it is necessary for humane reasons to slaughter an injured ratite at night or Sunday or a holiday, and the Agency veterinary medical officer cannot be obtained, the carcass and all parts shall be kept for inspection, with the head and all viscera except the gastrointestinal tract held by the natural attachment. If all parts are not so kept for inspection, the carcass shall be condemned. If on inspection of a carcass slaughtered in the absence of an inspector, any lesion or other evidence is found indicating that the bird was sick or diseased, or affected with any other condition requiring condemnation of the animal on ante mortem inspection, or if there is lacking evidence of the condition that rendered emergency slaughter necessary, the carcass shall be condemned. Ratites that are sick, dying, or that have been treated with a drug or chemical and presented for slaughter before the required withdrawal period, are not covered by emergency slaughter provisions.

10. Revise § 381.72 to read as follows:

§ 381.72 Segregation of suspects on ante mortem inspection.

(a) All birds, except ratites, that on ante mortem inspection do not plainly show, but are suspected of being affected with, any disease or condition that under §§ 381.80 to 381.93 of this Part may cause condemnation in whole or in part on post mortem inspection, shall be segregated from the other poultry and held for separate slaughter, evisceration, and post mortem inspection. The inspector shall be notified when such segregated lots are presented for post mortem inspection, and inspection of such birds shall be conducted separately. Such procedure for the correlation of ante mortem and post mortem findings by the inspector, as may be prescribed or approved by the Administrator, shall be carried out.

(b) All ratites showing symptoms of disease will be segregated, individually tagged as "U.S. Suspects" by establishment personnel under FSIS supervision with a serially numbered metal or plastic leg band or tag bearing the term "U.S. Suspect," and held for further examination by an FSIS veterinarian. Depending upon the findings of the veterinarian's examination, these birds will either be passed for regular slaughter, slaughtered as suspects, withheld from slaughter, or condemned on ante mortem. Those ratites affected with conditions that would be readily detected on post mortem inspection need not be individually tagged on ante mortem inspection with the "U.S. Suspect" tag provided that such ratites are segregated and otherwise handled as "U.S. Suspects." All ratites identified as "U.S. Condemned" shall be tagged by establishment personnel, under FSIS supervision, with a serially numbered metal or plastic leg band or tag bearing the term "U.S. Condemned."

11. Amend § 381.76 by revising the introductory text of paragraph (b) (1) to read as follows:

§ 381.76 Post-mortem inspection, when required; extent; traditional, Streamlined Inspection System (SIS), New Line Speed (NELS) Inspection System and the New Turkey Inspection (NTI) System; rate of inspection.

* * * * *

(b)(1) There are five systems of post-mortem inspection: Streamlined Inspection System (SIS) and the New Line Speed (NELS) Inspection System, both of which shall be used only for broilers and cornish game hens; the New Turkey Inspection (NTI) System, which shall be used only for turkeys; Traditional Inspection: and Ratite Inspection.

* * * * *

12. Revise § 381.96 to read as follows:

§ 381.96 Wording and form of the official inspection legend.

Except as otherwise provided in this subpart, the official inspection legend required to be used with respect to inspected and passed poultry products shall include wording as follows: "Inspected for wholesomeness by U.S. Department of Agriculture." This wording shall be contained within a circle. The form and arrangement of such wording shall be exactly as indicated in the example in Figure 1, except that the appropriate official establishment number shall be shown, and if the establishment number appears elsewhere on the labeling material in the manner prescribed in § 381.123(b), it may be omitted from the inspection mark. The administrator may approve the use of abbreviations of such inspection mark; and such approved abbreviations shall have the same force and effect as the inspection mark. The official inspection legend, or the approved abbreviation thereof, shall be printed on consumer packages and other immediate containers of inspected and passed poultry products, or on labels to be securely affixed to such containers of such products and may be printed or stenciled thereon, but shall not be applied by rubber stamping. When applied by a stencil, the legend shall not be less than 4 inches in diameter. An official brand must be applied to inspected and passed carcasses and parts of ratites that are shipped unpacked.

Done at Washington, DC, on: April 25, 2001.

Thomas J. Billy,

Administrator.

[FR Doc. 01–10679 Filed 4–26–01; 1:36 pm]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AWP–1]

Establishment of a Class E Enroute Domestic Airspace Area, El Centro, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: This document delays the effective date of a direct final rule which establishes a Class E enroute domestic airspace area beginning at 1,200 feet above ground level (AGL) in the vicinity of El Centro, CA and replaces existing Class G uncontrolled airspace within Restricted Area 2510A (R2510A), the Kane West Military Operating Area (MOA), and Kane East MOA.

EFFECTIVE DATE: The effective date of the direct final rule published on February 26, 2001 (66 FR 11531) is delayed until 0901 UTC July 12, 2001.

ADDRESSES: The official docket may be examined in the Office of the Assistant Chief Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Debra Trindle, Air Traffic Division, Airspace Specialist, AWP–520.10, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6613.

SUPPLEMENTARY INFORMATION: On February 26, 2001, the FAA published in the **Federal Register** a direct final rule; request for comments, which established a Class E enroute domestic airspace area beginning at 1,200 feet above ground level in the vicinity of El Centro, CA (FR Document 01–4680, 66 FR 11531, Airspace Docket No. 01–AWP–1). Please note that when accessing this document it was published incorrectly by the **Federal Register** as 00–AWP–1. The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 15, 2001. No adverse comments were received; therefore this document confirms that this direct final rule will become effective, but on a delayed date of July 12, 2001. The delay in the effective date is so the change will be in conjunction with established aeronautical charting cycles.

Issued in Los Angeles, California, on April 4, 2001.

Leonard A. Mobley,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 01–10841 Filed 4–30–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 648

[Docket No. 010410087–1087–01; I.D. 031401B]

RIN 0648–AO07

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework Adjustment 14

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 14 to the Atlantic Sea Scallop Fishery Management Plan (FMP). This final rule implements management measures for the 2001 and 2002 fishing years, including a days-at-sea (DAS) adjustment, a Sea Scallop Area Access Program (Area Access Program) for two areas that have been closed to scallop fishing in the Mid-Atlantic, and a 50–bu (17.62 hectoliters (hl)) possession restriction of in-shell scallops on vessels shoreward of the vessel monitoring system (VMS) demarcation line. The intent of this action is to achieve the goals and objectives of the FMP and to achieve optimum yield in the scallop fishery. In addition, NMFS publishes the Office of Management and Budget (OMB) control numbers for collection-of-information requirements contained in this final rule.

DATES: Effective April 26, 2001.

ADDRESSES: Copies of Framework Adjustment 14, its Final Supplemental Environmental Impact Statement (FSEIS), and Regulatory Impact Review (RIR) are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at http://www.nefmc.org.

Comments regarding the collection-of-information requirements contained in this final rule should be sent to Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; and to the Office of Information and Regulatory Affairs, Office of Management and Budget,

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Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Peter W. Christopher, Fishery Policy Analyst, 978–281–9280; fax 978–281–9135; e-mail peter.christopher@noaa.gov.

SUPPLEMENTARY INFORMATION:

Regulations implementing Amendment 7 to the FMP (64 FR 14835, March 29, 1999) redefined overfishing and revised the fishing mortality (F) reduction schedule through fishing year 2008. The reductions in F and associated sea scallop DAS schedule were intended to rebuild the sea scallop stock within 10 years. Amendment 7 also established an annual monitoring and review process to adjust management measures to meet the stock rebuilding objectives as conditions in the resource change. In addition, Amendment 7 included a measure that continued the closures of two sea scallop closed areas in the Mid-Atlantic region, known as the Hudson Canyon South and Virginia Beach Closed Areas, through March 1, 2001. These closed areas were originally implemented by interim rules (63 FR 15324, March 31, 1998; 63 FR 51862, September 29, 1998) to prevent the harvest of juvenile scallops and to allow time for scallop growth and rebuilding. Framework 14 renames the Hudson Canyon South Closed Area as the Hudson Canyon Area to avoid confusion that the "South" description may cause.

Based on information from the 29th Northeast Regional Stock Assessment Workshop (September 1999) and on the updated catch and survey data, the New England Fishery Management Council (Council) included new biological projections in its 2000 Stock Assessment and Fishery Evaluation (SAFE) Report for sea scallops (September 8, 2000) that conclude that scallop rebuilding is ahead of the rebuilding schedule specified in Amendment 7. As reported in the 2000 SAFE Report, the accelerated rebuilding has occurred primarily because of strong year classes of scallops in 1998 and 2000. The Scallop Plan Development Team (PDT), which completed the analysis in the 2000 SAFE Report, determined that DAS allocations could be increased from the Amendment 7 levels while still meeting the 2001 and 2002 F targets, provided that the Georges Bank and Southern New England multispecies closed areas remain closed to scallop fishing and that access to scallops in the Hudson Canyon and Virginia Beach Areas in the Mid-Atlantic is controlled. The PDT also recommended closing four new areas to scallop fishing to protect high concentrations of juvenile scallops.

At its January 25, 2001, meeting, the Council took final action on management measures for Framework 14. The Council recommended the following measures for fishing years 2001 and 2002: An annual DAS allocation of 120, 48, and 10 DAS for full-time, part-time, and occasional vessels, respectively; an Area Access Program for the Hudson Canyon and Virginia Beach Areas to control fishing effort, catch, and fishing mortality in these two previously closed areas; and a prohibition on the possession of more than 50 U.S. bushels (17.62 hl) of in-shell scallops inside the VMS demarcation line for vessels that fish in or transit the area south of 42°20′ N. latitude. Although the Scallop Oversight Committee supported two additional closures in Framework 14, the Council ultimately decided to recommend that no new closures (beyond the continuation of the Georges Bank and Southern New England multispecies closed areas) be implemented because such closures had the potential for unnecessary hardships on the industry and that new closures are not necessary to achieve the goals of the FMP given the improved condition of the resource.

Approved Measures

This action implements an annual DAS allocation of 120, 48, and 10 DAS for full-time, part-time, and occasional vessels, respectively, for the 2001 and 2002 fishing years. This allocation represents an increase over the DAS allocations that became effective March 1, 2001, as scheduled under Amendment 7 (i.e., 49 full-time, 19 part-time, and 4 occasional).

Framework 14 implements a system (Area Access Program) for allowing controlled scallop fishing in the Hudson Canyon and Virginia Beach Sea Scallop Access Areas, similar to programs implemented under Frameworks 11 and 13 to the FMP that allowed scallop fishing in the multispecies closed areas. Vessels are prohibited from fishing for scallops in the Sea Scallop Access Areas unless they are fishing under the Area Access Program. The intent of this access program is to derive biological, social, and economic benefits from fishing in the areas over the course of 2 years. Measures included in the Area Access Program are described below.

This action also implements a prohibition on the possession of more than 50 U.S. bu (17.62 hl) of in-shell scallops inside the VMS demarcation line for vessels that fish in or transit the area south of 42°20′ N. latitude. Without this restriction, vessels could avoid the limitations of the seven-man crew and DAS restrictions by bringing in-shell scallops shoreward of the VMS demarcation line and shucking inside the line. Because DAS stop accruing once a vessel is inside the VMS demarcation line, vessels are able to bank this saved time for future trips. This measure also may have the incidental benefit of helping to prevent possible contamination of inshore habitats caused by any large discards of scallop viscera as a result of shucking near shore. Vessels fishing north of 42°20′ N. latitude will be exempt from this restriction, provided they do not enter the area south of 42°20′ N. latitude. This exemption is intended to allow a limited fishery to continue north of 42°20 N. latitude by some vessels that have traditionally landed in-shell scallops.

Finally, this final rule corrects a reference to the stowage provisions in the regulations for Closed Area I that inadvertently references a paragraph that formerly included gear stowage provisions but is now reserved. This regulation is found at § 648.81(b)(2)(ii).

Sea Scallop Area Access Program Measures

The 2001 Area Access Program begins on May 1, 2001 and ends when the TAC is caught or when vessels have used up their allocated number of trips. The 2002 Area Access Program begins on March 1, 2002, unless the fishery is closed prior to February 28, 2002, in which case it will begin on April 1, 2002. A delay in the start date is intended to reduce possible bycatch of finfish that could occur in late winter and early spring.

The Area Access Program includes a TAC of 13.96 million lb (6,331 mt) and 0.62 million lb (283 mt) for the Hudson Canyon and Virginia Beach Sea Scallop Access Areas, respectively, for 2001, and 14.14 million lb (6,415 mt) and 0.60 million lb (273 mt) for the Hudson Canyon and Virginia Beach Sea Scallop Access Areas, respectively, for 2002. These TACs include set-asides of 2 percent and 1 percent to defray the costs of observers and research, respectively. The TACs achieve an F of 0.2 in each of the two areas.

All limited access scallop vessels, including vessels that replace vessels that hold a scallop Confirmation of Permit History, are eligible to fish for the sea scallop TAC under the Area Access Program. Full-time and part-time scallop vessels are restricted to a total of three annual trips to the Hudson Canyon and Virginia Beach Sea Scallop Access Areas. A trip to either of the areas counts as one of the allowed trips.

Vessels participating in the Area Access Program are allowed to take only one of the three allocated trips before May 1 and only two of the three allocated trips before June 1. At least one trip must be started before September 1 to be eligible to fish the remainder of the allocated trips or any additional trips that may be authorized on or after October 1. This measure is meant to prevent a derby style fishery from occurring and may reduce the potential for bycatch by limiting trips in late spring when bycatch, particularly of summer flounder, could be problematic. Vessels in the occasional permit category may conduct only one trip and may fish in the area of their choice.

Participating scallop vessels are allowed to possess and land from the areas up to 17,000 lb (7,711.1 kg) of scallop meats per trip in fishing year 2001 and 18,000 lb (8,164.7 kg) of scallop meats per trip in fishing year 2002. Limits on both the amount of scallops possessed and landed and the number of trips are intended to help to control fishing mortality of scallops in the areas. These limits are also intended to increase social benefits by allowing all limited access vessels an opportunity to fish in the areas without creating a derby fishery, and to increase economic benefits by promoting an orderly fishery and reducing the possibility of market gluts that could be caused by high initial catches in these areas.

After taking into account data on the number of eligible vessels participating and on the total number of trips taken, the Administrator, Northeast Region, NMFS (Regional Administrator) may adjust the sea scallop possession limit for the Hudson Canyon and Virginia Beach Sea Scallop Access Areas any time during the season and on or after October 1 for fishing year 2001 and 2002 may allocate one or more additional trips for full-time and part-time vessels. In order for additional trips to be allocated, a sufficient amount of the sea scallop TAC must remain to warrant such an adjustment or allocation. In order for a vessel to participate in any additional Area Access Program trips allocated on or after October 1, that vessel must have started at least one Area Access Program trip prior to September 1 of the current fishing year. Vessels with occasional permits will not be allocated any additional trips.

Any trip of 10 DAS or less for a vessel fishing in the Area Access Program will count as 10 DAS. Any trip of over 10 DAS will count as the actual DAS (e.g., if a vessel used 12 DAS, 12 DAS would be deducted from its annual DAS allocation). The intended effect of the minimum 10 DAS count is to reduce the amount of days that are available to be fished in the 2001–2002 fishing years in other areas, where scallops are generally smaller, thereby reducing fishing mortality by potentially reducing the number of scallops caught under DAS.

Vessels will be allowed to use dredges or trawls when fishing in the Area Access Program. Dredge gear is required to be outfitted with a twine top with a minimum mesh size of 10 inches (25.40 cm). The purpose of increasing the minimum twine top mesh size measurement from 8 inches (20.32 cm) to 10 inches (25.40 cm) for the Area Access Program is to reduce bycatch of groundfish and other finfish. Recent research and experience from the Georges Bank and Southern New England Closed Area Sea Scallop Exemption Program demonstrate that the 10-inch (25.40 cm) mesh size may significantly reduce bycatch of certain species, especially flatfish species.

All scallop vessels fishing in the Area Access Program must have installed on board an operational VMS unit that meets the minimum performance criteria as specified in the regulations at § 648.9(b). (Vessels with occasional permits are the only limited access scallop vessels not currently required to have a VMS unit). Scallop vessels planning to fish in the Area Access Program must so declare by notifying the Regional Administrator through the VMS as described here.

Each vessel operator is required to inform NMFS of his/her intention to fish in the Sea Scallop Access Areas prior to the 25th day of the month preceding the month in question through the VMS e-mail system to facilitate placement of observers (e.g., if the vessel plans to fish in these areas in July, it would need to notify the Regional Administrator by June 25).

The following information must be reported to the Regional Administrator prior to the 25th day of the month preceding the month in question: Vessel name and permit number, owner and operator's name, owner and operator's phone numbers, the area to be fished, and the number of trips anticipated to be taken in the area in question. Vessels will be provided additional information by mail regarding all notification requirements.

Each vessel participating in the Area Access Program is required to report specific information on a daily basis through the VMS. For each day of an Area Access Program trip, a vessel must report the daily pounds (kg) of scallop meats kept, the area fished that day, and the Fishing Vessel Trip Report page numbers corresponding to the respective Sea Scallop Access Area trip. In addition, vessels on observed trips must provide a separate report of the daily pounds (kg) of scallop meats kept on tows that were observed.

Vessels that have declared a trip into the Area Access Program are prohibited from possessing more than 50 U.S. bu (17.62 hl) (400 lb (181.4 kg) of meats) of shell stock when outside the Sea Scallop Access Areas. This limit for shell stock (i.e., unshucked scallops) is considered part of the overall possession limit. A limit on the amount of sea scallops landed in the shell is necessary to monitor and enforce the overall meat weight possession limit requirement. Allowing vessels to retain a relatively minor amount of shell stock will help satisfy a market for large, whole scallops, yet not compromise the enforceability of the conservation intent of the possession limit.

General category permitted vessels and limited access scallop vessels fishing outside a scallop DAS are allowed to fish in the Sea Scallop Access Areas throughout the year, provided that no more than 100 lb (45.36 kg) of scallop meats are possessed on board the vessel when the vessel is in the Sea Scallop Access Areas. These vessels are prohibited from possessing in-shell scallops while inside the Sea Scallop Access Areas, except they may possess an equivalent of in-shell scallops that are necessary to provide 100 lb (45.36 kg) of scallop meats. Vessels not fishing under the Area Access Program may transit the Sea Scallop Access Areas with more than these possession limits on board, provided their gear is properly stowed according to the regulations at § 648.23(b). This measure is intended to allow an incidental catch of scallops for scallop vessels that fish for other species outside the areas and to allow for more direct transiting to and from other fishing areas.

To improve the enforceability of the Area Access Program, all limited access scallop vessels equipped with a VMS unit will be polled twice per hour, regardless of whether the vessel is enrolled in the Area Access Program or not. Also, vessels are required to stow all dredge or trawl gear while transiting to and from the Sea Scallop Access Areas and must land their scallop catch at one location for each trip.

Vessels are required to carry observers when requested. The Council has recommended, as a goal, a 10-percent observer coverage for the Hudson Canyon Sea Scallop Access Area and a 20-percent observer coverage for the Virginia Beach Sea Scallop Access Area. Observers will obtain information on catch, catch rates, and bycatch and may

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Participating scallop vessels are allowed to possess and land from the areas up to 17,000 lb (7,711.1 kg) of scallop meats per trip in fishing year 2001 and 18,000 lb (8,164.7 kg) of scallop meats per trip in fishing year 2002. Limits on both the amount of scallops possessed and landed and the number of trips are intended to help to control fishing mortality of scallops in the areas. These limits are also intended to increase social benefits by allowing all limited access vessels an opportunity to fish in the areas without creating a derby fishery, and to increase economic benefits by promoting an orderly fishery and reducing the possibility of market gluts that could be caused by high initial catches in these areas.

After taking into account data on the number of eligible vessels participating and on the total number of trips taken, the Administrator, Northeast Region, NMFS (Regional Administrator) may adjust the sea scallop possession limit for the Hudson Canyon and Virginia Beach Sea Scallop Access Areas any time during the season and on or after October 1 for fishing year 2001 and 2002 may allocate one or more additional trips for full-time and part-time vessels. In order for additional trips to be allocated, a sufficient amount of the sea scallop TAC must remain to warrant such an adjustment or allocation. In order for a vessel to participate in any additional Area Access Program trips allocated on or after October 1, that vessel must have started at least one Area Access Program trip prior to September 1 of the current fishing year. Vessels with occasional permits will not be allocated any additional trips.

Any trip of 10 DAS or less for a vessel fishing in the Area Access Program will count as 10 DAS. Any trip of over 10 DAS will count as the actual DAS (e.g., if a vessel used 12 DAS, 12 DAS would be deducted from its annual DAS allocation). The intended effect of the minimum 10 DAS count is to reduce the amount of days that are available to be fished in the 2001–2002 fishing years in other areas, where scallops are generally smaller, thereby reducing fishing mortality by potentially reducing the number of scallops caught under DAS.

Vessels will be allowed to use dredges or trawls when fishing in the Area Access Program. Dredge gear is required to be outfitted with a twine top with a minimum mesh size of 10 inches (25.40 cm). The purpose of increasing the minimum twine top mesh size measurement from 8 inches (20.32 cm) to 10 inches (25.40 cm) for the Area Access Program is to reduce bycatch of groundfish and other finfish. Recent research and experience from the Georges Bank and Southern New England Closed Area Sea Scallop Exemption Program demonstrate that the 10-inch (25.40 cm) mesh size may significantly reduce bycatch of certain species, especially flatfish species.

All scallop vessels fishing in the Area Access Program must have installed on board an operational VMS unit that meets the minimum performance criteria as specified in the regulations at § 648.9(b). (Vessels with occasional permits are the only limited access scallop vessels not currently required to have a VMS unit). Scallop vessels planning to fish in the Area Access Program must so declare by notifying the Regional Administrator through the VMS as described here.

Each vessel operator is required to inform NMFS of his/her intention to fish in the Sea Scallop Access Areas prior to the 25th day of the month preceding the month in question through the VMS e-mail system to facilitate placement of observers (e.g., if the vessel plans to fish in these areas in July, it would need to notify the Regional Administrator by June 25).

The following information must be reported to the Regional Administrator prior to the 25th day of the month preceding the month in question: Vessel name and permit number, owner and operator's name, owner and operator's phone numbers, the area to be fished, and the number of trips anticipated to be taken in the area in question. Vessels will be provided additional information by mail regarding all notification requirements.

Each vessel participating in the Area Access Program is required to report specific information on a daily basis through the VMS. For each day of an Area Access Program trip, a vessel must report the daily pounds (kg) of scallop meats kept, the area fished that day, and the Fishing Vessel Trip Report page numbers corresponding to the respective Sea Scallop Access Area trip. In addition, vessels on observed trips must provide a separate report of the daily pounds (kg) of scallop meats kept on tows that were observed.

Vessels that have declared a trip into the Area Access Program are prohibited from possessing more than 50 U.S. bu (17.62 hl) (400 lb (181.4 kg) of meats) of shell stock when outside the Sea Scallop Access Areas. This limit for shell stock (i.e., unshucked scallops) is considered part of the overall possession limit. A limit on the amount of sea scallops landed in the shell is necessary to monitor and enforce the overall meat weight possession limit requirement. Allowing vessels to retain a relatively minor amount of shell stock will help satisfy a market for large, whole scallops, yet not compromise the enforceability of the conservation intent of the possession limit.

General category permitted vessels and limited access scallop vessels fishing outside a scallop DAS are allowed to fish in the Sea Scallop Access Areas throughout the year, provided that no more than 100 lb (45.36 kg) of scallop meats are possessed on board the vessel when the vessel is in the Sea Scallop Access Areas. These vessels are prohibited from possessing in-shell scallops while inside the Sea Scallop Access Areas, except they may possess an equivalent of in-shell scallops that are necessary to provide 100 lb (45.36 kg) of scallop meats. Vessels not fishing under the Area Access Program may transit the Sea Scallop Access Areas with more than these possession limits on board, provided their gear is properly stowed according to the regulations at § 648.23(b). This measure is intended to allow an incidental catch of scallops for scallop vessels that fish for other species outside the areas and to allow for more direct transiting to and from other fishing areas.

To improve the enforceability of the Area Access Program, all limited access scallop vessels equipped with a VMS unit will be polled twice per hour, regardless of whether the vessel is enrolled in the Area Access Program or not. Also, vessels are required to stow all dredge or trawl gear while transiting to and from the Sea Scallop Access Areas and must land their scallop catch at one location for each trip.

Vessels are required to carry observers when requested. The Council has recommended, as a goal, a 10-percent observer coverage for the Hudson Canyon Sea Scallop Access Area and a 20-percent observer coverage for the Virginia Beach Sea Scallop Access Area. Observers will obtain information on catch, catch rates, and bycatch and may

comment, further notice and opportunity to comment on this final rule is unnecessary. Therefore, the AA, under 5 U.S.C. 553(b)(B), finds good cause exists to waive prior notice and additional opportunity for public comment.

It is contrary to the public interest to delay for 30 days the effective date for the prohibition on the possession limit of more than 50 U.S. bu (17.62 hl) of in-shell scallops shoreward of the VMS demarcation line. Currently, some vessels are shucking their scallop catch inside the VMS demarcation line and thus compromising the conservation objectives of both the DAS and crew size restrictions of the FMP. To allow this activity to continue unrestricted could undermine the effects of the scallop management measures. In addition, a 30 day delay in effectiveness would delay the potential incidental benefits of reducing contamination of inshore waters that may be associated with high discards of scallop viscera from vessels shucking inshore of the VMS demarcation line. For these reasons, the AA finds, under 5 U.S.C. 553(d)(3), good cause not to delay for 30 days the effective date of this provision.

Because the annual DAS allocations implemented in this final rule are higher than the DAS allocations that went into effect on March 1, 2001, and because the Area Access Program (and associated information collection requirements as published in 15 CFR 902) allows access to areas that would otherwise be closed to scallop fishing, these measures relieve restrictions, and are therefore not subject to a 30–day delay in effectiveness under 5 U.S.C. 553(d)(1).

Also, this final rule corrects a reference to the stowage provisions in the regulations for Closed Area I that inadvertently references a paragraph that formerly included gear stowage provisions but is now reserved (§ 648.81(b)(2)(ii)). The correction to this crossreference imposes no new requirements and is not subject to the 30-day delay in effective date provisions of 5 U.S.C. 553 (d).

Because a prior notice and opportunity for public comment is not required for this rule under 5 U.S.C. 533, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

This final rule has been determined to be significant for the purposes of Executive Order 12866.

For purposes of the Congressional Review Act, this rule has been determined to be major within the meaning of 5 U.S.C. 804 (2). Because this rule establishes a regulatory program for a commercial activity related to fishing under 5 U.S.C. 808 (1), it is not subject to the Congressional Review Act 60–day delay in effective date.

This rule contains collection-of-information requirements subject to the PRA and which have been approved by OMB. The estimated response times and the OMB Control Numbers for these requirements are: 1 hour for installation of a vessel monitoring system (VMS) (0648–0416); 2 minutes for a monthly VMS declaration of an intent to fish during the next month (0648–0416); 2 minutes for notification at least 5 days prior to departure on a fishing trip (0648–0416); 10 minutes for a daily VMS catch report (0648–0416); 2 minutes for a notification of intent to leave on a fishing trip (0648–0202); and 5 seconds for VMS polling (0648–0416 and 0648–0307). The submission requirements for research proposals are cleared under OMB Control Numbers 0348–0043 and 0348–0044.

The response time estimates above include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 25, 2001.

John Oliver,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR chapter IX, part 902 and 50 CFR chapter VI, part 648 are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT; OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by adding in numerical order an entry for § 648.58 with new OMB control numbers to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b)* * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
. . .	. . .
50 CFR	
. . .	. . .
648.58	0348–0043, 0348–0044, 0648–0202, 0648–0307, and 0648–0416
. . .	. . .

50 CFR Chapter VI

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.10, the first sentence of paragraph (b)(1), introductory text, is revised to read as follows:

§ 648.10 DAS notification requirements.

* * * * *

(b) * * *

(1) A scallop vessel issued a full-time or part-time limited access scallop permit; or issued an occasional limited access permit when fishing under the Sea Scallop Area Access Program specified under § 648.58; or a scallop vessel fishing under the small dredge program specified in § 648.51(e); or a vessel issued a limited access multispecies, monkfish, occasional scallop, or combination permit whose owner elects to provide the notifications required by paragraph (b) of this section using a VMS that meets the minimum performance criteria specified in § 648.9(b) or as modified pursuant to

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§ 648.9(a), unless otherwise authorized or required by the Regional Administrator under paragraph (d) of this section, must have installed on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b) or as modified pursuant to § 648.9(a). * * *

* * * * *

3. In § 648.14, revise paragraphs (a)(38), (a)(39), (a)(40), and (h)(27); and add paragraphs (a)(110), (a)(111), (h)(29), (h)(30), (h)(31), (h)(32), (h)(33), (i)(8), and (i)(9) to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(38) Enter or be in the area described in § 648.81(a)(1) on a fishing vessel, except as provided in § 648.81(a)(2) and (d).

(39) Enter or be in the area described in § 648.81(b)(1) on a fishing vessel, except as provided in § 648.81(b)(2).

(40) Enter or be in the area described in § 648.81(c)(1) on a fishing vessel, except as allowed under § 648.81(c)(2) and (d).

* * * * *

(110) Fish for, possess, or land sea scallops in or from the areas described in § 648.57, except as allowed under §§ 648.52(e) and 648.58.

(111) Transit or be in the areas described in § 648.57 when fishing under a scallop DAS, except: As allowed under § 648.58; or when all scallop gear is unavailable for immediate use as defined in § 648.23(b), unless there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use.

* * * * *

(h) * * *

(27) Enter or be in the areas described in § 648.57 when fishing with scallop dredge gear under the Sea Scallop Area Access Program specified in § 648.58, with a net, net material, or any other material on the top half of the dredge with mesh size smaller than that specified in § 648.58(c)(7).

* * * * *

(29) Possess or land per trip more than 50 bu (17.62 hectoliters (hl)) of in-shell scallops, as specified in § 648.52(d), once inside the VMS Demarcation Line by a vessel that, at any time during the trip, fished in or transited any area south of 42°20′ N. Latitude, except as provided in § 648.54.

(30) Land per trip more than 100 lb (45.36 kg) of scallop meats as specified in § 648.52(e) in or from the areas described in § 648.57 when fishing under a scallop DAS but not declared into the Sea Scallop Area Access Program or when fishing outside of the scallop DAS program.

(31) Possess more than 100 lb. (45.36 kg) of scallop meats in the areas described in § 648.57 when fishing under a scallop DAS but not declared into the Sea Scallop Area Access Program or when fishing outside of the scallop DAS program, unless the vessel's fishing gear is unavailable for immediate use as defined in § 648.23(b), or, there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use.

(32) Except as allowed in § 648.52(e), land in-shell scallops in or from the areas described in § 648.57 when fishing under a scallop DAS but not declared into the Sea Scallop Area Access Program or when fishing outside of the scallop DAS program.

(33) Except as allowed in § 648.52(e), possess in-shell scallops in the areas described in § 648.57 when fishing under a scallop DAS but not declared into the Sea Scallop Area Access Program or when fishing outside of the scallop DAS program, unless the vessel's fishing gear is unavailable for immediate use as defined in § 648.23(b), or, there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use.

* * * * *

(i) * * *

(8) Possess, retain, or land per trip no more than 100 lb (45.36 kg) of shucked scallops in or from the areas described in § 648.57.

(9) Except as allowed in § 648.52(e), possess or land in-shell scallops in or from the areas described in § 648.57.

* * * * *

4. In § 648.52, the section heading and paragraphs (a) and (c) are revised, and paragraphs (d) and (e) are added to read as follows:

§ 648.52 Possession and landing limits.

(a) Except as provided in paragraph (e) of this section, owners or operators of vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10 or that have used up their DAS allocations, and vessels possessing a general scallop permit, unless exempted under the state waters exemption program described under § 648.54, are prohibited from possessing or landing per trip more than 400 lb (181.44 kg) of shucked, or 50 bu (17.62 hl) of in-shell scallops with no more than one scallop trip of 400 lb (181.44 kg) of shucked, or 50 bu (17.62 hl) of in-shell scallops, allowable in any calendar day.

* * * * *

(c) Owners or operators of vessels with a limited access scallop permit that have declared into the Sea Scallop Area Access Program as described in § 648.58 are prohibited from fishing for, possessing or landing per trip more than the sea scallop possession and landing limit specified in § 648.58(c)(6).

(d) Owners or operators of vessels issued limited access or general category scallop permits fishing in or transiting the area south of 42°20′ N. Latitude at any time during a trip are prohibited from fishing for, possessing, or landing per trip more than 50 bu (17.62 hl) of in-shell scallops shoreward of the VMS Demarcation Line, unless when fishing under the state waters exemption specified under § 648.54.

(e) Owners or operators of vessels with a general category scallop permit and vessels with a limited access scallop permit that are not fishing under a scallop DAS may land per trip no more than 100 lb (45.36 kg) of sea scallop meats in or from the areas described in § 648.57, and may possess no more than 100 lb (45.63 kg) of sea scallop meats in or from the areas described in § 648.57, unless the vessel is only transiting the areas with all fishing gear unavailable for immediate use as defined in § 648.23(b), or, there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use. No in-shell scallops from the Hudson Canyon and Virginia Beach Sea Scallop Access Areas may be landed. In-shell scallops up to 12.5 bu (4.41 hl) taken by such vessels from the Hudson Canyon and Virginia Beach Sea Scallop Access Areas may be possessed only for the purpose of shucking in order to provide no more than 100 lb of scallop meats. Any combination of scallop meats and in-shell scallops possessed by such vessels must be equivalent to no more than 100 lb (45.36 kg) of scallop meats.

5. In § 648.53, paragraph (b) is amended by revising the table to read as follows:

§ 648.53 DAS allocations.

* * * * *

(b) * * *

DAS Category	1999–2000	2000–2001	2001–2002	2002–2003	2003–2004	2004–2005	2005–2006	2006–2007	2007–2008	2008
Full-time	120	120	120	120	45	34	35	38	36	60
Part-time	48	48	48	48	18	14	14	15	17	24
Occasional	10	10	10	10	4	3	3	3	4	5

* * * * *

6. In § 648.57, the section heading and the introductory text of paragraphs (a) and (b) are revised to read as follows:

§ 648.57 Closed and regulated areas.

(a) *Hudson Canyon Sea Scallop Access Area.* Through February 28, 2003, except as provided in §§ 648.52 and 648.58, no vessel may fish for scallops in or land scallops from the area known as the Hudson Canyon Sea Scallop Access Area, and no vessel may possess scallops in the Hudson Canyon Sea Scallop Access Area, unless such vessel is only transiting the area with all fishing gear unavailable for immediate use as defined in § 648.23(b), or, there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use. The Hudson Canyon Sea Scallop Access Area (copies of a chart depicting this area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

* * * * *

(b) *Virginia Beach Sea Scallop Access Area.* Through February 28, 2003, except as provided in §§ 648.52 and 648.58, no vessel may fish for scallops in or land scallops from the area known as the Virginia Beach Sea Scallop Access Area, and no vessel may possess scallops in the Virginia Beach Sea Scallop Access Area, unless such vessel is only transiting the areas with all fishing gear unavailable for immediate use as defined in § 648.23(b), or, there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use. The Virginia Beach Sea Scallop Access Area (copies of a chart depicting this area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

* * * * *

7. Section 648.58 is revised to read as follows:

§ 648.58 Sea Scallop Area Access Program.

(a) *Eligibility.* Vessels issued a limited access scallop permit are eligible to participate in the Sea Scallop Area Access Program, and may fish in the Sea Scallop Access Areas, as described in § 648.57 of this section, for the times specified in paragraph (c)(1) of this section, when fishing under a scallop DAS, and while complying with the requirements of this section. Copies of a chart depicting these areas are available from the Regional Administrator upon request.

(b) *Sea Scallop Access Areas*—(1) *Hudson Canyon Sea Scallop Access Area.* Eligible vessels, as specified in paragraph (a) of this section, may fish for, possess, and retain sea scallops in excess of the possession limit specified in § 648.52(e) in or from in the Hudson Canyon Sea Scallop Access Area, which is the area described in § 648.57(a).

(2) *Virginia Beach Sea Scallop Access Area.* Eligible vessels, as specified in paragraph (a) of this section, may fish for, possess, and retain sea scallops in excess of the possession limit specified in § 648.52(e) in or from the Virginia Beach Sea Scallop Access Area, which is the area described in § 648.57(b).

(c) *Sea Scallop Area Access Season and Requirements.* To fish in the Sea Scallop Access Areas under the Sea Scallop Area Access Program, eligible vessels must fish during the Season specified in paragraph (c)(1) of this section and must comply with the requirements specified in paragraphs (c)(2) through (c)(4) of this section:

(1) *Season*—(i) *Fishing year 2001.* From May 1, 2001 through February 28, 2002, vessels participating in the Sea Scallop Area Access Program may fish for or possess sea scallop in or from the respective Sea Scallop Access Areas specified in § 648.57 of this section, unless access to these areas is terminated as specified in paragraph (f) of this section.

(ii) *Fishing year 2002.* From March 1, 2002, through February 28, 2003, vessels participating in the Sea Scallop Area Access Program may fish in the respective Sea Scallop Access Areas specified in § 648.57 of this section, unless access to these areas is terminated as specified in paragraph (f) of this section. Should the 2001 fishing year season be closed early, as described in paragraph (c)(1) of this section, the Sea Scallop Area Access Program season for fishing year 2002 will begin on April 1, 2002.

(2) *VMS.* The vessel must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10 and paragraph (h) of this section.

(3) *Declaration.* (i) Prior to the 25th day of the month preceding the month in which fishing is to take place, the vessel must submit a monthly report through the VMS e-mail messaging system of its intention to fish in the Hudson Canyon or Virginia Beach Sea Scallop Access Areas, along with the following information: Vessel name and permit number, owner and operator's name, owner and operator's phone numbers, and number of trips anticipated for each Sea Scallop Access Area in which it intends to fish. The Regional Administrator may waive a portion of this notification period for trips into the Sea Scallop Access Areas in April or May, 2001. Notification of this waiver of a portion of the notification period will be provided to the vessel through a permit holder letter issued by the Regional Administrator.

(ii) In addition to the requirements described in paragraph (c)(3)(i) of this section, and for the purpose of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the time, port of departure, and specific Sea Scallop Access Area to be fished, at least 5 working days prior to the beginning of any trip on which it declares into the Sea Scallop Area Access Program.

(iii) On the day the vessel leaves port to fish under the Sea Scallop Area Access Program, the vessel owner or operator must declare into the Program through the VMS, in accordance with instructions to be provided by the Regional Administrator prior to the vessel leaving port.

(4) *Number of trips*—(i) *Full and part-time vessels.* Full and part-time vessels are restricted to a total of three trips into the Sea Scallop Access Areas, unless otherwise authorized by the Regional Administrator as specified in paragraph (e)(2) of this section. A trip to either area counts as one trip.

(A) *Distribution of trips for the 2001 fishing year.* For fishing year 2001, full-time and part-time vessels participating in the Sea Scallop Area Access Program may start no more than two of their three allowed Area Access Program trips before June 1, 2001. To be eligible for any additional trips allocated under paragraph (e)(4) of this section, at least

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one trip must begin by September 1, 2001.

(B) *Distribution of trips for 2002 fishing year.* For fishing year 2002, full-time and part-time vessels participating in the Sea Scallop Area Access Program may start no more than one of their three allowed Area Access Program trips before May 1, 2002, and no more than two of their three allowed Area Access Program trips before June 1, 2002.

(ii) *Occasional scallop vessels.* Occasional vessels may fish only one trip per fishing year in 2001 and 2002 under the Sea Scallop Area Access Program. The one allowed trip may be conducted in either the Hudson Canyon or Virginia Beach Sea Scallop Access Area specified in § 648.57 of this section at any time during the season, as specified in paragraph (c)(1) of this section.

(5) *Area fished.* A vessel that has declared a trip into the Sea Scallop Area Access Program must not fish for, possess, or land scallops from outside the specific Sea Scallop Access Area fished during that trip and must not enter or exit the specific Sea Scallop Access Area fished more than once per trip. A vessel that has declared a trip into the Sea Scallop Area Access Program must not exit one Sea Scallop Access Area and transit to, or enter, the other Sea Scallop Access Area on the same trip.

(6) *Possession and landing limits*—(i) *Fishing year 2001.* Unless otherwise authorized by the Regional Administrator as specified in paragraph (e) of this section, after declaring into the Sea Scallop Area Access Program in fishing year 2001 a vessel owner or operator may fish for, possess and land up to 17,000 lb (7,711.1 kg) of scallop meats per trip, with a maximum of 400 lb (181.4 kg) of the possession limit originating from 50 bu (17.62 hl) of in-shell scallops.

(ii) *Fishing year 2002.* Unless otherwise authorized by the Regional Administrator as specified in paragraph (e) of this section, after declaring into the Sea Scallop Area Access Program in fishing year 2002, a vessel owner or operator may fish for, possess, and land up to 18,000 lb (8,164.7 kg) of scallop meats per trip, with a maximum of 400 lb (181.4 kg) of the possession limit originating from 50 bu (17.62 hl) of in-shell scallops.

(7) *Gear restrictions.* The vessel must fish with or possess scallop dredge or trawl gear only in accordance with the restrictions specified in § 648.51(a) and (b), except that the mesh size of a net, net material, or any other material on the top of a scallop dredge in use by or in possession of the vessel shall not be smaller than 10.0 inches (25.40 cm) square or diamond mesh.

(8) *Transiting.* While outside of the Sea Scallop Access Areas specified in § 648.57, all fishing gear must be unavailable for immediate use as defined in § 648.23(b), unless there is a compelling safety reason.

(9) *Off-loading restrictions.* The vessel may not off-load its sea scallop catch from a trip at more than one location per trip.

(10) *Reporting.* The owner or operator must submit reports through the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished when declared in the Sea Scallop Area Access Program, including trips accompanied by a NMFS-approved observer. The reports must be submitted in 24–hour intervals, for each day beginning at 0000 hours and ending at 2400 hours. The reports must be submitted by 0900 hours of the following day and must include the following information:

(i) Total pounds/kilograms of scallop meats kept, total number of tows and the Fishing Vessel Trip Report log page number.

(ii) [Reserved]

(d) *Accrual of DAS.* A scallop vessel that has declared a fishing trip into the Sea Scallop Area Access Program of this section shall have a minimum of 10 DAS deducted from its DAS allocation, regardless of whether the actual number of DAS used during the trip is less than 10. Trips that exceed 10 DAS will be counted as actual time.

(e) *Adjustments to possession limits and number of trips*—(1) *Adjustment process for sea scallop possession limits for Hudson Canyon and the Virginia Beach Sea Scallop Access Areas.* The Regional Administrator may adjust the sea scallop possession limit at any time during the Sea Scallop Area Access Program. This adjustment may be made if the Regional Administrator determines that such adjustment will likely allow the scallop TAC to be reached without exceeding it. Notification of this adjustment to the possession limit will be provided to the vessel through a permit holder letter issued by the Regional Administrator.

(2) *Adjustment process for number of trips for Hudson Canyon and the Virginia Beach Sea Scallop Access Areas.* On or after October 1 for fishing years 2001 and 2002, if the scallop catch in the Hudson Canyon and/or Virginia Beach Sea Scallop Access Areas is less than the scallop TACs specified for fishing years 2001 and 2002 in paragraphs (f)(1) and (f)(2) of this section, respectively, the Regional Administrator may allocate one or more additional trips for the Hudson Canyon and/or Virginia Beach Sea Scallop Access Areas for full and part-time limited access sea scallop vessels that declared into and began a trip under the Sea Scallop Area Access Program prior to September 1 for the respective fishing year. This adjustment may be made if the Regional Administrator determines that such adjustment will likely allow the scallop TAC to be reached without exceeding it. Notification of this adjustment to the trip limit will be provided to the vessel through a permit holder letter issued by the Regional Administrator. Unused trips after September 30, 2001, may not be carried over into the 2002 Sea Scallop Area Access Program. Vessels with occasional permits would not be allocated an additional trip.

(3) *Increase of possession limit to defray costs of observers*—(i) *Defraying the costs of observers.* The Regional Administrator may increase the sea scallop possession limit specified in paragraph (c)(6) of this section to defray costs of observers by areas subject to the limits specified in paragraph (e)(3)(ii) of this section and to the limit on the cumulative amount of sea scallops allocated for a vessel that has declared a fishing trip into the Sea Scallop Area Access Program with a NMFS-approved observer on board. Notification of this increase of the possession limit will be provided to the vessel through a Letter of Authorization issued by the Regional Administrator which must be kept on board the vessel. The amount of the possession limit increase will be determined by the Regional Administrator and the vessel owner will be responsible for paying the cost of the observer, regardless of whether the vessel lands or sells sea scallops on that trip.

(ii) *Observer set-aside limits on increases of possession limits by area.* The cumulative amount of scallops authorized under this part to be taken by vessels in excess of the possession limits specified in paragraph (c)(6) of this section to defray the cost of an observer shall not exceed 2-percent of the overall TAC for each Sea Scallop Access Area. The following amounts represent 2 percent of those TACs:

(A) Hudson Canyon Sea Scallop Access Area, 2001 area access program - 127 mt;

(B) Virginia Beach Sea Scallop Access Area, 2001 area access program - 6 mt;

(C) Hudson Canyon Sea Scallop Access Area, 2002 area access program - 128 mt;

(D) Virginia Beach Sea Scallop Access Area, 2002 area access program - 5 mt.

(iii) *Notification of observer set-aside limit.* NMFS shall publish notification in the **Federal Register** of the date that the Regional Administrator projects that the observer set-aside limit will be caught.

(4) *Adjustments to possession limits and/or number of trips to defray the costs of sea scallop research*—(i) *Defraying the costs of sea scallop research.* The Regional Administrator may increase the sea scallop possession limit specified in paragraph (c)(6) of this section or allow additional trips into a Sea Scallop Access Area, subject to the limits on the cumulative amount of sea scallops allocated to defray costs for sea scallop research specified in paragraph (e)(4)(ii) of this section.

(ii) *Research set-aside limits on adjustments to possession limits and number of trips by area.* The cumulative amount of scallops authorized to be taken by vessels in excess of the possession limits specified in paragraph (c)(6) of this section for purposes of defraying the cost of sea scallop research shall not exceed 1 percent of the overall TAC for each Sea Scallop Access Area. The following amounts represent 1 percent of those TACs:

(A) Hudson Canyon Sea Scallop Access Area, 2001 area access program - 63 mt;

(B) Virginia Beach Sea Scallop Access Area, 2001 area access program - 3 mt;

(C) Hudson Canyon Sea Scallop Access Area, 2002 area access program - 64 mt;

(D) Virginia Beach Sea Scallop Access Area, 2002 area access program - 3 mt.

(iii) NMFS shall publish notification in the **Federal Register** of the date that the Regional Administrator projects that the scallop research set-aside limits will be caught.

(iv) *Adjustment procedure.* (A) Determinations as to which vessel may be authorized to take more than the trip limits specified in paragraph (c)(6) of this section, or to take additional trips for the purposes of defraying sea scallop research costs, shall be made by NMFS, in cooperation with the Council. At a minimum, applicants shall submit a scallop proposal under this program and a project summary that includes: The project goals and objectives, relationship of sea scallop research to management needs or priorities identified by the Council, project design, participants other than applicant, funding needs, breakdown of costs, and the vessel(s) for which authorization is requested.

(B) NMFS will make the final determination as to what proposals are approved and which vessels are authorized to take scallops in excess of possession limits or additional trips. Authorization to increase possession limits and/or number of trips will be provided to the vessel by Letter of Authorization issued by the Regional Administrator which must be kept on board the vessel.

(v) *Project Report Procedure.* Upon completion of his/her sea scallop research, the researcher of approved projects must provide the Council with a report of his/her findings, which include:

(A) A detailed description of methods of data collection and analysis;

(B) A discussion of results and any relevant conclusions presented in a format that is understandable to a non-technical audience; and

(C) A detailed final accounting of all funds used to conduct the sea scallop research.

(f) *Termination of the Sea Scallop Area Access Program*—(1) *Fishing year 2001 area access program*—(i) *Hudson Canyon Sea Scallop Access Area.* The Hudson Canyon Sea Scallop Access Area fishery for fishing year 2001 shall be terminated as of the date the Regional Administrator projects that 6,204 mt of sea scallops (the TAC less the observer and research set-asides) will be caught by vessels fishing in the Hudson Canyon Sea Scallop Access Area described in this section. NMFS shall publish notification of the termination in the **Federal Register**.

(ii) *Virginia Beach Sea Scallop Access Area.* The Virginia Beach Sea Scallop Access Area fishery for fishing year 2001 shall be terminated as of the date the Regional Administrator projects that 277 mt of sea scallops (the TAC less the observer and research set-asides) will be caught by vessels fishing in the Virginia Beach Sea Scallop Access Area described in this section. NMFS shall publish notification of the termination in the **Federal Register**.

(2) *Fishing year 2002 area access program.* (i) Hudson Canyon Sea Scallop Access Area. The Hudson Canyon Sea Scallop Access Area fishery for fishing year 2002 shall be terminated as of the date the Regional Administrator projects that 6,287 mt of sea scallops (the TAC less the observer and research set-asides) will be caught by vessels fishing in the Hudson Canyon Sea Scallop Access Area described in this section. NMFS shall publish notification of the termination in the **Federal Register**.

(ii) *Virginia Beach Sea Scallop Access Area.* The Virginia Beach Sea Scallop Access Area fishery for fishing year 2002 shall be terminated as of the date the Regional Administrator projects that 268 mt of sea scallops (the TAC less the observer and research set-asides) will be caught by vessels fishing in the Virginia Beach Sea Scallop Access Area described in this section. NMFS shall publish notification of the termination in the **Federal Register**.

(g) *Transiting.* Limited access sea scallop vessels fishing under a scallop DAS that have not declared a trip into the Sea Scallop Area Access Program may not fish in the areas known as the Hudson Canyon and Virginia Beach Sea Scallop Access Areas described in § 648.57, and may not enter or be in such areas unless the vessel is transiting the area and the vessel's fishing gear is unavailable for immediate use as defined in § 648.23(b), or there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use.

(h) *VMS Polling.* For the duration of the Sea Scallop Area Access Program, as described under this section, all sea scallop limited access vessels equipped with a VMS unit will be polled twice per hour, regardless of whether the vessel is enrolled in the Sea Scallop Area Access Program.

8. In § 648.80, paragraph (h)(1) is revised to read as follows:

§ 648.80 Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(h) * * *

(1) Except as provided in paragraph (h)(2) of this section, a scallop vessel that possesses a limited access scallop permit and either a multispecies combination vessel permit or a scallop multispecies possession limit permit, and that is fishing under a scallop DAS allocated under § 648.53, may possess and land up to 300 lb (136.1 kg) of regulated species per trip, provided that the amount of cod on board does not exceed the daily cod limit specified in § 648.86(b), up to a maximum of 300 lb (136.1 kg) of cod for the entire trip, and provided the vessel has at least one standard tote on board, unless otherwise restricted by § 648.86(a)(2).

* * * * *

9. In § 648.81, the introductory text of paragraphs (a)(1), (b)(1), and (c)(1) and paragraph (b)(2)(ii) are revised to read as follows:

§ 648.81 Closed areas.

(a) * * *

(1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area I (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the

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following points in the order stated, except as specified in paragraphs (a)(2) and (d) of this section:

* * * * *

(b) * * *

(1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area II (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraph (b)(2) of this section:

* * * * *

(2) * * *

(ii) The vessel's fishing gear is stowed in accordance with the provisions of § 648.23(b).

(c) * * *

(1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as the Nantucket Lightship Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (c)(2) and (d) of this section:

* * * * *

10. In § 648.86, paragraph (a)(2)(iii) is revised to read as follows:

§ 648.86 Multispecies possession restrictions.

* * * * *

(a) * * *

(2) * * *

(iii) Unless otherwise authorized by the Regional Administrator as specified in paragraph (f) of this section, scallop dredge vessels or persons owning or operating a scallop dredge vessel that is fishing under a scallop DAS allocated under § 648.53 may land or possess on board up to 300 lb (136.1 kg), of haddock, except as specified in § 648.88(c), provided that the vessel has at least one standard tote on board. This restriction does not apply to vessels issued NE multispecies Combination Vessel permits that are fishing under a multispecies DAS. Haddock on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

* * * * *

11. In § 648.88, paragraph (c) is revised to read as follows:

§ 648.88 Multispecies open access permit restrictions.

* * * * *

(c) *Scallop multispecies possession limit permit.* A vessel that has been issued a valid open access scallop multispecies possession limit permit may possess and land up to 300 lb (136.1 kg) of regulated species when fishing under a scallop DAS allocated under § 648.53, provided the vessel does not fish for, possess, or land haddock from January 1 through June 30, as specified under § 648.86(a)(2)(i), and provided the vessel has at least one standard tote on board.

* * * * *

[FR Doc. 01–10783 Filed 4–26–01; 4:30 pm]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR PART 240

[Release No. 34–44227; File No. 57–17–99]

RIN 3235–AH74

Recordkeeping Requirements for Transfer Agents

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is amending its transfer agent record retention rule, Rule 17Ad–7, under the Securities Exchange Act of 1934 ("Act"). The amendments will allow registered transfer agents to use electronic, microfilm, and microfiche records maintenance systems to preserve records that they are required to retain under Rule 17Ad–6. The new requirements apply only to those registered transfer agents that elect to store their records using these methods. The amendments are designed to increase the flexibility and efficiency of transfer agent recordkeeping. The amendments adopted today are consistent with the requirements of the Electronic Signatures and Global and National Commerce Act of 2000 ("ESIGN").

EFFECTIVE DATE: May 31, 2001.

FOR FURTHER INFORMATION CONTACT: Jerry W. Carpenter, Assistant Director, or David Karasik, Special Counsel, at 202–942–4187, Office of Risk Management and Control, Division of Market Regulation, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION: The Commission today is adopting amendments to rule 17Ad–7 [17 CFR 240.17Ad–7(f)] under the Act.

I. Discussion of Amendments to Rule 17Ad–7

A. Background

On May 25, 1999, the Commission issued a release requesting comment on proposed amendments to its transfer agent record retention rule, Rule 17Ad–7,[1] that would allow registered transfer agents to use electronic and micrographic records storage systems subject to certain conditions ("Proposing Release").[2] The purpose of the proposal was to increase the flexibility and efficiency of transfer agent recordkeeping while maintaining necessary controls over accuracy, integrity, and access to those records. The proposed amendments would have codified, in most part, two staff no-action positions that permitted transfer agents to use optical storage technology.[3] However, based on the comments received and the experience gained by the staff in considering appropriate records management solutions, the Commission is adopting the proposed amendments with certain changes discussed herein.

B. The Transfer Agent Regulatory System

Section 17A(a)(2)(A)(i) of the Act directs the Commission to use its authority under the Act "to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities. * * *"[4] Transfer agents play a vital role in the operation of that system. Transfer agents cancel stock certificates presented for transfer, issue new stock certificates, and maintain the records

[1] 17 CFR 240.17Ad–7. Unless otherwise noted, all references to Rule 17Ad–7 or Rule 17Ad–6 or to any paragraph of those rules will be to 17 CFR 240.17Ad–7 and 17 CFR 17Ad–6, respectively.

[2] Securities Exchange Act Release No. 41442 (May 25, 1999), 64 FR 29608 (June 2, 1999).

[3] On February 2, 1993, the Commission's Divisions of Market Regulation and Investment Management issued a no-action letter that permitted registered transfer agents, investment advisors, and investment companies to retain their records using optical disk storage technology. Letter regarding DST Systems, Inc. (Feb. 2, 1993). On February 12, 1997, the Commission announced in the release adopting amendments to Rule 17a–4 that the staff would take no action if transfer agents fulfilled their recordkeeping requirements by complying with the provisions of Rule 17a–4. Securities Exchange Act Release No. 38245 (Feb. 5, 1997), 62 FR 6469 (Feb. 12, 1997). The optical disk recordkeeping requirements of the 1997 no-action position were similar to those set forth in the 1993 no-action position but contained additional safeguards, such as a third party access requirement and eliminated certain requirements, such as the requirement that the storage system be reviewed and evaluated by two independent public accounting firms. The requirements of the Proposing Release were nearly identical to those of the 1997 no-action position.

[4] 15 U.S.C. 78q-1(a)(2)(A)(i).

reflecting the ownership of securities as agent for the issuer. They also may disburse dividends and interest payments and send securityowner communications, such as proxy materials and annual reports. Some transfer agents maintain custody of securities on behalf of individual investors and securities depositories.

In order to facilitate the prompt, accurate, and efficient clearance and settlement of securities transactions, the Commission, having due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and the maintenance of fair competition among transfer agencies, is authorized to promulgate rules and regulations that are necessary or appropriate to implement the provisions of section 17A of the Act.[5] Section 17A of the Act prohibits registered transfer agents from engaging in any activity in contravention of the rules and regulations that the Commission may prescribe as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Act.[6] Section 17 of the Act requires every registered transfer agent to make, keep, and furnish copies of such records that the transfer agent's appropriate regulatory agency prescribes by rule.[7] Finally, Section 23(a) of the Act grants the Commission the power to make such rules and regulations as may be necessary or appropriate to implement the provisions of the Act.[8]

Because the Commission's oversight of transfer agents is substantially dependent on its own transfer agent examination process, which in turn relies on the records that transfer agents make and retain, the Commission promulgated Rules 17Ad–6 and 17Ad–7 under the Act to specify the types of records that transfer agents must make and keep and the amount of time and manner in which these records must be preserved.[9] The Commission's oversight of transfer agents would be seriously hindered if a transfer agent's records were inaccurate, inauthentic, or inaccessible. Accordingly, Rule 17Ad–7 seeks to protect investors and promote the integrity of the markets by protecting the accuracy, integrity, and accessibility of transfer agent records.

[5] 15 U.S.C. 78q-1(a)(2)(A).

[6] 15 U.S.C. 78q-1(d).

[7] 15 U.S.C. 78q-(a)(3).

[8] 15 U.S.C. 78w(a).

[9] Depending on the type of record, the records covered by these rules generally must be maintained for two years, six years, or until one year after the termination of a transfer agency relationship. Rule 17Ad–7.

II. The Rule Amendments as Adopted

Rule 17Ad–7, as amended, allows transfer agents to use electronic or micrographic storage media to maintain their records. Specifically, the rule requires transfer agents to:

- Use storage mechanisms that are designed to ensure the accessibility, security, and integrity of the records, detect attempts to alter or remove the records, and provide means to recover altered, damaged, or lost records;
- Create an index of the records that are electronically or micrographically stored and store the index with the underlying records;
- Keep a duplicate of all records and indexes that are stored using electronic or micrographic storage media;
- Be able to promptly download electronically or micrographically stored records to an alternate medium such as paper, microfilm, or microfiche; and,
- Keep in escrow an updated copy of the software or other information that is necessary to access and download electronically stored records.

The amended rule does not require transfer agents that wish to continue to maintain their records in hard copy format to maintain their records any differently than they are doing so today. The requirements adopted today apply only to those transfer agents that choose to retain their records electronically or micrographically.

III. Overview of Amendments to Rule 17Ad–7

The new provisions of Rule 17Ad–7 define the term "micrographic media" to mean microfilm or microfiche or any similar medium and the term "electronic storage media" to mean any digital storage medium or system.[10]

Registered transfer agents that choose to use electronic or micrographic records storage media must: have available at all times for examination by the Commission and the transfer agent's appropriate regulatory agency ("ARA")[11] facilities to project or produce easily readable images of the records that it stores on electronic or micrographic storage media; be ready to provide the stored records to the Commission and its ARA; create an index of the records that it stores on electronic storage media or micrographic media and store the index with those records; have the index available at all times for examination by the Commission and its ARA; have quality assurance procedures to verify the quality and accuracy of the electronic or micrographic recording process; and maintain separately from the originals a duplicate of the records and the index that the transfer agent stores on electronic storage media or micrographic media.[12] The transfer agents may store the duplicates of the indexed records on any medium permitted by this rule. The electronic media that a transfer agent uses to store its records must: ensure the security and integrity of the records by means of manual and automated controls that assure the authenticity and quality of the electronic facsimile; detect attempts to alter or remove the records; provide means to recover altered, damaged, or lost records resulting from any cause; externally label all removable units of storage media using a unique identifier; internally label each file with its unique name, the date and time of file creation, the date and time of last modification or extension, and a file sequence number when the file spans more than one volume.[13]

Transfer agents that use electronic or micrographic records storage media to store their records must establish an audit system that accounts for the inputting of and any changes to every record that is stored on electronic or micrographic storage media. The results of such audit system must be available at all times for examination by the Commission and the transfer agent's ARA and be preserved for the same time that is required by this rule for the underlying records.[14]

Also, transfer agents that use electronic storage media or micrographic media to store their records must: Maintain, keep current, and provide promptly upon request by the Commission and their ARA all information necessary to access the records and indexes stored on electronic storage media or micrographic media and place in escrow and keep current a copy of the physical and logical format of the electronic or micrographic storage media, the field format of all different information types written on the electronic storage media and source code, and the appropriate documentation and information necessary to access records and indexes. The escrow agent must file a statement with the Commission that it will make

[10] Rule 17Ad–7(f)(1).

[11] In certain situations, the Commission is not a transfer agent's primary regulatory authority. The most common example of this is for transfer agents that are banks or subsidiaries of banks. In such a case, the transfer agent's ARA could be the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, or the Federal Deposit Insurance Corporation.

[12] Rule 17Ad–7(f)(2).

[13] Rule 17Ad–7(f)(3).

[14] Rule 17Ad–7(f)(4).

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this information available promptly upon request to the Commission's representatives or the ARA.[15]

Finally, if a transfer agent uses another party to maintain or preserve the required records using electronic storage media or micrographic media, such third party shall file with the Commission an undertaking stating that such records are being maintained or preserved by the third party on behalf of the transfer agent and that such records will be surrendered promptly upon request of the transfer agent, the Commission's representatives, or the ARA to examine such records. The rule makes clear that the transfer agent retains ultimate responsibility for complying with the requirements of the rule.[16]

IV. Discussion of Proposal and Comment Letters

The Commission received eleven comment letters in response to the Proposing Release.[17] While most of the comments were generally favorable, all of the commenters offered specific observations and suggestions about the proposed conditions on transfer agents' use of electronic storage media. As discussed below, the Commission is adopting the proposed amendments to Rule 17Ad-7 with certain modifications suggested by the comment letters.

A. Scope and Definitions

In the Proposing Release, the Commission proposed to add subparagraph (f) to Rule 17Ad-7 to allow registered transfer agents to use micrographic media or electronic storage media to store the records that they are required to keep under Rule 17Ad-6. The term "micrographic media" was defined as microfilm or microfiche or any similar medium. The term "electronic storage media" was defined as any digital storage medium or system that meets the standard of this rule. The commenters did not raise any issues with regard to the proposed scope or definitions.

We are adopting these definitions substantially as proposed. For clarity, we have added another definition: the term "ARA" as used throughout the rule refers to a transfer agent's appropriate regulatory agency as that term is defined in 15 U.S.C. 78c(a)(34).

B. Record Integrity Standards

The Proposing Release would have required that transfer agents use an electronic or micrographic storage media system that met certain standards intended to deter the alteration of records. Specifically, the Commission proposed that transfer agents preserving their records electronically must do so in a non-rewriteable, non-erasable format[18] and that the storage system be able to automatically verify the quality and accuracy of the electronic recording process.[19] The Commission also proposed that the electronic storage media system label the storage units in sequential order and record the date and time that information is electronically stored.[20] Finally, as proposed, the storage system would have the capacity to download records stored on electronic storage media so that the records could be promptly transferred to an alternate medium such as paper, microfilm or microfiche.[21]

The commenters had varying responses to these proposed standards. Schwab stated that the rule should not limit electronic storage media to WORM-based systems. StorageTek stated that the Commission should not favor a particular type of storage system because there are types of electronic storage systems other than optical disk systems that use WORM technology.

Chase stated that, with respect to downloading records stored on electronic storage media, the rule should only require that the electronic storage media system have the capability to print images or provide images in a format suitable for transfer to another acceptable medium, thereby allowing transfer agents the flexibility to determine the most suitable way to provide imaged data to an examining authority. Chase further stated that it would be comfortable with the proposed requirement as long as paper is an acceptable alternate medium. In addition, with respect to the requirement that an electronic storage media system automatically verify the accuracy of the quality and accuracy of its recording process, Chase stated it is unaware of any system that can automatically insure image quality and accuracy. Chase also suggested that the rule should require only that the transfer agent have quality assurance procedures in place.

Plasmon agreed with the Commission's interest in accommodating a wider range of storage media and suggested that there are at least four major varieties of optical disk media that should be considered for document storage applications. However, Plasmon contended that magnetic-optical disks offer the highest degree of data protection over the longest periods of time. Plasmon believes that linear (tape) media simply does not attain the same degree of data safety.

EMC wrote that specifying that records be retained on non-erasable, non-rewritable media is overly prescriptive because it would effectively dictate the storage technology (*i.e.*, WORM). It further argued that this technology has become obsolete and expensive to manage. Instead, EMC suggested that the focus of the Commission's rule should not be to create an immutable copy but rather on the ability of the storage system to create a copy that can be verified as authentic.

Fidelity argued that the rule should not require sequential serialization of storage units but instead should allow more flexibility (*e.g.*, serialization by unique media index and identifier numbers).

The final rule incorporates many of the commenters' suggestions. For example, we have eliminated the proposed "non-erasable, non-rewriteable" requirement and instead are adopting a goals-oriented set of requirements that electronic storage systems be designed to: ensure the security and integrity of the records by means of manual and automated controls; detect attempts to alter or remove the records; and provide means to recover altered, damaged or lost records.[22] The Commission believes that using a set of requirements to ensure security and integrity of records is appropriate in the transfer agent context, unlike the broker-dealer context, because of the lower risks from record alteration for transfer agents. There appear to be a lower incidence of altered transfer agent records and the Commission staff has brought few enforcement actions against transfer agents based on alteration of their records. In addition, transfer agents do not hold customer funds, open accounts, or recommend investments. Therefore, the Commission generally does not inspect transfer agents for financial and sales practice problems. Accordingly, requiring transfer agents to use WORM does not at this time seem necessary.

We have also removed the requirement that the storage system be able to "automatically verify the quality and accuracy" of the recording process and instead substituted language requiring the storage system to "have quality assurance procedures to verify the quality and accuracy of the electronic or micrographic recording process."[23] In making the change, the Commission emphasizes the importance of the electronic recordkeeping system's ability to electronically store documents in a reliable and consistent manner.

Finally, in response to the comments discussed above, we have modified the requirement that the storage system label "all units of storage media in sequential order" in favor of a standard that requires the system to "label all removable units of storage media using a unique identifier * * *" and "uniquely identify files and internally label each file with its unique name, the date and time of file creation, the date and time of last modification or extension, and a file sequence number when the file spans more than one volume." We believe that these changes will provide transfer agents greater flexibility to select appropriate and cost effective records organizing methodologies while still maintaining the ability of the transfer agent and the Commission to locate individual records and reconstruct the sequence of the records.

The Commission notes that the amendments to the Rule are technology-neutral as they establish standards and set forth features that the electronic storage media must satisfy to be considered an acceptable storage medium rather than specifying the use of a particular technology.

C. Audit System

In the Proposing Release, the Commission proposed to require transfer agents using electronic or micrographic storage media to establish an audit system that accounts for the entry of and changes to every record that is electronically or micrographically stored.[24] As proposed, the results of the audit system would have to be available at all times for inspection by the transfer agent's ARA and the Commission and would have to be preserved for the same period of time as the underlying records.

Fidelity contended that the audit system should not be required to record the names of the people who add or change records stored on electronic storage media because it is possible for audit systems to identify people through the use of identifier numbers.

In response to these comments, we have modified the audit provisions to offer transfer agents flexibility over how to record and trace the identity of those who modify records. The rule does not specify the manner in which transfer agents should account for those who input or change the records. Rather, paragraph (f)(3) of the rule requires that transfer agents establish an audit system that can, at the least, readily identify when and by whom changes to records were made to the stored records.

D. Production of Stored Records

The Proposing Release would have required transfer agents storing electronic or micrographic records to: (1) Have facilities for immediate projection or production of easily readable images of the records that are being stored electronically or micrographically; (2) be ready at all times to provide a facsimile enlargement of the records that are being stored electronically or micrographically; (3) create an index of the records that are being stored electronically or micrographically; and (4) maintain a duplicate of the index of the records.[25]

Chase stated that the rule should not require that the index be stored on an optical disk or otherwise specify the location of the index. Chase further commented that being able to identify a needed image, locate the image, and retrieve it whenever necessary should be sufficient requirements for the index component of the rule. Fidelity stated that the requirement to maintain duplicates of records stored on micrographic media or electronic storage media should not be interpreted as a requirement to maintain backup storage systems.

In order to help ensure efficient and complete access to a transfer agent's records during examinations by the Commission or the transfer agent's ARA, we are adopting these requirements substantially as proposed.[26] The Commission notes that the rule does not specify the type of medium on which the index should be stored. The Commission, however, believes that it is important to keep the requirement that the index be stored with the indexed records so that Commission representatives will be able to locate records in cases where a transfer agent refuses to cooperate or is no longer operating. In addition, Commission agrees that the requirement to maintain duplicates of records stored on micrographic or electronic storage media is not a requirement to maintain backup storage systems.

E. Proposed Third Party Access Requirement

In the Proposing Release, the Commission proposed that there be a mechanism to enable the Commission to access and download the electronically stored records in cases where a transfer agent is no longer operating, refuses to cooperate with the Commission or the transfer agent's ARA, or has not properly or fully indexed electronically stored records.[27] Accordingly, the proposed amendments would have required transfer agents to preserve, keep current, and surrender upon request the information necessary to download records stored on electronic or micrographic storage media. Moreover, under the proposed amendments, before a transfer agent would have been able to use electronic storage media, it would have had to have at least one party other than itself (*e.g.*, the transfer agent's electronic storage media vendor) file a statement with the Commission that it, the third party, had the ability to download information from the transfer agent's electronic storage system and that it would do so at the request of either the Commission or the transfer agent's ARA.[28]

ICI, Federated Investors, Chase, ChaseMellon, Schwab, and Fidelity commented on the proposed requirement that a third party file undertakings with the Commission and

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[15] Rule 17Ad–7(f)(5).

[16] A transfer agent may use the services of a third party to maintain the records required to be retained under Rule 17Ad-6. An agreement with a third party can include instructions for the third party to fulfill some or all of the requirements of Rule 17Ad–7 including, for example, the maintenance of duplicate records. However, an agreement with a third party to maintain a transfer agent's records shall not relieve the transfer agent from the responsibility to prepare and maintain records as specified in this rule or in Rule 17Ad-6. Rule 17Ad-7(f)(6).

[17] Letters from Charles Rossi, President, and Thomas L. Montrone, Vice President and Chairman, STA Optical Scanning Committee, The Securities Transfer Association, Inc. ("STA") (July 2, 1999); Kathleen C. Joaquin, Director—Transfer Agency & International Operations, Investment Company Institute ("ICI") (July 1, 1999); Jay S. Neuman, Corporate Counsel, Federated Investors, Inc. ("Federated") (July 1, 1999); Gerald L. Popovsky, Associate Counsel, ChaseMellon Shareholder Services, LLC ("ChaseMellon") (July 2, 1999); Christine A. Owens, Corporate Government Relations Manager, StorageTek ("StorageTek") (July 2, 1999); Robert P. DeGregorie, Assistant General Counsel, The Chase Manhattan Bank ("Chase") (July 2, 1999); Michael L. Michael, Vice President and Chief Compliance Officer, FMR Corp. ("Fidelity") (July 13, 1999); W. Hardy Callcott, Sr. Vice President and General Counsel, Charles Schwab & Co., Inc. ("Schwab") (July 14, 1999); Robert L. Hamilton (August 8, 1999); Thomas Ferguson, Senior Vice President, Plasmon/IDE ("Plasmon") (April 27, 2000); and Michael Kilian, Senior Technologist, EMC Corporation ("EMC") (October 31, 2000). The comment letters and a Commission staff summary of the comment letters are contained in File No. S7–17–99 and are available for inspection in the Commission's Public Reference Section, 450 5th Street, NW, Washington, DC.

[18] Also known as "WORM" or write once, read many.

[19] Proposed Rule 17Ad–7(f)(2)(ii).

[20] Proposed Rule 17Ad–7(f)(2)(iii).

[21] Proposed Rule 17Ad–7(f)(2)(iv).

[22] Rule 17Ad–7(f)(3)(i).

[23] Rule 17Ad–7(f)(3)(ii).

[24] Proposed Rule 17Ad–7(f)(3).

[25] Proposed Rule 17Ad–7(f)(1).

[26] Rule 17Ad–7(f)(2).

[27] Proposed Rule 17Ad–7(f)(5).

[28] Proposed Rule 17Ad–7(f)(5).

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the transfer agent's ARA before a transfer agent uses electronic storage media. ICI and Federated asked for the Commission to clarify whether the third party access undertakings pursuant to the 1997 no action position would be sufficient to comply with the proposed amendments to Rule 17Ad–7. ICI and Federated both opined that the provisions of the 1997 no-action position are substantially similar to the proposed amendments and therefore should be sufficient for a transfer agent to comply with.

Chase, ChaseMellon, and Fidelity expressed concern that the proposed requirement raises security and confidentiality risks because it would require that the undertakings be filed by a third party that has direct access to the transfer agent's records. Schwab stated that it is unnecessary for a transfer agent that maintains its own records to contract with another party solely to comply with the requirement. Schwab also asserted that the requirement should be amended so that it is consistent with Rule 17a–4(f)(3)(vii)[29] and should only apply to transfer agents that use electronic storage media exclusively for some or all of their record retention.

The Commission has revised the proposed rule to reflect its intention that the third party access requirement be no more burdensome than necessary to allow the Commission to access a transfer agent's records. The proposed requirement was intended to assist the Commission or the transfer agent's ARA to access the transfer agent's records during, for example, some type of emergency (such as a transfer agent's insolvency or refusal to cooperate), yet recognize the potential security concerns if transfer agents provide "access" to their records system to third parties. In consideration of the comments received, the final rule clarifies that the third party is not required to have a continuous or unlimited right to use or have access to the records.[30] Instead, the transfer agent will be required to place in escrow with an independent third party[31] its records management software that will enable the Commission or the transfer agent's ARA to access records and indexes. The escrow agent will only have in its possession the records management software but will not have access to the underlying records. The amended rule also requires the escrow agent to file an undertaking with the Commission and the transfer agent's ARA that it will make such records management software available to the Commission or the transfer agent's ARA promptly upon the request of the Commission or the ARA.

[29] Rule 17a–4(f)(3)(vii) requires broker-dealers that use electronic or micrographic storage media to "organize and index accurately all information maintained on both original and any duplicate storage media." The Commission notes that the third party "access" provisions as proposed in Rule 17Ad–7 were modeled after those contained in Rule 17a–4(vii).

[30] Rule 17Ad–7(f)(5)(ii).

[31] An "independent" third party is a third party that does not control, is not controlled by, and is not under common control with, the transfer agent.

F. Effect on Previously Issued No Action Positions

ICI and Federated requested that the Commission elucidate the effect that amendments to Rule 17Ad–7 will have on transfer agents that are currently using electronic storage media under the terms of previously issued no-action letters.[32] ICI and Federated Investors believe that the terms of the no-action letters are sufficient to comply with the proposed amendments to the rule and that transfer agents using electronic storage media under the terms of no-action letters should not have to additionally comply with the third party undertaking requirement. ICI stated that if the Commission determines that new undertakings are necessary transfer agents should have a transition period of at least ninety days to obtain the required undertakings.

Fidelity requested that the Commission explain the effect of the proposed amendments on the no-action position relating to transfer agents that was issued when the Commission amended Rule 17a–4 to permit broker-dealers to use electronic storage media.[33] Specifically, Fidelity stated that the no-action position allowed transfer agents to use electronic storage media under the terms of the amended Rule 17a–4 to comply with their recordkeeping requirements under Rules 17Ad–6, 17Ad–10, 17Ad–11, 17Ad–13, and 17Ad–15 under the Act but that the proposed amendments in the Proposing Release only applied to Rule 17Ad–7.

The Commission notes that the amendments to Rule 17Ad–7 provide for the electronic or micrographic storage of all records that transfer agents are required to retain. The Commission also notes that the amendments to Rule 17Ad–7 will supersede all previously issued no-action letters and will be effective May 31, 2001, as opposed to ninety days from the date of publication in the **Federal Register** as suggested by ICI.

[32] *See supra* footnote 3.

[33] Securities Exchange Act Release No. 38245 (Feb. 5, 1997), 62 FR 6469 (Feb. 12, 1997).

There are two reasons why the amendments to Rule 17Ad–7 will become effective on May 31, 2001. First, after May 31, 2001, and until the Commission's transfer agent record retention rule is effective, the differing provisions of ESIGN[34] would be applicable, which could potentially lead to confusion. Second, the Commission believes that the minor changes required to be made to transfer agents' recordkeeping systems currently operating under the no-action positions will not be burdensome to implement.[35]

G. Destruction of Canceled Certificates and Other Records

StorageTek and Chase stated that transfer agents should be able to destroy canceled certificates where an electronic record has been made. StorageTek included an analysis with its comment letter that concluded that organizations should be able to copy original records and store them on electronic storage media without significant legal consequences if the original records are destroyed.

The Commission has solicited comment on the issue of the destruction of canceled certificates in another proposing release and, thus, is not addressing that issue in the context of this rulemaking.[36]

V. The Electronic Signatures in Global and National Commerce Act of 2000

A. Introduction

On June 30, 2000, Congress enacted ESIGN.[37] ESIGN, among other things, specifies that where a statute, regulation, or other rule of law requires records[38] to be retained, such

[34] ESIGN is discussed in section V of this release.

[35] The Commission also is providing notice that the staff of the Division of Market Regulation will not recommend enforcement action to the Commission if until June 30, 2001, a transfer agent continues to use records storage technology permissible under either of two staff no-action positions. Securities Exchange Act Release No. 38245 (Feb. 5, 1997), 62 FR 6469 (Feb. 12, 1997) or Letter to Jules Moskowitz, DST Systems, Inc., from Judith C. Poppalardo, Division of Market Regulation and Thomas S. Harman, Division of Investment Management (February 2, 1993).

[36] Securities Exchange Act Release No. 43401 (Oct. 2, 2000), 65 FR 59766 (Oct. 6, 2000). In that release, we proposed rules to, among other things, require transfer agents to establish written procedures for the cancellation, storage, transportation, and destruction of securities certificates. Should the Commission adopt these rules, maintaining such written procedures in either hard copy or on electronic or micrographic media would be permissible.

[37] The Electronic Signatures in Global and National Commerce, Pub. L. 106–229, 114 Stat. 464 (2000), 15 U.S.C. 7001 *et seq.*

[38] Section 106(9) of ESIGN, 15 U.S.C. 7006(9), defines the term "record" to mean "information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form."

requirement is met by retaining an electronic record that accurately reflects the information set forth in the record; remains accessible to all parties legally entitled to access such record; and is kept in a form capable of being accurately reproduced for later reference.[39]

While ESIGN does not define how these requirements are to be met, it preserves the Commission's ability to interpret and apply ESIGN consistent with the statutes it administers pursuant to its existing legal authority.[40] To interpret ESIGN, the Commission may issue rules, orders, or guidance of general applicability under its organic statute.[41] On February 28, 2001, the Commission announced several upcoming rulemaking activities regarding recordkeeping requirements under the federal securities laws that are consistent with ESIGN.[42] Accordingly, under ESIGN section 107(b)(1)(B), the record retention provisions of Title I of ESIGN will become effective on June 1, 2001.

B. The Commission's Statutory Responsibilities

In order to facilitate the prompt, accurate, and efficient clearance and settlement of securities transactions, Congress authorized the Commission, having due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and the maintenance of fair competition among transfer agencies, to promulgate rules and regulations that are necessary or appropriate to implement the provisions of the Act. For example, section 17(a)(3) requires every registered transfer agent to make, keep, and furnish copies of such records that the transfer agent's ARA prescribes by rule.[43] Section 17A prohibits registered transfer agents from engaging in any activity in contravention of the rules and regulations that the Commission may prescribe as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Act.[44] Finally, Section 23(a) grants the Commission the power to make such rules and regulations as may be necessary or appropriate to implement the provisions of the Act.[45] Thus, the Act authorizes the Commission to issue rules that require registered transfer agents to keep such records as the Commission may prescribe in the public interest or for the protection of investors, and to make such records available for inspection. This grant of authority recognizes the importance of transfer agent recordkeeping to the Commission's regulatory function and investor protection objective.

Rules 17Ad–6 and 17Ad–7 under the Act specify the type of records that registered transfer agents must make and keep and the length of time and manner in which these records must be preserved. Depending on the type of record, the records covered by these rules generally must be maintained for two years,[46] six years,[47] or until one year after the termination of a transfer agency relationship.[48] Section 17(a)(1) of the Act[49] requires registered transfer agents to make and keep certain records that the Commission prescribes to be necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. Rules 17Ad–6 and 17Ad–7 under the Act specify the type of records that registered transfer agents must make and keep and the length of time and manner in which these records must be preserved. Rule 17Ad–7(f) currently permits registered transfer agents to preserve the records listed in Rule 17Ad–6 either in hardcopy or on microfilm, subject to certain conditions. However, Rule 17Ad–7 provides no other alternatives to maintaining records. The amendments will allow registered transfer agents to electronically and micrographically preserve records that they are required to retain.

As discussed above, Rule 17Ad–7, as amended today, allows transfer agents to use electronic or micrographic storage media to store their records in a manner that will ensure the security and integrity of the records by means of manual and automated controls; will assure the authenticity and quality of the electronic facsimile; detect attempts to alter or remove the indexed records; and will provide means to recover altered, damaged, or lost indexed records.

Transfer agents that use electronic or micrographic storage media are also required to create an index of the records that are electronically or micrographically stored and store the index with those records. In addition, the rule requires that the electronic storage system label the storage units with unique identifiers and record the date and time that information was electronically stored. Transfer agents are also required to keep a duplicate of any records that are stored using electronic or micrographic storage media on any type of medium that is acceptable under Rule 17Ad–7. Finally, transfer agents are required to maintain a duplicate index that is stored with the duplicate set of records separately from the original records.

C. ESIGN's Requirements

When adopting regulations, orders, or guidance to interpret ESIGN's impact on the statutes it administers, the Commission is subject to certain requirements. First, the interpretation must be "consistent" with Section 101 of ESIGN.[50] Second, the interpretation may not "add to the requirements" of Section 101.[51] Third, in issuing the interpretation, the Commission must find that: (1) There is substantial justification for the interpretation; (2) the methods selected to carry out that purpose are substantially equivalent to the requirements imposed on non-electronic records; (3) the methods selected to carry out that purpose will not impose unreasonable costs on the acceptance and use of electronic records; and (4) the methods selected to carry out that purpose do not require or accord greater legal status or effect to the implementation or application of a specific technology or technical specification.[52, 53]

As discussed in the next section, the Commission finds that the electronic recordkeeping provisions of Rule 17Ad–7, as amended today, are consistent with the requirements established by ESIGN. Thus, registered transfer agents are required to comply with Rule 17Ad–7 as amended.

D. Analysis and Commission Findings

The amendments to Rule 17Ad–7 require transfer agents to preserve, keep current, and surrender upon request the information necessary to download records stored on electronic or micrographic storage media. Transfer agents must also be able to promptly download electronically or micrographically stored records to an alternate medium, such as paper, microfilm or microfiche. Moreover, if a

[39] ESIGN § 101(d)(1).

[40] ESIGN § 104(b).

[41] ESIGN § 104(b)(1). *See* section 23(a) of the Act.

[42] *See* Securities Exchange Act Release No. 44014 (February 28, 2001), 66 FR 13273 (March 5, 2001); <http://www.sec.gov/news/digest.shtml>.

[43] 15 U.S.C. 78q(a)(3).

[44] 15 U.S.C. 78q–1(d).

[45] 15 U.S.C. 78w(a).

[46] Rule 17Ad–7(a) and (b).

[47] Rule 17Ad–7(d).

[48] Rule 17Ad–7(c).

[49] 15 U.S.C. 78q(a)(1).

[50] ESIGN § 104(b)(2)(A). *See also* ESIGN § 101(d).

[51] ESIGN § 104(b)(2)(B).

[52, 53] ESIGN § 104(b)(2)(C); 15 U.S.C. 78q, 78q–1 and 78w.

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transfer agent uses a third party to maintain its records, the amendments require the third party to file an undertaking with the Commission that the third party will permit the Commission or the transfer agent's ARA to examine such records upon request.

The Commission's investor protection objective is substantially dependent on the Commission's oversight of transfer agents through its transfer agent examination process, which relies on the records that transfer agents make and retain. This objective would be seriously undermined if transfer agents records were inaccurate, inauthentic, or inaccessible. Through Rule 17Ad–7, the Commission seeks to protect investors by promoting the accuracy, integrity, and accessibility of transfer agent records.

The Commission makes the following findings with respect to Rule 17Ad–7:

1. Rule 17Ad–7 Is Consistent With Section 101 of ESIGN

ESIGN provides that statutes or regulations that require the retention of certain contractual or transactional records may be complied with by storing such records electronically. Similarly, Rule 17Ad–7 allows transfer agents to maintain various records that they are required to retain in an electronic or micrographic format. In addition, Rule 17Ad–7 permits electronic or micrographic storage of a broader category of records than ESIGN requires because it permits the electronic and micrographic storage of all records registered transfer agents are required to create and maintain, not just contractual or transactional records. Moreover, consistent with ESIGN, the rule's electronic and micrographic storage provisions do not specify the use of a particular technology or technical specification. The Commission believes that the amended rule will help to ensure that records necessary for the supervision and regulation of registered transfer agents are maintained in a manner that is accurate, accessible, and that is consistent with ESIGN.

2. Rule 17Ad–7 Does Not Add to the Requirements of Section 101 of ESIGN

ESIGN requires electronic records to be stored in a manner that ensures that they are accurate, accessible, and capable of being accurately reproduced for later reference. The electronic and micrographic storage provisions of Rule 17Ad–7 are designed to ensure that registered transfer agents store electronic and micrographic records in a manner consistent with the statutory goals of ESIGN—accurate, accessible and accurately reproduced records. For example, the quality assurance procedures requirement is designed to ensure that the records are accurate by providing verification that a record has been accurately stored in the electronic system. The indexing requirement is designed to ensure that the records are accessible by providing a means to search for specific records. The labeling provisions are intended to ensure both the accuracy and accessibility of the records by indicating the order in which records are stored, thereby making specific records easier to locate and authenticating the storage process.

Finally, the rule does not specify or require any type of records storage technology but instead permits a transfer agent to choose the method of electronic and micrographic storage subject to certain conditions. Thus, Rule 17Ad–7 provides flexibility and choice for registered transfer agents as new electronic and micrographic storage technologies are developed.

3. Rule 17Ad–7's Requirements Are Substantially Justified

The amendments to Rule 17Ad–7 are substantially justified by the need to protect investors, ensure the soundness of the securities markets, and ensure the prompt and accurate clearance and settlement of securities transactions, which includes the transfer of record ownership. In order to ensure investor protection and compliance with its rules, the Commission requires, among other things, that registered transfer agents maintain records that document their transactions with customers and other entities with which they transact.[54] Examiners review these records to determine whether registered transfer agents are complying with the requirements of the securities laws and regulations. A failure to maintain accurate, accessible, and correct records could lead to situations where a transfer agent does not know whether an investor actually owns a security and could also provide an opportunity for deliberate alteration of records. Accordingly, if investors are to be adequately protected and systemic risk in the securities industry mitigated, a transfer agent's records must provide an accurate account of its operations.

To achieve its vital regulatory interests, the Commission believes that a rule that permits the use of electronic and micrographic storage media must contain certain requirements.[55] These requirements include prudent but reasonable safeguards to prevent the stored information from being modified or removed (accidentally or maliciously) without detection. To further this objective, the rule requires that transfer agents use electronic or micrographic records storage systems that are designed to insure the security and integrity of the records by means of manual and automated controls and can detect attempts to alter or remove the records. The rule also requires transfer agents to create duplicates of the original records. The duplicates must be accessible and verifiable as authentic. In addition, Rule 17Ad–7 requires registered transfer agents to maintain, keep current, and provide promptly upon request by the Commission or the transfer agent's ARA all information necessary to access the records and indexes stored on electronic or micrographic storage media. Finally, transfer agents must place in escrow a current copy of the electronic or micrographic storage media's software and all the other information necessary for the Commission or the transfer agent's ARA to access records and indexes.

These conditions also are necessary because electronic storage technology is relatively new and there currently does not appear to be an industry standard for its development and for compatibility among different electronic storage systems. In addition, the ability of the Commission to review a transfer agent's records would be severely compromised should a transfer agent refuse or not be available to cooperate with the Commission.

4. Rule 17Ad–7's Requirements Are Substantially Equivalent to Non-Electronic Record Requirements

Amended Rule 17Ad–7 is designed to ensure the retention of legible, authentic, and complete records. These same goals are applicable to all registered transfer agent records regardless of their form: registered transfer agents have in place similar record retention requirements whether they store their records electronically, micrographically, or in hard copy. While Rule 17Ad–7 contains specific provisions that are only applicable to electronic or micrographic formats, these provisions are designed to take into account the different characteristics among paper, electronic, and micrographic formats, while not imposing disproportionate burdens on any format.

[54] Rule 17Ad–6(a).

[55] Unlike broker-dealers, transfer agents are not subject to the rules and oversight of any self-regulatory organization. Since the Commission is the only entity that reviews transfer agent records, the rule's record integrity requirements are essential.

Another reason for requirements that apply to electronic storage derives from the differences in the way that paper, micrographic, and electronic media store images of records. Paper and micrographic systems store exact images while electronic systems often store the original information in digital form, which can potentially be tampered with. In addition, the use of electronic storage media requires technical expertise and knowledge of the media's proprietary hardware and software characteristics in order to access the records. Therefore, Rule 17Ad–7 requires transfer agents that use electronic and micrographic storage media place in escrow a copy of the physical and logical format of the storage media, the field format of all different information types written on the storage media and source code, and the appropriate documentation and information necessary to access records and indexes.[56] In the absence of such requirement, a transfer agent could store records that only it had the technology and knowledge to access. If the transfer agent went out of business or refused to cooperate, it would be similar to a situation where a transfer agent has stored hard copy records in an inaccessible place, which has always been prohibited by the rule.

5. Rule 17Ad–7 Does Not Impose Unreasonable Costs on the Acceptance and Use of Electronic Records

Amended Rule 17Ad–7 will not result in unreasonable costs to any particular person or entity. The amendments will broaden the options that transfer agents have for the storage and retention of the records they are required to maintain. Specifically, because the amendments do not require the use of any particular technology, transfer agents are not obligated to change their present recordkeeping and retention systems.

Those transfer agents that choose to take advantage of the amendments to Rule 17Ad–7 will face certain fixed and variable costs to employ electronic or micrographic records management systems that would comply with the rule. However, it is practically impossible to estimate the costs for implementing a records management system for any given transfer agent, or the industry as a whole, that would be in compliance with Rule 17Ad–7. When a transfer agent selects the type of records management storage, such as micrographic (microfilm or microfiche) or electronic recording techniques (computers), it will likely consider solutions that will optimize its cost, based on factors such as risk and complexity, while enabling it to meet its regulatory obligations. Moreover, while the costs and types of these systems vary, numerous document storage vendors appear to make the market for these systems competitive. Further, Rule 17Ad–7 requires that any recordkeeping system, whether electronic or paper-based, selected by a registered transfer agent be designed to ensure the accuracy, integrity, and accessibility of the transfer agent's records.

The Commission believes that the costs are justified by the benefits that electronic or micrographic storage media offer. For example, with electronic records maintenance systems: Documents are less likely to be lost or misfiled; documents are likely to be retrieved more quickly; audit trails can be automated; risk reduction is improved for natural disasters; file centralization is automatic (electronic records need not be removed from their storage in order to reference them); multiple persons can view the same document simultaneously; access authorization can be automated; the space required for document storage is drastically reduced; document indexing and cross-referencing can be automatic; and documents can be copied, faxed, printed, and emailed without the paper originals.

Each transfer agent will ultimately evaluate the risk and cost effectiveness of its records management solution differently based upon the solution that is best for its business model, such as its business practices and volume, and will select a method that assures its ability to comply with Rule 17Ad–7. Moreover, the rule cannot envision the effect of future market competition, innovation, and the other solutions that transfer agents might employ. Because each transfer agent is able to select the method, whether electronic, micrographic, or paper-based, that works best for it based on its individual circumstances, Rule 17Ad–7 does not impose any unreasonable costs on the acceptance and use of electronic records.

6. Rule 17Ad–7 Does Not Require, or Accord Greater Legal Status or Effect to, the Implementation or Application of a Specific Technology or Technical Specification

Rather than prescribe a single technological solution to records management, the rule incorporates a goal-oriented approach based on the statutory scheme for transfer agent regulation. The goals of the rule include: Long-term retention and access to records; detection of fraud, including forged or illegally modified records; making information more useful; and allowing transfer agents to use modern information technology to handle their ever-expanding number of records. While the rule contains certain standards to achieve the Commission's statutory functions, the rule enables transfer agents to select from numerous types of records storage systems to maintain the records that they are required to retain. The Commission is aware of many types of electronic and micrographic storage media technology available for recordkeeping purposes that would comply with the rule's requirements and anticipates that additional methods will continue to be developed.

E. Conclusion

Rule 17Ad–7, as amended today, provides standards so that the transfer agents' use of record maintenance systems, including those using electronic and micrographic technologies, will accurately reflect the information contained in the original records and will be readily accessible to the Commission and other appropriate regulatory agencies. The rule does not specify a particular technology to carry out these standards. Therefore, the Commission finds that Rule 17Ad–7 is consistent with ESIGN's requirements.

VI. Paperwork Reduction Act

Certain provisions of the amendments to Rule 17Ad–7 contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995,[58] and the Commission has submitted them to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is: "Record Retention Requirements for Registered Transfer Agents." The OMB control number for the collection of information is 3235–0136. The collection of information requirements are necessary to ensure the integrity of transfer agents' records that are maintained on electronic storage media and to ensure the Commission's ability to access such records.

In the Proposing Release, the Commission requested comment on the proposed collections of information. No comments were received that addressed the PRA submission.

Rules 17Ad–7(f)(2)(iii) and 17Ad–7(f)(2)(iv) contain a collection of information requirements that are intended to ensure that the Commission has complete access to transfer agents' records during examinations. Rule

[56] Rule 17Ad–7(f)(5)(ii).

[58] 44 U.S.C. 3501 *et seq.*

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17Ad–7(f)(2)(iii) and 17Ad–7(f)(2)(v) will require transfer agents that use electronic or micrographic storage media to create an index of all electronically or micrographically stored records and to maintain a duplicate of each index. The Commission has not specified the format of the index that is required to be maintained. The original and duplicate indexes are required to be kept in separate locations in order to protect against loss, damage, or alteration. The indexes are required to be maintained for as long as the transfer agent uses electronic or micrographic storage media.

Rule 17Ad–7(f)(4) contains a collection of information requirement that is intended to ensure the integrity of transfer agents' records that are stored on electronic or micrographic storage media. Rule 17Ad–7(f)(4) requires each registered transfer agent that uses electronic or micrographic storage media to establish an audit system to account for the inputting of or changes made to the records (*e.g.*, by unique identifier numbers) that are electronically or micrographically stored. While the rule does not specify the precise contents of each audit system, any data stored regarding inputting of records and changes made to existing records would be part of that audit system. The rule further requires that the results of the audit system be preserved for the period of time the underlying audited records are required to be preserved and that the results of the audit system be available to the Commission or ARA at all times.

Rule 17Ad–7(f)(5) contains collection of information requirements that ensures the Commission's access to records of a transfer agent that is no longer operating, refuses to cooperate with the investigative efforts of the Commission or another appropriate regulatory agency, or has not properly or fully indexed electronically or micrographically stored records. Rule 17Ad–7(f)(5) requires each transfer agent that uses electronic or micrographic storage media to place in escrow and keep current a copy of the physical and logical format of the electronic storage or micrographic media, the field format of all different information types written on the electronic storage media and source code, and the appropriate documentation and information necessary to access records and indexes. The information required by Rule 17Ad–7(f)(5) will be required to be maintained for as long as the transfer agent is using electronic or micrographic storage media.

Rule 17Ad–7(f)(6) requires that for each transfer agent that uses a third party to maintain or preserve the transfer agent's records with electronic or micrographic systems, the third party must file with the Commission a written statement to the effect that (1) such records are maintained or preserved by the third party on behalf of the transfer agent; (2) such records will be surrendered promptly on request of the transfer agent; and (3) the third party will permit Commission representatives or designees to examine such records. This requirement is intended to ensure that the appropriate examining authorities are able to access a transfer agent's electronically or micrographically stored records if the transfer agent does not maintain those records. This requirement can be fulfilled in the form of a letter to the Commission.

The collection of information required by the amendments to Rule 17Ad–7 should not result in any new significant burden to transfer agents. All information required as a condition of transfer agents' use of electronic or micrographic storage media is specifically tied to a transfer agent's decision to use electronic or micrographic storage media to satisfy its recordkeeping obligations.

The likely respondents to the collection of information are large registered transfer agents. At this time, the Commission estimates that there will be 500 respondents to the collection of information requirements contained in the amendments to Rule 17Ad–7. The frequency of response to the collection of information requirements varies depending on the specific requirement and whether the transfer agent stores its own records or uses the services of a third party. Thus, the collection of information requirements contained in Rules 17Ad–7(f)(5)(ii) and 17Ad–7(f)(6) might require more than one response.

The primary time burdens that are required by the amendments to Rule 17Ad–7 are the duplicate, labeling, index, audit trail, and statement-filing provisions. The Commission contemplates that the electronic and micrographic document storage systems that transfer agents are likely to utilize can automatically produce duplicate records, sequential labels, indexes, and audit trails. In the Proposing Release, the Commission estimated that each transfer agent would, on average, expend 125 hours per year to comply with the collection of information requirements of Rule 17Ad–7. The Commission solicited comments regarding this annual hourly burden but did not receive any comments. This time burden will apply only to registered transfer agents that choose to use electronic or micrographic storage media.

In the Proposing Release, the Commission estimated that approximately 40 transfer agents were likely to use electronic or micrographic storage systems. However, based on further consultations with transfer agent industry officials, vendors of electronic records storage systems, and Commission staff members, the Commission now believes that the number of likely respondents will be 500.[59] Accordingly, we estimate that the collection of information requirements will result in 62,500 additional burden hours (500 transfer agents x 125 annual hours) to the transfer agent industry.[60]

If a transfer agent chooses to use electronic or micrographic storage media, then providing the information will be mandatory. Responses to the collection of information requirements will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

VII. Costs and Benefits of the Amendments to Rule 17Ad-7

The Commission has identified certain costs and benefits relating to the rule amendments. No comments were received about the costs and benefits of the proposed rule and the commenters did not cite cost concerns as the basis for their suggestions. We expect that registered transfer agents will chose to adopt electronic or micrographic recordkeeping if it is cost effective for them to do so.

A. Benefits

The Commission envisions that transfer agents choosing to automate their paper-based records systems in favor of electronic or micrographic systems are likely to reduce their costs and risks associated with recordkeeping. While these benefits are not readily quantifiable in terms of a particular dollar value, many factors underlie the potential reduction of costs and gains in efficiency to transfer agents that elect to use micrographic or electronic storage systems:

- Documents are less likely to be lost or misfiled,
- Documents are likely to be retrieved more quickly,
- Audit trails can be automated,
- Risk reduction is improved for natural disasters,
- File centralization is automatic (file and records need not be removed from their storage in order to reference them),
- Multiple persons can view the same document simultaneously,
- Access authorization can be automated,
- Space required for document storage is drastically reduced,
- Document indexing and cross-referencing can be automatic, and
- Documents can be copied, faxed, printed, and e-mailed without the paper originals.

B. Costs

The amendments to Rule 17Ad-7 will not impose costs on any particular person or entity. Although the amendments will broaden the options for transfer agents to use for the storage and retention of the records that they are required to maintain, the amendments require no technology changes or even the use of any technology, provided the transfer agent is capable of producing copies of documents that the Commission, or the transfer agent's ARA, requests.[61] Therefore, transfer agents are not obligated to change their present recordkeeping and retention systems.

We expect, as noted above, that numerous transfer agents will determine that it is cost-effective for them to choose to maintain their records electronically or micrographically. However, it is practically impossible to estimate the costs for implementing a records management system for any given transfer agent, or the industry as a whole, that would be in compliance with Rule 17Ad-7(f). When a transfer agent selects the type of records management technology, such as photographic (microfilm or microfiche) or digital recording techniques (computer technology), it will likely consider solutions that will optimize its cost, based on individualized factors such as risk and complexity. Each transfer agent will evaluate the risk and cost effectiveness of their records management solution differently based upon the solution that is best for their business model, such as their business practices and volume, and that assures their ability to comply with Rule 17Ad-7. Moreover, we cannot predict the effect of future market competition and innovation on the technologies that transfer agents might employ for their recordkeeping.

Nevertheless, transfer agents that choose to change their recordkeeping system to electronic or micrographic storage systems may face the following costs. First, transfer agents that choose to store records electronically or micrographically will have to select the type of technology system they will use to store and maintain the required records. While the costs and types of these systems vary widely, numerous document storage vendors appear to make the market for these systems competitive. In addition, the expected life span of each system varies (e.g., some systems and their associated software might become obsolete sooner than others and some systems physically last longer than others). All systems, however, require physical and technological maintenance.

Second, transfer agents that choose to use micrographic media or electronic storage media will incur some costs associated with transferring hard copy records to micrographic or electronic storage media. These costs are likely to depend upon the volume of hard copy records needed to be transferred to electronic or micrographic format, the amount of labor needed to convert the records, and the type of storage media involved.

Third, transfer agents will incur costs in complying with the rule. Specifically, the rule requires that transfer agents using electronic or micrographic storage media create a duplicate of the records electronically or micrographically stored, that they create an index of the electronically or micrographically stored records, and that they establish an audit system to account for inputting of and changes to electronically or micrographically stored records. All of these requirements will result in costs to those transfer agents. Again, these costs are difficult to quantify in terms of labor and technology.

VIII. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

A. Consideration of Burden on Competition

Section 23(a)(2) of the Act[62] requires the Commission to consider the impact that any rule promulgated under the Act would have on competition. The Commission is further required to state "the reasons for [its] determination that any burden on competition imposed by such rule or regulation is necessary or appropriate in furtherance of the purposes of [the Act].[63]

In the Proposing Release, the Commission solicited comments on whether the amendments to Rule 17Ad–7 would have any effects on competition. The Commission received no comments in response to this solicitation.

The Commission does not anticipate that the amendments will impose any burden on competition that is not necessary or appropriate in furtherance of the Act. The amended rule permits, but does not require, all registered transfer agents to use electronic and micrographic storage media to fulfill their recordkeeping obligations. In addition, the requirements that transfer agents must meet with respect to using electronic and micrographic storage media will apply to all registered transfer agents that choose to store their records electronically or micrographically. The amendments are intended to remove any remaining regulatory impediments facing transfer agents who decide to store records in an electronic or micrographic form. The Commission believes that by changing the regulatory scheme, transfer agents can have the certainty to adopt storage methods that best suits their business needs and can then be able to offer to the market a service they believe is more cost-effective and efficient.

B. Promotion of Efficiency, Competition, and Capital Formation

Section 3 of the Act[64] as amended by the National Securities Markets Improvement Act of 1996[65] provides that whenever the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall consider, in addition to the protection of investors, whether the action will

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[59] The Commission is unable to predict the number of transfer agents that will use third parties to store their records and, thus, is unable to predict the number of third party undertakings that will be filed with the Commission.

[60] Based on an estimated average administrative labor cost of $50 per hour (based on the Securities Industry Association's wage survey for the year 2000 for programmers and senior programmers. An additional 35% for overhead was added to the hourly rates.), the Commission's staff estimate that the total labor cost to the entire transfer agent industry for complying with the collection of information requirements contained in the proposed amendments is $3,125,000 annually ($50 x 62,500). The Commission's staff developed these estimates in consultation with representatives of the transfer agent industry and the staff of the Commission's Office of Economic Analysis.

[61] 17 CFR 240.17Ad-6 and 240.17Ad-7.

[62] 15 U.S.C. 78w(a)(2).

[63] 15 U.S.C. 78w(a)(2).

[64] 15 U.S.C. 78c.

[65] Pub. L. No. 104–290, 110 Stat. 3416 (1996).

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promote efficiency, competition, and capital formation.

In the Proposing Release, the Commission solicited comments on whether the amendments to Rule 17Ad–7 would have any effects on competition, efficiency and capital formation. The Commission received no comments in response to this solicitation.

The amendments should promote efficiency. By allowing registered transfer agents to benefit from advances in recordkeeping technology, the time and labor in maintaining and accessing records should be reduced, resulting in operational and financial efficiencies. Although the amendments address how companies and its transfer agents keep records which are activities that occur after the issuance of securities, the amendments should also encourage capital formation. By allowing transfer agents to use a broader range of storage methods, transfer agents who decide to store records electronically or micrographically, will no longer have the facility or operational costs of a traditional paper based system. Transfer agents could then pass the cost savings to companies who can, in turn, see a similar reduction in their recordkeeping expenses. Lower recordkeeping expenses should assist companies in bringing their overall costs down and should benefit companies in their efforts in raising capital. The amendments, which apply equally to transfer agents, should also promote competition between the vendors who create and manufacture the new storage technologies and between the transfer agents who use the new methods. Vendors can compete with each other to develop systems that can allow transfer agents to mange the records on a more resourceful, economical basis. The improvement in storage technologies can then allow transfer agents to compete among one another in offering to companies a more cost-effective, efficient service.

The amendments should: (1) Promote efficiency by allowing registered transfer agents to benefit from advances in recordkeeping technology, (2) not adversely affect capital formation because the amendments relate solely to post-issuance activity, and (3) not impose any burden on competition among transfer agents because the amendments will apply equally to all registered transfer agents.

IX. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis ("FRFA") has been prepared in accordance with the provisions of the Regulatory Flexibility Act ("RFA").[66] This FRFA relates to the adoption of amendments to Rule 17Ad–7(f), which conditions registered transfer agents' use of micrographic and electronic storage systems in fulfilling their record retention requirements.[67] The FRFA notes that the new rule does not require transfer agents to maintain their records micrographically or electronically; however, those transfer agents choosing to do so must comply with the requirements of the rule.

A. Need for the Rules and Rule Amendments

The amendments are designed to increase the flexibility and efficiency of transfer agent recordkeeping. Section 17(a)(1) of the Act[68] requires registered transfer agents to make and keep certain records that the Commission prescribes to be necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. Rules 17Ad–6 and 17Ad–7 under the Act specify the type of records that registered transfer agents must make and keep and the amount of time and manner in which these records must be preserved. Depending on the type of record, the records covered by these rules generally must be maintained for two years,[69] six years,[70] or until one year after the termination of a transfer agency relationship.[71] Rule 17Ad–7(f)[72] currently permits registered transfer agents to preserve the records listed in Rule 17Ad–6 on microfilm, subject to certain conditions. However, Rule 17Ad–7 currently provides no other alternative to maintaining records in hard copy.

B. Significant Issues Raised by Public Comment

The Commission received eleven comment letters in response to the Proposing Release. The commenters generally supported the goals of the Commission's proposals, although some expressed concerns with specific provisions and some suggested alternative approaches for addressing particular issues. The Commission has modified its proposal to incorporate many of these comments and suggested alternatives.

The Commission also requested comment with respect to the IRFA in the Proposing Release. The Commission did not receive any comments concerning the IRFA.

C. Small Entities Subject to the Rule

For purposes of Commission rulemaking, paragraph (h) of Rule 0–10 under the Act[73] defines the term "small business" or "small organization," with reference to a transfer agent, to include any transfer agent that: (1) Received fewer than 500 items for transfer and fewer than 500 items for processing during the preceding six months (or in the time that it has been in business, if shorter); (2) transferred items only of issuers that would be deemed "small business" or "small organizations" as defined in Rule 0–10 under the Act; (3) maintained master shareholder files that in the aggregate contained less than 1,000 shareholder accounts or was the named transfer agent for less than 1,000 shareholder accounts at all times during the preceding fiscal year (or in the time that it has been in business, if shorter); and (4) is not affiliated with any person (other than a natural person) that is not a small business or small organization under Rule 0–10. The Commission estimates that 180 registered transfer agents qualify as small entities and would be subject to the amendments to Rule 17Ad–7.

The Commission estimates that approximately 150 transfer agents will receive fewer than 500 items for transfer during the preceding six months. However, the Commission believes that the amendments to Rule 17Ad–7 will not significantly affect small entities. The Commission notes that Rule 17Ad–4(b) under the Act[74] already exempts approximately 150 small transfer agents from several of the recordkeeping requirements of Rules 17Ad–6 (and as a result from 17Ad–7). In addition, any burden imposed by the amendments applies only to those transfer agents that choose to use electronic or micrographic storage media; many transfer agents might not have to maintain their records any differently than they are doing so prior to today.[75] The Commission also believes that it is not feasible to further clarify, consolidate, or simplify the amendments for small entities because a small entity choosing to store its records electronically or micrographically will not be disproportionately or unreasonably burdened by the new requirements of Rule 17Ad–7. Finally, the Commission believes that creating any new exemptions for small business entities in Rule 17Ad–7 would undermine the purpose of the Commission's transfer agent regulatory oversight responsibilities. Thus, small business entities are still required to maintain the same types of records as before; Rule 17Ad–7 merely provides alternate methods for doing so.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

In the IRFA, the Commission requested comment on the costs of complying with each of the recordkeeping, reporting, and other requirements under the proposed rule amendments. It also requested comment as to whether there would be any ongoing costs associated with complying with the rule amendments and asked commenters to provide detailed estimates of these costs. The Commission did not receive any comments concerning this aspect of the IRFA.

The amendments to Rule 17Ad–7 impose certain reporting, recordkeeping, and compliance requirements. For example, the amendments require each registered transfer agent that chooses to use electronic or micrographic storage media to set up a system to record the inputting of records to electronic storage media and the inputting of any changes to records that are electronically or micrographically stored. However, the reporting, recordkeeping, and compliance requirements contained in the amendments to Rule 17Ad–7 apply only to registered transfer agents that choose to use electronic storage media. Some small transfer agents might not be able to afford the costs currently involved with storing records electronically or micrographically and therefore will not choose to use these storage medias. However, it is likely that as additional technologies are developed, these costs will be reduced and it may become cost-effective for more small transfer agents to use electronic or micrographic storage media. Therefore, the amendments to Rule 17Ad–7 should not have a significant economic impact on a substantial number of small entities.

E. Agency Action to Minimize Effect on Small Entities

As required by section 603 of the RFA, the Commission has considered adopting different compliance, reporting requirements, and effective dates with respect to transfer agents' use of electronic and micrographic storage media with the view that these measures would minimize the economic impact of the proposed rule amendments on small entities. However, the Commission believes that the compliance, reporting requirements, and effective dates as adopted today are necessary to ensure the accuracy and integrity of the records of those transfer agents that choose to store them electronically or micrographically and to ensure the access to such records by the Commission or another appropriate regulatory agency.

X. Statutory Basis

The Commission is adopting amendments to § 240.17Ad–7 of Chapter II of Title 17 of the *Code of Federal Regulations* pursuant to Sections 17, 17A, and 23[76] in the manner set forth below.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities, Transfer agents.

Text of Amendment

In accordance with the foregoing, Title 17, Chapter II of the *Code of Federal Regulations* is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following specific citation:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

Section 240.17Ad–7 also issued under 15 U.S.C. 78b, 78q, and 78q–1.

* * * * *

2. The authority citation following § 240.17Ad–7 is removed.

3. Section 240.17Ad–7 is amended by revising paragraph (f) to read as follows:

§ 240.17Ad–7 Record retention.

* * * * *

(f) (1) For purposes of this section:

(i) The term *micrographic media* means microfilm or microfiche or any similar medium.

(ii) The term *electronic storage media* means any digital storage medium or system.

(iii) The term *ARA* means your appropriate regulatory agency as that term is defined in 15 U.S.C. 78c(a)(34).

(2) If you as a registered transfer agent use electronic storage media or micrographic media to store your records, you must:

(i) Have available at all times for examination by the staffs of the Commission and of your ARA facilities to project or produce immediately easily readable images of such records;

(ii) Be ready at all times to provide such records that the staffs of the Commission and your ARA or their representatives may request;

(iii) Create an accurate index of such records, store the index with those records, and have the index available at all times for examination by the staffs of the Commission and your ARA;

(iv) Have quality assurance procedures to verify the quality and accuracy of the electronic or micrographic recording process; and

(v) Maintain separately from the originals duplicates of the records and the index that you store on electronic storage media or micrographic media. You may store the duplicates of the indexed records on any medium permitted by this section. You must preserve the duplicate records and index for the same time that is required by this section for the indexed records, and you must have them available at all times for examination by the staffs of the Commission and your ARA.

(3) Any electronic storage media that you use to store your records must:

(i) Ensure the security and integrity of the records by means of manual and automated controls that assure the authenticity and quality of the electronic facsimile, detect attempts to alter or remove the records, and provide means to recover altered, damaged, or lost records resulting from any cause;

(ii) Externally label all removable units of storage media using a unique identifier that allows the manual association of that removable storage unit with its place and order in the recordkeeping system; and

(iii) Uniquely identify files and internally label each file with its unique name, the date and time of file creation, the date and time of last modification or extension, and a file sequence number when the file spans more than one volume.

(4) If you use electronic storage media or micrographic media to store your records, you must establish an audit system that accounts for the inputting of and any changes to every record that is stored on electronic storage media or micrographic media. The results of such audit system must:

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[66] 5 U.S.C. 604.

[67] An Initial Regulatory Flexibility Analysis ("IRFA") summary regarding the amendments to Rule 17Ad–7 appeared in the Proposing Release.

[68] 15 U.S.C. 78q(a)(1).

[69] Rule 17Ad–7(a) and (b).

[70] Rule 17Ad–7(d).

[71] Rule 17Ad–7(c).

[72] Rule 17Ad–7(f).

[73] 17 CFR 240.0–10(h).

[74] 17 CFR 240.17Ad–4(b).

[75] For example, Rule 17Ad–7(f) will be essentially inapplicable to transfer agents that solely maintain paper records.

[76] 15 U.S.C. 78q, 78q–1(a)(2), 78q–1(d) and 78w(a).

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(i) Be available at all times for examination by the staffs of the Commission and your ARA; and

(ii) Be preserved for the same time that is required by this section for the underlying records.

(5) If you use electronic storage media or micrographic media to store your records, you must:

(i) Maintain, keep current, and provide promptly upon request by the staffs of the Commission and your ARA all information necessary to access the records and indexes stored on electronic storage media or micrographic media; and

(ii) Place in escrow with an independent third party and keep current a copy of the physical and logical format of the electronic storage or micrographic media, the field format of all different information types written on the electronic storage media and source code, and the appropriate documentation and information necessary to access records and indexes. The independent escrow agent must file an undertaking signed by a duly authorized person with the Commission and your ARA stating that:

"[Name of Third Party] hereby undertakes to furnish promptly upon request to the U.S. Securities and Exchange Commission, its designees, or representatives, upon reasonable request, a current copy of the physical and logical format of the electronic storage or micrographic media, the field format of all different information types written on the electronic storage media and source code, and the appropriate documentation and information necessary to access the records and indexes of [Name of Transfer Agent]'s electronic records management system.

(6) (i) If you use a third party to maintain or preserve some or all of the required records using electronic storage media or micrographic media, such third party shall file a written undertaking signed by a duly authorized person with the Commission and your ARA stating that:

"With respect to any books and records maintained or preserved on behalf of [Name of Transfer Agent], [Name of Third Party] hereby undertakes to permit examination of such books and records at any time or from time to time during business hours by representatives or designees of the U.S. Securities and Exchange Commission, and to promptly furnish to said Commission or its designee true, correct, complete, and current hard copies of any or all or any part of such books and records."

(ii) Agreement with a third party to maintain your records shall not relieve you from the responsibility to prepare and maintain records as specified in this section or in § 240.17Ad–6.

* * * * *

Dated: April 27, 2001.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–11005 Filed 4–27–01; 2:33 pm]

BILLING CODE 8010–01–U

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 102

T.D. [01–36]

RIN 1515–AC80

Rules of Origin for Textile and Apparel Products

AGENCY: Customs Service, Department of the Treasury.

ACTION: Interim rule; solicitation of comments.

SUMMARY: This document amends the Customs Regulations on an interim basis to align the existing country of origin rules for textile and apparel products with the statutory amendments to section 334 of the Uruguay Round Agreements Act, as set forth in section 405 within Title IV of the Trade and Development Act of 2000. Section 405 clarifies the text of section 334 by redesignating certain provisions and amends the processing operations required to confer country of origin status to certain textile fabrics and made-up articles. This document implements the statutory changes.

DATES: This interim rule is effective May 1, 2001. Comments must be received on or before July 2, 2001.

ADDRESSES: Written comments (preferably in triplicate) may be submitted to and inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Cynthia Reese, Textile Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Tel. (202) 927–1361.

SUPPLEMENTARY INFORMATION:

Background

Section 334 of the Uruguay Round Agreements Act (URAA), Public Law 103–465, 108 Stat. 4809 (19 U.S.C. 3592), directs the Secretary of the Treasury to prescribe rules implementing certain principles for determining the origin of textiles and apparel products. Section 102.21 of the Customs Regulations (19 CFR 102.21) implements section 334 of the URAA.

On May 18, 2000, President Clinton signed into law the Trade and Development Act of 2000 (the Act), Public Law 106–200, 114 Stat. 251. Section 405 of Title IV of the Act amends section 334 of the URAA. Specifically, section 405(a) amends section 334(b)(2) of the URAA by redesignating paragraphs (b)(2)(A) and (B) as paragraphs (b)(2)(A)(i) and (ii), and by adding two special rules at new paragraphs (b)(2)(B) and (C) that change the rules of origin for certain fabrics and made-up textile products.

Under section 334, certain fabrics, silk handkerchiefs and scarves were considered to originate where the base fabric was knit or woven, notwithstanding any further processing. As a result of the statutory amendment to section 334 effected by section 405 of the Act, the processing operations which may confer origin on certain textile fabrics and made-up articles are changed to include dyeing, printing, and two or more finishing operations. In particular, the amendment to section 334 affects the processing operations which may confer origin on fabrics classified under the Harmonized Tariff Schedule of the United States (HTSUS) as of silk, cotton, man-made fibers or vegetable fibers.

Section 405(b) provides that the amendments to section 334 apply to goods entered, or withdrawn from warehouse for consumption, on or after May 18, 2000.

Amendment to the Customs Regulations

As the statutory amendments to section 334 of the URAA necessitate corresponding changes to the Customs Regulations, this document amends § 102.21 on an interim basis to implement the rules of origin for the textile products specified in section 405(a) of the Act.

Comments

Before adopting this interim regulation as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs

Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC.

Inapplicability of Prior Public Notice and Comment Procedures

Because these regulations serve to align the Customs Regulations to the statutory amendments to section 334 of the URAA, as set forth in section 405 within Title IV of the Act, which went into effect May 18, 2000, Customs has determined, pursuant to the provisions of 5 U.S.C. 553(b)(B), that prior public notice and comment procedures on this regulation are unnecessary and contrary to the public interest. The regulatory amendments inform the public of changes to the processing operations deemed necessary to confer country of origin status to certain textile fabrics or made-up articles by way of amendment to the tariff shift rules applicable to select textile goods. For these reasons, pursuant to the provisions of 5 U.S.C. 553(d)(3), Customs finds that there is good cause for dispensing with a delayed effective date.

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for these interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Drafting Information

The principal author of this document was Suzanne Kingsbury, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 102

Customs duties and inspection, Imports, Rules of Origin, Trade agreements.

Amendment to the Regulations

For the reasons stated above, part 102 of the Customs Regulations (19 CFR part 102) is amended as set forth below.

PART 102—RULES OF ORIGIN

1. The authority citation for part 102 continues to read as follows:

Authority: U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1624, 3314, 3592.

2. In § 102.21: the introductory text to paragraph (e) is redesignated as paragraph (e)(1) and revised; in newly designated paragraph (e)(1) the table is amended by revising the entries in the "Tariff shift and/or other requirements" column adjacent to the "HTSUS" column listing for 5007, 5208–5212, 5309–5311, 5407–5408, 5512–5516, 5602–5603, 5608, 5801–5803, 5804.10, 5804.21–5804.30, 5806, 5808.90, 5901–5903, 5905, 5906–5907, 5911.10–5911.20, 5911.31–5911.32, 5911.40, 5911.90, 6001–6002, 6101–6117, 6213–6214, 6301–6306 and 9404.90; and a new paragraph (e)(2) is added, to read as follows:

§ 102.21 Textile and apparel products.

* * * * *

(e) *Specific rules by tariff classification.* (1) The following rules will apply for purposes of determining the country of origin of a textile or apparel product under paragraph (c)(2) of this section:

HTSUS	Tariff shift and/or other requirements
.	.
5007	(1) A change from greige fabric of heading 5007 to finished fabric of heading 5007 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or, (2) If the country of origin cannot be determined under (1) above, a change to heading 5007 from any other heading, provided that the change is the result of a fabric-making process.
.	.
5208–5212	(1) A change from greige fabric of heading 5208 through 5212 to finished fabric of heading 5208 through 5212 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or (2) If the country of origin cannot be determined under (1) above, a change to heading 5208 through 5212 from any heading outside that group, provided that the change is the result of a fabric-making process.
.	.
5309–5311	(1) A change from greige fabric of heading 5309 through 5311 to finished fabric of heading 5309 through 5311 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or (2)If the country of origin cannot be determined under (1) above, a change to heading 5309 through 5311 from any heading outside that group, provided that the change is the result of a fabric-making process.
.	.
5407–5408	(1) A change from greige fabric of heading 5407 through 5408 to finished fabric of heading 5407 through 5408 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or (2) If the country of origin cannot be determined under (1) above, a change to heading 5407 through 5408 from any heading outside that group, provided that the change is the result of a fabric-making process.
.	.
5512–5516	(1) A change from greige fabric of heading 5512 through 5516 to finished fabric of heading 5512 through 5516 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or (2) If the country of origin cannot be determined under (1) above, a change to heading 5512 through 5516 from any heading outside that group, provided that the change is the result of a fabric-making process.

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HTSUS	Tariff shift and/or other requirements
5602–5603	(1) Except for fabric of wool or of fine animal hair, a change from greige fabric of heading 5602 through 5603 to finished fabric of heading 5602 through 5603 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or (2) If the country of origin cannot be determined under (1) above, a change to heading 5602 through 5603 from any heading outside that group, provided that the change is the result of a fabric-making process.
5608	(1)(a) Except for netting of wool or of fine animal hair, a change from greige netting of heading 5608 to finished netting of heading 5608 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or (1)(b) If the country of origin cannot be determined under (1)(a) above, a change to netting of heading 5608 from any other heading, except from heading 5804, and provided that the change is the result of a fabric-making process. (2) A change to fishing nets or other made up nets of heading 5608: (a) If the good does not contain nontextile attachments, from any other heading, except from heading 5804 and 6002, and provided that the change is the result of a fabric-making process; or (b) If the good contains nontextile attachments, from any heading, including a change from another good of heading 5608, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
5801–5803	(1) Except for fabric of wool or of fine animal hair, a change from greige fabric of heading 5801 through 5803 to finished fabric of heading 5801 through 5803 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or (2) If the country of origin cannot be determined under (1) above, a change to heading 5801 through 5803 from any other heading, including a heading within that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, and 6002, and provided that the change is the result of a fabric-making process.
5804.10	(1) Except for fabric of wool or of fine animal hair, a change from greige fabric of subheading 5804.10 to finished fabric of subheading 5804.10 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or (2) If the country of origin cannot be determined under (1) above, a change to subheading 5804.10 from any other heading, except from heading 5608, and provided that the change is the result of a fabric-making process.
5804.21–5804.30.	(1) Except for lace of wool or of fine animal hair, a change from greige lace of subheading 5804.21 through 5804.30 to finished lace of subheading 5804.21 through 5804.30 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or (2) If the country of origin cannot be determined under (1) above, a change to subheading 5804.21 through 5804.30 from any other heading, provided that the change is the result of a fabric-making process.
5806	(1) Except for fabric of wool or of fine animal hair, a change from greige fabric of heading 5806 to finished fabric of heading 5806 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or (2) If the country of origin cannot be determined under (1) above, a change to heading 5806 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, and 5801 through 5803, and provided that the change is the result of a fabric-making process.
5808.90	(1) For ornamental fabric trimmings: (a) A change from a greige good of subheading 5808.90 to a finished good of subheading 5808.90 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or, (b) If the country of origin cannot be determined under (a) above, a change to subheading 5808.90 from any other chapter, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, and 5512 through 5516, and provided that the change is the result of a fabric-making process. (2) For nonfabric ornamental trimmings: (a) If the trimming is of continuous filaments, including strips, a change to subheading 5808.90 from any other heading, except from heading 5001 through 5007, 5401 through 5408, 5501 through 5502, and 5604 through 5607, and provided that the change is the result of an extrusion process; or (b) If the trimming is of staple fibers, a change to subheading 5808.90 from any other heading, except from heading 5106 through 5113, 5204 through 5212, 5306 through 5311, 5401 through 5408, 5508 through 5516, and 5604 through 5607, and provided that the change is the result of a spinning process. (3) For tassels, pompons and similar articles: (a) If the good has been wholly assembled in a single country, territory, or insular possession, a change to subheading 5808.90 from any other heading; (b) If the good has not been wholly assembled in a single country, territory, or insular possession and the good is of staple fibers, a change to subheading 5808.90 from any other heading, except from heading 5004 through 5006, 5106 through 5110, 5204 through 5207, 5306 through 5308, and 5508 through 5511, and 5604 through 5607, and provided that the change is the result of a spinning process; or (c) If the good has not been wholly assembled in a single country, territory, or insular possession and the good is of filaments, including strips, a change to subheading 5808.90 from any other heading, except from heading 5001 through 5007, 5401 through 5406, and 5501 through 5502, and provided that the change is the result of an extrusion process.

HTSUS	Tariff shift and/or other requirements
5901–5903	(1) Except for fabric of wool or of fine animal hair, a change from greige fabric of heading 5901 through 5903 to finished fabric of heading 5901 through 5903 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or, (2) If the country of origin cannot be determined under (1) above, a change to heading 5901 through 5903 from any other heading, including a heading within that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5803, 5806, 5808, and 6002, and provided that the change is the result of a fabric-making process.
5905	(1) Except for wall coverings consisting of textile fabric of wool or of fine animal hair treated on the back or affixed by any means to a backing of any material, a change from wall coverings of greige fabric of heading 5905 to wall coverings of finished fabric of heading 5905 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or, (2) If the country of origin cannot be determined under (1) above, a change to heading 5905 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5603, 5803, 5806, 5808, and 6002, and provided that the change is the result of a fabric-making process.
5906–5907	(1) Except for fabric of wool or of fine animal hair, a change from greige fabric of heading 5906 through 5907 to finished fabric of heading 5906 through 5907 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or, (2) If the country of origin cannot be determined under (1) above, a change to heading 5906 through 5907 from any other chapter, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5803, 5806, 5808, and 6002, and provided that the change is the result of a fabric-making process.
5911.10–5911.20.	(1) Except for fabric of wool or of fine animal hair, a change from greige fabric of subheading 5911.10 through 5911.20 to finished fabric of subheading 5911.10 through 5911.20 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or, (2) If the country of origin cannot be determined under (1) above, a change to subheading 5911.10 through 5911.20 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, and 6001 through 6002, and provided that the change is the result of a fabric-making process.
5911.31–5911.32.	(1)(a) Except for fabric of wool or of fine animal hair, a change from greige fabric of subheading 5911.31 through 5911.32 to finished fabric of subheading 5911.31 through 5911.32 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or, (1)(b) If the country of origin cannot be determined under (1)(a) above, for goods not combined with nontextile components, a change to subheading 5911.31 through 5911.32 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, and 6001 through 6002, and provided that the change is the result of a fabric-making process. (2) For goods combined with nontextile components, a change to subheading 5911.31 through 5911.32 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
5911.40	(1) Except for fabric of wool or of fine animal hair, a change from greige fabric of subheading 5911.40 to finished fabric of subheading 5911.40 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or, (2) If the country of origin cannot be determined under (1) above, a change to subheading 5911.40 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, and 6001 through 6002, and provided that the change is the result of a fabric-making process.
5911.90	(1) For goods of yarn, rope, cord, or braid: (a) If the good is of continuous filaments, including strips, a change of those filaments, including strips, to subheading 5911.90 from any other heading, except from heading 5001 through 5006, 5401 through 5406, and 5501 through 5502, and provided that the change is the result of an extrusion process; or (b) If the good is of staple fibers, a change of those fibers to subheading 5911.90 from any other heading, except from heading 5106 through 5110, 5204 through 5207, 5306 through 5308, and 5508 through 5511, and provided that the change is the result of a spinning process. (2)(a) If the good is a fabric, except for fabric of wool or of fine animal hair, a change from greige fabric of subheading 5911.90 to finished fabric of subheading 5911.90 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or, (2)(b) If the country of origin cannot be determined under (2)(a) above, if the good is a fabric, a change to subheading 5911.90 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, 5809, and 6001 through 6002, and provided that the change is the result of a fabric-making process. (3) If the good is a made up article other than a good of yarn, rope, cord, or braid, a change to subheading 5911.90 from any heading, including a change from another good of heading 5911, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.

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HTSUS	Tariff shift and/or other requirements
6001–6002	(1) Except for fabric of wool or of fine animal hair, a change from greige fabric of heading 6001 through 6002 to finished fabric of heading 6001 through 6002 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or, (2) If the country of origin cannot be determined under (1) above, a change to heading 6001 through 6002 from any heading outside that group, provided that the change is the result of a fabric-making process.
6101–6117	(1) If the good is not knit to shape and consists of two or more component parts, except for goods of subheading 6117.10 provided for in paragraph (e)(2) of this section, a change to an assembled good of heading 6101 through 6117 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good is not knit to shape and does not consist of two or more component parts, except for goods of subheading 6117.10 provided for in paragraph (e)(2) of this section, a change to heading 6101 through 6117 from any heading outside that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5806, 5809 through 5811, 5903, 5906 through 5907, and 6001 through 6002, and subheading 6307.90, and provided that the change is the result of a fabric-making process. (3) If the good is knit to shape, except for goods of subheading 6117.10 provided for in paragraph (e)(2) of this section, a change to 6101 through 6117 from any heading outside that group, provided that the knit to shape components are knit in a single country, territory, or insular possession.
. . . . .	
6213–6214	Except for goods of heading 6213 through 6214 provided for in paragraph (e)(2) of this section, the country of origin of a good classifiable under heading 6213 through 6214 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.
. . . . .	
6301–6303	Except for goods of heading 6302 through 6304 provided for in paragraph (e)(2) of this section, the country of origin of a 17 good classifiable under heading 6301 through 6306 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.
. . . . .	
9404.90	Except for goods of subheading 9404.90 provided for in paragraph (e)(2) of this section, the country of origin of a good classifiable under subheading 9404.90 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.

* * * * *

(2) For goods of HTSUS headings 6213 and 6214 and HTSUS subheadings 6117.10, 6302.22, 6302.29, 6302.52, 6302.53, 6302.59, 6302.92, 6302.93, 6302.99, 6303.92, 6303.99, 6304.19, 6304.93, 6304.99, 9404.90.85 and 9404.90.95, except for goods classified under those headings or subheadings as of cotton or of wool or consisting of fiber blends containing 16 percent or more by weight of cotton:

(i) The country of origin of the good is the country, territory, or insular possession in which the fabric comprising the good was both dyed and printed when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing;

(ii) If the country of origin cannot be determined under (i) above, except for goods of HTSUS subheading 6117.10 that are knit to shape or consist of two or more component parts, the country of origin is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process; or

(iii) For goods of HTSUS subheading 6117.10 that are knit to shape or consist of two or more component parts:

(A) If the good is knit to shape, the country of origin of the good is the country, territory, or insular possession in which a change to HTSUS subheading 6117.10 from yarn occurs, provided that the knit to shape components are knit in a single country, territory, or insular possession; or

(B) If the good is not knit to shape and consists of two or more component parts, the country of origin of the good is the country, territory, or insular possession in which a change to an assembled good of HTSUS subheading 6117.10 from unassembled components occurs, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.

Charles W. Winwood,

Acting Commissioner of Customs.

Approved: April 13, 2001.

Timothy E. Skud,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 01–10719 Filed 4–30–01; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 132 and 163

[T.D. 01–35]

RIN 1515–AC83

Licenses for Certain Worsted Wool Fabrics Subject to Tariff-Rate Quota

AGENCY: Customs Service, Department of the Treasury.

ACTION: Interim rule; solicitation of comments.

SUMMARY: This document amends the Customs Regulations on an interim basis to set forth the form and manner by which an importer establishes that a valid license, issued under regulations of the U.S. Department of Commerce, is in effect for certain worsted wool fabric that is the subject of a tariff-rate quota. Such a license is necessary in order to enable the importer to claim the in-quota rate of duty on the worsted wool fabric.

DATES: Interim rule effective on May 1, 2001. The interim rule is applicable to products that are entered, or withdrawn from warehouse, for consumption on or after May 1, 2001. Comments must be received on or before July 2, 2001.

ADDRESSES: Written comments may be addressed to and inspected at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Erin Riley, Office of Field Operations, (202–927–5395).

SUPPLEMENTARY INFORMATION:

Background

Under section 501 of the Trade and Development Act of 2000 (the "Act") (Pub. L. 106–200, 114 Stat. 251; May 18, 2000), the Harmonized Tariff Schedule of the United States (HTSUS) was amended to establish a tariff-rate quota for certain worsted wool fabrics that are entered or withdrawn from warehouse for consumption, on or afterJanuary 1, 2001.

Generally, under a tariff-rate quota, the United States applies one tariff rate, known as the in-quota rate, to imports of a product up to a particular amount, known as the in-quota quantity, and another, higher rate, known as the over-quota rate, to imports of a product in excess of the given amount. The preferential, in-quota rate would be applicable to the product only to the extent that the aggregate in-quota quantity of the product that is entered or withdrawn for consumption is not exceeded during the quota year.

To establish the tariff-rate quota for worsted wool fabrics, subchapter 2 of Chapter 99, HTSUS, was amended by section 501(a) and (b) of the Act to add two new subheadings, 9902.51.11 and 9902.51.12, respectively.

The two new subheadings created by section 501(a) and (b) of the Act describe certain fabrics of worsted wool provided for in subheadings 5111.11.70, 5111.19.60, 5112.11.20 and 5112.19.90, HTSUS. Since the passage of the Act, the President issued Presidential Proclamation 7383 (December 1, 2000). The Annex to that Presidential Proclamation provided, in pertinent part, for the following HTSUS substitutions, effective on or after January 1, 2001:

Subheading 5112.11.20 is replaced by subheadings 5112.11.30 and 5112.11.60; and

Subheading 5112.19.90 is replaced by subheadings 5112.19.60 and 5112.19.95.

Further, it is noted that HTSUS subheadings 5111.11.70 and 5111.19.60 do not provide for worsted wool fabric so fabrics described in those subheadings would not meet the description of fabrics that could fall under the tariff rate quota.

Accordingly, the tariff rate quota is applicable to certain fabrics of worsted wool provided for in subheadings 5112.11.30, 5112.11.60, 5112.19.60 and 5112.19.95, HTSUS, that are described in and entered under subheadings 9902.51.11 and 9902.51.12, HTSUS.

Need for Tariff-Rate Quota for Worsted Wool Fabrics

Worsted wool fabrics as described in HTSUS subheadings 5112.11.30, 5112.11.60, 5112.19.60 and 5112.19.95 are subject to a duty rate of 28.3% ad valorem. However, articles, such as men's suits, that are made (cut and sewn) from this fabric, are dutiable at the lower rate of 18.8% ad valorem.

By applying a higher tariff rate to the input product, *i.e.*, the worsted wool fabric, than to the more labor-intensive and higher-value-added apparel items that are made from the fabric, the tariff schedule in effect provides an incentive for the importation of the finished apparel items at the lower rate of duty, to the competitive detriment of U.S. suit-makers. Furthermore, this tariff inversion is compounded by the additional reduction in tariffs on men's wool suits that are made in Canada or Mexico pursuant to the North American Free Trade Agreement Implementation Act (NAFTA) (Pub. L. 103–182; December 8, 1993). In this latter instance, U.S. suit-makers face greater competitive disadvantage due to the increased difference in tariff between the worsted wool fabric relative to the free rate of duty on imports of such suits under NAFTA.

Consequently, under the tariff-rate quota adopted in this case, the tariff on imported worsted wool fabric entered under HTSUS subheading 9902.51.11 or 9902.51.12 (which includes certain fabric of worsted wool provided for in HTSUS subheadings 5112.11.30, 5112.11.60, 5112.19.60 and 5112.19.95) is reduced in an effort to limit the above-described tariff inversion, and the resultant competitive disadvantage, faced by U.S. suit-makers in the purchase of such fabric that is intended for use in the manufacture of men's and boys' worsted wool suits, suit-type jackets and trousers.

Application of Tariff-Rate Quota Under HTSUS Subheadings 9902.51.11 and 9902.51.12

Specifically, under subheading 9902.51.11, which covers those worsted wool fabrics having an average fiber diameter greater than 18.5 micron, the applicable tariff rate is reduced from the current rate of 28.3% ad valorem to the rate in effect for worsted wool suit-type jackets in HTSUS subheading 6203.31.00 (currently, 18.8% ad valorem); and, under subheading 9902.51.12, which covers those worsted wool fabrics having an average fiber diameter of 18.5 micron or less, the applicable tariff rate is reduced from the current U.S. rate of 28.3% to a rate equivalent to the Canadian "most favored nation" (MFN) rate for imports of such fabric (currently, 6%).

Both subheadings 9902.51.11 and 9902.51.12 also require that the worsted wool fabric be certified by the importer as being suitable for use in making suits, suit-type jackets, or trousers.

This tariff-rate quota for worsted wool fabric is to be in effect for calendar years 2001, 2002 and 2003. The quota year is thus the calendar year (from January 1–December 31, inclusive) in which the subject fabric is entered or withdrawn for consumption.

The in-quota quantities of worsted wool fabric entered under HTSUS subheading 9902.51.11 or 9902.51.12 that are eligible for the reduced tariffs for each quota year are limited, respectively, to 2.5 million square meter equivalents and 1.5 million square meter equivalents (U.S. Notes 15 and 16 to subchapter II of Chapter 99, HTSUS, respectively, as amended by section 501(d) of the Act). These in-quota quantities may be adjusted on an annual basis as provided in section 504(b) of the Act.

Administration of Tariff-Rate Quota by U.S. Department of Commerce

In implementing the in-quota limits on the quantities of worsted wool fabric that may be entered or withdrawn for consumption subject to the reduced tariffs afforded by subheadings 9902.51.11 and 9902.51.12, the U.S. Department of Commerce has been delegated the authority under section 501(e) of the Act to fairly apportion these in-quota quantities among those persons, including firms, corporations and other legal entities, in the United States, who cut and sew men's and boys' worsted wool suits, suit-type jackets and trousers. This delegation of authority to the Department of Commerce was effected by Presidential Proclamation No. 7383 (December 1, 2000).

Accordingly, the Department of Commerce has issued regulations setting up a program for the allocation of the aggregate in-quota quantity established, respectively, for subheadings 9902.51.11 and 9902.51.12 (15 CFR 335.1–335.7; see **Federal Register** dated January 22, 2001 (66 FR 6459)).

In pertinent part, under this program, the usage of the quota is allocated to U.S. suit-makers by virtue of licenses issued to them by the Department of Commerce. Each license is issued for a

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stated quantity of fabric and is required to have a unique control number. A suit-maker who has been issued such a license (a licensee) may enter worsted wool fabric under subheading 9902.51.11 or 9902.51.12 at the related in-quota rate of duty, up to the amount authorized in the license.

However, if the importer of record is not the licensee, the importer must have received an authorization from the licensee to act on its behalf, in order to be entitled to the in-quota rate of duty. The licensee may only authorize an importer to import fabric under the license on its behalf by making such an authorization in writing or by an electronic notice to the importer and by providing a copy of such authorization to the Department of Commerce. This authorization must include the unique control number of the license; it must specifically cover the fabric being imported; and it must be in the possession of the importer at the time of filing the entry summary or warehouse withdrawal for consumption (Customs Form 7501), or its electronic equivalent, in order for the importer to be eligible for the applicable in-quota rate of duty.

A licensee may only withdraw an authorization from an importer by notifying the importer in writing or by electronic notice and by providing a copy of this withdrawal notification to the Department of Commerce. It is the responsibility of the licensee to safeguard the use of the license issued. Neither the Department of Commerce nor Customs is liable for any unauthorized or improper use of the license.

Corresponding Customs Rulemaking

In accordance with the rulemaking of the Department of Commerce, Customs is issuing this interim rule in order to set forth a new § 132.18, Customs Regulations (19 CFR 132.18), that prescribes the form and manner by which an importer establishes that a valid license exists for worsted wool fabric subject to the tariff-rate quota that is entered under HTSUS subheading 9902.51.11 or 9902.51.12. In particular, the unique control number assigned to the license must be referenced on the entry summary or warehouse withdrawal for consumption, or its electronic equivalent, in order to entitle the importer to claim the in-quota rate of duty on the worsted wool fabric.

Section 132.18 also makes clear that by claiming the in-quota rate of duty for worsted wool fabric that is entered under HTSUS subheading 9902.51.11 or 9902.51.12, the importer is thus certifying that the worsted wool fabric is suitable for use in making suits, suit-type jackets, or trousers, as required under these subheadings.

In addition, this document revises the Interim (a)(1)(A) List set forth as an Appendix to part 163, Customs Regulations (19 CFR part 163, Appendix) to make reference to the license or written authorization required under new § 132.18. The (a)(1)(A) List provides a listing of the records and information required for the entry of merchandise.

Comments

Before adopting this interim regulation as a final rule, consideration will be given to any written comments that are timely submitted to Customs. Customs specifically requests comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC.

Inapplicability of Notice and Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866

Pursuant to the provisions of 5 U.S.C. 553(b)(B), Customs has determined that good cause exists for dispensing with prior public notice and comment procedures for this interim rule. This interim rule implements a preferential tariff benefit in favor of the importing public; it provides a necessary and reasonable means for carrying out this preferential tariff benefit; and it closely parallels existing regulatory provisions that implement similar trade preference programs. Also, for these same reasons, there is no need for a delayed effective date under 5 U.S.C. 553(d). Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Nor does this document meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Paperwork Reduction Act

The collections of information involved in this interim rule have already been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB ControlNumbers 1515–0065 (Entry summary and continuation sheet) and 1515–0124 (General recordkeeping and record production requirements). This rule does not make any material change to the existing approved information collections.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

List of Subjects

19 CFR Part 132

Customs duties and inspection, Quotas, Reporting and recordkeeping requirements.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, parts 132 and 163, Customs Regulations (19 CFR parts 132 and 163), are amended as set forth below.

PART 132—QUOTAS

1. The general authority citation for part 132 continues to read, and the specific sectional authority under this part is revised to read, as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States (HTSUS)), 1623, 1624.

§§ 132.15 through 132.18 also issued under 19 U.S.C. 1202 (additional U.S. Note 3 to Chapter 2, HTSUS; subchapter III of Chapter 99, HTSUS; additional U.S. Note 8 to Chapter 17, HTSUS; and subchapter II of Chapter 99, HTSUS, respectively), 1484, 1508.

2. Part 132 is amended by adding a new § 132.18 to read as follows:

§ 132.18 License for certain worsted wool fabric subject to tariff-rate quota.

(a) *Requirement.* For worsted wool fabric that is entered under HTSUS subheading 9902.51.11 or 9902.51.12, the importer must possess a valid license, or a written authorization from the licensee, pursuant to regulations of the U.S. Department of Commerce (15 CFR 335.5), in order to claim the in-quota rate of duty on the worsted wool fabric at the time it is entered or withdrawn from warehouse for consumption. The importer must record the distinct and unique 9-character number for the license covering the worsted wool fabric on the entry summary or warehouse withdrawal for consumption (Customs Form 7501, column 34), or its electronic equivalent (see paragraph (c)(1) of this section).

(b) *Importer certification.* By entering the worsted wool fabric under HTSUS subheading 9902.51.11 or 9902.51.12, the importer thus certifies that the worsted wool fabric is suitable for use in making suits, suit-type jackets, or trousers, as required under these subheadings.

(c) *Validity of license.*—(1) *License number.* To be valid, the license, or written authorization issued under the license and including its unique control number, must meet the requirements of 15 CFR 335.5, and with respect to the requirement in 15 CFR 335.5(a) that the license have a unique control number, the license must have a distinct and unique identifying number consisting of 9 characters comprised of the following three elements:

(i) The first character must be a "W";

(ii) The second and third characters must consist of the last 2 digits of the calendar year for which the license is issued and during which it is in effect; and

(iii) The final 6 characters represent the distinct and unique identifier assigned to the license by the Department of Commerce.

(2) *Use of license.* A license covering worsted wool fabric that is entered under HTSUS subheading 9902.51.11 or 9902.51.12 is in effect, and may be used to obtain the applicable in-quota rate of duty for fabric that is entered or withdrawn for consumption, only during the specific calendar year (January 1—December 31, inclusive) for which the license is issued (see 15 CFR 335.2 and 335.5(b) and (d)).

(d) *Retention and production of license or authorization to Customs.* The license and any written authorization from the licensee to the importer are subject to the recordkeeping requirements of part 163 of this chapter (19 CFR part 163). Specifically, the license and any written authorization must be retained for a period of 5 years in accordance with § 163.4(a) of this chapter, and must be made available to Customs upon request in accordance with § 163.6(a) of this chapter.

PART 163—RECORDKEEPING

1. The authority citation for part 163 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

2. The Appendix to part 163 is amended by adding the following new listing under section IV in appropriate numerical order to read as follows:

Appendix to Part 163—Interim (a)(1)(A) List

* * * * *

IV. * * *

§ 132.18 License, or written authorization, as applicable, for worsted wool fabric subject to tariff-rate quota

* * * * *

Charles W. Winwood,

Acting Commissioner of Customs.

Approved: April 9, 2001.

Timothy E. Skud,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 01–10717 Filed 4–30–01; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 250

[T.D. ATF–451]

RIN 1512–AC38

Delegation of Authority (2000R–415P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: This final rule places ATF authorities contained in ATF regulations, with the "appropriate ATF officer" and requires that persons file documents required by ATF regulations, with the "appropriate ATF officer" or in accordance with the instructions on the ATF form. Also, this final rule removes the definitions of, and references to, specific officers subordinate to the Director and the word "region." Concurrently with this Treasury Decision, ATF Order 1130.23 is being published. Through this order, the Director has delegated all of the authorities in ATF regulations to the appropriate ATF officers and specified the ATF officers with whom applications, notices and other reports, which are not ATF forms, are filed. In addition, this final rule makes a few corrections and provides an additional option for filing a statement of eligibility for flavors.

EFFECTIVE DATE: This rule is effective May 1, 2001.

FOR FURTHER INFORMATION CONTACT: Robert Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW, Room 5003, Washington, DC 20226 (telephone 202–927–8210 or e-mail to alctob@atfhq.atf.treas.gov).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to Treasury Order 120–01 (formerly 221), dated June 6, 1972, the Secretary of the Treasury delegated to the Director of the Bureau of Alcohol, Tobacco and Firearms (ATF), the authority to enforce, among other laws, the provisions of chapter 51 of the Internal Revenue Code of 1986 (IRC) and the Federal Alcohol Administration (FAA) Act. The Director has subsequently redelegated certain of these authorities to appropriate subordinate officers by way of various means, including by regulation, ATF delegation orders, regional directives, or similar delegation documents. As a result, to ascertain what particular officer is authorized to perform a particular function under chapter 51 of the IRC or the FAA Act, each of these various delegation instruments must be consulted. Similarly, each time a delegation of authority is revoked or redelegated, each of the delegation documents must be reviewed and amended as necessary.

ATF has determined that this multiplicity of delegation instruments complicates and hinders the task of determining which ATF officer is authorized to perform a particular function. ATF also believes these multiple delegation instruments exacerbate the administrative burden associated with maintaining up-to-date delegations, resulting in an undue delay in reflecting current authorities.

Accordingly, this final rule rescinds all authorities of the Director in part 250 that were previously delegated and places those authorities with the "appropriate ATF officer." All of the authorities of the Director that were not previously delegated are also placed with the "appropriate ATF officer." Along with this final rule, ATF is publishing ATF Order 1130.23, Delegation Order—Delegation of the Director's Authorities in 27 CFR Part 250, Liquors and Articles from Puerto Rico and the Virgin Islands, which delegates certain of these authorities to the appropriate organizational level. The effect of these changes is to consolidate all delegations of authority in part 250 into one delegation instrument. This action both simplifies the process for determining what ATF officer is authorized to perform a particular function and facilitates the updating of delegations in the future. As a result, delegations of authority will be reflected in a more timely and user-friendly manner.

In addition, this final rule also eliminates all references in the

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regulations that identify the ATF officer with whom an ATF form is filed. This is because ATF forms will indicate the officer with whom they must be filed. Similarly, this final rule also amends part 250 to provide that the submission of documents other than ATF forms (such as letterhead applications, notices and reports) must be filed with the "appropriate ATF officer" identified in ATF Order 1130.23. These changes will facilitate the identification of the officer with whom forms and other required submissions are filed.

This final rule also makes various technical amendments to Subpart A—Scope of Regulations of 27 CFR part 250. First, a new § 250.3 is added to recognize the authority of the Director to delegate regulatory authorities in part 250 and to identify ATF Order 1130.23 as the instrument reflecting such delegations. Second, § 250.2 is amended to provide that the instructions for an ATF form identify the ATF officer with whom it must be filed.

ATF has made or will make similar changes in delegations to all other parts of Title 27 of the Code of Federal Regulations through separate rulemakings. By amending the regulations part by part, rather than in one large rulemaking document and ATF Order, ATF minimizes the time expended in notifying interested parties of current delegations of authority.

Miscellaneous Changes

We have given an option to file ATF Form 5154.1 for persons who require a statement of eligibility for flavors to be used in the computation of the effective tax rate for distilled spirits. This ATF form may be used in lieu of the statement of composition prescribed by 27 CFR 250.50a(b).

Corrections

Two corrections have been made. First, we have corrected the text of § 250.118 to insure that the district director is referenced in this entire section. Second, we have removed § 250.277 which no longer applies because T.D. ATF–206 (50 FR 23949) eliminated the use and reports of strip stamps.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no new or revised recordkeeping or reporting requirements.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. A copy of this final rule was submitted to the Chief Counsel for Advocacy of the Small Business Administration in accordance with 26 U.S.C. 7805(f). No comments were received.

Executive Order 12866

It has been determined that this rule is not a significant regulatory action because it will not: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Administrative Procedure Act

Because this final rule merely makes technical amendments and conforming changes to improve the clarity of the regulations, it is unnecessary to issue this final rule with notice and public procedure under 5 U.S.C. 553(b). Similarly it is unnecessary to subject this final rule to the effective date limitation of 5 U.S.C. 553(d).

Drafting Information

The principal author of this document is Robert Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 250

Alcohol and alcoholic beverages, Administrative practice and procedure, Authority delegations (Government agencies), Beer, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Spices and flavorings, Surety bonds, Transportation, Warehouses, Wine.

Authority and Issuance

Title 27, chapter I, Code of Federal Regulations is amended as follows:

PART 250—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

Paragraph 1. The authority citation for part 250 continues to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5061, 5081, 5111, 5112, 5114, 5121, 5122, 5124, 5131–5134, 5141, 5146, 5207, 5232, 5271, 5276, 5301, 5314, 5555, 6001, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

§§ 250.2, 250.11, 250.43, 250.209, 250.314, 250.316, 250.319 and 250.331 [Amended]

Par. 2. In part 250 remove the words "Director" each place it appears and add, in substitution, the words "appropriate ATF officer" in the following places:

a. Section 250.2(a);
b. The definition of "Liquor bottle" in § 250.11;
c. Section 250.43;
d. Section 250.209;
e. The first sentence of § 250.314(b);
f. Section 250.316;
g. Section 250.319; and
h. The third, fourth and last sentence of § 250.331(b).

Par. 3. Section 250.2 is further amended by adding a sentence at the end of paragraph (a) and revising paragraph (b) to read as follows:

§ 250.2 Forms prescribed.

(a) * * * The form will be filed in accordance with the instructions for the form.

(b) Forms may be requested from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950, or by accessing the ATF web site (http://www.atf.treas.gov/).

Par. 4. In Subpart A—Scope of Regulations, a new § 250.3 is added as follows:

§ 250.3 Delegations of the Director.

All of the regulatory authorities of the Director contained in this part 250 are delegated to appropriate ATF officers. These ATF officers are specified in ATF Order 1130.23, Delegation Order—Delegation of the Director's Authorities in 27 CFR Part 250, Liquors and Articles from Puerto Rico and the Virgin Islands. ATF delegation orders, such as ATF Order 1130.23, are available to any interested person by mailing a request to the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950, or by accessing the ATF web site (http://www.atf.treas.gov/).

Par. 5. Section 250.11 is further amended by:

a. Removing the definitions of "ATF officer", "Chief, Puerto Rico Operations, "Region", "Regional director (compliance), and "United States Bureau of Alcohol, Tobacco and Firearms office"; and

b. Adding a new definition of "Appropriate ATF officer" to read as follows:

§ 250.11 Meaning of terms.

* * * * *

Appropriate ATF Officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.23, Delegation Order—Delegation of the Director's Authorities in 27 CFR Part 250, Liquors and Articles from Puerto Rico and the Virgin Islands.

* * * * *

Par. 6. Section 250.37 is revised to read as follows:

§ 250.37 United States Bureau of Alcohol, Tobacco and Firearms officers.

Appropriate ATF officers are authorized to collect internal revenue taxes on liquors and articles subject to tax, which are to be shipped to the United States.

Par. 7. Section 250.50a(b)(2) is revised to read as follows:

§ 250.50a Verification of eligible flavors.

* * * * *

(b) * * *

(2) A statement of composition using ATF Form 5154.1 or a letterhead request that lists the—

(i) Name and percentage of alcohol by volume of the flavor; and

(ii) Name and quantity of each ingredient used in the manufacture of the flavor.

* * * * *

§§ 250.52, 250.81, 250.96, 250.105, 250.110, 250.112, 250.112a, 250.126 and 250.222 [Amended]

Par. 8. Part 250 is amended by removing the words "Chief, Puerto Rico Operations" or "Chief, Puerto Rican Operations," and adding, in substitution, the words "appropriate ATF officer" each place it appears in the following places:

a. Section 250.52(b) and (c);
b. Section 250.81;
c. Section 250.96;
d. Section 250.105;
e. Section 250.110;
f. Section 250.112(c)(1), (c)(4) and (e);
g. Section 250.112a(c)(1);
h. Section 250.126; and
i. Section 250.222(b) and (c).

Par. 9. Section 250.54 is revised to read as follows:

§ 250.54 Filing and disposition of formulas.

Formulas required by this subpart must be submitted, and disposed of, in accordance with the instructions on the prescribed ATF form. The applicant shall maintain copies of approved formulas available for examination by revenue agents.

Par. 10. Section 250.61 is revised to read as follows:

§ 250.61 General.

Every person filing a bond under this subpart, or consent of surety on such bond, must file it in accordance with the instructions on the form.

§§ 250.62a, 250.65, 250.70, 250.70a, 250.71, 250.72, 250.74, 250.75, 250.112, 250.112a, 250.194, 250.276, 250.303 and 250.331 [Amended]

Par. 11. Part 250 is further amended by removing the words "regional director (compliance)" each place they appear and adding, in substitution, the words "appropriate ATF officer" in the following places:

a. Section 250.62a;
b. Section 250.65;
c. Section 250.70;
d. Section 250.70a;
e. Section 250.71(c) and (d);
f. Section 250.72;
g. Section 250.74;
h. Section 250.75;
i. Section 250.112(e);
j. Section 250.112a(b)(3);
k. Section 250.194;
l. The first and second sentence of § 250.276;
m. Section 250.303; and
n. The first and second sentence of § 250.331(b).

Par. 12. Section 250.112(c)(3) is revised to read as follows:

§ 250.112 Returns for semimonthly periods.

(c) *Filing.* * * *

(3) The remittance may be in any form that is authorized to be accepted under the provisions of § 70.61 of this chapter.

* * * * *

§ 250.112a [Amended]

Par. 13. The first sentence of § 250.112a(b)(1) is amended by removing the words "regional director (compliance), for each region in which taxes are paid" and adding in substitution the words "appropriate ATF officer".

§ 250.113 [Amended]

Par. 14. Section 250.113(a) is amended by removing the words "on file with the Chief, Puerto Rico Operations".

§§ 250.116, 250.174 and 250.310 [Amended]

Par. 15. Part 250 is further amended by inserting the word "appropriate" before the words "ATF officer" or "ATF officers" each place they appear in the following places:

a. The second to the last sentence of § 250.116;
b. Section 250.174(a) and (e); and
c. Section 250.310(a) and (e).

Par. 16. The second to the last sentence in § 250.118 is amended by removing the word "director" and adding in substitution the words "district director of customs".

Par. 17. Section 250.119 is revised to read as follows:

§ 250.119 Disposition of forms by district director of customs.

Two copies of the Form 487B will be forwarded to the appropriate ATF officer, and one copy of the form will be retained by the district director of customs and be available for inspection by appropriate ATF officers.

Par. 18. The second and third sentences of § 250.128 are revised to read as follows:

§ 250.128 Taxpayment at port of arrival.

* * *The tax may be paid to an appropriate ATF officer, and an ATF receipt obtained, or the tax may be paid to the director of customs, who will issue a customs receipt. If payment is to be made to an appropriate ATF officer, the director of customs will notify the appropriate ATF officer of the amount of tax due. * * *

Par 19. Section 250.172 is amended:

a. In paragraph (a) by removing the preceding comma and the words "but references therein to a regional director (compliance) shall apply, for purposes of this part, to the Chief, Puerto Rico Operations";

b. By revising paragraph (b) to read as follows:

§ 250.172 Bonds.

* * * * *

(b) *Approval required.* No person bringing eligible articles into the United States from Puerto Rico may file monthly claims for drawback under the provisions of this subpart until a bond on ATF Form 5154.3 has been approved.

Par. 20. Section 250.173 is amended by:

a. Revising paragraph (a) to read as set forth below; and

b. Removing the phrase "with the Chief, Puerto Rico Operations," from the first sentence of paragraph (d).

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§ 250.173 Claims for drawback.

(a) *General.* Persons bringing eligible articles into the United States from Puerto Rico must file claim for drawback on ATF Form 2635 (5620.8). Upon finding that the claimant has satisfied the requirements of this subpart, the appropriate ATF officer must allow the drawback of taxes at a rate of $1 less than the lesser of $10.50 a proof gallon or the rate specified in 26 U.S.C. 5001(a).

* * * * *

§ 250.193 [Amended]

Par. 21. The last sentence of § 250.193(b) is amended by removing the phrase "regional director (compliance) of the consignee's region" and adding, in substitution, the words "appropriate ATF officer".

§ 250.197 [Amended]

Par. 22. Section 250.197 is amended by removing the phrase "regional director (compliance) of each region in which a consignee's distilled spirits plant is located" and adding, in substitution, the words "appropriate ATF officer".

Par. 23. Section 250.199f(c) is revised to read as follows:

§ 250.199f Consignee premises.

* * * * *

(c) *Distribution of forms.* The proprietor shall keep and send copies according the instructions on the form.

* * * * *

Par. 24. Section 250.224 is revised to read as follows:

§ 250.224 Filing and disposition of formulas.

Formulas required by this subpart must be submitted, and disposed of, in accordance with the instructions on the prescribed ATF form. The applicant shall maintain copies of approved formulas available for examination by insular agents.

Par. 25. Section 250.275(a) is revised to read as follows:

§ 250.275 Filing.

(a) All records and reports required by this part will be maintained separately, by transaction or reporting date, at the importer's place of business. The appropriate ATF officer may, pursuant to an application, authorize files, or an individual file, to be maintained at another business location under the control of the importer, if the alternative location does not cause undue inconvenience to appropriate ATF or Customs officers desiring to examine the files or delay in the timely submission of documents.

* * * * *

Par. 26. The first sentence of § 250.276 is revised to read as follows:

§ 250.276 Retention.

All records required by this part, documents or copies of documents supporting these records, and file copies of reports required by this part shall be retained for not less than three years, and during this period shall be available, during business hours, for inspection and copying by appropriate ATF or customs officers. * * *

Par. 27. The undesignated heading preceding § 250.277 is removed.

§ 250.277 [Removed]

Par. 28. Section 250.277 is removed and reserved.

Par. 29. Section 250.308 is amended:

a. By removing in paragraph (a) the preceding comma and the words ", but references therein to a regional director (compliance) shall apply, for purposes of this part to the Chief, Puerto Rico Operations"; and

b. By revising paragraph (b) to read as follows:

§ 250.308 Bonds.

* * * * *

(b) *Approval required.* No person bringing eligible articles into the United States from the Virgin Islands may file monthly claims for drawback under the provisions of this subpart until a bond on ATF Form 5154.3 has been approved.

Par. 30. Section 250.309 is amended by:

a. Revising paragraph (a) to read as set forth below; and

b. Removing the phrase "with the Chief, Puerto Rico Operations," from the first sentence of paragraph (d).

§ 250.309 Claims for drawback.

(a) *General.* Persons bringing eligible articles into the United States from the Virgin Islands must file claim for drawback on ATF Form 2635 (5620.8). Upon finding that the claimant has satisfied the requirements of this subpart, the appropriate ATF officer must allow the drawback of taxes at a rate of $1 less than the lesser of $10.50 a proof gallon or the rate specified in 26 U.S.C. 5001(a).

* * * * *

§ 250.314 [Amended]

Par. 31. Section 250.314 is amended by:

a. Removing the phrase "to the Director" in the second sentence in paragraph (a).

b. Removing the phrase "from the Director" in the third sentence in paragraph (a).

c. Removing the word "Director's" and adding, in substitution, the words "appropriate ATF officer's" in the third sentence in paragraph (b).

Par. 32. Section 250.318 is revised to read as follows:

§ 250.318 Liquor bottles denied entry.

Filled liquor bottles not conforming to the provisions of this subpart shall be denied entry into the United States: *Provided,* That, upon letterhead application, in triplicate, the appropriate ATF officer may, in nonrecurring cases, authorize the release from customs custody of distilled spirits in bottles, except those coming under the provisions of § 250.316, which, through unintentional error, do not conform to the provisions of this subpart, if such officer finds that such release will not afford jeopardy to the revenue.

§ 250.331 [Amended]

Par. 33. Section 250.331 is further amended by:

a. Removing from the first sentence of paragraph (a) the words "regional director (compliance) of the region in which his place of business is located" and adding, in substitution, the words "appropriate ATF officer".

b. Removing the second sentence of paragraph (b).

Signed: March 14, 2001.

Bradley A. Buckles,

Director.

Approved: March 28, 2001.

Timothy E. Skud,

Acting Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 01–10673 Filed 4–30–01; 8:45 am]

BILLING CODE 4810–31–P

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2202

Rules of Ethics and Conduct of Review Commission Employees

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Final rule.

SUMMARY: The Commission hereby eliminates its rules for the ethics and conduct of Commission employees. The ethics and conduct of Commission employees are now governed by rules issued by the Office of Government Ethics (OGE) subsequent to the Commission's adoption of its rules. Eliminating the Commission's separate rules will prevent confusion in the administration of the Commission's program for ensuring that its employees comply with the accepted standards for ethical conduct.

DATES: Effective May 1, 2001.

FOR FURTHER INFORMATION CONTACT: Earl R. Ohman, Jr., General Counsel, One Lafayette Center, 1120 20th St., N.W. 9th Floor, Washington, D.C. 20036–3457, phone 202–606–5410.

SUPPLEMENTARY INFORMATION: Rules for the ethical conduct of employees including Commission employees have been promulgated by the OGE at 5 CFR Part 2635, Standards of Ethical Conduct for Employees of the Executive Branch. The OGE has advised the Commission that these rules supersede 29 CFR Part 2202.

List of Subjects in 29 CFR Part 2202

Conflict of interests.

For the reasons stated, the Occupational Safety and Health Review Commission under the authority of 29 U.S.C. 661(g) amends Title 29, Chapter XX of the Code of Federal Regulations as follows:

PART 2202—[REMOVED AND RESERVED]

1. Part 2202 is removed and reserved.

Dated: April 25, 2001.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 01–10767 Filed 4–30–01; 8:45 am]

BILLING CODE 7600–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 173

[USCG–1999–6094]

RIN 2115–AF87

Raising the Threshold of Property Damage for Reports of Accidents Involving Recreational Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: The Coast Guard raises the threshold of property damage for reports of accidents involving recreational vessels when damage to vessels and other property totals $2,000 or more in any one accident or—this represents a change from the Notice of Proposed Rulemaking—when a collision occurs involving two or more vessels, regardless of the amount of damage to property. The higher threshold better accounts for the rising cost of repairs to recreational vessels. This Final Rule will reduce the number of reports of accidents for minor or cosmetic damage, help us maintain statistics for future years comparable to those for past ones, and reduce the burden of paperwork on the public to report such incidents.

DATES: This final rule is effective July 2, 2001.

ADDRESSES: Comments and materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–1999–6094 and are available for inspection or copying at the Docket Management Facility, U. S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact Bruce Schmidt, Project Manager, Office of Boating Safety, Program Management Division, Coast Guard, by e-mail at *bschmidt@comdt.uscg.mil* or by telephone at 202–267–0955.

If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

You may obtain a copy of this rule by calling the U. S. Coast Guard Infoline at 1–800–368–5647 or by accessing either the Web Site for the Office of Boating Safety, at *http://www.uscgboating.org,* or the Internet Site for the Docket Management Facility, at *http://dms.dot.gov.*

SUPPLEMENTARY INFORMATION:

Background and Purpose

On June 20, 2000, we published a Notice of Proposed Rulemaking (NPRM) entitled Raising the Threshold of Property Damage for Reports of Accidents Involving Recreational Vessels (65 FR 38229). We received 17 letters commenting on the proposed rule. No public hearing was requested and none was held.

Regulatory Authority and History

46 U.S.C. 6101 requires the Secretary (who has delegated the authority to the Commandant) to prescribe rules on the reporting of "marine casualties." We use that authority to describe different types of marine casualties, including those involving certain amounts of property damage, that various parties must report. 33 CFR Part 173, Subpart C, contains the rules applicable to recreational vessels.

In 1972, the threshold of property damage for reports of accidents involving recreational vessels was $100. (This was the original threshold.) In 1979, the effects of inflation on the original threshold dictated that we raise the threshold to $200. The purpose of this adjustment was to reduce the number of reports filed for minor incidents.

Even the threshold of $200, however, eventually resulted in the submission of an excessive number of reports of accidents on minor incidents. This trend increased the reporting burden on the boating public, and the administrative burden on both the States and the Coast Guard. On February 6, 1989, to reduce these burdens, we published a Final Rule (54 FR 5608) raising the threshold to $500. As it had been in 1979, the effect of inflation on repair costs was the basis for this change.

The formula described in the preamble of the Final Rule of 1989 rested on a methodology allowing us to adjust the threshold annually by applying a deflator based on the Gross National Product (GNP) to account for inflation. In that preamble, we also stated our intent to review the threshold annually and, if necessary, adjust the threshold in law each time it rose by another $100.

How We Developed the New Methodology for Adjusting the Threshold

After analyzing the formula described in the preamble of the Final Rule of 1989, we determined that further adjustments both in the threshold and in the methodology used to determine it were necessary. Non-safety-related accident reports continued even after the threshold rose to $500 in 1989. We now believe both that the threshold was too low and that the methodology itself was amiss. An inflation index based on the GNP and applied to a base-year value of $500 yields a threshold for 2001 still low enough for the reporting of too many damages that are merely cosmetic. We decided that it is necessary to adjust the base-year value of the threshold to reach the level only where damage due to accidents implicates safety.

The National Association of State Boating Law Administrators (NASBLA) is a professional association consisting of officials of States, commonwealths, and provinces responsible for administering or enforcing the boating laws of those bodies. Within NASBLA,

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the Committee on Boating Accident Investigation, Reporting, and Analysis (BAIRAC) has responsibility for reporting and analyzing accidents.

The Boating Law Administrators (BLAs) who serve on BAIRAC are experts in enforcement, in education for boating safety, and in investigation of boating accidents. From their ongoing relationships with facilities that repair recreational boats, as well as from their experience with and knowledge of various types of damage to boats and costs to repair it, they have strongly conveyed the need for the Coast Guard to raise the threshold of property damage for reports of accidents involving recreational vessels to a level that accurately reflects current prices of boats and costs of repair.

BAIRAC called on the Coast Guard to initiate rulemaking to raise the threshold for reports of accidents involving only property damage from $500 to $2,000 and to amend the reportable conditions to include all accidents involving collisions of two or more vessels. The BLAs and the Coast Guard agreed that a threshold of $2,000 for those accidents involving only property damage would enable States' accident investigators to focus on reports of safety-related damage and would eliminate most of the reports of cosmetic damage. However, as we stated in the NPRM we published in 2000, we did not then see the benefit of requiring reports of all accidents involving collisions of two or more vessels, regardless of the amount of damage to property.

In that NPRM, we attempted to define a level of cosmetic damage using data contained in the Boating Accident Report Database (BARD). Data for 1998 show that 1,718 reported collisions of two or more vessels involved only property damage. Of those 1,718, 1,002 involved property damage below the proposed threshold of $2,000. Taking a closer look at the data, we discovered that nearly 90% of those 1,002 involved property damage at or below a threshold of $1,500. At that time, we considered most of these more cosmetic than safety-related, notwithstanding that they involved collisions. So, recognizing the need to reduce the number of reports for minor or cosmetic damage, the need to reduce the administrative burden on the public and the States of reports for such damage, and the need for States' accident investigators to focus on safety-related damage, we did not plan to mandate reports of all accidents involving collisions of two or more vessels. However, as will become clear in our discussion of comments, our position has changed. We now fully concur with BAIRAC that we should require reports of such accidents, regardless of the amount of damage to property.

The threshold of property damage for reports of accidents involving recreational vessels when damage to vessels and other property totals $2,000 or more in any one accident or of accidents involving collisions of two or more vessels, regardless of the amount of damage to property, is the minimum set by Federal rule; but States are free to impose stricter requirements. Thus, a State could require reports of all accidents, even if each report results only in property damage below the threshold of $2,000.

We have also determined that it is necessary to find an inflation-index that tracks the trends in the boat-repair industry more accurately than does the GNP. The GNP gives the total market value of all final goods and services produced in the U.S. for a given year. It comprises spending by all sectors of the economy. Therefore, the GNP deflator measures all changes in prices affecting consumers, private industry, and government.

The Producer Price Index (PPI) is an alternative inflation-index. It gives the average change over time of prices received by sellers of domestic goods and services. The data constituting the PPI are organized by industry and product, making it possible to find specific data about prices of repairs to non-military boats. These data track the specific changes in prices of repairs to recreational boats. As this rulemaking concerns these very prices, we believe the PPI to be more suitable for measuring the changes in those prices with an appropriate threshold of property damage for reports of accidents involving those vessels.

How we calculate the new threshold. For 2001 and beyond, we will use the PPI for Standard Industrial Classification (SIC) 3732, "Boat Building and Repairing: Boat repairing, non-military boats", to reckon the threshold. The new value for 2001, of $2,000, will serve as the base value. To reckon the value of the threshold for 2002 using 2001 as the base year, one should run the following calculation:

(Base threshold for 2001) × ([PPI for 2002] / [PPI for 2001])

For example, if the preliminary estimate of the PPI by the Bureau of Labor Statistics for 2002 were 191.0, and for 2001 it were 189.0, the calculation would run as follows:

$2,000 × (191.0 / 189.0) = $2,021.16

Since this increase, rounded to the nearest $100, is less than $500, the threshold would remain at $2000. (An increment of $500 is small enough to serve the interest of safety and yet not so small as to entail too-frequent changes in the threshold.) We will calculate the increase every year; once it, rounded to the nearest $100, reaches $500, we will raise the threshold accordingly.

Discussion of Comments and Changes

We received a total of 17 comments on the proposed amendments to the rules. Eleven comments came from BLAs, and a twelfth from NASBLA. Two came from boating organizations, two from members of the general public, and one from an associate professor of education and safety research. Of the 17, one, from the State of California, arrived after the closing date of October 18, 2000; we accepted it because of the high volume of accident reports generated by the State each year, about 10 percent of all reported accidents occurring there, and because we could accept it without prejudice to other participants in the rulemaking.

Twelve comments, including seven submitted by BLAs and the one submitted by NASBLA, supported raising the threshold of property damage to $2,000 or more. Five of those twelve comments also supported requiring the reporting of all accidents involving collisions of two or more vessels, regardless of the amount of property damage.

The remaining five comments, including the remaining four submitted by BLAs, opposed raising the threshold of property damage at all.

Here follows a summary of each adverse comment:

The first stated that published accident figures are already too low by a factor of 16, and that raising the threshold would only worsen the situation. It further stated that the whole system of reporting accidents needs to be strengthened, not weakened.

The second, from the State of Alabama, suggested that we eliminate the threshold altogether. It argued that the amount of property damage has no relevance for analyzing accidents with the object of preventing them. It also presented criteria for reporting them that the State has been using for around 15 years.

The third, from the State of Connecticut, maintained that the cost of property damage alone does not furnish a fair proxy for safety and that adopting the revised threshold could eliminate the reporting of many important accidents involving smaller boats. Next, it concurs with NASBLA that any reporting should reach all collisions involving any numbers of vessels. Last, it states that eliminating or not mandating the reporting of all such collisions would likely reduce the value of BARD in illustrating the variety of boating accidents witnessed and investigated in Connecticut.

The fourth, submitted by the State of Ohio, presented a variety of arguments against raising the threshold. (1) We were failing to differentiate what we called "minor or cosmetic damage" from what we considered damage worthy of reporting. (2) An instant increase in the threshold from $500 to $2,000 would eliminate statistical comparability for most accidents. (3) Although the Coast Guard wishes to reduce the burden of paperwork on the public, (a) Congress, which enacted the reporting system, must have held that the information warranted the burden; (b) the threshold of $2,000 is totally arbitrary and subjective, with no basis in relevant experience; (c) the Coast Guard appears to have used a criterion other than inflation as the factor for determining the increase from $200 in 1979 to $500 in 1989; and (d) the Coast Guard has not defined a "non-safety-related accident," it has not offered any authority for addressing itself solely to "safety-related accidents," and it has not stated why one level of "material loss" is a proper concern of its while another is not. (4) If the Coast Guard accepts the demand of BAIRAC for proposing this change, it should also follow the full recommendation of BAIRAC-specifically, the call to cover all accidents involving collisions of two or more vessels, regardless of dollar amount of damage. (5) To set the threshold at a "proper" amount now, the Coast Guard should either fix it at $500 (where it arrived in 1989) but raise it with the PPI from now on or drop it back to the original $100 and raise it appropriately with the PPI. And, last, (6) the system for reporting accidents arose in the first place to benefit the boating community, and, if administered correctly, would be not a burden but rather a benefit.

The fifth, submitted by the State of California, stated that we had not demonstrated that all accidents in which property damage falls below $2,000 or even $500 are any less important, in establishing causation, than those where it falls above $2,000. California believes that even accidents where damage is nominal may serve in identifying problems and may benefit safety analysts as they conceive safety programs for needs emerging in their State. Further, California recommends the reporting of all accidents caused by factors under the control of operators as well as accidents involving defects in equipment, unmarked hazards, and other matters bearing on safety. When analyzing any accident, California considers two questions: whether, if this operator had acted in a more prudent manner, this accident could have been avoided and whether this accident could have been avoided but for the defects in equipment, unmarked hazards, and other matters. If the answer is yes to either question, California considers that accident very seriously when structuring safety programs.

Included in one comment was a recommendation to clarify that reports would be required when the damage in an accident stood not just above but at $2,000. Thus, it would have the Final Rule read not "Damage to vessels and other property totals more than $2,000 an accident * * *" but "Damage to vessels and other property totals $2,000 or more an accident * * *"

After thoughtfully considering all of the above comments, the Coast Guard has decided to raise the threshold of property damage for reports of accidents involving recreational vessels to a level where such damage totals $2,000 or more an accident and to require reports of accidents for collisions involving two or more vessels, regardless of amount of property damage. The higher threshold will go into effect for the remainder of calendar year 2001 after the **EFFECTIVE DATE.**

Our decision to amend the proposed rule so as to require reports of accidents for collisions involving two or more vessels, regardless of amount of property damage, rests on information furnished by the five comments that supported requiring reports of such accidents as well as raising the threshold to a level of $2,000 or more an accident. Even two of the five adverse comments agreed with BAIRAC, on requiring reports of such accidents. The primary justification for reporting all such accidents is that they owe to violation of the Navigation Rules (that is, No Proper Lookout, Excessive Speed, Reckless Operation, or the like). We concur, and add that these accidents are necessarily "safety-related."

Over time, collisions involving two or more vessels are the most-reported kind of accident; every year, they represent about a third of all reported accidents. For 1999, BARD shows 2,774 such accidents. Of those, 1,707 (nearly two-thirds) resulted in property damage only; no fatalities and no injuries. The average damage for each of those 1,707 was around $2,900; but the damage for 1,023 (60%) of them came to less than $2,000, and the average damage for those 1,023 was around $1,000. We acknowledge that excluding those 1,023 (about 12 percent of all reported accidents) because of low damage alone would compromise the quality and scope of data captured by BARD. Next, the absence of 1,023 accidents most or all of which were due to violations of Navigation Rules would diminish the usefulness of the data in structuring safety programs. Last, we do not want to forgo valuable data on factors controllable by operators of less-expensive boats just because their boats incur less-expensive repairs. We agree that the reporting of all collisions involving two or more vessels is important both for understanding safety-related incidents at any moment and for tracking statistics over time. Thus, the benefits for the public of our collecting these data outweigh the burden on the public of supplying them.

In conclusion, our intent is to raise the threshold for reporting property damage to a level where we capture almost all useful data and almost no useless ones. Damage worthy of reporting comprises that whose cause implicates the safe operation and navigation of the vessel and whose effect implicates the "structural integrity" or "seaworthiness" of the vessel. Damage worthy of reporting is by definition worth the paperwork entailed by reporting. And more-selective reporting can only yield more-useful statistics. Again, States remain free to capture all the data they want.

In our previous Final Rule (54 FR 5608 (February 6, 1989)), we proposed to raise the threshold in increments of $100 over time to ensure the adjustment of the threshold to an appropriate level. We have not, nevertheless, raised it since then. Moreover, we doubt whether even the threshold of $500, set then, was high enough and we suspect that the methodology used to calculate it was amiss. (For instance, applying that methodology to the latter threshold would yield a threshold of barely $700 today. Our research suggests, and most of the comments confirm, that such a threshold would fail to capture many useful data.)

We will review the new threshold every year. When it should increase by $500, we will raise it to an appropriate level by appropriate means: Notice-and-comment rulemaking with the participation of all willing parties.

Regulatory Evaluation

This Final Rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget (OMB) has not reviewed this

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Rule under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040 (February 26, 1979)). We expect the economic impact of this Rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Cost of Rule

This Final Rule would impose no added monetary costs on the operator or owner of a recreational vessel or on anyone else. On the contrary, it would decrease costs that the current rule imposes.

Benefits of Rule

Raising the threshold of property damage for reports of accidents involving recreational vessels to $2,000 or more an accident and requiring the reporting of accidents involving collisions of two or more vessels, regardless of amount of damage, for most of the remainder of 2001 would benefit owners and operators of recreational vessels, and officials of States and the Coast Guard, by reducing the current burden of submitting and administering accident reports. In 1999, there were 1,189 reported accidents that involved only property damage—no fatalities and no injuries—and also did not involve any collisions of two or more vessels. Requiring a threshold of $2,000 or more in property damage for reporting an accident would have kept the following 1,189 accidents from being published in our statistics on accidents for 1999:

	Number of accidents	Damage amount
Capsizing	112	85,879
Collision with Fixed Object	302	239,242
Collision with Floating	54	44,702
Falls in Boat	10	5,702
Falls Overboard	14	11,661
Fire or Explosion of Fuel	36	29,010
Fire or Explosion (Other)	46	34,482
Flooding or Swamping	213	161,227
Grounding	186	130,864
Other	39	27,018
Sinking	81	59,985
Skiers' Mishaps	7	5,251
Struck by Boat	19	13,657
Struck by Motor or Propeller	3	1,250
Struck Submerged Object	54	45,809
Unknown Type	13	10,759
Total	1,189	906,498

For these 1,189 accidents, the average amount of damage is about $762.00. If this level of property damage were enough to declare the particular vessel or vessels total losses, the accidents would meet Federal reporting-requirements. If not, this level of damage would count as more "cosmetic" than "safety-related" and therefore would not meet those requirements.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this Final Rule will have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This Rule applies exclusively to private citizens who own or operate recreational vessels and by definition are not "small entities". Further, this Rule will reduce the reporting burden on those private citizens for reporting accidents involving recreational vessels.

Because it expects the effects of this Rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this Rule will not have a significant economic impact on a substantial number of small entities. Furthermore, as private citizens own the vast majority of recreational vessels and are not small entities, the Regulatory Flexibility Act does not apply to most of the public that this Rule would regulate.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this Final Rule so that they could better evaluate its effects on them and participate in the rulemaking. We provided the name, telephone number, and e-mail address of a contact for any small entities that felt either that the Rule would affect their small businesses, organizations, or governmental jurisdictions or that had questions concerning its provisions or options for compliance.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal rules to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This Final Rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In fact, it should result in an actual reduction of paperwork as it requires reports of fewer accidents.

Federalism

We have analyzed this Final Rule under E.O. 13132, Federalism, and have determined that it does not have enough implications for federalism to warrant the preparation of a Federalism Assessment. States will remain free to impose stricter requirements for reports of accidents involving recreational vessels.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this Final Rule will not result in such an expenditure, we do discuss the effects of this Rule elsewhere in this preamble.

Taking of Private Property

This Final Rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Reform of Civil Justice

This Final Rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this Final Rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This Rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has a substantial direct effect on one or more Indian tribe, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

We have considered the environmental impact of this Final Rule and concluded that, under figure 2–1, paragraph (34)(a), of Commandant Instruction M16475.lC, this Rule is categorically excluded from further environmental documentation. The Rule would merely raise the threshold of property damage for reports of accidents involving recreational vessels. A Determination of Categorical Exclusion is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 173

Marine safety, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 173 as follows:

Subpart C—Casualty and Accident Reporting

1. The citation of authority for part 173 continues to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2110, 6101, 12301, 12302; OMB Circular A–25; 49 CFR 1.46.

2. Revise § 173.55(a)(3) to read as follows:

§ 173.55 Report of casualty or accident.

(a) * * *

(3) Damage to vessels and other property totals $2,000 or more or there is a complete loss of any vessel; or a collision occurs involving two or more vessels, regardless of the amount of damage to property; or

* * * * * *

3. Revise the heading of § 173.57 to read as follows:

§ 173.57 Contents of report.

4. Revise the heading of § 173.59 to read as follows:

§ 173.59 Where to submit report.

Dated: March 15, 2001.

Terry M. Cross,

Rear Admiral, U. S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 01–10839 Filed 4–30–01; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 099–0032a; FRL–6967–8]

Revisions to the Arizona State Implementation Plan, Pinal-Gila Counties Air Quality Control District and Pinal County Air Quality Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Pinal-Gila Counties Air Quality Control District (PGCAQCD) and Pinal County Air Quality Control District (PCAQCD) portions of the Arizona State Implementation Plan (SIP). These revisions concern the recision of all of the remaining SIP rules from the defunct PGCAQCD and the recision of certain PCAQCD SIP Rules. We are approving the recision of local rules that no longer regulate permitting procedures for various emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on July 2, 2001 without further notice, unless EPA receives adverse comments by May 31, 2001. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andrew Steckel, Rulemaking Office Chief (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You may inspect the submittal documents and our technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, AZ 85012

Pinal County Air Quality Control District, Building F, 31 North Pinal Street, Florence, AZ 85232

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; (415) 744–1135.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us", or "our" are used, we mean EPA.

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I. The State's Submittal

A. What Rules Did the State Submit for Recision?

On August 4, 2000, ADEQ submitted certain PGCAQCD SIP rules listed in Tables 1, 2, 3, 4, 5, 6, and 7 for recision with respect to Gila County only. The replacement ADEQ SIP rules are listed where applicable. Other justifications or demonstrations for recision are provided in the notes below Table 7.

On December 20, 2000 (65 FR 79742) EPA clarified that certain PCAQCD rules are SIP-approved by an action on April 9, 1996 (61 FR 15717). We intended that some of these SIP-approved PCAQCD rules shown in Tables 1, 2, and 3 replace or rescind corresponding PGCAQCD SIP rules still in effect in PCAQCD. Therefore, all rules listed in Tables 1, 2, and 3 are rescinded both with respect to Gila County (by the ADEQ submittal) and with respect to PCAQCD (by the EPA approval of replacement PCAQCD SIP rules.)

Certain of the PGCAQCD SIP rules are determined by EPA to not be appropriate for inclusion in the SIP, but were originally erroneously SIP-approved. We are removing these rules from the PGCAQCD portion of the Arizona SIP under section 110(k)(6) as inconsistent with the requirements of section 110(a) and part D of the CAA. These PGCAQCD SIP rules inappropriate for the SIP are also included in Tables 1, 2, and 3. The two recision submittals and the removals in combination rescind all of the rules in Tables 1, 2, and 3 with respect to both Gila County and PCAQCD.

The PGCAQCD SIP rules in Tables 4, 5, and 6 are rescinded with respect to Gila County only, because there is not yet an approved SIP rule replacement for PCAQCD.

The PGCAQCD SIP rules in Table 7 were submitted by ADEQ for recision but are already rescinded in other actions with respect to both Gila County and PCAQCD. These rules are listed in Table 7 for clarity only, and we will take no further action on them.

TABLE 1.—PGCAQCD RULES (PREVIOUSLY SUBMITTED ON JULY 1, 1975, APPROVED ON NOVEMBER 15, 1978, 43 FR 53031) FOR RECISION WITH RESPECT TO BOTH GILA COUNTY AND PCAQCD

PGCAQCD SIP rule	Rule title	Replacement ADEQ SIP rule number	Replacement PCAQCD SIP rule number
7–1–1.1	Policy and Legal Authority	(Note 1)	(Note 1)
7–1–1.3	Air Pollution Prohibited	(Note 1)	(Note 1)
7–1–2.5(A)	Permits: Transfer	R9–3–317	32932
7–1–2.5(B)	Permits: Expiration	R9–3–306	32567
7–1–2.5(C)	Permits: Posting	R9–3–315	(Note 1)
7–1–2.6	Recordkeeping and Reporting	R9–3–308, 314	29645
7–2–1.1	Non-Specific Particulate	R9–3–201	43861
7–2–1.2	Sulfur Dioxide	R9–3–202 (Note 2)	47514
7–2–1.4	Photochemical Oxidants	R9–3–204	51166
7–2–1.5	Carbon Monoxide	R9–3–205	54819
7–2–1.6	Nitrogen Dioxide	R9–3–205	21946
7–2–1.7	Evaluation	R9–3–216	2–3–110
7–3–1.6	Reduction of Animal or Vegetable Matter	(Note 1)	(Note 1)

TABLE 2.—PGCAQCD RULE (PREVIOUSLY SUBMITTED ON JULY 1, 1975, APPROVED ON DECEMBER 17, 1979, 44 FR 73033) FOR RECISION WITH RESPECT TO BOTH GILA COUNTY AND PCAQCD

PGCAQCD SIP rule number	Rule title	Replacement ADEQ SIP rule number	Replacement PCAQCD SIP rule number
7–2–1.8	Anti-Degradation	(Note 1)	(Note 1)

TABLE 3.—PGCAQCD RULES (PREVIOUSLY SUBMITTED ON AUGUST 7, 1980, APPROVED ON APRIL 12, 1982, 47 FR 15580) FOR RECISION WITH RESPECT TO BOTH GILA COUNTY AND PCAQCD

PGCAQCD SIP rule number	Rule title	Replacement ADEQ SIP rule number	Replacement PCAQCD SIP rule number
7–1–1.2	Definitions	R9–3–101	1–3–140
7–1–1.3(C)	Air Pollution Prohibited	(Note 1)	(Note 1)

TABLE 4.—PGCAQCD RULES (PREVIOUSLY SUBMITTED ON JULY 1, 1975, APPROVED ON NOVEMBER 15, 1978, 43 FR 53031) FOR RECISION WITH RESPECT TO GILA COUNTY ONLY

PGCAQCD SIP rule number	Rule title	Replacement ADEQ SIP rule number	Replacement PCAQCD SIP rule number
7–3–1.2(A)	Fugitive Dust	R9–3–404	None
7–3–1.2(B)	Fugitive Dust	R9–3–405	None
7–3–1.2(C)	Fugitive Dust	R9–3–405	None
7–3–1.2(D)	Fugitive Dust	R9–3–406	None
7–3–1.2(E)	Fugitive Dust	R9–3–409	None

TABLE 4.—PGCAQCD RULES (PREVIOUSLY SUBMITTED ON JULY 1, 1975, APPROVED ON NOVEMBER 15, 1978, 43 FR 53031) FOR RECISION WITH RESPECT TO GILA COUNTY ONLY—Continued

PGCAQCD SIP rule number	Rule title	Replacement ADEQ SIP rule number	Replacement PCAQCD SIP rule number
7–3–1.3	Open Burning	(Note 2)	None
7–3–1.4	Incineration	(Note 2)	None
7–3–1.5	Wood Waste Burners	R9–3–504	None
7–3–1.7	Particulate Emissions—Fuel Burning Equipment	R9–3–503	None
7–3–1.8	Process Industries	R9–3–502	None
7–3–2.2	Fuel Burning Installations	R9–3–503	None
7–3–2.3	Sulfite Pulp Mills	(Note 2)	None
7–3–2.4	Sulfuric Acid Plants	R9–3–507	None
7–3–3.1	Storage of Volatile Organic Compounds	R9–3–510	None
7–3–3.2	Loading of Volatile Organic Compounds	R9–3–510	None
7–3–3.3	Pumps and Compressors	R9–3–510	None
7–3–4.1	Emission Standards—Carbon Monoxide from Stationary Sources: Industrial	R9–3–502	None
7–3–5.1	Emission Standards—Nitrogen Oxides: Fuel Burning Equipment	R9–3–503	None
7–3–5.2	Nitric Acid Plants	R9–3–506	None

TABLE 5.—PGCAQCD RULE (PREVIOUSLY SUBMITTED ON JULY 1, 1975, APPROVED ON DECEMBER 17, 1979, 44 FR 73033) FOR RECISION WITH RESPECT TO GILA COUNTY ONLY

PGCAQCD SIP rule number	Rule title	Replacement ADEQ SIP rule number	Replacement PCAQCD SIP rule number
7–3–2.5	Other Industries	(Note 2)	None

TABLE 6.—PGCAQCD RULES (PREVIOUSLY SUBMITTED ON AUGUST 7, 1980, APPROVED ON APRIL 12, 1982, 47 FR 15580) FOR RECISION WITH RESPECT TO GILA COUNTY ONLY

PGCAQCD SIP rule number	Rule title	Replacement ADEQ SIP rule number	Replacement PCAQCD SIP rule number
7–3–1.1	Visible Emissions: General	R9–3–501	None
7–3–1.4(C)	Incineration	(Note 2)	None
7–3–1.7(F)	Particulate Emissions—Fuel Burning Equipment	R9–3–503	None
7–3–3.4(A)	Organic Solvents	R9–3–101	None
7–3–3.4(B)	Organic Solvents	R9–3–502	None
7–3–3.4(C)	Organic Solvents	R9–3–525	None
7–3–3.4(D)	Organic Solvents	R9–3–527	None
7–3–3.4(E)	Organic Solvents	R9–3–502	None
7–3–3.4(F)	Organic Solvents	R9–3–502	None
7–3–3.4(G)	Organic Solvents	R9–3–502	None
7–3–3.4(H)	Organic Solvents	(Note 1)	(Note 1)
7–3–3.4(I)	Organic Solvents	R9–3–101	None
7–3–3.4(J)	Organic Solvents	R9–3–502	None

TABLE 7.—PGCAQCD RULES SUBMITTED FOR RECISION BUT ALREADY RESCINDED WITH RESPECT TO BOTH GILA COUNTY AND PCAQCD

PGCAQCD SIP rule number	Rule title	Recision reference
7–1–2.2	Permit Unit Description and Fees	(Note 3)
7–1–2.4	Appeals to Hearing Board	(Note 3)
7–1–2.7	Enforcement	(Note 3)
7–1–4.1	Violations: Orders of Abatement	(Note 4)
7–1–4.2	Hearings on Orders of Abatement	(Note 4)
7–1–5.1	Classification and Reporting; Production of Records; Confidentiality of Records; Violation; Penalty	(Note 4)
7–1–5.2	Special Inspection Warrant	(Note 4)
7–1–5.3	Decisions of Hearing Board; Subpoenas; Effective Date	(Note 4)
7–1–5.4	Judicial Review; Grounds; Procedures	(Note 4)
7–1–5.5	Notice of Hearing; Publication; Service	(Note 4)
7–1–5.6	Injunctive Relief	(Note 4)
7–2–1.3	Non-Methane Hydrocarbons	(Note 3)
7–3–6.1	Major Sources: Policy and Legal Authority	(Note 3)

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Note 1: Designates a rule determined by EPA to be not appropriate for inclusion in the SIP, because it is unenforceable, or replaced by a federal standard, or refers to a non-criteria pollutant, or refers to local procedural matters, such as those concerning assessment of fees, enforcement, and local hearing board procedures.

Note 2: Designates a rule without an exact parallel ADEQ SIP rule or PCAQCD SIP rule, for which information was provided by the ADEQ to show that rescinding the PGCAQCD rule would not conflict with section 110(l) of the CAA.

Note 3: 40 CFR 52.120(c)(18)(iv)(B).

Note 4: 40 CFR 52.120(c)(18)(iv)(A).

On December 29, 2000, we found that the submittal of August 4, 2000 met the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of the Recision Submittals?

There are no previous recision submittals for PGCAQCD on which we have not acted.

C. What Is the Purpose of the Recision Submittals?

The PGCAQCD originally adopted a set of air pollution control rules that we approved into the Arizona SIP. Gila County and Pinal County later dissolved the PGCAQCD.[1] Gila County elected to have the ADEQ administer Arizona state rules in Gila County. The remaining PGCAQCD SIP rules in Gila County are defunct and not used to enforce air regulations in Gila County. This action rescinds all remaining PGCAQCD rules from the SIP with respect to Gila County. This action also rescinds part of the remaining PGCAQCD SIP rules that have been replaced with SIP Rules with respect to PCAQCD.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Recision Submittals?

Generally, section 110(l) and 193 of the CAA require that the recision of SIP rules must not relax existing requirements of the SIP. If requirements are relaxed, the ADEQ must demonstrate that the modifications do not interfere with attainment of the NAAQS or otherwise violate sections 110(l) or 193.

B. Do the Recision Submittals Meet the Evaluation Criteria?

We believe the recision submittals are consistent with the CAA and relevant policy and guidance regarding SIP relaxations. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) and 110(k)(6) of the CAA, we are approving the recision submittals, because we believe they fulfill all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same recision submittal. If we receive adverse comments by May 31, 2001, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final recision will be effective without further notice on July 2, 2001. This will remove the rules from the federally enforceable SIP.

III. Background Information

A. Why Were These Rules Originally Approved Into the SIP?

The rules were intended to regulate some of the seven criteria pollutants, which harm human health and the environment, and regulate permitting procedures for control of these pollutants. Section 110(a) of the CAA required states to submit regulations that control the emission of these pollutants.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 2, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compound.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 20, 2001.

Michael Schulz,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart D—Arizona

2. Section 52.120 is amended by adding paragraphs (c)(18)(iv)(D), (c)(18)(iv)(E), (c)(18)(iv)(F), (c)(18)(iv)(G), (c)(46)(i)(B), and (c)(46)(i)(C) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(18) * * *

(iv) * * *

(D) Previously approved on November 15, 1978 in paragraph (c)(18)(iv) of this section and now deleted without replacement Rules 7–1–1.1, 7–1–1.3, 7–1–2.5, 7–1–2.6, 7–2–1.1, 7–2–1.2, 7–2–1.4, 7–2–1.5, 7–2–1.6, 7–2–1.7, and 7–3–1.6.

(E) Previously approved on December 17, 1979 in paragraph (c)(18)(iv) of this section and now deleted without replacement Rule 7–2–1.8.

(F) Previously approved on November 15, 1978 in paragraph (c)(18)(iv) of this section and now deleted without replacement with respect to Gila County only Rules 7–3–1.2, 7–3–1.3, 7–3–1.4, 7–3–1.5, 7–3–1.7, 7–3–1.8, 7–3–2.2, 7–3–2.3, 7–3–2.4, 7–3–3.1, 7–3–3.2, 7–3–3.3, 7–3–4.1, 7–3–5.1, and 7–3–5.2.

(G) Previously approved on December 17, 1979 in paragraph (c)(18)(iv) of this section and now deleted without replacement with respect to Gila County only Rule 7–3–2.5.

* * * * *

(46) * * *

(i) * * *

(B) Previously approved on April 12, 1982 in paragraph (c)(46)(i)(A) of this section and now deleted without replacement Rules 7–1–1.2 and 7–1–1.3(C).

(C) Previously approved on April 12, 1982 in paragraph (c)(46)(i)(A) of this section and now deleted without replacement with respect to Gila County only Rules 7–3–1.1, 7–3–1.4(C), 7–3–1.7(F), and 7–3–3.4.

* * * * *

[FR Doc. 01–10651 Filed 4–30–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–928; MM Docket No. 00–13, RM–9679]

Radio Broadcasting Services; Aberdeen, Elma and Montesano, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at joint request of KAYO Broadcasting and Marrow, Inc., substitutes Channel 271C2 for Channel 271C3 at Elma, reallots Channel 271C2 from Elma to Montesano, Washington, and modifies Station KSWW(FM)'s license accordingly. We also reallot Channel 257C1 from Aberdeen to Elma, as a replacement service, and modify Station KAYO–FM's license accordingly. *See* 65 FR 7816, February 16, 2000. Channel 271C2 can be reallotted to Montesano in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.5 kilometers (9.0 miles) northwest to avoid a short-spacing to the licensed site of Station KINK–FM, Channel 270C, Portland, Oregon. The coordinates for Channel 271C2 at Montesano are 47–03–44 North Latitude and 123–44–44 West Longitude. See Supplementary Information, *infra*.

DATES: Effective May 29, 2001.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–13, adopted April 4, 2001, and released April 13, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

In addition, Channel 257C1 can be realloted to Elma in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.5 kilometers (9.0 miles) west to avoid a short-spacing to the licensed site of Station KWJJ–FM, Channel 258C1, Portland Oregon. The coordinates for Channel 257C1 at Elma are 46–57–31 North Latitude and 123–35–18 West Longitude. The allotment of Channel 257C1 at Elma is short-spaced to the licensed site of Station CFOX(FM), Channel 257C, Vancouver, British Columbia, and to the proposed allotment of Channel 258A at Metchosin/Sooke, British Columbia. Also, the allotment of Channel 271C2 at Montesano is short-spaced to the licensed site of Station CFUV–FM, Channel 270B, Victoria, British Columbia, and to the proposed allotment of Channel 269A at Nanaimo, British Columbia. Since Elma and Montesano are located within 320 kilometers (200 miles) of the U.S.-Canadian border, Canadian concurrence for Channel 271C2 at Montesano, and for Channel 257C1 at Elma, as specially-negotiated, short-spaced allotments, were requested, but have not yet been received. Therefore, if a construction permit is granted prior to the receipt of formal concurrence by the Canadian government for these allotments, the construction permit will include the following condition: "Operation with

[1] The Pinal-Gila Counties Air Pollution District originally had jurisdiction in Pinal County and Gila County. On April 1, 1988, Gila County gave jurisdiction for air quality control to ADEQ. On April 4, 1988, Gila County dissolved the PGCAQCD on behalf of Gila County. On August 15, 1988, Pinal County renamed the PGCAQCD the Pinal County Air Quality Control District, but continued to enforce the PGCAQCD rules. On November 23, 1992, Pinal County formally dissolved the PGCAQCD on behalf of Pinal County. In 1993 and later, PCAQCD adopted PCAQCD replacement rules, many of which subsequently became SIP-approved PCAQCD rules.

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the facilities specified herein is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the USA-Canadian FM Broadcast Agreement."

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 54, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 257C1 at Aberdeen; removing Channel 271C3 and adding Channel 257C1 at Elma; and by adding Montesano, Channel 271C2.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–10700 Filed 4–30–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 01–879; MM Docket No. 00–54; RM–9835 & RM–9907]

Radio Broadcasting Services; Bogata, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Bogata Broadcasting Company ("BBC") filed a Petition for Reconsideration of the Report and Order which allotted Channel 263A to Bogata, Texas. *See* 65 FR 67655, November 13, 2000. BBC has withdrawn its interest in Channel 263A at Bogata and requests that the allotment be rescinded. Action in this document grants the Petition for Reconsideration, deleting Channel 263A and Bogata from the FM Table of Allotments. With this action, this proceeding is terminated.

DATES: Effective May 21, 2001.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 00–54, March 28, 2001, and released April 6, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 263A and Bogata.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–10701 Filed 4–30–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–927; MM Docket No. 00–166; RM–9951; RM–10015; RM–10016]

Radio Broadcasting Services; Wickenburg, Bagdad and Aguila, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 242C3 to Wickenburg, Arizona, as that community's third local FM service, in response to a petition for rule making filed on behalf of Wickenburg Broadcasting. *See* 65 FR 56857, September 20, 2000. In response to a counterproposal filed on behalf of Bagdad Broadcasting Company, this document also allots Channel 246C3 to Bagdad, Arizona, as that community's second local FM service (RM–10015). Additionally, in response to a counterproposal filed on behalf of Circle S Broadcasting Co., Inc., this document allots Channel 297C3 to Aguila, Arizona, as that community's first local aural service (RM–10016) and partially denies the Circle S counterproposal to the extent it also requested modification of its Station KSWG(FM), Channel 231C3, Wickenburg to specify operation on Channel 242C3 at Wickenburg. Coordinates used for Channel 242C3 at Wickenburg are 34–01–01 NL; 112–41–46 WL; coordinates for Channel 246C3 at Bagdad are 34–36–11 NL; 113–12–04 WL; coordinates used for Channel 297C3 at Aguila are 33–56–34 NL; 113–10–24 WL. As Wickenburg, Bagdad and Aguila are all located within 320 kilometers (199 miles) of the US-Mexico border, concurrence of the Mexican government has been requested for Channels 242C3, 246C3 and 297C3, respectively, at those communities but has not been received. Therefore, if construction permits are granted for the specified channels at Wickenburg, Bagdad and Aguila prior to receipt of final notification by the Mexican government, the authorizations will include the following condition: "Operation with the facilities specified herein is subject to modification, suspension or termination without right to a hearing if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement, or if specifically objected to by Mexico." With this action, this docketed proceeding is terminated.

DATES: Effective May 29, 2001. Filing windows for Channel 242C3 at Wickenburg, Arizona, Channel 246C3 at Bagdad, Arizona, and Channel 297C3 at Aguila, Arizona, will not be opened at this time. Instead, the issue of opening those allotments for auction will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–166, adopted April 4, 2001, and released April 13, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Aguila, Channel 297C3; adding Channel 246C3 at Bagdad; and adding Channel 242C3 at Wickenburg.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–10704 Filed 4–30–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–929; MM Docket No. 98–155, RM–9082, RM–9133]

Radio Broadcasting Services; Alva, Mooreland, Tishomingo and Tuttle, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document denies a Petition for Reconsideration filed by Ralph Tyler directed to the *Report and Order* in this proceeding which denied his proposal for to reallot Channel 259C3 from Tishomingo to Tuttle, Oklahoma, and modify his Station KTSH license to specifyTuttle as the community of license. *See* 65 FR 82296, December 28, 2000. With this action, the proceeding is terminated.

DATES: Effective May 1, 2001.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 98–155, adopted April 4, 2001, and released April 13, 2001. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3805, 1231 M Street, NW., Washington, DC 20036.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–10703 Filed 4–30–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–930; MM Docket No. 89–120, RM–6701, 6999, 7000, 7001]

FM Broadcasting Services; Northwye, Cuba, Waynesville, Lake Ozark, and Eldon, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In MM Docket No. 89–120, the Commission dismissed as moot the petition for reconsideration filed by Lake Broadcasting, Inc., licensee of Station KBMX(FM), Channel 270A (101.9 MHz), Eldon, Missouri, and grantee of the construction permit for Station KFXE (FM), Channel 271A (102.1), Cuba, Missouri. Lake had requested reconsideration of the Report and Order, 57 FR 6561, published February 26, 1992. The Commission dismissed Lake's petition for reconsideration following the denial of certiorari by the U.S. Supreme Court in Lake's appeal of the revocation of its licenses and construction permits. *See Contemporary Media, Inc., et al.*, v. *Federal Communications Commission*, 214 F. 3d 187 (D.C. Cir 2000), cert. denied, 532 U.S. ____ (2001). Michael Rice, Lake's sole owner and president, had been convicted of the felonies of deviate sexual conduct and sodomy of minors. Lake and other licensees owned or controlled by Rice also made repeated misrepresentations to the Commission as to Rice's continued involvement with their stations. With this action, the proceeding is terminated.

DATES: Effective May 1, 2001.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Memorandum Opinion and Order, MM Docket 89–120, adopted April 4, 2001, and released April 13, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Information Center (room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may be also purchased from the Commission's copy contractor, International Transcription Service, 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–10702 Filed 4–30–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 00–10; FCC 01–123]

RIN 3060–AH39

Establishment of a Class A TV Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document implements the Community Broadcasters Protection Act of 1999, which directs the FCC to establish a Class A television service to provide a measure of primary status to certain low-power television stations. This document addresses a wide range of issues related to the implementation of the statute, including the protected service area of Class A stations, Class A interference protection requirements vis a vis other TV stations, eligibility criteria for Class A status, common ownership restrictions applicable to Class A stations, the treatment of modification applications filed by Class A licensees, and general operating requirements.

DATES: Effective May 31, 2001, except for 47 CFR 73.1545(e), which contains information collection requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Debra Sabourin, Policy and Rules Division, Mass Media Bureau, (202) 418–2130, or Keith Larson, Office of the Bureau Chief, Mass Media Bureau, (202) 418–2600.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order on Reconsideration ("*MO&O*"), FCC 01–123, adopted April 5, 2001; released April 13, 2001. The full text of the

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Commission's *MO&O* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room TW–A306), 445 12 St., SW., Washington, DC. The complete text of this *MO&O* may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 1231 20th St., NW., Washington, DC 20036.

Paperwork Reduction Act

This document contains new or modified information collection requirements. Implementation of these new or modified reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget.

Synopsis of Memorandum Opinion and Order

I. Introduction

1. April 2000 we released a *Report and Order* (*"R&O"*), 65 FR 29985, May 10, 2000, establishing a Class A television service. Our action implemented the Community Broadcasters Protection Act of 1999 (CBPA), which was signed into law November 29, 1999. Community Broadcasters Protection Act of 1999, Public Law 106–113, 113 Stat. Appendix I at pp. 1501A–594—1501A–598 (1999), *codified* at 47 U.S.C. 336 (f) (CBPA). Pursuant to the CBPA and our implementing rules, certain qualifying low-power television (LPTV) stations will be accorded Class A status. Class A licensees will have "primary" status as television broadcasters, thereby gaining a measure of interference protection from full-service television stations, even as those stations convert to a digital format. The CBPA and our *R&O* will facilitate the acquisition of capital needed by LPTV stations to allow them to continue to provide free, over-the-air programming, particularly locally-produced programming, to their communities. In this *MO&O*, we dispose of petitions for reconsideration of the *R&O*, make changes to some of our rules, and provide clarification of other rules.

II. Background

2. From its creation by the Commission in 1982, the low power television service has been a secondary spectrum priority service whose members may not cause objectionable interference to existing full-service stations, and * * * must yield to facilities increases of existing full-service stations or to new full-service stations where interference occurs. Currently, there are approximately 2,300 licensed LPTV stations in approximately 1,000 communities, operating in all 50 states. These stations serve both rural and urban audiences. Because they operate at reduced power levels, LPTV stations serve a much smaller geographic region than full-service stations and can fit into areas where a higher power station cannot be accommodated in the Table of Allotments. In many cases, LPTV stations may be the only television station in an area providing local news, weather, and public affairs programming. Even in some well-served markets, LPTV stations may provide the only local service to residents of discrete geographical communities within those markets. Many LPTV stations air "niche" programming, often locally produced, to residents of specific ethnic, racial, and interest communities within the larger area, including programming in foreign languages.

3. In the CBPA, Congress found that the future of low-power television is uncertain. Because LPTV stations had secondary spectrum status, they could be displaced by full-service TV stations that sought to expand their own service area, or by new full-service stations that entered the same market. The statute found that this regulatory status affects the ability of LPTV stations to raise necessary capital. In addition, Congress recognized that the conversion to digital television further complicates the uncertain future of LPTV stations. In assigning DTV channels, the Commission maintained the secondary status of LPTV stations and TV translators and, in order to provide all full-service stations with a second channel, was compelled to establish DTV allotments that will displace a number of LPTV stations. Although the Commission has taken a number of steps to mitigate the impact of the DTV transition on stations in the LPTV service, that transition nonetheless would have significant adverse effects on many stations, particularly LPTV stations operating in urban areas where there are few, if any, available replacement channels for displaced stations.

4. Congress sought in the CBPA to address some of these issues by providing certain low power television stations—to be known as Class A stations—"primary" spectrum use status. Congress also recognized, however, that, because, of the emerging DTV service, not all LPTV stations could be guaranteed a certain future. Congress recognized the importance and engineering complexity of the Commission's plan to convert full-service stations to digital format, and protected the ability of these stations to provide both digital and analog service during the transition.

5. Congress also recognized, however, that, because of the emerging DTV service, not all LPTV stations could be guaranteed a certain future. Congress recognized the importance and engineering complexity of the FCC's plan to convert full-service stations to digital format, and protected the ability of these stations to provide both digital and analog service during the transition.

III. Discussion

A. Application and Certification for License

1. Statutory Timeframes

6. Section 336(f)(1)(B) of the CBPA states: "* * * Within 60 days after such date of enactment, licensees intending to seek class A designation shall submit to the Commission a certification of eligibility based on the qualification requirements of this subsection. * * * section 336(f)(1)(C) provides that, consistent with the requirements set forth in the CBPA, a licensee "may" submit an application for Class A designation within 30 days after final regulations are adopted implementing the CBPA. 47 U.S.C. 336(f)(1)(B), (C).

7. The 60-day certification period was clearly specified by Congress in 47 U.S.C. 336(f)(1)(B) of the CBPA. The statute states that licensees intending to seek Class A designation "shall" submit a certification of eligibility within 60 days after the date of enactment of the Act. The CBPA was signed into law on November 29, 1999; thus, the time for filing a certificate of eligibility ended 60 days later, on January 28, 2000. To comply with the requirements of the statute, parties must have made the requisite submission within the time period specified. Section 47 U.S.C. 336(f)(1)(C) states that applicants "may" file license applications within 30 days from the adoption of final implementing rules. Section 336(f)(1)(B), in contrast, states that licensees intending to seek Class A designation "shall" file a certification of eligibility within 60 days after enactment. Thus, even though no licensee was required to file a certificate of eligibility, any licensee that wished to do so was required to file within 60 days after enactment. The use of the word "may" in relation to applications indicates that the 30 day filing period is permissive only, and not mandatory. Thus, applicants were not required to file within 30 days following adoption of final rules, although they were permitted to do so. Allowing a longer filing period was appropriate to give LPTV licensees adequate time to prepare and file their Class A applications.

2. Ongoing Eligibility

8. The intent of Congress in enacting the CBPA was to establish the rights of a very specific, already-existing group of LPTV stations. The statute itself states its intent to apply to a small number of stations: "Since the creation of low-power television licensees by the Federal Communications Commission, a small number of license holders have operated their stations in a manner beneficial to the public good providing broadcasting to their communities that would not otherwise be available." The statute specifically states that an eligible low-power station must have met certain requirements "during the 90 days preceding the date of the enactment of the Community Broadcasters Protection Act of 1999." 47 U.S.C. 336(f)(2)(A)(i). During that 90-day period, a qualifying station was to have "broadcast a minimum of 18 hours per day and an average of at least 3 hours weekly of local programming * * *" and been "in compliance with the Commission's requirements applicable to low-power television stations * * *" 47 U.S.C. 336(f)(2)(A)(i)(III). To comply with the requirements of the statute, parties must make the requisite showing for the time period specified.

B. Qualifying Low-Power Television Stations

1. Locally-Produced Programming

9. Section 336(f)(2)(A) of the CBPA requires that, during the 90 days preceding the date of enactment of the CBPA, LPTV stations must have broadcast an average of at least 3 hours per week of programming produced within the "market area" served by the station. In the *R&O*, we determined that the predicted Grade B contour was the appropriate measure for determining the provision of locally oriented programming for the communities served by LPTV stations. We clarify the "local programming" requirement. For a Class A station's programming to qualify as "local programming" under the CBPA, the programming must be produced within the same "market area" in which it is broadcast. For a single Class A station, "locally produced programming" is programming produced within the predicted Grade B contour of the station broadcasting the program or produced at the station's main studio. With respect to a group of commonly controlled stations, Class A stations whose predicted Grade B contours are physically contiguous to each other may consider the programming produced within any of these contours as "local programming." If a Class A station is one of a group of commonly controlled Class A stations, but its predicted Grade B contour is not physically contiguous to that of another Class A station in the commonly-owned group, it may not consider the programming produced in any of those distant stations' contours "local programming."

2. Operating Requirements

10. To qualify for Class A status, the CBPA provides that, during the 90 days preceding enactment of the statute, a station must have been in compliance with the Commission's requirements for LPTV stations. 47 U.S.C. 336(f)(2)(A)(i)(III). In addition, beginning on the date of its application for a Class A license and thereafter, a station must be "in compliance with the Commission's operating rules for full-power stations." 47 U.S.C. 336(f)(2)(A)(ii). We intend to apply to Class A licensees all part 73 rules, except for those which are inconsistent with the manner in which LPTV stations are authorized or the lower power at which these stations operate. We will apply the part 73 regulations to Class A applicants or licensees, except for those that cannot apply for technical or other reasons, because this course of action is most consistent with the language in the CBPA.

11. *Main Studio Requirements.* The Commission requires stations licensed under part 73 to maintain a "meaningful management and staff presence" at the station's main studio in order to serve the needs and interests of the residents of the station's community of license. The Commission has defined a minimally acceptable "meaningful presence" as full-time managerial and full-time staff personnel. It stated that there must be "management and staff presence" on a full-time basis during normal business hours to be considered "meaningful." It further explained that the standard does not necessarily require two people at the main studio; rather, management and staff presence are required on a full-time basis, which may consist of more than two people working on part-time bases. Jones Eastern of the Outer Banks, Inc., 6 FCC Rcd 3615 (1991), clarified, 7 FCC Rcd 6800 (1992), 10 FCC Rcd 3759 (1995).

12. While we recognize that LPTV stations face financial constraints due to their generally smaller coverage areas, we do not believe it is appropriate to exempt Class A stations from the same staffing requirements we impose on full service stations under part 73. The CBPA defines a "qualifying" LPTV station as one that "from and after the date of its application for a class A license, * * * is in compliance with the Commission's operating rules for full-power television stations." The Commission's main studio staffing requirements are intended to ensure that stations maintain a local responsive presence in the community. Exposure to daily community activities and other local media of communications helps stations identify community needs and interests, which is necessary to operate in today's competitive marketplace and to meet our community service requirements. To accomplish these objectives, stations must maintain, at a minimum, full-time managerial and full-time staff personnel. In light of the CBPA's intent that Class A stations comply with all of the requirements of full-power TV stations, we believe it is both reasonable and appropriate to require Class A stations to meet the same obligations with respect to maintaining a local community presence as their full service counterparts.

13. We will, however, amend our main studio requirement. For a single Class A station, a station's main studio shall be located within the station's predicted Grade B contour. With respect to a group of commonly controlled stations, Class A stations whose predicted Grade B contours are physically contiguous to each other may locate their main studio within any of these contours. Thus, two or more commonly owned Class A stations having contiguous predicted Grade B contours may construct and maintain one main studio within their combined boundaries, provided that main studio functions as the main studio for all the stations. If a Class A station is one of a group of commonly controlled Class A stations, but its predicted Grade B contour is not physically contiguous to that of another Class A station in the commonly-owned group, its main studio shall be located within its own predicted Grade B contour. We will amend our rule accordingly, and note that our requirement applies only to newly created main studios.

14. *Power Limits.* We will not raise the ERP limit for Class A stations beyond the current LPTV maximum power levels. These power levels are sufficient to preserve existing service, which is consistent with Congress' objective underlying the CBPA. Congress emphasized in the CBPA the importance of balancing the needs of LPTV licensees against the needs of full-service stations as they transition to a digital format. We do not wish to risk hindering the implementation of digital

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television. We will retain the current LPTV maximum power level requirements for Class A stations.

15. *Ongoing Obligations.* In the *R&O,* we adopted a rule requiring Class A television broadcast stations to broadcast a minimum of eighteen hours per day and an average of at least three hours per week of locally produced programming each quarter. The CBPA makes clear that Class A licensees must "continue" to meet the qualifying low-power station eligibility criteria, indicating an intent that the criteria to qualify for Class A status create ongoing obligations. Moreover, it would be inconsistent with the overall intent of the CBPA—to afford Class A status only to stations that provide a substantial amount of locally-originated programming—to relieve stations of that obligation once Class A status has been achieved. We thus affirm our previous conclusion that Class A licensees must continue to meet the minimum operating hours and locally-produced programming obligations. Of course, Class A licensees may apply to the Commission for a waiver of the rules.

16. *Fines and Penalties.* We clarify that Class A licensees are subject to the regulations regarding fines and penalties applicable to full power stations. Although Class A licensees will not be subject to loss of license for failure to continue to comply with the eligibility requirements in 47 U.S.C.(f)(2)(A) of the CPBA, they are subject to loss of Class A status if they fail to meet these ongoing obligations.

17. *DTV Broadcast Requirements.* We permit Class A television stations that convert to digital operation to offer telecommunications services of any nature, consistent with the public interest, convenience and necessity, on an ancillary or supplementary basis in the same manner as full power DTV stations. In this regard, digital Class A stations must broadcast a free over-the-air video program service at least comparable to NTSC technical quality under the digital transmission standard applicable to full service stations. Such services will be subject to the fees due under § 73.624(g) and be subject to the same requirement that they not derogate the free over-the-air video program stream required of digital broadcasters. Taking this action furthers the Commission's goal of encouraging the transition of television broadcasting from analog to digital operation. By enabling Class A stations to generate additional revenues from ancillary or supplementary services, we seek to encourage the early conversion of Class A stations from analog to digital operation. Sections 73.624(c) and 73.624(g) will, therefore, apply to Class A television stations converting to digital operations. Section 73.624(b) will apply only to the extent that such stations must also transmit at least one over-the-air video program signal at no direct charge to viewers of the digital Class A station.

3. Mandatory Carriage

18. Both the language of the CBPA and the accompanying conference report are silent with respect to the issue of must carry rights for Class A stations. It is unlikely that Congress intended to grant Class A stations full must carry rights, equivalent to those of full-service stations, without addressing the issue directly. This conclusion with respect to Class A must carry rights is consistent with the view recently expressed by the Commission in its *R&O* implementing the Satellite Home Viewer Improvement Act of 1999. In that Order, the Commission concluded that Class A stations are low power stations for mandatory carriage purposes, and are therefore not entitled to mandatory satellite carriage. *R&O,* In the Matter of Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues, Retransmission Consent Issues, CS Docket Nos. 00–96 and 99–363, FCC 00–417 (released November 30, 2000).

19. We believe that Congress intended that Class A stations have the same limited must carry rights as LPTV stations. Section 614(a) of the Communications Act, as amended, requires the carriage of local television broadcast stations and "qualified" low power television stations in certain limited circumstances. Section 614(h)(2) defines the term "qualified low power station" as any television broadcast station "conforming to the rules established for Low Power Television Stations contained in part 74 of title 47, Code of Federal Regulations" that complies with the other criteria established in that section. 47 U.S.C. 534(h)(2). Thus, to be eligible for must carry, Class A stations, like other low power television stations, must comply with the part 74 rules and the other eligibility criteria established by statute and our rules.

20. Just as it is unreasonable to conclude that Congress intended to confer on Class A stations the same must carry rights as full-service stations without addressing this issue directly in the CBPA, we also believe that it is unlikely that Congress intended to take away from LPTV stations their existing must carry rights if they elect to convert to Class A. The principal intent of the CBPA was to provide additional certainty to LPTV stations during the digital transition and to alleviate the limitations that "secondary service" imposed on the ability of these stations to attract capital and to continue to provide high quality broadcast programming. Given the severe impact loss of must carry rights would impose on Class A stations who enjoyed these rights as LPTV stations, we conclude it is unlikely that Congress intended to remove these rights without specific mention in the CBPA.

4. Alternative Eligibility Criteria

21. Section 336(f)(2)(A) of the CBPA defines the eligibility criteria for Class A stations. Section 336(f)(2)(B) provides that a station may also qualify for Class A status if the Commission determines that the public interest, convenience, and necessity would be served by treating the station as a qualifying low-power television station for purposes of this section, or for other reasons determined by the Commission.

22. Foreign language stations should have the same eligibility requirements as any other potential Class A station. We recognize that foreign language stations provide a valuable service in providing access to national news and entertainment that might not otherwise exist for non-English speaking communities. In enacting the CBPA, however, Congress intended to preserve the service of a small class of existing LPTV stations that were providing a specified level of local programming to their communities. To fulfill the intent of the statute, foreign language stations, like other potential Class A stations, must meet the local programming criteria to qualify for Class A status. We will not establish different criteria for foreign language stations that do not meet the local programming criteria. We also decline to establish alternative criteria under the CBPA for foreign language stations based on the foreign language nature of their programming. An applicant's qualification for Class A status is not contingent upon whether it serves a particular audience, but upon whether it meets the eligibility criteria set out in the CBPA.

23. We also allow deviation from the CBPA Class A eligibility criteria by waiver only where such deviations are insignificant or when compelling circumstances exist in individual cases. We disagree with CBA and other petitioners who contend that section 336(f)(2)(B) establishes a broad obligation independent of section 336(f)(2)(A) under which the Commission may determine that other groups of LPTV stations may qualify for Class A status for public interest or any other reasons. Congress intended to protect a small group of LPTV stations that were providing local programming.

C. Class A Interference Protection Rights and Responsibilities

1. Protection of Pending NTSC TV Applications and Facilities

24. The CBPA requires that the Commission preserve the service areas of LPTV stations pending the final resolution of a Class A application. We concluded in our *R&O,* that that provision requires protection from the date of filing of an acceptable certification of eligibility for Class A status. With respect to NTSC facilities, section 336(f)(7)(A) of the CBPA provides that the Commission may not grant a Class A license, nor approve a modification of license, unless the applicant shows that the proposed Class A station will not cause interference within the predicted Grade B contour (as of the date of enactment of the * * * [CBPA] * * * or as proposed in a change application filed on or before such date) of any television station transmitting in analog format. In our *R&O,* we interpreted this provision to require Class A stations to protect both existing analog stations and full-service applicants where the Commission has completed all processing short of grant necessary to provide a reasonably ascertainable Grade B contour. Specifically, we required Class A applicants to protect the predicted Grade B contour (as of November 29, 1999, or as proposed in a change application filed on or before that date) of full-power analog stations licensed on or before November 29, 1999. We also required Class A applicants to protect the Grade B contour of full-power analog facilities for which a construction permit was authorized on or before November 29, 1999. Finally, we required Class A applicants to protect the facilities proposed in any application for full-power analog facilities that was pending on November 29, 1999, for which the Commission had completed all processing short of grant as of that date, and for which the identity of the successful applicant was known. The applications in this latter category are post-auction applications, applications proposed for grant in pending settlements, and any singleton applications cut off from further filings. We did not require Class A applicants for initial Class A authorization to protect pending rule making petitions for new or modified NTSC channel allotments or full-service applications that were not accepted for filing by November 29, 1999, including most pending television freeze waiver applications.

25. Our decision to protect the delineated categories of pending NTSC applications is not inconsistent with either the language of the CBPA or the underlying intent of Congress. Section 336(f)(7)(A)(i) of the statute requires Class A applicants and licensees to protect the predicted Grade B contour (as of * * * [November 29, 1999], or as proposed in a change application filed on or before such date) of analog facilities. Thus, Class A stations must protect the predicted Grade B contour of analog stations licensed or granted a construction permit as of November 29, 1999, as well as of facilities proposed in certain pending analog applications. As we noted in the *R&O,* the phrase "predicted Grade B contour" is singular. The assertion that the phrase "transmitting in analog format" is ambiguous is not relevant to our interpretation of the separate phrase "predicted Grade B contour." This latter phrase, as modified by the parenthetical in section 336(f)(7)(A)(i), limits the facilities proposed in applications pending as of November 29, 1999 that must be protected by Class A stations to those for which there is a single, reasonably ascertainable predicted Grade B contour as of that date. These applications consist of post-auction applications, applications proposed for grant in pending settlements, and any singleton applications cut off from further filing. The applications in each of these categories have progressed through the cut-off stage and the identity of the successful applicant in each case has been determined. Class A applicants can identify a single predicted Grade B contour with respect to these applications for which protection must be afforded and are not required to show that they will not interfere with multiple, hypothetical contours that may not turn out to be actual contours, if the applicant in question does not ultimately receive the station license.

26. This interpretation is consistent with both the language of section 336(f)(7)(A)(i) and with the intent of Congress as expressed in the overall statutory scheme. Throughout the CBPA, Congress attempted to balance the enhanced rights it conferred on Class A stations against those of full service stations in light of the limited spectrum available. Requiring Class A applicants to protect applications that have progressed through the cut-off stage strikes an appropriate balance between the rights of pending NTSC applicants and the interests of LPTV stations seeking primary status. Applicants that have prosecuted their applications through the cut-off stage and to the point that the identity of the successful applicant is known have in most cases invested substantial resources in filing and prosecuting their applications. Most of these applications have been pending for some time, and LPTV stations affected by the facilities proposed in these applications have long been on notice that they would ultimately be displaced or be required to reduce their facilities. Requiring Class A applicants to protect applications that had progressed through this stage by November 29, 1999 is both equitable and a reasonable reading of the CBPA.

27. We estimate that there are still pending before the Commission applications that may account for approximately 180 potential new NTSC stations. The grant of this number of new full service stations would likely displace a significant number of LPTV stations, many of which would be unlikely to be able to successfully locate replacement spectrum within the core. In light of the primary intent of the CBPA to protect those presently operating LPTV stations that can qualify under the statute, we conclude that our interpretation of section 336(f)(7)(A)(i) appropriately balances the rights of these stations against those of pending NTSC applicants.With respect to applications for which a settlement is pending as of the date of enactment of the CBPA, we clarify that where such a settlement includes a channel change, and the application for the channel change has not been accepted for filing with the Commission, we will treat that channel change application in the same way as any other pending NTSC application for purposes of determining priority vis a vis Class A. Thus, where a pending settlement depends upon a channel change which has not been accepted for filing by the Commission, and that new channel proposal conflicts with the protected facilities of a Class A-certified LPTV station, the settlement will not be protected.

2. DTV Maximization and Allotment Adjustments

28. The CBPA provides that a Class A application for license or license modification may not be granted where the proposal would interfere with DTV stations seeking to "maximize power" under the Commission's rules, for those stations that complied with the notification requirements of section 336(f)(1)(D) of the statute. Section 336(f)(1)(D) requires that, to be entitled to protection by Class A applicants, DTV stations were required to have filed an application for maximization or a

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notice of intent to seek maximization by December 31, 1999, and have filed a bona fide application for maximization by May 1, 2000. Approximately 370 DTV maximization applications were filed in accordance with that statutory deadline. In the *R&O*, we interpreted the use of the term "maximization" in the statute to refer to power and/or antenna height increases above the values given in the DTV Allotment Table, and to site changes that would extend the service area of DTV facilities beyond a station's NTSC replication facilities.

29. The CBPA provided an exception to the provision for preservation of the service areas of Class A-certified LPTV stations. According to section 336 (f)(1)(D), if, thereafter, "technical problems arise requiring an engineering solution to a full-power station's allotted parameters or channel assignment in the digital television Table of Allotments, the Commission shall make such modifications as necessary (i) to ensure replication of the full-power digital television applicant's service area * * * and (ii) to permit maximization of a full-power digital television applicant's service area * * *" (if the applicant complied with the notification and application requirements established by that section).

30. As we indicated in the *R&O*, the statutory language is somewhat ambiguous regarding the protection to be accorded by Class A applicants to DTV stations seeking to replicate or maximize power. Although section 336(f)(1)(D) appears to tie replication and maximization to resolution of technical problems, section 336(f)(7) appears to require all applicants for a Class A license or modification of license to demonstrate protection to stations seeking to replicate or maximize power, as long as the station seeking to maximize has complied with the notification and application requirements of section 336(f)(1)(D), without reference to any need to resolve technical problems on the part of the DTV station. Despite the reference in section 336(f)(1)(D) to technical problems, we concluded in the *R&O*, that it was most consistent with the statutory schemes for both Class A LPTV service and digital full-service broadcasting to require Class A stations to protect all DTV stations seeking to replicate or maximize facilities, as provided in section 336(f)(7)(A)(ii), regardless of the existence of "technical problems," provided stations seeking to maximize complied with the notification requirements of section 336(f)(1)(D) of the statute. We interpreted section 336(f)(1)(D) as providing DTV stations with the flexibility to make adjustments to the facilities proposed in these maximization applications, including channel changes, where necessary to resolve technical problems that prevented implementation of the facilities proposed therein. Consistent with this statutory interpretation, we also provided that the maximized service areas resulting from timely filed maximization application proposals could be carried over to a DTV station's final in-core DTV channels, such as a station's in-core analog channel, to the extent the in-core channel facilities for maintaining the maximized service area would provide the required protection to other DTV stations. Such maximized facilities on post-transition channels will have priority over conflicting Class A facilities.

A. Methods of Interference Protection to Class A Facilities

1. Analog Full-Service TV Protection to Analog Class A—Frequency Offset

31. We are persuaded to modify our decisions in the *R&O*, regarding use of carrier offsets by Class A station entities. Requiring use of carrier offsets will provide for greater spectrum efficiency by making room for more new LPTV or Class A stations and/or by allowing more existing stations to increase facilities. First, we will require that, within nine months of the date of release of this *MO&O*, all Class A station licensees operate with a carrier offset. Within that time period, we will also require that Class A construction permits and pending applications for such permits be modified or amended to specify a carrier offset. To do so, station licensees, permittees, and applicants shall specify the carrier offset in a letter to the Commission staff, referencing their license, permit, or pending application. Class A stations operating with an offset must meet the +/− 1 kilohertz frequency tolerance requirements of § 73.1545(c) of the Commission's Rules. We understand that most stations not currently operating with an offset could readily do so at modest cost by modifying their existing transmitters. A small number of stations may have to obtain new transmitters equipped for offset operation. With regard to offset conversion, we will not impose the transmitter equipment performance requirements of § 73.1590 of our rules. However, stations converting to offset or changing their offset will be required to measure the visual carrier frequency and the difference between the aural and visual carriers to determine compliance with the requirements of § 73.1545(c). This data must be kept on file at the transmitter or remote control point, and be made available upon request to authorized Commission representatives.

32. Second, we will require all Class A stations or Class A-eligible LPTV stations seeking facilities increases to specify a carrier offset in their modification applications, regardless of whether the advantages of offset operation can be realized with respect to all neighboring co-channel stations. As noted above, such a requirement will improve spectrum efficiency generally for new as well as existing stations.

33. Finally, until the time at which all Class A entities are required to specify use of a carrier offset, we may, on a case-by-case basis, direct Class A station licensees, permittees and Class A-eligible LPTV applicants (affected stations) to operate their stations with a carrier offset at the request of a displaced Class A station, displaced Class A-eligible LPTV station, or applicant or allotment petitioner for a new NTSC television station (requesting stations). The requesting party must first attempt to negotiate a voluntary offset agreement with the affected Class A entity. Such agreements should be included with the applications of the requesting station and offset notification of the affected station. The Commission staff will process the related applications and offset notifications in a coordinated manner. In the event a voluntary agreement cannot be reached, the requesting station may file (or amend) its application, despite the interference conflict with the affected station. The application must set forth the requesting station's efforts to reach agreement with the affected station and request that the affected station be directed to specify a carrier offset. A copy of the application (or amendment to a pending application) must be sent to the affected station, which will be given 30 days to file comments. If the requesting station's application is otherwise acceptable (that is, except for the conflict with the affected station), the Commission staff may direct the affected station to file within 30 days a letter notification specifying a particular carrier offset. It will process the related applications and offset notifications in a coordinated manner.

34. This Class A proceeding has not addressed carrier offset issues with regard to television translator and non-Class A LPTV stations. Therefore, the above provisions do not, as a matter of policy, apply to these stations. Many translators and LPTV stations do not operate with a frequency offset. Channel displacement among LPTV and translator stations has been extensive. The difficulties faced by translator and LPTV licensees, including Class-A eligibles, in finding replacement channels could be lessened if translators and LPTV stations operated with carrier offsets. We strongly encourage such stations to enter into voluntary offset agreements, particularly where this would accommodate use of a replacement channel by a displaced station. On a case-by-case basis, we reserve the right to modify the license of a TV translator or non-Class A LPTV station subject to the provisions of the Communications Act of 1934, as amended.

2. Alternative Means of Interference Protection

35. In the *R&O*, we concurred with commenters who favor permitting Class A stations to enter into interference or relocation agreements with full-service, LPTV, TV translator and other Class A licensees, permittees or applicants. We required agreements to be submitted with the related applications for initial or modified broadcast facilities. We said we would approve of such agreements if we find them to be consistent with the public interest. We reaffirm our decision in the *R&O*. We will approve interference or relocation agreements between Class A applicants and applicants for full-service television stations, provided we find the agreements to be consistent with the public interest.

E. Methods of Interference Protection by Class A to Other Facilities

1. Grandfathering of LPTV Interference Waivers

36. In the *R&O*, we adopted interference protection requirements for Class A applicants, as directed by the CBPA. These require protection to certain authorized and proposed NTSC TV, DTV, LPTV and TV translator and land mobile radio services. Applicants for Class A authorizations must certify in their applications that their proposed facilities comply with the applicable interference protection requirements in the Commission's Rules.

37. As requested and to guide applicants for initial Class A authorizations, we provide the following clarification. Existing waivers of the LPTV station interference protection requirements may be used as a basis for certifying compliance with the Class A interference protection requirements provided: (1) Construction of the facilities for which Class A status is sought was authorized on the basis of a waiver of the interference standards with respect to a protected station; (2) all engineering parameters under that LPTV authorization remain unchanged; (3) all authorized engineering parameters of the protected station associated with the waiver remain unchanged; and (4) the LPTV licensee has no knowledge that its station is causing interference to the reception of the protected station within its protected service area; e.g., Grade B contour for NTSC TV stations. We also reiterate that any interference from existing LPTV facilities within the protected contour of later authorized or proposed LPTV or TV translator facilities is permitted by the LPTV rules and is also grandfathered.

2. Land Mobile Radio Service and TV Channel 16

38. The CBPA, at section 336(f)(7)(C), provides that the Commission may not authorize a Class A station that will cause interference to certain land mobile radio uses of television channels. In the *R&O*, we stated that it is most consistent with the statutory scheme and the waiver granted for public safety land mobile use of Channel 16 in the New York City metropolitan area that LPTV station WEBR–LP and the New York police and public safety agencies continue to cooperate to ensure that neither party interferes with the other's transmission. Pursuant to our decision in the *R&O*, because the application reflected the parties' commitment to the agreement, the Mass Media Bureau granted the application on August 21, 2000 and did not impose a condition that WEBR–LP's authority to operate as a Class A station be subject to the agreement.

F. Remaining Issues

1. Issuance of DTV Licenses to Class A, TV Translator, and LPTV Stations

39. In the *R&O*, we noted that Class A stations may convert their existing channel to digital broadcasting at any time. We also concluded that the plain reading of the CBPA, as well as its legislative history, does not require us to issue an additional license for DTV services to Class A or TV translator licensees, but does require us to accept DTV applications from licensees of Class A or TV translator stations that meet the interference protection requirements set forth in the statute. Recognizing that a number of outstanding issues regarding the transition to DTV must be resolved, we said we would defer matters regarding the issuance of additional DTV licenses for Class A stations to a future DTV rulemaking.

40. We reaffirm our decision in the *R&O*. The statute requires that we shall accept a license application for such services that meet certain interference protection requirements. Nothing in the statute requires that we assign a second DTV channel to Class A stations. A Class A station may convert its existing channel to digital broadcasting at any time, or it may compete with other interested parties for additional channels for DTV.

41. We must exercise restraint with respect to issuing additional DTV licenses in order to preserve spectrum to accommodate needs associated with the transition of full-service stations to digital service. For instance, in our DTV periodic review proceeding we expressed our belief that more out-of-core stations than initially anticipated must be accommodated with in-core channels and that this effort will be made more difficult because there are more stations occupying core channels than initially planned for. We therefore defer matters regarding the issuance of additional DTV licenses for Class A stations to a future rulemaking. Issues regarding the means of issuing such licenses will be considered in that proceeding.

2. Stations Operating Between 698 and 806 MHz

42. In the *R&O*, we decided not to impose any time limit on the filing of a Class A application by LPTV licensees operating on channels outside the core channels 2–51. We said that the CBPA provides that, if a qualified applicant for a Class A license operating on an out-of-core channel locates an in-core channel, the Commission "shall issue a Class A license simultaneously with the assignment of such channel," but does not impose a time limit on the filing of such applications. We required stations operating on these channels to have filed a certification of eligibility within the time frame established in the statute (i.e., by January 28, 2000), and granted these stations a presumption of displacement, permitting them to file displacement applications immediately if they can locate a replacement channel within the core spectrum.

43. We also stated that, when a qualified LPTV station outside the core seeking Class A status locates an in-core channel, we will require the station to file a Class A application simultaneously with its application for modification of license to move to the in-core channel. We said we will provide interference protection to such stations on the in-core channel from the

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date of grant of a construction permit for the in-core channel. Because the CBPA prohibits the award of Class A status to stations outside the core, we believed it would be inconsistent with the statute to provide interference protection on a channel outside the core. We stated that contour protection would commence with the award of a construction permit on the in-core channel, rather than a license to cover construction.

44. We decline to reconsider our decision not to impose a six month time limit on LPTV licensees on out-of-core channels seeking Class A status. The CBPA provides that, if a qualified applicant for a Class A license operating on an out-of-core channel locates an in-core channel, the Commission "shall issue a Class A license simultaneously with the assignment of such channel." The statute does not require that we impose a time limit on the filing of such applications, and we believe many LPTV stations outside the core will need additional time to locate an in-core channel. In most cases, it would be in the best interest of qualified LPTV stations operating outside the core to try to locate an in-core channel now, as the core spectrum is becoming increasingly crowded and it is likely to become increasingly difficult to locate an in-core channel in the future.

45. We wish to clarify our policy with respect to those certified-eligible LPTV stations that are licensed on a core channel, and have received or applied for a displacement construction permit on an out-of-core channel. The authorized or proposed non-core facilities will not receive Class A protections. However, stations having a non-core construction permit or pending displacement application for such a permit as of the Class A filing deadline, and that have filed timely certifications of eligibility, will not be required to file a Class A application by that deadline, but rather at such later time as they file a displacement application for an available in-core channel. This will preserve Class A opportunities for a number of displaced LPTV stations.

3. Call Signs

46. In the *R&O*, we allowed Class A stations to use standard television call signs with the suffix "-CA" to distinguish the stations from "-LP" stations. We said that, upon grant of its initial Class A application, the qualifying LPTV licensee can change its station's existing numerical or four-letter low power call sign to a four-letter call sign with the "CA" suffix.

47. We reaffirm our decision. As we have stated elsewhere in this proceeding, Congress in the CBPA intended to create a distinct group of stations that are neither LPTV stations nor full power broadcast stations. Use of the "-CA" suffix appropriately distinguishes this unique group of stations from secondary LPTV stations that use the "-LP" suffix and from primary full power stations that use the "-TV" suffix. We note further that use of the suffix is not required for purposes of station promotion, such as station letterhead.

IV. Conclusion

48. In this *MO&O*, we generally reaffirm the decisions we reached in the *R&O*, although we make some changes and clarify certain aspects of our rules, as described previously. Pursuant to the CBPA and our implementing rules, certain qualifying LPTV stations will be accorded "primary" status as television broadcasters. The actions we have taken today and in the *R&O* will facilitate the acquisition of capital needed by these stations to allow them to continue to provide free, over-the-air programming to their local communities. By improving the viability of these stations, our action today promotes our fundamental goals of ensuring diversity and localism in television broadcasting.

V. Administrative Matters

49. *Regulatory Flexibility Analysis.* Pursuant to the Regulatory Flexibility Act of 1980, as amended, *See* 5 U.S.C. 601 *et seq.*, the Commission's Supplemental Final Regulatory Flexibility Analysis has been completed.

50. *Paperwork Reduction Act Analysis.* The actions taken in this *MO&O* have been analyzed with respect to the paperwork Reduction Act of 1995, and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the Act.

VI. Supplemental Final Regulatory Flexibility Analysis

51. As required by the Regulatory Flexibility Act (RFA), *see* 5 U.S.C. 601 *et seq.*, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice and a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the *R&O*. The Commission sought written public comment on the proposals in the Notice, including comment on the IRFA. No comments were received in response to the IRFA or the FRFA. This present Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) conforms to the RFA. *See* 5 U.S.C. 604.

Need for, and Objectives of, the Memorandum Opinion and Order on Reconsideration

52. The Community Broadcasters Protection Act of 1999 (CBPA) directed the Commission, within 120 days after the date of enactment, to prescribe regulations establishing a Class A television license available to licensees of qualifying low-power television (LPTV) stations. The CBPA directs that Class A licensees be subject to the same license terms and renewal standards as full-power television licensees, and that Class A licensees be accorded primary status as a television broadcaster as long as the station continues to meet the requirements set forth in the statute for a qualifying low-power station. In addition to other matters, the CBPA sets out certain certification and application procedures for low-power television licensees seeking to obtain Class A status, prescribes the criteria low-power stations must meet to be eligible for a Class A license, and outlines the interference protection Class A applicants must provide to analog (or NTSC), digital (DTV), LPTV, and TV translator stations.

53. The Commission adopted the *R&O*, to implement the CBPA. In that Order, we determined that the service areas of LPTV licensees would be preserved from the date the Commission receives a certification of eligibility for Class A status, as long as the certification is ultimately approved by the Commission. The *R&O*, interpreted the CBPA to require that Class A stations protect both existing analog stations and full power analog applicants that have completed all processing short of grant. Similarly, the *R&O* required Class A stations to protect the digital service areas of DTV facilities proposed in an application pending as of the CBPA enactment date (November 29, 1999) and that had completed all processing short of grant as of that date. The *R&O*, generally applied to Class A applicants and licensees all part 73 regulations except those that cannot apply for technical or other reasons. The *R&O* also addressed a wide range of other issues related to the implementation of the CBPA, including the protected service area of Class A stations, Class A interference protection requirements vis-a-vis other TV stations, common ownership restrictions applicable to Class A stations, and the treatment of modification applications filed by Class A licensees.

54. In this *MO&O*, we do not change most of the determinations made in the *R&O*. We do, however, adopt the following changes. We modify our main studio location requirements with respect to LPTV stations in a commonly owned group. We also clarified our definition of "local programming" with respect to LPTV stations in a commonly owned group. We permit Class A television stations that convert to digital operation to offer ancillary or supplementary services in the same manner as full power DTV stations. We clarify that Class A stations have the same limited must carry rights as LPTV stations, but do not have the same must carry rights as full service television stations under part 73 of the Commission's rules. To foster efficient spectrum utilization, we modify our decision regarding the use of carrier frequency offsets by Class A stations, by establishing a deadline for the required use of offsets and requiring the use of such offsets to accommodate, where possible, certain Class A and full-service NTSC station proposals.

Summary of Significant Issues Raised by Public Comments

55. No comments were received in response to the IRFA. Furthermore, no petitions or comments were received on the *R&O*, concerning the FRFA. Two petitioners, however, did file Petitions for Reconsideration raising concerns about the main studio staffing requirements. These petitioners advised that the Commission Class A staffing requirements were too costly. As a result of petitioners' comments, we clarified that the staffing standard does not necessarily require two full-time staff to be present at the main studio. Rather, management and staff presence are required on a full-time basis, which may consist of more than two people working on part-time bases. In addition, the Commission amended the main studio requirement so that commonly owned Class A stations having contiguous boundaries may share a single main studio. Further analysis of this issue may be found below in the section on minimizing significant impacts.

Description and Estimate of the Number of Small Entities To Which the Proposed Rules Apply

56. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules. 5 U.S.C. 603(b)(3). The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 5 U.S.C. 601(3). A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632.

57. *Small TV Broadcast Stations.* The SBA defines small television broadcasting stations as television broadcasting stations with $10.5 million or less in annual receipts. 13 CFR 121.201 (SIC Code 4833). The *MO&O* modifies certain rules applicable to Class A television licenses, which are available to licensees of qualifying LPTV stations. According to the Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database, virtually all LPTV broadcast stations have revenues of less than $10.5 million. Currently, there are approximately 2,200 licensed LPTV stations. Public Notice, "Broadcast Station Totals as [of] September 30, 1999" (released November 22, 1999). The Commission notes, however, that under SBA's definition, revenues of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. The Commission's estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

58. We anticipate that the frequency offset requirement in the *MO&O* will result in changes to the reporting and recordkeeping requirements of Class A stations. When a Class A station begins operating with a frequency offset, it will be necessary for it to notify the Commission in writing.

Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.

59. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(c)(1)–(4).

60. The R&O, adopted a number of rules designed to help LPTV stations seeking to convert to Class A status and exempts Class A licensees from part 73 rules that clearly could not apply, either due to technical differences in the operation of low-power and full-power stations, or for other reasons. Although the *R&O* applied the main studio rule for the first time to LPTV stations who qualify as Class A stations, requiring them to locate their main studios within the station's Grade B contour, as determined pursuant to the Commission's rules, the *R&O* grandfathers the main studios at the site in use as of November 28, 1999. As discussed, several petitioners expressed concern about the main studio requirement and its effect on small entities. Petitioners argued that the cost of the main studio staffing requirement, as adopted in the *R&O*, was financially prohibitive for small businesses and would result in the demise of Class A stations. This *MO&O* both clarifies and modifies the rules set forth in the *R&O*. These revisions work together to reduce both the staffing burden and the burden of maintaining multiple studios by permitting commonly owned LPTV stations having contiguous boundaries to share a main studio and staff. This alternative significantly reduces the costs associated with maintaining multiple studios and additional staff. In contrast the Commission could have merely clarified the staffing rule as set forth in the *R&O* and not modified the main studio location rule; however, the result works to benefit those small entities with multiple stations. Any further relaxation of the main studio rules would have been inconsistent with the intention and language of the CPBA which requires Class A stations to have a local presence and local programming.

61. In the *MO&O* we permit Class A television stations that convert to digital operation to offer ancillary or supplementary services in the same manner as full power DTV stations. A petitioner to the *R&O* requested a modification of the rules to allow such stations to offer telecommunications services on either an ancillary or supplemental basis in the event that the station decides to convert to DTV. We have complied with this request and have created an alternative for Class A stations which are interested in converting to digital operation. Since

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this is optional, it in no way should be perceived as a requirement for Class A licensure or operation. Class A stations are not required to convert to DTV under the CBPA.

62. Lastly, we modify our decision regarding the use of carrier frequency offsets by Class A stations. We now require the use of frequency offsets to accommodate, where possible, certain Class A and full-service NTSC stations and, more generally, will require all Class A stations to specify operation with an offset within nine months of the release of this *MO&O*. In response to the *R&O*, two parties requested this modification in order to allow the stations to make more efficient use of scarce broadcast spectrum. These frequency offsets are of a nominal nature and if required, would result in the expenditure of modest financial resources. We believe that offset operations will greatly facilitate an increase in the number of Class A stations by maximizing use of the broadcast spectrum. The alternative, if we had not granted petitioners' requests, would have been to continue with the existing rule. Such a continuation would have resulted in fewer LPTV stations becoming Class A stations. Furthermore, this modification only affects those LPTV stations which choose to apply for a Class A license.

63. *Report to Congress:* The Commission will send a copy of the *MO&O*, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. *See* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *MO&O*, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *MO&O* and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**. See 5 U.S.C. 604(b).

VII. Ordering Clauses

64. Pursuant to authority contained in sections 1, 4(i), 303, and 336(f) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303, and 336(f), part 73 of the Commission's rules, *are amended* as set forth.

65. The amendments set forth *shall be effective* May 31, 2001, except for 47 CFR 73.1545(e), which contains information collection requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

66. The petitions for reconsideration or clarification listed *are granted* to the extent provided herein and otherwise *are denied*.

67. The Motion for Acceptance of late-Filed Petition for Reconsideration, filed on June 12, 2000 by Larry L. Schrecongost, *is granted*.

68. The Emergency Petition for Extension of Time, filed on December 4, 2000 by John W. Smith, Jr., *is dismissed*.

69. The Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this *MO&O*, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

This proceeding is terminated.

List of Subjects in 47 CFR Part 73

Television, Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons set forth in the preamble part 73 title 47 of the Code of Federal Regulations is amended to read as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

2. Section 73.1125 is amended by revising paragraph (c) to read as follows:

§ 73.1125 Station main studio location.

* * * * *

(c) Each Class A television station shall maintain a main studio at a location within the station's predicted Grade B contour, as defined in § 73.683 and calculated using the method specified in § 73.684. With respect to a group of commonly controlled stations, Class A stations whose predicted Grade B contours are physically contiguous to each other may locate their main studio within any of these contours. If a Class A station is one of a group of commonly controlled Class A stations, but its predicted Grade B contour is not physically contiguous to that of another Class A station in the commonly owned group, its main studio shall be located within its own predicted Grade B contour. Alternatively, a Class A television station shall maintain a main studio at the site used by the station as of November 29, 1999.

* * * * *

3. Section 73.1545 is amended by revising paragraph (e) and adding a note to paragraph (e) to read as follows.

§ 73.1545 Carrier frequency departure tolerances.

* * * * *

(e) *Class A TV stations.* The departure of the carrier frequency of Class A TV stations may not exceed the values specified in § 74.761 of this chapter. Provided, however, that Class A TV stations licensed to operate with a carrier offset, including those stations licensed with a maximum effective radiated power and/or antenna height greater than the values specified in their initial Class A TV station authorization, must comply with paragraph (c) of this section.

Note to paragraph (e): At a date not later than nine months after release of the Memorandum Opinion and Order on Reconsideration in MM Docket No. 00–10 (the proceeding that established the Class A TV service), all licensed Class A stations must operate with a carrier frequency offset. See *Memorandum Opinion and Order on Reconsideration*, In the Matter of Establishment of a Class A Television Service, MM Docket No. 00–10, released April 13, 2001.

4. Section 73.6000 is revised to read as follows:

§ 73.6000 Definitions.

Locally produced programming. For the purpose of this subpart, locally produced programming is programming:

(1) Produced within the predicted Grade B contour of the station broadcasting the program or within the contiguous predicted Grade B contours of any of the stations in a commonly owned group; or

(2) Programming produced at the station's main studio.

Note to § 73.6000: *See Report and Order*, In the Matter of Establishment of a Class A Television Service, MM Docket No. 00–10, released April 4, 2000; *Memorandum Opinion and Order on Reconsideration*, In the Matter of Establishment of a Class A Television Service, MM Docket No. 00–10, released April 13, 2001.

5. Section 73.6024 is amended by revising paragraph (c) to read as follows:

§ 73.6024 Transmission standards and system requirements.

* * * * *

(c) A Class A TV station must meet the offset carrier frequency and frequency tolerance provisions of § 73.1545 of this part.

6. Section 73.6026 is revised to read as follows:

§ 73.6026 Broadcast regulations applicable to Class A television stations.

The following rules are applicable to Class A television stations:

§ 73.603 Numerical designation of television channels.
§ 73.624(b), (c) and (g) Digital television broadcast stations. Section 73.624(b) will apply only to the extent that such stations must also transmit at least one over-the-air video program signal at no direct charge to viewers of the digital Class A station
§ 73.635 Use of common antenna site.
§ 73.642 Subscription TV service.
§ 73.643 Subscription TV operating requirements.
§ 73.644 Subscription TV transmission systems.
§ 73.646 Telecommunications Service on the Vertical Blanking Interval and in the Visual Signal.
§ 73.653 Operation of TV aural and visual transmitters.
§ 73.658 Affiliation agreements and network program practice; territorial exclusivity in non-network program arrangements.
§ 73.664 Determining operating power.
§ 73.665 Use of TV aural baseband subcarriers.
§ 73.667 TV subsidiary communications services.
§ 73.669 TV stereophonic aural and multiplex subcarrier operation.
§ 73.670 Commercial limits in children's programs.
§ 73.671 Educational and informational programming for children.
§ 73.673 Public information initiatives regarding educational and informational programming for children.
§ 73.688 Indicating instruments.
§ 73.691 Visual modulation monitoring.

[FR Doc. 01–10706 Filed 4–30–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010112013–1013–01; I.D. 042501D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Offshore Component in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season amount of the Pacific cod total allowable catch (TAC) apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 26, 2001, until 1200 hrs, A.l.t., June 10, 2001.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2001 A season Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the GOA is 1,098 metric tons (mt) as established by the Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season amount of the Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 948 mt, and is setting aside the remaining 150 as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to prevent exceeding the amount of the 2001 A season Pacific cod TAC specified for the offshore component constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20 (b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to prevent exceeding the 2001 A season Pacific cod TAC specified for the offshore component constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 25, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–10784 Filed 4–26–01; 4:30 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010112013–1013–01; I.D. 042601A]

Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for yellowfin sole by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the second seasonal apportionment of the 2001 Pacific halibut bycatch allowance specified for the trawl yellowfin sole fishery category.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 26, 2001, until 1200 hrs, A.l.t., May 21, 2001.

ADDRESSES: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the

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BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The second seasonal apportionment of the 2001 halibut bycatch allowance specified for the BSAI trawl yellowfin sole fishery category, which is defined at § 679.21(e)(3)(iv)(B)(1), is 196 metric tons through May 20 (66 FR 7276, January 22, 2001).

In accordance with § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the second seasonal apportionment of the 2001 halibut bycatch allowance specified for the trawl yellowfin sole fishery in the BSAI has been caught. Consequently, the Regional Administrator is closing directed fishing for yellowfin sole by vessels using trawl gear in the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to avoid exceeding the halibut bycatch allowance for the yellowfin sole fishery category constitutes good cause to waive the requirement to provide prior notice opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A) as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to avoid exceeding the halibut bycatch allowance for the yellowfin sole fishery category constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 26, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–10864 Filed 4–26–01; 4:30 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 66, No. 84

Tuesday, May 1, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1604

Uniformed Services Accounts

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) proposes to add a new part to its regulations explaining the rules under which members of the uniformed services can participate in the Thrift Savings Plan (TSP).

DATES: Comments must be received on or before July 2, 2001.

ADDRESSES: Comments may be sent to Patrick J. Forrest, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Patrick J. Forrest at (202) 942–1661.

SUPPLEMENTARY INFORMATION: The Board administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514. The TSP provisions of FERSA have been codified, as amended, largely at 5 U.S.C. 8351 and 8401–8479. The TSP is a tax-deferred retirement savings plan for Federal employees which is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

The National Defense Authorization Act for Fiscal Year 2000, Public Law 106–65, 113 Stat. 512, as amended by the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Public Law 106–398, 114 Stat. 1654, extended the opportunity to participate in the TSP to uniformed services members. The uniformed services include the Army, Navy, Air Force, Marine Corps, Coast Guard, Public Health Service, and the National Oceanic and Atmospheric Administration. Therefore, beginning on October 9, 2001, uniformed services members can elect to contribute to the TSP, with contributions to commence in January 2002. Generally, uniformed services members are covered by the TSP regulations found at 5 CFR chapter VI. However, uniformed services members will contribute to the TSP under rules that differ substantially from those that apply to civilian accounts; this proposed rule supplements TSP regulations to explain those differences.

Analysis

An eligible employee elects to contribute to the TSP by making a contribution election within 60 days after appointment to a TSP-eligible position or during a TSP open season, as described at 5 CFR part 1600. Proposed § 1604.3 supplements part 1600 by explaining special open season rules for uniformed services members and by describing the initial uniformed services open season to begin October 9, 2001, and to end January 31, 2002. Proposed § 1604.4 further supplements part 1600 by explaining special uniformed services contribution rules, most notably those allowing TSP contributions from incentive and special pay (including bonuses), and contributions from pay that is not subject to Federal income taxation. Uniformed services accounts thereby differ from civilian accounts, which consist solely of contributions from basic pay that is subject to Federal income taxation; to account for these differences, the TSP will maintain separate uniformed services and civilian accounts, as described in proposed§ 1604.5.

The TSP error correction regulations are codified at 5 CFR part 1605. Proposed § 1604.6 explains a special error correction rule that will apply if a uniformed services employing agency fails to deduct a TSP contribution from bonus pay. Under the standard error correction procedures, a participant can establish a schedule of makeup contributions to replace the missed contribution through future payroll deductions. That schedule may not exceed four times the number of pay periods over which the error occurred. Because bonuses are paid in a single monthly pay period, current procedures would limit to four months the schedule of makeup contributions relating to a missed bonus contribution. The Board believes that four months is insufficient time to replace a bonus contribution because the dollar amount of the bonus might exceed the uniformed services member's monthly basic pay. Therefore, proposed § 1604.6 allows a schedule of makeup contributions of up to four times the number of months it would take for the service member to earn basic pay equal to the dollar amount of the missed contribution.

The regulations codified at 5 CFR parts 1650, 1651, and 1655 govern TSP withdrawals, death benefits, and loans, respectively. Proposed §§ 1604.7, 1604.8, and 1604.10 supplement those regulations. Proposed § 1604.7(d) provides for a uniformed services member to use the definition of separation from service found at proposed § 1604.2 to determine whether he or she is eligible for a withdrawal under part 1650. Other provisions of those sections call for participants to use separate forms for uniformed services and civilian accounts, describe the spousal rights applicable to uniformed services members, and explain how non-taxable sums are treated differently from taxable sums when they are distributed from the TSP.

Under 5 CFR part 1653, a TSP account can be divided in an action for divorce, annulment, or legal separation, and is subject to legal process relating to child support, alimony, or child abuse. Proposed § 1604.9 supplements the part 1653 regulations. Proposed § 1604.9(a) pertains to participants for whom the TSP maintains both a uniformed services account and a civilian account, and states that a court order or legal process must expressly state from which account(s) payment is to be made. Proposed §§ 1604.9(b) and (c) explain how non-taxable sums are treated differently from taxable sums when they are paid from the TSP pursuant to a court order or legal process.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only employees of the Federal Government.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

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Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, 1501–1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under section 1532 is not required.

List of Subjects in 5 CFR Part 1604

Employment benefit plans, Government employees, Military personnel, Pensions, Retirement.

For the reasons set out in the preamble, the Board proposes to add a new 5 CFR part 1604 to read as follows:

PART 1604—UNIFORMED SERVICES ACCOUNTS

Sec.

1604.1 Applicability.
1604.2 Definitions.
1604.3 Contribution elections.
1604.4 Contributions.
1604.5 Separate service member and civilian accounts.
1604.6 Error correction.
1604.7 Withdrawals.
1604.8 Death benefits.
1604.9 Court orders and legal processes.
1604.10 Loans.

Authority: 5 U.S.C. 8474(b)(5) and (c)(1); sec. 661(b), Pub. L. 106–65, 113 Stat. 512, 672 (5 U.S.C. 8440e).

§ 1604.1 Applicability.

This part describes the special features of TSP participation applicable to members of the uniformed services. Uniformed services members are also covered by the other regulations of 5 CFR chapter VI to the extent they do not conflict with the regulations of this part.

§ 1604.2 Definitions.

As used in this part:

Basic pay means basic pay payable under 37 U.S.C. 204 and compensation received under 37 U.S.C. 206.

Bonus contributions means contributions made by participants from a bonus as defined in 37 U.S.C. chapter 5.

Civilian account means the account to which contributions have been made by or on behalf of a civilian employee.

Civilian employee means a TSP participant covered by the Federal Employees' Retirement System, the Civil Service Retirement System, or equivalent retirement plans.

Combat zone compensation means compensation received for active service during a month in which a member of the Armed Forces serves in a combat zone.

Combat zone contributions means employee contributions that are made from compensation subject to the Federal income tax exclusion at 26 U.S.C. 112 for combat zone compensation.

Employee contributions means contributions made by participants from basic pay, incentive pay, and special pay (including bonuses).

Employing agency means the organization that employs an individual who is eligible to contribute to the TSP and that has authority to make compensation decisions for that employee.

Federal civilian retirement system means the Civil Service Retirement System established by 5 U.S.C. chapter 83, subchapter III, the Federal Employees' Retirement System established by 5 U.S.C. chapter 84, or any equivalent Federal civilian retirement system.

Periodic contributions means employee contributions made from recurring incentive pay and special pay (including bonuses) as defined in 37 U.S.C. chapter 5.

Ready Reserve means those members of the uniformed services described at 10 U.S.C. 10142.

Regular contributions means employee contributions made from basic pay.

Separation from service means a transfer to inactive status or to a retired list pursuant to a provision of title 10, United States Code, or a release from active duty that is not followed within 31 full calendar days by a resumption of active duty.

Service member means a member of the uniformed services on active duty or a member of the Ready Reserve in any pay status.

Service member account means the account to which contributions have been made by or on behalf of a member of the uniformed services.

Special and incentive pay means pay payable as special or incentive pay under 37 U.S.C. chapter 5.

TSP record keeper means the entity that is engaged by the Board to perform record keeping services for the Thrift Savings Plan. The TSP record keeper is the National Finance Center, United States Department of Agriculture, located in New Orleans, Louisiana.

Uniformed services means the Army, Navy, Air Force, Marine Corps, Coast Guard, Public Health Service, and the National Oceanic and Atmospheric Administration.

§ 1604.3 Contribution elections.

A service member may make contribution elections as described in 5 CFR part 1600, with the following exceptions:

(a) *Initial uniformed services open season.* A service member may make a contribution election during an initial uniformed services TSP open season beginning October 9, 2001, and ending January 31, 2002. Contributions based on an election made on or before December 31, 2001, will be deducted from pay the first full pay period of January 2002; elections made in January 2002 will be effective during the first full pay period after the election is received.

(b) *New service members.* An individual who is appointed as a service member may make a TSP contribution election within 60 days after the effective date of the appointment; contributions based on such an election will be made during the first full pay period after the election is received.

(c) *Conversion between active duty and Ready Reserve status.* A service member who converts from Ready Reserve status to active duty status (for more than 30 days), or who converts from active duty to Ready Reserve status, may make a TSP contribution election within 60 days after the effective date of the conversion; contributions based on such an election will be made during the first full pay period after it is received.

(d) *TSP open season elections.* In addition to being able to make a contribution election during the periods described in paragraphs (a) through (c) of this section, as applicable, a service member may make a contribution election during any TSP open season thereafter (as described at 5 CFR part 1600, subpart B).

(e) *Source of contributions.* A service member may elect to contribute sums to the TSP from basic pay, incentive pay, and special pay (including bonuses). Except for an election to contribute from bonuses, all contribution elections must be made during one of the periods described in paragraphs (a) through (d) of this section. An election pertaining to a bonus contribution may be made before the service member receives the bonus pay; however, the service member must be making a regular contribution in order to make a bonus contribution. A service member may elect to contribute from special or incentive pay (including bonuses) in anticipation of receiving such pay (that is, he or she does not have to be receiving the special pay or incentive pay when the contribution election is made); those elections will take effect when the service member receives the special or incentive pay.

§ 1604.4 Contributions.

(a) *Employee contributions.* Subject to the regulations at 5 CFR part 1600 and the following limitations, a service member may make regular contributions to the TSP from basic pay. If the service member makes regular contributions, he or she also may contribute all or a portion of incentive pay and special pay (including bonuses) to the TSP:

(1) *Temporary percentage limitations.* Subject to paragraph (a)(2) of this section, the maximum service member TSP regular employee contribution (including combat zone contributions) for 2001 is 6 percent of basic pay per pay period. The maximum contribution will increase one percent a year until 2005, after which the percentage of basic pay limit will not apply and the maximum contribution will be limited only as provided in paragraph (a)(2) of this section.

(2) *Internal Revenue Code limitations.* The dollar amount of TSP employee contributions is limited by three different provisions of the Internal Revenue Code (I.R.C.). If a service member's employee contributions exceed any of these limitations, the service member may request a refund of employee contributions (and associated earnings) from the TSP on the form titled "Request for Return of Excess Employee Contributions to Participant," which can be obtained from the TSP record keeper. The completed form must be returned to the TSP record keeper by February 20 of the year after the excess contributions were made.

(i) *Limit on elective deferrals.* Section 402(g) of the I.R.C. (26 U.S.C. 402(g)) places a dollar limit on the amount a person may save on a tax-deferred basis through retirement savings plans. (The limit is periodically adjusted by the Internal Revenue Service; it is $10,500 in 2001.) The TSP will not accept any employee contributions that exceed the I.R.C. section 402(g) limit. If a service member contributes to a civilian TSP account or to another qualified employer plan described at I.R.C. sections 401(k), 403(b), or 408(k) (26 U.S.C. 401(k), 403(b), or 408(k)), and the total employee contributions from taxable income made to all plans exceed the I.R.C. section 402(g) limit, he or she may request a refund of employee contributions from the TSP to conform with the limit. (Combat zone contributions are not taken into consideration when determining the application of the I.R.C. section 402(g) limit.)

(ii) *Section 457 limit.* If a service member contributes to the TSP and to a plan described at I.R.C. section 457 (26 U.S.C. 457) (generally, a deferred compensation plan for a state or local government or tax-exempt organization), the total amount the service member may contribute to all tax-deferred savings plans cannot exceed the dollar limit found at section 457(c)(as opposed to the I.R.C. section 402(g) limit described in paragraph (a)(2)(i) of this section). (The limit is periodically adjusted by the Internal Revenue Service; it is $8,500 in 2001.) A service member who contributes to a section 457 plan should consult that plan's administrator concerning any limit on the amount he or she can also contribute to the TSP. (Combat zone contributions are not taken into consideration when determining the application of the I.R.C. section 457(c) limit.)

(iii) *Limit on contributions to qualified plans.* Section 415(c) of the I.R.C. (26 U.S.C. 415(c)) also places an annual limit on the combined amount that can be contributed to the TSP and to other Federal civilian retirement systems (as defined in § 1604.2). (The limit is periodically adjusted by the Internal Revenue Service; it is the lesser of 25 percent of compensation or $35,000 in 2001.) For purposes of applying this limit, compensation includes combat zone compensation. In implementation of this law, no employee contribution may be made to the TSP for any year to the extent that the sum of the employee's contributions to the TSP and to a Federal civilian retirement system, when added to the employer's contributions to the TSP for that year, would exceed the I.R.C. section 415(c) limit. (If a service member contributes to a civilian TSP account and to a service member TSP account in a single calendar year, the annual limit on contributions will be derived from the participant's combined service member and civilian compensation.) Combat zone contributions are taken into consideration when determining the application of the I.R.C. section 415(c) limit.

(b) *Matching contributions.* When the Secretary of a military department (i.e., the Army, Navy and Air Force) authorizes matching contributions for a service member, the service member's regular contributions will be matched dollar-for-dollar on the first three percent of basic pay contributed to the TSP, and 50 cents on the dollar on the next two percent of basic pay contributed. Matching contributions only apply to regular contributions. Matching contributions are not taken into consideration when determining the application of the contribution limits found at I.R.C. sections 402(g) and 457 (described in paragraphs (a)(2)(i) and (a)(2)(ii) of this section, respectively), but they are taken into consideration when determining the application of the contribution limit found at I.R.C. section 415 (described in paragraph (a)(2)(iii) of this section).

(c) *Deduction and transmittal of contributions.* A service member's employing agency will deduct regular contributions from the service member's basic pay each pay period based on his or her contribution election and will transmit the contributions to the TSP. If a service member also elects to make periodic contributions to the TSP, the employing agency must deduct (and transmit to the TSP) these contributions from the service member's incentive pay or special pay (including bonuses), as applicable.

§ 1604.5 Separate service member and civilian accounts.

(a) *Separate accounts.* Service member accounts are maintained separately from civilian accounts. Therefore, service members making both civilian and uniformed services TSP contributions will have two TSP accounts. For those participants, the accounts are treated separately except in the following circumstances:

(1) If a participant contributes to a service member account and a civilian account, the contributions to both accounts together cannot exceed the Internal Revenue Code contribution limits described in § 1604.4(a)(2).

(2) An active duty member of the uniformed services may obtain a loan from his or her account, as described at § 1604.10, and the loan will be disbursed from the uniformed services account. If the TSP maintains a service member account and a civilian account for an individual, the TSP will calculate the Internal Revenue Code maximum loan amount using both account balances, as described in § 1604.10(a)(3).

(b) *Transfers between TSP accounts.* Service member and civilian TSP account balances may be combined through a transfer (thus producing one account), and the transferred funds will be treated as employee contributions and otherwise invested as described at 5 CFR part 1600. Transfers under this section are subject to the following rules:

(1) An account balance can be transferred once the TSP is informed (by the participant's employing agency) that the participant has separated from either civilian or uniformed services employment.

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(2) Combat zone contributions may not be transferred from a uniformed services TSP account to a civilian TSP account.

(3) Transferred funds will be allocated among the TSP's investment funds according to the contribution allocation in effect for the gaining account.

(4) If a service member's account balance exceeds $3,500, the service member must obtain the consent of his or her spouse before transferring the balance into a civilian account. A request for an exception to the spousal consent requirement will be evaluated under the rules explained in 5 CFR part 1650.

(5) Before the transfer can be accomplished, any outstanding loans from the account to be transferred must be closed as described in 5 CFR part 1655.

§ 1604.6 Error correction.

(a) *General rule.* A service member's employing agency must correct the service member's account if, as the result of employing agency error, a service member does not receive the TSP contributions to which he or she is entitled. Except as provided in paragraph (b) of this section, those corrections must be made in accordance with 5 CFR part 1605.

(b) *Missed bonus contributions.* This paragraph (b) applies when an employing agency fails to implement a contribution election that was properly submitted by a service member requesting that a TSP contribution be deducted from bonus pay. Within 30 days of receiving the employing agency's acknowledgment of the error, a service member may establish a schedule of makeup contributions with his or her employing agency to replace the missed contribution through future payroll deductions. These makeup contributions can be made in addition to any TSP contributions that the service member is otherwise entitled to make.

(1) The schedule of makeup contributions may not exceed four times the number of months it would take for the service member to earn basic pay equal to the dollar amount of the missed contribution. For example, a service member who earns $29,000 yearly in basic pay and who missed a $2,500 bonus contribution to the TSP can establish a schedule of makeup contributions with a maximum duration of 8 months. This is because it takes the service member 2 months to earn $2,500 in basic pay (at $2,416.67 per month).

(2) At its discretion, an employing agency may set a ceiling on the length of a schedule of employee makeup contributions. The ceiling may not, however, be less than twice the number of months it would take for the service member to earn basic pay equal to the dollar amount of the missed contribution.

§ 1604.7 Withdrawals.

A service member may withdraw all or a portion of his or her account under the rules in 5 CFR part 1650, with the following exceptions:

(a) *Separate accounts.* If the TSP maintains a service member account and a civilian account for an individual, a separate withdrawal request must be made for each account.

(b) *Spousal rights.* The spouse of a service member participant has the same TSP spousal rights as the spouse of a civilian participant covered under the Federal Employees' Retirement System; those spousal rights in the context of a withdrawal (and the process by which a service member may obtain an exception to them) are explained at 5 CFR part 1650.

(c) *Combat zone contributions.* If a service member account contains combat zone contributions, the withdrawal will be distributed *pro rata* from all sources. If a participant requests the TSP to transfer all, or a portion, of a withdrawal to an Individual Retirement Account (IRA) or other eligible retirement plan, the *pro rata* share of the withdrawal attributable combat zone contributions (if any) cannot be transferred.

(d) *Separation.* The definition of separation from service at § 1604.2 applies when determining a service member's eligibility for a withdrawal.

§ 1604.8 Death benefits.

The account balance of a deceased service member will be paid as described at 5 CFR part 1651, with the following exceptions:

(a) *Separate accounts.* To designate a beneficiary for a TSP death benefit, a service member must file a valid beneficiary designation form. If the TSP maintains a service member account and a civilian account for an individual, a separate beneficiary designation form must be filed for each account.

(b) *Combat zone contributions.* If a service member account contains combat zone contributions, the death benefit payment will be made *pro rata* from all sources.

(c) *Trustee-to-trustee transfers.* The surviving spouse of a TSP participant can request the TSP to transfer a death benefit payment to an Individual Retirement Account (IRA); the *pro rata* share attributable to combat zone contributions (if any) cannot be transferred.

§ 1604.9 Court orders and legal processes.

A TSP account can be divided in an action for divorce, annulment, or legal separation, and is subject to legal process relating to child support, alimony, or child abuse. The TSP will make a payment from a service member's account under such orders or processes as described at 5 CFR part 1653, with the following exceptions:

(a) *Separate accounts.* To qualify for enforcement against the TSP, a court order or legal process must expressly relate to the TSP. Therefore, if the TSP maintains a service member account and a civilian account for an individual, a qualifying court order or legal process must expressly state from which account payment is to be made.

(b) *Combat zone contributions.* If a service member account contains combat zone contributions, the payment will be made *pro rata* from all sources.

(c) *Trustee-to-trustee transfers.* The current or former spouse of a TSP participant can request the TSP to transfer a court-ordered payment to an Individual Retirement Account (IRA) or other eligible retirement plan; the *pro rata* share attributable to combat zone contributions (if any) cannot be transferred.

(d) *Transfer to a TSP account.* If the TSP maintains an account for a court order payee who is the current or former spouse of the participant, the payee can request the TSP to transfer the court-ordered payment to the payee's TSP account; the *pro rata* share attributable to combat zone contributions (if any) cannot be transferred.

§ 1604.10 Loans.

A service member may be eligible for a TSP loan as described at 5 CFR part 1655, with the following exceptions:

(a) *Separate accounts.* If the TSP maintains a service member account and a civilian account for an individual:

(1) A separate loan application must be made for each account;

(2) A participant may have no more than two loans outstanding from each account at any time; one loan from each account may be a loan for the purchase of a primary residence;

(3) The Internal Revenue Code maximum loan amount test, which is described in 5 CFR part 1655, will be applied using the combined balances in both TSP accounts; and

(4) Separate TSP loan statements will be issued for each account.

(b) *Spousal rights.* Before a loan agreement is approved for a service member account, the participant's spouse must consent to the loan by signing the loan agreement. A request for an exception to the spousal consent requirement will be evaluated under the rules explained in 5 CFR part 1650.

(c) *Combat zone contributions.* If a service member account contains combat zone contributions, the loan will be distributed *pro rata* from all sources; loan repayments will be credited on a similar *pro rata* basis. If a loan is declared a taxable distribution, the *pro rata* share of the loan attributable to combat zone contributions (if any) will not be reported as taxable income to the participant.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 01–10698 Filed 4–30–01; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–72–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2; A300 B4; A300 B4–600, B4–600R, and F4–600R (Collectively Called A300–600); A310; A319; A320; A321; A330; and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300 B2; A300 B4; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600); A310; A319; A320; A321; A330; and A340 series airplanes. This proposal would require replacement of Labinal actuators in certain powered cockpit seats by new improved actuators. This action is necessary to prevent uncommanded horizontal movement of the cockpit seats or loss of ability to lock the seats in place during flight, which could limit the ability of the crew to perform necessary tasks, leading to reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 31, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–72–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–72–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from SOGERMA Z.I. de l'arsenal, BP. 109–17303 Rochefort Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056, telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–72–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket Number 2001–NM–72–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Airbus Model A300 B2; A300 B4; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600); A310; A319; A320; A321; A330; and A340 series airplanes, equipped with certain powered cockpit seats manufactured by SOGERMA. The DGAC advises that there have been incidents of uncommanded horizontal movement of the seats during flight. Investigation indicated that these incidents were due to broken Labinal actuators for the electric brake on the seats. This condition, if not corrected, could result in uncommanded movement of the cockpit seats or loss of ability to lock the seats into place during flight, which could limit the ability of the crew to perform necessary tasks, leading to reduced controllability of the airplane.

Explanation of Relevant Service Information

SOGERMA has issued Service Bulletin SB TAAI2–25–402, Revision 1, dated December 21, 2000, which describes procedures for replacement of the Labinal actuators in the cockpit seats with new improved actuators. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 2000–524(B), dated December 27, 2000, in order to

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assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 548 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required parts would be provided at no cost to the operator. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $131,520, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figure discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 2001–NM–72–AD.

Applicability: Model A300 B2; A300 B4; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600); A310; A319; A320; A321; A330; and A340 series airplanes; certificated in any category; equipped with powered cockpit seats manufactured by SOGERMA and having the serial numbers listed in SOGERMA Service Bulletin SB TAAI2–25–402, Revision 1, dated December 21, 2000.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded horizontal movement of the cockpit seats or loss of ability to lock the seats into place during flight, which could limit the ability of the crew to perform necessary tasks, leading to reduced controllability of the airplane, accomplish the following:

Replacement

(a) Within 6 months after the effective date of this AD: Remove Labinal actuators having part number (P/N) 4136290003 and replace them with Labinal actuators having P/N 4136290004 or 4136290005 or AVIAC actuators having P/N 6147–6, in accordance with SOGERMA Service Bulletin SB TAAI2–25–402, Revision 1, dated December 21, 2000.

Spares

(b) As of the effective date of this AD, no person shall install a powered cockpit seat which has a Labinal actuator having P/N 4136290003 on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 2000–524(B), dated December 27, 2000.

Issued in Renton, Washington, on April 24, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–10724 Filed 4–30–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–380–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42–200, –300, –320, –500, and ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Aerospatiale Model ATR42–200, –300, –320, –500, and ATR72 series airplanes. This proposal would require a revision of the Airplane Flight Manual to add instructions that prohibit the flightcrew from selecting the reverse position on the engines in the event of propeller thrust dissymmetry. This action is necessary to ensure that the flightcrew is advised of the hazard associated with selecting reverse thrust during propeller thrust dissymmetry, which could result in reduced controllability of the airplane during landing. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 31, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–380–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–380–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–NM–380–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket 2000–NM–380–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Aerospatiale Model ATR42–200, –300, –320, –500, and ATR72 series airplanes. The DGAC advises of an incident in which a Model ATR42–320 series airplane swerved off the runway. At the time of the incident, the "low pitch" condition was not equally effective for both engines. The resulting propeller thrust dissymmetry, combined with the flightcrew's concurrent selection of reverse thrust, resulted in the reduced controllability of the airplane during landing.

The design of Model ATR42 and ATR72 series airplanes is similar, and these airplanes incorporate similar equipment including engines and propellers; therefore, these airplanes are subject to the identified unsafe condition.

FAA's Determination

In light of this information, the FAA finds that certain procedures should be amended in the FAA-approved airplane flight manual (AFM) for the affected airplanes prohibiting the flightcrew from selecting the reverse position on the engines in the event of propeller thrust dissymmetry. We have determined that the current AFMs for these airplanes do not adequately define such procedures.

The DGAC has mandated this AFM revision and issued French airworthiness directives 2000–436–080(B) and 2000–437–052(B), both dated October 18, 2000, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type-certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept us informed of the situation described above. We have examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination and Requirements of the Proposed AD

We have identified an unsafe condition that is likely to exist or develop on other products of this same type design. Therefore, we are proposing to adopt this AD, which

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would require revising the Normal Procedures section of the AFM.

Cost of Compliance

We estimate that this AD would affect 69 airplanes of U.S. registry. The proposed actions would take approximately 1 work hour per airplane, at an average labor rate of $60 per work hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $4,140, or $60 per airplane.

We base these cost estimates on assumptions that no operator has yet done any of the actions in this proposed AD, and that no operator would do those actions in the future unless this proposed AD is adopted. The cost figures discussed in AD rulemaking actions represent only the time necessary to do the specific actions required by the AD. These figures typically do not include incidental costs, such as the time required for access and close, or for planning or other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Docket 2000–NM–380–AD.

Applicability: All Model ATR42–200, –300, –320, –500, and ATR72 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flightcrew is advised of the hazard associated with selecting reverse thrust during propeller thrust dissymmetry, which could result in reduced controllability of the airplane during landing, accomplish the following:

Revision of Airplane Flight Manual (AFM)

(a) Within 5 days after the effective date of this AD, revise the Normal Procedures section of the FAA-approved AFM, under "APPROACH AND LANDING," to include the following. This may be accomplished by inserting a copy of this AD into the AFM.

"NORMAL LANDING

- After nose wheel touchdown

Both PL—GI
Both LO PITCH lights—Check illuminated

CAUTION: If a thrust dissymmetry occurs or if one LO PITCH light is not illuminated, the use of any reverse is not allowed."

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 2: French airworthiness directives 2000–436–080(B) and 2000–437–052(B), both dated October 18, 2000, also address the subject of this AD.

Issued in Renton, Washington, on April 24, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–10725 Filed 4–30–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–367–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737 series airplanes. This proposal would require initial and repetitive inspections of certain areas of the wing spars to detect cracking or corrosion; and follow-on corrective actions and repair, if necessary. This proposal is prompted by reports of cracks and corrosion in the upper chord of the front and rear spars of the wing and reports of cracks propagating from previously repaired areas. The actions specified in the proposed AD are intended to detect and correct such cracking or corrosion of the upper and lower chords of the wing spars, which could result in reduced structural integrity of the wing.

DATES: Comments must be received by June 15, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), ANM–114, Attention: Rules Docket No. 99–NM–367–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 99–NM–367–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Nenita Odesa, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2557; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–367–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–367–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received numerous reports of cracking and corrosion in the upper chord of both the front and rear spars of the wing. Cracks were reported by 18 operators in the upper and rear spar chord on 38 airplanes. In addition, 5 operators reported cracks propagating from repairs that were accomplished previously on 6 airplanes per Boeing Service Bulletin 737–57–1067, Revision 3, dated May 24, 1990, or earlier revisions. Findings indicate that 2 of those cracks were found in the front spar upper chord, and 4 cracks in the rear spar upper chord. Corrosion also was found in the external surfaces of the upper and lower chords of the front and rear spars on 64 airplanes. Such cracking and corrosion, if not corrected, could result in reduced structural integrity of the wing.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 737–57–1067, Revision 4, dated November 7, 1991. Revision 4 adds initial and repetitive inspections for airplanes on which a previous repair to the upper chord of the front or rear spar was made per Revision 3, or earlier revisions, of the service bulletin. Revision 4 includes the following procedures:

- An initial (detailed) visual inspection for cracks of the external surfaces of the upper and lower chords of the front spar outboard of the engine nacelle, upper and lower chords of the rear spar, and the lower chord of the front spar inboard of the engine nacelle.
- An initial eddy current inspection for cracks of the external surfaces of the vertical legs of the upper chords of the front and rear spars.
- Repetitive close (detailed) visual inspections for cracks and corrosion of the external surfaces of the upper and lower chords of the front and rear spars.
- Repetitive eddy current inspections for cracks of the external surfaces of the vertical legs of the upper chords of the front and rear spars.
- Follow-on corrective actions that include cleaning the exposed front and rear spar cavities, removing corrosion by blending out the damaged surface areas, and applying a corrosion-inhibiting compound to the accessible areas of the upper and lower chords of the front and rear spars.
- Crack and corrosion repair that includes removing corrosion; inspecting the rework area for cracks, and repairing any cracks found in the specific chord surfaces of the front and rear spars, which includes installing a nesting angle if necessary and refinishing the blend out area; and applying a corrosion-inhibiting compound.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that this proposed AD differs from the service bulletin in that it would NOT allow the following actions:

1. Repair of certain damage (that exceeds the limits specified in the service bulletin) to be accomplished by contacting Boeing for repair instructions; rather, it would require that such repairs be accomplished per a method approved by the FAA.

2. Flight with a horizontal crack in the upper chords of the front or rear spars; rather, it would require repair per a method approved by the FAA.

3. "Close visual inspections"; rather, it would require "detailed visual inspections." A note has been added following paragraph (a) of this proposed AD to clarify this.

Operators also should note that Part II of the service bulletin does not include repair procedures if a horizontal crack is found in the upper chords of the front or rear spars. However, paragraph (d)(3) of this proposed AD requires repair of such cracking per a method approved by the FAA, as cited in paragraph (f) of this AD.

Operators also should note that the service bulletin specifies initial detailed visual and eddy current inspections "upon the accumulation of 20 years airframe age or within 1 year after receipt of Revision 3 of the service bulletin." However, since all airplanes in the applicability of this AD are over 20 years old, the FAA has determined that it is unnecessary to include the specification for the airframe age in this proposed AD.

Clarification of Action Required for Previous Repair

The Accomplishment Instructions of the previously referenced service bulletin do not specifically include procedures for repetitive eddy current inspections for airplanes on which a previous repair to the upper chord of the front or rear spar was made per Boeing Service Bulletin 737–57–1067, Revision 3, or earlier revisions. However, such action is specified in the service bulletin in an "Action" paragraph of the Summary, and in paragraph C., "Description." Paragraphs (d)(3), (d)(4)(ii), and (e) of this AD specify repair per a method approved by the FAA, which is cited in paragraph (f) of this AD.

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Cost Impact

There are approximately 168 Boeing Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 45 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 30 work hours per airplane to do the initial detailed visual and eddy current inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the initial inspections on U.S. operators is estimated to be $81,000, or $1,800 per airplane.

The FAA estimates that it would take approximately 30 work hours per airplane to do the repetitive inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $81,000, or $1,800 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would do those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 99–NM–367–AD.

Applicability: Model 737 series airplanes, line numbers 1 through 310 inclusive, and 323; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance per paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking or corrosion of the upper and lower chords of the front and rear spars of the wing, which could result in reduced structural integrity of the wing, do the following:

Initial Detailed Visual and Eddy Current Inspections (Part I)

(a) Within 12 months after the effective date of this AD: Do an initial detailed visual inspection to detect cracking or corrosion of the upper and lower chords of the front and rear spars, and an eddy current inspection to detect cracking of the vertical legs of the upper chords of the front and rear spars, per Part I of the Accomplishment Instructions of Boeing Service Bulletin 737–57–1067, Revision 4, dated November 7, 1991. Before further flight following the inspections, do the follow-on corrective actions required by paragraph (d) of this AD.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate by the inspector. Inspection aids such as mirrors, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

Repetitive Detailed Visual and Eddy Current Inspections (Part II)

(b) Repeat the initial detailed visual inspection required by paragraph (a) of this AD at intervals not to exceed 12 months per Part II of the Accomplishment Instructions of Boeing Service Bulletin 737–57–1067, Revision 4, dated November 7, 1991. Before further flight following the inspection, do the follow-on corrective actions required by paragraph (d) of this AD.

(c) Repeat the initial eddy current inspection required by paragraph (a) of this AD at intervals not to exceed 48 months per Part II of the Accomplishment Instructions of Boeing Service Bulletin 737–57–1067, Revision 4, dated November 7, 1991. Before further flight following the inspection, do the follow-on corrective actions required by paragraph (d) of this AD.

Follow-on Corrective Actions (Parts I, II, and III)

(d) Do the follow-on corrective actions (including cleaning spar cavities, removing corrosion, and applying corrosion-inhibiting compound) required by paragraphs (d)(1), (d)(2), (d)(3), and (d)(4) of this AD, as applicable.

(1) If no cracking or corrosion is found, apply a corrosion-inhibiting compound to the accessible areas of the upper and lower chords of both the front and rear spars per Part I or Part II of the Accomplishment Instructions of Boeing Service Bulletin 737–57–1067, Revision 4, dated November 7, 1991, as applicable.

(2) If any corrosion is found, repair per Part III of the Accomplishment Instructions of Boeing Service Bulletin 737–57–1067, Revision 4, dated November 7, 1991.

(3) If a horizontal crack is found in the upper chords of the front or rear spars, repair per paragraph (f) of this AD.

(4) If any cracking is found other than that identified in paragraph (d)(3) of this AD, repair per paragraph (d)(4)(i) or (d)(4)(ii) of this AD, as applicable.

(i) If damage of the chords of the front or rear spar is within the limits specified in the service bulletin, before further flight, repair per Part III of the Accomplishment Instructions of Boeing Service Bulletin 737–57–1067, Revision 4, dated November 7, 1991.

(ii) If damage of the chords of the front or rear spar exceeds the limits specified in the service bulletin, before further flight, repair per paragraph (f) of this AD.

Initial and Repetitive Eddy Current Inspections of Previous Repairs

(e) For airplanes on which a previous repair to the upper chord of the front or rear spar was made per Boeing Service Bulletin 737–57–1067, Revision 3, dated May 24, 1990, or earlier revisions: Within 12 months after the effective date of this AD, do an eddy current inspection of the repair area to detect cracking per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Repeat this inspection thereafter at intervals not to exceed 12 months. If any discrepancy is found, before further flight, repair per paragraph (f) of this AD. For a repair method to be approved by the Manager, SACO, as required by this paragraph, the approval letter must specifically reference this AD.

Repair

(f) Repair (including removing corrosion; inspecting the rework area for cracks; refinishing the blend-out area; installing a nesting angle repair; and applying chemical film treatment, primer, sealant, and corrosion-inhibiting compound) any discrepancy specified in paragraphs (d)(3), (d)(4)(ii), and (e) of this AD, per a method approved by the Manager, Seattle ACO; or per data meeting the type certification basis of the airplane approved by a Boeing Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

(h) Special flight permits may be issued per §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on April 24, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–10729 Filed 4–30–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–211–AD]

RIN 2120–AA64

Airworthiness Directives; BAe Systems (Operations) Limited Model Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain BAe Systems (Operations) Limited Model Avro 146–RJ series airplanes. This proposal would require modification of the passenger service units. This action is necessary to prevent failure of the passenger service units to deliver oxygen to the passengers in the event of decompression of the airplane, which could result in injury to the passengers. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 31, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–211–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–211–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–NM–211–AD." The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket 2000–NM–211–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for, notified the FAA that an unsafe condition may exist on certain BAe Systems (Operations) Limited Model Avro 146–RJ series airplanes. The CAA advises that the current design of the support lanyards on the passenger service units (PSUs) could restrict operation of the oxygen generator drop-down lids. Failure of the PSUs to deliver oxygen to the passengers in the event of decompression of the airplane could result in injury to the passengers.

Relevant Service Information

The manufacturer has issued BAe Systems (Operations) Limited Service Bulletin SB.25–418–36215A, dated

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April 5, 2000; and Revision 1, dated October 17, 2000. The service bulletin describes procedures for modifying the PSUs. The modification involves relocating the lanyard from the third attachment lug (next to the speaker installation) to the end attachment lug on the PSUs. These actions are intended to adequately address the unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 004–04–2000 to ensure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that this AD would affect 40 airplanes of U.S. registry. The proposed actions would take approximately 5 work hours per airplane, at an average labor rate of $60 per work hour. Required parts would be provided at no cost to the operators. Based on these figures, the FAA estimates the cost of the proposed AD on U.S. operators to be $12,000, or $300 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket 2000–NM–211–AD.

Applicability: Model Avro 146–RJ series airplanes, certificated in any category, as listed in BAe Systems (Operations) Limited Service Bulletin SB.25–418–36215A, Revision 1, dated October 17, 2000.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the passenger service units (PSUs) to deliver oxygen to the passengers in the event of decompression of the airplane, which could result in injury to the passengers, accomplish the following:

Modification

(a) Within 90 days after the effective date of this AD, modify the PSUs by relocating the lanyard, in accordance with BAe Systems (Operations) Limited Service Bulletin SB.25–418–36215A, dated April 5, 2000; or Revision 1, dated October 17, 2000.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in British airworthiness directive 004–04–2000.

Issued in Renton, Washington, on April 24, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–10728 Filed 4–30–01; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 24, 101

RIN 1515–AC63

User and Navigation Fees; Other Reimbursement Charges

AGENCY: Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations regarding the proper assessment of user and navigation fees, as well as other reimbursement charges for Customs services performed in connection with, among other things, the processing of vehicles, vessels, aircraft and merchandise arriving in the United States. It is believed that the proposed amendments would conform the regulations with the intent of the Customs user fee statute. The proposed amendments also reflect existing operational policy and administrative practice in this area.

DATES: Comments must be received on or before July 2, 2001.

ADDRESSES: Written comments may be addressed to and inspected at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT
Kimberly Nott, Office of Field Operations, 202–927–1364.

SUPPLEMENTARY INFORMATION:

Background

The Customs user fee statute, codified at 19 U.S.C. 58c, authorizes a schedule of fees that are chargeable to users of various services provided by Customs in connection with the activities that are listed in section 58c(a). Under the user fee statute, in pertinent part, a fee is charged to reimburse the Government for Customs services that are provided, among other things, for processing certain vehicles, vessels, aircraft and merchandise that arrive in the United States. In particular, a user fee is charged for Customs services that are provided in connection with the arrival of a commercial vessel of 100 net tons or more (19 U.S.C. 58c(a)(1)), and in connection with the arrival of a private vessel or private aircraft (19 U.S.C. 58c(a)(4)).

Definition of Arrival for Purposes of the User Fee Statute

For purposes of the applicability of a user fee for providing Customs services in connection with the arrival of a vessel or aircraft as described above, the statute generally defines the term arrival" as being an arrival that occurs within a port of entry in the Customs territory of the United States (19 U.S.C. 58c(c)(2)). Each Customs port of entry has specific geographical limits that are defined by regulation (19 CFR 101.3(b)).

Section 58c is implemented by § 24.22, Customs Regulations (19 CFR 24.22). Section 24.22(a)(2), however, defines the term arrival" as being an arrival within a Customs port of entry or any place serviced by any such port. Customs has concluded that this definition of arrival is overbroad and conflicts with a more suitable definition of arrival in section 58c, which, on its face, clearly does not mean to require the assessment of a user fee at every location serviced by Customs.

Accordingly, Customs proposes to amend § 24.22(a)(2) to define an arrival as occurring at any place within the limits of a Customs port of entry or at a designated Customs station. A Customs station is any place other than a port of entry where Customs officers or employees are lawfully stationed to enter and clear vessels, accept entries of merchandise, collect duties, and enforce the various provisions of the Customs and navigation laws of the United States (19 CFR 101.1). However, under the proposed amendment, for purposes of the applicability of user fees in accordance with 19 U.S.C. 58c(c)(2), a Customs station would essentially be considered as the functional equivalent of a Customs port of entry. The definition of "Customs station" in § 101.1, Customs Regulations (19 CFR 101.1) would be amended to conform with this.

A list of places that have been designated as Customs stations appears in § 101.4(c), Customs Regulations (19 CFR 101.4(c)); also, Customs stations may be temporarily designated as such by the port director as provided in § 101.4(d), Customs Regulations (19 CFR 101.4(d)).

Customs believes that the definition of arrival in proposed § 24.22(a)(2) would conform with the intent of the user fee statute. Moreover, it reflects existing Customs operational policy and administrative practice in this area. Further, the definition would simplify the collection of user fees by listing the specific locations where only these fees are applicable and must be assessed for Customs services.

In this latter respect, where user fees are assessed under section 58c, the law is quite clear that no charges other than user fees may be collected to reimburse the Government for any cargo inspection, clearance, or other Customs activity, expense or service performed (even on an overtime basis); or for any Customs personnel provided in connection with the arrival or departure of a commercial vessel, or its passengers, crew, stores, material, or cargo, for the United States (19 U.S.C. 58c(e)(6)(A)(i) and (ii)).

User Fees, Navigation Fees, Other Reimbursement Charges; Arrival of Commercial Vessel

In cases where Customs user fees do not apply, the cost of Customs services is reimbursable to the Government under the circumstances and to the extent otherwise specifically authorized in the law. The specific circumstances where the cost of Customs services would be otherwise reimbursable to the Government are described in § 24.17, Customs Regulations (19 CFR 24.17). Furthermore, certain navigation fees for vessels, as listed in § 4.98, Customs Regulations (19 CFR 4.98), may be assessed as well, to the extent they are also applicable (19 CFR 24.21(b)(1)).

The services listed in § 4.98(a)(1) for which a navigation fee is applicable relate to the arrival of any vessel. However, § 4.98(a) would conflict with proposed § 24.22(a)(2), and with the user fee statute, insofar as it also requires the collection of a navigation fee for Customs services that are provided in connection with the arrival of a commercial vessel of 100 net tons or more or any private vessel in a Customs port of entry or a designated Customs station where, as already mentioned, a user fee would apply (19 U.S.C. 58c(a)(1)). The user fee would of course include Customs services as enumerated in § 4.98(a)(1). Accordingly, it is proposed to amend the introductory text of paragraph (a)(1) in § 4.98 to exclude the assessment of navigation fees on commercial vessels of 100 net tons or more and on any private vessels that arrive within a Customs port of entry or a designated Customs station, where user fees would apply to these vessels.

In addition, § 24.17(a)(4), Customs Regulations (19 CFR 24.17(a)(4)), currently requires that the owner, master, or agent of a vessel sought to be entered must reimburse the Government for the salary and expenses of any Customs officer or employee stationed at or sent to a designated Customs station or any other place that is not a port of entry for services rendered in connection with the entry or clearance of the vessel.

As such, § 24.17(a)(4) would also be in conflict with the definition of arrival in proposed § 24.22(a)(2), and with the

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user fee statute, to the extent that it requires reimbursement other than user fees at a designated Customs station. Accordingly, it is proposed to revise § 24.17(a)(4) to require reimbursement for services afforded by Customs at any place that is not a port of entry or a designated Customs station. For the same reason, §§ 24.17(a)(5) and 101.4(b)(3) would be similarly revised.

User Fees, Other Reimbursement Charges; Arrival of Private Vessel or Private Aircraft

Section 58c(a)(4), as noted, provides for an annual user fee to cover Customs services that must be furnished in processing the arrival of a private vessel or private aircraft. Section 24.22(e)(1), which implements this provision, requires, however, that, notwithstanding payment of the user fee under section 58c, all overtime charges provided for Customs services remain payable as well. Again, as previously discussed, the user fee statute precludes the assessment of other charges, including charges for overtime services, where user fees are applicable (19 U.S.C. 58c(e)(6)(A)(i)). Accordingly, it is proposed to amend § 24.22(e)(1) by removing the provision allowing for the collection of overtime charges.

Comments

Before adopting this proposal as a final rule, consideration will be given to any written comments that are timely submitted to Customs. Customs specifically requests comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC.

Regulatory Flexibility Act and Executive Order 12866

The proposed amendments are intended to conform with statutory law, reflect existing Customs operational policy and administrative practice, and simplify the collection of user fees by listing the specific locations where only these fees are applicable and must be assessed for Customs services. Accordingly, it is certified, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that, if adopted, the proposed rule will not have a significant economic impact on a substantial number of small entities. Nor do the proposed amendments meet the criteria for a "significant regulatory action" under E.O. 12866.

List of Subjects

19 CFR Part 4

Arrival, Cargo vessels, Common carriers, Customs duties and inspection, Entry, Fees, Fishing vessels, Freight, Harbors, Imports, Landing, Maritime carriers, Merchandise, Passenger vessels, Reporting and recordkeeping requirements, Shipping, Vessels.

19 CFR Part 24

Customs duties and inspection, Fees, Harbors, Reporting and recordkeeping requirements, User fees.

19 CFR Part 101

Customs duties and inspection, Customs ports of entry, Harbors, Reporting and recordkeeping requirements, User fees.

Proposed Amendments to the Regulations

It is proposed that parts 4, 24, and 101, Customs Regulations (19 CFR parts 4, 24, and 101) be amended as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 would continue to read as follows, and the specific authority citation for § 4.98 would be revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91;
* * * * *

Section 4.98 also issued under 19 U.S.C. 58a;
* * * * *

2. It is proposed to amend § 4.98 by revising the introductory text of paragraph (a)(1) to read as follows:

§ 4.98 Navigation fees.

(a)(1) The Customs Service will publish a General Notice in the **Federal Register** and Customs Bulletin periodically, setting forth a revised schedule of navigation fees for the following services provided to commercial vessels of 100 net tons or more and any private vessels that arrive at a place other than a Customs port of entry or a designated Customs station and to commercial vessels of less than 100 net tons that arrive anywhere in the United States, including a Customs port of entry or a designated Customs station:
* * * * *

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general and relevant specific authority citations for part 24 would continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1505, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701.
* * * * *

Section 24.17 also issued under 19 U.S.C. 261, 267, 1450, 1451, 1452, 1456, 1524, 1557, 1562; 46 U.S.C. 2110, 2111, 2112 ;
* * * * *

2. It is proposed to amend § 24.17 by revising the first sentence of paragraph (a)(4) and by revising paragraph (a)(5) to read as follows:

§ 24.17 Reimbursable services of Customs employees.

(a) * * *

(4) When a Customs employee is assigned pursuant to § 101.4 of this chapter to a place which is not a port of entry or a designated Customs station for service in connection with the entry or clearance of a vessel, the owner, master, or agent of the vessel will be charged the full compensation and authorized travel and subsistence expenses of such employee from the time he leaves his official station until he returns. * * *

(5) When a Customs employee is assigned under the authority of section 447, Tariff Act of 1930, to make entry of a vessel at a place other than a port of entry or designated Customs station or to supervise the unlading of cargo, the private interest will be charged the full compensation and authorized travel and subsistence expenses of such employee from the time he leaves his official station until he returns.
* * * * *

3. It is proposed to amend § 24.22 by revising paragraph (a)(2) to read as set forth below; and by removing the last sentence of paragraph (e)(1):

§ 24.22 Fees for certain services.

(a) *Definitions.* * * *
* * * * *

(2) The term *arrival* means arrival at any place within the limits of a port of entry in the Customs territory of the United States, at any designated Customs station as listed in § 101.4(c) of this chapter, or at any temporary Customs station designated by the port director under § 101.4(d) of this chapter.
* * * * *

PART 101—GENERAL PROVISIONS

1. The general and relevant specific sectional authority citations for part 101 would continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

Sections 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;
* * * * *

2. It is proposed to amend § 101.1 by revising the definition for "Customs station" to read as follows:

§ 101.1 Definitions.
* * * * *

Customs station. Other than for purposes of assessing user fees under 19 U.S.C. 58c where a "Customs station" is the functional equivalent of a port of entry, a "Customs station" is any place, other than a port of entry, at which Customs officers or employees are stationed, under the authority contained in article IX of the President's Message of March 3, 1913 (T.D. 33249), to enter and clear vessels, accept entries of merchandise, collect duties, and enforce the various provisions of the Customs and navigation laws of the United States.
* * * * *

3. It is proposed to amend § 101.4 by revising the section heading, paragraph (b), introductory text, and paragraph (b)(3) to read as follows:

§ 101.4 Entry and clearance of vessels at Customs stations and places other than a port of entry.
* * * * *

(b) *Authorization to enter.* Authorization to enter or be cleared at a Customs station, or any other place that is not a port of entry, will be granted by the director of the port under whose jurisdiction the station or place falls provided the port director is notified in advance of the arrival of the vessel concerned and the following conditions are met:
* * * * *

(3) The owner, master, or agent of a vessel sought to be entered at a place other than a port of entry or designated Customs station reimburses the Government for the salary and expenses of the Customs officer or employee stationed at or sent to such other place which is not a port of entry or a designated Customs station for services rendered in connection with the entry or clearance of the vessel, and
* * * * *

Raymond W. Kelly,
Commissioner of Customs.
Approved: October 26, 2000.
John P. Simpson,
Deputy Assistant Secretary of the Treasury.
[FR Doc. 01–10718 Filed 4–30–01; 8:45 am]
BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 916]

RIN 1512–AA07

Proposed Rockpile Viticultural Area (2000R–436P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition proposing the establishment of a viticultural area located in northwest Sonoma County, California. The proposed Rockpile viticultural area would consist of approximately 14,000 acres of land which the petitioner states is at or above the 800′ elevation, includes areas of small rock and gravel mixed in the topsoil, some with outcroppings of larger rock, and growing conditions favorable for commercial wine grapes.

DATES: Written comments must be received by July 2, 2001.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 916). Copies of the petition, the proposed regulations, the appropriate maps, and any written comments received will be available for public inspection during normal business hours at the ATF Reading Room, Office of Public Affairs and Disclosure, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226. Submit e-mail comments to: nprm@atfhq.atf.treas.gov. E-mail comments must contain your name, mailing address, and e-mail address. They must also reference this notice number and be legible when printed on not more than three pages 8½″ x 11″ in size. We will treat e-mail as originals and we will not acknowledge receipt of e-mail. See Public Participation section of this notice for alternative means of commenting.

FOR FURTHER INFORMATION CONTACT: N.A. Sutton, Specialist, Regulations Division (San Francisco, CA), Bureau of Alcohol, Tobacco and Firearms, 221 Main Street, 11th Floor, San Francisco, CA (415) 744–7011.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new Part 9 to 27 CFR, for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

27 CFR 4.25(e)(1) defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features, the boundaries of which have been delineated in Subpart C of Part 9.

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Petition

The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition proposing a new viticultural area to be

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called Rockpile. The proposed viticultural area is located in northwest Sonoma County, California, and encompasses approximately 14,000 acres, of which 148 acres are planted to vineyards. This proposed area overlaps approximately 2,500 acres with the approved Dry Creek Valley viticultural area.

Evidence That the Name of the Area Is Locally or Nationally Known

Initial reference to the Rockpile name dates to 1858 (*The Sonoma Democrat* newspaper, Santa Rosa, CA, 10/28/1882), and is based on cattle-raising at this "Rock Pile Ranch" location. According to the petitioner, in 1911 an investment partnership purchased about 21,000 acres of property in this area, naming it *La Roca Monte Rancho*, Spanish for the Rocky Peak. The property soon became known by its English name of *Rockpile Ranch*.

The Rockpile local name usage is noted on the current USGS Warm Springs Dam, Cloverdale and Big Foot Mountain Quadrangle maps, all parts of the petition. The most recent AAA Mendocino and Sonoma Coast Region map shows Rockpile Road within the proposed viticultural area.

Historical or Current Evidence That the Boundaries of the Viticultural Area Are as Specified in the Petition

The boundaries are based on historical name usage and the combination of geographical features, predominantly elevation and rocky terrain.

The historical name usage, according to the petitioner and as researched by historian Cathy Park, stems from a 1911 investment partnership that purchased land in the petitioned area. Acquisitions included the existing Rockpile Ranch, Rockpile Peak and surrounding areas. To manage this vast sheep-raising and hunting property, the area was eventually divided into Rockpile #1, Rockpile #2 and Rockpile #3 ranches. During the Depression much of the property was sold, but 18,000 acres of the Rockpile Ranch #3 area was preserved as a working sheep ranch. By the 1930's the area became locally known as Rockpile, and the winding road to the ranch headquarters was named Rockpile Road. USGS and AAA maps identify the area and road as Rockpile.

The predominant geographic highlight is the 800′ and above elevation of the entire petitioned area. This feature makes it higher than other grape-growing areas in the immediate proximity.

Evidence Relating to the Geographical Features (Climate, Soil, Elevation, Physical Features, etc.) Which Distinguish Viticultural Features of the Proposed Area From Surrounding Areas

The petitioner has defined the proposed viticultural area based on a geographic combination of elevation, terrain and climate.

The elevation of the Rockpile area, as shown on the USGS maps, spans from 800′ to approximately 1900′. According to the petition, the east and north side boundaries are delineated by the 800′ elevation, while the south and west boundaries average close to 1,800′ in elevation. Currently, vineyards are established from 800′ to 1,800′ elevations, with approximately 95% of the planted area above the 1,000′ elevation. This higher elevation provides different climatic influences.

Spring daytime temperatures in the proposed area run five to ten degrees cooler than the Healdsburg area, approximately ten miles southeast, according to the petition. In the absence of a marine inversion layer, or fog, the temperature decreases about six degrees Fahrenheit for additional 1,000 feet of elevation. The cool prevailing northwesterly spring breezes, which are not as prevalent at the lower elevations of the protected valley floors, increase the cooling effect. According to the petition, the viticultural effect of this cooling creates a delayed bud break and slower growth, resulting in delayed bloom and fruit set.

Summer weather in the Rockpile area, according to the petition, is slightly warmer than the area valleys due to less fog and more clear weather, resulting in increased sunshine and warmer temperatures. On days when the marine inversion is shallower than 1,000 feet, Rockpile is above the fog.

Fall night temperatures, as stated in the petition, can be warmer than in the surrounding areas, with less fog at 800′ and above than at lower elevations. The crucial grape ripening period of September and early October is generally warmer and drier in the Rockpile locality than in surrounding viticultural areas.

The soils, according to the petition, differ from neighboring valley viticultural areas by the relative absence of silt and sand, the higher oxidized iron properties (red color), and the clay subsoil. The topsoil, generally loam to clay loam with a red to brown color, is twelve to twenty-four inches in depth in the better viticultural locations. There are areas of small rock and gravel mixed in the topsoil, some with outcroppings of larger rock. The topsoil depth, and amounts of clay, rock and organic matter vary within the area. The topsoil is acid to very acid, and the subsoil is more clay-like in texture; however, areas of weathered shale and sandstone, in addition to the topography, contribute to well-drained vineyard conditions.

Proposed Boundaries

The proposed viticultural area is in northwest Sonoma County, California. The approved USGS maps for determining the boundary of the proposed Rockpile viticultural area are Warm Springs Dam Quadrangle, California—Sonoma Co., 7.5 Minute Series, edition of 1978; Cloverdale Quadrangle, California, 7.5 Minute Series, edition of 1975; Tombs Creek Quadrangle, California—Sonoma Co., 7.5 Minute Series, edition of 1978; and Big Foot Mountain Quadrangle, California, 7.5 Minute Series, edition of 1991.

The area is of an irregular east-to-west rectangular shape, with Rockpile Road running through its length. The eastern portion starts at the western edge of the Lake Sonoma Recreational Area and Warm Springs Dam, and runs in a west-northwesterly direction. The western portion of the petitioned area encompasses Rockpile Peak and Rockpile Ranch #3.

A portion of Rockpile's proposed eastside overlaps with the northwest corner of the Dry Creek Valley viticultural area. Approximately 2,500 acres, or 3% of the Dry Creek Valley viticultural area and 18% of the Rockpile area, is common territory. This overlapping area is flanked by the Dry Creek estuary to the north and Warm Springs Creek estuary to the south.

Public Participation—Written Comments

ATF requests comments from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given to comments received on or before the closing date.

ATF will not recognize any submitted material as confidential and comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Comments may be submitted by facsimile transmission to (202) 927-8602, provided the comments: (1) are legible; (2) are 8½″ x 11″ in size, (3) contain a written signature, and (4) are three pages or less in length. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of three pages will not be accepted. Receipt of FAX transmittals will not be acknowledged. Facsimile transmitted comments will be treated as originals.

Any person who desires an opportunity to comment orally at a public hearing on the proposed regulation should submit his or her request, in writing, to the Director within the 60-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

Regulatory Flexibility Act

It is hereby certified that this proposed regulation will not have a significant impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from that area.

No new requirements are proposed. Accordingly, a regulatory flexibility anlysis is not required.

Executive Order 12866

It has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

Drafting Information

The principal author of this document is N.A. Sutton, Regulations Division (San Francisco), Bureau of Alcohol, Tobacco, and Firearms.

List Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is proposed to be amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

Par 2. Subpart C is amended by adding Section 9.173 to read as follows:

§ 9.173 Rockpile.

(a) *Name.* The name of the viticultural area described in this section is "Rockpile."

(b) *Approved map.* The appropriate maps for determining the boundary of the Rockpile viticultural area are four 1:24,000 Scale USGS topography maps. They are titled:

(1) Warm Springs Dam Quadrangle, CA—Sonoma Co. 1978

(2) Cloverdale Quadrangle, CA 1975

(3) Tombs Creek Quadrangle, CA—Sonoma Co. 1978

(4) Big Foot Mountain Quadrangle, CA 1991

(c) *Boundary.* The proposed viticultural area is located in northwest Sonoma County, California. The boundary encircles the Rockpile Ranch area, located west of Lake Sonoma. The point of beginning is the intersection of Rockpile Road and the boundary line between Section 14 and 15, Township 10 N, Range 11 W (Warm Springs Dam Quadrangle);

(1) Then proceed north along the Sections 15 and 10 east boundary lines to the intersection of the 800′ contour line, Township 10N, Range 11W (Warm Springs Dam Quadrangle);

(2) Then proceed west along the 800′ contour line through Sections 10, 9, 4, 5, 32 and into Section 31, Townships 10 and 11 N, Range 11 W (Warm Springs Dam and Cloverdale Quadrangles);

(3) Then proceed west along the 800′ contour line in Section 31, following the line as it reverses to the east direction, Township 11 N, Range 11 W (Big Foot Mountain Quadrangle);

(4) Then proceed along the 800′ contour line east through Sections 31, 32 and 33, and northwest through Sections 33, 32, 29 and 30, Township 11 N, Range 11 W (Cloverdale Quadrangle);

(5) Then proceed west along the 800′ contour line through Sections 30, 25, 24, 23, 14, 15, 22, 21, 20 to the intersection with the east boundary line of Section 19, Township 11 N, Range 12 W (Big Foot Mountain Quadrangle);

(6) Then proceed south along the east boundary line of Sections 19, 30 and 31 to the intersection with the Township 11 N and 10 N boundary line, Township 11 N, Range 12 W (Big Foot Mountain Quadrangle);

(7) Then proceed east along the Township 10 and 11 N boundary line to the intersection with the Sections 2 and 1 boundary line, Township 10 and 11 N, Range 12 W (Big Foot Mountain Quadrangle);

(8) Then proceed south along the Section 1 west boundary line, turning east at the southwest corner of Section 1 and continuing east to Section 6, Township 10 N, Range 12 W (Big Foot Mountain and Tombs Creek Quadrangles);

(9) Then proceed east along the south boundary of Section 6 to the intersection with Section 8, Township 10 N, Range 11 W (Tombs Creek and Warm Springs Dam Quadrangles);

(10) Then proceed south along the west boundary of Section 8, turning east at its southwest corner and continuing east to the intersection with the 876′ market, Township 10 N, Range 11 W (Warm Springs Dam Quadrangle);

(11) Then proceed straight south in Section 16 to the intersection with the 800' contour line Township 10 N, Range 11 W (Warm Springs Dam Quadrangle);

(12) Then follow the 800′ contour line as it meanders west, southeast, southwest and east to its intersection with Section 14, and continues north along the west boundary line of Section 14, returning to the point of beginning at Rockpile Road and the Section 14 west boundary line, Township 10 N, Range 11 W (Warm Springs Dam Quadrangle).

Signed: April 13, 2001.

Bradley A. Buckles,

Director.

[FR Doc. 01-10811 Filed 4-30-01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 160

[USCG–2001–8659]

RIN 2115–AG06

Notification of Arrival: Addition of Charterer to Required Information

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend advance notification requirements in the Notice of Arrival regulations for vessels bound for ports or places in the United States. In addition to the information already required by these regulations, the proposed changes would require the owner, master, operator, agent, or person in charge of the vessel to identify the charterer(s) of their vessel. With the proposed addition of the charterer information in the notice, we will be able to better identify the charterers associated with substandard vessels.

DATES: Comments and related material must reach the Docket Management Facility on or before July 2, 2001. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before June 15, 2001.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2001–8659), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*.

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Project Manager CDR Mark Prescott, Coast Guard, telephone 202–267–0225. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting positive and negative comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–2001–8659), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES;** but please submit your positive or negative comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Coast Guard initiated the Port State Control Program (PSC) in April of 1994, because of concerns raised over the steady increase in the number of substandard non-U.S. flagged vessels visiting U.S. waters. The goal of the Program was to eliminate substandard vessels from U.S. waters. To meet this goal the Coast Guard developed a risk-based targeting matrix that evaluated a foreign vessel's Flag State, owner, operator, classification society, ship type, and its compliance history. The use of the matrix allowed limited Coast Guard resources to be directed to those vessels that posed the greatest risk to safety and the environment. The basis of the matrix is derived from information obtained as part of a vessel's notification of arrival required by 33 CFR part 160, subpart C. The targeting matrix is a tool the Captain of the Port (COTP) uses to assign a score to each arriving foreign vessel, and then prioritize vessel boardings based on the total number of points assigned to each vessel. Those vessels, representing the highest risk, are then targeted for boarding. If a vessel is determined to be substandard, it is detained until the deficiencies are corrected. Although the number of detentions of substandard vessels fell from 547 in 1997 to 193 in 2000, there are still too many of these vessels calling on U.S. ports.

Current factors, obtained from the notice of arrival and used in the PSC matrix, include the vessel's class society, flag state, owner and operator. The Coast Guard believes that the proposed addition of charterer, as a factor to consider in the Port State targeting scheme, would further improve our ability to identify vessels most likely to pose the highest risks.

A recent study sponsored by the Netherlands Ministry of Transport indicates that the expense of operating a substandard vessel is 14 percent less than the operating cost of a compliant vessel. We know that many companies chartering vessels to move their cargo go to great lengths to ensure that the vessels they charter are sound and pose minimal risks. In other cases, individuals or corporations select a vessel based solely on the cost of chartering the vessel, foregoing any examination of the vessel's condition or safety and casualty history. We feel these two scenarios demonstrate the value of collecting the arriving vessel's charterer as one more factor in the PSC control matrix.

For purposes of this rulemaking the Coast Guard considers the "charterer" to be the person or organization who contracts for the vessel or the majority of the carrying capacity of a vessel for the transportation of cargo to a stated port for a specified period. With the proposed addition of the charterer information in the notice, we will be able to better identify the charterers associated with substandard vessels. Vessels that are associated with targeted charterers will be assigned points, with the appropriate weighting, in the targeting matrix. This additional information will enable us to better prioritize inspections of vessels of greater risk.

Regulatory History

We published in the **Federal Register**, on August 18, 2000, a notice of request for comments entitled *Notification of Arrival: Addition of Charterer or Cargo Owner to Required Information* (65 FR 50481). You should refer to this notice for a comprehensive discussion of background information relating to this rulemaking. You can find this notice electronically through the Web Site for the Docket Management System at *http://dms.dot.gov* under docket number USCG–2000–7796.

Discussion of Comments

The Coast Guard received sixteen comment letters in response to the notice of request for comments published in the **Federal Register** on August 18, 2000. The notice outlined the Coast Guard's statutory authority for collecting specific information from vessels arriving at ports in the United States. It also asked thirteen questions relative to adding charterer and cargo owner information to that information already required to be reported in the notice of arrival under 33 CFR part 160, subpart C. Only five comment letters answered all of the questions asked within the notice. To concentrate on all of answers and comments addressing the specific questions asked in our notice, we have organized this discussion into sections. Each of the thirteen questions asked in the notice is designated as an independent section, and is identified within section headings. A general overview of the responses suggests that collection of charterer would be of value for the PSC matrix and entails minimal costs. The collection of cargo owner would be more difficult and less valuable, particularly in cases of containers or multiple cargo owners.

Question 1: What Role Do the Charterer and Cargo Owner Play in Ensuring Ships Are in Compliance With International Safety and Pollution Regulations? To What Extent Should They Be Held Accountable?

The vast majority of respondents to this question felt that the vessel owner is ultimately responsible for the condition of the vessel. Their opinion on the role played by the charterer and cargo owner in ensuring the quality of the vessel was split. Seven of the twelve respondents felt that the charterer shared in the responsibility and pointed out that, particularly among bulk liquid transporters, there was significant effort made by the charterer to select vessels with the best record of compliance. None of the respondents felt the charterer or cargo owner should be held accountable for ship selection. It was generally felt that the role of the cargo owner was more difficult to determine and in some cases there would be multiple cargo owners. Many of these responses support the Coast Guard belief that the charterer does have an influence on the quality of vessels carrying their product and therefore support our proposal to add charterer to the information required on the notice of arrival.

Question 2: Would Publication of a List of Charterers and Cargo Owners That Are Associated With Detentions Improve Compliance With International Safety Standards?

Eleven comments responded to this question. Seven of the comments indicate that publishing such a list would not improve compliance with international safety standards. Four respondents believe that publishing a list of charterers and cargo owners associated with detentions would or may have a measurable impact. One respondent states that enforcement of existing regulations would be more sensible than adding new regulations. The Coast Guard agrees that publication of the list of charterers associated with vessel detentions is not likely to significantly influence a charterer's practices. However, we believe this information will be useful in targeting vessels for PSC boarding and would distribute this information to our field units for that purpose.

Question 3: Should the Charterer and Cargo Owner Be Included in the Coast Guard's Port State Control targeting matrix? If So, Does the Type of Chartering Agreement Matter When a Decision Is Being Made To Determine Who Should Be Associated With a Detention?

Eleven comments responded to this question. Six of the respondents believe including the charterer and cargo owner in the targeting matrix holds merit, whereas five respondents disagreed or had reservations. There was one comment suggesting that including the port facility along with the charterer would be of value and another suggesting that the insurer should be included. One respondent that supported adding charterer and cargo owner to the PSC matrix mentioned that trying to collect and evaluate this information may prove to be unwieldy, particularly with the potential for many cargo owners for a single vessel. The Coast Guard agrees with the comments supporting inclusion of the charterer and cargo owner information in our targeting matrix and also with the comment concerning the difficulty in managing the cargo owner data. The Coast Guard believes that requiring the vessel to provide the cargo owner information in the notice of arrival will be an overall greater burden on industry than providing the charterer, with perhaps less value. Because of this, and the fact that it would be much more difficult for us to collect and evaluate the cargo owner, we do not propose to add cargo owner information to the notice of arrival requirement. One comment indicated that only after the Coast Guard had sufficient time to collect and analyze data on the role of the charterer in vessel detentions, would it be relevant to use charterer in its PSC matrix. We agree with this comment, and we will need to have charterer data for some time in order to assess the weight to assign in our boarding matrix and to be able to differentiate those charterers most likely to be associated with vessel detentions.

Question 4: What Is the Screening Process Used by Your Company Prior to Chartering a Vessel? How Is the Final Vessel Selection Made?

Question 5: What Factors Are Considered When You Select a Vessel for Charter?

Eight of the sixteen total responses to the docket addressed these questions. The same eight responders addressed question five and, because of the connection between the two questions, we will address them both here. All comments noted specific elements used in screening a vessel prior to chartering. The extent to which these elements are considered appears to vary from one company to another. Some companies rely on information from trade associations or data collection organizations, some have extensive in-house vetting processes or contract for such services. There appears to be variations between types of vessels being chartered, bulk liquid vs. dry bulk vs. container ships. Those elements considered included availability, cost, compliance with regulations, cargo carrying capacity, vessel suitability for the cargo, vessel stability, terms of contract, ownership, history of the vessel and the owner's fleet, inspection

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history, age, Flag State, class society and past knowledge or use of the vessel. The comments reinforce our belief that individuals and corporations vary considerably in the methodology and tools used in making a decision on which vessel to charter. They also vary greatly in philosophy regarding whether to rely on the owner to supply a properly certificated vessel, or whether they need to expend greater resources to ensure that the vessel meets all applicable international marine safety and environmental protection standards. We feel that where the emphasis is placed to a greater extent on cost in selecting a vessel for charter, there will be a higher likelihood that the vessel will be substandard. For this reason, we believe that targeting vessels that are chartered by companies frequently associated with substandard vessels for PSC examinations, will improve our ability to keep substandard ships out of U.S. waters. Therefore, we propose to collect charterer information from all vessels, and use this information to improve our foreign vessel targeting matrix.

Question 6: Do You Consider a Vessel's Safety or Casualty Record, Including Its Port State Control History in Your Decision Process?

Seven of the eight comments submitted to the docket in response to this question indicated that they use the vessel's safety or casualty record in the chartering decision process. The degree of importance placed on safety and casualty records varies but several felt it was very important. One respondent who felt it was important stressed the use of the Coast Guard's PSIX database and encouraged the frequent updating of that Port State Control Database. These responses further validate the charterer's role in the quality of vessels being chartered. The Coast Guard believes that the extent to which charterers are selective in their chartering decisions will be another factor that can be used in PSC boarding decisions.

Question 7: Does a Charterer or Cargo Owner Change During a Voyage? If Yes, What Are the Circumstances and in General How Often Does This Occur?

The responses to this question generally indicate that it is rare for either charterer or cargo owner to change during a voyage. It was more likely however, that the cargo owner would change and possibly more than once during a voyage. For reasons stated earlier, the Coast Guard is not proposing to collect information on the cargo owner, so such change would not affect the purpose of this regulatory change to the notice of arrival requirements. Regarding a change of charterer, we feel this is a much less frequent occurrence, and that providing the current charterer would not be a burden to the Master or vessel prior to arrival.

Question 8: In Those Instances Where the Charterer Changes During the Voyage or There Are Multiple Cargo Owners or Cargo Ownership Changes How Is Responsibility for Ensuring Compliance With International Maritime Safety and Pollution Prevention Standards Determined?

Five responses provided a specific answer to who is responsible for compliance with international safety and pollution standards under the circumstances mentioned in the question. Three of the responses emphasized that the vessel owner was responsible regardless of such changes. Two comments indicate that some vetting could still take place prior to a cargo owner or charterer change, and that they played some role. We appreciate the information provided within the responses to this question. At this point the relevancy of the question is marginal, because we are not proposing to collect cargo owner information, and a change to the charterer during a voyage is apparently a rare event.

Question 9: What Documentation Does the Vessel Owner, Agent, Master, Person-in-Charge or Operator Have That Identifies the Charterer or Cargo Owner? Is This Documentation Available Onboard the Vessel?

There was a mixed response as to the availability of the cargo owner and or charterer information being available onboard the vessel. The Coast Guard believes that today's technology easily enables a vessel or vessel agent to communicate with its home office or vessel owner, allowing charterer information to be readily available for notice of arrival reporting. As mentioned earlier, identifying the cargo owner, particularly in situations with multiple cargo owners, is a more onerous task, and the Coast Guard is not proposing to add this information to the required notice of arrival.

Question 10: How Is the Cost of a Delay Resulting From a Port State Control Action or Detention Measured or Determined? Who Absorbs or Pays for It?

We received 12 comments to question ten. According to eight commenters the cargo owner measures the cost of delay and the vessel owner pays for the actual delay. Three other respondents believe the cargo owner absorbs the cost of delay. One commenter did not directly respond to this question. We appreciate the information provided within the responses to this question. However, the cost of delay is not included in the regulatory cost estimates. Generally, the Coast Guard does not evaluate these types of expenses, because the industry can avoid them by complying with the applicable regulations.

Question 11: Would Requiring That the Name of the Charterer and Cargo Owner Be Provided as Part of the Notice of Arrival Have an Impact on Small Businesses?

We received 11 comments to this question. Four commenters argue that requiring them to include the name of the charterer and cargo owner in the notice of arrival information would create a high additional cost. Once again the concerns lie with providing the name or names of cargo owners, which the Coast Guard does not propose to collect.

Question 12: What Would the Cost Be to Your Company of Adding the Name of Charterer and Cargo Owner to the Information Reported in the Notice of Arrival? Does this Cost Differ According to the Type of Charter, Cargo Owner or Vessel Type? What Is the Basis for Your Estimate?

We received ten comments addressing this question. Six comments indicate that there would be a minimal cost burden placed on their company by identifying the charterer in the notice of arrival. However, two respondents, representing container and break-bulk shipping operations, estimate that their company would be burdened with a significant cost increase by adding this information to the notice of arrival. The four remaining respondents did not directly answer this question. We appreciate the information provided, and believe that the associated cost for providing charterer information to be minimal. Therefore, we propose to include charterer information in the notice of arrival.

Question 13: What Is Your Estimate of the Total Cost to Industry of Adding the Name of the Charterer and Cargo Owner to the Information Reported in the Notice of Arrival? What Is the Total Cost by Charterer, Cargo Owner or Vessel Type? What Is the Basis for Your Estimate?

Eleven comments concerning this question were submitted to the docket. Nine of those commenters were unable to provide an answer because they lack the information necessary to give a proper response. Another commenter went beyond the scope of this question. One commenter estimates the burden of cost to the industry would be worth considering. We appreciate the information provided within the responses to this question. We reviewed the comments and incorporated the information into our regulatory analysis.

Discussion of Proposed Rule

This rulemaking would revise 33 CFR part 160, subpart C. The statutory authority for this rulemaking is 33 U.S.C. 1231. Specifically, this rulemaking would amend 33 CFR 160.203 by adding the definition of charterer and 33 CFR 160.201, 160.207, and 160.211 by including the name of the charterer as part of the information required by vessels bound for ports or places in the United States.

Adding the definition of charterer is necessary to differentiate between long term chartering agreements (bare boat or demise charters), where the charterer is essentially the operator of the vessel, and an individual that "leases" a vessel to move goods or materials for short periods of time or a single voyage.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040, February 26, 1979).

A draft Regulatory Evaluation under paragraph 10(e) is available in the docket as indicated under **ADDRESSES**. A summary of the Evaluation follows:

Under the Port State Control (PSC) program the Coast Guard developed a risk-based matrix to better identify substandard foreign vessels calling in U.S. ports. The matrix evaluates a foreign vessel's Flag State, owner, operator, classification society, ship type, and compliance history and assigns scores to each vessel. Based on these scores, the Coast Guard boards and examines vessels that are likely to pose risks to safety or the environment. Vessels found to have deficiencies are detained until the deficiencies have been corrected.

While the number of substandard vessel detentions has fallen since the implementation of PSC, too many substandard vessels are calling on U.S. ports. A recent study by the Netherlands Ministry of Transport indicates that the expense of operating a substandard vessel is approximately 14 percent lower than the expense of operating a compliant vessel. When individuals or corporations select vessels to carry their products, the cost to charter vessels is a prime consideration in some cases. Thus, many vessels selected for transport based on cost alone are likely to be substandard. By requiring vessels to report their charterers in the notifications of arrival, the Coast Guard will be able to better identify potentially substandard vessels.

The proposed addition of charterer as a factor that is considered when determining vessel risk in our Port State Control targeting scheme would improve our ability to determine which vessels are likely to be substandard. Charterers who are continually associated with substandard vessels would be assigned points, with the appropriate weighting, in the targeting matrix. Currently, we can not calculate the number or percentage of detentions that would cause a charterer to be targeted, because we do not have the essential charterer data. With the proposed addition of the charterer information in the notice of arrival, we will be able to better identify the charterers associated with substandard vessels and better identify the high risk vessels requiring inspection.

Population: There are approximately 10,000 vessels submitting 67,300 notice of arrivals annually that would be subject to this rule.

Cost and benefit: We determined that vessel owners and operators will incur the costs of this rule. The Coast Guard will not incur additional costs as a result of the increase in information collected. The increased costs will be the result of additional time spent completing the charterer information in the Notice of Arrival paperwork. This additional effort is relatively minimal.

The potential benefits of the proposed rule are not quantifiable but include the following: (1) U.S. waters will experience increased safety; (2) U.S. waters will experience a decrease in damage to property and the environment; (3) Coast Guard will target substandard vessels traveling U.S. waters that pose safety and environmental risks; (4) Coast Guard will spend less effort on compliant vessels; (5) Coast Guard will spend more effort examining previously unboarded vessels; (6) Coast Guard will have more information on foreign vessels traveling U.S. waters; (7) Coast Guard and vessel owners will have better understanding of the risks posed by foreign vessels; and (8) degrees of liability will be clarified.

Alternatives: The only alternative to the proposed rule we consider is to take no action. The Coast Guard would continue to collect the information currently required under 33 CFR part 160, subpart C, boarding vessels based on the current PSC targeting matrix. The Coast Guard believes that factoring the charterer into the targeting matrix is an important element in risk analysis for the PSC program. Currently, too many substandard vessels that pose risks to public safety and the environment enter U.S. ports. The additional information collected under the proposed rule would help the Coast Guard identify owners of substandard vessels and would address vessel deficiencies more efficiently. The "no action" alternative is not further explored.

The annual costs for the proposed rule are summarized as follows:

TABLE 1: TOTAL ANNUAL COSTS SUMMARY

Estimated number of port calls	Clerical labor minutes per port call	Clerical labor minutes per year	Cost per clerical labor hour	Cost per clerical labor minutes	Total annual cost
67,300	1	67,300	$31.00	$0.52	$35,000

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and

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governmental jurisdictions with populations of less than 50,000.

We estimate that this rule will not affect a significant number of small businesses because the proposed rule imposes minimal impacts. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult CDR Mark Prescott, Project Manager, Office of Operating and Environmental Standards (G–MSO), telephone 202–267–0225. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, record keeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Notification of Arrival: Addition of Charterer to Required Information

Summary of the Collection of Information: This rulemaking will amend 33 CFR 160.201, 160.207, and 160.211 to include the name of the charterer as part of the information required by vessels bound for ports or places in the United States. This collection of information will add minimal burden to the information collection described in OMB 2115–0557, Advanced Notice of Vessel Arrival and Departure.

Proposed Use of Information: The Coast Guard will use the information collected to identify those foreign vessels that pose the highest risks to U.S. waterways and ports and target these vessels for inspection.

Description of the Respondents: The respondents are vessel crews traveling U.S. waterways and hailing U.S. ports that must issue an Advanced Notice of Arrival.

Number of Respondents: The estimated number of vessels with crews that will provide the information is 10,000 annually.

Frequency of Response: Crews on approximately 10,000 vessels will issue an Advanced Notice of Arrival 6 to 7 times annually.

Burden of Response: It is estimated that adding the name of the charterer on the Notice of Arrival will require 1 minute of clerical labor per response.

Estimate of Total Annual Burden: It is estimated that vessels will make 67,300 port calls annually. Each of these port calls will require 1 minute of clerical labor to complete the charterer information on the Notice of Arrival. The estimated annual burden is 67,300 minutes, or 1,122 hours.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

Federalism

We analyzed this rule under Executive Order 13132, Federalism. Because this rule amends the existing federal Advance Notice of Arrival rules, if those existing rules are preemptive, then perforce this rule, which would amend the existing rule to add "charterer" to the list of required information to be supplied in an Advance Notice of Arrival, will also be preemptive. The Coast Guard believes that its existing Advance Notice of Arrival regulation in 33 CFR 160.213, which are issued under Title I of the Ports and Waterways Safety Act, is preemptive of any state rule, which would also require the vessel to provide the state (or one of its political subdivisions) advance notice of arrival. See, *U.S.* v. *Locke*, 529 U.S. 89, 120 S.CT 1135 (2000). However, the Coast Guard has, in numerous instances, through Memoranda of Agreement with an interested State, cooperated with the States and agreed to provide the information contained in the Advance Notice of Arrival to the states. It will continue to do so.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has a substantial direct effect on one or more Indian tribe, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(d), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. The proposed rule is a procedural regulation that does not have any environmental impact because the action does not have a significant effect on the quality of the human environment. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 160

Administrative practice and procedure; Harbors; Hazardous materials transportation; Marine safety; Navigation (water); Reporting and record keeping requirements; Vessels;

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 160, subpart C as follows:

PART 160—PORTS AND WATERWAYS SAFETY—GENERAL

Subpart C—Notifications of Arrivals, Departures, Hazardous Conditions, and Certain Dangerous Cargoes

1. The authority citation for part 160 continues to read as follows:

Authority: 33 U.S.C. 1223, 1231; 49 CFR 1.46.

2. In § 160.201 redesignate paragraphs (c)(3)(vii), (viii), (ix), and (x) as paragraphs (c)(3)(viii), (ix), (x), and (xi) respectively, and add paragraph (c)(3)(vii) to read as follows:

§ 160.201 Applicability and exceptions to applicability.

* * * * *

(c) * * *

(3) * * *

(vii) Name of the charterer of the vessel;

* * * * *

3. In § 160.203 add in alphabetical order the definition for "Charterer" to read as follows:

§ 160.203 Definitions.

* * * * *

Charterer means the person or organization that contracts for the majority of the carrying capacity of a ship for the transportation of cargo to a stated port for a specified period.

* * * * *

4. In § 160.207 redesignate paragraphs (c)(7), (8), (9), (10), and (11) as paragraphs (c)(8), (9), (10), (11), and (12) respectively, and add paragraph (c)(7) to read as follows:

§ 160.207 Notice of arrival: Vessels bound for ports or places in the United States.

* * * * *

(c) * * *

(7) Name of the charterer of the vessel;

* * * * *

5. Amend § 160.211 as follows:

a. Redesignate paragraphs (a)(7), (8), (9), (10), (11), (12), (13), (14), (15), and (16) as paragraphs (a)(8), (9), (10), (11), (12), (13), (14), (15), (16), and (17) respectively; and add paragraph (a)(7);

b. In paragraph (b) remove "(a)(8) through (16)" and all "(a)(9) through (17)".

The addition reads as follows:

§ 160.211 Notice of arrival: Vessels carrying certain dangerous cargo.

(a) * * *

(7) Name of the charterer of the vessel;

* * * * *

6. Amend § 160.213 to read as follows:

a. Redesignate paragraphs (a)(7), (8), (9), (10), (11), (12), (13), (14), and (15) as paragraphs (a)(8), (9), (10), (11), (12), (13), (14), (15), and (16) respectively, and add paragraph (a)(7);

b. In paragraph (b) remove "(a)(8) through (15)" and "(a)(9) through (16)".

The addition read add as follows:

§ 160.213 Notice of departure: Vessels carrying certain dangerous cargo.

(a) * * *

(7) Name of the charterer of the vessel;

* * * * *

Dated: March 23, 2001.

R.C. North,

Rear Admiral, U. S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 01–10838 Filed 4–30–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–01–015]

RIN 2115–AA97

Safety Zone: Captain of the Port Chicago Zone

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish safety zones for annual fireworks displays located at the Navy Pier, Chicago, Illinois. This action is necessary to provide for the safety of life and property on navigable waters during each event. This action is intended to restrict vessel traffic in a portion of the Chicago Harbor.

DATES: Comments must be received on or before May 31, 2001.

ADDRESSES: Comments may be mailed or delivered to: Commanding Officer, U.S. Coast Guard Marine Safety Office Chicago, 215 W. 83rd Street, Suite D, Burr Ridge, Illinois 60521. Marine Safety Office Chicago maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at MSO Chicago between 7:30 a.m. and 4 p.m. Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: MST2 Mike Hogan, U.S. Coast Guard Marine Safety Office Chicago, 215 W. 83rd Street, Suite D, Chicago, Illinois 60521 (630) 986–2175.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number on this rulemaking (CGD09–01–015), indicate the specific section of this proposal to which each comment

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applies, and give the reason(s) for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for photocopying and electronic filing. If you would like to know they reached us, please enclose a stamped, self-addressed envelope or postcard.

The Coast Guard will consider all comments received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may request a public meeting by writing to MSO Chicago at the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, the Coast Guard will hold a public meeting at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Coast Guard proposes to establish a permanent safety zone that will be activated for fireworks displays occurring throughout the summer season annually at the same location. The proposed safety zone will include the waters off the Navy Pier Breakwall, Lake Michigan bounded by the arc of a circle with a 350-foot radius with its center in approximate position 41°53′18″ N, 087°36′08″ W (NAD 1983).

Based on recent accidents that have occurred in other Captain of the Port zones and the explosive hazard associated with these events, the Captain of the Port has determined that fireworks launches in close proximity to watercraft pose a significant risk to public safety and property. The likely combination of large numbers of inexperienced recreational boaters, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement within a 350-foot radius of the fireworks launch platforms will help ensure the safety of persons and property at these events and help minimize the associated risk.

Establishing permanent safety zones by notice and comment rulemaking gives the public the opportunity to comment on the proposed zones, provides better notice than promulgating temporary rules annually, and decreases the amount of annual paperwork required for these events. The Coast Guard has not previously received notice of any impact caused by these events.

Discussion of Proposed Rule

The proposed size of this safety zone was determined using National Fire Protection Association and local area fire department standards, combined with the Coast Guard's knowledge of waterway conditions in these areas.

Although these new regulations will not affect the Chicago River, the channel will be affected. In the event that shipping is affected by these new regulations, commercial vessels may request permission from the Captain of the Port Chicago to transit through the safety zone.

The proposed safety zone would be in effect from 8 p.m. (c.d.t.) to 11 p.m. (c.d.t.) However, vessels may enter, remain in, or transit through this safety zone during this time frame if authorized by the Captain of the Port Chicago, or designated Coast Guard patrol personnel on scene, as provided for in 33 CFR 165.23. The proposed zone will be activated on the Sunday before Memorial Day and Labor Day, every Wednesday and Saturday between Memorial Day and Labor Day, and the Fourth of July.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed this rule under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

This determination is based on the minimal time that vessels will be restricted from the zones, and all of the zones are in areas where the Coast Guard expects insignificant adverse impact to mariners from the zones' activation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit a portion of an activated safety zone.

These safety zones would not have a significant economic impact on a substantial number of small entities for the following reasons: The proposed zone is only in effect for few hours on the day of the event. Vessel traffic can safely pass outside the proposed safety zone during the events. In cases where traffic congestion is greater than expected and blocks the Chicago River, traffic may be allowed to pass through the safety zone under Coast Guard escort with the permission of the Captain of the Port Chicago. Before the effective period, we will issue maritime advisories widely available to users of the Port of Chicago by the Ninth Coast Guard District Local Notice to Mariners, Marine information broadcasts, and facsimile broadcasts may also be made. Additionally, the Coast Guard has not received any negative reports from small entities affected during these displays in previous years.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Chicago (see **ADDRESSES.**)

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a state, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 32(g) of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Add § 165.908 to read as follows:

§ 165.908 Safety Zones: Annual fireworks events in the Captain of the Port Chicago Zone.

(a) The following area is designated a safety zone:

(1) Location. The waters off the end of Navy Pier, Lake Michigan, where the fireworks barge will be, bounded by the arc of a circle with a 350-foot radius with its center in the middle of the barge, an approximate position of 41° 53′ 18″ N, 087° 36′ 08″ W (NAD 1983).

(2) Effective dates. This regulation becomes effective from 8 p.m. (c.d.t.) to 11 p.m. (c.d.t.) on the Sunday before Memorial and Labor Day; every Wednesday and Saturday from Memorial Day weekend to Labor Day Weekend; and the Fourth of July. If the Fourth of July fireworks are canceled due to inclement weather, the paragraph (a)(1) is effective on July 5th.

(b) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator shall proceed as directed.

(3) The safety zone encompasses a portion of Lake Michigan that is near the entrance to the Chicago River. In cases where shipping is affected, commercial vessels may request permission from the Captain of the Port Chicago to transit the safety zone. Approval will be made on a case-by-case basis. Requests must be made in advance and approved by the Captain of the Port before transits will be authorized. The Captain of the Port may be contacted via U.S. Coast Guard Group Milwaukee on Channel 16, VHF–FM.

Dated: April 20, 2001.

R.E. Seebald,

Captain, U.S. Coast Guard, Captain of the Port Chicago.

[FR Doc. 01–10716 Filed 4–30–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 175

[USCG–2000–8589]

RIN 2115–AG04

Wearing of Personal Flotation Devices (PFDs) by Certain Children Aboard Recreational Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to require that children aboard recreational vessels wear personal flotation devices (PFDs), or lifejackets. During 1995–1998, 105 children under 13 died in the water, 66 of them by drowning. This proposed rule should reduce the number of children who drown because they were not wearing lifejackets.

DATES: Comments and related material must reach the Docket Management Facility on or before August 29, 2001.

ADDRESSES: Identify your comments and related material by the docket number for this rulemaking [USCG–2000–8589]. To make sure they do not enter the docket more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand-delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Internet Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, at the address listed above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.* You may obtain a copy of this proposed rule by calling the U.S. Coast Guard Infoline at 1–800–368–5647, or read it

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on the Internet, at the Web Site for the Office of Boating Safety, at *http://www.uscgboating.org* or at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: For questions on this proposed rule, contact Carlton Perry, Project Manager, Office of Boating Safety, U.S. Coast Guard, by telephone at 202–267–0979 or by e-mail at *cperry@comdt.uscg.mil*. For questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [USCG–2000–8589], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, by hand-delivery, by fax, or electronically to the Docket Management Facility at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or hand-delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and want to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not plan to hold a public meeting. You may ask for one by submitting a request to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On September 25, 1997, we published in the **Federal Register** a notice of request for comments titled, "Recreational Boating Safety—Federal Requirements for Wearing Personal Flotation Devices" [62 FR 50280]. In that notice, under docket number CGD 97–059, we asked interested people, groups, and businesses about the need for, and alternatives to, Federal requirements or incentives for boaters to wear lifejackets. On March 20, 1998, we published a second notice with the same title and under the same docket number to extend the comment period to May 29, 1998 [63 FR 13586].

We received over 600 written comments in response to the initial notice. Most opposed any Federal requirements that all boaters wear lifejackets all the time. Yet almost 120 supported Federal or State requirements to wear lifejackets for at least some recreational vessels, boaters, or activities.

After summarizing the comments (copy of the initial notices, public comments, and summary of comments in public docket USCG–1999–6219), we consulted with NBSAC at its meetings in October 1998 and April 1999 regarding the results. NBSAC recommended that we publish another notice of request for comments, one that would focus more on the need to propose rules calling for mandatory wear by children, by operators of Personal Watercraft (PWC), and by people being towed behind recreational vessels.

In deference to NBSAC, we published in the **Federal Register** another notice of request for comments titled, "Recreational Boating Safety—Federal Requirements for Wearing Personal Flotation Devices" [64 FR 53971 (October 5, 1999)]. In that notice, under docket number USCG–1999–6219, we addressed only vessels less than 16 feet in length, which should include specific groups of high-risk recreational vessels, boaters, and activities.

We received almost 600 written comments in response to the second, more focused notice. The comments were mixed: Most opposed broad Federal requirements for wearing lifejackets, a few supported various Federal requirements for selected circumstances, more supported continued States' requirements for use of safety equipment, and a few objected to the inconsistency between or among the several States' requirements.

After summarizing the comments (copy of the initial notices, public comments, and summary of comments in public docket USCG–1999–6219), we again consulted with NBSAC at its meeting in May 2000 regarding the results. NBSAC then recommended that we either expand section 175.15 of title 33 of the Code of Federal Regulations or add a new section to part 175 to require children to wear lifejackets. This section would require children under 13 to wear lifejackets approved by the Coast Guard while aboard recreational vessels under way, except when the children are below decks or in enclosed cabins.

The number of deaths by drowning of children under 13 has decreased from 27 in 1995 to 11 in 1998. A review of statistics on recreational boating accidents during 1998 showed that the rate of children drowning in States that require children to wear lifejackets (1.22 such drownings for every 1000 accidents) is lower than that of States that do not (1.31 such drownings for every 1000 accidents).

By late 1995, 26 States had enacted statutes requiring children to wear lifejackets while aboard recreational vessels. The requirements, however, were not consistent nationwide, affecting children of different ages, while aboard vessels of different sizes, and under different activities. By late 1999, 36 States had enacted statutes requiring children to wear lifejackets while aboard recreational vessels. The requirements, however, still were not consistent nationwide. They varied by the age for wearing: From under age 18, when the vessel operator is under 18, to under age 6. They varied in other particulars, too: on the sizes of vessels (more than 26 feet in length or less than 65 feet, 26 feet, 19 feet, 18 feet, or 16 feet in length); whether the vessels were under way, in motion, or not specified; and whether the children were on open decks, below decks, or in enclosed cabins.

To improve boating safety and encourage greater uniformity of boating laws, we are proposing a requirement that children under 13 wear lifejackets approved by the Coast Guard while aboard vessels under way, except when the children are below decks or in enclosed cabins. We are nevertheless proposing to adopt the ages at or below which the States require children to wear lifejackets within those States. The existence of a Federal requirement for children to wear lifejackets under specific circumstances, even one that adopted States' thresholds of age, would encourage States to establish their own requirements for children and would draw the several requirements into greater uniformity nationwide.

Discussion of Proposed Rule

1. Section 175.3 would add a definition of the term "State" to clarify the applicability of non-Federal requirements and the Federal adoption of those requirements.

2. Section 175.15 would accomplish a minor editorial change and add a new paragraph establishing a requirement for children under 13 to wear lifejackets approved by the Coast Guard while aboard recreational vessels.

3. Subpart B would add a new section 175.25 adopting the ages at or below which the States require children to wear lifejackets while aboard recreational vessels within those States.

The proposed rule would apply only where a State had not enacted such a requirement. It would apply now, therefore, only in Colorado, Guam, Hawaii, Idaho, Indiana, Iowa, Kentucky, Maryland, Minnesota, the Northern Mariana Islands, Nevada, New Mexico, North Carolina, North Dakota, South Dakota, the Virgin Islands, West Virginia, Wisconsin, and Wyoming [See the 1999 edition of the National Association of State Boating Law Administrators, *Reference Guide to State Boating Laws*], and, for recreational vessels owned in the United States, it would apply on the high seas.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget (OMB) has not reviewed this rule under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) [44 FR 11040 (February 26, 1979)].

A draft Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT follows:

1. Cost of Proposed Rule

This rule would impose no costs on the boating public. Existing rules require that the carriage of an appropriate PFD for each passenger. Costs to the Government would be non-existent as well because the Coast Guard already trains its Boarding Officers to check safety equipment when boarding recreational vessels.

2. Benefit of Proposed Rule

This rule would be appropriate because, even though statistics on boating accidents show that the actual numbers of children under 13 that drowned in recent years were relatively small (14 in 1996, 14 in 1997 and 11 in 1998), these few drownings were avoidable. The rule should reduce the number of children under 13 that drown every year because they are not wearing lifejackets.

This rule would now affect only those States, identified above, that have not enacted requirements for children to wear lifejackets. In those States, there were 7 fatal drownings and 1 moderate and 3 critical near-drowning injuries of children under 13 from 1995 through 1998 that could have been prevented if the children had worn lifejackets. (These numbers may overstate the number of lives that could have been saved if the children had worn lifejackets: Narratives in accident reports may fail to disclose circumstances in which the victims were pinned, for example, and would have drowned anyway. Yet they may just as well understate the number of lives that could have been saved: Many accidents go unreported entirely.)

A memorandum from the Office of the Secretary of Transportation, dated April 29, 1996, sets the value of a fatality averted for use in preparing economic evaluations at $2.7 million and affirms previous guidance to agencies within the Department to classify injuries as minor, moderate, serious, severe, critical, or fatal. The guidance also assigns to each degree of injury averted a certain fraction of the value of a fatality averted. Therefore, to calculate the value of each degree of injury averted, we multiplied $2.7 million, the value of a fatality averted, by the fraction assigned to each degree of injury averted.

If we consider a 100% rate of compliance with a requirement for children to wear lifejackets, we can calculate the retrospective benefits of this rule as below:

VALUE OF INJURIES AND FATALITIES FOR STATES WITHOUT EXISTING REGULATIONS

Injury severity	Fraction of value of fatality averted	Value of injuries and fatalities if averted	Number of injuries (1995–1998)	Dollar amount
Minor	0.0020	($2,700,000)(0.0020) =$5,400	0	($5,400)(0)=0
Moderate	0.0155	($2,700,000)(0.0155) =$41,850	1	($41,850)(1) =$41,850
Serious	0.0575	($2,700,000)(0.0575) =$155,250	0	($155,250)(0) =0
Severe	(0.1875)	($2,700,000)(0.1875) =$506,250	0	($506,250)(0) =0
Critical	(0.7625)	($2,700,000)(0.7625)= $2,058,750	3	($2,058,750)(3) =$6,176,250
Fatal	1.0000	($2,700,000)(1.000) =$2,700,000	7	($2,700,000)(7) =18,900,000
Total			11	$25,118,100

The total value of injuries and fatalities averted for 1995–1998 would have been $25,118,100. Therefore, the average annual value of injuries and fatalities averted would have been $6,279,525 ($25,118,100)/(4 years).

Small Entities

Under the Regulatory Flexibility Act [5 U.S.C. 601–612], we have considered whether this proposed rule would have a significant economic effect on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This Federal requirement for children under 13 to wear lifejackets would apply to operators of recreational vessels on waters subject to the jurisdiction of the United States, as defined in 33 CFR 2.05–30. It would continue to apply to operators of recreational vessels owned in the United States, while operating on the high seas (as defined in 33 CFR 2.05–1). Further, since this proposed rule would adopt the ages at or below which States require children to wear lifejackets, operators of recreational vessels in States with such requirements would not be subject to different requirements within their States, unless the States changed their own: One State, one requirement. Only those operators of recreational vessels either in States without such requirements or on navigable waters of the United States outside States altogether would be subject to the Federal requirement.

Because the Regulatory Flexibility Act does not apply to individuals, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a

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significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic effect on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule would affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Public Law 104–121], we want to assist small entities in understanding this proposed rule so that they can better evaluate its effect on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Carlton Perry, Project Manager, Office of Boating Safety, by telephone at 202–267–0979, or by e-mail at cperry@comdt.uscg.mil.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520].

Federalism

We have analyzed this proposed rule under E.O. 13132 and have determined that, because the Federal requirement for children under 13 to wear lifejackets would not supersede or preempt any State's requirement for children to wear lifejackets, this rule does not have implications for federalism under that Order. The proposed Federal requirement would apply only in States without such requirements.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 [2 U.S.C. 1531–1538] governs the issuance of Federal rules that impose unfunded mandates. An unfunded mandate is a requirement that a State, a local or tribal government, or the private sector incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Reform of Civil Justice

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule. Nor would it create an environmental risk to health or risk to safety that might disproportionately affect children; on the contrary, it would advance the welfare of children.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(a), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. The rule would require that certain children aboard recreational vessels wear lifejackets. A Determination of Categorical Exclusion is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 175

Marine safety.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 175 as follows:

1. The citation of authority for part 175 continues to read as follows:

Authority: 46 U.S.C. 4302; 49 CFR 1.46.

2. Amend § 175.3 by adding the following definition in alphabetical order, to read as follows:

§ 175.3 Definitions.

* * * * *

State means a State or Territory of the United States of America, whether a State of the United States, American Samoa, the Commonwealth of the Northern Marianas Islands, the District of Columbia, Guam, Puerto Rico, or the United States Virgin Islands.

* * * * *

3. Amend § 175.15 by removing from paragraph (b) the term "PFD's" and adding in its place the term "PFDs", and by adding a new paragraph (c), to read as follows:

§ 175.15 Personal flotation devices required.

* * * * *

(c) No person may use a recreational vessel unless all children aboard under 13 years old are wearing appropriate PFDs; or—

(1) The children are below decks or in an enclosed cabin; or

(2) The vessel is not under way.

4. Add a new § 175.25 to subpart B, to read as follows:

§ 175.25 Adoption of States' requirements for children to wear personal flotation devices.

(a) This section applies to every operator of a recreational vessel on waters within the geographical boundaries of any State that has established by statute a requirement under which children must wear PFDs approved by the Coast Guard while aboard recreational vessels.

(b) If the applicable State's statute establishes an age under which children must wear PFDs, that age, instead of the age provided in § 175.15(c)(2)(i) of this part, applies within the geographical boundaries of that State.

Dated: January 15, 2001.

Terry M. Cross,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 01–10840 Filed 4–30–01; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 111

Postage Meters and Meter Stamps

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to change Domestic Mail Manual P030 to extend the use of postage meters to include postage-evidencing systems that print information-based indicia.

DATES: Comments must be received on or before May 31, 2001.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Postage Technology Management, 1735 N. Lynn Street, Room 5011, Arlington, VA 22209–6050. Copies of all written comments will be available at this address for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: James Luff, 703–292–3693.

SUPPLEMENTARY INFORMATION: Mailers may now use information-based indicia (IBI) to show evidence of postage, as they would letterpress and digital meter stamps. IBI include human-readable information and a USPS-approved two-dimensional barcode with a digital signature and other required data fields. Existing regulations on classes of mail that apply to metered mail now apply to mail bearing IBI. In particular, mailers can use IBI and receive qualifying discounts for presorted mail.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed amendments to the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following section of the Domestic Mail Manual as set forth below:

P Postage and Payment Methods

P000 Basic Information

P030 Postage Meters and Meter Stamps

1.0 Basic Information

* * * * *

1.4 Classes of Mail

Postage may be paid by printing postage meter stamps (including letterpress, digital meter stamps, and information-based indicia) on any class of mail except Periodicals. Information-based indicia (IBI) include human-readable information and a USPS-approved two-dimensional barcode with a digital signature and other required data fields. Metered mail (including mail bearing IBI) is entitled to all privileges and subject to all conditions applying to the various classes of mail.

Appropriate amendments to 39 CFR part 111 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 01–10862 Filed 4–30–01; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO–001–0055; FRL–6972–1]

Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for Colorado; Long-Term Strategy of State Implementation Plan for Class I Visibility Protection: Craig Station Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a proposed revision to the long-term strategy portion of Colorado's State Implementation Plan (SIP) for Class I Visibility Protection, contained in section III of the document entitled "Colorado's State Implementation Plan for Class I Visibility Protection: Craig Station Units 1 and 2 Requirements," as submitted by the Governor with a letter dated February 20, 2001. The proposed revision will incorporate into the SIP emissions reduction requirements for the Craig Station (a coal-fired steam generating plant located near the town of Craig, Colorado). EPA proposes to approve the proposed SIP revision, which is expected to remedy Craig Station's contribution to visibility impairment in the Mt. Zirkel Wilderness Area and, therefore, make reasonable progress toward the Clean Air Act National visibility goal with respect to such contribution. EPA makes this proposal based on its understanding that the State will make two minor changes to the proposed SIP revision before final adoption, as described in this proposed rule.

DATES: Comments on this proposed action must be received in writing by May 31, 2001.

ADDRESSES: Comments should be addressed to Richard Long, Director, Air and Radiation Programs, 8P–AR, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2405.

Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: Air and Radiation Programs, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2405; and Colorado Department of Public Health and Environment, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530.

FOR FURTHER INFORMATION CONTACT: Amy Platt, Air and Radiation Programs, Environmental Protection Agency, Region VIII, (303) 312–6449.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever "we," "us," or "our" are used it means the Environmental Protection Agency.

I. Background

Section 169A of the Clean Air Act (CAA),[1] 42 U.S.C. 7491, establishes as a National goal the prevention of any future, and the remedying of any existing, anthropogenic visibility impairment in mandatory Class I Federal areas[2] (referred to herein as the "National goal" or "National visibility goal"). Section 169A called for EPA to, among other things, issue regulations to assure reasonable progress toward meeting the National visibility goal, including requiring each State with a mandatory Class I Federal area to revise its State Implementation Plan (SIP) to contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the National goal. CAA section 169A(b)(2). Section 110(a)(2)(J) of the CAA, 42 U.S.C. 7410(a)(2)(J), similarly requires SIPs to meet the visibility protection requirements of the CAA.

We promulgated regulations that required affected States to, among other things, (1) coordinate development of SIPs with appropriate Federal Land Managers (FLMs); (2) develop a program to assess and remedy visibility impairment from new and existing sources; and (3) develop a long-term (10–15 years) strategy to assure reasonable progress toward the National visibility goal. See 45 FR 80084, December 2, 1980 (codified at 40 CFR 51.300–307). The regulations provide for the remedying of visibility impairment that is reasonably attributable to a single existing stationary facility or small group of existing stationary facilities. These regulations require that the SIPs provide for periodic review, and revision as appropriate, of the long-term strategy not less frequently than every three years, that the review process include consultation with the appropriate FLMs,

[1] The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401, *et seq.*

[2] Mandatory class I Federal areas include international parks, national wilderness areas, and national memorial parks greater than five thousand acres in size, and national parks greater than six thousand acres in size, as described in section 162(a) of the Act (42 U.S.C. 7472(a)). Each mandatory Class I Federal area is the responsibility of a "Federal land manager" (FLM), the Secretary of the department with authority over such lands. See section 302(i) of the Act, 42 U.S.C. 7602(i).

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and that the State provide a report to the public and EPA that includes an assessment of the State's progress toward the National visibility goal. See 40 CFR 51.306(c).

On July 12, 1985 (50 FR 28544) and November 24, 1987 (52 FR 45132), we disapproved the SIPs of states, including Colorado, that failed to comply with the requirements of the provisions of 40 CFR 51.302 (visibility general plan requirements), 51.305 (visibility monitoring), and 51.306 (visibility long-term strategy). We also incorporated corresponding Federal plans and regulations into the SIPs of these states pursuant to section 110(c)(1) of the CAA, 42 U.S.C. 7410(c)(1).

The Governor of Colorado submitted a SIP revision for visibility protection on December 21, 1987, which met the criteria of 40 CFR 51.302, 51.305, and 51.306 for general plan requirements, monitoring strategy, and long-term strategies. We approved this SIP revision in an August 12, 1988 **Federal Register** document (53 FR 30428), and this revision replaced the Federal plans and regulations in the Colorado Visibility SIP.

The Governor of Colorado submitted subsequent SIP revisions for visibility protection with letters dated November 18, 1992, August 23, 1996, and August 19, 1998. These revisions were made to fulfill the requirements to periodically review and, as appropriate, revise the long-term strategy for visibility protection. We approved the first two long-term strategy revisions on October 11, 1994 (59 FR 51376), and January 16, 1997 (62 FR 2305), respectively. The 1998 revisions will be addressed at a later date.

After Colorado's 1992 long-term strategy review, the U.S. Forest Service (USFS) certified visibility impairment in Mt. Zirkel Wilderness Area (MZWA) and named the Hayden and Craig generating stations in the Yampa Valley of Northwest Colorado as suspected sources. The USFS is the FLM for MZWA. This certification was issued on July 14, 1993. Hayden Station was addressed in the State's 1996 long-term strategy review and revision (see 62 FR 2305, January 16, 1997).

Craig Station, which is the focus of this SIP revision, is located 40 miles upwind from MZWA. The facility consists of three units, but only Units 1 and 2 are subject to this action. Unit 1 is a 428 megawatt steam generating unit that commenced commercial operation in 1980 and Unit 2 is a 428 megawatt steam generating unit that commenced commercial operation in 1979. The existing emission control equipment on Units 1 and 2 consists of the following: wet scrubbers to control sulfur dioxide (SO_2) (currently achieve 65% SO_2 removal), electro-static precipitators to control particulate pollution, and low nitrogen oxides (NO_X) burners to control NO_X emissions. The 1999 emissions inventory for Craig Station Units 1 and 2, as reported to EPA's Acid Rain database, indicated that these units emitted 9,216 tons of SO_2 and 12,501 tons of NO_X. Particulate emissions have been more difficult to estimate since continuous emissions rate data is not available.

On October 9, 1996, Sierra Club, Inc. ("Sierra Club") sued the owners of the Craig Station in United States District Court, alleging numerous violations of State and Federal opacity standards from 1991–1996. In the Fall of 1996, the State, Craig Station owners, and EPA initiated a joint study to develop information on SO_2 emission reduction options and associated costs for Craig Station Units 1 and 2. This joint study, referred to as the "Craig Flue Gas Desulfurization Study (Craig FGD Study)," was viewed as a means to move the parties to a negotiated resolution of Craig Station's contribution to visibility impairment in MZWA, and if negotiations failed, as a possible basis for a Best Available Retrofit Technology (BART) determination under State and EPA visibility regulations. The Craig FGD Study was completed on August 31, 1999.

The Craig FGD Study identified several options, at reasonable costs, for addressing Craig Station's contribution to visibility impairment at MZWA. This information and the results of other technical analyses led us, on September 22, 1999, to call for a revision to the Colorado Visibility SIP to resolve the long outstanding certification of visibility impairment for MZWA with respect to Craig Station (see 64 FR 54010, October 5, 1999). The State was given 12 months to revise the SIP accordingly.

In October 1999, the Sierra Club, the Colorado Air Pollution Control Division (APCD), EPA, USFS, and the Craig Station owners entered into negotiations to try to reach a "global settlement" of the various issues facing the power plant. These issues included the Sierra Club lawsuit and the USFS certification of impairment in MZWA.

On October 17, 2000, the Sierra Club and owners of Craig Station reached an agreement in principle to resolve the Sierra Club lawsuit. Sierra Club and the Craig Station owners subsequently negotiated and signed a consent decree that they filed with the United States District Court for the District of Colorado on January 10, 2001 (Civil Action No. 96–N–2368) (referred to hereafter as "Craig Consent Decree" or "Consent Decree.")

The Consent Decree resolves the Sierra Club complaint regarding opacity violations and also requires substantial reductions in air pollutants that are intended to resolve Craig Station's contribution to visibility impairment in MZWA. The Consent Decree contemplates that its requirements will be incorporated into the Colorado SIP. Although we were not involved in the direct negotiations between Sierra Club and the Craig Station owners regarding the terms of the Consent Decree, during negotiations Sierra Club and the Craig Station owners sought, and we provided, our input regarding terms of the settlement. In particular, in a December 20, 2000 letter, we commented on a final draft of the Consent Decree and gave our preliminary views of the settlement with respect to the SO_2 limits for Craig Station. We made clear that only through our public rulemaking process would we reach final judgment regarding a Visibility SIP revision based on the Consent Decree. This proposed rulemaking is the first step in that public rulemaking process. The Sierra Club and Craig Station owners also asked the State, USFS, and National Park Service to provide input on the Consent Decree during the negotiations of the final agreement.

II. Colorado's February 1, 2001, Proposed Revision

With a letter dated February 20, 2001, the Governor of Colorado submitted a proposed revision to the long-term strategy portion of Colorado's SIP for Visibility Protection, entitled "Revision of Colorado's State Implementation Plan for Class I Visibility Protection: Craig Station Units 1 and 2 Requirements." The proposed revision is being made to fulfill, with respect to Craig Station's contribution to visibility impairment in MZWA, the Federal and Colorado requirements to revise the long-term strategy to include emission limitations and schedules for compliance necessary to demonstrate reasonable progress toward the National visibility goal.[3]

Among other things, the proposed SIP revision incorporates provisions of the Craig Consent Decree that require the owners of Craig Station to install control equipment and meet stringent emission limitations for particulates (including opacity), NO_X and SO_2.

[3] This proposed revision is specific to requirements for Craig Station and does not constitute the State's three year review of the components of the Long-term Strategy, as required by 40 CFR 51.306(c). That review and report are not due from the State until September 2001, at which time the public will be able to review and comment on the State's full Long-term Strategy.

A. Analysis of State's Proposed Revision

1. Procedural Background

The CAA requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the CAA provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the CAA similarly provides that each revision to an implementation plan submitted by a State under the CAA must be adopted by such State after reasonable notice and public hearing.

On January 11, 2001, the Colorado Air Pollution Control Division requested that the Colorado Air Quality Control Commission (AQCC), after providing adequate notice, hold a public hearing on April 19, 2001 to consider the proposed revision to the Long-term Strategy of the Visibility SIP. This request was granted. In a February 20, 2001 letter to EPA from Governor Bill Owens, the State requested that we "parallel process" the proposed revision.

Parallel processing allows us to propose rulemaking on a proposed SIP revision at the same time the State is soliciting public comment on the proposed SIP revision. If the Colorado Air Quality Control Commission (AQCC) adopts the proposed SIP revision without significant changes (except for the two minor changes we believe are necessary, as described below), and the Governor submits the final revision to us for approval, we will consider any comments received and proceed with a final rulemaking action. However, should the State substantially change the proposed SIP revision before submitting the final version to us, we will re-propose and again solicit public comment on the State amended SIP revision before we take final rulemaking action. For further information regarding parallel processing, please see 40 CFR part 51, appendix V, section 2.3.1.

We have reviewed the proposed SIP revision incorporating requirements for Craig Units 1 and 2 to determine adequacy should the State's proposal be finalized. We believe the State's proposed revision would adequately address Craig Station's contribution to visibility impairment in MZWA, thereby resolving the USFS's certification of impairment and making reasonable progress toward the National visibility goal. In addition, should the State's proposed revision be finalized and submitted to EPA, with the two minor changes described below in section II.A.2.b., Analysis of Reasonable Progress, it will adequately satisfy EPA's September 22, 1999, Visibility SIP Call.

2. Content of Proposed SIP Revision

The proposed SIP revision is contained in section III of the submittal entitled "Revision of Colorado's State Implementation Plan for Class I Visibility Protection: Craig Station Units 1 and 2 Requirements," dated February 1, 2001. Only section III contains provisions that are enforceable against the Craig Station owners. Part III incorporates relevant portions of the Craig Consent Decree into the long-term strategy. The remainder of the proposed SIP revision contains provisions that are explanatory and analyses that are required by section 169A of the CAA, Federal visibility regulations (40 CFR 51.300 to 51.307), and/or the Colorado Visibility SIP.

a. Section III: Enforceable Portion of the Proposed SIP Revision: Craig Station Units 1 and 2 Requirements

The State incorporated into its proposed Visibility SIP revision provisions of the Craig Consent Decree including Definitions, Emission Controls and Limitations, Continuous Emission Monitors, Construction Schedule, Emission Limitation Compliance Deadlines, and Reporting. Such provisions must be met by the Craig Station owners and are enforceable. The Consent Decree numbering scheme was retained to avoid confusion between the SIP and the Consent Decree, but only the Consent Decree's emission controls and limitations, construction schedule, and sections necessary to ensure enforceability of these requirements were included in the proposed SIP. Some changes were made to Consent Decree language to conform to a SIP framework. Finally, changes were made to the force majeure provisions of the Consent Decree to ensure that a demonstration of reasonable progress could be made at this time. Provisions of particular interest incorporated from the Craig Consent Decree are summarized below.

SO_2 Emission Limitations—Craig Units 1 and 2 will be designed to meet at least a 93.7% SO_2 removal rate. The Craig Station owners must design, construct and operate FGD upgrades and related equipment to reliably treat 100% of the flue gas and to meet the following emissions limitations:

—No more than 0.160 lbs SO_2 per million Btu heat input on a 30 boiler operating day rolling average basis;

—No more than 0.130 lbs SO_2 per million Btu heat input on a 90 boiler operating day rolling average basis;

—At least a 90% reduction of SO_2 on a 90 boiler operating day rolling average basis, unless Craig Station owners show this limit cannot be met, in which case an alternative limit shall be established, not to be less than an 85% reduction of SO_2 on a 30 boiler operating day average or 86% on a 90 boiler operating day average [4]; and

—A unit cannot operate for more than 72 consecutive hours without any SO_2 emissions reductions; that is, it must shut down if the control equipment is not working at all for three days.

Particulate Emission Limitations—The Craig Station owners must install and operate a Fabric Filter Dust Collector (known as a baghouse or FFDC) on Craig Units 1 and 2. Particulate emission limitations for each unit are:

—No more than 0.03 lbs of particulate matter per million Btu heat input; and

—No more than 20.0% opacity, with certain limited exceptions, as averaged over each separate 6-minute period within an hour as measured by continuous opacity monitors.

NO_X Emissions Limitations—NO_X reductions are to be achieved through the requirement to install "state-of-the-art" low-NO_X burners utilizing two-stage combustion with supplemental over-fire air systems. The emissions limitations on each of Craig Station Units 1 and 2 are:

—No more than 0.30 lbs per million Btu heat input on a calendar year annual average basis.

Compliance with Emissions Limits—All required controls must be designed to meet enforceable emission limits. Compliance with the emission limits shall be determined by continuous emission monitors. Compliance with the percentage reduction requirement for SO_2 shall be determined by comparing SO_2 emissions from the stack (measured by continuous emissions monitors—"CEMs") to potential SO_2 emissions from coal combusted (determined through coal sampling and analysis).

Construction Schedule—The final deadlines for constructing control equipment are as follows: Unit 1—

[4] Any changes made to the percentage reduction requirement will be made pursuant to the requirements of the Consent Decree, and if the ultimate percentage reduction requirement changes from 90%, the State has indicated that it would report the changes in its next long-term strategy review. We would provide an information notice on any such changes as well.

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Completion of construction and initiation of start-up of all upgrades by 12/31/03. Unit 2—Completion of construction and initiation of start-up of all upgrades by 6/30/04.

The schedule for commencement of compliance with the emissions limitations is as follows:

SO_2

—For Unit 1, within 180 days after completion of construction of the additional SO_2 control equipment, or by June 30, 2004, whichever date is earlier, except for 90% SO_2 reduction, which must be achieved within 270 days of the above compliance date, but no later than March 31, 2005.

—For Unit 2, within 180 days after completion of construction of the additional SO_2 control equipment, or by December 31, 2004, whichever date is earlier, except for 90% SO_2 reduction, which must be achieved within 270 days of the above compliance date, but no later than September 30, 2005.

Particulates

—For Unit 1, within 180 days after completion of construction of baghouse system, or by April 30, 2004, whichever date is earlier.

—For Unit 2, within 180 days after completion of construction of baghouse system, or by October 31, 2004, whichever date is earlier.

NO_X

—June 30, 2004 for Unit 1 and December 31, 2004 for Unit 2.

These construction deadlines and emission limitation compliance deadlines are subject to the "force majeure" provisions of the Consent Decree, which have been included in the proposed SIP revision. A force majeure event refers to an excused delay in meeting construction deadlines or in meeting emission limitation compliance deadlines due to certain limited circumstances wholly beyond the control of the Craig Station owners.

To help ensure that reasonable progress continues to be made, the State commits in the proposed SIP revision to reopen the SIP (with public notice and hearing) after it is determined that a construction schedule or an emission limitation schedule has been, or will be, delayed by more than 12 months as a result of a force majeure determination or determinations. The State will re-evaluate the SIP at that time to determine whether revisions are necessary to continue to demonstrate reasonable progress, and to ensure that the emission limitations are met. In addition, the proposed SIP revision also contains a clarification that the force majeure provisions are not to be construed to authorize or create any preemption or waiver of the requirements of State or Federal air quality laws, or of the requirements contained in the SIP or Consent Decree.

EPA believes that the language of the proposed SIP revision should assure reasonable progress toward the National visibility goal. If deadlines extend more than twelve months, we expect the State to revise the SIP.

b. Analysis of Reasonable Progress

Congress established as a National goal "the prevention of any future, and the remedying of any existing" anthropogenic visibility impairment in mandatory Class I Federal areas. The statute does not mandate that the national visibility goal be achieved by a specific date but instead calls for "reasonable progress" toward the goal. Section 169A(b)(2) of the CAA requires EPA to issue implementing regulations requiring visibility SIPs to contain such "emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward the National goal."

EPA's implementing regulations provided for an initial round of visibility SIP planning which included a long-term strategy to make reasonable progress toward the National goal. See 40 CFR 51.302(c)(2)(i) and 51.306. Section 169A(g)(1) of the CAA specifies factors that must be considered in determining reasonable progress including: (1) the costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of the source. Protection of visibility in a mandatory Class I Federal area is the objective.

In this unique case, the Craig Station owners have agreed in the context of a judicially-enforceable Consent Decree to meet emissions limitations that are expected to reduce Craig Station's contribution to visibility impairment in MZWA to below perceptible levels. The State has analyzed the emission reductions provided for in the Consent Decree in light of the statutory factors for determining reasonable progress and the ultimate objective of protecting visibility. The State has proposed that the measures assure reasonable progress by remedying Craig Station's contribution to perceptible visibility impairment in MZWA and has proposed a Visibility SIP revision containing these measures.

Further, in a December 14, 2000 letter from Tom Thompson, USFS, Rocky Mountain Region, to Margie Perkins, APCD, the USFS concluded that "the proposed reductions of both sulfur dioxide and nitrogen oxides will resolve all Forest Service issues relative to the Craig Station and our 1993 Certification of Impairment." Based in part on this letter, the State has proposed that the pertinent provisions of the Craig Consent Decree, as embodied in the proposed SIP revision, effectively resolve the USFS certification of impairment in MZWA in relation to Craig Station.

We have reviewed the State's proposed SIP revision and supporting information in light of the statutory and regulatory requirements and propose to approve it based on the understanding that the State will make two minor changes. First, in section III, Enforceable Portion of the SIP Revision: Craig Station Units 1 and 2 Requirements, the following language should be added to section II.2.(m) (definition of "Craig Owners") to ensure that successor owners are covered by the SIP revision: "and successor owners of Craig Station." Second, also in section III, the following language should be removed from section IX.26., to clarify that reporting requirements continue indefinitely after the Consent Decree is terminated: "and continuing until the Decree is terminated." We believe these changes are necessary to ensure enforceability of the SIP revision and consistency with the Hayden SIP revision. Our proposed approval is based on our anticipation that these changes will be made in the final SIP revision adopted by the AQCC.

We believe the State has reasonably proposed that the emission reduction measures at Craig Station required by the Consent Decree and contained in the proposed Visibility SIP revision will remedy Craig Station's contribution to perceptible visibility impairment at MZWA, with reasonable costs, an expeditious compliance schedule, and no significant adverse energy or non-air quality environmental impacts. The State's February 1, 2001 proposed SIP revision and accompanying information, available at the addresses listed at the beginning of this document, provides a detailed analysis of each of the "reasonable progress" considerations. We have reviewed these "reasonable progress" considerations and a summary of the State's analysis follows.

(i) Factor (1) Cost of Compliance

By signing the Consent Decree, the Craig Station owners have demonstrated their willingness to bear the cost to upgrade Craig Station Units 1 and 2. Therefore, this factor is not particularly relevant to this action. However, the State proposes that the costs are reasonable given that the cost of the combined Craig Units 1 and 2 SO_2 removal upgrades (approximately $27.5 million total or $4.49 million/year and $659/ton of SO_2 removed—in January 1998 dollars) at the facility are within the range of retrofit costs at other facilities. It should be noted that included in these cost estimates are credits that represent a portion of the control costs that the Craig Station owners will be able to recoup by the sale of marketable allowances of SO_2 received under the allowance trading program of the Clean Air Act's Acid Rain Program (approximately $100/ton).

The State also compared costs with the results of an EPA modelling study[5] which estimated the retrofit costs for SO_2 control at 200 coal-fired electric utilities (630 boilers). This study indicated that the 50th percentile cost (in 1998 dollars) was more than the estimated cost of the Craig Units 1 and 2 upgrade.[6]

The State believes that estimated costs for SO_2 emission reductions at Craig Station Units 1 and 2 appear to be lower or similar to estimates for other projects and therefore, that the cost of these SO_2 emission reductions is reasonable. For a more detailed discussion of the cost of compliance, please refer to the proposed SIP revision.

(ii) Factor (2) Time Necessary for Compliance

The time necessary for compliance is reasonable. Under the terms of the Craig Consent Decree, approximately three to four years will elapse between the filing of the Decree and operation of the control equipment on Units 1 and 2, respectively.[6] By comparison, if the State went through a complete regulatory process with the Craig Station to make a reasonable attribution decision and BART determination, the State estimates that the time until installation of controls could be 5½ years. We note that the Hayden Consent Decree allowed approximately 3½ years time between the filing of the Consent Decree and operation of the required control equipment. See 62 FR 2305 (January 16, 1997).

[5] "Project Summary: Retrofit Costs for SO_2 and NO_X Control Options at 200 Coal-Fired Plants," EPA/600/S7–90–021, March 1991.

[6] EPA notes that should this proposed approval be finalized, the time period between SIP approval and operation of control equipment would be even shorter.

(iii) Factor (3) Energy and Non-Air Quality Environmental Impacts of Compliance

Any negative impacts are minimal, as discussed below.

(a) Energy Impacts. It will be necessary to divert additional power (estimated at 1.5 MW/unit) to in-house use to operate the upgrade equipment, resulting in a percent decrease in plant output of 0.2%. By comparison, the retrofit at Hayden Station resulted in a decrease in plant output of 1.1%. See 62 FR 2305 (January 16, 1997).

(b) Water Impacts. An increase in water consumption will be needed to support the SO_2 upgrades. However, it is uncertain at this time how large this increase will be. It is possible that the increase can be met entirely through increased internal efficiencies in water use at the facility. If not, then Craig Station will need to increase its consumptive use of existing water rights in the Yampa River. Craig Station is a "zero discharge facility" and does not have a river water discharge. Overall, the State believes that the upgrades to current control equipment should have only a minimal impact on water usage at Craig Station.

(c) Solid Waste Impacts. Craig Station's solid waste will increase, although no major changes to current disposal methods will be required. However, the increase in scrubber waste solids due to the increase in SO_2 removal may require the acquisition of two new transport trucks for landfill disposal of the wastes.

(d) Other Environmental Benefits. In a December 14, 2000 letter from Tom Thompson, USFS, Rocky Mountain Region (*i.e.*, the Federal land manager for Mt. Zirkel Wilderness Area), to Margie Perkins, APCD, the USFS indicated that it believes the proposed reductions in SO_2 and NO_X emissions required under the Consent Decree will "significantly benefit" the aquatic ecosystems in MZWA. The State concurs that the emission reductions should reduce acid accumulations in the snowpack.

Overall, the State believes that any energy and non-air quality related impacts that will result from this proposed revision are acceptable.

(iv) Factor (4) Remaining Useful Life of Source

The owners of the Craig Station assume that Craig Station Units 1 and 2 have a remaining useful life of 20 years. In its technical judgment, the State believes 20 years is an accurate estimate and therefore, the upgrade required in this proposed SIP revision is reasonable.

(v) Visibility Benefits

Any contribution to visibility impairment in MZWA caused or contributed to by the Craig Station Units 1 and 2 come from their SO_2 emissions converted to sulfate haze in the atmosphere. The enhanced FGD control systems will lower Craig Station Units 1 and 2's combined SO_2 emissions to a total of approximately 2,600 tons per year from the current level of over 9,300 tons per year. In the State's technical judgment, this will effectively address visibility problems in MZWA caused by SO_2 from Craig Units 1 and 2 and will lower the threshold of SO_2 emissions from the units to below perceptible levels in MZWA. We believe these conclusions are reasonable. It should be noted that the State recognizes that regional haze from outside Colorado and emissions from other Colorado sources could also be contributing to visibility impairment at MZWA.

(vi) Reasonable Progress and BART

The State believes that its proposed SIP revision assures reasonable progress toward meeting the National visibility goal as it relates to Craig Station and MZWA. First, the proposed SIP revisions embody emission reductions of visibility impairing pollutants at Craig Station Units 1 and 2 at a reasonable cost, within the same timeframe or earlier than similar reductions would likely occur through reasonable attribution and BART determinations. Second, the emission limitations for Craig Station Units 1 and 2 for SO_2, particulate, and NO_X reached through a negotiation process are similar to or more stringent than those imposed on some units subject to Prevention of Significant Deterioration (PSD) regulations (*e.g.*, Craig Station Unit 3 and Rawhide Energy Station). Third, although there have been no BART determinations made nationally under the mandatory Class I Federal visibility protection program since 1977, there have been several "BART-like" decisions made in settlement of FLM certifications of impairment that have resulted in SO_2 limitations that are similar or less stringent than those in the Craig Consent Decree.

The State believes that the Craig Consent Decree, as embodied in the proposed SIP revision, expeditiously remedies Craig Station's contribution to visibility impairment in MZWA, at a reasonable cost and without undue non-air environmental or energy impacts. Although a formal BART analysis has not been performed for Craig Station Units 1 and 2, the State also expects that the Consent Decree's 90% control

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requirement on a 90-day rolling average for SO_2 would be at least as good as BART had such an analysis been performed.

Finally, as noted above, the USFS has concluded that the emissions reductions reflected in this proposed SIP revision should effectively address concerns of visibility impairment in MZWA associated with Craig Station.

In our opinion, the State's belief is reasonable that the proposed SIP revision will assure reasonable progress in remedying Craig Station's contribution to visibility impairment in MZWA. However, as described above, we believe that two minor changes to the proposed SIP revision are necessary.

c. Six Factors Considered in Developing the Long-Term Strategy

The State considered the six factors contained in 40 CFR 51.306(e) when developing this proposed revision to its long-term strategy. These six factors are as follows: (1) Eemission reductions due to ongoing air pollution control programs; (2) additional emission limitations and schedules for compliance; (3) measures to mitigate the impacts of construction activities; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including such plans as currently exist within the State for these purposes; and (6) enforceability of emission limitations and control measures. Because this long-term strategy SIP revision is focused entirely on the Craig Station Units 1 and 2 requirements that resulted from a negotiated settlement, the State concluded that factors (1), (4), and (5) are not applicable. These factors will be considered when the State conducts its next full long-term strategy review process in September 2001. For a detailed discussion of the remaining factors as they relate to Craig Station Units 1 and 2, please refer to Colorado's proposed long-term strategy revision, which is available at the addresses listed in the beginning of this document.

3. Additional Requirements

a. FLM Consultation

As required under State and Federal regulations (Colorado Air Quality Control Commission Regulation No. 3, section XV.F.; 40 CFR 51.306(c)), the State prepared and distributed a FLM Comment Draft of its long-term strategy review/revision to the USFS and the National Park Service. These agencies are the FLMs of all of Colorado's Class I areas.

b. SIP Enforceability

All measures and other elements in the SIP must be enforceable by the State and EPA (see sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556). Our criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, *et al.* (see 57 FR 13541).

The specific emissions limitations contained in this February 1, 2001 proposed revision to the SIP are addressed above in section II.A.2.a., "Section III: Enforceable Portion of the SIP Revision: Craig Station Requirements." By adopting emission limitations for Craig Station into the Visibility SIP, the limitations will become enforceable by the State. C.R.S. 25–7–115. Enforceability of emission limitations will be ensured by the inclusion in this proposed SIP revision of Consent Decree sections VI., Continuous Emission Monitors (for SO_2 and opacity), and IX., Reporting, to ensure determination of compliance through reliable and valid measurements and to ensure accurate and adequate data reporting. As described above, we believe that two minor changes to the proposed SIP revision are needed to ensure enforceability. Should EPA finalize this proposed approval of the proposed SIP revision, the emission limitations will be federally enforceable.

Consistent with section 110(a)(2)(A) of the CAA, the State of Colorado has a program that will ensure that the measures contained in the SIP are adequately enforced. The Colorado APCD has the authority to implement and enforce all control measures adopted by the AQCC. C.R.S. 25–7–111. In addition, Colorado statute provides that the APCD shall enforce against any "person" who violates the emission control regulations of the AQCC, the requirements of the SIP, or the requirements of any permit. C.R.S. 25–7–115. Civil penalties of up to $15,000 per day per violation are provided for in the State statute for any person in violation of these requirements (C.R.S. 25–7–122), and criminal penalties are also provided for in the State statute. C.R.S. 25–7–122.1.

Thus, we believe that the control measures contained in the proposed revision to Colorado's State Implementation Plan for Class I Visibility Protection: Craig Station Units 1 and 2 Requirements, will be enforceable and that the APCD has adequate enforcement capabilities to ensure compliance with those control measures.

III. Proposed Action

We have reviewed the adequacy of the State's proposed revision to the long-term strategy portion of Colorado's SIP for Class I Visibility Protection, contained in section III of the document entitled "Revision of Colorado's State Implementation Plan for Class I Visibility Protection: Craig Station Units 1 and 2 Requirements," as submitted by the Governor with a letter dated February 20, 2001. We are proposing to approve the proposed revision, which includes the incorporation of certain requirements from the Craig Consent Decree, provided that the State makes two minor changes to the proposed SIP revision, as described in the body of this document.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Request for Public Comments

We are requesting comments on all aspects of this proposal. As indicated at the outset of this document, we will consider any comments received by May 31, 2001.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This proposed action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 19, 2001.

Patricia D. Hull,

Acting Regional Administrator, Region 8.

[FR Doc. 01–10806 Filed 4–30–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 099–0032b; FRL–6967–9]

Revisions to the Arizona State Implementation Plan, Pinal-Gila Counties Air Quality Control District and Pinal County Air Quality Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Pinal-Gila Counties Air Quality Control District (PGCAQCD) and Pinal County Air Quality Control District (PCAQCD) portions of the Arizona State Implementation Plan (SIP). These revisions concern the recision of all of the remaining SIP rules from the obsolete PGCAQCD and the recision of certain PCAQCD SIP Rules. We are approving the recision of local rules that no longer regulate permitting procedures and various emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by May 31, 2001.

ADDRESSES: Mail comments to Andrew Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rule revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, AZ 85012.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; (415)744–1135.

SUPPLEMENTARY INFORMATION: This proposal addresses the recisions of defunct SIP rules from the PGCAQCD. In the Rules and Regulations section of this **Federal Register**, we are approving the recision of these rules in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: March 20, 2001.

Mike Schulz,

Acting Regional Administrator, Region IX.

[FR Doc. 01–10652 Filed 4–30–01; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–931; MM Docket No. 01–91; RM–10096]

Radio Broadcasting Services; Hugo, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Alan Olson, requesting the allotment of Channel 222A to Hugo, Colorado, as that community's first local aural transmission service. Coordinates used for this proposal are those of the city reference at 39–08–10 NL and 103–28–10 WL.

DATES: Comments must be filed on or before June 4, 2001, and reply comments on or before June 19, 2001.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Alan Olson, 934 E. Vermijo Ave., Colorado Springs, CO 80903.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MM Docket No. 01–91, adopted April 4, 2001, and released April 13, 2001. The full text of

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this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800. Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Hugo, Channel 222A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–10705 Filed 4–30–01; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–880; MM Docket No. 01–89; RM–10094]

Television Broadcasting Services; Decatur, Plano, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition for rule making filed by Word of God Fellowship, Inc. ("petitioner"), requesting the reallotment of Television Channel 29 from Decatur to Plano, Texas as the community's first local transmission service. Petitioner is asked to provide additional information in support of the requested reallotment, specifically, an analysis of the Urbanized Areas involved using the Commission's relevant cases, and a showing that the companion digital channel at Decatur should also be reallotted to Plano. Channel 29 can be reallotted from Decatur to Plano in compliance with the Commission's minimum distance separation requirements at the petitioner's requested site, at coordinates 32–52–16 NL and 96–55–22 WL31–06–18 North Latitude and 91–54–26 West Longitude.

DATES: Comments must be filed on or before June 4, 2001, and reply comments on or before June 19, 2001.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Robert L. Olender, 5335 Wisconsin Avenue, NW., Suite 300, Washington, DC 20015–2003 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, and (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–89 adopted March 28, 2001 and released April 13, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of FM Allotments under Texas, is amended by removing Decatur, Channel 29, and adding Plano, Channel 29.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–10699 Filed 4–30–01; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 66, No. 84
Tuesday, May 1, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 25, 2001.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 and to Departmental clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Business Cooperative Service

Title: 7 CFR 4284–G, Rural Business Opportunity Grants.

OMB Control Number: 0570–0024.

Summary of Collection: The Rural Business Opportunity Grant (RBOG) program was authorized by section 741 of the Federal Agriculture Improvement and Reform Act of 1996, Public Law 104–127. The objective of the RBOG program is to promote sustainable economic development in rural areas. This purpose is achieved through grants made by the Rural-Business Cooperative Service (RBS) to public and private non-profit organizations and cooperatives to pay costs of economic development planning and technical assistance for rural businesses.

Need and Use Of The Information: The information collected is from grant applicants and grant recipients. Grantees are required to keep complete and accurate accounting records as evidence that the grant funds were used properly. The information is necessary for RBS to process applications in a responsible manner, make prudent program decisions, and effectively monitor the grantees' activities to ensure that funds obtained from the Government are used appropriately.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 100.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Quarterly; Monthly .

Total Burden Hours: 8,044.

Animal and Plant Health Inspection Service

Title: Fruit from Hawaii.

OMB Control Number: 0579–0123.

Summary of Collection: The United States Department of Agriculture is responsible for preventing plant diseases or insect pests from spreading within the United States. The Plant Quarantine Act authorizes the Department to carry out this mission. Chapter 8 of the Plant Quarantine Act (& U.S.C. 161) provides authority for the Secretary of Agriculture and the Animal and Plant Health Inspection Service (APHIS) to Quarantine any State, Territory, or District of the United States to prevent the spread of plant diseases and insect pests (such as fruit flies) new or widely distributed throughout the United States. APHIS regulates the interstate movement of fruits and vegetables from Hawaii to prevent the spread of Mediterranean fruit fly, the melon fly, the Oriental fruit fly, and the Malaysian fruit fly pests that occur in Hawaii and can cause millions of dollars in damage to U.S. agriculture. APHIS will collect information using several forms to ensure fruits from Hawaii are free from pests and disease.

Need and Use of the Information: APHIS will collect information using forms PPQ 540, PPQ 530, PPQ 519 to ensure abui, atemoya, bananas, longan, rambutan, sapodilla, and durian from Hawaii are brought safely into the United States.

Description of Respondents: Business or other for-profit.

Number of Respondents: 300.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 327.

Animal and Plant Health Inspection Service

Title: Imported Seed and Screening.

OMB Control Number: 0579–0124.

Summary of Collection: The United States Department of Agriculture (USDA) is responsible for preventing plant diseases or insect pests from entering the United States, preventing the spread of pests not widely distributed in the United States, and eradicating those imported pest when eradication is feasible. The Plant Quarantine Act and the Federal Plant Pest Act authorizes the Department to carry out this mission. Under the authority of the Federal Seed Act of 1939, as amended, the USDA regulates the importation and interstate movement of certain agricultural and vegetable seeds. The Plant Protection & Quarantine Division of USDA's Animal & Plant Health Inspection Service (APHIS) has established a seed analysis program with Canada that allows U.S. companies that import seed for cleaning or processing to enter into compliance agreements with APHIS. This program eliminates the need for sampling shipments of Canadian-origin seed at the border and allows certain seed importers to clean seed without the direct supervision of an APHIS inspector. APHIS will collect information using forms PPQ 925 and PPQ 519.

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Need and Use of the Information: APHIS will collect information to prevent the spread of insect pests and noxious weeds in the United States. If the information were not collected there would be no way of preventing noxious weeds from entering the United States.

Description of Respondents: Business or other for-profit.

Number of Respondents: 30,000.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 11,345.

Animal and Plant Health Inspection Service

Title: Plum Pox Compensation.

OMB Control Number: 0579–0159.

Summary of Collection: Plum Pox is an extremely serious viral disease of plants that can affect may stonefruit species, including plum, peach, apricot, almond, and nectarine. The United States Department of Agriculture is responsible for preventing plant pest and noxious weeds from entering the United States, preventing the spread of pests and weeds not widely distributed in the United States and eradicating those imported pests and weeds when eradication is feasible. Chapter 8 of the Plant Quarantine Act (7 U.S.C. 161) provides authority for the Secretary of Agriculture to quarantine any State, Territory, or District of the United States to prevent the spread of insect pests and plant diseases new or not widely distributed throughout the United States. Section 102 of the Organic Act (7 U.S.C. 147a) states, in part, that "the Secretary of Agriculture, either independently or in cooperation with the States * * * is authorized to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests." The Animal & Plant Health Inspection Service (APHIS) will collect information using form PPQ 651, Application for Plum Pox Compensation, in order to qualify agricultural producers for disaster payments in conjunction with losses suffered as a result of Plum Pox.

Need and Use of the Information: APHIS will collect the owner's name and address, a description of the owner's property, and a certification statement that the plums removed from the owner's property were commercial plums. The owners will also need to send APHIS a copy of the public order or destruction order that describes the number of plum trees removed. The information will be used to obtain the correct address to which funds are to be sent, and to verify the location and number of plum trees for which the owner is requesting replacement funds. If the information were not collected, APHIS would be unable to reimburse eligible grove and nursery owners for the loss of their trees.

Description of Respondents: Business or other for-profit.

Number of Respondents: 12.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 2.

Animal and Plant Health Inspection Service

Title: District of Columbia Plant Health Certificate.

OMB Control Number: 0579–0166.

Summary of Collection: The United States Department of Agriculture is responsible for preventing plant pests and noxious weeds from entering the United States, preventing the spread of pests and weeds not widely distributed in the United States and eradicating those imported pests and weeds when eradication is feasible. The Federal Plant Protection Act authorized the Department to carry out this mission. The Plant Protection and Quarantine (PPQ) Division of the Animal and Plant Health Inspection Service (APHIS) provides certification services for plant material moving interstate to ensure other states that the plants and plant products they are receiving from the District of Columbia are free of prohibited or otherwise regulated plant pests. APHIS will collect information using form PPQ 571, District of Columbia Plant Health Certificate.

Need and Use of the Information: APHIS will collect information to certify that the domestic plant or other plant material described by the shipper has been inspected according to appropriate procedures and that it is considered free from certain plant diseases, insects, or other pests, and is considered to conform with the requirements of the importing State. If the information is not collected, it would likely result in the interstate spread of damaging agricultural pests. Further, entities in the District of Columbia would be unable to ship their products to other States, as other States require this certification.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 4.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 40.

Nancy B. Sternberg,

Departmental Clearance Office.

[FR Doc. 01–10745 Filed 4–30–01; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Availability of Environmental Assessment To Amend the Hiawatha National Forest Land and Resource Management Plan

AGENCY: Forest Service, USDA.

ACTION: Notice of Availability of Environmental Assement.

SUMMARY: On May 1, 2001, Hiawatha National Forest Supervisor, Clyde N. Thompson (Responsible Official) announced the preferred alternative and availability of the Rock River Canyon Wilderness Environmental Assessment for a 30-day comment and review period. The preferred alternative would amend the Hiawatha National Forest Land and Resource Management Plan (Forest Plan) to revise the standards and guidelines for management of the Rock River Canyon Wilderness. This notice is pursuant to National Forest System Land and Resource Management Planning regulations (36 CFR 219.35(b), 65 FR 67579, November 9, 2000). Copies of the Environmental Assessment (EA) are available upon request.

DATES: On May 1, 2001, Hiawatha National Forest Supervisor, Clyde N. Thompson announced the preferred alternative and availability of the Rock River Canyon Wilderness Environmental Assessment for public review and comment. Comments on the EA must be received no later than May 31, 2001.

ADDRESSES: Send comments or requests for documents to: Forest Supervisor, Hiawatha National Forest, 2727 North Lincoln Road, Escanaba, MI 49829 or email comments to *mailroom r9 hiawatha@fs.fed.us*, with the subject line: "Rock River Canyon Wilderness EA."

FOR FURTHER INFORMATION CONTACT: Janel Crooks, Project Coordinator, at 906–387–2512. TDD 906–387–3371. Or access the forest web page at *www.fs.fed.us/r9/hiawatha*.

Responsible Official: Clyde N. Thompson, Forest Supervisor, 2727 North Lincoln Rd., Escanaba, Michigan 49829.

SUPPLEMENTARY INFORMATION: The proposed Forest Plan Amendment No. 22 describes programmatic standards and guidelines that allow for existing recreation use while reducing resource impacts to the Wilderness and wilderness values. These standards and guidelines address trails, camping and other management concerns. The preferred alternative designates existing trails, prohibits new trails, and institutes voluntary registration for overnight and day use. This is a non-significant amendment. Public involvement has been an important part of the decision making process for this proposal. Public comments were gathered in 1992 through a survey of users. In April 1993, a public scoping letter was sent to over 400 interested parties and a notice was published in the local newspaper. On December 17, 1999, a second public scoping letter was mailed to over 400 interested parties and a legal notice was published in the Escanaba Daily Press, Escanaba, MI. On May 1, 2001, legal notice was published in the Daily Press, Escanaba, MI, notifying the public of the availability of the EA for review. A 30-day comment period follows release of the EA on May 1, 2001. Comments on the EA must be received no later than May 21, 2001. A final decision is expected by November 2001. this decision will be subject to appeal pursuant to USDA Forest Service regulations 36 CFR 217.3.

Dated: April 16, 2001.

Clyde N. Thompson,

Forest Supervisor.

[FR Doc. 01–10500 Filed 4–30–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Garnet Stars & Sands Project; Idaho Panhandle National Forests, Benewah and Latah Counties, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The St. Joe Ranger District of the Idaho Panhandle National Forests is beginning an analysis and preparation of an environmental Impact Statement to address recreational digging, leasing and/or sale of the garnet resource in the Emerald, Hidden, Wood and Cat Spur Creek drainages. The responsible official is Forest Supervisor, Idaho Panhandle National Forests, 3815 Schreiber Way, Coeur d' Alene, ID 83815.

The garnet resource consists of both sands and gemstones. The sands are used for industrial purposes, primarily as abrasives. The Project Area produces extraordinary quality and quantity of large garnets, with some of the drainages producing star garnets. These gemstones are use commercially for jewelry and are sought after by recreationists.

Much of the Emerald Creek drainage, on public and private lands, has been mined in the past. Two lease renewals, one new lease application, one prospecting permit extension, and eight new prospecting permit applications have been submitted. In addition, the Forest Service currently manages a public digging areas (by fee permit) in 281 Gulch, a tributary to Emerald Creek.

The Purpose and Need for this project is based in the fact that the garnet resource is finite and valuable and there is considerable public interest in leasing of gemstones and sands and retaining the recreational digging area. The Purpose and Need for this project is as follows:

- Respond to public interest in developing the mineral resource, while conserving the garnet resource for future generations.
- Gemstone deposits within the current Forest Service recreational digging area in 281 Gulch are becoming depleted. If the Forest Service is going to continue to provide this unique recreational digging opportunity, other areas need to be tested, identified and developed.
- Resolve twelve pending mining applications or extensions (lease applications, permit applications and permit extensions) for both garnets and sand, dating back to 1996.

DATES: The Draft Environmental Impact Statement is expected to be filed by October 1, 2001. The Final Environmental Impact Statement is expected to be filed by June 30, 2001.

ADDRESSES: Comments should be sent to: Garnet Stars & Sands, St. Joe Ranger District, PO Box 407, St. Maries, ID 83861.

FOR FURTHER INFORMATION CONTACT: Questions should be referred to Tracy Gravelle, St. Joe Ranger District, Avery Office, HC Box 1, Avery, ID 83861.

SUPPLEMENTARY INFORMATION:

Proposed Action

Public Recreational Gemstone Digging Areas

(1) The Forest Service would reserve Wood Creek and certain tributaries of the East Fork of Emerald Creek (281 Gulch, Garnet Gulch, No Name, PeeWee and Strom Creeks) and for public recreational digging of gemstone garnets. These areas would not be available for commercial lease.

These drainages would be tested with a combination of auger holes, hand or machine-dug trenches. After testing, drainages will be listed in order of priority for development. Each drainage would require different development. The following activities are likely:

Only one drainage at a time would be open.

All site may have trees cut and removed and/or used for reclamation.

An average of 200–300 feet per year would be opened and reclaimed according to design features in Chapter 2 of the EIS.

Reclamation will follow Best Management Practices and include site-specific mitigations that will be developed for this analysis.

Details by Drainage

281 Gulch: Progressive digging would continue in the two forks to the confluence of the East and West Forks. Digging would then continue on the main fork of 281 to Road 447. Overburden removal would be needed.

Garnet Gulch: The original parking area for Pee Wee and NoName creeks would be used for this drainage. The a-frame would be located at the parking area and a toilet facility installed. An estimated ½ mile trail would be constructed. Some overburden removal may be necessary.

PeeWee and No Name Creeks: These drainages have been recreational digging areas previously and are known to have high quality gemstones. At the time, there was no equipment brought in to remove overburden and it is believed that there may be more resource available. Development would include a toilet facility but the parking and other site space still exist. These two areas shared parking areas. Overburden removal is likely going to be necessary.

Strom Gulch: Parking, the a-frame and toilet may be developed on the upper road (Rd. 1487) or this site would utilize the facilities for Pee Wee and NoName Creeks. No overburden removal is expected.

Wood Creek: parking and a site for the a-frame and toilet would be developed. Some overburden removal may be necessary.

Lease Application

(2) The pending lease application (ID 29529) for gemstones on Bechtel Butte would be approved. This entails the following: 5 to 6 pits 15 feet in diameter; one backhoe trench 100 feet long by 20 feet wide and 8 feet deep on the ridge; a bobcat excavator would be used to fill in and dig smaller trenches (T42N, R1E, Sections 9, 10, 15 & 16). It is expected that these activities would begin in 2002 and continue through 2007.

Prospecting Permits

Prospecting permits also suggest that there could be further development applied for in the form of a lease application. In order to perform an efficient analysis, for some of the permits we are assuming subsequent

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development as long as analysis shows that it can be done within relevant laws and regulations. When or if a lease application is filed, then another NEPA decision would be required but it is likely that much of the pre-work would be complete with this document.

(3) The ending prospecting permit applications (ID 31439, 31440, 31441, 31442, 31443, 31444) and prospecting permit extension (ID 29619) would be approved. Specifically this entails three backhoe trenches.

For the area under these permits, ID 31439–31444 and 29619, the following subsequent development is assumed:

National Forest lands along the East and West Forks of Emerald Creek would be developed for mining garnet sands. This would include the wider and more accessible portions of the East Fork from the west line of T24N, R1E, Section 18 (between Flat Creek and Strom Gulch) to near the confluence of the East and West Forks of Emerald Creek. Some portions of Road 447 would be removed for mining and replaced afterward, which would result in a temporary re-route around mining operations. Some portions of the creek channel would be temporarily relocated for mining and then rebuilt. A similar mining scenario would take place in the West Fork on approximately 25 acres (½) mile of stream). The West Fork operations would begin at the upstream end and take two summer seasons beginning in the year 2003. The East Fork operations would begin at the upstream end of the creek and would last for a total of 7–10 years starting in the year 2003. West Fork location: T43N, R1E, Section 33 and T42N, R1E, Section 4. East Fork locations: T24N, R1W, Sections 13 and 14; T42N, R1E, Sections 3, 8, 9, 17, and 18.

Other areas would be explored for possible future mining development. However, the probability of mining activity here is less certain and will not be analyzed at this time. Any development of these drainages would likely be applied for after the mining in the East and West Forks is complete.

(4) The pending prospecting permit application (ID 33036/amended application (4/2/2001)) for garnet gemstones would be approved. This entails hand-dug trenches in a tributary to Cat Spur Creek. No assumptions for further development will be made at this time. (T42N, R2E, Section 19).

(5) The pending prospecting permit application (ID 32421) for garnet sands on Bechtel Butte would be approved. This entails three hand-dug trenches 10 ft. × 12 ft. (T42N, R1E, Sections 9, 10, 15, 16).

Lease Renewal

(6) The pending lease renewal applications (ID 016415 & 25554) would be approved. This would include development and mining for garnet sands on approximately 8.0 acres in Section 9 on the East Fork of Emerald Creek; these operations would likely occur in the last third of the 7–10 year mining period for mining the East Fork. The remaining areas of the lease have already been mined and reclaimed. (T42N, R1E, Section 9).

Conditions & Reclamation

(7) The conditions and reclamation requirements under which any recreational and commercial garnet mining could be implemented would be developed.

Forest Plan Amendment and Other Agency Permits

It is possible that this proposal would require a non-significant Forest Plan amendment regarding mining development.

The proposed action allows for commercial leasing of gemstones and sands, which requires permit approval and implementation by the Bureau of Land Management. Project implementation with floodplains would require Corps of Engineers Permits (404 permits).

Issues

We expect that maintaining fish and water quality will be issues of primary importance. Also, we expect that whether or not to maintain recreational digging areas is likely to be an issue. Other issues will be developed during this scoping period. A likely alternative to the proposed action could be to allow recreational digging only and not allow commercial leasing of gemstone garnets.

Public Involvement

A scoping letter has been sent to addresses on the mailing list in addition to outreach to rockhound groups and other interested parties. While public participation is welcome at any time, comments received during the 30-day scoping comment period will be especially useful in preparation of the Draft EIS. News releases have been sent out to the local and major newspapers in northern Idaho. This project is also listed on the Idaho Panhandled National Forest web site (*www.fs.fed.us/ipnf*); pertinent documents will be displayed on this site. In addition, the comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.** It is the reviewer's obligation to comment during the scoping and/or DEIS review.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 533 (1973). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Amgoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: April 16, 2001.

Pat Aguilar,

Acting Forest Supervisor, Idoho Ponhandle National Forests.

[FR Doc. 01–10812 Filed 4–30–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Iowa Watershed Rehabilitation Pilot Project Plan, Monona and Mills Counties, IA

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Iowa Watershed Rehabilitation Pilot Project Plan, Monona and Mills Counties, Iowa.

FOR FURTHER INFORMATION CONTACT: Leroy Brown, State Conservationist, Natural Resources Conservation Service, 210 Walnut Street, 693 Federal Building, Des Moines, IA 50309–2180.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant impacts on the environment. As a result of these findings, Leroy Brown, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purpose is to develop procedures and demonstrate actions that may be used to implement a statewide watershed rehabilitation program in Iowa. To accomplish this, two aging watershed structures will be rehabilitated as a pilot project to demonstrate methods and develop public support for the rehabilitation program. These actions will restore these two structures so they will continue to function for 50 years.

The project actions include the reshaping of the road ditch in a road right-of-way, modifying the auxiliary spillway to lower its elevation by three feet and replacement of a principal spillway outlet on a structure in Mills County that threatens motorist safety on U.S. Highway 34 in case of a dam breach. The project actions in Monona County include renovation of structure fill and spillway, a conservation easement to convert existing 49 acres of cropland to native grass and forbs, approximately eight sediment and water control basins, 6.8 acres of waterway, pasture renovation plantings on 60 acres, and one livestock watering system.

The Plan and Environmental Assessment has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and to interested parties. A limited number of copies of the plan and environmental assessment are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be viewed by contacting Leroy Brown.

No administrative action will be taken until 30 days after the date of this publication in the **Federal Register.**

Finding of No Significant Impact for the Iowa Watershed Rehabilitation Pilot Project, Lawson Creek and Pony Creek Watersheds, Monona and Mills Counties, Iowa

Introduction

The proposed plan is for an Iowa Watershed Rehabilitation Pilot Project to address aging and impaired watershed structures in the State of Iowa. Two watersheds were selected for the pilot project. One structure in each watershed was chosen for use in the pilot project.

Lawson site 1–1 is an earthfill structure that was installed in 1970 to control severe gully erosion and reduce flooding. The structure receives runoff from 258 acres of agricultural land and originally had a permanent pool of 1.3 acres. The structure prematurely filled with sediment due to extreme actions of a previous private landowner. The structure is in danger of failing and a major gully problem will reform.

Pony Creek site 31 was installed in 1963 to control severe gully erosion and reduce flooding. The earthfill structure receives drainage from 270 acres of agricultural land and has a permanent pool of 14 acres. U.S. Highway 34 was relocated below the structure in 1974. This places about 8000 motor vehicles daily within the potential dam breach area. Hydraulic routings indicate that the breach of the structure would put water about two feet deep across the highway.

These two structures were chosen because they are representative of the types of problems that will be encountered in other watersheds when a state wide Watershed Rehabilitation Program is implemented.

Lawson Creek Watershed was a federally assisted action authorized and installed under Public Law 78–534, The Flood Control Act as part of the Little Sioux River Flood Prevention Project. Pony Creek watershed was a federally assisted action authorized and installed under Public law 83–566, The Watershed Protection and Flood Prevention Act. The proposed rehabilitation actions to remedy problems with the existing structural components at Site 1–1 in Lawson Creek Watershed and Site 31 in Pony Creek Watershed are authorized in accordance with the original federal authorities as amended by the Small Watershed Rehabilitation Amendments of 2000, and the Soil and Water Conservation, Soil Conservation and Domestic Allotment Act of 1936, as amended, Public Law 74–46, 16 U.S.C. 590 a–f (CFDA No. 10.902). An environmental assessment was undertaken by the Natural Resources Conservation Service (NRCS) in conjunction with the development of this rehabilitation plan. This assessment was undertaken in consultation with local, state and federal agencies as well as interested organizations and individuals. Data developed during assessment and copies of the rehabilitation plan are available for public review at the following location: Natural Resources Conservation Service, 210 Walnut Street, 693 Federal Building, Des Moines, Iowa 50309–2180.

An Environmental Impact Statement (EIS) was prepared for the Little Sioux Watershed Flood Prevention Project in 1976. The EIS discusses the effects of installing flood prevention and grade stabilization dams and land treatment practices.

Recommended Action

Proposed actions for Site 1–1 in Lawson Creek Watershed are:

1. Raising the existing structure height by about 15 feet.
2. Installing a new principal spillway couduit.
3. Securing a conversation easement on 49 acres above the existing pool area in perpetuity.
4. Converting the land use from cropland to native grass and forbs within the conservation easement area.
5. Installing about eight water and sediment control basins to prevent gully erosion and trap sediment.
6. Establishing 6.8 acres of grassed waterway to control erosion in drainage ways.
7. Planting improved grass mixture on 60 acres of existing pastureland to improve soil cover.
8. Installing one livestock watering system.

Proposed actions for Site 31 in Pony Creek Watershed are:

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1. Modifying a constructed earth block in the highway road ditch below the structure in the right-of-way of U.S. Highway 34. The man made block would be lowered about two feet for a distance of about 50 feet.
2. Replacing the existing corrugated metal pipe principal spillway.
3. The auxiliary spillway will be modified to lower its' elevation by about three feet.

Effects of the Recommended Actions

Lawson Creek Watershed

The actions in the proposed plan for Lawson Creek Watershed will control gully erosion for 50 years at Site 1–1, reduce sheet, rill and ephemeral cropland gully erosion in the watershed above the site, reduce delivery of sediment both to the structure site and the Maple River, provide a source of water for minnow species in the structure pool, and reduce downstream peak flows.

There are three cultural resource sites recorded in the area. None are in the area of potential effect. Following its procedures, NRCS surveyed the area of potential effect and no sites were identified. Construction discoveries will be handled in accordance with NRCS General Manual, Section 420, Part 401.

The Loess Hills are a nationally significant natural area. The installation of the project measures will prevent gully damages to this portion of the Loess Hills. The planting of native vegetation as per Iowa NRCS specifications for restoration of rare and declining habitats on the 49 acre easement area will help restore native prairie vegetation to this portion of the Loess Hills.

The project will convert 49 acres of cropland to a diverse mixture of native grasses and forbs. This will add diversity and improve wildlife habitat on these 49 acres and within the watershed. Any incidental or unavoidable impacts to woody vegetation or other significant wildlife habitat types will be quantified prior to construction and any losses will be replaced through mitigation.

No threatened or endangered species are recorded in the area. No critical habitat for any species is present in the proposed project area.

There are no wetlands, prime farmland or other unique or protected land resources that will be negatively impacted to the proposed actions.

No other significant adverse environmental impacts will occur from installation of project features.

There is no existing or anticipated public controversy associated with this proposed action.

The effects of the recommended actions in Lawson Watershed are consistent with the Environmental Impact Statement prepared for the Little Sioux River Watershed Flood Prevention Project.

Pony Creek Watershed

The actions in the proposed plan for Pony Creek Watershed Site 31 will allow the structure to continue to control gully erosion, prevent any downstream sedimentation, and prevent a flood hazard to motorists on U.S. Highway 34 from a dam breach failure.

There are no significant cultural resources identified within the work area for the replacement of the existing principal spillway outlet. No new earthfill will be required.

The deepening of the block in the road ditch will affect previously disturbed soil material except for the south slope where a small area of undisturbed hillside will be disturbed. This small undisturbed area has been archaeologically surveyed and contains no cultural resources. The modification of the auxiliary spillway is in an area previously disturbed and will not affect deposits that could contain cultural resources.

If a construction discovery is made, the NRCS will take action as prescribed in the NRCS General Manual, Section 420, Part 401.

There will be no impacts to any threatened or endangered species.

No wildlife or fisheries habitats will be adversely impacted.

There will be no impacts to the Loess Hills, a nationally significant natural area.

There are no wetlands, prime farmland, agricultural land, or other natural or unique land resources that will be impacted by the actions in the proposed plan.

There will be a minor, short term adverse impact to recreational use of the Mills County Conservation Board park in which the structure is located while the new outlet pipe is being installed. The pool will be drawn down by about six feet while the new pipe is installed. This will expose some unsightly shoreline conditions and may have a minor impact on use of the pool by shoreline anglers. The project will be done quickly and all efforts will be made to limit the duration and severity of such disruptions in recreational use. No new earthfill will be required.

No other significant adverse environmental impacts will occur from installation of project features.

There is no existing or anticipated public controversy associated with this proposed action.

Alternative Actions

Other alternative actions were considered in the planning process but were rejected. The recommended alternatives for both watersheds that are included in the proposed plan, are both the most practical and lowest cost means of accomplishing the rehabilitation of the structures so that they continue to provide the original benefits for which they were constructed. These actions meet the sponsors objectives and goals, provide environmental benefits, cause no significant adverse environmental impacts, and cause no public controversy.

Consultation and Public Participation

Lawson Creek Watershed

The Monona County Soil and Water Conservation District (SWCD) has discussed the plan for Lawson Creek Watershed Site 1–1 at their regular public meetings.

The one landowner involved with Site 1–1 rehabilitation plan, conservation easement and land treatment measures has been involved with the development of this plan.

Twenty Indian tribes and three local historical societies were notified of this intended action and consulted about their knowledge of historical properties in the project area.

Only one response was received from one of the Indian tribes stating they were unaware of any cultural resources associated with the project area.

Inter-agency consultation and public participation to date have shown no unresolved conflicts with implementing this selected plan action in the Lawson Creek Watershed.

Pony Creek Watershed

The Mills County Soil and Water Conservation District (SWCD) has reviewed the plan for Pony Creek Watershed Site 31 at a public meeting.

The Mills County Conservation Board and the Iowa Department of Transportation have been involved with the development of this plan.

Twenty Indian tribes and three local historical societies were notified of this intended action and consulted about their knowledge of historical properties in the project area. Only one response was received from one of the Indian tribes stating they were unaware of any cultural resources associated with the project area. A cultural resource field investigation did not indicate the presence of cultural resources.

Inter-agency consultation and public participation to date have shown no unresolved conflicts with implementing this selected plan action in the Pony Creek Watershed.

Conclusion

The Environmental Assessment summarized above indicates that this Federal action will not cause significant impacts on the environment. Therefore, based on the above findings, I have determined that an environmental impact statement for the Iowa Watershed Rehabilitation Pilot Project is not required.

Dated: April 2, 2001.

Leroy Brown,

State Conservationist.

[FR Doc. 01–10813 Filed 4–30–01; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF AGRICULTURE

Sunshine Act Meeting

AGENCY: Rural Telephone Bank, USDA.

ACTION: Staff briefing for the Board of Directors.

TIME AND DATE: 2 p.m., Thursday, May 10, 2001.

PLACE: Conference Room 5030, South Building, Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED:

1. Current telecommunications industry issues.
2. Contract for business advisor to the Privatization Committee.
3. Transferability of Class C stock to a stockholder's subsidiary company.
4. Office of the Inspector General's audit report on FY 2000 financial statements.
5. FY 2000 annual report.
6. Administrative issues.

ACTION: Board of Directors meeting.

TIME AND DATE: 9 a.m., Friday, May 11, 2001.

PLACE: Conference Room 107–A, Jamie L. Whitten Building, Department of Agriculture, 12th and Jefferson Drive, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to order.
2. Action on Minutes of the February 6, 2001, board meeting.
3. Report on loans approved in the second quarter of FY 2001.
4. Report on financial activity for the second quarter of FY 2001.
5. Privatization Committee report.
6. Clarification on stock policy regarding the transferability of Class C stock to a stockholder's subsidiary company.
7. Action on the Bank's annual report for FY 2000.
8. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Roberta D. Purcell, Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Dated: April 26, 2001.

Blaine D. Stockton,

Acting Governor, Rural Telephone Bank.

[FR Doc. 01–10958 Filed 4–27–01; 12:29 pm]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Tri-State Generation and Transmission Association, Inc.; Notice of Intent To Hold A Public Workshop and Prepare an Environmental Assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of intent to hold a public workshop and prepare an environmental assessment.

SUMMARY: The Rural Utilities Service (RUS) intends to hold a public scoping workshop and prepare an environmental assessment (EA) in connection with possible impacts related to the construction and operation of a combustion turbine generation facility. The project is being proposed by Tri-State Generation and Transmission Association, Inc. (Tri-State), of Westminster, Colorado. RUS will conduct a public scoping workshop at the Lordsburg High School, 41 W. 4th Street, Lordsburg, New Mexico. The meeting/workshop will be held on May 16, 2001, from 4 p.m. until 8 p.m.

FOR FUTHER INFORMATION CONTACT: Dennis E. Rankin, Environmental Protection Specialist, RUS, Engineering and Environmental Staff, Stop 1571, 1400 Independence Avenue, SW, Washington, DC 20250–1571, telephone: (202) 720–1953 or e-mail: drank@inrus.usda.gov.; or Karl Myers, Senior Environmental Planner, Tri-State, P.O. Box 33695, Denver, Colorado 80233, telephone: (303) 452–6111 or e-mail: kmyerstristategt.org.

SUPPLEMENTARY INFORMATION: Tri-State is proposing to construct a 150 MW peaking facility consisting of four GE LM6000 combustion turbine generators with associated auxiliary and support facilities including transmission connections and a high-pressure natural gas pipeline connection available for commercial dispatch in January 2003. The preferred site is located approximately 12 miles southeast of Lordsburg, New Mexico. The preferred transmission alternative is to connect these generators via two new/rebuilt 115 kV lines between the generating site and the Hidalgo 115 kV Substation.

RUS may provide financial assistance for the project. The Bureau of Land Management has received a right-of-way application for the 115 kV transmission line. The EA will address the impacts associated with granting the right-of-way.

Alternatives to be considered by RUS include no action, load management and energy conservation, purchase power, alternative generators and alternative sites.

Comments regarding the proposed project may be submitted in writing at the public meeting/workshop or in writing no later than June 16, 2001, to RUS at the address provided above.

An environmental assessment (EA) will be prepared for the proposed project. Based on a review of the Environmental Assessment and other relevant information, RUS will determine if the preparation of an environmental impact statement is necessary. Should RUS determine that the preparation of an environmental impact statement is not necessary, it will prepare a Finding of No Significant Impact.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal, State and local environmental laws and regulations and completion of the environmental review procedures as prescribed by RUS's Environmental Policies and Procedures.

Dated: April 25, 2001.

Mark S. Plank,

Acting Director, Engineering and Environmental Staff.

[FR Doc. 01–10777 Filed 4–30–01; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

AGENCY: U.S. Census Bureau.

Title: Census 2000 Count Question Resolution Program.

Form Number(s): None.

Agency Approval Number: None.

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Type of Request: New collection.
Burden: 15,600 hours.
Number of Respondents: 3,000.
Avg Hours Per Response: 5.2 hours.
Needs and Uses: After the release of Census 2000 redistricting data, some governmental entities may seek to challenge these official Census 2000 counts. The Census Bureau is implementing the Census 2000 Count Question Resolution program (CQR) to address boundary, geocoding, and coverage (processing errors that result in a failure to include or the incorrect inclusion of population data that was identified and collected during the 2000 Census) errors. The census officially ended on December 31, 2000, and no additional census data can or will be collected after that date. The CQR Program is not a mechanism or process to challenge the March 6, 2001, decision of the Secretary of Commerce to release unadjusted numbers from Census 2000 for redistricting purposes nor to revise the numbers that were released for redistricting. Neither is the program a mechanism or process to challenge or revise the numbers sent to the President on December 28, 2000, used to apportion the United States House of Representatives.

Local or tribal governmental entities submitting a challenge using the CQR Program must submit supporting documentation, such as address lists and/or maps. Supporting evidence in the form of address lists shall be taken from a source dated no later than April 1, 2000. Challenges alleging geocoding or coverage (processing) errors in housing unit counts or group quarters population counts, must specify the block(s) for which the counts are being challenged. All governmental unit boundary challenges must be based on the boundaries that were in effect on January 1, 2000. The Census Bureau will compare the maps and supporting documentation with the information used to depict the boundaries for Census 2000. The Census Bureau will respond to all challenges and/or questions and will notify all affected governmental entities of any corrections to their official counts.

The Census Bureau published a notice in the **Federal Register** on January 22, 2001 (Vol. 66, No. 14, pp. 6574–6578) announcing our plans to conduct the CQR Program and instructing local and Tribal governments on how, when, and where to submit challenges.

CQR will begin June 30, 2001 and will conclude September 30, 2003.

Affected Public: State, local, or Tribal government.
Frequency: One time.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13 U.S.C., Section 141.
OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: April 6, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–10765 Filed 4–30–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Applicant Background Questionnaire

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 2, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Geraldine Burt, U.S. Census Bureau, Field Division, FOB–3, Room 1784, Washington, DC 20233–5700, 301–457–1939.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Applicant Background Questionnaire is completed on a voluntary basis by applicants for Regional Office Schedule A positions with the Census Bureau at the time of application and testing. The Census Bureau conducts a wide variety of statistical surveys and hires interviewers and other Schedule A employees to work on these surveys on an ongoing basis. The questions on the Applicant Background Questionnaire are of a sensitive nature relating to race and national origin as well as medical disabilities. This information is useful in determining whether we have a representative sample of the community from which we are hiring. This allows the Census Bureau to adjust recruiting efforts quickly and to employ local applicants for indigenous hiring. It also allows us to assess our compliance with equal employment opportunity regulations. Background information provided by applicants will not be used in applicant screening or selection and will not be available to the selecting official.

II. Method of Collection

Individuals complete the BC–1431 only once. Based on past experience, the BC–1431 on average takes about 2.5 minutes to complete. The paper form is completed by the applicant at the time of testing.

III. Data

OMB Number: 0607–0494.
Form Number: BC–1431.
Type of Review: Regular Submission.
Affected Public: Census Bureau Job Applicants.
Estimated Number of Respondents: 25,000.
Estimated Time Per Response: 2.5 minutes.
Estimated Total Annual Burden Hours: 1,042.
Estimated Total Annual Cost: There is no cost to respondents except for their time.
Respondent's Obligation: Voluntary.

Legal Authority: Pub. L. 92–261, Equal Employment Opportunity Act of 1972 Pub. L. 94–311, Publication of Economic and Social Statistics for Americans of Spanish Origin or Descent 41 CFR part 60–3, Information on Impact (Section 4) 5 U.S.C. 7204, Antidiscrimination Policy, Minority Recruitment Program.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 26, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–10773 Filed 4–30–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Generic Clearance for Customer Satisfaction Surveys

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 2, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Joanne Dickinson, U.S. Bureau of the Census, Room 3015–3, Washington, DC 20233–0800, and 301–457–4081.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is requesting an extension of the generic clearance to conduct customer satisfaction research surveys which may be in the form of mailed or electronic questionnaires and/or focus groups or personal interviews.

The Census Bureau has ranked a customer focused environment as one of its most important strategic planning objectives. The Bureau routinely needs to collect and analyze customer feedback about its products and services to better align them to its customers' needs and preferences. Several products and distribution channels have been designed/redesigned based on feedback from its various customer satisfaction research efforts.

Each research design is reviewed for content, utility, and user-friendliness by a variety of appropriate staff (including research design and subject-matter specialists). The concept and design are tested by internal staff and a select sample of respondents to confirm its appropriateness, user-friendliness, and to estimate burden (including hours and cost) of the proposed collection of information. Collection techniques are discussed and included in the research concept design discussions to define the most time-, cost-efficient and accurate collection media.

The clearance operates in the following manner: a block of hours is reserved at the beginning of each year, and the particular activities that will be conducted under the clearance are not specified in advance. The Census Bureau provides information to OMB about the specific activities on a flow basis throughout the year. OMB is notified of each activity in a letter that gives specific details about the activity, rather than by means of individual clearance packages. At the end of each year, a report is submitted to OMB that summarizes the number of hours used as well as the nature and results of the activities completed under the clearance.

Some modifications of the clearance from previous years are planned. The number of hours is expanded from 3,750 per year to 4,000 to allow for larger-scale research efforts with increased analytical power. In addition, incentives as a survey procedure may also be the subject of research under the clearance.

II. Method of Collection

This research may be in the form of mailed or electronic questionnaires and/or focus groups or personal interviews.

III. Data

OMB Number: 0607–0760.
Form Number: Various.
Type of Review: Regular.
Affected Public: Individuals or households, State or local governments, farms, businesses or other for-profit organizations, federal agencies or employees, non-profit institutions, small businesses or organizations.
Estimated Number of Respondents: 48,000.
Estimated Time Per Response: 5 minutes.
Estimated Total Annual Burden Hours: 4,000 hours.
Estimated Total Annual Cost: There is no cost to respondents, except for their time to answer the questions posed.
Respondent's Obligation: Voluntary.

Legal Authority: Executive Order 12862.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 26, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–10774 Filed 4–30–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Survey of Plant Capacity Utilization

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 2, 2001.

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ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Ron Taylor, Bureau of the Census, Room 2135 FOB–4, Washington, DC 20233, on (301) 457–4683.

SUPPLEMENTARY INFORMATION

I. Abstract

The Census Bureau plans to extend the current OMB clearance for the Survey of Plant Capacity Utilization. The survey is conducted annually collecting data for fourth quarter operations. The survey collects, from manufacturing plants, the value of actual production and the value of production that could have been achieved if operating at "full production" and "emergency production" levels. The survey also collects data on work patterns by shift. These data include hours in operation, production workers, and plant hours worked. The resulting estimates are used in measuring inflationary pressures, capital flows, production indexes and analyzing and forecasting economic and industrial trends. The survey results are primarily used by the Federal Reserve Board, Federal Emergency Management Agency, and the Department of Defense.

II. Method of Collection

The Census Bureau will use mail out/mail back survey forms to collect the data. Companies will be asked to respond within 30 days of the initial mailing. This due date will be imprinted at the top of the form. Letters encouraging participation will be mailed to companies that have not responded by the designated time.

III. Data

OMB Number: 0607–0175.
Form Number: MQ–C1.
Type of Review: Regular.
Affected Public: Manufacturing plants.
Estimated Number of Respondents: 17,000.
Estimated Time Per Response: 3 hours.
Estimated Total Annual Burden Hours: 51,000.
Estimated Total Annual Cost: $806,820 (51,000 * $15.82).
Respondents Obligation: Mandatory.
Legal Authority: Title 13 US Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 26, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–10775 Filed 4–30–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

2002 Economic Census Ownership Or Control Flier

ACTION: Proposed Collection; Comment Request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 2, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Department Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington DC 20230 (or via the Internet at mcclayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) should be directed to Bruce M. Goldhirsch, Bureau of the Census, Room 2529, Building 3, Washington, DC 20233–6100, and 301–457–2626 or email at Bruce.M.Goldhirsch@census.gov.

SUPPLEMENTARY INFORMATION

I. Abstract

The Census Bureau is the preeminent collector of timely, relevant and quality data about the people and economy of the United States. Economic data are the Census Bureau's primary program commitment during non-decennial census years. The economic census, conducted under authority of title 13 U.S.C., is the primary source of facts about the structure and function of the Nation's economy and features unique industry and geographic detail. Economic census statistics serve as part of the framework for the national accounts and provide essential information for government, business and the general public.

The data collection for ownership and control questions is a supplement to the 2002 Economic Census. In prior censuses these questions were included as part of the economic census questionnaires and used to determine if single-establishment firms were either owned or controlled by another company or if they operate at more than one location. Since the ownership or control questions only apply to single-establishment companies, we have removed these questions from economic census questionnaires. We will include these questions on a separate flier that only will be inserted in economic census questionnaire mail out packages for single-establishment firms.

II. Method of Collection

The economic census will select establishments for its mail canvas from the Census Bureau's Business register. For those single-establishments firms selected in the economic census, an ownership or control flier will be inserted in the mail out package. We estimate that for the 2002 Economic Census there will be approximately 2,442,300 establishments of single-establishment firms.

III. Data

OMB Number: Not Available.
Form Number: The 12 fliers used to collect ownership or control information are tailored to specific business practices and are too numerous to list separately in this notice.
Type of Review: Regular Review.
Affected Public: State or local governments, businesses or other for profit organizations, and non-profit institutions.
Estimated Number of Respondents: 2,442,300.
Estimated Time Per Response: 1.2 minutes.
Estimated Total Annual Burden Hours: 48,846.
Estimated Total Annual Cost: $748,320.
Respondent's Obligation: Mandatory.
Legal Authority: Title 13, U.S.C., Sections 131 and 224.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also become a matter of public record.

Dated: April 26, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–10776 Filed 4–30–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 47–2000]

Foreign-Trade Zone 104—Chatham County, Georgia; Application for Expansion Amendment of Application

Notice is hereby given that the application of the Savannah Airport Commission, grantee of FTZ 104, requesting authority to expand its zone in Chatham County, Georgia (Doc. 47–2000, 65 FR 50178, 8/17/00), has been amended to remove 1,057 acres from the FTZ expansion request. Proposed Site 6 at Mulberry Grove will be reduced from 2,239 acres to 1,182 acres.

In addition, this notice will serve to clarify the size of Proposed Site 5 at the Savannah International Trade and Convention Center. As stated in the original notice, the proposed site would consist of 94 acres. However, the applicant is requesting FTZ status for only a 24-acre parcel within the 94-acre site. The application otherwise remains unchanged.

The comment period is reopened until May 31, 2001. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below.

A copy of the application and the amendment and accompanying exhibits are available for public inspection at the following locations:

U.S. Department of Commerce, Export Assistance Center, 6001 Chatham Center Drive, Suite 100, Savannah, GA 31405.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: April 25, 2001.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–10861 Filed 4–30–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 17–2001]

Foreign-Trade Zone 138—Columbus, OH; Application for Subzone E.I. DuPont de Nemours and Company, Inc. (Chemical Products) Circleville, OH

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Rickenbacker Port Authority, grantee of FTZ 138, requesting special-purpose subzone status for the manufacturing and warehousing facilities of E.I. DuPont de Nemours and Company, Inc. (DuPont), located in Circleville, Ohio. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on April 23, 2001.

DuPont has two sites with 320 employees in Pickaway County, Ohio. Site 1 (750 acres) is located at U.S. Route 23 and DuPont Road, Circleville, Ohio. Site 2 (193,000 square feet) is located at 2300 Owens Road, Circleville, Ohio. The DuPont facility is used for the manufacturing, testing, packaging and warehousing of Kapton® polyimide films (HTS 3920.99.22, duty rate 4.2%), which are used in miniaturized electronic components, microprocessor chip carriers and high speed locomotive motors. Components and materials sourced from abroad (representing about 73% of all parts consumed in manufacturing) include: 4-4′-oxydianiline (ODA); 3,4,3′,4′ biphenyl tetracarboxylic dianhydride (BPDA); pyromellitic dianhydride (PMDA); benemine, 4,4′-(1,3-phenylenebis (oxy)) bis (RODA); and 4,4′-oxydiphthalic anhydride (ODPA) (HTS 2922.29.80, 2917.39.30, 2917.39.70, 2922.29.29, and 2917.39.30, duty rate ranges from 6.5% to 10.6%).

FTZ procedures would exempt DuPont from Customs duty payments on the foreign components used in export production. Some 35 percent of the plant's shipments are exported. On its domestic sales, DuPont would be able to choose the duty rates during Customs entry procedures that apply to finished polyimide film (4.2%) for the foreign inputs noted above. The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 2, 2001. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to July 16, 2001).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, Two Nationwide Plaza, Suite 1400, Columbus, OH 43215.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: April 23, 2001.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–10859 Filed 4–30–01; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 18–2001]

Foreign-Trade Zone 33—Pittsburgh, Pennsylvania; Application for Subzone, Sony Technology Center-Pittsburgh (Television Manufacturing Facilities) Mount Pleasant, Pennsylvania

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Regional Industrial Development Corporation of Southwestern Pennsylvania, grantee of FTZ 33, requesting special-purpose subzone status for the manufacturing and warehousing facilities of the Sony Technology Center-Pittsburgh (STC–P), located in Mount Pleasant, Pennsylvania. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on April 23, 2001.

The STC–P facility is comprised of three sites with 3,300 employees in Westmoreland County, Pennsylvania: Site 1 (633.64 acres, currently with 3,550,000 square feet, with a possible expansion of 458,330 square feet)—located at 1001 Technology Drive, Mount Pleasant, Pennsylvania; Site 2 (9.8 acres, 192,500 square feet)—located at the South Greensburg Commons at Huff and Parr Streets, Greensburg, Pennsylvania; and Site 3 (31.2 acres, 273,600 square feet)—located at the former Montgomery Wards Distribution Center on Route 119 in New Stanton, Pennsylvania.

STC–P indicates that it intends to manufacture, test, package, and warehouse under zone procedures unfinished and finished television sets (HTSUS 8528, duty free-5%), components of television sets (HTSUS 8540, 5.4%; HTSUS 7011, 5.2%), television tubes (HTSUS 8540, 3.3%–15%), specialty chemicals for the electronics industry (HTSUS 2916, 6.5%, HTSUS 3403, 6.5%) and thermal transfer ribbons (HTSUS 3921, 4.20%, HTS 9612, 8.2%). Foreign-sourced materials will account for, on average, 68% of the finished products value. STC–P indicates that the foreign sourced inputs would be as follows: Feldspar, salts of oxometallic or peroxometallic acids, hydrogen, silicates, other organo-inorganic compounds, glass frit, artificial graphite, polymers of vinyl chloride, polymers of vinyl acetate, polyacetals, silicones, self-adhesive sheets, rubber, packaging materials, glass parts of television tubes, pipe seal ribbon, screws, bolts, articles of aluminum, tungsten, electromagnets, heater evaporation coil, switches, relays, fuses, lenses, signaling glassware, base metal mountings, loudspeakers, unrecorded and recorded media, transmission apparatus, parts of televisions, electrical capacitors, electrical resistors, printed circuits, thin steel for aperture grilles (HTSUS 7209.18.2510 and 7211.23.6075), electrical filament, cathode ray tubes, diodes, transistors, electronic integrated circuits and microassemblies, insulated wire, EMI shields, natural graphite, microcrystalline wax, unsaturated and saturated acyclic monocarboxylic acids, glass parts for television, casein, lubricating preparations, polishes and creams, prepared glues, polymers of ethylene and vinyl acetate, amino-resins, ribbons for impressions. The application also indicates that the company may in the future import under FTZ procedures other materials used in the production of televisions, thermal transfer ribbons and specialty chemicals.

FTZ procedures would exempt STC–P from Customs duty payments on the foreign components used in export production. Some 17 percent of the plant's shipments are exported. On its domestic sales, STC–P would be able to choose the duty rates during Customs entry procedures that apply to finished products (duty free to 15%) for the foreign inputs noted above. However, the subzone plan indicates that certain manufacturing inputs, including cathode ray tubes, components of cathode ray tubes, stainless steel ribbon and pipe seal ribbon, will be admitted to the proposed subzone in privileged foreign status.

The majority of zone savings would involve choosing the duty rate on unfinished televisions (HTSUS 8528.12.0800—duty-free) rather than the rate for the primary foreign-sourced components: loudspeakers, transmission apparatus, electrical capacitors, electrical resistors, printed circuits, diodes, transistors and similar semiconductor devices, integrated circuits, insulated electric conductors, electrical insulators, insulating fittings and EMI shields (HTSUS 8518.29.8000, 8518.30.2000, 8525.30.9005, 8532.24.0020, 8533.10.0060, 8534.00, 8541, 8542, 8544.20.0000, 8546.90.0000, 8548.90.000 duty rate ranges from duty-free to 5.3%). Application of the unfinished television classification requires that cathode ray tubes be evaluated separately. The application indicates that STC–P will admit foreign materials for the cathode ray tubes made at the plant in privileged foreign status. The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 2, 2001. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to July 2, 2001.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 2002 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: April 23, 2001.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–10860 Filed 4–30–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with section 351.213 (2000) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review

Not later than the last day of May 2001, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in May for the following periods:

	Period
Antidumping Duty Proceeding	
Argentina: Light-walled Rectangular Carbon Steel Pipe and Tubing, A–357–802	5/1/00–4/30/01
Belgium: Stainless Steel Plate in Coils, A–423–808	5/1/00–4/30/01
Brazil:	
Iron Construction Castings, A–351–503	5/1/00–4/30/01
Frozen Concentrated Orange Juice, A–351–605	5/1/00–4/30/01
Canada: Stainless Steel Plate in Coils, A–122–830	5/1/00–4/30/01
France: Antifriction Bearings, Ball and Spherical Plain, A–427–801	5/1/00–4/30/01
Germany: Antifriction Bearings, Ball, A–428–801	5/1/00–4/30/01
India: Welded Carbon Steel Pipes and Tubes, A–533–502	5/1/00–4/30/01
Indonesia: Extruded Rubber Thread, A–560–803	5/1/00–4/30/01
Italy:	
Antifriction Bearings, Ball, A–475–801	5/1/00–4/30/01
Stainless Steel Plate in Coils, A–475–822	5/1/00–4/30/01
Japan:	
Antifriction Bearings, Ball, A–588–804	5/1/00–4/30/01
Gray Portland Cement and Clinker, A–588–815	5/1/00–4/30/01
Polyvinyl Alcohol, A–588–836	5/1/00–4/30/01
Republic of Korea:	
Malleable Cast Iron Pipe Fittings, Other than Grooved, A–580–507	5/1/00–4/30/01
Polyester Staple Fiber, A–580–812	11/8/99–4/30/01
Stainless Steel Plate in Coils, A–580–831	5/1/00–4/30/01
Singapore: Antifriction Bearings, Ball, A–559–801	5/1/00–4/30/01
South Africa: Stainless Steel Plate in Coils, A–791–805	5/1/00–4/30/01
Taiwan:	
Certain Circular Welded Carbon Steel Pipe & Tubes, A–583–008	5/1/00–4/30/01
Polyester Staple Fiber, A–583–833	3/30/00–4/30/01
Polyvinyl Alcohol, A–583–824	5/1/00–4/30/01
Stainless Steel Plate in Coils, A–583–830	5/1/00–4/30/01
The People's Republic of China:	
Iron Construction Castings, A–570–502	5/1/00–4/30/01
Polyvinyl Alcohol, A–570–842	5/1/00–4/30/01
Pure Magnesium, A–570–832	5/1/00–4/30/01
The United Kingdom: Antifriction Bearings, Ball, A–412–801	5/1/00–4/30/01
Turkey: Welded Carbon Steel Pipe and Tube, A–489–501	5/1/00–4/30/01
Countervailing Duty Proceedings	
Belgium: Stainless Steel Plate in Coils, C–423–809	1/1/00–12/31/00
Brazil: Iron Construction Castings, C–351–504	1/1/00–12/31/00
Italy: Stainless Steel Plate in Coils, C–475–823	1/1/00–12/31/00
South Africa: Stainless Steel Plate in Coils, C–791–806	1/1/00–12/31/00

Suspension Agreements

None.

In accordance with section 351.213(b) the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of May 2001. If the Department does not receive, by the last day of May 2001, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries

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at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: April 24, 2001.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 01–10845 Filed 4–30–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Certain Cased Pencils From the People's Republic of China: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 1, 2001.

FOR FURTHER INFORMATION CONTACT: Paul Stolz at (202) 482–4474, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW., Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Background

On January 26, 2000, the Department published a notice of initiation of administrative review of the antidumping duty order on certain cased pencils from the People's Republic of China, covering the period December 1, 1998 through November 30, 1999 (65 FR 4228). On January 9, 2001, we published the preliminary results of review (66 FR 1638). In our notice of preliminary results, we stated our intention to issue the final results of this review no later than May 9, 2001.

Extension of Time Limit for Final Results of Review

We determine that it is not practicable to complete the final results of this review within the original time limit. Therefore the Department is extending the time limit for completion of the final results until no later than July 8, 2001. *See* Decision Memorandum from Howard B. Smith to Thomas F. Futtner, dated concurrently with this notice, which is on file in the Central Records Unit, Room B–099 of the main Commerce building.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: April 23, 2001.

Thomas F. Futtner,

Acting Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 01–10764 Filed 4–30–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Boston College; Notice of Decision on Application for Duty-Free Entry of Electron Microscope

This is a decision pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 01–008. *Applicant:* Boston College, Chestnut Hill, MA 02467. *Instrument:* Electron Microscope, Model JEM–2010F. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 66 FR 16445, March 26, 2001. *Order Date:* December 1, 2000.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. *Reasons:* The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of the instrument.

Gerald Z. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 01–10857 Filed 4–30–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 01–010. *Applicant:* University of Colorado, Department of MCD Biology, 347 UCB, Boulder, CO 80309–0347.

Instrument: Electron Microscope, Model Tecnai F20.

Manufacturer: FEI Company, The Netherlands. *Intended Use:* The instrument is intended to be used for the study of the structure of biological materials in three dimensions. Sometimes these will be components of cells such as organelles or filaments; sometimes large molecules within cells. In addition, the structure of molecules will be studied at very high resolution by extracting and preparing them so that many copies of the molecule can be imaged at once and these images averaged. The goal of these investigations is to achieve a detailed understanding of the 3-dimensional structure of some cellular component, which in turn can be used to increase the understanding of the component.

Application accepted by Commissioner of Customs: April 13, 2001.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 01–10858 Filed 4–30–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042601B]

Survey of Intent and Capacity to Process Fish and Shellfish

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 2, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to George Darcy, Assistant Regional Administrator, Sustainable Fisheries Division, 1 Blackburn Circle, Gloucester, MA, 01930, (978) 281–9331, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

I.. Abstract

The Fishery Management Plans for Atlantic Surf Clams and Ocean Quahogs, and Atlantic Mackerel, Squid, and Butterfish include requirements that the National Marine Fisheries Service and/or the Mid-Atlantic Fishery Management Council survey domestic processors and joint venture operators annually to establish industry capacity to utilize the managed species.

A survey, described in the squid, mackerel and butterfish regulations at 50 CFR 648.21(b), is used to establish the intent and capacity of the U.S. industry to utilize allowable harvest in a given year. If the U.S. industry is unable to fully utilize the allowed harvest of Atlantic mackerel, the excess may be used in establishing levels of catch for joint ventures and/or direct foreign harvest.

A survey, required under the surf clam and ocean quahog regulations at 50 CFR 648.7(a)(3)(ii), is used to obtain data for use in monitoring present processing activities and estimating future production at the processing plant level.

Both annual surveys seek information concerning the annual capacity to process these species; the historical amount of product processed; and the quantity of product to be processed in the future.

II. Method of Collection

Telephone surveys are used for the surf clam/ocean quahog fishery, and paper forms are used for the Atlantic mackerel, squid, and butterfish fisheries.

III. Data

OMB Number: 0648–0235.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 54.
Estimated Time Per Response: 5 minutes per report for the surf clam/ocean quahog fishery, 15 minutes per report for other fisheries.
Estimated Total Annual Burden Hours: 10.
Estimated Total Annual Cost to Public: $19.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 25, 2001.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 01–10787 Filed 4–30–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042601C]

Surf Clam/Ocean Quahog Transfer Log

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 2, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to George Darcy, Assistant Regional Administrator, Sustainable Fisheries Division, 1 Blackburn Circle, Gloucester, MA, 01930, (978) 281–9331, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

I. Abstract

Persons holding Individual Transferable Quotas (ITQ) in the surf clam/ocean quahog fishery are annually issued an allowable quota for harvest. Individual allocations may be transferred to other fishermen, but the ITQ holder must register such a transfer with NOAA in advance. The information is used by NOAA for enforcing the quotas.

II. Method of Collection

A paper form is used for each transfer.

III. Data

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Form Number: None.
Type of Review: Regular submission.
Affected public: Business or other for-profit organizations, individuals or households.
Estimated Number of Respondents: 206.
Estimated Time Per Response: 5 minutes.
Estimated Total Annual Burden Hours: 52.
Estimated Total Annual Cost to Public: $216.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 25, 2001.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 01–10788 Filed 4–30–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042601D]

NOAA Satellite Ground Station Customer Questionnaire

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 2, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Wayne Winston, E/SP3, Room 3320, 5200 Auth Road, Suitland MD 20746–4304 (phone 301–457–5681)

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA operates meteorological satellite imagery transmission systems whose data are available worldwide. Any user can establish a ground station for receiving the data without prior consent from NOAA. Surveying of customers allows NOAA to learn about who uses the data, how, with what equipment, the location of the equipment, and similar subjects. This information is used to help determine the possible impact of signal or data changes, to identify users for future contacts, and to annually report to the World Meteorological Organization on the geographic location and capabilities of known receiving stations.

II. Method of Collection

People contacting NOAA in a way that indicates that they may operate a satellite receiving station for acquiring NOAA data are mailed a questionnaire. An electronic version is available to persons accessing the related NOAA Web site.

III. Data

OMB Number: 0648–0227.
Form Number: None.
Type of Review: Regular submission.
Affected public: Not-for-profit institutions, individuals or households, business or other for-profit organizations, farms, and state, local, or tribal government.
Estimated Number of Respondents: 300.
Estimated Time Per Response: 10 minutes.
Estimated Total Annual Burden Hours: 50.
Estimated Total Annual Cost to Public: $50.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 25, 2001.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 01–10789 Filed 4–30–01; 8:45 am]

BILLING CODE 3510–HR–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042401E]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Red Crab Advisory Panel and Scientific and Statistical Committee, (SSC) to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held between May 15, 2001, and May 18, 2001. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Newburyport, MA. See **SUPPLEMENTARY INFORMATION** for specific locations.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Tuesday, May 15, 2001, 10 a.m.—Red Crab Advisory Panel Meeting.

Location: Rossi's Restaurant, 50 Water Street, Mill #2, Newburyport, MA 01950; telephone: (978) 499–0240.

The Red Crab Advisors will elect a chair and review Advisory Panel operating procedures. The Advisors will review proposed management measure alternatives and provide input. The Advisors will provide information on the social, economic and operational aspects of the red crab fishery.

Friday, May 18, 2001, 10 a.m.—Scientific and Statistical Committee Meeting.

Location: New England Management Council Office, 50 Water Street, Mill #2, Newburyport, MA 01950; telephone: (978) 465–0492.

The SSC committee will develop plans to provide the Council advice on the priorities identified by the Council. These include:

(1) Review of fishing mortality and biomass reference points for selected groundfish species and skates.

(2) Review of changes in the scallop reference points that might result from a rotational area management strategy and the scientific basis of proposed scallop rotational area management measures as developed by the Council and Scallop PDT.

(3) Evaluation of the available information on the stock structure of monkfish and its implications for management. Review of the monkfish assessment update (to be done by the Monkfish Monitoring Committee), and review of fishing mortality and biomass reference points.

(4) Review of the update of whiting status that will be completed by the Whiting Plan Development Team; and

(5) Other issues that it might advise the Council on such as the potential value of marine protected areas (MPAs) and closed areas (quantify benefits from existing closed areas) and multispecies management issues.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: April 25, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–10785 Filed 4–30–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042401F]

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of committee meetings.

SUMMARY: Two committees of the North Pacific Fishery Management Council (Council) will meet in Anchorage, AK.

DATES: The meetings will be held on May 15-16 and May 24-25, 2001.

ADDRESSES: The meetings will be held at the Anchorage Hilton Hotel, 500 W. Third Avenue, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff; 907–271–2809.

SUPPLEMENTARY INFORMATION: The Council's Gulf of Alaska Groundfish Rationalization Committee will meet beginning at 10 a.m. on Tuesday, May 15, in the Chart room at the Anchorage Hilton Hotel, and continue through Wednesday, May 16. The Committee will continue working toward rationalization programs for the Gulf of Alaska groundfish fisheries.

The Council's Community Development Quota (CDQ) Policy Committee will meet in the Iliamna Room at the Anchorage Hilton Hotel, beginning at 8:30 a.m. on Thursday May 24, and conclude Friday afternoon, May 25, 2001. The Committee will continue to address issues related to the Community Development Quota oversight responsibilities of the State of Alaska and NMFS in order to provide policy recommendations to the Council.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: April 25, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–10786 Filed 4–30–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Technology Opportunities Program (TOP) Grant Recipient Survey

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A).

DATES: Written comments must be submitted on or before July 2, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet mclayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Clifton Beck, NTIA, Room H–4888, U.S. Department of Commerce, 14th and Constitution Avenue, NW,

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Washington, DC 20230 (or via the Internet cbeck@ntia.doc.gov).

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of the Technology Opportunities Program (TOP), formerly the Telecommunications and Information Infrastructure Assistance Program (TIIAP), is to promote the widespread and efficient use of advanced telecommunications services in the public and non-profit sectors to serve America's communities.

The program has the following objectives:

- To promote the widespread availability and use of digital network technologies.
- To increase the awareness in public and non-profit sectors of digital information technologies and their benefits.
- To stimulate public and non-profit sector organizations to examine potential benefits of, and plan for, investments in digital network technologies.
- To provide a wide variety of model digital network technology projects for public and non-profit sector organizations to follow.
- To educate the public and non-profit sectors about best practices in implementing a wide variety of digital network technology projects.
- To help reduce disparities in access to, and use of, digital network technologies.

II. Method of Collection

Survey mailed to recipients.

III. Data

OMB Number: 0660–0013.
Form Number: None.
Type of Review: Regular submission.
Affected Public: State and local Governments and non-profit institutions.
Estimated Number of Respondents: 210.
Estimated Time Per Response: 1 hour.
Estimated Total Annual Respondent Burden Hours: 210.
Estimated Total Annual Cost to the Public: 0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to the notice will be summarized and/or included in the request for OMB approval of the information collection; they also will become a matter of public record.

Dated: April 24, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–10766 Filed 4–30–01; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of full and partially closed meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend. Individuals who will need accommodations for a disability in order to attend the meeting (i.e. interpreting services, assistive listening devices, materials in alternative format) should notify Munira Mwalimu at 202–357–6938 or at *Munira.Mwalimu@ed.gov* no later than April 30, 2001. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

DATES: May 10–12, 2001.

TIME: May 10—Executive Committee, 5:00–6 p.m., (open), 6:00–7 p.m. (closed). May 11—Full Board 8:30–10 a.m. (open); Assessment Development Committee 10:15 a.m.–12:15 p.m., (open); Committee on Standards, Design and Methodology, 10:15 a.m.–12:15 p.m. (open); Reporting and Dissemination Committee, 10:15 a.m.–12:15 p.m. (open); Full Board, 12:15–1:15 p.m., (closed); 1:15–5 p.m., (open). May 12—Nominations Committee, 7:30–8:30 a.m.; Full Board, 8:30 a.m.–12 p.m. (open).

LOCATION: Loews Annapolis Hotel, 126 West Street, Annapolis, Maryland.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Operations Officer, National Assessment Governing Board, 800 North Capitol Street, NW., Suite 825, Washington, DC 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994) (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons. Under Public Law 105–78, the National Assessment Governing Board is also granted exclusive authority over developing the Voluntary National Tests pursuant to contract number RJ97153001.

The Executive Committee will meet on May 10 in open session from 5 p.m. to 6 p.m., and in closed session from 6 p.m. to 7 p.m.

In open session, the Executive Committee will receive updates on the contract for test question banking storage and security and on NAEP reauthorization, appropriations, and related legislation. The Executive Committee will also discuss the NAEP schedule.

From 6:00–7 p.m. the Committee will meet in closed session to discuss future government cost estimates on contracts for the National Assessment of Educational Progress (NAEP) project; to discuss awards for secondary grants analyses for the NAEP project; and to receive independent government cost estimates on contract initiatives for NAEP.

The meeting must be conducted in closed session because public disclosure of this information would likely have an adverse financial effect on the NAEP program. The discussion of this information would be likely to significantly frustrate implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of 552b(c) of Title 5 U.S.C.

On May 11, the full Board will convene in open session from 8:30 a.m.–10 a.m. The Board will approve the agenda; hear a report from the Executive Director of the National Assessment Governing Board; receive a briefing from Secretary of Education Roderick Paige on the "No Child Left Behind" Initiative; and receive an update on the NAEP Program. From 10:15 a.m. to 12:15 p.m., the Board's standing committees will meet in open session.

The Assessment Development Committee will meet from 10:15 a.m.–12:15 p.m. to receive an update on various NAEP assessment development activities, including projects in mathematics, reading, and foreign language. The Committee will also receive a briefing on the content of the NAEP Long Term Trend Study.

The Committee on Standards, Design, and Methodology will meet from 10:15 a.m.–12:15 p.m. to receive an update on the 1992–1998 achievement levels publications and on the status of the Trial Urban Assessment. In addition, the Committee will review and discuss sampling plans for the 2002 NAEP and the methodology for enhanced reporting.

The Reporting and Dissemination Committee will meet from 10:15 a.m.–12:15 p.m. to discuss the sampling and reporting plan for NAEP 2002 assessments; new models for reporting achievement levels; the plan for release of the NAEP 2002 Mathematics Report; and the schedule for release of future NAEP reports. In addition, the Committee will discuss reporting data for subgroups; and the plan for private school reporting in NAEP 2002 assessments. The Reporting and Dissemination Committee will then receive an update on racial categories in NAEP reporting and discuss the background questions in reading and writing for NAEP 2002.

On May 11, the full Board will meet in closed session from 12:15–1:15 p.m. to receive a briefing on the NAEP 2000 Mathematics Report Card. This meeting must be closed because the report has not gone through complete National Center for Education Statistics (NCES) adjudication process and has not been released by the Secretary of Education. Premature disclosure of the information presented for review would be likely to significantly frustrate implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of Section 552b(c) of Title 5 U.S.C.

The full Board will meet in open session on May 11 from 1:15–2 p.m. to receive a briefing on the Baltimore Sun's "Reading by Nine" Project. From 2:00–2:45 p.m., the Board will receive an update from Congressional staff on "NAEP/NAGB: View from the Hill." From 3:00–4:15 p.m., the full Board will have a panel discussion on NAEP and NAGB, Past Reflections and Future Directions. Subsequently, at 4:15–5 p.m., the Board will receive a briefing on the Third International Mathematics and Science Study (TIMSS) 1999 Benchmarking Study after which the May 11 meeting will conclude.

On May 12, the Nominations Committee will convene from 7:30 a.m.–8:30 a.m. to discuss the Committee's organization and work schedule.

From 8:30–9:30 a.m., the Board will receive an update and discuss the NAEP 2004 Mathematics Framework project. The Board will then hear and take action on the Committee reports from 9:30 a.m. to 12 p.m. whereupon the meeting will adjourn.

Summaries of the activities of the closed sessions and related matters, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c), will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW., Washington, DC, from 8:30 a.m. to 5 p.m. Eastern Standard Time.

Dated: April 25, 2001.

Sharif Shakrani,

Deputy Executive Director, National Assessment Governing Board.

[FR Doc. 01–10863 Filed 4–30–01; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

[Docket Nos. EA–237 and EA–238]

Applications to Export Electric Energy; Allegheny Energy Supply Company, LLC

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Allegheny Energy Supply Company, LLC (Allegheny) has applied for authority to transmit electric energy from the United States to Mexico and to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before May 31, 2001.

ADDRESS: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Rosalind Carter (Program Office) 202–586–7983 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On, April 9, 2001, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received separate applications from Allegheny to transmit electric energy from the United States to Mexico and to Canada. Allegheny is a limited liability company formed under Delaware law. Allegheny's sole member is Allegheny Energy, Inc., an electric utility holding company registered under the Public Utility Holding Company Act of 1935. As part of the Allegheny Energy, Inc. holding company system, Allegheny is affiliated with three franchised electric utilities: Monongahela Power Company; The Potomac Edison Company; and West Penn Power Company.

Allegheny owns and operates electric power generation facilities and their associated transmission facilities. However, Allegheny does not have a franchised electric power service area. Allegheny operates as a marketer and broker of electric power at wholesale and arranges services in related areas such as transmission services. Allegheny will generate or purchase the power to be exported from electric utilities and federal power marketing agencies as defined in Section 3(22) and (19) (16 U.S.C. 796 (22) and (19) of the FPA. Allegheny proposes to transmit to Mexico and to Canada electric energy purchased from electric utilities and other suppliers within the U.S. Allegheny requests the export authorization be issued for five years.

In FE Docket EA–237, Allegheny proposes to arrange for the delivery of electric energy to Mexico over the international transmission facilities owned by San Diego Gas & Electric Company, El Paso Electric Company, Central Power and Light Company, and Comision Federal de Electricidad, the national electric utility of Mexico.

In FE Docket EA–238, Allegheny proposes to arrange for the delivery of electric energy to Canada over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Eastern Maine Electric Cooperative, International Transmission Company

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(formally Detroit Edison Company), Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company.

The construction of each of the international transmission facilities to be utilized by Allegheny, as more fully described in the applications, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the Allegheny application to export electric energy to Mexico should be clearly marked with Docket EA–237. Comments on the Allegheny application to export electric energy to Canada should be clearly marked with Docket EA–238. Additional copies are to be filed directly with Daniel L. Gordon, President, Allegheny Energy Global Markets, LLC, 2 World Financial Center, 36th Floor, New York, NY 10080 and Patricia J. Clark, Esq., Allegheny Energy Supply Company, LLC, 4350 Northern Pike, Monroeville, PA 15146.

A final decision will be made on these applications after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA) and a determination is made by the DOE that the proposed actions will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select "Regulatory", then "Electricity", then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on April 25, 2001.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 01–10772 Filed 4–30–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–235]

Application to Export Electric Energy; Sempra Energy Resources

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Sempra Energy Resources (SER) has applied for authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before May 31, 2001.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On March 28, 2001, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from SER to transmit electric energy from the United States to Mexico. In a related proceeding currently before DOE (FE Docket PP–235), SER has applied for a Presidential permit to construct, operate, maintain, and connect a new electric transmission facility between San Diego Gas and Electric Company's (SDG&E's) Imperial Valley Substation in Imperial County, California, and the Termoeléctrica de Mexicali (TDM) powerplant SER proposes to construct in the vicinity of Mexicali, Baja California, Mexico. The electric energy SER proposes to export to Mexico would be for the purpose of providing "black start" capability to the TDM powerplant and for providing ancillary equipment power when the facility's electrical generating equipment is not in operation. Exports from the United States to the TDM plant for "black start" purposes are expected to occur routinely, such as during weekend plant shutdowns, with a maximum of 12 MW to be exported.

The electric energy SER proposes to export to Mexico would be obtained from its own generation sources or from power purchase agreements and delivered to SDG&E's Imperial Valley Substation using the existing domestic transmission system. The exported electricity would be transmitted to Mexico over the facilities proposed in FE Docket PP–235.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the SER application to export electric energy to Mexico should be clearly marked with Docket EA–235. Additional copies are to be filed directly with Alberto Abreu, Director, Permitting and Licensing, Sempra Energy Resources, 101 Ash Street, P.O. Box 1831, San Diego, CA 92112–4150.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.doe.gov*. Upon reaching the Fossil Energy Home page, select "Electricity" and then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on April 25, 2001.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 01–10769 Filed 4–30–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Chicago Operations Office; Notice of Financial Assistance Solicitation Availability

AGENCY: Chicago Operations Office, DOE.

ACTION: Notice of financial assistance solicitation availability.

SUMMARY: The Department of Energy is announcing its intent to invite applications from small businesses and institutions of higher education and development for the Cooperative Automotive Research for Advanced Technologies (CARAT) Program. This annual solicitation seeks innovative research and development in the following seven (7) topic areas: TOPIC 1—Alternative (Non-Lithium) Insertion Electrode Battery Technology; TOPIC 2—Non-Carbon Anodes for Lithium-ion Batteries; TOPIC 3—Fuel Cells for Auxiliary and Portable Power; TOPIC 4—Homogeneous-Charge Compression-Ignition (HCCI) Enabling Technology; TOPIC 5—Cost-Effective, High-Efficiency Porous Media Heat Transfer; TOPIC 6—Cost-Effective, High-Efficiency Materials for Thermoelectric Devices; and TOPIC 7—Cost-Effective, High-Efficiency Integrated Systems Approach to Auxiliary Electric Motors.

DATES: The complete solicitation document will be available on or about April 27, 2001. The deadline for the submission of applications will be identified in the solicitation.

ADDRESSES: Copies of the solicitation, when issued, can be obtained from the DOE Chicago Operations Office, Acquisition and Assistance Home Page at *http://www.ch.doe.gov/business/ACQ.htm* under the heading "current solicitations", Solicitation No. DE–SC02–01EE50657.

FOR FURTHER INFORMATION CONTACT: Earlette Robinson, 630/252–2667.

SUPPLEMENTARY INFORMATION: Preapplications will be due approximately two-weeks after on the release of the solicitation. Please note that users will not be alerted when the solicitation is issued on the Internet.

Issued in Argonne, Illinois on April 20, 2001.

John D. Greenwood,

Assistant Manager for Acquisition and Assistance.

[FR Doc. 01–10770 Filed 4–30–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC00–580–001. FERC Form 580]

Information Collection Submitted for Review and Request for Comments

April 25, 2001.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of submission of review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the information collection listed in this notice to the Office of Management and Budget (OMB) for review under the provisions of section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission, as explained below. The Commission received comments from two entities in response to an earlier **Federal Register** notice of June 21, 2000 (65 FR 38529) and has replied to these comments in its submission to OMB.

DATES: Comments regarding this collection of information are best assured of having their full effect if received on or before May 31, 2001.

ADDRESSES: Address comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 725 17th Street NW., Washington, DC 20503. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Mr. Michael Miller, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425, and by e-mail to *mike.miller@ferc.fed.us*

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. *Collection of Information:* FERC Form No. 580, "Interrogatory on Fuel and Energy Purchase Practices, Docket No. IN79–6".

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* 1902–0137.

The Commission is now requesting that OMB approve a three year extension of these mandatory information collection requirements.

4. *Necessity of Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of the Federal Power Act (FPA). The FPA was amended by the Public Utility Regulatory Policies Act (Pub. L. 95–617) to require the Commission to review "not less frequently than every two (2) years * * * of practices * * * to ensure efficient use of resources (including economical purchase and use of fuel and electric energy) * * *". The information is used to:

(1) Review as mandated by statute, fuel purchase and cost recovery practices to insure efficient use of resources, including economical purchase and use of fuel and electric energy, under fuel adjustment clauses on file with the Commission; (2) evaluate fuel costs in individual rate filings; (3) to supplement periodic utility audits; and (4) to monitor changes and trends in the electric wholesale market. The information has also been used by the Energy Information Administration under a Congressional mandate to study various aspects of coal, oil, and gas transportation rates. Electric market participants and the public are using the information to assess the marketplace during its transition to a fully competitive regime.

5. *Respondent Description:* The respondent universe currently comprises approximately 119 respondents.

6. *Estimated Burden:* 3,808 total burden hours, 119 respondents, 59.5 responses annually (119 responses every two years), 64 hours per response (average).

7. *Estimated Cost Burden to Respondent:* 3,808 hours ÷ 2,080 hours per year × $117,041 = $214,275.

Statutory Authority: Sections 205(f) of the Federal Power Act, as amended by Section 208 of the Public Utility Regulatory Policies Act. (49 Stat. 851; 16 U.S.C. 824d).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–10735 Filed 4–30–01; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG01–12–001]

Alliance Pipeline L.P.; Notice of Filing

April 25, 2001.

Alliance Pipeline L.P. filed revised standards of conduct on April 11, 2001 in accordance with the Commission's March 15, 2001 Order. 94 FERC ¶ 61,277 (2001).

Alliance Pipeline states that it served copies of the filing on all parties in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest in this proceeding with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before May 10, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–10734 Filed 4–30–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1312–000]

Bethlehem Steel Corporation; Notice of Issuance of Order

April 25, 2001.

Bethlehem Steel Corporation (Bethlehem) submitted for filing a rate schedule under which Bethlehem will engage in wholesale electric power and energy transactions at market-based rates. Bethlehem also requested waiver of various Commission regulations. In particular, Bethlehem requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Bethlehem.

On April 3, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Bethlehem should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Bethlehem is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Bethlehem's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 3, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–10744 Filed 4–30–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM96–1–015, RP01–384–000, and RP01–385–000 (Not Consolidated)]

Standards for Business Practices of Interstate Natural Gas Pipeline; Chandeleur Pipe Line Company, USG Pipeline Company; Notice of Compliance Filing

April 26, 2001.

Take notice that the above-referenced pipelines made filings in compliance with Docket No. RM96–1–015, Order No. 587–M.[1] The tariff sheets implement Version 1.4 of the Gas Industry Standards Board (GISB) Standards accepted by the Commission in Order No. 587–M and are proposed to become effective May 1, 2001.

On November 30, 2000 at Docket No. RM96–1–015, the Commission issued Order No. 587–M to amend section 284.12(b) of its regulations to incorporate Version 1.4 of the GISB standards. The business practices and standards contained in Order 587–M make additions and revisions to Version 1.3 of the standards, which had previously been incorporated by reference. Among other things, Order No. 587–M adopted the business practices and electronic communications standards created by GISB on August 31 and November 15, 1999. Order No. 587–M requires pipelines to adopt Version 1.4 of the GISB Standards and to implement these provisions by May 1, 2001.

Any person desiring to become a party a proceeding must file a separate motion to intervene or protest in each docket.

Any person desiring to be heard or to protest said filings should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

[1] Standards for Business Practices of Interstate Natural Gas Pipelines, Order No. 587–M, 65 FR 77285 (Dec. 11, 2000), FERC Stats. & Regs. Regulations Preambles [Jul. 1996–Dec. 2000] ¶ 31,114 (Nov. 30, 2000).

Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/ doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–10778 Filed 4–30–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1279–000]

Connecticut Energy Cooperative, Inc.; Notice of Issuance of Order

April 25, 2001.

Connecticut Energy Cooperative, Inc. (CECI) submitted for filing a rate schedule under which CECI will engage in wholesale electric power and energy transactions at market-based rates. CECI also requested waiver of various Commission regulations. In particular, CECI requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by CECI.

On April 3, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariff and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by CECI should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, CECI is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of CECI's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 3, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 01–10743 Filed 4–30–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–027]

Dominion Transmission, Inc.; Notice of Negotiated Rate

April 25, 2001.

Take notice that on April 20, 2001, Dominion Transmission, Inc. (DTI) tendered for filing with the Commission the following tariff sheets for disclosure of a recently negotiated transaction with Penn Virginia Oil & Gas Corporation.

Original Sheet No. 1415
Sheet Nos. 1416–1499

DTI states that copies of its letter of transmittal and enclosures have been served upon DTI's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/ rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/ doorbell.htm.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–10741 Filed 4–30–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–026]

Dominion Transmission, Inc.; Notice of Negotiated Rate

April 25, 2001.

Take notice that on April 20, 2001, Dominion Transmission, Inc. (DTI) tendered for filing with the Commission the following tariff sheets for disclosure of a recently negotiated transaction with Key Oil Company:

Original Sheet No. 1414
Sheet Nos. 1415–1499

DTI states that copies of its letter of transmittal and enclosures have been served upon DTI's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/ rims.htm (call 202–208–2222 for assistance). Comments, protests, and

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interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–10742 Filed 4–30–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1166–000]

Enron Sandhill Limited Partnership; Notice of Issuance of Order

April 25, 2001.

Enron Sandhill Limited Partnership (Enron Sandhill) submitted for filing a rate schedule under which Enron Sandhill will engage in wholesale electric power and energy transactions at market-based rates. Enron Sandhill also requested waiver of various Commission regulations. In particular, Enron Sandhill requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Enron Sandhill.

On March 29, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Enron Sandhill should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Enron Sandhill is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Enron Sandhill's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 3, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at*http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 01–10740 Filed 4–30–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–320–045]

Gulf South Pipeline Company, LP; Notice of Negotiated Rate Filing

April 26, 2001.

Take notice that on April 23, 2001, Gulf South Pipeline Company, LP (Gulf South) filed with the Commission a contract for disclosure of a recently negotiated rate transaction with Mobile Gas Service Corporation to be substituted for the contract field on April 19, 2001. Gulf South states that certain pages were inadvertently omitted from the contract; therefore, Gulf South requests withdrawal of the April 19, 2001 filing.

Gulf South states that copies of the filing are being served upon all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–10779 Filed 4–30–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–5–003]

Mid Louisiana Gas Company; Notice of Compliance Filing

April 26, 2001.

Take notice that on April 23, 2001, Mid Louisiana Gas Company (MidLa) filed under protest the following revised tariff sheet in order to comply with an informal request the Commission's Staff. The Staff has requested that MidLa revise such tariff sheet in order to eliminate certain provisions that are duplicative of other provisions in MidLa's tariff. As mandated by Order No. 587–L, the revised tariff sheet is to be effective as of November 1, 2000.

First Fourth Revised Sheet No. 135C

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web athttp://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR

385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–10780 Filed 4–30–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–382–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

April 25, 2001.

Take notice that on April 19, 2001, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective May 19, 2001:

55 Revised Sheet No. 50
56 Revised Sheet No. 51
23 Revised Sheet No. 52
Fifth Revised Sheet No. 56
Sixth Revised Sheet No. 263
Seventh Revised Sheet No. 263A
Second Revised Sheet No. 263B
Second Revised Sheet No. 263C
Third Revised Sheet No. 263D
Third Revised Sheet No. 263E

Northern states that it is filing revised tariff sheets to amend the provisions dealing with the Carlton Commodity Surcharge as further discussed in the filing.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–10738 Filed 4–30–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1011–000 and ER01–1011–001]

Redbud Energy LP; Notice of Issuance of Order

April 25, 2001.

Redbud Energy LP (Redbud) submitted for filing a rate schedule under which Redbud will engage in wholesale electric power and energy transactions at market-based rates. Redbud also requested waiver of various Commission regulations. In particular, Redbud requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Redbud.

On March 29, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Redbud should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Redbud is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Redbud's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 3, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 01–10736 Filed 4–30–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. MG98–8–002 and MG98–13–001]

Tuscarora Gas Transmission Company; Notice of Filing

April 25, 2001.

Tuscarora Gas Transmission Company filed revised standards of conduct on April 18, 2001 in accordance with the Commission's March 19, 2001 Order. 94 FERC ¶ 61,325 (2001).

Tuscarora Gas Transmission Company states that it served copies of the filing on all parties in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest in this proceeding with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before May 10, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This

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filing may also be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Secretary.

[FR Doc. 01–10739 Filed 4–30–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–383–000]

Viking Gas Transmission Company; Notice of Tariff Filing

April 25, 2001.

Take notice that on April 20, 2001, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Ninth Revised Sheet No. 82 to be effective on June 1, 2001.

Viking states that the purpose of this filing is to change Viking's tariff to expand the period during which requests for service may be made. Viking's tariff currently does not allow requests for service to be made more than ninety days prior to the proposed commencement date of service. Viking's proposed change would allow requests for service to be made up to eleven months prior to the proposed commencement date of service.

Viking states that copies of this filing have been served on all of Viking's jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–10737 Filed 4–30–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Membership of Performance Review Board

April 26, 2001.

The Federal Energy Regulatory Commission hereby provides notice of the membership of its Performance Review Board (PRB). This action is undertaken in accordance with Title 5, U.S.C., Section 4314(c)(4). The Commission's PRB will be comprised of the following members:

Thomas R. Herlihy
Daniel L. Larcamp
Cynthia A. Marlette

David P. Boergers,

Secretary.

[FR Doc. 01–10781 Filed 4–30–01; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6971–9]

Proposed Settlement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree which was lodged with the United States District Court for the Northern District of California by the United States Environmental Protection Agency ("EPA") on April 5, 2001 to address a lawsuit filed by the Bayview Hunters Point Community Advocates, Communities for a Better Environment, Latino Issues Forum, Sierra Club, Transportation Solutions Defense and Education Fund, Urban Habitat Program, a Project of the Tides Center, and Our Children's Earth Foundation. This lawsuit, which was filed pursuant to section 304(a) of the Act, 42 U.S.C. 7604(a), addresses EPA's alleged failure to meet a mandatory deadline under section 110(k) of the Act, 42 U.S.C. 7410(k), to take final action to approve or disapprove the 1999 San Francisco Bay Area Ozone Attainment Plan. *Bayview Hunters Point Community Advocates et. al.* v. *EPA*, Civil No. C–01–0050 THE (N.D. Cal.).

DATES: Written comments on the proposed consent decree must be received by May 31, 2001.

ADDRESSES: Written comments should be sent to Jan Tarabek, Office of Regional Counsel, US Environmental Protection Agency Region 9, 75 Hawthorne Street, San Francisco, CA 94105. Copies of the proposed consent decree are available from Jan Taber, (415) 744–1341.

SUPPLEMENTARY INFORMATION: The Clean Air Act requires EPA to take action to approve or disapprove a State implementation plan revision within 12 months of a determination by the Administrator that such revision is complete. See section 110(k)(1)–(4). 42 U.S.C. 7410(k)(1)–(4). On August 13, 1999, the California Air Resources Board submitted to EPA the 1999 San Francisco Bay Area Ozone Attainment Plan ("1999 Plan") as a proposed revision to the California State Implementation Plan. EPA found the 1999 Plan to be complete pursuant to section 110(k)(1)(B), 42 U.S.C. 7410(k)(1)(B), on October 28, 1999. On March 30, 2001, EPA published a proposed rule on the plan. 66 FR 17379. The proposed consent decree provides that the Administrator or her delegatee shall sign no later than August 28, 2001, a notice for publication in the **Federal Register** taking final action pursuant to section 110(k) of the Act, 42 U.S.C. 7410(k), and shall submit the notice by September 4, 2001, to the Office of the Federal Register for publication.

For a period of thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed consent decree from persons who were not named as parties to the litigation in question. EPA or the Department of Justice may withhold or withdraw consent to the proposed consent decree if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, following the comment period, that consent is inappropriate, the final consent decree will then be executed by the parties.

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF

Dated: April 17, 2001.

Anna L. Wolgast,

Acting General Counsel.

[FR Doc. 01–10808 Filed 4–30–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6971–8]

Draft Public Involvement Policy—Extension of Public Comment Period and Announcement of Public Dialogue

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of public comment period and announcement of public dialogue.

SUMMARY: The Environmental Protection Agency published its draft Public Involvement Policy on December 28, 2000 and requested public comments through April 27, 2001 (65 FR 82335, Dec. 28, 2000). EPA now extends this public comment period through July 31, 2001. This extension will allow the agency to convene an on-line public dialogue on the draft Public Involvement Policy. This dialogue, which will be an interactive discussion on the Internet, will provide additional opportunities for the public to provide feedback on issues relating to the draft policy. The dialogue will be held during two weeks in the summer of 2001 and will be announced on the EPA web page at *http://www.epa.gov/stakeholders.* To request direct e-mail notification of the dialogue, send a message to: *stakeholders@epa.gov.* The draft policy is posted on the web at *http://www.epa.gov/stakeholders/policy.htm.* EPA's Office of Policy, Economics and Innovation will maintain all public comments on the draft Public Involvement Policy in a docket that is available to the public. In addition, EPA may post all comments on the Internet, unless commenters request otherwise.

DATES: Comments will be accepted until July 31, 2001. The on-line dialogue will be held in June or July, 2001.

ADDRESSES: Submit comments to Patricia A. Bonner, United States Environmental Protection Agency, Office of Policy, Economics and Innovation (MC 1807), 1200 Pennsylvania Ave, NW., Washington, DC 20460, by facsimile to 202–260–4903, or by electronic mail to: *stakeholders@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Patricia Bonner at 202–260–0599 or *bonner.patricia@epa.gov.*

Jay Benforado,

Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation.

[FR Doc. 01–10807 Filed 4–30–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[EB Docket No. 01–99; DA 01–1044]

Designation of Consolidated Hearing To Adjudicate Damages Claims in the End User Common Line Charge Proceeding

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On April 24, 2001, the Enforcement Bureau of the Federal Communications Commission ("Commission") released a Hearing Designation Order ("HDO") initiating a consolidated hearing to adjudicate the damages claims of several complainant independent payphone providers ("Complainants") against certain local exchange carriers ("Defendants"). To avail themselves of the opportunity to participate in this hearing, the parties are required to file a written Notice of Appearance with the Office of the Commission Secretary, stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in the HDO, within 20 days of the mailing of the HDO to the parties.

DATES: The HDO was mailed to the parties on April 24, 2001. The parties are required to file their Notice of Appearance by May 14, 2001.

ADDRESSES: Submit the Notice of Appearance to the Office of the Commission Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW–204B, Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Tejal Mehta, 202–418–7397.

SUPPLEMENTARY INFORMATION: The Commission has previously ruled that the Defendants violated section 201(b) of the Communications Act of 1934, as amended, and part 69 of the Commission's rules by improperly assessing End User Common Line charges upon the Complainants. *See C.F. Communications Corp., et al.* v. *Century Telephone of Wisconsin, Inc., et. al.*, Memorandum Opinion and Order on Remand, 15 FCC Rcd 8759 (2000). The HDO resolves certain outstanding issues and refers others, including whether Complainants are entitled to an award of damages, to an Administrative Law Judge.

Federal Communications Commission.

David H. Solomon,

Chief, Enforcement Bureau.

[FR Doc. 01–10951 Filed 5–1–01; 8:45 am]

BILLING CODE 6712–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Government in the Sunshine; Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, May 7, 2001.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Michelle A. Smith, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: April 27, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–11033 Filed 4–27–01; 3:07 pm]

BILLING CODE 6210–01–P

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–33–01]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

Vital Statistics Training Application—Reinstatement—(OMB No. 0920–0217)

National Center for Health Statistics (NCHS). In the United States, legal authority for the registration of vital events, i.e., births, deaths, marriages, divorces, fetal deaths, and induced terminations of pregnancy, resides individually with the States (as well as cities in the case of New York City and Washington, DC) and Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. These governmental entities are the full legal proprietors of vital records and the information contained therein. As a result of this State authority, the collection of registration-based vital statistics at the national level, referred to as the U.S. National Vital Statistics System (NVSS), depends on a cooperative relationship between the States and the Federal government. This data collection, authorized by 42 U.S.C. 242k, has been carried out by NCHS since it was created in 1960.

To help in achieving the comparability needed for combining data from all States into national statistics, NCHS carries out a training program for State and local vital statistics staff to assist in developing expertise in all aspects of vital registration and vital statistics. The training offered under this program includes courses for registration staff, statisticians, and coding specialists, all designed to bring about a high degree of uniformity and quality in the data provided by the States. This training program is authorized by 42 U.S.C. 242b, Section 304(a). In order to offer the types of training that would be most useful to vital registration staff members, NCHS requests information from State and local vital registration officials about their projected needs for training. NCHS also asks individual candidates for training to submit an application form containing name, address, occupation, work experience, education, and previous training. These data enable NCHS to determine those individuals whose needs can best be met through the available training resources. The annualized burden for this collection is 44 hours.

Respondents	Number of respondents	Responses/respondents	Avg. burden/response (in hrs)
State, local, and Territory Registration Officials	57	1	.33
Training Applicants	100	1	.25

Dated: April 23, 2001.

Nancy Cheal,

Acting Associate Director for Policy Planning, and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 01–10732 Filed 4–30–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 day–34–01]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

Linking Epidemiologic Research to Disease Prevention: A Pilot Program to Test Approaches for Communicating Increased Risk of Cervical Cancer to Female Workers in the Dry-Cleaning Industry—NEW—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

The National Institute for Occupational Safety and Health (NIOSH) has conducted worker notification formally since 1988. This program informs workers in NIOSH-conducted epidemiological studies about the study results and hence, of their risks. The intervention research to be conducted under this application will extend the risk communication beyond the mortality study cohort (an aging and mostly retired cohort) to similarly exposed women, younger and still employed.

Several studies, including one conducted at NIOSH, have documented elevated mortality from cancer among dry cleaning workers. Some of the cancers involved—most notably cervical cancer—can be successfully treated if detected early. Thus, along with better hazard control, better secondary disease prevention is urgently needed to help women workers already exposed. Exiting NIOSH procedures for notifying workers about the agency's research findings seem unlikely to reach the larger at-risk population of women dry cleaners who were not actually study subjects.

The ultimate purpose of this research is to increase understanding of how to encourage medical screening among workers at risk. The project has two main objectives: (1) To assess descriptively the feasibility and potential public health benefits of a broader than usual approach to NIOSH worker notification about occupational health risks, based on results of NIOSH epidemiologic research; and (2) to determine whether a follow-up reminder about the importance of medical screening makes a significant difference in the notified workers' long-term health behavior.

The primary study population will consist of a minimum 300 current female dry cleaning workers in New York City (ages 18–65), selected from the membership list (a respondent

universe of 375) from the dry cleaners' local labor union. A separate population of 100 former dry cleaning workers randomly selected from a cohort list of approximately 226 surviving women dry cleaners in a NIOSH cohort mortality study will provide descriptive data only and will not be included in the data analysis of the primary group of currently employed dry cleaners. All study participants will be mailed a packet of risk information from NIOSH, along with a letter of endorsement of the study from the local union in New York, encouraging participation in the study. The risk information packet will include the NIOSH mortality study results as well as other information about cancer and cancer screening, with a special emphasis on cervical cancer screening.

Brief (15-minute) telephone interviews will follow the mailed notifications to workers and will be used to evaluate (1) the effects of an intervention (mailed written notification materials) on post-intervention cervical cancer screening behaviors; and (2) the effects of a reminder message mailed six months after the initial notification.

The effect of the first intervention will be measured by comparing the pre-and post-intervention screening behaviors for the year prior to the intervention. The effect of the second intervention will be evaluated experimentally (using a control group), measuring the screening behaviors from the time of the reminder letter to the Time-2 interview 6 months later, compared to the screening behaviors at the Time-1 interview. These intervention evaluations will address barriers to cervical screening and also will allow insight into the following questions:

1. Does the outreach message have a long-term impact concerning the use of cancer screening services (message retention and actual screening behavior)?

2. Does receiving a screening reminder affect message retention and actual screening behavior?

The annualized burden for this collection is 253.3 hours.

Respondents	Number of respondents	Number of responses	Avg. burden per response (in hrs.)
Year 1	400	1	20/60
Year 2	360	1	20/60

Dated: April 23, 2001.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention, (CDC).

[FR Doc. 01– 10733 Filed 4–30–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01045]

Diabetes Programs; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY)2001 funds for grant programs entitled Diabetes Programs. This announcement is related to the focus area of Diabetes.

The purpose of the program is to reduce the disease and economic burden of diabetes, and improve the quality of life for all persons who have or are at risk for diabetes, through prevention programs.

B. Eligible Applicants

Assistance will only be provided to the organizations listed below. No other applications are solicited. The Conference Report H. R. 4577, Consolidated Appropriation Act 2001, specified these funds for the organizations listed below.

1.1 Fresno Community Hospital and Medical Center to support a minority focused diabetes outreach program. ($214,767)

1.2 Diabetes -Endocrinology Center of Western New York in Buffalo for community education and outreach efforts to improve early detection, prevention, and control of diabetes. ($198,893)

1.3 Louisiana State Health Sciences Center in Shreveport for a comprehensive diabetic education and treatment program. ($257,720)

1.4 Center for Diabetes and Prevention Control at Texas Tech University Health Sciences Center to provide a national model of diabetes outreach, education, prevention, and care. ($1,720,691)

Note: Title 2 of the United States Code, Chapter 26, Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $2,392,341 is available in FY 2001 to fund four awards. It is expected that the award will begin on or about July 1, 2001, and will be made for a 12-month budget period within a one year project period. Funding estimates may change.

D. Where To Obtain Additional Information

Business management technical assistance may be obtained from: Barry Copeland, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 01045, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2751, Email Address: bjc8@cdc.gov.

Program technical assistance may be obtained from: Dara Murphy, Division of Diabetes Translation, National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), 4770 Buford Highway, NE, MS K–10Atlanta, Georgia 30341, Telephone: (770) 488–5193, E-Mail Address: dlm1@cdc.gov.

Dated: April 25, 2001.

John L. Williams,

Director, Procurement and Grant Office, Center for Disease Control and Prevention (CDC).

[FR Doc. 01–10761 Filed 4–30–01; 8:45 am]

BILLING CODE 4163–18–P

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01079]

Cooperative Agreement for the Development of State-Level Surveillance Systems, Enhancement of Epidemiologic Practice, and the Development of Epidemiologic Training Programs for State Health Agencies; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement for the development of state-level surveillance systems, enhancement of epidemiologic practice, and the development of epidemiologic training programs for state health agencies.

B. Eligible Applicants

Assistance will be provided only to the Council of State and Territorial Epidemiologists (CSTE). No other applications are solicited. Because of the professional appointments and technical expertise with tribal, state, territorial and local health agencies, through its membership, CSTE is uniquely capable of applying epidemiologic principles to disease, environmental, and injury problems at the national, state, and local levels, and when states are directly affected. No other organization has the scientific and technical expertise to carry out this project.

C. Availability of Funds

Approximately $3,000,000 is available in FY 2001 to fund this award. Funds will be allocated to individually described and budgeted projects or activities which will comprise the overall cooperative agreement. Individual projects are expected to range from $100,000 to $625,000. It is expected that the award will be made on or about September 30, 2001, and will be made for a 12 month budget period within a project period of up to five years.

D. Where To Obtain Additional Information

Business management technical assistance may be obtained from: Mattie Jackson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: 770–488–2696, Email address: mij3@cdc.gov.

Program technical assistance may be obtained from: Maryan D. Reynolds, Public Health Advisor 1600 Clifton Road, Mailstop D–18, Atlanta, GA 30333, Telephone number: 404–639–4240, Email address: mdk0@cdc.gov.

Dated: April 25, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–10760 Filed 4–30–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity: Comment Request

Proposed Projects

Title: Head Start Impact Study.

OMB No.: New Collection.

Description: The Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF) of the Department of Health and Human Services (DHHS) is requesting comments on plans to conduct the Head Start Impact Study. This study is being conducted under contract with Westat, Inc. (with the Urban Institute, American Institutes for Research, and Decision Information Resources as their subcontractors) (#282–00–0022) to collect information for determining, on a national basis, how Head Start affects the school readiness of children participating in the program as compared to children not enrolled in Head Start and to determine under which conditions Head Start works best and for which children.

The Head Start Impact Study involves ten waves of data collection. The first two waves will occur during the field test in fall 2001 and spring 2002. The field test will involve approximately 600 first time enrolled three- and four-year old preschool children across eight grantee/delegate agencies representing different community contexts. The children participating will be randomly assigned to either a Head Start group (that receives Head Start program services) or a comparison group (that does not receive Head Start services but may enroll in other available services selected by their parents or be cared for at home). Waves three through ten will involve data collection for the full-scale study. The Head Start Impact Study is a longitudinal study that will involve approximately 5,000–6,000 first time enrolled three- and four-year old preschool children across an estimated 75 nationally representative grantee/delegate agencies (in communities where there are more eligible children and families than can be served by the program). Data collection for the full-scale study will begin in fall 2002 and extend through spring 2006 with child assessments, conducted in the fall and spring of the Head Start years and in the spring of the kindergarten and first grade years and parent interviews conducted in the fall and spring of each year. Interviews/surveys with program staff/care providers, and quality of care assessments will be conducted in the spring of each year.

This schedule of data collection is necessitated by the mandate in Head Start's 1998 reauthorization (Coates Human Services Amendments of 1998, PL 05–285) that DHHS conduct research to determine, on a national level, the impact of Head Start on the children it serves.

Respondents: Individuals or households, Head Start Agencies, school districts, and other child care providers.

Annual Burden Estimates: Estimated Response Burden for Respondents to the Head Start Impact Study—fall 2001, spring 2002, fall 2002, spring 2003, fall 2003, spring 2004, fall 2004, spring 2005, fall 2005, and spring 2006.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Year 1 (fall 2001):				
Parent Interviews	600	1	1.00	600
Child Assessments	600	1	0.66	400
Year 1 (spring 2002):				
Parent Interviews	540	1	1.00	540
Child Assessments	540	1	0.66	360

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Teacher Ratings	108	5	0.25	27
Family Services Coordinators	50	1	0.75	38
Education Coordinators	50	1	0.75	38
Center Directors/Principals	50	1	1.00	50
Classroom Teachers/Care Providers	108	1	0.50	54
Total—year 1				2,107
Year 2 (fall 2002):				
Parent Interviews	5,111	1	1.00	5,111
Child Assessments	5,111	1	0.66	3,407
Year 2 (spring 2003):				
Parent Interviews	4,599	1	1.00	4,599
Child Assessments	4,599	1	0.66	3,066
Teacher Ratings	920	5	0.25	230
Family Services Coordinators	500	1	0.75	375
Education Coordinators	500	1	0.75	375
Center Directors/Principals	500	1	1.00	500
Classroom Teachers/Care Providers	920	1	0.50	460
Total—year 2				18,123
Year 3 (fall 2003):				
Parent Interviews	4,139	1	1.00	4,139
Child Assessments	2,287	1	0.66	1,525
Year 3 (spring 2004):				
Parent Interviews	3,910	1	1.00	3,910
Child Assessments	3,910	1	0.66	2,607
Teacher Ratings	782	5	0.25	196
Family Services Coordinators	450	1	0.75	338
Education Coordinators	450	1	0.75	338
Center Directors/Principals	450	1	1.00	450
Classroom Teachers/Care Providers	782	1	0.50	391
Total—year 3				13,894
Year 4 (fall 2004):				
Parent Interviews	3,519	1	1.00	3,519
Year 4 (spring 2005):				
Parent Interviews	3,519	1	1.00	3,519
Child Assessments	3,519	1	0.66	2,346
Teacher Ratings	704	5	0.25	176
Family Services Coordinators	405	1	0.75	304
Education Coordinators	405	1	0.75	304
Center Directors/Principals	405	1	1.00	405
Classroom Teachers/Care Providers	704	1	0.50	352
Total—year 4				10,925
Year 5 (fall 2005):				
Parent Interviews	1,667	1	1.00	1,667
Year 5 (spring 2006):				
Parent Interviews	1,667	1	1.00	1,667
Child Assessments	1,667	1	0.66	1,111
Teacher Ratings	333	5	0.25	83
Family Services Coordinators	300	1	0.75	225
Education Coordinators	300	1	0.75	225
Center Directors/Principals	300	1	1.00	300
Classroom Teachers/Care Providers	333	1	0.50	167
Total—year 5				5,445
Estimated Total Annual Burden Hours				10,098

Note: The 10,098 Total Annual Burden Hours is based on an average of 2001–02, 2002–03, 2003–04, 2004–05, and 2005–06 estimated burden hours.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF

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Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: April 26, 2001.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 01–10793 Filed 4–30–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACYF/CB–2001–01]

Announcement of the Availability of Financial Assistance and Request for Applications To Support Adoption Opportunities Demonstration Projects, Child Abuse and Neglect Discretionary Activities, Abandoned Infants Assistance Awards and Projects To Build the Analytical Capacity of State Child Welfare Programs

AGENCY: Administration on Children, Youth and Families (ACYF), ACF, DHHS.

ACTION: Notice.

SUMMARY: The Children's Bureau (CB) within the Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF) announces the availability of fiscal year (FY) 2001 funds for competing new Adoption Opportunities Program, Child Abuse and Neglect Discretionary Activities, Abandoned Infants Assistance and projects to build the analytical capacity of state child welfare programs. Funds from the Adoption Opportunities Program are designed to provide support for demonstration projects that facilitate the elimination of barriers to adoption and provide permanent loving homes for children who would benefit from adoption, particularly children with special needs. Discretionary funds from the Promoting Safe and Stable Families Program support research, training and technical assistance and evaluation efforts to preserve families. Funds from the Child Abuse Prevention and Treatment Act support knowledge-building research and service demonstration projects designed to assist and enhance national, State and community efforts to prevent, assess, identify and treat child abuse and neglect. Funds from section 101 of the Abandoned Infants Assistance Act, as amended (42 USC 670 note) are to establish a program of comprehensive service demonstration projects to prevent the abandonment in hospitals of infants and young children, particularly those exposed to a dangerous drug and those with the human immunodeficiency virus or who have been perinatally exposed to the virus.

DATES: The closing time and date for receipt of applications is 4:30 p.m. (Eastern Time Zone) on June 15, 2001.

Note: The program announcement, including all necessary forms can be downloaded and printed from the Children's Bureau web site at *www.acf.dhhs.gov/programs/cb.* Hard copies of the program announcement may be requested in hard copy by writing or calling the Operations Center (see phone number and address below) or sending an email to *cb@lcgnet.com.*

FOR FURTHER INFORMATION CONTACT: ACYF Operations Center at: 1815 N. Fort Myer Drive, Suite 300, Arlington, Virginia 22209 or 1–800–351–2293.

SUPPLEMENTARY INFORMATION:

Statutory Authority Covering Discretionary Grant Programs in This Announcement With the Catalog of Federal Domestic Assistance (CFDA) Numbers

Adoption Opportunities: Title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, as amended, (42 USC 5111) CFDA: 93.652.

Promoting Safe and Stable Families: Section 430 of title IV–B, Subpart 2, of the Social Security Act, as amended, (42 USC 629) CFDA: 93.556.

Child Abuse and Neglect: Section 104 of the Child Abuse Prevention and Treatment Act, as amended (42 USC 5101 et seq.) CFDA: 93.670.

Abandoned Infants: Section 101 of the Abandoned Infants Assistance Act, as amended (42 USC 670 note) CFDA: 93.551

Priority Areas

2001A. Adoption Opportunities

2001A.1 Adoptive Placements for Children in Foster Care

Eligible Applicants: Eligibility is limited to State social service agencies. Due to funding limitations and to generate and financially support the broadest range of issues and approaches, priority will be given to applicants who have not been funded under this priority in previous years. However, applicants previously funded under this priority area will not be precluded from receiving grants.

Project Duration: The projects will be awarded for a project period of 36 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of each grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is $300,000 per budget period.

Matching or Cost Sharing Requirement: The grantee must provide at least 10 percent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $300,000 per budget period must include a match of at least $33,333 per budget period. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

Anticipated Number of Projects To Be Funded: It is anticipated that three projects will be funded.

2001A.2 Field-Initiated Demonstration Projects Advancing the State of the Art in the Adoption Field

Eligible Applicants: States, local government entities, public and private nonprofit licensed child welfare and adoption agencies, and community-based nonprofit adoption organizations which currently work with children in the public child welfare system, and universities with experience in adoptions. Applicants without direct access or responsibility for the targeted children must apply in partnership with States, local government entities, or public or private nonprofit licensed child welfare and adoption agencies.

Project Duration: The projects will be awarded for a project period of 48 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of each grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is $250,000 per budget period.

Matching or Cost Sharing Requirement: The grantee must provide at least 10 percent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $250,000 per budget period must include a match of at least $27,778 per budget period. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

Anticipated Number of Projects To Be Funded: It is anticipated that four projects will be funded.

2001A.3 Quality Improvement Centers on Adoption

Eligible Applicants: Public or private nonprofit agencies, organizations, and institutions of higher learning, alone or in partnerships with child welfare agencies. The Children's Bureau especially encourages partnerships between public agencies and private nonprofit agencies, universities and foundations with adoption experience.

Project Duration: The projects will be awarded for a period of 60 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is $175,000 per Quality Improvement Center (QIC) for the first 12 months. Years two through five will be funded at a level of $500,000 per budget period per QIC. The proposed budget allocated by the QIC for administrative, management, and evaluation purposes in years two through five may not exceed $125,000 per year.

Matching or Cost Sharing Requirement: The grantee must provide at least 10 percent of the total administrative approved cost of the project. The total approved administrative cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $175,000 for the 12-month planning phase must include a match of at least $19,444. In years two through five, awardees will be required to provide a 10 percent match on the total cost allocated by the QIC for administration, management and evaluation. A project requesting an annual total of $125,000 for these purposes will be required to provide a match of at least $13,889 per year. QIC awardees are not required to provide a 10 percent match on the approximately $350,000 that will be awarded to local sites.

The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

Anticipated Number of Projects To Be Funded: It is anticipated that four projects will be funded.

2001A.4 Evaluations of Existing Adoption Programs

Eligible Applicants: States, local government entities, public and private nonprofit licensed child welfare and adoption agencies, and community-based nonprofit adoption organizations which currently work with children in the public child welfare system, and universities with experience in adoptions and child welfare issues. Collaborative efforts and interdisciplinary applications are encouraged; however, a primary applicant must be identified.

Project Duration: The projects will be awarded for a project period of 36 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of each grantee, and a determination that continued funding would be in the best interest of the government.

Projects involving evaluations through secondary analysis of existing data may propose a shorter duration.

Federal Share of Project Costs: The maximum Federal share of the project is $100,000 per budget period.

Matching or Cost Sharing Requirement: The grantee must provide at least 10 percent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $100,000 per budget period must include a match of at least $11,111 per budget period. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

Anticipated Number of Projects to be Funded: It is anticipated that up to four projects will be funded.

2001B. Child Abuse and Neglect

2001B.1 National Resources Center on Child Maltreatment

Eligible Applicants: Any national, State, local, Tribal, public or private nonprofit agency or organization, including accredited colleges and universities, with demonstrated expertise in the field of child welfare and the prevention, intervention, and treatment of child abuse and neglect.

Project Duration: The project will be awarded for a project period of 24 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond the 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of each grantee, and a determination that continued funding would be in the bestr interest of the government.

Federal Share of Project Costs: The grant amount will not exceed $700,000 per year for two years. The dollar amount requested must be fully justified and documented.

Matching Requirement: None.

Anticipated Number of Projects to be Funded: It is anticipated that one project will be funded.

2001B.2 Investigator-Initiated research Projects Advancing the State of the Art in the Child Abuse and Neglect Field

Eligible Applicants: State, local government, public and private nonprofit, community-based nonprofit organizations and universities with experience in the areas of child welfare child maltreatment. Collaborative efforts and interdisplinary applications are

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encouraged, however, a primary applicant must be identified.

Project Duration: The projects will be awarded for a project of 36 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of each grantee, and a determination that continued funding would be in the best interest of the government.

Projects involving secondary analysis of existing data may propose a shorter duration.

Federal Share of Project Costs: The maximum Federal share of the project is up to $250,000 per budget period.

Matching or Cost Sharing Requirement: There is no matching requirement.

Anticipated Number of Projects To Be Funded: It is anticipated that up to four projects will be funded at the maximum funding level or more than four if applications for lesser amounts are funded.

2001B.3 Field-Initiated Demonstration Projects Advancing the State of the Art in the Child Abuse and Neglect Field

Eligible Applicants: States, local government entities, public and private nonprofit, community-based nonprofit organizations and universities with experience in the areas of child welfare and child maltreatment. Collaborative efforts and interdisciplinary applications are encouraged; however, a primary applicant must be identified.

Project Duration: The projects will be awarded for a project period of 48 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of each grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is $250,000 per budget period.

Matching or Cost Sharing Requirement: There is no matching requirement.

Anticipated Number of Projects To Be Funded: It is anticipated that four projects will be funded.

2001B.4 Quality Improvement Centers for Child Protective Services

Eligible Applicants: Public or private nonprofit agencies, organizations, and institutions of higher learning, alone or in partnerships with child welfare agencies. The Children's Bureau especially encourages partnerships between public agencies and private nonprofit agencies, universities and foundations with experience in child maltreatment issues.

Project Duration: The projects will be awarded for a period of 60 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is $175,000 per QIC for the first 12 months. Years two through five will be funded at a level of $500,000 per budget period per QIC. The proposed budget allocated by the QIC for administrative, management, and evaluation purposes in years two through five may not exceed $125,000 per year.

Matching or Cost Sharing Requirement: The grantee must provide at least 10 percent of the total approved administrative cost of the project. The total approved administrative cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $175,000 for the 12-month planning phase must include a match of at least $19,444. In years two through five, awardees will be required to provide a 10 percent match on the total cost allocated by the QIC for administration, management, and evaluation. A project requesting an annual total of $125,000 for these purposes will be required to provide a match of at least $13,889 per year. QIC awardees are not required to provide a 10 percent match on the approximately $350,000 that will be awarded to local sites.

The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

Anticipated Number of Projects To Be Funded: It is anticipated that four projects will be funded.

2001B.5 Evaluations of Existing Child Abuse and Neglect Programs

Eligible Applicants: Public (State, Tribal, or local) or private nonprofit agencies, organizations, or institutions of higher learning are eligible to apply. Collaborative efforts and interdisciplinary applications are encouraged; however, a primary applicant must be identified.

Project Duration: The projects will be awarded for a project period of 36 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of each grantee, and a determination that continued funding would be in the best interest of the government.

Projects involving secondary analysis of existing data may propose a shorter duration.

Federal Share of Project Costs: The maximum Federal share of the project is $100,000 per budget period.

Matching or Cost Sharing Requirement: There is no matching requirement.

Anticipated Number of Projects To Be Funded: It is anticipated that up to four projects will be funded.

2001C: Abandoned Infants

2001C.1 Support for Previous Comprehensive Service Demonstration Projects

Eligible Applicants: Comprehensive service demonstration projects initially funded in FY 1977. Current grantees applying under this priority are advised that this is a competitive funding process and that applications approved for funding will be given a new grant number. Existing award activities cannot overlap with the new grant's project period, and funds from the currently existing grants cannot be expended for the new grant activities.

Project Duration: The projects will be awarded for a project period of 48 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: Grant amounts will vary and range up to $450,000 per budget period per grantee for each of the 4 years.

Matching Requirement: The grantees must provide at least 10 percent of the total approved cost of the project. The total approved cost of the project is the sum of the Federal share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting a total of $450,000 in Federal funds for the first budget period must include a match of at least $50,000 (10 percent of total approved project costs). If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

Anticipated Number of Projects To Be Funded: it is anticipated that four projects will be funded.

2001C.2 Support for New Comprehensive Service Demonstration Projects

Eligible Applicants: Any State, local public or nonprofit agency or organization including accredited colleges and universities. Applicants who can apply under this priority area include: (1) Applicants in jurisdictions in which there currently does not exist a program funded under the Abandoned Infants Assistance Program (check the National Abandoned Infants Assistance Resource Center's web site *http://www.socrates.berkeley.edu/~aiarc* for a list of current programs); (2) applicants who have previously received funding under the Abandoned Infants Assistance Program but are not currently grantees; and (3) applicants that are currently funded by the Abandoned Infants Assistance Program but are establishing a program in a separate locality serving a different target population, e.g., an agency establishing a program in a different city of establishing a second program in a city with a population over 1,000,000.

Project Duration: The projects will be awarded for a project period of 48 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: Grant amount will vary and range up to $450,000 per budget period for each of the 4 years.

Matching Requirement: The grantees must provide at least 10 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting a total of $450,000 in Federal funds for the first budget period must include a match of at least $50,000 (10 percent of total approved project costs). If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

Anticipated Number of Projects To Be Funded: It is anticipated that four projects will be funded.

2001C.3 Family Support Services for Grandparents and Other Relatives Providing Care for Children of Women Who Are Substance Abusing and HIV Positive

Eligible Applicants: Public agencies and private, nonprofit organizations and institutions of higher education are eligible to apply.

Project Duration: The projects will be awarded for a project period of 48 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: Grant amounts will not exceed $100,000 per budget period for each of the 4 years. The dollar amount request must be fully justified and documented.

Matching Requirement: Grantees must provide at least 10 percent of the total approved cost of the project. The total approved cost of the project is the sum of the Federal share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting a total of $100,000 in Federal funds per year must include a match of at least $11,111 (10 percent of approved project costs per budget period). If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

Anticipated Number of Projects To Be Funded: It is anticipated that up to three projects will be funded.

2001C.4 Recreational Services for Children Affected by HIV/AIDS

Eligible Applicants: Public agencies and private, nonprofit organizations and institutions of higher education are eligible to apply.

Project Duration: The projects will be awarded for a project period of 48 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: Grant amounts will vary from $50,000 to $100,000 per budget period for each of the 4 years. The dollar amount requested must be fully justified and documented.

Matching Requirement: Grantees must provide at least 10 percent of the total approved cost of the project. The total approved cost of the project is the sum of the Federal share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting a total of $100,000 in Federal funds for the first budget period must include a match of at least $11,111 (10 percent of total approved project costs). If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

Anticipated Number of Projects To Be Funded: It is anticipated that three projects will be funded.

2001D. Building Analytical Capacity for Child Welfare Programs in the States

2001D.1 Demonstration Sites: Building Analytical Capacity for Child Welfare Programs in the States

Eligible Applicants: Eligibility is limited to States that have not yet developed capacities for data analysis and interpretation to improve decision-making and accountability. Funds will be awarded for building an infrastructure for research and evaluation designed to increase efficiency and effectiveness of State child welfare programs.

Project Duration: The projects will be awarded for a project period of 36 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of each grantee, and a determination that continued funding would be in the best interest of the government.

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Federal Share of Project Costs: The maximum Federal share of the project is $250,000 per budget period.

Matching or Cost Sharing Requirement: The grantee must provide at least 10 percent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $250,000 per budget period must include a match of at least $27,778 per budget period. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

Anticipated Number of Projects To Be Funded: It is anticipated that four projects will be funded.

2001D.2 Mentor Sites: Building Analytical Capacity for Child Welfare Programs in the States

Eligible Applicants: Eligibility is limited to the States that have already developed capacities, in-house or contractually, for data analysis and interpretation and can serve as mentors for other States that seek to improve data analysis through advanced research and evaluation. Funds will be awarded to the mentor sites for consulting and technical assistance to promote increased efficiency and effectiveness of child welfare programs in States that have not yet developed capacities for advanced data analysis and interpretation.

Project Duration: The projects will be awarded for a project period of 36 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of each grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is $150,000 per budget period.

Matching or Cost Sharing Requirement: There is not matching requirement.

Anticipated Number of Projects To Be Funded: It is anticipated that four projects will be funded.

Evaluation Criteria

Reviewers will consider the following factors when scoring applications. However, in order to adequately prepare their applications, applicants must refer to the full program announcement for the specific evaluation criteria for each priority area. The points awarded for each criterion vary, depending on the specific priority area.

Criterion 1: Objectives and Need for Assistance. Applications will be judged on the extent to which they clearly specify the purposes and/or strategies of the proposed project and their relationship to legislative authority and child welfare outcomes, as appropriate; the quality of their statement regarding the need for the project; and evidence that the applicant understands current issues and recent developments in the field that may have relevance to the implementation of the project. Applicants must refer to the specific evaluation criteria for each priority area contained in the full Program Announcement in order to adequately prepare their applications. The points awarded for this criterion vary, depending on the specific priority area.

Criterion 2: Approach. Applicants will be judged on the clarity, feasibility, and thoroughness of their description of the approach that they intend to use in implementing proposed projects. The approach sections will be expected to include, as appropriate, information on barriers to implementation and proposed solutions to those barriers; necessary collaborations with other organizations and agencies and their respective roles; evaluation plans; reporting requirements; and staffing plans. Applicants must refer to the specific evaluation criteria for each priority area contained in the full Program Announcement in order to adequately prepare their applications. The points awarded for this criterion vary, depending on the specific priority area.

Criterion 3: Organizational Profiles. Applicants will be judged on the experience and demonstrated competence of staff who are proposed to implement the project and, as appropriate, the experience of the organization in implementing related projects. Applicants must refer to the specific evaluation criteria for each priority area contained in the full Program Announcement in order to adequately prepare their applications. The points awarded for this criterion vary, depending on the specific priority area.

Criterion 4: Budget and budget justification. Applicants will be judged on the adequacy, reasonableness, and completeness of their budget requests to support their proposed projects, including their management plans to control and account for expenditure of project funds. Applicants must refer to the specific evaluation criteria for each priority area contained in the full Program Announcement in order to adequately prepare their applications. The points awarded for this criterion vary, depending on the specific priority area.

Required Notification of the Single Point of Contact

Most portions of this program are covered under Executive Order 12372, Intergovernmental Review of Federal Programs, and 45 CFR part 100, Intergovernmental Review of Department of Health and Human Services program and Activities. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, and Wyoming have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these jurisdictions need take no action regarding Executive Order 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of Executive Order 12372. Applicants to the Adoption Opportunities program are also exempt from the requirements of Executive Order 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the accommodate or explain rule. A list of the Single Points of Contact for each State and Territory can be found on line at *http://www.whitehouse.gov/omb/grants/spoc.html.*

Dated: April 25, 2001.

Gail E. Collins,

Acting Deputy Commissioner, Administration on Children, Youth and Families.

[FR Doc. 01–10792 Filed 4–30–01; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACYF/HS–2001–10]

Fiscal Year 2001 Discretionary Announcement for Head Start—Higher Education Hispanic/Latino Service Partnerships: Availability of Funds and Request for Applications

AGENCY: Administration on Children, Youth and Families (ACYF).

ACTION: Notice.

Statutory Authority: The Head Start Act, as amended 42 U.S.C. 9801 *et seq.*

SUMMARY: The Administration for Children and Families (ACF), Administration on Children, Youth and Families (ACYF) announces the availability of approximately $500,000 annually for each of four (4) years to support Head Start-Higher Education Hispanic/Latino Service Partnerships (HS–HEHLSPs). The goal of this HS–HEHLSPs initiative is to improve the quality and long term effectiveness of Head Start and Early Head Start programs by developing models of academic training through partnerships between institutions of higher education and Head Start and Early Head Start agencies. The priority for this funding is: Partnerships to increase the number of center-based teachers with AA, BA or advanced degrees in early childhood education or related fields earned by Head Start teachers, in order to assist Head Start grantees to meet the 2003 Congressional mandate and to provide teachers with knowledge areas vital in building quality Head Start programs.

DATES: The closing date and time for receipt of application is 4:30 p.m. (Eastern Time Zone), June 15, 2001.

Note: Applications should be submitted to: ACYF Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, Virginia 22209.

However, prior to preparing and submitting an application, in order to satisfactorily compete under this announcement, it will be necessary for potential applicants to read the full announcement which is available through the addresses listed below.

ADDRESSES: Applications, including all necessary forms can be downloaded from the Head Start Web site at *www.acf.dhhs.gov/programs/hsb.* The Web site also contains a listing of all Head Start and Early Head Start programs. Hard copies of the application may be obtained by writing or calling the Operations Center or sending an e-mail to *hrs@lcgnet.com.*

FOR FURTHER INFORMATION CONTACT: ACYF Operations Center at: 1815 N. Fort Myer Drive, Suite 300, Arlington, Virginia 22209 or 1–800–351–2293.

SUPPLEMENTARY INFORMATION:

Eligible Applicants: Institutions of higher education with experience and capability in educating and preparing professionals to work effectively with Hispanic young children and families are eligible to apply. Institutions that are currently funded under the Head Start—Higher Education Hispanic Service partnerships are not eligible to apply under this announcement.

Project Duration: The announcement is soliciting applications for project periods up to four years. Awards, on a competitive basis, will be for a one-year budget period, although projects may be for four years. Applications for continuation funds under these awards beyond the first year budget period, but within the established project period, will be entertained in subsequent years on a non-competitive basis, subject to availability of funds, satisfactory progress of the grantee, and a determination that continued funding would be in the best interest of the Government.

Federal Share of Project Costs: The maximum share is $150,000 for the first year of the four-year period. The Federal share is inclusive of indirect costs.

Matching Requirements: There are no matching requirements.

Anticipated Number of Projects to be Funded: It is anticipated that approximately four projects will be funded.

Anticipated Number of Projects to be Funded: It is anticipated that approximately four projects will be funded.

Review Criteria

Criterion 1. Objectives and Need for Assistance: (10 Points)

The extent to which the application identifies relevant physical, economic, social, financial, institutional or other problems requiring a grant; demonstrates the need for assistance; and states the principal and subordinate objectives of the project consistent with the purposes of the program announcement.

The Head Start Bureau is particularly interested in the following aspects of the applications:

1. State the specific training objectives for the program. Indicate how these objectives are based on an assessment of staff training and program improvement needs of participant Head Start and Early Head Start agencies; how they related to Head Start goals, outcomes and policy priorities, and how they will enhance the quality of Head Start services to Hispanic/Latino children and their families.

2. Describe the process used to assess the needs for the proposed program design. Specifically identify the population to be served in terms of numbers and types of staff to be trained and the proposed areas of training, course, and/or degrees to be awarded.

3. Describe the development of the HS–HEHLSPs agreement and other consultation related to the development of the proposed initiative. Describe any efforts to frame the proposed initiative within broader state or community efforts to enhance professional and career development for staff in all forms of early childhood and child care programs.

Criterion 2. Results or Benefits Expected: (20 points)

The extent to which the application identifies the results and benefits to be derived; describes the anticipated contribution to policy, practice, theory and/or research; specific benefits should be described for both the HS–HEHLSPs and Head Start/Migrant Head Start/Early Head Start partners.

The Head Start Bureau is particularly interested in the following aspects of the applications:

1. Based on the stated program objectives, identify the results and benefits to be derived. Identify the specific results or benefits that could be expected for the Head Start grantee(s) and the institution. Describe how the trainees benefit from the project.

2. Identify both qualitative and quantitative data the applicant will collect to measure progress towards the stated results or benefits. Identify how the program will determine the extent to which it has achieved its stated objectives.

3. Provide a projection of the estimated number of trainees, by category, who will earn degrees over the four year duration of the project based on an analysis of the current levels of

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credits/courses earned by participants and a proposed sequence of courses.

Criterion 3. Approach (40 points)

A. The extent to which the application outlines a sound and realistic plan of action pertaining to the scope of the project which details how the proposed work will be accomplished, including a timeline; lists of each organization, consultants, including the evaluator, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution; and assures the adequacy of time devoted to the project by key staff;

B. The extent to which the project approach, if successfully carried out, is likely to achieve the proposed project objectives; and

C. The applicant must fully describe the approach and/or methodology and delineate the relationship of each task to the accomplishment of the proposed objectives. There should be evidence that the planned approach reflects sufficient input from and partnership with Head Start/Migrant Head Start/Early Head Start and the HS–HEHLPs.

The Head Start Bureau is particularly interested in the following aspects of the applications:

1. Describe the planning the applicant will conduct during the start-up period to prepare for implementation of the program. Provide assurance that no more than six months will be devoted to planning activities.

2. Indicate how Head Start staff will be recruited and selected to participate in the program, including staff from other child care organizations that are collaborating with Head Start grantees and delegate agencies and meet Head Start performance standards within a given community.

3. Describe how the training and coursework will be contextually and culturally relevant to the Head Start, Migrant Head Start and the Early Head Start environment and how it will contribute to enhancing the effectiveness of teachers, staff, program quality and outcomes for Head Start children and families.

4. Describe efforts by the institution and Head Start partners to make training and coursework accessible to Head Start participants and to support their successful completion of courses, training, and degrees. Include a discussion of issues such as the timing, scheduling, and location of classes or training; support to enhance the literacy and study skills of participants; and approaches to integrate HS–HEHLSPs training in the working environment of the Head Start program.

5. Describe efforts to complement the federal funds requested in this proposal with other resources to maximize the benefits to Head Start and HS–HEHLSPs participants. Include any efforts or plans to assist Head Start staff in accessing sources of financial assistance or to make use of other funding for training and career development of early childhood program staff. In addition, describe any proposed contributions of funds from local Head Start programs to the partnership. Provide assurance that trainees will not be required to bear any costs of participating in training.

6. Describe how previous CDA training and certification of Head Start staff, as well as previous coursework, credits or AA degrees from 2-year institutions, will be linked to academic credits and course sequences leading to BA degrees.

7. Describe the organizational structure that will support the project objectives. Indicate how joint planning and assessment with the Head Start, Migrant Head Start and Early Head Start grantees will be implemented with timelines and clear lines of responsibility. Indicate how staff positions are assigned and describe their major functions and responsibilities.

8. Describe the activities that will continue after the completion of this project that will ensure that the institution will continue to participate in providing educational opportunities for Head Start, Migrant Head Start and Early Head Start staff.

9. Include support letters that document consultation and support from the proposed grantee or delegate agency partners, the Head Start Collaboration Office, and any existing state level early childhood career development initiative.

Criterion 4. Staff and Position Data (20 points)

Key staff should be qualified and knowledgeable of Head Start, Migrant Head Start and Early Head Start. The extent of the demonstrated capacity of the applicant organization, key leaders, managers and project personnel to:

1. provide high quality, relevant, and responsive training to Head Start staff;

2. assure participating project staff are competent to plan and deliver appropriate course material to Head Start trainees that is culturally relevant;

3. manage the implementation of the training grant in an effective and timely manner; and

4. manage successful partnership that involve sharing resources, staffing, and facilities.

Criterion 5. Budget and Budget Justification: (10 points)

The extent to which the project's costs are reasonable and appropriate in view of the activities to be carried out and the anticipated outcomes. Provide a line item detail for the costs of attendance of project staff to attend ACF-sponsored conferences in Washington, DC. It is the expectation that applicants should limit budget projections to those costs necessary to build institutional capacity for and execute training and career development partnerships with participating Head Start grantees.

Required Notification of the State Single Point of Contact

This program is covered under Executive Order 12372, Intergovernmental Review of Federal Programs, and 45 CFR part 100, Intergovernmental Review of Department of Health and Human Services Program and Activities. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-four jurisdictions need take no action regarding Executive Order 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of Executive Order 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 6a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the accommodation or explain rule.

When comments are submitted directly to ACF, they should be addressed to: William Wilson, Head Start Bureau, 330 C Street, SW., Washington, DC 20447, Attn: Head Start-Higher Education Hispanic/Latino Service Partnerships. A list of the Single Points of Contact (SPOCs) for each State and Territory can be found on the following web site: http://www.whitehouse.gov/omb/grants/spoc.html.

Dated: April 25, 2001.

Gail E. Collins,

Acting Deputy Commissioner, Administration on Children, Youth and Families.

[FR Doc. 01–10720 Filed 4–30–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0174]

Agency Information Collection Activities; Proposed Collection; Comment Request; Recall Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on FDA's recall regulations (guidelines) and provides guidances to manufacturers on recall responsibilities.

DATES: Submit written or electronic comments on the collection of information by July 2, 2001.

ADDRESSES: Submit electronic comments on the collection of information via the Internet at http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

FDA Recall Regulations—Part 7 (Subpart C) (21 CFR Part 7 (Subpart C))—(OMB Control Number 0910–0249)—Extension

Section 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371) and 21 CFR part 7, subpart C sets forth the recall regulations (guidelines) and provides guidance to manufacturers on recall responsibilities. The guidelines apply to all FDA regulated products (i.e., food, including animal feed; drugs, including animal drugs; medical devices, including in vitro diagnostic products; cosmetics; and biological products intended for human use). These responsibilities include development of a recall strategy that requires time by the firm to determine the actions or procedures required to manage the recall (§ 7.42); providing FDA with complete details of the recall including reason(s) for the removal or correction, risk evaluation, quantity produced, distribution information, firm's recall strategy, copy of any recall communication(s), and a contact official (§ 7.46); notifying direct accounts of the recall, providing guidance regarding further distribution, giving instructions as to what to do with the product, providing recipients with a ready means of reporting to the recalling firm (§ 7.49); submitting periodic status reports so that FDA may assess the progress of the recall. Status report information may be determined by, among other things, evaluating return reply cards, effectiveness checks and product returns (§ 7.53); and providing the opportunity for a firm to request in writing that FDA terminate the recall (§ 7.55).

A search of the FDA database was performed to determine the number of recalls that took place during fiscal year 2000. The resulting number of recalls from this database search (1,933) is used in estimating the current annual reporting burden for this report. FDA estimates the total annual industry burden to collect and provide the above information to 84,665 burden hours.

The following is a summary of the estimated annual burden hours for manufacturers, processors, and distributors to comply with the voluntary reporting requirements of FDA's recall regulations.

Recognizing that there may be a vast difference in the information collection and reporting time involved in different recalls of FDA's regulated products, FDA estimates on average the burden of collection for recall information as follows:

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TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
7.42	1,933	1	1,933	1.8	3,479
7.46 and 7.49	1,933	1	1,933	4.0	7,732
7.53	1,933	1	1,933	36.0	69,588
7.55(b)	1,933	1	1,933	2.0	3,866
Total					84,665

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: April 24, 2001.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 01–10707 Filed 4–30–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1489]

Agency Information Collection Activities; Announcement of OMB Approval; Sterility Requirements for Aqueous-Based Drug Products for Oral Inhalation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Sterility Requirements for Aqueous-Based Drug Products for Oral Inhalation" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 18, 2000 (65 FR 56314), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0353. The approval expires on March 31, 2004. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: April 24, 2001.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 01–10708 Filed 4–30–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0511]

Agency Information Collection Activities; Announcement of OMB Approval; Hazard Analysis and Critical Control Point (HACCP); Procedures for the Safe and Sanitary Processing and Importing of Juice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Hazard Analysis and Critical Control Point (HACCP); Procedures for the Safe and Sanitary Processing and Importing of Juice" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 19, 2001 (66 FR 6138 at 6194), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0466. The approval expires on March 31, 2004. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: April 24, 2001.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 01–10709 Filed 4–30–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1502]

Agency Information Collection Activities; Announcement of OMB Approval; Adverse Experience Reporting for Licensed Biological Products and General Records

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Adverse Experience Reporting for Licensed Biological Products and General Records" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 26, 2000 (65 FR 81528), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0308. The approval expires on April 31, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: April 24, 2001.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 01–10710 Filed 4–30–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1503]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Orphan Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by May 31, 2001.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Orphan Drug Products—21 CFR Part 316 (OMB Number 0910–0167)—Extension

Sections 525 through 528 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360aa through 360dd) give FDA statutory authority to: (1) Provide recommendations on investigations required for approval of marketing applications for orphan drugs, (2) designate eligible drugs as orphan drugs, (3) set forth conditions under which a sponsor of an approved orphan drug obtains exclusive approval, and (4) encourage sponsors to make orphan drugs available for treatment on an "open protocol" basis before the drug has been approved for general marketing. The implementing regulations for these statutory requirements have been codified under part 316 (21 CFR part 316) and specifies the content and format of a request for written recommendations concerning the nonclinical laboratory studies and clinical investigations necessary for approval of marketing applications. Section 316.12 provides that, before providing such recommendations, FDA may require results of studies to be submitted for review. Section 316.14 contains provisions permitting FDA to refuse to provide written recommendations under certain circumstances. Within 90 days of any refusal, a sponsor may submit additional information specified by FDA. Section 316.20 specifies the content and format of an orphan drug application which includes requirements that an applicant document that the disease is rare (affects fewer than 200,000 persons in the United States annually) or that the sponsor of the drug has no reasonable expectation of recovering costs of research and development of the drug. Section 316.26 allows an applicant to amend the application under certain circumstances. Section 316.30 requires submission of annual reports, including progress reports on studies, a description of the investigational plan, and a discussion of changes that may affect orphan status. The information requested will provide the basis for an FDA determination that the drug is for a rare disease or condition and satisfies the requirements for obtaining orphan drug status. Secondly, the information will describe the medical and regulatory history of the drug. The respondents to this collection of information are biotechnology firms, drug companies, and academic clinical researchers.

In the **Federal Register** of September 19, 2000 (65 FR 56586), the agency requested comments on the proposed collections of information. No significant comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
316.10, 316.12, and 316.14	0	0	0	0	0
316.20, 316.21, and 316.26	90	1.78	160.20	125	20,025
316.22	5	1	5	2	10
316.27	5	1	5	4	20
316.30	450	1	450	2	900
316.36	.2	3	.6	15	9
Total Burden Hours					20,964

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The information requested from respondents represents, for the most part, an accounting of information already in possession of the applicant. It is estimated, based on the frequency of requests over the past 10 years, that 90 persons or organizations per year will request orphan drug designation and that no requests for recommendations on design of preclinical or clinical studies will be received. Based upon FDA experience over the last decade, FDA estimates that the effort required to prepare applications to receive consideration for sections 525 and 526 of the act (§§ 316.10, 316.12, 316.20, and 316.21) is generally similar and is estimated to

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require an average of 95 hours of professional staff time and 30 hours of support staff time per application. Estimates of annual activity and burden for foreign sponsor nomination of a resident, agent, change in ownership or designation, and inadequate supplies of drug in exclusivity, are based on total experience by FDA with such requests since 1983.

Dated: April 24, 2001.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 01–10711 Filed 4–30–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–1450]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Request: Extension of a currently approved collection; *Title of Information Collection:* Medicare Uniform Institutional Provider Bill and Supporting Regulations in 42 CFR 424.5; *Form Number:* HCFA–1450 (OMB approval #: 0938–0247); *Use:* This standardized form is used in the Medicare/Medicaid program to apply for reimbursement of covered services by all providers that accept Medicare/Medicaid assigned claims; *Frequency:* On occasion; Affected Public: Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 46,708; *Total Annual Responses:* 147,343,290; *Total Annual Hours Requested:* 1,854,070.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm*, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Wendy Taylor, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: March 19, 2001.

John P. Burke, III,

HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–10814 Filed 4–30–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1182–PN]

RIN 0938–AK75

Medicare Program; Revision of Payment Rates for End-Stage Renal Disease (ESRD) Patients Enrolled in Medicare+Choice Plans

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: This notice proposes a new payment methodology, effective January 2002, for beneficiaries with End-Stage Renal Disease (ESRD) who are enrolled in Medicare+Choice (M+C) plans. The proposed methodology would implement section 605 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA). Section 605 requires the Secretary to increase ESRD M+C payment rates, using appropriate adjustments, to reflect the demonstration rates (including the risk adjustment methodology associated with those rates) of the social health maintenance organization ESRD capitation demonstrations. Briefly, the approach that we propose follows:

- Base State-level per capita rates on 100 percent of estimated State per capita ESRD fee-for-service expenditures in a base year.
- Adjust State per capita rates by age and sex factors, in order to pay more accurately, given differences in costs among ESRD patients.

The effect of the new ESRD M+C payment methodology would be to increase Medicare's Fiscal Year (FY) 2002 ESRD payments by an estimated $25 million (for 9 months of costs, given the effective date of January 2002). Total ESRD M+C payment increases for FY 2003 through FY 2005 are estimated to be $40 million annually.

The payment methodology proposed in this notice would govern M+C payments for enrollees with ESRD in 2002. M+C organizations are required to submit Adjusted Community Rate (ACR) proposals setting forth their M+C plan benefits, premiums, and cost-sharing for 2002 by July 1, 2001. M+C organizations need information on the payments they will receive for ESRD enrollees to prepare their ACR submissions. Section 605(c) of BIPA provided that this notice had to be published no later than 6 months after the enactment of BIPA or June 20, 2001. Yet section 605(c) also requires that the "final" ESRD methodology be published no later than July 1, 2001. In light of these deadlines, and the need of M+C organizations for final information on ESRD payment rates to prepare the ACR proposals, we find that affording the public a full 60-day comment period would be "impracticable" and "contrary to the public interest," and that there is "good cause" for shortening the 60-day comment period we normally provide to 30 days.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on May 31, 2001.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address ONLY: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1182–PN, P.O. Box 8013, Baltimore, MD 21244–8013.

To ensure that mailed comments are received in time for us to consider them, please allow for possible delays in delivering them.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244–8013.

Comments mailed to the above addresses may be delayed and received too late for us to consider them.

Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1182-PN. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room C5–12–08 of the Health Care Financing Administration, 7500 Security Blvd., Baltimore, MD, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. Please call (410) 786–7197 to view these comments.

For information on ordering copies of the **Federal Register** containing this document and electronic access, see the beginning of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Anne Hornsby, (410) 786–1181.

SUPPLEMENTARY INFORMATION:

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $9. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register.**

This **Federal Register** document is also available from the **Federal Register** online database through GPO Access, a service of the U.S. Government Printing Office. The Website address is: *http://www.access.gpo.gov/nara/index.html.*

I. Background

Section 605 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) amends section 1853(a)(1)(B) of the Social Security Act (the Act) by adding the following sentence at the end: "In establishing such rates, the Secretary shall provide for appropriate adjustments to increase each rate to reflect the demonstration rate (including the risk adjustment methodology associated with such rate) of the social health maintenance organization end-stage renal disease capitation demonstrations (established by section 2355 of the Deficit Reduction Act of 1984, as amended by section 13567(b) of the Omnibus Budget Reconciliation Act of 1993), and shall compute such rates by taking into account such factors as renal treatment modality, age, and the underlying cause of the end-stage renal disease." The amendment will apply to payments for months beginning with January 2002.

Currently, M+C ESRD capitation payments are based on State-level rates that are not risk-adjusted. ESRD M+C base payment rates are set at 95 percent of State average fee-for-service costs in a base year (1997), which is consistent with other M+C rates. ESRD rates include the costs of beneficiaries with Medicare as Secondary Payer and the costs of beneficiaries who have functioning grafts 3 years or less from date of transplant. Note that for the purpose of M+C payment, "ESRD beneficiaries" includes beneficiaries with ESRD, whether entitled to Medicare because of ESRD, disability, or age.

A. ESRD Managed Care Demonstration Project

Beneficiaries with ESRD are the only group prohibited from enrolling in Medicare risk HMOs and M+C organizations, although a beneficiary who develops ESRD after enrolling with an organization that offers an M+C plan may remain enrolled with the organization under an M+C plan. In 1996, the Congress required the Secretary to conduct an ESRD Managed Care Demonstration Project to assess whether it is feasible to allow year-round open enrollment in managed care for Medicare ESRD patients of all ages. As of December 2000, there were two such Demonstration sites, one in California with approximately 1,200 enrollees and a second in Florida with approximately 600 enrollees.

The ESRD Demonstration introduced 100 percent risk-adjustment into ESRD capitation payments. We calculated separate monthly capitation rates by treatment modality (dialysis, transplant, or functioning graft), and then adjusted the dialysis and functioning graft rates for age (0–19, 20–64, or 65+ years old) and original cause of renal failure (diabetes or other cause).

Further, the Demonstration tested whether offering additional benefits not covered by Medicare enhanced effective treatment of this population. The statute mandated that we pay ESRD Demonstration sites 100 percent of estimated per capita fee-for-service expenditures in that State, rather than the 95 percent paid to managed care plans outside the Demonstration. To justify the extra 5 percent, ESRD Demonstration sites agreed to provide additional benefits, for example, nutritional supplements.

Finally, the Demonstration did not allow ESRD patients with Medicare as Secondary Payer to enroll in the sites. Therefore, we excluded fee-for-service beneficiaries with Medicare as Secondary Payer from calculation of the base payment rates. Excluding Medicare as Secondary Payer beneficiaries increased the Demonstration rates about 20 percent over rates paid outside the Demonstration.

B. ESRD Demonstration Experience With the Capitated Payment System

Preliminary assessments reveal that the administrative demands of implementing the methodology employed in the ESRD Demonstration were substantial and complex. HCFA and the Demonstration sites experienced difficulty with ensuring accurate and timely collection of data on treatment modality; data problems also occurred with the original cause adjuster. In large part, this was because to determine payment status, we had to rely on nonbilling documents. For example, the documentation of a transplant involves a detailed medical form that must travel from transplant center to organ transplant network to us. Often we did not receive these forms timely. Working with the Demonstration sites, we have had to create complex processes for retroactive adjustments and reconciliations because of delays in receipt of the appropriate documentation.

This assessment is based on our preliminary analysis of issues that have arisen during the ESRD Demonstration. The final evaluation of the ESRD Demonstration is forthcoming. Meanwhile, we are pursuing further improvements to the payment system for ESRD beneficiaries enrolled in managed care. Given our ongoing discussion with the Demonstration sites about system problems affecting payment, however, we are prospectively changing the ESRD Demonstration payment methodology. Demonstration payments will no longer be risk-adjusted. We will pay the unadjusted base capitation rate until this interim approach is superseded by implementation of the risk-adjusted ESRD M+C payment methodology proposed in this notice.

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II. Provisions of the Proposed Notice

A. Calculation of State-Level Per Capita ESRD Rates at 100 Percent of State Fee-for-Service Costs

As noted above, BIPA requires that ESRD Managed Care Demonstration rates be increased "to reflect" the Demonstration rate, "including" the risk adjustment methodology used under the Demonstration. We discuss our approach to reflecting the Demonstration risk adjustment methodology in section II.B below. To increase the base rate to "reflect" the ESRD Demonstration rate, we propose to calculate ESRD M+C payment rates based on 100 percent of our current best estimate of actual 1997 State per capita ESRD fee-for-service costs, which is consistent with the approach provided for in the statutory provisions establishing the ESRD Demonstration. To bring the per capita ESRD rates forward to CY 2002, we will apply the M+C methodology under the Balanced Budget Act of 1997 (BBA), whereby the annual State capitation rate is the largest of the blended capitation rate, the minimum amount rate, and the minimum percentage increase rate. Our reasons for selecting this approach follow.

Increasing the original 1997 ESRD M+C payment rates to an amount representing 100 percent of our current estimates of actual 1997 State per capita ESRD fee-for-service costs results in an increase in the original 1997 rates of approximately 1 percent. To determine monthly per capita rates that are 100 percent of State fee-for-service costs in 1997, we returned to the 1997 rates, since that was selected as the base year for payments under the BBA payment methodology. To illustrate why paying 100 percent of a rate based on our current estimate of 1997 costs only increases the original 1997 rates by 1 percent, we have conducted preliminary analysis of the 1997 rates using average per capita costs for the nation. (To calculate the new ESRD rates, we will use fee-for-service costs on a State-by-State basis.)

Our analysis of the 1997 rates reveals that the national per capita rate promulgated in 1997 (based on September 1996 calculations) is about 4.1 percent higher than our current best estimate of the actual 1997 fee-for-service costs on which the rates are to be based.

- The basis for the 1997 monthly per capita ESRD rates was the monthly U.S. Per Capita Costs (USPCC) for ESRD of $3,861.
- In contrast, our best estimate in 2001 of actual monthly ESRD per capita cost for 1997 is $3,710. The difference is approximately 4.1 percent.

Under the M+C methodology set forth in the BBA, the original 1997 rates were the basis for all future rates, with no provision for correcting over or under estimates. This means that on average, in 1997 we paid managed care organizations an amount representing about 99 percent of the actual Medicare Average Annual Per Capita Cost (AAPCC) for 1997, rather than the assumed 95 percent of the AAPCC. To pay M+C organizations 100 percent of estimated State per capita ESRD fee-for-service costs for 1997, therefore, we will increase the 1997 rates by approximately 1 percent.[1] As noted above, this approach is fully consistent with the legislation providing for the ESRD Demonstration, which provided for payment at 100 percent of the AAPCC, and did not link this to a particular rate book or at any point to M+C payment rates.

Post-1997 ESRD Demonstration payment rates were updated using the BBA methodology, which resulted in the minimum 2 percent increase each year. To further "reflect the Demonstration rate," we propose to do the same under the new ESRD methodology, notwithstanding the fact that actual fee-for-service costs did not increase at this rate, but actually decreased (see footnote 1). ESRD M+C payment rates outside the Demonstration also were increased 2 percent under the BBA methodology.

In summary, we propose to increase the 1997 payment rate produced by the pre-BIPA M+C payment methodology by approximately 1 percent to get to 100 percent of actual fee-for-service costs for 1997, thus fulfilling the BIPA mandate that new ESRD rates be increased to "reflect" the Demonstration rates, which are based on a 100 percent standard.

B. Risk Adjust the Base Payment Rates By Age and Sex

As noted above, section 605 of BIPA requires that the increase in ESRD rates to reflect Demonstration rates include the risk adjustment methodology associated with such rates. The methodology in place at the time BIPA was enacted was set forth above in section I.A. While the Demonstration methodology included several components, the bulk of the effect of risk adjustment is attributable to adjustment for age. For the reasons that follow, after taking into account the possibility of other categories of risk adjustment used in the ESRD Demonstration, we are proposing to adjust M+C ESRD rates only for age and sex. We believe that this "reflects" the most significant effects of the ESRD Demonstration methodology. To increase the power of the age adjustment compared to the ESRD Demonstration age adjustment, we will change from a 3-category age classification to the 10-category classification currently used in the M+C payment methodology.

We decided not to create separate rates for treatment modality or adjust for original cause of kidney failure for several reasons. First, when we implement the comprehensive risk adjustment model (adding ambulatory and outpatient diagnoses to the existing hospital-diagnosis system), we expect to incorporate ESRD M+C enrollees into the single risk-adjusted payment system. This will allow us to capture co-morbidity information in addition to demographic information and basic disease markers for ESRD beneficiaries.

In addition, research indicates that increased age is the single best correlate of ESRD mortality. The ESRD population enrolled in managed care is on average older than the ESRD fee-for-service population (see table below). (This is due to the current restrictions on ESRD enrollment in M+C organizations.) Our research comparing the 1998 Medicare HMO ESRD population with the fee-for-service population reveals the following contrasts (Eggers 2000).

Age	Percent of ESRD HMO population (percent)	Percent of ESRD fee-for-service population (percent)
Age 75+	28	15
65–74	41	22
45–64	24	39
0–44	7	24

We reviewed other evidence before selecting an interim risk adjustment methodology based on age and sex, including the following:

- Eggers *et al.* (2001) found that when taking age into account, M+C organizations were transplanting at the same rates as fee-for-service organizations in 1998.
- A detailed study of capitation models for ESRD (The Lewin Group and URREA 2000) shows that age is a much more important factor predicting 1996 fee-for-service spending for within-year transplant patients, functioning graft patients, and pediatric dialysis patients than it is for adult hemodialysis patients. The study notes, however, that ESRD patients enrolled in Medicare HMOs with Medicare as primary payer are not included in the sample of patients analyzed, so we do not know whether the study findings are accurate for the M+C ESRD population, which is on average older than the fee-for-service ESRD population.

Taking into consideration the current enrollment restrictions in the M+C program and the resulting age distribution of ESRD M+C enrollees, we have concluded that adjusting for age and sex and using a more detailed age categorization obviates the need to include treatment modality and original cause as factors in this interim methodology.

HCFA's Office of the Actuary developed the following age/sex factors for ESRD beneficiaries enrolled in M+C plans. These factors will be used in making payments for ESRD beneficiaries starting in January 1, 2002. For a given ESRD enrollee, the appropriate age/sex factor will be multiplied by the standardized statewide payment rates in the M+C ratebook. Prior to January 2002, there are no adjustments for age and sex for M+C ESRD beneficiaries.

AGE/SEX DEMOGRAPHIC FACTORS FOR M+C ESRD ENROLLEES

Age	Part A		Part B	
	Male	Female	Male	Female
0–34	.55	.70	.70	.75
35–44	.65	.70	.80	.80
45–54	.70	.85	.85	.90
55–59	.80	.95	.90	1.00
60–64	.90	1.10	.90	1.10
65–69	1.15	1.35	1.10	1.20
70–74	1.25	1.45	1.15	1.25
75–79	1.30	1.55	1.20	1.25
80–84	1.40	1.60	1.20	1.25
85+	1.45	1.60	1.20	1.25

Given current enrollment restrictions, we estimate that, under the proposed methodology, the age- and sex-adjusted average ESRD payment per beneficiary will result in a significant increase in payments to M+C organizations for their ESRD enrollees.

When ESRD M+C enrollees are incorporated into the comprehensive risk adjustment system (adding ambulatory and outpatient diagnoses to the existing hospital-diagnosis system), payments for ESRD patients will be adjusted using the same adjusters used for other enrollees, thus incorporating information on basic disease markers and co-morbidities into calculations of ESRD payments.

Preliminary findings from the ESRD Demonstration, which allowed ESRD beneficiaries of all ages to enroll, indicate that the age distributions at the Demonstration sites were very similar to the ESRD age distribution in fee-for-service Medicare. A change in the law to allow ESRD beneficiaries of all ages to enroll in M+C plans would result in moderation of the average payment increases expected from the proposed methodology, because we would expect a shift in the age distribution of the M+C ESRD population toward younger enrollees.

Although the ESRD Managed Care Demonstration did not enroll beneficiaries with Medicare as Secondary Payer, we are unable to exclude from the M+C program any beneficiaries with Medicare as Secondary Payer who develop ESRD. Therefore, these ESRD beneficiaries with Medicare as Secondary Payer will be included in the program and payment rates. Due to data limitations, we do not expect to make separate payment adjustments.

III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

V. Regulatory Impact Statement

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980 Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually).

We have determined that this proposed notice is not a major rule with economically significant effects. There are approximately 18,000 ESRD beneficiaries enrolled in M+C plans. The additional cash expenditures for these ESRD M+C beneficiaries under this BIPA provision are estimated to be: $25 million in 2002; $40 million in 2003; $40 million in 2004; $40 million in 2005; and $45 million in 2006. These estimates assume continuation of the current restrictions on enrollment in the M+C program for ESRD beneficiaries. These estimates include the impact of adjusting for age and sex and the impact

[1] Note 4: the 4 percent differential in 1997 (between the national per capital rate promulgated in 1997 and our best estimate in 2001 of 1997 costs) is projected to grow to almost 25 percent by 2002. This is because the underlying growth trends for ESRD fee-for-service costs from 1997 to 2002 are negative, while the M+C payment rates have increased at a minimum of 2 percent per year, as provided in the BBA. Current estimates of the actual ESRD fee-for-service cost trends from 1997 to 2002 project a decrease of approximately 7 percent. In contrast, the guaranteed 2 percent increase per year (3 percent in 2001 under BIPA) equates to an increase of approximately 11.5 percent. The result is a differential of almost 25 percent by 2002.

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of raising the ESRD base rates by 1 percent. Since the proposed notice results in increases in total expenditures of less than $100 million per year, this notice is not a major rule as defined in Title 5, United States Code, section 804(2) and is not an economically significant rule under Executive Order 12866.

The RFA requires agencies to analyze the economic impact on small entities, and if an agency finds that a regulation imposes a significant burden on a substantial number of small entities, it must explore options for reducing the burden. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $7.5 million or less annually. For purposes of the RFA, most managed care organizations are not considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in anyone year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This proposed notice would have no consequential effect on State, local, or tribal governments, and the private sector cost of this rule falls below these thresholds as well.

We have reviewed this proposed notice under the threshold criteria of E.O. 13132, Federalism. We have determined that the proposed notice would not significantly affect the rights, roles, and responsibilities of the States.

We have examined the economic impact of this notice on M+C organizations and find that the overall impact is positive. However, because the number of ESRD patients enrolled in M+C organizations represents a very small fraction of M+C organizations' annual receipts and because a small number of M+C organizations qualify as small entities under the RFA, the Secretary is initially certifying that this notice will not have a significant impact on a substantial number of small entities. To our knowledge, no small rural hospitals will be affected by this notice, so the Secretary is also initially certifying that this notice will not have a significant impact on a substantial number of small rural hospitals.

In accordance with the provisions of E.O. 12866, this proposed notice was reviewed by OMB.

Works Cited

Eggers, Paul W., Diane L. Frankenfield, Joel W. Greer, William McClellan, William F. Owen, Jr., and Michael V. Rocco, "Comparison of Mortality and Intermediate Outcomes between Dialysis Patients Enrolled in HMO and Fee for Service," February 2001. Under review at the American Journal of Kidney Disease.

Eggers, Paul. "Outcome of ESRD Patients in HMOs." RPA/REF 2000 Annual Meeting. Washington DC March 25–27, 2000.

The Lewin Group and University Renal Research and Education Association (URREA). "Capitation Models for ESRD: Methodology and Results." Prepared for Renal Physicians Association, American Society of Nephrology, American Society of Transplant Physicians, American Society for Pediatric Nephrology, and Amgen. January 7, 2000.

Section 1853(a)(1)(B) of the Social Security Act (42 U.S.C. 1395w–23(a)(1)(B))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare-Hospital Insurance; and Program No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: March 19, 2001.

Michael McMullan,

Acting Deputy Administrator, Health Care Financing Administration.

Dated: April 12, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–10865 Filed 4–26–01; 3:48 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Postponement of Meeting of the Advisory Committee on Organ Transplantation

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice; postponement.

SUMMARY: A notice announcing the first meeting of the Advisory Committee on Organ Transplantation (ACOT), Department of Health and Human Services (HHS), was published in the **Federal Register** dated April 12, 2001 (66 FR, page 18962). This meeting, scheduled for May 1–2, 2001, has been postponed.

SUPPLEMENTARY INFORMATION: This notice is to inform the public that the first meeting of the Advisory Committee on Organ Transplantation (ACOT), Department of Health and Human Services (HHS), which was scheduled for May 1–2, 2001, has been postponed. The Secretary of HHS will publish a notice in the **Federal Register** once the date for the rescheduled ACOT meeting is determined. Individuals with questions should contact the ACOT Executive Director, Ms. Lynn Rothberg Wegman, M.P.A., by telephone at (301)–443–7577, by e-mail at *Lwegman@hrsa.gov*, or in writing at the Division of Transplantation, Office of Special Programs, Health Resources and Services Administration, Room 7C–22, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Dated: April 27, 2001.

Elizabeth M. Duke,

Acting Administrator, Health Resources and Services Administration.

[FR Doc. 01–11004 Filed 4–27–01; 3:10 pm]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Renewal and Revision to be Submitted to the Office of Management and Budget (OMB) for Approval under the Paperwork Reduction Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed information collection; request for comments.

SUMMARY: The collection of information described below will be submitted to OMB for approval under the provisions of the Paperwork Reduction Act of 1995. Copies of specific information collection requirements, related forms and explanatory material may be obtained by contacting the Information Collection Clearance Officer of the U.S. Fish and Wildlife Service at the address and/or phone numbers listed below.

DATES: Consideration will be given to all comments received on or before July 2, 2001.

ADDRESSES: Comments and suggestions on specific requirements should be sent to Rebecca A. Mullin, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 222, Arlington, VA 22203, (703) 358–2278 or Rebecca_Mullin@FWS.gov Email.

FOR FURTHER INFORMATION CONTACT: Ren Lohoefener, Chief, Division of Consultation, Recovery, Habitat, and State Grants, 703/358–2171

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service (Service) proposes to submit the following information collection requirements to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are invited on (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. The information collections in this program will not be part of a system of records covered by the Privacy Act (5 U.S.C. 552(a)).

Experimental populations established under section 10(j) of the Endangered Species Act of 1973 (ESA), as amended, require information collection and reporting to the Service. Section 9 of the ESA describes prohibited acts involving threatened or endangered species (16 U.S.C. section 1538 (a)(1)(B)). There are three major categories of information collected under the already issued experimental population rules. To date these categories have encompassed information relating to: (1) The general taking or removal of individuals of an experimental population, and (2) the authorized taking of individuals related to reports of depredation on livestock or pets caused by individuals that are part of an experimental population and (3) the collection of specimens or the recovery of dead animals that are part of an experimental population. These three categories have adequately described the types of information needed to evaluate the efficacy of the program and are expected to continue to accurately describe activities under the program.

Because individuals of designated experimental populations for species listed as threatened or endangered under the ESA are categorically protected, documentation of human-related mortalities, recovery of dead specimens and other types of take related to the status of experimental populations is important to the Service in order to monitor the success of reintroduction efforts, and recovery efforts in general. In order to minimize potential conflict with humans which could undermine recovery efforts, livestock depredations connected with experimental populations of listed species require prompt attention for purposes of determining the location, timing, and nature of the predatory behavior involved, accurate determination of the species responsible for a livestock kill, and the timely application of necessary control measures. The Service, in cooperation with the United States Department of Agriculture/Animal Plant Health Inspection Service Division of Wildlife Services or other cooperating State or Federal agencies, relies on prompt public reporting of depredation in order to resolve livestock related problems, and, therefore, a time sensitive requirement for reporting problems (generally within 24 hours) to the appropriate Service office is necessary. Information collection is achieved primarily by means of telephone calls by members of the public to Service offices specified in the individual rules (some may choose to use facsimile or electronic mail). Information required is limited to the identity of the caller, species involved, time and place of an incident, the type of incident, and circumstances related to the incident described. The vast majority of the information supplied to the Service as a result of experimental population regulations, is provided by cooperating State and Federal agencies under cooperative agreement. However, some of the information collected by the Service under the experimental population rules is provided by the public.

The collected information can be separated into three categories; general take or removal, depredation related take, and specimen collection. General take or removal information refers to human-related mortality including unintentional taking incidental to otherwise lawful activities (e.g. highway mortalities), take in defense of human life, take related to defense of property (if authorized), or take in the form of authorized harassment. Most contacts related to this type of information collection are in regard to sightings of experimental animals, or the inadvertent discovery of an injured or dead individual. Depredation related take refers to the reporting of take for management purposes, where livestock depredation has been documented or may include authorized harassment or lethal take of experimental animals in the act of attacking livestock. The information collection required by the rules for this type of take include the necessary follow-up reports after the Service has authorized harassment or lethal take of experimental animals in relation to confirmed instances of livestock depredation or in defense of human life. Specimen collection is for the purpose of documenting incidental or authorized scientific collection. Most of the information collection requirement for this take pertains primarily to the reporting of sightings of experimental population animals or the inadvertent discovery of an injured or dead individual. Information collection is required for necessary follow-up reports when the Service has authorized take of experimental animals for specimen collection.

The standard information collection includes the name, address, and phone number of the reporting party, location and time of the reported incident, species of experimental population involved. Reporting parties include, but are not limited to, individuals or households, farms, businesses, and other non-profit organizations. The reporting of specimen collections, recovery, or even the reporting of dead individuals from experimental populations is important to the Service's efforts in monitoring these individuals and for other scientific purposes. Federal agencies may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The control numbers for this collection are 1018–0095 and 1018–0096.

Because the number of reports generated annually by the general public (rather than cooperating agencies or separately permitted individuals) under these rules is extremely small (far less than one report per year, per rule) and to assure thorough documentation of results, the Service is estimating the number of expected reports to assume a maximum number per year based on allowance for increased population size and public awareness of experimental populations.

The following existing experimental populations described under Title 50 of the Code of Federal Regulations contain information collection requirements:

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50 CFR Section	Species (scientific name)	Type of reporting
17.84(c)	Red Wolf (Canis rufus):	Take in defense of human life, incidental take, take related to livestock depredation.
17.84(g)	Black footed ferret (Mustela nigripes):	Incidental take, specimen collection/reporting.
17.84(h)	Whooping crane (Grus americana):	Specimen collection/reporting.
17.84(i)	Gray wolf (Canis lupus):	Take in defense of human life, incidental take, take related to livestock depredation.
17.84(j)	California condors (Gymnogyps californianus):	Specimen collection/reporting, incidental take.
17.84(k)	Mexican gray wolf (Canus lupus baileyi)	Take in defense of human life, incidental take, take related to livestock depredation.
17.84(l)	Grizzly bear (Ursus horribilis)	Take in defense of human life, incidental take, take related to livestock depredation.

Future experimental populations that are established will require the same types of reports as listed above. This proposed information collection notice would also apply to future experimental populations that encompass the same information requirements outlined above to streamline the process.

Title: Endangered and Threatened Wildlife, 50 CFR 17.84, Experimental populations.

Description of respondents: Private individuals and households, businesses, not-for-profit organizations, and farms.

Bureau form number: N/A.

Frequency of collection: On occasion. Species]

BURDEN ESTIMATES FOR REPORTING REQUIREMENTS FOR EXPERIMENTAL POPULATINS

Type of report	Number of respondents	Average time required per report (in minutes)	Total annual burden (in hours)
General take or removal[a]	20	15	5
Depredation related take[b]	22	15	5.5
Specimen collection[c]	20	15	5

(a) General take or removal includes human related mortality including unintentional taking incidental to otherwise lawful activities (e.g. highway mortalities), take in defense of human life, take related to defense of property (if authorized) or take in the form of authorized harassment.

(b) Depredation-related take is take for management purposes where livestock depredation has been documented and may include authorized harassment or authorized lethal take of experimental animals in the act of attacking livestock.

(c) Specimen collection, recovery, or reporting of dead individuals from experimental populations for documentation purposes or authorized scientific collection purposes.

Dated: April 26, 2001.

Rebecca A. Mullin,

Fish and Wildlife Service, Information Collection Office.

[FR Doc. 01–10810 Filed 4–30–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for the Northern Spotted Owl, Boise Cascade Corporation, Klickitat County, WA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the Boise Cascade Corporation (Boise) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The application has been assigned permit number TE 028219–0. The proposed permit would authorize the incidental take, in the form of habitat modification (i.e., harm), of the northern spotted owl (*Strix occidentalis caurina*), a species that is federally listed as threatened. The proposed duration of the permit and habitat conservation plan (HCP) is 5 years, or as long as the owl site is active. We also announce the opening of a 30-day comment period to receive comments from the public on Boise's incidental take permit application and the accompanying proposed HCP. The HCP fully describes the proposed project and the measures Boise will undertake to minimize and mitigate for project impacts to the owl. These measures and associated impacts are also described in the background and summary information that follow. We also request comments from the public on our preliminary determination that Boise's HCP would qualify as a "Low Effect" HCP, eligible for a categorical exclusion under the National Environmental Policy Act, as provided by the Department of the Interior Manual (516 DM2, Appendix 1 and 516 DM 6, Appendix 1). The basis for this determination is discussed in an Environmental Action Statement, which is also available for public review. All comments received will become part of the public record and will be available for review pursuant to section 10(c) of the Act.

DATES: Written comments must be received by 5 p.m. on May 31, 2001.

ADDRESSES: Comments should be addressed to the State Supervisor, Fish and Wildlife Service, Western Washington Office, 510 Desmond Drive SE, Suite 102, Lacey, Washington 98503, fax number (306) 753-9518 (for further information and instruction on the reviewing and commenting process, see Public Review and Comment section below).

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Zisa, Fish and Wildlife Service, Western Washington Office, telephone (360) 534–9330.

SUPPLEMENTARY INFORMATION: Section 9 of the Act and Federal regulation prohibit the taking of a species listed as endangered or threatened. The term "take" is defined under the Act to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. "Harm" is defined to include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns,

including breeding, feeding, and sheltering (50 CFR 17.3). However, under limited circumstances the Service may issue permits to take listed species, provided such take is incidental to, and not the purpose of, an otherwise lawful activity. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32. Regulations governing permits for endangered species are promulgated in 50 CFR 17.22.

Background

The proposed permit area occurs within Boise's 34,000-hectare (ha) (84,000-acre (ac)) Simcoe District ownership in the eastern Cascade Mountains of Washington. The actual area covered by the proposed permit and HCP is 250 ha (620 ac) of Boise ownership within owl site #459, centered in section 27, township 6 north, range 15 east. The proposed permit area occurs in the ponderosa pine zone, an ecotype that historically provided little habitat for spotted owls. In the last century, fire suppression and other aspects of forest management have allowed large areas to transition to grand fir and douglas fir habitat types that provide more habitat for the species. However, even in light of these historically recent conditions, the proposed permit area occurs at the extreme southern and eastern edge of current spotted owl distribution within Washington. Immediately to the south and east, central Klickitat County is not forested. To the west, the main population of owls is on Federal lands in the Cascade Mountains, approximately 50 kilometers (km) (30 miles (mi)) from owl site #459. The area in-between is dominated by non-Federal land and contains only a few scattered owl sites'the nearest of these being about 16 km (10 mi) away. A fairly large owl population cluster (approximately 25 to 35 sites) occurs to the north, largely in the Klickitat River basin within the Yakama Indian Reservation, and site #459 is at the extreme edge of that cluster.

As is common throughout the eastern portion of the owl's range, the human-induced fir habitat types within the proposed permit area are being degraded by severe and chronic insect infestations. In addition to direct degradation and mortality of fir trees, such infestations result in massive accumulation of standing and downed wood fuels that increase the likelihood of fires that will remove not only the damaged stands, but also healthier neighboring stands. Spruce budworm infestations have heavily impacted large acreages within and nearby the proposed permit area in the last decade. Recent surveys by Service and Washington Department of Natural Resources personnel indicate that the majority of douglas fir and grand fir which dominate stands within the proposed permit area are being defoliated and are either in advanced stages of decline or already dead. The ponderosa pine component of these stands is not impacted directly by the spruce budworm.

Less than 60 ha (150 ac) of the 2,635-ha (6,511-ac) likely home range radius of owls at site #459 are classified as suitable habitat, including 35 ha (86 ac) within the proposed permit area. This amount of habitat is far below the acreage typically thought necessary to maintain long-term viability of owl sites in this portion of the species' range.

The proposed permit area also includes a portion of Bowman Creek, a fish-bearing stream that is a tributary of the Little Klickitat River. Bull trout (*Salvelinus confluentus*) and other listed or proposed salmonids are not known to occur on Bowman Creek or its down stream confluence, the Little Klickitat River (Carl Dugger, Washington Department of Fish and Wildlife, Goldendale, Washington, pers. comm.). A 15-meter (50-foot) waterfall on the Little Klickitat River below the confluence with Bowman Creek may serve as a barrier to fish passage into the proposed permit area. No other federally threatened or endangered plants or animals are known to exist in the permit area.

The requested section 10 permit would authorize the incidental take of spotted owls associated with one currently occupied owl site. Boise proposes harvest of severely and chronically insect-damaged forest within this owl site. While this harvest will not result in removal of known suitable habitat while the site remains occupied, operations within adjacent non-suitable habitat or within forest classified as non-suitable but perhaps occasionally used by owls, could result in some harm or harassment of the owls at this site. Issuance of the permit would provide Boise with certainty that such unintended and specifically unpredictable consequences do not result in violations of the Act.

Under the proposed action, Boise would limit harvest, through seasonal restrictions and harvest deferrals and prescriptions. Harvest would be limited not only within suitable owl habitat, but also within other forest areas adjacent to the habitat, and harvest deferrals would be retained for a longer period of time than would otherwise be necessary. Boise also would increase monitoring of owls associated with the proposed permit area—including implementation of a radio-telemetry project to monitor the response of the owls to the proposed management activities, and financial contribution to an ongoing owl population study in the region. All associated information would be included in mandatory reports to the Service. Seasonal restrictions also would be imposed on these management actions so that reproductive and fledgling activities of the owls are not disturbed.

We have made a preliminary determination that the Boise HCP qualifies as a Low Effect HCP as defined by the Service's Habitat Conservation Planning Handbook. Low Effect HCPs are those involving: (1) minor or negligible effects on federally listed and candidate species and their habitats; and (2) minor or negligible effects on other environmental values or resources. As more fully explained in the Service's preliminary Low Effect Determination, the Boise HCP qualifies as a Low Effect HCP for the following reasons:

(1) Approval of the HCP would result in minor or negligible effects on the owl and other listed or proposed species. Occurrence of threatened northern spotted owls on the permit lands is limited to one occupied site. There is a possibility that this site may be subject to incidental take as a result of the proposed action. Several facts lead to the conclusion that loss of this site due to incidental take would have a negligible impact on the long-term survival of the species: Loss of the site would probably occur even absent issuance of the permit; this owl site occurs at the very edge of the species range and is relatively isolated; the site is not associated with any Late Successional Reserve or other owl population cluster designated for long-term conservation purposes; the status of the local owl population (east of the national forests in Yakima and Klickitat counties) is most substantially influenced by natural conditions and management actions on the Yakama Indian Reservation and other nearby lands. Except for the owl, no listed or proposed animals occur on the proposed permit lands; due to the presence of a natural fish passage barrier, no bull trout, steelhead (*Oncorhynchus mykiss*) or other anadromous fish are known to occur on the proposed permit lands and no salmonid habitat impacts would result from issuance of the permit. No listed or proposed plant species are known to occur on the proposed permit lands;

(2) The HCP would not have adverse effects on unique geographic, historic or

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cultural sites, or involve unique or unknown environmental risks;

(3) Approval of the HCP would not result in any cumulative impacts and would not result in significant adverse effects on public health or safety;

(4) The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, state, local or tribal law or requirement imposed for the protection of the environment; and

(5) Approval of this HCP would not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

We have therefore made a preliminary determination that approval of the Boise HCP qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of the Interior Manual (516 DM2, Appendix 1 and 516 DM 6, Appendix 1). Based upon this preliminary determination, we do not intend to prepare further National Environmental Policy Act documentation. We will consider public comments in making our final determination on whether to prepare such additional documentation.

This notice is provided pursuant to section 10(c) of the Act. We will evaluate the permit application, HCP, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If we determine that the requirements are met, we will issue a permit for the incidental take of the northern spotted owl. The final permit decision will be made no sooner than 30 days from the date of this notice.

Public Review and Comments

Individuals wishing copies of the permit application, copies of our preliminary Low Effect Determination, or copies of the full text of the HCP, including a map of the proposed permit area, references, and legal descriptions of the proposed permit area, should contact the office and personnel listed in the **ADDRESSES** section above.

If you wish to comment on the permit application or the HCP, you may submit your comments to the address listed in the **ADDRESSES** section of this document. For internal tracking purposes, please refer to permit number TE 028219–0 when submitting comments. Comments and materials received, including names and addresses of respondents, will be available for public review, by appointment, during normal business hours at the address in the **ADDRESSES** section above and will become part of the public record, pursuant to section 10(c) of the Act. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. Anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety.

Dated: April 19, 2001.

Don Weathers,

Deputy Regional Director, Region 1, Portland, Oregon.

[FR Doc. 01–10763 Filed 4–30–01; 8:45 am]

BILLING CODE 4210–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Technology Transfer Act of 1986; Chevron Research and Technology Co.

AGENCY: Geological Survey, Interior.

ACTION: Notice of Proposed Cooperative Research & Development Agreement (CRADA) Negotiations.

SUMMARY: The United States Geological Survey (USGS) is contemplating entering into a Cooperative Research and Development Agreement (CRADA) with the Chevron Research and Technology Company, a division of Chevron U.S.A. Inc. for the purpose of evaluating hyperspectral remote sensing technology that permits the rapid assessment of vegetation type.

INQUIRIES: If any other parties are interested in similar activities with the USGS, please contact Delores Richardson, Administrative Officer, USGS National Wetlands Research Center, 700 Cajundome Blvd., Lafayette, LA 70506, phone (337) 266–8515.

SUPPLEMENTARY INFORMATION: This notice is submitted to meet the USGS requirements stipulated in Survey Manual Chapter 500.20.

Susan Haseltine,

Chief Scientist for Biology.

[FR Doc. 01–10815 Filed 4–30–01; 8:45 am]

BILLING CODE 4310–17–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Technology Transfer Act of 1986; Exploration Company of Delaware, Inc.

AGENCY: Geological Survey, Interior.

ACTION: Notice of Proposed Cooperative Research and Development Agreement (CRADA) Negotiations.

SUMMARY: The United States Geological Survey (USGS) is contemplating entering into a Cooperative Research and Development Agreement (CRADA) with the Exploration Company of Delaware, Inc., to obtain and characterize various coalbeds from the Maverick Basin, in south Texas.

INQUIRIES: If any other parties are interested in similar activities with the USGS, please contact Charles E. Barker, USGS Denver Federal Center, Sixth Ave. and Kipling St., Building 20, MS 977, Denver, CO 80225, (303) 236–5797.

SUPPLEMENTARY INFORMATION: This notice is submitted to meet the USGS requirements stipulated in Survey Manual Chapter 500.20.

P. Patrick Leahy,

Associate Director for Geology.

[FR Doc. 01–10816 Filed 4–30–01; 8:45 am]

BILLING CODE 4310–47–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Technology Transfer Act of 1986

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of proposed cooperative research & development agreement (CRADA) negotiations.

SUMMARY: The United States Geological Survey (USGS) is contemplating entering into a Cooperative Research and Development Agreement (CRADA) with Hamilton Operating, Inc., to obtain and characterize various coalbeds from the Eagle Pass Basin, in south Texas.

Inquiries: If any other parties are interested in similar activities with the USGS, please contact Charles E. Barker, USGS Denver Federal Center, Sixth Ave. and Kipling St., Building 20, MS 977, Denver, CO 80225, (303) 236–5797.

SUPPLEMENTARY INFORMATION: This notice is submitted to meet the USGS requirements stipulated in Survey Manual Chapter 500.20.

P. Patrick Leahy,

Associate Director for Geology.

[FR Doc. 01–10817 Filed 4–30–01; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–1220–BY]

Notice of Closure to Motorized Vehicles

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure order for motorized vehicle travel.

SUMMARY: Notice is hereby given that effective May 7th, 2001 certain public lands in Fremont County are closed to all types of motorized vehicle travel. The public lands are located approximately 2 miles northwest of Penrose, Colorado to the west of the Brush Hollow Reservoir. The purpose of this closure is to prevent the development of unauthorized user-created trails, to prevent resource damage to soils and vegetation, to prevent illegal dumping, and to reduce the impacts to wildlife. Future interdisciplinary planning will determine the appropriate travel routes for these areas.

EFFECTIVE DATES: These closures are effective May 7th, 2001 and shall remain in effect until revised, revoked or amended.

ADDRESSES: Royal Gorge Field Office, 3170 East Main Street, Canon City, CO 81212; Telephone (719) 269–8500.

FOR FURTHER INFORMATION CONTACT: Levi D. Deike, Field Office Manager or Diana Kossnar, Outdoor Recreation Planner at the address listed above or 719–269–8500.

SUPPLEMENTARY INFORMATION: The public lands affected by this temporary closure are identified as follows:

Sixth Principal Meridian

T.18S.,R.69W.
Section 24, S½NW¼, W½SW¼, W½SE¼ (240 acres)

This closure does not apply to emergency, law enforcement, and federal or other government vehicles while being used for official or emergency purposes, or to any vehicle whose use is expressly authorized or otherwise officially approved by BLM. Violation of this order is punishable by fine and/or imprisonment as defined in 18 U.S.C. 3571. Notice of this closure and a detailed map will be posted at the Royal Gorge Field Office in Canon City.

Levi D. Deike,

Field Office Manager.

[FR Doc. 01–10752 Filed 4–30–01; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–910–02–1430–LRTN]

Notice of Intent To Prepare Meadowood Planning Analysis/ Environmental Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM) will prepare a Planning Analysis/Environmental Assessment (PA/EA) to assess management alternatives for Meadowood Farm. The farm, located on Mason Neck in Fairfax County, Virginia, will be administered by the Eastern States Office, upon acquisition by BLM.

The planning effort will follow the procedures set forth in 43 CFR, Subpart 1600.

The public is invited to participate in the planning process, beginning with the identification of planning issues and criteria at a public meeting to be held on May 16, 2001. The meeting time and place will be announced.

You may also participate by sending issues and/or criteria in writing to the Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153.

Dated April 18, 2001.

Walter Rewinski,

Acting State Director.

[FR Doc. 01–10750 Filed 4–30–01; 8:45 am]

BILLING CODE 4310–6J–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–910–0777–26–241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council Meeting notice.

SUMMARY: This notice announces a meeting of the Arizona Resource Advisory Council (RAC). The meeting will be held on Wednesday, May 16, in Phoenix, Arizona. The business meeting will be held in the BLM National Training Center, 9828 North 31st Avenue. It will begin at 9 a.m. and will conclude at approximately 4 p.m. The agenda items to be covered include the review of the December 12, 2000, and January 24, 2001 meeting minutes; BLM State Director's Update on legislation, regulations and statewide planning efforts; Update on 3809 Surface Management Regulations for Locatable Mineral Operations; Presentation on Fiber-Optic Rush 2001, Wild Horse and Burro Monitoring/Census Update; Update Proposed Field Office Rangeland Resource Teams; Reports from BLM Field Office Managers; Reports by the Standards and Guidelines, Recreation and Public Relations, Wild Horse and Burro Working Groups; Reports from RAC members; and Discussion of future meetings. A public comment period will be provided at 11:30 a.m. on May 16, 2001, for any interested publics who wish to address the Council.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, (602) 417–9215.

Denise P. Meridith,

Arizona State Director.

[FR Doc. 01–10751 Filed 4–30–01; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Application for authorization to issue health care certificates.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on January 24, 2001 at 66 FR 7762, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 31, 2001. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget,

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Office of Information and Regulatory Affairs, 725—17th Street, NW., Room 10235, Washington, DC 20530; Attention: Lauren Wittenberg, Department of Justice Desk Officer.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* Application for Authorization to Issue Health Care Certificates.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–905, Business and Trade Services, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Not-for-profit institutions. The data collected on this form is used by the Service to determine eligibility of an organization to issue certificates to foreign health care workers.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10 responses at 4 hours per responses.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 40 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 1331 Pennsylvania Avenue, NW., Suite 1220, Washington, DC 20530.

Dated: April 25, 2001.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 01–10802 Filed 4–30–01; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—Executive Leadership Training for Women

AGENCY: National Institute of Corrections, Department of Justice.

ACTION: Solicitation for a cooperative agreement.

SUMMARY: The National Institute of Corrections (NIC) invites applications for a cooperative agreement to provide for the revision of the current curriculum for the program, Executive Leadership Training for Women, and to plan all aspects of program delivery for the leadership series. The cooperative agreement includes the delivery of Phase I of the program in fiscal year 2002.

The award recipient will become familiar with the work currently being done at NIC that provides for an understanding of the history and future development goals of the NIC Executive Leadership Training Program for Women. Through an NIC briefing and review of written materials the recipient will have access to the original design methodology and all aspects of curriculum development and delivery. The recipient will have the full benefit of the work in progress under the cooperative agreement, "Documentation of the Impact of NIC Executive Leadership Training for Women" that will provide for an assessment of the impact of the current program on graduates.

This project will be a collaborative venture with the NIC Prisons Division. NIC seeks to continue to offer the most current and effective leadership development for women in senior positions in corrections. A total of $120,000 is reserved for the project during fiscal years 2001 and 2002. The 2001 allocation is $40,000 and the 2002 allocation is $80,000. Funds are subject to congressional approval at the beginning of each fiscal year. The cooperative agreement funds are intended to support one cooperative agreement over an 18 month period. The recipient of the award will be selected through the competitive solicitation process.

Background

History

In the early 1990's the Prisons Division of the National Institute of Corrections made a commitment to a leadership development curriculum that would enhance the ability of women for executive level positions in corrections. Although some women were in mid-level management and executive positions, the gains realized during the previous 20 years seemed to be slowing. Noting the under-representation of women in executive positions NIC awarded a Cooperative Agreement to develop a competency-based executive leadership training program for women. The development of the program was divided into two phases: Needs assessment and curriculum design; and a pilot presentation. The program was originally designed for senior level women working in state departments of corrections. It quickly expanded to include professional women from jails and community corrections. Since the development of the core program, additional "phases" or training events have been added to further enhance the long-term development of the graduate and her contribution to her agency.

Curriculum Design

The curriculum design for Executive Leadership for Women was developed as a competency model based on research done with correctional visionaries and women in senior positions in correctional leadership. The administration of several assessment instruments created findings that formed the development of the competencies. Through one such instrument, Strategic Directions Questionnaire, correctional leaders identified 10 competencies as essential to a commissioner's future leadership effectiveness. From this, a Correctional Leadership Competency Model was developed. In this original research for the program 48 directors of corrections participated.

In addition, twenty women in correctional leadership positions (directors, deputy directors and regional directors of corrections) completed the Leadership 360™ questionnaire, a competency assessment instrument, which was used in conjunction with the Correctional Leadership Competency Model to identify the areas in which women most needed leadership development.

The three largest gap areas—strategic, communication and consensual—were given particular emphasis in the design of the training. All ten competencies were used in the development of the curriculum. Participants attending the program receive Leadership 360™ feedback, which includes a profile of the individual gap scores against the Correctional Leadership Competency Model.

A brief description of the phases offers an overwiew of the goals throughout the process. Classes are small, ranging from 20–22 participants. Participants return a year after the first five day program for the Phase II program, a three day event.

Phase I: Executive Leadership

This five-day program focuses on leadership development. A number of assessments, including the Leadership 360™ feedback, are combined with experiential activities and simulations to help participants gain understanding of their own behavior and leadership effectiveness. The program is highly individualized.

Phase II: Strategic Leadership

At the recommendation of Phase I participants, NIC funded a three-day follow-up training. Phase II emphasizes strategic thinking, the leaders' role in challenging and encouraging change within the organization, and the use of persuasion and consensual skills for managing change.

Phase I and II program participants overlap, thereby creating opportunities for the two classes to network and further build leadership capacity on a national level.

Phase III: Organizational Leadership

Note: Redevelopment of Phase III is not within the scope of this cooperative agreement activity.

With Phase III, NIC extended its leadership program to directors of corrections. Partnerships between Phase I and II participants and their directors are the cornerstone in building organizational competency. Phase III is focused on the dynamics of the organization, especially the use of innovative problem-solving, and the role of the executive team in creating effective vehicles for systemic change.

Scope of the Project

The National Institute of Corrections is interested in ideas the applicant may present that will maximize the opportunity to update the program content based on current research on women's leadership development. Applicants are encouraged to become not only familiar with the existing program model but also to explore a variety of program models that may enhance the existing program.

The work of this project will result in:

A. Background Summary for Women's Leadership Development Program

Development of a brief, research-based written overview that identifies the benefits of offering a program specific to women's leadership development. This document should include a review of leadership education principles or concepts as they apply to women's leadership development.

B. Curriculum Revision

Review of current Executive Leadership Training curriculum and the development of revised material or design model through *one* of the following ways:

Existing Model With Enhancements

- A review and update of the curriculum based on work being done by NIC on leadership competencies that will include an update of the research originally done to support the Correctional Leadership Model as well as recommendations from the information gathered during the course of this cooperative agreement.

Introduction of a New Model

- A review and update of the curriculum using a competency based leadership education model that can be modified to be corrections specific for women in senior management as well as recommendation from the information gathered during the course of this cooperative agreement.

Either approach to program design must include the following:

- A continuation of a two phase program design with an increased emphasis on project work and the use of technology as a tool to strengthen the application of program goals during the calendar year between the two phases.
- A program design that includes an increased emphasis on coaching and mentoring as an executive skill with practical applications.
- An updated participant manual and a faculty companion manual.

C. Training Evaluation Model

Recommendation for a training evaluation design for prospective use which will be developed in consultation with NIC and the provider of the NIC Cooperative Agreement, "Documentation of the Impact of NIC Executive Leadership Training for Women."

D. Site Selection

Selection of site for Phase I program delivery. An important component to the success of the previous programs has been the effectiveness of the learning environment. The site description or recommendations included within the application of this cooperative agreement will be a consideration in the selection criteria. The learning environment must be a site that is conducive to outdoor experimental activities; individual quiet work; and provide space for small group break out space. The recommended site should be located within a one hour drive from a major airport.

E. Program Delivery

Delivery of Phase I in the summer of 2002 is a part of this agreement. Traditionally offered in June, the delivery of this program may be delivered between the months of June and September of 2002 to assure adequate program development time. The delivery of the Executive Leadership Training Program, Phase I includes preparation of program material, setting the agenda for and hosting a faculty planning meeting, negotiating faculty contracts and coordination of all on site logistics. Participant and faculty travel is managed and funded separately by NIC. Participant lodging and meals are funded within this agreement based on government per diem.

Required Project Activities

A. Identification of women's leadership training programs in the private or public sector to provide background for further understanding of the role of such programs in Executive Leadership and to review various models.

B. If an award has been made, attendance of the primary team members at the June 20–24, 2001 class

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at the Searles Castle in Salem, New Hampshire to allow for a more in depth orientation to the current program and to participate in a focus group with graduates and the provider for the "Documentation of the Impact of NIC Executive Leadership Training for Women." (If an award has not been made by that date, one team member, preferably the project director, from the top three applicants will be invited at NIC's expense to observe aspects of the program.)

C. Initial meeting with NIC, the current provider of the training, and the awardee of the Cooperative Agreement, "Documentation of the Impact of NIC Executive Leadership for Women" for an overview of program's history, development and current goals. This commitment may be met under item B above, if a final award has been made.

D. All activities necessary to meet the goals under Scope of Project. Inclusion of a person on the project team with recent experience in developing leadership programs for and/or conducting training for executive women is desirable.

E. Collaborating with NIC and the awardee of the cooperative agreement entitled "Documentation of the Impact of NIC Executive Leadership Training for Women," announced in the February 2001 **Federal Register**. This collaboration will be for the purpose of sharing information for program development.

Authority: Public Law 93–415.

Funds Available: The award will be limited to $120,000 (direct and indirect costs) and project activity must be completed within 18 months of the date of award. Participant and faculty travel for the delivery of Phase I is not included in the funding for this project. This project will be a collaborative venture with the NIC Prisons Division. Funds will be allocated for fiscal year 2001, at $40,000 and fiscal year, 2002 at $80,000.

Application Requirements: The successful applicant will propose a project approach that will ensure accomplishment of each of the stated desired outcomes under the section Scope of the Project within this announcement. The applicant will assure that the project team offers technical expertise in the areas of program development, leadership education specific to the development of women in leadership, and administrative capabilities to coordinate all logistical requirements of the project. The project staff identified must indicate a willingness to the commitment of time necessary to complete the project plan.

The success of the work under this project is critical to the further development of NIC's leadership series for executive women. This announcement is running concurrently with the NIC cooperative agreement entitled "Documentation of the Impact of the NIC Executive Leadership Training for Women." Successful applicants for each of these related projects must be willing to work in collaboration to provide for coordinated information sharing in the curriculum refinement goals of NIC. The NIC Program Manager will be responsible for assuring adequate opportunities for coordination.

Deadline for Receipt of Applications: Applications must be received by 1 p.m. on Tuesday, May 29, 2001. They should be addressed to: Director, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534. Hand delivered applications should be brought to 500 First Street, NW., Washington, DC 20534. The front desk will call Bobbi Tinsley at (202) 307–3106, extension 0 for pickup.

Addresses and Further Information: A copy of this announcement, application forms, and information on the current NIC Executive Leadership Training for Women Program may be obtained through the NIC web site: *http://www.nicic.org* (click on "Cooperative Agreements"). If a written copy is needed contact Judy Evens, Cooperative Agreement Control Office (1–800–995–6423 ext. 44222 or (202) 307–3106 ext. 44222, e-mail at *jevens@bop.gov.*) All technical and/or programmatic questions concerning this announcement should be directed to Andie Moss, at 320 First Street, NW., Room 5007, Washington, DC 20534 or by calling 800–995–6423, ext. 30485, 202–307–3106, ext. 30485, or e-mail: amoss@bop.gov.

Eligibility Applicants: An eligible applicant is any State or general unit of local government, public or private agency, educational institution, organization, team, or individual with the requisite skills to successfully meet the outcome objectives of the project.

Review Considerations: Applications received under this announcement will be subjected to an NIC 3 to 5 member Peer Review Process.

Number of Awards: One (1).

NIC Application Number: 01P04. This number should appear as a reference line in your cover letter and also in box 11 of Standard Form 424.

Executive Order 12372: This program is subject to the provisions of Executive Order 12372. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. Applicants (other than Federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC), a list of which is included in the application kit, along with further instructions on proposed projects serving more than one State.

(Catalog of Federal Domestic Assistance Number: 16.603)

Dated: April 25, 2001.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 01–10759 Filed 4–30–01; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

April 19, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ESA, and PWBA contact Marlene Howze ((202) 219–8904 or by email to Howze-Marlene@dol.gov). To obtain documentation for ETA, MSHA, OSHA, and VETS contact Darrin King ((202) 693–4129 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Vehicle Mechanical Inspection Report for Transportation Subject to DOT Requirements; Subject to DOL Safety Standards.

OMB Number: 1215–0036.

Affected Public: Business or other for-profit; and farms.

Frequency: On Occasion.

Annual Respondents: 1,200.

Annual Responses: 3,600.

Estimated Time Per Record Keeping: 5 minutes.

Total Burden Hours: 300.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $166.

Description: Section 401 of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) requires that Farm Labor Contractors (FLCs), Agricultural Employers (AGERs) or Agricultural Associations (AGASs) which use, or cause to be used, any vehicle to transport a migrant or seasonal agricultural worker ensure that such vehicle conforms to vehicle safety standards prescribed by the Secretary of Labor under MSPA and with other applicable Federal and State safety standards.

Sections 500.100–102 and 500.104 of Regulations, 29 CFR Part 500, Migrant and Seasonal Agricultural Worker Protection Act (MSPA), set forth the vehicle safety standards which must be met to be able to transport migrant and seasonal agricultural workers.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Maintenance of Receipt for Benefits Paid by a Coal Mine Operator.

OMB Number: 1215–0124.

Affected Public: Business or other for-profit; and State, Local, or Tribal Government.

Frequency: On Occasion.

Annual Respondents: 150.

Annual Responses: 150.

Estimated Time Per Record-keeping: 1 hour.

Total Burden Hours: 1.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: 30 U.S.C. 933(a) requires coal mine operators to secure the payment of benefits for which they may become liable by:

a. Qualifying as a self insurer in accordance with regulations prescribed by the Secretary; or

b. Insuring the payment of such benefits with any stock or mutual company or association, or with any other person or fund, including any state fund, while such company, association, person or fund is authorized under the laws of any state to insure workers' compensation.

20 CFR 725.531 requires self insured operators or insurance carriers to retain receipts for black lung benefit payments made for five years after the date on which the receipt was executed. 30 USC 933(d) includes a civil penalty of not more than $1,000, which may be assessed to coal mine operators by the Secretary for each day during which the operator fails to secure the payment of benefits.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Claim for Reimbursement: Assisted Reemployment.

OMB Number: 1215–0178.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; and State, Local, or Tribal Government.

Frequency: Quarterly.

Annual Respondents: 20.

Annual Responses: 80.

Estimated Time per Record keeper: 30 minutes.

Total Burden Hours: 40.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $30.

Description: To aid in the employment of Federal employees with disabilities related to an injury on the job, employers submit the form CA–2231 to claim reimbursement for wages paid under the assisted re-employment project. The collection of this information is authorized under section 8104(a) of the Federal Employees Compensation Act (FECA) as well as Public Laws 103–333 and 106–113.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01–10828 Filed 4–30–01; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

April 10, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ESA, and PWBA contact Marlene Howze ((202) 693–4120 or by email to Howze-Marlene@dol.gov). To obtain documentation for ETA, MSHA, OSHA, and VETS contact Darrin King ((202) 693–4129 or by E-Mail to King-Darrin@dol gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected, and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

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Type of Review: New Collection.

Agency: Bureau of Labor Statistics (BLS).

Title: Survey of Respirator Use and Practices.

OMB Number: 1220–0NEW.

Affected Public: Business or other for-profit; farms; and not-for-profit institutions.

Frequency: One-time.

Number of Respondents: 40,000.

Number of Annual Responses: 40,000.

Estimated Time Per Response: 30 minutes.

Total Burden Hours: 20,000.

Total Annualized Capital/Startup Costs: 50.

Total Annuol Costs (operating/maintaining systems or purchasing services): $0.

Description: The National Institute for Occupational Safety and Health (NIOSH) and the Bureau of Labor Statistics (BLS), U.S. Department of Labor (DOL) have agreed to conduct a survey of United States employers regarding the use of the respiratory protective devices. NIOSH needs more in-depth usage data to evaluate standards (29 CFR 1910.134, Respiratory Protection) and to pinpoint areas where education and training efforts are needed. NIOSH will use the information obtained by BLS from the survey to identify industrial sector and establishment size: (1) The distribution of respirator use, (2) the types of respirators used, (3) the hazards that respirators are used against, (4) the training of respirator users, (5) the extent medical examinations are used to qualify workers for respirator use for all respirator users, (6) the extent fit testing is used to qualify workers for respirator use, (7) the conductor of fit testing by users, (8) the distribution of fit test methods, (9) the training level of respirator program administrators, (10) the characteristics of respirator programs; and (11) the usefulness of an NIOSH certification label.

The findings of the survey will permit direction and evaluation of efforts to protect workers. It will give researchers information to develop educational interventions for specific populations to improve respirator use in the workplace.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01–10829 Filed 4–30–01; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the "Employment, Wages, and Contributions Report" (ES–202 Program). A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section of this notice on or before July 2, 2001.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The ES–202 Program, a Federal/State cooperative effort, produces monthly employment and quarterly wage information. It is a by-product of quarterly reports submitted to State Employment Security Agencies (SESAs) by employers subject to State Unemployment Insurance (UI) laws. The collection of these data is authorized by 29 U.S.C. 1, 2. The ES–202 data, which are compiled for each calendar quarter, provide a comprehensive business name and address file with employment and wage information for employers subject to State UI laws. Similar data for Federal Government employers covered by the Unemployment Compensation for Federal Employees program also are included. These data are submitted to the BLS by all 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands. The BLS summarizes these data to produce totals for all counties, Metropolitan Statistical Areas, the States, and the nation. The ES–202 Program provides a virtual census of nonagricultural employees and their wages, with about 55 percent of the workers in agriculture covered as well.

The ES–202 Program is a comprehensive and accurate source of data on the number of establishments, monthly employment, and quarterly wages, by industry, at the four-digit Standard Industrial Classification (SIC) level, and at the national, State, Metropolitan Statistical Area, and county levels. The North American Industry Classification System (NAICS), which will replace the SIC coding system, is scheduled to be implemented in the ES–202 Program with data for the first quarter of 2001. The ES–202 series has broad economic significance in measuring labor trends and major industry developments, and in time series analyses of establishments, employment, and wages by size of establishment.

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Action

Office of Management and Budget clearance is being sought for the

Employment, Wages, and Contributions Report (ES–202 Program).

The ES–202 program is the only Federal statistical program that provides information on establishments, wages, tax contributions and the number of employees subject to State Unemployment Insurance laws and the Unemployment Compensation for Federal Employees program. The consequences of not collecting ES–202 data would be grave to the Federal statistical community. BLS would not have a sampling frame for its establishment surveys; the Bureau of Economic Analysis would not be able to publish as accurate personal income data in a timely manner for the U.S., States, and local areas; and the Employment Training Administration would not have the information it needs to administer the Unemployment Insurance Program.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Employment, Wages, and Contributions (ES–202) Program.

OMB Number: 1220–0012.

Affected Public: State, local, or tribal government.

Total Respondents: 53.

Frequency: Quarterly.

Total Responses: 212.

Average Time Per Response: 4,503 hours.

Estimated Total Burden Hours: 954,720 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 25th day of April, 2001.

W. Stuart Rust, Jr.,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 01–10827 Filed 4–30–01; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of a currently approved information collection used in issuing a building pass to National Archives and Records Administration (NARA) volunteers and employees of NARA contractors so that they can enter NARA facilities to perform their duties. NARA uses the information to ensure that only authorized persons have access. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before July 2, 2001 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–6913; or electronically mailed to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–713–6730, or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Request for and Record of Pass.

OMB number: 3095–0026.

Agency form number: NA Form 6006.

Type of review: Regular.

Affected public: Individuals or households, business or other for-profit organizations and institutions, and Federal government.

Estimated number of respondents: 1,266.

Estimated time per response: 3 minutes.

Frequency of response: On occasion (when respondent wishes to enter NARA facilities). Respondents who are contractors are given a building pass which expires at the end of each fiscal year; those who are volunteers are given a pass valid for 5 years.

Estimated total annual burden hours: 63 hours.

Abstract: The collection of information is necessary as a security measure to protect employees, information, and property in National Archives and Records Administration (NARA) facilities and to facilitate the issuance of passes. Use of the form is authorized by 44 U.S.C. 2104. At the NARA College Park facility, individuals receive an access card with the pass that is electronically coded to permit access to secure zones ranging from a general nominal level to stricter access levels for classified records zones. The access card system is part of the security management system which meets the accreditation standards of the Government intelligence agencies for storage of classified information, and serves to comply with E.O. 12958.

Dated: April 25, 2001.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 01–10790 Filed 4–30–01; 8:45 am]

BILLING CODE 7515–01–U

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of a currently approved information collection using an application that is submitted to a Presidential library to request the use of space in the library for a privately sponsored activity. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before July 2, 2001 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives

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and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–6913; or electronically mailed to *tamee.fechhelm@nara.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–713–6730, or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Application and Permit for Use of Space in Presidential Library and Grounds.

OMB number: 3095–0024.

Agency form number: NA Form 16011.

Type of review: Regular.

Affected public: Private organizations.

Estimated number of respondents: 1,000.

Estimated time per response: 20 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 333 hours.

Abstract: The information collection is prescribed by 36 CFR 1280.42. The application is submitted to a Presidential library to request the use of space in the library for a privately sponsored activity. NARA uses the information to determine whether use will meet the criteria in 36 CFR 1280.42 and to schedule the date.

Dated: April 25, 2001.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 01–10791 Filed 4–30–01; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities; Submission for OMB Review

AGENCY: National Science Foundation.

ACTION: Notice Antarctic Conservation Act Application and Permit Form Under OMB Review.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice for public comment; the first was published in the **Federal Register** on February 5, 2001 (66 FR 8984), and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Office for National Science Foundation, 725—17th Street, NW., Room 10235, Washington, DC 20503, and to Teresa R. Pierce, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to tpierce@nsf.gov. Comments regarding these information collections are best assured to having their full effect if received within 30 days of this notification. Copies of the submission(s) maybe obtained by calling 703–292–7555.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Teresa Pierce at (703) 292–7555 or send email to tpierce@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: Antarctic Conservation Act Application Permit Form.

OMB Approval Number: 3145–0034.

Type of Request: Intent to seek a three year extension of an approved information collection that will expire August 31, 2001.

Proposed Project: The current Antarctic Conservation Act Application Permit Form (NSF 1078) has been in use of many years. The form requests general information, such as name, affiliation, location, etc., and more specific information as to the type of activity to be undertaken, which requires a permit, such as taking of a native mammal or bird, entry into a protected area or introduction of non-native species.

Use of the Information: The purpose of the regulations (45 CFR part 670) is to conserve and protect the native mammals, birds, plants, and invertebrates of Antarctica and the ecosystem upon which they depend and to implement the Antarctic Conservation Act of 1978, Public Law 95–541, as amended by the Antarctic Science, Tourism, and Conservation Act of 1996, Public Law 104–227.

Burden on the Public: The Foundation estimates about 25 responses annually at ½ hour per response; this computes to approximately 12.5 hours annually.

Dated: April 25, 2001.

Teresa R. Pierce,

NSF Reports Clearance Officer.

[FR Doc. 01–10794 Filed 4–30–01; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Docket No. 50–305

Nuclear Management Company LLC; Kewaunee Nuclear Power Plant Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of exemptions from 10 CFR 50.61 and apendices G and H to part 50 to Facility Operating License No. DPR–43 issued to the Nuclear Management Company, LLC (NMC or the licensee), for operation of the Kewaunee Nuclear Power Plant (KNPP or Kewaunee), located in Kewaunee County, Wisconsin.

Environmental Assessment

Identification of the Proposed Action

The proposed action allows the incorporation of the use of fracture toughness (KJC) test data for evaluating the integrity of the Kewaunee Nuclear Power Plant (KNPP) reactor pressure vessel (RPV) circumferential beltline weld. The licensee submittal requested NRC staff approval of a new methodology for assessing the integrity of the RPV circumferential beltline weld based on the use of the 1997 Edition of American Society for Testing and Materials (ASTM) Standard Test Method E–1921 and American Society for Mechanical Engineering (ASME) Code Case N–629. The licensee submittal included: (1) An exemption from 10 CFR 50.61 to use a proposed alternative methodology based on ASME Code Case N–629 and WCAP–15075; (2) an exemption from Appendix H to Part 50, which specifies use of ASTM E185–82 for testing of surveillance materials, to use a proposed alternative, ASTM E185–98, which allows use of ASTM E1921–97 for testing of surveillance capsule material; (3) an exemption from appendices G and H to part 50, which specifies Charpy V–Notch impact and drop weight testing, to use a proposed alternative ASTM E1921–97; and, (4) a reassessment of the KNPP RPV's compliance with 10 CFR 50.61 (concerning pressurized thermal shock, PTS) for end of license (EOL) condition.

The proposed action is in accordance with the licensee's application for exemptions dated June 7, 1999, as supplemented by letters dated February 4, September 26, and December 18, 2000.

The Need for the Proposed Action

KNPP is a pressurized water reactor (PWR) which commenced commercial operation in 1974, and its current operating license will expire in December 2013. The proposed action, exemptions from 10 CFR 50.61, Appendix G of Part 50, and appendix H of part 50, is needed to allow the use of the proposed alternative methodology. The exemption is necessary since the alternative methodology differs from the current methodology specified in the regulations. The proposed exemptions would permit the use of a proposed methodology to use fracture toughness data as an alternative to the Charpy V-notch and to use a drop weight-based methodology to adequately evaluate the integrity of the KNPP RPV, establish pressure-temperature limit curves, and ensure that the RPV is protected from failure by PTS.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the exemptions and assessment methodology described above would provide an adequate evaluation of the reactor vessel fracture toughness for KNPP for end of license (EOL) condition. The proposed action would use an alternate methodology from the methodology currently utilized. The proposed action does not result in any physical or operational changes to the plant.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with this action.

Alternatives to the Proposed

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no significant change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Kewaunee.

Agencies and Persons Contacted

In accordance with its stated policy, on November 14, 2000, the NRC staff consulted with the Wisconsin State official, S. Jenkins of the Wisconsin Public Service Commission, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated June 7, 1999, as supplemented by letters dated February 4, September 26, and December 18, 2000, which are available for public inspection at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records are accessible electronically from the ADAMS Public Library component on the NRC Web site, *http:www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 12th day of February, 2001.

For the Nuclear Regulatory Commission.

Tae J. Kim,

Acting Section Chief, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–10824 Filed 4–30–01; 8:45am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of April 30, May 7, 14, 21, 28, June 4, 2001.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

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MATTERS TO BE CONSIDERED:

Week of April 30, 2001

There are no meetings scheduled for the Week of April 30, 2001.

Week of May 7, 2001—Tentative

Thursday, May 10, 2001

10:25 a.m.—Affirmation Session (Public Meeting) (If needed).

10:30 a.m.—Briefing on Office of Nuclear Regulatory Research (RES) Programs and Performance (Public Meeting) (Contact: James Johnson, 301–415–6802).

Friday, May 11, 2001

10:30 a.m.—Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: John Larkins, 301–415–7360).

Week of May 14, 2001—Tentative

There are no meetings scheduled for the Week of May 14, 2001.

Week of May 21, 2001—Tentative

There are no meetings scheduled for the Week of May 21, 2001.

Week of May 28, 2001—Tentative

Wednesday, May 30, 2001

10:25 a.m.—Affirmation Session (Public Meeting) (If needed).

Week of June 4, 2001—Tentative

Tuesday, June 5, 2001

9:25 a.m.—Affirmation Session (Public Meeting) (If needed).

2 p.m.—Discussion of Management issues (Closed-Ex. 2).

Wednesday, June 6, 2001

10:30 a.m.—All Employees Meeting (Public Meeting).

1:30 p.m.—All Employees Meeting (Public Meeting).

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

ADDITIONAL INFORMATION: By a vote of 5–0 on April 23, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Final Rule to Amend 10 CFR Part 2, Subpart J, in Regard to the Licensing Support Network" be held on April 24, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. if you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: April 26, 2001.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 01–10955 Filed 4–27–01; 12:20 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Report to Congress on Abnormal Occurrences Fiscal Year 2000; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974 (Pub. L. 93–438) identifies an abnormal occurrence (AO) as an unscheduled incident or event that the U.S. Nuclear Regulatory Commission (NRC) determines is significant from the standpoint of public health or safety. The Federal Reports Elimination and Sunset Act of 1995 (Pub. L. 104–66) requires that AOs be reported to Congress annually. During fiscal year 2000, nine events that occurred at facilities licensed or otherwise regulated by the NRC and/or the Agreement States were determined to be AOs. These events are discussed below. As required by Section 208, the discussion for each event includes the date and place, the nature and probable consequences, the cause or causes, and the action taken to prevent recurrence. Each event is also being described in NUREG–0090, Vol. 23, "Report to Congress on Abnormal Occurrences, Fiscal Year 2000." This report will be available electronically at the NRC Web site <http://www.nrc.gov/NRC/NUREGS/indexnum.html> at the NRC Homepage.

Nuclear Power Plants

The following event that occurred at U.S. nuclear power plants during fiscal year 2000 was determined to be significant enough to be reported as an AO to Congress.

00–1 Steam Generator Tube Failure at Indian Point Unit 2 in Buchanan, New York

Date and Place—February 15, 2000; Indian Point Unit 2, a commercial nuclear power plant operated by Consolidated Edison Company, located about 24 miles north of New York City.

Nature and Probable Consequences—On February 15, 2000, at 7:17 p.m., the Indian Point Unit 2 nuclear plant experienced a steam generator tube failure which required the declaration of an "Alert" (the second lowest of four emergency classifications in the NRC-required emergency response plan) at 7:29 p.m., and a manual reactor trip at 7:30 p.m. The steam generator is a heat exchanger which allows heat to pass from the reactor (primary system) to the turbine generator (secondary system). It also provides the boundary between the radioactive primary system and the non-radioactive secondary system. At Indian Point Unit 2 there are four steam generators and each steam generator has approximately 3300 tubes. On February 15, the failure of one of these tubes allowed reactor water to leak into the secondary system. By 8:31 p.m. the operators had taken steps to isolate the steam generator which contained the leaking tube. After the steam generator was isolated, the operators began to cool down the plant. At 9:02 p.m. they were forced to suspend the cooldown process when they realized they had inadvertently established an excessive cooldown rate. This excessive cooldown rate caused a rapid reduction in reactor coolant system (pressurizer) level. To restore the level the licensee pumped borated water into the reactor coolant system using the safety injection system. After the level was restored the operators resumed the cooldown and reached cold shutdown at 4:57 p.m on February 16, 2000. The licensee exited the "Alert" emergency classification at 6:50 p.m. that day.

The steam generator tube failure resulted in an initial primary-to-secondary leak of reactor coolant of approximately 146 gallons per minute, and required an "Alert" declaration. This event involved some procedural and equipment issues that challenged operators, complicated the event response, and delayed achieving the cold shutdown condition. It caused significant public and media interest, and required increased NRC attention. The event resulted in a minor radiological release to the environment that was well within regulatory limits. No radioactivity was measured offsite above normal background levels, and the event did not impact public health and safety.

Following the event, the NRC performed an inspection and determined that Consolidated Edison Company had not performed an adequate examination of the steam generator tubes during its 1997 outage. As a result, degraded tubes were allowed to remain in service during plant operation, which ultimately led to a steam generator tube failure.

Cause or Causes— The event was caused by primary water stress corrosion cracking (PWSCC) flaws in steam generator tubes. There were deficiencies in the overall direction and execution of the 1997 steam generator in-service examinations at Indian Point Unit 2. Specifically, the licensee did not identify the presence of PWSCC flaws in steam generator tubes and remove these tubes from service, despite opportunities to do so. As a result, tubes with PWSCC were left in service following the 1997 steam generator inspection until one of these tubes failed on February 15, 2000, when the reactor was at 100 percent power.

Actions Taken To Prevent Recurrence

Licensee—The licensee performed the necessary actions to protect the health and safety of the public. Before the event, the licensee was in the process of implementing a station improvement program. This event demonstrated the need for continuous management attention to planned improvements to ensure they are timely and effective. Subsequently the licensee made the decision to replace all four steam generators prior to returning to power. The industry completed a lessons-learned report based on the Indian Point Unit 2 steam generator tube failure event and provided it to the NRC on October 26, 2000.

NRC—The NRC reviewed the causes, safety implications, and licensee actions following the event. Information Notice 2000–09, "Steam Generator Tube Failure at Indian Point Unit 2," was issued on June 28, 2000, to alert other licensees to this event. A Notice of Violation was issued to Indian Point 2 on November 20, 2000. A lessons-learned report on the steam generator tube failure at Indian Point Unit 2 was completed on October 23, 2000. In this report, the NRC evaluated the staff's technical and regulatory processes related to assuring steam generator tube integrity and identified and recommended areas for improvement applicable to the NRC and the industry. Subsequently, the NRC established a Steam Generator Action Plan detailing activities to be addressed by the NRC and the industry to improve management of steam generator performance.

This event is closed for the purpose of the AO report to Congress.

Fuel Cycle Facilities (Other Than Nuclear Power Plants)

None of the events that occurred at the fuel cycle facilities during fiscal year 2000, was determined to be significant enough to be reported as an AO to Congress.

Other NRC Licensees (Industrial Radiographers, Medical Institutions, etc.)

The following three events occurred at facilities licensed or otherwise regulated by the NRC during fiscal year 2000 and were determined to be significant enough to be reported as AOs to Congress.

00–2 Overexposures at Mallinckrodt, Inc., in Maryland Heights, Missouri

Date and Place—From 1995 through 2000; Mallinckrodt, Inc.; Maryland Heights, Missouri.

Nature and Probable Consequences—On March 31, 2000, a contract employee who was providing services for Mallinckrodt, Inc., was attempting to correct flow problems with a 703,000 megabecquerel (19 curie) molybdenum-99/technetium-99m generator. The employee performed the operation in a glove box. The employee's initial attempts to correct the generator problem were not successful. The employee then removed the generator column containing the radioactive material from its shield and determined that the inlet line was not connected and the outlet line was bent at an angle. Holding the unshielded column in his right hand, the employee corrected the problems with the inlet and outlet lines. This process took between 10 and 20 seconds to complete. Dose rates at the location of the column held by the employee were calculated to be approximately 510 mSv (51 rem) per second. As a result the employee's thumb and index finger of the right hand received a dose ranging from 5,100 mSv (510 rem) to 11,200 mSv (1,120 rem) shallow-dose equivalent. The NRC annual dose limit to the skin or any extremity is 500 mSv (50 rem) shallow-dose equivalent. The employee believed that the gloves he wore provided him adequate protection from radiation.

On April 5, 2000, Mallinckrodt determined that the radiation monitor worn on the employee's right hand recorded a dose of 57 mSv (5.7 rem) shallow-dose equivalent in excess of its administrative weekly limit which was 20 mSv (2 rem). Mallinckrodt's investigation of the exposure determined that the employee had directly handled the generator column and reported the event to the NRC on April 13, 2000. The employee was examined by a physician, who identified no immediate health effects. Due to the inability of either the NRC or the licensee to precisely estimate the likely exposure to the employee's finger and thumb, long-term health effects could not be predicted.

During its investigation of the March 31, 2000, event, Mallinckrodt identified other employee overexposures that occurred in the preceding 5 years during the performance of two routine operations. As a result of the first routine operation, 11 employees involved in the hand-labeling of vials containing millicurie quantities of indium-111 (In-111) (a State-regulated, non-NRC licensed material) received extremity doses ranging from 500 mSv (50 rem) to 3,200 mSv (320 rem) shallow-dose equivalent. In addition to these doses from In-111, the 11 employees had also received doses from NRC-regulated material, typically less than 5 percent of their total extremity doses.

The second operation involved the handling of unshielded and partially shielded vials and syringes containing radioactive material (State- and NRC-regulated material) in a sterility testing laboratory. As a result of this operation Mallinckrodt identified four employees who received extremity doses ranging from 680 mSv (68 rem) to 960 mSv (96 rem) shallow-dose equivalent.

Cause or Causes—The causes of the March 31, 2000, event were insufficient training to ensure that the employee understood the difference between radioactive contamination and radiation and inadequate oversight of the laboratory. The written, approved procedure on the employee's assigned duties did not allow the removal of the generator column during manufacturing. However, an ad hoc procedure had been developed by the staff of the laboratory that was not known to, or approved by, the management outside the laboratory. The ad hoc procedure allowed the removal of the generator column from the shield using remote handling tools. On March 31, 2000, the employee was using the ad hoc procedure but the tools that were used to remove the generator column from the shield had fallen to the bottom of the glove box and were out of the employee's reach. The employee decided on his own to remove the column and to perform repairs without using tools.

Regarding the other operations that resulted in significant doses, Mallinckrodt personnel believed, erroneously, that the doses recorded by the personnel monitoring devices worn by its employees reflected the actual

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exposures received. However, the actual doses were, in some instances, 100 times greater than those recorded by the monitors. This was due to the distance between the monitors, which are normally worn like a ring at the base of the finger, and the fingertips, where the exposures were received.

Actions Taken To Prevent Recurrence

Licensee—The licensee staff was instructed in the proper handling of unshielded containers of radioactive material. The licensee increased its radiation safety and supervisory oversight in the generator manufacturing laboratory. In addition, the licensee initiated and implemented managerial changes to its operations and agreed to: (1) Retain an independent organization to assess the radiation safety program and the radiation safety aspects of its radioactive material manufacturing processes; (2) provide assurance that workers have received training and understand procedures and practices to maintain radiation exposures as low as is reasonably achievable (ALARA); (3) develop a plan to review operations for the last five years to determine if additional workers have received exposures in excess of regulatory limits; and (4) request an amendment to incorporate a corrective action program into its license. NRC confirmed the licensee's agreement in a Confirmatory Order Modifying license issued on June 22, 2000.

NRC—The NRC conducted an Augmented Inspection Team (AIT) inspection on May 4 through May 26, 2000, and a follow up inspection on July 17 through August 4, 2000. As a result of the AIT inspection, NRC issued the June 22, 2000, Confirmatory Order Modifying License to Mallinckrodt. On December 21, 2000, NRC issued a Notice of Violation and Proposed Imposition of a $125,000 Civil Penalty.

This event is closed for the purpose of the AO report to Congress.

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00–3 Brachytherapy Misadministration at Sibley Memorial Hospital in Washington, District of Columbia

Date and Place—September 15–20, 2000; Sibley Memorial Hospital; Washington, District of Columbia.

Nature and Probable Consequences—Two patients were prescribed doses of 70 Gy (7,000 rad) each for eye treatment. The first patient received a dose of 108.7 Gy (10,870 rad) and the second patient received a dose of 114.70 Gy (11,470 rad).

The two patients were prescribed iodine-125 (I–125) eye plaques for treatment of ocular melanomas. These treatments were performed in an attempt to preserve the patients' eyes, which otherwise would have been surgically removed. The licensee's treatment planning system uses air-kerma, and the supplier of the I–125 seeds uses millicurie units. The licensee made an error converting air-kerma to millicurie units. Consequently, orders were placed for a higher source strength of I–125 seeds, which were subsequently administered to the patients, resulting in the overdoses.

The error was identified by the licensee during a review of the patients' charts on September 22, 2000, after the physicist noted that the dosimetrist was ordering I–125 seeds for an upcoming study with higher than expected source strength.

The patients were informed of the misadministrations. Before the start of the treatments, the patients were informed of the substantial risk of vision loss, the possibility of cataract formation, and a 10 to 15 percent possibility that removal of the eye might be required due to tumor progression or eye pain.

Cause or Causes—The principal cause of the misadministrations was a human error in converting source strength of the I–125 seeds from air-kerma to millicurie units. A secondary cause was the failure of the authorized user and medical physicist to recheck the conversion factor equations before the treatment was completed (a requirement of the licensee's Quality Management Plan).

Actions Taken To Prevent Recurrence

Licensee—The licensee suspended all procedures involving the eye plaques until corrective actions were developed and the staff was trained in the corrective actions. Written procedures were established to ensure the accuracy of the treatment calculations. The licensee has submitted to the NRC its planned corrective actions to prevent potential errors in the future.

NRC—An inspection was conducted by the NRC's Region I office on September 28 and 29, 2000, to examine the circumstances of the misadministration and the licensee's corrective and preventive actions. In accordance with the NRC's Medical Event Assessment Program, the NRC has retained a medical consultant to assess the misadministrations and their potential consequences. Enforcement action is pending.

This event is closed for the purpose of the AO report to Congress.

Agreement State Licensees

The following six events occurred at facilities of Agreement State licensees during fiscal year 2000 and were determined to be significant enough to be reported as AOs to Congress.

AS 00–1 Gamma Stereotactic Radiosurgery Misadministration at Healthsouth Medical Center in Birmingham, Alabama

Date and Place—April 12, 2000; Healthsouth Medical Center; Birmingham, Alabama.

Nature and Probable Consequences—Patient A was prescribed a dose of 80 Gy (8,000 rad) to the left trigeminal nerve using a gamma stereotactic radiosurgery (GSR) device. However, because of an error, a dose of about 0.2 Gy (20 rad) was delivered to the intended treatment site and a dose of 80 Gy (8,000 rad) was delivered to a wrong treatment site.

On the same day that patient A was scheduled for a GSR treatment, patient B was also admitted for a similar treatment using the same device. During the approval process of the treatment plan, the dose delivery sheet of patient B was inadvertently switched with that of patient A. As a result, patient A was treated with the radiosurgery parameters intended for patient B, and a dose of 80 Gy (8,000 rad) was delivered at the wrong treatment site within the patient's skull. The misadministration was discovered immediately following the delivery of the dose by the patient's radiation oncologist. The identification of this misadministration prevented a related misadministration for patient B. The licensee notified the State agency of this misadministration on April 12, 2000. The patient returned to the Medical Center on April 20, 2000, and was treated as prescribed.

The licensee stated that the misadministration resulted in no observable acute effects to the patient. The patient was notified verbally within 24 hours by the referring physician and the neurosurgeon and will be closely monitored by the neurosurgeon.

Cause or Causes—This misadministration was caused by mixing patient treatment protocol documentation during approval of the treatment plans for the two different patients that were prescribed similar treatments.

Actions Taken To Prevent Recurrence

Licensee—The licensee took immediate action to prevent the mixing of patient treatment protocol documentation. As a result, each page of the treatment protocol contains a unique name and time stamp, which the radiation oncologist or medical physicist will in the future check before delivering the radiosurgery treatment.

State Agency—The Alabama Department of Public Health, Office of Radiation Control was satisfied with the licensee's corrective actions. The licensee's corrective measures will be reviewed during the agency's next routine inspection of the licensee's activities.

This event is closed for the purpose of the AO report to Congress.

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AS 00–2 Gamma Stereotactic Radiosurgery Misadministration at University of California in San Francisco, California

Date and Place—September 11, 1998; University of California; San Francisco, California. The California Department of Health Services, Radiologic Health Branch was notified of the misadministration on September 17, 1998. The NRC staff was informed of this event in July 2000. The State of California indicated that the delay in reporting this event to the NRC resulted from a computer error.

Nature and Probable Consequences—A patient was prescribed a radiation therapy treatment of two metastatic lesions of the brain using a gamma stereotactic radiosurgery (GSR) device. One of the brain lesions was prescribed a dose of 16 Gy (1,600 rad). However, because of an error, the wrong site of the brain received more than 10 Gy (1,000 rad).

The patient was treated for two metastatic brain lesions, one in the left thalamus and the other in the right parietal regions of the brain. A treatment plan was developed for the lesion in the left thalamus to deliver a single dose of 16 Gy (1600 rad), at the 60% isodose line. However, one of the seven parameter settings of the GSR, the "left Y" coordinate, was erroneously set at 111 mm (4.37 in.) instead of 101 mm (3.98 in.) resulting in a 5 mm (0.20 in.) translocation of the treatment volume. This error resulted in an under-dose of a portion of the intended treatment volume and an unintended dose of more than 10 Gy (1,000 rad) to brain tissue outside of the prescribed treatment volume. The misadministration was discovered when the licensee performed a quality control verification of the GSR parameters after the radiation treatment.

The licensee reported that the patient experienced no acute side effects from this misadministration. The physician who was involved in this treatment notified the patient of this misadministration. The physician explained the necessity of another treatment because of the under-dose to a portion of the tumor site. An additional treatment was added to the treatment plan to complete the prescribed dose to the intended treatment volume of the left thalamus, and the treatment was completed. The patient died as a direct result of the metastatic condition on March 3, 1999.

Cause or Causes—The misadministration was caused by a human error. One member of the treatment team set a wrong coordinate and another member of the treatment team failed to independently verify the coordinate setting.

Actions Taken To Prevent Recurrence

Licensee—The initial corrective actions by the licensee included decreasing distractions to the treatment team by limiting telephone calls in the treatment control area and restricting conversations in the treatment room to conversations required for the treatment of the patient.The licensee was requested by the State to contact other GSR facilities to review their methods of operation. The licensee found that another GSR facility had performed a study comparing the frequency of incorrect coordinate settings by licensees who did one independent verification and licensees who did two. The licensee used this study as a guide and has adopted the procedure of performing two independent checks of the coordinate settings before each treatment and retaining the follow-up check of the coordinate settings after each treatment to determine if an error was made.

State Agency—The findings of the onsite investigation by the State staff agreed with the findings of the licensee's quality assurance review. The State also shared the finding of the study performed by the licensee with other Agreement States and with the NRC because of the study's generic implications. The State was satisfied with the licensee's corrective actions and believes they should be adequate to prevent recurrence. No enforcement actions were taken by the State for this misadministration.

This event is closed for the purpose of the AO report to Congress.

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AS 00–3 Gamma Stereotactic Radiosurgery Misadministration at Healthsouth Doctor's Hospital in Coral Gables, Florida

Date and Place—January 25, 2000; Healthsouth Doctor's Hospital; Coral Gables, Florida.

Nature and Probable Consequences—A patient was prescribed a gamma stereotactic radiosurgery (GSR) treatment for 80 brain lesions. Each brain lesion site was prescribed 12 Gy (1,200 rad). However, a lesion site was treated twice because of an error.

The patient's treatments were based on computer-generated magnetic resonance imaging (MRI) slices taken in the Z direction. Prior to each treatment, the lesion site coordinates were printed out as part of the written directive and they were checked manually and initialed by the authorized user and the medical physicist. For the fourth treatment, the licensee intended to deliver 12 Gy (1,200 rad) to lesion site 47. However, prior to the treatment the wrong MRI slice was displayed in the computer showing lesion site 16 (Z=70.7 mm [2.78 in.]) instead of lesion site 47 (Z= 65.0 mm [2.56 in.]). Thus, the treatment plan was calculated at lesion site 16, which had already been treated. The written directive was prepared and signed by the authorized user and the radiation safety officer (RSO) indicating a dose of 12 Gy (1,200 rad) to Z=70.7 mm (2.78 in.). The treatment was administered as indicated in the directive. As a result, lesion site 16 was treated twice. The RSO discovered the error on January 28, 2000, during a routine quality assurance review of the treatment plan. The licensee indicated that the retreatment of site 16 did not result in harmful effects for the patient. The patient was rescheduled for treatment of lesion site 47 and treatment of additional untreated sites.

The misadministration was reported to the Florida Bureau of Radiation Control, the authorized user, and the patient on January 28, 2000.

Cause or Causes—The licensee determined that this misadministration was caused by human error.

Actions Taken To Prevent Recurrence

Licensee—No action was taken by the licensee. The licensee has not identified any quality management procedures that need to be changed to prevent this type of human error. In addition, the licensee believes that this type of error was detected because of its aggressive quality assurance program.

State Agency—The Bureau of Radiation Control performed an onsite investigation on February 2, 2000. The investigation found no apparent violations of the licensee's license or the regulations. During the investigation the licensee indicated that it has performed in excess of 2,000 GSR procedures and a quality assurance review of each procedure. Of the 2,000 procedures the

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licensee has estimated that over 600 procedures involved the treatment of 20 or more lesion sites and that this was the only time a lesion site was treated twice.

This event is closed for the purpose of the AO report to Congress.

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AS 00–4 Gamma Stereotactic Radiosurgery Misadministration at University of Maryland Medical Systems in Baltimore, Maryland

Date and Place—April 20, 2000; University of Maryland Medical Systems (UMMS); Baltimore, Maryland.

Nature and Probable Consequences—A patient was prescribed a radiation therapy treatment for pituitary adenoma using a gamma stereotactic radiosurgery (GSR) device. The licensee's therapy treatment team planned to deliver a maximum dose of 18 Gy (1,800 rad) to the 50% isodose line given in six administrations. However, because of the incorrect settings of the Y and Z coordinates, a dose of 12.5 Gy (1,250 rad) was administered to the wrong treatment site.

The licensee's therapy treatment team consisted of a neurosurgeon, an oncologist, and a medical physicist. The treatment plan was developed, reviewed, and signed by each member of the treatment team prior to the administration of the first dose. When the medical physicist briefly left the GSR facility, the neurosurgeon and the oncologist inadvertently reversed the Y and the Z coordinates while adjusting the position of the patient's stereotactic frame (moving the patient's head to the incorrect position). When the medical physicist returned, each member of the treatment team incorrectly verified the position of the patient's frame assembly. All team members signed the quality assurance checklist to indicate that they conducted this check and that the patient's frame was positioned in accordance with the written directive. As a result, the patient's base of the frontal lobe received the unintended dose. The medical physicist identified the incorrect settings of the Y and Z coordinates while preparing to adjust the frame assembly for the second administration. Upon discovery of the misadministration, the treatment team revised the treatment plan to accommodate for the error and to complete the therapy procedure. The State agency was notified of this misadministration on April 21, 2000, and performed an onsite investigation on April 26–28, 2000.

The neurosurgeon notified the patient, provided an estimate of the unintended dose delivered, and explained that no adverse health effects were expected to result from this event.

Cause or Causes—This misadministration was determined to be a sequence of human errors made by the neurosurgeon, oncologist, and medical physicist during patient positioning. However, while the root cause of the event appears to be human errors during the setting of the patient positioning parameters, other factors may have contributed to the event. For example, to position the patient, the treatment team used an internal procedure which was not documented in writing. This procedure was not sent to the licensee's Radiation Safety Committee or the State Agency for approval. The radiation safety officer (RSO) was a contract employee of the UMMS. Furthermore, he had not received any specialized training, e.g., equivalent to the authorized user training. Interaction between the RSO and the authorized users was rare. Finally, the RSO failed to complete and document the annual reviews of the GSR radiation protection program content and implementation for the previous 3 years (1997 through 2000).

Actions Taken To Prevent Recurrence

Licensee—The licensee held a management conference with key members of management, radiation safety, radiation oncology, neurosurgery, patient care services, and clinical effectiveness. As a result of this meeting, the licensee implemented a written protocol regarding patient positioning.

State Agency—The onsite investigation by the State determined that the licensee failed to implement approved written procedures regarding treatment planning, patient positioning, and administration of doses. Furthermore, the licensee failed to complete and document the annual reviews of the GSR radiation protection program content and implementation for the previous 3 years. A Department Letter/Notice of Violation was issued on June 21, 2000. An enforcement action is pending.

This event is closed for the purpose of the AO report to Congress.

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AS 00–5 Teletherapy Misadministration at Western Baptist Hospital in Paducah, Kentucky

Date and Place—October 16, 1996, to November 1, 1996; Western Baptist Hospital; Paducah, Kentucky. This misadministration was discovered by the hospital on January 8, 1997. The State was informed of the misadministration on January 8, 1997 and was reported to NRC on March 5, 1997. However, it was identified as an AO during discussions of the event at an Integrated Materials Performance Evaluation Program review of the State of Kentucky in July 2000.

Nature and Probable Consequences—A patient was prescribed a radiation therapy treatment using cobalt-60 teletherapy equipment. The patient was prescribed a dose of 39 Gy (3900 rad). However, the dose was administered to the wrong treatment site because of an error.

The patient was treated for bone pain associated with renal cell carcinoma with metastases to the right iliac bone. The prescribed treatment was 5 treatments per week for a total of 13 treatments. The prescribed dose to the right iliac bone was 39 Gy (3900 rad). When the patient returned for evaluation of the right iliac bone pain, the physician determined that the dose of 39 Gy (3900 rad) was administered to the left iliac bone.

The licensee stated that the misadministration had no effect on the patient's life-span and did not result in any permanent impairment or dysfunction.

Cause or Causes—The causes of this misadministration were that (1) markers were not used on the patient's x-ray film to distinguish the supine/prone positions; (2) a second x-ray film was incorrectly labeled as to left/right; (3) the physician did not perform a visual inspection to determine that the correct area had been marked on the patient; and (4) the prescribing physician and simulator therapists failed to correctly orient left/right on fluoroscopy.

Actions Taken To Prevent Recurrence

Licensee—The licensee established a requirement to label the x-ray films to distinguish left/right and supine/prone positions. One of the radiation physicists will review the treatment plans of patients that are not responding clinically as expected. The physicists have been retrained to check all information in the patient's chart regarding calculations and setup. The physicians and therapists have been reminded of the importance of accurately determining patient orientation.

State Agency—The State agency reviewed the written directive and no problems were noted. A telephone conference was held with the radiation safety officer, the attending physician, and the Director of Safety Management. The inspection frequency for the facility was increased. An inspection in March 1998 found no violations.

This event is closed for the purpose of the AO report to Congress.

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AS 00–6 Brachytherapy Misadministration at Aultman Hospital in Canton, Ohio

Date and Place—August 22, 2000 through October 30, 2000; Aultman Hospital; Canton, Ohio.

Nature and Probable Consequences—As a result of a common error, four patients that were prescribed manual brachytherapy gynecological procedures were administered doses higher than those prescribed.

The first patient was prescribed a total dose of 92.9 Gy (9,290 rad). This dose included brachytherapy treatments of 20 Gy (2,000 rad) and 22.5 Gy (2,250 rad) using Ir-192 sources and a dose of 50.4 Gy (5,040 rad) from an external beam linear accelerator. On September 18, 2000, the patient was administered a brachytherapy dose of 33.3 Gy (3,330 rad) Ir-192 instead of the prescribed dose of 20 Gy (2,000 rad). On October 9, 2000, the same patient was administered a brachytherapy dose of 35 Gy (3,500 rad) Ir-192 instead of the prescribed dose of 22.5 Gy (2,250 rad) Ir-192. The patient was also administered the prescribed dose of 50.4 Gy (5,040 rad) from an external beam linear accelerator.

The second patient was prescribed a total dose of 90.7 Gy (9,070 rad). This dose included brachytherapy treatments of 19.8 Gy (1,980 rad) using Ir-192 sources and of 20.5 Gy (2,050 rad) using a combination of Ir-192 and radium-226 (Ra-226) sources and a dose of 50.4 Gy (5,040 rad) from an external beam linear accelerator. On August 22, 2000, the patient was administered a brachytherapy dose of 35.2 Gy (3,520 rad) Ir-192 instead of the prescribed dose of 19.8 Gy (1,980 rad) Ir-192. On September 5, 2000, the same patient was administered the prescribed dose of 20.5 Gy (2,050 rad) using a combination of Ir-192 and Ra-226 implant sources. The patient was also administered the prescribed dose of 50.4 Gy (5,040 rad) from an external beam linear accelerator.

The third patient was prescribed a total dose of 63.9 Gy (6,390 rad). This dose included a brachytherapy treatment of 18.9 Gy (1,890 rad) using Ir-192 sources and a dose of 45 Gy (4,500 rad) from an external beam linear accelerator. On October 30, 2000, the patient was administered a brachytherapy dose of 32.4 Gy (3,240 rad) Ir-192 instead of the prescribed dose of 18.9 Gy (1,890 rad) Ir-192. The patient was also administered the prescribed dose of 45 Gy (4,500 rad) from an external beam linear accelerator.

The fourth patient was prescribed a total dose of 79.3 Gy (7,925 rad). This dose included brachytherapy treatments of 20.3 Gy (2,025 rad) and 14 Gy (1,400 rad) using Ir-192 sources and a dose of 45 Gy (4,500 rad) from an external beam linear accelerator. On October 23, 2000, the patient was administered a brachytherapy dose of 31.5 Gy (3,150 rad) Ir-192 instead of the prescribed dose of 20.3 Gy (2,025 rad) Ir-192. On November 6, 2000, the same patient was administered the prescribed brachytherapy dose of 14 Gy (1,400 rad) Ir-192. The patient was also administered the prescribed dose of 45 Gy (4,500 rad) from an external beam linear accelerator.

The misadministrations were discovered on November 3, 2000, and November 13, 2000, during an internal audit of the licensee's Quality Management Program (QMP) by the Radiation Safety Officer (RSO) and the Radiation Protection Staff. A telephone report by the licensee's RSO was made to the Ohio Department of Health, Bureau of Radiation Protection, on November 4, 2000, and November 13, 2000.

The first, second, and fourth patients were notified of the misadministrations. The notification of the third patient is pending because the patient was hospitalized for an unrelated infection. The licensee stated that the clinical treatment of these patients has not been affected by the misadministrations.

Cause or Causes—The licensee indicated that this event was primarily caused by an operator error in the data entry of the source strength in the treatment planning computer. The facility obtained a new computer in August 2000, and the operator made a mistake and entered the source strengths in milligram-radium-equivalent instead of millicurie. Also, the quality assurance of the treatment planning was inadequate, and the second checks of treatment plans, to which the licensee committed in its QMP were inadequate.

Actions Taken To Prevent Recurrence

Licensee—As soon as the licensee's management determined that a reportable event had occurred, the licensee took action to provide additional training to the staff involved in brachytherapy procedures. The licensee submitted a written report to the Ohio Department of Health, Bureau of Radiation Protection, within 15 days of discovering the misadministrations.

State Agency—The Ohio Department of Health, Bureau of Radiation Protection, performed an onsite investigation on November 21 and 22, 2000, to review the procedures and the findings of the licensee's quality management review and to confirm that the licensee's corrective action proposal is adequate to prevent recurrence. Enforcement actions or penalties, if any, will be determined at a later date.

This event is closed for the purpose of the AO report to Congress.

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Dated at Rockville, Maryland this 25th day of April, 2001.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 01–10821 Filed 4–30–01; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

Plan for Updating and Consolidating the Decommissioning Policy and Guidance of the Nuclear Regulatory Commission's Office Nuclear Material Safety and Safeguards, and Notice of Public Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Publication of plan and notice of public meeting.

SUMMARY: The Office of Nuclear Material Safety and Safeguards (NMSS) intends to consolidate and update the policy and guidance for NMSS's decommissioning program. This endeavor is in response to the NMSS performance goals, in the NRC's Strategic Plan, of: (1) Making NRC activities and decisions more effective, efficient, and realistic; and (2) reducing unnecessary regulatory burden on stakeholders.

DATES: Comments on this plan should be submitted by June 15, 2001. The comments will be considered by NRC in the process of updating and consolidating the policy and guidance for NMSS's decommissioning program.

ADDRESSES: Submit written comments to: Jack D. Parrott, Project Scientist, Office of Nuclear Material Safety and Safeguards, Mail Stop T–7F27, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand-deliver comments to: 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m., Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Room O–1F21, Rockville, MD 20852. The NRC Public Document Room is open from 7:45 a.m.

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to 4:15 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jack D. Parrott, Mail Stop T–7F27, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6700; Internet: JDP1@NRC.GOV.

SUPPLEMENTARY INFORMATION: The initial scope of this effort covers all of the decommissioning policies and guidance that implement the NMSS decommissioning regulations. Three NUREG volumes have been identified for development which would update/consolidate all existing NMSS decommissioning guidance documents to the extent practicable. Also reviewed will be decommissioning technical assistance requests, decommissioning licensing conditions, and all decommissioning generic communications issued over the past several years. For the purposes of this project, the NMSS decommissioning policy and guidance documents will be grouped into the functional categories of: (1) The General Materials Decommissioning Process, (2) Characterization, Survey, and Determination of Radiological Criteria, and (3) Financial Assurance, Recordkeeping, and Timeliness. The three NUREG volumes will follow these functional categories. The documents that will be considered in this consolidation/updating project are identified in Table 1.

Table I.—Documents for Consideration in the Decommissioning Guidance Consolidation Project

Guidance Documents To Be Consolidated

NUREG–1727, "NMSS Decommissioning Standard Review Plan," September 2000
NUREG/BR–0241, "NMSS Handbook for Decommissioning Fuels Cycle and Materials Licensees," March 1997
Information Notice 90–16, "Compliance with New Decommissioning Rule," March 1990
"Draft Branch Technical Position on Site Characterization for Decommissioning," November 1994
NRC Regulatory Issue Summary 2000–09, "Standard Review Plan for Licensee Requests to Extend the Time Periods Established for Initiation of Decommissioning Activities," June 2000
NRC Administrative Letter 96–05, Revision 1, "Compliance with the Rule "T 'Timeliness in Decommissioning of Material Facilities'" July 1998
Information Notice 96–47, "Record-keeping and Decommissioning Notifications for Disposals of Radioactive Waste by Land Burial Authorized under Former 10 CFR 20.304, 20.302, and Current 20.2002," August 1996
Information Notice 90–38, Supplement 1, "License and Fee Requirements For Processing Financial Assurance Submittals for Decommissioning," November 1990
Information Notice 90–38, "Requirements for Processing Financial Assurance Submittals for Decommissioning," May 1990
Information Notice 90–16, "Compliance with New Decommissioning Rule," March 1990
Records Management Guide 93–03, "Final Criteria for Determining That Records Should be Retained Permanently Because of Significant Historical Value," 1993
Records Management Guide 92–01, "Plan for Decommissioning Records," 1992

Other Documents for Reference/ Consideration

NUREG–1575, "Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM), Rev. 1," August 2000
NUREG/CR–5512, Volume 1, "Residual Radioactive Contamination from Decommissioning: Technical Basis for Translating Contamination Levels to Annual Total Effective Dose Equivalent," October 1992
Draft NUREG/CR–5512, Volume 2, "Residual Radioactive Contamination from Decommissioning: User's Manual," May 1999
Draft NUREG/CR–5512, Volume 3, "Residual Radioactive Contamination From Decommissioning: Parameter Analysis," October 1999
Draft NUREG/CR–5512, Volume 4, "Comparison of the Models and Assumptions used in the DandD 1.0, RESRAD 5.61, and RESRAD-Build Computer Codes with Respect to the Residential Farmer and Industrial Occupant Scenarios Provided in NUREG/CR–5512," October 1999
NUREG/CR–5621, "Groundwater Models in Support of NUREG/CR–5512," December 1998
Draft NUREG–1549, "Decision Methods for Dose Assessment to Comply with Radiological Criteria for License Termination," July 1998
NUREG/CR–6692, "Probabilistic Modules for the RESRAD and RESRAD-Build Computer Codes," November 2000
Draft NUREG–1505, Rev. 1, "A Nonparametric Statistical Methodology for the Design and Analysis of Final Status Decommissioning Surveys," June 1998
NUREG–1506, "Measurement Methods for Radiological Surveys in Support of New Decommissioning Criteria," August 1995
NUREG–1507, "Minimum Detectable Concentrations with Typical Radiation Survey Instruments for Various Contaminants and Field Conditions," August 1995
Manual Chapter 2605, "Decommissioning Procedures for Fuel Cycle and Materials Licensees," November 1996
Manual Chapter 2602, "Decommissioning Inspection Program for Fuel Cycle Facilities and Materials Licensees," June 1997
Inspection Procedure 87104, "Decommissioning Inspection Procedure for Materials Licensees," June 1997
Inspection Procedure 88104, "Decommissioning Inspection Procedure for Fuel Cycle Facilities," June 1997
Inspection Procedure 83890, "Closeout Inspection and Survey," March 1994
Temporary Instruction 2800/026, "Follow-up Inspection of Formerly Licensed Sites Identified as Potentially Contaminated", July 2000

Background/Bases Documents

Atomic Energy Act of 1954, as amended
National Environmental Policy Act
10 CFR 20, Subpart E—Radiological Criteria for License Termination
10 CFR 30.35—Financial assurance and recordkeeping for decommissioning
10 CFR 30.36—Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas
10 CFR part 30, Appendix A—Criteria Relating to Use of Financial Tests and Parent Company Guarantees for Providing Reasonable Assurance of Funds for Decommissioning
10 CFR part 30, Appendix C—Criteria Relating to Use of Financial Tests and Self Guarantees for Providing Reasonable Assurance of Funds for Decommissioning
10 CFR part 30, Appendix D—Criteria Relating to Use of Financial Tests and Self-Guarantee for Providing Reasonable Assurance of Funds for Decommissioning by Commercial Companies That Have no Outstanding Rated Bonds
10 CFR part 30, Appendix E—Criteria Relating to Use of Financial Tests and Self-Guarantee For Providing Reasonable Assurance of Funds For Decommissioning by Nonprofit Colleges, Universities, and Hospitals
10 CFR 40.36—Financial assurance and recordkeeping for decommissioning
10 CFR 40.42—Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas
10 CFR 70.25—Financial assurance and recordkeeping for decommissioning
10 CFR 70.38—Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas
10 CFR 72.30—Financial assurance and recordkeeping for decommissioning
10 CFR 72.54—Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas
10 CFR 72.130—Criteria for decommissioning
62 FR 39058, "Radiological Criteria for License Termination," July 1997
53 FR 24018, "General Requirements for Decommissioning Nuclear Facilities," June 1988
64 FR 68395, "Supplemental Information on the Implementation of the Final Rule on Radiological Criteria for License Termination," December 1999
63 FR 64132, "Supplemental Information on the Implementation of the Final Rule on Radiological Criteria for License Termination," November 1998
62 FR 39058, "Radiological Criteria for License Termination," July 1997
53 FR 24018, "General Requirements for Decommissioning Nuclear Facilities," June 1988
61 FR 24669, "Termination or Transfer of Licensed Activities: Recordkeeping Requirements," May 1996
60 FR 38235, "Clarification of Decommissioning Funding Requirements," July 1995
59 FR 36026, "Timeliness in Decommissioning of Materials Facilities," July 1994
58 FR 39628, "Decommissioning Recordkeeping and License Termination: Documentation Additions," July 1993
53 FR 24018, "General Requirements for Decommissioning Nuclear Facilities," June 1988
NUREG–1496, "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities," July 1997
NUREG–0586, "Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities," August 1988
NUREG/CR–1754, "Technology, Safety and Costs of Decommissioning Reference Non-Fuel-Cycle Nuclear Facilities," February 1981

NUREG/CR–1754, "Technology, Safety and Costs of Decommissioning Reference Non-Fuel Cycle Nuclear Facilities," Addendum 1, October 1989
NUREG/CR–0129, "Technology, Safety and Costs of Decommissioning a Reference Small Mixed Oxide Fuel Fabrication Plant," February 1979
NUREG/CR–1266, "Technology, Safety and Costs of Decommissioning a Reference Uranium Fuel Fabrication Plant," October 1980
NUREG/CR–1757, "Technology, Safety and Costs of Decommissioning a Reference Uranium Hexafluoride Conversion Plant," October 1981
NUREG/CR–2210, "Technology, Safety and Costs of Decommissioning a Reference Independent Spent Fuel Storage Installation," January 1984
NUREG/CR–2241, "Technology and Costs of Termination Surveys Associated with Decommissioning of Nuclear Facilities," February 1982
NUREG/CR–3293, "Technology, Safety and Costs of Decommissioning Reference Nuclear Fuel Cycle and Non Fuel Cycle Facilities Following Postulated Accidents," May 1985
NUREG/CR–6280, "Technology, Safety, and Costs of Decommissioning a Reference Large Irradiator and Reference Sealed Sources," January 1996
NUREG/CR–6477, "Revised Analyses of Decommissioning Reference Non-Fuel-Cycle Facilities," July 1998
NUREG/CR–6656, "Information on Hydrologic Conceptual Models, Parameters, Uncertainty Analysis, and Data Sources for Dose Assessments at Decommissioning Sites," November 1999

Licensing Documents To Be Considered

Post License Termination Rule decommissioning technical assistance requests
Post License Termination Rule license amendments
Site specific decommissioning Environmental Assessments/ Environmental Impact Statements
Site specific decommissioning Safety Evaluation Reports
Results of decommissioning financial assurance reviews
Site specific submittals of Form NRC–314, "Certificate of Disposition of Materials"

Other Documents for Possible Reference

Other agencies' documents—e.g., U.S. Department of Energy, U.S. Environmental Protection Agency, U.S. Geological Survey, Council on Environmental Quality
Consensus standards—American Nuclear Society, American Society of Mechanical Engineers, American Society for Testing and Materials, Health Physics Society
International guidance—International Atomic Energy Agency, Nuclear Energy Agency

The implementation of the consolidation and updating of the decommissioning policy and guidance documents will be conducted using the Business Process Reengineering (BPR) techniques established for the NRC's materials licensing policy and guidance consolidation and updating efforts (NUREG–1556 series). The BPR approach will be used to both develop the product, and manage the review and concurrence process, using self-managed teams consisting of NRC headquarters and regional resources. The goal is to produce consolidated NMSS decommissioning guidance that allows the NRC staff to evaluate information submitted by licensees in a timely, efficient, and consistent manner that protects public health and safety.

The development of each NUREG volume will follow a standardized BPR team model to facilitate overall project management. Teams will consist of a team leader and three or four team members, representing headquarters and regional staff, and possibly Agreement State participation.

The goal is to commence the first NUREG volume project in the June/July 2001 time frame, the second NUREG volume in the January 2002 time frame, and the third NUREG volume in the June/July 2002 time frame. The BPR model uses a one year schedule that contains two periods of document production for each volume. The first phase of document production lasts five months during which the teams work together at NRC headquarters during much of this time to focus their efforts on the guidance document, and to take advantage of the facilitation services provided by the NRC's Regulatory Product Development Center. At the end of the first phase a draft NUREG volume is produced which is released to the public for review and to solicit public input. After a 90-day comment period, the teams reconvene periodically over approximately four months to consider public input and revise the document. The NUREG volume is then published in final.

The overall project is scheduled to be completed by the end of fiscal year 2003 with the publication of the final version of the third NUREG volume. The end result will be a streamlined multi-volume NUREG grouped into the decommissioning functional categories described above, with the goal of

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making decommissioning activities licensed by NRC more effective and efficient while reducing unnecessary regulatory burden on stakeholders. Further ease of use will be realized by making this a web-based document. Note also that the BPR model establishes a 3-year review cycle for updating the guidance.

The updated, consolidated guidance will be provided to all users, both NRC and licensee, in hardcopy and/or electronic media. Since each group will have access to the same guidance, the expected results are more complete license documents that will expedite the approval process for both applicants and reviewers. As a result, the resource expenditure for this project will serve to improve the overall decommissioning process. Successful completion of this project is an integral component of the effort to meet NMSS' performance goals in the NRC's Strategic Plan. This will be done by developing decommissioning guidance that ensures that NRC's decommissioning activities and decisions are more effective, efficient, and realistic; and that they reduce unnecessary regulatory burden on stakeholders through, for example, the application of risk insights and performance-based methods, and the use of a consistent decommissioning regulatory basis.

Public Meeting: NRC will conduct a public meeting in the auditorium of the NRC's headquarters office, Two White Flint North, 11545 Rockville Pike, Rockville, MD, on June 1, 2001, to discuss this plan for updating and consolidating the decommissioning policy and guidance of the NRC's Office Nuclear Material Safety and Safeguards with interested members of the public. The meeting is scheduled for 9 a.m. to 2 p.m. There will be an opportunity for members of the public to ask questions of NRC staff and make comments related to the plan. The meeting will be transcribed. For more information on the public meeting, please contact Jack D. Parrott, Project Scientist, Office of Nuclear Material Safety and Safeguards, Mail Stop T–7F27, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; 301–415–6700; Internet: JDP1@NRC.GOV.

Dated at Rockville, MD, this 20th day of April, 2001.

For the Nuclear Regulatory Commission.

Larry W. Camper,

Chief, Decommissioning Branch Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01–10823 Filed 4–30–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44217; File No. SR–EMCC–00–04]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Order Approving a Proposed Rule Change Relating to Membership Criteria for Inter-Dealer Brokers Regulated by the Securities and Futures Authority Limited

April 24, 2001.

On July 3, 2000, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–EMCC–00–04) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on December 13, 2000.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change establishes admission criteria for brokers or dealers who are regulated by the Securities and Futures Authority Limited ("SFA")[3] and act as inter-dealer brokers ("IDBs"). EMCC's membership criteria for IDBs that are registered by the SFA will mirror the requirements of U.S. registered broker-dealers acting as IDBs[4] except SFA regulated IDBs will be required to maintain "excess financial resources" of $10,000,000 US as opposed to excess net capital of $10,000,000.

II. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[5] Since the Commission's approval of EMCC Rule 2, EMCC has been informed that brokers or dealers who are regulated by the SFA also act as IDBs and, in fact, that there are broker-dealers who are regulated by the SFA who would like to be IDB members of EMCC. The Commission believes it is prudent for EMCC to establish criteria for broker-dealers that act as IDBs and that are regulated by the SFA because it will encourage IDBs regulated by the SFA to become participants in EMCC and therefore should facilitate the prompt and accurate clearance and settlement of emerging market securities transactions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–EMCC–00–04) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–10748 Filed 4–30–01; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 43680 (December 6, 2000), 65 FR 77947.

[3] SFA is the United Kingdom financial services regulator.

[4] EMCC's Rules define an IDB as "a broker-dealer that conducts securities trading which matches buyers and sellers who are banks or dealers, and who is designated as such by the Corporation." EMCC's membership criteria for broker-dealers acting as IDBs require an applicant to demonstrate to the EMCC Board or Membership and Risk Committee that: (1) The applicant has the operational capacity to perform its membership functions in a satisfactory manner; (2) the applicant has an established business history of at least three years or personnel with sufficient operational background and experience to ensure the ability of the applicant to conduct its business; (3) the applicant has the financial ability to make all anticipated payments required by EMCC; (4) the applicant is in compliance with the capital requirements imposed by its appropriate regulatory authority; and (5) no adverse conditions exist which might prohibit applicant's membership in EMCC.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44219; File No. SR–OCC–00–02]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Relating to OCC Clearing Members Pledging Long Options Positions

April 25, 2001.

On March 6, 2000, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–OCC–00–02) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on July 19, 2000.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 43029 (July 12, 2000), 65 FR 44844.

I. Description

The proposed rule change expands the categories of accounts from which clearing members may pledge long options positions to third party lenders and expands the categories of permitted pledgees. The proposed rule change is intended to reflect liberalizing amendments to Regulation T (12 CFR 220) and Regulation U (12 CFR 221) made by the Board of Governors of the Federal Reserve System ("Fed Board").

Options have traditionally had no loan value under the Fed Board's margin regulations. The only relevant exception was for "special purpose credit" extended to broker-dealers.[3] A bank or another broker-dealer could extend credit on long options carried for the accounts of market makers and specialists to secure credit for financing their market making functions. Accordingly, when OCC adopted Rule 614, which allowed long options to be pledged to a bank or another broker-dealer, OCC specified that options could only be pledged from clearing members' market-maker and specialist accounts.[4] In addition, the permitted pledgees under Rule 614 were limited to banks and broker-dealers as these were the only categories of lenders from which a broker-dealer such as a clearing member or market maker was permitted to borrow.[5]

In 1996, the Fed Board eliminated the general prohibition against extending credit on long options and instead deferred to the rules of the options exchanges regarding option loan value by incorporating those rules by reference into Regulation T.[6] Although exchange margin rules then in effect also prohibited extensions of credit against long options, these rules have subsequently been amended to permit broker-dealers to extend credit on certain long option positions in a customer margin account.[7]

In 1998, the Board amended the Supplement to Regulation U to allow lenders other than broker-dealers to extend 50 percent loan value against all long positions in listed options.[8] The Fed Board also modified the margin regulations to reflect amendments to the Act. The National Securities Markets Improvement Act of 1996 ("NSMIA") repealed section 8(a) of the Act which, among other things, had prohibited broker-dealers from obtaining credit against the collateral of exchange-traded equity securities from lenders other than broker-dealers and certain banks. For that reason, the Fed Board deleted provisions of Regulations T and U that implemented section 8(a) of the Act.

As a result of all of the foregoing statutory and regulatory changes, credit may now be extended by broker-dealers, banks, and other lenders against long option positions whether carried for the account of a market-maker or specialist, another broker-dealer, a public customer, or for the clearing member's own proprietary account. This renders the provisions of Rule 614, restricting the types of OCC accounts from which long options may be pledged and the kind of entities that may be pledgees obsolete. In recognition of this fact, OCC proposed to amend Rule 614 to delete the obsolete restrictions.

Of course, Regulations T and U continue to impose certain restrictions on extensions of credit secured by OCC-issued options. For example, the 50 percent loan limit would generally be applicable with certain exceptions such as when the credit is extended to an "exempted borrower."[9] As is the case with other securities credit transactions, lenders and borrowers who use the OCC pledge program are obligated to comply with the Fed Board's margin regulations.

OCC also proposed to make certain technical amendments to Rule 614. These reflect, among other things, revisions to Sections 8 and 9 of the Uniform Commercial Code adopted since Rule 614 was originally drafted. Conforming changes are being made to Rules 601, 602, 1105, and 1106.

II. Discussion

In Section 17A, Congress stated its finding that the development of uniform standards and procedures for clearance and settlement will reduce unnecessary costs and increase the protection of investors and persons facilitating transactions by and acting on behalf of investors. The Commission believes that the approval of OCC's rule change is in line with this finding and directive of Congress. The proposed rule change is intended to reflect liberalizing amendments to Regulation T (12 CFR 220) and Regulation U (12 CFR 221) made by the Fed Board. Due to those amendments, credit may now be extended by broker-dealers, banks, and other lenders against long options positions whether carried for the account of a market-maker or specialist, another broker-dealer, a public customer, or for the clearing member's own proprietary account. This renders the provisions of Rule 614, restricting the types of OCC accounts from which long options may be pledged and the kinds of entities that may be pledgees, obsolete. In recognition of this fact, OCC is amending Rule 614 to delete the obsolete restrictions. As a result, OCC's rules governing the pledging of long options positions will be consistent with those of the options exchanges and with the Fed Board's Reg T and Reg U.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–00–02) be and hereby is approved.

For the Commission by the Division of market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–10782 Filed 4–30–01; 8:45 am]

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[3] Long options may also be given value in a customer's margin account when used to offset margin otherwise required on short option positions and are in turn given margin credit in the clearing member's account at OCC. However, that use of long option value does not involve the pledging of options to third party lenders, and Rule 614 therefore has no application to such use.

[4] In recognition of the ability of a clearing member to pledge long options to a commodity clearing organization for the purpose of securing obligations to such clearing organization on related futures and futures option contracts, OCC later amended Rule 614 to permit this particular form of pledge. In 1999, OCC also amended its rules to permit pledging of long positions to third party lenders from a non-proprietary cross-margining account. Securities Exchange Act Release No. 41883 (September 17, 1999), 64 FR 51819 (September 24, 1999).

[5] As noted in the footnote above, the rule was later amended to permit pledging of long options to a commodity clearing organization.

[6] Fed Board Release, 61 FR 20385 (May 6, 1996).

[7] See, e.g., Securities Exchange Act Nos. 41658 (July 27, 1999), 64 FR 42736 (August 5, 1999)(SR–CBOE–97–67] and 42011 (October 14, 1999), 64 FR 57172 (October 22, 1999) (SR–NYSE–99–03].

[8] Fed Board Release, 63 FR 2806 (January 16, 1998).

[9] Exempted borrower is defined in Section 220.2 of Regulation T and in Section 221.2 of Regulation U.

[10] 17 CFR 200.30–3(a)(12).

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44182; File No. SR–PCX–2001–01]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Trust Issued Receipts

April 16, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 8, 2001, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amendment No. 1 to the proposed rule change was filed on April 18, 2001.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and to grant approval to the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt generic listing requirements for Trust Issued Receipts ("TIRs") that would permit its wholly-owned subsidiary PCX Equities, Inc. ("PCXE" or "the Corporation") to trade, either by listing or pursuant to unlisted trading privileges ("UTP"), specified series of TIRs pursuant to Rule 19b–4(d) under the Act. Below is the text of the proposed rule change. *Italics* indicate text to be added.

* * * * *

PCX Equities, Inc. Trust Issued Receipts

Rule 8.200(a). The Corporation will consider for trading, whether by listing or pursuant to unlisted trading privileges, Trust Issued Receipts that meet the criteria of this Rule.

(b) Definitions. A Trust Issued Receipt is a security (1) that is issued by a trust ("Trust") which holds specific securities deposited with the Trust; (2) that, when aggregated in some specified minimum number, may be surrendered to the Trust by the beneficial owner to receive the securities; and (3) that pay beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee ("Trustee") by an issuer of the deposited securities.

(c) Designation. The Corporation may trade, whether by listing or pursuant to unlisted trading privileges, Trust Issued Receipts based on one or more securities. The Trust Issued Receipts based on particular securities shall be designated as a separate series and shall be identified by a unique symbol. The securities that are included in a series of Trust Issued Receipts shall be selected by the Corporation or by such other person as shall have a proprietary interest in such Trust Issued Receipts.

(d) Initial and Continued Listing and/or Trading. Trust Issued Receipts will be traded on the Corporation subject to application of the following criteria:

(1) Commencement of Trading—For each Trust, the Corporation will establish a minimum number of Trust Issued Receipts required to be outstanding at the time of commencement of trading on the Corporation.

(2) Continued Trading—Following the initial twelve month period following formation of a Trust and commencement of trading on the Corporation, the Corporation will consider the suspension of trading in or removal from listing of or termination of unlisted trading privileges for a Trust upon which a series of Trust Issued Receipts is based under any of the following circumstances:

(A) if the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Issued Receipts for 30 or more consecutive trading days;

(B) if the Trust has fewer than 50,000 receipts issued and outstanding;

(C) if the market value of all receipts issued and outstanding is less than 1,000,000; or

(D) if any other event shall occur or condition exists which, in the opinion of the Corporation, makes further dealings on the Corporation inadvisable.

Upon termination of a Trust, the Corporation requires that Trust Issued Receipts issued in connection with such trust be removed from listing or have their unlisted trading privileges terminated. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of securities in the Trust falls below a specified amount.

(3) Term—The stated term of the Trust shall be as stated in the Trust prospectus; however, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

(4) Trustee—The trustee must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handing corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, as qualified trust company or banking institution must be appointed co-trustee.

(5) Voting—Voting rights shall be as set forth in the Trust prospectus.

(e) ETP Holders and ETP Firms. ETP Holders and ETP Firms shall provide to all purchasers of newly issued Trust Issued Receipts a prospectus for the series of Trust Issued Receipts.

(f) Applicability. This Rule is applicable only to Trust Issued Receipts. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the provisions of the Bylaws and all other rules and procedures of the Board of Directors shall be applicable to the trading on the Corporation of such securities. Trust Issued Receipts are included within the definition of "security" or "securities" as such terms are used in the Bylaws and Rules of the Corporation.

Commentary:

.01 The Corporation may approve trust issued receipts for trading, whether by listing or pursuant to unlisted trading privileges, pursuant to Rule 19b–4(e) under the Securities Exchange Act of 1934, provided that the following criteria are satisfied:

(a) each security underlying the trust issued receipt must be registered under Section 12 of the Exchange Act;

(b) each security underlying the trust issued receipt must have a minimum public float of at least $150 million;

(c) each security underlying the trust issued receipt must be listed on a national securities exchange or traded through the facilities of Nasdaq as a reported national market system security;

(d) each security underlying the trust issued receipt must have an average daily trading volume of at least 100,000 shares during the preceding, sixty-day trading period;

(e) each security underlying the trust issued receipt must have an average daily dollar value of shares traded during the preceding sixty-day trading period of at least $1 million; and

(f) the most heavily weighted security in the trust issued receipt cannot initially represent more than 20% of the overall value of the trust issued receipt.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to adopt generic listing requirements to accommodate the trading, whether by listing or UTP, of TIRs pursuant to Rule 19b–4(e) under the Act.[4] Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization ("SRO") will not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4,[5] if the Commission has approved, pursuant to Section 19(b) of the Act,[6] the SRO's trading rules, procedures and listing requirements for the product class that include the new derivative securities product, and the SRO has a surveillance program for the product class.[7] The Exchange believes that the Commission's approval of the proposed listing requirements for TIRs will allow PCXE to begin trading qualifying products without the need for notice and comment and Commission approval under section 19(b) of the Act.[8] The Exchange's ability to rely on Rule 19b–4(e) for these products potentially reduces the time frame for bringing these securities to the market and thus enhances investors' opportunities.

The Commission has previously approved requests of the American Stock Exchange ("Amex") and the Chicago Stock Exchange ("CHX") to provide generic standards to list and/or trade TIRs.[9] The Exchange believes that its proposed listing requirements for TIR are substantially similar to the listing requirements at the Amex and CHX. The information provided below is intended to provide a description of how TIRs are created traded and is similar to that discussed in the original Amex TIRs Approval Order.[10]

a. *General.* TIRs are negotiable receipts that are issued by a trust in which securities of issuers are deposited and held on behalf of the holders of the TIRs. They are designed to allow investors to hold interests in a variety of companies in a particular industry through a single, exchange-listed and traded instrument that represents beneficial ownership in the deposited securities. Holders may cancel their TIRs at any time to receive their *pro rata* share of the underlying securities.

Beneficial owners of the receipts have the same rights, privileges, and obligations as they would if they beneficially owned the underlying securities outside the TIRs program. Holders of the receipts have the right to instruct the trustee to vote their *pro rata* share of the underlying securities evidenced by the receipts. They will receive reports, proxy solicitations, and other information distributed by the issuers of the deposited securities to their security holders, and will receive their *pro rata* share of the dividends and other distributions declared and paid by the issuers to the trustee.

b. *Creation of the Trust.* TIRs will be issued by a trust created pursuant to a depositary trust agreement. After the initial offering, the trust may issue additional receipts on a continuous basis when an investor deposits the requisite securities in the trust. An investor will be permitted to withdraw the underlying securities upon delivery to the trustee of one or more round lots of 100 TIRs. Conversely, an investor may deposit the necessary securities and receive TIRs in return.

c. *The Trust Issued Receipts Portfolio.* The companies represented by securities in the portfolio underlying the TIRs must meet the following minimum criteria: (1) The companies' common stock must be registered under section 12 of the Act;[11] (2) the minimum public float of each company included in the portfolio must be at least $150 million; (3) each security must either be listed on a national securities exchange or traded through the facilities of Nasdaq as a reported national market system security; (4) the average daily trading volume for each security must be at least 100,000 shares during the preceding sixty-day trading period; (5) the average daily dollar value of the shares traded during the preceding sixty-day trading period must be at least $1 million; and (6) the most heavily weighted security in the TIR cannot initially represent more than 20% of the overall value of the TIR.

d. *Criteria for Initial and Continued Listing.* The Exchange intends to list or trade pursuant to UTP, specified series of TIRs that currently are listed on other exchanges and that are developed from time to time. Under the proposed rules, the Exchange may list or trade pursuant to Rule 19b–4(e),[12] a series of TIRs that meet the specified criteria and such series has the requisite level of TIRs outstanding at the time of commencement of trading on the PCXE.[13] The minimum number of receipts that must be outstanding at commencement of trading on PCXE will be included in any required submission under Rule 19b–4(e).

The Exchange believes that the proposed initial listing requirements will ensure that no security underlying a TIR will be readily susceptible to manipulation, while permitting sufficient flexibility in the construction of various TIRs to meet investors' needs. The Exchange also believes that these criteria will ensure sufficient liquidity for those investors seeking to purchase and deposit the underlying securities with the trustee to create a new TIR.

In connection with continued listing, the Exchange will consider the suspension of trading in, or removal from listing of, a series of TIRs when any of the following circumstances arise: (1) The trust has more than sixty days remaining until termination and there are fewer than 50 record and/or beneficial holders of TIRs for 30 or more consecutive trading days; (2) the trust has fewer than 50, 000 receipts issued and outstanding; (3) the market value of all receipts issued and outstanding is less than $1 million; (4) such other event occurs or conditions exists which, in the opinion of the Exchange, makes further dealings on PCXE inadvisable.

These flexible criteria will allow the Exchange to avoid delisting TIRs (and possibly terminating the trust) due to relatively brief fluctuations in market conditions that may cause the numbers of holders to vary. The Exchange will not, however, apply these delisting criteria for the initial 12-month period following the formation of a trust and commencement of trading on the PCXE. In addition, if the number of companies represented by the deposited securities drops to fewer than nine, and each time the number of companies is reduced thereafter, the Exchange will consult with the Commission to confirm the appropriateness of the continued listing of the TIRs.

e. *PCXE Rules Applicable to Trading of TIRs.* Dealings in TIRs on the PCXE will be conducted pursuant to the PCXE's equity trading rules. PCXE's general dealing and settlement rules will apply, including its rules on clearance and settlement of securities transactions and its equity margin rules. Other generally applicable PCXE equity rules and procedures will also apply, including, among others, rules governing the Intermarket Trading System, priority of orders, operational

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the PCX made certain technical changes relating to numbering of proposed rule text. *See* letter from Cindy L. Sink, Senior Attorney, Regulatory Policy, PCX, to Andrew Shipe, Attorney, Division of Market Regulation, SEC, dated April 16, 2001 ("Amendment No. 1").

[4] 17 CFR 240.19b–4(e).

[5] 17 CFR 240.19b–4(c)(1).

[6] 15 U.S.C. 78s(b).

[7] *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

[8] 15 U.S.C. 78s(b).

[9] *See* Securities Exchange Act Release No. 43496 (September 29, 2000), 65 FR 60230 (October 10, 2000).

[10] *See* Securities Exchange Act Release No. 41892 (September 21, 1999), 64 FR 52559 (September 29, 1999).

[11] 15 U.S.C. 78(1).

[12] 17 CFR 240.19b–4(e).

[13] The Exchange anticipates requiring a minimum of 150,000 outstanding receipts before trading can commence.

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and regulatory trading halts, and responsibilities of specialists.[14]

The Exchange's surveillance procedures for TIRs will be similar to the procedures for portfolio depository receipts and will incorporate and rely upon existing surveillance systems.

f. *Disclosure and Dissemination of Information.* The Exchange will distribute an information circular to its members in connection with the trading of TIRs. It will discuss the special characteristics and risks of trading this type of security, including the fact that TIRs are not individually redeemable. Specifically, the circular, among other issues, will discuss what TIRs are, how they are created, the requirement that member and member firms deliver a prospectus to investors purchasing TIRs prior to or concurrently with the confirmation of a TIRs transaction, applicable PCXE rules, dissemination information, trading information, and the applicability of suitability rules. In addition, the circular will inform members of specific PCXE policies, such as trading halts and market conditions particular to such securities.

2. Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[15] in general, and furthers the objectives of section 6(b)(5),[16] in particular, in that it is designed to promote just and equitable principles of trade, to enhance competition and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2001–01 and should be submitted by May 22, 2001.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act[17] and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposal to provide standards to permit listing and trading of trust issued receipts pursuant to Rule 19b–4(e)[18] furthers the intent of that rule by facilitating commencement of trading in these securities without the need for notice and comment and Commission approval. By establishing listing standards, the proposals should reduce PCX's regulatory burden, as well as benefit the public interest, by enabling PCX to bring qualifying products to the market more quickly. Accordingly, the Commission finds that PCX's proposal will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with section 6(b)(5) of the Act.[19]

As described above, the Commission has previously approved similar Amex and CHX rules that permit the listing and trading of individual trust issued receipts.[20] In approving these securities for trading, the Commission considered their structure, their usefulness to investors and the markets, and the Exchanges' rules and surveillance programs that govern their trading. The Commission concluded then that securities approved for listing under those rules would allow investors to: (1) Respond quickly to changes in the overall securities markets generally and for the industry represented by a particular trust; (2) trade, at a price disseminated on a continuous basis, a single security representing a portfolio of securities that the investor owns beneficially; (3) engage in hedging strategies similar to those used by institutional investors; (4) reduce transactions costs for trading a portfolio of securities; and (5) retain beneficial ownership of the securities underlying the trust issued receipts. The Commission notes that PCX's proposed standards are substantially similar to the Amex and CHX standards. The Commission therefore believes that trust issued receipts that satisfy PCX's proposed standards should produce the same benefits to PCX and to investors.

The Commission further believes that adopting listing standards for these securities and applying Rule 19b–4(e) should fulfill the intended objective of that rule by allowing those products that satisfy the listing standards to start trading without the need for notice and comment and Commission approval. PCX's ability to rely on Rule 19b–4(e) potentially reduces the time frame for bringing these securities to the market, or for permitting the trading of these securities pursuant to UTP, and thus enhances investors' opportunities. The Commission notes that it maintains regulatory oversight over any products listed under the generic standards through regular inspection oversight.

The Commission finds that PCX's proposal contains adequate rules and procedures to govern the listing and trading of trust issued receipts pursuant to Rule 19b–4(e) on the PCX, or pursuant to UTP. All trust issued receipt products listed under the standards will be subject to the full panoply of PCX rules and procedures that now govern both the trading of trust issued receipts and the trading of equity securities on the Amex and CHX, including, among others, rules and procedures governing trading halts, disclosures to members, responsibilities of the specialist, account opening and customer suitability requirements, the election of a stop or limit order, and margin.

The Commission further finds that: (1) By requiring that the underlying securities in a trust issued receipt be registered under Section 12 of the Act and listed on a national securities exchange or Nasdaq, and (2) by establishing minimum values for the number of outstanding receipts, average daily trading volume, average daily dollar volume, and public float, the Exchange's proposed listing criteria will help to ensure that a minimum level of liquidity will exist to allow for the maintenance of fair and orderly markets for those trust issued receipts listed and traded pursuant to Rule 19b–4(e). The Commission believes that these listing criteria will help to ensure that no security underlying a trust issued receipt will be readily susceptible to manipulation, while permitting sufficient flexibility in the construction of various trust issued receipts to meet investors' needs. The Commission further believes that these criteria should serve to ensure that the underlying securities of such trust issued receipts are well capitalized and actively traded, which will help to ensure that U.S. securities markets are not adversely affected by the listing and trading of new trust issued receipts under Rule 19b–4(e). Accordingly, the Commission finds that these criteria are consistent with section 6(b)(5) of the Act,[21] because they serve to prevent fraudulent or manipulative acts; promote just and equitable principles of trade; remove impediments to and perfect the mechanism of a free and open market and a national market system; and protect investors and the public interest.

Additionally, as the Commission noted in its previous review and approval of CHX and Amex Rules, the Exchange's delisting criteria allows it to consider the suspension of trading and the delisting of a trust issued receipt if an event occurs that makes further dealings in such securities inadvisable. This will give the Exchange flexibility to delist trust issued receipts if circumstances warrant.

The Commission notes that, in connection with its previous review and approval of CHX and Amex Rules, it approved similar applicable minimum price increments, surveillance procedures, and disclosure and prospectus delivery requirements for trust issued receipts.[22] In accord with these previous findings, the Commission believes that PCX's proposed rules will provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest. Further, the Commission believes that the proposal will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risk of trading trust issued receipts.

Finally, PCX will file Form 19b–4(e) with the Commission within five business days of commencement of trading a trust issued receipt under the listing standards and will comply with all Rule 19b–4(e) recordkeeping requirements.

The Commission finds good cause for approving the proposed rule change (SR–PCX–2001–01) prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the proposed rule change is similar to rules previously approved by the Commission for Amex and CHX, and that is concerns issues that previously have been the subject of a full comment period pursuant to section 19(b) of the Act.[23] The Commission does not believe that the proposed rule change raises novel regulatory issues that were not addressed in the previous filings. Moreover, the Commission believes that approving the listing and trading of TIRs on the PCX will increase industry competitiveness by providing an additional venue for the trading of such issues, to the benefit of the investor. Accordingly, the Commission finds that there is good cause, consistent with section 6(b)(5) of the Act,[24] to approve the proposal on an accelerated basis, and before expiration of the period for filing comments.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[25] that the proposed rule change (SR–PCX–2001–01) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–10746 Filed 4–30–01; 8:45 am]

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[14] PCXE's rules relating to odd lot executions will not apply because the trust issued receipts will be traded only in round lots or round lot multiples. In addition, the Exchange understands that the Commission has provided an exemption from the short sale rule, Rule 10a–1 under the Act (17 CFR 240.10a–1) for transactions in securities issued under the TIRs program. *See* S.E.C. Exemption Letter, 1999 WL 1038048 (S.E.C.). the Exchange will issue a notice to its members detailing the terms of the exemption.

[15] 15 U.S.C. 78f(b).

[16] 15. U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78f(b)(5).

[18] 17 CFR 240.19b–4(e).

[19] 15 U.S.C. 78f(b)(5). In approving these rules, the Commission has considered their impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] *See e.g.* Securities Exchange Act Release No. 42056 (October 22, 1999), 64 FR 58870 (November 1, 1999) (CHX); Securities Exchange Act Release No. 41892 (September 21, 1999), 64 FR 52559 (September 29, 1999) (Amex).

[21] 15 U.S.C. 78f(b)(5).

[22] *See note 22, supra.*

[23] 15 U.S.C. 78s(b).

[24] 15 U.S.C. 78f(b)(6).

[25] 15 U.S.C. 78s(6)(2).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44216; File No. SR–PCX–00–48]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Auto-Ex Between-the-Quotes

April 24, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 13, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amendment Nos. 1 and 2 to the proposed rule change were filed on January 3, and April 2, 2001, respectively.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve it on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to effect a change to its Automatic Execution System ("Auto-Ex") that will allow small-sized customer option orders that improve the PCX best bid or offer ("BBO") to be automatically executed by the Auto-Ex System. Below is the text of the proposed rule change. New text is in *italics.*

Pacific Exchange, Inc. Constitution and Rules

* * * * *

Rule 6 Options Trading Automatic Execution System

¶ 5231

Rule 6.87(a)–(1)—No change.

(m) Auto-Ex-Between-the Quotes. Lead Market Makers may, at their discretion, employ the Auto-Ex-Between-the-Quotes

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the PCX re-designated the filing as a submission pursuant to section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2), rather than section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A). In Amendment No. 2, the PCX added rule text to provide that the Auto-Ex-Between-the-Quotes feature would not permit execution of orders at prices that trade through other markets. *See* letters from Cindy L. Sink, Senior Attorney, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC, dated January 2, 2001 ("Amendment No. 1"), and March 29, 2001 ("Amendment No. 2").

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feature of POETS. This feature will permit the automatic execution of limit orders entered into POETS that are: (i) to buy or sell five option contracts or less; and(ii) have limit prices that are between, but not equal to, the best bid or offering price then being disseminated on the PCX. Lead Market Makers must provide the members of the trading crowd with at least five minutes notice before activating this feature. If the feature is on, Market Makers are exempt from the mandatory log-on requirements of Rule 6.87(e)(4). This feature does not allow the execution of orders at prices that trade-through other markets.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. THe PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

This proposal would allow for the automatic execution (by the Auto-Ex feature of POETS [4]) of small-sized customer limit orders that improve the PCX's disseminated best bid or offer. This feature will be employed at the discretion of the designated Lead Market Maker ("LMM") in the relevant option issue.

The new feature would operate in the following manner. Assume that the PCX best bid or offer ("BBO") is 5 bid, 5¼ asked. Next, assume that a customer limit order to purchase one option contract at 5⅛ is entered electronically on the PCX. If the new feature is *not* operating, the incoming order would be placed in the limit order book and displayed automatically, so that the new PCX BBO would be 5⅛ bid, 5¼ offered. However, if the new feature *is* operating, the incoming order would be executed by the Auto-Ex System before having an opportunity to be placed in the limit order book. Consequently, the customer's limit order would be immediately executed at its limit price and the PCX BBO would remain unchanged from 5 bid, 5¼ asked.

[4] Pacific Option Exchange Trading System.

The PCX guarantees that customers will receive an execution on Auto-Ex, at the PCX's disseminated price, for all customer orders for up to 20 contracts (and in certain option issues, up to 75 contracts).[5] In addition, all customer orders entered electronically on the PCX are immediately displayed if they improve the PCX BBO, regardless of the size of the order. If a customer limit order to purchase one option contract is entered on the PCX and disseminated over the Options Price Reporting Authority the price (*e.g.*, 5⅛ but not the size (one contract) will be disseminated to the public. Thus, for example, if the PCX (and national) best bid in a series is 5⅛ based solely upon a customer order to buy one contract, and a market order to sell 20 contracts is then entered on the PCX for automatic execution, the market order will be executed at 5⅛ (the PCX's disseminated price), with one contract trading against the customer limit order and 19 contracts trading against the members of the trading crowd who are logged on to Auto-Ex—even though they may be bidding 5 for that particular series.[6]

Currently, on the PCX, if a small customer limit order changes the PCX BBO, market-makers may manually execute that order to reduce their risk of having to trade additional contracts through Auto-Ex at the price of the customer limit order. This is a difficult process, however, in option issues and series that are so thinly-traded that the markets are not displayed on overhead screens on the trading floor, but are displayed on "buried" screens that have to be called up manually. The traders of such issues therefore may not be aware of an order to buy one contract at 5⅛, for example, that has just been entered. Before the traders realize it, another order, to sell 20 contracts at 5⅛, may have just been automatically executed on Auto-Ex, with 19 of those contracts being sold against those traders' accounts. However, if the new feature had been in operation, the order for one contract would have been immediately executed and the market-makers would not have been required to buy those 19 option contracts at 5⅛ when their quote was 5 bid.

The proposed rule change provides that Lead Market Makers may, at their discretion, employ the Auto-Ex-Between-the-Quotes feature of POETS. It further provides that this feature would permit the automatic execution of limit orders entered into POETS that: (i) Are to buy or sell five option contracts or less; and (ii) have limit prices that are between, but not equal to, the best bid or offering price then being disseminated on the PCX. It further states that Lead Market Makers would be required to provide the members of the trading crowd with at least five minutes notice before activating this feature. If the feature is on, market-makers would be exempt from the mandatory log-on-requirements of PCX Rule 6.87(e)(4).[7] The rule change would allow the LMM to set the number of contracts (from between one to five) that may be automatically executed if the new feature is in operation.

The Exchange believes that the proposal would facilitate transactions in securities by eliminating the need to execute certain very small customer limit orders manually (as in currently the case). The Exchange also believes that the proposal would remove opportunities for manipulative acts and practices involving small customer orders that are entered for the sole purpose of changing the PCX BBO and/or the national best bid and offer ("NBBO").

2. Statutory Basis

The Exchange believes that this proposal is consistent with section 6(b) of the Act,[8] in general, and furthers the objectives of section 6(b)(5),[9] in particular, in that it is designated to facilitate transactions in securities, to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

[5] The PCX provides such guarantees in all option series in order to remain competitive with the other options exchanges. See PCX Rules 6.86, 6.87.

[6] Likewise, if the PCX offered a guaranteed size of 75 contracts and the inbound order was an order to sell 75 contracts, then one contract would trade against the customer limit order and 74 contracts would trade against the members of the trading crowd.

[7] PCX Rule 6.87(e)(4) provides, in part, that a market maker who has been logged on to Auto-Ex in an option issue at any time during an expiration month must continue to be logged on to Auto-Ex in that issue whenever present in that trading crowd, until the close of business on the next Expiration Friday.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–00–48 and should be submitted by May 22, 2001.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission believes that the proposal is consistent with sections 6(b)(5) of the Act,[11] which requires, among other things, that the rules of an Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

The Commission notes that, under current PCX Rules 6.86 and 6.87, market-makers taking part in Auto-Ex are required to be firm for a minimum of twenty or more contracts at the bid or offer displayed as the disseminated market quote. By the operation of these rules, therefore, a limit order for a small number of contracts, priced better than the disseminated quote, would establish the best bid or offer on the Exchange, and thereby commit the Exchange's market-makers to electronically execute large numbers of contracts at prices better than those at which they are willing to trade.

The proposed rule change would alter this situation by permitting certain small limit orders (those for five or fewer contracts) to be automatically executed through operation of the PCX's Auto-Ex system. Under the proposal, LMMs would be permitted, at their discretion, and upon giving five minutes notice to the crowd, to activate this function. While the function is active, market-makers logged on to the Auto-Ex system would be excused from compliance with Exchange Rule 6.87(e)(4) and, therefore, permitted to log off the system. Small limit orders that improve the best bid or offer would then be executed, at their limit prices, against those market-makers who opt to remain logged on to Auto-Ex, or against the lead LMM. The intended effect would be to execute a small limit order rather than to display it, which potentially would allow a larger contra-side order to enter the POETS system, execute against it, and trigger the execution of multiple contracts by market-makers at prices they did not quote.

The Commission believes that the proposed feature should foster a fair and orderly market by preserving booked order priority, allowing for efficient Auto-Ex executions, and limiting the opportunity for "small order baiting."[12] The Commission notes that, according to PCX,[13] the proposed rule change would continue to permit limit orders in the Exchange's limit order book to trade against orders in the POETS/Auto-Ex system, thereby preserving the priority of booked orders.

The Commission finds good cause for approving the proposed rule change (SR–PCX–00–48) prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register.** The proposed rule change is designed to automatically execute small customer orders at prices better than the disseminated quote in certain circumstances. Accordingly, the Commission finds that there is good cause, consistent with section 6(b)(5) of the Act,[14] to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[15] that the proposed rule change, as amended, (SR–PCX–00–48) is hereby approved on an accelereated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–10747 Filed 4–30–01; 8:45 am]

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[10] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] "Small order baiting" occurs when a customer limit order for a minimal number of contracts is entered on one side of the market at a better price than the disseminated quote, thereby improving the quote. A large customer order on the other side of the market is then sent to the Auto-Ex to obtain the better price set by the small limit order.

[13] Telephone conversation between Cindy L. Sink, Senior Attorney, Regulatory Policy, PCX, and Andrew Shipe, Attorney, Division of Market Regulation, SEC, April 24, 2001.

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44218; File No. SR–SCCP–00–06]

Self-Regulatory Organization; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by Stock Clearing Corporation of Philadelphia Relating to Proposed Fees for Processing of Units of Beneficial Interest in the Nasdaq 100 Trust, Series 1

April 25, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 8, 2000, Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") and on December 15, 2000, amended, the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

SCCP proposes to institute a fee for the processing of Units of Beneficial Interest in the Nasdaq 100 Trust, Series 1 ("Nasdaq-100 Index Tracking Stock").

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified

[1] 15 U.S.C. 78s(b)(1).

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in Item IV below. SCCP has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to enable SCCP to charge fees that will apply to trading of Units of Beneficial Interest in the Nasdaq-100 Index Tracking Stock. On December 13, 2000, the Commission granted accelerated approval of a proposed rule change submitted by the Philadelphia Stock Exchange, Inc. ("Phlx") that, among other things, amended Phlx's rules to permit the trading, pursuant to unlisted trading privileges ("UTP"), of the Nasdaq-100 Index Tracking Stock.[3] In addition, Phlx has obtained a license to use the Nasdaq-100 Index in connection with the trading of the Nasdaq-100 Index Tracking Stock.

Specifically, SCCP will charge a fee of $0.30 per trade for all participants while specialists will pay a $0.50 fee per trade for the first 1,000 trades and $0.25 for all subsequent trades. No other SCCP transaction fees will apply to trades in the Nasdaq-100 Index Tracking Stock. Upon initiation of trading, SCCP participants will be notified by means of a circular of the new fees applicable to trading in the Nasdaq-100 Index Tracking Stock.

The proposed fees for transactions in the Nasdaq-100 Index Tracking Stock are lower than the fees charged for other equities already processed through SCCP. It is SCCP's belief that the proposed lower fees should encourage trading of this new product while ensuring that the amounts collected will still cover SCCP's costs of processing Nasdaq-100 Index Tracking Stock.

SCCP believes that the proposed rule change is consistent with Section 17A of the Act[4] because it equitably allocates reasonable fees among SCCP participants as the fees apply equally to all participants that trade Nasdaq-100 Index Tracking Stock.

B. Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[5] and Rule 19b–4(f)(2)[6] thereunder because the proposed rule change establishes a fee. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at Phlx's principal office. All submissions should refer to File No. SR–SCCP–00–06 and should be submitted by May 22, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–10749 Filed 4–30–01; 8:45 am]

BILLING CODE 8010–01–M

[2] The Commission has modified the text of the summaries prepared by SCCP.

[3] Securities Exchange Act Release No. 43717 (Dec. 13, 2000), 65 FR 80976 (Dec. 22, 2000) (File No. SR–Phlx–00–54).

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Committee Re–Establishment

Re–establishment of Advisory Committees

We publish this notice following the provisions of the Federal Advisory Committee Act (Pub. L. 92–463) to re-establish Small Business Administration (SBA) discretionary advisory committees. The General Services Administration's Committee Management Secretariat has determined that re-establishment is in the public interest.

1. National Advisory Council

The Council will provide advice, ideas and opinions on SBA programs and small business issues. The Council's scope of activities includes reviewing SBA programs and informing SBA of current small business issues. Its members provide an essential connection between SBA, SBA program participants, and the small business community nationwide.

2. District Advisory Councils

The District Advisory Councils provide advice and recommendations to the SBA regarding the effectiveness of and need for SBA programs, particularly within the local districts. Official designations include:

1. Alabama District Advisory Council (formerly Birmingham District Advisory Council).
2. Buffalo District Advisory Council.
3. Columbus District Advisory Council.
4. Connecticut District Advisory Council (formerly Hartford District Advisory Council).
5. Georgia District Advisory Council (formerly Atlanta District Advisory Council).
6. Hawaii District Advisory Council (formerly Honolulu District Advisory Council).
7. Houston District Advisory Council.
8. Indiana District Advisory Council (formerly Indianapolis District Advisory Council).
9. Louisiana District Advisory Council (formerly New Orleans District Advisory Council).
10. Maine District Advisory Council (formerly Augusta District Advisory Council).
11. Minnesota District Advisory Council (formerly Minneapolis District Advisory Council).
12. Montana District Advisory Council (formerly Helena District Advisory Council).
13. North Florida District Advisory Council.

14. Oregon District Advisory Council (formerly Portland District Advisory Council).
15. Pittsburgh District Advisory Council.
16. Rhode Island District Advisory Council (formerly Providence District Advisory Council).
17. Richmond District Advisory Council.
18. Santa Ana District Advisory Council.
19. Utah District Advisory Council (formerly Salt Lake City District Advisory Council).
20. Vermont District Advisory Council (formerly Montpelier District Advisory Council).
21. Washington, DC District Advisory Council.
22. West Virginia District Advisory Council (formerly Clarksburg District Advisory Council).
23. Wisconsin District Advisory Council (formerly Madison District Advisory Council).

FOR FURTHER INFORMATION CONTACT: For additional information, contact Nancyellen Gentile, Committee Management Officer, 409 Third Street, NW., Washington, DC 20416; telephone (202) 205–2469.

Nancyellen Gentile,

Committee Management Officer.

[FR Doc. 01–10805 Filed 4–30–01; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer at the following addresses:

(OMB)

Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, DC. 20503

(SSA)

Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–4145, or by writing to him at the address listed above.

1. Disability Hearing Officer's Report of Disability Hearing (DC)—0960–0507. The information collected on form SSA–1204–BK is used by the Disability Hearing Officer (DHO) to conduct and document disability hearings, and to provide a structured format that concerns all conceivable issues relating to SSI claims for disabled children. The completed form SSA–1204–BK will aid the DHO in preparing the disability decision and will provide a record of what transpired at the hearing. The respondents are DHO's in the State Disability Determination Services.

Number of Respondents: 100,000.
Frequency of Response: 1.
Average Burden Per Response: 60 minutes.
Estimated Annual Burden: 100,000 hours.

2. Report of Student Beneficiary About to Attain Age 19—0960–0274. The information collected on form SSA–1390 is used by SSA to determine a student's eligibility for Child's Social Security benefits for those turning age 19. The respondents are student Title II beneficiaries about to attain age 19.

Number of Respondents: 50,000.
Frequency of Response: 1.
Average Burden Per Response: 5 minutes.
Estimated Annual Burden: 4,167 hours.

3. Disability Hearing Officer's Report of Disability Hearing—0960–0440. The information on Form SSA–1205–BK is used by the Disability Hearing Officers (DHOs) at the Social Security Administration (SSA) as a guide to conducting and recording disability hearings. It ensures that all of the pertinent issues are considered. The respondents are DHOs in the State Disability Determination Services and Federal DHOs.

Number of Respondents: 100,000.
Frequency of Response:
Average Burden Per Response: 60 minutes.
Estimated Annual Burden: 100,000 hours.

4. Application For Benefits Under The Italy-U.S. International Social Security Agreement—0960–0445. The information collected on Form SSA–2528 is required by SSA in order to determine entitlement to benefits. The respondents are applicants for old-age, survivors or disability benefits that reside in Italy.

Number of Respondents: 200.
Frequency of Response: 1.
Average Burden Per Response: 20 minutes.
Estimated Annual Burden: 67 hours.

5. Request for Claimant Conference—0960–0608. The information collected on form SSA–378 is used by the Disability Adjudicator to complete processing of a claimant's disability claim. Depending on the response, the Disability Adjudicator schedules/conducts the Claimant Conference, awaits the receipt of additional evidence, requests additional evidence from the source, or finalizes the determination on the case. The respondents are applicants for Social Security disability and Supplemental Security Income benefits whose initial determination of disability will be less than fully favorable.

Number of Respondents: 210,500.
Frequency of Response: 1.
Average Burden Per Response: 3 minutes.
Estimated Annual Burden: 10,525 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed above.

1. Waiver of Your Right to Personal Appearance Before an Administrative Law Judge, HA–4608—0960–0284. Each claimant has a statutory right to appear in person (or through a representative) and present evidence about his/her claim at a hearing before an Administrative Law Judge (ALJ). If a claimant wishes to waive his/her statutory right to appear before an ALJ, he/she must complete a written request. The claimant may use form HA–4608

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for this request. The information collected is used to document an individual's claim to show that an oral hearing is not preferred in the appellate process. The respondents are applicants for Social Security and Supplemental Security Income benefits who request a hearing.

Number of Respondents: 12,000.
Frequency of Response: 1.
Average Burden Per Response: 2 minutes.
Estimated Annual Burden: 400 hours.

2. Request for SSI Benefit Estimate—0960–0492. SSA uses Form SSA–3716 for Supplemental Security Income (SSI) beneficiaries who wish to request a 5-month estimate of what their benefits would be if they should return to work in the future. The respondents are SSI Recipients or Applicants for SSI Benefits.

Number of Respondents: 50,000.
Frequency of Response: 1.
Average Burden Per Response: 5 minutes.
Estimated Annual Burden: 4,167 hours.

3. Supplemental Statement Regarding Farming Activities Of Person Living Outside The U.S.A.—0960–0103. Form SSA–7163A–F4 is used by SSA to collect needed information whenever a Social Security beneficiary or claimant reports work on a farm outside the U.S. The information is used to make a determination for work deduction purposes. The respondents are Social Security beneficiaries or claimants who are engaged in farming activities outside the U.S.

Number of Respondents: 1,000.
Frequency of Response: 1.
Average Burden Per Response: 60 minutes.
Estimated Annual Burden: 1,000 hours.

Dated: April 24, 2001.

Frederick W. Brickenkamp,

Reports Clearance Officer.

[FR Doc. 01–10632 Filed 4–30–01; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 3648]

Designation of Countries of Particular Concern Under the International Religious Freedom Act

Pursuant to section 408(a) of the International Religious Freedom Act of 1998, notice is hereby given that the Secretary of State, under authority delegated by the President, has re-designated the following countries as "countries of particular concern" under section 402(b) of the Act for having engaged in or tolerated particularly severe violations of religious freedom: Burma, China, Iran, Iraq, Sudan.

Dated: April 16, 2001.

Thomas F. Farr,

Office Director for International Religious Freedom, Bureau of Democracy, Human Rights and Labor U.S. Department of State.

[FR Doc. 01–10833 Filed 4–30–01; 8:45 am]

BILLING CODE 4710–18–P

DEPARTMENT OF STATE

[Public Notice 3652]

Privacy Act of 1974: Creation of a New System of Records

Notice is hereby given that the Department of State proposes to create a new system of records, STATE–55, pursuant to the provisions of the Privacy Act of 1974, as amended [5 U.S.C. 522a (r)], and the Office of Management and Budget Circular No. A–130, Appendix I. STATE–55 was created to accommodate the transfer of records from the former Arms Control and Disarmament Agency (ACDA) as a result of the consolidation of ACDA with the Department as mandated by the Foreign Affairs Agencies Consolidation Act of 1998 (Pub. L. 105–277). The Department's report was filed with the Office of Management and Budget on April 23, 2001.

This system of records is being implemented by the Department of State to facilitate its responsibility for providing individuals with copies of its publication "*World Military Expenditures and Arms Transfers.*"

Any persons interested in commenting on the new system of records may do so by submitting comments in writing to Margaret Peppe, Chief; Programs and Policies Division; Office of IRM Programs and Services; A/RPS/IPS/PP; U.S. Department of State, SA–2; Washington, DC 20522–6001. This system of records will be effective 40 days from the date of publication, unless we receive comments that will result in a contrary determination.

The new system description, "World Military Expenditures and Arms Transfers Mailing List, STATE–55" will read as set forth below.

State–55

SYSTEM NAME:

World Military Expenditures and Arms Transfers Mailing List.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Department of State; 2201 C Street, NW; Washington, DC 20520.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Requesters of the publication "World Military Expenditures and Arms Transfers" (WMEAT).

CATEGORIES OF RECORDS IN THE SYSTEM:

Names and addresses of requestors of the publication "World Military Expenditures and Arms Transfers."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 2581 (Arms Control and Disarmament); 22 U.S.C. 2651a (Organization of the Department of State); 22 U.S.C. 3921 (Management of service); 5 U.S.C. 301 (Management of the Department of State); and Pub. L. 105–277 (Foreign Affairs Agencies Consolidation Act of 1998).

PURPOSE(S):

The information in this system of records is collected and maintained by the Bureau of Verification and Compliance to facilitate its responsibility for providing individuals with copies of WMEAT as requested.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The information in this system is used to disseminate current editions of the publication WMEAT to individuals who have submitted a request for current and subsequent editions.

Also see the "Routine Uses" paragraph of the Prefatory Statement published in the **Federal Register**.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media.

RETRIEVABILITY:

Individual name.

SAFEGUARDS:

All employees of the Department of State have undergone a thorough background security investigation. Access to the Department and its annexes is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and ad hoc monitoring of computer usage.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with published records schedules of the Department of State and as approved by the NationalArchives and Records Administration. More specific information may be obtained by writing to the Director; Office of IRM Programs and Services; SA–2; Department of State; 515 22nd Street, NW; Washington, DC 20522–6001.

SYSTEM MANAGER AND ADDRESS:

Project Officer for WMEAT; Bureau of Verification and Compliance; Department of State; 2201 C Street, NW; Washington, DC 20520.

NOTIFICATION PROCEDURE:

Individuals wanting to request information about themselves and having reason to believe that the Bureau of Verification and Compliance might have records pertaining to them should write to the Director; Office of IRMPrograms and Services; SA–2; Department of State; 515 22ndStreet, NW; Washington, DC 20522–6001. The individual must specify that he/she wishes the "World Military Expenditures and Arms Transfers" Mailing List to be checked. At a minimum, the individual should include: name; date and place of birth; current mailing address and zip code; signature and preferably his/her social security number.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Director, Office of IRM Programs and Services (address above).

RECORD SOURCE CATEGORIES:

These records contain information obtained primarily from the individual who is the subject of these records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Dated: April 23, 2001.

Patrick F. Kennedy,

Assistant Secretary for the Bureau of Administration, Department of State.

[FR Doc. 01–10831 Filed 4–30–01; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2001–8737]

Potential Approaches To Setting Ballast Water Treatment Standards

AGENCY: Coast Guard, DOT.

ACTION: Notice and request for public comments.

SUMMARY: To reduce the potential of introducing nonindigenous species (NIS) to the waters of the United States, the Coast Guard seeks comments on four approaches to setting standards for Ballast Water Treatment and on several specific questions related to setting, implementing, and enforcing such standards. NIS can alter the fundamental characteristics and processes of ecosystems in which they become established, with subsequent adverse impacts to biodiversity, the economy, and human health. Therefore, the Coast Guard is currently gathering information on four potential approaches to setting ballast water treatment (BWT) standards. The Coast Guard, and other relevant Federal agencies, will use information obtained from this notice to develop a comprehensive program of standards and regulations to protect U.S. waters from introductions of NIS due to ballast water discharges and other ship-related mechanisms.

DATES: Comments and related material must reach the Docket Management Facility on or before July 2, 2001.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, (USCG–2001–8737) U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, call Dr. Richard Everett, Project Manager, Office of Operating and Environmental Standards (G–MSO), Coast Guard, telephone 202–267–0214. For questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION: The Coast Guard is in the process of developing standards for the treatment of water discharged from ships' ballast tanks. One venue for this activity has been the Ballast Water and Shipping Committee (BWSC) of the Federal Aquatic Nuisance Species Task Force. The members of the BWSC represent Federal, state, industry, academic and non-governmental interests. It was originally hoped that the BWSC would be able to develop a draft standard, but during the committee's deliberations it became clear that this would not be possible without additional information. To further the process of reaching a standard, the BWSC identified four approaches to setting BWT standards and several issues related to such standards that require further discussion. As the federal agency with authority to approve ballast water treatment technology and practices, and as a member of the BWSC, the Coast Guard seeks comments on four potential approaches (outlined in this notice) to setting standards for Ballast Water Treatment and on several specific questions related to setting, implementing, and enforcing such standards.

How May I Comment on the Optional Approaches to Setting BWT Standards?

You may submit comments and related material on the options and questions to the Docket Management Facility as indicated previously in the **ADDRESSES** section of this notice. If you submit written comments please include—

- Your name and address;
- The docket number for this notice (USCG–2001–8737);
- The specific section of this notice to which each comment applies; and
- The reason for each comment.

We invite you to provide your views on the various options and questions presented, possible approaches not

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identified in this publication, the potential impacts of the various options (including possible unintended or unanticipated consequences), and any supporting or relevant data or information that you would like the Coast Guard to consider during the development of standards and an associated regulatory program. Please explain your views as clearly as possible; describe any assumptions used; and provide copies of data or technical information used to support your views.

You may mail, hand deliver, fax, or electronically submit your comments and attachments to the Docket Management Facility, using the address or fax number listed in the **ADDRESSES** section of this notice. Please do not submit the same comment or attachment more than once. Do not submit any information electronically that you consider confidential business information (CBI). You may claim information that you submit to the Coast Guard in response to this notice as CBI by marking "CBI" on any or all of that information. If you mail or hand deliver your comments, they must be on 8½ by 11 inch paper, and the quality of the copy should be clear enough for copying and scanning. If you mail your comments and would like to know if the Docket Management Facility received them, please enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments and material received during the comment period.

Why Is the Coast Guard Soliciting Comments on the Optional Approaches to Setting BWT Standards?

The problem of how to reduce the threat of introducing foreign organisms to U.S. waters via ballast water discharged from ships is complex. A number of factors contribute to the complexity of this issue, including: the relative volumes and pumping rates involved in ballasting operations; the great variability in voyage durations and routes; and the great variability in the physical, chemical, and biological characteristics of the ballast water carried by the vessels that operate in U.S. waters.

Under Section 1101 of the Nonindigenous Aquatic Nuisance Prevention and Control Act, as amended by the National Invasive Species Act of 1996 (NISA), Congress directed the Coast Guard to issue regulations and guidelines on ballast water management practices to prevent the introduction of NIS to U.S. waters via the discharge of foreign water from ships' ballast tanks. Under these regulations, mid-ocean ballast water exchange (BWE) or environmentally sound alternative BWT methods, determined by the U.S. Coast Guard to be as effective as BWE in preventing and controlling infestations of aquatic nuisance species, are required for the Great Lakes and Hudson River north of the George Washington Bridge, and recommended for the remainder of U.S. waters.

Therefore, a need exists to develop standards for BWT technology and a regulatory process by which proposed alternative BWT technologies can be evaluated and approved. NISA explicitly directs that such alternative technologies must be "as effective as BWE." Currently, the actual "effectiveness" of BWE in reducing the threat of introductions is not well resolved. Furthermore, concerns have been voiced that mid-ocean BWE as a practice will be inherently difficult to quantify, can not be safely performed on all transoceanic voyages, and is not possible during coastal voyages. Because current understanding of BWE is limited and a range of opinions exists concerning the basis for BWT standards, further discussion is necessary.

We will use the information and perspectives provided in response to this notice to further define the technical and policy issues that will be incorporated in the eventual standards and regulations.

The options and questions in this notice were drafted by the BWSC of the Aquatic Nuisance Species Task Force. The "Summary and Recommendations * * *" developed by the BWSC are available in the docket and may be accessed on the Internet at *http://dms.dot.gov.*

Proposed Options for Ballast Water Treatment Standards

Following discussions within the BWSC, the following options (in no order of preference) were identified:

Approaches based on BWE as currently specified by Congress under NISA:

(a) Standard based on the theoretical effectiveness of BWE in replacing water [100 percent for empty-refill exchange (ERE) and 95 percent for flow-through exchange (FTE)].

(b) Standard set as equivalent to the measured effectiveness of BWE. This effectiveness could be expressed as an average across all vessel types and all taxa, as a specific profile across taxonomic groups within vessel types, or as some intermediate combination of these.

Approaches not related to BWE but used in other standard-setting efforts:

(c) Standard based on the measured capabilities of the best available technology. As in (b), this level of treatment could be determined as an overall average, or within discrete groupings of vessels and taxa.

(d) Standard based on the biological requirements, as empirically estimated or modeled, of receiving systems.

Quantification of the Standard

Basing a BWT standard on the theoretical effectiveness of BWE in replacing the water in ballast tanks allows an immediate determination of the quantitative level of treatment: 95 percent reduction in abundance, as theoretically possible using the flow-through process to exchange three full-tank volumes, and assuming that organisms are uniformly distributed and behave in the same fashion as water molecules. The other options would require varying amounts of additional effort to determine the quantitative degree of treatment.

For standards based on the measured effectiveness of BWE, the use of a coarse average could conceivably be accomplished using existing data and the results of a limited number of studies now in progress. The more finely resolved approach based on effectiveness profiles across taxonomic groups for major types of vessels would require an as yet undeveloped data set on BWE effectiveness across major ship classes and biotic groups. This approach would require a focused research effort to identify the data gaps and conduct the necessary experiments. This work would generate an operative percent removal profile for BWE in each ship class and characterize effectiveness in terms of major taxonomic groupings and life stages (i.e., viruses, bacteria, unicellular heterotrophicand autotrophic organisms, and macrozooplankton). A hypothetical example of such a profile could be as follows: For oil tankers, exchange (as defined operationally by regulations) achieves a minimum removal of 85 percent of original zooplankton, 75 percent of original phytoplankton, 25 percent of toxic dinoflagellate cysts, and 25 percent of original bacteria. Standards based on the capabilities of the best available technology will also require a significant amount of additional work, as most existing systems are still in preliminary phases of development. Significantly, for standards based on either BWE or best available technology, important decisions will need to be made concerning the specifics of standardized testing protocols.

Questions Related To Setting and Implementing Standards for BWT

The range of potential options indicates a significant need for further discussion about the basis upon which to formulate a standard or set of standards for use in evaluating BWT technologies intended to reduce the introduction of organisms in ballast water discharges. Further, a regulatory program will be required to enforce the eventual BWT standard. Selection of a specific option for a standard will influence or even determine many aspects of the program. Important components of the regulatory program will include (but are not restricted to): The criteria to determine the performance of BWT technology, the timing and details of phase-in periods and grandfathering provisions, the nature of exemptions, and provisions for the review and revision of the standard.

In addition to general views on the approach used to set standards for BWT, the Coast Guard is also interested in viewpoints on the following specific questions:

a. Questions related to setting the standard are as follows:

1. Should a standard be based on BWE, best available technology, or the biological capacity of the receiving ecosystem? What are the arguments for, or against, each option?

2. If BWE is the basis for a standard, what criterion should be used to quantify effectiveness: the theoretical effectiveness of exchange, the water volume exchanged (as estimated with physical/chemical markers), the effectiveness in removing or killing all or specific groups of organisms, or something else; and why?

3. How specifically should the effectiveness of either BWE or best available technology be determined (i.e., for each vessel, vessel class, or across all vessels) before setting a standard based on the capabilities of these processes?

4. What are the advantages and disadvantages of considering the probability of conducting a safe and effective BWE on every voyage when estimating the overall effectiveness of BWE?

5. What are the advantages and disadvantages of expressing a BWT standard in terms of absolute concentrations of organisms versus the percent of inactivation or removal of organisms?

b. Issues related to implementing the standard are as follows:

1. Should there be different initial standards or regulatory requirements for existing and yet-to-be-built vessels, and what might be the nature of such differences? Should there be incremental refinements (quantitative level or taxonomic breadth) in the standard over time, and if so, what should be the period of approvals and the timing of revisions?

2. If best available technology is the basis for standards, how should "best" and "available" be defined?

3. Should indicators be used to characterize or monitor effectiveness, and if so, what indicators should be used? Some possible indicators are:

—A single organism type (like dinoflagellate cysts) that serves as a lone indicator of effectiveness.

—A limited set of indicators representative of near-coastal zooplankton, phytoplankton, and bacteria that provide a profile of effectiveness across broad taxonomic groupings.

—Physical surrogates for organisms, such as microspheres, that mimic the passive entrainment of organisms in water.

—The percent of reduction in all organisms regardless of type (as measured through ATP [Adenosine Triphosphate] reduction, for example), providing a blanket estimate of system effectiveness.

—Other methods for characterizing the effectiveness of BWT measures that could be alternatives to the above list.

Dated: January 19, 2001.

R.C. North,

Rear Admiral, U. S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 01–10837 Filed 4–30–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2001–9526]

Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Hazardous Substances Response Standards Subcommittee of the Chemical Transportation Advisory Committee (CTAC) will meet to review the draft document for national marine emergency chemical response guidance. This document addresses safety protocols for personnel, training requirements, and equipment specifics. It also categorizes response teams based on their ability to bring equipment to the scene of a hazardous substance incident. As a result of this meeting, and subsequent meetings as deemed necessary by the Chairman, this Subcommittee will develop recommendations for a national standard that will provide direction to the chemical response industry. This meeting will be open to the public.

DATES: The Subcommittee will meet on Thursday, May 17, 2001, from 8:30 a.m. to 5 p.m. and on Friday, May 18, 2001, from 8:30 a.m. to 12 p.m. This meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before May 15, 2001. Requests to have a copy of your material distributed to each member of the Subcommittee should reach the Coast Guard on or before May 15, 2001.

ADDRESSES: The Subcommittee will meet at the Marathon Ashland Headquarters, 5500 San Felipe St., Houston, Texas. Send written material and requests to make oral presentations to Lieutenant Susan Klein, Coast Guard Technical Representative for the Subcommittee, Commandant (G–MOR–2), U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Lieutenant Susan Klein, Coast Guard Technical Representative for the Subcommittee, telephone 202–267–0417, fax 202–267–4065.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda of the CTAC Subcommittee on Hazardous Substance Response Standards includes the following:

(1) Introduction of Subcommittee members and attendees.

(2) Brief overview of Subcommittee tasking and desired outcome.

(3) Review of current status of draft document.

(4) Open discussion of further document improvements.

(5) Discussion of final product format and plan for future work.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. All attendees at the meeting are encouraged to fully review the Subcommittee's task statement prior to the meeting. Copies of the Subcommittee's task statement can be obtained from Lieutenant Susan Klein, telephone 202–267–0417, fax 202–267–4065. It is also available from the CTAC Internet Website at: *www.uscg.mil/hq/g-m/advisory/ctac.* At

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the discretion of the Subcommittee Chair, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Coast Guard Technical Representative to the Subcommittee and submit written material on or before May 15, 2001. If you would like a copy of your material distributed to each member of the Subcommittee in advance of a meeting, please submit 25 copies to the Coast Guard Technical Representative to the Subcommittee no later than May 15, 2001.

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact the Coast Guard Technical Representative to the Subcommittee as soon as possible.

Dated: April 25, 2001.

Howard L. Hime,

Acting Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 01–10836 Filed 4–30–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice Before Waiver With Respect to Land at Manassas Regional Airport, Manassas, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The FAA is publishing notice of proposed release of 12.27 acres of excess land at the Manassas Regional Airport; Manassas, Virginia. There are no impacts to the Airport and the land is not needed for airport development as shown on the Airport Layout Plan. The excess surplus property is located beyond the Runway Protection Zone for Runway 16L and appropriate restrictions will encumber the released property to ensure compatible land use.

DATES: Comments must be received on or before May 31, 2001.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Terry J. Page, Manager, FAA Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA 20166.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Juan E. Rivera, Airport Director, Manassas Regional Airport, at the following address; Mr. Juan E. Rivera, Airport Director, P.O. Box 560, Manassas Regional Airport, Manassas, Virginia 20108.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Page, Manager, Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA 20166; telephone (703) 661–1354, fax (703) 661–1370, email Terry.Page@faa.gov.

SUPPLEMENTARY INFORMATION: On April 5, 2000, new authorizing legislation became effective. That bill, the Wendell H. Ford Aviation investment and Reform Act for the 21st Century, Public Law 10–181 (Apr. 5, 2000; 114 Stat. 61) (AIR 21) requires that a 30-day public notice must be provided before the Secretary may waive any condition imposed on an interest in surplus property.

Issued in Chantilly, Virginia on April 23, 2001.

Terry J. Page,

Manager, Washington Airports District Office, Eastern Region.

[FR Doc. 01–10843 Filed 4–30–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review, Orlando International Airport, Orlando, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Greater Orlando Aviation Authority for Orlando International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Orlando International Airport under part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before October 22, 2001.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is April 23, 2001. The public comment period ends June 22, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. John W. Reynolds, Jr., Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando, Florida 32822, (407) 812–6331, Extension 16. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Orlando International Airport are in compliance with applicable requirements of part 150, effective April 23, 2001. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before October 22, 2001. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Greater Orlando Aviation Authority submitted to the FAA on April 3, 2001 noise exposure maps, descriptions and other documentation which were produced during the Orlando International Airport FAR part 150 Study, Noise Exposure Maps and Compatibility Plan conducted between July 7, 1997 and March 30, 2001. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures,

to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Greater Orlando Aviation Authority. The specific maps under consideration are "1999 DNL NOISE CONTOURS" and "2004 DNL NOISE CONTOURS" in the submission. The FAA has determined that these maps for Orlando International Airport are in compliance with applicable requirements. This determination is effective on April 23, 2001. FAA's determination on the airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Orlando International Airport, also effective on April 23, 2001. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before October 22, 2001.

The FAA's detailed evaluation will be concluded under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations: Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando, Florida 32822.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida, April 23, 2001.

John W. Reynolds, Jr.,

Assistant Manager, Orlando Airports District Office.

[FR Doc. 01–10842 Filed 4–30–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA 2001–9473]

Notice of Safety Advisory

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of Safety Advisory.

SUMMARY: FRA is issuing Safety Advisory 2001–03 addressing the in-service failures of railroad airbrake system trainline angle cocks manufactured by Ellcon-National. The manufacturer notified the Association of American Railroads (AAR) of failures of Model 7000 Thread-to-Thread and Model 7270 Thread-to-Flange Angle Cocks. To date, no derailments, collisions, or injuries have resulted from these failures; however, closed angle cocks occurring en route may lead to insufficient braking and in the worst case could result in runaway trains on grades. FRA recommends that all railroads and private car owners obtain a copy of AAR's Early Warning EW–177 (C–9296) issued on March 29, 2001, and review the document's extensive listing of cars that had the subject angle cocks installed as original equipment. FRA also recommends that cars found with the original angle cocks still installed have the angle cocks replaced, at both ends, or be retrofitted with a handle assembly torque kit in accordance with AAR's guidance. AAR has applied Severity Code "MG," which means "See Early Warning Letter for Instructions."

FOR FURTHER INFORMATION CONTACT: Gary Fairbanks, Mechanical Engineer, Motive Power and Equipment Division, Office of Safety Assurance and Compliance, FRA, 400 Seventh Street, SW, RRS–14, Mail Stop 25, Washington, DC 20590 (Telephone 202–493–6322/ Fax 202–493–6230)

SUPPLEMENTARY INFORMATION: Recently, FRA was informed by the Association of American Railroads (AAR) of several in-service failures of certain Ellcon-National angle cocks, *Model 7000 Thread-to-Thread*, and *Model 7270 Thread-to-Flange*. No injuries or fatalities resulted from these incidents which involved several car types, but some of the subject angle cocks have been found to have rotated partially or completely closed due to en route vibrations of the train. This undesired rotation of the angle cock has been identified by crew members in several instances on trains while operating en route and in one case, necessitated the need to activate an emergency brake application from the two-way end-of-train (EOT) device.

The AAR issued Maintenance Advisory MA–65 on September 13, 2000, regarding these angle cocks, and then upgraded its concern by issuing Early Warning EW–177 on March 29, 2001. The AAR's Braking Systems and Equipment Engineering Committees have determined that the angle cocks without the latest friction disc, which is a ¼-inch thick stop plate and handle assembly, must either be replaced or have the handle assembly retrofitted on non-register version. A number of conditions have been found on samples of the subject angle cocks that cause concern, such as roll pins protruding from the handles, worn leger lock tangs, bent lock tangs, and bent or distorted handle assemblies.

The subject angle cocks were applied to new cars and furnished as replacement stock beginning in January of 1993. The AAR recommended that

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the first priority would be to replace or retrofit those angle cocks manufactured between 1993 and 1996, as those are without friction discs and modified handle assemblies. Ellcon-National has accounted for approximately 16,700 angle cocks applied during this period as original equipment on new freight cars. However, Ellcon-National notified the AAR that between January 1993 and March 2000 approximately 97,000 angle cocks that have a potential for failure were applied to cars.

Ellcon-National is offering handle assembly torque kits upon request, as well as field service support. For more information, contact Mr. Brian Driggers or Inside Sales Department personnel at Ellcon-National at 864–277–5000 or E-mail: *sales@ellcon-national.com*. The AAR requests that each removed part be tagged with the car's initials and number, and that Ellcon-National be contacted to arrange for disposition or return of accumulated angle cocks or handle assemblies.

Action Recommended by FRA

• FRA recommends that all railroads and private car owners obtain a copy of AAR's Early Warning EW–177 (C–9296) issued on March 29, 2001, and review the document's extensive listing of cars that had the subject angle cocks installed as original equipment.

• FRA also recommends that cars found with the original angle cocks still installed have the angle cocks replaced, at both ends, or be retrofitted with a handle assembly torque kit in accordance with AAR's guidance. AAR has applied Severity Code "MG," which means "See Early Warning Letter for Instructions."

It should be noted that the AAR in conjunction with railroads, private car owners, and Ellcon-National has also developed an action plan to focus on and accelerate the angle cock modifications on the cars equipped with the above noted angle cocks. For more information, FRA recommends that railroads and private car owners contact Mr. Patrick T. Ameen, Assistant Vice President Technical Services, Association of American Railroads, 50 F street, NW., Washington, DC 20001–1564, (202) 639–2141.

FRA may modify Safety Advisory 2001–03, issue additional safety advisories, or take other appropriate action to ensure the highest level of safety on the Nation's railroads.

Issued in Washington, DC on April 26, 2001.

George A. Gavalla,

Associate Administrator for Safety.

[FR Doc. 01–10978 Filed 4–30–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Voluntary Intermodal Sealift Agreement (VISA)/Joint Planning Advisory Group (JPAG)

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Synopsis of April 19, 2001 meeting with VISA participants.

On April 19, 2001, the Maritime Administration (MARAD) and the United States Transportation Command (USTRANSCOM) co-hosted a meeting of the VISA JPAG at MARAD headquarters, Washington, DC.

Meeting attendance was by invitation only, due to the nature of the information discussed and the need for a government-issued security clearance. Of the 55 U.S.-flag carrier corporate participants currently enrolled in VISA, 23 VISA carrier representative companies participated in the JPAG. In addition, JPAG attendance included representatives from the Department of Defense (DOD), the Military Traffic Management Command, Military Sealift Command, USTRANSCOM and MARAD.

Following opening remarks by Acting Deputy Maritime Administrator Bruce J. Carlton and Mr. Daniel F. McMillin, Deputy Director, Plans and Policy Directorate (TCJ5) USTRANSCOM, Government representatives provided participants with an overview of expected outcomes. The JPAG objectives included: (1) Familiarization of VISA participants with the specific procedures to be used during a VISA activation; (2) validation of DOD planning assumptions for VISA carrier liner routes; (3) an examination of VISA carriers ability to fulfill potential contingency requirements as well as identification of equipment capabilities and/or shortfalls; and (4) an update on progress made toward training U.S. civilian mariners to operate in a chemical/biological warfare environment.

During the JPAG, VISA participants convened in separate work groups with Government analysts to offer solutions and recommendations to satisfy DOD requirements. Afterwards, the groups met together to discuss the results. The VISA participants were also briefed on the USTRANSCOM sponsored Exercise "Turbo Challenge 2001".

The full text of the VISA program is published in 66 FR 10938–10947, dated February 20, 2001. One of the program requirements is that MARAD periodically publish a list of VISA participants in the **Federal Register**. As of April 19, 2001, the following commercial U.S.-flag vessel operators were enrolled in VISA with MARAD: Alaska Cargo Transport Inc., American Automar, Inc., American President Lines, Ltd., American Roll-On Roll-Off Carrier, LLC, American Ship Management, L.L.C., Automar International Car Carrier, Inc., Beyel Brothers Inc., Central Gulf Lines, Inc., Cook Inlet Marine, Crowley Liner Services, Inc., Crowley Marine Services, Inc., CSX Lines, LLC, Donjon Marine Co., Double Eagle Marine, LLC, E-Ships, Inc., Farrell Lines Incorporated, First American Bulk Carrier Corp., First Ocean Bulk Carrier-I, LLC, First Ocean Bulk Carrier-II, LLC, First Ocean Bulk Carrier-III, LLC, Foss Maritime Company, Gimrock Maritime, Inc., Lockwood Brothers, Inc., Liberty Shipping Group Limited Partnership, Lykes Lines Limited, LLC., Lynden Incorporated, Maersk Line, Limited, Matson Navigation Company, Inc., Maybank Navigation Company, LLC, McAllister Towing & Transportation Company, Inc., Moby Marine Corporation, Moran Towing Corporation, NPR, Inc., Ocean Marine Shipping, Inc., Odyssea Shipping Line LLC, OSG Car Carriers, Inc., Resolve Towing & Salvage, Inc., Samson Tug & Barge Company, Inc., Sea Star Line, LLC, Seacor Marine International Inc., Sealift Inc., Signet Maritime Corporation, Smith Maritime, STEA Corporation, Stevens Towing Co., Inc., Superior Marine Services, Inc., Totem Ocean Trailer Express, Inc., Trailer Bridge, Inc., TransAtlantic Lines LLC, Trico Marine Operators, Inc., Troika International, Ltd., U.S. Ship Management, Inc., Van Ommeren Shipping (USA) LLC, Waterman Steamship Corporation, and Weeks Marine, Inc.

FOR FURTHER INFORMATION CONTACT: Mr. William F. Trost, Acting Director, Office of Sealift Support, (202) 366–2323.

Dated: April 25, 2001.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 01–10801 Filed 4–30–01; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–9477]

Reports, Forms, and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before July 2, 2001.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 9 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: For further information, contact Edward Jettner, NHTSA, 400 Seventh Street, SW., Room 5320, NPS–11,Washington, DC 20590. Mr. Jettner's telephone number is (202) 366–4917. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Consolidated Vehicle Owner's Manual Requirements for Motor Vehicles and Motor Vehicle Equipment.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2127–0541.

Affected Public: Individuals, households, business, other for-profit, not-for-profit, farms, Federal Government and State, Local or Tribal Government.

Abstract: 49 U.S.C. 30117 authorizes the Secretary to require that manufacturers provide technical information, as for example information directed for publication in a vehicle owner's manual, related to the performance and safety specified in the Federal motor vehicle safety standards for the purposes of educating the consumer and providing safeguards against improper use. Using this authority, the agency issued the following FMVSS and regulations, specifying that certain safety precautions regarding items of motor vehicle equipment appear in the vehicle owner's manual to aid the agency in achieving many of its safety goals.

FMVSS No. 108—Lamps, Reflective Devices, and Associated Equipment. This standard requires that certain lamps and reflective devices with certain performance levels be installed on motor vehicles to assure that the roadway is properly illuminated, that vehicles can be readily seen, and the signals can be transmitted to other drivers sharing the road, during day, night and inclement weather. Since the specific manner in which headlamp aim is to be performed is not regulated (only the performance of the device is), aiming devices manufactured or installed by different vehicle and headlamp manufacturers may work in significantly different ways. As a consequence, to assure that headlamps can be correctly aimed, instructions for proper use must be part of the vehicle as a label, or optionally, in the vehicle owner's manual.

FMVSS No. 205—Glazing Materials. This standard specifies requirement for all glazing material used in windshields, windows, and interior partitions of motor vehicles. Its purpose is to reduce the likelihood of lacerations and to minimize the possibility of occupants penetrating the windshield in a crash. More detailed information regarding the care and maintenance of such glazing items, as the glass-plastic windshield is required to be placed in the vehicle owner's manual.

FMVSS No. 208—Occupant Crash Protection. This standard specifies requirements for both active and passive occupant crash protection systems for passenger cars, multipurpose passenger vehicles, trucks and small buses. Certain safety features, such as air bags, or the care and maintenance of air bag systems, are required to be explained to the owner by means of the owner's manual. For example, the owner's manual must describe the vehicle's air bag system and provide precautionary information about the proper positioning of the occupants, including children. The owner's manual must also warn that no objects, such as shotguns carried in police cars, should be placed over or near the air bag covers.

FMVSS No. 210—Seat Belt Assembly Anchorages. This standard specifies requirements for seat belt assembly anchorages to ensure effective occupant restraint and to reduce the likelihood of failure in a crash. The standard requires that manufacturers place the following information in the vehicle owner's manual:

a. an explanation that child restraints are designed to be secured by means of the vehicle's seat belts, and,

b. a statement alerting vehicle owners that children are always safer in the rear seat.

FMVSS No. 213—Child Restraint Systems. This standard specifies requirements for child restraint systems and requires that manufacturers provide consumers with detailed information relating to child safety in air bag-equipped vehicles. The vehicle owner's manual must include information about the operation and do's and don'ts of built-in child seats.

Part 575 Section 103—Camper Loading. This standard requires that

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manufacturers of slide-in campers designed to fit into the cargo bed of pickup trucks affix a label to each camper that contains information relating to certification, identification and proper loading, and to provide more detailed loading information in the owner's manual of the truck.

Part 575 Section 105—Utility Vehicles. This regulation requires manufacturers of utility vehicles to alert drivers that the particular handling and maneuvering characteristics of utility vehicles require special driving practices when these vehicles are operated on paved roads. For example, the vehicle owner's manual is required to contain a discussion of vehicle design features that cause this type of vehicle to be more likely to roll over, and to include a discussion of driving practices that can reduce the risk of roll over. A statement is provided in the regulation that manufacturers shall include, in its entirety or equivalent form, in the vehicle owner's manual.

Estimated Annual Burden: 1371 hours.

Number of Respondents: 21.

Issued on: April 26, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–10795 Filed 4–30–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket Number NHTSA–2001–9443]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on an extension of a currently approved collection.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before July 2, 2001.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Deborah Mazyck, NHTSA 400 Seventh Street, SW., Room 5320, NPS–32,Washington, DC 20590. Ms. Mazyck's telephone number is (202) 366–0846. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Procedures for Selecting Lines to be Covered by the Theft Prevention Standard (49 CFR 542).

OMB Control Number: 2127–0539.

Affected Public: Business or other for-profit.

Form Number: This collection of information uses no standard forms.

Abstract: The Anti Car Theft Act of 1992 amended the Motor Vehicle Theft Law Enforcement Act of 1984 (Pub. L. 98–547) and requires this collection of information. One component of the theft prevention legislation required the Secretary of Transportation (delegated to the National Highway Traffic Safety Administration (NHTSA)) to promulgate a theft prevention standard for the designation of high-theft vehicle lines. Provisions delineating the information collection requirements include section 33104, which requires NHTSA to promulgate a rule for the identification of major component parts for vehicles having or expected to have a theft rate above the median rate for all new passenger motor vehicles (cars, MPV's, and light-duty trucks) sold in the United States, as well as with major component parts that are interchangeable with those having high-theft rates.

The specific lines and parts to be identified are to be selected by agreement between the manufacturer and the agency. If there is a disagreement of the selection, the statute states that the agency shall select such lines and parts, after notice to the manufacturer and an opportunity for written comment.

The procedures, contained in §§ 542.1 and 542.2 will be applied to those lines introduced before or after the 1997 model year (MY).

Estimated Annual Burden: 1,920 hours.

Number of Respondents: 24.

Issued on April 26, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–10796 Filed 4–30–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–9434]

Reports, Forms, and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seekOMB approval.

DATES: Comments must be received on or before July 2, 2001.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 9 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: For further information, contact Dr. WilliamFan, NHTSA, 400 Seventh Street, SW., Room 5320, NPS–11,Washington, DC 20590. Dr. Fan's telephone number is (202) 366–4922. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Part 589—Upper Interior Component Head Impact Protection Phase-in Requirements.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2127–0581

Requested Expiration Date: Three years from the date of approval.

Affected Public: Business or for-profit.

Form Number: No standard form.

Summary of the Collection of Information: Manufacturers of passenger cars, trucks and multipurpose passenger vehicles with a gross vehicle weight rating of 4,536 kilograms or less and buses with a gross vehicle weight rating of 3,860 kilograms or less are required to respond to NHTSA inquiries, to submit a report, concerning the number of such vehicles that meet the upper interior component head impact protection requirements of Standard No. 201, Occupant Protection in Interior Impact (49 CFR 571.201).

Description of the Need for the Information: Title 49, Chapter 30115 of the U.S. Code specifies that the Secretary of Transportation shall require every manufacturer or distributor of a motor vehicle or motor vehicle equipment to furnish the distributor or dealer at the time of delivery certification that each item of motor vehicle equipment conforms to all applicable Federal Motor Vehicle Safety Standards (FMVSS).

Using this authority, the agency issued FMVSS No. 201, "Occupant Protection in InteriorImpact," specifying test procedures and requirements for passenger cars, multipurpose passenger vehicles, trucks, and buses. The standard specifies four optional implementation plans. There are two four-year phase-in implementation Plans starting on September 1, 1998 and with a full implementation on September 1, 2002. Vehicle manufacturers who choose these phase-in plans are required to report achievement of annual production quotas for the first four years during the phase-in period. The report is due within 60 days after August 31 of each production year. After the report is received, requirements will cease and no further report will be required.

Estimated Annual Reporting and Record-keeping Hour Burden: It was estimated in the original request that these phase-in requirements would apply to 35 vehicle manufacturers and that the average hour burden for each manufacturer would be about 36 hours. The estimates are still valid. The estimated total annual hour burden is, therefore, 1,260 hours.

Issued on: April 26, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–10799 Filed 4–30–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket Number NHTSA–01–9468]

Reports, Forms, and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on an extension of a currently approved collection.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seekOMB approval.

DATES: Comments must be received on or before July 2, 2001.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW..Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

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FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Deborah Mazyck, NHTSA 400 Seventh Street, SW., Room 5320, NPS–32,Washington, DC 20590. Ms. Mazyck's telephone number is (202) 366–0846. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Petitions for Exemption from the Vehicle Theft Prevention Standard.

OMB Control Number: 2127–0542.

Affected Public: Business or other for-profit.

Form Number: This collection of information uses no standard forms.

Abstract: 49 U.S.C. Chapter 331 requires the Secretary of Transportation to promulgate a theft prevention standard to provide for the identification of certain motor vehicles and their major replacement parts to impede motor vehicle theft. 49 U.S.C. 33106 provides for an exemption to this identification process by petitions from manufacturers who equip covered vehicles with standard original equipment antitheft devices, which the Secretary determines are likely to be as effective in reducing or deterring theft as the identification system.

Estimated Annual Burden: 32 hours.

Number of Respondents: 4.

Issued on: April 26, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety, Performance Standards.

[FR Doc. 01–10800 Filed 4–30–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket Number NHTSA–2001–9356]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on an extension of a currently approved collection.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before July 2, 2001.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Deborah Mazyck, NHTSA 400 Seventh Street, SW., Room 5320, NPS–32,Washington, DC 20590. Ms. Deborah Mazyck's telephone number is (202) 366–0846. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) how to enhance the quality, utility, and clarity of the information to be collected;

(iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Consolidated Vehicle Identification Number Requirements and Motor Vehicle Theft Prevention Standards (49 CFR 571.115, and Parts 565, 541 and 567).

OMB Control Number: 2127–0510.

Affected Public: Business or other for-profit.

Form Number: This collection of information uses no standard forms.

Abstract: 49 CFR Parts 571.115 and 565.

NHTSA's statute at 15 U.S.C. 1392, 1397, 1401, 1407, and 1412 of the National Traffic and Motor Vehicle Safety Act of 1966 authorizes the issuance of Federal Motor Vehicle Safety Standard (FMVSS) and the collection of data which support their implementation. The agency, in prescribing an FMVSS, is to consider available relevant motor vehicle safety data and to consult with other agencies as it deems appropriate. Further, the Act mandates, that in issuing any FMVSS, the agency should consider whether the standard is reasonable, practicable and appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed, and whether such standards will contribute to carrying out the purpose of the Act. The Secretary is authorized to revoke such rules and regulations as deemed necessary to carry out this subchapter. Using this authority, the agency issued the initial FMVSS No. 115, Vehicle Identification Number, specifying requirements for vehicle identification numbers to aid the agency in achieving many of its safety goals.

The standard was amended in August 1978 by extending its applicability to additional classes of motor vehicles and by specifying the use of a 30-year, 17-character Vehicle Identification Number (VIN) for worldwide use. The standard was amended in May 1983 by deleting portions of FMVSS No. 115 and reissuing those portions as a general agency regulation, Part 565. Subsequently, the standard was amended again in June 1996 transferring the text of the FMVSS No. 115 to Part 565, without making any substantive changes to the VIN requirements as a result of the proposed consolidation. The provision of the Part 565 (amended) regulation requires vehicle manufacturers to assign a unique VIN to each new vehicle and to inform NHTSA of the code used in forming the VIN. These regulations apply to all vehicles: passenger cars, multipurpose passenger vehicles, trucks, buses, trailers, incomplete vehicles, and motorcycles.

Part 541

The Motor Vehicle Information and Cost Savings Act was amended by the Anti-Car Theft Act of 1992 (Pub. L. 102–519.) The enacted Theft Act states that passenger motor vehicles, multipurpose passenger vehicles, and light-duty trucks with a gross vehicle weight rating of 6,000 pounds or less be covered under the Theft Prevention Standard. Each major component part must be either labeled or affixed with the VIN and its replacement component part must be marked with the DOT symbol, the letter (R) and the manufacturers' logo.

Part 567

This part specifies the content and location of, and other requirements for, the certification label or tag to be affixed to motor vehicles and motor vehicle equipment. Specifically, the VIN is required to appear on the certification label. Additionally, this certificate will provide the consumer with information to assist him or her in determining which of the Federal Motor Vehicle Safety Standards are applicable to the vehicle or equipment, and its date of manufacturer.

Estimated Annual Burden: 456,212.

Number of Respondents: 1,000.

Issued on: April 26, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety, Performance Standards.

[FR Doc. 01–10844 Filed 4–30–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Discretionary Cooperative Agreements To Support Seat Belt Enforcement With State Associations of Chiefs of Police

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT

ACTION: Announcement of Cooperative Agreements in conjunction with the Buckle Up America Campaign to increase seat belt enforcement with the State Associations of Chiefs of Police.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces a cooperative agreement program to solicit support for the Buckle Up America (BUA) campaign. NHTSA solicits applications from the State Associations of Chiefs of Police to participate in the BUA campaign, by mobilizing law enforcement agencies to increase the use of seat belts and child safety seats, the most effective safety devices for reducing injuries and fatalities in traffic crashes. Only applications submitted by the State Associations of Chiefs of Police will be considered. The State Associations of Chiefs of Police will take a leadership role in involving the law enforcement agencies in their state in increasing enforcement of seat belt and child safety seat laws by participating in the mobilization periods, high visibility enforcement, training officers and public information and education.

DATES: Applications must be received no later than June 1, 2001, at 2 p.m., Eastern Standard Time.

ADDRESSES: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), ATTN: Ross S. Jeffries, 400 7th Street, SW., Room 5301, Washington, DC 20590. All applications submitted must include a reference to NHTSA Cooperative Agreement Program No. DTNH22–01–R–05143.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to, Ross S. Jeffries, Office of Contracts and Procurement at (202) 366–6283. Programmatic questions should be directed to Sandy Richardson, Traffic Law Enforcement Division, NTS–13, NHTSA, 400 7th Street, SW., Washington DC 20590 by e-mail *srichardson@nhtsa.dot.gov* or by phone (202) 366–4294. Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

SUPPLEMENTARY INFORMATION:

Background

It's a fact: On America's roads, someone is killed every 13 minutes and someone is injured every nine seconds in traffic crashes. It takes only a few seconds to fasten a seat belt. Yet this simple action, repeated every time you get into a motor vehicle, may be the most significant driving-related behavior change you can make to extend your life. Wearing a seat belt dramatically increases your chance of surviving a crash.

Each year, approximately 41,000 Americans die in traffic crashes and another three million are injured. Sadly, many of these deaths and injuries could have been prevented if the victims had been wearing seat belts or were properly restrained in child safety seats.

Research has found that lap/shoulder safety belts, when used, reduce the risk of fatal injury to front seat passenger car occupants by 45 percent and the risk of moderate to critical-injury by 50 percent. For light truck occupants, safety belts reduce the risk of fatal injury by 60 percent and moderate to critical-injury by 65 percent. No other safety device has as much potential for immediately preventing deaths and injuries in motor vehicle crashes. From 1975 through 1999, an estimated 123,213 lives were saved by seat belts.

But, seat belt use rates and the resulting savings could be much higher. In June 2000, the average observed use rate reported by states with secondary enforcement laws was 63 percent, compared to 77 percent in states with primary enforcement laws. Many States in the U.S. are still well below the goal of 85 percent for the year 2000 and thirteen States had use rates below 60 percent in 2000. On the other hand, use rates of 85–90 percent are a reality in most developed nations with seat belt use laws, and seven States achieved use rates greater than 80 percent in 1999. A

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national use rate of 90 percent, among front seat occupants of all passenger vehicles, would result in prevention of an additional 5,500 deaths and 121,000 injuries annually. This would translate into an $8.8 billion reduction in societal costs, including 356 million for Medicare and Medicaid.

In April 1997, the Buckle Up America (BUA) campaign established ambitious national goals: (a) to increase seat belt use to 85 percent and reduce child fatalities (0–4 years) by 15 percent by the year 2000; and (b) to increase seat belt use to 90 percent and reduce child fatalities by 25 percent by the year 2005. This campaign advocates a four part strategy: (1) Building public-private partnerships; (2) enacting strong legislation; (3) maintaining high visibility law enforcement; and (4) conducting effective public education. Central to this Campaign's success is the implementation of two major enforcement mobilizations each year (Memorial Day and Thanksgiving holidays).

Objectives: To help achieve the new national seat belt goals, NHTSA seeks to establish cooperative efforts between NHTSA and State Associations of Chiefs of Police to increase the use of seat belts and child safety seats. Specific objectives for this cooperative agreement program will be to support the Buckle Up America campaign by increasing periodic waves of high visibility enforcement and by promoting participation in Operation ABC's national mobilizations (May and November).

1. *Periodic "Waves" of High Visibility Enforcement:* The history of efforts to increase seat belt use in the U.S. and Canada suggests that highly visible enforcement of seat belt laws must be the core of any successful program to increase seat belt use. No State has ever achieved a high seat belt use rate without such a component.

Canada currently has a national seat belt use rate above 90 percent. Nearly every province first attempted to increase seat belt use through voluntary approaches involving public information and education. These efforts were effective in achieving only very modest usage rates (no higher than 30 percent). By 1985, it became obvious to Canadian and provincial officials that additional efforts would be needed to achieve levels of 80 percent or greater. These efforts, mounted from 1985 to 1995, centered around highly publicized "waves" of enforcement, a technique that had already been shown to increase seat belt use in Elmira, New York. When these procedures were implemented in the Canadian provinces, seat belt use generally increased from about 60 percent to well over 80 percent, within a period of 3–5 years.

The Canadian successes using periodic, highly visible "waves" of enforcement, as well as successes of such efforts implemented in local jurisdictions in the U.S., prompted NHTSA to implement Operation Buckle Down (also called the "70 by "92" Program) in 1991. This two-year program focused on Special Traffic Enforcement Programs (sTEPs) to increase seat belt use. It was followed by a national usage rate increase from about 53 percent in 1990 to 62 percent by the end of 1992 (as measured by a weighted aggregate of State surveys). Neither the level of enforcement nor its public visibility was uniform in every State. Had these "waves" of enforcement been implemented in a more uniform fashion in every state, the impact would likely have been much greater.

Several states have experienced considerable success in reaching higher levels of occupant protection usage rates though campaigns which focus on high visibility enforcement combined with a targeted public information and education campaign which highlights the zero tolerance message of the enforcement component. In order to demonstrate the potential of periodic, highly visible enforcement in a more controlled environment, the State of North Carolina implemented its Click-It or Ticket program in 1993. In this program, waves of coordinated and highly publicized enforcement efforts (*i.e.*, checkpoints) were implemented in every county. As a result, seat belt use increased statewide, from 65 percent to over 80 percent, in just a few months. This program provided the clearest possible evidence to demonstrate the potential of highly visible enforcement to increase seat belt use in a large jurisdiction. South Carolina has recently achieved similar successes. NHTSA now seeks to replicate this program throughout its various Regions. High consideration will be given to those applicants that develop an approach that is compatible or consistent with this strategy.

2. *National Mobilizations:* National law enforcement mobilizations have also proven effective in increasing seat belt use. The *BUA* campaign supports two national mobilizations each year (Memorial Day and Thanksgiving holidays). During the November 2000 mobilization period conducted throughout the week surrounding Thanksgiving, over 10,000 law enforcement agencies participated in Operation ABC. Their efforts were covered by several hundred national and local television organizations in all major media markets. More than 1,500 print articles were written in response to the mobilization.

Period of Support

Cooperative agreements may be awarded for a period of support of (1) year. The application should address what is proposed and can be accomplished during the funding period (12 months). Subject to the availability of funds, the agency anticipates awarding up to 3 cooperative agreements in the amount of $50,000 each, totaling $150,000. Federal funds should be viewed as seed money to assist the Associations in working with local law enforcement agencies in the development of traffic safety initiatives. NHTSA may choose to extend the period of performance under this agreement for an additional 12 months, subject to the availability of funds. If NHTSA elects to do so, it will notify the recipients within 60 days prior to the expiration of this agreement and the recipients will submit a proposal for an additional 12 months of performance.

Eligibility Requirements

In order to be eligible to participate in this cooperative agreement program, an applicant must be a State Association of Chiefs of Police, and must meet the following requirements:

—Have the ability to provide funding to law enforcement agencies in the state.
—Have written support and approval from the applicant's chief executive officer to conduct seat belt enforcement programs to participate in and encourage local law enforcement participation in the Operation ABC Campaign and in other seat belt enforcement programs. (Include copy with proposal.)
—Obtain written support from the Governor's Representative or his/her designee in the State Highway Safety Office (SHSO) demonstrating that the applicant's proposal is partnered with the State's program. (Include copy with proposal.)

Application Procedure

Each applicant must submit one original and two copies of their application package to: NHTSA, Office of Contracts and Procurement (NAD–30), ATTN: Ross S. Jeffries, 400 7th Street, SW., Room 5301, Washington, DC 20590. Only complete application packages received by the due date will be considered. Submission of four additional copies will expedite processing, but is not required. Applications must be typed on one side of the page only. Applications must include a reference to NHTSA Program No. DTNH22–01–R–05143 . The applicant shall specifically identify any information in the application for which confidential treatment is requested, in accordance with the procedures of 49 CFR Part 512, Confidential Business Information.

Only complete packages received on or before June 1, 2001, 2 p.m. Eastern Standard Time will be considered.

Application Contents

The application package must be submitted with OMB Standard Form 424 (Rev. 4–88, including 424A and 424B), Application for Federal Assistance, with the required information filled in and the certifications and assurances included. While the Form 424–A deals with budget information, and section B identifies Budget Categories, the available space does not permit a level of detail which is sufficient to provide for a meaningful evaluation of the proposed costs. A supplemental sheet should be provided which presents a detailed breakdown of the proposed costs, as well as any costs which the applicant proposes to contribute in support of this effort. The budget should be a 1-year plan. Also included shall be a program narrative statement which addresses the following:

1. A description of the project to be pursued which provides:

a. A detailed explanation of the proposed strategy to support the enforcement efforts, including methods for gaining support (both within the community and law enforcement leadership) for "waves" of highly publicized seat belt enforcement and for mobilization efforts. In addition, an explanation of the strategies to fund local law enforcement agencies to participate in the national mobilizations, and to conduct "waves" of highly publicized seat belt enforcement. A description of efforts to address training needs (e.g., differential enforcement or diversity sensitivity) of law enforcement jurisdictions and how training will be marketed to these jurisdictions.

b. The goals, objectives, and the anticipated results and benefits of the project (supporting documentation from concerned interests other than the applicant can be used.)

c. Written evidence of approval by the applicant's Chief Executive Officer.

d. An explanation demonstrating the need for assistance.

e. Description of any extraordinary social/community involvement.

f. A discussion of the criteria to be used to evaluate the results (e.g. number of citations, number of officers trained, seat belt use surveys, level of earned media coverage, etc.).

2. A list of the proposed activities in chronological order to show the schedule of accomplishments and their target dates.

3. Identification of the proposed program coordinator for participation in the proposed project effort.

4. A description of the applicant's previous experience related to this proposed program effort (i.e. past participation in highly publicized enforcement or participation in the Operation ABC national seat belt mobilizations).

5. A statement of any technical assistance which the applicant may require of NHTSA in order to successfully complete the proposed project.

Application Review Process and Evaluation Factors

Initially, each application will be reviewed to confirm that the applicant meets the eligibility requirements and that the application contains all of the information required by the Application Contents section of this notice. Each complete application from an eligible recipient will then be evaluated by a Technical Evaluation Committee. The applications will be evaluated using the following criteria:

1. The potential of the proposed project effort to increase seat belt use. (40%)

The likeliness and feasibility of the applicant's projects to increase enforcement by law enforcement jurisdictions of proper seat belt and child safety seat use. The degree to which the applicant has identified jurisdictions that might benefit from training opportunities concerning proper seat belt and child safety seat use, and effectiveness of the applicant's plan for providing that training. The overall soundness and feasibility of the applicant's approach to participating and successfully seeking law enforcement participation in mobilization efforts, public information campaigns concerning seat belt and child safety seat use, and child safety seat clinics.

2. The applicant's proposed strategy for participating and seeking the participation of local law enforcement agencies in the Buckle Up America National seat belt mobilizations. (40%)

The likeliness and feasibility of the Association's proposal, as described in its innovative project plan, to assist smaller law enforcement agencies in participating in the *Buckle Up America* National seat belt mobilizations. The degree to which the applicant has demonstrated a complete understanding of the requirements for successful participation in the Operation ABC national seat belt mobilizations. The overall soundness and feasibility of the applicant's proposed strategy and demonstrated ability to involve and coordinate this project with smaller law enforcement agencies.

3. The applicant's ability to demonstrate support and coordination with local government and the State Highway Safety Office. (15%)

The degree to which the proposal describes efforts and commitment to obtain the support from local government officials throughout the State. The likeliness and feasibility of the applicant's proposal for reaching local and state government executives throughout the state, including suggested methods for generating interest, making initial contacts and reasons for taking this approach as opposed to others.

4. The adequacy of the organizational plan for accomplishing the proposed project effort through the experience and technical expertise of the proposed personnel. (5%)

Program management and technical expertise will be estimated by reviewing the qualifications and experience of the proposed personnel, and the relative level of effort of the staff. Consideration will be given to the adequacy of the organizational plan for accomplishing the proposed project effort. Consideration will also be given to the Association's resources and how it will provide the program management capability and personnel expertise to successfully perform the activities in its plan.

NHTSA Involvement

The NHTSA will be involved in all activities undertaken as part of the cooperative agreement program and will:

1. Provide a Contracting Officer's Technical Representative (COTR) to participate in the planning and management of the cooperative agreement and to coordinate activities between the selected State Associations of Chiefs of Police and NHTSA;

2. Provide information and technical assistance from government sources, within available resources and as determined appropriate by the COTR;

3. Provide liaison between the selected State Associations of Chiefs of Police and other government and private agencies as appropriate; and

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4. Stimulate the exchange of ideas and information among cooperative agreement recipients through periodic meetings.

Terms and Conditions of Award

1. Prior to award, the recipient must comply with the certification requirements of 49 CFR Part 29—Department of Transportation Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

2. During the effective period of the cooperative agreement(s) awarded as a result of this notice, the agreement(s) shall be subject to NHTSA's General Provisions for Assistance Agreements (7–95).

Reporting Requirements

1. The recipient shall submit brief quarterly reports documenting the project effort to date, which will include information on accomplishments, obstacles and problems encountered, and noteworthy activities. Quarterly reports shall be due 15 days after the end of each quarter, and a final report summarizing the project effort shall be due within 30 days after the completion of the project. An original and three copies of each of these reports shall be submitted to the COTR.

2. The recipient may be requested to conduct an oral presentation of project activities for the COTR and other interested NHTSA personnel. For planning purposes, assume that these presentations will be conducted at the NHTSA Office of Traffic and Injury Control Programs, Washington, D.C or at a conference identified by the COTR. An original and three copies of briefing materials shall be submitted to the COTR.

Rose A. McMurray,

Associate Administrator for Traffic, Safety Programs.

[FR Doc. 01–10818 Filed 4–30–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2001–9036; Notice 1]

Mazda Motor Corporation, Receipt of Application for Decision of Inconsequential Noncompliance

Mazda Motors Corporation has determined that certain 1994 model Mazda Navajos and 1994 through 2000 model Mazda B-Series trucks do not meet the labeling requirements of paragraphs 5.2(a) and 5.2(c) of Federal Motor Vehicle Safety Standard (FMVSS) No. 120, "Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars". Pursuant to 49 U.S.C. 30118(d) and 30120(h), Mazda has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports."

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Mazda states that approximately 218,000 vehicles were manufactured with tire rims that do not include the letter "T" identifying TRA as the source of the nominal dimensions of the rims. Also, the rims on these vehicles do not include the "DOT" symbol, indicating certification of compliance with the substantive requirements of the standard.

Mazda states that the noncompliances are inconsequential to motor vehicle safety because, with the exception of the cited missing markings, the noncomplying rims do comply with all other federal requirements. The missing markings identifying the source of the rim dimensions have no effect on the tire/rim performance. According to Mazda, the tires and rims on the affected vehicles are properly matched and are appropriate for the load carrying characteristics of these vehicles. Mazda indicates that selection of an incorrect replacement rim is possible, but not likely to result in a safety problem. Mazda states that a comparison of rim dimensions by several other designates listed in S5.2(a) indicated that dimensions for the size and type of the rims in question are essentially identical to the rims designed by TRA, the source for the noncompliant rims. Therefore, correctly sized rims with dimensions from other designates would be appropriate for these vehicles. With respect to the DOT symbol marking, Mazda states that the rims comply with all federal requirements that may have an impact on motor vehicle safety and therefore, it does not consider this noncompliance with S5.2(c) to be a safety problem.

Interested persons are invited to submit written data, views and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. After the Agency has determined that the application will be granted or denied, a notice will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: (30 days after Publication Date).

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and .501.8)

Issued on: April 26, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–10797 Filed 4–30–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2001–9426; Notice 1]

Mazda Motor Corporation, Receipt of Application for Decision of Inconsequential Noncompliance

Mazda Motor Corporation has determined that certain 2000 Mazda MPVs do not meet the labeling requirements of paragraphs S5.1 and S5.2 of Federal Motor Vehicle Safety Standard (FMVSS) No. 120 "Tire Selection and Rims for Motor Vehicles Other than Passenger Cars". Pursuant to 49 U.S.C. 30118(d) and 30120(h), Mazda has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports."

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application. Mazda states that the noncompliance are inconsequential as related to motor vehicle safety and requests exemption from the notification and recall requirements.

Mazda manufactured 19,569 model year 2000 MPVs equipped with 15-inch tires with an incorrect maximum load rating marked on the sidewall. According to Mazda, the maximum load marked on the tires is 635 kg, whereas the correct maximum load for the tires is 670 kg. The actual load marking of 635 kg. is noncompliant with FMVSS No. 120, S5.1.2, which requires that the maximum tire load capacity exceed the gross axle weight rating. The primary safety problem that may result from this noncompliance is the purchase of incorrect replacement tires for the original equipment tires. Mazda states that the noncompliance is inconsequential to motor vehicle safety because the owner's manual for the vehicle lists the correct maximum load rating for the MPV tires of 670 kg, and that tires rated at 635 kg maximum load have sufficient compliance margin to be appropriate for use on the 2000 Mazda MPV.

Mazda's petition stated that the company also produced 6,036 vehicles with 15-inch steel rims that are noncompliant with the requirements of FMVSS No. 120, S5.2. These rims do not contain a designation which indicates the source of the rim's published nominal dimensions as required by S5.2(a). Additionally, the rims do not contain the "DOT" symbol as required by S5.2(c). Mazda states that the noncompliance with S5.2(a) is inconsequential to motor vehicle safety because the dimensions for the 15X6JJ rim do not vary significantly among the different publication sources. Therefore, according to Mazda, any rim of the correct size designation should be appropriate for the 2000 Mazda MPV. With respect to the DOT symbol marking, Mazda states that the 15-inch steel rims comply with all federal requirements that may have an impact on motor vehicle safety and that it does not consider this noncompliance to be a safety problem.

Interested persons are invited to submit written data, views and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department to Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. After the Agency has determined that the application will be granted or denied, a notice will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: (30 days after Publication Date).

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and .501.8)

Issued on: April 26, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–10798 Filed 4–30–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34034]

The Cuyahoga Valley Railway Company—Trackage Rights Exemption—The Mahoning Valley Railway Company

The Mahoning Valley Railway Company (MVR), a Class III rail carrier, has agreed to grant limited, nonexclusive trackage rights to The Cuyahoga Valley Railway Company (CVR), a Class III rail carrier.[1] CVR will operate over the necessary portions of the MVR rail system in Youngstown to or from interchange with whichever connecting carriers exist at the time such rights are exercised.[2] The transaction was expected to be consummated on or after April 19, 2001.

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34034, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Rose-Michele Weinryb, Esq., Weiner Brodsky Sidman Kider PC, 1300 19th Street, NW., Fifth Floor, Washington, DC 20036–1609.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: April 23, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–10671 Filed 4–30–01; 8:45 am]

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[1] MVR is a wholly owned subsidiary of CVR, which is a wholly owned subsidiary of LTV Steel, Inc. (LTV). MVR provides rail service to certain LTV facilities in Youngstown, OH (Facilities). The trackage rights are part of a larger transaction in which CVR will sell and transfer to Summit View, Inc. all of MVR's issued and outstanding capital stock. CVR is being granted trackage rights to ensure that rail service continues to the Facilities in the event that MVR does not provide the Facilities with rail service at agreed-upon levels.

[2] CVR's trackage rights (i) will become effective, from time to time, only if and when MVR rail service falls below certain standards, (ii) will remain effective only for defined periods of time, and (iii) do not permit CVR to provide any rail services to any customer other than the Facilities.

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Investigator Integrity Questionnaire.

DATES: Written comments should be received on or before July 2, 2001 to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Renee Reid, Office of Inspection, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–7810.

SUPPLEMENTARY INFORMATION: Title: Investigator Integrity Questionnaire.

Form Number: ATF F 8620.7.

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Abstract: Persons interviewed by contract investigators will be randomly selected to voluntarily complete ATF F 8620.7 regarding the investigator's degree of professionalism.

Current Actions: New information collection.

Type of Review: New.

Affected Public: Individuals or households.

Estimated Number of Respondents: 2,500.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 250.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchases of services to provide information.

Dated: April 24, 2001.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 01–10819 Filed 4–30–01; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0117]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Human Resources and Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Office of Human Resources and Administration (OHR&A), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 31, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0117" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Inquiry Concerning Application for Employment, VA Form Letter 5–127.

OMB Control Number: 2900–0117.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The form letter is used to obtain information from individuals who have knowledge of the applicants' past work record, performance, and character. The information is used by VA personnel officials to verify qualifications and determine suitability of the applicant for VA employment.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on February 15, 2001, at page 10565.

Affected Public: Individuals or households—Business or other for-profit—State, Local or Tribal Government.

Estimated Annual Burden: 3,125 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 12,500.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0117" in any correspondence.

Dated: April 17, 2001.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–10820 Filed 4–30–01; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Tuesday,
May 1, 2001

Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1240

Honey Research, Promotion, and Consumer Information Order; Amendments; Final Rule

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1240

[FV–00–701 FR]

RIN 0581–AB84

Honey Research, Promotion, and Consumer Information Order; Amendments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the honey research and promotion program by: changing the size and composition of the National Honey Board (Board); changing nomination and eligibility requirements for handlers, importers, and representatives of cooperatives on the Board; changing the term of office for members of the Board and the National Honey Nominations Committee; authorizing the Board to develop a voluntary quality assurance program; removing the requirement for small companies to file for an exemption under the program in order to avoid paying assessments; requiring producers to submit reports to the Board and to maintain records; and adding statutory requirements for continuance referenda and evaluations. Amendments to the Honey Research, Promotion, and Consumer Information Act (Act) require that these changes be made to the program. The Act authorized additional changes, but they failed to receive the approval of the voters in a referendum held in September 2000.

EFFECTIVE DATE: May 31, 2001.

FOR FURTHER INFORMATION CONTACT: Kathie M. Birdsell, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535 South Building, Washington, DC 20250–0244; telephone (202) 720–9917 (toll free); facsimile (202) 205–2800.

SUPPLEMENTARY INFORMATION: The honey research and promotion program will be changed by amending the Honey Research, Promotion, and Consumer Information Order (Order) (7 CFR part 1240). The changes to the Order are being made as a result of changes made by Congress to the Honey Research, Promotion, and Consumer Information Act (Act) (Pub. L. 98–690; enacted October 30, 1984; 7 U.S.C. 4601–4613, as amended) on June 23, 1998 (Pub. L. 105–185). The honey program operates under the Act.

Prior documents. A proposed rule on amending the Order was published in the **Federal Register** on February 28, 2000 (65 FR 10600) with a 60-day comment period. The comment period ended on April 28, 2000. A second proposed rule and a referendum order were published in the **Federal Register** on August 7, 2000 (65 FR 48324).

In addition, USDA published a proposed rule on the referendum procedures which were used in the referendum on the votable amendments in the **Federal Register** on May 15, 2000 (65 FR 30924) with a 30-day comment period. The final rule on the referendum procedures was published in the August 7, 2000, issue of the **Federal Register** (65 FR 48318).

Question and Answer Overview

Why Is The Honey Program Being Changed?

The honey program is being changed because the Act which authorizes the program was amended in 1998. The amendments to the Act require the same changes to be made to the program.

What Are the Major Changes That Will be Made to the Honey Program?

The major changes affect: (1) The composition and size of the National Honey Board (Board); (2) nomination and eligibility requirements for handlers, importers, and representatives of cooperatives on the Board; (3) the term of office for members of the Board and the National Honey Nominations Committee (Committee); (4) authorization for the voluntary quality assurance program; (5) exemption, reporting, and recordkeeping procedures; and (6) requirements for referenda and evaluations.

How Would the Size and Composition of the Board Change?

The Board is currently composed of seven producers, two importers (or one importer and one exporter), two handlers, one representative of a cooperative, one public member, and their alternates.

This rule will change the importer-exporter position on the Board to another importer position to provide more importer input into Board deliberations. In addition, the public member position will be eliminated, and at least 50 percent of the Board members will have to be producers. In addition, the Board will be required to periodically review the producer regions and number of importer positions on the Board and recommend any appropriate changes to the U.S. Department of Agriculture (USDA or the Department).

How Will Nomination and Eligibility Procedures Change?

Currently, handlers, importers, and others submit the names of handlers and importers to the Committee for consideration as the official nominees to serve on the Board as handler members and alternates. This rule will allow handler and importer organizations to be certified to submit the names of handlers and importers to the Committee as well. In addition, national honey marketing cooperatives will be allowed to submit names to the Committee for consideration as the official nominees for the cooperative representative and alternate on the Board.

This rule also adds a new eligibility requirement for importer members and alternates. In order to be eligible to serve in these positions, importers must receive at least 75 percent of their gross honey business income from the sale of imported honey and honey products during any three of the preceding five years. Previously, any person who imported any amount of honey was eligible to serve on the Board as an importer member or alternate.

What Are the Changes in the Terms of Office for Committee and Board Members?

This rule will change the beginning of the term of office for Committee members from January 1 to July 1. This will facilitate more timely nomination and appointment of new members.

In addition, the amended Act authorized the Secretary to stagger the terms of office of Board members periodically to help ensure continuity of Board membership. For example, currently the term of office for the producer members and alternates from four of the seven producer regions end on December 31, 2001. This means that over 50 percent of the producer members on the Board could change in one year. This is not desirable. Therefore, the Secretary will work with the Board and the Committee to determine which of the regional producer positions should have a different term of office.

What Is a Voluntary Quality Assurance Program?

After this rule becomes effective, the Board will be allowed to develop rules and regulations for a voluntary quality assurance program for review by USDA. Under this type of program, the Board may develop an official seal of approval to be used only by producers, handlers, and importers who participate in the program. In order to participate in the program, the products of the industry members would be required to meet certain purity standards. The goal of this type of program is to increase demand for honey and honey products by increasing consumer confidence in the honey and honey products on the market.

How Would Exemption and Recordkeeping Requirements Change?

Producers, producer-packers, and importers who sell (1) less than 6,000 pounds of honey annually and (2) the honey is sold through local retail outlets, such as roadside stands, farmers markets, or groceries will no longer have to request an exemption from the Board in order to avoid paying assessments under the program. In addition, producers would be required to keep records for a period of two years just like producer-packers, handlers, and importers. The Board and the Department need access to certain industry records in order to enforce the assessment and reporting provisions of the program.

What Are the Statutory Requirements on Continuance Referenda and Evaluations?

The Act requires the Secretary of Agriculture (Secretary) to conduct a continuance referendum on the honey program at least once every five years. When the Act was amended in 1998, it specified that continuance referenda be held no more than once every two years. Therefore this rule adds that limitation on the frequency of continuance referenda to the Order.

In 1996 [7 U.S.C. 7401], Congress required all national research and promotion boards to conduct independent evaluations of their programs at least once every five years. This rule will simply include that requirement in the Order.

What Happened to the Other Proposed Amendments?

The other proposed amendments (votable amendments) did not receive enough support from the industry in the September 2000 referendum. Therefore, they are not being implemented at this time. However, the amended Act authorizes the Secretary to conduct rulemaking and a referendum to implement one or more of the votable amendments at a later time, if recommended by the Board or the honey industry.

The votable amendments would have: (1) Required the Board to reserve 8 percent of its funds annually for beekeeping and production research; (2) authorized the Board to develop recommendations for purity standards and an inspection and monitoring system to enhance the image of honey and honey products; (3) added two handler-importer members and alternates to the Board; (4) reduced the producer assessment from 1 cent per pound to 0.75 cents per pound; (5) added a new assessment on handlers of 0.75 cents per pound on the domestic honey that they handle; and (6) increased the importer assessment from 1 cent per pound to 1.5 cents per pound on imported honey and honey products.

Executive Orders 12866 and 12988

This rule has been determined to be "not significant" for purposes of Executive Order (E.O.) 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In addition, this rule has been reviewed under E.O. 12988, Civil Justice Reform. The rule is not intended to have retroactive effect and would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act allows producers, producer-packers, importers, and handlers (if covered by the program) to file a written petition with the Secretary of Agriculture (Secretary) if they believe that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with law. In the petition, the person may request a modification of the Order or an exemption from the Order. Petitions must be filed not later than two years after: (1) The effective date of the Order, provision, or obligation challenged in the petition; or (2) the date on which the petitioner became subject to the Order, provision, or obligation challenged in the petition. The petitioner will have the opportunity for a hearing on the petition. Afterwards, the Secretary will issue a ruling on the petition.

If the petitioner disagrees with the Secretary's ruling, the petitioner may file, within 20 days, an appeal in the U.S. District Court for the district where the petitioner resides or conducts business.

Regulatory Flexibility Act and Paperwork Reduction Act

Regulatory Flexibility Analysis. In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) has examined the impact of changes to the honey program on small honey producers, producer-packers, and importers. The final regulatory flexibility analysis was included in the proposed rule that was published in the **Federal Register** on August 7, 2000.

However, that analysis included the impact of both the votable and non-votable amendments to the Order. This rule will implement only the non-votable amendments because the votable amendments were not approved in the September 2000 referendum. Accordingly, the applicable analysis is as follows.

The Small Business Administration (SBA) (13 CFR 121.201) defines small agricultural producers as those having annual receipts of no more than $500,000. Small producer-packers, handlers, and importers fit into the SBA definition for small agricultural service firms with annual receipts of less than $5 million.

According to National Honey Board (Board) records, 2,885 producers paid $1,864,590 in assessments in 1999. That represents $646 in assessments on 64,600 pounds of honey per producer. At the average wholesale price for honey in 1999 of 65.5 cents per pound, the average producer had $42,313 in receipts, well below the $500,000 threshold.

Similarly, Board records indicate that 348 importers paid $1,743,021 in assessments in 1999. That represents $5,008 in assessments on 500,800 pounds of honey per importer. At the average wholesale price for honey of 65.5 cents per pound, the average importer had $328,024 in receipts, well below the $5 million threshold.

Therefore, a majority of the producers, producer-packers, handlers, and importers who would be affected by the changes to the Order may be considered small entities. In addition, an estimated three handler-importer organizations whose membership includes these entities would be affected by the changes to the Order.

The changes in the nomination procedures for Board members would benefit handlers, importers, and marketing cooperatives by giving them increased input on the individuals who are nominated by the National Honey Nominations Committee (Committee). The new eligibility requirements for persons serving as importer members and alternates on the Board and the elimination of the authority for an exporter to serve in an importer position on the Board will also benefit importers by providing them more representation on the Board and, thus, more input into Board decisions on how their assessment dollars are spent.

The change in the term of office for Committee members will greatly facilitate the ability of state beekeeper associations to submit nominees to

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serve on the Committee to USDA in a timely manner and help assure that the Secretary is able to appoint new members to the Committee prior to the beginning of the term of office. The new requirement that 50 percent of the members of the Board must be producers reflects the amended provisions of the Act.

In addition, producers, handlers, and importers would benefit from the changes on reconstituting the Board. Reconstitution of Board members will be based on changes in the geographical distribution of honey production in the United States and on changes in the proportion of assessments paid on domestic honey and on imported honey and honey products, and this should provide more equitable treatment and fairness of representation on the Board for producers, handlers, and importers alike.

All segments of the honey industry could benefit from the implementation of a quality assurance program and a related inspection and monitoring system because they have the potential to increase wholesale and retail confidence in the quality of the honey that is marketed. This means that consumers, food service operators, and manufacturers would be likely to have more confidence in the quality of honey and honey products available on the market. This, in turn, is expected to generate increased sales of honey in the United States and abroad, which would benefit producers, handlers, and importers alike. Handlers would also have confidence in the purity of the honey they are buying from producers or importers.

Adding reporting and recordkeeping requirements for producers will assist the Board in periodically collecting production information to help identify industry trends for use in program planning and evaluation. This information will help guide the Board in its decision making as well as be provided to industry members for their use in making individual marketing decisions. The amendment will also assist the Board in enforcing the assessment and reporting provisions of the Order which is expected to help ensure that everyone who is subject to assessments is paying assessments.

Elimination of the requirement for persons who are eligible to claim an exemption to file an application for an application will significantly reduce the paperwork burden on the industry as well as reduce the Board's costs in managing the program.

The new statutory guideline for the timing of referenda reduces the possibility that the operations of the Board will be disrupted so frequently that the effectiveness of the Board's programs would be compromised.

In addition, removing obsolete provisions from the Order and rewriting other provisions will make the Order more understandable to the public, the industry, and the Board and its staff.

We have also revised the paperwork and recordkeeping impact as described in the August 7, 2000, by eliminating references and information relating to the votable amendments that will not be implemented as a result of this final rule. Therefore, the remaining paperwork and recordkeeping impact is described below.

One amendment requires producers to maintain and make available to the Board and the Secretary books and records. Another requires producers to periodically report to the Board information pertaining to the quantity of honey produced and the total number of bee colonies maintained. Currently, only handlers, importers, and producer-packers are required to maintain records and provide reports to the Board or the Secretary. This information is necessary for enforcement of the Act. It is most likely that the information requested from producers would be obtained through periodic audits.

Based on this expanded reporting authority, there are also plans to collect production information periodically from producers. At this time, the Board's plans are tentative on how and when producers are to report the prescribed information due to mailing costs and certain other factors relating to the content and design of the information collection. The form or mailer for collecting the information will be submitted to OMB for approval prior to its use, and the industry will be notified.

The reporting burden for certain producers, producer-packers, handlers, and importers who qualify for exemption from assessment based on the quantity of honey or honey products produced, handled, or imported will be eliminated. Pursuant to the 1998 changes to the Act, the Order will no longer require individuals to file an application with the Board in order to attain exempt status.

The recordkeeping and reporting requirements related to the amendments to the Order are designed to minimize the burden on producers, producer-packers, handlers, and importers. In addition, any information collection that cannot occur through forms already in use will pose a minimal additional burden.

The estimated total annual cost of maintaining records and providing the information to the Board and USDA by an estimated 5,043 respondents would be $25,245 annually. The 5,043 respondents are as follows: 5,024 producers, 7 handlers, 7 importers, 2 cooperative representatives, and 3 organizations. The total cost for producers is $25,120 or $5.00 per producer per response. The total cost for handlers is $35 or $5.00 per handler. The total cost for importers is $35 or $5 per importer. The total cost for cooperative representatives is $10 or $5 per cooperative representative. The total cost for organizations is $45 or $15 per organization.

The impact of the recordkeeping requirement provided for in this rule on small entities will be minimal. This recordkeeping requirement is consistent with prudent business practices and is not expected to impose any undue costs or significant burdens on a vast majority of the small entities affected. It is anticipated that a significant number of these small entities currently keep these records for commercial and/or tax purposes.

The forms to be modified will require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act, as well as the amendments to the Order. The information required has been designed to coincide with normal industry business practices to minimize the burden on the industry.

With regard to alternatives, the provisions of the amendments to the Order in this rule have been carefully reviewed, and every effort has been made to minimize any unnecessary costs or requirements while maintaining consistency with the provisions of the Act, as amended.

There are no federal rules that duplicate, overlap, or conflict with this rule.

Paperwork Reduction Act. In accordance with the OMB regulation [5 CFR part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection and recordkeeping requirements that are imposed by this rule have been approved by OMB under OMB Control Nos. 0581–0093 and 0505–0001.

This information differs from what was published in the August 7, 2000, proposed rule because the August 7, 2000, proposed rule included the burden associated with amendments that will not be implemented by this final rule. Following are the increases and decreases in burden that will become effective with this final rule.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581–0093. *Expiration Date of Approval:* March 31, 2001.

OMB Number: 0505–0001. *Expiration Date of Approval:* July 31, 2002.

Type of Request: Revision of currently approved information collections for advisory committees and boards and for research and promotion programs.

Abstract: The recordkeeping and information collection requirements are essential to carry out the intent of the Act, as amended.

Producer recordkeeping and reporting (increase under OMB No. 0581–0093). The Order currently requires handlers, importers, and producer-packers to retain their books and records for at least two years beyond the marketing year of their applicability. This rule changes the Order to conform to the Act, as amended, by also requiring producers to maintain and retain books and records for two years. It is anticipated that producers already maintain and retain the books and records which contain this information for commercial and/or tax purposes. Therefore, this recordkeeping requirement is consistent with prudent business practices and is not expected to impose any undue costs or significant burdens on a vast majority of producers.

In addition, the Board will have the authority to require producers to report information pertaining to the quantity of honey produced and the total number of bee colonies maintained. Currently, the Board's authority to request reports extends only to handlers, importers, and producer-packers. It is most likely that this information will be obtained from producers through periodic audits.

Based on this expanded reporting authority, the Board also plans to collect the quantity of honey produced and number of bee colonies maintained periodically from producers. At this time, the Board's plans are tentative on how and when producers are to report this information due to mailing costs and certain other factors relating to the content and design of the possible information collection.

Candidate Profile form (increase under OMB No. 0581–0093). This rule also revises qualification requirements for serving on the Board. This information will be collected on the Board's Candidate Profile form and be used by the Board's staff and the Committee to determine the qualifications of candidates. It is anticipated that the basic background information to be collected would be readily accessible or otherwise obtained from records currently maintained by those persons who would be candidates to serve on the Board.

Nominee background form (decrease under OMB No. 0505–0001 and increase under OMB No. 0581–0093). Currently, nominees for positions on the Board or the Committee must submit a copy of a USDA background form (AD–755) under OMB No. 0505–0001 to the Secretary. In the future, nominees will be required to submit a copy of an AMS background form (AMS–755) under OMB No. 0581–0093. The information collected on the two forms is identical.

Report by honey handler and importer organizations and national honey marketing cooperatives (increase under OMB No. 0581–0093). This rule will allow handler and importer organizations and national honey marketing cooperatives to submit the names of handlers, importers, and cooperative representatives, respectively, to the Committee for nomination to the Board. However, the organizations must submit information in a report to the Secretary in order to be certified as eligible to submit the names.

In addition to increasing the burden under OMB No. 0581–0093, this rule also decreases the burden by 41.5 hours because it removes the requirement for producers, producer-packers, and importers to file an application with the Board in order to qualify for exemption from assessments.

The provisions of the amendments to the Order in this rule have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping or reporting costs or requirements.

Under this rule, the information required has been designed to coincide with normal industry business practices to minimize the burden on the industry. The information sought is not available from other sources because such information relates specifically to persons covered by the Act and Order. Therefore, there is no practical method for collecting the required information without the proposed recordkeeping requirements and use of forms described in this rule.

The estimated total annual cost of maintaining records and providing the information to the Board and USDA by an estimated 5,043 respondents would be $25,245 annually. The 5,043 respondents are as follows: 5,024 producers, 7 handlers, 7 importers, 2 cooperative representatives, and 3 organizations. The total cost for producers is $25,120 or $5.00 per producer per response. The total cost for handlers is $35 or $5.00 per handler. The total cost for importers is $35 or $5 per importer. The total cost for cooperative representatives is $10 or $5 per cooperative representative. The total cost for organizations is $45 or $15 per organization.

(1) *PRODUCER RECORDKEEPING AND REPORTING (NEW BURDEN UNDER OMB No. 0581–0093).*

Estimate of Burden: Public recordkeeping burden for keeping this information is estimated to average 0.5 hours per recordkeeper maintaining such records.

Respondents (Recordkeepers): Producers and producer-packers (in their capacity as producers).

Estimated Number of Respondents (Recordkeepers): 5,000.

Estimated Number of Responses per Respondent (Recordkeeper): 1.

Estimated Total Annual Burden on Respondents (Recordkeepers): 2,500 hours.

(2) *CANDIDATE PROFILE (NEW BURDEN UNDER OMB No. 0581–0093).*

Estimate of Burden: Public reporting burden for this collection of information from candidates to the Board is estimated to average 0.50 hours per response.

Respondents: 15 Producers, 4 handlers, 4 importers, and 1 cooperative representative.

Estimated Number of Respondents: 24.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 12 hours.

(3) *BACKGROUND INFORMATION FORM (DECREASE UNDER OMB No. 0505–001 AND NEW BURDEN UNDER OMB No. 0581–0093).*

Estimate of Burden: Public reporting burden for the collection of information from two nominees for each of the estimated four number and four alternate position openings annually is estimated to average 0.5 hours per response.

Respondents: 9 producers, 3 handlers, 3 importers, and 1 cooperative representative.

Estimated Number of Respondents: 16.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 8 hours.

(4) *A REPORT FROM HONEY HANDLER AND IMPORTER ORGANIZATIONS AND NATIONAL HONEY MARKETING COOPERATIVES (NEW BURDEN UNDER OMB No. 0581–0093).*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.5 hours per response for each organization.

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Respondents: Honey handler and importer organizations.

Estimated Number of Respondents: 3.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 4.5 hours.

Comments on the regulatory and paperwork impact of the amendments to the Order were invited in the February 28, 2000, proposed rule. Three comments were submitted by the April 28, 2000, deadline, and were discussed in the August 7, 2000, proposed rule on these amendments.

Background

As explained above, the Act, which authorizes the honey research and promotion program, was amended in 1998. Subsequently, the U.S. Department of Agriculture (USDA or the Department) requested interested persons to submit proposals for making comparable changes to the program, which operates under the Honey Research, Promotion, and Consumer Information (Order).

The National Honey Board (Board)—with the support of three honey industry groups—submitted a proposal containing regulatory text for all of the changes authorized or required by the 1998 amendments to the Act. Proposals submitted by eight other organizations or persons did not include regulatory text. Therefore, the Department published the Board's proposal, with a few changes, as a proposed rule in the **Federal Register** on February 28, 2000 (65 FR 10600), with a 60-day comment period. The eight other submissions were made part of the rulemaking record and are considered comments on the proposed changes.

A total of 30 comments were received on the proposed amendments. These included the original eight comments that were received in response to USDA's request for proposals in 1999, some of which were resubmitted by the commenter. Seventeen commenters supported the amendments, 12 commenters opposed one or more of the amendments, and one commenter merely expressed an opinion on the direction the Board should take. As discussed in the August 7, 2000, rule, some changes were made to the proposed amendments as a result of comments received.

USDA held a national referendum on the votable amendments from September 5 through 29, 2000. In the referendum, only 30.33 percent of the voters, who represented 51.26 percent of the pounds of honey produced, handled, and imported by the voters in the referendum, approved the votable amendments. Therefore, only the non-votable amendments will be made effective by this final rule. In order to implement only the non-votable amendments, it has been necessary to delete language related to the votable amendments and to rewrite some paragraphs as a result of the deletions. Some renumbering of sections and paragraphs has also occurred.

This rule will amend the Order by: (1) Changing the size and composition of the Board; (2) changing nomination and eligibility requirements for handlers, importers, and representatives of cooperatives on the Board; (3) changing the term of office for members of the Board and the National Honey Nominations Committee (Committee); (4) authorizing the Board to develop a voluntary quality assurance program; (5) removing the requirement for small companies to file for an exemption under the program in order to avoid paying assessments; (6) requiring producers to provide reports and maintain records; and (7) adding statutory requirements for continuance referenda and evaluations.

The amendments that appeared in the August 7, 2000, proposed rule that will not be made by this rule are: (1) A requirement for the Board to reserve 8 percent of its funds annually for beekeeping and production research; (2) authorization for the Board to develop recommendations for purity standards and an inspection and monitoring system to enhance the image of honey and honey products; (3) the addition of two handler-importer members and alternates to the Board; (4) a reduction in the producer assessment from 1 cent per pound to 0.75 cents per pound; (5) a new assessment on handlers of 0.75 cents per pound on the domestic honey that they handle; and (6) an increase in the importer assessment from 1 cent per pound to 1.5 cents per pound on imported honey and honey products.

Board size and composition. The Board is currently composed of seven producers, two importers (or one importer and one exporter), two handlers, one representative of a cooperative, one public member, and their alternates.

This rule will change the importer-exporter position on the Board to another importer position to provide more importer input into Board deliberations. In addition, the public member position will be eliminated, and at least 50 percent of the Board members will have to be producers.

Also, this rule will add a new section to the Order to provide for reconstitution of the Board every five years. The new section provides procedures for making changes in the boundaries of the domestic producer regions and for adding importer members if warranted. The representation of importers will not change unless the proportion of assessments owed by importers compared with the proportion of assessments owed by producers on domestic honey changes by more than 6 percent from the proportions determined by the Board for its 1996 fiscal period. The first review is required before the next continuance referendum on the program, which will be held in 2001.

Nominoting and eligibility requirements. This rule will also change some of the nomination procedures under the Order. Currently, handlers, importers, and others submit the names of handlers and importers to the Committee for consideration as the official nominees to serve on the Board as handler members and alternates. This rule will allow handler and importer organizations to be certified to submit the names of handlers and importers to the Committee as well. In addition, national honey marketing cooperatives will be allowed to submit names to the Committee for consideration as the official nominees for the cooperative representative and alternate on the Board.

This rule also adds a new eligibility requirement for importer members and alternates. In order to be eligible to serve in these positions, importers must receive at least 75 percent of their gross honey business income from the sale of imported honey and honey products during any three of the preceding five years. Previously, any person who imported any amount of honey was eligible to serve on the Board as an importer member or alternate.

Terms of office. In addition, this rule will change the beginning of the term of office for Committee members from January 1 to July 1. This will facilitate more timely nomination and appointment of new members.

Also, the amended Act authorized the Secretary to stagger the terms of office of Board members periodically to help ensure continuity of Board membership. For example, currently the term of office for the producer members and alternates from four of the seven producer regions end on December 31, 2001. This means that over 50 percent of the producer members on the Board could change in one year. This is not desirable. Therefore, the Secretary will work with the Board and the Committee to determine which of the regional producer positions should have a different term of office.

Voluntary quality assurance program. After this rule is implemented the Board may develop rules and regulations for a voluntary quality assurance program for review by USDA. The voluntary quality assurance program may include the establishment of an official Board seal of approval to be displayed on honey and honey products or producers, handlers, and importers that participate in the voluntary program and are found to meet such standards of purity as are established under the program. It may also include actions to encourage the honey industry to participate in the program and to encourage consumers to purchase honey and honey products that bear the official seal of approval. In addition, the Department or other parties approved by the Department may perform periodic inspections of the participants in the voluntary program. Before a voluntary quality assurance program will be implemented, USDA will issue the proposed rules and regulations relating to the program for public comment.

Exemptions, reports, and recordkeeping. Producers, producer-packers, and importers who sell (1) less than 6,000 pounds of honey annually and (2) the honey is sold through local retail outlets, such as roadside stands, farmers markets, or groceries will no longer have to request an exemption from the Board in order to avoid paying assessments under the program. In addition, producers would be required to keep records for a period of two years just like producer-packers, handlers, and importers. The Board and the Department need access to certain industry records in order to enforce the assessment and reporting provisions of the program.

Continuance referenda. The Act requires the Secretary of Agriculture to conduct a continuance referendum on the honey program at least once every five years. When the Act was amended in 1998, it specified that continuance referenda be held no more than once every two years. Therefore, this rule adds the limitation on the frequency of continuance referenda to the Order.

Evaluations. This rule also includes a requirement for the Board to conduct an independent evaluation of the effectiveness of its programs at least once every five years. The requirement was imposed by Congress on all national research and promotion programs in 1996.

Miscellaneous changes. Finally, this rule removes obsolete and gender-specific language from the Order and makes a number of changes for syntax and for clarity. Most of these changes were in the August 7, 2000, proposed rule. Additional changes made by this rule include removing gender-specific language from §§ 1240.34(b), 1240.38(j), and 1240.62(a), expanding § 1240.5 *Department* to read *Department or USDA*, and adding the tenure limitation for Committee members back into paragraph (a)(3) of § 1240.32.

List of Subjects in 7 CFR Part 1240

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Honey promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1240 is amended as follows:

PART 1240—HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION

1. Revise the authority citation for part 1240 to read as follows:

Authority: 7 U.S.C. 4601–4613; 7 U.S.C. 7401.

2. Revise the heading of part 1240 to read as set forth above.

3. Add a heading for a new subpart A, consisting of §§ 1240.1 through 1240.67, to read as follows:

Subpart A—Honey Research, Promotion, and Consumer Information Order

4. Remove § 1240.43.

4a. Redesignate §§ 1240.1 through 1240.14, 1240.16 through 1240.22, and 1240.44 as follows:

Old section	New section
1240.1	1240.26
1240.2	1240.1
1240.3	1240.18
1240.4	1240.10
1240.5	1240.12
1240.6	1240.20
1240.7	1240.8
1240.8	1240.9
1240.9	1240.21
1240.10	1240.13
1240.11	1240.6
1240.12	1240.22
1240.13	1240.25
1240.14	1240.4
1240.16	1240.3
1240.17	1240.28
1240.18	1240.2
1240.19	1240.27
1240.20	1240.7
1240.21	1240.19
1240.22	1240.17
1240.44	1240.43

5. Revise newly designated § 1240.2 to read as follows:

§ 1240.2 Board.

Board or *National Honey Board* means Honey Board, the administrative body established pursuant to § 1240.30.

6. Revise newly designated § 1240.3 to read as follows:

§ 1240.3 Committee.

Committee means the National Honey Nominations Committee established pursuant to § 1240.32.

7. Add a new § 1240.5 to read as follows:

§ 1240.5 Department or USDA.

Department or *USDA* means the United States Department of Agriculture.

8. Revise newly designated § 1240.8 to read as follows:

§ 1240.8 Handle.

Handle means to process, package, sell, transport, purchase or in any other way place honey or honey products, or cause them to be placed, in the current of commerce. This term shall include selling unprocessed honey that will be consumed without further processing or packaging. This term shall not include the transportation of unprocessed honey by a producer to a handler or transportation by a commercial carrier of honey, whether processed or unprocessed, for the account of the handler or producer. This term shall not include the purchase of honey or a honey product by a consumer or other end-user of the honey or honey product.

9. Revise newly designated § 1240.10 to read as follows:

§ 1240.10 Honey.

Honey means the nectar and saccharine exudations of plants which are gathered, modified, and stored in the comb by honey bees, including comb honey.

10. Add a new § 1240.11 to read as follows:

§ 1240.11 Honey production.

Honey production means all beekeeping operations related to managing honey bee colonies to produce honey, harvesting honey from the colonies, extracting honey from the honeycombs, and preparing honey for sale and further processing.

11. Revise newly designated § 1240.13 to read as follows:

§ 1240.13 Importer.

Importer means any person who imports honey or honey products into the United States as principal or as an agent, broker, or consignee for any person who produces honey or honey products outside of the United States for sale in the United States, and who is

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listed in the import records as the importer of record for such honey or honey products.

12. Add a new § 1240.14 to read as follows:

§ 1240.14 Industry information.

Industry information means information or a program that will lead to the development of new domestic and foreign markets, new marketing strategies, or increased efficiency for the honey industry, or an activity to enhance the image of honey and honey products and of the honey industry.

13. Add a new § 1240.16 to read as follows:

§ 1240.16 National honey marketing cooperative.

National honey marketing cooperative means a cooperative that markets its products in at least two of the following four regions of the United States, as determined by the Secretary:

(a) The Atlantic Coast, including the District of Columbia and the Commonwealth of Puerto Rico;

(b) The Mideast;

(c) The Midwest; and

(d) The Pacific, including the states of Alaska and Hawaii.

14. Revise newly designated § 1240.19 to read as follows:

§ 1240.19 Plans and projects.

Plans and *projects* means those research, promotion, industry information, and consumer education plans, studies, or projects established pursuant to §§ 1240.38 and 1240.39.

15. Add a new § 1240.23 to read as follows:

§ 1240.23 Qualified national organization representing handler interests.

Qualified national organization representing handler interests means an organization that the Secretary certifies as being eligible to recommend nominations to the Committee for handler and alternate handler members of the Board under § 1240.32.

16. Add a new § 1240.24 to read as follows:

§ 1240.24 Qualified national organization representing importer interests.

Qualified national organization representing importer interests means an organization that the Secretary certifies as being eligible to recommend nominations to the Committee for importer and alternate importer members of the Board under § 1240.32.

17. Revise newly designated § 1240.25 to read as follows:

§ 1240.25 Research.

Research means any type of systematic study or investigation, including studies testing the effectiveness of market development and promotion efforts, and/or the evaluation of any study or investigation designed to advance the image, desirability, usage, marketability, production, or quality of honey or honey products. Such term shall also include studies on bees to advance the cost effectiveness, competitiveness, efficiency, pest and disease control, and other management aspects of beekeeping, honey production, and honey bees.

18. Revise § 1240.30 to read as follows:

§ 1240.30 Establishment and membership.

A Honey Board is established to administer the terms and provisions of this part. The Board shall consist of twelve (12) members, each of whom shall have an alternate. Seven members and seven alternates shall be honey producers; two members and two alternates shall be honey handlers; two members and two alternates shall be honey importers; and one member and one alternate shall be an officer, director, or employee of a national honey marketing cooperative. The Board shall be appointed by the Secretary from nominations submitted by the Committee, pursuant to § 1240.32. Notwithstanding any other provision of this part, at least 50 percent of the members of the Board shall be honey producers.

19. Revise § 1240.31 to read as follows:

§ 1240.31 Term of office.

The members of the Board and their alternates shall serve for terms of three years, except that terms may be staggered periodically as recommended by the Board and as determined by the Secretary or as determined by the Secretary alone. No member or alternate shall serve more than two consecutive three-year terms. The term of office shall begin on April 1. Each Board member and alternate member shall continue to serve until the member's or alternate's successor meets all qualifications and is appointed by the Secretary.

20. Amend § 1240.32 as follows:

a. By revising paragraphs (a)(1) and (a)(3), and (b)(1) and (b)(2) respectively;

b. Removing paragraph (b)(6);

c. Redesignating paragraphs (b)(7) and (b)(8) as (b)(6) and (b)(7) respectively;

d. Revising newly designated paragraphs (b)(6) and (b)(7); and

e. Adding paragraphs (b)(8), (b)(9), (b)(10), (b)(11), and (b)(12).

The revisions and additions to § 1240.32 read as follows:

§ 1240.32 Nominations.

* * * * *

(a) * * *

(1) There is established a National Honey Nominations Committee, which shall consist of not more than one member from each State, appointed by the Secretary from nominations submitted by each State beekeeper association. Wherever there is more than one eligible association within a State, the Secretary shall designate the association most representative of the honey producers, handlers, and importers not exempt under § 1240.42 (a) and (b) to make nominations for that State.

* * * * *

(3) Members of the Committee shall serve for three-year terms, except that the term of appointments to the Committee may be staggered periodically, as determined by the Secretary. No member shall serve more than two consecutive three-year terms. The term of office shall begin on July 1.

* * * * *

(b) * * *

(1) The Committee shall nominate the members and alternate members of the Board and submit such nominations promptly to the Secretary for approval.

(2) The Committee shall meet annually to make such nominations, or, at the determination of the Chairperson, the Committee may conduct its business by mail ballot in lieu of an annual meeting.

* * * * *

(6) In nominating producer members to the Board, no producer-packer who, during any three of the preceding five years, purchased for resale more honey than the producer-packer produced shall be eligible for nomination or appointment to the Board as a producer or as an alternate to a producer.

(7) In nominating importer members to the Board, no importer who, during any three of the preceding five years, did not receive at least 75 percent of the gross income generated by the sale of honey and honey products from the sale of imported honey and honey products shall be eligible for nomination or appointment to the Board as an importer or as an alternate to an importer.

(8) Six months before the new Board term begins, the Committee shall submit to the Secretary nominations for positions on the Board. The number of nominations will directly correspond to the number of producer, handler, importer, and cooperative member positions due to become vacant. Selection of nominees by the Committee will be pursuant to the following:

(i) Nominations for producer members and alternate producer members will be from the regions in which one or more vacancies will occur;

(ii) Nominations for handler members and alternate handler members will be based on recommendations made by qualified national organizations representing handler interests, or, if the Secretary determines that there is not a qualified national organization representing handler interests, by individual handlers who have paid assessments to the Board on honey or honey products handled;

(iii) Nominations for importer members and alternate importer members will be based on recommendations made by qualified national organizations representing importer interests, or, if the Secretary determines that there is not a qualified national organization representing importer interests, by individual importers who have paid assessments to the Board on imported honey or honey products; and

(iv) Nominations for a member and alternate member who are officers, directors, or employees of national honey marketing cooperatives will be based on recommendations made by qualified national honey marketing cooperatives.

(9) *Qualified national organization representing handler interests.* To be certified by the Secretary as a qualified national organization representing handler interests, an association or organization must meet the following criteria, as evidenced in a factual report submitted by the association or organization to the Secretary:

(i) The organization's membership is comprised primarily of honey handlers;

(ii) The organization represents a substantial number of handlers who handle a substantial volume of honey in at least 20 states;

(iii) The organization has a history of stability and permanency;

(iv) A primary or overriding purpose of the organization is to promote the economic welfare of honey handlers;

(v) A portion of the operating funds of the organization are derived from handlers; and

(vi) The organization demonstrates the ability and willingness to further the purposes of the Act.

(10) *Qualified national organization representing importer interests.* To be certified as a qualified national organization representing importer interests, an association or organization must meet the following criteria, as evidenced in a factual report submitted by the association or organization to the Secretary:

(i) The organization's total paid membership is comprised of a significant number of importers or the organization's total paid membership represents at least a majority of the volume of honey imported into the United States;

(ii) The organization has a history of stability and permanency;

(iii) A primary or overriding purpose of the organization is to promote the economic welfare of honey importers;

(iv) Substantial geographic territory is covered by the active membership of the organization;

(v) A portion of the operating funds of the organization are derived from importers; and

(vi) The organization demonstrates the ability and willingness to further the purposes of the Act.

(11) As a condition of certification by the Secretary as a qualified national organization representing handler or importer interests, an organization shall agree to:

(i) Notify handlers and importers who are not members of the organization of Board nomination opportunities for which the organization is certified to make recommendations to the Committee; and

(ii) Consider the nomination of handlers and importers who are not members when making the nominations of the organization to the Committee, if nonmembers indicate an interest in serving on the Board.

(12) A certification determination by the Secretary of a qualified organization representing handler or importer interests shall be final.

21. Add a new § 1240.33 to read as follows:

§ 1240.33. Board reconstitution.

(a) Every five years, the Board shall review the geographic distribution of the quantities of domestically produced honey assessed under this subpart and the changes in the annual average percentage of assessments owed by importers under this subpart relative to assessments owed by producers of domestic honey. The Board shall conduct the initial review required by this paragraph prior to the first continuance referendum conducted after May 31, 2001.

(b)(1) If warranted as a result of this review, the Board shall recommend for the Secretary's approval:

(i) Changes in the regional representation of honey producers; and/or

(ii) The addition of Board members.

(2) If such allocations are necessary to reflect changes in the proportion of domestic and imported honey assessed under this subpart or the source of assessments on imported honey or honey products, the Board may not recommend the addition of members pursuant to paragraph (b)(1)(ii) of this section unless the proportion of assessments owed by importers compared with the proportion of assessments owed on domestic honey by producers changed by more than 6 percent from the base period proportion determined in accordance with paragraph (d) of this section.

(c) Except as provided in paragraph (d) of this section, recommendations made under paragraph (b) of this section shall be based on the 5-year average annual assessments, excluding the 2 years containing the highest and lowest disparity between the proportion of assessments owed from imported and domestic honey or honey products, determined pursuant to the review that is conducted under paragraph (a) of this section.

(d) The base period proportions for determining the magnitude of change under paragraph (c) of this section shall be the proportions determined during the prior review conducted under this section. In the case of the initial review, the base period proportions shall be the proportions determined by the Board for fiscal period 1996.

(e) Notwithstanding any other provision of this section, at least 50 percent of the members of the Board shall be honey producers.

(f) Any such reallocation or addition of members shall be made at least six months prior to the date on which terms of office of the Board begin each year and shall become effective at least 30 days prior to such date.

22. Amend § 1240.34 as follows:

a. By revising paragraphs (a) and (b); and

b. By removing "Honey Nominations Committee and adding "Committee" in its place in paragraph (c).

The revisions of paragraphs (a) and (b) read as follows:

§ 1240.34 Vacancies.

(a) In the event any member of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such position shall automatically become vacant: *Provided*, That if, as a result of Board reconstitution pursuant to § 1240.33, a producer member or alternate is no longer from the region from which such person was appointed, the affected member and/or alternate may serve out the term for which such person was appointed, or if a member, whose position is based on the member's status as an importer is

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subject to reallocation by the Board, the affected member and/or alternate may serve out the term for which such person was appointed.

(b) If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that the member be removed from office. If the Secretary finds the recommendation of the Board shows adequate cause, the Secretary shall remove such member from office.

* * * * *

23. Amend § 1240.35 by revising paragraph (a) to read as follows:

§ 1240.35 Procedure.

(a) A majority of members, of which at least 50 percent are producers, including alternates acting in place of members of the Board, shall constitute a quorum: *Provided*, That such alternates shall serve only whenever the member is absent from a meeting or is disqualified. Any action of the Board shall require the concurring votes of a majority of those present and voting. At assembled meetings, all votes shall be cast in person.

* * * * *

24. Amend § 1240.38 by revising paragraphs (c), (d), (e), (j), (g),(k), (l) and (m) to read as follows:

§ 1240.38 Duties.

* * * * *

(c) To prepare and submit to the Secretary for approval 60 days in advance of the beginning of a fiscal period, a budget of its anticipated expenses in the administration of this part including the probable costs of all programs and plans and to recommend a rate of assessment with respect thereto;

(d) To investigate violations of this part and report the results of such investigations to the Secretary for appropriate action to enforce the provisions of this part;

(e) To develop programs and plans and to enter into contracts or agreements with the approval of the Secretary for the development and carrying out of programs and plans of research, promotion, advertising, consumer education, or industry information and the payment of the costs thereof with funds collected pursuant to this part;

* * * * *

(g) To periodically prepare and make public and to make available to producers, handlers, producer-packers, and importers, reports of its activities carried out and, at least once each fiscal period, to make public an accounting of funds received and expended;

* * * * *

(j) To submit to the Secretary such information pertaining to this subpart as the Secretary may request;

(k) To notify honey producers, producer-packers, handlers, and importers of all Board meetings through press releases or other means.

(l) To appoint and convene, from time to time, working committees which may include producers, handlers, producer-packers, importers, exporters, members of wholesale or retail outlets for honey, or other members of the public to assist in the development of research, promotion, advertising, consumer education, and industry information programs for honey; and

(m) To develop and recommend such rules and regulations to the Secretary for approval as may be necessary for the development and execution of plans or activities to effectuate the declared purpose of the Act.

25. Revise the heading preceding § 1240.39 to read as follows:

RESEARCH, PROMOTION, CONSUMER EDUCATION, AND INDUSTRY INFORMATION

26. Revise § 1240.39 to read as follows:

§ 1240.39 Research, promotion, consumer education, and industry information.

(a) *Scope of activities.* The Board shall develop and submit to the Secretary for approval any plans, programs, or projects authorized in this section. Such plans, programs, and projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate plans, programs, or projects for consumer education, industry information, advertising, and promotion of honey and honey products designed to strengthen the position of the honey industry in the marketplace and to maintain, develop, and expand markets for honey and honey products;

(2) The establishment and conduct of marketing research and development plans to the end that the acquisition of knowledge pertaining to honey and honey products or their consumption and use may be encouraged or expanded, or to the end that the marketing and utilization of honey and honey products may be encouraged, expanded, improved, or made more efficient: *Provided*, That supply management programs or other programs that would otherwise limit the right of the individual honey producer to produce honey shall not be conducted under, or as a part of, this subpart;

(3) The development and expansion of honey and honey product sales in foreign markets;

(4) A prohibition on advertising or other promotion programs that make any false or unwarranted claims on behalf of honey or its products or false or unwarranted statements with respect to the attributes or use of any competing product;

(5) The sponsorship of research designed to advance the cost-effectiveness, competitiveness, efficiency, pest and disease control, and other management aspects of beekeeping, honey production, and honey bees;

(6) The conduct of activities which may lead to the development of new markets or marketing strategies for honey or honey products. In addition, the Board may conduct activities designed to increase the efficiency of the honey industry or activities to enhance the image of honey and honey products and the honey industry;

(7) Periodic evaluation by the Board of each plan, program, or project authorized under this part to insure that each plan, program, or project contributes to an effective and coordinated program of research, promotion, consumer education, and industry information and submit such evaluation to the Secretary. If the Board or the Secretary finds that a plan, program, or project does not further the purposes of the Act, then the Board shall terminate such plan, program, or project; and

(8) The Board to enter into contracts or make agreements for the development and carrying out of research, promotion, consumer education, and industry information programs, and pay for the costs of such contracts or agreements with funds received by the Board.

(b) *Independent evaluation.* In addition to any evaluation that may be carried out pursuant to paragraph (a)(7) of this section, the Board shall, not less often than every five years, authorize and fund, from funds otherwise available to the Board, an independent evaluation of the effectiveness of this subpart and other plans, programs, and projects conducted by the Board pursuant to the Act. The Board shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this paragraph.

27. Amend § 1240.40 by revising paragraphs (a) and (b) to read as follows:

§ 1240.40 Budget and expenses.

(a) Sixty days in advance of the beginning of each fiscal period, or as may be necessary thereafter, the Board shall prepare and recommend a budget on a fiscal period basis of its anticipated expenses and disbursements in the administration of this subpart, including expenses of the Committee and probable costs of research, promotion, consumer education, and industry information.

(b) The Board is authorized to incur expenses for: research, promotion, consumer education, and industry information; such other expenses for the administration, maintenance, and functioning of the Board and the Committee as may be authorized by the Secretary; any operating reserve established pursuant to § 1240.43; and those administrative costs incurred by the Department specified in paragraph (d) of this section. The funds to cover such expenses shall be paid from assessments collected pursuant to § 1240.41, donations from any person not subject to assessments under this subpart, and other funds available to the Board including those collected pursuant to § 1240.67 and subject to the limitationscontained in that section.

* * * * *

28. Revise § 1240.41 to read as follows:

§ 1240.41 Assessments.

(a) *Domestic honey and honey products.* The assessment rate on honey produced in the United States and handled shall be 1 cent per pound of honey produced.

(b) *Imported honey and honey products.* The assessment rate on honey or honey products imported into the United States shall be 1 cent per pound of honey or honey products imported. The importer of imported honey and honey products shall pay the assessment to the Board through the U.S. Customs Service at the time of entry of such honey and honey products into the United States. Should the U.S. Customs Service fail to collect an assessment from an importer, the importer shall be responsible for the payment of the assessment to the Board.

(c) *General.* (1) Except as provided in § 1240.42 and in paragraphs (c)(2) and (e) of this section, the first handler shall be responsible for the collection of such assessment from the producer and payment thereof to the Board. The first handler shall maintain separate records for each producer's honey handled, including honey produced by said handler.

(2) Producer-packers shall pay to the Board the assessment on all honey or honey products for which they act as first handler, in addition to the assessment owed on honey they produce.

(3) Should a first handler fail to collect an assessment from a producer, the producer shall be responsible for the payment of the assessment to the Board.

(4) Assessments shall be paid to the Board at such time and in such manner as the Board, with the Secretary's approval, directs pursuant to this part. Such regulations may provide for different handler, importer, producer, or producer-packer payment schedules so as to recognize differences in marketing or purchasing practices and procedures.

(d) *Late payment.* (1) There shall be a late-payment charge imposed on any importer, handler, or producer-packer who fails to remit to the Board the total amount for which any such importer, producer, or producer-packer is liable on or before the payment due date established by the Board. The amount of the late-payment charge shall be set by the Board subject to approval by the Secretary.

(2) There shall also be imposed on any importer, handler, or producer-packer subject to a late-payment charge, an additional charge in the form of interest on the outstanding portion of any amount for which the importer, handler, or producer-packer is liable. The rate of interest shall be prescribed in regulations issued by the Secretary.

(3) Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures.

(e) *Honey under loan.* Whenever a loan is made on honey under an USDA loan program, the Secretary shall provide that the assessment be deducted from the proceeds of the loan or the loan deficiency payment, if applicable, and that the amount of such assessment shall be forwarded to the Board, except that the assessment shall not be deducted by the Secretary in the case of a honey marketing cooperative approved by the Department's Commodity Credit Corporation that deducts the assessment from its member producers. As soon as practicable after the assessment is deducted from the loan funds or loan deficiency payment, the Secretary shall provide the producer with proof of payment of the assessment.

(f) *Advance payment.* The Board is authorized to accept advance payment of assessments by handlers, importers, or producer-packers that shall be credited toward any amount for which the handlers, importers, or producer-packers may become liable. The Board is not obligated to pay interest on any advance payment.

29. Amend § 1240.42 as follows:

a. By revising paragraph (a);

b. By removing paragraphs (c) and (f);

c. By redesignating paragraphs (d) and (e) as (c) and (d), respectively; and

d. By revising newly designated paragraphs (c) and (d).

The revisions to § 1240.42 read as follows:

§ 1240.42 Exemption from assessment.

(a) A producer who produces less than 6,000 pounds of honey per year, a producer-packer who produces and handles less than 6,000 pounds of honey or honey products per year, or an importer who imports less than 6,000 pounds of honey or honey products per year shall be exempt from assessment: *Provided*, such honey or honey products are distributed directly through local retail outlets such as roadside stands, farmers markets, groceries, or other outlets as otherwise determined by the Secretary during such year.

* * * * *

(c) If, after a person has been exempt from paying assessments for any year under this section, and such person no longer meets the requirements of this section for an exemption, such person shall file a report with the Board in the form and manner prescribed by the Board and pay an assessment on or before March 15 of the subsequent year on all honey or honey products produced or imported by such person during the year for which the person claimed the exemption.

(d) The Board may recommend to the Secretary that honey exported from the United States be exempted from the provisions of this subpart and include procedures for the refund of assessments on such honey and such safeguards as may be necessary to prevent improper use of this exemption.

30. Add a new § 1240.44 to read as follows:

§ 1240.44 Voluntary quality assurance program.

(a) The Board is authorized to develop and carry out a voluntary quality assurance program concerning purity standards for honey and honey products. The Secretary shall have the authority to approve or disapprove such program.

(b) The program may include the following components:

(1) The establishment of an official Board seal of approval to be displayed on honey and honey products which meet such standards of purity as are established under the program;

(2) Actions to encourage producers, handlers, and importers to participate in the program;

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(3) Actions to encourage consumers to purchase honey and honey products bearing the official seal of approval; and

(4) Periodic inspections by the Secretary, or other parties approved by the Secretary, of honey and honey products of persons who participate in the program.

(c) To be eligible to display the official seal of approval under paragraph (b)(1) of this section on a honey or honey product, a producer, handler, or importer shall participate in the voluntary program described in paragraph (a) of this section.

31. Revise § 1240.50 to read as follows:

§ 1240.50 Reports.

Each handler, importer, producer, or producer-packer subject to this part shall be required to report to the employees of the Board, at such time and in such manner as it may prescribe, such information as may be necessary for the Board to perform its duties. Such reports shall include, but shall not be limited to the following:

(a) For producers or producer-packers: the quantity of honey produced and the total number of bee colonies maintained.

(b) For handlers and producer-packers: the total quantity of honey acquired during the reporting period; the total quantity of honey and honey products handled during such period; the amount of honey acquired from each producer, giving the name and address of each producer; the assessments collected during the reporting period; the quantity of honey processed for sale from a producer-packer's own production; and a record of each transaction for honey on which assessments had already been paid, including a statement from the seller that the assessment had been paid.

(c) For importers: the total quantity of honey and honey products imported during the reporting period and a record of each importation of honey or honey products during such period, giving the quantity, date, country of origin, and port of entry.

(d) For persons who have an exemption from assessments under § 1240.42(a) and (b), such information as deemed necessary by the Board, and approved by the Secretary, concerning the exemption including disposition of exempted honey.

32. Revise § 1240.51 to read as follows:

§ 1240.51 Books and records.

Each handler, importer, producer, producer-packer, or any person who is exempt from assessments under this subpart shall maintain and during normal business hours make available for inspection by employees or agents of the Board or the Secretary, such books and records as are necessary to carry out the provisions of this part, including such records as are necessary to verify any required reports. A member or alternate member of the Board is prohibited from conducting such inspections. Such books and records shall be maintained for two years beyond the fiscal period of their applicability.

33. Revise § 1240.52 to read as follows:

§ 1240.52 Confidential treatment.

All information obtained from the books, records, or reports required to be maintained under §§ 1240.50 and 1240.51 shall be kept confidential by all employees and agents of the Board and all officers and employees of the Department and shall not be disclosed to the public. Only such information as the Secretary deems relevant shall be disclosed to the public and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart: Except that nothing in this subpart shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of a number of handlers or importers subject to this subpart, if such statements do not identify the information furnished by any person;

(b) The publication by direction of the Secretary of the name of any person convicted of violating this subpart, together with a statement of the particular provisions of this subpart violated by such person.

34. Revise § 1240.61 to read as follows:

§ 1240.61 Right of the Secretary.

All fiscal matters, programs or plans, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

35. Amend § 1240.62 as follows:

a. By removing "he/she" and adding "the Secretary" in its place in paragraph (a);

b. By removing paragraph (c);

c. By redesignating paragraph (d) as (c); and

d. By revising newly designated paragraph (c).

The revisions to § 1240.62 read as follows:

§ 1240.62 Suspension or termination.

* * * * *

(c) The Secretary shall hold a referendum on the request of the Board, or when petitioned by 10 percent or more of the honey producers and importers subject to assessment under this subpart to determine if the honey producers and importers favor termination or suspension of this subpart. A referendum under this paragraph may not be held more than once every two (2) years. If the Secretary determines, through a referendum conducted pursuant to this paragraph, that continuation of this subpart is approved, any referendum otherwise required to be conducted under paragraph (b) of this section shall not be held less than five (5) years after the date the referendum was conducted under this paragraph.

Dated: April 23, 2001.

Kenneth C. Clayton,

Acting Administor, Agricultural Marketing Service.

[FR Doc. 01–10602 Filed 4–30–01; 8:45 am]

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Part III

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 930

Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 2000–2001 Crop Year for Tart Cherries; Final Rule

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV01–930–2 FR]

Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 2000–2001 Crop Year for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes final free and restricted percentages for the 2000–2001 crop year. The percentages are 50 percent free and 50 percent restricted and will establish the proportion of cherries from the 2000 crop which may be handled in normal commercial outlets. The percentages are intended to stabilize supplies and prices, and strengthen market conditions and were recommended by the Cherry Industry Administrative Board (Board), the body which locally administers the marketing order. This action will also authorize the release of reserve pool cherries to replace those purchased for government sales. The marketing order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

EFFECTIVE DATE: This final rule is effective May 2, 2001 through June 30, 2001.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Dawana R. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, MD 20737, telephone: (301) 734–5243, or Fax: (301) 734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, or Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This final rule is issued under marketing agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries produced in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order provisions now in effect, final free and restricted percentages may be established for tart cherries handled by handlers during the crop year. This rule will establish final free and restricted percentages for tart cherries for the 2000–2001 crop year, beginning July 1, 2000, through June 30, 2001. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempt therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The order prescribes procedures for computing an optimum supply and preliminary and final percentages that establish the amount of tart cherries that can be marketed throughout the season. The regulations apply to all handlers of tart cherries that are in the regulated districts. Tart cherries in the free percentage category may be shipped immediately to any market, while restricted percentage tart cherries must be held by handlers in a primary or secondary reserve, or be diverted in accordance with section 930.59 of the order and section 930.159 of the regulations, or used for exempt purposes (and obtaining diversion credit) under section 930.62 of the order and section 930.162 of the regulations. The regulated Districts for this season are: District one—Northern Michigan; District two—Central Michigan; District three—Southwest Michigan; and District seven—Utah. Districts four, five, six, eight, and nine (New York, Oregon, Pennsylvania, Washington, and Wisconsin, respectively) would not be regulated for the 2000–2001 season.

The order prescribes under section 930.52 that, upon adoption of the order, the districts to be regulated shall be those districts in which the average annual production of cherries over the prior three years has exceeded 15 million pounds. A district not meeting the 15 million-pound requirement shall not be regulated in such crop year. Because this requirement was not met in the districts of New York, Oregon, Pennsylvania, Washington, and Wisconsin, handlers in those districts will not be subject to volume regulation during the 2000–2001 crop year. Production from New York was regulated last year. Production from the other four States was not subject to regulation.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. Demand for tart cherries and tart cherry products tends to be relatively stable from year to year. The supply of tart cherries, by contrast, varies greatly from crop year to crop year. The magnitude of annual fluctuations in tart cherry supplies is one of the most pronounced for any agricultural commodity in the United States. In addition, since tart cherries are processed either into cans or frozen, they can be stored and carried over from crop year to crop year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely balanced. The primary purpose of setting free and restricted percentages is to balance supply with demand and reduce large surpluses that may occur.

Section 930.50(a) of the order describes procedures for computing an optimum supply for each crop year. The Board must meet on or about July 1 of each crop year, to review sales data, inventory data, current crop forecasts and market conditions. The optimum supply volume shall be calculated as 100 percent of the average sales of the prior three years to which is added a desirable carryout inventory not to exceed 20 million pounds or such other amount as may be established with the approval of the Secretary. The optimum supply represents the desirable volume

of tart cherries that should be available for sale in the coming crop year.

The order also provides that on or about July 1 of each crop year, the Board is required to establish preliminary free and restricted percentages. These percentages are computed by deducting the actual carryin inventory from the optimum supply figure (adjusted to raw product equivalent—the actual weight of cherries handled to process into cherry products) and subtracting that figure from the current year's USDA crop forecast. If the resulting number is positive, this represents the estimated over-production, which would be the restricted percentage tonnage. The restricted percentage tonnage is then divided by the sum of the USDA crop forecast for the regulated districts to obtain percentages for the regulated districts. The Board is required to establish a preliminary restricted percentage equal to the quotient, rounded to the nearest whole number, with the complement being the preliminary free tonnage percentage. If the tonnage requirements for the year are more than the USDA crop forecast, the Board is required to establish a preliminary free tonnage percentage of 100 percent and a preliminary restricted percentage of zero. The Board is required to announce the preliminary percentages in accordance with paragraph (h) of § 930.50.

The Board met on June 22, 2000, and computed, for the 2000–2001 crop year, an optimum supply of 275 million pounds. The Board recommended that the desirable carryout figure be zero pounds. Desirable carryout is the amount of fruit required to be carried into the succeeding crop year and is set by the Board after considering market circumstances and needs. This figure can range from zero to a maximum of 20 million pounds. The Board calculated preliminary free and restricted percentages as follows: The USDA estimate of the crop was 245 million pounds; an 88 million pound carryin added to that estimate results in a total available supply of 333 million pounds. The carryin figure reflects the amount of cherries that handlers actually have in inventory. Subtracting the optimum supply of 275 million pounds from the total estimated available supply results in a surplus of 58 million pounds of tart cherries. An adjustment for changed economic conditions of 35 million pounds was added to the surplus, pursuant to § 930.50 of the order. This adjustment is discussed later in this document. After the adjustment, the resulting total surplus is 93 million pounds of tart cherries. The surplus was divided by the production in the regulated districts (195 million pounds) and resulted in a restricted percentage of 48 percent for the 2000–2001 crop year. The free percentage was 52 percent (100 percent minus 48 percent). The Board unanimously established these percentages and announced them to the industry as required by the order.

The preliminary percentages were based on the USDA production estimate and the following supply and demand information available at the June meeting for the 2000–2001 year:

Optimum supply formula	Millions of pounds
(1) Average sales of the prior three years	275
(2) Plus desirable carryout	0
(3) Optimum supply calculated by the Board at the June meeting	275
Preliminary Percentages:	
(4) USDA crop estimate	245
(5) Plus carryin held by handlers as of July 1, 2000	88
(6) Total available supply for current crop year	333
(7) Surplus (item 6 minus item 3)	58
(8) Economic adjustment to surplus	35
(9) Adjusted surplus (item 7 plus item 8)	93
(10) USDA crop estimate for regulated districts	195

Percentages	Free	Restricted
(11) Preliminary percentages (item 9 divided by item 10 × 100 equals restricted percentage; 100 minus restricted percentage equals free percentage)	52	48

Between July 1 and September 15 of each crop year, the Board may modify the preliminary free and restricted percentages by announcing interim free and restricted percentages to adjust to the actual pack occurring in the industry.

Section 930.50(d) of the order requires the Board to meet no later than September 15 to recommend final free and restricted percentages to the Secretary for approval. The Board met on September 8, 2000, and recommended final free and restricted percentages of 50 percent. The Board recommended that the interim percentages and final percentages be the same. At that time, the Board had available actual production, sales, and carryin inventory amounts to review and made adjustments to the percentages.

The Secretary establishes final free and restricted percentages through the informal rulemaking process. These percentages will make available the tart cherries necessary to achieve the optimum supply figure calculated by the Board. The difference between any final free percentage designated by the Secretary and 100 percent is the final restricted percentage.

The Board used an updated optimum supply figure in determining the final free and restricted percentages. The revised optimum supply is 277 million pounds, instead of 275 million pounds used in June. The 3-year average sales figure computed in June included an estimate of June 2000 sales because actual June sales were not yet available. The 3-year average sales figure used in the final calculations reflects actual sales for each month of the 3-year period.

The actual production reported by the Board was 284 million pounds, which is a 39 million pound increase from the USDA crop estimate of 245 million pounds. The increase in production was due to higher yields in the major producing States (Michigan, New York, Utah, Washington, and Wisconsin). For 2000–2001, production in the regulated districts totaled 232 million pounds, 37 million pounds greater than the USDA estimate of 195 million pounds.

An 87 million pound carryin (actual carryin as opposed to the 88 million pounds originally estimated in June)

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was added to the Board's reported production of 284 million pounds, yielding a total available supply for the current crop year of 371 million pounds. The optimum supply of 277 million pounds was subtracted from the total available supply which resulted in a 94 million pound surplus. An adjustment of 22 million pounds for changed economic conditions was added to the surplus, pursuant to § 930.50 of the order. This adjustment is discussed later in this document. After the adjustment, the resulting total surplus is 116 million pounds of tart cherries. The total surplus of 116 million pounds is divided by the 232 million-pound volume of tart cherries produced in the regulated districts. This results in a 50 percent restricted percentage and a corresponding 50 percent free percentage for the regulated districts.

The final percentages are based on the Board's reported production figures and the following supply and demand information available in September for the 2000–2001 crop year:

Optimum supply formula	Millions of pounds
(1) Average sales of the prior three years	277
(2) Plus desirable carryout	0
(3) Optimum supply calculated by the Board at the September meeting	277
Final Percentages:	
(4) Board reported production	284
(5) Plus carryin held by handlers as of July 1, 2000	87
(6) Tonnage available for current crop year	371
(7) Surplus (item 6 minus item 3)	94
(8) Economic adjustment to surplus	22
(9) Adjusted surplus (item 7 plus item 8)	116
(10) Production in regulated districts	232

Percentages	Free	Restricted
(11) Final Percentages (item 9 divided by item 10 × 100 equals restricted percentage; 100 minus restricted percentage equals free percentage)	50	50

As previously mentioned, the Board recommended an economic adjustment in computing both the preliminary and final percentages for the 2000–2001 crop year. This is authorized under § 930.50. These provisions provide that in its deliberations of volume regulation recommendations, the Board consider, among other things, the expected demand conditions for cherries in different market segments and an analysis of economic factors having a bearing on the marketing of cherries. Based on these considerations, the Board may modify its marketing policy calculations to reflect changes in economic conditions.

The order provides that the 3-year average of all sales be used in determining the optimum supply of cherries. The industry wants to export diversion cherries to foreign markets, excluding Canada and Mexico. Exports are used by handlers to meet their diversion requirements. Including this volume of sales in the optimum supply formula, however, results in an overestimate of the volume of tart cherries that can be profitably marketed in unrestricted markets. Thus, the Board recommended adjusting its estimate of surplus cherries by adding exempt export sales (all exports except those going to Canada and Mexico).

This season the Board also recommended that the adjustment reflect the impact that USDA purchases for school lunch and other purposes might have on the sales component of the optimum supply formula. Purchases by USDA are part of the average sales history for the industry. In recent years, USDA has purchased about 17 million pounds of tart cherry products and this has been factored into the optimum supply formula. During the 2000–2001 crop year, USDA expects to purchase about 10 million pounds of frozen and hot pack cherries, and 20 million pounds of dried cherries. The Board determined that the difference between the expected purchases (30 million pounds) during the 2000–2001 crop year and the average purchases of 17 million pounds should not be included in the optimum supply figure.

Therefore, the Board adjusted the expected surplus to 22 million pounds (35 million pounds of exports minus 13 million pounds of USDA purchases). Without this adjustment, the surplus for the 2000–2001 crop year would have been 129 million pounds. Dividing this figure by the Board reported production in the regulated districts (232 million pounds) would have resulted in a 56 percent restricted percentage. Hence, this adjustment resulted in a reduction in the restricted percentage from 56 percent to 50 percent. The 50 percent restricted percentage will allow growers to deliver more of their crop to handlers. This reduction should provide some benefits to growers in Michigan and Utah which are the only States restricted for the 2000–2001 crop year.

By recommending this marketing policy modification, the Board believes that it will provide stability to the marketplace and the industry will be in a better situation in future years. This modification is intended to further facilitate and encourage market expansion. Board members were of the opinion that, if this adjustment is not made, growers could be paid less than their production costs, because handlers would suffer financial losses that will probably be passed on to the growers. In addition, the value of cherries already in inventory could be depressed due to the overabundant supply of available cherries, a result inconsistent with the intent of the order and the Act.

The supplementary information section of the proposed rule stated that the Board also recommended that a like quantity of cherries be released from the reserve to replace cherries that the USDA and other governmental agencies offer to purchase for surplus removal purposes. Based on a comment filed on behalf of the Board, purchases by other government agencies will also be included. The comment, discussed in full later, clarifies that the Board intended that such releases only be made for surplus removal type purchases, and that all government purchases, not only USDA purchases for such purposes should trigger releases.

Simply put, the procurement process consists of three stages. The offer to buy stage, the invitation to bid stage, and the awarding of contracts stage. Such releases will be based on USDA and other government agency announced offers to purchase tart cherries for surplus removal. The quantities purchased are sometimes less than the quantities mentioned in the announced offers. Actual purchases depend on the prices and quantities offered as well as possible adjustments in user requirements.

Because of the potential difference between the offer and the actual quantity purchased, and the timing of the offer and the invitation to bid and awarding of contracts by the government agency, the Board indicated, in its comment, that the quantity of reserve tonnage released on the basis of surplus removal offers should not be considered as carryover at the first stage of the procurement process. If at the second stage, the quantity for which bids are invited is less than the initial quantity offered, the difference between the two amounts will be considered carryover tonnage. If at the third stage the quantity for which contracts have been awarded and the quantity initially offered to be purchased is less, the difference between the two amounts will be considered carryover for the purpose of computing marketing percentages.

According to the Board, releasing a like quantity of tart cherries from the reserve to replace cherries that are offered to be purchased by USDA and other government agencies for surplus removal, together with the previously mentioned carryover adjustments, will remove the variability and irregularity of such purchases and thereby make the computation of volume regulation percentages more stable and predictable. The Board believes that such releases will equitably spread the benefit of these planned purchases throughout the industry because all handlers regulated under the order, and not just those handlers who successfully bid and sold product to USDA and other government agencies, will benefit from the surplus removal tart cherry purchases.

The Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This goal will be met by the establishment of a preliminary percentage which releases 100 percent of the optimum supply and the additional release of tart cherries provided under § 930.50(g). This release of tonnage, equal to 10 percent of the average sales of the prior three years sales, is made available to handlers each season. The Board recommended that such release should be made available to handlers the first week of December and the first week of May. Handlers can decide how much of the 10 percent release they would like to receive during the December and May release dates. Once released, such cherries are released for free use by such handler. Approximately 27 million pounds will be made available to handlers this season in accordance with Department Guidelines. This release will be made available to every handler and released to such handler in proportion to its percentage of the total regulated crop handled. If a handler does not take his/her proportionate amount, such amount shall remain in the inventory reserve.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this final regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) will allow AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opts for such certification, but rather performs regulatory flexibility analyses for any rulemaking that will generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of tart cherries who are subject to regulation under the tart cherry marketing order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms, which include handlers, have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Board and subcommittee meetings are widely publicized in advance and are held in a location central to the production area. The meetings are open to all industry members (including small business entities) and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Board recommendations can be considered to represent the interests of small business entities in the industry.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. During the period 1995/96 through 1999/00, approximately 91 percent of the U.S. tart cherry crop, or 280.5 million pounds, was processed annually. Of the 280.5 million pounds of tart cherries processed, 62 percent was frozen, 29 percent was canned, and 9 percent was utilized for juice.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to tart cherry production has been trending downward. In the ten-year period, 1987/88 through 1997/98, the tart cherry area decreased from 50,050 acres, to less than 40,000 acres. In 1999/00, approximately 90 percent of domestic tart cherry acreage was located in four States: Michigan, New York, Utah and Wisconsin.

Michigan leads the nation in tart cherry acreage with 70 percent of the total. Michigan produces about 75 percent of the U.S. tart cherry crop each year. In 1999/00, tart cherry acreage in Michigan decreased to 28,100 acres from 28,400 acres the previous year.

In crop years' 1987/88 through 1999/00, tart cherry production ranged from a high of 359.0 million pounds in 1987/88 to a low of 189.9 million pounds in 1991/92. The price per pound received by tart cherry growers ranged from a low of 7.3 cents in 1987 to a high of 46.4 cents in 1991. These problems of wide supply and price fluctuations in the tart cherry industry are national in scope and impact. Growers testified during the order promulgation process that the prices they received often did not come close to covering the costs of production.

They also testified that production costs for most growers range between 20 and 22 cents per pound, which is well above average prices received during the 1993–1995 seasons.

The industry demonstrated a need for an order during the promulgation process of the marketing order because large variations in annual tart cherry supplies tend to lead to fluctuations in prices and disorderly marketing. As a result of these fluctuations in supply

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and price, growers realize less income. The industry chose a volume control marketing order to even out these wide variations in supply and improve returns to growers. During the promulgation process, proponents testified that small growers and processors would have the most to gain from implementation of a marketing order because many such growers and handlers had been going out of business due to low tart cherry prices.

They also testified that, since an order would help increase grower returns, this should increase the buffer between business success and failure because small growers and handlers tend to be less capitalized than larger growers and handlers.

Aggregate demand for tart cherries and tart cherry products tends to be relatively stable from year-to-year. Similarly, prices at the retail level show minimal variation. Consumer prices in grocery stores, and particularly in food service markets, largely do not reflect fluctuations in cherry supplies. Retail demand is assumed to be highly inelastic which indicates that price reductions do not result in large increases in the quantity demanded. Most tart cherries are sold to food service outlets and to consumers as pie filling; frozen cherries are sold as an ingredient to manufacturers of pies and cherry desserts. Juice and dried cherries are expanding market outlets for tart cherries.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. In general, the farm-level demand for a commodity consists of the demand at retail or food service outlets minus per-unit processing and distribution costs incurred in transforming the raw farm commodity into a product available to consumers. These costs comprise what is known as the "marketing margin."

The supply of tart cherries, by contrast, varies greatly. The magnitude of annual fluctuations in tart cherry supplies is one of the most pronounced for any agricultural commodity in the United States. In addition, since tart cherries are processed either into cans or frozen, they can be stored and carried over from year-to-year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely in equilibrium. As a result, grower prices fluctuate widely, reflecting the large swings in annual supplies.

In an effort to stabilize prices, the tart cherry industry uses the volume control mechanisms under the authority of the Federal marketing order. This authority allows the industry to set free and restricted percentages. These restricted percentages are only applied to States or districts with a 3-year average of production greater than 15 million pounds. Currently, only the three districts in Michigan and Utah are subject to restricted percentages.

The primary purpose of setting restricted percentages is an attempt to bring supply and demand into balance. If the primary market is over-supplied with cherries, grower prices decline substantially. The tart cherry sector uses an industry-wide storage program as a supplemental coordinating mechanism under the Federal marketing order. The primary purpose of the storage program is to warehouse supplies in large crop years in order to supplement supplies in short crop years. The storage approach is feasible because the increase in price—when moving from a large crop to a short crop year—more than offsets the cost for storage, interest, and handling of the stored cherries.

The price that growers' receive for their crop is largely determined by the total production volume and carryin inventories. The Federal marketing order permits the industry to exercise supply control provisions, which allow for the establishment of free and restricted percentages for the primary market, and a storage program. The establishment of restricted percentages impacts the production to be marketed in the primary market, while the storage program has an impact on the volume of unsold inventories.

The volume control mechanism used by the cherry industry results in decreased shipments to primary markets. Without volume control the primary markets (domestic) would likely be over-supplied, resulting in low grower prices.

To assess the impact that volume control has on the prices growers receive for their product, an econometric model has been estimated. The estimated model provides a way to see what impacts volume control may have on grower prices. The three districts in Michigan and Utah are the only restricted areas for this crop year and their combined total production is 232 million pounds. A 50 percent restriction means 116 million pounds is available to be shipped to primary markets from these two States. Production levels of 17 million pounds for New York, 4 million pounds for Oregon, 5 million pounds for Pennsylvania, 17 million pounds for Washington, and 10 million pounds for Wisconsin results in an additional 53 million pounds available for primary market shipments.

In addition, USDA requires a 10% release from reserves as a market growth factor. This results in an additional 28 million pounds being available for the primary market. The 116 million pounds from Michigan and Utah. the 53 million pounds from the other producing states, and the 28 million pound release gives a total of 197 million pounds being available for the primary markets. This results in 88 million pounds being restricted and an effective restricted percent of 30.8 percent.

The econometric model is used to estimate grower prices with and without regulation. Without the volume controls, the estimated grower price would be approximately $0.12 per pound. With volume controls, the estimated grower price would increase to approximately $0.20 per pound.

The use of volume controls is estimated to have a positive impact on growers' total revenues. Without regulation, growers' total revenues from processed cherries are estimated to be $34.2 million in 2000–2001. In this scenario, production is 284 million pounds and price, without regulation, is estimated to be $0.12 per pound. With regulation, growers' revenues from processed cherries are estimated to be $43.8 million. In this scenario, 197 million pounds are available for the primary markets with an estimated price of $0.20 per pound. Over the past several seasons, growers received approximately $0.05 per pound for restricted (diverted) cherries.

The results of econometric analysis are subject to some level of uncertainty. As long as the resulting grower prices are $0.15 per pound or greater, then growers' are better off with the regulation. If price with regulation is $0.15 per pound or less, the estimated revenues under no regulation would be similar to the revenues with a 50 percent regulation.

It is concluded that the 50 percent volume control would not unduly burden producers, particularly smaller growers. The 50 percent restriction is only applied to the growers in Michigan and Utah. The growers in the other 5 regulated States will benefit from this restriction. Michigan and Utah produced over 80 percent of the tart cherry crop during the 2000/01 crop year.

Recent grower prices have been as high as $0.20 per pound. At current production levels, the cost of production is reported to be $0.20 to $0.22 per pound. Thus, the estimated $0.20 per pound received by growers with regulation is close to the cost of production. The use of volume controls is believed to have little or no effect on consumer prices and will not result in fewer retail sales or sales to food service outlets.

Without the use of volume controls, the industry could be expected to continue to build large amounts of unwanted inventories. These inventories have a depressing effect on grower prices. The econometric model shows for every 1 million-pound increase in carryin inventories, a decrease in grower prices of $0.0033 per pound occurs. The use of volume controls allows the industry to supply the primary markets while avoiding the disastrous results of over-supplying these markets. In addition, through volume control, the industry has an additional supply of cherries that can be used to develop secondary markets such as exports and the development of new products.

In discussing the possibility of marketing percentages for the 2000–2001 crop year, the Board considered the following factors contained in the marketing policy: (1) The estimated total production of tart cherries; (2) the estimated size of the crop to be handled; (3) the expected general quality of such cherry production; (4) the expected carryover as of July 1 of canned and frozen cherries and other cherry products; (5) the expected demand conditions for cherries in different market segments; (6) supplies of competing commodities; (7) an analysis of economic factors having a bearing on the marketing of cherries; (8) the estimated tonnage held by handlers in primary or secondary inventory reserves; and (9) any estimated release of primary or secondary inventory reserve cherries during the crop year.

The Board's review of the factors resulted in the computation and announcement in September 2000 of the free and restricted percentages in this rule (50 percent free and 50 percent restricted).

A positive factor for the cherry industry this year is the unusually large USDA purchases of cherries during this crop year. These USDA sales include a significant amount of frozen cherries and large quantities of dried cherries. It also appears likely that the USDA will offer to buy more cherries later this year using Congressionally appropriated funds designated for purchases of specified commodities, including tart cherries.

A number of industry leaders have suggested that the Board should consider alternative approaches for dealing with this challenging situation which has developed with this year's crop because of (a) the considerably larger actual crop size, (b) the resulting high regulation percentage, and the prospect of a significant secondary reserve, (c) the unusually large USDA purchases, and (d) other factors.

The Board discussed two alternatives. The first alternative was an economic adjustment component for the large USDA purchases. The Board added a separate component for the economic adjustment in the supply regulation calculations for the large USDA purchases.

The average of USDA purchases during the last three years has been 17 million pounds. This year USDA has purchased 10 million pounds of frozen cherries to be delivered during the 2000 crop-marketing year. USDA has also currently offered to buy another approximately 20 million pounds as dried cherries. If all of this is successfully awarded after the bids, this will be a total of 30 million pounds to be delivered this year. This is 13 million pounds more than USDA tart cherry purchases in recent years. Those who support this type of economic adjustment for the USDA demand agree that the additional 17 million pounds over the average could be used as a partial balance to the 35 million pounds of the economic adjustment for the expected export diversion credit volume.

The second alternative is that no change be made in the economic adjustment (with a reserve release if needed). The Board might decide to make no changes in the economic adjustment with the expectation that, if cherries are needed from the reserve to meet the unusually large USDA purchases, a reserve release will be made by the Board when needed during the coming marketing year. Some in the industry stated that even though the crop turned out to be considerably larger than expected in June, and despite the large USDA purchases, it is best to keep the economic adjustment factor at 35 million pounds. With the larger crop size, this would result in a regulation of 57 percent in the regulated districts. With this alternative, if more open market cherries are needed because of the large USDA purchases to date (and/or an expected additional purchase later this year), some of the reserve can be used to replace the free tonnage tart cherries.

As mentioned earlier, the Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. The quantity available under this rule is 110 percent of the quantity shipped in the prior three years.

The free and restricted percentages established by this rule release the optimum supply and apply uniformly to all regulated handlers in the industry, regardless of size. There are no known additional costs incurred by small handlers that are not incurred by large handlers. The stabilizing effects of the percentages impact all handlers positively by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all producers by allowing them to better anticipate the revenues their tart cherries will generate.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this regulation.

While the benefits resulting from this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain markets even though tart cherry supplies fluctuate widely from season to season.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements have been previously approved by OMB and assigned OMB Number 0581–0177.

There are some reporting, recordkeeping, and other compliance requirements under the marketing order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This rule does not change those requirements.

A proposed rule concerning this action was published in the **Federal Register** on January 10, 2001 (66 FR 1909). Copies of the rule were mailed or sent via facsimile to all Board members and handlers. Finally, the rule was made available through the Internet by the Office of the Federal Register. A 15-day comment period ending on January 25, 2001, was provided to allow

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interested persons to respond to the proposal.

Two comments were received during the comment period in response to the proposal. One comment was received from a Michigan grower-handler who supported the Board's recommendation. A second comment was received on behalf of the Board, and recommended several clarifications to the proposal. The commenter stated that the Board intended that reserve releases should be made for USDA and other government intended purchases, not only USDA purchases. The commenter also stated that the intent of the Board was that reserve releases involving intended government purchases should be triggered only by bonus purchases (non-entitlement purchases) of surplus tart cherries; i.e., purchase offers intended to remove surplus supplies from the marketplace. The Board believes that the benefits of purchases to remove surpluses should be shared by each handler in proportion to the quantities of reserve cherries held by the handlers. Purchases by government agencies for other purposes (referred to as entitlement purchases) should continue to be supplied with free tonnage, not reserve tonnage.

The commenter also stated that any reserve inventory released based on surplus removal purchase offers should not adversely impact the Optimum Supply Formula and volume regulation percentages in the subsequent marketing season. If an offer to make a surplus removal purchase results in a reserve release in one crop year and an invitation to submit bids and an awarding of contracts the following year, the tonnage released during the previous year would be considered as carryover tonnage. This would increase the total available supply of cherries for the succeeding year even though most if not all of them will probably be purchased by the government agency, and make the volume regulation for the succeeding year more restrictive than needed. To prevent this from occurring, the commenter recommended various methods of handling the carryover during the procurement steps. If the tonnage offered and released is the same as the quantity purchased, none of the released tonnage should be considered as carryover. The same would be true if the offer had been made but the invitations to bid and the awarding of contracts had not been issued. If the offer to purchase and the amount released is more than the quantity for which contracts were awarded, the difference between the two amounts would not be considered as carryover tonnage. If the offer to purchase and the amount of tonnage released is more than the amount in the invitation to bid or the contracts awarded, the difference in the amounts would be considered carryover tonnage. This reflects how this aspect of the computation of volume regulations will be accomplished. They will help the Board properly administer the inventory releases and the volume control provisions of the marketing order. Supply management is a critical feature of the tart cherry marketing order and it is important that the percentages not be more restrictive than needed.

In summary, it was the Board's intent to limit the types of purchases that would trigger inventory reserve releases to bonus (non-entitlement) surplus removal purchases. Also, the Board did not intend to limit reserve releases to surplus removal purchases made by the USDA. It wanted all government purchases for such purposes to trigger releases of reserve cherries. These requested changes are made in the applicable provisions.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following website: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, and the comments received, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because handlers have already received 2000–2001 crop tart cherries from growers. Further, handlers are aware of this rule which was recommended at a public meeting. Also, a 15-day comment period was provided for in the proposed rule, and the comments received have been addressed.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR Part 930 is amended to read as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 930.154 is added to read as follows:

§ 930.154 Reserve release.

If USDA or any other governmental agency initiates an invitation to purchase product as a non-entitlement purchase, the Board shall release a like quantity of cherries from the reserve pool to each handler who has a proportionate share in the reserve.

3. Section 930.252 is added to read as follows:

§ 930.252 Final free and restricted percentages for the 2000–2001 crop year.

The final percentages for tart cherries handled by handlers during the crop year beginning on July 1, 2000, which shall be free and restricted, respectively, are designated as follows: Free percentage, 50 percent and restricted percentage, 50 percent.

Dated: April 24, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–10664 Filed 4–30–01; 8:45 am]

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Federal Register

Tuesday,
May 1, 2001

Part IV

Department of the Treasury

Internal Revenue Service
26 CFR Part 1

Community Development Financial Institutions Fund

New Markets Tax Credits and Guidance New Market Tax Credit Program; Proposed Rule and Notice

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–119436–01]

RIN 1545–AY87

New Markets Tax Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This document invites comments from the public on issues that the IRS may address in regulations relating to the new markets tax credit under section 45D. A taxpayer that makes a qualified equity investment in a qualified community development entity that has received a new markets tax credit allocation may claim a 5-percent credit for each of the first 3 years and a 6-percent tax credit for each of the next 4 years. All materials submitted will be available for public inspection and copying.

DATES: Written and electronic comments must be submitted by July 2, 2001.

ADDRESSES: Send submissions to: CC:M&SP:RU (REG–119436–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:M&SP:RU (REG–119436–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may send submissions electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or directly to the IRS Internet site at http://www.irs.ustreas.gov/tax_regs/regslist.html.

FOR FURTHER INFORMATION CONTACT: Concerning submissions, the Regulations Unit, (202) 622–7180; concerning the proposals, Paul Handleman, (202) 622–3040 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: Section 121(a) of the Community Renewal Tax Relief Act of 2000 (Public Law 106–554) (Act), amended the Internal Revenue Code (Code) to add the new markets tax credit. Section 45D(a)(1) of the Code provides a new markets tax credit on a credit allowance date in an amount equal to the applicable percentage of the taxpayer's qualified equity investment in a qualified community development entity (CDE). The credit allowance date for any qualified equity investment is the date on which the investment is initially made and each of the 6 anniversary dates thereafter. The applicable percentage is 5 percent for the first 3 credit allowance dates and 6 percent for the remaining credit allowance dates.

In addition, section 121(f) of the Act provides that not later than 120 days after the date of the enactment of the Act (Dec. 21, 2000), Treasury will issue guidance specifying how entities will apply for an allocation under section 45D(f)(2); the competitive procedure through which the allocations are made; and the actions that Treasury will take to ensure that the allocations are properly made to appropriate entities. The Secretary of the Treasury has delegated authority for issuing this guidance to the Under Secretary (Domestic Finance), who in turn has delegated the authority to the Director of Treasury's Community Development Financial Institutions Fund (Fund). Simultaneously with the issuance of this advance notice of proposed rulemaking, the Fund is issuing separate guidance on how an entity may apply to become certified as a CDE; how a CDE may apply to receive an allocation of new markets tax credits; the competitive procedure through which the allocations will be made; and the actions that Treasury will take to ensure that the allocations are properly made to appropriate entities.

In developing guidance to assist taxpayers in applying the rules of section 45D, the IRS has identified certain issues that may be considered for guidance or other administrative pronouncements. The IRS invites comments from the public on the following issues and any other issues for which taxpayers believe guidance is needed.

1. The new markets tax credit may be claimed only with respect to qualified equity investments in a CDE. Section 45D(b)(1)(B) requires CDEs to use substantially all of the cash from a qualified equity investment to make qualified low-income community investments.

(a) How should "substantially all" be defined for purposes of section 45D(b)(1)(B)? For example, what percentage should constitute "substantially all" of the cash from a qualified equity investment?

(b) What amounts should be treated as used to make qualified low-income community investments? For example, how should issuance costs (including underwriter's compensation) and reserves be treated?

(c) How much time under section 45D(b)(1)(B) should a CDE have to invest the cash from a qualified equity investment in a qualified low-income community investment?

(d) How should repayments of equity or principal in respect of a qualified low-income community investment be treated for purposes of section 45D(b)(1)(B)? For example, are there circumstances when a CDE should not be required to reinvest any such amounts in another qualified low-income community investment during the 7-year credit period?

(e) How should the "substantially all" requirement under section 45D(b)(1)(B) be administered during the 7-year credit period?

2. Section 45D(b)(3) contains a safe harbor under which the "substantially all" requirement of section 45D(b)(1)(B) will be treated as met if at least 85 percent of the aggregate gross assets of the CDE are invested in qualified low-income community investments.

(a) How should "aggregate gross assets" be defined under section 45D(b)(3)? For example, are there any assets of a CDE that should not be taken into account for these purposes?

(b) How should the aggregate gross assets of a CDE be determined under section 45D(b)(3)?

(c) How should compliance with the 85 percent test of section 45D(b)(3) be determined? For example, should the CDE be required to satisfy the test throughout the entire 7-year credit period following the issuance of a qualified equity investment? Should any grace periods be provided? If so, what should those grace periods be?

3. As indicated previously, section 45D(b)(1)(B) requires CDEs to use substantially all of the cash with respect to a qualified equity investment to make qualified low-income community investments. Under section 45D(d)(1)(A), the term "qualified low-income community investment" includes any capital or equity investment in, or loan to, any qualified active low-income community business. Section 45D(d)(2)(A) provides that the term "qualified active low-income community business" means, with respect to any taxable year, any corporation (including a non-profit corporation) or partnership if for the year (i) at least 50 percent of the total gross income of the entity is derived from the active conduct of a qualified business (as defined in section 45D(d)(3)) within any low-income community, (ii) a substantial portion of the use of the tangible property of the entity is within any low-income community, (iii) a substantial portion of

the services performed for the entity by its employees is performed in any low-income community, (iv) less than 5 percent of the average of the aggregate unadjusted bases of the property of the entity is attributable to collectibles (as defined in section 408(m)(2)) other than collectibles that are held primarily for sale to customers in the ordinary course of the business, and (v) less than 5 percent of the average of the aggregate unadjusted bases of the property of the entity is attributable to nonqualified financial property (as defined in section 1397C(e)).

(a) How should "substantial portion" be defined for purposes of section 45D(d)(2)(A)(ii) and (iii)?

(b) When should the determination be made regarding whether a trade or business constitutes a "qualified active low-income community business:"? For example, should the determination be made at the time of the investment in the business based on reasonable expectations? Under what circumstances, if any, should an investment in a business lose its status as a "qualified low-income community investment" under section 45D(d)(1)(A) by reason of a failure of the business to satisfy the requirements for a qualified active low-income community business under section 45D(d)(2)? Should the degree of control of the CDE over the business be relevant to this determination?

(c) Should special rules be provided under section 45D(d)(2)(A) for determining whether a newly-formed entity meets the requirements for a qualified active low-income community business?

4. Section 45D(d)(1)(C) provides that the term "qualified low-income community investment" includes financial counseling and other services to businesses located in, and residents of, low-income communities. What types of services should constitute "financial counseling and other services" for these purposes?

5. Section 45D(d)(1)(D) provides that the term "qualified low-income community investment" includes any equity investment in, or loan, to a CDE.

(a) What restrictions, if any, should apply to the use by a CDE of the proceeds of a qualified low-income community investment received from another CDE?

(b) Under what circumstances, if any, should an investment by one CDE in another CDE lose its status as a "qualified low-income community investment" under section 45D(d)(1)(D)? Should the degree of control of the investing CDE over the other CDE be relevant to this determination?

6. Under section 45D(g)(3)(B), a recapture event (requiring an investor to recapture credits previously taken) may occur with respect to an equity investment in a CDE if substantially all of the proceeds of the investment cease to be used to make investment for qualified low-income community investments.

(a) What circumstances should constitute a change in use of the proceeds of a qualified equity investment that triggers a recapture event under section 45D(g)(3)(B)?

(b) What remedial action(s), if any, should a CDE be permitted to take to avoid recapture under section 45D(g)(3)(B)?

7. Section 45D(i)(1) provides that Treasury may prescribe regulations that limit the new markets tax credit for investments that are directly or indirectly subsidized by other Federal tax benefits (including the low-income housing tax credit under section 42 and the exclusion from gross income under section 103). Under what circumstances should investments be treated as directly or indirectly subsidized by other Federal tax benefits?

8. Section 45D(i)(2) and (4) provides that Treasury may prescribe regulations that prevent the abuse of the purposes of section 45D and that impose appropriate reporting requirements.

(a) What anti-abuse rules may be necessary for carrying out section 45D?

(b) What types of reporting requirements should be imposed for carrying out section 45D?

Marlene Gross,

Deputy Associate Chief Counsel (Passthroughs and Special Industries).

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DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Guidance, New Markets Tax Credit Program

AGENCIES: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Guidance, New Markets Tax Credit Program.

SUMMARY: Title I, subtitle C, section 121 of the Community Renewal Tax Relief Act of 2000 (the "Act"), as enacted by section 1(a)(7) of the Consolidated Appropriations Act, 2001 (Pub. L. 106–554, December 21, 2000), amended the Internal Revenue Code (the "IRC") by adding IRC section 45D, New Markets Tax Credit. Section 45D requires the Secretary of the Treasury ("Treasury") to establish a program that will provide an incentive to investors in the form of a tax credit over seven years, which is expected stimulate investment in new private capital that, in turn, will facilitate economic and community development in distressed communities. Section 45D, among other things, also requires the Secretary to issue guidance on (i) how entities may apply to receive allocations of New Markets Tax Credits ("NMTCs"); (ii) the competitive procedure through which such allocations will be made; and (iii) the actions that will be taken to ensure that proper allocations are made to appropriate entities. The Secretary has delegated such authority to the Under Secretary (Domestic Finance), who has in turn delegated such authority to the Director of the Community Development Financial Institutions Fund (the "Fund"). Pursuant to section 121(f) of the Act, this document provides guidance on how an entity may apply to become certified as a "qualified community development entity" ("CDE"), how a CDE may apply to receive an allocation of NMTCs, the competitive procedure through which such allocations will be made, and the actions that will be taken to ensure that proper allocations are made to appropriate entities.

In addition, this Guidance seeks comment from the public as to certain application and allocation issues that the Fund may address in subsequent guidance (see Section VII, "Pending Issues," for further detail). All material submitted in response to this Guidance will be available at the Fund for public inspection and copying.

As provided by IRC section 45D(i), Treasury is authorized to prescribe regulations relating to the NMTC Program as may be appropriate, including regulations that (i) limit NMTCs for investments that are directly or indirectly subsidized by other Federal tax benefits, including the Low-Income Housing Tax Credit under IRC section 42, and the exclusion from gross income for certain tax-exempt bond interest under IRC section 103; (ii) prevent abuse of the purposes of IRC section 45D; (iii) provide rules for determining whether the "Substantially All Test" found at IRC section 45D(b)(1)(B) is treated as met; (iv) impose appropriate reporting requirements; and (v) apply IRC section 45D to newly formed entities.

Simultaneously with the issuance of this Guidance, the Internal Revenue Service ("IRS") is issuing an Advance Notice of Proposed Rulemaking (the "ANPRM") that invites comments from the public on certain issues that the IRS may address in regulations relating to the NMTC Program and IRC section 45D.

The Fund has the authority to allocate to CDEs the authority to issue to their investors, for calendar year 2001, up to the aggregate amount of $1 billion in equity as to which NMTCs may be claimed; for each of years 2002 and 2003, up to $1.5 billion in equity as to which NMTCs may be claimed; for each of years 2004 and 2005, up to $2 billion; and for each of years 2006 and 2007, up to $3.5 billion. Amounts not allocated in any calendar year may be carried over to succeeding years, to the extent provided in IRC § 45D(f)(3).

This Guidance does not solicit applications either for CDE certification or allocations of NMTCs. The Fund expects, in the future, to issue additional guidance that will solicit CDE certification applications and applications for NMTC allocations.

DATES: Written and electronic comments on the issues set forth below in Section VII, "Pending Issues," must be submitted to the Fund by July 2, 2001.

ADDRESSES: Comments in response to the issues set forth below in Section VII, "Pending Issues," should be sent by mail to: Acting Director, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005; by e-mail to *cdfihelp@cdfi.treas.gov*; or by facsimile at (202) 622–8244. This is not a toll free number.

FOR FURTHER INFORMATION CONTACT: Information regarding the Fund and its programs may be downloaded from the Fund's web site at *http://www.treas.gov/cdfi*.

SUPPLEMENTARY INFORMATION:

I. Definitions

Allocation Agreement: means a formal agreement, by and between the Fund and a CDE that has been provided with a NMTC allocation, that specifies the terms and conditions of such NMTC allocation.

Community Development Entity or *CDE:* see Qualified Community Development Entity, below.

Community Development Financial Institution or *CDFI:* means an entity that has been certified by the Fund as meeting the criteria set forth in section 103 of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702). For further details, refer to the CDFI Program regulations set forth at 12 CFR 1805.201.

Comprehensive Investment Plan: means a document, to be included in a CDE's application for an allocation of NMTCs, that provides historical information and a minimum five-year investment strategy that offers a detailed discussion of (a) the applicant's track record in making investments and promoting community development; (b) the applicant's financial and operational capacity, including its ability to track NMTC investment proceeds; (c) the capacity, skills, and experience of its management team; (d) an analysis of its target market; (e) its plan for raising capital with a NMTC allocation; and (f) its strategy for using the proceeds from such an allocation (including its financial and community development underwriting criteria).

Credit Allowance Period: means the seven-year period beginning on the date on which a Qualified Equity Investment, as hereinafter defined, is initially made.

Low-Income Community: means any population census tract in which (A) the poverty rate is at least 20 percent, or (B)(i) in the case of a tract not located within a Metropolitan Area (as hereinafter defined), the median family income for such tract does not exceed 80 percent of statewide median family income, or (ii) in the case of a tract located within a Metropolitan Area, the median family income for such tract does not exceed 80 percent of the greater of statewide median family income or the Metropolitan Area median family income. With respect to (B) in the preceding sentence, possession-wide median family income shall be used (in lieu of statewide income) in assessing the status of census tracts located within a possession of the United States. Upon application by an entity for certification as a CDE, the Fund may designate under IRC section 45D(e)(2) an area within a census tract as a Low-Income Community if (A) the boundary of the area is continuous; (B) the area would otherwise meet the definition of a Low-Income Community if it were a census tract; and (C) there is inadequate access to investment capital in the area (as demonstrated by studies, surveys, or other analyses provided by the applicant). In the case of an area that is not tracted for population census tracts, the equivalent county divisions (as defined by the Bureau of the Census for purposes of determining poverty areas) shall be used for purposes of defining poverty rates and median family incomes. For the purpose of determining whether a business meets the definition of Qualified Active Low-Income Community Business, as hereinafter defined, the CDE shall use the most recent census or other data that is available at the time of its investment in the business.

Low-Income Persons: means individuals residing in Low-Income Communities having an income, adjusted for family size, of not more than (i) for non-Metropolitan Areas, 80 percent of the statewide median family income; and (ii) for Metropolitan Areas, the greater of (A) 80 percent of the statewide median family income or (B) 80 percent of the Metropolitan Area median family income.

Metropolitan Area: means an area designated as such by the Office of Management and Budget pursuant to 44 U.S.C. 3504(e) and 31 U.S.C. 1104(d) and Executive Order 10253 (3 CFR 1949–1953 Comp., p. 758), as amended.

Qualified Active Low-Income Community Business: means, with respect to any taxable year, any corporation (including a nonprofit corporation) or partnership if, for such taxable year: (i) at least 50 percent of the total gross income of such entity is derived from the active conduct of a Qualified Business within any Low-Income Community; (ii) a substantial portion of the use of the tangible property of such entity (whether owned or leased) is within any Low-Income Community; (iii) a substantial portion of the services performed for such entity by its employees are performed in any Low-Income Community; (iv) less than five percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to collectibles (as defined in IRC section 408(m)(2)) other than collectibles that are held primarily for sale to customers in the ordinary course of such business; and (v) less than five percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to nonqualified financial property (as defined in IRC section 1397C(e)). For this purpose, a proprietorship may be considered a Qualified Active Low-Income Community Business if the business would meet the requirements of the preceding sentence if it were incorporated. In addition, the term Qualified Active Low-Income Community Business includes any trade or business, including any program, department, or division of a business, that would qualify as a Qualified Active Low-Income Community Business if such trade or business were separately incorporated.

Qualified Business: means any business that meets the definition found at IRC section 1397C(d), except that (i) in lieu of applying IRC section 1397C(d)(2)(B), the rental to others of real property located in any Low-Income Community shall be treated as a Qualified Business if there are substantial improvements located on such property, and (ii) IRC section 1397C(d)(3) (relating to the rental of tangible personal property) shall not apply. The rental to others of residential rental property (as defined in IRC section 168(e)(2)(A)) is not a Qualified Business.

Qualified Community Development Entity or *CDE:* means any domestic corporation or partnership if (A) the primary mission of the entity is serving, or providing investment capital for, Low-Income Communities or Low-Income Persons; (B) the entity maintains accountability to residents of Low-Income Communities through their representation on any governing board of the entity or on any advisory board to the entity; and (C) the entity is certified by the Fund as a CDE. A CDE may also be a limited liability company ("LLC") that meets the above tests. SSBICs, as hereinafter defined, and CDFIs will be deemed to be CDEs in the manner hereinafter set forth.

Qualified Equity Investment: means any equity investment in a CDE if (A) such investment is acquired by the investor at its original issue (directly or through an underwriter) solely in exchange for cash; (B) substantially all of such cash is used by the CDE to make Qualified Low-Income Community Investments; and (C) the investment is designated by the CDE as a Qualified Equity Investment. Qualified Equity Investment also includes the purchase of a Qualified Equity Investment from a prior holder, to the extent provided in IRC section 45D(b)(4). Qualified Equity Investment does not include any equity investment issued by a CDE more than five years after the date the CDE receives a NMTC allocation. For purposes of this Guidance, "equity investment" means (A) any stock (other than nonqualified preferred stock as defined in IRC section 351(g)(2)) in a corporation and (B) any capital interest in a partnership. An LLC shall be deemed to be either a corporation or a partnership, according to the LLC's treatment under federal tax law.

Qualified Low-Income Community Investment: means (A) any capital or equity investment in, or loan to, any Qualified Active Low-Income Community Business; (B) the purchase from a CDE of any loan made by such entity that is a Qualified Low-Income Community Investment; (C) financial counseling and other services to businesses located in, and residents of, Low-Income Communities; and (D) any equity investment in, or loan to, any CDE.

Specialized Small Business Investment Company or *SSBIC:* is defined in IRC section 1044(c)(3). For further information, contact Austin Belton, Small Business Administration ("SBA"), at 202/205–7027.

II. The New Markets Tax Credit Program: How the Credit Works

By providing an incentive in the form of a tax credit over seven years, NMTCs are intended to stimulate the investment of $15 billion in new private capital in CDEs that, in turn, will make investments in eligible businesses in distressed urban, rural, and Native American communities, thus facilitating economic and community development.

Through the NMTC Program, an entity may apply to the Fund to be certified as a CDE (see Section IV, "Eligibility," for further detail). Nonprofit entities and for-profit entities may be certified as CDEs by the Fund. Only CDEs that are for-profit entities are eligible to compete for, and receive, an allocation of authority to issue Qualified Equity Investments with respect to which investors will be entitled to claim NMTCs. A taxpayer (including, for example, individuals, corporations, partnerships, and investment funds) that makes a Qualified Equity Investment in a CDE that has received a NMTC allocation from the Fund may claim a five percent tax credit on the investment amount for each of the first three years and a six percent tax credit for each of the next four years. If the CDE fails to issue equity investments to use all or part of its NMTC allocation within five years from the date of the Allocation Agreement, the unused portion of the allocation will terminate.

IRC section 45D(b)(1)(B) requires that the CDE use "substantially all" of the cash raised as a result of its NMTC

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allocation to make Qualified Low-Income Community Investments (the "Substantially All Test"). The Substantially All Test will be treated as met if at least 85 percent of the aggregate gross assets of the CDE are invested in Qualified Low-Income Community Investments (the "Safe Harbor Test," found at IRC section 45D(b)(3)). If the Safe Harbor Test is met, the CDE need not trace the use of cash from the particular stock issuance (or other equity investment) with respect to which the NMTCs are claimed. The IRS may address issues related to the Substantially All Test in subsequent regulations.

Under IRC section 45D(d)(1)(A), Qualified Low-Income Community Investment includes any capital or equity investment in, or loan to, any Qualified Active Low-Income Community Business. Please note, however, that under IRC section 45D(f)(2)(B), the Fund will give priority when evaluating whether to award a CDE with a NMTC allocation to any CDE that intends to satisfy the Substantially All Test by making Qualified Low-Income Community Investments in one or more businesses in which persons unrelated to the CDE (within the meaning of IRC section 267(b) or section 707(b)(1)) hold the majority equity interest (see Section V, "Evaluation," below).

If selected for an allocation of NMTCs, a CDE will receive a Notice of NMTC Allocation, which will set forth the amount of the CDE's NMTC allocation and describe the general terms and conditions that will govern said allocation. The general terms and conditions will include, among others, the requirement that the CDE enter into an Allocation Agreement with the Fund for the duration of the Credit Allowance Period and comply with certain reporting requirements so that the Fund can monitor the CDE's compliance with IRC section 45D, this Guidance, and subsequent guidance and/or regulations. The CDE may not issue Qualified Equity Investments to its investors until such time as the Fund and the CDE have executed the Allocation Agreement.

Under IRC section 45D(g)(3), the following constitute events of recapture: (i) the CDE ceases to qualify as a CDE; (ii) the CDE ceases to meet the Substantially All Test; or (iii) the CDE redeems Qualified Equity Investments during the Credit Allowance Period. The IRS may address recapture issues in subsequent regulations.

III. Applications

At a future date, the Fund will make available two application forms: (i) An application for CDE certification and (ii) an application for an allocation of NMTCs. An entity may submit these applications concurrently or separately (provided, however, that if they are submitted separately, the CDE certification application must be submitted prior to the submission of an allocation application). The CDE certification application form will require that the applicant provide, among other items, specific information relating to its primary mission and its accountability to residents of Low-Income Communities, as described below. The NMTC allocation application form will require that the applicant provide, among other items, a Comprehensive Investment Plan. Further details regarding eligibility and other program requirements will be set forth in the application packets, which will be made available at a future date.

IV. Eligibility

IRC section 45D(c) specifies the eligibility requirements that each entity must meet in order to be certified by the Fund as a CDE. At the time an entity submits its CDE certification application, the entity must be a duly organized and validly existing legal entity under the laws of the jurisdiction in which it is incorporated or otherwise established. As described above, a CDE is any domestic corporation or partnership (including LLCs) if (A) the primary mission of the entity is serving, or providing investment capital for, Low-Income Communities or Low-Income Persons; (B) the entity maintains accountability to residents of Low-Income Communities through their representation on any governing board of the entity or on any advisory board to the entity; and (C) the entity is certified by the Fund as a CDE.

SSBICs and CDFIs are automatically eligible to be designated as CDEs, but must complete abbreviated application materials in order to receive a CDE designation from the Fund. Any entity, regardless of tax status, may apply to the Fund for designation as a CDE; however, only for-profit CDEs are eligible to apply for allocations of NMTCs.

To comply with the primary mission requirement, an entity must (a) provide organizational documents that, in the opinion of the Fund, clearly evidence a mission of directly serving or providing investment capital for Low-Income Communities or Low-Income Persons; and (b) be able to demonstrate that at least 60 percent of its activities are dedicated to directly serving Low-Income Communities or Low-Income Persons. In order to be certified as a CDE, an entity must demonstrate that it maintains accountability to residents of Low-Income Communities through their representation on any governing board of the entity or on any advisory board to the entity. In the case where a CDE is a limited partnership or an LLC, this accountability requirement may be met if residents of Low-Income Communities are represented on the governing or advisory board of the entity's managing general partner or other controlling entity (such as a nonprofit CDFI). A CDE may maintain accountability to residents of Low-Income Communities by having board members who are directly representative of the Low-Income Community (i.e., they are Low-Income Persons or other residents of the Low-Income Community).

A CDE is not limited in the number of Low-Income Communities that it may serve or propose to serve.

A CDE certification will last for a period of 15 years unless it is revoked or terminated by the Fund. To maintain its CDE certification, a CDE must certify annually during this period that the CDE has continued to meet CDE certification requirements.

Previous awardees under the Fund's Community Development Financial Institutions Program (the "CDFI Program") and/or the Bank Enterprise Award Program (the "BEA Program") are eligible to apply for allocations of NMTCs, but such applicants are not ensured NMTC allocations. Further, the Fund reserves the right, in its sole discretion, to declare a NMTC Program applicant to be ineligible for a NMTC allocation if the applicant is an awardee under the CDFI Program and/or the BEA Program and is out of compliance with the agreements governing said award(s). Similarly, the Fund reserves the right, in its sole discretion, after consultation with the SBA, to declare a NMTC applicant to be ineligible for a NMTC allocation if the applicant is no longer certified as a CDE by virtue of it no longer being deemed a SSBIC by the SBA.

A CDE that is an insured depository institution may not receive a BEA Program award for the provision of any financial assistance or services that are also Qualified Low-Income Community Investments if such assistance or services were provided with cash proceeds of a Qualified Equity Investment for which the investor received the benefits of NMTCs. A CDE that is an insured depository institution may not receive both a BEA Program award and a NMTC allocation for the same equity investment in a CDE.

V. Evaluation

All applications for allocations of NMTCs will be reviewed for eligibility and completeness. If determined to be eligible and complete, each application for a NMTC allocation will be evaluated by the Fund on a competitive basis to determine the applicant's ability and strategy for carrying out its Comprehensive Investment Plan and the extent to which the applicant will maximize the effective use of the NMTC allocation. The Fund will conduct the substantive review of said applications in accordance with the criteria and procedures described in this Guidance, and subsequent guidance or regulations that the Fund may issue, which will include a description of the scoring system to be used by the Fund in the evaluation of applications.

Phase One

In Phase One of the substantive review, each Fund reader will evaluate applications for NMTC allocations and award points to be distributed among the following categories of information (or others that the Fund deems appropriate):

(a) Institutional investment and community development track record;
(b) Financial and operational capacity;
(c) Capacity, skills and experience of the management team;
(d) Market analysis;
(e) Capitalization strategy;
(f) Investment strategy;
(g) Projected community development activities and projected impact.

In addition, as provided by IRC section 45D(f)(2), the Fund will give preference to any CDE that (i) has a record of having successfully provided capital or technical assistance to disadvantaged businesses or communities, or (ii) intends to satisfy the Substantially All Test by making Qualified Low-Income Community Investments in one or more businesses in which persons unrelated to the CDE (within the meaning of IRC section 267(b) or section 707(b)(1)) hold the majority equity interest. For purposes of (i), the Fund will also consider the record of the entity controlling the CDE. A record of having successfully provided capital or technical assistance to disadvantaged businesses or communities may be demonstrated either by the past actions of the CDE itself or by an entity controlling the CDE (e.g., where a new CDE is established by a nonprofit corporation with a history of providing assistance to disadvantaged communities, or where the new CDE is controlled by a CDFI or SSBIC).

Phase Two

Once the initial evaluation is completed, the Fund will determine which applications will receive further consideration for allocations based on application scores, written recommendations of individuals who performed initial reviews based on the above stated categories of information, and the amount of NMTCs available. Applicants that advance to Phase Two may receive a site visit and/or an interview (by telephone or in person) by a Fund reviewer for the purpose of obtaining clarifying or confirming information. At this point in the process, applicants may be required to submit additional information about their applications in order to assist the Fund with its final evaluation. After conducting such site visits and/or telephone interviews, the Fund reviewers will evaluate all applications in accordance with the evaluation criteria outlined above and prepare recommendation memoranda containing recommendations on the amount of the NMTC allocation, if any, that should be provided to each applicant.

A final review panel of Fund staff will consider the reviewers' recommendation memoranda and make final recommendations to the Fund's selecting official. In making its recommendations, the final review panel also may consider the institutional diversity (e.g., size, type, focus, affiliation), geographic diversity of applicants, and other factors that the Fund deems appropriate.

In the case of an applicant that has previously received financial or technical assistance awards from the Fund under the CDFI Program or the BEA Program, the Fund will consider the applicant's level of success in meeting its performance goals (if applicable), financial soundness covenants (if applicable), and other requirements contained in its existing award agreement(s) with the Fund.

The Fund's selecting official will make the final allocation determination based on the applicant's file, including, without limitation, reader and reviewer recommendations and the panel's recommendation, and the amount of NMTCs available.

In the case of regulated CDEs, the Fund's selecting official reserves the right to take into consideration the views of the appropriate Federal banking agencies. In the case of applicants that are also SSBICs, the Fund reserves the right to consult with the SBA.

The Fund reserves the right to change these evaluation procedures, upon public notice, if the Fund deems it appropriate.

VI. Monitoring

The Fund will collect information, on at least an annual basis, from each CDE that is a recipient of a NMTC allocation and/or a Qualified Low-Income Community Investment, including such audited financial statements and opinions of counsel as the Fund deems necessary or desirable, in its sole discretion. The Fund shall use such information to monitor each CDE's compliance with the Fund's requirements for certification as a CDE and the CDE's compliance with the provisions of its Allocation Agreement, and to determine, among other matters, whether substantially all of the CDE's equity raised through its NMTC allocation is used to make Qualified Low-Income Community Investments. The Fund will also use such information to assess the impact of the NMTC Program on Low-Income Communities. The Allocation Agreement shall include provisions setting forth the CDE's reporting requirements.

VII. Pending Issues

In developing guidance to assist potential applicants to the NMTC Program, the Fund has identified certain issues that may be addressed in additional guidance and/or regulations. The Fund invites comments from the public on these and any other issues on which the public believes guidance is particularly needed.

1. IRC section 45D(f)(2) requires that in making allocations of NMTCs, priority be given to: (a) any applicant that has a record of having successfully provided capital or technical assistance to disadvantaged businesses or communities or (b) any applicant which intends to satisfy the Substantially All Test by making Qualified Low-Income Community Investments in one or more businesses in which persons unrelated to the CDE hold a majority equity interest.

(a) How should the Fund implement this policy? For instance, should the Fund incorporate preference points into the scoring? Should the Fund make awards to organizations that are deemed competitive and meet one or both of these criteria before providing an allocation to any other applicant?

(b) What specific factors should the Fund consider when evaluating whether an applicant meets the requirements for priority treatment?

(c) Should more weight be given to one priority category over the other and should an applicant be allowed to

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receive preference points under both priority categories?

2. Should there be limits as to the amount of a NMTC allocation that may be awarded to an applicant in a calendar year?

3. During the evaluation process of NMTC applications, the Fund will request that applicants provide information on their track records for providing capital or technical assistance to Low-Income Communities and disadvantaged businesses and the effect that such investment/technical assistance has had on such Low-Income Communities or businesses. Applicants may also be required to describe the social underwriting criteria that they will use when deciding which companies to invest in. If an applicant receives a NMTC allocation, it will be required to report to the Fund on the ways in which the Qualified Equity Investments are used to benefit Low-Income Communities.

(a) What indicators should the Fund assess when evaluating the community development impact of an applicant's prior activities or the social underwriting criteria of its loan policies?

(b) On what basis should the Fund judge how "successfully" capital or technical assistance has been provided?

(c) What information should the Fund request from allocation recipients as indicators for evaluating the effectiveness of the NMTC Program (e.g., number of jobs created or retained, increases in revenues of businesses receiving Qualified Low-Income Community Investments, rates of return to investors from Qualified Equity Investments, or number of clients served at facilities that are developed)?

Authority: Consolidated Appropriations Act of 2001, Pub. L. 106–554.

Dated: April 20, 2001.

Jeffrey C. Berg,

Acting Director for the Community Development Financial Institutions Fund.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 132/P.L. 107–6

To designate the facility of the United States Postal Service located at 620 Jacaranda Street in Lanai City, Hawaii, as the "Goro Hokama Post Office Building". (Apr. 12, 2001; 115 Stat. 8)

H.R. 395/P.L. 107–7

To designate the facility of the United States Postal Service located at 2305 Minton Road in West Melbourne, Florida, as the "Ronald W. Reagan Post Office of West Melbourne, Florida". (Apr. 12, 2001; 115 Stat. 9)

Last List March 21, 2001

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DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 490

RIN 1904–AB00

Alternative Fuel Transportation Program; Biodiesel Fuel Use Credit

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Final rule, completion of regulatory review.

SUMMARY: In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled "Regulatory Review Plan," published in the **Federal Register** on January 24, 2001 (66 FR 7702), DOE temporarily delayed for 60 days (66 FR 8746, February 2, 2001) the effective date of the final rule entitled "Alternative Fuel Transportation Program; Biodiesel Fuel Use Credit" published in the **Federal Register** on January 11, 2001 (66 FR 2207). DOE has now completed its review of that regulation, and does not intend to initiate any further rulemaking action to modify its provisions.

DATES: The effective date of the rule amending 10 CFR part 490 published at 66 FR 2207, January 11, 2001, and delayed at 66 FR 8746, February 2, 2001, is confirmed as April 13, 2001.

FOR FURTHER INFORMATION CONTACT: David Rodgers, Office of Energy Efficiency and Renewable Energy, (202) 586–9118, *david.rodgers@hq.doe.gov*.

Issued in Washington, DC on April 24, 2001.

Spencer Abraham,

Secretary of Energy.

[FR Doc. 01–10771 Filed 5–1–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–147–AD; Amendment 39–12207; AD 2001–09–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 777–200 series airplanes, that requires replacement of certain existing bushings of the aft trunnion of the outer cylinder of the main landing gear (MLG) with new bushings, and replacement of grease in an undercut on the aft trunnion, if necessary. The actions specified by this AD are intended to prevent stress corrosion cracking and consequent fracture of the aft trunnion of the outer cylinder of the MLG, which could result in collapse of the MLG. This action is intended to address the identified unsafe condition.

DATES: Effective June 6, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 6, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stan Wood, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2772; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 777–200 series airplanes was published in the **Federal Register** on December 29, 2000 (65 FR 82959). That action proposed to require replacement of certain existing bushings of the aft trunnion of the outer cylinder of the main landing gear (MLG) with new bushings, and replacement of grease in an undercut on the aft trunnion, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Delete Airplane With Line Number (L/N) 1

One commenter requests that the Boeing Model 777 series airplane having L/N 1 be removed from the applicability section of the proposed rule. The commenter states that the main landing gear on that airplane was reworked prior to airplane delivery, and the outer cylinders with the final configuration of the aft trunnion were installed. The commenter adds that this rework was done at the manufacturer per Boeing Production Revision Record 61571, part G95. Such rework meets the intent of Boeing Service Bulletin 777–32–0003, dated October 9, 1997, which was specified in the applicability section of the proposed rule.

The FAA concurs with the commenter. The FAA has determined that this airplane was retained by the manufacturer until delivery to an operator at the end of the year 2000. The following changes have been made to the final rule: The applicability and cost impact sections have been revised accordingly; paragraph (a)(3) of the final rule has been revised to remove the reference to the airplane having L/N 1; and Note 3, which specified, "For the purposes of this AD, the airplane having L/N 1 is considered to have the configuration of a Group 1 airplane," has been removed.

Revised Service Information

The same commenter states that, subsequent to issuance of the proposed rule, Boeing Alert Service Bulletin 777–32A0025, Revision 1, dated March 8, 2001, was submitted to the FAA for approval. (The original issue of the

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service bulletin was referenced in the proposal as the appropriate source of service information for accomplishment of the specified actions.) The commenter adds that the revised bulletin contains additional inspection requirements for operators that used a specific corrosion-inhibiting compound when incorporating the referenced service bulletin. The commenter notes that when the final rule is released it should reference the revised service bulletin.

The FAA concurs with the commenter. Since the issuance of the proposed rule, the FAA has approved Revision 1 of the service bulletin. The service bulletin was revised in order to delete a certain corrosion-inhibiting compound specified in the original issue that, in certain conditions, has been found to promote corrosion. Documentation received from the manufacturer shows that compound was used on only 3 of the 25 airplanes affected by this final rule, and those airplanes are scheduled to be reworked using the revised service bulletin. The final rule has been revised to require accomplishment of the specified actions per Revision 1 only. A new Note 3 has been added to the final rule to give credit for airplanes that applied the correct corrosion-inhibiting compound per the original service bulletin.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 25 airplanes of the affected design in the worldwide fleet. The FAA estimates that 11 airplanes of U.S. registry will be affected by this AD, that it will take approximately 36 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $13,228 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $169,268, or $15,388 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–09–02 Boeing: Amendment 39–12207. Docket 2000–NM–147–AD.

Applicability: Model 777–200 series airplanes; line numbers (L/N) 2 through 29 inclusive, except L/N's 10, 14, and 18; certificated in any category; except those on which the outer cylinder of the main landing gear (MLG) has been replaced in accordance with Boeing Service Bulletin 777–32–0003, dated October 9, 1997.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent stress corrosion cracking and consequent fracture of the aft trunnion of the outer cylinder of the MLG, which could result in collapse of the MLG, accomplish the following:

Replacement of Bushings

(a) Within 5 years and 300 days since date of manufacture of the airplane, or within 1 year after the effective date of this AD, whichever occurs later, replace bushings in the aft trunnion of the outer cylinder with new bushings by doing paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this AD; as applicable; in accordance with Boeing Alert Service Bulletin 777–32A0025, Revision 1, dated March 8, 2001.

(1) Remove bushings in the aft trunnion of the outer cylinder of the MLG.

(2) Perform a one-time detailed visual inspection of the aft trunnion area for corrosion or other damage.

(3) For airplanes listed in Group 1 of the service bulletin: Replace grease in the undercut of the aft trunnion with corrosion-inhibiting compound.

(4) Install new bushings with corrosion-inhibiting compound.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Corrective Action

(b) If any corrosion or other damage is found during the inspection required by paragraph (a)(2) of this AD: Prior to further flight, repair in accordance with Boeing Alert Service Bulletin 777–32A0025, Revision 1, dated March 8, 2001; except, where the service bulletin specifies to contact Boeing for instructions, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Note 3: Prior accomplishment of paragraphs (a) and (b) of this AD, as specified in Boeing Alert Service Bulletin 777–32A0025, dated April 6, 2000; using BMS 3–27 or Cor-Ban 27L corrosion-inhibiting compound; is acceptable for compliance with the applicable actions required by this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) Except as provided by paragraph (b) of this AD: The actions shall be done in accordance with Boeing Alert Service Bulletin 777–32A0025, Revision 1, dated March 8, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on June 6, 2001.

Issued in Renton, Washington, on April 20, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–10465 Filed 5–1–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–115–AD; Amendment 39–12215; AD 2001–09–10]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes Equipped With Pratt & Whitney Model PW4400 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all McDonnell Douglas Model MD–11 series airplanes equipped with Pratt & Whitney Model PW4400 series engines, that currently requires revising the Airplane Flight Manual (AFM) to advise the flight crew of applicable operational limits. This amendment corrects a typographical error in one paragraph of the existing AD that resulted in a reference to an incorrect engine fan blade which is not subject to the requirements of that paragraph. The actions specified in this AD are intended to ensure that the flight crew is informed of applicable limitations in airplane performance, and to prevent reduced acceleration and climb performance relative to performance data in the AFM, which could result in the airplane overrunning the end of the runway during takeoff or landing, or impacting obstacles or terrain. This action is intended to address the identified unsafe condition.

DATES: Effective May 17, 2001.

Comments for inclusion in the Rules Docket must be received on or before July 2, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–115–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–115–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

Information pertaining to this amendment may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Philip C. Kush, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5263; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On April 3, 2001, the FAA issued AD 2001–07–08, amendment 39–12173 (66 FR 18527, April 10, 2001), applicable to all McDonnell Douglas Model MD–11 series airplanes equipped with Pratt & Whitney Model PW4400 series engines. That AD requires revising the Airplane Flight Manual (AFM) to advise the flight crew of applicable operational limits. That action was prompted by the FAA's finding that the operational limits specified in the Limitations Section of the AFM for McDonnell Douglas Model MD–11 series airplanes equipped with Pratt & Whitney Model PW4400 series engines do not adequately list the performance correction sections in the AFM; and reports that Pratt & Whitney Model PW4400 series engines with certain early-production fan blades (Phase 0/1, FB2B), as installed on certain McDonnell Douglas Model MD–11 series airplanes, do not produce the amount of thrust indicated in the AFM. The actions required by that AD are intended to ensure that the flight crew is informed of applicable limitations in airplane performance, and to prevent reduced acceleration and climb performance relative to performance data in the AFM, which could result in the airplane overrunning the end of the runway during takeoff or landing, or impacting obstacles or terrain.

Actions Since Issuance of Previous Rule

Since the issuance of AD 2001–07–08, the FAA has found a typographical error in paragraph (b) of that AD. Paragraph (b) requires a revision of the Performance Section of the AFM to address a shortfall in the amount of thrust produced by certain engines equipped with certain early-production fan blades. That paragraph states that it applies to "airplanes with Pratt & Whitney Model PW4460 or PW4462 engines with FB2C [fan blades]

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installed." (Though the existing AD referred to the subject parts as "fans," the correct term in this case is "fan blades.") Although FB2C fan blades do exist, these fan blades are not subject to the unsafe condition addressed by paragraph (b) of AD 2001–07–08. The correct model number for the fan blades subject to paragraph (b) is "FB2B." (The preamble of AD 2001–07–08 correctly identifies the affected fan blades subject to the unsafe condition, where it states, "Pratt & Whitney Model PW4400 series engines with certain early-production fan blades (Phase 0/1, FB2B) " do not produce the amount of thrust indicated in the AFM.")

The FAA finds that this typographical error could result in airplanes subject to the thrust-shortfall condition not being subject to the AFM revision required by paragraph (b) of the existing AD. For operators of McDonnell Douglas Model MD–11 series airplanes with Pratt & Whitney Model PW4460 or PW4462 engines with FB2B fan blades installed, failure to incorporate the AFM revision in paragraph (b) of the existing AD could lead to reduced acceleration and climb performance relative to performance data in the AFM, which could result in the airplane overrunning the end of the runway during takeoff or landing, or impacting obstacles or terrain.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 2001–07–08 to continue to require revising the AFM to advise the flight crew of applicable operational limits. This new AD revises paragraph (b) of the existing AD to refer to the correct fan blades. Except for this change in the applicability of paragraph (b) of this AD, all requirements remain the same as those in the existing AD.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–115–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12173 (66 FR 18527, April 10, 2001), and by adding a new airworthiness directive (AD), amendment 39–12215, to read as follows:

2001–09–10 McDonnell Douglas: Amendment 39–12215. Docket 2001–NM–115–AD. Supersedes AD 2001–07–08, Amendment 39–12173.

Applicability: All Model MD–11 series airplanes equipped with Pratt & Whitney Model PW4400 series engines, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew is informed of limitations in airplane performance, and to prevent reduced acceleration and climb performance relative to performance data in the Airplane Flight Manual (AFM), which could result in the airplane overrunning the end of the runway during takeoff or landing, or impacting obstacles or terrain, accomplish the following:

Restatement of Requirements of AD 2001–07–08

AFM Revision: Limitations Section

(a) Within 30 days after April 25, 2001 (the effective date of AD 2001–07–08, amendment 39–12173), revise Section 1, Limitations, of the FAA-approved AFM to include the following information under Subsection 3, Operational Limits. This may be accomplished by inserting a copy of this AD into the AFM.

"Required Performance Corrections in Section 4A or 4B must be applied as applicable."

New Requirements of this AD

AFM Revision: Performance Section 4A or 4B

(b) For airplanes with Pratt & Whitney Model PW4460 or PW4462 engines with FB2B fan blades installed: Within 30 days after the effective date of this AD, revise the Performance Section of the FAA-approved AFM to include the following information under Section 4A or 4B, as applicable. This may be accomplished by inserting a copy of this AD into the AFM.

"When operating with one PW4460 engine, one PW4462 engine (operated at PW4460 thrust rating), or one PW4462 engine installed, apply the following performance corrections:

Weight must be reduced by:

Takeoff—1.3%
Enroute—2.5%
Landing—1.3%

When operating with more than one PW4460 engine and/or PW4462 engine (operated at PW4460 thrust rating), or more than one PW4462 engine installed, apply the following performance corrections:

Weight must be reduced by:

Takeoff—2.5%
Enroute—2.5%
Landing—2.5%."

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Effective Date

(e) This amendment becomes effective on May 17, 2001.

Issued in Renton, Washington, on April 24, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–10723 Filed 5–1–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–124–AD; Amendment 39–12206; AD 2001–09–01]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757–200 and –300 series airplanes, that requires repetitive clearing of the drain passage at the aft end of the main landing gear (MLG) truck beam to ensure moisture and contaminants within the truck beam can properly drain; and, for certain airplanes, an internal inspection of the truck beam to detect discrepancies, and follow-on actions. This amendment is prompted by reports of fracture of MLG truck beams. The actions specified by this AD are intended to prevent stress corrosion cracking, leading to fracture of a MLG truck beam during ground operations, which could result in either reduced controllability of the airplane or a fire.

DATES: Effective June 6, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 6, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dennis Stremick, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2776; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain 757–200 and –300 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on September 18, 2000 (65 FR 56268). That action proposed to require repetitive clearing of the drain passage at the aft end of the main landing gear (MLG) truck beam to ensure moisture and contaminants within the truck beam can properly drain. That action also proposed to expand the applicability, and, for certain airplanes, add a new inspection and follow-on actions.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Reference Revised Service Bulletins

One commenter asks that the FAA revise the supplemental NPRM to reference Revision 1 of Boeing Alert Service Bulletins 757–32A0135 and 757–32A0138, both dated November 30, 2000. The proposed rule referenced Boeing Alert Service Bulletins 757–32A0135 (for Model 757–200 series airplanes) and 757–32A0138 (for Model 757–300 series airplanes), both dated June 8, 2000, as the appropriate sources of service information for certain proposed actions. The commenter states that the service bulletins have been revised for clarification, based on questions received from operators.

We concur with the commenter's request. Since the issuance of the proposed rule, the FAA has reviewed and approved Revision 1 of the service bulletins. Revision 1 clarifies certain instructions and revises the effectivity listing to show changes in airplane operators. (No additional airplanes are added to the effectivity listing of Revision 1.) Therefore, we have revised the applicability statement and paragraphs (a) and (b) of this final rule to reference Revision 1 of the service bulletins as the appropriate source of service information for the actions required by those paragraphs. We also have revised Notes 2 and 3 to state that accomplishment of the actions required by this AD in accordance with the original issue of the service bulletins is acceptable for compliance with paragraphs (a) and (b) of this final rule.

Change Certain Wording in Paragraphs (a) and (b)

Two commenters ask that the wording in paragraphs (a) and (b) of the proposed rule, which specifies "* * * since the date of manufacture of the MLG * * *," be changed to read "* * * since the date of delivery of the airplane or since

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date of installation for new replacement truck beams installed after airplane delivery * * *." The commenters state that exposure to a typical service environment does not occur until after the airplane is delivered. This is because the airplane is maintained in a controlled environment and the landing gear is not exposed to the harsh conditions of in-service landing gear, so no degradation of protective finishes would be expected prior to delivery.

One commenter notes that the landing gear manufacturing date will normally precede airplane delivery by several months (and could be much longer for replacement truck beams), and the manufacturer does not typically provide the landing gear date of manufacture to the operators. If the date of manufacture is used as the basis for determining the inspection threshold, the manufacturer will be required to research and compile the data for distribution to operators. Operators could be required to comply months earlier than intended, as the service bulletins referenced in the proposed rule specify airplane age, which is normally based on delivery date. Specifying the airplane delivery date, or date of installation of new replacement truck beams as the basis for determining the compliance threshold will simplify determination of the threshold for each affected airplane. The operators will already have delivery or installation dates in their records, and will not have to rely on the manufacturer to provide additional information.

We concur with the commenters' requests. We agree that exposure to a typical service environment does not occur until after the airplane is delivered to the original operator, because the airplane is maintained in a controlled environment and the landing gear is not exposed to the harsh conditions of in-service landing gear, as the commenter states. Additionally, specifying a compliance time of within a certain number of years since the date of airplane delivery or since the date of installation of new replacement truck beams will allow operators easy access to the data necessary for determining when the clearing procedure should be done. Paragraphs (a) and (b) of the final rule have been changed accordingly.

Change Various Sections

One commenter asks for the following changes:

1. Replace the term "MLG," as specified in paragraphs (a) and (b) of the proposed rule, with "MLG truck beam" throughout the proposed rule. The commenter states that this would specify the exact component affected by the proposal and allow additional compliance time for units having the MLG truck beam replaced with an overhauled unit separately from the MLG assembly.

We concur. The term "MLG" has been changed throughout the final rule to the term, "MLG truck beam." Specifying the component instead of the entire MLG assembly allows additional time for compliance when the existing MLG truck beam is replaced with a new or overhauled truck beam, apart from the MLG assembly.

2. Replace the phrase "Overhaul of the MLG truck beam prior to the effective date of this AD * * *," as specified in Note 3 of the proposed rule, with "Overhaul of the MLG truck beam prior to the compliance time of this AD * * *." This is to allow credit to be taken for MLG assemblies overhauled and installed within the AD compliance time.

We partially concur with the commenter. We do not concur that the phrase "Overhaul of the MLG truck beam prior to the effective date of this AD," as specified in Note 3 of the final rule, be replaced with "Overhaul of the MLG truck beam prior to the compliance time of this AD." Note 3 gives operators credit for overhaul of the MLG truck beam prior to the effective date of the AD, in accordance with the original service bulletin. However, we do concur that the commenter be given credit for MLG assemblies overhauled and installed within the AD compliance time. However, the FAA notes that operators are always given credit for work accomplished previously if the work is performed in accordance with the existing AD by means of the phrase in the compliance section of the AD that states, "Required as indicated, unless accomplished previously."

Another commenter asks that Note 3 of the proposed rule be removed or clarified to state that previously overhauled truck beams comply with the rule based on prior accomplishment of the applicable service bulletins. The commenter states that Note 3 could be interpreted as being applicable to all truck beams that were overhauled per Boeing Model 757 Component Maintenance Manual (CMM) 32–11–56, which is specified in the service bulletins referenced in the proposed rule.

We concur with the commenter that Note 3 of the final rule needs further clarification, however, including the original service bulletin in the note already gives credit for previously overhauled truck beams that comply with the rule based on prior accomplishment. Prior accomplishment of the overhaul of the MLG truck beam, as referenced in the note, does include overhaul of the truck beam per the CMM because it is referenced in the service bulletin as a source for doing the overhaul of the truck beam. Also, we have added the internal inspection specified in paragraph (b) of the final rule to further clarify the intent of Note 3.

3. Remove the phrase "* * * in accordance with Boeing Alert Service Bulletin 757–32A0135, dated June 8, 2000 * * *" from Note 3 of the proposed rule to avoid confusion, since the referenced service bulletin does not specify any additional actions beyond the current overhaul procedures.

We do not concur. As stated in issue 2. above, Note 3 gives operators credit for overhaul of the MLG truck beam prior to the effective date of the AD, in accordance with the original service bulletin. The actions required by this AD must be performed in accordance with FAA-approved procedures and the referenced service bulletin contains such procedures. We cannot leave the note open so that the operator can use any procedure they might have available because not all maintenance procedures are FAA-approved.

4. Give credit for paragraph (b) of the proposed rule, within the referenced compliance time, if an airplane within Group 1 has an MLG assembly replaced with either a new MLG assembly or an overhauled MLG assembly incorporating a new MLG truck beam.

We concur that if an airplane within Group 1 has a MLG assembly replaced with either a new MLG assembly or an overhauled MLG assembly incorporating a new MLG truck beam, that airplane is in compliance with this AD. As stated in our response to issue 1. above, the term "MLG" has been changed throughout the final rule to the term "MLG truck beam," which clarifies this information.

Extend Compliance Times

One commenter asks that the repetitive interval for the clearing procedure of the aft drain hole, as specified in paragraph (a) of the proposed rule, be changed from 6 months to 18 months, even if the drain hole is found clogged. The commenter states that unless there is conclusive evidence that it is more likely that a blocked drain hole that is cleared will be more likely to block again, this requirement cannot be justified and should be reviewed.

We do not concur. If the clogging of the drain passage was caused by incorrect application of corrosion inhibiting compound, the clogging is likely to reoccur sooner than for a drain passage that is not blocked. The repetitive interval for the clearing procedure for an aft drain hole that is found clogged will remain at every 6 months.

A second commenter asks that the compliance time specified in paragraph (b) of the proposed rule be extended. The commenter states that it is presently operating under an approved 24-month "C" check (heavy maintenance) program. The proposed rule specifies a compliance period of 6 months to inspect all affected MLG, if the date of manufacture is over 8 years. The commenter has 44 MLG (22 airplanes) which fall into this category and considers that compliance time to be overly aggressive. The commenter adds that the inspection is better performed in a heavy maintenance environment, and 6 months would not allow them the scheduling opportunity to perform internal inspections on all the affected MLG. The commenter also notes that, in the unlikely event that a truck assembly requires replacement, options for accomplishment of the replacement are extremely limited considering shipping, turn time, limited parts availability, and a compliance time of 6 months, to perform the internal inspections and any replacement necessary. These conditions cause an undue burden on the operators.

We do not concur. In developing an appropriate compliance time for this action, we considered not only the degree of urgency associated with addressing the subject unsafe condition, but the manufacturer's recommendation as to an appropriate compliance time, and the practical aspect of accomplishing the required inspection and corrective action within an interval of time that parallels the normal scheduled maintenance for the majority of affected operators. We have determined that within 8 years since the date of airplane delivery (for MLG truck beams that have not been overhauled), or since the date of installation of new truck beams (per response to a previous comment), or within 6 months after the effective date of this AD; whichever occurs latest, represents an appropriate compliance time allowable for the inspection and corrective action to be accomplished during scheduled maintenance intervals. But under the provisions of paragraph (c) of the final rule, we may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

A third commenter states that a time limit of 30 days for overhaul or replacement of the MLG truck beam should be allowed if any discrepancy is detected. The commenter notes that a small airline does not have the resources to perform an immediate overhaul or replacement of the affected part.

We do not concur. As stated in the proposal, there have been several reports of fracture of the MLG truck beam due to stress corrosion cracking, which can lead to fracture of the truck beam. This unsafe condition could result in either reduced controllability of the airplane or a fire. In consideration of the end-level effect of the unsafe condition on the airplane, if not immediately addressed, the FAA has determined that the compliance time of prior to further flight for overhaul or replacement of the truck beam if any discrepancy is detected, as specified in paragraph (b) of the final rule, must remain. This compliance time is necessary to maintain an adequate level of safety within the transport airplane fleet.

Revise Applicability

One commenter asks that the applicability of the proposed rule be revised to specify the truck beam part number and serial number, instead of the airplane serial number. The commenter states that the only link between the components and the airplane that are affected by the proposal is the configuration of the airplane at delivery. The commenter adds that identification by the part number and serial number will eliminate the possibility that unsafe truck beams will not be included in the applicability of the rule.

We do not concur. The applicability of this AD identifies Model 757–200 and –300 series airplanes, as listed in the referenced service bulletins, which specify the airplane line numbers. The manufacturer has verified that the truck beams specified in this AD are installed on airplanes listed in the effectivity section of Revision 1 of the service bulletins, so no change to the applicability of this AD is necessary in this regard.

Clarify Terminating Action

Two commenters ask for the following changes:

One commenter asks that the installation of new or overhauled truck beams terminate the repetitive clearing of the drain hole specified in paragraph (a) of the proposed rule. The commenter states that the manufacturer considers overhaul of the truck beams to be sufficient for termination of the repetitive clearing procedures specified in the service bulletin. The commenter adds that while the requirements of an AD are binding, and the statements in a service bulletin are merely recommendations, the FAA should consider including the content of the manufacturer's recommendation in the final rule.

The commenter also notes that this condition is a result of insufficient corrosion protection, which is due to improper plating of the parts during manufacture and/or improper application of primer, grease, or corrosion-preventive compounds during assembly. The potential for a corrosion problem on the truck beams that were improperly manufactured is increased as a result of the fact that the improperly applied grease or corrosion-preventive compounds may block the drain hole. But the commenter adds that the manufacturer and the suppliers have improved their processes and the unsafe condition has been eliminated in later deliveries, as indicated by the fact that the service bulletins referenced in the proposed rule are applicable to airplanes having line numbers 1 through 874 only.

The FAA agrees that clarification is necessary. The current CMM referenced in the service bulletins contains an error that specifies the application of too much corrosion inhibiting compound on the interior of the MLG truck beam. If the CMM is used to apply the corrosion inhibiting compound, the unsafe condition may still exist on later deliveries of Model 757–200 and –300 series airplanes.

Another commenter asks that the FAA determine whether operators with truck beams that were overhauled and installed prior to the effective date of the proposed rule should do the repetitive drain hole clearing and detailed internal inspection per the proposed rule. A second commenter asks if the overhaul or replacement of the truck beams is terminating action for the repetitive clearing procedures of the aft drain hole, or if it is corrective action as specified in paragraph (b) of the proposed rule.

We do not concur. For airplanes with truck beams that were overhauled and installed prior to the effective date of the final rule, as well as all other affected airplanes, the repetitive drain hole clearing and detailed internal inspection procedures must continue to be done indefinitely. The corrective action of either applying corrosion preventive compound, or overhaul or replacement of the truck beam, does not terminate the repetitive clearing procedures of the aft drain hole.

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Reference Maintenance Planning Document (MPD)

One commenter requests that the repetitive clearing procedure of the aft drain hole be addressed by an MPD revision because Boeing Service Letter 757–SL–32–060, dated March 31, 1999, specifies the possible addition of the clearing instructions for the drain hole to the MPD. The commenter notes that once the corrective actions have been accomplished per the service bulletins, the unsafe condition in the proposed rule is eliminated. The commenter adds that any further maintenance after the initial clearing of the drain hole should be limited to the procedures contained in the MPD, as the requirements in that document should be adequate to maintain all airplane systems.

We do not concur. The repetitive clearing procedures of the aft drain hole are not specified in the MPD, so further maintenance cannot be done per that document.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 874 airplanes of the affected design in the worldwide fleet. The FAA estimates that 350 Model 757–200 series airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspections required by this AD on U.S. operators is estimated to be $21,000, or $60 per airplane, per inspection cycle.

For Group 1 airplanes, as listed in Boeing Alert Service Bulletin 757–32A0135: It will take approximately 28 work hours per airplane to accomplish the internal inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD is estimated to be $1,680 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Currently, there are no Model 757–300 series airplanes on the U.S. Register. But should an affected airplane be imported and placed on the U.S. Register in the future, it will require approximately 1 work hour to accomplish the inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection will be $60 per airplane, per inspection cycle.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–09–01 Boeing: Amendment 39–12206. Docket 99–NM–124–AD.

Applicability: Model 757–200 series airplanes as listed in Boeing Alert Service Bulletin 757–32A0135, Revision 1; and Model 757–300 series airplanes as listed in Boeing Alert Service Bulletin 757–32A0138, Revision 1; both dated November 30, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent stress corrosion cracking, leading to fracture of a main landing gear (MLG) truck beam during ground operations, which could result in either reduced controllability of the airplane or a fire, accomplish the following:

Repetitive Clearing Procedure

(a) Within 4 years since the last overhaul of the MLG truck beam, since the date of airplane delivery (for MLG truck beams that have not been overhauled), or since the date of installation of new truck beams; or within 90 days after the effective date of this AD; whichever occurs latest: Insert a wooden probe, or similar non-metallic object, into the aft drain hole of the MLG truck beam, to clear the drain passage and ensure it can properly drain, in accordance with Boeing Alert Service Bulletin 757–32A0135, Revision 1 (for Model 757–200 series airplanes), or 757–32A0138, Revision 1 (for Model 757–300 series airplanes), both dated November 30, 2000, as applicable.

(1) If the aft drain hole is found unclogged, repeat the clearing procedure thereafter at intervals not to exceed 18 months.

(2) If the aft drain hole is found clogged, repeat the clearing procedure thereafter at intervals not to exceed 6 months.

Note 2: Accomplishment of the clearance of the drain passage prior to the effective date of this AD in accordance with Boeing Service Letter 757–SL–32–060, dated March 31, 1999; Boeing Alert Service Bulletin 757–32A0135 (for Model 757–200 series airplanes), or 757–32A0138 (for Model 757–300 series airplanes), both dated June 8, 2000; as applicable; is considered acceptable for compliance with the requirements specified in paragraph (a) of this AD.

Internal Inspection

(b) For Group 1 airplanes as listed in Boeing Alert Service Bulletin 757–32A0135, Revision 1, dated November 30, 2000: Within 8 years since the date of airplane delivery (for MLG truck beams that have not been overhauled), or since the date of installation of new truck beams; or within 6 months after the effective date of this AD; whichever occurs latest: Perform an internal inspection of the truck beam protective finish (plating and primer) to detect discrepancies (flaked, cracked, missing finish, or corrosion), as illustrated in Figure 2 of the alert service bulletin.

Corrective Action

(1) If no discrepancy is detected, prior to further flight, apply corrosion preventive compound in accordance with the Accomplishment Instructions of the alert service bulletin.

(2) If any discrepancy is detected, prior to further flight, overhaul or replace the truck beam, as applicable, in accordance with the Accomplishment Instructions of the alert service bulletin.

Note 3: Accomplishment of the internal inspection and overhaul of the MLG truck beam, as applicable, prior to the effective date of this AD, in accordance with Boeing Alert Service Bulletin 757–32A0135, dated June 8, 2000, is considered acceptable for compliance with the requirements specified in paragraph (b) of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Alert Service Bulletin 757–32A0135, Revision 1, dated November 30, 2000; or Boeing Alert Service Bulletin 757–32A0138, Revision 1, dated November 30, 2000; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on June 6, 2001.

Issued in Renton, Washington, on April 20, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–10466 Filed 5–1–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–200–AD; Amendment 39–12208; AD 2001–09–03]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Model A330 series airplanes. This action requires repetitive inspections of the spars, rib, and stringers in the vertical stabilizer spar box for failure of the bonds to the skin, and repair, if necessary. It also requires modification of the vertical stabilizer spar box by installation of fasteners to reinforce the bonds to the skin, which terminates the repetitive inspections. This action is prompted by issuance of mandatory continuing airworthiness information. This action is necessary to prevent failure of the bonds of the vertical stabilizer spar box to the skin, which could lead to reduced structural integrity of the spar box. It is intended to address the identified unsafe condition.

DATES: Effective May 17, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 17, 2001.

Comments for inclusion in the Rules Docket must be received on or before June 1, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket Number 2000–NM–200–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9–anm–iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–200–AD in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, ANM–116, International Branch, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A330 series airplanes. The DGAC advises that there have been findings of localized failure of bonding of the spars, rib, and stringers to the skin on several vertical stabilizer spar boxes. This failure results from contamination of the bonding surface during the production process. This condition, if not corrected, could result in failure of the bonds of the vertical stabilizer spar box to the skin, which could lead to reduced structural integrity of the spar box.

Explanation of Relevant Service Information

Airbus has issued two service bulletins pertinent to this unsafe condition. Airbus Service Bulletin A330–55A3025, Revision 01, dated September 15, 2000, describes procedures for initial and repetitive ultrasonic inspections of the spars, rib, and stringers of the vertical stabilizer spar box for failure of the bonds to the skin; and for repair of localized areas of this debonding.

Airbus Service Bulletin A330–55A3026, dated June 23, 2000, describes procedures for installation of fasteners

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to reinforce those areas which are susceptible to failure of the bond between the spars, rib, and stringers of the vertical stabilizer spar box and the skin. Accomplishment of the installation eliminates the need for the repetitive inspections.

Accomplishment of the actions specified in these service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 2000–427–126(B), dated October 4, 2000, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design that may be registered in the United States at some time in the future, this AD is being issued to prevent failure of the bonds of the vertical stabilizer spar box to the skin, resulting in reduced structural integrity of the spar box. This AD requires accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would take approximately 2 to 70 work hours per airplane, depending on its serial number, to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection is estimated to be between $120 and $4,200 per airplane, per inspection cycle.

In addition, it would take approximately 20 to 822 work hours per airplane, depending on its serial number, to accomplish the required terminating action at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the terminating action is estimated to be between $1,200 to $49,320 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–2000–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action, and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–09–03 Airbus Industrie: Amendment 39–12208. Docket 2000–NM–200–AD.

Applicability: Model A330 series airplanes, certificated in any category; with serial numbers as listed in Airbus Service Bulletin A330–55A3026, dated June 23, 2000, or A330–55A3025, Revision 01, dated September 15, 2000.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the bonds of the spars, the rib, and the stringers of the vertical stabilizer spar box to the skin, which could lead to reduction in the structural integrity of the spar box, accomplish the following:

Inspections

(a) Within 650 flight cycles from the previous inspection performed prior to the effective date of this AD, in accordance with Airbus All Operators Telex (AOT) A330–55A3025, dated April 19, 2000, or 60 days after the effective date of this AD, whichever occurs later: Perform an ultrasonic inspection of the spars, the rib, and the stringers of the vertical stabilizer spar box for failure of the bonds to the skin, in accordance with Airbus Service Bulletin A330–55A3025, Revision 01, dated September 15, 2000. Repeat the ultrasonic inspection at intervals not to exceed 650 flight cycles until the accomplishment of paragraph (c) of this AD.

Note 2: The ultrasonic inspection need not include those areas of the spars, the rib, and the stringers of the vertical stabilizer spar box which have previously been repaired or modified.

Repairs

(b) Perform applicable repairs, as shown in Table 1, as follows:

TABLE 1.—REPAIRS

If, during any inspection required by paragraph (a)—	Then—
(1) No failure of the bonds is detected.	No repair is required.
(2) A single area of failed bonding is detected, and it is smaller than 300 mm².	No repair is required.
(3) A single area of failed bonding is detected, and it is at least 300 mm² but less than 2,000 mm².	Prior to further flight, perform a local repair per Airbus Service Bulletin A330–55A3025, Revision 01, dated September 15, 2000.
(4) A single area of failed bonding is detected, and it is at least 2,000 mm², or multiple areas of failed bonding are detected at one specific component.	Prior to further flight, perform a repair per Airbus Service Bulletin A330–55A3025, Revision 01, dated September 15, 2000.

Terminating Action

(c) Within 5 years of the date of manufacture of the airplane: Install fasteners to the spars, the rib, and the stringers of the vertical stabilizer spar box, in accordance with Airbus Service Bulletin A330–55A3026, dated June 23, 2000. Accomplishment of the installation terminates the repetitive inspection required by paragraph (a) of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The actions shall be done in accordance with Airbus Service Bulletin A330–55A3025, Revision 01, dated September 15, 2000, and Airbus Service Bulletin A330–55A3026, dated June 23, 2000; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 2000–427–126(B), dated October 4, 2000.

Effective Date

(g) This amendment becomes effective on May 17, 2001.

Issued in Renton, Washington, on April 20, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–10464 Filed 5–1–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Monensin, Sulfadimethoxine, and Ormetoprim; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is updating the animal drug regulations for medicated feeds to correctly reflect previously approved assay limits for Type A medicated articles containing monensin, or sulfadimethoxine and ormetoprim in combination. This action is being taken to improve the accuracy of the agency's regulations.

DATES: This rule is effective May 2, 2001.

FOR FURTHER INFORMATION CONTACT: Mary G. Leadbetter, Center for Veterinary Medicine (HFV–143), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6964.

SUPPLEMENTARY INFORMATION: FDA has found that the April 1, 2000, edition of Title 21, Parts 500 to 599 of the Code of Federal Regulations (CFR) does not reflect revised assay limits for Type A medicated articles containing monensin, or sulfadimethoxine and ormetoprim in combination, that were approved in the new animal drug applications for these drugs. At this time, FDA is amending the regulations to correct these errors in 21 CFR 558.4.

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This is rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.4 [Amended]

2. Section 558.4 *Requirement of a medicated feed mill license* is amended in paragraph (d) in the "Category I" table in the entry for "Monensin" in the "Assay limits percent type A" column by removing "90–110" and adding in its place "85–115"; and in the "Category II" table in both paired entries for "Sulfadimethoxine" and "Ormetoprim" in the "Assay limits percent type A" column by removing "95–115" and in its place adding "90–110".

Dated: April 20, 2001.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 01–10874 Filed 5–1–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–01–056]

Drawbridge Operation Regulations: Long Island, New York Inland Waterway from East Rockaway Inlet to Shinnecock Canal, NY.

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge regulations which govern the operation of the Atlantic Beach Bridge, at mile 0.4, across the Reynolds Channel in New York. This deviation from the regulations allows the bridge owner to need not open the bridge for the passage of vessel traffic from 8 a.m., on May 15, 2001 through 8 a.m., on May 17, 2001. This action is necessary to facilitate necessary maintenance at the bridge. Vessels that can pass under the bridge without an opening may do so at all times.

DATES: This deviation is effective from May 15, 2001 through May 17, 2001.

FOR FURTHER INFORMATION CONTACT: Joe Schmied, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION:

The Atlantic Beach Bridge, mile 0.4, across the Reynolds Channel has a vertical clearance of 25 feet at mean high water, and 30 feet at mean low water in the closed position. The existing operating regulations are listed at 33 CFR 117.799(e).

The bridge owner, the Nassau County Bridge Authority, requested a temporary deviation from the operating regulations to facilitate replacement of the power operating controls at the bridge.

This deviation to the operating regulations will allow the owner of the Atlantic Beach Bridge to need not open the bridge for the passage of vessel traffic from 8 a.m., on May 15, 2001 through 8 a.m., on May 17, 2001. Vessels that can pass under the bridge without an opening may do so at all times.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: April 19, 2001.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 01–10969 Filed 5–1–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

United States Coast Guard

33 CFR Part 164

[USCG–2000–8300]

RIN 2115–AG03

Exemption of Public Vessels Equipped with Electronic Charting and Navigation Systems From Paper Chart Requirements

AGENCY: United States Coast Guard, DOT.

ACTION: Direct final rule.

SUMMARY: The Coast Guard amends its regulations to exclude public vessels owned, leased, or operated by the U.S. Government from certain requirements for navigational charts and publications. The amendments allow public vessels to use electronic charting and navigation systems providing reliable navigation information displays. Amending these regulations provides a platform for the Coast Guard to acquire more information and evaluate these systems as alternatives leading towards the goal of a fully integrated electronic charting and navigation technology into the commercial sector. The Coast Guard is currently preparing an Advanced Notice of Proposed Rulemaking to amend the same regulations allowing commercial vessels to use electronic charting systems.

DATES: This rule is effective July 31, 2001, unless a written adverse comment, or written notice of intent to submit an adverse comment, reaches the Docket Management Facility on or before July 2, 2001. If an adverse comment, or notice of intent to submit an adverse comment, is received, the Coast Guard will withdraw this direct final rule and publish a timely notice of withdrawal in the **Federal Register**.

ADDRESSES: You may mail your comments to the Docket Management Facility, (USCG–2000–8300) U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington DC 20590–0001, or deliver them to room PL–401 on the Plaza level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and documents, as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions regarding this rule, contact David Beach, Office of Vessel Traffic Management, Coast Guard, telephone 202–267–6623. For questions on viewing, or submitting material to, the docket, contact Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [USCG 2000–8300] and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the Docket Management Facility at the address under **ADDRESSES**. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail and would like to know they were received, please enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments and material received during the comment period.

Regulatory Information

The Coast Guard is publishing a direct final rule, the procedures for which appear in 33 CFR 1.05–55, because it anticipates no adverse comment. If no adverse comment or written notice of intent to submit an adverse comment is received within the specified comment period, this rule will become effective as stated in the **DATES** section. In that case, approximately 30 days before the effective date, the Coast Guard will publish a document in the **Federal Register** stating that no adverse comment was received and confirming that this rule will become effective as scheduled. However, if the Coast Guard receives a written adverse comment or written notice of intent to submit an adverse comment, it will publish a document in the **Federal Register** announcing withdrawal of all or part of this direct final rule. If an adverse comment applies to only part of this rule and it is possible to remove that part without defeating the purpose of this rule, the Coast Guard may adopt as final those parts of this rule on which no adverse comment was received. The part of this rule that was the subject of an adverse comment will be withdrawn. If the Coast Guard decides to proceed with a rulemaking following receipt of an adverse comment, the Coast Guard will publish a separate Notice of Proposed Rulemaking (NPRM) and provide a new opportunity for comment.

A comment is considered "adverse" if the comment explains why this rule would be inappropriate, including a challenge to the rule's underlying premise or approach, or why it would be ineffective or unacceptable without a change. The Coast Guard is also, at present, drafting a similar advanced notice of proposed rulemaking to allow commercial vessels to use electronic navigation systems. We encourage public participation when that rulemaking is published in the near future.

Background and Purpose

This rulemaking would exclude public vessels from the chart and publication requirements in 33 CFR 164.11, 33 CFR 164.30, and 33 CFR 164.33. This exclusion would only apply to public vessels equipped with an electronic charting and navigation system that meets the standards approved by the Federal agency exercising operational control of the vessel.

The United States based the navigation and safety regulations found in Title 33 Code of Federal Regulations on Chapter 5 of the International Convention for Safety of Life at Sea (SOLAS). SOLAS exempts ships of war from its safety of navigation provisions. Nevertheless, at the time the Coast Guard drafted the existing navigation safety regulations, exemptions for U.S. warships or other vessels being utilized in exclusive, noncommercial government service were not addressed. Further chart carriage requirements were not considered because electronic charting did not exist and no alternatives to paper documents were contemplated.

The intent of the rule is to enable Federal agencies to utilize electronic charting and navigation systems as an alternative to requiring paper nautical charts and publications, when the public vessel is equipped with an electronic system and backup.

The Coast Guard realizes that electronic charting and navigation systems are increasingly predominant in the maritime industry. As a result, commercial shipping industries have expressed their desire to incorporate this new technology into their operations.

Today, commercial shipping companies that wish to use an electronic charting and navigation system as their primary means of navigation on international voyages must meet an International Maritime Organization (IMO) standard. The term "ECDIS" (Electronic Chart Display and Information System) describes the IMO compliant system which specifies technical system requirements including the use of S–57 Vector format ENC (Electronic Navigation Chart) chart data produced under the authority of a government hydrographic office.

Currently, the Coast Guard, the National Oceanographic and Atmospheric Agency (NOAA) and the National Imagery and Mapping Agency (NIMA) are working together to develop electronic chart portfolios and evaluate how these charts interrelate with commercially available electronic charting and navigation systems. The Coast Guard is also evaluating commercially available electronic charting and navigation systems with the expectation that it may assist in establishing interim regulatory standards for electronic charting pending the wider availability of IMO and International Hydrographic Organization (IHO) compliant electronic charts. This rule allows the Coast Guard to gather and analyze operational data related to using these systems as installed on a variety of vessels.

The Coast Guard realizes the expense that commercial shipping companies will incur in attempting to meet the IMO ECDIS standard. Our evaluation is an attempt to afford the commercial industries a provisional measure that may allow marine industries to use current electronic charting and navigation systems with the intention that commercial and public vessels eventually meet the IMO ECDIS standard.

Public vessel operations already include the additional precautions necessary to ensure the safety of navigation during these evaluations and trials (i.e. navigation standards, greater available vessel manning and navigation details set when public vessels enter ports). The Coast Guard will also use the lessons learned, findings, and other experiences acquired through our evaluation of electronic charting and navigation systems to develop the regulation allowing the use of an electronic charting and navigation system by commercial vessels.

The Coast Guard is taking a leadership position with assisting commercial shippers in exploring the use of electronic charting and navigation systems as their primary means of navigation in U.S. waters. The information we acquire from use of such systems on public vessels will support the goal of fully integrated electronic charting and navigation technology into the commercial shipping sector.

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Discussion of Rule

At present. sections 33 CFR 164.11 entitled "Navigation under way; General", 33 CFR 164.30 entitled "Charts, Publications, and Equipment, General", and 33 CFR 164.33 entitled "Charts and Publications" require that all vessels have printed marine charts that are published by National Ocean Service, the U.S. Army Corps of Engineers, or a river authority, and plot each fix on those charts. The charts must be currently corrected at a large enough scale, and have enough detail to make safe navigation of the area possible. This proposed rule would amend the "Applicability" section (33 CFR 164.01) to offer an alternative to certain U.S. public vessels from the printed nautical charts and publications requirement. The alternative means of compliance would only apply to vessels using an electronic charting and navigation system, which is approved by the Federal agency exercising operational control of the vessel.

Regulatory Evaluation

This direct final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The rule has not been reviewed by the Office of Management and Budget under this Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This direct final rule would exclude public vessels from certain requirements for paper navigational charts and publications that are found in 33 CFR Part 164 (Sections 164.11, 164.30, and 164.33). Agencies will be allowed the flexibility of using either electronic charts or the currently required paper charts. Consequently, this rule would not impose any mandatory costs on the agencies it involves.

This direct final rule would apply to warships and other vessels owned or operated by the United States Government and used only in government noncommercial service when equipped with an approved electronic system.

The Coast Guard does not expect using electronic charts and navigation systems in place of paper charts to adversely impact maritime safety.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard expects that this rule would have a minimal economic impact on small entities. The Coast Guard does not believe that vessels affected by this rule are owned or operated by small entities, but by the federal government. In addition, the acceptable paper charts currently authorized are not printed or produced by small entities. Therefore, the Coast Guard believes that few, if any, small entities would be affected either directly or indirectly by this rule.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. Comments submitted in response to this finding will be evaluated under the criteria in the "Regulatory Information" section of this preamble.

Collection of Information

This rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 13132, and has determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment. This rulemaking only applies to Federal Government owned or operated public vessels. Therefore, since States may not regulate such vessels, a Federal Assessment is unnecessary.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(d) of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. The Coast Guard believes this rule would have no significant effect on the environment or any effect on regulations involving the environment. The Coast Guard does recognize this rule may even have a positive effect on the environment by minimizing the risk of environmental harm resulting from vessel groundings. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 164

Marine safety, Navigation.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 164 as follows:

PART 164—NAVIGATION SAFETY REGULATIONS

1. The Authority citation for part 164 continues to read as follows:

Authority: 33 U.S.C. 1223, 1231; 46 U.S.C. 2103, 3703; 49 CFR 1.46. Sec. 164.13 also issued under 46 U.S.C. 8502. Sec. 164.61 also issued under 46 U.S.C. 6101.

2. In § 164.01, revise paragraph (a), and add paragraph (c) to read as follows:

§ 164.01 Applicability.

(a) This part (except as specifically limited by this section) applies to each self-propelled vessel of 1600 or more gross tons (except as provided in paragraph (c) of this section, or for foreign vessels described in § 164.02) when it is operating in the navigable waters of the United States except the St. Lawrence Seaway.

(b) * * *

(c) Provisions of §§ 164.11(a)(2) and (c), 164.30, and 164.33 do not apply to warships or other vessels owned, leased, or operated by the United States Government and used only in government noncommercial service when these vessels are equipped with electronic navigation systems that have met the applicable agency regulations regarding navigation safety.

Dated: January 19, 2001.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 01–10834 Filed 5–1–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego 01–006]

RIN 2115–AA97

Security Zone; San Diego Bay

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone in the navigable waters of San Diego Bay, San Diego, CA. There were previously only two aircraft carriers home-ported at Naval Air Station North Island; however, a third aircraft carrier has been designated to homeport at Naval Air Station North Island. The establishment of this temporary security zone is needed to ensure the physical protection of this third aircraft carrier at Naval Air Station North Island.

DATES: This temporary regulation is effective May 2, 2001 through October 29, 2001.

ADDRESSES: Coast Guard Marine Safety Office, 2716 North Harbor Drive, San Diego, CA, 92101–1064, (619) 683–6495.

FOR FURTHER INFORMATION CONTACT: Lieutenant Kathleen Garza, USCG, c/o U.S. Coast Guard Captain of the Port, telephone (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Regulatory Information

A supplemental notice of proposed rulemaking (SNPRM) for a permanent rulemaking of this regulation is in process. However, under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for making this regulation effective immediately. Publishing a NPRM and delaying the effective date would be contrary to the interest of national security. Due to the recent terrorist attack on a U.S. Navy vessel, the Navy has a heightened level of concern with regards to all its vessels and their crews. As a result, the Navy has determined a need for increased security measures for their vessels and crewmembers while berthed at U.S. Naval Air Station North Island. To accomplish this goal, a temporary security zone is needed to protect vessels while they are berthed at U.S. Naval Air Station North Island. Due to the need to protect these vessels and their crews, delaying the effective date would be contrary to national security. At the same time, we are inviting public comments on the security zone via the publication of a SNPRM. This temporary regulation will be removed once comments on the SNPRM are analyzed and a Final Rule is published.

Background and Purpose

The Coast Guard is establishing the temporary security zone, to accommodate the home-porting of a new aircraft carrier at Naval Air Station North Island. There were previously only two aircraft carriers home-ported at Naval Air Station North Island; however, a third aircraft carrier has been designated to homeport at Naval Air Station North Island.

The establishment of this temporary security zone is needed to accommodate the home-porting of this third aircraft carrier. The modification and expansion of this security zone will prevent recreational and commercial craft from interfering with military operations involving all naval vessels home-ported at Naval Air Station, North Island, and it will protect transiting recreational and commercial vessels, and their respective crews, from the navigational hazards posed by such military operations. In addition, the Navy has been reviewing all aspects of its anti-terrorism and force protection posture in response to the attack on the USS COLE. The establishment of this temporary security zone will safeguard vessels and waterside facilities from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into, transit through, or anchoring within this security zone is prohibited unless authorized by the Captain of the Port, the Commander, Naval Air Force, U.S. Pacific Fleet, the Commander, Naval Base San Diego, or the Commanding Officer, Naval Air Station North Island.

Vessels or persons violating this section would be subject to the penalties set forth in 50 U.S.C. 192 and 18 U.S.C. 3571: seizure and forfeiture of the vessel, a monetary penalty of not more than $250,000, and imprisonment for not more than 10 years.

The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U.S. Navy.

Regulatory Evaluation

This temporary regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This regulation will have minimal additional impact on vessel traffic because it is only a slight modification and expansion of the existing security zone codified at 33 CFR 165.1105.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this proposal would have significant impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this temporary rule would not have a significant economic impact on a substantial number of small entities because vessel traffic would be allowed to pass through the zone with the permission of the Captain of the Port.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they may better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This temporary regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

The Coast Guard has analyzed this temporary regulation under Executive Order 13132 and determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

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Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630 Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets the applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

The Coast Guard has considered the environmental impact of this temporary regulation and concluded that, under Figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1C, it will have no significant environmental impact and it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist will be available for inspection and copying in the docket to be maintained at the address listed in **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

1. The authority citation for 33 CFR Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g) 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new section 165.T11–038 is added to read as follows:

§ 165.T11–038 Security Zone: San Diego Bay, CA.

(a) Location. The following area is a security zone: on the waters along the northern shoreline of Naval Air Station North Island, the area enclosed by the following points: Beginning at 32°42′53.0″ N, 117°11′45.0″ W (Point A); thence running northerly to 32°42′55.5″ N, 117°11′45.0″ W (Point B); thence running easterly to 32°42′55.5″ N, 117°11′30.5″ W (Point C); thence running southeasterly to 32°42′40.0″ N, 117°11′06.5″ W (Point D); thence running southerly to 32°42′37.5″ N, 117° 11′07.0″ W (Point E); thence running southerly to 32°42′28.5″ N, 117°11′11.0″ W (Point F); thence running southeasterly to 32°42′22.0″ N, 117°10′48.0″ W (Point G); thence running southerly to 32°42′13.0″ N, 117°10′51.0″ W (Point H); thence running generally northwesterly along the shoreline of Naval Air Station North Island to the place of beginning.

(b) Effective Dates. This temporary regulation is effective May 2, 2001 through October 29, 2001.

(c) Regulations. In accordance with the general regulations in section 165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port or the Commanding Officer, Naval Base, San Diego.

(d) The U.S. Navy may assist the U.S. Coast Guard in the patrol and enforcement of this security zone.

Dated: April 6, 2001.

S.P. Metruck,

Commmander, U.S. Coast Guard Captain of the Port, San Diego.

[FR Doc. 01–10715 Filed 5–1–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego 01–007]

RIN 2115–AA97

Security Zone; San Diego Bay

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone around the Naval Amphibious Base, Coronado, California, at the request of the U.S. Navy. This security zone will be established inside an already existing restricted area defined by the U.S. Navy maintained buoys. The establishment of this security zone is needed to ensure the physical protection of naval vessels and its activities at Naval Base, Coronado.

DATES: This temporary regulation is effective May 2, 2001 through October 29, 2001.

ADDRESSES: U.S. Coast Guard Marine Safety Office, 2716 North Harbor Drive, San Diego, CA 92101–1064, (619) 683–6495.

FOR FURTHER INFORMATION CONTACT: Lieutenant Kathleen Garza, USCG, c/o U.S. Coast Guard Captain of the Port, telephone (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Regulatory Information

A notice of proposed rulemaking (NPRM) for a permanent rulemaking of this regulation will be published soon. However, under 5 U.S.C. 553(b)(B), the Coast Guard finds good cause exists for making this temporary regulation effective immediately. Publishing a NPRM and delaying the effective date would be contrary to the interest of national security. Due to the recent terrorist attack on a U.S. Navy vessel, the Navy has a heightened level of concern with regards to all its vessels and their crews. As a result, the Navy has determined a need for increased security measures for their vessels and crewmembers while berthed at Naval Amphibious Base Coronado, Coronado, CA. To accomplish this goal, a temporary security zone is needed to protect vessels while they are berthed at Naval Amphibious Base, Coronado. Due to the need to protect these vessels and their crews, delaying the effective date would be contrary to national security. At the same time, we will invite public comment on the security zone via the publication of an NPRM. This temporary regulation will be removed once comments on the NPRM are analyzed and a Final Rule is published.

Background and Purpose

The Coast Guard is establishing a temporary security zone around the Naval Amphibious Base, Coronado, California, at the request of the U.S. Navy. The security zone will consist of the waters of San Diego Bay around the perimeter of the Naval Amphibious Base, extending approximately 100 yards out. Currently, there is a restricted area around the Naval Amphibious Base, which is located at 33 CFR section 334.860. The Navy believes that this

restricted area, by itself, is insufficient to adequately safeguard its vessels and the military operations involving the base. The Navy has been reviewing all aspects of its anti-terrorism and force protection posture in response to the attack on the USS COLE. The creation of this security zone will safeguard vessels moored at the Naval Amphibious Base and waterside facilities from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature. The creation of this security zone will also prevent recreational and commercial craft from interfering with military operations involving naval vessels and it will protect transiting recreational and commercial vessels, and their respective crews, from the navigational hazards posed by such military operations. Entry into, transit through, or anchoring within this security zone is prohibited unless authorized by the Captain of the Port, the Commander, Naval Base San Diego, or the Commanding Officer, Naval Station, San Diego.

Vessels or persons violating this section would be subject to the penalties set forth in 50 U.S.C. 192 and 18 U.S.C. 3571: seizure and forfeiture of the vessel, a monetary penalty of not more than $250,000, and imprisonment for not more than 10 years.

The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U.S. Navy.

Regulatory Evaluation

This temporary regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This regulation will have minimal additional impact on vessel traffic because the security zone is located inside an already existing restricted area defined by U.S. Navy maintained buoys and codified at 33 CFR § 334.860.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this regulation would have significant impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities because vessel traffic would be allowed to pass through the zone with the permission of the Captain of the Port.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they may better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

The Coast Guard has analyzed this temporary regulation under Executive Order 13132 and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630 Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets the applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

The Coast Guard has considered the environmental impact of this temporary regulation and concluded that, under Figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1C, it will have no significant environmental impact and it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist will be available for inspection and copying in the docket to be maintained at the address listed in **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for 33 CFR Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g) 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

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2. A new section 165T11–035 is added to read as follows:

§ 165.T11–035 Security Zone: San Diego, CA.

(a) Location. The following area is a security zone: the waters of San Diego Bay, inside the United States Navy maintained buoys around Naval Amphibious Base Coronado to the pierline 100 yards out, enclosed by lines connecting the following points: Beginning at 32°40′30.0″ N, 117°10′03.0″ W (Point A); thence running northeasterly to 32°40′54.0″ N, 117°09′35.5″ W (Point B); thence running northeasterly to 32°40′55.0″ N, 117°09′27.0″ W (Point C); thence running southeasterly to 32°40′43.0″ N, 117°09′09.0″ W (Point D); thence running southerly to 32°40′39.0″ N, 117°09′08.0″ W (Point E); thence running southwesterly to 32°40′30.0″ N, 117°09′12.9″ W (Point F); thence running a short distance to 32°40′29.0″ N, 117°09′14.0″ W (Point G); thence running southwesterly to 32°40′26.0″ N, 117°09′17.0″ W (Point H); thence running northwesterly to the shoreline to 32°40′31.0″ N, 117°09′22.5″ W (Point I).

(b) Effective Date. This temporary regulation is effective May 2, 2001 through October 29, 2001.

(c) Regulation. In accordance with the general regulations in section 165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port or the Commanding Officer, Naval Base, San Diego.

(d) The U.S. Navy may assist the U.S. Coast Guard in the patrol and enforcement of this security zone.

Dated: April 6, 2001.

S.P. Metruck,

Commander, U.S. Coast Guard Captain of the Port, San Diego.

[FR Doc. 01–10714 Filed 5–1–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego 01–009]

RIN 2115–AA97

Security Zone; San Diego Bay

AGENCY: Coast Guard, DOT

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone around the Naval Supply Center Pier at Naval Base, San Diego, at the request of the U.S. Navy. The establishment of this security zone is needed to ensure the physical protection of naval vessels moored at the Naval Supply Center Pier.

DATES: This temporary regulation is effective May 2, 2001 through October 29, 2001.

ADDRESSES: Coast Guard Marine Safety Office, 2716 North Harbor Drive, San Diego, CA, 92101–1064, (619) 683–6495.

FOR FURTHER INFORMATION CONTACT: Lieutenant Kathleen Garza, USCG, c/o U.S. Coast Guard Captain of the Port, telephone (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Regulatory Information

A notice of proposed rulemaking (NPRM) for a permanent rulemaking of this regulation will be published soon. However, under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for making this regulation effective immediately. Publishing a NPRM and delaying the effective date would be contrary to the interest of national security. Due to the recent terrorist attack on a U.S. Navy vessel, the Navy has a heightened level of concern with regards to all its vessels and their crews. As a result, the Navy has determined a need for increased security measures for their vessels and crewmembers while berthed at Naval Supply Center Pier, Naval Base, San Diego. To accomplish this goal, a temporary security zone is needed to protect vessels while they are berthed at Naval Supply Center Pier, Naval Base, San Diego. Due to the need to protect these vessels and their crews, delaying the effective date would be contrary to national security. At the same time, we will invite public comments on the security zone via the publication of a NPRM. This temporary regulation will be removed once comments on the NPRM are analyzed and a Final Rule is published.

Background and Purpose

The Coast Guard is establishing a temporary security zone around the Naval Supply Center Pier at Naval Base, San Diego. The security zone consists of the waters of San Diego Bay extending approximately 100 feet out from the north, west, and south sides of the Naval Supply Center Pier.

Currently, there is a restricted area around the Naval Supply Center Pier, 33 CFR 334.870(d). The Navy believes that this restricted area, by itself, is insufficient to adequately safeguard its vessels. The Navy has been reviewing all aspects of its anti-terrorism and force protection posture in response to the attack on the U.S.S. *Cole*. The creation of this security zone will safeguard vessels moored at the Naval Supply Center Pier and waterside facilities from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature. The creation of this security zone will also prevent recreational and commercial craft from interfering with military operations involving naval vessels and it will protect transiting recreational and commercial vessels, and their respective crews, from the navigational hazards posed by such military operations. Entry into, transit through, or anchoring within this security zone is prohibited unless authorized by the Captain of the Port, the Commander, Naval Base San Diego, or the Commanding Officer, Naval Station, San Diego.

Vessels or persons violating this section would be subject to the penalties set forth in 50 U.S.C. 192 and 18 U.S.C. 3571: seizure and forfeiture of the vessel, a monetary penalty of not more than $250,000, and imprisonment for not more than 10 years.

The U. S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U. S. Navy.

Regulatory Evaluation

This temporary regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This proposal will have minimal additional impact on vessel traffic because it is already a restricted area codified at 33 CFR 334.870(d) with existing regulations against vessel activity in the same area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this regulation would have significant impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities because vessel traffic would be allowed to pass through the zone with the permission of the Captain of the Port.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they may better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This temporary regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

The Coast Guard has analyzed this temporary regulation under Executive Order 13132 and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630 Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets the applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

The Coast Guard has considered the environmental impact of this temporary regulation and concluded that, under Figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1C, it will have no significant environmental impact and it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist will be available for inspection and copying in the docket to be maintained at the address listed in **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for 33 CFR Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g) 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new section 165.T11–037 is added to read as follows:

§ 165.T11–037 Security Zone: San Diego, CA.

(a) *Location.* The following area is a security zone: the waters of San Diego Bay extending approximately 100 feet from the north, west, and south sides of the Naval Supply Center Pier enclosed by lines connecting the following points: Beginning at 32°42′50″ N, 117°10′25″ W (Point A); to 32°42′50″ N, 117°10′38″ W (Point B); to 32°42′54″ N, 117°10′38″ W (Point C); to 32°42′54″ N, 117°10′25″ W (Point D).

(b) *Effective Dates.* This temporary regulation is effective May 2, 2001 through October 29, 2001.

(c) In accordance with the general regulations in section 165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port or the Commanding Officer, Naval Base, San Diego. Section 165.33 also contains other general requirements.

(d) The U.S. Navy may assist the U.S. Coast Guard in the patrol and enforcement of this security zone.

Dated: April 6, 2001.

S.P. Metruck,

Commander, U.S. Coast Guard, Captain of the Port, San Diego.

[FR Doc. 01–10713 Filed 5–1–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego 01–008]

RIN 2115–AA97

Security Zone; San Diego Bay

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone at Naval Base, San Diego, California, at the request of the U.S. Navy. The temporary security zone will expand across the mouth of Chollas Creek. This security zone is needed to ensure the physical protection of naval vessels moored at Naval Base, San Diego.

DATES: This temporary regulation is effective May 2, 2001 through October 29, 2001.

ADDRESSES: Coast Guard Marine Safety Office, 2716 North Harbor Drive, San Diego, CA, 92101–1064, (619) 683–6495.

FOR FURTHER INFORMATION CONTACT: Lieutenant Kathleen Garza, USCG, c/o U.S. Coast Guard Captain of the Port, telephone (619) 683–6495.

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SUPPLEMENTARY INFORMATION:

Regulatory Information

A notice of proposed rulemaking (NPRM) for a permanent rulemaking of this regulation is in process. However, under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for making this regulation effective immediately. Publishing a NPRM and delaying the effective date would be contrary to the interest of national security. Due to the recent terrorist attack on a U.S. Navy vessel, the Navy has a heightened level of concern with regards to all its vessels and their crews. As a result, the Navy has determined a need for increased security measures for their vessels and crewmembers while berthed at Naval Base, San Diego. To accomplish this goal, a temporary security zone is needed to protect vessels while they are berthed at U.S. Naval Base, San Diego. Due to the need to protect these vessels and their crews, delaying the effective date would be contrary to national security. At the same time, we are inviting public comment on the security zone via the publication of an NPRM. This temporary regulation will be removed once comments to the NPRM are analyzed and a Final Rule is published.

Background and Purpose

The Coast Guard is establishing this temporary security zone, to enclose the mouth of Chollas Creek so that unauthorized vessels or persons cannot transit into Chollas Creek.

This temporary security zone is needed to ensure the physical protection of naval vessels moored in the area. This security zone will also prevent recreational and commercial craft from interfering with military operations involving all naval vessels home-ported at Naval Base, San Diego and it will protect transiting recreational and commercial vessels, and their respective crews, from the navigational hazards posed by such military operations. In addition, the Navy has been reviewing all aspects of its anti-terrorism and force protection posture in response to the attack on the USS *Cole*. The modification and expansion of this security zone will safeguard vessels and waterside facilities from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into, transit through, or anchoring within this security zone is prohibited unless authorized by the Captain of the Port, the Commander, Naval Base San Diego, or the Commanding Officer, Naval Station, San Diego.

Vessels or persons violating this section would be subject to the penalties set forth in 50 U.S.C. 192 and 18 U.S.C. 3571; seizure and forfeiture of the vessel, a monetary penalty of not more than $250,000, and imprisonment for not more than 10 years.

The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U.S. Navy.

Regulatory Evaluation

This temporary regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This regulation will have minimal additional impact on vessel traffic because it is only a slight modification and expansion of the existing security zone codified at 33 CFR 165.1102.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this regulation would have significant impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities because vessel traffic would be allowed to pass through the zone with the permission of the Captain of the Port.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they may better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This temporary regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

The Coast Guard has analyzed this temporary regulation under Executive Order 13132 and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

Taking of Private Property

This temporary rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630m Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This temporary rule meets the applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

The Coast Guard has considered the environmental impact of this temporary regulation and concluded that, under Figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1C, it will have no significant environmental impact and it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist will be available for inspection and copying in the docket to be maintained at the address listed in **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for 33 CFR Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g) 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add section 165.T11–036 to read as follows:

§ 165.T11–036 Security Zone: San Diego Bay, CA.

(a) *Location.* The following area is a security zone: the water area within Naval Station, San Diego enclosed by the following points: Beginning at 32°41′16.5″ N, 117°08′01″ W (Point A); thence running southwesterly to 32°41′06″ N, 117°08′09.3″ W (Point B); thence running southeasterly along the U.S. Pierhead Line to 32°39′36.9″ N, 117°07′23.5″ W (Point C); thence running easterly to 32°39′38.5″ N, 117°07′06.5″ W (Point D); thence running generally northwesterly along the shoreline of the Naval Station to the place of beginning.

(b) *Effective Dates.* This temporary regulation is effective May 2, 2001 through October 29, 2001.

(c) *Regulations.* In accordance with the general regulations in section 165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port or the Commanding Officer, Naval Base, San Diego.

(d) The U.S. Navy may assist the U.S. Coast Guard in the patrol and enforcement of this security zone.

Dated: April 6, 2001.

S.P. Metruck,

Commander, U.S. Coast Guard, Captain of the Port, San Diego.

[FR Doc. 01–10712 Filed 5–1–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AJ99

Review of Benefit Claims Decisions

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document concerns the Department of Veterans Affairs' (VA) adjudication regulations. We are adding new provisions to allow any claimants who file a timely Notice of Disagreement to obtain a de novo review of their claims at the Veterans Service Center level before deciding whether to proceed with the traditional appeal process. This is intended to provide a more efficient means for resolving disagreements concerning claims.

DATES: *Effective Date:* June 1, 2001.

FOR FURTHER INFORMATION CONTACT: Bill Russo, Attorney-Advisor, Compensation and Pension Service, or John Bisset, Jr., Consultant, Compensation and Pension Service, Regulations Staff, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7210 and (202) 273–7213, respectively.

SUPPLEMENTARY INFORMATION: On February 18, 2000, VA published in the **Federal Register** (65 FR 8329–8330), a proposed rule which would establish provisions at 38 CFR 3.2600 to allow any claimants who file a timely Notice of Disagreement to obtain a de novo review (a new and complete review with no deference given to the decision being reviewed) by Veterans Service Center personnel before deciding whether to proceed with the traditional appeal process. We received written comments from American Veterans of WWII, Korea and Vietnam (AMVETS), Florida Department of Veterans' Affairs, National Organization of Veterans Advocates, Paralyzed Veterans of America, Veterans of Foreign Wars (Department of Maine), three VA employees and two concerned private individuals.

Potential Changes to the Traditional Appeal Process

We proposed to establish a new de novo review procedure that would be available to any claimant who files a Notice of Disagreement with a decision on a claim governed by 38 CFR part 3. We did not, and do not, intend the new de novo review procedure to change the procedures or rights involved with appealing such claims decisions to the Board of Veterans' Appeals. We intend it to be an additional, optional procedure to be conducted, if at all, between a claimant's filing a Notice of Disagreement and VA's issuance of a Statement of the Case. If de novo review under § 3.2600 is not requested with the Notice of Disagreement or after the Notice of Disagreement is filed but within 60 days after VA mails notice of the right of such review to the claimant, then the appeal will proceed in accordance with the traditional appeal process. However, a claimant may not pursue de novo review and the traditional appeal simultaneously. A traditional appeal is suspended until de novo review is complete. Otherwise, there would be a risk of duplicative development and inconsistent decisions made in the same claim.

Two commenters stated that the proposed regulations are unclear as to whether they change existing procedures regarding filing and processing of the Notice of Disagreement and the issuance of the Statement of the Case.

The final rule does not modify the procedures of the traditional appeal process. To make this clear, we are amending the proposed rule in two respects. At the end of § 3.2600(b), we are adding language that provides that if a claimant fails to timely request de novo review under § 3.2600, VA will proceed with the traditional appellate process by issuing a Statement of the Case. For clarity, we are also adding a sentence to § 3.2600(b) to preclude any extension of the time limit. Section 3.109(b) allows for a good cause extension of time limits within which a claimant is required to act to perfect a claim or challenge an adverse VA decision. Since the de novo review process is an optional procedure, not a required one, § 3.109(b) does not apply to the period during which a claimant may request the de novo review process. Moreover, VA believes that a 60-day time limit, without the possibility of extension, is a reasonable amount of time for a claimant to decide whether to opt for the de novo review process.

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In addition, we are using the last sentence of the proposed § 3.2600(b) to begin a new § 3.2600(f). This new paragraph provides that review under § 3.2600 does not limit the appeal rights of a claimant, and, if the claimant does not withdraw his or her Notice of Disagreement as a result of this review process, VA will proceed with the traditional appellate process by issuing a Statement of the Case.

One commenter suggested that the proposed § 3.2600 be amended to make clear that claimants who have filed a Notice of Disagreement may present additional evidence.

This final rule does not modify existing procedures for submission of evidence. Under current regulations, any claimant may present additional evidence after filing a Notice of Disagreement (38 CFR 19.37, 20.304 and 20.1304). Furthermore, § 3.2600(c) allows the reviewer to obtain additional evidence. We therefore make no change based on this comment.

Two commenters expressed concern that this rulemaking would limit the right of a claimant to have a hearing at some point following this new review process.

This final rule doesn't place any limitations on existing rights: 38 CFR 3.103(c) states, "Upon request, a claimant is entitled to a hearing at any time on any issue involved in a claim within the purview of part 3 of this chapter, subject to the limitations described in § 20.1304 of this chapter with respect to hearings in claims which have been certified to the Board of Veterans['] Appeals for appellate review." In fact, proposed § 3.2600(b) specified that review under § 3.2600 "does not limit the appellate rights of a claimant." For these reasons, we make no change based on these comments.

Management and Personnel Matters

One commenter predicted that implementation of the de novo review process that VA proposed would increase the backlog of pending claims because VA would assign its most productive adjudicators to this new review process. This same commenter predicted that implementation of this review process will cause a decline in the quality of VA claims decisions, for this same reason, and because there would be insufficient oversight of decisions made during this review process. Another commenter expressed concern that no benefit would be gained from the de novo review process unless Veterans Service Centers are authorized to hire additional personnel to conduct the de novo review.

VA believes that there is no evidence that implementation of the de novo review process will increase the backlog of pending claims. In addition, VA believes that any increase in the backlog of pending claims which might occur as the de novo review program begins, will be offset by a greater long-term reduction in pending appeals. At the twelve VA Veterans Service Centers that have participated in the pilot test of the Decision Review Officer program since December 1997, there has been a significant decline in the number of substantive appeals filed. VA also believes that there will be no decline in the quality of VA decisions due to the de novo review program. There has been no such decline at the twelve pilot Service Centers. Moreover, decisions rendered under the de novo review process will be subject to VA Central Office oversight under VA's Systematic Technical Advisory Review (STAR), just like other Service Center decisions. VA believes there will be significant efficiency benefits gained through the de novo review program: We believe it will reduce the number of cases that go to the Board of Veterans' Appeals, which will in turn reduce the number of claims which must be readjudicated on remand from the Board of Veterans' Appeals. We therefore make no changes based on these comments.

One commenter suggested that the Decision Review Officers should be placed outside the chain of command of the Veterans Service Center Manager and report directly to the Director of their VA Regional Office to ensure that the Decision Review Officer is independent.

VA believes that it is not necessary to remove the Decision Review Officers from the chain of command of the Veterans Service Center Manager in order for them to function independently. Under the final rule, a Service Center Manager has no authority, other than the existing clear and unmistakable error authority under § 3.105(a) or the difference of opinion authority under § 3.105(b) (which must be approved by VA Central Office), to overturn a Decision Review Officer's decision. We therefore make no change based on this comment.

This same commenter suggested that attorneys perform de novo reviews under § 3.2600, since attorneys are most familiar with the statutes, regulations and adjudication manual provisions regarding veterans benefits.

VA believes that other staff besides attorneys are qualified to serve as Decision Review Officers. For example, staff which are currently working as Hearing Officers or Master Rating Specialists have extensive knowledge of statutes, regulations and adjudication manual provisions regarding veterans benefits, and are well qualified to serve as Decision Review Officers. We therefore make no change based on this comment.

Representation for Claimants

Two commenters urged that the de novo review process include a claimant's duly appointed representative, and that the proposed § 3.2600 be amended for that purpose.

Nothing in this final rule excludes or discourages the participation of claimants' representatives. Furthermore, § 3.103(e) states, "Subject to the provisions of §§ 14.626 through 14.637 of this title [concerning recognition of veterans service organizations and accreditation of individual representatives], claimants are entitled to representation of their choice at every stage in the prosecution of a claim." Therefore, we believe that VA regulations make it clear that a claimant is allowed to have representation during this new review process, and we make no change based on these comments.

Timing of VA Notice of Right to De Novo Review

One commenter said that the proposed regulation fails to make it clear when the VA will send the claimant notice of the right to the de novo review.

Based on this comment, we have specified in § 3.2600(b) that VA will send the notice "upon receipt of the Notice of Disagreement."

Timing of Claimant's Request for De Novo Review

Two commenters said the proposed rule was unclear as to whether a request for a de novo review, filed at the same time as the Notice of Disagreement, would be considered valid.

VA concurs. We have amended § 3.2600(b) to provide that a claimant may request review under § 3.2600 with his or her Notice of Disagreement or after the Notice of Disagreement is filed but not later than 60 days after VA mails notice of the right to de novo review.

Time Limits for VA Action

One commenter suggested that this rulemaking include a provision to require VA to respond to a Notice of Disagreement within 30 days. We believe the intent of the comment is to require, by regulation, that VA furnish notice of the right to a review under § 3.2600 within 30 days of the receipt of the Notice of Disagreement. This commenter felt that this would improve VA's accountability to claimants.

VA believes that it would be inadvisable to set a deadline for VA to furnish this notice. Instances arise where VA must ask the claimant to clarify some aspect of the Notice of Disagreement. This would make it impracticable for VA to furnish the notice within a specified time period. We therefore make no change based on this comment.

One commenter suggested that this rulemaking strictly limit the time VA has to conclude the de novo review, for example, within 30–60 days.

We believe that it would be inadvisable to set time limits on the review process. Due to factors such as VA's workload or illness of the claimant, there may be unavoidable delays in scheduling an informal conference or obtaining additional relevant evidence. We therefore make no change based on this comment.

Clear and Unmistakable Error

One commenter stated the rulemaking is unclear as to whether the reviewer will have independent authority to revise decisions based on clear and unmistakable error, or whether the Veterans Service Center Manager must approve such decisions.

Section 3.2600(e) clearly authorizes the reviewer to reverse or revise prior decisions based on clear and unmistakable error under § 3.105(a) without obtaining the approval of any other VA official. We therefore make no change to § 3.2600 based on this comment. However, VA has amended § 3.104 to make clear that not only § 3.105 but also new § 3.2600 are valid bases for revision of decisions on the same factual basis as the initial decision by the agency of original jurisdiction.

One commenter stated the rulemaking is unfair because it gives the reviewer authority to revise decisions based on clear and unmistakable error in a manner unfavorable to the claimant, without any prior notice to the claimant. This same commenter stated that the rulemaking should be amended to allow a claimant to obtain de novo review of a clear and unmistakable error. This commenter also stated that the potential for clear and unmistakable error review of prior, final decisions may be a disincentive to seeking a review under § 3.2600.

As stated in § 3.2600(e), the reviewer will have the same clear and unmistakable error authority as any other VA adjudicator under § 3.105(a). However, we note that § 3.103(b) and § 3.105(e) and (f) do already require advanced notice of proposed reductions or terminations of benefits. With respect to clear and unmistakable error claims filed by claimants, under § 3.2600, if such claims are denied, the claimant may file a Notice of Disagreement, and will then be notified of his or her right to the de novo review process, just as with any other claim governed by 38 CFR part 3. The potential for clear and unmistakable error review is not unique to the de novo review process under § 3.2600. It applies to any claim filed subsequent to a final VA decision. We therefore make no change based on this comment.

Date of Implementation

One commenter said that the proposed regulations fail to make it clear which claimants will be eligible for the de novo review (i.e. those with appeals pending on the effective date of the regulation, or those filing claims on or after the effective date).

To clarify this issue, we have added to proposed § 3.2600 a new paragraph (g), which states: "This section applies to all claims in which a Notice of Disagreement is filed on or after June 1, 2001." This will provide claimants with a date certain on which the de novo review will be available. We believe that including claims which are pending at various stages of the appellate process would be administratively difficult because the de novo review is designed to occur prior to the traditional appellate process.

Other Comments

One commenter suggested that VA conduct de novo review in every claim in which a Notice of Disagreement is filed, unless claimants specifically state they do not want to go through this review process.

As was stated in proposed § 3.2600(b), "This [de novo] review does not limit the appellate rights of a claimant." We believe the suggestion made by this commenter would interfere with the traditional appeal process by requiring claimants who want only the traditional process (and not the de novo process) to file an extra document which makes that statement. We also believe that the de novo review process should be optional for claimants, not mandatory. We therefore make no change based on this comment.

One commenter suggested that a favorable decision resulting from the de novo review process need not contain a citation to the pertinent laws.

We believe that requiring all decisions issued under the de novo review process to contain the items listed in § 3.2600(d) will provide more consistent, uniform decisions. This will benefit both claimants and the Board of Veterans' Appeals (if the claim is ultimately appealed there). We therefore make no change based on this suggestion.

One commenter urged that VA allow claimants whose cases have been remanded to the Veterans Service Center by the Board of Veterans' Appeals to obtain review under § 3.2600 at that stage.

Nothing in this final rule modifies the post-remand VA claims process. We note, however, that no existing regulations or policies prohibit a Veterans Service Center from assigning whatever staff they deem appropriate (including the Decision Review Officer) to review a case following a remand by the Board of Veterans' Appeals. Review by a Decision Review Officer following remand from the Board would not, however, be made under § 3.2600 procedures because, as we stated above, the de novo review under § 3.2600 is designed to occur prior to the traditional appellate process. We therefore make no change based on this suggestion.

One commenter suggested that the proposed § 3.2600 be revised to give the reviewer authority to grant entitlement to non-service connected pension on an extra-schedular basis under 38 CFR 3.321(b)(2).

This final rule is not intended to modify the procedure or authority established by § 3.321(b)(2), which authorizes only Adjudication Officers to grant pension on an extra-schedular basis if schedular percentage standards are not met. That procedure and authority is intended to function as a rare exception to the general requirement in § 4.17 that a claimant must meet certain minimum disability rating percentage criteria to be entitled to pension benefits. VA believes that the Adjudication Officer (now called Veterans Service Center Manager in certain VA Regional Offices) is capable of deciding all such claims. We therefore make no change based on this comment.

One commenter suggested that VA should discuss the applicability of the U.S. Court of Appeals for the Federal Circuit decisions in *Hayre* v. *West*, 188 F.3d 1327 (Fed. Cir. 1999), and *Brown* v. *West*, 203 F.3d 1378 (Fed. Cir. 2000), but did not elaborate.

These cases have no applicability to the subject of this rulemaking, which is de novo review of certain appealed decisions, so we make no change based on this comment. We note, however, that the de novo review process will be available in any claim for which a Notice of Disagreement has been filed on or after the effective date of this

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regulation, including claims for an earlier effective date (e.g., *Hayre*) and clear and unmistakable error (e.g., *Brown*).

Finally, we are making one other change from the proposed rule. We proposed to add a new subpart D to part 3 and a new § 3.2100, which would have governed the scope of applicability of provisions in subpart D. After the proposed rule was published, VA published another final rule that added subpart D and new § 3.2100. Accordingly, we do not include either subpart D or § 3.2100 in this final rule.

Executive Order 12866

The Office of Management and Budget has reviewed this final rule under Executive Order 12866.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Unfunded Mandates

The Unfunded Mandates Reform Act requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This final rule will have no consequential effect on State, local, or tribal governments.

Regulatory Flexibility Act

The Secretary hereby certifies that the adoption of this final rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The final rule does not directly affect any small entities. Only VA beneficiaries are directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109, 64.110, and 64.127.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: February 15, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.104 Amended

2. In § 3.104, paragraph (a), the second sentence is amended by removing "§ 3.105" and adding, in its place, "§ 3.105" and adding, in its place, "§ 3.105 and § 3.2600".

§ 3.105 Amended

3. In § 3.105, paragraph (b) is amended by adding, as the last sentence, "However, a decision may be revised under § 3.2600 without being recommended to Central Office."

Subpart D—Universal Adjudication Rules That Apply to Benefit Claims Governed by Part 3 of this Title

4. The authority citation for part 3, subpart D continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

5. A new undesignated center heading and § 3.2600 are added to subpart D to read as follows:

Revisions

§ 3.2600 Review of benefit claims decisions.

(a) A claimant who has filed a timely Notice of Disagreement with a decision of an agency of original jurisdiction on a benefit claim has a right to a review of that decision under this section. The review will be conducted by an Adjudication Officer, Veterans Service Center Manager, or Decision Review Officer, at VA's discretion. An individual who did not participate in the decision being reviewed will conduct this review. Only a decision that has not yet become final (by appellate decision or failure to timely appeal) may be reviewed. Review under this section will encompass only decisions with which the claimant has expressed disagreement in the Notice of Disagreement. The reviewer will consider all evidence of record and applicable law, and will give no deference to the decision being reviewed.

(b) Unless the claimant has requested review under this section with his or her Notice of Disagreement, VA will, upon receipt of the Notice of Disagreement, notify the claimant in writing of his or her right to a review under this section. To obtain such a review, the claimant must request it not later than 60 days after the date VA mails the notice. This 60-day time limit may not be extended. If the claimant fails to request review under this section not later than 60 days after the date VA mails the notice, VA will proceed with the traditional appellate process by issuing a Statement of the Case. A claimant may not have more than one review under this section of the same decision.

(c) The reviewer may conduct whatever development he or she considers necessary to resolve any disagreements in the Notice of Disagreement, consistent with applicable law. This may include an attempt to obtain additional evidence or the holding of an informal conference with the claimant. Upon the request of the claimant, the reviewer will conduct a hearing under § 3.103(c).

(d) The reviewer may grant a benefit sought in the claim notwithstanding § 3.105(b), but, except as provided in paragraph (e) of this section, may not revise the decision in a manner that is less advantageous to the claimant than the decision under review. A review decision made under this section will include a summary of the evidence, a citation to pertinent laws, a discussion of how those laws affect the decision, and a summary of the reasons for the decision.

(e) Notwithstanding any other provisions of this section, the reviewer may reverse or revise (even if disadvantageous to the claimant) prior decisions of an agency of original jurisdiction (including the decision being reviewed or any prior decision that has become final due to failure to timely appeal) on the grounds of clear and unmistakable error (see § 3.105(a)).

(f) Review under this section does not limit the appeal rights of a claimant. Unless a claimant withdraws his or her Notice of Disagreement as a result of this review process, VA will proceed with the traditional appellate process by issuing a Statement of the Case.

(g) This section applies to all claims in which a Notice of Disagreement is filed on or after June 1, 2001.

(Authority: 38 U.S.C. 5109A and 7105(d))

[FR Doc. 01–11028 Filed 5–1–01; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 153–0195a; FRL–6958–1]

Revisions to the California State Implementation Plan, Butte County Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions are rules from the Butte County Air Quality Management District (BCAQMD) portion of the California State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are approving or rescinding local rules that address general permitting requirements for stationary sources in the BCAQMD.

DATES: These revisions are effective on July 2, 2001 without further notice, unless EPA receives adverse comments by June 1, 2001. If EPA receives such comment, it will publish a timely withdrawal **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Mail comments to Gerardo Rios, Permits Office Chief (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rule revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions at the following locations:

Permits Office (AIR–3), Air Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Butte County Air Quality Management District, 2525 Dominic Drive, Suite J, Chico, CA 95928.

A courtesy copy of the rules may be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* However, these versions of the rules may be different than the versions submitted to EPA for approval. Readers are cautioned to verify that the adoption date of the rule listed is the same as the rule submitted to EPA for approval. The official submittal is only available at the agency addresses listed above.

FOR FURTHER INFORMATION CONTACT: David Wampler, Permits Office, (Air–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; (415) 744–1256.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," and "our" refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the dates that they were adopted or rescinded by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted or rescinded	Submitted
BCAQMD	403	Permit to Operate	11/09/93	06/16/95
BCAQMD	422	Required Information	09/18/90	03/26/96
BCAQMD	424	State Implementation Plan	08/06/85	03/26/96
BCAQMD	1105	Request for Designated Non-Major Source Status	02/15/96	05/10/96
BCAQMD	4–3	Permit Fee	08/20/85	05/10/96
			Rescinded	
BCAQMD	4.5A	Standards for Granting Applications	08/06/85	05/10/96
			Rescinded	
BCAQMD	4.5B	Conditional Approval	08/06/85	05/10/96
			Rescinded	
BCAQMD	4.6	State Ambient Air Quality Standards	07/26/83	05/10/96
			Rescinded	
BCAQMD	4–6A	State Implementation Plan	07/26/83	05/10/96
			Rescinded	
BCAQMD	4.9	Action on Applications	08/06/85	05/10/96
			Rescinded	
BCAQMD	4–11	Appeals	08/20/85	05/10/96
			Rescinded	

On July 31, 1995, the submittal of Rule 403 was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review. On May 15, 1996, the submittal of Rules 422 and 424 were found to meet the completeness criteria. On July 19, 1996, the submittal of Rule 1105 and the recision submittals of Rules 4–3, 4.5A, 4.5B, 4–6, 4–6A, 4.9, and 4–11 were found to meet the completeness criteria.

Rules 4–3 and 4–11 were previously submitted on April 11, 1983 and approved on November 18, 1983. Rules 4.5A and 4.5B were previously submitted on February 25, 1980 and approved on May 27, 1982. Rules 4–6 and 4–6A were previously submitted on August 6, 1982 and approved on June 1, 1983. Rule 4.9 was previously submitted on July 10, 1980 and approved on May 27, 1982.

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B. Are There Other Versions of These Rules?

On February 3, 1987, EPA approved into the SIP versions of Rules 403 and 422. Today's action will approve the only revision to these rules since our 1987 action.

On June 1, 1983, EPA approved into the SIP Rule 4.6. This rule is not required in the SIP, because it only relates to non-SIP Rule 4–5.

On June 1, 1983, EPA approved into the SIP Rule 4.6A. Submitted Rule 424 revises and recodifies SIP-approved Rule 4.6A. There are no other versions of Rules 424 or 4.6A that have been submitted to us since our 1983 approval of Rule 4.6A. Today's action will rescind Rule 4.6A and replace it with Rule 424.

There is currently no version of Rule 1105 in the SIP, nor has there been earlier versions of 1105 submitted for SIP-approval.

On November 18, 1983, EPA approved into the SIP Rule 4–3. Rule 4–3 is submitted for recision without replacement, because the collection of local fees by BCAQMD is inappropriate for EPA to enforce in the SIP.

On May 27, 1982, EPA approved into the SIP Rules 4.5A, 4.5B, and 4.9. BCAQMD revised and recodified these rules with new Rules 420, 421, and 423, respectively, which were approved into the SIP on February 3, 1987.

On November 18, 1983, EPA approved into the SIP Rule 4–11. BCAQMD revised and recodified this rule with new Rule 425, which was SIP-approved on February 3, 1987. BCAQMD has not revised this rule since that time.

C. What Are the Changes in the Submitted Rules?

Rule 403 includes the following significant additions to the current SIP Rule 403:

- Any equipment in existence prior to June 15, 1982 emitting a controlled pollutant must obtain a permit to operate.
- Equipment subject to Title V of the CAA of 1990 must obtain a Title V permit.

Rule 422 includes the following significant additions to the current SIP Rule 422:

- The APCO may require information that will disclose the nature, extent, quantity, or degree of air contaminants that may be discharged into the atmosphere.

Rule 424 includes the following change to the current SIP Rule 4–6A:

- The rule references Rule 430 instead of Rule 4.5.

Rule 1105 is a new rule that includes the following provisions:

- The owner or operator of a specified stationary source, that would otherwise be a major source, would be allowed under Rule 1105 to request and accept federally-enforceable limits such that the annual potential to emit would be below major-source thresholds in order to allow the source to be considered a "designated non-major source."
- The limits to the potential to emit must be approved by EPA and must be permanent, quantifiable, and practically-enforceable.
- A designated non-major source would not be subject to the permitting requirements of Rule 1101, Title V—Federal Operating Permits or of Title V of the Clean Air Act of 1990.

The TSD has more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

All of the Rules in today's action except Rule 1105 describe administrative provisions and definitions that support the New Source Review permitting rules found in other BCAQMD requirements. In combination with the other requirements, these rules must be enforceable (see section 110(a) of the CAA) and must not relax existing requirements (see sections 110(l) and 193). In general, EPA evaluated these rules and has determined that each rule is consistent with the CAA, EPA regulations and EPA policy.

Rule 1105 was evaluated using EPA policy describing options sources have for limiting their potential under section 112 and Title V of the CAA. This policy is generally described in EPA's 1995 "Transition Policy"—a January 25, 1995 policy memorandum entitled, "Options for Limiting the Potential to Emit of a Stationary Source Under section 112 and Title V of the Clean Air Act" from John Seitz, Director of EPA's Office of Air Quality Planning and Standards, to EPA's Regional Air Division Directors.

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules and recisions are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules and recisions because we believe they fulfill all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed rule section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by June 1, 2001, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on July 2, 2001. This will incorporate these rules into or rescind rules from the federally enforceable SIP.

III. Background Information

Why Were These Rules Submitted?

Sections 172 and 173 of the CAA require that permits be obtained for affected sources, major sources, and any sources required by parts C and D of the CAA. CARB submitted revised and updated administrative rules to support this permitting requirement, and submitted for recision redundant administrative rules that were already replaced with revised SIP rules. CARB also submitted a rule that allows a source to be not considered a major source.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 2, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Permitting, and Reporting and recordkeeping requirements.

Dated: February 9, 2001.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Part 52, chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(54)(viii)(C), (c)(86)(ii)(B), (c)(124)(xii)(B), (c)(138)(i)(B), (c)(168)(i)(A)(*4*), (c)(222)(i)(E), (c)(230)(i)(E), and (c)(231)(i)(D) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(54) * * *

(viii) * * *

(C) Previously approved on May 27, 1982 in paragraph (viii)(B) of this section and now deleted Rules 4.5A and 4.5B.

* * * * *

(86) * * *

(ii) * * *

(B) Previously approved on May 27, 1982 in paragraph (ii)(A) of this section and now deleted Rule 4.9.

* * * * *

(124) * * *

(xii) * * *

(B) Previously approved on June 1, 1983 in paragraph (xii)(A) of this section and now deleted Rules 4–6 and 4–6A.

* * * * *

(138) * * *

(i) * * *

(B) Previously approved on November 18, 1983 in paragraph (i)(A) of this section and now deleted without replacement Rules 4–3 and Rule 4–11.

* * * * *

(168) * * *

(i) * * *

(A) * * *

(*4*) Rule 424, adopted on August 6, 1985.

* * * * *

(222) * * *

(i) * * *

(E) Butte County Air Quality Management District.

(*1*) Rule 403, adopted on November 9, 1993.

* * * * *

(230) * * *

(i) * * *

(E) Butte County Air Quality Management District.

(*1*) Rule 422, adopted on September 18, 1990.

* * * * *

(231) * * *

(i) * * *

(D) Butte County Air Quality Management District.

(*1*) Rule 1105, adopted on February 15, 1996.

* * * * *

[FR Doc. 01–10649 Filed 5–1–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–6968–6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a petition submitted by BMW Manufacturing Corporation, Greer, South Carolina (BMW), to exclude (or "delist") a certain hazardous waste from the lists of hazardous wastes. BMW will generate the petitioned waste by treating wastewater from BMW's automobile assembly plant when aluminum is one of the metals used to manufacture automobile bodies. The waste so generated is a wastewater treatment sludge that meets the definition of F019. BMW petitioned EPA to grant a "generator-specific" delisting because BMW believes that its F019 waste does

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not meet the criteria for which this type of waste was listed. EPA reviewed all of the waste-specific information provided by BMW, performed calculations, and determined that the waste could be disposed in a landfill without harming human health and the environment. This action responds to BMW's petition to delist this waste on a generator-specific basis from the hazardous waste lists, and to public comments on the proposed rule. EPA took into account all public comments on the proposed rule before setting the final delisting levels. Final delisting levels in the waste leachate are based on the EPA Composite Model for Leachate Migration with Transformation Products as used in EPA, Region 6's Delisting Risk Assessment Software. Today's rule also sets limits on the total concentration of each hazardous constituent in the waste. In accordance with the conditions specified in this final rule, BMW's petitioned waste is excluded from the requirements of hazardous waste regulations under Subtitle C of the Resource Conservation and Recovery Act (RCRA).

EFFECTIVE DATE: This rule is effective on May 2, 2001.

ADDRESSES: The RCRA regulatory docket for this final rule is located at the EPA Library, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays.

The reference number for this docket is R4–00–01–BMWF. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at a cost of $0.15 per page for additional copies. For copying at the South Carolina Department of Health and Environmental Control, please see below.

FOR FURTHER INFORMATION CONTACT: For general and technical information concerning this final rule, please contact Judy Sophianopoulos, RCRA Enforcement and Compliance Branch (Mail Code 4WD–RCRA), U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, (404) 562–8604, or call, toll free (800) 241–1754, and leave a message, with your name and phone number, for Ms. Sophianopoulos to return your call. Questions may also be e-mailed to Ms. Sophianopoulos at *sophianopoulos.judy@epa.gov*. You may also contact Cindy Carter, Appalachia III District, South Carolina Department of Health and Environmental Control (SCDHEC), 975C North Church Street, Spartanburg, South Carolina. If you wish to copy documents at SCDHEC, please contact Ms. Carter for copying procedures and costs.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

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I. Background

A. What Is a Delisting Petition?

A delisting petition is a request made by a hazardous waste generator to exclude one or more of his/her wastes from the lists of RCRA-regulated hazardous wastes in §§ 261.31, 261.32, and 261.33 of Title 40 of the Code of Federal Regulations (40 CFR 261.31, 261.32, and 261.33). The regulatory requirements for a delisting petition are in 40 CFR 260.20 and 260.22. EPA, Region 6 has prepared a guidance manual, *Region 6 Guidance Manual for the Petitioner*,[1] which is recommended by EPA Headquarters in Washington, DC and all EPA Regions.

B. What Laws and Regulations Give EPA the Authority To Delist Wastes?

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (i.e., ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in § 261.11 (a)(2) or (a)(3). Discarded commercial chemical product wastes which meet the listing criteria are listed in § 261.33(e) and (f).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show, first, that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See § 260.22(a) and the background documents for the listed wastes. Second, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (i.e., ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the EPA to determine whether the waste contains any other toxicants at hazardous levels. See § 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (i.e., excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their wastes continue to be nonhazardous based on the hazardous waste characteristics (i.e., characteristics which may be promulgated subsequent to a delisting decision.)

In addition, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes are also considered hazardous wastes. See 40 CFR 261.3 (a)(2)(iv) and (c)(2)(i), referred to as the "mixture" and "derived-from" rules, respectively. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the "mixture/derived-from" rules and remanded them to the EPA on procedural grounds. *Shell Oil Co. v. EPA*, 950 F.2d 741 (D.C. Cir. 1991). On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues (57 FR 7628). These rules became final on October 30, 1992 (57 FR 49278), and should be consulted for more information regarding waste mixtures and solid wastes derived from treatment, storage, or disposal of a hazardous waste. The mixture and derived-from rules are codified in 40 CFR 261.3 (b)(2) and (c)(2)(i). EPA plans to address waste mixtures and residues when the final portion of the Hazardous Waste Identification Rule (HWIR) is promulgated.

On October 10, 1995, the Administrator delegated to the Regional Administrators the authority to evaluate and approve or deny petitions submitted in accordance with §§ 260.20 and 260.22 by generators within their Regions (National Delegation of Authority 8–19) in States not yet authorized to administer a delisting program in lieu of the Federal program. On March 11, 1996, the Regional Administrator of EPA, Region 4, redelegated delisting authority to the Director of the Waste Management Division (Regional Delegation of Authority 8–19).

C. What Is the History of This Rulemaking?

BMW manufactures BMW automobiles, and is seeking a delisting for the sludge that will be generated by treating wastewater from its manufacturing operations, when aluminum will be used to replace some of the steel in the automobile bodies. Wastewater treatment sludge does not meet a hazardous waste listing definition when steel-only automobile bodies are manufactured. However, the wastewater treatment sludge generated at automobile manufacturing plants where aluminum is used as a component of automobile bodies, meets the listing definition of F019 in § 261.31.[2]

BMW petitioned EPA, Region 4, on June 2, 2000, to exclude this F019 waste on a generator-specific basis from the lists of hazardous wastes in 40 CFR part 261, subpart D.

The hazardous constituents of concern for which F019 was listed are hexavalent chromium and cyanide (complexed). BMW petitioned the EPA to exclude its F019 waste because BMW does not use either of these constituents in the manufacturing process. Therefore, BMW does not believe that the waste meets the criteria of the listing.

BMW claims that its F019 waste will not be hazardous because the constituents of concern for which F019 is listed will be present only at low concentrations and will not leach out of the waste at significant concentrations. BMW also believes that this waste will not be hazardous for any other reason (i.e., there will be no additional constituents or factors that could cause the waste to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4). As a result of the EPA's evaluation of BMW's petition, the Agency proposed to grant a delisting to BMW, on February 12, 2001. See 66 FR 9781–9798, February 12, 2001, for details. Today's rulemaking addresses public comments received on the proposed rule and finalizes the proposed decision to grant BMW's petition for delisting.

II. Summary of Delisting Petition Submitted by BMW Manufacturing Corporation, Greer, South Carolina (BMW)

A. What Waste Did BMW Petition EPA To Delist?

BMW petitioned EPA, Region 4, on June 2, 2000, to exclude a maximum annual weight of 2,400 tons (2,850 cubic yards) of its F019 waste, on a generator-specific basis, from the lists of hazardous wastes in 40 CFR part 261, subpart D. BMW manufactures BMW automobiles, and is seeking a delisting for the sludge that will be generated by treating wastewater from its manufacturing operations, when aluminum will be used to replace some of the steel in the automobile bodies. Wastewater treatment sludge does not meet a hazardous waste listing definition when steel-only automobile bodies are manufactured. However, the wastewater treatment sludge generated at automobile manufacturing plants where aluminum is used as a component of automobile bodies meets the listing definition of F019 in § 261.31.

B. What Information Did BMW Submit To Support This Petition?

In support of its petition, BMW submitted: (1) Descriptions of its manufacturing and wastewater treatment processes, the generation point of the petitioned waste, and the manufacturing steps that will contribute to its generation; (2) Material Safety Data Sheets (MSDSs) for materials used to manufacture automobiles and to treat wastewater; (3) the minimum and maximum annual amounts of wastewater treatment sludge generated from 1996 through 1999, and an estimate of the maximum annual amount expected to be generated in the future; (4) results of analysis for metals, cyanide, sulfide, fluoride, and volatile organic compounds in the currently generated waste at the BMW plants in Greer, South Carolina, and Dingolfing, Germany; (5) results of the analysis of leachate from these wastes, obtained by means of the Toxicity Characteristic Leaching Procedure ((TCLP); SW–846 Method 1311[3]); (6) results of the determinations for the hazardous characteristics of ignitability, corrosivity, and reactivity in these wastes; (7) results of determinations of dry weight percent, bulk density, and free liquids in these wastes; and (8) results of the analysis of the waste currently generated at the plant in Greer, South Carolina, by means of the Multiple Extraction Procedure (MEP), SW–846 Method 1320, in order to evaluate the long-term resistance of the waste to leaching in a landfill.

The hazardous constituents of concern for which F019 was listed are hexavalent chromium and cyanide (complexed). BMW petitioned the EPA to exclude its F019 waste because BMW does not believe that the waste meets the criteria of the listing.

BMW submitted to the EPA analytical data from its Greer, South Carolina plant and from the BMW plant in Dingolfing, Germany. Four composite samples of wastewater treatment sludge, from approximately 60 batches of wastewater, were collected from each plant over a three-week period. Based on this information, EPA identified the following constituents of concern: barium, cadmium, chromium, cyanide, lead, and nickel. The maximum reported concentrations of the toxicity characteristic (TC) metals barium, cadmium, chromium, and lead in the

[1] This manual may be down-loaded from Region 6's Web Site at the following URL address: http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dlistpdf.htm

[2] "Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process."

[3] "SW–846" means EPA Publication SW–846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods." Methods in this publication are referred to in today's proposed rule as "SW–846," followed by the appropriate method number.

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TCLP extracts of the samples were below the TC regulatory levels. The maximum reported concentration of total cyanide in unextracted waste was 3.35 milligrams per kilogram (mg/kg), which is greater than the generic exclusion level of 1.8 mg/kg for high temperature metal recovery (HTMR) residues in 40 CFR 261.3(c)(2)(ii)(C)(1), and less than 590 mg/kg, the Land Disposal Restrictions (LDR) Universal Treatment Standards (UTS) level, in section 268.48. Chromium was undetected in the TCLP extract of any sample. The maximum reported concentration of chromium in unextracted samples was 100 mg/kg for the German plant and 222 mg/kg for the Greer, South Carolina plant. The maximum concentration of nickel in the TCLP extract of any sample was 0.73 milligrams per liter (mg/l) for the German plant and 6.25 mg/l for the Greer, South Carolina plant. The maximum reported concentration of nickel in unextracted samples was 6,500 mg/kg for the German plant and 1,700 mg/kg for the Greer, South Carolina plant. See the proposed rule, 66 FR 9781–9798, February 12, 2001, for details on BMW's analytical data, production process, and generation process for the petitioned waste. EPA does not generally verify submitted test data before proposing delisting decisions. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has maintained a spot-check sampling and analysis program to verify the representative nature of data for some percentage of the submitted petitions. A spot-check visit to a selected facility may be initiated before or after granting a delisting. Section 3007 of RCRA gives EPA the authority to conduct inspections to determine if a delisted waste is meeting the delisting conditions.

III. EPA's Evaluation and Final Rule

A. What Decision Is EPA Finalizing and Why?

For reasons stated in both the proposal and this final rule, EPA believes that BMW's petitioned waste should be excluded from hazardous waste control. EPA, therefore, is granting a final generator-specific exclusion to BMW, of Greer, South Carolina, for a maximum annual generation rate of 2,850 cubic yards of the waste described in its petition as EPA Hazardous Waste Number F019. This waste is required to undergo verification testing before being considered as excluded from Subtitle C regulation. Requirements for waste to be land disposed have been included in this exclusion. The exclusion applies only to the waste as described in BMW's petition, dated June 2000.

Although management of the waste covered by this petition is relieved from Subtitle C jurisdiction, the generator of the delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation. See 40 CFR part 260, appendix I. BMW's preferred method of waste management for its delisted waste is recycling, rather than land disposal. Nonhazardous waste management is subject to all applicable federal, state, and local regulations.

B. What Are the Terms of This Exclusion?

In the rule proposed on February 12, 2001, EPA requested public comment on which of the following possible methods should be used to evaluate BMW's delisting petition and set delisting levels for the petitioned waste (see 66 FR 9781–9798, February 12, 2001):

(1) Delisting levels based on the EPA Composite Model for Landfills (EPACML), modified for delisting; (2) delisting levels based on the EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP model) as used in EPA, Region 6's Delisting Risk Assessment Software (DRAS); (3) use of the Multiple Extraction Procedure (MEP), SW–846 Method 1320, to evaluate the long-term resistance of the waste to leaching in a landfill; (4) setting limits on total concentrations of constituents in the waste that are more conservative than results of calculations of constituent release from waste in a landfill to surface water and air, and release during waste transport; and (5) setting delisting levels at the Land Disposal Restrictions (LDR) Universal Treatment Standards (UTS) levels in 40 CFR 268.48. See the proposed rule, 66 FR 9781–9798, February 12, 2001, for details of calculating delisting levels using these methods.

After considering all public comments on the proposed rule, and the MEP analysis of the petitioned waste which indicated long-term resistance to leaching (see 66 FR 9793–9794, February 12, 2001), EPA is granting BMW, in today's final rule, an exclusion from the lists of hazardous wastes in subpart D of 40 CFR part 261 for its petitioned waste when disposed in a Subtitle D[4] landfill. BMW must meet all of the following delisting conditions in order for this exclusion to be valid: (1) Delisting levels in mg/l in the TCLP extract of the waste based on the DRAS EPACMTP model of 100.0[5] for Barium, 1.0 for Cadmium, 5.0 for Chromium, 33.6 for Cyanide, 5.0 for Lead, and 70.3 for Nickel; (2) the total concentration of cyanide (total, not amenable) in the waste, not the waste leachate, must not exceed 200 mg/kg; (3) the total concentrations, in mg/kg, of metals in the waste, not the waste leachate, must not exceed 2,000 for Barium, 500 for Cadmium, 1,000 for Chromium, 2,000 for Lead, and 20,000 for Nickel.

Delisting levels and risk levels calculated by DRAS, using the EPACMTP model, are presented in Table 1 below.[6] DRAS found that the major pathway for human exposure to this waste is groundwater ingestion, and calculated delisting and risk levels based on that pathway. For details, see the following **Federal Registers**: 65 FR 75637–75651, December 4, 2000; 65 FR 58015–58031, September 27, 2000; and the proposed rule for BMW's petitioned waste, 66 FR 9792–9793, February 12, 2001.

[4] The term, "Subtitle D landfill," refers to a landfill that is licensed to land dispose nonhazardous wastes, that is, wastes that are not RCRA hazardous wastes. A Subtitle D landfill is subject to federal standards in 40 CFR parts 257 and 258 and to state and local regulations for nonhazardous wastes and nonhazardous waste landfills.

[5] Delisting levels cannot exceed the Toxicity Characteristic (TC) regulatory levels. Therefore, although the DRAS EPACMTP calculates higher concentrations (see the proposed rule, 66 FR 9793, February 12, 2001, and Table 1, below), the delisting levels in the final rule are set at the TC levels for barium, cadmium, chromium, and lead. In order for the waste to be delisted, concentrations in the TCLP extract of the waste must be less than the TC levels. See the regulatory definition of a TC waste in 40 CFR 261.24.

[6] Table 1 is identical to Table 3B of the proposed rule (66 FR 9793, February 12, 2001), except that typographical errors for the entries for lead and chromium have been corrected in response to verbal comments by BMW. Specifically, the DRAS-calculated delisting level for chromium was corrected to read "5.39×10^{5}*," instead of "$5.39 \times 10^{minus.5}$," and the DAF for lead was corrected to read "1.24×10^{4}," instead of "1.24×10^{-4}." The acronym, "DAF," in Table 1, means the Dilution Attenuation Factor calculated by DRAS. The "*" in Table 1 means that the DRAS-calculated delisting level exceeds the Toxicity Characteristic regulatory level. See Footnote 5 above.

TABLE 1.—DELISTING AND RISK LEVELS CALCULATED BY DRAS WITH EPACMTP MODEL FOR BMW PETITIONED WASTE

Constituent	Delisting level (mg/l TCLP)	DAF	DRAS-calculated risk for maximum concentration of carcinogen in waste	DRAS-calculated hazard quotient for maximum concentration of non-carcinogen in waste
Barium	182*	69.2		4.87×10^{-2}
Cadmium	1.4*	74.6	1.62×10^{-13}	3.57×10^{-2}
Chromium	5.39×10^{5}*	9,580		5.8×10^{-7}
Cyanide	33.6	44.8		1.49×10^{-3}
Lead	187*	1.24×10^{4}		Not Calculable; No Reference Dose for Lead
Nickel	70.3	93.5		8.9×10^{2}
Total Hazard Quotient for All Waste Constituents				0.187
Total Carcinogenic Risk for the Waste (due to Cadmium)			1.62×10^{-13}	

EPA believes that the limits on total concentrations in conditions (2) and (3) above are protective of human health and the environment, and that they are appropriate, given that the delisted waste is not subject to regulation as a hazardous waste. EPA also believes that these limits are realistic, attainable values for wastewater treatment sludges that contain metals and cyanide. The limit for cyanide was chosen so that the waste could not exhibit the reactivity characteristic for cyanide by exceeding the interim guidance for reactive cyanide of 250 mg/kg of releasable hydrogen cyanide (SW–846, Chapter Seven, section 7.3.3.)

After taking into account all public comments on the proposed rule, EPA is retaining in today's final rule to exclude BMW's petitioned waste Conditions (2) through (7) in Table 1, appendix IX of part 261 of the proposed rule (66 FR 9796–9798, February 12, 2001). In response to public comments, EPA is changing Condition (1) for BMW's waste in Appendix IX, by replacing the proposed delisting levels in the TCLP leachate with the leachate delisting levels in the first condition of today's Preamble, section III.B: delisting levels, in mg/l in the TCLP extract of the waste, of 100.0[7] for Barium, 1.0 for Cadmium, 5.0 for Chromium, 33.6 for Cyanide, 5.0 for Lead, and 70.3 for Nickel. The limits on total concentrations in today's final rule are the same as proposed in Condition (1) of Table 1, appendix IX, part 261: The total concentration of cyanide (total, not amenable) in the waste, not the waste leachate, must not exceed 200 mg/kg; the total concentrations, in mg/kg, of metals in the waste, not the waste leachate, must not exceed 2,000 for Barium, 500 for Cadmium, 1,000 for Chromium, 2,000 for Lead, and 20,000 for Nickel.

C. When Is the Delisting Effective?

This rule is effective on May 2, 2001. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule reduces the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon final publication.

These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

D. How Does This Action Affect the States?

The final exclusion being granted today is issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the States. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal (RCRA) and State (non-RCRA) programs, petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws.

Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program, i.e., to make their own delisting decisions. Therefore, this exclusion does not apply in those authorized States. If the petitioned waste will be transported to and managed in any State with delisting authorization, BMW must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

IV. Public Comments Received on the Proposed Exclusion

A. Who Submitted Comments on the Proposed Rule?

EPA received public comments on the proposed rule published in 66 FR 9781–9798, February 12, 2001, from (1) BMW Manufacturing Corporation, Greer, South Carolina (BMW), the petitioner, (2) Alliance of Automobile Manufacturers, Washington, DC, (3) Nissan North America, Inc., Smyrna, Tennessee, and (4) The Aluminum Association, Washington, DC. EPA commends and appreciates the thoughtful comments submitted by all of the commenters.

B. Comments and Responses From EPA

Comment: BMW stated that the Land Disposal Restrictions (LDR) should not be used to establish delisting levels, because there is no scientific or regulatory basis for their use. BMW also stated, in support of this position, that EPA had decided not to establish delisting levels based on LDR, in

[7] Delisted wastes cannot exhibit a hazardous waste characteristic. Therefore, when delisting levels are set at the Toxicity Characteristic (TC) regulatory levels, the TCLP extract of the petitioned waste must have concentrations less than the TC levels in order to meet conditions for delisitng. Although the DRAS EPACMTP calculates higher concentrations (see the proposed rule, 66 FR 9793, February 12, 2001, and Table 1, section III.B. of today's preamble), the delisting levels in the final rule are set at the TC levels for barium, cadmium, chromium, and lead.

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response to public comments on a previously proposed rule to delist F019 waste (64 FR 55443, October 13, 1999).

Response: EPA has decided not to set delisting levels based on LDR for BMW's petitioned waste, and the final delisting levels in appendix IX of part 261 established in today's final rule are not based on LDR. The analytical data submitted by BMW indicate that the petitioned waste, when generated, would meet LDR treatment standards. See the proposed rule, 66 FR 9790–9792, February 12, 2001, and today's preamble, section II.B.

Comment: BMW disagrees with EPA's proposed method of setting delisting levels based on total concentrations, because there is no scientific correlation between total concentrations of metals and environmental impact. BMW stated that EPA modeling and testing demonstrate that harmful concentrations of constituents will not leach from the petitioned waste.

Response: BMW brings up some significant issues in this comment and makes some good points. However, EPA feels that the proposed limits on total concentrations are reasonable, given that the delisted waste will not be subject to regulation as a hazardous waste under RCRA Subtitle C. These limits will provide added reassurance to the public that management of the waste as nonhazardous will be protective of human health and the environment.

Comment: BMW disagrees with EPA's proposal to base delisting levels on the EPACML model (66 FR 9792–9793, 9797, February 12, 2001). BMW stated that if the new EPACMTP model "is truly based on improved science, the concentration limits calculated by the model should be the basis for establishing delisting levels."

Response: EPA agrees with the points made in this comment, and today's final rule uses the DRAS EPACMTP as the basis for the delisting levels in the TCLP extract of the waste. As stated in today's preamble, section III.B., concentrations in the TCLP extract of the waste (in mg/l) are limited to 100.0 [8] for Barium, 1.0 for Cadmium, 5.0 for Chromium, 33.6 for Cyanide, 5.0 for Lead, and 70.3 for Nickel.

[8] Delisted wastes cannot exhibit a hazardous waste characteristic. Therefore, when delisting levels are set at the Toxicity Characteristic (TC) regulatory levels, the TCLP extract of the petitioned waste must have concentrations less than the TC levels in order to meet conditions for delisting. Although the DRAS EPACMTP calculates higher concentrations (see the proposed rule, 66 FR 9793, February 12, 2001, and Table 1, section III.B. of today's preamble), the delisting levels in the final rule are set at the TC levels for barium, cadmium, chromium, and lead.

Comment: The Alliance of Automobile Manufacturers (Alliance) stated that it strongly supports the proposed delisting, and agrees with EPA that fate and transport models are useful tools to evaluate delisting petitions. However, the Alliance believes that the F019 listing itself should be revised to exclude wastewater treatment sludges from automotive industry conversion coating on aluminum when hexavalent chromium and cyanides are not used in the process.

Response: Today's final rule is site-specific and waste-specific; it applies only to BMW's plant in Greer, South Carolina, and only to the petitioned waste. An exclusion of general applicability would require a separate rule-making, with more extensive data collection and risk analysis. EPA understands the Alliance's concern about the need for each auto company to submit a delisting petition, but is unable to address this concern at the present time.

Comment: The Alliance disagrees with EPA's proposed use of (1) the MEP to evaluate BMW's delisting petition; (2) establishing delisting levels based on total concentrations; and (3) establishing delisting levels based on LDR treatment standards.

Response: (1) EPA used MEP analysis of the petitioned waste as a measure of the long-term resistance of the waste to leaching (see 66 FR 9789, 9793–9794, February 12, 2001), which is an important consideration for waste to be disposed in a Subtitle D (nonhazardous waste) landfill. (2) The Alliance brings up some significant issues in this comment and makes some good points. However, EPA feels that the proposed limits on total concentrations are reasonable, given that the delisted waste will not be subject to regulation as a hazardous waste under RCRA Subtitle C. These limits will provide added reassurance to the public that management of the waste as nonhazardous will be protective of human health and the environment. (3) EPA has decided not to set delisting levels based on LDR for BMW's petitioned waste, and the final delisting levels in appendix IX of part 261 established in today's final rule are not based on LDR. The analytical data submitted by BMW indicate that the petitioned waste, when generated, would meet LDR treatment standards. See the proposed rule, 66 FR 9790–9792, February 12, 2001, and today's preamble, section II.B.

Comment: The Alliance commented on the use of the EPACMTP and DRAS by saying that their use should be the subject of a separate rulemaking because they raise complex issues that EPA should not try to resolve in this delisting.

Response: Use of the EPACMTP and DRAS has been described in detail in 65 FR 75637–75651, December 4, 2000, and 65 FR 58015–58031, September 27, 2000. The December 4, 2000 **Federal Register** discusses the key enhancements of the EPACMTP and the details are provided in the background documents to the proposed 1995 Hazardous Waste Identification Rule (HWIR) (60 FR 66344, December 21, 1995). The background documents are available through the RCRA HWIR FR proposal docket (60 FR 66344, December 21, 1995). For every delisting petition submitted to EPA, EPA proposes and requests comment on all available methods for evaluating the petition and setting delisting levels, including the EPACMTP and DRAS. Thus, these models, and future improvements, will be proposed for comment in every delisting rulemaking.

Comment: Nissan North America, Inc. (Nissan) stated that none of the following methods proposed by EPA is appropriate for evaluating BMW's petition and setting delisting levels for the petitioned waste: (1) Use of the MEP; (2) setting limits on total concentrations; and (3) setting delisting levels at the LDR UTS levels in 40 CFR 268.48.

Response: (1) EPA used MEP analysis of the petitioned waste as a measure of the long-term resistance of the waste to leaching (see 66 FR 9789, 9793–9794, February 12, 2001), which is an important consideration for waste to be disposed in a Subtitle D (nonhazardous waste) landfill. (2) Nissan's points are well taken, but EPA feels that the proposed limits on total concentrations are reasonable, given that the delisted waste will not be subject to regulation as a hazardous waste under RCRA Subtitle C. These limits will provide added reassurance to the public that management of the waste as nonhazardous will be protective of human health and the environment. (3) EPA has decided not to set delisting levels based on LDR for BMW's petitioned waste, and the final delisting levels in appendix IX of part 261 established in today's final rule are not based on LDR. The analytical data submitted by BMW indicate that the petitioned waste, when generated, would meet LDR treatment standards. See the proposed rule, 66 FR 9790–9792, February 12, 2001, and today's preamble, section II.B.

Comment: The Aluminum Association (TAA) stated that the restrictions imposed in the proposed rule (66 FR 9781–9798, February 12, 2001) may have an impact on future delistings submitted by aluminum industry customers that use aluminum parts in the manufacture of automobiles.

Response: TAA's concern is understandable, but today's final rule is site-specific and waste-specific. It applies only to BMW's plant in Greer, South Carolina, and only to the petitioned waste. EPA evaluates every delisting petition on its own merits, in accordance with 40 CFR 260.20 and 260.22, and every proposed and final rule on delisting is site-specific and waste-specific.

Comment: TAA expressed support for the proposed delisting and the determination that BMW's petitioned waste is nonhazardous. TAA also expressed support for all of the comments on the proposal submitted by the Alliance of Automobile Manufacturers (Alliance): (1) The F019 listing definition needs to be changed so that conversion coating processes are excluded when they don't use the constituents of concern that were the basis of the original listing; (2) BMW's waste should not be evaluated by means of the MEP; (3) limits for total concentrations in BMW's waste should not be set; (4) delisting levels for BMW's waste should not be based on the LDR UTS; and (5) EPA should use a separate notice and comment rulemaking for use of the EPACMTP and DRAS.

Response: (1) Today's final rule is site-specific and waste-specific; it applies only to BMW's plant in Greer, South Carolina, and only to the petitioned waste. An exclusion of general applicability would require a separate rule-making, with more extensive data collection and risk analysis. EPA understands the concern of TAA and the Alliance about the need for each auto company to submit a delisting petition, but is unable to address this concern at the present time. (2) EPA used MEP analysis of the petitioned waste as a measure of the long-term resistance of the waste to leaching (see 66 FR 9789, 9793–9794, February 12, 2001), which is an important consideration for waste to be disposed in a Subtitle D (nonhazardous waste) landfill. (3) EPA feels that the proposed limits on total concentrations are reasonable, given that the delisted waste will not be subject to regulation as a hazardous waste under RCRA Subtitle C. These limits will provide added reassurance to the public that management of the waste as nonhazardous will be protective of human health and the environment. (4) EPA has decided not to set delisting levels based on LDR for BMW's petitioned waste, and the final delisting levels in appendix IX of part 261 established in today's final rule are not based on LDR. The analytical data submitted by BMW indicate that the petitioned waste, when generated, would meet LDR treatment standards. See the proposed rule, 66 FR 9790–9792, February 12, 2001, and today's preamble, section II.B. (5) Use of the EPACMTP and DRAS has been described in detail in 65 FR 75637–75651, December 4, 2000 and 65 FR 58015–58031, September 27, 2000. The December 4, 2000 **Federal Register** discusses the key enhancements of the EPACMTP and the details are provided in the background documents to the proposed 1995 Hazardous Waste Identification Rule (HWIR) (60 FR 66344, December 21, 1995). The background documents are available through the RCRA HWIR FR proposal docket (60 FR 66344, December 21, 1995). For every delisting petition submitted to EPA, EPA proposes and requests comment on all available methods for evaluating the petition and setting delisting levels, including the EPACMTP and DRAS. Thus, these models, and future improvements, will be proposed for comment in every delisting rulemaking.

V. Regulatory Impact

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a rule of general applicability and therefore is not a "regulatory action" subject to review by the Office of Management and Budget. Because this action is a rule of particular applicability relating to a facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because the rule will affect only one facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of tribal governments, as specified in Executive Order 13084 (63 FR 27655, May 10, 1998). For the same reason, this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve technical standards; thus, the requirements of section 12(c) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VI. Congressional Review Act

The Congressional Review Act (5 U.S.C. 801 *et seq.*) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, the Comptroller General of the United States prior to publication of the final rule in the **Federal Register.** This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will become effective on the date of publication in the **Federal Register.**

VII. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting

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elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: April 10, 2001.

Richard D. Green,

Director, Waste Management Division.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of appendix IX, part 261 add the following wastestream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
.	.	.
BMW Manufacturing Corporation ..	Greer, South Carolina	Wastewater treatment sludge (EPA Hazardous Waste No. F019) that BMW Manufacturing Corporation (BMW) generates by treating wastewater from automobile assembly plant located on Highway 101 South in Greer, South Carolina. This is a conditional exclusion for up to 2,850 cubic yards of waste (hereinafter referred to as "BMW Sludge") that will be generated each year and disposed in a Subtitle D landfill after May 2, 2001. With prior approval by the EPA, following a public comment period, BMW may also beneficially reuse the sludge. BMW must demonstrate that the following conditions are met for the exclusion to be valid. (1) *Delisting Levels:* All leachable concentrations for these metals must be less than the following levels (ppm): Barium—100.0; Cadmium—1.0; Chromium—5.0; and Lead—5.0. All leachable concentrations for cyanide and nickel must not exceed the following levels (ppm): Cyanide—33.6; and Nickel—70.3. These metal and cyanide concentrations must be measured in the waste leachate obtained by the method specified in 40 CFR 261.24, except that for cyanide, deionized water must be the leaching medium. The total concentration of cyanide (total, not amenable) in the waste, not the waste leachate, must not exceed 200 mg/kg. Cyanide concentrations in waste or leachate must be measured by the method specified in 40 CFR 268.40, Note 7. The total concentrations of metals in the waste, not the waste leachate, must not exceed the following levels (ppm): Barium—2,000; Cadmium—500; Chromium—1,000; Lead—2,000; and Nickel—20,000. (2) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to SW–846 methodologies, where specified by regulations in 40 CFR parts 260–270. Otherwise, methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that representative samples of the BMW Sludge meet the delisting levels in Condition (1). (A) *Initial Verification Testing:* BMW must conduct verification sampling initially when test runs of aluminum vehicle parts are run and again when production of vehicles with aluminum body parts commences. For verification sampling during the test runs, BMW must collect and analyze a minimum of four composite samples of the dewatered sludge that is generated from wastewater treated during the time of the test runs. For verification sampling at the initiation of the production of vehicle models with aluminum parts, BMW must collect a minimum of four composite samples from the first roll-off box of sludge generated after production of automobiles with aluminum parts reaches 50 units per day. BMW must analyze for the constituents listed in Condition (1). If BMW chooses to beneficially reuse sludge, and the reuse has been approved by EPA, following a public comment period, verification testing of the sludge must consist of analyzing a minimum of four composite samples of the sludge for the constituents listed in Condition (1).

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(B) *Subsequent Verification Testing:* If the initial verification testing in Condition (2)(A) is successful for both the test runs and the commencement of production, i.e., delisting levels of Condition (1) are met for all of the composite samples, BMW must implement an annual testing program to demonstrate that constituent concentrations measured in the TCLP extract and total concentrations measured in the unextracted waste do not exceed the delisting levels established in Condition (1). (3) *Waste Holding and Handling:* BMW must store as hazardous all BMW Sludge generated until verification testing, as specified in Condition (2)(A), is completed and valid analyses demonstrate that Condition (1) is satisfied. If the levels of constituents measured in the composite samples of BMW Sludge do not exceed the levels set forth in Condition (1), then the BMW Sludge is non-hazardous and must be managed in accordance with all applicable solid waste regulations. If constituent levels in a composite sample exceed any of the delisting levels set forth in Condition (1), the batch of BMW Sludge generated during the time period corresponding to this sample must be managed and disposed of in accordance with Subtitle C of RCRA. (4) *Changes in Operating Conditions:* BMW must notify EPA in writing when significant changes in the manufacturing or wastewater treatment processes are implemented. EPA will determine whether these changes will result in additional constituents of concern. If so, EPA will notify BMW in writing that the BMW Sludge must be managed as hazardous waste F019 until BMW has demonstrated that the wastes meet the delisting levels set forth in Condition (1) and any levels established by EPA for the additional constituents of concern, and BMW has received written approval from EPA. If EPA determines that the changes do not result in additional constituents of concern, EPA will notify BMW, in writing, that BMW must verify that the BMW Sludge continues to meet Condition (1) delisting levels. (5) *Data Submittals:* Data obtained in accordance with Condition (2)(A) must be submitted to Jewell Grubbs, Chief, RCRA Enforcement and Compliance Branch, Mail Code: 4WD–RCRA, U.S. EPA, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303. This submission is due no later than 60 days after filling the first roll-off box of BMW Sludge to be disposed in accordance with delisting Conditions (1) through (7) for both the test runs and again for the commencement of production. Records of analytical data from Condition (2) must be compiled, summarized, and maintained by BMW for a minimum of three years, and must be furnished upon request by EPA or the State of South Carolina, and made available for inspection. Failure to submit the required data within the specified time period or maintain the required records for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12).

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TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(6) *Reopener Language:* (A) If, at any time after disposal of the delisted waste, BMW possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified in the delisting verification testing is at a level higher than the delisting level allowed by EPA in granting the petition, BMW must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data. (B) If the testing of the waste, as required by Condition (2)(B), does not meet the delisting requirements of Condition (1), BMW must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data. (C) Based on the information described in paragraphs (6)(A) or (6)(B) and any other information received from any source, EPA will make a preliminary determination as to whether the reported information requires that EPA take action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If EPA determines that the reported information does require Agency action, EPA will notify the facility in writing of the action believed necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing BMW with an opportunity to present information as to why the proposed action is not necessary. BMW shall have 10 days from the date of EPA's notice to present such information. (E) Following the receipt of information from BMW, as described in paragraph (6)(D), or if no such information is received within 10 days, EPA will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment, given the information received in accordance with paragraphs (6)(A) or (6)(B). Any required action described in EPA's determination shall become effective immediately, unless EPA provides otherwise. (7) *Notification Requirements:* BMW must provide a one-time written notification to any State Regulatory Agency in a State to which or through which the delisted waste described above will be transported, at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting conditions and a possible revocation of the decision to delist.

[FR Doc. 01–10991 Filed 5–1–01; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010112013–1013–01; I.D. 042701B]

Fisheries of the Exclusive Economic Zone Off Alaska; Shallow-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA), except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This action is necessary because the second seasonal apportionment of the 2001 halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA has been caught.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 27, 2001, until 1200 hrs, A.l.t., June 10, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Pacific halibut bycatch allowance for the GOA trawl shallow-water species fishery, which is defined at § 679.21(d)(3)(iii)(A), was established by the Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001) for the second season, the period April 1, 2001, through June 10, 2001, as 100 metric tons.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the second seasonal apportionment of the 2001 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA has been caught. Consequently, NMFS is prohibiting directed fishing for species included in the shallow-water species fishery by vessels using trawl gear in the GOA, except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. The species and species groups that comprise the shallow-water species fishery are: Pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and "other species."

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to prevent exceeding the second seasonal apportionment of the 2001 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to prevent exceeding the second seasonal apportionment of the 2001 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 27, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–11002 Filed 4–27–01; 4:19 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010112013–1013–01; I.D. 042701A]

Fisheries of the Exclusive Economic Zone Off Alaska; Species in the Rock Sole/Flathead Sole/"Other Flatfish" Fishery Category by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for species in the rock sole/flathead sole/"other flatfish" fishery category by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the second seasonal apportionment of the 2001 Pacific halibut bycatch allowance specified for the trawl rock sole/flathead sole/"other flatfish" fishery category.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 27, 2001, until 1200 hrs, A.l.t., July 1, 2001.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The second seasonal apportionment of the 2001 halibut bycatch allowance specified for the BSAI trawl rock sole/flathead sole/"other flatfish" fishery category, which is defined at § 679.21(e)(3)(iv)(B)(2), is 179 metric tons (66 FR 7276, January 22, 2001).

In accordance with § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the second seasonal apportionment of the 2001 halibut bycatch allowance specified for the trawl rock sole/flathead sole/"other flatfish" fishery in the BSAI has been caught. Consequently, the Regional Administrator is closing directed fishing for species in the rock sole/flathead sole/"other flatfish" fishery category by vessels using trawl gear in the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to avoid exceeding the halibut bycatch allowance for rock sole/flathead sole/"other flatfish" fishery category constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to avoid exceeding the halibut bycatch allowance for rock sole/flathead sole/"other flatfish" fishery category constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 27, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–11003 Filed 4–27–01; 4:19 pm]

BILLING CODE 3510–22–S

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Proposed Rules

Federal Register
Vol. 66, No. 85
Wednesday, May 2, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[Docket No. TB–00–23]

Tobacco Inspection—Growers Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of referendum.

SUMMARY: This document announces that a referendum will be conducted by mail during the period of June 4–8, 2001, for producers of flue-cured tobacco who sell their tobacco at auction in Fairmont-Fair Bluff, North Carolina, and Loris, South Carolina, to determine producer approval of the designation of the Fairmont-Fair Bluff and Loris tobacco markets as one consolidated auction market.

DATES: The referendum will be held June 4–8, 2001.

FOR FURTHER INFORMATION CONTACT: William Coats, Associate Deputy Administrator, Tobacco Programs, Agricultural Marketing Service, United States Department of Agriculture, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 205–0508.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a mail referendum on the designation of a consolidated auction market at Fairmont-Fair Bluff, North Carolina, and Loris, South Carolina. Fairmont-Fair Bluff, North Carolina, was designated on April 6, 1995, (7 CFR 29.8001) as a flue-cured tobacco auction market and Loris, South Carolina, was designated on August 16, 1941, under the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*). Under this Act those markets have been receiving mandatory grading services from USDA.

On September 6, 2000, an application was made to the Secretary of Agriculture to consolidate the designated markets of Fairmont-Fair Bluff, North Carolina, and Loris, South Carolina. The application, filed by sales supervisors on those markets, was made pursuant to the regulations promulgated under the Tobacco Inspection Act (7 CFR part 29.1–29.3). On November 9, 2000, a public hearing was held in Tabor City, North Carolina, pursuant to the regulations. A Review Committee, established pursuant to 7 CFR 29.3(h)), has reviewed and considered the application, the testimony presented at the hearing, the exhibits received in evidence, and other available information. The Committee recommended to the Secretary that the application be granted and the Secretary approved the application on March 27, 2001.

Before a new market can be officially designated, a referendum must be held to determine that a two-thirds majority of producers favor the designation. It is hereby determined that the referendum will be held by mail during the period of June 4–8, 2001. The purpose of the referendum is to determine whether farmers who sold their tobacco on the designated markets at Fairmont-Fair Bluff and Loris are in favor of, or opposed to, the designation of the consolidated market for the 2001 and succeeding crop years. Accordingly, if a two-thirds majority of those tobacco producers voting in the referendum favor the consolidation, a new market will be designated as and will be called Fairmont-Fair Bluff-Loris.

To be eligible to vote in the referendum a tobacco producer must have sold flue-cured tobacco on either the Fairmont-Fair Bluff, North Carolina, or Loris, South Carolina, auction markets during the 2000 marketing season. Any farmer who believes he or she is eligible to vote in the referendum but has not received a mail ballot by June 4, 2001, should immediately contact William Coats at (202) 205–0508.

The referendum will be held in accordance with the provisions for referenda of the Tobacco Inspection Act, as amended (7 U.S.C. 511d), and the regulations for such referendum set forth in 7 CFR 29.74.

Dated: April 25, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–10894 Filed 5–1–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV01–981–1 PR]

Almonds Grown in California; Revision of Requirements Regarding Quality Control Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on a revision to the administrative rules and regulations of the California almond marketing order (order) pertaining to the quality control program. The order regulates the handling of almonds grown in California, and is administered locally by the Almond Board of California (Board). Under the order, handlers receiving almonds from growers must have them inspected to determine the percentage of inedible almonds in each lot. Based on these inspections, handlers incur an inedible disposition obligation. They must satisfy this obligation by disposing of inedible almonds or almond material in outlets such as oil and animal feed. This rule would require at least 25 percent of each handler s disposition obligation to be satisfied by disposing of inedible almonds. Handlers with total annual inedible obligations of less than 1,000 pounds would be exempt from the 25 percent requirement. This rule would also implement a change requiring inedible obligation reports prepared by the Federal-State Inspection Service (inspection agency) to cover weekly rather than monthly periods, consistent with current practice. These proposed changes would help remove more inedible product from human consumption channels, and improve program administration.

DATES: Comments must be received by June 1, 2001.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Martin Engeler, Assistant Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901. Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California, hereinafter referred to as the "order." The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule invites comments on revisions to the administrative rules and regulations pertaining to the quality control program under the California almond marketing order. The proposal would require that at least 25 percent of handlers inedible disposition obligations be satisfied by disposing of inedible almonds to accepted users of such product. Handlers with total annual inedible obligations of less than 1,000 pounds would be exempt from this requirement. The proposal would also require inedible obligation reports prepared by the inspection agency to cover weekly rather than monthly periods. The Board initially recommended adding the 25 percent disposition requirement at a July 12, 2000, meeting. The Department subsequently requested additional information regarding reporting requirements and additional inspection costs. At a meeting on December 6, 2000, the Board provided the requested information and added a recommendation to change the reporting requirement to require inedible obligation reports prepared by the inspection agency to cover weekly rather than monthly periods. Both proposals were unanimously recommended by the Board.

Section 981.42 of the order provides authority for a quality control program. Section 981.42(a) requires handlers to obtain incoming inspection on almonds received from growers to determine the percent of inedible kernels in each lot of any variety. This information is then reported to the Board. Section 981.42(a) further requires handlers to dispose of a quantity of almonds or almond product to satisfy an inedible disposition obligation as determined by the incoming inspection. This section also provides authority for the Board, with the approval of the Secretary, to establish rules and regulations necessary and incidental to the administration of the order's quality control provisions.

Twenty-Five Percent Requirement

Section 981.442 of the order's administrative rules and regulations specifies that the weight of inedible kernels in each lot of any variety of almonds in excess of 1 percent of the kernel weight received by a handler shall constitute that handler's disposition obligation. Handlers are required to satisfy the disposition obligation by delivering packer pickouts, kernels rejected in blanching, pieces of kernels, meal accumulated in manufacturing, or other material, to crushers, feed manufacturers, feeders, or dealers in nut wastes on record with the Board as accepted users of such product. Accepted users dispose of this material to non-human consumption outlets. Currently, any of the aforementioned almond material can be used by handlers to satisfy any or all of their inedible disposition obligation. This rule would require that at least 25 percent of handlers disposition obligations be satisfied with inedible kernels as defined under § 981.408 of the rules and regulations. Handlers with total annual inedible obligations of less than 1,000 pounds would be exempt from the 25 percent requirement.

The overall intent of the quality control program is to remove inedible almonds from product shipped to consumers. Inedible almonds are poor quality kernels or pieces of defective almonds that in some instances may contain aflatoxin. Removing inedible almonds from human consumption channels provides a better quality product to consumers.

When the quality control program was initially implemented, it was recognized that it was not commercially feasible for handlers to remove all inedible almonds during the course of processing. Thus, handlers were allowed to use other almond material besides inedible almonds to satisfy their inedible disposition obligation.

Over the years, changes have occurred in the industry. There has been a marked increase in the amount of almonds used in the manufacture of almond products. This has led to an increase in the amount of almond by-product material generated by handlers. Handlers can use this product to satisfy their disposition obligation. Because of the increased availability of this almond by-product material for use in satisfying the disposition obligation, handlers may be less diligent than in the past in removing inedible almonds from their finished product.

Changes in the marketplace have also created conditions allowing handlers to deliver product containing a higher level of inedible almonds to their customers. Buyers, especially those who process almonds into other products, accept almonds with a higher inedible content than in the past. They can purchase this type of product at reduced price levels and still meet their needs.

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Although there is a market for this product, handlers shipping product with a higher inedible content is not consistent with the intent of the quality control program, which is to remove inedible almonds from human consumption channels.

Finally, improvements in technology have enabled the delivery of a relatively clean product from shellers to handlers. Almonds are typically shelled, then delivered to handlers. In some instances, this product can meet a customer s specifications without further handler processing to remove inedible almonds.

The intent of the quality control program is to remove inedible almonds from product prior to shipment. Because of the aforementioned factors, the Board believes the intent of the quality control program is not sufficiently achieved. Therefore, the Board recommended requiring that at least 25 percent of handlers disposition obligations be satisfied with inedible almonds. This proposed change is designed to ensure that handlers remove more inedible almonds from their product prior to shipment. It is expected that this change would result in a higher quality product shipped to consumers and more inedible almonds being removed from human consumption channels, thereby better effectuating the intent of the Board s quality control program.

Reporting Period Change

Section 981.442(a)(3) of the regulations requires the Federal-State Inspection Service (inspection agency) to prepare a report for each handler showing the weight of almonds received and the inedible content, and provide copies of the report to the Board and handler. Section 981.442(a)(3) currently requires this report from the inspection agency to cover a period of one day or a period not exceeding one month.

In carrying out the quality control program under the order, the almond industry utilizes the inspection agency to perform the required inspections. Prior to the 2000–2001 crop year, the inspection agency issued a report covering a period of one day, or a period not exceeding one month. At the beginning of the 2000–2001 crop year, the inspection agency began issuing a report covering weekly periods. This period has made it easier for the Board to collect and disseminate statistical information to handlers in a more timely manner. To bring the rules and regulations into conformity with current practices, the Board recommended revising § 981.442(a)(3) to require the inspection agency s report to the Board and handlers to cover weekly periods.

Additional Change

Finally, this proposal would add clarifying language to the regulations regarding the mechanics of crediting the disposition obligation. The proposed language would clarify that the handlers disposition obligations are credited upon satisfactory completion of ABC Form 8, and state who the responsible parties are for completing ABC Form 8.

Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 106 handlers of California almonds who are subject to regulation under the order and approximately 7,000 almond producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Data for the most recently completed season indicate that about 63 percent of the handlers ship under $5,000,000 worth of almonds and 37 percent ship over $5,000,000 worth on an annual basis. In addition, based on production and grower price data reported by the National Agricultural Statistics Service, and the total number of almond growers, the average annual grower revenue was approximately $98,000. In view of the foregoing, it can be concluded that the majority of handlers and producers of California almonds may be classified as small entities, excluding receipts from other sources.

This proposed rule would revise the administrative rules and regulations pertaining to the quality control program under the California almond marketing order. Section 981.42 of the order provides authority for a quality control program. Section 981.42(a) requires almond handlers to obtain incoming inspection on almonds received from growers to determine the percent of inedible kernels in each lot of any variety. This information is reported to the Board by the inspection agency. Based on this incoming inspection, handlers incur an inedible disposition obligation. Handlers are then required to dispose of a quantity of almonds or almond material to accepted users of such product (basically, non-human consumption outlets) to satisfy their inedible disposition obligation. Section 981.42 also provides authority for the Board, with the approval of the Secretary, to establish rules and regulations necessary and incidental to the administration of the order's quality control provisions. Section 981.442 contains the rules and regulations used in administering the quality control program.

This proposed rule would require that at least 25 percent of a handler's inedible disposition obligation be satisfied by disposing of inedible almonds to the appropriate outlets. Currently, handlers may dispose of various types of almonds and almond products to satisfy the obligation. The purpose of this proposed 25 percent requirement is to help ensure the intent of the program is being met, which is to remove inedible almonds from human consumption channels. The rule would also modify language to specify a reporting period for the inspection agency to not exceed one week rather than one day or a period exceeding one month. This change would bring the rules and regulations into conformity with reporting procedures currently being followed.

There would be no additional cost to the industry to incorporate the revised reporting period into the regulations. However, there would be additional costs associated with implementing the requirement that at least 25 percent of each handler's total inedible dispositions be satisfied with inedible almonds. Inspection costs would increase slightly. Currently, § 981.442(a)(5) provides that the inspection agency must determine the almond content of each inedible disposition for each handler. That information is provided to the Board, and is credited against the appropriate handler's inedible disposition obligation after the disposition takes place. In order to implement the 25 percent requirement, it would be necessary for the inspection agency to determine not only the almond content of the dispositions, but also the amount of inedible product in the almond material. This would require additional analysis of samples by the inspection agency. The inspection agency charges a per-ton fee and an hourly fee for inedible almond inspections. The per ton fee would not change. However, the number of hours required to implement the additional analysis would increase. It is estimated that the average total number of hours currently spent on inedible almond inspections could increase up to 20 percent; that is, from 1,116 hours to 1,339 hours. At the rate of $14 per hour, this would represent an estimated increase to the industry of approximately $3,122.

While there are additional costs to this proposal, there are also benefits. The intent of the quality control program under the order is to remove inedible almonds from human consumption channels and provide an improved quality product to consumers. It would be difficult to estimate the potential benefits of this proposed action in dollar terms. However, ensuring a good quality product to consumers leads to consumer satisfaction and repeat purchases, and contributes to orderly marketing.

Based on the foregoing, the Board believes that the costs of this proposal would be outweighed by the benefits. This proposal is beneficial to both the almond industry and consumers.

Handlers incurring total annual inedible obligations of less than 1,000 pounds would not be required to meet the 25 percent requirement. The approximately 30 handlers with such small obligations are allowed under current regulations to deliver their inedible material to Board staff in lieu of an accepted user. Almond Board staff is not trained to perform inedible analysis on almond product, and it would not be feasible for handlers with a 1,000 pound inedible obligation or less to incur additional costs for analyzing such small amounts of product. This exemption is also consistent with the RFA goal of ensuring that regulatory actions do not disproportionately impact smaller businesses. Thus, the exemption is in order.

One alternative to the proposals would be leave the regulations unchanged. With regard to the inspection reporting period changes, that was not considered viable because the current practices differ from those outlined in the marketing order regulations. Regarding the 25 percent inedible disposition requirement, leaving the program unchanged would not help ensure inedibles are removed from human consumption channels. Because of the significant amount of almond by-product material available to satisfy disposition obligations, it is believed that some handlers can satisfy their entire inedible obligation with this material. This proposal would help ensure inedibles are removed.

Another alternative would be to require 100 percent of handlers disposition obligations to be satisfied with inedible almonds. However, such a requirement would not be commercially feasible for handlers. The Board believes that setting a 25 percent requirement is a reasonable change to better reflect the intent of the program.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large almond handlers. The current information collection requirements referenced in this proposed rule have been previously approved by the Office of Management and Budget (OMB) under OMB No. 0581–0071. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

In addition, the Board's meetings were widely publicized throughout the almond industry and all interested persons were invited to attend the meeting and participate in Board deliberations. Like all Board meetings, the July 12, 2000, and December 6, 2000, meetings were public meetings and all entities, both large and small, were able to express their views on this issue. The Board itself is composed of ten members, of whom five are producers and five are handlers.

Also, the Board has a number of appointed committees to review certain issues and make recommendations to the Board. The Board's Quality Control Committee met on July 11, 2000, and on September 13, 2000, and discussed these issues. Those meetings were also public meetings and both large and small entities were able to participate and express their views. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because this rule would need to be in effect prior to the 2001–2002 crop year, which begins August 1, 2001. Also, California almond handlers are aware of these issues which were discussed at public meetings and were unanimously recommended by the Board. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is proposed to be amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 981.442, paragraph (a)(5) and the last sentence in paragraph (a)(3) are revised to read as follows:

§ 981.442 Quality control.

(a) * * *

(3) * * * The report shall cover the handler's daily receipt or the handler's total receipts during a period not exceeding one week, and shall be submitted by the inspection agency to the Board and the handler.

* * * * *

(5) *Meeting the disposition obligation.* Each handler shall meet its disposition obligation by delivering packer pickouts, kernels rejected in blanching, pieces of kernels, meal accumulated in manufacturing, or other material, to crushers, feed manufacturers, feeders, or dealers in nut wastes on record with the Board as accepted users. Handlers shall notify the Board at least 72 hours prior to delivery: *Provided,* That the Board or its employees may lessen this notification time whenever it determines that the 72 hour requirement is impracticable. The Board may supervise deliveries at its option. In the case of a handler having an annual total obligation of less than 1,000 pounds, delivery may be to the Board in lieu of an accepted user, in which case the Board would certify the disposition lot and report the results to the USDA. For dispositions by handlers with mechanical sampling equipment, samples may be drawn by the handler in a manner acceptable to the Board and the inspection agency. For all other dispositions, samples shall be drawn by

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or under supervision of the inspection agency. Upon approval by the Board and the inspection agency, sampling may be accomplished at the accepted user's destination. The edible and inedible almond meat content of each delivery shall be determined by the inspection agency and reported by the inspection agency to the Board and the handler. The handler's disposition obligation will be credited upon satisfactory completion of ABC Form 8. ABC Form 8, Part A, is filled out by the handler, and Part B by the accepted user. Deliveries containing less than 50 percent almond meat content shall not be credited against the disposition obligation. At least 25 percent of a handler's total crop year inedible disposition obligation shall be satisfied with dispositions consisting of inedible kernels as defined in § 981.408: *Provided*, That this 25 percent requirement shall not apply to handlers with total annual obligations of less than 1,000 pounds. Each handler's disposition obligation shall be satisfied when the almond meat content of the material delivered to accepted users equals the disposition obligation, but no later than August 31 succeeding the crop year in which the obligation was incurred.

* * * * *

Dated: April 25, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–10892 Filed 5–1–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–12–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB 2000 series airplanes. This proposal would require testing of certain components of the emergency pitch trim system (EPTS), and corrective action, if necessary. This action is necessary to prevent faulty activation of the emergency pitch trim actuator (EPTA), which could cause damage to the elevator front spar, resulting in reduced structural integrity of the elevator and a non-functioning EPTS. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by June 1, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–12–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9–anm–nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–12–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–12–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–12–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab Model SAAB 2000 series airplanes. The LFV advises that, in one case, it has been reported that wires to an emergency pitch trim actuator (EPTA) mode control relay were wired incorrectly in production. This condition, if not corrected, could result in faulty activation of the EPTA, causing damage to the elevator front spar and resulting in reduced structural integrity of the elevator and a non-functioning emergency pitch trim system (EPTS).

Explanation of Relevant Service Information

Saab has issued Service Bulletin 2000–27–046, dated November 30, 2000, which describes procedures for conducting a functional test of the EPTS, and checking and replacing the wiring, if necessary. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive 1–162, dated November 30, 2000, in order to assure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

This airplane model is manufactured in Sweden and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 3 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed testing, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $360, or $120 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

SAAB Aircraft AB: Docket 2001–NM–12–AD.

Applicability: Model SAAB 2000 series airplanes, certificated in any category, serial numbers –004 through –063, inclusive.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent faulty activation of the emergency pitch trim actuator (EPTA), which could cause damage to the elevator front spar, resulting in reduced structural integrity of the elevator and a non-functioning emergency pitch trim system (EPTS), accomplish the following:

Testing and Corrective Actions

(a) Within 400 flight hours from the effective date of this AD, perform a functional test of the EPTS in accordance with Saab Service Bulletin 2000–27–046, dated November 30, 2000. If the left or right EPTA is not working according to the functional test, before further flight, check the wiring and perform all applicable follow-on corrective actions, in accordance with paragraph 2. C. of Saab Service Bulletin 2000–27–046, dated November 30, 2000.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Swedish airworthiness directive 1–162, dated November 30, 2000.

Issued in Renton, Washington, on April 26, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–10941 Filed 5–1–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–412–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4; A310; and A300 B4–600, B4–600R, and F4–600R (Collectively Called A300–600) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

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ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300 B2 and B4; A310; and A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes. This proposal would require modification of certain components related to the fuel level sensors. This action is necessary to prevent the possibility of overheating of the fuel level sensors, which could lead to the risk of explosion in the fuel tank. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by June 1, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–412–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–412–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–412–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–412–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for, notified the FAA that an unsafe condition may exist on certain Airbus Model A300 B2 and B4; A310; and A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes. The DGAC advises that investigations by the manufacturer have revealed that, if a 115V alternating current (AC) short circuit occurs outside of the fuel tanks, in the wiring that is routed with the fuel level sensor harnesses, the sensing element in the fuel level sensors could overheat. This overheating of the sensors could cause possible ignition of the fuel tank vapors, resulting in an explosion inside of the fuel tank.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A300–28–0078, dated September 27, 2000, which describes procedures for installing new fused fuel level sensors and new harness connectors in the wing inner and outer fuel tanks and the center fuel tank on Model A300 B2 and B4 series airplanes. Airbus has also issued Service Bulletins A310–28–2141, including Appendix 01; and A300–28–6063; both dated September 27, 2000; which describe procedures for installing fused adapters for the fuel level sensors between the aircraft external wiring harness and the in-tank wiring at the fuel tank wall connectors in Model A310 and A300–600 series airplanes. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 2000–481–324(B), dated November 29, 2000, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

The FAA estimates that 157 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately the number of work hours per airplane specified in the table below to accomplish the proposed modifications, and that the average labor rate is $60 per work hour. Approximate required parts costs and costs per airplane are listed in the table below:

Approximate Cost per Airplane

Airplane model	Work hours	Parts cost	Approximate cost per airplane
A300 B2, Post Modification 03082S4068	8	$18,241	$18,721
A300 B2, Pre Modification 03082S4068	8	16,690	17,170
A300 B4, Post Modification 01664S2368	16	24,512	25,472
A300 B4, Pre Modification 01664S2368	16	22,811	23,771
A310–200	10	11,972	12,572
A310–300	12	16,125	16,845
A300–600	2	3,805	3,925

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 2000–NM–412–AD.

Applicability: Model A300 B2 and B4 series airplanes; Model A310 series airplanes, except those on which Airbus Modification 12201 has been embodied in production; and Model A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes, except those on which Airbus Modification 12202 has been embodied in production; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the possibility of overheating of the fuel level sensors, which could lead to the risk of explosion in the fuel tank, accomplish the following:

Modification

(a) Within 18 months after the effective date of this AD, modify the electrical connectors to the fuel sensors by the installation of new connectors and new sensors, or fused adapters for the sensors, as applicable, in accordance with the applicable service bulletin listed in the following table:

TABLE 1.—APPLICABLE SERVICE BULLETINS

Airbus model series airplane	Airbus service bulletin No.	Service bulletin date
(1) A300 B2 and B4	A300–28–0078	September 27, 2000.
(2) A310	A310–28–2141	September 27, 2000.
(3) A300–600	A300–28–6063	September 27, 2000.

Spare Parts

(b) As of the effective date of this AD, no person shall install on any airplane a part with any of the identifying numbers listed in the following table:

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TABLE 2.—PROHIBITED SPARE PARTS

Airbus model series airplane	Part	Part No.
(1) A300 B2 and B4	Sensor	718–054–1
(2) A300 B2 and B4	Sensor	718–557
(3) A300 B2 and B4	Sensor	718–055–1
(4) A300 B2 and B4	Connector	852510R8T33SN02
(5) A310	Connector	E0052R10B6SNE
(6) A310	Connector	E0052R12B10SNE
(7) A310	Connector	E0052R14B19SNE
(8) A300–600	Connector	E0052R14B19SNE

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 2000–481–324(B), dated November 29, 2000.

Issued in Renton, Washington, on April 25, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–10940 Filed 5–1–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–53–AD]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. TFE731–2, –3, and –4 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to supersede two existing airworthiness directives (ADs), applicable to Honeywell International Inc. (formerly AlliedSignal Inc. and Garrett Turbine Engine Co.) TFE731–2, –3, and –4 series turbofan engines. Those AD's currently require removing certain fan rotor discs from service in accordance with a drawdown schedule, and establishing new fan rotor disc life limits. This proposal would require stricter life limits for certain fan rotor discs. This proposal is prompted by the availability of an improved fan rotor disc and by a reduction in the probability of fan rotor disc failure by terminating the life of the older, high-stressed, fan rotor disc. The actions specified in the proposed AD are intended to prevent failure of the fan disc due to fatigue cracking in the dovetail slots, which could result in in-flight engine shutdown, uncontained engine failure, and damage to the airplane.

DATES: Comments must be received by July 2, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–53–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The service information referenced in the proposed rule may be obtained from Honeywell Engines and Systems (formerly AlliedSignal Inc. and Garrett Turbine Engine Co.) Technical Publications and Distribution, M/S 2101–201, P.O. Box 52170, Phoenix, AZ 85072–2170; telephone: (602) 365–2493 (General Aviation), (602) 365–5535 (Commercial Aviation), fax: (602) 365–5577 (General Aviation), (602) 365–2832 (Commercial Aviation). This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood CA 90712–4137; telephone: (562) 627–5246; fax: (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments, as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NE–53–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–53–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On May 22, 1986, the FAA issued AD 86–11–05, Amendment 39–5325 (51 FR 2025, June 4, 1986), and on August 26, 1996, the FAA issued AD 96–18–13, Amendment 39–9737 (61 FR 47806, September 11, 1996). These AD's require removing certain fan rotor discs from service in accordance with drawdown schedules based on the fan rotor disc's accumulated cycles-since-new (CSN). These AD's also establish new fan rotor disc life cycle limits at 4,100 CSN or 4,600 CSN, depending on the respective disc part number. That action was prompted after additional analyses revealed that stress levels in the dovetail slots of the affected fan rotor discs were higher than initially calculated. The requirements of that AD are intended to prevent failure of the fan disc due to fatigue cracking in the dovetail slots, resulting in in-flight engine shutdown, uncontained engine failure, and damage to the airplane. In addition, to further reduce the probability of a fatigue failure and separation of in-service fan rotor discs, the FAA issued AD 96–05–03, Amendment 39–9529 (61 FR 10881, March 18, 1996) and AD 96–04–01, Amendment 39–9512 (61 FR 7690, February 29, 1996), which require initial and repetitive eddy current inspections of the dovetail slots. Within the past ten years, 400 fan discs have been removed from service for unacceptable eddy current inspection indications. Service experience has shown that the crack detection capability of this eddy current inspection procedure remains between 80–90 percent. Since AD 86–11–05, AD 96–18–13, AD 96–05–03, and AD 96–04–01 were issued, the FAA has determined that approximately 1,400 affected fan rotor discs remain in service, and has concluded that an accelerated removal schedule of affected fan rotor discs at next access or prior to December 31, 2002, is necessary to further reduce the probability of fan rotor disc failures.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of Honeywell International Inc. Alert Service Bulletin TFE731–A72–3668, dated October 25, 2000, that describes fan rotor disc replacement procedures, and references other documents for instructions on replacement, with the redesigned fan rotor discs.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other Honeywell International Inc. (formerly AlliedSignal Inc. and Garrett Turbine Engine Co.) TFE731–2, –3, and –4 series turbofan engines of this same type design, the proposed AD would require replacing fan rotor discs part numbers (P/N's) 3072162–All, 3072816–All, 3073436–All, 3073539–All, and 3074529–All (where All denotes all dash numbers).

Economic impact

There are approximately 1,400 engines with affected discs in the worldwide fleet. The FAA estimates that 1,100 engines installed on aircraft of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately one work hour per engine to accomplish the proposed action during a normally scheduled fan rotor disc removal period, and approximately six work hours per engine to accomplish the proposed action during an unscheduled fan rotor disc removal period, and that the average labor rate is $60 per work hour. Required parts would cost approximately $20,400 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $22,509,000.

Regulatory Impact

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–5325 (51 FR 2025, June 4, 1986) and Amendment 39–9737, (61 FR 47806, September 11, 1996) and by adding a new airworthiness directive, to read as follows:

Honeywell International Inc.: Docket No. 2000–NE–53–AD. Supersedes AD 86–11–05, Amendment 39–5325 and AD 96–18–13, Amendment 39–9737.

Applicability: This airworthiness directive (AD) is applicable to Honeywell International Inc. (formerly AlliedSignal Inc. and Garrett Turbine Engine Co.) TFE731–2, –3, and –4 series turbofan engines, with fan rotor discs part numbers (P/N's) 3072162–All, 3072816–All, 3073436–All, 3073539–All, and 3074529–All (where All denotes all dash numbers). These engines are installed on, but not limited to, Avions Marcel Dassault Falcon 10, 50, and 100 series; Learjet 31, 35, 36, and 55 series; Lockheed-Georgia 1329–23 and –25 series; Israel Aircraft Industries 1124 series and 1125 Westwind series; Cessna Model 650, Citations III, VI, and VII; Raytheon British Aerospace HS–125 series; and Sabreliner NA–265–65 airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent failure of the fan disc due to fatigue cracking in the dovetail slots, which could result in in-flight engine shutdown,

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uncontained engine failure, and damage to the airplane, do the following:

(a) Remove fan rotor discs P/N's 3072162–All, 3072816–All, 3073436–All, 3073539–All, and 3074529–All (where All denotes all dash numbers), and replace with serviceable fan rotor discs at next access to the fan rotor disc, at the next scheduled fan rotor disc inspection, or prior to December 31, 2002, whichever occurs earliest. Fan rotor disc replacement information is available in Honeywell International Inc. Alert Service Bulletin TFE731–A72–3668, dated October 25, 2000.

Definitions

(b) For the purpose of this AD, the following definitions apply:

(1) Access to the fan rotor disc is whenever the fan shaft is unstretched.

(2) A serviceable disc is a disc that does not have a P/N listed in this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (LAACO). Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, LAACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the LAACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on April 24, 2001.

Donald E. Plouffe,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–10890 Filed 5–1–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–61–AD]

RIN 2120–AA64

Airworthiness Directives; GE Aircraft Engines CT7 Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to GE Aircraft Engines (GE) CT7 series turboprop engines. This proposal would require removal of stage 2 turbine aft cooling plates of a certain part number (P/N) and installation of cooling plates of a new design. This proposal is prompted by a report of a stage 2 turbine aft cooling plate cracking, resulting in an uncontained engine failure. The actions specified by the proposed AD are intended to prevent stage 2 turbine aft cooling plate cracking, which could result in uncontained engine failure, and damage to the airplane.

DATES: Comments must be received by July 2, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–61–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Barbara Caufield, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7146; fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NE–61–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–61–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

In July 1999, the FAA was made aware of an uncontained failure of a GE CT7–5 turboprop engine, caused by a cracked stage 2 turbine aft cooling plate. In February 2000, GE identified and reported the root cause of the cooling plate failure to the FAA. The failure was due to micro-cracking at the cooling air holes and a reduction in material properties, caused during manufacture by an excessive electro-discharge machining (EDM) recast layer in the air holes followed by inadequate abrasive flow. GE has identified those cooling plates manufactured by this method, as P/N 6064T07P02, having the serial number (SN) prefix of GFF. GE also has reported that a few unaffected stage 2 turbine aft cooling plates, P/N 6064T07P02 having a SN prefix other than GFF, are installed mainly on engines in foreign military service. This condition, if not corrected, could cause cracking of the stage 2 turbine aft cooling plate, resulting in an uncontained engine failure, and damage to the airplane.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other GE CT7 series turboprop engines of the same type design, the proposed AD would require replacing affected stage 2 turbine aft cooling plates with new design aft cooling plates, P/N 6064T07P05, having cooling holes made by conventional drilling methods.

Economic Impact

There are approximately 564 engines of the affected design in the worldwide fleet. The FAA estimates that 180 engines installed on airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 0.5 work hour per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required aft cooling plates would cost approximately $15,282 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,756,160. The manufacturer has stated that it may provide the new design aft cooling plate at no cost to operators, and that if the aft cooling plate is replaced at the next engine or hot section module overhaul shop visit, no additional labor costs will be incurred.

Regulatory Impact

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

GE Aircraft Engines: Docket No. 2000–NE–61–AD.

Applicability: This airworthiness directive (AD) is applicable to GE Aircraft Engines (GE) CT7 Models CT7–5A2, –5A3, –7A, and –7A1 turboprop engines, installed on but not limited to Construcciones Aeronauticas, SA CN–235 series and SAAB Aircraft AB SF340 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance is required at the next overall of the engine or hot section module, or within 8,000 cycles after the effective date of this AD, whichever occurs first, unless already done.

To prevent stage 2 turbine aft cooling plate cracking, which could result in an uncontained engine failure and damage to the airplane, do the following:

(a) Replace stage 2 aft cooling plate P/N 6064T07P02 with stage 2 aft cooling plate P/N 6064T07P05.

(b) After the effective date of this AD, do not install any stage 2 aft cooling plate P/N 6064T07P02.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(d) Special flight permits may be issued in accordance §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on April 24, 2001.

Donald E. Plouffe,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–10889 Filed 5–1–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 164

[USCG–2001–8826]

RIN 2115–AG09

Electronic Chart Display and Information Systems for Commercial Vessels

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend its regulations to allow commercial vessels to use as their primary means of navigation in U.S. waters an electronic charting and navigation system that meets the Electronic Charting Display and Information System (ECDIS) standard of the International Maritime Organization (IMO). Allowing commercial vessels to use modern electronic charting technology may reduce the potential for human error by providing a continuous update of a vessel's position for the mariner. To obtain information needed to amend this rule, the Coast Guard asks for comments from the public on the questions listed in this document.

DATES: Comments and related material must reach the Docket Management Facility on or before July 2, 2001.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG 2001–8826), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

(3) By fax to the Docket Management Facility at (202) 493–2251.

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(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this proposed rule, contact David Beach, Office of Vessel Traffic Management, Coast Guard, telephone 202–267–6623. For questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address and identify the docket number for this rulemaking (USCG 2001–8826). Please indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. The Coast Guard may change this proposed rule in view of the comments received.

Public Meeting

As of now, the Coast Guard does not plan to hold a public meeting. But you may submit a request for a public meeting to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Currently, self-propelled vessels 1600 gross tons and over (with some exceptions) are required to use printed charts and publications and manually plot their position while navigating in U.S. waters. The existing regulations require a vessel to maintain current paper charts and publications for the area to be transited. Paper charts and publications requiring labor-intensive corrections cannot be updated as expediently as an electronic charting system. Rapid improvements in electronic technology and communications may offer viable options to replace these traditional methods and tools of navigation.

Existing computer applications can eliminate paper documents and reduce the time needed to obtain updated navigation information. Today, computer technology can instantly assimilate data from multiple satellite sources and allow continuous information updates to a vessel's navigation and positioning. The Coast Guard realizes that updating or correcting printed navigation material (i.e. charts and publications) requires a considerable expenditure of time and effort for the commercial shipping industry.

The International Maritime Organization (IMO) has adopted Electronic Charting Display Information Systems (ECDIS) standards for vessels on international voyages, and electronic charting systems are commercially available for even the smallest vessels. The Coast Guard is considering the feasibility of allowing commercial vessels the option to use ECDIS as their primary means of navigation in the navigable waters of the United States.

Under a separate rulemaking, the Coast Guard is publishing a Direct Final Rule allowing public vessels to use electronic charting and navigation systems as their primary means of navigation while transiting in the navigable waters of the United States. The Coast Guard is also planning to conduct an operational evaluation of certain electronic charting and navigation systems that are commercially available. This evaluation will assist the Coast Guard in determining if there are other charting and navigation systems incorporating electronic technology that are functionally equivalent to those required by IMO. If there are functionally equivalent systems that do not meet all of the IMO ECDIS requirements, the Coast Guard may attempt to readdress IMO acceptance of these systems at a later date.

Discussion of Proposed Rule

The Coast Guard is considering amending existing regulations to allow commercial vessels to use an IMO compliant ECDIS as their primary means of navigation in the navigable waters of the United States. Commercial vessels using an ECDIS that meets the IMO standard will have the option to be exempt from the paper chart requirement listed in 33 CFR 164.30 and the requirement for printed navigational publications found in 33 CFR 164.33. Vessels that choose to operate without an IMO compliant ECDIS would continue to navigate using corrected and up to date printed charts and publications in accordance with applicable regulations.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget under this Order has not reviewed the rule. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard must considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Presently, the impact of the proposed rulemaking would have on small entities has not been determined. Any impact on small entities will be assessed in a preliminary Regulatory Flexibility Assessment. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment explain how you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard would assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. The proposed rulemaking would provide small businesses or organizations an opportunity to comment and will provide a point of contact for any questions on the proposed rulemaking's provisions and its options for compliance. The Coast Guard will provide State's Small Business Development Centers (SBDC) with copies of the proposed rulemaking for further distribution. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal Regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. *et seq.*).

Questions

The Coast Guard requests your comments and any data or information that would answer the following questions, as well as comments on any other part of the current regulations that should be revised. In responding to a question, please explain your reasons for each answer so that we can carefully weigh the consequences and impact of any future requirements we may propose. In addition, please provide relevant data (data on operational incidents resulting in personal injury, property damage, or pollution would be particularly useful), if possible that would support the need for excluding commercial vessels from certain requirements regarding the carriage of paper navigational charts, and publications.

Usage

1. Should ECDIS systems be allowed as an alternative to paper charts for commercial vessels?
2. Which categories of self-propelled vessels (1600 or more gross tons) will install the optional ECDIS system as defined by IMO, as an alternative for the paper charts required by 33 CFR part 164?
3. How many self-propelled vessels of less than 1600 gross tons may install an ECDIS system?
4. If you are planning to install ECDIS, what factors led you to this decision?
5. If you are not planning to install ECDIS, what factors led you to this decision?
6. Are you considering ECDIS as a stand-alone unit, or as part of an Integrated Bridge System?

Costs

1. What is the cost for an ECDIS system (software/hardware)?
2. How much would you estimate it would cost to have an ECDIS system installed on your vessel?
3. Once the ECDIS system is installed, what kind of maintenance would the system need?
4. How much does the maintenance of the system cost and how often (annual, quarterly, monthly) would it need to be conducted?
5. What is the average operational life of the ECDIS system? Is there a projected time when the system should be replaced?
6. What does it cost to update electronic charts? How is the update information provided? How often is the update information provided?
7. How does the electronic chart service compare to your current service for paper charts?
8. What are the economic benefits to a company that would use ECDIS instead of existing paper charts? What other potential benefits can be provided by the use of ECDIS?
9. Are there other electronic charting and navigational systems that should be considered?
10. How many paper charts are purchased on average per year? How much do the charts cost? How much does it cost to have the paper charts updated and how often are they updated (annually, quarterly, monthly)?

Operations

1. What kind of training would be required to use an ECDIS system?
2. What would be the estimated time period for the training and what are the involved costs?
3. Who would be responsible for conducting the training?
4. What are the potential benefits of using an ECDIS system in lieu of paper charts on board a vessel?
5. IMO requires an acceptable backup for ECDIS systems. What is an acceptable backup system (A second, independent ECDIS system, an electronic charting system, manually updated and corrected paper charts)? If paper, how many charts and what scale do you recommend?
6. Which electronic navigation system components need to be backed up (i.e. power, positioning, communications)?
7. What means does an ECDIS use to provide voyage reconstruction for the purpose of marine casualty investigation and how long does the system retain this data?
8. Are there mediums to share and display this data?
9. Can ECDIS display charts and the navigation publications simultaneously?

Miscellaneous

1. Should we allow electronic versions of publications as well as charts?
2. How would any proposed regulation affect small entities?

Comments are not limited to the preceding questions and are invited on any aspect of this proposal or of implementing the electronic charting and navigation requirements for commercial vessels.

Dated: March 23, 2001.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 01–10835 Filed 5–1–01; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 153–0195b; FRL–6958–2]

Revisions to the California State Implementation Plan, Butte County Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to the Butte County Air Quality Management District (BCAQMD) State Implementation Plan (SIP) which concern the permitting of stationary sources of air emissions. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

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DATES: Comments must be received in writing by June 1, 2001.

ADDRESSES: Comments must be submitted in writing to Gerardo Rios at the Region IX mailing address listed below. Copies of the rules and EPA's evaluation report are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Permits Office (AIR–3), Air Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Butte County Air Quality Management District, 2525 Dominic Drive, Suite J, Chico, CA 95928.

A courtesy copy of the rules may be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. However, these versions of the rules may be different than the versions submitted to EPA for approval. Readers are cautioned to verify that the adoption date of the rule listed is the same as the rule submitted to EPA for approval. The official submittal is only available at the agency addresses listed above.

FOR FURTHER INFORMATION CONTACT: David Wampler, Permits Office, (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; (415) 744–1256.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: BCAQMD 403, 422, 424, 1105, 4–3 (recision), 4.5A (recision), 4.5B (recision), 4–6 (recision), 4–6A (recision), 4.9 (recision), and 4–11 (recision). In the Rules and Regulations section of this **Federal Register**, we are approving action on these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: February 9, 2001.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 01–10650 Filed 5–1–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 67

[USCG 2001–8825]

RIN 2115–AG08

Vessel Documentation: Lease-Financing for Vessels Engaged in the Coastwise Trade

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend its regulations on the documentation of vessels engaged in the coastwise trade. These proposals address statutory amendments eliminating certain barriers to seeking foreign financing by lease for U.S.-flag vessels. These proposals would clarify the information needed to determine the eligibility of a vessel financed in this manner for a coastwise endorsement.

DATES: Comments and related material must reach the Docket Management Facility on or before July 2, 2001.

Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before July 2, 2001.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2001–8825), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*.

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Patricia Williams, Deputy Director, National Vessel Documentation Center, Coast Guard, telephone 304–271–2506. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–2001–8825) indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

In 1996, Congress amended the vessel documentation laws to promote lease financing of vessels engaged in the coastwise trade (section 1113(d) of Public Law 104–324, the Coast Guard Authorization Act of 1996) ("the 1996 Act") (46 U.S.C. 12106(e)). Lease financing has become a very common way to finance capital assets in the maritime industry. Under lease financing, ownership of the vessel is in the name of the lessor, with a demise charter to the charterer of the vessel. (A demise or bareboat charter is an agreement in which the charterer assumes the responsibility for operating, crewing, and maintaining the vessel as if the charterer owned it.) Many vessel operators choose to acquire or build vessels through lease financing, instead of the traditional mortgage financing, because of possible cost benefits. But, until the 1996 Act, operators were prevented from obtaining this financing from U.S. companies that are less than 75 per cent U.S. owned because the leasing company had to be a U.S. citizen under section 2 of the Shipping Act, 1916, (46 U.S.C. app. 802), which requires at least 75 per cent U.S. ownership. This situation severely restricted the source of available capital.

Under section 1113(d) of the 1996 Act, Congress eliminated this technical impediment to vessel financing by adding a new paragraph (e) to 46 U.S.C. 12106. Under 46 U.S.C. 12106(e), Congress authorized the Secretary of Transportation (since delegated to the Commandant of the Coast Guard) to issue coastwise endorsements if (1) the vessel is eligible for documentation; (2) the owner, a parent entity of the owner, or subsidiary of a parent of the owner is primarily engaged in leasing or other financing transactions; (3) the vessel is under a demise charter to a person certifying that the person is a U.S. citizen for engaging in coastwise trade under section 2 of the Shipping Act, 1916; and (4) the demise charter is for at least 3 years.

According to the legislative history for the 1996 Act (see House Conference Report No. 104–854; Public Law 104–324, 1996 U.S. Code Congressional and Administrative News, p. 4323), Congress intended to broaden the sources of capital for owners of U.S. vessels engaged in the coastwise trade by creating new lease-financing options. At the same time, Congress did not intend to undermine the basic principle of U.S. maritime law that vessels operated in domestic trades must be built in shipyards in the U.S. and be operated and controlled by U.S. citizens, which is vital to U.S. military and economic security. In that report, Congress directed the Coast Guard to establish the necessary regulations to administer 46 U.S.C. 12106(e), including the filing of demise charters for vessels issued a coastwise endorsement under that provision.

The Coast Guard's National Vessel Documentation Center (NVDC) has received requests by owners and prospective owners of U.S. vessels wanting to avail themselves of the lease-finance provisions under 46 U.S.C. 12106(e). The NVDC began implementing the new statutory provisions on a case-by-case basis. Initially, the NVDC based its determinations of eligibility for a coastwise endorsement on (1) a letter submitted by the owner or owner's attorney explaining the nature of the business relationship and how that relationship satisfied the statutory provisions and (2) a copy of the demise charter. However, it became clear to the NVDC that verification of the lease-finance arrangement and, specifically, of whether the leasing entity was "primarily engaged in leasing or other financing transactions," could not be readily ascertained. The NVDC concluded that the term "leasing or other financing transactions" in 46 U.S.C. 12106(e) was ambiguous.

To assist in clarifying the phrase "leasing or other financing transactions," the NVDC looked to the Conference Report. On page 4326, the report states: "Section 1113(d) of the Conference substitute adds a new subsection (e) to section 12106 which would permit a coastwise endorsement for non-U.S. citizen vessel ownership where (1) ownership is primarily a financial investment in the vessel without the ability and intent to control the vessel's operations by a person not primarily engaged in the direct operation or management of vessels and (2) where the owner has transferred to a qualified American citizen full possession, control and command of the U.S. built vessel in a demise charter and the demise charterer is considered the owner pro hac vice during the charter term. It is intended that banks, leasing companies, or other financial institutions qualify as owners of U.S. flag-vessels under this section even if they have a vessel owning and operating affiliate so long as the majority of the aggregate revenues of any such group are not derived from the operation or management of vessels by group members."

In light of the Conference Report, the NVDC began requiring additional evidence that the arrangement, and all parties to it, meet the statutory requirements as envisioned by Congress. Specifically, the NVDC began requiring certifications, in the form of affidavits, and supporting documentation verifying the following:

(1) That the entity owning the vessel and seeking the coastwise endorsement is a bank, leasing company, or other financial entity organized under the laws of the United States or a State.

(2) That ownership of the vessel is primarily a financial investment without the ability and intent to control the vessel's operations by an entity not primarily engaged in the direct operation or management of vessels.

(3) That the owner will transfer, to a qualified U.S. citizen under 46 U.S.C. app. 802, full possession, control, and command of a U.S.-built vessel through a demise charter for a period of at least 3 years. The owner must verify that, for the purposes of the charter, the demise charterer is considered the owner during the term of the charter. The owner also must submit, to the NVDC, a copy of the charter.

(4) That the majority of the aggregate revenues of the entity, the parent entity, or a subsidiary of the parent entity is not derived from the operation or management of vessels.

(5) That the entity is not primarily engaged in the operation or management of commercial foreign-flag vessels used for the carriage of cargo unrelated to the vessel's owner or charterer.

During the year 2000, at least 15 business entities applied for a coastwise endorsement under the lease-finance provisions. Only one business entity has not been able to certify that they meet the above requirements.

Discussion of the Proposed Regulations

This rulemaking is intended to implement 46 U.S.C. 12106(e) on lease-financing. The proposed regulations are based on the current practice of the NVDC, as described above.

In § 67.3, Definitions, the definition of "person" would be revised and the definitions of new terms used in these amendments ("parent," "primarily engaged in leasing or other financing transactions," and "subsidiary") would be added.

Proposed § 67.20 is new and would set out the requirements for qualifying for a coastwise endorsement under lease-financing.

Proposed § 67.147 is new and would list the items, in addition to those in § 67.141, that are needed to apply for a coastwise endorsement involving lease-financing.

Section 67.167, Requirement for exchange of Certificate of

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Documentation, would be revised to identify when a Certificate of Documentation with a coastwise endorsement under lease-financing would become invalid.

Proposed § 67.179 is new and would apply to barges in the coastwise trade, which are exempt, under § 67.9(c), from the requirement that they be documented with a coastwise endorsement. The purpose for this requirement is to allow barges that can qualify to operate under lease-financing to do so without documentation so that they are on the same footing with other coastwise barges. This would reduce a potential burden, because there would be no need to obtain documents for barges at a cost of $113 or more per vessel, plus the cost of preparing the applications for documents.

We ask for your comments on these proposals and specifically on implementing the phrase "leasing or other financing transactions" in proposed § 67.20(a)(2) and 46 U.S.C. 12106(e)(1)(B).

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). A draft Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is available in the docket as indicated under **ADDRESSES**.

This proposed rule, in §§ 67.147 and 67.179, would require vessel and barge owners and charterers opting to take advantage of the lease-financing provisions in 46 U.S.C. 12106(e) to submit certain documents to the NVDC. According to Coast Guard's data, there are 87 business entities that have applied under the lease-finance provisions since the passage of the 1996 Act. Therefore, we estimate that the number of entities opting to do the same in the future will be approximately 30 annually.

There are no mandatory costs associated with this rulemaking. The cost imposed on those who choose to take advantage of lease-financing would include the cost of preparing and submitting the required documents. Those costs would vary from applicant to applicant and would probably be the same both for vessels under proposed § 67.147 and barges under proposed § 67.179. For further information on those costs, see the section on "Collection of Information" in this preamble.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The proposed rule would affect vessel owners and charterers who choose to take advantage of the lease-financing option. This option reduces the burden on owners by allowing them to have access to the cheapest financing available anywhere in the world. Under the proposed rule, to take advantage of the lease-financing option, the vessel owner and charterer must submit affidavits and a copy of their demise charter to the NVDC. The estimated cost of preparing and submitting this material would be minimal and is discussed further under "Collection of Information" in this preamble. Companies would tend to choose lease-financing only if they expect its costs to be offset by increased profits.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Patricia Williams, Deputy Director, National Vessel Documentation Center (NVDC), Coast Guard, telephone 304–271–2506.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection. This estimate applies to the documents to be submitted under proposed §§ 67.147 and 67.179. This collection would be added to the burden estimate under OMB Control Number OMB 2115–0110.

Title: Vessel Documentation: Lease-Financing for Vessels Engaged in the Coastwise Trade.

Summary of the Collection of Information: This proposed rulemaking would add new collection-of-information requirements, in proposed §§ 67.147 and 67.179, for vessel owners and charterers applying to engage in the coastwise trade under the lease-financing provisions of 46 U.S.C. 12106(e). These new requirements would require a change in previously approved OMB Collection 2115–0110.

Need for Information: The Coast Guard needs this information to determine whether an entity meets the statutory requirements.

Proposed Use of Information: The Coast Guard would use this information to determine whether an entity meets the statutory requirements.

Number of Respondents: Approximately, 30 entities a year, including charter amendments and sub-charters.

Frequency of Response: Whenever an entity seeks to qualify to engage in the coastwise trade under 46 U.S.C. 12106(e), a qualified entity amends the charter, or the demise charterer sub-charters the vessel by demise charter.

Burden of Response: The burden resulting from this proposed rule would arise from the requirements in proposed §§ 67.147 and 67.179 that affidavits be prepared and submitted, along with a copy of the demise charter, to the NVDC. We estimate that it would take a total of 12 hours to prepare the affidavits and make the submissions. As for the per-hour cost to accomplish this administrative task, we estimate that it could be as low as $67 per hour. However, most, if not all, of the applicants so far, chose to use law firms to accomplish these tasks, even though the proposed rule would not require their use. Hourly cost for legal assistance could be substantially higher. To align our estimates more closely with industry practice, we used $167 per hour for a total of $2004 per application.

Estimate of Total Annual Burden: The total annual hour burden for industry is 12 hours per application × $167 per hour (the higher of the two figures discussed above) × 30 applications per year for a total of $60,120 per year.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined that it does not have implications for federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(d), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. This proposed rulemaking is administrative in nature and identifies the information necessary to apply for a coastwise endorsement under 46 U.S.C. 12106(e). A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 46 CFR Part 67

Reporting and recordkeeping requirements, Vessels.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR part 67 as follows:

PART 67—DOCUMENTATION OF VESSELS

1. The authority citation for part 67 continues to read as follows:

Authority: 14 U.S.C. 664; 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 2103, 2107, 2110, 12106, 12120, 12122; 46 U.S.C. app. 841a, 876; 49 CFR 1.45, 1.46.

2. In § 67.3, revise the definition for the term "person;" and add, in alphabetical order, definitions for the terms "entity," "parent," "primarily engaged in leasing or financing," and "subsidiary" to read as follows:

§ 67.3 Definitions.

* * * * *

Entity means a corporation; partnership; limited liability partnership; limited liability company; association; joint venture; trust arrangement; and the government of the United States, a State, or a political subdivision of the United States or a State; and includes a trustee, beneficiary, receiver, or similar representative of any of them.

* * * * *

Parent means a person that owns or controls more than 50 per cent of another entity.

Person means an individual or an entity.

Primarily engaged in leasing or other financing transactions means that more than 50% of the aggregate revenue of an entity is derived from banking or similar financial transactions.

* * * * *

Subsidiary means any entity more than 50 per cent of which is directly or indirectly owned or controlled by another person.

* * * * *

3. Add § 67.20 to read as follows:

§ 67.20 Coastwise endorsement for a vessel that is owned by a lease-financing company and is under a demise charter.

(a) A vessel under a demise charter that is eligible for a coastwise endorsement under 46 U.S.C. 12106(e) may receive that endorsement if it meets the following:

(1) The vessel is eligible for documentation under 46 U.S.C. 12102.

(2) The vessel is considered built in the United States under § 67.97 and has not lost coastwise privileges under § 67.19(d).

(3) The entity that owns the vessel, a parent of that entity, or a subsidiary of a parent of that entity is primarily engaged in leasing or other financing transactions and not in vessel operations or management.

(4) The majority of the aggregate revenues of the entity that owns the

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vessel, a parent of that entity, or a subsidiary of a parent of that entity is not derived from the operation or management of one or more vessels.

(5) The entity that owns the vessel, a parent of that entity, or a subsidiary of a parent of that entity is not primarily engaged in the operation or management of commercial, foreign-flag vessels used for the carriage of cargo for parties unrelated to the vessel's owner or charterer.

(6) The vessel is under a demise charter to a person that certifies to the Director, National Vessel Documentation Center, that the person is a citizen of the United States for engaging in the coastwise trade under 46 U.S.C. app. 802.

(7) The demise charter is for a period of at least 3 years, unless a shorter period is authorized by the Director, National Vessel Documentation Center, under circumstances such as—

(i) When the vessel's remaining life would not support a charter of 3 years; or

(ii) To preserve the use or possession of the vessel.

(b) To apply for a coastwise endorsement for a vessel under a demise charter, see § 67.147.

§ 67.35 [Amended]

4. In § 67.35, at the end of paragraph (c), add the words "or the vessel qualifies under § 67.20".

5. In § 67.36, revise paragraphs (c)(1) and (c)(2) to read as follows:

§ 67.36 Trust.

* * * * *

(c) * * *

(1) It meets the requirements of paragraph (a) of this section and at least 75 per cent of the equity interest in the trust is owned by citizens; or

(2) It meets the requirements of § 67.20.

6. In § 67.39, revise paragraphs (c)(1) and (c)(2) to read as follows:

§ 67.39 Corporation.

* * * * *

(c) * * *

(1) It meets the requirements of paragraph (a) of this section and at least 75 per cent of the stock interest in the corporation is owned by citizens; or

(2) It meets the requirements of § 67.20.

* * * * *

7. Add § 67.147 to read as follows:

§ 67.147 Application procedure: Coastwise endorsement for a vessel that is owned by a lease-financing company and is under a demise charter.

(a) In addition to the items under § 67.141, the entity owning the vessel (other than a barge under § 67.179) and seeking a coastwise endorsement under § 67.20 must submit the following to the National Vessel Documentation Center:

(1) A certification, in the form of an affidavit, and supporting documentation from an officer of the entity owning the vessel certifying the following:

(i) That the entity owning the vessel is a bank, leasing company, or other financial entity organized under the laws of the United States or a State.

(ii) That ownership of the vessel is primarily a financial investment without the ability and intent to control the vessel's operations and that the entity owning the vessel is not primarily engaged in the direct operation or management of the vessel.

(iii) That the entity owning the vessel will transfer to a qualified United States citizen under 46 U.S.C. app. 802 the full possession, control, and command of the vessel through a demise charter for a period of at least 3 years, unless a shorter period is authorized under § 67.20(a)(7). The certification must include a statement that the charterer will be deemed to be the owner *pro hac vice* for the term of the charter.

(iv) That the majority of the aggregate revenues of the entity that owns the vessel, a parent of that entity, or a subsidiary of a parent of that entity is not derived from the operation or management of one or more vessels.

(v) That the entity that owns the vessel, a parent of that entity, or a subsidiary of a parent of that entity is not primarily engaged in the operation or management of commercial, foreign-flag vessels used for the carriage of cargo unrelated to the vessel's owner or charterer.

(2) A copy of the charter, which must provide that the charterer is deemed to be the owner *pro hac vice* for the term of the charter.

(b) The charterer of a vessel under paragraph (a) of this section must provide detailed citizenship information in the format of form CG–1258, Application for Documentation, section G, citizenship. The citizenship information may be attached to the form CG–1258 that is submitted under § 67.141 and must be signed by, or on behalf of, the charterer.

(c) Whenever a charter under paragraph (a) of this section is amended, the vessel owner must file a copy of the amendment with the Director, National Vessel Documentation Center, within 10 days after the effective date of the amendment.

(d) Whenever the charterer of a vessel under paragraph (a) of this section demise charters the vessel to a sub-charterer—

(1) The charterer must file a copy of the sub-charter with the Director, National Vessel Documentation Center, within 10 days after the effective date of the sub-charter; and

(2) The sub-charterer must provide detailed citizenship information in the format of form CG–1258, Application for Documentation, section G, citizenship.

(e) A person that submits a false certification under this section is subject to penalty under 46 U.S.C. 12122.

8. In § 67.167, in paragraph (c)(8), remove the last "or"; in paragraph (c)(9), remove the period and add, in its place, "; or"; and add paragraph (c)(10) to read as follows:

§ 67.167 Requirement for exchange of Certificate of Documentation.

* * * * *

(c) * * *

(10) For a vessel under 46 U.S.C. 12106(e)—

(i) The demise charter expires or is transferred to another charterer;

(ii) The citizenship of the charterer or sub-charterer changes to the extent that they are no longer qualified for a coastwise endorsement;

(iii) The entity that owns the vessel, a parent of that entity, or a subsidiary of a parent of that entity is no longer primarily engaged in leasing or other financing transactions;

(iv) The majority of the aggregate revenues of the entity that owns the vessel, a parent of that entity, or a subsidiary of a parent of that entity is derived from operation or management of vessels; or

(v) The entity that owns the vessel, a parent of that entity, or a subsidiary of a parent of that entity becomes primarily engaged in operation or management of foreign-flag vessels used for the carriage of cargo unrelated to the vessel's owner or charterer.

* * * * *

9. Add § 67.179 to subpart M to read as follows:

§ 67.179 Application procedure: Coastwise operation of a barge that is owned by a lease-financing company and is under a demise charter.

(a) The entity owning a barge qualified to engage in coastwise trade under the lease-financing provisions of 46 U.S.C. 12106(e) must submit the following to the National Vessel Documentation Center:

(1) A certification, in the form of an affidavit, and supporting documentation from an officer of the entity owning the barge certifying the following:

(i) That the entity owning the barge is a bank, leasing company, or other financial entity organized under the laws of the United States or a State.

(ii) That ownership of the barge is primarily a financial investment without the ability and intent to control the barge's operations by a person not primarily engaged in the direct operation or management of the barge.

(iii) That the entity owning the barge will transfer to a qualified United States citizen under 46 U.S.C. app. 802 the full possession, control, and command of the U.S.-built barge through a demise charter for a period of at least 3 years, unless a shorter period is authorized under § 67.20(a)(7). The certification must include a statement that the charterer will be deemed to be the owner *pro hac vice* for term of the charter.

(iv) That the majority of the aggregate revenues of the entity that owns the barge, a parent of that entity, or a subsidiary of a parent of that entity is not derived from the operation or management of one or more vessels.

(v) That the entity that owns the barge, a parent of that entity, or a subsidiary of a parent of that entity is not primarily engaged in the operation or management of commercial, foreign-flag vessels used for the carriage of cargo for unrelated to the barge's owner or charterer.

(vi) That the barge is qualified to engage in the coastwise trade and that it is owned by an entity eligible to own vessels documented with a registry endorsement.

(2) A copy of the charter agreement, which must provide that the charterer will be deemed to be the owner *pro hac vice*.

(b) The charterer of the barge under paragraph (a) of this section must provide detailed citizenship information in the format of form CG–1258, Application for Documentation, section G, citizenship. The citizenship information must be signed by, or on behalf of, the charterer.

(c) Whenever a charter under paragraph (a) of this section is amended, the barge owner must file a copy of the amendment with the Director, National Vessel Documentation Center, within 10 days after the effective date of the amendment.

(d) Whenever the charterer of a barge under paragraph (a) of this section demise charters the barge to a sub-charterer—

(1) The charterer must file a copy of the sub-charter with the Director, National Vessel Documentation Center, within 10 days after the effective date of the sub-charter; and

(2) The sub-charterer must provide detailed citizenship information in the format of form CG–1258, Application for Documentation, section G, citizenship.

(e) A person that submits a false certification under this section is subject to penalty under 46 U.S.C. 12122.

Dated: February 13, 2001.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 01–11021 Filed 5–1–01; 8:45 am]

BILLING CODE 4910–15–U

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Notices

Federal Register
Vol. 66, No. 85
Wednesday, May 2, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[FV–01–328]

United States Standards for Grades of Frozen Celery

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) is soliciting comments on its proposal to create new United States Standards for Grades of Frozen Celery. USDA has received a petition from a grower of celery to create grade standards for frozen celery that will include a description of the product, style, sample unit size, grades, ascertaining the grade by sample, and ascertaining the grade by lot. This proposal will provide a common language for trade, a means of measuring value in the marketing of frozen celery, and provide guidance in the effective utilization of frozen celery.

DATES: Comments may be submitted on or before July 2, 2001.

ADDRESSES: Written comments may be submitted to: Karen L. Kaufman, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0247,1400 Independence Avenue SW., Washington, DC 20250–0247; fax (202) 690–1087; or e-mail *karen.kaufman@usda.gov*.

Comments should reference the date and page of this issue of the **Federal Register**. All comments received will be made available for public inspection at the address listed above during regular business hours and on the Internet.

The draft of the United States Standards for Grades of Frozen Celery available either through the address cited above or by accessing AMS's Home Page on the Internet at: www.ams.usda.gov/standards/frozveg.htm. Any comments received, regarding this proposed standard will also be posted on that site.

FOR FURTHER INFORMATION CONTACT: Karen L. Kaufman at (202) 720–5021 or e-mail at karen.kaufman@usda.gov.

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture "to develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices * * *" AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables no longer appear in the Code of Federal Regulations but are maintained by USDA/AMS/Fruit and Vegetable Programs.

AMS is proposing to establish the U.S. Standards for Grades of Frozen Celery using the procedures that appear in Part 36 of Title 7 of the Code of Federal Regulations (7 CFR Part 36).

Proposed by the Petitioner

The petitioner, a grower of celery, requested that USDA develop a standard for frozen celery to be used by the industry. The petitioner provided information on style, sample size and description to AMS to develop the standard. AMS visited the petitioner's facility to collect information on grades of frozen celery and how to ascertain the grade of a sample and of a lot.

AMS prepared a discussion draft of the frozen celery standard, and distributed copies for input to the petitioner, the American Frozen Food Institute (AFFI), and the National Food Processors Association (NFPA). Input from the above groups was used to develop the proposed standard.

Proposed by Fruit and Vegetable Programs, AMS

Based on the results of the information gathered, AMS is proposing to establish a standard for frozen celery following the standard format for U.S. Grade Standards. AMS is proposing to define "frozen celery" and establish "sliced" and "diced as the style designations. The proposal will also define the quality factors that affect frozen celery and determine sample unit sizes for this commodity.

This proposal will establish the grade levels "A", "B" and "Substandard" and assign the corresponding score points for each level. The proposed tolerance for each quality factor as defined for each grade level will be established.

The grade of a sample unit of frozen celery will be ascertained by considering the factors of varietal characteristics and flavor and odor which are not scored; the ratings for the factors of color, defects, and character, which are scored; the total score; and the limiting rules which apply. This proposal will provide a common language for trade, a means of measuring value in the marketing of frozen celery, and provide guidance in the effective utilization of frozen celery. The official grade of a lot of frozen celery covered by these standards will be determined by the procedures set forth in the Regulations Governing Inspection and Certification of Processed Products Thereof, and Certain Other Processed Foods Products (§ 52.1 to 52.83).

This notice provides for a 60 day comment period for interested parties to comment on changes to the standards.

Authority: 7 U.S.C. 1621–1627.

Dated: April 25, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–10893 Filed 5–1–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Availability of an Environmental Assessment; Ashley, Dixie, Fishlake, Manti-La Sal, Uinta, and Wasatch-Cache National Forest's; Utah Counties: Beaver, Box Elder, Cache, Carbon, Daggett, Davis, Duchesne, Emery, Garfield, Grand, Iron, Juab, Kane, Millard, Morgan, Piute, Rich, Salt Lake, San Juan, Sanpete, Sevier, Summit, Tooele, Uintah, Utah, Wasatch, Washington, Wayne, and Weber; Wyoming Counties: Sweetwater and Uinta; Colorado Counties: Mesa and Montrose

AGENCY: USDA Forest Service.

ACTION: Notice of availability of an environmental assessment.

SUMMARY: The Utah Fire Amendment Project was initiated October 13, 1998 with the published public notification of proposed Forest Plan amendments in the newspaper of general circulation for each National Forest. The responsible officials are the Forest Supervisors for the Ashley, Dixie, Fishlake, Manti-La Sal, Uinta, and Wasatch-Cache National Forest's. In accordance with planning regulations issued November 9, 2000 at 36 CFR § 219.35 the responsible official's have decided to proceed under the 1982 regulations in effect prior to November 9, 2000. In addition, the responsible official's have decided to proceed under the administrative appeal and review procedures of 36 CFR § 217 in effect prior to November 9, 2000.

DATES: Effective as of May 2, 2001.

FOR FURTHER INFORMATION CONTACT: David Hatfield, Manti-La Sal National Forest, 599 West Price River Drive, Price, UT 84501, (435) 637–2817.

Dated: April 19, 2001.

Pam Gardiner,

Forest Supervisor, Wasatch-Cache National Forest.

[FR Doc. 01–10875 Filed 5–1–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Availability of the Luna Lake Trail Relocation Environmental Assessment, Including a Proposed Non-Significant Amendment to the 1997 Revision to the Routt National Forest Land and Resource Management Plan, Garfield, Grand, Jackson, Moffat, Rio Blanco, and Routt Counties, CO

AGENCY: U.S. Forest Service, U.S.D.A.

ACTION: Notice of availability of an environmental assessment.

SUMMARY: An environmental assessment of the proposed relocation of approximately three miles of the Luna Lake Trail in the Mt. Zirkel Wilderness that was heavily impacted by the Routt Divide Blowdown event in October 1997 is available upon request. The analysis includes a proposed non-significant amendment to the 1997 Revision to Routt National Forest Land and Resource Management Plan to reallocate acres in management area prescriptions in the project area. The amendment is necessary to reflect the change in recreational use patterns and social encounters that would result from trail relocation. This notice is provided pursuant to National Forest System Land and Resource Management Planning regulations (36 CFR 219.35, 65 FR 67579, November 9, 2000).

DATES: Public scoping on this proposed project was initiated on August 8, 1999. A pre-decisional Environmental Assessment was issued on August 2, 2000. The official public comment period ended on September 11, 2000.

ADDRESSES: Send requests for documents to: Forest Supervisor, Medicine Bow-Routt National Forests and Thunder Basin National Grassland, 2468 Jackson Street, Laramie, WY 82070–6535.

FOR FURTHER INFORMATION CONTACT: Ed Patalik, Recreation Planner, Hahns Peak-Bears Ears Ranger District, 925 Weiss Drive, Steamboat Springs, CO 80487–9315. Phone: (970) 870–2245 Electronic mail: epatalik@fs.fed.us

SUPPLEMENTARY INFORMATION: Public scoping for this project was initiated with an article in the *Steamboat TODAY* newspaper, Steamboat Springs, Colorado, on August 8, 1999.

On April 7, 2000, a letter describing this proposed project and the non-significant amendment to the 1997 Revision to the Routt National Forest Land and Resource Management Plan was mailed to over 1,800 individuals and organizations on the Routt Forest Plan and Routt Divide Blowdown mailing lists. This mailing was followed with another article about the proposed project in the *Steamboat TODAY* newspaper on April 14, 2000.

A pre-decisional Environmental Assessment was made available for review and public comment invited in legal notices published in the *Steamboat TODAY* newspaper on August 2, 2000, and in the *Laramie Daily Boomerang*, Laramie, Wyoming on August 9, 2000. The official public comment period ended on September 11, 2000.

Dated: April 17, 2001.

Mary H. Peterson,

Forest Supervisor.

[FR Doc. 01–10536 Filed 5–1–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Availability of Funding and Requests for Proposals for Guaranteed Loans Under the Section 538 Guaranteed Rural Rental Housing Program; Correction

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Correction.

SUMMARY: The Rural Housing Service (RHS) corrects a notice published December 26, 2000 (65 FR 81650). This action is taken to correct the authorized purposes of section 538 guaranteed loans by eliminating the requirement that acquisition loans result in the creation of new units.

Accordingly, the notice published December 26, 2000, (65 FR 81650–81656), is corrected as follows:

On page 81650 in the third column, Item I, "Purpose and Program Summary," the fourth sentence should read "Qualified lenders will be authorized to originate, underwrite, and close loans for multi-family housing projects requiring new construction or acquisition with rehabilitation of at least $15,000 per unit."

Dated: April 17, 2001.

James C. Alsop,

Acting Administrator, Rural Housing Service.

[FR Doc. 01–10900 Filed 5–1–01; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–809]

Certain Circular Welded Non-Alloy Steel Pipe From the Republic of Korea; Preliminary Results of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of changed circumstances antidumping duty administrative review.

SUMMARY: On February 27, 2001, the Department of Commerce published a notice of initiation in the above-named case. As a result of this review, the Department of Commerce preliminarily finds for the purposes of this proceeding that Hyundai Steel Company is the successor-in-interest to Hyundai Pipe Company, Ltd.

EFFECTIVE DATE: May 2, 2001.

FOR FURTHER INFORMATION CONTACT: Suresh Maniam or Sibel Oyman, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0176 and (202) 482–1174, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the "Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's ("Department") regulations are to 19 CFR Part 351 (2000).

SUPPLEMENTARY INFORMATION:

Background

On February 27, 2001, the Department published a notice of initiation of this changed circumstances review (*see Notice of Initiation of Changed Circumstances Antidumping Duty Administrative Review*, 66 FR 12460). On March 20, 2001, the Department conducted a verification of Hyundai Steel Company ("Hyundai Hysco") at its headquarters in Seoul (*see Memorandum to the File*, "Verification of Hyundai Hysco in the Changed Circumstance Review of Oil Country Tubular Goods and Circular Welded Non-Alloy Steel Pipe from South Korea," dated April 13, 2001) (public version on file in the Department's Central Records Unit, in Room B–099).

Scope of the Review

The merchandise subject to this review is circular welded non-alloy steel pipe and tube, of circular cross-section, not more than 406.4mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low-pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air-conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and as support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and other related industries. Unfinished conduit pipe is also included in this order.

All carbon-steel pipes and tubes within the physical description outlined above are included within the scope of this review except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. In accordance with the Department's *Final Negative Determination of Scope Inquiry on Certain Circular Welded Non-Alloy Steel Pipe and Tube from Brazil, the Republic of Korea, Mexico, and Venezuela*, 61 FR 11608, (March 21, 1996), pipe certified to the API 5L line-pipe specification and pipe certified to both the API 5L line-pipe specifications and the less-stringent ASTM A–53 standard-pipe specifications, which falls within the physical parameters as outlined above, and entered as line pipe of a kind used for oil and gas pipelines is outside of the scope of the antidumping duty order.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule of the United States ("HTSUS") subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS subheadings are provided for convenience and Customs Service purposes, our written description of the scope of this proceeding is dispositive.

Preliminary Results

In making successor-in-interest determinations, the Department examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g., Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 57 FR 20460, 20461 (May 13, 1992). While no single factor, or combination of factors, will necessarily prove dispositive, the Department will generally consider the new company to be the successor to its predecessor company if the resulting operations are essentially the same as the predecessor company. *See e.g., Id. and Industrial Phosphoric Acid from Israel; Final Results of Changed Circumstances Review*, 59 FR 6944, 6945 (February 14, 1994). Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as its predecessor, the Department will assign the new company the cash-deposit rate of its predecessor.

Based on the information submitted by Hyundai Hysco during the initiation stages of this changed circumstances review and the information examined during verification, we preliminarily determine that Hyundai Hysco is the successor-in-interest to Hyundai Pipe Company ("HDP"). We find that the company's organizational structure, senior management, production facilities, supplier relationships, and customers have remained essentially unchanged. Furthermore, HDP has provided sufficient internal and public documentation of its name change. Based on all the evidence reviewed, we find that Hyundai Hysco operates as the same business entity as HDP. Thus, we preliminarily determine that Hyundai Hysco should receive the same antidumping duty cash-deposit rate (*i.e.*, a 2.64 percent antidumping duty cash-deposit rate) with respect to the subject merchandise as HDP, its predecessor company.

Public Comment

Any interested party may request a hearing within 10 days of publication of this notice. Any hearing, if requested, will be held no later than 28 days after the date of publication of this notice, or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 14 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in those comments, may be filed not later than 21 days after the date of publication of this notice. All written comments shall be submitted in accordance with 19 CFR 351.303. Persons interested in attending the hearing, if one is requested, should contact the Department for the date and time of the hearing. The Department will publish the final results of this changed circumstances review, including the results of its analysis of issues raised in any written comments.

We are issuing and publishing this determination and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and sections 351.216 and 351.222 of the Department's regulations. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of Assistant Secretary for Import Administration.

Dated: April 26, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–11019 Filed 5–1–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary System (NMSS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS or Sanctuary) is seeking applicants for the following six vacant seats on its Sanctuary Advisory Council (Council): Hawaii County, Honolulu County, Kauai County, Maui County, Education and Research. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the conservation and management of marine resources; and the length of residence in the area affected by the Sanctuary. Applicants who are chosen as members should expect to serve two-year terms, pursuant to the Council's Charter.

DATES: Applications are due by June 1, 2001.

ADDRESSES: Application kits may be obtained from Kellie Cheung at the Hawaiian Islands Humpback Whale National Marine Sanctuary, 6700 Kalanianaole Hwy, Suite 104, Honolulu, Hawaii 96825. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Kellie Cheung at (808) 397–2651, or Kellie.Cheung@noaa.gov.

SUPPLEMENTARY INFORMATION: The HIHWNMS Advisory Council was established in March 1996 (the current Council has served since July 1998) to assure continued public participation in the management of the Sanctuary. Since its establishment, the Council has played a vital role in the decisions affecting the Sanctuary surrounding the main Hawaiian Islands.

The Council's twenty-three voting members represent a variety of local user groups, as well as the general public, plus ten local, state and federal governmental jurisdictions.

The Council is supported by three working groups: The Research Subcommittee chaired by the Research Representative, the Education Subcommittee chaired by the Education Representative, and the Conservation Subcommittee chaired by the Conservation Representative, each respectively dealing with matters concerning research, education and resource protection.

The Council represents the coordination link between the Sanctuary and the state and federal management agencies, user groups, researchers, educators, policy makers, and other various groups that help to focus efforts and attention on the humpback whale and its habitat around the main Hawaiian Islands.

The Council functions in an advisory capacity to the Sanctuary Manager and is instrumental in helping to develop policies and program goals, and to identify education, outreach, research, long-term monitoring, resource protection and revenue enhancement priorities. The Council works in concert with the Sanctuary Manager by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Manager in achieving the goals of the Sanctuary program within the context of Hawaii's marine programs and policies.

Authority: 16 U.S.C. Section 1431 *et seq.* (Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: April 26, 2001.

Ted I. Lillestolen,

Deputy Assistant Administrator for Oceans and Coastal Zone Management.

[FR Doc. 01–10982 Filed 5–1–01; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Thunder Bay National Marine Sanctuary and Underwater Preserve Advisory Council

AGENCY: Office of National Marine sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Thunder Bay National Marine Sanctuary and Underwater Preserve (Sanctuary/Preserve) is seeking applications for the following seats on the new Advisory Council: Recreation member and alternate, Tourism member and alternate, Business/Economic Development member and alternate, Fishing (recreational, charter and/or commercial) member and alternate, Diving member and alternate, Education (elementary, junior high, high school) member and alternate, Education (higher education) member and alternate, Maritime History & Interpretation member and alternate, and Citizen-At-Large 2 members and alternates.

Applicants are chosen based upon their particular expertise and experiences in relation to the seat for which they are applying; community and professional affiliations; and the length of residence in the area affected by the Sanctuary/Preserve.

Applicants who are chosen as members should expect to serve 2-to 3 year terms pursuant to the Council's Charter. Applicants should be available to attend approximately 4 to 6 meetings annually.

DATES: Applications are due by June 1, 2001.

ADDRESSES: Application kits may be obtained from Ellen Brody, NOAA/Thunder Bay National Marine Sanctuary and Underwater Preserve, 2205 Commonwealth Blvd., Ann Arbor, MI 48105–2945. Applications are also available on-line at: *http://www.glerl.noaa.gov/glsr/thunderbay.* All completed applications should be sent to the above Ann Arbor address.

FOR FURTHER INFORMATION CONTACT: Ellen Brody, NOAA/Thunder Bay National Marine Sanctuary and Underwater Preserve, 2205 Commonwealth Blvd., Ann Arbor, MI 48105–2945, (734) 741–2270 Phone, (734) 741–2176 FAX, ellen.brody@noaa.gov.

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SUPPLEMENTARY INFORMATION: The first Thunder Bay Sanctuary Advisory Council was established in 1997. Their mission was to provide advice and recommendations to NOAA and the State throughout the designation process for the Sanctuary/Preserve.

The Sanctuary/Preserve was officially designated October 7, 2000. The new Sanctuary Advisory Council will provide advice and recommendations to the Sanctuary/Preserve Manager and the Joint Management Committee (a State/Federal body to oversee major policy, management and budget issues concerning the Sanctuary/Preserve) regarding the management and operation of the Thunder Bay Sanctuary/Preserve.

The Advisory Council will be composed of 15 local residents. In addition to the above competitive seats, the following entities will appoint a representative to sit on the Council: Alpena County Board of Commissioners, Alpena City Council, Alpena Township Board of Trustees, Sanborn Township Board of Trustees, Thunder Bay Underwater Preserve Council.

The Sanctuary/Preserve was established to manage and protect Thunder Bay's historic collection of an estimated 116 shipwrecks. NOAA and the State of Michigan are equal partners in the management of the Sanctuary/Preserve. Both NOAA and the State will mutually agree upon the selection of the Advisory Council members.

Authority: 16 U.S.C. Sections 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: April 26, 2001.

Ted I. Lillestolen,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 01–10983 Filed 5–1–01; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042601E]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of an application for a research permit (1304).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement under the Endangered Species Act (ESA): NMFS has received an application for a scientific research permit from Dr. William C. Coles, of the Department of Planning and Natural Resources, Division of Fish and Wildlife, United State Virgin Islands.

DATES: Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number no later than 5 p.m. eastern standard time on June 1, 2001.

ADDRESSES: Written comments on the new application should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application. Comments will not be accepted if submitted via e-mail or the Internet. The applications and related documents are available for review in the indicated office, by appointment:

For permit 1304: Endangered Species Division, F/PR3, 1315 East West Highway, Silver Spring, MD 20910 (phone:301–713–1401, fax: 301–713–0376).

FOR FURTHER INFORMATION CONTACT: Terri Jordan, Silver Spring, MD (phone: 301–713–1401, fax: 301–713–0376, e-mail: Terri.Jordan@noaa.gov)

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Scientific research and/or enhancement permits are issued under Section 10(a)(1)(A) of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222-226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

The following species are covered in this notice:

Sea turtles

Threatened and endangered Green turtle (*Chelonia mydas*)
Endangered Hawksbill turtle (*Eretmochelys imbricata*)
Endangered Leatherback turtle (*Dermochelys coriacea*)
Threatened and endangered Olive ridley turtle (*Lepidochelys olivacea*)

New Applications Received

Application 1304

The applicant requests a permit to take endangered and threatened sea turtles in the U.S. Virgin Islands for scientific research. The applicant proposes to capture, handle, tag, collection of biological samples and release green, hawksbill, leatherback and olive ridley turtles.

Dated: April 26, 2001.

Phil Williams,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–11017 Filed 5–1–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041701B]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of request to modify a scientific research permit 1227; issuance of modification #1 to permit 1236 and modification #1 to permit 1254.

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement under the Endangered Species Act (ESA): NMFS has received a request to modify permit (1227) from Dr. Peter Dutton, of NMFS-SWFSC; NMFS has issued modification #1 to permit 1236 to Dr. John A. Musick, PhD., of the College of William and Mary (1236) and NMFs has issued modification #1 to permit 1254 to Dynegy Northest Generation, Inc. (1254).

DATES: Comments or requests for a public hearing on the modification request must be received at the appropriate address or fax number no later than 5 p.m. eastern standard time on June 1, 2001.

ADDRESSES: Written comments on any of the new applications or modification requests should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application or modification request. Comments will not be accepted if submitted via e-mail or the Internet. The applications and related documents are available for review in the indicated office, by appointment:

Endangered Species Division, F/PR3, 1315 East West Highway, Silver Spring, MD 20910 (phone:301–713–1401, fax: 301–713–0376).

FOR FURTHER INFORMATION CONTACT: Terri Jordan, Silver Spring, MD (phone: 301–713–1401, fax: 301–713–0376, e-mail: Terri.Jordan@noaa.gov)

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Scientific research and/or enhancement permits are issued under Section 10(a)(1)(A) of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222-226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

The following species are covered in this notice:

Sea turtles

Threatened and endangered Green turtle (*Chelonia mydas*)
Endangered Hawksbill turtle (*Eretmochelys imbricota*)
Endangered Kemp's ridley turtle (*Lepidochelys kempii*)
Endangered Leatherback turtle (*Dermochelys coriacea*)
Threatened Loggerhead turtle (*Caretta coretta*)
Threatened and endangered Olive ridley turtle (*Lepidochelys olivacea*)

Fish

Endangered Shortnose Sturgeon (*Acipenser brevirostrum*)

Modification Requests Received

Permit #1227

The applicant requests a modification to permit 1227. Permit 1227 authorizes the capture of up to five leatherback turtles in breakaway hoop nets for the purpose of collecting genetic samples and attaching satellite transmitters to the animals. Modification #1 would increase the authorized annual take from five animals to 100 animals. All of the animals would be measured, flipper tagged, PIT tagged, have a tissue sample collected and then be released. Up to 20 of these animals would have satellite transmitters attached to them via a harness.

Permits and Modified Permits Issued

Permit #1236

Notice was published on April 14, 2000 (65 FR 20138), that Dr. John A. Musick, PhD., of the College of William and Mary applied for a scientific research. Permit 1236 was issued on October 10, 2000. During the review of permit #1236 part of the proposed permit was separated from the package for additional comment and review. This portion is now being issued as modification #1 to permit 1236. Modification #1 authorizes the take of listed sea turtles in the coastal waters of the Chesapeake Bay. Research conducted in the Chesapeake Bay will study inter-nesting movements of sea turtles in Virginia via satellite telemetry. The study will capture, handle, tag (PIT, flipper, satellite, radio and acoustic), collect biological samples (via humeral bone biopsy, blood samples and laparoscopy) and release loggerhead, green , Kemp's ridley, and leatherback turtles. Modification #1 to permit 1236 was issued on April 10, 2001, authorizing take of listed species. Permit 1236 expires June 30, 2005.

Permit #1254

Notice was published on February 8, 2001 (66 FR 8560), that Mr. Martin Daley, of Dynegy Northeast Generation (DNG) applied for a modification to 1254. For modification #1, DNG requested the removal of Central Hudson Gas and Electric (CHGE) from the permit as a result of the completed sale of the Roseton and Danskammer Point power plants from CHGE to DNG. Modification #1 to Permit 1254 was issued on April 13, 2001, authorizing take of listed species. Permit 1254 expires August 31, 2005.

Dated: April 26, 2001.

Phil Williams,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–11018 Filed 5–1–01; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

April 26, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: May 4, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing.

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A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 75671, published on December 4, 2000.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 26, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 28, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on May 4, 2001, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
339/639	1,452,969 dozen.
342/642	660,793 dozen.
433	24,540 dozen.
442	82,693 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–10950 Filed 5–1–01; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Department of Defense, Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, Office of the Deputy Under Secretary of Defense for Installations, Office of Economic Adjustment.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Economic Adjustment announces the proposed extension of a currently approved collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 2, 2001.

ADDRESSES: Interested parties should submit written comments and recommendations on the proposed information collection to the Office of Economic Adjustment, ATTN: Ms. Katie Smith, 400 Army Navy Drive, Suite 200, Arlington, VA 22202–2884; E-mail comments submitted via the Internet should be addressed to: Katie.Smith@osd.mil.

FOR FURTHER INFORMATION CONTACT: To request further information on this proposed information collection, or to obtain a copy of the proposal and associated collection instrument, please write to the above address or call Ms. Katie Smith at (703) 604–2400.

Title, Associated Form, and OMB Number: Base Realignment and Closure (BRAC) Military Base Reuse Status, DD Form 2740, OMB Control Number 0790–0003.

Needs and Uses: Through the Office of Economic Adjustment (OEA), DOD funds are provided to communities for economic adjustment planning in response to closures of military installations. A measure of program evaluation is the monitoring of civilian job creation and type of redevelopment at the former military installations. The respondents to the semi-annual survey will generally include a single point of contact at the local level who is responsible for overseeing redevelopment efforts. If this data is not collected, OEA would have no accurate, timely information regarding the civilian reuse of former military bases. A key function of the economic adjustment program is to encourage private sector use of lands and buildings to generate jobs as military activity diminishes and to serve as a clearinghouse for reuse data.

Affected Public: Business or Other For-Profit; Federal Government; State, Local, or Tribal Government.

Annual Burden Hours: 150.

Number of Annual Respondents: 75.

Annual Responses to Respondent: 2.

Average Burden per Response: 1 hour.

Frequency: Semi-annual.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This information collection is authorized by the Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act of 1990, Public Law 101–510, 10 U.S.C. 2391, and Executive Order 12788.

Dated: April 26, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–10898 Filed 5–1–01; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice. The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Form Number, and OMB Number: Intercontinental Ballistic Missile Hardened Intersite Cable System Right-of-Way Landowner/Tenant Questionnaire; AF Form 3951; OMB Number 0701–0141.

Type of Request: Extension.

Number of Respondents: 4,000.

Responses Per Respondent: 1.

Annual Responses: 4,000.

Average Burden Per Response: 15 minutes.

Annual Burden Hours: 1,000.

Needs and Uses: The information collection requirement is used to report changes in ownership/lease information, conditions of missile cable route and associated appurtenances, and projected building/exacavation projects. The information collected is used to ensure system integrity and to maintain a close contact public relations program with involved personnel and agencies. Respondents are landowners and tenants. This form collects updated landowner/tenant information as well as data on local property conditions that could adversely affect the Hardened Intersite Cable System (HICS).

Affected Public: Individuals or Households; Farms; State, Local or Tribal Government.

Frequency: Biennially.

Respondents's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10326, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: April 26, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–10896 Filed 5–1–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Notice of Advisory Committee Meeting Date Change

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting date change.

SUMMARY: The Defense Science Board (DBS) Task Force on Systems Technology for the Future U.S. Strategic Posture closed meeting scheduled for May 16–17, 2001, has been changed to May 30–31, 2001. The meeting will be held at Strategic Analysis Inc., 3601 Wilson Boulevard, Suite 600, Arlington, VA.

Dated: April 25, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–10895 Filed 5–1–01; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

National Imagery and Mapping Agency

Privacy Act of 1974; System of Records

AGENCY: National Imagery and Mapping Agency, DoD.

ACTION: Notice to Amend Systems of Records.

SUMMARY: The National Imagery and Mapping Agency (NIMA) is amending its Address Directory as it appears in the NIMA inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on June 1, 2001 unless comments are received which result in a contrary determination.

ADDRESSES: Comments should be sent to the Office of General Counsel, National Imagery and Mapping Agency, Mail Stop D–10, 4600 Sangamore Road, Bethesda, MD 20816–5003.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Willess, Associate General Counsel, at (301) 227–2953.

SUPPLEMENTARY INFORMATION: The National Imagery and Mapping Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: April 26, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

National Imagery and Mapping Agency Official Mailing Addresses

National Imagery and Mapping Agency, 4600 Sangamore Road, Bethesda, MD 20816–5003.

National Imagery and Mapping Agency, 3200 South Second Street, St. Louis, MO 63118–3399.

National Imagery and Mapping Agency, 1210 Sunrise Valley Drive, Reston, VA 22091–3414.

NIMA College, 5825 21st Street, Suite 106, Ft. Belvoir, VA 22060–5921.

[FR Doc. 01–10897 Filed 5–01–01; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The C2 Database Panel Meeting will meet at Langley Air Force Base (AFB), VA on May 3, 2001 from 8 a.m. to 5 p.m.

The purpose of the meeting is to receive briefings and discuss the direction of the study. The meeting will be closed to the public in accordance with Section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 01–10876 Filed 5–1–01; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The C2 Database Panel Group Meeting will meet in San Francisco, CA and Hickam AFB, Hawaii on May 14–18, 2001 from 8 a.m. to 5 p.m.

The purpose of the meeting is to receive briefings and discuss the direction of the study. The meeting will be closed to the public in accordance with Section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 01–10877 Filed 5–1–01; 8:45 am]

BILLING CODE 5001–01–U

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Commercial Space Panel Chairs Meeting will meet in Washington, DC on May 9, 2001 from 8 a.m. to 5 p.m.

The purpose of the meeting is to receive briefings and discuss the direction of the study. The meeting will be closed to the public in accordance with Section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

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For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 01–10878 Filed 5–1–01; 8:45 am]

BILLING CODE 5000–01–U

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The C2 Database Ops Panel Meeting will meet at Gunter Air Force Base (AFB), AL on May 9, 2001 from 8 a.m. to 5 p.m.

The purpose of the meeting is to receive briefings and discuss the direction of the study.

The meeting will be closed to the public in accordance with Section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 01–10880 Filed 5–1–01; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Electronics Targets Panel Meeting will meet in Washington, DC on May 8–10, 2001 from 8 a.m. to 5 p.m.

The purpose of the meeting is to receive briefings and discuss the direction of the study. The meeting will be closed to the public in accordance with Section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 01–10879 Filed 5–1–01; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Invention for Licensing; Government-Owned Invention

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. U.S. Patent Application Serial No. 09/363,819 entitled "Molecularly-Imprinted Material Made By Template-Directed Synthesis," Navy Case No. 79,430.

ADDRESSES: Requests for copies of the patent application cited should be directed to the Naval Research Laboratory, Code 1008.2, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, PhD., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: April 23, 2001.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 01–10881 Filed 5–1–01; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 2, 2001.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 27, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: Annual Progress Reporting Form for Assistive Technology Grantees.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 896.

Abstract: This data collection will be conducted annually to obtain program and performance information from National Institute on Disability and Rehabilitation Research (NIDRR) state assistive technology grantees on their project activities. The information collected will assist federal NIDRR staff in responding to the Government Performance and Results Act (GPRA).

Data will primarily be collected through an internet form.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila.Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–10973 Filed 5–1–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 2, 2001.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 27, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Student Financial Assistance Programs

Type of Review: Extension.

Title: Consolidation Loan Rebate Fee Report.

Frequency: Monthly.

Affected Public: Businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 9,804, Burden Hours: 10,621.

Abstract: The Consolidation Loan Rebate Fee Report for payment by check or Electronic Funds Transfer (EFT) will be used by approximately 817 lenders participating in the Title IV, Part B loans program. The information collected is used to transmit interest payment rebate fees to the Secretary of Education.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe.Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–10974 Filed 5–1–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 2, 2001.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

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Dated: April 27, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.
Title: Distance Education Demonstration Program Annual Reporting Form.
Frequency: Annually.
Affected Public: Not-for-profit institutions; Individuals or household; Businesses or other for-profit.
Reporting and Recordkeeping Hour Burden: Responses: 30,544, Burden Hours: 6,340.
Abstract: The information will be used by the Department of Education to conduct analyses and prepare reports required by the Congress in the authorization of the Distance Education Demonstration Program. These analyses may also become the basis of recommendations the Department may make to amend the governing statute as prescribed by the Congress in its program authorization. Respondents include participants in the Distance Education Demonstration Program (institutions and systems and consortia of institutions) and their students who are enrolled in distance education courses and programs.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe.Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–10975 Filed 5–1–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 2, 2001.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 27, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Student Financial Assistance Programs

Type of Review: Revision.
Title: Income Contingent Repayment Program Consent to Disclosure of Tax Information Form.
Frequency: Once every 5 years.
Affected Public: Individuals or household.
Reporting and Recordkeeping Hour Burden: Responses: 300,000; Burden Hours: 75,000.
Abstract: This form is the means by which a defaulted student loan borrower (and, if married, the borrower's spouse), choosing to repay under the Income Contingent Repayment Plan, provides written consent to the disclosure of certain tax return information by the Internal Revenue Service to the Department of Education and its agents for the purpose of calculating the borrower's monthly repayment amount.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe.Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–10976 Filed 5–1–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 2, 2001.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 27, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.
Title: Evaluation of Title I Accountability Systems and School Improvement Efforts (TASSIE)—Data Collection Instrument.
Frequency: Annually.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Federal Government.
Reporting and Recordkeeping Hour Burden: Responses: 10,300; *Burden Hours:* 6,990.
Abstract: The purpose of the Evaluation of Title I Accountability Systems and School Improvement Efforts is to examine and evaluate Title I accountability systems and school improvement efforts in a nationally representative sample of districts and schools. This project addresses both the implementation and effectiveness of accountability practices in 2,200 districts and 740 schools. The TASSIE will provide data on the extent of alignment between Title I accountability systems and states' and districts' own accountability systems, the assistance and incentives provided to school identified as in need of improvement, and will assess the impact of these policies and practices on schools, teachers, and students.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address Jackie.Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–10977 Filed 5–1–01; 8:45 am]

BILLING CODE 4001–01–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 1, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 27, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.
Title: State Vocational Directors Survey on Perkins III Funding and Accountability Systems.
Frequency: One time, 2001 Survey.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden: Responses: 168.
Burden Hours: 144.
Abstract: The Perkins III legislation mandates changes in state-level funding and accountability systems. In most cases, the new requirements demand a higher level of system organization and rigor than previously existed. The State Vocational Directors Survey is one part of an evaluation whose primary purpose is to determine the progress of state efforts to comply with these aspects of the Perkins III requirements.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at

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(202) 708–5359 or via her internet address Jackie.Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–10972 Filed 5–1–01; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.338]

Office of Elementary and Secondary Education—Reading Excellence Program

ACTION: Notice to change deadline for intergovernmental review.

SUMMARY: On March 29, 2001 (66 FR 17163), the Department published a notice inviting applications for new awards for fiscal year 2001. The notice established May 22, 2001 as the deadline for intergovernmental review. The Secretary changes the deadline for intergovernmental review for the Reading Excellence Program grant competition. The Secretary takes this action to expedite the awarding of grants, which in turn will allow States more time to implement their grant programs.

DATES: The new deadline for intergovernmental review is June 6, 2001. The deadline for transmittal of applications remains May 7, 2001.

FOR FURTHER INFORMATION CONTACT: Nancy Rhett, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5C141, Washington, DC 20202–6200; Telephone: (202) 260–8228. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–888–877–8339.

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*

Authority: 20 U.S.C. 7131.

Dated: April 26, 2001.

Thomas M. Corwin,

Acting Deputy Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 01–10884 Filed 5–1–01; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1310–000 and ER01–1310–001]

LG&E Power Monroe LLC; Notice of Issuance of Order

April 26, 2001.

LG&E Power Monroe LLC (LG&E Monroe) submitted for filing a rate schedule under which LG&E Monroe will engage in wholesale electric power and energy transactions at market-based rates. LG&E Monroe also requested waiver of various Commission regulations. In particular, LG&E Monroe requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by LG&E Monroe.

On April 4, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by LG&E Monroe should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, LG&E Monroe is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of LG&E Monroe's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 4, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.fer.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–10905 Filed 5–1–01; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1335–000]

Magnolia Energy, L.P.; Notice of Issuance of Order

April 26, 2001.

Magnolia Energy, L.P. (Magnolia) submitted for filing a rate schedule under which Magnolia will engage in wholesale electric power and energy transactions at market-based rates. Magnolia also requested waiver of various Commission regulations. In particular, Magnolia requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Magnolia.

On April 5, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Magnolia should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Magnolia is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Magnolia's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 7, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.fer.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–10906 Filed 5–1–01; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1336–000]

Mountain View Power Partners II, LLC; Notice of Issuance of Order

April 26, 2001.

Mountain View Power Partners II, LLC (Mountain View) submitted for filing a rate schedule under which Mountain View will engage in wholesale electric power and energy transactions at market-based rates. Mountain View also requested waiver of various Commission regulations. In particular, Mountain View requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Mountain View.

On April 6, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Mountain View should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Mountain View is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Mountain View's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 7, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.fer.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–10907 Filed 5–1–01; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–175–000]

Northern Natural Gas Company; Notice of Application

April 26, 2001.

On April 23, 2001, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed an application in Docket No. CP01–175–000 pursuant to Section 7(b) of the Natural Gas Act (NGA) and Section 157.18 of the Commission's Regulations for permission and approval to abandon, in-place five (5) 1,400 horsepower horizontal compressor units at the Mullinville compressor station, with appurtenances, located in Kiowa County, Kansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may be viewed at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Northern states the horizontal compressor units at its Mullinville compressor station proposed to be abandoned in the instant application are not longer needed due to changes in the operating configuration of its system since the units were initially installed. Northern states that the horizontal compressor units were installed pursuant to authorization received by order issued April 6, 1943 in Docket No. G–280.[1] Northern states the units have not been operated in recent years due to changes in the operating configuration; and that, the subject horizontal units are obsolete and parts to repair these units are not readily available. Northern states that the remaining units at the Mullinville compressor station provide the necessary compression service to meet Northern's current firm service obligations; and that, Northern's facilities downstream of the Mullinville compressor station currently operate at or near the maximum operating pressures without the subject horizontal units. At this time, Northern proposes to abandon these units in-place. However, Northern intends to utilize parts from these units in the future to repair other units located elsewhere on its system as the need may arise.[2]

[1] *Northern Natural Gas Company*, 3 F.P.C. 967 (1943).

[2] The unit or parts of the unit, once abandoned, may be salvaged rather than utilized elsewhere on Northern's pipeline system. At this time, Northern does not anticipate there is any specific value that

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Northern asserts that the abandonment of these facilities will not result in the abandonment of service to any of Northern's existing shippers, nor will the proposed abandonment adversely affect capacity since the compression is no longer needed to meet current firm service obligations. Northern also asserts minimal environmental impact.

Any questions regarding this application should be directed to Keith L. Petersen, Director, Certificates and Reporting for Northern, 1111 South 103rd Street, Omaha, Nebraska 68124, at (402) 398–7421 or Bret Fritch, Senior Regulatory Analyst, at (402) 398–7140.

There are two ways to become involved in the Commission's review of this abandonment. First, any person wishing to obtain legal status by becoming a party to the proceedings for this abandonment should, on or before May 17, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this abandonment. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the abandonment provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this abandonment should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Also, comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying abandonment will be issued.

David P. Boergers,

Secretary.

[FR Doc. 01–10908 Filed 5–1–01; 8:45 am]

BILLING CODE 6717–01–M

can be attributed to these units. Therefore, Exhibit Y attached hereto reflects a salvage value of zero.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–67–000, et al.]

Tractebel Power, Inc., et al.; Electric Rate and Corporate Regulation Filings

April 25, 2001.

Take notice that the following filings have been made with the Commission:

1. Tractebel Power, Inc., Petitioner California Cogeneration Council, et al.

[Docket Nos. EL01–67–000 and EL01–64–000]

Take notice that on April 18, 2001, Tractebel Power, Inc. submitted for filing with the Federal Energy Regulatory Commission (Commission), a Petition for an Enforcement Action Pursuant to Section 210(h)(2)(B) of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. § 824a–3(h)(2)(B) (2000), and Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207.

Comment date: May 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Tri-State Generation and Transmission

[Docket No. NJ01–4–000]

Take notice that on April 20, 2001, Tri State Generation and Transmission Association, Inc. (Tri-State) tendered for filing with the Federal Energy Regulatory Commission (Commission), a Petition for a Declaratory Order that its Open Access Transmission Tariff meets the Commission's comparability standards and is therefore an acceptable reciprocity tariff pursuant to the provisions of Order Nos. 888, 888–A and 888–B.

Comment date: May 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. The Detroit Edison Company

[Docket No. ER01–1379–001]

Take notice that on April 20, 2001, The Detroit Edison Company (Detroit Edison) tendered for filing a compliance Service Agreement for wholesale power sales transactions (the Service Agreements) under Detroit Edison's Wholesale Power Sales Tariff (WPS–2), FERC Electric Tariff No. 3 (the WPS–2 Tariff) between Detroit Edison and Powerex Corp.

Comment date: May 11, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Commonwealth Edison Company, Commonwealth Edison Company of Indiana

[Docket No. ER01–1796–001]

Take notice that on April 20, 2001, Commonwealth Edison Company and Commonwealth Edison Company of Indiana (collectively ComEd) tendered for filing corrections to its April 12, 2001 filing in Docket No. ER01–1796–001 of its Order 614 reformatted OATT. Accordingly ComEd tendered for filing Substitute Original Sheet Nos. 110, 114 and 124 to correct those sheets from which language had inadvertently been dropped in its April 12, 2001 filing.

ComEd requests an effective date of June 12, 2001.

Comment date: May 11, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. PPL Electric Utilities Corporation

[Docket No. ER01–1829–000]

Take notice that on April 20, 2001, PPL Electric Utilities Corporation (PPL Electric Utilities) tendered for filing an Interconnection Agreement between PPL Electric Utilities and PEI Power II, LLC.

Comment date: May 11, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. The Detroit Edison Company

[Docket No. ER01–1830–000]

Take notice that on April 20, 2001, The Detroit Edison Company (Detroit Edison) tendered for filing Service Agreements for wholesale power sales transactions (the Service Agreements) under Detroit Edison's Wholesale Power Sales Tariff (WPS–2), FERC Electric Tariff No. 3 (the WPS–2 Tariff) between Detroit Edison and Alpena Power Company and between Detroit Edison and Consumers Energy Company d/b/a Consumers Energy Traders.

Comment date: May 11, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. PECO Energy Company

[Docket No. ER01–1831–000]

Take notice that on April 20, 2001, PECO Energy Company (PECO) tendered for filing an Interconnection Agreement between PECO and Merck & Co., Inc. (Merck), designated as Service Agreement No. 569 under PJM Interconnection, L.L.C."s FERC Electric Tariff, Fourth Revised Volume No. 1, to be effective on April 20, 2001. Copies of this filing were served on Merck and PJM.

Comment date: May 11, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Commonwealth Edison Company

[Docket No. ER01–1832–000]

Take notice that on April 20, 2001, Commonwealth Edison Company (ComEd) tendered for filing an unexecuted Service Agreement with the city of Batavia and an unexecuted Service Agreement with the city of St. Charles under the terms and conditions of ComEd's Power Sales and Reassignment of Transmission Rights Tariff PSRT–1.

ComEd requests an effective date of March 22, 2001 for the Service Agreements and accordingly requests waiver of the Commission's notice requirements. Copies of the filing were served on the cities of Batavia and St. Charles.

Comment date: May 11, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Commonwealth Edison Company, Commonwealth Edison Company of Indiana

[Docket No. ER01–1833–000]

Take notice that on April 20, 2001 Commonwealth Edison Company and Commonwealth Edison Company of Indiana (collectively ComEd) tendered for filing to amend the generator interconnection procedures set forth in Attachment K of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of June 20, 2001. Copies of the filing were served upon ComEd's jurisdictional customers and interested state commissions.

Comment date: May 11, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Carolina Power & Light Company

[Docket No. ER01–1834–000]

Take notice that on April 20, 2001, Carolina Power & Light Company (CP&L) tendered for filing an executed Service Agreement between CP&L and the following eligible buyer, Washington Gas Energy Services, Inc. Service to this eligible buyer will be in accordance with the terms and conditions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4, for sales of capacity and energy at market-based rates.

CP&L requests an effective date of March 28, 2001 for this Service Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: May 11, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Western Resources, Inc. and Kansas Gas and Electric Company

[Docket No. ER01–1835–000]

Take notice that on April 20, 2001, Western Resources, Inc. (WRI) tendered for filing on its behalf and on behalf of its wholly owned subsidiary, Kansas Gas and Electric Company (KGE), an Order 614 compliant version of the Electric Power, Transmission and Service Contracts between WRI and the Kansas Electric Power Cooperative, Inc. (KEPCo) and between KGE and KEPCo. WRI states that the filing is to submit for filing an Order 614 compliant version of the contract accepted by the Federal Energy Regulatory Commission (FERC) in Docket No. ER93–683–000 KGE states that the filing is not only to submit the an Order 614 compliant version of its contract with KEPCo, accepted in Docket No. ER93–683–000, but also to update the existing Exhibit B to reflect the installation of the Haysville delivery point. This filing is proposed to become effective March 23, 2001.

Copies of the filing were served upon KEPCo and the Kansas Corporation Commission.

Comment date: May 11, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Community Energy, Inc.

[Docket No. ER01–1836–000]

Take notice that on April 20, 2001, Community Energy, Inc. (CEI) tendered for filing for acceptance of CEI Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-rates; and the waiver of certain Commission regulations.

CEI intends to engage in wholesale electric power and energy purchases and sales as a marketer. CEI is not in the business of generating or transmitting electric power. CEI is involved in electric energy marketing, with its primary purpose of serving energy customers with the "cleanest" energy options.

Comment date: May 11, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Northern Indiana Public Service Company

[Docket No. ER01–1837–000]

Take notice that on April 20, 2001, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and H.Q. Energy Services (U.S.) Inc. (H.Q. Energy).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Non-Firm Point-to-Point Transmission Service to H.Q. Energy pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of April 21, 2001.

Copies of this filing have been sent to H.Q. Energy Marketing Corporation, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Comment date: May 11, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of

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Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–10904 Filed 5–1–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File Application for a New License

April 26, 2001.

Take notice that the following notice of intent has been filed with the Commission and is available for public inspection.

a. *Type of filing:* Notice of Intent to File an Application for New License.

b. *Project Nos:* 135 and 2195.

c. *Date filed:* April 9, 2001.

d. *Submitted by:* Portland General Electric Company (PGE).

e. *Name of Projects:* Oak Grove Project P–135 and North Fork Project P–2195.

f. *Location:* The Oak Grove and the North Fork Projects are located on the Clackamas River in Clackamas County, Oregon.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6.

h. Pursuant to Section 16.19 of the Commission's regulations, the licensee is required to make available the information described in Section 16.7 of the regulations. Such information is available from the licensee at Portland General Electric Company, Hydro Licensing Department, 3WTC–BRHL, 121 SW Salmon Street, Portland, Oregon 97204.

i. *FERC Contact:* John Blair, (202) 219–2845, *John.Blair.@ferc.fed.us.*

j. *Expiration Date of Current License:* August 31, 2006.

k. The installed plant capacity of the Oak Grove Project is 44,000 kilowatts (kw). The combined installed plant capacity of the North Fork, Faraday, and River Mill powerhouse(s) is 121,000 kw.

l. The licensee states its unequivocal intent to submit an application for a new license for Project No. 135 and Project No. 2195. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by August 31, 2004.

m. A copy of the notice of intent is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The notice may be viewed on *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

David P. Boergers,

Secretary.

[FR Doc. 01–10909 Filed 5–1–01; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6972–3]

Agency Information Collection Activities: Proposed Collection; Comment Request; Consumer Confidence Reports for Community Water Systems

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Consumer Confidence Reports for Community Water Systems, EPA ICR No.1832.03, OMB No. 2040–0201. The current ICR approval expires on 9/30/01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on the proposed information collection as described below.

DATES: Comments must be submitted on or before July 2, 2001.

ADDRESSES: To obtain a copy of the currently approved Information Collection Request for Consumer Confidence Reports for Community Water Systems without charge, please contact the Safe Drinking Water Hotline (800–426–4791). Hours of operation are 9 a.m. to 5:30 p.m. (ET), Monday–Friday, excluding Federal holidays. Copies are also available from the Office of Water Resource Center (RC4100), U.S. EPA Headquarters, 401 M Street SW, Washington DC 20460. People interested in getting information or making comments aobut the Consumer Confidence Reports for Community Water Systems ICR should direct inquiries or comments to the Office of Ground Water and Drinking Water, Drinking Water Protection Division, Mail Code 4606, 1200 Pennsylvania Avenue, NW, Washington DC 20460.

FOR FURTHER INFORMATION CONTACT: Kathleen A. Williams, EPA, Office of Ground Water and Drinking Water, Drinking Water Protection Division (202)–260–2589, fax (202)–401–2345, email: *williams.kathleena@epa.gov.*

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are owners and operators of community water systems, primacy agents including regulators in the States, Puerto Rico, the U.S. Trust Territories; Indian Tribes and Alaska Native Villages, and in some instances U.S. EPA Regional Administrators and staff.

Title: Consumer Confidence Reports for Water Systems Information Collection Request (OMB Control No. 2040–0201; EPA ICR No. 1832.02), expiring 9/30/01.

Abstract: Section 114 of the Safe Drinking Water Act (SDWA) of 1996, enacted August 6, 1996, amended section 1414(c) of the Act to require community water systems (CWSs) to send an annual Consumer Confidence Report (CCR) to their customers. EPA codified these provisions under subpart O of 40 CFR part 141, the Consumer Confidence Report Rule. The CCR Rule requires, at a minimum, that each CWS mail to each of its customers an annual report on quality of drinking water provided by the system. The information in the report is information that the CWS already collects pursuant to other drinking water regulations. Reports must contain information on the source of water provided, levels of detected contaminants, violations of any national primary drinking water regulations, and health information concerning drinking water and potential risks from detected contaminants. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. In the EPA ICR No. 1832.02, OMB No. 2040–0201 for 1998–2001, the total burden was estimated to be approximately: 459,674 hours at an annual cost of $20,807,555. The estimated number of respondents was 47,040 community water systems. We expect that the burden for the continuing ICR for 2002–2004 will remain the same. Any recommendations from the drinking water community and the general public on this issue will be given consideration by the Agency.

Dated: April 25, 2001.

Phil Oshida,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 01–10992 Filed 5–1–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6972–2]

Agency Information Collection Activities: Proposed Collection; Comment Request; Public Water System Supervision Program Primacy Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Information Collection Request for the Public Water System Supervision Primacy Regulation, ICR Number 1836.01, OMB Control Number 2040–0195. The current ICR approval expires on September 30, 2001. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 2, 2001.

ADDRESSES: To obtain a copy of the currently approved Information Collection Request for the Primacy Regulation without charge, please contact the Safe Drinking Water Hotline (800–426–4791). Hours of operation are 9 a.m. to 5:30 p.m. (ET), Monday-Friday, excluding Federal holidays. Copies are also available from the Office of Water Resource Center (RC 4100), US EPA Headquarters, 401 M Street, SW., Washington, DC 20460. People interested in getting information or making comments about this ICR should direct inquiries or comments to the Office of Ground Water and Drinking Water, Drinking Water Protection Division, Mail Code 4606, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Jennifer Melch; Protection Branch; Office of Ground Water and Drinking Water; EPA (4606), Ariel Rios Building, 1200 Pennsylvania Ave, NW., Washington, DC 20460; telephone (202) 260–7035, or *melch.jennifer@epa.gov.*

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which have primary enforcement authority for the PWSS program.

Title: Information Collection Request for the Public Water System Supervision Program Primacy Regulation, (ICR Number 1836.01, OMB Control Number 2040–0195), expiring on September 30, 2001.

Abstract: This information collection is necessary because the Safe Drinking Water Act (SDWA) Amendments of 1996 added a new element to the requirements for states to obtain and/or retain primacy for the Public Water System Supervision (PWSS) program. In order for EPA to determine whether states meet the new administrative penalty authority requirement, states must submit a copy of their legislation authorizing the penalty authority and a description of their authority for administrative penalties that will ensure adequate compliance of systems serving a population of 10,000 individuals or less. In accordance with the procedures outlined in section 142.11(7)(i) and section 142.12 (c)(iii), the State Attorney General must certify that the laws and regulations were duly adopted and are enforceable. Alternatively, if a state constitution prohibits assessing administrative penalties, the state must submit a copy of the relevant provision of the constitution as well as an Attorney General's statement confirming that interpretation. Furthermore, as provided in section 142.11(a)(7)(ii) and section 142.12(c), EPA may additionally require supplemental statements from the State Attorney General, (such as an interpretation of the statutory language), when the above supplied information is deemed insufficient for a decision. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of

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information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: In the EPA ICR No. Number 1836.01, OMB Control Number 2040–0195, for 1998–2001, the total burden was estimated to be approximately 696.20 hours at a cost of $37,954.63. These figures were based on the one time effort of approximately 12 hours and 26 minutes by each of the 56 states who wish to adopt the administrative penalty authority necessary in order to obtain or retain primacy. This estimate includes the time for gathering, analyzing, writing, and reporting information. There will be no capital, start-up, or operation and maintenance costs. This data collection does not involve periodic reporting or recordkeeping. Since approximately one half of the states have already submitted revision applications, we estimate the burden for the continuing ICR to be $18,977.32. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: April 25, 2001.

Phil Oshida,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 01–10993 Filed 5–1–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6972–4]

Agency Information Collection Activities; Proposed Collection; Comment Request; Public Water Systems Supervision Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Public Water Systems Supervision Program (PWSSP), EPA ICR No. 0270.40; OMB No. 2040–0090. The current ICR approval expires on 9/30/01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 2, 2001.

ADDRESSES: People interested in getting information or making comments about the draft PWSSP ICR should direct inquiries or comments to the Office of Ground Water and Drinking Water, Drinking Water Protection Branch, Mail Code 4606, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Richard Naylor, (202) 260–5135, fax (202) 401–2345, e-mail: *naylor.richard@epa.gov.*

SUPPLEMENTARY INFORMATION: *Affected entities:* Entities potentially affected by this action are public water systems, primacy agents including regulators in the States, Puerto Rico, the U.S. Trust Territories; Indian Tribes and Alaska Native Villages, and in some instances, U.S. EPA Regional Administrators and staff.

Title: Information Collection Request for Public Water Systems Supervision Program, OMB Control No. 2040–0090; EPA ICR No. 0270.40; expires 09/30/2001.

Abstract: This ICR contains record keeping and reporting requirements that are mandatory for compliance with 40 CFR parts 141 and 142. Sections 1401 and 1412 of the Safe Drinking Water Act (SDWA), as amended, require EPA to establish National Primary Drinking Water Regulations (NPDWRs) that ensure the safety of drinking water. These regulations, contained in 40 CFR parts 141 and 142, are designed to reduce any exposure to contaminants—microbial, organic and inorganic chemicals, and radionuclides in finished drinking water to safe levels. The Act further requires EPA to ensure compliance with and enforce these regulations. Section 1445 of SDWA stipulates that every supplier of water shall conduct monitoring, maintain records, and provide such information as is needed for the Agency to carry out its compliance and enforcement responsibilities with respect to SDWA. Ensuring implementation of these requirements by public water systems is principally a responsibility of the States, particularly the 49 States that have assumed primary enforcement responsibility (primacy) for public water systems under SDWA section 1413. As part of the Public Water Systems Supervision Program, the Office of Ground Water and Drinking Water's Safe Drinking Water Information System (SDWIS) collects data from the States on public water systems regulated by EPA. Without comprehensive, up-to-date information on drinking water contamination, States and EPA would not be able to ensure "a supply of drinking water which dependably complies with such maximum contaminant levels" (SDWA section 1401 (1) (d)).

An Agency may not conduct or sponsor and a person is not required to respond to, a collection of information if it does not display a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to: (i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and, (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

Burden Statement: The OMB currently approved burden associated with this ICR is: 9,531,172 burden hours per year; and $180,567 burden costs. Since the publication of the ICR for the Public Water Systems Supervision Program in December 1993, EPA has developed rule specific ICRs for each new or revised drinking water rule. Most of the rules addressed in the 1993 PWSSP ICR (e.g., Radionuclides Rule, Public Notification Rule, Lead and Copper Rule, Total Trihalomethanes Rule, Surface Water Treatment Rule and the Unregulated Contaminant Monitoring Rule) have been revised to varying degrees. Accordingly, in the revision of the PWSSP ICR, EPA will ensure that there is no double counting of burden with the individual ICRs for the revised rules.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. Any recommendations from the drinking water community and the general public on this issue will be given consideration by the Agency.

Dated: April 25, 2001.

Phil Oshida,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 01–10995 Filed 5–1–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6972–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Regulations for a Voluntary Emissions Standards Program Applicable to Manufacturers of Light-Duty Vehicles and Trucks Beginning in Model Year 1997

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Regulations for a Voluntary Emissions Standards Program Applicable to Manufacturers of Light-Duty Vehicles and Trucks Beginning in Model Year 1997, OMB Control Number 2060–0345, expiration date 04/30/01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 1, 2001.

ADDRESSES: Send comments, referencing EPA ICR No. 1761.03 and OMB Control No. 2060–0345, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-mail at *Farmer,sandy@epamail.epa.gov,* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1761.03. For technical questions about the ICR contact: Chestine Payton, Office of Transportation and Air Quality, Certification and Compliance Division, (202) 564–9328, fax (202) 565–2057. E-mail address: *payton,chestine@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulations for a Voluntary Emissions Standards Program Applicable to Manufacturers of Light-Duty Vehicles and Trucks Beginning in Model Year 1997 (OMB #2060–0345, approved through 04/30/01). This is a request for extension of a currently approved collection.

Abstract: The information collection is conducted to support averaging, banking, and trading provisions included in the National Low Emission Vehicle (LEV) program. These averaging, banking, and trading provisions give the automobile manufacturers a measure of flexibility in meeting the fleet average Non-methane organic gas (NMOG) standards and the five-percent cap on Tier 1 vehicles and transitional low emission vehicles (TLEVs) in the ozone transport region (OTR). EPA will use the reported data to calculate credits and debits and otherwise ensure compliance with the applicable production levels and emissions standards. When a manufacturer opted into the Voluntary National LEV program, reporting will be mandatory.

Manufacturers submit information regarding the annual sales, calculation, generation, and usage of emission credits in an annual report. In addition, upon transferring credits to another manufacturer, the manufacturer submits this information along with their annual report. This information will be submitted to EPA in annual reports and will involve approximately 18 respondents at a total annual cost of about $580,212.

EPA currently has in place an Information Collection Request (ICR) and clearance for annual sales/production reporting for light-duty vehicles and trucks. This ICR reflects additional requirements to collate the annual sales/production data and implement the credit calculation program.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on February 21, 2001 (66 FR 11020); no comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 241 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Manufacturers of light-duty vehicles and light-duty trucks.

Estimated Number of Respondents: 18.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden Per Respondent: 4,338.

Estimated Total Annualized Capital, O&M Cost Burden: 0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following address. Please refer to EPA ICR No. 1761.03 and OMB Control No. 2060–0345 in any correspondence.

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Dated: April 20, 2001.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 01–10994 Filed 5–1–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6972–8]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; NSPS New Source Performance Standards (NSPS) for Municipal Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS Subpart E: New Source Performance Standards (NSPS) for Incinerators. OMB Control Number 2060–0040, expiration date April 30, 2001. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 1, 2001.

ADDRESSES: Send comments, referencing EPA ICR No. 1058.07 and OMB Control No. 2060–0040, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-mail at Farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1058.07 For technical questions about the ICR contact Ann Kline (202–564–0119).

SUPPLEMENTARY INFORMATION:

Title: NSPS Subpart E: New Source Performance Standards for Incinerators, OMB Control No. 2060–0040; EPA ICR No. 1058.07, expiring April 30, 2001. This is a request for extension of a currently approved collection.

Abstract: The New Source Performance Standards (NSPS) for Incinerators were promulgated on December 23, 1971. These standards apply to incinerators that charge more than 45 megagrams per day (50 tons per day) of solid waste for the purpose of reducing the volume of the waste after promulgation of NSPS subpart E in 1971. Solid waste is defined as refuse that is more than 50 percent municipal type waste. This information is being collected to assure compliance with 40 CFR part 60, subpart E.

Owners or operators of the affected facilities described must make one-time-only notifications including: (1) Notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; (2) notification of the initial performance test, including information necessary to determine the conditions of the performance test; and (3) performance test measurements and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Monitoring requirements specific to NSPS Subpart E provide information on daily charging rates and hours of operation. Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements, maintenance reports, and records

The control of emissions of particulate matter from municipal incinerators requires not only the installation of properly designed equipment, but also the operation and maintenance of that equipment. Certain records and reports are necessary to enable the Administrator to: (1) Identify existing, new, and reconstructed sources subject to the standards; (2) determine a source's initial capability to comply with the emission standard; and (3) ensure that the standards are being achieved. These records and reports are required under subpart E and the General Provisions of 40 CFR part 60. Owners or operators of affected facilities must provide certain notifications and reports on startup and initial performance. Owners or operators of affected facilities also must record certain operation and maintenance and retain files of this information for at least two years following the date of such measurements, maintenance reports, and records.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless a currently valid OMB control number is displayed. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on August 17, 2000 (65 FR 50196); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 89 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/Operators of Municipal Incinerators.

Estimated Number of Respondents: 96.

Frequency of Response: Daily, Monthly, and Semi-annually.

Estimated Total Annual Hour Burden: 8,544 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $240,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1058.07 and OMB Control No. 2060–0040 in any correspondence.

Dated: April 24, 2001.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 01–10997 Filed 5–1–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6974–2]

RIN 2060–AI72

Hazardous Air Pollutants List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of denial of a petition to delist methanol from the list of hazardous air pollutants.

SUMMARY: This notice announces EPA's decision to deny a petition from the American Forest and Paper Association (AF&PA) requesting that EPA remove the chemical methanol (CAS No. 67–56–1) from the list of hazardous air pollutants (HAP) in section 112(b)(1) of the Clean Air Act (CAA). Petitions to delist a substance from the HAP list are permitted under section 112(b)(3) of the CAA.

The EPA is denying the petition because we cannot conclude that there are adequate data to determine that emissions of methanol may not reasonably be anticipated to cause any adverse effects to human health. This decision is based on our examination of the available information concerning the potential hazards of and projected exposures to methanol emissions. We have determined that the appropriate health-based criterion for evaluating the risks associated with methanol emissions is the range of 0.3 to 30 milligrams per cubic meter (mg/m^3). To demonstrate that exposures are reasonably anticipated not to result in any adverse effects to humans, including sensitive subpopulations, the estimated 24-hour exposure concentrations would need to be 0.3 mg/m^3 or lower. Our review of the petitioner's exposure assessment leads us to conclude that maximum 24-hour exposures could be in the range of 2 to 7 mg/m^3, which is well above 0.3 mg/m^3. Because the criteria for removing a substance from the list of HAP have not been met, EPA must deny the petition. Moreover, any future petition for the removal of methanol from the list of HAP will be denied as a matter of law unless such future petition is accompanied by substantial new information or analysis.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck French, Emission Standards Division (MD–13), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone (919) 541–0467, electronic mail address: *french.chuck@epa.gov.*

SUPPLEMENTARY INFORMATION: *Docket.* The EPA has compiled a docket, No. A–99–23, that contains documents relevant to this notice of denial. The docket reflects the full administrative record for this action and includes all the information relied upon by the EPA in the development of this notice of denial. The docket is a dynamic file because material is added throughout the decision process. The docketing system is intended to allow members of the public and industries to readily identify and locate documents. It is available for public review and copying between 8:30 a.m. and 5:30 p.m., Monday through Friday (except for Federal holidays) at the following address: U.S. EPA, Air and Radiation Docket and Information Center (6102), 401 M Street, SW, Washington, DC 20460. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). Alternatively, copies of the docket index, as well as individual items contained within the docket, may be mailed on request from the Air Docket by calling (202) 260–7548 or (202) 260–7549. A reasonable fee may be charged for copying docket materials.

World Wide Web (WWW)

In addition to being available in the docket, an electronic copy of this notice will be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the notice will be posted on the TTN's policy and guidance page at http://www.epa.gov/ttn/oarpg. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Judicial Review

Today's final action denying AF&PA's petition to remove methanol from the list of HAP constitutes an order under section 112 of the CAA that is based on a determination of nationwide scope and effect. Pursuant to section 307(b)(1) of the CAA (42 U.S.C. 7607(b)(1)), a petition for review of this action may be filed only in the United States Court of Appeals for the District of Columbia, and must be filed within 60 days from the date of publication of this final action.

Outline

This notice is organized as follows:

I. Background
II. Criteria for Delisting
III. Evaluation of the Petition and Subsequent Material
A. Submission of the Petition and Subsequent Material
B. Uses, Sources, and Chemical Characteristics of Methanol
C. Methanol Health Effects Analysis
D. Sources of Methanol Emissions and Maximum Levels of Exposure
E. Risk Characterization
F. Other Elements of the Petition
IV. Denial of the Petition

I. Background

Section 112 of the CAA contains a mandate for EPA to evaluate and control emissions of HAP. Section 112(b)(1) presents the list of HAP which includes a list of specific chemical compounds and compound classes used to identify source categories for which EPA must promulgate emissions standards. The EPA is required to periodically review the list of HAP and, where appropriate, revise this list by rule. In addition, under section 112(b)(3), any person may petition the EPA to modify the list by adding or deleting one or more substances. A petition to remove a HAP from the HAP list must demonstrate that there are adequate data on the health and environmental effects of the substance to determine that emissions, ambient concentrations, bioaccumulation, or deposition of the substance may not reasonably be anticipated to cause any adverse effects to human health or the environment. The petitioner must provide a detailed evaluation of the available data concerning the substance's potential adverse health and environmental effects and characterize the potential human and environmental exposures resulting from emissions of the substance.

On March 8, 1996, the AF&PA submitted a petition to delete the chemical methanol (methyl alcohol, methyl hydroxide, wood alcohol, wood spirit) (CAS No. 67–56–1) from the HAP list. Following receipt of the petition, we conducted a preliminary evaluation to determine whether the petition was complete according to Agency criteria. To be deemed complete, a petition must consider all relevant available health and environmental effects data. A petition must also provide comprehensive emissions data, including peak and annual average emissions for each source or for a representative selection of sources, and must estimate the resultant exposures of people living in the vicinity of the sources. In addition, a petition must address the environmental impacts associated with emissions to the ambient air and impacts associated with the subsequent cross-media transport of those emissions. The petitioner submitted several supplements to the petition between March 1997 through February 1999 to address deficiencies

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identified during the completeness review. We determined the petition to delete methanol to be complete, and we published a notice of receipt of a complete petition in the **Federal Register** on July 19, 1999 (64 FR 38668). We also requested comment on the petition, including a request for additional data relevant to EPA's consideration of the petition.[1]

II. Criteria for Delisting

Section 112(b)(2) of the CAA requires the EPA to make periodic revisions to the initial list of HAP, outlines the criteria to be applied in deciding whether to add or delete a substance from the list and identifies pollutants that should be listed as:

> * * * pollutants which present, or may present, through inhalation or other routes of exposure, a threat of adverse human health effects (including, but not limited to, substances which are known to be, or may reasonably be anticipated to be, carcinogenic, mutagenic, teratogenic, neurotoxic, which cause reproductive dysfunction, or which are acutely or chronically toxic) or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition, or otherwise * * *.

To assist the EPA in making judgments about whether a pollutant causes adverse environmental effects, section 112(a)(7) defines an "adverse environmental effect" as:

> * * * any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.

Section 112(b)(3) establishes general requirements for petitioning the Agency to modify the HAP list by adding or deleting a substance. Although the Administrator may add or delete a substance on his or her own initiative, when EPA receives a petition to add or delete a substance from the list, the burden is on the petitioner to include sufficient information to support the request under the substantive criteria set forth in section 112(b)(3)(B) and (C). The statute directs the Administrator to either grant or deny a petition within 18 months of receipt. If the Administrator decides to grant a petition, the Agency publishes a written explanation of the Administrator's decision, along with a proposed rule to add or delete the substance. The proposed rule is open to public comment and public hearing and all additional substantive information received is considered prior to the issuance of a final rule. If the Administrator decides to deny the petition, the Agency publishes a notice of its denial, along with a written explanation of the basis for denial. A decision to deny a petition is a final Agency action subject to review in the DC Circuit Court of Appeals under section 307(b) of the CAA.

To promulgate a final rule deleting a substance from the HAP list, section 112(b)(3)(C) provides that the Administrator must determine that:

> * * * there is adequate data on the health and environmental effects of the substance to determine that emissions, ambient concentrations, bioaccumulation or deposition of the substance may not reasonably be anticipated to cause any adverse effects to the human health or adverse environmental effects.

We do not interpret section 112(b)(3)(C) to require absolute certainty that a pollutant will not cause adverse effects on human health or the environment before it may be deleted from the list. The use of the terms "adequate" and "reasonably" indicate that the Agency must weigh the potential uncertainties and their likely significance. Uncertainties concerning the risks of adverse health or environmental effects may be mitigated if we can determine that projected exposures are sufficiently low to provide reasonable assurance that such adverse effects will not occur. Similarly, uncertainties concerning the magnitude of projected exposures may be mitigated if we can determine that the levels which might cause adverse health or environmental effects are sufficiently high to provide reasonable assurance that exposures will not reach harmful levels. However, the burden remains on a petitioner to demonstrate that the available data support an affirmative determination that emissions of a substance may not be reasonably anticipated to result in adverse effects on human health or the environment (that is, EPA will not remove a substance from the list of HAP based merely on the inability to conclude that emissions of the substance will cause adverse effects on human health or the environment). As a part of the requisite demonstration, a petitioner must resolve any critical uncertainties associated with missing information. We will not grant a petition to delist a substance if there are major uncertainties which need to be addressed before we would have sufficient information to make the requisite determination.

A denial of a petition may take one of two forms, it may either be a denial with prejudice, in which case any future petition will be denied as a matter of law unless it is accompanied by substantial new evidence; or it may be a denial without prejudice, in which case EPA will consider future petitions without the presentation of substantial new evidence. The EPA will issue a denial with prejudice when there are adequate data available which lead EPA to conclude that emissions of a substance can be anticipated to result in adverse effects to human health or the environment; or when EPA concludes that the available evidence cannot support a determination that a substance may not reasonably be anticipated to result in adverse effects to human health or the environment and, therefore, that substantial new information or analyses would be necessary to allow the Agency to make such a determination. Today's denial is a denial with prejudice because EPA concludes that the available evidence (the data and analysis upon which the petitioner relies) cannot support a determination that methanol emissions may not reasonably be anticipated to result in adverse effects to human health or the environment.[2]

III. Evaluation of the Petition and Subsequent Material

A. Submission of the Petition and Subsequent Material

The original petition submitted on March 6, 1996, and the supplemental materials provided by AF&PA up through February 18, 1999, contain information on chemical characteristics of methanol, emissions sources, fate and transport, exposure, toxicity, atmospheric transformation, and environmental impacts. We determined that these materials constituted a complete petition, and that AF&PA's petition was complete as of February 18, 1999. In October 1999, during the technical review of the complete petition, a significant new study, sponsored by the Health Effects Institute (HEI), titled "Reproductive and Offspring Developmental Effects Following Maternal Inhalation Exposure to Methanol in Nonhuman Primates" (Burbacher, et al., 1999) (hereinafter the "Burbacher Primate Study"), was published in the HEI Research Report Number 89 (i.e., HEI Report) along with commentary by the HEI Health Review Committee. Because of the direct relevance of this information, we considered the Burbacher Primate Study, as well as the entire HEI Report in our technical review. Moreover, the petitioner provided EPA with additional materials on November 13, 1999 and July 3, 2000, in support of the original petition. These materials provided comments, opinions and interpretations regarding the data presented in the Burbacher Primate Study.

B. Uses, Sources, and Chemical Characteristics of Methanol

Methanol is used as a solvent in various adhesives, cleaners, and inks. Other sources include wood pulping; combustion of biomass, refuse, and plastics; and manufacture of petroleum, charcoal, and plastics. The petition describes methanol as a simple alcohol containing one carbon atom. Methanol is reported to occur naturally as an emission resulting from metabolism in vegetation, microorganisms, and insects. It has also been found in volcanic gases. Methanol is produced during the natural biodegradation of organic wastes of all kinds, including sewage and wastewater sludge, by microorganisms normally found in the environment.

C. Methanol Health Effects Analysis

In the materials submitted between March 1996 and February 1999, the petitioner presents an evaluation of the available health effects data, including human and laboratory animal studies. The petition states that there is a significant amount of data on methanol toxicity to both animals and humans. Most of the data relate to acute exposure through ingestion and, to a lesser degree, acute inhalation exposures, although there are also numerous studies of sub-chronic and chronic inhalation exposures at low concentrations. The petition describes four studies of exposed human workers and several studies of mice, rats, dogs, and nonhuman primates.

Based on negative results in mutagenicity testing, the petition asserts that methanol is not likely to be genotoxic. Moreover, based on testing in mice for 18 months and rats for 24 months, and on an understanding of methanol's metabolism and likely mode of action, the petition states that there is no evidence to indicate, nor reason to believe, that methanol is carcinogenic.

The petitioner proposes that the primary adverse effects of methanol that occur after acute high exposures are metabolic acidosis and central nervous system effects including eye damage. These acute toxic effects result from saturation of a metabolic pathway that results in accumulation of formate. Other effects reported in four epidemiology studies of clerical workers exposed to high concentrations of methanol include headaches, nausea, and blurred vision.

The petition states that there are no reports of reproductive or developmental effects in humans due to methanol exposures. However, laboratory inhalation studies have shown reproductive and developmental effects in animals exposed to relatively high concentrations. The petitioner determined that the most sensitive toxic endpoint from the available studies was developmental effects (ossification of cervical ribs) in mice exposed in the womb as identified in a study by Rogers, *et al.* 1993. In that study, pregnant mice were exposed by inhalation to methanol concentrations ranging from 1,300 to 19,500 mg/m^3 for 7 hours per day on days 6–15 of pregnancy. The no-observable-adverse-effect-level (NOAEL) reported in the Rogers mouse study is 1,300 mg/m^3.

No EPA inhalation reference concentrations (RfC) are currently available for methanol to assess the potential for adverse human health effects due to inhalation exposure. Therefore, the petitioner conducted a dose-response assessment with the available toxicity data to derive a similar health-based criterion called a "safe exposure level" (SEL). The petitioner asserts that exposures at or below the SEL can be expected to produce no adverse human health effects from lifetime inhalation exposures. The SEL was derived based on an approach similar to the EPA RfC methodology, which incorporated the identification of the most sensitive toxic endpoint from a critical study and a corresponding NOAEL, an adjustment of the NOAEL from an animal exposure concentration to an equivalent human exposure concentration, and application of selected uncertainty factors.

The petitioner identified the Rogers mouse study as the critical study with a NOAEL of 1,300 mg/m^3. To determine the human-equivalent concentration (HEC) of methanol, the petitioner used this NOAEL and converted it to a human-equivalent NOAEL by multiplying the animal species NOAEL by the ratio of a breathing rate divided by the body weight of the animal species to the same parameters for humans, which resulted in a HEC of 8,300 mg/m^3. Application of a standard 10-fold uncertainty factor for interspecies extrapolation and another standard 10-fold uncertainty factor for individual variation in the population results in a calculated SEL of 83 mg/m^3.

To support the claim that the SEL is safe, the petitioner presents information on background body levels in humans. Methanol is found in the body without exogenous exposures to the chemical in ambient air. This background body concentration, which is approximately 1–2 milligrams/liter (mg/l) methanol in blood, is attributed to both natural metabolic processes and dietary sources (such as fresh fruit and vegetables, fermented beverages, and Aspartame-sweetened diet beverages). The petitioner predicts, using pharmacokinetic (PK) models, that steady state blood methanol levels in humans exposed to 83 mg/m^3 are similar to typical measured background levels in humans.

The EPA is unconvinced by the petitioner's human health effects assessment and the proposed SEL. We conclude that the petitioner's SEL is not an appropriate criterion for decision making for this petition. In fact, as discussed later in today's notice, we have derived a range for a health-based decision criterion that includes values that are significantly lower than the petitioner's SEL. Our concerns about the health effects assessment and the SEL, which are explained below, are the basis for our denial of the petition to remove methanol from the HAP list.

We agree with the petitioner that the available evidence does not suggest that methanol is genotoxic or that it is likely to be carcinogenic. We agree that documented adverse effects of methanol after acute high exposures include metabolic acidosis and central nervous system effects, including eye damage. We also agree that developmental effects could be one of the most, or the most, sensitive endpoint and could occur after acute or chronic exposures. However, as shown in the Burbacher Primate Study, reproductive effects could also be

[1] We received eighteen submissions in response to the request for comments concerning the methanol petition. The submissions are in the docket. Fifteen of these were from various industry groups and supported the removal of methanol from the HAP list. The other three comments received were from States opposed to the petition. We considered all comments during our technical review.

[2] A denial with prejudice serves a vital administrative purpose. It prevents the endless re-submission of essentially identical petitions (with only peripheral or trivial changes) in the wake of an EPA decision on the merits of a petition. Thereby, once EPA has denied a petition to delist based on a full consideration of the merits, any future petition to remove the same chemical will not trigger another full evaluation of the merits unless it includes substantial data or analyses that were not present in the earlier petition. Conversely, EPA may issue a denial without prejudice, for example, where there has not been a complete examination of the merits of a petition, and where, therefore, EPA has not reached a decision on the petition that is based on a robust evaluation of the underlying technical data and analyses. For example, where a petition obviously lacks some element necessary for EPA to properly evaluate the petition, EPA may deny such petition without prejudice and allow the petitioner to re-submit the petition with the necessary additional information without a determination that the additional information constitutes substantial new data or analysis. See, e.g., Notice of Denial, January 13, 1993 (58 FR 4164) (denying without prejudice a petition to remove five glycol ethers from the list of HAP).

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considered among the most sensitive endpoints.

The petitioner derived its proposed SEL using the available information in much the same way that EPA might use this information to derive an RfC. A specified NOAEL from a critical study (Rogers et al.) was identified and adjusted to an HEC yielding a NOAEL(HEC) of 8,300 mg/m^3. This value was then divided by uncertainty factors of 10-fold each for interspecies extrapolation and for intraspecies variability to produce an SEL of 83 mg/m^3.

In response to suggestions by EPA scientists in 1996, the petitioner made no duration adjustment of the NOAEL in calculating the HEC. However, the question of whether and how developmental effects data should be duration-adjusted has been a matter of ongoing discussion within the Agency and the broader scientific community. Although the specific protocol for acceptable duration-adjustment remains to be more fully developed, we believe the current state of scientific understanding differs from the understanding in 1996 and tends to support incorporating duration-adjustment in the petitioner's derivation of the SEL for methanol. In order to be public-health protective, since either the chemical or its damage may accumulate, current risk assessment procedures adjust for duration of exposure, i.e., adjust short-term inhalation exposures associated with adverse effects by a concentration times time ("c × t") factor in order to derive health risk estimates for longer-term exposures. To duration-adjust the NOAEL, the concentration would be multiplied by an additional factor of 7/24 hrs/day (because Rogers et al. exposed the mice for 7 hrs/day). In this case, the resulting SEL would be 24 mg/m^3.

We also note that the petitioner's SEL analysis did not employ available techniques such as the benchmark dose (BMD) method to utilize more of the data from Rogers et al. to characterize the dose-response relationship. Current EPA practice in deriving RfC is to apply the BMD method whenever the data are appropriate for its application. This method has been used relatively recently in health assessments for several pollutants (such as methylmercury, carbon disulfide, antimony trioxide, manganese, and diesel exhaust), which are available in the EPA's Integrated Risk Information System (IRIS). We did not require the petitioner to specifically include a BMD approach as part of the completeness review. However, we suggested to the petitioner (in a letter dated September 30, 1998) that the health hazard assessment could be strengthened by utilizing more than one method to derive the SEL. For example, we stated that using the EPA's BMD method would provide a useful comparison to the petitioner's approach.

A BMD analysis was included in the published paper by Rogers et al. and yielded 305 parts per million (ppm) (approximately 400 mg/m^3) as the BMDL–5 (lower 95 percent confidence limit on the maximum likelihood estimate for a 5 percent added risk for the incidence of cervical ribs). We have conducted additional but still preliminary BMD analyses on data from the study by Rogers et al. using various mathematical models in conjunction with the EPA BMD software under development. By our initial calculations, a BMDL–5 for excess risk of cervical ribs could fall in a range from roughly 195 to 325 mg/m^3. The difference between this range of estimates and the value reported by Rogers et al. is due in part to differences in the calculation of added risk versus excess risk, as well as other minor differences in the treatment of the data. If the BMDL–5 value we have calculated were used instead of the NOAEL in the petitioner's derivation of their SEL, the resulting SEL would be roughly 4–7 fold lower, or on the order of 10–20 mg/m3, assuming that the BMDL–5 is used as an alternative for a NOAEL and the same uncertainty factors are applied. Incorporating the duration-adjustment noted above would yield an SEL on the order of 4–6 mg/m^3.

Also in response to our previous suggestions, the petitioner provided a supplementary analysis in August 1997 of PK data for experimental animals exposed to methanol by inhalation. This analysis involved dosimetric adjustments of the exposure concentrations based on either a default value or data from various publications (Perkins et al., 1995; Horton et al., 1992). The petitioner concluded that the PK data supported their use of the default dosimetric adjustment and indicated that the default value provided a conservative (protective) SEL. A more refined model of methanol inhalation pharmacokinetics (Fisher et al., 1999) has recently become available. That model appears to suggest that relative respiratory uptake in monkeys may be less than previously understood. To the extent that respiratory uptake in humans approximates that of nonhuman primates, this finding may tend to support the petitioner's claim that the default dosimetric adjustment is conservative in the case of the mouse data. However, the default adjustment would still be used and, thus, no change in the SEL is implied on this basis.

In October 1999, several months after the petition was determined to be complete, the Burbacher Primate Study was released by the HEI. This study was funded through the HEI and published after a thorough review by an ad hoc peer review panel, as well as the standing HEI Health Review Committee, both of which comprised well-recognized, independent, scientific experts.

In that study, Burbacher et al. exposed 11–12 adult female rhesus macaque monkeys per group to 0, 200, 600, or 1,800 ppm (0, 260, 780, 2,300 mg/m^3) methanol vapors for 2.5 hours/day, 7 days/week, prior to and after conception, but terminating before parturition. The investigators measured reproductive performance of the mothers and also evaluated the offspring at regular intervals during the first 9 months of life to assess their growth and neurobehavioral development. They also conducted PK studies to determine whether methanol disposition (absorption, distribution, metabolism, and excretion) was altered by repeated methanol exposures.

No significant effects in reproductive function distinguished the methanol-exposed adult groups from the control group, except for a statistically significant ($p = 0.03$) decrease in the duration of pregnancy. Pregnancies resulting in live births were about 6–8 days (5 percent) shorter in the methanol-exposed groups. However, as described below, there are uncertainties and ongoing debate as to whether this decrease is related to methanol exposures.

With regard to effects on the offspring, the investigators evaluated growth measures and various neurological functions. The only significant effect in growth measures was a severe wasting syndrome that became evident in two female offspring from the 1800 ppm group at 1–1.5 years of age. Again, as described below, there is uncertainty and debate as to whether this wasting was due to methanol exposure or some other factors.

Neurobehavioral development was evaluated in several ways, including clinical assessments, as well as objective tests of sensorimotor development, visual acuity, memory, and social interaction. Two effects were reported. First, a concentration-related delay in sensorimotor development was measured in male offspring during the first month of life. As reflected in the infant's ability to reach for, grasp, and retrieve a small object, sensorimotor development was delayed by approximately 9 days for the 200 ppm group to more than 2 weeks for the 600 and 1,800 ppm groups. In addition, the offspring prenatally exposed to methanol did not perform as well as controls on the Fagan Test of Infant Intelligence. The Fagan test has been shown to reflect information processing, attention, and visual memory function in human and nonhuman primate infants and has been proven to be sensitive to the effects of prenatal exposure to toxic chemicals such as methylmercury and polychlorinated biphenyls (PCB), as well as correlating well with IQ measures in children at later ages. The test is based on the ability of an infant to recognize previously seen visual stimuli and distinguish them from novel stimuli. A higher level of cognitive function is implied by a tendency to attend preferentially to a novel stimulus. All three groups of prenatally methanol-exposed infants failed to show a significant preference for novel social stimuli (pictures of monkey faces), whereas the control group did show a significant novelty preference as expected. However, performance was not concentration-related, nor was there a significant overall methanol effect across the four groups.

As stated by HEI, "the investigators reported no systematic effects of prenatal methanol exposure on most of the measures used to test infant neurobehavioral development." Moreover, HEI concludes that "overall, the results provide no evidence of a robust effect of prenatal methanol exposure on the neurobehavioral development of nonhuman primate infants."

The petitioner submitted comments on the Burbacher Primate Study in November 1999 and July 2000. In the November 1999 submittal, the petitioner stated that "it is doubtful whether this decrease in gestation period was related to methanol exposure, as there was no dose-response and no apparent differences in the offspring, in terms of body weight or other physical parameters, between those animals exposed *in utero* and the control group. The reduced duration of pregnancy moreover was within the normal range of gestation periods for this species." The petitioner also stressed that there was no evidence that the wasting syndrome observed in two offspring was related to methanol exposure. In addition, the petitioner asserted that the study provides no reliable evidence of an adverse effect of prenatal exposure on the neurobehavioral development of the offspring. Furthermore, the petitioner stressed that the Burbacher Primate Study shows that repeated exposure to concentrations of methanol vapors as high as 1800 ppm does not result in accumulation of blood formate above baseline levels. The petitioner concludes that overall, the PK data provide further support for the SEL of 83 mg/m^3.

The petitioner submitted additional comments on the Burbacher Primate Study in July 2000. The EPA generally considers substantive augmentation of an already complete petition late in the decision-making process to be a petition amendment that requires withdrawal and re-submission of the petition, thereby restarting the statutory clock for Agency decision making.[3] However, in this case the petitioner requested that EPA delay its decision on the petition until after conducting a preliminary review of the petitioner's new submission. The EPA agreed to do so, and to reserve judgement (pending this review) as to whether the content of this submission amounted to substantive new information or analysis. To the extent that this material might constitute a substantive augmentation of the petition, we are not obligated to consider it in connection with our decision on the current petition. Nevertheless, because we believe that the arguments and comments presented in the new submission are merely extensions of the arguments and comments previously offered by the petitioner or presented in the HEI Report, we have fully considered all of the petitioner's submissions as a part of today's decision.

In the July 2000 submittal, the petitioner presented the opinions and comments of five expert scientists[4] who had conducted independent reviews of the HEI Report. The petitioner summarized the comments of the experts stating that "those experts express strong reservations against drawing any conclusions about methanol reproductive or developmental effects from the HEI Report, both because the statistical analyses performed presented a likelihood that some differences between controls and exposed groups would occur just by chance, and because the observed effects were inconsistent with the other results of the study. In particular, the lack of any clear dose-response relationship; the inconsistencies between results for different cohorts, sexes, or tests of related functions; and the fact that some of the effects identified were associated with only a small increase in maternal blood methanol all caused AF&PA experts to conclude that the reported effects on gestation period and neurobehavioral development are unlikely to be real." The detailed comments from the petitioner and experts are presented in the docket.

The data from the 1999 Burbacher Primate Study complement and extend the current understanding of methanol health effects. As the HEI Health Review Committee noted in its commentary, the experiments in this study were "well designed and executed with appropriate quality control and quality assurance procedures. Thus, one can have confidence in the data." Moreover, because nonhuman primates are the best surrogate to study methanol toxicity and neurobehavioral development in humans, the results are highly relevant for risk assessment. We agree with these statements by the HEI Health Review Committee about the relevance of the Burbacher Primate Study for risk assessments, and while it is evident that the results of the study are subject to multiple interpretation, we believe that, absent additional data, the observed effects must be considered in any risk assessment of methanol emissions.

As mentioned previously in today's notice, there was a statistically significant ($p = 0.03$) decrease in the duration of pregnancy. Although no other adverse reproductive outcomes (*e.g.*, reduced fertility, spontaneous abortion, reduced neonatal size or weight) were statistically significant, it is noteworthy that cesarian sections (C-sections) were performed only on methanol-exposed females, that is, two C-sections per group for a total of six in the methanol-exposed groups versus no C-sections in the controls. These operations were performed in response to signs of difficulty in the pregnancy (*e.g.*, vaginal bleeding) and, thus, serve as supporting evidence of reproductive dysfunction in the methanol-exposed females.

The HEI Health Review Committee stated that the pregnancy durations in both control and methanol-exposed groups were within the norms of other colonies. However, the reason for having a concurrent control is to provide a more direct comparison with

[3] This interpretation is necessary in order to avoid situations where EPA might otherwise have insufficient time to adequately review and analyze substantive information submitted by a petitioner at or near the end of the statutory time period. See CAA section 112(b)(3)(D). However, it is entirely within a petitioner's discretion to direct EPA to either proceed with a determination without looking at such material, or to re-submit the petition with the new substantive material.

[4] The five experts were as follows: David G. Hoel, PhD., from Medical University of Texas; Anthony R. Scialli, M.D., from Georgetown University; Thomas B. Starr, PhD., from TBS Associates; and Alice F. Tarantal, PhD., from University of California, Davis.

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the experimentally treated animals. Monkeys in other colonies were not necessarily subjected to the same conditions or type of handling that existed in the Burbacher Primate Study. Moreover, it is not clear what "norms" have been established or how they should be applied in this case. By analogy, a reduction of IQ from 102 to 98 is a small percentage change around a norm of 100, but if this reflects a population average change, the reduction is quite meaningful. Although no one should generalize an effect size from the small number of monkeys in the Burbacher Primate Study to an entire population, neither should the difference between methanol-exposed and control groups be dismissed as inconsequential because it is "within the norms."

As to the petitioner's comment that "vaginal bleeding 1–4 days prior to delivery of live born-healthy infants is not that unusual in this species, so vaginal bleeding does not necessarily imply an at risk fetus requiring cesarian-section delivery," it is noteworthy that the control animals did not have such bleeding. No evidence was given by AF&PA to counter the determination of the veterinarians conducting the study that placental separation was occurring in the methanol-treated animals requiring C-section. While the exposed animals that received C-sections were excluded from the analysis regarding the determination of gestation length, this finding, in conjunction with the shortened gestation length of the other methanol-exposed animals, would support the notion of problems with maintenance of pregnancy. Overall, this is not a trivial outcome on duration of pregnancy and may have adverse consequences on the offspring, even in the absence of frank effects. Furthermore, the lack of an increasing dose-related trend in the pregnancy duration data does not nullify the fact that all of the methanol-exposed groups, both when tested collectively and separately against controls, had significantly shorter pregnancy lengths. In summary, the reduction in pregnancy duration observed in this study appears to constitute an adverse reproductive effect associated with methanol vapor concentrations of 200–1800 ppm.

As mentioned above, the only significant effect in growth measures was a severe wasting syndrome that became evident in two female offspring from the 1800 ppm group at 1–1.5 years of age. In both cases, the animals ate normally but lost weight and failed to grow normally, which led to progressive weakness and ultimately their having to be euthanized. No infectious agent or pathogenic factor could be identified. Thus, it appears that a highly significant toxicological effect on growth could be attributed to prenatal methanol exposure at 1800 ppm.

As noted previously in today's notice, two neurobehavioral development effects were found. A concentration-related delay in sensorimotor development was measured in male offspring during the first month of life. Also, the offspring prenatally exposed to methanol did not perform as well as controls on the Fagan Test of Infant Intelligence. The HEI Health Review Committee recommended that these neurobehavioral findings should be interpreted "cautiously" for various reasons. The first reason for caution was the small number of animals in each group. In our view, however, the low number of animals presumably implies less statistical power to detect an effect, not necessarily that an apparent effect was more likely due to chance. On this basis, we find the results to be no less credible and perhaps even more credible, if anything. The second reason for caution was that no adjustment was made for multiple comparisons. However, it is not clear to us, nor apparently to the statisticians involved in either analyzing or reviewing these data (otherwise, an adjustment would have been made), what would be the most appropriate adjustment to make in this instance, because the concept of having a battery of tests is to evaluate different domains of function that are presumably somewhat, if not entirely, independent of each other. The third reason for caution was that "no dose response was generally noted" in connection with the observed effects. Actually, for the sensorimotor effects, we note that a concentration-related trend was evident in the data for males and for both sexes combined (although not for the females alone); the basis for the gender-specific nature of this finding is unknown, but other developmental neurobehavioral effects, including the developmental toxicity effects of ethanol (Osborn et al., 1998; Rudeen, 1992), are known to differ between sexes and, thus, cannot be dismissed as necessarily chance occurrences. As for the lack of a concentration-related trend in the Fagan test results, this could well reflect the inherent constraints of the measured endpoint, which typically is an approximately 60 percent response preference for novel stimuli vis-a-vis a 50 percent chance response level. If the control group performs at the 60 percent level and the most impaired subjects perform at approximately the 50 percent chance level (worse than chance performance would not be expected), the range over which a concentration-response relationship can be expressed is necessarily quite limited and, thus, the lack of a clear monotonic trend is not surprising.

As the fourth reason for caution, the petitioner and the HEI Committee point out that a consistent effect was not seen on other measures of cognitive performance in the Burbacher Study, namely, the Nonmatch to Sample Test. However, the lack of a significant methanol effect on this test may have been due in part to the fact that the task was apparently quite difficult for the infant monkeys, regardless of their exposure. Also, other studies suggest that these particular tests reflect different neuroanatomical mechanisms (McKee and Squire, 1993; Clark *et al.*, 1996) and, therefore, may be independent of one another. Hence, the lack of consistency among different tests does not necessarily imply that the few significant results are implausible. Measures of cognition used in the assessment battery not only measure different neurobehavioral functions but also were performed at different ages. A developmental perturbation would not be expected to affect all tests of all endpoints at all times of assessment. Thus, the tests of visually-directed reaching and recognition memory would not necessarily be expected to give the same results. The supposition of the AF&PA expert reviewers that gross effects should be seen on measures of head circumference and early measures of growth and development is an oversimplification of the range of effects that may follow developmental exposures to neurotoxic agents. Consequently, we find that the lack of concordance among all the tests in the Burbacher Primate Study is not a cogent argument for a lack of biological plausibility for effects of gestational exposure to methanol.

As the fifth reason for caution, the HEI Health Review Committee and petitioner note that maternal blood methanol levels in the 200 ppm group were only slightly higher than the controls (*i.e.*, approximately double). But as the HEI Health Review Committee states, "these results may indicate sensitivity to even small increases in maternal blood methanol, or they may indicate random findings." Without a better understanding of the fetal PK processes that could have been involved in these effects, it may be presumptuous to suppose that the measured maternal blood methanol levels are an adequate indicator of fetal exposure to the responsible toxic agent.

In summary, the HEI Health Review Committee's notes of caution do not warrant dismissal of the findings. Therefore, we conclude that these findings provide plausible evidence of developmental neurotoxicity in infant monkeys that had been exposed prenatally to methanol via their mothers' exposure to concentrations of 600–1800 ppm methanol vapor and possibly lower.

We also have concerns regarding the potential background levels of methanol in human blood resulting from consumption of fruit. The assertion is made by the petitioner that foods (especially fresh fruit) provide quantities of methanol, as measured in human breath, that would constitute a background level similar to that found from anthropogenic sources. This assertion is derived from papers by Taucher *et al.* (1995) and Lagg *et al.* (1994), in which four individuals are fed either three peaches, three peaches and one orange, six peaches and one banana, or five peaches and four bananas. Breath measurements were taken starting before, during, and starting immediately after consuming these fruits. There is no discussion as to whether these individuals rinsed their mouths out after consuming the fruit. Nor is there any correction for off-gassing of methanol from the residual mouth contents or stomach contents. Additionally, studies by Batterman *et al.* (1998) suggest that human breath concentrations of methanol following inhalation exposure only achieve equilibrium with blood concentrations "if subjects are in a methanol-free environment for 30 min or more after exposure" due to desorption from the lining of the respiratory tract. There is reason to suspect that the same thing happens with the fruit in the mouth, esophagus, and stomach, especially given the tendency of high-fiber foods such as fruit to leave remnants on teeth and to stimulate gas release from the upper GI.

The peak human breath concentrations reported in the Taucher *et al.* and Lagg *et al.* studies are only 3 ppm (3.9 mg/m^3) from the largest quantity of fruit 2 hours post-consumption and 4 ppm (5.2 mg/m^3) from 100 ml of 48 proof homemade brandy with 0.19 percent methanol at 4 hours post consumption. The breath concentration of methanol after brandy consumption falls off with a half-life of about 1.5 hr, roughly identical to what is seen from the Batterman *et al.* study, while the concentration after eating fruit does not decline, strongly suggesting that the source material is still in the mouth and upper GI tract. Although a concentration of 3–4 ppm in exhaled breath is within the range of human experience, it is probably an extreme case. The acute consumption of sufficient fruit to raise breath concentrations more than twice that level most likely involves acute GI effects sufficient to discourage the attempt. In summary, based on the weight of evidence, we think that there are reproductive and developmental health consequences following exposure to methanol in both mice (Rogers *et al.*) and primates (Burbacher *et al.*) and that these effects should be considered relevant to potential risks in humans.

Although the findings from Burbacher *et al.* provide reasonable qualitative evidence of reproductive and developmental toxicity associated with methanol exposure during pregnancy, characterizing the dose-response relationship in these data is more problematic. It is, therefore, premature to predict an RfC based on the results of that study because the process for RfC development requires a much more extensive analysis and review than is possible within the present time constraints. At a minimum, further analysis of the primate data using BMD or other methods needs to be considered as part of the process to develop an RfC for methanol. However, some perspective can be gained by considering a few of the possible interpretations and applications of the data from the Burbacher study. For example, if 200 ppm (260 mg/m^3) were considered a Lowest Observed Adverse Effects Level (LOAEL) for reproductive toxicity (shortened pregnancy length), adjustment of this value to an HEC, based on temporal (2.5/24 hours) and dosimetric (default value of 1) factors, would yield a LOAEL(HEC) of approximately 27 mg/m^3. Potentially applicable uncertainty factors include a factor of as much as 10 for use of a LOAEL instead of a NOAEL and a factor of up to 10 for intraspecies variability, which could result in a reference value as low as 0.27 mg/m^3. As another example, if 200 ppm were considered a NOAEL for developmental toxicity (neurobehavioral effects in infants) and a temporal adjustment of the HEC were made, the NOAEL(HEC) would be 27 mg/m^3. In this case, an uncertainty factor of 10 for intraspecies variability might be applied, resulting in a possible reference value of 2.7 mg/m^3. A rather wide range of possible values for a health-based criterion, on the order of 0.3 to 30 mg/m^3, can be estimated from the primate data in this manner, depending on which type of effect, effect level, and uncertainty factors are selected, but this range should not be construed as bounds on what a fully developed RfC for methanol vapor might ultimately be.

Taken together, the studies by Rogers *et al.* and Burbacher *et al.* provide a pattern of evidence indicative of reproductive and developmental toxicity associated with exposure of mice and monkeys to methanol vapor during gestation. In our judgment, this evidence is relevant for evaluating potential risks of methanol to human health. The data imply a window of sensitivity during gestation, which is supported by other work that has shown that the critical period for induction of developmental toxicity by maternal inhalation of methanol vapor can be at least as short as 1 day in mice (Rogers and Mole, 1997). However, the minimal period of exposure sufficient to induce such effects has not been determined. This fact suggests that the potential for acute exposures, as well as chronic exposures, must be considered in any human exposure analysis in connection with a petition to remove methanol from the list of HAP.

While we do not believe that the effects observed in the Burbacher Primate Study can be dismissed, we are not prepared at this time to propose a specific alternative to the petitioner's SEL. However, there appears to be some convergence within the range of possible reference values that could be derived from the rodent and primate studies. As noted above, using BMD methods and making duration adjustments of the data from Rogers *et al.*, it is possible to derive values of about 4–6 mg/m^3, which are at the approximate midpoint of the values (0.3–30 mg/m^3) that might be derived from the data of the Burbacher Primate Study. Although one should not place too much weight on these specific numbers, the fact that they converge suggests greater plausibility than if the values were widely disparate.

The selection of an appropriate health effects decision criterion or reference level is a central component in the determination of potential risk. For chronic noncancer risk assessments, the EPA-verified inhalation RfC values are the primary quantitative consensus values used by the Agency. For assessing potential adverse health effects due to short-term exposures (*e.g.*, 24 hours), the Agency utilizes various acute exposure criteria. Sometimes we use EPA developmental RfC values to assess the potential effects to developing humans due to short-term exposures. Other benchmarks that we utilize, when appropriate, may include, among others, acute minimal risk levels (MRL)

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produced by the Agency for Toxics Substances and Disease Registry and acute reference exposure levels (REL) produced by the California Environmental Protection Agency.

For methanol, as discussed previously, there are no EPA-verified RfC values available to assess noncancer risks. Moreover, benchmarks produced by other agencies have not utilized the recent results from the Burbacher Primate Study. Therefore, based on our review of the available information, we conclude that a range of 0.3 to 30 mg/m^3 represents the most appropriate criterion for determining whether methanol emissions may reasonably be anticipated to cause adverse human health effects. Furthermore, since the critical effects are adverse developmental outcomes that could occur after short-term exposures, we judged that, of the available exposure duration estimates (*i.e.*, 1-hour, 24-hour, and annual concentrations), 24 hours would be the most appropriate exposure duration to compare to the health criterion range of 0.3 to 30 mg/m^3 for decision-making purposes.

While we conclude, based on available data, that 24-hour exposures below 0.3 mg/m^3 are not likely to result in adverse human health effects, we are unable to make a more precise determination at this time regarding the exposure levels at which adverse effects are likely to occur. The range of values (0.3 to 30 mg/m^3) chosen as a health-based decision criterion is not presented as a bright line between safety and toxicity. There is progressively greater potential concern about the likelihood of adverse effects as exposures increase within, and above, this range, and we cannot conclude based on the available evidence that any level of exposure above 0.3 mg/m^3 may not reasonably be anticipated to cause adverse human health effects. The comparison of exposure estimates to the health criterion is discussed further in the Risk Characterization section of today's notice.

D. Sources of Methanol Emissions and Maximum Levels of Exposure

In the original petition submittal (dated March 1996), it is stated that based on the 1993 Toxic Release Inventory (TRI), approximately 2,303 facilities reported emissions of methanol, which resulted in a total 86,155 tons of methanol emitted to the air in 1993 in the U.S. The 1993 TRI data indicated that the paper and allied products industry accounted for about 52 percent of the methanol emissions. The next largest source category was the chemical and allied products industry which accounted for 25 percent of the methanol emissions. Six facilities reported emissions over 1,000 tons per year (tpy), 195 facilities reported emissions over 100 tpy and 828 facilities reported emissions over 10 tpy. Subsequent petition submittals present emissions estimates based on more recent data sources (*e.g.*, the 1995 TRI) for sources emitting greater than 500 tpy of methanol.

In order to focus the exposure modeling assessment on those sources that are most likely to present unacceptable risks, the petitioner conducted a conservative screening level exposure assessment to identify an emissions cut-off for further analysis. "Conservative" refers to the selection of models and modeling parameters that are more likely to result in overestimates, rather than underestimates, of ambient concentrations of a pollutant. A hypothetical plant assumed to have a 10 meter stack with a fenceline 10 meters from the stack was utilized for the screening assessment. A very conservative screening model that assumes no plume rise and conservative meteorology was used to model the emissions dispersion and estimate maximum offsite concentrations. Using this approach, the petitioner concludes that only sources emitting greater than 500 tpy could theoretically result in offsite concentrations greater than 83 mg/m^3. Therefore, most of the emissions inventory development and exposure modeling assessment focused on sources emitting greater than 500 tpy.

In the March 1996 submittal, the petitioner presented stack and fugitive emissions estimates for the 15 highest emitting plants in the U.S. as reported in the TRI. In the supplements received between March 1997 and February 1999, the petitioner identified about 55 additional sources of various sizes and industry types. Overall, the petitioner identified about 60 sources that emit greater than 500 tpy of methanol.

In the original submission, the petitioner also reviewed various materials developed by EPA for estimating HAP emissions. Emission factors found by the petitioner in this material included such source categories as ammonia production, charcoal manufacturing, terephthalic acid production, formaldehyde production, glycol ethers productions and sulfate (kraft) pulping. The petitioner, however, concluded that the lack of emission factor data would preclude the petitioner from compiling a national inventory using the emissions factor approach.

The petitioner also obtained information on methanol's use as a fuel for motor vehicles and asserts that methanol is a promising alternative fuel for motor vehicles, which could help reduce emissions of volatile organic chemicals (VOC) and air toxics such as benzene. However, the petitioner found that methanol as a motor fuel is currently limited to Indianapolis-style race cars, about 14,000 cars in the Federal government and private fleets, and approximately 400 buses in California. The petitioner claims that current methanol emissions from motor vehicles appears to be quite small.

The petitioner concludes in the initial submittal that the TRI was the most suitable database for identifying the most significant industrial categories and individual sources with large industrial emissions and would provide the "best-estimate" of methanol emissions in the U.S. The petitioner claims that other potential methanol sources are comparatively small or widely dispersed and are unlikely to cause high ambient concentrations of methanol.

The petitioner submitted additional emissions information in March 1997, January 1998, April 1998, and February 1999. These submittals primarily contained modeling data for a set of facilities and did not discuss emissions inventory development. However, the petitioner did present some emissions data and discussed the selection of 500 tpy as a cut-off for the emissions inventory. The primary focus was to identify sources that emit greater than 500 tpy of methanol.

The petitioner also contacted various States and requested data on methanol emissions. California, Colorado, Kansas, Louisiana, New York, South Carolina, Texas, and Wisconsin responded to this request and provided emission data. The petitioner's review of these data found only one facility that was not considered in the earlier analyses.

The petitioner also reviewed the 1996 TRI for additional facilities. Two petroleum refineries reported methanol emissions in excess of 500 tpy in 1996 that were not considered in the earlier analyses. The appearance of these facilities in the 1996 TRI database was due to new methanol emission estimates that were developed for a hydrogen production process.

Finally, the petitioner reviewed several EPA documents to determine if any large sources had been left out of the earlier analyses. The petitioner could not find any evidence of any large methanol emissions source that needed to be considered. Therefore, the petitioner concluded that all sources

above 500 tpy of methanol were accounted for in the petition.

Based on our review, we believe that the petitioner's analysis for establishing the 500 tpy cutoff for the cited health benchmark (SEL of 83 mg/m^3) is a reasonable approach and is technically sound. We confirmed that only sources emitting more than 500 tpy would have a theoretical possibility of exceeding an offsite concentration of 83 mg/m^3. Therefore, assuming an SEL of 83 mg/m^3 as a guideline, 500 tpy would be an appropriate cut-off for emissions inventory development. Nonetheless, as discussed above, we have determined that the appropriate health based decision criterion is the range of 0.3 to 30 mg/m^3. Therefore, the 500 tpy cut-off may no longer be valid for purposes of evaluating sources that have the potential to cause adverse impacts on human health.

Moreover, while we believe that the petitioner's overall methodology for identifying all the methanol emissions sources greater than 500 tpy is technically sound, a comparison with the EPA's 1996 National Toxics Inventory (NTI) shows that the petitioner may not have found all the sources emitting more than 500 tpy. A query of the 1996 NTI database for methanol resulted in approximately 4,280 facilities reporting methanol emissions. Of these facilities, 37 had methanol emissions in excess of 500 tpy. Nineteen of these 37 facilities were not included in the petitioner's inventory. Two of the facilities not considered in the petitioner's analysis are the International Paper Company in Oregon and the Mead Publishing Paper Division in Maine. These are the largest methanol emitting facilities (2,547 and 2,101 tpy, respectively) found in the NTI. However, the petitioner did include six of the top ten emitting sources reported in the NTI, as well as a few very large sources that were not found in the NTI. One of these sources in the petition has higher reported emissions (2,450 tpy) than all but one source listed in the NTI. The petition also included several sources that are likely to adequately represent the worst-case sources in the U.S., including one source that emits 829 tpy at ground level with a relatively close fenceline. Therefore, the petitioner's emissions inventory is generally acceptable for the purpose of estimating maximum offsite concentrations.

The petition asserts that inhalation is the only significant route of human exposure to methanol emissions. Since methanol rapidly biodegrades and volatilizes in water, it is highly unlikely that humans are exposed to significant amounts of methanol through fallout upon soils or water bodies.

The petitioner used the emission inventory as input in a tiered air dispersion modeling analysis. A "tiered" analysis applies successive refinements in model selection and input data to derive successively less conservative predictions of the maximum offsite air concentrations of a given pollutant. Tier 1 is the simplest and most conservative approach; tier 2 is somewhat less conservative and more refined, including some facility-specific parameter data and less conservative assumptions; and tier 3 is even more refined and less conservative than tier 2 and depends on more site-specific information. For the most part, the petitioner utilized a mix of tier 2 and tier 3 approaches from EPA's three-tier analysis method (EPA–450/4–92–001).

The petitioner modeled many sources to estimate maximum annual, maximum 24 hour, and maximum 1-hour concentrations at the boundaries of the facilities. Twenty-four hour concentrations were considered most relevant for risk assessment since the critical effect is developmental/reproductive effects that could occur after short-term exposures.

In the March 1996 submittal, using data from the 15 largest emitting facilities, the petitioner developed ten model plants representative of the largest emitters in ten different industrial categories. When available, the petitioner used source-specific stack parameter data (such as stack height, exit velocity, stack temperature) from the EPA's Aerometric Information Retrieval System (AIRS) database. Otherwise, the petitioner used industry average values. The petitioner used a simple terrain tier 2 modeling approach and assumed all emissions are from the same location and the fenceline is 100 meters from the stack. Meteorological data from each of five cities in the U.S. were used in the modeling to represent a variety of meteorological conditions. This modeling approach predicted maximum 24-hour ambient methanol concentrations of 0.1 to 4.5 mg/m^3 resulting from the methanol emissions.

To show conservatism of the tier 2 modeling, the petitioner conducted more refined modeling (tier 3) using more site-specific data for one of the largest facilities. The maximum 24-hour concentration decreased by a factor of 3 for this facility using the tier 3 approach.

In the March 1996 submittal, the petitioner also included a conservative screening-level modeling analysis of complex terrain, whereby a single large plant (emitting 2,000 tpy) was placed in a hypothetical location of complex terrain. This complex terrain analysis predicted a 24-hour maximum concentration of 6.9 mg/m^3. In addition, the petitioner assessed the combined impact of hypothetical co-located plants, whereby two large plants were assumed to have emissions being released from the exact same location. The results from the combined impact of co-located sources yielded a maximum predicted 24-hour ambient concentration of 6 mg/m^3.

In March 1997, the petitioner submitted a supplement that included tier 3 modeling for 19 additional facilities, most of which are among the largest in the U.S. This modeling analysis included 12 pulp and paper mills and seven facilities from other industries. The maximum 24-hour offsite concentration from this analysis was 2.5 mg/m^3. This supplement also included further evaluation and modeling of potential co-location situations. The petitioner searched TRI and found there were no instances where two large sources were within 2 miles of each other. However, the petitioner did identify five medium to small sources along a 1-mile line in Lexington, NC. Also, the petitioner found three pulp and paper mills in the Wisconsin Rapids, WI area and a number of medium and large sources in the Mobile, AL area. The petitioner modeled each of these co-location scenarios and predicted the maximum 24-hour concentration to be 0.6 mg/m^3.

The March 1997 supplement also presented tier 3 complex terrain modeling analyses for two actual plants located in complex terrain, which predicted a maximum 24-hour concentration of 0.4 mg/m^3. In addition, data on measured ambient levels of methanol were presented showing that background levels of methanol are less than 0.8 mg/m^3 .

In January 1998 and February 1999, in response to EPA comments, the petitioner submitted modeling analyses for 13 additional facilities that included tier 3 modeling analyses for eight facilities and tier 2 modeling analyses for five facilities. These facilities included all the non-paper sources with greater than 500 tpy reported in the TRI for years 1993–95. The range for the 24-hour maximum offsite concentration for 12 of these plants was 0.1 to 3 mg/m^3. However, there was one facility (the Missouri Chemical Works), modeled using tier 3 approach, for which the maximum 24-hour concentration was 7.6 mg/m^3. This source was originally identified as emitting 829 tpy of fugitive emissions released at ground level in the January 1998 submittal based on

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1995 TRI emissions reporting. Subsequently, in the July 2000 submittal, the petitioner states that in 1998, this facility initiated several changes that reduced emissions by about 70 percent. The petitioner remodeled this facility using 1999 emissions estimates (253 tpy), which decreased the maximum offsite concentration to 3.65 mg/m^3.

In the February 1999 submittal, the petitioner attempted to demonstrate that the pulp and paper mills modeled in previous submittals were representative of the industry and included at least one worst-case example. The petitioner stated that the modeling analyses included the source with the highest total emissions, the two facilities with the highest fugitive emissions, as well as two large sources with low-level releases. Moreover, the petitioner creates a very conservative hypothetical worst-case analysis for a paper plant to show that the theoretical worst-case offsite air concentration for a source emitting 1,815 tpy is 31 mg/m^3.

In summary, the petition includes modeling analyses using a mix of tier 1, tier 2 and tier 3 approaches for roughly 50 sources in the U.S., including many of the largest emitting sources. Moreover, the petition includes modeling analyses for sources located near one another (*i.e.*, co-location) and for a few facilities in complex terrain. Overall, the maximum modeled fenceline concentration from any facility using the tier 2 approach was about 4.5 mg/m^3, and the maximum concentration of any facility using the tier 3 approach (with updated emissions data) was 3.65 mg/m^3.

We agree with the petitioner that inhalation is the primary route of human exposure to methanol emissions. The petitioner provides a tiered-based dispersion modeling analysis of facilities emitting greater than 500 tpy methanol. Following generally acceptable modeling guidelines, the petitioner estimates maximum 24-hour modeled fenceline concentrations from the inventoried facilities using conservative screening techniques and more refined (tier 3) modeling procedures. Further, the petitioner shows that combined impacts from co-located sources, as well as background ambient concentrations, are negligible and will not appreciably contribute to maximum predicted ambient levels. Overall, we generally believe that the petitioner's conclusions regarding ambient concentrations of methanol that are likely to result from facilities emitting greater than 500 tpy are technically sound and credible. Nonetheless, we have a number of comments regarding the petitioner's analyses.

With regard to the March 1996 submittal, we think that some of the input parameters in the simple terrain tier 2 analysis were not as conservative as they should be for a tier 2 analysis. For example, fugitive emissions were approximated from a height of 50 feet. These should have been modeled as ground-level sources. Also, no basis for many of the site-parameter assumptions are provided. However, the rest of the model assumptions in this tier 2 analysis appear to be conservative, therefore, the results are most likely conservative. The tier 3 detailed modeling of a single large facility also used the same fugitive source assumption (50 feet release height). Therefore, the results from the tier 3 analysis may not result in a conservative estimation of fenceline concentrations. The complex terrain modeling of a single large facility was performed with an extremely conservative model (SCREEN2/VALLEY), thus these results are most likely conservative. Also, the analysis of combined impact of co-located plants utilized some very conservative assumptions, thus, these concentrations are most likely overpredicted.

With regard to the March 1997 submittal, it appears that the tier 3 modeling of 19 large facilities was performed following EPA modeling guidelines. Detailed documentation of the approach, input data and results are provided. The results from the complex terrain analysis appear to be credible. Also, the reported measured ambient levels of methanol appear to coincide well with the data from the EPA's AIRS database. Thus, the March 1997 submittal is judged to be technically sound and appropriate.

With regard to the January 1998 and February 1999 submittals, it appears that the modeling of each of the 13 facilities follows EPA modeling guidance. The one facility (Missouri Chemical Works) that had a maximum 24-hour modeled concentration of 7.6 mg/m^3 (using 1995 TRI emissions data) seems to be a very good "worst-case" example. Model documentation for this run was provided and appeared to justify the results.

The analysis (in the February 1999 submittal) of a hypothetical worst-case pulp and paper mill is extremely conservative. The predicted worst-case air concentration of 31 mg/m^3 is clearly an overestimation for this type of facility, and fenceline concentration predictions for a facility of this type would likely be much lower using a more realistic approach.

In summary, based on the analyses presented in all the submittals, the maximum modeled fenceline concentration from any facility using very conservative hypothetical screening level approaches was 31 mg/m^3, the maximum concentration using tier 2 approaches for actual plants was about 4.5 mg/m^3, and the maximum concentration of any facility using the refined tier 3 approach was 7.6 mg/m^3 (using 1995 data) and 3.65 mg/m^3 (using 1999 data).

Overall, based upon our technical review of the series of submittals, we think that the ambient concentrations predicted by the analysis are technically sound and credible. However, it is possible that, using a different facility source configuration, a different inventory, or a different model, predicted concentrations could be higher or lower than those presented in the petition. Furthermore, year-to-year variations in meteorological conditions could result in different predicted concentrations. While dispersion models are generally designed to be conservative, it is possible that the models utilized in the analysis are not as conservative as expected. Also, as discussed above, the petitioner did not appear to include all sources greater than 500 tpy in the modeling analysis. Thus, the maximum concentration of 3.65 mg/m^3 predicted by the refined (tier 3) model using the updated emissions data may not accurately reflect actual worst-case fenceline concentrations. However, we think it is unlikely that any existing facility would present offsite ambient concentrations that are higher than the maximum concentration of 7.6 mg/m^3 predicted for the Missouri Chemical Works using the 1995 TRI data (829 tpy emitted at ground level).

Moreover, we agree with the petitioner's conclusion that background sources and co-location of facilities are not significant. Monitoring values of methanol, primarily measured near large emitters, are found to generally be less than 1.0 mg/m^3. The worst-case average methanol concentration in the AIRS monitoring database was found to be 0.2 mg/m^3. Furthermore, impacts from individual facilities fall off rapidly with distance, thus, it is highly unlikely that coincidental impacts from multiple facilities would greatly increase maximum predicted impacts.

Finally, when comparing model predicted estimates to health criteria, the petitioner makes a conservative assumption. Namely, the petitioner does not apply an inhalation exposure assessment to the air level predictions, instead elects to use the maximum exposed individual (MEI) approach. The MEI is the predicted exposure for a hypothetical person assumed to be located at the place of maximum predicted offsite air concentration for 24 hours. If an exposure assessment were applied, whereby we determine where actual people are located and account for daily activities and other exposure factors, actual maximum individual inhalation exposures could be somewhat lower than the MEI predictions from the dispersion analysis. Based upon our review of the petitioner's analyses, the likely proximity of inhabitable areas to these large facilities, and knowledge of human activity patterns over a 24-hour period, we conclude that maximum 24-hour exposures to methanol emissions could be in the range of 2 to 7 mg/m^3, but that such exposures may not reasonably be expected to exceed 7 mg/m^3. Notably, this analysis does not address potential increases in exposures which might occur should methanol emissions increase substantially in the future.

E. Risk Characterization

The petitioner states that the maximum predicted 24-hour concentration for any of these facilities was about 3.65 mg/m^3. As stated above, the petitioner proposes a SEL of 83 mg/m^3. Thus, the petitioner asserts that concentrations of methanol anticipated to occur at the fenceline are far below the SEL and cannot reasonably be anticipated to cause either acute or chronic adverse health effects to people living nearby these facilities. The petitioner also asserts, based on data on PK, that even if a person were continuously exposed to the maximum predicted concentration of 3.65 mg/m^3, that individual's blood methanol level would increase by about 0.7 mg/l, which represents only about 3 percent of the mean baseline level of methanol that individuals have in their blood as a result of natural physiological processes.

Generally, the EPA uses a hazard quotient (HQ) approach to characterize the noncancer risk associated with exposures to pollutants. In this approach, the HQ is developed by comparing the level of exposure (and the appropriate duration of exposure) to the appropriate health-based decision criterion that represents a similar duration of exposure. For example, in many assessments, the average lifetime exposures are compared to a chronic RfC to determine the likelihood of adverse effects from long-term exposures. However, for pollutants that cause developmental effects, such as methanol, the critical duration of exposure could be a short duration (hours or days). Therefore, we conclude that a 24-hour exposure concentration is most appropriate for the HQ analysis for methanol.

Assuming that the estimated exposure level represents total exposure (exposure due to the source being evaluated plus all background exposures), if the HQ is less than 1, the reference level is not exceeded, and the adverse health effect represented by the health reference level is unlikely. Usually the RfC is considered protective of all noncancer adverse health effects. Therefore, exposures at or below the RfC are generally not expected to result in any adverse noncancer health effects. If on the other hand, the HQ is greater than 1 (*i.e.*, exposures are greater than the RfC), we generally are unable to conclude that adverse effects are not likely to occur. The risks following exposures above the RfC are uncertain, but risk increases as exposures to such pollutants increase above the RfC.

However, for methanol, at this time, we do not have a single value criterion, such as an RfC, that we think is appropriate for the derivation of an HQ. Instead, as discussed above, we have determined that the appropriate health-based criterion for EPA decision making for this methanol petition is the range of 0.3 to 30 mg/m^3. In other words, at this time, in order to demonstrate that exposures are reasonably anticipated not to result in any adverse effects to humans, including sensitive subpopulations, the estimated 24-hour exposure concentrations would need to be 0.3 mg/m^3 or lower. From the exposure assessment discussion, we have determined that maximum 24-hour exposures could be in the range of 2 to 7 mg/m^3, which is well above 0.3 mg/m^3. Therefore, at this time, we are not able to determine that emissions of methanol may not reasonably be anticipated to result in any adverse effects to humans. This means that the petition has failed to meet the criteria outlined in section 112(b)(3)(C) of the CAA. Therefore, EPA must deny AF&PA's petition, and methanol will remain on the list of HAP under section 112(b) of the CAA. Moreover, because we conclude that the information submitted in connection with this petition does not support a determination that methanol emissions will not cause adverse human health effects, any future petition for the removal of methanol from the list of HAP will be denied as a matter of law unless such petition is accompanied by substantial new information or analysis.

F. Other Elements of the Petition

The petitioner also presented an evaluation of the potential environmental impacts of methanol emissions, and impacts related to atmospheric transformation of methanol emissions into formaldehyde. Because we are denying the petition for the reasons stated above, we do not find it necessary to make final determinations regarding these elements of the petition.

However, we will note a few concerns with regard to the petitioner's environmental impact analysis. First, the petition contends that methanol has low inherent toxicity to aquatic biota, which is a reasonable conclusion based on available information. However, the petitioner fails to demonstrate that the levels emitted from large point sources would not increase methanol levels in nearby water bodies (*i.e.*, ponds) to levels that would cause adverse effects to sensitive biota. Similarly, with regard to terrestrial biota, the petitioner has conservatively estimated ambient concentrations of methanol near large emitters, but did not estimate safe levels for terrestrial receptors with which to compare these concentrations. Moreover, there is no methanol-specific information presented regarding toxicity to terrestrial plants and invertebrates. Instead, the petition summarized the ecological toxicity information by using broad ranges, which is acceptable as a preface to a more complete eco-toxicity assessment, but should be accompanied by a more detailed description of sensitive studies (including a discussion on the quality of the data). Finally, because small terrestrial mammals (*e.g.*, mice) residing near large emitters are likely to be the most highly exposed terrestrial biota, due to their relatively high metabolic rates and small home ranges, the petition should include an estimate of safe levels in air and safe doses for these biota to compare to estimated exposures near large methanol emitters.

IV. Denial of the Petition

Based on our review of the petition submitted by AF&PA and other relevant material (including the Burbacher Primate Study and the materials submitted by the petitioner subsequent to the release of that study), EPA concludes that available data do not support a determination that methanol emissions may not reasonably be anticipated to cause any adverse effect to human health or the environment. This determination is based on our conclusions regarding the appropriate criterion for evaluating the likelihood of adverse health effects and the maximum

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24-hour exposures that may reasonably be anticipated to occur. Accordingly, we are denying AF&PA's petition to remove methanol from the list of HAP under section 112(b) of the CAA. Moreover, because we conclude that the information submitted in connection with this petition does not support a determination that methanol emissions will not cause adverse human health effects, we are denying this petition with prejudice, and any future petition for the removal of methanol from the list of HAP will be denied as a matter of law unless such petition is accompanied by substantial new information or analysis.

Dated: April 27, 2001.

Christine T. Whitman,

Administrator.

[FR Doc. 01–10990 Filed 5–1–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00312; FRL–6776–3]

National Advisory Committee for Acute Exposure Guideline Levels (AEGLs) for Hazardous Substances; Proposed AEGL Values

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) is developing AEGLs on an ongoing basis to provide Federal, State, and local agencies with information on short-term exposures to hazardous chemicals. This notice provides AEGL values and Executive Summaries for 18 chemicals for public review and comment. Comments are welcome on both the AEGL values in this notice and the Technical Support Documents placed in the public version of the official docket for these 18 chemicals.

DATES: Comments, identified by the docket control number OPPTS–00312, must be received by EPA on or before June 1, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00312 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Barbara Cunningham, Acting Director, Environmental Assistance Division (7401), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Paul S. Tobin, Designated Federal Officer (DFO), Office of Prevention, Pesticides and Toxic Substances (7406), 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–1736; e-mail address: tobin.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the general public to provide an opportunity for review and comment on "Proposed" AEGL values and their supporting scientific rationale. This action may be of particular interest to anyone who may be affected if the AEGL values are adopted by government agencies for emergency planning, prevention, or response programs, such as EPA's Risk Management Program under the Clean Air Act and Amendments Section 112r. It is possible that other Federal agencies besides EPA, as well as State and local agencies and private organizations, may adopt the AEGL values for their programs. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Proposed Rules and Regulations," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–00312. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

3. *Fax-on-Demand.* You may request to receive a faxed copy of the document(s) by using a faxphone to call (202) 401–0527 and select the item number 4800 for an index of the items available by fax-on-demand in this category, or select the item number for the document related to the chemical(s) identified in this document as listed in the chemical table in Unit III. You may also follow the automated menu.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00312 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460. (Note: for express delivery, please see "In person or by courier" in Unit I.C.2.).

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically.* You may submit your comments electronically by e-mail to: oppt.ncic@epa.gov, or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.1 or ASCII file format. All comments in electronic form must be identified by docket control numbers OPPTS–00312. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without official notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the DFO listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data that you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. Introduction

EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS) provided notice on October 31, 1995 (60 FR 55376) (FRL–4987–3) of the establishment of the NAC/AEGL Committee with the stated charter objective as "the efficient and effective development of Acute Exposure Guideline Levels (AEGLs) and the preparation of supplementary qualitative information on the hazardous substances for federal, state, and local agencies and organizations in the private sector concerned with [chemical] emergency planning, prevention, and response." The NAC/AEGL Committee is a discretionary Federal advisory committee formed with the intent to develop AEGLs for chemicals through the combined efforts of stakeholder members from both the public and private sectors in a cost-effective approach that avoids duplication of efforts and provides uniform values, while employing the most scientifically sound methods available. An initial priority list of 85 chemicals for AEGL development was published in the **Federal Register** of May 21, 1997 (62 FR 27734) (FRL–5718–9). This list is intended for expansion and modification as priorities of the stakeholder member organizations are further developed. While the development of AEGLs for chemicals are currently not statutorily based, at lease one rulemaking references their planned adoption. The Clean Air Act and Amendments Section 112(r) Risk Management Program states, "EPA recognizes potential limitations associated with the Emergency Response Planning Guidelines and Level of Concern and is working with other agencies to develop AEGLs. When these values have been developed and peer reviewed, EPA intends to adopt them, through rulemaking, as the toxic endpoint for substances under this rule (see 61 FR 31685)." It is believed that other Federal and State agencies and private organizations will also adopt AEGLs for chemical emergency programs in the future.

B. Characterization of the AEGLs

The AEGLs represent threshold exposure limits for the general public and are applicable to emergency exposure periods ranging from 10 minutes to 8 hours. AEGL–2 and AEGL–3 levels, and AEGL–1 levels as appropriate, will be developed for each of five exposure periods (10 and 30 minutes, 1 hour, 4 hours, and 8 hours) and will be distinguished by varying degrees of severity of toxic effects. It is believed that the recommended exposure levels are applicable to the general population including infants and children, and other individuals who may be sensitive and susceptible. The AEGLs have been defined as follows:

AEGL–1 is the airborne concentration (expressed as parts per million (ppm) or milligram/meter cubed (mg/m^3)) of a substance above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic, non-sensory effects. However, the effects are not disabling and are transient and reversible upon cessation of exposure.

AEGL–2 is the airborne concentration (expressed as ppm or mg/m^3) of a substance above which it is predicted that the general population, including susceptible individuals, could experience irreversible or other serious, long-lasting adverse health effects, or an impaired ability to escape.

AEGL–3 is the airborne concentration (expressed as ppm or mg/m^3) of a substance above which it is predicted that the general population, including susceptible individuals, could experience life-threatening health effects or death.

Airborne concentrations below the AEGL–1 represent exposure levels that could produce mild and progressively increasing odor, taste, and sensory irritation, or certain non-symptomatic, non-sensory effects. With increasing airborne concentrations above each AEGL level, there is a progressive increase in the likelihood of occurrence and the severity of effects described for each corresponding AEGL level. Although the AEGL values represent threshold levels for the general public, including sensitive subpopulations, it is recognized that certain individuals, subject to unique or idiosyncratic responses, could experience the effects described at concentrations below the corresponding AEGL level.

C. Development of the AEGLs

The NAC/AEGL Committee develops the AEGL values on a chemical-by-chemical basis. Relevant data and information are gathered from all known sources including published scientific literature, State and Federal agency publications, private industry, public data bases, and individual experts in both the public and private sectors. All key data and information are summarized for the Committee in draft form by Oak Ridge National Laboratories together with "draft" AEGL values prepared in conjunction with NAC/AEGL Committee members. Both

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the "draft" AEGLs and "draft" technical support documents are reviewed and revised as necessary by the NAC/AEGL Committee members prior to formal committee meetings. Following deliberations on the AEGL values and the relevant data and information for each chemical, the NAC/AEGL Committee attempts to reach a consensus. Once the NAC/AEGL Committee reaches a consensus, the values are considered "Proposed" AEGLs. The Proposed AEGL values and the accompanying scientific rationale for their development are the subject of this notice.

In this notice the NAC/AEGL Committee publishes proposed AEGL values and the accompanying scientific rationale for their development for 18 hazardous substances. These values represent the fourth set of exposure levels proposed and published by the NAC/AEGL Committee EPA published the first "Proposed" AEGLs for 12 chemicals from the initial priority list in the **Federal Register** of October 30, 1997 (62 FR 58840–58851) (FRL–5737–3); for 10 chemicals in the **Federal Register** of March 15, 2000 (65 FR 14186–14196) (FRL–6492–4); for 14 chemicals in the **Federal Register** of June 23, 2000 (65 FR 39263–39277) (FRL–6591–2); and for 7 chemicals in the **Federal Register** of December 13, 2000 (65 FR 77866–77874) (FRL–6752–5) in order to provide an opportunity for public review and comment. In developing the proposed AEGL values, the NAC/AEGL Committee has followed the methodology guidance "Guidelines for Developing Community Emergency Exposure Levels for Hazardous Substances," published by the National Research Council of the National Academy of Sciences (NAS) in 1993. The term Community Emergency Exposure Levels (CELLS) is synonymous with AEGLs in every way. The NAC/AEGL Committee has adopted the term Acute Exposure Guideline Levels to better connote the broad application of the values to the population defined by the NAS and addressed by the NAC/AEGL Committee. The NAC/AEGL Committee invites public comment on the proposed AEGL values and the scientific rationale used as the basis for their development.

Following public review and comment, the NAC/AEGL Committee will reconvene to consider relevant comments, data, and information that may have an impact on the NAC/AEGL Committee's position and will again seek consensus for the establishment of Interim AEGL values. Although the Interim AEGL values will be available to Federal, State, and local agencies and to organizations in the private sector as biological reference values, it is intended to have them reviewed by a subcommittee of the NAS. The NAS subcommittee will serve as a peer review of the Interim AEGLs and as the final arbiter in the resolution of issues regarding the AEGL values, and the data and basic methodology used for setting AEGLs. Following concurrence, "Final" AEGL values will be published under the auspices of the NAS.

III. List of Chemicals

On behalf of the NAC/AEGL Committee, EPA is providing an opportunity for public comment on the AEGLs for the 18 chemicals identified in the following table. This table also provides the fax-on-demand item number for the chemical specific documents, which may be obtained as described in Unit I.B.3.

A. Fax-On-Demand Table

TABLE 1.—FAX-ON-DEMAND NUMBERS

CAS No.	Chemical name	Fax-on-demand item no.
67–56–1	Methanol	4938
77–81–6, 107–44–8, 96–64–0, 329–99–7	Nerve Agents GA, GB, GD, GF	4940
79–10–7	Acrylic acid	4941
107–18–6	Allyl alcohol	4879
107–30–2	Chloromethyl methyl ether	4880
108–88–3	Toluene	4882
108–95–2	Phenol	4943
110–00–9	Furan	4885
127–18–4	Tetrachloroethylene	4889
509–14–8	Tetranitromethane	4894
594–42–3	Perchloromethyl mercaptan	4897
630–08–0	Carbon monoxide	4944
10294–34–5	Boron trichloride	4928
19287–45–7	Diborane	4931
50782–69–9	Nerve Agent VX	4945

B. Executive Summaries

The following are executive summaries from the chemical specific Technical Support Documents (which may be obtained as described in Unit I.B.) that support the NAC/AEGL Committee's development of AEGL values for each chemical substance. This information provides the following information: A general description of each chemical, including its properties and principle uses; a summary of the rationale supporting the AEGL–1, -2, and -3 concentration levels; a summary table of the AEGL values; and a listing of key references that were used to develop the AEGL values. More extensive toxicological information and additional references for each chemical may be found in the complete Technical Support Documents. Risk managers may be interested to review the complete Technical Support Document for a chemical when deciding issues related to use of the AEGL values within various programs.

1. *Methanol*—i. *Description.* Methanol is a clear, colorless, volatile flammable liquid with a pungent odor. It is used in industrial production as a solvent and raw material for the production of many important organic compounds.

The acute and short-term toxicity of methanol varies greatly between different species: Due to pharmacokinetic differences, at higher exposure concentrations rodents develop higher blood methanol concentrations than humans and monkeys. Primate, but not rodent species, show accumulation of the metabolite formate. At lower concentrations methanol causes symptoms characteristic of effects on the visual system, such as blurred vision, and the central nervous system (CNS), such as nausea, dizziness, and headaches, as well as slight eye and nose irritation. At high concentrations, the accumulation of the toxic metabolite formic acid may lead to blindness and death by metabolic acidosis. In rodents methanol causes developmental toxic effects and fetal death.

The AEGL–1 was based on a pharmacokinetic study in which human volunteers were exposed to 800 ppm methanol for 8 hours (Batterman *et al.*, 1998), because no other experimental human study was available that used an exposure concentration above a level of 200 ppm, which was used in other studies and which was considered below the AEGL–1 threshold. In this pharmacokinetic study no statement was made on the presence or absence of any signs or symptoms of the methanol exposure; in a personal communication, the second author, Dr. Franzblau, stated that none of the subjects reported symptoms. A factor of 3 was applied for intraspecies variation because the exposure level in the Batterman *et al.* (1998) study was considered below the effect threshold and thus the effect level was less severe than defined for the AEGL–1 level. However, interindividual variability with regard to slight neurotoxic effects (*e.g.*, headache) is likely to exist (although it cannot be quantified exactly from the existing experimental and epidemiological studies) and, thus, it cannot be ruled out that a fraction of the general population might experience slight effects under the exposure conditions of the experimental study of Batterman *et al.* (1998), which used healthy individuals. Because exposure repsonse data were unavailable for all of the AGEL-specific exposure durations, temporal extrapolation was used in the development of AEGL values for the specific AEGL–time periods. The concentration exposure-time relationship for many systematically acting vapors and gases may be described by $C^n \times t = k$, where C = concentration, t = time, k is a constant, and the exponent n ranges from 0.8 to 3.5. In this case, the value was scaled to appropriate exposure periods according to the dose-response regression equation $C^n \times t = k$, using the default of n = 3 for shorter exposure periods, due to the lack of suitable experimental data for deriving the concentration exponent.

The AEGL–2 values were based on developmental toxic effects in mice. After a single exposure to different concentration-time combinations on gestational day 7, the most sensitive endpoint was cervical rib induction, which occurred at concentration-time products greater than or equal to 15,000 ppm × h, but not at concentration-time products below 15,000 ppm × h (*i.e.*, no effects were observed after exposure to 2,000 ppm × 5 h, 2,000 ppm × 7 h and 5,000 ppm × 2 h; authors expressed data only as C × t values) (Rogers *et al.* 1995, abstract; Rogers, 1999, personal communication). These results are supported by a repeated exposure teratogenicity study (Rogers *et al.*, 1993), in which a significant increase in cervical vertebrae was observed at 2,000 ppm or higher, and by a single 7-hour exposure study at 10,000 ppm (Rogers *et al.*, 1997). For the no-observed-effect level (NOEL) of 2,000 ppm for 7 hours (Rogers *et al.* 1995, abstract; Rogers, 1999, personal communication), the corresponding end-of-exposure blood concentration was measured as 487 mg/Liter (l) (Rogers *et al.*, 1993). A total uncertainty factor (UF) of 10 was applied. A factor of 1 was applied for interspecies variability because a sensitive species was used for derivation of AEGL–2 values and because toxicokinetic differences between species were accounted for by using a pharmacokinetic model for calculating exposure concentrations. A factor of 10 was used for intraspecies variability because no information on developmental toxic effects of methanol on humans is available and because also for other chemicals the variability in susceptibility of humans for developmental toxic effects is not well characterized. The total UF was applied to the blood methanol concentration resulting in a concentration of 48.7 mg/l. For this blood methanol concentration, inhalation exposure concentrations for appropriate time periods were calculated so that a blood methanol concentration of 48.7 mg/l would be reached at the end of the time period. For these calculations, a pharmacokinetic model based on the model from Perkins *et al.* (1995) was used. The calculated exposure concentrations were set as AEGL–2 values. For 10 minutes, a concentration of 11,000 ppm was calculated using the pharmacokinetic model. Since this value was considered too close to the 10-minute AEGL–3 value of 15,000 ppm, the 10-minute AEGL–2 was set at the 30-minute value.

The AEGL–3 values were based on acute lethal effects on humans after oral methanol uptake (Naraqi *et al.*, 1979; Erlanson *et al.*, 1965; Bennett *et al.*, 1955; Gonda *et al.*, 1978). For lethal cases without relevant concommitant ethanol exposure, the peak blood methanol concentration was calculated from the measured concentration and the time between intoxication and measurement using Michaelis-Menten kinetics. The lowest calculated peak blood concentration was 1,109 mg/l from the study by Naraqi *et al.* (1979). Due to the very steep dose-response curve for lethality in monkeys (Gilger and Potts, 1955), a factor of 2 was applied to derive a peak blood concentration of 555 mg/l as the NOEL for lethality. An factor of 3 was applied for intraspecies variability, because of the very steep dose response-relationship for lethality after oral exposure seen in rhesus monkeys (Gilger and Potts, 1955) and because a factor of 10 would have resulted in blood methanol concentrations of about 70 mg/l which would be far below a level of 130–200 mg/l, at which ethanol therapy is recommended (ATSDR, 1993; Becker, 1983; Meyer *et al.*, 2000) (these

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values refer to concentrations measured after hospital admission, which are usually considerably lower than peak concentrations). For the resulting blood methanol concentration of 185 mg/l, inhalation exposure concentrations for appropriate time periods were calculated so that a blood methanol concentration of 185 mg/l would be reached at the end of the time period. For calculations, a pharmacokinetic model based on the model from Perkins *et al.* (1995) was used. These exposure concentrations were set as AEGL–3 values. The 10-minute AEGL–3 was set at the 30-minute value because at the concentration of 44,000 ppm calculated by the model additional immediate toxic effects could not be excluded and because the calculated value is close to the lower explosive limit in air.

The calculated values are listed in Table 2 below:

TABLE 2.—SUMMARY TABLE OF PROPOSED AEGL VALUES FOR METHANOL[A]

Classification	10-Minutes	30-Minutes	1-Hour	4-Hours	8-Hours	Endpoint (Reference)
AEGL–1 (Nondisabling)	670 ppm (880 mg/m^3)	670 ppm (880 mg/m^3)	530 ppm (690 mg/m^3)	340 ppm (450 mg/m^3)	270 ppm (350 mg/m^3)	Pharmacokinetic study (Batterman *et al.*, 1998); according to a personal communication, none of the subjects reported symptoms (Franzblau, 1999; 2000)
AEGL–2 (Disabling)	4,000 ppm (5,200 mg/m^3)	4,000 ppm (5,200 mg/m^3)	2,100 ppm (2,800 mg/m^3)	720 ppm (940 mg/m^3)	510 ppm (670 mg/m^3)	No developmental toxic effects in mice Rogers *et al.* (1993; 1995, abstract; 1997); Rogers (1999, personal communication)
AEGL–3 (Lethal)	15,000 ppm (20,000 mg/m^3)	15,000 ppm (20,000 mg/m^3)	7,900 ppm (10,000 mg/m^3)	2,500 ppm (3,300 mg/m^3)	1,600 ppm (2,100 mg/m^3)	Lethality in humans after oral exposure (Naraqi *et al.*, 1979; Erlanson *et al.*, 1965; Bennett *et al.*, 1955; Gonda *et al.*, 1978; Meyer *et al.*, 2000)

[a] Cutaneous absorption may occur; direct skin contact with the liquid should be avoided.

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2–5. *Nerve Agents GA, GB, GD, GF*—

i. *Description.* The G-series agents [GA (tabun), GB (sarin), GD (soman), and GF] are all toxic ester derivatives of phosphonic acid containing either a cyanide or fluoride substituent group, and are commonly termed "nerve" agents as a consequence of their anticholinesterase properties. These compounds were developed as chemical warfare agents, and one was used by chemical terrorists in the 1995 incident of nerve agent exposure that took place in the Tokyo subway system. The chemical names of these 4 agents are as follows: Agent GA, dimethylamidocyanophosphate; Agent GB, isopropyl methyl phosphonofluoridate; Agent GD, pinacolyl methylphosphonofluoridate; and Agent GF, *O*-cyclohexylmethyl-fluorophosphonate.

The G-agents are all viscous liquids of varying volatility (vapor density relative to air between 4.86 and 6.33) with faint odors ("faintly fruity," or "spicy," "odor of camphor"). Toxic effects may occur at concentrations below those of odor detection.

The vapor pressures and acute toxicity of the G-series agents are sufficiently high for the vapors to be rapidly lethal. Within the G-series, GB is considered largely a vapor hazard, while GD is considered mainly a vapor hazard. GA represents a smaller vapor hazard and is expected to present a relevant contact hazard. The vapor pressure of agent GF is intermediate between that of agents GA and GD.

Exposure to acutely toxic concentrations of G-agents can result in excessive bronchial, salivary, ocular, and intestinal secretion, sweating, miosis, bronchospasm, intestinal hypermotility, bradycardia, muscle fasciculations, twitching, weakness, paralysis, loss of consciousness, convulsions, depression of the central respiratory drive, and death. Minimal effects observed at low vapor concentrations include miosis (pinpointing of the pupils of the eye, with subsequent decrease in pupil area), tightness of the chest, rhinorrhea, and dyspnea.

The results of agent GB vapor exposure studies conducted with human volunteers indicate that the threshold for miosis and other minimal toxic effects falls in the range of 0.05 to 0.5 mg/m^3 for 10–30 minute exposures. These findings are based on the results of low-concentration nerve agent exposures to informed volunteers who were under clinical supervision during the periods of exposure as well as for post-exposure periods of several months. Inconsistencies between the studies in identifying the toxicity threshold may be due to differences in individual sensitivities or breathing rates of the test subjects, or to differences in experimental protocols or analytical methods.

There is at present no evidence to indicate that asymptomatic exposures to any of the G-agents result in chronic neurological disorders. A major concern associated with symptomatic exposures to anticholinesterase compounds such as the G agents is the possibility of chronic neurological effects. In general, the available epidemiological data indicate that most clinical signs of toxicity resolve within hours to days; severe miosis may require several months after exposure for resolution. However, several studies have shown that subclinical signs may persist for longer periods. Following the chemical terrorist attacks with nerve agent GB that occurred in Japan in 1994 and 1995, clinical signs of agent toxicity were no longer apparent in the surviving victims 3 months after the exposures had occurred. However, several studies conducted on a small number of asymptomatic individuals 6–8 months after the attack revealed subclinical signs of neurophysiological deficits as measured by event-related and visual evoked potentials, psychomotor performance, and increases in postural sway.

Small but measurable changes in single fibre electromyography (SFEMG) of the forearm were detectable between 4 and 15 months following exposure to a concentration of agent GB that produced minimal clinical signs and symptoms in fully informed human subjects who were under clinical supervision in compliance with Helsinki accords (Baker and Sedgwick, 1996). The SFEMG effects were not clinically significant and were not detectable after 15–30 months. In a separate study of workers who had been occupationally exposed to agent GB (sarin), altered electroencephalograms (EEGs) were recorded 1 year or more after the last exposure had occurred. Spectral analysis of the EEGs indicated significant increases in brain beta activity (12–30 Hz) in the exposed group when compared to non-exposed controls, and sleep EEGs revealed significantly increased rapid eye movement in the exposed workers; these observations were not clinically significant. Increases in beta activity were also observed in rhesus monkeys 1 year after being dosed with 5 µg GB/kilogram (kg). Slight, but non-significant increases in beta activity, without deleterious effects on cognitive performance, were reported for marmosets injected with 3.0 µg GB/kg and tested 15 months later. The significance of subclinical neurological effects for the long-term health of exposed individuals has not been determined.

Animal data from vapor and oral exposure studies for agent GB suggest that agent GB does not induce reproductive or developmental effects in mammals. Oral exposure studies of agents GB and GD in lab animals, as well as injection exposure studies of agent GA, likewise suggest the lack of reproductive or development effects for these agents. Agent GB was not found to be genotoxic in a series of microbial and mammalian assays, but agent GA was reported to be weakly mutagenic. There is no evidence that agents GB and GA are carcinogenic.

The data base for toxicological effects in humans is more complete for agent GB than for any of the other G-agents. Furthermore, agent GB is the only G-agent for which sufficient human data are available to directly derive AEGL–1 and AEGL–2 values, and the only G-agent for which sufficient laboratory animal data are available for deriving an AEGL–3 value for all five AEGL time periods. The AEGL–1 values for agent GB were derived from a study on human volunteers in which minimal and reversible effects occurred as a consequence of a 20-minute exposure to a GB vapor concentration of 0.05 mg/m^3 (Harvey, 1952; Johns, 1952).

The AEGL–2 values for agent GB were derived from a study in which miosis, dyspnea, photophobia, inhibition of red blood cell cholinesterase (RBC-ChE), and changes in SFEMG were observed in human volunteers following a 30-minute exposure to 0.5 mg/m^3 (Baker and Sedgwick, 1996). The SFEMG changes noted in the study were not clinically significant, and were not detectable after 15–30 months. Baker and Sedgwick considered SFEMG changes to be a possible early indicator or precursor of the nondepolarising neuromuscular block found associated with Intermediate Syndrome paralysis in severe organophosphorous insecticide poisoning cases. The study concluded that these electromyographic changes were persistent (>15 months), but that they were reversible and subclinical. While not considered debilitating or permanent effects in themselves, SFEMG changes are here considered an early indicator of exposures that could potentially result in more significant effects. Selection of this effect as a protective definition of an AEGL–2 level is considered appropriate given the steep dose-response toxicity curve of nerve agents. This concept of added precaution for steep dose-response is consistent with emergency planning guidance for nerve agents previously developed by the National Center for Environmental Health of the Centers for Disease Control and Protection.

Animals exposed to low concentrations of the G agents exhibit the same signs of toxicity as humans, including miosis, salivation, rhinorrhea, dyspnea, and muscle fasciculations. Studies on dogs and rats indicate that exposures to 0.001 mg GB/m^3 for up to 6 hours per day are unlikely to produce any signs of toxicity.

Because exposure-response data were unavailable for all of the AEGL–specific exposure durations, temporal extrapolation was used in the development of AEGL values for the AEGL–specific time periods. The concentration-exposure time relationship for many systemically acting vapors and gases may be described by $C^n \times t = k$, where the exponent n ranges from 0.8 to 3.5.

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Ongoing but unpublished analyses of rat exposure data as performed by Mioduszewski and his colleagues is indicating that the n value for agent GB likely varies with exposure duration (t) (Mioduszewski *et al.*, 2000a, b). Future analyses may provide separate n values for different duration periods of concern, and will be used when available. Current analyses are based on a log-log linear regression of the lethality of GB to female Sprague-Dawley rats (Mioduszewski *et al.*, 2000a, b), which yields an n value of 1.93 with a r^2 of 0.9948. This value indicates a good agreement between the data points. Given that all mammalian toxicity endpoints observed in the data set for all nerve agents represent different points on the response continuum for anticholinesterase exposure, and that the mechanism of mammalian toxicity (cholinesterase inhibition) is the same for all nerve agents, the experimentally derived n = 2 from the Mioduszewski *et al.* (2000a, b) rat lethality data set is used as the scaling function for the AEGL–1 and AEGL–2 derivations rather than a default value. An n of 1.16 was calculated for comparison using other data (human volunteer) and other endpoints (e.g., GB-induced miosis in humans; see Appendix B). However, due to a poor r^2 (0.6704) and other uncertainties associated with some of the exposure measurements in these earlier studies, Mioduszewki *et al.*, data were determined to be the best source of an estimate for n. An n value of 2 was also used to derive the 8-hour AEGL–3 value for GB from the experimental rat lethality data set in which animals were exposed to GB vapor for a maximal period of 6 hours (Mioduszewski *et al.*, 2000a, b).

The fact that AEGL–1 and AEGL–2 analyses for agent GB are based on data from human volunteers (Harvey, 1952; Johns 1952; Baker and Sedgwick, 1996) precludes the use of an interspecies UF. To accommodate known variation in human cholinesterase activity that may make some individuals susceptible to the effects of cholinesterase inhibitors such as nerve agents, a factor of 10 was applied for intraspecies variability (protection of susceptible populations). A modifying factor is not applicable. Thus, the total UF for estimating AEGL–1 and AEGL–2 values for agent GB is 10.

In comparison to agent GB, the data sets characterizing toxicity of agents GA, GD, and GF are less complete. Nevertheless, the literature clearly indicates that inhibition of cholinesterase activity is a common mechanism of toxicity shared by all these nerve agents. Thus, it was possible to develop AEGL estimates for agents GA, GD, and GF by a comparative method of relative potency analysis from the more complete data set for agent GB. This approach has been previously applied in the estimation of nerve agent exposure limits, most recently by Mioduszewski *et al* (1998).

The AEGL–1 and AEGL–2 values for agents GA, GD, and GF were derived from the AEGL–1 and AEGL–2 values for GB using a relative potency approach, based on the potency of the agents to induce LOAEL effects of miosis, rhinorrhea, and SFEMG; and agent concentration in units of mg/m^3. Agents GA and GB were considered to have an equivalent potency for causing miosis. Agents GD and GF are each considered approximately twice as potent as agents GB or GA for these endpoints, and equipotent to each other for AEGL–1 and AEGL–2 effects. Thus, the AEGL–1 and AEGL–2 concentration values for agents GD and GF are equal to 0.5 times those values derived for agents GA and GB.

AEGL–3 values for agent GB were derived from recent inhalation studies in which the lethality of GB to female Sprague-Dawley rats was evaluated for the time periods of 10, 30, 60, 90, 240, and 360 minutes (Mioduszewski *et al.*, 2000a, b). Both experimental LC_{01} and LC_{50} values were evaluated. The use of a rat data set resulted in selection of an interspecies UF of 3; the full default value of 10 was not considered appropriate since the mechanism of toxicity in mammals is cholinesterase inhibition. The full default value of 10 for intraspecies uncertainty was considered necessary to protect susceptible populations. Since a modifying factor is not applicable, the total UF for AEGL–3 determination for agent GB is equal to 30.

The AEGL–3 values for agent GA were derived from the AEGL–3 values for GB using a relative potency approach based on lethality of the agents; the potency of agent GA was considered to be only ½ that of agent GB for this endpoint. Thus, the AEGL–3 concentration values for agent GA are equal to 2.0 times the AEGL–3 values for agent GB.

The lethal potencies of agents GD and GF are considered equivalent, and equipotent to that of agent GB. Thus, the AEGL–3 concentration values for agent GB, GD, and GF are equivalent. A secondary and short-term GD inhalation study of rat lethality for exposure times ≤30 minutes (Aas *et al.*, 1985) lends support to the assumption of lethal equipotency for agents GB and GD. Since the principal mode of action (cholinesterase inhibition) for the G-agents is identical, an n = 2 was used for deriving AEGL–3 values from the data of Aas and his colleagues. Due to the sparse data set for this agent, the full default values for interspecies (10) and intraspecies (10) uncertainty were applied. Since a modifying factor is not applicable, a total UF of 100 was used in deriving 10-minute AEGL–3 (0.27 mg/m^3) and 30-minsute AEGL–3 (0.15 mg/m^3) estimates for agent GD from Aas *et al.* (1985).

The calculated values are listed in Table 3 below:

TABLE 3.—SUMMARY OF PROPOSED AEGL VALUES FOR NERVE AGENTS[A] GA, GB, GD, AND GF [PPM (MG/M^3)]

Agent	Classification	10-Minutes	30-Minutes	1-Hour	4-Hours	8-Hours	Endpoint (Reference)
GA	AEGL–1 (Non-disabling)	0.0010 ppm (0.0069 mg/m³)	0.00060 ppm (0.0040 mg/m³)	0.00042 ppm (0.0028 mg/m³)	0.00021 ppm (0.0014 mg/m³)	0.00015 ppm (0.0010 mg/m³)	Based on relative potency from GB[b]
	AEGL–2 (Disabling)	0.013 ppm (0.087 mg/m³)	0.0075 ppm (0.050 mg/m³)	0.0053 ppm (0.035 mg/m³)	0.0026 ppm (0.017 mg/m³)	0.0020 ppm (0.013 mg/m³)	Based on relative potency from GB[b]
	AEGL–3 (Lethal)	0.11 ppm (0.76 mg/m³)	0.057 ppm (0.38 mg/m³)	0.039 ppm (0.26 mg/m³)	0.021 ppm (0.14 mg/m³)	0.015 ppm (0.10 mg/m³)	Based on relative potency from GB[c]

TABLE 3.—SUMMARY OF PROPOSED AEGL VALUES FOR NERVE AGENTS[A] GA, GB, GD, AND GF [PPM (MG/M^3)]—Continued

Agent	Classification	10-Minutes	30-Minutes	1-Hour	4-Hours	8-Hours	Endpoint (Reference)
GB	AEGL–1 (Non-disabling)	0.0012 ppm (0.0069 mg/m³)	0.00068 ppm (0.0040 mg/m³)	0.00048 ppm (0.0028 mg/m³)	0.00024 ppm (0.0014 mg/m³)	0.00017 ppm (0.0010 mg/m³)	Headache, eye pain, rhinorrhea, tightness in chest, cramps, nausea, malaise, miosis in human volunteers exposed to 0.05 mg/m^3 for 20 minutes (Harvey, 1952; Johns, 1952)
	AEGL–2 (Disabling)	0.015 ppm (0.087 mg/m³)	0.0085 ppm (0.050 mg/m³)	0.0060 ppm (0.035 mg/m³)	0.0029 ppm (0.017 mg/m³)	0.0022 ppm (0.013 mg/m³)	Miosis, dyspnea, RBC-ChE inhibition, SFEMG changes in human volunteers exposed to 0.5 mg/m^3 for 30 minutes (Baker and Sedgwick, 1996)
	AEGL–3 (Lethal)	0.064 ppm (0.38 mg/m³)	0.032 ppm (0.19 mg/m³)	0.022 ppm (0.13 mg/m³)	0.012 ppm (0.070 mg/m³)	0.0087 ppm (0.051 mg/m³)	Based on experimental Sprague-Dawley rat lethality data (LC_{01} and LC_{50}); whole-body dynamic exposure to concentrations between 2–56 mg/m^3 for 3, 10, 30, 60, 90, 240, and 360 minutes (Mioduszewski *et al.*, 2000a,b)
GD	AEGL–1 (Non-disabling)	0.00046 ppm (0.0035 mg/m³)	0.00026 ppm (0.0020 mg/m³)	0.00018 ppm (0.0014 mg/m³)	0.000091 ppm (0.00070 mg/m³)	0.000065 ppm (0.00050 mg/m³)	Based on relative potency from GB[d]
	AEGL–2 (Disabling)	0.0057 ppm (0.044 mg/m³)	0.0033 ppm (0.025 mg/m³)	0.0022 ppm (0.018 mg/m³)	0.0012 ppm (0.0085 mg/m³)	0.00085 ppm (0.0065 mg/m³)	Based on relative potency from GB[d]
	AEGL–3 (Lethal)	0.049 ppm (0.38 mg/m³)	0.025 ppm (0.19 mg/m³)	0.017 ppm (0.13 mg/m³)	0.0091 ppm (0.070 mg/m³)	0.0066 ppm (0.051 mg/m³)	Based on relative potency from GB. Supported by Wistar rat LC_{50}; dynamic chamber exposures at 21 mg/m^3 for 3 time periods of <30 minutes duration (Aas *et al.*, 1985)[e]
GF	AEGL–1 (Non-disabling)	0.00049 ppm (0.0035 mg/m³)	0.00028 ppm (0.0020 mg/m³)	0.00020 ppm (0.0014 mg/m³)	0.00010 ppm (0.00070 mg/m³)	0.000070 ppm (0.00050 mg/m³)	Based on relative potency from GB[d]
	AEGL–2 (Disabling)	0.0062 ppm (0.044 mg/m³)	0.0035 ppm (0.025 mg/m³)	0.0024 ppm (0.018 mg/m³)	0.0013 ppm (0.0085 mg/m³)	0.00091 ppm (0.0065 mg/m³)	Based on relative potency from GB[d]
	AEGL–3 (Lethal)	0.053 ppm (0.38 mg/m³)	0.027 ppm (0.19 mg/m³)	0.018 ppm (0.13 mg/m³)	0.0098 ppm (0.070 mg/m³)	0.0071 ppm (0.051 mg/m³)	Based on relative potency from GB[e]

[a] Percutaneous absorption of G-agent vapor is known to be an effective route of exposure; nevertheless, percutaneous vapor concentrations needed to produce similar adverse effects are greater than inhalation vapor concentrations by several orders of magnitude. Thus, the AEGL values presented are considered protective for both routes of exposure.

[b] Based on relative potency equal to that of agent GB (see section 4.3 and Mioduszewski *et al.*, 1998)

[c] Agent GA is considered approximately ½ as potent as GB in causing lethality; thus, AEGL–3 values for GA are estimated by multiplying each time-specific AEGL–3 value for agent GB by a factor of 2 (see section 4.3 and Mioduszewski *et al.*, 1998)

[d] Agents GD and GF are considered approximately twice as potent as agents GA and GB for causing miosis, and equipotent to each other. Thus, AEGL–1 and AEGL–2 values are estimated by multiplying each time-specific AEGL–1 or AEGL–2 value for agent GB by a factor of 0.5 (see section 4.3 and Mioduszewski *et al.*, 1998)

[e] Based on a relative potency for lethality of GD = GF = GB and lethality data of Aas *et al.* (1985) (which provides a 10-minute AEGL–3 estimate of 0.27 $mg/m^3$and a 30-minute AEGL–3 value of 0.15 mg/m^3) (see section 4.3 and Appendix A)

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g. Mioduszewski, R.J., Manthei, J., Way, R., Burnett, D., Gaviola, B. Muse, W., Thomson, S., Sommerville, D., and Crosier, R. 2000b. Estimating the probability of sarin vapor toxicity in rats as a function of exposure concentration and duration. Proceedings of the International Chemical Weapons Demilitarization Conference (CWD–2000), The Hague, NL. May 21–24, 2000.

6. *Acrylic acid*—i. *Description.* Acrylic acid is a clear, colorless, corrosive liquid with a pungent odor. The primary use of acrylic acid, accounting for about two third of its use, is in the production of acrylic esters and resins, which are used primarily in coatings, paint, plastics, and adhesives. Acrylic acid is also used in oil treatment chemicals, detergent intermediates, and water treatment chemicals.

Except for reports on odor threshold and a personal communication about irritative effects in humans no studies reporting effects in humans are available. Irritative effects of acrylic acid in animals have been described in studies using repeated 6-hour exposures of rabbits, rats, and mice. Consistently, histopathological alterations of the nasal mucosa was a more sensitive toxicological endpoint than the appearance of clinical signs of irritation: The lowest concentrations leading to clinical signs of irritation (concentrations without effect given in brackets) were 129 (77) ppm in rabbits (blepharospasm, perinasal and perioral wetness), 218 (114) ppm in rats (eyelid closure, discharge from eyes), and 223 (72) ppm in mice (scratching at the nose). Repeated exposure for 1–2 weeks led to histopatholgical changes of the nasal mucosa at the lowest concentrations tested, which were 34 ppm for rabbits, 74 ppm for rats and 25 ppm for mice. In mice, effects were found after exposure to 5 ppm for 22 hours/day, but not 6 hours/day, for 2 weeks. A number of studies described lethal effects in rats. In a study in which rats were exposed to acrylic acid aerosol (Hagan and Emmons, 1988), LC_{50} values of 5,670; 3,804; and 2,553 ppm for 30 minutes, 1 hour, and 2 hours, respectively, were reported. Studies evaluating the acute toxicity of acrylic acid vapors used very small numbers of animals or were not reported in detail and gave somewhat varying results. In summary, the available studies do not indicate a large difference in the toxicity of acrylic acid vapor and aerosol. No developmental toxic effects of acrylic acid were found in several inhalation studies. Acrylic acid may have a weak clastogenic effect *in vitro*. No carcinogenic effects were found after application of acrylic acid in the drinking water, while after subcutaneous and topical application tumors were found (probably attributable to local irritative effects).

AEGL–1 values were based on the odor recognition threshold of 1 ppm determined by Hellman and Small (1974). Since this odor threshold was determined in a trained odor panel, it was assumed that the olfaction of the general population is less good. For this reason, the reported recognition threshold and not the detection threshold was chosen for derivation of AEGL–1 values. This concentration of acrylic acid is supposed to have warning properties since most people should perceive the odor of acrylic acid at this concentration. Since the odor threshold is considered to depend primarily on exposure concentration and not much on exposure time, a flat line was used for time scaling. An UF of 1 was applied for intraspecies variability because this factor was considered adequate for an odor threshold. The derived values are supported by irritative effects in humans: In a personal communication, Renshaw (1991) reported that eye irritation was noted after exposure to concentrations of 5–23 ppm for 15–30 minutes and that slight eye irritation was experienced after exposure to 0.3–1.6 ppm for 30 minutes to 2.5 hours. Since occurrence of slight eye irritation can be tolerated at the AEGL–1 level these data support AEGL–1 values in the latter concentration range.

The AEGL–2 was based on blepharospasm in rabbits observed during the first and subsequent exposures in a teratogenicity study using repeated exposures (Neeper-Bradley *et al.*, 1997). Blepharospasm was considered a sign of impaired ability to escape. The highest concentration not leading to this effect was 77 ppm (the LOEL was 129 ppm). A total UF of 3 was used. An interspecies factor of 1 was applied because the rabbit was considered a species especially sensitive for blepharospasm/eyelid closure. An intraspecies factor of 3 was used because it was assumed that only toxicodynamic, but not toxicokinetic differences contribute to variability of this local effect. No information was available on the exposure concentration dependence of the time to onset of blepharospasm. Since the increase of this effect with time was assumed to be small and observations from 6-hour exposure periods were available, use of a flat line to derive values for appropriate exposure periods was considered an appropriate approach.The AEGL–3 was based on a mortality study in rats using single exposures against acrylic acid aerosol for 30 minutes, 1 hour, or 2 hours (Hagan and Emmons, 1988). Using Probit analysis, maximum likelihood estimates for LC_{01} values were calculated for appropriate exposure periods between 10 minutes and 8 hours. These values were similar to the lower 95% confidence limit of LC_{05} values calculated by Probit analysis. The same values were obtained when time scaling was done according to the dose-response regression equation $C^n \times t = k$, using an n of 1.7, that was derived by Probit analysis from the data of the AEGL–3 key study (Hagan and Emmons, 1988) or by linear regression of log (LC_{50}) – log (time) data. A total UF of 10 was used. An interspecies factor of 3 was applied because the interspecies variability was assumed to be small due to the facts that acrylic acid is a contact-site, direct-acting toxicant, the mechanism of action is unlikely to differ between species and the influence of metabolism, detoxification, and elimination on lethal effects after inhalation is estimated to be small. An intraspecies factor of 3 was applied because a small interindividual variability can be assumed since acrylic acid is a contact-site, direct-acting toxicant not requiring metabolic conversion.

The calculated values are listed in Table 4 below:

TABLE 4.—SUMMARY TABLE OF PROPOSED AEGL VALUES FOR ACRYLIC ACID

Classification	10-Minutes	30-Minutes	1-Hour	4-Hours	8-Hours	Endpoint (Reference)
AEGL–1 (Nondisabling)	1.0 ppm (3.0 mg/m^3)	1.0 ppm (3.0 mg/m^3)	1.0 ppm (3.0 mg/m^3)	1.0 ppm (3.0 mg/m^3)	1.0 ppm (3.0 mg/m^3)	Odor detection threshold in humans (Hellman and Small, 1974)
AEGL–2 (Disabling)	26 ppm (78 mg/m^3)	26 ppm (78 mg/m^3)	26 ppm (78 mg/m^3)	26 ppm (78 mg/m^3)	26 ppm (78 mg/m^3)	Blepharospasm in rabbits (Neeper-Bradley *et al.*, 1997)
AEGL–3 (Lethal)	470 ppm (1,400 mg/m^3)	250 ppm (750 mg/m^3)	170 ppm (510 mg/m^3)	77 ppm (231 mg/m^3)	51 ppm (153 mg/m^3)	Lethality in rats (Hagan and Emmons, 1988)

ii. *References.*

a. Hellman, T.M. and Small, F.H. 1974. Characterization of the odor properties of 101 petrochemicals using sensory methods. *Journal of the Air Pollution Control Association*. Vol. 24:979–982.

b. Hagan, J.V. and Emmons, H.F. 1988. Acrylic acid—acute inhalation toxicity study in rats. Unpublished Report No. 87R–106. Rohm and Haas Co., Spring House, PA.

c. Neeper-Bradley, T.L., Fowler, E.H., Pritts, I.M., and Tyler, T.R. 1997. Developmental toxicity study of inhaled acrylic acid in New Zealand White rabbits. *Food and Chemical Toxicology*. Vol. 35:869–880.

d. Renshaw, F.M. and Renshaw, F.M. 1988. Rohm and Haas Co. Personal communication cited in *Emergency Response Planning Guidelines*, Acrylic acid. AIHA (American Industrial Hygiene Association), Akron, OH.

7. *Allyl alcohol*—i. *Description.* Allyl alcohol is a colorless liquid that is a potent sensory irritant. Toxic effects following inhalation exposures to allyl alcohol vapor include lacrimation, pulmonary edema and congestion, and inflammation, hemorrhage, and degeneration of the liver and kidney. Human data were limited to voluntary exposures for short durations and general statements about the signs of toxicity following accidental exposures to unknown concentrations of allyl alcohol for unspecified amounts of time in the workplace. Animal data were limited to studies in which lethality was the only endpoint of interest, subchronic exposures, or single-exposure experiments in which the model was questionable.

The AEGL–1 value was based on the mean odor detection threshold concentration of 1.8 ppm (AIHA, 1989). Odor is considered a threshold effect; therefore the values were not scaled across time, but rather the threshold value is applied to all times.

The AEGL–2 values were based on a subchronic exposure study in which rats were repeatedly exposed to 40 ppm for 7 hours/day (Dunlap *et al.*, 1958). Irritation was noted to occur during the first few exposures. An UF of 3 was applied for species to species extrapolation because there did not appear to be much variation between species: A NOEL for lethality was the same for 3 different species (mice, rats, and rabbits). An UF of 3 was also applied for intraspecies extrapolation. Although the traditional approach for UF in a case such as this would argue for an uncertainty factor of 10 because of the lack of data addressing interindividual variability, this would result in a composite uncertainty factor of 30. An UF of 30 would drive the AEGL–2 values (8 hour AEGL–2 of 1.2 ppm) to a level that would be inconsistent with available data: Dunlap, *et al.* (1958) reported that rats exposed for 7 hours/day, 5 days/week for 60 exposures to 1, 2, or 5 ppm had no observable adverse effects, while rats exposed to 20 ppm only exhibited decreased body-weight gain, and Torkelson *et al.* (1959) reported that no adverse effects were noted when rats, guinea pigs, rabbits, and dogs were exposed to 2 ppm for 7 hours/day, 5 days/week for 28 exposures, while exposure of rats, guinea pigs, and rabbits exposed to 7 ppm for 7 hours/day, 5 days/week for 134 exposures exhibited only reversible liver and kidney damage. Therefore, a total UF of 10 was applied to the AEGL–2 value.

The experimentally derived exposure value was then scaled to AEGL time frames using the concentration-time relationship given by the equation $C^n \times t = k$, where the exponent n generally ranges from 1 to 3.5 (ten Berge, 1986). The value of n was not empirically derived due to the unreliability and inconsistencies of the data; therefore, the default value of n = 1 was used for extrapolating from shorter to longer exposure periods and a value of n = 3 was used to extrapolate from longer to shorter exposure periods. The 10-minute value was set equal to the 30-minute value because it was considered too precarious to extrapolate from the exposure duration of 7 hours to 10 minutes.

The AEGL–3 values were based upon a NOEL for lethality in mice, rats, and rabbits of 200 ppm for 1 hour (Union Carbide, 1951). An UF of 3 was applied for species to species extrapolation because there did not appear to be much variation across species for lethality. A NOEL for lethality was the same for 3 different species (mice, rats, and rabbits), and this endpoint was used for the AEGL–3 derivation. Additionally, the use of a NOEL for lethality is inherently conservative. An UF of 3 was also applied for intraspecies extrapolation. As discussed in the AEGL–2 derivation unit, applying the traditional UF of 10 to account for the lack of data addressing interindividual variability would result in a composite UF of 30, which would drive the AEGL–3 values to a level that would be inconsistent with available data (1 hour AEGL–3 of 6.7 ppm; see AEGL–2 derivation in this unit). Therefore, a total UF of 10 was applied to the AEGL–3 value.

The experimentally derived exposure value was then scaled to AEGL time frames using the concentration-time relationship given by the equation $C^n \times t = k$, where the exponent n generally ranges from 1 to 3.5 (ten Berge, 1986). Again, the value of n was not empirically derived due to the unreliability and inconsistencies of the data; therefore a default value of n should be used in the temporal scaling of AEGL values across time. If one applies the default value of n = 1 for extrapolating from shorter to longer exposure periods and a value of n = 3 to extrapolate from longer to shorter exposure periods, one obtains the following values: 10 minutes: 36 ppm; 30 minute: 25 ppm; 1 hour: 20 ppm; 4 hours: 5.0 ppm; 8 hours: 2.5 ppm. Going with a default value results in AEGL values that are inconsistent with the available data. The AEGL–2 data do not support the hypothesis that n = 1 for extrapolation to 4 or 8 hours: When using an n = 1 (which assumes a "worse case" scenario) to extrapolate from 1 hour to 4 or 8 hours, one obtains a 4-hour AEGL–3 value of 5.0 ppm, which

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is almost identical to the 4-hour AEGL–2 value of 4.8 ppm, and an 8-hour AEGL–3 value of 2.5 ppm, which is lower than the 8-hour AEGL–2 value of 3.5 ppm. The AEGL–2 values help to serve as a baseline: They are based on a multiple exposure scenario in which rats exposed for 40 ppm for 7 hours/days exhibited reversible signs of irritation. It is unreasonable to have AEGL–3 values below the AEGL–2 values. Therefore, in the absence of any further data, an n of 2 was selected as a reasonable compromise between the possible values for n as reported by ten Berge (1986): It is between the most conservative n = 1 (which results in unreasonable values) and an n = 3, a least conservative value. AEGL–3 values are therefore derived using an n = 3 for extrapolation to 10 and 30 minutes and an n = 2 for extrapolation to 4 or 8 hours.

The calculated values are listed in Table 5 below:

TABLE 5.—SUMMARY OF PROPOSED AEGL VALUES FOR ALLYL ALCOHOL [PPM (MG/M³)]

Classification	10-Minutes	30-Minutes	1-Hour	4-Hours	8-Hours	Endpoint (Reference)
AEGL–1 (Nondisabling)	1.8 (4.4)	1.8 (4.4)	1.8 (4.4)	1.8 (4.4)	1.8 (4.4)	Mean odor detection threshold (AIHA, 1989)
AEGL–2 (Disabling)	9.6 (23)	9.6 (23)	7.7 (19)	4.8 (12)	3.5 (8.5)	Irritation in rats at 40 ppm for 7 hours (Dunlap *et al.*, 1958)
AEGL–3 (Lethality)	36 (87)	25 (61)	20 (48)	10 (24)	7.1 (17)	NOEL for lethality in mice, rats, and rabbits exposed to 200 ppm for 1 hour (Union Carbide, 1951)

ii. *References.*

a. AIHA. 1989. Odor thresholds for chemicals with established occupational health standards. AIHA, Fairfax, VA.

b. Dunlap, M.K., Kodama, J.K., Wellington, J.S., Anderson, H.H., and Hine, C.H. 1958. The toxicity of allyl alcohol. *American Medical Association Archives of Industrial Health*. Vol. 18:303–311.

c. ten Berge, W.F. 1986. Concentration-time mortality response relationship of irritant and systemically acting vapours and gases. *Journal of Hazardous Materials*. Vol. 13:301–309.

d. Torkelson, T.R., Wolf, M.A., Oyen, F., and Rowe, V.K. 1959a. Vapor toxicity of allyl alcohol as determined on laboratory animals. *American Industrial Hygiene Association Journal*. Vol. 20:217–229.

e. Union Carbide and Carbon Corporation. 1951. Initial submission: letter from DuPont Chemical to USEPA regarding a letter about toxicity studies with allyl alcohol with cover letter dated October 15, 1992. Doc. #88–920009857. Union Carbide and Carbon Corp., New York, NY.

8. *Chloromethyl methyl ether*—i. *Description.* Chloromethyl methyl ether (CMME) is a man-made chemical that is highly flammable and a severe respiratory, eye, nose, and skin irritant. Technical grade CMME contains 1–8% bis-chloromethyl ether (BCME) as a contaminant. Since humans are only exposed to technical grade CMME (a great deal of effort is needed to remove "all" BCME from CMME), and the human and animal inhalation exposure data all involved technical grade CMME, the AEGL values derived in this document will address the toxicity and carcinogenicity of technical grade CMME.

Acute exposure to technical grade CMME can lead to delayed fatal pulmonary edema in humans and animals, whereas chronic occupational exposure is linked with small-cell lung carcinoma. The carcinoma has a distinct histology from that of cigarette smoking-associated lung cancer and has a shorter latency period. BCME is a much more potent carcinogen than CMME, and is widely believed to account for most or all of the carcinogenicity of technical grade CMME. The EPA places technical grade CMME (and BCME) in classification A ("human carcinogen") based on sufficient human carcinogenicity data. Technical grade CMME acute inhalation toxicity has been studied in rats, mice, and hamsters. Numerous epidemiological studies describe occupational exposure to technical grade CMME, although CMME concentrations were almost never measured.

No data were available to determine the concentration-time relationship for CMME toxic effects. The concentration-time relationship for many irritant and systemically acting vapors and gases may be described by $C^n \times t = k$, where the exponent n ranges from 0.8 to 3.5 (ten Berge *et al.*, 1986). To obtain protective AEGL–2 and AEGL–3 values for 30–480 minutes, n = 3 and n = 1 were used to extrapolate to durations shorter and longer, respectively, than the exposure duration in the key study (AEGL–1 values were not derived). The 10-minute values were not extrapolated because the NAC determined that extrapolating from ≥4 hours to 10 minutes is associated with unacceptably large inherent uncertainty, and the 30-minute values were adopted for 10 minutes to be protective of human health.

AEGL–1 values were not recommended because there were no inhalation studies that had endpoints consistent with the definition of AEGL–1.

AEGL–2 values for technical grade CMME were based on a study in which rats were exposed 30 times (probably for 6 hours/day, 5 days/week) to 1 ppm technical grade CMME vapor (Drew *et al.*, 1975). Two rats died (exposure days 16 and 22) but their cause of death was not stated. Some of the rats were allowed to live for their lifetime; they had minimal mucosal effects and several had lung hyperplasia or squamous metaplasia, but no tumors were reported. The AEGL–2 values were based on a single 6-hour exposure, which is expected to cause a similar or lower incidence of hyperplasia and/or metaplasia than 30 exposures. An UF of 10 was used: 3 to account for sensitive humans (response to an irritant gas hydrolyzed *in situ* is not likely to vary greatly among humans) and 3 for interspecies extrapolation (little interspecies variability was seen; the key study was repeat-exposure). A modifying factor of 3 was applied to account for potential differences in BCME content of technical grade CMME. The resulting AEGL values were supported by a lifetime CMME rat and hamster study (Laskin *et al.*, 1975) and a 6-month BCME rat and mouse study (Leong *et al.*, 1975, 1981).

CMME AEGL–2 values were also calculated using a BCME inhalation cancer slope factor with extrapolation to 4 to 8 hours, and based on 10^{-4}, 10^{-5}, and 10^{-6} excess cancer risk levels (BCME was assumed to represent 8% of CMME and to account for all CMME carcinogenicity). CMME AEGL–2 values based on the noncarcinogenicity endpoints were lower than those calculated for 10^{-4} excess cancer risk but were similar to or greater than those calculated for 10^{-5} or 10^{-6} excess cancer risk. AEGL–2 values based on the noncarcinogenic endpoints were considered to be more appropriate because only multiple exposures to CMME were shown to result in tumor formation, and AEGL values are applicable to rare events or single, once-in-a-lifetime exposures of small populations in limited geographic areas.

AEGL–3 values were derived from a rat inhalation LC_{50} study where exposure was for 7 hours (Drew *et al.*, 1975). The threshold for lethality, as represented by the LC_{01} (14.8 ppm) calculated using probit analysis, was the AEGL–3 toxicity endpoint. Animals that died, and to a lesser degree, animals surviving to 14 days, had increased relative lung weights, congestion, edema, hemorrhage, and acute necrotizing bronchitis. An UF of 10 was used: 3 for sensitive humans (response to an irritant gas hydrolyzed *in situ* is not likely to vary greatly among humans) and 3 for interspecies extrapolation (little interspecies variability was seen, as expected for an irritant gas hydrolyzed *in situ*). An additional modifying factor of 3 was applied to account for potential differences in BCME content of technical grade CMME. Comparable AEGL–3 values were obtained with CMME in a hamster LC_{50} study and in a BCME single-exposure rat study (Drew *et al.*, 1975).

The calculated values are listed in Table 6 below:

TABLE 6.—SUMMARY OF PROPOSED AEGL VALUES FOR CHLOROMETHYL METHYL ETHER (CMME) [PPM(MG/M³)]

Level	10-Minutes	30-Minutes	1-Hour	4-Hours	8-Hours	Endpoint (Reference)
AEGL–1 (Nondisabling)	Not Recommended (No studies available consistent with AEGL–1 definition)					
AEGL–2 (Disabling)	0.076 (0.25)	0.076 (0.25)	0.061 (0.20)	0.038 (0.13)	0.025 (0.082)	Tracheal or bronchial squamous metaplasia; regenerative lung hyperplasia (Drew *et al.*, 1975).
AEGL–3 (Lethal)	1.2 (3.9)	1.2 (3.9)	0.94 (3.1)	0.59 (2.0)	0.43 (1.4)	Lethality threshold for rats (Drew *et al.*, 1975).

ii. *References.*

a. Drew, R.T., Laskin, S., Kuschner, M., and Nelson, N. 1975. Inhalation carcinogenicity of alpha halo ethers. I. The acute inhalation toxicity of chloromethyl methyl ether and bis(chloromethyl)ether. *Archives of Environmental Health*. Vol. 30:61–69.

b. Laskin, S., Drew, R.T., and Cappiello, V., *et al.*, 1975. Inhalation carcinogenicity of alpha halo ethers. II. Chronic inhalation studies with chloromethyl methyl ether. *Archives of Environmental Health*. Vol. 30:70–72.

c. Leong, B.K.J., Kociba, R.J., Jersey, G.C., and Gehring, P.J. 1975. Effects from repeated inhalation of parts per billion of bis(chloromethyl)ether in rats. *Toxicology and Applied Pharmacology*. Vol. 33:175.

d. Leong, B.K.J., Kociba, R.J., and Jersey, G.C. 1981. A lifetime study of rats and mice exposed to vapors of bis(chloromethyl)ether. *Toxicology and Applied Pharmacology*. Vol. 58:269–281.

e. ten Berge, W. F., Zwart, A., and Appelman, L. M. 1986. Concentration-time mortality response relationship of irritant and systemically acting vapors and gases. *Journal of Hazardous Materials*. Vol. 13:302–309.

9. *Toluene*—i. *Description.* Toluene is a ubiquitous substance that is widely used as a raw material in the chemical manufacturing industry, as an additive in gasoline to increase the octane level, and as a solvent in lacquers, paint thinners, glue, and other compounds. The odor threshold for toluene ranges from 0.16 to 37 ppm for detection and 1.9 to 69 ppm for recognition; the odor is not unpleasant. Toluene is readily absorbed from the respiratory tract and distributed throughout the body, accumulating in tissues with high lipid content. Toluene is a CNS depressant and, at high concentrations, is irritating to the eyes. Other toxic effects observed in humans include renal toxicity, cardiac arrhythmias, blood dyscrasias, hepatomegaly, and developmental abnormalities. A considerable amount of human and animal data were available for derivation of AEGLs.

Mouse lethality data were used for the regression analyses of the concentration-exposure durations. Regression analysis of the relationship between time and concentration ($C^n \times t = k$), based on four studies with the mouse, the most sensitive species, showed that n = 2. This relationship was used for all AEGL levels because the primary mechanism of action of toluene is CNS depression, which at high concentrations results in death.

The AEGL–1 was based on observations of mild sensory irritation and headache in humans at a concentration of 100 ppm for up to 6 hours in an atmosphere controlled setting (Andersen *et al.*, 1983; Rahill *et al.*, 1996; Dick *et al.*, 1984; Baelum *et al.*, 1985; 1990). An UF of 3 was chosen to protect sensitive individuals because the mechanism of action for irritation is not expected to vary greatly among individuals and no effects on ventilatory parameters were found at much higher concentrations. Extrapolation was made to the relevant AEGL time points using the relationship $C^n \times t = k$ where n = 2, based on the mouse lethality data. The endpoint and values are supported by the multiple studies with human subjects, some of which reported no effects at the 100 ppm concentration.

The AEGL–2 was based on more serious effects in humans at concentrations of ≥200 ppm for 8 hours including incoordination, dizziness, decreased reaction time, mental confusion, muscular weakness, and nausea (Wilson, 1943; von Oettingen *et al.*, 1942). These effects were considered to represent the threshold for impaired ability to escape. An UF of 3 was applied to account for sensitive individuals because the threshold for CNS impairment does not vary greatly among individuals. Extrapolation was made to the 10-minute, 30-minute, 1-hour and 4-hour time points using the equation $C^n \times t = k$ where n = 2 (based on mouse lethality data). The above values are supported by the behavioral effects observed in monkeys after a 50-minute exposure to 2,000 ppm toluene (Taylor and Evans, 1985). At this concentration-duration, these animals exhibited significantly decreased

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reaction time and decreased accuracy on matching to sample tasks. Dividing the 2,000 ppm concentration by intra- and interspecies UF of 3 each (for a total of 10) results in values similar to those based on the human data.

The AEGL–3 values were derived from the exposure concentrations equal to one third of the mouse 1-hour LC_{50} reported by Moser and Balster (1985). The 1-hour mouse LC_{50} of 19,018 ppm was divided by 3 to estimate the threshold for lethality. A total UF of 10 was applied which includes 3 to account for sensitive individuals and 3 for interspecies extrapolation (the mechanism of action for severe CNS depression does not vary greatly among individuals or among species). The estimated 1-hour threshold for lethality of 6,339 ppm was extrapolated to the 10-minute, 30-minute, 4-hour, and 8-hour AEGL–3 time points using the relationship $C^n \times t = k$ where n = 2 (calculated from the mouse lethality data). These values are supported by the accidental exposure of two men to an estimated concentration of >1,842 ppm toluene for an average duration of 2.5 hours which resulted in severe but reversible CNS depression (Meulenbelt *et al.*, 1990). Scaling of this exposure to the 10-minute, 30-minute, 1-, 4-, and 8-hour time points yields slightly higher values (2,400; 1,400; 970; 490; and 340 ppm, respectively) than those based on the threshold for lethality in the mouse. The proposed values are considered adequately protective since the mouse is more sensitive than humans to the CNS effects of toluene.

The calculated values are listed in Table 7 below:

TABLE 7.—SUMMARY OF PROPOSED AEGL VALUES FOR TOLUENE [PPM (MG/M³)]

Classification	10-Minutes	30-Minutes	1-Hour	4-Hours	8-Hours	Endpoint (Reference)
AEGL–1 (Nondisabling)	260 (980)	120 (450)	82 (300)	41 (150)	29 (112)	Eye irritation, headache in humans (Andersen *et al.*, 1983)
AEGL–2 (Disabling)	600 (2,260)	270 (1,020)	190 (710)	94 (340)	67 (260)	Incoordination, mental confusion, neurobehavioral deficits in humans (Wilson, 1943; von Oettingen *et al.*, 1942)
AEGL–3 (Lethal)	1,600 (6,000)	900 (3,380)	630 (2,360)	320 (1,200)	220 (830)	Lethality, 1/3 of the mouse 1-hour LC_{50} (Moser and Balster, 1985)

ii. *References.*

a. Andersen, I., Lundqvist, G.R., Molhave, L., Pedersen, O.F., Proctor, D.F., Vaeth, M., and Wyon, D.P. 1983. Human response to controlled levels of toluene in six-hour exposures. *Scandinavian Journal of Work and Environmental Health*. Vol. 9:405–418.

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d. Moser, V.C. and Balster, R.L. 1985. Acute motor and lethal effects of inhaled toluene, 1,1,1-trichloroethane, halothane, and ethanol in mice: Effects of exposure duration. *Toxicology and Applied Pharmacology*. Vol. 77:285–291.

10. *Phenol*—i. *Description.* Phenol is a colorless to pink, hygroscopic solid with a characteristic, sweet, tarry odor. Pure phenol consists of white to clear acicular crystals. In the molten state, it is a clear, colorless liquid with a low viscosity.

Cases of lethal poisoning of humans by phenol have been reported in the literature after oral uptake or skin contact. Only few studies reporting effects on humans after inhalation of phenol are available: One study reported slight effects on liver and blood parameters (increased serum transaminase activity, increased hemoglobin concentration, increased numbers of white blood cells) after repeated occupational exposure to a mean time-weighted average concentration of 5.4 ppm phenol (Shamy *et al.*, 1994). Piotrowski (1971) did not report on effects in a toxicokinetic study, in which subjects were exposed to 6.5 ppm for 8 hours. Likewise, Ogata *et al.* (1974) in a toxicokinetic field study did not mention any effects on workers exposed to mean workshift concentrations of 4.95 ppm. In persons exposed to >1 mg/l phenol in contaminated drinking water for several weeks following an accidental spill of phenol, gastrointestinal symptoms (diarrhea, nausea, burning pain and sores in the mouth) and skin rashes occurred (Baker *et al.*, 1978). A geometric mean odor detection threshold of 0.060 ppm (range of all critiqued odor thresholds 0.0045–1 ppm) has been reported (AIHA, 1989).

No studies reporting LC_{50} values for phenol in animals are available. Oral LD_{50} values were reported as 420 mg/kg for rabbits, 400–650 mg/kg for rats and 282–427 mg/kg for mice. In rats, exposure to a phenol aerosol concentration of 900 mg/m3 resulted in ocular and nasal irritation and slight incoordination after 4 hours and tremors and prostration in 1 of 6 animals after 8 hours (Flickinger, 1976). After 4 hours exposure to 211 and 156 ppm, a decrease of the number of white blood cells, but no signs of toxicity were reported (Brondeau *et al.*, 1990). After exposure of rats to 0.5, 5, and 25 ppm for 6 hours/day, 5 days/week for 2 weeks no clinical, hematological or histopathological effects were found (CMA, 1998; Hoffmann *et al.*, 1999). Continuous exposure to 5 ppm phenol for 90 days caused no hematological or histological effects in rhesus monkeys, rats and mice. A concentration of 166 ppm (for 5 minutes) resulted in a 50% decrease of respiration (RD_{50}) in mice. No teratogenic effects were found in rats and mice. An oral carcinogenicity study in rats and mice, using exposure through drinking water, found an increased tumor incidence in male rats of the low exposure group, but not in male rats of the high exposure group or in female rats and mice. Phenol has tumor promoting activity when applied dermally and can cause clastogenic and possibly very weak mutagenic effects.

The AEGL–1 was based on a repeated inhalation exposure study in rats (CMA, 1998; Hoffmann *et al.*, 1999), which found no clinical, hematological or histopathological effects after exposure to 25 ppm phenol (highest concentration used) for 6 hours/day, 5 days/week for 2 weeks. A total UF of 10 was used. An UF of 3 was applied for interspecies variability because a multiple exposure study was used for the derivation of AEGL. A factor of 3 was applied for intraspecies variability because the study reported no effects and thus was below the AEGL–1 effect level and because available human data do not point at a large interindividual variability. The other exposure duration-specific values were derived by time scaling according to the dose-response regression equation $C^n \times t = k$, using the default of n = 3 for shorter exposure periods and n = 1 for longer exposure periods, due to the lack of suitable experimental data for deriving the concentration exponent. Continuation of the time scaling to the 10-minute period is supported by the reported RD_{50} value of 166 ppm for an exposure period of 5 minutes in mice (De Ceaurriz *et al.*, 1981): The resulting 10-minute AEGL–1 is 20-fold below the RD_{50} value in mice.

The AEGL–2 was based on a repeated inhalation exposure study in rats (CMA, 1998; Hoffmann *et al.*, 1999), which found no clinical, hematological or histopathological effects after exposure to 25 ppm phenol (highest concentration used) for 6 hours/day, 5 days/week for 2 weeks, and on a single exposure study in rats, in which exposure to 900 mg/m³ phenol aerosol (equivalent to 234 ppm) led to ocular and nasal irritation, muscle spasms and slight loss of coordination within 4 hours of exposure and to tremors and prostration in 1 of 6 animals at the end of the 8-hour exposure period (Flickinger, 1976). A total UF of 3 was used for the study of CMA (1998), because the exposure concentration used was a no-observed-adverse-effect level (NOAEL) in a repeated exposure study and because use of a higher UF would resulted in the same concentrations set as AEGL–1. This factor was formally split up into an interspecies factor of 1 and an intraspecies factor of 3. A total UF of 30 was used for the Flickinger (1976) study. This factor was formally split up into an interspecies factor of 3 and an intraspecies factor of 10. The other exposure duration-specific values were derived by time scaling according to the dose-response regression equation $C^n \times t = k$, using the default of n = 3 for shorter exposure periods, due to the lack of suitable experimental data for deriving the concentration exponent. For the 10-minute AEGL–2 the 30-minute value was applied because the derivation of AEGL values was based on a long experimental exposure period and no supporting studies using short exposure periods were available for characterizing the concentration-time-response relationship. Calculations were done on the basis of both studies and resulted in very similar concentrations. Since slightly lower values were obtained on basis of the CMA (1998) study, these values were set as AEGL–2 values.

The AEGL–3 was based on an inhalation study in rats, in which exposure to a phenol aerosol concentration of 900 mg/m³ phenol (equivalent to 234 ppm phenol vapor) for 8 hours resulted in tremors, incoordination and prostration in 1 of 6 animals, but not in death (Flickinger, 1976). This study is supported by the study of Brondeau *et al.* (1990), which did report only slight effects after exposure of rats to 211 ppm phenol vapor for 4 hours. The comparison of the dose equivalent to the derived AEGL–3 values with human oral lethality data supports use of a total UF of 10. An additional argument for not choosing a total UF higher than 10 is that a factor of 30 would have resulted in corresponding body doses in the dose range described by Baker *et al.* (1978) for an incident of drinking water contamination. In this study mainly mild gastrointestinal (local) effects, but no systemic/severe effects, were observed upon repeated oral exposure. The total UF of 10 was formally split up into an interspecies factor of 3 and an intraspecies factor of 3. The other exposure duration-specific values were derived by time scaling according to the dose-response regression equation $C^n \times t = k$, using the default of n = 3 for shorter exposure periods, due to the lack of suitable experimental data for deriving the concentration exponent. For the 10-minute AEGL–3 the 30-minute value was applied because the derivation of AEGL values was based on a long experimental exposure period and no supporting studies using short exposure periods were available for characterizing the concentration-time-response relationship.

The calculated values are listed in Table 8 below:

TABLE 8.—SUMMARY TABLE OF PROPOSED AEGL VALUES FOR PHENOL [A]

Classification	10-Minutes	30-Minutes	1-Hour	4-Hours	8-Hours	Endpoint (Reference)
AEGL–1 (Nondisabling)	8.3 ppm (32 mg/m³)	5.7 ppm (22 mg/m³)	4.5 ppm (17 mg/m³)	2.9 ppm (11 mg/m³)	1.9 ppm (7.3 mg/m³)	No effects in rats (CMA, 1998; Hoffmann *et al.*, 1999)
AEGL–2 (Disabling)	19 ppm (73 mg/m³)	19 ppm (73 mg/m³)	15 ppm (58 mg/m³)	9.5 ppm (36 mg/m³)	6.3 ppm (24 mg/m³)	No effects in rats (CMA, 1998; Hoffmann *et al.*, 1999); irritation, loss of coordination, tremors, and prostration in rats (Flickinger, 1976)
AEGL–3 (Lethal)	59 ppm (230 mg/m³)	59 ppm (230 mg/m³)	47 ppm (180 mg/m³)	29 ppm (110 mg/m³)	23 ppm (88 mg/m³)	No lethality in rats (Flickinger, 1976)

[a] Rapid dermal penetration occurs from phenol vapor, molten phenol and phenol solutions; skin contact with molten phenol or concentrated phenol solutions should be avoided; fatal intoxications have been observed when a small part of the body surface was involved.

ii. *References.*

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11. *Furan*—i. *Description*. Furan is a colorless, highly flammable liquid with a strong, ethereal odor. It is used primarily as an industrial intermediate. Because of its relatively high vapor pressure, furan is predicted to exist almost entirely in the vapor phase in the atmosphere.

No toxicity data regarding human exposures to furan were available. Animal toxicity data were limited, with much of the literature focused on metabolism and disposition. Metabolism studies indicate that furan is bioactivated to a reactive metabolite, cis-2-butene-1,4-dial, by cytochrome P450 2E1. Quantitative toxicology data for effects following inhalation exposure to furan were limited to one study.

An AEGL–1 was not derived for furan. No human or animal data relevant to the derivation of an AEGL–1 for furan were available in the searched literature.

The AEGL–2 derivation is based on the threshold for adverse effects in male and female rats at a concentration of 1,014 ppm for 1 hour (Terrill *et al.*, 1989). Although the severity of the reported clinical signs (respiratory distress, increased secretory response) was not reported, this lowest-exposure concentration group did not exhibit a decrease in body weights like the rats exposed to 2,851 ppm or 4,049 ppm.

The AEGL–3 derivation is based upon the highest NOEL for mortality in male and female rats of 2,851 ppm for 1 hour (Terrill *et al.*, 1989). Rats exposed to 1,014; 2,851; or 4,049 ppm exhibited clinical signs including respiratory distress and increased secretory response: however, the degree of the signs at each concentration was not provided. Death occurred in the highest exposure group.

An UF of 10 was applied for species to species extrapolation because quantitative toxicology data were available in only one species, rats. Despite the predicted lower absorbed dose and liver dose of the reactive metabolite in humans compared to rodents (following a simulated exposure to 10 ppm for 4 hours, the predicted absorbed dose of furan (mg/kg) in humans, and consequently the liver dose of the reactive metabolite cis-2-butene-1,4-dial, was 10-fold less than in mice and 3.5-fold lower than in rats (Kedderis and Held, 1996), the differences between humans and rodents in sensitivity to the reactive metabolite are not known, and the liver was the only organ investigated. An UF of 3 was applied for sensitive individuals (intraspecies) because interindividual variations in the activating enzyme are not predicted to be a factor in bioactivation (Kedderis and Held, 1996). A modifying factor of 3 was applied because only one data set addressing furan toxicity following inhalation exposure was available: This study was not repeated, and there was no information on furan toxicity in other species or on reproductive/developmental toxicity. Therefore, a total uncertainty factor/modifying factor of 100 was applied to the AEGL–2 and -3 values.

The experimentally derived exposure values were scaled to AEGL time frames using the concentration-time relationship given by the equation $C^n \times t = k$, where the exponent n generally ranges from 1 to 3.5 (ten Berge, 1986). The value of n was not empirically derived because of insufficient data; therefore, the default value of n = 1 was used for extrapolating from shorter to longer exposure periods and a value of n = 3 was used to extrapolate from longer to shorter exposure periods.

The calculated values are listed in Table 9 below:

TABLE 9.—SUMMARY OF PROPOSED AEGL VALUES FOR FURAN [PPM (MG/M³)]

Classification	10-Minutes	30-Minutes	1-Hour	4-Hours	8-Hours	Endpoint (Reference)
AEGL–1 (Nondisabling)	Insufficient Data (ID)[a]	ID	ID	ID	ID	ID were available to derive an AEGL–1
AEGL–2 (Disabling)	18 (50)	13 (39)	10 (28)	2.5 (7.0)	1.3 (3.6)	1,014 ppm for 1 hour: Threshold for adverse effects in rats (clinical signs: Severity of respiratory distress, increased secretory response not reported; no decrease in body weights) (Terrill *et al.*, 1989)
AEGL–3 (Lethality)	52 (140)	46 (100)	29 (81)	7.1 (20)	3.6 (10)	2,851 ppm for 1 hour: Threshold for lethality in rats (Terrill *et al.*, 1989)

[a] Absence of an AEGL–1 does not imply that exposure below the AEGL–2 is without adverse effects

ii. *References*.

a. ten Berge, W.F. 1986. Concentration-time mortality response relationship of irritant and systemically acting vapours and gases. *Journal of Hazardous Materials*. Vol. 13:301–309.

b. Terrill, J.B., Van Horn, W.E., Robinson, D., and Thomas, D.L. 1989. Acute inhalation toxicity of furan, 2 methylfuran, furfuryl alcohol, and furfural in the rat. *American Industrial Hygiene Association Journal*. Vol. 50:A359–A361.

12. *Tetrachloroethylene*—i. *Description*. Tetrachloroethylene (PCE), also commonly known as perchloroethylene or Perc, is a colorless, nonflammable liquid. It has an ethereal odor, with a reported odor threshold ranging from 2–71 ppm. PCE is commonly used as a dry-cleaning solvent and as a degreaser, and is also used as a chemical intermediate and as a veterinary antithelmintic.

Following exposure to PCE, humans primarily experience CNS effects and irritation, with some cases of reversible liver effects reported. CNS effects also predominate in animals, although liver effects are noted in mice, and nephrotoxicity is observed in rats. However, the hepatotoxicity and nephrotoxicity is commonly associated with repeated or chronic exposures.

The AEGL–1 derivation is based on the exposure of six volunteers to 106 ppm for 1 hour (Rowe *et al.*, 1952). At this level, an apparent non-objectionable odor and eye irritation were noted, and one subject experienced a light fullness in the head An interspecies UF was not applicable. An intraspecies UF of 3 is applied because the Minimum Alveolar Concentration (MAC; the concentration that produces lack of movement in 50% of persons exposed) for volatile anesthetics does not vary by more than a factor of 2–3-fold. The AEGL–1 values are consistent with values that would be obtained using a study addressing minor central nervous effects (changes in visual evoked potentials and visual contrast sensitivity, significant performance deficits for vigilance and eye-hand coordination) following exposure to 50 ppm for 4 hours (Altmann *et al.*, 1990; 1992). If one bases on AEGL–1 on these exposure parameters and uses the same UFs and value of n, one obtains almost identical values.

The AEGL–2 value is based upon the no-effect level for ataxia in rats following exposure to 1,150 ppm PCE for 4 hours/day, 5 days/week for 2 weeks (4 hour time period was used for the derivation) (Goldberg *et al.*, 1964). Exposure to the next higher concentration of 2,450 ppm resulted in reversible ataxia. An interspecies UF of 3 is applied based on the similarity of effects manifested in rodents compared to humans produced by agents that are CNS depressants. Additionally, a no-effect level for lethality is identical for rats and mice and the 4-hour and 6-hour LC_{50} values in mice compared to rats vary by less than 1.5-fold. An intraspecies UF of 3 is applied because the MAC for volatile anesthetics does not vary by more than a factor of 2–3-fold. The AEGL–2 values are supported by the Carpenter (1937) inhalation study in which volunteers exposed to 475 ppm for 2 hours, 10 minutes reported salivation, slight eye irritation, tightness in the frontal sinuses, increased hand perspiration, and increased nasal irritation. These effects are milder than those defined by AEGL–2. An AEGL derivation based on the exposure parameters, a total UF of 3 (3 to account for intraspecies variability; an interspecies UF not needed because the derivation is based on human data), and an n of 2 results in identical AEGL–2 values.

The AEGL–3 derivation is based on a no-effect-level for lethality in mice of 2,450 ppm for 4 hours and in rats of 2,445 ppm for 4 hours (Friberg *et al.*, 1953; NTP, 1986). An interspecies UF of 3 is applied because a no-effect level for lethality is identical for rats and mice and the 4-hour and 6-hour LC_{50} values in mice compared to rats vary by less than 1.5-fold. The interspecies UF of 3 is further supported by the similarity of effects manifested in rodents compared to humans produced by agents that are CNS depressants. An intraspecies UF of 3 is applied because the MAC for volatile anesthetics should not vary by more than a factor of 2–3-fold. The AEGL–3 values are supported by a human study in which the effects noted were milder than those defined by the AEGL–3 definition (humans exposed to 934 ppm for 95 min experienced tightness of the frontal sinuses, increased hand perspiration, nostril irritation, congestion of eustachian tubes, lassitude, slight mental fogginess, stinging eyes, exhilaration, and/or the tip of nose and lips anesthetized; Carpenter, 1937), and an animal study in which rats exposed to 2,300 ppm for 4 hours/day, 5 days/week for 2 weeks exhibited overt ataxia only following the first 4 hour exposure (Goldberg *et al.*, 1964). Although the Carpenter study (1937) was not used because the effects were below that of the definition of AEGL–3 type endpoints, the study does support the use of a total UF of 10 for the Friberg *et al.* (1953) and NTP (1986) studies as being protective of human health.

The experimentally derived exposure values were then scaled to AEGL time frames using the equation $C^n \times t = k$, where the exponent n generally ranges from 1 to 3.5 (ten Berge, 1986). The value of n used for PCE was the calculated and published value of n = 2 based upon the Rowe *et al.* (1952) rat mortality data for PCE (ten Berge, 1986). The 10-minute AEGL–1, -2, and -3 values were set equal to the 30-minute values. The 10-minute AEGL–1 value was set equal to the 30-minute value of 50 ppm because human data indicated that exposure to 75–80 ppm for 1–4 minutes resulted in slight eye irritation (Stewart *et al.*, 1961). The 10-minute AEGL–2 value was set equal to the 30-minute value of 330 ppm because it was considered too precarious to extrapolate from the exposure duration of 4 hours to 10 minutes, and because a human study demonstrated an exposure to 600 ppm for 10 minutes caused significant effects (eye and nose irritation, dizziness, tightness, and numbing about the mouth, some loss of inhibitions, and motor coordination required great effort; Rowe *et al.*, 1952). The 10-minute AEGL–3 was set equal to the 30-minute value of 690 ppm because it was considered too precarious to extrapolate from the exposure duration of 4 hours to 10 minutes.

The calculated values are listed in Table 10 below:

TABLE 10.—SUMMARY OF PROPOSED AEGL VALUES FOR TETRACHLOROETHYLENE [PPM (MG/M³)]

Classification	10-Minutes	30-Minutes	1-Hour	4-Hours	8-Hours	Endpoint (Reference)
AEGL–1 (Nondisabling)	50 (340)	50 (340)	35 (240)	18 (120)	12 (81)	Mild eye irritation in six subjects exposed to 106 ppm for 1 hour (Rowe *et al.*, 1952)
AEGL–2 (Disabling)	330 (2,200)	330 (2,200)	230 (1,600)	120 (810)	81 (550)	No-effect level for ataxia in rats following exposure to 1,150 ppm PCE for 4 hours/day, 5 days/week for 2 weeks (4 hour time period used for the derivation) (Goldberg *et al.*, 1964).
AEGL–3 (Lethal)	690 (4,700)	690 (4,700)	490 (3,300)	240 (1,600)	170 (1,200)	No-effect-level for lethality in mice of 2,450 ppm for 4 hours and in rats of 2,445 ppm for 4 hours (Friberg *et al.*, 1953; NTP, 1986)

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i. ten Berge, W.F. 1986. Concentration-time mortality response relationship of irritant and systemically acting vapours and gases. *Journal of Hazardous Materials.* Vol. 13:301–309.

13. *Tetranitromethane*—i. *Description.* Tetranitromethane (TNM) is a highly explosive chemical that is used as an oxidizer in rocket propellants, to increase the cetane of diesel fuels, and as a reagent to detect double bonds in organic molecules (Budavari *et al.*, 1996; ACGIH, 1996). TNM is also formed as an impurity during the manufacture of trinitrotoluene (TNT). In humans, impure TNM has caused irritation of the eyes, nose, throat, dizziness, chest pain, dyspnea, methemoglobinemia, and cyanosis (Budavari *et al.*, 1996). TNM causes a variety of lung lesions and induced lung tumors in both rats and mice (NTP, 1990).

No data were available to determine the concentration-time relationship for TNM concentration-time relationship for many irritant and systemically acting vapors and gases may be described by $C^n \times t = k$, where the exponent n ranges from 0.8 to 3.5 (ten Berge *et al.*, 1986). To obtain protective AEGL values, scaling across time was performed using n = 3 to extrapolate to <6 hours (exposure duration in key study) and n = 1 to extrapolate to >6 hours. The 10-minute values were not extrapolated from 6 hours because the NAC determined that extrapolating from ≥4 hours to 10 minutes is associated with unacceptably large inherent uncertainty, and the 30-minute values were adopted for 10 minutes to be protective of human health.

AEGL–1, AEGL–2, and AEGL–3 values were derived from an NTP (1990) study in which rats and mice were exposed to 2, 5, 10, 25, or 50 (mice only) ppm TNM for 2 weeks (6 hours/day, 5 days/week). At 2 ppm, no effects were specifically noted in either species. A single 6-hour exposure to 2 ppm was used for AEGL–1 derivation. An UF of 10 was applied: 3 to account for sensitive humans (response to an irritant gas is not likely to vary greatly among humans) and 3 for interspecies extrapolation (toxicity of TNM did not vary greatly between two species; the key study was repeat-exposure).

Exposure to 5 ppm TNM resulted in lowered body weight gains and reddened lungs in mice (rats may have been lethargic), and one 6-hour exposure is the basis for the derived AEGL–2 values. An UF of 10 was used: 3 to account for sensitive humans (response to an irritant gas is not likely to vary greatly among humans) and 3 for interspecies extrapolation (most sensitive species was used; the key study was repeat-exposure). The resulting AEGL–2 values were similar to those derived using a TNM inhalation cancer slope factor (derived from a 103-week NTP, 1990 carcinogenicity study) and based on a 10^{-4} excess cancer risk level. Use of the noncarcinogenicity endpoints was considered to be more appropriate because it appears that the tumorigenic response to inhaled TNM is a function of prolonged nasal and lung tissue irritation resulting from repeated exposures and not the result of a single-low exposure.

Rats and mice exposed to 10 ppm in the NTP (1990) 2-week study were lethargic, lost weight, and the mice had reddened lungs, polypnea, and ataxia, whereas rats exposed to 25 ppm all died on the first day, and most mice exposed to 25 ppm died on day 3 or 4. Therefore, 10 ppm is considered to approximate the lethality threshold for both species, and is supported by an LC_{50} study in which the NOEL for lethality for a 4-hour exposure was 10 and 17 ppm for rats and mice, respectively (Kinkead *et al.*, 1977a; 1977b). AEGL–3 values were developed using one 6-hour exposure and an UF of 10: 3 to account for sensitive humans (response to an irritant gas is not likely to vary greatly among humans) and 3 for interspecies extrapolation (toxicity of TNM did not vary greatly between two species; the key study was repeat-exposure).

The calculated values are listed in Table 11 below:

TABLE 11.—SUMMARY OF PROPOSED AEGL VALUES FOR TETRANITROMETHANE (TNM) [PPM (MG/M³)]

Classification	10-Minutes	30-Minutes	1-Hour	4-Hours	8-Hours	Endpoint (Reference)
AEGL–1 (Nondisabling)	0.46 (3.7)	0.46 (3.7)	0.36 (2.9)	0.23 (1.8)	0.15 (1.2)	No effects in rats or mice (NTP, 1990).
AEGL–2 (Disabling)	1.1 (9.1)	1.1 (9.1)	0.91 (7.3)	0.57 (4.6)	0.38 (3.5)	Lower weight gain and reddened lungs in mice (NTP, 1990).
AEGL–3 (Lethal)	2.3 (28)	2.3 (28)	1.8 (15)	1.1 (9.2)	0.75 (6.0)	Lethality threshold for rats and mice (NTP, 1990).

ii. *References.*

a. NTP. 1990. Toxicology and carcinogenesis studies of tetranitromethane in F344/N rats and B6C3F1 mice. TR #386, U.S. Department of Health and Human Services, Public Health Service, National Institutes of Health, Research Triangle Park, NC.

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14. *Perchloromethyl mercaptan*—i. *Description.* Perchloromethyl mercaptan is an oily, yellow liquid with an unbearable, acrid odor. Although it was used as a chemical warfare gas by the French in the battle of the Champagne in 1915, its wartime use was abandoned shortly thereafter because of its strong warning odor, decomposition in the presence of iron and steel, and because the vapors could easily be removed by charcoal (Prentiss, 1937). Today, perchloromethyl mercaptan is used as an intermediate in the synthesis of dyes and fungicides (Captan, Folpet).

Data addressing human and animal toxicity following exposure to perchloromethyl mercaptan vapors were very limited. Human data were generally limited to case reports describing exposures to an unquantifiable amount of perchloromethyl mercaptan, secondary sources, and/or sources in which the experimental details were not provided. Animal data addressing the lethal and nonlethal effects of perchloromethyl mercaptan were primarily limited to rats.

Exposure to perchloromethyl mercaptan for 6 hours/day, 5 days/week for 2 weeks at a concentration of 0.02 ppm did not result in any measurable changes in rats, while exposure to 0.13 ppm resulted only in mild nasal epithelial changes in rats (Knapp *et al.*, 1987). Likewise, no clear treatment related changes were observed in rats exposed to 0.014 or 0.079 ppm perchloromethyl mercaptan for 6 hours/day, 5 days/week, for a total of 70 to 72 exposure days (Knapp and Thomassen, 1987). Based on these data, a NOAEL of 0.079 ppm in rats exposed for 6 hours/day, 5 days/week, for a total of 70 to 72 exposure days was used for the derivation of an AEGL–1 (Knapp and Thomassen, 1987). An interspecies factor of 3 was applied because although little is known about differences in perchloromethyl mercaptan toxicity between species, the AEGL–1 is based on a NOAEL from a subchronic study and is therefore inherently conservative. An intraspecies UF of 3 was applied to protect for sensitive individuals because the mechanism of action of perchloromethyl mercaptan is likely to be that of an irritant.

A subchronic study in which rats were exposed to 0.58 ppm for 6 hours/day, 5 days/week for 70 days was chosen for the AEGL–2 derivation (Knapp and Thomassen, 1987). Rats exposed to 0.58 ppm for 70 days exhibited only minimal effects: Lung weights were increased, and the only treatment-related pulmonary lesion was mild to minimal focal subacute interstitial pneumonia in 28% of males and 6% of females. An interspecies factor of 10 was applied because little is known about differences in perchloromethyl mercaptan toxicity between species. An intraspecies UF of 3 was applied to protect for sensitive individuals because the mechanism of action of perchloromethyl mercaptan is likely to be that of an irritant.

The no-effect level for lethality of 9 ppm for 1 hour in male and female rats was chosen for use in the AEGL–3 derivation (Stauffer Chemical Company, 1971). An interspecies factor of 10 was applied because little is known about differences in perchloromethyl mercaptan toxicity between species. An intraspecies UF of 3 was applied to protect for sensitive individuals because the mechanism of action of perchloromethyl mercaptan is likely to be that of an irritant.

The experimentally derived exposure values were scaled to AEGL time frames using the concentration-time relationship given by the equation $C^n \times t = k$, where the exponent n generally ranges from 1 to 3.5 (ten Berge, 1986). The value of n was not empirically derived because of insufficient data; therefore, the default value of n = 1 was used for extrapolating from shorter to longer exposure periods and a value of n = 3 was used to extrapolate from longer to shorter exposure periods. The 10-minute values for the AEGL–1 and AEGL–2 levels were flat-lined from the 30-minute values because it was considered too precarious to extrapolate from an exposure duration of 6 hours to an exposure duration of 10 minutes.

The calculated values are listed in Table 12 below:

TABLE 12.—SUMMARY OF PROPOSED AEGL VALUES FOR PERCHLOROMETHYL MERCAPTAN [PPM (MG/M³)]

Classification	10-Minutes	30-Minutes	1-Hour	4-Hours	8-Hours	Endpoint (Reference)
AEGL–1 (Nondisabling)	0.018 (0.14)	0.018 (0.14)	0.014 (0.11)	0.0090 (0.068)	0.0060 (0.046)	NOAEL of 0.079 ppm for 6 hours/day, 5 days/week for 70–72 exposure days (Knapp and Thomassen, 1987)
AEGL–2 (Disabling)	0.044 (0.33)	0.044 (0.33)	0.035 (0.27)	0.022 (0.17)	0.015 (0.11)	Treatment-related mild to minimal focal subacute interstitial pneumonia and slightly increased lung weights in rats exposed to 0.58 ppm for 6 hours/day, 5 days/week for 70 days (Knapp and Thomassen, 1987)
AEGL–3 (Lethality)	0.54 (4.1)	0.38 (2.9)	0.30 (2.3)	0.075 (0.57)	0.038 (0.29)	No-effect level for lethality in rats (9 ppm for 1 hour) (Stauffer Chemical Co., 1971)

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acting vapours and gases. *Journal of Hazardous Materials*. Vol. 13:301–309.

15. *Carbon monoxide*—i. *Description*. Carbon monoxide (CO) is a tasteless, non-irritating, odorless and colorless gaseous substance. The main source of CO production is the combustion of fuels. Environmental exposure to CO can occur while traveling in motor vehicles (9–25 and up to 35 ppm), working, visiting urban locations with heavily traveled roads (up to 50 ppm), or cooking and heating with domestic gas, kerosene, coal or wood (up to 30 ppm) as well as in fires and by environmental tobacco smoke. Endogenous CO formation during normal metabolism leads to a background carboxyhemoglobin concentration ([COHb]) of about 0.5–0.8%. Smokers are exposed to considerable CO concentrations leading to a [COHb] of about 3–8%.

CO binds to hemoglobin forming [COHb] and thereby renders the hemoglobin molecule less able to bind oxygen. Due to this mechanism, the oxygen transport by the blood and the release of bound oxygen in the tissues are decreased. Tissue damage results from local hypoxia. Organs with a high oxygen requirement, such as the heart and the brain, are especially sensitive for this effect.

CO is a tasteless, non-irritating, odorless and colorless toxic gas which can cause lethal poisonings with very few and late occurring warning signs. Until very severe symptoms occur none or only nonspecific symptoms are noted. For this reason, AEGL–1 values were not recommended.

The AEGL–2 was based on cardiovascular effects in patients with coronary artery disease, which constitute the most susceptible subpopulation. For the derivation of AEGL–2 values a level of 4% [COHb] was chosen. At this exposure level, patients with coronary artery disease may experience a reduced time until onset of angina (chest pain) during physical exertion (Allred *et al.*, 1989; 1991). In the available studies, the CO exposure alone (i.e., with subjects at rest) did not cause angina, while exercise alone did so. However, it should be noted that all studies used patients with stable exertional angina, who did not experience angina while at rest. Thus, it cannot be ruled out that in more susceptible individuals (a part of the patients with unstable angina pectoris might belong to this group) CO exposure alone could increase angina symptoms. The changes in the electrocardiogram (ST-segment depression of 1 mm or greater) associated with angina symptoms were fully reversible. An exposure level of 4% [COHb] is unlikely to cause a significant increase in the frequency of exercise-induced arrhythmias. Ventricular arrhythmias have been observed at [COHb] of 5.3%, but not at 3.7% (Sheps *et al.*, 1990; 1991), while in another study no effect of CO exposure on ventricular arrhythmia was found at 3 and 5% [COHb] (Dahms *et al.*, 1993). An exposure level of 4% [COHb] was considered protective of acute neurotoxic effects in children, such as syncopes, headache, nausea, dizziness, and dyspnea (Crocker and Walker, 1985), and long-lasting neurotoxic effects (defects in the cognitive development and behavioral alterations) in children (Klees *et al.*, 1985). A mathematical model (Coburn *et al.*, 1965; Peterson and Stewart, 1975) was used to calculate exposure concentrations in air resulting in a [COHb] of 4% at the end of exposure periods of 10 and 30 minutes and 1, 4, and 8 hours. A total UF of 1 was used. An intraspecies UF of 1 was considered adequate because the values are based on observations in the most susceptible human subpopulation (patients with coronary artery disease).

The AEGL–3 was based on observations in humans. Several case reports indicate that in patients with coronary artery disease, CO exposure can contribute to myocardial infarction (which was considered an AEGL–3 endpoint). In the published cases of myocardial infarction, the following [COHb] were measured after transport to the hospital: 52.2% (Marius-Nunez, 1990), 30%, 22.8% (Atkins and Baker, 1985), 21% (Ebisuno *et al.*, 1986), 15.6% (Grace and Platt, 1981). Case reports on stillbirths after CO poisoning of pregnant women reported measured maternal [COHb] of about 22–25% or higher (Caravati *et al.*, 1988; Koren *et al.*, 1991). Since in all case studies COHb levels were determined after admission to hospital, the [COHb] at the end of the exposure were probably higher than the measured concentrations. These anecdotal case reports were not considered an adequate basis for the derivation of AEGL–3 values because of uncertainties in the end-of-exposure [COHb] and the insufficient characterization of the exposure conditions (with repeated and/or prolonged exposures in several cases). Therefore, the experimental studies of Chiodi *et al.* (1941) and Haldane (1895), that reported no severe or life-threatening symptoms in healthy subjects exposed to a [COHb] of about 40–56%, were used as the basis for derivation of AEGL–3 values. A mathematical model (Coburn *et al.*, 1965; Peterson and Stewart, 1975) was used to calculate exposure concentrations in air resulting in a [COHb] of 40% at the end of exposure periods of 10 and 30 minutes and 1, 4, and 8 hours. A total UF of 3 was used. An intraspecies UF of 3 was applied to the calculated CO concentrations in air because a factor of 10 would have resulted in exposure concentrations sometimes found in homes and the environment and because the derived values (corresponding to a [COHb] of about 15%) are supported by information on effects, such as myocardial infarction and stillbirths, reported in more susceptible subpopulations.

The calculated values are listed in Table 13 below:

TABLE 13.—SUMMARY TABLE OF PROPOSED AEGL VALUES FOR CARBON MONOXIDE

Classification	10-Minutes	30-Minutes	1-Hour	4-Hours	8-Hours	Endpoint (Reference)
AEGL–1 (Nondisabling)	NR[a]	NR	NR	NR	NR	
AEGL–2 (Disabling)	420 ppm (480 mg/m^3)	150 ppm (170 mg/m^3)	83 ppm (95 mg/m^3)	33 ppm (38 mg/m^3)	27 ppm (31 mg/m^3)	Cardiac effects in humans with coronary artery disease (Allred *et al.*, 1989; 1991)
AEGL–3 (Lethal)	1700 ppm (1,900 mg/m^3)	600 ppm (690 mg/m^3)	330 ppm (380 mg/m^3)	150 ppm (170 mg/m^3)	130 ppm (150 mg/m^3)	No severe or life-threatening effects in humans (Chiodi *et al.*, 1941; Haldane, 1895)

[a] Not recommended since CO is a non-irritating orderless gas which can cause lethal poisonings with very few late occurring warning signs.

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16. *Boron trichloride*—i. *Description*. Boron trichloride is a colorless gas at room temperature that fumes in moist air, or a colorless fuming liquid at low temperatures. It hydrolyzes in water and moist air to produce heat, hydrochloric acid, and boric acid at ordinary temperatures. No data were available regarding human exposures to boron trichloride, and animal inhalation toxicity data were limited to two studies. Vernot *et al.* (1977) reported 1-hour LC_{50} values of 2,541 ppm for male rats and 4,418 ppm for female rats. The other available study by Stokinger and Spiegl (1953) served only as a pilot study, and provided preliminary data on the toxicity of boron trichloride vapor following inhalation exposure in rats, mice, and guinea pigs.

No data relevant to the AEGL–1 defined endpoints were available. Based on the knowledge that one mole of boron trichloride theoretically hydrolyzes to form 3 moles of hydrogen chloride in moist air, the AEGL–1 values were derived by a ⅓ reduction of the accepted hydrogen chloride (HCl) values and are recommended as guidance levels[a]. The hydrogen chloride AEGL–1 was based on a 45 minute NOAEL in exercising adult asthmatics (Stevens *et al.*, 1992). No UFs were applied for inter- or intraspecies variability since the study population consisted of sensitive humans. Additionally, the same value was applied across the 10- and 30-minute, and 1-, 4-, and 8-hour exposure time points since mild irritantcy is a threshold effect and generally does not vary greatly over time. Thus, prolonged exposure will not result in an enhanced effect.

No data relevant to the AEGL–2 defined endpoints were available. Based on the knowledge that one mole of boron trichloride theoretically hydrolyzes to form 3 moles of hydrogen chloride in moist air, the AEGL–2 values were derived by a ⅓ reduction of the accepted HCl values and are recommended as guidance levels[a]. The hydrogen chloride AEGL–2 for the 30-minute, 1-, 4-, and 8-hour time points was based on severe nasal or pulmonary histopathology in rats exposed to 1,300 ppm hydrogen chloride for 30 minutes (Stavert *et al.*,1991). An UF of 3 was applied for interspecies variability because the test species (rodents) is more sensitive to the effects of hydrogen chloride than primates and because direct irritation is not expected to vary greatly between species. An UF of 3 was applied for intraspecies extrapolation since the mechanism of action is direct irritation and the subsequent effect or response is not expected to vary greatly among individuals. An additional modifying factor of 3 was applied to account for the sparse database of effects defined by AEGL–2 and since the effects observed at the concentration used to derive AEGL–2 values were somewhat severe. Thus, the total uncertainty and modifying factor adjustment is 30-fold. It was then time-scaled to the 1-, 4-, and 8-hour AEGL exposure periods using the $C^n \times t = k$ relationship, where n = 1 based on regression analysis of combined rat and mouse LC_{50} data (1 minute to 100 minutes) as reported by ten Berge *et al.*, 1986. The 10-minute AEGL–2 value was derived by dividing the mouse RD_{50} of 309 ppm by a factor of 3 to obtain a concentration causing irritation (Barrow *et al.*, 1977). One-third of the mouse RD_{50} for hydrogen chloride corresponds to an approximate decrease in respiratory rate of 30%, and decreases in the range of 20 to 50% correspond to moderate irritation (ASTM, 1991).

The AEGL–3 was based on ⅓ of the 1-hour boron trichloride LC_{50} of 2,541 ppm in male rats (Vernot *et al.*, 1977). An UF of 3 was applied for intraspecies variability and an additional UF of 10

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was applied for interspecies extrapolation to account for a poor data base (total UF = 30). No boron trichloride data were available from which to derive an n value for the scaling of the derived AEGL–3 value across time. Because boron trichloride hydrolyzes in moist air to form hydrogen chloride, the value of n = 1 for hydrogen chloride as calculated by ten Berge (1986) was used for the scaling to the 10- and 30-minute, 1-, 4-, and 8-hour exposures using the relationship $C^n \times t = k$. The derived AEGL–3 values were consistent with the application of the Stokinger and Spiegl (1953) data where exposure to 50 ppm for 2 x 7 hours in rats, mice, and guinea pigs did not result in mortality when clean cages were substituted every 2 hours of the exposure (to reduce contact with the hydrolysis products formed in the cage).

It is recommended that in the event of a boron trichloride release, the concentrations of both boron trichloride and HCl should be monitored. It is conceivable that boron trichloride concentrations could be within the acceptable AEGL range, while the hydrolysis product HCl could exceed permissible AEGL levels. Another likely situation is that the concentration of each will fall below the AEGL criteria but the combination of the two will produce an overall HCl exposure exceeding a given AEGL criteria and thus produce more toxicity than expected by the designated AEGL level.

The calculated values are listed in Table 14 below:

TABLE 14.—SUMMARY OF PROPOSED AEGL VALUES FOR BORON TRICHLORIDE [PPM (MG/M^3)]

Classification	10-Minutes	30-Minutes	1-Hour	4-Hours	8-Hours	Endpoint (Reference)
AEGL–1 (Nondisabling)	0.6 (2.9)	0.6 (2.9)	0.6 (2.9)	0.6 (2.9)	0.6 (2.9)	Recommended as guidance levels: ⅓ the NAC-approved HCl values [NOAEL of HCl in exercising human asthmatics (Stevens *et al.*, 1992)]
AEGL–2 (Disabling)	34 (160)	14 (67)	7.3 (35)	1.8 (8.6)	0.90 (4.3)	Recommended as guidance levels: ⅓ the NAC-approved HCl values [Mouse RD_{50} (Barrow *et al.*, 1977); Histopathology in rats (Stavert *et al.*, 1991)]
AEGL–3 (Lethal)	170 (810)	57 (270)	28 (130)	7.1 (34)	3.5 (17)	⅓ the 1-hour boron trichloride LC_{50} value of 2,541 ppm in male rats (Vernot *et al.*, 1977)

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17. *Diborane*—i. *Description.* Diborane a highly unstable gas, and is combustible upon exposure to moist air or high heat. It rapidly hydrolyzes in water to produce boric acid, hydrogen, and heat. Because of its strong reducing character, it has many industrial uses such as a rubber vulcanizer, a catalyst for olefin polymerization, an intermediate in the production of other boron hydrides, and as a doping gas in the semiconductor industry. Diborane was also investigated in the 1950's as a potential rocket fuel.

Data on acute exposures of humans to diborane were limited to case reports of accidental work-related exposures. Signs and symptoms of exposure included chest tightness, shortness of breath and dyspnea, wheezing, nonproductive cough, and precordial pain. Workers exposed to diborane generally experienced a complete recovery of symptoms within a short period following exposure. No quantitative information was given regarding the exposure terms of these individuals, and the data were therefore unsuitable for derivation of AEGLs. No reports of death were found in the literature.

Data on lethal and sublethal effects of diborane were available for several animal species, including dogs, rats, mice, hamsters, rabbits, and guinea pigs. Fifteen-minute LC_{50} values in rats ranged from 159–182 ppm, and 4-hour LC_{50} values ranged from 40–80 ppm in rats and 29–31.5 ppm in mice. Animals exposed to lethal and sublethal concentrations developed pulmonary hemorrhages, congestion, and edema, and death was related to these severe pulmonary changes. Recent studies in rats and mice have also uncovered the development of multi-focal and/or diffuse inflammatory epithelial degeneration in the bronchioles following exposure to diborane. These pulmonary changes produced by exposure to sublethal concentrations were completely reversible in rats by two weeks after an acute exposure, and were being repaired in the mouse by 2 weeks post-exposure. The signs of toxicity and repair of pulmonary lesions following acute exposure to sublethal concentrations in animals were similar to the human case reports. It is likely that the mechanism of toxicity is due to direct interaction of diborane with cellular components, especially since diborane is such a potent reducer. There appears to be a similar mechanism of toxicity between species because the cause of death from diborane exposure has always been from pulmonary damage, including edema, hemorrhage, and congestion. Mice appeared to be the more sensitive species, and the mice data were therefore used for the derivations of AEGLs.

An AEGL–1 value was not derived because it was not appropriate. The AEGL–2 value is below the odor threshold of diborane and no other data pertaining to endpoints relevant to AEGL–1 definition were available.

The AEGL–2 values were based on a LOAEL (lowest-observed-adverse-effect level) for pulmonary changes in male ICR mice following acute inhalation exposure to diborane. No effects were observed in mice exposed to 5 ppm for 1 hour, while exposure to 5 ppm for 2 hours resulted in 4/10 mice developing multi-focal and/or diffuse inflammatory epithelial degeneration in the bronchioles (Nomiyama *et al.*, 1995). There were no other treatment related changes, such as changes in behavior or appearance, body or organ weight, or in hematological or clinical chemistry indices.

The AEGL–3 values were based on the estimate a 4-hour LC_{01} of 9.2 ppm obtained by probit analysis of data from a 4-hour LC_{50} study in male ICR mice (Uemura *et al.*, 1995).

A total UF of 10 was applied to the AEGL–2 and AEGL–3 values. An interspecies UF of 3 was applied because the most sensitive species, the mouse, was used, and the endpoint of toxicity, histological changes in the lungs, was the most sensitive endpoint. Further support of a value of 3 is that signs of toxicity and repair of pulmonary lesions following acute exposure to sublethal concentrations in animals were similar to the human case reports. It is likely that the mechanism of toxicity is due to direct interaction of diborane with cellular components, especially since diborane is such a potent reducer. There appears to be a similar mechanism of toxicity between species because the cause of death from diborane exposure has always been from pulmonary damage, including edema, hemorrhage, and congestion. An intraspecies factor of 3 was applied because the mechanism of action is not expected to differ greatly among individuals. The lung remained the target organ at all concentrations of exposure, and the biological response remained the same, becoming more severe with increasing concentration until death occurred from anoxia as a consequence of severe pulmonary changes.

The derived AEGL values were scaled to 10-minute, 30-minute, 1-hour, 4-hour, and 8-hour exposures using $C^n \times t = k$. To calculate n for diborane, a regression plot of the effective concentration (EC_{50}) values was derived from the studies by Nomiyama *et al.* (1995) and Uemura *et al.* (1995) investigating 1-, 2-, and 4-hour exposures to 1, 5, or 15 ppm diborane, with multi-focal and/or diffuse inflammatory epithelial degeneration in the bronchioles as the endpoint of toxicity. From the regression analysis, the derived value of n = 1 was used in the temporal scaling of all the AEGL values ($C^1 \times t = k$; Haber's Law). For the AEGL–3, the 30-minute value was flat-lined for the 10-minute value because it was considered too precarious to extrapolate from the exposure duration of 4 hours to 10 minutes. Although it is considered appropriate to extrapolate from a 2-hour exposure to a 10-minute exposure duration in the AEGL–2 derivation, the 10-minute value of 6.0 ppm would approach that of the 10-minute AEGL–3 value of 7.3 ppm. Therefore, the 30-minute AEGL–2 value was flat-lined for the 10-minute value.

The calculated values are listed in Table 15 below:

TABLE 15.—SUMMARY OF PROPOSED AEGL VALUES FOR DIBORANE [PPM (MG/M^3)]

Classification	10-Minutes	30-Minutes	1-Hour	4-Hours	8-Hours	Endpoint (Reference)
AEGL–1 (Nondisabling)	Not recommended (NR)[a]	NR	NR	NR	NR	Not recommended because proposed AEGL–2 value is below the odor threshold, and no other data pertaining to endpoints relevant to the AEGL–1 definition were available
AEGL–2 (Disabling)	6.0 (6.6)	2.0 (2.2)	1.0 (1.1)	0.25 (0.28)	0.13 (0.14)	LOAEL for pulmonary changes in male ICR mice; 5 ppm for 2 hour (Nomiyama *et al.*, 1995)
AEGL–3 (Lethality)	7.3 (8.0)	7.3 (8.0)	3.7 (4.1)	0.92 (1.0)	0.46 (0.51)	4-hour LC_{01} of 9.2 ppm estimated from a 4-hour LC_{50} in male ICR mice (Uemura *et al.*, 1995)

[a] Absence of an AEGL–1 does not imply that exposure below the AEGL–2 is without adverse effects.

ii. *References.*

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18. *Nerve Agent VX*—i. *Description.* Nerve agent VX [*O*-ethyl-*S*-(isopropylaminoethyl) methyl phosphonothiolate] is a toxic ester derivative of phosphonic acid containing a sulfur substituent group, and is commonly termed a "nerve" agent as a consequence of its anticholinesterase properties. Agent VX was developed as a chemical warfare agent, and shares many of the same properties as the G-series nerve agents (GA, GB, GD, and GF).

Agent VX is a amber-colored liquid with a molecular weight of 267.38; it has a vapor density of 9.2 (air = 1) and a liquid density of 1.006 gram/milliter (g/ml) at 20° C; its water solubility is 3 g per 100 g at 25° C and 7.5 g per 100 g at 15° C. Agent VX was deliberately formulated to possess a low volatility (10.5 mg/m^3 at 25° C), and is approximately 2,000 times less volatile

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than nerve agent GB (DA, 1990). As a consequence, agent VX is a persistent, "terrain denial" military compound with the potential to off-gas toxic concentrations for days following surface application.

Toxic effects may occur at concentrations below those of odor detection.

Exposure to acutely toxic concentrations of agent VX can result in excessive bronchial, salivary, ocular, and intestinal secretion, sweating, miosis, bronchospasm, intestinal hypermotility, bradycardia, muscle fasciculations, twitching, weakness, paralysis, loss of consciousness, convulsions, depression of the central respiratory drive, and death (Dunn and Sidell, 1989). Minimal effects observed at low vapor concentrations include miosis (pinpointing of the pupils of the eye, with subsequent decrease in pupil area), tightness of the chest, rhinorrhea, and dyspnea.

There is at present no evidence to indicate that asymptomatic exposures to agent VX result in chronic neurological disorders. However, a major concern associated with symptomatic exposures to anticholinesterase compounds such as agent VX is the possibility of chronic neurological effects. No human data exist for evaluating the potential of agent VX for inducing chronic neurological effects following acute symptomatic exposures.

Animal studies have shown that exposures to agent VX have not caused reproductive or developmental effects. Agent VX was not found to be genotoxic in a series of microbial and mammalian assays, and there is no evidence indicating that VX is carcinogenic.

Animals exposed to acutely toxic concentrations of agent VX exhibit the same signs of toxicity as humans, including miosis, salivation, and tremors. In a short-term inhalation toxicity study, no signs of toxicity, except miosis, were observed in rats, mice, guinea pigs, or rabbits exposed to VX vapor concentrations of 0.0002 mg/m^3 or less (6 hours/day, 5 days/week, for 2 weeks) (Crook *et al.*, 1983).

Insufficient data are available from which to derive AEGL values for VX from human or animal inhalation toxicity studies. The few studies available are historical, and are considered nonverifiable due to flawed study design, poor sampling techniques, or suspect contamination of sampling and detection apparatus. Nevertheless, available literature clearly indicates that inhibition of cholinesterase activity is a common mechanism of toxicity shared by the G-series nerve agents and nerve agent VX. Thus, it was possible to develop AEGL estimates for agent VX by a comparative method of relative potency analysis from the more complete data set for nerve agent GB. This approach has been previously applied in the estimation of nerve agent exposure limits, most recently by Reutter *et al.* (2000). Available literature indicates that Agent VX is considered approximately 12 times more potent than agent GB (Callaway and Dirnhuber, 1971).

All mammalian toxicity endpoints observed in the data set for nerve agent VX as well as the G-series agents represent different points on the response continuum for anticholinesterase effects. Further, the mechanism of mammalian toxicity (cholinesterase inhibition) is the same for all nerve agents. As a consequence, the experimentally derived n = 2 from the Mioduszewski *et al.* (2000a, b) rat lethality data set for agent GB is here used as the scaling function for the agent VX AEGL–1, AEGL–2, and AEGL–3 derivations rather than a default value.

Under comparable conditions of exposure, the current analysis finds that agent VX has a potency to cause miosis and other transient effects approximately 12 times greater than that of agent GB. The AEGL–1 values for agent GB were derived from a study of human subjects in which minimal effects occurred following a 20-minute exposure to a GB vapor concentration of 0.05 mg/m^3 (Harvey, 1952; Johns, 1952). These findings are based on the results of low-concentration nerve agent exposures to informed volunteers who were under clinical supervision during the periods of exposure as well as for post-exposure periods of several months.

The AEGL–2 values for agent GB were derived from a study of human subjects in which miosis, dyspnea, photophobia, inhibition of red blood cell cholinesterase (RBC-ChE) to approximately 60% of individual baseline, and small but measurable changes in SFEMG of the forearm occurred following a 30-minute exposure to 0.5 mg GB/m^3 (Baker and Sedgwick, 1996). This recent study was performed under Helsinki accords and clinical supervision, and was conducted with the cooperation of fully informed human subjects.

The fact that AEGL–1 and AEGL–2 analyses for agent VX are based on data from human volunteers (Harvey, 1952; Johns 1952; Baker and Sedgwick, 1996; GB vapor exposure to clinically supervised human volunteers) precludes the use of an interspecies UF. To accommodate known variation in human cholinesterase activity that may make some individuals more susceptible to the effects of cholinesterase inhibitors such as nerve agents, a factor of 10 was applied for intraspecies variability (protection of susceptible populations). With application of a modifying factor of 3 for the incomplete VX data set, the total UF for estimating AEGL–1 and AEGL–2 values for agent VX is 30.

The SFEMG effects noted in the study chosen for estimation of AEGL–2 values were not clinically significant, and were not detectable after 15–30 months. Baker and Sedgwick (1996) considered SFEMG changes to be a possible early indicator or precursor of the nondepolarising neuromuscular block found associated with Intermediate Syndrome paralysis in severe organophosphorous insecticide poisoning cases. The Baker and Sedgwick (1996) study concluded that these electromyographic changes were persistent (>15 months), but that they were reversible and subclinical. While not considered debilitating or permanent effects in themselves, SFEMG changes are here considered an early indicator of exposures that could potentially result in more significant effects. Selection of this effect as a protective definition of an AEGL–2 level is considered appropriate given the steep dose-response toxicity curve of nerve agents.

Insufficient data are available to directly derive an AEGL–3 for agent VX. The AEGL–3 values for agent VX were indirectly derived from the AEGL–3 values for GB using a relative potency approach in which agent VX is considered 12 times more potent than agent GB for lethality. As a result, AEGL–3 values for agent VX were derived from recent inhalation studies in which the lethality of GB to female Sprague-Dawley rats was evaluated for the time periods of 10, 30, 60, 90, 240, and 360 minutes (Mioduszewski *et al.*, 2000a, b). Both experimental LC_{01} and LC_{50} values were evaluated. The use of a rat data set resulted in selection of an interspecies UF of 3; the full default value of 10 was not considered appropriate for the interspecies UF since the mechanism of toxicity in both laboratory rodents and humans is cholinesterase inhibition. To accommodate known variation in human cholinesterase activity, the full default value of 10 for intraspecies uncertainty was considered necessary to protect susceptible populations. With the additional application of a modifying factor of 3 for the incomplete VX data set, the total UF for AEGL–3 determination for agent VX is equal to 100.

The NAC noted that an earlier report by the National Research Council (NRC) (NRC, 1997) included an evaluation of the same VX toxicity data base, and had recommended at that time that additional research was needed to more fully characterize the toxicity of VX vapor. The NAC further notes that such studies could be limited and should specifically focus on obtaining data that would reduce uncertainties regarding the relative potency between agents GB and VX, or the potency of agent VX, for critical effects such as miosis, rhinorrhea, and lethality. To acknowledge the significant gaps in the data base for this nerve agent, the NAC considers the proposed AEGL values to be temporary in nature and subject to re-evaluation in 3 years.

The calculated values are listed in Table 16 below:

TABLE 16.—SUMMARY OF PROPOSED TEMPORARY AEGL VALUES[A] FOR AGENT VX [PPM (MG/M^3)][B]

Classification	10-Minutes	30-Minutes	1-Hour	4-Hours	8-Hours	Endpoint (Reference)
AEGL–1 (Non-disabling)	0.000018 ppm (0.00020 mg/m^3)	0.000010 ppm (0.00011 mg/m^3)	0.0000073 ppm (0.000080 mg/m^3)	0.0000037 ppm (0.000040 mg/m^3)	0.0000026 ppm (0.000028 mg/m^3)	Derived by relative potency from study of multiple minimal effects in human volunteers exposed to 0.05 mg/m^3 GB vapor for 20 minutes; headache, eye pain, rhinorrhea, tightness in chest, cramps, nausea, malaise, miosis (Harvey, 1952; Johns, 1952)[C]
AEGL–2 (Disabling)	0.00022 ppm (0.0024 mg/m^3)	0.00013 ppm (0.0014 mg/m^3)	0.000090 ppm (0.00098 mg/m^3)	0.000045 ppm (0.00049 mg/m^3)	0.000032 ppm (0.00035 mg/m^3)	Derived by relative potency from study of GB vapor exposure to exercising human volunteers exposed to 0.5 mg/m^3 for 30 minutes; miosis, dyspnea, inhibition of RBC-ChE changes in SFEMG (Baker and Sedgwick, 1996)[D]
AEGL–3 (Lethal)	0.00088 ppm (0.0096 mg/m^3)	0.00045 ppm (0.0049 mg/m^3)	0.00030 ppm (0.0033 mg/m^3)	0.00016 ppm (0.0017 mg/m^3)	0.00012 ppm (0.0013 mg/m^3)	Derived by relative potency from experimental Sprague-Dawley rat lethality data (LC_{01} and LC_{50}); whole-body dynamic exposure to GB vapor concentrations between 2–56 mg/m^3 for 3, 10, 30, 60, 90, 240, and 360 minutes (Mioduszewski *et al.*, 2000a, b)[E]

[A] Percutaneous absorption of VX vapor is known to be an effective route of exposure; nevertheless, percutaneous vapor concentrations needed to produce similar adverse effects are greater than inhalation vapor concentrations by an approximate factor of 10. Thus, the AEGL values presented in this table are considered protective for both routes of exposure.

[B] Agent VX is considered approximately 12 times more potent than agent GB. (see section 4.3, and Callaway and Dirnhuber, 1971).

[C] Derived from multiple minimal effects noted in human volunteers exposed to agent GB vapor at 0.05 mg-min/m^3 for 20 minutes (Harvey, 1952; Johns, 1952). VX concentration to achieve same endpoint estimated by relative potency comparison presented in footnote "b" in this table.

[D] Derived from transient effects noted in exercising human volunteers exposed to agent GB vapor at 0.5 mg-min/m^3 for 30 minutes (Baker and Sedgwick, 1996). VX concentration to achieve same endpoint estimated by relative potency comparison presented in footnote "b" in this table.

[E] Derived from LC_{01} values for female Sprague-Dawley rats exposed to GB vapor in dynamic exposure chamber (Mioduszewski *et al.*, 2000a, b). VX concentrations to achieve same endpoint estimated by relative potency comparison presented in footnote "b" in this table.

ii. *References.*

a. Baker, D.J. and Sedgwick, E.M. 1996. Single fibre electromyographic changes in man after organophosphate exposure. *Human and Experimental Toxicology*. Vol. 15:369–375.

b. Callaway, S. and Dirnhuber, P. 1971. Estimation of the concentration of nerve agent vapour required to produce measured degrees of miosis in rabbit and human eyes. Technical Paper No. 64 Chemical Defence Establishment, Porton Down, Salisbury, Wilts., UK

c. Crook, J.W., Hott, P., and Owens, E.J., *et al.* 1983. The effects of subacute exposures of the mouse, rat, guinea pig, and rabbit, to low-level VX concentrations. U.S. Army Armament Research and Development Command, Chemical Systems Laboratory, Technical Report ARCSL-TR-82038, Aberdeen Proving Ground, MD.

d. DA (U.S. Department of the Army). 1990. Potential military chemical/biological agents and compounds. Field Manual FM 3-9 (NAVFAC P-467, AFR 355-7), Headquarters, Department of the Army, Department of the Navy, Department of the Air Force, Washington, DC (December 12, 1990).

e. Dunn, M.A. and Sidell, F.R. 1989. Progress in the medical defense against nerve agents. *Journal of the American Medical Association*. Vol. 262:649–652.

f. Harvey, J.C. 1952. Clinical observations on volunteers exposed to concentrations of GB. Medical Laboratories Research Report No. 114, Publication Control No. 5030–114 (CMLRE-ML-52), MLCR 114. Army Chemical Center, Aberdeen Proving Ground, MD.

g. Johns, R.J. 1952. The effect of low concentrations of GB on the human eye. Research Report No. 100, Publication Control No. 5030–100 (CMLRE-ML-52). Chemical Corps Medical Laboratories, Army Chemical Center, Aberdeen Proving Ground, MD.

h. Mioduszewski, R.J., Manthei, J., Way, R., Burnett, D., Gaviola, B., Muse, W., Crosier, R., and Sommerville, D. 2000a. Estimating the probability of sarin vapor toxicity in rats as a function of exposure concentration and duration. Presented at the 39th Annual Meeting of the Society of Toxicology, March, 2000, Philadelphia, PA. *Toxicologist*. Vol. 54(1):18 (#84).

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j. NRC. 1997. Review of the acute human-toxicity estimates for selected chemical warfare agents. Committee on Toxicology, Subcommittee on Toxicity Values for Selected Nerve Agents and Vesicant Agents. National Academy Press, Washington, DC.

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k. Reutter, S.A., Mioduszewski, R.J., and Thomson, S.A. 2000. Evaluation of airborne exposure limits for VX: worker and general population exposure criteria. ECBC-TR-074. Edgewood Chemical Biological Center, U.S. Army Soldier and Biological Chemical Command, Aberdeen Proving Ground, MD.

IV. Next Steps

The NAC/AEGL Committee plans to publish "Proposed" AEGL values for five-exposure periods for other chemicals on the priority list of 85 in groups of approximately 10 to 20 chemicals in future **Federal Register** notices during the calendar year 2001.

The NAC/AEGL Committee will review and consider all public comments received on this notice, with revisions to the "Proposed" AEGL values as appropriate. The resulting AEGL values will be established as "Interim" AEGLs and will be forwarded to the NRC/NAS, for review and comment. The "Final" AEGLs will be published under the auspices of the NRC/NAS following concurrence on the values and the scientific rationale used in their development.

List of Subjects

Environmental protection, Hazardous substances.

Dated: April 23, 2001.

Stephen L. Johnson,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substonces.

[FR Doc. 01–11001 Filed 5–1–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140289; FRL–6777–5]

Access to Confidential Business Information by GEOMET Technologies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized Versar, Incorporated's (Versar) wholley owned subsidiary GEOMET Technologies, Incorporated (GEOMET) of Germantown, MD access to information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data will occur no sooner than May 7, 2001.

FOR FURTHER INFORMATION CONTACT: Barbara A. Cunningham, Acting Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to "those persons who are or may be required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA)." Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

III. What Action is the Agency Taking?

Under contract number 68–W–99–041, Versar's subsidiary, GEOMET of 20251 Century Boulevard, Germantown, MD, will assist the Office of Pollution Prevention and Toxics (OPPTS) providing exposure assessments for new and existing chemicals.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W–99–041, GEOMET will require access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA to perform successfully the duties specified under the contract.

GEOMET personnel will be given access to information submitted to EPA under sections 4, 5, 6, and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA that the Agency may provide GEOMET access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and at the Versar site located at 6850 Versar Center, Springfield, VA.

GEOMET will be required to adhere to all provisions of EPA's *TSCA Confidential Business Information Security Manual.*

Clearance for access to TSCA CBI under this contract may continue until April 30, 2004.

GEOMET personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Confidential business information.

Dated: April 19, 2001.

Deborah A. Williams,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 01–10999 Filed 5–1–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34171B; FRL–6770–9]

Ethyl Parathion; Receipt of Request For Registration Cancellations and Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request by a number of registrants, including Cheminova, Inc. and Cheminova A/S, for the following actions: to immediately cancel the registrations for their manufacturing use products containing O, O-Diethyl-O-p-nitrophenyl thiophosphate (ethyl parathion), to immediately cancel the use on corn grown for seed by amending their ethyl parathion end-use product registrations; and to cancel all of their ethyl parathion end-use products effective as of December 31, 2002. EPA will decide whether to approve the requests after consideration of public comment.

DATE: Comments on the requested cancellation of product and use registrations must be submitted to the address provided below by June 1, 2001.

FOR FURTHER INFORMATION CONTACT: Laura Parsons, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5776; fax number: (703) 308–7042; e-mail address: parsons.laura@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules" and then look up the entry for this document under the **Federal Register**—Environmental Documents. You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access information about the risk assessment for ethyl parathion, go to the Home Page for the Office of Pesticide Programs or go directly http://www.epa.gov/pesticides/op/ethylparathion.htm.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–34171B. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34171B in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–34171B. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registrants Request to Cancel Product and Use Registrations

A. Background Information

Ethyl parathion is an organophosphate insecticide/miticide currently registered for use on alfalfa, barley, corn, cotton, canola, sorghum, soybean, sunflower, and wheat crops. In 1991, EPA and the registrants reached an agreement that limited ethyl parathion use to these nine current crop sites, and restricted application and post-application practices to mitigate extreme acute toxicity risks to workers. As a result, to protect workers, ethyl parathion may only be handled by trained, certified applicators using closed mixing and loading systems, may only be applied aerially, and crops treated with the pesticide may only be harvested mechanically.

Even with the post 1991 use restrictions, EPA's revised risk assessment completed in September, 1999 showed high levels of worker and ecological risk from legal uses of ethyl

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parathion. There were also several unfulfilled data requirements. After viewing the revised risk assessment and outstanding data requirements, Cheminova, Inc. and Cheminova, A/S and EPA signed a memorandum of agreement (MOA) effective October 10, 2000. In accordance with this MOA, Cheminova, Inc. and Cheminova, A/S have requested to amend their end-use products registrations to immediately terminate the use on corn grown for seed which can result in higher exposures to workers and have requested voluntary cancellation of all their ethyl parathion registrations. Some other companies holding registrations for ethyl parathion products have also written letters to the EPA requesting voluntary cancellation of all their ethyl parathion products.

B. Requests for Voluntary Cancellation

Registrants have requested voluntary cancellation of all their ethyl parathion registrations either by signing a MOA or by letter to the Agency. Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180-day comment period on a request for voluntary termination of any minor agricultural use before granting the request, unless (1) the registrants request a waiver of the comment period, or (2) the Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment. The registrant has requested that EPA waive the 180-day comment period. EPA is granting the registrants' request to waive the 180-day comment period and is providing a 30-day public comment period before taking action on the requested cancellations. Given the potential worker and ecological risk that ethyl parathion use poses, EPA anticipates granting the requested cancellations at the close of the comment period for this announcement. The specific cancellation requests are set forth below.

1. *Requests for termination of use on corn grown for seed.* In accordance with the MOA, Cheminova, Inc. has requested that its end-use products registrations be amended to immediately terminate the use of corn grown for seed. EPA anticipates granting the requested termination shortly after the end of the 30 day comment period for this notice. This use termination was requested for the end-use products identified in the following Table 1.

TABLE 1.—END USE PRODUCT REGISTRATION DELETING USE ON CORN GROWN FOR SEED

Company	Reg. No.	Product
Cheminova, Inc.	67760–37	Parathion 4EC
	67760–38	Parathion 8EC
	67760–39	Ethyl-Methyl Parathion 6-3 EC

2. *Requests for voluntary cancellation of manufacturing use product registrations.* Pursuant to the Agreement and FIFRA section 6(f)(1)(A), Cheminova, A/S, the only registrant with a manufacturing use product registration, has submitted a request for voluntary cancellation of registrations for all ethyl parathion manufacturing-use products. EPA anticipates granting the cancellation request shortly after the end of the 30 day comment period for this notice. The registrations for which cancellations were requested are identified in the following Table 2.

TABLE 2.—MANUFACTURING USE-PRODUCT REGISTRATION CANCELLATION REQUESTS

Company	Reg. No.	Product
Cheminova, A/S	4787–17	Parathion Technical

3. *Requests for voluntary cancellation of end-use product registrations.* Several registrants have submitted requests for immediate voluntary cancellation of their registrations for end-use pesticide products containing ethyl parathion. The registrants who signed the MOA requested for cancellation of their ethyl parathion end-use product registrations effective as of December 31, 2002. EPA expects that end-use product registrations canceled by letter of voluntary cancellation are to be canceled shortly after the end of the 30-day comment period for this notice. The end-use registrations for which cancellation was requested by MOA or letter are identified in the following Table 3.

TABLE 3.—END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS

Company	Reg. No.	Product
Cheminova, Inc.	67760–37	Parathion 4EC
	67760–38	Parathion 8EC
	67760–39	Ethyl-Methyl Parathion 6-3 EC
Universal Cooperatives, Inc.	1386–646	Red Panther Parathion 8
Wilbur Ellis, Co.	2935–481	Parathion 4 Spray
	2935–483	Parathion 8 Aqua
Amvac, Chemical Co.	5481–435	Parathion 8
	5481–436	Parathion 4E
Helena Chemical	5905–513	Parathion 4E Emulsifiable Insecticide Concentrate
	5905–514	Parathion 8E Emulsifiable Insecticide Concentrate
	5905–515	Parathion — Methyl Parathion 6-3 Insecticide Concentrate
	5905–516	Helena Parathion 8 Flowable Insecticide Concentrate
Agriliance, LLC	9779–322	Parathion 8
Micro-Flo, Co.	51036–180	Micro Flo Co./ Parathion 8E

III. Potential Actions Relative to Remaining End-Use Products Registrations

EPA is contemplating various enforcement and regulatory actions with respect to the remaining end-use product registrations after EPA grants the voluntary cancellation requests set forth in Unit II. of this Notice. These remaining registrations cite the manufacturing use product listed in Table 2 as the source of active ingredient in these products. Because EPA intends to limit the sale, distribution and use of the existing stocks of this source in the order canceling its registration, production of these remaining end-use products may be illegal under the cancellation order or the current registrations for these end-use products. Accordingly, EPA may initiate appropriate enforcement actions to ensure that the remaining end-use products are not being produced illegally after the source is canceled. As shown in the Agency's revised risk assessment dated September 1999, EPA is concerned with the risks associated with the use of pesticide products containing ethyl parathion. Because of these concerns, EPA is contemplating initiating a proceeding to cancel these remaining registrations. The remaining end-use product registrations that may be subject to enforcement and regulatory actions discussed in this Unit are identified in the following Table 4.

TABLE 4.—END-USE PRODUCT REGISTRATIONS POTENTIALLY SUBJECT TO INVOLUNTARY CANCELLATION

Company	Reg. No.	Product
Drexel Chemical Co.	19713–322	Seis-Tres 6-3
	19713–323	Drexel Parathion 8
	19713–324	Ida Seis-Tres 6-3
	19713–325	Drexel Parathion 4EC

IV. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more pesticide uses. FIFRA section 6(f)(1) further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**, make reasonable efforts to inform persons who rely on the pesticide for minor agricultural uses, and provide a 30-day period in which the public may comment. Thereafter, the Administrator may approve such a request.

V. Procedures for Withdrawal of Request

Registrants may withdraw a request for cancellation only in conformance with the memoranda of agreement. Registrants must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

VI. Proposed Existing Stocks Provision

Pursuant to section 6(f) of FIFRA, EPA intends to grant the requests for voluntary amendment and cancellation identified in Unit II. For purposes of the cancellation order that the Agency proposes to issue at the close of the comment period for this announcement, the term "existing stocks" will be defined, pursuant to EPA's existing stocks policy published in the **Federal Register** on June 26, 1991 at 56 FR 29362, as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the amendment or cancellation. Any distribution, sale, or use of existing stocks after the effective date of the cancellation order that the Agency intends to issue that is not consistent with the terms of that order will be considered a violation of section 12(a)(2)(K) and/or 12(a)(1)(A) of FIFRA.

A. Distribution, Sale and Use of End-Use Products Bearing Old Labeling Permitting Use on Corn Grown for Seed

In any cancellation order issued in response to registrants' request for registration amendment to terminate the use on corn grown for seed, EPA does not intend to prohibit the sale, distribution and use of the existing stocks of these products. Based on the registrants's assurance, EPA anticipates that most of these products will be relabeled to eliminate the canceled use.

B. Distribution, Sale and Use of Manufacturing-Use Products

EPA anticipates that any cancellation order issued in response to the registrants' request for voluntary cancellation of manufacturing-use product registrations would:

(1) Prohibit, as of the effective date of the cancellation order, all sale, distribution and use of existing stocks of manufacturing use products imported into the United States after July 7, 2000;

(2) Prohibit, as of the effective date of the cancellation order, all sale and distribution of ethyl parathion manufacturing use products imported into the United States prior to July 7, 2000 to pesticide registrants who have not executed the MOA or an agreement equivalent to the MOA, and prohibit use by such registrants, unless the sale, distribution or use is for the purpose of manufacturing a product intended solely for export consistent with the requirements of FIFRA Section 17; and

(3) Prohibit, as of December 31, 2002, all sale, distribution and use of existing stocks of manufacturing-use products imported prior to July 7, 2000, unless the sale or distribution is solely for purposes of export consistent with the requirements of section 17 of FIFRA, or for proper disposal.

C. Distribution, Sale and Use of End-Use Products

EPA anticipates that any cancellation order issued in response to the registrants' request for voluntary cancellation of end-use product registrations would:

(1) Prohibit, as of December 31, 2002, registrants from distributing or selling existing stocks of the end-use products;

(2) Prohibit, as of August 31, 2003, all sale and distribution of existing stocks of the end-use products; and

(3) Prohibit, as of October 31, 2003, all use of existing stocks of the end-use products.

VII. Future Tolerance Revocations

EPA anticipates drafting a future **Federal Register** notice proposing to separate the parathion tolerances for residues found in 40 CFR 180.121 into 180.121 for ethyl parathion and 180.122 for methyl parathion. This future notice will additionally propose revocation of tolerances on commodities on which there are no registered uses of either ethyl parathion or methyl parathion. With this present notice, EPA seeks comment as to whether any individuals or groups want to support continuation of these tolerances. For the nine crops on which ethyl parathion may be used until October 31, 2003, ethyl parathion tolerances will be revoked with an expiration date which will allow commodities with residues resulting from lawful applications to clear the channels of trade.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 22, 2001.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 01–10436 Filed 5–1–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34225D; FRL–6781–1]

Diazinon Products; Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

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SUMMARY: This notice announces EPA's cancellation order for the product and use cancellations as requested by two companies that hold the registrations of pesticide manufacturing-use and end-use products containing the active ingredient diazinon and accepted by EPA, pursuant to section 6(f) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This order follows up a January 10, 2001, notice of receipt of the two companies' requests for cancellations and amendments of their diazinon product registrations to terminate all indoor uses and certain agricultural uses. In the January 10, 2001 notice, EPA indicated that it would issue an order confirming the voluntary product and use registration cancellations. Any distribution, sale, or use of the products subject to this cancellation order is only permitted in accordance with the terms of the existing stocks provisions of this cancellation order.

DATES: The cancellations are effective May 2, 2001.

FOR FURTHER INFORMATION CONTACT: Ben Chambliss, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8174; fax number: (703) 308–7042; e-mail address: chambliss.ben@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use diazinon products. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access information about the risk assessment for diazinon, go to the Home Page for the Office of Pesticide Programs or go directly to http://www.epa.gov/pesticides/op/diazinon.htm.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–34225D. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Receipt of Requests to Cancel and Amend Registrations to Delete Uses

A. Background

In December 2000, Syngenta Crop Protection, Inc. (Syngenta) and Makheteshim Agan of North Amenrica, Inc./Makheteshim Chemical Works, Ltd. (collectively referred to as the "Technical Registrants"), the basic manufacturers of the active ingredient diazinon and registrants of products containing diazinon, and EPA agreed to several voluntary measures that will reduce the potential exposure to children associated with diazinon containing products. EPA initiated the negotiations with the Technical Registrants after finding that diazinon, as currently registered, was an exposure risk, especially to children. As a result, the Technical Registrants respectively submitted a letter under section 6(f) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requesting cancellation or amendment of all of their diazinon product registrations to terminate all indoor uses and certain agricultural uses. The uses for which termination was requested are identified in the following List 1:

List 1.—Uses Requested for Termination

1. *Indoor uses*: Pet collars, or inside any structure or vehicle, vessel, or aircraft or any enclosed area, and/or on any contents therein (except mushroom houses), including food/feed handling establishments, greenhouses, schools, residences, museums, sports facilities, stores, warehouses and hospitals.

2. *Agricultural uses*: Alfalfa, bananas, Bermuda grass, dried beans, celery, red chicory (radicchio), citrus, clover, coffee, cotton, cowpeas, cucumbers, dandelions, kiwi, lespedeza, parsley, parsnips, pastures, peppers, Irish potatoes, sheep, sorghum, spinach, squash (winter and summer), sweet potatoes, rangeland, strawberries, Swiss chard, tobacco, tomatoes, turnips. The uses for dried beans, dried peas, chicory, cowpeas and dandelions were removed from all labels in 1991.

**In addition, Syngenta has requested that "lawns" be removed from three of its commercial agricultural products (EPA Registrations 100–460, 100–461 and 100–784).

The letters requested that EPA cancel the registrations of all of their diazinon manufacturing-use products, conditioned upon EPA's issuance of replacement registrations for these products which do not allow formulation or reformulation into products bearing instructions for the uses identified in List 1. The letters also requested cancellations or amendments of the Technical Registrants' end-use product registrations to terminate these uses. These letters were followed by a memorandum of agreement between the Technical Registrants and EPA (MOA), in which the Technical Registrants agreed to phase out non-agricultural uses of its diazinon products. A copy of the Technical Registrants' letters requesting voluntary cancellation and the above-mentioned MOA are located in docket control number OPP–34225D.

Pursuant to section 6(f)(1) of the FIFRA, EPA announced the Agency's receipt of these requests from the Technical Registrants by a **Federal Register** notice published on January 10, 2001 (66 FR 1977) (FRL–6763–7). In that Notice, EPA provided a 30-day comment period: The Technical Registrants requested that the Administrator waive the 180-day comment period provided under FIFRA section 6(f)(1)(C). EPA also approved the

replacement registrations for the Technical Registrants' diazinon manufacturing-use products on January 11, 2001.

Following the publication of the 6(f) notice, EPA received many comments from growers, as well as the U.S. Department of Agriculture, expressing that the use of diazinon pesticide products is vital for many of the agricultural uses identified in List 1. According to the comments, there is a nationwide need for the application of diazinon products on spinach, strawberries, and tomatoes. There are also needs for the application of diazinon products on certain crops in certain states. These needs are identified in the following Table 1:

TABLE 1.— SPECIFIC REGIONAL NEED FOR DIAZINON END-USE PRODUCTS

Crop	Use area(s)
Bananas	Hawaii
Celery	Texas
Cucumbers	Texas)
Ground Squirrel/ Rodent Burrow Dust Stations for Public Health Use	California
Parsley	Texas and California
Parsnips	Texas and Oregon
Peas, succulent	Texas and Maryland
Peppers	Texas and California
Potatoes, Irish	Texas, Washington and Michigan
Potatoes, Sweet	Texas
Squash, summer and winter	Texas and California
Swiss Chard	Texas
Turnips, root	Texas and Oregon
Turnips, tops	Texas and Oregon

In response to these comments, the Technical Registrants agreed to maintain on their diazinon product registrations the use on spinach, strawberries and tomatoes. EPA's assessment of risks associated with the use of diazinon products concluded that all acute and chronic dietary risk estimates are below the Agency's level of concern. EPA's assessment considered all currently registered uses, including the agricultural uses identified in List 1. There may also be adequate data to support the tolerances for spinach, strawberries and tomatoes. EPA is currently reviewing residue data for these crops recently provided by the registrant to determine their acceptability. Accordingly, pursuant to FIFRA section 3(c)(7)(A), EPA approved the amendments of the Technical Registrants' replacement manufacturing-use product registrations to permit formulation and reformulation into products bearing instructions for spinach, strawberries and tomatoes. As amended, the approved replacement registrations for the Technical Registrants diazinon manufacturing-use products permit formulation and reformulation into products bearing instructions only for the agricultural uses identified in the following List 2:

List 2.—Agricultural Uses in Technical Registrants' Replacement Manufacturing-Use Product Registrations

Almonds, apples, apricots, beans (seed treatment only) except soybeans, beets, blackberries, blueberries, boysenberries, broccoli, cattle (non-lactating; ear tags only), Chinese broccoli, Brussels sprouts, cabbage, Chinese cabbage (bok choy and napa), cantaloupes, carrots, Casaba melons, cauliflower, cherries, collards, field corn (seed treatment only), sweet corn (including seed treatment), cranberries, Crenshaw melons, dewberries, endive (escarole), ginseng, grapes, honeydew melons, hops, kale, lettuce, lima beans (seed treatment only), loganberries, melons, muskmelons, mustard greens, Chinese mustard, nectarines, onions, peaches, pears, peas (seed treatment only), Persian melons, pineapples, plums, prunes, radishes, Chinese radishes, raspberries, rutabagas, spinach, strawberries, sugar beets, tomatoes, walnuts, watercress (Hawaii only), and watermelons.

Similarly, in today's Cancellation Order, EPA is approving the Technical Registrants' requested cancellations and amendments of the their diazinon end-use products registrations to terminate all uses identified in List 1 except spinach, strawberries and tomatoes. The individual states identified in Table 1 may wish to issue special-local-need registrations under FIFRA section 24(c) for diazinon end-use products to address the specific agricultural needs in their states respectively, as identified in Table 1.

B. Requests for Voluntary Cancellotion of Manufacturing Use Products

Pursuant to FIFRA section 6(f)(1)(A), the Technical Registrants submitted requests for voluntary cancellation of the registrations for their diazinon manufacturing-use products, conditioned upon EPA's issuance of replacement registrations for these products which do not allow their formulation or reformulation into products bearing instructions for indoor use or certain agricultural uses, as identified in List 1 of this notice. The product registrations for which cancellations were requested are identified in the following Table 2:

TABLE 2.—MANUFACTURING-USE PRODUCT REGISTRATION CANCELLATION REQUESTS

Company	Reg. No.	Product
Makhteshim Chemical Works, Ltd.	11678–6	DIAZOL Technical Stabilized
	11678–20	DIAZOL(Diazinon) Stabilized Oil Concentrate
Syngenta Crop Protection, Inc.	100–524	D.Z.N(R) DIAZINON MG 87% INSECTICIDE
	100–714	D.Z.N(R) DIAZINON MG 5%
	100–771	D.Z.N(R) DIAZINON MG 22.4% WBC
	100–783	D.Z.N(R) DIAZINON MG 56%

As mentioned in Unit II.A of this notice, EPA received comments requesting that the Agency continues to permit the use of diazinon products on certain agricultural sites that the Technical Registrants had proposed to cancel. In response to these comments, pursuant to FIFRA section 3(c)(7)(A), EPA approved the Technical Registrants' amendments of the replacement registrations for their diazinon manufacturing-use products to permit formulation and reformulation of these replacement manufacturing use products into products bearing instructions for spinach, strawberries, and tomatoes, because there appears to be a nationwide need for the use of diazinon products on these crops. The individual states identified in Table 1 may wish to issue special-local-need registrations under FIFRA section 24(c) for diazinon end-use products to meet the specific agricultural needs in their states, as identified in Table 1. Because the concerns expressed in the comments have been addressed, EPA is issuing an order in this notice canceling the registrations identified in Table 2, as requested by the Technical Registrants.

C. Requests for Voluntary Cancellation of End-Use Products

In addition to requesting voluntary cancellation of its diazinon manufacturing-use product registrations, Syngenta also submitted requests for voluntary cancellation of the registrations for its diazinon end-use products that are registered primarily for indoor use. These end-use product registrations for which cancellation was requested are identified in the following Table 3:

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TABLE 3.—END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS

Company	Reg. No.	Product
Syngenta Crop Protection, Inc.	100–445	D.Z.N(R) DIAZINON 2D
	100–477	D.Z.N(R) HOME PEST CONTROL LIQUID
	100–478	D.Z.N(R) HOME PEST CONTROL PRESSURIZED LIQUID
	100–625	D.Z.N(R) HOME PEST CONTROL — XP
	100-659	D.Z.N(R) 0.5% RTU
	100–685	D.Z.N(R) 1/2% EW
	100–686	D.Z.N(R) 1% EW
	100–687	D.Z.N(R) 5.0 EW

EPA did not receive any comments expressing a need of diazinon products for indoor use. Accordingly, EPA is issuing an order in this notice canceling the registrations identified in Table 3, as requested by Syngenta.

D. Requests for Voluntary Amendments of End-Use Product Registrations to Terminate Certain Uses

Pursuant to section 6(f)(1)(A) of FIFRA, the Technical Registrants submitted requests to amend a number of their diazinon end-use product registrations to terminate the uses identified in List 1 of this notice. The registrations for which amendments to terminate uses were requested are identified in the following Table 4:

TABLE 4.—END-USE PRODUCT REGISTRATIONS REQUESTS FOR AMENDMENTS TO TERMINATE USES

Company	Reg. No.	Product
Makhteshim-Agan of North America, Inc.	66222–10	DIAZOL Diazinon 50W
	66222–9	DIAZOL Diazinon AG500
Syngenta Crop Protection, Inc	100–460	D.Z.N(R) DIAZINON 50W
	100–461	D.Z.N(R) DIAZINON AG500
	100–463	D.Z.N(R) DIAZINON
	100–469	D.Z.N(R) DIAZINON 14G
	100–784	D.Z.N(R) DIAZINON AG600 WBC
	100–785	EVICT(TM) INDOOR/OUTDOOR WBC

As mentioned in Unit II.A of this notice, EPA received comments requesting that the Agency continues to permit the use of diazinon products on certain agricultural sites that the Technical Registrants had proposed to cancel. In response to these comments, the Technical Registrants have agreed to retain the use on spinach, strawberries, and tomatoes on their current diazinon end-use product registrations. The individual states identified in Table 1 may also wish to issue special-local-need registrations under FIFRA section 24(c) for diazinon end-use products to meet the specific agricultural needs in their states, as identified in Table 1. Accordingly, EPA is issuing an order in this notice approving the amendments of the registrations identified in Table 3 to terminate all uses identified in List 1 except spinach, strawberries, and tomatoes.

III. Cancellation Order

Pursuant to section 6(f) of FIFRA, EPA hereby approves the requested diazinon product registration cancellations and amendments to terminate all indoor uses and certain agricultural uses, as identified in List 1 of this notice, except spinach, strawberries, and tomatoes. Accordingly, the Agency orders that the diazinon manufacturing use product registrations identified in Table 2 and the diazinon end-use product registrations identified in Table 3 are hereby canceled. The Agency also orders that all of the uses identified in List 1, except spinach, strawberries, and tomatoes, are hereby canceled from all end-use product registrations identified in Table 4. Any distribution, sale, or use of existing stocks of the products identified in Tables 2-4 in a manner inconsistent with the terms of this Order or the Existing Stock Provisions in Unit IV of this Notice will be considered a violation of section 12(a)(2)(K) of FIFRA and/or section 12(a)(1)(A) of FIFRA.

IV. Existing Stocks Provisions

For purposes of this Order, the term "existing stocks" is defined, pursuant to EPA's existing stocks policy (56 FR 29362, June 26, 1991), as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the amendment or cancellation. The existing stocks provisions of this Cancellation Order are as follows:

1. *Distribution or sale of manufacturing-use products.* Distribution or sale by any person of the existing stocks of any product identified in Table 2 will not be lawful under FIFRA after May 2, 2001, except for the purposes of returns for relabeling consistent with the Technical Registrants' cancellation request letters and the MOA, shipping such stocks for export consistent with the requirements of section 17 of FIFRA, or proper disposal.

2. *Use of manufacturing-use products to formulate for indoor use.* Use by any person of the existing stocks of any product identified in Table 2 for formulation or reformulation into any product that bears instructions for indoor use will not be lawful under FIFRA after May 2, 2001. All other use of such products may continue until the existing stocks are exhausted, provided that such use does not violate any existing stocks provision of this Cancellation Order and is in accordance with the existing labeling of that product.

3. *Use of manufacturing-use products to formulate for agricultural use.* Use by any person of the existing stocks of any product identified in Table 2 for formulation or reformulation into any product bearing instructions for the agricultural uses identified in List 1, except spinach, strawberries and tomatoes, will not be lawful under FIFRA after May 31, 2001. All other use of such products may continue until the existing stocks are exhausted, provided that such use does not violate any existing stocks provision of this Cancellation Order and is in accordance with the existing labeling of that product.

4. *Sale or distribution of indoor end-use products by Technical Registrants.* Sale or distribution by the Technical Registrants of the existing stocks of any product identified in Table 3 or Table 4 that bear instructions for indoor use will not be lawful under FIFRA after May 2, 2001, except for the purposes of returns for relabeling consistent with the Technical Registrants' cancellation request letters and the MOA, shipping such stocks for export consistent with the requirements of section 17 of FIFRA, or proper disposal.

5. *Retail and other sale or distribution of indoor end-use products.* Sale or distribution by any person of the existing stocks of any product identified in Table 3 or Table 4 that bear instructions for indoor use will not be lawful under FIFRA after December 31, 2002, except for the purposes of returns for re-labeling consistent with the Technical Registrants' cancellation request letters and the MOA, shipping such stocks for export consistent with the requirements of section 17 of FIFRA, or proper disposal.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 24, 2001.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 01–10998 Filed 5–1–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–1017; FRL–6779–1]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–1017, must be received on or before June 1. 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1017 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9368; e-mail address: jamerson.hoyt@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" "Regulation and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–1017. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action; including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1017 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–1017. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this

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document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 18, 2001.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number 4 (IR-4)

PP 5E4557

EPA has received a pesticide petition (5E4557) from Interregional Research Project #4 (IR-4), Center for Minor Crop Pest Management, Rutgers, The State University of New Jersey, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of the fungicide dicloran, 2,6-dichloro-4-nitroaniline, in or on the raw agricultural commodity leafy greens subgroup (except spinach) at 10 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of dicloran in peaches, lettuce and potatoes has been studied. Parent compound and numerous metabolites derived by hydroxylation and acetylation of the nitro group, along with deamination and hydroxylation of the amino group, were seen in all crops. Glutathione conjugation with simultaneous removal of one or both chlorine atoms was shown to occur.

2. *Analytical method.* An adequate analytical method electron capture/gas liquid chromatography (EC GLC) is available for enforcement purposes. Parent compound is the only analyte in the tolerance expression.

3. *Magnitude of residues.* Existing tolerances for dicloran in lettuce and endive, which are also in Crop Subgroup 4-A, are supported by residue studies which have been previously reviewed by EPA. Tolerances for two other crops in Crop Group 4, celery and rhubarb, also exist. The existing data support the conclusion that residues of dicloran will not exceed 10 ppm for the leafy greens subgroup (except spinach).

B. Toxicological Profile

1. *Acute toxicity.* The acute oral lethal dose 50 (LD_{50}) of technical dicloran is greater than 10,000 milligrams/kilogram (mg/kg), the acute dermal LD_{50} is greater than 2,000 mg/kg, and the 4–hour acute inhalation lethal concentration 50 (LC_{50}) is greater than 2 mg/liter. Dicloran is not a dermal irritant but is a sensitizer. Dicloran is a mild eye irritant.

2. *Genotoxicity.* The following genotoxicity tests were conducted: gene mutation (Ames tests), structural chromosome aberration (*in vivo* cytogenetic assay using human lymphocytes) and unscheduled DNA synthesis using rat hepatocytes. Results were generally negative; however, some Ames tests with the bacterium *S. typhimurium* showed a positive response. Ames tests with *E. coli* were negative. In view of the results of mammalian chronic, carcinogenic and developmental studies, however, Gowan Company considered that the results of the positive Ames tests are not relevant to human toxicity.

3. *Reproductive and developmental toxicity.* In a rabbit developmental toxicity study, the maternal no observed adverse effect level (NOAEL) was 8 mg/kg/day and the maternal lowest observed adverse effect level (LOAEL) was 20 mg/kg/day. The developmental NOAEL was greater than or equal to 50 mg/kg/day, the highest dose tested. In a rat developmental toxicity study, the maternal and embryotoxic NOAEL was 100 mg/kg/day, and the maternal and embryotoxic LOAEL was 200 mg/kg/day. The teratological NOAEL was greater than or equal to 400 mg/kg/day, the highest dose tested.

In a 2–generation rat reproduction study, the NOAEL for systemic toxicity was 250 ppm (21 mg/kg/day) on the basis of reduced body weight gain and increased liver and kidney weights. The

NOAEL for reproductive and developmental toxicity was also 250 ppm on the basis of reduced pup weights. No other reproductive or developmental parameters were affected at any treatment level. The highest dose tested was 1,250 ppm (110 mg/kg/day).

4. *Subchronic toxicity.* In 90–day rat studies, the NOAEL was determined to be 500 ppm in the diet (44 mg/kg/day), and the LOAEL was based upon increased liver weights in both sexes and centrilobular hepatocyte enlargement in males. Similar effects, as well as an increase in blood cholesterol concentration, were observed in 90–day mouse studies, and the NOAEL was 15 mg/kg/day.

5. *Chronic toxicity.* EPA has established the reference dose (RfD) for dicloran at 0.025 mg/kg/day. The RfD is based on a 2–year dog feeding study with a NOAEL of 2.5 mg/kg/day and an uncertainty factor of 100. The effect of concern was increased liver weight and histological changes in hepatocytes. In an 80–week mouse study, dicloran was not carcinogenic when administered at dose levels up to 600 ppm (103 mg/kg/day). Hepatotoxicity indicated this to be the approximate maximum tolerated dose (MTD). In a 2–year rat study, dicloran was not carcinogenic when administered at 1,000 ppm (59 mg/kg/day for males and 71 mg/kg/day for females).

6. *Animal metabolism.* Dicloran is rapidly metabolized and excreted by rats, goats and hens. Numerous metabolites derived by reduction, acetylation, hydroxylation, deamination and dechlorination were observed.

7. *Endocrine disruption.* Developmental toxicity studies in rats and rabbits and a reproduction study in rats gave no indication of any effects on endocrine function related to development and reproduction. Subchronic and chronic treatment did not induce any morphological changes in endocrine organs and tissues.

C. Aggregate Exposure

1. *Dietary exposure—*i. *Food.* Novigen Sciences' DEEM version 7.62 software was used to perform a worst-case analysis of the proposed action. In a theoretical maximum residue concentration (TMRC) analysis it was assumed that dicloran is used on 100% of the acreage of the currently registered crops, lettuce and endive, and that residues on these crops are equal to the tolerance levels. These assumptions were then applied to all of the crops in the leafy greens subgroup (except spinach), and the two cases were compared. It was found that the proposed tolerance for the leafy greens subgroup (except spinach) would increase the presumed exposure from 9.7% of the RfD to 9.9% for the general population. In the presumably most heavily exposed population subgroup, nursing females, exposure would increase from 11.8% to 11.9% of the RfD. Presumed exposure for children ages 1–6 would increase from 7.5% to 7.9%, and the presumed exposure for children ages 7–12 would increase from 9.0% to 9.2% of the RfD. The presumed exposure of infants was no more than 0.2% of the RfD for any scenario.

No developmental or reproductive effects have been observed which indicate special perinatal sensitivity. Therefore, an analysis of acute exposure has not been conducted.

ii. *Drinking water.* Dicloran has no aquatic uses. Dicloran was not reported in the Agency's survey of pesticides in ground water from 1971–1991, nor in the Agency's 1988–1990 survey of pesticides in drinking water wells. The compound has not been reported in surface water. A small scale prospective ground water study suggests that the average residue in ground water is well below 0.001 ppm. The Agency has not conducted a detailed analysis of potential exposure to dicloran via drinking water; however, Gowan Company believes that chronic exposure from this source is very small.

2. *Non-dietary exposure.* Dicloran has no aquatic, lawn, turf or residential uses.

D. Cumulative Effects

At this time the Agency has not reviewed available information concerning the potentially cumulative effects of dicloran and other substances that may have a common mechanism of toxicity. For purposes of this petition only, Gowan Company is considering only the potential risks of dicloran in its aggregate exposure.

E. Safety Determination

1. *U.S. population.* In the TMRC analysis described in section C above, it was concluded that the proposed action would increase the chronic dietary exposure to dicloran by no more than 0.2% of the RfD for the general population. Exposure from drinking water and all other routes is expected to be negligible. In the TMRC analysis described in section C above, it was concluded that the proposed action would increase the chronic dietary exposure to dicloran by no more than 0.2% of the RfD for the general population. Exposure from drinking water and all other routes is expected to be negligible.

2. *Infants and children.* It was concluded that the proposed action would increase the chronic dietary exposure of infants by no more than 0.1% of the RfD, of children ages 1–6 by no more than 0.4%, and of children ages 7–12 by no more than 0.2%.

In assessing the potential for additional sensitivity of infants and children to residues of dicloran, EPA considers data from developmental toxicity studies in the rat and rabbit and reproduction studies in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

No developmental effects have been observed with dicloran. The lowest embryotoxic NOAEL in these studies was 100 mg/kg/day, compared to a chronic NOAEL of 2.5 mg/kg/day. There is no indication of special perinatal sensitivity in the absence of maternal toxicity and thus no suggestion of special sensitivity of infants and children. Gowan Company concluded that there is a reasonable certainty of no harm to infants and children from aggregate exposure to dicloran residues.

F. International Tolerances

Codex and Canadian maximum residue levels of 10 ppm, identical to the U.S. tolerance level, have been established for lettuce, which is the major crop in this crop subgroup. Dicloran is not registered on a leafy vegetable in Mexico.

[FR Doc. 01–10809 Filed 5–1–01; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–992; FRL–6762–8]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

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DATES: Comments, identified by docket control number PF–992, must be received on or before June 1, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–992 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Carol E. Frazer, PhD., Biopesticides and Pollution Prevention Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8810; e-mail address: frazer.carol @epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS code	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulatations and Proposed Rules" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–992. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–992 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–992. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 19, 2001.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioners. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

EPA has received a pesticide petition 0G6222 from Nutra-Park Inc., formerly known as JP BioRegulators, Inc., 3230 Deming Way, Suite 125, Middleton, WI 53562, through Interregional Research Project Number 4 (IR-4), Technology Centre of New Jersey, Rutgers University, 681 U.S. Highway #1 South, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 USC 346a(d), to amend 40 CFR part 180 to establish an amendment/expansion of an existing tolerance exemption for the biochemical pesticide Lysophosphatidylethanolamine, also known as Lyso-PE and LPE.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Nutra-Park Inc. has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Nutra-Park Inc. and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

Nutra-Park Inc.

PP 0G622

A. Product Name and Proposed Use Practices

Lysophosphatidylethanolamine, a specific type of phospholipid, is used to enhance the ripening and shelf life of the following fruits: Apples, citrus, cranberries, grapes, nectarines, peaches, pears, strawberries, tomatoes, blueberries, peppers, and cherries. Phospholipid enhances ethylene production thus stimulating and promoting ripening, but does not enhance respiration so that fruit stays firmer and has a longer shelf life.

Lysophosphatidylethanolamine is sprayed at the rate of 12–500 ppm of active ingredient. Application rate will be 50–200 gallons per acre. Preharvest applications are made May through October and post-harvest application, by dipping fruit in solution and air drying, is extended into December. Treatment is made either 2 weeks prior to harvest or within 1–4 weeks after harvest.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* The active ingredient is lysophosphatidylethanolamine, a specific type of phospholipid. The mechanism by which phospholipid enhances ripening is as a growth regulator. It has been observed empirically that phospholipid stimulates ethylene production, but not respiration of plant tissues although the exact mechanism is not fully understood. Phospholipid is present in all cells in all organisms. It is part of cell membranes. About 50% of the cell membrane is composed of lipid of which the major constituent is phospholipid. Lyso-PE (a specific member of the phospholipid group) is present in high quantities in food products containing egg yolk and meat. In dried egg yolk, Lyso-PE constitutes 2% of the lipids present. Lyso-PE is also found in egg solids, cow's milk, corn grains, corn starch, oats and wheat which are exempted from regulation under section 25(b)(2) of FIFRA.

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* This section is not applicable, as this proposes a temporary exemption from the requirement of a tolerance.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* An analytical method for residues is not applicable, as this proposes a temporary exemption from the requirement of a tolerance.

C. Mammalian Toxicological Profile

Waivers for toxicology studies have been requested for phospholipid. Phospholipid is a fat found in food consumed by humans and animals, and is non-toxic to humans and animals. Sufficient data exist to assess the hazards of phospholipid and to make a determination on aggregate exposure, consistent with section 408 (c)(2), for the exemptions from the requirement of a tolerance. The exposures, including dietary exposure, and risks associated with establishing the requested exemption from the requirement of a tolerance follows.

Phospholipid is present in all cells in all organisms. It is part of the cell membranes. Lyso-PE (a specific phospholipid) is present in high quantities in food products containing egg yolk and meat. In dried egg yolk, the Lyso-PE constitutes 2% of the fat present. Egg solids are widely used in food products. In the USA, about 18 billion eggs are broken per year to produce egg white and egg solids. Because of this, all acute toxicity, genotoxicity, and subchronic toxicity studies normally required for biochemical pesticides are waived.

D. Aggregate Exposure

Phospholipid is present in all cells in all organisms. It is a part of the cell membrane. Phospholipid is present in high quantities in food products containing egg yolk and meat.

1. *Dietary exposure—*i. *Food.* It is anticipated that residues of phospholipid will be negligible in treated raw agricultural commodities. Due to the product's lack of mammalian toxicity, any exposure, if it occurred, will not be harmful to humans.

ii. *Drinking water.* It is not anticipated that residues of phospholipid will occur in drinking water.

2. *Non-dietary exposure.* Nutra-Park Inc. is not aware of any non-dietary exposures.

E. Cumulative Exposure

There is no anticipated potential for cumulative effects of phospholipid since it does not have a mode of

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toxicity. No cumulative effects are expected with other substances.

F. Safety Determination

1. *U.S. population.* The lack of toxicity of phospholipid is demonstrated by the above summary. Based on this information, the aggregate exposure to phospholipid over a lifetime should not pose appreciable risks to human health. There is a reasonable certainty that no harm will result from aggregate exposure to phospholipid residues. Exempting phospholipid from the requirement of a temporary tolerance should be considered safe and pose insignificant risk.

Egg solids are widely used in food products. In dried egg yolk, 2% of the lipids are Lyso-PE.

2. *Infants and children.* Egg yolks are used in a variety of foods including baby food and infant formula. Lyso-PE is also present in human breast milk. There is a reasonable certainty that no harm will result to infants and children from aggregate exposure to phospholipid residues.

G. Effects on the Immune and Endocrine Systems

Nutra-Park Inc. has no information to suggest that phospholipid will adversely affect the immune or endocrine systems.

H. Existing Tolerances

A temporary tolerance exemption on apples, citrus, cranberries, grapes, nectarines, peaches, pears, strawberries and tomatoes in conjunction with Experimental Use Permits for lysophosphatidylethanolamine is currently in effect (63 FR 32131) June 12, 1998, and has been extended to June 2003.

I. International Tolerances

Nutra-Park Inc. is not aware of any international tolerances of this biochemical.

[FR Doc. 01–11000 Filed 5–1–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6972–5]

Boro Wood Products Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into a settlement with Southeastern Modular Homes, Inc., for response costs pursuant to section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(h)(1) regarding the Boro Wood Products Superfund Site located in Bennettsville, Marlboro County, South Carolina. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4 (WMD–CPSB), 61 Forsyth Street SW, Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

Dated: April 11, 2001.

Franklin E. Hill,

Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 01–10996 Filed 5–1–01; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice 44]

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Notice and request for comments.

SUMMARY: The Export-Import bank as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before June 30, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments and request for additional information to Carlista Robinson, 811 Vermont Avenue, NW., Room 764, Washington, DC 20571, (202) 565–3351.

SUPPLEMENTARY INFORMATION:

Title & Form Number: Ex-Im Bank Letter of Interest Application form—EIB Form 95–9.

OMB Number: 3048–0005.

Type of Review: Reinstatement, without change, of a previously approved collection.

Need and Use: The information requested enables the applicant to provide Ex-Im Bank with the information necessary to determine eligibility for an indicative offer of support under the loan and guarantee programs.

Affected Public: Business or other for-profit.

Respondents: Entities involved in the provision of financing or arranging of financing for foreign buyers of U.S. exports.

Estimated Annual Respondents: 960.

Estimated Time Per Respondent: 20 minutes.

Estimated Annual Burden: 300.

Frequency of Response: When applying for a Letter of Interest.

Dated: April 26, 2001.

Carlista D. Robinson,

Agency Clearance Officer.

BILLING CODE 6690–01–M

LETTER OF INTEREST APPLICATION

OMB No. 3048-0005
Expires 07/31/2001

Please type. Processing of applications may be delayed if the requested information is not provided.

1. **Applicant.** The applicant may be any responsible individual, financial institution or non-financial enterprise. ☐ Check if applicant has been assisted by a city or state export agency and provide the name of the agency:

Applicant name:		Duns #:
Contact person:		Phone #:
Position title:		Fax #:
Street Address:		City:
State/Province:	Postal Code:	Country:
Taxpayer ID #:		

2. **Exporter.** The "exporter" is the company which contracts with the buyer for the sale of the U.S. goods and services. ☐Check if the exporter is also the applicant. If not, complete the information below.

Exporter name:		Duns #:
Street address:		Phone #:
City:	State:	Postal code:
Taxpayer ID #:		

3. **Supplier.** The "supplier" is the U.S. company which manufactures the goods and/or performs the services to be exported. ☐ Check if the supplier is also the exporter. ☐ Check if the supplier is not determined. If neither applies, attach the same information for the primary supplier as requested above for the exporter. Information on additional suppliers is not required for an LI.

4. **Borrower.** The "borrower" is the company which agrees to repay the Ex-Im Bank direct or guaranteed loan. Complete the information below. Check the box for "public sector" if the borrower is at least 50% directly or indirectly owned by a government. Check the box for "private sector" if the borrower is less than 50% owned by a government.

Contact person:		Fax #:	
Borrower name:		Duns #:	
Street address:	City:	☐ public sector	☐ private sector
State/Province:	Postal Code:	Country:	

5. **Buyer and End-user.** The "buyer" is the company which contracts with the exporter for the purchase of the U.S. goods and services. The "end-user" is the foreign company which utilizes the U.S. goods and services in its business. ☐Check if the borrower, buyer, and end-user are not the same entity. If box is checked, attach the same information for the buyer and the end-user as requested above for the borrower.

6. **Export Items.** The "export items" are the goods and services to be exported from the U.S.

   6a. **Large Aircraft.** ☐ Check if the export items include aircraft which, in a passenger configuration, contain more than 70 seats. If box is checked, complete ***Attachment A.***

   6b. **Military.** ☐ Check if the buyer is associated in ***any*** way with the military, if ***any*** export items are to be used by the military, or if ***any*** export items are defense articles or have a military application.

   6c. **Limited Recourse Project Finance.** ☐ Check if you want a Letter of Interest issued by the Project Finance Division. If box is checked, complete ***Attachment D.***

   6d. **Description of Export Items.** Briefly describe the principal goods and services, including the ***type, quantity, model number and capacity (if applicable), and SIC Code*** For an aircraft transaction, include a description of the engines.

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OMB No. 3048-0005
Expires: 07/31/2001

6e. Utilization of Export Items. Briefly describe the principal business activity of the ***end-user***. If the export items are to be used in a project, also provide the name, location, purpose, and scope of the project.

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7. Financing Type Requested. Check applicable box(es). You may request both a direct loan and a guarantee. If both financing options are acceptable to Ex-Im Bank, they will be indicated in the LI as options. Refer to ***attachment A*** if the transaction involves the export of new large aircraft.

☐ Direct Loans ☐ Comprehensive Guarantee ☐ Political Risk Guarantee

8. Contract Price. The "contract price" is the ***amount to be shown in the supplier's invoice related to goods to be exported from the U.S. and services to be performed by U.S. companies*** If there is more than one supplier, the contract price is the sum of the suppliers' invoice amounts. The "eligible foreign content" is the portion of the contract price representing components to be purchased by the supplier outside the U.S. and ***incorporated in the U.S. into the items to be exported*** Costs to be incurred in the end-user's country are not considered eligible foreign content. Note that the eligible foreign content, if any, is part of the contract price.

8a. Contract Price: $ _____ (including eligible foreign content)

8b. Eligible Foreign Content: $ _____

9. Foreign Competition. ☐ Check if, to the best of your knowledge, there is at least one entity offering non-U.S. goods and/or services in ***direct*** competition for this specific export sale.

10. Other U.S. Government Agencies. ☐ Check if an application for support of this export contract or related project has been filed with the Agency for International Development, Maritime Administration, Overseas Private Investment Corporation or Trade Development Agency.

11. Environmental Effects. If 85% of the contract price exceeds $10,000,000, complete ***attachment B***. Attachment B is not required for aircraft transactions.

12. Tied Aid Capital Projects Fund. If you want Ex-Im Bank to preclude or counter a tied aid offer, complete ***attachment C***.

13. Certifications. The undersigned certifies that the facts stated and the representations made in this application and any attachments to this application are true, to the best of the applicant's knowledge and belief after due diligence, and that the applicant has not omitted any material facts.

The undersigned further certifies that it is not currently, nor has it been within the preceding three years: 1) debarred, suspended or declared ineligible from participating in any Federal program; 2) formally proposed for debarment, with a final determination still pending; 3) voluntarily excluded from participation in a Federal transaction; or 4) indicted, convicted or had a civil judgment rendered against it for any of the offenses listed in the Regulations Governing Debarment and Suspension (Governmentwide Nonprocurement Debarment and Suspension Regulations: Common Rule), 53 fed. Reg. 19204 (1988).

Applicant (company) name: _____

Name and title of authorized officer: _____

Signature of authorized officer: _____ Date: _____

Payment, payable to the Export-Import Bank of the U.S., must accompany application; please indicate: ☐ Visa ☐ Mastercard ☐ Check

Account #: _____ Expiration Date: _____

Signature: _____

Ex-Im Bank would be pleased to assist you in applying for financial support. If you have any questions, please contact the Credit Applications and Processing Unit at 202-565-3800.

Taxpayer Identifying Numbers: Ex-Im Bank intends to use the taxpayer identifying numbers furnished on this application for purposes of collecting and reporting on any claims arising out of such persons' or business entities' relationships with the U.S. government.

Public Burden Statement: Public burden reporting for this collection of information is estimated to average 20 minutes per response, including time required for searching existing data sources, gathering the necessary data, providing the information required, and reviewing the final collection. Send comments on the accuracy of this esti-mate of the burden and recommendations for reducing it to: Office of Management and Budget, Paperwork Reduction Project (#3048-0004), Washington, D.C. 20503.

EIB Form 95-9
Revised 02/00

OMB No. 3048-0005
Expires 07/31/2001

LETTER OF INTEREST APPLICATION
ATTACHMENT A: Large Aircraft Transactions

1. **Financing Type Requested.** Three financing options are available for ***new*** large aircraft transactions under the Large Aircraft Sector Understanding (LASU), contained in the OECD Arrangement. Check the option(s) you are requesting. For ***used*** large aircraft transactions, complete No. 7 of the *Letter of Interest Application*

   ☐ **Option 1:** An Ex-Im Bank guarantee for up to 85% of the contract price.

   ☐ **Option 2:** An Ex-Im Bank guarantee for 42.5% of the contract price coupled with an Ex-Im Bank direct loan at the applicable LASU interest rate for 42.5% of the contract price. The Ex-Im Bank direct loan is repaid during the later maturities.

   ☐ **Option 3:** An Ex-Im Bank guarantee for 22.5% of the contract price coupled with an Ex-Im Bank direct loan at the applicable LASU interest rate for 62.5% of the contract price. The Ex-Im Bank guaranteed loan and direct loan are repaid on a pari-passu basis.

2. **Spare Parts Financing.** Indicate in No. 6d. of the *Letter of Interest Application* if any spare parts or spare engines are included in the export sale. Provide the requested information on these items.

3. **Transaction Information.** Include with your application a background summary on the airline, the reason for the purchase, proposed routes, and delivery dates. This information replaces the information requested in No. 6e. of the *Letter of Interest Application*

4. **Contract Price.** If credit memoranda information is available, deduct all airframe and engine credit memoranda, if any, from the aircraft price when calculating the contract price to be entered in No. 8a. of the *Letter of Interest Application*

If you have questions about this attachment, please contact the Aircraft Finance Division (Telephone: 202-565-3550 or Fax: 202-565-3558).

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OMB No. 3048-0005
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LETTER OF INTEREST APPLICATION
ATTACHMENT B: Ex-Im Bank Environmental Screening Document

Limited Recourse Project Financing and Long-Term Programs Only

Ex-Im Bank will screen project finance and long-term transactions into three categories, as defined in Ex-Im Bank's *Environmental Procedures*. The information you provide will help Ex-Im Bank to determine the proper category for your application. This information is crucial to the appropriate and timely review of your application. Check the boxes that apply to your application.

1. **Project identification.**

☐ Check if the goods and/or services described in your application are destined for an identified project.

If checked, identify the project: _____

If not checked, explain: _____

2. **Project Location.** Is the project located in or sufficiently near to have perceptible environmental effects in any of the following areas? Check all that apply.

- ☐ Tropical Forest
- ☐ Nationally designated wetlands or protected wildlands
- ☐ National parks
- ☐ Nationally designated refuges
- ☐ Coral reefs or mangrove swamps
- ☐ Nationally designated seashore areas
- ☐ Habitat of endangered species
- ☐ Large scale resettlement (How many persons? _____)
- ☐ Properties on the World Heritage List

3. **Project Sector or Industry.** Which classification describes the project for which the exports are destined? Check all that apply.

- ☐ Airport construction
- ☐ Chemical plant
- ☐ Forestry
- ☐ Geothermal Power
- ☐ Hydropower plant
- ☐ Iron & steel plant
- ☐ Large infrastructure project
- ☐ Large-scale water reservoir
- ☐ Mining & mineral processing plant
- ☐ Nuclear power plant
- ☐ Oil & gas field development
- ☐ Petrochemical plant or refinery
- ☐ Pharmaceutical project
- ☐ Pulp & paper plant
- ☐ Smelter
- ☐ Thermal power plant
- ☐ Waste management
- ☐ Air traffic control systems or navigational aids
- ☐ Consulting services
- ☐ Hospitals and medical equipment
- ☐ Pre-project services (feasibility & environmental studies)
- ☐ Railway signaling
- ☐ Telecommunications or satellites
- ☐ Transportation carriers (aircraft, locomotives, boats)
- ☐ Other (describe) _____

Name of Applicant _____ Date _____

If you have questions about this attachment, please contact the Engineering and Environment Division (Telephone: 202-565-3570 or Fax: 202-565-3584).

OMB No. 3048-0005
Expires 07/31/2001

LETTER OF INTEREST APPLICATION
ATTACHMENT C: Tied Aid Capital Projects Fund

1. ☐ Check if you are requesting appropriate Ex-Im Bank support to preclude or counter foreign tied aid offers.

2. ☐ Check if one or more foreign governments are offering, or planning to offer, unusually long repayment periods, unusually low interest rates, and/or mixed grant-credit financing for ***the specific contract for which Ex-Im Bank support is sought.*** Attach available documentary evidence of a foreign tied aid credit offer. If such evidence is not available, specify your reasons for suspecting foreign tied aid.

_____

_____

_____

3. ☐ Check if you authorize Ex-Im Bank to ask the OECD Secretariat to issue a confidential "no aid" common line request to OECD member governments. Acceptance of this request would preclude future foreign and U.S. aid financing for the project.

4. ☐ Check if you believe that loss of this contract will jeopardize follow-on sales opportunities for similar sales in the same market. Provide the type and estimated value of potential follow-on sales.

_____

_____

_____

5. Provide the following information, if known, for each foreign government's tied aid offer.

	Foreign Offer #1	Foreign Offer #2
Donor government		
Foreign exporters supported		
Total offer amount		
Currency of offer		
Credit portion amount		
Credit portion interest rate		
Credit portion grace period		
Credit portion repayment period		
Grant portion, if any		

If you have questions about this attachment, please contact the Business Development Division (Telephone: 202-565-3900 or Fax: 202-565-3931).

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EX-IM BANK

LETTER OF INTEREST APPLICATION

ATTACHMENT D: PROJECT FINANCE TRANSACTIONS, EXECUTIVE SUMMARY

Ex-Im Bank's analysis of potential limited recourse project finance transactions differs from routine export trade finance transactions. Therefore, we require additional information from applicants for a Project Finance Letter of Interest. Please provide the information outlined below to the best of your ability. It is highly recommended that you provide as much information as possible at this stage of the application process.

1. **Project Name and/or Company:**

2. **Type of Project:**

3. **Project Location (including Country):**

4. **Brief Project Description:**

5. **Project Participants:**
   a) **Sponsors**
   b) **EPC Contractor**
   c) **Project Input Supplier(s)**
   d) **Off-taker(s)**

6. **Estimated Debt/Equity:**

7. **Other Potential Financing Sources:**

8. **Is this an international tender?**

   Yes _____ **No** _____ **Bid due date** _____

9. **Estimated Project Timeframe (e.g. financial close, construction start date, etc.)**

10. **Project Status (e.g. signed EPC contract, status of offtake contract, etc.)**

OMB No. 3048-0005 Exp. 07/31/2001 — EIB Form 95-9 Revised 04/99

[FR Doc. 01–10957 Filed 5–1–01; 8:45 am]

BILLING CODE 6690–01–C

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

April 24, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's budget estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 2, 2001. If you anticipate that you will be submitted comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to jboley@fec.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION

OMB Control No.: 3060–0874.
Title: Consumer Complaint Form.
Form No.: FCC Form 475.
Type of Review: Revision of currently approved collection.
Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, state, local or tribal governments, and federal government.
Number of Respondents: 58,772.
Estimated Time Per Response: .5 hours.
Frequency of Response: On occasion reporting requirement.
Total Annual Burden: 29,386 hours.
Total Annual Cost: N/A.
Needs and Uses: The Consumer Information Bureau (CIB) handles informal complaints filed against carriers pursuant to sections (4)(I) and 208 of the Communications Act of 1934, as amended. 47 U.S.C. Sections 154(I), 208. Pursuant to the Commission's rules, informal complaints must be filed in writing and should contain, (a) the name, address and telephone number of the complainant, (b) the name of the carrier against which the complaint is made, (c) a complete statement of the facts tending to show that such carrier did or omitted to do anything in contravention of the Communications Act, and (d) the specific relief or satisfaction sought. 47 CFR section 1.716. The information sought in the Consumer Complaint For 475 (FCC Form 475) provides the CIB with complete information to process the complaints pursuant to the applicable rules. The completion of the FCC Form 475 is, however, voluntary. The revision to the existing FCC Form 475 is necessary because CIB now handles both common carrier wireline and wireless complaints. The existing FCC Form 475 does not provide for complaints filed against wireless carriers. The revised FCC Form 475 is more comprehensive in that it allows consumers to file complaints against either wireline or wireless carriers by using the same form.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–10867 Filed 5–1–01; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

April 24, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's budget estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 2, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW., Room 1–A804, Washington, DC 20554 or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–xxx.
Title: Spectrum Audit Letter.
Form No.: N/A.
Type of Review: New collection.
Respondents: Businesses or other for-profit, state, local or tribal government, not-for-profit institutions.
Number of Respondents: 300,000.
Estimated Time Per Response: .5 hour per response.
Total Annual Burden: 150,000 hours.
Total Annual Cost: None.
Needs and Uses: The information collected is required for an audit of the construction and operational status of all of the Private Land Mobile Radio (PLMR) and Fixed Microwave Radio (FMR) stations in the Commission's licensing database that are subject to rule-based construction and operational requirements. The Commission's Rules for the PLMR and FMR services require construction within a specified time frame and require a station to remain operational in order for the license to remain valid.

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OMB Approval No.: 3060–0788.
Title: DTV Showings/Interference Agreements.
Form No.: FCC 301/FCC 340.
Type of Review: Revision of currently approved collection.
Respondents: Businesses or other for-profit, not-for-profit institutions.
Number of Respondents: 350.
Estimated Hours Per Response: 55 hours (5 hours applicant; 40 hours consulting engineer; 10 hours attorney).
Frequency of Response: On occasion.
Cost to Respondents: $2,800,000.
Estimated Total Annual Burden: 1,750 hours.
Needs and Uses: Section III–D of the FCC 301 and Section VII of the FCC 340 begin with a "Certification Checklist." This checklist contains a series of questions by which applicants may certify compliance with key processing requirements. The first certification requires conformance with the DTV Table of Allotments. The Commission allows flexibility for DTV facilities to be constructed at locations within five kilometers of the reference allotment sites without consideration of additional interference to analog or DTV service, provided the DTV service does not exceed the allotment reference height above average terrain or effective radiated power. In order for the Commission to process applications that cannot certify affirmatively, Section 73.623(c) requires applicants to submit a technical showing to establish that their proposed facilities will not result in additional interference to TV broadcast and DTV operations.

Additionally, the Commission permits broadcasters to agree to proposed DTV facilities that do not conform to the initial allotment parameters, even though they might be affected by potential new interference. The Commission will consider granting applications on the basis of interference agreements if it finds that such grants will serve the public interest. These agreements must be signed by all parties to the agreement. In addition, the Commission needs the following information to enable such public interest determinations: a list of parties predicted to receive additional interference from the proposed facility, a showing as to why a grant based on the agreements would serve the public interest, and technical studies depicting the additional interference.

This collection has been revised to remove all references to industry frequency coordination committees. These committees did not evolve. Respondents have been using consulting engineers and attorneys to prepare the technical showings and interference agreements.

The technical showings and interference agreements will be used by FCC staff to determine if the public interest would be served by the grant of the application and to ensure that the proposed facilities will not result in additional interference.

OMB Control Number: 3060–0960.
Title: Application of Network Non-duplication Protection, Syndicated Exclusivity and Sports Blackout Rules to Satellite Retransmissions.
Form Number: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Business of other for-profit entity.
Number of Respondents: 1,407.
Estimated Time Per Response: 0.50 hours per information request, and 1 hour per notification.
Total Annual Burden: 29,867 hours.
Total Annual Costs: $716,808.
Needs and Uses: The information collection requirements in this Notice are used by the Commission to apply a satellite carrier's retransmission of superstations, network non-duplication, syndicated exclusivity and sports blackout rules as they currently apply to cable operators.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 01–10868 Filed 5–1–01; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 01–9; FCC 01–130]

Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc., Pursuant to Section 271 of the Telecommunications Act of 1996, for Authorization To Provide In-Region InterLATA Services in the State of Massachusetts

AGENCY: Federal Communications Commission.
ACTION: Notice; correction.

SUMMARY: The Federal Communications Commission published a document in the **Federal Register** on April 23, 2001, in CC Docket No. 01–9, Application by Verizon New England, Inc., *et al.*, For Authorization to Provide In-Region, InterLATA Services in Massachusetts. The document contained an incorrect effective date.

FOR FURTHER INFORMATION CONTACT: Susan Pie, (202) 418–1580.

Correction

In the **Federal Register** of April 23, 2001, in FR Doc. 01–10090, on page 20455, in the third column, correct the **DATES** caption to read:

DATES: Effective April 26, 2001.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 01–10866 Filed 5–1–01; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FCC File No. EB–00–IH–0089/FCC 01–90]

Industry Guidance on the Commission's Case Law Interpreting 18 U.S.C. 1464 and Enforcement Policies Regarding Broadcast Indecency

AGENCY: Federal Communications Commission.
ACTION: Notice: policy statement.

SUMMARY: This document was issued by the Federal Communications Commission to provide guidance to the broadcast industry regarding the case law interpreting 18 U.S.C. 1464 and the FCC's enforcement policies with respect to broadcast indecency. By summarizing the regulations and explaining the FCC's analytical approach to reviewing allegedly indecent material, the FCC provides a framework by which broadcast licensees can assess the legality of airing potentially indecent material. Commissioner Ness and Commissioner Furchtgott-Roth of the FCC issued separate statements available from the FCC. Commissioner Tristani of the FCC dissented and issued a statement available from the FCC.

FOR FURTHER INFORMATION CONTACT: Norman Goldstein, Assistant Chief, or Catherine Withers, Attorney, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, (202) 418–1420. This document is available from the FCC's web site at *http://www.fcc.gov/Bureaus/Enforcement/Orders/2001/fcc01090.doc* or you may visit the Reference Information Center at the FCC's headquarters located at 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The FCC reference center is open to the public Monday through Thursday from 8 a.m. until 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. You may also reach the reference center at (202) 418–0270. As an alternative, information that is routinely available to the public can be obtained from International Transcription Services (ITS), a private government contractor. ITS has an office at the FCC's Washington, DC location and can be reached directly at (202) 857–3800.

SUPPLEMENTARY INFORMATION: It is a violation of federal law to broadcast obscene or indecent programming. 18 U.S.C. 1464. The Commission issues this Policy Statement to provide guidance to the broadcast industry regarding our case law interpreting 18 U.S.C. 1464 and our enforcement policies with respect to broadcast indecency.[1] The Policy Statement is divided into five parts. Section I gives an overview of the Policy Statement. Section II provides the statutory basis for indecency regulation and discusses the judicial history of such regulation. In addition, Section II explains that in accordance with judicial precedent, § 73.3999 of the Commission's rules limits the ban on the broadcasting of indecent programming so as to provide a "safe harbor" from 10 p.m. to 6 a.m. Thus, § 73.3999 provides that "[n]o licensee of a radio or television broadcast station shall broadcast on any day between 6 a.m. and 10 p.m. any material which is indecent." 47 CFR 73.3999(b).

Section III describes the analytical approach the Commission uses in making indecency determinations. Indecency findings involve at least two fundamental determinations. First, the material alleged to be indecent must fall within the subject matter scope of our indecency definition—that is, the material must describe or depict sexual or excretory organs or activities. Second, the broadcast must be *patently offensive* as measured by contemporary community standards for the broadcast medium. In applying the "community standards for the broadcast medium" criterion, the Commission has ruled that the standard is not a local one, but rather is that of an average broadcast viewer or listener and not the sensibilities of any individual complainant.

In determining whether material is patently offensive, the *full context* in which the material appeared is critically important. It is not sufficient, for example, to know that explicit sexual terms or descriptions were used, just as it is not sufficient to know only that no such terms or descriptions were used. Explicit language in the context of a *bona fide* newscast might not be patently offensive, while sexual innuendo that persists and is sufficiently clear to make the sexual meaning inescapable might be. Moreover, contextual determinations are necessarily highly fact-specific, making it difficult to catalog comprehensively all of the possible contextual factors that might exacerbate or mitigate the patent offensiveness of particular material.

Section III also sets out the principal factors that have proved significant in our decisions to date : (1) The *explicitness or graphic nature* of the description or depiction of sexual or excretory organs or activities; (2) whether the material *dwells on or repeats at length* descriptions of sexual or excretory organs or activities; (3) *whether the material appears to pander or is used to titillate,* or *whether the material appears to have been presented for its shock value.* In assessing all of the factors, and particularly the third factor, the overall context of the broadcast in which the disputed material appeared is critical. Each indecency case presents its own particular mix of these, and possibly other, factors, which must be balanced to ultimately determine whether the material is patently offensive and therefore indecent. No single factor generally provides the basis for an indecency finding. To illustrate the noted factors, however, and to provide a sense of the weight these considerations have carried in specific factual contexts, Section III contains a comparison of cases that has been organized to provide examples of decisions in which each of these factors has played a particularly significant role, whether exacerbating or mitigating, in the indecency determination made. The comparison of selected rulings is intended to illustrate the various factors that have proved significant in resolving indecency complaints. The cited material refers only to broadcast indecency actions and does not include any discussion of case law concerning indecency enforcement actions in other services regulated by this agency such as cable, telephone, or amateur radio.

Section IV describes the Commission's broadcast indecency enforcement process. The Commission does not independently monitor broadcasts for indecent material. Its enforcement actions are based on documented complaints of indecent broadcasting received from the public. Given the sensitive nature of these cases and the critical role of context in an indecency determination, it is important that the Commission be afforded as full a record as possible to evaluate allegations of indecent programming. In order for a complaint to be considered, our practice is that it must generally include: (1) A full or partial tape or transcript or significant excerpts of the program; (2) the date and time of the broadcast; and (3) the call sign of the station involved. Any tapes or other documentation of the programming supplied by the complainant, of necessity, become part of the Commission's records and cannot be returned. Documented complaints should be directed to the FCC, Investigations and Hearings Division, Enforcement Bureau, 445 Twelfth Street, SW., Washington, DC 20554.

If a complaint does not contain the supporting material described, or if it indicates that a broadcast occurred during "safe harbor" hours or the material cited does not fall within the subject matter scope of our indecency definition, it is usually dismissed by a letter to the complainant advising of the deficiency. In many of these cases, the station may not be aware that a complaint has been filed. If, however, the staff determines that a documented complaint meets the subject matter requirements of the indecency definition and the material complained of was aired outside "safe harbor" hours, then the broadcast at issue is evaluated for patent offensiveness. Where the staff determines that the broadcast is not patently offensive, the complaint will be denied. If, however, the staff determines that further enforcement action might be warranted, the Enforcement Bureau, in conjunction with other Commission offices, examines the material and decides upon an appropriate disposition, which might include any of the following: (1) Denial of the complaint by staff letter based upon a finding that the material, in context, is not patently offensive and therefore not indecent; (2) issuance of a Letter of Inquiry (LOI) to the licensee seeking further information concerning or an explanation of the circumstances surrounding the broadcast; (3) issuance of a Notice of Apparent Liability (NAL) for monetary forfeiture; and (4) formal referral of the case to the full Commission for its consideration and action. Generally, the last of these alternatives is taken in cases where issues beyond straightforward indecency violations may be involved or where the potential sanction for the indecent programming exceeds the Bureau's delegated forfeiture authority of $25,000 (47 CFR 0.311).

[1] This Policy Statement addresses the February 22, 1994, Agreement for Settlement and Dismissal with Prejudice between the United States of America, by and through the Department of Justice and Federal Communications Commission, and Evergreen Media Corporation of Chicago, AM, Licensee of Radio Station WLUP (AM).

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Where an LOI is issued, the licensee's comments are generally sought concerning the allegedly indecent broadcast to assist in determining whether the material is actionable and whether a sanction is warranted. If it is determined that no further action is warranted, the licensee and the complainant will be so advised. Where a *preliminary* determination is made that the material was aired and was indecent, an NAL is issued. If the Commission previously determined that the broadcast of the same material was indecent, the subsequent broadcast constitutes egregious misconduct and a higher forfeiture amount is warranted.

The licensee is afforded an opportunity to respond to the NAL, a step which is required by statute. 47 U.S.C. 503(b). Once the Commission or its staff has considered any response by the licensee, it may order payment of a monetary penalty by issuing a Forfeiture Order. Alternatively, if the preliminary finding of violation in the NAL is successfully rebutted by the licensee, the NAL may be rescinded. If a Forfeiture Order is issued, the monetary penalty assessed may either be the same as specified in the NAL or it may be a lesser amount if the licensee has demonstrated that mitigating factors warrant a reduction in forfeiture.

A Forfeiture Order may be appealed by the licensee through the administrative process under several different provisions of the Commission's rules. The licensee also has the legal right to refuse to pay the fine. In such a case, the Commission may refer the matter to the U.S. Department of Justice, which can initiate a trial *de novo* in a U.S. District Court. The trial court may start anew to evaluate the allegations of indecency.

Section V is the conclusion. The Commission has issued the Policy Statement to provide guidance to broadcast licensees regarding compliance with the Commission's indecency regulations. By summarizing the regulations and explaining the Commission's analytical approach to reviewing allegedly indecent material, the Commission provides a framework by which broadcast licensees can assess the legality of airing potentially indecent material. Numerous examples are provided in this document in an effort to assist broadcast licensees. However, the Policy Statement is not intended to be an all-inclusive summary of every indecency finding issued by the Commission and it should not be relied upon as such. There are many additional cases that could have been cited. Further, the excerpts from broadcasts quoted in the Policy Statement are intended only as a research tool. A complete understanding of the material, and the Commission's analysis thereof, requires review of the tapes or transcripts and the Commission's rulings thereon.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–10869 Filed 5–1–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting; Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2 p.m. on Thursday, April 26, 2001, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate and resolution activities.

In calling the meeting, the Board determined, on motion of Director Ellen S. Seidman (Director, Office of Thrift Supervision), seconded by Director John M. Reich (Appointive), concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), and chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no notice earlier than April 20, 2001, of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: April 27, 2001.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 01–11046 Filed 4–27–01; 4:45 pm]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

Provex Lines Inc., 6581 NW. 82nd Avenue, Miami, FL 33166, Officer: Jose Arteaga, President, (Qualifying Individual)

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Legend Express Co., 960 E. 12th Street, Los Angeles, CA 90021, Officers: Gila Morad, President, Julito A. Pascua, Vice President of Sales, (Qualifying Individual).

Dated: April 27, 2001.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–11020 Filed 5–1–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 25, 2001.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303–2713:

1. Georgia Banking Company, Inc., Atlanta, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Georgia Banking Company, Atlanta, Georgia.

Board of Governors of the Federal Reserve System, April 26, 2001.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 01–10899 Filed 5–1–00; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 690–6207.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Projects 1. *HHS Procurement:* Solicitations and Contracts—Extension—0990–0115—This clearance request covers the general information collection requirements of the procurement process such as technical proposals and statements of work. *Respondents:* State or local governments, businesses or other for-profit, non-profit institutions, small businesses. *Annual Number of Respondents:* 5,660; *Frequency of Response:* one time; *Average Burden per Response:* 253.41 hours; *Estimated Annual Burden:* 1,434,300 hours.

Please send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Written comments should be received within 60 days of this notice.

Dated: April 24, 2001.

Kerry Weems,

Acting Deputy Assistant Secretary, Budget.

[FR Doc. 01–10902 Filed 5–1–01; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee (CLIAC): Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Clinical Laboratory Improvement Advisory Committee (CLIAC).

Times and Dates: 8:30 a.m.—5 p.m., May 30, 2001; 8:30 a.m.—3:30 p.m., May 31, 2001.

Place: CDC, Koger Center, Williams Building, Conference Rooms 1802 and 1805, 2877 Brandywine Road, Atlanta, Georgia 30341.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This committee is charged with providing scientific and technical advice and guidance to the Secretary of Health and Human Services, the Acting Assistant Secretary for Health, and the Director, CDC, regarding the need for, and the nature of, revisions to the standards under which clinical laboratories are regulated; the impact on medical and laboratory practices of proposed revisions to the standards; and the modification of the standards to accommodate technological advances.

Matters to Be Discussed: The agenda will include the waiver workgroup report on criteria for waiver approval and updates from CDC, Food and Drug Administration and Health Care Financing Administration.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Rhonda Whalen, Chief, Laboratory Practice Standards Branch, Division of Laboratory Systems, Public Health Practice Program Office, CDC, 4770 Buford Highway, NE, m/s F–11, Atlanta, Georgia 30341–3724, telephone 770/488–8042, fax 770/488–8279.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 26, 2001.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 01–10936 Filed 5–1–01; 8:45 am]

BILLING CODE 4163–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–231]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality,

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utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Request: Extension of a currently approved collection; *Title of Information Collection:* Medicare+Choice (M+C) Provider Sponsored Organization (PSO) Waiver Request Form and Supporting Regulations in 42 CFR 422.370–422.378; *Form Number:* HCFA–R–231 (0938–0722); *Use:* The PSO waiver request form is for use by PSO's that do not have a State risk-bearing entity licence and that wish to enter into a M+C contract with HCFA to provide prepaid health care services to eligible Medicare beneficiaries. HCFA will use the information requested on this form to determine whether the applicant is eligible for a waiver of the state licensure requirement for M+C organizations as allowed under section 1855(a)(2) of the Social Security Act.; *Frequency:* One-time.; *Affected Public:* Business or other for-profit, Not-for-profit institutions, and Federal Government.; *Annual Number of Respondents:* 10.; *Total Annual Responses:* 10.; *Total Annual Hours Requested:* 100.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm*, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, HCFA–R–231, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 23, 2001.

John P. Burke, III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–10882 Filed 5–1–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute: Proposed Collection; Comment Request; The Framingham Study

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (MB) for review and approval.

Proposed Collection: Title: The Framingham Study. *Type of Information Collection Request:* Revision of a currently approved collection (OMB No. 0925–0216). *Need and Use of Information Collection:* The Framingham Study will conduct examinations and morbidity and mortality follow-up in original, offspring, and third generation participants for the purpose of studying the determinants of cardiovascular disease. *Frequency of Response:* The participants will be contacted annually. *Affected Public:* Individuals or households; Businesses or other for profit; Small businesses or organizations. *Type of Respondents:* Adult men and women; doctors and staff of hospitals and nursing homes. The annual reporting burden is as follows; *Estimated Number of Respondents:* 2,833: *Estimated Number of Responses per Respondent:* 3.78; *Average Burden Hours Per Response:* 0.806; and *Estimated Total Annual Burden Hours Requested:* 8,639. The annualized cost to respondents is estimated at $44,080, assuming respondents time at the rate of $10 per hour for participant and $55 per hour for physicians and other professional health care respondents.

There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

ESTIMATE OF ANNUAL HOUR BURDEN

Type of respondents	Number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Participant examination	2,133	4.69	0.836	8,376.5
[1]Physician, hospital, nursing home staff	350	1.0	0.6700	234.5
[1]Participant's next-of-kin	350	1.0	0.0800	28
Total	2,833	3,78	0.806	8639

[1] Annual burden is placed on doctors, hospitals, nursing homes, and respondent relatives/informants through requests for information which will help in the compilation of the number and nature of new fatal and nonfatal events.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used: (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Paul Sorlie, Project Officer, NIH, NHLBI, 6701 Rockledge Drive, MSC 7934, Bethesda, MD 20892, or call non-toll-free number (301) 435–0707 or E-mail your request, including your address to : Sorlie@nih.gov.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received on or before July 2, 2001.

Dated: April 19, 2001.

Peter J. Savage,

Acting Director, Division of Epidemiology and Clinical Applications, National Heart, Lung, and Blood Institute.

[FR Doc. 01–10932 Filed 5–1–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES (DHHS)

National Institutes of Health (NIH)

National Institutes of Health Clinical Center (NIHCC); Opportunity for Cooperative Research and Development Agreement (CRADA)

SUMMARY: The National Institutes of Health Clinical Center (NIHCC) is seeking to enter at least one Cooperative Research and Development Agreement (CRADA). The goal is to develop and implement an application specific artificial neural network based intelligent computing system for on-line and off-line quality control of a process, particularly a medical process, and especially test result production in clinical laboratory automated analyzers. The development of this technology is part of the ongoing activities of the NIHCC. The term of any CRADA will be up to five (5) years.

DATES: Interested parties should notify this office in writing of their intent to file a formal proposal no later than June 1, 2001. Formal proposals should be submitted to this office no later than July 2, 2001. Proposals received after this date will still be considered, but only after all proposals received before this date have been considered.

ADDRESSES: Questions concerning this announcement, and all research proposals, should be submitted to Bruce D. Goldstein, Esq., Technology Transfer Branch, National Cancer Institute, National Institutes of Health, Suite 450, 6120 Executive Blvd., Rockville, MD 20852, Phone: 301–496–0477, Fax: 301–402–2117. Scientific questions should be addressed to James M. DeLeo, 6100 Executive Blvd., Suite 5C01, Rockville, MD 20852; Phone (direct): 301–496–3848; Fax: 301–496–3848; e-mail: *jdeleo@nih.gov*. Inquiries directed to obtaining patent license(s) related to participation in the CRADA opportunity should be addressed to Dale Berkley, PhD., J.D., Senior Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Blvd., Suite 325, Rockville, MD 20852–3804, Phone: 301–496–7735, Fax: 301–402–0220, e-mail: *Berkld@od.nih.gov*.

SUPPLEMENTARY INFORMATION: A CRADA is the anticipated joint agreement to be entered into by NIHCC and a collaborator pursuant to the Federal Technology Transfer Act of 1986 (15 U.S.C. 3710 a), as amended. A CRADA is an agreement designed to enable certain collaborations between Government laboratories and non-Government laboratories. It is not a grant, and is not a contract for the procurement of goods/services. THE NIHCC IS PROHIBITED FROM TRANSFERRING FUNDS TO A CRADA COLLABORATOR. Under a CRADA, the NIHCC can offer the selected collaborator access to facilities, staff, materials, and expertise. The collaborator may contribute facilities, staff, materials, expertise, and funding to the collaboration. A CRADA collaborator may elect an option to an exclusive or non-exclusive license to Government intellectual patent rights arising under the CRADA, and may qualify as an inventor or co-inventor of new technology developed under the CRADA. As between two or more sufficient, overlapping research proposals (where the overlap cannot be cured), the NIHCC, as specified in 15 U.S.C. § 3710a(c)(4), will give special consideration to small businesses, and will give preference to business units located in the U.S. that agree to manufacture CRADA products in the U.S.

The CRADA will employ a generalized computational system and method developed earlier at the National Institutes of Health. This technology was developed for the purpose of detecting errors in processes including, but not limited to, data collection in laboratory automated analyzers. The technology is capable of early on-line detection of various types of errors such as bias, precision, and random errors. It may also be developed as an off-line computational component. Theoretical studies have demonstrated significant advantages of this technology over current state-of-the art quality control practice in laboratory instrument quality control monitoring. The primary goal of the CRADA is to use the developed system and method to build practical and useful software and/or hardware components for application in real-world production or assembly process environments such as commercially available laboratory automated analyzers and other appropriate medical or non-medical applications.

The described methods and system are the subject of a U.S. patent application filed November 26, 1998 by the Public Health Service on behalf of the Federal Government. Commercialization of new CRADA technology may require obtaining an appropriate PHS license.

The collaborator in this endeavor is expected to commit technical personnel commensurate with the level of research activities defined by the CRADA Research Plan. It is anticipated that PHS facilities and/or those of the collaborator will be utilized, as appropriate, for the research activities as defined by the Research Plan. NIHCC anticipates, in addition, that the Collaborator, as appropriate, will provide funding for the project.

Party Contributions

The NIHCC anticipates that its role may include, but not be limited to, the following:

(1) Plan research studies, interpret research results, and, as appropriate, jointly publish the conclusions with the collaborator;

(2) Provide collaborator with access to existing NIHCC research data, both already collected and yet to be collected (except for medical or other personal data regarding identifiable patients);

(3) Provide staff, expertise, and materials for the development and testing of promising application products;

(4) Provide work space and equipment for testing of any prototype products developed.

The NIHCC anticipates that the role of the successful collaborator will include at least the following:

(1) Provide significant intellectual, scientific, and technical expertise in the development of relevant products;

(2) Plan research studies, interpret research results, and, as appropriate, jointly publish the conclusions; and

(3) Provide NIHCC a supply of necessary materials, access to necessary proprietary technology and/or data, and as necessary for the project, staff and funding in support of the research goals.

Other contributions may be necessary for particular proposals.

Selection Criteria

Proposals submitted for consideration should address, as best as possible and to the extent relevant to the proposal, each of the following:

(1) Expertise:

A. Expertise in the research and development of diagnostic, prognostic,

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and/or therapeutic products pertinent to the technology; and

B. Ability to secure national marketing and distribution of its products (international distribution a plus).

(2) Reliability as a research partner, specifically:

A. Willingness to commit best effort and to provide adequate and sustained resources and/or funding, as appropriate, to support the CRADA studies;

B. Development of this technology, as outlined in the CRADA Collaborator's proposal;

C. Ability to develop and produce products in a timely manner, as applicable (for example, as demonstrated by a history of meeting benchmarks in licenses);

D. Commitment to supporting the advancement of scientific research, as evidenced by a willingness to jointly publish research results in a prompt manner; and

E. Willingness to be bound by DHHS and PHS policies regarding:

(i) the public distribution of research tools,

(ii) the care and handling of animals, and

(iii) protection of humans who are subjects of research.

(3) Physical Resources:

A. An established headquarters, with office space and basic office equipment;

B. Access to the organization during business hours by telephone, facsimile, courier, U.S. Post, e-mail, the World-Wide-Web, and, as appropriate, other evolving information technologies; and

C. Sufficient financial and material resources to support, at a minimum, the anticipated activities of the CRADA to meet the needs of NIHCC under the proposal.

The collaborator is encouraged to propose, in the written research statement, related applications and technologies other than those specifically described herein.

Dated: April 23, 2001.

Kathleen Sybert,

Chief, TTB/NCI/NIH.

[FR Doc. 01–10933 Filed 5–1–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES (DHHS)

National Institutes of Health (NIH)

National Institutes of Health Clinical Center (NIHCC) Opportunity for Cooperative Research and Development Agreement (CRADA)

SUMMARY: The National Institutes of Health Clinical Center (NIHCC) is seeking to enter at least one Cooperative Research and Development Agreement (CRADA). The goal is to develop and implement application specific computer-learned medical-outcome indexes as partially described in the April 2001 issue of the periodical entitled "Advance for Administrators of the Laboratory." The development of this technology is part of the ongoing activities of the NIHCC. The term of any CRADA will be up to five (5) years.

DATES: Interested parties should notify this office in writing of their intent to file a formal proposal no later June 1, 2001. Formal proposals should be submitted to this office no later than July 2, 2001. Proposals received after this date will still be considered, but only after all proposals received before this date have been considered.

ADDRESSES: Questions concerning this announcement, and all research proposals, should be submitted to Bruce D. Goldstein, Esq., Technology Transfer Branch, National Cancer Institute, National Institutes of Health, Suite 450, 6120 Executive Blvd., Rockville, MD 20852, Phone: 301–496–0477, Fax: 301–402–2117. Scientific questions should be addressed to James M. DeLeo, 6100 Executive Blvd., Suite 5C01, Rockville, MD 20852; Phone (direct): 301–496–3848; Fax: 301–496–3848; e-mail: *jdeleo@nih.gov*. Inquiries directed to obtaining patent license(s) related to participation in the CRADA opportunity should be addressed to Dale Berkley, PhD., J.D., Senior Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Blvd., Suite 325, Rockville, MD 20852–3804, Phone: 301–496–7735, Fax: 301–402–0220, e-mail: *Berkld@od.nih.gov*.

SUPPLEMENTARY INFORMATION: A CRADA is the anticipated joint agreement to be entered into by NIHCC and a collaborator pursuant to the Federal Technology Transfer Act of 1986 (15 U.S.C. 3710 a), as amended. A CRADA is an agreement designed to enable certain collaborations between Government laboratories and non-Government laboratories. It is not a grant, and is not a contract for the procurement of goods/services. THE NIHCC IS PROHIBITED FROM TRANSFERRING FUNDS TO A CRADA COLLABORATOR. Under a CRADA, the NIHCC can offer the selected collaborator access to facilities, staff, materials, and expertise. The collaborator may contribute facilities, staff, materials, expertise, and funding to the collaboration. A CRADA collaborator may elect an option to an exclusive or non-exclusive license to Government intellectual patent rights arising under the CRADA, and may qualify as an inventor or co-inventor of new technology developed under the CRADA. As between two or more sufficient, overlapping research proposals (where the overlap cannot be cured), the NIHCC, as specified in 15 U.S.C. 3710a(c)(4), will give special consideration to small businesses, and will give preference to business units located in the U.S. that agree to manufacture CRADA products in the U.S.

As used here, the expression "computer-learned medical outcome indexes" refers to probability or degree of membership values indicating ("indexing") particular medical outcomes such as diagnostic categories, preferred treatments, times to events, and other medical classifications and outcomes. These indexes and their confidence intervals are computed using laboratory and other patient data with neural networks and other machine-learning computer programs which, once trained, may run as background tasks in laboratory instrument computers, hospital information systems, and various personnel computers including desk, lap, and palm top computers. These programs could also be inscribed in hardware. It is expected that medical index computer programs will provide valuable patient information at virtually no extra cost, and that they will be in everyday use in future clinical settings to aid health care providers in making important cost-effective patient management decisions.

The described methods are the subject of an Employee Invention Report filed with the NIH Office of Technology Transfer. Also the initial report and characterization of the invention is partially described in an article entitled "Computer-Learned Medical Outcome Indexes, by Jim DeLeo," in the April 2001 issue of Advance for Administrators of the Laboratory. Commercialization of new CRADA technology may require obtaining an appropriate PHS license to practice this described prior art.

The collaborator in this endeavor is expected to commit technical personnel commensurate with the level of research activities defined by the CRADA Research Plan. It is anticipated that PHS facilities and/or those of the collaborator will be utilized, as appropriate, for the research activities as defined by the Research Plan. NIHCC anticipates, in addition, that the Collaborator, as appropriate, will provide funding for the project.

Party Contributions

The NIHCC anticipates that its role may include, but not be limited to, the following:

(1) Plan research studies, interpret research results, and, as appropriate, jointly publish the conclusions with the collaborator;

(2) Provide collaborator with access to existing NIHCC research data, both already collected and yet to be collected (except for medical or other personal data regarding identifiable patients);

(3) Provide staff, expertise, and materials for the development and testing of promising application products;

(4) Provide work space and equipment for testing of any prototype products developed.

The NIHCC anticipates that the role of the successful collaborator will include at least the following:

(1) Provide significant intellectual, scientific, and technical expertise in the development of relevant products;

(2) Plan research studies, interpret research results, and, as appropriate, jointly publish the conclusions; and

(3) Provide NIHCC a supply of necessary materials, access to necessary proprietary technology and/or data, and as necessary for the project, staff and funding in support of the research goals.

Other contributions may be necessary for particular proposals.

Selection Criteria

Proposals submitted for consideration should address, as best as possible and to the extent relevant to the proposal, each of the following:

(1) Expertise:

A. Expertise in the research and development of diagnostic, prognostic, and/or therapeutic products pertinent to the technology; and

B. Ability to secure national marketing and distribution of its products (international distribution a plus).

(2) Reliability as a research partner, specifically:

A. Willingness to commit best effort and to provide adequate and sustained resources and/or funding, as appropriate, to support the CRADA studies;

B. Development of this technology, as outlined in the CRADA Collaborator's proposal;

C. Ability to develop and produce products in a timely manner, as applicable (for example, as demonstrated by a history of meeting benchmarks in licenses);

D. Commitment to supporting the advancement of scientific research, as evidenced by a willingness to jointly publish research results in a prompt manner; and

E. Willingness to be bound by DHHS and PHS policies regarding:

(i) the public distribution of research tools,

(ii) the care and handling of animals, and

(iii) protection of humans who are subjects of research.

(3) Physical Resources:

A. An established headquarters, with office space and basic office equipment;

B. Access to the organization during business hours by telephone, facsimile, courier, U.S. Post, e-mail, the World-Wide-Web, and, as appropriate, other evolving information technologies; and

C. Sufficient financial and material resources to support, at a minimum, the anticipated activities of the CRADA to meet the needs of NIHCC under the proposal.

The collaborator is encouraged to propose, in the written research statement, related applications and technologies other than those specifically described herein.

Dated: April 23, 2001.

Kathleen Sybert,

Chief, TTB/NCI/NIH.

[FR Doc. 01–10934 Filed 5–1–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Eye Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Eye Council.

Date: June 14–15, 2001.

Open: June 14, 2001, 8:30 a.m. to 5 p.m.

Agenda: Following opening remarks by the Director, NEI, there will be presentations by staff of the Institute and discussions concerning Institute programs and policies.

Place: 6130 Executive Boulevard, Room G, Rockville, MD 20852.

Closed: June 15, 2001, 8:30 a.m. to 1 p.m.

Closed: June 15, 2001, 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: 6130 Executive Boulevard, Room G, Rockville, MD 20852.

Contact Person: Lois DeNinno, National Eye Institute, Executive Plaza South, Suite 350, 6120 Executive Blvd., MSC 7167, Bethesda, MD 20892, 301–496–9110.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: April 25, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–10927 Filed 5–1–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute, Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NHLBI.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Heart, Lung, and Blood Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

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Name of Committee: Board of Scientific Counselors, NHLBI.

Date: June 7, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, 9000 Rockville Pike, Building 10, Room 7S235, Bethesda, MD 20892.

Contact Person: Elizabeth G. Nabel, MD, Scientific Director for Clinical Research, National Heart, Lung, and Blood Institute, Division of Intramural Research, Building 10, Room 8C103, MSC 1754, Bethesda, MD 20892, 301/496–1518.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 25, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–10926 Filed 5–01–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development, Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Child Health and Human Development Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(b)(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Child Health and Human Development Council.

Date: June 4–5, 2001.

Open: June 4, 2001, 8:30 a.m. to 4 p.m.

Agenda: The agenda includes: Report of the Director, NICHD; a presentation by the Division of Epidemiology, Statistics and Prevention Research Branch; and other business of the Council.

Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Closed: June 4, 2001, 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Closed: June 5, 2001, 8:30 a.m. to be adjournment.

Agenda: To review and evaluate grant applications.

Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Contact Person: Mary Plummer, Committee Management Officer, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: April 25, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–10918 Filed 5–1–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and digestive and Kidney Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Digestive Diseases and Nutrition C Subcommittee.

Date: July 19–20, 2001.

Open: July 19, 2001, 1 p.m. to 1:30 p.m.

Agenda: To receive procedures and discuss policies.

Place: Sheraton Crystal City, 1800 Jefferson Davis Highway, Arlington, VA 22202.

Closed: July 19, 2001, 1:30 p.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: Sheraton Crystal City, 1800 Jefferson Davis Highway, Arlington VA 22202.

Closed: July 20, 2001, 8 a.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: Sheraton Crystal City, 1800 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Carolyn Miles, PhD, Scientific Research Administrator, Review Branch, DEA, NIDDK, Room 755, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7791.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 25, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–10919 Filed 5–1–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Communication Disorders Review Committee.

Date: June 20–22, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House, 1615 Rhode Island Avenue, NW, Washington, DC 20036.

Contact Person: Melissa Stick, PhD, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NIDCD/NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: April 25, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–10920 Filed 5–1–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: June 7–8, 2001.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, Mirage II Room, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Priti Mehrotra, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, Bethesda, MD 20892, 301–496–2550, pm158b@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 25, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–10921 Filed 5–1–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Alcohol Abuse and Alcoholism.

Date: June 6–7, 2001.

Closed: June 6, 2001, 7 p.m. to 9 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed June 7, 2001, 8:30 a.m. to 9:30 a.m.

Agenda: To review and evaluate the Board of Scientific Counselors Report.

Place 45 Center Drive, Natcher Building, Conference Room E1/2, Bethesda, MD 20892.

Open: June 7, 2001 9:30 a.m. to 4 p.m.

Agenda: Program documents.

Place: 45 Center Drive, Natcher Building, Conference Room E1/2. Bethesda, MD 20892.

Contact Person: Kenneth R. Warren, Director, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Willco Building, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–4375, kwarren@niaaa.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institute of Health, HHS)

Dated: April 25, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–10922 Filed 5–1–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIAAA.

The meeting will be open to public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL INSTITUTE ON ALCOHOL ABUSE AND ALCOHOLISM, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIAAA.

Date: June 7–8, 2001.

Open: June 7, 2001, 8 a.m. to 8:30 a.m.

Agenda: To discuss administrative details.

Place: Parklawn Building, Conference Room D, 5600 Fishers Lane, Rockville, MD.

Closed: June 7, 2001, 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate the laboratory of Membrane Biochemistry and Biophysics.

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Place: Parklawn Building, Conference Room D, 5600 Fishers Lane, Rockville, MD.

Contact Person: Benedict J. Latteri, Acting Deputy Director, Division of Intramural Clinical and Biological Research, National Institute on Alcohol Abuse and Alcoholism, 9000 Rockville Pike, Room 1B58, Building 31—MSC 2088, Bethesda, MD 20892–2088, 301–402–1227.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: April 25, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–10924 Filed 5–1–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and alcoholism Special Emphasis Panel.

Date: April 27, 2001.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 6000 Executive Blvd., Rm 409, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Sean O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: April 25, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–10925 Filed 5–1–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Advisory Neurological Disorders and Stroke Council.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Neurological Disorders and Stroke Council Training Subcommittee.

Date: May 23, 2001.

Time: 8 p.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, One Metro Center, Bethesda, MD 20814.

Contact Person: Constance W. Atwell, PhD, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892–9531, (301) 496–9248.

Name of Committee: National Institute of Neurological Disorders and Stroke Council Clinical Trials Subcommittee.

Date: May 24, 2001.

Time: 8:30 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Natcher Building, Conference Room C, Bethesda, MD 20892.

Contact Person: Constance W. Atwell, PhD, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892–9531, (301) 496–9248.

Name of Committee: National Advisory Neurological Disorders and Stroke Council Neuroinformatics, Computational Neuroscience, and Infrastructure Subcommittee.

Date: May 24, 2001.

Time: 8:30 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Natcher Building, Conference Room H, Bethesda, MD 20892.

Contact Person: Yuan Liu, PhD, Program Director, National Institutes of Neurological Disorders and Stroke, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Suite 2110, MSC 9531, Bethesda, MD 20852, (301) 496–1917.

Name of Committee: National Institute of Neurological Disorders and Stroke Council.

Date: May 24–25, 2001.

Open: May 24, 2001, 10:30 a.m. to 5 p.m.

Agenda: Report by the Acting Director, NINDS; Report by the Director, Division of Extramural Research; and other administrative and program developments.

Place: 45 Center Drive, Natcher Building, Conference Room E1/2, Bethesda, MD 20892.

Closed: May 25, 2001, 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Natcher Building, Conference Room E1/2, Bethesda, MD 20892.

Contact Person: Constance W. Atwell, PhD, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892–9531, (301) 496–9248.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 25, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–10928 Filed 5–1–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552 (c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, SBIR Phase II: "HIV Risk Assessment for Women in a Health Care Setting".

Date: May 4, 2001.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Richard C. Harrison, Chief, Contract Review Branch, Office of Extramural Affairs, National Institute of Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, 301–435–1437.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel "Development and Manufacture of Pharmaceutical Products for Addiction Treatment".

Date: May 10, 2001.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1438.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel "State and Local Epidemiology Planning and Information Development".

Date: May 22, 2001.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Richard C. Harrison, Chief, Contract Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, 301–435–1437.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: April 25, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–10929 Filed 5–1–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: May 1, 2001.

Time: 1 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225, politis@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: May 25, 2001.

Time: 10:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Zakir Bengali, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892, (301) 435–1742.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, (HHS)

Dated: April 25, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–10923 Filed 5–1–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 30, 2001.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sally Ann Amero, PhD, Scientific Reveiw Administrator, Center for Scientific Review, Genetic Sciences Integrated Review Group, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892–7890, 301–435–1159, ameros@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–03.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 25, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–10930 Filed 5–1–01; 8:45 am]

BILLING CODE 4140–01–M

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, May 1, 2001, 1 PM to May 1, 2001, 3 PM, NIH, Rockledge 2, Bethesda, MD, 20892 which was published in the **Federal Register** on April 13, 2001, 66 FR 19183.

The meeting will now start at 1:30 PM and end at 3 PM. The date and location remains the same. The meeting is closed to the public.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–10931 Filed 5–1–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Protocols for the Cross-Site Process Evaluation of the State Incentive Grant (SIG) Program

(New)—SAMHSA's Center for Substance Abuse Prevention (CSAP) is charged with evaluating the State Incentive Cooperative Agreements for Community-Based Action, or State Incentive Grant (SIG) Program. States receiving SIG funds are: (1) To coordinate, leverage and/or redirect, as appropriate, all substance abuse prevention resources within the State that are directed at communities, families, schools, and workplaces, and (2) to develop a revitalized, comprehensive State-wide prevention strategy aimed at reducing drug use by youth. The ultimate aim of the SIG Program is to prevent substance abuse among youths ages 12 to 17. The District of Columbia and the 20 States that have received SIG grants thus far are required to implement at the community level a range of substance abuse, community-based prevention efforts, at least half of which are derived from sound scientific research findings. CSAP awarded about $3 million per year for three years to each of five States in FY 1997, to each of fourteen States in FY 1998, to one State and the District of Columbia in FY 1999, and to seven additional States in FY 2000.

CSAP is conducting a national, cross-site evaluation of the SIG Program, consisting of a process and an outcome evaluation. The outcome evaluation will address two questions: (1) "Has the SIG Program had an impact on youth substance abuse?," and (2) "How do SIG States differ in their impact on youth substance abuse?" These questions will be addressed by using data already being collected by SAMHSA's National Household Survey of Drug Abuse (NHSDA) and selected data collected independently within funded States. The process evaluation will focus on three questions: (1) "Did States attain the SIG Program's two main goals of coordinated funding streams and revitalized comprehensive prevention strategies and how were these goals attained?," (2) "What other substance abuse prevention programming has the State implemented?," and (3) "Did SIGs meet the criterion of supporting science-based programs fifty percent of the time, and what array of prevention activities were supported?'

In addition to the NHSDA data and the State data on outcomes, three instruments are needed to collect process information about SIG activities at the State, community, and program levels: (1) A SIG State Case Study Protocol; (2) a Sub-Recipient Community Protocol; and (3) a Comparison Community Protocol. The State Case Study Protocol, which will serve as the final report template for the grant, will collect data on the following topics at the State level: contextual conditions; SIG mobilization; system characteristics and dynamics; collaborative strategies or activities; immediate outcomes; systems change; sub-recipient characteristics and dynamics; sub-recipient planning and science-based prevention interventions; immediate, intermediate, and long-term outcomes for the sub-recipient community and program; possible rival explanations; and lessons learned. The Sub-recipient Community Protocol will collect data at the community level from a sample of sub-recipient communities in the SIG States on the following topics: contextual conditions, definition of the intervention in operation, and immediate, intermediate, and long-term outcomes. The Comparison Community Protocol will collect data from a sample communities in the SIG States that have not received sub-recipient awards on the following topics: the largest prevention initiatives in the community, community-wide policies aimed at preventing drug abuse, the community's comprehensive plan, and information about the community. Estimated response burden is as shown in the following table:

Protocol	Number of respondents	Responses per respondent	Hours per response	Total hour burden
SIG State Case Study (n=28)	28 evaluators	1	80	2,240
	28 program directors	1	8	224
	56 key informants	1	4	224
Sub-recipient Community (n=36)	28 (initial contacts)	1	1	28
	36 (sub-recipient directors)	1	1	36
	360 (site visit interviews)	1	1	360
Comparison Community (n=36)	28 (initial contacts)	1	1	28
	360 (site visit interviews)	1	1	360
Total	924			3,500
Annual Average	308			1,167

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Stuart Shapiro, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: April 24, 2001.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 01–10937 Filed 5–1–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This Notice is also available on the internet at the following website: *http://www.health.org/workplace.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014, Fax: (301) 443–3031.

Special Note: Please use the above address for all surface mail and correspondence. For all overnight mail service use the following address: Division of Workplace Programs, 5515 Security Lane, Room 815, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016 (formerly: Bayshore Clinical Laboratory)

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931 / 334–263–5745

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–9000 (formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866 / 800–433–2750

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Laboratory Partners, LLC, 129 East Cedar St., Newington, CT 06111, 860–696–8115 (formerly: Hartford Hospital Toxicology Laboratory)

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652 / 417–269–3093 (formerly: Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, P. O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045 / 847–688–4171

Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200 / 800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31602, 912–244–4468

DrugProof, Division of Dynacare/ Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672 / 800–898–0180 (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

Dynacare Kasper Medical Laboratories *, 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 780–451–3702 / 800–661–9876

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662–236–2609

Express Analytical Labs, 1301 18th Ave NW, Suite 110, Austin, MN 55912, 507–437–7322

Gamma-Dynacare Medical Laboratories *, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ONT, Canada N6A 1P4, 519–679–1630

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Integrated Regional Laboratories, 5361 NW 33rd Avenue, Fort Lauderdale, FL 33309, 954–777–0018, 800–522–0232 (formerly: Cedars Medical Center, Department of Pathology)

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989 / 800–433–3823 (formerly: Laboratory Specialists, Inc.)

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927 / 800–728–4064 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288 / 800–800–2387

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900 / 800–833–3984 (formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche

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CompuChem Laboratories, Inc., A Member of the Roche Group)
Laboratory Corporation of America Holdings, 1120 Stateline Road West, Southaven, MS 38671, 866–827–8042 / 800–233–6339 (formerly: LabCorp Occupational Testing Services, Inc., MedExpress/National Laboratory Center)
Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400 / 800–437–4986 (formerly: Roche Biomedical Laboratories, Inc.)
Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734 / 800–331–3734
MAXXAM Analytics Inc.*, 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555 (formerly: NOVAMANN (Ontario) Inc.)
Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699, 419–383–5213
MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466 / 800–832–3244
MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295 / 800–950–5295
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250 / 800–350–3515
Northwest Drug Testing, a division of NWT Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 801–293–2300 / 800–322–3361 (formerly: NWT Drug Testing, NorthWest Toxicology, Inc.)
One Source Toxicology Laboratory, Inc., 1705 Center Street, Deer Park, TX 77536, 713–920–2559 (formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134
Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818–598–3110 / 800–328–6942 (formerly: Centinela Hospital Airport Toxicology Laboratory
Pathology Associates Medical Laboratories, 11604 E. Indiana Ave., Spokane, WA 99206, 509–926–2400 / 800–541–7891
PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 650–328–6200 / 800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–215–8800 (formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372 / 800–821–3627
Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 858–279–2600 / 800–882–7272
Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 (formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 248–373–9120 / 800–444–0106 (formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–842–6152 (moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 801 East Dixie Ave., Suite 105A, Leesburg, FL 34748, 352–787–9006x4343 (formerly: SmithKline Beecham Clinical Laboratories, Doctors & Physicians Laboratory)
Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600 / 800–877–7484 (formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995 / 847–885–2010 (formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories)
Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 619–686–3200 / 800–446–4728 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)
Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520 / 800–877–2520 (formerly: SmithKline Beecham Clinical Laboratories)
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300 / 800–999–5227
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507 / 800–279–0027
Sparrow Health System,Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520 (formerly: St. Lawrence Hospital & Healthcare System)
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273
Toxicology Testing Service, Inc., 5426 NW. 79th Ave., Miami, FL 33166, 305–593–2260
Universal Toxicology Laboratories, LLC, 9930 W. Highway 80, Midland, TX 79706, 915–561–8851 / 888–953–8851

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register,** 16 July 1996) as meeting the minimum standards of the "Mandatory Guidelines for Workplace Drug Testing" (59 **Federal Register,** 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 01–10762 Filed 5–1–01; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for a Phased Residential Development Project, in Lake County, Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

Lakewood Development Partnership (Applicant), seeks an incidental take permit (ITP) from the Fish and Wildlife Service (Service), pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The ITP would authorize the take of three families of the threatened Florida scrub-jay, Aphelocoma coerulescens and the threatened eastern indigo snake, Drymarchon corais couperi, in Lake County, Florida, for a period of ten (10) years. The proposed taking is incidental to land clearing activities and development on a multi-phase project site (Project). The Project contains about 37 acres of occupied Florida scrub-jay habitat, and the potential exists for the Project to provide about 47 acres of habitat to the eastern indigo snake. A more detailed description of the mitigation and minimization measures to address the effects of the Project to the Florida scrub-jay and eastern indigo snake is provided in the Permittee's HCP, the Service's draft Environmental Assessment (EA), and in the **SUPPLEMENTARY INFORMATION** section below.

The Service also announces the availability of a draft environmental assessment (EA) and HCP for the incidental take permit application. Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has made a preliminary determination that issuing the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended. The Finding of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 60 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

The Service specifically requests information, views, and opinions from the public via this Notice on the federal action, including the identification of any other aspects of the human environment not already identified in the Service's EA. Further, the Service specifically solicits information regarding the adequacy of the HCP as measured against the Service's ITP issuance criteria found in 50 CFR Parts 13 and 17.

If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE038105–0 in such comments. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the internet to "david_dell@fws.gov". Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from the Service that we have received your internet message, contact us directly at either telephone number listed below (see **FURTHER INFORMATION**). Finally, you may hand deliver comments to either Service office listed below (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not; however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

DATES: Written comments on the ITP application, draft EA, and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before July 2, 2001.

ADDRESSES: Persons wishing to review the application, HCP, and draft EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216–0192. Written data or comments concerning the ITP renewal or HCP should be submitted to the Regional Office. Please reference permit number TE038105–0 in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313, facsimile: 404/679–7081; or Mr. Miles A. Meyer, Fish and Wildlife Biologist, Jacksonville Field Office, Florida (see **ADDRESSES** above), telephone: 904/232–2580.

SUPPLEMENTARY INFORMATION: The Florida scrub-jay is geographically isolated from other subspecies of scrub-jays found in Mexico and the Western United States. The Florida scrub-jay is found exclusively in peninsular Florida and is restricted to scrub habitat. The total estimated population is between 7,000 and 11,000 individuals. Due to habitat loss and degradation throughout the State of Florida, it has been estimated that the Florida scrub-jay population has been reduced by at least half in the last 100 years. Surveys have indicated that three families of Florida scrub-jays (17 individuals) utilize habitat associated with the abandoned citrus groves and vegetated edge of the Palatlakaha River on the Project site. Construction of the Project's infrastructure and residential lots will likely result in death of, or injury to, Florida scrub-jays incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with property development will reduce the availability of habitat used for feeding and shelter.

Historically, the eastern indigo snake occurred throughout Florida and into the coastal plain of Georgia, Alabama, and Mississippi. Georgia and Florida currently support the remaining, endemic populations of eastern indigo snake. Over most of its range, the eastern indigo snake frequents a diversity of habitat types such as pine flatwoods, scrubby flatwoods, xeric sandhill communities, tropical hardwood hammocks, edges of freshwater marshes, agricultural fields, coastal dunes and human altered habitats. Due to its relatively large home range, this snake is especially vulnerable to habitat loss, degradation, and fragmentation. The wide

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distribution and territory size requirements of the eastern indigo snake makes evaluation of status and trends very difficult. Surveys for this species on site were negative, however the habitat is suitable. If any eastern indigo snakes are present, construction of the Project's infrastructure and residential lots may result in their death or injury incidental to the carrying out of these otherwise lawful activities.

The draft EA considers the environmental consequences of two alternatives. The no action alternative may result in loss of habitat for Florida scrub-jay and eastern indigo snake and exposure of the Applicant under Section 9 of the Act. The proposed action alternative is issuance of the ITP with on-site mitigation. The on-site preservation alternative would restore and preserve 71 acres of unoccupied habitat and 10 acres of occupied habitat adjacent to the Palatlakaha River. The affirmative conservation measures outlined in the HCP to be employed to offset the anticipated level of incidental take to the protected species are the following:

1. The impacts associated with the proposed project include 27 acres of permanent impacts associated with infrastructure and lot development. To mitigate for the proposed impacts to occupied habitat the applicant will restore and preserve habitat within two areas of the project site. Approximately 27 acres of unoccupied scrub habitat and 10 acres of occupied habitat will be enhanced and preserved along the Palatlakaha River. Additionally, a 54-acre parcel located west of the Palatlakaha River will be restored and preserved as scrub habitat. This amount is based on mitigation at a ratio of 3:1 (three acres restored for every one acre impacted). Management will be conducted on a regular basis by the applicant. After initial habitat restoration of the 81-acre mitigation area, the property would then be set apart through an easement, requiring preservation and management for Florida scrub-jays and eastern indigo snakes into perpetuity.

2. No construction activities would occur within 150 feet of an active Florida scrub-jay nest during the nesting season.

3. The HCP provides a funding mechanism for these mitigation measures.

As stated above, the Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP. An appropriate excerpt from the FONSI reflecting the Service's finding on the application is provided below:

Based on the analysis conducted by the Service, it has been determined that:

1. Issuance of an ITP would not have significant effects on the human environment in the project area.

2. The proposed take is incidental to an otherwise lawful activity.

3. The Applicant has ensured that adequate funding will be provided to implement the measures proposed in the submitted HCP.

4. Other than impacts to endangered and threatened species as outlined in the documentation of this decision, the indirect impacts which may result from issuance of the ITP are addressed by other regulations and statutes under the jurisdiction of other government entities. The validity of the Service's ITP is contingent upon the Applicant's compliance with the terms of the permit and all other laws and regulations under the control of State, local, and other Federal governmental entities.

The Service will also evaluate whether the issuance of a Section 10(a)(1)(B) ITP complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: April 19, 2001.

Judy L. Pulliam,

Acting Regional Director.

[FR Doc. 01–10938 Filed 5–1–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–1020–ML–01–24 1A]

OMB Approval Number 1004–0051; Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On December 19, 2000, the BLM published a notice in the **Federal Register** (65 FR 79420) requesting comments on this proposed collection. The comment period ended on February 20, 2001. The BLM received one comment from the public in response to that notice. You may obtain copies of the proposed collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Office, (1004–0051), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a copy of your comments to the Bureau Information Clearance Officer (WO–630), 1849 C St., NW., Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Actual Grazing Use Report (43 CFR 4130).

OMB Approval Number: 1004–0051.

Bureau Form Number: 4130–5.

Abstract: Respondents (permittees or lessees) supply BLM with information on the actual amount of livestock grazing use on the public lands within a specified time frame. BLM uses the information for billing purposes and program monitoring.

Frequency: Annual reporting as required.

Description of Respondents: Respondents are holders of grazing permits and leases on public lands that BLM administers.

Estimated Completion Time: 25 minutes.

Annual Responses: 15,000.

Filing Fee per Response: 0.

Annual Burden Hours: 6,250.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: March 1, 2001.

Michael H. Schwartz,

BLM Information Collection Clearance Officer.

[FR Doc. 01–10911 Filed 5–1–01; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management, Burley Field Office

[ID–077–1220–HQ]

Notice of Closure of Public Land in Twin Falls County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure of public lands in Twin Falls County, Idaho.

SUMMARY: Notice is hereby given that certain lands in Twin Falls County, Idaho shall be closed to entry for all uses due to extreme environmental hazards. There is an active landslide on the east rim of the Salmon Falls Creek Canyon that poses a great threat to the safety of the public visiting the area. The area is known as Bluegill Lake or Sinking Canyon, and is located 6.5 miles west of Buhl, ID. The legal land description of the closure is as follows:

T. 9S., R 13E., Boise Meridian

Section 26: SE¼ NE¼, NE¼ SE¼, SE¼ SE¼.

Exceptions to this order are granted to the following:

Law enforcement and emergency services personnel.

Administratively approved access for actions such as monitoring and research studies.

EFFECTIVE DATE: This closure is effective immediately, and shall remain effective until rescinded by the Authorized Officer.

FOR FURTHER INFORMATION CONTACT: Theresa Hanley, Burley Field Manager, 15 East 200 South, Burley, ID 83318. Telephone (208) 677–6641. A map showing the public lands that have been closed is available at the BLM Burley Field Office.

SUPPLEMENTARY INFORMATION: Authority for this closure may be found in 43 CFR 8364.1. Any person who fails to comply with this closure under this subpart may be subject to the penalties provided in 8360.0–7 of this title.

Dated: April 6, 2001.

Theresa M. Hanley,

Burley Field Manager.

[FR Doc. 01–10915 Filed 5–1–01; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–912–6320–AA; GP1–0098]

Resource Advisory Committees; Notice of Intent to Establish and Call for Nominations

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to establish and call for nominations for each of the Oregon Bureau of Land Management (BLM) District Resource Advisory Committees (Committees) provided for in Section 205 of the Secure Rural Schools and Community Self Determination Act of 2000 (Pub. L. 106–393).

SUMMARY: This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act. Notice is hereby given that the Secretary of the Interior intends to establish five Resource Advisory Committees, pursuant to Section 205 of the Secure Rural Schools and Community Self Determination Act of 2000, Public Law 106–393 (the Act), for western Oregon BLM districts that contain Oregon and California (O&C) grants lands and Coos Bay Wagon Road grant lands. The public is also requested to submit nominations for membership on the Committees.

DATES: Nomination applications for Resource Advisory Committees can be obtained from your local BLM district office, or on the web at *www.or.blm.gov/planning/advisory*. All applications must be received by the appropriate BLM District office listed below no later than June 1, 2001. All nominations must include letters of reference from represented interests or organizations and a completed application that includes background information, as well as any other information that speaks to the nominee's qualifications.

ADDRESSES:

BLM Resource Advisory Committee Contacts

Coos Bay District Resource Advisory Committee: Sue Richardson, District Manager,1300 Airport Lane, North Bend, Oregon 97459, (541) 756–0100

Eugene District Resource Advisory Committee: Wayne Elliot, Resource Management Advisor, 2890 Chad Drive, Eugene, Oregon 97408–7336, (541) 683–6600

Medford District Resource Advisory Committee: Ron Wenker, District Manager, 3040 Biddle Road, Medford, Oregon 97504, (541) 618–2200

Roseburg District Resource Advisory Committee: Cary Osterhaus, District Manager, 777 NW Garden Valley Blvd., Roseburg, Oregon 97470, (541) 440–4913

Salem District Resource Advisory Committee: Jose Linares, Associate District Manager, 1717 Fabry Road SE, Salem, Oregon 97306, (503) 375–5646

FOR FURTHER INFORMATION CONTACT: Maya Fuller, Oregon/Washington Bureau of Land Management, Oregon State Office, PO Box 2965, Portland, Oregon 97208, (503) 952–6437.

SUPPLEMENTARY INFORMATION: The Secure Rural Schools and Community Self Determination Act establishes a five-year payment schedule to local counties to compensate them in part for the decrease in funds formally derived from the harvest of timber on federal lands. Pursuant to the Act, BLM is establishing five Committees for western Oregon BLM districts that contain O&C grant lands and Coos Bay Wagon Road grant lands. Committees will consist of 15 local citizens representing a wide array of interests.

The Act creates a new mechanism for local community collaboration with federal land management activities in the selection of projects to be conducted on federal lands or that will benefit resources on federal lands using funds under Title II of the Act.

Committee membership must be balanced in terms of the categories of interest represented. Members will serve without monetary compensation, but will be reimbursed for travel and per diem when on Committee business, as authorized by 5 U.S.C. 5703. Prospective members are advised that membership on a Resource Advisory Committee calls for a substantial commitment of time and energy.

Any individual or organization may nominate one or more persons to serve on the Committees. Individuals may also nominate themselves or others. Nominees must reside within one of the counties that are (in whole or part) within the BLM District boundaries of the Committee(s) on which membership is sought. A person may apply for and serve on more than one Committee. Nominees will be evaluated based on their education, training, and experience relating to land use issues and knowledge of the geographical area of the Committee. Nominees must also demonstrate a commitment to collaborative resource decision-making.

You may make nominations for the following categories of interest:

Category One—5 members who:

1. represent organized labor;

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2. represent developed outdoor recreation, off-highway vehicle users, or commercial recreation activities;
3. represent energy and mineral development interests;
4. represent the commercial timber industry; or
5. hold federal grazing permits, or other land permits, within the area for which the committee is organized.

Category Two—5 members representing:
1. nationally recognized environmental organizations;
2. regionally or locally recognized environmental organizations;
3. dispersed recreational activities;
4. archeological and historical interests; or
5. nationally or regionally recognized wild horse and burro interest groups.

Category Three—5 members who:
1. hold State elected office or their designee;
2. hold county or local elected office;
3. represent American Indian Tribes within or adjacent to the area for which the committee is organized;
4. are school officials or teachers; or
5. represent the affected public at large.

The Resource Advisory Committees will be based on western Oregon BLM District boundaries. Specifically, the BLM Committees are as follows:

Salem District Resource Advisory Committee advises officials on projects associated with federal lands within the Salem District boundary which includes Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington, and Yamhill Counties.

Eugene District Resource Advisory Committee advises federal officials on projects associated with federal lands within the Eugene District boundary. The area covers Benton, Douglas, Lane, and Linn Counties.

Roseburg District Resource Advisory Committee advises federal officials on projects associated with federal lands within the Roseburg District boundary which includes Douglas, Lane, and Jackson Counties.

Medford District Resource Advisory Committee advises federal officials on projects associated with federal lands within the Medford District and Klamath Falls Resource Area in the Lakeview District. The area covers Coos, Curry, Douglas, Jackson, and Josephine Counties, and small portions of west Klamath County.

Coos Bay District Resource Advisory Committee advises federal officials on projects associated with federal lands within the Coos Bay District which includes Coos, Curry, Douglas, and Lane Counties.

Dated: April 18, 2001.

Nina Rose Hatfield,

Acting Director, Bureau of Land Management.

[FR Doc. 01–11061 Filed 5–1–01; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–070–1020–PG]

Resource Advisory Council Meeting; Upper Snake River District

AGENCY: Bureau of Land Management, Interior.

ACTION: Upper Snake River District Resource Advisory Council Meeting: Locations and Times.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM) meeting of the Upper Snake River District Resource Advisory Council (RAC) will be held as indicated below. The agenda for this two-day meeting is as follows: A tour of the North Rim project near Twin Falls, Idaho will be held for RAC members on the first day. The second day will include discussions on the Shoshone Land Use Plan Amendment, Craters of the Moon National Monument planning, and issues surrounding the Goose Creek Allotment. Additional items that may be scheduled (depending on time) include Fire Restoration, information on the State of Idaho Federal Lands Task Force, and information on BLM Off-Highway Vehicle Planning in Idaho. The agenda may change as issues warrant between publication of this notice and the meeting.

All meetings are open to the public. The public may present written or oral comments to the council. Each formal council meeting will have a time allocated for hearing public comments. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations should contact David Howell at the Upper Snake River District Office, 1405 Hollipark Dr., Idaho Falls, ID 83401, or telephone (208) 524–7559.

DATES AND TIMES: The meeting will be held May 30–31, 2001 at the Herrett Center on the College of Southern Idaho campus in Twin Falls. An executive session of the RAC will begin at 1 p.m., and the full RAC meeting will begin at 2 p.m. The meeting will conclude no later than 3 p.m. the following day. Public comments, if any, will be scheduled from 8:30 a.m. to 9 a.m. on May 31, 2001.

SUPPLEMENTARY INFORMATION: The purpose of the Resource Advisory Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of the of the public lands.

FOR FURTHER INFORMATION CONTACT: David Howell, Upper Snake River District, 1405 Hollipark Dr., Idaho Falls, ID 83401, (208) 524–7559.

Dated: April 2, 2001.

James E. May,

District Manager.

[FR Doc. 01–10916 Filed 5–1–01; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–930–1310–01; OKNM 101622]

New Mexico: Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease OKNM 101622 for lands in Leflore County, Oklahoma, was timely filed and was accompanied by all required rentals and royalties accruing from December 1, 2000, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

The Lessee has met all the requirements for reinstatement of the lease as set out in sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate the lease effective December 1, 2000, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

FOR FURTHER INFORMATION CONTACT: Gloria S. Baca, BLM, New Mexico State Office, (505) 438–7566.

Dated: April 19, 2001.

Gloria S. Baca,

Land Law Examiner.

[FR Doc. 01–10913 Filed 5–1–01; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–020–01–5410–11–A187; AZA–31581]

Notice of Receipt of Conveyance of Mineral Interest Application

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Minerals Segregation.

SUMMARY: The private lands described in this notice aggregating approximately 950 acres, are segregated and made unavailable for filings under the general mining laws and the mineral leasing laws to determine their suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interest will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

FOR FURTHER INFORMATION CONTACT: Vivian Titus, Land Law Examiner, Arizona State Office, 222 N. Central Ave., Phoenix, Arizona 85004 (602) 417–9598. Serial Number AZA–31581.

Gila and Salt River Base and Meridian, Maricopa County, Arizona

T. 8 N., R. 2 W.,
Sec. 20, NE¼, N½SE¼, N½SW¼SE¼, N½S½SW¼SE¼, SE¼SE¼;
Sec. 21, All.

Minerals Reservation—All Minerals

Upon publication of this Notice of Segregation in the **Federal Register** as provided in 43 CFR 2720.1–1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the mining and mineral leasing laws. The segregative effect of the application shall terminate upon: Issuance of a patent or deed of such mineral interest; upon final rejection of the application; or two years from the date of publication of this notice, whichever occurs first.

Dated: March 28, 2001.

Denise P. Meridith,

State Director.

[FR Doc. 01–10910 Filed 5–1–01; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(NM–080–1430–EU; Serial No. NMNM–104317)]

Noncompetitive Sale of Public Lands in Eddy County

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The following land has been found suitable for direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at no less than the appraised fair market value of $20,000. The land will not be offered for sale until at least 60 days after the date of this notice.

T. 17 S., R. 30 E., NMPM

Sec. 20: Lots 13, 14, 15, S½SE¼NE¼SE¼
Containing approximately 5 acres.

The land is hereby segregated from appropriation under the public land laws, including the mining laws. The segregative effect of the notice of realty action shall terminate upon issuance of patent or other document of conveyance to such lands, upon publication in the **Federal Register** of a termination of the segregation, or 270 days from date of publication, whichever occurs first.

The land is to be offered by direct sale to Ray Westall, to correct an encroachment on public land. The subject lands are not required for any other Federal purpose and meet the disposal criteria of the regulations contained in 43 CFR 2711.3–3(a)(2).

The patent, when issued, will reserve all minerals to the United States and will be subject to existing rights-of-way. Detailed information concerning the reservation, as well as specific conditions of the sale, are available for review at the Carlsbad Field Office, Bureau of Land Management, 620 East Greene, Carlsbad, New Mexico 88220.

For a period of 45 days from May 2, 2001, interested parties may submit comments to Bobbe Young, Lead Realty Specialist, P.O. Box 1778, Carlsbad, NM 88220. Any adverse comments will be evaluated by the Field Manager, who may vacate or modify this realty action and issue a final determination. In absence of objections, this realty action will become the final determination of the Department of the Interior.

Dated: April 12, 2001.

Leslie A. Theiss,

Field Manager.

[FR Doc. 01–10914 Filed 5–1–01; 8:45am]

BILLING CODE 4310–VA–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Assessment Prepared for Proposed Western Gulf Sale 180 on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of the environmental assessment on proposed Western Gulf of Mexico Lease Sale 180.

SUMMARY: The Minerals Management Service (MMS) has prepared an environmental assessment (EA) for the proposed annual Lease Sale 180 for the Western Planning Area of the Gulf of Mexico Outer Continental Shelf.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section at the number below. You may obtain single copies of the EA from the Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394 or by calling 1–800–200–GULF.

SUPPLEMENTARY INFORMATION: In this EA, MMS has reexamined the potential environmental effects of the proposed action and alternatives based on any new information regarding potential impacts and issues that were not available at the time the Final Environmental Impact Statement (FEIS) for Lease Sales 171, 174, 177, and 180 was prepared. In summary, no new significant impacts were identified for proposed Lease Sale 180 that were not already assessed in the FEIS for Lease Sales 171, 174, 177, and 180. As a result, MMS determined that a supplemental EIS is not required and prepared a Finding of No New Significant Impact.

Public Comment: If you wish to comment, you may mail or hand-carry written comments to the Department of the Interior, Minerals Management Service, Regional Director (MS 5410), Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or

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address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: April 25, 2001.

Ralph Ainger,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 01–10722 Filed 5–1–01; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Policy Committee of the Minerals Management Advisory Board; Notice and Agenda for Meeting

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Meeting.

SUMMARY: The OCS Policy Committee of the Minerals Management Advisory Board will meet at the Radisson Hotel Old Town in Alexandria, Virginia.

DATES: Wednesday, May 23 and Thursday, May 24, 2001, from 8:30 a.m. to 5 p.m.

ADDRESSES: The Radisson Hotel Old Town, 901 N. Fairfax Street, Alexandria, Virginia 22314, telephone (703) 683–6000.

FOR FURTHER INFORMATION CONTACT: Ms. Jeryne Bryant at Minerals Management Service, 381 Elden Street, Mail Stop 4001, Herndon, Virginia 20170–4187. She can be reached by telephone at (703) 787–1211 or by electronic mail at jeryne.bryant@mms.gov.

SUPPLEMENTARY INFORMATION: The OCS Policy Committee represents the collective viewpoint of coastal States, environmental interests, industry and other parties involved with the OCS Program. It provides policy advice to the Secretary of the Interior through the Director of the MMS on all aspects of leasing, exploration, development, and protection of OCS resources.

The agenda for May 23rd will cover the following principal subjects:

Report on the Vice President's Energy Task Force. This presentation will provide an update on the status of Vice President Cheney's Energy Task Force.

Recent Events Regarding Natural Gas Supply. This presentation will address the winter natural gas supply, the role of the natural gas supply in California, and the proposed Alaska pipeline.

Natural Gas Subcommittee Report. This presentation will provide an update on the activities of the Natural Gas Subcommittee that was established at the October 2000 meeting to assess the contribution that the OCS can make in meeting the short-term and long-term natural gas needs of the United States.

Energy Demands—States' Perspective. This presentation will address what the coastal States perceive their respective energy demand(s) will be over the next 5–10 years and the plans to deal with the demand(s).

Coastal Consistency—Final Regulations. This presentation will address Federal Coastal Zone Management consistency, including new regulations and reauthorization of the Coastal Zone Management Act.

The agenda for May 24th will cover the following principal subjects:

OCS Scientific Committee Update. This presentation will provide an update on the activities of the Scientific Committee. It will also highlight the activities that are related to energy issues/concerns, ocean issues, hard mineral activity, and any other topics that are relevant to both Committees.

Atlantic Region Update. This presentation will address the outcome of the Manteo litigation and contracts/statement of work for Atlantic studies.

Gulf of Mexico (GOM) Region—Panel Discussion. This presentation will address the status of Sale 181; GOM 5-year projection of production; floating production, storage and offloading systems; oil spill contingency plans; new technology in deep water and seismic surveying; and the GOM State Geologist Survey Consortium.

Next 5-Year Program. This presentation will address the next 5-Year Program and its implications.

Hard Minerals Update. This presentation will provide an update on subcommittee activities and other pertinent hard minerals information.

MMS Regional Updates. The Regional Directors will highlight activities off the California and Alaska coasts.

Ocean Activities. This presentation will address the status of the formation of the Oceans Commission and its composition; and the functions and ocean-related activities of the Consortium for Oceanographic Research and Education.

The meeting is open to the public. Approximately 100 visitors can be accommodated on a first-come-first-served basis.

Upon request, interested parties may make oral or written presentations to the OCS Policy Committee. Such requests should be made no later than May 11, 2001, to Jeryne Bryant. Requests to make oral statements should be accompanied by a summary of the statement to be made. Please see **FOR FURTHER INFORMATION CONTACT** section for address and telephone number.

Minutes of the OCS Policy Committee meeting will be available for public inspection and copying at the MMS in Herndon, Virginia.

Authority: Federal Advisory Committee Act, P.L. No. 92–463, 5 U.S.C. Appendix 1, and the Office of Management and Budget's Circular No. A–63, Revised.

Dated: April 26, 2001.

Carolita U. Kallaur,

Associate Director for Offshore Minerals Management.

[FR Doc. 01–10952 Filed 5–1–01; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–924 (Preliminary)]

Mussels From Canada

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is threatened [2] with material injury by reason of imports from Canada of mussels, provided for in subheading 0307.31.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigation

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chairman Koplan determines that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of mussels from Canada.

Background

On March 12, 2001, a petition was filed with the Commission and Commerce by Great Eastern Mussel Farms, Tenants Harbor, ME, alleging that an industry in the United States is threatened with material injury by reason of LTFV imports of mussels from Canada. Accordingly, effective March 12, 2001, the Commission instituted antidumping duty investigation No. 731–TA–924 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 19, 2001 (66 FR 15503). The conference was held in Washington, DC, on April 2, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on April 26, 2001. The views of the Commission are contained in USITC Publication 3416 (May 2001), entitled Mussels from Canada: Investigation No. 731–TA–924 (Preliminary).

Issued: April 27, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–11016 Filed 5–1–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Pursuant to the Comprehensive Environmental Response Compensation and Liability Act

Notice is hereby given that, on March 23, 2001, a proposed Settlement Agreement in *In Re: Teplitz Auto Parts, Inc.*, No. 00–13384 (ash) (Bankr. S.D.N.Y.), a bankruptcy action involving Teplitz Auto Parts, Inc., a defendant in *United States* v. *Woodward Metal Processing, Corp. et al.*, No. 98–2736 (JWB/GDH) (D.N.J.), was lodged with the United States District Court for the District of New Jersey. By its terms, the Settlement Agreement becomes effective only after approval is obtained from both the Bankruptcy Court and the District Court.

In the District Court action, the United States sought to recover response costs incurred in connection with a removal action at the Woodward Metal Processing Corporation Site, located at 125 Woodward Street, Jersey City, New Jersey ("Site"), pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607. The proposed Settlement Agreement would allow a general unsecured claim in the bankruptcy action by the United States in the amount of $375,000. Together with other ending settlements, the Settlement Agreement would resolve the District Court action in its entirety.

The U.S. Department of Justice will receive, for period of thirty (30) days from the date of publication of this Notice, comments relating to the proposed Settlement Agreement. Any comments should be addressed to the Assistant Attorney General for the Environmental and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should reference the following case name and number: *United States* v. *Metal Processing Corp., et al.*, DJ #90–11–2–1299/1.

The proposed Settlement Agreement may be examined at the offices of EPA Region II, located at 290 Broadway, New York, New York, c/o Virginia Curry, Esq., (212) 637–3134, or at the U.S. Attorney's Office, 970 Broad St., 7th Floor, Newark, NJ 07102, c/o Susan Cassell, Esq., (973) 645–2700. A copy of the proposed Settlement Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, c/o Peggy Fenlon-Gore, (202) 514–5245. In requesting a copy, please enclose a check in the amount of $6.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Ronald G. Gluck, Esq.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–10883 Filed 5–1–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of March and April, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–38,500; American Pine Products, Prineville, OR

TA–W–38,651; Georgia Pacific Corp., Industrial Wood Products Div., Gaylord Particleboard, Gaylord, MI

TA–W–38,533; Spray Cotton Mills, Eden, NC

TA–W–38,775; Q and M Manufacturing, Inc., Cheboygan, MI

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TA–W–38,786; Wing Industries, Division of Atrium Companies, Inc., Greenville, TX
TA–W–38,516; Owens Brockway, Glass Container Div., Fulton, New York
TA–W–38,693; Summit Timber Co., Darrington, WA
TA–W–38,845; Borg-Warner, Inc. Transmission Systems Div., Coldwater, MI
TA–W–38,789; Dietrick's Milk Products, LLC, Middlebury Center, PA
TA–W–38,466, A & B; Armtex, Inc., Pilot Mountain, NC, Gastonia, NC and Surry Industries, LLC, Pilot Mountain, NC

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–38,515; Permanent Label Corp., Clifton, NJ
TA–W–38,537; West Texas Energy Services, LLC, Big Spring, TX
TA–W–38,707; Philips Consumer Electronics Co., Knoxville Industrial Design Group (KID), Knoxville, TN
TA–W–38,595; Magnetic Data Technologies, LLC, Eden Prairie, MN
TA–W–38,902; Troy Design, Inc., Small Car Group, Lansing, MI
TA–W–38,806; Chicago Steel, LLP, Gary, IN

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–38,529; Ametek/Prestolite, Motors and Switch Div., Decatur, AL
TA–W–38,992; Coastal Machinery Co., Portland, OR
TA–W–38,814; Hager Hinge Companies, Consumer Div., Oxford, AL
TA–W–38,876; The Worthington Steel Co., Malvern, PA
TA–W–38,667; New ERA Cap Co., Inc., Derby, NY
TA–W–38,515; Permanent Label Corp., Clifton, NJ
TA–W–38,532; United Plastic Group Portland, Hillsboro, OR
TA–W–38,744; Kearfott Guidance and Navigation Corp., Wayne, NJ
TA–W–38,747; Createc Corp., Harrodsburg, KY
TA–W–38,721; HPM Corp., Mt. Gilead, OH
TA–W–38,481; BF Goodrich Aerospace, Cedar Knolls, NJ
TA–W–38,450; Specialty Minerals, Inc., Mobile, AL
TA–W–38,712; Dave Szalay Logging, Whitefish, MT
TA–W–38,607; Owens Corning, Newark, OH
TA–W–38,805; Playtex Apparel, Inc., New York, NY
TA–W–38,769; Deltrol Corp., Milwaukee, WI

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–38,896; Vaagan Bros, Lumber, Inc., Colville, WA
TA–W–38,890; Erie Forge and Steel, Inc., Erie, PA
TA–W–38,629; Seral, Inc., Houston, TX
TA–W–38,698; Powermatic Corp., Walter Meyer Holding AG, McMinnville, TN

The investigation revealed that criteria (2) and (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increased imports did not contribute importantly to worker separations at the firm.

TA–W–38,598; NACCO Materials Handling Group, Danville, IL
TA–W–38,901; Moose River Lumber Co., Inc., Jackman, ME

The investigation revealed that criteria (1) and (2) have not been met. A significant number of proportion of the workers did not become totally or partially separated from employment as required for certification. Sales or production did not decline during the relevant period as required for certification.

TA–W–38,855; Willamette Industries, Inc., Foster Plywood Div., Sweet Home, OR

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–38,871; Vishay Sprogue, Inc., Sanford, ME: April 18, 2000.
TA–W–38,801; Converse, Inc., North Reading, MA: April 14, 2000.
TA–W–38,733; Oremet, Div. of Allegheny Technologies, Inc., Albany, OR: February 10, 2000.
TA–W–38,453; Thomas and Betts Corp., Prembroke, MA: December 6, 1999.
TA–W–38,799; Dana Spicer, Off-Hwy Products Div., Plymouth, MN: February 1, 2000.
TA–W–38,689; Sony Music, Inc., Disc Manufacturing, Carrollton, GA: January 30, 2000.
TA–W–38,949; Columbia Forest Products, Klamath Falls, OR: March 15, 2000.
TA–W–38,536; Crawford Furniture Manufacturing Corp., New Bethlehem, PA: December 17, 1999.
TA–W–38,907; Bayer Clothing Group, Inc., New York, NY: March 13, 2000.
TA–W–38,489; Western Supplies Co., St. Louis, MO: December 15, 1999.
TA–W–38,701; Woodgrain Millwork, Inc., Fruitland, ID: February 2, 2000.
TA–W–38,922; Thomas and Betts, St. Matthews, SC: March 13, 2000.
TA–W–38,710; Sure Cutting Services, Inc., Opa Locka, FL: January 25, 2000.
TA–W–38,571; Shorewood Packaging Corp., Cincinnati, OH: January 10, 2000.
TA–W–38,790 & A; Wilkins Industries, Inc., McRae, GA and Athens, GA: February 24, 2001.
TA–W–38,656; The JPM Co., San Jose, CA: January 28, 2000.
TA–W–38,966; Dearborn Brass, 21st Century Companies, Inc., Tyler, TX: February 9, 2000.
TA–W–38,894; Hoffman/New Yorker, Inc., Dushore Plant, Dushore, PA: March 7, 2000.
TA–W–38,631; Slater Steels Melt Shop, Ft. Wayne, IN: January 10, 2000.
TA–W–38,752; F.L. Smithe Machine Co., Inc., Duncansville, PA: February 9, 2000.
TA–W–38,677; Super Snack Manufacturing, Savoy, TX: March 30, 2001.
TA–W–38,737 & A; Hagale Industries, Inc., Ardmore, OK and Idabel, OK: February 16, 2000.
TA–W–38,738,A, B, & C; Hagale Industries, Inc., Republic MO, Stocton, MO and Reeds Spring, MO: February 16, 2000.
TA–W–38,499; CHI, Inc., International, Inc., Crisfield, MD: December 15, 1999.
TA–W–38,739; Allison Manufacturing Co., Albermarle, NC: February 14, 2000.
TA–W–38,686; Pilling Weck Surgical, Irvington, NJ: January 31, 2000.
TA–W–38,812; Regal Headwear USA, Inc., Gladwater, TX: February 22, 2000.
TA–W–846; Black and Decker, Beloit, WI: March 6, 2000.
TA–W–38,732 & A; Haggar Clothing Co., Edinburg Manufacturing, Edinburg, TX and Weslaco Operations Weslaco, TX: February 14, 2000.
TA–W–38,933; Union Knitwear, Inc., Maynardville, TN: March 14, 2000.
TA–W–38,388; Corbin Russwin, Inc., Berlin, CT: November 16, 1999.
TA–W–38,928; Motorola Personal Communication Sector, Harvard, IL: February 14, 2000.

TA–W–38,741; The William Carter Co., Griffin, GA: January 29, 2000.
TA–W–38,646; CSC Ltd, Warren, OH: January 22, 2000.
TA–W–38,633; Venturi Designs Ltd, New York, NY: January 22, 2000.
TA–W–38,829; Anvil Knitwear, Mullins, SC: November 14, 2000.
TA–W–38,534; Hedstrom Lumber Co., Inc., Two Harbor Div., Two Harbor, MN and Grand Marais Div., Grand Marais, MN: December 26, 1999.
TA–W–38,422; CMI Industries, Inc., Clinton Fabric Div., Clinton, SC and Bailey Plant, Clinton, SC: December 4, 1999.
TA–W–38,757; Gorge Lumber Co., Inc., Portland, OR: July 11, 2000.
TA–W–38,763; Donora Sportswear Co., Inc., Donora, PA: October 9, 2000.
TA–W–38,573; Man Edge Tool Co. and White Container Corp. and American Hickory Corp., Lewistown, PA: January 5, 2000.
TA–W–38,800; TI Automotive, New Haven Plant, New Haven, MI: February 28, 2000.
TA–W–38,774; Vera Sportswear, Inc., Charlestown, MA: February 5, 2000.
TA–W–38,837 & A; WCI Steel, Inc., Warren, OH and Youngstown Sinter Plant, Youngstown, OH: January 21, 2001.
TA–W–38,373; Kirkwood Industries, Cleveland, OH: November 7, 1999.
TA–W–38,730; Cardinal industries, Grundy, VA: February 8, 2000.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of March and April, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increased imports contributed improtantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TA–04623; Westark/Dunbrooke Industries, Inc., Versailles, MO
NAFTA–TAA–04535; Owens Corning, Newark, OH
NAFTA–TAA–04514; Summit Timber Co., Darrington, WA
NAFTA–TAA–04567; Crown Pacific Limited Partnership, Bonners Ferry, ID
NAFTA–TAA–04642; Kearfott Guidance & Havigation Corp., Wayne, NJ
NAFTA–TAA–04585; Presto Products Manufacturing Co., Algagordo, NM
NAFTA–TAA–04402; United Plastics Group Portland, Hillsboro, OR
NAFTA–TAA–04665; The Worthington Steel Co., Malvern, PA
NAFTA–TAA–04639; Borg-Warner, Inc., Transmission Systems Div., Coldwater, MI
NAFTA–TAA–04563; HPM Corp., Mt. Gilead, OH
NAFTA–TAA–04550; Freightliner LLC, Mt. Holly Truck Manufacturing Plant, Mt. Holly, NC
NAFTA–TAA–04512; Georgia Pacific Corp., Industrial Wood Products Div., Gaylord Particleboard, Gaylord, MI
NAFTA–TAA–04564; Deltrol Corp., Economy Bushing Company/Deltrol Precision, Milwaukee, WI
NAFTA–TAA–04599; Createc Corp., Harrodsburg, KY
NAFTA–TAA–04418; Owens Brockway, Glass Container Div., Fulton, NY
NAFTA–TAA–04621; Skyjack Rental Equipment, Inc., d/b/a Skyjack Rental Equipment Services, Wathena, KS
NAFTA–TAA–04546; Dave Szalay Logging, Whitefish, MT
NAFTA–TAA–04469; Nova Bus, Inc., Plant III, Roswell, NM
NAFTA–TAA–04647; Wing Industries, Div. of Atrium Companies, Inc., Greenville, TX
NAFTA–TAA–04649; Lionel LLC, Chesterfield, MI
NAFTA–TAA–04537; Dietrich's Milk Products, LLC, Middlebury Center, PA
NAFTA–TAA–04697; Coastal Machinery Co., Portland, OR

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA–TAA–04705; Troy Design, Inc., Small Car Group, Lansing, MI
NAFTA–TAA–04524; Philips Consumer Electronics Co., Knoxville Industrial Design Group (KID), Knoxville, TN
NAFTA–TAA–04345; Hutchinson Moving and Storage, Thief River Falls, MN
NAFTA–TAA–04566; Allison Manufacturing Co., Albermarle, NC
NAFTA–TAA–04450; Magnetic Data Technologies LLC, Eden Prairie, MN
NAFTA–TAA–04628; Chicago Steel LLP, Gary, IN

The investigation revealed that criteria (1) and (2) have not been met. A significant number or proportion of the workers did not become totally or partially separated from employment as required for certification. Sales or production did not decline during the relevant period as required for certification.

NAFTA–TAA–04631; Willamette Industries, Inc., Foster Plywood Div., Sweet Home, OR

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated from employment as required for certification.

NAFTA–TAA–04624; Do Little Logging, LLC, Lewistown, MT

The investigation revealed that criteria (2) and (4) have not been met. Sales or production did not decline during the relevant period as required for certification. There has not been a shift in production of such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

NAFTA–TAA–04560; Erie Forge and Steel, Inc., Erie, PA

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–04686; Thomas and Betts, St. Matthews, SC: March 13, 2000.

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NAFTA–TAA–04694; Omniglow Corp., West Springfield, MA: March 19, 2000.
NAFTA–TAA–04656; Motorola Personal Communications Sector, Harvard, IL: February 13, 2000.
NAFTA–TAA–04368; Condor DC Power Supplies, Inc., Todd Products, Group, Brentwood, NY: November 10, 2000.
NAFTA–TAA–04637; Hoffman/New Yorker, Inc., Dushore Plant, Dushore, PA: March 7, 2000.
NAFTA–TAA–04387; Corbin Russwin, Inc., Berlin, CT: November 20, 1999.
NAFTA–TAA–04646; Vera Sportswear, Inc., Charlestown, MA: February 17, 2000.
NAFTA–TAA–04410; Kwikset Corp., Anaheim, CA: April 9, 2000.
NAFTA–TAA–04544; CAE Newnes, Inc., Sherwood, OR: February 8, 2000.
NAFTA–TAA–04533; Woodgrain Millwork, Inc., Fruitland, ID: Feburary 2, 2000.
NAFTA–TAA–04612; Stant Manufacturing, Inc., Commersville, IN: February 22, 2000.
NAFTA–TAA–04305; Berg Lumber Co., Lewistown, MT: November 13, 1999.
NAFTA–TAA–04539; Sony Music, Inc., Sony Disc Manufacturing, Carrollton, GA: January 30, 2000;
NAFTA–TAA–04575; Gorge Lumber Company, Inc., Portland OR: July 11, 2000.
NAFTA–TAA–04510; the JPM Company, San Jose, CA: January 23, 2000.
NAFTA–TAA–04685; Sonoco, Industrial Products Div., Shepherd, MI: March 1, 2000.
NAFTA–TAA–04468; OBG Manufacturing/Distribution Company, Oshkosh B'Gosh, Inc., Liberty, KY: January 12, 2000.
NAFTA–TAA–04451; Titanium Sports Technologies, LLC, Pay Plus Benefits, Inc., Kennewick, WA: January 16, 2000.
NAFTA–TAA–04520; Super Sack Manufacturing, Savoy, TX: March 8, 2000.
NAFTA–TAA–04602 & A; Wilkins Industries, Inc., McRae, GA and Athens, GA: February 24, 2001.
NAFTA–TAA–04565; Cummins, Inc., Charleston Cylinder Head Business, Charleston, SC: February 12, 2000.
NAFTA–TAA–04655; Busy B's Cedar, Priest River, ID: February 14, 2000.
NAFTA–TAA–04688; Columbia Forest Products, Klamath Division, Flamath Falls, OR: March 8, 2000.
NAFTA–TAA–0426; Thomas and Betts, Bainbridge, GA: March 8, 2000.
NAFTA–TAA–04604; Nautel Maine, Inc., Bangor, ME: March 1, 2000.
NAFTA–TAA–04493; Camp, Inc., Jackson, MI: January 12, 2000.
NAFTA–TAA–04643; Invensys Powerware Corp., AKA Best Power, Necedah, WI: March 12, 2000.
NAFTA–TAA–04457; Ametek/Prestolite, Motors and Switch Div., Decatur, AL: January 19, 2000.

I hereby certify that the aforementioned determinations were issued during the month of March and April, 2001. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: April 23, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–10942 Filed 5–1–01; 8:45am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,695]

Drummond Company, Inc., Jasper, Alabama; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 20, 2001, in response to a worker petition which was filed on behalf of workers at Drummond Company, Inc., Jasper, Alabama.

The Department of Labor has determined that the petition is invalid. Under the Trade Act of 1974, a petition may be filed by a group of three or more workers in an appropriate subdivision of a firm, by a company official, or by their union or other duly authorized representative. The petitioners are not employees of Drummond Company, Jasper, Alabama. The petition was signed by three petitioners who are not authorized to file on behalf of workers of the company. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 12th day of April, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–10944 Filed 5–1–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,824]

Heritage Sportswear Marion, South Carolina; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 12, 2001, in response to a worker petition which was filed on behalf of workers at Heritage Sportswear, Marion, South Carolina.

The petitioners were separated from the subject firm more than a year prior to the postmark date of the petition February 24, 2001. Section 223(b)(1) of the Trade Act of 1974 specifies that no certification may apply to any worker whose last separation occurred more than a year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 12th day of April 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–10947 Filed 5–1–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38, 272]

Renfro Corporation Pulaski, Virginia; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 3, 2000, applicable to all workers of Renfro Corporation, Finishing Department, located in Pulaski, Virginia. The notice was published in the **Federal Register** on December 6, 2000 (65 FR 76290).

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. Information provided by the petitioners show that layoffs occurred in the Seaming Department at Renfro Corporation in Pulaski, Virginia. The workers are engaged in employment related to the production of socks.

The intent of the certification is to provide coverage to all workers of the subject firm impacted by increased imports of socks. Therefore, the Department is amending the certification to include all workers of the firm engaged in employment related to the production of socks, not just those in the Finishing Department.

The amended notice applicable to TA–W–38, 272 is hereby issued as follows:

All workers of Renfro Corporation, Pulaski, Virginia, engaged in employment related to the production of socks, who became totally or partially separated from employment on or after October 13, 1999, through November 3, 2002, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 17th day of April 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–10946 Filed 5–1–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Petition for NAFTA-Transitional Adjustment Assistance

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed renewal of the information collection of the Petition For NAFTA Transitional Adjustment Assistance, ETA 9042.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

DATES: Written comments must be submitted on or before July 2, 2001. Written comments should evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility, evaluate the accuracy of the agency's estimate of the burden of a proposed collection of information including the validity of the methodology and assumptions used; enhance the quality, utility, and clarity of a information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

ADDRESSES: Edward A. Tomchick, Division of Trade Adjustment Assistant, Employment and Training Administration, Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210, 202–693–3560 (this is not a toll-free nbumber).

SUPPLEMENTARY INFORMATION:

I. Background

The North American Free Trade Agreement (NAFTA) Implementation Act amended Chapter 2 of Title II of the Trade Act of 1974 to add a Subchapter D—NAFTA Transitional Adjustment Assistance Program. This program provides needed adjustment assistance to workers adversely affected because of imports from Canada or Mexico or shifts of production from the United States to those countries.

Section 250 of the Act authorizes the Governor of each State to accept petitions for certification of eligibility to apply for adjustment assistance. Once a petition for NAFTA adjustment assistance is filed with the Governor in the State where the firm is located, the law gives the Governor ten days to make a preliminary finding of whether the petition meets the group eligibility requirements under Subchapter D, and transmits the finding to the Secretary of Labor. The NAFTA Confidential Data Request Form ETA–9043 establishes the format which has been used by the Governor for making a preliminary finding.

II. Current Actions

This is a request for OMB approval under [the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)] for a collection of information assigned OMB Control No. 1205–0339.

Type of Review: Extension without change.
Agency: Employment and Training Administration, Labor.
Title: NAFTA-Confidential Data Request.
OMB Number: 1205–0339.
Agency Number: ETA–9043.
Affected Public: Business and State.
Total Respondents: Estimated 1,000.
Total Respondents: Estimated 1,000.
Frequency: On occasion.
Average Time per Response:
Respondents = 15 minutes.
State Review = 5 minutes.
Estimated Total Burden Hours:
Respondents = 250 hours.
State review = 80 hours.
Total = 330.
Estimated Respondent cost:
Respondents = $6,250.
State review = $1,406.
Total = $7,656.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–11011 Filed 5–1–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–4478]

Brenner Tank, Inc., Mauston, WI

Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on January 24, 2001, in response to a petition filed by a company official on behalf of workers at Brenner Tank, Inc., Mauston, Wisconsin.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

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Signed at Washington, DC, this 20th day of April, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–11012 Filed 5–1–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–04495]

Johnson Electric Automotive, Inc. Brownsville, Texas Including Temporary Workers of Austin Temporary Services Employed at Johnson Electric Automotive, Inc. Brownsville, Texas; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on February 22, 2001, applicable to workers of Johnson Electric Automotive, Brownsville, Texas. The notice was published in the **Federal Register** on April 5, 2001 (66 FR 18119).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Information provided by the State and the company shows that some employees of the subject firm were temporary workers from Austin Temporary Services, Harlingen, Texas to produce shafts of motors for lawnmowers and boats at the Brownsville, Texas location.

Based on these findings, the Department is amending the certification to include temporary workers of Austin Temporary Services, Harlingen, Texas employed at Johnson Electric Automotive, Inc., Brownsville, Texas.

The intent of the Department's certification is to include all workers of Johnson Electric Automotive, Inc., Brownsville, Texas adversely affected by a shift of production to Mexico.

The amended notice applicable to NAFTA—04495 is hereby issued as follows:

All workers of Johnson Electric Automotive, Inc., Brownsville, Texas including temporary workers of Austin Temporary Services, Harlingen, Texas who were engaged in the production of shafts of motors for lawnmowers and boats at Johnson Electric Automotive, Inc., Brownsville, Texas who became totally or partially separated from employment on or after January 26, 2000 through February 22, 2003 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC this 13th day of April, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–10948 Filed 5–1–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–4548]

Louisiana-Pacific Corporation, Jasper Stud Mill, Jasper, TX

Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on February 13, 2001, in response to a petition filed by a company official on behalf of workers at Louisiana-Pacific Corporation, Jasper Stud Mill, Jasper, Texas.

This case is being terminated due to the petitioner's request that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 23rd day of April 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–11013 Filed 5–1–01; 8:45 am]

BILLING CODE 4510–31–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Division of Trade Adjustment Assistance (DTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of DTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request if filed in writing with the Director of DTAA not later than May 14, 2001.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of DTAA at the address shown below not later than May 14, 2001.

Petitions filed with the Governors are available for inspection at the Office of the Director, DTAA, ETA, DOL, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 18th day of April, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

Appendix

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Pathfinders (Co.)	Sedro Wooley, WA	02/27/2001	NAFTA–4,591	Soft lap top computer cases.
Corning Cable Systems (Co.)	Kernersville, NC	02/27/2001	NAFTA–4,592	Telecommunications products.
William Carter (The) (Wkrs)	Griffin, GA	02/20/2001	NAFTA–4,593	Infants wear.
Edscha (UAW)	Jackson, MI	02/13/2001	NAFTA–4,594	Door hinge.
Eaton (Wkrs)	Marshall, MI	02/22/2001	NAFTA–4,595	Automotive.
Q and M Manufacturing (Wkrs)	Cheboygan, MI	02/27/2001	NAFTA–4,596	Gaskets.
Reptron Manufacturing Services (Wkrs)	Caylord, MI	02/27/2001	NAFTA–4,597	Electronic circuit assemblies.
Inman Mills (Co.)	Inman, SC	02/28/2001	NAFTA–4,598	Woven, greige goods.
Createc Corporation (Wkrs)	Harrodsbury, KY	03/01/2001	NAFTA–4,599	Polystrene packaging.
Marcegaglia USA (Wkrs)	Greenville, PA	03/01/2001	NAFTA–4,600	Stainless steel tube & pipe.
Blue Mountain Products (Wkrs)	Pendleton, OR	02/27/2001	NAFTA–4,601	Wood lumber.
Wilkins Industries (Wkrs)	McRae, GA	03/01/2001	NAFTA–4,602	Women's jeans.
Wilkins Industries (Co.)	Athens, GA	03/01/2001	NAFTA–4,602	Women's jeans.
IEC Electronics (Wkrs)	Edinburg, TX	03/02/2001	NAFTA–4,603	Printed circuit boards.
Nautel Maine (Co.)	Bangor, ME	03/02/2001	NAFTA–4,604	Radio transmitters.
Ropak Northwest (Wkrs)	Kent, WA	03/02/2001	NAFTA–4,605	Plastic containers.
Collis, Inc.—SSW Holding (Wkrs)	Elizabethtown, KY	02/27/2001	NAFTA–4,606	Refrigerator shelves and baskets.
U.S. Intec—Permaglas (Wkrs)	Corvallis, OR	02/27/2001	NAFTA–4,607	Roofing materials.
Kazoo (Wkrs)	San Antonio, TX	02/16/2001	NAFTA–4,608	Pants and shirt.
Cooper Standard Automotive (Co.)	Rocky Mount, NC	03/05/2001	NAFTA–4,609	Extruded rubber parts.
Perfect Fit Industries (Co.)	Richfield, NC	03/05/2001	NAFTA–4,610	Comforters, bed spreads and bedding.
Stanley Fastening Systems (Wkrs)	Hamlet, NC	03/05/2001	NAFTA–4,611	Staple production machines.
Stant Manufacturing (UAW)	Connersville, IN	03/02/2001	NAFTA–4,612	Automotive closure caps.
Budd Company (The) (UAW)	Philadelphia, PA	03/09/2001	NAFTA–4,613	Automotive stamping & assemblies.
Sandhills Printing and Finishing (Co.)	Sanford, NC	03/09/2001	NAFTA–4,614	Printing & Finishing.
Westfield Tanning (Wkrs)	Westifled, PA	03/09/2001	NAFTA–4,615	Leather for footwear.
Trinity Industries (Wkrs)	Johnstown, PA	03/12/2001	NAFTA–4,616	Railroad freight car axles.
NAPCO Button (Co.)	Coppell, TX	03/09/2001	NAFTA–4,617	Dyed buttons.
Eagle Knits of Stanfield (Co.)	Norwood, NC	03/08/2001	NAFTA–4,618	Knit goods (fabric).
Thomas and Betts (Co.)	Pembroke, MA	03/08/2001	NAFTA–4,619	Electronic photocontrols.
Super Sack (Co.)	Savoy, TX	03/08/2001	NAFTA–4,620	Semi-bulk packaging containers.
Skyjack Rental Equipment (Wkrs)	Wathena, KS	02/16/2001	NAFTA–4,621	Mobile elevated working platforms.
STB Systems—3D–FX Interactive (Wkrs)	El Paso, TX	03/07/2001	NAFTA–4,622	PC boards, computer games.
Westark—Dunbrooke Industries (Co.)	Versailles, MO	03/07/2001	NAFTA–4,623	Baseball and coaches jackets.
Do Little Logging (Wkrs)	Lewiston, MT	03/06/2001	NAFTA–4,624	Softwood saw logs.
Brach Confections (IBT)	Chicago, IL	03/06/2001	NAFTA–4,625	Candy.
Thomas and Betts (Wkrs)	Bainbridge, GA	03/08/2001	NAFTA–4,626	Street lights.
Samsonite Corporation, (Co.)	Denver, CO	03/07/2001	NAFTA–4,627	Luggage.
Chicago Steel (Wkrs)	Gary, IN	03/05/2001	NAFTA–4,628	Coil to coil tension leveling.
Kolblena Bresse Bleu (UFCW)	Watertown, WI	03/05/2001	NAFTA–4,629	Goat cheese, cream cheese, blue cheese.
Sierra Pacific Industries (WCIW)	Loyalton, CA	03/05/2001	NAFTA–4,630	Lumber products.
Willamette Industries (Wkrs)	Sweet Home, OR	03/05/2001	NAFTA–4,631	Plywood.
Rosboro Lumber (Wkrs)	Springfield, OR	02/09/2001	NAFTA–4,632	Lumber.
Drexel Heritage Furnishings (IBT)	Black Mountain, NC	03/12/2001	NAFTA–4,633	Residential furniture.
PGP, LC (PACE)	Sherman, TX	03/12/2001	NAFTA–4,634	Edible oil.
Viasystems Technologies (CWA)	Richmond, VA	03/12/2001	NAFTA–4,635	Printed circuit boards.
Freightliner (IAM)	Portland, OR	03/12/2001	NAFTA–4,636	Trucks.
Hoffman New Yorker (Wkrs)	Dusuore, PA	03/12/2001	NAFTA–4,637	Pressing equipment.
Schott Corporation (Wkrs)	Marshall, MN	03/12/2001	NAFTA–4,638	Magnetic transformers.
Borg Warner (Wkrs)	Coldwater, MI	03/06/2001	NAFTA–4,639	Automotive transmission components.
Hastings Manufacturing (Wkrs)	Hastings, MI	03/12/2001	NAFTA–4,640	Piston ring.
Graphic Packaging (AWPPW)	Portland, OR	03/09/2001	NAFTA–4,641	Paperboard packaging.
Kearfott Guidance and Navigation (Wkrs)	Wayne, NJ	03/06/2001	NAFTA–4,642	Breakout boards and harnesses.
Invensys-Powerware Corporation (Co.)	Necedah, WI	03/12/2001	NAFTA–4,643	Power protection.
Valeo Climate Control (Co.)	Arcola, IL	03/13/2001	NAFTA–4,644	Automotive air conditioning modules.

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Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Acme Die Casting (UAW)	Racine, WI	03/12/2001	NAFTA–4,645	Buttom base.
Vera Sportswear (Co.)	Charlestown, MA	02/17/2001	NAFTA–4,646	Skirts, pants and dressers.
Wing Industries (Wkrs)	Greenville, TX	03/14/2001	NAFTA–4,647	Wood doors.
Nucor Bearing Products (Wkrs)	Wilson, NC	03/14/2001	NAFTA–4,648	Bearing components, car hubs.
Lionel LLC (UAW)	Chesterfield, MI	02/27/2001	NAFTA–4,649	Toy trains and accessories.
Avecia (Co.)	Mt. Pleasant, TN	03/14/2001	NAFTA–4,650	Research and laboratory.
Discwax Corporation (Wkrs)	Stanley, NC	03/14/2001	NAFTA–4,651	Wax disc.
Grote Industries (Co.)	Madison, IN	03/12/2001	NAFTA–4,652	Electrical wiring harnesses.
L'Koral (Wkrs)	Vernon, CA	03/14/2001	NAFTA–4,653	Double knit and single knit material.
Fleischmann's Yeast—Burns Phillip Food (Co.).	Oakland, CA	03/14/2001	NAFTA–4,654	Dry yeast products.
Busy B's Cedar (Wkrs)	Priest River, ID	02/14/2001	NAFTA–4,655	Lumber processing.
Motorola Personal Communications Sectors (Wkrs).	Harvard, IL	02/13/2001	NAFTA–4,656	Cellular phones.
Pelton Casteel (Wkrs)	Milwaukee, WI	03/13/2001	NAFTA–4,657	Steel castings.
Racewear Designs (Co.)	El Cajon, CA	03/13/2001	NAFTA–4,658	Jackets and crew shirts.
Kasle Steel (IBT)	Dearborn, MI	03/01/2001	NAFTA–4,659	Coiled and roll steel for auto.
Rayovac Corporation (Wkrs)	Fennimore, WI	03/11/2001	NAFTA–4,660	Alkaline batteries.
Sunshine Precious Metals (Wkrs)	Kellogg, ID	03/16/2001	NAFTA–4,661	Concentrated silver ore.
Federal Mogul (Wkrs)	Malden, MO	03/16/2001	NAFTA–4,662	Aluminum molds and castings.
Bloomsburg Mills (Co.)	Bloomsburg, PA	03/19/2001	NAFTA–4,663	Women's outwear, blouse etc.
Sterling Fibers (Co.)	Pace, FL	03/15/2001	NAFTA–4,664	Acrylic fiber, textile goods.
Worthington Steel (The) (USWA)	Malvern, PA	03/12/2001	NAFTA–4,665	Hot and cold rolled strip steel products.
Nikki Knits (Wkrs)	Goldsboro, NC	03/20/2001	NAFTA–4,666	Girls clothing.
Ten Cate Enbi (Wkrs)	West Henrietta, NY	03/19/2001	NAFTA–4,667	Rubber rollers.
Johnson and Johnson Medical (Wkrs)	El Paso, TX	03/26/2001	NAFTA–4,668	Disposable surgical products.
VF Imagewear (West) (Co.)	Columbus, MS	03/12/2001	NAFTA–4,669	Industrial work pants.
Mayfair Mills (Wkrs)	Starr, SC	03/26/2001	NAFTA–4,670	Greige fabric.
Weyerhaeuser Company (IAMW)	Longview, WA	03/26/2001	NAFTA–4,671	Soft wood dimension lumber.
Bakka Cororation (Wkrs)	El Paso, TX	03/26/2001	NAFTA–4,672	Sewed sporting clothing.
Maxi Switch (Co.)	Tucson, AZ	03/26/2001	NAFTA–4,673	Circuit boards.
SLI Product Lighting (Wkrs)	Mullins, SC	03/26/2001	NAFTA–4,674	Light fixtures.
Specialty Plastic Products (Wkrs)	Jefferson City, TN	03/26/2001	NAFTA–4,675	Child car seat covers.
Dye Works (Co.)	Trenton, NJ	03/26/2001	NAFTA–4,676	Wet processing of garments.
Accuride International (Co.)	Charlotte, NC	03/23/2001	NAFTA–4,677	Metal drawer slides.
Color Edge (Wkrs)	Sturgis, MI	03/15/2001	NAFTA–4,678	Plastic.
Williamson Dickie (Wkrs)	Eagle Pass, TX	03/23/2001	NAFTA–4,679	Jeans.
Thermoplastics Operations—Textron (IUE)	Mishawaka, IN	03/16/2001	NAFTA–4,680	Plastic automotive parts.
Hart Schaffner and marx (UNITE)	Rochester, IN	03/19/2001	NAFTA–4,681	Trousers/slacks, suits, jackets.
ISP Mineral Products (USWA)	Pembine, WI	03/19/2001	NAFTA–4,682	Roffing grapules.
National Steel (Wkrs)	Portage, IN	03/20/2001	NAFTA–4,683	Steel production.
Crane Pumps and Sysem (Wkrs)	Piqua, OH	03/20/2001	NAFTA–4,684	Splitcase casting.
Sonoco (Wkrs)	Shepherd, MI	03/01/2001	NAFTA–4,685	Spiral tubes for tape.
Thomas and Betts (Co.)	St. Matthews, SC	03/20/2001	NAFTA–4,686	Emergency lighting.
Avaya (IBEW)	Shreveport, LA	03/02/2001	NAFTA–4,687	Communication equipment.
Columbia Forest Products (Co.)	Klamath Falls, OR	03/20/2001	NAFTA–4,688	Softwood veneer.
Cajun Bag and Supply (Co.)	Rayne, LA	03/23/2001	NAFTA–4,689	Containers.
Rue Logging, Inc. (Comp.)	South Fork, CO	03/20/2001	NAFTA–4,690	Cut Logs.
Intex Corporation (Co.)	Greensboro, NC	03/28/2001	NAFTA–4,691	Knit Shirts.
Textile Sales And Repair (Co.)	Gastonia, NC	03/27/2001	NAFTA–4,692	Sales of textile & machinery.
Thalman Manufacturing (UNITE)	Hempstead, NY	03/27/2001	NAFTA–4,693	Neckties.
Omniglow Corporation (Co.)	West Springfield, MA	03/19/2001	NAFTA–4,694	Chemiluminescent products.
Ridgeview—Leisure Sock (Wkrs)	Newton, NC	03/28/2001	NAFTA–4,695	Socks.
Americo Group (Wkrs)	New York, NY	03/28/2001	NAFTA–4,696	Short's clothing.
Coastal Machinery (IAMAW)	Portland, OR	03/27/2001	NAFTA–4,697	Planers and feed-tables.
Cummins Power Generation (Co.)	St. Peter, MN	03/29/2001	NAFTA–4,698	Generators, PC board assembly.
American Steel Foundries—Keystone (USWA)	East Chicago, IN	03/26/2001	NAFTA–4,699	Rail car.
Conexant (Wkrs)	El Paso, TX	03/29/2001	NAFTA–4,700	Circuit boards.

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Detroit Tool (Wkrs)	Lebanon, MO	03/29/2001	NAFTA–4,701	Tooling and dies.
Renfro Hosiery (Wkrs)	Mr. Airy, NC	03/20/2001	NAFTA–4,702	Socks.
Labanon Apparel (Co.)	Lebanon, VA	03/30/2001	NAFTA–4,703	Health care uniforms.
Superior Lumber (Wkrs)	Glendale, OR	03/26/2001	NAFTA–4,704	Plywood.
Troy Design (Wkrs)	Lansing, MI	03/13/2001	NAFTA–4,705	Design and engineering.
Form Tech Enterprise—Quick Plastics (Wkrs)	Orwigsburg, PA	03/30/2001	NAFTA–4,706	Plastic profile extrusion.
Wabash Alloys (Wkrs)	Oak Creek, WI	03/30/2001	NAFTA–4,707	Alloys.
General Automotive (Co.)	Franklin, WI	03/30/2001	NAFTA–4,708	Fuel Injection parts.
Orion Bus Industries (UAW)	Oriskany, NY	03/30/2001	NAFTA–4,709	Interior bus components.
Textron Fastening Systems (Co.)	Brooklyn, MI	04/03/2001	NAFTA–4,710	Automotive fasteners.
Snuffy's Pet Products (Co.)	McConnellsburg, PA	04/03/2001	NAFTA–4,711	Dog treats.
Lexington Fabrics (Co.)	Florence, AL	04/03/2001	NAFTA–4,712	Knitted sportwear.
Gateway Company (Wkrs)	North Sioux City, SD	04/02/2001	NAFTA–4,713	Personal computers.
Talon Automotive Group, (Wkrs)	New Baltimore, MI	03/30/2001	NAFTA–4,714	Metal stamping.
Fox River Paper (USWA)	Vicksburg, MI	03/28/2001	NAFTA–4,715	Text and cover paper.
Motor Products (UAW)	Owasso, MI	03/01/2001	NAFTA–4,716	Fractional horsepower motors.
Omicron Industries (Co.)	El Paso, TX	04/05/2001	NAFTA–4,717	Pumice stone.
Basset Furniture Industries (Co.)	Bassett, VA	04/05/2001	NAFTA–4,718	Wood furniture.
Wolverine Roof Truss (Co.)	Milan, MI	03/21/2001	NAFTA–4,719	Wooden roof trusses.
Naturipe Berry Growers (IBT)	Watsonville, CA	03/28/2001	NAFTA–4,720	Process strawberry products.
Atofina Chemicals (Wkrs)	Portland, OR	04/04/2001	NAFTA–4,721	Chemicals.
Fashions International (UNITE)	Scranton, PA	04/04/2001	NAFTA–4,722	Garments.
Taylor Lumber and Treating (IAM)	Sheridan, OR	04/03/2001	NAFTA–4,723	Lumber.
William Carter (The) (Wkrs)	Harlingen, TX	04/04/2001	NAFTA–4,724	Sleepwear and Playwears.
Lyons Falls Pulp and Paper (PACE)	Lyons Falls, NY	03/30/2001	NAFTA–4,725	Paper.
Boise Cascade (UBCA)	Emmett, ID	04/03/2001	NAFTA–4,726	Lumber.
Ludlow Building Products (IAW)	Adrian, MI	04/03/2001	NAFTA–4,727	Laminated fibre board.
Crawford Furniture (Co.)	New Bethlehem, PA	04/03/2001	NAFTA–4,728	Dressers, chests, night stamp.
Nooter Corp. (Comp.)	St. Louis, MO	04/09/2001	NAFTA–4,729	Plate Steel Fabrication.
Stainless Tank Equipment	Cottage Grove, WI	04/09/2001	NAFTA–4,730	Stainless Tanks.
Meridian Automotive Systems	Lapeer, MI	04/09/2001	NAFTA–4,731	Supply Plastic Composite to GM.
Peerless Pattern Works (Wkrs)	Portland, OR	04/05/2001	NAFTA–4,732	Tooling to Mtg Aluminum Castings.
Boston Scientific Corp (Comp)	Maple Grove, MN	04/09/2001	NAFTA–4,733	Diagnostics, Guide Catheters.
Pleasant River Lumber Co (Wkrs)	Dover Foxcroft, ME	04/09/2001	NAFTA–4,734	Framing Lumber, Dimension Lumber.
SCI Systems, Inc. (Comp)	Augusta, ME	04/09/2001	NAFTA–4,735	Electronic Components.
Quadion Corp. (Comp)	Minneapolis, MN	04/06/2001	NAFTA–4,736	Rubber Products.
Badger Sportwear, Inc (Comp)	Fairmont, NC	04/05/2001	NAFTA–4,737	Cotton Athletic Shirts and Shorts.
C–Cor.Net (Wkrs)	Tipton, PA	04/05/2001	NAFTA–4,738	Cable Television Amplifiers.
Mattel (Comp)	Murray, KY	04/06/2001	NAFTA–4,739	Children's Products.
Travis Knits (Wkrs)	Cherrysville, NC	04/06/2001	NAFTA–4,740	Textile Fabric—Dye and Finish.
Berlog, Inc. (Comp.)	Warren, OR	04/04/2001	NAFTA–4,741	Logging.
Grove Worldwide LLC (Wkrs)	Shady Grove, PA	04/05/2001	NAFTA–4,742	Aerial Work Platforms.
SMTC Manufacturing (Comp)	Thornton, CO	04/06/2001	NAFTA–4,743	Printed Circuit Boards.
White Consolidated Industries (Comp)	El Paso, TX	04/10/2001	NAFTA–4,744	Upright Vacuum Cleaners.
Deferiet Paper Co	Deferiet, NY	03/30/2001	NAFTA–4,745	Groundwood Specialty Paper.
Small Woodland (Co.)	Eagle Point, OR	04/11/2001	NAFTA–4,746	Logs.
Thermodisc (Co.)	El Paso, TX	04/12/2001	NAFTA–4,747	Fabricated molded parts.
Antech Corporation (Wkrs)	El Paso, TX	04/12/2001	NAFTA–4,748	Generators, power machines.
Hammond and Associates (Co.)	Lexington, AL	04/12/2001	NAFTA–4,749	T-shirts.
H.H. Fessler Knitting (Wkrs)	Shoemakersville, PA	04/10/2001	NAFTA–4,750	Knit apparel.
Western Electronics (Wkrs)	Eugene, OR	04/10/2001	NAFTA–4,751	Scanner cabies.
Mar Bax Shirt (Co.)	Gassville, AR	03/16/2001	NAFTA–4,752	Men's woven dress shirts.
Rubbermaid Cleaning Products (Co.)	Greenville, NC	04/10/2001	NAFTA–4,753	Toilet bowl brushes.
Fontaine Fifth Wheel, (Co.)	Rocky Mount, NC	04/10/2001	NAFTA–4,754	Wheels.
Daimler Chrysler (Wkrs)	Auburn Hills, MI	03/20/2001	NAFTA–4,755	Vehicles.
Butwin—Rennoc Corp. (Wkrs)	St. Paul, MN	04/12/2001	NAFTA–4,756	Men's and boy's clothes.
Seal Glove (Co.)	Millenburg, PA	04/10/2001	NAFTA–4,757	Industrial work gloves.
Exide Technologies (Wkrs)	Dunmore, PA	04/05/2001	NAFTA–4,758	Automotive batteries.
Thomson Saginaw (UAW)	Saginaw, MI	04/12/2001	NAFTA–4,759	Linear race shaft.
Oxford Automotive (UAW)	Alma, MI	04/16/2001	NAFTA–4,760	Metal automotive stamping parts.

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Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Sierra Pine (IAM)	Springfield, OR	04/12/2001	NAFTA–4,761	Particle board.
Cendont (Wkrs)	Great Fall, MI	04/09/2001	NAFTA–4,762	Call center.
C.M.S. Hartzell (IBT)	St. Paul, MN	04/13/2001	NAFTA–4,763	Die casting.
Solon Manufacturing (Co.)	Rhinelander, WI	04/12/2001	NAFTA–4,764	Ice cream sticks and corn dog sticks.
Techalloy (Co.)	Florence, MA	04/11/2001	NAFTA–4,765	Fine wire.
Fleetguard Nelson (Co.)	Neillsville, WI	04/11/2001	NAFTA–4,766	Exhaust filtration products.
Percision Twist Drill (Wkrs)	Crystal Lake, IL	04/11/2001	NAFTA–4,767	Drills.
Trumark (UAW)	Lansing, MI	04/17/2001	NAFTA–4,768	Metal stamping.

[FR Doc. 01–10945 Filed 5–1–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–4389]

Raider Apparel Inc. Alma, Georgia; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on December 14, 2000 in response to a petition filed on behalf of workers at Raider Apparel Inc., Alma, Georgia.

An active certification covering the petitioning group of workers remains in effect (NAFTA–3103). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 23rd day of April, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–10943 Filed 5–1–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0103 (2001)]

Ionizing Radiation Standard; Extension of the Office of Management and Budget's (OMB) Approval of the Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning its proposal to decrease the existing burden-hour estimates, and to extend OMB approval of the collection-of-information requirements, of the Ionizing Radiation Standard (29 CFR 1910.1096).

DATES: Submit written comments on or before July 2, 2001.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0103 (2001), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Todd Owen, Directorate of Policy, OSHA, U.S. Department of Labor, Room N–3641, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2444. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified in the Ionizing Radiation Standard is available for inspection and copying in the Docket Office, or by requesting a copy from Todd Owen at (202) 693–2444. For electronic copies of the ICR contact OSHA on the Internet at http://www.osha.gov/comp-links.html and select "Information Collection Requests."

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and cost) is minimal, collection instruments are understandable, and OSHA's estimate of the information-collection burden is correct.

The information-collection requirements mandated by the Ionizing Radiation Standard (§ 1910.1096; hereafter, "Standard") protect employees from the adverse health effects that may result from overexposure to ionizing radiation. These requirements specify that employers must telephone OSHA if they expose employees to radiation above the level defined by the Standard, send written reports of radiation overexposure to OSHA, maintain employee exposure records, and furnish these records to employees on request.

II. Special Issues for Comment

OSHA has particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and cost) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

III. Proposed Actions

OSHA proposes to decrease the existing burden-hour estimate, and to extend OMB approval, of the collection-of-information requirements in the Standard. In this regard, the Agency is proposing to decrease the current burden-hour estimate from 42,491 hours to 27,642 hours, a total reduction of 14,849 hours. The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of these information-collection requirements.

Type of Review: Extension of currently approved information-collection requirements.

Title: Ionizing Radiation (29 CFR 1910.1096).

OMB Number: 1218–0103.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local or tribal governments.

Number of Respondents: 12,113.

Frequency of Response: Occasionally.

Average Time per Response: Time per response varies from 5 minutes (.08 hour) to maintain radiation-exposure records to 15 minutes (.25 hour) for employers to prepare a written report of employee overexposure for submission to OSHA.

Estimated Total Burden Hours: 27,642 hours.

Estimated Cost (Operation and Maintenance): $1,719,720.

IV. Authority and Signature

R. Davis Layne, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 3–2000 (65 FR 50017).

Signed at Washington, DC on April 27th, 2001.

R. Davis Layne,

Acting Assistant Secretary of Labor.

[FR Doc. 01–11022 Filed 5–1–01; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0198 (2001)]

Logging Operations Standard; Extension of the Office of Management and Budget's (OMB) Approval of an Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning its proposal to decrease the existing burden-hour estimates, and to extend OMB approval of the collection-of-information requirements, of the Logging Operations Standard (29 CFR 1910.266).

DATES: Submit written comments on or before July 2, 2001.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0198 (2001), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to (202) 693—1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs. OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified in the Logging Operations Standard is available for inspection and copying in the Docket Office, or by requesting a copy from Theda Kenney at (202) 693–2222. For electronic copies of the ICR contact OSHA on the Internet at http://www.osha.gov/comp-links.html and select "Information Collection Requests."

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and cost) is minimal, collection instruments are understandable, and OSHA's estimate of the information-collection burden is correct.

Paragraph (i)(1) of the Logging Operations Standard (§ 1910.266; hereafter, "Standard") requires employers to provide training for each employee, including supervisors. To meet this requirement, employers must conduct the training at the frequencies specified by paragraph (i)(2). Paragraph (i)(3) requires that an employee's training must consist of the following elements: Safe work practices, including the use, operation, and maintenance of tools, machines, and vehicles the employee uses or operates, as well as procedures, practices, and requirements of the employer's worksite; recognition and control of health and safety hazards associated with the employee's specific work tasks and logging operations in general; and the requirements of the Standard. Under paragraph (i)(7), employers must assure that every employee, including supervisors, receives first-aid and CPR training; this training must, at a minimum, conform to the requirements listed in Appendix B of the Standard.

Paragraph (i)(10)(i) specifies that employers must certify the training provided to employees. This certification must be in writing and provide the following information: The name or identifier of the employee; the date(s) of the training; and either the signature of the employer or the individual who conducted the training. Paragraph (i)(10)(ii) requires employers to maintain the most recent certification for training completed by an employee.

Training employees and supervisors in safe work practices and to recognize and control the safety and health hazards associated with their work tasks and overall logging operations enables them to avoid or prevent exposure to these hazards. In addition, the requirement to train every employee and supervisor in first-aid and CPR optimizes their availability to administer emergency treatment to employees injured during logging operations; universal training is critical because logging operations occur at isolated locations with employees and supervisors distributed over large work areas.

Establishing and maintaining written certification of the training provided to each employee assures the employer that every employee receives the training specified by the Standard, and at the required frequencies. In addition, these records provide the most efficient means for an OSHA compliance officer

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to determine whether or not an employer preformed the required training at the necessary and appropriate frequencies.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and cost) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

III. Proposed Actions

OSHA proposes to decrease the existing burden-hour estimate, and to extend OMB approval, of the collection-of-information requirements specified by the Standard. In this regard, the Agency is proposing to decrease the current burden-hour estimate from 73,106 hours 3,192 hours, a total reduction of 69,914 hours. The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of this information-collection requirement.

Type of Review: Extension of currently approved information-collection requirement.

Title: Logging Operations (29 CFR 1910.266).

OMB Number: 1218–0198.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local or tribal governments.

Number of Respondents: 14,000.

Frequency of Response: Annually; occasionally.

Average Time per Response: Either 2 minutes (0.03 hours) or 5 minutes (.08 hours) depending on type of training.

Estimated Total Burden Hours: 2,940.

Estimated Cost (Operation and Maintenance): $0.

IV. Authority and Signature

R. Davis Layne, Acting Assistant Secretary of Labor and Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 3–2000 (65 FR 50017).

Signed at Washington, DC on April 27th, 2001.

R. Davis Layne,

Acting Assistant Secretary of Labor.

[FR Doc. 01–11023 Filed 5–1–01; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0099 (2001)]

Respiratory Protection Standard; Extension of the Office of Management and Budget's (OMB) Approval of the Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning its proposal to decrease the existing burden-hour estimates, and to extend OMB approval of the collection-of-information requirements, of the Respiratory Protection Standard (29 CFR 1910.134).

DATES: Submit written comments on or before July 2, 2001.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0099 (2001), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Todd Owen, Directorate of Policy, OSHA, U.S. Department of Labor, Room N–3641, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2444. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified in the Respiratory Protection Standard is available for inspection and copying in the Docket Office, or by requesting a copy from Todd Owen at (202) 693–2444. For electronic copies of the ICR contact OSHA on the Internet at http://www.osha.gov/comp-links. html, and select "Information Collection Requests."

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and cost) is minimal, collection instruments are understandable, and OSHA's estimate of the information-collection burden is correct.

The Respiratory Protection Standard's (§ 1910.134; hereafter, "Standard") information-collection requirements require employers to: Develop a written respirator program; conduct employee medical evaluations and provide follow-up medical evaluations to determine the employee's ability to use a respirator; provide the physician or other licensed health care professional with information about the employee's respirator and the conditions under which the employee will use the respirator; and administer fit-tests for employees who will use negative or positive-pressure, tight-fitting facepieces. In addition, employers must ensure that employees store emergency-use respirators in compartments clearly marked as containing emergency-use respirators. For respirators maintained for emergency use, employers must label or tag the respirator with a certificate stating the date of inspection, the name of the individual who made the inspection, the findings of the inspection, required remedial action, and the identity of the respirator.

The Standard also requires employers to ensure that cylinders used to supply breathing air to respirators have a certificate of analysis from the supplier stating that the breathing air meets the requirements for Type 1—Grade D breathing air; such certification assures employers that the purchased breathing air is safe. Compressors used to supply breathing air to respirators must have a tag containing the most recent change date and the signature of the individual authorized by the employer to perform the change. Employers must maintain this tag at the compressor. These tags provide assurance that the compressors are functioning properly.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;

- The accuracy of OSHA's estimate of the burden (time and cost) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

III. Proposed Actions

OSHA is requesting to decrease the existing burden-hour estimate, and to extend OMB approval, of the collection-of-information requirements in the Standard. In this regard, the Agency is requesting to decrease the current burden-hour estimate from 8,926,558 hours to 6,502,811 hours, a total reduction of 2,423,747 hours. The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of this information-collection requirements.

Type of Review: Extension of currently approved information-collection requirements.

Title: Respiratory Protection (29 CFR 1910.134).

OMB Number: 1218–0099.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local or tribal governments.

Number of Respondents: 1,300,000.

Frequency of Response: Annually; monthly; occasionally.

Average Time per Response: Time per response varied from 8 hours for large facilities to develop a written respiratory program to 5 minutes for employers to maintain employee medical-evaluation records.

Estimated Total Burden Hours: 6,502,811 hours.

Estimated Cost (Operation and Maintenance): $72,900,680.

IV. Authority and Signature

R. Davis Layne, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 3–2000 (65 FR 50017).

Signed at Washington, DC on April 27th, 2001.

R. Davis Layne,

Acting Assistant Secretary of Labor.

[FR Doc. 01–11024 Filed 5–1–01; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL INDIAN GAMING COMMISSION

Paperwork Reduction Act

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: The National Indian Gaming Commission (NIGC), in accordance with the Paperwork Reduction Act of 1995, intends to submit to the Office of Management and Budget (OMB) a request to review and extend approval for information collection activities prescribed by the following NIGC regulations: (1) Annual Fees; (2) Issuance of Certificates of Self Regulation to Tribes for Class II Gaming. As to each information collection activity, the NIGC solicits public comment on: the need for the information, the practical utility of the information and whether the information is necessary for the proper performance of NIGC functions; the accuracy of the burden estimate; and ways that the NIGC might minimize this burden including the use of automated collection techniques or other forms of information technology. When providing comment, a respondent should specify the particular collection activity to which the comment pertains.

DATES AND ADDRESSES: Comments for the NIGC's evaluation of the information collection activities and its request to OMB to extend or approve the information collections must be received by June 29, 2001. Send comments to Ms. Cindy Altimus, National Indian Gaming Commission, 1441 L Street, NW, Suite 9100, Washington, DC 20005. The NIGC regulations to which the information collections pertain are available on the NIGC website, www.nigc.gov, by written request to the NIGC (Attn: Ms. Cindy Altimus), 1441 L Street NW, Suite 9100, Washington, DC, 20005, or by telephone request at (202) 632–7003. There are no toll-free numbers. All other requests for information should be submitted to Ms. Altimus at the above address for the NIGC.

SUPPLEMENTARY INFORMATION:

Title: Annual Fees Payable by Indian Gaming Operations.

OMB Number: 3141–0007.

Abstract: The Indian Gaming Regulatory Act, 25 U.S.C. § 2701 et seq., authorizes the NIGC to establish a schedule of fees to be paid to the NIGC by each gaming operation under the jurisdiction of the NIGC. Fees are computed using rates set by the NIGC and the assessable gross revenues of each gaming operation. The total of all fees assessed annually cannot exceed $8,000,000. Under its implementing regulation for the fee payment program, 25 C.F.R. Part 514, the NIGC relies on a quarterly statement of gross gaming revenues provided by each gaming operation that is subject to the fee requirement. The required information is needed for the NIGC to both set and adjust fee rates and to support the computation of fees paid by each gaming operation.

Respondents: Indian tribal gaming operations.

Estimated Number of Respondents: 320.

Estimated Annual Responses: 1280.

Estimated Annual Burden Hours per Respondent: 8.

Estimated Total Annual Burden on Respondents: 10,240 hours.

Title: Petitions for Certificates of Self-Regulation for Class II Gaming Operations.

OMB Number: 3141–0008.

Abstract: The Indian Gaming Regulatory Act, 25 U.S.C. § 2701 et seq., allows any Indian tribe that has conducted class II gaming for at least three years to petition the NIGC for a certificate of self-regulation for its class II gaming operations. The NIGC will issue the certificate if it determines from available information that the tribe has conducted its gaming activity in a manner which has resulted in an effective and honest accounting of all revenues, a reputation for safe, fair, and honest operation of the activity, and an enterprise free of evidence of criminal or dishonest activity. The tribe must also have adopted and implemented proper accounting, licensing, and enforcement systems and conducted the gaming operation on a fiscally and economically sound basis. The implementing regulation of the NIGC, 25 CFR Part 518, requires a tribe interested in receiving the certificate to file a petition with the NIGC describing the tribe's gaming operations, its regulatory process, its tribal revenue allocation plan, and its accounting and record keeping systems for the gaming operation. The tribe must also provide copies of various documents in support of the petition. Submission of the petition and supporting documentation is voluntary. The NIGC will use the information submitted by the respondent tribe in making a determination on whether to issue the certificate of self-regulation.

Respondents: Indian tribes conducting class II gaming.

Estimated Number of Potential Respondents: 200.

Estimated Annual Voluntary Responses: 5.

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Estimated Annual Burden Per Voluntary Respondent: 30 hours.

Estimated Total Annual Burden on Respondents: 150 hours.

Jacqueline Agtuca,

Chief of Staff.

[FR Doc. 01–10917 Filed 5–1–01; 8:45 am]

BILLING CODE 7565–01–P

NORTHEAST DAIRY COMPACT COMMISSION

Notice of Meeting

AGENCY: Northeast Dairy Compact Commission.

ACTION: Notice of meeting.

SUMMARY: The Compact Commission will hold its regular monthly meeting to consider matters relating to administration and enforcement of the price regulation. This meeting will be held in Rhode Island, continuing the Commission's program of holding a meeting in each of the Compact states. In addition to receiving reports and recommendations of its standing Committees, the Commission will receive a number of informational reports, including reports on the operation of the wholesale and retail markets and about the impact of the price regulation on the Rhode Island WIC Program.

DATES: The meeting will begin at 10 a.m. on Friday, May 11, 2001.

ADDRESSES: The meeting will be held at the Newport Marriott Hotel, 25 America's Cup Avenue, Newport, Rhode Island.

FOR FURTHER INFORMATION CONTACT: Daniel Smith, Executive Director, Northeast Dairy Compact Commission, 64 Main Street, Room 21, Montpelier, VT 05602. Telephone (802) 229–1941.

Authority: 7 U.S.C. 7256.

Dated: April 25, 2001.

Daniel Smith,

Executive Director.

[FR Doc. 01–10888 Filed 5–1–01; 8:45 am]

BILLING CODE 1650–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–338 and 50–339]

Virginia Electric and Power Company, North Anna Power Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from the requirements of Title 10 of the Code of Federal Regulations (10 CFR) part 50, appendix G, for Facility Operating License Nos. NPF–4 and NPF–7, issued to Virginia Electric and Power Company (the licensee), for operation of the North Anna Power Station, Units 1 and 2, located in Louisa County, Virginia.

Environmental Assessment

Identification of the Proposed Action

10 CFR Part 50, Appendix G, requires that the pressure-temperature (P–T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak testing conditions. Specifically, 10 CFR part 50, Appendix G, states that "[t]he appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions." Appendix G of 10 CFR part 50 specifies that the requirements for these limits are contained in the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code), Section XI, Appendix G.

To address provisions of an amendment to the Technical Specifications P–T limits and low-temperature overpressure protection (LTOP) system setpoints, the licensee requested in its submittal dated June 22, 2000, as supplemented on January 4, February 14, March 13, and March 22, 2001, that the NRC staff exempt North Anna Power Station from the requirements of 10 CFR Part 50, Appendix G, to allow the use of ASME Code Case N–641.

Code Case N–641 permits the use of an alternate reference fracture toughness (K_{IC} fracture toughness curve instead of the K_{IA} fracture toughness curve) for reactor vessel materials in determining the P–T limits, LTOP system setpoints and T_{enable}, and provides for plant-specific evaluation of T_{enable}. Since the K_{IC} fracture toughness curve shown in ASME Section XI, Appendix A, Figure A–2200–1 (the K_{IC} fracture toughness curve) provides greater allowable fracture toughness than the corresponding K_{Ia} fracture toughness curve of ASME Section XI, Appendix G, Figure G–2210–1 (the K_{Ia} fracture toughness curve), and a plant-specific evaluation of T_{enable} would give lower values of T_{enable} than use of a generic bounding evaluation for T_{enable}, use of Code Case N–641 for establishing the P–T limits, LTOP system setpoints and T_{enable} would be less conservative than the methodology currently endorsed by 10 CFR Part 50, Appendix G. Although the use of the K_{IC} fracture toughness curve in ASME Code Case N–641 was recently incorporated into Appendix G to Section XI of the ASME Code, an exemption is still needed because 10 CFR Part 50, Appendix G requires a licensee's analysis to use an edition and addenda of Section XI of the ASME Code incorporated by reference into 10 CFR Part 50, section 50.55a, i.e., the editions through 1995 and addenda through the 1996 addenda (which do not include the provisions of Code Case N–641). Therefore, an exemption to apply the Code case is required by 10 CFR Part 50, section 50.60. The proposed action is in accordance with the licensee's application for exemption dated June 22, 2000, as supplemented by letters dated January 4, February 14, March 13, and March 22, 2001.

The Need for the Proposed Action

ASME Code Case N–641 is needed to revise the method used to determine the reactor coolant system (RCS) P–T limits, LTOP setpoints, and T_{enable}.

The purpose of 10 CFR part 50, Section 50.60(a), and 10 CFR part 50, appendix G, is to protect the integrity of the reactor coolant pressure boundary in nuclear power plants. This is accomplished through these regulations that, in part, specify fracture toughness requirements for ferritic materials of the reactor coolant pressure boundary. Pursuant to 10 CFR part 50, appendix G, it is required that P–T limits for the RCS be at least as conservative as those obtained by applying the methodology of the ASME Code, Section XI, Appendix G.

Current overpressure protection system (OPPS) setpoints produce operational constraints by limiting the P–T range available to the operator to heat up or cool down the plant. The operating window through which the operator heats up and cools down the RCS becomes more restrictive with continued reactor vessel service. Reducing this operating window could potentially have an adverse safety impact by increasing the possibility of inadvertent OPPS actuation due to pressure surges associated with normal plant evolutions such as reactor coolant pump start and swapping operating charging pumps with the RCS in a water-solid condition. The impact on the P–T limits and OPPS setpoints has been evaluated for an increased service period for operation to 32.3 effective full-power years (EFPYs) for Unit 1 and 34.3 EFPYs for Unit 2, based on ASME Code, Section XI, Appendix G requirements. The results indicate that these OPPS setpoints would significantly restrict the ability to perform plant heatup and cooldown, create an unnecessary burden to plant operations, and challenge control of plant evolutions required with OPPS enabled. Continued operation of North Anna Units 1 and 2 with P–T curves developed to satisfy ASME Code, Section XI, Appendix G, requirements without the relief provided by ASME Code Case N–641 would unnecessarily restrict the P–T operating window, especially at low temperature conditions.

Use of the K_{Ic} curve in determining the lower bound fracture toughness of RPV steels is more technically correct than use of the K_{Ia} curve since the rate of loading during a heatup or cooldown is slow and is more representative of a static condition than a dynamic condition. The K_{Ic} curve appropriately implements the use of static initiation fracture toughness behavior to evaluate the controlled heatup and cooldown process of a reactor vessel. The staff has required use of the conservatism of the K_{Ia} curve since 1974, when the curve was adopted by the ASME Code. This conservatism was initially necessary due to the limited knowledge of the fracture toughness of RPV materials at that time. Since 1974, additional knowledge has been gained about RPV materials, which demonstrates that the lower bound on fracture toughness provided by the K_{Ia} curve greatly exceeds the margin of safety required, and that the K_{IC} curve is sufficiently conservative, to protect the public health and safety from potential RPV failure. Application of ASME Code Case N–641 will provide results that are sufficiently conservative to ensure the integrity of the reactor coolant pressure boundary while providing P–T curves that are not overly restrictive. Implementation of the proposed P–T curves, as allowed by ASME Code Case N–641, does not significantly reduce the margin of safety.

In the associated exemption, the NRC staff has determined that, pursuant to 10 CFR part 50, section 50.12(a)(2)(ii), the underlying purpose of the regulation will continue to be served by the implementation of ASME Code Case N–641.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the proposed action provides adequate margin of safety against brittle failure of the reactor coolant pressure boundary. The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the North Anna Power Station, Units 1 and 2, dated April 1973.

Agencies and Persons Consulted

In accordance with its stated policy, on April 2, 2001, the staff consulted with the Virginia State official, Mr. J. Dekrafft of the Radiological Health Program of the Virginia Department of Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Signficant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated June 22, 2000, as supplemented by letters dated January 4, February 14, March 13, and March 22, 2001. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 26th day of April 2001.

For the Nuclear Regulatory Commission.

Gordon E. Edison,

Senior Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–10965 Filed 5–1–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–482]

Wolf Creek Nuclear Operating Corporation, Wolf Creek Generating Station; Notice of Consideration of Approval of Application Regarding Proposed Corporate Restructuring of Kansas City Power & Light Company and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an order under 10 CFR 50.80 approving the indirect transfer of Facility Operating License No. NPF–42 for Wolf Creek Generating Station (WCGS) as held by Kansas City Power & Light Company (KCPL), one of three joint owners of WCGS, and Wolf Creek Nuclear Operating Corporation, the operator of the facility, to a new holding company for KCPL, to the extent such indirect transfer would occur in connection with a proposed restructuring of KCPL. The facility is located in Coffey County, Kansas.

According to the February 20, 2001, application filed by KCPL, which was supplemented by letters dated February 27, March 5, and March 8, 2001, from counsel for KCPL, the proposed restructuring of KCPL encompasses the formation of a newly formed holding company as yet unnamed (*"HoldingCo"*). Upon the proposed restructuring, KCPL will cease to be publicly-traded and become a wholly-owned subsidiary of *HoldingCo*, but it will retain ownership of its regulated electric power generation, transmission, and distribution assets, including its interests in WCGS and Wolf Creek Nuclear Operating Corporation (WCNOC). No direct transfer of the license as now held by KCPL and WCNOC to *HoldingCo* is being proposed.

WCNOC would remain as the managing agent for the joint owner licensees (KCPL, Kansas Gas and Electric Company, and Kansas Electric

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Power Cooperative, Inc.) of the facility and would continue to have exclusive responsibility for the management, operation, and maintenance of WCGS as the non-owner operator licensee. The application does not propose a change in the rights, obligations, or interests of the licensees of WCGS. In addition, no physical changes to WCGS or operational changes are being proposed.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the underlying transaction that will effectuate the indirect transfer will not affect the qualifications of the holder of the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By May 22, 2001, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon counsel for KCPL, Robert W. Warnement, Skadden, Arps, Slate, Meagher & Flom LLP, 1440 New York Avenue, NW., Washington, DC 20005–2111; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: *ogclt@NRC.GOV*); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by June 1, 2001, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the license transfer application filed by KCPL dated February 20, 2001, and the supplemental letters dated February 27, March 5, and March 8, 2001, from counsel for KCPL, which are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov*).

Dated at Rockville, Maryland, this 26th day of April 2001.

For the Nuclear Regulatory Commission

Jack N. Donohew,

Senior Project Manager, Section 2, Project Directorate IV and Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–10966 Filed 5–1–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste

Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 126th meeting on May 15–17, 2001, at 11545 Rockville Pike, Rockville, Maryland, Room T–2B3.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Tuesday, May 15, 2001

A. *8:30–10:15 a.m.: Opening Statement/ Planning and Procedures* (Open)—The Chairman will open the meeting with brief opening remarks. The Committee will then review items under consideration at this meeting and consider topics proposed for future ACNW meetings.

B. *10:30–11:30 a.m. and 1:30–2:30 p.m.: Key Technical Issues (KTIs)—Vertical Slice Report* (Open)—The Committee members will present a progress report on their assigned KTIs.

C. *2:30–3:30 p.m.: Break and Preparation of Draft ACNW Reports* (Open)—Cognizant ACNW members will prepare draft reports, as needed, for consideration by the full Committee.

D. *3:30–5:30 p.m.: Discussion of Proposed ACNW Reports* (Open)—The Committee will discuss proposed ACNW reports on Entombment, Proposed Revisions to 10 CFR Part 71, High Level Waste Chemistry and the Staff Requirements Memorandum (SRM) on the March 22, 2001, ACNW Commission briefing.

Wednesday, May 16, 2001

E. *8:30–8:40 a.m.: Opening Remarks by the ACNW Chairman* (Open)—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

F. *8:40–10:15 a.m.: Overview of Sequoyah Fuels* (Open)—The Committee will receive an information briefing from the NRC staff on the current status of activities at the Sequoyah Fuels Corporation Facility.

G. *10:30–12 Noon.: Yucca Mountain Draft Environmental Impact Statement (DEIS)* (tentative) (Open)—The Committee will receive an update from a DOE representative on the DEIS for the proposed high level waste repository at Yucca Mountain, Nevada.

H. *1:00–2 p.m.: Supplemental Draft Environmental Impact Statement (DEIS) for Yucca Mountain* (tentative) (Open)—The Committee will receive an information briefing from the NRC staff on their plans to review the DOE DEIS for the proposed HLW repository at Yucca Mountain, Nevada.

I. *2:00–3 p.m.: Break and Preparation of Draft ACNW Reports* (Open)—Cognizant ACNW members will prepare draft reports, as needed, for consideration by the full Committee.

J. *3:00–5 p.m.: Discussion of Proposed ACNW Reports* (Open)—The Committee will continue its discussion of proposed ACNW reports.

Thursday, May 17, 2001

K. *8:30–8:35 a.m.: Opening Remarks by the ACNW Chairman* (Open)—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

L. *8:35–10 a.m.: Meeting Reports* (Open)—The Committee will hear reports from the members and staff on meetings attended since the 125th ACNW Meeting, including the National Research Council Meeting on their report on long-term institutional control, the 9th International HLW Conference and the Nuclear Waste Technical Review Board Spring Meeting.

M. *10:15–12 Noon: Discussion of Proposed ACNW Reports* (Open)—The Committee will continue its discussion of proposed ACNW reports.

N. *1:00–1:30 p.m.: Miscellaneous* (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 11, 2000 (65 FR 60475). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Howard J. Larson, ACNW, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Larson as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Howard J. Larson, ACNW (Telephone 301/415–6805), between 8 A.M. and 5 P.M. EDT.

ACNW meeting notices, meeting transcripts, and letter reports are now available for downloading or viewing on the internet at http://www.nrc.gov/ACRSACNW.

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301/415–8066), between 7:30 a.m. and 3:45 p.m. EDT at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: April 26, 2001.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 01–10964 Filed 5–1–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from April 9, 2001, through April 20, 2001. The last biweekly notice was published on April 18, 2001 (66 FR 19998).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission

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expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By June 1, 2001, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Branch, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: April 1, 2001 (102–04552).

Description of amendments request: The amendments would revise the requirements on the following programs in the administrative controls section of the technical specifications (TSs): (1) Section 5.5.13, "Diesel Fuel Oil Testing Program," (2) Section 5.5.14, "TS Bases Control Program," (3) Section 5.5.15, "Safety Functions Determination Program (SFDP)," and (4) Section 5.6.5, "Core Operating Limits Report (COLR)." The proposed changes clarify the program requirements in Section 5.5.13 without changing testing methods or limits, revise the program in Section 5.5.14 based on changes to 10 CFR 50.59 in the regulations, clarify the program requirements in Section 5.5.15 including changing the program name to the plant-specific name for the program, and add the CENTS code to the list of analytical methods used, including the use of CENTS for control element assembly ejection analyses, to determine core operating limits and revise the list of referenced topical reports in the COLR in Section 5.6.5.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Technical Specification (TS) 5.5.13, Diesel Generator Fuel Oil Program. TS 5.5.13.a.3 currently states, "Water and sediment are within the limits of ASTM D1796," for the acceptability of new diesel fuel oil. This is an incorrect reference for the limits of water and sediment of new fuel oil. The water and sediment limits for new fuel oil are contained within the Technical Specification Bases. ASTM D1796 contains testing methods used for analysis of new fuel oil for water and sediment. This proposed amendment changes the wording of TS 5.5.13.a.3 to state, "Water and sediment within limits when tested in accordance with ASTM D1796." This proposed change is an administrative change and will have no affect on plant design, operation, or maintenance. Additionally, this proposed change does not result in any hardware changes or affect plant operating practices. The water and sediment testing methods and limits are not affected by this change. Thus, this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

TS 5.5.14, TS Bases Control Program, requires a program for processing changes to the Bases of the TS [...]

In the initial sentence to TS 5.5.14.b, the word "involve" will be replaced with "require." Additionally, the second allowance for changing TS Bases as described in TS 5.5.14.b will be revised to state, "A change to the updated FSAR or Bases that requires NRC approval pursuant to 10 CFR 50.59." This change is based on the changes to 10 CFR 50.59 published in the **Federal Register** (Volume 64, Number 191) dated October 4, 1999. This change is consistent with NRC approved Technical Specifications Task Force (TSTF) traveler number 364-revision 0.

This change will also numerically format the two options listed in TS 5.5.14.b. This is consistent with other listings contained in Section 5.0 of the TS.

This proposed change deletes the reference to "unreviewed safety question" as previously used in 10 CFR 50.59[, before the rule change published October 4, 1999, in the **Federal Register**.] Deletion of this definition was approved by the NRC with the revision to 10 CFR 50.59.

[These] proposed change[s to TS 5.5.14 are] administrative change[s] and will have no affect on plant design, operation, or maintenance. Additionally, [these] change[s do] not result in any hardware changes or affect plant operating practices. Therefore, [the] proposed change[s to TS 5.5.14 do] not involve a significant increase in the probability or consequences of an accident previously evaluated.

TS 5.5.15, Safety Functions Determination Program (SFDP). Clarification is being added to TS 5.5.15. The second paragraph of TS 5.5.15 will be changed to read: "A loss of safety function exists when, assuming no concurrent single failure, no concurrent loss of offsite power, or no concurrent loss of onsite diesel generator(s), a safety function assumed in the accident analysis cannot be performed. For the purpose of this program, a loss of safety function may exist when a support system is inoperable, and * * *"

An additional paragraph will be added to the end of TS 5.5.15 stating, "When a loss of safety function is caused by the inoperability of a single Technical Specification support system, the appropriate Conditions and Required Actions to enter are those of the support system."

Additionally, clarification will be added to limiting conditions for operation (LCO) 3.0.6 Bases of the "appropriate LCO for loss of safety function." The Bases will also clarify the requirement for the SFDP that consideration does not have to be made for a loss of power in determining loss of function. This change is consistent with NRC approved TSTF traveler number 273-revision 2, as amended by editorial change WOG–ED–23.

In addition, an editorial change to remove the "*s*" from the word "Functions" in the title for TS 5.5.15 will occur. The change reflects the plant specific name for this program.

[These] proposed change[s to TS Section 5.5.15 are] administrative change[s] and will have no affect on plant design, operation, or maintenance. The change[s] clarify] the requirements for determining loss of safety function and the correct LCO to enter for loss of safety function. The proposed change[s do] not result in any hardware changes or affect plant operating practices. The program will still determine when a safety function has been lost and will direct the appropriate action. Therefore, [the] proposed change[s to TS 5.5.15 do] not involve a significant increase in the probability or consequences of an accident previously evaluated.

TS 5.6.5, Core Operating Limits Report (COLR) is being revised to add the option to use the CENTS computer code in licensing analysis by adding CENTS to the list of approved core operating limit analytical methods contained in TS 5.6.5.b. The CENTS computer code has been generally approved for the calculation of transient behavior in Pressurized Water reactors (PWRs) designed by Combustion Engineering (CE). PVNGS intends to qualify CENTS for use in future Palo Verde licensing analyses by following the guidelines prescribed in Generic Letter (GL) 83–11, Supplement 1.

CENTS is a best-estimate code designed to provide realistic simulation of Nuclear Steam Supply System (NSSS) behavior during normal and transient conditions. The CENTS Safety Evaluation (SE) documents the generic NRC approval of the CENTS code for use in the licensing analyses for PWRs designed by CE. The CENTS SE is described in letter, "Acceptance for Referencing of Licensing Topical Report CE–NPD 282–P, "Technical Manual for the CENTS Code" dated March 17, 1994, from USNRC to S. A. Toelle, ABB Combustion Engineering.

The proposed change does not immediately alter any methodology used in [an] reload analysis. It only provides the option to replace the CESEC transient simulation code with an alternate NRC approved code. Providing the option to substitute the NRC approved CESEC code with another NRC approved code [CENTS] will not alter the physical characteristics of any component involved in the initiation or mitigation of an accident. The actual implementation of the CENTS code will be performed by following the guidance provided in Generic Letter (GL) 83–11, Supplement 1. This proposed change does not result in any hardware changes or affect plant operating practices. Thus, this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

TS 5.6.5, core operating limits report (COLR) which identifies the methodology report(s) by number, title, date, and NRC staff approval document, will be revised to allow the reports to be identified by number and title only. A note will be added to TS 5.6.5.b to specify that a complete citation be included in the COLR for each report, including the report number, title, revision, date, and any supplements.

This change has previously been reviewed and accepted by the NRC in letter, "Acceptance for Siemens References to Approved Topical Reports in Technical Specifications" from S.A. Richards, NRC to J.F. Mallay, Siemens Power Corporation dated December 15, 1999. This change is also consistent with NRC accepted TSTF 363-revision 0.

Additionally, TS 5.6.5.b.6 and 5.6.5.b.7 both list the same topical report (Calculative Methods for the CE Small Break LOCA Evaluation Model, CENPD–137]. TS 5.6.5.b.7 is the supplement to the topical report listed in [TS] 5.6.5.b.6. TS 5.6.5.b.7 will be deleted and the "Calculative Methods for the CE Small Break LOCA Evaluation Model, CENPD–137" topical report (along with its supplement) will be listed in full text within the COLR.

[The] proposed change[s related to the listing of topical reports in TS 5.6.5.b are] administrative change[s] and will have no

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affect on plant design, operation, or maintenance. Thus, [these] proposed change[s do] not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

TS 5.5.13, Diesel Generator Fuel Oil Program. The proposed change is an administrative change. This change would have no affect on the physical plant. Consequently, plant configuration and the operational characteristics remain unchanged and the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

TS 5.5.14, TS Bases Control Program. The proposed changes associated with TS 5.5.14.b do not involve any physical changes. These changes allow PVNGS to be in compliance with NRC approved changes to 10 CFR 50.59. This change is an administrative change. Plant configuration and the operational characteristics remain unchanged and thus, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

TS 5.5.15, SFDP. The proposed change to TS 5.5.15 does not involve any physical changes to the plant[s]. This change is an administrative change. The loss of function of the specific component is addressed in its specific TS LCO and plant configuration will be governed by the required actions of those LCOs. Since this proposed change is a clarification that does not degrade the availability or capability of safety related equipment, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

TS 5.6.5, COLR is being revised to add the option to use the CENTS computer code in licensing analysis by adding CENTS to the list of approved core operating limit analytical methods contained in TS 5.6.5.b. The proposed change will not affect reload analysis other than providing an option to replace the CESEC transient simulation code with an equivalent code. Providing this option in and of itself will not alter the physical characteristics of any component in the plant. Since providing the option to use the CENTS code will not alter the physical characteristics of any component in the plant, this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

TS 5.6.5, Core Operating Limits Report (COLR) which identifies the methodology report(s) by number, title, date, and NRC staff approval document, will be revised to allow the reports to be identified by number and title only. This is an administrative change. This change has no affect on the physical plant. Plant configuration and the operational characteristics remain unchanged and thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

TS 5.5.13, Diesel Generator Fuel Oil Program. The proposed change to TS 5.5.13.a.3 is an administrative change. This change would have no affect on the physical plant and has no effect on any safety analyses assumptions. Therefore, this proposed change does not involve a significant reduction in a margin of safety.

TS 5.5.14, TS Bases Control Program. The proposed changes associated with TS 5.5.14.b will not reduce a margin of safety because it has no direct effect on any safety analyses assumptions. Changes to the TS Bases that result in meeting the criteria in paragraph (c)(2) of 10 CFR 50.59 will still require NRC approval pursuant to 10 CFR 50.59. This change is administrative in nature and is based on NRC reviewed and approved changes to 10 CFR 50.59. Therefore, this proposed change does not involve a significant reduction in a margin of safety.

TS 5.5.15, SFDP. The proposed change to TS 5.5.15 are clarifications only. No changes are made in the LCO, the time required for the TS required actions to be completed, or the out of service time for the components involved. The NRC has approved the proposed administrative changes (TSTF 273-revision 2, as amended by editorial change WOG–ED–23). Safety-related equipment controlled by the TS will still perform as credited in the safety analysis. Therefore, this proposed change does not involve a significant reduction in a margin of safety.

TS 5.6.5, COLR is being revised to add the option to use the CENTS computer code in licensing analysis by adding CENTS to the list of approved core operating limit analytical methods. The proposed change will allow running existing analyses with a different method that has been reviewed and approved by NRC. The actual implementation of the CENTS code will be performed by following the guidance provided in Generic Letter (GL) 83–11, Supplement 1. Thus, this proposed change does not involve a significant reduction in a margin of safety.

TS 5.6.5, Core Operating Limits Report (COLR) which identifies the methodology report(s) by number, title, date, and NRC staff approval document, will be revised to allow the reports to be identified by number and title only. This is an administrative change. This change has no affect on the physical plant. Plant configuration and the operational characteristics remain unchanged. Therefore, change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Section Chief: Stephen Dembek.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: April 4, 2001 (102–04554).

Description of amendments request: The amendments would revise Specification 3.3.12, "Boron Dilution Alarm System (BDAS)," and Specification 3.9.2, "Refueling Operations—Nuclear Instrumentation" of the technical specification (TSs). Specification 3.9.2 applies to the required operability of startup range monitors (SRMs). The applicability modes for limiting condition for operation (LCO) 3.3.12 would be extended to Mode 6, refueling. A note to "Enter applicable Conditions and Required Actions of LCO 3.3.12, "Boron Dilution Alarm System (BDAS)," for BDAS made inoperable by SRMs" would be added to the Actions for LCO 3.9.2 and the Required Action B.2 on performing surveillance requirement (SR) 3.9.1.1, and associated completion time, for LCO 3.9.2 would be deleted.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed changes to Technical Specifications 3.3.12 and 3.9.2 do not significantly increase the probability or consequences of an accident previously evaluated in the Updated Final Safety Analysis Report (UFSAR) [for Palo Verde Nuclear Generating Station]. The proposed amendment[s] would add MODE 6 Applicability to TS 3.3.12 for the BDAS. In addition, the proposed amendment[s] would add a note to the Actions of TS 3.9.2 which directs the operator to enter the applicable Conditions and Required Actions of TS 3.3.12 in the event that the BDAS is made inoperable by inoperable startup range monitors (SRMs). Finally, the proposed amendment[s] would delete the TS 3.9.2 Required Action B.2.

The boron dilution alarm system (BDAS) and chemical monitoring of the reactor coolant system (RCS) boron concentration are established in the MODE 6 inadvertent deboration analysis in UFSAR Section 15.4.6 to alert the operator of a boron dilution event at least 30 minutes prior to a loss of subcriticality. The BDAS and RCS boron monitoring are not accident initiators. The proposed changes will ensure that the assumptions of UFSAR Section 15.4.6, for mitigating an inadvertent deboration event, are met. In addition, the proposed changes do not alter the design or configuration of the plant but establish requirements for operating the plant as analyzed and designed. The amendment[s do] not physically affect the operability or availability of the boron dilution alarm system (BDAS), but ensures it is available as required or that sufficient actions are taken if it becomes inoperable. Furthermore, the inadvertent deboration event analysis does not involve dose consequences since the acceptance criteria is to provide operator notification at least 30 minutes prior to the loss of subcriticality such that the operator may terminate the event before subcriticality is achieved [and exceeded,] and the RCS and fuel clad boundaries are challenged. Therefore, the proposed amendment[s] to TS 3.3.12 and TS 3.9.2 [do] not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed amendment[s] to Technical Specifications 3.3.12 and 3.9.2 [do] not create the possibility of an accident of a new or different kind from any accident previously evaluated. The proposed amendment[s] would add MODE 6 Applicability to TS 3.3.12 for the BDAS. In addition, the proposed amendment[s] would add a note to the Actions of TS 3.9.2 which directs the operator to enter the applicable Conditions and Required Actions of TS 3.3.12 in the event that the BDAS is made inoperable by inoperable startup range monitors (SRMs). Finally, the proposed amendment[s] would delete the TS 3.9.2 Required Action B.2. The proposed changes do not alter the design or configuration of the plant but establish requirements for operating the plant as analyzed and designed.

In MODE 6, the BDAS and the startup range monitors (SRM) are the primary means to monitor reactivity changes during core alterations and to alert the operator of a boron dilution event in time to prevent a loss of subcriticality. Chemical sampling to monitor RCS boron concentration is used when the BDAS is unavailable. Accidents involving reactivity anomalies are evaluated in UFSAR Section 15.4, Reactivity and Power Distribution Anomalies. Inadvertent deboration is described in UFSAR Section 15.4.6 as requiring the BDAS or chemical monitoring of the RCS boron concentration to alert the operator at least 30 minutes prior to the loss of subcriticality in MODE 6. The proposed changes to TS 3.3.12 and 3.9.2 will require the BDAS to be OPERABLE in MODE 6 or perform RCS boron concentration monitoring if the BDAS is inoperable.

The BDAS and RCS boron concentration monitoring are means to detect a boron dilution event. The proposed changes ensure this detection occurs as required. The proposed amendment[s do] not physically affect the response or operation of the plant. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The proposed changes to Technical Specifications 3.3.12 and 3.9.2 do not involve a significant reduction in a margin of safety. The proposed amendment[s] would add MODE 6 Applicability to TS 3.3.12 for the BDAS. In addition, the proposed amendment[s] would add a note to the Actions of TS 3.9.2 which directs the operator to enter the applicable Conditions and Required Actions of TS 3.3.12 in the event that the BDAS is made inoperable by inoperable startup range monitors (SRMs). Finally, the proposed amendment[s] would delete the TS 3.9.2 Required Action B.2. These changes ensure the adequate detection of a boron dilution event.

The current Technical Specifications 3.3.12 satisfies the inadvertent deboration safety analysis requirements to have the BDAS OPERABLE in MODES 3, 4,and 5. In accordance with UFSAR Section 15.4.6, Inadvertent Deboration, the same requirements and actions apply for MODE 6. Therefore, it is proposed that MODE 6 Applicability for the BDAS be added to TS 3.3.12. In addition, the Action section of TS 3.9.2 would be modified with a note to ensure the safety analysis assumptions are satisfied in MODE 6, since the SRM must be OPERABLE for the corresponding BDAS channel to be OPERABLE. Technical Specification Bases 3.3.12 and UFSAR Section 15.4.6 indicate that the BDAS is necessary to alert the operator of an inadvertent deboration event at least 15 minutes before the reactor loses subcriticality in MODES 3, 4, and 5. UFSAR Section 15.4.6 also indicates that 30 minutes is required in MODE 6. These criteria are in agreement with the guidance of NUREG 0800, [NRC's] Standard Review Plan. Therefore, the margin of safety being considered for [these] proposed amendment[s] is the 30 minutes before the loss of subcriticality that the operator must be notified [...] in the event of a boron dilution event. The proposed changes to TS 3.3.12 and TS 3.9.2 will require the BDAS to be OPERABLE in MODE 6 and, if the BDAS is inoperable, will require that the RSC boron concentration be monitored at pre-analyzed frequencies via chemical sampling in order to satisfy the 30 minute acceptance criteria. Finally, the proposed change[s] also serve to clarify that an inoperable SRM will cause the corresponding BDAS channel to be inoperable, thus requiring action in accordance with TS 3.3.12, in addition to TS 3.9.2. [The proposed changes add a requirement to TS 3.3.12 and account for the BDAS being inoperable because of inoperable SRMS] Therefore, the proposed change[s do] not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Section Chief: Stephen Dembek.

Consumers Energy Company, Docket No. 50–155, Big Rock Point Plant, Charlevoix, County, Michigan

Date of amendment request: October 26, 2000, as supplemented by letters dated February 9, February 28, March 14, March 15, and March 23, 2001.

Description of amendment request: The proposed amendment reflects the replacement of the original 75-ton reactor building gantry crane by an upgraded single-failure proof 125-ton crane designed to meet Crane Manufacturers Association of America (CMAA) Specification 70 and American Society of Mechanical Engineers (ASME) B30.2. The proposed amendment to the Technical Specifications (TSs) would revise (1) Definition 1.8 on fuel handling, (2) the applicability of TS 3/4.2.1 on fuel handling support system requirements, and (3) Section 3.2.2.d of the limiting conditions for operation for TS 3/4.2.2 on fuel handling general requirements, and would delete TS 3/4.3.1 on control of heavy loads. The licensee also submitted revisions to the bases for TSs 3/4.2.2 and 3/4.3.1. The crane has a Design Rated Load (DRL) of 125 tons; however, it has been analyzed to safely retain a load of 105 tons under the site-specific earthquake and the Maximum Critical Load (MCL) for the crane is 105 tons.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee provided its analysis in its letters dated October 26, 2000, and March 14, 2001, which address the issue of no significant hazards consideration, and is presented below:

The proposed [amendment] does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

A significant increase in the probability of an accident is not created because:

• The replacement crane will not be utilized for a greater number of fuel handling evolutions than was the case for the existing 75-ton crane. The existing crane was utilized for each transfer of fuel assemblies between the reactor and the Spent Fuel Pool; in the case of full-core offloads, which was the normal practice during refueling outages at Big Rock Point [Plant], the existing crane would make 84 transfers of irradiated fuel from the reactor to the Spent Fuel Pool, and a nominal 62 transfers of irradiated fuel from the Spent Fuel Pool back to the reactor. The replacement crane will handle fuel only after it has been placed into the W100 Transfer Cask. It is anticipated that the W100 Fuel Transfer Cask will be handled 14 times while it contains fuel (one movement from the

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Spent Fuel Pool to a staging area in Room 444, and one movement from Room 444 to a W150 Storage Cask), during loading of seven W150 Storage Casks. Additional moves of the W100 Transfer Cask when it is loaded with fuel would be required only if an off-normal condition required a loaded cask to be returned to the Spent Fuel Pool.

• The replacement crane has been analyzed to safely handle the 105-ton W100 Fuel Transfer Cask under seismic conditions that include the Big Rock Point [Plant] site-specific safe shutdown earthquake of 0.104g. The UFHSR [Updated Final Hazards Summary Report] is being revised to limit the weight of loads being moved over the Spent Fuel Pool to 105 tons.

• The existing crane has been used to lift the properly rigged 24-ton fuel transfer cask over fuel; the probability of dropping the 24-ton fuel transfer cask was minimized by the proper rigging that consisted of attaching a safety catch device to the transfer cask. In the case of the replacement crane, loads will be prevented from dropping by the design of the single-failure proof Ederer X–SAM hoist, which prevents loads from dropping more than 18 inches in the event of any single failure. Administrative controls will be instituted on the use of the replacement crane to require lifts of any heavy loads over fuel or over structures, the failure of which would jeopardize safe storage of fuel, to be done at a height of greater than 18 inches. Administrative controls will be instituted to prohibit use of the replacement crane for movement of any cask over fuel; these controls will be specified in the Big Rock Point [Plant] UFHSR. Administrative controls that apply to our [the licensee's] current 75-ton crane will be maintained, and strengthened, as appropriate, to provide greater assurance that heavy loads transported over fuel will be safely transported. Strengthened administrative controls include limiting the number of crane operators to approximately 12 individuals, and requiring that they receive Operator Engineer training in the use of the upgraded crane.

• The existing crane met single-failure proof criteria only when it was used to handle the properly-rigged 24-ton fuel transfer cask; the 105-ton single-failure proof crane will be single-failure proof for all lifts of loads which are 105 tons or less.

• The replacement of the existing crane with a 105-ton single-failure proof crane is being performed as a safety-related modification, and 10 CFR [Part] 50 Appendix B [Quality Assurance] criteria are being applied to all critical elements of design, purchasing, installation and testing. Therefore, the replacement crane and trolley can be expected to perform in accordance with their design specifications. As a result, the probability of a trolley failure on the replacement crane is considered to be no greater than the probability of a failure of the safety catch device which was employed with the existing crane when it was used to handle the 24-ton fuel transfer cask.

A significant increase in the consequences of an accident is not created because:

• This change affects fuel handling, and fuel handling accidents have already been analyzed and bound all other categories of accidents at the Big Rock Point Plant. Analysis indicates that the dose from the bounding fuel accident (a 24-ton fuel transfer cask drop), assuming a free release path without isolation of ventilation from containment, falls below the Protective Action Guidelines (PAGs) of Environmental Protection Agency–400 (EPA–400) 68 days following plant shutdown (the reactor was shutdown [as] of 8/29/1997). The analysis assumed a total of 500 damaged assemblies in the Spent Fuel Pool, with 84 of them being freshly discharged from the reactor. The Spent Fuel Pool contains 441 fuel assemblies. With more than three years of radiological and heat decay since the plant was shutdown, the potential source terms for gaseous and volatile radionuclides associated with the remaining design basis accidents has continued to decrease; therefore, the doses at the site boundary associated with a postulated accident involving any number of the available fuel assemblies have also decreased. The design of the Ederer X–SAM trolley and hoist is such that upon a single failure of the trolley that would allow the suspended load to free-fall, the load could fall for a maximum of 18 inches before the drum brake mechanism would engage to stop the downward travel. An 18-inch drop of the 105-ton dry fuel storage system fuel transfer cask has been analyzed and has been determined not to result in failure of the floors of the Spent Fuel Pool, Room 444 or the laydown area at the 599-foot 5-inch elevation of containment. These are the only floors in containment over which the cask will [be] moved with the 105-ton single-failure proof crane at a height of less than 18 inches. The 105-ton W100 Transfer Cask is the largest load that will be handled over the Spent Fuel Pool, when fuel is being stored in the Pool. For other floors/structures, (*i.e.*, the Reactor Deck at elevation 632′ 6″ [632 feet 6 inches]), administrative controls will be imposed to require the 105-ton cask to be suspended at least 18 inches above the floor/structure.

[The proposed amendment reflects the replacement of the original 75-ton non single-failure proof crane, with a single-failure proof crane. The replacement crane addresses malfunctions (e.g., dropping loads under single-failure conditions) that were possible with the original crane.]

Based on this discussion, it is concluded that this proposed change to the Defueled Technical Specifications does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change is requested to reflect the removal of the original 75-ton reactor building non single-failure proof semi-gantry crane and its replacement with a single-failure proof 105-ton crane, which will be designed to meet the applicable criteria and guidelines of NUREG–0554 and NUREG–0612. The change results from installation of a crane that replaces another crane. The general functions performed by the replacement crane (cask handling and movement of heavy loads) do not differ from those performed by the original crane. Therefore, new or different accidents will not be created by elimination of restrictions associated with the original 75-ton crane, since the design of the replacement crane addresses malfunctions (for example, dropping loads under single-failure conditions) that were possible with the original crane.

Based on this discussion, it is concluded that this proposed change to the Defueled Technical Specifications does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in the margin of safety.

To prevent failure of the Spent Fuel Pool structure when handling loads over the Pool with the existing 75-ton crane, loads were limited to 24 tons, and cask handling evolutions were limited to the southwest corner of the Spent Fuel Pool. These measures ensured that the Spent Fuel pool would not fail as a result of a load being dropped into it. The replacement crane has been designed such that a load will not drop more than 18 inches if a single failure should occur in its trolley. A drop of the 105-ton W100 Fuel Transfer Cask from a height of 18 inches to the Spent Fuel Pool floor has been determined not to result in failure of the Spent Fuel Pool; loads handled by the replacement crane will be restricted to 105 tons to ensure that the structural integrity of the Spent Fuel Pool will not be compromised by a postulated drop of the 105-ton W100 Fuel Transfer Cask.

The existing crane is designed to handle loads up to 75 tons Because the existing crane was not designed as a single-failure proof crane, restrictions were placed on load paths, load weights, and the configuration of the 24-ton fuel transfer cask (the cask was required to have a safety catch device attached between the cask and the crane structure to prevent dropping the transfer cask in the event of a trolley failure) to ensure that a margin of safety existed with respect to dropping heavy loads on spent fuel and to prevent a dropped load from causing structural failure of the Spent Fuel Pool. The replacement crane is designed to withstand the Big Rock Point [Plant] site-specific safe shutdown earthquake of 0.104g while safely retaining a load equal to 105 tons. Therefore, handling the 105-ton W100 transfer cask with this crane provides equivalent margins with respect to crane failure as the current restriction that limits loads being handled over the Spent Fuel Pool to 24 tons. The UFHSR will restrict handling of loads over the Spent Fuel Pool to 105 tons whenever fuel is stored in the Pool. The trolley and hoist for the replacement crane are designed to be single-failure proof, and provide a margin of safety for dropping a suspended load equivalent to the safety catch employed with 24-ton transfer cask safety catch.

[The proposed amendment reflects the replacement of the original 75-ton non single-failure proof crane, with a single-failure proof 125-ton crane having an MCL of 105 tons.. The replacement crane is designed to meet the applicable criteria of NUREG–0554 and NUREG–0612, CMAA Specification 70, and ASME B30.2.]

Based on this discussion, it is concluded that this proposed change to the Defueled Technical Specifications does not involve a significant decrease in the margin of safety.

The NRC staff has reviewed the licensee's analysis in both letters of October 26, 2000, and March 14, 2001, and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David A. Mikelonis, Esquire, Consumers Energy Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Section Chief: Robert A. Gramm.

Consumers Energy Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: March 5, 2001, as revised March 30, 2001.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 5.5.12, "Technical Specifications (TS) Bases Control Program," to be consistent with the changes to 10 CFR 50.59 published in the **Federal Register** on October 4, 1999 (64 FR 53582), as reflected in the Nuclear Energy Institute's Technical Specification Task Force (TSTF) Standard TS Change Traveler, TSTF–364, "Revision to TS Bases Control Program to Incorporate Changes to 10 CFR 50.59." Specifically, Palisades TS 5.5.12b currently states, in part, that licensees may make changes to Bases without prior NRC approval provided the changes do not "involve * * * [a] change to the updated FSAR [Final Safety Analysis Report] or Bases that involves an unreviewed safety question as defined in 10 CFR 50.59." The proposed amendment would change this quoted portion of TS 5.5.12b to state "require * * * [a] change to the updated FSAR or Bases that requires NRC approval pursuant to 10 CFR 50.59."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The following evaluation supports the finding that operation of the facility in accordance with the proposed changes would not:

a. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change deletes the reference to unreviewed safety question as defined in 10 CFR 50.59. Deletion of the definition of unreviewed safety question was approved by the NRC with the revision of 10 CFR 50.59. Consequently, the probability of an accident previously evaluated is not significantly increased. Changes to the TS Bases are still evaluated in accordance with 10 CFR 50.59. As a result, the consequences of any accident previously evaluated are not significantly affected. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Involve a significant reduction in the margin of safety.

The proposed change will not reduce a margin of safety because it has no direct effect on any safety analyses assumptions. Changes to the TS Bases that result in meeting the criteria in paragraph 10 CFR 50.59(c)(2) will still require NRC approval pursuant to 10 CFR 50.59. This change is administrative in nature based on the revision to 10 CFR 50.59. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Arunas T. Udrys, Esquire, Consumers Energy Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Section Chief: Claudia M. Craig.

Consumers Energy Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: April 2, 2001.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) by removing all requirements for, and references to, the "Assembly Radial Peaking Factor," (F_R^A). Consequently, in TS Section 1.0, the definition of Assembly Radial Peaking Factor would be deleted and the definition of the Total Radial Peaking Factor (F_R^T) would be corrected to read: "F_R^T shall be the maximum ratio of the individual fuel pin power to the core average pin power integrated over the total core height, including tilt." In Limiting Condition for Operation (LCO) 3.2.2, the title would be changed to "TOTAL RADIAL PEAKING FACTOR (F_R^T);" the wording would state "F_R^T shall be within the limits specified in the [Core Operating Limits Report] COLR;" Condition A would state "F_R^T not within limits specified in the COLR;" Required Action A.1 would state "Restore F_R^T to within limits;" and Surveillance Requirement (SR) 3.2.2.1 would state "Verify F_R^T is within limits specified in the COLR." In LCO 3.2.3, Required Action A.1 would state: Verify F_R^T is within the limits of LCO 3.2.2, "Total Radial Peaking Factor (F_R^T)'." Associated changes would be made to the TS Bases and table of contents.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

There are no changes in plant systems, plant control operating procedures or instrument alarm or trip settings associated with this [TS Change Request] TSCR. Because neither physical equipment, nor operating methods for that equipment change, the probability of accident initiation would not change. Therefore, the proposed technical specification change would not involve a significant increase in the probability of an accident previously evaluated.

The assembly radial peaking (F_R^A) has been used in the past safety analyses and radiological conscquence analyses. These analyses utilized the assumption that F_R^A would remain within the Technical Specifications limit during plant operations. These analyses verify, for Anticipated Operational Occurrences (AOOs) and Postulated Accidents (PAs), that:

(1) The Departure from Nucleate Boiling Ratio (DNBR) remains above the appropriate Technical Specifications Safety Limit, and

(2) The calculated offsite doses and control room dose for the affected events remained within the guidelines of 10 CFR 100, Section 11, "Determination of exclusion area, low population zone and population center distance," and 10 CFR 50, Appendix A, General Design Criteria (GDC) 19, "Control room."

Improved DNB correlations and better spacer grid design have allowed the safety analysis calculations to be performed using only the total radial peaking factor (F_R^T) limit (which remains unchanged), without exceeding the specified Safety Limits. The radiological consequence events that previously used the F_R^A limit have been re-analyzed using the slightly higher F_R^T limit to determine the source strength. The revised calculated offsite dose and control room dose for the affected events remained within the guidelines of 10 CFR 100 and GDC 19.

Because the results of the transient analyses, which were performed without F_R^A

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assumptions, continue to meet the Safety Limits, and because the dose consequences of all analyzed events, which were also performed without F_R^Δ assumptions, continue to be within the guidelines of 10 CFR 100 and GDC 19, the proposed technical specification change would not involve a significant increase in the consequences of an accident previously evaluated.

Therefore, operation of the plant in accordance with the proposed Technical Specifications would not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Operation of the plant in accordance with the proposed Technical Specifications would not add any new equipment, settings, or alter any plant operating practices. The only change is the deletion of all Technical Specifications references to the Assembly Radial Peaking Factor, F_R^Δ, (a peaking factor no longer used in core design or safety analyses). Since there will be no change in operating plant equipment, settings, or normal operating practices, operation in accordance with the proposed Technical Specifications would not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. Does this change involve a significant reduction in a margin of safety?

The disposition of the [Standard Review Plan] SRP Chapter 15 events, the setpoint verification, the [fuel centerline melt] FCM and the [minimum departure from nucleate boiling ratio] MDNBR analyses documented in Siemens report EMF–2259 Revision 1, "Palisades Cycle 15 Safety Analysis Report" dated August 1999 considered the impact of several changes in fuel design and plant operations for Cycle 15. A detailed and simplified XCOBRA–IIIC model that incorporated limiting radial and axial power distributions, as well as the removal of the F_R^Δ peaking limit, were developed for Cycle 15. This model was applied to all DNB event analyses for Cycle 15 and the MDNBR values for limiting AOOs and PAs were evaluated with the [High Thermal Performance] HTP DNB correlation. The limiting MDNBR is calculated for SRP event 15.3.3 Reactor Coolant Pump Rotor Seizure and the limiting FCM is calculated for SRP event 15.4.3 Single Rod Withdrawal. The calculated results for the limiting events meet the Safety Limits specified in TS LCO 2.1.

The SRP events were dispositioned in accordance with Siemens approved methodologies listed in Palisades TS Section 5.6.5, Amendment 189. The completed safety analysis supports Palisades plant operation at 2530 Mwt.

The results of the transient analyses, which were performed without F_R^Δ assumptions, continue to meet the Safety Limits, and the dose consequence of all analyzed events, which were also performed without F_R^Δ assumptions, continue to be within the guidelines of 10 CFR 100 and GDC 19 * * * [Therefore] operation of the Facility in accordance with the proposed technical specification change would not involve a significant reduction in the margin of safety.

Therefore, operation of the plant in accordance with the proposed Technical Specifications would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Arunas T. Udrys, Esquire, Consumers Energy Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Section Chief: Claudia M. Craig.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: March 1, 2001.

Description of amendment request: The amendments would allow implementation of 10 CFR Part 50, Appendix J, Option B, which governs performance-based containment leakage testing requirements for Types B and C testing. Catawba has previously implemented 10 CFR Part 50, Appendix J. Option B requirements for Type A testing. In addition to the changes associated with the adoption of 10 CFR Part 50, Appendix J, Option B, the licensee is also proposing the following two changes: (1) Technical Specification (TS) 3.6.3 will be modified to delete the requirement for conducting soap bubble tests of welded penetrations during Type A tests which are not individually Type B or Type C testable, and (2) the Bases for TS 3.6.2 will be modified to clarify that for the purpose of certain TS 3.6.2 Required Actions, the air lock door bulkhead is considered to be part of the door.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The following discussion is a summary of the evaluation of the changes contained in this proposed amendment against the 10 CFR 50.92(c) requirements to demonstrate that all three standards are satisfied. A no significant hazards consideration is indicated if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated, or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated, or

3. Involve a significant reduction in a margin of safety.

First Standard

The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. Implementation of these changes will provide continued assurance that specified parameters associated with containment integrity will remain within acceptance limits as delineated in 10 CFR [Part] 50, Appendix J, Option B. The changes are consistent with current safety analyses. Although some of the proposed changes represent minor relaxation to existing TS requirements, they are consistent with the requirements specified by Option B of 10 CFR [Part] 50, Appendix J. The systems affecting containment integrity related to this proposed amendment request are not assumed in any safety analyses to initiate any accident sequence. Therefore, the probability of any accident previously evaluated is not increased by this proposed amendment. The proposed changes maintain an equivalent level of reliability and availability for all affected systems. In addition, maintaining leakage within analyzed limits assumed in accident analyses does not adversely affect either onsite or offsite dose consequences. Therefore, the proposed amendment does not increase the consequences of any accident previously evaluated.

Second Standard

The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. No changes are being proposed which will introduce any physical changes to the existing plant design. The proposed changes are consistent with the current safety analyses. Some of the changes may involve revision in the testing of components; however, these are in accordance with the Catawba current safety analyses and provide for appropriate testing or surveillance that is consistent with 10 CFR [Part] 50, Appendix J, Option B. The proposed changes will not introduce new failure mechanisms beyond those already considered in the current safety analyses. No new modes of operation are introduced by the proposed changes. The proposed changes maintain, at minimum, the present level of operability of any system that affects containment integrity.

Third Standard

The proposed amendment will not involve a significant reduction in a margin of safety. The provisions specified in Option B of 10 CFR [Part] 50, Appendix J allow changes to Type B and Type C test intervals based upon the performance of past leak rate tests. 10 CFR [Part] 50, Appendix J, Option B allows longer intervals between leakage tests based on performance trends, but does not relax the leakage acceptance criteria. Changing test intervals from those currently provided in the TS to those provided in 10 CFR [Part] 50, Appendix J, Option B does not increase any risks above and beyond those that the NRC has deemed acceptable for the performance based option. In addition, there are risk reduction benefits associated with reduction in component cycling, stress, and wear associated with increased test intervals. The proposed changes provide continued assurance of leakage integrity of containment without adversely affecting the public health and safety and will not significantly reduce existing safety margins. Similar proposed changes have been previously reviewed and approved by the NRC, and they are applicable to Catawba.

Based upon the preceding discussion, Duke Energy has concluded that the proposed amendment does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: Richard L. Emch, Jr..

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: March 29, 2001.

Description of amendment request: The proposed amendments would revise the Keowee Hydro Unit (KHU) Technical Specifications Surveillance Requirements (SRs) to address concerns related to voltage and frequency overshoot during surveillance testing. This would be accomplished by removing the note that had been implemented by Amendment Nos. 316, 316, and 316 (October 4, 2000) for Oconee Nuclear Station, Units 1, 2, and 3, respectively, to temporarily waive the upper limits specified in Surveillance Requirement 3.8.1.9, thereby reinstalling the original SR. In addition, as a result of an upgrade of the KHU governors, the proposed amendments would reduce the time delay specified in Technical Specification 3.8.1 and SR 3.8.1.17 from 12 seconds ±1 second to 5 seconds ±1 second. In addition, related Bases changes have been proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

No. The License Amendment Request (LAR) removes a Note to Surveillance Requirement (SR) 3.8.1.9 that temporarily waived the surveillance requirements associated with the upper limits for Keowee Hydro Unit (KHU) voltage and frequency. The waiver of these requirements allowed Duke to avoid an unplanned forced shutdown of all three Oconee units, and the potential safety consequences and operational risks associated with that action.

This LAR also changes the arming time delay associated with the out-of-tolerance logic that had been approved for installation in Amendment Nos. 312, 312, and 312. This change lowers the allowed time delay, thereby resulting in the activation of the out-of-tolerance logic more quickly after KHU startup.

Since this LAR assures that each KHU reaches its required operating band within the required time, and that if maloperation of a unit occurs, the KHU will be taken off line, the probability or consequences of an accident previously evaluated is not significantly increased.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

No. The LAR involves removing a Note that temporarily waived SR 3.8.1.9.a associated with the KHUs. This LAR also changes the time delay associated with the activation of out-of-tolerance logic that had been approved for installation in Amendment Nos. 312, 312, and 312. This change lowers the allowed time delay, thereby resulting in the activation of the out-of-tolerance logic more quickly after KHU startup.

Since this LAR restores Technical Specification SR 3.8.1.9 to the condition prior to Amendment Nos. 316, 316, and 316 and provides a shortened arming delay for the out-of-tolerance logic that was approved in Amendment Nos. 312, 312, and 312, no new failure mechanism or accident sequence is introduced. Therefore, the possibility of a new or different kind of accident from any kind of accident previously evaluated is not created.

3. Involve a significant reduction in a margin of safety.

No. The LAR involves removing a Note that allowed temporary waiver of the requirements to meet SR 3.8.1.9.a and shortens the arming time delay associated with the activation of out-of-tolerance logic that had been approved for installation in Amendment Nos. 312, 312, and 312.

This LAR, therefore, improves the margin of safety by assuring that SR 3.8.1.9.a can be implemented. The change to a shorter arming time delay for the out-of-tolerance circuit activation also improves the margin of safety by limiting the time that a KHU would be carrying safety loads in an out-of-tolerance condition.

Therefore, this request does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

NRC Section Chief: Richard L. Emch, Jr.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: April 13, 2001.

Description of amendment request: The proposed change relaxes the allowable cooldown rate in the Reactor Coolant System (RCS) Technical Specifications (TS) 3.4.8.1, "Pressure / Temperature Limits." Specifically, the change eliminates the limitation of a 10 °F per hour cooldown rate when the RCS temperature is below 135 °F. The proposed limitations permit a 100 °F per hour cooldown rate to continue down to an RCS temperature of 110 °F, at which point the rate is reduced to 30 °F per hour.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will the operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response:

Limitations have been imposed on cooldown of the Reactor Coolant System (RCS) to assure compliance with the minimum temperature requirements of 10 CFR [Part] 50, Appendix G. The proposed changes revise the allowable cooldown limits in a way such that operation remains consistent with the design assumptions and satisfies the stress limits for cyclic operation. By ensuring operation remains within the bounds of the existing design basis and assumptions, the probability of a brittle fracture of the reactor vessel has not been increased.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will the operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response:

The proposed changes will not create the possibility of a new or different kind of accident from any previously analyzed since they do not introduce new systems, failure

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modes, or other plant perturbations. The proposed changes revise the cooldown limitations based on the fact the conservatively estimated peak pressure that can occur when the RCS cold leg temperature is below 200 °F is less than the proposed pressure limit. The limits assure that operation remains consistent with the design assumptions and satisfies the stress limits for cyclic operation.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. Will the operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response:

The margin of safety provided by Technical Specification 3.4.8.1 is based on assuring that the maximum cooldown rates are consistent with the design assumptions and satisfy the stress limits for cyclic operation. The proposed changes will not involve a significant reduction in the margin of safety since equivalent pressure and temperature limit requirements for reactor operation will be applied. The proposed changes were derived in accordance with approved NRC methodology which was developed to assure the reactor coolant system pressure boundary is designed with sufficient margin to withstand any condition during normal operation including anticipated operational occurrences and system in-service leak and hydrostatic tests.

These requirements were revised in accordance with 10 CFR [Part] 50, Appendix G utilizing the latest NRC guidance in Regulatory Guide 1.99, Revision 2 relative to estimating neutron irradiation damage to the reactor vessel. In addition, the 16 EFPY [effective full power year] basis for these pressure/temperature limits has been found to include sufficient margin to account for the limits of uncertainty described in Draft Regulatory Guide DG–1053.

Therefore, the proposed change will not involve in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N.S. Reynolds, Esquire, Winston & Strawn, 1400 L Street NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: February 9, 2001.

Description of amendment request: The proposed amendment (one-time change) revises the Steam Generator (SG) inspection frequency requirements in TS 5.5.9.d.2, "Steam Generator (SG) Tube Surveillance Program, Inspection Frequencies," for the Braidwood Station, Unit 1, Fall 2001 refueling outage, to allow a 40 month inspection interval after one SG inspection, rather than after two consecutive inspections resulting in C–1 classification. This one-time change is proposed to eliminate unnecessary SG inspections during the upcoming Unit 1, Fall 2001 refueling outage, thus, resulting in significant dose, schedule, and cost savings.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed one-time change revises the Steam Generator (SG) inspection interval requirements in Technical Specifications (TS) 5.5.9.d.2, "Steam Generator (SG) Tube Surveillance Program, Inspection Frequencies," for the Braidwood Station, Unit 1, Fall 2001 refueling outage, to allow a 40 month inspection frequency after one inspection, rather than after two consecutive inspections results that are within the C–1 category. C–1 category is defined as "<5% of the total tubes inspected are degraded tubes and none of the inspected tubes are defective."

The proposed one-time extension of the Unit 1, SG tube inservice inspection interval does not involve changing any structure, system, or component, or affect reactor operations. It is not an initiator of an accident and does not change any existing safety analysis previously analyzed in the Byron/Braidwood Stations' Updated Final Safety Analysis Report (UFSAR). As such, the proposed changes do not involve a significant increase in the probability of an accident previously evaluated.

Since the proposed change does not alter the plant design, there is no direct increase in SG leakage. Industry experience indicates that the probability of increased SG tube degradation would not go undetected. Additionally, steps described below will further minimize the risk associated with this extension. For example, the scope of inspections performed during the last Braidwood Station, Unit 1, refueling outage (i.e., the first refueling outage following SG replacement) exceeded the TS requirements for the first two refueling outages after SG replacement. That is, more tubes were inspected than were required by TS. Currently, Braidwood Station, Unit 1, does not have an active SG damage mechanism, and will meet the current industry examination guidelines without performing SG inspections during the next refueling outage. Additionally, as part of our SG Tube Surveillance Program, both a Condition Monitoring Assessment and an Operational Assessment are performed after each inspection and compared to the Nuclear Energy Institute (NEI) 97–06, "Steam Generator Program Guidelines," performance criteria. The results of the Condition Monitoring Assessment demonstrated that all performance criteria were met during the Braidwood Station, Unit 1, Spring 2000 refueling outage, and the results of the Operational Assessment show that all performance criteria will be met over the proposed operating period. Considering these actions, along with the improved SG design and reliability of Babcock and Wilcox International (BWI) replacement SGs, extending the SG tube inspection frequency does not involve a significant increase in the consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change revises the SG inspection frequency requirements in TS 5.5.9.d.2, "Steam Generator (SG) Tube Surveillance Program, Inspection Frequencies," for the Braidwood Station, Unit 1, Fall 2001 refueling outage, to allow a 40 month inspection interval after one inspection, rather than after two consecutive inspections with inspection results within the C–1 category.

The proposed change will not alter any plant design basis or postulated accident resulting from potential SG tube degradation. The scope of inspections performed during the last Braidwood Station, Unit 1, refueling outage (i.e., the first refueling outage following SG replacement) significantly exceeded the TS requirements for the scope of the first two refueling outages after SG replacement.

Primary to secondary leakage that may be experienced during all plant conditions is expected to remain within current accident analysis assumptions. The proposed change does not affect the design of the SGs, the method of SG operation, or reactor coolant chemistry controls. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. The proposed change involves a one-time extension to the SG tube inservice inspection frequency, and therefore will not give rise to new failure modes. In addition, the proposed change does not impact any other plant system or components.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The SG tubes are an integral part of the Reactor Coolant System (RCS) pressure boundary that are relied upon to maintain the RCS pressure and inventory. The SG tubes isolate the radioactive fission products in the reactor coolant from the secondary system.

The safety function of the SGs is maintained by ensuring the integrity of the SG tubes. In addition, the SG tubes comprise the heat transfer surface between the primary and secondary systems such that residual heat can be removed from the primary system.

SG tube integrity is a function of the design, environment, and current physical condition. Extending the SG tube inservice inspection frequency by one operating cycle will not alter the function or design of the SGs. SG inspections conducted during the first refueling outage following SG replacement demonstrated that the SGs do not have an active damage mechanism, and the scope of those inspections significantly exceeded those required by the TS. These inspection results were comparable to similar inspection results for the same model of replacement SGs installed at other plants, and subsequent inspections at those plants yielded results that support this extension request. The improved design of the replacement SGs also provides reasonable assurance that significant tube degradation is not likely to occur over the proposed operating period.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Robert Helfrich, Senior Counsel, Nuclear, Mid-West Regional Operating Group, Exelon Generation Company, LLC, 1400 Opus Place, Suite 900, Downers Grove, Illinois 60515.

NRC Section Chief: Anthony J. Mendiola.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: April 6, 2001.

Description of amendment request: The proposed amendment would change the Kewaunee Nuclear Power Plant Technical Specification Section 6.2, "Organization," and Section 6.13, "High Radiation Area" to reflect the title change from Shift Supervisor to Shift Manager.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will not alter the intent of the TS. Changing the title from Shift Supervisor to Shift Manager is administrative in nature. It has no impact on accident initiators or plant equipment, and thus, does not affect the probability or consequences of an accident.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a change to the physical plant or operations. Since this is an administrative change it does not contribute to accident initiation. Therefore, it does not produce a new accident scenario or produce a new type of equipment malfunction.

(3) Involve a significant reduction in the margin of safety.

Since this is an administrative change, it does not involve a significant reduction in the margin of safety. The proposed change does not affect plant equipment or operation. Safety limits and limiting safety system settings are not affected by this change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701–1497.

NRC Section Chief: Claudia M. Craig.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: February 7, 2001.

Description of amendment request: The proposed amendment would revise the technical specifications to replace the accident source term used in all design basis site boundary and control room dose analysis with the alternate source term. Additionally, the proposed amendment would implement regulatory guidance provided in Regulatory Guide (RG) 1.183, "Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors," regarding the licensing basis source term for design basis events.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to FCS [Fort Calhoun Station] TS [Technical Specifications] modify requirements to: place the control room ventilation system in operation and in filtered air mode during refueling operations in the containment or spent fuel pool, place a spent fuel pool area radiation monitor in operation during refueling operations at the spent fuel pool, delete a specification that requires a ventilation isolation actuation signal (VIAS) and two radiation monitors to be operable, increase the volume of trisodium phosphate (TSP) in the reactor containment building, include both internal and external leakage for the residual heat removal (RHR) system leakage test, perform an internal leakage test on the RHR system, and credit the alternative source term (AST) for the design basis site boundary and control room dose analyses. These TS changes do not impact operation of other equipment or systems important to safety. The proposed TS changes reflect the parameters used in the radiological consequences calculations described in Attachment E [to the licensee's February 7, 2001, letter].

The current TS 3.16 limits RHR system leakage to 1243 cc/hour from external sources and does not provide a limit for leakage from internal sources due to valve seat back leakage to the safety injection refueling water tank (SIRWT) or require an internal leakage test to be performed. The re-analysis for LOCA [loss-of-coolant accident] assumed a total leakage from all RHR sources of 3800 cc/hour. The internal leakage would leak back into the water remaining in the SIRWT. While it appears the allowable leakage is being increased, the limit is more inclusive, and therefore, more conservative than the current leakage limit. The internal leakage test performed on the RHR system will measure and quantify the back leakage into the SIRWT.

The proposed changes to TSs 2.3 and 3.6 are necessary to ensure the post-LOCA pH of the recirculation water is equal to or greater than 7.0. Radiation levels in containment following a LOCA may cause the generation of hydrochloric and nitric acids from radiolysis of cable insulation and sump water. TSP will neutralize these acids. The radiolysis analysis performed demonstrates that the sump pH will be greater than or equal to 7.0 post design basis accident (DBA), which meets the intent of RG 1.183 regarding iodine revolatization. Therefore, there is no increase in the probability or consequences of an accident previously evaluated due to radiolysis concerns.

The proposed change to TS 2.8.2(4) requires the control room ventilation system to be in operation and in the Filtered Air mode. This is a conservative action to reduce control room operator exposure. This action is credited in the fuel handling accident analysis. 10 CFR 50.36 requires, in part, that if an operating restriction is an initial condition of a DBA, then a Limiting Condition for Operation (LCO) should be established. Therefore, this action, which will reduce operator exposure, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to TS 2.8.3(5) will delete the requirement for the ventilation

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isolation actuation signal (VIAS) to be operable with two radiation monitors operable, and require the control room ventilation system to be in operation and in the Filtered Air mode and a spent fuel pool area radiation monitor to be in operation during refueling operations in the spent fuel pool. The current basis for TS 2.8.3(5) is to ensure the control room ventilation system is operated in Filtered Air mode upon receipt of a VIAS. The proposed change will require the control room ventilation system placed in the Filtered Air mode during refueling operations, thereby eliminating the need for the VIAS to be operable. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes proposed do not affect the precursors for accidents or transients analyzed in Chapter 14 of the FCS USAR. Therefore, there is no increase in the probability of accidents previously evaluated. The probability remains the same since the accident analyses performed and discussed in the basis for the TS changes, involve no change to a system, component or structure that affects initiating events for any USAR Chapter 14 accident evaluated. A re-analysis of USAR Chapter 14 events was conducted with respect to radiological consequences. This re-analysis was performed in accordance with current accepted methodology, and consequences were expressed in terms of TEDE [total effective dose equivalent] dose. The current methodology is no longer exactly comparable to the previous methods used for dose consequences. The previous dose calculations analyzed the dose consequences to thyroid and whole body as a result of postulated DBA events. The previous dose calculations were shown to be well below the regulatory limits of 10 CFR 100.11 (25 percent) with respect to thyroid and whole body dose. The current accepted NRC methodology, as described in 10 CFR 50.67, specifies new dose acceptance criteria in terms of TEDE dose. The revised analyses for all evaluated DBA events meet the applicable TEDE dose acceptance criteria (specified also in RG 1.183) for alternative source term implementation. The most current analyses do not credit several engineered safeguards features (ESF) filtration systems as the previous analyses did, and hence, are more conservative in that aspect. If a comparison is performed between the previous calculations (thyroid and whole body dose) and revised analyses TEDE results (per method shown in footnote 7 of RG 1.183), a slight increase in dose consequences is exhibited but is not significant, and the TEDE results are below regulatory acceptance criteria.

The changes proposed do not increase the probability of an accident previously evaluated. Because of the new regulatory requirements related to AST implementation, the dose consequences, if compared to previous ones, are only slightly increased (using guidance in footnote 7 of RG 1.183). However, the dose consequences of the revised analyses are below the AST regulatory acceptance criteria.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The implementation of the proposed changes does not create the possibility of an accident of a different type than was previously evaluated in the USAR. The proposed changes to FCS TS modify requirements to: place the control room ventilation system in operation and in filtered air mode during refueling operations in the containment or spent fuel pool, place a spent fuel pool area radiation monitor in operation during refueling operations at the spent fuel pool, delete a specification that requires a ventilation isolation actuation signal (VIAS) and two radiation monitors to be operable, increase the volume of trisodium phosphate (TSP) in the reactor containment building, include both internal and external leakage for the residual heat removal (RHR) system leakage test, perform an internal leakage test on the RHR system, and credit the alternative source term (AST) for the design basis site boundary and control room dose analyses[.]

The changes proposed do not change how DBA events were postulated nor do the changes themselves initiate a new kind of accident with a unique set of conditions. The changes proposed were based on a complete re-analysis of offsite and control room operator doses, where the system requirements being revised were not credited in the calculations. The revised analyses are consistent with the regulatory guidance established in RG 1.183. The revised analyses utilize the most current understanding of source term timing and chemical forms as a more appropriate mitigation technique. Not crediting filtration systems and only crediting natural forces is conservative from the aspect of dose consequences. Through this re-analysis, no new accident initiator or failure mode was identified.

3. The proposed change does not involve a significant reduction in a margin of safety.

The implementation of the proposed changes does not reduce the margin of safety. The radiological analyses results, with the proposed changes, remain within the regulatory acceptance criteria (10 CFR 50 Appendix A, 10 CFR 50.67) utilizing the TEDE dose acceptance criteria directed in RG 1.183. These criteria have been developed for application to analyses performed with alternative source terms. These acceptance criteria have been developed for the purpose of use in design basis accident analyses such that meeting these limits demonstrates adequate protection of public health and safety. An acceptable margin of safety is inherent in these licensing limits. Therefore, there is no significant reduction in the margin of safety as a result of the proposed changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment requests: April 6, 2001.

Description of amendment requests: The amendment application proposes to revise the Facility Operating License No. NPF–10, and Facility Operating License No. NPF–15 for San Onofre Nuclear Generating Station, Units 2 and 3, respectively. The licensee proposed to add annotations to technical specification Surveillance Requirements 3.8.1.2, 3.8.1.3, 3.8.1.9, 3.8.1.10 and 3.8.1.19 that provide guidance to ensure a diesel generator sub-component, an automatic voltage regulator (AVR), is operable and regularly tested. The proposed annotations clarify that only one AVR is required for the associated diesel generator to be operable and only one AVR can be in service at any one time.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The diesel generators provide emergency power to accident mitigation equipment in the event of a loss of offsite power. They cannot cause an accident. The San Onofre Nuclear Generating Station (SONGS) emergency diesel generators (EDG) each have two automatic voltage regulators (AVRs) that are 100% redundant to each other. Maintaining both AVRs for each diesel in a high state of readiness, while minimizing unnecessary testing on the diesels, optimizes the overall availability of the diesel generator systems to perform their function if required.

This change allows testing the two AVRs for each diesel on a staggered monthly basis. In addition, it clarifies that each AVR only needs to be subjected to a dynamically challenging test once every 24 months provided that its dynamic performance is measured and determined to be acceptable. These testing requirements demonstrate a high level of assurance that each AVR will be capable of performing its design function while minimizing unnecessary wear on the diesels. The reliability of the diesel generators to provide emergency power will not be degraded as a result of this change. Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The AVRs are a subcomponent of the EDGs. This change to the surveillance test frequency does not physically change the use, function, or design of the EDG or its subcomponent, the AVR.

This change ensures both 100% capacity AVRs are adequately tested to ensure operability without increasing the number of test starts of the EDGs.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety?

Response: No.

This change allows testing the two AVRs for each diesel on a staggered monthly basis. In addition, it clarifies that each AVR only needs to be subjected to a dynamically challenging test once every 24 months provided that its dynamic performance is measured and determined to be acceptable. These testing requirements demonstrate a high level of assurance that each AVR will be capable of performing its design function while minimizing unnecessary wear on the diesels. This proposed change does not involve an alteration of the SONGS 2 and 3 design. The reliability of the diesel generators to provide emergency power will not be degraded as a result of this change.

Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chief: Stephen Dembek.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: January 11, 2001.

Description of amendment request: The proposed amendments would revise Technical Specifications 5.5.17, "Containment Leakage Rate Testing Program," to add an exception to Regulatory Guide (RG) 1.163, "Performance-Based Containment Leak-Testing Program." Specifically, the licensee proposes to use America Society of Mechanical Engineering, Subsections IWL and IWE to meet the intent of RG 1.163. The proposed change will affect the frequency of containment concrete visual examinations and allow the examinations to be preformed during power operation instead of exclusively during refueling outages.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change affects the frequency of visual examinations that will be performed for the concrete surfaces of the Vogtle Electric Generating Plant (VEGP) Unit 1 and Unit 2 containments for the purpose of the Containment Leakage Rate Testing Program. In addition, the proposed change allows those examinations to be performed during power operation as opposed to during a refueling outage. The frequency of visual examinations of the concrete surfaces of the containments and the mode of operation during which those examinations are performed has no relationship to or adverse impact on the probability of any of the initiating events assumed for the accident analyses. Therefore, the proposed change does not involve a significant increase in the probability of any accident previously evaluated. The proposed change would allow visual examinations that are performed pursuant to NRC-approved [American Society of Mechanical Engineering] ASME Section XI Code requirements (except where relief has been granted by the NRC) to meet the intent of visual examinations required by Regulatory Guide 1.163, without requiring additional visual examinations pursuant to the Regulatory Guide. The intent of early detection of deterioration will continue to be met by the more rigorous requirements of the Code-required visual examinations. Therefore, the safety function of the VEGP containments as a fission product barrier will be maintained, and there will not be a significant increase in the consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

No. The proposed change affects the frequency of visual examinations that will be performed for the concrete surfaces of the Vogtle Electric Generating Plant (VEGP) Unit 1 and Unit 2 containments for the purpose of the Containment Leakage Rate Testing Program. In addition, the proposed change allows those examinations to be performed during power operation as opposed to during a refueling outage. The proposed change does not adversely affect or otherwise alter plant operation. No new equipment is introduced, and no new limiting single failures are created. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The proposed change affects the frequency of visual examinations that will be performed for the concrete surfaces of the Vogtle Electric Generating Plant (VEGP) Unit 1 and Unit 2 containments for the purpose of the Containment Leakage Rate Testing Program. In addition, the proposed change allows those examinations to be performed during power operation as opposed to during a refueling outage. The proposed change would allow visual examinations that are performed pursuant to NRC-approved ASME Section XI Code requirements (except where relief has been granted by the NRC) to meet the intent of visual examinations required by Regulatory Guide 1.163, without requiring additional visual examinations pursuant to the Regulatory Guide. The intent of early detection of deterioration will continue to be met by the more rigorous requirements of the Code-required visual examinations. Therefore, the safety function of the VEGP containments as a fission product barrier will be maintained, and there will not be a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308–2216.

NRC Section Chief: Richard L. Emch, Jr.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: April 12, 2001 (TS 00–02).

Brief description of amendments: The proposed amendment would change the Sequoyah Nuclear Plant Technical Specification (TS) surveillance requirements for the ice condenser. The request would change the method and frequency for determining boron concentration and pH of the ice and proposes an additional test requirement for ice that is to be added to the ice condenser.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), Tennessee Valley Authority (TVA), the licensee, has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The only analyzed accidents of possible consideration in regards to changes potentially affecting the ice condenser are a

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loss of coolant accident (LOCA) and a main steam line break (MSLB) inside containment. However, the ice condenser is not postulated as being the initiator of any LOCA or MSLB. This is because it is designed to remain functional following a design basis earthquake, and the ice condenser does not interconnect or interact with any systems that interconnect or interact with the reactor coolant or main steam systems. Since the proposed changes to the TS and TS bases are solely to revise and provide clarification of the ice sampling and chemical analysis requirements, and are not the result of or require any physical change to the ice condenser, there can be no change in the probability of an accident previously evaluated in the Safety Analysis Report.

In order for the consequences of any previously evaluated event to be changed, there would have to be a change in the ice condenser's physical operation during a LOCA or MSLB, or in the chemical composition of the stored ice. The proposed changes do not alter either from existing requirements, except to add an upper limit on boron concentration, which is the bounding value for the hot leg switchover timing calculation. Though the frequency of the existing surveillance requirement (SR) for sampling the stored ice is changed from once every 18 months to once every 54 months, the sampling requirements are strengthened overall with: (1) the requirement to obtain one randomly selected sample from each ice condenser bay (24 total samples) rather than 9 "representative" samples, and (2) the addition of a new SR to verify each addition of ice meets the existing requirements for boron concentration and pH value. The only other change is to clarify that each sample of stored ice is individually analyzed for boron concentration and pH, but that the acceptance criteria for each parameter is based on the average values obtained for the 24 samples. This is consistent with the bases for the boron concentration of the ice, which is to ensure the accident analysis assumptions for containment sump pH and boron concentration are not altered following complete melting of the ice condenser. Historically, chemical analysis of the stored ice has had a very limited number of instances where an individual sample did not meet the boron or pH requirements, with all subsequent evaluations (follow-up sampling) showing the ice condenser as a whole was well within these requirements. Requiring chemical analysis of each sample is provided to preclude the practice of melting all samples together before performing the analysis, and to ensure the licensee is alerted to any localized anomalies for investigation and resolution without the burden of entering a 24-hour action, provided the averaged results are acceptable. Thus, based on the above, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Because the TS and TS bases changes do not involve any physical changes to the ice condenser, any physical or chemical changes to the ice contained therein, or make any changes in the operational or maintenance aspects of the ice condenser as required by the TS, there can be no new accidents created from those already identified and evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The ice condenser TSs ensure that during a LOCA or MSLB the ice condenser will initially pass sufficient air and steam mass to preclude over pressurizing lower containment, that it will absorb sufficient heat energy initially and over a prescribed time period to assist in precluding containment vessel failure, and that it will not alter the bulk containment sump pH and boron concentration assumed in the accident analysis. Since the proposed changes do not physically alter the ice condenser, but rather only serve to strengthen and clarify ice sampling and analysis requirements, the only area of potential concern is the effect these changes could have on bulk containment sump pH and boron concentration following ice melt. However, this is not affected because there is no change in the existing requirements for pH and boron concentration, except to add an upper limit on boron concentration. This upper limit is the bounding value for the hot leg switchover timing calculation. Averaging the pH and boron values obtained from analysis of the individual samples taken is not a new practice, just one that was not consistently used by all ice condenser plants. Using the averaged values provides an equivalent bulk value for the ice condenser, which is consistent with the accident analysis for the bulk pH and boron concentration of the containment sump following ice melt. Changing the performance frequency for sampling the stored ice does not reduce any margin of safety because: (1) the newly proposed surveillance (SR 4.6.5.1.f) ensures ice additions meet the existing boron concentration and pH requirements, (2) there are no normal operating mechanisms, including sublimation, that reduce the ice condenser bulk pH and boron concentration, and (3) the number of required samples has been increased from 9 to 24 (1 randomly selected ice basket per bay), which is approximately the same number of samples that would have been taken in the same time period under the existing requirements. Thus, it can be concluded that the proposed TS and TS bases changes do not involve a significant reduction in the margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Richard P. Correia.

TXU Electric, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: April 3, 2001.

Brief description of amendments: The proposed change would revise Technical Specification (TS) 3.3.6, "Containment Ventilation Isolation Instrumentation" to modify the Note for Required Action B.1 such that it applies only to "Required Action and associated Completion Time of Condition A not met." The proposed change is the result of the discovery of an error which occurred when the TS was converted to the "improved TS format" with issuance of License Amendment Nos. 64 and 64, for Comanche Peak Steam Electric Station, Units 1 and 2 on February 26, 1999.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change removes an allowance to open containment pressure relief valves under administrative controls when one train of Automatic Actuation Logic and Actuation Relays is inoperable. The proposed change corrects a non-conservative technical specification and thus makes the technical specifications consistent with the previously evaluated accident analyses. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change makes the technical specifications consistent with the previously evaluated accident analyses. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed change makes the technical specifications consistent with the previously evaluated accident analyses. Therefore the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff

proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: March 22, 2001 (ET 01–0012).

Description of amendment request: The amendment would (1) decrease the allowable values for Function 8, pressurizer pressure-low, pressurizer pressure-high, in Table 3.3.1–1, "Reactor Trip System Instrumentation," and (2) decrease the allowable value for pressurizer pressure-low for safety injection in Table 3.3.2–1, "Engineered Safety Feature Actuation System Instrumentation." The changes are needed because the licensee will be replacing the existing Tobar pressurizer pressure transmitters with Rosemount transmitters in the next refueling outage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The existing safety related pressurizer pressure transmitters are being replaced with ones of similar characteristics and functions, and without changing the design or functional basis of the system, structure, or components associated with the pressure transmitters.

The protection system performance will remain within the bounds of the previously performed accident analysis. The Reactor Trip System (RTS) and Engineered Safety Feature Actuation System (ESFAS) instrumentation will continue to function in a manner consistent with the plant design basis. The replacement of the pressurizer pressure transmitters and proposed changes to the affected Allowable Values will not affect any of the analysis assumptions for any of the accidents previously evaluated, since the changes are consistent with the setpoint methodology and ensure adequate margin to the Safety Analysis Limit. The proposed changes will not affect any event initiators nor will the proposed changes affect the ability of any safety related equipment to perform its intended function. There will be no degradation in the performance of nor an increase in the number of challenges imposed on safety related equipment assumed to function during an accident situation. There will be no change to normal plant operating parameters or accident mitigation capabilities.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

A review of the failure modes and effects in Updated Safety Analysis Report Section 7.7.2 found that failure of the replacement pressure transmitters will be the same as for the existing pressure transmitters. As such, the effects of such failures on [the safety] functions of the other equipment are concluded to be similar to those previously evaluated.

There are no changes in the method by which any safety related plant system performs its safety function. The normal manner of plant operation remains unchanged. The increase [or decrease] in the pressurizer pressure functions Allowable Values still provides acceptable margin between the nominal Trip Setpoint and Allowable Value. The changes in Allowable Value does not impact the systems capability to provide both control and protection functions. No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes.

Therefore, the proposed changes do not create a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes do not affect the acceptance criteria for any analyzed event nor is there a change in any Safety Analysis Limit. There will be no effect on the manner in which safety limits or RTS and ESFAS settings are determined nor will there be any affect on those plant systems necessary to assure the accomplishment of protection functions. [The proposed changes to the pressurizer pressure Allowable Values will maintain the accident analyses in the Updated Safety Analysis Report.]

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: March 23, 2001 (CO 01–0013).

Description of amendment request: The amendment proposes to (1) delete certain license conditions from the operating license, and (2) revise Table 5.5.9–2, "Steam Generator Tube Inspection," in Section 5.5.9, "Steam Generator (SG) Tube Surveillance Program," of the technical specifications (TSs). License Conditions 2.C.(4) and 2.C.(6) through 2.C.(14) of the facility operating license are considered to have been completed and obsolete, or to duplicate other license requirements, and are proposed to be deleted. Attachments 2 and 3 to the facility operating license are also proposed to be deleted. Section 2.F of the facility operating license is considered to duplicate the reporting requirements in 10 CFR 50.72 and 50.73 and is proposed to be deleted. The reporting requirements in two "Action Required" columns of TS Table 5.5.9–2 are also considered to duplicate the reporting requirements in 10 CFR 50.72 and 50.73 and are proposed to be deleted. The list of the attachments and appendices to the facility operating license would also be revised to reflect the proposed deletion of Attachments 2 and 3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This request involves administrative changes only. No actual plant equipment or accident analyses will be affected by the proposed changes. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This request involves administrative changes only. No actual plant equipment or accident analyses will be affected by the proposed change and no failure modes not bounded by previously evaluated accidents will be created. Therefore, the proposed changes do not create a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Margin of safety is associated with confidence in the ability of the fission product barriers (i.e., fuel and fuel cladding, Reactor Coolant System pressure boundary, and containment structure) to limit the level of radiation dose to the public. This request involves administrative changes only [and does not change these barriers].

No actual plant equipment or accident analyses will be affected by the proposed change. Additionally, the proposed changes

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will not relax any criteria used to establish safety limits, will not relax any safety system settings, or will not relax the bases for any limiting conditions of operation [in the TSs]. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: April 3, 2001 (ET 01–0008).

Description of amendment request: The amendment would make the following changes to the technical specifications (TSs):

(1) Revise Safety Limit 2.1.1 by replacing Figure 2.1.1–1, "Reactor Core Safety Limits," with a reference to limits being specified in the Core Operating Limits Report (COLR) and by adding two reactor core safety limits on departure from nucleate boiling ratio (DNBR) and peak fuel centerline temperature.

(2) Revise Note 1 on the over temperature ΔT in Table 3.3.1–1 of TS 3.3.1, "Reactor Trip System Instrumentation," by replacing values of parameters with a reference to the values being specified in the COLR and correcting the expression for one term in the inequality for over temperature ΔT.

(3) Revise Note 2 on the overpower ΔT in Table 3.3.1–1 by replacing values of parameters with a reference to the values being specified in the COLR.

(4) Replace the limits for the reactor coolant system (RCS) pressure and average temperature with a reference to the limits being specified in the COLR for Limiting Condition for Operation (LCO) 3.4.1 and Surveillance Requirements (SRs) 3.4.1.1 and 3.4.1.2.

(5) Add the phrase "and greater than or equal to the limit specified in the COLR" to the RCS total flow rate in LCO 3.4.1 and SRs 3.4.1.3 and 3.4.1.4.

(6) Move items a. and b. to the left in the Note to the applicability in LCO 3.4.1.

(7) Revise TS Section 5.6.5 by adding TS 3.3.1 on over temperature and overpower "T trip setpoints and TS 3.4.1 on RCS pressure, temperature, and flow limits to the existing list of core operating limits for each reload cycle that are documented in the COLR and revising the list of topical reports in the COLR that represent the analytical methods approved by the Commission to determine core operating limits.

The proposed changes remove cycle-specific parameter limits and relocate them to the COLR, but they (1) do not change any of the limits, (2) add more specific requirements regarding DNBR limit and peak fuel centerline temperature limit to the TSs, (3) revise the list of topical reports in the list of NRC-approved analytical methods, (4) correct one term of an expression, and (5) move terms in a Note to the mode applicability for an LCO.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are programmatic and administrative in nature which do not physically alter safety related systems, nor affect the way in which safety related systems perform their functions. More specific requirements regarding the safety limits (i.e., DNBR limit and peak fuel centerline temperature limit) are being imposed in TS 2.1.1, "Reactor Core Safety Limits," which replace the Reactor Core Safety Limits figure and are consistent with the values stated in the USAR [Updated Safety Analysis Report]. The proposed changes remove the cycle-specific parameter limits from TS 3.4.1 and relocate them to the COLR which do not change plant design or affect system operating parameters. In addition, the minimum limit for RCS total flow rate is being retained in TS 3.4.1 to assure that a lower flow rate than reviewed by the NRC will not be used. The proposed changes do not, by themselves, alter any of the parameter limits. The removal of the cycle-specific parameter limits from the TS does not eliminate existing requirements to comply with the parameter limits. The existing TS Section 5.6.5b, COLR Reporting Requirements, continues to ensure that the analytical methods used to determine the core operating limits meet NRC reviewed and approved methodologies. The existing TS Section 5.6.5c, COLR Reporting Requirements, continues to ensure that applicable limits of the safety analyses are met.

The proposed changes to reference only the Topical Report number and title do not alter the use of the analytical methods used to determine core operating limits that have been reviewed and approved by the NRC. This method of referencing Topical Reports would allow the use of current Topical Reports to support limits in the COLR without having to submit an amendment to [the TS of] the operating license. Implementation of revisions to Topical Reports would still be reviewed in accordance with 10 CFR 50.59 and where required receive NRC review and approval.

Although the relocation of the cycle-specific parameter limits to the COLR would allow revision of the affected parameter limits without prior NRC approval, there is no significant effect on the probability or consequences of an accident previously evaluated. Future changes to the COLR parameter limits could result in event consequences which are either slightly less or slightly more severe than the consequences for the same event using the present parameter limits. The differences would not be significant and would be bounded by the existing requirement of TS Section 5.6.5c to meet the applicable limits of the safety analyses.

The cycle-specific parameter limits being transferred from the TS to the COLR will continue to be controlled under existing programs and procedures. The USAR accident analyses will continue to be examined with respect to changes in the cycle-dependent parameters obtained using NRC reviewed and approved reload design methodologies, ensuring that the transient evaluation of new reload designs are bounded by previously accepted analyses. This examination will continue to be performed pursuant to 10 CFR 50.59 requirements ensuring that future reload designs will not involve a significant increase in the probability or consequences of an accident previously evaluated. Additionally, the proposed changes do not allow for an increase in plant power levels, do not increase the production, nor alter the flow path or method of disposal of radioactive waste or byproducts. Therefore, the proposed changes do not change the types or increase the amounts of any effluents released offsite.

[The proposed changes to the expression of the $f_1(\Delta I)$ term, which is in the over temperature ΔT inequality, clarifies and corrects the term. Moving the terms in a Note to the LCO mode applicability is an administrative action.]

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

[The proposed changes are programmatic and administrative in nature which do not physically alter safety related systems, nor affect the way in which safety related systems perform their functions.]

The proposed changes that retain the minimum limit for RCS total flow rate in the TS, and that relocate certain cycle-specific parameter limits from the TS to the COLR, thus removing the requirement for prior NRC approval of revisions to those parameters, do not involve a physical change to the plant. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There are no changes being made to the parameters within which the plant is operated, other than their relocation to the COLR. There are no setpoints affected by the proposed changes at which protective or mitigative actions are initiated. The proposed changes will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No alteration in the procedures which ensure the plant remains within analytical limits is being proposed, and no change is being made to the procedures relied upon to respond to an off-normal event. As such, no new failure modes are being introduced.

The proposed changes to reference only the Topical Report number and title do not alter the use of the analytical methods used to determine core operating limits that have been reviewed and approved by the NRC. This method of referencing Topical Reports would allow the use of current Topical Reports to support limits in the COLR without having to submit an amendment to [the TS of] the operating license. Implementation of revisions to Topical Reports would still be reviewed in accordance with 10 CFR 50.59 and where required receive NRC review and approval.

Relocation of cycle-specific parameter limits has no influence or impact on, nor does it contribute in any way to the possibility of a new or different kind of accident. The relocated cycle-specific parameter limits will continue to be calculated using the NRC reviewed and approved methodology. The proposed changes do not alter assumptions made in the safety analysis and operation within the core operating limits will continue.

[The proposed changes to the expression of the $f_1(\Delta I)$ term, which is in the over temperature ΔT inequality, clarifies and corrects the term.]

Therefore, the proposed changes do not create a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. The proposed changes [are programmatic and administrative in nature and] do not physically alter safety related systems, nor does it [a]ffect the way in which safety-related systems perform their functions. The setpoints at which protective actions are initiated are not altered by the proposed changes. Therefore, sufficient equipment remains available to actuate upon demand for the purpose of mitigating an analyzed event. As the proposed changes to relocate cycle-specific parameter limits to the COLR will not affect plant design or system operating parameters, there is no detrimental impact on any equipment design parameter, and the plant will continue to operate within prescribed limits.

The development of cycle-specific parameter limits for future reload designs will continue to conform to NRC reviewed and approved methodologies, and will be performed pursuant to 10 CFR 50.59 to assure that plant operation [is] within cycle-specific parameter limits.

The proposed changes to reference only the Topical Report number and title do not alter the use of the analytical methods used to determine core operating limits that have been reviewed and approved by the NRC. This method of referencing Topical Reports would allow the use of [the] current Topical Reports to support limits in the COLR without having to submit an amendment to [the TS of] the operating license. Implementation of revisions to Topical Reports would still be reviewed in accordance with 10 CFR 50.59 and where required receive NRC review and approval.

[The proposed changes to the expression of the $f_1(\Delta I)$ term, which is in the over temperature ΔT inequality, clarifies and corrects the term. Moving the terms in a Note to the LCO mode applicability is an administrative action.]

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: February 28, 2001.

Brief description of amendments: The amendments revise the definitions of engineered safety feature response time and reactor protection system response time in Technical Specification (TS) 1.1, "Definitions," to add the following statement: "In lieu of measurement, response time may be verified for selected components provided that the components and methodology for verification have been previously reviewed and approved by the [Nuclear Regulatory Commission] NRC." Approval of the amendments will allow either an allocated sensor response time or a measured sensor response time for the identified Reactor Protection System and Engineered Safety Features Actuation System pressure sensors when performing response time testing.

Date of issuance: April 19, 2001.

Effective date: April 19, 2001, and shall be implemented within 45 days of the date of issuance.

Amendment Nos.: Unit 1–135, Unit 2–135, Unit 3–135.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 20, 2001 (66 FR 15766).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 19, 2001.

No significant hazards consideration comments received: No. Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert.

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Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: December 21, 2000, as supplemented on February 12, 2001, and March 5, 2001.

Brief description of amendments: The amendments revise Technical Specification 5.2.2.e by removing the reference to the Nuclear Regulatory Commission Policy Statement on working hours.

Date of issuance: April 5, 2001.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 245 and 219.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 7, 2001 (66 FR 9380).

The February 12, 2001, and March 5, 2001, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated April 5, 2001.

No significant hazards consideration comments received: No.

Calvert Cliffs Nuclear Power Plant, Inc., Docket No. 50–318, Calvert Cliffs Nuclear Power Plant, Unit No. 2, Calvert County, Maryland

Date of application for amendment: September 14, 2000, as supplemented on December 21, 2000.

Brief description of amendment: The amendment permits operation of Calvert Cliffs Unit 2 with a core containing a lead fuel (test) assembly that includes fuel rods with advanced zirconium alloy cladding.

Date of issuance: April 5, 2001.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 220.

Renewed License No. DPR–69: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 10, 2001 (66 FR 2012).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 5, 2001.

No significant hazards consideration comments received: No.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois.

Date of application for amendments: June 19, 2000, as supplemented by letters dated March 16, 2001, and April 4, 2001.

Brief description of amendments: The proposed amendments revised the technical specifications to remove their applicability related to the Boron Dilution Protection System (BDPS) after the next refueling outage for each unit. During the refueling outages, modifications are scheduled to be made which will permit mitigation of a boron dilution event without the use of the BDPS.

Date of issuance: April 6, 2001.

Effective date: Immediately, to be implemented upon completion of the modifications scheduled to be completed after cycle 9 for Byron, Unit 2, and Braidwood, Units 1 and 2, and after cycle 11 for Byron, Unit 1.

Amendment Nos.: 117 and 111.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 6, 2000 (65 FR 54084).

Since the proposed additional changes provided in this supplement are more restrictive than the originally proposed changes, it does not change the previous determination of no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 6, 2001.

No significant hazards consideration comments received: No.

Consumers Energy Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: February 12, 2001.

Brief description of amendment: The amendment changes Technical Specification Section 5.6.5b, "Reporting Requirements—Core Operating Limits Report (COLR)," to add a report pertaining to statistical setpoint methodology to the list of approved methodology references.

Date of issuance: April 9, 2001.

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 195.

Facility Operating License No. DPR–20. Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 7, 2001 (66 FR 13801).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 9, 2001.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: August 22, 2000, as supplemented by letter dated November 7, 2000.

Brief description of amendments: The amendments revise the Technical Specifications (TS) of each unit to restore a time limit for an allowable condition for the occurrence of an inoperable refueling water storage tank level transmitter in TS 3.3.2.

Date of issuance: April 12, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 198 and 179.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** *November 1, 2000 (65 FR 65341).*

The supplement dated November 7, 2000, provided clarifying information that did not change the scope of the August 22, 2000, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 12, 2001.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: September 6, 2000, as supplemented on January 18, and April 2, 2001.

Brief description of amendment: The amendment revises Technical Specification 5.5.15 to allow a one time change in the 10 CFR part 50, Appendix J, Type A test interval from the required 10 years to a test interval of 15 years.

Date of issuance: April 17, 2001.

Effective date: April 17, 2001.

Amendment No.: 206.

Facility Operating License No. DPR–64:

Date of initial notice in ***Federal Register:*** January 24, 2000 (66 FR 7665).

The January 18, and April 2, 2001, submittals contained clarifying information only, and did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 17, 2001.

No significant hazards consideration comments received: No.

Entergy Nuclear Generation Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: February 16, 2001.

Brief description of amendment: This amendment substitutes a surveillance interval of "Once/Operating Cycle" for the current surveillance interval of "Each Refueling Outage," for the following instruments in Technical Specification Table 4.2.F: Containment High Radiation Monitor, Reactor Building Vent Radiation Monitor, Main Stack Vent Radiation Monitor, and Turbine Building Vent Radiation Monitor.

Date of issuance: April 9, 2001.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 189.

Facility Operating License No. DPR–35: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 7, 2001 (66 FR 13802).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 9, 2001.

No significant hazards consideration comments received: No.

Entergy Nuclear Generation Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: November 22, 2000, as supplemented on January 30 and February 2, 2001.

Brief description of amendment: This amendment changes the pressure-temperature limit curves of Figures 3.6.1, 3.6.2, and 3.6.3 of the Technical Specifications (TS) over operation between 20, 32, and 48 Effective Full Power Years. However, these curves will only apply for the remainder of operating cycles 13 and 14. The Bases section has been modified to reflect these TS changes.

Date of issuance: April 13, 2001.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 190.

Facility Operating License No. DPR–35: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 27, 2000 (65 FR 81915).

The January 30 and February 2, 2001, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 13, 2001.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: August 10, 2000, as supplemented by letter dated March 22, 2001.

Brief description of amendment: The amendment revised Technical Specification 3/4.9.4, "Refueling Operations, Containment Building Penetrations," by deleting the requirements for the containment purge and exhaust system and by revising the closure requirements for containment building penetrations to require that containment penetrations are capable of being closed during the handling of irradiated fuel within the containment.

Date of issuance: April 18, 2001.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 230.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 20, 2000 (65 FR 56950).

The March 22, 2001, supplemental letter provided clarifying information that was within the scope of the original **Federal Register** notice and did not change the staff's initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 18, 2001.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. 50–353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania

Date of application for amendment: February 1, 2001, as supplemented March 6 and 23, 2001.

Brief description of amendment: This amendment revises the minimum critical power ratio safety limits for operating cycle 7.

Date of issuance: April 12, 2001.

Effective date: As of date of issuance, and shall be implemented within 30 days.

Amendment No.: 114.

Facility Operating License No. NPF–85. This amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 21, 2001 (66 FR 11061).

The March 6 and 23, 2001, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 12, 2001.

No significant hazards consideration comments received: No.

Florida Power and Light Company, Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application for amendment: December 4, 2000, as supplemented February 9, 2001.

Brief description of amendment: This amendment changes the licensing bases to incorporate a revised analysis of the Main Steam Line Break inside containment.

Date of Issuance: April 20, 2001.

Effective Date: April 20, 2001.

Amendment No.: 175.

Facility Operating License No. DPR–67: Amendment revised the Updated Final Safety Analysis Report.

Date of initial notice in ***Federal Register:*** February 7, 2001 (66 FR 9383).

The February 9, 2001, Supplement did not affect the original proposed no significant hazards determination, or expand the scope of the request as noticed in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 20, 2001.

No significant hazards consideration comments received: No.

North Atlantic Energy Service Corporation, et al., Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: December 18, 2000.

Description of amendment request: The amendment deletes Technical Specifications Section 6.7.6.e, "Post-Accident Sampling," for Seabrook Station, Unit No. 1 and thereby eliminates the requirements to have and maintain the post-accident sampling system.

Date of issuance: April 17, 2001.

Effective date: As of its date of issuance, and shall be implemented within 60 days.

Amendment No.: 78.

Facility Operating License No. NPF–86: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 24, 2000 (66 FR 7683).

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The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 17, 2001.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: October 19, 2000, as supplemented November 16, 2000, and April 9, 2001, and as limited in scope by letter dated March 23, 2001.

Brief description of amendment: The amendment revises the Technical Specifications regarding operability requirements during core alterations and while moving irradiated fuel assemblies within the secondary containment. The amendment also provides for a change in design and licensing bases for a selective application of the alternate radiological source term in accordance with 10 CFR 50.67, "Accident Source Term," and revised meteorology dispersion values, both being limited to a design-basis fuel handling accident.

Date of issuance: April 16, 2001.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 237.

Facility Operating License No. DPR–49: The amendment revised the Technical Specifications and the licensing and design bases regarding a design-basis fuel handling accident.

Date of initial notice in ***Federal Register:*** March 6, 2001 (66 FR 13598).

NMC's letters dated March 23 and April 9, 2001, are within the scope of the changes proposed in NMC's letter of October 19, 2000, that was noticed in the **Federal Register** on March 6, 2001.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 16, 2001.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of application for amendments: April 17, 2000, as supplemented February 2, 2001.

Brief description of amendments: The amendments change the Technical Specifications (TSs) for removal of boric acid storage tanks from the safety injection (SI) system. These changes accomplish two objectives: (1) Eliminate high concentration boric acid from the SI system and (2) align this specific TS section with the standard TSs.

Date of issuance: April 16, 2001.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment Nos.: 156 and 147.

Facility Operating License Nos. DPR–42 and DPR–60: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 7, 2001 (66 FR 13806).

The February 2, 2001, supplement provided clarifying information that was within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 16, 2001.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: October 4, 2000, as supplemented March 12, April 2, and April 5, 2001.

Brief description of amendments: The amendments revise the surveillance test requirements for excess flow check valves (EFCVs) to allow testing of a representative sample at 24-month intervals such that each EFCV is tested at least once every 10 years.

Date of issuance: April 11, 2001.

Effective date: As of date of issuance to be implemented within 30 days.

Amendment Nos.: 193 and 168.

Facility Operating License Nos. NPF–14 and NPF–22. The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 10, 2001 (66 FR 2021).

The March 12, April 2, and April 5, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the amendment beyond the scope of the initial notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 11, 2001.

No significant hazards consideration comments received: No.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: January 18, 2001, as supplemented by letter dated February 21, 2001.

Brief description of amendment: The amendment authorizes the installation of new engineered safety feature transformers as an improvement. This amendment will allow the installation and use of the new transformers equipped with automatic load tap changers and an update to the Final Safety Analysis Report (FSAR) to reflect their installation.

Date of issuance: April 6, 2001.

Effective date: April 6, 2001, and shall be implemented in the next periodic update to the FSAR in accordance with 10 CFR 50.71(e).

Amendment No.: 143.

Facility Operating License No. NPF–30: The amendment revised the FSAR.

Date of initial notice in ***Federal Register:*** February 21, 2001 (66 FR 11063).

The February 21, 2001, supplemental letter provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 6, 2001.

No significant hazards consideration comments received: No.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: January 18, 2001.

Brief description of amendment: The amendment deletes Section 5.5.3, "Post Accident Sampling," of the Technical Specifications for the Callaway Plant and thereby eliminates the requirements to have and maintain the post-accident sampling system (PASS).

Date of issuance: April 6, 2001.

Effective date: April 6, 2001, to be implemented within 60 days of the date of issuance.

Amendment No.: 144.

Facility Operating License No. NPF–30: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 7, 2001 (66 FR 13808).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 6, 2001.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland this 25th day of April 2001.

For The Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation

[FR Doc. 01–10822 Filed 5–1–01; 8:45 am]

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OFFICE OF MANAGEMENT AND BUDGET

Draft Report to Congress on the Costs and Benefits of Federal Regulations

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice and request for comments.

SUMMARY: OMB requests comments on the attached Draft Report to Congress on the Costs and Benefits of Federal Regulation. The Draft Report is divided into an Introduction and three chapters. The Introduction sets the context and provides the background for the next three chapters. Chapter I discusses the various types of regulations and the problems we have encountered in our past attempts to estimate the total costs and benefits of Federal regulations, especially in the aggregate and by regulatory program. The chapter also proposes several new approaches to produce better estimates and asks for comments on these proposals as well as other suggestions to improve our estimates. Chapter II provides data on the costs and benefits of each of the major regulations reviewed by OMB under Executive Order 12866 from April 1, 1999 through March 31, 2000 as well as information on the costs and benefits of the major regulations issued by the independent agencies during this period. Chapter III discusses last year's recommendation to improve the regulatory information provided by the agencies. It also asks for comments on that proposal as well as for suggestions that would improve the transparency and the public's understanding of the regulatory analyses provided by the agencies.

DATES: To ensure consideration of comments as OMB prepares this Draft Report for submission to Congress, comments must be in writing and received by OMB no later than July 2, 2001.

ADDRESSES: Comments on this Draft Report should be addressed to John F. Morrall III, Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Room 10235, 725 17th Street, NW., Washington, DC 20503.

You may also submit comments by facsimile to (202) 395–6974, or by electronic mail to *jmorrall@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: John F. Morrall III, Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Room 10235, 725 17th Street, NW., Washington, DC 20503. Telephone: (202) 395–7316.

SUPPLEMENTARY INFORMATION: Congress directed the Office of Management and Budget (OMB) to prepare a Report to Congress on the Costs and Benefits of Federal Regulations. Specifically, Section 628 of the FY2000 Treasury and General Government Appropriations Act (the Act) requires OMB to submit a report on the costs and benefits of Federal regulations together with recommendation for reform. The Act says that the report should contain estimates of the costs and benefits of regulations in the aggregate, by agency and agency program, and by major rule, as well as an analysis of impacts of Federal regulation on State, local, and tribal government, small business, wages, and economic growth. The Act also states that the report should go through notice and comment and peer review.

Donald R. Arbuckle,

Acting Administrator, Office of Information and Regulatory Affairs.

Draft Report to Congress on the Costs and Benefits of Federal Regulations Introduction

This is a draft for public comment of the Office of Management and Budget's fourth report to Congress on the costs and benefits of Federal regulation.[1] This report is required by Section 628(a) of the FY2000 Treasury and General Government Appropriations Act (the Act). The Act requires OMB to submit "an accounting statement and associated report" containing:

"(1) an estimate of the total annual costs and benefits (including quantifiable and nonquantifiable effects) of Federal rules and paperwork, to the extent feasible:

"(A) in the aggregate;

"(B) by agency and agency program; and

"(C) by major rule;

"(2) an analysis of impacts of Federal regulation on State, local, and tribal government, small business, wages, and economic growth; and

"(3) recommendations for reform.

The Act at Section 628 (b), (c), and (d) also specifies how we are to produce the report. We must:

"(b) * * * provide public notice and an opportunity to comment on the statement and report,

"(c) * * * issue guidelines to agencies to standardize (1) measures of costs and benefits and (2) the format of accounting statements, and

"(d) * * * provide for independent and external review of the guidelines and each accounting statement and associated report under this section."

This draft report provides the public with an opportunity to comment on the "statement and report" before we submit it to Congress. We are also asking independent and external experts in the economics of Federal regulation to review this draft report. After taking the public comments and peer reviews into account, we will submit the final report to Congress.

In early October 1999, we drafted "Guidelines to Standardize Measures of Costs and Benefits and the Format of Accounting Statements" (Guidelines). We circulated them for "independent and external review" by nine experts in the field of benefit cost analysis. Based on these comments we finalized the Guidelines and issued them as a Memorandum for the Heads of Departments and Agencies (M–00–08) on March 22, 2000.[2] On August 7, 2000, we asked the Departments and Agencies to use the Guidelines to provide the "accounting statements" on the benefits and costs of regulations that we would use to prepare the report to Congress on the costs and benefits of Federal regulations. Using this information as well as other information from the agencies and published literature on the costs, benefits, and impacts of Federal regulation, we prepared this draft report.

This draft report is OMB's fourth report to Congress on the costs and benefits of Federal regulation required by a series of appropriations' riders that ask for substantially the same regulatory information. Starting next year, Section 624 of the Consolidated Appropriations Act of 2001 requires us to update this report and deliver it to Congress with the Budget on an annual basis. This requirement gives us an opportunity to develop a longer run and permanent strategy to produce more comprehensive and higher quality reports. In addition, we are aware of only a limited amount of additional information on aggregate effects that has become available since the third report was issued on June 2, 2000. The new information we present in this draft report for comment are the benefit and cost estimates, both quantitative and qualitative, of the major regulations issued between April 1, 1999, and March 31, 2000. This information was not included in the 2000 report. We are also taking this opportunity to ask for comments on the 2000 final report and for citations to any

[1] This report uses the terms "rule" and "regulation" interchangeably.

[2] See http://www.whitehouse.gov/omb/memoranda/m00–08.pdf

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pertinent articles of information left out of that report. Finally, we are asking for recommendations for regulatory reform, including areas where the public interest would be served by updating, revising, or rescinding Federal regulations.

Chapter I discusses the 2000 report's estimates of total annual costs and benefits of Federal regulation and paperwork in the aggregate, and by agency and agency program, and asks for comments on them. It also asks for comments and discusses our analysis of the impacts of Federal regulation on State, local, and tribal government, small business, wages, and economic growth.

Chapter II uses agency regulatory impact analyses to present new quantitative estimates and qualitative descriptions of the benefits and costs of the 31 major rules issued by Federal agencies for which we concluded review during the 12-month period between April 1, 1999 and March 31, 2000. It also discusses cost and benefit information for the ten major rules issued during this period by the independent agencies. This "regulatory year" is the same period we used for the first three reports.

Chapter III discusses general recommendations for reform aimed at improving the agencies' estimates of costs and benefits and the quality of regulations that we included in last year's report. It also solicits suggestions and recommendations for reforms for existing regulations and regulatory programs and provides a format to summarize the recommendations. Finally, Chapter III asks for suggestions that would improve the regulatory development and oversight process.

Chapter I: Estimating the Total Annual Costs, Benefits, and Impacts of Federal Regulations and Paperwork

I. Overview

This chapter discusses the estimates of the total annual costs and benefits of Federal rules and paperwork in the aggregate and by agency and agency program presented in Chapter II of last year's Report, Report to Congress On the Costs and Benefits of Federal Regulations (OMB, 2000).[3] After discussing some of the problems we have encountered in estimating their costs and benefits, we explain why we decided to take a fresh and thorough look at our approach to aggregating these estimates. We then propose various new approaches to estimation and ask for comments on them and any other suggestions on how to improve our estimates.

Last year's estimates represented our third estimation attempt. Each successive report added new information, both on new and existing regulations, as it became available during the intervening period. The new information significantly affected our estimates. Because of uncertainty, we characterized the estimates with wide ranges. Even then, we pointed out that wide gaps remained in both the cost and benefit estimates due to our inability to quantify and monetize many types of costs and benefits. Many commenters including the peer reviewers expressed doubts about the accuracy of the estimates and suggested ways to improve the estimates, but few offered alternative estimates.[4]

Given the concerns with our estimates, the relatively short time that has passed since we issued our last report on June 2, 2000, and new statutory requirements to do this report on an annual basis, we are taking this opportunity to step back and take a more careful look at both the methodologies and assumptions behind the hundred or so individual studies upon which our estimates are based and our approach to aggregating them.

On March 22, 2000, we issued "Guidelines to Standardize Measures of Costs and Benefits and the Formats of Accounting Statements" (OMB Memorandum M–00–08), which dealt with many of the problems that analysts face in estimating the costs and benefits of individual regulations. Most analyses of the impacts of regulations are not simple or clear cut.

Clearly we cannot identify fully the aggregate estimates of the costs and benefits of all Federal regulation. In particular, we are most uncertain about the costs and benefits of regulations issued before 1990. At that time, OMB and others began systematically keeping track of the total costs and benefits of major regulations by using estimates from agency regulatory impact analyses. Before that time, the aggregate estimates were a combination of studies from academics, agencies, and industry using a variety of methods and assumptions. Moreover, some of the studies were retrospective, others prospective.

In addition, using the standards of our new Guidelines, it is apparent that many of the regulatory estimates for regulations issued since 1990 are also not fully satisfactory. Thus, for the reasons discussed above, we have decided this year to reassess the approach and methodology we have used to estimate the aggregate costs and benefits of Federal regulation. To do this, we are asking for advice and guidance from the public and peer reviewers on ways to improve our past estimates and implementation of the Act.

II. Developing Aggregate Estimates of the Benefits and Costs of Regulation

Although we expressed significant methodological concerns with aggregate estimates of the benefits and costs of regulation in our previous three reports, we did present estimates of the total benefits and costs of Federal rules and paperwork in the three reports.[5] We are not aware of new information that would provide the basis for a major revision to these estimates. We are interested, though, in identifying appropriate next steps in supporting a major overhaul of these estimates. To this end, we are considering several possibilities.

Should We Assess Older Regulations? One possibility would be to drop the benefits and costs of Federal regulatory action for regulations issued prior to 1990. Several peers and commenters on the draft of last year's report expressed concern with the methodology used to estimate the costs and benefits of some of the most important regulations issued before 1990. Also, in a dynamic economy changes in product mix, consumer taste, per capita income, production technologies, etc., all operate to change the effect of regulations adopted two or three decades ago. Over time, these requirements become absorbed in a broader economic milieu and the merits of identifying independent benefit and cost estimates for these older rules is at least arguable.

Should We Focus on Specific Statutes or Categories of Regulations? A second possibility would be to focus efforts on developing estimates of the benefits and costs of specific programs—for example, regulation of automobile safety or drinking water systems. This approach could yield estimates of benefits and costs associated with a specific program and at the same time offer some insight into specific areas where the program is effective and, perhaps, areas where the program is less effective.

This approach is similar to the approach adopted by EPA in its Report to Congress on the Benefits and Costs of the 1990 Clean Air Act Amendments. In this case, EPA identified a well-defined baseline—the Clean Air Act prior to adoption of the 1990 amendments. However, we believe a review of this type ought to go beyond just providing estimates of total benefits and costs to assess the specific regulatory provisions that make up the regulatory program.

This approach, of course, will not yield aggregate estimates of the benefits and costs of Federal regulations unless all regulatory programs are evaluated. However, it may help to bring into focus the effects of specific programs and help to identify what elements of the program are working—and what elements are not working and need to be over-hauled.

Should We Seek to Develop A Better Way to Estimate the Aggregate Cost of Federal Regulation?

Rather than using the bottom up approach of adding up individual estimates of regulatory programs and regulations, a top down approach could be used to estimate the costs of all regulation. At least for some regulations, survey techniques could be used to ask firms and other entities what expenditures they make to comply with Federal regulation. In this regard, the Department of Commerce has recently reinstated (after a five year lapse) its national survey for pollution abatement costs and expenditures (know as the PACE survey for short). This approach could be expanded for other regulations.

How Should We Estimate Effects on State, Local, and Tribal Government, Small Business, Wages, and Economic Growth?

Last year we presented a general theoretical discussion of the effects of regulation on State, Local, and Tribal Government, Small Business, Wages, and Economic Growth without any empirical estimates. We received several comments on last year's report asking for empirical estimates. We have asked agencies to provide this information in their reports and accounting statements to us. We would also appreciate receiving any additional information that commenters would like to provide us.

How Can We Improve the Estimates of Costs and Benefits of Major Regulations?

In our previous reports, we relied heavily on agency estimates for major regulations. Our approach has been to work with the agencies as we reviewed their regulatory impact analyses to help them improve their estimates. As mentioned, we also issued Guidance to help them standardize and improve their estimates of costs and benefits of regulations. And in some instances we monetize agency estimates where they had provided quantified information, but for whatever reason had not monetized themselves. We also made attempts to use consistent discount rates. Still, many commenters continue to ask us to do a better job of assuring consistency in the methodologies and assumptions used by the agencies in their estimates. We will continue to emphasize to the agencies the importance of complying with the Guidelines.

Some commenters have also urged us to provide our own independent estimates of costs and benefits in the place of agency estimates. We of course will continue to work with the agencies to improve the agency estimates at the time we review their regulations. But the question arises whether we should include the agency estimates in our report if, with the passage of time and the addition of new information in the course of preparing the Report to Congress, we find that revised estimates would be more accurate.

How Should We Treat EPA's Aggregate Estimates of the Benefits of the Clean Air Act?

The aggregate estimate of the benefits of Federal Regulations reported in the last two Reports is dominated by EPA's estimates of the benefits of regulations required by the Clean Air Act (CAA) from their two Reports to Congress on the Benefits and Costs of the Clean Air Act. The magnitude and importance of these estimates demand careful attention to their derivation and accuracy.

These Reports were developed through an EPA Science Advisory Board (SAB) peer review process. In both cases, the SAB panels reviewing these two Reports concluded review by stating that these Reports were serious, careful studies employing sound methods and data. The SAB panel also stated that "While we do not endorse all details of the study, we believe that the study's conclusions are generally consistent with the weight of available evidence."[6]

Public commenters on both of those reports criticized the methodology and several of the key assumptions in those reports. We share some of those concerns and spent considerable time in our last two reports discussing them.

II. Summary

In order to improve our estimates of the total annual costs and benefits of Federal rules and paperwork in the aggregate and by agency and agency program presented in last year's Report, we are asking for comments and suggestions on those estimates, as well as for comments and suggestions on how to improve the ongoing estimation of the costs and benefits of agency rules. In addition to the questions and issues raised above, we also invite comments on any other aspect of last year's report (see Chapter II) that commenters feel would improve future reports.

Chapter II: Estimates of Benefits and Costs of This Year's "Major" Rules

In this chapter, we examine the benefits and costs of each "major rule," as required by section 628(a)(1)(C). We have included in our review those final regulations on which OMB concluded review during the 12-month period April 1, 1999, through March 31, 2000. This "regulatory year" is the same calendar period we have used for our three previous reports.

For purposes of section 628(a)(1)(C), we have interpreted "major rule" to include all final rules promulgated by an Executive branch agency that meet any one of the following three measures:

- Rules designated as "economically significant" under section 3(f)(1) of Executive Order 12866.
- Rules designated as "major" under 5 U.S.C. 804(2) (Congressional Review Act).
- Rules designated as meeting the threshold under Title II of the Unfunded Mandates Reform Act (2 U.S.C. 1531–1538).

We also include a discussion of major rules issued by independent regulatory agencies, although OMB does not review these rules under Executive Order 12866. This discussion is based on data provided by these agencies to the General Accounting Office (GAO) under the Congressional Review Act.

During the regulatory year, OMB reviewed 31 final rules that met the criteria noted above. Of these final rules, HHS submitted eight; EPA six; USDA six; DOT three; DOI three; and DOC, HUD, FEMA, and the Emergency Oil and Gas Guarantee Loan Board and the Emergency Steel Guarantee Loan Board, one each. These 31 rules represent about 16 percent of the 190 final rules reviewed by OMB between April 1, 1999, and March 31, 2000, and less than

[3] The June 2000 report may be found on OMB's home page at: *http://www.whitehouse.gov/omb/inforeg/2000fedreg-report.pdf*. The charts are in a separate file at: *http://www.whitehouse.gov/omb/inforeg/2000fedreg-charts.pdf*.

[4] See Chapter I of last year's report, which presents a discussion of the peer reviewers' and public's comments on last year's draft report (OMB 2000).

[5] See the detailed discussions of the various problems encountered in estimating aggregate costs and benefits that caveated the estimates in the previous reports (OMB 1997, 1998, and 2000). These reports are on our home page at http://www.whitehouse.gov/omb/inforeg/index.html.

[6] See council review closure letter to EPA Administrator Browner, p. 1, EPA–SAB–Council–ADV–00–003, Nov. 19, 1999.

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one percent of the 4,679 final rule documents published in the **Federal Register** during this period. Nevertheless, because of their scale and scope, we believe that they represent the vast majority of the costs and benefits of new Federal regulations issued during this period.

I. Overview

We found that the benefit cost analyses accompanying the 31 final rules listed in Table 1 vary substantially in type, form, and format of the estimates the agencies generated and presented. For example, agencies developed estimates of benefits, costs, and transfers that were sometimes monetized, sometimes quantified but not monetized, sometimes qualitative, and, most often, some combination of the three.

II. Benefits and Costs of Economically Significant/Major Final Rules (April 1999 to March 2000)

A. Social Regulation

Of the 31 rules reviewed by OMB, 12 are regulations requiring substantial additional private expenditures and/or providing new social benefits,[7] as described in Table 1.[8] EPA issued six of these rules; DOI two; and USDA, DOC, HUD, and DOT one each. Agency estimates and discussion are presented in a variety of ways, ranging from a purely qualitative discussion, for example, the benefits of USDA's irradiation rule, to a more complete benefit-cost analysis, for example, EPA's storm water discharges rule.

1. Benefits Analysis

Agencies monetized at least some benefit estimates for seven of the 12 rules including: (1) HUD's estimate of $715.6 million over the first five years from reduced lead exposure; (2) DOI's estimate of $50 million to $192 million per year in benefits from it's migratory bird hunting regulations; and (3) EPA's $800 million to $19.3 billion per year in human health and visibility improvements from its regional haze rule. In one case, the agency provided some of the benefit estimates in monetized and quantified form, but did not monetize other, important quantified components of benefits. EPA's analysis of its handheld engines rule monetized the projected fuel savings, but not the estimated hydrocarbon and nitrogen oxide emission reductions.

In three cases, agencies did not report any quantified (or monetized) benefit estimates. In one case, the agency provided a qualitative description of benefits. USDA's irradiation rule discusses the benefits associated with the reductions in diseases associated with reduced pathogen exposure.

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[7] The other 19 are "transfer" rules that set terms for monetary payments from one group to another that do not directly affect total resources available to society.

[8] Note that all dollar figures Table 1 are in 1996 dollars unless otherwise noted.

TABLE 1: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/99 - 3/31/00
(As of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
USDA	Irradiation of Meat Food Products	Not Estimated	$35 - 105 million/yr. (1995 dollars) assuming 25 percent of ground beef irradiated	"Society also may realize benefits from these final regulations if the use of irradiation results in a reduction of illnesses beyond what is achieved by current technologies. Several types of harmful microbial pathogens can be present in meat food products, including E. coli O157:H7, Salmonella, Clostridium perfringens, and the protozoan parasite Toxoplasma gondii. Irradiation at the dose levels allowed by this action can reduce the levels of these pathogens substantially. Economic benefits associated with these reductions would be decreases in the diseases associated with these pathogens. The reductions in the disease rates would translate into a reduction in the number of visits to physicians and hospitals." [64FR72163]
DOC	Endangered and Threatened Species; Threatened Status for Two Chinook Salmon ESUs	Not Estimated	Not Estimated	

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TABLE 1: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/99 - 3/31/00
(As of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
HUD	Lead-Based Paint Hazards	$715.6 million (1996 dollars) for first five years of activity	$564.2 million (1996 dollars) for first five years of activity	Costs and benefits include the present value of future costs and benefits associated with the first five years of hazard reduction activities. Monetized benefits based on prevention of elevated blood lead levels (EBLs) in children. "Such benefits include avoiding the costs of special education and medical treatment for EBL children, as well as increasing lifetime earnings associated with higher IQs for children with lower blood lead levels." [64FR50187] "The monetized benefit of increased lifetime earnings due to lower blood lead levels accounts for 99 percent of all monetized health benefits of the rule." [64FR50187] "HUD believes that an intergenerational discount rate is applicable to the final rule because the costs will be borne by adult taxpayers, and lifetime earnings will be realized by the children and grandchildren of these adult taxpayers." [64FR50186] Application of a 3% discount rate implies a benefit estimate of $2.65 billion for the first five years of activity.
DOI	Migratory Bird Hunting (Early Season Frameworks)	$50-192 million/yr.	Not Estimated	"Estimates of individual's willingness to pay indicate the size of this benefit. Willingness to pay for generally improved duck hunting in California was $32. Willingness to pay for taking twice as many birds in Montana was $123. Expanding these estimates nationwide, the welfare benefit of the duck hunting frameworks in on the order of $50 to $192 million" (RIA, p. 1).
DOI	Migratory Bird Hunting (Late Season Frameworks)	$50-192 million/yr.	Not Estimated	"Estimates of individual's willingness to pay indicate the size of this benefit. Willingness to pay for generally improved duck hunting in California was $32. Willingness to pay for taking twice as many birds in Montana was $123. Expanding these estimates nationwide, the welfare benefit of the duck hunting frameworks in on the order of $50 to $192 million" (RIA, p. 1).

TABLE 1: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/99 - 3/31/00
(As of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
DOT	Light Truck CAFÉ Model-Year 2002	Not Estimated	Not Estimated	
EPA	Storm Water Discharges (Phase II)	$671.5 million/yr.- 1.628 billion/yr. (1998 dollars)	$847.6 - 981.3 million/yr. (1998 dollars)	Estimates of individual willingness to pay for water quality improvements in fresh water and marine water indicate the size of the monetized benefit. "There are additional benefits to storm water control that cannot be quantified or monetized. Thus, the current estimate of monetized benefits may understate the true value of storm water controls because it omits many ways in which society is likely to benefit from reduced storm water pollution, such as improved aesthetic quality of waters, benefits to wildlife and to threatened and endangered species, cultural values, and biodiversity benefits." [64FR68794]

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TABLE 1: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/99 - 3/31/00
(As of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
EPA	Tier 2 / New Motor Vehicle Emissions Standards	$13.7 - 25.2 billion/yr. (1997 dollars) in 2030.	$5.3 billion/yr. (1997 dollars) in 2030.	Agency estimates are based on analysis of 2030. Estimates represent "a single year 'snapshot' of the yearly benefits and costs expected to be realized once the standards have been fully implemented and non-compliant vehicles have all been retired. Near-term costs will be higher than long-run costs as vehicle manufacturers and oil companies invest in new capital equipment and develop and implement new technologies. In addition, near-term benefits will be lower than long-run benefits because it will take a number of years for Tier 2-compliant vehicles to fully displace older, more polluting vehicles." [65FR6783] Monetized benefits are based on reductions in cases of respiratory illness and premature mortality. Savings in associated medical costs are also included in the monetized portion of the benefits. Non-quantified benefits include possible improvements in visibility and avoided crop damage. "A full appreciation of the overall economic consequences of the Tier 2/gasoline sulfur standards requires consideration of all benefits and costs expected to result from the new standards, not just those benefits and costs which could be expressed here in dollar terms." [65FR6785]

TABLE 1: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/99 - 3/31/00
(As of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
EPA	Regional Haze Rule	$0.8 - 19.3 billion/yr. (1990 dollars) in 2015	$0.8 - 4.4 billion/yr. (1990 dollars) in 2015	Agency estimates are based on analysis of effects in 2015. Monetized benefits reflect improvements in health and visibility. "This benefit analysis does not quantify all potential benefits or disbenefits. The magnitude of the unquantified benefits associated with omitted categories, such as damage to ecosystems or damage to industrial equipment and national monuments, is not known." [RIA, p.9-1] EPA notes that "the RIA is not a precise reflection of the actual costs, economic impacts, and benefits associated with the progress goals and emission management strategies developed as a result of the final regional haze rule. This is due to the fact that under the regional haze rule, the States bear the primary responsibility for establishing reasonable progress goals as well as emission management strategies for meeting these goals. Until such time as the States make those decisions, EPA can only speculate as to which goals may be established and what types of control requirements or emission limits might result from the associated emission management strategies." [64FR35760]
EPA	Handheld Engines	$80 million /yr. in fuel savings (1998 dollars) plus 310,000 tons/yr. combined annualized emission reductions in tons of nitrogen oxides and hydrocarbons	$180 - $240 million/year (1998 dollars)	Agency expects additional reductions in CO levels beyond Phase I levels, due to improved technology. These potential benefits have not been estimated. [65FR24296]

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TABLE 1: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/99 - 3/31/00
(As of date of completion of OMB review)

AGENCY	RULE	BENEFITS	COSTS	OTHER INFORMATION
EPA	Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport	$1.18 billion/yr. (1997 dollars)	$1.15 billion/yr. (1997 dollars)	EPA did not provide a quantified and monetized benefits analysis for the promulgated trading program as part of this section 126 rulemaking. The EPA promised to provide a benefits assessment for the final section 126 rule at a later time.
EPA	Persistent Bio-accumulative Toxic Chemicals	Not estimated	$147 million in the first year; $82 million/yr. thereafter	"Because the state of knowledge about the economics of information is not highly developed, EPA has not attempted to quantify the benefits of adding chemicals to EPCRA section 313 or changing reporting thresholds. Furthermore, because of the inherent uncertainty in the subsequent chain of events, EPA has also not attempted to predict the changes in behavior that result from the information, or the resultant net benefits (i.e., the difference between benefits and costs). EPA does not believe that there are adequate methodologies to make reasonable monetary estimates of either the benefits of the activities required by the rule, or the follow-on activities. The economic analysis of the rule, however, does provide illustrative examples of how the rule will improve the availability of information on PBT chemicals (Ref. 67)." [64FR58743]

TABLE 1: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/99 - 3/31/00
(As of date of completion of OMB review)

TRANSFER RULES

Dept. of Agriculture (USDA)

Dairy Market Loss assistance Program
Crop Loss Disaster Assistance Program (1998)
Crop Loss Disaster Assistance Program (1999)
Food Stamp Provisions
New England Milk Marketing Orders

Dept. of Health and Human Services (HHS)

Physician Fee Schedule for CY2000
Vaccine Injury Compensation Program: Addition of Rotavirus Vaccines
Medicare Program: Prospective Payment System for Hospital Outpatient Services
Medicare Program: Changes to Hospital Inpatient Prospective Payment Systems
Medicare Program: Medicare Disproportionate Share Hospital Adjustment Calculation

Dept. of the Interior (DOI)

Bureau of Indian Affairs: Indian Reservation Roads Funds for FY2000

Dept. of Transportation (DOT)

Credit Assistance for Surface Transportation Projects
Operation of Motor Vehicles by Intoxicated Drivers

Emergency Oil and Gas Guaranteed Loan Program

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TABLE 1: SUMMARY OF AGENCY ESTIMATES FOR FINAL RULES 4/1/99 - 3/31/00
(As of date of completion of OMB review)

TRANSFER RULES	
Emergency Oil and Gas Guaranteed Loan Board	
Emergency Oil and Gas Guaranteed Loan Program	
Emergency Steel Guarantee Loan Board	
Emergency Steel Guarantee Loan Program	
Federal Emergency Management Agency (FEMA)	
Hurricane Floyd Property Acquisition and Relocation Grants	
Social Security Administration	
Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for Aged, Blind, and Disabled	
Revised Medical Criteria for Determination of Disability, Endocrine System and Related Criteria	
Effective Date of Application for Supplemental Security Income (SSI) Benefits	

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2. Cost Analysis

For eight of the 12 rules, agencies provided monetized cost estimates. These include such items as USDA's estimate of $35 million to $105 million per year as the cost of its irradiation rule and EPA's estimate of $5.3 billion in the year 2030 as the cost of its Tier 2 rule.

For the remaining four rules, the agencies did not estimate costs. These rules included DOI's two migratory bird hunting rules, DOC's endangered species rule and NHTSA's light truck fuel economy rule.

3. Net Monetized Benefits

Six of the 12 rules provided at least some monetized estimates of both benefits and costs. Of those, three have positive net monetized benefits, that is, estimated monetized benefits that unambiguously exceed the estimated monetized costs of the rules. For example, HUD's lead-based paint rule will generate an estimated net benefit of about $150 million (present value) over its first five years. EPA's tier 2 rule will result in an estimated net benefit of between $8.4 billion and $19.9 billion in 2030. One, EPA's handheld engines rule, has negative net monetized benefits.

Two EPA rules yielded estimates that included the possibility of both positive or negative net benefits. For example, EPA's storm water rule was estimated to generate between $671.5 million and $1.63 billion in benefits and between $848 million and $981 million in costs. The monetized benefit and cost estimates for EPA's Section 126 rule are essentially equal.

4. Rules Without Quantified Effects

Two of the rules in Table 1 are classified as economically significant even though the agency did not provide any quantified estimates of their effects.

DOC—Threatened Status for Two Chinook Salmon ESUs: Based upon publicly available information, OMB determined that rules covering these species were major. Citing the Conference Report on the 1982 amendments to the Endangered Species Act, the agency did not perform a benefit-cost analysis of the final rules.

DOT—Light Truck CAFE: For each model year, DOT must establish a corporate average fuel economy (CAFE) standard for light trucks, including sport-utility vehicles and minivans. (DOT also sets a separate standard for passenger cars, but is not required to revisit the standard each year.) For the past five years, however, appropriations language has prohibited NHTSA from spending any funds to change the standards. In effect, it has frozen the light truck standard at its existing level of 20.7 miles per gallon (mpg) and has prohibited NHTSA from analyzing effects at either 20.7 mpg or alternative levels. Although DOT did not estimate the benefits and costs of the standards, the agency's experience in previous years indicates that they may be substantial. Over 5 million new light trucks are subject to these standards each year, and the standard, at 20.7 mpg, is binding on several manufacturers. In view of these likely, substantial effects, we designated the rule as economically significant.

B. Transfer Regulations

Of the 31 rules listed in Table 1, 19 implement Federal budgetary programs. The budget outlays associated with these rules are "transfers" to program beneficiaries. Of the 19, three are USDA rules implementing Federal appropriations language regarding disaster aid for farmers; one deals with the food stamp program; five are HHS rules implementing Medicare and Medicaid policy; three deal with social security eligibility; two are DOT rules regarding grants to states to pay for highway projects and reduce intoxicated driving; one is a BIA rule regarding funding for road-building on Indian reservations; two are loan guarantees (oil and gas, and steel); and one is a FEMA rule providing assistance to the victims of Hurricane Floyd.

III. Major Rules for Independent Agencies

The Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (SBREFA) require the General Accounting Office (GAO) to submit reports on major rules to the Committees of jurisdiction in both Houses of Congress, including rules issued by agencies not subject to Executive Order 12866 (the "independent" agencies). We reviewed the information on the costs and benefits of major rules contained in GAO reports for the period of April 1, 1999 to March 31, 2000. GAO reported that four independent agencies issued ten major rules during this period. GAO reported that the agencies said they were not required to do benefit-cost analysis for the ten rules. We list the agencies and the type of information provided by them (as summarized by GAO) in Table 2.

In comparison to the agencies subject to E.O. 12866, the independent agencies provided relatively little quantitative information on the costs and benefits of the major rules. As Table 2 indicates, seven of the ten rules included some discussion of benefits and costs. None of the ten regulations had any monetized cost information; one regulation monetized the benefits associated with the regulation.

The one rule that estimated benefits was "Regional Transmission Organizations (RTO)" by the Federal Energy Regulatory Commission. The rule cited an estimate that EPA produced in connection with the environmental assessment that RTO formation would result in annual benefits of $2.4 billion.

TABLE 2.—BENEFIT AND COST INFORMATION ON INDEPENDENT AGENCY RULES

Agency	Total rules	Rules with some information on costs or benefits	Monetized information on costs	Monetized information on benefits
Federal Communications Commission (FCC)	5	2	0	0
Securities and Exchange Commission (SEC)	3	3	0	0
Nuclear Regulatory Commission (NRC)	1	1	0	0
Federal Energy Regulatory Commission (FERC)	1	1	0	1
Total	10	7	0	1

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Chapter III: Recommendations for Reform

Section 628(a)(3) of the FY2000 Treasury and General Government Appropriations Act (the Act) requires OMB to submit "recommendations for reform" with its report on the costs and benefits of Federal regulations. As we have pointed out in our previous reports, much of OMB's job in reviewing regulations and regulatory impact analyses submitted by the agencies is to suggest regulatory reforms and improvements.

Last year we issued guidelines for the agencies to use in preparing the regulatory impact analyses that accompany major regulatory actions. We hoped that The Guidelines to Standardize Measures of Costs and Benefits and the Format of Accounting Statements, issued in final form as Memorandum M–00–08 on March 22, 2000, would improve the quality of the data and analyses underlying major regulations, thereby leading to improvements in Federal regulation. In order to improve transparency and understanding of regulatory impacts by the public, we asked the agencies last year to use the format of the accounting statements to summarize regulatory impacts in the preambles to the **Federal Register** notices announcing their rules. We believe these guidelines and the accounting statement provide a sound foundation for estimating and presenting the benefits and costs of Federal regulation. OMB expects agencies to use the guidelines and the format of the accounting statements as they prepare regulatory impact analyses in the coming months. We are interested in suggestions on further actions we should take to improve the overall performance of the agencies in their responsibility to provide transparent and understandable regulatory analyses to the public.

In addition, in our previous reports to Congress, we highlighted some of the individual and incremental reforms that were underway by drawing from the key entries in the Regulatory Plan that is published in the **Federal Register** each Fall. With the change in Administrations, we are now in the process of reviewing a variety of existing regulations and regulatory programs in an effort to identify areas where sensible changes will yield greater benefits for the public at lower costs. At this point in the process, we do not have enough information to present a set of recommendations for the reform of specific regulations or regulatory programs. To help us in this effort, we are asking for recommendations and comments on regulations and regulatory programs that may be of concern to the public.

Specifically, we would like to receive suggestions on specific regulations that could be rescinded or changed that would increase net benefits to the public by either reducing costs and/or increasing benefits. We would appreciate if commenters identified regulations that are obsolete or outmoded, and could be rescinded or updated. If possible we would appreciate commenters being as specific as possible in their suggested reforms including whether the reform could be accomplished by agencies through rulemaking or would require statutory changes. In addition to supplying whatever documentation and supporting materials (including citations to published studies) you feel is appropriate, we would appreciate it if you used the following suggested format to summarize the recommendations.

Format for Suggested Regulatory Reform Improvements

Name of Regulation:
Agency Regulating: (Include any subagency).
Citation: (Code of Federal Regulations).
Authority: (Statute).
Description of Problem: (Harmful impact and on whom).
Proposed Solution: (Both the fix and the procedure to fix it).
Estimate of Economic Impacts (Quantified benefits and costs if possible).

Finally, we also invite commenters to suggest any other reforms to the regulatory development and oversight processes that would improve regulatory outcomes.

[FR Doc. 01–11006 Filed 5–1–01; 8:45 am]
BILLING CODE 3110–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB review; Comment Request

AGENCY: Overseas Private Investment Corporation.

ACTION: Request for Comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency is preparing an information collection request for OMB review and approval and to request public review and comment on the submission. Comments are being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments msut be received on or before July 2, 2001.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT: *OPIC Agency Submitting Officer:* Carol Brock, Records Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; 202/336–8563.

Summary of Form Under Review

Type of Request: Form Renewal.

Title: Request for Registration for Political Risk Investment Insurance.

Form Number: OPIC–50.

Frequency of USE: Once per investor, per project.

Type of Respondents: Business or other institutions.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies investing overseas.

Reporting Hours: ½ hour per project.

Number of Responses: 850 per year.

Federal Cost: $1,600 per year.

Authority for Information Collection: Sections 231 and 234(a) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The OPIC 50 form is submitted by eligible investors to register their intent to make international investments, and ultimately, to seek OPIC insurance. By submitting Form 50 to OPIC prior to making an irrevocable commitment, the incentive effect of OPIC is demonstrated.

Dated: April 27, 2001.

Rumu Sarkar,

Assistant General Counsel, Administrative Affairs, Department of Legal Affairs.

[FR Doc. 01–10956 Filed 5–1–01; 8:45 am]
BILLING CODE 3210–1–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

[Extension: Proposed Form N–6; SEC File No. 270–446; OMB Control No. 3235–0503]

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for an extension of the previously approved collection of information discussed below.

The title for the collection of information is "Form N–6 Under the Investment Company Act of 1940 and the Securities Act of 1933, Registration Statement of Variable Life Insurance Separate Accounts Registered as Unit Investment Trusts."

On March 13, 1998, the Securities and Exchange Commission proposed a new Form N–6 for insurance company separate accounts that are registered as unit investment trusts that offer variable life insurance policies. The form would be used by these separate accounts to register under the Investment Company Act of 1940 and to offer their securities under the Securities Act of 1933. For these registrants, the proposed form would replace Form N–8B–2, currently used by all unit investment trusts to register under the Investment Company Act, and Form S–6, currently used by all unit investment trusts to offer their securities under the Securities Act. Forms S–6 and N–8B–2 were not designed for variable life insurance registrants and do not reflect fundamental improvements that the Commission has made to other investment company registration forms, including Forms N–1A and N–4, which facilitate clearer and more concise disclosure. If adopted, proposed Form N–6 would:

- Eliminate requirements in the current registration forms that are not relevant to variable life insurance and include items that are specifically addressed to variable life insurance;
- Streamline variable life prospectus disclosure by adopting a two-part format consisting of a simplified prospectus, designed to contain essential information, and a Statement of Additional Information, containing more extensive information that investors could obtain upon request; and
- Provide variable life separate accounts a single, integrated form for Investment Company Act and Securities Act registration, thereby eliminating unnecessary paperwork and duplicative reporting.

The Commission estimates that there are approximately 200 separate accounts registered as unit investment trusts and offering variable life insurance policies that would file registration statements on proposed Form N–6. The Commission estimates that there will be as many as 50 initial registration statements on proposed Form N–6 filed annually. The Commission estimates, therefore, that approximately 250 registration statements (200 post-effective amendments plus 50 initial registration statements) will be filed on Form N–6 annually.

The Commission estimates that the hour burden for preparing and filing a post-effective amendment on proposed Form N–6 will be 100 hours. Thus, the total annual hour burden for preparing and filing post-effective amendments would be 20,000 hours (200 post-effective amendments annually times 100 hours per amendment). The Commission estimates that the hour burden for preparing and filing an initial registration statement on proposed Form N–6 will be 800 hours. Thus, the annual hour burden for preparing and filing initial registration statements would be 40,000 hours (50 initial registration statements annually times 800 hours per registration statement). The total annual hour burden for proposed Form N–6, therefore, is estimated to be 60,000 hours (20,000 hours for post-effective amendments plus 40,000 hours for initial registration statements).

The Commission estimates that the cost burden for preparing and filing a post-effective amendment on proposed Form N–6 will be $7,500. Thus, the total annual cost burden for preparing and filing post-effective amendments would be $1,500,000 (200 post-effective amendments annually times $7,500 per amendment). The Commission estimates that the cost burden for preparing and filing an initial registration statement on proposed Form N–6 will be $20,000. Thus, the annual cost burden for preparing and filing initial registration statements would be $1,000,000 (50 initial registration statements annually times $20,000 per registration statement). The total annual cost burden for proposed Form N–6, therefore, is estimated to be $2,500,000 ($1,500,000 for post-effective amendments plus $1,000,000 for initial registration statements).

The hour and cost burdens would be offset by a decrease in the burdens attributable to Forms N–8B–2 and S–6 because separate accounts registering on Form N–6 would no longer be required to register on Forms N–8B–2 and S–6. The Commission expects that the aggregate burden imposed by Forms N–6, S–6, and N–8B–6 after Form N–6 is adopted will be no greater, and may be less, than the burden currently imposed by Forms S–6 and N–8B–2.

Form N–6 has not yet been adopted, and therefore no variable life separate accounts are currently using Form N–2 to register pursuant to the Securities Act and the Investment Company Act.

The information collection requirements that would be imposed by Form N–6 are mandatory. Responses to the collection of information will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 25, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–10979 Filed 5–1–01; 8:45 am]
BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27385]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

April 27, 2001.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The

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application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 17, 2001, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After May 17, 2001, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

DTE Energy Company, *et al.* (70–9589)

DTE Energy Company ("DTE"), a public-utility holding company that claims exemption from registration under section 3(a)(1) of the Act by rule 2, and DTE Enterprises, Inc. ("Merger Sub"), an inactive, wholly owned subsidiary of DTE (collectively, "Applicants"), both located at 2000 Second Avenue, Detroit, Michigan 48226–1279, have filed an amended application under sections 3(a)(1), 3(a)(2), 9(a)(2), and 10 of the Act.

On February 23, 2001, the Commission issued a notice of these proposed acquisitions.[1] The terms of the underlying agreement, however, were subsequently changed. Applicants have amended their application to reflect this change, and this supplemental notice is therefore necessary.

Under the terms of an Agreement and Plan of Merger dated October 4, 1999, as amended on November 12, 1999 and February 28, 2001, Merger Sub will merge with MCN Energy Group Inc. ("MCN"), a Michigan public-utility holding company claiming exemption under section 3(a)(1) of the Act by rule 2 under the Act, with Merger Sub surviving as a wholly owned direct subsidiary of DTE. Each share of outstanding MCN common stock (including the associated right to purchase Series A Junior Participating Preferred Stock) will be converted into a right to receive either $24.00 in cash or .715 shares of DTE common stock. DTE and Merger Sub therefore request authority to acquire indirectly and directly, respectively, all of the ownership interests that MCN holds in the three public-utility companies described below. Applicants state that, except as discussed below (and except for the merger of MCN into Merger Sub), the current corporate structures of DTE and MCN will not change.

DTE, a Michigan corporation, is engaged, through subsidiaries, in various utility and nonutility activities.[2] Its common stock is listed on the New York Stock Exchange ("NYSE") and, as of January 31, 2001, 142,649,172 of its shares were outstanding. For the year ended December 31, 2000, DTE had consolidated operating revenues of $5.6 billion, approximately $1.47 billion of which were attributable to nonutility activities. Applicants state that the total value of the assets of DTE and its subsidiaries as of December 31, 2000 was approximately $12.7 billion, of which approximately $7.4 billion consisted of the net value of electric plant and equipment. Applicants state that, as of December 31, 2000, The Detroit Edison Company ("Detroit Edison"), a direct public-utility company subsidiary of DTE, had 8,691 employees and the other subsidiaries of DTE had 453 employees.

DTE owns directly or indirectly all of the outstanding common stock of two public-utility companies, Detroit Edison and International Transmission Company ("ITC"), a direct subsidiary of Detroit Edison.[3] Detroit Edison is engaged in, among other things, the generation and distribution of electric energy in a 7,600 square-mile area in southeastern Michigan. Detroit Edison's service area includes about thirteen percent of Michigan's total land area and about half of the population of the State (approximately five million people). Applicants state that, for the year that ended December 31, 2000, Detroit Edison's operating revenues and net income were approximately $4.13 billion and $413 million, respectively. As of December 31, 2000, Detroit Edison's assets had a book value of $10.99 billion. As of December 31, 2000, Detroit Edison had a summer net rated capability of approximately 11,030 MW. Detroit Edison is subject to general regulation by the Michigan Public Service Commission ("MPSC") regarding the conditions of its service, rates and recovery of certain costs, accounting and various other matters. Its wholesale electric rates are also subject to regulation by the Federal Energy Regulatory Commission ("FERC"). In addition, the Nuclear Regulatory Commission has jurisdiction over all phases of the operation, construction (including plant modifications), licensing and decommissioning of Detroit Edison's Fermi 2 nuclear power plant.

ITC, having acquired the transmission assets of Detroit Edison in January of 2001, is an electric public-utility company. Its transmission system consists of approximately 6,472 miles of transmission lines, operated at up to 345 kilovolts, through 41 transmission stations. The FERC has jurisdiction over the rates, terms, and conditions of ITC's transmission service, and the MPSC has jurisdiction over the siting of transmission facilities.

MCN, a Michigan corporation is engaged in the distribution of natural gas through three public-utility company subsidiaries: Michigan Consolidated Gas Company ("MichCon"), Citizens Gas Fuel Company ("Citizens"), and Southern Missouri Gas Company, LP ("SMGC"). MCN is also indirectly engaged in various nonutility activities.[4] The common stock of MCN is listed on the NYSE, and Applicants state that, as of the close of business on February 28, 2001, there were 90,185,793 shares of MCN common stock issued and outstanding. For the year that ended on December 31, 2000, MCN's operating revenues on a consolidated basis were approximately $2.8 billion, of which approximately $1.2 billion were attributable to utility activities. Applicants state that the consolidated assets of MCN and its subsidiaries, as of December 31, 2000, were valued at more than $4.8 billion, of which approximately $1.5 billion consisted of the net value of gas utility plant and equipment. As of December 31, 2000, MichCon employed 2,707 people, while MCN and its other subsidiaries had 239 employees.

MichCon, a Michigan corporation, is a natural gas distribution and transmission company that owns distribution, transmission, production and storage properties and facilities and serves approximately 1.2 million customers in more than 500 communities throughout Michigan.[5] As of December 31, 2000, its distribution system included 17,313 miles of distribution mains, 1,109,528 service lines and 1,222,287 active meters. MichCon owns 2,604 miles of transmission and production lines that deliver natural gas to the distribution districts and interconnect its storage fields with the sources of supply and the market areas, as well as properties relating to four underground natural gas storage fields with an aggregate working gas storage capacity of approximately 124 Bcf. For the year that ended December 31, 2000, MichCon's operating revenues and net income were approximately $1.1 billion and $109.5 million, respectively. As of December 31, 2000, MichCon had $2.3 billion in assets. MichCon's rates are regulated by the MPSC.

Citizens, a wholly owned public-utility company subsidiary of MCN, is engaged in the distribution of natural gas in Michigan. Citizens serves approximately 16,000 residential, commercial and industrial customers in and around Adrian, Michigan. For the year that ended December 31, 2000, Citizen's operating revenues and net income were approximately $18.4 million and $1.3 million, respectively, and its assets were valued at $26.4 million. Applicants state that the Adrian Gas Rate Commission establishes Citizens' rates, and that the MPSC has jurisdiction over Citizens with respect to gas safety, service in other areas served by other gas utilities, intrastate lines and accounting matters.

MCN also owns a 46.5% limited partnership interest, and a 1% general partnership interest in Southern Missouri Gas Company, L.P. ("SMGC"), a public-utility company engaged in the distribution of natural gas. SMGC serves approximately 7,000 residential, commercial, and industrial customers in southern Missouri. For the year that ended on December 31, 2000, MCN's share of SMGC's operating revenues were approximately $3.7 million, MCN's share of SMGC's net loss was approximately $1.1 million, and MCN's share of SMGC's assets were valued at $25 million. Applicants state that the Missouri Public Service Commission has jurisdiction over SMGC's rates, safety practices, long-term financing, and mergers and acquisitions directly involving SMGC.

Additionally, Applicants request that the Commission issued an order under section 3(a)(1) of the Act exempting DTE and Merger Sub, after the Merger, from all of the requirements of the Act, except for section 9(a)(2) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–10980 Filed 5–1–01; 8:45 am]

BILLING CODE 8010–01–M

[1] *See* HCAR No. 27349.

[2] DTE is indirectly engaged in many nonutility activities, including operating pulverized coal facilities and coke oven batteries, coal sourcing, blending and transportation, landfill gas-to-energy facilities, providing expertise in the application of new energy technologies, real estate development, merchant generation, and power marketing and trading.

[3] Applicants state that DTE will become the direct parent company of ITC, as contemplated by an order dated September 13, 2000. *See DTE*, HCAR No. 27229 (authorizing DTE to acquire directly all of the issued and outstanding voting securities of ITC). In the interim, as the current owner of all ownership interests in ITC, Detroit Edison claims to be entitled to an exemption from registration under section 3(a)(2) of the Act.

[4] MCN is indirectly engaged in many nonutility activities that are managed primarily through MCN's Diversified Energy group which consists of predominately two segments: Pipelines and Processing and Energy Marketing. Diversified Energy also holds investments in oil and gas exploration and production properties.

[5] All of the issued and outstanding common stock of MichCon is held by MichCon Holdings, a wholly owned direct subsidiary of MCN. MichCon Holdings claims exception from registration under section 3(a)(1) of the Act by rule 2.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of April 30, 2001.

A closed meeting will be held on Tuesday, May 1, 2001, at 11 a.m.

Commissioner Hunt, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (4), (5), (7), (8), (9)(A), 9(B), and (10) and 17 CFR 200.402(a)(3), (4), (5), (7), (8) (9)(i), 9(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

The subject matters of the closed meeting scheduled for Tuesday, May 1, 2001 will be:

- Institution and settlement of injunctive actions; and
- Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: April 26, 2001.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–11037 Filed 4–27–01; 4:16 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44222; File No. SR–DTC–00–16]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Revising The Depository Trust Company's Fee Schedule and Amending the Electronic Dividend System Procedures

April 25, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 14, 2000, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change revises DTC's fee schedule and amends the elective dividend system (EDS) procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, DTC included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to revise the EDS procedures so that they adequately describe the functioning of the EDS system. The

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

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proposed rule change also revises DTC's fee schedule so that the fees align with the services referenced.

Service	Present fee	Proposed fee
For each reclaim instruction processed over the EDS after payable date in respect of withholding tax relief on Netherlands securities as part of the DTC Tax Relief service.	None	$25.00
For each EDS instruction relating to cash-in-lieu of fractional shares, or round-up for additional shares	None	25.00
For each dividend, interest or principal payment arranged to be paid at a participant's request directly from agent to participant, where such payment is made by a foreign issuer to such participant.	None	16.26

DTC believes that the proposed rule change is consistent with section 17A of the Act[3] and the rules thereunder because fees will be more equitably allocated among users of DTC's services and EDS procedures will better describe current EDS functionality.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives on impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Act

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by DTC, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2) thereunder.[5] At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at DTC. All submissions should refer to the File No. SR–DTC–00–16 and should be submitted by May 23, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–10981 Filed 5–1–01; 8:45 am]

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[3] 15 U.S.C. 78q–1.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2)

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44213; File No. SR–Phlx–01–21]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Primary Trading Session Hours for Equities Whose Primary Market Is Not the Exchange

April 23, 2001.

On March 16, 2001, the Philadelphia Stock Exchange, Inc. (Phlx) filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder, a proposal to amend Phlx Rule 101 to establish the Primary Trading Session hours of securities whose primary market is not Phlx. On March 28, 2001, the Commission published the proposed rule change in the **Federal Register**.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade; to facilitate transactions in securities; to remove impediments to and perfect the mechanisms of a free and open market and a national market system; and, in general, to protect investors and the public interest.[5]

Many securities are traded on Phlx pursuant to unlisted trading privileges ("UTP"). The proposed rule change would make the hours of the Phlx Primary Trading Session for these securities the same hours that they are traded on their primary markets (except if the primary market is PCX Equities, Inc.). The Commission has previously stated that, absent any regulatory concerns, the decision to change an exchange's trading hours is a matter that falls within the business discretion of the exchange.[6] The Commission does not believe that the proposal raises any regulatory concerns and notes that no comments on the proposal were submitted. In addition, although the proposed rule change will not affect the current equity trading hours on Phlx,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 44088 (March 20, 2001), 66 FR 16966.

[4] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] *See, e.g.*, Securities Exchange Act Release No. 38766 (June 24, 1997), 62 FR 35244, 35245 (June 30, 1997) (approving proposal by the Pacific Exchange to change the closing time of its equity floor from 1:50 to 1:30 Pacific Time).

the hours of Phlx's Primary Trading Session will automatically change whenever the hours of a primary market change, thereby alleviating the need for additional rule changes. Accordingly, the Commission concludes that Phlx's proposal is reasonable and consistent with the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–Phlx–01–21) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–10886 Filed 5–1–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44220; File No. SR–Phlx–2001–45]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Amending Rule 930

April 25, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b–4 thereunder,[2] notice is hereby given that on April 20, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I, II, and III, below which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to amend Exchange Rule 930, *Lease Agreement*, to add new paragraph (k). Proposed Rule 930(k) relates to the Exchange's ability to allow a member who leases a membership ("leasee") to pay past-due fees owed to the Exchange by the lessor under a lease agreement, on behalf of the lessor. The Exchange also proposes to amend Rule 930 to make certain minor technical amendments to the text of the rule in order to make the various paragraphs contained in the rule more consistent.

Proposed Rule 930(k) states that the Exchange is a third party beneficiary of the lease agreement, and shall have the right to permit payment by a lessee of past-due fees owed to the Exchange by the lessor. The proposed rule further states that should the lessee pay such past due amounts, the lessee shall provide written notice to the lessor and the Exchange. Once the lessee has elected to make such payments, the lessee may continue to make such payments for a period of up to three months and set off such amounts, with notice to the Exchange and lessor against amounts due the lessor by the lessee. Furthermore, proposed Rule 930(k) states that notwithstanding the terms of the lease agreement, a lessee will not be considered in default of the lease agreement solely by virtue of having elected to make such payments.

In addition, certain minor technical amendments will be made to Rule 930 in order to make the text more consistent. For example, the word "agreement" will be added after the word "lease" in order to make it consistent with other references to "lease agreements." Also, the words "Certificate of Incorporation" are added to make the text more consistent and to clarify that various terms of a lease agreement must be in accordance with the Exchange's Certificate of Incorporation, as well as its by-laws and rules.

A. Discussion

1. Authority Under Delaware Law

The Exchange represents that, as a non-stock corporation organized under the Delaware General Corporation law ("DGCL"), it has the authority to adopt proposed Rule 930(k). Article Nineteenth of the Exchange's Certificate of incorporation expressly empowers the Board of Governors ("Board") of the Exchange:

to determine whether, and under what terms and conditions, memberships may be leased, and to adopt by resolution or to set forth in the Rules of the Board of Governors such rules with respect to lease agreements, lessors and lesses as the board may from time to time determine to be advisable, including, without limitation, rules regulating and setting forth the rights and obligations of lessors and lessees, the required terms of lease agreements, and the fees, dues and other charges required to be paid by lessors and lessees (or either of them) to the Corporation in connection with and for the privilege of leasing memberships.[3]

Thus, the Exchange represents that Rule 930(k) clearly falls within Article Nineteenth's grant of authority.

In addition, Section 141(j) of the DGCL empowers the Board to direct the business and affairs of the Exchange, and the Exchange's by-laws give the Board broad power to adopt rules of the Exchange. 8 *Del. C.*§ 141(j);[4] By-Law Art. IV, § 4–4.

The Exchange represents that numerous provisions of its by-laws and rules already address matters similar to those addressed by proposed Rule 930(k).[5] Moreover, the Exchange's by-laws require lessors and lessees (as members) to pledge to abide by the rules as they may be amended from time time.[6]

Accordingly, the Exchange states that the Board has the authority to adopt Rule 930(k) under the DGCL and the Exchange's Certificate of Incorporation, by-laws and rules.

2. Permissibility Under Pennsylvania Contract Law

The Exchange believes that proposed Rule 930(k) is also permissible as a matter of Pennsylvania contract law. The terms of the Exchange's contractual relationships with both lessors and lessees permit adoption of the rule, and, in any event, the Exchange is already a

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43987 (February 20, 2001), 66 FR 12582 (February 27, 2001) (approving adoption of Article Nineteenth, SR–Phlx–99–50.

[4] *See also 8 Del. C.* § 121(a) (providing that in addition to powers expressly granted by law or the Certificate of Incorporation, the corporation and its directors may exercise "any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business or purposes set forth in its certificate of incorporation"); Certificate of Incorporation, Article Third (stating, in part, that the Exchange may operate in any lawful act or activity for which corporations may be organized under the DGCL).

[5] *See, e.g.*, By-Law Art. XV, § 15–1(a) (providing that a membership may be leased in accordance with such rules as the Board may adopt); By-Law Art. XII, § 12–8 (authorizing lessor application fee as fixed from time to time by the Board, lessor initiation fee and fee upon transfer of equitable title to a membership); Rule 930 (setting forth required terms of lease agreement and providing, among other things, that the Exchange may dispose of a membership subject to a lease agreement); Rule 960.1 (providing that all members, member organizations and any persons associated with any member are subject to expulsion, suspension, termination as to activities at the Exchange or any other fitting sanction for violation of the Rules of the Exchange); *see also* Certificate of Incorporation, Article Twentieth (giving Board plenary authority to assess fees, dues and other charges and to impose penalties, including cancellation of a membership and forfeiture of all rights as a lessor or lessee, for nonpayment.)

[6] *See* Exchange By-Law Art. XII, § 12–9. As a condition of the right to lease their seats, lessors agree "to abide by the [Exchange's] By-laws as they have or shall be from time to time amended, and by all rules and regulations adopted pursuant to the By-Laws." Lessees, as members, likewise make the same commitment.

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third party beneficiary to the lease agreements as a matter of law. Each of these reasons separately provides a sufficient legal basis under Pennsylvania contract law for the adoption of Rule 930(k). (Future lease agreements would of course by deemed to incorporate the terms of Rule 930(k) within them, and thus obviate any contract law question).

a. Lease Terms Incorporate Relevant Terms of the Exchange's Certificate of Incorporation, By-Laws and Rules

Under the terms and conditions pursuant to which the Exchange awards the privileges of membership and approves the right to lease a seat, the Exchange reserves the right to adopt authorized by-laws, rules, or regulations that affect those lessors and lessees; accordingly, the Exchange represents that any potential impact on lease agreements of Rule 930(k) would be contractually permissible. Both lessors and lessees (as members) agree respectively as a condition of approval of the right to lease seats and as a condition of approval for membership that the Exchange may effectuate changes to their lease agreements. As a condition of the right to lease their seats, lessors agree "to abide by the [Exchange's] By-Laws as they have or shall be from time-to-time amended, and by all rules and regulations adopted pursuant to the By-Laws."[7] Lessees (as members) likewise make the same commitment.[8] By agreeing to abide by future by-laws, rules, and regulations, lessors and lessors and lessees necessarily grant permission to the Exchange to adopt rules pursuant to which their lease agreements may be affected.

Accordingly, the Exchange represents that Rule 930(k), which would provide in express form the authorization for the modification of lease agreements, would simply authorize that which is countenanced by the terms of the Exchange's existing relationships with lessors and lessees. It is thereby permissible as a matter of Pennsylvania contract law.

b. The Exchange Is a Third-Party Beneficiary of All Lease Agreements

The Exchange is already, as a matter of Pennsylvania law, a third party beneficiary of lease agreements and would as such be entitled to collect Exchange fees from a lessee upon the default of a lessor, and to permit set-off by the lessee. Pennsylvania law provides that as a third-party beneficiary the Exchange is entitled to enforce, in its own name, as a real party in interest, the rights that accrue to it under the lease agreement. Generally, a non-party to a contract is a third party beneficiary either (i) when the parties to a contract express an intention in the contract itself to benefit the third party, or (ii) if the surrounding circumstances are sufficiently compelling that recognition of the beneficiary's right is appropriate to effectuate the intention of the parties, and the performance satisfies an obligation of the parties to pay money to the beneficiary or the circumstances indicate that the parties intend to give the beneficiary the benefit of the promised performance.

Here, the Exchange represents that it is a third party beneficiary of lease agreements in accordance with the intention expressed in the lease agreements themselves even in the absence of Rule 930(k). Rule 930(c) provides that the lease agreement "shall require a lessee to pay the Corporation [the Exchange] * * * all applicable dues, fees, charges, and other debts arising from the use of membership." As the purpose of the lease agreement is to permit the lessee the "use of membership," proposed Rule 930(k) specifies the circumstances in which the Exchange, rather than *requiring* payment by the lessee of one such fee, is simply *allowing* payment by a lessee.

In addition, the Exchange believes that many of the other terms of the lease agreements also manifest the parties' clear intent to make the Exchange a beneficiary. *See* for example, Rule 930(a) (the Exchange must approve the transfer of membership); 930(d) (the lessee may not encumber legal title to the membership during the lease agreement); 930(e) (legal title to the membership must be transferred to the lessor in accordance with the Exchange's by-laws upon the expiration of the lease agreement or other such event); and 930(j) (the Exchange may dispose of a membership subject to a lease agreement in accordance with its by-laws and rules).

Moreover, in addition to the intent manifested in the lease agreements, which is itself sufficient to render the Exchange a third party beneficiary, the Exchange represents and the circumstances surrounding the lease agreements independently compel the same conclusion. As noted, the lease agreements are required to contain mandatory provisions that make reference to the Exchange, *see* Rule 930. Reference to a third party in the contract itself is a strong indication that the party is a third party beneficiary. The Exchange also exercises numerous rights related to the lease agreements. It approves lessors, as well as lessers, Rule 931 (approval of lessors); By-Law Art, XV, § 51–1 (approval of lessees), and requires lessors and lessees to abide by the Exchange's by-laws, By-Law Art. XII, § 12–9(a), (b); Rule 930(j). Indeed, the purpose of the lease agreement is to permit trade on the Exchange.[9] The Exchange also reserves the right to approve all transfers of membership pursuant to a lease agreement.[10] Finally, as noted, Rule 930 already requires that lessees be responsible for payment to the Exchange of all applicable dues, fees, charges and other debts, and proposed Rule 930(k) identifies under what circumstances the lessee may, at his or her option, remit one such fee to the Exchange.[11]

Accordingly, the Exchange represents that it is a third party beneficiary to the lease agreements with the right to enforce the provisions of Rule 930(k).

In sum, the Exchange states that adoption by the Exchange of proposed Rule 930(k) would be consistent with applicable corporate governance and contract law.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements maybe examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[7] *See* By-Law Art. XII, § 12–9(b).

[8] *See id.* at 12–9(a).

[9] *See* By-Law Art. XII, § 21–1 (a member conducts business on the Exchange).

[10] *See* Rule 930(a), (d) and (e).

[11] Indeed, the Exchange may well be a constructive party to the lease agreement. While Pennsylvania courts have not had the opportunity to address the issue of constructive parties, there exists persuasive caselaw elsewhere that when the contracting parties, and a third party have a sufficiently intertwined business relationship, the third party is deemed to be constructive party to the contract. Here, for the various reasons outlined in the text, the Exchange, lessors, and lessees, possess such an extraordinarily intertwined business relationship that the Exchange could be considered a constructive party to lease agreements. This would provide yet another alternate basis for the legal adequacy of the Exchange's proposed Rule 930(k)

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Exchange Rule 930 to add paragraph (k), which allows the lessee of membership to pay fees owed to the Exchange by the lessor that are past due and to set off such amounts from amounts due the lessor by the lessee.[12] This provision, which the Phlx represents is in accordance with proposed Exchange Rule 51,[13] allows a lessee to pay, on behalf of the lessor, any fees, including the capital funding fee,[14] owed to the Exchange by the lessor. Proposed Rule 930(k) helps to protect innocent lessees from being unexpectedly dispossessed from their membership and trading rights in the event of nonpayment by their lessors. Pursuant to proposed Rule 930(k), the lessee should be able to continue trading under his/her current lease provisions, for a period of up to three months. Therefore, the lessee's trading privileges should not be interrupted if the lessor does not pay its fees, including the capital funding fee referred to in footnotes 12, 13 and 14. In addition, the provisions of proposed Rule 930(k) should give the lessee sufficient time to execute a new lease agreement, if necessary.[15] The Exchange believes that provisions (contained in its Certificate of Incorporation and by-laws) give the Exchange the authority to modify lease agreements in the manner described above.[16]

The Phlx further represents that the purpose of the minor technical amendments to Rule 930 is to make the language in the paragraphs of the existing rule more consistent with each other. References to the Certificate of Incorporation are being added throughout Rule 930. For example, paragraph (a) of Rule 930 would state that a lease agreement shall not be effective unless the transfer of membership was approved under the Exchange's Certificate of Incorporation, by-laws or rules. The Exchange represents that, as a matter of Delaware corporation law, a certificate of incorporation is preeminent and accordingly, by-laws and any rules adopted thereto cannot conflict with the certificate of incorporation.[17] Further, the Exchange is amending Rule 930 to consistently refer to the lease as a "lease agreement."

2. Statutory Basis

For these reasons, the Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[18] in general, and with Section 6(b)(5),[19] in particular, in that it is designed to promote just and equitable principles of trade and protects investors and the public interest by enabling lessees to continue trading, even with their respective lessors fail to pay fees owed the Exchange when due.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Phlx consents, the Commission will:

A. By order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change in consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2001–45 and should be submitted by May 23, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–10887 Filed 5–1–01; 8:45 am]

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[12] The principal fee that the Phlx currently charges to lessors and other owners of memberships in the "capital funding fee." *See* Securities Exchange Act Release No. 42993 (June 29, 2000), 65 FR 42415 (July 10, 2000) (approving adoption of capital funding fee, SR–Phlx–99–51). *See* footnote 14 below for a further discussion of the capital funding fee.

[13] On December 6, 1999, the Exchange submitted a proposed rule change relating to the adotion of new Rule 51, *Enforcement*, which relates to the ability of the Exchange's Board to take certain specified measures if any owner of a membership fails to pay (or have paid on its behalf) any capital funding fee when due. The roposal is ending (SR–Phlx–99–52).

[14] On January 5, 2000, the Commission approved as a three-month pilot program, a capital funding fee applicable to owners of memberships. *See* Securities Exchange Act Release No. 42318 (January 5, 2000), 65 FR 2216 (January 13, 2000) (SR–Phlx–99–49). On April 24, 2000, the Commission approved the extension of the three-month pilot program until July 6, 2000. *See* Securities Exchange Act Release No. 42714 (April 24, 2000), 65 FR 25782 (May 3, 2000) (SR–Phlx–00–29). Permanent approval of the capital funding fee was received on June 29, 2000. *See* Securities Exchange Act Release No. 42993 (June 29, 2000), 65 FR 42415 (July 10, 2000)(SR–Phlx–99–51).

[15] Under proposed Rule 51, *supra* note 13, the Exchange may issue temporary trading rights to members whose leases are suspended due to nonpayment of the capital funding fee by the lessor.

[16] *See* Certificate of Incorporation Article Third, proposed Article Nineteenth and Article Twentieth, By-Law Art. XII, § 12–9, and proposed Rule 51.

[17] *See* 8 *Del. C.* § 102 and 109(b)

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

Office of Defense Trade Controls

[Public Notice 3650]

Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to section 36(c) and 36(d) and in compliance with section 36(e) of the

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Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each of the twenty-four letters.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202 663–2700).

SUPPLEMENTARY INFORMATION: Section 38(e) of the Arms Export Control Act mandates that notifications to the Congress pursuant to section 36(c) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: April 16, 2001.

William J. Lowell,

Director, Office of Defense Trade Controls, Department of State.

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
April 4, 2001.
Dear Mr. Speaker:

Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement with the Republic of Korea.

The transaction described in the attached certification involves the manufacture of Multiple Launch Rocket System (MLRS) M26A2 rocket pods with extended range rockets and M77 submunitions for use by the Republic of Korea.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Michael E. Guest,
Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 132–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
March 21, 2001.
Dear Mr. Speaker:

Pursuant to Section 36 (d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement with Greece.

The transaction described in the attached certification involves the transfer of technical data and assistance in the manufacture of upgrades to the TOW weapon system for end use by the Hellenic Army.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Michael A. Guest,
Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. 002–01

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
March 21, 2001.
Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of four (4) MK15 MOD12 Phalanx Close-In-Weapon systems with 20mm guns for vessels, type Destroyer (DD) and type LST to the Government of Japan for use by the Japan Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Michael A. Guest,
Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 003–01

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
March 21, 2001.
Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of unclassified hardware to Germany for incorporation into the Eurofighter 2000 center fuselage.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Michael A. Guest,
Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 004–01

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
March 21, 2001.
Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves launch services for the Hispasat-1D communications satellite on an Atlas IIAS launch vehicle from Cape Canaveral, Florida. The satellite will provide commercial communications services as well as communications services for the Spanish Ministry of Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Michael A. Guest,
Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 005–01

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
March 26, 2001.
Dear Mr. Speaker:

Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense services and technical data to support the manufacture of F100–PW–229/–229A Engine Parts in Norway for F–16 Aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Michael E. Guest,
Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 007–01

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
April 6, 2001.
Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license

for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to Canada of know-how sufficient for the performance of depot level support for the AN/APG–65 radar for end use by the Government of Canada (Canadian CF–18 Aircraft) and Commonwealth of Australia (Australian F/A–18 Aircraft).

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Michael E. Guest,
Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 008–01

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
April 6, 2001.
Dear Mr. Speaker:

Pursuant to Section 36 (d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement with Japan.

The transaction described in the attached certification involves the transfer of technical data and assistance in the manufacture and overhaul of Propellant Actuated Devices (PAD) utilized in the Crew Escape Systems for the F–15, FS–X, and F–2 Aircraft for end use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Michael E. Guest,
Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 010–01

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
April 6, 2001.
Dear Mr. Speaker:

Pursuant to Section 36(c) & (d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for defense articles and defense services in the amount of $50,000,000.

The transaction described in the attached certification involves the of technical data and assistance for the joint design, development, and manufacture of new and existing rounds of military ordnance in the 20mm to 40mm range of Medium Caliber Ammunition for end-use in the United States and Norway.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Michael E. Guest,
Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 013–01

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
April 6, 2001.
Dear Mr. Speaker:

Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement with Italy.

The transaction described in the attached certification involves the transfer of technical data and assistance in the manufacture of TOW Missile Gyroscopes. The Gyroscopes will be for end use in the United States and Italy.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Michael E. Guest,
Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. 014–01

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
April 6, 2001.
Dear Mr. Speaker:

Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement with France.

The transaction described in the attached certification involves the transfer of technical data and assistance in the manufacture of a vehicle-based biological agent detection lab. The vehicle-based biological agent detection labs will be for end use by the French Ministry of Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Michael E. Guest,
Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. 015–01

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
April 6, 2001.
Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture of components and spare parts for the ALQ–88AK Electronic Countermeasure System in the Republic of Korea.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Michael E. Guest,
Acting Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 016–01

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
March 21, 2001.
Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export to Luxembourg of the ASTRA 3A commercial communications satellite and associated ground systems, training and customer operations support. The transaction also includes launch operations support in French Guiana.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Michael E. Guest,
Acting Assistant Secretary, Legislative Affairs.

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Enclosure: Transmittal No. DTC 020–01

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
March 21, 2001.
Dear Mr. Speaker:
Pursuant to Section 36(c)&(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed Technical Assistance Agreement with Canada, Australia and New Zealand.
The transaction described in the attached certification involves the transfer of technical data and defense services to Australia for the establishment of a LAV–25 turret production and assembly facility in support of Canadian, Australian and New Zealand LAV–25 programs.
The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.
More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.
Sincerely,
Michael E. Guest,
Acting Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DTC 021–01

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
March 21, 2001.
Dear Mr. Speaker:
Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed Technical Assistance Agreement with Israel.
The transaction described in the attached certification involves the transfer of technical data and defense services to Israel for the manufacture, assembly and repair of the H–764G Inertial Navigation System for various fixed wing and rotary aircraft used by the Israeli Ministry of Defense.
The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.
More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.
Sincerely,
Michael E. Guest,
Acting Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DTC 022–01

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
March 21, 2001.
Dear Mr. Speaker:
Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.
The transaction contained in the attached certification involves the manufacture in Japan of Strapdown Inertial Systems for an additional ten years for the Japan Defense Agency's ASM and Cruising Target Drone Programs.
The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.
More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.
Sincerely,
Michael E. Guest,
Acting Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DTC 024–01

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
March 21, 2001.
Dear Mr. Speaker:
Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.
The transaction contained in the attached certification involves the manufacture in Japan of aircraft wheel and brake components for the Japanese Defense Force.
The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.
More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.
Sincerely,
Michael E. Guest,
Acting Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DTC 025–01

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
March 21, 2001.
Dear Mr. Speaker:
Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed Manufacturing License Agreement with the United Kingdom.
The transaction described in the attached certification involves the transfer of technical data and defense services to the United Kingdom for the design, development and manufacture of the Joint Services General Purpose Mask for the US Armed Forces.
The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.
More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.
Sincerely,
Michael E. Guest,
Acting Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DTC 026–01

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
March 26, 2001.
Dear Mr. Speaker:
Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.
The transaction contained in the attached certification involves the export of technical data and assistance for the manufacture in Japan of UH–60 electrical components for the Japan Defense Agency.
The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.
More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.
Sincerely,
Michael E. Guest,
Acting Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DTC 027–01

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
March 26, 2001.
Dear Mr. Speaker:
Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.
The transaction contained in the attached certification involves the export of technical data and defense services to Australia for the manufacture in Japan of Strapdown Inertial Systems for an additional ten years for the Japan Defense Agency's ASM and Cruising Target Drone Programs.
The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.
More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.
Sincerely,
Michael E. Guest,
Acting Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DTC 029–01

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
March 26, 2001.
Dear Mr. Speaker:
Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.
The transaction contained in the attached certification involves the export of defense services and technical data for the manufacture of the JFC–115 Fuel Control Units, in Japan.
The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.
More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.
Sincerely,
Michael E. Guest,
Acting Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DTC 030–01

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
March 26, 2001.
Dear Mr. Speaker:
Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.
The transaction contained in the attached certification involves the export of defense services and technical data to support the manufacture of F100–PW–229/–229A Engine Parts in Belgium for F–16 Aircraft.
The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.
More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.
Sincerely,
Michael E. Guest,
Acting Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DTC 031–01

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
April 6, 2001.
Dear Mr. Speaker:
Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.
The transaction contained in the attached certification involves the manufacture of LN–39A Inertial Navigation Units for use on Italian and Brazilian AMX aircraft and Italian F–104 aircraft.
The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.
More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.
Sincerely,
Michael E. Guest,
Acting Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DTC 035–01

April 2, 2001.
Dear Mr. Speaker:
Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.
The transaction contained in the attached certification involves ongoing activities associated with technical assistance agreements with Russia beyond those addressed in DTC 39–98, dated March 19, 1998, DTC 98–99, dated August 5, 1999, DTC 014–00, dated March 7, 2000, and DTC 034–01, dated March 1, 2001, providing for the marketing and sale of satellite launch services utilizing Proton rocket boosters and the performance of associated integration and launch services from Kazakhstan.
The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.
More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.
Sincerely,
Michael E. Guest,
Acting Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DTC 046–01

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

[FR Doc. 01–10832 Filed 5–1–01; 8:45 am]
BILLING CODE 4710–25–U

DEPARTMENT OF STATE

[Delegation of Authority DA1–244]

Delegation of Duties, Functions and Responsibilities Vested in the Under Secretary of State for Management

By virtue of the authority vested in me as Under Secretary of State for Management, I hereby delegate, during periods of my absence, the duties functions and responsibilities vested in me as Under Secretary of State for Management to the following officials of the Department of State in an order as may be specified from time to time: Assistant Secretary for Administration; Assistant Secretary for Consular Affairs; Assistant Secretary for Diplomatic Security; Director General of the Foreign Service and Human Resources.

This delegation shall not include the duties, functions and responsibilities vested in me by Public Notice 802 dated April 14, 1982, as amended (relating to the designated order of succession to the Secretary of State), nor duties, functions, and responsibilities required by law to be exercised by higher authority than the delegate.

This delegation supersedes the Delegation of Authority on this subject dated March 6, 1998. This memorandum shall be published in the **Federal Register**.

Dated: April 25, 2001.

Grant S. Green, Jr.,

Under Secretary of State For Management, Department of State.

[FR Doc. 01–11014 Filed 5–1–01; 8:45 am]
BILLING CODE 4710–35–P

DEPARTMENT OF STATE

[Delegation of Authority 245]

Organization, Functions, and Authority Delegations; Deputy Secretary of State

By virtue of the authority vested in me as Secretary of State, including the authority of section 4 of the State Department Basic Authorities Act, as amended (22 U.S.C. 2651a), I hereby delegate to the Deputy Secretary, to the extent authorized by law, all authorities and functions vested in the Secretary of State or the head of agency by any act, order, determination, delegation of authority, regulation, or executive order, now or hereafter issued. This delegation includes all authorities and functions that have been or may be delegated or redelegated to other Department officials but does not repeal delegations to such officials.

Notwithstanding this delegation of authority, the Secretary of State may exercise any function or authority delegated by this delegation. The Deputy Secretary may, to the extent consistent with law, (1) redelegate such functions and authorities and authorize their successive redelegation, and (2) promulgate such rules and regulations as may be necessary to carry out such functions.

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This memorandum shall be published in the **Federal Register**.

Dated: April 23, 2001.

Colin L. Powell,

Secretary of State, Department of State.

[FR Doc. 01–11015 Filed 5–1–01; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements filed during week ending April 20, 2001.

The following Agreements were filed with the Department of Transportation under provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the applications.

Docket Number: OST–2001–9480.
Date Filed: April 19, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC2 AFR 0104 dated 17 April 2001 Mail Vote 121—Resolution 010y. TC2 Within Africa Special Passenger Amending Resolution from Botswana to Malawi. *Intended effective date:* 1 May 2001.

Docket Number: OST–2001–9499.
Date Filed: April 20, 2001.
Parties: Members of the International Air Transport Association.
Subject: PTC12 NMS–AFR 0105 dated 26 March 2001 (Mail Vote 119). North Atlantic-Africa Resolutions r21-r22. PTC12 NMS–AFR 0111 dated April 2001 adopting (Mail Vote 119). Minutes—PTC12 NMS–AFR 0107 dated 30 March 2001. Summary of Agreement (Applicable to/from USA, US Territories). Description of Agreement (Not Applicable to/from US, USA Territories). Tables—PTC12 NMS–AFR Fares 0061 dated 20 April 2001. *Intended effective date:* 1 May 2001.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 01–10968 Filed 5–1–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) during the Week Ending April 20, 2001

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period, DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2001–9455.
Date Filed: April 17, 2001.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 8, 2001.
Description: Application of Kuwait Airways Corporation, pursuant to Section 402(c), 14 CFR Parts 211 and 377, and Subpart B, requesting renewal of its foreign air carrier permit, authorizing Kuwait Airways to engage in scheduled air transportation and charter operations of persons, property and mail between the State of Kuwait and the United States.

Docket Number: OST–2001–9484.
Date Filed: April 19, 2001.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 10, 2001.
Description: Application of Singapore Airlines Cargo PTE Limited, pursuant to 49 U.S.C. Section 41301 and Subpart B, requesting a foreign air carrier permit to provide scheduled and nonscheduled foreign air transportation of property and mail on any and all routes authorized pursuant to the April 8, 1997, Air Transportation Service Agreement between the Government of the United States and the Government of the Republic of Singapore on the following routes: from points behind Singapore via Singapore and intermediate points to a point or points in the United States and beyond, and between the United States and any point or points.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 01–10967 Filed 5–1–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Marin and Sonoma County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Marin and Sonoma County, California.

FOR FURTHER INFORMATION CONTACT: Mr. C. Glenn Clinton, Team Leader, Project Delivery Team-North, Federal Highway Administration, 980 9th Street, Suite 400, Sacramento, California 95814–2724, Telephone: (916) 498–5020.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the California Department of Transportation (Caltrans) will prepare an environmental impact statement (EIS) for a proposal to relieve recurring traffic congestion and to reduce high occupancy vehicle (HOV) lane user delay on US 101 between State Route 37 in Marin County and the Old Redwood Highway Interchange in Sonoma County, a distance of approximately 27.5 kilometers (16 miles). The proposed project is an important component of a comprehensive, multi-modal transportation plan.

The Marin-Sonoma Narrows Project proposes to extend the existing high occupancy vehicle (HOV) lane system in Marin County northward into southern Sonoma County. Alternatives under consideration include: (1) taking no action; (2) addition of a northbound and a southbound high occupancy vehicle (HOV) lane; (3) constructing a reversible HOV lane; and (4) construction of high occupancy toll (HOT) lanes. The project proposes conversion of existing expressway to access-controlled freeway and the addition and/or upgrade of intersections. Additional alternatives and design options will be developed during public scoping meetings.

Information describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Public scoping meetings will be held in Marin County and in Sonoma County in late spring and early summer 2001. A public hearing will be held later in the environmental process, after the draft environmental impact statement (DEIS) is completed. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. Regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: April 23, 2001.

C. Glenn Clinton,

Team Leader, Program Delivery Team, North Sacramento, California.

[FR Doc. 01–10891 Filed 5–1–01; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Programmatic Environmental Impact Statement for the California High Speed Train System

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: FRA is issuing this notice to advise the public that FRA will join the California High Speed Rail Authority (Authority) in the preparation of a programmatic environmental impact statement (EIS) and programmatic environmental impact report (EIR) for the California High-Speed Train System. FRA is also issuing this notice to solicit public and agency input into the development of the scope of the EIR/EIS and to advise the public that outreach activities conducted by the Authority and its representatives will be considered in the preparation of the EIR/EIS. Alternatives to be evaluated and analyzed in the Programmatic EIR/EIS include (1) take no action (No-Project or No-Build); (2) construction of a steel-wheel-on-steel-rail or Maglev high-speed train system and stations; and (3) modal alternatives that would include a combination of air, highway, and conventional passenger rail improvements. Possible environmental impacts include displacement of commercial and residential properties; disproportionate impacts to minority and low-income populations; community and neighborhood disruption; increased noise and electro-magnetic interference along rail corridors; traffic impacts associated with stations; effects to historic properties or archaeological sites; impacts to parks and recreation resources; visual quality effects; exposure to seismic and flood hazards; impacts to water resources, wetlands, and sensitive biological species and habitat; land use compatibility impacts; energy use; and impacts to agricultural lands.

FOR FURTHER INFORMATION CONTACT: For further information regarding the programmatic environmental review, please contact: Mr. John Barna, Deputy Director of the California High-Speed Rail Authority, 925 L Street, Suite 1425, Sacramento, CA 95814, (telephone 916–322–0827) or Mr. David Valenstein, Environmental Program Manager, Office of Passenger Programs, Federal Railroad Administration, 1120 Vermont Avenue (Mail Stop 20), Washington, DC 20590, (telephone 202 493–6368).

SUPPLEMENTARY INFORMATION: The Authority has determined that the need for a high-speed train system is directly related to the expected growth in population and resulting increases in intercity travel demand in California over the next twenty years and beyond. As a result of this growth in travel demand, there will be increases in travel delays from the growing congestion on California's highways and at airports. In addition, there will be effects on the economy and quality of life from a transportation system that is less and less reliable as travel demand increases and from deteriorating air quality in and around California's metropolitan areas. The intercity highway system, commercial airports, and conventional passenger rail serving the intercity travel market are currently operating at or near capacity, and will require large public investments for maintenance and expansion in order to meet existing demand and future growth. The proposed high-speed train system would provide a new mode of high-speed intercity travel that would link the major metropolitan areas of the state; interface with international airports, mass transit, and highways; and provide added capacity to meet increases in intercity travel demand in California in a manner sensitive to and protective of California's unique natural resources.

Background

The California High-Speed Rail Commission, established in 1993 to investigate the feasibility of high-speed rail in California, concluded that a high-speed train system is technically, environmentally, and economically feasible and set forth recommendations for the technology, corridors, financing, and operations of a proposed system. Following the Commission's work, a new nine-member California High-Speed Rail Authority (Authority) was established in 1996 and is authorized and directed by statute to undertake the planning for the development of a proposed statewide high-speed train network that is fully coordinated with other public transportation services. The Legislature has granted the Authority the powers necessary to oversee the construction and operation of a statewide high-speed train network once financing is secured. As part of the Authority's efforts to implement a high-speed train system, the Authority adopted a Final Business Plan in June 2000, which reviewed the economic feasibility of a 700-mile-long high-speed train system capable of speeds in excess of 200 miles per hour on a dedicated, fully grade-separated state-of-the-art track. The FRA has responsibility for oversight of the safety of railroad operations, including the safety of any proposed high-speed ground transportation system. For the California proposal, the FRA would need to take certain regulatory actions before any new high-speed train system could operate.

Alternatives

An initial system alternatives evaluation will consider all reasonable system alternatives at a broad level of analysis. This analysis will be followed by a more detailed consideration of the most practical and feasible alternatives in the Programmatic EIR/EIS. The alternatives will include:

No-Build Alternative

The take no action (No-Project or No-Build) alternative is defined to serve as the baseline for comparison of all alternatives. The No-Build Alternative represents the state's transportation system (highway, air, and conventional rail) as it existed in 1999–2000, and as it would exist after completion of programs or projects currently planned for funding and implementation by 2020.

The No-Build Alternative defines the existing and future statewide intercity transportation system based on programmed and funded improvements to the intercity transportation system through 2020, according to the following sources of information:

- State Transportation Improvement Program (STIP)
- Regional Transportation Plans (RTPs) for all modes of travel
- Airport plans
- Intercity passenger rail plans (Amtrak Five- and Twenty-year Plans)

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High-Speed Train Alternative

The Authority has defined a 700-mile-long (1,126-kilometer-long) high-speed train system capable of speeds in excess of 200 miles per hour (mph) (320 kilometers per hour [km/h]) on dedicated, fully grade-separated tracks, with state-of-the-art safety, signaling, and automated train control systems. Both steel-wheel-on-steel-rail and magnetic levitation (maglev) train technologies are being considered for the system that would serve the major metropolitan centers of California, extending from Sacramento and the San Francisco Bay Area, through the Central Valley, to Los Angeles and San Diego.

The Authority has identified high-speed train corridors and station locations in their 2000 Business Plan. Within these corridors, there are several potential alignment and station location options that will undergo a screening evaluation prior to detailed environmental and engineering technical studies. In heavily constrained urban areas, alignment options that assume sharing corridors and/or tracks with other passenger rail services will also be considered. The high-speed train corridors are defined as follows:

San Diego To Los Angeles: Mainline service connecting Los Angeles and San Diego would follow either an inland route (along existing transportation corridors) and/or a coastal route (along the existing LOSSAN corridor). The inland route runs from Los Angeles Union Station to Riverside along existing rail corridors and new rights-of-way, continuing to San Diego along the I–15/I–215 Corridor. The coastal route extends from Los Angeles Union Station to San Diego along the existing LOSSAN rail corridor. A link between Los Angeles Union Station and Los Angeles International Airport (LAX) will also be studied.

Los Angeles To Bakersfield: From Los Angeles Union Station to Santa Clarita, existing rail corridors would be followed. There are two corridors crossing the Tehachapi Mountains, the first links Bakersfield to Los Angeles via the I–5 Grapevine Corridor. The second corridor connects Bakersfield and Los Angeles through the Antelope Valley (Palmdale).

Bakersfield To Sacramento: Between Bakersfield and Sacramento, specific options to be evaluated will include minimizing impacts to prime agricultural lands, utilizing existing rail corridors, and serving downtown stations or airports in Bakersfield and Fresno.

Merced To Bay Area: From the vicinity of Merced in the Central Valley, the alignment would follow the Pacheco Pass to Gilroy. From Gilroy to San Jose, the alignment would follow the existing Caltrain corridor. North of San Jose, mainline service would continue to follow the existing Caltrain corridor along the peninsula to San Francisco and/or existing rail corridors in the East Bay to Oakland.

Stations: Station placement would be determined on the basis of ridership potential, system-wide needs, and local planning constraints/conditions. Station placement will be coordinated with local and regional planning agencies, and will provide for seamless connectivity with other modes of travel. Potential station locations to be evaluated in the screening evaluation prior to detailed environmental and engineering technical studies in the Programmatic EIR/EIS include: San Diego, Mira Mesa, Escondido, Temecula, Riverside, Ontario International Airport (ONT), East San Gabriel Valley, University Town Center (La Jolla), Oceanside, Irvine, Anaheim, Norwalk, Los Angeles International Airport (LAX), Los Angeles Union Station, Burbank, Santa Clarita, Palmdale, Bakersfield, Tulare County/Visalia, Fresno, Merced, Modesto, Stockton, Sacramento, Los Banos, Gilroy, San Jose, Redwood City, San Francisco International Airport (SFO), San Francisco, Fremont/Newark, Oakland International Airport (OAK), and Oakland. The potential sites listed represent general locations for planning purposes.

Other Modal Alternatives

There are currently three main options for intercity travel between the major urban areas of San Diego, Los Angeles, the Central Valley, San Jose, Oakland/San Francisco, and Sacramento: vehicles on the highway system, commercial air service, and conventional passenger trains (Amtrak). The FRA and the Authority will evaluate a set of Modal/System Alternatives consisting of expansion of highways, airports, and intercity and commuter rail systems serving the markets identified for the High-Speed Train Alternative at a similar level of investment. The modal alternatives will be defined by assigning the expected incremental travel demand forecasted for the horizon years of 2020 and 2040 to the state's transportation infrastructure, then identifying alternatives for accommodating that travel demand without a high-speed train system.

Scoping and Comments

FRA encourages broad participation in the EIS process during scoping and review of the resulting environmental documents. Comments and suggestions are invited from all interested agencies and the public at large to insure the full range of issues related to the proposed action and all reasonable alternatives are addressed and all significant issues are identified. In particular, FRA is interested in determining whether there are areas of environmental concern where there might be the potential for significant impacts identifiable at a program level. Public agencies with jurisdiction are requested to advise the FRA and the Authority of the applicable permit and environmental review requirements of each agency, and the scope and content of the environmental information that is germane to the agency's statutory responsibilities in connection with the proposed project.

A statewide scoping meeting is scheduled for 1:00—3:30 p.m. on Tuesday, April 24, 2001 in Sacramento, California, at 1416 Ninth Street. Scoping meetings will be advertised locally and are planned for the following major cities along the planned 700-mile-long high-speed train corridor alternatives at the dates and times indicated:

- Oakland on April 25—Oakland City Hall, Council Chambers, 3rd Floor One Frank H. Ogawa Plaza, Oakland 94612, from 11 a.m.–12:30 p.m. and in Hearing Rm. 3 from 6:00–8 p.m.
- Bakersfield on April 30—Kern County Administration Building, 1115 Truxtun Ave., Bakersfield 93301, from 3:00–5 p.m. and from 6:00–8 p.m.
- Los Angeles on May 2—Japanese/American National Museum, 369 East First St., Los Angeles 90012, from 4:00–6 p.m. and from 6:30–9 p.m.
- Fresno on May 7—Fresno City Hall, 2600 Fresno St., Fresno 93721 from 3:00–5 p.m. and from 6:00–8 p.m.
- Riverside on May 8—Riverside Convention Center, La Sierra Rm., 3443 Orange St., Riverside 92501, from 6:30–9 p.m.
- San Diego on May 10—San Diego Association of Governments, Main Boardroom, 401 B St., Suite 800, San Diego 92101, from 2:30–4 p.m. and at the University Town Center, Forum Room, 4545 La Jolla Village Dr., Suite E25, San Diego 92122, from 6:00–8:30 p.m
- Modesto on May 14—Modesto City/County Administration Building, 1010 Tenth St., Modesto 95354, from 3:00–5 p.m. and from 6:00–8 p.m.
- San Jose on May 15—Berger Drive Facility, Auditorium, 1555 Berger Dr., San Jose 95112, from 1:30–3 p.m. and from 6:00–8 p.m.
- Irvine on May 23—Irvine Civic Center, Conference and Training Center, One Civic Center Plaza, Irvine 92623, from 3:00–5 p.m. and from 6:00–8 p.m.

Persons interested in providing comments on the scope of the programmatic EIR/EIS should do so by May 31, 2001. Comments can be sent in writing to Mr. David Valenstein at the FRA address identified above. Comments may also be addressed to Mr. John Barna of the Authority at their address identified above. Information and documents regarding the environmental review process will also be made available through the Authority's Internet site: [http://www.cahighspeedrail.gov/].

Signed on Thursday, April 19, 2001.

Mark E. Yachmetz,

Associate Administrator for Railroad Development.

[FR Doc. 01–10903 Filed 5–1–01; 8:45 am]

BILLING CODE 4910–06–U

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3848; Notice 4]

Beall Trailers of Washington, Inc.; Grant of Petition for Renewal of Temporary Exemption From Federal Motor Vehicle Safety Standard No. 224

This notice grants the petition by Beall Trailers of Washington, Inc., of Kent, Washington ("Beall"), a wholly-owned subsidiary of Beall Corporation, for a renewal of the temporary exemption we granted it in July 1998 from Federal Motor Vehicle Safety Standard No. 224 *Rear Impact Protection*. The basis of the petition is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

Notice of receipt of the petition was published on January 20, 2000, and an opportunity afforded for comment (65 FR 3267).

On July 8, 1998, we granted Beall's initial exemption petition, assigning it NHTSA Temporary Exemption No. 98–5, expiring July 1, 1999 (63 FR 36989). On April 20, 1999, we received Beall's application for renewal , which was filed in time to stay the expiration date of the exemption, as provided by 49 CFR 555.8(e). Following our request, Beall provided more current financial and production information on October 28, 1999 to supplement its new petition.

Beall manufactures and sells dump body trailers. It (identified in the petition as "Truckweld") produced a total of 311 trailers in 1997, of which 124 were dump body types. Truckweld trailer production in 1998 was down to 135 units but the number of dump body types was not stated.

Standard No. 224 requires, effective January 26, 1998, that all trailers with a GVWR of 4536 Kg or more, including dump body types, be fitted with a rear impact guard that conforms to Standard No. 223 *Rear impact guards*. Beall argued earlier that "alterations may have to be made to the trailer chassis or even raising the dump box to provide space for the retractable guard," indicating that a guard that retracts when the dump body is in operation is the solution it is seeking in order to comply. During the time that its exemption has been in effect, Beall "has, in good faith, made attempts to design a compliant device." It states that it has developed "a number of potential designs" including an articulating design, but "these devices * * * do not meet FMVSS 224, have interferences with paving equipment, or have severe maintenance issues." The company is still testing hinged, retractable devices but three issues must be overcome. First, space for a retracted device is not readily available "due to the clearance issues in connecting to pavers." Raising the box also raises the center of gravity and reduces the stability of the trailers "thereby endangering others." Second, "asphalt service will, over a period of time, render such devices unusable." Finally, "it would be possible to operate a trailer with these type (sic) of devices in the retracted position, therefore not in compliance." It will continue its efforts to conform during the three-year exemption period it has requested.

If a renewal of the exemption is not granted, substantial economic hardship will result. First, it would lose a trailer that accounts for 40 percent of its overall production. In addition, "some percentage of the remaining 60% would be lost since our customers typically purchase matching truck mounted dump bodies which may also be lost." It also believes that 31 of its 63 employees would have to be laid off if its application is denied. It argues that maintenance of full employment would be in the public interest . Beall's net income was $39,317 in fiscal year 1995, $72,213 in 1996, $697,040 before income taxes in 1997, and $326,255 in 1998.

One comment was received on the petition, from Pioneer Truck Equipment of Salem, Oregon, which opposed it. Pioneer, a manufacturer of "multi axle dump body trailers," argues that Beall's exemption has given it a competitive advantage. It believes that Beall's petition should be denied, or, alternatively, that there be "a blanket exemption for all affected manufacturers." In considering whether to grant a temporary exemption, however, the test we must apply is whether denying an exemption would cause substantial economic hardship to a manufacturer that has tried in good faith to comply.

Beall is a small volume manufacturer by any standard, producing only 135 units in the year preceding the filing of its application for renewal. Its net income at that point was $326,255. We note that this figure reflects Beall's financial situation during the first year that Standard No. 224 and its exemption was in effect. This new income was substantially lower than the previous year, before Standard No. 224's effective date, when it was $697,040 (which, however, was more than six times the combined net income for the two years prior to that). While the company is not showing net losses, its average net income over the four-year period 1995–98 is roughly $284,000. If we assume that Beall's net income is reduced 50% if an exemption is not granted, the possible result is a net income of only $142,000. In the meantime, it must continue to expend resources in searching for means to conform to Standard No. 224 within the strictures of reduced income. The company assures us that it has been testing hinged, retractable devices, but reports that it continues to experience difficulty. An exemption will be in the public interest because it will allow it to retain full employment. The effect upon safety will be minimal due to the low volume of production.

In consideration of the foregoing, we hereby find that the petitioner has met its burden of persuasion that compliance would cause substantial economic hardship to a manufacturer that has tried to meet the standard in good faith, and that a temporary exemption would be in the public interest and consistent with the objectives of motor vehicle safety. Given the facts that more than two years have passed between our receipt of Beall's petition and our decision to grant it, and that Beall has continued to manufacture its trailers as allowed by the tolled expiration date, we are providing an exemption until August 1, 2001, which, is in effect, slightly more than a two-year exemption. In view of the comment from Pioneer, we are not providing the three-year exemption Beall requested. If Beall has still not achieved compliance, this exemption period should be sufficient to allow the company to file

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a further exemption request in time to toll the new expiration date, and to provide us with updated compliance and financial information. Accordingly, NHTSA Temporary Exemption No. 98–5 from 49 CFR 571.224 Standard No. 224, Rear Impact Protection is hereby extended to, and will expire on, August 1, 2001.

L. Robert Shelton,

Executive Director.

[FR Doc. 01–10971 Filed 5–1–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB review; comment request

April 25, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 1, 2001 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0927.

Form Number: IRS Form 8390.

Type of Review: Extension.

Title: Information Return for Determination of Life Insurance Company Earnings Rate Under Section 809.

Description: Life insurance companies are required to provide data so the Secretary of the Treasury can compute the: (1) Stock earnings rate of the 50 largest stock companies; and (2) average mutual earnings rate. These factors are used to compute the differential earnings rate which will determine the tax liability for mutual life insurance companies.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 150.

ESTIMATED BURDEN HOURS PER RESPONDENT/RECORDKEEPER

Recordkeeping	55 hr., 57 min.
Learning about the law or the form.	2 hr., 34 min.
Preparing and sending the form to the IRS.	3 hr., 36 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 9,323 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 01–10885 Filed 5–1–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 26, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 1, 2001 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0092.

Form Number: ATF F 5100.31.

Type of Review: Extension.

Description: The Federal Alcohol Administration Act regulates the labeling of alcoholic beverages and designates the Treasury Department to oversee compliance with regulations. This form is completed by the regulated industry and submitted to Treasury as an application to label their products. Treasury oversees label applications to prevent consumer deception and to deter falsification of unfair advertising practices on alcoholic beverages.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 8,624.

Estimated Burden Hours Per Recordkeeper: 30 minutes.

Frequency of Response Other (3 years).

Estimated Total Recordkeeping Burden: 28,565.

OMB Number: 1512–0115.

Form Number: ATF F 2140 (5220.4).

Type of Review: Extension.

Title: Monthly Report—Export Warehouse Proprietor.

Description: Proprietors who are qualified to operate export warehouses that handled untaxpaid tobacco products are required to file a monthly report. This report summarizes all transactions by the proprietor handling receipts, dispositions and on-hand quantities. The form is used for product accountability and is examined by regional office personnel.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 221.

Estimated Burden Hours Per Respondent: 48 minutes.

Frequency of Response: Monthly.

Estimated Total Reporting Burden: 2,148 hours.

OMB Number: 1512–0184.

Form Number: ATF F 5400.4.

Type of Review: Extension.

Title: Explosives Transaction Record.

Description: This form is used to verify the qualification and identification of unlicensed persons wishing to purchase explosive materials from licensed dealers, as well as the location in which the explosives are intended for storage and/or use. ATF used the information in its investigations and inspections to establish leads and determine compliance.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/Recordkeepers: 1,140.

Estimated Burden Hours Per Respondent/Recordkeeper: 20 minutes.

Frequency of Response: Other (whenever sales are made).

Estimated Total Reporting/Recordkeeping Burden: 7,227 hours.

OMB Number: 1512–0188.

Form Number: ATF F 5100.1.

Type of Review: Extension.

Title: Signing Authority for Corporate Officials.

Description: ATF F 5100.1 is substituted instead of a regulatory

requirement to submit corporate documents or minutes of a meeting of the Board of Directors to authorize an individual or office to sign for the corporation in ATF matters. The form identifies the corporations, the individual or office authorized to sign, and documents to authorization.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1,000

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 250 hours.

OMB Number: 1512–0198.

Form Number: ATF F 5110.28.

Recordkeeping Requirement ID Number: ATF REC 5110/03.

Type of Review: Extension.

Title: Distilled Spirits Plant Monthly Report of Processing Operations.

Description: The information collected is necessary to account for and verify the processing of distilled spirits in bond. It is used to audit plant operations, and the compilation of statistics.

Respondents: Business or other for-profit, State, Local or Tribal Government.

Estimated Number of Respondents/Recordkeepers: 134.

Estimated Burden Hours Per Respondent/Recordkeeper: 2 hours.

Frequency of Response: Monthly.

Estimated Total Reporting/Recordkeeping Burden: 3,886 hours.

OMB Number: 1512–0500.

Form Number: ATF F 5630.5R and ATF F 5630.RC.

Type of Review: Extension.

Title: Special Tax Renewal Registration and Return/Special Tax Location Registration Listing.

Description: 26 U.S.C. Chapters 51, 52 and 53 authorize collection of special taxes from persons engaging in certain businesses. ATF Forms 5630.5R and 5630.5RC are used to compute tax and as an application for registry.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 350,000.

Estimated Burden Hours Per Respondent: 15 minutes for each form.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 100,500 hours.

Clearance Officer: Frank Bowers, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 01–10959 Filed 5–1–01; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 26, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 1, 2001 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0544.

Form Number: None.

Type of Review: Extension.

Title: Implementation of Public Law 103–159, Relating to the Permanent Provisions of the Brady Handgun Violence Prevention Act (Final Rule)

Description: The information collection is submitted to implement the permanent provisions of the Brady Law. These provisions provide for the establishment of a national instant criminal background check system (NICS) that a firearms licensee must contact before transferring any firearm to unlicensed individuals.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Recordkeepers: 106,000.

Estimated Burden Hours Per Recordkeeper: 1 hour.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 1 hour.

Clearance Officer: Frank Bowers (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 01–10960 Filed 5–1–01; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 24, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 1, 2001 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0042.

Form Number: IRS Form 970.

Type of Review: Extension.

Title: Application To Use LIFO Inventory Method.

Description: Form 970 is filed by individuals, partnerships, trusts, estates, or corporations to elect to use the LIFO inventory method or to extend the LIFO method to additional goods. The IRS uses Form 970 to determine if the election was properly made.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 3,000.

ESTIMATED BURDEN HOURS PER RESPONDENT/RECORDKEEPER

Recordkeeping	8 hr., 7 min.
Learning about the law or the form.	2 hr., 47 min.
Preparing and sending the form to the IRA.	3 hr., 2 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 41,850 hours.

OMB Number: 1545–1668.

Form Number: IRS Form 8865 and Schedules.

Type of Review: Extension.

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Title: Return of U.S. Persons With Respect to Certain Foreign Partnerships.

Description: The Taxpayer Relief Act of 1997 significantly modified the information reporting requirements with respect to foreign partnerships. The Act made the following three changes (1) Expanded section 6038B to require U.S. persons transferring property to foreign partnerships in certain transactions to report those transfers; (2) expanded section 6038 to require certain U.S. Partners of controlled foreign partnerships to report information about the partnerships; and (3) modified the reporting required under section 6046A with respect to acquisitions and dispositions of foreign partnership interests. Form 8865 is used by U.S. persons to fulfill their reporting obligations under sections 6038B, 6038, and 6046A.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents/ Recordkeepers: 5,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form/Schedule	Recordkeeping	Learning about the law or the form	Preparing, copying, assembling and sending the form to the IRS
8865	96 hr., 45 min	21 hr., 32 min	35 hr., 59 min.
Schedule K–1 (Form 8865)	30 hr., 7 min	9 hr., 39 min	17 hr., 45 min.
Schedule O (Form 8865)	13 hr., 9 min	2 hr., 22 min	2 hr., 42 min.
Schedule P (Form 8865)	5 hr., 15 min	30 min	36 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 444,600.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 01–10961 Filed 5–1–01; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4852

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4852, Substitute for Form W–2, Wage and Tax Statement, or Form 1099–R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, Etc.

DATES: Written comments should be received on or before July 2, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Substitute for Form W–2, Wage and Tax Statement, or Form 1099–R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, Etc.

OMB Number: 1545–0458.

Form Number: Form 4852.

Abstract: In the absence of a Form W–2 or 1099R from the employer or payer, Form 4852 is used by the taxpayer to estimate gross wages, pensions, annuities, retirement or IRA payments received as well as income or FICA tax withheld during the year. The form is attached to the tax return so the return can be processed through normal channels the same as those with Forms W–2 or 1099R attached.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, farms, and Federal, state, local or tribal governments.

Estimated Number of Responses: 1,500,000.

Estimated Time Per Response: 18 minutes.

Estimated Total Annual Burden Hours: 450,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 25, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–10870 Filed 5–1–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4562

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4562, Depreciation and Amortization (Including Information on Listed Property).

DATES: Written comments should be received on or before July 2, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Depreciation and Amortization (Including Information on Listed Property).

OMB Number: 1545–0172.

Form Number: Form 4562.

Abstract: Form 4562 is used to claim a deduction for depreciation and amortization; to make the election to expense certain tangible property under Internal Revenue Code section 179; and to provide information on the business/ investment use of automobiles and other listed property. The form provides the IRS with the information necessary to determine that the correct depreciation deduction is being claimed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, farms, and individuals.

Estimated Number of Respondents: 6,500,000.

Estimated Time Per Respondent: 45 hours, 54 minutes.

Estimated Total Annual Burden Hours: 298,367,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 24, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–10871 Filed 5–1–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–3–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI–3–91 (TD 8456), Capitalization of Certain Policy Acquisition Expenses (§§ 1.848–2(g)(8), 1.848–2(h)(3) and 1.848–2(i)(4)).

DATES: Written comments should be received on or before July 2, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Capitalization of Certain Policy Acquisition Expenses.

OMB Number: 1545–1287.

Regulation Project Number: FI–3–91.

Abstract: Internal Revenue Code section 848 provides that insurance companies must capitalize "specified policy acquisition expenses." In lieu of identifying the categories of expenses that must be capitalized, section 848 requires that a company capitalize an amount of otherwise deductible expenses equal to specified percentages of net premiums with respect to certain types of insurance contracts. Insurance companies that enter into reinsurance agreements must determine the amounts to be capitalized under those agreements consistently. This regulation provides elections to permit the parties to a reinsurance agreement to shift the burden of capitalization for their mutual benefit.

Current Actions: There is no change to this existing regulation.

Type of review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,070.

Estimated Time Per Respondent: 1 hr.

Estimated Total Annual Burden Hours: 2,070.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long

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as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 25, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–10872 Filed 5–1–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR–77–86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing temporary regulation, LR–77–86 (TD 8124), Certain Elections Under the Tax Reform Act of 1986(§ 5h.5).

DATES: Written comments should be received on or before July 2, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Certain Elections Under the Tax Reform Act of 1986.

OMB Number: 1545–0982.

Regulation Project Numbers: LR–77–86.

Abstract: Section 5h.5(a) of this regulation sets forth general rules for the time and manner of making various elections under the Tax Reform Act of 1986. The regulation enables taxpayers to take advantage of various benefits provided by the Internal Revenue Code.

Current Actions: There is no change to this existing regulation.

Type of review: Extension of OMB approval.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and state, local, or tribal governments.

Estimated Number of Respondents: 114,710.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 28,678.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 25, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–10873 Filed 5–1–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS (VA)

Department of Veterans Affairs (VA) Claims Processing Task Force, Notice of Establishment

As required by Section 9(a)(2) of the Federal Advisory Committee Act, U.S.C. (App. 1) 9(c), the Department of Veterans Affairs (VA) hereby gives notice of the establishment of the VA Claims Processing Task Force. The Secretary of Veterans Affairs has determined that establishing this Task Force is in the public interest.

The Task Force will critique the Veterans Benefits Administration's (VBA) organization and management with a primary focus on the compensation and pension processes. The Task Force will evaluate the procedures and processes for deciding veterans' appeals of VBA rating decisions. The Task Force will also assess various issues and develop findings that are aimed at improving VA's ability to process veterans' claims for disability compensation and pension.

The Task Force will report to the Secretary recommendations that VA can take to increase productivity, reduce claims processing times, and shrink the disability claims backlog without compromising either the accuracy of decisions or service to the Nation's veterans.

The Task Force will consist of ten (10) to eleven (11) members and a Chairperson. Selection criteria for Task Force membership will be based on expertise in areas such as organizational assessment, functional analysis, evaluation of existing practices, and improving operational processes. VA will give attention to equitable geographic distribution and to ethnic and gender representation when appointing Task Force members.

The Designated Federal Officer for the Task Force is John R. O'Hara. His phone number is (202) 273–5130.

Dated: April 27, 2001.

By Direction of the Secretary.

Robert W. Schultz,

Acting Assistant Secretary for Human Resources and Administration.

[FR Doc. 01–11029 Filed 5–1–01; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Former Prisoners of War, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Former Prisoners of War will be held on April 30 through May 2, 2001, at the Washington, DC, Headquarters of The American Legion, Room 700, 1608 K Street NW, Washington DC. Each day the meeting will convene at 9 a.m. and end at 4:30 p.m. The meeting is open to the public.

The purpose of the committee is to advise the Secretary of Veterans Affairs on the administration of benefits under Title 38, United States Code, for veterans who are former prisoners of war, and to make recommendations on the needs of such veterans for compensation, health care and rehabilitation.

The agenda for April 30th will begin with an introduction of committee members and dignitaries, a review of Committee reports, an update of activities since the last meeting, and a period for POW veterans and/or the public to address the committee. The Committee will also reveiw the Secretary's response to the April and October, 2000, report of meeting, and receive presentations on Veterans Benefits Administration and Veterans Health Administration activities, as well as on the One VA POW Learning Seminars. The agenda on May 1 will include an update on VA long term health care, a report from the Center on POW Studies, an update by the National Institute of Health on the follow-up report on morbidity and mortality among POWs and a report on the development of the Data Merge project as a follow-up to the findings of the Expert Panel on Stroke. The committee will also take up consideration of priority for POWs in long-term Health Care programs and other issues. On May 2, the Committee's Medical and Administrative working committees will break out to discuss their activities and report back to the Committee.

Additionally, the Committee will review and analyze the comments discussed throughout the meeting for the purpose of assisting and compiling a final report to be sent to the Secretary.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. John F. McCourt, Acting Director, Compensation and Pension Service (21), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Submitted materials must be received by April 20, 2001. A report of the meeting and roster of Committee members may be obtained from Mr. McCourt.

Dated: April 10, 2001.

By Direction of the Secretary.

Ventris C. Gibson,

Committee Management Officer.

[FR Doc. 01–10954 Filed 5–1–01; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Rehabilitation (VACOR)

Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Veterans' Advisory Committee on Rehabilitation (VACOR), authorized by Public Law 96–466, Subsection 1521, will be held on May 22 through 24, 2001.

The meeting schedule is as follows:

Date	Address	Room number	Time
May 22	Department of Veterans Affairs, Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.	230 and 530	8 a.m.–5 p.m.
May 23	Veterans Benefits Administration, 1800 G Street, NW., Washington, DC 20006	542	9:30 a.m.–4:30 p.m.
May 24	Veterans Benefits Administration, 1800 G Street NW., Washington, DC 20006	542	9 a.m.–11:30 p.m

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The purpose of the meeting is to review the quality of the services which the Department of Veterans Affairs provides to disabled veterans who participate in VA-sponsored programs of rehabilitation.

On the morning of May 22, the Committee will hold a joint meeting with the VA Advisory Committee on Prosthetics and Special-Disabilities Programs to discuss mutual issues and concerns. Both Committees will also receive a briefing on the current status of the rehabilitation bed issues by the Chief Consultant of the Rehabilitation Strategic Healthcare Group. At the conclusion of the joint meeting, the Advisory Committee on Rehabilitation will move to room #530 for the remainder of the day. In the afternoon, the Committee will receive briefings regarding veteran demographics and the linkage between the Department of Veterans Affairs and the Department of Labor.

On the morning of May 23, the Committee will receive a briefing on the current status of the Vocational Rehabilitation and Employment (VR&E) program. In the afternoon, the Committee will receive a briefing concerning the recommendations from VR&E's Blue Ribbon Panel of rehabilitation experts. On the morning of May 24, the Committee will discuss future meeting dates, agenda items and recommendations.

The meeting is open to the public. For those wishing to attend, contact Jada G. Jones, Veterans Benefits Administration (28), phone (202) 273–7425, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, prior to May 17, 2001.

Dated: April 27, 2001.

By Direction of the Secretary.

Ventris C. Gibson,

Committee Management Officer.

[FR Doc. 01–11030 Filed 5–1–01; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Research and Development Cooperative Studies Evaluation Committee

Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) as amended, by section 5(c) of Public Law 94–409, that a meeting of the Research and Development Cooperative Studies Evaluation Committee will be held at The River Inn, 924 Twenty-Fifth Street, NW., Washington, DC 20037, on May 9–10, 2001. The session is scheduled to begin at 7:30 a.m. and end at 5 p.m. A total of six studies and three sub-studies will be reviewed. One study, including its two sub-studies, "Testosterone Treatment to Prevent Fractures in Aging Hypogonadal Men" is a resubmission. Three studies are undergoing mid-term reviews: "18-F-Fluorodeoxyglucose (FDG) Positron Emission Tomography (PET) Imaging in the Management of Patients with Solitary Pulmonary Nodules," "Genetic Tissues Banking in VA Clinical Research: A Cooperative Studies Program Demonstration Project," and "The Coronary Artery Revascularization Prophylasix Trial (CARP)." The two new studies and one new sub-study submitted for review are: "Veterans Affairs Open Versus Endovascular Repair (OVER) Trial for Abdominal Aortic Aneurysm," "Total Myocardial Revascularization On and Off Cardiopulmonary Bypass: A Prospective Randomized Study," and a sub-study "Homocysteinemia in Kidney and End Stage Renal Disease—DNA Bank."

The Committee advises the Chief Research and Development Officer through the Director of the Cooperative Studies Program on the relevance and feasibility of the studies, the adequacy of the protocols, and the scientific validity and propriety of technical details, including protection of human subjects.

The meeting will be open to the public from 7:30 a.m. to 8 a.m. to discuss the general status of the program. Those who plan to attend should contact Ms. Denise Shorter, Coordinator, Department of Veterans Affairs, Washington, DC at (202) 273–8265.

The meeting will be closed from 8 a.m. to 5 p.m. This portion of the meeting involves consideration of specific proposals in accordance with provisions set forth in section 10(d) of Public Law 92–463, as amended by sections 5(c) of Public Law 94–409, and 5 U.S.C. 552b(c)(6). During the closed session of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research proposals, and similar documents, and the medical records of patients who are study subjects, the disclosures of which would constitute a clearly unwarranted invasion of personal privacy.

Dated: April 27, 2001.

By Direction of the Secretary.

Robert W. Schultz,

Acting Assistant Secretary for Human Resources and Administration.

[FR Doc. 01–11032 Filed 5–1–01; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities, Notice of Meeting

The Department of Veterans Affairs (VA), in accordance with Public Law 92–463, gives notice that a meeting of the Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities (Committee) will be held on:

Thursday, May 3, 2001: 10 a.m. to 5 p.m.

Friday, May 4, 2001: 9 a.m. to 12:30 p.m.

The location of the meet will be 811 Vermont Avenue, NW., Washington, DC, in Room 442 on both days.

The purpose of the Committee is to advise the Secretary on matters of structural safety in the construction and remodeling of VA facilities and to recommend standards for use by VA in the construction and alteration of facilities as prescribed under Section 8105 of Title 38, United States Code.

On Thursday, May 3, 2001, the Committee will review the developments in the field of structural design, as they relate to seismic safety of buildings, and fire safety issues. On Friday, May 4, 2001, the Committee will vote on structural and fine safety issues for inclusion in VA's standards.

Both meetings will be open to the public. It will be necessary for those wishing to attend to contact Krishna K. Banga, Senior Structural Engineer, Facilities Quality Service, Office of Facilities Management, Department of Veterans Affairs Central Office, at 202–565–9370, prior to the meeting.

Dated: April 24, 2001.

By Direction of the Secretary.

Ventris C. Gibson,

Committee Management Officer.

[FR Doc. 01–11031 Filed 5–1–01; 8:45 am]

BILLING CODE 8320–01–M

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Federal Register

Wednesday,
May 2, 2001

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Part 107

Hazardous Materials: Temporary Reduction of Registration Fees; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 107

[Docket No. RSPA–00–8439 (HM–208D)]

RIN 2137–AD53

Hazardous Materials: Temporary Reduction of Registration Fees

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking; status.

SUMMARY: RSPA is issuing this document to inform persons of the status of a Notice of Proposed Rulemaking (NPRM) which it published in the **Federal Register** on December 7, 2000, proposing to: temporarily lower the registration fees paid by persons who transport or offer for transportation in commerce certain categories and quantities of hazardous materials; charge not-for-profit organizations the same registration fee as a small business; and use the North American Industry Classification System for size criteria for determining if an entity is a small business. Consistent with the President's fiscal year 2002 budget request to Congress, RSPA is delaying final action on these proposals pending enactment of the Fiscal Year 2002 Department of Transportation appropriations. Therefore, under the existing regulations, for registration year 2001–2002, which begins July 1, 2001, the registration fees remain $300 (including a $25 processing fee) for small businesses and $2,000 (including a $25 processing fee) for all other businesses.

FOR FURTHER INFORMATION CONTACT: Mr. David Donaldson, Office of Hazardous Materials Planning and Analysis, (202) 366–4484, or Ms. Deborah Boothe, Office of Hazardous Materials Standards, (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On December 7, 2000 (65 FR 76889), RSPA issued an NPRM proposing to temporarily lower the registration fee for all registrants for the next six registration years (2001–2002 through 2006–2007) in order to eliminate an unexpended balance (or surplus) in the Hazardous Materials Emergency Preparedness (HMEP) grants fund. The HMEP grants program supports hazardous material emergency response planning and training activities by States, local governments, and Indian tribes and related activities. RSPA also proposed to amend its reference to the Small Business Administration (SBA) small business criteria to reflect SBA's recent replacement of the Standard Industrial Classification (SIC) code system with the North American Industry Classification System. In addition, RSPA proposed to allow payment by additional credit cards than previously authorized.

On April 9, 2001 the President submitted his fiscal year 2002 budget request to Congress. In that budget request, the President proposes to fund a portion of RSPA's hazardous materials safety program budget from fees collected through the Hazardous Materials Registration program. Consistent with the President's budget request to Congress, RSPA is delaying final action on all proposals contained in this rulemaking pending enactment of the Fiscal Year 2002 Department of Transportation appropriations.

Therefore, under the existing regulations, for registration year 2001–2002, which begins July 1, 2001, the registration fees remain unchanged at $300 (including a $25 processing fee) for small businesses and $2,000 (including a $25 processing fee) for all other businesses. RSPA is also delaying action on all other proposals contained in the December 7, 2000 NPRM. RSPA received 19 comments to the NPRM. These comments will be considered in any future rulemaking action published under this docket. A copy of the 2001–2002 registration form can be obtained after May 1, 2001, from our web site at http://hazmat.dot.gov/register.htm and from our fax-on-demand service at 1–800–467–4922 (extension 2; document 700).

Issued in Washington, DC, on April 27, 2001.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 01–10953 Filed 5–1–01; 8:45 am]

BILLING CODE 4910–60–P



Federal Register

Wednesday,
May 2, 2001

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1, et al.
Federal Acquisition Regulations; Interim Rules

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 97–25; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summery presentation of interim rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 97–25. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at http://www.arnet.gov/far.

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 97–25 and specific FAR case number(s). Interested parties may also visit our website at http://www.arnet.gov/far.

Item	Subject	FAR case	Analyst
I	Preference for Performance-Based Contracting	2000–307	Wise.
II	Contractor Personnel in the Procurement of Information Technology Services	2000–609	Nelson.

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Federal Acquisition Circular 97–25 amends the FAR as specified below:

ITEM I—Preference for Performance-Based Contracting (FAR Case 2000–307)

This interim rule amends FAR 2.101, Definitions, and 37.102, Policy, to implement Section 821 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398). The rule affects contracting officers that buy services by explicitly establishing a preference for performance-based contracts or task orders.

Item II—Contractor Personnel in the Procurement of Information Technology Services (FAR Case 2000–609)

This interim rule adds FAR 39.104 to implement Section 813 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398). Section 813 prohibits the use of minimum experience or education requirements for contractor personnel in solicitations for the acquisition of information technology services, unless—

1. The contracting officer first determines that the needs of the agency cannot be met without such requirement; or

2. The needs of the agency require the use of a type of contract other than a performance-based contract.

Dated: April 27, 2001.

Al Matera,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 97–25 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administration for the National Aeronautics and Space Administration.

All Federal Acquisition Regulation (FAR) changes and other directive material contained in FAC 97–25 are effective May 2, 2001.

April 5, 2001.

David A. Drabkin,

Deputy Associate Administrotor, Office of Acquisition Policy, General Services Administration.

Dated: April 25, 2001.

Deidre A. Lee,

Director, Defense Procurement.

April 6, 2001.

Tom Luedtke,

Associate Administrator for Procurement, National Aereonautics and Space Administration.

[FR Doc. 01–11007 Filed 5–1–01; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2 and 37

[FAC 97–25; FAR Case 2000–307; Item I]

RIN 9000–AJ12

Federal Acquisition Regulation; Preference for Performance-Based Contracting

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 821 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001. The FAR rule explicitly establishes a preference for performance-based contracting when acquiring services.

DATES: Effective Date: May 2, 2001.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before July 2, 2001 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: farcase.2000–307@gsa.gov.

Please submit comments only and cite FAC 97–25, FAR case 2000–307 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Julia Wise, Procurement Analyst, at (202) 208–1168. Please cite FAC 97–25, FAR case 2000–307.

SUPPLEMENTARY INFORMATION:

A. Background

Section 821(a) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398) establishes, Governmentwide, the following order of precedence when acquiring services—

1. A firm-fixed-price performance-based contract or task order.

2. A performance-based contract or task order that is not firm-fixed-price.

3. A contract or task order that is not performance-based.

Section 821(e)(1) provides a definition for "performance-based" that applies to Section 821(a): "The term "performance-based," with respect to a contract, a task order, or contracting means that the contract, task order, or contracting, respectively, includes the use of performance work statements that set forth contract requirements in clear, specific, and objective terms with measurable outcomes."

This interim FAR rule—

1. Moves the existing definition "performance-based contracting" at FAR 37.101 to FAR 2.101, Definitions, and revises it to include the substance of the Section 821(e) definition; and

2. Revises FAR 37.102, Policy, to explicitly state that performance-based contracting is the preferred method for acquiring services and to enumerate the order of precedence established by statute.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not impose a new policy requirement on small entities. The FAR currently promotes the use of performance-based service contracting and the use of firm-fixed-price type of contracts and task orders when it is appropriate to do so. For example, in the current FAR—

1. Paragraph (a) of 37.102, policy, states "Agencies shall use performance-based contracting methods * * * to the maximum extent practicable, for the acquisition of services. * * *"

2. Subpart 37.6, Performance-Based Contracting, exclusively addresses performance-based contracting; and

3. Subpart 16.1, Selecting Contract Types, addresses a preference, under certain conditions, for a firm-fixed-price type of contract that best utilizes the basic profit motive of business enterprise.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 2 and 37 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97–25, FAR case 2000–307), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. The Councils have been tasked with publishing an interim rule to implement Section 821 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398), which is effective 180 days after the date of enactment (October 30, 2000) of Public Law 106–398. However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 2 and 37

Government procurement.

Dated: April 27, 2001.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2 and 37 as set forth below:

1. The authority citation for 48 CFR parts 2 and 37 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by adding, in alphabetical order, the definition "Performance-based contracting" to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

Performance-based contracting means structuring all aspects of an acquisition around the purpose of the work to be performed with the contract requirements set forth in clear, specific, and objective terms with measurable outcomes as opposed to either the manner by which the work is to be performed or broad and imprecise statements of work.

* * * * *

PART 37—SERVICE CONTRACTING

37.101 [Amended]

3. Amend section 37.101 by removing the definition "Performance-based contracting."

4. Amend section 37.102 by revising paragraph (a) to read as follows:

37.102 Policy.

(a) Performance-based contracting (see Subpart 37.6) is the preferred method for acquiring services (Public Law 106–398, section 821). When acquiring services, including those acquired under supply contracts, agencies must—

(1) Use performance-based contracting methods to the maximum extent practicable, except for—

(i) Architect-engineer services acquired in accordance with 40 U.S.C. 541–544 (see part 36);

(ii) Construction (see part 36);

(iii) Utility services (see part 41); or

(iv) Services that are incidental to supply purchases; and

(2) Use the following order of precedence (Public Law 106–398, section 821(a));

(i) A firm-fixed price performance-based contract or task order.

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(ii) A performance-based contract or task order that is not firm-fixed price.

(iii) A contract or task order that is not performance-based.

* * * * *

[FR Doc. 01–11008 Filed 5–1–01; 8:45 am]

BILLING CODE 6820–EP–U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 39

[FAC 97–25; FAR Case 2000–609; Item II]

RIN 9000–AJ11

Federal Acquisition Regulation; Contractor Personnel in the Procurement of Information Technology Services

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 813 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001. The Act requires that the FAR be amended to address the use, in the procurement of information technology services, of requirements regarding the experience and education of contractor personnel.

DATES: *Effective Date:* May 2, 2001.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before July 2, 2001 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: farcase.2000–609@gsa.gov.

Please submit comments only and cite FAC 97–25, FAR case 2000–609 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 97–25, FAR case 2000–609.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends the FAR to implement Section 813 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398). The Act prohibits the use of minimum experience or education requirements for contractor personnel in solicitations for the acquisition of information technology services, unless—

1. The contracting officer first determines that the needs of the agency cannot be met without such requirement; or

2. The needs of the agency require the use of a type of contract other than a performance-based contract.

This interim rule implements the Act by adding a new section to Subpart 39.1 to implement Section 813 of the Act.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it will make it easier for them to hire employees to work on information technology service contracts, as well as increase their business opportunities in obtaining Government contracts. Therefore, we have prepared an Initial Regulatory Flexibility Analysis that is summarized as follows:

The interim rule amends FAR Part 39 to implement Section 813 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398). The Act requires that the Federal Acquisition Regulation be revised to address the use, in the procurement of information technology services, of requirements regarding the experience and education of contractor personnel. The rule prohibits the use of minimum experience or education requirements for contractor personnel in solicitations for the acquisition of information technology services, unless the contracting officer first determines the needs of the agency cannot be met without that requirement; or the needs of the agency require the use of a type of contract other than a performance-based contract. The interim rule will apply to all large and small entities that seek award of Federal information service contracts. The rule should have a positive economic impact on small businesses because it will make it easier for them to hire employees to work on information technology service contracts, as well as increase their business opportunities in obtaining Federal contracts.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR Part 39 in accordance with 5 U.S.C. 610. Submit such comments separately and cite 5 U.S.C. 601, *et seq.* (FAC 97–25, FAR case 2000–609), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary in order to implement section 813 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398). The Act requires that the FAR be amended within 180 days of enactment; enactment was on October 30, 2000. However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Part 39

Government procurement.

Dated: April 27, 2001.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 39 as set forth below:

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

1. The authority citation for 48 CFR part 39 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Add § 39.104 to read as follows:

39.104 Information technology services.

When acquiring information technology services, solicitations must not describe any minimum experience or educational requirement for proposed contractor personnel unless the contracting officer determines that the needs of the agency—

(a) Cannot be met without that requirement; or

(b) Require the use of other than a performance-based contract (see subpart 37.6).

[FR Doc. 01–11009 Filed 5–1–01; 8:45 am]

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DEPARTMENT OF DEFENSE

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 97–25 which amends the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 97–25 which precedes this document. These documents are also available via the Internet at http://www.arnet.gov/far.

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

SUPPLEMENTARY INFORMATION:

LIST OF RULES IN FAC 97–25

Item	Subject	FAR case	Analyst
I	Preference for Performance-Based Contracting	2000–307	Wise.
II	Contractor Personnel in the Procurement of Information Technology Services.	2000–609	Nelson.

Item I—Preference for Performance-Based Contracting (FAR Case 2000–307)

This interim rule amends FAR 2.101, Definitions, and 37.102, Policy, to implement section 821 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398). The rule affects contracting officers that buy services by explicitly establishing a preference for performance-based contracts or task orders.

Item II—Contractor Personnel in the Procurement of Information Technology Services (FAR Case 2000–609)

This interim rule adds FAR 39.104 to implement Section 813 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398). Section 813 prohibits the use of minimum experience or education requirements for contractor personnel in solicitations for the acquisition of information technology services, unless—

1. The contracting officer first determines that the needs of the agency cannot be met without such requirement; or

2. The needs of the agency require the use of a type of contract other than a performance-based contract.

Dated: April 27, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–11010 Filed 5–1–01; 8:45 am]

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Federal Register

Wednesday,
May 2, 2001

Part IV

Federal Retirement Thrift Investment Board

5 CFR Parts 1600, 1601

Employee Elections to Contribute to the Thrift Savings Plan; Participants' Choices of Investment Funds; Final Rules

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FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1600

Employee Elections to Contribute to the Thrift Savings Plan

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is amending the regulations on employee elections to contribute to the Thrift Savings Plan (TSP) to provide for employee participation in the TSP to begin immediately upon the employee's appointment to a position covered by FERS or CSRS, or an equivalent retirement plan. Beginning July 1, 2001, participants also will be able to transfer into their TSP accounts funds from certain qualified retirement plans or conduit individual retirement accounts (IRAs). In addition, the limitations on employee contributions (as a percentage of basic pay) are phased out over the next 5 years.

EFFECTIVE DATE: May 2, 2001.

FOR FURTHER INFORMATION CONTACT: Salomon Gomez on (202) 942–1661; Merritt A. Willing on (202) 942–1666; or Patrick J. Forrest on (202) 942–1659. FAX (202) 942–1676.

SUPPLEMENTARY INFORMATION: The Board administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514, which has been codified, as amended, largely at 5 U.S.C. 8351 and 8401–8479. The TSP is a tax-deferred retirement savings plan for Federal employees, which is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code. Sums in a TSP participant's account are held in trust for that participant.

On October 27, 2000, Congress passed Public Law 106–361. In it, Congress eliminates the waiting period for new and rehired employees to begin making employee contributions. The Act also permits participants to transfer moneys from certain qualified retirement accounts and conduit IRAs into their TSP accounts. Also, on December 21, 2000, Congress passed the Consolidated Appropriations Act for Fiscal Year 2001, Public Law 106–554, which includes a provision changing the limits on FERS and CSRS TSP employee contributions (i.e., 10 and 5 percent of basic pay, respectively) by raising the percentage limitation one percent each year until 2006, when the limits are removed altogether. However, the Internal Revenue Code annual limits on elective deferrals, I.R.C. sections 402(g) and 415(c), will continue to be applicable to TSP contributions.

On March 26, 2001, the Board published a proposed rule with a request for comments in the **Federal Register** (66 FR 16415). The Board received two comments on the proposed rule, one from a Federal agency and the other from a Washington, D.C., attorney who represents federal employees in domestic relations disputes.

The Federal agency commenter suggested that § 1600.13(a), describing the effective date of TSP contribution elections made after May 15, 2001, be clarified by omitting redundant language. The Board accepted the suggestion and revised § 1600.13(a).

The other commenter suggested that the rule be amended to permit Federal employees to transfer into their TSP accounts retirement funds they received through a domestic relations court order, either from the spouse's TSP account or other qualified retirement plan or from an IRA set up to receive funds transferred from a qualified retirement plan. Public Law 106–361 authorizes the TSP to accept any eligible rollover distribution that a qualified trust can accept under the Internal Revenue Code. A qualified trust can accept a transfer of funds received pursuant to a qualified domestic relations court order, and the proposed regulation is sufficiently broad to permit the TSP to accept a similar transfer. There is nothing in the Board's current court order regulation at 5 CFR § 1653.5(b) which would lead to a contrary result. Thus, the Board believes that the proposed regulation is sufficiently broad to include the transfers contemplated by the commenter. The Board will, however, include a more specific description of these transfers when it revises its court order regulations at 5 CFR part 1653.

Therefore, with the one exception discussed above to § 1600.13, the Board adopts the provisions of the proposed rule as the final rule.

Analysis

Subpart A includes definitions that are relevant to contributions; the definition of highly compensated employee in the existing regulation is deleted because it is obsolete.

Subpart B combines the provisions that relate to contribution elections. The rule deletes obsolete references to the initial open season in 1987, and makes changes necessary to permit immediate employee contributions. It eliminates the requirement that an employee who was previously eligible to participate in the TSP must wait until an open season to make a contribution election. Under the amended rule, an employee is immediately eligible to make a contribution election for employee contributions. If the employee was previously eligible to receive employer contributions, the employee will also be immediately eligible to receive employer contributions. The amendment makes other changes to differentiate between contribution elections, provided for in this part, and contribution allocations, provided for in part 1601.

In subpart C, the Board has reorganized the provisions that describe the contributions program in general. The amendment phases out the limits on employee contributions as a percentage of basic pay and explains the Internal Revenue Code's limitations on TSP contributions, which still apply.

Subpart D describes the kinds of qualified retirement accounts and conduit IRAs that may be transferred to the TSP, the method by which a transfer may be made, and the treatment accorded such funds in the TSP.

CROSS-REFERENCE TABLES

Old section	New section
1600.1	1600.1.
1600.2(a)	Deleted.
1600.2(b)	1600.12(b).
1600.2(c)	1600.15.
1600.2(d)	1600.16.
1600.3	Deleted.
1600.4(a)	1600.11(a).
1600.4(b)	Deleted.
1600.5	1600.12(c).
1600.6	1600.14.
1600.7	1600.13.
1600.8	Deleted.
1600.9	1600.21.
1600.10	1600.22.
1600.11	1600.23.
1600.12	1600.18.
1600.13	Deleted.
1600.14	Deleted.
1600.15	Deleted.
1600.16	Deleted.
1600.17	Deleted.
1600.18	Deleted.
1600.1	1600.1.
1600.11	1600.4.
1600.12	1600.2(b), 1600.5.
1600.13	1600.7.
1600.14	1600.6.
1600.15	1600.2(c).
1600.16	1600.2(d).
1600.17	New.
1600.18	1600.12.
1600.21	1600.9.
1600.22	1600.10.
1600.23	1600.11.
1600.31	New.
1600.32	New.

CROSS-REFERENCE TABLES—Continued

Old section	New section
1600.33	New.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only employees of the Federal Government.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, and 1501–1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under section 1532 is not required.

Submission to Congress and the General Accounting Office

Pursuant to 5 U.S.C. 801(a)(1)(A), the Board submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in today's **Federal Register**. This rule is not a major rule as defined at 5 U.S.C. 804(2).

List of Subjects in 5 CFR Part 1600

Employment benefit plans, Government employees, Pensions, Retirement.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set out in the preamble, 5 CFR part 1600 is revised to read as follows:

PART 1600—EMPLOYEE ELECTIONS TO CONTRIBUTE TO THE THRIFT SAVINGS PLAN

Subpart A—General

Sec.
1600.1 Definitions.

Subpart B—Elections

1600.11 Types of elections.
1600.12 Period for making contribution elections.
1600.13 Effective dates of contribution elections.
1600.14 Method of election.
1600.15 Number of elections.
1600.16 Belated elections.
1600.17 Timing of agency contributions.
1600.18 Effect of transfer to FERS.

Subpart C—Program of Contributions

1600.21 Contributions in whole numbers.
1600.22 Maximum contributions.
1600.23 Required reduction of contribution rates.

Subpart D—Transfers From Other Qualified Retirement Plans

1600.31 Accounts eligible for transfer.
1600.32 Methods for transferring account from qualified retirement plan or conduit IRA to TSP.
1600.33 Treatment accorded transferred funds.

Authority: 5 U.S.C. 8351, 8432(b)(1)(A), 8474(b)(5) and (c)(1).

Subpart A—General

§ 1600.1 Definitions.

Terms used in this part have the following meanings:

Account or *individual account* means the account established for a participant in the Thrift Savings Plan under 5 U.S.C. 8439(a).

Agency automatic (1%) contributions means any contributions made under 5 U.S.C. 8432(c)(1) and (c)(3).

Agency matching contributions means any contributions made under 5 U.S.C. 8432(c)(2).

Basic pay means basic pay as defined in 5 U.S.C. 8331(3). For CSRS and FERS employees, it is the rate of pay used in computing any amount the individual is otherwise required to contribute to the Civil Service Retirement and Disability Fund as a condition of participating in the Civil Service Retirement System or the Federal Employees' Retirement System, as the case may be.

Board means the Federal Retirement Thrift Investment Board established under 5 U.S.C. 8472.

Contribution allocation means the apportionment of a participant's future contributions and loan payments among the TSP investment funds.

Contribution election means a request by an employee to start contributing to the TSP, to change the amount of contributions made to the TSP each pay period, or to terminate contributions to the TSP.

CSRS means the Civil Service Retirement System established by 5 U.S.C. chapter 83, subchapter III, or any equivalent Federal retirement system.

CSRS employee or *CSRS participant* means any employee or participant covered by CSRS.

Date of appointment means the effective date of an employee's accession by the current employing agency.

Election period means the last calendar month of a TSP open season. It is the earliest period during which a TSP contribution election can become effective.

Employee contributions means any contributions to the Thrift Savings Plan made under 5 U.S.C. 8351(a), 8432(a), or 8440a through 8440e.

Employer contributions means agency automatic (1%) contributions under 5 U.S.C. 8432(c)(1) or 8432(c)(3) and agency matching contributions under 5 U.S.C. 8432(c)(2).

Employing agency means the organization that employs an individual eligible to contribute to the TSP and that has authority to make personnel compensation decisions for the individual.

Executive Director means the Executive Director of the Federal Retirement Thrift Investment Board under 5 U.S.C. 8474.

FERS means the Federal Employees' Retirement System established by 5 U.S.C. chapter 84 or any equivalent Federal retirement system.

FERS employee or *FERS participant* means any employee or TSP participant covered by FERS.

Open season means the period during which employees may elect to make contributions to the TSP, change the amount of contributions, or terminate contributions (without losing the right to resume contributions during the next open season).

Separation from Government service means the cessation of employment with the Federal Government, the U.S. Postal Service, or with any other employer, from a position that is deemed to be Government employment for purposes of participating in the TSP, for 31 or more full calendar days.

Thrift Savings Plan, TSP, or *Plan* means the Thrift Savings Plan established under subchapters III and VII of the Federal Employees' Retirement System Act of 1986, 5 U.S.C. 8351 and 8401–8479.

Thrift Savings Plan Service Office (TSPSO) means the office of the TSP recordkeeper which provides service to participants. The TSPSO's address is: Thrift Savings Plan Service Office, National Finance Center, P.O. Box 61500, New Orleans, Louisiana 70161–1500.

TSP recordkeeper means the entity that is engaged by the Board to perform recordkeeping services for the Thrift Savings Plan. The TSP recordkeeper is the National Finance Center, Office of

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Finance and Management, United States Department of Agriculture, located in New Orleans, Louisiana.

Subpart B—Elections

§ 1600.11 Types of elections.

(a) *Contribution elections.* A contribution election can be made on a Form TSP–1, Thrift Savings Plan Election Form, and includes any one of the following elections:

(1) To make employee contributions;

(2) To change the amount of employee contributions; or

(3) To terminate employee contributions.

(b) *Contribution allocation.* A participant may make or change the manner in which future deposits to his or her account are allocated among the TSP's investment funds only in accordance with 5 CFR part 1601.

§ 1600.12 Period for making contribution elections.

(a) *Participation upon initial appointment or reappointment.* An employee may make a contribution election as follows:

(1) *Appointments made during the period January 1 through June 30, 2001.* An employee appointed, or reappointed following a separation from Government service, to a position covered by FERS or CSRS during the period January 1 through June 30, 2001, may make a TSP contribution election during the May 15 through July 31, 2001, open season.

(2) *Appointments made on or after July 1, 2001.* An employee appointed, or reappointed following a separation from Government service, to a position covered by FERS or CSRS may make a TSP contribution election within 60 days after the effective date of the appointment.

(b) *Open season elections.* Any employee may make a contribution election during an open season. Each year an open season will begin on May 15 and will end on July 31; a second open season will begin on November 15 and will end on January 31 of the following year. If the last day of an open season falls on a Saturday, Sunday, or legal holiday, the open season will be extended through the end of the next business day.

(c) *Election to terminate contributions.* An employee may elect to terminate employee contributions to the TSP at any time. If an employee's election to terminate contributions is received by the employing agency during an open season, the employee, if otherwise eligible, may make an election to resume contributions during the next open season. If the election to terminate contributions is received by the employing agency outside an open season, the employee may not make an election to resume contributions until the second open season beginning after the election to terminate.

(d) *Forced termination of employee contributions due to in-service hardship withdrawal restrictions under 5 CFR part 1650.* If an employee is reappointed to a position covered by FERS or CSRS following a separation from Government service and, at the time of separation, he or she had been previously ineligible to make employee contributions or receive agency matching contributions because of the restrictions on participants' ability to make contributions after having received an in-service hardship distribution, described in 5 CFR part 1650, the employee continues to be ineligible to make employee contributions or have agency matching contributions made on the employee's behalf during the six-month period described at 5 CFR 1650.32.

§ 1600.13 Effective dates of contribution elections.

(a) *Participation upon initial appointment or reappointment.* (1) TSP contribution elections made pursuant to § 1600.12(a)(1) that are received by the employing agency between May 15, 2001, and June 30, 2001, will become effective the first full pay period in July 2001. TSP contribution elections made pursuant to § 1600.12(a)(1) that are received by the employing agency during July 2001 will become effective no later than the first full pay period after the date the employing agency receives the election.

(2) TSP contribution elections made pursuant to § 1600.12(a)(2) will become effective no later than the first full pay period after the election is received by the employing agency.

(b) *Open season elections.* TSP contribution elections made pursuant to § 1600.12(b) that are received by an employing agency during a portion of an open season which precedes the election period, except for an election to terminate contributions, will become effective the first full pay period of the election period. TSP contribution elections made pursuant to § 1600.12(b) that are received by an employing agency during the election period will become effective no later than the first full pay period after the date the employing agency receives the election.

(c) *Election to terminate contributions.* An election to terminate contributions, whenever it is made, will become effective no later than the first full pay period after the date the employing agency receives the election.

(d) *Elections resulting from transfer to FERS.* Elections made pursuant to § 1600.18 will become effective no later than the first full pay period after the date the employing agency receives the election. If the employee submits a contribution election at the same time that he or she submits the FERS transfer election, both elections will become effective the same pay period.

§ 1600.14 Method of election.

(a) A participant must submit a contribution election to his or her employing agency. Employees may use either the paper TSP election form, Form TSP–1, or, if provided by their employing agency, electronic media to make an election. If an electronic medium is used, all relevant elements contained on the paper Form TSP–1 must be included in the electronic medium.

(b) A contribution election must:

(1) Be completed in accordance with the instructions on Form TSP–1, if a paper form is used;

(2) Be made in accordance with the employing agency's instructions, if the submission is made electronically; and

(3) Not exceed the maximum contribution limitations described in § 1600.22.

§ 1600.15 Number of elections.

Once a contribution election made during an open season becomes effective, no further contribution elections may be made during the same open season, except an election to terminate contributions.

§ 1600.16 Belated elections.

When an employing agency determines that an employee was unable, for reasons that were beyond the employee's control (other than agency administrative error, as provided in 5 CFR part 1605), to make a contribution election within the time limits prescribed by this part, the agency may accept the employee's election within 30 calendar days after it advises the employee of its determination. The election will become effective no later than the first full pay period after the date the employing agency receives the election.

§ 1600.17 Timing of agency contributions.

(a) *Employees not previously eligible to receive agency contributions.* An employee appointed or reappointed to a position covered by FERS who had not been previously eligible to receive agency contributions is eligible to receive agency contributions the full second election period following the effective date of the appointment. If an employee is appointed during an election period, that election period is not counted as the first election period.

(b) *Employees previously eligible to receive agency contributions.* An employee reappointed to a position covered by FERS who was previously eligible to receive agency contributions is immediately eligible to receive agency contributions.

(c) Agency matching contributions that are attributable to the employee contributions made to the account of a FERS participant must change or terminate, as applicable, when the employee's contribution election becomes effective.

§ 1600.18 Effect of transfer to FERS.

(a) If an employee appointed to a position covered by CSRS elects to transfer to FERS, the employee may make a contribution election simultaneously with the election to transfer to FERS, or within 30 calendar days after the effective date of his or her transfer.

(b) Eligibility to make employee contributions, and therefore to have agency matching contributions made on the employee's behalf, is subject to the restrictions on making employee contributions after receipt of a financial hardship in-service withdrawal described at 5 CFR part 1650.

(c) If the employee had elected to make TSP contributions while covered by CSRS, the election continues to be valid until the employee makes a new valid election.

(d) Agency automatic (1%) contributions for all employees covered under this section and, if applicable, agency matching contributions attributable to employee contributions must begin the same pay period that the transfer to FERS becomes effective.

Subpart C—Program of Contributions

§ 1600.21 Contributions in whole numbers.

Employees may elect to contribute a percentage of basic pay or a dollar amount, subject to the limits described in § 1600.22. The election must be expressed in whole percentages or whole dollar amounts.

§ 1600.22 Maximum contributions.

(a) *Percentage of basic pay.* (1) Subject to paragraphs (b) and (c) of this section, the maximum FERS employee contribution for 2001 is 11 percent of basic pay per pay period. The maximum contribution will increase one percent a year until 2005, after which the percentage of basic pay limit will not apply and the maximum contribution will be limited only as provided in paragraphs (b) and (c) of this section.

(2) Subject to paragraphs (b) and (c) of this section, the maximum CSRS employee contribution for 2001 is 6 percent of basic pay per pay period. The maximum contribution will increase one percent a year until 2005, after which the percentage of basic pay limit will not apply and the maximum contribution will be limited only as provided in paragraphs (b) and (c) of this section.

(b) *Internal Revenue Code (I.R.C.) limit on elective deferrals.* Section 402(g) of the I.R.C. (26 U.S.C. 402(g)) places a limit on the amount an employee may save on a tax-deferred basis through the TSP. Employee contributions to the TSP will be restricted to the I.R.C. limit; the TSP will not accept any contribution that exceeds the I.R.C. section 402(g) limit. If a participant contributes to the TSP and another plan, and the combined contributions exceed the I.R.C. section 402(g) limit, he or she may request a refund of employee contributions from the TSP to conform with the limit.

(c) *I.R.C. limit on contributions to qualified plans.* Section 415(c) of the I.R.C. (26 U.S.C. 415(c)) also places a limit on the amount an employee may save on a tax-deferred basis through the TSP. Employee contributions, described in this section, and employer contributions, described in § 1600.17, made to the TSP will be restricted to the I.R.C. section 415(c) limit. No employee contribution may be made to the TSP for any year to the extent that the sum of the employee contributions and the employer contributions for that year would exceed the I.R.C. section 415(c) limit.

§ 1600.23 Required reduction of contribution rates.

(a) The employing agency will reduce the contribution of any FERS or CSRS employee who has elected a whole dollar amount but whose elected contribution for any pay period exceeds any of the applicable maximum percentages set forth in § 1600.22. The employing agency will reduce the whole dollar amount to the highest whole dollar amount that does not exceed the applicable maximum percentage.

(b) An employing agency will not contribute to a participant's TSP account any amounts in excess of the limits referred to in § 1600.22(b) or (c).

Subpart D—Transfers From Other Qualified Retirement Plans

§ 1600.31 Accounts eligible for transfer.

Effective July 1, 2001, participants may transfer funds in the following types of accounts into their existing TSP accounts. This option is not available to participants who have already made a full withdrawal of their account or who are receiving monthly payments.

(a) *Qualified retirement plan.* For the purposes of this part, a qualified retirement plan is a qualified trust, described in section 401(a) of the I.R.C. (26 U.S.C. 401(a)), which is exempt from taxation under I.R.C. section 501(a) (26 U.S.C. 501(a)), or an annuity plan, described in section 403(a) of the I.R.C. (26 U.S.C. 403(a)).

(b) *Conduit individual retirement account* (conduit IRA). For the purposes of this part, a conduit IRA is an individual retirement account, described in I.R.C. section 408(a) (26 U.S.C. 408(a)), or an individual retirement annuity, described in I.R.C. section 408(b) (26 U.S.C. 408(b)), that contains only funds transferred or rolled over from a qualified retirement plan (and earnings on those amounts).

(c) *Eligible rollover distribution.* In order to be eligible for transfer to the TSP, distributions from accounts that qualify under either paragraph (a) or (b) of this section must also be eligible rollover distributions pursuant to I.R.C. section 402(c)(4) (26 U.S.C. 402(c)(4)).

§ 1600.32 Methods for transferring account from qualified retirement plan or conduit IRA to TSP.

(a) *Trustee to trustee transfer.* Participants may request that the administrator of their qualified retirement plan or the custodian of their conduit IRA transfer any or all of their account directly to the TSP by completing and submitting a Form TSP–60, Request for a Rollover into the TSP, to the administrator or custodian and requesting that the transaction be completed.

(b) *Rollover by participant.* Participants who have already received a distribution from their plan or conduit IRA may roll over all or part of the distribution into the TSP in accordance with the following requirements:

(1) The participant must complete a Form TSP–60, Request for a Rollover into the TSP.

(2) The administrator of the qualified retirement plan or the custodian of the conduit IRA must certify on the TSP transfer form the amount and date of the distribution, and that the distribution is an eligible rollover distribution in accordance with I.R.C. section 402(c)(4) (26 U.S.C. 402(c)(4)).

(3) The participant must submit the completed Form TSP–60, together with a certified check, cashier's check, cashier's draft, money order, or treasurer's check from a credit union, made out to the Thrift Savings Plan for

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the entire amount of the rollover. A participant may roll over the full amount of the distribution by making up, from his or her own funds, the amount that was withheld from the distribution for the payment of federal taxes.

(4) The transaction must be completed within 60 days of the participant's receipt of the distribution from the retirement plan or conduit IRA. The transaction is not complete until the TSP recordkeeper receives the Form TSP–60, executed by both the participant and plan administrator or IRA custodian, together with the guaranteed funds for the amount to be rolled over.

§ 1600.33 Treatment accorded transferred funds.

(a) All funds transferred to the TSP pursuant to §§ 1600.31 and 1600.32 will be treated as employee contributions.

(b) All funds transferred to the TSP pursuant to §§ 1600.31 and 1600.32 will be invested in accordance with the participant's contribution allocation on file at the time the transfer is completed.

(c) Funds transferred to the TSP pursuant to §§ 1600.31 and 1600.32 are not subject to the limits on contributions described in § 1600.22.

[FR Doc. 01–10962 Filed 5–1–01; 8:45 am]
BILLING CODE 6760–01–U

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1601

Participants' Choices of Investment Funds

AGENCY: Federal Retirement Thrift Investment Board

ACTION: Final rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is amending the regulations on participants' choices of investment funds. This amendment implements a provision of the Thrift Savings Plan Act of 1996, which added two new investment funds to the Thrift Savings Plan (TSP). It also implements a decision by the Board to transfer the processing of contribution allocations from the employing agencies to the TSP recordkeeper.

EFFECTIVE DATE: May 2, 2001.

FOR FURTHER INFORMATION CONTACT: Salomon Gomez on (202) 942–1661; Merritt A. Willing on (202) 942–1666; or Patrick J. Forrest on (202) 942–1659. FAX (202) 942–1676.

SUPPLEMENTARY INFORMATION: The Board administers the TSP which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514. The Thrift Savings Plan Act of 1996, Public Law 104–208, 110 Stat. 3009, amended FERSA to create two new TSP investment funds. The TSP provisions of FERSA have been codified, as amended, largely at 5 U.S.C. 8351 and 8401–8479. The TSP is a tax-deferred retirement savings plan for Federal employees, similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code. Sums in a TSP participant's account are held in trust for that participant.

On March 26, 2001, the Board published a proposed rule with a request for comments in the **Federal Register** (66 FR 16415). The Board received no comment on the proposed rule. Therefore, the Board is adopting the provisions of the proposed rule as a final rule without change.

Analysis

The final rule eliminates §§ 1601.2(a), (c) and (d), 1601.4(b), and 1601.6 because those sections are obsolete. Sections 1601.3 and 1601.7 have been redesignated as § 1602.36; effective May 1, 2001, error correction will be processed in accordance with part 1605.

Subpart A contains definitions relevant to participants' choices of investment funds, as it does currently. The definitions of allocation election, election form, and election period in the existing regulation are deleted as unnecessary. Other definitions, such as Board and CSRS, are deleted because they are not specifically applicable to participants' choices of investment funds.

In subpart B, the Board explains a new process for making a contribution allocation. Contribution allocations apply to future TSP contributions and loan payments. Currently, participants make a contribution election and a contribution allocation at the same time, on Form TSP–1; this form is submitted to the participant's employing agency. Participants will continue to use Form TSP–1 to make contribution elections and will submit that form to their employing agency. However, on May 1, 2001, when the new funds are implemented, contribution allocations will be submitted to the TSP recordkeeper following the procedures described in Subpart B.

Subpart B includes a transition rule that explains how new contributions will initially be invested upon implementation of the new funds. This transition rule will apply to contributions and loan payments posted after April 30, 2001. In particular, § 1601.12 provides that beginning on May 1, 2001, contributions and loan payments for each TSP account will be invested based on the allocation of the most recent contribution posted to a participant's account between March 15 and April 30, 2001. If there was none, contributions and loan payments will be invested based upon any interfund transfer request pending for April 30, 2001. If there is no interfund transfer request pending for April 30, 2001, contributions and loan payments will be allocated based upon the participant's March 31, 2001 month-end account balance. If a participant's March month-end account balance is zero, his or her contributions and loan payments will be invested in the G Fund. This derived allocation will continue until a valid contribution allocation is received and processed.

For accounts first established on or after May 1, 2001, contributions and other deposits received will be invested in the G Fund until the participant makes a different contribution allocation. The participant may subsequently make a contribution allocation to change the investment of future contributions or an interfund transfer to change the investment of his or her existing account balance at any time after he or she is notified by the TSP recordkeeper that the account has been established. Effective May 1, 2001, all TSP participants may elect to invest all or part of their new contributions and loan payments in any of the five investment funds.

Section 1601.13 explains that, effective May 1, 2001, a participant may make a contribution allocation by using the TSP Web site, the ThriftLine, or by completing a Form TSP–50, Investment Allocation. Section 1601.13 also explains the requirements for a valid contribution allocation, largely incorporating existing § 1601.2(b). It also explains that participants will be able to make contribution allocations in increments of one percent instead of the current five percent.

Subpart C describes the rules that a participant must follow in order to make an interfund transfer of his or her existing TSP account balance. Section 1601.22 of the final regulation essentially incorporates § 1601.5 of the existing regulations and also provides that, effective May 1, 2001, a participant may use the TSP Web site, the ThriftLine, or a Form TSP–50 to request an interfund transfer.

Subpart D has been added to part 1601 to consolidate rules that apply to participants' choices of investment funds for new contributions (contribution allocations) and to redistributing existing account balances (interfund transfers). For example, § 1602.32 describes the timing and posting dates for contribution allocations and interfund transfer requests. Section 1602.33 provides that a participant who elects to make an interfund transfer to the F Fund, C Fund, S Fund, or I Fund must execute an acknowledgment of risk (that the investment is made at the participant's risk and the participant understands that the TSP does not guarantee investment returns or guarantee against a loss in the value of the investment). Section 1602.34 prescribes the rules for giving effect to a Form TSP–50.

CROSS-REFERENCE TABLES

Old section	New section
1601.1	1601.1
1601.2(a), (c), (d)	Deleted.
1601.2(b)	1601.13
1601.3	1601.36
Con't.	*Con't.*
1601.4(a)	1601.21
1601.4(b)	Deleted.
1601.5	1601.22
1601.6	1601.32
1601.7	1601.36
1601.1	1601.1
1601.11	New.
1601.12	New.
1601.13	1601.2(b)
1601.21	New.
1601.22	1601.5
1601.31	New.
1601.32	1601.6
1601.33	New.
1601.34	New.
1601.35	New.
1601.36	1601.3, 1601.7

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only employees of the Federal Government.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, and 1501–1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under section 1532 is not required.

Submission to Congress and the General Accounting Office

Pursuant to 5 U.S.C. 801(a)(1)(A), the Board submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in today's **Federal Register**. This rule is not a major rule as defined at 5 U.S.C. 804(2).

List of Subjects in 5 CFR Part 1601

Employment benefit plans, Government employees, Pensions, Retirement.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set out in the preamble, 5 CFR part 1601 is revised to read as follows:

PART 1601—PARTICIPANTS' CHOICES OF INVESTMENT FUNDS

Subpart A—General

Sec.
1601.1 Definitions.

Subpart B—Investing Future Contributions and Loan Payments

1601.11 Applicability.
1601.12 Investing future contributions and loan payments in the TSP investment funds.
1601.13 Elections.

Subpart C—Redistributing Participants' Existing Account Balances

1601.21 Applicability.
1601.22 Methods of requesting an interfund transfer.

Subpart D—Contribution Allocations and Interfund Transfer Requests

1601.31 Applicability.
1601.32 Timing and posting dates.
1601.33 Acknowledgment of risk.
1601.34 Effectiveness of Form TSP–50.
1601.35 Posting of transaction requests.
1601.36 Error correction.

Authority: 5 U.S.C. 8351, 8438, 7474(b)(5) and (c)(1).

Subpart A—General

§ 1601.1 Definitions.

As used in this part:

Account balance means the sum of the dollar balances for each source of contributions in each investment fund for an individual account.

Acknowledgment of risk means an acknowledgment that any investment in the F Fund, C Fund, S Fund, or I Fund is made at the participant's risk, that the participant is not protected by the United States Government or the Board against any loss on the investment, and that neither the United States Government nor the Board guarantees any return on the investment.

C Fund means the Common Stock Index Investment Fund established under 5 U.S.C. 8438(b)(1)(C).

Contribution allocation means the apportionment of a participant's future contributions and loan payments among the TSP investment funds.

Day means calendar day, unless otherwise stated.

Employing agency means the organization that employs an individual eligible to contribute to the TSP and that has authority to make personnel compensation decisions for the individual.

F Fund means the Fixed Income Investment Fund established under 5 U.S.C. 8438(b)(1)(B).

G Fund means the Government Securities Investment Fund established under 5 U.S.C. 8438(b)(1)(A).

I Fund means the International Stock Index Investment Fund established under 5 U.S.C. 8438(b)(1)(E).

Interfund transfer means the reapportionment, under this part, of a participant's existing account balance among the various TSP investment funds.

Investment fund means any investment fund authorized under 5 U.S.C. 8438.

S Fund means the Small Capitalization Stock Index Fund established under 5 U.S.C. 8438(b)(1)(D).

Source of contributions means employee contributions, agency automatic (1%) contributions, or agency matching contributions.

ThriftLine means the automated voice response system by which TSP participants may, among other things, access their accounts by telephone. The ThriftLine can be reached at (504) 255–8777.

TSP recordkeeper means the entity that is engaged by the Board to perform recordkeeping services for the Thrift Savings Plan. The TSP recordkeeper is the National Finance Center, United States Department of Agriculture, located in New Orleans, Louisiana.

TSP Web site means the Internet location maintained by the Board, which contains information about the TSP and by which TSP participants may, among other things, access their accounts by computer. The TSP Web site address is http://www.tsp.gov.

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Subpart B—Investing Future Contributions and Loan Payments

§ 1601.11 Applicability.

This subpart applies only to the investment of future contributions and loan payments in the TSP's investment funds; it does not apply to redistributing participants' existing account balances among the investment funds, which is covered in subpart C of this part.

§ 1601.12 Investing future contributions and loan payments in the TSP investment funds.

(a) *Transition rule.* Effective May 1, 2001, contributions and loan payments will be allocated among the investment funds based on the allocation of the most recent contribution posted to the account between March 15, 2001, and April 30, 2001. If no contributions have been posted to an account between March 15, 2001, and April 30, 2001, the allocation will be based on the allocation shown on an interfund transfer request pending for April 30, 2001. If there is no interfund transfer pending for April 30, 2001, the allocation will be based on the allocation of the account as of the March 31, 2001, account balance. If the March 31, 2001, account balance is zero, the contributions and loan payments will be allocated 100% to the G Fund. The allocation derived under this section will be applied to all contributions and loan payments posted as of a date after April 30, 2001, until a new contribution allocation is made by the participant pursuant to § 1600.12.

(b) *Investment fund availability.* Effective May 1, 2001, all participants may elect to invest all or any portion of their future contributions and loan payments in any of the TSP's five investment funds.

§ 1601.13 Elections.

(a) *Contribution allocation.* Effective May 1, 2001, each participant may indicate his or her choice of investment funds for the allocation of future contributions and loan payments by using the TSP Web site or the ThriftLine, or completing Form TSP–50, Investment Allocation. The following rules apply to contribution allocations:

(1) Contribution allocations must be made in one percent increments. The sum of the percentages elected for all of the investment funds must equal 100%;

(2) The percentage elected by a participant for investment of future contributions in an investment fund will be applied to all sources of contributions and loan payments. A participant may not make different percentage elections for different sources of contributions or for loan payments;

(3) A participant who elects for the first time to invest contributions and loan payments in the F Fund, C Fund, S Fund, or I Fund must execute an acknowledgment of risk in accordance with § 1601.33;

(4) All contributions and loan payments made on behalf of a participant who does not have a contribution allocation in effect will be invested in the G Fund;

(5) Once a contribution allocation becomes effective, it remains in effect until it is superseded by a subsequent contribution allocation. If a separated participant is rehired, his or her last contribution allocation before separation from service will be given effect until a new allocation is made.

(b) *Effect of rejection of form.* If a Form TSP–50 is rejected, the purported contribution allocation made on the form will have no effect. The TSP will provide the participant with a written statement of the reason the form was rejected.

(c) *Contribution elections.* A participant may designate the amount of employee contributions he or she wishes to make to the TSP or may stop contributions only in accordance with 5 CFR part 1600.

Subpart C—Redistributing Participants' Existing Account Balances

§ 1601.21 Applicability.

This subpart applies only to redistributing participants' existing account balances among the TSP's investment funds; it does not apply to the investment of future contributions and loan payments, which is covered in subpart B of this part.

§ 1601.22 Methods of requesting an interfund transfer.

(a) Effective May 1, 2001, participants may make an interfund transfer using the TSP Web site or the ThriftLine, or by completing a Form TSP–50, Investment Allocation. The following rules apply to an interfund transfer request:

(1) Interfund transfer requests must be made in one percent increments. The sum of the percentages elected for all of the investment funds must equal 100%;

(2) The percentages elected by the participant will be applied to the balances from each source of contributions that make up the participant's total account balance on the effective date of the interfund transfer;

(3) Any participant who elects to invest in the F Fund, C Fund, S Fund, or I Fund for the first time must execute an acknowledgment of risk in accordance with § 1601.33.

(b) An interfund transfer request has no effect on contributions and loan payments made after the effective date of the interfund transfer request; subsequent contributions and loan payments will continue to be allocated among the investment funds in accordance with the participant's contribution allocation made under subpart B of this part.

Subpart D—Contribution Allocations and Interfund Transfer Requests

§ 1601.31 Applicability.

This subpart applies both to contribution allocations made under subpart B of this part and interfund transfers made under subpart C of this part.

§ 1601.32 Timing and posting dates.

(a) *Posting dates.* (1) A contribution allocation will ordinarily be posted within 2 business days after it is received.

(2) An interfund transfer request received by midnight (central time) on the 15th of the month will be posted to a participant's account as of the last day of the month. (If the 15th of the months falls on a weekend, holiday, or other nonbusiness day, the deadline will be the next business day.) Requests received after the deadline will be posted to a participant's account as of the last day of the following month.

(b) *Limit.* There is no limit on the number of contribution allocations or interfund transfer requests that may be made by a participant; however, only one interfund transfer will be processed per month.

(c) *Multiple contribution allocations or interfund transfer requests.* (1) If two or more contribution allocations or two or more interfund transfer requests with different dates are received for a participant and would be posted on the same day under the rules set forth in paragraph (a) of this section, only the last contribution allocation or interfund transfer request with the latest date will be posted.

(2) If two or more contribution allocations or two or more interfund transfer requests with the same date are received for a participant and would be posted on the same day, the following rules will apply:

(i) If one or more of the contribution allocations or interfund transfer requests are submitted through the TSP Web site or the ThriftLine and one or more are made on a Form TSP–50 and would be posted on the same day, only the latest contribution allocation or interfund transfer request made through the TSP Web site or the ThriftLine will be posted;

(ii) If one or more of the contribution allocations or interfund transfer requests are made through the TSP Web site or the ThriftLine, only the contribution allocation or interfund transfer request entered at the latest time will be posted; and

(iii) If the contribution allocations or interfund transfer requests are submitted using Form TSP–50, all of the forms will be rejected unless the percentage allocations among the investment funds are identical, in which case one will be accepted.

(3) For purposes of determining the date and time of a contribution allocation or an interfund transfer request, the following rules apply:

(i) The date of a contribution allocation or interfund transfer request made through the TSP Web site or the ThriftLine, is the date the participant enters the investment percentages;

(ii) The date of a contribution allocation or interfund transfer request made on Form TSP–50 is the date the form is signed by the participant; and

(iii) Central time is used for determining the date and time on which a transaction is entered and confirmed through the TSP Web site or the ThriftLine.

(d) *Cancellation of contribution allocation or interfund transfer request.* (1) A contribution allocation or an interfund transfer request may be canceled only through the TSP Web site, the ThriftLine, or through written correspondence.

(2) *Cancellation on the TSP Web site or ThriftLine.* A contribution allocation or an interfund transfer request may be canceled by entering the cancellation on the TSP Web site or the ThriftLine only up to the deadline, described in paragraph (a) of this section, that is applicable to the original request. If a change or cancellation is received after the deadline, the original request will be processed as scheduled. The second request will then be processed in turn.

(3) *Cancellation by correspondence.* A participant may also cancel a contribution allocation or an interfund transfer request by submitting a letter to the TSP recordkeeper requesting cancellation. To be accepted, the cancellation letter must be signed and dated and must contain the participant's name, Social Security number, and date of birth. To be effective, the cancellation must be received by the deadline described in paragraph (a) of this section. Unless the letter states unambiguously the specific contribution allocation or interfund transfer request it seeks to cancel, the written cancellation will apply to any contribution allocation or interfund transfer request with a date (as determined under paragraph (c)(3) of this section) before the date of the cancellation letter. If the date of a cancellation letter is the same as the date of a contribution allocation or an interfund transfer request and the request was made on Form TSP–50, the form will be canceled. If the request was made on the TSP Web site or ThriftLine, it will only be canceled if the written cancellation specifies the date of the TSP Web site or ThriftLine request to be canceled.

§ 1601.33 Acknowledgment of risk.

(a) A participant who wants to invest in any investment fund other than the G Fund must execute an acknowledgment of risk for that fund. If a required acknowledgment of risk has not been executed, no transactions involving the fund(s) for which the acknowledgment is required will be accepted.

(b) The acknowledgment of risk may be executed in association with a contribution allocation or an interfund transfer using the TSP Web site, the ThriftLine, or Form TSP–50.

§ 1601.34 Effectiveness of Form TSP–50.

(a) A Form TSP–50 will not be effective if:

(1) It is not signed and dated;

(2) It is missing a Social Security number or date of birth;

(3) The contribution allocation or interfund transfer percentages do not total 100%; or

(4) The form is otherwise not properly completed in accordance with the instructions on the form.

(b) If a Form TSP–50 is rejected, the TSP will provide the participant with a written statement of the reason the form was rejected.

§ 1601.35 Posting of transaction requests.

The Board fully expects to meet the standards of § 1601.32. However, the Board cannot and does not guarantee that the TSP Web site or the ThriftLine will always be available to accept and process transaction requests.

§ 1601.36 Error correction.

Errors in processing contribution allocations and interfund transfer requests, or errors that otherwise cause money to be invested in the wrong investment fund, will be corrected in accordance with the error correction regulations found at 5 CFR part 1605.

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Federal Register

Wednesday,
May 2, 2001

Part V

Department of Agriculture

Commodity Credit Corporation

7 CFR Part 1410
Conservation Reserve Program—Farmable Wetlands Pilot Program; Final Rule

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1410

RIN 0560–AG38

Conservation Reserve Program—Farmable Wetlands Pilot Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Conservation Reserve Program (CRP) regulations to implement provisions of Title XI of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (the 2001 Act), that provide for enrollment, in the States of Iowa, Minnesota, Montana, Nebraska, North Dakota, and South Dakota, of certain wetlands and buffer acreage on a pilot basis into the CRP under the Farmable Wetlands Pilot Program.

DATES: This regulation is effective April 30, 2001.

FOR FURTHER INFORMATION CONTACT: Beverly Preston, Conservation and Environmental Programs Division, USDA/FSA/CEPD/STOP 0513, 1400 Independence Avenue, SW., Washington, DC 20250–0513, Telephone (202) 720–9563.

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 1105 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Public Law 106–387) requires that the regulations necessary to implement these provisions be issued as soon as practicable. It also provides that the regulations be promulgated and administered without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture (the Secretary) effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. These provisions are thus issued as final and are effective immediately.

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866 and has been determined to be significant and, therefore, was reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental impact assessment nor an Environmental Impact Statement is needed.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. This final rule is not retroactive and does not pre-empt State laws. Before any judicial action may be taken with respect to the provisions of the final rule, administrative remedies at 7 CFR parts 11 and 780 must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions that impose "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or the private sector, of $100 million or more in any 1 year. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Federal Domestic Assistance Program

The title and number of the Federal Domestic Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies, are: Conservation Reserve Program—10.069.

Paperwork Reduction Act

Section 1105 of Public Law 106–78 requires that the regulations implementing these provisions be promulgated and administered without regard to the Paperwork Reduction Act. This means that the normal 60-day public comment period and OMB approval of the information collections required by this rule are not required.

Background

The purpose of the Conservation Reserve Program (CRP) is to cost-effectively assist owners and operators in conserving and improving soil, water, and wildlife resources by converting highly erodible and other environmentally sensitive acreage normally devoted to the production of agricultural commodities to a long-term vegetative cover. CRP participants enter into contracts for 10 to 15 years in exchange for annual rental payments and cost-share assistance for installing certain conservation practices. In determining the amount of annual rental payments to be paid, CCC considers, among other things, the amount necessary to encourage owners or operators of eligible cropland to participate in the CRP. Offers are submitted in such a manner as the Secretary prescribes. The maximum rental payments CCC will pay reflect site-based soil productivity, prevailing local cash equivalent rental rates, and maintenance costs. Offers by producers who request rental payments greater than the amount CCC is willing to pay for their soil type are automatically rejected by CCC. Except for the continuous signup process, remaining offers are evaluated for possible acceptance based on a comparison of environmental benefits indicators with the rental payment cost. The continuous signup process does not include an evaluation based on environmental benefits indicators because only those practices designed to obtain high environmental benefits are eligible to be offered during the continuous signup. Acreage determined eligible and suitable to be devoted to continuous signup practices by the Secretary is automatically accepted into the CRP provided all other eligibility requirements are met.

Substantive Changes

Section 1102 of the 2001 Act amended section 1231 of the Food Security Act of 1985 (16 U.S.C. 3831), which provides statutory authority for the CRP, to provide a Farmable Wetlands Pilot Program for the enrollment, in the States of Iowa, Minnesota, Montana, Nebraska, North Dakota, and South Dakota, of certain wetlands and buffer acreage on a pilot basis into the CRP. Accordingly, as specified in the new statute, the substantive CRP regulations are changed by this notice to create a new section, 7 CFR 1410.12, that provides that eligible owners and operators in the States of Iowa, Minnesota, Montana, Nebraska, North Dakota, and South Dakota may enroll certain wetland and buffer acreage into a new Farmable Wetland Pilot Program. Enrollment under this pilot may not exceed 500,000 acres for all States, and 150,000 acres in any one State. The maximum enrollment for both the wetland and buffer acreage, of an owner or operator, must not exceed 40 acres per tract. Wetlands also must not exceed 5 acres in size to be eligible for enrollment. Acreage enrolled must be cropland that has a cropping history in at least 3 of the most recent 10 years. These limitations are statutory. General CRP criteria that currently requires cropland to be physically and legally capable of being cropped will apply to this pilot program as will other requirements not inconsistent with the new law.

Acreage offered under this pilot program will be offered using the CRP's continuous signup procedures. Incentives that apply to certain continuous signup practices will be authorized for acreage enrolled under the Farmable Wetlands Pilot Program. Although the signup will be continuous, acreage enrolled through the Farmable Wetlands Pilot Program will not accrue to diminish previous continuous signup acreage goals. However, the 25 percent cropland limitation that applies to the amount of a county's cropland that may be enrolled in the CRP will apply to pilot enrollments.

List of Subjects in 7 CFR Part 1410

Administrative practices and procedures, agriculture, conservation plan, grazing lands, and natural resources.

Accordingly, 7 CFR part 1410 is amended as follows:

PART 1410—CONSERVATION RESERVE PROGRAM

1. The authority citation for 7 CFR part 1410 continues to reads as follows:

Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 3801–3847.

2. A new section, § 1410.12, is added to read as follows:

§ 1410.12 Farmable Wetlands Pilot Program.

* * * * *

(a) In addition to other allowable enrollments, land may be enrolled in this program through the Farmable Wetlands Pilot provided for in this section, except that:

(b)(1) This pilot program is authorized only in the States of Iowa, Minnesota, Montana, Nebraska, North Dakota, and South Dakota;

(2) As determined by the Deputy Administrator, owners and operators in each of the States in paragraph (b)(1) of this section may enroll cropland that has been annually planted or considered planted to an agricultural commodity in 3 of the 10 most recent crop years, that:

(i) Is a wetland, including a converted wetland, as determined by NRCS or other technical authority, that does not exceed the size limitations of this section; and

(ii) Subject to other provisions of this section, is buffer acreage that provides protection for and is contiguous to the wetlands.

(3) An owner or operator may not enroll in this pilot program any wetland, or land in a flood plain, that:

(i) Is located adjacent to a perennial riverine system wetland as identified on the final national wetland inventory map of the Department of the Interior; or

(ii) Is located adjacent to a perennial stream identified on a 1–24,000 scale map of the United States Geological Service, when the area is not delineated on a final national wetland inventory map.

(4) Enrollment in the CRP under this pilot program must not exceed:

(i) 500,000 acres in all eligible States; and

(ii) 150,000 acres in any one State.

(5) The maximum size of any wetland described in paragraph (b)(2)(i) of this section shall be five contiguous acres.

(6) The maximum size of any buffer acreage described in paragraph (b)(2)(ii) of this section shall be the greater of:

(i) Three times the size of the wetland described in paragraph (b)(2)(i) of this section, or

(ii) 150 feet on either side of the wetland.

(7) The maximum total acreage enrolled in the CRP under this section, including any wetland and buffer acreage described in paragraph (b)(2)(ii) of this section, in a tract, as determined by the Deputy Administrator, of an owner or operator, is 40 acres.

(8) All participants subject to a CRP contract under this section must agree to restore the hydrology of the wetland described in paragraph (b)(2)(i) of this section to the maximum extent possible, as determined by the Deputy Administrator, in accordance with the FOTG.

(9) Offers for contracts under this section shall be submitted under continuous signup provisions as authorized in § 1410.30 of this part.

(10) Except as otherwise determined by the Deputy Administrator, all other requirements of this part shall apply to enrollments under this section and the Deputy Administrator by contract or otherwise may add such other requirements or conditions as are deemed needed or appropriate. Such additional limitations as apply include but are not limited to payment limitations and limitations on the amount of acreage that can be enrolled in any one county.

Signed at Washington, DC, on April 27, 2001.

James R. Little,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 01–11069 Filed 4–30–01; 4:49pm]

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Federal Register

Wednesday,
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Part VI

The President

Proclamation 7430—National Day of Prayer, 2001

Executive Order 13209—Amendment to Executive Order 13183, Establishment of the President's Task Force on Puerto Rico's Status

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Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 7430 of April 27, 2001

National Day of Prayer, 2001

By the President of the United States of America

A Proclamation

Turning to prayer in times of joy and celebration, strife and tragedy is an integral part of our national heritage. When the first settlers landed on the rocky shores of the New World, they celebrated with prayer, and the practice has continued through our history. In 1775, the Continental Congress asked the citizens of the colonies to pray for wisdom in forming a Nation. General George Washington, encamped at Valley Forge, also sought God's guidance as Americans fought for their independence. The faith of our Founding Fathers established the precedent that prayers and national days of prayer are an honored part of our American way of life.

Continuing in that tradition, many of the men and women who have served at the highest levels of our Nation also have turned to prayer seeking wisdom from the Almighty. President Lincoln, who proclaimed a day of "humiliation, fasting, and prayer" in 1863, once stated: "I have been driven many times to my knees by the overwhelming conviction that I had nowhere else to go. My own wisdom, and that of all about me, seemed insufficient for the day." Today, millions of Americans continue to hold dear that conviction President Lincoln so eloquently expressed. Gathering in churches, synagogues, mosques, temples, and homes, we ask for strength, direction, and compassion for our neighbors and ourselves.

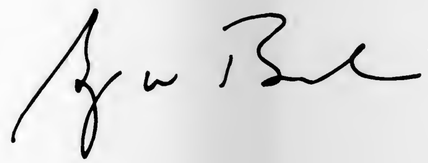
The theme of the 2001 National Day of Prayer is "One Nation Under God." In a prayer written specially for the occasion, Americans are asked to pray for "a moral and spiritual renewal to help us meet the many problems we face." Special observances are scheduled for all 50 States, with local volunteers planning a variety of activities including prayer breakfasts, concerts, rallies, and student gatherings. These events will bring people of all faiths together, each according to his or her own beliefs, to give thanks to the Almighty and to ask for strength and guidance.

The Congress, by Public Law 100–307, has called on our citizens to reaffirm the role of prayer in our society and to honor the religious diversity our freedom permits by recognizing annually a "National Day of Prayer."

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States of America, do hereby proclaim May 3, 2001, as a National Day of Prayer. I encourage the citizens of our Nation to pray each in his or her own manner, seeking God's blessings on our families and government officials and personal renewal, moral awakening, and a new spirit of harmony across our land. I urge all Americans to join in observing this day with appropriate programs, ceremonies, and activities.

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IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of April, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-fifth.



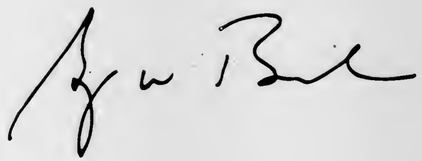
[FR Doc. 01–11209
Filed 5–1–01; 9:07 am]
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Presidential Documents

Executive Order 13209 of April 30, 2001

Amendment to Executive Order 13183, Establishment of the President's Task Force on Puerto Rico's Statis

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to extend by 3 months the time in which the President's Task Force on Puerto Rico's Status is to report to the President as directed in Executive Order 13183 of December 23, 2000, it is hereby ordered that section 4 of Executive Order 13183 is amended by deleting "May 1, 2001" and inserting in lieu thereof "August 1, 2001".



THE WHITE HOUSE,
April 30, 2001.

[FR Doc. 01–11210
Filed 5–1–01; 9:07 am]
Billing code 3195–01–P

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H.R. 132/P.L. 107–6
To designate the facility of the United States Postal Service located at 620 Jacaranda Street in Lanai City, Hawaii, as the "Goro Hokama Post Office Building". (Apr. 12, 2001; 115 Stat. 8)

H.R. 395/P.L. 107–7
To designate the facility of the United States Postal Service located at 2305 Minton Road in West Melbourne, Florida, as the "Ronald W. Reagan Post Office of West Melbourne, Florida". (Apr. 12, 2001; 115 Stat. 9)

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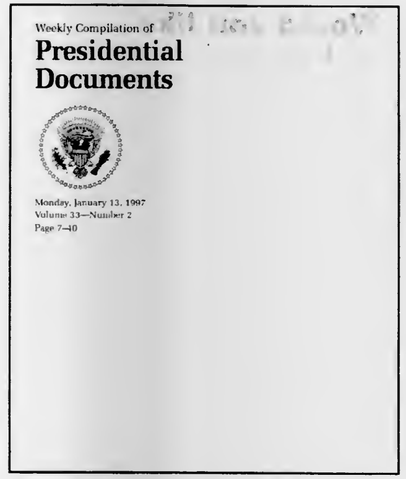
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Rules and Regulations

Federal Register
Vol. 66, No. 86
Thursday, May 3, 2001

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 382

49 CFR Part 27

[OST Docket No. 1999–6159]

RIN 2105–AC81

Nondiscrimination on the Basis of Disability in Air Travel

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The Department of Transportation (DOT or Department) is amending its rules implementing the Air Carrier Access Act of 1986 (ACAA) and section 504 of the Rehabilitation Act of 1973 to require airports and air carriers to provide boarding assistance to individuals with disabilities by using ramps, mechanical lifts, or other suitable devices where level-entry boarding by loading bridge or mobile lounge is not available on any aircraft with a seating capacity of 31 or more passengers. This final rule parallels the 1996 final rule for aircraft with a seating capacity of 19 through 30 passengers.

DATES: This rule is effective on June 4, 2001.

FOR FURTHER INFORMATION CONTACT: Blane A. Workie, Office of the General Counsel, Department of Transportation, 400 7th Street, SW., Room 10424, Washington, DC., 20590, 202–366–4723 (voice), (202) 755–7687 (TTY), 202–366–9313 (fax), or *blane.workie@ost.dot.gov* (email). Arrangements to receive the rule in an alternative format may be made by contacting the above named individual.

SUPPLEMENTARY INFORMATION:

Background Information

Many airline passengers have mobility impairments and must be boarded and deplaned using a wheelchair. In 1996, the Department issued a rule to require the use of ramps, lifts or similar devices on most aircraft with 19 through 30 seats. At that time, the Department considered requiring ramps, lifts, or similar devices on all aircraft with 30 or fewer seats but the development of lift devices appeared not to have proceeded to the point where imposing regulation for the smallest aircraft (*e.g.*, those under 19 passenger seats) would have been justified. Many believed that existing lift devices were not designed to work, or could not work, with aircraft with seating capacity of 19 or fewer passengers. The 1996 rule focused on smaller aircraft because many smaller aircraft don't use loading bridges, and in many cases mobility-impaired passengers have been boarded by being carried up aircraft stairs in a special "boarding chair." This process is undignified for the passenger, and potentially dangerous for both the passenger and those who are providing the boarding assistance.

In August 1999, recognizing that the need for level-entry boarding for passengers with mobility impairments also existed in larger aircraft, the Department of Transportation published a notice of proposed rulemaking (NPRM) proposing to extend the applicability of the 1996 final rule to aircraft with a seating capacity of 31 or more passengers. Similar to the 1996 final rule on aircraft with 19 through 30 seats, in the 1999 NPRM the Department proposed to require airports and airlines to work together to ensure the availability of lifts to provide level-entry boarding where it was not already available for passengers with disabilities traveling on aircraft with 31 or more seats. We received 27 comments from disability community organizations, individuals with disabilities, carriers, and industry associations representing airports and airlines. Of the 27 commenters, the vast majority generally supported the proposal but suggested substantive modifications in various parts of the rule.

Discussion of Comments

1. Boarding Assistance Methods

Comments: The disability community comments had a common theme that carrying passengers up stairs by hand or in a boarding chair is a grossly offensive way of providing access, for reasons having to do with the dignity, safety, and comfort of passengers. Some disability group commenters did say, however, that using boarding chairs to carry passengers up stairs should be permitted with the consent of the passenger when a lift is inoperative or when there is an emergency. One disability group advocate, the Paralyzed Veterans of America, stressed that travelers with disabilities should be consulted about alternative arrangements (e.g. an alternative flight) when level boarding is not available.

The majority of the comments from industry also supported the use of mechanical lifts, ramps or other suitable devices in most situations where level entry-boarding bridges and accessible passenger lounges are not available. However, American Trans Air argued against the general requirement for lifts, ramps, or other suitable devices. The carrier thought that airlines should be permitted to use "reasonable efforts" to provide boarding assistance to individuals with disabilities using mechanical lifts, ramps or other suitable devices that do not require employees to lift or carry passengers up stairs.

The Air Transport Association of America (ATA) requested clarification as to when, if ever, a passenger with a disability may be carried onto an aircraft with the use of a chair or other device and when, if ever, a passenger with a disability may be physically hand carried on board. The ATA also requested clarification as to whether carrier personnel may assist a passenger transferring from an aisle chair to a seat by directly picking up the passenger's arms or legs.

DOT Response: The Department is not persuaded that carriers should be permitted to simply use "reasonable efforts" to provide boarding assistance using mechanical lifts, ramps, or other suitable devices that do not require employees to lift or carry passengers up stairs. It is not enough to use "reasonable efforts" to provide level-entry boarding. We will carry forward the 1996 provision and apply it here. Airline personnel will generally not be

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permitted to carry passengers up stairs in a boarding chair, because it is an undignified and unsafe way of providing access for passengers and it increases risks to carrier personnel involved. The Department is requiring that, under normal circumstances, on an aircraft with 31 or more seats, carrier personnel may not lift passengers in boarding chairs up stairs as a means of effectuating the change of level needed for boarding. Hand-carrying (bodily picking up a passenger for purposes of a change of level) is only allowed when necessary for an emergency evacuation. In all other abnormal circumstances (e.g. if a lift breaks down), the carrier can use whatever means are available (including boarding chairs but not hand-carrying) as a means of effectuating the change of level needed for boarding. The use of a boarding chair to carry a passenger up or down stairs in such abnormal circumstances is conditioned on the passenger's consent (except in the case of emergency evacuations).

The Department wants it to be clear that this does not mean that boarding chairs and/or aisle chairs cannot be used in the boarding assistance process. Indeed, their use is usually necessary to get the passenger to a seat from a lift. Nor does it mean that carrier personnel are relieved of their obligation to assist passengers in transferring from their own wheelchairs to a boarding or aisle chair and then from that device to an aircraft seat.

2. Implementation Schedules

Comments: Both carriers and airports commented that the 18-month time frame for negotiating and implementing an agreement for the acquisition and use of level-entry boarding assistance devices was not sufficient to allow for the re-programming of funding, negotiations between carriers and airports, and employee training. On the other hand, disability community organizations and individuals with disabilities seemed to feel that the proposed 18-month time frame was too long and advocated for shortening the time to 12-months. These commenters argued for a shortening of time because years have passed since the ACAA regulations have been in place, lifts have been available for some time, and commenters believe that airlines and airports are capable of providing boarding assistance within the 12-month time frame.

DOT Response: The Department believes that existing lifts or lifts put in place in response to the 1996 small aircraft lift rule will assist in meeting the requirements of this rule. We expect that there may be many situations in which the same boarding assistance equipment used to provide access to 19 through 30 seat aircraft can be used for larger aircraft. Further, the final rule provides an 18-month time frame to permit an orderly acquisition process for additional equipment and to avoid increasing costs through an overly abrupt start-up requirement. In choosing an 18-month schedule, the Department has tried to balance the need to provide accessibility as soon as possible and the need to give parties a reasonable amount of time to do the work. The Department continues to believe that 18 months accomplishes this objective.

3. Private Charters and Irregular or Emergency Operations

Comments: Carriers and airports argued that the requirement for airports and carriers to negotiate concerning the acquisition of boarding assistance devices should be limited to situations where the carrier is a regular, scheduled-service, or frequent user of the airport. These commenters asserted that the rule should not apply to private charters and irregular or emergency operations at airports where the carrier does not provide regular scheduled service. They also contended that the requirement for an agreement for the acquisition and use of boarding assistance devices should not apply to certain seasonal service.

DOT Response: The Department does not believe that it is advisable to waive its level-entry boarding assistance requirements in situations where a carrier provides seasonal service or the carrier is not a regular, scheduled-service, or frequent user of an airport. The main point of this regulation is to ensure that, in as many situations as possible, passengers with disabilities be able to travel by air, with safety and dignity. Carriers have ongoing working relationship with every airport that they fly to regardless of how infrequent the flights to that particular airport may be. For instance, carriers must pay airports take-off and landing fees. It is not persuasive to assert that the infrequency or irregularity of the relationship between a carrier and an airport should result in the Department not requiring them to negotiate with one another to acquire mechanical lifts, ramps, or other suitable devices that do not require employees to lift or carry passengers up stairs. Given the mandate of the Air Carrier Access Act, it is reasonable to require accessibility even where a carrier provides seasonal service or the carrier is not a regular, scheduled-service, or frequent user of an airport.

4. Responsibility for Obtaining and Maintaining Lifts

Comments: Carriers and airports disagreed over who should be responsible for providing lift devices and maintaining them in proper working condition. Two airport commenters, the American Association of Airport Executives and the City of Billings Aviation and Transit Department, contended that airports must have flexibility to assess costs/charges against airlines for procurement and maintenance of lifts. These two commenters also wanted flexibility to require airlines to be responsible for the training of all employees in the use of lifts and the establishment of basic safety and insurance requirements. American Trans Air commented that under most circumstances airports and not carriers should be responsible for maintaining all lifts and other accessibility equipment in proper working condition. This commenter stated that joint responsibility between a carrier and an airport is appropriate only if a carrier is a frequent user, is responsible for more than 10% of the enplanements at the airport, or has regularly scheduled service to that point.

DOT Response: The Department believes that airports and carriers can negotiate among themselves to determine their respective responsibilities in paying for and maintaining mechanical lifts or other suitable devices. Airports and carriers have worked together for decades to find a basis for agreement on a wide variety of air transportation matters, so the concept of airports and air carriers negotiating to determine how accessibility will be provided is appropriate. The Department will not dictate one-size-fits-all solutions to issues that are better decided locally by the parties concerned. Carriers and airports share a joint responsibility to ensure that passengers with disabilities have the opportunity to use aircraft with 31 or more seats.

5. Regulatory Evaluation

Comments: The Regional Airline Association disputed the Department's statement in the NPRM that the incremental cost of the rule would be negligible because lifts are already in place or required to be in place by existing rules. The commenter seemed to be arguing that the cost of the rule would be more than negligible because 860 aircraft (40% of the total regional fleet) have more than 30 seats and lifts are not required by existing rules for these aircraft. American Trans Air also disagreed with the Department's certification that the proposed rule would not have a significant impact on carriers and airports. American Trans Air stated that they fly to any airport that is certified to accept their fleet type and argued that airport operating authorities of smaller stations do not generally have the sustained traffic that would justify the capital costs of developing a lift capability.

DOT Response: The Department realizes that this is the first time that lifts or other suitable devices have been required to access an aircraft with 31 or more seats, but we expect that there may be many situations in which the same boarding assistance equipment that is currently required to be used to provide access to smaller aircraft can be used to provide access to aircraft with 31 or more seats. The Department believes that this rule which covers aircraft with more than 30 seats would require only minimal increase in the number of lifts already acquired by airports and air carriers because the demand for lifts is determined primarily by the size of the airport. For example, every airport needs at least one lift, and large airports, where gates are far apart and short turn-around time is important, need two or more. The frequency of lift usage by passengers with disabilities is only a secondary factor because the lifts acquired in response to the 1996 final rule on aircraft with seating capacity of 19 through 30 passengers are not used to their full potential. The Department estimates that the average use of a lift per day is less than 1 operation.

Further, the requirement to provide boarding assistance to individuals with disabilities using mechanical lifts, ramps, or other suitable devices apply only at airports with 10,000 or more annual enplanements, primary airports that have commercial service and where lifts would receive more use. Airports with less than 10,000 annual enplanements (small airports which often may not have regularly scheduled service) are not covered by this rule. The 10,000 enplanement threshold is also the same standard that has applied since 1996 to ramp/lift assistance for aircraft with 19 through 30 seats.

6. Availability of Lifts

Comments: One commenter, Broward County, expressed its view that existing lifts on the market will not accommodate certain widebody aircraft and requested that the failure of airports to have lifts for widebodies on-site not constitute non-compliance. This commenter explained that it represents an airport and that this airport had purchased a "Lift-A-Loft" transporter but the "Lift-A-Loft" will reportedly not accommodate a 747 or a DC–10. Two other commenters, the Eastern Paralyzed Veterans Association and the National Association of Protection and Advocacy Systems, wrote that they were aware of two companies that manufacture lifts that service large aircraft. They stated that Lift-A-Loft Corporation manufactures at least one lift that can service aircraft as large as a 747. A second company, Wollard Airport Equipment Company, was also cited as a company that manufactures lifts that access commuter, regional and jet aircraft up to Boeing 727.

DOT Response: The Department is not convinced that existing lifts will not accommodate certain widebody aircraft. No carrier or carrier association voiced concerns that existing lifts on the market would not accommodate larger aircraft. Nevertheless, the final rule has a provision permitting airports and air carriers to seek a written waiver, under limited circumstances, from the requirement that they must provide boarding assistance to persons with disabilities by using ramps or mechanical lifts where level-entry boarding by loading bridge or mobile lounge is not available. A waiver will be granted only if the carrier can demonstrate that no existing lift or other suitable device on the market will accommodate the aircraft, and the carrier agrees to provide enplaning/deplaning assistance using boarding chairs as was allowed prior to the adoption of this final rule. If the use of existing models of lifts or other feasible devices to enplane a passenger would present an unacceptable risk of significant damage to the aircraft or injury to passenger or employees, then the Department would view this as meaning that there is no suitable device to accommodate the aircraft.

7. Funding

Comments: One commenter, the City of Billings Aviation and Transit Department, requested that the Department of Transportation develop procedures establishing the number of lifts needed and how many will be eligible for Airport Improvement Program (AIP) funding.

DOT Response: The Department does not perceive a need to dictate procedures establishing the number of lifts needed in each airport for each carrier. The Department would prefer that the parties concerned develop their own procedures establishing the number of lifts needed in their specific situations. AIP is an option that can assist in the purchase of lifts but the amount of AIP funding available varies each year.

8. Foreign Air Carriers

Comments: The Air Transport Association requested clarification as to what extent this final rule will apply to foreign air carriers and U.S. airline operations wholly outside the United States.

DOT Response: This rule does not specifically mention foreign air carriers or U.S. airline operations wholly outside the United States because we did not propose to cover them in the notice of proposed rulemaking and it would be outside the scope of the notice to now cover foreign air carriers. Also, § 382.3(c) of the Department's Air Carrier Access Act rule states that this rule (part 382) does not apply to foreign air carriers or to airport facilities outside the United States, its terrorities, possessions or commonwealths. However, on May 18, 2000, the Department of Transportation, through the Office of Aviation Enforcement and Proceedings, notified foreign airlines serving the United States that effective April 5, 2000, as mandated by the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), they are now subject to the requirements of the Air Carrier Access Act. The Department is currently working on a separate rulemaking to make the regulations implementing the Air Carrier Access Act applicable to foreign air carriers.

9. Penalties

Comments: The Paralyzed Veterans of America thought DOT should establish specific and automatic penalties against carriers that fail to provide level-entry boarding regardless of any alternative arrangements accepted by the disabled passenger.

DOT Response: The Department does not need to create a new penalty provision in order to bring an enforcement case against an airport or an airline for failure to provide level-entry boarding. If an airline fails to comply with its obligations, the enforcement procedure of 14 CFR 382.65(c) and (d) would apply. If an airport fails to comply, the procedures of 49 CFR part 27, subpart C would apply.

10. Definitions

Comments: The ATA requested clarification on the meaning of "acquisition." The Paralyzed Veterans of America requested a change to § 382.29(a)(3) to state "passenger with a disability" rather than "handicapped passenger."

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DOT Response: The Department uses the word "acquisition" of equipment to mean the purchase or lease of equipment. The Department assumes the disability group commenter is referring to § 382.39(a)(3) since § 382.29(a)(3) does not exist. The Department amended part 382 in 1996 to change terms containing the word "handicap" or "handicapped" to "disability." See 61 FR 56422. Most occurrences of the words "handicap" or "handicapped" were subsequently replaced by the word "disability" in the published rule. However, certain phrases that contain a version of the word "handicap" were inadvertently overlooked. We are correcting that in this final rule. These changes are editorial in nature and do not require notice and comment.

11. Unrelated Issues

Comments: The Colorado Cross-Disability Coalition expressed frustration at the refusal of operators of small aircraft to transport or even sell a ticket to persons who cannot walk or who need in-flight medical oxygen. Another individual commenter requested a standard, industry-wide protocol for transporting of power wheelchairs and expressed anger at removal of gel batteries and damage to a chair.

DOT Response: Since their inception, the ACAA rules have required carriers using aircraft of all sizes to transport and provide enplaning/deplaning assistance to passengers who require it (although level-entry boarding might not be required in all cases). However, in some models of small aircraft, no existing model of lift or other device will work and the stairs that are built into the door of the aircraft are not strong enough to accommodate two or three persons at a time, as the use of a boarding chair would require. The result is that airlines may legally deny boarding to persons with mobility impairments in some limited situations. See 55 FR 8033–8034, March 6, 1990. This rulemaking does not concern small aircraft, in-flight oxygen, or the transportation of power wheelchairs and any new requirements on these topics would be outside the scope of the notice.

Section-By-Section Analysis

The Department has revised the format and subsequently the numbering of the rule text language in part 382 from that proposed in the August 1999 NPRM. The August 1999 NPRM placed the boarding assistance requirements for large aircraft in subpart (b) of § 382.39 which is titled "Provision of services and equipment." The Department now realizes that it will be clearer if we simply create a new § 382.40a for boarding assistance requirements concerning large aircraft. The comments that the Department received for each individual section are discussed below under the revised section number.

14 CFR 382.39

1. 14 CFR 382.39(a)(2)

Comments: Several disability advocates were concerned about exemptions for aircraft carrying less than 19 passengers, and for float planes. They believe that it is technically feasible to provide safe and dignified access to small aircraft currently exempt from level boarding requirements. These commenters suggest widening the scope of air carrier regulations to require boarding access for all commercial airline flights regardless of aircraft size. Representatives of industry supported the current exemptions in § 382.40 for three specific 19-seat aircraft models, aircraft with fewer than 19 passengers, and float planes.

The Paralyzed of America pointed out that in the proposed § 382.39(a)(2) in the NPRM the Department mistakenly referred to paragraph (c) instead of paragraph (b).

DOT Response: This rulemaking concerns only aircraft with seating capacity of 31 or more passengers. In November 1996, the Department published a final rule concerning aircraft with 19 through 30 seats. In the 1996 final rule, the Department explained that it was aware of three 19-seat "problem aircraft" with which existing models of lifts do not work well, and the Department exempted the Fairchild Metro, the Jetstream 31, and the Beech 1900 (C and D models) from the boarding assistance requirements. The Department also exempted float planes, which often pick up passengers from docks or floating platforms, because they are incompatible with lift use. In addition, in the 1996 final rule, the Department decided to exempt all aircraft carrying fewer than 19 passengers because the existing lift devices did not appear designed to work with, or able to work with, some of the smallest aircraft. Additionally, the smallest aircraft carry a very small share of the national air traffic.

The commenter is correct in noting that in the proposed § 382.39(a)(2) in the NPRM the Department mistakenly referred to paragraph (c) instead of paragraph (b). This error has been rectified in the final rule.

14 CFR 382.40a

1. 14 CFR 382.40a(a)

Comments: The American Association of Airport Executives suggested creating two categories of aircraft (31 through 50, and greater than 50 passenger seats) and exempting airports that have no regularly scheduled operations by aircraft with more than 50 seats from having to have lifts or other boarding devices suitable for aircraft with more than 50 seats. The commenter reasoned that most existing equipment designed to facilitate boarding by disabled passengers would serve most turboprop and regional jet equipment but not aircraft with more than 50 seats.

DOT Response: The Department is not adopting this suggestion. Carriers have ongoing working relationships with every airport that they fly to regardless of how infrequent the flights to that particular airport may be. Further, the Department has provided carriers and airports an 18-month implementation schedule to permit an orderly acquisition process for additional equipment and to avoid increasing costs through an overly abrupt start-up requirement.

2. 14 CFR 382.40a(b)

Comments: Many of the comments from persons with a disability and organizations representing the interests of persons with a disability supported not allowing enplaning and deplanning of passengers with disabilities through hand-carrying or the use of boarding chairs under any circumstances. These commenters felt the rule should require lifts for boarding access when there are no level entrances or loading bridges. Several of the disability group commenters supported allowing enplaning and deplaning of disabled passengers using boarding chairs in emergency situations or if a lift is temporarily not working. The Paralyzed Veterans of America (PVA) stressed that disabled travelers should be consulted about alternative arrangements (i.e. an alternative flight) when level boarding is not available and requested that the Department more thoroughly set forth and more prominently display within its rules the carrier's duties with respect to alternative arrangements.

American Trans Air wrote that it did not support the requirement to provide boarding assistance by using mechanical lifts, ramps, or other suitable devices that do not require employees to lift or carry passengers up stairs and preferred the use of "reasonable efforts to provide boarding assistance."

The Air Transport Association requested clarification as to when, if whenever a passenger states he uses a wheelchair for boarding. In addition, alternative arrangements due to an inoperable lift should not be commonplace. Section 382.40a(c)(6) requires that the agreement between carriers and airports ensure that all lifts and other accessibility equipment are in proper working condition. Further, carriers on their own often ensure that a passenger with a disability is provided the option of an alternative flight when the required boarding assistance cannot be provided.

ever, a passenger with a disability may be carried onto an aircraft with the use of a chair or other device and when, if ever, a passenger with a disability may be physically hand-carried on board. The ATA also requested clarification as to whether carrier personnel may assist a passenger transferring from an aisle chair to a seat by directly picking up the passenger's arms or legs.

DOT Response: The Department is not persuaded by the argument that carriers be permitted to use "reasonable efforts" to provide boarding assistance using mechanical lifts, ramps, or other suitable devices that do not require employees to lift or carry passengers up stairs in boarding chairs. It is not enough to use "reasonable efforts" to provide level-entry boarding. Airline personnel will generally not be permitted to carry passengers up stairs in a boarding chair because it is an undignified and unsafe way of providing access for passengers and it increases risks to carrier personnel involved. The Department is requiring that, under normal circumstances, on an aircraft with 31 or more seats, carrier personnel may not lift passengers in boarding chairs up stairs as a means of effectuating the change of level needed for boarding. Hand-carrying (bodily picking up passenger for purposes of a change of level) is only allowed when necessary for an emergency evacuation. In all other abnormal circumstances (e.g., if a lift breaks down), the carrier can use whatever means are available (including boarding chairs or an alternative flight, but not hand-carrying) as a means of effectuating the change of level needed for boarding. The use of a boarding chair to carry the passenger up or down stairs is conditioned on the passenger's consent (except in the case of emergency evacuations).

The Department wants it to be clear that this does not mean that boarding chairs and/or aisle chairs cannot be used in the boarding assistance process. Indeed, their use is necessary to get the passenger to a seat from a lift. Nor does it mean that carrier personnel are relieved of their obligation to assist passengers in transferring from their own wheelchairs to a boarding or aisle chair and then from that device to an aircraft seat.

The Department does not agree with the PVA's comment that there is a need for the Department to set forth in more detail and more prominently display in its rules the carrier's duties with respect to alternative arrangements. Section 382.45(a)(2) already requires the carrier to inform a passenger with a disability of any limitations on the ability of the aircraft to accommodate the passenger

3. 14 CFR 382.40a(c)(1)

Comments: The vast majority of comments from carriers, airports, and industry associations argued that the requirement for a carrier to negotiate in good faith with the airport operator at each airport should be limited to those situations where the carrier is a regular, scheduled-service, or frequent user of the airport. They contended that § 382.40a should not apply to private charters and irregular or emergency operations at airports where the carrier does not provide regular scheduled service. They also asserted that § 382.40a should not apply to as carriers and airports with limited seasonal-only service and regional airlines that provide seasonal service because demand is not adequate to support year-round service. In general, the industry comments declared that in these circumstances the rule should allow boarding and deplaning assistance by any means available, including hand-carrying with the express consent of the passenger.

The American Association of Airport Executives also requested an exemption for airports without regularly scheduled operations by aircraft with more than 50 seats from having lifts or other boarding devices suitable for aircraft with larger seating capacity. The same commenter requested clarification as to whether the phrase "to negotiate in good faith with each carrier serving the airport" applied to charters and non-scheduled carriers. Two other industry association commenters, the ATA and the Regional Airline Association, thought the requirement for agreements with airports was unnecessarily broad. They suggested revising § 382.40a(c)(1) to read as follows: "a carrier that does not provide passenger boarding by level-entry boarding bridges or accessible passenger lounges at an airport at which it provides regular scheduled service shall negotiate in good faith with that airport concerning the acquisition and use of boarding assistance devices."

American Trans Air commented that it supports the provision but would like the costs to be allocated between operator and carrier based on proportionate use of facility. Two commenters representing airports argued that airports must have flexibility to: assess costs/charges for procurement and maintenance of lifts, require airlines to be responsible for training of all employees in the use of lifts, establish basic safety and insurance requirements before airlines can use lifts, and release the airports of liability if carriers do not follow these procedures.

The Paralyzed Veterans of America thought DOT should require that copies of all contracts negotiated under this rule be submitted to DOT for review and made available to the public as a means of ensuring compliance and determining the responsible party.

DOT Response: The Department does not believe it is necessary to require copies of all contracts negotiated under this rule be submitted to DOT for review since the written agreements between carriers and airports must be made available to DOT upon request. Also, airports and carriers can negotiate among themselves to determine their respective responsibilities in paying for and maintaining mechanical lifts or other suitable devices. See response to comments regarding "Responsibility for Obtaining and Maintaining Lifts" for a fuller discussion of why the Department believes airports and carriers can negotiate among themselves.

The Department will adopt the suggestion of two industry commenters to narrrow the requirements of § 382.40a(c)(1) by limiting the type of carrier that must negotiate in good faith to those carriers that do not provide passenger boarding by level-entry boarding bridges or accessible passenger lounges at an airport. However, the Department does not believe that it is advisable to waive its level-entry boarding assistance requirements in situations where a carrier provides seasonal service or the carrier is not a regular, scheduled-service, or frequent user of an airport. See response to comments regarding "Private Charters and Irregular or Emergency Operations" for a fuller discussion of why the Department believes it is reasonable to require accessibility even where a carrier provides seasonal service or the carrier is not a regular, scheduled-service, or frequent user of an airport.

4. 14 CFR 382.40a(c)(2)

Comments: Most of the disability groups and persons with disabilities argued that a 12-month total time frame rather than 18-month total time frame was appropriate. They contended that a

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3-month time frame for airport operators and air carriers to negotiate and sign a written agreement allocating responsibility for providing boarding assistance was sufficient and argued that a 9-month time frame to implement the agreement would be more than enough time. One person with a disability commented that 18 months is enough time to start using lifts for larger aircraft. The PVA stated that it would like for the final rule to require immediate implementation where level-entry boarding equipment is available to carriers or airports and is usable on aircraft affected by these regulations.

Representatives of industry strongly argued that more time than the Department's proposed 18-month schedule was needed to complete all actions necessary to ensure accessible boarding for passengers with disabilities. Two commenters, the American Association of Airport Executives and the City of Billings Aviation and Transit Department, requested a change to a minimum of a 24-month deadline in lieu of 18 months to allow for funding re-programming, air carrier negotiations, and employee training. The Regional Airline Association requested 36 months in lieu of 18 months due to what it perceived to be significant costs to regional airlines. American Trans Air commented that it would support the18-month timeline only if carrier negotiation with airports is restricted to those carriers that are frequent users of airports, airports that are responsible for more than 10% of the enplanements, or carriers that have regular scheduled service at airports.

The Air Transport Association requested exemptions on a case-by-case basis for carriers and airports unable to secure lifts or other devices due to lack of availability from manufacturers and their demonstrated good faith efforts to obtain lifts, ramps, or other devices in a timely manner.

DOT Response: The Department believes existing lifts or lifts put in place in response to the 1996 small aircraft lift rule will assist in meeting the requirements of this rule. See response to comments regarding "Implementation Schedules" for a fuller discussion of why the Department chose an 18-month time frame. The Department notes that the rule already requires immediate implementation where level-entry boarding equipment is available to carriers and airports. Section 382.39(a)(2) states that boarding shall be by level entry boarding platforms or accessible passenger lounges, where these means are available. Otherwise, carriers shall use ramps, lifts, or other devices for enplaning and deplaning persons with disabilities who need this kind of assistance. In sum, carriers are required to use these devices as soon as they are ready where level-entry boarding platforms are not available for a flight (i.e., a carrier cannot decline to use an available lift).

The Department believes it is unnecessary to grant waivers on a case-by-case basis for carriers and airports unable to secure lifts or other devices due to lack of availability from manufacturers and their demonstrated good faith efforts to obtain lifts, ramps, or other devices in a timely manner. Air carriers and airports have 18 months from the effective date of the rule to acquire lifts or other suitable devices. We expect that there may be many situations in which the same boarding assistance equipment used to provide access to smaller aircraft can be used to provide access to aircraft with 31 or more seats. The final rule includes a provision permitting airports and air carriers to seek a written waiver only if the carrier can demonstrate that no existing lift or other suitable device on the market will accommodate the aircraft and the carrier agrees to provide enplaning/deplaning assistance using boarding chairs as was allowed prior to adoption of this final rule. See response to comments regarding "Availability of Lifts" for a fuller discussion of when the Department will grant a waiver.

5. 14 CFR 382.40a(c)(3)

Comments: American Trans Air commented that it supported the provision whereby a passenger requiring lift assistance may be required to check in at least one hour before the scheduled departure time.

DOT Response: The Department agrees with the commenter and the final rule is the same as the proposal in the NPRM.

6. 14 CFR 382.40a(c)(4)

Comments: Broward County expressed its view that existing lifts on the market will not accommodate certain widebody aircraft and requested that the failure of airports to have lifts for widebodies on-site not constitute non-compliance. The Eastern Paralyzed Veterans of America and the National Association of Protection and Advocacy Systems wrote that they were aware of two companies that manufacture lifts that service large aircraft.

DOT Response: The Department is not convinced that existing lifts will not accommodate widebody aircraft. Nevertheless, the final rule includes a new provision waiving the requirement for boarding assistance to persons with disabilities by using ramps or mechanical lifts under limited circumstances. Boarding assistance by lift is not required on any widebody aircraft determined by the Department of Transportation to be unsuitable on the basis that no existing boarding assistance device on the market will accommodate the aircraft without significant risk of serious damage to the aircraft or injury to passenger or employee.

7. 14 CFR 382.40a(c)(5)

Comments: American Trans Air commented that it supports this provision and understands that it would be able to refuse transport for passengers with disabilities without jeopardy according to § 382.31 (refusal of service) since hand-carrying is not an option. The Paralyzed Veterans of America expressed concern that the phrase "for reasons beyond the control of the parties to the agreement" in proposed § 382.40a (c)(5) seems to limit mandatory alternative boarding to situations where the air carrier or airport was not at fault for the failure to provide level-entry boarding. The PVA requested that the Department ensure that passengers have an option of alternative boarding or an alternative flight regardless of who is responsible for the failure to provide entry level boarding.

DOT Response: A carrier may not refuse transport on an aircraft with seating capacity of 31 or more passengers when level-entry boarding assistance through lift, ramp or other suitable device is not available. If a lift is not available, regardless of the reason, then the airline must consult with the passenger and provide boarding assistance by any available means to which the passenger consents (except hand-carrying as defined in § 382.39(a)(2)). For example, carrier personnel may carry a passenger up stairs in a boarding chair if the passenger consents. The Department is not aware of any model of aircraft with seating capacity of 31 or more seats with stairs that are built into the door of the aircraft that are not strong enough to accommodate two or three persons at a time, as the use of boarding chairs would require. If the passenger does not consent to being carried in a boarding chair, then the carrier may offer other options such as an alternative flight. The Department has removed the phrase "for reasons beyond the control of the parties to the agreement" from § 382.40a (c)(5) because it is confusing and could appear to some as limiting the situations in which alternative boarding must be provided.

8. 14 CFR 382.40a(c)(6)

Comments: American Trans Air thought that airports and not carriers should be responsible for maintaining all lifts and other accessibility equipment in proper working condition. This commenter stated that joint responsibility between a carrier and an airport is appropriate only if the carrier is a frequent user, is responsible for more than 10% of enplanements, or has regularly scheduled service. The PVA would like for the final rule to include a regular schedule for deployment and testing of lifts to ensure that any mechanical difficulties are discovered and resolved before a passenger needs the equipment to board an aircraft. This disability organization thought the final rule should require regular maintenance and testing on a schedule consistent with manufacturer instructions. If equipment cannot be repaired the same day, then the disability group commenter would like for the carrier to be required to make arrangements for replacement.

DOT Response: The Department believes that airports and carriers can negotiate among themselves to determine their respective responsibilities in paying for and maintaining mechanical lifts or other suitable devices. See response to comments regarding "Responsibility for Obtaining and Maintaining Lifts" for a fuller discussion of why the Department believes airports and carriers can negotiate among themselves.

Additionally, the Federal Aviation Administration (FAA) has an Advisory Circular on Lift Maintenance titled "Guide Specification for Devices Used to Board Airline Passengers With Mobility Impairments" (AC No. 150/5220–21B) as guidance on how to maintain lifts in proper working condition. Carriers and airports share a joint responsibility to ensure that passengers with disabilities have the opportunity to use aircraft with 31 or more seats.

9. 14 CFR 382.40a(d)(1)

Comments: American Trans Air requested that the Department consider requiring Fixed Base Operators (FBOs) and other contract service providers involved in the use of boarding assistance equipment to be responsible for their own training. This commenter also suggested that the Department require airports where the carrier is not a frequent user to be responsible for ensuring service/contract providers are trained/certified. A disability group advocate, the PVA, recommended that the training requirements for personnel be stronger and suggested regular training of personnel with periodic refreshers.

DOT Response: Carriers and airports are ultimately responsible for ensuring that contract service providers are adequately trained in the use of boarding assistance equipment. The general part 382 requirement of training to proficiency includes refresher training, as needed, to maintain proficiency. We note that § 382.61, which applies to carriers that operate aircraft with more than 19 seats, requires refresher training as appropriate to the duties of each employee to ensure that proficiency is maintained. For example, for personnel involved in providing boarding assistance, training to proficiency would cover the use of the boarding assistance equipment used by the carrier and appropriate boarding assistance procedures that safeguard the safety and dignity of passengers.

49 CFR Part 27

1. 49 CFR 27.72(a)

Comments: One person with a disability expressed concern about the fact that the NPRM is limited to boarding assistance at airports with more than 10,000 annual enplanements.

DOT Response: The Department made the tentative decision not to apply this rule to airports with fewer than 10,000 enplanements because these airports are non-primary airports—small airports that often may not have regularly scheduled service. Airports with 10,000 or more annual enplanements are primary airports that have more commercial-service traffic and where lifts would receive more use. The 10,000 enplanement threshold is the same standard that has applied since 1996 to ramp/lift assistance for aircraft with 19 through 30 seats.

2. 49 CFR 27.72(b)

Comments: One commenter agreed that sub-section (c) of § 27.72 should apply to aircraft with a seating capacity of 19 through 30 passengers only so long as exemption for 19-seat aircraft models such as the Jetstream 31 remain.

DOT Response: The requirement for airports and carriers to jointly provide ramps or lifts for aircraft with 19 through 30 passenger seats does not override the existing exemption for certain aircraft such as the Jetstream 31. Indeed, the requirement as it pertains to 19 through 30 seat aircraft and the exemption for three aircraft types have been in existence since 1996. Nothing in the current proceeding affects them.

3. 49 CFR 27.72(c)(1)

Comments: American Trans Air supported the requirement that airport operators negotiate in good faith with each carrier, but would like the cost of boarding devices to be apportioned between operator and carrier based on enplanements and/or departures.

DOT Response: Again, the Department believes that airports and carriers can negotiate among themselves to determine their respective responsibilities in paying for mechanical lifts or other suitable devices. Airports and carriers have worked together for decades to find a basis for agreement on a wide variety of air transportation issues, so the concept of airports and air carriers negotiating to determine how accessibility will be provided is appropriate.

4. 49 CFR 27.72(c)(2)

Comments: American Trans Air commented that Chicago Express's aircraft are currently exempt from the requirement to implement agreement within the specified time frame because its entire fleet consists of the Jetstream 31, a 19-seat aircraft model determined by the Department of Transportation to be unsuitable for boarding assistance by lift. On behalf of Chicago Express, its affiliate/code-share partner, this carrier requested an 18-month period from the date Chicago Express acquires aircraft/equipment that is not exempt to the date that it must use mechanical lifts.

DOT Response: The Department will not allow an additional 18-month compliance period for carriers that choose to begin operating aircraft for which boarding assistance by lift is required. The purpose of the initial phase-in period was to enable carriers to avoid costs through an overly abrupt start-up requirement. By now all carriers should be aware of the general boarding assistance requirements for aircraft with19 through 30 seats and realize that they must acquire lifts or other suitable devices if they operate aircraft for which boarding assistance by lift is required.

5. 49 CFR 27.72(c)(3)

Comments: Some disability advocates such as Access to Independence and Mobility were concerned about exemptions for aircraft carrying fewer than 19 passengers, and for float planes. They believe that if is technically feasible to provide safe and dignified access to small aircraft currently exempt from level boarding requirements. These commenters suggest widening the scope of air carrier regulations to require boarding access for all commercial airline flights regardless of aircraft size.

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Representatives of industry supported the current exemptions in § 382.40 for three specific 19-seat aircraft models, aircraft with fewer than 19 passenger seats, and float planes. One disability group recommended replacing the word "lift" in § 27.72(c)(3)(iv) with "boarding assistance device" since not all boarding assistance devices are lifts.

DOT Response: The Department has replaced the word "lift" in § 27.72(c)(3)(iv) with the phrase "lifts, ramps, or other suitable boarding devices" because a lift is not the only acceptable boarding device. See response to comments regarding § 382.39(a)(2) for a discussion of why the Department has exempted small aircraft and float planes from level boarding requirements.

6. 49 CFR 27.72(c)(4)

Comments: American Trans Air commented that it supports this provision and understands that it would be able to refuse transport for passengers with disabilities without jeopardy according to § 382.21 (refusal of service) since hand-carrying is not an option.

DOT Response: See response to comments regarding § 382.40a(c)(5).

7. 49 CFR 27.72(c)(5)

Comments: American Trans Air commented that it supports the provision but believes the responsibility for maintaining the lifts and other accessibility equipment should be apportioned based on proportionate use of the facility.

DOT Response: See response to comments regarding § 382.40a(c)(6).

8. 49 CFR 27.72(d)(1)

Comments: One carrier commented that it supports the provision but would like the costs to be allocated between operator and carrier based on proportionate use of facility. Two commenters representing airports argued that airports must have flexibility to: assess costs/charges for procurement and maintenance of lifts, require airlines to be responsible for training of all employees in the use of lifts, establish basic safety and insurance requirements before airlines can use lifts, and release the airports of liability if carriers do not follow these procedures. The Paralyzed Veterans of America thought DOT should require copies of all contracts negotiated under this rule be submitted to DOT for review and made available to the public as a means of ensuring compliance and determing the responsible party. The American Association of Airport Executives suggested adding "where level entry boarding is not otherwise available" to the end of the first sentence to conform the airport requirement with the air carrier requirement.

DOT Response: The Department will add the sentence "where level entry boarding is not otherwise available" to the end of the first sentence to conform the airport requirement with the air carrier requirement. The Department will not allocate the costs between operator and carrier based on proportionate use of facility. Airports and carriers can negotiate among themselves to determine their respective responsibilities in paying for and maintaining mechanical lifts or other suitable devices. See response to comments regarding § 382.40a(c)(1) for further detail.

9. 49 CFR 27.72(d)(2)

The comments and issues here are identical to those discussed in § 382.40a(c)(2) earlier. See that section for a discussion of comments and DOT response.

10. 49 CFR 27.72(d)(3)

Comments: One commenter expressed his view that existing lifts on the market will not accommodate widebody aircraft and requested that the failure of airports to have lifts for widebodies on-site not constitute non-compliance. Two commenters wrote that they were aware of two companies that manufacture lifts that service large aircraft.

DOT Response: See response to comments regarding § 382.40a(c)(4).

11. 49 CFR 27.72(d)(4)

The comments and issues here are identical to those discussed in § 382.40a(c)(5) earlier. See that section for a discussion of comments and DOT response.

12. 49 CFR 27.72(d)(5)

The comments and issues here are identical to those discussed in § 382.40a(c)(6) earlier. See that section for a discussion of comments and DOT response.

13. 49 CFR 27.72(e)

Comments: American Trans Air supported the provision that airports shall ensure that airport personnel involved in providing boarding assistance are trained. This commenter also requested that the Department impose responsibility on the airports where the carrier is not a frequent user of the airport for ensuring that service/contract providers are trained. The PVA recommended that the training requirements for personnel be stronger and suggested regular training of personnel with periodic refreshers.

DOT Response: See response to comments regarding § 382.40a(d)(1).

Regulatory Analysis and Notices

A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This action has been determined to be non-significant under Executive Order 12866 and the Department of Transportation Regulatory Policies and Procedures. Any costs or benefits resulting from this action would be so minimal that no further assessment is required since existing lifts, or lifts previously in place in response to the small aircraft lift rule, will be sufficient to meet the proposed requirements in many situations. The Office of the Secretary has prepared and placed in the docket a regulatory evaluation of the final rule.

B. Executive Order 13132 (Federalism)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule does not adopt any regulation that: (1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts state law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

C. Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. We hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities because the overall national annual costs are not great, few of the aircraft covered by this rule are operated by small entities, and few of commercial service airports covered by this rule could properly be regarded as small entities.

E. Paperwork Reduction Act

This rule imposes no new information reporting or record keeping necessitating clearance by the Office of Management and Budget.

F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

List of Subjects

14 CFR Part 382

Air carriers, Consumer protection, Individuals with disabilities, Reporting and recordkeeping requirements.

49 CFR Part 27

Airports, Civil rights, Individuals with disabilities, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 14 CFR part 382 and 49 CFR part 27 are amended as follows:

1. The authority citation for 14 CFR part 382 is revised to read as follows:

Authority: 49 U.S.C. 41702, 47105, and 41712.

2. In 14 CFR Part 382, the term "handicapped person" or "handicapped passenger" is revised to read "individual with a disability" wherever it occurs. The term "handicapped persons" or "handicapped passengers" is revised to read "individuals with a disability" whenever it occurs.

3. Section 382.39(a)(2) is revised to read as follows:

§ 382.39 Provision of services and equipment.

* * * * *

(a) * * *

(2) Boarding shall be by level-entry loading bridges or accessible passenger lounges, where these means are available. Where these means are unavailable, assistance in boarding aircraft with 30 or fewer passenger seats shall be provided as set forth in § 382.40, and assistance in boarding aircraft with 31 or more seats shall be provided as set forth in § 382.40a. In no case shall carrier personnel hand-carry a passenger in order to provide boarding or deplaning assistance (i.e., directly pick up the passenger's body in the arms of one or more carrier personnel to effect a change of level that the passenger needs to enter or leave the aircraft). Hand-carrying of passengers is permitted only for emergency evacuations.

* * * * *

4. A new section 382.40a is added to read as follows:

§ 382.40a Boarding assistance for large aircraft.

(a) Paragraphs (b) and (c) of this section apply to air carriers conducting passenger operations with aircraft having a seating capacity of 31 or more passengers at airports with 10,000 or more annual enplanements, in any situation where passengers are not boarded by level-entry loading bridges or accessible passenger lounges.

(b) Carriers shall, in cooperation with the airports they serve, provide boarding assistance to individuals with disabilities using mechanical lifts, ramps, or other suitable devices that do not require employees to lift or carry passengers up stairs.

(c) (1) Each carrier that does not provide passenger boarding by level-entry loading bridges or accessible passenger lounges shall negotiate in good faith with the airport operator at each airport concerning the acquisition and use of boarding assistance devices. The carrier(s) and the airport operator shall, by no later than March 4, 2002, sign a written agreement allocating responsibility for meeting the boarding assistance requirements of this section between or among the parties. The agreement shall be made available, on request, to representatives of the Department of Transportation.

(2) The agreement shall provide that all actions necessary to ensure accessible boarding for passengers with disabilities are completed as soon as practicable, but no later than December 4, 2002. All air carriers and airport operators involved are jointly responsible for the timely and complete implementation of the agreement.

(3) Under the agreement, carriers may require that passengers wishing to receive boarding assistance requiring the use of a lift for a flight check in for the flight one hour before the scheduled departure time for the flight. If the passenger checks in after this time, the carrier shall nonetheless provide the boarding assistance by lift if it can do so by making a reasonable effort, without delaying the flight.

(4) Level-entry boarding assistance under the agreement is not required with respect to float planes or with respect to any widebody aircraft determined by the Department of Transportation to be unsuitable for boarding assistance by lift, ramp, or other device on the basis that no existing boarding assistance device on the market will accommodate the aircraft without a significant risk of serious damage to the aircraft or injury to passengers or employees.

(5) When level-entry boarding assistance is not required to be provided under paragraph (c)(4) of this section, or cannot be provided as required by paragraphs (b) and (c) of this section (e.g., because of mechanical problems with a lift), boarding assistance shall be provided by any available means to which the passenger consents, except hand-carrying as defined in § 382.39 (a)(2).

(6) The agreement shall ensure that all lifts and other accessibility equipment are maintained in proper working condition.

(d) The training of carrier personnel required by § 382.61 shall include, for those personnel involved in providing boarding assistance, training to proficiency in the use of the boarding assistance equipment used by the carrier and appropriate boarding assistance procedures that safeguard the safety and dignity of passengers.

5. The authority citation for Part 27 continues to read as follows:

Authority: Sec. 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); sec. 16(a) and (d) of the Federal Transit Act of 1964, as amended (49 U.S.C. 5310(a) and (f); sec. 165(b) of the Federal-Aid Highway Act of 1973, as amended (23 U.S.C. 142nt).

6. In 49 CFR part 27, § 27.72 is revised to read as follows:

§ 27.72 Boarding assistance for aircraft.

(a) Paragraphs (b)–(e) of this section apply to airports with 10,000 or more annual enplanements.

(b) Airports shall, in cooperation with carriers serving the airports, provide boarding assistance to individuals with disabilities using mechanical lifts, ramps, or other devices that do not require employees to lift or carry passengers up stairs. Paragraph (c) of this section applies to aircraft with a seating capacity of 19 through 30 passengers. Paragraph (d) of this section applies to aircraft with a seating capacity of 31 or more passengers.

(c) (1) Each airport operator shall negotiate in good faith with each carrier serving the airport concerning the acquisition and use of boarding assistance devices for aircraft with a seating capacity of 19 through 30 passengers. The airport operator and the carrier(s) shall, by no later than September 2, 1997, sign a written agreement allocating responsibility for meeting the boarding assistance requirements of this section between or

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among the parties. The agreement shall be made available, on request, to representatives of the Department of Transportation.

(2) The agreement shall provide that all actions necessary to ensure accessible boarding for passengers with disabilities are completed as soon as practicable, but no later than December 2, 1998, at large and medium commercial service hub airports (those with 1,200,000 or more annual enplanements); December 2, 1999, for small commercial service hub airports (those with between 250,000 and 1,199,999 annual enplanements); or December 2, 2000, for non-hub commercial service primary airports (those with between 10,000 and 249,999 annual enplanements). All air carriers and airport operators involved are jointly responsible for the timely and complete implementation of the agreement.

(3) Boarding assistance under the agreement is not required in the following situations:

(i) Access to aircraft with a capacity of fewer than 19 or more than 30 seats;

(ii) Access to float planes;

(iii) Access to the following 19-seat capacity aircraft models: the Fairchild Metro, the Jetstream 31, and the Beech 1900 (C and D models);

(iv) Access to any other 19-seat aircraft model determined by the Department of Transportation to be unsuitable for boarding assistance by lift, ramp or other suitable device on the basis of a significant risk of serious damage to the aircraft or the presence of internal barriers that preclude passengers who use a boarding or aisle chair to reach a non-exit row seat.

(4) When boarding assistance is not required to be provided under paragraph (c)(3) of this section, or cannot be provided as required by paragraphs (b) and (c) of this section (e.g., because of mechanical problems with a lift), boarding assistance shall be provided by any available means to which the passenger consents, except hand-carrying as defined in 14 CFR 382.39(a)(2).

(5) The agreement shall ensure that all lifts and other accessibility equipment are maintained in proper working condition.

(d)(1) Each airport operator shall negotiate in good faith with each carrier serving the airport concerning the acquisition and use of boarding assistance devices for aircraft with a seating capacity of 31 or more passengers where level entry boarding is not otherwise available. The airport operator and the carrier(s) shall, by no later than March 4, 2002 sign a written agreement allocating responsibility for meeting the boarding assistance requirements of this section between or among the parties. The agreement shall be made available, on request, to representatives of the Department of Transportation.

(2) The agreement shall provide that all actions necessary to ensure accessible boarding for passengers with disabilities are completed as soon as practicable, but no later than December 4, 2002. All air carriers and airport operators involved are jointly responsible for the timely and complete implementation of the agreement.

(3) Level-entry boarding assistance under the agreement is not required with respect to float planes or with respect to any widebody aircraft determined by the Department of Transportation to be unsuitable for boarding assistance by lift, ramp, or other device on the basis that no existing boarding assistance device on the market will accommodate the aircraft without a significant risk of serious damage to the aircraft or injury to passengers or employees.

(4) When level-entry boarding assistance is not required to be provided under paragraph (d)(3) of this section, or cannot be provided as required by paragraphs (b) and (d) of this section (e.g., because of mechanical problems with a lift), boarding assistance shall be provided by any available means to which the passenger consents, except hand-carrying as defined in 14 CFR 382.39(a)(2).

(5) The agreement shall ensure that all lifts and other accessibility equipment are maintained in proper working condition.

(e) In the event that airport personnel are involved in providing boarding assistance, the airport shall ensure that they are trained to proficiency in the use of the boarding assistance equipment used at the airport and appropriate boarding assistance procedures that safeguard the safety and dignity of passengers.

Issued this 27th day of April 2001 at Washington, DC.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 01–11201 Filed 5–1–01; 10:22 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, 522, 524, 529, and 558

Animal Drugs, Feeds, and Related Products; Tylosin Tartrate for Injection, etc.; Withdrawal of Approval of NADAs

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations by removing those portions that reflect approval of 13 new animal drug applications (NADAs) listed below. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADAs.

DATES: This rule is effective May 14, 2001.

FOR FURTHER INFORMATION CONTACT: Pamela K. Esposito, Center for Veterinary Medicine (HFV–210), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–5593.

SUPPLEMENTARY INFORMATION: The following sponsors have requested that FDA withdraw approval of the NADAs listed below because the products are no longer manufactured or marketed:

Sponsor	NADA Number Product (Drug)	21 CFR Cite Affected (Sponsor Drug Labeler Code)
Elanco Animal Health, A Div. of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285.	NADA 12–585 Tylan Injectable (tylosin tartrate)	522.2640b (000986)
	NADA 15–207 Hyferdex Injection (iron dextran complex).	522.1183(c) (000986)
	NADA 30–330 Tylocine Sulfa Tablets (sulfadiazine, sulfamerazine, sulfamethazine, tylosin).	not applicable

Sponsor	NADA Number Product (Drug)	21 CFR Cite Affected (Sponsor Drug Labeler Code)
	NADA 31–962 Tylan plus Neomycin Eye Powder (neomycin sulfate, tylosin).	524.2640 (000986)
	NADA 40–123 Toptic Ointment (cephalonium, flumethasone, iodochlorhydroxyquin, piperocaine hydrochloride, polymyxin B sulfate).	524.321 (000986)
	NADA 47–092 Tribodine (ticarbodine)	520.2460a (000986)
	NADA 47–353 Ferti-Cept (chorionic gonadotropin)	522.1081(b) (000986)
	NADA 92–602 Cephalothin Discs (cephaloridine) ..	529.360 (000986)
	NADA 96–678 Tribodine Capsules (ticarbodine)	520.2460b (000986)
Bioproducts, Inc., 320 Springside Dr., suite 300, Fairlawn, OH 44333–2435.	NADA 93-518 Tylan® 10 Plus (tylosin phosphate)	558.625(b)(2) (051359)
Young's, Inc., Roaring Spring, PA 16673	NADA 96–162 Hog Grow-R-Mix-4000, Hog Grow-R-Mix-800 (tylosin phosphate).	558.625(b)(13) (035393)
Veterinary Laboratories, Inc., 12340 Santa Fe Dr., Lenexa, KS 66215.	NADA 42–889 Oxytocin Injection (oxytocin)	522.1680(b) (000857)
Webel Feeds, Inc., Pittsfield, IL 62363	NADA 116–196 Webel Tylan Premix (tylosin phosphate).	558.625(b)(73) (035098)

Following the withdrawal of approval of these NADAs, Young's, Inc., is no longer the sponsor of any approved applications. Therefore, 21 CFR 510.600(c) is amended to remove the entries for the sponsor.

Elanco Animal Health's NADA 30–330 Tylocine Sulfa Tablets is not codified in 21 CFR part 520. Therefore, an amendment to the regulations for this withdrawal is not required.

As provided below, the animal drug regulations are amended to reflect the withdrawal of approvals.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 520, 522, 524, and 529

Animal drugs.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, 522, 524, 529, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for "Young's, Inc.", and in the table in paragraph (c)(2) by removing the entry "035393".

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.2460 [Removed]

4. Section 520.2460 *Ticarbodine oral dosage forms* is removed.

§ 520.2460a [Removed]

5. Section 520.2460a *Ticarbodine tablets* is removed.

§ 520.2460b [Removed]

6. Section 520.2460b *Ticarbodine capsules* is removed.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

7. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.1081 [Amended]

8. Section 522.1081 *Chorionic gonadotropin for injection; chorionic gonadotropin suspension* is amended by removing and reserving paragraph (b).

§ 522.1183 [Amended]

9. Section 522.1183 *Iron hydrogenated dextran injection* is amended by removing and reserving paragraph (c).

§ 522.1680 [Amended]

10. Section 522.1680 *Oxytocin injection* is amended in paragraph (b) by removing "000857,".

§ 522.2640b [Removed]

11. Section 522.2640b *Tylosin tartrate for injection* is removed.

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

12. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 524.321 [Removed]

13. Section 524.321 *Cephalonium, polymyxin B sulfate, flumethasone, iodochlorhydroxyquin, piperocaine hydrochloride topical-otic ointment* is removed.

§ 524.2640 [Removed]

14. Section 524.2640 *Tylosin, neomycin eye powder* is removed.

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

15. The authority citation for 21 CFR part 529 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 529.360 [Removed]

16. Section 529.360 *Cephalothin discs* is removed.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

17. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.625 [Amended]

18. Section 558.625 *Tylosin* is amended by removing and reserving paragraphs (b)(2), (b)(13), and (b)(73).

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Dated: April 23, 2001.

Linda Tollefson,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 01–11070 Filed 5–2–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 522, and 558

Animal Drugs, Feeds, and Related Products; Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is updating the animal drug regulations to reflect changes to previously approved new animal drug applications (NADAs). Several sponsors currently listed as sponsors of approved applications and specified in the animal drug approval regulations are incorrect. This action is being taken to improve the accuracy of the regulations.

DATES: This rule is effective May 3, 2001.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–4567.

SUPPLEMENTARY INFORMATION: FDA has found several errors in the agency's regulations concerning approval of animal drugs, feeds, and related products including the list of sponsors of approved applications. To correct those errors, FDA is amending 21 CFR 510.600(c)(1) and (c)(2) to remove 28 sponsor names and their corresponding drug labeler codes (DLCs) because the firms are no longer the holders of any approved NADAs. This document is also amending the animal drug approval regulations by correcting nonsubstantive DLC errors in 21 CFR 522.2120, 558.274, 558.625, and 558.630.

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedure are unnecessary because FDA is merely correcting nonsubstantive errors.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

Animal drugs.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 522, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entries for "Albion Laboratories, Inc.", "Balfour Guthrie & Co.", "Diamond Shamrock Corp.", "DuPont Merck Pharmaceutical Co.", "Farmers Feed & Supply Co.", "Franklin Laboratories, Inc.", "Gland-O-Lac Co.", "Michael Gordon, Inc.", "Henwood Feed Additives", "Heska Corp.", "Hubbard Milling Co.", "Lemmon Co.", "Mattox & Moore, Inc.", "McClellan Laboratories, Inc.", "Nixon and Co.", "Osborn Laboratories, Inc.", "Peter Hand Foundation", "Premier Malt Products, Inc.", "Protein Blenders, Inc.", "The Rath Packing Co.", "Rhone Merieux Canada, Inc.", "Shell Chemical Co.", "Square Deal Fortification Co.", "Sterling Winthrop, Inc.", "Syntex Animal Health, Inc.", "V.P.O., Inc.", "Vet-A-Mix, Inc.", and "Westchester Veterinary Products, Inc.", and in the table in paragraph (c)(2) by removing the entries for "000033, 000056, 000693, 000934, 010290, 010290, 011461, 011485, 011789, 012190, 012487, 025001 026186, 027863, 028260, 032707, 033999, 036108, 043728, 043729, 043732, 043735, 043737, 043738, 043743, 043744, 047015, 049047, and 063604".

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.2120 [Amended]

4. Section 522.2120 *Spectinomycin dihydrochloride injection* is amended in paragraph (b) by removing "Nos. 000033 and 059130" and adding in its place "No. 059130".

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

5. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.274 [Amended]

6. Section 558.274 *Hygromycin B* is amended by removing and reserving paragraph (a)(5); by removing "011790 and" in paragraph (a)(7); and by removing "026186," from the "Sponsor" column in the table in paragraphs (c)(1)(i) and (c)(1)(ii).

§ 558.625 [Amended]

7. Section 558.625 *Tylosin* is amended by removing and reserving paragraphs (b)(16), (b)(19), and (b)(34), and in paragraph (b)(79) by removing "012286" and adding in its place "017519".

§ 558.630 [Amended]

8. Section 558.630 *Tylosin and sulfamethazine* is amended in paragraph (b)(8) by removing ", 026186".

Dated: April 23, 2001.

Linda Tollefson,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 01–11158 Filed 5–2–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 11

RIN 1076–AE15

Law and Order on Indian Reservations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Temporary final rule and request for comments.

SUMMARY: The Bureau of Indian Affairs (BIA) is amending its regulations contained in 25 CFR Part 11 to add the Santa Fe Indian School property (Southwest Region, New Mexico) to the listing of courts of Indian offenses. This amendment will establish a Court of Indian Offenses for a period not to exceed one year. It is necessary to establish a Court of Indian Offenses with jurisdiction over the Santa Fe Indian School property in order to protect lives and property.

DATES: Effective Date: This rule is effective on May 3, 2001 and expires on May 1, 2002.

Comments Date: Comments must be received on or before July 2, 2001.

ADDRESSES: Send comments on this rule to Ralph Gonzales, Office of Tribal Services, Bureau of Indian Affairs, 1849 C Street NW., MS 4660, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Iris A. Drew, Tribal Government Officer, Southwest Regional Office, Bureau of Indian Affairs, 615 First Street NW., Albuquerque, NM 87125–6567, at (505) 346–7592; or Ralph Gonzales, Branch of Judicial Services, Office of Tribal Services, Bureau of Indian Affairs, 1849 C Street NW., MS 4660 Washington, DC 20240, at (202) 208–4401.

SUPPLEMENTARY INFORMATION: The authority to issue this rule is vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2 and 9; and 25 U.S.C. 13, which authorizes appropriations for "Indian judges." See *Tillett* v. *Hodel*, 730 F.Supp. 381 (W.D. Okla. 1990), aff'd 931 F.2d 636 (10th Cir. 1991) *United States* v. *Clapox*, 13 Sawy. 349, 35 F. 575 (D.Ore. 1888). This rule is published in exercise of the rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs.

On December 27, 2000, Congress passed the Omnibus Indian Advancement Act of 2000, Public Law 106–568, 114 Stat. 2868. Section 823(a) of that Act places the Santa Fe Indian School property and the Indian Hospital in "trust for the benefit of the 19 Pueblos of New Mexico," which establishes federal Indian criminal jurisdiction over the Santa Fe Indian School and Indian Hospital grounds to wit:

> In general—The land described in this subsection is the tract of land, located in the city and county of Santa Fe, New Mexico, upon which the Santa Fe Indian School is located and more particularly described as all that certain real property, excluding the tracts described in paragraph (2), as shown in the United States General Land Office Plat of the United States Indian School Tract dated March 19, 1937, and recorded at Book 363, Page 024, Office of the Clerk, Santa Fe County, New Mexico, containing a total acreage of 131.43 acres, more or less.
>
> (2) Exclusions—The excluded tracts described in this paragraph are all portions of any tracts heretofore conveyed by the deeds recorded in the Office of the Clerk, Santa Fe County, New Mexico at—
>
> (A) Book 114, Page 106, containing 0.518 acres, more or less;
>
> (B) Book 122, Page 45, containing 0.238 acres, more or less;
>
> (C) Book 123, Page 228, containing 14.95, more or less; and
>
> (D) Book 130, Page 84, containing 0.227 acres, more or less,
>
> leaving, as the net acreage to be included in the land described in paragraph (1) and taken into trust pursuant to subsection (a), a tract containing 115.5 acres, more or less.
>
> Limitations and Conditions—The land taken into trust pursuant to subsection (a) shall remain subject to—
>
> (1) Any existing encumbrances, rights of way, restrictions, or easements of record;
>
> (2) The right of the Indian Health Service to continue use and occupancy of 10.23 acres of such land which are currently occupied by the Santa Fe Indian Hospital and its parking facilities as more fully described as Parcel "A" in legal description No. Pd–K–51–06–01 and recorded as Document No. 059–3–778, Bureau of Indian Affairs Land Title & Records Office, Albuquerque, New Mexico; and
>
> (3) The right of the United States to use, without cost, additional portions of land transferred pursuant to this section, which are contiguous to the land described in paragraph (2), for purposes of the Indian Health Service.

Id. at §§ 823(b)–(c).

A provisional Court of Indian Offenses must be established for the Santa Fe Indian School and Indian Hospital to protect the lives, persons, and property of people residing at and attending or visiting the school and hospital, until the 19 Pueblos establish a tribal court or otherwise request a CFR Court to exercise criminal jurisdiction. This court shall function for a period not to exceed one year. Judges of the Court of Indian Offenses shall be authorized to exercise all the authority provided under 25 CFR part 11 including: Subpart D—Criminal Offenses; Subpart H—Appellate Proceedings; Subpart J—Juvenile Offender Procedure; issuance of arrest and search warrants pursuant to 25 CFR 11.302 and 11.305 and the Indian Law Enforcement Reform Act, 25 U.S.C. 2803(2) (1998). BIA officials had already begun to set up a provisional Court of Indian Offenses pursuant to 25 CFR 11.100(a) for the Southwest Region to address this law enforcement need. This final rule is intended to establish a provisional Court of Indian Offenses. This court will not be exercising the following authority under 25 CFR part 11: Subpart E—Civil Actions; Subpart F—Domestic Relations; Subpart G—Probate Proceedings; Subpart I—Children's Court; and Subpart K—Minor-in-Need-of-Care Procedure.

Determination To Issue a Final Rule

The Department has determined that the public notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b), do not apply because of the good cause exception under 5 U.S.C. 553(b)(3)(B), which allows the agency to suspend the notice and public procedure when the agency finds for good cause that those requirements are impractical, unnecessary and contrary to the public interest. This amendment will establish a provisional Court of Indian Offenses for the Santa Fe Indian School property and Indian Hospital, New Mexico, that was placed in trust for the benefit of the 19 Pueblos. If this provisional court is not established, there is a potential risk to public safety and a further risk of significant financial liability to the Federal Government from a lawsuit for failure to execute diligently its trust responsibility and provide adequate law enforcement on trust land. Delaying this rule to solicit public comment through the proposed rulemaking process would thus be contrary to the public interest.

Determination To Make Rule Effective Immediately

We are making the rule effective on the date of publication in the **Federal Register** as allowed under the good cause exception in 5 USC 553(d)(3). Delaying the effective date of this rule is unnecessary and contrary to the public interest because there is a critical need to expedite establishment of this Court of Indian Offenses. There is now a void in law enforcement at the Santa Fe Indian School and Indian Hospital and an increase in visitors to the grounds of these facilities is imminent. For these reasons, an immediate effective date is in the public interest and in the interest of the Pueblos. Accordingly, this amendment is issued as a final rule effective immediately.

We invite comments on any aspect of this rule and we will revise the rule if comments warrant. Send comments on this rule to the address in the **ADDRESSES** section.

Regulatory Planning and Review (Executive Order 12866)

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. OMB makes the final determination under Executive Order 12866.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector,

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productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. The establishment of this Court of Indian Offenses is estimated to cost less than $200,000 annually to operate. The cost associated with the operation of this court will be shared among the Office of Indian Education, the Bureau of Indian Affairs, and Indian Health Service.

b. This rule will not create inconsistencies with other agencies' actions. The Department of the Interior through the Bureau of Indian Affairs has the sole responsibility and authority to establish Courts of Indian Offenses on Indian reservations.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The establishment of this Court of Indian Offences will not affect any program rights of the nineteen Pueblos. Its primary function will be to administer justice for misdemeanor offenses within the Santa Fe Indian School grounds. The court's jurisdiction will be limited to criminal offense provided in 25 CFR part 11.

d. This rule will not raise novel legal or policy issues. The Solicitor analyzed and upheld the Department of the Interior's authority to establish Courts of Indian Offenses in a memorandum dated February 28, 1935. The Solicitor found that authority to rest principally in the statutes placing supervision of the Indians in the Secretary of the Interior, 25 U.S.C. 2 and 9, and 25 U.S.C. 13, which authorizes appropriations for "Indian judges." The United States Supreme Court recognized the authority of the Secretary to promulgate regulations with respect to Courts of Indian Offenses in *United States* v. *Clapox*, 35 F. 575 (D.Ore. 1888).

Regulatory Flexibility Act

The Department of the Interior, BIA, certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). An initial Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. The amendment to 25 CFR part 11.100(a) will establish a Court of Indian Offences with limited criminal jurisdiction over Indians within a limited geographical area at Santa Fe, New Mexico. Accordingly, there will be no impact on any small entities.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more. The establishment of this Court of Indian Offenses is estimated to cost less than $200,000 annually to operate. The cost associated with the operation of this court will be shared among the Office of Indian Education, the Bureau of Indian Affairs, and Indian Health Service.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This is a court established specifically for the administration of misdemeanor justice for Indians located within the boundaries of the Santa Fe Indian School, New Mexico and will not have any cost or price impact on any other entities in the geographical region.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This is a court established specifically for the administration of misdemeanor justice for Indians located within the boundaries of the Santa Fe Indian School, New Mexico, and will not have an adverse impact on competition, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. The establishment of this Court of Indian Offences will not have jurisdiction to affect any rights of the small governments. Its primary function will be to administer justice for misdemeanor offenses within the Santa Fe Indian School grounds. Its jurisdiction will be limited to criminal offense provided in 25 CFR part 11.

b. This rule will not produce a Federal mandate of $100 million or greater in any year; i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings Implication Assessment (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. The amendment to 25 CFR part 11.100(a) will establish a Court of Indian Offences with limited criminal jurisdiction over Indians within a limited geographical area at Santa Fe, New Mexico. Accordingly, there will be no jurisdictional basis for to adversely affect any property interest because the court's jurisdiction is solely personal jurisdiction over Indians.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. The Solicitor found that authority to rest principally in the statutes placing supervision of the Indians in the Secretary of the Interior, 25 U.S.C. 2 and 9; and 25 U.S.C. 13, which authorizes appropriations for "Indian judges." The United States Supreme Court recognized the authority of the Secretary to promulgate regulations with respect to Courts of Indian Offenses in *United States* v. *Clapox*, 35 F. 575 (D.Ore. 1888).

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The Solicitor analyzed and upheld the Department of the Interior's authority to establish Courts of Indian Offenses in a memorandum dated February 28, 1935. The Solicitor found that authority to rest principally in the statutes placing supervision of the Indians in the Secretary of the Interior, 25 U.S.C. 2 and 9; and 25 U.S.C. 13, which authorizes appropriations for "Indian judges." The United States Supreme Court recognized the authority of the Secretary to promulgate regulations with respect to Courts of Indian Offenses in *United States* v. *Clapox*, 35 F. 575 (D.Ore. 1888). Part 11 also requires the establishment of an appeals court; hence the judicial system defined in Executive Order 12988 will not normally be involved in this judicial process.

Paperwork Reduction Act

This regulation does not require an information collection under the Paperwork Reduction Act. The information collection is not covered by an existing OMB approval. An OMB form 83–I has not been prepared and has not been approved by the Office of Policy Analysis. No information is being collected as a result of this court exercising its limited criminal misdemeanor jurisdiction over Indians within the exterior boundaries of the Santa Fe Indian School, New Mexico.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required. The establishment of this Court of Indian Offenses conveys personal jurisdiction over the criminal misdemeanor actions of Indians with the exterior boundaries of the Santa Fe Indian School and does not have any impact of the environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects. The amendment to 25 CFR part 11.100(a) does not apply to any of the 558 federally recognized tribes, except the 19 Pueblos in New Mexico that have requested the establishment of the provisional Court of Indian Offences until they establish a tribal court to provide for a law and order code and judicial system to deal with law and order on the trust land at Santa Fe Indian School. The Department of the Interior, in establishing this provisional court, is fulfilling its trust responsibility and complying with the unique government-to-government relationship that exists between the Federal Government and Indian tribes.

List of Subjects in 25 CFR Part 11

Courts, Indians-Law, Law enforcement, Penalties.

For the reasons stated in the preamble, we are amending part 11, chapter I of title 25 of the Code of Federal Regulations, as set forth below. This amendment is effective from May 3, 2001 to May 1, 2002.

PART 11—LAW AND ORDER ON INDIAN RESERVATIONS

1. The authority citation for part 11 continues to read as follows:

Authority: R.S. 463; 25 U.S.C. 2, 38 Stat. 586; 25 U.S.C. 200, unless otherwise noted.

2. Section 11.100 is amended by adding new paragraph (a)(14) to read as follows:

§ 11.100 Listing of Courts of Indian Offenses.

(a) * * *

(14) Santa Fe Indian School Property, including the Santa Fe Indian Health Hospital (land in trust for the 19 Pueblos of New Mexico).

* * * * *

Dated: April 27, 2001.

James H. McDivitt,

Deputy Assistant Secretary—Indian Affairs (Management).

[FR Doc. 01–11086 Filed 5–2–01; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD07–01–033]

RIN 2115—AA97

Security Zone; Vicinity of Atlantic Fleet Weapons Training Facility, Vieques, PR and Adjacent Territorial Sea

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: At the request of the U.S. Navy, the Coast Guard is establishing a temporary security zone covering the area of territorial sea and land adjacent to the bombing and gunnery range (Impact Area) at the naval installation on the eastern end of Vieques Island, Puerto Rico. The security zone is needed to protect the bombing and gunnery range, and adjacent land and waters at the Navy's Atlantic Fleet Weapons Training Facility on Vieques Island, PR, to ensure against destruction, injury, or loss of uninterrupted use. Only authorized vessels are permitted to enter or remain within the security zone.

DATES: This rule is effective from 3 p.m., April 26, 2001 until 11:59 p.m., April 30, 2001.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [CGD07–01–033] and are available for inspection or copying at the Seventh Coast Guard District office, 909 S.E. First Avenue, Room 918, Miami, FL, 33131, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Brian DeVries at (305) 415–6950.

SUPPLEMENTARY INFORMATION:

Regulatory Information

In order to protect the interests of national security, and in accordance with the Presidential Directive of Jan 31, 2000, the President has directed the conduct of Navy Training at the Atlantic Fleet Weapons Training Facility on Vieques Island, PR. Immediate action is needed to ensure the uninterrupted use by the U.S. Navy of the Training Facility on Vieques, including the adjacent land and waters, and to protect that facility from destruction or injury. The Coast Guard is promulgating the security zone regulations to prevent interference with the conduct of the Navy's exercises for the duration of the security zone. As a result, the enforcement of the security zone is a function directly involved in, and necessary to, the Navy training exercise. Accordingly, based on the military function exception set forth in the Administrative Procedure Act, 5 U.S.C. 553(a)(1), notice and comment rule-making and advance publication, pursuant to 5 U.S.C. 553(b) and (d), are not required for this regulation.

Even if the requirements of 5 U.S.C. 553 would otherwise be applicable, the Coast Guard for good cause finds that, under 5 U.S.C. 553(b)(B) and (d)(3), notice and public comment on the rule before the effective date of the rule and advance publication are impracticable and contrary to the public interest. There is an imminent need to use the naval installation bombing and gunnery range and the adjacent waters for ongoing scheduled exercises by the Navy which further the national security interests of the United States. Opportunity for notice and public comment or advance publication of the zone was impracticable since the Navy did not request the establishment of the zone until April 26, 2001. This regulation is geographically and temporally tailored to meet the needs of national security with a minimal burden on the public.

Background and Purpose

The Atlantic Fleet Weapons Training Facility is located on the eastern end of Vieques Island, PR. Use of this naval installation is important to achieving acceptable levels of military readiness in accordance with established training standards and requires training exercises conducted with inert ordnance. Such training exercises cannot be safely or effectively conducted if there are unauthorized persons inside the training areas or if the installation is damaged or personnel are injured. The U.S. Army Corps of Engineers has established a danger zone in the vicinity of the bombing and

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gunnery target area, 33 CFR 334.1470, that is in effect during these training exercises. The Army Corps has also established a restricted area off the coast of the naval facility, 33 CFR 334.1480.

In order to further the interests of national security, and in accordance with the Presidential directive of January 31, 2000, the President has directed the conduct of Navy Training at the Atlantic Fleet Weapons Training Facility on Vieques Island, Puerto Rico. During the current exercises, the restricted area and danger zone have not provided the degree of security required for the naval facility. These operations cannot be conducted if unauthorized personnel or vessels are present inside the security zone. Therefore, to ensure against the destruction, injury or loss of uninterrupted use of the naval installation at Vieques, including the adjacent land and waters, the Coast Guard is establishing this security zone.

The Coast Guard previously established a similar security zone (65 FR 25489) around the Atlantic Fleet Weapons Training Facility, Vieques, PR. Based on the Coast Guard's experience implementing that security zone and discussions with the U.S. Navy, the coordinates of the security zone being implemented by this regulation have been slightly modified. The coordinates of the security zone being implemented by this regulation have been altered so that the zone no longer encompasses commonly used transit paths between Vieques, PR and traditional fishing areas.

This security zone is established pursuant to the authority of subpart D of part 165 of Title 33 of the Code of Federal Regulations and the Magnuson Act regulations promulgated by the President under 50 U.S.C. 191, including subparts 6.01 and 6.04 of part 6 of Title 33 of the Code of Federal Regulations. See E.O. 10173, as amended. The security zone is needed to protect the bombing and gunnery range, and the adjacent facilities and water, at Vieques Island, PR against destruction, injury, or loss of uninterrupted use. Pursuant to this regulation, no vessel or person will be allowed to enter or remain in the security zone unless specifically authorized to do so by the District Commander or his designated representatives. The District Commander or his designated representatives may grant permission for a vessel to enter or remain within the security zone when operations permit and may condition that permission as appropriate. As operations permit, all efforts will be made to honor any requests to enter.

Vessels or persons violating this section are subject to the penalties set forth in 50 U.S.C. 192 and 18 U.S.C. 3571; seizure and forfeiture of the vessel, a monetary penalty of not more than $250,000, and imprisonment for not more than 10 years.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

Although the security zone covers an area out to three miles from shore, the zone will be in effect for a limited amount of time. The vessel traffic in the area normally consists of a small number of commercial fishing vessels and other vessels transiting the area. These vessels are not allowed to enter or transit the zone during these training exercises under existing Army Corps of Engineer regulations (33 CFR 334.1470 and 33 CFR 334.1480). These vessels can redirect their transit around the zone with only minor delays in time and distance.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the vicinity of the Naval installation at Vieques, PR and fishing vessels which normally fish the area. These vessels are not allowed to enter or transit the zone during these training exercises under existing Army Corps of Engineer regulations (33 CFR 334.1470 and 334.1480). This security zone will not have a significant economic impact on a substantial number of these small entities. Although the security zone will cover an area out to three miles from shore, the zone will be in effect only for a limited amount of time.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we will assist small entities in understanding this rule and how it affects them. Small entities may call the person identified in **FOR FURTHER INFORMATION CONTACT.**

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard anticipates this temporary rule will be categorically excluded from further environmental documentation under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.lC. The environmental analysis checklist and Categorical Exclusion Determination will be prepared and submitted after establishment of this temporary security zone, and will be available in the docket. This temporary rule only ensures the protection of Naval assets and the uninterrupted use of the area for scheduled Naval operations. Standard Coast Guard manatee and turtle watch measures will be in effect during Coast Guard patrols of the security zone. Deep-water routes will be used where practical. Lookouts will be posted to avoid collision with turtles and manatees. If a collision occurs, notification will be made to the U.S. Fish & Wildlife Service at Boqueron, Puerto Rico (787–851–7297). The Categorical Exclusion Determination will be available in the docket for inspection or copying where indicated under **ADDRESSES.**

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

Temporary regulation: For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A new temporary § 165.T07–033 is added to read as follows:

§ 165.T07–033 Security Zone; Vieques Island, PR.

(a) *Location.* The following area is established as a Security Zone: An area of water and land measured from the mean high water line off the naval reservation, along the east end of Vieques Island extending from Cabellos Colorados (18°-09.82′ N, 065°-23.45′ W) due northeast 4 nautical miles to position 18°-12.0′ N, 065°-20.0′ W, then easterly around Vieques Island, remaining 3 nautical miles from the coast, to a point 3 nautical miles south of Cayo Jalovita (18°-06.83′ N, 065°-21.25′ W) at 18°-03.6′ N, 065°20.33′ W then northwest to a baseline position of 18°-05.42′ N, 065°-26.0′ W at Puerto Mosquito, including the rocks, cays, and small islands within.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part:

(i) No person or vessel may enter or remain in this zone without the permission of the District Commander or designated representatives,

(ii) All persons within this zone shall obey any direction or order of the District Commander or designated representatives,

(iii) The District Commander or designated representatives may take possession and control of any vessel in this zone,

(iv) The District Commander or designated representatives may remove any person, vessel, article or thing from this zone,

(v) No person may board, or take or place any article or thing on board, any vessel in this zone without the permission of the District Commander or designated representatives; and,

(vi) No person may take or place any article or thing upon any waterfront facility in this security zone without the permission of the District Commander or designated representatives.

(2) The District Commander or designated representatives may grant permission for individual vessels to enter or remain within this security zone when permitted by operational conditions and may place conditions upon that permission. Vessels permitted to enter or remain in this zone must radio the patrol commander upon entering and departing the zone.

(c) *Enforcement.* Vessels or persons violating this section are subject to the penalties set out in 50 U.S.C. 192 and 18 U.S.C. 3571:

(1) Seizure and forfeiture of the vessel;

(2) A monetary penalty of not more than $250,000; and

(3) Imprisonment for not more than 10 years.

(d) *Dates.* This section is effective from 3 p.m., April 26, 2001 until 11:59 p.m. April 30, 2001.

(e) *Authority.* In addition to the authority in part 165, this section is also authorized under authority of Executive Order 10173, as amended.

Dated: April 26, 2001.

G.W. Sutton,

Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District Acting.

[FR Doc. 01–11153 Filed 5–2–01; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA143–4115a; FRL–6973–4]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Reasonably Available Control Technology Requirements for Volatile Organic Compounds and Nitrogen Oxides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is removing the conditional status of its approval of the Commonwealth of Pennsylvania State Implementation Plan (SIP) revision that requires all major sources of volatile organic compounds (VOCs) and nitrogen oxides (NO_X) to implement reasonably available control technology (RACT). Pennsylvania has satisfied the condition imposed in EPA's conditional limited approval published on March 23, 1998 (63 FR 13789). The intended effect of this action is to remove the conditional nature of EPA's approval of Pennsylvania's VOC and NO_X RACT Regulation. The regulation retains its limited approval status. Conversion of the Pennsylvania VOC and NO_X RACT Regulation from limited to full approval will occur when EPA has approved the case-by-case RACT determinations submitted by Pennsylvania.

DATES: This rule is effective on June 18, 2001 without further notice, unless EPA receives adverse written comment by June 4, 2001. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency,

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Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Ellen Wentworth, (215) 814–2034, at the EPA Region III address above, or by e-mail at wentworth.ellen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On March 23, 1998 (63 FR 13789), EPA granted a conditional limited approval of the Pennsylvania SIP that established and required all major sources of VOCs and NO_X to implement RACT. This approval was granted on the condition that Pennsylvania must, by no later than April 22, 1999, certify that (1) it had submitted case-by-case RACT proposals for all sources subject to the RACT requirements currently known to the Pennsylvania Department of Environmental Protection (PADEP), or (2) demonstrate that the emissions from any remaining subject sources represented a de minimis level of emissions as defined in the rulemaking document.

On April 22, 1999, the PADEP submitted a letter certifying that it had met the terms and conditions imposed by EPA in its March 23, 1998 conditional limited approval of its VOC and NO_X RACT regulations by submitting 485 case by case VOC/NO_X RACT determinations as SIP revisions. EPA concurs that Pennsylvania's April 22, 1999 certification satisfies the condition imposed in its conditional limited approval published on March 23, 1998. EPA is, therefore, removing the conditional status of its approval of Pennsylvania's VOC and NO_X RACT regulation. The regulation retains its limited approval status. Conversion to full approval will occur when EPA has approved the case-by-case RACT determinations submitted by PADEP.

II. EPA Action

EPA is removing the conditional status of its approval of Pennsylvania's VOC and NO_X RACT Regulation. The regulation will retain limited approval status until EPA has approved the case-by-case RACT SIP revisions proposals submitted by PADEP. This action is being published without prior proposal because we view this as a noncontroversial amendment and because we anticipate no adverse comments. In a separate document in the "Proposed Rules" section of this **Federal Register** publication, we are proposing to remove the conditional status of the approval of the Pennsylvania's VOC and NO_X RACT Regulation. This action will be effective without further notice unless we receive relevant adverse comment by June 4, 2001. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. Any parties interested in commenting must do so at this time. If no such comments are received by June 4, 2001, you are advised that this section will be effective on June 18, 2001.

III. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 2, 2001. Filing a petition for reconsideration by the Administrator of the removal of the conditional status of EPA's approval of Pennsylvania's VOC and NO_X RACT regulation does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and record keeping requirements.

Dated: April 24, 2001.

William C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

§ 52.2026 [Amended]

2. In § 52.2026, paragraph (f) is removed and reserved.

[FR Doc. 01–10984 Filed 5–2–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[TN 240–1–200103a; FRL–6974–6]

Clean Air Act Approval and Promulgation of the Redesignation of Shelby County, Tennessee, to Attainment for Lead

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the request to redesignate Shelby County, Tennessee, from nonattainment to attainment for the lead primary national ambient air quality standard (NAAQS). The request was submitted on February 15, 2001, by the Memphis and Shelby County Health Department (MSCHD) through the Tennessee Department of Environment and Conservation (TDEC).

DATES: This direct final rule is effective July 2, 2001 without further notice, unless EPA receives adverse comment by June 4, 2001. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Kimberly Bingham at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

Copies of documents relative to this action are available at the following addresses for inspection during normal business hours:

- Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
- Tennessee Air Pollution Control Board, 9th Floor, L & C Annex, 401 Church Street, Nashville, Tennessee 37243–1531.
- Memphis and Shelby County Health Department, 814 Jefferson Avenue, Memphis, Tennessee 38105.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham, Regulatory Planning Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303. The telephone number is (404)562–9038. Ms. Bingham can also be reached via electronic mail at bingham.kimberly@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 107(d)(5) of the Clean Air Act (CAA) provides for areas to be designated as attainment, nonattainment, or unclassifiable with respect to the lead NAAQS. Governors are required to submit recommended designations for areas within their states. When an area is designated nonattainment, the state must prepare and submit a SIP that meets the requirements of sections 110(a)(2) and 172(c) of the CAA demonstrating how the area will be brought into attainment. The EPA designated the portion of Memphis in Shelby County, Tennessee, around the Refined Metals, Inc., secondary lead smelter as a lead nonattainment area on January 6, 1992. This nonattainment designation was based on lead NAAQS violations recorded by monitors near the Refined Metals Corporation facility in 1990 and 1991.

During the second quarter of 1998, another violation of the lead NAAQS occurred in the Shelby County nonattainment area. Subsequently, the MSCHD issued a notice of violation giving Refined Metals, Inc., options to surrender all of its permits or pay a fine and conduct extensive remodeling of the facility. Refined Metals, Inc., chose to surrender all of its permits and shutdown permanently on December 22, 1998. Since the facility permanently closed, there has not been any violation of the lead NAAQS. On February 15, 2001, MSCHD through the State of Tennessee submitted a request to redesignate the Shelby County area to attainment for lead.

II. Analysis of the Redesignation Request

Section 107(d)(3)(E) of the CAA, as amended in 1990, sets forth the requirements that must be met for a nonattainment area to be redesignated to attainment. It states that an area can be redesignated to attainment if the following conditions are met.

1. The EPA has determined that the lead NAAQS has been attained.
2. The State has met all applicable requirements for the area under section 110 and part D, and the implementation plan has been fully approved by EPA under section 110(k).
3. The EPA has determined that the improvement in air quality is due to permanent and enforceable reductions in emissions.
4. The EPA has fully approved a maintenance plan, including a contingency plan, for the area under section 175A.

The following is a description of how each requirement has been achieved.

1. Attainment of the Lead NAAQS

To demonstrate that the Shelby County area is in attainment with the lead NAAQS, MSCHD submitted air quality data from the third quarter of 1998 through 2000. There has not been any violation of the lead standard since Refined Metals, Inc. shutdown on December 22, 1998. This amount of monitoring data (more than eight consecutive quarters at the present time) without a violation of the lead standard is adequate to demonstrate attainment of the lead NAAQS. Modeling may also be required to redesignate an area to attainment. The EPA believes that because there are no lead sources in the area since Refined Metals, Inc., shut down, a modeling analysis is not needed.

2. The State Has Met All Applicable Requirements for the Area Under Section 110 and Part D, and the Implementation Plan Has Been Fully Approved by EPA Under Section 110(k).

To be redesignated to attainment, section 107(d)(3)(E) requires that an area must have met all applicable requirements of sections 110(k), 110(a)(2), and part D of the CAA. The EPA has determined that the lead SIP for the Shelby County area that was approved on September 20, 2000, meets

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the requirements of sections 110(k), 110(a)(2), and part D of the CAA. For a more detailed description of how these requirements were met see the document published on September 20, 2000, in the **Federal Register**, (65 FR 56794).

3. Permanent and Enforceable Improvement in Air Quality

Since the Refined Metals facility, the sole source of lead emissions in the Shelby County nonattainment area surrendered its permits and ceased operations, there are no permitted process emissions from the facility or in the nonattainment area. The Refined Metals facility has been completely decontaminated and demolished. Any future request to operate a secondary lead smelter on this site or in Shelby County will have to be approved by MSCHD and will be subject to prevention of significant deterioration (PSD) permit requirements. The PSD requirements ensure that a new facility will not cause any adverse effects to the air quality in an attainment area. Consequently, EPA has determined that the emission reductions in the Shelby County area are permanent and enforceable.

4. Maintenance Plan

Section 175(A) of the CAA requires states that submit a redesignation request for a nonattainment area under section 107(d) to include a maintenance plan to ensure that the attainment of NAAQS for any pollutant is maintained. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the approval of a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan demonstrating attainment for the ten years following the initial ten year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard that occurs after redesignation. The contingency provisions are to include a requirement that the state will implement all measures for controlling the air pollutant of concern that were contained in the SIP prior to redesignation.

The MSCHD submitted a maintenance plan to ensure that the lead NAAQS is maintained. The maintenance plan for the Shelby County area, contains the part C PSD program, a monitoring network to verify continued attainment, and a contingency plan.

A. Part C PSD Program

As previously mentioned earlier in this document, the MSCHD has a fully approved PSD program. Owners of all new major sources seeking to relocate in the Shelby County area must demonstrate that the proposed new emissions from those sources will be in compliance with the lead NAAQS.

B. Monitoring Network

To ensure that the lead NAAQS is maintained, the MSCHD will continue to operate two lead monitors located in the Shelby County area. If future review of the monitoring site operation results in a recommendation to alter the current monitoring network, MSCHD must obtain EPA approval of the recommendation.

C. Contingency Plan

With respect to the requirement of section 175(A) that the contingency provisions of a maintenance plan include all control measures previously contained in the SIP, EPA believes that the requirement is satisfied in that the State is carrying forward contingency measures previously approved in the lead SIP for Shelby County. In addition, the EPA does not believe any additional contingency measures are needed. Contingency measures would serve no useful purpose in light of the permanent closure and dismantling of the Refined Metals facility and the revocation of its permit. Moreover, any attempt to reopen a facility on the same site would trigger MSCHD's PSD permitting requirements.

The EPA is approving the redesignation request and maintenance plan because it satisfies the requirements of section 175(A) of the CAA requirements.

III. Final Action

EPA is approving the request to redesignate Shelby County to a lead attainment area and the maintenance plan submitted on February 15, 2001, by the MSCHD through the State of Tennessee. The EPA is publishing this rule without a prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should the Agency receive adverse comments. This rule will be effective July 2, 2001 without further notice unless the Agency receives adverse comments by June 4, 2001.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on July 2, 2001 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 18, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 2, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and will not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Lead, Intergovernmental relation, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: April 18, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart RR—Tennessee

2. Section 52.2220(c) is amended by revising the entries for Section 1200–3–22–.03 to read as follows:

§ 52.52220 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA APPROVED TENNESSEE REGULATIONS

State citation	Title/subject	Adoption date	EPA approval date	Federal Register Notice
Section 1200–3–22–.03	Maintenance Plan for Shelby County, Tennessee	02/14/01	July 2, 2001	66 FR 22127

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart C—Section 107 Attainment Status Designations

2. In § 81.343, the attainment status table for lead is amended by revising the designation type and date entry for Shelby County (part).

§ 81.343 Tennessee.

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TENNESSEE-LEAD

Designated area	Designation		Classification	
	Date	Type	Date	Type
Shelby County (part): Area encompassed by a circle with a ¾ mile radius with center being the intersection of Castex and Mallory Avenue, Memphis, TN.	July 2, 2001	Attainment		

[FR Doc. 01–11090 Filed 5–2–01; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301119; FRL–6778–9]

RIN 2070–AB78

Sucroglycerides; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of sucroglycerides when used as an inert ingredient in or on growing crops or when applied to raw agricultural commodities after harvest. Rhodia Inc., submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of sucroglycerides.

DATES: This regulation is effective May 3, 2001. Objections and requests for hearings, identified by docket control number OPP–301119, must be received by EPA on or before July 2, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301119 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–305–6304; and e-mail address: boyle.kathryn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register** —Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301119. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of July 7, 1998 (63 FR 36681) (FRL –5795–6), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP) 6E4714 by Rhodia Inc., CN 7500, Cranbury, NJ 08512–7500. This notice included a summary of the petition prepared by the petitioner. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.1001(c), be amended by establishing an exemption from the requirement of a tolerance for residues of sucroglycerides.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe."

Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Sucroglycerides

Sucroglycerides are a mixture of substances, primarily of mono-, di-, and tri-glycerides and mono- and di-sucrose esters of fatty acids. The product is produced through a process of transesterification of an edible fat or oil with sucrose. Thus, sucroglycerides are composed of and basically produced from sugar and oil.

Sucroglycerides have self-affirmed GRAS (generally recognized as safe) status. A GRAS substance is one that is generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures to be safe under the conditions of its intended use. Under the FFDCA, there is no requirement that GRAS status can be determined only by the Food and Drug Administration (FDA). The GRAS determination may also be made by a company providing that the quantity and quality of data would be the same as if the data were submitted to FDA for review and evaluation.

The sucroglycerides Independent Safety Determination was affirmed by an expert panel in 1991 which examined only sucroglycerides manufactured from palm oil. The same expert panel re-convened in 1994 to evaluate sucroglycerides manufactured from edible fats and oils. This addendum to the Independent Safety Determination differed only in that the starting materials could be any edible fat or oil as opposed to palm oil only as originally evaluated in 1991. The panel concluded that sucroglycerides are GRAS for use in the food applications considered when used in accordance with good manufacturing practices.

The intended food applications evaluated as part of the Independent Safety Determination included use as a texturizer in biscuit mixes, and as an emulsifier in baked goods and baking mixes, dairy product analogs, frozen dairy desserts and mixes, and whipped milk products. The maximum estimated content of sucroglycerides in these anticipated food uses is 1.5%. Under 21 CFR 172.859, a related mixture, sucrose fatty acid esters, can be used as direct food additives as emulsifiers in various baked goods and baking mixes, dairy and dairy analog products, chewing gum, confections and frostings, and coffee and tea beverages with added dairy or dairy analog products, as texturizers in chewing gum, confections and frostings, and surimi-based fabricated seafood products, and as components of protective coatings applied to fresh fruit to retard ripening and spoiling. Under 21 CFR 184.1505, mono- and di-glycerides prepared from fats or oils are GRAS.

V. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by sucroglycerides are discussed in this unit.

The submission to the Agency consisted of two studies (subchronic and chronic toxicity/carcinogenicity) that contained individual animal data. These two studies were reviewed as guideline studies, that is, studies that meet the Agency's criteria for a well-conducted study that supplies the necessary information. The other submissions consisted of toxicology study summaries. The summaries varied in the amount of information presented. Some were literature reports and partial translations of studies conducted in France. Thus, these summaries provided useful information to the Agency which was used during the weight-of-the-evidence evaluation.

1. *Acute.* The summary reported an acute toxicity study in which no adverse effects were reported. The LD_{50} was estimated to be greater than 30 gram/kilogram body weight (g/kg bwt).

2. *Subchronic toxicity.* In a 13-week dog feeding study sucroglycerides were administered to 5 pure bred Beagle dogs/sex/dose in the diet at dose levels of 0, 5, 10, or 20% (control, 1.19, 2.59, or 5.61 gram/kilogram/day (g/kg/day) for males and control, 1.31, 2.57, or 4.7 g/kg/day for females). Three animals/sex/dose were sacrificed after 13 weeks, and the remaining two animals/sex/dose continued on for an additional 8 weeks of observation on control diets, and were then sacrificed.

No animals died on study and there was no overt toxicity. The decreased cholesterol levels, increased SGPT (serum glutamic pyruvic transaminase) values, ad hepatic pathology are effects that are comparable to those seen as a result of a high fat dietary intake. The grossly high doses of this fatty compound were over the limit dose and effects seen cannot readily be distinguished from those observed with a high fat diet. The NOAEL (no observed adverse effect level) was at the 10% level (2.6 g/kg/day for males and females). The LOAEL (lowest-observed adverse effect level) was determined to be at the 20% level (5.6 g/kg/day for males and 4.7 g/kg/day for females). This study is classified as acceptable and satisfies the guideline requirement for a subchronic oral study in dogs.

In a different study, the summary reported that administration of sucroglycerides to rats for 100 days at concentrations up to 10% in the diet resulted in increased body weight gain and increased hepatic, total lipids and

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lipid fractions with normal plasma lipid levels.

3. *Combined chronic toxicity/carcinogenicity 2-year rat study.* In this study sucroglycerides were administered via the diet to 50 rats/sex/group at dose levels of 0, 5, 10, or 20% (control, 1.59, 3.37, or 7.70 g/kg/day in males and control, 1.86, 4.01, or 9.25 g/kg/day in females for up to 108 weeks). No adverse effects were observed in mortality, hematology, blood chemistry, ophthalmoscopy, organ weights, or gross pathology parameters for either sex at any treatment level. The NOAEL for this combined chronic/carcinogenicity rat feeding study is 5% (3.37 g/kg/day for males and 4.01 g/kg/day for females). The LOAEL is 10% (7.70 g/kg/day for males and 9.25 g/kg/day for females) based on decreased food efficiency in males.

Under the conditions of this study, dosing is considered adequate to assess the carcinogenic potential of sucroglycerides based on the fact that the compound was administered at doses above the limit dose, food efficiency was reduced at 10% in males, and body weight and body weight gain, along with food efficiency was increased at 20% in both sexes. The administration of sucroglycerides to rats up to 20% in the diet did not result in an overall treatment-related increase in incidence of tumor formation. This study is classified as acceptable and satisfies the guideline requirement for a chronic toxicity/carcinogenicity oral study in rats.

In a different study, the summary reported that in a 25 to 28–month rat study, food efficiency was decreased at 10% lard sucroglyceride in the diet. No other effects were noted.

Summaries of another two long-term rat studies with 5 g/kg bwt sucroglycerides in the diet were submitted. These also demonstrated no adverse effects and no evidence of carcinogenicity.

4. *Mutagenicity.* No mutagenicity studies were submitted to the Agency. However, none of the components of sucroglycerides are known mutagens. Given this information and since the combined chronic toxicity/carcinogenicity study did not result in an overall treatment-related increase in incidence of tumor formation, mutagenicity studies will not be required.

5. *Developmental/reproductive toxicity.* No developmental or reproductive toxicity guideline studies were submitted to the Agency, although summaries of two chronic toxicity/2-generation reproductive studies were submitted. Both summaries were partial translations of French studies. Both summaries reported no adverse effects.

In a 1987 article in open literature describing a 2-generation reproductive and developmental toxicity study of a related compound, sucrose polyester (a mixture of hexa-, hepta-, and octa-esters of edible grade fatty acids with sucrose), was fed to rats at up to 10% of the diet. There were no adverse effects on reproductive function, on the development of the fetus, or on the viability or growth of the offspring into adult life.

Given the observed lack of developmental and reproductive effects, and the fact the mono- and di-glycerides are not know developmental toxicants, guideline developmental and reproductive studies will not be required.

6. *Dermal toxicity.* No dermal studies were submitted to the Agency. Sucrose esters of fatty acids and mono-and di-glycerides are unlikely to be absorbed through the skin in sufficient amounts to cause toxicity.

7. *Neurotoxicity.* No neurotoxicity studies were submitted to the Agency. However, no neurotoxicity was observed in the oral guideline studies.

The submitted toxicity studies demonstrate the low toxicity of sucroglycerides. For sucroglycerides, in several studies minimal effects occurred at doses that were expressed as grams of sucroglycerides per kilogram of animal body weight per day. For many chemicals, the Agency has reviewed data that demonstrate significant effects at doses that are expressed in milligrams per kilogram of animal body weight per day. Thus, the minimal toxicity that occurred with consumption of sucroglycerides, occurred at higher dose levels than normally used in testing.

VI. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

A. Dietary Exposure

For the purposes of assessing potential exposure under this exemption, EPA considered that sucroglycerides could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible.

1. *Food.* As previously stated, sucroglycerides have self-affirmed GRAS status. EPA will regulate only the use of sucroglycerides as an inert ingredient in pesticide formulations. Thus, the amount of sucroglycerides that can be applied to food as a result of their use in a pesticide product as an inert ingredient would not significantly increase the amount of sucroglycerides in the food supply above those amounts permitted by FDA.

2. *Drinking water exposure.* The solubility of sucroglycerides in water is very low, less than 1 part per billion. Given this low solubility in water and the low toxicity, both of which were demonstrated in testing, the Agency has determined that exposure for all human population groups through drinking water would be extremely low.

B. Other Non-Occupational Exposure

Currently, there are no residential uses of sucroglycerides. Given that sucroglycerides are unlikely to be absorbed through the skin in sufficient amounts to cause toxicity, even if residential uses of sucroglycerides were to occur, toxicity would not occur.

VII. Cumulative Effects

Section 408 (b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider "available information" concerning the cumulative effects of a particular chemical's residues and "other substances that have a common mechanism of toxicity." Sucroglycerides have a demonstrated lack of toxicity, and thus are unlikely to share a common mechanism of toxicity with any other substances.

VIII. Determination of Safety for U.S. Population

Given the available toxicity information indicating minimal effects, there should be no concerns for human health, whether the exposure is acute, subchronic, or chronic. Thus, based on the low toxicity of sucroglycerides and the low potential for exposure from the EPA regulated uses of sucroglycerides, the Agency has determined that there is a reasonable certainty of no harm to the U.S. population from aggregate exposure to residues of sucroglycerides and that a tolerance is not necessary.

IX. Determination of Safety for Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin safety will be safe for infants and children. Due to the expected low toxicity of sucroglycerides, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary. The Agency has determined that there is a reasonable certainty of no harm to infants and children from aggregate exposure to residues of sucroglycerides and that a tolerance is not necessary.

X. Other Considerations

A. Endocrine Disruptors

There is no available evidence that sucroglycerides are an endocrine disruptor.

B. Analytical Method(s)

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. Existing Exemptions

There are no existing exemptions for sucroglycerides.

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for sucroglycerides nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

XI. Conclusions

Based on the information in this preamble, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues of sucroglycerides. Accordingly, EPA finds that exempting sucroglycerides from the requirement of a tolerance will be safe.

XII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301119 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 2, 2001.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW,, Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301119, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or

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ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

XIII. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications " is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XIV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 13, 2001.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. In § 180.1001, the table in paragraph (c) is amended by adding alphabetically the following inert ingredient to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
Glycerides, edible fats and oils derived from plants and animals, reaction products with sucrose (CAS Reg. Nos. 100403–38–1, 100403–41–6, 100403–39–2, 100403–40–5)		emulsifier, dispersing agent.

[FR Doc. 01–11093 Filed 5–2–01; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 01–120]

Federal-State Joint Board on Universal Service: Children's Internet Protection Act

AGENCY: Federal Communications Commission.

ACTION: Final rule, correction.

SUMMARY: This document corrects errors in the final rule portion regarding implementation of the Children's Internet Protection Act (CIPA) published in the **Federal Register** on April 16, 2001.

DATES: Effective May 3, 2001.

FOR FURTHER INFORMATION CONTACT: Jonathan Secrest or Narda Jones, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This summary contains corrections to the rule portion of the Commission's Report and Order, CC Docket No. 96–45; FCC 01–120, 66 FR 19394 (April 16, 2001). The full text of the Commission's Report and Order is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, S.W., Washington, D.C., 20554.

Correction

1. On page 19396, in the third column, "Subpart H—Administration" is corrected to read "Subpart F—Universal Service Support for Schools and Libraries".

2. On page 19396, in the third column, in paragraph 2, "subpart H" is corrected to read "subpart F".

3. In § 54.20, on page 19397, in the third column, in paragraphs (c)(2)(iii)(A), (c)(2)(iii)(B), and (c)(2)(iii)(C), the phrase "for which you have requested or received Funding Commitments" is corrected to read "on this Form 486."

4. In § 54.520, on page 19397, in the third column, paragraph (c)(3)(i) is corrected by inserting after the phrase "paragraph (a)(3) of this section," the following phrase "other than one requesting only discounts on telecommunications services for consortium members."

5. In § 54.520, on page 19398, in the first column, in paragraph (c)(3)(ii) the phrase "duly completed and signed certifications" is corrected to read "duly completed and signed Forms 479," and the phrase "received under the universal service support mechanism by" is corrected to read "that I have been approved for discounts under the universal service support mechanism on behalf of," and by inserting opening quotation marks after the phrase "or I certify".

6. In § 54.520, on page 19398, in the third column, in paragraph (f), "December 21, 2000" is corrected to read "April 20, 2001" and by inserting the phrase "or library" after the phrase "in which the school".

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–11063 Filed 5–2–01; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

Regulations Governing the Taking and Importing of Marine Mammals

CFR Correction

In Title 50 of the Code of Federal Regulations, parts 200 to 599, revised as of October 1, 2000, Part 216 is corrected by removing Subpart N (§ § 216.151 through 216.157).

[FR Doc. 01–55515 Filed 5–2–01; 8:45 am]

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Proposed Rules

Federal Register
Vol. 66, No. 86
Thursday, May 3, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Reducing Unnecessary Regulatory Burden While Maintaining Safety Workshop and Comments

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public workshop and request for comments.

SUMMARY: Consistent with the Nuclear Regulatory Commission (NRC) Strategic Plan and the Energy and Water Appropriations Bill, 2000, the Commission has directed the staff to maintain plant safety and improve public confidence, but reduce unnecessary regulatory burden. Within this context, unnecessary regulatory burden is defined as regulatory requirements that do not aid the Commission in its mission to protect public health and safety. A workshop will be held to inform and solicit stakeholder input on activities associated with reducing unnecessary regulatory burden. Comments can be provided orally at the workshop, or in writing within 30 days following the workshop. The workshop will be a facilitated round table format with participants representing the broad spectrum of affected interests. There will also be opportunities for audience comments and questions. Although unnecessary burden reduction initiatives are ongoing agency-wide, this workshop will primarily focus on three areas: Risk informing portions of 10 CFR Part 50, reforming outdated or paperwork oriented regulations, reviewing other regulatory requirements (e.g., technical specifications) for burden reduction opportunities. Depending on comments and discussions received during or following this workshop, other workshops may follow. This workshop will also entertain new technologies or techniques that could be used to reduce unnecessary regulatory burden and will provide the status of the licensing action information collection initiative. The NRC hopes to gain widespread participation from (but not limited to) representatives from non-governmental organizations, industry, Federal agencies, State governments, local governments, international organizations, and private citizens. Following the workshop, the NRC staff plans to prepare a staff paper to the Commission to articulate stakeholder's interest, comments, and recommendations regarding this initiative.

DATES: The workshop will be held on May 31, 2001—8:30 a.m. to 5:00 p.m. The comment period expires July 2, 2001.

ADDRESSES: The workshop will be held at NRC Headquarter Offices, Two White Flint, Auditorium, 11545 Rockville Pike, Rockville, Maryland, 20555–0001. Written comments may be sent to: Chief, Rules and Directives Branch, U.S. Nuclear Regulatory Commission, Mail Stop T–06 D59, Washington, D.C., 20555–0001. Comments may be hand delivered to 11545 Rockville Pike, Rockville, Maryland, 20555–0001.

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, the facilitator of this workshop, Mail Stop O–15 D21, telephone (301) 415–1642; Internet: FXC@nrc.gov; or William S. Raughley regarding comments, telephone (301) 415–7577; Internet: WSR@nrc.gov, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For material related to the meeting, please contact U.S. NRC Public Affairs Office (301) 415–8200.

SUPPLEMENTARY INFORMATION:

Background

Consistent with the NRC Strategic Plan and the Energy and Water Appropriations Bill, 2000, NRC has several initiatives planned to reduce unnecessary regulatory burden on licensees. Although unnecessary burden reduction initiatives are agency-wide, this workshop will primarily focus on initiatives associated with the following three areas: (1) Risk informing portions of 10 CFR Part 50, (2) reforming outdated or paperwork oriented regulations, and (3) seeking unnecessary burden reduction in other regulatory requirements (e.g., technical specifications). The workshop will also entertain new technologies or techniques which could be used to reduce unnecessary regulatory burden and provide a status on the information collection initiative for licensing actions.

To elaborate, the NRC Strategic Plan, Fiscal Year 2000–Fiscal Year 2005 (Volume 2, Part I) and the companion document Strategic Plan Appendix (Volume 2, Part 2) explain NRC performance goals to: (1) Maintain safety, protection of the environment, and common defense and security; (2) increase public confidence; (3) make NRC activities and decisions more effective, efficient, and realistic; (4) reduce unnecessary regulatory burden on licensees. Stakeholders generally include the public, licensees, other Federal Agencies, States, local governments, industry, the international community, non-government organizations and others. (The referenced documents and ADAMS references are available through the NRC website "www.nrc.gov/NRC/PUBLIC/meet.html" under "Nuclear Regulatory Research" or "RES.") The Energy and Water Appropriations Bill, 2000, states in part that:

* * * The Committee directs the Commission to examine reforms to the scope of power reactor regulations that will promote a higher level of confidence that the revised regulations, when issued, are consistent with the fundamental accountability of the Commission and that regulations which do not contribute to adequate protection are eliminated. The Committee directs that these efforts be completed no later than December 31, 2000.

In addition, the committee directs the Commission to review existing regulations to reform those that are outdated or paperwork oriented to a set of regulations that are performance based by 2004.

The NRC Strategic Plan and the Energy and Water Appropriations Bill, 2000 provide the framework for NRC initiatives to reduce the unnecessary regulatory burden on licensees. The NRC Strategic Plan defines the unnecessary regulatory burden for NRC licensees as requirements that go beyond what is necessary and sufficient for providing reasonable assurance that public health and safety, the environment, and the common defense and security will be protected. Consistent with the NRC Strategic Plan, the NRC is seeking stakeholder input to identify and discuss opportunities for reducing unnecessary regulatory burden while maintaining safety. By reducing unnecessary regulatory burden, both the NRC and licensee resources may be made available to more effectively focus on maintaining safety. During the past 30 years, an ever-increasing body of technical knowledge and operating experience has been accumulated that may allow for refinements and enhancement in NRC requirements that can reduce the unnecessary regulatory burden while assuring maintenance of safety. Not all the NRC requirements may have been updated to take into account these advances. The NRC believes that for some areas of NRC regulations and practices, the burden is not commensurate with the safety benefit.

Discussion

From the NRC's perspective the initiatives described below for reducing the unnecessary regulatory burden have common attributes: (1) The NRC Strategic Plan and the Energy and Water Appropriations Bill, 2000 provide the incentive and framework for these initiatives; (2) each initiative is planned to result in revisions to regulatory documents or plant technical specifications; (3) while each initiative is expected to result in the reduction of unnecessary regulatory burden, expected levels of safety will be maintained; and (4) the plans to reduce the unnecessary regulatory burden while maintaining safety need greater stakeholder involvement in, and understanding of, the goals of the overall initiative; the relative priorities of the initiatives including those initiatives that will result in the burden reductions with no safety impact; and the identification and prioritization of candidate changes within each initiative. Removal of unnecessary regulatory burden can only be to the extent it is feasible and cost effective. In addition, having involved the stakeholders, the overall plans, the milestones we intend to meet, and status should be communicated to the Commission periodically and made publicly available.

The staff plans to (1) hold a workshop to communicate to and obtain feedback from stakeholders regarding NRC plans for reducing unnecessary regulatory burden while maintaining safety and (2) provide an opportunity for written feedback after the meeting.

The enclosed workshop agenda is designed to provide the opportunity for meaningful stakeholder interaction and involvement and provide stakeholders with a foundation to provide written comments. The specific objectives are to: (1) Provide an NRC management perspective of efforts to reduce unnecessary burden including the relationship between the individual efforts and the input needed from the stakeholders; (2) explain the NRC plans in the areas of risk informing 10 CFR Part 50, reforming outdated and paperwork requirements, and reviewing other regulatory requirements; (3) share inputs received to date from stakeholders; (4) obtain broader participation and stakeholder input regarding the scope and relative priorities of these initiatives including new technologies; (5) provide context for identifying unrecognized opportunities and exploring concerns associated with unnecessary regulatory burden reductions; and (6) provide a foundation for stakeholders to provide detailed written comments on the agency's unnecessary burden reduction initiatives and specific questions.

The following summarizes unnecessary burden reduction initiatives that will be discussed at the workshop.

Risk Informing the Regulations

The staff has under way two initiatives for risk-informing 10 CFR Part 50, first described, and options defined in SECY–98–300, "Options for Risk-informed Revisions to 10 CFR Part 50, Domestic Licensing of Production and Utilization Facilities," dated December 23, 1998. In the first initiative (SECY–98–300, "Option 2") the staff is addressing risk-informed changes to the regulatory scope for structures, systems, and components in need of special treatment (e.g., quality assurance, environmental qualification). This initiative does not address changing the technical content of the special treatment requirements, the design of the plant or the design-basis accidents. In the second initiative (SECY–98–300, "Option 3") the staff is assessing the risk-significance of technical requirements associated with the special treatment requirements in 10 CFR Part 50. This work is closely linked and integrated with the effort under Option 2.

In SECY–99–264, "Proposed Staff Plan for Risk-Informing Technical Requirements in 10 CFR Part 50," dated November 8, 1999, the staff provided the original plan and schedule for its work to risk-inform the technical requirements of 10 CFR Part 50 (Option 3). In SECY–00–0086, "Status Report on Risk-Informing the Technical Requirements of 10 CFR Part 50 (Option 3)," April 12, 2000, the staff provided a status report on Option 3 activities, including an initial version of the "framework" document (a document the staff is using to guide Option 3 activities). In SECY–00–0086, based on meetings with stakeholders and input from industry, 10 CFR 50.44 "Standards For Combustible Gas Control System In Light-Water-Cooled Power Reactors," and 10 CFR 50.46, "Acceptance Criteria For Emergency Cooling Systems For Light-Water Reactors," were listed as a high priority candidate regulations for evaluation under Option 3.

In SECY–00–0198, "Status Report on Study of Risk-Informed Changes to the Technical Requirements of 10 CFR Part 50 (Option 3) and Recommendations on Risk-Informed Changes to 10 CFR 50.44 (Combustible Gas Control)," September 14, 2000, the staff provided a status report focusing on the results of its feasibility study and recommendations to risk-inform 10 CFR 50.44, an updated framework document, and a short status of other Option 3 work underway. In SECY–00–0198, the staff indicated that work had been initiated to develop risk-informed alternatives to the current 10 CFR 50.46. More recently, the status of this work has been described noting the need for more stakeholder involvement in a memorandum to the Commission dated February 5, 2001 (Adams Accession Number ML010260032).

Risk-informed changes to 10 CFR 50.61, "Fracture Toughness Requirements for Protection Against PTS Events," are also under evaluation. The status and schedule for this work were reported in SECY–00–0140, "Reevaluation of the Pressurized Thermal Shock Rule (10 CFR 50.61) Screening Criterion," June 23, 2000.

The staff requested public comment on SECY–00–213, "Risk-Informed Regulation Implementation Plan," October 26, 2000, in a **Federal Register** Notice (65 FR 80473) on December 21, 2000. Input received from stakeholders and work done to date on Option 3 by the staff are being considered in determining which regulations from 10 CFR Part 50 are candidates to be risk-informed. The staff-identified candidates identified to date are listed in Table A–2 in Attachment 1 to SECY–00–0198.

Unnecessary Burden Reduction While Maintaining Safety

A trip report (Adams Accession Number ML003725832) summarizes a public meeting on June 14, 2000, between the NRC Office of Nuclear Regulatory Research (RES) and Commonwealth Edison (Com-Ed) to understand concerns with some regulations that it perceives to impose unnecessary regulatory burden. The trip report attachments include a list of

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items they consider to be unnecessary regulatory burden. Com-Ed explained that the list was illustrative but not exhaustive.

The NRC reviewed the list, and it appeared the items fell into four categories: (1) Items that seem to be simple revisions to outdated or paperwork requirements of apparently little or no safety benefit; these items could be further grouped into outdated, redundant, collection, reporting, or paperwork-oriented-type regulations and are candidates to satisfy the Congressional request; (2) complex technical changes needing NRC resources and prioritizing in the budget and planning process; some of these items can be integrated into ongoing or planned initiatives such as risk informing 10 CFR 50.46; (3) items that are unlikely to be considered as part of current staff initiatives; (4) items already being processed for rulemaking.

Subsequently, the Industry Licensing Action Task Force provided a list of outdated or paperwork requirements it considered to be unnecessary regulatory burden that was similar to items in the Com-Ed list.

Resources have been assigned to develop a plan to evaluate outdated or paperwork requirements. However, rather than evaluating individual lists, the NRC believes that it would be efficient to obtain an exhaustive list of candidate outdated or paperwork requirements considered to be unnecessary regulatory burden before evaluating changes to outdated or paperwork requirements. In addition, the NRC would like to hear from other stakeholders regarding the possible reduction of outdated and paperwork requirements.

Reviewing Other Regulatory Requirements

In addition to reviewing NRC regulations, the NRC staff is involved in various activities to assess other regulatory requirements and administrative processes to identify possible improvements in efficiency or reductions in unnecessary regulatory burden. The staff is currently reviewing its internal procedures and processes, various reporting or administrative requirements imposed on power reactor licensees, and is continuing with initiatives related to the content of technical specifications. Specific types of activities underway are discussed in "Summary of Meeting Held on February 7, 2001, Between the NRC Staff and Industry Licensing Action Task Force," dated March 29, 2001 (Adams Accession Number ML010890109).

Proposed Information Collection Initiative

A **Federal Register** Notice (Adams Accession Number ML003771785) soliciting public comments on the proposed information collection was published on December 7, 2000. The purpose of the information collection initiative is to gather information from licensees regarding the impact of the NRC activities. As discussed in the **Federal Register** notice (FRN), the information gathered from the proposal would assist the Office of Nuclear Reactor Regulation (NRR) staff in allocating staff resources and measuring how the work the NRR staff completes contributes to the agency goals and meets the Government Performance and Results Act (GPRA). Five different groups commented on the proposed initiative (Tennessee Valley Authority, Illinois Department of Nuclear Safety, Winston and Strawn, Hopkins and Sutter, and the Nuclear Energy Institute). Comments received from the public were generally not in favor of the proposed initiative. Based on the public comments, the staff believes that to proceed with the initiative as it was originally proposed in the FRN is not feasible and is not an effective use of NRC resources. Thus, the staff has explored other means of achieving the objectives and identified the following two options that will be discussed at the workshop:

Option 1—The NRR Project Manager would indicate whether the amendment reduces: radiation dose, risk, outage time, increases safety, or is administrative. Criteria/guidance would be developed to categorize the various amendments. At the end of the fiscal year, the staff would determine how many of the licensing actions fell into each category and make a rough estimate regarding cost savings.

Option 2—Criteria would be developed to determine whether an amendment was a low, medium, or high savings to the licensee. The licensee would indicate which category the amendment falls into. The staff would need input from the industry to develop the criteria and would need individual licensees to categorize amendments upon submittal to the NRC.

New Technologies or Techniques

Advances in computational capability and data permit more realistic modeling of reactor behavior and may provide opportunities for reducing unnecessary burden while maintaining safety. Recent examples include revised source terms and current efforts to risk inform 10 CFR 50.44, 10 CFR 50.46, and 10 CFR 50.61. The NRC is interested in other opportunities.

Obtaining Broad Stakeholder Input

We are interested in stakeholder feedback on the priority of the candidates, to recommend what additional work should be in the scope of unnecessary burden reduction initiatives and to obtain general concerns. The feedback should consider factors such as potential safety benefit and stakeholder interest, as well as the agency's four performance goals. The stakeholders are encouraged to participate in the workshop discussion sessions and provide written comment. The following questions will help to start each workshop discussion session as well as provide a format for comments:

1. What aspects of these initiatives interfere with the NRC ability to maintain safety or increase public confidence?

2. Will implementation of these initiatives improve regulatory efficiency, effectiveness, and realism?

3. Beyond this meeting and the request for comments, how can stakeholder participation in these initiatives be enhanced?

4. Which areas being pursued will not likely be fruitful to stakeholders, or otherwise have a negative impact on stakeholder needs?

5. Are ongoing and future activities to reduce unnecessary burden appropriately prioritized? Which activities should receive the highest priority and why?

6. Are there any other opportunities that have not been recognized or being pursued at this time. Identify: (a) The regulation or portion thereof that should be evaluated; (b) possible improvements to the regulations; (c) the basis for the proposed reduction including the potential impact on safety, public confidence, regulatory effectiveness and efficiency; and (d) the estimate dollar cost saving per year.

7. What advancements in technology would help NRC better meet its performance goal of reducing unnecessary burden on stakeholders?

8. What new areas of regulatory research may be warranted to advance technology that could better serve these initiatives?

Dated at Rockville, Maryland, this 27th day of April 2001.

For the Nuclear Regulatory Commission.

Farouk Eltawila,

Acting Director, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research.

Tentative Agenda—Reducing Unnecessary Regulatory Burden While Maintaining Safety Workshop

8:30–8:45 Welcome and Introduction
8:45–9:00 Meeting Objectives, Structure and Groundrules
9:00–9:15 Overview of NRC Initiative to Reduce Unnecessary Regulatory Burden
9:15–10:30 Risk Informing 10 CFR Part 50 Participants Discussion
10:30–10:45 Break
10:45–11:45 Paperwork Reduction and Obsolete Regulations Participants Discussion
11:45–1:00 Lunch Break
1:00–1:45 Licensing Actions to Reduce Unnecessary Burden Participants Discussion
1:45–3:15 Other NRC Initiatives Related to Unnecessary Burden Reduction Participants Discussion
3:15–3:30 Break
3:30–4:30 Open discussion
4:30–4:45 Summary and Closure

[FR Doc. 01–11108 Filed 5–2–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 151

[USCG–2000–7442]

RIN 2115–AD23

Permits for the Transportation of Municipal and Commercial Waste

AGENCY: Coast Guard, DOT.

ACTION: Notice of intent with request for comments.

SUMMARY: The Coast Guard is advising the public of its intent to finalize regulations previously published as an Interim Rule (IR) in the **Federal Register** (54 FR 22546) on May 24, 1989. These regulations have been codified at 33 CFR Part 151. The IR was published to implement the permitting and numbering requirements of the Shore Protection Act (SPA), but was never published as a Final Rule. Because of the lapse in time since the IR publication, the Coast Guard is seeking comments from the public before finalizing the IR.

DATES: Comments must be received on or before August 1, 2001.

ADDRESSES: You may submit your written comments and related material by one of the following methods:

(1) By mail to the Docket Management Facility, (USCG–2000–7442), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this notice. Comments and documents, as indicated in this notice, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may electronically access the public docket for this notice on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For information concerning this reopened comment period, contact Ensign William Sportsman, Office of Operating & Environmental Standards (G–MSO–2), U.S. Coast Guard Headquarters, telephone 202–267–0226. For questions on viewing, or submitting material to the docket, contact Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to participate in this rulemaking by submitting your comments and related material. To do so, please include your name and address, identify the docket number for this notice (USCG–2000–7442), indicate the specific section of the Interim Rule that you are commenting on, and give the reason for each comment. You may submit your written comments and material by mail, hand, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please do not submit the same comment or material by more than one means. Do not submit comments on the Interim Rule that have already been made part of the CGD 89–014 docket. If you submit them by mail or hand, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they were received, enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments and material received during the comment period. All comments, including those previously submitted under the CGD 89–014 docket, may be viewed at http://dms.got.gov.

Background and Purpose

On May 24, 1989, the Coast Guard published in the **Federal Register** (54 FR 22546), an Interim Rule with request for comments (docket number CGD 89–014), implementing the permitting and numbering requirements of the Shore Protection Act (33 U.S.C. § 2601 *et seq.*). In response, the Coast Guard received six comments. After it was determined that the procedures outlined in the Interim Rule were operating successfully, the Coast Guard published a Notice of Withdrawal in the **Federal Register** (60 FR 64001) on December 13, 1995, to discontinue the rulemaking. The intent was to close the rulemaking project. However, due to an oversight, the Interim Rule was never finalized.

The Interim Rule has been in place for the past 11 years, and the Coast Guard believes these procedures have been operating in a satisfactory manner. Therefore, the Coast Guard intends to finalize the Interim Rule as published, and the first step in this process is to reopen the comment period for the Interim Rule.

Discussion of Comments and Changes

The Coast Guard received six letters commenting on the Interim Rule. In the following paragraphs, the Coast Guard discusses the comments received, and explains any changes made to the regulations. The Coast Guard first discusses general comments, and secondly discusses comments regarding specific sections of the regulations.

General Comments

One comment suggested that the rule require the same waste handling practices as stipulated in section 4103 of SPA. The comment also suggested the Coast Guard consider an operator's record of compliance with the required practices when deciding to approve or deny a permit.

The requirements for waste handling practices are outside the scope of this rulemaking. The Environmental Protection Agency (EPA) is responsible for implementing section 4103 of SPA.

One comment asked why the Interim Rule did not include regulations

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implementing sections 4104 through 4109 of SPA. This section of SPA concerns suspensions and revocations, enforcement, subpoena authority, and permit fees and penalties. The comment asked the Coast Guard to explain how it will implement these requirements.

As stated in the preamble to the Interim Rule, the Coast Guard will initiate two regulatory projects to implement the responsibilities delegated under SPA. This document finalizes the first regulatory project covering the issuing of permits and the numbering of vessels. Regulations implementing the other provisions of SPA may be proposed under a separate rulemaking in the future.

Comments Regarding Specific Sections

Applicability (§ 151.1003)

Three comments stated that numerous crew, work, supply, and service vessels engaged in support of oil or gas operations in the Outer Continental Shelf occasionally transport commercial waste and garbage. This waste is generated on offshore platforms and mobile offshore drilling units and is considered minor and incidental cargo. The comments stated that these vessels should be exempt from the requirements of the Interim Rule because they are not dedicated to nor designed for the transport of commercial waste. One of the comments also suggested that lightering and other small vessels should be exempt from the regulations because they transport plastics and other wastes ashore from vessels in port. These vessels are prohibited from discharging waste into the ocean under the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78, Annex V).

The Coast Guard agrees with these comments. This rule only applies to owners and operators of vessels whose primary purpose is the transportation of municipal or commercial waste. The Coast Guard recognizes that there are vessels that transport waste incidental to the primary purpose or business of the vessel. While the owners and operators of these vessels must take appropriate precautions to ensure that they do not deposit waste into the waters of the United States during transport, the Coast Guard does not intend for this rule to apply to these vessels. As stated in the Interim Rule, an owner or operator will only be required to hold a permit if the vessel is hired to transport municipal or commercial waste for a specific voyage or for a specific time. Therefore, the Coast Guard intends to make no revisions based on these comments.

Three comments opposed applying the Interim Rule to vessels carrying non-hazardous oil field waste. These vessels are required to obtain a Certificate of Inspection (COI), meet route and cargo restrictions, construction standards, and stability standards under rules promulgated in the Coast Guard's Navigation and Vessel Inspection Circular (NVIC) Number 7–87, "Guidance on Waterborne Transport of Oil Field Wastes." The comments argued that vessels under the NVIC 7–87 already meet a higher degree of scrutiny than is mandated by SPA.

The Coast Guard agrees with these comments. To reduce the regulatory burden, vessels operating under the NVIC 7–87 program already meet regulatory standards similar to these regulations and are exempt from having to obtain a permit. Thus, vessels engaged in transporting non-hazardous oil field waste were never intended to be included in the application of the Interim Rule. This is evidenced by the fact that they were never specifically listed in 33 CFR 151.1003, Applicability, or 33 CFR 151.1006, Definitions.

Issuing or Denying the Issuance of a Conditional Permit (§ 151.1015)

The Coast Guard received four comments regarding the permit issuance procedures and policies. Two comments wanted the Officer in Charge, Marine Inspection (OCMI) or the Captain of the Port (COTP) where the vessel will operate to participate in the issuance procedures. One comment stated that it would be appropriate and convenient for the OCMI or COTP to approve (or deny) the application. The comment noted that the OCMI or COTP "will surely be involved in verifying information, investigating complaints, and monitoring compliance in any case." Another comment suggested that the Coast Guard send a copy of the issued permit to the OCMI or COTP.

The Coast Guard does not agree with these comments. It will be more efficient to issue the permits from a central location because vessels subject to these regulations may operate in more than one COTP or OCMI zone of responsibility. The owner or operator is required to maintain the permit onboard the vessel. Therefore, a copy of the permit will be available for the COTP or OCMI to examine whenever necessary. The Coast Guard will not make any changes to § 151.1015 based on these comments.

For vessels requiring a COI, one comment suggested the Coast Guard withhold issuance of a permit if the COI is invalid.

The Coast Guard does not agree with this comment. Vessels holding a COI are currently inspected on regularly scheduled intervals. If the COI is invalid, the vessel is not expected to be operating on the navigable waters of the United States.

Another comment requested that the Coast Guard include a statement in § 151.1015(b)(2)(ii)(A) that clarifies that if there is a change of vessel operator or owner, the permit is no longer valid. In the Interim Rule, § 151.1015(b)(2)(ii)(A) states that a permit will only be terminated if the vessel is sold or if subpart B no longer applies to the vessel.

The Coast Guard does not agree with this comment. We believe the current language of the Interim Rule is sufficient to enable compliance.

Two comments stated that although § 151.1015 details the denial of a permit, it unnecessarily focuses on completeness and accuracy of the forms instead of substantive information such as the history of the operator or the condition of the vessel.

The Coast Guard understands that permit applicants can be frustrated with the level of accuracy required in the forms; however, this information is a necessary step in ensuring that permit applicants are capable of meeting the requirements for a permit.

Withdrawal of a Conditional Permit (§ 151.1018)

Three comments questioned whether § 151.1018 is consistent with SPA. SPA allows the Coast Guard to issue or deny a permit after consulting with the EPA. However, the Interim Rule does not include the consultation with EPA before issuance of a permit. SPA also allows the Coast Guard to deny a permit if the owner or operator of the vessel has a pattern of serious violations. However, the Interim Rule only allows the Coast Guard to withdraw a permit at the request of EPA. The comments stated that SPA gives the Coast Guard the authority to withdraw a permit, but the Coast Guard has excluded its own authority in the Interim Rule.

The Coast Guard implemented the application procedures in the Interim Rule to eliminate unnecessary delays for vessel owner/operators seeking to continue an ongoing business. Conversely, the Coast Guard wanted to ensure that any decision to revoke a permit was substantiated by an agency that could act as a neutral agent.

One comment stated that it believes that the Coast Guard would initiate withdrawal of a permit for various reasons, such as improper vessel conditions. The comment asked the Coast Guard to include provisions for these withdrawals and cite the penalty provisions for a violation of §§ 151.1009 and 151.1018(c) in the Interim Rule.

The Interim Rule listed conditions that would lead to the withdrawal of a permit, citing a record or pattern of violations of five environmental protection acts. Permit withdrawal proceedings would be restricted to the conditions authorized by the act. Civil and criminal penalties for violations of the Shore Protection Act are outlined in 33 USC § 2608 and § 2609.

Display of Number (§ 151.1024)

Two comments objected to the requirement that vessel numbers displayed have to be at least 44 centimeters (18 inches) in height. One comment noted that the requirement for marking a tank vessel (found in 46 CFR 32.05–10 and 32.05–15) allows a vessel to be marked with figures that are 15 centimeters (6 inches) high.

The Coast Guard disagrees with these comments. Personnel involved with enforcement of these regulations must be able to easily identify a vessel's permit numbers from great distances or altitudes including while a vessel is at sea. Because of this, permit numbers need to be easily distinguishable from other markings displayed on a vessel.

One comment noted that there is an incorrect section citation in the Interim Rule. Paragraph (b) of § 151.1009 references § 151.104, which does not exist. The correct reference is § 151.1024, pertaining to permit numbers. The Coast Guard amended § 151.1009(b) to reflect the correct reference in a correction notice published in the **Federal Register** on June 5, 1989 (54 FR 24078).

Dated: March 16, 2001.

Joseph J. Angelo,

Director of Standards, Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 01–10970 Filed 5–2–01; 8:45 am]

BILLING CODE 4910–15–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 2001–2]

Notice of Termination

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office is proposing amendments to its regulation governing notices of termination of transfers and licenses covering the extended renewal term. The current regulation is limited to notices of terminations made under section 304(c) of the copyright law. The Sonny Bono Copyright Term Extension Act created a separate termination right under section 304(d). Under the proposed regulation, procedures governing notices of termination of the extended renewal term would cover notices made under either section 304(c) or 304(d).

DATES: Comments should be in writing and received on or before June 18, 2001.

ADDRESSES: If sent By Mail, ten copies of written comments should be addressed to: David O. Carson, General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20540. If Hand Delivered, ten copies should be brought to: Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room LM–403, First and Independence Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Kent Dunlap, Principal Legal Advisor for the General Counsel. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: Under the 1909 copyright law, which was in effect until January 1, 1978, works were subject to a renewal system in which the term of copyright was divided into two consecutive terms. Under the system initially established by the 1909 legislation, the duration of copyright protection was an initial copyright term of 28 years and a renewal term of an additional 28 years. The Copyright Act of 1976, Pub. L. 94–554, retained the renewal system for works that had subsisting copyrights on January 1, 1978. However, under section 304 of the copyright law (17 U.S.C. 304), the renewal term was extended to 47 years, creating a total potential term of protection of 75 years.

Besides generally extending the renewal term to 47 years, Congress also provided a termination procedure authorizing the termination of transfers or licenses during the extended renewal term. Established under section 304(c) of the copyright law, this provision created a means for authors and their surviving spouses and offspring to secure the benefits of the additional 19 years added to the renewal term. In 1977, the Copyright Office adopted a regulation establishing the procedures for exercising the termination right. 37 CFR 201.10

On October 27, 1998, President Clinton signed into law the Sonny Bono Copyright Term Extension Act, ("the Act"), Pub. L. 105–298, 112 Stat. 2827 (1998). The Act amended the copyright law, title 17 United States Code, to extend for an additional 20 years, the term of copyright protection in the United States. For works in which the duration of protection was determined under section 304 of title 17, the renewal term was extended from 47 years to 67 years. Like the Copyright Act of 1976, the Sonny Bono Copyright Term Extension Act also contained a termination provision covering the newly extended part of the extended renewal term (i.e., the last twenty years). Established under section 304(d) of the copyright law, this new right of termination was limited to authors and other successors-in-interest specified in the statute who had not previously terminated under section 304(c).

The termination provision created by section 304(d) largely incorporates by reference the standards established by section 304(c). Since notices of termination may be served up to ten years before the termination is to take effect, the right to serve termination notices under section 304(d) vested immediately upon the enactment of the Sonny Bono Copyright Term Extension Act. Although the Copyright Office has not put in place final regulations governing notices of termination issued under section 304(d), the Copyright Office Documents Section has already received a number of such notices for recordation. The Copyright Office has proceeded with recording these notices under its existing provisions for recordation of notices of termination pursuant to section 304. However, it is desirable that the Office's regulations on notices of termination be amended to provide expressly for notices of termination pursuant to section 304(d).

The Copyright Office has concluded that, with a few adjustments, § 201.10 can be adapted to cover terminations under either section 304(c) or section 304(d). The proposed regulation begins by adding introductory text clarifying that the scope of the regulation covers terminations under either sections 304(c) or 304(d). In provisions where the current regulation refers to section 304(c), the proposed regulation has been modified to add an alternative reference to section 304(d). Finally, a reference to section 304(d) has been added to § 201.4(a)(v) regarding recordation of transfers and certain other documents.

Paragraph (b) relating to contents of the notice would add two substantive changes not in the current regulation. Section (b)(i) of the proposed regulation

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requires that if the termination is made under section 304(d), the notice should provide a statement to that effect. Most of the notices of termination made under section 304(d) which have been received in this Office already contain such a statement. Inclusion of this requirement in the regulation appears to be a logical addition and would provide clarity to the notice. No corresponding requirement has been imposed in notices of termination issued under section 304(c) because such a requirement would upset established practices in issuing notices under that section.

The second substantive change adds a new § 201.10(b)(vi) requiring notices issued under section 304(d) to contain a statement "that the rights in the extended renewal term which are being terminated have not been subject to a previous termination." This is a statutory requirement imposed in section 304(d). Incorporating the requirement as part of the contents helps ensure that second notices of termination covering the same rights already terminated by a previous notice will not be served and recorded. This provision is not intended to preclude one joint author who has not previously exercised his termination right from terminating, even in cases where other joint authors have exercised such rights. Section 304(c) permits joint authors to exercise their termination rights separately. H.R. Rep. No. 94–1476, at 141 (1976).

The Copyright Office seeks public comment on these two proposed substantive additions to the required content of the notice of termination. The Copyright Office does not propose that the two new requirements be applied to notices already issued or to those issued before the proposed regulation is adopted in final form. If the two requirements are adopted in the final regulation, they are intended to be treated as requirements only after the effective date of the final regulation.

List of Subjects in 37 CFR Part 201

Copyright.

Proposed Regulations

In consideration of the foregoing, the Copyright Office proposes to amend part 201 of 37 CFR, chapter II in the manner set forth below:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702; § 201.10 is also issued under 17 U.S.C. 304.

§ 201.4 [Amended]

2. Amend § 201.4(a)(1)(v) by adding "and (d)" after "304(c)".

3. Section 201.10 is amended as follows:

a. by adding introductory text before paragraph (a);

b. by revising paragraphs (c)(2), (d)(2), (d)(4) and (e);

c. by redesignating paragraphs (b)(1)(i) through (v) as (b)(1)(ii) through (v) and (vii), respectively; and

d. by adding new paragraphs (b)(1)(i) and (b)(1)(vi). The revisions and additions to § 201.10 read as follows:

§ 201.10 Notices of termination of transfers and licenses covering extended renewal term.

This section covers notices of termination of transfers and licenses covering the extended renewal term under sections 304(c) and 304(d) of title 17, U.S.C.

* * * * *

(b) * * *

(1) * * *

(i) If the termination is made under section 304(d), a statement to that effect;

* * * * *

(vi) If termination is made under section 304(d), a statement that the rights which are being terminated have not been subject to a previous termination pursuant to section 304; and

* * * * *

(c) * * *

(2) In the case of a termination of a grant executed by one or more of the authors of the work, the notice as to any one author's share shall be signed by that author or by his or her duly authorized agent. If that author is dead, the notice shall be signed by the number and proportion of the owners of that author's termination interest required under section 304(c) or section 304(d), whichever applies, of title 17, U.S.C., or by their duly authorized agents, and shall contain a brief statement of their relationship or relationships to that author.

* * * * *

(d) * * *

(2) The service provision of either section 304(c) or section 304(d) of title 17, U.S.C., whichever applies, will be satisfied if, before the notice of termination is served, a reasonable investigation is made by the person or persons executing the notice as to the current ownership of the rights being terminated, and based on such investigation:

(i) If there is no reason to believe that such rights have been transferred by the grantee to a successor in title, the notice is served on the grantee; or

(ii) If there is reason to believe that such rights have been transferred by the grantee to a particular successor in title, the notice is served on such successor in title.

* * * * *

(4) Compliance with the provisions of paragraphs (d)(2) and (3) of this section will satisfy the service requirements of either section 304(c) or section 304(d) of title 17, U.S.C., whichever applies. However, as long as the statutory requirements have been met, the failure to comply with the regulatory provisions of paragraph (d)(2) or (d)(3) of this section will not affect the validity of the service.

(e) *Harmless errors.* (1) Harmless errors in a notice that do not materially affect the adequacy of the information required to serve the purposes of either section 304(c) or section 304(d) of title 17, U.S.C., whichever applies, shall not render the notice invalid.

(2) Without prejudice to the general rule provided by paragraph (e)(1) of this section, errors made in giving the date or registration number referred to in paragraph (b)(1)(iii) of this section, or in complying with the provisions of paragraph (b)(1)(vii) of this section, or in describing the precise relationships under paragraph (c)(2) of this section, shall not affect the validity of the notice if the errors were made in good faith and without any intention to deceive, mislead, or conceal relevant information.

* * * * *

4. Amend the new § 201.10(b)(1)(vii) by removing "paragraph (v)" and adding "paragraph (vii)".

Dated: April 26, 2001.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 01–11152 Filed 5–2–01; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA143–4115b; FRL–6973–5]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Reasonably Available Control Technology Requirements for Volatile Organic Compounds and Nitrogen Oxides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to remove the conditional status of its approval of the Commonwealth of Pennsylvania State Implementation Plan (SIP) revision that requires all major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) to implement reasonably available control technology (RACT). In the "Rules and Regulations" section of this **Federal Register**, EPA is removing the conditional nature of its approval of the Commonwealth's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. The rationale for removing the conditional status of EPA's approval is set forth in the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by June 4, 2001.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, and the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Ellen Wentworth, (215) 814–2034, at the EPA Region III address above, or by e-mail at wentworth.ellen@epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action with the same title that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: April 24, 2001.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 01–10985 Filed 5–2–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[TN 241–1–2000103b; FRL–6974–5]

Clean Air Act Approval and Promulgation of the Redesignation of Shelby County, TN, to Attainment for Lead

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State Implementation Plan submitted on February 15, 2001, by the Memphis and Shelby County Health Department through the Tennessee Department of Environment and Conservation for the purpose of redesignating Shelby County from nonattainment to attainment for the lead national ambient air quality standard. In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before June 4. 2001.

ADDRESSES: Written comments should be addressed to Kimberly Bingham, at the EPA Regional Office listed below. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations.

U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, Air, Pesticides, and Toxics Management Division, 61 Forsyth Street, Atlanta, Georgia 30303–3104.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham of the EPA Region 4, Air Planning Branch at (404) 562–9038 and at the above address.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Final Rules section of this **Federal Register**.

Dated: April 19, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 01–11091 Filed 5–2–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH83

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Robust Spineflower; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed Rule; technical corrections.

SUMMARY: We, the U.S. Fish and Wildlife Service, published a proposed rule to establish critical habitat for the robust spineflower (*Chorizanthe robusta* var. *robusta*) in the **Federal Register** on February 15, 2001. The proposed rule contained several errors in the map and legal description for the Freedom mapping unit (Unit D). This document contains corrections to the proposed rule to designate critical habitat for *Chorizanthe robusta* var. *robusta* for this proposed critical habitat unit.

DATES: We will accept comments until the close of business on June 4, 2001. Requests for public hearings must be received by May 23, 2001.

ADDRESSES: Comment submission: If you wish to comment, you may submit your comments and materials by any one of several methods:

1. You may submit written comments and information to Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office, 2394 Portola Road, Suite B, Ventura, California 93003. You may also hand-deliver written comments to our Ventura Fish and Wildlife Office at the address given above.

2. You may send comments by electronic mail (e-mail) to: robustsf@fws.gov See the Public Comments Solicited section below for file format and other information on electronic filing.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection,

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by appointment, during normal business hours at the Ventura Fish and Wildlife Office.

FOR FURTHER INFORMATION CONTACT: Diane Noda, Field Supervisor, at the address above (telephone 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Background

On February 15, 2001, we proposed critical habitat for the robust spineflower (*Chorizanthe robusta* var. *robusta*), pursuant to the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*) (66 FR 10419). A total of approximately 660 hectares (ha) (1,635 acres (ac)) of land fall within the boundaries of the proposed critical habitat designation, all in Santa Cruz County, California.

The proposed rulemaking contained errors in the mapping and legal description for the Freedom mapping unit (Unit D). In the proposed rule, we inadvertently mapped this unit to the north and east of the correct location. We are providing a corrected Geographic Information System (GIS) map and a corrected legal description of the mapping unit. The GIS map is provided to help the public understand the general location of the proposed critical habitat. A corrected version of Table 5 is also provided; this table provides approximate areas of proposed critical habitat for *Chorizanthe robusta* var. *robusta* by land ownership. The corrected table indicates that for the Freedom Unit, approximately 3.8 ha (9.5 ac) are on private lands and 0.2 ha (0.5 ac) are on lands under local jurisdiction.

Public Comments Solicited

We intend that any final action resulting from this technical clarification be as accurate as possible. Comments and suggestions from the public, concerned governmental entities, private interests, or any other interested party are solicited. Comments are invited specifically concerning:

(1) Biological data concerning any threat (or lack thereof) to *Chorizanthe robusta* var. *robusta;*

(2) The location of any additional populations of the species, and the reasons why any habitat in should or should not be designated as critical habitat, as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of *Chorizanthe robusta* var. *robusta;* and

(4) Current or planned activities within the proposed critical habitat units and their possible impacts on the species.

National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as defined in the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. For additional information concerning permit and associated requirements for endangered species, see 50 CFR 17.62 and 17.63.

Author(s)

The primary authors of this proposed rule is Connie Rutherford (see **ADDRESSES** section), and Barbara Behan, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232 (telephone 503/231–6131).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*)

In proposed rule FR Doc. 01–1837, published February 15, 2001 (66 FR 10419), make the following corrections.

1. On page 10425, correct Table 5 to read as follows:

TABLE 5.—APPROXIMATE AREAS, IN HECTARES (HA) AND ACRES (AC),[1] OF PROPOSED CRITICAL HABITAT FOR CHORIZANTHE ROBUSTA VAR. ROBUSTA BY LAND OWNERSHIP

Unit name	State lands	Private lands	City and other local jurisdictions	Federal lands	Total
A. Pogonip	20 ha (50 ac)	45 ha (115 ac)	100 ha (250 ac)		165 ha (410 ac).
B. Branciforte		5 ha (10 ac)			5 ha (10 ac).
C. Aptos		30 ha (80 ac)			30 ha (80 ac).
D. Freedom		3.8 ha (9.5 ac)	0.2 ha (0.5 ac)		4 ha (10 ac).
E. Buena Vista		75 ha (185 ac)			75 ha (185 ac).
F. Sunset	55 ha (130 ac)				55 ha (130 ac).
G. Former Fort Ord				325 ha (805 ac)	325 ha (805 ac).
Total	75 ha (180 ac)	157 ha (396 ac)	102 ha (254 ac)	325 ha (805 ac)	659 ha (1,635 ac).

[1] Approximate acres have been converted to hectares (1 ha = 2.47 ac). Based on the level of imprecision of mapping of each unit, hectares and acres greater than 10 have been rounded to the nearest 5; hectares and acres less than or equal to 10 have been rounded to the nearest whole number. Totals are sums of units.

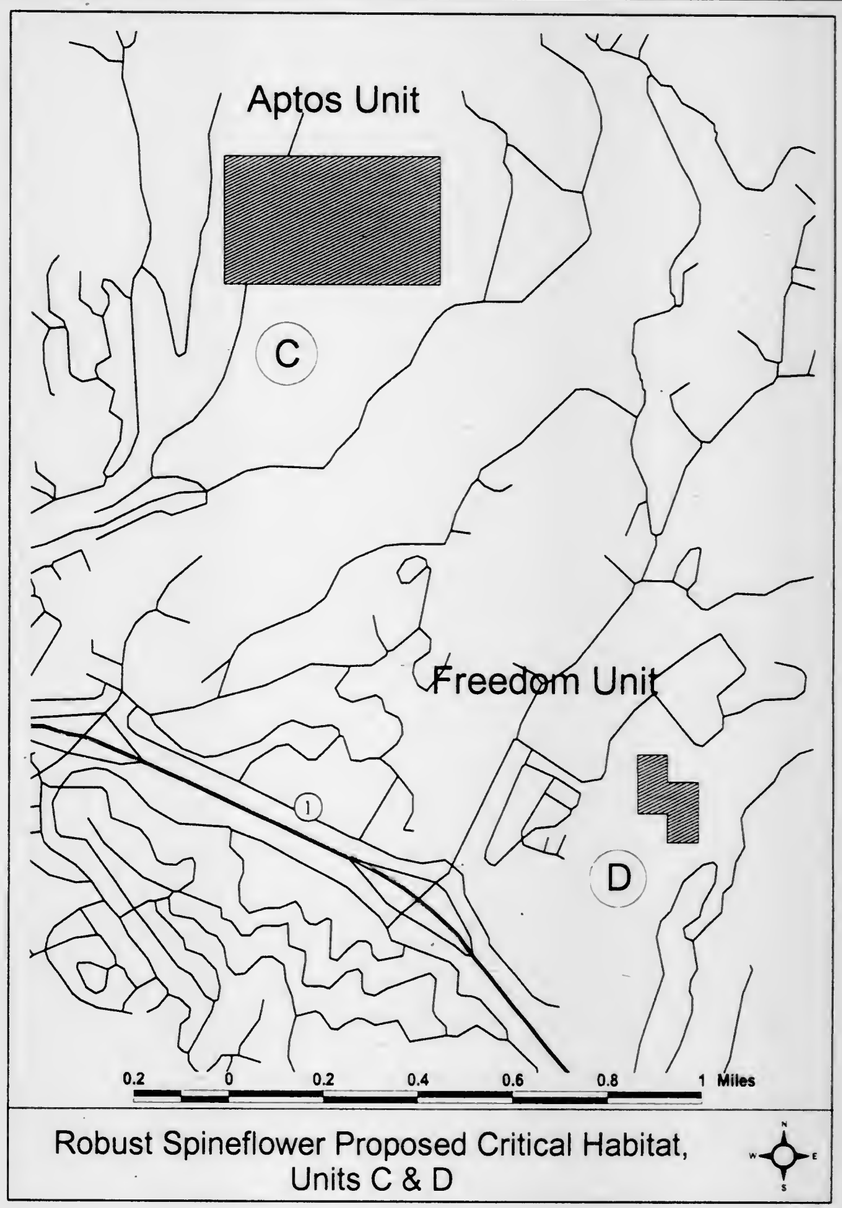
§ 17.96 [Corrected]

2. On page 10434, correct the legal description for Map Unit D to read as follows:

Map Unit D (Freedom). Santa Cruz County, California. From USGS 7.5′ quadrangle map Watsonville West, California. The following lands within the Aptos Land Grant: T. 11 S. R.1 E., W½ of NW¼ of NW¼ of SE¼; the NE¼ of NE¼ of NE¼ of SW¼; and SE¼ of SE¼ of SE¼ of NW¼, Mount Diablo Base Principal Meridian, sec. 16 (protracted).

3. On page 10435, correct the map for Freedom Unit (Unit D) to read as follows:

BILLING CODE 4310–55–P



Robust Spineflower Proposed Critical Habitat, Units C & D

BILLING CODE 4310–55–C

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Dated: April 25, 2001.

Daniel Welsh,

Acting Manager, California/Nevada Operations.

[FR Doc. 01–10830 Filed 5–2–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 043001D]

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public hearings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold seven public hearings in May and June 2001 to gather public input regarding proposed management measures for its draft Amendment 5 to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP).

DATES: The public hearings will be held in May and June 2001. Written comments must be received in the Council office by May 29, 2001. See **SUPPLEMENTARY INFORMATION** for specific dates and times of the public hearings.

ADDRESSES: Written comments should be sent to Bob Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699, or via email to safmc@noaa.gov. Copies of the Public Hearing Document are available from Kim Iverson, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; telephone: 843–571–4366.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; telephone: 843–571–4366; fax: 843–769–4520; email address: kim.iverson@noaa.gov.

SUPPLEMENTARY INFORMATION: The South Atlantic Fishery Management Council (Council) will hold seven public hearings in May and June 2001 to gather public input regarding proposed management measures for its draft Amendment 5 to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP). At the request of the rock shrimp industry, the Council is considering the following measures for its proposed Amendment 5: The development of a limited entry program to remove speculative interest in the fishery and to ensure the economic viability of the rock shrimp industry; shrimp trawl mesh size restrictions to reduce the harvest of small rock shrimp; a requirement for operator permits and vessel monitoring systems to ensure better compliance with the FMP's management measures; and designation of specific geographic areas within which these management measures would apply.

Meeting Dates and Locations

The dates and locations for the scheduled public hearings are presented below. All hearings are scheduled to begin at 6 p.m.

May 3, 2001– NC Department of Environment & Natural Resources, 127 Cardinal Drive, Wilmington, NC 28405; Telephone: 910–395–3900

May 7, 2001– Radisson Beach Resort, 2600 N. A1A, Fort Pierce, FL 34949; Telephone: 561–465–5544

May 8, 2001– Florida Fish & Wildlife Conservation Commission, Florida Marine Research Institute 100 Eighth Avenue, SE, St. Petersburg, FL 53701–5095; Telephone: 727–896–8626

May 9, 2001– Lafayette Plaza Hotel, 301 Government Street, Mobile, AL 36602; Telephone: 334–694–0101

May 15, 2001– Town & Country Inn, 2008 Savannah Highway, Charleston, SC 29407; Telephone: 843–571–1000

May 24, 2001– University of Georgia, Marine Extension Service, 715 Bay Street, Brunswick, GA 31520; Telephone: 912–264–7268

May 29, 2001– Radisson Hampton, 700 Settlers Landing Road, Hampton, VA 23669, Telephone: 757/727–9700

June 19, 2001– Radisson Ponce de Leon, 4000 US Highway 1, St. Augustine, FL 32095; Phone: 904–824–2821

Special Accommodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least five days prior to the hearing date.

Dated: May 1, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–11273 Filed 5–1–01; 2:51 pm]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 66, No. 86
Thursday, May 3, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Availability of an Environmental Assessment for an Amendment to the Fishlake National Forest Land and Resource Management Plan To Change the Forage Utilization Standards

AGENCY: Forest Service, Agriculture.

ACTION: Notice of availability of an environmental assessment.

SUMMARY: The Fishlake National Forest proposes to amend the Forest Plan forage utilization guidelines. Supervisor Guy Pence (Responsible Official) has mad available copies of the Environmental Assessment for the Proposed Amendment to the Fishlake National Forest Land and Resource Management Plan. This amendment changes the forage utilization guidelines for riparian vegetation from percent of available forage utilized to residual stubble height. The amendment also modifies the use levels in upland areas. The Environmental Assessment is available for 30-day public review and comment. The notice and comment period is expected to end on June 1, 2001. This notice is required pursuant to National Forest System Land and Resource Management Planning regulations (36 CFR 219.35(b)).

DATES: In February of 1998, the Fishlake National Forest initiated scoping for a proposal to revise allotment management plans and to amend the Fishlake National Forest Land and Resource Management Plan. In October of 2000, the Fishlake National Forest Supervisor decided to separate the documentation and analysis for he forest plan amendment. A new scoping notice was sent to the public on February 21, 2001. The Environmental Assessment is available for public comment beginning May 2, 2001. Comments will be accepted through June 1, 2001. A decision is expected in June of 2001.

ADDRESSES: Comments on the environmental assessment can be submitted to the Forest Supervisor at: Forest Supervisor, Fishlake National Forest, 115 East 900 North St., Richfield, Ut 84701.

FOR FURTHER INFORMATION CONTACT: David Grider, Range Specialist, at 435–865–3700 or Responsible Official: Guy Pence, Acting Forest Supervisor, 115 East 900 North St., Richfield, UT 84701.

SUPPLEMENTARY INFORMATION: New guidelines are being proposed because scientific research indicates that residual stubble height offers a more accurate and more efficient measure of forage utilization. This is a non-significant amendment.

Dated: April 16, 2001.

Guy W. Pence,

Acting Forest Supervisor, Fishlake National Forest.

[FR Doc. 01–11041 Filed 5–2–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

April 2001 Sunset Reviews: Final Results and Revocation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of five-year ("Sunset") reviews and revocation of antidumping duty orders: polyvinyl alcohol from the People's Republic of China (A–570–842), Japan (A–588–836), and Taiwan (A–583–824).

SUMMARY: On April 2, 2001, the Department of Commerce ("the Department") initiated sunset reviews of the antidumping duty orders on polyvinyl alcohol from the People's Republic of China ("PRC"), Japan, and Taiwan (66 FR 17524). Because no domestic interested party responded to the sunset review notice of initiation by the applicable deadline, the Department is revoking these antidumping duty orders.

EFFECTIVE DATE: May 14, 2001.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or James P. Maeder, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5050 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statue

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the "Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("Department") regulations are to 19 CFR part 351 (2000).

Background

On May 14, 1996, the Department issued antidumping duty orders on polyvinyl alcohol from the PRC, Japan, and Taiwan. Pursuant to section 751(c) and 19 CFR part 351 in general, the Department initiated sunset reviews of these orders by publishing a notice of the initiation in the **Federal Register**, 66 FR 17524 (April 2, 2001). In addition, as a courtesy to interested parties, the Department sent letters, via certified and registered mail, to each party listed on the Department's most current service list for this proceeding to inform them of the automatic initiation of sunset reviews of these orders.

Because the Department did not receive any domestic interested party response to the sunset review notice of initiation by the applicable deadline, April 17, 2001, the Department notified the International Trade Commission on April 19, 2001, that it intended to issue a final determination revoking these antidumping duty orders.

Determination To Revoke

Pursuant to section 751(c)(3)(A) of the Act and 19 CFR 351.218(d)(1)(iii)(B)(3), of the *Sunset Regulations*, if no domestic interested party responds to the notice of initiation, the Department shall issue a final determination, within 90 days after the initiation of the review, revoking the finding or order or terminating the suspended investigation. Because no domestic interested party filed a response to the notice of initiation, the Department finds that no domestic interested party

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is participating in these reviews, and it is revoking these antidumping duty orders.

Effective Date of Revocations

Pursuant to sections 751(c)(3)(A) and 751(d)(2) of the Act, and 19 CFR 351.222(i)(2)(i), the Department will instruct the Customs Service to terminate the suspension of liquidation of the merchandise subject to these orders entered, or withdrawn from warehouse, on or after May 14, 2001. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation. The Department will complete any pending administrative reviews of these orders and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: April 27, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–11150 Filed 5–2–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–807]

Notice of Preliminary Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products From the Netherlands

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 3, 2001.

FOR FURTHER INFORMATION CONTACT: Melissa Blackledge, Stephanie Arthur, or Robert James at (202) 482–3518, (202) 482–6312, or (202) 482–0649, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Applicable Statute and Regulations:

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Tariff Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations are to the regulations at 19 CFR part 351 (April 2000).

Preliminary Determination

We preliminarily determine that certain hot-rolled carbon steel flat products (hot-rolled steel) from the Netherlands are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

On December 4, 2000 the Department initiated antidumping investigations of hot-rolled steel from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine. See Initiation of Antidumping Duty Investigation: Certain Hot-Rolled Carbon Steel Flat Products from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine, 65 FR 77568 (December 12, 2000). Since the initiation of these investigations the following events have occurred.

In its initiation notice the Department set aside a period for all interested parties to raise issues regarding product coverage. See 65 FR 77568. We received comments regarding product coverage as follows: from Duracell Global Business Management Group on December 11, 2000; from Energizer on December 15, 2000; from Bouffard Metal Goods Inc. and Truelove & MacLean, Inc. on December 18, 2000; from the Corus Group plc., which includes Corus Steel USA (CSUSA) and Corus Staal BV (Corus Staal), and Thomas Steel Strip on December 26, 2000; and from Rayovac Corporation on March 12, 2001.

On December 22, 2000, the Department issued a letter to interested parties in all of the concurrent HR products antidumping investigations, providing an opportunity to comment on the Department's proposed model matching characteristics and hierarchy. Comments were submitted by: petitioners (January 5, 2001); Corus Staal and CSUSA (January 3, 2001); Iscor Limited (Iscor), respondent in the South Africa investigation (January 3, 2001); and Zaporizhstal, respondent in the Ukraine investigation (January 3, 2001). Petitioners agreed with the Department's proposed characteristics and hierarchy of characteristics. Corus Staal and CSUSA suggested adding a product characteristic to distinguish prime merchandise from non-prime merchandise. Neither Iscor nor Zaporizhstal proposed any changes to either the list of product characteristics proposed by the Department or the hierarchy of those product characteristics but, rather, provided information relating to its own products that was not relevant in the context of determining what information to include in the Department's questionnaires. For purposes of the questionnaires subsequently issued by the Department to the respondents, no changes were made to the product characteristics or the hierarchy of those characteristics from those originally proposed by the Department in its letter dated December 22, 2000. With respect to Corus Staal's and CSUSA's request, the additional product characteristic suggested to distinguish prime from non-prime merchandise is unnecessary. The Department already asks respondents to distinguish prime from non-prime merchandise in field number 2.2 "Prime vs. Secondary Merchandise." See the Department's Antidumping Duty Questionnaire, at B–7 and C–7. These fields are used in the model-match program to prevent matches of prime merchandise to non-prime merchandise.

On December 28, 2000, the United States International Trade Commission (ITC) notified the Department that it preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by the reason of imports of the subject merchandise from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine. See Hot-Rolled Steel Products from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine, 66 FR 805 (January 4, 2001).

On January 4, 2001 the Department issued an antidumping questionnaire to the Corus Group plc., the sole producer of subject hot-rolled steel in the Netherlands. We requested that Corus Staal and CSUSA respond to section A (general information, corporate structure, sales practices, and merchandise produced), section B (home market or third-country sales), section C (U.S. sales), section D (cost of production/constructed value), and, if applicable, section E (cost of further manufacture or assembly performed in the United States).

Respondent submitted its initial response to section A of the Department's questionnaire on February 1, 2001. We received Corus Staal's and CSUSA's sections B through E responses on February 26, 2001. Petitioners filed comments regarding all portions of respondent's questionnaire response on March 6, 2001. We issued the following supplemental questionnaires to respondent: (i) Section A on February 27, 2001, (ii) sections B and C on March 13, 2001, and (iii) sections D and E on March 14, 2001. Respondent filed a response to our section A and sections B through E supplemental questionnaires on March 16, 2001 and April 4, 2001, respectively. In addition, pursuant to the Department's preliminary determination that Corus Staal and CSUSA are affiliated with Galvpro LP (Galvpro), on March 16, 2001 respondent filed a section E response reporting the cost of U.S. further manufacturing incurred by Galvpro. See Memorandum to Joseph A. Spetrini; Affiliation Issue Regarding Galvpro LP and Laura Metaal Holding, February 27, 2001 (Affiliation Memorandum); see also Letter from Robert M. James to the Corus Group, February 27, 2001. The "Affiliation" section of this notice provides further information regarding our preliminary determination with respect to affiliation issues.

Period of Investigation

The period of investigation (POI) is October 1, 1999 through September 30, 2000. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (i.e., December 2000), and is in accordance with our regulations. See 19 CFR 351.204(b)(1).

Scope of Investigation

For purposes of this investigation, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this investigation. Specifically included within the scope of this investigation are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. If steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead; or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this investigation:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, e.g., ASTM specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron and Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearings steels, as defined in the HTS.
- Tool steels, as defined in the HTS.
- Silico-manganese (as defined in the HTS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTS.

The merchandise subject to this investigation is classified in the HTS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled flat-rolled carbon steel flat products covered by this investigation, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.

Affiliation

In its initiation notice, the Department identified as a respondent in this investigation the Corus Group plc. See 65 FR 77573. As indicated in respondent's February 1, 2001 questionnaire response at pages A–7 and A–8, the Corus Group plc. wholly owns Koninklijke Hoogovens NV (KHNV) which, in turn, wholly owns

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Corus Staal. CSUSA is a U.S. subsidiary of KHNV and acts as an agent for Corus Staal's U.S. sales. CSUSA argues in its January 18, 2001 submission that Galvpro should not be considered an affiliated party under section 771(33) of the Tariff Act because neither Corus Staal nor CSUSA has any direct or indirect ownership of Galvpro[1]. In addition, Corus Staal claims in its February 1, 2001 questionnaire response that it also considers sales made to Laura Metaal Trading BV (Laura Metaal) to be unaffiliated transactions because KHNV (Corus Staal's parent and a minority shareholder in Laura Metaal) is not in a position to exercise or assert control over Laura Metaal or its subsidiaries.

However, as explained below, the Department has preliminarily determined that Corus Staal, CSUSA, Laura Metaal, and Galvpro are affiliated parties within the meaning of section 771(33)(F) of the Tariff Act because they are all under the common control of the Corus Group plc. See Affiliation Memorandum. Section 771(33)(F) of the Tariff Act defines affiliated parties to include "[t]wo or more persons directly or indirectly controlling, controlled by, or under the common control with, any person." Control, in turn, is defined by section 771(33) as one person being "legally or operationally in a position to exercise restraint or direction over the other." In determining whether control exists, the Department considers corporate or family groupings, franchise or joint venture agreements, debt financing, and close supplier relationships. See 19 CFR 351.102(b).

Galvpro is a joint venture of Corus Coatings USA, Inc., a wholly-owned subsidiary of the Corus Group plc., and Weirton Coatings LLC, a subsidiary of Weirton Steel Corporation (Weirton). The Corus Group plc. (through Corus Coatings USA) has a substantial equity interest in Galvpro. See Respondent's February 1, 2001 response at page A–10; see also Respondent's January 18, 2001 letter to the Department at page 3. In previous cases the Department has determined that control exists when one party is in a position to influence the pricing and production decisions of the affiliated entity. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Postponement of Final Determination; Stainless Steel Sheet and Strip in Coils From Germany, 64 FR 30710, 30721–24 (June 8, 1999). The record in this investigation indicates that the Corus Group plc. is indeed in a position to influence pricing and production decisions of Galvpro. See Affiliation Memorandum at pages 2 and 3 for more detailed information regarding this issue. In addition, a review of the record reveals other indicia of control, including debt financing of Galvpro by the Corus Group plc.. See Affiliation Memorandum at page 3; see also Petitioners' January 26, 2001 submission at Exhibit 2. Finally, the significant equity in Galvpro by the Corus Group plc. (through Corus Coatings USA) is clear evidence of the ability of Corus Group plc. to exert influence over Galvpro's production, pricing, or cost of the subject merchandise or foreign like product.

The record also indicates that the Corus Group plc. has the ability to exert control over Laura Metaal. Laura Metaal consumes subject merchandise through its manufacturing operations and acts as a reseller through its service center.[2] See Respondent's February 1, 2001 response at page A–3. The Corus Group plc. wholly owns KHNV, which in turn has a minority shareholder interest in Laura Metaal. In addition, KHNV nominated one of the four voting members on Laura Metaal's Board of Directors, and nominated one of two non-voting advisors to the Board, affording the Corus Group plc. substantial influence over Laura Metaal and the company's operations. See Respondent's February 1, 2001 response at page A–3.

As indicated above, the Corus Group plc. has the potential ability to exercise direction and restraint over Galvpro's and Laura Metaal's production and pricing. The Corus Group plc. has a substantial equity interest in both Galvpro and Laura Metaal and plays a substantial role in their operations and management. The Corus Group plc. is in a position, legally and operationally, to exercise direction and restraint over both Galvpro and Laura Metaal, within the meaning of section 771(33)(F) of the Tariff Act, as amended by the URAA. Because Corus Staal and CSUSA are wholly-owned subsidiaries of the Corus Group plc, Corus Group plc also is in a position legally and operationally to exercise direction and restraint over Corus Staal and CSUSA, within the meaning of section 771(33)(F) of the Act. As a result, we preliminarily find that both Galvpro and Laura Metaal are affiliated with Corus Staal and CSUSA, within the meaning of section 771(33)(F) of the Tariff Act because these four companies are all under the common control of the Corus Group plc. For a more detailed discussion of our preliminary affiliation determination, please refer to the Affiliation Memorandum.

[1] Galvpro is a limited partnership, with ownership held by Weirton Coatings LLC, the Galvpro management, and Corus Group plc. (through Corus Coatings LLC). Galvpro was formed to construct and operate a manufacturing facility for the treatment of cold-rolled steel to produce galvanized steel products. See Respondent's January 18, 2001 submission at page 2.

Product Comparisons

Pursuant to section 771(16) of the Tariff Act, all products produced by the respondent that are within the scope of the investigation, above, and were sold in the comparison market during the POI, are considered to be foreign like products. We have relied on the following eleven criteria to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product: whether or not painted, quality, carbon content level, yield strength, thickness, width, whether coil or cut sheet, whether or not temper rolled, whether or not pickled, whether mill or trimmed edge, and whether the steel is rolled with or without patterns in relief. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's January 4, 2001 questionnaire.

Fair Value Comparisons

To determine whether sales of hot-rolled steel from the Netherlands were made in the United States at less than fair value, we compared constructed export price (CEP) to normal value (NV), as described in the "Constructed Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Tariff Act, we calculated weighted-average CEPs for comparison to weighted-average NVs.

Constructed Export Price

Corus Staal reported as export price (EP) transactions certain sales of subject merchandise sold to unaffiliated U.S. customers prior to importation. Corus Staal reported as CEP transactions its sales of subject merchandise sold through the Rafferty-Brown Companies, two affiliated steel service centers which further manufacture flat-rolled steel products. In addition, in accordance with our preliminary affiliation determination, Corus Staal reported as CEP transactions sales made through Galvpro.

We have preliminarily determined with respect to Corus Staal's reported EP sales that such transactions are properly classified as CEP transactions. Having reviewed the evidence on the record of this investigation regarding respondent's reported EP sales, we conclude that sales between the foreign producer (i.e., Corus Staal) and the U.S. customer were made "in the United States" by CSUSA on behalf of Corus Staal within the meaning of section 772(b) of the Tariff Act, and therefore, should be treated as CEP transactions. Specifically, although Corus Staal initially reaches the agreement with the U.S. customer on the estimated overall volume and pricing of merchandise, CSUSA provides the final written confirmation of the agreement, setting forth the agreed prices and quantities, to the U.S. customer. See Respondent's February 1, 2001 response at page A–56. The description provided by Corus Staal regarding the sales process for its alleged EP transactions indicates that, for these sales, the merchandise was "sold (or agreed to be sold)" in the United States. Therefore, we have preliminarily decided to treat Corus Staal's reported EP sales as CEP transactions. This is consistent with the Federal Circuit's decision in *AK Steel Corporation et. al.* v. *United States*, 226 F.3d 1361 (Fed. Cir. 2000) (AK Steel). See also Polyvinyl Alcohol from Japan: Preliminary Results of Antidumping Duty Administrative Review, 66 FR 11140 (February 22, 2001), where the Department preliminarily determined that, pursuant to AK Steel, sales through a U.S. affiliate were made "in the United States" and were therefore classifiable as CEP transactions. For a more detailed discussion of this issue, please refer to our Preliminary Analysis Memorandum, dated April 23, 2001.

We calculated CEP in accordance with subsection 772(b) of the Tariff Act. We based CEP on the packed, delivered, duty paid or delivered prices to unaffiliated purchasers in the United States. We made adjustments for price-billing errors and early payment discounts, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act; these included, where appropriate, foreign inland freight, marine insurance, foreign brokerage and handling, international freight, U.S. customs duties, U.S. inland freight, U.S. inland insurance, and U.S. warehousing expenses. In accordance with section 772(d)(1) of the Tariff Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs and warranty expenses), and indirect selling expenses, including inventory carrying costs. We also made an adjustment for profit in accordance with section 772(d)(3) of the Tariff Act.

With respect to subject merchandise to which value was added in the United States by the Rafferty Brown Companies and Galvpro prior to sale to unaffiliated customers, we deducted the cost of further manufacturing in accordance with section 772(d)(2) of the Tariff Act.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Tariff Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP the U.S. LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP it is the level of the constructed sale from the exporter to the importer.[3]

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Tariff Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP affect price comparability, we adjust NV under section 773(A)(7)(B) of the Tariff Act (the CEP offset provision). See, e.g., Certain Carbon Steel Plate from South Africa, Final Determination of Sales at Less Than Fair Value, 62 FR 61731 (November 19, 1997).

[3] The U.S. Court of International Trade (CIT) has held that the Department's practice of determining levels of trade for CEP transactions after CEP deductions is an impermissible interpretation of section 772(d) of the Tariff Act. See *Borden, Inc.* v. *United States*, 4 F. Supp. 2d 1221, 1241–42 (CIT 1998) (Borden); see also *Micron Technology* v. *United States*, 40 F. Supp. 2d. 481 (1999)(Micron). The U.S. Court of Appeals for the Federal Circuit (CAFC), however, has reversed the CIT's holdings in both Micron and Borden on the level of trade issue. The CAFC held that the statute unambiguously requires Commerce to deduct the selling expenses set forth in section 772(d) from the CEP starting price prior to performing its LOT analysis. See *Micron Technology Inc.* v. *United States*, Court Nos. 00–1058–1060 (Fed. Cir. March 7, 2001); see also *Borden, Inc.* v. *United States*, Court Nos. 99–1575–1576 (Fed. Circ. March 12, 2001)(unpublished opinion). Consequently, the Department will continue to adjust the CEP, pursuant to section 772(d) of the Tariff Act, prior to performing the LOT analysis, as articulated by the Department's regulations at 19 CFR 351.412.

In implementing these principles in this investigation, we obtained information from Corus Staal and CSUSA about the marketing stages involved in its reported U.S. and home market sales, including a description of the selling activities performed by Corus Staal and CSUSA for each channel of distribution. In identifying LOTs for U.S. CEP sales we considered the selling functions reflected in the starting price after any adjustments under section 772(D) of the Tariff Act.

In the home market, Corus Staal reported two channels of distribution (sales by Corus Staal and sales through its affiliated service centers) and three customer categories (end users, steel service centers, and trading companies). For both channels of distribution in the home market, Corus Staal performed similar selling functions, including strategic and economic planning, advertising, freight and delivery arrangements, technical/warranty services, and sales logistics support. The remaining selling activities did not differ significantly by channel of distribution. See Corus Staal's February 1, 2001 response at Exhibit A–8. Because channels of distribution do not qualify as separate levels of trade when the selling functions performed for each channel are sufficiently similar, we have determined that one LOT exists for Corus Staal's home market sales.

In the United States CSUSA reported two channels of distribution for sales of subject merchandise during the POI (EP sales made directly from CSUSA to U.S. customers and CEP sales made through affiliated service centers). For EP sales, CSUSA reported two customer categories (end users and steel service centers). See CSUSA's February 26, 2001 response at pages C–13 through C–15. As explained in the "Constructed Export Price" section of our notice, we have preliminary determined that all of Corus Staal's reported EP transactions are properly classified as CEP sales. In CEP situations we do not determine the U.S. LOT on the basis of the CEP starting price. Rather, as described above, we determine the U.S. LOT on the basis of the CEP starting price minus the expenses and profit deducted pursuant to section 772(d) of the Act.

Corus Staal and CSUSA claimed that sales made through its second channel of distribution in the home market (i.e., those through affiliated service centers) constituted a different LOT from its alleged EP sales. Corus Staal and CSUSA therefore requested a LOT adjustment to the extent that price comparisons were made between U.S. EP sales and those through home market affiliated service centers. As there are no

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EP transactions in the United States, it is not necessary to address respondent's request for a LOT adjustment with respect to EP sales.

With regard to its CEP sales, respondent claims that a CEP offset for sales made through two affiliated parties, Rafferty-Brown Steel Company of Connecticut (RBC) and Rafferty-Brown Steel Company of North Carolina (RBN) (collectively, the Rafferty-Brown Companies) is appropriate because the RBC and RBN sales are made at a point in the distribution process that is less advanced than Corus Staal's home market sales. In analyzing respondent's request for a CEP offset, we reviewed information respondent provided in section A of its response regarding selling activities performed and services offered in the U.S. and foreign market. We found there to be few differences in the selling functions performed by Corus Staal on sales to its affiliated U.S. importers and those performed for sales in the home market. For example, on sales to both home market customers and to affiliated U.S. importers, Corus Staal provided similar freight and delivery services and technical/warranty assistance. See Respondent's February 1, 2001 response at pages A–19 through A–46. The Department has preliminarily determined that the record does not support Corus Staal's claim that home market sales are at a different, more advanced LOT than the adjusted CEP sales. Accordingly, no CEP offset adjustment to NV is warranted. For a more detailed discussion regarding the basis for our LOT determination, refer to our Preliminary Determination Analysis Memorandum for the Corus Group plc., dated April 23, 2001.

Normal Value

Home Market Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (i.e., the aggregate volume of home market sales of the foreign like product was equal to or greater than five percent of the aggregate volume of U.S. sales), we compared Corus Staal's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Tariff Act. As Corus Staal's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable. Therefore, we have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

Affiliated-Party Transactions and Arm's-Length Test

Corus Staal's sales to affiliated home market customers for consumption which were not made at arm's-length prices were excluded from our analysis because we considered them to be outside the ordinary course of trade.[4] See 19 CFR 351.102(b). To test whether these sales were made at arm's-length prices, we compared on a model-specific basis the prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. See 19 CFR 351.403(c). In instances where no price ratio could be calculated for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, excluded them from our LTFV analysis. See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, 58 FR 37062, 37077 (July 9, 1993); see also Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Emulsion Styrene-Butadiene Rubber from Brazil, 63 FR 59509, 59512 (November 4, 1998). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

[4] On March 6, 2001 Corus Staal requested that it not be required to report downstream home market sales made through Feijen Staal service (Feijen), claiming that the cut-to-length sheet sold by this form would have a low likelihood of matching to U.S. sales of coiled material. The Department informed Corus Staal on March 8, 2001 that it would not be required to report Feijen's downstream sales based on Corus Staal's claims, on the record, with respect to the nature of the products sold by Feijen. The Department will accordingly include in its calculation of normal value sales to Feijen from Corus Staal, provided these transactions pass our arm's-length test. Corus Staal also requested an exemption from reporting downstream sales made by Vlietjonge BV (Vlietjonge), an affiliated party involved in the processing and sale of flat products. See Corus Staal's April 4, 2001 supplemental response at page A–4. Corus Staal again claimed that the cut-to-length merchandise sold by Vlietjonge would not likely match to U.S. sales of coiled material. The Department granted Corus Staal's request on April 6, 2001.

Cost of Production Analysis

Based on allegations contained in the petition, and in accordance with section 773(b)(2)(A)(i) of the Tariff Act, we found reasonable grounds to believe or suspect that sales of hot-rolled steel produced in the Netherlands were made at prices below the cost of production (COP). As a result, the Department has initiated investigations to determine whether Corus Staal made home market sales during the POI at prices below its respective COP, within the meaning of section 773(b) of the Tariff Act. We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Tariff Act, we calculated COP based on the sum of Corus Staal's cost of materials and fabrication for the foreign like product, plus an amount for home market SG&A expenses, interest expenses, and packing costs. We relied on the home market sales and COP information provided by Corus Staal in its original and supplemental responses. Where appropriate, we made certain adjustments to Corus Staal's reported COP. See Memorandum to the File, "Analysis of Cost-of-Production Data of Corus Group plc.," April 23, 2001, on file in room B–099 of the Main Commerce building.

B. Test of Home-Market Sales Prices

We compared the adjusted weighted-average COP for Corus Staal to the home market sales of the foreign like product, as required under section 773(b) of the Tariff Act, in order to determine whether these sales had been made at prices below the COP within an extended period of time (i.e., a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. In accordance with section 773(b)(2)(C)(i) of the Tariff Act, we determined that sales made below the COP were made in substantial quantities if the volume of such sales represented 20 percent or more of the volume of sales under consideration for the determination of normal value.

On a model-specific basis, we compared the revised COP to the home market prices, less any applicable movement charges and other direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Tariff Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) or the Tariff Act. In such cases, because we compared prices to POI-average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Tariff Act. Therefore, we disregarded the below-cost sales.

We found that for certain models of hot-rolled steel, more than 20 percent of the home-market sales by Corus Staal were made within an extended period of time at prices less than the COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded these below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Tariff Act. For those U.S. sales of hot-rolled steel for which there were no comparable home market sales in the ordinary course of trade, we compared EP to constructed value (CV) in accordance with section 773(a)(4) of the Tariff Act. See Price-to-CV Comparisons, below.

D. Calculation of Constructed Value

In accordance with section 773(e)(1) of the Tariff Act, we calculated CV based on the sum of Corus Staal's cost of materials, fabrication, SG&A, interest, U.S. packing costs, and an amount for profit. We made adjustments similar to those described above for COP. In accordance with section 773(e)(2)(A) of the Tariff Act, we based SG&A and profit on the amounts incurred and realized by Corus Staal in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the home market. For selling expenses we used the weighted-average home market selling expenses.

Price-to-Price Comparisons

We calculated NV based on the FOB or delivered prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for billing adjustments, early payment discounts, and inland freight. Where appropriate, we made adjustments for differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Tariff Act. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Tariff Act for differences in circumstances of sale for imputed credit expenses (offset by interest revenue) and warranties. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Tariff Act.

Price-to-CV Comparisons

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Tariff Act. We deducted from CV the weighted-average home market direct selling expenses and added the weighted-average U.S. product-specific direct selling expenses in accordance with section 773(a)(6)(C)(iii) of the Tariff Act.

Currency Conversions

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Tariff Act.

Verification

Pursuant to section 782(i) of the Tariff Act, we intend to verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Tariff Act, we are directing the Customs Service to suspend liquidation of all entries of hot-rolled steel from the Netherlands that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the CEP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Corus Staal BV	2.44
All Others	2.44

ITC Notification

In accordance with section 733(f) of the Tariff Act, we have notified the ITC of our determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determinations.

Public Comment

Case briefs or other written comments in at least six copies must be submitted to the Assistant Secretary for Import Administration no later than later than fifty days after the date of publication of this notice, and rebuttal briefs, limited to issues raised in case briefs, no later than fifty-five days after the date of publication of this preliminary determination. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Tariff Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, any hearing will be held fifty-seven days after publication of this notice, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the case and rebuttal briefs. We intend to make our final determination no later than 75 days after the date of this preliminary determination.

This determination is published pursuant to sections 733(f) and 777(i)(1) of the Tariff Act. Since January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: April 23, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–10846 Filed 5–2–01; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–811]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from Ukraine

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination in the less than fair value investigation of certain hot-rolled carbon steel flat products from Ukraine.

SUMMARY: On December 12, 2000, the Department of Commerce published a notice of initiation of an antidumping duty investigation of certain hot-rolled carbon steel flat products from Ukraine. This investigation covers four producers of the subject merchandise. The period of investigation is April 1, 2000 through September 30, 2000. The Department preliminarily determines that certain hot-rolled carbon steel flat products from Ukraine are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: May 3, 2001.

FOR FURTHER INFORMATION CONTACT: Lori Ellison or Laurel LaCivita of Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5811 and (202) 482–4243, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2000).

Preliminary Determination

We preliminarily determine that certain hot-rolled carbon steel flat products ("hot-rolled steel") from Ukraine are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

On December 4, 2000, the Department initiated an antidumping duty investigation of hot-rolled steel from Ukraine.[1] *See Notice of Initiation of Antidumping Duty Investigations: Certain Hot-Rolled Carbon Steel Flat Products From Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine,* 65 FR 77568 (December 12, 2000). Since the initiation of this investigation the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage. See Initiation Notice at 77569. We received no comments from any parties in this investigation. The Department did, however, receive comments regarding product coverage in the investigation of hot-rolled carbon steel products from the Netherlands. In that investigation we received comments regarding product coverage as follows: from Duracell Global Business Management Group on December 11, 2000; from Energizer on December 15, 2000, from Bouffard Metal Goods Inc., and Truelove & MacLean, Inc. on December 18, 2000, from the Corus Group plc., which includes Corus Steel USA (CSUSA) and Corus Staal BV (Corus Staal), and Thomas Steel Strip on December 26, 2000; and from Rayovac Corporation on March 12, 2001.

On December 22, 2000, the Department issued a letter to interested parties in all of the concurrent certain hot-rolled carbon steel flat products antidumping investigations, providing an opportunity to comment on the Department's proposed model matching characteristics and hierarchy. Comments were submitted by: Petitioners (January 5, 2001); Corus Staal BV and Corus Steel USA Inc., collectively referred to as Corus, respondent in the Netherlands investigation (January 3, 2001); Iscor Limited, respondent in the South Africa investigation (January 3, 2001); and Zaporizhstal, respondent in the Ukraine investigation (January 3, 2001). Petitioners agreed with the Department's proposed characteristics and hierarchy of characteristics. Corus suggested adding a product characteristic to distinguish prime merchandise from non-prime merchandise. Neither Iscor nor Zaporizhstal proposed any changes to either the list of product characteristics proposed by the Department or the hierarchy of those product characteristics but, rather, provided information relating to its own products that was not relevant in the context of determining what information to include in the Department's questionnaires.

For purposes of the questionnaires subsequently issued by the Department to the respondents, no changes were made to the product characteristics or the hierarchy of those characteristics from those originally proposed by the Department in its December 22, 2000 letter. With respect to Corus' request, the additional product characteristic suggested by Corus, to distinguish prime merchandise from non-prime merchandise, is unnecessary. The Department already asks respondents to distinguish prime from non-prime merchandise in field number 2.2 "Prime vs. Secondary Merchandise." See the Department's Antidumping Duty Questionnaire, at C–5 and C–6 (January 4, 2001).

On December 29, 2000, the United States International Trade Commission ("ITC") issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of the subject merchandise from Ukraine, which was published on January 4, 2001. *See Hot-Rolled Steel Products from Argentina, China, India, Indonesia, Kazakhstan, Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine,* 66 FR 805 (January 4, 2001) ("*ITC Preliminary Determination*").

On January 4, 2001, we issued questionnaires to the Embassy of Ukraine and to all of the known producers of the subject merchandise in Ukraine: Dnepropetrovsk Comintern Steel Works ("Dnepropetrovsk"), Ilyich Iron & Steel Works, Mariupol ("Ilyich"), Krivoi Rog State Mining and Metallurgical Works ("Krivorozhstal") and Zaporozhstal Iron & Steel Works ("Zaporizhstal").

On January 22, 2001, Krivorozhstal responded that it does not manufacture any of the subject merchandise and, accordingly, could not be one of the exporters of the subject merchandise to the United States.

On January 25, 2001, the Department requested comments from interested parties regarding surrogate country selection, and information to value factors of production. On February 6, 2001, we received comments concerning surrogate country selection from both the petitioners and Zaporizhstal.

[1] The petitioners with respect to the investigation in Ukraine are: Bethlehem Steel Corporation, LTV Steel Company, Inc., National Steel Corporation, U.S. Steel Group, a unit of USX Corporation, the United Steelworkers of America, Gallatin Steel Company, IPSCO Steel Inc., Nucor Corp., Steel Dynamics, Inc., Weirton Steel Corp., and Independent Steelworkers Union.

On February 9, 2001, Zaporizhstal submitted its section A response, including a request for "market economy treatment to Ukraine * * * or, at a minimum, market-oriented industry treatment to Zaporizhstal." On February 16, 2001, the government of Ukraine confirmed its support for these requests. *See Memorandum to the File from Lori Ellison to Edward Yang, Request for Revocation of NME Status/MOI Treatment for Zaporizhstal,* dated April 16, 2001. Also on February 16, 2001, the State Committee of Industrial Policy of Ukraine entered an appearance as an interested party to the proceeding. On February 21, 2001, Ilyich entered an appearance as a foreign producer and exporter of the subject merchandise and an interested party to the proceeding, but did not respond to the Department's questionnaire. Dnepropetrovsk similarly did not respond to the Department's questionnaire.

On February 23, 2001, the Department issued a section A supplemental questionnaire to Zaporizhstal. On February 26, 2001, the Department sent Zaporizhstal a questionnaire concerning its request for market-economy treatment for Ukraine and/or market-oriented industry ("MOI") treatment for Zaporizhstal. On February 27, 2001, Zaporizhstal submitted section C and D responses. In addition, it provided section C responses for Midland Industries Limited ("Midland Industries"), Midland Metals International, Inc. ("Midland Metals"), Midland Resources Holding Limited ("Midland Resources"), and Rudolph Robinson International, Ltd. ("Robinson"). (These companies, and Zaporizhstal, are occasionally referred to as "respondents" in this notice). Also on February 27, 2001, Zaporizhstal also submitted an unsolicited section B response (home market sales) in light of its request for market-economy treatment for Ukraine and/or market-oriented industry treatment for itself.

On March 9, 2001, respondents submitted a response to the first supplemental section A questionnaire. On March 13, 2001, Department officials met with counsel for respondents regarding this response and issued a letter to them in which the Department explained that a large number of their answers were unresponsive and grossly deficient despite explicit instructions in the original questionnaire and the supplemental questionnaire of February 23, 2001. *See Memorandum to the File from Lori Ellison to Rick Johnson; Ex-Parte Meeting,* dated March 19, 2001.

On March 14, 2001, the Department issued a supplemental section C and D questionnaire to respondents. On March 19, 2001, Zaporizhstal responded to certain issues noted in our March 13, 2001 letter regarding affiliation. In addition, on March 20, 2001, we issued a second supplemental section A questionnaire to respondents.

On March 22, 2001, certain petitioners (Bethlehem Steel Corporation, LTV Steel Company, Inc., National Steel Corporation, and U.S. Steel Group, a unit of USX Corporation) (hereinafter referred to as Bethlehem *et al.*) requested that the Department conduct a middleman dumping investigation of Robinson and other trading companies through whom Zaporizhstal's subject merchandise was sold to the United States.

On March 27, 2001, we issued a supplemental questionnaire to respondents concerning their claims of affiliation. On April 5, 2001, respondents submitted their second supplemental section A questionnaire response and their supplemental section C and D questionnaire responses. On April 9, 2001 respondents submitted responses to the March 27, 2001 affiliation questionnaire. On April 11, 2001 respondents submitted unsolicited information purporting to respond to selected questions from the Department's supplemental questionnaires. These responses were not filed on a timely basis.

Period of Investigation

The period of investigation ("POI") is April 1, 2000, through September 30, 2000. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, November 2000). *See* 19 CFR 351.204(b)(1).

Scope of Investigation

For purposes of this investigation, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this investigation.

Specifically included within the scope of this investigation are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this investigation:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, e.g., American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.

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• Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
• ASTM specifications A710 and A736.
• USS abrasion-resistant steels (USS AR 400, USS AR 500).
• All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
• Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this investigation is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by this investigation, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.

Middleman Dumping Allegation

On March 22, 2001, Bethlehem et al. requested that the Department conduct a middleman dumping investigation of Robinson and other trading companies through whom Zaporizhstal's subject merchandise was sold to the United States. They allege that the trading companies purchased subject merchandise from Midland Industries, and resold such merchandise into the United States at prices less than the trading companies' cost of acquisition and associated expenses. Further, Bethlehem et al. maintain that the trading companies' resale prices do not permit the recovery of these companies' total acquisition and associated costs. Because of the complexity of the issue, the Department has not yet determined the proper course of action on the petitioners' middleman dumping allegation. Accordingly, we will address the middleman dumping issue in the final determination.

Nonmarket-Economy Country Status

The Department has treated Ukraine as a non-market economy ("NME") country in all past antidumping investigations. *See, e.g., Notice of Preliminary Determinations of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars from Poland, Indonesia, and Ukraine,* 66 FR 8343 (January 30, 2001) and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Ukraine ("CTL Plate from Ukraine")* 62 FR 61754 (November 19, 1997). This NME designation remains in effect until it is revoked by the Department (*see* section 771(18)(C) of the Act). During this investigation, Zaporizhstal requested revocation of Ukraine's NME status. Following the official endorsement of this request by the Ukrainian government, the Department issued a letter to Zaporizhstal and the Ukrainian Embassy requesting, *inter alia,* that the company and the Government of Ukraine submit evidence addressing the statutory criteria relevant to their NME status and described in section 771(18)(B) of the Act. In addition, the Department requested that Zaporizhstal submit evidence of progress regarding those factors under section 771(18)(B) which Ukraine did not satisfy in its 1996 request for revocation. *See CTL Plate from Ukraine,* 62 FR 61754. However, as of the date of this determination, we have received no response to this request for information. Given that no evidence or argumentation on the record exists regarding progress since the earlier determination, for purposes of this preliminary determination, we have continued to treat Ukraine as an NME country.

Market Oriented Industry

As indicated above (*see* "Case History"), Zaporizhstal, with the support of the Government of Ukraine, has requested market-oriented-industry treatment for Zaporizhstal (that is, that the hot-rolled steel industry in Ukraine be treated as a market-oriented industry). Accordingly, on February 26, 2001, we issued a questionnaire concerning Zaporizhstal's market-oriented industry treatment. Specifically, we requested that Zaporizhstal and the Government of Ukraine address the following criteria: (1) For the merchandise under investigation, there must be virtually no government involvement in setting prices or amounts to be produced; (2) the industry producing the merchandise under investigation should be characterized by private or collective ownership; and (3) market-determined prices must be paid for all significant inputs, whether material or non-material (*e.g.,* labor and overhead), and for all but an insignificant portion of all the inputs accounting for the total value of the merchandise under review. To date, we have received no response to this request for information.

Furthermore, we note that in this investigation, there are three known producers of subject merchandise: Ilyich, Dnepropetrovsk, and Zaporizhstal. Of these three, Ilyich and Denpropetrovsk have failed to respond to the Department's questionnaire. As the Department stated in *Notice of Final Determination of Sales at Less Than Fair Value: Freshwater Crawfish Tail Meat From the People's Republic of China,* 62 FR 41351 (August 1, 1997), "consistent with past practice, we require information on the entire industry, or virtually the entire industry, in order to make an affirmative determination that an industry is market oriented." As further noted in that determination, the Department received questionnaire responses from only a small portion of the exporters named in the petition, and data on the record in that case revealed that several exporters who did not respond to the Department's questionnaire exported the subject merchandise into the United States during the POI. Finally, we also noted in that case that "although we received a letter from the China Chamber on March 6, 1997, this letter did not adequately respond to the Department's original request for information, and did not provide the necessary information regarding the universe of PRC crawfish producers and exporters."

In this case, we likewise are faced with the fact that known exporters of Ukrainian subject merchandise have not responded to the Department's requests for information. Furthermore, we have received no information from the Government of Ukraine, despite our explicit request. Consequently, consistent with Department practice, for purposes of this preliminary determination, we have continued to treat the hot-rolled steel industry in Ukraine as not qualified for MOI treatment.

No Shipper Treatment for Krivorozhstal

Krivorozhstal reported that it did not have any sales of hot-rolled carbon steel flat products to the United States. The Department confirmed, through a review of U.S. Customs data, the absence of shipments from Krivorozhstal to the U.S. during the POI. Therefore, in accordance with the Department's practice, we did not investigate Krivorozhstal.

Ukraine-Wide Rate

We sent questionnaires to all four companies identified as potential respondents in the petition. We did not receive responses from Ilyich and Dnepropetrovsk. As discussed below in the "Separate Rates" section of the notice, Zaporizhstal has significantly impeded this investigation. Given that we did not make a determination of a separate rate for Zaporizhstal, the Ukraine-wide rate will be applicable to it. In addition, U.S. import statistics indicate that the total quantity and value of U.S. imports of hot-rolled steel from Ukraine is greater than the total quantity and value of hot-rolled steel reported by Zaporizhstal (*see* Memorandum to Edward C. Yang, *Facts Available Corroboration Memorandum, Preliminary Determination of Hot-Rolled Carbon Steel Flat Products from Ukraine,* April 23, 2001 ("*FA/Corroboration Memorandum*")). Accordingly, we are applying the Ukraine-wide rate to all exporters in Ukraine based on our presumption that those respondents who failed to respond to our questionnaire constitute a single enterprise under common control by the government of Ukraine. *See, e.g., Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China,* 61 FR 19026 (April 30, 1996) ("*Bicycles*"). Therefore, the Ukraine-wide rate applies to all entries of the subject merchandise from Ukraine.

Application of Facts Available

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. The statute requires that certain conditions be met before the Department may resort to facts available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. Pursuant to section 782(e) of the Act, the Department shall not decline to consider information deemed "deficient" under section 782(d) of the Act if: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In selecting from among the facts available, section 776(b) of the Act authorizes the Department to use an adverse inference, if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See* also "Statement of Administrative Action" accompanying the URAA, H.R. Rep. No. 103–316, 870 ("SAA"). The statute and SAA provide that such an adverse inference may be based on secondary information, including information drawn from the petition.

In accordance with sections 776(a) and (b) of the Act, for the reasons explained below, we preliminarily determine that the use of total adverse facts available is warranted with respect to respondents Dnepropetrovsk, Ilyich, and Zaporizhstal.

Ilyich and Dnepropetrovsk

Although Ilyich entered an appearance as a foreign producer and exporter of the subject merchandise, it ultimately did not respond to any of the Department's questionnaires. Similarly, Dnepropetrovsk failed to provide any response to the Department's questionnaires. Given these companies' failure to respond, section 776(a) directs the Department to use facts available. In selecting from among facts available, section 776(b) of the Act authorizes the Department to use adverse inference where the parties fail to cooperate to the best of their abilities. Failure to respond to the Department's questionnaires demonstrates such lack of cooperation on the part of Ilyich and Dnepropretovsk. Therefore, for purposes of the preliminary determination, we have used adverse inference in selecting from among facts otherwise available, pursuant to section 776(b) of the Act.

Zaporizhstal

Although Zaporizhstal has responded in part to the Department's questionnaires and supplemental questionnaires over the course of this proceeding, its response is too deficient to be used as a basis for calculating a dumping margin. Specifically, it has not provided the Department with complete, documented, factors of production information. Moreover, the factors of production data which has been submitted has not been prepared in accordance with the Department's instructions, and its use would significantly distort the margin calculation. In addition, statements made in the Zaporizhstal's April 5, 2001 second supplemental section A response indicate that Zaporizhstal made sales of subject merchandise to the United States through an affiliated party, Midland Resources. However, Zaporizhstal had not previously identified this sales channel, and did not report the U.S. sales of Midland Resources. Finally, Zaporizhstal did not timely file its response to a large number of questions relating to U.S. sales of Midland Industries' (a company with which Zaporizhstal claims to be affiliated), thereby effectively denying the Department the ability to analyze significant sales information for the purposes of the preliminary determination. Accordingly, we have relied on the facts otherwise available for purposes of this preliminary determination, pursuant to section 776(a)(2)(A) and (B) of the Act. For a detailed analysis of Zaporizhstal's responses and their underlying deficiencies, *see* Memorandum to Edward C. Yang, *Facts Available Corroboration Memorandum, Preliminary Determination of Hot-Rolled Carbon Steel Flat Products from Ukraine,* April 23, 2001 ("*FA/Corroboration Memorandum*").

As described in the *FA/Corroboration Memorandum,* Zaporizhstal failed to provide adequate responses to the Department's supplemental questionnaires, despite the

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Department's clear instructions and repeated attempts to obtain the necessary data, pursuant to section 782(d) of the Act. Moreover, we are unable, under the application of section 782(e), to use the company's information in our preliminary calculations, since the responses currently on the record are so incomplete that they cannot serve as a reliable basis for reaching the applicable determination. *See* section 782(e)(3), (4) and (5) of the Act and the *FA/Corroboration Memorandum*.

We also find that the application of adverse inferences in this case is appropriate, pursuant to section 776(b) of the Act. As discussed above, despite the Department's clear directions in both the original and supplemental questionnaires, Zaporizhstal failed to provide critical information which was readily at the company's disposal. Specifically, it failed to provide a description of its calculation methodology for each of its factors of production, or worksheets demonstrating how each factor was determined, despite the Department's explicit requests. Furthermore, the data that was provided was in a distortive format that did not permit the comparison of U.S. sales and factors of production based on the product matching characteristics identified in the Department's questionnaire, or on any other reasonable basis. Zaporizhstal's most recent response to the Department's supplemental questionnaire reveals that the company made sales of subject merchandise through an affiliated party, but had not previously disclosed either this sales channel or the U.S. sales of that affiliate. In addition, the company failed to answer a significant number of questions concerning the sales of Midland Industries, in a timely manner, thereby depriving the Department of reasonable use of the information for the purposes of the preliminary determination. For these reasons, we find that the company did not cooperate to the best of its ability in responding to the Department's request for information, and that, consequently, an adverse inference is warranted under section 776(b) of the Act when selecting facts available. *See e.g., Notice of Final Determination of Sales at Less than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000).

Selection and Corroboration of Facts Available

Section 776(b) of the Act states that an adverse inference may include reliance on information derived from the petition. *See* also SAA at 829–831. Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation (*see* SAA at 870).

In order to determine the probative value of the margins in the petition for use as adverse facts available for purposes of this determination, we examined evidence supporting the calculations in the petition. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price (EP) and normal value (NV) calculations on which the margins in the petition were based, as adjusted by the Department for the purposes of initiation. Our review of the EP and NV calculations indicated that the information in the petition has probative value, as certain information included in the margin calculations in the petition is from public sources concurrent, for the most part, with the POI. For purposes of the preliminary determination, we attempted to further corroborate the information in the petition.

For EP we re-examined the calculations from the petition. Given that the EP was based on POI-wide average unit imports values taken from publicly available information, and no adjustments to EP were made, no further corroboration was necessary.

For NV, we re-examined the data petitioners relied upon in constructing the NV, as adjusted by the Department. We reviewed the financial data used in the petition, which is derived from publicly-available data (*i.e.*, 1997 financial statements from PT Krakatau Steel, an Indonesian producer of comparable merchandise), and therefore requires no further corroboration. With regard to the usage factors provided by petitioners, we find that the petition information is corroborated based on a comparison of the usage rates reported by Zaporizhstal to those that we used in our initiation of this investigation.

Zaporizhstal is an integrated steel producer with the typical coking, sintering and hot-metal production facilities. The factors of production information provided in the petition was based on a similarly integrated steel producer. We examined these factors and found that, although the usage factors information reported by Zaporizhstal are grossly deficient, and therefore unusable for the purposes of calculating a margin, evidence shows that the usage rates for significant factors of production in the petition are nevertheless lower than those reported by Zaporizhstal. As such, we find that the data we used in the petition, with adjustments, was conservative. Thus, we conclude that the 89.49 percent margin, the highest rate from the petition, has probative value.

Separate Rates

It is the Department's policy to assign all exporters of merchandise subject to investigation in a NME country a single rate, unless an exporter can demonstrate that it is sufficiently independent from government control so as to be entitled to a separate rate. In this case, the single responding company, Zaporizhstal, has claimed to be sufficiently independent to warrant a separate rate. However, given that Zaporizhstal failed to cooperate in this investigation to the best of its ability, we have not made a determination as to whether Zaporizhstal merits a separate rate, and are assigning a single country-wide rate for all exporters of subject merchandise from Ukraine for purposes of our preliminary determination.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify all company information relied upon in making our final determination, provided that necessary information is submitted in a timely manner and in the form requested by the Department.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all imports of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the U.S. Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percent
Ukraine-Wide	89.49

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination of sales at LTFV. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation, of the subject merchandise.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than fifty days after the date of publication of this notice, and rebuttal briefs, limited to issues raised in case briefs, no later than fifty-five days after the date of publication of this preliminary determination. *See* 19 CFR 351.309(c)(1)(i); 19 CFR 351.309(d)(1). A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, any hearing will be held fifty-seven days after publication of this notice at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief, and may make rebuttal presentations only on arguments included in that party's rebuttal brief. *See* 19 CFR 351.310(c).

If this investigation proceeds normally, we will make our final determination no later than 75 days after the date of the preliminary determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: April 23, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–10847 Filed 5–2–01; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–820]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Hot-Rolled Carbon Steel Flat Products From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 3, 2001.

FOR FURTHER INFORMATION CONTACT: Nithya Nagarajan, Timothy Finn, or John Conniff at (202) 482–5253, (202) 482–0065, and (202) 482–1009, respectively; AD/CVD Enforcement, Office 4, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR part 351 (2000).

Preliminary Determination

We preliminarily determine that certain hot-rolled carbon steel flat products (HRS) from India are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice.

Case History

This investigation was initiated on December 4, 2000. *See Notice of Initiation of Antidumping Duty Investigations: Certain Hot-Rolled Carbon Steel Flat Products from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine*, 65 FR 77568 (December 12, 2000) (*Initiation Notice*).[1] Since the initiation of these investigations, the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage. *See Initiation Notice*, at 77569. We received no comments from any parties in this investigation. The Department did, however, receive comments regarding product coverage in the investigation of HRS from the Netherlands. In that investigation we received comments from Duracell Global Business Management Group on December 11, 2000; from Energizer on December 15, 2000; from Bouffard Metal Goods, Inc.; and Truelove & Maclean, Inc., on December 18, 2000; and from Corus Staal BV and Corus Steel U.S.A., Inc. (collectively referred to as Corus); and Thomas Steel Strip Corporation on December 26, 2000, and from Rayovac Corporation on March 12, 2001.

On December 22, 2000, the Department issued a letter to all interested parties in each of the concurrent certain hot-rolled carbon steel flat products antidumping investigations,[2] providing an opportunity to comment on the Department's proposed model matching characteristics and hierarchy. Comments were submitted by: petitioners (January 5, 2001); Corus, a respondent in the concurrent Netherlands HRS investigation (January 3, 2001); Iscor Limited, a respondent in

[1] The petitioners in these investigations are Bethlehem Steel Corporation, Gallatin Steel Company, IPSCO Steel Inc., LTV Steel Company, Inc., National Steel Corporation, Nucor Corporation, Steel Dynamics Inc., U.S. Steel Group (a unit of USX Corporation), Weirton Steel Corporation, the Independent Steelworkers Union, and the United Steelmakers of America (collectively the petitioners). However, Weirton Steel Corporation is not a petitioner in the investigation involving the Netherlands.

[2] *See Initiation Notice* for a complete list of all the countries being investigated concurrently.

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the concurrent South Africa HRS investigation (January 3, 2001); and Zaporizhstal, a respondent in the concurrent Ukraine HRS investigation (January 3, 2001). No other interested party submitted comments. Petitioners agreed with the Department's proposed characteristics and hierarchy of characteristics. Corus suggested adding a product characteristic to distinguish prime merchandise from non-prime merchandise. Neither Iscor nor Zaporizhstal proposed any changes to either the list of product characteristics proposed by the Department or the hierarchy of those product characteristics but, rather, provided information relating to its own products that were not relevant in the context of determining what information to include in the Department's questionnaires. For purposes of the questionnaires subsequently issued by the Department to the respondents, no changes were made to the product characteristics or the hierarchy of those characteristics from those originally proposed by the Department in its December 22, 2000, letter. With respect to Corus' request, the additional product characteristic suggested by Corus, to distinguish prime merchandise from non-prime merchandise, is unnecessary. The Department already asks respondents to distinguish prime from non-prime merchandise in field number 2.2, "Prime vs. Secondary Merchandise." *See* the Department's Antidumping Duty Questionnaire, at B–7 and C–7. These fields are used in the model match program to prevent matches of prime merchandise to non-prime merchandise.

On December 28, 2000, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of the products subject to this investigation from Argentina, China, India, Indonesia, Kazakhstan, the Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine, are materially injuring an industry in the United States producing the domestic like product. *See Hot-Rolled Steel Products from Argentina, China, India, Indonesia, Kazakhstan, Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine*, 66 FR 805 (January 4, 2001).

The Department issued antidumping questionnaires to the two mandatory respondents in India on January 11, 2001.[3] *See Selection of Respondents* section below. We received responses to our questionnaire from both mandatory respondents, Ispat Industries Ltd. (Ispat) and Essar Steel Ltd. (Essar). We issued supplemental questionnaires, pertaining to sections A, B, C, and D of the antidumping questionnaire, to Ispat and Essar in March 2001. Ispat and Essar responded to these supplemental questionnaires in April 2001.

Ispat requested that it not be required to report certain information requested in the questionnaires. Specifically Ispat requested that it be permitted to exclude sales of HRS by its cold-rolling division. These sales were the result of internal transfers between Ispat's HRS facility and its cold-rolling production facility. On February 1, 2001, Ispat reported that its hot-rolling division transferred a small quantity of HRS to its cold-rolling division which primarily further processed the HRS into non-subject merchandise. However, the cold-rolling division sold a small percentage of HRS to unaffiliated home market customers during the period of investigation (POI). Also, Ispat reported that its cold-rolling division purchased HRS on the open market during the POI and does not maintain information that would enable it to track whether it sold HRS produced by Ispat's hot-rolling division or HRS purchased from unaffiliated suppliers. Therefore, according to Ispat, it would be extremely difficult for Ispat to identify and report the sales of HRS, by its cold-rolling division. In addition, Ispat claimed that the sales at issue involve products with characteristics unique to the home market, and thus it is unlikely that these sales would match its U.S. sales. As a result, Ispat requested that it be allowed to exclude these sales from its overall home market sales database.

On March 16, 2001, the Department issued a supplemental questionnaire to Ispat concerning this exclusion request. We received Ispat's response on March 22, 2001. The information contained in this response, in addition to information contained in Ispat's responses to the antidumping questionnaire, indicate that the sales covered by these exclusion requests are not representative of normal selling behavior, were made in such small volumes that they would have an insignificant effect on our analysis, and, if not excluded, would unduly complicate the Department's analysis. Therefore, we granted the exclusion request discussed above. *See* Letter from Thomas F. Futtner, Acting Office Director, to Ispat, dated April 16, 2001.

Postponement of the Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On April 13, 2001, Ispat and Essar requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until 135 days after the publication of the preliminary determination. Ispat and Essar also included a request to extend the provisional measures to not more than 135 days after the publication of the preliminary determination. Accordingly, since we have made an affirmative preliminary determination, and the requesting parties account for a significant proportion of exports of the subject merchandise, we have postponed the final determination until not later than 135 days after the date of the publication of the preliminary determination.

Period of Investigation

The period of investigation (POI) for this investigation is October 1, 1999, through September 30, 2000. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, November 2000).

Scope of Investigation

For purposes of these investigations, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of these investigations.

Specifically included within the scope of these investigations are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of these investigations, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of these investigations unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of these investigations:

• Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, e.g., American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).

• Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.

• Ball bearing steels, as defined in the HTSUS.

• Tool steels, as defined in the HTSUS.

• Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.

• ASTM specifications A710 and A736.

• USS abrasion-resistant steels (USS AR 400, USS AR 500).

• All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).

• Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to these investigations is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by these investigations, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Act permits the Department to investigate either (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined. Using company-specific export data for the POI, which we obtained from the American Embassy in New Delhi, India, we found that four Indian exporters shipped HRS to the United States during the POI. Due to limited resources we determined that we could investigate only the two largest producers/exporters, accounting for more than 60 percent of total exports to the United States. *See* Memorandum from Timothy Finn to Holly A. Kuga, *Selection of Respondents*, dated January 10, 2001. Therefore, we designated Ispat and Essar as mandatory respondents and sent them the antidumping questionnaire.

Product Comparisons

In accordance with section 771(16) of the Act, all products produced by the respondents covered by the description in the *Scope of Investigation* section, above, and sold in India during the POI are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied upon the following product characteristics to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product or CV: painted or not painted; quality; carbon content; yield strength; thickness; width; cut-to-length or coil; tempered or not tempered; pickled or not pickled; edge trim; and with or without patterns in relief. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed above.

Fair Value Comparisons

To determine whether sales of HRS from India were made in the United States at LTFV, we compared the export

[3] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. Section E requests information on further manufacturing.

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price (EP) to the normal value (NV), as described in the *Export Price* and *Normal Value* sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs. We compared these to weighted-average home market prices.

Date of Sale

For home market and U.S. sales, Ispat and Essar both reported the date of invoice/shipment, as the most appropriate date of sale. Essar and Ispat both stated that the invoice/shipment date best reflects the date on which the material terms of sale are established and that price and/or quantity can and do change between order confirmation date and invoice/shipment date. Petitioners, however, have alleged that the sales documentation provided by respondents indicates that the order confirmation date appears to be the date when the material terms of sale are set for a majority of these respondents' sales of HRS. On March 2, 2001, the Department requested respondents to provide additional information concerning the choice of date of invoice/shipment as the date of sale. On March 16, 2001, Ispat and Essar reiterated that invoice/shipment date is the most appropriate date of sale and requested that they not have to report sales based on any alternative date of sale.

The Department is preliminarily using the dates of sale reported by each respondent (*i.e.*, date of invoice/shipment), as this is our preferred methodology. The Department uses invoice date under section 351.401(i) unless there is sufficient evidence that material terms of sale initially set at some earlier date were not subject to change. This methodology has recently been affirmed by the Court of International Trade. *See SEAH Steel Corp. Ltd.* v. *United States*, Slip. Op. 01–20 (Ct. Int'l. Trade) (February 23, 2001) (ruling that the Department's choice of date of invoice as the date of sale was appropriate and in accordance with the Department's practice). However, we intend to fully examine establishment of material terms of sale at verification, and we will incorporate our findings, as appropriate, in our analysis for the final determination. Due to the complexity of this issue, we invite all interested parties to submit comments on this issue in accordance with the schedule for comments set forth in this notice.

Export Price

For the price to the United States, we used EP, in accordance with section 772(a) of the Act, because Ispat and Essar sold the merchandise directly to unaffiliated U.S. customers or sold the merchandise to unaffiliated trading companies, with knowledge that these companies in turn sold the merchandise to U.S. customers, and constructed export price was not otherwise warranted. For both Ispat and Essar, we calculated EP using the packed prices charged to the first unaffiliated customer in the United States (the starting price).

We deducted from the starting price, where applicable, amounts for discounts and rebates, and movement expenses in accordance with section 772(c)(2)(A) of the Act. In this case, movement expenses include foreign inland freight, international freight, foreign and U.S. brokerage and handling charges, insurance, U.S. duties and U.S. inland freight.

Duty Drawback

In the instant investigation, Ispat and Essar have claimed a duty drawback adjustment for the Government of India's Duty Entitlement Passbook Scheme ("DEPB"). Under the DEPB program, exporters are granted a credit which is equivalent to 14 percent of the FOB value of exports. The exporters then use this credit to offset the customs duty payment on imported inputs used to manufacture exported products.

In addition, Essar has claimed a duty drawback adjustment for the Advance License program. The Advance License program allows exporters to import specified inputs duty-free to utilize in production of a finished product. According to the information on the record, there is a quantitative limit on the duty-free imports for each of the specified input materials. These limited inputs are exempt from customs duties, and upon exportation of the finished merchandise, the duties collected on imported inputs are refunded to the exporter.

The petitioners, in their comments for our preliminary determination, filed on April 11, 2001, argue that neither Ispat nor Essar qualify for a duty drawback adjustment for the DEPB program; and in addition, that Essar does not qualify for the Advance License program, because the respondents have failed to show that the duty drawback received conformed to the Department's requirements for granting the adjustment.

The Department applies a two-pronged test to determine whether a respondent has fulfilled the statutory requirements for a duty drawback adjustment pursuant to section 772(c)(1)(B) of the Act. Specifically, the Department grants a duty drawback adjustment if it finds that: (1) Import duties and rebates are directly linked to and are dependent upon one another, and (2) the company claiming the adjustment can demonstrate that there are sufficient imports of raw materials to account for the duty drawback received on exports of the manufactured product. *See Steel Wire Rope from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 61 FR 55965, 55968 (October 30, 1996).

The Department has repeatedly rejected the claim for duty drawback under the DEPB, based on the fact that the applicants received a drawback for the full amount of dutiable imports although there is no direct linkage between the material actually imported and the refunded amount. *See Final Determination: Stainless Steel Round Wire from India*, 64 FR 17319, 17320 (April 9, 1999). The record evidence in this investigation demonstrates that neither Essar nor Ispat was able to "link" the import duties paid on the input, and then rebated upon exportation. Rather the evidence on the record demonstrates that the DEPB program is a refund of duties calculated on an aggregated basis rather than on a input-specific basis. *See Essar: Supplemental Questionnaire Response*, dated April 6, 2001, at 48–50; *see also Ispat: Supplemental Questionnaire Response*, dated April 6, 2001, at SC–18–19. After a review of the documentation on the record, we found that neither Ispat nor Essar was able to (1) demonstrate that import duties and rebates for the DEPB program are directly linked to and dependent upon one another; or (2) demonstrate that there were sufficient imports of raw materials to account for the duty drawback received on exports of the finished product. *See Final Results of Administrative Review: Silicon Metal from Brazil*, 64 F.R. 6305, 6318 (February 9, 1999) (denying a duty drawback adjustment when the respondent had not met the burden of demonstrating that it was entitled to the adjustment). Based on this information, we preliminarily find that Ispat and Essar have failed to meet both prongs of the Department's test with regard to the DEPB duty drawback adjustment. As a result, we have not made an adjustment to U.S. price for DEPB duty drawback in the preliminary determination.

With regard to the Advance License program, we further find that Essar has not met its burden. Essar failed demonstrated that in order to obtain a refund from the Government of India under the Advance License Program, that it was able to link the value of imports eligible for refund to the actual quantity of inputs imported and then used in the production and export of subject merchandise. Essar states that it provides the following information to the Government of India: (1) The quantity of exports; (2) the quantity of imports; and (3) "whether the company imported inputs in proportion to the quantitative norms set by the government." *See Essar: Supplemental Questionnaire Response*, at 49–50. However, based upon an examination of the information on the record, the Department is unable to find that Essar's records indicate that the calculated amount of exempted import duties were applied to the import quantities of input materials actually utilized (as opposed to the total aggregate quantity of imports eligible), and then reconciled to the quantity of merchandise exported to derive the reported per unit duty drawback amount. See id. at 50. Therefore, we preliminarily find that Essar was unable to (1) demonstrate that import duties and rebates for the Advance License program are directly linked to and dependent upon one another; and (2) demonstrate that there were sufficient imports of raw materials to account for the duty drawback received on exports of the finished product. Therefore, we preliminarily find that Essar has not met both prongs of the Department's test with regard to the Advance Licence duty drawback adjustment. As a result, we have not made an adjustment to Essar's U.S. price for Advance License duty drawback in the preliminary determination.

Normal Value

A. Selection of Comparison Market

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or has sufficient aggregate value, if quantity is inappropriate) and that there is no particular market situation in the home market that prevents a proper comparison with the EP transaction. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

For this investigation, we found that Ispat and Essar each had a viable home market for HRS. Thus, the home market is the appropriate comparison market in this investigation, and we used the respondents' submitted home market sales data for purposes of calculating NV.

In deriving NV, we made adjustments as detailed in the *Calculation of NV Based on Home Market Prices* and *Calculation of NV Based on CV*, sections below.

B. Affiliated-Party Transactions and Arm's-Length Test

Essar reported that it only sold HRS in the home market to unaffiliated customers. Therefore, the Department's arm's-length test is inapplicable with regard to Essar's home market sales.

Ispat reported that it made home market sales to other affiliated companies. We applied the arm's-length test to sales from Ispat to these affiliated companies by comparing them to sales of identical merchandise from Ispat to unaffiliated home market customers. If these affiliated party sales satisfied the arm's-length test, we used them in our analysis. Sales to affiliated customers in the home market which were not made at arm's-length prices were excluded from our analysis because we considered them to be outside the ordinary course of trade. *See* 19 CFR 351.102.

To test whether these sales were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers net of all discounts and rebates, movement charges, direct selling expenses, and home market packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's-length. *See* 19 CFR 351.403(c) and 62 FR at 27355, *Preamble—Department's Final Antidumping Regulations* (May 19, 1997).

A. COP Analysis

Concurrent with the filing of the original petition, the petitioners alleged that sales of HRS in the home market of India were made at prices below the fully absorbed COP, and accordingly, requested that the Department conduct a country-wide sales-below-COP investigation. Based upon the comparison of the adjusted prices from the petition for the foreign like product to its COP, and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that sales of HRS manufactured in India were made at prices below the COP. *See Initiation Notice* at 77572. As a result, the Department has conducted an investigation to determine whether Ispat and Essar made sales in the home market at prices below their respective COPs during the POI within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

1. Calculation of COP. In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP for each respondent based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for the home market general and administrative (G&A) expenses and interest expenses.

We relied on the COP data submitted by Ispat and Essar in their cost questionnaire responses, except, as noted below, in specific instances where Ispat's submitted costs were not appropriately quantified or valued.

a. Changes to Ispat's Cost of Production. Based on the information on the record, it appears that Ispat reached commercial levels of production prior to the POI. Therefore, we disallowed the start-up adjustment claimed by Ispat. We adjusted the reported costs to include depreciation expenses and certain raw material costs that were omitted. We recalculated Ispat's G&A expense ratio using its company-wide G&A costs from its fiscal year 2000 audited financial statements. We adjusted Ispat's financial expense ratio to include the net exchange rate difference and loss on cancellation of forward contract per its audited financial statements.

See Calculation Memorandum from Michael P. Harrison to Neal Halper, dated April 23, 2001, for a discussion of the above-referenced adjustments.

2. Test of Home Market Sales Prices. On a model-specific basis, we compared the revised COP to the home market prices, less any applicable discounts and rebates, movement charges, selling expenses, commissions, and packing. We then compared the adjusted weighted-average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP within an extended period of time (i.e., a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time.

3. Results of the COP Test. Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such

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sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) or the Act. In such cases, because we compared prices to POI average costs, we also determined that such sales were not made at prices that would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

We found that, for certain models of HRS, more than 20 percent of the home market sales by Ispat and Essar were made within an extended period of time at prices less than the COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded these below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. Calculation of NV Based on Home Market Prices

We based home market prices on the packed prices to unaffiliated purchasers in India. We adjusted, where applicable, the starting price for discounts and rebates. We made adjustments for any differences in packing, in accordance with section 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and we deducted movement expenses and domestic brokerage and handling, pursuant to section 773(a)(6)(B)(ii) of the Act. In addition, where applicable, we made adjustments for differences in circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Act movement expenses (foreign inland freight and warehousing). We also made COS adjustments, where applicable, by deducting direct selling expenses incurred for home market sales (credit expense and warranty) and adding U.S. direct selling expenses. We also made adjustments, pursuant to 19 CFR 351.410(e), for indirect selling expenses incurred on comparison-market or U.S. sales where commissions were granted on sales in one market but not in the other (the commission offset). No other adjustments to NV were claimed or allowed.

E. Calculation of NV Based on CV

Section 773(a)(4) of the Act provides that, where NV cannot be based on comparison-market sales, NV may be based on CV. Accordingly, for those models of HRS for which we could not determine the NV based on comparison-market sales, either because there were no sales of a comparable product or all sales of the comparison products failed the COP test, we based NV on CV.

F. Level of Trade (LOT)/CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as the U.S. transaction (in this case EP transactions). The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit. For EP sales, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer.

To determine whether NV sales are at a different LOT than EP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

In implementing these principles in this investigation, we obtained information from the respondents about the marketing stages involved in the reported U.S. and home market sales, including a description of the selling activities performed by the respondents for each channel of distribution. In identifying LOTs for EP and home market sales, we considered the selling functions reflected in the starting price before any adjustments. In this investigation, neither Ispat nor Essar requested a LOT adjustment.

Ispat. Ispat reported that it sold subject merchandise to three different types of customers (end users, service centers, and trading companies through three separate channels of distribution) in the home market. Further, Ispat indicated that, for each of the reported channels of distribution, it provided the same types of selling functions (market research, sales calls, interactions with customers, inventory maintenance, freight, and technical advice) at the same levels of intensity. Since all three types of Ispat's customers received the same selling functions, at the same levels of intensity, we determine that there is a single LOT in the home market with respect to Ispat.

Ispat also reported that it made EP sales of subject merchandise to a single type of customer (trading companies) through a single channel of distribution in the U.S. market. Further, Ispat indicated that it performed certain types of selling functions (pre- and post-sale customer visits, order processing, inventory maintenance, technical advice, freight arrangements, warranty services, and advertising) for the U.S. customers. As a result, we preliminary determine that there is a single level of trade with respect to Ispat's EP sales. We then compared the LOT for Ispat's EP sales to the home market LOT and found that its EP sales are provided at the same LOT as its home market sales. Thus, no LOT adjustment is warranted, and we have not made a LOT adjustment for Ispat's sales.

Essar. Essar reported that it sold subject merchandise to two different types of customers (end users and service centers through two separate channels of distribution) in the home market. Further, it indicated that, for each of the reported channels of distribution, it provided the same types of selling functions (price negotiation, sales calls, interactions with customers, inventory maintenance, freight, and warranty services) at the same levels of intensity. Since both types of Essar's customers received the same selling functions, at the same levels of intensity, we determine that there is a single LOT in the home market with respect to Essar.

Essar further reported that it made EP sales of subject merchandise to a single type of customer (trading companies) through a single channel of distribution in the U.S. market. Further, Essar indicated that it provided certain types of selling functions (price negotiation, processing orders, freight and delivery arrangements, inventory maintenance, sales calls and visits, credit and payment collection, and warranty services) for the U.S. customers. As a result, we preliminary determine that there is a single level of trade for U.S. EP sales. We then compared the LOT for EP sales to the home market LOT and found that Essar's EP sales are provided at the same LOT as its home market sales. Thus, no LOT adjustment is warranted, and we have not made a LOT adjustment for Essar's sales.

Currency Conversions

We made currency conversions into U.S. dollars in accordance with section 773A of the Act based on exchange rates in effect on the dates of the U.S. sales, as obtained from the Federal Reserve Bank (the Department's preferred source for exchange rates).

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determination.

All Others Rate

Recognizing the impracticality of examining all producers and exporters in all cases, section 735(c)(5)(A) of the Act provides for the use of an "all others" rate, which is applied to non-investigated firms. *See* SAA at 873. This section states that the all others rate shall generally be an amount equal to the weighted average of the weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and de minimis margins, and any margins based entirely upon the facts available. Therefore, we have preliminarily assigned to all other exporters of Indian HRS, an "all others" margin that is the weighted average of the margins calculated for Ispat and Essar.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service (Customs Service) to suspend liquidation of all entries of HRS from India that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which NV exceeds EP, as indicated in the chart below. We will adjust the deposit requirements to account for any export subsidies found in the companion countervailing duty investigation. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/exporter	Margin (percent)
Ispat Industries Ltd	39.36
Essar Steel Ltd	34.55
All Others	34.75

Disclosure

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of the proceedings in these investigations in accordance with 19 CFR 351.224(b).

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our sales at LTFV determination. If our final antidumping determination is affirmative, the ITC will determine whether the imports covered by that determination are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to more than one HRS case, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

As noted above, the final determination will be issued within 135 days after the date of the publication of the preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of Assistant Secretary for Import Administration.

Dated: April 23, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–10848 Filed 5–2–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–812]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Indonesia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 3, 2001.

FOR FURTHER INFORMATION CONTACT: Mark Manning or Nova Daly at (202) 482–3936 and (202) 482–0989, respectively; AD/CVD Enforcement, Office 4, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR part 351 (2000).

Preliminary Determination

We preliminarily determine that certain hot-rolled carbon steel flat products (HRS) from Indonesia are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice.

Case History

This investigation was initiated on December 4, 2000. *See Notice of Initiation of Antidumping Duty Investigations: Certain Hot-Rolled Carbon Steel Flat Products From Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine*, 65 FR 77568 (December 12,

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2000) (*Initiation Notice*).[1] Since the initiation of these investigations, the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage. *See Initiation Notice* at 77569. We received no comments from any parties in this investigation. The Department did, however, receive comments regarding product coverage in the investigation of HRS from the Netherlands. In that investigation we received comments from Duracell Global Business Management Group on December 11, 2000; from Energizer Battery Co., Inc. on December 15, 2000; from Bouffard Metal Goods, Inc., and Truelove & Maclean, Inc., on December 18, 2000; from Corus Staal BV and Corus Steel U.S.A., Inc., (collectively referred to as "Corus") and Thomas Steel Strip Corporation on December 26, 2000; and from Rayovac Corporation on March 12, 2001.

On December 22, 2000, the Department issued a letter to interested parties in all of the concurrent HRS antidumping investigations, providing an opportunity to comment on the Department's proposed model matching characteristics and hierarchy. Comments were submitted by: petitioners (January 5, 2001); Corus, respondent in the Netherlands investigation (January 3, 2001); Iscor Limited, respondent in the South Africa investigation (January 3, 2001); and Zaporizhstal, respondent in the Ukraine investigation (January 3, 2001). Petitioners agreed with the Department's proposed characteristics and hierarchy of characteristics. Corus suggested adding a product characteristic to distinguish prime merchandise from non-prime merchandise. Neither Iscor nor Zaporizhstal proposed any changes to either the list of product characteristics proposed by the Department or the hierarchy of those product characteristics but, rather, provided information relating to its own products that was not relevant in the context of determining what information to include in the Department's questionnaires. For purposes of the questionnaires subsequently issued by the Department to the respondents, no changes were made to the product characteristics or the hierarchy of those characteristics from those originally proposed by the Department in its December 22, 2000 letter. With respect to Corus' request, the additional product characteristic suggested by Corus, to distinguish prime merchandise from non-prime merchandise, is unnecessary. The Department already asks respondents to distinguish prime from non-prime merchandise in field number 2.2 "Prime vs. Secondary Merchandise." *See* the Department's Antidumping Duty Questionnaire, at B–7 and C–7 (January 4, 2001). These fields are used in the model match program to prevent matches of prime merchandise to non-prime merchandise.

On January 4, 2001, the Department issued an antidumping questionnaire to Krakatau, the mandatory respondent in Indonesia.[2] *See* January 3, 2001 respondent selection memo. On January 15, 2001, we received a faxed letter from Krakatau requesting an extension of time to respond to section A of the Department's questionnaire. On January 18, 2001, we received Krakatau's official, mailed section A extension request. On January 23, 2001, the Department granted Krakatau an extension of time to respond to section A of the questionnaire and notified Krakatau that submitting documents to the record of this proceeding via fax is not an acceptable method of submission and that such documents would not be accepted on an official basis. In the January 23, 2001 letter to Krakatau, we provided detailed information concerning the appropriate manner of submitting information or requests to the record, including a discussion of the regulations guiding the official submission of information.

On February 5, 2001, we received Krakatau's response to section A of the Department's questionnaire. Also on February 5, 2001, the Department received a faxed letter from Krakatau requesting an extension of time to respond to sections B, C, and D of the questionnaire. On February 8, 2001, the Department sent a letter to Krakatau granting its request for an extension of the deadline. In the letter, we again instructed Krakatau to follow the proper procedures for submitting requests to the record.

On February 23, 2001, the Department received a letter from Krakatau requesting a further extension of time to respond to sections B, C, and D of the questionnaire. The Department subsequently sent a letter, dated February 23, 2001, denying Krakatau's request for a further extension due to the limited time available in this investigation and the impending preliminary determination. On February 28, 2001, fifty-five days after issuing the antidumping questionnaire, the Department received Krakatau's response to sections B, C, and D of the questionnaire and non-functional sales databases.

On March 1, 2001, the Department sent Krakatau a request for supplemental information regarding section A of the Department's questionnaire. On March 2, 2001, the Department received a letter from the petitioners notifying the Department that Krakatau had failed to serve them a computer diskette containing the sales and cost databases, which was due February 28, 2001. On March 5, 2001, the Department sent a letter to Krakatau notifying it that the sales databases it submitted to the Department on February 28, 2001 were not functional and provided instructions on the proper format for submitting computer data. In addition, this letter instructed Krakatau to send copies of the revised home and U.S. market sales databases to the petitioners. Sixty-four days after issuing the questionnaire, the Department received, on March 9, 2001, the revised sales databases, in addition to the cost reconciliation package and an unsolicited addendum to the February 28, 2001 section D response. However, Krakatau submitted only three copies of the proprietary version of its response, rather than the six copies required by the Department's regulations. In addition, Krakatau failed to submit a public version of these documents.

On March 12, 2001, the Department received Krakatau's response to the Department's supplemental section A questionnaire. On March 14, 2001, the Department sent Krakatau a supplemental questionnaire regarding section D of the Department's questionnaire. On March 15, 2001, the Department sent a letter to Krakatau stating that its March 9, 2001 submission did not contain the correct number of proprietary and public copies. In that letter, we again provided Krakatau with the same detailed information concerning the correct procedures for submitting information as was originally provided on January 23, 2001. On March 16, 2001, the Department sent Krakatau a request for supplemental information covering sections B and C of the questionnaire. The Department issued a second supplemental section D questionnaire on March 23, 2001. Shortly thereafter, on March 30, 2001, the Department received Krakatau's supplemental response to section D of the questionnaire. On April 2, 2001, the Department received Krakatau's supplemental response to sections B and C of the Department's questionnaire. However, the software program Krakatau used to compress the size of its supplemental data and the inconsistent use of different date formats in the home market invoice date field, caused the Department a significant delay in accessing the supplemental data for our analysis. In addition, one of the petitioners notified the Department that Krakatau failed to serve it with a diskette containing the supplemental sales databases, which was due April 2, 2001. Since the date of the Department's preliminary determination was approximately three weeks away, we provided this petitioner with a copy of the supplemental data we received from Krakatau. *See* Memorandum to the File, dated April 2, 2001. On April 16, 2001, the Department issued Krakatau a second supplemental questionnaire covering sections B and C, with a due date of April 26, 2001. Since this due date is after the preliminary determination (*i.e.*, April 23, 2001), the information received in this response will be taken into account for the final determination.

[1] The petitioners in these investigations are Bethlehem Steel Corporation, Gallatin Steel Company, IPSCO Steel Inc., LTV Steel Company, Inc., National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., U.S. Steel Group (a unit of USX Corporation), Weirton Steel Corporation, the Independent Steelworkers Union, and the United Steelworkers of America (collectively the petitioners). Weirton Steel Corporation is not a petitioner in the investigation involving hot-rolled steel from the Netherlands.

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. Section E requests information on further manufacturing.

Period of Investigation

The POI for this investigation is October 1, 1999 through September 30, 2000. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, November 2000).

Scope of Investigation

For purposes of this investigation, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this investigation.

Specifically included within the scope of this investigation are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this investigation:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to these investigations is classified in the HTSUS under the following tariff classification numbers: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by this investigation, including vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff classification numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS tariff classification numbers are provided for convenience and U.S. Customs Service (Customs) purposes, the written description of the merchandise under investigation is dispositive.

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Facts Available

1. Application of Facts Available

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, subject to sections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, the Department shall use, subject to sections 782(d) of the Act, facts otherwise available in reaching the applicable determination. Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference, if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–20 (October 16, 1997). Finally, section 776(b) of the Act states that an adverse inference may include reliance on information derived from the petition. *See also* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Rep. No. 103–316 at 870 (1994).

For the reasons discussed below, the Department determines that, in accordance with sections 776(a)(2)(B) and 776(b) of the Act, the use of adverse facts available is appropriate for the preliminary determination for Krakatau. The evidence on the record establishes that the use of total facts available for Krakatau is warranted because Krakatau failed to provide complete sales and cost questionnaire responses within the meaning of section 776(a)(2)(B) of the Act. In its initial and supplemental responses, Krakatau failed to provide the information in the manner requested in the Department's January 4, 2001 antidumping questionnaire, the March 16, 2001 sections B and C supplemental questionnaire, and the March 14 and 23, 2001 supplemental section D questionnaires.

We also note that at no time did Krakatau notify the Department, pursuant to section 782(c)(1) of the Act, that it was unable to submit the information requested in the requested form and manner, nor did it suggest alternative forms in which it would be able to submit the requested information. Throughout the course of this antidumping investigation, the Department gave Krakatau, a pro se company, assistance and opportunities to comply with the Department's requests for information. Specifically, taking into consideration the fact that the respondent is a pro se company, the Department provided Krakatau detailed information and guidance on how to properly calculate and report sales and cost data and adjustments, granted Krakatau extensions to reply to requests for information, and provided an opportunity to explain and correct the deficiencies in its responses. However, at no point in the investigation did Krakatau notify the Department that it had any difficulties in submitting the information in the form and manner requested, seek guidance on alternative reporting requirements, or propose an alternate form for submitting the required data, as contemplated in section 782(c)(1) of the Act. Despite the efforts at assistance on the part of the Department, Krakatau failed to provide information reliable enough that it can serve as a basis for reaching the applicable determination.

Pursuant to section 782(e)(3) of the Act, the sales information Krakatau provided in its initial and supplemental responses was deficient such that the Department cannot consider it as a reliable basis for reaching the applicable determination. Our analysis of Krakatau's sales response found deficiencies that prohibit us from conducting an accurate model match, which prevents us from ensuring that products sold in the U.S. market are accurately matched to identical or most similar products sold in the home market. Without properly matching products sold in the U.S. and home markets, we cannot accurately identify similar matches and, as appropriate, calculate an accurate difference in merchandise (DIFMER) adjustment to account for the differences in the products being matched. In addition, we found that Krakatau's deficiencies in reporting multiple home and U.S. market sales adjustments prevent us from calculating fully adjusted home and U.S. market prices. Without fully adjusted home and U.S. market prices, we are unable to calculate an accurate dumping margin.

Since these functions are essential elements to a dumping analysis, we find that Krakatau's responses cannot serve as a reliable basis for this preliminary determination. Specifically, Krakatau failed to provide: (1) Accurate quality classifications for sales in the home and U.S. market; (2) minimum specified yield strength classifications for sales in the home and U.S. market; (3) a method for identifying sales of non-foreign like product in its home market sales database; and (4) an explanation and appropriate supporting documents for how it calculated brokerage and handling, short-term interests rates (which are used in the calculation of imputed credit expenses), advertising, technical service, indirect selling expenses, inventory carrying costs, and packing. *See* March 16, 2001 sales supplemental questionnaire and April 2, 2001 sales supplemental response. *See* also Memorandum from Holly A. Kuga to Bernard T. Carreau, *Certain Hot-Rolled Carbon Steel Flat Products from Indonesia: Preliminary Determination of Sales at Less Than Fair Value: The Use of Facts Available for PT Krakatau Steel and Corroboration of Secondary Information*, dated April 23, 2001 *(Krakatau Facts Available Memorandum)*.

Regarding Krakatau's cost response, our analysis found deficiencies in the initial and supplemental responses that prohibit us from accurately determining Krakatau's COP for each of the control numbers (CONNUMs) reported in its home and U.S. sales databases. The primary problem is that Krakatau calculated a company-wide average cost, and then to obtain individual product costs, applied this average cost to the cumulative yield for each individual production process each product (by CONNUM) passed through, rather than calculating product-specific costs. Without product-specific costs, the Department is unable to accurately determine whether home markets sales were sold at prices above, or below, the COP. Without a proper cost test, the Department is unable to calculate the proper NV in price-to-price comparisons.[3] In addition, the absence of product-specific costs prevents us from calculating a valid DIFMER (assuming that the correct sales were selected for comparison). Lastly, we note that Krakatau failed to provide a COP for certain of its reported home market CONNUMs and failed to provide a CV for certain of its reported U.S. market CONNUMs. For home market sales without a COP, we cannot perform the cost test to determine whether these sales were sold above their COP. For U.S. sales without a reported CV, we have no means of determining NV if there are no home market sales matches.

[3] Without a proper cost test, it is impossible to determine whether 20 percent or more of the home market sales are below cost and hence, would be excluded from the calculation of NV.

Because of Krakatau's failure to provide product-specific costs that account for the physical characteristics of unique products, we find that Krakatau's cost responses cannot serve as a reliable basis for this preliminary determination. Specifically, Krakatau failed to provide: (1) Costs that account for differences in quality, carbon, strength, thickness, width, pickling, edge trim, and pattern; (2) costs that account for differences in the chemistry or alloy content of specific grades of steel; (3) costs that account for differences in individual production processes; (4) the financial statements of its affiliates or of its parent corporation; (5) an explanation or supporting documents for the adjustments it made to the calculation of the scrap credit and direct material cost for "Sponge Iron Consumption;" (6) an explanation of why it did not incorporate the daily time utilization reports in its cost methodology; (7) a COP for multiple CONNUMs contained in the home market sales database; and (8) a CV for multiple CONNUMs contained in the U.S. market sales database. As a result, the information on the record is insufficient for purposes of calculating a dumping margin. *See* March 14 and March 23, 2001 cost supplemental questionnaires. *See* also *Krakatau Facts Available Memorandum*.

Of the many deficiencies in Krakatau's cost response, the most problematic deficiency is that Krakatau calculated one company-wide average cost and then, to obtain individual product costs, applied this average cost to the cumulative yield for the individual path each product (by CONNUM) passed through. The cumulative yield of subsequent cost centers through which a product passes will account for the losses that occur at those cost centers. However, this methodology does not account for processing differences within each cost center. For example, within the hot rolling mill, products with different thicknesses are not differentiated in terms of cost based on their rolling times. In another example, the costs associated with the pickling process are not assigned to products based on whether or not the product was pickled, but rather only by applying the yield loss associated with the pickling cost center to the average cost of hot rolling. As discussed above, the failure to provide product-specific costs makes it impossible to (1) conduct the sales below cost test, (2) calculate the 20% comparability test used in the DIFMER adjustment, and (3) calculate CV.

Moreover, we find that the cumulative effect of these errors is to erode our confidence in Krakatau's response as a whole. Therefore, pursuant to section 782(e)(3) of the Act, the Department finds that the information on the record, as discussed above, is so incomplete that it cannot serve as a reliable basis for reaching the applicable determination.

We also find that the application of an adverse inference in this case is appropriate. Krakatau failed to act to the best of its ability to comply with the Department's requests for information when it failed to provide: (1) Accurate quality and yield strength characteristics (which prevents the Department from conducting an accurate model match), (2) a method for identifying sales of non-foreign like product in its home market sales database, (3) an explanation and appropriate supporting documents for how it calculated certain sales expense adjustments, and (4) product-specific costs. Despite the Department's directions in the original and supplemental questionnaires, and the extensions granted, Krakatau made no effort to provide any explanation or propose an alternate form of submitting the data. *See Krakatau Facts Available Memorandum*.

Furthermore, the information cannot be obtained elsewhere. Without this critical information, the Department cannot accurately determine the dumping margin for Krakatau. In addition, as outlined in the *Case History* section above, the company's failure to properly submit information and data to the record of this proceeding delayed the Department in making critical decisions involving the calculation of Krakatau's dumping margin. The company was put on notice by Department's extension letters and other correspondence that failure to properly submit information and data to the Department constituted a deficiency which could result in the use of facts available. *See* the Department's letters to Krakatau dated January 23, February 8, March 5, and March 15, 2001.

Krakatau's submission of information is so incomplete that it cannot serve as a reliable basis for reaching the applicable determination. Its failure to comply with the Department's procedures for submitting information and data to the record of this proceeding, and its repeated failure to provide information to the Department which could not be obtained elsewhere, demonstrate a consistent pattern of unresponsiveness and a failure to cooperate to the best of its ability with the Department's requests for information. Despite the Department's directions in the questionnaires and the letters granting extensions, Krakatau did not provide the information requested by the Department, made no effort to explain any difficulties it was having in supplying the information, and did not propose an alternate form of submitting the information. For these reasons, we find that Krakatau did not act to the best of its ability in responding to the Department's requests for information, *see, e.g., Circular Stainless Steel Hollow Products*, and that, consequently, an adverse inference is warranted under section 776(b) of the Act. *See Krakatau Facts Available Memorandum*.

Pursuant to section 776(b) of the Act, the Department is basing Krakatau's margin on adverse facts available for purposes of the preliminary determination. Section 776(b) of the Act authorizes the Department to use as adverse facts available information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. As adverse facts available, we are applying the margin for Indonesia published in the Department's notice of initiation, which is 59.25 percent. *See Notice of Initiation of Antidumping Duty Investigations: Certain Hot-Rolled Carbon Steel Flat Products From Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine*, 65 FR 77568 (December 12, 2000)) (*HRS Initiation Notice*).

2. Selection and Corroboration of Facts Available

Section 776(b) of the Act states that an adverse inference may include reliance on information derived from the petition. *See also* SAA at 829–831. Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870). The SAA also states that independent sources used to corroborate

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such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation (*see* SAA at 870).

In order to determine the probative value of the margin in the petition for use as adverse facts available for purposes of this determination, we examined evidence supporting the calculations in the petition. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price (EP) and normal value (NV) calculations on which the margin in the petition was based. Our review of the EP and NV calculations indicated that the information in the petition has probative value, as certain information included in the margin calculations in the petition is from public sources concurrent with the relevant POI. For purposes of the preliminary determination, we attempted to further corroborate the information in the petition. We re-examined the EP and NV data which formed the basis for the margin in the petition in light of information obtained during the investigation and, to the extent practicable, found that it has probative value.

Accordingly, in selecting adverse facts available with respect to Krakatau, the Department determined to apply a margin rate of 59.25 percent, the margin published in the Department's notice of initiation.

All Others Rate

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or de minimis margins, or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated "all others" rate for exporters and producers not individually investigated. This provision contemplates that we weight-average margins other than facts available margins to establish the "all others" rate. Where the data do not permit weight-averaging such rates, the SAA, at 873, provides that we may use other reasonable methods. Because the petition contained only an estimated price-to-CV dumping margin, which the Department adjusted for purposes of initiation, there are no additional estimated margins available with which to create the "all others" rate. Therefore, we applied the published margin of 59.25 percent as the "all others" rate.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing Customs to suspend liquidation of all entries of HRS from Indonesia that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct Customs to require a cash deposit or the posting of a bond equal to the amount by which the NV exceeds the EP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The dumping margins are as follows:

Manufacturer/exporter	Margin (percent)
PT Krakatau Steel	59.25
All Others	59.25

Disclosure

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of the proceedings in these investigations in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our sales at LTFV determination. If our final antidumping determination is affirmative, the ITC will determine whether the imports covered by that determination are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Case briefs must be submitted no later than 35 days after the publication of this notice in the **Federal Register**. Rebuttal briefs must be filed within five business days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Public versions of all comments and rebuttals should be provided to the Department and made available on diskette.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to more than one HRS case, the Department may schedule a single hearing to encompass all cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

If this investigation proceeds normally, we will make our final determination in this investigation no later than 75 days after the date of this preliminary determination.

This determination is published pursuant to sections 733(f) and 777(i)(1) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: April 23, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 01–10849 Filed 5–2–01; 8:45 am]

BILLING CODE 3510–DS–U

DEPARTMENT OF COMMERCE

International Trade Administration

[A–834–806]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Kazakhstan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination in the less than fair value investigation of certain hot-rolled carbon steel flat products from Kazakhstan.

SUMMARY: On December 12, 2000, the Department of Commerce published a notice of initiation of an antidumping duty investigation of certain hot-rolled carbon steel flat products from Kazakhstan. This investigation covers one producer of the subject merchandise. The period of investigation is April 1, 2000 through September 30, 2000. The Department preliminarily determines that certain hot-rolled carbon steel flat products from Kazakhstan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: May 3, 2001.

FOR FURTHER INFORMATION CONTACT: Juanita H. Chen at 202–482–0409, or Rick Johnson at 202–482–3818, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2000).

Preliminary Determination

The Department of Commerce ("Department") preliminarily determines that certain hot-rolled carbon steel flat products ("hot-rolled steel") from Kazakhstan are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice, *infra*.

Case History

On December 4, 2000, the Department initiated an antidumping duty investigation of hot-rolled steel from Kazakhstan. *See* Notice of Initiation of Antidumping Duty Investigations: Certain Hot-Rolled Carbon Steel Flat Products from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine, 65 FR 77568 (December 12, 2000) ("Notice of Initiation"). The Department set aside a period for all interested parties to raise issues regarding product coverage. *See* Notice of Initiation, at 77569. We received no comments from any parties in this investigation. The Department did, however, receive comments regarding product coverage in the investigation of hot-rolled steel from the Netherlands. In that investigation we received comments from Duracell Global Business Management Group on December 11, 2000, from Energizer on December 15, 2000, from Bouffard Metal Goods, Inc., and Truelove & Maclean, Inc., on December 18, 2000, from Corus Staal BV and Corus Steel U.S.A., Inc. (collectively "Corus"), and Thomas Steel Strip on December 26, 2000, and from Rayovac Corporation on March 12, 2001.

On December 22, 2000, the Department issued a letter to interested parties in all of the concurrent hot-rolled steel investigations, providing an opportunity to comment on the Department's proposed model matching characteristics and hierarchy. Comments were submitted by: Bethlehem Steel Corporation, Gallatin Steel Company, IPSCO Steel Inc., LTV Steel Company, Inc., National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., U.S. Steel Group (a unit of USX Corporation), Weirton Steel Corporation, and the Independent Steelworkers Union (hereinafter collectively referred to as "petitioners"); Corus, respondents in the Netherlands investigation; Iscor Limited ("Iscor"), respondent in the South Africa investigation; and Zaporizhstal, respondent in the Ukraine investigation. The petitioners agreed with the Department's proposed characteristics and hierarchy. Corus suggested adding a product characteristic to distinguish prime merchandise from non-prime merchandise. Neither Iscor nor Zaporizhstal proposed any changes to either the list of product characteristics or the hierarchy but, rather, provided information relating to its own products that was not relevant in the context of determining what information to include in the Department's questionnaires. For purposes of the questionnaires subsequently issued by the Department to the respondents, no changes were made to the product characteristics or hierarchy from those originally proposed by the Department in its December 22, 2000 letter. With respect to Corus' request, the additional product characteristic suggested by Corus, to distinguish prime merchandise from non-prime merchandise, is unnecessary. The Department already asks respondents to distinguish prime from non-prime merchandise in field number 2.2 "Prime vs. Secondary Merchandise." *See* the Department's Antidumping Duty Questionnaire, at C–5 (January 4, 2001).

On December 29, 2000, the United States International Trade Commission ("ITC") issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise from Kazakhstan, which was published on January 4, 2001. *See* Hot-Rolled Steel Products from Argentina, China, India, Indonesia, Kazakhstan, Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine, 66 FR 805 (January 4, 2001) ("ITC Preliminary Determination").

On January 4, 2001, the Department issued its antidumping duty questionnaire to the Embassy of Kazakhstan and to the only known producer of subject merchandise, OJSC Ispat Karmet ("Ispat Karmet"). The Department received confirmation from the U.S. Embassy in Kazakhstan that Ispat Karmet is the sole company in Kazakhstan that produces or exports hot-rolled carbon steel to the United States. On January 23, 2001, the Department requested comments from interested parties regarding surrogate country selection, and information to value factors of production. On February 6, 2001, we received the petitioners' comments for surrogate country selection. The Embassy of Kazakhstan and Ispat Karmet submitted no comments on surrogate country selection. On March 23 and April 6, 2001, we received comments from the petitioners regarding valuing factors of production. On April 18, 2001, we received comments from Ispat Karmet in opposition to some of the petitioners' suggested values for factors of production.

On February 1, 2001, we received Ispat Karmet's Section A response to the Department's questionnaire ("Section A response"). On February 14, March 12, and April 4, 2001, we issued Section A supplemental questions, Sections C and D supplemental questions, and Sections A, C and D second supplemental questions to Ispat Karmet, respectively. We received Ispat Karmet's Sections C and D response ("Section C/D response") on February 26, 2001, its Section A supplemental response ("Supp. A response") on March 7, 2001, its Sections C and D supplemental response ("Supp. C/D response") on April 2, 2001, and its Sections A, C and D second supplemental response ("2d Supp. response") on April 13, 2001.

On March 16, 2001, certain petitioners (Bethlehem Steel Corporation, LTV Steel Company, Inc., National Steel Corporation, and U.S. Steel Group) (hereinafter collectively "Bethlehem, *et al.*") requested that the Department initiate a middleman dumping investigation. On March 30, 2001, Ispat Karmet submitted comments on the middleman dumping request,

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arguing that the allegation is legally defective because Bethlehem *et al.* have not provided specific evidence that a trading company is dumping. On April 6, 2001, Bethlehem, *et al.* submitted a letter further asserting that they have demonstrated that a middleman dumping investigation is warranted, and that Ispat Karmet's opposition is baseless. On April 10, 2001, Ispat Karmet submitted a letter pointing out alleged flaws in the middleman dumping allegation. Because of the complexity of the issue, the Department has not yet determined the proper course of action on the middleman dumping allegation. Accordingly, we will address the middleman dumping issue in the final determination.

On March 21, 2001, Ispat Karmet requested that the Department determine that the hot-rolled steel industry in Kazakhstan is a market-oriented industry ("MOI"), and submitted basic information on the hot-rolled steel industry in Kazakhstan. On March 27, 2001, the petitioners submitted comments on Ispat Karmet's MOI request, arguing that Ispat Karmet failed to meet the conditions necessary for establishing MOI status. On March 30, 2001, the Department issued a supplemental questionnaire to Ispat Karmet, requesting further information on the hot-rolled steel industry in Kazakhstan. That additional information is due to be filed on April 30, 2001. Consequently, we do not yet have adequate information necessary to analyze the issue for the preliminary determination. As a result, we are unable to make a determination on Ispat Karmet's MOI request for this preliminary determination. We will address the MOI issue in the final determination.

Scope of Investigation

For purposes of this investigation, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of these investigations.

Specifically included within the scope of this investigation are vacuum degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels, high strength low alloy ("HSLA") steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States ("HTSUS"), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this investigation:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, e.g., American Society for Testing and Materials ("ASTM") specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers ("SAE")/American Iron & Steel Institute ("AISI") grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this investigation is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by this investigation, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is April 1, 2000 through September 30, 2000.

Nonmarket Economy Country

The Department has treated Kazakhstan as a non-market economy ("NME") country in all past antidumping investigations and administrative reviews. *See, e.g.*, Titanium Sponge From the Republic of Kazakhstan, 64 FR 66169 (November 24, 1999) (final admin. review); Ferrosilicon From Kazakhstan and Ukraine, 58 FR 13050 (March 9, 1993) (final determination); and Uranium From Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan, 57 FR 23380 (June 3, 1992) (prelim. determination). A designation as a NME country remains in effect until it is revoked by the Department. *See* section 771(18)(C)(i) of the Act. No party has requested a revocation of Kazakhstan's NME status. Therefore, for this preliminary determination, the Department is continuing to treat Kazakhstan as a NME country.

When the Department is investigating imports from a NME country, normal value ("NV") is based on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise, pursuant to section 773(c)(1) and (4) of the Act. The sources of individual factor values are discussed in the "Normal Value" section of this notice, *infra*.

Separate Rates

In a NME proceeding, the Department presumes that all companies within the country are subject to governmental control. Thus, it is the Department's policy to assign all producers of subject merchandise in a NME country a single rate, unless a producer can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

Ispat Karmet is wholly foreign-owned. Ispat Karmet reported that 100 percent of its shares are held by Ispat Karmet Holdings BV, which is located in the Netherlands. Further, there is no Kazakhstan ownership of Ispat Karmet. Thus, because we have no evidence indicating that it is under the control of the Republic of Kazakhstan, a separate rates analysis is not necessary to determine whether it is independent from government control. *See* Brake Rotors from the People's Republic of China, 66 FR 1303, 1306 (January 8, 2001) (prelim. results); Creatine Monohydrate from the People's Republic of China, 64 FR 71104, 71105 (December 20, 1999) (final determ.).

Accordingly, we preliminarily have determined a separate rate for Ispat Karmet.

Kazakhstan-Wide Rate

As discussed, *supra*, in a NME proceeding, the Department presumes that all companies within the country are subject to governmental control. The Department assigns a single NME rate unless a producer can demonstrate eligibility for a separate rate. Ispat Karmet has preliminarily qualified for a separate rate. Furthermore, the information on the record indicates that Ispat Karmet accounted for all imports of subject merchandise during the POI. Since Ispat Karmet, the only known Kazakhstan producer, responded to the Department's questionnaire, and we have no evidence of any other Kazakhstan producers of subject merchandise during the POI, we have calculated a Kazakhstan-wide rate for this investigation based on the weighted-average margin determined for Ispat Karmet. This Kazakhstan-wide rate applies to all entries of subject merchandise except for entries of subject merchandise exported by Ispat Karmet.

Date of Sale

In reporting its U.S. sales, Ispat Karmet stated that it "understands that the Department's current practice is to rely on the invoice date as the date of sale." See Section C response, at 8. Ispat Karmet initially stated that the "date of invoice is the date on which all essential terms of sale are finalized, *i.e.*, quantity, unit price, and product mix, and is the date on which Ispat Karmet transfers title to the customer." See Section A response, at A–9. Yet in elaborating on its sales process, Ispat Karmet stated that it "negotiates each sale individually and concludes the sale by signing an addendum to an annual sales agreement with an international trader. The addendum establishes the basic terms for individual transactions, but Ispat Karmet does not transfer title to the purchaser until the date shown on the invoice. Ispat Karmet, therefore, reports the invoice date as the date of sale * * *" *See* Section C response, at 8.

As stated in 19 CFR 351.401(i), the Department will normally use the date of invoice as the date of sale. However, as also stated in that regulatory provision, the Department may use a date other than the date of invoice if the Department is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.

In response to the Department's questionnaire regarding the types of changes after the initial agreement, Ispat Karmet explained that "(o)n occasion, the delivery date may be extended beyond the date specified in the original addendum. However, we do not normally experience any changes once an addendum is finalized, other than changes in quantity within the tolerance limit." *Id.* at A–9 and A–10. Ispat Karmet stated that after initially negotiating the annual contract, "Ispat Karmet and the trader subsequently negotiate an addendum for subsequent shipments of merchandise, generally covering the quantity to be shipped over a one-or two-month period and establishing the specific terms of those shipments, such as quantity, technical specifications, delivery, and packing." *See* Supp. C/D response, at 2. However, Ispat Karmet maintained that the "addendum is the preparatory document for a sale, while the invoice reflects the actual shipment of the merchandise and the completion of the sale." *Id.*

From Ispat Karmet's own response, it appears that the material terms of the sale are established with the addendum. The information on the record indicates a lack of any changes in the material terms of sale between addendum and invoice, aside from "variations within a permissible tolerance range." *Id.* at 3. There appear to be no changes in price or in quantity, outside of the contractually agreed upon tolerances, after the addendum is finalized. This serves to confirm that the parties agree to the material terms of sale at the addendum stage. Therefore, for this preliminary determination, the Department is using the date of the addendum as the date of sale, as it better reflects the date on which the material terms of the sale were established. We intend to fully examine this issue at verification and will incorporate our findings, as appropriate, in our final determination.

Fair Value Comparisons

To determine whether sales of hot-rolled steel products from Kazakhstan were made in the United States at LTFV, we compared EP to a normal value ("NV"), as described in the "Export Price" and "Normal Value" sections of this notice, *infra*.

Export Price

We used EP methodology for this preliminary determination, in accordance with section 772(a) of the Act. Section 772(a) of the Act defines EP as the "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States * * *" Constructed export price ("CEP") methodology, in accordance with section 772(b) of the Act, was not otherwise warranted based on the facts

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on the record. All sales activities, including negotiations, paperwork processing and receipt of payment, appear to be conducted in Kazakhstan. See Section A response, at A–9 and A–10; Supp. A response, at 5–6. Ispat Karmet did report that when it "receives a complaint from a customer, a member of Ispat Karmet's technical staff may travel to the customer's location to inspect the product." See Section C/D response, at 4. However, this appears to occur after importation to the United States. Ispat Karmet identified Ispat North America, Inc. as providing "general marketing services in the United States to all steel plants in the Ispat group, including Ispat Karmet." See Section A response, at A–8. However, Ispat Karmet reported that "(n) either Ispat North America nor any other related party had any role in U.S. sales during the period of investigation." *See* Section C/D response, at 7. Ispat Karmet also stated that all of its "sales to the U.S. market during the POI were concluded directly with its trading company customers." *See* Section C response, at 7.

None of the customers to whom Ispat Karmet sold subject merchandise to during the POI were listed as affiliated companies. See Supp. A response, at Exhibit 3. Furthermore, Ispat Karmet indicated that it knew that its reported sales of subject merchandise were destined for the United States at the time of sale because in negotiating with an international trader, Ispat Karmet seeks "details of the end-customer and the intended end application. Because of this, Ispat Karmet's sales have clearly identified destinations." *See* Section A response, at A–9. Accordingly, pursuant to section 772(a) of the Act, because subject merchandise was sold to an unaffiliated purchaser by Ispat Karmet outside of the United States, with the knowledge that the final destination of subject merchandise was the United States, we have determined these sales to be EP transactions for purposes of this preliminary determination.

In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs to the NVs based on factors of production. *See* Memorandum to Edward C. Yang from Juanita H. Chen: Factor Valuation Memorandum (April 13, 2001) ("Factor Valuation Memo"). We calculated EP based on the Free Carrier At ("FCA") rail prices charged to unaffiliated customers. See Section C response, at 10. We also made adjustments from the starting price to account for foreign inland freight. *See* Memorandum to the File, from Juanita H. Chen, Case Analyst: Preliminary Determination Analysis for OJSC Ispat Karmet (April 23, 2001) ("Prelim. Analysis Memo").

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if: (1) The merchandise is exported from a NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

Factors of production include: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs, including depreciation. We calculated NV based on factors of production reported by Ispat Karmet. *See* Factor Valuation Memo; *see also* Prelim. Analysis Memo. We valued all the input factors using publicly available information as discussed in the "Surrogate Country" and "Factor Valuations" sections of this notice, *infra*.

A. Surrogate Country

When the Department investigates imports from a NME, section 773(c) of the Act provides for the Department, in most circumstances, to base NV on the NME producers' factors of production, valued in a surrogate market economy country or countries considered appropriate by the Department. In accordance with section 773(c)(4), the Department, in valuing factors of production, shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are at a level of economic development comparable to the NME country and are significant producers of comparable merchandise. The sources of individual factor values are discussed, *infra*.

The Department's Office of Policy has determined that Algeria, Ecuador, Egypt, Morocco, and the Philippines are countries comparable to Kazakhstan in terms of overall economic development. *See* Memorandum to the File, from Juanita H. Chen, Case Analyst: Selection of Surrogate Country (March 26, 2001) ("Surrogate Country Memo"), at Attachment I (policy memorandum from Jeffrey May, dated January 12, 2001). According to the available information on the record, we have determined that Egypt is an appropriate surrogate country because it is at a comparable level of economic development and is a significant producer of comparable merchandise. Furthermore, there is a wide array of publicly available information for Egypt. Therefore, we have relied, where possible, on Egyptian information in calculating NV by using Egyptian prices to value Ispat Karmet's factors of production, when available and where appropriate. We have obtained and relied upon public information wherever possible. See Factor Valuation Memo. Where no Egyptian values were available, we used information from the Philippines, another country chosen by the Department's Office of Policy as comparable to Kazakhstan in terms of overall economic development. *Id.*

In accordance with section 351.301(c)(3)(i) of the Department's regulations, for the final determination in an antidumping investigation, interested parties may submit publicly available information to value factors of production within 40 days after the date of publication of the preliminary determination.

B. Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by Ispat Karmet for the POI. *See* Factor Valuation Memo. To calculate NV, we multiplied the reported per-unit factor quantities by publicly available surrogate values from Egypt or, where necessary, the Philippines.

In selecting surrogate values, we considered the specificity, quality and contemporaneity of the data. We adjusted import prices by including the cost of freight so that the import prices were delivered prices. For those values not contemporaneous with the POI, we adjusted the values to account for inflation using producer price indices, as appropriate, published in the International Monetary Fund, International Financial Statistics (March 2001) ("IMF").

We valued raw material inputs, energy inputs, by-products and packing materials using values from the appropriate HTSUS category, and from the World Bank website. See Factor Valuation Memo, at 4–8. Pursuant to section 351.408(c)(1) of our regulations, where it was possible to discern from the record that a factor was purchased from a market economy supplier and paid for in a market economy currency, we used the price paid to the market economy supplier. See Factor Valuation Memo, at 7; *see also* Lasko Metal Products v. United States, 43 F.3d 1442, 1445–46 (Fed. Cir. 1994). To value labor, we used regression-based wage rates, in accordance with section 351.408(c)(3) of the Department's regulations. See Factor Valuation Memo, at 8. We based the value of freight by rail on public information used in the August 31, 1999 analysis memorandum for the preliminary results of the 1997–1998 administrative review of titanium sponge from Kazakhstan. *Id.*; *see also* Titanium Sponge From the Republic of Kazakhstan, 64 FR 48793, 48795 (September 8, 1999) (prelim. results). To value overhead, selling, general and administrative expenses, and profit, we used public information reported in the 1998 financial statements of Alexandria National Iron & Steel Co. ("ANS Steel"), an Egyptian producer of hot-rolled steel. *See* Factor Valuation Memo, at 8–9. While we could not determine a complete value for overhead using ANS Steel's financial statements, we could determine a value for depreciation, a part of overhead, and have used this value for overhead.

For each of the surrogate values selected for use in the Department's calculations, we adjusted the values for inflation using appropriate price index inflators when those values were not from a period concurrent with the POI. *See* Factor Valuation Memo, at 2.

Verification

As provided in section 782(i)(1) of the Act, we will verify all appropriate information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service ("Customs") to suspend liquidation of all imports of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct Customs to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-average margin percent
OJSC Ispat Karmet	239.57
Kazakhstan-Wide	239.57

Disclosure

The Department will disclose calculations performed, within five days of the date of publication of this notice, to the parties in this investigation, in accordance with section 351.224(b) of the Department's regulations.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our affirmative determination of sales at LTFV. As our final determination is affirmative, the ITC will determine, before the later of 120 days after the date of this preliminary determination or 45 days after our final determination, whether imports of hot-rolled steel from Kazakhstan are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than 50 days after the date of publication of this notice, and rebuttal briefs, limited to issues raised in the case briefs, may be submitted no later than five days after the time limit for filing the case brief, pursuant to section 351.309(c) and (d) of the Department's regulations. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in the case or rebuttal briefs. Tentatively, any hearing will be held 57 days after publication of this notice at the U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice, pursuant to section 351.310(c) of the Department's regulations. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief, and may make rebuttal presentations only on arguments included in that party's rebuttal brief, pursuant to section 351.310(c) of the Department's regulations.

If this investigation proceeds normally, we will make our final determination no later than 75 days after the date of this preliminary determination (i.e. July 9, 2001).

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: April 23, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–10850 Filed 5–2–01; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–791–809]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from South Africa

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 3, 2001.

FOR FURTHER INFORMATION CONTACT: Doug Campau or Maureen Flannery at (202) 482–1395 or (202) 482–3020, respectively; Office of Antidumping/Countervailing Duty Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (Department) regulations are to the regulations at 19 CFR part 351 (April 2000).

Preliminary Determination

We preliminarily determine that certain hot-rolled carbon steel flat products (HR products) from South Africa are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margin of sales at LTFV is shown in the

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"Suspension of Liquidation" section of this notice.

Case History

On December 4, 2000, the Department initiated antidumping investigations of HR products from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine. *See Initiation of Antidumping Duty Investigations: Certain Hot-Rolled Carbon Steel Flat Products from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine*, 65 FR 77568 (December 12, 2000) (*Initiation Notice*). The petitioners in this investigation are Bethlehem Steel Corporation, Gallatin Steel Company, IPSCO Steel Inc., LTV Steel Company, Inc., National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., U.S. Steel Group (a unit of USX Corporation), Weirton Steel Corporation, and the Independent Steelworkers Union (petitioners). Since the initiation of this investigation the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage (*see Initiation Notice* at 77568). We received no comments from any parties in this investigation. The Department did, however, receive comments regarding product coverage in the investigation of HR products from the Netherlands. In that investigation, we received comments regarding product coverage as follows: from Duracell Global Business Management Group on December 11, 2000; from Energizer on December 15, 2000; from Bouffard Metal Goods Inc. and Truelove & MacLean, Inc. on December 18, 2000; from the Corus Group plc., which includes Corus Steel USA (CSUSA) and Corus Staal BV (Corus Staal), and Thomas Steel Strip on December 26, 2000; and from Rayovac Corporation on March 12, 2001.

On December 22, 2000, the Department issued a letter to interested parties in all of the concurrent HR products antidumping investigations, providing an opportunity to comment on the Department's proposed model matching characteristics and hierarchy. Comments were submitted by petitioners (January 5, 2001); Corus, respondent in the Netherlands investigation (January 3, 2001); Iscor Limited (Iscor), respondent in the South Africa investigation (January 3, 2001); and Zaporozhstal Iron & Steel Works (Zaporozhstal), respondent in the Ukraine investigation (January 3, 2001). Petitioners agreed with the Department's proposed characteristics and hierarchy of characteristics. Corus suggested adding a product characteristic to distinguish prime merchandise from non-prime merchandise. Neither Iscor nor Zaporozhstal proposed any changes to either the list of product characteristics proposed by the Department or the hierarchy of those product characteristics, but provided information relating to their own products that was not relevant in the context of determining what information to include in the Department's questionnaires. For purposes of the questionnaires subsequently issued by the Department to the respondents, no changes were made to the product characteristics or the hierarchy of those characteristics from those originally proposed by the Department in its December 22, 2000 letter. With respect to Corus' request, the additional product characteristic suggested by Corus, to distinguish prime merchandise from non-prime merchandise, is unnecessary. The Department already asks respondents to distinguish prime from non-prime merchandise in field number 2.2, "Prime vs. Secondary Merchandise." See the Department's Antidumping Duty Questionnaire, at B–7 and C–7 (January 4, 2001).

On December 28, 2000, the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary injury determination on imports of subject merchandise from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine. On January 4, 2001, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of the merchandise under investigation from these countries. *See ITC Preliminary Notice of Determination for Hot-Rolled Steel Products from Argentina, China, India, Indonesia, Kazakhstan, Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine*, 66 FR 805, 802 (January 4, 2001).

On January 4, 2001, the Department issued sections A–E of its antidumping duty questionnaire[1] to Highveld Steel and Vanadium Corporation Limited (Highveld), Saldanha Steel Limited (Saldanha), and Iscor. On January 25, 2001, Saldanha and Iscor submitted letters to the Department indicating that they would not be responding to the Department's questionnaires. On January 26, 2001—one day after the due date of January 25, 2001—the Department received Highveld's response to Section A of its antidumping duty questionnaire. Highveld's section A response was not appropriately filed with the Department's Central Records Unit, did not include relevant case information in the upper right-hand corner of the first page as prescribed by section 351.303(d)(2) of the Department's regulations, and did not contain a request for proprietary treatment of business proprietary information, though certain information was bracketed. Furthermore, no public version was submitted, and neither version was served on the petitioners. On February 2, 2001, the Department sent a letter to Highveld addressing these deficiencies, asking Highveld to re-file its section A response—revised to comply with the Department's requirements—by no later than February 6, 2001, and warning Highveld that its failure to comply could result in rejection of its section A response. This letter was accompanied by a copy of the Department's regulations for the submission of documents to the record. Also on February 2, 2001, at Highveld's request, the Department approved an extension of the deadline for submitting the section B, C, and D questionnaire responses to February 26, 2001.

On February 6, 2001—twelve days after the original due date of January 25, 2001—the Department received the public version of Highveld's response to Section A of its antidumping duty questionnaire, along with the revised proprietary version. There was substantial improper use of bracketing in both the proprietary and public versions of this response (*e.g.*, single brackets around public information, double brackets used inappropriately numerous times, triple brackets used numerous times, and bracketed information not summarized or ranged in the public version). On February 9, 2001, the Department held a teleconference with Highveld to address these issues, and asked Highveld to re-file the entire narrative portion of its submissions—revised to comply with the Department's requirements—along with any revised exhibits (*see Memorandum to the File, "Telephone Conference with Highveld Official."* dated Feburary 12, 2001). In this teleconference, the Department again warned Highveld that its failure to comply could result in the rejection of its submissions. On February 12, 2001, the Department sent Highveld a letter reiterating what was discussed in the February 9, 2001 teleconference. On February 16, 2001, the Department faxed to Highveld a copy of those portions of its regulations addressing the procedures for proper bracketing, filing and treatment of proprietary information subject to administrative protective order (APO). Also on February 16, 2001, at Highveld's request, the Department approved an extension of the deadline for submitting the second revised version of the section A questionnaire response to February 21, 2001.

On February 23, 2001—two days after the due date of February 21, 2001—the Department received the second revised versions of Highveld's public and proprietary responses to the Section A antidumping duty questionnaire. The second revised public version still did not contain a request for proprietary treatment of business proprietary information as required by the Department's APO regulations.

On February 26, 2001, the Department received the narrative portions of Highveld's responses for sections B, C, and D. Highveld again failed to serve the petitioners with copies of its submission to the Department. Highveld also failed to properly submit any of the required home market sales, U.S. sales, or cost of production data to either the Department or to the petitioners. Highveld submitted a floppy diskette containing no files of any kind, and then sent its sales and cost data sets—to the Department only—via electronic mail (*see Memorandum to the File, "Compilation of Electronic Mail Correspondence with Highveld Officials,"* dated April 23, 2001). In analyzing these data sets, the Department discovered that Highveld failed to report any data for twelve different types of expenses for the majority of its U.S. sales. The fields for which this data was not reported were international freight (INTNFRU), marine insurance (MARNINU), U.S. inland freight from port to warehouse (INLFPWU), U.S. warehousing expense (USWAREHU), U.S. inland freight from warehouse to unaffiliated customer (INLFWCU), U.S. inland insurance (USINSURU), other U.S. transportation expense (USOTHTRU), U.S. customs duty (USDUTYU), commissions (COMMU), indirect selling expenses incurred in country of manufacture (INDIRSU), inventory carrying costs incurred in the United States (INVCARU), and U.S. repacking cost (REPACKU). In the narrative responses for each of the twelve missing sales expenses, Highveld simply stated that the subject data had to be supplied by an affiliated U.S. reseller. Highveld also failed to provide unique product costs that account for cost differences related to the physical characteristics defined by the Department. In the narrative response related to CONNUM-specific costs, Highveld merely stated that it does not account for costs in this manner.

On February 27, 2001, the Department sent a letter to Highveld, via electronic mail, asking Highveld to confirm that it has served the sections B, C, and D submissions on all parties to the proceeding. Highveld responded, via electronic mail, that because the shipment to the petitioners was so large, it would take extra time to arrive via express mail. The Department subsequently learned—through its own inquiries with the involved express mail company—that the sections B, C, and D submissions were shipped late.

On March 8, 2001, the Department issued a supplemental questionnaire for Highveld's Section A response. On March 12, 2001, petitioners submitted comments on Highveld's sections B, C, and D responses. On March 15, 2001, the Department issued a supplemental questionnaire for Highveld's sections B, C, and D responses, along with several additional questions for Highveld's section A response. In this questionnaire, we asked Highveld to report data for the twelve expenses missing from the majority of its U.S. sales observations. We also repeated our instruction to Highveld to report CONNUM-specific cost information that accounts for cost differences for each of the physical characteristics defined by the Department. These instructions directed Highveld to rely not only on its existing financial and cost accounting records, but on any other information which would allow it to calculate a reasonable allocation of its costs. On March 16, 2001—eighteen days after the original due date of February 26, 2001—the Department finally received a properly submitted copy of Highveld's required home market sales, U.S. sales, and COP data.

On March 26, 2001, at Highveld's request, the Department approved an extension of the deadline for submitting the supplemental questionnaire response for sections B and C to March 29, 2001. Also on March 26, 2001, the Department received Highveld's response to the Department's section A supplemental questionnaire, issued on March 8, 2001. Again, Highveld failed to timely serve either proprietary or public versions of its response on the petitioners. The public version of this submission was withheld from the record as a consequence of the following APO deficiencies: (1) it contained bracketed information that had not been blacked out; (2) bracketed information was not summarized or ranged; and (3) relevant case information was not included in the upper right-hand corner of the first page as prescribed by section 351.303(d)(2) of the Department's regulations. On March 29, 2001, the Department issued a second supplemental questionnaire for sections B and C. On March 30, 2001, the Department sent a letter to Highveld addressing the deficiencies of Highveld's supplemental section A questionnaire response submitted on March 26, 2001, asking Highveld to re-file its supplemental section A response—revised to comply with the Department's requirements—by no later than April 3, 2001. This letter also warned Highveld that if it failed to provide accurately the information requested within the time provided, the Department might be required to base its findings on the facts available, and that if Highveld failed to cooperate with the Department by not acting to the best of its ability to comply with a request for information, the Department could use information adverse to Highveld's interest in conducting its analysis.

Also on March 30, 2001—one day after the due date of March 29, 2001—the Department received the narrative portions of Highveld's response to the section B and C portions of the supplemental questionnaire issued on March 15, 2001. Highveld again failed to submit the required home market or U.S. sales data to either the Department or the petitioners. On April 2, 2001—three days after the due date of March 30, 2001—the Department received the narrative portions of Highveld's response to the section D portion of the supplemental questionnaire issued on March 15, 2001 (Supplemental D response). Highveld again failed to submit the required cost of production data to either the Department or the petitioners. Furthermore, in its narrative response, Highveld indicated that its cost of production data set would not include the unique product costs

[1] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. Section E requests information on further manufacturing.

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requested in the Department's March 15, 2001 supplemental questionnaire. The only explanation offered by Highveld was that it does not account for cost in this manner. Highveld failed to offer any explanation as to why it did not calculate appropriate cost differences for the physical characteristics defined by the Department as instructed in the Department's supplemental questionnaire.

On April 2, 2001, the Department contacted Highveld's staff person by telephone to inquire as to the location of the revised data sets which should have accompanied Highveld's narrative responses to the supplemental questionnaire for sections B, C, and D. Highveld's staff person indicated that the revised data sets would be submitted with its response to the Department's second supplemental questionnaire for sections B and C issued on March 29, 2001 (*see Memorandum to the File, "Telephone Conference with Highveld Official,"* dated April 3, 2001).

On April 6—three days after the due date of April 3, 2001—the Department received the revised portions of Highveld's response to the section A supplemental questionnaire issued on March 8, 2001. Also on April 6, the Department received Highveld's revised data sets which should have accompanied Highveld's narrative responses to the supplemental questionnaire for sections B, C, and D, originally due on March 29 (sections B and C) and 30 (section D), 2001. Both the sales and cost of production data sets contained major deficiencies which the Department—in its March 29, 2001 supplemental questionnaire—had specifically asked Highveld to remedy. Specifically, Highveld again failed to report data for the twelve expenses missing from the majority of its U.S. sales observations, and failed to assign a control number for each unique product in the sales data sets, as requested in the Department's March 15, 2001 supplemental questionnaire. Furthermore, Highveld's COP data set did not include the unique product costs requested in the Department's March 15, 2001 supplemental questionnaire. Finally, on April 6—one day after the due date of April 5, 2001—the Department received Highveld's response to the Department's second supplemental questionnaire for sections B and C issued on March 29, 2001. In this response, Highveld indicated that the data for the twelve expenses missing from the majority of its U.S. sales had to be supplied by an affiliated U.S. reseller, and that they would be made available during verification.

On April 10, 2001, we sent a second supplemental questionnaire to Highveld asking it to resubmit its cost data in accordance with the Department's instructions by April 24, 2001. On April 17, 2001, we sent Highveld a letter requiring that it submit, by April 27, 2001, certain information that was missing from its sections B & C response.

Period of Investigation

The Period of Investigation (POI) is October 1, 1999 through September 30, 2000. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (i.e., November 2000), and is in accordance with our regulations. *See* section 351.204(b)(1) of the Department's regulations.

Scope of Investigation

For purposes of this investigation, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this investigation. Specifically included within the scope of this investigation are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of these investigations, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this investigation:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, e.g., ASTM specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron and Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearings steels, as defined in the HTS.
- Tool steels, as defined in the HTS.
- Silico-manganese (as defined in the HTS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTS.

The merchandise subject to this investigation is classified in the HTS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled flat-rolled carbon steel flat products covered by this investigation, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.

Facts Available (FA)

Highveld

Section 776(a)(2) of the Act provides that "if an interested party or any other person: (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

In this case, Highveld failed, within the meaning of section 776(a)(2)(B) of the Act, to provide requested information in the form and manner requested. Notably, Highveld failed, in its original section C response, to report any data for international freight (INTNFRU), marine insurance (MARNINU), U.S. inland freight from port to warehouse (INLFPWU), U.S. warehousing expense (USWAREHU), U.S. inland freight from warehouse to unaffiliated customer (INLFWCU), U.S. inland insurance (USINSURU), other U.S. transportation expense (USOTHTRU), U.S. customs duty (USDUTYU), commissions (COMMU), indirect selling expenses incurred in country of manufacture (INDIRSU), inventory carrying costs incurred in the United States (INVCARU), and U.S. repacking cost (REPACKU), for the majority of its U.S. sales. These expenses are essential to the Department's calculation of U.S. price. Depending on the type, these expenses are used to adjust the reported starting sale price for each observation in the U.S. sales data set. Without data for these expenses, it is impossible for the Department to calculate U.S. prices from starting sales prices. We issued Highveld a supplemental questionnaire requesting that it correct these deficiencies, but it failed to do so. Highveld responded that it did not have this information, that such information must be supplied by an affiliated reseller in the United States, and that the information would be provided at verification. Highveld offered no reason as to why the data was not being provided within the deadlines provided by the Department, nor did it offer or suggest any alternative format for providing the needed information. Furthermore, Highveld failed to report the sales price from its U.S. affiliate to the first unaffilited customer for these sales. As this data is missing from the majority of Highveld's reported U.S. sales, it is impossible for the Department to calculate U.S. prices for the majority of Highveld's U.S. sales. Highveld's failure to provide the requested sales data thus renders its U.S. sales response unusable for this preliminary determination.

Highveld also failed, in its original and supplemental section D responses, to provide unique product costs that account for cost differences related to the physical characteristics defined by the Department. Highveld instead reported its costs by steel grade, differentiating those costs only by grade. That methodology does not provide product-specific COP information, nor does it provide the Department with information to calculate a difference in merchandise (DIFMER) adjustment to account for differences in physical characteristics beyond product grade when comparing sales of similar merchandise. Without product-specific COPs, we are unable to determine whether sales of the subject merchandise were made at less than COP as directed by section 773(b)(1) of the Act. As a result, we have no way of knowing whether to disregard certain sales from the calculation of normal value (NV) for falling below COP or whether to disregard all sales of the subject merchandise and base NV on CV. Furthermore, in accordance with section 773(a)(6)(C)(ii) of the Act, when comparing United States sales with home market sales, we may determine that the merchandise sold in the United States does not have the same physical characteristics as the merchandise sold in the home market and that those differences have an effect on prices. In such instances, we are required to make reasonable allowances for these differences ("DIFMER") in calculating NV. Without the ability to make the appropriate DIFMER adjustment, it is impossible for us to appropriately calculate NV. Thus, without product-specific COP information, and information necessary for calculating a DIFMER adjustment, we are unable to determine the appropriate basis for NV or to calculate NV. As noted in the *Case History* section above, we issued Highveld a supplemental questionnaire on March 15, 2001, requesting that it correct these deficiencies, but it failed to do so. Instead, Highveld stated simply that it does not account for cost in this manner. Highveld's failure to provide the requested data renders its cost response unusable for this preliminary determination.

As also noted in detail in the *Case History* section above, Highveld failed, within the meaning of section 776(a)(2)(B) of the Act, to provide requested information prior to several deadlines for the submission of such information, or in the form and manner requested. Highveld's questionnaire responses were often fraught with APO formatting deficiencies, including improper bracketing of proprietary information, improper labeling of documents containing proprietary information, and missing language concerning the release of proprietary information under APO. Furthermore, the majority of Highveld's questionnaire responses were submitted after the applicable deadlines. In such cases, the Department received Highveld's submissions anywhere from one to eighteen days late. Notably, Highveld's sales and cost data sets—which are absolutely crucial for the Department's analysis—were submitted eighteen days late for the initial sections B, C, & D response, eight days late for the supplemental sections B & C response, and seven days late for the supplemental section D response. These responses and accompanying data were similarly served late on the petitioners.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so

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inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority" if the information is timely, can be verified, and is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information, if it can do so without undue difficulty.

As noted above, Highveld failed, on numerous occasions, to provide its questionnaire responses to the Department or other parties to this proceeding by the applicable deadlines, in the form and manner requested. As noted in the *Case History* section above, the Department provided Highveld with numerous opportunities to remedy or explain major deficiencies in its submissions. To this end, the Department issued several supplemental questionnaires, allowed Highveld several chances to revise and resubmit documents in order that such documents might comply with the Department's regulations governing formatting and filing requirements, sent Highveld multiple letters, facsimiles, and electronic mail explaining and re-explaining the Department's concerns over the deficiencies in Highveld's submissions, held a teleconference to explain the Department's concerns over the deficiencies in Highveld's submissions, sent Highveld copies of relevant regulations and guidelines for the submission of documents to the record, and granted Highveld several extensions to deadlines for its submissions. Despite all of this, Highveld has continued to submit its responses after applicable deadlines. This pattern has significantly impeded the Department's ability to conduct a timely analysis, limiting the Department's ability to issue supplemental questionnaires to address questions and deficiencies related to Highveld's submissions. It has also made it virtually impossible for the petitioners or other interested parties to submit comments on Highveld's responses in a timely manner, so that such comments might be given appropriate consideration in the Department's analyses. Moreover, as discussed above, Highveld has also failed to remedy the major substantive deficiencies in its U.S. sales and COP data sets, leaving the data sets so incomplete that they cannot be used to calculate a preliminary margin for Highveld. Consequently, we are disregarding Highveld's sales and COP data in our analysis.

In light of Highveld's failure to provide requested information necessary to calculate dumping margins in this case, in accordance with section 776(a) of the Act, we are forced to resort to total facts available for this preliminary determination.

According to section 776(b) of the Act, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Session at 870 (1994). Furthermore, "an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference." Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27340 (May 19, 1997) (Final Rule).

In this case, we have determined that Highveld has not acted to the best of its ability in responding to the Department's request for complete U.S. sales data, including data for the twelve expenses missing from the majority of Highveld's U.S. sales observations. As noted in the *Case History* section above, we repeated our request for such data in a supplemental questionnaire, but Highveld failed to provide it. Highveld's explanation was that it did not have this information, that such information must be supplied by an affiliated reseller in the United States, and that the information would be provided at verification. It is Highveld's responsibility to ensure that all information essential to the Department's analyses of Highveld's U.S. sales is provided to the Department, regardless of whether such information must be supplied by an affiliated reseller in the United States. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip from Mexico*, 64 FR 30790, 30803 (June 8, 1999). It is also Highveld's responsibility to notify the Department, in writing, within fourteen days if it expects to have difficulties in submitting such information in accordance with section 782(c)(1) of the Act, and to suggest alternative forms in which it could submit the information. Highveld made no such notification, nor suggested any alternative reporting methodologies.

We have also determined that Highveld has not acted to the best of its ability in responding to the Department's request for product-specific cost information that takes into account physical differences between the products. As noted in the *Case History* section above, in our supplemental questionnaire, dated March 15, 2001, we repeated our instruction to Highveld to report product-specific cost information that accounts for cost differences for each of the physical characteristics. These instructions directed Highveld to rely not only on its existing financial and cost accounting records, but on any other information which would allow it to calculate a reasonable allocation of its costs. It is standard procedure for the Department to request product-specific cost data and we routinely receive such information from respondents. In the Department's experience, companies have information which allows them to calculate a reasonable estimate of the costs to make a given product, as such cost information is necessary to determine whether it is profitable to make the product. Even if a company does not identify product-specific costs in its normal financial and cost accounting records, it should be able to make reasonable allocations of its costs among distinct products through the use of other product and production information. Highveld failed to offer any explanation as to why it did not make such reasonable allocations.

Under section 782(c) of the Act, a respondent has a responsibility not only to notify the Department if it is unable to provide requested information, but also to provide a "full explanation and suggested alternative forms." In response to our requests for product-specific cost data, Highveld simply stated that it does not account for cost in this manner. (*See* Supplemental D response.) Cooperation in an antidumping investigation requires more than a simple statement that a respondent cannot provide certain information from its previously prepared records; the burden to establish that it has acted to the best of its ability rests upon the respondent. As noted above, to meet that burden a respondent must explain what steps it has taken to comply with the information request, and propose alternative methodologies for getting the necessary information. *See Allied-Signal Aerospace v. United States*, 996 F.2d 1185, 1192 (Fed. Cir. 1993). Highveld has failed to do either.

Moreover, we find that Highveld's claim that it is unable to provide cost information in the manner requested by the Department to be inconsistent with its other statements and information on the record of this case. For example, Highveld closely tracks actual production for yield purposes and for purposes of identifying particular coils for warehouse identification, as is evidenced by the yield information maintained by the company and the identifying tags affixed to each finished product. Highveld also has budgets, manufacturing standards, and engineering standards for specific products listed in the company's product brochure. Highveld likely develops production plans involving the identification of certain products as produced from certain raw materials on certain production lines using specific engineering standards. Further, to maintain International Organization for Standardization (ISO) certification, we believe that Highveld must maintain contemporaneous records of production and processes to insure the quality of the products it produces. While certain of Highveld's records do not contain the information requested on separate product costs, the company could have developed a reasonable allocation methodology to allocate costs to products on a control number (CONNUM)-specific basis using the company's normal cost accounting records as a starting point. The Department requested that Highveld look beyond its financial and cost accounting records and select from a variety of available data using, for example, engineering standards, direct labor hours, machine hours, or budgeting systems for allocating costs to products on a CONNUM-specific basis. Highveld failed to develop any system to allocate costs according to these criteria.

Given (i) Highveld's repeated failure to provide data for twelve expenses for the majority of its U.S. sales observations; and (ii) Highveld's repeated failure to provide product-specific cost data that takes into account physical differences in the product or to provide any meaningful explanation of why such data could not be provided, we preliminarily determine that Highveld did not cooperate to the best of its ability. Accordingly, we have used an adverse inference in selecting the facts available to determine Highveld's margin.

Iscor/Saldanha

In this proceeding, Saldanha and Iscor declined to respond to the Department's antidumping questionnaire. Because Saldanha and Iscor provided no information, sections 782(d) and (e) of the Act are not relevant, and the Department must resort to the use of facts available for these respondents, in accordance with 776(a) of the Act.

Furthermore, as Iscor and Saldanha declined to respond to the Department's antidumping questionnaire, we preliminarily determine that both companies failed to cooperate to the best of their abilities within the meaning of section 776(b) of the Act. Accordingly, we have used an adverse inference in selecting the facts available to determine the appropriate margin for Iscor and Saldanha.

Corroboration

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on "secondary information," such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The SAA accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. (1994), states that "corroborate" means to determine that the information used has probative value. *See* SAA at 870. In this proceeding, we considered the petition as the most appropriate information on the record upon which to base the dumping calculation. In accordance with section 776(c) of the Act, we sought to corroborate the data contained in the petition. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information (*e.g.*, import statistics, cost data and foreign market research reports) was available for this purpose. *See Initiation Notice*, at 77571. For purposes of the preliminary determination, we attempted to further corroborate the information in the petition. To the extent practicable, we reexamined the export price, home market price, and CV data provided for the margin calculations in the petition in light of information obtained during the investigation, and found that it has probative value (*see Memorandum to the File, "Corroboration of Secondary Information,"* dated April 23, 2001). As adverse facts available, we have preliminarily assigned Highveld, Iscor and Saldanha the rate of 9.28 percent—the margin calculated from the petition and used for initiation.

Affiliation

In accordance with section 771(33)(E) of the Act, the Department considers affiliated any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization. In the contemporaneous countervailing duty investigation of HR products from South Africa, the Department noted that respondent Iscor controls 50 percent of the voting ownership in respondent Saldanha. *See Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment with Final Antidumping Duty Determinations: Certain Hot-Rolled Carbon Steel Flat Products from South Africa*, 66 FR 20261 (April 20, 2001). Consequently, and in accordance with section 771(33)(E) of the Act, we conclude that these companies are affiliated for purposes of this proceeding.

Collapsing

Section 351.401(f)(1) of the Department's regulations provides that two or more affiliated producers will be treated as a single entity in an antidumping proceeding if: (i) the producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (ii) the Department concludes that there is a significant potential for the manipulation of price or production. Section 351.401(f)(2) of the Department's regulations provides that in identifying a significant potential for the manipulation of price or production, the factors the Department may consider include: (i) the level of common ownership; (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (iii) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

We have analyzed these criteria with respect to Iscor and Saldanha. According to information available on the public record of the contemporaneous countervailing duty investigation of HR products from South Africa, Iscor is a 50 percent shareholder in Saldanha, and is in a position to

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exercise control of Saldanha's assets. Furthermore, both companies produce the subject merchandise. *See* the public version of *Memo to File, "Cross-Ownership of Iscor, Ltd., in Saldanha Steel Ltd.,"* dated April 13, 2001 (case number C–791–810), which has been placed on the record of this investigation. In light of these facts, and because Iscor's and Saldanha's refusal to cooperate in this investigation has impeded our analysis of this issue, the Department infers that there is significant potential for the manipulation of prices or production between these two companies within the meaning of section 351.401(f)(2) of the Department's regulations. Thus, we preliminarily determine, in accordance with 351.401(f)(1) of the Department's regulations, that Saldanha and Iscor should be treated as a single entity for purposes of this antidumping proceeding, and have determined one dumping margin for this single entity.

Verification

In accordance with section 782(i) of the Act, we intend to verify information to be used in making our final determination.

All Others

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or de minimis margins, or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated "all others" rate for exporters and producers not individually investigated. This provision contemplates that we weight-average margins other than facts available margins to establish the "all others" rate. Where the data do not permit weight-averaging such rates, the SAA, at 873, provides that we may use other reasonable methods. Because the petition contained only an estimated price-to-CV dumping margin, which the Department adjusted for purposes of initiation, there are no additional estimated margins available with which to create the "all others" rate. Therefore, we applied the published margin of 9.28 percent as the "all others" rate.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, the Department will direct the Customs Service to suspend liquidation of all entries of HR products from South Africa that are entered, or withdrawn from warehouse, for consumption on or after the date of publication in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin indicated in the chart below. This suspension of liquidation will remain in effect until further notice. The preliminary weighted-average dumping margins are as follows:

	Margin (percent)
Exporter/Manufacturer:	
Highveld	9.28
Iscor/Saldanha	9.28
All Others	9.28

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination, or 45 days after our final determination, whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to several HR products cases, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Interested parties who wish to request a hearing, or participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination no later than 75 days after the date of this preliminary determination.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: April 23, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–10851 Filed 5–2–01; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–814]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Argentina

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 3, 2001.

FOR FURTHER INFORMATION CONTACT: Constance Handley or Charles Riggle at (202) 482–0631 and (202) 482–0650, respectively; AD/CVD, Enforcement, Office 5, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2000).

Preliminary Determination

We preliminarily determine that certain hot-rolled carbon steel flat products (HRS) from Argentina are being, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice.

Case History

On November 13, 2000, the Department received a petition on hot-rolled carbon steel flat products from Argentina filed in proper form by Bethlehem Steel Corporation, Gallatin Steel Company, IPSCO Steel Inc., LTV Steel Company, Inc., National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., U.S. Steel Group (a unit of USX Corporation), Weirton Steel Corporation, and Independent Steelworkers Union. On November 16, 2000, the United Steel Workers of America joined as co-petitioners in this case.

This investigation was initiated on December 4, 2000. *See Notice of Initiation of Antidumping Duty Investigations: Certain Hot-Rolled Carbon Steel Flat Products From Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine*, 65 FR 77568 (December 12, 2000) (*Initiation Notice*). Since the initiation of these investigations, the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage. See Initiation Notice at 77569. We received no comments from any parties in this investigation. The Department did, however, receive comments regarding product coverage in the concurrent investigation of HRS products from the Netherlands. In that investigation we received comments from Duracell Global Business Management Group on December 11, 2000, from Energizer on December 15, 2000, from Bouffard Metal Goods, Inc., and Truelove & Maclean, Inc., on December 18, 2000, from Corus Staal BV and Corus Steel U.S.A., Inc. (collectively referred to as Corus), from Thomas Steel Strip Corporation on December 27, 2000, and from Rayovac Corporation on March 12, 2001.

On December 22, 2000, the Department issued a letter to interested parties in all of the concurrent HRS antidumping investigations, providing an opportunity to comment on the Department's proposed model matching characteristics and hierarchy. Comments were submitted by: The petitioners (January 5, 2001); Corus, respondent in the Netherlands investigation (January 3, 2001); Iscor Limited, respondent in the South Africa investigation (January 3, 2001); and Zaporizhstal, respondent in the Ukraine investigation (January 3, 2001). Petitioners agreed with the Department's proposed characteristics and hierarchy of characteristics. Corus suggested adding a product characteristic to distinguish prime merchandise from non-prime merchandise. Neither Iscor nor Zaporizhstal proposed any changes to the either the list of product characteristics proposed by the Department or the hierarchy of those product characteristics but, rather, provided information relating to its own products that was not relevant in the context of determining what information to include in the Department's questionnaires. For purposes of the questionnaires subsequently issued by the Department to the respondents, no changes were made to the product characteristics or the hierarchy of those characteristics from those originally proposed by the Department in its December 22, 2000 letter. With respect to Corus' request, the additional product characteristic suggested by Corus, to distinguish prime merchandise from non-prime merchandise, is unnecessary. The Department already asks respondents to distinguish prime from non-prime merchandise in field number 2.2 "Prime vs. Secondary Merchandise." *See* the Department's Antidumping Duty Questionnaire, at B–7 and C–7 (January 4, 2001). These fields are used in the model match program to prevent matches of prime merchandise to non-prime merchandise. After careful review of the comments received, we made no changes to the model matching characteristics and hierarchy proposed in the Department's letter.

On December 28, 2000, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of the products subject to this investigation are threatening or materially injuring an industry in the United States producing the domestic like product. *See Hot-Rolled Steel Products from Argentina, China, India, Indonesia, Kazakhstan, the Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine*, 66 FR 805 (January 4, 2001).

On January 4, 2001, the Department issued an antidumping questionnaire to Acindar Industria Argentina de Aceros SA (Acindar) and Siderar Saic (Siderar), the mandatory respondents in this case. On January 16, 2001, Siderar notified the Department that it would not be responding to the Department's questionnaire due to the burdens involved in submitting a response. It provided no further elaboration, nor did it suggest alternatives to the Department's requirements pursuant to section 782 (c) of the Act. On January 17, 2001, the Government of Argentina also notified the Department that Siderar would not be participating in the investigation. On January 17, 2001, Acindar informed the Department that it did not sell the subject merchandise to the United States during the period of investigation (POI) and, therefore, had no sales to report. Upon reviewing U.S. Customs data, the Department confirmed that Acindar did not sell the subject merchandise to the United States during the POI and as such any future exports from Acindar will be subject to the "all-others" rate.

Period of Investigation

The POI for this investigation is October 1, 1999 through September 30, 2000. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, November 2000).

Scope of the Investigation

For purposes of this investigation, the products covered are certain HRS of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight length, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this investigation.

Specifically included within the scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of

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definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten. or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope:

• Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, e.g., American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).

• Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.

• Ball bearing steels, as defined in the HTSUS.

• Tool steels, as defined in the HTSUS.

• Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.

• ASTM specifications A710 and A736.

• USS abrasion-resistant steels (USS AR 400, USS AR 500).

• All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).

• Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this investigation is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by this investigation, including vacuum degassed fully stabilized, high strength low alloy, and the substrate for motor lamination steel may also enter under the following tariff classification numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00.

Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.

Facts Available

1. Application of Facts Available

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference, if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–20 (October 16, 1997). Finally, section 776(b) of the Act states that an adverse inference may include reliance on information derived from the petition. *See also* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Rep. No. 103–316 at 870 (1994).

In accordance with section 776(a)(2)(A) of the Act, for the reasons explained below, because Siderar failed to respond to our questionnaire, we preliminarily determine that the use of total adverse facts available is warranted with respect to Siderar. See the April 23, 2001 memorandum Application of Facts Available for Siderar Saic on file in the Central Records Unit, Room B–099 of the main Commerce Department Building.

Section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See also* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 103–316 at 870 (1994) (SAA). Failure by Siderar to respond to the Department's antidumping questionnaire constitutes a failure to act to the best of its ability to comply with a request for information, within the meaning of section 776 of the Act. Because Siderar failed to act to the best of its ability, the Department has determined that, in selecting among the facts otherwise available, an adverse inference is warranted in selecting the facts available for this company. Consistent with Department practice, we assigned Siderar the highest margin alleged in the amendment to the petition, *i.e.*, 44.59 percent. *See Initiation Notice.*

2. Selection and Corroboration of Facts Available

Section 776(b) of the Act states that an adverse inference may include reliance on information derived from the petition. *See also* SAA at 829–831. Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and Customs data, and information obtained from interested parties during the particular investigation (*see* SAA at 870).

We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose. *See Import Administration AD Investigation Initiation Checklist*, dated December 4, 2000, for a discussion of the margin calculation in the petition. In addition, in order to determine the probative value of the margin in the petition for use as adverse facts available for purposes of this determination, we examined evidence supporting the calculation in the petition. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price (EP) and normal value (NV) calculations on which the margin in the petition was based. Our review of the EP and NV calculation indicated that the information in the petition has probative value, as certain information (*e.g.*, international freight and customs duties) included in the margin calculation in the petition is from public sources concurrent, for the most part, with the POI.

We compared the export prices contained in the petition with U.S. Census values for the same HTS category and found the export prices suggested in the petition to be reasonable and, therefore, corroborated for purposes of calculating a facts available margin. With respect to the NV data included in the margin calculations of the petition, we were able to corroborate the reasonableness of these data through the use of multiple sources. *See* the April 23 memorandum titled *Application of Facts Available for Siderar Saic.*

All-Others Rate

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or de minimis margins, or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated "all-others" rate for exporters and producers not individually investigated. Our recent practice under these circumstances has been to assign, as the "all-others" rate, the simple average of the margins in the petition. We have done so in this case.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing Customs to suspend liquidation of all entries of HRS from Argentina that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct Customs to require a cash deposit or the posting of a bond equal to the amount by which the NV exceeds the EP, as indicated in the chart below. We will adjust the deposit requirements to account for any export subsidies found in the companion countervailing duty investigation. These suspension-of-liquidation instructions will remain in effect until further notice. The dumping margins are as follows:

Manufacturer/exporter	Margin (percent)
Siderar Saic (Siderar)	44.59
All Others	40.60

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Case briefs must be submitted no later than 35 days after the publication of this notice in the **Federal Register**. Rebuttal briefs must be filed within five business days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Public versions of all comments and rebuttals should be provided to the Department and made available on diskette.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to more than one HRS case, the Department may schedule a single hearing to encompass all cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

If this investigation proceeds normally, we will make our final determination in this investigation no later than 75 days after the date of this preliminary determination.

This determination is published pursuant to sections 733(f) and 777(i)(1) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: April 23, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–10852 Filed 5–2–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–865]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 3, 2001.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand, Carrie Blozy, or Doreen Chen, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3207, (202) 482–0165, and (202) 482–0193, respectively.

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The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2000).

Preliminary Determination

We preliminarily determine that certain hot-rolled carbon steel flat products from the People's Republic of China ("PRC") are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

This investigation was initiated on December 4, 2000. *See Notice of Initiation of Antidumping Duty Investigations: Certain Hot-Rolled Carbon Steel Flat Products From Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine*, 65 FR 77568 (December 12, 2000). The Department set aside a period for all interested parties to raise issues regarding product coverage. *See* Notice of Initiation, at 77569. We received comments regarding product coverage as follows: from Duracell Global Business Management Group on December 11, 2000; from Energizer on December 15, 2000; from Bouffard Metal Goods Inc. and Truelove & MacLean, Inc. on December 18, 2000; from the Corus Group plc., which includes Corus Steel USA (CSUSA) and Corus Staal BV (Corus Staal), and Thomas Steel Strip on December 26, 2000; and from Rayovac Corporation on March 12, 2001. Since the initiation of this investigation the following events have occurred.

On December 20, 2000, the Department of Commerce ("the Department") requested information from the U.S. Embassy in the PRC to identify producers/exporters of the subject merchandise and received a response in January 2001.

On December 22, 2000, the Department issued a letter to interested parties in all of the concurrent certain hot-rolled carbon steel flat products antidumping investigations, providing an opportunity to comment on the Department's proposed model matching characteristics and hierarchy. Comments were submitted by: petitioners (January 5, 2001); Corus Staal BV and Corus Steel USA Inc., collectively referred to as Corus, respondent in the Netherlands investigation (January 3, 2001); Iscor Limited, respondent in the South Africa investigation (January 3, 2001); and Zaporizhstal, respondent in the Ukraine investigation (January 3, 2001). Petitioners agreed with the Department's proposed characteristics and hierarchy of characteristics. Corus suggested adding a product characteristic to distinguish prime merchandise from non-prime merchandise. Neither Iscor nor Zaporizhstal proposed any changes to either the list of product characteristics proposed by the Department or the hierarchy of those product characteristics but, rather, provided information relating to its own products that was not relevant in the context of determining what information to include in the Department's questionnaires. For purposes of the questionnaires subsequently issued by the Department to the respondents, no changes were made to the product characteristics or the hierarchy of those characteristics from those originally proposed by the Department in its December 22, 2000 letter. With respect to Corus' request, the additional product characteristic suggested by Corus, to distinguish prime merchandise from non-prime merchandise, is unnecessary. The Department already asks respondents to distinguish prime from non-prime merchandise in field number 2.2 "Prime vs. Secondary Merchandise." *See* the Department's Antidumping Duty Questionnaire, at C–5 (January 4, 2001).

On December 29, 2000, the United States International Trade Commission ("ITC") issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of the subject merchandise from the PRC, which was published on January 4, 2001. *See Hot-Rolled Steel Products from Argentina, China, India, Indonesia, Kazakhstan, Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine*, 66 FR 805 (January 4, 2001) ("ITC Preliminary Determination").

On January 4, 2001, the Department issued its antidumping questionnaire to the Chinese Ministry of Foreign Trade & Economic Cooperation with a letter requesting that it forward the questionnaire to all Chinese exporters of certain hot-rolled carbon steel flat products who had shipments during the period of investigation ("POI"). We also sent courtesy copies of the antidumping questionnaire to the following possible producers/exporters of subject merchandise named in the petition: Anshan Iron & Steel (Group) Co., Anyang Iron and Steel Group, Shanghai Baosteel Group Corp., Benxi Iron and Steel Group Co., Laiwu Iron and Steel Group, and Wuhan Iron and Steel Group Co.

On January 25 and 26, 2001, the following Chinese producers/exporters of certain hot-rolled carbon steel flat products submitted information on the quantity and value of their shipments of subject merchandise to the United States during the POI: Angang Group International Trade Corporation, New Iron & Steel Co., Ltd., and Angang Group Hong Kong Co., Ltd. (collectively "Angang"), Shanghai Baosteel Group Corporation, Baoshan Iron and Steel Co., Ltd., and Baosteel Group International Trade Corporation (collectively "Baosteel Group"), Benxi Iron & Steel Group International Economic & Trade Co., Ltd., Bengang Steel Plates Co., Ltd., and Benxi Iron & Steel Group Co., Ltd. (collectively "Benxi"), Pangang Group International Economic & Trading Corporation and Panzhihua Iron & Steel (Group) Company (collectively "Panzhihua"), Wuhan Iron & Steel (Group) Corporation and International Economic and Trading Corp. Wugang Group (collectively "WISCO"), and Shanghai Yi Chang Steel Strip Co., Ltd. ("Yi Chang").

On February 6, 2001, we selected Angang, Baosteel Group, Benxi, and Yi Chang as the mandatory respondents (*see* "Selection of Respondents" below). We received complete Section A responses from Angang, Baosteel Group, Benxi, Panzhihua, WISCO, and Yi Chang on February 8, 2001.

On February 16, 2001, the Department issued a supplemental questionnaire to Yi Chang concerning the relationship between Baosteel Group and Yi Chang. Also, on February 16, 2001, the Department issued a letter to Baosteel Group concerning the submission of Section D questionnaire responses for certain wholly-owned firms of Baosteel Group, which during some or all of the POI produced merchandise meeting the physical description of the merchandise described in Appendix III to the Department's January 4, 2001 antidumping questionnaire (*see* "Baosteel Group-Wholly Owned Suppliers of Hot-Rolled Carbon Steel Flat Products," below, for further discussion of this issue). On February 22, 2001, the Department issued section A supplemental questionnaires to Angang, Benxi, Baosteel Group, and Yi Chang and received responses on March 8, 2001. On February 26, 2001, respondents submitted their responses to sections C and D to the Department's antidumping questionnaire. On February 28, 2001, the Department issued a letter to Yi Chang requesting that Yi Chang identify all unique products or models produced by Yi Chang during the POI that meet the physical description of the merchandise described in Appendix III to the Departments' January 4, 2001 antidumping questionnaire. Yi Chang submitted this information on March 7, 2001. On March 12, 2001, the Department issued supplemental questionnaires to Angang, Benxi, Baosteel Group, and Yi Chang and received responses to these questionnaires on April 2, 2001. On March 12, 2001, Baosteel Group submitted section D questionnaire responses for certain wholly-owned firms of the Baosteel Group, which during part or all of the POI produced merchandise meeting the physical description of the merchandise described in Appendix III to the Department's January 4, 2001 antidumping questionnaire. On March 27, 2001, the Department issued a supplemental section D questionnaire to Baosteel Group, following its March 12, 2001 section D response, and received a response on April 10, 2001. Petitioners filed comments on respondents' submissions in March 2001.

On January 31, 2001, we requested publicly-available information for valuing the factors of production and comments on surrogate country selection. On February 14, 2001, we received comments from petitioners on the appropriate surrogate country. On March 23, 2001, Baosteel Group submitted information concerning surrogate values to be used for valuing the factors of production. On March 26 and March 30, 2001, petitioners and respondents Angang and Benxi, respectively, submitted information concerning surrogate values for use in valuing the factors of production. On April 5 and 6, petitioners and respondents Baosteel Group and Yi Chang, respectively, submitted rebuttal comments on surrogate values.

Period of Investigation

The POI is April 1, 2000 through September 30, 2000. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (November 13, 2000). 19 CFR 351.204(b)(1).

Scope of Investigation

For purposes of this investigation, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this investigation.

Specifically included within the scope of this investigation are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this investigation:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this investigation is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by this investigation, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00,

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7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either: (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection; or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined. After consideration of the complexities expected to arise in this proceeding and the resources available to the Department, we determined that it was not practicable in this investigation to examine the six known producers/exporters of subject merchandise. Instead, we found that, given our resources, we would be able to investigate four Chinese producers/exporters. Angang, Baosteel Group, Benxi, and Yi Chang accounted for almost all exports of the subject merchandise from the PRC during the POI, as reported by the six producers/exporters at the time we made our respondent selection, and we selected them as mandatory respondents. *See Memorandum from Edward Yang to Joseph A. Spetrini Re: Selection of Respondents*, February 6, 2001.

Yi Chang—Country of Origin

In its original section A questionnaire response, dated February 8, 2001, Yi Chang stated that "it produced and sold the subject merchandise directly and did not purchase from an unaffiliated supplier." However, subsequent responses from Yi Chang on February 26, 2001, March 8, 2001, and April 2, 2001, made clear the following facts: first, "during the POI, Yi Chang was engaged only in the pickling of subject merchandise"—it therefore did not melt steel and as a result, purchased hot-rolled carbon steel coils as the input for its pickling process; second, Yi Chang purchased its hot-rolled carbon steel coils from Chinese and third country suppliers; and third, "all of the subject merchandise exported to the United States during the POI was produced from imported hot-rolled coils." Finally, in response to a supplemental question from the Department concerning the country of origin markings on the hot-rolled carbon steel flat products sold by Yi Chang to the United States, Yi Chang stated that because it added value to the finished product after pickling the hot-rolled coils, Yi Chang declared the product as originating in China. *See* Yi Chang April 2, 2001 supplemental response at page 10.

In determining whether substantial transformation has occurred for the purposes of establishing the country of origin for Yi Chang's hot-rolled carbon steel flat products exported to the United States in this dumping investigation, we examine whether the degree of processing or manufacturing in the PRC resulted in a new and distinct or different article from the hot-rolled steel coils imported from third country market economy suppliers. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from India ("Butt-Weld Pipe Fittings from India")*, 60 FR 10545, 10546 (February 27, 1995) and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Taiwan ("Cold-Rolled Steel from Taiwan")*, 65 FR 34658 (May 31, 2000). The Department has also stated in prior determinations that it is not bound by the country-of-origin and substantial transformation determinations made by other agencies of the U.S. government. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062, 37065 (July 9, 1993). Rather, our determination is made on the basis of reviewing the totality of the circumstances presented to the Department solely for the purpose of the antidumping proceeding. When an input from country A is further processed in country B, without any change in the class or kind of merchandise taking place, the Department normally will consider the product exported to the United States as originating in country A. *See, e.g., Butt-Weld Pipe Fittings from India and Cold-Rolled Steel from Taiwan*. In this case, the manufacturing process undertaken by Yi Chang in the PRC did not result in a change in the class or kind of merchandise between the third country hot-rolled steel coils and Yi Chang's pickled hot-rolled steel coils. In addition, although Yi Chang does perform some processing on the imported hot-rolled coils (*i.e.*, trimming and pickling), that further processing does not result in a substantial transformation within the context of this antidumping investigation. The data on the record indicate that the degree of transformation in this case is less than that found in cases in which the product was deemed to have been transformed sufficiently to change the origin of the item. Consequently, for the preliminary determination, we have denied Yi Chang's claims that the country of origin of the merchandise sold by Yi Chang is properly the PRC. Because none of the hot-rolled carbon steel flat products sold by Yi Chang in the United States during the POI was of Chinese origin, we preliminarily find that Yi Chang is not eligible for an antidumping duty margin calculation in this investigation of hot-rolled carbon steel flat products from the PRC. Also, we note that we are not addressing the issue of Yi Chang's relationship with the Baosteel Group, as Yi Chang did not produce any merchandise which was the same as that exported to the United States by the Baosteel Group.

Baosteel Group—Wholly Owned Suppliers of Hot-Rolled Carbon Steel Flat Products

In its questionnaire responses Baosteel Group explained that the subject merchandise it sold to the United States was exported by Baosteel Group International Trade Corporation ("Baosteel International"), a part of the Baosteel Group, and was produced by Baoshan Iron and Steel Co., Ltd. ("Baoshan Co., Ltd."), also a part of the Baosteel Group, and Baosteel Group itself. For Baosteel Group's ownership percentages in these companies, see *Analysis for the Preliminary Determination of Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China: Shanghai Baosteel Group Corporation* ("*Baosteel Group*"), ("*Baosteel Group Analysis Memorandum*"), dated April 23, 2001. Additionally, in its section A questionnaire response Baosteel Group identified three other wholly-owned Baosteel Group steel companies that produced hot-rolled steel products within the scope of this investigation during the POI, but stated that they did not export these products to the United States. Because the name of these firms is proprietary, we are referring to these companies as Firm A, Firm B, and Firm C. On February 16, 2001, the Department issued a letter to Baosteel Group requesting it to "ensure that when providing your Section D information, you submit full Section D information for all wholly-owned facilities of the Baosteel Group, which during some or all of the POI produced merchandise meeting the physical description of the merchandise described in Appendix III to the Department's January 4, 2001 antidumping questionnaire to Baosteel." Although objecting to this request, Baosteel Group nevertheless submitted section D responses for Firm A and Firm B on March 12, 2001, and supplemental responses on April 10, 2001. (In its March 12, 2001 response, Baosteel Group stated that Firm C did not produce or sell any merchandise that meets the physical description of the merchandise described in Appendix III to the Department's questionnaire.)

The Department requested this information primarily because the questionnaire responses for Baosteel Group have been filed on behalf of Shanghai Baosteel Group Corporation, Baoshan Co., Ltd., and Baosteel International. As noted above, both Baoshan Co., Ltd., which produces the subject merchandise sold to the United States, and Baosteel International, the trading company which sells the subject merchandise to the United States, are part of the Shanghai Baosteel Group Corporation. Moreover, both Firm A and Firm B are wholly-owned subsidiaries of the Shanghai Baosteel Group Corporation. For purposes of its separate rate analysis, the Department considers these companies to be one entity. Because it is the Shanghai Baosteel Group Corporation as a whole to which the Department has preliminarily granted a separate rate (*see* "Separate Rates," below), which will apply to each of its constituent entities, the Shanghai Baosteel Group Corporation is the respondent. Consequently, in order to accurately calculate the Corporation's normal value for any given model of subject merchandise, the Department necessarily requires for every model or product type reported by Shanghai Baosteel Group Corporation in the U.S. market sales listing, one weighted-average set of factors of production data based on POI-specific factors of production data for all members of the single entity Shanghai Baosteel Group Corporation. Therefore, for the preliminary determination, for all models of subject merchandise sold by Shanghai Baosteel Group Corporation during the POI we have calculated a single weighted-average normal value based on the factors of production for all of the firms (Baoshan Co., Ltd./Baosteel Group, Firm A and Firm B) that produced these models during the POI.

Nonmarket Economy Country Status

The Department has treated the PRC as a non-market economy ("NME") country in all past antidumping investigations (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 33805 (May 25, 2000), and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China*, 65 FR 19873 (April 13, 2000) (*Apple Juice*)). A designation as an NME remains in effect until it is revoked by the Department (*see* section 771(18)(C) of the Act). The respondents in this investigation have not requested a revocation of the PRC's NME status. We have, therefore, preliminarily determined to continue to treat the PRC as an NME country. When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs us to base the normal value ("NV") on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the "Normal Value" section, below.

Furthermore, no interested party has requested that the hot-rolled carbon steel flat products industry in the PRC be treated as a market-oriented industry and no information has been provided that would lead to such a determination. Therefore, we have not treated the hot-rolled carbon steel flat products industry in the PRC as a market-oriented industry in this investigation.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate, unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. The six companies that have submitted section A responses have provided the requested company-specific separate rates information and have stated that, for each company, there is no element of government ownership or control. All six companies have requested a separate company-specific rate.[1]

Angang reported that it is owned by all the people and that Angang and its affiliates have no corporate relationship with any level of the PRC government. Angang stated that Angang Group International Trade Corporation has complete independence with respect to its export activities.

Baosteel Group reported that Baosteel Group is a company owned by all the people. Baosteel Group claimed that Baosteel Group, Baoshan Iron and Steel Co., Ltd., and Baosteel International Trade Corporation operate independently from the national, provincial and local governments with respect to all significant export activities.

Benxi reported that it is owned by all the people. Benxi stated that all exports of the subject merchandise were produced by Bengang Steel, of which Benxi Group has majority ownership. Benxi claimed that Benxi Trading and its affiliates have no corporate relationship with any level of the PRC government.

Panzhihua reported that Pangang Group International Economic & Trading Corporation ("Pangang International") and its parent company, Panzhihua Iron & Steel (Group) Company (Panzhihua Group), are owned by all the people. Panzhihua claimed that Pangang International, Panzhihua Group, and Panzhihua Steel operate independently from the national, provincial and local governments with respect to all significant export activities.

WISCO reported that International Economic and Trading Corp. Wugang Group ("IETC"), and its parent company and supplier, Wuhan Iron & Steel (Group) Corporation, are owned by all the people. WISCO claimed that Wuhan Iron & Steel (Group) Corporation and IETC operate independently from the national, provincial and local governments with respect to all significant export activities.

Based on these claims, we considered whether each respondent is eligible for a separate rate. The Department's separate rate test to determine whether the exporters are independent from government control is not concerned, in general, with macroeconomic/border-type controls, *e.g.*, export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test

[1] As noted above, Yi Chang is not eligible for a separate rate because it made no exports of the subject merchandise to the United States during the POI.

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focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See, e.g., Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value,* 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 62 FR 61276, 61279 (November 17, 1997); and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less than Fair Value,* 60 FR 14725, 14726 (March 20, 1995).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) and amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). Under the separate rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of *De Jure* Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. The respondents have placed on the record a number of documents to demonstrate absence of *de jure* control, including the "Foreign Trade Law of the People's Republic of China" and the "Company Law of the People's Republic of China." In prior cases, the Department has analyzed these laws and found that they establish an absence of *de jure* control. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China,* 60 FR 54472, 54474 (October 24, 1995). We have no information in this proceeding which would cause us to reconsider this determination.

2. Absence of *De Facto* Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide.* Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The respondents asserted the following: (1) They establish their own export prices; (2) they negotiate contracts without guidance from any governmental entities or organizations; (3) they make their own personnel decisions; and (4) they retain the proceeds of their export sales, using profits according to their business needs. Additionally, none of the respondents' questionnaire responses suggest pricing is coordinated among exporters. Furthermore, our analysis of the respondents' questionnaire responses reveals no other information indicating government control. As stated in the *Silicon Carbide,* 59 FR at 22587, ownership of the company by a state-owned enterprise does not require the application of a single rate. Based on the information provided, we preliminary determine that there is an absence of *de facto* governmental control of the respondents' export functions. Consequently, we preliminarily determine that Angang, Baosteel Group, Benxi, Panzhihua, and WISCO have met the criteria for the application of a separate rate.

The People's Republic of China-Wide Rate

All exporters were given the opportunity to respond to the Department's questionnaire. As explained above, we received timely Section A responses from Angang, Baosteel Group, Benxi, Panzhihua, WISCO, and Yi Chang.[2] Our review of U.S. import statistics from the PRC, however, reveals that Angang, Baosteel Group, Benxi, Panzhihua, and WISCO did not account for all imports of subject merchandise into the United States from the PRC, even after adjusting for the merchandise Yi Chang said it had entered as being of Chinese origin. For this reason, we preliminarily determine that some PRC exporters of certain hot-rolled carbon steel flat products failed to respond to our questionnaire. Consequently, we are applying a single antidumping rate—the China-wide rate—to all other exporters in the PRC based on our presumption that those respondents who failed to demonstrate entitlement to a separate rate constitute a single enterprise under common control by the Chinese government. *See, e.g., Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China,* 65 FR 25706, 25707 (May 3, 2000) ("*Synthetic Indigo*"). The China-wide rate applies to all entries of subject merchandise except for entries from Angang, Baosteel Group, Benxi, Panzhihua, and WISCO.

Use of Facts Otherwise Available

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if that information is necessary to the determination but does not meet all of the requirements established by the Department provided that all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

[2] As explained above, for the preliminary determination we have found that Yi Chang did not have any exports of the subject merchandise to the United States during the POI.

Section 776(a)(2)(B) of the Act requires the Department to use facts available when a party does not provide the Department with information by the established deadline or in the form and manner requested by the Department. In addition, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of that party as facts otherwise available.

A. China Wide Rate

In the case of the single Chinese enterprise, as explained above, some exporters of the single enterprise failed to respond to the Department's request for information. Pursuant to section 776(a) of the Act, in reaching our preliminary determination, we have used total facts available for the China-wide rate because certain entities did not respond. Also, because some exporters of the single enterprise failed to respond to the Department's requests for information, the Department has found that the single enterprise failed to cooperate to the best of its ability. Therefore, pursuant to section 776(b) of the Act, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate. For our preliminary determination, as adverse facts available, we have used the highest rate calculated for a respondent, *i.e.,* the rate calculated for Benxi. In an investigation, if the Department chooses as facts available a calculated dumping margin of another respondent, the Department will consider information reasonably at its disposal as to whether there are circumstances that would indicate that using that rate is appropriate. Where circumstances indicate that the selected margin may not be appropriate, the Department will attempt to find a more appropriate basis for facts available. *See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin as adverse best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). In this investigation, there is no indication that the highest calculated margin is inappropriate to use as adverse facts available.

Accordingly, for the preliminary determination, the China-wide rate is 67.44 percent. Because this is a preliminary margin, the Department will consider all margins on the record at the time of the final determination for the purpose of determining the most appropriate final China-wide margin.

B. Angang and Benxi

Angang and Benxi failed to report freight information for all of their reported inputs. This information was requested twice by the Department, first in the original questionnaire dated January 4, 2001, and again in a supplemental questionnaire dated March 12, 2001. Because Angang and Benxi failed to provide this information, the Department, in accordance with section 776(a) of the Act, is basing its freight expense calculation on the facts otherwise available. This information is important because the Department needs it to calculate the freight expense component of the cost of Angang's and Benxi's factors of production. Because we find that Angang and Benxi failed to cooperate by not acting to the best of their ability to comply with our request that they provide the freight expense data, we are making, pursuant to section 776(b) of the Act, an adverse inference in selecting from the facts otherwise available. Therefore, as facts available, we applied the highest freight expense calculated for each respondent's inputs to those inputs for which freight information was not reported.

C. Baosteel Group, Firm A of Baosteel Group, and Firm B of Baosteel Group

Respondent Baosteel Group reported that it sold 63 unique models of hot-rolled products to the United States during the POI; however, Baosteel Group calculated unique factors of production costs for only seven product categories. Similarly, Firm A and Firm B of the Baosteel Group also did not report unique factors of production for every model of hot-rolled steel sold to the United States during the POI by Baosteel Group. In our supplemental questionnaires to Baosteel Group, Firm A of the Baosteel Group, and Firm B of the Baosteel Group, we requested that they revise their response to calculate a unique set of FOP data for each control number produced and sold in the United States market, taking into account the physical characteristics that distinguish each product. In their April 2, 2001 response and April 10, 2001 response, Baosteel Group and Firm A of Baosteel Group, respectively, maintained that because they produce a relatively narrow size range of hot-rolled products and do not keep the record of the processing time for different size of products for the cost accounting purpose, they are not able to allocate their cost among the products based upon the physical characteristics, such as width and thickness. In its April 2, 2001 response, Firm B of the Baosteel Group claimed that as it produced generally low-alloy hot-rolled products with a small range of carbon content, the yield rate of raw materials at the rolling process does not vary according to different slab and hot-rolled sheet. Furthermore, Firm B maintained that the cost of hot-rolled coils is only separately recorded and assigned to major categories of products at the rolling process (*e.g.,* hot-rolled strips, checkered steel sheet, medium and small size thick hot-rolled coils).

In their April 13, 2001 response, petitioners argued that because Baosteel Group failed to submit factors of production data which account for differences in cost related to products of varying thicknesses, the Department should apply adverse facts available. However, based on the claims of Baosteel Group and the data it submitted, we preliminarily determine that respondents assigned factor usages to products to the level of specificity permitted by their cost accounting systems. As Baosteel Group appears to have responded to the best of its ability, it is not appropriate to draw an adverse inference in applying facts available as advocated by petitioners in their April 12, 2001 submission. Additionally, although the reported factors of production were not on a model-specific basis, there is no data on the record to suggest that the reported factor amounts did not accurately reflect the factor amounts associated with all subject merchandise. Finally, we are unable to adjust the reported factors of production due to the broad basis on which the costs were accumulated and the lack of information on the record on how to appropriately adjust these costs. Consequently, we have determined to use their data for the preliminary determination. We intend to fully examine this issue at verification and for the final determination.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production, valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, the Department, in valuing the factors of production, shall utilize, to

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the extent possible, the prices or costs of factors of production in one or more market economy countries that are at a level of economic development comparable to the NME country and are significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the NV section below.

The Department has determined that India, Pakistan, Indonesia, Sri Lanka and the Phillippines are countries comparable to the PRC in terms of economic development. *See Memorandum from Jeffrey May to Edward Yang: Antidumping Duty Investigation on Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China*, dated January 11, 2001. Customarily, we select an appropriate surrogate based on the availability and reliability of data from these countries. For PRC cases, the primary surrogate has often been India if it is a significant producer of comparable merchandise. In this case, we have found that India is a significant producer of comparable merchandise.

We used India as the primary surrogate country and, accordingly, we have calculated NV using Indian prices to value the PRC producers' factors of production, when available and appropriate. *See Surrogate Country Selection Memorandum to The File from Catherine Bertrand, Case Analyst*, dated April 23, 2001, (*"Surrogate Country Memorandum"*). We have obtained and relied upon publicly available information wherever possible. *See Factor Valuation Memorandum to The File from Case Analysts*, dated April 23, 2001 (*"Factor Valuation Memorandum"*).

In accordance with section 351.301(c)(3)(i) of the Department's regulations, for the final determination in an antidumping investigation, interested parties may submit publicly available information to value factors of production within 40 days after the date of publication of this preliminary determination.

Fair Value Comparisons

To determine whether sales of certain hot-rolled carbon steel flat products to the United States by Angang, Benxi, and Baosteel Group were made at less than fair value, we compared export price ("EP") or constructed export price ("CEP"), as appropriate, to NV, as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs or CEPs.

Export Price and Constructed Export Price

In accordance with section 772(a) of the Act, for respondents Angang and Benxi we used EP because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and because CEP was not otherwise indicated. As explained below, for Baosteel Group we used CEP. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs or CEPs to the NVs.

We calculated EP based on prices to unaffiliated purchasers in the United States. For Angang we made deductions, where appropriate, for foreign inland freight, insurance, and ocean freight. Because certain domestic charges, such as those for foreign inland freight, insurance, and ocean freight, were provided by NME companies, we valued those charges based on surrogate rates from India. *See Factor Valuation Memorandum*. For Benxi, we made deductions, where appropriate, for foreign inland freight and brokerage and handling. Because these factors were provided by NME companies, we based them on surrogate rates from India. *See Factor Valuation Memorandum*.

Baosteel Group classified all of its sales of the subject merchandise in the United States as EP sales in its questionnaire response. All of Baosteel Group's U.S. sales of subject merchandise were made prior to importation through Baosteel America Inc. ("Baosteel America"), a U.S. based affiliated reseller.

We examined the facts surrounding the U.S. sales process. The initial point of contact for all customer inquiries is Baosteel Group International Trade Corporation ("Baosteel International"), the trading company owned by Baosteel Group and exporter of all of Baosteel Group's sales of the subject merchandise. Subsequent contacts with the customer may go through Baosteel America since due to the time difference between the United States and the PRC, Baosteel America serves as a more convenient communication link to Baosteel International. According to Baosteel Group, Baosteel International and the U.S. customer negotiate the prices, quantities and other sales terms directly, or through Baosteel America as a corresponding intermediary. After settling sales quantity, price, time of shipment and other terms of contract, Baosteel International will instruct Baosteel America to sign a contract with the designated U.S. customer. Because the terms of sale for all U.S. sales of subject merchandise are FOB Shanghai, neither Baosteel International nor Baosteel America incurs any movement expenses. Baosteel Group explained that three invoices are issued for each U.S. sales transaction. The first invoice is issued by Baoshan Co., Ltd. to Baosteel International after the goods are shipped out. The second invoice is issued by Baosteel International to Baosteel America upon shipment to the port. The third invoice is issued by Baosteel America to the unaffiliated U.S. customer after receiving the invoice from Baosteel International. Baosteel Group maintains that title does not transfer to Baosteel America and the goods do not enter Baosteel America's inventory. The U.S. customer pays Baosteel America, which then makes payment to Baosteel International. Baosteel International pays Baoshan Co., Ltd. after receiving payment from Baosteel America. The U.S. customer may request technical service or make warranty claims through Baosteel America, although according to Baosteel Group, Baosteel International must authorize approval for all claims. *See* Section A Questionnaire Response (February 8, 2001), Sections C and D Questionnaire Response (February 26, 2001) Section A Supplemental Questionnaire Response (March 8, 2001), and Supplemental Section A, C, and D Questionnaire Response (April 2, 2001).

Because the contracts on which Baosteel Group's U.S. sales were based were between Baosteel America and its unaffiliated U.S. customers and Baosteel America invoiced and received payment from the unaffiliated U.S. customer, the Department preliminarily determines that Baosteel Group's U.S. sales were made "in the United States" within the meaning of section 772(b) of the Act, and, thus, should be treated as CEP transactions. This is consistent with *AK Steel Corp.* v. *United States*, 226 F.3d 1361, 1374 (Fed. Cir. 2000).

We calculated weighted-average CEPs for Baosteel Group's U.S. sales made in the United States through its U.S. affiliate. We based CEP on FOB Shanghai prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight from the plant to the port of exportation and brokerage and handling in accordance with section 772(c)(2)(A) of the Act. Because these factors were provided by NME companies, we based them on surrogate rates from India. To calculate inland freight, we multiplied the reported distance from the plant to the port of exit by a surrogate rail rate from India. In accordance with section 772(d)(1) of the Act, we deducted from CEP direct and indirect selling expenses (*i.e.*, credit and indirect selling expenses) that were associated with Baosteel America's economic activities occurring in the United States. *See Baosteel Group Analysis Memorandum*.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if: (1) The merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

Factors of production include: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. We used factors of production, reported by respondents, for materials, energy, labor, by-products, and packing. We valued all the input factors using publicly available published information as discussed in the "Surrogate Country" and "Factor Valuations" sections of this notice.

In accordance with 19 CFR 351.408(c)(1), where a producer sources an input from a market economy and pays for it in market economy currency, the Department employs the actual price paid for the input to calculate the factors-based NV. *See also Lasko Metal Products* v. *United States*, 437 F.3d 1442, 1445–1446 (Fed. Cir. 1994) (*"Lasko"*). Respondents Baosteel Group, Angang and Benxi reported that some of their inputs were sourced from market economies and paid for in market economy currency. *See* "Factor Valuation" section below.

Each of the respondents reported "self-produced" factors among its factors of production for energy inputs, including such factors as electricity, oxygen, nitrogen, and argon. We preliminarily determined to value electricity, oxygen, argon, and nitrogen through use of surrogate valuation, rather than based on surrogate valuation of the factors going into the production of those inputs.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by respondents for the POI. To calculate NV, the reported per-unit factor quantities were multiplied by publicly available Indian surrogate values (except as noted below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. For a detailed description of all surrogate values used for respondents, *see Factor Valuation Memorandum*.

Citing Department case precedent, respondent Baosteel Group argued in its March 23, 2001 surrogate value submission that the Department should make deductions to domestic prices to ensure that they are exclusive of India's Central Sales Tax or any state sales tax. Consistent with *Sebacic Acid from the People's Republic of China, Final Results of Antidumping Duty Administrative Review*, 62 Fed. Reg. 65678 (December 15, 1997), where there was substantial evidence that a surrogate value based on a domestic price was tax-inclusive, we deducted sales taxes from the surrogate value. Specifically, the surrogate value for sulphuric acid was based on data from *Indian Chemical Weekly*, which was recently used in the antidumping investigation of bulk aspirin from the People's Republic of China. *See Memorandum to Susan Kuhbach*, Factor of Production Valuation for the Final Determination; Final Determination of the Antidumping Duty Investigation of *Bulk Aspirin from the People's Republic of China* (*"Bulk Aspirin"*) (May 17, 2000). This memorandum was added to the record as an attachment to *Memorandum to the File, Hot-Rolled Carbon Steel Products from the People's Republic of China* (April 17, 2001). In the *Bulk Aspirin* factor valuation memorandum, we calculated a lower, tax-exclusive surrogate value for sulphuric acid. Consistent with *Bulk Aspirin*, we have also calculated a tax-exclusive surrogate value for sulphuric acid in this case.

We added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States*, 117 F.3d 1401 (Fed. Cir. 1997). For those Indian Rupee values not contemporaneous with the POI, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's *International Financial Statistics*. For those United States dollar denominated values (*e.g.*, for slag, electricity) not contemporaneous with the POI, we adjusted for inflation using producer price indices published in the International Monetary Fund's *International Financial Statistics*.

Except as noted below, we valued raw material inputs using the weighted-average unit import values derived from the *Monthly Trade Statistics of Foreign Trade of India—Volume II—Imports* (*"Indian Import Statistics"*) for the time period corresponding to the POI. Where POI-specific *Indian Import Statistics* data were not available, we used *Indian Import Statistics* data from an earlier period (*i.e.*, April 1, 1998 through March 31, 1999 or April 1, 1999 through March 31, 2000. Also, we valued sulfuric acid using *Indian Chemical Weekly* data from October 1998 though March 1999. We adjusted the value for inflation using wholesale price indices published in the International Monetary Fund's *International Financial Statistics* and excluded taxes.

We rejected the following values submitted by respondents and/or petitioners as aberrational. We rejected the POI-specific surrogate value for iron ore pellets (HTS 26011201) provided by respondent Baosteel Group because the value of $0.29 per MT was aberrational when compared with data from the same source from an earlier period, the value for iron ore available from the Department's *Index of Factor Values for the People's Republic of China* located at *http://www.ia.ita.doc.gov/factorv/prc/material.html*, and the market prices paid by Baosteel Group and Angang. Instead, we valued iron ore pellets using the identical HTS number, but for an earlier period (April 1, 1998 through March 31, 1999). We valued ferro-silicon based on HTS number 72022100 ("silicon containing greater than 55% of silicon") rather than respondent Baosteel Group's proposed ferro-silicon value (HTS 72022900 (other ferro-silicon) based on the fact that respondent Baosteel Group's data indicated that the specification of the ferro-silicon purchased by Baosteel Group was of the higher silicon content material. We note that respondents Benxi and Angang also proposed valuing ferro-silicon based on *Indian Import Statistics* data for ferro-silicon containing more than 55 percent silicon, albeit for an earlier period. Also, the Department determined that the surrogate value for slag submitted by both respondents and petitioners was unreliable. According to *New Steel*, February 1997, pages 24 and 44, slag has a relatively low value compared to the price of steel. Because the Indian values for slag were unusually high compared to the price of the subject merchandise, the Department has preliminarily used values for slag from the U.S. Geological Survey *Minerals, Commodities Summaries* from 1998. *See Factor*

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Valuation Memorandum. We valued ammonium sulphate, which was reported as a by-product for respondent Angang, based on Indian Chemical Weekly and we excluded taxes. The Indian surrogate value proposed by respondents Angang and Benxi represented a sale of only one metric ton. Finally, as the surrogate values for oxygen, nitrogen, and argon appeared aberrational compared with valuation data used for these factors in the *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China (CTL Plate)*, 62 FR 61964, (November 20, 1997) we relied on October 1996 price information from Bhoruka Gases Limited, an Indian manufacturer of Industrial Gases for surrogate values for oxygen, nitrogen, and argon gases. This information was adjusted for inflation using data from the International Monetary Fund's *International Financial Statistics*.

As explained above, respondents Baosteel Group and Angang sourced certain raw material inputs from market economy suppliers and paid for them in market economy currencies. Specifically, Baosteel Group, Firm B of the Baosteel Group, and Angang sourced iron ore from market economy suppliers. Respondent Baosteel Group reported that four types of iron ore were purchased from market economy suppliers, namely, iron ore powder, lump iron ore powder, titanium iron ore and pellet iron powder. The evidence provided by Baosteel Group indicated that its market economy purchases of iron ore were significant. See Exhibits 4 and 9 of Baosteel Group's February 26, 2001 submission. The Department has determined to use the FOB Baosteel Group prices as reported, in accordance with 19 CFR 351.408(c)(1). However, for that portion of the iron ore powder, lump iron ore powder, and pellet iron powder shipments which were unloaded at an intermediary port, we have added an Indian surrogate river transport freight expense, given that the data indicates that the prices reported did not account for these additional expenses. Also, Baosteel Group reported that for certain of the imported iron ore imports, the marine insurance was provided by a non-market economy supplier. Where Baosteel Group reported that the marine insurance was provided by an NME supplier, we valued marine insurance from an Indian company (see below). We then added the freight and shipment expenses as well as a marine insurance expense to a weighted-average FOB Baosteel Group price to account for materials delivered at an intermediary port. Finally, we weight-averaged the total value of the iron ore delivered directly to Baosteel Group (which included freight and marine insurance expenses) with the total value of the iron ore unloaded at an intermediately port to derive a final market-based iron ore price per category of iron ore reported.

Firm B of the Baosteel Group reported that two types of iron ore were purchased from market economy suppliers, namely, iron ore powder and iron ore lumps. The evidence provided by Firm B of Baosteel Group indicated that its market economy purchases of iron ore were significant. *See* March 12, 2001 submission of Firm B of Baosteel Group at D–7. The Department has determined to use the FOB Firm B prices as reported, in accordance with 19 CFR 351.408(c)(1). We added to weighted-average price for each input the weighted-average reported amount for freight.

As explained in the preamble to 19 CFR 351.408(c)(1), where the quantity of the input purchase was insignificant, we do not rely on the price paid by an NME producer to a market economy supplier. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 17, 1997). Benxi's reported information demonstrates that the quantity of one of its inputs which it sourced from market economy suppliers was so small as to be insignificant when compared to the quantity of the same input it sourced from PRC suppliers. *See Factor Valuation Memorandum* for the precise volumes. Therefore, as the amount of this reported market economy input is insignificant, we did not use the price paid by Benxi for this input and instead used *Indian Import Statistics* data, as adjusted for inflation.

To value electricity, we used 1997 data reported as the average Indian domestic prices within the category "Electricity for Industry," published in the International Energy Agency's publication, *Energy Prices and Taxes*, Fourth Quarter, 1999, as adjusted for inflation.

Angang purchased iron ore fines and lump iron ore from market economy suppliers during the POI, one of which was an affiliated joint venture. We compared the prices paid to the affiliated supplier with the prices paid to unaffiliated suppliers (both to Angang and Baosteel) and found that price from the affiliated supplier was within the same range as those from the unaffiliated suppliers. After having conducted this test, we calculated a weighted average of the affiliated and unaffiliated purchases to arrive at the price for iron ore fines, because Angang had purchases from both types of market economy suppliers for this input.

Respondents reported the following packing inputs: Paper, steel strip, steel clip, steel wires, plastic board, plastic washers, inner and outer paperboard, steel cushions, and steel buckles. We used *Indian Import Statistics* data for the POI and for the period April 1, 1998 through March 31, 1999. *See Factor Valuation Memorandum*.

We used Indian transport information to value transport for raw materials. For all instances in which respondents reported delivery by truck, to calculate domestic inland freight (truck), we used a price quote from an Indian trucking company for transporting materials between Mumbai and Surat (263 kilometers), which was provided in Exhibit 32 to Baosteel Group's March 23, 2001 surrogate value submission. We converted the Indian Rupee value to U.S. dollars and adjusted for inflation through the POI. Similarly, for domestic inland freight (rail), we used freight rates as quoted from Indian Railway Conference Association price lists, which was provided in Exhibit Z to the November 22, 2000, amendment to petition in this case. We used the rate for distances between 741–750 kilometers (the lowest distance reported on the schedule) since all of the respondents are located less than 500 kilometers from the port of exit. We converted the Indian Rupee value to U.S. dollars and adjusted for inflation through the POI.

To value inland insurance, we used the Department's recently revised *Index of Factor Values for Use in Antidumping Duty Investigations Involving Products from the PRC* (available on the Department's website.) We converted the Indian Rupee value to U.S. dollars and adjusted for inflation through the POI. To value marine insurance and brokerage and handling we used a publicly summarized version of the average value for marine insurance expenses and brokerage and handling expenses reported in *Certain Stainless Steel Wire Rod from India; Final Results of Antidumping Duty Administrative and New Shipper Reviews*, 64 FR 856 (January 6, 1999).

To value river transport, we used the surrogate value for river freight used in the *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From The People's Republic of China* ("*Cold-Rolled Steel from the PRC*"), 65 FR 1117 (January 7, 2000). No party submitted a surrogate value for ocean freight. Therefore, to value ocean freight, we used the same methodology as in *CTL Plate* and the initiation of this case. We calculated the total cost, insurance, freight (CIF) value for imports of subject merchandise into the United States during the POI, subtracted the insurance and freight exclusive total Free Alongside (FAS) value, and divided the remainder by the total volume of POI importations of subject merchandise to arrive at a per unit value. *See Factor Valuation Memorandum*.

Respondents identified a number of by-products which they claimed are recovered in the production process and/or sold. However, for certain of the claimed by-products the responses are unclear as to how the various inputs are re-entered into the production process. Therefore, the Department has only offset the respondents' cost of production by the amount of a reported by-product (or a portion thereof) where respondents' responses indicated that it was sold and/or where the record evidence clearly demonstrates that the by-product was re-entered into the production process. We intend to examine this issue more closely at verification for all respondents. *See Factor Valuation Memorandum* for a complete discussion of by-product credits given and the surrogate values used.

To value factory overhead, and selling, general and administrative expenses ("SG&A"), we calculated simple average rates based on financial information from two Indian integrated steel producers, SAIL and Tata. For profit, we used information from Tata. Although respondents requested that we use financial information from another Indian steel producer, that steel producer is a mini-mill, and its financial information would be less comparable to that of the respondents, as the respondents operate integrated steel production facilities. (For a further discussion of the surrogate values for overhead, SG&A and profit, see *Factor Valuation Memorandum*.)

For labor, consistent with section 351.408(c)(3) of the Department's regulations, we used the PRC regression-based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in May 2000 (*see http://ia.ita.doc.gov/wages*). The source of the wage rate data on the Import Administration's Web site is the *1999 Year Book of Labour Statistics*, International Labor Office (Geneva: 1999), Chapter 5B: Wages in Manufacturing.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify all company information relied upon in making our final determination.

Rate for Producers/Exporters That Responded Only to Separate Rates Questionnaire

For those PRC producers/exporters that responded to our separate rates questionnaire but did not respond to the full antidumping questionnaire because they were not selected to respond (*i.e.*, Panzhihua and WISCO), we have calculated a weighted-average margin based on the rates calculated for those producers/exporters that were selected to respond. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Freshwater Crawfish Tail Meat From the People's Republic of China*, 62 FR 41347, 41350 (August 1, 1997).

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all imports of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the U.S. Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as indicated below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average percent margin
Angang Group International Trade Corporation	64.77
Shanghai Baosteel Group Corporation	40.74
Benxi Iron & Steel Group Co., Ltd.	67.44
Panzhihua Iron & Steel (Group) Company	44.47
Wuhan Iron & Steel Group Corporation	44.47
China-Wide	67.44

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination of sales at LTFV. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation, of the subject merchandise.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than fifty days after the date of publication of this notice, and rebuttal briefs, limited to issues raised in case briefs, no later than fifty-five days after the date of publication of this preliminary determination. *See* 19 CFR 351.309(c)(1)(i); 19 CFR 351.309(d)(1). A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, any hearing will be held fifty-seven days after publication of this notice at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief, and may make rebuttal presentations only on arguments included in that party's rebuttal brief. *See* 19 CFR 351.310(c).

If this investigation proceeds normally, we will make our final determination no later than 75 days after the date of the preliminary determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

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Dated: April 23, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–806]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Hot-Rolled Carbon Steel Flat Products From Romania

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 3, 2001.

FOR FURTHER INFORMATION CONTACT: Christopher Riker or Charles Riggle at (202) 482–0186, (202) 482–0650, respectively; AD/CVD Enforcement, Office 5, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR part 351 (2000.)

Preliminary Determination

We preliminarily determine that certain hot-rolled carbon steel flat products (HRS) from Romania are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice.

Case History

This investigation was initiated on December 4, 2000. *See Notice of Initiation of Antidumping Duty Investigations: Certain Hot-Rolled Carbon Steel Flat Products From Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine*, 65 FR 77568 (December 12, 2000) (*Initiation Notice*). Since the initiation of these investigations,[1] the following events have occurred:

The Department set aside a period for all interested parties to raise issues regarding product coverage. See *Initiation Notice* at 77569. We received no comments from any parties in this investigation. The Department did, however, receive comments regarding product coverage in the investigation of hot-rolled carbon steel products from the Netherlands. In that investigation we received comments from Duracell Global Business Management Group on December 11, 2000, from Energizer on December 15, 2000, from Bouffard Metal Goods, Inc., and Truelove & Maclean, Inc., on December 18, 2000, and from Corus Staal BV and Corus Steel U.S.A., Inc. (collectively referred to as Corus), from Thomas Steel Strip Corporation on December 26, 2000, and from Rayovac Corporation on March 12, 2001.

On December 28, 2000, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of the products subject to this investigation are threatening or are materially injuring an industry in the United States producing the domestic like product. *See Hot-Rolled Steel Products from Argentina, China, India, Indonesia, Kazakhstan, Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine*, 66 FR 805 (January 4, 2001).

On January 4, 2001, the Department issued an antidumping questionnaire to the government of Romania, the mandatory respondent in this case. We also sent copies of the questionnaire to Gavazzi Steel and Sidex S.A. (Sidex), both of whom had been identified as producers/exporters of the subject merchandise by the petitioners. On January 30, 2001, we received a letter from Sidex stating that Gavazzi Steel, a producer of the subject merchandise in Romania, did not sell the subject merchandise to the United States during the period of investigation (POI) and that only HRS produced by Sidex was exported to the United States during the POI. On February 1 and February 26, 2001, we received questionnaire responses from Sidex, Sidex Trading, SRL, Sidex International, Plc (jointly, the Sidex Exporters), Metalexportimport, S.A. (MEI), Metanef, S.A. (Metanef) and Metagrimex, S.A. (Metagrimex). We issued supplemental questionnaires to Sidex and the Sidex Exporters, MEI, Metanef and Metagrimex on March 12, 2001, and received responses on March 31, 2001. On February 1, 2001, we invited interested parties to provide comments on the surrogate country selection and publicly available information for valuing the factors of production. We received comments from both the petitioners and the respondents regarding surrogate country selection on February 6, 2001. Between February 6 and April 11, 2001, the petitioners and the respondents submitted additional comments regarding issues they believed the Department should consider for the purposes of the preliminary determination.

On April 11, 2001, counsel for Sidex and the Sidex Exporters, Metanef, MEI and Metagrimex submitted a letter from the Embassy of Romania which stated that Gavazzi Steel made no exports of subject merchandise to the United States during the POI.

Period of Investigation

The POI for HRS from Romania is April 1, 2000 through September 30, 2000. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, November 2000).

Scope of the Investigation

For purposes of this investigation, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight length, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this investigation.

Specifically included within the scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent of vanadium, or 0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506). Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this investigation is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by this investigation, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00.

Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.

Nonmarket Economy Status

The Department has treated Romania as a non-market-economy (NME) country in all past antidumping investigations. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Small Diameter Carbon and Alloy Seamless, Standard, Line and Pressure Pipe From Romania*, 65 FR 39125 (June 23, 2000). A designation as a NME remains in effect until it is revoked by the Department (*see* section 771(18)(C) of the Act).

On January 3, 2001, we received a letter from the Romanian Undersecretary of State requesting market economy status. In response, the Department issued a letter outlining the proper form and procedures for making a request for market economy status. *See Letter from Gary Taverman to the Government of Romania* (January 5, 2001). There has been no further communication from the Romanian government on this issue.

When the Department is investigating imports from a NME, section 773(c)(1) of the Act directs us to base normal value (NV) on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the *Normal Value* section, below.

Separate Rates

It is the Department's policy to assign all exporters of subject merchandise subject to investigation in a NME country a single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. For purposes of this "separate rates" inquiry, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified in *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under this test, exporters in NME countries are entitled to separate, company-specific margins when they can demonstrate an absence of government control over exports, both in law (*de jure*) and in fact (*de facto*).

Evidence supporting, though not requiring, a finding of *de jure* absence of government control includes the following: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

De facto absence of government control with respect to exports is based on the following four criteria: (1) Whether the export prices are set by or subject to the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has autonomy in making decisions regarding the selection of management; and (4) whether each exporter has the authority to negotiate and sign contracts. (*See Silicon Carbide*, 59 FR at 22587.)

We have determined, according to the criteria identified in *Sparklers* and *Silicon Carbide*, that the evidence of record demonstrates an absence of

[1] The petitioners in these investigations are Bethlehem Steel Corporation, Gallatin Steel Company, IPSCO Steel Inc., LTV Steel Company, INc., National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., U.S. Steel Group (a unit of USX Corporation), Weirton Steel Corporation, the Independent Steelworkers Union, and the United Steelworkers of America (collectively the petitioners). Weirton Steel Corporation is not a petitioner in the investigation involving (HRS) from the Netherlands.

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government control, both in law and in fact, with respect to exports by Metagrimex, Metanef, MEI and the Sidex Exporters. In the case of Metagrimex, that company was established as a privately-owned limited-liability trading company after Romania began its extensive privatization program in 1990; the company has never been state-owned nor controlled by provincial or local governments. In the case of Metanef and MEI, although these companies were previously state-owned, they have since become privately-held trading companies in accordance with legislative enactments decentralizing the companies' control. Moreover, a review of the corporate governance rules of each of these three companies indicates that they are only limited by their respective articles of incorporation and bylaws. Specifically, the information on the record shows that MEI, Metagrimex and Metanef are autonomous in selecting their management, negotiating and signing contracts, setting their own export prices, and retaining their own profits.[2] In the case of Sidex and the Sidex Exporters, although Sidex remains primarily state-owned, the record evidence indicates that the government exercises no control over the daily operations of the company, and that the company operates independently in the selling of the subject merchandise. In the case of Sidex, we note that one of the seven directors of the company is a government official. Otherwise, Sidex and the Sidex Exporters appear to operate independent of government control with respect to the selection of their management, negotiating and signing contracts, setting their own export prices and retaining their own profits.

For a complete discussion of the Department's preliminary determination that Metagrimex, Metanef, MEI and the Sidex Exporters are entitled to separate rates, *see* the April 23, 2001, memorandum, *Assignment of Separate Rates for Respondents in the Antidumping Duty Investigation of Certain Hot-Rolled Carbon Steel Flat Products from Romania,* which is on file in the Central Records Unit (CRU), room B–099 of the main Commerce Department Building.

[2] We note that an issue has been raised as to whether it is appropriate to assign a margin to any Romanian company other than Sidex, because the evidence on the record may suggest that Sidex has a more direct role in U.S. sales of HRS than is typically seen in NME cases. This issue will be examined closely at verification.

Romania-Wide Rate

As in all NME cases, the Department implements a policy whereby there is a rebuttable presumption that all exporters comprise a single entity under common government control, the "NME entity." Therefore, the Department assigns a single NME rate to the NME entity, unless an exporter can demonstrate eligibility for a separate rate. If all exporters, accounting for all exports of subject merchandise to the United States during the POI, demonstrate eligibility for a separate rate, the Department will calculate an "all others" rate as it does in market economy cases. However, if record evidence suggests that all exporters have not responded to at least the Department's initial shipment information query, the Department will rely on its presumption that there is an additional entity under government control and will assign a country-wide rate to the NME entity. Such is the situation in this investigation. Specifically, we have been unable to confirm through a comparison of the reported data to public sources, that no other company exported HRS to the United States during the POI.

In an effort to confirm that all sales of HRS from Romania were indeed accounted for in the reported sales volumes for each of the respondents in this investigation, we compared the total sales quantity for all four respondents to total imports of HRS from Romania as reported by the U.S. Customs Service. According to the U.S. Customs Service, total imports of HRS from Romania during the POI were significantly higher than the total sales quantity reported to the Department by the four respondents. *See Memorandum to the File from Valerie Ellis Regarding IM–145 data for POI Imports from Romania* (April 19, 2001). Given this, we believe that additional exporters of the subject merchandise exist that have not responded to the Department's questionnaire.

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference, if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review,* 62 FR 53808, 53819–20 (October 16, 1997). Section 776(b) of the Act also provides that an adverse inference may include reliance on information derived from the petition. *See also* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Rep. No. 103–316 at 870 (1994).

The SAA, at 870, and section 351.308(c)(1) of the Department's regulations, clarify that information from the petition is "secondary information." If the Department relies on secondary information as facts available, section 776(c) of the Act provides that the Department shall, to the extend practicable, corroborate such information using independent sources reasonably at its disposal. The SAA further provides that corroboration means simply that the Department will satisfy itself that the secondary information to be used has probative value. However, where corroboration is not practicable, the Department may use uncorroborated information.

On January 4, 2001, we sent an antidumping questionnaire to the Government of Romania requesting that they transmit the questionnaire to all of the companies in Romania who produce or export the subject merchandise to the United States. There is no record evidence as to whether or not they did so. Although we received questionnaire responses from the exporters named in the petition, as well as from additional trading companies not named in the petition, as discussed above, Customs data indicate that these exporters do not account for all exports of the subject merchandise to the United States during the POI. As a result, the Department presumes that there is an additional NME entity that has not responded to our questionnaire and determination of a country-wide rate is appropriate. Because the information necessary to calculate a country-wide rate is not available on the record, we have determined the country-wide rate based on the facts available, pursuant to section 776(a)(1) of the Act. In addition, pursuant to section 776(b) of the Act, we are using an adverse inference in selecting among the facts otherwise available because the NME entity failed to cooperate to the best of its ability by not responding to the Department's questionnaire. As adverse facts available, we have assigned a rate of 88.62 percent, the highest rate contained in the petition, as the Romania-wide rate.

To corroborate the petition rate of 88.62 percent, we examined the basis of the rate contained in the petition. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price and normal value calculations on which the petition margin calculation was based. The U.S. price in the petition was based on import average unit values. Based on a comparison of the U.S. Census Bureau's official IM–145 import statistics with the average unit values in the petition, we find the export price suggested in the petition to be consistent with those statistics. The normal value was based on a factors of production analysis using public information, reasonably available to the petitioners, to value the factors. The petitioners estimated the factors of production by using a U.S. company's experience in manufacturing a like product during the first nine months of 2000. Where appropriate, the factors were adjusted for known differences using publicly available *UN Commodity Trade Statistics*. We compared the factors used by the petitioners in the petition to the factors provided by the respondents and find them to be similar. In addition, the information used to value the factors comes from public, published sources. For these reasons, we find the petition rate used as adverse facts available to be corroborated for the purposes of this investigation.

Fair Value Comparisons

To determine whether sales of the subject merchandise by Metagrimex, Metanef, MEI and the Sidex Exporters to the United States were made at LTFV, we compared the export price (EP) to the NV, as described in the *Export Price* and *Normal Value* sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs to weighted-average NVs.

Export Price

We used EP methodology in accordance with section 772(a) of the Act, because the Sidex Exporters, Metagrimex, Metanef and MEI sold the merchandise directly to unaffiliated customers in the United States prior to importation, and CEP methodology was not otherwise indicated.

1. The Sidex Exporters

We calculated EP based on packed FOB Galati prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for inland freight from the plant to the port of embarkation and brokerage and handling in Romania. Because domestic brokerage and handling and inland freight were provided by NME companies, we based those charges on surrogate rates from Egypt. (*See* the *Normal Value* section for further discussion.)

2. Metanef

We calculated EP based on packed FOB Galati prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for inland freight from the plant to the port of embarkation and brokerage and handling in Romania. As with the Sidex Exporters, because domestic brokerage and handling and inland freight were provided by NME companies, we based those charges on surrogate rates from Egypt. (*See* the *Normal Value* section for further discussion.)

3. Metagrimex

We calculated EP based on packed FOB Galati prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for inland freight from the plant to the port of embarkation and brokerage and handling in Romania. As with the Sidex Exporters and Metanef, because domestic brokerage and handling and inland freight were provided by NME companies, we based those charges on surrogate rates from Egypt. (*See* the *Normal Value* section for further discussion.)

4. MEI

We calculated EP based on packed FOB Galati prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for inland freight from the plant to the port of embarkation and brokerage and handling in Romania. As with the other Romanian companies, because domestic brokerage and handling and inland freight were provided by NME companies, we based those charges on surrogate rates from Egypt. (*See* the *Normal Value* section for further discussion.)

Normal Value

A. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) are at a level of economic development comparable to that of the NME country; and (2) are significant producers of comparable merchandise. The Department initially determined that the Philippines, the Dominican Republic and El Salvador are the countries most comparable to Romania in terms of overall economic development. We subsequently included Egypt, Ecuador and Algeria among the countries which are economically comparable to Romania because Egypt's per-capita GNP and overall economic development were also similar to that of Romania. *See* the January 22 and March 30, 2001 memoranda from Jeff May, Director, Office of Policy to Gary Taverman, Director, Office 5, AD/CVD Enforcement.

According to the information on the record, we have determined that Egypt is a significant producer of products comparable to the subject merchandise among the above-referenced potential surrogate countries, and provides the necessary factor price information for most of the factors of production. Accordingly, where possible, we have calculated NV using Egyptian prices to value the Romanian producer's factors of production. We have obtained and relied upon publicly available information whenever possible. Where we did not have reliable Egyptian values, we used values for inputs from the Philippines, which, to a lesser degree, produces comparable products to the subject merchandise, as well. Where the producer purchased factor inputs from a market-economy supplier in significant quantities and paid in a convertible currency, we used the actual prices paid to value all of the input.

B. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by Sidex, the company in Romania that produced hot-rolled carbon steel flat products, for the exporters that sold hot-rolled carbon steel flat products to the United States

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during the POI. To calculate NV, the reported unit factor quantities were multiplied by publicly available Egyptian and, where necessary, Philippine values.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices to make them delivered prices. We added to surrogate values a surrogate freight cost using the distance from the seaport to the factory or the reported distance from the domestic supplier to the factory, whichever distance was shorter. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States*, 117 F. 3d 1401 (Fed. Cir. 1997). For those freight values not contemporaneous with the POI, we adjusted for inflation using consumer price indices published in the International Monetary Fund's International Financial Statistics.

We valued material inputs and packing material by Harmonized Tariff Schedule (HTS) number, using imports statistics from the UN Commodity Trade Statistics for 1998. Where a material input was purchased in a market-economy currency from a market-economy supplier, we valued all of the input at the actual purchase price in accordance with section 351.408(c)(1) of the Department's regulations. For a complete analysis of surrogate values, *see* the April 23, 2001 memorandum, *Factors of Production Valuation for Preliminary Determination (Valuation Memorandum)*, on file in the CRU.

We valued labor using the method described in 19 CFR 351.408(c)(3).

To value electricity, we used the electricity rates for Egypt reported in the January 2000 Middle East and North Africa Region Infrastructure Development Unit publication *Republic of Yemen Comprehensive Development Review (Phase I) Power and Energy Sector Report.*

We based our calculation of depreciation, selling, general and administrative (SG&A) expenses and profit from the financial statements of Alexandria National Iron and Steel Works, an Egyptian producer of products comparable to the subject merchandise. We were unable to calculate an appropriate overhead ratio from any of the information on the record.

To value truck and rail freight rates, we used a 1999 rate, adjusted for inflation, provided by the Egyptian Consulting House, a member of AGN International. For barge transportation, we valued barge rates using an Egyptian rate from an Egyptian freight forwarder for steel coil and coal in bulk from Alexandria to Hulwan, Egypt, as adjusted for inflation.

For brokerage and handling, we used a 1999 rate provided by a trucking and shipping company located in Alexandria, Egypt. For further details, see *Valuation Memorandum.*

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise from Romania entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

Exporter/manufacturer	Margin (percent)
Sidex Trading, SRL & Sidex International, Plc	22.97
Metanef, S.A	32.36
Metagrimex, S.A	33.40
Metalexportimport,S.A	25.60
Romania-Wide	88.62

The Romania-wide rate applies to all entries of the subject merchandise except for entries from exporters/producers that are identified individually above.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant portion of exports of the subject merchandise or, if in the event of a negative determination, a request for such postponement is made by the petitioners. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by the respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On April 11, 2000, we received a request from the respondents for postponement of the final determination and an extension of the provisional measures. Because the preliminary determination in this case is affirmative, the requesting respondents account for a significant percent of the exports to the United States and there is no compelling reason to deny the respondents' request, we have extended the deadline for issuance of the final determination in this case until the 135th day after the date of publication of this preliminary determination in the **Federal Register**.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine by the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

In accordance with 19 CFR 351.224, the Department will disclose to the parties the details of its antidumping calculations. Case briefs will be due two weeks after the issuance of the final verification report in conjunction with this investigation. Rebuttal briefs must be filed within five business days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Public versions of all comments and rebuttals should be provided to the Department and made available on diskette. Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. In the event that the Department receives requests for hearings from parties to more than one HRS case, the Department may schedule a single hearing to encompass all cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

As noted above, the final determination will be issued within 135 days after the date of publication of this preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: April 23, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–10854 Filed 5–2–01; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–817]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 3, 2001.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza or Nancy Decker at (202) 482–3019 and (202) 482–0196, respectively; AD/CVD Enforcement, Office 8, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (Department) regulations are to the regulations at 19 CFR part 351 (April 2000).

Preliminary Determination

We preliminarily determine that certain hot-rolled carbon steel flat products (HR) from Thailand are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV is shown in the "Suspension of Liquidation" section of this notice.

Case History

On December 4, 2000, the Department initiated antidumping investigations of HR products from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine. *See* Initiation of Antidumping Duty Investigation: Certain Hot-Rolled Carbon Steel Flat Products from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine, 65 FR 77568 (December 12, 2000) (Initiation Notice). The petitioners in this investigation are Bethlehem Steel Corporation, LTV Steel Company, Inc., National Steel Corporation, U.S. Steel Group (a Unit of USX Corporation), Gallatin Steel Company, IPSCO Steel Inc., Nucor Corporation, Steel Dynamics, Inc., Weirton Steel Corporation, and Independent Steelworkers Union. Since the initiation of this investigation the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage. *See* Initiation Notice at 77569. We received no comments from any parties in this investigation. The Department did, nowever, receive comments regarding product coverage in the investigation of hot-rolled carbon steel products from the Netherlands. In that investigation we received comments from Duracell Global Business Management Group on December 11, 2000, from Eveready Battery Co., Inc., on December 15, 2000, from Bouffard Metal Goods, Inc., and Truelove & Maclean, Inc., on December 18, 2000, and from Corus Staal BV and Corus Steel U.S.A., Inc., and Thomas Steel Strip Corporation on December 27, 2000.

On December 22, 2000, the Department issued a letter to interested parties in all of the concurrent HR products antidumping investigations, providing an opportunity to comment on the Department's proposed model matching characteristics and hierarchy. Comments were submitted by: petitioners (January 5, 2001); Corus Staal BA and Corus Steel USA Inc., (Corus), respondent in the Netherlands investigation (January 3, 2001); Iscor Limited (Iscor), respondent in the South Africa investigation (January 3, 2001); and Zaporizhstal, respondent in the Ukraine investigation (January 3, 2001). Petitioners agreed with the Department's proposed characteristics and hierarchy of characteristics. Corus suggested adding a product characteristic to distinguish prime merchandise from non-prime merchandise. Neither Iscor nor Zaporizhstal proposed any changes to either the list of product characteristics proposed by the Department or the hierarchy of those product characteristics but, rather, provided information relating to its own products that was not relevant in the context of determining what information to include in the Department's questionnaires. For purposes of the questionnaires subsequently issued by the Department to the respondents, no changes were made to the product characteristics or the hierarchy of those characteristics from those originally proposed by the Department in its December 22, 2000 letter. With respect to Corus' request, the additional product characteristic suggested by Corus, to distinguish prime from non-prime merchandise, is unnecessary. The Department already asks respondents to distinguish prime from non-prime merchandise in field number 2.2 "Prime vs. Secondary Merchandise." *See* the Department's Antidumping Duty Questionnaire, at B–7 and C–7. These fields are used in the model match program to prevent matches of prime merchandise to non-prime merchandise.

On December 28, 2000, the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary injury determination on imports of subject merchandise from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine. On January 4, 2001, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of the subject merchandise from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine. *See* Hot-Rolled Steel Products from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine, 66 FR 805–02 (January 4, 2001).

On January 4, 2001, the Department issued all sections of its antidumping duty questionnaire to Sahaviriya Steel Industries Public Co., Ltd. (SSI), Siam

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Strip Mill Public Co., Ltd. (SSM), and Nakornthai Strip Mill Public Co., Ltd. (Nakornthai). Prior to issuing the antidumping duty questionnaire, the Department received a letter, dated December 25, 2000, from Nakornthai indicating that its mill was not in operation and that it made no sales of subject merchandise during the period of investigation (POI). On January 16, 2001, the Department received Nakornthai's response to Section A of the questionnaire which further stated that it was not in operation during the POI and, therefore, should not be subject to this investigation. On January 18, 2001, Nakornthai submitted additional evidence regarding its non-production of merchandise subject to this investigation. On January 24, 2001, the Department issued a letter indicating that based on Nakornthai's response to Section A of the questionnaire that it was not currently required to respond to Sections B, C, and D. The Department did not receive a response to any section of the questionnaire from SSM. On January 25, 2001, the Department received SSI's response to Section A of the questionnaire. On February 16, 2001, petitioners filed comments on SSI's section A response. On March 1, 2001, the Department issued a supplemental questionnaire for SSI's Section A response. SSI responded on March 16, 2001.

SSI filed its responses to Sections B, C, and D of the questionnaire on February 26, 2001. On March 5, 2001, petitioners submitted comments on SSI's Sections B, C, and D responses. The Department issued a supplemental questionnaire for responses to Sections B and C on March 12, 2001. The Section D supplemental questionnaire was issued on March 12, 2001. The Department received responses to the Sections B–D supplemental questionnaires on March 26, 2001 and March 28, 2001.

Period of Investigation

The POI is October 1, 1999 through September 30, 2000. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (i.e., November 2000), and is in accordance with our regulations. See section 351.204(b)(1). We based our analysis on sales transactions made within the POI by date of sale. For the home market we treated the date of the final commercial invoice as the date of sale. For the U.S. market we treated the date of the final contract as the date of sale.

Scope of Investigation

For purposes of this investigation, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this investigation. Specifically included within the scope of this investigation are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this investigation: level exceeding 2.25 percent.

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, e.g., ASTM specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron and Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearings steels, as defined in the HTS.
- Tool steels, as defined in the HTS.
- Silico-manganese (as defined in the HTS) or silicon electrical steel with a silicon
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTS.

The merchandise subject to this investigation is classified in the HTS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled flat-rolled carbon steel flat products covered by this investigation, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.

Date of Sale

SSI states that in the home market, customers submitted purchase orders and SSI issued order confirmations, but that it was not uncommon for both quantity and value to change between the order confirmations and the issuance of the commercial invoice (which occurred at the time of shipment for home market sales). Based upon the above information, we have preliminarily determined that the invoice date is the appropriate date of sale for home market sales.

For U.S. sales, SSI has indicated that the appropriate date of sale is the date of the final commercial invoice, which is essentially the bill of lading date. However, due to an accounting error, SSI did not record the final commercial invoice dates as the bill of lading dates in its accounting system during the POI; instead, the final commercial invoice dates were recorded as the same date as the pre-shipment invoices. Thus, SSI has requested that the Department use the bill of lading date, which is the date of shipment, as a surrogate for the invoice date because this date most closely corresponds to the date of issuance of the final commercial invoice. As to whether the invoice date or the contract date better represents the date of sale, SSI has indicated that the quantity and price terms frequently change after the contract date, whereas the terms of sale do not change after the invoice date. SSI therefore concludes that the terms of sale are established on the date of the final commercial invoice.

We have examined whether the final commercial invoice date or some other date better represents the date on which the material terms of sale were established. The Department has examined the information submitted by SSI concerning the company's initial contracts, final contracts, pre-shipment invoices, and final commercial invoices for its U.S. sales, and has found that the material terms of sale are set at the final contract date. Specifically, we find that the changes in quantity and price referred to by SSI occur after the initial contract date, but not after the final contract date. We note, however, that in some instances there were changes in quantity after the final contract date. We find these changes to be minimal and to have affected a relatively insignificant volume of subject merchandise shipped to the United States. Moreover, unit prices for the products did not change between the final contract date and invoice date. For business proprietary details of our analysis of the date of sale issue, see Memo to the File regarding Antidumping Duty Investigation on Certain Hot-Rolled Carbon Steel Flat Products from Thailand; Preliminary Determination Analysis for Sahaviriya Steel Industries, Inc. (April 23, 2001) (Analysis Memo). Moreover, we find no basis to use a surrogate date of sale, such as shipment date (bill of lading date), where another date establishes the terms of sale. Accordingly, for U.S. sales, we have preliminarily determined that the final contract date is the appropriate date of sale in this investigation because it better represents the date upon which the material terms of sale were established.

Product Comparisons

Pursuant to section 771(16) of the Act, all products produced by the respondent that are within the scope of the investigation, above, and were sold in the comparison market during the POI, are considered to be foreign like products. We have relied on eleven criteria, in descending order of importance, to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product: whether painted or not, quality, carbon content level, yield strength, thickness, width, whether coil or cut sheet, whether temper rolled or not temper rolled, whether pickled or not pickled, whether mill-edge or trimmed, and with or without patterns in relief. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product, based on the characteristics and characteristic subcategories indicated in the Department's January 4, 2001, questionnaire.

Facts Available (FA)

SSM

As noted above under "Case History," SSM failed to respond to the Department's antidumping questionnaire. Section 776(a)(2)(A) of the Act provides that "if any interested party or any other person—(A) withholds information that has been requested by the administering authority * * *, (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title." The statute requires that certain conditions be met before the Department may resort to the facts otherwise available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to 782(e), disregard all or part of the original and subsequent responses, as appropriate. Briefly, section 782(e) provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, and the Department can use the information without undue difficulties, the statute requires it to do so.

In this proceeding, SSM provided no response to the Department's antidumping questionnaire. Because SSM provided no information whatsoever, sections 782 (d) and (e) of the Act are not applicable, and the Department is required to resort to the use of facts available for this respondent, in accordance with 776(a)(2)(A) of the Act. Moreover, we note that at no time did SSM contact the Department and state it was having difficulty responding to the questionnaire or otherwise explain why it could not provide the requested information. On January 25, 2001, we contacted counsel for SSM to inquire if SSM would be submitting a response to Section A of the Department's antidumping questionnaire. Counsel confirmed that SSM would not be filing any such response. See Memorandum to the File from Angelica Mendoza (January 25, 2001). Thus, we have also determined that this respondent has not cooperated to the best of its ability. Therefore, pursuant to section 776(b) of the Act, we used an adverse inference

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in selecting a margin from the FA. As FA, the Department has applied a margin rate of 20.30 percent, the highest alleged margin based on our recalculation for Thailand in the petition. See Memorandum from Joseph A. Spetrini to Bernard T. Carreau, Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Preliminary Determination of Sales at Less Than Fair Value—The Use of Facts Available for Siam Strip Mill Public Co. Ltd, and the Corroboration of Secondary Information, dated April 23, 2001 (Facts Available Memorandum).

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on "secondary information," such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 103–316, (1994) (hereinafter, the SAA) states that "corroborate" means to determine that the information used has probative value. See SAA at 870.

In this proceeding, we considered the petition information the most appropriate record information to use to establish the dumping margins for this uncooperative respondent because, in the absence of verifiable data provided by SSM, the petition information is the best approximation available to the Department of SSM's pricing and selling behavior in the U.S. market. In accordance with section 776(c) of the Act, we sought to corroborate the data contained in the petition.

To corroborate the margin calculations in the petition, we examined the data relied upon in making those calculations. The export prices (EP) in the petition were based on import values compiled by the U.S. Customs Service. These data are from publicly available sources (i.e., official U.S. government statistics). Therefore, we find that the U.S. price from the petition margin is sufficiently corroborated.

For the normal value (NV) calculation, petitioners relied upon constructed value (CV), consisting of cost of manufacture (COM), selling, general, administrative expenses (SG&A), interest expenses, and profit. Petitioners based depreciation, SG&A, interest, and profit on publicly available financial statements of a Thai steel producer (SSI, a respondent in this investigation). Therefore, because these data are based on publicly available financial statements, we find them to be sufficiently corroborated. Petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce HR in the United States and Thailand using publicly available data. To corroborate these data, we compared it to the reported COM of SSI and its affiliates. Our analysis showed that the petitioners' reported costs were reasonably close to the data submitted by SSI and its affiliates. Based on this analysis, we find that the COM data used in the antidumping petition have probative value. See Facts Available Memorandum.

Fair Value Comparisons for SSI

To determine whether sales of certain hot-rolled carbon steel flat products from Thailand were made in the United States at LTFV, we compared the EP to the NV, as described in the Export Price and Normal Value sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated POI weighted-average EPs for comparison to POI weighted-average NVs.

Export Price

We used EP methodology in accordance with section 772(a) of the Act because SSI sold the merchandise under investigation directly to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States prior to the date of importation, and because a CEP methodology was not otherwise indicated. We based EP on packed prices to the first unaffiliated customer. In accordance with section 772(c)(2), we made deductions from the starting price for movement expenses, including foreign inland freight and customs brokerage and handling.

Normal Value

A. Selection of Comparison Market

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (i.e., whether the aggregate quantity of the foreign like product is equal to or greater than five percent of the aggregate quantity of U.S. sales), we compared SSI's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1) of the Act. Since SSI's aggregate quantity of home market sales of the foreign like product was greater than five percent of its aggregate quantity of U.S. sales for the subject merchandise, we determined that the home market was viable for SSI. Therefore, we have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

A. Affiliate Party Transactions and Arm's Length Test

To test whether sales to affiliated end-user customers are made at arm's length prices, we compare, on a model-specific basis, the prices of sales to affiliated customers with sales to unaffiliated customers net of all movement charges, billing adjustments, discounts, direct selling expenses, and packing. Where, for the tested models of foreign like product, prices to the affiliated party are on average 99.5 percent or more of the price to unaffiliated parties, we determine that such sales are made at arm's length prices. *See* 19 CFR 351.403(c); see also Antidumping Duties; Countervailing Duties Final Rule, 62 FR 27355 (May 19, 1997).

If these affiliated party sales satisfied the arm's-length test, we used them in our analysis. Merchandise sold to affiliated customers in the home market made at non-arm's length prices were excluded from our analysis because we considered them to be outside the ordinary course of trade. See 19 CFR 351.102. Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

C. Cost of Production Analysis

Based on our analysis of the cost allegations submitted by petitioners in the original petition, the Department found reasonable grounds to believe or suspect that Thai producers had made sales of HR in the home market at prices below the cost of producing the merchandise, in accordance with section 773(b)(2)(A)(i) of the Act. As a result, the Department initiated an investigation to determine whether respondents made home market sales during the POI at prices below their cost of production (COP) within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of SSI's cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general and administrative expenses (SG&A), interest expenses, and packing costs. The Department relied on the COP and CV data submitted by SSI on February 26, 2001 with the exception of the following: (1) SSI reported a SG&A expense ratio that was derived using POI information (i.e., three-months of 1999 and nine-months of 2000). In accordance with our established practice, we recalculated SSI's SG&A expense ratio using information from the company's audited financial statements; (2) SSI reported a financial expense ratio that was derived using unconsolidated POI information (i.e., three-months of 1999 and nine-months of 2000). In accordance with our established practice, we recalculated SSI's financial expense ratio using information from its consolidated financial statements. *See* Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from France, 64 FR 73143, 73152 (Dec. 29, 1999). This practice has been upheld by the Court of International Trade. See *Gulf States Tube* v. *United States*, 981 F. Supp. 630 (CIT 1997).

2. Test of Home Market Sales Prices

We compared the weighted-average COP for SSI to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges, discounts, and billing adjustments.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of SSI's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where 20 percent or more of SSI's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in substantial quantities, in accordance with section 773(b)(2)(C)(i) of the Act, within an extended period of time. In such cases because we compared prices to weighted-average COPs for the POI, we also determined that such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded those below-cost sales.

D. Price-to-Price Comparison

We based NV for SSI on prices of home market sales that passed the COP test. We made deductions for billing adjustments and discounts. We made deductions, where appropriate, for inland freight and inland insurance, pursuant to section 773(a)(6)(B) of the Act. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act, and 19 CFR 351.411. In accordance with section 773(a)(6) of the Act, we deducted home market packing costs and added U.S. packing costs. In accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, we made circumstances of sale (COS) adjustments for imputed credit expense, interest revenue, and warranties. For the calculation of imputed credit expense, we based credit days on the number of days between estimated shipment from the plant and payment date, rather than the number of days between shipment from the port and payment date (see Analysis Memo). We also re-coded all home market and U.S. sales that incurred warranty expenses. For further information, see Analysis Memo.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value (CV), that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment pursuant to section 773(a)(7)(A) of the Act. *See* Notice of Final Determination of Sales at Less Than Fair Value; Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731 (November 19, 1997).

In determining whether separate LOTs actually existed in the home market for the respondent, we examine whether the respondent's sales involved different marketing stages (or their equivalent) based on the channel of distribution, customer categories, and selling functions (or services offered) to each customer or customer category, in both markets.

SSI claimed one LOT in the U.S. and two LOTs in the home market: LOT 1 includes direct sales to end-users, trading companies, and service centers; and LOT 2 includes all sales made through its affiliates. SSI claimed that all U.S. sales are at the same LOT as LOT 1 in the home market. SSI reported four channels of distribution for home market sales made through LOT 1 and LOT 2. The first channel of distribution was sales made through unaffiliated trading companies with one customer category (i.e., end-users). The second channel of distribution was sales made through affiliated trading companies with two customer categories (i.e., end-users and service centers). The third channel of distribution was direct sales with one customer category (i.e., unaffiliated end-users). The fourth channel of distribution was direct sales with one customer category (i.e., end-users/resellers).

In analyzing SSI's selling activities for its home market and U.S. market, we determined that essentially the same services were provided for both markets. Due to the proprietary nature of the levels of these selling activities, for further analysis, see Analysis Memo. Therefore, based upon this information, we have preliminarily determined that the LOT for all EP sales is the same as the LOT for all sales in the home market. Accordingly, because we find the U.S. sales and home market sales to be at the same LOT, no LOT adjustment under section 773(a)(7)(A) of the Act is warranted for SSI.

Currency Conversions

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the

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benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) of the Act directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, see Policy Bulletin 96–1: Currency Conversions (61 FR 9434, March 8, 1996).)

Verification

In accordance with section 782(i) of the Act, we intend to verify information to be used in making our final determination.

All Others

Pursuant to sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Act, the estimated all-others rate is equal to the estimated weighted average dumping margin established for SSI, the only exporter/producer investigated.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, the Department will direct the U.S. Customs Service to suspend liquidation of all entries of HR producers from Thailand, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the U.S. Customs Service to require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin indicated in the chart below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins in the preliminary determination are as follows:

Exporter/manufacturer	Margin (percent)
SSI	7.48
SSM	20.30
All Others	7.48

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine, before the later of 120 days after the date of this preliminary determination or 45 days after our final determination, whether these imports are materially injuring, or threatening material injury to, the U.S. industry.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to several HR cases, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Interested parties who wish to request a hearing, or participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination no later than 75 days after the date of this preliminary determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: April 23, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–10855 Filed 5–2–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–835]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination of sales at less than fair value.

EFFECTIVE DATE: May 3, 2001.

FOR FURTHER INFORMATION CONTACT: Patricia Tran or Robert James at (202) 482–1121 and (202) 482–0649, respectively, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that certain hot-rolled carbon steel flat products from Taiwan are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in Section 733 of the Tariff Act. The estimated margin of sales at LTFV is shown in the "Suspension of Liquidation" section of this notice.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments to the Tariff Act of 1930 (the Tariff Act) by the Uruguay Round Agreements (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (Department) regulations are to the regulations at 19 CFR part 351 (April 1, 2000).

Case History

On December 4, 2000, the Department initiated antidumping investigations of certain hot-rolled carbon steel flat products from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine. *See Notice of Initiation of Antidumping Duty Investigations: Certain Hot-Rolled Carbon Steel Flat Products from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine,* 65 FR 77568 (December 12, 2000) (*Initiation Notice*). Since the initiation of this investigation, the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage. *See Initiation Notice* at 77569. We received no comments from any parties in this investigation. However, we did receive comment in the hot-rolled investigation regarding the Netherlands as follows: from Duracell Global Business Management Group on December 11, 2000; from Energizer on December 15, 2000; from Bouffard Metal Goods Inc. and Truelove & MacLean, Inc. on December 18, 2000; from the Corus Group plc., which includes Corus Steel USA (CSUSA) and Corus Staal BV (Corus Staal), and Thomas Steel Strip on December 26, 2000; and from Rayovac Corporation on March 12, 2001.

On December 22, 2000, the Department issued a letter to interested parties in all of the concurrent HR products antidumping investigations, providing an opportunity to comment on the Department's proposed model matching characteristics and hierarchy. Comments were submitted by: petitioners (January 5, 2001); Corus Staal BV and Corus Steel USA Inc., (Corus), respondent in the Netherlands investigation (January 3, 2001); Iscor Limited (Iscor), respondent in the South Africa investigation (January 3, 2001); and Zaporizhstal, respondent in the Ukraine investigation (January 3, 2001). Petitioners agreed with the Department's proposed characteristics and hierarchy of characteristics. Corus suggested adding a product characteristic to distinguish prime merchandise from non-prime merchandise. Neither Iscor nor Zaporizhstal proposed any changes to either the list of product characteristics proposed by the Department or the hierarchy of those product characteristics but, rather, provided information relating to its own products that was not relevant in the context of determining what information to include in the Department's questionnaires. For purposes of the questionnaires subsequently issued by the Department to the respondents, no changes were made to the product characteristics or the hierarchy of those characteristics from those originally proposed by the Department in its December 22, 2000 letter. With respect to Corus' request, the additional product characteristic suggested by Corus, to distinguish prime from non-prime merchandise, is unnecessary. The Department already asks respondents to distinguish prime from non-prime merchandise in field number 2.2 "Prime vs. Secondary Merchandise." See the Department's Antidumping Duty Questionnaire, at B–7 and C–7. These fields are used in the model match program to prevent matches of prime merchandise to non-prime merchandise.

On December 28, 2000, the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary injury determination on imports of subject merchandise from Taiwan. On January 4, 2001, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of the subject merchandise from Taiwan (66 FR 805).

On January 4, 2001, the Department issued its antidumping duty questionnaire to China Steel Corporation (China Steel), Yieh Loong Enterprise Co., Ltd. (Yieh Loong), and An Feng Steel Co., Ltd. (An Feng). On February 2, 2001, the Department received from China Steel and Yieh Loong the response to Section A of the questionnaire. (An Feng never responded to any of the Department's questionnaires. *See* the section "Facts Available" (below).) On February 15, 2001 and February 21, 2001, the petitioners filed comments on the Section A responses of both China Steel and Yieh Loong. On February 27, 2001 the Department issued a supplemental questionnaire for China Steel's and Yieh Loong's Section A responses. The two companies submitted their responses on March 20, 2001. China Steel made additional submissions in follow-up to its March 20, 2001 response on March 21 and March 26, 2001.

China Steel and Yieh Loong filed their Section B, C, and D responses on February 26, 2001. On March 6, 2001 petitioners submitted comments on the Section B, C, and D responses of China Steel and Yieh Loong. The Department issued a supplemental questionnaire to China Steel and Yieh Loong regarding their Section B and C responses on March 15, 2001. On April 3, 2001, China Steel and Yieh Loong filed their supplemental Section B and C responses. On March 16, 2001, petitioners submitted additional comments regarding China Steel's Section D response. On March 21, 2001, petitioners filed additional comments regarding Yieh Loong's Section D response. The Department issued supplemental questionnaires concerning Yieh Loong's Section D response on March 21, 2001, and concerning China Steel's Section D response on March 23, 2001. The Department received the responses to these supplemental questionnaires on April 9, 2001.

On April 17, 2001 and April 18, 2001, the Department issued another supplementary questionnaire to China Steel and Yieh Loong regarding their Section B, C and D responses. We have set a due date of April 23, 2001 for the responses.

Period of Investigation

The period of investigation (POI) is October 1, 1999 through September 30, 2000.

Scope of Investigation

For purposes of these investigations, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of these investigations.

Specifically included within the scope of these investigations are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of these investigations, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or

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2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of these investigations unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of these investigations:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to these investigations is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by these investigations, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.

Affiliations

In the dumping petition the petitioners identified An Feng, China Steel, and Yieh Loong as the principal Taiwanese producers of subject merchandise. We issued questionnaires to these three companies on January 4, 2001. (*See* the "Case History" section (above).) Upon analysis of the responses of China Steel and Yieh Loong, we have determined that these two companies are affiliated under Section 771(33)(E) of the Tariff Act. The Department has collapsed China Steel and Yieh Loong (hereafter referred to as "China Steel") pursuant to Section 351.401(f) of the Department's regulations for purposes of calculating a weighted-average margin. For details of the Department's analysis, *see* the Affiliation Memorandum, April 19, 2001, a copy of which is in room B–099 at the main Department of Commerce building. Therefore, the rate that we have assigned to China Steel (Yieh Loong's parent company) in this preliminary determination will be applicable to both China Steel and Yieh Loong.

Facts Available

An Feng

As noted above under "Case History," An Feng failed to respond to the Department's antidumping questionnaire. Section 776(a)(2) of the Tariff Act provides that "if an interested party or any other person (A) withholds information that has been requested by the administering authority or the Commission under this title, (B) fails to provide such information by the deadlines for submission of the information or in the from and manner requested, subject to subsections (c)(1) and (e) of Section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in Section 782(i), the administering authority and the Commission shall, subject to subsection 782(d), use the facts otherwise available in reaching the applicable determination under this title." Because An Feng failed to respond to our request for information, pursuant to Section 776(a)(2) of the Tariff Act we resorted to the facts otherwise available to calculate the dumping margin for this company.

Section 776(b) of the Tariff Act provides that the Department may use an inference that is adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for necessary information. *See also* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 103–316 (1994) (SAA) at 870. Failure by An Feng to respond to the Department's antidumping questionnaire constitutes a failure to act to the best of its ability to comply with a request for information within the meaning of Section 776(b) of the Tariff Act. Because An Feng failed to respond and offered no explanation for its failure, the Department has determined that, in selecting among the facts otherwise available, an adverse inference is warranted in selecting the facts available for this company. Because we are unable to calculate a margin for An Feng, consistent with our practice, we have assigned An Feng the highest margin alleged based on our recalculation of the petition margins. *See Notice of Preliminary Determination of Sales at Less Than Fair Value; Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Japan and Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Japan and the Republic of South Africa*, 64 FR 69718, 69722 (December 14, 1999), and *Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Germany*, 63 FR 10847, 10848 (March 5, 1998)) and *Notice of Preliminary Determinations of Sales at Less Than Fair Value: Stainless Steel Angle from Japan, Korea, and Spain*, 66 FR 2880, 2883 (January 12, 2001). Based on amendments to the petition and the Department's recalculations, where applicable, the highest margin is 29.14 percent. *See Initiation Notice* at 77576.

Section 776(b) of the Tariff Act states that an adverse inference may include reliance on information derived from the petition. *See also* SAA at 829–831. Section 776(c) of the Tariff Act provides that, when the Department relies on secondary information (such as the petition) as the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics, U.S. Customs Service data, and information obtained from interested parties during the particular proceeding. *Id.*

To corroborate the margin calculations in the petition, we examined the data relied upon in making those calculations. The export prices (EP) in the petition were based on import values compiled by the U.S. Customs Service. These data, as recalculated by the Department using POI-wide and nation-wide averages for initiation purposes, are from publicly available sources (*i.e.*, official U.S. government statistics). Therefore, we find that the U.S. price from the petition margin is sufficiently corroborated.

For the normal value (NV) calculation, petitioners relied upon constructed value (CV), consisting of cost of manufacture (COM), selling, general, administrative expenses (SG&A), interest, packing, and profit. Petitioners based depreciation, interest, SG&A, packing, and profit on publicly available financial statements of Taiwan steel producers. Therefore, because these data are based on publicly available financial statements, we find them to be sufficiently corroborated. Petitioners based COM (net of depreciation) on their own cost experience of producing merchandise identical to that subject to this investigation. To corroborate these data, we compared it to the reported COM of China Steel and its affiliate Yieh Loong. Although we have found that these companies control numbers (CONNUMs) were mostly unusable, we were still able to make a reliable comparison with the petitioner's COM data for corroboration purposes. We performed this comparison by first calculating the average COM for all of the CONNUMs China Steel and Yieh Loong reported in their CV databases provided with their April 9, 2001 submissions, and comparing that average to the COM petitioners provided in their submission of November 22, 2000, exhibit I–14. Our analysis showed that the petitioners' reported costs were reasonably close to the data submitted by China Steel and Yieh Loong. Based on this analysis, we find that the COM data used in the antidumping petition have probative value. *See* Corroboration Memorandum, April 23, 2001.

China Steel

On January 4, 2001, the Department issued China Steel its antidumping duty questionnaire. The questionnaire explicitly instructed to China Steel to report all sales by affiliates to the first unaffiliated customer. However, if sales to all affiliated customers constituted less than five percent of its total sales in the home market these companies were to notify the Department. On January 19, 2001, China Steel requested to exclude themselves from reporting home market resales by affiliates. China Steel stated that its sales to its affiliates, China Steel Global Trading Corporation (China Steel Global) and China Steel Chemical Corporation (China Steel Chemical), constituted less than five percent of its total sales in the home market. On January 29, 2001, the Department replied to China Steel's January 19, 2001 letter and stated that we could not make a determination based on the information provided. The Department requested that China Steel document whether the total quantity of subject merchandise sold to all affiliated parties (regardless of whether subject merchandise was further processed by affiliates) constituted less than five percent of total home market sales. China Steel failed to provide such information.

On February 26, 2001, China Steel submitted its response to Sections B, C, and D of the questionnaire. In this submission, China Steel only reported affiliated party sales for the companies it considered to be affiliated entities, and China Steel did not provide resales by these affiliates. China Steel coded sales to Yieh Loong, Yieh Hsing Enterprise Co., Ltd. (Yieh Hsing) and Yieh Phui Enterprise Co., Ltd. (Yieh Phui) as sales to non-affiliated companies. Because the Department collapsed China Steel and Yieh Loong, any reseller affiliated with either China Steel or Yieh Loong is recognized as affiliated with the collapsed entity (China Steel/ Yieh Loong). *See* Affiliation Memorandum, April 19, 2001. Therefore, because of Yieh Phui's and Yieh Hsing's affiliation to Yieh Loong, they are affiliated with the collapsed entity, and total affiliated party sales are greater than five percent of total home market sales. *See* Affiliated Reseller Memorandum, April 19, 2001.

On March 15, 2001, the Department issued its supplemental Sections B and C questionnaire, reiterating that China Steel must report all resales by affiliated parties (Yieh Loong, China Steel Chemical, China Steel Global, Yieh Phui, and Yieh Hsing) to the first unaffiliated party.

China Steel's April 3, 2001 supplemental response provided incomplete and deficient information regarding affiliated parties' resales. Although China Steel provided complete sales information for China Steel Global and China Steel Chemical, it provided minimal sales information for Yieh Phui and Yieh Hsing, and inconsistent information regarding Yieh Loong. Sales to China Steel's affiliates constitute a significant quantity of China Steel's home market sales, and it is necessary to have this information in order for the Department to calculate a margin. *See* Adverse Facts Available Memorandum, April 23, 2001.

Pursuant to Section 782(c) of the Act, China Steel, after receiving a request from the Department, must promptly notify the Department if it is unable to submit the information requested, together with a full explanation and suggest alternative forms in which it is able to submit the requested information to the Department. The Department has repeatedly requested China Steel to provide complete information with respect to its downstream sales as originally instructed in the January 4, 2001 antidumping questionnaire. The Department has granted a number of extensions to China Steel and Yieh Loong to permit them to provide complete and accurate questionnaire responses. China Steel stated in its April 3, 2001 narrative that it does not control Yieh Hsing and Yieh Phui; therefore, it could not provide complete and adequate information. China Steel has never suggested any alternative reporting methodology. However, the Department finds that China Steel and Yieh Loong's ability to compel their affiliates to turn over some of the business proprietary information requested by the Department is a clear indication of their ability to exercise control over these parties.

Pursuant to Section 776(A)(B) of the Act, we find that China Steel failed to cooperate to the best of its ability because it repeatedly refused or ignored the Department's instructions to submit accurate downstream sales data, did not supply missing sales data, as demonstrated by its selective

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submission of China Steel's affiliates' data, and never provided alternatives or reasonable explanations for why it could not report all downstream sales. Further, without this data, the information regarding home market sales is unusable. A significant quantity of China Steel's home market sales are made through affiliates. Without this information the Department cannot calculate an accurate dumping margin.

In addition, the Department found other deficiencies that made China Steel's submission unusable for purposes of calculating a dumping margin. The principal deficiency was the failure to report certain product characteristics, e.g., quality, carbon content, yield strength, thickness, and width for a significant share of China Steel's sales to affiliated and unaffiliated customers. The Department requires the physical characteristics of paint, quality, carbon, yield strength, thickness, width, cut-to-length versus coiled, tempered rolled, pickled, edge trim, and patterns in order to match the product to its appropriate match in the United States, to ascertain whether the home market merchandise was sold at prices above the cost of production, and to calculate a difference-in-merchandise adjustment. Therefore, without complete physical characteristics for all sales, we cannot calculate an accurate margin.

Moreover, we find that China Steel's claim that it is unable to provide proper physical characteristics in the manner requested by the Department to be inconsistent with other information on the record of this case. For example, China Steel stated in its April 3, 2001 submission that physical characteristics (e.g., carbon, yield strength) can be identified from production records and inventory records as well as its product code system. In addition, China Steel states that it is still able to calculate cost for some merchandise for which it did not report complete physical characteristics. It is unclear from the record why China Steel cannot provide physical characteristics for certain sales, yet still associates costs to those same sales. Moreover, China Steel never provided any supporting documentation in regards to the sales at issue, despite the Department's request in a supplemental questionnaire that it do so. Without this documentation the Department is unable to determine the accuracy of China Steel's responses regarding this merchandise. *See* Adverse Facts Available Memorandum, April 23, 2001.

Therefore, because of these deficiencies, on April 17 and April 18, 2001, we issued to these companies a supplemental questionnaire, the response for which is due April 23, 2001. We will analyze the responses to this supplemental questionnaire and issue our analysis, if appropriate, concurrent with the final determination of this investigation.

In light of China Steel's repeated failure to provide affiliated sales information and its repeated failure to provide all necessary product characteristics or to provide any meaningful explanation of why such data could not be provided, we preliminarily determine that China Steel did not cooperate to the best of its ability. Accordingly, for the purpose of this preliminary determination we have assigned, as adverse facts available, the highest margin from the antidumping petition as recalculated by the Department. *See* the December 4, 2000, Import Administration AD Investigation Initiation Checklist at 25, a copy of which is contained in the public file in room B–099 of the main Department of Commerce building. We consider the data from the petition to be corroborated for the reasons given above in discussing the use of the petition as the basis for adverse facts available for An Feng.

All Others

The estimated all-others rate is equal to the average of the dumping margins calculated in the antidumping duty petition as recalculated by the Department. *See* the December 4, 2000, Import Administration AD Investigation Initiation Checklist.

Suspension of Liquidation

In accordance with Section 733(d) of the Tariff Act, the Department will direct the Customs Service to suspend liquidation of all entries of subject merchandise from Taiwan that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin indicated in the chart below. This suspension of liquidation will remain in effect until further notice.

The margins in the preliminary determination are as follows:

Exporter/manufacturer	Margin (percent)
China Steel Corporation (including Yieh Loong)	29.14
An Feng Steel Co., Ltd.	29.14
All Others	20.28

ITC Notification

In accordance with Section 733(f) of the Tariff Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination, or 45 days after our final determination, whether these imports are causing, or threatening, material injury to the U.S. industry.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette.

Section 774 of the Tariff Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. In the event that the Department receives requests for hearings from parties to several hot-rolled carbon steel flat products cases, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Interested parties who wish to request a hearing, or participate if one is requested, must submit a written request within 30 days of the publication of this notice. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination no later than 75 days after the date of publication of this preliminary determination.

This determination is issued and published in accordance with section 733(d) and 777(i)(1) of the Tariff Act. Since January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: April 23, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–10856 Filed 5–2–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–307–820, A–533–823, and A–834–807]

Notice of Initiation of Antidumping Duty Investigations: Silicomanganese From Kazakhstan, India and Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of antidumping duty investigations.

EFFECTIVE DATE: May 3, 2001.

FOR FURTHER INFORMATION CONTACT: Sally Gannon (India), Robert James (Venezuela), and Jean Kemp (Kazakhstan) at (202) 482–0162, (202) 482–0649, and (202) 482–4037, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Initiation of Investigations

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (2000).

The Petition

On April 6, 2001, the Department of Commerce (the Department) received a petition filed in proper form by the following parties: Eramet Marietta Inc. (Eramet) and the Paper, Allied-Industrial, Chemical and Energy Workers International Union, Local 5–0639 (collectively, the petitioners). The Department received from the petitioners information supplementing the petition throughout the 20-day initiation period.

In accordance with section 732(b) of the Act, the petitioners allege that imports of silicomanganese from Kazakhstan, India, and Venezuela are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring an industry in the United States.

The Department finds that the petitioners filed this petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) and 771(9)(D) of the Act and have demonstrated sufficient industry support with respect to each of the antidumping investigations that they are requesting the Department to initiate (*see* the *Determination of Industry Support for the Petitions* section below).

Scope of Investigations

For purposes of these investigations, the products covered are all forms, sizes and compositions of silicomanganese, including silicomanganese briquettes, fines and slag. Silicomanganese is a ferroalloy composed principally of manganese, silicon and iron, and normally contains much smaller proportions of minor elements, such as carbon, phosphorous and sulfur. Silicomanganese is sometimes referred to as ferrosilicon manganese. Silicomanganese is used primarily in steel production as a source of both silicon and manganese. Silicomanganese generally contains by weight not less than 4 percent iron, more than 30 percent manganese, more than 8 percent silicon and not more than 3 percent phosphorous. Silicomanganese is properly classifiable under subheading 7202.30.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Some silicomanganese may also be classified under HTSUS subheading 7202.99.5040. This petition covers all silicomanganese, regardless of its tariff classification. Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, our written description of the scope remains dispositive.

During our review of the petition, we discussed the scope with the petitioners to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (62 FR 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments by May 17, 2001. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

Determination of Industry Support for the Petition

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition. Moreover, the petitioners do not offer a definition of domestic like product distinct from the scope of the investigation.

In this case, "the article subject to investigation" also is substantially similar to the scope of the Department's antidumping duty order involving silicomanganese published in 1994. *See Notice of Antidumping Duty Order: Silicomanganese From the People's Republic of China (PRC)*, 59 FR 66003 (December 22, 1994). Thus, based on our analysis of the information

[1] *See Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

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presented to the Department above and the information obtained and reviewed independently by the Department, we have determined that there is a single domestic like product which is defined in the *Scope of Investigations* section above, and have analyzed industry support in terms of this domestic like product.

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. The sole U.S. producer of the domestic like product, and the trade union which represents its workers, are petitioners in this case. Furthermore, the Department received no opposition to the petition. Therefore, we conclude that the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Thus, the requirements of section 732(c)(4)(A)(ii) are also met.

Accordingly, the Department determines that the petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See* the *Import Administration AD Investigation Checklist*, April 26, 2001 (*Initiation Checklist*) (public version on file in the Central Records Unit of the Department of Commerce, Room B–099).

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department has based its decision to initiate these investigations. The sources of data for the deductions and adjustments relating to home market price, U.S. price, constructed value (CV) and factors of production (FOP) are detailed in the *Initiation Checklist*. Where the petitioners obtained data from foreign market research, we contacted the researcher to establish its credentials and to confirm the validity of the information being provided. *See* Memorandum to the File, *Contacts with Source of Market Research for Antidumping Petition Regarding Imports of Silicomanganese from India and Kazakhstan*, April 23, 2001 (*Market Research for India and Kazakhstan*), and *see also* Memorandum to the File, *Contacts with Source of Market Research for Antidumping Petition Regarding Imports of Silicomanganese from Venezuela*, April 23, 2001 (*Market Research for Venezuela*). Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate. The anticipated period of investigation (POI) for the market economy countries is April 1, 2000, through March 31, 2001, while the anticipated POI for Kazakhstan, the non-market economy (NME) country, is October 1, 2000, through March 31, 2001.

Regarding the investigation involving the NME, the Department presumes, based on the extent of central government control in an NME, that a single dumping margin, should there be one, is appropriate for all NME exporters in the given country. *See, e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the PRC*, 59 FR 22585 (May 2, 1994). In the course of these investigations, all parties will have the opportunity to provide relevant information related to the issues of Kazakhstan's NME status and the granting of separate rates to individual exporters.

Lastly, export price (EP) was based on the data published by the U.S. International Trade Commission's dataweb, at *http://dataweb.usitc.gov/scripts/REPORT.asp (dataweb)*. This data, as presented, is FOB customs value. Specifically, the petitioners calculated the average unit values (AUVs) of silicomanganese entering the United States from India, Kazakhstan, and Venezuela during the respective POIs, excluding February and March 2001, and made the applicable adjustments to the AUVs. The margins calculated using this methodology are as follows: India, 5.89 to 86.98 percent; Kazakhstan, 164.29 percent; and Venezuela, 20.38 to 47.14 percent.

Because the Department considers the country-wide import statistics to calculate estimated margins to be sufficient for purposes of initiation, we have initiated these investigations based on the country-wide import statistics for the POI, excluding February and March 2001, for which data was not available, for each country, respectively.

India

Export Price

The petitioners based EP on the AUV of silicomanganese imported from India under the applicable HTSUS subheading, for the POI, excluding February and March 2001, based on the data published by the U.S. International Trade Commission's *dataweb*. This data, as presented, is FOB customs value. Net U.S. price was calculated by deducting foreign inland freight and brokerage and handling charges, which were based on foreign market research and inflated appropriately.

Normal Value

With respect to normal value (NV), the petitioners provided a home market price that was obtained from foreign market research for a grade, *i.e.*, silicon and carbon content, that is comparable or identical to that of the products exported to the United States which serve as the basis for EP. The petitioners state that the home market price quotation was ex-factory, and, therefore, they did not make any deductions for movement expenses from this price.

Although the petitioners provided information on home market prices, they also provided information demonstrating reasonable grounds to believe or suspect that sales of silicomanganese in the home market were made at prices below the fully absorbed cost of production (COP), within the meaning of section 773(b) of the Tariff Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Tariff Act, COP refers to the total cost of producing the foreign-like product which includes the cost of manufacturing (COM), selling, general and administrative expenses (SG&A), and packing expenses. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce silicomanganese in the United States and India, using publicly available data, foreign market research, and price quotes from suppliers. To calculate SG&A, petitioners relied upon the aggregate financial and cost data for the metals and chemicals sector in India published by the Reserve Bank of India (RBI). Based upon the comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made at prices below the COP, within the meaning of section 773(b)(2)(A)(i) of the Tariff Act. Accordingly, the Department is initiating a country-wide cost investigation. *See Initiation of Cost Investigations* section below.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Tariff Act, petitioners based NV for sales in India on CV. The petitioners calculated CV using the same COM and SG&A used to compute Indian home market costs. Consistent with section 773(e)(2) of the Tariff Act, petitioners included in CV an amount for profit. The petitioners calculated a profit amount using the data published by the RBI for the metals and chemicals processing and manufacturing sector.

The estimated dumping margin for India based on a comparison between EP and home market price is 5.89 percent. Based upon the comparison of EP to CV, the petitioners calculated an estimated dumping margin of 86.98 percent.

Kazakhstan

Export Price

The petitioners identified Joint Stock Corporation Yermak Ferro-Alloys (Yermak) and Temirtau Chemical and Metal Works (Temirtau) as the only producers of subject merchandise in Kazakhstan. The petitioners were unable to obtain specific sales or offers for sale of subject merchandise in the United States. Therefore, petitioners based EP on the AUVs for one ten-digit category of the HTSUS (7202.30.0000) on imports from Kazakhstan for the POI (excluding February and March 2001 because data were not available at the time of the petition filing). For the HTSUS category under examination, the petitioners calculated the import AUVs using the reported quantity and Customs value for imports as recorded in the U.S. Census Bureau's official IM–145 import statistics. We note that Customs import value as defined by Technical Documentation for US Exports and Imports of Merchandise on CD–ROM excludes U.S. import duties, freight, insurance and other charges incurred in bringing the merchandise to the United States. The petitioners calculated a net U.S. price by deducting from EP foreign inland freight to the port of exportation and brokerage and handling charges at the port of exportation. In order to calculate foreign inland freight, the petitioners determined that the distance by rail between each of the factories and the port exceeds 1,525 kilometers, and then applied an Indian rail rate as a surrogate. We note that the distance from both factories to the port of exportation appears to exceed 1,525 kilometers. For brokerage and handling charges at the port of exportation, petitioners used an Indian brokerage and handling rate as a surrogate. Both of these surrogate value rates, which were adjusted for inflation, were used in the Department's most recent final results of review in the Silicomanganese from the People's Republic of China antidumping case. *See Silicomanganese From the People's Republic of China: Notice of Final Results of Antidumping Administrative Review*, 65 FR 31514 (May 18, 2000) (Silicomanganese from the PRC).

Normal Value

The petitioners allege that Kazakhstan is an NME country, and in all previous investigations, the Department has determined that Kazakhstan is an NME. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Beryllium Metal and High Beryllium Alloys from the Republic of Kazakhstan*, 62 FR 2648, 2649 (January 17, 1997). Kazakhstan will be treated as an NME unless and until its NME status is revoked. Pursuant to section 771(18)(C)(i) of the Tariff Act, because Kazakhstan's status as an NME remains in effect, the petitioners determined the dumping margin using a factors of production (FOP) analysis.

For NV, the petitioners based the FOP, as defined by section 773(c)(3) of the Tariff Act, on the consumption rates of Eramet's silicomanganese plant in the United States, adjusted for known differences in electricity and electrode consumption. The petitioners assert that information regarding either Kazakhstan producers' consumption rates is not available, and have therefore assumed, for purposes of the petition, that producers in Kazakhstan use the same inputs in the same quantities as the petitioners use, except where a variance from the petitioners' cost model can be justified on the basis of available information. The petitioners argue that the use of the petitioners' FOP is conservative for the following reasons: (1) They have not made adjustments to Eramet's FOP for the increases in certain FOP by the Kazakh producers; and (2) they have used a certain surrogate value. Because this information is proprietary, *see* the *Initiation Checklist* (proprietary version) for details. Based on the information provided by the petitioners, we believe the petitioners' FOP methodology represents information reasonably available to the petitioners and is appropriate for purposes of initiating this investigation.

The petitioners assert that India is the most appropriate surrogate country for Kazakhstan because, pursuant to section 773(c), the Department calculates normal value in an NME antidumping investigation by valuing the FOP using values in a surrogate, market-economy country that (1) is at a comparable level of economic development to the NME and (2) is a significant producer of comparable merchandise. Also, petitioners state that Indian data are available for nearly all FOP used to manufacture silicomanganese. Based on the information provided by the petitioners, we believe that the petitioners' use of India as a surrogate country is appropriate for purposes of initiating this investigation.

In accordance with section 773(c)(4) of the Tariff Act, the petitioners valued FOP, where possible, on reasonably available, public surrogate data from India. Raw and process materials were primarily valued based on price quotes from an Indian supplier, foreign research conducted in India (including using Eramet's cost methodology for valuing silicomanganese fines), and Indian import statistics from the Monthly Statistics of the Foreign Trade of India, Volume II: Imports. (We note that petitioners did not directly value electrode paste but instead treated electrode paste as part of factory overhead, citing *Silicomanganese from the PRC*, in which the Department concluded that electrode paste may have been already included in the "stores and spares" overhead category. *See Issues and Decision Memorandum for the Antidumping Duty Administrative Review of Silicomanganese from the People's Republic of China—December 1, 1997 through November 30, 1998* (May 8, 2000). Also, we note that petitioners believe the correct approach is to directly value electrode paste because it is a direct input and to include "stores and spares" expenses in the numerator in the calculation of the factory overhead rate.) Labor was valued using the regression-based wage rate for Kazakhstan provided by the Department, in accordance with 19 CFR 351.408(c)(3). Electricity was valued using the rate for India published in a quarterly report of the OECD's International Energy Agency. For overhead, SG&A and profit, the petitioners, at the request of the Department, applied rates derived from the RBI for the Indian metals and chemicals sector. All surrogate values which fell outside the POI were adjusted for inflation based on the currency in which the source data were reported. The Indian wholesale price index, as published by the International Monetary Fund's International Financial Statistics, was used for these adjustments. Based on the information provided by the petitioners, we believe their surrogate values represent information reasonably available to the petitioners and are acceptable for

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purposes of initiation of this investigation.

Based upon the comparison of EP to CV, the petitioners calculated an estimated dumping margin of 164.29 percent.

Venezuela

Export Price

The petitioners based EP on the AUV of silicomanganese imported from Venezuela under the applicable HTSUS subheading, for the POI, excluding February and March 2001, based on the data published by the U.S. International Trade Commission's *dataweb*. This data, as presented, is FOB customs value. Net U.S. price was calculated by deducting foreign inland, which was based on foreign market research.

Normal Value

Petitioners used data obtained from a foreign market researcher to determine the price charged in the home market. The price quote obtained by the researcher represents a selling price (exclusive of taxes) in U.S. dollars during the last half of 2000 and January and February 2001. Terms of sale were delivered. Petitioners then deducted an amount for inland freight. Information regarding inland freight charges in Venezuela was also obtained from the foreign market researcher. *See Initiation Checklist.*

Petitioners provided information demonstrating reasonable grounds to believe or suspect that sales of silicomanganese in the home market were made at prices below COP, within the meaning of section 773(b) of the Tariff Act, and requested that the Department conduct a sales-below-cost investigation for Venezuela.

As indicated above, pursuant to section 773(b)(3) of the Tariff Act, COP consists of the COM, SG&A, and packing. Petitioners calculated COM based on their own production experience, adjusted for known differences between cost incurred to produce silicon manganese in the United States and Venezuela using publicly available data and foreign market research. To calculate SG&A, petitioners relied on data obtained from the financial statement of HEVENSA, a Venezuelan steel producer. Based upon the comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made at prices below the COP, within the meaning of section 773(b)(2)(A)(i) of the Tariff Act. Accordingly, the Department is initiating a cost investigation for Venezuela. *See Initiation of Cost Investigations* section below.

Given the evidence of below-cost sales, petitioners also based NV on CV pursuant to sections 773(a)(4), 773(b) and 773(e) of the Tariff Act. The petitioners calculated CV using the same COM and SG&A used to compute Venezuelan home market costs. The petitioners did not include in CV an amount for profit. However, petitioners point out that, consistent with section 773(e)(2) of the Tariff Act, the Department has to include an amount for profit in its NV and CV calculations during the investigation.

The estimated dumping margin for Venezuela, based on a comparison between EP and home market price, is 20.38 percent. The estimated dumping margin for price-to-CV comparisons is 47.14 percent.

Initiation of Cost Investigations

As noted above, pursuant to section 773(b) of the Act, the petitioners provided information demonstrating reasonable grounds to believe or suspect that sales in the home markets of India and Venezuela were made at prices below the fully absorbed COP and, accordingly, requested that the Department conduct country-wide sales-below-COP investigations in connection with the requested antidumping investigations for these countries. The Statement of Administrative Action (SAA), submitted to the U.S. Congress in connection with the interpretation and application of the URAA, states that an allegation of sales below COP need not be specific to individual exporters or producers. SAA, H. Doc. 103–316, at 833(1994); *see also* 19 CFR 351.301(d)(2). The SAA, at 833, states that "Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation."

Further, the SAA provides that "new section 773(b)(2)(A) retains the current requirement that Commerce have 'reasonable grounds to believe or suspect' that below cost sales have occurred before initiating such an investigation. 'Reasonable grounds' * * * exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices." *Id.* Based upon the comparison of the adjusted prices from the petition for the representative foreign like products to their COPs, we find the existence of "reasonable grounds to believe or suspect" that sales of these foreign like products in the markets of India and Venezuela were made at prices below their respective COPs within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating the requested country-wide cost investigations.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of silicomanganese from India, Kazakhstan, and Venezuela are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV. The petitioners contend that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, profit-to-sales ratios, and capacity utilization. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and have determined that these allegations are properly supported by accurate and adequate evidence and meet the statutory requirements for initiation (*see Initiation Checklist*).

Initiation of Antidumping Investigations

Based upon our examination of the petitions on silicomanganese, and the petitioners' responses to our supplemental questionnaire clarifying the petitions, as well as our conversations with the foreign market researcher who provided information concerning various aspects of the petition, we have found that it meets the requirements of section 732 of the Act. *See Initiation Checklist, Market Research for India and Kazakhstan*, and *Market Research for Venezuela*. Therefore, we are initiating antidumping duty investigations to determine whether imports of silicomanganese from India, Kazakhstan, and Venezuela are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the governments of India, Kazakhstan, and Venezuela. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as appropriate.

International Trade Commission Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine, no later than May 21, 2001, whether there is a reasonable indication that imports of silicomanganese from India, Kazakhstan, and Venezuela are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: April 26, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–11149 Filed 5–2–01; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–815]

Sulfanilic Acid From the People's Republic of China; Notice of Extension of Time Limit for Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 3, 2001.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on sulfanilic acid from the People's Republic of China. The review covers the period August 1, 1999 through July 31, 2000.

FOR FURTHER INFORMATION CONTACT: Sean Carey or Samantha Denenberg, AD/CVD Enforcement Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–3964 or (202) 482–1386, respectively.

Postponement of Preliminary Results of Review

On October 2, 2000, the Department published a notice of initiation of an administrative review of the antidumping duty order on sulfanilic acid from the People's Republic of China, covering the period August 1, 1999 through July 31, 2000 (65 FR 58733). The preliminary results are currently due no later than May 3, 2001.

Section 751(a)(3)(A) of the Tariff Act, as amended (the Act), requires the Department to issue its preliminary results within 245 days after the last day of the anniversary month of an order/finding for which a review is requested. However, if it is not practicable to complete the preliminary results within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for a preliminary determination to a maximum of 365 days.

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore, the Department is extending the time limit for completion of the preliminary results to no later than August 31, 2001. *See* Memorandum from Barbara E. Tillman to Joseph A. Spetrini, dated April 26, 2001, which is on file in the Central Records Unit, Room B–099 of the main Commerce Building. This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: April 27, 2001.

Richard O. Weible,

Acting Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 01–11151 Filed 5–2–01; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–841]

Vector Supercomputers From Japan: Notice of Final Results of Changed Circumstances Review, and Revocation of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of changed circumstances review, and revocation of antidumping duty order.

SUMMARY: On March 13, 2001, the Department of Commerce ("the Department") published a notice of initiation and preliminary results of a changed circumstances review with the intent to revoke the antidumping duty order on certain vector supercomputers from Japan. *See Certain Vector Supercomputers From Japan: Notice of Initiation and Preliminary Results of Changed Circumstances Review of the Antidumping Order and Intent to Revoke Order ("Initiation and Preliminary Results"), 66 FR 14547 (March 13, 2001). In our Initiation and Preliminary Results*, we gave interested parties an opportunity to comment. No interested party opposed the preliminary results.

Therefore, we are now revoking this order because the domestic producer of the like product has expressed no interest in the continuation of the order.

EFFECTIVE DATE: May 3, 2001.

FOR FURTHER INFORMATION CONTACT: Mark Young or James Terpstra AD/CVD Enforcement, Office VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–6397, or (202) 482–3965 respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR part 351 (2000).

SUPPLEMENTARY INFORMATION:

Background

On February 27, 2001, Cray Inc. ("Cray") requested that the Department

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conduct a changed circumstances review and revoke the antidumping duty order on vector supercomputers from Japan, retroactive to October 1, 2000. In its February 27, 2001 request, Cray claims that it is the only U.S. producer of vector supercomputers and was the sole petitioner in the antidumping investigation that led to the antidumping order. Further, Cray states that it no longer has an interest in maintaining this order. As noted above, we gave interested parties an opportunity to comment on the *Initiation and Preliminary Results*. We received no comments from interested parties. On March 26, 2001 we received a submission from Skymoon Ventures ("Skymoon") in support of revocation of the order. Skymoon identified itself as being part of the "high technology industry." However, Skymoon produced no evidence that it was an interested party within the meaning of section 771(9)(C) of the Act and 19 CFR 351.102(b). Therefore, we have not considered its comments in these final results.

Scope of Review

The scope of this order consists of all vector supercomputers, whether new or used, and whether in assembled or unassembled form, as well as vector supercomputer spare parts, repair parts, upgrades, and system software, shipped to fulfill the requirements of a contract entered into on or after October 16, 1997, for the sale and, if included, maintenance of a vector supercomputer. A vector supercomputer is any computer with a vector hardware unit as an integral part of its central processing unit boards.

In general, the vector supercomputers imported from Japan, whether assembled or unassembled, covered by this order are classifiable under heading 8471 of the Harmonized Tariff Schedules of the United States ("HTS"). Merchandise properly classified under HTS numbers 8471.10 and 8471.30, however, is excluded from the scope of this order. Although, these references to the HTS are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Final Results of Review; Revocation of Antidumping Duty Order

The affirmative statement of no interest by petitioners concerning vector supercomputers, as described herein, constitutes changed circumstances sufficient to warrant revocation of this order. Furthermore, no interested party commented on the *Initiation and Preliminary Results*. Therefore, the Department is revoking the order on certain vector supercomputers from Japan, in accordance with sections 751(b) and (d) and 782(h) of the Act and 19 CFR 351.216(d) and 351.222(g), effective October 1, 2000.

We will instruct the U.S. Customs Service ("Customs") to end the suspension of liquidation effective October 1, 2000, and to liquidate without regard to antidumping duties, as applicable, and to refund any estimated antidumping duties collected for all unliquidated entries of certain vector supercomputers meeting the specifications indicated above entered or withdrawn from warehouse for consumption on or after October 1, 2000. We will also instruct Customs to pay interest on such refunds in accordance with section 778 of the Act.

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This changed circumstances administrative review, revocation of the antidumping duty order and notice are in accordance with sections 751(b) and (d) and 782(h) of the Act and sections 351.216 and 351.222(g) of the Department's regulations.

Dated: April 27, 2001.

Timothy J. Hauser,

Acting Under Secretary for International Trade.

[FR Doc. 01–11272 Filed 5–1–01; 2:32 pm]

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DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On April 6, 2001, CEMEX, S.A. de C.V. ("CEMEX") filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the 9th Administrative review of the antidumping duty order made by the International Trade Administration, respecting Gray Portland Cement and Clinker from Mexico. This determination was published in the **Federal Register** (66 Fed. Reg. 14889) on March 14, 2001. The NAFTA Secretariat has assigned Case Number USA–MEX–2001–1904–04 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on April 6, 2001, requesting panel review of the 9th administrative review of the antidumping duty order described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is May 7, 2001);

(b) a Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is May 21, 2001); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: April 10, 2001.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 01–11042 Filed 5–2–01; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On April 6, 2001, Tubos de Acero de Mexico, S.A. ("TAMSA") filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the five-year sunset review of the antidumping duty order made by the International Trade Administration, respecting Oil Country Tubular Goods from Mexico. This determination was published in the **Federal Register** (66 FR 14131) on March 9, 2001. The NAFTA Secretariat has assigned Case Number USA–MEX–2001–1904–03 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on April 6, 2001, requesting panel review of the five-year sunset review of the antidumping duty order described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is May 7,.2001);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is May 21, 2001); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: April 10, 2001.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 01–11043 Filed 5–2–01; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904; NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On April 20, 2001, Tubos de Acero de Mexico, S.A. ("TAMSA") filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the fourth administrative review of the antidumping duty order and determination not to revoke made by the International Trade Administration, respecting Oil Country Tubular Goods from Mexico. This determination was published in the **Federal Register** (66 FR 15832) on March 21, 2001. The NAFTA Secretariat has assigned Case Number USA–MEX–2001–1904–05 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on April 6, 2001, requesting panel review of the five-year sunset review of the antidumping duty order described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is May 21, 2001);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in

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support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is June 4, 2001); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: April 24, 2001.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 01–11114 Filed 5–2–01; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of California Coastal Management Program

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the California Coastal Management Program/California Coastal Commission.

This coastal Zone Management Program evaluation will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972 (CZMA), as amended and regulations at 15 CFR part 923.

The CZMA requires continuing review of the performance of states with respect to coastal management program implementation. Evaluation of Coastal Zone Management Programs require findings concerning the extent to which a state has met the national objectives, adhered to its coastal program document approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

This evaluation includes a site visit, consideration of public comments, and consultations with interested Federal, State, and local agencies and members of the public. Public meetings will be held as part of the site visits.

Notice is hereby given of the dates of the site visit for the listed evaluation, and the dates, local times, and locations of the public meetings during the site visit.

The California Coastal Management Program/California Coastal Commission evaluation site visit will be held from June 5–13, 2001. Two public meetings will be held during the week. The first will be held on Wednesday, June 6, 2001, from 7–9 p.m., in the Bayside Conference Room at Pier 1, San Francisco, California 94111. The second will be held on Monday, June 11, 2001, from 7–9 p.m. at Ahmanson Auditorium, University Hall 1000, Loyola Marymount College, 7900 Loyola Blvd, Los Angeles, CA 90045.

Copies of the State's most recent performance reports, as well as OCRM's notifications and supplemental request letters to the State, are available upon request from OCRM. Written comments from interested parties regarding this Program are encouraged and will be accepted until 15 days after the last public meeting. Please direct written comments to Margo E. Jackson, Deputy Director, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th floor, Silver Spring, Maryland 20910. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

FOR FURTHER INFORMATION CONTACT: Margo E. Jackson, Deputy Director, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, (301) 713–3155, Extension 114.

Dated: April 30, 2001.

Ted I. Lillestolen,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 01–11298 Filed 5–2–01; 8:45 am]

BILLING CODE 3510–08–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Short Supply Request under the United States-Caribbean Basin Trade Partnership Act (CBTPA)

April 30, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Denial of the petition alleging that yarns of cashmere and yarns of camel hair cannot be supplied by the domestic industry in commercial quantities in a timely manner.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUMMARY: On February 28, 2001 the Chairman of CITA received a petition from Amicale Industries, Inc. alleging yarn of cashmere and yarn of camel hair, classified in heading 5108.10.60 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requested that the President proclaim that apparel articles of U.S. formed fabrics of such yarns be eligible for preferential treatment under the CBTPA. As a result, CITA published a Federal Register Notice on March 8, 2001 (66 FR 13913) requesting public comments on the petition. These comments were due March 23, 2001. Based on currently available information, CITA has determined that these products can be supplied by the domestic industry in commercial quantities in a timely manner and therefore denies the petition.

SUPPLEMENTARY INFORMATION:

Authority: Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act, as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

BACKGROUND: The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns or fabrics formed in the United States or a beneficiary country. The CBTPA also provides for quota–and duty–free treatment for apparel articles that are both cut (or knit–to–shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabric or yarn that is not formed in the United States or a CBTPA beneficiary country, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner and the President has proclaimed such treatment. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On February 28, 2001 the Chairman of CITA received a petition from Amicale Industries, Inc. alleging yarn of cashmere and yarn of camel hair, classified in heading 5108.10.60 of the HTSUS, cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requested that the President proclaim that apparel articles of U.S. formed fabrics of such yarns be eligible for preferential treatment under the CBTPA.

CITA solicited public comments regarding this request (66 FR 13913, published on March 8, 2001) particularly with respect to whether yarn of cashmere and yarn of camel hair, classified in HTSUS heading 5108.10.60, can be supplied by the domestic industry in commercial quantities in a timely manner.

On the basis of currently available information, CITA has determined that yarn of cashmere and yarn of camel hair is spun in the United States and is available from U.S. producers in commercial quantities in a timely manner. Two companies in their submissions claim that they currently spin the yarns in question. Two other companies in their submissions claim to have the spinning capacity to produce these yarns. One company in its submission claims it supplies camel and cashmere hair fibers to companies that spin it into yarn and claims that three additional companies are capable of supplying cashmere and camel hair yarn to the petitioner.

Based on currently available information, CITA has determined that Amicale's petition should be denied. Amicale has not established that these yarns cannot be supplied by the domestic industry in commercial quantities in a timely manner. Currently available information indicates that the domestic industry is able to supply these yarns in commercial quantities in a timely manner.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.01–11211 Filed 5–1–01; 12:40 pm]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Agricultural Advisory Committee; Ninth Renewal

The Commodity Futures Trading Commission has determined to renew again for a period of two years its advisory committee designated as the "Agricultural Advisory Committee." The Commission certifies that the renewal of the advisory committee is in the public interest in connection with duties imposed on the Commission by the Commodity Exchange Act, 7 U.S.C. 1, *et seq.*, as amended.

The objectives and scope of activities of the Agricultural Advisory Committee are to conduct public meetings and submit reports and recommendations on issues affecting agricultural producers, processors, lenders and others interested in or affected by agricultural commodities markets, and to facilitate communications between the Commission and the diverse agricultural and agriculture-related organizations represented on the Committee.

Commissioner David D. Spears serves as Chairman and Designated Federal Official of the Agricultural Advisory Committee. The Committee's membership represents a cross-section of interested and affected groups including representatives of producers, processors, lenders and other interested agricultural groups.

Interested persons may obtain information or make comments by writing to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

Issued in Washington, DC on April 25, 2001, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 01–11039 Filed 5–2–01; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:30 a.m., Wednesday, May 30, 2001.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 01–11229 Filed 5–1–01; 10:59 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Defense Federal Acquisition Regulation Supplement Part 205, Publicizing Contact Actions, and DFARS 252.205–7000, Provision of Information to Cooperative Agreement Holders; OMB Number 0704–0286.

Type of Request: Extension.

Number of Respondents: 5,594.

Responses per Respondent: 1.

Annual Responses: 6,153.

Average Burden per Response: 1.1 hour (average).

Annual Burden Hours: 6,153.

Needs and Uses: This information collection requires DoD contractors to provide information to cooperative agreement holders regarding employees or offices that are responsible for entering into subcontracts under DoD contracts. Cooperative agreement holders furnish procurement technical assistance to business entities within specified geographic areas. This policy implements 10 U.S.C. 2416. DFARS Subpart 205.4 and the clause at DFARS 252.205–7000 require that DoD contractors awarded contracts exceeding $500,000 provide to cooperative agreement holders, upon their request, a list of those appropriate employees or offices responsible for entering into subcontracts under DoD contracts. The list must include the business address, telephone number, and area of responsibility of each employee or office. The contractor need not provide the list to a particular cooperative agreement holder more frequently than once a year.

Affected Public: Business or Other For-Profit.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Mr. David M. Pritzker. Written comments and recommendations on the proposed information collection should be sent to Mr. Pritzker at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing. Written requests for copies of

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the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: April 27, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–11050 Filed 5–2–01; 8:45 am]

BILLING CODE 5000–08–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0077]

Federal Acquisition Regulation; Proposed Collection; Quality Assurance Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0077).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning quality assurance requirements. The clearance currently expires on June 30, 2001.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before July 2, 2001.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Beverly Cromer, Acquisition Policy Division, GSA (202) 208–6750.

SUPPLEMENTARY INFORMATION:

A. Purpose

Supplies and services acquired under Government contracts must conform to the contract's quality and quantity requirements. FAR Part 46 prescribes inspection, acceptance, warranty, and other measures associated with quality requirements. Standard clauses related to inspection require the contractor to provide and maintain an inspection system that is acceptable to the Government; give the Government the right to make inspections and test while work is in process; and require the contractor to keep complete, and make available to the Government, records of its inspection work.

B. Annual Reporting Burden

Respondents: 950.

Responses Per Respondent: 1.

Total Responses: 950.

Hours Per Response: .25.

Total Burden Hours: 237.5 (238).

C. Annual Recordkeeping Burden

Recordkeepers: 58,060.

Hours Per Recordkeeper: .68.

Total Burden Hours: 39,481.

Total Annual Burden: 238 + 39,481 = 39,719.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0077, Quality Assurance Requirements, in all correspondence.

Dated: April 30, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–11078 Filed 5–2–01; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0138]

Federal Acquisition Regulation; Proposed Collection; Contract Financing

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0138).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension to a currently approved information collection requirement concerning contract financing. The clearance currently expires on June 30, 2001.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before July 2, 2001.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jerry Olson, Acquisition Policy Division, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Acquisition Streamlining Act (FASA) of 1994, Pub. L. 103–355, provided authorities that streamlined the acquisition process and minimize burdensome Government-unique requirements. Sections 2001 and 2051 of FASA substantially changed the statutory authorities for Government financing of contracts. Sections 2001(f) and 2051(e) provide specific authority for Government financing of purchases of commercial items, and sections 2001(b) and 2051(b) substantially revised the authority for Government financing of purchases of non-commercial items.

Sections 2001(f) and 2051(e) provide specific authority for Government financing of purchases of commercial items. These paragraphs authorize the Government to provide contract financing with certain limitations.

Sections 2001(b) and 2051(b) also amended the authority for Government financing of non-commercial purchases by authorizing financing on the basis of certain classes of measures of performance.

To implement these changes, DOD, NASA, and GSA amended the FAR by revising Subparts 32.0, 32.1, and 32.5; by adding new Subparts 32.2 and 32.10; and by adding new clauses to 52.232.

The coverage enables the Government to provide financing to assist in the performance of contracts for commercial items and provide financing for non-commercial items based on contractor performance.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *2* hours per request for commercial financing and *2* hours per request for performance-based financing, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden for commercial financing is estimated as follows:

Respondents: 1,000.

Responses Per Respondent: 5.

Total Responses: 5,000.

Hours Per Response: 2.

Total Burden Hours: 10,000.

The annual reporting burden for performance-based financing is estimated as follows:

Respondents: 500.

Responses Per Respondent: 12.

Total Responses: 6,000.

Hours Per Response: 2.

Total Burden Hours: 12,000.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0138, Contract Financing, in all correspondence.

Dated: April 30, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–11079 Filed 5–2–01; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0102]

Federal Acquisition Regulation; Proposed Collection; Prompt Payment

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0102).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension to a currently approved information collection requirement concerning prompt payment. The clearance currently expires on June 30, 2001.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before July 2, 2001.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jerry Olson, Acquisition Policy Division, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

Part 32 of the FAR and the clause at FAR 52.232–5, Payments Under Fixed-Price Construction Contracts, require that contractors under fixed-price construction contracts certify, for every progress payment request, that payments to subcontractors/ suppliers have been made from previous payments received under the contract and timely payments will be made from the proceeds of the payment covered by the certification, and that this payment request does not include any amount which the contractor intends to withhold from a subcontractor/ supplier. Part 32 of the FAR and the clause at 52.232–27, Prompt Payment for Construction Contracts, further require that contractors on construction contracts—

(a) Notify subcontractors/suppliers of any amounts to be withheld and furnish a copy of the notification to the contracting officer;

(b) Pay interest to subcontractors/ suppliers if payment is not made by 7 days after receipt of payment from the Government, or within 7 days after correction of previously identified deficiencies;

(c) Pay interest to the Government if amounts are withheld from subcontractors/suppliers after the Government has paid the contractor the amounts subsequently withheld, or if the Government has inadvertently paid the contractor for nonconforming performance; and

(d) Include a payment clause in each subcontract which obligates the contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days after such amounts are paid to the contractor, include an interest penalty clause which obligates the contractor to pay the subcontractor an interest penalty if payments are not made in a timely manner, and include a clause requiring each subcontractor to include these clauses in each of its subcontractors and to require each of its subcontractors to

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include similar clauses in their subcontracts.

These requirements are imposed by Public Law 100–496, the Prompt Payment Act Amendments of 1988.

Contracting officers will be notified if the contractor withholds amounts from subcontractors/suppliers after the Government has already paid the contractor the amounts withheld. The contracting officer must then charge the contractor interest on the amounts withheld from subcontractors/suppliers. Federal agencies could not comply with the requirements of the law if this information were not collected.

B. Annual Reporting Burden

Respondents: 38,194.
Responses Per Respondent: 11.
Total Responses: 420,134.
Hours Per Response: 11.
Total Burden Hours: 46,215.

C. Annual Recordkeeping Burden

Recordkeepers: 34,722.
Hours Per Recordkeeper: 18.
Total Recordkeeping Burden Hours: 624,996.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0102, Prompt Payment, in all correspondence.

Dated: April 30, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–11080 Filed 5–2–01; 8:45 am]

BILLING CODE 6820–34–U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0088]

Federal Acquisition Regulation; Proposed Collection; Travel Costs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0088).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning travel costs. The clearance currently expires June 30, 2001.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before July 2, 2001.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jerry Olson, Acquisition Policy Division, GSA, (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR 31.205–46, Travel Costs, requires that, except in extraordinary and temporary situations, costs incurred by a contractor for lodging, meals, and incidental expenses shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the per diem rates in effect as of the time of travel as set forth in the Federal Travel Regulations for travel in the conterminous 48 United States, the Joint Travel Regulations, Volume 2, Appendix A, for travel is Alaska, Hawaii, the Commonwealth of Puerto Rico, and territories and possessions of the United States, and the Department of State Standardized Regulations, section 925, "Maximum Travel Per Diem Allowances for Foreign Areas." The burden generated by this coverage is in the form of the contractor preparing a justification whenever a higher actual expense reimbursement method is used.

B. Annual Reporting Burden

Respondents: 5,800.
Responses Per Respondent: 10.
Total Responses: 58,000.
Hours Per response: .25.
Total Burden Hours: 14,500.

Obtaining Copies of Proposals:

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVP), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0088, Travel Costs, in all correspondence.

Dated: April 30, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–11081 Filed 5–2–01; 8:45 am]

BILLING CODE 6820–34–U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0134]

Submission for OMB Review; Comment Request Entitled Environmentally Sound Products

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Environmentally Sound Products. A request for public comments was published at 65 FR 75925, December 5, 2000. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before June 4, 2001.

FOR FURTHER INFORMATION CONTACT: Laura Smith, Federal Acquisition Policy Division, GSA (202) 208–7279.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW., Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

This information collection complies with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962). RCRA requires the Environmental Protection Agency (EPA) to designate items which are or can be produced with recovered materials. RCRA further requires agencies to develop affirmative procurement programs to ensure that items composed of recovered materials will be purchased to the maximum extent practicable. Affirmative procurement programs required under RCRA must contain, as a minimum (1) a recovered materials preference program and an agency promotion program for the preference program; (2) a program for requiring estimates of the total percentage of recovered materials used in the performance of a contract, certification of minimum recovered material content actually used, where appropriate, and reasonable verification procedures for estimates and certifications; and (3) annual review and monitoring of the effectiveness of an agency's affirmative procurement program.

The items for which EPA has designated minimum recovered material content standards are (1) construction products, (2) paper and paper products, (3) vehicular products, (4) landscaping products, (5) nonpaper office products, (6) park and recreation products, (7) transportation products, and (8) miscellaneous products. The FAR rule also permits agencies to obtain pre-award information from offerors regarding the content of items which the agency has designated as requiring minimum percentages of recovered materials. A complete list of EPA designated items is available at *http://www.epa.gov/cpg*.

In accordance with RCRA, the information collection applies to acquisitions requiring minimum percentages of recovered materials, when the price of the item exceeds $10,000 or when the aggregate amount paid for the item or functionally equivalent items in the preceding fiscal year was $10,000 or more.

Contracting officers use the information to verify offeror/contractor compliance with solicitation and contract requirements regarding the use of recovered materials. Additionally, agencies use the information in the annual review and monitoring of the effectiveness of the affirmative procurement programs required by RCRA.

B. Annual Reporting Burden

Respondents: 64,350.
Responses Per Respondent: 1.
Total Responses: 64,350.
Hours Per Response: 30 minutes (.5 hr).
Total Burden Hours: 32,175.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 208–7312. Please cite OMB control No. 9000–0134, Environmentally Sound Products, in all correspondence.

Dated: April 30, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–11082 Filed 5–2–01; 8:45 am]

BILLING CODE 6820–34–U

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Meeting

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board (DSB) Task Force on Chemical Warfare Defense will meet in closed session on May 31, 2001, and June 1, 2001, at SAIC, Inc., 4001 N. Fairfax Drive, Arlington, VA 22201. The Task Force will assess the possibility of controlling the risk and consequences of a chemical warfare (CW) attack to acceptable national security levels within the next five years.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Task Force will assess current national security and military objectives with respect to CW attacks; CW threats that significantly challenge these objectives today and in the future; the basis elements (R&D, materiel, acquisition, personnel, training, leadership) required to control risk and consequences to acceptable levels, including counter-proliferation; intelligence, warning, disruption; tactical detection and protection (active and passive); consequence management; attribution and deterrence; and policy. The Task Force will also assess the testing and evaluation necessary to demonstrate and maintain the required capability and any significant impediments to accomplishing this goal.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. Law No. 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly this meeting will be closed to the public.

Dated: April 27, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–11051 Filed 5–2–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Partially Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting.

Nome of Committee: Army Science Board (ASB), Objective Force Soldier.
Date of Meeting: May 16–17, 2001.
Time of Meeting: 0800–1700 (both days).
Place: Fort Bragg, NC.
Agenda: The Army Science Board's (ASB) Summer Study on "Objective Force Soldier/Soldier Systems" will meet for panel discussions and report preparation (day one) and study-related site visits of Fort Bragg (day two). The first day of meetings (May 16) will be open to the public. The site visits, due to their classified portions, will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C. Appendix 2, subsection 10(d). For further information, please contact Mr. Mike

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Hendricks, Lead Staff Assistant on 703–617–7048.

Wayne Joyner,

Executive Assistant, Army Science Board.

[FR Doc. 01–11115 Filed 5–2–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: May 18, 2001.

Time of Meeting: 0730–1700, May 18, 2001.

Place: US Army Night Vision Laboratory 399, Ft. Belvoir Virginia.

Agenda: The Army Science Board's (ASB) panel is conduction a series of panel discussions and a study on "Knowledge Based Management and Information Reliability" to exam innovative ways of addressing technology issues that have the potential to "weight down" our future Warfighters with massive amounts of data. These meetings will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please contact Mr. Randy Woodson, Office of the DA DCSINT, 703 604 2462, randy.woodson@hqha.army.mil.

Wayne Joyner,

Executive Assistant, Army Science Board.

[FR Doc. 01–11116 Filed 5–2–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Invention for Licensing; Government-Owned Invention

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. U.S. Patent No. 6,137,117 entitled "Integrating Multi-Waveguide Sensor," Navy Case No. 79,373.

ADDRESSES: Requests for copies of the patent application cited should be directed to the Naval Research Laboratory, Code 1008.2, 4555 Overlook Avenue, SW, Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: April 25, 2001.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 01–11117 Filed 5–2–01; 8:45 am]

BILLING CODE 3810–FF–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meeting

Pursuant to the provision of the "Government in the Sunshine Act" (5 U.S.C. § 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) meeting described below.

TIME AND DATE OF MEETING: 9 a.m., May 23, 2001.

PLACE: The Defense Nuclear Facilities Safety Board, Public Hearing Room, 625 Indiana Avenue, NW, Suite 300, Washington, DC 20004.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Department of Energy (DOE) requires contractors at defense nuclear facilities to develop and implement nuclear quality assurance programs to ensure the requisite quality of operations, products, and services that directly affect nuclear safety-related systems and operations. Activities required to be conducted under established quality assurance programs extend from scientific studies, to the design, construction, operation, and deactivation of defense nuclear facilities. Notwithstanding contract and rule requirements concerning quality assurance, there is evidence that quality assurance programs at defense nuclear facilities are not consistently achieving their quality objectives.

This is the second in a series of open meetings being held by the Defense Nuclear Facilities Safety Board (Board) on the topic of quality assurance within DOE nuclear defense activities. Board inquiries will address (1) quality assurance requirements and practices in related industries, and (2) the implementation of DOE quality assurance requirements at selected sites.

FOR FURTHER INFORMATION CONTACT: Richard A. Azzaro, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004, (800) 788–4016. This is a toll-free number.

SUPPLEMENTARY INFORMATION: The Defense Nuclear Facilities Safety Board reserves its right to further schedule and otherwise regulate the course of this meeting, to recess, reconvene, postpone or adjourn the meeting, and otherwise exercise its authority under the Atomic Energy Act of 1954, as amended.

Dated: April 30, 2001.

John T. Conway,

Chairman.

[FR Doc. 01–11162 Filed 4–30–01; 4:17 pm]

BILLING CODE 3670–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Saturday, May 12, 2001, 8:30 a.m.–12:00 noon.

ADDRESSES: Fernald Environmental Management Project Site, Services Building Conference Room, 7400 Willey Road, Hamilton, OH 45219.

FOR FURTHER INFORMATION CONTACT: Doug Sarno, Phoenix Environmental, 6186 Old Franconia Road, Alexandria, VA 22310, at (703) 971–0030 or (513) 648–6478, or e-mail; *djsarno@theperspectivesgroup.com.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

8:30 a.m.—Call to Order
8:30–8:45 a.m.—Chair's Remarks and Ex Officio Announcements
8:45–9:45 a.m.—Rebaseline update
9:45–11:45 a.m.—Stewardship Issues
11:45–12:00 noon—Public Comment session
12:00 noon—Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Gary Stegner, Public Affairs Office, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to the Fernald Citizens' Advisory Board, % Phoenix Environmental Corporation, MS–76, Post Office Box 538704, Cincinnati, OH 43253–8704, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC on April 27 2001.

Belinda Hood,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 01–11146 Filed 5–2–01; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF87–93–007]

Cambria Cogen Company, Small Power Production and Cogeneration Facilities—Qualifying; Notice of Filing

April 27, 2001.

Take notice that on April 26, 2001, Cambria Cogen Company tendered for filing clarifications regarding its QF Application.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before May 7, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11056 Filed 5–2–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1515–001]

Duke Energy Audrain, LLC; Notice of Filing

April 27, 2001.

Take notice that on April 9, 2001, Duke Energy Audrain, LLC (Duke Audrain) filed a revision to its proposed FERC Electric Tariff Original Volume No. 1 (Tariff), clarifying that all market information shared between Duke Audrain and any public utility with a franchised service territory that is an affiliate of Duke Audrain will be disclosed simultaneously to the public and correcting tariff designations. No other changes were made to the Tariff or to Duke Audrain's Application for Order Accepting Market Based Rates for Filing and Certain Waivers and Pre-Approvals, filed in Docket No. ER01–1208–000 on March 13, 2001.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before May 7, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www/ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11055 Filed 5–2–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Initiation of Proceeding and Refund Effective Date

April 27, 2001.

San Diego Gas & Electric Company, Complainant, v. Sellers of Energy and Ancillary Service Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents; Docket No. EL00–95–012.

Investigation of Practices of the California Independent System Operator and the California Power Exchange; Docket No. EL00–98–000.

California Independent System Operator Corporation; Docket No. RT01–85–000.

Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council; Docket No. EL01–68–000.

Take notice that on April 26, 2001, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL01–68–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL01–68–000 will be 60 days after publication of this notice in the **Federal Register**.

David P. Boergers,

Secretary.

[FR Doc. 01–11053 Filed 5–2–01; 8:45 am]

BILLING CODE 6717–01–M

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7481–068]

NYSD Limited Partnership; Notice of Availability of Environmental Assessment

April 27, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has prepared an Environmental Assessment (EA) for the New York State Dam Project. The EA examines the environmental impacts of four alternatives for providing downstream fish passage at the project for adult blueback herring.

In the EA, the Commission's staff has reviewed the comments on its June 14, 1996 Draft Environmental Assessment. In summary, the EA evaluates four alternatives for operation of the project's existing fish bypass for adult blueback herring: (1) licensee's alternative; (2) resource agency alternative; (3) staff alternative; and (4) no-action. The EA recommends the licensee operate its fish bypass for adult blueback herring in accordance with the staff alternative. The EA concludes that implementation of this alternative would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference and Files Maintenance Branch, Room 2A of the Commission's offices at 888 First Street, NE., Washington, DC 20426. A copy is also available for inspection and reproduction at the addresses in item g above. This filing may also be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). For further information, please contact Timothy J. Welch at (202) 219–2666.

David P. Boergers,

Secretary.

[FR Doc. 01–11054 Filed 5–2–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request for Extension of Time To Commence and Complete Project Construction and Soliciting Comments, Motions To Intervene, and Protests

April 27, 2001.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. Application Type: Request for Extension of Time to Commence and Complete Project Construction.

b. Project No.: 10648–007.

c. Location: The proposed project would be located on the Hudson River, in Saratoga and Rensselear Counties, New York. The project does not utilize federal or tribal lands.

d. Date Filed: March 9, 2001.

e. Applicant: Adirondack Hydro Development Corporation.

f. Name of Project: Waterford Hydroelectric Project.

g. Pursuant to: Public Law 104–242.

h. Applicant Contact: Keith F. Corneau, Director, Corporate Development, Adirondack Hydro Development Corporation, 39 Hudson Falls Road, South Glens Falls, NY 12803, (518) 747–0930.

i. FERC Contact: Any questions on this notice should be addressed to Mr. Lynn R. Miles, at (202) 219–2671, or e-mail address: lynn.miles@ferc.fed.us.

j. Deadline for filing comments and or motions: May 4, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, Mail Code: 888 First Street, NE., Washington, DC 20426.

Please include the project numbers (10648–007) on any comments filed.

k. Description of the Request: The licensee has requested that the Commission grant its request for an additional two-year period to commence construction of the Waterford Hydroelectric Project. The deadline to commence project construction for FERC Project No. 10648 would be extended to June 9, 2003. The deadline for completion of construction would be extended to June 9, 2005.

l. Locations of the Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service Responsive Documents—Any filing must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. An additional copy must be sent to the Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, as the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–11057 Filed 5–2–01; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6974–1]

Agency Information Collection Activities: Proposed Collection; Comment Request; Underground Injection Control (UIC) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB):

Underground Injection Control Program, EPA ICR No. 0370.13, OMB Control No. 2040–0042 which expires 9/30/01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 2, 2001.

ADDRESSES: Persons interested in getting information or making comment about this ICR (# 0370.13) should direct inquires to Robert E. Smith, U.S. Environmental Protection Agency; Ariel Rios Building; 1200 Pennsylvania Avenue, NW, Mail Stop 4606; Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert E. Smith, Office of Ground Water and Drinking Water: 202–260–5559; FAX 202–401–2345; E-mail: *robert-eu@epa.gov.* Further information on the ICR can be obtained from the Safe Drinking Water Hotline at (703) 286–1093, E-mail: *hotline-sdwa@epa.gov.*

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are owners/operators of underground injection wells and State UIC Primacy Agencies including, Puerto Rico, the U.S. Trust Territories, Indian Tribes, and Alaska's Native Villages and, in some instances, U.S. EPA Regional Offices.

Title: Information Collection Request for the Underground Injection Control Program (OMB Control No. 2040–0042; EPA ICR No. 0370.13.), expiring September 30, 2001.

Abstract: The Underground Injection Control (UIC) Program under the Safe Drinking Water Act established a Federal and State regulatory system to protect underground sources of drinking water (USDWs) from contamination by injected fluids. Owners/operators of underground injection wells must obtain permits, conduct environmental monitoring, maintain records, and report results to EPA or the State UIC primacy agency. States must report to EPA on permittee compliance and related information. The information is reported using standardized forms, and regulations are codified at 40 CFR parts 144 through 148. The data are used to ensure the protection of underground sources of drinking water from UIC authorities. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. In the UIC Program ICR for 1998–2001, the total burden associated with it was estimated to be 1,135,273 hours per year and the total cost was estimated to be $58,246,054 per year. EPA expects that the total burden for the continuing UIC Program ICR for the period 2001–2004 will be approximately the same except for inflation for the cost information. This is because little or no significant increase in the UIC well population is anticipated during this period. EPA also considered the possible impact of the Class V Well Phase I rulemaking (64 FR 68546, 11/30/99) implementation for the renewal period. While this rulemaking has separate ICR coverage until November 2002, the Program ICR will include slightly increased burden and cost for State implementation of Class V Well Phase I rulemaking from December 1, 2002 until September 30, 2004.

Respondents/Affected Entities: Owners/Operators of UIC wells, State Primacy Agencies including, Puerto Rico, the U.S. Trust Territories, Indian Tribes, and Alaska's Native Villages and EPA Regional Offices.

Dated: April 25, 2001.

Philip S. Oshida,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 01–11092 Filed 5–2–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PF–1005; FRL–6773–9]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

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DATES: Comments, identified by docket control number OPP–50878, must be received on or before June 4, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–50878 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Susanne Cerrelli, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8077; e-mail address: cerrelli.susanne@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–50878. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–50878 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–50878. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 19, 2001.

Kathleen F. Knox,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petitioner's summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

AgraQuest, Inc.

PP 1G6240

EPA has received a pesticide petition 1G6240 from AgraQuest, Inc., 1530 Drew Avenue, Davis, CA 95616, proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish a temporary exemption from the requirement of a tolerance for the microbial pesticide *Bacillus pumilus* strain QST 2808 in or on all raw agricultural commodities (RAC). Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, AgraQuest, Inc. has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by AgraQuest, Inc. and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

Sonata™ AS is proposed for use as a biofungicide to control various plant diseases such as downy mildew, powdery mildew, *Phytophthera, Sclerotinia, Cercospora*, and/or rust on the following vegetable crop groups: root and tuber, bulb, leafy except Brassica, Brassica, legume, fruiting, and cucurbit; on the following fruit crop groups: pome and stone, on the grain, cereal, group; and the following individual crops: grape, grasses grown for seed, hop, mint, peanuts, strawberry, and field grown roses. The product is applied as a foliar spray alone, in alternating spray programs, or in tank mixes with other registered crop protection products, up to and including the day of harvest.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* Sonata™ AS contains the QST 2808 strain of *Bacillus pumilus* as the active ingredient. *Bacillus pumilus* strain QST 2808 is a ubiquitous, naturally occurring, non-pathogenic microorganism. It is commonly recovered from water, soil, air, and decomposing plant residue. *Bacillus pumilus* produces proteases and other enzymes that enable it to degrade a variety of natural substrates and contribute to nutrient recycling. *Bacillus pumilus* prevents spore germination by formation of a physical barrier and subsequently colonizes fungal spores. QST 2808 Technical is used to formulate Sonata™ AS. The product will be applied at a maximum rate of 1.18×10^{13} colony forming units per acre, which is equivalent to a maximum rate of 3 gallons of Sonata™ AS per acre.

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* AgraQuest is submitting a petition requesting that EPA establish a temporary exemption from the requirement of a tolerance for the QST strain of *Bacillus pumilus*, therefore, this section is not applicable.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* AgraQuest is submitting a petition requesting that EPA establish a temporary exemption from the requirement of a tolerance for the QST strain of Bacillus pumilus, therefore, this section is not applicable.

C. Mammalian Toxicological Profile

The active ingredient *Bacillus pumilus* strain QST 2808 has been evaluated for toxicity through oral, dermal, pulmonary, intravenous and eye routes of exposure. The results of the studies have indicated there are no significant human health risks. The acute oral toxicity/pathogenicity LD_{50} in rats is greater than 4.1×10^9 cfu/g. The acute dermal toxicity LD_{50} in rats is greater than 2,000 milligrams/kilograms (mg/kg) (toxicity category III). The acute pulmonary toxicity/pathogenicity LD_{50} in rats is greater than 1.6×10^8 cfu per animal. The acute intravenous toxicity/pathogenicity LD_{50} in rats is greater than 1.6×10^8 cfu per animal. No pathogenic or infective effects were observed in the studies.

Slight eye irritation in rabbits was observed at a dose of 0.1 mL (toxicity category IV) and minimal skin irritation in rabbits was observed at a dose of 0.5 mL (toxicity category IV). Since its discovery, no incidents of hypersensitivity have been reported by researchers, manufacturers or users of *Bacillus pumilus* strain QST 2808. The formulated product is a very dilute aqueous suspension of *Bacillus pumilus*, with <3% intentionally added inert ingredients. It is unlikely that this product's toxicity profile will differ from that of the technical material. Acute toxicology studies are in progress on the formulated product.

D. Aggregate Exposure

Sonata™ AS is proposed for use under an experimental use permit to control various plant diseases on agricultural crops.

1. *Dietary exposure.* Dietary exposure is not expected from the use of this microbial pesticide as proposed. The lack of acute oral toxicity/pathogenicity and the ubiquitous nature of the organism support the exemption from the requirement of a tolerance for this active ingredient.

i. *Food.* Dietary exposure from use of *Bacillus pumilus* strain QST 2808, as proposed, is minimal. Residues of *Bacillus pumilus* strain QST 2808 are not expected on agricultural commodities. In a study conducted to determine the longevity of *Bacillus pumilus* residues on pepper leaf surfaces under field conditions, the results showed that the number of colony forming units of *Bacillus pumilus* decreased significantly over time in the first 5 days. In addition, the

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microbial pesticide can be removed from food by peeling, washing, cooking, and processing.

ii. *Drinking water.* Exposure to humans from residues of *Bacillus pumilus* strain QST 2808 in consumed drinking water would be unlikely. *Bacillus pumilus* strain QST 2808 is a naturally occurring microorganism known to exist in terrestrial habitats. Although it may be found in water, it is not known to thrive in aquatic environments.

2. *Non-dietary exposure.* The potential for non-dietary exposure to the general population, including infants and children, is unlikely as the proposed use sites are agricultural settings. In addition, non-dietary exposures would not be expected to pose any quantifiable risk due to a lack of residues of toxicological concern. Personal protective equipment (PPE) mitigates the potential for exposure to applicators and handlers of the proposed products, when used in agricultural settings.

E. Cumulative Exposure

There is no indication of mammalian toxicity of *Bacillus pumilus* and no information to indicate that toxic effects would be cumulative. Therefore, consideration of a common mode of action is not appropriate. In addition, it is not expected that, when used as proposed, Sonata™ AS would result in residues that would remain in human food items.

F. Safety Determination

Risk and exposure to humans, infants, and children is likely to be minimal.

1. *U.S. population. Bacillus pumilus* strain QST 2808 is not pathogenic or infective to mammals. There have been no reports of toxins associated with the organism, and acute toxicity/pathogenicity studies have shown that *Bacillus pumilus* strain QST 2808 is non-toxic, non-pathogenic, and non-irritating. Residues of *Bacillus pumilus* strain QST 2808 are not expected on agricultural commodities, and therefore, exposure to the general U.S. population, from the proposed uses, is not anticipated.

2. *Infants and children.* As mentioned above, residues of *Bacillus pumilus* strain QST 2808 are not expected on agricultural commodities. There is a reasonable certainty of no harm for infants and children from exposure to *Bacillus pumilus* strain QST 2808 from the proposed uses.

G. Effects on the Immune and Endocrine Systems

Bacillus pumilus strain QST 2808 is a naturally occurring, non-pathogenic microorganism. There is no evidence to suggest that *Bacillus pumilus* strain QST 2808 functions in a manner similar to any known hormone, or that it acts as an endocrine disrupter.

H. Existing Tolerances

There is no U.S. EPA tolerance for *Bacillus pumilus* strain QST 2808.

I. International Tolerances

There is no Codex Alimentarius Commission maximum residue level (MRL) for *Bacillus pumilus* strain QST 2808.

[FR Doc. 01–11094 Filed 5–2–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50878; FRL–6774–1]

Experimental Use Permit; Receipt of Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application 69592–EUP–R from AgraQuest, Inc., 1530 Drew Avenue, Davis, CA 95616 requesting an experimental use permit (EUP) for the microbial pesticide *Bacillus pumilus* Strain QST 2808. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments, identified by docket control number OPP–50878, must be received on or before June 4, 2001.

ADDRESSES: Comments and data may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–50878 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Susanne Cerrelli, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8077; e-mail address: cerrelli.susanne@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of microbial substances under the Federal Food, Drug and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–50878. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–50878 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–50878. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

AgraQuest, Inc., 1530 Drew Avenue, Davis, CA 95616 has requested an EUP for the microbial pesticide *Bacillus pumilus* Strain QST 2808 for a 2 year period, commencing March 1, 2001 and ending March 1, 2003. The objective of this EUP is to obtain efficacy and phytotoxicity data over a large geographical area on many important minor crops. A total of 4,000 acres are proposed to be treated with 2,188 pounds of active ingredient. AgraQuest's proposed testing areas include the following states: Arizona, California, Colorado, Florida, Georgia, Indiana, Michigan, North Carolina, North Dakota, New Jersey, New Mexico, New York, Oklahoma, Oregon, Pennsylvania, Texas, Virginia, Washington, West Virginia, and Wisconsin. Proposed crop treatment sites include brassica, bulb vegetables, cereal grains, cucurbits, fruiting vegetables, grape, grass seed, hop, leafy vegetables, legume vegetables, mint, peanuts, pome fruits, root and tuber vegetables, roses (field) and stone fruits. The application methods proposed include ground, aerial, and chemigation methodology.

III. What Action is the Agency Taking?

Following the review of the AgraQuest, Inc. application and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register.**

IV. What is the Agency's Authority for Taking this Action?

The Agency's authority for taking this action is under 40 CFR part 172.

List of Subjects

Environmental protection, Experimental use permits.

Dated: April 17, 2001.

Kathleen F. Knox,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 01–11095 Filed 5–2–01; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[DA 01–933, ET Docket No. 98–206]

The MITRE Corporation Report on Technical Analysis of Potential Harmful Interference to DBS From Proposed Terrestrial Services in the 12.2–12.7 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Notice; request for comments.

SUMMARY: The MITRE Corporation delivered to the FCC a Report titled "Analysis of Potential MVDDS Intereference to DBS in the 12.2–12.7 GHz Band." The MITRE Corporation report was conducted pursuant to Prevention of Interference to Direct Broadcast Satellite Services, of the Commerce, Justice, State and Judiciary Appropriations Act, (CJSJA Act), H.R. 5548 (enacted on December 21, 2000, as part of Public Law 106–553). The MITRE Corporation report addresses the question of possible interference from MVDDS to DBS. Pursuant to the statute, the Commission seeks comment on this report.

DATES: Comments Due: May 15, 2001; Reply Comments Due May 23, 2001.

FOR FURTHER INFORMATION CONTACT: Michael Marcus for the MITRE Study, and Tom Derenge for ET Docket No. 98–206, Office of Engineering and Technology, (202) 418–2418, and (202) 418–2451, respectively; internet mmarcus@fcc.gov and tderenge@fcc.gov, respectively.

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SUPPLEMENTARY INFORMATION: This is a summary of the text of the *Public Notice*, DA 01–933 released April 23, 2001. This document is available on the Commission's Internet site, at *ww.fcc.gov/oet/info/mitrereport/*. It is also available for inspection and copying during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW, Washington, DC, and also may be purchased from the Commission's duplication contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Summary of the Public Notice

1. On April 18, 2001, MITRE Corporation delivered to the FCC a Report titled "Analysis of Potential MVDDS Intereference to DBS in the 12.2–12.7 GHz Band." The MITRE Corporation report was conducted pursuant to Section 1012, Prevention of Interference to Direct Broadcast Satellite Services, of the Commerce, Justice, State and Judiciary Appropriations Act, (CJSJA Act), H.R. 5548 (enacted on December 21, 2000, as part of Public Law 106–553). This document can be found through the Commission's Electronic Comment Filing System (ECFS) at. *www.fcc.gov/e-file/ecfs.html*. It can also be found directly at *www.fcc.gov/oet/inf/mitrereport/*. (The report contains many color diagrams so use of a color printer is recommended in order to follow the technical details in hard copies.) Pursuant to the statute, the Commission seeks comment on this report.

2. The *First Report and Order and Further Notice of Proposed Rulemaking* in ET Docket 98–206, 66 FR 7606, January 24, 2000, (*http://www.fcc.gov/Bureaus/Engineering_Technology/Orders/2000/fcc00418.pdf*) proposed that a new Multichannel Video Distribution and Data Service (MVDDS) share the existing Direct Broadcast Satellite Service (DBS) downlink allocation at 12.2–12.7 GHz. The MITRE Corporation report addresses the question of possible interference from MVDDS to DBS users in accordance with Section 1012 of the CJSJA Act.

3. Comments on The MITRE Corporation report shall be filed by no later than May 15, 2001. Replies to the comments shall be filed no later than May 23, 2001. Comments and replies are to be filed with the Commission following the same procedures applicable to the First Report and Order and Further Notice of Proposed Rule Making in this proceeding, ET Docket No. 98–206. Comments filed through the ECFS can be sent as an electronic file via the Internet at www.fcc.gov/e-file/ecfs.html. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To obtain filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message: "get form <your e-mail address>". A sample form and directions will be sent in reply.

4. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Generally, only one electronic submission must be filed. If filing by paper, parties must file an original and four copies. Parties should send comments to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. Parties are also encouraged to file a copy of all pleadings on a 3.5 inch diskette in Word 97 format.

5. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. See 47 CFR 1.1200 and 1.1206. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance or the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. See 47 CFR 1.1206(b). Other rules pertaining to oral and written ex parte presentations in permit-but-disclose proceedings are set forth in 47 CFR 1.1206(b).

6. This action is taken pursuant to authority found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r); and pursuant to §§ 0.31 and 0.241 of the Commission's Rules, 47 CFR 0.31 and 0.241.

Federal Communications Commission.

Geraldine Matise,

Deputy Chief, Policy and Rules Division, Office of Engineering and Technology.

[FR Doc. 01–11077 Filed 5–2–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE & TIME: Tuesday, May 8, 2001 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

PREVIOUSLY ANNOUNCED DATE & TIME: Thursday, May 10, 2001, Meeting Open to the Public.

This meeting has been cancelled.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1200.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 01–11326 Filed 5–1–01; 3:08 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 29, 2001.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303–2713:

1. Financial Investors of the South, Birmingham, Alabama; to acquire 100 percent of the voting shares of Capital Bank (in organization), Montgomery, Alabama.

2. Wewahitchka State Bank Employee Stock Ownership Plan, Wewahitchka, Florida; to acquire 50 percent of the voting shares of Gulf Coast Community Bancshares, Inc., Wewahitchka, Florida, and thereby indirectly acquire Wewahitchka State Bank, Wewahitchka, Florida.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Advantage Bancorp, Woodbury, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of First Choice Bank (in organization), Geneva, Illinois.

2. CIB Marine Bancshares, Inc., Pewaukee, Wisconsin; to merge with Citrus Financial Services, Inc., Vero Beach, Florida, and thereby indirectly acquire Citrus Bank, NA, Vero Beach, Florida.

3. Hustisford Community Bancorp, Inc., Hustisford, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Hustisford State Bank, Hustisford, Wisconsin.

C. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. American Summit Financial Holdings, LLC, Eden Prairie, Minnesota; to become a bank holding company by acquiring up to 60 percent of the voting shares of Superior Financial Holding Company, Two Harbors, Minnesota, and thereby indirectly acquire Lake Bank, N.A., Two Harbors, Minnesota.

Board of Governors of the Federal Reserve System, April 27, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–11038 Filed 5–2–01; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the Future Master Plan Development for the Centers for Disease Control (CDC) in Chamblee, GA

Pursuant to the requirements of the National Environmental Policy Act (NEPA) of 1969, and the President's Council on Environmental Quality Regulations (40 CFR parts 1500–1508), as implemented by General Services Administration (GSA) Order PBS P 1095.4D, GSA announces its Notice of Intent (NOI) to prepare an EIS for the proposed development and future build out for the CDC in Chamblee, Georgia. The proposed action includes the expansion of facilities and will include additional buildings, parking structures, and infrastructure on Government-owned property located in Chamblee located south of Tucker Road between Peachtree Dekalb Airport and Buford Highway. The EIS will examine the impacts of this proposed development on the natural and human environment to include impacts to wetlands, floodplains, traffic, and other potential impacts identified by the community through the scoping process.

The EIS will address the potential impacts of two alternatives: the Proposed Action (Development Alternative), and No-Action Alternative (meet facility requirements without full development on site). GSA will solicit community input throughout this process, and will incorporate community comments into the decision process. As part of the Public Scoping process, GSA solicits comments in writing at the following address: Mr. Phil Youngberg, Environmental Manager (4PT), General Services Administration (GSA), 77 Forsyth Street, Suite 450, Atlanta, GA 30303 or Fax: Mr. Phil Youngberg at 404–562–0790. Comments should be submitted in writing no later than June 1st, 2001.

Dated: April 18, 2001.

Phil Youngberg,

Environmental Manager (4PT), General Services Administration.

[FR Doc. 01–11147 Filed 5–2–01; 8:45 am]

BILLING CODE 6820–23–M

GENERAL SERVICES ADMINISTRATION

Public Buildings Service, Portfolio Management Division (9PT); Notice of Public Meeting

The General Services Administration (GSA) is in the process of investigating a potential site for the U.S. Border Patrol in the vicinity of Madison Avenue and Guava Street in Murrieta, CA, and is developing an Environmental Assessment for the project. A public meeting will be held at the Murrieta City Council Chambers, 26442 Beckman Court, Murrieta, CA 92562, on May 9, 2001, at 6 p.m. For additional information regarding this project, call Kevin Waldron, Project Manager, at (415) 522–3275, General Services Administration, Public Buildings Service, Portfolio Management Division, 450 Golden Gate Avenue (9PTC), San Francisco, CA 94102.

Dated: April 17, 2001.

Abdee Gharavi,

Director (9PT), Portfolio Management Division, PBS, General Services Administration.

[FR Doc. 01–11148 Filed 5–2–01; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

Malabika Sarker, M.B.B.S., M.P.H., University of Alabama at Birmingham: Based on the report of an investigation conducted by the University of Alabama at Birmingham and additional analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) finds that Dr. Sarker, former doctoral fellow, Department of Epidemiology, School of Public Health, University of Alabama at Birmingham, engaged in scientific misconduct by falsifying questionnaire data for risk factors for sexually transmitted diseases (STDs) in Bangladesh for her dissertation. The research was supported by the Fogerty International Center, National Institutes of Health (NIH), grant D43 TW01035, "UAB AIDS/HIV International Training & Research."

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The purpose of the research was to determine from questionnaires the lifestyle and personal history factors of subjects and correlate them to infection rates for STDs from use of laboratory tests. Dr. Sarker admitted that she falsified the coding of the questionnaire data relating to the occupations of the subjects and of their sexual partners to present statistically significant data regarding the risk factors for STDs.

Dr. Sarker has accepted the PHS finding and has entered into a Voluntary Exclusion Agreement with PHS in which she has voluntarily agreed for a period of three (3) years, beginning on April 17, 2001:

(1) To exclude herself from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee;

(2) That any institution that submits an application for PHS support for a research project on which Dr. Sarker's participation is proposed or that uses Dr. Sarker in any capacity on PHS supported research, or that submits a report of PHS-funded research in which Dr. Sarker is involved, must concurrently submit a plan for supervision of her duties to the funding agency for approval. The supervisory plan must be designed to ensure the scientific integrity of Dr. Sarker's research contribution. The institution must also submit a copy of the supervisory plan to ORI.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris Pascal,

Director, Office of Research Integrity.

[FR Doc. 01–11073 Filed 5–2–01; 8:45 am]

BILLING CODE 4150–31–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meetings

In accordance with section 10(d) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), The Agency for Healthcare Research and Quality (AHRQ) announces meetings of scientific peer review groups. The subcommittees listed below are part of the Agency's Health Services Research Initial Review Group Committee.

The subcommittee meetings will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6). Grant applications are to be reviewed and discussed at these meetings. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

1. *Name of Subcommittee:* Health Care Research Training.
Date: May 10–11, 2001 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).
Place: AHRQ, Executive Officer Center, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

2. *Name of Subcommittee:* Health Research Dissemination and Implementation.
Date: June 4–5, 2001 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).
Place: AHRQ, Executive Office Center, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

3. *Name of Subcommittee:* Health Care Technology and Decision Sciences.
Date: June 7–8, 2001 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).
Place: AHRQ, Executive Office Center, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

4. *Name of Subcommittee:* Health Care Systems Research.
Date: June 7–8, 2001 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).
Place: AHRQ, Executive Office Center, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

5. *Name of Subcommittee:* Health Care Quality and Effectiveness Research.
Date: June 21–22, 2001 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).
Place: AHRQ, Executive Office Center, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain a roster of members or minutes of the meetings should contact Ms. Jenny Griffith, Committee Management Officer, Office of Research Review, Education and Policy, AHRQ, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1847.

(This notice is being published less than 15 days prior to the May 10–11 meeting due to administrative difficulties.)

Agenda items for these meetings are subject to change as priorities dictate.

Dated: April 25, 2001.

John M. Eisenberg,

Director.

[FR Doc. 01–11040 Filed 5–2–01; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–01–32]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

NIOSH Website for Kids and Teens—NEW—The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC). The mission of the National Institute for Occupational Safety and Health is to promote safety and health at work for all people through research and prevention.

The goal of this project is to develop a more effective means of communicating NIOSH occupational safety and health (OSH) information to youth via the NIOSH Website for Kids and Teens. NIOSH research indicates that approximately 80% of youths are employed at some point before they leave high school. Research also indicates that despite being prevented by child labor laws from engaging in the most dangerous occupations, teens have a higher rate of injury per hour worked than adults. Each year, 70 teens die from work injuries. Another 200,000 are injured on the job each year. Of these, about 100,000 are injured seriously enough to require emergency room treatment.

This project will identify effective promotional methods to assure a high level of awareness of the NIOSH Website for Kids and Teens among youth and to generate a high volume of first-time visitors to the website. This project will also develop enhanced website content to increase the relevance of the NIOSH Website for Kids and Teens for the youth audience and to insure repeated visits to the website. The Theory of Planned Behavior (TPB) will be used to guide the assessment of youth attitudes and intentions regarding the usage of an OSH website. This information will be used to tailor promotional messages to increase their appeal to youth who report that they would not be likely to visit an OSH website. The effectiveness of the tailored promotional messages will be contrasted with that of untailored messages.

Due to significant differences in cognitive and emotional development, the youth audience targeted by this study will be segmented into three age groups, 5–8, 9–14, and 15–19. These age groups roughly correspond to elementary, middle, and high school. Different website content will be developed for each age group.

Since youth from rural and urban backgrounds have different opportunities for employment, it is expected that youth from these two areas will have different OSH information needs. This study will recruit representative samples of youth from both rural and urban areas. Differences found between youth from these two areas will be used to tailor website content for each group. The impact of this tailoring will be assessed by systematically matching and mismatching this tailored content with representative samples of youth from each area.

The aims of this project will be accomplished in three phases: 1) Representative samples from each of three targeted age groups (5–8, 9–14, 15–19) will be surveyed regarding their preferences for website content, style, promotional channels, behavioral intentions, behavioral norms, and perceived behavioral constraints; 2) Pretesting of enhanced OSH website content and format developed by this study on representative samples of the targeted age groups and of promotional materials; 3) A promotional campaign using a 3 (elementary, middle, and high school age groups) X 2 (tailored promotional messages, untailored promotional messages) X 2 (rural, urban) design. Promotional messages will be placed in venues (such as magazines or television programs) that have youth oriented content. The effectiveness of these promotional channels and messages will be determined by monitoring the volume of visits to the respective internet portal pages for the NIOSH Website for Kids and Teens.

Based on an entry level hourly wage of $5.15, the total cost to respondents is $15,450.

Type of survey	Type of respondents	No. of respondents	No. of responses per respondents	Average burden per response (in hours)	Total burden (in hours)
Audience Need and Preference Survey	Elementary, middle, and high school students.	750	1	2	1,500
Pretesting	Elementary, middle, and high school students.	750	1	2	1,500
Total					3,000

Dated: April 25, 2001.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 01–11052 Filed 5–2–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–01–34]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

The National Health and Nutrition Examination Survey (NHANES) OMB. No. 0920–0237—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC). The National Health and Nutrition Examination Survey (NHANES) has been conducted periodically since 1970 by the National Center for Health Statistics, CDC. The current cycle of NHANES began in February 1999 and will now be conducted on a continuous, rather than periodic, basis. About 5,000 persons will be examined annually. They will receive an interview and a physical examination. Participation in the survey is completely voluntary and confidential.

NHANES programs produce descriptive statistics which measure the health and nutrition status of the general population. Through the use of questionnaires, physical examinations, and laboratory tests, NHANES studies

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the relationship between diet, nutrition and health in a representative sample of the United States. NHANES monitors the prevalence of chronic conditions and risk factors related to health such as coronary heart disease, arthritis, osteoporosis, pulmonary and infectious diseases, diabetes, high blood pressure, high cholesterol, obesity, smoking, drug and alcohol use, environmental exposures, and diet.

NHANES data are used to establish the norms for the general population against which health care providers can compare such patient characteristics as height, weight, and nutrient levels in the blood. Data from NHANES can be compared to those from previous surveys to monitor changes in the health of the U.S. population. NHANES will also establish a national probability sample of genetic material for future genetic research for susceptibility to disease.

Users of NHANES data include Congress; the World Health Organization; Federal agencies such as NIH, EPA, and USDA; private groups such as the American Heart Association; schools of public health; private businesses; individual practitioners; and administrators. NHANES data are used to establish, monitor, and evaluate recommended dietary allowances, food fortification policies, programs to limit environmental exposures, immunization guidelines and health education and disease prevention programs. The current submission requests approval through November 2004.

The survey description, contents, and uses are the same as those in the previous **Federal Register** notice for this survey which was published on March 27, 2000 (Volume 65, Number 59). There is no net cost to respondents other than their time. Respondents are reimbursed for any out-of-pocket costs such as transportation to and from the examination center.

Category	Number of respondents per year	Number of responses/ respondent	Avg. burden per response (in hours)	Total burden (hours)
1. Screening interview only	13,333	1	0.167	2,227
2. Screener and family interviews only	500	1	0.434	217
3. Screener, family, and SP interviews only	882	1	1.101	971
4. Screener, family, and SP interviews and primary MEC exam only	4,951	1	6.669	33,018
5. Screener, household, and SP interviews, primary MEC exam and full MEC replicate exam	248	1	11.669	2,894
6. Screener, household, and SP interviews, and home exam	50	1	1.851	93
7. Quality control verification	1,333	1	0.030	40
8. Special studies	2,067	1	0.500	1,034
Total				40,493

Dated: April 27, 2001.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 01–11066 Filed 5–2–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02002]

Grants for Rape Prevention and Education

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Notice of the availability of fiscal year 2002 funds and request for comments.

SUMMARY: The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for targeted grants to state health departments to support programs addressing violence against women. The Rape Prevention and Education Grant Program strengthens education and training to combat violence against women by supporting increased awareness, education and training, and the operation of hotlines. CDC will award targeted grants to State Health Departments to be used for rape prevention and education programs conducted by rape crisis centers, State sexual assault coalitions, and other public and private nonprofit entities.

Assistance will be provided only to the health departments of States or their bona fide agents who are current recipients of Rape Prevention and Education funding, including: the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. Approximately $42,000,000 is available in FY 2002, for funding under this formula-based grant program.

It is expected that the awards will begin on or about October 1, 2001, and will be made for a 12-month budget period within a project period of up to five years. Continuation awards will be made within the project period based on satisfactory progress reflected in the annual continuation application.

States must adhere to Congressional legislation regarding the allowable uses for these funds. Not more than five percent (exclusive of Direct Assistance) of any grant or contract through the grant may be obligated for administrative costs. This five percent limitation is in lieu of, and replaces, the indirect cost rate. Targeted grants to States are to be used for rape prevention and education programs conducted by rape crisis centers, State sexual assault coalitions, and other public and private nonprofit entities for: educational seminars; the operation of hotlines; training programs for professionals; the preparation of informational material; education and training programs for students and campus personnel designed to reduce the incidence of sexual assault at colleges and universities; education to increase awareness about drugs used to facilitate rapes or sexual assault; and other efforts to increase awareness of the facts about or to help prevent sexual assault, including efforts to increase awareness in underserved communities and awareness among individuals with disabilities (as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)).

A State may not use more than two percent of the amount received for each fiscal year for surveillance studies or prevalence studies. Amounts provided to States must be used to supplement, and not supplant, other Federal, State, and local public funds expended to provide the services described above. Grant funds cannot be used for construction, renovation, the lease of passenger vehicles, the development of major software applications, or supplanting current applicant expenditures.

The National Center for Injury Prevention and Control of CDC will provide information on submitting applications via the Rape Prevention and Education Version of the Grant Application and Reporting System (RPE–GARS).

DATES: Awards will begin on or about October 1, 2001, and will be made for a 12-month budget period within a project period of up to five years.

Comments are due June 4, 2001.

ADDRESSES: Interested persons are invited to comment on the proposed program. All comments received on or before June 4, 2001 will be considered before the final program announcement is published. Address comments to: Wendy Watkins, Division of Violence Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Mailstop K–58, Atlanta, GA 30341–3724, Telephone (770) 488–1567, Internet address: *dmw7@cdc.gov.*

FOR FURTHER INFORMATION CONTACT: Wendy Watkins, Division of Violence Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Mailstop K–58, Atlanta, GA 30341–3724, Telephone (770) 488–1567, Internet address: dmw7@cdc.gov.

Dated: April 27, 2001.

Joseph R. Carter,

Associate Director for Management and Operations,, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–11068 Filed 5–2–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Request for Input on Vaccine Financing

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Notice and request for public comment.

SUMMARY: The National Vaccine Advisory Committee (NVAC) Work Group on the Introduction of New Vaccines seeks input on issues that may be barriers to the optimal implementation of new vaccines. The work group is evaluating how vaccine financing affects the standard of care for different population subgroups.

Vaccine financing can impact specific population subgroups differentially in terms of access and supply of new vaccines. The process by which the public and private sector purchase and distribute vaccines may differ in important ways. The public sector plays a major role in the financing of pediatric vaccine, but it plays a smaller role in the financing of adult vaccines. The timing of public purchase may depend on specific advisory group recommendations as well as specific state budgets. The eligibility for public and private payer programs may also vary.

We are asking partner organizations and groups to submit their items on the pluses and minuses of the current vaccine financing system. In addition to identifying potential barriers to the optimal implementation of vaccines due to vaccine financing, possible solutions to these problems are requested. The information gathered from the partners will be used as the basis for a meeting to develop options for the NVAC to consider.

DATES: Comments and information must be submitted by May 31, 2001.

ADDRESSES: Comments and information regarding Vaccine Financing should be submitted to the National Vaccine Program Office, Attn: Introduction of New Vaccines, Centers for Disease Control and Prevention, Mailstop D–66, 1600 Clifton Road, NE., Atlanta, Georgia 30333; Federal Express Address: 200 E. Ponce de Leon Avenue, Decatur, Georgia 30030; fax: 404–687–6687; e-mail: *nvpo@cdc.gov.*

FOR FURTHER INFORMATION CONTACT: The National Vaccine Program Office, Attn: Introduction of New Vaccines, Centers for Disease Control and Prevention, Mailstop D–66, 1600 Clifton-Road, NE., Atlanta, Georgia 30333; Federal Express Address: 200 E. Ponce de Leon Avenue, Decatur, Georgia 30030; fax: 404–687–6687; e-mail: *nvpo@cdc.gov.*

Dated: April 27, 2001.

Joseph R. Carter,

Associate Director for Management and Operations, Centers for Disease Control and Prevention.

[FR Doc. 01–11067 Filed 5–2–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0183]

Elanco Animal Health, A Div. of Eli Lilly & Co. et al.; Withdrawal of Approval of NADAs

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 13 new animal drug applications (NADAs) listed below at the request of the sponsor. In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations by removing the portions reflecting approval of the NADAs.

DATES: Withdrawal of approval is effective May 14, 2001.

FOR FURTHER INFORMATION CONTACT: Pamela K. Esposito, Center for Veterinary Medicine (HFV–210), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–5593.

SUPPLEMENTARY INFORMATION: The following sponsors have requested that FDA withdraw approval of the NADAs listed below because the products are no longer manufactured or marketed:

Sponsor	NADA Number Product (Drug)	21 CFR Cite Affected (Sponsor Drug Labeler Code)
Elanco Animal Health, A Div. of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285.	NADA 12–585 Tylan Injectable (tylosin tartrate).	522.2640b (000986)
	NADA 15–207 Hyferdex Injection (iron dextran complex).	522.1183(c) (000986)

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Sponsor	NADA Number Product (Drug)	21 CFR Cite Affected (Sponsor Drug Labeler Code)
.....	NADA 30–330 Tylocine Sulfa Tablets (sulfadiazine, sulfamerazine, sulfamethazine, tylosin).	not applicable
.....	NADA 31–962 Tylan plus Neomycin Eye Powder (neomycin sulfate, tylosin).	524.2640 (000986)
.....	NADA 40–123 Toptic Ointment (cephalonium, flumethasone, iodochlorhydroxyquin, piperocaine hydrochloride, polymyxin B sulfate).	524.321 (000986)
.....	NADA 47–092 Tribodine (ticarbodine)	520.2460a (000986)
.....	NADA 47–353 Ferti-Cept (chorionic gonadotropin).	522.1081(b) (000986)
.....	NADA 92–602 Cephalothin Discs (cephaloridine).	529.360 (000986)
.....	NADA 96–678 Tribodine Capsules (ticarbodine).	520.2460b (000986)
Bioproducts, Inc., 320 Springside Dr., suite 300, Fairlawn, OH 44333–2435.	NADA 93–518 Tylan® 10 Plus (tylosin phosphate).	558.625(b)(2) (051359)
Young's Inc., Roaring Spring, PA 16673	NADA 96–162 Hog Grow-R-Mix-4000, Hog Grow-R-Mix–800 (tylosin phosphate).	558.625(b)(13) (035393)
Veterinary Laboratories, Inc., 12340 Santa Fe Dr., Lenexa, KS 66215.	NADA 42–889 Oxytocin Injection (oxytocin)	522.1680(b) (000857)
Webel Feeds, Inc., R.R. 3, Pittsfield, IL 62363 ...	NADA 116–196 Webel Tylan Premix (tylosin phosphate).	558.625(b)(73) (035098)

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADAs 12–585, 15–207, 30–330, 31–962, 40–123, 42–889, 47–092, 47–353, 92–602, 93–518, 96–162, 96–678, and 116–196, and all supplements and amendments thereto, is hereby withdrawn, effective May 14, 2001.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations by removing those portions that reflect approval of the NADAs.

Dated: April 23, 2001.

Linda Tollefson,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 01–11071 Filed 5–2–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Single Source Cooperative Agreement to Support the National Center for Natural Products Research (NCNPR), University of Mississippi

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its intention to accept and consider a single source application for the award of a cooperative agreement to the University of Mississippi (UM) to support the National Center for Natural Products Research (NCNPR), which is located on UM's Campus at Oxford, MS. FDA anticipates providing up to $1 million in fiscal year 2001 (direct and indirect costs) for this project, with an additional 4 years of funding up to $1 million per year predicated upon acceptable performance and the availability of future fiscal year funding. These collaborations will support and benefit the public health by promoting more efficient development and dissemination of natural products research and science and will complement the diverse activities of both the public and private sector that may become collaborators.

DATES: Submit applications by June 18, 2001.

ADDRESSES: An application is available from, and should be submitted to Rosemary Springer, Grants Management Specialist, Division of Contracts and Procurement Management (HFA–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7182, e-mail: rspringe@oc.fda.gov. Applications hand-carried or commercially delivered should be addressed to rm. 2129, 5630 Fishers Lane, Rockville, MD 20857. Application forms can also be found at http://www.nih.gov/grants/funding/phs398/forms_toc.html.

FOR FURTHER INFORMATION CONTACT:

Regarding the administrative and financial management aspects of this notice: Rosemary Springer (address above).

Regarding the programmatic aspects: Jeanne I. Rader, Center for Food Safety and Applied Nutrition (HFS–840), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5375, e-mail: JRader@CFSAN.fda.gov.

SUPPLEMENTARY INFORMATION: FDA is announcing its intention to accept and consider a single source application from UM for a cooperative agreement to support NCNPR. FDA's authority to enter into grants and cooperative agreements is detailed under section 301 of the Public Health Service Act (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance at 93.103. Before entering into cooperative agreements, FDA carefully considers the benefits such agreements will provide to the public.

The Public Health Service (PHS) strongly encourages all award recipients to provide a smoke-free work place and to discourage the use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

FDA is committed to achieving the health promotion and disease prevention objectives of Healthy People 2010, a national activity to reduce morbidity and mortality and to improve the quality of life. Applicants may obtain a hard copy of Healthy People 2010 objectives, volumes I and II, conference edition (B0074) for $22 per set, by writing to the Office of Disease Prevention and Health Promotion (ODPHP) Communication Support Center, P.O. Box 37366, Washington, DC 20013–7366. Each of the 28 chapters of Healthy People 2010 is priced at $2 per copy. Telephone orders can be placed to the ODPHP Center on 301–468–5690. The ODPHP Center also sells the complete conference edition in CD–ROM format (B0071) for $5. This publication is available as well on the Internet at www.health.gov/healthypeople/. Web site viewers should proceed to "Publications."

I. Background

Congress amended the Federal Food, Drug, and Cosmetic Act (the act) with the passage of the Dietary Supplement Health and Education Act of 1994, to create a regulatory framework for dietary supplements under food provisions of the act. FDA has primary responsibility for ensuring that appropriate regulatory actions are taken against marketed products that: (a) Present an unreasonable or significant risk of illness or injury when used according to label directions or under ordinary conditions of use, or (b) bear labeling that is false or misleading.

The ability to identify and analyze specific components in ingredients, including botanical ingredients, and in finished products is an essential component of research and regulatory programs directed at ensuring that dietary supplements are safe and that their labeling is truthful and not misleading. The availability of authenticated reference materials is an essential prerequisite to the accurate identification and quantitative analysis of ingredients or finished products. For many botanical ingredients currently used in marketed dietary supplement products, however, appropriate reference materials are not readily available, their authenticity is not well documented, and their compositional characteristics are not adequately defined and evaluated for biological effects.

The use of botanical products in dietary supplements in the U.S. has increased significantly in recent years. The newness of the regulatory approaches and marketed uses of these products has created a critical need for bringing sound science to a number of issues that are necessary to ensure that marketed products are safe and their labeling is truthful and not misleading. Therefore, it is essential that general principles and criteria for ensuring scientific validity in manufacturing of botanical products and the use of botanical ingredients in dietary supplements be developed through scientific discussion and consensus-building. Such general principles and criteria will be applicable not only to FDA regulatory and research activities, but will also promote consistency and scientific rigor with respect to research and standard-setting activities performed by other organizations and agencies, and will assist in the development of quality control practices by industry.

II. Goals and Objectives

A. Concept

FDA believes that cooperative research with the UM–NCNPR will provide opportunities to address important national and international problems in natural products research in a timely manner. However, only FDA employees will perform any official regulatory activities. Further, FDA believes that cooperative research through UM will promote the efficient use of the complementary resources of both parties.

The applicant would propose to design, implement, and evaluate a comprehensive, multidisciplinary array of scientific activities in the broad area of natural products' ingredients. The applicant's proposal must be designed to meet the objectives of the request for applications (RFA). The applicant's proposal should identify and assess innovative approaches to address the RFA objectives relative to the broad area of natural product identification and safety.

The purpose of this cooperative agreement would be to:

- Coordinate scientific workshops and conferences on relevant topics of public interest to address high priority science and research needs;
- Obtain and characterize authenticated reference materials for botanicals;
- Develop literature reviews on relevant topics; and
- Share technical information and scientific concepts.

B. Project Emphasis

The purpose is to augment and enhance research and scientific expertise in natural products research. There is a critical need to address the increasingly complex problems in such areas as acquisition, validation, and characterization of botanical reference materials, related research and literature reviews to ensure the safety or effectiveness of marketed products, and the development of sound scientific principles and consensus-building for dealing with these ingredients and products. Since there is increased concern regarding the safety of dietary supplements, the need to find other ways of expanding the current science base is essential.

The sharing of complementary resources will create opportunities for important national and international issues in natural products research to be addressed in a timely and scientifically sound manner. Many of these issues (e.g., development and characterization of authenticated botanical reference standards, and scientific review and consensus-building) can only be addressed with close cooperation of the public and private sectors. UM's expertise and facilities for obtaining and characterizing authenticated botanical reference materials are needed to conduct investigations at the forefront of natural products research. Additionally, UM's experimental field plots, vast repository containing thousands of natural products extracts for testing in a variety of biological assays, and their expertise and long history of active scientific investigations are well known in these areas. University personnel will provide enhanced scientific expertise in advanced techniques for the characterization of natural products as well as expand the current capabilities in research to support regulatory actions and respond to emergency situations.

C. Summary

FDA believes that research conducted at the UM is a sound investment in the future public health of American consumers. It provides an opportunity for extensive cooperation with university scientists; and it will stimulate collaborative efforts to ensure a safe food supply contributing significantly to the implementation of the goals for government, academia, industry, and consumers to work together to improve the safety of natural products. The UM scientists would bring a special perspective to advancing the knowledge of natural products germane to the public interest. Interaction among those scientists will stimulate creativity and innovation. FDA's participation in this venture will promote a greater awareness and understanding of regulatory science and practice among academic scientists, thereby providing economic and program benefits to both. In summary, collaboration between the public and the private sector provides an efficient means of remaining current with scientific and technical accomplishments in the areas of natural products research.

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III. Mechanism of Support

A. Award Instrument

Support for this program, if awarded, will be in the form of a cooperative agreement. The award will be subject to all policies and requirements that govern the research grant programs of the PHS, including the provisions of 42 CFR part 52, 45 CFR parts 74 and 92, and PHS's grants policy statement. The regulations issued under Executive Order 12372 do not apply.

B. Length of Support

The length of support will be for 1 year with the possibility of an additional 4 years of noncompetitive support. Continuation, beyond the first year, will be based upon performance during the preceding year and the availability of Federal fiscal year appropriations. The National Institutes of Health (NIH) modular grant program does not apply to this FDA program.

IV. Reasons for Single Source Selection

Competition is limited to UM because: (1) FDA's appropriations language has included funds for collaborative research on dietary supplements between UM–NCNPR and FDA; and (2) UM has been determined to be the only institution with the unique capability of providing a broad range of highly relevant scientific expertise and facilities that are physically co-located and singularly dedicated to natural products research.

FDA believes that there is compelling evidence that UM is uniquely qualified to fulfill the objectives of the proposed cooperative agreement. UM is a comprehensive research institution with numerous academic programs relevant to natural products which can help to ensure that market products are safe for the American public. The UM School of Pharmacy has been in existence for 90 years and has an outstanding 30-year track record for isolating and developing prospective new pharmaceuticals from plants and microorganisms.

NCNPR, which opened in July 1999, is a division of the Research Institute of Pharmaceutical Sciences of the UM's School of Pharmacy. NCNPR was created to bring together an alliance of academia, government, and the pharmaceutical and agrochemical industries to integrate research, development, and commercialization of potentially useful natural products. The facility is the nation's only university-affiliated research center devoted to improving human health and agricultural productivity through the discovery, development, and commercialization of pharmaceuticals and agrochemicals derived from natural products. The goal of NCNPR in botanical dietary supplements is to enable safe, effective, and proper use of high quality botanical products by informed professionals and consumers. NCNPR conducts basic and applied multidisciplinary research to discover and develop natural products for use as pharmaceuticals, dietary supplements and agrochemicals. NCNPR also maintains a repository of several thousand natural product extracts that are available for screening by collaborators working in other areas.

NCNPR has substantial expertise to carry forward specific discoveries, products, and technologies. Most of the projects to develop promising high priority products or technology are conducted in collaboration with industrial partners or through externally funded grants and contract. NCNPR is staffed with a highly synergistic mix of full-time research faculty and support staff and employs a number of undergraduate and graduate students and postdoctoral scientists. Additionally, the USDA's National Products Utilization Research Unit is co-housed and programmatically integrated with the NCNPR thus expanding the available expertise and facilities. Together, the faculty, scientists, staff, students, USDA scientists, and external collaborators, provide the human resources required to accomplish the research and development goals of the RFA.

Additionally, FDA's appropriations language includes funds for collaborative research on dietary supplements between NCNPR and FDA. NCNPR has the unique capability to bring together diverse scientific expertise on bioactive natural products research from: (a) The UM faculty in the School of Pharmacy involving researchers in the Departments of Pharmacognosy, Medicinal Chemistry, Pharmaceutics, Pharmacology, and the Research Institute of Pharmaceutical Sciences; (b) research scientists in the U.S. Department of Agriculture/Agricultural Research Service's (USDA/ARS) National Products Utilization Research Unit who are physically co-housed and programmatically integrated in the NCNPR; and (c) its close academic links and historical collaborations with agricultural and botanical programs and facilities at the UM system. UM–NCNPR's ability to successfully and uniquely collaborate with FDA is also enhanced by its a repository of several thousand natural product extracts; and its long history of successful basic and applied multidisciplinary research to discover and develop natural products for use as bioactive ingredients in dietary supplements and pharmaceuticals, and for improving the quality and safety of dietary supplements. Finally, the large number of established collaborations among NCNPR scientists and other government agencies, academic organizations, and research institutions will also be useful in enhancing the collaborative efforts with FDA. These collaborations will support and benefit the public health by promoting more efficient development and dissemination of natural products research and science and will complement the diverse activities of both the public and private sector that may become collaborators.

Research in NCNPR is focused on using state-of-the-art knowledge and technology to discover bioactive natural products, develop novel technologies or processes that facilitate the discovery of bioactive natural products, and provide research-based information on plant derived products with health applications. These programs, facilities, and expertise are essential for supporting the needs to ensure that sound science is available for ensuring the safety and truthfulness of labeling of marketed dietary supplement products.

Collaboration between the public and private sector is an efficient means for both FDA and UM to remain current with scientific and technical accomplishments from a natural products research perspective. Harmonizing regulatory activities is but one example of the need for and use of this natural products research knowledge and expertise. The partnership between FDA and UM will provide both the technical and educational expertise necessary for effective mechanisms that will facilitate the movement of new technology and provide direct usefulness to the public health.

V. Reporting Requirements

An annual financial status report (FSR) (SF–269) is required. The original and two copies of this report must be submitted to FDA's Grants Management Officer within 90 days of the budget expiration date of the grant. Failure to file the FSR in a timely fashion will be grounds for suspension or termination of the grant.

An annual program progress report is also required. The noncompeting continuation application (PHS 2590) will be considered the annual program progress report. The progress report must include a description of the progress and accomplishments for each objective stated in the RFA.

A final program progress report, FSR (SF–269), and invention statement must be submitted within 90 days after the expiration of the project period as noted on the notice of grant award.

VI. Delineation of Substantive Involvement

Substantive involvement by the awarding agency is inherent in the cooperative agreement award. Accordingly, FDA will have substantial involvement in the program activities of the project funded by the cooperative agreement. Substantive involvement includes, but is not limited to, the following:

1. FDA will work closely with the grantee and have final approval on all project activities. This could include management structure for the program, development of plans and strategies for key scientific approaches and projects, and for identifying and carrying out the research.

2. FDA will participate in all functions directly related to the guidance and development of the program.

3. FDA will provide technical monitoring and/or direction of the work, including monitoring of data analysis, interpretation of analytical findings and their significance.

4. FDA will assist and approve (as deemed appropriate) the substance of publications, co-authorship of publications and data release.

5. FDA will have final approval on any re-directions proposed during the course of the project.

VII. Review Procedures

A. Review Method

The application submitted in response to this RFA will first be reviewed by grants management and program staff for responsiveness. The application will be considered nonresponsive if it is not in compliance with this document. If an application is found to be nonresponsive it will be returned to the applicant without further consideration. An application is considered nonresponsive for the following reasons: (1) The applicant organization is ineligible; (2) it is received after the specified receipt date; (3) it is incomplete; (4) it is illegible; (5) it is not responsive to the RFA; (6) the material presented is insufficient to permit an adequate review; and/or (7) it exceeds the recommended threshold amount reflected in the RFA.

A responsive application will be reviewed and evaluated for scientific and technical merit by an ad hoc panel of experts in the subject field. A responsive application will also be subject to a second level of review by a National Advisory Council for concurrence with the recommendations made by the first level reviewers. The Commissioner of FDA or his/her designee will make final funding decisions.

B. Review Criterio

1. Responsiveness to RFA

The application must demonstrate that the objectives and goals of the RFA are understood and the applicant shall offer a logical program to meet the objectives of the RFA.

2. Adequacy of Plan

The applicant must provide a detailed plan to establish a collaborative natural products research program as a multidisciplinary effort (i.e., FDA and academia). The application will be evaluated on the thoroughness of the plan, the reasonableness of the approach, and adherence to the concept and its objectives, as stated in the RFA. The detailed plan must form the basis of a balanced natural products research program directed toward development of skills and expertise in aspects of natural products research, as stated in the RFA. Included will be development of: Scientific expertise in natural products research involving researchers in pharmacognosy, medicinal chemistry, pharmacology, and pharmaceutical sciences; state of the art knowledge and technology to discover bioactive natural products; novel technologies or processes that facilitate the discovery of bioactive natural products; and research-based information on potential health applications of plant derived products. The plan must also include a schedule for accomplishing the objectives outlined above.

3. Timeliness of Program Implementation

The application will be evaluated for the applicant's ability to establish natural products research in an expeditious manner.

4. Adequacy and availability of research facilities

The application must demonstrate that the applicant has adequate research facilities in the areas of: Pharmacognosy, medicinal chemistry, pharmacology, and pharmaceutical sciences, as stated in the RFA.

5. Ability to Conduct Proprietary Research

The application shall demonstrate the applicant's ability to conduct proprietary research and to protect confidentiality of data, procedures, etc.

6. Staff Experience and Capabilities

The application must demonstrate the availability of core staff with the experience and capability to conduct research as described in the detailed plan presented in item 2 above. The staff must have the capability to deal with natural products research as well as plan long-range research to assess future needs. The availability of sufficient administrative and support personnel to meet the RFA objectives must also be demonstrated.

7. Reasonableness of proposed budget

The application is evaluated on the bases of the reasonableness of costs.

VIII. Submission Requirements

The original and two copies of the completed grant application form PHS 398 (Rev. 4/98), with appendices for each of the copies, should be delivered to Rosemary Springer (address above). The application receipt date is June 18, 2001. No supplemental or addendum material will be accepted after the receipt date. The outside of the mailing package and item 2 of the application face page should be labeled: "Response to RFA–FDA–CFSAN–2001–2."

IX. Method of Application

A. Submission Instructions

Applications will be accepted during normal business hours, 8 a.m. to 4:30 pm., Monday through Friday, on or before the established receipt date. Applications will be considered received on time if sent or mailed on or before the receipt date as evidenced by a legible U.S. Postal Service dated postmark or a legible date receipt from a commercial carrier, unless they arrive too late for orderly processing. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for review and will be returned to the applicant. (Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this method, applicants should check with their local post office.) Do not send applications to the Center for Scientific Research (CSR), NIH. Any application that is sent to NIH, that is then forwarded to FDA and not received in time for orderly processing, will be deemed nonresponsive and returned to the applicant. Applications must be submitted via mail delivery as stated above. FDA is unable to receive applications electronically. Instructions for completing the application form can

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be found on the following Web site: http://www.nih.gov/grants/funding/phs398/phs398.html. The forms can be found at http://www.nih.gov/grants/funding/phs398/forms_toc.html. Applicants are advised that FDA does not adhere to the page limitations or the type size and line spacing requirements imposed by NIH on its applications.

B. Format for Application

Submission of the application must be on Grant Application Form PHS 398 (Rev. 4/98). All "General Instructions" and "Specific Instructions" in the application kit should be followed with the exception of the receipt dates and mailing label address. The face page of the application should reflect the request for applications number RFA-FDA-CFSAN-2001-2.

Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

Information collection requirements requested on Form PHS 398 and the instructions have been submitted by PHS to the Office of Management and Budget (OMB) and were approved and assigned OMB control number 0925-0001.

C. Legend

Unless disclosure is required by the Freedom of Information Act as amended (5 U.S.C. 552) as determined by the freedom of information officials of DHHS or by a court, data contained in the portions of this application that have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted information shall not be used or disclosed except for evaluation purposes.

Dated: April 30, 2001.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 01-11159 Filed 5-2-01; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Anesthetic and Life Support Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Anesthetic and Life Support Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 14 and 15, 2001, 8 a.m. to 5 p.m.

Location: Holiday Inn, The Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Contact: Kimberly Topper, Center for Drug Evaluation and Research (HFD-21), Food and Drug Administration, 5600 Fishers Lane, Rockville MD 20857, 301-827-7001, e-mail: topperk@cder.fda.gov, FAX 301-827-6801, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 12529. Please call the Information Line for up-to-date information on this meeting.

Agenda: On both days the committee will discuss the medical use of opiate analgesics in various patient populations, including pediatric patients and patients with chronic pain of nonmalignant etiology, as well as the risk to benefit ratio of extending opiate treatment into these populations. It will also address concerns regarding the abuse potential, diversion and increasing incidence of addiction to opiate analgesics, especially to the modified release opiate analgesics.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by June 7, 2001. Oral presentation from the public will be scheduled between approximately 1 p.m. and 2 p.m each day. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before June 7, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Background material from FDA will be posted 24 hours before the meeting at the Anesthetic and Life Support Drugs Advisory Committee docket site at http://www.fda.gov/ohrms/dockets/ac/acmenu.htm. (Click on the year 2001 and scroll down to Anesthetic and Life Support Drugs meetings.) This is the same Web site where you can find the minutes, transcript, and slides from the meeting. This material is generally posted about 3 weeks after the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 27, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01-11157 Filed 4-30-01; 4:16 pm]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D-0184]

Compliance Policy Guide: "Statement of Policy for Labeling and Preventing Cross-Contact of Common Food Allergens;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a compliance policy guide (CPG) entitled "Statement of Policy for Labeling and Preventing Cross-Contact of Common Food Allergens." This CPG is intended to set forth FDA's internal enforcement priorities concerning undeclared food allergens.

DATES: Submit written comments on this CPG at any time.

ADDRESSES: Submit written requests for single copies of the CPG entitled "Statement of Policy for Labeling and Preventing Cross-Contact of Common Food Allergens" to the Director, Division of Compliance Policy (HFC-230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301-827-0482. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the document.

Submit written comments on the CPG to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Technical questions concerning allergens in foods: Kathy Gombas, Office of Field Programs (HFS-615), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-4231, FAX 202-260-0136.

Questions concerning regulatory actions: MaryLynn Datoc, Office of Enforcement (HFC-230), Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-0413, FAX 301-827-0482.

SUPPLEMENTARY INFORMATION:

I. Background

FDA has developed a CPG on FDA's internal enforcement process concerning undeclared allergens in foods. The purpose of this CPG is to provide clear policy and regulatory guidance to FDA's field and headquarters staff. It also contains information that may be useful to the regulated industry and to the public. FDA is issuing this CPG as Level 1 guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115; 65 FR 56468, September 19, 2000). The guidance represents the agency's current thinking on the subject. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. The guidance is intended to further FDA's efforts to prevent potential serious allergic reactions in sensitive individuals resulting from undeclared allergens in foods. FDA is making this guidance document effective immediately because public participation prior to its implementation is not appropriate in these circumstances (21 CFR 10.115(g)(2); 65 FR 56478). Although the guidance document announced in this notice is being implemented immediately, FDA is requesting comments on the guidance. FDA will review all comments received, revise the guidance in response to the comments as appropriate, and publish a notice of availability if the guidance is revised.

II. Comments

Interested persons may, at any time, submit written comments on the CPG entitled "Statement of Policy for Labeling and Preventing Cross-Contact of Common Food Allergens," to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the CPG and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Copies of the CPG may also be downloaded to a personal computer with access to the Internet. The Office of Regulatory Affairs (ORA) home page includes the CPG and may be accessed at http://www.fda.gov/ora under "Compliance References."

Dated: April 27, 2001.

Ann M. Witt,

Acting Associate Commissioner for Policy.

[FR Doc. 01-11072 Filed 5-2-01; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D-0202]

Medical Devices: Draft "The Least Burdensome Provisions of the FDA Modernization Act of 1997: Concept and Principles;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "The Least Burdensome Provisions of the FDA Modernization Act of 1997: Concept and Principles." In this draft guidance, FDA sets forth its interpretation of the provisions of the Food and Drug Administration Modernization Act of 1997 (FDAMA) that require FDA to take into account the least burdensome means for applicants to demonstrate a device's effectiveness or substantial equivalence. This guidance is neither final nor is it in effect at this time.

DATES: Submit written comments on this draft guidance by August 1, 2001.

ADDRESSES: Submit written requests for single copies on a 3.5" diskette of the draft guidance document entitled "The Least Burdensome Provisions of the FDA Modernization Act of 1997: Concept and Principles" to the Division of Small Manufacturers Assistance (HFZ-220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301-443-8818. Submit written comments on this draft guidance to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Joanne R. Less, Center for Devices and Radiological Health (HFZ-403), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-1190.

SUPPLEMENTARY INFORMATION:

I. Background

A central purpose of FDAMA was to ensure the timely availability of safe and effective new products that would benefit the American public. While Congress wanted to reduce unnecessary burdens associated with the premarket clearance and approval processes, Congress did not intend to lower the statutory thresholds for substantial equivalence or reasonable assurance of safety and effectiveness. To help achieve this goal, Congress added section 513(a)(3)(D)(ii) and (i)(1)(D) to the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c).

These two paragraphs (a)(3)(D)(ii) and (i)(1)(D) of section 513 of the law contain what are commonly referred to as the "least burdensome provisions" of the act. During the last year, FDA has been working with the Least Burdensome Industry Task Force to develop an interpretation of the least burdensome provisions that would accurately capture Congress' intent and that could be implemented consistently by FDA and industry. This draft guidance, in addition to the other guidances developed by the agency, is a part of that process. As presented in this draft guidance, FDA has chosen to apply the least burdensome concept beyond the two statutory provisions in which the language actually appears. FDA considers the least burdensome concept to be one that could affect almost all premarket regulatory activities, including presubmission meetings with industry, premarket submissions, and the development of guidance documents and regulations.

II. Significance of Guidance

This draft guidance document represents the agency's current thinking on the least burdensome provisions of the act. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statutes and regulations.

The agency has adopted good guidance practices (GGPs), and published the final rule, which set forth the agency's regulations for the development, issuance, and use of guidance documents (21 CFR 10.115; 65 FR 56468, September 19, 2000). This draft guidance document is issued as a Level 1 guidance in accordance with the GGP regulations.

III. Electronic Access

In order to receive "The Least Burdensome Provisions of the FDA Modernization Act of 1997: Concept and Principles" via your fax machine, call the CDRH Facts-On-Demand system at 800-899-0381 or 301-827-0111 from a touch-tone telephone. Press 1 to enter

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the system. At the second voice prompt press 1 to order a document. Enter the document number (1332) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes the civil money penalty guidance documents package, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. Guidance documents are also available on the Dockets Management Branch Web site at http://www.fda.gov/ohrms/ dockets/ default.htm.

IV. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance by August 1, 2001. Submit two copies of any comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 30, 2001.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 01–11231 Filed 5–1–01; 12:40 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–116]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Clinical Laboratory Improvement Amendments (CLIA) Application Form and Supporting Regulations in 42 CFR 493.1—.2001; *Form No.:* HCFA–116 (OMB# 0938–0581); *Use:* Certification requirements have been established for any entity that performs testing on human beings for diagnostic or treatment purposes. Laboratories must apply for and obtain a certificate in order to perform this testing; *Frequency:* Biennially; *Affected Public:* Business or other for profit, Not for profit institutions, Federal Government, and State, local or tribal government; *Number of Respondents:* 16,000; *Total Annual Responses:* 16,000; *Total Annual Hours:* 20,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/ regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 23, 2001.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Standards and Support Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–11044 Filed 5–2–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–18]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a curently approved collection; *Title of Information Collection* Application for Hospital Insurance in 42 CFR 406.7; *Form No.:* HCFA–18 (OMB# 0938–0251); *Use:* The HCFA–18F5 is used to establish entitlement to hospital insurance and supplementary medical insurance for beneficiaries entitled under title XVIII of the Social Security Act; *Frequency:* On occasion; *Affected Public:* Individuals or households; *Number of Respondents:* 50,000; *Total Annual Responses:* 50,000; *Total Annual Hours:* 12,500.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at *http://www.hcfa.gov/ regs/prdact95.htm*, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 26, 2001.

John P. Burke, III,

Reports Clearance Officer, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–11118 Filed 5–2–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Organ Procurement and Transplantation Network (42 CFR Part 121, OMB No. 0915–0184)—Revision

The operation of the Organ Procurement and Transplantation Network (OPTN) necessitates certain recordkeeping and reporting requirements in order to perform the functions related to organ transplantation under contract to HHS. This is a request for a revision of the current recordkeeping and reporting requirements associated with the OPTN. These data will be used by HRSA in monitoring the contracts for the OPTN and the Scientific Registry and in carrying out other statutory responsibilities. Information is needed to match donor organs with recipients, to monitor compliance of member organizations with OPTN rules and requirements, and to ensure that all qualified entities are accepted for membership in the OPTN.

The estimated annual response burden is as follows:

ESTIMATED ANNUAL REPORTING AND RECORD KEEPING BURDEN

Section and activity	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
121.3(b) (2)—OPTN membership and application requirements for OPOs, hospitals, histocompatibility laboratories	30	1	30	40	1,200
121.6(c)—Submitting criteria for organ acceptance	900	1	900	0.1	90
121.6(c)—Sending criteria to OPOs	900	1	900	0.1	90
121.7(b)4—Reasons for refusal	900	0.5	34,200	0.1	3,420
121.7(e)—Transplant to prevent organ wastage	900	0.5	420	0.1	42
121.9(b)—Designated transplant program requirements	10	1	10	2	20
Total	940	38.8	36,460	.1	4,862

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: April 26, 2001.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 01–11074 Filed 5–2–01; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Request for Public Comments on Extension of Existing Information Collection To Be Submitted to OMB for Review Under the Paperwork Reduction Act

A request extending the information collection described below will be submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)). Copies of the proposed collection may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments on the proposal should be made within 60 days to the Bureau Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;

2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: User Survey for National Biological Information Infrastructure (NBII).

OMB Approval No.: 1028–0069.

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Summary: The collection of information referred herein applies to a voluntary survey that allows visitors to the NBII World-Wide Web site (*www.nbii.gov*) the opportunity to provide feedback on the utility and effectiveness of the NBII operation and contents in meeting their needs.

Estimated Completion Time: 3 minutes.

Estimated Annual Number of Respondents: 3,000.

Frequency: Once.

Estimated Annual Burden Hours: 150 hours.

Affected Public: Public and private, individuals and institutions.

For Further Information Contact: To obtain copies of the survey, contact the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, telephone (703) 648–7313, or go to the Website (http://www.nbii.gov).

Dated: April 23, 2001.

Dennis B. Fenn,

Associate Director for Biology.

[FR Doc. 01–11045 Filed 5–2–01; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–933–1430–DET; IDI–14647]

Public Land Order No. 7484; Revocation of a Bureau of Land Management Order dated January 28, 1952; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Bureau of Land Management order as it affects the remaining public lands withdrawn for the Bureau of Reclamation's Mountain Home Reclamation Project. The lands are no longer needed for the purposes for which they were withdrawn and the revocation is needed to consummate a pending land exchange. This action will open the lands to surface entry and mining, unless included in other segregations of record. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: June 4, 2001.

FOR FURTHER INFORMATION CONTACT: Jackie Simmons, BLM Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, 208–373–3867.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Bureau of Land Management Order dated January 28, 1952, which withdrew public lands for the Bureau of Reclamation's Mountain Home Reclamation Project, is hereby revoked in its entirety.

2. At 9 a.m. on June 4, 2001, the lands described in paragraph 1 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on June 4, 2001, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on June 4, 2001, the lands described in paragraph 1 will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: April 12, 2001.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. 01–11120 Filed 5–2–01; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–080–1430–ET; UTU 76946]

Public Land Order No. 7482; Partial Opening of Power Site Classification No. 93; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order opens, subject to the provisions of section 24 of the Federal Power Act, 160.78 acres withdrawn by an Executive Order which established Bureau of Land Management Power Site Classification No. 93. This action will allow for disposal of the lands and retain the power rights to the United States.

EFFECTIVE DATE: June 4, 2001.

FOR FURTHER INFORMATION CONTACT: Peter Kempenich, BLM Vernal Field Office, 170 South 500 East, Vernal, Utah 84078, 435–781–4432.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by the Act of June 10, 1920, section 24, as amended, 16 U.S.C. 818 (1994), and pursuant to the determination of the Federal Energy Regulatory Commission in DVUT–221–000, it is ordered as follows:

1. At 10 a.m. on June 4, 2001, the following described lands withdrawn by the Executive Order dated April 16, 1925, which established Power Site Classification No. 93, will be opened to disposal, subject to the provisions of section 24 of the Federal Power Act, and subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law:

Salt Lake Meridian

T.1 N., R. 25 E.,
Sec. 3, lots 18 and 19, and SW¼NW¼.
T. 2 N., R. 25 E.,
Sec. 34, NE¼SW¼ and SW¼SW¼.
The areas described aggregate 160.78 acres in Daggett County.

2. The State of Utah has waived its right of selection in accordance with the provisions of section 24 of the Federal Power Act of June 10, 1920, as amended 16 U.S.C. 818 (1994).

Dated: April 11, 2001.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. 01–11119 Filed 5–2–01; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Park System Advisory Board; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix 1–16, that the National Park System Advisory Board will meet May 21–23, 2001, in Gatlinburg, Tennessee. The Board will tour Great Smoky Mountains National Park on May 21, and will convene its business meeting on May 22 and 23 in the Banquet Room of Calhoun's Restaurant, 1004 Parkway, Gatlinburg, Tennessee 37738.

The Board will convene from 8:30 a.m., until 5 p.m., on May 22 and 23. The Board will consider procedural matters relative to completing its study of the future of the National Park Service and the National Park System. National Historic Landmark nominations will be considered by the Board during the morning session on May 22.

The Board may be addressed at various times by officials of the National Park Service and the Department of the Interior; and other miscellaneous topics and reports may be covered. The order of the agenda may be changed, if necessary, to accommodate travel schedules or for other reasons.

The Board meeting will be open to the public. Space and facilities to accommodate the public are limited and attendees will be accommodated on a first-come basis. Anyone may file with the Board a written statement concerning matters to be discussed. The Board may also permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time.

Anyone who wishes further information concerning the meeting, or who wishes to submit a written statement, may contact Mr. Loran Fraser, Office of Policy, National Park Service, 1849 C Street, NW, Washington, DC 20240 (telephone 202–208–7456).

Draft minutes of the meeting will be available for public inspection about 12 weeks after the meeting, in room 2414, Main Interior Building, 1849 C Street, NW., Washington, DC.

Dated: April 17, 2001.

Shirley Sears Smith,

Committee Management Officer, National Park Service.

[FR Doc. 01–11133 Filed 5–2–01; 8:45 am]

BILLING CODE 4310–70–U

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 21, 2001. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW., NC400, Washington, DC 20240. Written comments should be submitted by May 18, 2001.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ARIZONA

Maricopa County

Phoenix Indian School Historic District, 300 E. Indian School Rd., Phoenix, 01000521

ARKANSAS

Nevada County

Allen Tire Company and Gas Station, (Arkansas Highway History and Architecture MPS) 228 1st St., SW, Prescott, 01000523

Ouachita County

Harvey's Grocery and Texaco Station, (Arkansas Highway History and Architecture MPS) 3241 AR 24, Camden, 01000524

Union County

Griffin Auto Company Building, (Arkansas Highway History and Architecture MPS) 117 E. Locust St., El Dorado, 01000525

CALIFORNIA

San Francisco County

Camera Obscura, 1096 Point Lobos Ave., San Francisco, 01000522

FLORIDA

Bay County

SS Tarpon (Shipwreck), 7.8 nautical mi. offshore Panama City, Panama City, 01000527

Broward County

SS Copenhagen (shipwreck), Pompano Drop-Off S of Hillsboro Inlet, Pompano Beach, 01000532

Dixie County

City of Hawkinsville (shipwreck), Suwannee R. 100 yds S of Old Town RR trestle, Old Town, 01000533

Escambia County

USS Massachusetts—BB–2 (shipwreck), 1. mi. SSW of Pensacola Pass, Pensacola, 01000528

Miami-Dade County

Half Moon (shipwreck), Outside Bear Cut off Key Biscayne, Miami, 01000531

Monroe County

San Pedro (shipwreck), 1.25 mi. S of Indian Keys, Islamorada, 01000530

Palm Beach County

Old Lucerne Historic Residential District, Roughly along N. Lakeside Dr., N. Palmway St., and N. O St., from Lake Ave. to 7th Ave. N, Lake Worth, 01000526

St. Lucie County

Urca De Luca (shipwreck), 200 yds offshore Jack Island Park, N of Ft. Pierce Inlet, Ft. Pierce, 01000529

GEORGIA

Baker County

Notchaway Baptist Church and Cemetery, Jct. of GA 91 amd GA 253, Newton, 01000534

Coweta County

Oak Grove Plantation, 4537 N US 29, Newnan, 01000535

IDAHO

Idaho County

Elk City Wagon Road-Victory Gulch—Smith Grade Segment, Nez Perce National Forest, Elk City, 01000536

KANSAS

Dickinson County

First Presbyterian Church of Abilene, 300 N. Mulberry St., Abilene, 01000540
Hotel Sunflower, 409 NW 3rd St., Abilene, 01000539
St. John's Episcopal Church, 519 N. Buckeye Ave., Abilene, 01000537
United Building, 300 N. Cedar St., Abilene, 01000538

KENTUCKY

Greenup County

General U.S. Grant Bridge, Ohio R.-Chillicothe and Second St., South Portsmouth, 01000560

MASSACHUSETTS

Worcester County

Sutton Center Historic District, Roughly Boston Rd., Singletary Ave., and Uxbridge Rd., Sutton, 01000541

MISSOURI

Boone County

Taylor, John N. and Elizabeth, House, 716 W Broadway, Columbia, 01000546

Callaway County

Robnett—Payne House, 223 E Fifth St., Fulton, 01000543

St. Louis Independent City

Mississippi Valley Trust Company Building, 401 Pine St., St. Louis (Independent City), 01000544
St. Louis Theatre, 718 N. Grand Blvd., St. Louis (Independent City), 01000545

NEW YORK

Cattaraugus County

Bank of Gowanda, 8 W. Main St., Gowanda, 01000553

Erie County

Engine House No. 28, 1170 Lovejoy St., Buffalo, 01000554

New York County

Germania Life Insurance Company Building, 50 Union Sq. E, New York, 01000556

Oswego County

Montcalm Park Historic District, Roughly Montcalm St., W 6th St., W. Schuyler St., and Bronson St., vic. of Montcalm Park, Oswego, 01000555

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Queens County

St. Matthew's Episcopal Church, 85–45 96th St., Woodhaven, 01000550
Wyckoff—Snediker Family Cemetery, 85–45 96th St., Woodhaven, 01000549

Rensselaer County

Elmbrook Farm, 2567 Brookview Rd., Schodack, 01000551

Schuyler County

First Presbyterian Church of Hector, 5519 NY 414, Hector, 01000547

Steuben County

St. Ann's Federation Building, 38 Broadway, Hornell, 01000552

Westchester County

Caramoor, 149–181 Girdle Ridge Rd., Bedford, 01000548

NORTH CAROLINA

Dare County

Ballance, Ellsworth and Lovie, House, E side M.V. Australia Ln., 0.1 mi. S of Stowe Landing Rd., Hatteras, 01000558

Wake County

Caraleigh Mills, 421 Maywood Ave., Raleigh, 01000557

OHIO

Hamilton County

Cincinnati and Whitewater Canal Tunnel, Parallel to Miami Ave., jct. of Wamsley and Miami Ave., Cleves, 01000562

Logan County

Schine's Holland Theatre, 125 E. Columbus St., Bellefontaine, 01000561

Scioto County

General U.S. Grant Bridge, Ohio R.-Chillicothe and Second St., Portsmouth, 01000559

Summit County

Copley Depot, 3772 Copley Rd., Copley, 01000563

WISCONSIN

Lafayette County

Mottley Family Farmstead, 21496 Ivey Rd., Willow Springs, 01000564

[FR Doc. 01–11132 Filed 5–2–01; 8:45 am]
BILLING CODE 4310–70–U

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of Grand Valley State University, Allendale, MI

AGENCY: National Park Service, Interior.
ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of Grand Valley State University, Allendale, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Grand Valley State University professional staff in consultation with representatives of the Little River Band of Ottawa Indians of Michigan.

In 1971–1972, human remains representing a minimum of 17 individuals were removed from individual burials during excavations at the Battle Point site (20OT4), Crockery Township, Ottawa County, MI, by Grand Valley State University staff Dr. Richard Flanders. Human remains representing a minimum of an additional nine individuals were removed from disturbed contexts in the same area of the site. No known individuals were identified. The 8,413 associated funerary objects include iron buckets; clay pipes; glass beads; and silver ornaments including gorgets, tinklers, and brooches. The catalog numbers for these associated funerary objects are 2016, 2025, 2026, 2028–2030, 2056–2063, and 2079–2082.

Between 1980 and 1990, human remains representing a minimum of nine individuals were removed from the Battle Point site by Grand Valley State University staff. These remains were exposed through erosion of the Battle Point site by the Grand River. No known individuals were identified. The 60 associated funerary objects include silver ornaments, strike-a-lights, bucket fragments, a knife blade, pieces of wood, and fabric. The catalog number for these associated funerary objects is 9010.

Between 1990 and 1998, human remains representing a minimum of 15 individuals were removed from the Battle Point site by Grand Valley State University staff; Ottawa County, MI, Sheriff's Department staff; and the Office of the State Archaeologist of Michigan. The remains were exposed as a result of erosion of the site by the Grand River. The 149 associated funerary objects are a metal trade ax, wood, nails, and a bucket. The catalog numbers for these associated funerary objects are 20OT04/1992–1993, 20OT04/7.16.96, 20OT04/3.27.97, 20OT04/12.97.1–8, and 20OT04/9.24.98.

Unassociated funerary objects from the Battle Point site in the possession of the Grand Valley State University are reported in a separate Notice of Intent to Repatriate.

The Battle Point site is a multi-component site consisting of habitation dating to circa A. D. 200–1300, and a cemetery dating to the mid-19th century. Associated funerary objects date the burials to circa 1800–1840. Excavation notes, spatial analyses, and other studies demonstrate that the cemetery intrudes into habitation deposits dating to pre-European contact and that do not include a mortuary component.

Historic documentation indicates that a Native American cemetery associated with the Little River Band of Ottawa Indians of Michigan was located at the Battle Point site in the mid-19th century. An abstract of land title dated to 1846 identifies an association between members of the Little River Band of Ottawa Indians of Michigan and the plot on which the cemetery is located. The cemetery is specifically mentioned in a 1864 land transaction as associated with the Little River Band of Ottawa Indians of Michigan. On the basis of historical and oral historical information, the Battle Point site cemetery is determined to be culturally affiliated with the Little River Band of Ottawa Indians of Michigan.

Based on the above-mentioned information, officials of the Grand Valley State University have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 41 individuals of Native American ancestry. Officials of the Grand Valley State University also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 8,622 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Grand Valley State University have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Little River Band of Ottawa Indians of Michigan.

This notice has been sent to officials of the Grand Traverse Band of Ottawa and Chippewa Indians of Michigan, the Little Traverse Bay Bands of Odawa Indians of Michigan, the Little River Band of Ottawa Indians of Michigan, and the Grand River Bands of Ottawa Indians (a non-Federally recognized group). Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Janet G. Brashler, Professor and Curator of Anthropology, Grand Valley State University, Allendale, MI 49401, telephone (616) 854–3694, before June 4, 2001. Repatriation of the human remains and associated funerary objects to the Little River Band of Ottawa Indians may begin after that date if no additional claimants come forward.

Dated: April 16, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–11144 Filed 5–2–01; 8:45 am]
BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of Grand Valley State University, Allendale, MI

AGENCY: National Park Service, Interior.
ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Grand Valley State University, Allendale, MI, that meet the definition of "unassociated funerary object" under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum that has control of the cultural items. The National Park Service is not responsible for the determinations within this notice.

In 1971 and 1972, students and staff of Grand Valley State University, under the direction of Dr. Richard Flanders, removed 951 unassociated funerary objects from the Battle Point site (20OT04), Crockery Township, Ottawa County, MI. These funerary objects were not clearly associated with specific burials; however, they are typical of objects found in clear association with other discrete burials on the site. The unassociated funerary objects include iron buckets; clay pipes; glass beads; and silver ornaments, these including gorgets, tinklers, and brooches. The catalog numbers of these unassociated funerary objects are 2001–2003, 2007–2016, 2018–2024, 2031–2035, 2039–2040, 2042–2047, 2053–2055, 2065–2066, 2068–2071, and 2073.

In 1988, students and staff of Grand Valley State University removed 101 unassociated funerary objects from the Battle Point site during surface survey of the area. The unassociated funerary objects include beads, silver ornaments, tinkle cones, bucket fragments, wood, nails, a kaolin pipe fragment, and a button. The catalog numbers of these unassociated funerary objects are 2000, 20OT04/1988/, and 20OT04/00.

The Battle Point site is a multi-component site consisting of habitation dating to circa A.D. 200–1300, and a cemetery dating to the mid-19th century. Associated funerary objects date the burials to circa 1800–1840. Excavation notes, spatial analyses; and other studies demonstrate that the cemetery intrudes into habitation deposits that date to pre-European contact and that do not include a mortuary component. All Euro-American objects dating to the 19th century, therefore, are reasonably assumed to be funerary objects.

Historic documentation indicates that a Native American cemetery associated with the Little River Band of Ottawa Indians of Michigan was located at the Battle Point site in the mid-19th century. An abstract of land title dated to 1846 identifies an association between members of the Little River Band of Ottawa Indians of Michigan and the plot on which the cemetery is located. The cemetery is specifically mentioned in a 1864 land transaction as associated with historic Grand River Valley Bands of Ottawa Indians in Michigan. The Little River Band of Ottawa Indians is the only current Federally-recognized descendent from the historic Grand River Bands of Ottawa of Michigan. On the basis of historical and oral historical information, the Battle Point site cemetery is determined to be culturally affiliated with the Little River Band of Ottawa Indians of Michigan.

Officials of the Grand Valley State University have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), these 1,052 cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from the grave of an Native American individual. Officials of the Grand Valley State University also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these cultural items and the Little River Band of Ottawa Indians of Michigan.

This notice has been sent to officials of the Grand Traverse Band of Ottawa and Chippewa Indians of Michigan, the Little Traverse Bay Bands of Odawa Indians of Michigan, the Little River Band of Ottawa Indians of Michigan and to the Grand River Bands of Ottawa Indians, a non-Federally recognized group. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these cultural items should contact Janet G. Brashler, Professor and Curator of Anthropology, Grand Valley State University, Allendale, MI 49401, telephone (616) 854–3694, before June 4, 2001. Repatriation of these cultural items to the Little River Band of Ottawa Indians may begin after that date if no additional claimants come forward.

Dated: April 16, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–11145 Filed 5–2–01; 8:45 am]
BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Milwaukee Public Museum, Milwaukee, WI

AGENCY: National Park Service, Interior.
ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Milwaukee Public Museum, Milwaukee, WI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Milwaukee Public Museum professional staff and contract specialists in physical anthropology in consultation with representatives of the Forest County Potawatomi Community

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of Wisconsin Potawatomi Indians, Wisconsin.

In 1877, human remains representing one individual were removed from a grave (47–CT–38) on the property of J. Berg, Rantoul, Calumet County, WI, by H. H. Hayssen of New Holstein, WI. Mr. Hayssen sold the remains and associated funerary objects to the Milwaukee Public Museum in 1897. No known individual was identified. The 145 associated funerary objects include 19 copper alloy bracelets, copper alloy chains with finger rings, ear/hair ornaments of shell beads, thimbles, ermine tails, glass beads, chains, coins, silver ornaments, silk and cotton clothing fragments with silver ring-and-ball ornaments, German silver brooches, glass bead edging, 2 small pocket mirrors, 20 thimbles made into hair ornaments, a copper alloy finger ring, red ochre chunks, a perforated metal disc, shell beads, a musket ball, a miniature china teapot, an iron kettle, a porcelain basin and pitcher, 5 cowry shells, glass and shell beads, 6 small beaded bags, a kaolin pipe, and wooden matches.

Historic evidence identifies the J. Berg Farm Site as a known historic Potawatomi cemetery. The Potawatomi people abandoned the area in or before 1866. The associated funerary objects from this burial can be dated to circa 1850–1866.

At an unknown date prior to 1901, human remains representing one individual were removed from an unknown site in Kiel, Manitowoc County, WI, by August Stirn. Mr. Stirn donated the remains to the Milwaukee Public Museum in 1901. No known individual was identified. No associated funerary objects are present.

The degree of preservation of this individual's hair suggests that burial occurred during the half-century prior to disinterment. Geographic location of the burial is consistent with the historically documented territory of the Potawatomi in the late 19th century.

In 1916, human remains representing one individual were removed from the Camp Thomas Cemetery Site (47–WK–71) on the Ralph Holtz Farm, Muskego, Waukesha County, WI, by Rudolph Boettger. Mr. Boettger sold the human remains and two associated funerary objects to the Milwaukee Public Museum in 1922. He donated an additional associated funerary object to the museum in 1947. No known individual was identified. The three associated funerary objects are a small copper alloy bucket, a small wooden bowl with projecting animal effigy tab, and an iron knife blade.

The associated funerary objects date this burial to circa 1800. The date is consistent with historical evidence for Potawatomi occupation of the area. The Camp Thomas Cemetery Site is a known Potawatomi cemetery and camp utilized until the 1870s.

Based on cranial morphology, dental traits, and archeological context, these three individuals are identified as Native American. The geographical locations of the sites and dates of the burials are consistent with the historic territory of the Potawatomi people. Consultation evidence provided by representatives of the Forest County Potawatomi Tribe has identified these three sites as part of the Potawatomi's historic territory and verified Potawatomi occupation of the area until approximately 1900.

Based on the above-mentioned information, officials of the Milwaukee Public Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of three individuals of Native American ancestry. Officials of the Milwaukee Public Museum also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 148 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Milwaukee Public Museum have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Forest County Potawatomi Community of Wisconsin Potawatomi Indians, Wisconsin; Prairie Band of Potawatomi Indians, Kansas; Hannahville Indian Community, Michigan; Citizen Potawatomi Nation, Oklahoma; Huron Potawatomi, Inc.; and Pokagon Band of Potawatomi Indians of Michigan.

This notice has been sent to officials of the Forest County Potawatomi Community of Wisconsin Potawatomi Indians, Wisconsin; Prairie Band of Potawatomi Indians, Kansas; Hannahville Indian Community, Michigan; Citizen Potawatomi Nation, Oklahoma; Huron Potawatomi, Inc.; and Pokagon Band of Potawatomi Indians of Michigan. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Alex Barker, Anthropology Section Head, Milwaukee Public Museum, 800 West Wells Street, Milwaukee, WI 53233, telephone (414) 278–2786, before June 4, 2001. Repatriation of the human remains and associated funerary objects to the Forest County Potawatomi Community of Wisconsin Potawatomi Indians, Wisconsin; Prairie Band of Potawatomi Indians, Kansas; Hannahville Indian Community, Michigan; Citizen Potawatomi Nation, Oklahoma; Huron Potawatomi, Inc.; and Pokagon Band of Potawatomi Indians of Michigan may begin after that date if no additional claimants come forward.

Dated: April 6, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–11140 Filed 5–2–01; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Museum of Natural History and Planetarium, Roger Williams Park, Providence, RI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Museum of Natural History and Planetarium, Roger Williams Park, Providence, RI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Museum of Natural History and Planetarium professional staff in consultation with representatives of the Narragansett Indian Tribe of Rhode Island and the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group).

In 1899, human remains representing one individual were recovered from Jamestown, RI, by James H. Clarke and donated to the Museum of Natural History and Planetarium. No known individual was identified. The two associated funerary objects are an iron axe fragment and an animal bone fragment.

Based on red ochre and copper staining on the human remains, this individual has been determined to be Native American from the contact period. Based on physical evidence and geographic/provenience information, this individual has been determined to be culturally affiliated with the Narragansett Indian Tribe of Rhode Island and the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group).

Before May 1939, human remains representing two individuals were recovered from Old Warwick, near Wharf Road, East Greenwich, RI, by Lincoln C. Bateson, who donated these human remains to the Museum of Natural History and Planetarium in May 1939. No known individuals were identified. No associated funerary objects are present.

Based on museum documentation and physical evidence, these individuals have been identified as Native American. Based on physical evidence and geographic/provenience information, these individuals have been determined to be culturally affiliated with the Narragansett Indian Tribe of Rhode Island and the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group).

In 1854, human remains representing one individual were recovered from the Stone Bridge Inn site (RI 1947), Tiverton, RI, by person(s) unknown, and donated to the Museum of Natural History and Planetarium in 1903. No known individual was identified. No associated funerary objects are present.

Based on museum documentation and physical evidence, this individual has been identified as Native American. Based on physical evidence and geographic/provenience information, this individual has been determined to be culturally affiliated with the Narragansett Indian Tribe of Rhode Island and the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group).

In 1927, human remains representing one individual were recovered from London Street, East Greenwich, RI, and donated to the Museum of Natural History and Planetarium by W.E. Crease. No known individual was identified. No associated funerary objects are present.

Accession information states these human remains were "dug up on London Street, 10 feet deep." Based on museum documentation and physical evidence, this individual has been identified as Native American. Based on physical evidence and geographic/provenience information, this individual has been determined to be culturally affiliated with the Narragansett Indian Tribe of Rhode Island and the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group).

In 1936, human remains representing one individual were recovered from Melrose Street, West Ferry site, Jamestown, RI, by Roy Johnson, Louis Watson, and others. In 1937, these human remains were donated to the Museum of Natural History and Planetarium by Mr. Johnson. No known individual was identified. The one associated funerary object is a blanket fragment.

Based on museum documentation and physical evidence, this individual has been identified as Native American. Based on physical evidence, consultation with tribal representatives, and geographic/provenience information, this individual has been determined to be culturally affiliated with the Narragansett Indian Tribe of Rhode Island and the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group).

In 1894, human remains representing three individuals were recovered from the Burr's Hill Burial Ground, Warren, RI, by A.T. Vaughn, who donated these remains to the Museum of Natural History and Planetarium in 1900. No known individuals were identified. Museum documentation indicates that "curios" were found with these human remains, and were transferred in 1913 to the Heye Foundation (now the National Museum of the American Indian) as part of an exchange. No associated funerary objects are now present in the collections of the Museum of Natural History and Planetarium.

Based on skeletal morphology and extensive copper staining, these individuals have been identified as Native American from the 17th century. Based on physical evidence, consultation with tribal representatives, and geographic/provenience information, these individuals have been determined to be culturally affiliated with the Narragansett Indian Tribe of Rhode Island and the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group).

In 1894, human remains representing one individual were recovered from Jamestown, RI, by A.T. Vaughn of the Antiquarian Society of Warren, RI. In 1900, these human remains were donated by Mr. Vaughn to the Museum of Natural History and Planetarium. No known individual was identified. The four associated funerary objects are fragments of bark, hair, iron, and cloth that are adhered to the human remains.

Based on skeletal morphology and extensive copper staining, this individual has been identified as Native American from the contact or proto-historic period. Based on physical evidence, consultation with tribal representatives, and geographic/provenience information, this individual has been determined to be culturally affiliated with the Narragansett Indian Tribe of Rhode Island and the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group).

Based on the above-mentioned information, officials of the Museum of Natural History and Planetarium have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 10 individuals of Native American ancestry. Officials of the Museum of Natural History and Planetarium also have determined that, pursuant to 43

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CFR 10.2 (d)(2), the seven objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Museum of Natural History and Planetarium have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Narragansett Indian Tribe of Rhode Island and the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group). This notice has been sent to officials of the Narragansett Indian Tribe of Rhode Island and the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group). Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Marilyn Massaro, Curator of Collections, Museum of Natural History and Planetarium, Roger Williams Park, Providence, RI 02905, telephone (401) 785–9457, before June 4, 2001. Repatriation of the human remains and associated funerary objects to the Narragansett Indian Tribe of Rhode Island and the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group) may begin after that date if no additional claimants come forward.

Dated: April 11, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–11141 Filed 5–2–01; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the U.S. Department of Defense, National Museum of Health and Medicine, Armed Forces Institute of Pathology, Washington, DC

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the U.S. Department of Defense, National Museum of Health and Medicine, Armed Forces Institute of Pathology (formerly the Army Medical Museum), Washington, DC.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by National Museum of Health and Medicine, Armed Forces Institute of Pathology professional staff in consultation with representatives of the Tonkawa Tribe of Indians of Oklahoma.

In 1868, human remains representing one individual were collected near Fort Cobb in Washita River, Caddo County, OK, by Dr. Palmer of the Smithsonian Institution. In 1869, the remains were transferred to the National Museum of Health and Medicine, Armed Forces Institute of Pathology. No known individual was identified. No associated funerary objects are present.

A logbook entry from the Smithsonian Institution indicates that the remains are of a female Tonkawa Indian "massacred by Indian with tomahawk." Biological evidence is consistent with the logbook entry. The Army Medical Museum accession records also indicate that the individual is a Tonkawa Indian.

Based on the above-mentioned information, officials of the National Museum of Health and Medicine, Armed Forces Institute of Pathology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the National Museum of Health and Medicine, Armed Forces Institute of Pathology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Tonkawa Tribe of Indians of Oklahoma.

This notice has been sent to officials of the Tonkawa Tribe of Indians of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Lenore Barbian, Ph.D., Assistant Curator, Anatomical Collections, National Museum of Health and Medicine, Armed Forces Institute of Pathology, Walter Reed Army Medical Center, Building 54, Washington, DC 20306–6000, telephone (202) 782–2203, before June 4, 2001. Repatriation of the human remains to the Tonkawa Tribe of Indians of Oklahoma may begin after that date if no additional claimants come forward.

Dated: April 11, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–11136 Filed 5–2–01; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the U.S. Department of Defense, National Museum of Health and Medicine, Armed Forces Institute of Pathology, Washington, DC

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the U.S. Department of Defense, National Museum of Health and Medicine, Armed Forces Institute of Pathology (formerly the Army Medical Museum), Washington, DC.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency

that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by National Museum of Health and Medicine, Armed Forces Institute of Pathology professional staff in consultation with representatives of Blackfeet Tribe of the Blackfeet Indian Reservation of Montana.

In 1873, human remains representing one individual were sent to the National Museum of Health and Medicine, Armed Forces Institute of Pathology by U.S. Army Assistant Surgeon John D. Hall of Fort Benton, Chouteau County, MT. In 1872, the individual received a leg wound in battle with Crow Indians, and traveled to Fort Benton where the injured leg was amputated by Assistant Surgeon Hall. The individual is identified as Nap-pan-na-qua (also noted in the accession records as "White Man"). No associated funerary objects are present.

In 1869, human remains representing one individual were collected from Three Buttes, MT, by U.S. Army Assistant Surgeon Elliot Coues. The individual was killed by Assiniboin Indians at Three Buttes. Also in 1869, Assistant Surgeon Coues sent the remains to the Smithsonian Institution. In 1874, the remains were transferred from the Smithsonian Institution to the National Museum of Health and Medicine, Armed Forces Institute of Pathology. No known individual was identified. No associated funerary objects are present.

Based on accession records of the National Museum of Health and Medicine, Armed Forces Institute of Pathology, the individuals have been determined to be Native American. Accession records also indicate that the individuals were Peigan Indian males. Biological evidence of the individuals' injuries is consistent with the accession file information. Historically, the Piegan were a constituent band of the Blackfeet which are now recognized as the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana. To date, consultation with the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana has not identified a lineal descendent.

Based on the above-mentioned information, officials of the National Museum of Health and Medicine, Armed Forces Institute of Pathology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the National Museum of Health and Medicine, Armed Forces Institute of Pathology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana.

This notice has been sent to officials of the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Lenore Barbian, Ph.D., Assistant Curator, Anatomical Collections, National Museum of Health and Medicine, Armed Forces Institute of Pathology, Walter Reed Army Medical Center, Building 54, Washington, DC 20306–6000, telephone (202) 782–2203, before June 4, 2001. Repatriation of the human remains to the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana may begin after that date if no additional claimants come forward.

Dated: April 11, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–11138 Filed 5–2–01; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the U.S. Department of Defense, National Museum of Health and Medicine, Armed Forces Institute of Pathology, Washington, DC

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the U.S. Department of Defense, National Museum of Health and Medicine, Armed Forces Institute of Pathology (formerly the Army Medical Museum), Washington, DC.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by National Museum of Health and Medicine, Armed Forces Institute of Pathology professional staff in consultation with representatives of the Kaw Nation, Oklahoma.

In 1868, human remains representing one individual were sent to the National Museum of Health and Medicine, Armed Forces Institute of Pathology by U.S. Army Surgeon B. E. Fryer of Fort Harker, KS. The individual was wounded in 1867 near Fort Zara, Barton County, KS, and later died at Fort Harker. No known individual was identified. No associated funerary objects are present.

Based on accession records of the National Museum of Health and Medicine, Armed Forces Institute of Pathology, the individual has been determined to be Native American. Accession records also indicate that the individual was a Kaw male who was wounded in a fight with the Cheyenne, and died 20 days later. Biological evidence of the individual's injury is consistent with the accession file information.

Based on the above-mentioned information, officials of the National Museum of Health and Medicine, Armed Forces Institute of Pathology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the National Museum of Health and Medicine, Armed Forces Institute of Pathology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Kaw Nation, Oklahoma.

This notice has been sent to officials of the Kaw Nation, Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Lenore Barbian, Ph.D., Assistant Curator, Anatomical Collections, National Museum of Health and Medicine, Armed Forces Institute of Pathology, Walter Reed Army Medical Center, Building 54, Washington, DC 20306–6000, telephone (202) 782–2203, before June 4, 2001. Repatriation of the human remains to the Kaw Nation, Oklahoma may begin after that date if no additional claimants come forward.

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Dated: April 11, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–11139 Filed 5–2–01; 8:45 am]

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DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the U.S. Department of Defense, National Museum of Health and Medicine, Armed Forces Institute of Pathology, Washington, DC

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the U.S. Department of Defense, National Museum of Health and Medicine, Armed Forces Institute of Pathology (formerly the Army Medical Museum), Washington, DC.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by National Museum of Health and Medicine, Armed Forces Institute of Pathology professional staff in consultation with representatives of the Seneca Nation of New York, Seneca-Cayuga Tribe of Oklahoma, and Tonowanda Band of Seneca Indians of New York.

Prior to 1915, human remains representing one individual were excavated from an Indian mission cemetery in Buffalo, Erie County, NY, by an unknown individual. In 1915, the National Museum of Health and Medicine, Armed Forces Institute of Pathology purchased the remains from the Charles H. Ward Company of Rochester, NY. No known individual was identified. No associated funerary objects are present.

Accession records from the National Museum of Health and Medicine, Armed Forces Institute of Pathology indicate that the remains were identified by the Charles H. Ward Company as an adult female Seneca Indian. Historical information indicates that the Buffalo Creek Mission Cemetery, from which the remains were obtained, was located in Erie County, NY. Historical records from the Indian Claims Commission places the Seneca in an area that includes Erie County, NY.

Prior to 1914, human remains representing one individual were collected from the farm of George Marsh approximately 5 miles from Canandaigua, Ontario County, NY, by George G. Heye of the Heye Foundation. In 1914, Mr. Heye donated the remains to the Smithsonian Institution. In 1915, the remains were transferred to the National Museum of Heath and Medicine, Armed Forces Institute of Pathology. No known individual was identified. No associated funerary objects are present.

Based on the geographic location where these human remains were found, this individual has been identified as Native American. Archeological information indicates that the Marsh farm site was an eastern Seneca village site dating from 1650–1670. Biological information indicates that these human remains are most likely of an adult individual of unknown sex. Based on geographical evidence and on archeological expert opinion, these human remains are most likely culturally affiliated with the Seneca Nation of New York, Seneca-Cayuga Tribe of Oklahoma, and Tonowanda Band of Seneca Indians of New York.

Based on the above-mentioned information, officials of the National Museum of Health and Medicine, Armed Forces Institute of Pathology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the National Museum of Health and Medicine, Armed Forces Institute of Pathology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Seneca Nation of New York, Seneca-Cayuga Tribe of Oklahoma, and Tonowanda Band of Seneca Indians of New York.

This notice has been sent to officials of the Seneca Nation of New York, Seneca-Cayuga Tribe of Oklahoma, and Tonowanda Band of Seneca Indians of New York. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Lenore Barbian, Ph.D., Assistant Curator, Anatomical Collections, National Museum of Health and Medicine, Armed Forces Institute of Pathology, Walter Reed Army Medical Center, Building 54, Washington, DC 20306–6000, telephone (202) 782–2203, before June 4, 2001. Repatriation of the human remains and associated funerary objects to the Seneca Nation of New York, Seneca-Cayuga Tribe of Oklahoma, and Tonowanda Band of Seneca Indians of New York may begin after that date if no additional claimants come forward.

Dated: April 11, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–11137 Filed 5–2–01; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the U.S. Department of Defense, National Museum of Health and Medicine, Armed Forces Institute of Pathology, Washington, DC

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the U.S. Department of Defense, National Museum of Health and Medicine, Armed Forces Institute of Pathology (formerly the Army Medical Museum), Washington, DC.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by National Museum of Health and Medicine, Armed Forces Institute of Pathology professional staff in consultation with representatives of the Seneca Nation of New York, Seneca-Cayuga Tribe of Oklahoma, and Tonowanda Band of Seneca Indians of New York.

In October 1875, human remains representing three individuals were sent to the National Museum of Health and Medicine, Armed Forces Institute of Pathology by U.S. Army Assistant Surgeon W. H. Forwood. The individuals were killed near Fort Richardson, Jack County, TX, in May 1875. Accession records identify them as Eath-ath Qua-ha day (Red Bear), Tooh-Parrah Qua-ha day (Black Bear), Yan-eth-ohis Qua-ha day (Wife of Black Bear). No associated funerary objects are present.

Accession records from the National Museum of Health and Medicine, Armed Forces Institute of Pathology indicate that the remains are of Comanche Indians. Biological evidence of the injuries and sex of the human remains is consistent with the accession records. To date, consultation with the Comanche Indian Tribe, Oklahoma has not identified a lineal descendent.

Based on the above-mentioned information, officials of the National Museum of Health and Medicine, Armed Forces Institute of Pathology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of three individuals of Native American ancestry. Officials of the National Museum of Health and Medicine, Armed Forces Institute of Pathology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Comanche Indian Tribe, Oklahoma.

This notice has been sent to officials of the Comanche Indian Tribe, Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Lenore Barbian, Ph.D., Assistant Curator, Anatomical Collections, National Museum of Health and Medicine, Armed Forces Institute of Pathology, Walter Reed Army Medical Center, Building 54, Washington, DC 20306–6000, telephone (202) 782–2203, before June 4, 2001. Repatriation of the human remains to the Comanche Indian Tribe, Oklahoma may begin after that date if no additional claimants come forward.

Dated: April 11, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–11135 Filed 5–2–01; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Robert S. Peabody Museum of Archaeology, Andover, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Robert S. Peabody Museum of Archaeology, Andover, MA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Robert S. Peabody Museum of Archaeology professional staff in consultation with representatives of the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; the Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; the Spirit Lake Tribe, North Dakota; the Lower Sioux Indian Community of Minnesota Mdewakanton Sioux Indians of the Lower Sioux Reservation in Minnesota; the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; the Standing Rock Sioux Tribe of North and South Dakota; the Santee Sioux Tribe of the Santee Reservation of Nebraska; the Yankton Sioux Tribe of South Dakota; the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; the Prairie Island Indian Community of Minnesota Mdewakanton Sioux Indians of the Prairie Island Reservation, Minnesota; the Upper Sioux Indian Community of the Upper Sioux Reservation, Minnesota; the Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota; the Flandreau Santee Sioux Tribe of South Dakota; the Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; and the Shakopee Mdewakanton Sioux Community of Minnesota (Prior Lake).

In 1869, human remains representing one individual were collected by Warren King Moorehead. In 1895, Mr. Moorehead donated these human remains to the Robert S. Peabody Museum of Archaeology. No known individual was identified. No associated funerary objects are present.

An original card with the human remains states these human remains are those of a Sioux scout killed at Summit Springs, SD, in 1869. Cultural affiliation has been established based on the information on this card. There is no existing information to contradict this finding.

Based on the above-mentioned information, officials of the Robert S. Peabody Museum of Archaeology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Robert S. Peabody Museum of Archaeology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; the Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; the Spirit Lake Tribe, North Dakota; the Lower Sioux Indian Community of Minnesota Mdewakanton Sioux Indians of the Lower Sioux Reservation in Minnesota; the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; the Standing Rock Sioux Tribe of North and South Dakota; the Santee Sioux Tribe of the Santee Reservation of Nebraska; the Yankton Sioux Tribe of South Dakota; the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; the Prairie Island Indian Community of Minnesota Mdewakanton Sioux Indians of the Prairie Island Reservation, Minnesota; the Upper Sioux Indian Community of the Upper Sioux Reservation, Minnesota; the Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota; the Flandreau Santee Sioux Tribe of South Dakota; the Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; and the Shakopee Mdewakanton Sioux Community of Minnesota (Prior Lake). This notice has been sent to officials of the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; the Crow Creek Sioux Tribe of the Crow Creek

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Reservation, South Dakota; the Spirit Lake Tribe, North Dakota; the Lower Sioux Indian Community of Minnesota Mdewakanton Sioux Indians of the Lower Sioux Reservation in Minnesota; the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; the Standing Rock Sioux Tribe of North and South Dakota; the Santee Sioux Tribe of the Santee Reservation of Nebraska; the Yankton Sioux Tribe of South Dakota; the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; the Prairie Island Indian Community of Minnesota Mdewakanton Sioux Indians of the Prairie Island Reservation, Minnesota; the Upper Sioux Indian Community of the Upper Sioux Reservation, Minnesota; the Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota; the Flandreau Santee Sioux Tribe of South Dakota; the Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; and the Shakopee Mdewakanton Sioux Community of Minnesota (Prior Lake). Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact James W. Bradley, Director, Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA 01810, telephone (978) 749–4490, before June 4, 2001. Repatriation of the human remains to the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; the Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; the Spirit Lake Tribe, North Dakota; the Lower Sioux Indian Community of Minnesota Mdewakanton Sioux Indians of the Lower Sioux Reservation in Minnesota; the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; the Standing Rock Sioux Tribe of North and South Dakota; the Santee Sioux Tribe of the Santee Reservation of Nebraska; the Yankton Sioux Tribe of South Dakota; the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; the Prairie Island Indian Community of Minnesota Mdewakanton Sioux Indians of the Prairie Island Reservation, Minnesota; the Upper Sioux Indian Community of the Upper Sioux Reservation, Minnesota; the Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota; the Flandreau Santee Sioux Tribe of South Dakota; the Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; and the Shakopee Mdewakanton Sioux Community of Minnesota (Prior Lake) may begin after that date if no additional claimants come forward.

Dated: April 18, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–11142 Filed 5–2–01; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Tioga County Historical Society, Owego, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Tioga County Historical Society, Owego, NY, that meet the definition of "unassociated funerary objects" under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The eight cultural items are an iron tomahawk, a celt, copper points, arrowshaft fragments, carbonized material, and a deer bone ornament. The iron tomahawk, copper points, arrowshaft fragment, and carbonized material have not been located.

In 1953, the iron tomahawk, celt, copper points, arrowshaft fragment and carbonized material were donated by James S. Truman to the Tioga County Historical Society. Donor information indicates that the iron tomahawk was removed from an "Indian grave in Cayuga County, NY"; the celt was removed from "an Indian mound in Cayuga County, NY"; and the copper points, arrowshaft fragment, and carbonized material were removed "from a Cayuga County, NY Indian grave." Donor information indicates that the deer bone ornament was removed from "a grave in Cayuga County, NY" and was donated at an unknown date to the Tioga County Historical Society by Frank Truman.

Based on geographic location, archeological evidence, and object types, these cultural items have been affiliated with the Cayuga Nation of New York. Historical evidence indicates that the Cayuga Nation of New York were the aboriginal occupants of the areas in which the cultural items were found. Oral history of the Cayuga indicates that the area in which the cultural items were found is within their traditional territory.

Officials of the Tioga County Historical Society have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), these eight cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the Tioga County Historical Society also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these items and the Cayuga Nation of New York.

This notice has been sent to officials of the Cayuga Nation of New York; St. Regis Band of Mohawk Indians; Seneca Nation of New York; Oneida Nation of New York; Onondaga Nation of New York; Seneca-Cayuga Tribe of Oklahoma; Oneida Tribe of Wisconsin; Tonawanda Band of Seneca Indian of New York; and Tuscarora Nation of New York. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Dana Leo, Curator, Tioga County Historical Society, 110 Front Street, Owego, NY 13827, telephone (607) 687–2460, before June 4, 2001. Repatriation of these objects to the Cayuga Nation of New York may begin after that date if no additional claimants come forward.

Dated: April 11, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–11134 Filed 5–2–01; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the University of North Dakota Hariman Research Center, Grand Forks, ND, and in the Control of the U.S. Department of the Interior, Bureau of Reclamation, Dakotas Area Office, Bismarck, ND

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of North Dakota Hariman Research Center, Grand Forks, ND, and in the control of the U.S. Department of the Interior, Bureau of Reclamation, Dakotas Area Office, Bismarck, ND.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Bureau of Reclamation, Dakotas Area Office professional staff in consultation with representatives of the North Dakota Intertribal Reinterment Committee; Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community of Minnesota Mdewakanton Sioux Indians of the Lower Sioux Reservation in Minnesota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Omaha Tribe of Nebraska; Ponca Tribe of Nebraska; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Prairie Island Indian Community of the Minnesota Mdewakanton Sioux Indians of the Prairie Island Reservation, Minnesota; Santee Sioux Tribe of the Santee Reservation of Nebraska; Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; Turtle Mountain Band of Chippewa Indians of North Dakota; Winnebago Tribe of Nebraska; and Yankton Sioux Tribe of South Dakota.

On November 9, 2000, the Bureau of Reclamation, Dakotas Area Office and the North Dakota Intertribal Reinterment Committee submitted a request to the Native American Graves Protection and Repatriation Review Committee to make a recommendation on the disposition of a minimum of 14 culturally unidentifiable human remains and 4 associated funerary objects from North Dakota and in the control of the Bureau of Reclamation, Dakotas Area Office. The North Dakota Intertribal Reinterment Committee was established by North Dakota State statute for the reinterment of human remains in the State of North Dakota and is composed of representatives of the following Native American tribes in and from North Dakota: the Standing Rock Sioux Tribe of North & South Dakota; the Spirit Lake Tribe, North Dakota; the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and the Turtle Mountain Band of Chippewa Indians of North Dakota. The Bureau of Reclamation, Dakotas Area Office had previously received a resolution supporting repatriation to the North Dakota Intertribal Reinterment Committee from the Great Plains Tribal Chairman's Association, an association that represents 17 Federally recognized tribes within the Great Plains region of the Bureau of Indian Affairs.

The Native American Graves Protection and Repatriation Review Committee considered the request at its December 11–13, 2000, meeting. The review committee concurred with the Bureau of Reclamation, Dakotas Area Office's proposal to repatriate these culturally unidentifiable human remains and associated funerary objects to the North Dakota Intertribal Reinterment Committee representing the Standing Rock Sioux Tribe of North & South Dakota; Spirit Lake Tribe, North Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and Turtle Mountain Band of Chippewa Indians of North Dakota. A January 11, 2001, letter from the Assistant Director, Cultural Resources Stewardship and Partnerships to the Bureau of Reclamation, Dakotas Area Office confirmed concurrence regarding the disposition of these culturally unidentifiable human remains and associated funerary objects.

In 1974, University of North Dakota professionals, under contract to the Bureau of Reclamation, Dakotas Area Office, collected the remains of a minimum of three individuals from site 32LM104. No known individuals were identified. The one associated funerary object is a projectile point.

The human remains (inventory records 32LM104–A, 32LM104–B, and 32LM104–C) and associated funerary object (32LM104–AFO–A) were inventoried by the University of North Dakota Hariman Research Center in 1996. Based on site morphology, osteological evidence, and associated artifacts, these individuals have been identified as Native American and probably date to the Middle Plains Woodland period (100 B.C.–A.D. 600).

In 1974, University of North Dakota professionals, under contract to the Bureau of Reclamation, Dakotas Area Office, collected the remains of a minimum of one individual from a disturbed portion of site 32LM228. No known individual was identified. The three associated funerary objects are two projectile points and one piece of worked, incised shell.

The human remains (32LM228–A) and associated funerary objects (32LM228–AFO–A, 32LM228–AFO–B, and 32LM228–AFO–C) were inventoried by the University of North Dakota Hariman Research Center in 1996. Based on site morphology, osteological evidence, and associated artifacts, this individual has been identified as Native American and probably dates to the Plains Woodland period (400 B.C.–A.D. 1000).

In 1974, University of North Dakota professionals, under contract to the Bureau of Reclamation, Dakotas Area Office, collected the remains of a minimum of four individuals from site 32NE401. No known individuals were identified. No associated funerary objects are present.

The human remains (32NE401–A, 32NE401–B, 32NE401–C, and 32NE401–D) were inventoried by the University of North Dakota Hariman Research Center in 1996. Based on the site morphology, osteological evidence, and associated artifacts, these individuals have been identified as Native American and probably date to the Plains Woodland period (400 B.C.–A.D. 1000).

In 1990, University of North Dakota professionals, under contract to the Bureau of Reclamation, Dakotas Area Office, collected the remains of a minimum of one individual from excavations at site 32RY77. No known

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individual was identified. No associated funerary objects are present.

The human remains (32RY77–A) were inventoried by the University of North Dakota Hariman Research Center in 1990 and 1996. Based on site morphology, osteological evidence, and associated artifacts, the individual has been identified as Native American and probably dates to the Early to Middle Woodland period (400 B.C.–A.D. 600).

In 1982, Dakota Interactive Services professionals, under contract to the Bureau of Reclamation, Dakotas Area Office, collected the remains of a minimum of one individual from excavations at site 32SN72. No known individual was identified. No associated funerary objects are present.

The human remains (32SN72–A) were inventoried by the University of North Dakota Hariman Research Center in 1996. Based on site morphology, osteological evidence, and associated artifacts, the individual has been identified as Native American of an unknown period.

In 1982, Dakota Interactive Services professionals, under contract to the Bureau of Reclamation, Dakotas Area Office, collected the remains of a minimum of one individual from excavations at site 32SN88. No known individual was identified. No associated funerary objects are present.

The human remains (32SN88–A) were inventoried by the University of North Dakota Hariman Research Center in 1996. Based on site morphology, osteological evidence, and associated artifacts, the individual has been identified as Native American of an unknown period.

In 1982, Dakota Interactive Services professionals, under contract to the Bureau of Reclamation, Dakotas Area Office, collected the remains of a minimum of one individual from a survey of site 32SN93. No known individual was identified. No associated funerary objects are present.

The human remains (32SN93–A) were inventoried by the University of North Dakota Hariman Research Center in 1996. Based on site morphology, osteological evidence, and associated artifacts, the individual has been identified as Native American and probably dates to the Plains Woodland period (400 B.C.–A.D. 1000).

In 1985, University of North Dakota professionals, under contract to the Bureau of Reclamation, Dakotas Area Office, collected the remains of a minimum of one individual from excavations at site 32SN246. No known individual was identified. No associated funerary objects are present.

The human remains (32SN246–A) were inventoried by the University of North Dakota Hariman Research Center in 1996. Based on site morphology, osteological evidence, and associated artifacts, the individual has been identified as Native American and probably dates to the Middle Woodland period (100 B.C.–A.D. 600).

In 1976, University of North Dakota professionals, under contract to the Bureau of Reclamation, Dakotas Area Office, collected the remains of a minimum of one individual from excavations at site 32SN403. No known individual was identified. No associated funerary objects are present.

The human remains (32SN403–A) were inventoried by the University of North Dakota Hariman Research Center in 1996. Based on site morphology, osteological evidence, and associated artifacts, the individual has been identified as Native American and probably dates to the Northeastern Plains Complex period (early A.D. 1400s).

Based on the above-mentioned information, officials of the Bureau of Reclamation, Dakotas Area Office have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of 14 individuals of Native American ancestry. Officials of the Bureau of Reclamation, Dakotas Area Office also have determined that, pursuant to 43 CFR 10.2 (d)(2), the four objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. In accordance with the recommendations of the Native American Graves Protection and Repatriation and Review Committee, officials of the Bureau of Reclamation, Dakotas Area Office have determined that, pursuant to 43 CFR 10.2 (e), there is no relationship of shared group identity that can be reasonably traced between either these Native American human remains or the associated funerary objects and any present-day Indian tribe or group, and the disposition of these Native American human remains should be to the North Dakota Intertribal Reinterment Committee representing the Standing Rock Sioux Tribe of North & South Dakota; Spirit Lake Tribe, North Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and Turtle Mountain Band of Chippewa Indians of North Dakota.

This notice has been sent to the North Dakota Intertribal Reinterment Committee; Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community of Minnesota Mdewakanton Sioux Indians of the Lower Sioux Reservation in Minnesota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Omaha Tribe of Nebraska; Ponca Tribe of Nebraska; Prairie Island Indian Community of the Minnesota Mdewakanton Sioux Indians of the Prairie Island Reservation, Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Tribe of the Santee Reservation of Nebraska; Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; Turtle Mountain Band of Chippewa Indians of North Dakota; Winnebago Tribe of Nebraska; and Yankton Sioux Tribe of South Dakota. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Kimball Banks, NAGPRA Coordinator, Bureau of Reclamation, Dakotas Area Office, P.O. Box 1017, Bismarck, ND 58501, telephone (701) 250–4242, extension 3602, before June 4, 2001. Repatriation of the human remains and associated funerary objects to the North Dakota Intertribal Reinterment Committee representing the Standing Rock Sioux Tribe of North and South Dakota; the Spirit Lake Tribe, North Dakota; the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and the Turtle Mountain Band of Chippewa Indians of North Dakota may begin after that date if no additional claimants come forward.

Dated: April 13, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–11143 Filed 5–2–01; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Draft Director's Order Concerning National Park Service Policies and Procedures Governing Its Youth Programs Division

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) has prepared a Director's Order setting forth its policies and procedures governing the management and implementation of youth programs throughout the National Park Service. When adopted, the policies and procedures will apply to all units of the national park system.

DATES: Written comments will be accepted until June 5, 2001.

ADDRESSES: Draft Director's Order #26 is available on the internet at *http://www.nps.gov/refdesk/Dorders/index.htm*. Requests for copies and written comments should be sent to William H. Jones, NPS Youth Programs Division Manager, Department of the Interior, 1849 C St. RM# 7325 NW., Washington, DC 20010.

FOR FURTHER INFORMATION CONTACT: William H. Jones at (202) 565–1079.

SUPPLEMENTARY INFORMATION: The NPS is updating its current system of internal written instructions. When these documents contain new policy or procedural requirements that may affect parties outside the NPS, they are first made available for public review and comment before being adopted. The draft order Director's Order covers topics such as the management and supervision of the Youth Conservation Corps, the Public Land Corps, Job Corps and other programs that introduce youth to employment opportunities and conservation projects in the National Park Service.

Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment.

Dated: April 20, 2001.

William H. Jones,

Program Manager, Youth Programs Division.

[FR Doc. 01–11131 Filed 5–2–01; 8:45 am]

BILLING CODE 4310–70–U

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Receipt of Application and Environmental Assessment Received for Access to National Park Service Property for the Siting of Wireless Transmission Antennas and Request for Public Comment

AGENCY: National Park Service, Department of the Interior.

ACTION: Public notice of the receipt of an Application for a right-of-way permit for a wireless telecommunications facility, receipt of an Environmental Assessment (EA) evaluating the potential impact of mounted antennas and supporting infrastructure proposed within the right-of-way at Cape Hatteras National Seashore, and the request for public comment.

SUMMARY: Public Notice is hereby given that the National Park Service (NPS) has received an Application from Triton PCS Corporation for a right-of-way permit to construct, operate, and maintain a wireless telecommunications site within the Cape Hatteras National Seashore.

The proposed facility consists of an antenna array incorporated into an existing elevated water tank, which is the subject of a prior right-of-way granted to the Town of Nags Head, NC, in 1986. The proposed facility includes the placement of three separate 9 feet by 10 feet directional antennas on top of an existing water tank which has a height of 149.0 feet and which is situated on Cape Hatteras National Seashore property. Additionally, there is proposed the construction of a 10 feet by 20 feet elevated service module to house associated equipment and access to the site as part of the requested right-of-way.

The NPS is making the Application and EA available for public review. A preliminary review by park staff of the documents submitted to date indicates that the proposed facility will not have a significant impact on the quality of the human environment within the meaning of Section 102(2c) of the National Environmental Policy Act of 1969. The NPS will take no final action on this proposed wireless telecommunications facility until the comments from the public have been considered.

DATES: There will be a thirty (30) day public review period for comment on the Application and the EA. Written comments must be received on or before July 2, 2001.

ADDRESSES: Interested parties may review the Application and EA at Headquarters Building, Outer Banks Group, National Park Service, 1401 National Park Drive, Manteo, North Carolina 27954. Comments concerning the Application or EA should be directed to Superintendent Francis A. Peltier, Outer Banks Group, National Park Service, 1401 National Park Drive, Manteo, North Carolina 27954. Phone (252) 473–2111 ext. 132. Copies of the Application and EA can be obtained by writing the Superintendent at 1401 National Park Drive, Manteo, NC, 27954, or calling 252–473–2111 ext. 132.

Francis A. Peltier,

Superintendent, Outer Banks Group.

[FR Doc. 01–11130 Filed 5–2–01; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–01–017]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: May 10, 2001 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. No. TA–201–67 (Wheat Gluten) (Consistency Determination)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the United States Trade Representative on May 17, 2001.)
5. Inv. No. 731–TA–925 (Preliminary) (Greenhouse Tomatoes from Canada)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on May 14, 2001; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on May 21, 2001.)
6. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: April 30, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–11230 Filed 5–1–01; 10:59 am]

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DEPARTMENT OF JUSTICE

Notice of Lodging of Partial Consent Decree in Comprehensive Environmental Response, Compensation and Liability Act Cost Recovery Action

In accordance with the Departmental Policy, 28 CFR 50.7, notice is hereby given that a Partial Consent Decree in *United States* v. *American Scrap Company*, Civil Action No. 1:99–CV–2047, was lodged with the United States District Court for the Middle District of Pennsylvania on April 20, 2001. This Partial Consent Decree resolves the United States' claims against Hornell Waste Material Co., Inc., Midlane Salvage Co., Inc., Russell I. Young and Barbara Garry ("Settling Defendants") under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607(a), for response costs incurred at the Jack's Creek/Sitkin Smelting Superfund Site in Mifflin County, Pennsylvania. The Partial Consent Decree requires the Settling Defendants to pay a total of $45,000 in past resposne costs.

The Department of Justice will accept written comments on the proposed Partial Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Acting Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044 and refer to *United States* v. *American Scrap Company*, DOJ # 90–11–2–911/1.

Copies of the proposed Partial Consent Decree may be examined at the Office of the United States Attorney, Middle District of Pennsylvania, 228 Walnut Street, Harrisburg, PA 17108, and at EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029. A copy of the proposed Partial Consent Decree may be obtained by mail from the U.S. Department of Justice, Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611. When requesting a copy of the proposed Partial Consent Decree, please enclose a check to cover the twenty-five cents per page reproduction costs payable to the "Consent Decree Library" in the amount of $8.50, and reference *United States* v. *American Scrap Company*, DOJ # 90–11–2–911/1.

Robert Brook,

Assistant Chief, Environmenal Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 01–11124 Filed 5–2–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Pursuant to the Clean Water Act

Notice is hereby given that, on April 16, 2001, a proposed Settlement Agreement in *United States* v. *Arco Pipe Line Company*, No. 99 2161 GTV (D. Kan.) (DJ #90–5–1–06347), was lodged with the United States District Court for the District of Kansas.

The proposed Settlement Agreement would resolve the United States' claims against Arco Pipe Line Company, under Section 311 of the Clean Water Act ("CWA"), 33 U.S.C. 1321, for Arco's January 21, 1994, discharge of 3869 barrels of oil into navigable waters of the United States.

Under the proposed settlement, Arco will pay the United States $804,700 in civil penalties for the oil spill. In addition, Arco will spend $145,300 on a Supplemental Environmental Project ("SEP") consisting of remodeling/reconstructing the concrete drinking water intake for the City of Osawatomie, KS. The settlement also resolves Arco's claims against the United States for costs, expenses and damages incurred as a result of the oil discharge.

The U.S. Department of Justice will receive, for a period of thirty (30) days from the date of publication of this notice, comments relating to the proposed Settlement Agreement. Any comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should reference the following case name and number: *United States* v. *Arco Pipe Line Company*, DJ #90–5–1–06347.

The proposed Settlement Agreement may be examined at the offices of EPA Region VII, located at 901 North 5th Street, Kansas City, Kansas 66101, c/o Denise Roberts, (913) 551–7559, or at the U.S. Attorney's Office, 500 State Avenue, Suite 360, Kansas City, Kansas 66101, c/o Robert Olsen, (913) 551–6730. A copy of the proposed Settlement Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, c/o Peggy Fenlon-Gore, (202) 514–5245. In requesting a copy, please enclose a check in the amount of $13.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Robert Maher,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–11121 Filed 5–2–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a proposed consent decree in *United States* v. *Drum Service Company of Florida, et al.*, Civil No. 98–697–Civ–Orl–28C, was lodged on April 13, 2001, with the United States District Court for the Middle District of Florida ("NAPA Decree"). The proposed consent Decree would resolve certain claims under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9607, as amended, as well as certain claims under Florida law, brought against NAPA Properties, a Florida general partnership, and its individual partners and distributees (collectively "Settling Defendants"), to recover response costs incurred by the Environmental Protection Agency in connection with the release of hazardous substances at the Zellwood Groundwater Contamination Superfund Site ("Site") in Zellwood, Orange County, Florida. The United States alleges that NAPA Properties is laible as a person who owns a portion of the Site and as the successor of a person who owned a portion of the Site at the time of the release of a hazardous substance. The United States also alleges that the individual partners of NAPA are liable under Florida law for the obligations of the partnership. Under the proposed Consent Decree, the Settling Defendants will pay $502,813 as well as a portion of the proceeds of certain real property sold by the partnership, to the Hazardous Substances Superfund to reimburse the United States for response costs incurred and to be incurred at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, PO Box 7611, Washington, DC 20530, and should refer to *United States* v. *Drum Service Company of Florida, et al.*, M.D. FL, Civil No. 98–687–Civ–Orl–28C, DOJ Ref. #90–11–2–266.

The Consent Decree may be examined at the Region 4 Office of the Environmental Protection Agency, 61 Forsyth Street, Atlanta, GA 30303 and the United States Attorney's Office for the Middle District of Florida, Federal building & U.S. Courthouse, 80 N. Hughey Avenue, Orlando, Florida 32801 c/o Assistant U.S. Attorney Roberto Rodriguez. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, Post Office Box 7611, Washington, DC 20044. In requesting copies please refer to the referenced case and enclose a check in the amount of $12.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Ellen Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–11122 Filed 5–2–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with 28 CFR 50.7 and Section 122 of the Comprehensive Environmental Response, Compsenation and Liability Act ("CERCLA"), 42 U.S.C. 9622, notice is hereby given that on April 23, 2001, a proposed consent decree in *United States* v. *General Motors Corp.*, Civil Action NO. 01–CV–0589, was lodged with the United States District Court for the Northern District of New York.

In this action the United States sought costs for response activities in connection with the aluminum diecasting facility owned by General Motors Corp. in Massena, New York. The Complaint alleges that the defendant is liable under Section 107(a), 42 U.S.C. 9607(a), of CERCLA. Pursuant to the decree, defendant will pay to the United States past unreimbursed response costs in an amount totaling at least $1,245,832.73, plus interest.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Alcoa, Inc.*, D.J. Ref. 90–11–3–558A.

The proposed consent decree may be examined at the Office of the United States Attorney, Northern District of New York, James T. Foley Federal Building, 445 Broadway, Albany, New York, 12207 and at U.S. EPA, (Region II) 290 Broadway, 17th Floor New York, New York 10007–1866. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $6.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Ronald Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–11125 Filed 5–2–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act, the Clean Air Act, and the Clean Water Act

In accordance with 28 CFR 50.7, notice is hereby given that on April 18, 2001, a Consent Decree in *United States* v. *Massachusetts Institute of Technology*, Civil Action No. 01–cv10646–JLT, was lodged with the United States District Court for the District of Massachusetts. A complaint in the action was also filed simultaneously with the lodging of the Consent Decree. In the complaint the United States alleges that the defendant Massachusetts Institute of Technology ("MIT") (a) violated federal hazardous waste emergency, storage, handling, and labeling regulations promulgated under the Resource Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.* ("RCRA"), (b) failed to comply with requirements relating to monitoring and reporting in violation of the Clean Air Act, 42 U.S.C. 7401 *et seq.*, and (c) failed to meet regulatory requirements relating to oil spill prevention plans in violation of section 311 of the Clean Water Act, 33 U.S.C. 1321.

Under the proposed decree, MIT will pay a civil penalty of $155,000, undertake three Supplemental Environmental Projects, and comply with a variety of injunctive measures to achieve full compliance with RCRA, the CAA, and the CWA.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044, and should refer to *United States* v. *Massachusetts Institute of Technology*, D.J. Ref. 90–7–1–06942.

The proposed consent decree may be examined at the office of the United States Attorney, Suite 9200, 1 Courthouse Way, Boston, Massachusetts 02110, and at the Region I office of the Environmental Protection Agency, One Congress Street, Suite 1100, Boston, Massachusetts 02114. A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, PO Box 7611, Washington, DC 20044. In requesting a copy, please enclose a check (there is a 25 cent per page reproduction cost) in the amount of $20.25 payable to the "Consent Decree Library."

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 01–11123 Filed 5–2–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The ATM Forum

Notice is hereby given that, on March 29, 2001, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The ATM Forum has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Verilink, Madison, AL; ShareGate, Inc., Reno, NV; Mahi Networks, Petaluma, CA; Pivotech Systems, Inc., Piscataway, NJ; Partner Voxtream, Vojens, Denmark; and SII Network Systems, Inc., Chiba-shi, Chiba, Japan have been added as parties to this venture. The following principal members have downgraded to auditing members: Thales Communications,

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Colombes Cedex, France; Fujitsu, Raleigh, NC; Zdruzenie ATM v SR, Bratislava, Slovakia; Paradyne, Largo, FL; and CNT Corporation, Plymouth, MN. The following members changed their names: CSELT S.p.A. to Telcom Italia Lab S.p.A., Torino, Italy; and Thomson-CSF to Thales Communications, Colombes Cedex, France. The following members have been involved in acquisitions: Spyrant, Calabasas, CA acquired Hekimian Laboratories, Rockville, MD; Qwest Communications, Arlington, VA acquired US West, Boulder, CO; Avtec Systems, Inc., Fairfax, FA acquired Symbiont, Fairfax, VA; Dynegy Connect, LP, Aurora, CO acquired Extant, Aurora, CO; Natural MicroSystems, Inc., St-Hubert, Quebec, Canada acquired InnoMediaLogic, Inc., Framingham, MA; and Altera Corporation, High Wycombe, Buckinghamshire, United Kingdom acquired DesignPRO, Inc., Nepean, Ontario, Canada. Also, Elsa Communications, Helsinki, Finland; Ciena Corporation, Marlboro, MA; K-Net, Ltd., Odiham, Hampshire, United Kingdom; Societe Europeene Des Satellites S.A., Betzdorf, Luxembourg; Telecom New Zealand, Wellington, New Zealand; Roke Manor Research, Romsey Hampshire, United Kingdom; University of Tech Helsinki, Espoo, Finland; University of Wuerzburg, Wuerzburg Germany; Central Research Institute of Electric Power, Tokyo, Japan; and Intercai Telematics Consultants, Utrecht, The Netherlands have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and The ATM Forum intends to file additional written notification disclosing all changes in membership.

On April 19, 1993, The ATM Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 2, 1993 (58 FR 31415).

The last notification was filed with the Department on December 29, 2000. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 27, 2001 (66 FR 12565).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 01–11127 Filed 5–2–01; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1933—PKI Forum, Inc.

Notice is hereby given that, on April 2, 2001, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), PKI Forum, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. pursuant to Section 6(b) of the Act, the identities of the parties are Andes Networks, Inc., Mountain View, CA; Baltimore, Dublin, Ireland; CertCo, New York, NY; Chrysalis-ITS, Ottawa, Ontario, Canada; Cisco Systems, San Jose, CA; Communications Electronics Security Group (CESG), Cheltenham, Glos, United Kingdom; Compaq Computer Corporation, Houston, TX; Computer Associates, Herndon, VA; Conclusive Logic, Maidenhead, Berks, United Kingdom; Cryptomathic, Aarhus C, Denmark; Cylink, Corporation, Santa Clara, CA; DataKey, Inc., Minneapolis, MN; De La Rue InterClear Limited, Gasingstoke, United Kingdom; Digital Signature Trust Co., Salt Lake City, UT; Diversinet Corp., Toronto, Ontario, Canada; Entrust Technologies, Ottawa, Ontario, Canada; Fujitsu Limited, Tokyo, Japan; FundSERV Inc., Toronto, Ontario, Canada; GlobalSign SA/NV, Brussels, Belgium; LockStar, Inc., Lyndhurst, NJ; Neucom Corporation, Shibuya-ku, Tokyo, Japan; Odyssey Technologies Ltd, Chennai, India; RSA Security, Inc., Bedford, MA; SECUDE GmbH, Darmstadt, Germany; SHYM Technology, Inc., Needham, MA; SSE Ltd, Dublin, Ireland; SSH Communications Security Corp., Helsinki, Finland; Sybase Inc., Emeryville, CA; TeleTrusT e.V., Erfurt, Germany; VeriSign, Inc., Mountain View, CA; Visa International, Foster City, CA; and Wells Fargo, San Francisco, CA.

The venture was formed as a Delaware non-stock member corporation. The nature and objectives of the venture are (a) to provide a forum for the demonstration of support for standards-based, interoperable public key infrastructure as a foundation for e-business and e-business applications; (b) to foster interoperability by interacting with appropriate standards and testing bodies; (c) to initiate studies and demonstration projects to show the value of interoperable PKI Forum, Inc. and PKI Forum, Inc. based solutions; and (d) to undertake such other activities as may from time to time be appropriate to further the purposes and achieve the goals set forth above.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc 01–11128 Filed 5–2–01; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1933—Wireless Application Protocol Forum, Ltd.

Notice is hereby given that, on January 8, 2001, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1933, 15 U.S.C. 4301 *et seq.* ("the Act"), Wireless Application Protocol Forum, Ltd. ("WAP") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Air-Go Technologies Corp., San Francisco, CA; APAS Inc., Tokyo, Japan; Apollis AG, Munchen, Germany; Arcot Systems, Inc., Santa Clara, CA; Banksys, Brussels, Belgium; Blue Martini Software, San Mateo, CA; Cherrypicks, Hong Kong, Hong Kong-China; Civista Ltd., Tolworth, England, United Kingdom; ClientSoft Inc., Hawthorne, NY; Columbitech AB, Stockholm, Sweden; Digital Boardwalk, Inc., Santa Monica, CA; EncrypTix, Inc., El Segundo, CA;' Equifax, Atlanta, GA; India's Wireless internet Initiative (IWIN), Bangalore, India; Intergraph Corporation, Inc., Huntsville, AL; Inventec Electronics (Shanghai) Co., Ltd., Shanghai, People's Republic of China; KPMG Consulting LLC, McLean, VA; Leap Corporation, Atlanta, GA; Lightbridge, Inc., Burlington, MA; Logical Design Solutions, Inc., Morristown, NJ; mCentric Ltd., London, England, United Kingdom; Mgage Systems AB, Stockholm, Sweden; MobileRAIN Technologies, Inc., Union City, CA; MobileWebSurf.com, Milpitas, CA; Mspect, Inc., Sunnyvale, CA; Netfish Technologies, Inc., Santa Clara, CA; Netonomy, Paris, France; NextCom K.K., Tokyo, Japan; Nextron, Inc., San Jose, CA; Orsus Solutions Ltd., Or Yehuda, Israel; pacific21 Ltd., London, England, United Kingdom; Partner Communications Co. Ltd., Rosh Ha'ayin, Israel; Pivotal Corporation, North Vancouver, British Columbia, Canada; Plexus Technologies, San Jose, CA; Probaris Technologies, Inc., Philadelphia, PA; Purple Technologies Ltd., London, England, United Kingdom; Radio Frequency Investigation Ltd., Hants, England, United Kingdom; Ripcord Systems Inc., London, England, United Kingdom; SANYO Electric Co., Ltd., Osaka, Japan; SecureSoft Inc., Seoul, Republic of Korea; Shenzhen New World Xianglong, Shen Zhen, Guangdong Province, People's Republic of China; Sinotone Datacom Ltd., Hong Kong, Hong Kong-China; SkyGo.com, Redwood City, CA; Smart421, Herts, England, United Kingdom; Soprano Design Pty Ltd, North Sydney, New South Wales, Australia; SPEEDWARE Corporation, St. Laurent, Quebec, Canada; Synapta, Palo Alto, CA; Synovial Inc., Fremont, CA; Telephia, Inc., San Francisco, CA; The PhonePages of Sweden AB, Kista, Sweden; UltiVerse Technologies, Inc., Waltham, MA; Vettro Corporation, New York, NY; Wiral Ltd., Espoo, Findland; Wmode, Inc., Calgary, Alberta, Canada; WorldCom, Clinton, MS; YacCom, Rennes, France; ZoomON AB, Stockholm, Sweden; and Zurcher Kantonalbank, Zurich, Switzerland have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open,and WAP intends to file additional written notifications disclosing all changes in membership.

On March 18, 1998, WAP filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 31, 1998 (63 FR 72333).

The last notification was filed with the Department on October 3, 2000. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 29, 2000 (65 FR 83096).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 01–11126 Filed 5–2–01; 8:45 am]

BILLING CODE 4481–11–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the CJIS Advisory Policy Board

AGENCY: Federal Bureau of Investigation (FBI), Justice.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce the meeting of the Criminal Justice Information Services (CJIS) Advisory Policy Board. The CJIS Advisory Policy Board is responsible for reviewing policy issues, uniform crime reports, and appropriate technical and operational issues related to the programs administered by the FBI's CJIS Division and thereafter, make appropriate recommendations to the FBI Director. The topics to be discussed will include Proposed CJIS Wide Area Network (WAN) Migration to the Justice Consolidation Network, the Revised National Crime Information Center (NCIC) Sanctions Process, and Secondary Dissemination of NCIC Wanted Person File Data. Discussion will also include the status on the National Crime Prevention and Privacy Compact, Update on DOJ Global and Information Sharing, and other issues related to the Integrated Automated Fingerprint Identification System, NCIC, Law Enforcement Online, National Instant Criminal Background Check System and Uniform Crime Reporting Programs.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement concerning the FBI's CJIS Division programs or wishing to address this session should notify the Designated Federal Employee, Mr. Roy Weise, Programs Development Section (304) 625–2730, at least 24 hours prior to the start of the session.

The notification should contain the requestor's name, corporate designation, and consumer affiliation or government designation along with a short statement describing the topic to be addressed and the time needed for the presentation. A requestor will ordinarily be allowed not more than 15 minutes to present a topic.

DATES AND TIME: The Advisory Policy Board will meet in open session from 9 a.m. until 5 p.m. on June 5–6, 2001.

ADDRESSES: The meeting will take place at the Opryland Hotel, 2802 Opryland Drive, Nashville, Tennessee, telephone (615) 889–1000.

FOR FURTHER INFORMATION CONTACT: Inquires may be addressed to Ms. Lori A. Kemp, Management Analyst, Advisory Groups Management Unit, Programs Development Section, FBI CJIS Division, Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0149, telephone (304) 625–2619, facsimile (304) 625–5090.

Dated: April 25, 2001.

Roy G. Weise,

Designated Federal Employee, Programs Development Section, Criminal Justice Information Service Division, Federal Bureau of Investigation.

[FR Doc. 01–11129 Filed 5–2–01; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

Time and Date: 9 a.m. To 4:30 p.m. on Monday, June 4, 2001 & 8:30 a.m. To 12 noon on Tuesday, June 5, 2001.

Place: Raintree Plaza Hotel & Conference Center, 1900 Ken Pratt Boulevard, Longmont, Colorado 80501.

Status: Open.

Matters to be Considered: Update on Interstate Compact Activities; Presentations on Corrections Population Decline, Office of Victims of Crime Funding Allocations, and Publication on Impact of Job Stress on Corrections Officers; and Proposed Initiative to Collect Information on Federal Grants Available to Corrections Entities.

FOR FURTHER INFORMATION CONTACT: Larry Solomon, Deputy Director, 202–307–3106, ext. 155.

Morris L. Thigpen,

Director.

[FR Doc. 01–11089 Filed 5–2–01; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of April, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility

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requirements of Section 222 of the Act must be met.

(1) That a significant number or protection of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–38,958; Moeller Rubber Products Co., Inc., Greenville, MS
TA–W–38,648; Sterling Last, LLC, Henderson, TN
TA–W–38,740; Eaton Corp., Torque Control Products Div., Marshall, MI
TA–W–38,703; Olsonite Corp., Algoma, WI
TA–W–38,748; Thompson River Lumber Co., Thompson Falls, MT
TA–W–38,675; Earl Soesbe Co., Inc., Rensselaer, IN

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–38,839; ASARCO, Inc., East Helena Plant, East Helena, MT
TA–W–38,724; Lear Corp., Formerly Known as United Technologies, Inc., Linden Avenue Plant, Zanesville, OH
TA–W–38,861; Brach Confections, Inc., Chicago, IL
TA–W–38,048; Invensys Powerware Corp., a/k/a Best Power, Necedah, WI
TA–W–38,510; VF Imagewear East (Formerly VF Knitwear), Nutmeg Mills and The 39th Street Facility, Tampa, FL
TA–W–38,883; Graphic Packaging Corp., Portland, OR

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–39,047; Rayovac Corp., Wonewoc, WI: March 28, 2000.
TA–W–38,943; Stant Manufacturing, Inc., Connersville, IN: March 9, 2000.
TA–W–38,835; Allegheny Color Corp., Ridgway, PA: February 15, 2000.
TA–W–38,603; The Daniel Green Co., Dolgeville, NY: August 12, 2000.
TA–W–38,926; Procon Products, Murfreesboro, TN: March 1, 2000.
TA–W–38,729; CAE Newnes, Inc., Sherwood, OR: February 8, 2000.
TA–W–38,756; Motor Products, Owosso, MI: February 12, 2000.
TA–W–38,683; Didde Web Press, Emporia, KS: January 22, 2000.
TA–W–38,942; ISP Minerals, Kremlin Plant, Pembine, WI: March 14, 2000.
TA–W–38,725; Ametek/Dixson, Grand Junction, CO: February 9, 2000.
TA–W–38,523; Morris Material Handling, Inc., Oak Creek, WI: December 20, 1999.
TA–W–38,471; Dura Automotive Systems Inc., East Jordan Brake Operations, East Jordan, MI: December 6, 1999.
TA–W–38,713; Agrifrozen Foods, Woodburn, OR: February 9, 2000.
TA–W–38,508; VF Imagewear East (Formerly VF Knitwear), North Wilkesboro, NC: December 18, 1999.
TA–W–38,495 & A; VF Imagewear East (Formerly VF Knitwear), Martinsville, VA and Bassett, VA: December 13, 1999.
TA–W–38,731; Great Lakes Paper Co., Clifton, NJ: February 8, 2000.
TA–W–38,661; Converse, Inc., Mission, TX: February 2, 2000.
TA–W–38,583; Vision Legwear, LLC, Plant 1 and Plant 2, Spruce Pine, NC: January 29, 2000.
TA–W–38,782; Republic Technologies International, Canton, OH: February 11, 2000.
TA–W–39,005; Rayovac Corp., Fennimore, WI: February 21, 2000.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D. Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of April, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agriculture firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–04587; Thompson River Lumber Co., Thompson Falls, MT
NAFTA–TAA–04632; Rosboro Lumber Co., Mill A, Springfield, OR
NAFTA–TAA–04372; Bermo, Inc., Sauk Rapids, MN
NAFTA–TAA–04596; O and M Manufacturing, Inc., Cheboygan, MI
NAFTA–TAA–04625; Brach Confections, Inc., Chicago, IL
NAFTA–TAA–04716; Motor Products, Owosso, MI
NAFTA–TAA–04503; Earl Soesbe Co., Inc., Rensselaer, IN
NAFTA–TAA–04532; Olsonite Corp., Algoma, WI
NAFTA–TAA–04641; Graphic Packaging Corp., Portland, OR
NAFTA–TAA–04595; Eaton Corp., Torque Control Products Div., Marshall, MI
NAFTA–TAA–04713; Gateway, Inc., North Sioux City, SD
NAFTA–TAA–04660; Rayovac Corp., Fennimore, WI
NAFTA–TAA–04547; ASARCO, Inc., East Helena Plant, East Helena, MT
NAFTA–TAA–04385; Dura Automotive Systems, Inc., East Jordan Brake Operations, East Jordan, MI
NAFTA–TAA–04553; Lear Corp., Formerly Known as United Technologies Automotive, Inc., Linden Avenue Plant, Zanesville, OH

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criteria (1) and (2) have not been met. A significant number or proportion of the workers did not become totally or partially separated from employment as required for certification. Sales or production did not decline during the relevant period as required for certification.

NAFTA–TAA–04422; VF Imagewear East (Formerly VF Knitwear), Nutmeg Mills and The 39th Street Facility, Tampa, FL

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

NAFTA–TAA–04671; Weyerhaeuser Co., Western Lumber/Wood Products, Green Mt. Longview Lumber, Longview, WA

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–04407; Morris Material Handling, Inc., Oak Creek, WI: December 18, 1999.
NAFTA–TAA–04412; VF Imagewear East (Formerly VF Knitwear), North Wilkesboro, NC: December 18, 1999.
NAFTA–TAA–04543; Agrifrozen Foods, Woodburn, OR: February 9, 2000.
NAFTA–TAA–04405 & A; VF Imagewear East (Formerly VF Knitwear), Martinsville, VA and Basset, VA: December 13, 1999.
NAFTA–TAA–04673; Maxi Switch, Inc., Tucson, AZ: March 26, 2000.
NAFTA–TAA–04465; Vision Legwear, LLC, Plant 1 and Plant 2, Spruce Pine, NC: January 17, 2000.
NAFTA–TAA–04404 & A; Hedstrom Lumber Co., Inc., Two Harbors Div., Two Harbors, MN and Grand Marais Div., Grond Marais, MN: December 26, 1999.
NAFTA–TAA–04654; Burns Philip Food, Inc., Fleischmann's Yeast, Oakland, CA: March 9, 2000.
NAFTA–TAA–04538; Chinatex America, Inc., New York, NY: January 26, 2000.
NAFTA–TAA–04500; Merit Abrasive Products, Compton, CA: January 30, 2000.
NAFTA–TAA–04536; Thrall Car, Thrall North American Rail Car, Chicago Heights, IL: January 15, 2000.

I hereby certify that the aforementioned determinations were issued during the month of April, 2001. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: April 23, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–11101 Filed 5–2–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,243]

COLOR-TEX International, North Carolina Finishing Division, Salisbury, NC; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of February 4, 2001, a petition requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance applicable to workers of the subject firm. The negative determination was signed on January 12, 2001, and published in the **Federal Register** on February 8, 2001 (66 FR 9599).

The Department's review of the application shows that the information provided supports additional survey of the subject firm customers.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 16th day of April 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–11106 Filed 5–2–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,848]

Genicom Corporation Currently Known as IER, Inc., Temple, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 18, 2000, applicable to workers of Genicom Corporation, Temple, Texas. The notice was published in the **Federal Register** on September 12, 2000 (65 FR 55050).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that the Department inadvertently failed to identify the subject firm title name in its entirety. The Department is amending the certification determination to correctly identify the subject firm title name to read "Genicom Corporation, currently known as IER, Inc.".

The amended notice applicable to TA–W–37,848 is hereby issued as follows:

All workers of Genicom Corporation, currently known as IER, Inc., Temple, Texas who became totally or partially separated from employment on or after June 16, 1999 through August 18, 2002 are eligile to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 18th day of April, 1999.

Linda G. Poole,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 01–11104 Filed 5–2–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,031]

IER, Inc. Temple, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 16, 2001 in response to a worker petition which was filed on behalf of workers at IER, Inc., Temple, Texas.

An active certification covering the petitioning group of workers is already

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in effect (TA–W–37,848, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 18th day of April, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–11100 Filed 5–2–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,622]

Mauston Tank, Inc., Mauston, WI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 5, 2001, in response to a petition filed by a company official on the same date on behalf of workers at Mauston Tank, Inc., Mauston, Wisconsin.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 20th day of April, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–11099 Filed 5–2–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,476]

Raider Apparel Inc., Alma, GA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 27, 2000 in response to a petition filed on behalf of workers at Raider Apparel Inc., Alma, Georgia.

An active certification covering the petitioning group of workers remains in effect (TA–W–36,121). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 23rd day of April, 2001.

Linda G. Poole,

Certifying Officer, Division Trade Adjustment Assistance.

[FR Doc. 01–11098 Filed 5–2–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,486]

TYCO Electronics, The Thomas and Betts Corporation, Irvine, CA; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 6, 2001, applicable to workers of Tyco Electronics, Irvine, California. The notice was published in the **Federal Register** on March 2, 2001 (66 FR 13086).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of electronic connectors and cable assemblies. Information received from the State shows that Tyco Electronics purchased The Thomas and Betts Corporation in July, 2000. Information also shows that some workers separated from employment at Tyco Electronics had their wages reported under a separate unemployment insurance (UI) tax account for The Thomas and Betts Corporation.

Accordingly, the Department is amending the certification to reflect this matter.

The intent of the Department's certification is to include all workers of Tyco Electronics, Irvine, California who were adversely affected by increased imports.

The amended notice applicable to TA–W–38,486 is hereby issued as follows:

"All workers of Tyco Electronics, The Thomas and Betts Corporation, Irvine, California who became totally or partially separated from employment on or after December 11, 1999 through February 6, 2003 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 16th day of April, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–11103 Filed 5–2–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,430]

Unilever-Bestfoods, Lipton, Conopco, Inc., Dallas, TX; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the U.S. Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 5, 2001, applicable to workers of Unilever-Bestfoods, Lipton, Dallas, Texas. The notice was published in the **Federal Register** on March 2, 2001 (66 FR 13086).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of 50 pound bulk margarine cubes. New information shows that some workers separated from employment at Unilever-Bestfoods, Lipton had their wages reported under a separate unemployment insurance (UI) tax account for Conopco, Inc., a company established by the subject firm to handle worker compensation nationwise.

The intent of the Department's certification is to include all workers of Unilever-Bestfoods, Lipton, who were adversely affected by increased imports of margarine.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–38,430 is hereby issued as follows:

All workers of Unilever-Bestfoods, Lipton, Conopco, Inc., Dallas, Texas, who became totally or partially separated from employment on or after December 5, 1999, through February 5, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 23rd day of April, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–11105 Filed 5–2–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

ETA 207, Nonmonetary Determination Activities Report

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension collection of the ETA 207, Nonmonetary Determinations Report,

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before July 2, 2001.

ADDRESSES: Diann Lowery, U.S. Department of Labor, Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue NW, Frances Perkins Bldg. Room S–4516, Washington, DC 20210. Telephone number 202–693–33210 (this is not a toll-free number). FAX number 202–693–3229.

SUPPLEMENTARY INFORMATION:

I. Background

The ETA 207 Report, Nonmonetary Determinations, contains State data on the number and types of issues that arise and data on the denials of benefits that may result due to reasons associated with a claimant's reason for separation from work such as voluntary leaving, or questions of continuing eligibility such as refusal of suitable work. These data are used by the Office of Workforce Security (OWS) to determine workload counts, to enable the OWS to evaluate the adequacy and effectiveness of nonmonetary determination procedures, and to evaluate the impact of State and Federal legislation with respect to disqualifications.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and * minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The continued collection of the information contained on the ETA 207 report is necessary to enable the national office to continue evaluating State performance in the nonmonetary determination area and to continue using the data as a key input to the administrative funding process.

Type of Review: Extension without change.

Agency: Employment and Training Administration (ETA).

Title: Nonmonetary Determinations Report.

OMB Number: 1205–0150.

Agency Number: ETA 207.

Affected Public: State and Local Governments.

Total Respondents: 53.

Frequency: Quarterly.

Total Responses: 212.

Average Time per Response: 4.22 hours.

Estimated Total Burden Hours: 896 hours.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): 0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 20, 2001.

Grace A. Kilbane,

Administrator, Office of Workforce Security.

[FR Doc. 01–11097 Filed 5–2–01; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act of 1998 (WIA); Notice of Incentive Funding Availability

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice of incentive funding availability for the Workforce Investment Act of 1998.

SUMMARY: The Department of Labor, in collaboration with the Department of Education, announces that six States, (Florida, Indiana, Kentucky, Texas, Utah and Vermont), are eligible to apply for WIA incentive awards under the WIA Regulations.

DATE: The six eligible States must submit their applications for incentive funding to the Department of Labor by June 18, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. William Rabung (e-mail: wrabung@doleta.gov), Office of Workforce Security, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room S–4231, Washington, DC 20210, telephone: (202) 693–3190 (voice) (This is not a toll-free number) or 1–800–326–2577 (TDD). Information may also be found at the website: http://usworkforce.org.

SUPPLEMENTARY INFORMATION: Six States that took the lead on implementing provisions of the Workforce Investment Act, (WIA), one year ahead of the full implementation date, have qualified for a share of the $10.08 million available for incentive grant awards. These funds, authorized by 20 CFR 666.220, are available for a three year period to support innovative workforce system building activities which are eligible under title I or title II of WIA, or under the Perkins Act (Perkins III).

In order to qualify for a grant award, a State must have exceeded performance levels, agreed to by the Secretaries, Governor, and State Education Officer, for outcomes in State operated employment and adult education programs. The goals included placement after training, retention in employment, and improvement in literacy levels, among other measures.

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The States eligibie to apply for incentive grant awards, and the amount they are eligible to receive are Florida, $2,645,125; Indiana, $1,308,726; Kentucky, $1,400,631; Texas, $3,000,000; Utah, $882,167; and Vermont $843,351. The six eligible States must submit their applications for incentive funding to the Department of Labor by June 18, 2001. As set forth in the provisions of WIA section 503(b)(2), and 20 CFR 666.220(b), the application must include assurances that:

A. The legislature of the State was consulted with respect to the development of the application.

B. The application was approved by the Governor, the eligible agency for adult education (as defined in section 203 of WIA), and the State agency responsible for vocational and technical education programs.

C. The State and the eligible State agency, as appropriate, exceeded the State adjusted levels of performance for WIA title I, and the expected levels of performance for WIA title II.

In addition, States are requested to provide a description of the planned use of incentive grants as part of the application process, to ensure that the State's planned activities are innovative and are authorized under the WIA Title I, the Adult Education and Family Literacy Act, and/or the Perkins Act as amended, as required by WIA Section 503(a).

These applications may take the form of a letter from the Governor, or designee, to the Deputy Assistant Secretary of Labor, Raymond J. Uhalde, Attention: William Rabung, 200 Constitution Avenue, Room S–4231, Washington, DC 20210. The States will receive their incentive grant awards this summer.

Signed at Washington, D.C., on April 27, 2001.

Raymond J. Uhalde,

Deputy Assistant Secretary of Labor, Employment and Training Administration.

[FR Doc. 01–11096 Filed 5–2–01; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–4618]

Eagle Knits of Stanfield Inc., Norwood, NC; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on March 8, 2001, in response to a petition filed on behalf of workers at Eagle Knits of Stanfield, Inc., Norwood, North Carolina.

The petitioner requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 24th day of April, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–11107 Filed 5–2–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–04392]

Unilever-Bestfoods, Lipton, Conopco, Inc., Dallas, Texas; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on February 5, 2001, applicable to workers of Unilever-Bestfoods, Lipton, Dallas, Texas. The notice was published in the **Federal Register** on March 2, 2001 (66 FR 13087).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of 50 pound bulk margarine cubes. New information shows that some workers separated from employment at Unilever-Bestfoods, Lipton had their wages reported under a separate unemployment insurance (UI) tax account for Conopco, Inc., a company established by the subject firm to handle worker compensation nationwide.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Unilever-Bestfoods, Lipton, who were adversely affected by a shift of production of margarine to Canada.

The amended notice applicable to NAFTA–04392 is hereby issued as follows:

All workers of Unilever-Bestfoods, Lipton, Conopco, Inc., Dallas, Texas, who became totally or partially separated from employment on or after December 5, 1999, through February 5, 2003, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 23rd day of April, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–11102 Filed 5–2–01; 8:45 am]

BILLING CODE 4510–30–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy; Determination of Executive Compensation Benchmark Amount Pursuant to Section 808 of Public Law 105–85

AGENCY: Office of Federal Procurement Policy, OMB.

ACTION: Notice.

SUMMARY: The Office of Management and Budget (OMB) is hereby publishing the attached memorandum to heads of agencies concerning the determination of the maximum "benchmark" compensation that will be allowable under government contracts during contractors' FY 2001—$374,228. This determination is required to be made pursuant to section 808 of Pub. L. 105–85. It applies equally to both defense and civilian procurement agencies.

FOR FURTHER INFORMATION CONTACT: Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board, OFPP on (202) 395–3254.

Sean O'Keefe,

Deputy Director.

To The Heads of Executive Departments and Agencies

Subject: Determination of Executive Compensation Benchmark Amount Pursuant to Section 808 of Pub. L. 105–85

This memorandum sets forth the "benchmark compensation amount" as required by section 39 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 435), as amended. Under section 39, the "benchmark compensation amount" is "the median amount of the compensation provided for all senior executives of all benchmark corporations for the most recent year for which data is available." The "benchmark compensation amount" established as directed by section 39 limits the allowability of compensation costs under government contracts. The "benchmark compensation amount" does not limit the compensation that an executive may otherwise receive.

Based on a review of commercially available surveys of executive compensation and after consultation with the Director of the Defense Contract Audit Agency, I have determined pursuant to the requirements of section 39 that the benchmark compensation amount for contractor fiscal year 2001 is $374,228. This benchmark compensation amount is to be used for contractor fiscal year 2001, and subsequent contractor fiscal years, unless and until revised by OMB. This benchmark compensation amount applies to contract costs incurred after January 1, 2001, under covered contracts of both the defense and civilian procurement agencies as specified in section 808 of Pub. L. 105–85.

Questions concerning this memorandum may be addressed to Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board, OFPP, on (202) 395–3254.

Sean O'Keefe,

Deputy Director.

[FR Doc. 01–11060 Filed 5–2–01; 8:45 am]

BILLING CODE 3110–01–U

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

April 30, 2001.

TIME AND DATE: 11:15 a.m., Monday, April 30, 2001.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider whether to postpone the May 2, 2001, Commission meeting regarding Eagle Energy, Inc., Docket No. WEVA 98–123.

No earlier announcement of the meeting was possible.

Federal Register CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 66, No. 83, at 21,416, April 30, 2001.

PREVIOUSLY ANNOUNCED TIME AND DATE: 10 a.m., Wednesday, May 2, 2001.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

STATUS: Closed in Part [Pursuant to 5 U.S.C. 552b(c)(10)].

CHANGES IN MEETING: The Commission has postponed the Commission meeting to consider and act upon Eagle Energy, Inc., Docket No. WEVA 98–123, until 10 a.m., Wednesday, May 30, 2001.

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 01–11327 Filed 5–1–01; 3:43 pm]

BILLING CODE 6735–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AGENCY

[Notice 01–055]

Information Collection: Submission for OMB Review, Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this proposal should be received on or before June 4, 2001.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Reports: None.

Title: AST—Technology Utilization.

OMB Number: 2700–0009.

Type of review: Extension.

Need and Uses: NASA is required to collect, and NASA contractors/recipients performing research and development are required to actively search for, identify, and report promptly, all new technologies (i.e., "inventions, discoveries, improvements, and innovations") resulting from work performed under such contracts and agreements.

Affected Public: Business or other for-profit, Not-for-profit institutions.

Number of Respondents: 372.

Responses Per Respondent: 2.5.

Annual Responses: 930.

Hours Per Request: ¾ to 1 hour.

Annual Burden Hours: 895.

Frequency of Report: Annually.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 01–11064 Filed 5–2–01; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 01–056]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that OptoGel, Inc., of Ashlawn, Pennsylvania, has applied for an exclusive license to practice the invention disclosed in NASA Case No. GSC–13, 13–1 entitled "Sol-Gel Processing to Form Sol-Gel Monoliths Inside Hollow Core Optical Fiber and Sol-Gel Fiber Devices Made Thereby," for which a U.S. Patent Application was filed and assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Publication of this notice is not a determination by NASA that the requested license will be granted, and NASA, in the absence of any objections or after reviewing any objections to this notice, may decide to grant the license as requested, grant co-exclusive or partially exclusive licenses, grant a nonexclusive license, or not grant any license at all. Written objections to the prospective grant of a license should be sent to Goddard Space Flight Center.

DATES: Responses to this notice must be received by July 2, 2001.

FOR FURTHER INFORMATION CONTACT: Diana Cox, Goddard Space Flight Center, Office of the Patent Counsel, Mail Code 710.1, Greenbelt, MD 20771, telephone (301) 286–7351.

Dated: April 27, 2001.

Edward A. Frankle,

General Counsel.

[FR Doc. 01–11065 Filed 5–2–01; 8:45 am]

BILLING CODE 7510–01–U

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* "Licensee Event Report".

3. *The form number if applicable:* NRC Form 366.

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4. *How often the collection is required:* On occasion.

5. *Who will be required or asked to report:* Holders of operating licenses for commercial nuclear power plants.

6. *An estimate of the number of responses:* 1130 annually.

7. *The estimated number of annual respondents:* 104.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 56,500.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* With NRC Forms 366, 366A, and 366B, the NRC collects reports of the types of reactor events and problems that are believed to be significant and useful to the NRC in its efforts to identify and resolve threats to public safety. They are designed to provide the information necessary for engineering studies of operational anomalies and trends and patters analysis of operational occurrences. The same information can be used for other analytic procedures that will aid in identifying accident precursors.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: *http://www.nrc.gov/NRC/PUBLIC/OMB/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by June 4, 2001. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Amy Farrell, Office of Information and Regulatory Affairs (3150–0104), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–7318.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 27th day of April 2001.

For the Nuclear Regulatory Commission.

Beth St. Mary,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–11110 Filed 5–2–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–313]

Entergy Operations, Inc., Arkansas Nuclear One, Unit 1, Notice of Availability of the Final Supplement 3 to the Generic Environmental Impact Statement Regarding the License Renewal of Arkansas Nuclear One, Unit 1

Notice is hereby given that the U. S. Nuclear Regulatory Commission (the Commission) has published a final plant-specific Supplement 3 to the Generic Environmental Impact Statement (GEIS), NUREG–1437, regarding the renewal of operating license DPR–51 for an additional 20 years of operation at Arkansas Nuclear One, Unit 1 (ANO–1). ANO–1 is located in Pope County, Arkansas. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

In Section 9.3 of the report, the staff concludes:

The staff recommends that the Commission determine that the adverse environmental impacts of license renewal for ANO–1 are not so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable. This recommendation is based on (1) the analysis and findings in the Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants, NUREG–1437; (2) the Entergy ER [Environmental Report]; (3) consultation with other Federal, State, and local agencies; (4) the staff's own independent review; and (5) the staff's consideration of public comments.

The final Supplement 3 to the GEIS is available electronically for public inspection in the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/NRC/ADAMS/index.html* (the Public Electronic Reading Room).

FOR FURTHER INFORMATION, CONTACT: Mr. Thomas J. Kenyon, Generic Issues, Environmental, Financial, and Rulemaking Branch, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Mr. Kenyon may be contacted at (301) 415–1120 or by writing to: Thomas J. Kenyon, U.S. Nuclear Regulatory Commission, MS 0–11 F1, Washington, DC 20555.

Dated at Rockville, Maryland, this 5th day of April, 2001.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 01–11109 Filed 5–2–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Meeting Concerning the Revision of the Oversight Program for Nuclear Fuel Cycle Facilities

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of public meeting.

SUMMARY: NRC will hold a public meeting at the Information Age Park Resource Center at 2000 McCracken Boulevard, Paducah, Kentucky, to provide the local public, facility employees, citizens' groups, and local officials with information about, and an opportunity to provide views on, how the NRC plans to revise and improve its oversight program for nuclear fuel cycle facilities. The oversight program applies to commercial nuclear fuel cycle facilities regulated under 10 CFR parts 40, 70, and 76. The facilities currently include gaseous diffusion plants, highly enriched uranium fuel fabrication facilities (one of which is NFS), low-enriched uranium fuel fabrication facilities, and a uranium hexafluoride (UF_6) production facility. These facilities possess large quantities of materials that are potentially hazardous (*i.e.*, radioactive, toxic, and/or flammable) to the workers, public, and environment. Also, some of the facilities possess information and material important to national security. In this area, the NRC regulates both the Paducah Gaseous Diffusion Plant operated by the United States Enrichment Corporation, and the Honeywell Specialty Chemicals uranium conversion facility in Metropolis, Illinois.

The goal of this revision project is to have an oversight program that: (1) provides earlier and more objective indications of facility performance in the areas of safety and national security, (2) increases stakeholder confidence in the NRC, and (3) increases regulatory effectiveness, efficiency, and realism. To this end, the NRC is striving to make the oversight program more risk-informed and performance-based. The oversight revision project is described in SECY–99–188, "Evaluation and Proposed Revision of the Nuclear Fuel Cycle Facility Oversight Program Nuclear Fuel Cycle Facility Safety Inspection Program," and in SECY–00–0222, "Status of Revision." SECY–99–188 and SECY–00–0222, as well as other background information, are available in the Public Document Room and on the NRC Web Page at *http://www.nrc.gov*.

Purpose of Meeting

To obtain stakeholder views for improving the NRC oversight program for ensuring fuel cycle licensees and certificate holders maintain protection of worker and public health and safety, protection of the environment, and safeguards for special nuclear material and classified matter in the interest of national security. The public meeting will focus on the revisions that are being made to the program, and on how interested parties can provide input to the change process.

DATE AND LOCATION: Members of the public, industry, and other stakeholders are invited to attend and participate in the meeting, which is scheduled for 7 to 8 p.m. on Wednesday, May 16, 2001. The meeting will be held in the Resource Center at the Paducah Information Age Park in Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: Patrick Castleman, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–8118, e-mail *pic@nrc.gov*.

Dated at Rockville, Maryland this 27th day of April 2001.

For the Nuclear Regulatory Commission.

Patrick Castleman,

Project Manager, Inspection Section, Safety and Safeguards Support Branch, Division of Fuel Cycle Safety and Safeguards.

[FR Doc. 01–11111 Filed 5–2–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

NUREG–1742, "Perspectives Gained From the Individual Plant Examination of External Events (IPEEE) Program"; Draft for Comment

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of the draft report for comment NUREG–1742, "Perspectives Gained from the Individual Plant Examination of External Events (IPEEE) Program".

SUMMARY: The Nuclear Regulatory Commission issued on June 28, 1991, Supplement 4 to Generic Letter 88–20, "Individual Plant Examination of External Events (IPEEE) for Severe Accident Vulnerabilities, 10 CFR 50.54(f)." Associated guidance for conduct of the IPEEEs was issued in June 1991 in NUREG–1407, "Procedural and Submittal Guidance for the Individual Plant Examination of External Events (IPEEE) for Severe Accident Vulnerabilities." Specifically, the Nuclear Regulatory Commission requested that each licensee perform an IPEEE to identify and report to the Nuclear Regulatory Commission all plant-specific vulnerabilities to severe accidents caused by external events. This review was limited to plant behavior under full-power operating conditions. The external events to be considered included seismic events; internal fires; and high winds, floods, and other (HFO) external initiating events including transportation or nearby facility accidents and plant-unique hazards. All currently operating nuclear power plants in the United States have completed their assessments and submitted their analyses to the NRC.

Consistent with the intent of Generic Letter 88–20, the primary goal of the IPEEE program has been for each licensee to identify plant-specific vulnerabilities to severe accidents. More specifically, Supplement 4 to Generic Letter 88–20 identified the following four objectives for the IPEEE:

- To develop an appreciation of severe accident behavior,
- To understand the most likely severe accident sequences that could occur at the licensee's plant under full-power operating conditions,
- To gain a qualitative understanding of the overall likelihood of core damage and fission product releases, and
- To reduce, if necessary, the overall likelihood of core damage and radioactive material releases by modifying, where appropriate, hardware and procedures that would help prevent or mitigate severe accidents.

The primary objective of the NRC's technical review process was to ascertain the extent to which the licensee's IPEEE submittals have achieved the intent of Generic Letter 88–20, satisfied the four principle IPEEE objectives listed above, and followed the recommended guidance in NUREG–1407. The reviews focused on verifying that the critical elements of acceptable IPEEE analyses in the fire, seismic, and HFO areas were performed in accordance with the guidelines in NUREG–1407. Results of the reviews of each IPEEE are documented in plant-specific Staff Evaluation Reports and Technical Evaluation Reports which were transmitted to each licensee and made publically available. It should also be noted that the staff's reviews were not intended to validate or verify the licensees' IPEEEs analyses or results (i.e., an in-depth evaluation of the various inputs, assumptions, and calculations was not performed). Rather, methods, approaches, assumptions, and results were reviewed for reasonableness. If inconsistencies were encountered, they were reported in the plant-specific IPEEE Technical Evaluation Reports.

The draft report NUREG–1742, "Perspectives Gained from the Individual Plant Examination of External Events (IPEEE) Program" summarizes the findings from the review of the licensees' IPEEE submittals. The public is invited to provide feedback on this draft report.

As part of the IPEEE program, some generic issues were addressed by the licensees in their submittals. As noted in draft NUREG–1742, while this has resulted in resolution of most of the generic issues related to the IPEEE program, some aspects of some generic issues were not sufficiently discussed in all submittals to reach a resolution. Those remaining issues will be addressed separately from the IPEEE program.

SUPPLEMENTARY INFORMATION: This notice serves as a request for public comment on the Nuclear Regulatory Commission's draft report NUREG–1742, "Perspectives Gained from the Individual Plant Examination of External Events (IPEEE) Program," that is dated April 2001 (web address: *http://www.nrc.gov/NRC/NUREGS/SR1742/V1/index.html*). Only written comments are requested. Feedback is especially requested on the following specific questions.

1. Does the information contained in NUREG–1742 represent a useful understanding of the potential vulnerabilities of nuclear power plants to external events? How will the information in this report be used by various stakeholders? What would make the information more useful?

2. Are there another comparisons of information from the IPEEE submittals that would yield useful insights? If so, what comparisons would be useful? Why?

3. Given the information from the IPEEE submittals on the risk from fire, seismic and other external events, is additional research needed to improve methods, reduce uncertainties, or resolve issues? If so, what research should be pursued and why? If not, why not?

4. Potential plant improvements, identified by licensees in their

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submittals, can be divided into three general categories—improvements that (1) have been completed, (2) will be made, or (3) will receive further consideration. Are there any improvements in either of the last two categories that have been completed and that resulted in a significant change in a plant's ability to withstand potential external events? If so, what are the improvements and the related changes to the plant's capability?

5. How can the results of the IPEEE program be used to (1) maintain safe operations of nuclear facilities; (2) make NRC activities and decisions more effective, efficient, and reliable; (3) increase public confidence; or (4) reduce unnecessary regulatory burden on stakeholders?

FOR FURTHER INFORMATION CONTACT: Written comments may be sent to Dr. Alan M. Rubin, Probabilistic Risk Analysis Branch, Division of Risk Analysis and Applications, Office of Nuclear Regulatory Research, Mail Stop T10E50, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or e-mail: *amr@nrc.gov*.

DATES: Submit comments by July 31, 2001. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

Dated this 10th Day of April 2001.

For the Nuclear Regulatory Commission.

Thomas L. King,

Director, Division of Risk Analysis and Applications, Office of Nuclear Regulatory Research.

[FR Doc. 01–11113 Filed 5–2–01; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

FEDERAL EMERGENCY MANAGEMENT AGENCY

Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants; Draft Addenda to NUREG–0654/FEMA–REP–1, Revision 1,

AGENCIES: Nuclear Regulatory Commission. Federal Emergency Management Agency.

ACTION: Notice of availability and request for comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) and the Federal Emergency Management Agency (FEMA) have issued for public comment the Draft Addenda to NUREG–0654/FEMA–REP–1, Rev. 1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants." This NUREG is the basic emergency planning guidance document for radiological emergency planning and preparedness for commercial nuclear power plants and is used by licensees and by State and local government emergency response agencies to develop and maintain radiological emergency plans for nuclear power plants.

DATE: The comment period ends August 1, 2001, of this **Federal Register** notice.

ADDRESSES: Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Hand-deliver comments to 11545 Rockville Pike, Rockville, Maryland between 7:15 a.m. and 4:30 p.m. on Federal workdays.

Those considering public comment may request a free single copy of the Draft Addenda to NUREG–0654/FEMA–REP–1, Rev. 1, by writing to: Reproduction and Distribution Services Section, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or E-mail: *DISTRIBUTION@nrc.gov*, or Facsimilie: (301) 415–2289.

The Draft Addenda to NUREG–0654/FEMA–REP–1, Rev. 1, also is available electronically by visiting NRC's Home Page (*http://www.nrc.gov/NRC/NUREGS/SR0654/R1addenda/index.html*) or FEMA's Home Page (*http://www.fema.gov/pte/rep/*).

A copy of the Draft Addenda to NUREG–0654/FEMA–REP–1, Rev. 1, is available for inspection and copying for a fee in the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland, Room O1F21.

FOR FURTHER INFORMATION CONTACT: Kathy Halvey Gibson, Chief, Emergency Preparedness and Health Physics Section, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone (301) 415–2910; electronic mail address: *khg@nrc.gov* or Vanessa E. Quinn, Chief, Radiological Emergency Preparedness Branch, Preparedness, Training, and Exercises Directorate, Federal Emergency Management Agency, Washington, DC 20472, telephone (202) 646–3664; electronic mail address: *vanessa.quinn@fema.gov*.

SUPPLEMENTARY INFORMATION: This notice announces the availability of and request for comment on the Draft Addenda to NUREG–0654/FEMA–REP–1, Rev. 1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants." NUREG–0654/FEMA–REP–1, Rev. 1, was issued in November 1980 and is the basic emergency planning guidance document for radiological emergency planning and preparedness for commercial nuclear power plants.

NUREG–0654/FEMA–REP–1, Rev. 1, is used by licensees and by State and local government emergency response agencies to develop and maintain radiological emergency plans for nuclear power plants. NUREG–0654/FEMA–REP–1, Rev. 1, is also used by staff of the NRC and FEMA to review, respectively, licensee and State and local government radiological emergency plans and preparedness, and to make findings and determinations regarding the adequacy of these plans. As part of FEMA's strategic review of its radiological emergency preparedness program, FEMA and NRC staff determined that it was not necessary to revise NUREG–0654/FEMA–REP–1, Rev. 1, but that to enhance its usefulness, the outdated citations in the document should be replaced with updated citations through means of an addenda. An initial version of the addenda was posted on the FEMA web site and provided to the member agencies of the Federal Radiological Preparedness Coordinating Committee for comment.

Dated at Rockville, Maryland, this 26th day of March 2001.

For the Nuclear Regulatory Commission.

Glenn M. Tracy,

Chief, Operator Licensing, Human Performance, and Plant Support Branch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission.

For the Federal Emergency Management Agency.

Russell Salter,

Director, Chemical and Radiological Preparedness Division, Preparedness, Training and Exercises Directorate, Federal Emergency Management Agency.

[FR Doc. 01–11112 Filed 5–2–01; 8:45 am]

BILLING CODE 7590–01–U

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: RI 38–115

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for review of a revised information collection. RI 38–115, Representative Payee Survey, is used to collect information about how the benefits paid to a representative payee have been used or conserved for the benefit of the incompetent annuitant.

Approximately 4,067 RI 38–115 forms will be completed annually. The form takes approximately 20 minutes to complete. The annual burden is 1,356 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before June 2, 2001.

ADDRESSES: Send or deliver comments to—

Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349A, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Donna G. Lease, Team Leader, Forms Analysis and Design, Budget and Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Steven R. Cohen,

Acting Director.

[FR Doc. 01–11083 Filed 5–2–01; 8:45 am]

BILLING CODE 6325–50–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24963; File No. 812–12392]

The Equitable Life Assurance Society of the United States, et al.

April 26, 2001.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an amended order under Section 6(c) of the Investment Company Act of 1940, as amended ("Act") granting exemptions from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder.

Summary of Application: Applicants seek an order to amend an Existing Order (describing below) to permit, under specified circumstances, the recapture of certain Credits applied to contributions made under "Contracts" and "Future Contracts" as defined in he applications for the Existing Order ("Prior Applications").[1] Applicants also request that the order being sought extend to "Equitable Broker-Dealers," defined in the Prior Applications.

Applicants: The Equitable Life Assurance Society of the United States ("Equitable Life"), The Equitable of Colorado, Inc. ("EOC," and together with Equitable Life, "Equitable"), Separate Account No. 45 of Equitable Life ("SA 45"), Separate Account No. 49 of Equitable Life ("SA 49"), Separate Account VA of EOC ("SA VA" and together with SA 45 and SA 49, the "Accounts"), any other separate accounts of Equitable Life or EOC (collectively, "Future Accounts") that support in the future variable annuity contracts and certificates that are substantially similar in all material respects to the contracts described herein, AXA Advisors, LLC, and Equitable Distributors, Inc. ("EDI") (collectively, "Applicants").

Filing Date: The application was filed on January 2, 2001 and amended on April 24, 2001.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 18, 2001, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. hearing request should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549–0609. Applicants, c/o The Equitable Life Assurance Society of the United States, 1290 Avenue of the Americas, New York, New York 10104, Attn: Dodi Kent, Esq.

FOR FURTHER INFORMATION CONTACT: Mark Cowan, Senior Counsel, or Keith Carpenter, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicant's Representations

1. On May 3, 1999, the Commission issued an order ("Prior Order")[2] exempting certain transactions of Applicants from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder. The Prior Order specifically permits the recapture, under specified circumstances, of certain 3% Credits applied to contributions made under Contracts or Future Contracts. On July 28, 1999, the Commission issued an order of exemption amending the Prior Order[3] (together with the Prior Order, the "Existing Order") to permit the recapture of Credits of up to 5% ("5% Credits"), under the same specified circumstances.[4]

2. Equitable now desires to offer and recapture Credits of up to 6% of contributions ("6% Credits") under the Contracts or Future Contracts, under the same and certain additional circumstances described below. Equitable will apply a Credit to the account of a Contract owner whenever the owner makes a contribution. The amount of the Credit will equal a percentage ("Credit Rate") of the contribution. For contributions received during the first Contract Year (as defined in the Contract prospectus), the applicable Credit Rate will be based on the Credit schedule then in effect and the total net amount of contributions received to date under a Contract. The Credit Rate applicable to contributions made after the first Contract Year will be

[1] *The Equitable Life Assurance Society of the United States*, Investment Company Act Release Nos. 23774 (Apr. 7, 1999) (File No. 812–11388) and 23889 (July 2, 1999) (File No. 812–11662).

[2] *The Equitable Life Assurance Society of the United States*, Investment Company Act Release No. 23822 (File No. 812–11388).

[3] *The Equitable Life Assurance Society of the United States*, Investment Company Act Release No. 23924 (File No. 812–11662).

[4] Pursuant to Rule 0–4 under the Act, Applicants incorporate by reference the statement of facts set out in the Prior Applications to the extent necessary to support the Application. Applicants represent that except as described herein all of the facts asserted in the Prior Applications remain true and accurate in all material aspects to the extent that such facts are relevant to any relief on which Applicants continue to rely.

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the Credit Rate applicable to "Net First Year Contributions" received during the first Contract Year. "Net Year Contributions" equal total first contributions ("Total First Year Contributions") less any withdrawals of contributions (including withdrawal charges) made during the first Contract Year.

3. Equitable currently proposes to use the following Credit schedule for contributions made under the Contract:

Contributions*		Credit rate (as a percentage of contribution)
At least	But less than	
Minimum	$250,000	4.0
$250,000	$1,000,000	5.0
$1,000,000	unlimited** ..	6.0

*The Credit Rate applicable depend on total net contributions received to date, Expected First Year Contributions, or Net First Year Contributions, as described below.

**Maximum contribution limitations may apply.

4. If Equitable receives more than one contribution during the first Contract Year and a higher Credit Rate applies to the later contribution(s) based on the total amount of net contributions to date (*i.e.*, the total net contributions surpass a breakpoint), Equitable will apply the higher Credit Rate to that contribution, as well as any prior or subsequent contributions made in the first Contract Year. Equitable will apply any additional Credit amounts resulting from such adjustments as of the date it receives the later contribution(s).

5. If a Contract owner executes a letter of intent ("Letter of Intent ") pursuant to which the owner agrees to make a certain amount of contributions in the first Contract Year ("Expected First Year Contributions"),[5] Equitable will apply a Credit amount to each contribution made during the first Contract Year using the Credit Rate applicable to the Expected First Year Contributions ("Letter of Intent Credit Rate"). Equitable will apply Credits at the Letter of Intent Credit Rate when it receives each contribution. For any contribution(s) that results in the total net contributions to date exceeding the Expected First Year Contributions, such that a higher Credit Rate would apply, Equitable will apply the higher Credit Rate to that contribution, as well as any prior or subsequent contribution(s) made in the first Contract Year.

[5] The Letter of Intent will be in the form of an acknowledgment in a delineated section of the application for the Contracts. The initial contribution must be at least 50% of the Expected First Year Contributions for the Letter of Intent Credit Rate to apply.

6. In the future, Equitable may apply Credits for contributions under the Contracts using the same Credit schedule or a different Credit schedule containing higher breakpoints.

7. Equitable will recapture Credits applied to contributions made under Contracts and Future Contracts under the same circumstances permitted by the Existing Order. In addition, on the first anniversary of the Contract ("Contract Anniversary"), Equitable will recapture any "Excess Credits" applied during the first Contract Year, as discussed below.

8. Excess Credits will exist when a Contract owner's Net First Year Contributions are lower than Total First Year Contributions. In such cases, Equitable will recapture an Excess Credit amount equal to the difference between the Credits that were actually applied and the Credits that would have been applied based on Net First Year Contributions.

Example.

• Assume an initial contribution of $250,000. A Credit of $12,500 (5% of $250,000) would be applied to the Contract. If the Contract owner withdraws $100,000 during the first Contract Year, his or her Net First Year Contributions would be $145,00 ($250,000–$100,000–$5,000 withdrawal charge ($100,000–15% free withdrawal × 8%)). The applicable Credit Rate based on Net First Year Contributions is 4%. At the end of the first Contract Year, Equitable would recapture $6,700 (5% of $105,000 plus 1% of $145,000).

9. Excess Credits also will exist when a Contract owner fails to fulfill the conditions of a Letter of Intent, and as a result the Credits applied to the Contract exceed the Credits that would have applied to actual contributions made had the Contract owner not executed a Letter of Intent. For Contract owners who fail to fulfill a Letter of Intent, Equitable will recapture an amount equal to the difference between the Credits that were actually applied and the Credits that would have been applied based on Net First Year Contributions.

Example.

• Assume an initial contribution of $150,000 pursuant to a Letter of Intent under which the Contract owner has agreed to make contributions totaling $250,000 during the first Contract Year. A Credit of $7,500 (5% of $150,000) would apply to the Contract. If the Contract owner makes no more contributions during the first Contract Year (and thus does not fulfill the terms of the Letter of Intent), then at the end of the first Contract Year, Equitable would recapture $1,500 (1% of $150,000).

10. The Contracts and Future Contracts will be substantially similar in all material respects to the Contracts covered by the Existing Order except that: (a) Equitable will apply and recapture Credits as described above, and (b) a sorter withdrawal charge schedule will apply. Specifically, the Contracts and Future Contracts will have a withdrawal charge schedule that declines from 8% in years one and two, to 0% in year nine and thereafter (rather than year 10 and thereafter, as it currently does).

11. Applicants submit that their request for an order that applies to the Accounts or any Future Account, in connection with the issuance of Contracts and Future Contracts that are substantially similar in all material respects to the Contracts described herein and underwritten or distributed by AXA Advisors, LLC, Equitable Distributors, Inc., or Equitable Broker-Dealers, is appropriate in the public interest for the same reasons as those given in support of the Existing Order.

Applicant's Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provision of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants request that the Commission, pursuant to Section 6(c) of the Act, amend the Existing Order to grant exemptions from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder, to the extent necessary to permit: (a) the recapture of 6% Credits under the same circumstances covered by the Existing Order, and (b) the recapture of Excess Credits in the manner described above.

3. Applicants submit that the recapture of Credits will not raise concerns under Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act, and Rule 22c–1 thereunder the same reasons given in support of the Existing Order. First, the 6% Credits will be recapturable under the same circumstances and on the same basis as the 5% Credits described in the Prior Applications, the only difference being the higher percentage amount. In addition, Applicants submit that when Equitable recaptures any Excess Credit, it is also simply retrieving its own assets, because a Contract owner's interest in any Excess Credit allocated to a Contract within the first Contract Year is not vested. Rather, Equitable retains the right to, and interest in, the Excess Credit, although not any earnings attributable to the Excess Credit.

4. Applicants state that because a Contract owner's interest in any recapturable Excess Credit is not vested, the owner will not be deprived of a proportionate share of the applicable Account's assets, *i.e.*, a share of the applicable Account's assets proportionate to the Contract owner's annuity account value (taking into account the investment experience attributable to any Excess Credit). The amounts recaptured will never exceed the Credits (or any Excess Credit) provided by Equitable from its own general account assets, and Equitable will not recapture any gain attributable to the Credit (or any Excess Credit).

5. Furthermore, Applicants submit that permitting a Contract owner who withdraws contributions, or who fails to fulfill his or here Letter of Intent obligations to retain any Excess Credit, would be patently unfair and would deny the Applicants a reasonable measure of protection against "anti-selection." The risk here is that rather than investing contributions over a number of years, a Contract owner could make an initial contribution, receive Credits, then later, during the first Contract Year, withdraw monies (perhaps by taking advantage of the 15% free withdrawal feature), thereby enabling the Contract owner to retain Credit amounts that otherwise would not have been applied. Similarly, a Contract owner could execute a Letter of Intent with no intention of fulfilling it, in order to obtain higher Credit amounts. Like the recapture of Credits permitted by the Existing Order, the amounts recaptured will equal the Excess Credits provided by Equitable from its own general account assets, and any gain associated with the Credit will remain part of the Contract owner's Contract value.

6. For the foregoing reasons, Applicants submit that the provisions for recapture of any Credit or Excess Credit under the Contracts does not violate Section 2(a)(32), 22(c), and 27(i)(2)(A) of the Act, and Rule 22c–1 thereunder, and that the requested relief therefrom is consistent with the exemptive relief provided under the Existing Order.

7. Applicants submit that their request for an order that applies to the Accounts or any Future Account, in connection with the issuance of Contracts and Future Contracts that are substantially similar in all material respects to the Contracts described herein and underwritten or distributed by AXA Advisors, LLC, Equitable Distributors, Inc., or Equitable Broker-Dealers, is appropriate in the public interest for the same reasons as those given in support of the Existing Order.

Conclusion

Applicants submit, based on the grounds summarized above, that their exemptive request meets the standards set out in Section 6(c) of the Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–11048 Filed 5–2–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24964]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

April 27, 2001.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of April, 2001. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifty St., NW., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 22, 2001, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549–0506.

Firstmark Partners Contrarian Value Fund [File No. 811–9109]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 21, 2000, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of approximately $3,800 incurred in connection with the liquidation were paid by applicant's investment adviser, Firststock Financial Services, Inc.

Filing Dates: The application was filed on March 7, 2001, and amended on April 18, 2001.

Applicant's Address: 5212 Underwood Ave., Omaha, NE 68132.

Circle Income Shares, Inc. [File No. 811–2378]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On January 22, 2001, applicant transferred its assets to One Group Mutual Funds based on net asset value. Expenses of $123,169 were incurred in connection with the reorganization. Applicant and the acquiring fund each were responsible for their own reorganizational expenses. Bank One Investment Advisors Corporation, the acquiring fund's investment adviser, assumed the costs of certain expenses, including proxy solicitation and legal expenses.

Filing Date: The application was filed on April 6, 2001.

Applicant's Address: PO Box 77004, Indianapolis, IN 46277–7004.

Imperial Special Investments, Inc. [File No. 811–9919]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On March 26, 2001, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $16,600 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on April 4, 2001.

Applicant's Address: 9920 S. La Cienega Blvd., Suite 636, Inglewood, CA 90301.

Bearguard Funds, Inc. [File No. 811–9291]

Summary: Applicant seeks an order declaring that it has ceased to be an

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investment company. On April 2, 2001, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $8,500 incurred in connection with the liquidation were paid by applicant's investment adviser, Skye Investment Advisers LLC.

Filing Date: The application was filed on April 4, 2001.

Applicant's Address: 985 University Avenue, Suite 26, Los Gatos, CA 95032.

Kemper Bond Enhanced Securities Trust, Series 1 and Subsequent Series [File No. 811–4382]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. On September 8, 1999, applicant made a final liquidating distribution to its shareholders based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Date: The application was filed on March 30, 2001.

Applicant's Address: 250 North Rock Road, Suite 150, Wichita, KA 67206–224.

IGAM Group Funds [File No. 811–9493]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 15, 2001, applicant made a liquidating distribution to its shareholders based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Date: The application was filed on March 27, 2001.

Applicant's Address: 24 Salt Pond Road, South Kingstown Office Park, Suite A5, Wakefield, RI 02879.

Income Opportunities Fund 2000, Inc. [File No. 811–7240]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 27, 2000, applicant made a liquidating distribution to its shareholders based on net asset value. As of April 6, 2001, applicant still had 20 shareholders who have not redeemed their shares. The Bank of New York is holding any unclaimed funds, which will escheat to each shareholder's state of residence after the applicable holding period. Expenses of $35,133 incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on February 23, 2001, and amended on April 18, 2001.

Applicant's Address: Merrill Lynch Investment Managers, LLP, 800 Scudders Mill Road, Plainsboro, NJ 08536.

State Farm Balanced Fund, Inc. [File No. 811–1520]

State Farm Interim Fund, Inc. [File No. 811–2726]

State Farm Municipal Bond Fund, Inc. [File No. 811–2727]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On April 1, 2001, each applicant transferred its assets to a corresponding series of State Farm Associates' Funds Trust based on net asset value. Expenses of $66,928, $7,878, and $25,025, respectively, incurred in connection with the reorganizations were paid by each applicant.

Filing Dates: The applications were filed on April 6, 2001, and amended on April 25, 2001.

Applicant's Address: Three State Farm Plaza, Bloomington, IL 61710–0001.

Composite Deferred Series, Inc. [File No. 811–4962]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 21, 2000, Applicant distributed all of its shares at net asset value to its sole shareholder in connection with Applicant's liquidation. Total expenses of approximately $4,000.00 were incurred in connection with the liquidation and were paid by WM Advisors, Inc.

Filing Date: The application was filed on February 1, 2001.

Applicant's Address: John T. West, c/o WM Advisors, Inc., 1201 Third Avenue, Suite 1400, Seattle, WA 98101.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–11087 Filed 5–2–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44223; File No. SR–NASD–00–55]

Self-Regulatory Organizations; Order Approving and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2 and 3 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Delivery Requirement of a Margin Disclosure Statement to Non-Institutional Customers

April 26, 2001.

I. Introduction

On September 5, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to require NASD member firms to deliver a margin disclosure statement to their non-institutional customers with margin accounts. On September 26, 2000, NASD Regulation submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on October 23, 2000.[4] The Commission received eight comment letters with respect to the proposed rule change and Amendment No. 1.[5] On March 28, 2001, NASD Regulation filed Amendment No. 2 to the proposed rule change responding to the comments.[6] On April 11, 2001, NASD Regulation filed a technical Amendment No. 3 to the proposed rule change.[7] In this notice and order, the Commission is approving the proposed rule change and Amendment No. 1, and approving Amendment Nos. 2 and 3 on an accelerated basis. The Commission is also seeking comment from interested persons on Amendment Nos. 2 and 3.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 clarified that if the equity in a customer's margin account falls below applicable requirements, an NASD member firm can force the sale of any of the securities in any of the customer's accounts held at the firm and such liquidations are not limited to the customer's margin-account. Additionally, NASD Regulation deleted the phrase "under the law" from its original filing to clarify that maintenance margin requirements are requirements of self-regulatory organizations. *See* Letter from Alden S. Adkins, General Counsel and Senior Vice President, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 25, 2000.

[4] *See* Securities Exchange Act Release No. 43441 (October 12, 2000), 65 FR 63275 ("Notice").

[5] *See* letter from Bill Singer, Attorney, Singer Frumento LLP, to Jonathan G. Katz, Secretary, Commission, dated October 26, 2000 ("Singer Letter"); letter from J. Scott Colesanti, Senior Compliance Attorney, Edward D. Jones & Co., Inc. to Jonathan G. Katz, Secretary, Commission, dated November 10, 2000 ("Edward Jones Letter"); letter from Professor Barbara Black and Adjunct Professor Jill Gross, Co-Directors, Securities Arbitration Clinic, John Jay Legal Services, Inc., Pace University School of Law, to Jonathan G. Katz, Secretary, dated November 8, 2000 ("John Jay Letter"); letter from Christopher R. Franke, Chairman, Self-Regulation and Supervisory Practices Committee, Securities Industry Association ("SIA"), to Margaret H. McFarland, Deputy Secretary, dated November 13, 2000 ("SIA Self-Regulation Committee Letter"); letter from W. Hardy Callcott, Senior Vice President and General Counsel, Charles Schwab & Co., Inc., to Jonathan G. Katz, Secretary, dated November 14, 2000 ("Charles Schwab Letter"); letter from Albert Tylka, Vice President, A.G. Edwards & Sons, Inc., to Margaret H. McFarland, Deputy Secretary, dated November 17, 2000 ("A.G. Edwards Letter"); letter from George Ruth, Chairman of the Rules and Regulations Committee, Credit Division, SIA, to Jonathan G. Katz, Secretary, dated November 21, 2000 ("SIA Credit Division Letter"); and letter from Jeffrey S. Alexander, Vice President and Senior Counsel, Office of the General Counsel, Merrill Lynch, to Jonathan G. Katz, Secretary, dated November 22, 2000 ("Merrill Lynch Letter").

[6] In Amendment No. 2, NASD Regulation responded to the comment letters submitted on the proposed rule change and Amendment No. 1, and incorporated several recommendations from the comment letters into the proposed rule text. The comments concerned the following: the need for flexibility with respect to the type of disclosure statement that NASD member firms would be required to provide to their customers; the burden and costs of sending a separate document; the expense and need for the requirement that the disclosure statement be delivered annually; the need for clarification of the delivery requirement and method; and the need for disclosure of the fact that any of the customers' assets, in addition to securities, carried by a broker-dealer firm on behalf of such customers may be liquidated to satisfy a margin call. *See* Letter from Jeffrey S. Holik, Vice President and Acting General Counsel, NASD Regulation, to Jack Drogin, Assistant Director, Division, Commission, dated March 27, 2001 ("Amendment No. 2").

[7] In Amendment No. 3, NASD Regulation provided a technical amendment to the proposed rule language clarifying that the annual margin disclosure statement may be delivered within or as part of other account documentation, and is not required to be provided in a separate document. *See* Letter from Jeffrey S. Holik, Vice President and Acting General Counsel, NASD Regulation, to Jack Drogin, Assistant Director, Division, Commission, dated April 10, 2001 ("Amendment No. 3").

[8] The term "non-institutional customer" would mean a customer that does not qualify as an "institutional account" under NASD Rule 3110(c)(4). NASD Rule 3110(c)(4) defines "institutional account" to mean the account of: (1) A bank, savings and loan association, insurance company, or registered investment company; (2) an investment adviser registered either with the Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or agency or office performing similar functions); or (3) any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least $50 million.

[9] NASD's 2300 series of rules covers *Transactions with Customers.*

[10] This annual disclosure statement may be the mandated margin disclosure statement as specified in proposed NASD Rule 2341(a), the abbreviated disclosure specified in proposed NASD Rule 2341(b), or an alternate disclosure that is "substantially similar" to the two other disclosure statements. In addition, the annual disclosure statement may be delivered within or as part of other account documentation, and is not required to be provided in a separate document. *See* Amendment No. 2, *supra* note 6 and Amendment No. 3, *supra* note 7.

II. Description of the Proposal

As described in the proposed rule change and Amendment No. 1, the NASD, through NASD Regulation, proposes to add a new NASD Rule 2341 to require NASD member firms to deliver to their non-institutional customers,[8] prior to or at the opening of a margin account, a specified disclosure statement discussing the operation of margin accounts and the risks associated with trading on margin.[9] NASD Regulation also proposes to require NASD member firms to deliver a disclosure statement to their non-institutional customers with margin accounts on an annual basis.[10] NASD Regulation proposes the following proposed rule text amendments in response to the comment letters submitted to the Commission regarding the proposed rule change and Amendment No. 1. The amended rule is as follows:

Proposed new language is *italicized.* Proposed deletions are in [brackets].

* * * * *

Rule 2341. Margin Disclosure Statement

(a) No member shall open a margin account, as specified in Regulation T of the Board of Governors of the Federal Reserve System, for or on behalf of a non-institutional customer, unless, prior to or at the time of opening the account, the member has furnished to the customer, individually, in writing or electronically, *and in a separate document,* the following margin disclosure statement:

Your brokerage firm is furnishing this document to you to provide some basic facts about purchasing securities on margin, and to alert you to the risks involved with trading securities in a margin account. Before trading stocks in a margin account, you should carefully review the margin agreement provided by your firm. Consult your firm regarding any questions or concerns you may have with your margin accounts.

When you purchase securities, you may pay for the securities in full or you may borrow part of the purchase price from your brokerage firm. If you choose to borrow funds from your firm, you will open a margin account with the firm. The securities purchased are the firm's collateral for the loan to you. If the securities in your account decline in value, so does the value of the collateral supporting your loan, and, as a result, the firm can take action, such as issue a margin call and/or sell securities *or other assets* in any of your accounts held with the member, in order to maintain the required equity in the account.

It is important that you fully understand the risks involved in trading securities on margin. These risks include the following:

- *You can lose more funds than you deposit in the margin account.* A decline in the value of securities that are purchased on margin may require you to provide additional funds to the firm that has made the loan to avoid the forced sale of those securities or other securities *or assets* in your account(s).
- *The firm can force the sale of securities or other assets in your account(s).* If the equity in your account falls below the maintenance margin requirements or the firm's higher "house" requirements, the firm can sell the securities *or other assets* in any of your accounts held at the firm to cover the margin deficiency. You also will be responsible for any short fall in the account after such a sale.
- *The firm can sell your securities or other assets without contacting you.* Some investors mistakenly believe that a firm must contact them for a margin call to be valid, and that the firm cannot liquidate securities *or other assets* in their accounts to meet the call unless the firm has contact them first. This is not the case. Most firms will attempt to notify their customers of margin calls, but they are not required to do so. However, even if a firm has contacted a customer and provided a specific date by which the customer can meet a margin call, the firm can still take necessary steps to protect its financial interests, including immediately selling the securities without the notice to the customer.
- *You are not entitled to choose which securities or other assets in your account(s) are liquidated or sold to meet a margin call.* Because the securities are collateral for the margin loan, the firm has the right to decide which security to sell in order to protect its interests.
- *The firm can increase its "house" maintenance margin requirements at any time and is not required to provide you advance written notice.* These changes in firm policy often take effect immediately and may result in the issuance of a maintenance margin call. Your failure to satisfy the call may cause

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the member to liquidate or sell securities in your account(s).

• *You are not entitled to an extension of time on a margin call.* While an extension of time to meet margin requirements may be available to customers under certain conditions, a customer does not have a right to the extension.

(b) Members shall, with a frequency of not less than once a calendar year, deliver individually, in writing or electronically, the disclosure statement described in paragraph (a) *or the following bolded disclosures* to all non-institutional customers with margin accounts:

Securities purchased on margin are the firm's collateral for the loan to you. If the securities in your account decline in value, so does the value of the collateral supporting your loan, and, as a result, the firm can take action, such as issue a margin call and/or sell securities or other assets in any of your accounts held with the member, in order to maintain the required equity in the account. It is important that you fully understand the risks involved in trading securities on margin. These risks include the following:

• *You can lose more funds than you deposit in the margin account.*

• *The firm can force the sale of securities or other assets in your account(s).*

• *The firm can sell your securities or other assets without contacting you.*

• *You are not entitled to choose which securities or other assets in your account(s) are liquidated or sold to meet a margin call.*

• *The firm can increase its "house" maintenance margin requirements at any time and is not required to provide you advance written notice.*

• *You are not entitled to an extension of time on a margin call.*

The annual disclosure statement required pursuant to this paragraph (b) may be delivered within or as part of other account documentation, and is not required to be provided in a separate document.

(c) In lieu of providing the [margin] disclosures [statement] specified in paragraphs (a) *and (b)*, a member may provide to the customer an alternative disclosure statement, provided that the alternative disclosures [statement] shall be substantially similar to the disclosures [statement] specified in paragraphs (a) *and (b)*.

(d) For purposes of this Rule, the term "non-institutional customer" means a customer that does not qualify as an "institutional account" under Rule 3110(c)(4).

* * * * *

A. Background

The recent growth in the level of customer margin account balances, coupled with the increase in customer inquiries and complaints to NASD Regulation and SEC staffs relating to the handling of margin accounts, has raised concerns as to whether investors understand the operation and risks associated with margin trading. NASD Regulation believes that investors' misconceptions about margin requirements, particularly with respect to maintenance margin, may cause them to underestimate the risks of margin trading and misunderstand the operation of and reasons for margin calls.

In this regard, a May 2000 General Accounting Office ("GAO") report ("GAO Report") noted that the SEC determined from the customer complaints it received that many investors who traded on-line did not understand margin requirements.[11] The GAO Report indicated that the lack of disclosures relating to when firms would sell securities in a margin account to cover margin loans was among the leading margin-related complaints that the SEC received.

In addition, the GAO Report collected and summarized information from 12 on-line broker-dealers.[12] All of the on-line firms contacted did provide their customers with the limited information required by Rule 10b–16 under the Act.[13] Some firms also provided additional information relating to margin, such as requirements for account opening, procedures for selling securities to cover account losses, or special requirements for volatile stocks. Nearly half of the firms contacted, however, automatically opened margin accounts for new customers without providing the customer with information relating to the risks associated with margin trading. At three of the firms that automatically[14] opened margin accounts, customers would find out about their account type only if they read and understood their account agreements. Three of the 12 on-line broker-dealers contacted did take "extra measures" to assure that their customers understood that stocks could be sold to cover outstanding loans in a margin account. These firms included information on their web sites that explained that accounts could be liquidated in fast-moving markets before the customary period.

The GAO Report concluded that better investor protection information, including information relating to margin requirements, was needed on web sites of some on-line broker-dealers. In this regard, the GAO Report recommended that the SEC ensure that broker-dealers with on-line trading systems include accurate and complete information on their web sites regarding, among other things, margin requirements.

B. Specific Areas of Concern

Based on customer complaints and the inquiries it has received, NASD Regulation identified several areas associated with margin trading that may have generated confusion and misunderstanding between customers and NASD member firms. According to NASD Regulation, these areas include:

Margin Calls—Notification. Some investors hold the mistaken belief that their broker-dealer must contact them for a margin call to be valid, and that their broker-dealer cannot liquidate securities or other assets in their accounts to meet the call unless a specified number of days have passed and/or the broker-dealer has contacted the customer. There are no such restrictions in Regulation T[15] promulgated by the Board of Governors of the Federal Reserve System or NASD Rule 2520.[16] Moreover, securities that have been purchased on margin by a customer and securities and other assets held in any other accounts with the firm by a customer are collateral for the margin loan and are, therefore, subject to the security claim of the broker-dealer until the customer fully pays for the securities. Thus, if a broker-dealer believes that the collateral for the margin loan is at risk, the broker-dealer is entitled to take any steps necessary to protect its financial interests, including immediate liquidation without notice to the customer. Some broker-dealers will attempt to notify their customers of margin calls, but they are not required to do so. Even if a broker-dealer has contacted a customer and provided a specific date by which the customer can meet a margin call; however, the broker-dealer can still take necessary steps to protect its financial interests, including immediate liquidation, without further notice to the customer.

Extension of time on margin calls. Some investors believe they are automatically entitled to an extension of time to meet margin calls. While an extension of time to meet initial margin requirements may be available to the customer under certain conditions, it is only granted if the clearing firm chooses to request an extension from its Designated Examining Authory—the customer does not have a right to an automatic extension.

In addition, some investors believe that when a maintenance margin call has been issued they are entitled to one or more extensions of time to meet the call, however, there is no mechanism for extending maintenance margin calls. If the customer fails to meet a maintenance margin call, the broker-dealer can, under certain circumstances, take a charge to its net capital in lieu of collecting the call, but the broker-dealer is not required to do so, and the customer has no right to demand it.

Right to dictate which security or other asset is liquidated. Some investors believe that they have the right to control which securities or other assets are liquidated to meet a maintenance margin call if there is more than one security or asset in the NASD customer's accounts.[17] There is no provision in the margin rules that gives the customers the right to control liquidation decisions. As discussed above, because the securities and other assets in any of the customers's accounts are collateral for the margin loan, the broker-dealer has the right to control the disposition of the collateral in order to protect its interests. In this regard, the broker-dealer may choose which securities or other assets in the margin account, or any other account held by the NASD member firm on behalf of the customer, to liquidate, and this selection need not relate to factors associated with the individual customer.[18] For example, the broker-dealer may choose a particular security or asset in customer's account to liquidate based on a high concentration of the security held by customers firm-wide.

NASD members raising their maintenance margin requirements. Some NASD member firms have increased their "house" maintenance margin requirements (*i.e.*, requirements above those required by law) as a result of concerns about the volatility and extreme price run-ups on certain stocks, the risks to their customers, and the NASD members's own potential exposure to losses from margin defaults. These changes in policy often take effect immediately and may result in the issuance of maintenance margin call. A customer's failure to satisfy the call will usually cause the NASD member firm to liquidate a portion of the customers's account.

Some investors believe that an NASD member firm must provide thirty days written notice before implementing this type of change. While Rule 10b–16 under the Act requires members to disclose to customers the credit terms (interest rates and methods of calculating interest) for margin transactions and requires advance written notice of such changes, it does not require advance notice of the amount of margin required.

C. Description of Proposal

1. Delivery Requirement

NASD Regulation believes that, although some NASD member firms are providing additional disclosures to customers relating to margin to address customers confusion, the content of these disclosures is not consistent from firm-to-firm and may not always be in a form that investors find clear and easy to understand.

Accordingly, the NASD is proposing to require all NASD member firms to deliver to each non-institutional customer individually, in hard copy or by electronic means, prior to or at the opening of a margin account, a disclosure statement that includes all of the information as specified in proposed NASD Rule 2341(a), or a substantially identical disclosure statement.[19] NASD member firms would also be required to deliver to each non-institutional customer individually, in hard copy or by electronic means, a disclosure statement on an annual basis.[20]

The proposal, as amended, would require that disclosure at or prior to the opening to the margin account be made in a separate document.[21] NASD Regulation represents that the initial disclosure statement may be on a separate page of, or as a separate attachment to, the margin agreement or other opening account documentation. NASD member firms, however, would be permitted to provide the annual disclosure within other documentation, such as the customer account statement.[22]

Furthermore, NASD member firms would be required to provide the disclosure statement to existing margin customers a the time the NASD member firm is required to send the next annual statement to the customer (following the effective date of the proposed rule change, as amended), but not to exceed 180 days following the effective date of the proposed rule change, as amended.

2. Content of Margin Disclosure Statement

The margin disclosure statement, as specified in proposed NASD Rule 2341(a), the abbreviated disclosure specified in proposed NASD Rule 2341(b), or an alternate disclosure that is "substantially similar" to the two versions provided by the proposal, as amended, should: (1) Describe the operation of a margin account; (2) emphasize that customers should carefully review their margin agreements; and (3) clarity some of the risks associated with margin trading, including among others, that the customer can lose more funds that initially deposited, the firm can force the sale of the securities or other assets in any of the customers's accounts held by the firm without notice the customer, the firm can dictate which securities or other assets in any of the customers's accounts may be selected for liquidation to meet a margin call, the firm may increase its "house" maintenance margin requirements at any time and is not required to provide the customer with advance written notice, and the customer is not entitled to an extension of time on a margin call.

3. Effective Date of the Proposed Rule

NASD Regulation intends to announce the effective date of the proposed rule change, as amended, in a Notice to Members to be published no

[11] *See On-Line Trading, Better Investor Protection Information Needed*, Report to Congressional Requesters, GAO, GGD–00–43 (May 2000). Between January 1998 and June 1999, 140 margin-related complaints concerning on-line trading firms were submitted to the SEC.

[12] While these firms represented less than 10 percent of the total estimated number of firms that offer on-line trading, they accounted for about 90 percent of the on-line trading volume during early 1999.

[13] Rule 10b–16 under the Act requires broker-dealers that extend credit to customers to finance securities transactions to furnish, in writing, specified information regarding the terms of the loan. These disclosures must be made on both an initial and periodic basis. For example, at the time a customer opens a margin account, the broker-dealer must provide the customer with a written statement disclosing, among other things, the annual rate of interest, the method of computing interest, and what other credit charges may be imposed. 17 CFR 240.10b–16.

[14] Those firms that provide clear indications of the type of account to be opened offered their customers the option on the web site to choose either a cash or margin account, or both. However, those firms that automatically opened margin accounts only offered new customers a choice with respect to account ownership, such as a joint or individual account.

[15] 12 CFR 220 *et seq.*

[16] NASD Rule 2520 governs margin requirements.

[17] *See* Amendment No. 1, *supra* note 3.

[18] *Id.*

[19] NASD member firms would be permitted to develop an alternative margin disclosure statement, provided that the alternative disclosure statement is substantially similar to the mandated disclosure statement and incorporates all of the relevant concepts. NASD Regulation represents that it will determine whether an alternative disclosure statement contains substantially identical information as required by the proposed NASD Rule 2341 during routine examinations of NASD member firms.

[20] *See supra* note 10.

[21] An NASD member firm would not satisfy the proposal's delivery requirement by posting the disclosure statement on its web site.

[22] *See* Amendment No. 3, *supra* note 7.

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later than 60 days following Commission approval of the proposed rule change. The effective date would be 30 days following publication of the Notice to Members announcing Commission approval of the proposed rule change.

III. Summary of Comments

The Commission received eight comment letters in response to the proposal and Amendment No. 1.[23] While most commenters generally favored the concept of providing customers of NASD members firms with a disclosure of margin trading risks, they also suggested various modifications to the proposal. The comments submitted to the Commission are summarized by issue below.

A. Margin Disclosure Statement

Several commenters stated that the proposal needed to be more flexible and that a "one-size-fits-all" disclosure statement on margin trading is not appropriate for all firms.[24] Commenters indicated that firms should be permitted to develop a method of disclosure that is best suited to their individual business, so long as they provide the specific disclosure information required by the proposal. NASD Regulation responded to these concerns through the new proposed rule language in paragraph (c) of proposed NASD Rule 2341 providing that, in lieu of using the margin disclosure statement specified in the proposal, an NASD members firm may use an alternative disclosure statement, provided that the alternative disclosure statement is substantially similar to the mandated disclosure statement specified in the proposal.

One commenter indicated that the proposal should be directed only at customers who trade on-line, and not those being assisted by a registered representative.[25] The commenter stated that the proposal should address more directly the concerns of the GAO Report[26] that determined that on-line traders do not understand margin requirements. The commenter suggested that the disclosure statements would best serve on-line customers who do not have accounts with full-services firms that can provide appropriate education on margin trading. NASD Regulation responded that, although customer accounts of on-line brokerage firms were the focus of the GAO Report, margin-related complaints received by NASD Regulation and the Commission have originated from customers of both on-line and full-service firms. Accordingly, NASD regulation believes that the misconceptions about the operation of a margin account and margin requirements are not limited to those investors who trade on-line, and that all investors would benefit significantly from the information provided in the proposed margin disclosure statement.

B. Separate Document

Several commenters opposed the requirement that the margin disclosure be made in a separate disclosure document, stating that such a requirement is unnecessary, duplicative, and economically burdensome.[27] These commenters also indicated that presenting the disclosure statement in a separate document could confuse customers by giving them the impression that it is more important than other disclosure requirements not presented in the same format, or by leading customers to believe it amends or voids their original agreements. In this regard, certain commenters indicated that such mistaken beliefs by customers could lead to costly legal challenges for NASD member firms.

In response, NASD Regulation indicated that it believes that the initial delivery of the margin disclosure statement should be in a separate document. NASD Regulation was concerned that the proposed disclosure may be hidden within other documentation and possibly overlooked by customers. With respect to the comment that a separate document may confuse customers, NASD Regulations responded that NASD member firms would be permitted to provide additional statements necessary to clarify the purpose of the disclosure document, including that the disclosures do not change or supersede the margin agreement in any way. With respect to the annual delivery requirement, NASD Regulation stated that the annual disclosure statement may be delivered within or as part of other account documentation.

One commenter, while supporting the proposed margin disclosure requirement, also indicated that customers should be educated about margin trading by their NASD members firms, and firm employees should be readily available to customers via dedicated telephone numbers and e-mail addresses posted on the firm's Internet sites.[28] This commenter suggests that when communication fails, customers should document attempts to contact firms, and firms should be held liable for margin-related damages. As a general matter, NASD Regulation responded by agreeing that NASD member firms should be prepared to answer customer questions relating to margin, and that the proposed margin disclosure statement is not intended to replace NASD member firms' responsibilities to respond to customer inquiries.

C. Annual Delivery

Several commenters opposed the proposed requirement that the disclosure statement be delivered annually. The commenters indicated that it would present an undue burden and expense for firms and would be excessive, redundant, and counter-productive in light of the amount of documentation and disclosure statements already sent to customers.[29] One commenter stated that this firm already receives numerous complaints from its customers about the amount of paperwork being mailed to them.[30] Another commenter was concerned that repeated statements about the risks of margin trading would undermine legitimate products associated with central asset accounts.[31]

NASD Regulation continues to believe that providing customers with information about the operation of margin accounts at account opening and annually thereafter will be of significant value to customers in understanding the operation of a margin account. Given that the full margin disclosure statement would be provided to customers at account opening, however, NASD Regulations believes that providing an abbreviated version of the disclosures would be appropriate for the annual disclosure requirement, thereby addressing some of the commenters' concerns. Accordingly, NASD Regulation amended the proposed rule language to permit members, at their option, to provide an abbreviated version of the disclosures to comply with the annual disclosure requirement provided that, at a minimum, such version contains all of the "bulleted information" as specified in proposed NASD Rule 2341(b).

In addition, NASD Regulation amended the proposed rule language to clarify that the annual disclosure statement required pursuant to proposed NASD Rule 2341(b) may be delivered within or as part of other account documentation, and is not required to be provided in a separate document.[32]

D. Timing of Account Opening Delivery Requirement

One commenter indicated that the proposal needed to clarify better when the initial disclosure statement should be delivered.[33] According to the commenter, the proposal directs that the initial disclosure statement be delivered when the margin account is opened; however, the proposal does not indicate what constitutes the opening of the account. The commenter questioned whether an account would be considered opened when the customer loan agreement is signed or when a loan is extended to the customer by the firm on margin. Another commenter requested clarification on whether "Personal Line of Credit" accounts would invoke the proposed margin disclosure requirements.[34] In order to address these comments, NASD Regulation clarified that, under the proposal, the margin disclosure statement is required to be sent at the time a margin account is opened, irrespective of whether a margin loan is extended. Also, if a "Personal Line of Credit" account is treated by the NASD member firm as an extension of credit via a margin account, NASD Regulation believes that the proposed disclosure requirement would apply.

E. Other Comments

One commenter indicated that the proposed delivery of the disclosure statement, "in writing or electronically," is confusing and suggests that the proposed rule confuses format with delivery.[35] To clarify, NASD Regulation indicated that the proposed disclosure statement may be sent "in writing," meaning that it may be delivered to the customer in a hard copy, paper format. The proposed disclosure statement also may be delivered "electronically," meaning that it may be delivered to the customer via an electronic delivery system (Internet, e-mail, etc.), provided that it is sent individually to the customer by such means.

Another commenter indicated that the proposed margin disclosure statements should be clarified to state that any asset held by the customer, not just securities, can be liquidated.[36] The commenter believed that this clarification would be an important piece of information for the customer to understand. In addition, the commenter indicated that certain crucial language on the statement should be in boldface for better emphasis, and that disclosures using industry jargon, such as "equity," "house requirements" and "maintenance margin," should be avoided. NASD Regulation agreed that a clarification that any assets held by the firm on behalf of the customer, not just securities, can be liquidated, is appropriate to include in the proposed disclosure statement. Accordingly, NASD Regulation amended the proposed rule language to indicate that an NASD member firm can liquidate securities or other assets held in the customer's accounts. With respect to the comment regarding the use of industry jargon, NASD Regulation does not believe that the use of those terms in confusing within the context of the overall statement and indicated that it had endeavored to use a minimal amount of industry jargon in the proposed margin disclosure statement.

Finally, one commenter stated that each customer should be required to sign the disclosure statement to acknowledge receipt and understanding of it.[37] NASD Regulation believes that such a requirement would be overly burdensome for members to comply with, and would not significantly increase the informational value to the customer of the margin disclosure statement.

F. Amendment to the Proposed Rule Language

NASD Regulation amended proposed NASD Rule 2341(a), in Amendment No. 2, to clarify that the initial margin disclosure document must be delivered in a separate document.[38]

NASD Regulation also added the phrase "*or other assets*" throughout the text of proposed NASD Rule 2341 to clarify that assets other than securities held in the customer's account can be liquidated and sold by the NASD member firm to satisfy a margin call.[39]

Furthermore, NASD Regulation provided an abbreviated disclosure statement, as discussed above, in paragraph (b) of proposed NASD Rule 2341 that NASD member firms could use on an annual basis.[40]

In addition, NASD Regulation amended the proposed rule language, in Amendment No. 3, to clarify that the annual disclosure statement required pursuant to paragraph (b) of proposed NASD Rule 2341 need not be provided in a separate document.[41]

IV. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act[42] and the rules and regulations thereunder applicable to a national securities association. In particular, the Commission finds the proposal to be consistent with the requirements of Section 15A(b)(6)[43] of the Act, because the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

As discussed above, based on the growing number of customer complaints and the GAO study, the Commission believes that many investors do not fully understand certain significant features of their margin accounts. The Commission believes that the proposed rule change will better inform investors by requiring NASD member firms to disclose to their non-institutional customers, in "plain English," the operations and the risks associated with margin trading. The Commission also believes that the proposal, as amended, will enhance customer protection by requiring that all NASD member firms provide identical or substantially identical information, and deliver the disclosures in a similar manner (*i.e.*, in the form of a hard copy or through electronic means) to their customers, pursuant to proposed NASD Rule 2341. The proposal's requirements will provide for uniform information consistent across all NASD member firms.

Specifically, the Commission finds that the mandated disclosure statement

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[23] *See supra* note 5.

[24] *See* Singer Letter, SIA Self-Regulation Committee Letter, Merrill Lynch Letter and SIA Credit Division Letter, *supra* note 5.

[25] *See* Merrill Lynch Letter, *supra* note 5.

[26] *See* GAO Report, *supra* note 11.

[27] *See* SIA Self-Regulation Committee Letter, Merrill Lynch Letter, and A.G. Edwards Letter, *supra* note 5.

[28] *See* Singer Letter, *supra* note 5.

[29] *See* Charles Schwab Letter, SIA Credit Division Letter, and A.G. Edwards Letter, *supra* note 5.

[30] *See* Merrill Lynch Letter, *supra* note 5.

[31] *See* SIA Credit Division Letter, *supra* note 5.

[32] *See* Amendment No. 3, *supra* note 7.

[33] *See* Edward Jones Letter, *supra* note 5.

[34] *Id.*

[35] *See* Merrill Lynch Letter, *supra* note 5.

[36] *See* John Jay Letter, *supra* note 5.

[37] *Id.*

[38] The proposed rule language is amended to clarify this requirement as follows:

(a) No member shall open a margin account, as specified in Regulation T of the Board of Governors of the Federal Reserve System, for or on behalf of a non-institutional customer, unless, prior to or at the time of opening the account, the member has furnished to the customer, individually, in writing or electronically, *and in a separate document*, the following margin disclosure statement:

[39] *See* Amendment No. 2, *supra* note 6.

[40] *Id.*

[41] The proposed rule language is amended to clarify this requirement as follows:

The annual disclosure statement required pursuant to this paragraph (b) may be delivered within or as part of other account documentation, and is not required to be provided in a separate document.

[42] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[43] 15 U.S.C. 78o–3(b)(6).

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is designed to alleviate customers' confusion and should help to alert them to some of the risks associated with margin trading, such as: (1) A customer could lose more funds than he/she deposits in a margin account; (2) an NASD member firm can force the sale of securities or other assets in any of the customer's accounts; (3) a customer does not have the right to dictate in which order those securities or other assets may be liquidated or sold to meet a margin call; (4) an NASD member firm may increase its "house" maintenance margin requirements at any time and is not required to provide its customer with advance written notice; and (5) an NASD customer is not entitled to an extension of time on a margin call.

The Commission also believes that NASD Regulation has responded adequately to commenters' concerns and suggestions by incorporating most of the recommendations into the proposal and explaining why it is not incorporating others. Among other things, in response to comments submitted on the published proposal, including Amendment No. 1, NASD Regulation clarified that: (1) Any asset held by the NASD member firm on behalf of the customer, not just securities, can be liquidated to satisfy a customer margin call; (2) the annual margin disclosure statement may be provided in an abbreviated form containing all the required information as specified in the proposed rule text; and (3) the annual disclosures may be delivered within or as part of other account documentation.

The Commission agrees that it was necessary for NASD Regulation to clarify that an NASD member firm may liquidate any securities or other assets held by such firm on behalf of the customer to meet a margin call. The Commission believes that this clarification will warn customers of the full extent of the risks of margin trading and ensure that such disclosure information is consistent with similar information provided in customers' margin agreements.

The Commission also believes that NASD Regulation's amendment to the proposed rule language to provide for an abbreviated version of the annual disclosure statement is appropriate because doing so allows NASD member firms flexibility as to the form of the annual disclosures, while still preserving the core disclosure information to investors.

Finally, the Commission believes that it is appropriate for NASD Regulation to require that, prior to or at the opening of a margin account, an NASD member firm must provide the disclosure statement in a separate document so that customers do not overlook information that is critical to making an informed decision regarding whether to trade on margin. As a matter of general business practice, this document should be provided at the time the margin agreement is established. It may be more cost effective, however, for firms to provide the annual disclosure as part of other documentation.

Furthermore, although NASD Regulation determined not to require the signature of customers on the disclosure statement, the Commission notes that NASD member firms must have supervisory procedures reasonably designed to demonstrate that customers have received the margin risk disclosures, as well as to demonstrate compliance with Rules 15c2–5 and 10b–16 under the Act.[44]

The Commission notes that NASD Regulation will announce the operational date of the proposed rule change, as amended, in a Notice to Members to be published no later than 60 days following the date of approval by the Commission, and that the operational date will be 30 days following the date of publication of the Notice to Members announcing Commission approval. The Commission believes that requiring NASD member firms to implement the disclosure requirements pursuant to the proposed NASD Rule 2341, 30 days following the date of publication of the Notice to Members announcing Commission approval of the proposal, will provide NASD member firms with sufficient time to comply with the requirements of proposed NASD Rule 2341.

V. Accelerated Approval of Amendment Nos. 2 and 3

The Commission finds good cause for approving Amendment Nos. 2 and 3 prior to the thirtieth day after publication in the **Federal Register**. The Commission believes that NASD Regulation has responded adequately to commenters' concerns and suggestions by incorporating certain commenters' recommendations into the proposed rule language in Amendment No. 2, and by explaining why it was not incorporating others. Further, the Commission noted that Amendment No. 3 is a technical amendment providing clarifying language in the proposed rule text that the annual margin disclosure statement is not required to be provided in a separate document. Instead, the annual margin disclosure statement may be delivered within or as part of other customer account documentation. In sum, the Commission believes that the substance of the proposed rule change was provided in the Notice and has been the subject of a full comment period. Accordingly, the Commission believes that there is good cause, consistent with Section 6(b)(5) and 19(b) of the Act,[45] to approve Amendment Nos. 2 and 3 to the proposal on an accelerated basis.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 2 and 3, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–55 and should be submitted by May 23, 2001.

VII. Conclusion

The Commission believes that the proposed rule change, as amended, is consistent with the Act, and, particularly, with Section 15A.[46]

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[47] that the proposed rule change (File No. SR–NASD–00–55) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[48]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–11049 Filed 5–2–01; 8:45 am]

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[44] 17 CFR 240.15c2–5; 240.10b–16.

[45] 15 U.S.C. 78f(b) and 78s(b).

[46] 15 U.S.C. 78o–3.

[47] 15 U.S.C. 78s(b)(2).

[48] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44231; File No. SR–PCX–2001–20]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to One Point Strike Price Intervals for Options on Exchange-Traded Fund Shares and the Hours of Trading for Options on the Nasdaq-100 Index Tracking Stock

April 27, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 5, 2001, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b–4 under the Act.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend PCX Rule 6.4 by adding Commentary .04 to create one point strike price intervals for options on Exchange-Traded Fund Shares. The PCX also proposes to amend PCX Rule 4.2 by adding Commentary .02 to establish the hours of trading for options on the Nasdaq-100 Index Tracking Stock, which is a particular type of Exchange-Traded Fund Shares,[4] from 6:30 a.m. to 1:15 p.m. Pacific Time ("PT"), except the last trading day of each calendar month, when trading in options on Nasdaq-100 Index Tracking Stock will end at 1:05 p.m. PT. Below is the text of the proposed rule change. Proposed new language is italicized, and proposed deletions are in brackets.

* * * * *

¶ 3703 Trading Sessions

Rule 4.2—No change.

Commentary:

.01—No change.

.02 The hours for trading options on Nasdaq-100 Index Tracking Stock will commence at 6:30 a.m. and end at 1:15 p.m. each business day, except the last trading day of each calendar month, when trading in options on Nasdaq-100 Index Tracking Stock will end at 1:05 p.m.

* * * * *

¶ 4745 Series of Options Open for Trading

Rule 6.4(a)–(e)—No change.

Commentary:

.01–.03—No change.

.04 The interval of strike prices of series of options on Exchange-Traded Fund Shares will be $1 or greater where the strike price is $200 or less.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide one point strike price intervals for options on Exchange-Traded Fund Shares and to establish the hours of trading in options on the Nasdaq-100 Index Tracking Stock from 6:30 a.m. to 1:15 p.m. PT, except the last trading day of each calendar month, when trading in options on the Nasdaq-100 Index Tracking Stock will end at 1:05 p.m. PT.

The PCX received approval from the Commission to trade options on Exchange-Traded Fund Shares on February 28, 2001.[5] The PCX proposes to amend Rule 6.4 by adding Commentary .04 regarding strike price intervals for options on Exchange-Traded Fund Shares to bracket the Fund Shares at one point intervals up to a share price of $200. This proposed amendment is consistent with the strike price interval established for options on Exchange-Traded Fund Shares on the American Stock Exchange, LLC ("Amex")[6] and by the Philadelphia Stock Exchange, Inc. ("Phlx").[7]

The PCX also proposes to amend its hours of business to trade options on the Nasdaq-100 Index Tracking Stock in PCX Rule 4.2 from 6:30 a.m. to 1:15 p.m. PT, except the last trading day of a calendar month, when trading in options on the Nasdaq-100 Index Tracking Stock will end at 1:05 p.m. PT. These hours are consistent with the trading of options on Nasdaq-100 Index Tracking Stock on the Amex and the Phlx.

The PCX believes that these amendments will increase investor protection by allowing options on Exchange-Traded Fund Shares and, in particular, options on the Nasdaq-100 Index Tracking Stock to trade at the same strike price intervals and trading hours on the PCX as on other exchanges. The PCX believes that these amendments will enable the PCX to compete with other exchanges in these products.

2. Statutory Basis

The Exchange believes that the proposed rule change will assist in allowing the Exchange to offer investors another choice of venue to conduct trading in these products. Thus, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] The Nasdaq-100®, and Nasdaq-100 Index®, and Nasdaq® are trade or service marks of The Nasdaq Stock Market, Inc. (with its affiliates, the "Corporations") and are licensed for use by the Exchange. Options on Nasdaq-100 Index Tracking Stock (the "Products") have not been passed on by the Corporations as to their legality or suitability. The Products are not issued, endorsed, sold, or promoted by the Corporations. The Corporations make no warranties and bear no liability with respect to the Products. The Corporations do not guarantee the accuracy and/or uninterrupted calculation of the Nasdaq-100 Index® or any data included therein. The Corporations make no warranty, expressed or implied, as to results to be obtained by Licensee, owners of the Products, or any other person or entity from the use of the Nasdaq-100 Index® or any data included therein. The Corporations make no express or implied warranties, and expressly disclaim all warranties of merchantability or fitness for a particular purpose or use with respect to the Nasdaq-100 Index® or any data included therein. Without limiting any of the foregoing, in no event shall the Corporations have any liability for any lost profits or special, incidental, punitive, indirect, or consequential damages, even if notified of the possibility of such damages.

[5] *See* Securities Exchange Act Release No. 44025 (February 28, 2001), 66 FR 13986 (March 8, 2001) (Order approving SR–PCX–01–12).

[6] *See* Securities Exchange Act Release No. 40157 (July 1, 1998), 63 FR 37426 (July 10, 1998) (Order approving SR–Amex–96–44).

[7] *See* Securities Exchange Act Release No. 44055 (March 8, 2001), 66 FR 15310 (March 16, 2001) (Order approving SR–Phlx–01–32).

[8] 15 U.S.C. 78f(b).

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the objectives of Section 6(b)(5)[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Exchange as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act[10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11] Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6).[13] The Exchange also provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2001–20 and should be submitted by May 24, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–11088 Filed 5–2–01; 8:45 am]

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[9] 15 U.S.C. 78f(b)(5).
[10] 15 U.S.C. 78s(b)(3)(A).
[11] 17 CFR 240.19b–4(f)(6).
[12] 15 U.S.C. 78s(b)(3)(A).
[13] 17 CFR 240.19b–4(f)(6).

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Shelby County, Tennessee and Desoto County, Mississippi

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for Section 9 of proposed Interstate 69 in Desoto County, MS and Shelby County, TN beginning near Hernando, MS and extending to Millington, TN.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Doctor, Field Operations Team Leader, Federal Highway Administration, 640 Grassmere Park, Suite 112, Nashville, Tennessee 37211, Telephone: (615) 781–5788

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Tennessee Department of Transportation and Mississippi Department of Transportation will prepare an Environmental Impact Statement (EIS) on a proposal to provide a divided freeway facility from Interstate 55 (I–55) and State Route (S.R.) 304 near Hernando in Desoto County, Mississippi to US 51/S.R. 385 near Millington in Shelby County, Tennessee. Two general corridors, A and B, are being studied. Corridor A will pass through the city of Memphis and will generally follow the existing interstate system from I–55/S.R. 304 in Hernando, MS to US 51/S.R. 385 near Millington. Corridor B will be east of Memphis and will begin at I–55/S.R. 304 in Hernando, MS and end at US 51/S.R. 385 near Millington. The proposed project will be 64 to 96 kilometers (40 to 60 miles) in length depending on which alternative alignment is selected.

This proposed improvement is a section of independent utility of the Congressionally-designated High Priority Corridor 18, or future Interstate 69 which proposes to construct Interstate 69 from Port Huron, Michigan to the lower Rio Grande Valley in Texas. The overall purpose of this corridor is to improve international and interstate trade and to facilitate economic development.

Alternatives to be considered are: (1) Taking no action (no-build); (2) three build alternatives in Corridor A and three build alternatives in Corridor B. All alternatives will have a full control of access freeway design and will be on both existing and new location and (3) other alternatives that may arise from public and agency input. Incorporated into and studied with the build alternatives will be design variations of grade and alignment.

Initial coordination letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A public hearing will be held upon completion of the Draft EIS and public notice will be given of the time and place of the hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing. A formal scoping meeting and public involvement meetings are planned for late Spring 2001.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

[14] 17 CFR 200.30–3(a)(12).

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Programs and activities apply to this program.)

Issued on: April 26, 2001.

Gary D. Corino,

Tennessee Assistant Division Administrator, Nashville.

[FR Doc. 01–11047 Filed 5–2–01; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

United States Department of the Interior

[Docket Number FRA–2001–9012]

The United States Department of the Interior on behalf of Steam Town National Historic Site seeks a waiver of compliance with the Inspection and Maintenance Standards for Steam Locomotives, 49 CFR Part 230, published November 17, 1999. Section 230.3(c) of the standards requires steam locomotives having flue tubes replaced prior to September 25, 1995, have a one thousand four hundred seventy-two service day inspection [49 CFR 230.17] performed prior to being allowed to operate under the requirements. The Steam Town National Historic Site seeks this waiver for one locomotive number CP 2317, which had the flue tubes replaced and was returned to service in July of 1998. Steam Town National Historic Site was unaware of the requirement to file for special consideration and failed to meet the cut off filing date of January 18, 2001.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2001–9012) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room P1–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room P1–401 (Plaza Level), 400 Seventh Street SW., Washington, DC. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

Issued in Washington, DC. on April 23, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 01–11085 Filed 5–2–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Long Island Rail Road

[Docket Number FRA–2000–8588]

Long Island Rail Road (LIRR) seeks a waiver of compliance with the Safety Appliance Safety Standards, 49 CFR part 231.14, which requires that sill steps be mounted utilizing mechanical fasteners. They request that the waiver be granted for one hundred twenty-one bi-level passenger coaches and twenty-three bi-level control car locomotives manufactured by Kawasaki. The waiver, if granted, would allow sill steps located at the four corners and two located on each side of the equipment, at the side door locations, to be mechanical fastened to a bracket that is welded to a tubular side sill. The railroad states that the equipment is a center sill-less design and is supported by two tubular side sills and to mechanically fasten the step to the car would require drilling the sill which would weaken it.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2000–8588) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room Pl–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

Issued in Washington, DC on April 27, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 01–11084 Filed 5–2–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket RSPA–98–4957 Notice 26]

Request for Public Comment

AGENCY: Research and Special Programs Administration, DOT.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Research and Special Programs Administration (RSPA) published its request to renew its information collection "Reporting of Safety-Related Conditions on Gas, Hazardous Liquid

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and Carbon Dioxide Pipelines and Liquefied Natural Gas Facilities" on February 15, 2001, (66 FR 10560). No comments were received. RSPA is giving the public an additional 30 days to provide comments.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–6205, or by Fax (202) 366–4566, or via electronic mail at marvin.fell@rspa.dot.gov.

SUPPLEMENTARY INFORMATION:

Title: Reporting of Safety-Related Conditions on Gas, Hazardous Liquid, and Carbon Dioxide Pipelines and Liquefied Natural Gas Facilities.

OMB Number: 2137–0578.

Type of Request: Renewal of existing information collection.

Abstract: 49 U.S.C. 60102 requires each operator of a pipeline facility (except master meter) to submit to the Department of Transportation a written report on any safety-related condition that causes or has caused a significant change or restriction in the operation of pipeline facility or a condition that is a hazard to life, property or the environment.

Estimate of Burden: The average burden hour per response is 6 hours.

Respondents: Pipeline and Liquefied Natural Gas facility operators.

Estimated response per year: 47.

Estimated Total Annual Burden on Respondents: 282 hours.

Frequency: On occasion.

Use: To alert RSPA of hazardous conditions that might continue uncorrected.

Copies of this information can be reviewed at the Dockets Unit,. Plaza 401, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC, 10:00 A.M. to 4:00 P.M. Monday through Friday excluding Federal Holidays or through the internet at *dms.dot.gov.*

Comments are invited on (a) the need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who respond including the use of the appropriate automated, electronic, mechanical, or other technological collection techniques. Send comments directly to the Office of Management and Budget, Office of Information and Regulatory Affairs ATTN: RSPA Desk Officer 726 Jackson Place NW., Washington, DC 20503.

Issued in Washington, DC on April 25, 2001.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 01–11154 Filed 5–2–01; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0166]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on forms needed to apply for replacement insurance to replace the amount of Modified Life Insurance that was reduced at age 70.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 2, 2001.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail comments to: *irmnkess@vba.va.gov.* Please refer to "OMB Control No. 2900–0166" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles: a. Application for Ordinary Life Insurance, Replacement Insurance for Modified Life Reduced at Age 65, National Service Life Insurance, VA Form 29–8485.

b. Application for Ordinary Life Insurance, Replacement Insurance for Modified Life Reduced at Age 70, National Service Life Insurance, VA Form 29–8485a.

c. Application for Ordinary Life Insurance, Replacement Insurance for Modified Life Reduced at Age 65, National Service Life Insurance, VA Form 29–8700.

d. Information About Modified Life Reduction, VA Forms 29–8700a–e.

OMB Control Number: 2900–0166.

Type of Review: Extension of a currently approved collection.

Abstract: The forms are used by the insured to apply for replacement insurance to replace the amount of Modified Life Insurance that was reduced at age 70. The information is used by VA to initiate the granting of coverage for which applied.

Affected Public: Individuals or households.

Estimated Annual Burden: 642 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 7,700.

Dated: April 26, 2001.

By Direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–11059 Filed 5–2–01; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0559]

Agency Information Collection Activities Under OMB Review

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the National Cemetery Administration (NCA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 4, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0559" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: State Cemetery Data, VA Form 40–0241.

OMB Control Number: 2900–0559.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: VA Form 40–0241 is used to collect information regarding the number of interments conducted at state veterans' cemeteries each year. This information is necessary for budget and oversight purposes.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 17, 2000, at pages 50276–50277.

Affected Public: State, Local or Tribal Government.

Estimated Annual Burden: 65 hours.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 65.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7613. Please refer to "OMB Control No. 2900–0559" in any correspondence.

Dated: April 20, 2001.

By Direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–11058 Filed 5–2–01; 8:45 am]

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Corrections

Federal Register
Vol. 66, No. 86
Thursday, May 3, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–325–002, et al.]

Southern Company Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

April 17, 2001.

Correction

In notice document 01–10080 beginning on page 20651 in the issue of Tuesday, April 24, 2001, make the following correction:

On page 20652, in the first column, in the third line from the bottom, the docket number should read "ER01–1778–000".

[FR Doc. C1–10080 Filed 5–2–01; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Customs Service

Quarterly IRS Interest Rates Used In Calculating Interest on Overdue Accounts and Refunds on Customs Duties

Correction

In notice document 01–9647 beginning on page 20173 in the issue of Thursday, April 19, 2001, make the following correction:

On page 20174, in the second column, in the second paragraph, in the first sentence, "IRB 136" is corrected to read "IRB 936".

[FR Doc. C1–9647 Filed 5–2–01; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8940]

RIN 1545-AY73

Purchase Price Allocation in Deemed and Actual Asset Acquisitions; Correction

Correction

In rule document 01–7934 beginning on page 17362 in the issue of Friday, March 30, 2001, make the following correction:

On page 17363, in the table under the column heading "Add", in the second line, "§1.338&—2(c)(17)" is corrected to read "§1.338–2(c)(17)".

[FR Doc. C1–7934 Filed 5–2–01; 8:45 am]
BILLING CODE 1505–01–D

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION 1985

Federal Register

Thursday,
May 3, 2001

Part II

Department of Health and Human Services

Administration for Children and Families

Fiscal Year 2001 Discretionary Announcement for Head Start Family Worker Training and Credentialing Initiative; Availability of Funds and Request for Applications; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACYF/HS–2001–07]

Fiscal Year 2001 Discretionary Announcement for Head Start Family Worker Training and Credentialing Initiative; Availability of Funds and Request for Applications

AGENCY: Administration on Children, Youth and Families (ACYF), ACF, DHHS.

ACTION: Notice.

SUMMARY: The Administration for Children and Families (ACF), Administration on Children, Youth and Families (ACYF) announces the availability of $1,000,000; up to $100,000 per project for one year to support up to ten entities to design and/or adapt competency-based training programs and curricula suitable for the training and credentialing of Head Start Family Worker Staff. Academic institutions, other training providers, and public or private non-profit or for-profit organizations are eligible to apply for projects, which will be funded on a competitive basis.

Applicants must provide assurances that if they receive funds under the announcement, the model training program required as part of the final report described in the section of this announcement entitled: *Expectations and Requirements for Family Worker Training and Credentialing Projects* will be established as part of the grantee's regular curricular offerings no later than one year from the date of submission of the report.

DATES: The closing date for receipt of applications is 5:00 P.M. EDT, July 2, 2001.

ADDRESSES: Mail applications to: Head Start Family Worker Training and Credentialing Initiative, ACYF Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, Virginia 22209.

Hand delivered courier or overnight delivery applications are accepted during the normal working hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, on or prior to the established closing date.

All packages should be clearly labeled as follows:

Application for Head Start Family Worker Training and Credentialing Initiative

FOR FURTHER INFORMATION CONTACT: The Head Start Discretionary Grant Support Team (1–800–351–2293) is available to answer questions concerning application requirements and to refer you to the appropriate contact person in ACYF for programmatic questions. You may e-mail your questions to: hs@lcgnet.com.

In order to determine the number of expert reviewers that will be necessary, if you plan to submit an application, you are requested to send a post card or call with the following information: the name, address, telephone and fax numbers, and e-mail address of the project director and the name of the applicant at least four weeks prior to the submission deadline date to: Head Start Family Worker Training and Credentialing Initiative, ACYF Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, Virginia 22209.

Fiscal Year 2001 Discretionary Announcement for Head Start Family Worker Training and Credentialing Initiative

Table of Contents

This program announcement is divided into five sections:

Part I contains general information and an introductory section that describes the background of various Head Start initiatives supporting professional development, the target audience of this initiative, and the Head Start Bureau's expectations regarding this initiative and next steps.

Part II contains key program information such as a description of competitive categories, eligible applicants, project periods and applicable Head Start regulations.

Part III contains the requirements for information that must be included in each application.

Part IV contains the criteria upon which applications will be reviewed and evaluated.

Part V contains a discussion of the application process.

Appendix A includes the relevant application forms, certifications, disclosures and assurances necessary for completing and submitting the application.

Appendix B contains a listing of Competency Goals and Indicators for Head Start Staff Working with Families.

Appendix C includes a listing of the Head Start Quality Improvement Centers. The Head Start Quality Improvement Centers and Disability Services Quality Improvement Centers form a regionally-based system, composed of institutions and organizations whose common purpose is to support the continuous improvement of all grantees and delegate agencies as they work to provide high quality and effective services to children and families and address the emerging priorities of child care partnerships, Head Start expansion and welfare reform. The Training and Technical Assistance reflects a national commitment to quality improvement, local capacity-building and ongoing evaluation.

Part I. Purpose and Background

A. Purpose

The purpose of this announcement is to solicit applications for grants for the design and/or adaptation of competency-based training programs appropriate for utilization in a national Head Start Family Worker Training and Credentialing Initiative. Grants will be awarded to develop methodologies and approaches to enhance the skills, knowledge, and effectiveness of Family Services staff who are working with parents and young children in Head Start and Early Head Start, and other early childhood and child care family support programs.

Organizations funded under this Announcement will work cooperatively with the Head Start Bureau, national experts, and national organizations in furthering this initiative.

Successful applicants will be expected to work collaboratively with local Head Start programs as well as with other service agencies and organizations involved in endeavors, which grant credit, degrees, and credentialing of Family Workers.

B. Background

Head Start

Head Start and Early Head Start are comprehensive child development programs which serve children from birth to age five, pregnant women, and their families. The Early Head Start program provides services to children zero to three and serves approximately 50,000 children. Head Start, which provides services to children age three to five, currently serves over 850,000 low-income families and their children through a nationwide network of approximately 2,100 grantee and delegate agencies. These agencies serve children and families through a variety of program options and service strategies including center-based, home-based, and family child care partnerships.

Note: In the balance of this document, the term "Head Start" refers to both Head Start and Early Head Start programs and staff, unless otherwise indicated.

Since its inception in 1965, Head Start has had a strong commitment and impressive success in involving, educating and supporting parents and families as an integral part of every local program. For example, recent research in a nationally representative sample of programs documented high levels of parent involvement and satisfaction: approximately 80% of all parents participate in home visits, parent-teacher conferences, classroom observations and volunteering and over 85% of parents were very satisfied with the quality of services their child received. These findings corroborate the 1999 report of the American Customers Satisfaction Index, in which Head Start received the highest rating of any government program.

Building on this strong record of success and commitment, the initiative described in this announcement is intended to continue to strengthen the quality of services to and depth of partnerships with families by enhancing the training and effectiveness of Family Workers in all Head Start programs. It complements a broad series of related efforts to improve Head Start program quality, staff credentials, and accountability, including more specific performance standards and measures in children's literacy and language development, a new focus on child outcomes in program monitoring and self-assessment, expanded funding to upgrade program quality and staff compensation, and higher qualification standards for Head Start teachers.

Family Workers in Head Start

More than 25,000 Family Workers are employed in local Head Start programs. Family Workers play a critical role in developing and supporting the implementation of Head Start's family partnership process. Through this process the family of each enrolled child has opportunities to develop and implement an individualized plan of services based on their interests and needs. In many instances, the quality of support received by families correlates with the training and qualifications of the program's Family Workers.

Collectively, Family Workers represent a group with varied levels of professional education/training and experience. Local agencies have established a range of qualifications for Family Workers varying from a Masters of Social Work (MSW) or other related degree to a High School diploma. Accordingly, some Head Start Social Services and Parent Involvement staff (known as Family and Community Partnerships staff since 1998) are college degreed as well as state licensed or credentialed. Others have received undergraduate training or on-the-job training. Some Family Workers are current or former parents of Head Start children. As might be expected, Family Workers also vary widely in characteristics such as salary levels, staffing patterns, fields of study, tenure, average salary, forms of supervision and ongoing professional development opportunities.

Family Worker Training and Credentialing Initiative

The Family Worker Training and Credentialing Initiative is designed to implement a mandate from Congress in the Head Start Act Amendments of 1994 (P.L. 103–252). This Section of the Act required that "the Secretary, in coordination with concerned public and private agencies and organizations examining the issues of standards and training for family service workers, shall * * * (1) review and, as necessary, revise or develop new qualification standards for Head Start staff providing such services; (2) promote the development of model curricula (on subjects including parenting training and family literacy) designed to ensure the attainment of appropriate competencies by individuals working or planning to work in the field of early childhood and family services; and (3) promote the establishment of a credential that indicates the attainment of the competencies that is accepted nationwide".

To assist in planning to carry out the Congressional mandates, the Head Start Bureau in 1999 and 2000 convened five focus groups of leaders from: national organizations, local Head Start Programs including parents of past and currently enrolled children; Head Start Quality Improvement Centers; accreditation organizations and higher education institutions to discuss the needs, issues, and existing models of Head Start Worker staff training.

Among the issues and needs identified by focus group participants were the following:

- Input to the development of "Competency Goals and Indicators for Head Start Staff Working with Families" attached in Appendix B, page 27. These competencies are being communicated to Head Start agencies to assist local efforts in selecting, training, and supervising Family Workers and will provide a common framework for competency-based training models solicited via this announcement;
- Key characteristics of models for delivery of training in these competencies and approaches to link competency-based training to higher education coursework and degrees;
- The importance and challenges of creating competency-based training that is responsive to highly diverse adult learners, such as Family Workers in Head Start and child care programs with little recent experience as students, who frequently continue to work while pursuing a degree, and who may require special academic and social supports to successfully meet standards in general education and early childhood courses, and
- Recognition that with over twenty-nine percent of Head Start staff members being parents of former or current Head Start children that there is a necessity to ensure that any competency-based training program/curriculum for Family Workers is appropriate for, open to, and welcomes the parents of Head Start children so that they can attain the necessary competencies.

Expectations and Requirements for Family Worker Training and Credentialing Projects

Section 649 the Head Start Act authorizes grants for research, demonstration and collaboration activities. These grants will involve extensive investigation into areas where knowledge is currently insufficient and will be awarded pursuant to Section 649.

Based on the above legislative mandates, focus group input, and additional planning, the Head Start Bureau is issuing this grants announcement to support the development and/or adaptation of a variety of models of competency-based, credit-bearing training for Family Workers in Head Start and early childhood and family support programs. The central requirements for all projects are as follows:

- Develop competency-based training programs and curricula relevant to the work of a Head Start Family Worker based on the Head Start Program Performance Standards; the Competency Goals and Indicators for Head Start Staff Working with Families, attached in Appendix B; and include a credible approach to assessing the attainment of these competencies by individual trainees;
- Create or adapt competency-based training that is linked to academic credit and degree programs and to other forms of credentialing for Family Workers. Applicants are urged to present plans for training which provide for articulation to AA, BA, MS degree programs if the trainee decides to continue his/her education, and portability, should trainees desire to be Family Workers in other related programs;
- Develop training and curricula that is accessible and affordable for adult learners and that accommodates the training needs of current Head Start Family Workers, including former Head Start Parents who are likely to continue to work full time as they continue to

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participate in training towards a Family Worker credential; and

• Create state-of-the-art training and assessment strategies that will ultimately enhance the quality of program services and outcomes for the increasing diversity of low-income families served by Head Start and early childhood programs and agencies.

The Bureau is soliciting applications to develop and/or adapt competency-based training curricula and programs appropriate to the fulfillment of educational and professional growth needs of Family Worker staff nationwide, including all geographic regions as well as for staff serving Migrant and Indian families and communities. For purposes of this announcement "development" means the creation and design of a totally new competency-based, credit-based, training program. "Adaptation" means the proposed utilization of "as is" or slightly modified appropriate credit-bearing competency-based training program coursework and materials, delivery modalities, scheduling and cost factors, etc.

Innovative, realistic, forward-looking, and trainee accessible model training program designs are necessary in order to facilitate and advance the Head Start Family Worker Training Initiative. Applicants may propose developmental work such as re-shaping course materials, curriculum and teaching strategies; adapting mentoring, advisement, reflective practice, and practicum strategies, using distance learning and other forms of technology in new ways, alternate means to improve access, reduce costs, and increase the successful completion of the training sequence and demonstration of competencies by candidates; and new efforts and methods to link competency-based training and curriculum to academic credit, higher education degree programs and related credentialing systems for Family Workers. Applicants are strongly encouraged to involve Family Workers, managers, program directors from Head Start and other community-based programs and training and technical assistance providers in their grant application planning and implementation of their projects. Attachment C provides a Directory of Head Start Training and Technical Assistance providers.

Each funded project will be expected to present a comprehensive competency-based credit-bearing training program and curriculum (plus alternate designs, if any) to the Head Start Bureau at the end of this grant project period. All elements of the training program, including but not limited to recruitment, entry requirements, course content, credit hours, primary and alternate delivery modalities, time requirements, implementation plans and schedule, staffing qualifications, program and student assessments (including a method or strategy for the assessment of the competencies to be acquired by trainees), program accreditation, credentialing mechanisms, articulation plans/processes/agreements, and cost factors are to be included in this presentation. At some point in the future, the Head Start Bureau intends to require a common set of competencies and skills for Family Workers. Model curricula developed under this Announcement will be used to help determine the requisite training and credential attainment for these workers. Therefore, successful applicants are also expected to declare their intent to implement their proposed program after the end of the grant period, independent of any additional Federal support, if the Head Start Bureau determines that their model is sufficient to meet the training needs of Head Start Family Workers.

The Bureau in concert with national experts and practitioners will carry out a comprehensive review of all final submissions. The review will include examination of how proposed programs will enhance the capacities of trainees in all of the areas addressed in the Head Start Program Performance Standards and sub-areas of the eleven Family Workers "Competency Goals and Indicators" as defined in Appendix B. As a result of this review, the Bureau will examine the possible establishment and implementation of a Family Worker Training Program Resource Data Base incorporating all training programs conforming to Head Start's requirements. Those providers and programs included in the Data Base will be deemed to be responsive and appropriate for use by local program Family Worker staff in pursuing courses of studies and credentialing.

Grantees will be expected to attend a three-day Orientation Meeting regarding this Initiative in Washington D.C. to be held no later than six weeks after grant award. The Head Start Bureau and a work group of national consultants on competency-based training and credentialing will convene to engage with grantees regarding programmatic issues and Bureau expectations for this initiative. Applicants need to budget for the three-day Orientation meeting.

Part II. Program Information and Requirements

A. Statutory Authority

The Head Start Act, as amended 42 U.S.C. 9801 et seq.

B. Eligible Applicants

Applicants must be public or private institutions of higher education or nonprofit or for profit organizations with experience and knowledge in working with early childhood programs for young children birth to age five. In accordance with 45 CFR 74.81, for profit organizations must waive their profit when applying for funding under this announcement.

C. Project Duration

Awards will be made on a competitive basis and will be for a one-year period. The total project period will be one year.

D. Federal Share of Project Costs

A total of approximately $1,000,000 in ACF funds will be available.

E. Number of Projects To Be Funded

ACF will fund up to ten applicants. An individual discretionary grant will be awarded to a successful applicant in order to foster achievement of the goals of this Head Start initiative.

F. Matching Requirement

Although there are no matching requirements, applicants are encouraged to provide non-Federal contributions to the project.

Part III. Application Requirements

A. Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly.

In preparing your project description, all information requested through each specific evaluation criteria should be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

B. General Instructions

ACF is particularly interested in specific factual information and statements of measurable goals in

quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. Cross-referencing should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix.

Pages should be numbered and a table of contents should be included for easy reference.

Introduction

Applicants are required to submit a full project description and shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expands and clarifies more program-specific information that is needed.

Project Summary/Abstract

Provide a summary of the Project description (a page or less) with reference to the funding request.

C. Objectives and Need for Assistance

Clearly identify the physical, economic, social, institutional and other problems(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported or (to be initiated), some of which may be outside the scope of the program announcement.

D. Results or Benefits Expected

Identify the results and benefits to be derived.

E. Approach

Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information that is conducted or sponsored by ACF."

List organizations, cooperating entities, consultants, or other key individuals whom will work on the project along with a short description of the nature of their effort or contribution.

F. Additional Information

Following are requests for additional information that need to be included in the application.

1. Staff and Position Data

Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

2. Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information.

G. Third-Party Agreements

Include written agreements between the grantee and subgrantees or subcontractors or other cooperative entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

Letters of Support

Provide statements from community, public and commerical leaders that support the project proposed for funding. All submissions should be included in the application *OR* by application deadline.

H. Budget and Budget Justificotion

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

General

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, "Federal resources" refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

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Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment

"Equipment" means an article of nonexpendable, tangible personal property having a useful life or more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (Note: Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information, which supports the amount requested.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Total Direct Charges, Total Indirect Charges, Total Project Costs.

Self-explanatory.

Part IV Evaluation Criteria

A. Review Criteria

In considering how applicants will carry out the responsibilities addressed under this announcement, competing applications for financial assistance will be reviewed and evaluated against the following criteria:

Criterion 1. Objectives and Need for Assistance: (15 points)

The extent to which the application identifies relevant physical, economic, social, financial, institutional or other problems requiring a grant; demonstrates the need for assistance; states the principal and subordinate objectives of the project; provides supporting documentation or other testimonies from concerned interests other than the applicant.

Information provided in response to Part III, Section C. of this announcement will be used to evaluate applicants on this criterion.

Criterion 2. Results or Benefits Expected: (25 points)

The extent to which the application identifies the results and benefits to be derived; describes the anticipated contribution to policy, practice, theory and/or research; specific benefits should be described for Head Start and the whole early childhood community working with children birth through five.

The Head Start Bureau is particularly interested in the following:

1. Based on the stated program objectives, identify the results and benefits to be derived for Family Workers in Head Start, Early Head Start, and staff in other early childhood, child care and family support agencies.

2. Describe potential longer term benefits of this initiative, including enhancing participation and provision of higher education opportunities for family service staff; enhancement of relationships between higher education institutions and local early care and education programs, including Head Start; program quality, and practices and outcomes in early care child/family programs.

Information provided in response to Part III, Section D of this announcement will be used to evaluate applicants on this criterion.

Criterion 3. Approach: (50 points)

The extent to which the application outlines an acceptable plan of action pertaining to the scope of the project which details how the proposed work will be accomplished, including a timeline; lists of each organization, consultants, including the evaluator, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution; assures the adequacy of time devoted to the project by key staff, the key staff should be knowledgeable of Head Start and Early Head Start, the applicant must fully describe the approach and/or methodology and delineate the relationship of each task to the accomplishment of the proposed objectives. There should be evidence that the planned approach reflects sufficient input from collaborating partners.

The Head Start Bureau is particularly interested in the following:

1. Describe the applicants' experience and capabilities in providing training to family worker staff from Head Start and early childhood and family support programs.

2. Provide a discussion of the major current and emerging challenges facing family workers, and the challenges of delivering competency-based training to current staff members.

3. Describe the planning and development process the applicant will use to develop a final design/model program and describe how Head Start and other program family workers, managers and others will be involved.

4. Discuss how other career development and higher education organizations, institutions, and providers/partners or contributors may be involved in the planning and design phase, as well as in ongoing refinement and improvement of the desired model for curricula.

5. Propose and defend an initial overall professional development strategy for Head Start Family workers and other related early childhood higher education programs, including content, and sequence of development experience, and ways to encourage applications of new knowledge, standards and best practices to the instruction of participants and their sponsoring Head Start program. Include discussion of issues such as the admission/eligibility requirements, program scheduling, accessibility, and location of activities, including explicit approaches to supporting peer networking and mentoring of participants.

6. Provide assurance that training/courses are offered at the lowest reasonable justifiable cost to trainees.

7. Indicate initial plans for the recruitment and selection of faculty or trainers who would train Family Workers. Discuss how recruitment and selection process will attract faculty/trainers with demonstrated ability to respond to the growing diversity of the population of families and children served in Head Start, Early Head Start and other early care and education programs.

Information provided in response to Part III, Sections E, F and G of this announcement will be used to evaluate applicants on this criterion.

Criterion 4. Budget and Budget Justification: (10 points)

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness and allocability of the proposed costs.

B. The Review Process

Applications received by the due date will be reviewed and scored competitively. Experts in the field, generally persons from outside the Federal government, will use the evaluation criteria listed in Part IV of this announcement to review and score the applications. The results of this review are a primary factor in making funding decisions. ACYF may also solicit comments from ACF Regional Office staff and other Federal agencies. The ACYF Commissioner may also consider a variety of all factors in funding decisions, including supporting a set of projects to serve Head Start programs and Family Workers in all geographic regions and representative of approaches to working with different types of Head Start programs, including Indian and Migrant grantees.

Part V. The Application Process

A. Required Forms

Eligible applicants interested in applying for funds must submit a complete application including the required forms included at the end of this program announcement in Appendix A. In order to be considered for a grant under this announcement, an application must be submitted on the Standard Form 424 approved by the Office of Management and Budget under Control Number 0348–0043. A copy has been provided. Each application must be signed by an individual authorized to act for the applicant and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, Assurances: Non-Construction Programs (approved by the Office of Management and Budget under control number 0348–0040). Applicants must sign and return the Standard Form 424B with their application. Applicants must provide a certification concerning lobbying. Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certification (approved by the Office of Management and Budget under control number 0348–0046). Applicants must sign and return the certification with their application.

Applicants must make the appropriate certification of their compliance with the Drug-Free Workplace Act of 1988. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for award. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must also understand that they will be held accountable for the smoking prohibition included within P.L. 103–227, Part C Environmental Tobacco Smoke (also known as The Pro-Children's Act of 1994). A copy of the **Federal Register** notice, which implements the smoking prohibition, is included with the forms. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

B. Application Limits

The application should be double-spaced and single-sided on 8½" × 11" plain white paper, with 1" margins on all sides. Use only a standard size font no smaller than 12 pitch throughout the application. All pages of the application (including appendices, resumes, charts, references/footnotes, tables, maps and exhibits) must be sequentially numbered, beginning on the first page after the budget justification, the principal investigator contact information and the Table of Contents. Although there is no limitation regarding number of pages, applicants are urged to be concise and limit applications to no more than 50 pages. Applicants are requested not to send pamphlets, brochures, or other printed material along with their applications as these pose copying difficulties. These materials, if submitted, will not be included in the review process. In addition, applicants must not submit any additional letters of endorsement beyond any that may be required.

Applicants are encouraged to submit curriculum vitae in a biographical format. Please note that applicants that

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do not comply with the requirements in the section on "Eligible Applicants" will not be included in the review process.

C. Checklist for a Complete Application

The checklist below is for your use to ensure that the application package has been properly prepared.

—One original, signed and dated application plus two copies.
—Attachments/Appendices, when included, should be used only to provide supporting documentation such as resumes, and letters of agreement/support.

(1) Application for Federal Assistance (SF–424, Rev. 7–97)
(2) Budget information-non-construction programs (SF424A&B)
(3) Budget Justification, including subcontract agency budgets
(4) Application Narrative and Appendices
(5) Proof that the organization is a non-profit organization
(6) Assurances Non-Construction Program
(7) Certification Regarding Lobbying
(8) If appropriate, a completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF–424, Rev. 7–97
(9) Certification of Protection of Human Subjects

D. Closing Date for Receipt of Applications

The closing time and date for receipt of applications is 5:00 p.m. (Eastern Time Zone) on August 1, 2001. Mailed or handcarried applications received after 5:00 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the ACF Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, Virginia 22209. Applicants are responsible for mailing applications well in advance when using all mail services to ensure that the applications are received on or before the deadline time and date.

Applications handcarried by applicants, applicant couriers, or other representatives of the applicant or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 5:00 p.m. at the ACF Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, VA 22209, between Monday and Friday (excluding Federal Holidays).

Applicants are cautioned that express/overnight mail services may not always deliver as agreed.

ACF cannot accommodate the transmission of applications by FAX or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

Late applications: Applications that do not meet the criteria stated above are considered late applications. ACF will notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend an application deadline for applicants affected by Acts of God such as floods and hurricanes, when there is widespread disruptions of mail service, or for other disruptions of services, such as a prolonged blackout, that affect the public at large. A determination to waive or to extend deadline requirements rests with the Chief Grants Management Officer.

E. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, Public Law 104–13, the Department is required to submit to OMB for review and approval any reporting and record keeping requirements in regulations including program announcements. All information collections within this program announcement are approved under the following current valid OMB control numbers 0348–0043, 0348–0044, 03480–0040, 0348–0046, 0925–0418 and 0970–0139.

Public reporting burden for this collection is estimated to average 10 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection of information.

An agency may not conduct or sponsor and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

F. Required Notification of the State Single Point of Contact

This program is covered under Executive Order 12372, Intergovernmental Review of Federal Programs, and 45 CFR part 100, Intergovernmental Review of Department of Health and Human Services Program and Activities. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

*All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, Wyoming, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-seven jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those Official State process recommendations, which may trigger the accommodation or explain rule.

When comments are submitted directly to ACF, they should be addressed to William Wilson, Head Start Bureau, 330 C Street, SW, Washington, DC 20447, Attn: Head Start Family Worker Training and Credentialing Initiative. A list of Single Points of Contact for each State and Territory can be found on the web site: http://www.whitehouse.gov/omb/grants/spoc.html

(Catalog of Federal Domestic Program Number 93.600, Project Head Start)

Dated: April 26, 2001.

Gail E. Collins,

Acting Deputy Commissioner, Administration on Children, Youth and Families.

BILLING CODE 4184–01–P

Appendix A—Application Forms, Certifications, Disclosures, and Assurances

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

	2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	**3. DATE RECEIVED BY STATE**	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code):*	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN):* ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify):*

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.):*

13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		**16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?**
a. Federal	$ .00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
b. Applicant	$ .00	b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
c. State	$ .00	
d. Local	$ .00	
e. Other	$ .00	
f. Program Income	$ .00	**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?** ☐ Yes If "Yes," attach an explanation. ☐ No
g. TOTAL	$ .00	

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

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INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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OMB Approval No. 0348-0044

BUDGET INFORMATION - Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6a-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years) (b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

21. Direct Charges:

22. Indirect Charges:

23. Remarks:

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INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

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INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

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9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, it applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97)

Administration for Children, Youth, and Families
U.S. Department of Health and Human Services

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart, F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central pint is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, SW Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to

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the performance of the grant: and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition.

(b) Establishing an ongoing drug-free awareness program to inform employees about -- (1)The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will -- (1) Abide by the terms of the statement; and (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted -- (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

.....

.....

Check if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant.

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant

[55 FR 21690, 21702, May 25, 1990]

Administration for Children, Youth, and Families
U.S. Department of Health and Human Services

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

Certification Regarding Debarment, Suspension, and Other Responsibility Matters--Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and

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Nonprocurement Programs
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

Certification Regarding Debarment, Suspension, and Other Responsibility Matters--Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered

Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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Administration for Children, Youth, and Families
U.S. Department of Health and Human Services

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

.....
Signature

.....
Title

.....
Organization

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	**Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):

11.	
Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____

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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994, requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

BILLING CODE 4184-01-C

It is estimated that in 2001 the Federal Government will outlay $305.6 billion in grants to State and local governments. Executive Order 12372, "Intergovernmental Review of Federal Programs" was issued with the desire to foster the intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. The Order allows each State to designate an entity to perform this function. Below is the official list of those entities. For those States that have a home page for their designated entity, a direct link has been provided below. States that are not listed on this page have chosen not to participate in the intergovernmental review process, and therefore do not have a SPOC. If you are located within one of these States, you may still send application materials directly to a Federal awarding agency.

Arkansas

Tracy L. Copeland
Manager, State Clearinghouse
Office of Intergovernmental Services
Department of Finance and Administration
1515 W. 7th St., Room 412
Little Rock, Arkansas 72203
Telephone: (501) 682–1074
Fax: (501) 682–5206
tlcopeland@dfa.state.ar.us

California

Grants Coordination
State Clearinghouse
Office of Planning and Research
P.O. Box 3044, Room 222
Sacramento, California 95812–3044
Telephone: (916) 445–0613
Fax: (916) 323–3018
state.clearinghouse@opr.ca.gov

Delaware

Charles H. Hopkins
Executive Department
Office of the Budget
540 S. Dupont Highway, 3rd Floor
Dover, Delaware 19901
Telephone: (302) 739–3323
Fax: (302) 739–5661
chopkins@state.de.us

District of Columbia

Ron Seldon
Office of Grants Management and Development
717 14th Street, NW, Suite 1200
Washington, DC 20005
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Fax: (202) 727–1617
ogmd-ogmd@dcgov.org

Florida

Florida State Clearinghouse
Department of Community Affairs
2555 Shumard Oak Blvd.
Tallahassee, Florida 32399–2100
Telephone: (850) 922–5438
(850) 414–5495 (direct)
Fax: (850) 414–0479

Georgia

Georgia State Clearinghouse
270 Washington Street, SW
Atlanta, Georgia 30334
Telephone: (404) 656–3855
Fax: (404) 656–7901
gach@mail.opb.state.ga.us

Illinois

Virginia Bova
Department of Commerce and Community Affairs
James R. Thompson Center
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Chicago, Illinois 60601
Telephone: (312) 814–6028
Fax (312) 814–8485
vbova@commerce.state.il.us

Iowa

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Division of Community and Rural Development
Iowa Department of Economic Development
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Des Moines, Iowa 50309
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Kentucky

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Department for Local Government
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Nevada

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New Hampshire

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New Mexico

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North Carolina

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Puerto Rico

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Changes to this list can be made only after OMB is notified by a State's officially designated representative. E-mail messages can be sent to *grants@omb.eop.gov*. If you prefer, you may send correspondence to the following postal address: Attn: Grants Management, Office of Management and Budget, New Executive Office Building, Suite 6025, 725 17th Street, NW, Washington, DC.

Appendix B—Competency Goals and Indicators for Head Start Staff Working With Families

The "Competency Goals and Indicators for Head Start Staff Workirig with Families" described on the following pages are intended to define competencies and skills for entry-level staff who are working directly with families under ongoing supervision in furtherance of their professional development. Family Workers should be able to demonstrate their ability to provide services consistent with the requirements of the Head Start Program Performance Standards.

Today's workers are expected to exhibit a new level of professionalism to effectively support today's families. Increasingly, new organizational structures and innovative service models within Head Start require workers to:

- Develop respectful relationships with families which evolve into an individualized family partnering process which addresses the parent's role in supporting child development goals, health and disabilities goals, as well as traditional social services, family development, and parent involvement goals.
- Work in partnership with families and other community providers to develop family partnership agreements and to integrate this process into family plans when appropriate.
- Support families in their efforts to obtain employment and move towards self-sufficiency.
- Provide a new level of service in the area of family literacy, reflective of the intent of the current Head Start Program Performance Standards.

Appendix B as follows:

- Reflects the Head Start Program Performance Standards
- Reflects the latest thinking in the family support field including strength-based, family centered principles, and
- Includes new areas of competency in response to the changing role of family support staff

Indicators are listed for each area of competency. These Indicators provide a mechanism to measure individuals seeking demonstrable competency in each of the competency goal areas.

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COMPETENCY GOALS AND INDICATORS FOR HEAD START STAFF WORKING WITH FAMILIES

Competency Goal #1: **Establish mutually respectful partnerships with families to enhance the quality of their lives and their communities.**

Indicators: *Head Start staff working with families should demonstrate their ability to do the following:*

- Conduct outreach, recruitment, and enrollment;
- Provide orientation on philosophy of program and services provided;
- Establish and maintain ongoing partnerships based on trust with families;
- Communicate effectively using appropriate verbal and nonverbal messages and reflective listening skills;
- Implement strategies including home visits to learn about families and the changing community.

Competency Goal #2: **Support families' efforts to reach their goals.**

Indicators: *Head Start staff working with families should demonstrate their ability to do the following:*

- Develop strengths-based assessments with families that describe their goals, strengths, resources and support networks, as well as necessary services and supports;
- Develop, in partnership with the family, an individualized family plan;
- Facilitate families' problem-solving and teach problem-solving skills;
- Coach, consult, educate, and utilize counseling skills, where appropriate;
- Advocate for the family and support them in advocating for themselves;
- Follow-up with the family on the progress toward meeting their goals and any needed revisions to the plan;
- Assist with transitions to other programs, communities and schools.

Competency Goal #3: **Offer parents opportunities to be involved in group activities, including policy groups and educational activities based on interest and need.**

Indicators: *Head Start staff working with families should demonstrate their ability to do the following:*

- Identify common interests and needs of parents in order to plan appropriate activities;
- Work with parent groups on group formation, group processing, and leadership
- Provide and/or coordinate training and educational opportunities for parents; and
- Engage parents in volunteering, community service and other ways of contributing to program activities and services.

Competency Goal #4: **Provide opportunities for children and families to participate in family literacy services.**

Indicators: *Head Start staff working with families should demonstrate their ability to do the following:*

- Work with other program staff to support interactive literacy activities between parents and their children;
- Provide training for parents in how to be the primary teacher for their children and full partners in the education of their children;
- Assist parents as adult learners to recognize and address their own literacy goals; and
- Link and support parents in engaging in literacy training that contributes to self-sufficiency.

Competency Goal #5: **Coordinate and integrate Head Start services in order to enhance effectiveness.**

Indicators: *Head Start staff working with families should demonstrate their ability to do the following:*

- Serve as a productive team member on an interdisciplinary team of professionals;
- Participate in and facilitate case conferences to promote service integration;
- Apply knowledge of health, mental health, disabilities, and child development in order to ensure holistic service delivery;
- Promote and support parent involvement and leadership throughout the program.

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Competency Goal #6: **Support families in accessing other community resources.**

Indicators: *Head Start staff working with families should demonstrate their ability to do the following:*

- Research and keep up-to-date on program and community resources;
- Analyze match of community resources to family needs and identify unmet family needs.
- Refer families to community resources and follow-up on the effectiveness of referrals; and
- Promote community partnerships that will improve supports to families.

Competency Goal #7: **Assist families in crisis.**

Indicators: *Head Start staff working with families should demonstrate their ability to do the following:*

- Listen to families and assess the crisis situation;
- Take active steps to ensure the safety of all involved;
- Decide when to intervene and when to refer a family;
- Identify (with the family) options, resources, and consequences to address the crisis; and
- Support families in making decisions and taking active steps to resolve current crises and be prepared to address future crises;

Competency Goal #8: **Respect and respond competently to the culture, traditions, lifestyle, language, and values of each family and community.**

Indicators: *Head Start staff working with families should demonstrate their ability to do the following:*

- Be knowledgeable about and sensitive to each family's values, beliefs, traditions, cultural influences, makeup, and circumstances;
- Work with families representing different cultures using a culturally competent and flexible approach.
- Identify and reflect on personal values, experiences and biases that facilitate and present barriers in working with certain groups of people.

Competency Goal #9 **Contribute to effective program practices and maintain a commitment to professionalism.**

Indicators: *Head Start staff working with families should demonstrate their ability to do the following:*

- Perform record-keeping and internal and external reporting tasks in a timely and objective fashion;
- Effectively utilize supervisory professional development and technical assistance resources to improve competence;
- Contribute to and participate in strategic planning, program self-assessment and other efforts to improve program services and agency responsiveness to families;
- Make decisions and act based on family support principles, theories, practices, and code of ethics;
- Articulate an awareness of self, values, and ethics as they impact on work with families; and
- Maintain professional boundaries and confidentiality.

Appendix C—Head Start Quality Improvement Centers

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QUALITY IMPROVEMENT CENTERS (QICS)

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Region/States	Agency	Project Director
Region I Connecticut Maine Massachusetts New Hampshire Rhode Island Vermont	**Education Development Center, Inc.** 55 Chapel Street Newton, MA 02458-1060	Pat Fahey 617-969-7100 x2375 617-969-3440 Fax E-mail[pfahey@edc.org]
	Disabilities Services: **Education Development Center, Inc.** 55 Chapel Street Newton, MA 02458-1060	Philip Printz 800-225-4276 x2349 617-618-2349 617-969-3440 Fax E-mail[pprintz@edc.org]
Region II (a) New Jersey New York (b) Puerto Rico/ Virgin Islands	**(a) New York University** Head Start Quality Improvement Center 726 Broadway, 5th Floor New York, NY 10003	Patricia M. Hall 212-998-5550 212-995-3458 Fax E-mail[pmh5@is2.nyu.edu]
	(b) Development Associates, Inc. Puerto Rico/Virgin Islands P.O. Box 3968 Guaynabo, PR 00970-3968	Gloria de-Llovio Dominguez 787-281-0125/0100/0110 787-281-0120 Fax E-mail[dahstasc@tld.net]
	Disabilities Services: **New York University** School of Education 726 Broadway, 5th Floor New York, NY 10003	Barbara Schwartz 212-998-5528 212-995-4562 Fax E-mail[b.schwartz@nyu.edu]
	Satellite Office **New York University QIC-D** 130 Winston Churchill Avenue San Juan, PR 00926	Linna Irizarry-Mayoral 787-751-8880 787-751-8810 Fax E-mail[cynuqicd@tld.net]
Region III Delaware District of Columbia Maryland Pennsylvania Virginia West Virginia	**University of Maryland University College** 3501 University Boulevard East Adelphi, MD 20783	Madhavi Parikh 301-446-1040 800-688-1675 301-446-1060 Fax E-mail[parim@hsrtc.umuc.edu]
	Disabilities Services: **Child Development Resources** P.O. Box 280 Norge, VA 23127-0280	Sheri Osborne 757-566-3300 757-566-8977 Fax E-mail [sherio@cdr.org]
	Satellite Office **West Virginia DSQIC Office** 2A Hyre Avenue Petersburg, WV 26847	Carol Thomas 304-257-4853 888-869-1359 304-257-4829 Fax E-mail[carolm@hardynet.com]

QUALITY IMPROVEMENT CENTERS (QICS)

July 2000

Region/States	Agency	Project Director
Region III (Cont.) Delaware District of Columbia Maryland Pennsylvania Virginia West Virginia	**Children's Hospital and the UCLID Center** University of Pittsburgh 3705 Fifth Avenue at Desoto Street Pittsburgh, PA 15123-2583	Stephen J. Bagnato 412-692-6520 412-692-8729 Fax E-mail[stephen_bagnato@poplar.chp.edu]
	Subcontract Office **Georgetown University Child Development Center** 3307 M Street, SW, 4th Floor Washington, DC 20007-3935	Kris Hansen 202-687-5107 202-687-8899 Fax E-mail[hansenk@gunet.georgetown.edu]
Region IV (a) Kentucky North Carolina South Carolina Tennessee (b) Alabama Florida Georgia Mississippi	**(a) Western Kentucky University** Training and Technical Assistance Services College of Education Room 344, Tate C. Page Hall 1 Big Red Way Bowling Green, KY 42101-3576	Colleen B. Mendel 270-745-4041 270-745-3340 Fax E-mail[colleen.mendel@wku.edu]
	(b) Western Kentucky University Training and Technical Assistance Services College of Education Room 344, Tate C. Page Hall 1 Big Red Way Bowling Green, KY 42101-3576	Marce Verzaro-O'Brien 305-289-2034 800-882-7482 305-289-0337 Fax E-mail[mvobrien@aol.com]
	Disabilities Services: **Chapel Hill Training–Outreach Project** 800 Eastowne Drive, Suite 105 Chapel Hill, NC 27514	Brenda Bowen 919-490-5577 x224 800-473-1727 919-490-4905 Fax E-mail[bbowen@intrex.net]
	Satellite Offices *Florida* **Pinellas County Head Start** 66988th Avenue North, Suite D Pinellas Park, FL 33781	Pam Kautz 727-547-5900 727-547-5909 Fax E-mail[pamkautz@aol.com]
	Georgia 1806 Calibre Woods Drive Atlanta, GA 30329	Lisa Goldman 404-325-0903 404-329-5488 Fax E-mail[lmgoldman@mindspring.com]
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QUALITY IMPROVEMENT CENTERS (QICS)

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Region V (a) Michigan Minnesota Wisconsin (b) Illinois Indiana Ohio	**(a) Cooperative Educational Service Agency #5** P.O. Box 564 626 East Slifer Street Portage, WI 53901 Satellite Offices **Bemidji State University** 325 Education/Art Building (EA325) 1500 Birchmont Drive NE Bemidji, MN 56601-2699 **BHK Head Start** HC2 Box 989 Allouez, MI 49805 **Michigan State University** Kellogg Center Room 22 East Lansing, MI 48824-1036 **University of Minnesota** 370C Peik Hall 159 Pillsbury Drive Minneapolis, MN 55455-0223 **UW-Waisman Center** 122 E. Olin Avenue Suite 110 Madison, WI 53713 --- **(b) The Ohio State University** Center for Special Needs Populations Suite 440 700 Ackerman Road Columbus, OH 43202-1559 Satellite Offices **OHSAI** 505 Windsor Park Drive Dayton, OH 45459	Linda Young 608-742-8814 x309 800-862-3275 x309 608-742-2384 Fax E-mail[youngl@cesa5.k12.wi.us] Connie Grant 218-755-3782 218-755-3787 Fax E-mail[cegrant@vax1.bemidji.msus.edu] Sally Hruska 906-337-5043 906-337-5043 Fax E-mail[shruska@up.net] Brooke Foulds 517-353-5194 517-355-5220 Fax E-mail[fouldsdo@pilot.msu.edu] Jean Marchessault 612-624-9509 612-625-2097 Fax E-mail[march020@tc.umn.edu] Linda Leonhart 608-265-9423 608-265-9421 Fax E-mail[leonhart@waisman.wisc.edu] Dennis Sykes 614-447-0844 x133 800-447-1424 614-447-9043 Fax E-mail[sykes.3@osu.edu] Barbara Haxton 937-435-1113 937-435-5411 Fax E-mail[haxton@erinet.com]

QUALITY IMPROVEMENT CENTERS (QICS)

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QUALITY IMPROVEMENT CENTERS (QICS)

July 2000

Region/States	Agency	Project Director
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Region VII Iowa Kansas Missouri Nebraska	**Community Development Institute** 5616 Raytown Road Raytown, MO 64133	Donna McDaniel 816-356-5373 816-356-2818 Fax E-mail[Dmcdaniel@CDI7.com]
	Disabilities Services: **University of Kansas Medical Center** KUMC CDU G001 3901 Rainbow Boulevard Kansas City, KS 66160-7339	Barbara Lawrence 913-588-5960 913-588-5920 Fax E-mail[blawren1@kumc.edu]
Region VIII Colorado Montana North Dakota South Dakota Utah Wyoming	**Community Development Institute** 9745 E. Hampden Avenue, Suite 310 Denver, CO 80231	Deborah Hinrichs 303-369-5959 x19 800-488-CDI8 (2348) 303-369-5801 Fax E-mail[Debhinrich@aol.com] or [CDI8QIC@aol.com]
	Disabilities Services: **Utah State University/HSRC** Room 13 6582 Old Main Hill Logan, UT 84322-6582	Don Barringer 435-797-0988 888-523-5127 435-797-0983 Fax E-mail[nordon@cc.usu.edu]
	Subcontract Offices	
	PEAK Parent Center, Inc. 6055 Lehman Drive, Suite 101 Colorado Springs, CO 80918	Shirley Swope 719-531-9400 719-531-9452 Fax E-mail[parentadvisor@peakparent.org]
	Parents Let's Unite for Kids (PLUK) 516 N. 32nd Street Billings, MT 59101-0298	Rebecca Johns 406-837-2029 888-288-2029 406-255-0253 Fax E-mail[rjohns@digisys.net]

QUALITY IMPROVEMENT CENTERS (QICS)

July 2000

Region/States	Agency	Project Director
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	South Dakota Parent Connection 3701 West 49th Street Suite 200B Sioux Falls, SD 57106	Bev Peterson 605-361-3171 605-361-2928 Fax E-mail[bpeterson@dakota.net]
	Utah Parent Center 2290 East 4500 South, Suite 110 Salt Lake City, UT 84117	Jennie Gibson 801-763-0722 801-763-0422 Fax
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	Satellite Offices	
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	California **Development Associates, Inc.** Quality Improvement Center at the Research Center Pacific Oaks College 65 S. Grand Avenue Pasadena, CA 91103-3592	Jacqueline Davis 800-666-9711 626-792-9720 626-397-1304 Fax E-mail[jdavis@devassoc.com]

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QUALITY IMPROVEMENT CENTERS (QICS)

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	Southern Office **Ventura County Superintendent of Schools Office** 5189 Verdugo Way Camarillo, CA 93012	Mary Ann Walker 805-383-9301 800-625-7649 805-383-9304 Fax E-mail[mawalker@vcss.k12.ca.us] Web[http://www.sonoma.edu/cihs/hsds/]
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QUALITY IMPROVEMENT CENTERS (QICS)

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Region XI	**University of Oklahoma** American Indian Institute 555 Constitution Street Suite 237 Norman, OK 73072-7820	Pattie Howell 405-325-4129 405-325-7319 Fax E-mail[phowell@ou.edu]
	Disabilities Services: **Three Feathers Associates** P.O. Box 5508 Norman, OK 73070	Antonia Dobrec 405-360-2919 405-360-3069 Fax E-mail[toni@threefeathersassoc.com]
Region XII	**Academy for Educational Development** 1825 Connecticut Avenue, NW Washington, DC 20009-5721	Leilani Pennel 800-864-0465 202-884-8729 202-884-8732 Fax E-mail[Lpennel@aed.org]
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Federal Register

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May 3, 2001

Part III

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Part 365, et al.
Revision of Regulations and Application Form for Mexican-Domiciled Motor Carriers To Operate in U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border; Proposed Rules

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 368 and 387

[Docket No. FMCSA–98–3297]

RIN 2126–AA33

Revision of Regulations and Application Form for Mexican-Domiciled Motor Carriers To Operate in U.S. Municipalities and Commercial Zones on the U.S-Mexico Border

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM); request for comments.

SUMMARY: The FMCSA proposes to revise its regulations and form that relate to the issuance of Certificates of Registration to any Mexican-domiciled motor carrier (of property) that wants to operate only in U.S. municipalities and commercial zones adjacent to Mexico in Texas, New Mexico, Arizona, or California. The notice also proposes a change to FMCSA's regulations governing financial responsibility of motor carriers to accurately reflect the requirements placed on these Mexican motor carriers. Other carriers that currently hold or may want to apply for a Certificate of Registration would now apply under separate FMCSA regulations. These revisions are part of our implementation of the North American Free Trade Agreement (NAFTA) entry provisions. The proposed changes would ensure that we receive adequate information to assess an applicant's safety program and its ability to comply with U.S. safety standards before it is registered to operate in the U.S. They would also enable us to maintain an accurate census of registered carriers. In addition, we would update the regulations as needed to reflect the transfer of motor carrier regulatory functions from the Federal Highway Administration (FHWA) to FMCSA.

DATES: We must receive your comments by July 2, 2001.

ADDRESSES: You can mail, fax, hand deliver or electronically submit written comments to the Docket Management Facility, U.S. Department of Transportation, Docket Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, FAX (202) 493–2251, on-line at *http://dmses.dot.gov/search.htm*. You must include the docket number that appears in the heading of this document in your comment. You can examine and copy all comments at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. You can also view all comments or download an electronic copy of this document from the DOT Docket Management System (DMS) at *http://dmses.dot.gov/search.htm* by typing the last four digits of the docket number appearing at the heading of this document. The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines in the "Help" section of the web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or you may print the acknowledgement page that appears after you submit comments on-line.

FOR FURTHER INFORMATION CONTACT: Valerie Height, (202) 366–1790, Regulatory Development Division, FMCSA, 400 7th Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: We will consider all comments we receive before the close of business on the comment closing date. We will include comments we receive after the comment closing date in the docket, and we will consider late comments to the extent practicable. The FMCSA may, however, issue a final rule at any time after the close of the comment period.

Background

Since 1982, significant limitations have been in place concerning operations by Mexican-domiciled motor carriers in the United States. A moratorium has existed on grants of operating authority under the jurisdiction of the former Interstate Commerce Commission (ICC). Access has been allowed only for certain motor carriers that fell outside the ICC's licensing jurisdiction. These carriers receive Certificates of Registration by filing Form OP–2 under the provisions of what is now 49 CFR part 368. Mexican-domiciled carriers who are eligible for Certificates of Registration are those who operate solely in the municipalities in the United States on the United States-Mexico international border or within the commercial zones of such municipalities (border area), as well as certain private carriers and carriers of exempt goods who operate beyond the border area.

Current Proposal

With the implementation of the NAFTA entry provisions, it is expected that additional Mexican-domiciled motor carriers will seek to operate in the United States, most of them beyond the border area. In deciding how to organize the treatment of all Mexican-domiciled carriers in this changing environment, the FMCSA considered both the advisability of uniform treatment, the familiarity of small businesses with the existing regime, and the need to ensure that all Mexican-domiciled carriers that enter the United States, whether to operate in commercial zones close to the border or beyond, meet our safety standards (*i.e.*, carrier requirements, vehicle requirements, and driver requirements, including but not limited to, the ability of the driver to read and speak the English language sufficiently to converse with the general public, understand highway traffic signs and signals in the English language, respond to official inquiries and make entries on reports and records).

We are proposing to continue the use of the Form OP–2 (with substantial changes discussed later) and the issuance of Certificates of Registration only for those carriers whose operations are limited to the border area. The FMCSA believes that there are carriers that are most familiar with the Certificate of Registration and want to continue operating in a limited area; however, we are interested in comments on the need to maintain the Certificate of Registration process. With the proposed changes to the Form OP–2, the only other main distinction between holders of Certificates of Registration and other Mexican-domiciled carriers operating in the United States would concern the type of insurance required to be held (trip versus continuous). This is addressed under the proposed changes to part 387 later in this preamble.

Further we are proposing that all current holders of Certificates of Registration would need to file new forms with the FMCSA. Those carriers who wish to continue operating only in the border area would file the Form OP–2 in accordance with the procedures in part 368. All other holders of Certificates of Registration who want to operate beyond the border area would file Form OP–1(MX) like all other Mexican-domiciled property carriers now seeking the ability to operate under the implementation of the NAFTA entry provisions. We are proposing to include these carriers in revisions to 49 CFR part 365 that are published elsewhere in today's **Federal Register**. That NPRM also proposes changes to Form OP–1(MX).

For all holders of Certificates of Registration, their Certificates of Registration would remain valid until the FMCSA has acted on an application submitted on the Form OP–2 or Form OP–1(MX). No filing fee is required for current holders of a Certificate of Registration who operate solely in municipalities in the U.S. on the U.S.-Mexico international border or within the commercial zones of such municipalities and are only updating their application information. However, if the current holder of a Certificate of Registration is requesting to expand the territorial scope of its current operations beyond this area, it must submit a new application using Form OP–1(MX), and is subject to the filing fee. That application will be processed as a new application.

The FMCSA proposes to modify parts 368, 387 and Form OP–2 as part of our implementation of the NAFTA entry provisions. The proposed changes will help ensure that we receive adequate information to assess a carrier's safety program and its ability to comply with U.S. safety standards. The changes will also enable us to maintain an accurate census of registered carriers. We are also seeking comments on the proposal to reissue all existing Certificates of Registration and to require current holders of Certificates of Registration to submit additional safety information about their operations. We are proposing revisions to part 368 that relate to the Form OP–2 modifications. In addition, we are updating the regulations as needed to reflect the transfer of motor carrier regulatory functions from FHWA to FMCSA.

Finally, under the ICC Termination Act (Pub. L. 104–88) and the Motor Carrier Safety Improvement Act (Pub. L. 106–159, 113 Stat. 1767)(December 9, 1999) (MCSIA), the FMCSA is directed to develop a new registration system to replace, in part, the current process. We believe that handling all applications by Mexican-domiciled motor carriers of property that want to operate beyond the border area under the same procedures is part of developing this new system of registration that captures all the important information that the FMCSA needs for ensuring safety.

This NPRM is one of three proposals related to carriers operating between Mexico and the U.S. published in today's **Federal Register**. Another NPRM seeks comments on changes to Form OP–1(MX) and 49 CFR part 365. The FMCSA made a conscious decision to propose retaining two different application forms, the OP–2 and the OP–1(MX). The third NPRM seeks comments on a safety monitoring program for Mexican carriers operating in the U.S. These three proposals are part of a coordinated effort to assess and monitor the safety performance of Mexican carriers before and as they operate in the U.S.

Proposed Revisions to 49 CFR Part 368

The titles to part 368 and § 368.1 would be revised to more accurately reflect the types of operations covered under part 368. Section 368.1 would be modified to clarify that a vehicle found to be operating beyond the authority granted in the Certificate of Registration may be ordered out of service and would be subject to applicable penalties. This authority was added by section 219 of MCSIA.

Section 368.2 would include only definitions for the terms "interstate transportation" and "Mexican-domiciled motor carrier."

Existing §§ 368.3, 368.4 and 368.5 would be revised and consolidated under a new proposed § 368.3 to clearly describe the application procedures for a Certificate of Registration. Under the revised procedures, an applicant would be required to submit a completed Form BOC–3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders, and Form MCS–150–Motor Carrier Identification Report (Application for U.S. DOT Number) as attachments to the OP–2 application form. Applicants should be aware that under a recent revision, Form MCS–150 must be submitted every 2 years, following the initial application for a Certificate of Registration (65 FR 70509, November 24, 2000). The Form OP–2 itself would be extensively revised to require significantly more safety information.

Proposed § 368.4 would include a new requirement for holders of Certificates of Registration to notify FMCSA in writing of any changes in, or corrections to, applicant information in the Form OP–2 as well as any changes in the Form BOC–3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders, within 45 days of the change. Currently, there is no requirement for filing of updated information after the initial application has been received. The proposed requirement would assist FMCSA in keeping its information on Mexican carriers current. The proposed requirement would not be an annual re-filing. A carrier with no change in status would not need to take any action apart from the biennial submission of Form MCS–150. A carrier who fails to update required information may be subject to suspension or revocation of its Certificate of Registration.

Proposed § 368.5 would require certain current holders of Certificates of Registration to register using the new Form OP–2 and attached Forms BOC–3 and MCS–150. However, no fee would be required for this registration. Current holders of Certificates of Registration would have a 1-year period to meet this one-time requirement. Current Certificates of Registration would remain valid until the new Form OP–2 has been processed.

Proposed § 368.6 would specify that approval would require evidence in the application that the carrier is currently registered with the Mexican Federal Government and in databases that are available to the FMCSA. This section would also make necessary technical corrections to change references from FHWA to FMCSA and delete outdated references to an "employee review board."

Proposed § 368.7 would require a holder of a Certificate of Registration to carry a copy of it in the vehicle. This is an existing requirement that was previously found in § 368.3.

Proposed § 368.8 would adopt provisions for appealing a decision denying an application and would make necessary terminology changes from FHWA to FMCSA.

Proposed Revisions to 49 CFR Part 387

Part 387 prescribes the minimum levels of financial responsibility that motor carriers must maintain. We are proposing to revise § 387.7 to make it clear that the longstanding exception that allows Mexican carriers operating in the border area to hold only trip insurance would be limited to those carriers and would not extend to other Mexican-owned or domiciled motor carriers operating under grants of authority issued under part 365.

Proposed Revisions to Form OP–2

The FMCSA proposes extensive revisions to the Form OP–2. The FMCSA proposes to add a new section to solicit additional information from the applicant to assist in identifying the nature of the applicant's existing operations in the U.S., if any, to help identify any previously submitted Form MCS–150, to verify the applicant's domicile in Mexico, and to confirm that the applicant holds a valid registration from the Mexican Federal Government. The question regarding domicile would be moved to the proposed new section "Additional Applicant Information." However, the proposed question regarding whether the applicant holds a valid registration from the Mexican

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Federal Government is new. It is proposed to ensure that only a carrier who has met Mexican Federal Government standards and regulations will hold a U.S. Certificate of Registration.

Under section 219 of MCSIA, a foreign carrier engaging in transportation in the United States without proper authorization may be disqualified from operating commercial vehicles in the United States. Accordingly, applicants would be asked to disclose whether any affiliated entities have been disqualified.

The proposed form would require an applicant to identify the type(s) of operations requested. The FMCSA would make clear that use of the Form OP–2 and issuance of Certificates of Registration would be limited to carriers that would operate solely in U.S. municipalities along the United States-Mexico border and commercial zones of such municipalities.

Additional information would be requested about insurance held by the applicant.

FMCSA proposes to add a new section that would require the applicant to certify that it has a system in place to ensure compliance with applicable requirements covering driver qualifications, hours of service, drug and alcohol testing, vehicle condition, accident monitoring, and hazardous materials transportation. In addition, FMCSA proposes that the applicant provide narrative responses describing how it will monitor hours of service, how it will maintain an accident register and what is its monitoring program. This part would also require that the applicant provide information including the names of individuals in charge of the applicant's safety program; locations where Federal Motor Carrier Safety Regulations (FMCSRs) are maintained, names of the individuals in charge of drug and alcohol testing (if applicable), and the drug testing laboratory used (if applicable). The FMCSA would evaluate only those safety certifications that apply to the applicant. For example, due to the weight of the vehicles they operate, certain applicants would not be subject to the drug and alcohol testing and CDL requirements in 49 CFR parts 382 and 383, respectively, and would not be required to certify compliance with those regulations. The certification information would enable FMCSA to evaluate, upon initial application, the safety compliance program of the applicant.

The proposed form would require household goods applicants to affirm a willingness to offer arbitration as a means of settling loss and damage claims in accord with U.S. law.

The FMCSA proposes to add more extensive and specific certifications regarding compliance, including compliance with Department of Labor regulations. Other parts of this certification would require the applicant to affirm its willingness and ability to provide the proposed service and to comply with all pertinent statutory and regulatory requirements. It would remind the applicant of statutory and regulatory responsibilities, which if neglected or violated, might subject the applicant to disciplinary or corrective action by FMCSA. Another certification, derived from the existing Form OP–2 application, would highlight the need to comply with applicable provisions of the U.S. Internal Revenue Code relating to payment of the Heavy Vehicle Use Tax. An additional certification would ensure that the applicant understands that the agents for service of process designated on the Form BOC–3 would also be deemed the applicant's representative in the United States for service of judicial process and notices under 49 U.S.C. 13304 and administrative notices under 49 U.S.C. 13303. Finally, the applicant would affirm that it is not currently disqualified from operating a commercial motor vehicle in the United States under the provisions of MCSIA.

The FMCSA will conduct workshops and also provide written material, such as handbooks, to help the Mexican applicants understand the various requirements and the proper way to complete the applications.

Request for Comments

The FMCSA solicits comments from the public on all aspects of this proposal, specifically the proposals to:

(1) Require new applicants for, and current holders of, Certificates of Registration to submit the revised Form OP–2;

(2) Require new applicants and current holders of Certificates of Registration to attach to the revised Form OP–2 a newly completed Form BOC–3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders;

(3) Require new applicants and current holders of Certificates of Registration to attach to the revised Form OP–2 a newly completed Form MCS–150-Motor Carrier Identification Report (Application for U.S. DOT Number); and

(4) Establish for all holders of Certificates of Registration a requirement for prompt updates concerning carrier operations, current addresses, and Form BOC–3 agents for service of process information.

The FMCSA further solicits comments on the desirability of combining Form OP–2 and Form OP–1(MX).

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and Department of Transportation Regulatory Policies and Procedures

The FMCSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866, and is significant within the meaning of Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). It has been reviewed by the Office of Management and Budget. It is anticipated that the economic impact of the proposals in this rulemaking would be minimal. The new or revised Form OP–2, while intended to foster and contribute to safety of operations, adherence to U.S. law and regulations, and compliance with U.S. insurance and tax payment requirements on the part of Mexican carriers, would impose little additional expense upon public agencies or the motoring public.

Nevertheless, the subject of safe operations by Mexican carriers in the United States will likely generate considerable public interest within the meaning of Executive Order 12866. The manner in which the FMCSA carries out its safety oversight responsibilities with respect to this international motor carrier transportation may be of substantial interest to the domestic motor carrier industry, the Congress, and the public at large. A copy of the Regulatory Evaluation prepared for the three companion NPRMs published in today's **Federal Register** is in the docket.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (Pub. L. 96–354, 5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement and Fairness Act (Pub. L. 104–121), requires federal agencies to analyze the impact of rulemakings on small entities, unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The FMCSA is issuing this NPRM because of the planned implementation of the NAFTA's motor carrier access provisions. A NAFTA dispute resolution tribunal recently ruled that the United States violated NAFTA by failing to allow any Mexican carriers greater access to the United States.

Mexican carriers would be subject to the same safety regulations as domestic carriers when operating in the U.S. The FMCSA's enforcement of the FMCSRs has become increasingly data dependent in the last several years. Several programs have been put in place to continually analyze crash rates, out-of-service (OOS) rates, compliance review records, and other data sources to allow the agency to focus on high-risk carriers. This strategy is only effective if the FMCSA has adequate data on carriers' size, operations, and history. We do not currently have this type of information on Mexican carriers. We do not have abundant information on their safety record, OOS rates, or other overall safety. Thus, a key component of this proposal is the requirement that holders of Certificates of Registration must complete a Form MCS–150 biennially, and notify the FMCSA of corrections to or changes in applicant information on the Form OP–2 as well as changes in the Form BOC–3 within 45 days of the change. This would enable the FMCSA to better monitor these carriers, and to quickly determine whether their safety or OOS rate changes.

The objective of this proposal is to help determine the capability of certain Mexican carriers to operate safely in the United States. The proposal describes what additional information Mexican carriers would have to submit.

This proposal would primarily affect Mexican-domiciled small motor carriers who wish to wish to operate solely within U.S. municipalities and commercial zones on the U.S.-Mexico border. The amount of information these carriers would have to supply to the FMCSA has been increased, and we estimate that it would take 4 hours to complete each form after compiling the necessary information.

The number of carriers subject to the proposals in this rule and the two companion rules published elsewhere in today's **Federal Register** is the sum of those currently operating within the United States and those who apply for authority in the future. First, we estimated the number of Mexican carriers already operating within the United States. Most of these carriers currently have operating authority and would merely be required to re-file using the revised forms. To continue operations solely within the border area as proposed in this rule, carriers would re-file the revised Form OP–2. To take advantage of NAFTA's liberalized access provisions, these carriers would re-file using the revised Form OP–1(MX) (see the rulemaking *Application by Certain Mexican Motor Carriers to Operate Beyond U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border* published elsewhere in today's **Federal Register**.)

The FMCSA's Office of Data Analysis and Information Systems developed a file comprised of Mexican carriers that have recently operated in the United States. As of January 2001, this file contained 11,787 Mexican motor carriers (2.3% of the 500,000 carriers listed in the FMCSA Motor Carrier Management Information System (MCMIS) census file). It includes Mexican carriers with operating authority, carriers who have a DOT number but not authority, carriers with both a DOT number and operating authority, and other carriers that the Agency believes are operating in the United States with neither operating authority nor a DOT number. These latter carriers are those who have been subject to a roadside inspection in the United States at some point in the last 3 years.

It has been suggested that many of these Mexican carriers no longer operate in the United States. The FMCSA calendar year 2000 MCMIS inspection and accident database identifies approximately 4,500 Mexican motor carriers. The FMCSA also verified that approximately 10,000 Mexican carriers currently have operating authority. Therefore, we constructed three different baseline scenarios for the number of Mexican carriers currently operating in the United States, a low (4,500), medium (9,500) and high (11,787) scenario.

The second step in figuring out the total number of Mexican carriers subject to these proposals is to determine how many *new* carriers will request authority under the proposals. Approximately 1,600 Mexican carriers have filed a Form OP–2 annually over the last several years (and a similar number have been granted). Only 190 OP–1(MX) applications are pending, as Mexican carriers stopped filing these forms when it became clear that these forms were not being processed. For the high estimate, the FMCSA assumes that this number will double to 3,200 in the first year after this proposal becomes a final rule, and then fall to 2,500 applicants per year for the following 9 years. As in the case of domestic carriers, the annual applicant number may include carriers that go out of business and subsequently re-enter the market. For the lower and middle estimates, we estimate that there will be 500 new applicants the first year, and then 200 per year thereafter. This translates into approximately 15,000 applicants in the first year for the high estimate, 10,000 for the medium estimate, and 5,000 for the low estimate. As was noted above, the FMCSA estimates that more than 500,000 motor carriers are currently operating in the United States.

We estimate that it takes 4 hours to complete each form. As was noted above, the vast majority of Mexican motor carriers currently operating in the United States have OP–2 authority. We estimate that half of all these carriers will switch to OP–1(MX) authority, while the other half will continue operating within U.S. municipalities and commercial zones on the U.S.—Mexico border. We assume that the new carriers will be more likely than current carriers to apply for OP–2 authority, since most of the large carriers who would presumably benefit from expanded U.S. operations are already operating in U.S. municipalities and commercial zones on the U.S.—Mexico border under OP–2 authority. While some new applicants will also want to take advantage of the opportunity to operate throughout the United States, many will not have the financial and administrative wherewithal to benefit from the enlarged operations allowed. Accordingly, the FMCSA estimates that three quarters (75%) of all new applicants will apply for OP–2 authority, with one quarter (25%) requesting OP–1(MX) authority. Nonetheless, changing this value would have no impact on the analysis since the costs of completing the two forms are identical.

A review of the MCMIS census file reveals that the vast majority of Mexican carriers are small. For Mexican carriers with any trucks, the mean number of trucks was 5.1. That mean was pulled up by a small number of large carriers. Seventy-five (75) percent of Mexican carriers had three or fewer trucks, and the 95th percentile carrier had only 15 trucks.

These proposals should not have any impact on small U.S. based motor carriers.

The regulatory evaluation includes a description of the recordkeeping and reporting requirements of these proposals. Under the revised procedures, an applicant would be required to submit a completed Form BOC–3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders, and Form MCS–150-Motor Carrier Identification Report (Application for U.S. DOT Number) as attachments to the OP–2 or OP–1(MX) application form. In addition, Mexican carriers would update the FMCSA of certain information changes.

The Form MCS–150 is approximately two pages long. In addition to requiring basic identifying information, it requires

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that carriers state the type of operation they run, the number of vehicles and drivers they use, and the types of cargo they haul. The Form BOC–3 merely requires the name, address and other information for a domestic agent to be contacted if the FMCSA needs to contact the motor carrier. The proposals also include other modest changes in the OP–1(MX) and OP–2 forms.

The FMCSA did not propose any different requirements or timetables for small entities. As noted above, we do not believe these requirements would be onerous, with the carriers required to spend 4 hours to complete the relevant forms. Mexican carriers would only be required to complete forms that most domestic U.S. carriers already are required to submit.

The FMCSA would not consolidate or simplify the compliance and reporting requirements for small carriers. As noted above, small U.S. carriers already have to comply with the similar paperwork requirements of part 365. Given the compelling interest in guaranteeing the safety of Mexican carriers operating in the United States, and the fact that the majority of these carriers are small entities, no special changes were proposed.

The FMCSA cannot exempt small carriers from these proposals without seriously diminishing the agency's ability to ensure the safe operations of Mexican carriers. The majority of Mexican carriers operating in the U.S. would be small; exempting them would have the same impact as not issuing these proposals. Therefore, FMCSA certifies that this proposed rule would not have a significant impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; 2 U.S.C. 1532) requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. Any agency promulgating a final rule likely to result in a Federal mandate requiring expenditures by a State, local, or tribal government or by the private sector of $100 million or more in any one year must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. The FMCSA has determined that the changes proposed in this rulemaking would not have an impact of $100 million or more in any one year.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under E. O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism Assessment)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999 (64 FR 43255, August 10, 1999). Consultation with States is not required when a rule is required by statute. The FMCSA, however, has determined that this action would not have significant Federalism implications or limit the policymaking discretion of the States. Comments on this conclusion are welcome and should be submitted to the docket.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217 Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Executive Order 13166 (Limited English Proficiency)

Executive Order 13166, Improving Access to Services for Persons With Limited English Proficiency, requires each Federal agency to examine the services it provides and develop reasonable measures to ensure that persons limited in their English proficiency can meaningfully access these services consistent with, and without unduly burdening, the fundamental mission of the agency. The FMCSA plans to provide a Spanish translation of the application instructions incorporated within the Form OP–2 application. We believe that this action complies with the principles enunciated in the Executive Order.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (49 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor or require through regulations. The FMCSA has determined that this proposal would impact a currently approved information collection, OMB No. 2126–0019.

This proposal will not have any impact on information collection OMB No. 2126–0015, entitled, "Designation of Agents, Motor Carriers, Brokers and Freight Forwarders." This currently approved collection covers the Form BOC–3. The current estimates of annual filings include the minimal additional Mexican motor carriers who would be filing updated information on the Form BOC–3.

The OMB has approved the information collection requirements on Form OP–2 under the control number 2126–0019, titled "Application for Certificate of Registration for Foreign Motor Carrier and Foreign Motor Private Carriers Under 49 U.S.C. 13902(c)." This includes approval for "Form OP–2—Application for Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers Under 49 U.S.C. 13902(c)", approved for 2,000 burden hours (1,000 respondents per year @ 2 hours each to complete the form). The FMCSA proposes to change the form title to Form OP–2—Application for Certificate of Registration for Foreign Motor Carriers and Foreign Private Carriers Under 49 U.S.C. 13902."

The Regulatory Evaluation for this proposal uses a numerical range to estimate the number of Mexican carriers anticipated to request OP–2 or OP–1(MX) authority under this proposal and a companion rule published elsewhere in today's **Federal Register** (see NPRM titled *Application by Certain Mexican Motor Carriers to Operate Beyond U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border.*). We estimate the number of applicants to range between a low estimate of 5,000, a medium estimate of 10,000 or a high estimate of 15,000 applicants. Please reference the Regulatory Flexibility Act analysis in this document or the Regulatory Evaluation for this rulemaking for a detailed discussion on how these estimates were derived. This analysis is based upon the high estimate (15,000) since that number enables the FMCSA to assess the maximum information collection burden to respondents.

The FMCSA estimatesd in the regulatory evaluation that 11,787 Mexican carriers are currently operating in the United States and are categorized as follows: Mexican carriers operating pursuant to OP–2 Certificates of Registration; Mexican carriers that previously filed an OP–1(MX) application; and Mexican carriers assigned DOT numbers and no OP authority or operating without appropriate authorization. The Agency estimates that half of the 11,787 Mexican carriers (or 5,894) known to be now operating in the U.S. will switch to OP–1(MX) authority, while the other half will continue operating pursuant to OP–2 authority.

Based upon the high estimate scenario, the FMCSA anticipates 3,200 first-time applicants for either OP–2 or OP–1(MX) authority in the first year that this proposal becomes a final rule, and 2,500 applicants annually in subsequent years. The agency estimates that 75 percent of the first year new applicants (2,400) would file a Form OP–2; and 75 percent of the subsequent-year new applicants (1,875 annually) would file a Form OP–2.

We assume that first-time applicants will be more likely than current carriers to apply for OP–2 authority, since most of the large carriers who would presumably benefit from expanded U.S. operations are already operating in the border commercial zones pursuant to OP–2 authority. While some new applicants may also want to take advantage of the opportunity to operate throughout the United States, many will not have the financial and administrative wherewithal or resources to benefit from the enlarged operations allowed.

This proposal would also require Mexican carriers to submit corrections to or changes in the OP–2 applicant information within 45 days of the change. For changes and updates, the agency anticipates that in the first year, 2,765 carriers would file updates or changes to the Form OP–2. In subsequent years, approximately 625 carriers would file updates or changes to the Form OP–2. The FMCSA estimates that it would take 30 minutes to fill out a form to request changes.

Therefore, the FMCSA estimates an adjusted burden hour calculation for the Form OP–2 as follows:

Mexican carrier re-filings or initial filings of the Form OP–2:
(in first year, known carriers): 5,894 x 4 hrs per form = 23,576 hrs
(in first year, first-time applicants): 2,400 × 4 hrs per form = 9,600 hrs
(in subsequent-years, first-time applicants): 1,875 × 4 hrs per form = 7,500 hrs
Updates/Changes:
(all in first year): 2,765 × 30 min. per form = 1,383 hrs
(all in subsequent years): 625 × 30 min. per form = 313 hrs

Therefore, the total burden hours for this information collection in the first year is 34,559 [(23,576 + 9,600 = 33,176) + 1,383]; and 7,813 in subsequent years [7,500 + 313].

OMB Control Number: 2126–0019.
Title: Application for Certificate of Registration for Foreign Motor Carrier and Foreign Motor Private Carriers Under U.S.C. 13902.
Respondents: Foreign motor carriers.
Estimated Annual Hour Burden for this NPRM: Year 1 = 34,559 hours; Subsequent years = 7,813 hours.

National Environmental Policy

The agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined under DOT Order 5610.1C (September 18, 1979) that this action does not require any environmental assessment. An environmental impact statement is, therefore, not required.

List of Subjects

49 CFR Part 368

Administrative practice and procedure, Highways and roads, Insurance, Motor Carriers of property.

49 CFR Part 387

Freight forwarders, Highways and roads, Motor carriers, Surety bonds.

For the reasons set forth in the preamble, the FMCSA proposes to amend 49 CFR parts 368 and 387 as follows:

1. Revise part 368 to read as follows:

PART 368—APPLICATION FOR A CERTIFICATE OF REGISTRATION TO OPERATE IN MUNICIPALITIES IN THE UNITED STATES ON THE UNITED STATES-MEXICO INTERNATIONAL BORDER OR WITHIN THE COMMERCIAL ZONES OF SUCH MUNICIPALITIES

Sec.
368.1 Certificate of registration.
368.2 Definitions.
368.3 Applying for a certificate of registration.
368.4 Requirement to notify of change in applicant information.
368.5 Re-registration of certain carriers holding certificates of registration.
368.6 Review of the application.
368.7 Requirement to carry certificate of registration in the vehicle.
368.8 Appeals.
Appendix A to Part 368—Form OP–2—Application for Certificate of Registration for Foreign Motor Carriers and Foreign Private Carriers Under 49 U.S.C. 13902

Authority: 49 U.S.C. 13301 and 13902; Pub. L. 106–159, 113 Stat. 1748; and 49 CFR 1.73.

§ 368.1 Certificate of registration.

(a) A Mexican-domiciled motor carrier must apply to the FMCSA and receive a Certificate of Registration to provide interstate transportation in municipalities in the United States on the United States-Mexico international border or within the commercial zones of such municipalities as defined in 49 U.S.C. 13902(c)(4)(A).

(b) A Certificate of Registration permits only interstate transportation of property in municipalities in the United States on the United States-Mexico international border or within the commercial zones of such municipalities. A holder of a Certificate of Registration who operates a vehicle beyond this area is subject to applicable penalties and the vehicle may be placed out of service.

§ 368.2 Definitions.

Interstate transportation means transportation described at 49 U.S.C. 13501, and transportation in the United States otherwise exempt from the Secretary's jurisdiction under 49 U.S.C. 13506(b)(1).

Mexican-domiciled motor carrier means a motor carrier of property whose principal place of business is located in Mexico.

§ 368.3 Applying for a certificate of registration.

(a) If you wish to obtain a Certificate of Registration under this part, you must submit an application that consists of: Form OP–2—Application for Mexican Certificate of Registration for Foreign Motor Carriers and Foreign Private Carriers Under 49 U.S.C. 13902, Form MCS–150—Motor Carrier Identification Report, and Form BOC–3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders.

(b) The FMCSA will only process your application for a Certificate of Registration if it meets the following conditions:

(1) The application must be completed in English.

(2) The information supplied must be accurate and complete in accordance with the instructions to the Form OP–2, Form MCS–150 and Form BOC–3.

(3) The application must include all the required supporting documents and

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applicable certifications set forth in the instructions to the Form OP–2, Form MCS–150 and Form BOC–3.

(4) The application must include the filing fee payable to the FMCSA in the amount set forth in 49 CFR § 360.3(f)(1); and

(5) The application must be signed by the applicant.

(c) If you fail to furnish the complete application as described under paragraph (b) of this section your application may be rejected.

(d) If you submit false information under this section, you will be subject to applicable Federal penalties.

(e) You must submit the application to the address provided in the instructions to the Form OP–2.

(f) You may obtain the application described in paragraph (a) of this section from any FMCSA Division Office or download it from the FMCSA web site at: http://www.fmcsa.dot.gov/factsfigs/formspubs.htm. Form OP–2 is also published in Appendix A to this part.

§ 368.4 Requirement to notify of change in applicant information.

(a) You must notify the FMCSA of any changes or corrections to the information in Parts I, IA or II submitted on the Form OP–2 or the Form BOC–3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders during the application process or while you have a Certificate of Registration. You must notify the FMCSA in writing within 45 days of the change or correction.

(b) If you fail to comply with paragraph (a) of this section, the FMCSA may suspend or revoke the Certificate of Registration until you meet those requirements.

§ 368.5 Re-registration of certain carriers holding certificates of registration.

(a) Each holder of a Certificate of Registration that permits operations only in municipalities in the United States along the United States-Mexico international border or in commercial zones of such municipalities issued prior to [*Insert date of publication of final rule in the* **Federal Register**.] who wishes to continue sclely in those operations must submit an application according to procedures established under § 368.3 of this part, except the filing fee in paragraph (b)(4) of that section is waived. You must file your application by [*Insert date 1 year after date of publication of final rule in the* **Federal Register**.].

(b) The FMCSA may suspend the Certificate of Registration of any applicable holder that fails to comply with the procedures set forth in this section.

(c) Certificates of Registration issued prior to [*Insert date of publication of final rule in the* **Federal Register**.] would remain valid until the OP–2 application filed according to paragraph (a) of this section is processed.

§ 368.6 Review of the application.

(a) The Federal Motor Carrier Safety Administration will review the application for correctness, completeness, and adequacy of information. Minor errors will be corrected without notice to the applicant. Incomplete applications will be rejected.

(b) Compliance will be determined solely on the basis of the application, required attachments, and the safety fitness of the applicant as determined by the information supplied in the application, including evidence that the applicant, its vehicles and drivers are registered with the Federal Government of Mexico and included in Mexican electronic databases that are available for inspection by the FMCSA.

(c) If the applicant does not require or is not eligible for a Certificate of Registration, the FMCSA will deny the application and notify the applicant.

(d) If the FMCSA grants the application, it will issue a Certificate of Registration.

(1) The Certificate of Registration will permit operations only in U.S. municipalities and commercial zones adjacent to the United States-Mexico border.

(2) The Certificate of Registration will be conditioned upon completion, to the satisfaction of FMCSA, of a safety review under § 385.215 of this title within 18 months of the date of the Certificate.

(e) Notice of the authority sought will not be published in either the **Federal Register** or the FMCSA Register. Protests or comments will not be allowed. There will be no oral hearings.

§ 368.7 Requirement to carry certificate of registration in the vehicle.

A holder of a Certificate of Registration must maintain a copy of the Certificate of Registration in any vehicle providing transportation service within the scope of the Certificate.

§ 368.8 Appeals.

An applicant has the right to appeal denial of the application. The appeal must be in writing and specify in detail why the agency's decision to deny the application was wrong. The appeal must be filed with the Director, Data Analysis and Information Systems within 20 days of the date of the letter denying the application. The decision of the Director will be the final agency order.

BILLING CODE 4910–EX–P

Appendix A to Part 368—Form OP–2—Application for Certificate of Registration for Foreign Motor Carriers and Foreign Private Carriers Under 49 U.S.C. 13902

U.S. Department of Transportation

Federal Motor Carrier Safety Administration

Form Approved
OMB No. 2126-0019
Expires on 00/00/00

Instructions for completing Form OP-2 Application for Mexican Certificate of Registration for Foreign Motor Carriers and Foreign Private Carriers Under 49 U.S.C. 13902

Please read these instructions before completing the application form. Retain the instructions and a copy of the complete application for your records. These instructions will assist you in preparing an accurate and complete application. Applications that do not contain the required information will be rejected and **may** result in a loss of the application fee. **The application must be completed in English** and typed or printed in ink. If additional space is needed to provide a response to any item, use a separate sheet of paper. Identify applicant on each supplemental page and refer to the section and item number in the application for each response.

PURPOSE OF THIS APPLICATION FORM:

This Form OP-2 is required to be filed by foreign (Mexican) motor carriers and motor private carriers who wish to register to transport property only in municipalities in the United States on the United States-Mexico international border or within the commercial zones of such municipalities.

This form is also required to be utilized by Mexican for-hire and private motor carriers that hold a Certificate of Registration from the former Interstate Commerce Commission, the Federal Highway Administration, the Office of Motor Carrier Safety or the Federal Motor Carrier Safety Administration issued before **[Insert date of publication of final rule in Federal Register]** with a territorial scope of operations limited to municipalities in the United States on the United States-Mexico international border or within the commercial zones of such municipalities and are required to supplement the information in their original applications by completing and re-filing the revised Form OP-2.

This form should not be used for registration by Mexican for-hire and private motor carriers to perform transportation in the United States beyond the commercial zones of municipalities on the international border, by United States based enterprises, owned or controlled by Mexican nationals, providing truck services for the transportation of international cargo within the United States as permitted under provisions of the North American Free Trade Agreement (NAFTA), nor by carriers previously issued a Certificate of Registration that authorized operations beyond border municipalities and their respective commercial zones. To register under NAFTA, or to reregister operations beyond commercial zones, you should instead complete and file Form OP-1(MX). To apply for authority to establish U.S.-based enterprises, owned or controlled by Mexican nationals, providing: (1) truck services for the transportation of international cargo within the United States, or (2) point-to-point bus services in the United States, in accordance with NAFTA provisions, complete and file Form OP-1 or OP-1(P), respectively.

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WHAT TO FILE:

All applicants must submit the following:

1. An original and one copy of a completed revised Form OP-2, Application for Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers, with all necessary attachments and statements.

2. A signed and dated Form BOC-3, Designation of Agents for Service of Process, which reflects the applicant's full and correct name, as shown on the Form OP-2, and applicant's address, including the street address, the city, state, country and zip code, must be attached to the application. The BOC-3 form must show street address(es), and not post office box numbers, for the person(s) designated as the agent(s) for service of judicial process and notices under 49 U.S.C. 13304 and administrative notices under 49 U.S.C. 13303. A person must be designated in each state in which the applicant may operate.

3. A completed and signed Form MCS-150 Motor Carrier Identification Report.

4. Internal Revenue Service Form 2290, Schedule I, which shows payment of Federal taxes for highway use by heavy vehicles, applicable under 26 U.S.C. § 4481, or a letter, signed by an authorized company official stating why applicant is not subject to this tax requirement. The form should be a copy of the most recent form filed with the IRS.

5. A filing fee of $300 for **each** type of registration requested, payable in U.S. dollars to the Federal Motor Carrier Safety Administration, by means of a check, money order or an approved credit card. Cash is not accepted.

GENERAL INSTRUCTIONS FOR COMPLETING THE APPLICATION FORM:

- All questions on the application form must be answered completely and accurately. If a question or supplemental attachment does not apply to the applicant, it should be answered "not applicable."

- The application must be typewritten or printed in ink. Applications written in pencil will be rejected.

- The application must be completed in English.

- The completed certification statements and oath must be signed by the applicant only, and not by the applicant's attorney or other applicant representative. The same person must sign the oath and certifications.

- Use the attachment pages included, as appropriate, to provide any descriptions, explanations, statements or other information that is required to be furnished with the application. If additional space is needed to respond to any question, please use separate sheets of paper. Identify continuation sheets by using headings that show both the number of the page of the revised OP-2 form or Attachment page on which the question or response appears and the item number of the question.

ADDITIONAL ASSISTANCE

OP-2

Additional information on obtaining registration or monitoring the status of your application is available through the Automated Response Capability (ARC) telephone system. After dialing (202) 358-7000, press 1, then request the appropriate menu number indicated below. You may use the ARC 24 hours a day, 7 days a week to obtain information in the following areas:

INFORMATION REQUESTED	MENU NUMBER
Status of your application (NOTE: Use the assigned docket number to expedite your request. The FMCSA will notify you of the docket number by letter.	1
Status of insurance and process agent filings	2
Assistance in filing your application	3
If you require information that is not available in the automated response system, the ARC will guide you to an appropriate FMCSA staff member who will be able to assist you in other areas.	

U.S. DOT REGISTRATION AND SAFETY RATINGS

To obtain information on registering with U.S. DOT (filing Form MCS-150) call: (800) 832-5660 (Automated Response System)

For information concerning a carrier's assigned safety rating, call: (800) 832-5660

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U.S. DOT HAZARDOUS MATERIALS REGULATIONS

To obtain information on whether the commodities you intend to transport are considered as hazardous materials:

Refer to the provisions governing the transportation of hazardous materials found under Parts 100 through 180 of Title 49 of the Code of Federal Regulations (CFR), particularly the Hazardous Materials Table at 49 CFR § 172.101 or contact the U.S. DOT, Research and Special Programs Administration at 1-800-467-4922.

To obtain information about DOT hazardous materials transportation registration requirements, contact the U.S. DOT, Research and Special Programs Administration at 1-800-467-4922.

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

SECTION I - APPLICANT INFORMATION

APPLICANT'S LEGAL BUSINESS NAME and DOING BUSINESS AS NAME. The applicant's name should be your full legal business name -- the name on the incorporation certificate, partnership agreement, tax records, etc. If you use a trade name that differs from your official business name, indicate this under "Doing Business As Name." Example: If you are John Jones, doing business as Quick Way Trucking, enter "John Jones" under APPLICANT'S LEGAL BUSINESS NAME and "Quick Way Trucking" under DOING BUSINESS AS NAME.

Because the FMCSA uses computers to retain information about licensed carriers, it is important to spell, space, and punctuate any name the same way each time you write it. Example: John Jones Trucking Co., Inc.; J. Jones Trucking Co., Inc.; and John Jones Trucking are considered three separate companies.

BUSINESS ADDRESS/MAILING ADDRESS. The business address is the physical location of the business in Mexico. Example: El Camino Real #756, Guadalajara, Jalisco, Mexico. If applicant receives mail at an address different from the business location, also provide the mailing address. Example: P. O. Box 3721. **NOTE:** To receive FMCSA notices and to ensure that insurance documents filed on applicant's behalf are accepted, notify in writing the Federal Motor Carrier Safety Administration, Suite 600, 400 Virginia Avenue, SW., Washington, DC 20024, if the business or mailing address changes. If applicant also maintains an office in the United States, that information should also be provided.

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

REPRESENTATIVE. If someone other than the applicant is preparing this form, or otherwise assisting the applicant in completing the application, provide the representative's name, title, position, or relationship to the applicant, address, and telephone and FAX numbers. Applicant's representative will be the person contacted if there are questions concerning this application.

6. **U.S. DOT NUMBER.** Applicants are required to obtain a US DOT number from the U.S. Department of Transportation (U.S. DOT) before initiating service. Motor carriers that already have been issued a U.S. DOT number should provide it; applicants that have not previously obtained a U.S. DOT number should refer to the U.S. DOT information sources under the "Additional Assistance" part of these Instructions. **NOTE:** a completed and signed Form MCS-150 Motor Carrier Identification Report must be submitted separately with this application.

FORM OF BUSINESS. A business is a corporation, a sole proprietorship, or a partnership. If the business is a sole proprietorship, provide the name of the individual who is the owner. In this situation, the Owner is the registration applicant. If the business is a partnership, provide the full name of each partner.

SECTION IA – ADDITIONAL APPLICANT INFORMATION

All applicants must answer each question in this section. Applicants must have been issued a Registration by the Mexican Government's Secretaria de Communicaciones y Transportes (SCT) before a Certificate of Registration will be issued. Applicant's registration must be contained in an SCT database. If the applicant is in the process of obtaining its SCT registration, indicate the date the application was filed. Applicant must supplement the information once the number has been issued prior to being issued its CR. If an applicant currently holds a CR and is supplementing the information contained in its original application, this information is also required. An existing CR will be suspended if the SCT registration number and information is not supplied.

SECTION II - OWNERSHIP, CONTROL AND AFFILIATIONS INFORMATION

All applicants must disclose pertinent information concerning the persons who own or control the applicant, and concerning any relationships or

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SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

affiliations which the applicant has had with other entities registered with FMCSA or its predecessor agencies. Applicant must indicate whether these entities have been disqualified from operating commercial motor vehicles in the United States pursuant to the Motor Carrier Safety Improvement Act of 1999 or any other law.

SECTION III – TYPE(S) OF REGISTRATION REQUESTED

Check the appropriate box(es) for the type(s) of registration you are requesting. For purposes of this application, for-hire motor carrier means an entity that is transporting the goods of others, and motor private carrier means an entity (person or company) that is transporting its own goods, including an entity that is performing such operations under an agreement or contract with a U.S. shipper or other business.

If you are reregistering you do not need to complete this section. Please refer to the following for a description of the commercial zones:

COMMERCIAL ZONES
UNITED STATES/MEXICO PORTS OF ENTRY

Commercial zones, unless otherwise defined, are determined through a formula dependant upon the population of the municipality (49 CFR 372, Subpart B). The commercial zones for all United States/Mexico ports of entry allow for transportation from the corporate limits of the municipality as follows:

Location		Population	Commercial Zone
Limits			
Arizona			
	Douglas	13,270	4 miles
	Lukeville	65	3 miles
	Naco	1,000	3 miles
	Nogales	19,745	4 miles
	San Luis	6,405	4 miles
	Sasabe	37	3 miles
California			
	Andrade	20	3 miles
	Calexico	22,246	4 miles
	Otay Mesa	Unknown	20 miles
	San Diego	1,110,500	20 miles

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

Location		Population	Commercial Zone
Limits			
	Tecate	212	20 miles**
New Mexico			
	Columbus	N/A	+++
	Santa Teresa	Unknown	+++
Texas			
	Brownsville	266,600+	*
	Del Rio	30,705	6 miles
	Eagle Pass	20,651	4 miles
	El Paso	592,400	15 miles
	Fabens	1,599	3 miles
	Hidalgo	384,800++	*
	Laredo	126,300	8 miles
	Presidio	3,072	4 miles
	Progresso	1,951	*
	Rio Grande City	9,891	*
	Roma	8,059	*

*Cameron, Hidalgo, Starr and Willacy Counties, Texas
Transportation within a zone comprised of Cameron, Hidalgo, Starr and Willacy Counties, Texas, by motor carriers of property, in interstate or foreign commerce, not under common control, management, or arrangement for shipments to or from points beyond such zone, is partially exempt from regulation under 49 U.S. Code §13506.

To the extent that commercial zones of municipalities within the above four counties extend beyond the boundaries of such commercial zones, they shall be considered to be part of the zone and partially exempt from regulation under 49 U.S. Code §13506.

**Considered a part of the San Diego commercial zone.
+Population based upon Brownsville-Harlingen metropolitan area.
++Population based upon McAllen-Edinburg-Mission metropolitan area.
+++The area comprised of Dona Ana and Luna counties.

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SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

SECTION IV - INSURANCE INFORMATION

Check the appropriate line that describes the type of business you will be conducting.

If you are applying for motor property carrier registration and you operate vehicles with a gross vehicle weight rating of 10,000 pounds or more and haul only non-hazardous materials, you are required to maintain $750,000 minimum liability coverage for the protection of the public. Hazardous materials referred to in the FMCSA's insurance regulations in item (c) of the table at 49 CFR 387.303 (b)(2) require $1 million minimum liability coverage; those in item (b) of the table at 49 CFR 387.303 (b)(2) require $5 million minimum liability coverage. If you operate only vehicles with a gross vehicle weight rating under 10,000 pounds, you must maintain $300,000 minimum liability coverage. If you operate only such vehicles but will be transporting any quantity of Division 1.1, 1.2 or 1.3 explosives; any quantity of poison gas (Division 2.3, Hazard Zone A, or Division 6.1, Packing Group 1, Hazard Zone A materials); or highway route controlled quantity of radioactive materials, you must maintain $5 million minimum liability coverage

Applicant does not have to submit evidence of insurance with the application, but if the registration is granted, applicant must carry on the vehicle when crossing the border a current Department of Transportation Form MCS-90 and evidence of insurance, which shows either trip insurance coverage, or evidence of continuing insurance coverage.

The FMCSA does not furnish copies of insurance forms. You must contact your insurance company to obtain all required insurance forms.

SECTION V - SAFETY CERTIFICATIONS

Applicants for motor carrier registration must complete the safety certifications. You should check the "YES" response only if you can attest to the truth of the statements. The carrier official's signature at the end of this section applies to the Safety Certifications. The "Applicant's Oath" at the end of the application form applies to all certifications. False certifications are subject to the penalties described in that oath.

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

If you are exempt from the U.S. DOT safety fitness regulations because you operate only vehicles with a gross vehicle weight rating under 10,001 pounds, and you will not transport any hazardous materials, you must certify that you are familiar with and will observe general operational safety fitness guidelines and applicable State and local laws relating to the safe operation of commercial motor vehicles.

Applicants should complete all applicable attachment pages and, if necessary to complete the responses, attach additional pages referring to the appropriate Sections and items in the application or Attachment pages. If you are exempt from the U.S. DOT safety fitness regulations, you must complete all relevant attachment pages to demonstrate your willingness and ability to comply with general operational safety fitness guidelines and applicable State and local laws.

SECTION VI - HOUSEHOLD GOODS ARBITRATION CERTIFICATIONS

For-hire carriers of property operating entirely in commercial zone areas that intend to transport household goods as defined in 49 U.S.C. 13102 (10) must certify their agreement to offer arbitration as a means of settling loss and damage claims as a condition of registration. The signature should be that of the same company official who completes the Applicant's Oath.

SECTION VII - COMPLIANCE CERTIFICATIONS

All applicants are required to certify accurately to their willingness and ability to comply with statutory and regulatory requirements including those administered by the Department of Labor and certain state agencies, to their tax payment status, and to their understanding that their agent for service of process is their official representative in the U.S. to receive filings and notices under 49 U.S.C. 13303.

Applicants are required to certify to their willingness and ability to comply with regulations administered by the Department of Transportation, including the Federal Motor Carrier Safety Regulations and Hazardous Materials Regulations, as well as all applicable statutory and regulatory requirements administered by the U.S. Department of Labor, or a state agency operating a plan pursuant to section 18 of the Occupational Safety Health Act of 1970 ("OSHA state plan agency").

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SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

Applicants will also be required to certify their willingness to produce records for the purpose of determining compliance with the applicable safety regulations of the FMCSA and the requirements administered by the U.S. Department of Labor.

The DOT considers compliance with Department of Labor and OSHA state plan agency requirements to be extremely important. An applicant's certification of its willingness to comply with DOL and OSHA requirements reflects an overall intention to comply with U.S. laws. While registration will not be withheld based solely on the failure by an applicant to certify that it is willing and able to comply with such requirements, such certification is required to avoid notification to DOL of an applicant's unwillingness to comply with these requirements.

SECTION VIII - APPLICANT'S OATH

The applicant or an authorized representative may prepare applications. In either case, the applicant must sign the oath. In the case of companies, an authorized employee in the business structure (i.e., an officer, director, or other employee having access to the information necessary to make the oath or affirmation) may sign.

LEGAL PROCESS AGENTS

All motor carrier applicants must designate a process agent in each State where operations are conducted. For example, if you will operate only in commercial zones along the U.S./Mexico border in CA and AZ, you must designate an agent in each of those states; if you will operate in only one state, an agent must be designated for that state only. Process agents who will accept legal filings on applicant's behalf are designated on FMCSA Form BOC-3. Form BOC-3 must be filed with the application.

STATE NOTIFICATION

Before beginning operations, all applicants must contact the appropriate regulatory agencies in every state in which the carrier will operate to obtain information regarding various state rules applicable to interstate registrations. It is the applicant's responsibility to comply with registration, fuel tax, and other state regulations and procedures. Begin this process by selecting the state of California, New Mexico or Texas as your base state for payment of your Single State Registration fees. See 49 CFR Part 367. You should select the state in

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

which you will operate the largest number of motor vehicles in the next year and contact that state's transportation agency (the California Public Utilities Commission, in San Francisco; the New Mexico State Corporation Commission, in Santa Fe; or the Texas Department of Transportation, in Austin), to obtain registration forms and instructions. Arizona does not participate in the Single State Registration System. If the majority of your transportation is in AZ, but you also operate in another state, you will need to contact a state other than AZ for this registration. Failure to accomplish this state registration could subject you to substantial state penalties as well as the potential loss of your registration. Please refer to the additional information provided in your application packet for further information.

MAILING INSTRUCTIONS:

To file for registration you must submit an ***original and one copy*** of this application with the appropriate filing fee to FMCSA. **Note:** Retain a copy of the completed application form and any attachments for your own records.

Mailing addresses for applications:

ALL DOCUMENTS WITH FEES ATTACHED (REGULAR MAIL ONLY):
Federal Motor Carrier Safety Administration
P. O. Box 100147
Atlanta, GA 30384-0147

FOR EXPRESS MAIL ONLY:
NationsBank Wholesale Lockbox 100147
6000 Feldwood Road
3rd Floor East
College Park, GA 30349

FOR CREDIT CARD USERS ONLY:
Federal Motor Carrier Safety Administration
Suite 600, 400 Virginia Avenue, SW.
Washington, DC 20024

FOR CURRENT CERTIFICATE OF REGISTRATION HOLDERS SUBMITTING UPDATED INFORMATION ONLY:
Federal Motor Carrier Safety Administration
Suite 600, 400 Virginia Avenue, SW.
Washington, DC 20024

FMCSA FILING FEES

Fee Schedule effective January 1996
Fee for Registration . . . $300.00

FEE POLICY

- Filing fees must be payable to the **Federal Motor Carrier Safety Administration**, by check drawn upon funds deposited in a bank in the United States or money order payable in U.S. currency or by approved credit card.
- Separate fees are required for each **type of registration** requested. If applicant requests registration as a for-hire motor carrier and as a private motor carrier, multiple fees are required. The applicant may submit a single payment for the sum of the applicable fees.
- Filing fees must be **sent along with the original and one copy of the application** to the appropriate address under the preceding paragraph titled **MAILING INSTRUCTIONS**.
- After an application is received, the filing fee is non-refundable.
- The FMCSA reserves the right to discontinue processing any application for which a check is returned due to insufficient funds. The application will not be processed until the fee is paid in full.
- **NO FILING FEE IS REQUIRED FOR CURRENT CERTIFICATE OF REGISTRATION HOLDERS WHO OPERATE ONLY IN MUNICIPALITIES IN THE U.S. ON THE U.S.-MEXICO INTERNATIONAL BORDER OR WITHIN THE COMMERCIAL ZONES OF SUCH MUNICIPALITIES AND ARE ONLY UPDATING THEIR APPLICATION INFORMATION**. However, if applicant is expanding the territorial scope of its current operations beyond this area, it must submit a new application using Form OP-1(MX), and a $300 filing fee. The application will be processed as a new application.

FILING FEE INFORMATION

All applicants must submit a filing fee of $300.00 for each type of registration requested. The total amount due is equal to the fee(s) times the number of boxes checked in ***Section III*** of the Form OP-2. Fees for multiple authorities may be combined in a single payment.

Total number of boxes checked in ***Section III*** _____ x filing fee $ _____ = $ _____

INDICATE AMOUNT $_____ AND METHOD OF PAYMENT:

☐ CHECK OR ☐ MONEY ORDER, PAYABLE TO: **FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

☐ VISA ☐ MASTERCARD

Credit Card Number _____

Expiration Date: _____

Signature _____ Date: _____

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U.S. Department of Transportation

Federal Motor Carrier Safety Administration

Form Approved
OMB No. 2126-0019
Expires 00/00/00

FORM – OP-2
Application for Mexican Certificate of Registration for Foreign Motor Carriers and Foreign Private Carriers Under 49 U.S.C. 13902

This application is for (1) all Mexican for-hire motor carriers and private motor carriers who wish to register to transport property only in municipalities in the United States on the United States-Mexico international border or within the commercial zones of such municipalities; and for Mexican for-hire and private motor carriers that hold a Certificate of Registration from the former Interstate Commerce Commission, the Federal Highway Administration, the Office of Motor Carrier Safety or the Federal Motor Carrier Safety Administration issued **[Insert date of publication of final rule in Federal Register]** authorizing operations in the border commercial zones and that are required to file the revised Form OP-2.

For FMCSA Use Only

Docket No. MX _____

DOT No. _____

Filed _____

Fee No. _____

PAPERWORK BURDEN

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. It is estimated that an average of 4 burden hours per response is required to complete this collection of information. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments concerning the accuracy of this burden estimate or suggestions for reducing this burden should be directed to the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 400 Virginia Avenue, S.W., Suite 600, Washington, DC 20024

SECTION I - APPLICANT INFORMATION

LEGAL BUSINESS NAME: _____

DOING BUSINESS AS NAME: _____

BUSINESS ADDRESS: (Actual Street Address):

_____
(Street Name and Number)

_____
(City) (State) (Country) (Zip Code)

(_____)_____ (_____)_____
(Telephone Number) (Fax Number)

SECTION I – APPLICANT INFORMATION (continued)

MAILING ADDRESS: (If different from above)

_____
(Street Name and Number)

_____
(City) (State) (Country) (Zip Code)

U.S. ADDRESS: (Does the applicant currently have an office in the United States? If so, give address and telephone number.)

_____
(Street Name and Number)

_____
(City) (State) (Country) (Zip Code)

(_____)_____ (_____)_____
(Telephone Number) (Fax Number)

APPLICANT'S REPRESENTATIVE: (Person who can respond to inquiries)

_____
(Name and title, position, or relationship to applicant)

_____
(Street Name and Number)

_____
(City) (State) (Country) (Zip Code)

(_____)_____ (_____)_____
(Telephone Number) (Fax Number)

US DOT NUMBER (If available; if not, see Instructions) _____

FORM OF BUSINESS (Check one)

☐ CORPORATION (Give Mexican or U.S. State of Incorporation) _____

_____

☐ SOLE PROPRIETORSHIP (Give full name of individual)

_____
(First Name) (Middle Name) (Surname)

☐ PARTNERSHIP (Identify each of the partners) _____

_____

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SECTION IA – ADDITIONAL APPLICANT INFORMATION

1. Do you or your company currently operate in the United States?
☐ Yes ☐ No

1a. If yes, indicate the locations where you operate and the ports of entry utilized.

_____

_____

_____

2. Has the applicant previously completed and submitted a Form MCS-150?
☐ Yes ☐ No

2a. If so, give the name under which it was submitted.

_____

_____

3. Do you or your company presently hold, or have you ever applied for regular (MC) or Mexican (MX) authority from the former U.S. Interstate Commerce Commission, the U.S. Federal Highway Administration, the Office of Motor Carrier Safety or the Federal Motor Carrier Safety Administration of the U.S. Department of Transportation under the name shown on this application, or under any other name?
☐ Yes ☐ No

3a. If yes, please identify the lead docket number(s) assigned to the application or grant of authority.

_____

_____

3b. If the application was rejected prior to the time a lead docket number(s) was assigned, please provide the name of the applicant shown on the application.

_____

_____

4. Is the applicant domiciled in Mexico? (Check one)
☐ Yes ☐ No

5. Indicate whether the applicant is owned or controlled by persons of Mexico (Check one)
☐ Yes ☐ No

6. Does the applicant hold a Federal Tax Number from the U.S. Government?
☐ Yes ☐ No

6a. If yes, enter the number here: _____

7. Has your company been issued a Registration by the Mexican Government's Secretaria de Communicaciones y Transportes (SCT)?
☐ Yes ☐ No

7a. If yes, give the name under which your company is registered, the Registration Number, and the place where the Registration was issued.

_____

_____

SECTION II – OWNERSHIP, CONTROL AND AFFILIATIONS INFORMATION

OWNERSHIP AND CONTROL

- If the applicant is a ***corporation***, list the names, country of residence, citizenship and domicile, if any, of the corporation, all principal officers and stockholders (holding more than 10 percent of stock) of applicant.
- If applicant is a ***partnership***, list the names, country of residence, citizenship and percentage of ownership of partnership for each partner.
- If applicant is an ***individual***, enter that individual's name, country of residence, and citizenship.

Name	Country of Residence	Citizenship	Domicile	Percentage of Ownership

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AFFILIATIONS

Disclose any relationship the applicant has, or has had, with any U.S. or foreign motor carrier, broker, or freight forwarder registered with the former ICC, FHWA, Office of Motor Carrier Safety, or Federal Motor Carrier Safety Administration within the past 3 years. For example, this relationship could be through a percentage of stock ownership, a loan, a management position, a wholly- owned subsidiary, or other arrangement.

If this requirement applies to you or your company, provide the name of the affiliated company, the latter's MC or MX number, its U.S. DOT Number, if any, and the company's latest U.S. DOT safety rating. Applicant must indicate whether these entities have been disqualified from operating commercial motor vehicles in the United States pursuant to the Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106-159, 113 Stat. 1748)(MCSIA) or any other law. (If you require more space, attach the information to this application form.

Name of affiliated company	MC or MX Number	U.S. DOT Number	U.S. DOT Safety Rating	Ever Disqualified under the MCSIA or any other law?

SECTION III – TYPE(S) OF REGISTRATION REQUESTED

You must submit a filing fee for each type of registration requested (for each checked box). **If you will operate beyond commercial zone you are not eligible for a Certificate of Registration. Please use form OP-1(MX) to apply for such authority.**

Applicant seeks to provide the following transportation service:

FOR-HIRE MOTOR CARRIER

- ☐ Service as a **for-hire motor carrier of property (except household goods),** between Mexico and points entirely in a municipality that is adjacent to Mexico, in contiguous municipalities in the U.S., any one of which is adjacent to Mexico, or in a zone that is adjacent to, and commercially a part of the municipality(ies).
- ☐ Service as a **for-hire motor carrier of household goods** between Mexico and points entirely in a municipality that is adjacent to Mexico, in contiguous municipalities in the U.S., any one of which is adjacent to Mexico, or in a zone that is adjacent to, and commercially a part of the municipality(ies).

PRIVATE MOTOR CARRIER

- ☐ Service as a **private motor carrier of property** (handling your own goods) between Mexico and points entirely in a municipality that is adjacent to Mexico, in contiguous municipalities in the U.S., any one of which is adjacent to Mexico, or in a zone that is adjacent to, and commercially a part of the municipality(ies).

SECTION IV – INSURANCE INFORMATION

- ☐ Applicant will operate vehicles having a gross vehicle weight rating (GVWR) of 10,000 pounds or more to transport:
  - ☐ Non-hazardous commodities ($750,000)
  - ☐ Hazardous materials referenced in the FMCSA insurance regulations at 49 CFR § 387.303(b)(2)(c) ($1,000,000).
  - ☐ Hazardous materials referenced in the FMCSA insurance regulations at 49 CFR § 387.303(b)(2)(b) ($5,000,000).
- ☐ Applicant will operate only vehicles having a GVWR of less than 10,000 pounds to transport:
  - ☐ Any quantity of Division 1.1, 1.2 or 1.3 explosives; any quantity of poison gas (Division 2.3, Hazard Zone A or Division 6.1, Packing Group 1, Hazard Zone A materials); or highway route controlled quantity of radioactive materials ($5,000,000).
  - ☐ Commodities other than those listed above ($300,000).

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SECTION IV – INSURANCE INFORMATION (continued)

Does the applicant presently hold public liability insurance?
☐ Yes ☐ No

If applicant does hold such insurance, please provide the information below:

Insurance Company _____
Address: _____
_____
Maximum Insurance Amount _____
Policy Number _____
Date Issued _____
Insurance Effective Date _____ Expiration Date_____

Does applicant presently operate or has it operated under trip insurance issued for movements in U.S. border commercial zones?
☐ Yes ☐ No

SECTION V – SAFETY CERTIFICATIONS

Applicant certifies that it is exempt from the U.S. DOT Federal Motor Carrier Safety Regulations (FMCSRs) because it will operate only small vehicles (GVWR under 10,001 pounds) and will not transport hazardous materials.

_____Yes _____No

If you answered **yes**, proceed to the end of this section, sign the certification and complete the appropriate attachments to Section V. Refer to the instructions for additional information.

If you answered No, you must complete the remaining questions in Section V, and sign the certification before you complete the appropriate attachments to Section V.

Applicant maintains copies of all U.S. DOT Federal Motor Carrier Safety Regulations (FMCSRs) and the Hazardous Materials Regulations (HMR)(if a property carrier transporting hazardous materials), understands and will comply with such Regulations, and has ensured that all company personnel are aware of the requirements.

_____Yes

Applicant certifies that the following tasks and measures will be fully accomplished and procedures fully implemented before it commences operations in the United States:

1. Driver qualifications:

The carrier has in place a system and procedures for ensuring the continued qualification of drivers to operate safely, including a safety record for each driver, procedures for verification of proper licensing of each driver, procedures for identifying drivers who are not complying with the U.S. and Mexican safety regulations, and a description of a retraining and educational program for poorly performing drivers.

_____Yes

The carrier has procedures in place to review drivers' employment and driving histories for at least the last 5 years, to determine whether the individual is qualified and competent to drive safely.

_____Yes

The carrier has established a system and requirements that each driver report to the carrier in writing under the driver's signature, all criminal convictions within 30 days of occurrence, including the following information: the driver's full name, driver's license number, and the date of conviction; details of the offense, including suspension, revocation, or cancellation of driving privileges, and the location of the offense.

_____Yes

The carrier has established a program to review the records of each driver at least once every 12 months and will maintain a record of the review.

_____Yes

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2. Hours of service:

The carrier has in place a record keeping system and procedures to monitor the hours of service performed by drivers, including procedures for continuing review of drivers' log books, and for ensuring that all operations requirements are complied with.

_____Yes

The carrier has ensured that all drivers to be used in the United States are knowledgeable of the U.S. hours of service requirements, and has clearly and specifically instructed the drivers concerning the application to them of the 10 hour, 15 hour, and 60 and 70 hour rules, as well as the requirement for preparing daily log entries in their own handwriting for each 24 hour period.

_____Yes

The carrier has attached to this application statements describing the carrier's monitoring procedures to ensure that drivers complete logbooks correctly, and describing the carrier's record keeping and driver review procedures.

_____Yes

3. Drug and alcohol testing:

The carrier is familiar with the alcohol and controlled substance testing requirements of 49 CFR 382 and 49 CFR 40 and has in place a program for systematic testing of drivers.

_____Yes

The carrier has attached to this application the name, address, and telephone number of the person responsible for implementing and overseeing alcohol and drug programs, and also of the drug testing laboratory and alcohol testing services that are used by the company.

_____Yes

4. Vehicle condition:

The carrier has established a system and procedures for inspection, repair and maintenance of its vehicles in a safe condition, and for preparation and maintenance of records of inspection, repair and maintenance in accordance with the U.S. DOT's FMCSRS and the Hazardous Materials Regulations (HMR).

_____Yes

The carrier's vehicles were manufactured in compliance with the applicable U.S. DOT Federal Motor Vehicle Safety Standards.

_____Yes

The carrier has inspected all vehicles that will be used in the United States prior to the beginning of such operations and has proof of the inspection on-board the vehicle as required by 49 CFR 396.17.

_____Yes

5. Accident monitoring program:

The carrier has in place a program for monitoring vehicle accidents and maintains an accident register in accordance with 49 CFR 390.15

_____Yes

The carrier has attached to this application a copy of its accident register for the previous year (or 12 months), or a description of how the company will maintain this register once it begins operations in the United States.

_____Yes

The carrier has established an accident countermeasures program and a driver training program to reduce preventable accidents.

_____Yes

The carrier has attached to the application a description and explanation of the accident monitoring program it has implemented for its operations in the United States.

_____Yes

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6. Production of records:

The carrier can and will produce records demonstrating compliance with the safety requirements within 48 hours of receipt of a request from a representative of the USDOT/FMCSA or other authorized official.

_____Yes

The carrier is including as an attachment to this application the name, address and telephone number of the employee who should be contacted for requesting records.

_____Yes

7. Hazardous Materials (to be completed by carriers of hazardous materials only).

The HM carrier has full knowledge of the U.S. DOT HMR, and has established programs for the thorough training of its personnel in such regulations.

The carrier has established a system and procedures for inspection, repair and maintenance of its vehicles for HM transportation in a safe condition, and for preparation and maintenance of records of inspection, repair and maintenance in accordance with the HMR.

_____Yes

The HM carrier has attached to this application a statement providing information concerning (1) the names of employees (other than drivers) responsible for assuring compliance with HM regulations referenced in Section V of this application), and (2) a description of their positions, training and experience with respect to safety regulations

_____Yes

The HM carrier has established a system and procedures for maintaining HM shipping documents.

_____Yes

7A. For Cargo tank carriers (of HM):

The carrier submits with this application a certificate of compliance for each cargo tank the company utilizes in the U.S., together with the name, qualifications, CT number, and CT number registration statement of the

facility the carrier will be utilizing to conduct the test and inspections of such tanks required by Part 180.

_____Yes

The carrier will register under Part 107, Subpart G, if transporting a minimum of 55 lbs. of explosives, any quantity of highway route controlled quantity of radioactive materials, more than 1 liter of PIH Zone A, other HM in a tank over 3,500 gallons, or more than 5,000 lbs. loaded in one place.

_____Yes

8. Compliance with all of the following once operations in the United States have begun.

The carrier will insure that drivers operate within the hours of service rules and are not fatigued while on duty.

The carrier will insure that all drivers operating in the United States are at least 21 years of age and possess a valid Commercial Drivers License (CDL) or Licensia Federal de Conductor (LFC).

The carrier will insure that all vehicles operated in the United States are inspected on an annual basis.

The carrier will insure that all violations and defects noted on inspection reports are corrected before vehicle and drivers are permitted to enter the United States.

_____Yes

_____
Signature of applicant

By signing these certifications, the carrier official is on notice that the representations made herein are subject to verification through inspections in the United States and through the request for and examination of records and documents. Failure to support the representations contained in this application could form the basis of a proceeding leading to the revocation of the authority granted.

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Safety and Compliance Information and Attachments for Section V

1. Individual responsible for safe operations and compliance with applicable regulatory and safety requirements.

NAME	ADDRESS	POSITION

2. Location where copies of the Federal Motor Carrier Safety Regulations and other regulations are maintained.

ATTACHMENT FOR SECTION V, NO. 1, DRIVER QUALIFICATIONS
Intentionally Left Blank

ATTACHMENT FOR SECTION V, NO. 2, HOURS OF SERVICE

MONITORING STATEMENTS

Statements describing monitoring procedures for ensuring correctness of logbook completion by drivers and describing record keeping and driver review procedures.

ATTACHMENT FOR SECTION V, NO. 3, DRUG AND ALCOHOL TESTING

Person responsible for implementing and overseeing alcohol and drug programs

NAME	ADDRESS	POSITION

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The drug testing laboratory and the alcohol testing services that are used by the carrier.

NAME	ADDRESS	TELEPHONE NO.

ATTACHMENT FOR SECTION V, NO. 4,
Intentionally Left Blank

ATTACHMENT FOR SECTION V, NO. 5,
ACCIDENT MONITORING PROGRAM

1. Describe how company will maintain accident register once it begins operations in U.S.

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ATTACHMENT FOR SECTION V, NO. 5, ACCIDENT MONITORING PROGRAM

2. Describe and explain accident monitoring program for operations in U.S.

ATTACHMENT FOR SECTION V, NO. 6, PRODUCTION OF RECORDS

Contact person(s) for requesting records

Name	Address	Telephone Number

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ATTACHMENT FOR SECTION V, NO. 7, HAZARDOUS MATERIALS (TO BE COMPLETED BY CARRIERS OF HAZARDOUS MATERIALS ONLY)

Statement respecting person(s) (other than drivers) responsible for ensuring compliance with HM regulations for HM activities

ATTACHMENT FOR SECTION V, NO. 7A, FOR CARGO TANK CARRIERS OF HM)

Cargo Tank Information (HM)

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SECTION VI - HOUSEHOLD GOODS ARBITRATION CERTIFICATIONS

If applicant will be transporting household goods between Mexico and border commercial zones, it must certify as follows:

Household goods carrier registration is now conditioned on the carrier's agreement to offer arbitration as a means of settling loss and damage claims.

Applicant certifies that it will offer arbitration in accordance with the requirements of U.S.C. § 14708.

_____
Signature

SECTION VII – COMPLIANCE CERTIFICATIONS

All applicants must certify as follows:

- Applicant is willing and able to provide the proposed operations or service and to comply with all pertinent statutory and regulatory requirements and regulations issued or administered by the U.S. Department of Transportation, including operational regulations, safety fitness requirements, motor vehicle safety standards, and minimum financial responsibility requirements.

  _____Yes

- Applicant is willing and able to comply with all applicable statutory and regulatory requirements administered by the U.S. Department of Labor, or by a state agency operating a plan pursuant to Section 18 of the Occupational Safety and Health Act of 1970 ("OSHA state plan agency,") including, but not limited to, requirements of the Occupational Safety and Health Act, the Surface Transportation Assistance Act, and the Fair Labor Standards Act.

  _____Yes

- Applicant has paid any taxes it owes under Section 4481 of the U.S. Internal Revenue Code (26 U.S.C. §4481) for the most recent taxable period as defined under Section 4482(c) of the Internal Revenue Code (26 U.S.C. §4482(c)).

  _____Yes

- Applicant understands that the agent(s) for service of process designated on FMCSA Form BOC-3 will be deemed applicant's official representative(s) in the United States for receipt of filings and notices in administrative proceedings under 49 U.S.C. 13303, and for receipt of judicial filings and notices issued in connection with the enforcement of any Federal statutes or regulations.

  _____Yes

- Applicant is willing and able to produce for review or inspection documents which are requested for the purpose of determining compliance with applicable statutes and regulations administered by the Department of Transportation, including the Federal Motor Carrier Safety Regulations, Motor Vehicle Safety Standards, and Hazardous Materials Regulations, within 48 hours of any written request. Applicant understands that the written request may be served on the person identified in the attachment for Section V, number 6, or the designated agent for service of process.

  _____ Yes

- Applicant is willing and able to produce for review or inspection documents (including employment, timekeeping, payroll, safety and health, and training records), which are requested for the purpose of determining compliance with applicable statutes and regulations administered by the U.S. Department of Labor and OSHA state plan agencies, within 48 hours of any written request. Applicant understands that the written request may be served on the person identified in the attachment for Section V, number 6, or the designated agent for service of process.

  _____ Yes

- Applicant is not presently disqualified from operating a commercial vehicle in the United States pursuant to the Motor Carrier Safety Improvement Act of 1999 or any other law.

  _____Yes

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SECTION VII – APPLICANT'S OATH

APPLICANT'S OATH MUST BE COMPLETED AND SIGNED BY APPLICANT

I, _____,

(First Name) Middle Name) (Surname) (Title)

verify under penalty of perjury, under the laws of the United States of America, that I understand the foregoing certifications and that all responses are true and correct. I certify that I am qualified and authorized to file this application. I know that willful misstatement or omission of material facts constitute Federal criminal violations under 18 U.S.C. §§ 1001 and 1621 and that each offense is punishable by up to 5 years imprisonment and a fine under Title 18, United States Code.

I further certify that I have not been convicted in U.S. Federal or State courts, after September 1, 1989, of any offense involving the distribution or possession of controlled substances, or that if I have been so convicted, that I am not ineligible to receive U.S. Federal benefits, either by court order or operation of law, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 862).

_____ _____

(Signature) (Date)

_____

(Relationship to applicant, e.g., President or Owner)

Form OP-2
Revised 00/01

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BILLING CODE 4910–EX–C

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

2. The authority citation for part 387 is revised to read as follows:

Authority: 49 U.S.C. 13101,13301,13906, 14701, 31138, and 31139; and 49 CFR 1.73.

3. In § 387.7, revise the first sentence of paragraph (b)(3) introductory text to read as follows:

§ 387.7 Financial responsibility required.

* * * * *

(b) * * *

(3) *Exception.* A Mexican motor carrier operating solely in the commercial zones with a certificate of registration issued under part 368 may meet the minimum financial responsibility requirements of this subpart by obtaining insurance coverage, in the required amounts, for periods of 24 hours or longer, from insurers that meet the requirements of § 387.11 of this subpart. * * *

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Issued on: April 27, 2001.

Brian M. McLaughlin,

Associate Administrator for Policy and Program Development.

[FR Doc. 01–11034 Filed 5–1–01; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 365

[Docket No. FMCSA–98–3298]

RIN 2126–AA34

Application by Certain Mexican Motor Carriers To Operate Beyond U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FMCSA proposes changes in its regulations to govern applications by Mexican carriers to operate beyond municipalities and commercial zones at the United States-Mexico border. The FMCSA also proposes to revise the application form, OP–1(MX), to be filed by these Mexican motor carriers. The proposed form would require additional information about the applicant's business and operating practices to allow the FMCSA to determine if the applicant could meet the safety standards established for operating in interstate commerce in the United States. Carriers that had previously submitted an application would have to submit the updated form. These proposed changes are needed to implement part of the North American Free Trade Agreement (NAFTA).

DATES: We must receive your comments by July 2, 2001.

ADDRESSES: You can mail, fax, hand deliver or electronically submit written comments to the Docket Management Facility, U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001 FAX (202) 493–2251, on-line at *http://dmses.dot.gov/submit*. You must include in your comment the docket number that appears in the heading of this document. You can examine and copy all comments at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. You can also view all comments or download an electronic copy of this document from the DOT Docket Management System (DMS) at *http://dms.dot.gov/search.htm* and typing the last four digits of the docket number appearing at the heading of this document. The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines at the "Help" section of the web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments on-line.

FOR FURTHER INFORMATION CONTACT: Ms. Valerie Height, (202) 366–1790, Regulatory Development Division, FMCSA, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: We will include comments received after the comment closing date in the docket, and we will consider late comments to the extent practicable. The FMCSA may, however, issue a final rule at any time after the close of the comment period.

Background

Under the Bus Regulatory Reform Act of 1982, (Pub. L. No. 97–261, 96 Stat. 1103) Congress imposed a two-year moratorium on issuance by the former Interstate Commerce Commission (ICC) of new grants of operating authority to motor carriers domiciled in a foreign country, or owned or controlled by persons of a foreign country. The legislation authorized the President to remove or modify the moratorium upon a determination that such action was in the national interest. As a result of legislative and executive extensions of the moratorium, only a limited class of Mexican motor carriers have operated in the United States on Certificates of Registration issued under what is now 49 CFR part 368.

The terms of NAFTA, Annex I, provide that the moratorium on licensing Mexican motor carriers to operate within the United States would be lifted by the President in phases under the following schedule:

(1) When NAFTA took effect on January 1, 1994, applications by Mexican bus operators to conduct cross border charter and tour bus services in international transportation service between Mexico and all points in the United States were to be accepted and processed by the ICC, and suitable authority issued.

(2) In the second stage, beginning December 17, 1995, Mexican trucking companies engaged in the transportation of property were to be permitted to file applications for cross border operations between Mexico and four United States border states and establish companies within the United States to distribute international cargo within the United States

(3) In the third phase, beginning January 1, 1997, applications were to be accepted and processed for Mexican passenger carriers to conduct regular route passenger operations in international service from Mexico to all points in the United States.

(4) In the fourth phase, beginning January 1, 2000, Mexican property carriers were to be allowed to file applications for cross border operations from Mexico to all points in the United States (except for point-to-point carriage of domestic cargo within the United States, for which the moratorium has not been removed under NAFTA).

(5) Finally, in the last phase, beginning on January 1, 2001, Mexican nationals were to be allowed to establish companies in the United States to provide point-to-point bus services in the United States.

Pursuant to the first phase of NAFTA, on January 1, 1994, the ICC began accepting applications from Mexican passenger carriers to conduct international charter and tour bus operations into the United States. The ICC promulgated rules and a revised application form to effect the processing of Mexican applications (Ex Parte No. 55 (Sub-No. 96), *Freight Operations by Mexican Motor Carriers—Implementation of the North American Trade Agreement*, 10 I.C.C. 2d 854

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(1995). These rules were anticipating the implementation of the second phase of NAFTA providing Mexican property carriers with additional access to the United States. A copy of the decision is in the public docket for this rulemaking. The ICC designated the revised application form OP–1(MX). On December 15, 1995, the International Brotherhood of Teamsters sought an emergency stay of the ICC decision in the United States Court of Appeals for the District of Columbia. *International Brotherhood of Teamsters* v. *Secretary of Transportation*, No. 95–1603 (D.C. Cir., filed Dec. 15, 1995). The Teamsters contended that the ICC decision was arbitrary and capricious because it failed to address serious concerns regarding the safe operation of Mexican motor carriers. The Teamsters had requested the ICC to add additional safety questions to the applications filed by Mexican carriers to ensure that the applicants were willing and able to comply with applicable safety regulations.

On December 18, 1995, the DOT announced a delay in implementing the NAFTA motor carrier access provisions. Because of safety concerns related to the operations of Mexican motor carriers and the lack of a motor carrier safety regulation and compliance program in Mexico, the ICC decided not to process applications from Mexican motor carriers for authority to operate in the United States border States in accordance with NAFTA's liberalization schedule. The FHWA continued this decision after the January 1, 1996, termination of the ICC and transfer of responsibilities to the FHWA.

Mexico filed complaints against the United States under NAFTA's dispute resolution provisions, challenging the United States decision to deny further trucking, investment, and bus access. An arbitration panel met in May 2000 to hear the trucking and investment case, which was the subject of extensive pre- and post-hearing briefings on safety and legal issues.

The panel issued a final report on February 6, 2001. A copy of the report is in the docket. The report unanimously concluded that the blanket refusal to process applications of Mexican motor carriers seeking United States operating authority out of concerns over the carriers' safety was in breach of NAFTA obligations of the United States, specifically NAFTA's liberalization provisions and provisions ensuring national treatment and most-favored-nation treatment for cross-border services. The panel also concluded that alleged deficiencies in Mexico's regulation of motor carrier safety did not relieve the United States of those NAFTA obligations. The panel stated, however, that the Department could subject Mexican motor carriers seeking to operate in the United States to different requirements than it applies to United States and Canadian carriers. The United States and Mexico have engaged in negotiations regarding the implementation of the liberalization provisions in light of the panel's decision.

The FMCSA regulates commercial motor vehicle (CMV) safety in the United States under a comprehensive system of regulations designed to ensure that drivers are medically qualified;, meet applicable licensing standards; can read and speak the English language sufficiently to converse with the general public, understand highway traffic signs and signals in the English language, respond to official inquiries and make entries on reports and records; and do not operate vehicles while impaired by drugs, alcohol or excessive fatigue. We require that every CMV be equipped with certain standard safety-related equipment and that vehicles be regularly inspected and maintained to ensure that they remain in safe operating condition. We enforce these regulatory requirements through roadside inspections and on-site compliance reviews. Roadside inspections focus on potentially unsafe vehicle and driver violations that may pose a threat to public safety, unless the vehicle or driver is placed out of service. Our compliance reviews entail a review of a carrier's overall compliance with the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations. Our investigators examine carrier records (including driver logbooks and drug and alcohol testing information) and evaluate roadside vehicle inspection data, accident records, and other safety related information to determine whether a motor carrier meets safety fitness standards.

The DOT has consulted extensively with Mexican transportation officials regarding the strengthening of Mexican truck safety regulation, and significant progress has been made in this area. Mexico has agreed to utilize the Commercial Vehicle Safety Alliance (CVSA) out-of-service (OOS) criteria and has issued final regulations based on these criteria. These standards cannot be effective without a safety oversight program, including systematic roadside inspections, to ensure compliance with and enforcement of the standards. The DOT officials have worked extensively with Mexican transportation officials on the establishment of such a program. However, Mexico has not yet completed implementation of a comprehensive safety inspection program.

With the exception of border commercial zone drayage operations, Mexican carriers have, for the most part, little or no experience operating under regulations comparable to the FMCSRs. The FMCSA must be prepared to evaluate the safety fitness of motor carriers having no experience operating under a comprehensive system of safety regulation like ours.

The FMCSA asks for public comment on proposed regulations and a revised Form OP–1(MX) that would require additional safety information and certifications of compliance with applicable safety requirements from all Mexican motor carrier applicants operating beyond the commercial zones.

In another NPRM published elsewhere in today's **Federal Register**, RIN 2126–AA33 *Revision of Regulations and Application Form for Mexican-Domiciled Motor Carriers to Operate in U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border*, the FMCSA is proposing changes to the process and form (OP–2) used to obtain a Certificate of Registration. The changes would limit a Certificate of Registration to Mexican-domiciled motor carriers that operate, or will operate, only in the commercial zones adjoining the United States-Mexico border. All other Mexican carriers, including current holders of Certificates of Registration who operate beyond the commercial zones, would be subject to the proposals in this NPRM.

The FMCSA proposes to revise the OP–1(MX) application form by requiring each motor carrier applicant to answer questions to demonstrate its basic knowledge of the FMCSRs and to indicate how it intends to comply with these regulations. In addition, the FMCSA proposes to require each applicant to make specific certifications of compliance. This additional information will enable the FMCSA to determine that each applicant is willing and able to comply with the FMCSRs while conducting operations in the United States. In addition, the FMCSA would require applicants to submit verification from the Mexican government that the applicant is a registered Mexican carrier authorized to conduct motor carrier operations up to the United States-Mexico border and that all drivers who would operate in the United States have a valid Licencia Federal de Conductor issued by the Government of Mexico. These requirements also are consistent with section 210(b) of the Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106–159, 113 Stat. 1748) (MCSIA), which requires the Secretary to establish regulations ensuring that all applicant motor carriers, including foreign motor carriers, are knowledgeable about the FMCSRs before being granted authority to operate in the United States. Failure to provide such verification would result in the rejection of the application.

The FMCSA solicits comment from the public on our proposal that Mexican applicants who have filed for authority on the existing Form OP–1(MX) must file the proposed revised Form OP–1(MX) to update and supplement the information about their operations, including the requirement that the carrier be registered with the Government of Mexico. This requirement would ensure that FMCSA's database contains current and consistent information about Mexican registrants and thus enhance the effectiveness of FMCSA's safety oversight.

These proposed requirements should not distract from, or detrimentally affect, the efforts underway between the Governments of Mexico and the United States to establish compatible regulations and to ensure that a comprehensive safety oversight program is put into place in Mexico. Over the long term, consistent, compatible safety standards and compliance practices will have the greatest impact in promoting safety, facilitating enforcement, reducing the enforcement burden on the border States, and establishing permanent and stable programs.

Proposed Form OP–1(MX)

The FMCSA proposes extensive revisions to the Form OP–1(MX). The FMCSA proposes to add new sections to solicit additional information from the applicant to assist in identifying the nature of the applicant's existing operations in the U.S., if any. Other sections would help identify any previously submitted Form MCS–150, verify the applicant's domicile in Mexico, and confirm that the applicant holds a valid registration from the Government of Mexico. The question regarding domicile would be removed. However, the proposed question regarding whether the applicant holds a valid registration from the Mexican government is new. It is proposed to ensure that only a carrier who has met Mexican Federal government standards and regulations will operate in the United States.

The single form for both passenger and property carriers would lessen the paperwork burden on the Mexican applicants and facilitate the inclusion of additional safety questions and certifications.

Under section 219 of MCSIA, a foreign carrier engaging in transportation in the United States without proper authorization may be disqualified from operating commercial vehicles in the United States. Accordingly, applicants would be asked to disclose whether any affiliated entities have been disqualified.

The proposed form would require an applicant to identify the type(s) of operations requested. The form would make clear that use of the Form OP–1(MX) and issuance of Authority Registrations would be limited to carriers that would operate *beyond* the municipalities along the United States-Mexico border and commercial zones of such municipalities.

Additional information would be requested about insurance held by the carrier.

The FMCSA proposes to add a new section that would require the applicant to certify that it has a system in place to ensure compliance with applicable requirements covering driver qualifications, hours of service, drug and alcohol testing, vehicle condition, accident monitoring, and hazardous materials transportation. In addition, the FMCSA proposes that the applicant provide narrative responses describing how it will monitor hours of service, how it will maintain an accident register and what is its monitoring program. This section would also require that the applicant provide information including the names of individuals in charge of the applicant's safety program. The applicant must provide: specific locations where the applicant maintains current FMCSRs, the names of the individuals in charge of drug and alcohol testing (if applicable). The FMCSA would require only those safety certifications that apply to the applicant. For example, due to the weight of the vehicles they operate, certain applicants would not be subject to the drug and alcohol testing and CDL requirements in 49 CFR parts 382 and 383, respectively, and would not be required to certify compliance with those regulations. The certification information would enable FMCSA to evaluate, upon initial application, the safety compliance program of the applicant. The FMCSA would reject an applicant that cannot offer a specific, unambiguous plan to ensure compliance.

The proposed form would require household goods applicants to affirm a willingness to offer arbitration as a means of settling loss and damage claims in accord with U.S. law.

The FMCSA proposes to add more extensive and specific certifications regarding compliance, including compliance with Department of Labor regulations. Other parts of this certification would require the applicant to affirm its willingness and ability to provide the proposed service and to comply with all pertinent statutory and regulatory requirements. It would remind the applicant of statutory and regulatory responsibilities, which if neglected or violated, might subject the applicant to disciplinary or corrective action by the FMCSA. Another certification, derived from the existing Form OP–2 application, would highlight the need to comply with applicable provisions of the U.S. Internal Revenue Code relating to payment of the Heavy Vehicle Use Tax. An additional certification would ensure that the applicant understands that the agents for service of process designated on the Form BOC–3 would also be deemed the applicant's representative in the United States for service of judicial process and notices under 49 U.S.C. 13304 and administrative notices under 49 U.S.C. 13303. Finally, the applicant would affirm that it is not currently disqualified from operating a commercial motor vehicle in the United States under the provisions of MCSIA.

The FMCSA will conduct workshops and also provide written material, such as handbooks, to help the Mexican applicants understand the various requirements and the proper way to complete the applications.

Proposed Revision to Part 365

The FMCSA proposes to add a new subpart E to part 365 to address the specific requirements of the application process for Mexican carriers. First, proposed § 365.501 sets out that all Mexican-domiciled carriers that want to operate *beyond* the border area must file the Form OP–1(MX). This would be a change from current practice to facilitate uniform treatment of all Mexican carriers that may wish to offer long haul service, and it is discussed as well in the NPRM concerning part 368 published in today's **Federal Register**. These special filing rules would *not* apply to Mexican-owned enterprises domiciled in the United States that want to distribute international cargo within the United States. Nor do they apply to Mexican nationals establishing companies in the United States to provide point-to-point bus services in the United States. Such entities would file either the standard OP–1 or OP–1(P) application form, as appropriate.

In proposed § 365.503, the FMCSA states that applications must be filled

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out in English and be complete to be considered. Information on obtaining applications is also provided.

We propose in § 365.505 to provide a waiver from the filing fee for two types of applicants. First would be those who submitted an application under the earlier version of the Form OP–1(MX) before the decision of the United States to stay implementation of the NAFTA entry provisions. Second would be those applicants that currently hold a Certificate of Registration and wish to continue operations solely within the U.S. municipalities and commercial zones along the U.S.-Mexico border.

In proposed § 365.507, the FMCSA states that all applications by Mexican carriers would be reviewed under the existing procedures of part 365. Also, we propose that approval of an application would be conditional upon successful completion of a safety review within 18 months. The safety review is discussed in another NPRM published today in the **Federal Register** (*Safety Monitoring System and Compliance Initiative for Mexican Motor Carriers Operating in the United States*).

Proposed § 365.509 would include a requirement for Mexican carriers to notify FMCSA in writing of any changes in, or corrections to, applicant information in the Form OP–1(MX) as well as any changes in the Form BOC–3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders, within 45 days of the change. The proposed requirement would assist FMCSA in keeping its information on Mexican carriers current. The proposed requirement would not be an annual re-filing. A carrier with no change in status would not need to take any action apart from the biennial submission of Form MCS–150. A carrier who fails to update required information may be subject to suspension or revocation of its operating authority.

Finally, we propose to add the Form OP–1(MX) as Appendix A to subpart E of part 365.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and Department of Transportation Regulatory Policies and Procedures

The FMCSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866, and is significant within the meaning of Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The Office of Management and Budget has reviewed this document. It is anticipated that the economic impact of the proposals in this rulemaking would be minimal. The new or revised Form OP–1(MX), while intended to foster and contribute to safety of operations, adherence to U.S. law and regulations, and compliance with U.S. insurance and tax payment requirements on the part of Mexican carriers, would impose little additional expense upon public agencies or the motoring public.

Nevertheless, the subject of safe operations by Mexican carriers in the United States will likely generate considerable public interest within the meaning of Executive Order 12866. The manner in which the FMCSA carries out its safety oversight responsibilities with respect to this international motor carrier transportation may be of substantial interest to the domestic motor carrier industry, the Congress, and the public at large. A copy of the Regulatory Evaluation prepared for the three companion NPRMs published in today's **Federal Register** is in the docket.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (Pub. L. 96–354, 5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement and Fairness Act (Pub. L. 104–121), requires federal agencies to analyze the impact of rulemakings on small entities, unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The FMCSA is issuing this NPRM because of the planned implementation of the NAFTA's motor carrier access provisions. A NAFTA dispute resolution tribunal recently ruled that the United States violated NAFTA by failing to allow any Mexican carriers greater access to the United States.

Mexican carriers would be subject to the same safety regulations as domestic carriers when operating in the U.S. The FMCSA's enforcement of the FMCSRs has become increasingly data dependent in the last several years. Several programs have been put in place to continually analyze crash rates, out-of-service (OOS) rates, compliance review records, and other data sources to allow the agency to focus on high-risk carriers. This strategy is only effective if the FMCSA has adequate data on carriers' size, operations, and history. We do not currently have this type of information on Mexican carriers. We do not have abundant information on their safety record, OOS rates, or other overall safety. Thus, a key component of this proposal is the requirement that carriers with OP–1(MX) authority must complete a Form MCS–150 biennially, and notify the FMCSA of corrections to or changes in applicant information on the Form OP–1(MX) as well as changes in the Form BOC–3 within 45 days of the change. This would enable the FMCSA to better monitor these carriers, and to quickly determine whether their safety or OOS rate changes.

The objective of this proposal is to help determine the capability of certain Mexican carriers to operate safely in the United States. The proposal describes what additional information Mexican carriers would have to submit.

This proposal would primarily affect Mexican-domiciled small motor carriers who wish to operate beyond the U.S. municipalities and commercial zones on the U.S.-Mexico border. The amount of information these carriers would have to supply to the FMCSA has been increased, and we estimate that it would take 4 hours to complete each form after compiling the necessary information.

The number of carriers subject to the proposals in this rule and the two companion rules published elsewhere in today's **Federal Register** is the sum of those currently operating within the United States and those who apply for authority in the future. First, we estimated the number of Mexican carriers already operating within the United States. Most of these carriers currently have operating authority and would merely be required to re-file using the revised forms. To operate in the U.S. beyond the municipalities and commercial zones along the U.S.—Mexico border, as proposed in this rule, carriers would file the revised Form OP–1(MX). To continue operations within the U.S. solely in municipalities and commercial zones along the U.S.—Mexico border, these carriers would file using the revised Form OP–2 (see the rulemaking *Revision of Regulations and Application Form for Mexican—Domiciled Motor Carriers to Operate in U.S. Municipalities and Commercial Zones on the U.S.—Mexico Border* published elsewhere in today's **Federal Register**).

The FMCSA's Office of Data Analysis and Information Systems developed a file comprised of Mexican carriers that have recently operated in the United States. As of January 2001, this file contained 11,787 Mexican motor carriers (2.3% of the 500,000 carriers listed in the FMCSA Motor Carrier Management Information System (MCMIS) census file). It includes Mexican carriers with operating authority, carriers who have a DOT number but not authority, carriers with both a DOT number and operating authority, and other carriers that the Agency believes are operating in the United States with neither operating authority nor a DOT number. These latter carriers are those who have been subject to a roadside inspection in the United States at some point in the last 3 years.

It has been suggested that many of these Mexican carriers no longer operate in the United States. The FMCSA calendar year 2000 MCMIS inspection and accident database identifies approximately 4,500 Mexican motor carriers. The FMCSA also verified that approximately 10,000 Mexican carriers currently have operating authority. Therefore, we constructed three different baseline scenarios for the number of Mexican carriers currently operating in the United States, a low (4,500), medium (9,500) and high (11,787) scenario.

The second step in figuring out the total number of Mexican carriers subject to these proposals is to determine how many *new* carriers will request authority under the proposals. Approximately 1,600 Mexican carriers have filed an OP–2 form annually over the last several years (and a similar number have been granted). Only 190 OP–1(MX) applications are pending, as Mexican carriers stopped filing these forms when it became clear that these forms were not being processed. For the high estimate, the FMCSA assumes that this number will double to 3,200 the first year this proposal is in effect, and then fall to 2,500 applicants per year for the following 9 years. As in the case of domestic carriers, the annual applicant number may include carriers that go out of business and subsequently re-enter the market. For the lower and middle estimates, we estimate that there will be 500 new applicants the first year, and then 200 per year thereafter. This translates into approximately 15,000 applicants in the first year for the high estimate, 10,000 for the medium estimate, and 5,000 for the low estimate. As was noted above, the FMCSA estimates that more than 500,000 motor carriers are currently operating in the United States.

We estimate that it takes 4 hours to complete each form. As was noted above, the vast majority of Mexican motor carriers currently operating in the United States have OP–2 authority. We estimate that half of all these carriers will switch to OP–1(MX) authority, while the other half will continue operating within U.S. municipalities and commercial zones on the U.S.—Mexico border. We assume that the new carriers will be more likely than current carriers to apply for OP–2 authority, since most of the large carriers who would presumably benefit from expanded U.S. operations are already operating in U.S. municipalities and commercial zones on the U.S.—Mexico border under OP–2 authority. While some new applicants will also want to take advantage of the opportunity to operate throughout the United States, many will not have the financial and administrative wherewithal to benefit from the enlarged operations allowed. Accordingly, the Agency estimates that three quarters (75%) of all new applicants will apply for OP–2 authority, with one quarter (25%) requesting OP–1(MX) authority. Nonetheless, changing this value would have no impact on the analysis since the costs of completing the two forms are identical.

A review of the MCMIS census file reveals that the vast majority of Mexican carriers are small. For Mexican carriers with any trucks, the mean number of trucks was 5.1. That mean was pulled up by a small number of large carriers. Seventy-five (75) percent of Mexican carriers had three or fewer trucks, and the 95th percentile carrier had only 15 trucks.

These proposals should not have any impact on small U.S. based motor carriers.

The regulatory evaluation includes a description of the recordkeeping and reporting requirements of these proposals. Under the revised procedures, an applicant would be required to submit a completed Form BOC–3-Designation of Agents—Motor Carriers, Brokers and Freight Forwarders, and Form MCS–150—Motor Carrier Identification Report (Application for U.S. DOT Number) as attachments to the OP–2 or OP–1(MX) application form. In addition, Mexican carriers would update the FMCSA of certain information changes.

The Form MCS–150 is approximately two pages long. In addition to requiring basic identifying information, it requires that carriers state the type of operation they run, the number of vehicles and drivers they use, and the types of cargo they haul. The Form BOC–3 merely requires the name, address and other information for a domestic agent to be contacted if the FMCSA needs to contact the motor carrier. The proposals also include other modest changes in the OP–1(MX) and OP–2 forms.

The FMCSA did not propose any different requirements or timetables for small entities. As noted above, we do not believe these requirements would be onerous, with the carriers required to spend 4 hours to complete the relevant forms. Mexican carriers would only be required to complete forms that most domestic U.S. carriers already are required to submit.

The FMCSA would not consolidate or simplify the compliance and reporting requirements for small carriers. As noted above, small U.S. carriers already have to comply with the similar paperwork requirements of part 365. Given the compelling interest in guaranteeing the safety of Mexican carriers operating in the United States, and the fact that the majority of these carriers are small entities, no special changes were proposed.

The FMCSA cannot exempt small carriers from these proposals without seriously diminishing the agency's ability to ensure the safe operations of Mexican carriers. The majority of Mexican carriers operating in the U.S. would be small; exempting them would have the same impact as not issuing these proposals. Therefore, FMCSA certifies that this proposed rule would not have a significant impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; 2 U.S.C. 1532) requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. Any agency promulgating a final rule likely to result in a Federal mandate requiring expenditures by a State, local, or tribal government or by the private sector of $100 million or more in any one year must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. The FMCSA has determined that the changes proposed in this rule making would not have an impact of $100 million or more in any one year.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of E. O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

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Executive Order 12630 (Taking of Private Property)

This proposed rule will not effect a taking of private property or otherwise have taking implications under E. O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999 (64 FR 43255, August 10, 1999). Consultation with States is not required when a rule is required by statute. The FMCSA, however, has determined that this action would not have significant Federalism implications or limit the policymaking discretion of the States. Comments on this conclusion are welcome and should be submitted to the docket.

Executive Order 13166 (Limited English Proficiency)

Executive Order 13166, "Improving Access to Services for Persons With Limited English Proficiency," dated August 16, 2000 (65 FR 50121), requires each Federal agency to examine the services it provides and develop reasonable measures to ensure that persons limited in their English proficiency can meaningfully access these services consistent with, and without unduly burdening, the fundamental mission of the agency. The FMCSA plans to provide a Spanish translation of the application instructions incorporated within the Form OP–1(MX) application. We believe that this action complies with the principles enunciated in the Executive Order.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217 Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (49 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FMCSA has determined that this proposal would impact a currently approved information collection, OMB No. 2126–0016.

This proposal will not have any impact on information collection OMB No. 2126–0015, entitled, "Designation of Agents, Motor Carriers, Brokers and Freight Forwarders." This currently approved collection covers the Form BOC–3. The current estimates of annual filings include the minimal additional Mexican motor carriers who would be filing updated information on the Form BOC–3.

The information collection requirements on Form OP–1(MX) have been approved by the OMB under the control number 2126–0016, titled "Revision of Licensing Application Forms, Application Procedures, and Corresponding Regulations." This approval includes forms OP–1(MX), OP–1(P), OP–1(FF), and OP–1 and totals 38,000 burden hours. Two thousand (2,000) of these 38,000 burden hours represent the approved amount for the OP–1(MX) (1,000 respondents per year @ 2 hours each to complete the form). The FMCSA proposes to change the form title to Form OP–1(MX)—Application to Register Mexican Carriers for Motor Carrier Authority Under the North American Free Trade Agreement (NAFTA)."

The Regulatory Evaluation for this proposal uses a numerical range to estimate the number of Mexican carriers anticipated to request OP–1(MX) or OP–2 authority under this proposal and a companion rule published elsewhere in today's **Federal Register** (see NPRM titled *Revision to Regulations and Application Form for Mexican-Domiciled Motor Carriers to Operate in U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border*). We estimate the number of applicants to range between a low estimate of 5,000, a medium estimate of 10,000 or a high estimate of 15,000 applicants. Please reference the Regulatory Flexibility Act analysis in this document or the Regulatory Evaluation for this rulemaking for a detailed discussion on how these estimates were derived. This analysis is based upon the high estimate (15,000) since that number enables the Agency to assess the maximum information collection burden to respondents.

The FMCSA estimates that 11,787 Mexican carriers are currently operating in the United States and are categorized as follows: Mexican carriers operating pursuant to OP–2 Certificates of Registration; Mexican carriers that previously filed an OP–1(MX) application; and Mexican carriers assigned DOT numbers and no OP authority or operating without appropriate authorization. The Agency estimates that half of the 11,787 Mexican carriers (or 5,894) known to be now operating in the U.S. will switch to OP–1(MX) authority, while the other half will continue operating pursuant to OP–2 authority.

Based upon the high estimate scenario, the FMCSA anticipates 3,200 first-time applicants for either OP–2 or OP–1(MX) authority in the first year that this proposal becomes a final rule, and 2,500 applicants annually in subsequent years. The agency estimates that 25 percent of the first year new applicants (800) would file a Form OP–1(MX); and 25 percent of the subsequent-year new applicants (625 annually) would file a Form OP–1(MX).

We assume that first-time applicants will be more likely than current carriers to apply for OP–2 authority, since most of the large carriers who would presumably benefit from expanded U.S. operations are already operating in the border commercial zones pursuant to OP–2 authority. While some new applicants may also want to take advantage of the opportunity afforded by this proposal to operate throughout the United States, many will not have the financial and administrative wherewithal or resources to benefit from the enlarged operations allowed.

This proposal would also require Mexican carriers to submit corrections to or changes in the OP–1(MX) applicant information within 45 days of the change. For changes and updates, the agency anticipates that in the first year, 2,232 carriers would file updates or changes to the Form OP–1(MX). In subsequent years, approximately 208 carriers would file updates or changes to the Form OP–1(MX). The FMCSA estimates that it would take 30 minutes to fill out a form to request changes.

Therefore, the FMCSA estimates an adjusted burden hour calculation for the Form OP–1(MX) as follows:

Mexican carrier re-filings or initial filings of the Form OP–1(MX):
(in first year, known carriers): 5,894 × 4 hrs per form = 23,576 hrs
(in first year, first-time applicants): 800 × 4 hrs per form = 3,200 hrs
(in subsequent-years, first-time applicants): 625 × 4 hrs per form = 2,500 hrs
Updates/Changes:
(all in first year): 2,232 × 30 min. per form = 1,117 hrs
(all in subsequent years): 208 × 30 min. per form = 104 hrs

Therefore, proposals in the NPRM, when promulgated as a final rule, would result in a change to the total burden hours for this information collection as follows:

In the first year: 63,893 [(38,000 − 2,000 = 36,000) + 26,776 + 1,117]; and in subsequent years: 38,604 [36,000 + 2,500 + 104].

OMB Control Number: 2126–0016.

Title: Revision of Licensing Application Forms, Application Procedures, and Corresponding Regulations.

Respondents: Motor carriers that operate CMVs in interstate commerce.

Estimated Annual Hour Burden for this NPRM: Year 1 = ([38,000 − 2,000 = 36,000] + 26,776 + 1,117 = 63,893 hrs); Subsequent years = ([38,000 − 2,000 = 36,000] + 2,500 + 104 = 38,604 hours).

National Environmental Policy

The agency has analyzed this proposal for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined under DOT Order 5610.1C (September 18, 1979) that this action does not require any environmental assessment. An environmental impact statement is, therefore, not required.

List of Subjects

49 CFR Part 365

Administrative practice and procedure, Brokers, Buses, Freight forwarders, Maritime carriers, Motor carriers, Moving of household goods, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the FMCSA proposes to amend 49 CFR part 365 as set forth below:

PART 365—RULES GOVERNING APPLICATIONS FOR OPERATING AUTHORITY

1. The authority citation for part 365 is revised to read as follows:

Authority: 5 U.S.C. 553 and 559; 16 U.S.C. 1456; 49 U.S.C. 13101, 13301, 13901–13906, 14708, 31138, and 31144; 49 CFR 1.73.

2. Add a new subpart E to part 365 to read as follows:

Subpart E—Special Rules for Certain Mexican Carriers

Sec.
365.501 Scope of rules.
365.503 Application.
365.505 Re-registration and fee waiver for certain applicants.
365.507 Review of the application.
365.509 Requirement to notify of change in applicant information.
Appendix A to Subpart E of Part 365—Form OP–1(MX) " Application to Register Mexican Carriers for Motor Carrier Authority Under the North American Free Trade Agreement (NAFTA)

Subpart E—Special Rules for Certain Mexican Carriers

§ 365.501 Scope of rules.

The rules in this subpart govern the application by a Mexican-domiciled motor carrier to provide transportation of property or passengers in interstate commerce between Mexico and points in the United States beyond the municipalities and commercial zones adjacent to the border.

§ 365.503 Application.

(a) Each applicant applying under this subpart must submit an application that consists of: Form OP–1 (MX), Form MCS–150—Motor Carrier Identification Form, and Form BOC–3—Designation of Agents-Motor Carriers, Brokers and Freight Forwarders.

(b) The FMCSA will only process your application if it meets the following conditions:

(1) The application must be completed in English.

(2) The information supplied must be accurate, complete, and include all required supporting documents and applicable certifications in accordance with the instructions to Form OP–1 (MX), Form MCS–150, and Form BOC–3.

(3) The application must include the filing fee payable to the FMCSA in the amount set forth at 49 CFR 360.3(f)(1); and

(4) The application must be signed by the applicant.

(c) You must submit the application to the address provided in Form OP–1 (MX).

(d) You may obtain the application forms from any FMCSA Division Office or download it from the FMCSA website at: *http://www.fmcsa.dot.gov/factsfigs/formspub.htm. Form OP–1 (MX) is also published in Appendix A to this part.*

§ 365.505 Re-registration and fee waiver for certain applicants.

(a) If you filed an application using Form OP–1(MX) before [*Insert date of publication of the final rule in the* **Federal Register**], you are required to file a new Form OP–1(MX) to update information about your operations. You do not need to submit a fee when you file a new application under this subpart.

(b) If you hold a Certificate of Registration issued before [*Insert date of publication of final rule in the* **Federal Register**] authorizing operations beyond the municipalities and commercial zones along the United States-Mexicoan border, you are required to file an OP–1(MX) if you want to continue those operations. You do not need to submit a fee when you file a new application under this subpart.

(1) You must file the application by [*Insert date 1 year after date of publication of final rule in the* **Federal Register**.].

(2) The FMCSA may suspend or revoke the Certificate of Registration of any applicable holder that fails to comply with the procedures set forth in this section.

(3) Certificates of Registration issued prior to [*Insert date of publication of final rule in the* **Federal Register**] would remain valid until the OP–1(MX) application filed according to paragraph (b) of this section is processed.

§ 365.507 Review of the application.

(a) The FMCSA will review and act on each application submitted under this subpart in accordance with the procedures set out in this part.

(b) When the FMCSA approves an application submitted under this subpart, the approval will be conditional upon the completion, to the satisfaction of the FMCSA, of a safety review under § 385.21 of this chapter within 18 months of the date of approval.

§ 365.509 Requirement to notify of change in applicant information.

(a) You must notify the FMCSA of any changes or corrections to the information in Parts I, IA or II submitted on the Form OP–1(MX) or the Form BOC–3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders during the application process or after having been granted operating authority. You must notify the FMCSA in writing within 45 days of the change or correction.

(b) If you fail to comply with paragraph (a) of this section, the FMCSA may suspend or revoke your operating authority until you meet those requirements.

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Appendix A to Subpart E of Part 365—Form OP–1(MX)—Application To Register Mexican Carriers for Motor Carrier Authority Under the North American Free Trade Agreement (NAFTA)

U.S. Department of Transportation

Federal Motor Carrier Safety Administration

Form Approved
OMB No. 2126-0016
Expires 00/00/00

Instructions for Completing Form OP-1(MX) Application to Register Mexican Carriers for Motor Carrier Authority Under the North American Free Trade Agreement (NAFTA)

Please read these instructions before completing the application form. Retain the instructions and a copy of the complete application for your records. These instructions will assist you in preparing an accurate and complete application. Applications that do not contain the required information will be rejected and **may** result in a loss of the application fee. **The application must be completed in English** and typed or printed in ink. If additional space is needed to provide a response to any item, use a separate sheet of paper. Identify applicant on each supplemental page and refer to the section and item number in the application for each response.

PURPOSE OF THIS APPLICATION FORM:

The Form OP-1(MX) is required to be filed by foreign (Mexican) for-hire motor carriers of passengers or property and motor private carriers who wish to register to transport property or passengers in the United States in accordance with the provisions of the North American Free Trade Agreement (NAFTA).

This form is also required to be utilized by those Mexican persons or entities who had previously filed applications for registration under NAFTA provisions and who are required to supplement the information in their original applications by completing and re-filing the revised Form OP-1(MX).

This Form should not be used for registration by Mexican carriers to perform transportation only in municipalities in the United States on the United States-Mexico international border or within the commercial zones of such municipalities. To apply for such registration, you should instead complete and file Form OP-2.

This form should not be filed by United States based enterprises, owned or controlled by Mexican nationals, providing: (1) truck services for the transportation of international cargo within the United States, or (2) point-to-point bus services in the United States, in accordance with NAFTA provisions. To apply for such registration, you should instead complete and file Form OP-1 or OP-1(P), respectively.

WHAT TO FILE:

All applicants must submit the following:

1. An original and one copy of a completed revised Form OP-1(MX) Application to Register Mexican Carriers for Motor Carrier Authority Under the North American Free Trade Agreement, with all necessary attachments and statements.

2. A signed and dated Form BOC-3, Designation of Agents for Service of Process, which reflects the applicant's full and correct name, as shown on the Form OP-1(MX), and applicant's address, including the street address, the city, state, country and zip code, must be attached to the application. The BOC-3 form must show street address(es), and not post office box numbers, for the person (s) designated as the agent (s) for service of judicial process and notices under 49 U.S.C. 13304 and administrative notices under 49 U.S.C. 13303. A person must be designated in each State in which the applicant may operate.

3. A completed and signed Form MCS-150 Motor Carrier Identification Report.

4. An Internal Revenue Service Form 2290, Schedule I, which shows payment of Federal Taxes for highway use by heavy vehicles, applicable under 26 U.S.C. § 4481, or a letter, signed by an authorized company official stating why applicant is not subject to this tax requirement. The form should be a copy of the most recent form filed with the IRS.

5. A filing fee of $300 for **each** type of registration requested, payable in U.S. dollars to the Federal Motor Carrier Safety Administration, by means of a check, money order, or an approved credit card. Cash is not accepted.

GENERAL INSTRUCTIONS FOR COMPLETING THE APPLICATION FORM:

- All questions on the application form must be answered completely and accurately. If a question or supplemental attachment does not apply to the applicant, it should be answered "not applicable."

- The application must be typewritten or printed in ink. Applications written in pencil will be rejected.

- The application must be completed in English.

- The completed certification statements and oath must be signed by the applicant only, and not by the applicant's attorney or other applicant representative. The same person must sign the oath and certifications.

- Use the attachment pages included, as appropriate, to provide any descriptions, explanations, statements or other information that is required to be furnished with the application. If additional space is needed to respond to

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any question, please use separate sheets of paper. Identify continuation sheets by using headings that show both the number of the page of the revised OP-1(MX) form or Attachment page on which the question or response appears and the item number of the question.

Additional Assistance

OP-1(MX)

Additional information on obtaining registration or monitoring the status of your application is available through the Automated Response Capability (ARC) telephone system. After dialing (202) 358-7000, press 1, then request the appropriate menu number indicated below. You may use the ARC 24 hours a day, 7 days a week to obtain information in the following areas:

Information Requested	Menu Number
Status of your application (NOTE: Use the assigned docket number to expedite your request. The FMCSA will notify you of the docket number by letter.)	1
Status of insurance and process agent filings	2
Assistance in filing your application	3
If you require information that is not available in the automated response system, the ARC will guide you to an appropriate FMCSA staff member who will be able to assist you in other areas.	

U.S. DOT Registration and Safety Ratings

To obtain information on registering with U.S. DOT (filing Form MCS-150) call: (800) 832-5660 (Automated Response System)

For information concerning a carrier's assigned safety rating, call: (800) 832-5660

U.S. DOT Hazardous Materials Regulations

To obtain information on whether the commodities you intend to transport are considered as hazardous materials:

Refer to the provisions governing the transportation of hazardous materials found under Parts 100 through 180 of Title 49 of the Code of Federal Regulations (CFR), particularly the Hazardous Materials Table at 49 CFR § 172.101 or contact the U.S. DOT, Research and Special Programs Administration at 1-800-467-4922.

To obtain information about DOT hazardous materials transportation registration requirements, contact the U.S. DOT, Research and Special Programs Administration at 1-800-467-4922.

Specific Instructions for Completing Each Section of the Application Form

SECTION I - Applicant Information

Applicant's Legal Business Name and Doing Business As Name. The applicant's name should be your full legal business name -- the name on the incorporation certificate, partnership agreement, tax records, etc. If you use a trade name that differs from your official business name, indicate this under "Doing Business As Name." Example: If you are John Jones, doing business as Quick Way Trucking, enter "John Jones" under APPLICANT'S LEGAL BUSINESS NAME and "Quick Way Trucking" under DOING BUSINESS AS NAME.

Because the FMCSA uses computers to retain information about licensed carriers, it is important to spell, space, and punctuate any name the same way each time you write it. Example: John Jones Trucking Co., Inc.; J. Jones Trucking Co., Inc.; and John Jones Trucking are considered three separate companies.

Business Address/Mailing Address. The business address is the physical location of the business. Example: El Camino Real #756, Guadalajara, and Jalisco, Mexico. If applicant receives mail at an address different from the business location, also provide the mailing address. Example: P. O. Box 3721. **Note:** To receive FMCSA notices and to ensure that insurance documents filed on applicant's behalf are accepted, notify in writing the Federal Motor Carrier Safety Administration, Suite 600, 400 Virginia Avenue, SW., Washington, DC 20024, if the business or mailing address changes. If applicant also maintains an office in the United States, that information should also be provided.

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SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

REPRESENTATIVE. If someone other than the applicant is preparing this form, or otherwise assisting the applicant in completing the application, provide the representative's name, title, position, or relationship to the applicant, address, and telephone and FAX numbers. Applicant's representative will be the person contacted if there are questions concerning this application.

U.S. DOT NUMBER. Applicants are required to register with the U.S. Department of Transportation (U.S. DOT) before initiating service. Motor carriers that already have been issued a U.S. DOT registration number should provide it; applicants that have not previously registered with U.S. DOT should refer to the U.S. DOT information sources under the "Additional Assistance" part of these Instructions. **NOTE:** a completed and signed Form MCS-150 Motor Carrier Identification Report must be submitted separately with this application.

FORM OF BUSINESS. A business is a corporation, a sole proprietorship, or a partnership. If the business is a sole proprietorship, provide the name of the individual who is the owner. In this situation, the Owner is the registration applicant. If the business is a partnership, provide the full name of each partner.

SECTION IA – ADDITIONAL APPLICANT INFORMATION

All applicants must answer each question in this section. Applicants must have been issued a Registration by the Mexican Government's Secretaria de Communicaciones y Transportes (SCT) before a Mexican Motor Carrier Authority Registration will be issued. Applicant's registration must be contained in the SCT database. If the applicant is in the process of obtaining its SCT registration, indicate the date the application was filed. Applicant must supplement the information once the number has been issued prior to being issued its Authority Registration. If an applicant currently holds an Authority Registration and is supplementing the information contained in its original application, this information is also required. An existing Authority Registration will be suspended if the SCT registration number and information is not supplied.

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

SECTION II - OWNERSHIP, CONTROL AND AFFILIATIONS INFORMATION

All applicants must disclose pertinent information concerning the persons who own or control the applicant, and concerning any relationships or affiliations which the applicant has had with other entities registered with FMCSA or its predecessor agencies. Applicant must indicate whether these entities have been disqualified from operating commercial motor vehicles in the United States pursuant to the Motor Carrier Safety Improvement Act of 1999 or any other law.

SECTION III – TYPE (S) OF REGISTRATION REQUESTED

Check the appropriate box (es) for the type(s) of registration you are requesting. For purposes of this application, for-hire motor carrier means an entity that is transporting the goods of others, and motor private carrier means an entity (person or company) that is transporting its own goods, including an entity that is performing such operations under an agreement or contract with a U.S. shipper or other business.

A separate filing fee is required for each type of registration requested.

SECTION IV - INSURANCE INFORMATION

Check the appropriate line that describes the type of business you will be conducting.

If you are applying for motor passenger carrier registration, check the line that describes the seating capacity of your vehicles. If all the vehicles you operate have a seating capacity of 15 passengers or fewer, you are required to maintain $1,500,000 minimum liability coverage. If any one of the vehicles you operate has a seating capacity of 16 passengers or more, you are required to maintain $5,000,000 minimum liability coverage.

If you are applying for motor property carrier registration and you operate vehicles with a gross vehicle weight rating of 10,000 pounds or more and haul only non-hazardous materials, you are required to maintain $750,000 minimum liability coverage for the protection of the public. Hazardous materials referred to in the FMCSA's insurance regulations in item (c) of the table at 49 CFR 387.303 (b)(2) require $1 million minimum liability coverage; those in item (b) of the table at 49 CFR 387.303 (b)(2) require $5 million minimum liability coverage. If you operate only vehicles with a

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gross vehicle weight rating less than 10,000 pounds, you must maintain $300,000 minimum liability coverage. If you operate only such vehicles but will be transporting any quantity of Division 1.1, 1.2 or 1.3 explosives; any quantity of poison gas (Division 2.3, Hazard Zone A, or Division 6.1, Packing Group 1, Hazard Zone A materials); or highway route controlled quantity of radioactive materials, you must maintain $5 million minimum liability coverage. Minimum levels of cargo insurance must be maintained by all motor common carriers in the amount of $5,000 for loss of or damage to property carried on any one motor vehicle, and $10,000 for loss of or damage to property occurring at any one time and place.

Appropriate insurance forms must be filed within **90 days** after the date notice of your application is published in the *DOT/FMCSA Register*. Form BMC-91 or BMC-91X for bodily injury and property damage; Form BMC-34 for cargo liability (common property carriers only).

The FMCSA does not furnish copies of insurance forms. You must contact your insurance company to arrange for the filing of all required insurance forms.

Applicant does not have to submit evidence of insurance with the application, but if the registration is granted, applicant must carry on the vehicle when crossing the border a current Department of Transportation Form MCS-90 and evidence of continuing insurance coverage.

SECTION V - SAFETY CERTIFICATIONS

Applicants for motor carrier registration must complete the safety certifications. You should check the "YES" response only if you can attest to the truth of the statements. The carrier official's signature at the end of this section applies to the Safety Certifications. The "Applicant's Oath" at the end of the application form applies to all certifications. False certifications are subject to the penalties described in that oath.

If you are exempt from the U.S. DOT safety fitness regulations because you operate only vehicles with a gross vehicle weight rating under 10,001 pounds, and you will not transport any hazardous materials, you must certify that you are familiar with and will observe general operational safety fitness guidelines and applicable State and local laws relating to the safe operation of commercial motor vehicles.

Applicants should complete all applicable Attachment pages and, if necessary to complete the responses, attach additional pages referring to

the appropriate Sections and items in the application or Attachment pages. If you are exempt from the U.S. DOT safety fitness regulations, you must complete all relevant attachment pages to demonstrate your willingness and ability to comply with general operational safety fitness guidelines and applicable State and local laws.

SECTION VI - HOUSEHOLD GOODS ARBITRATION CERTIFICATIONS

Applicants for household goods registration as defined in 49 U.S.C. 13102(10) must certify their agreement to offer arbitration as a means of settling loss and damage claims as a condition of registration. The signature should be that of the same company official who completes the Applicant's Oath.

SECTION VII - SCOPE OF OPERATING REGISTRATION SOUGHT

Applicant must indicate, by checking one or more lines, the description(s) which describes the registration(s) for which application is being made. A separate fee is assessed for each registration sought.

SECTION VIII - COMPLIANCE CERTIFICATIONS

All applicants are required to certify accurately to their willingness and ability to comply with statutory and regulatory requirements including those administered by the Department of Labor and certain State agencies, to their tax payment status, and to their understanding that their agent for service of process is their official representative in the U.S. to receive DOT filings and notices.

Applicants are required to certify to their willingness and ability to comply with regulations administered by the Department of Transportation, including the Federal Motor Carrier Safety Regulations and Hazardous Materials Regulations, as well as all applicable statutory and regulatory requirements administered by the U.S. Department of Labor, or a State agency operating a plan pursuant to section 18 of the Occupational Safety Health Act of 1970 ("OSHA State plan agency").

Applicants will also be required to certify their willingness to produce records for the purpose of determining compliance with the applicable safety regulations of the FMCSA and the requirements administered by the U.S. Department of Labor.

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SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

The DOT considers compliance with Department of Labor and OSHA state plan agency requirements to be extremely important. An applicant's certification of its willingness to comply with DOL and OSHA requirements reflects an overall intention to comply with U.S. laws. While registration will not be withheld based solely on the failure by an applicant to certify that it is willing and able to comply with such requirements, such certification is required to avoid notification to DOL of an applicant's unwillingness to comply with these requirements.

SECTION IX - APPLICANT'S OATH

The applicant or an authorized representative may prepare applications. In either case, the applicant must sign the oath. In the case of companies, an authorized employee in the business structure (i.e., an officer, director, or other employee having access to the information necessary to make the oath or affirmation) may sign.

LEGAL PROCESS AGENTS

All motor carrier applicants must designate a process agent in each State where operations are conducted. For example, if you will operate only in California and Arizona, you must designate an agent in each of those States; if you will operate in only one State, an agent must be designated for that State only. Process agents who will accept legal filings on applicant's behalf are designated on FMCSA Form BOC-3. Form BOC-3 must be filed with the application.

STATE NOTIFICATION

Before beginning operations, all applicants must contact the appropriate regulatory agencies in every State in and through which the carrier will operate to obtain information regarding various state rules applicable to interstate registrations. It is the applicant's responsibility to comply with registration, fuel tax, and other State regulations and procedures. You should select the State in which you will operate the largest number of motor vehicles in the next year and contact that State's transportation agency, to obtain registration forms and instructions. If the majority of your transportation is in Arizona, but you also operate in another State, you will need to contact a State other than Arizona for this registration. Failure to accomplish this State registration could subject you to substantial State penalties as well as the potential loss of your registration.

Please refer to the additional information provided in your application packet for further information.

MAILING INSTRUCTIONS:

To file for registration you must submit an ***original and one copy*** of this application with the appropriate filing fee to FMCSA. **Note:** Retain a copy of the completed application form and any attachments for your own records. Mailing addresses for applications:

ALL DOCUMENTS WITH FEES ATTACHED:
Federal Motor Carrier Safety Administration
P. O. Box 100147
Atlanta, GA 30384-0147

FOR EXPRESS MAIL ONLY:
Nationsbank Wholesale Lockbox 100147
6000 Feldwood Road
3rd Floor East
College Park, GA 30349

FOR CREDIT CARD USERS ONLY:
Federal Motor Carrier Safety Administration
Suite 600, 400 Virginia Avenue, SW.
Washington, DC 20024

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FMCSA FILING FEES

Fee Schedule effective January 1996
Fee for Registration . . . $300.00

FEE POLICY

- Filing fees must be payable to the **Federal Motor Carrier Safety Administration**, by check drawn upon funds deposited in a bank in the United States or money order payable in U.S. currency or by approved credit card.
- Separate fees are required for each **type of registration** requested. If applicant requests registration as a for-hire motor carrier and as a private motor carrier, multiple fees are required. The applicant may submit a single payment for the sum of the applicable fees.
- Filing fees must be **sent along with the original and one copy of the application** to the appropriate address under the preceding paragraph titled **MAILING INSTRUCTIONS**.
- After an application is received, the filing fee is non-refundable.
- The FMCSA reserves the right to discontinue processing any application for which a check is returned due to insufficient funds. The application will not be processed until the fee is paid in full.

FILING FEE INFORMATION

All applicants must submit a filing fee of $300.00 for each type of registration requested. The total amount due is equal to the fee(s) times the number of boxes checked in ***Section III*** of the Form OP-1(MX). Fees for multiple authorities may be combined in a single payment.

Total number of boxes
checked in ***Section III*** _____ x filing fee $ _____ = $ _____

INDICATE AMOUNT $_____ AND METHOD OF PAYMENT:

☐ CHECK OR ☐ MONEY ORDER, PAYABLE TO: **FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

☐ VISA ☐ MASTERCARD

Credit Card Number _____

Expiration Date: _____

Signature _____ Date: _____

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U.S. Department of Transportation

Federal Motor Carrier Safety Administration

Form Approved
OMB No. 2126-0016
Expires 00/00/00

FORM-OP-1(MX)
Application to Register Mexican Carriers for Motor Carrier Authority Under the North American Free Trade Agreement (NAFTA)

This application is for all Mexican carriers requesting to register to operate as motor carriers of passengers or property in interstate commerce between Mexico and points in the United States beyond the municipalities and commercial zones adjacent to the border, and for all Mexican persons or entities who had previously filed applications for registration under NAFTA provisions and who are required to supplement the information in their original applications by completing and re-filing the revised Form OP-1(MX).

For FMCSA Use Only

Docket No. MX _____

DOT No. _____

Filed _____

Fee No. _____

PAPERWORK BURDEN

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. It is estimated that an average of 4 burden hours per response is required to complete this collection of information. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments concerning the accuracy of this burden estimate or suggestions for reducing this burden should be directed to the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 400 Virginia Avenue, S.W., Suite 600, Washington, DC 20024

SECTION I - APPLICANT INFORMATION

LEGAL BUSINESS NAME: _____

DOING BUSINESS AS NAME: (Trade Name, if any) _____

_____

BUSINESS ADDRESS: (Actual Street Address):

_____
(Street Name and Number)

_____
(City) (State) (Country) (Zip Code)
( ) ( )

(Telephone Number) (Fax Number)

SECTION I – APPLICANT INFORMATION (continued)

MAILING ADDRESS: (If different from above)

_____
(Street Name and Number)

_____
(City) (State) (Country) (Zip Code)

U.S. ADDRESS: (Does the applicant currently have an office in the United States? If so, give address and telephone number.)

_____
(Street Name and Number)

_____
(City) (State) (Country) (Zip Code)

(_____)_____ (_____)_____
(Telephone Number) (Fax Number)

APPLICANT'S REPRESENTATIVE: (Person who can respond to inquiries)

_____
(Name and title, position, or relationship to applicant)

_____
(Street Name and Number)

_____
(City) (State) (Country) (Zip Code)

(_____)_____ (_____)_____
(Telephone Number) (Fax Number)

US DOT NUMBER (If available; if not, see Instructions) _____

FORM OF BUSINESS (Check one)

☐ CORPORATION (Give Mexican or U.S. State of Incorporation) _____

_____

☐ SOLE PROPRIETORSHIP (Give full name of individual)

_____
(First Name) (Middle Name) (Surname)

☐ PARTNERSHIP (Identify each of the partners) _____

_____ _____

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SECTION IA – ADDITIONAL APPLICANT INFORMATION

1. Do you or your company currently operate in the United States?
☐ Yes ☐ No

1a. If so, indicate the locations where you operate and the ports of entry utilized.

_____

_____

_____

2. Has the applicant previously completed and submitted a Form MCS-150?
☐ Yes ☐ No

2a. If so, give the name under which it was submitted.

_____

_____

3. Do you or your company presently hold, or have you ever applied for regular (MC) or Mexican (MX) authority from the former U.S. Interstate Commerce Commission, the U.S. Federal Highway Administration , the Office of Motor Carrier Safety, or the Federal Motor Carrier Safety Administration of the U.S. Department of Transportation under the name shown on this application, or under any other name?
☐ Yes ☐ No

3a. If yes, please identify the lead docket number(s) assigned to the application or grant of authority

_____

_____

3b. If the application was rejected prior to the time a lead docket number(s) was assigned, please provide the name of the applicant shown on the application

_____

_____

4. Is the applicant domiciled in Mexico? (Check one)
☐ Yes ☐ No

5. Indicate whether the applicant is owned or controlled by persons of Mexico (Check one)
☐ Yes ☐ No

6. Does the applicant hold a Federal Tax Number from the U.S. Government?
☐ Yes ☐ No

6a. If so, enter the number here: _____

7. Has your company been issued a Registration by the Mexican Government's Secretaria de Communicaciones y Transportes (SCT)?
☐ Yes ☐ No

7a. If so, give the name under which your company is registered, the Registration Number, and the place where the Registration was issued.

_____

_____

SECTION II – OWNERSHIP, CONTROL AND AFFILIATIONS INFORMATION

OWNERSHIP AND CONTROL

- If the applicant is a ***corporation***, list the names, country of residence, citizenship and domicile, if any, of the corporation, all principal officers and stockholders (holding more than 10 percent of stock) of applicant.
- If applicant is a ***partnership***, list the names, country of residence, citizenship and percentage of ownership of partnership for each partner.
- If applicant is an ***individual***, enter that individual's name, country of residence, and citizenship.

Name	Country of Residence	Citizenship	Domicile	Percentage of Ownership

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AFFILIATIONS

Disclose any relationship the applicant has, or has had, with any U.S. or foreign motor carrier, broker, or freight forwarder registered with the other former ICC, FHWA, Office of Motor Carrier Safety, or Federal Motor Carrier Safety Administration within the past 3 years. For example, this relationship could be through a percentage of stock ownership, a loan, a management position, a wholly-owned subsidiary, or other arrangement.

If this requirement applies to you or your company, provide the name of the affiliated company, the latter's MC or MX number, its U.S. DOT Number, if any, and the company's latest U.S. DOT safety rating. Applicant must indicate whether these entities have been disqualified from operating commercial motor vehicles in the United States pursuant to the Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106-159, 113 Stat. 1748)(MCSIA) or any other law. (If you require more space, attach the information to this application form.

Name of affiliated company	MC or MX Number	U.S. DOT Number	U.S. DOT Safety Rating	Ever Disqualified under the MCSIA or any other law?

SECTION III – TYPE(S) OF REGISTRATION REQUESTED

You must submit a filing fee for each type of registration requested (for each checked box).

Applicant seeks to provide the following transportation service:

PASSENGER REGISTRATION

- ❑ **Charter and special operations** transportation, in interstate or foreign commerce, between Mexico and the United States.
- ❑ Service as a common carrier over **regular routes** between Mexico and the United States (Regular route passenger carrier registration to perform regularly scheduled service only over named roads or highways). Regular route passenger service includes registration to transport newspapers, baggage or passengers, express packages, and mail in the same motor vehicle with passengers, or baggage of passengers in a separate motor vehicle.

  Applicants requesting registration to operate over regular routes – On a separate sheet of paper attached to the application, describe the specific route involved in your passenger carrier service description(s).
- ❑ Service as a **contract carrier** between Mexico and the United States, under continuing contract(s) with persons or organizations requiring passenger transportation service;

PROPERTY REGISTRATION

- ❑ **Motor Common Carrier of Property (except Household Goods)**
- ❑ **Motor Contract Carrier of Property (except Household Goods)**
- ❑ **Motor Common Carrier of Household Goods**
- ❑ **Motor Contract Carrier of Household Goods**
- ❑ **Private Carrier**

SECTION IV – INSURANCE INFORMATION

MOTOR PASSENGER CARRIER APPLICANTS

All motor passenger carriers operating in the United States, including Mexican carriers, must maintain public liability insurance. The amounts in parentheses represent the minimum amount of coverage required.

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Applicant will use vehicles with seating capacities of (*check only one*):

- ❑ 16 passengers or more ($5,000,000)
- ❑ 15 passengers or fewer only ($1,500,000)

MOTOR PROPERTY CARRIER APPLICANTS *(including Household Goods Carriers)*
NOTE: Refer to **SECTION IV** under the *Instructions to the Form OP-1(MX)* for information on cargo insurance filing requirements for motor common carriers.

- ❑ Applicant will operate vehicles having a gross vehicle weight rating (GVWR) of 10,000 pounds or more to transport:
  - ❑ Non-hazardous commodities ($750,000)
  - ❑ Hazardous materials referenced in the FMCSA insurance regulations at 49 CFR § 387.303(b)(2)(c) ($1,000,000).
  - ❑ Hazardous materials referenced in the FMCSA insurance regulations at 49 CFR § 387.303(b)(2)(b) ($5,000,000).
- ❑ Applicant will operate only vehicles having a GVWR under 10,000 pounds to transport:
  - ❑ Any quantity of Division 1.1, 1.2 or 1.3 explosives; and quantity of poison gas (Division 2.3, Hazard Zone A or Division 6.1, Packing Group 1, Hazard Zone A materials); or highway route controlled quantity of radioactive materials ($5,000,000).
  - ❑ Commodities other than those listed above ($300,000).

SECTION IV – INSURANCE INFORMATION (continued):

Does the applicant presently hold public liability insurance?
☐ Yes ☐ No

If applicant does hold such insurance, please provide the information below:

Insurance Company _____
Address: _____
_____
Maximum Insurance Amount _____
Policy Number _____
Date Issued _____
Insurance Effective Date _____ Expiration Date_____

Does applicant presently operate or has it operated under trip insurance issued for movements in U.S. border commercial zones?
☐ Yes ☐ No

SECTION V – SAFETY CERTIFICATIONS

Applicant certifies that it is exempt from the U.S. DOT Federal Motor Carrier Safety Regulations (FMCSRs) because it will operate only small vehicles (GVWR under 10,000 pounds) and will not transport hazardous materials.

_____Yes _____No

If you answered **yes**, proceed to the end of this section, sign the certification and complete the appropriate attachments to Section V. Refer to the instructions for additional information.

If you answered No, you must complete the remaining questions in Section V, and sign the certification before you complete the appropriate attachments to Section V.

Applicant maintains current copies of all U.S. DOT Federal Motor Carrier Safety Regulations, and the Hazardous Materials Regulations (if a property carrier transporting hazardous materials), understands and will comply with such Regulations, and has ensured that all company personnel are aware of the current requirements.

_____Yes

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Applicant certifies that the following tasks and measures will be fully accomplished and procedures fully implemented before it commences operations in the United States:

_____Yes

1. Driver qualifications:

The carrier has in place a system and procedures for ensuring the continued qualification of drivers to operate safely, including a safety record for each driver, procedures for verification of proper licensing of each driver, procedures for identifying drivers who are not complying with the U.S. and Mexican safety regulations, and a description of a retraining and educational program for poorly performing drivers.

_____Yes

The carrier has procedures in place to review drivers' employment and driving histories for at least the last 5 years, to determine whether the individual is qualified and competent to drive safely.

_____Yes

The carrier has established a system and requirements that each driver report to the carrier in writing under the driver's signature, all criminal convictions within 30 days of occurrence, including the following information: the driver's full name, driver's license number, and the date of conviction; details of the offense, including suspension, revocation, or cancellation of driving privileges, and the location of the offense.

_____Yes

The carrier has established a program to review the records of each driver at least once every 12 months and will maintain a record of the review.

_____Yes

2. Hours of service:

The carrier has in place a record keeping system and procedures to monitor the hours of service performed by drivers, including procedures for continuing review of drivers' log books, and for ensuring that all operations requirements are complied with.

_____Yes

The carrier has ensured that all drivers to be used in the United States are knowledgeable of the U.S. hours of service requirements, and has clearly and specifically instructed the drivers concerning the application to them of the 10 hour, 15 hour, and 60 and 70 hour rules, as well as the requirement for preparing daily log entries in their own handwriting for each 24 hour period.

_____Yes

The carrier has attached to this application statements describing the carrier's monitoring procedures to insure that drivers complete logbooks correctly, and describing the carrier's record keeping and driver review procedures.

_____Yes

3. Drug and alcohol testing:

The carrier is familiar with the alcohol and controlled substance testing requirements of 49 CFR 382 and 49 CFR 40 and has in place a program for systematic testing of drivers.

_____Yes

The carrier has attached to this application the name, address, and telephone number of the person responsible for implementing and overseeing alcohol and drug programs, and also of the drug testing laboratory and alcohol testing service that are used by the company.

_____Yes

4. Vehicle condition:

The carrier has established a system and procedures for inspection, repair and maintenance of its vehicles in a safe condition, and for preparation and maintenance of records of inspection, repair and maintenance in accordance with the U.S. DOT's Federal Motor Carrier Safety Regulations and the Hazardous Materials Regulations.

_____Yes

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The carrier has inspected vehicles that will be used in the United States prior to the beginning of such operations and has proof of the inspection on-board the vehicle as required by 49 CFR 396.17.

_____Yes

The carrier's vehicles were manufactured in compliance with the applicable U.S. DOT Federal Motor Vehicle Safety Standards.

_____Yes

5. Accident monitoring program:

The carrier has in place a program for monitoring vehicle accidents and maintains an accident register in accordance with 49 CFR 390.15.

_____Yes

The carrier has attached to this application a copy of its accident register for the previous year (or 12 months), or a description of how the company will maintain this register once it begins operations in the United States.

_____Yes

The carrier has established an accident countermeasures program and a driver training program to reduce preventable accidents.

_____Yes

The carrier has attached to the application a description and explanation of the accident monitoring program it has implemented for its operations in the United States.

_____Yes

6. Production of records:

The carrier can and will produce records demonstrating compliance with the safety requirements within 48 hours of receipt of a request from a representative of the USDOT/FMCSA or other authorized official.

_____Yes

The carrier is including as an attachment to this application the name, address and telephone number of the employee who should be contacted for requesting records.

_____Yes

7. Hazardous Materials (to be completed by carriers of hazardous materials only).

The HM carrier has full knowledge of the U.S. DOT Hazardous Materials Regulations, and has established programs for the thorough training of its personnel in such regulations.

_____Yes

The carrier has established a system and procedures for inspection, repair and maintenance of its vehicles for HM transportation in a safe condition, and for preparation and maintenance of records of inspection, repair and maintenance in accordance with the U.S. DOT's Hazardous Materials Regulations.

_____Yes

The HM carrier has attached to this application a statement providing information concerning: (1) the names of employees (other than drivers) responsible for assuring compliance with HM regulations referenced in Section V of this application), and (2) a description of their positions, training and experience with respect to safety regulations.

_____Yes

The HM carrier has established a system and procedures for maintaining HM shipping documents.

_____Yes

7A. For Cargo tank carriers (of HM):

The carrier submits with this application a certificate of compliance for each cargo tank the company utilizes in the U.S., together with the name, qualifications, CT number, and CT number registration statement of the facility the carrier will be utilizing to conduct the test and inspections of such tanks required by Part 180.

_____Yes

The carrier will register under Part 107, Subpart G, if transporting a minimum of 55 lbs. of explosives, any quantity of highway route controlled quantity of radioactive materials, more than 1 liter of PIH Zone A, other hazardous materials in a tank over 3,500 gallons, or more than 5,000 lbs. loaded in one place.

_____Yes

8. **Compliance with all of the following once operations in the United States have begun.**

The carrier will insure that drivers operate within the hours of service rules and are not fatigued while on duty.

The carrier will insure that all drivers operating in the United States are at least 21 years of age and possess a valid Commercial Drivers License (CDL) or Licencia Federal de Conductor (LFC).

The carrier will insure that all vehicles operated in the United States are inspected on an annual basis.

The carrier will insure that all violations and defects noted on inspection reports are corrected before vehicle and drivers are permitted to enter or continue in the United States.

_____Yes

_____
Signature of applicant

By signing these certifications, the carrier official is on notice that the representations made herein are subject to verification through inspections in the United States and through the request for and examination of records and documents. Failure to support the representations contained in this application could form the basis of a proceeding leading to the revocation of the authority granted.

Safety and Compliance Information and Attachments for Section V

1. Individual responsible for safe operations and compliance with applicable regulatory and safety requirements.

NAME	ADDRESS	POSITION

2. Location where current copies of the Federal Motor Carrier Safety Regulations and other regulations are maintained.

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ATTACHMENT FOR SECTION V, NO. 1, DRIVER QUALIFICATIONS
Intentionally Left Blank

ATTACHMENT FOR SECTION V, NO. 2, HOURS OF SERVICE

MONITORING STATEMENTS

Statements describing monitoring procedures for ensuring correctness of logbook completion by drivers and describing record keeping and driver review procedures.

ATTACHMENT FOR SECTION V, NO. 3, DRUG AND ALCOHOL TESTING

Person responsible for implementing and overseeing alcohol and drug programs

NAME	ADDRESS	POSITION

The drug testing laboratory and the alcohol testing service that are used by the carrier.

NAME	ADDRESS	TELEPHONE NO.

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ATTACHMENT FOR SECTION V, NO. 4,
Intentionally Left Blank

ATTACHMENT FOR SECTION V, NO. 5,
ACCIDENT MONITORING PROGRAM

1. Describe how company will maintain accident register once it begins operations in U.S.

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ATTACHMENT FOR SECTION V, NO. 5, ACCIDENT MONITORING PROGRAM

2. Describe and explain accident monitoring program for operations in U.S.

ATTACHMENT FOR SECTION V, NO. 6, PRODUCTION OF RECORDS

Contact person for requesting records

Name	Address	Telephone Number

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ATTACHMENT FOR SECTION V, NO. 7, HAZARDOUS MATERIALS (TO BE COMPLETED BY CARRIERS OF HAZARDOUS MATERIALS ONLY)

Statement respecting person(s) (other than drivers) responsible for ensuring compliance with HM regulations for HM activities.

ATTACHMENT FOR SECTION V, NO. 7A, (FOR CARGO TANK CARRIERS OF HM)

Cargo Tank Information (HM)

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SECTION VI - HOUSEHOLD GOODS ARBITRATION CERTIFICATIONS

Household Goods Motor Common and Contract Carrier Applicants must certify as follows:

Household goods carrier registration is now conditioned on the carrier's agreement to offer arbitration as a means of settling loss and damage claims.

Applicant certifies that it will offer arbitration in accordance with the requirements of 49 U.S.C. § 14708.

_____
Signature

SECTION VII – SCOPE OF OPERATING REGISTRATION SOUGHT

1. Applicant seeks to provide the following transportation service in foreign commerce:

   ❑ For a Mexican carrier to transport property between the United States–Mexico international border and all points in the United States (except for point-to-point carriage of domestic cargo in the U.S., which continues to be prohibited).

   ❑ For Mexican passenger carriers, charter and tour bus operations between the U.S.-Mexico international border and points in the United States.

   ❑ For Mexican passenger carriers, service as a common carrier over regular routes. (Regular route passenger carrier authority to perform regularly scheduled service only over named roads or highways.) Regular route passenger service includes authority to transport newspapers, baggage of passengers, express packages, and mail in the same motor vehicle with passengers, or baggage of passengers in a separate motor vehicle.

2. Indicate the principal border crossing points which applicant intends to utilize.

   _____
   _____
   _____

SECTION VIII – COMPLIANCE CERTIFICATIONS

All applicants must certify as follows:

- Applicant is willing and able to provide the proposed operations or service and to comply with all pertinent statutory and regulatory requirements and regulations issued or administered by the U.S. Department of Transportation, including operational regulations, safety fitness requirements, motor vehicle safety standards, and minimum financial responsibility requirements.

  _____Yes

- Applicant is willing and able to comply with all applicable statutory and regulatory requirements administered by the U.S. Department of Labor, or by a state agency operating a plan pursuant to Section 18 of the Occupational Safety and Health Act of 1970 ("OSHA state plan agency,") including, but not limited to, requirements of the Occupational Safety and Health Act, the Surface Transportation Assistance Act, and the Fair Labor Standards Act.

  _____Yes

- Applicant has paid any taxes it owes under Section 4481 of the U.S. Internal Revenue Code (26 U.S.C. §4481) for the most recent taxable period as defined under Section 4482(c) of the Internal Revenue Code.

  _____Yes

- Applicant understands that the agent(s) for service of process designated on FMCSA Form BOC-3 will be deemed applicant's official representative(s) in the United States for receipt of filings and notices in administrative proceedings under 49 U.S.C. 13303, and for receipt of filings and notices issued in connection with the enforcement of any Federal statutes or regulations.

  _____Yes

- Applicant is willing and able to produce for review or inspection documents which are requested for the purpose of determining compliance with applicable statutes and regulations administered by the Department of Transportation, including the Federal Motor Carrier Safety Regulations, Motor Vehicle Safety Standards and Hazardous Materials Regulations, within 48 hours of any written request. Applicant understands that the written request may be served on the person identified in the attachment for Section V, number 6, or the designated agent for service of process.

  _____ Yes

- Applicant is willing and able to produce for review or inspection documents (including employment, timekeeping, payroll, safety and health, and training records) which are requested for the purpose of determining compliance with applicable statutes and regulations administered by the U.S. Department of Labor and OSHA state plan agencies within 48 hours of any written request. Applicant understands that the written request may be served on the person identified in the attachment for Section V, number 6, or the designated agent for service of process.

  _____ Yes

- Applicant is not presently disqualified from operating a commercial vehicle in the United States pursuant to the Motor Carrier Safety Improvement Act of 1999 or any other law.

  _____Yes

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SECTION IX – APPLICANT'S OATH

APPLICANT'S OATH MUST BE COMPLETED (SIGNED) BY APPLICANT

I, _____,

(First Name) (Middle Name) (Surname) (Title)

verify under penalty of perjury, under the laws of the United States of America, that I understand the foregoing certifications and that all responses are true and correct. I certify that I am qualified and authorized to file this application. I know that willful misstatement or omission of material facts constitute Federal criminal violations under 18 U.S.C. §§ 1001 and 1621 and that each offense is punishable by up to 5 years imprisonment and a fine under Title 18, United States Code.

I further certify that I have not been convicted in U.S. Federal or State courts, after September 1, 1989, of any offense involving the distribution or possession of controlled substances, or that if I have been so convicted, that I am not ineligible to receive U.S. Federal benefits, either by court order or operation of law, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 862).

_____ _____

(Signature) (Date)

_____

(Relationship to applicant, e.g., President or Owner)

Issued on: April 27, 2001.

Brian M. McLaughlin,

Associate Administrator for Policy and Program Development.

[FR Doc. 01–11035 Filed 5–1–01; 8:45 am]

BILLING CODE 4910–22–C

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 385

[Docket No. FMCSA–98–3299]

RIN 2126–AA35

Safety Monitoring System and Compliance Initiative for Mexican Motor Carriers Operating in the United States

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), (DOT).

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FMCSA proposes to implement a safety monitoring system and compliance initiative to help determine whether Mexican-domiciled carriers conducting operations anywhere in the United States comply with applicable safety regulations and conduct safe operations. This NPRM would revise the safety fitness regulations at 49 CFR part 385 to implement a safety oversight program designed to evaluate the safety fitness of Mexican carriers within 18 months after receiving conditional authority to operate in the United States. This proposal is necessary to implement the entry provisions of the North American Free Trade Agreement (NAFTA).

DATES: We must receive your comments by July 2, 2001.

ADDRESSES: You can mail, fax, hand deliver or electronically submit written comments to the Docket Management Facility, U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001 FAX (202) 493–2251, on-line at *http://dmses.dot.gov/submit.* You must include the docket number that appears in the heading of this document in your comment. You can examine and copy all comments at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. You can also view all comments or download an electronic copy of this document from the DOT Docket Management System (DMS) at *http://dms.dot.gov/search.htm* and typing the last four digits of the docket number appearing at the heading of this document. The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the "help" section of the web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

FOR FURTHER INFORMATION CONTACT: Valerie Height, (202) 366–1790, Federal Motor Carrier Safety Administration, 400 7th Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Comments received after the comment closing date will be included in the docket and we will consider late comments to the extent practicable. The FMCSA may, however, issue a final rule at any time after the close of the comment period.

Background

Under the Bus Regulatory Reform Act of 1982 (Public Law No. 97–261, 96 Stat. 1103), Congress imposed a two-year moratorium on the former Interstate Commerce Commission's (ICC) issuance of new grants of U.S. operating authority to motor carriers domiciled in a foreign country, or owned or controlled by persons of a foreign country. The legislation authorized the President to remove or modify the moratorium upon a determination that such action was in the national interest. As a result of legislative and executive extensions, Mexican carriers have been subject to this moratorium since 1982. Since that time, most Mexican motor carriers of property seeking to initiate operations in the United States have been restricted to operating in the municipalities in the United States on the United States-Mexico border or within the commercial zones of such municipalities. Additional information on the implementation of NAFTA is set out in the preamble to the NPRM entitled *Application by Certain Mexican Motor Carriers to Operate Beyond U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border,* which addresses revisions to the part 365 application process and the OP–1(MX) application form and is published elsewhere in today's **Federal Register**. As we discussed in the NPRM addressing part 365, commercial motor vehicle safety in the United States is regulated under a comprehensive system of regulations designed to ensure that drivers are medically qualified; meet applicable licensing standards; can read and speak the English language sufficiently to converse with the general public, understand highway traffic signs and signals in the English language, to respond to official inquiries and to make entries on reports and records; and do not operate vehicles while impaired by drugs or alcohol or excessive fatigue. Our regulations also require carriers to equip every commercial motor vehicle with certain standard safety-related equipment and that vehicles be regularly inspected and maintained to ensure that they remain in safe operating condition. These regulatory requirements are enforced through roadside inspections and on-site compliance reviews. Roadside inspections focus on potentially unsafe vehicle and driver violations that may pose a threat to public safety unless the vehicle or driver is placed out of service. A compliance review comprises an examination of carrier records (including driver logbooks and drug and alcohol testing information), roadside vehicle inspection data, accident records and other safety related information to determine whether a motor carrier meets safety fitness standards as defined in the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations.

The U.S. DOT has consulted extensively with Mexican transportation officials in their efforts to strengthen Mexican vehicle safety regulations, and significant progress has been made in this area. Mexico has agreed to utilize the Commercial Vehicle Safety Alliance (CVSA) out-of-service criteria and has issued final regulations based on these criteria. These standards cannot be fully effective unless complemented by an adequate safety oversight program, including systematic roadside inspections, to ensure compliance with and enforcement of the criteria. U.S. DOT officials have worked extensively with Mexican transportation officials, but Mexico has not yet completed implementation of a comprehensive safety inspection program.

With the exception of the border commercial zone drayage operations, most Mexican carriers have little or no experience operating under regulations comparable to the FMCSRs. Accordingly, the FMCSA must be prepared to evaluate the safety fitness of motor carriers having no experience operating under our comprehensive system of safety regulations.

Proposed Safety Oversight Program

In this NPRM, the FMCSA proposes a safety oversight program to address U.S.

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concerns about Mexican motor carrier safety. The initial stage of this program would entail review of safety information submitted by Mexican motor carriers when applying for authority under 49 CFR part 365 or registering under 49 CFR part 368 to operate within the U.S. municipalities and commercial zones along the U.S.-Mexico border. The FMCSA proposes to amend Form OP–2 (Application for Mexican Certificate of Registration for Foreign Motor Carriers and Foreign Private Carriers Under 49 U.S.C. 13902) and Form OP–1(MX) (Application to Register Mexican Carriers for Motor Carrier Authority Under the North American Free Trade Agreement (NAFTA)) to require additional safety related information and certifications of compliance. Mexican carriers would be required to submit, concurrently with the application, completed copies of the Form BOC–3 (Designation of Agents—Motor Carriers, Brokers and Freight Forwarders) and Form MCS–150 (Motor Carrier Identification Report, Application for U.S. DOT Number). These proposals are discussed in two notices published elsewhere in today's **Federal Register**. The requirement to submit a completed Form MCS–150 with the application would ensure that the Mexican carrier obtains a U.S. DOT number and is placed in the FMCSA safety system before it begins operations in the United States.

The FMCSA will conduct workshops and also provide written material, such as handbooks, to help the Mexican applicants understand the various regulatory requirements and the proper way to complete the applications. Once Mexican-domiciled carriers commence operations within the United States, they would be subject to intensified roadside monitoring through the vehicle inspection process. Data generated as a result of these inspections would be evaluated frequently to identify carriers with serious safety problems that warrant immediate attention. We propose to require that, as a condition of registration, all Mexican new entrant carriers undergo at least one satisfactory safety review within 18 months after receiving authority to operate within the United States. The proposed safety review is designed to enable the FMCSA to identify any Mexican carriers that may be conducting unsafe operations or that may lack the basic safety management controls necessary to ensure protection of the public safety.

Registrations issued to Mexican carriers under 49 CFR parts 365 and 368 would be expressly conditioned upon the carrier successfully completing the safety oversight program. The safety review component of the program would evaluate a Mexican carrier's safety performance and basic safety management controls by reviewing performance-based safety information in the FMCSA's Motor Carrier Management Information System (MCMIS) and documents required to be maintained by motor carriers under the Federal Motor Carrier Safety Regulations, including records related to driver medical qualifications, driver hours of service, drug and alcohol testing and vehicle inspection, maintenance and repair. Specific procedures for the safety review, including the necessary documentation to be made available for review, are still being developed and would be provided to carriers when they get approval to operate. We also contemplate that the safety review process would be further refined as the result of a future rulemaking proceeding implementing a safety review requirement for all new entrant motor carriers under section 210 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106–159, 113 Stat. 1748).

We also propose that the safety reviews be conducted either by reviewing records at the carrier's business premises or by requesting that Mexican carriers bring designated records to alternative locations, such as border inspection facilities. If the safety review determines that the carrier does not satisfactorily exercise basic safety management controls, its registration would be suspended. The carrier would then be required to submit a plan for corrective action within a specified time frame. Upon receipt of the corrective action plan, the FMCSA would promptly conduct a targeted follow-up safety review, if necessary, to determine whether the deficiencies have been corrected. If the carrier satisfactorily corrects the problem(s), the suspension would be lifted and the carrier would be allowed to resume operating within the United States. If the carrier fails to submit a corrective action plan, or if the follow-up safety review determines that the carrier has not satisfactorily corrected the problem, the carrier's registration would be revoked in accordance with the condition of its issuance.

The FMCSA proposes to take expedited action if a Mexican carrier engages in conduct that poses a potentially serious threat to public safety. Such conduct would include:

(1) Using drivers not possessing, or operating without, a valid Licencia Federal de Conductor (LFC) or Commercial Driver's License (CDL). A non-valid LFC or CDL would include one that is falsified, revoked, expired, or without a Hazardous Materials endorsement, when required.

(2) Operating vehicles that have been placed out of service for violations of the Commercial Vehicle Safety Alliance (CVSA) North American Standard Out-of-Service Criteria without making required repairs.

(3) Being involved in, due to carrier act or omission, a hazardous materials incident within the United States involving a highway route controlled quantity of any of the following, as defined in 49 CFR 173.403, 173.50, 173.115, 173.132, and 173.133:

(a) a Class 7 (radioactive) material,

(b) a Class 1, Division 1.1, 1.2, or 1.3 explosive, or

(c) a poison inhalation Hazard Zone A or B material.

(4) Being involved in, due to carrier act or omission, two or more hazardous material incidents occurring within the United States and involving any hazardous material not listed above and defined in 49 CFR chapter I.

(5) Using a driver who tests positive for drugs or alcohol or who refuses to submit to required drug or alcohol tests.

(6) Operating within the United States a motor vehicle that is not insured as required by 49 CFR part 387.

(7) Having an aggregate operations out of service rate of 50 percent based upon three inspections occurring within a consecutive 90-day period.

The FMCSA believes that these violations pose the greatest threat to public safety and raise serious questions about a carrier's willingness and ability to conduct safe operations. FMCSA would take expedited action either by issuing a deficiency letter requesting a written response demonstrating that appropriate corrective action has been taken or scheduling an expedited safety review. Failure to respond to the deficiency letter or undergo the expedited safety review would result in the suspension of the carrier's registration. Checking for these activities would require our State partners to expand the scope of the roadside inspection and to collect additional safety data.

The Mexican carrier applicants would remain subject to this oversight program for the entire 18-month initial operations period, even if they demonstrate compliance with our regulations by undergoing a satisfactory safety review before the expiration of the period. If a carrier has not undergone a safety review within 18 months of receiving authority to operate in the United States, it would retain its conditional registration status until a satisfactory safety review is conducted.

The carrier would also remain within the safety oversight program for more than 18 months if it received an unsatisfactory safety review within 18 months but needed additional time beyond the 18-month period to demonstrate that necessary corrective action was taken.

This proposal is consistent with the new motor carrier entrant requirements under section 210(a) of the MCSIA, which, among other things, directs the Secretary of Transportation to require each owner and each operator granted new operating authority to undergo a safety review within the first 18 months after beginning operations under that authority.

Under one of the companion NPRMs appearing in today's **Federal Register**, *Revision of Regulations and Application Form for Mexican-Domiciled Motor Carriers to Operate in U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border*, Mexican carriers currently operating in the U.S. border commercial zones under Certificates of Registration would be required to re-register by submitting revised application forms with expanded carrier safety assessment information, even if not changing the scope of their existing operations. These carriers would also be subject to the safety monitoring system proposed in this NPRM.

Finally, we wish to emphasize that the safety oversight program is intended to supplement, not replace, the regular safety fitness compliance and enforcement procedures applicable to all motor carriers within our jurisdiction.

Section-By-Section Analysis

Proposed § 385.21 describes the safety oversight program for Mexican-domiciled carriers and its components, including the safety review. The proposed safety review could be conducted at a designated location in the United States. Failure to provide the necessary documentation in connection with a safety review may result in the suspension of the carrier's registration until the documents are produced.

Section 385.23 would identify seven categories of serious safety violations which, when identified through roadside inspections or other means, would cause the FMCSA to take expedited action. Expedited action could take the form of a safety review or the issuance of a deficiency letter requesting proof of corrective action for the violations identified in the roadside inspection. Failure to submit an adequate written response to the deficiency letter would result in suspension of the carrier's authority until the carrier makes the required showing of corrective action.

Section 385.25 would provide for the suspension of a Mexican carrier's registration if the safety review determines that it does not exercise basic safety management controls necessary to ensure safe operations. If the carrier then fails to take necessary corrective action, either by failing to submit a corrective action plan or by submitting an inadequate plan, the carrier's registration could be revoked after notice and an opportunity for a proceeding. This section would clarify that the carrier would also be subject to the suspension and revocation provisions of 49 U.S.C. 13905 for repetitive violations of DOT regulations governing its operations.

Section 385.27 would establish a procedure for administrative review if a Mexican-domiciled carrier believes a suspension under §§ 385.23 and 385.25 is unwarranted. The request for review would be submitted to the Chief Safety Officer, who would be required to complete the review within 10 days after the carrier submits its request.

Section 385.29 would set forth that a Mexican-domiciled carrier would remain in the safety oversight program for 18 months after issuance of its conditional registration or Certificate of Registration. At the end of 18 months, the carrier's authority would become permanent, provided its most recent safety review was satisfactory. If the carrier has not undergone a safety review during the 18-month period, the carrier would remain in the program until a safety review is conducted. If a carrier's registration is under suspension at the end of the 18-month period, it would remain in the safety oversight program until it took the necessary corrective action or its registration was revoked under § 385.25 (b).

Section 385.31 would clarify that Mexican-domiciled carriers are subject to the general safety fitness procedures of subpart A of part 385 during the time they are in the safety oversight program.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and Department of Transportation Regulatory Policies and Procedures

The FMCSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866 and is significant within the meaning of Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The Office of Management and Budget has reviewed this document. This proposal is based upon existing statutory authority and serves to a large extent as notice to the affected carriers of procedures that would be used to enforce the Federal Motor Carrier Safety Regulations. The anticipated economic impact of this rulemaking would be minimal for carriers that do not violate applicable safety regulations while operating in the United States. No additional requirements would be imposed on carriers that conduct lawful operations in compliance with these regulations.

Nevertheless, the subject of safe operations by Mexican carriers in the United States will likely generate considerable public interest within the meaning of Executive Order 12866. The manner in which the FMCSA carries out its safety oversight responsibilities with respect to this international motor carrier transportation may be of substantial interest to the domestic motor carrier industry, the Congress, and the public at large. A regulatory evaluation was completed for the three companion NPRMs (published elsewhere in today's **Federal Register**) that implement the NAFTA entry provisions and our proposed safety monitoring system for Mexican-domiciled carriers conducting operations in the United States. This evaluation concluded that anywhere between (high estimate), to 10,000 (medium estimate) to 5,000 (low estimate) Mexican carriers would file for authority in the first year after the moratorium is lifted. The FMCSA estimates that in the first year (in the high estimate scenario), only 3,200 of these carriers would be new applicants, dropping to 2,500 in subsequent years. In the medium or low estimate scenarios, only 500 of the first-year applicants would be new, dropping to 200 in subsequent years. This is because most of the 15,000 to 5,000 Mexican carriers already are operating in the United States. Please refer to the Regulatory Evaluation for a detailed discussion on how these estimates were derived. A copy of the Regulatory Evaluation is in the docket.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (Pub. L. 96–354) (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement and Fairness Act (Public Law 104–121), requires Federal agencies to analyze the impact of rulemakings on small entities, unless the Agency certifies that the rule will not have a significant economic impact

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on a substantial number of small entities.

The FMCSA is issuing this document because of the planned implementation of the NAFTA's motor carrier access provisions. A NAFTA dispute resolution tribunal recently ruled that the United States violated NAFTA by failing to allow Mexican carriers greater access to the United States.

Mexican carriers would be subject to the same safety regulations as domestic carriers when operating in the United States. The objective of this proposal, in conjunction with the two companion NPRMs published elsewhere in today's **Federal Register**, is to help determine the capability of Mexican carriers to operate safely in the United States. This proposal describes a safety oversight program applicable to Mexican-domiciled carriers for the 18-month period beginning at the time they receive authority to operate in the United States.

A review of the MCMIS census file reveals that the vast majority of Mexican carriers are small. For Mexican carriers with any trucks, the mean number of trucks was 5.1. That mean was pulled up by a small number of large carriers. Seventy-five (75) percent of Mexican carriers had three or fewer trucks, and the 95th percentile carrier had only 15 trucks. These proposals should not have any impact on small U.S.-based motor carriers.

The FMCSA cannot exempt small carriers from these proposals without seriously diminishing the agency's ability to ensure the safe operations of Mexican carriers. The majority of Mexican carriers operating in the U.S. would be small; exempting them would have the same impact as not issuing these proposals. The safety oversight plan simply places Mexican carriers on notice concerning the manner in which the FMCSA would be enforcing compliance with the FMCSRs. Therefore, FMCSA certifies that this proposed rule would not have a significant impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; 2 U.S.C. 1532) requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. Any agency promulgating a final rule likely to result in a Federal mandate requiring expenditures by a State, local or tribal government, or by the private sector of $100 million or more in any one year must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act.

Under this proposal, State law enforcement personnel in the four border States currently performing roadside inspections under the Motor Carrier Safety Assistance Program (MCSAP) will target for inspection Mexican carriers whose operations within the United States were previously limited to U.S. municipalities and commercial zones along the U.S.-Mexico border. Although the number of carriers subject to inspection will increase as a result of liberalized entry into the United States, additional Federal funds have been earmarked for increased inspection activity in the border States. The FMCSA has determined that the changes proposed in this rulemaking would not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999 (64 FR 43255, August 10, 1999). Consultation with States is not required when a rule is required by statute. The FMCSA, however, has determined that this action would not have significant Federalism implications or limit the policy making discretion of the States. Comments on this conclusion are welcome and should be submitted to the docket.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) [49 U.S.C. 3501–3520], Federal agencies must determine whether requirements contained in rulemakings are subject to information collection provisions of the PRA and, if they are, obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor or require through regulations. The FMCSA has determined that this proposed regulation does not constitute an information collection with the scope or meaning of the PRA.

The FMCSA performs safety compliance assessments and enforcement activities as required by statutes and the FMCSRs. Implementation of this proposal would create no additional paperwork burden on Mexican carriers that comply with the FMCSRs. Any safety data that the FMCSA solicits from individual motor carriers regarding deficiency and/or non-compliance is not considered a collection of information because this type of response is required of such carriers as part of the usual and customary compliance and enforcement practice under the FMCSRs. Accordingly, the FMCSA has determined that this proposed action would not affect any requirements under the PRA.

National Environmental Policy Act

The agency has analyzed this proposal under of the National Environmental Policy Act of 1969 as amended [42 U.S.C. 4321 *et seq.*] and has determined under DOT Order 5610.1C (September 18, 1979) that the proposed action does not require any environmental assessment. An environmental impact statement is, therefore, not required.

List of Subjects

49 CFR Part 385

Highway Safety, Highways and roads, Motor carriers, Motor vehicle safety, and Safety fitness procedures.

For the reasons stated in the preamble, the FMCSA proposes to amend 49 CFR part 385 as set forth below:

PART 385—SAFETY FITNESS PROCEDURES

1. The authority citation for part 385 is revised to read as follows:

Authority: 49 U.S.C. 104, 504, 521(b)(5)(A), 5113, 13901–13905, 31136, 31144, 31502, and 49 CFR 1.73.

2. Sections 385.1 through 385.19 are designated as Subpart A–General, and a new subpart B is added consisting of new §§ 385.21 through 385.31 to read as follows:

Subpart B—Safety Monitoring System for Mexican Carriers

Sec.

385.21 Safety oversight program.
385.23 Expedited action.
385.25 Suspension and revocation of Mexican carrier registration.
385.27 Administrative review.
385.29 Duration of enhanced safety oversight program.
385.31 Applicability of safety fitness and enforcement procedures.

Subpart B—Safety Monitoring System for Mexican Carriers

§ 385.21 Safety oversight program.

(a) Mexican-domiciled carriers issued registrations pursuant to 49 CFR part 365 subpart E or certificates of registration pursuant to 49 CFR part 368 are subject to a safety fitness oversight program to help determine that they comply with applicable Federal Motor Carrier Safety Regulations, Motor Vehicle Safety Standards, and Hazardous Materials Regulations and conduct safe operations. This program includes intensified monitoring through frequent roadside inspections and an evaluation of the carrier's compliance with the applicable safety regulations through a safety review conducted within 18 months after the carrier is issued a new registration or Certificate of Registration.

(b) The safety review under this section may be conducted either at the carrier's business premises or at an alternative location in the United States designated by the FMCSA. When the safety review is conducted in the United States, the carrier must make available for inspection at the designated location all records determined to be necessary to adequately evaluate the carrier's compliance with the applicable regulations.

(c) Failure to provide necessary documents upon reasonable request in connection with a safety review conducted under this section or § 385.23 will result in the suspension of the carrier's operating authority until the documents are produced.

§ 385.23 Expedited action.

(a) A Mexican motor carrier committing any of the following violations identified through roadside inspections, or by any other means, may be subjected to an expedited safety review or issued a deficiency letter identifying the violations and directing the carrier to submit a written response demonstrating corrective action:

(1) Using drivers not possessing, or operating without, a valid Licencia Federal de Conductor (LFC) or Commercial Driver's License (CDL). A non-valid LFC or CDL includes one that is falsified, revoked, expired, or without a Hazardous Materials endorsement, when required.

(2) Operating vehicles that have been placed out of service for violations of the Commercial Vehicle Safety Alliance (CVSA) North American Standard Out-of-Service Criteria without making the required repairs.

(3) Involvement in, due to carrier act or omission, a hazardous materials incident within the United States involving a highway route controlled quantity of any of the following, as defined in 49 CFR 173.403, 173.50, 173.115, 173.132, and 173.133:

(i) A Class 7 (radioactive) material,

(ii) A Class 1, Division 1.1, 1.2, or 1.3 explosive, or

(iii) A poison inhalation Hazard Zone A or B material.

(4) Involvement in, due to carrier act or omission, two or more hazardous material incidents occurring within the United States and involving any hazardous material not listed in paragraph (a)(3) of this section and defined in 49 CFR chapter I.

(5) Using a driver who tests positive for drugs or alcohol or who refuses to submit to required drug or alcohol tests.

(6) Operating within the United States a motor vehicle that is not insured as required by 49 CFR part 387.

(7) Having an aggregate operations out of service rate of 50 percent based upon three inspections occurring within a consecutive 90-day period.

(b) Failure to respond to the deficiency letter by submitting a written response demonstrating corrective action will result in the suspension of the carrier's registration until the required showing of corrective action is submitted to the FMCSA.

§ 385.25 Suspension and revocation of Mexican carrier registration.

(a) If a safety review conducted under § 385.21 determines that a Mexican carrier does not exercise the basic safety management controls necessary to ensure safe operations, the carrier's registration will be suspended until the FMCSA determines that the carrier has taken appropriate corrective action necessary to remedy the violations discovered in the safety review.

(b) If a safety review conducted under § 385.21 determines that a Mexican carrier does not exercise the basic safety management controls necessary to ensure safe operations, and the carrier fails to take necessary corrective action as directed by the FMCSA, or fails to submit a plan for taking necessary corrective action, the carrier's registration may be revoked after notice and an opportunity for a proceeding.

(c) If a carrier operates in violation of a suspension order issued under this subpart, its registration may be revoked after notice and an opportunity for a proceeding.

(d) Notwithstanding any provision of this subpart, a Mexican carrier is subject to the suspension and revocation provisions of 49 U.S.C. 13905 for repeated violations of DOT regulations governing its motor carrier regulations.

§ 385.27 Administrative review

(a) A Mexican-domiciled motor carrier may request the FMCSA to conduct an administrative review if it believes the FMCSA has committed an error in suspending the carrier's registration under this subpart.

(b) The motor carrier's request must explain the error it believes the FMCSA committed in suspending its registration and include any information or documents that support its argument.

(c) The motor carrier must submit its request in writing to the Chief Safety Officer, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

(d) Administrative review shall occur no later than 10 days after the carrier submits its request for review.

§ 385.29 Duration of enhanced safety oversight program.

(a) Mexican-domiciled carriers subject to this subpart will remain in the enhanced safety oversight program for 18 months from the date their conditional registration or Certificate of Registration is issued, except as provided in paragraphs (c) and (d) of this section.

(b) If, at the end of this 18-month period, the carrier's most recent safety review was satisfactory and no additional actions are pending under this subpart, the carrier's conditional registration or Certificate of Registration will become permanent.

(c) If, at the end of this 18-month period, the carrier has not undergone a

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safety review, it will remain in the enhanced safety oversight program until a safety review is conducted. If the results of this safety review are satisfactory, the carrier's conditional registration or Certificate of Registration will become permanent.

(d) If, at the end of this 18-month period, the carrier's registration is suspended under § 385.25 (a), the carrier will remain in the enhanced safety oversight program until the FMCSA either:

(1) Determines that the carrier has taken corrective action; or

(2) Completes measures to revoke the carrier's authority under § 385.25(b).

§ 385.31 Applicability of safety fitness and enforcement procedures.

At all times during which a Mexican-domiciled motor carrier is subject to the enhanced safety oversight program in this subpart, it is also subject to the general safety fitness procedures established in subpart A of this part and to compliance and enforcement procedures applicable to all carriers regulated by the FMCSA.

Issued on: April 27, 2001.

Brian M. McLaughlin,

Associate Administrator for Policy and Program Development.

[FR Doc. 01–11036 Filed 5–1–01; 8:45 am]

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Part IV

The President

Proclamation 7431—Law Day, U.S.A.

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Presidential Documents

Title 3—

The President

Proclamation 7431 of April 30, 2001

Law Day, U.S.A., 2001

By the President of the United States of America

Proclamation

This year marks the 44th commemoration of May 1 as Law Day, U.S.A., a national day of observance to celebrate our legal heritage. On this occasion, we reflect on the role our legal system plays in the lives of every American and how the freedoms we enjoy would not be possible without a strong and independent judiciary. The theme of this year's Law Day, "Ensuring the Rights of Victims," acknowledges our gratitude for a legal system that recognizes the importance of protecting the rights of those who are victimized by crime.

This Law Day, I call upon all Americans to consider how the law, communities, and individuals can better assist and support victims of crime. We must continue to strive for a legal system in which victims receive timely and accurate information regarding offenders and relevant public proceedings. In appropriate circumstances, a victim of crime should have an opportunity for restitution. In addition, social services provided to victims of crime can give the assistance and support that victims deserve in the aftermath of crime.

We are encouraged by the progress our country has made over the last three decades toward better assisting those whose lives are affected by criminal offenses. However, government and laws cannot effectively address this issue alone. More than 10,000 State- or community-based organizations provide help and hope to crime victims. I encourage Americans to celebrate, support, and consider joining these volunteers and other workers in service to their fellow citizens.

Keeping faith with our commitment to the victims of crime also drives us to increased efforts to prevent crimes and effectively punish those who commit them, to ensure that similar violations are discouraged and law-abiding citizens are protected.

Law Day provides an opportunity to express appreciation to professionals who accept the responsibility to serve justice. From attorneys to judges to the many other professionals working in our legal system, those who serve justice uphold the rule of law on which our democracy is built. They join with law enforcement professionals to give our people confidence to live without fear for their safety.

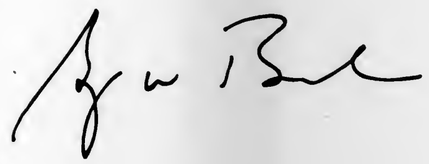
We must each do our part to build a Nation in which civility and respect for our neighbors overwhelm the powers of injustice. As Thomas Jefferson wrote, "It is reasonable that every one who asks justice should do justice." I encourage all Americans to join with members of the legal community in protecting the rights of crime victims and in celebrating a legal system that, while not perfect, is the best the world has ever known.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 1, 2001, as Law Day, U.S.A. I call upon all the people of the United States to observe

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this day with appropriate ceremonies and activities. I also call upon Government officials to display the flag of the United States in support of this national observance.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-fifth.



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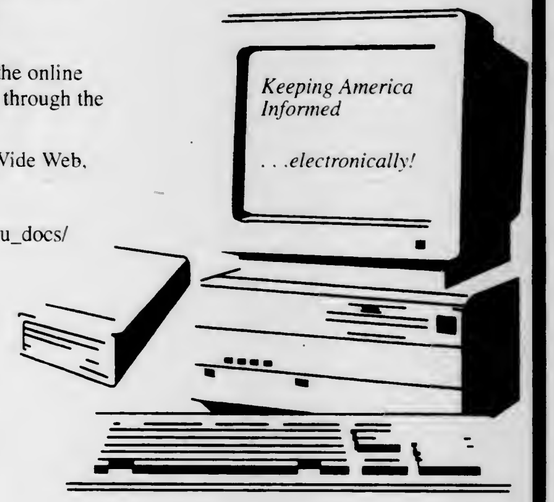
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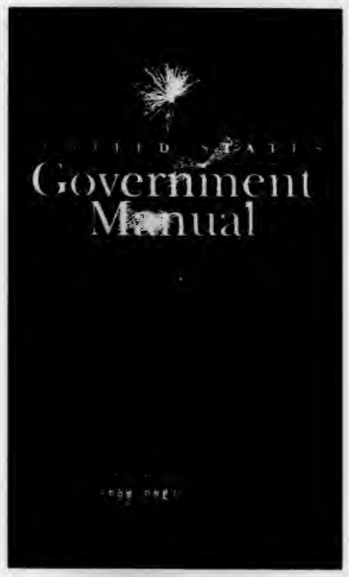
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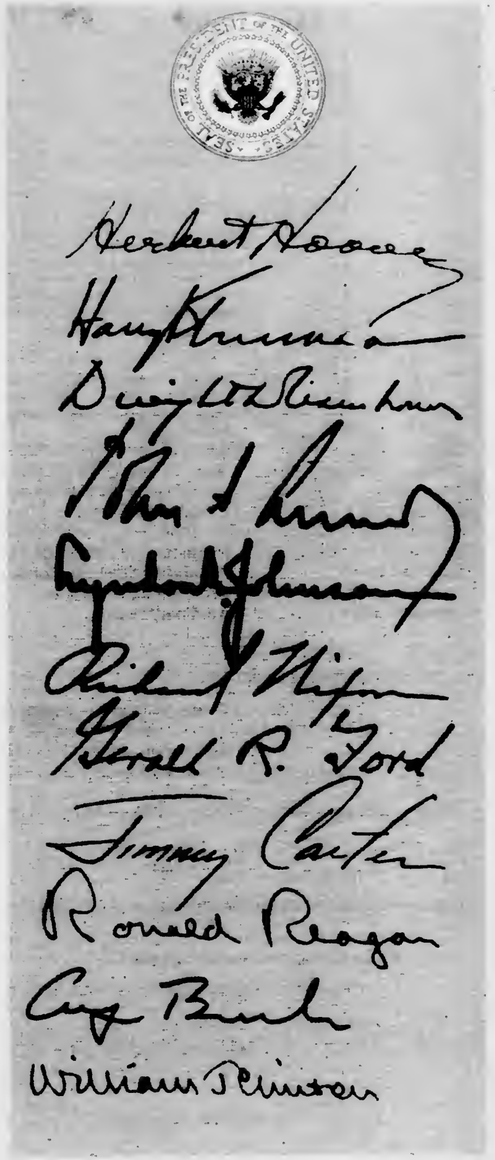
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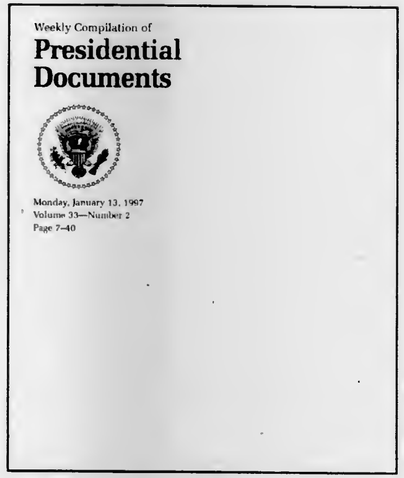
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Rules and Regulations

Federal Register
Vol. 66, No. 87
Friday, May 4, 2001

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 01–008–1]

Change in Disease Status of Germany, Italy, and Spain Because of BSE

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations by adding Germany, Italy, and Spain to the list of regions where bovine spongiform encephalopathy exists because the disease has been detected in native-born animals in those regions. Germany, Italy, and Spain are currently listed among the regions that present an undue risk of introducing bovine spongiform encephalopathy into the United States. Therefore, the effect of this action is a continued restriction on the importation of ruminants that have been in Germany, Italy, or Spain and meat, meat products, and certain other products of ruminants that have been in Germany, Italy, or Spain. This action is necessary in order to update the disease status of Germany, Italy, and Spain regarding bovine spongiform encephalopathy.

DATES: This interim rule was effective April 30, 2001. We invite you to comment on this docket. We will consider all comments that we receive by July 3, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 01–008–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 01–008–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Donna Malloy, National Center for Import and Export, Products Program, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231; (301) 734–3277.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR parts 93, 94, 95, and 96 (referred to below as the regulations) govern the importation of certain animals, birds, poultry, meat, other animal products and byproducts, hay, and straw into the United States in order to prevent the introduction of various animal diseases, including bovine spongiform encephalopathy (BSE).

BSE is a neurological disease of bovine animals and other ruminants and is not known to exist in the United States.

It appears that BSE is primarily spread through the use of ruminant feed containing protein and other products from ruminants infected with BSE. Therefore, BSE could become established in the United States if materials carrying the BSE agent, such as certain meat, animal products, and animal byproducts from ruminants that have been in regions in which BSE exists or in which there is an undue risk of introducing BSE into the United States, are imported into the United States and are fed to ruminants in the United States. BSE could also become established in the United States if ruminants from regions in which BSE exists, or in which there is an undue risk of introducing BSE into the United States, are imported into the United States.

Sections 94.18, 95.4, and 96.2 of the regulations prohibit or restrict the importation of certain meat and other animal products and byproducts from ruminants that have been in regions in which BSE exists or in which there is an undue risk of introducing BSE into the United States. In § 94.18, paragraph (a)(1) lists the regions in which BSE exists. Paragraph (a)(2) lists the regions that present an undue risk of introducing BSE into the United States because their import requirements are less restrictive than those that would be acceptable for import into the United States and/or because the regions have inadequate surveillance. In § 94.18, paragraph (b) prohibits the importation of fresh, frozen, and chilled meat, meat products, and most other edible products of ruminants that have been in any region listed in paragraphs (a)(1) or (a)(2). Paragraph (c) restricts the importation of gelatin derived from ruminants that have been in any of these regions. Section 95.4 prohibits or restricts the importation of certain byproducts from ruminants that have been in any of those regions, and § 96.2 prohibits the importation of casings, except stomach casings, from ruminants that have been in any of these regions. Additionally, the regulations in 9 CFR part 93 pertaining to the importation of live animals provide that APHIS may deny the importation of ruminants from regions where a communicable disease such as BSE exists and from regions that present risks of introducing communicable diseases into the United States (see § 93.404(a)(3)).

Currently, Germany, Italy, and Spain are among the regions listed in § 94.18(a)(2), which are regions that present an undue risk of introducing BSE into the United States. However, on November 26, 2000, a case of BSE was confirmed in a native-born animal in Germany; on January 12, 2001, a case of BSE was confirmed in a native-born animal in Italy; and on November 22, 2000, a case of BSE was confirmed in a native-born animal in Spain. Therefore, in order to update the disease status of these three regions regarding BSE, we are amending the regulations by removing Germany, Italy, and Spain from the list in § 94.18(a)(2) of regions that present an undue risk of

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introducing BSE into the United States and adding Germany, Italy, and Spain to the list in § 94.18(a)(1) of regions where BSE is known to exist. The effect of this action is a continued restriction on the importation of ruminants that have been in Germany, Italy, or Spain and on the importation of meat, meat products, and certain other products and byproducts of ruminants that have been in Germany, Italy, and Spain.

Emergency Action

This rulemaking is necessary on an emergency basis to update the disease status of Germany, Italy, and Spain regarding BSE. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register** that will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required under Executive Order 12866.

We are amending the regulations by adding Germany, Italy, and Spain to the list of regions where BSE exists because the disease has been detected in native-born animals in those regions. Germany, Italy, and Spain are currently listed among the regions that present an undue risk of introducing BSE into the United States. Regardless of which of the two lists a region is on, the same restrictions apply to the importation of ruminants and meat, meat products, and most other products and byproducts of ruminants that have been in the region. Therefore, this action, which is necessary in order to update the disease status of Germany, Italy, and Spain regarding BSE, will not result in any change in the restrictions that apply to the importation of ruminants and meat, meat products, and certain other products and byproducts of ruminants that have been in Germany, Italy, or Spain.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7711, 7712, 7713, 7714, 7751, and 7754; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

§ 94.18 [Amended]

2. Section 94.18 is amended as follows:

a. In paragraph (a)(1), by adding, in alphabetical order, the words "Germany,", "Italy,", and "Spain,".

b. In paragraph (a)(2), by removing the words "Germany,", "Italy,", and "Spain,".

Done in Washington, DC, this 30th day of April 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–11247 Filed 5–3–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM190, Special Conditions No. 25–178–SC]

Special Conditions: Bombardier Inc. Model CL–600–1A11 Airplane; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Bombardier Inc. Model CL–600–1A11 airplanes modified by Duncan Aviation, Inc. These modified airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of dual Attitude Heading Reference Systems (AHRS) as well as a new Electronic Flight Information System (EFIS) that displays critical flight parameters to the flightcrew. The applicable airworthiness standards do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields. The special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is April 25, 2001.

Comments must be received on or before June 4, 2001.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–114), Docket No. NM190, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM190. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2145; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the rules docket or special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to these special conditions must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM190." The postcard will be date stamped and returned to the commenter.

Background

On November 28, 2000, Duncan Aviation Inc., P.O. Box 81887, Lincoln, NE 68501, applied for a supplemental type certificate (STC) to modify Bombardier Inc. Model CL–600–1A11 airplane listed on Type Certificate A21EA. The Model CL–600–1A11 is a twin engine transport airplane. It has an executive interior and is capable of carrying two flight crewmembers and up to nineteen passengers. This model is powered by two aft mounted AVCO Lycoming ALF–502L or ALF–502L–2 engines. The modification incorporates the installation of dual Rockwell Collins Attitude Heading Reference Systems (AHRS) as well as a new Electronic Flight Information System (EFIS) that displays critical flight parameters to the flightcrew. These systems can be susceptible to disruption to command and/or response signals as a result of electrical and magnetic interference. This disruption of signals could result in loss of all critical flight displays and annunciations or present misleading information to the pilot.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Duncan Aviation must show that the Bombardier Inc. Model CL–600–1A11 airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A21EA, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The certification basis for the modified Bombardier Inc. Model CL–600–1A11 airplane includes 14 CFR part 25, dated February 1, 1965, including Amendments 25–1 through 25–37, as listed in the Type Certificate Data Sheet (TCDS) A21EA.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Bombardier Inc. Model CL–600–1A11 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model CL–600–1A11 airplane must comply with the part 25 fuel vent and exhaust emission requirements of 14 CFR part 34 and the part 25 noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should Duncan Aviation, Inc. apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Bombardier Inc. Model CL–600–1A11 airplane will incorporate the following novel or unusual design features: Dual Attitude and Heading Reference Systems (AHRS) as well as a new Electronic Flight Information System (EFIS) that displays critical flight parameters to the flightcrew. These systems can be susceptible to disruption to command and/or response signals as a result of electrical and magnetic interference. This disruption of signals could result in loss of all critical flight displays and annunciations or present misleading information to the pilot.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionic/electronic and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Bombardier Inc. Model CL–600–1A11 as modified by Duncan Aviation Inc. These special conditions require that new avionic/electronic and electrical systems, such as the AHRS and EFIS that perform critical functions, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1, or paragraph 2, below:

1. A minimum threat of 100 volts rms per meter electric field strength from 10 kHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

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2. A threat external to the airframe of the following field strengths for the frequency ranges indicated. Both peak and average field strength components from the Table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Bombardier Inc. Model CL–600–1A11 airplane modified by Duncan Aviation, Inc. Should Duncan apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on Bombardier Inc. Model CL–600–1A11 airplane modified by Duncan Aviation, Inc. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for this airplane has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Bombardier Inc. Model CL–600–1A11 airplanes modified by Duncan.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on April 25, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–11254 Filed 5–3–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM191, Special Conditions No. 25–179–SC]

Special Conditions: Lockheed-Georgia Model 1329–25; and Models 1329–23A, –23D and –23E airplanes modified by STC SA2326SW (JetStar 731); High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Lockheed-Georgia Model 1329–25, and Models 1329–23A, –23D and –23E airplanes modified by STC SA2326SW, for the modifications installed by Duncan Aviation Inc. These modified airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of dual Attitude Heading Reference Systems (ARHS) that provide input to both pilot and copilot flight instruments displaying critical flight parameters (attitude) to the flightcrew. The applicable airworthiness standards do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). The special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is April 17, 2001. Comments must be received on or before June 4, 2001.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–114), Docket No. NM191, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM191. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2145; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the Docket or Special Conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to these special conditions must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM191." The postcard will be date stamped and returned to the commenter.

Background

On February 21, 2001, Duncan Aviation, Inc., P.O. Box 81887, Lincoln, Nebraska, applied for a supplemental type certificate (STC) to modify the Lockheed-Georgia Model 1329–25, and Models 1329–23A, –23D and –23E airplanes modified by STC SA2326SW, listed on Type Certificate 2A15. These airplanes are four engine transport category airplanes of the executive type, capable of carrying two flight crewmembers and ten passengers. All models are powered by four aft mount AiResearch TFD–731 engines. In the Model 1329–23A, –23D, and –23E airplanes modified by STC SA232SW, the Pratt & Whitney turbojet engines have been replaced with the AiResearch TFE–731 engines. The modification incorporates the installation of dual Rockwell Collins Attitude Heading Reference Systems (ARHS) that provide input to both pilot and copilot flight instruments displaying critical flight parameters (attitude and heading) to the flightcrew. The AHRS can be susceptible to disruption to both command/response signals as a result of electrical and magnetic interference. This disruption of signals could result in loss of all critical flight displays and annunciations or present misleading information to the pilot.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Duncan Aviation, Inc., must show that the Lockheed-Georgia Model 1329–25, and Models 1329–23A, –23D and –23E airplanes modified by STC SA2326SW, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. 2A15, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The certification basis for the modified Lockheed-Georgia Model 1329–25, and Models 1329–23A, –23D and –23E airplanes modified by STC SA2326SW, includes CAR 4b, dated December 31, 1953, as amended by Amendments 4b–1 through 4b–9 as listed in the Type Certificate Data Sheet (TCDS) 2A15.

If the Administrator finds that the applicable airworthiness regulations (i.e., CAR 4b, as amended) do not contain adequate or appropriate safety standards for the Lockheed-Georgia Model 1329–25, and Models 1329–23A, –23D and –23E airplanes modified by STC SA2326SW, because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, these Lockheed-Georgia Model 1329–25; and Models 1329–23A, –23D, and –23E airplanes must comply with the fuel vent and exhaust emission requirements of part 34 and the noise certification requirements of part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should Duncan apply at a later date for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

As noted earlier, the modified Lockheed-Georgia Model 1329–25, and Models 1329–23A, –23D and –23E airplanes modified by STC SA2326SW, will incorporate dual Attitude and Heading Reference Systems (AHRS) that provide input to both pilot and copilot flight instruments displaying critical flight parameters (attitude and heading) to the flightcrew. The AHRS can be susceptible to disruption to both command/response signals as a result of electrical and magnetic interference. This disruption of signals could result in loss of all critical flight displays and annunciations or present misleading information to the pilot.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionic/electronic and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by

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reference, special conditions are needed for the Lockheed-Georgia Model 1329–25; and Models 1329–23A, –23D and –23E. These special conditions require that new avionic/electronic and electrical systems, such as the AHRS, that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical avionic/electronic and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1, or paragraph 2, below:

1. A minimum threat of 100 volts rms per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated. Both peak and average field strength components from the Table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	20
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Lockheed-Georgia Model 1329–25, and Models 1329–23A, –23D and —23E airplanes modified by STC SA2326SW, with the modifications installed by Duncan Aviation. Should Duncan Aviation apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on Lockheed-Georgia Model 1329–25, and Models 1329–23A, -23D and -23E airplanes modified by STC SA2326SW, that are further modified by Duncan Aviation. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for this airplane has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Lockheed-Georgia Model 1329–25, and Models 1329–23A, –23D and –23E airplanes modified by STC SA2326SW, that are further modified by Duncan Aviation, Inc.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies:

Critical Functions: Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on April 17, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–11253 Filed 5–3–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–40–AD; Amendment 39–12216; AD 94–14–20 R1]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Model S–76A Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD) for Sikorsky Aircraft Corporation (Sikorsky) Model S–76A helicopters. That AD currently requires a one-time inspection of the tail rotor blade (blade) spar elliptical centering plug (centering plug) for disbonding and the addition of a retaining pad on the pitch change shaft between the output tail rotor gearbox flange and the inboard tail rotor spar. This amendment contains the same requirements as the existing AD but clarifies that the 500-hour time-in-service (TIS) repetitive inspections, which could cause inadvertent damage, are not required. This AD also incorporates by reference a revised alert service bulletin (ASB) that does not include the 500-hour TIS repetitive inspections. This amendment is prompted by operator confusion about whether the current AD continues to require the 500-hour TIS repetitive inspections. The actions specified by this AD are intended to verify that the FAA has determined that the 500-hour TIS repetitive inspections are not required to prevent the centering plug from disbonding and moving out of position, loss of tail rotor control, and subsequent loss of control of the helicopter.

DATES: Effective June 8, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 8, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Tech Support, 6900 Main Street, Stratford, Connecticut 06614, phone (203) 386–3001, fax (203) 386–5983. This 1 information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Noll, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7160, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by revising AD 94–14–20, Amendment 39–8969 (59 FR 41238, August 11, 1994), which applies to Sikorsky Model S–76A helicopters, was published in the **Federal Register** on January 30, 2001 (66 FR 8184). The action proposed to require a one-time inspection of the blade centering plug for disbonding and the addition of a retaining pad on the pitch change shaft between the output tail rotor gearbox flange and the inboard tail rotor spar. The action also clarified that 500-hour TIS repetitive inspections, which could cause inadvertent damage, are not required and proposed to incorporate by reference a revised ASB that does not include the 500-hour TIS repetitive inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for some editorial changes that are made in paragraphs (a) and (e). These changes were made to better identify the service information that is incorporated by reference. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that this AD will affect 150 helicopters of U.S. registry. This revised AD will not impose any additional burden or costs.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–8969 (59 FR 41238, August 11, 1994), and by adding a new airworthiness directive (AD), Amendment 39–12216, to read as follows:

94–14–20 R1 Sikorsky Aircraft Corporation: Amendment 39–12216. Docket No. 2000–SW–40–AD. Revises AD 94–14–20, Amendment 39–8969, Docket No. 93–SW–13–AD.

Applicability: Model S–76A helicopters, with tail rotor blade (blade) assembly, part number (P/N) 76101–05001 (all dash numbers) or 76101–05101 (all dash numbers), installed with more than 130

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hours time-in-service (TIS), certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 25 hours TIS, unless accomplished previously.

To prevent the blade spar elliptical centering plug (centering plug) from disbonding and moving out of position, loss of tail rotor control, and subsequent loss of control of the helicopter, accomplish the following:

(a) Inspect the centering plug for disbonding of the polyurethane filler that fills the space between the aluminum centering plug and the graphite spar in accordance with the Accomplishment Instructions, paragraph 3.A.(1) and (2), of Sikorsky Aircraft Corporation Alert Service Bulletin No. 76–65–35B (153B), Revision B, dated October 2, 1997 (ASB).

Note 2: The 500-hours TIS repetitive inspections contained in the Accomplishment Instructions, paragraph 3.D., of Sikorsky Aircraft Corporation Alert Service Bulletin 76–65–35A, Revision A, dated February 29, 1984, are not required by this AD.

(1) If the inspection of the centering plug reveals disbonding of ½-inch or less in length, install a retaining pad, P/N 76102–05004–111, in accordance with the Accomplishment Instructions, paragraph 3.C., of the ASB.

(2) For disbonds greater than ½-inch in length, repair the blade assembly in accordance with the Accomplishment Instructions, paragraph 3.B.(1), of the ASB except you are not required to contact Sikorsky Worldwide Customer Service. If blades are found with polyurethane filler excessively cracked or deteriorated to extent of breaking away from the spar or aluminum plug by 0.005-inch or greater, replace the blade with an airworthy blade.

(3) For spars with complete spar to centering plug disbond in which the polyurethane filler is intact and remains fully bonded to the centering plug, repair the blade assembly in accordance with the Accomplishment Instructions, paragraph 3.B.(2), of the ASB.

(4) For spars with complete polyurethane filler to centering plug disbond in which the polyurethane filler is intact and remains fully bonded to the spar, repair the blade assembly in accordance with the Accomplishment Instructions, paragraph 3.B.(3) of the ASB.

(b) Install a retaining pad, P/N 76102–05004–111, in accordance with the Accomplishment Instructions, paragraph 3.C., of the ASB.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Boston Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Boston Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished if a retaining pad has been installed.

(e) The inspections, modifications, and repair shall be done in accordance with the Accomplishment Instructions, paragraphs 3.A.(1), 3.A.(2), 3.B.(1), 3.B.(2), 3.B.(3), and 3.C., of Sikorsky Aircraft Corporation Alert Service Bulletin No. 76–65–35B (153B), Revision B, dated October 2, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Tech Support, 6900 Main Street, Stratford, Connecticut 06614, phone (203) 386–3001, fax (203) 386–5983. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on June 8, 2001.

Issued in Fort Worth, Texas, on April 20, 2001.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 01–10730 Filed 5–3–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–352–AD; Amendment 39–12214; AD 2001–09–09]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A330 and A340 series airplanes. This action requires a one-time inspection to verify the proper configuration of the drive assemblies for the low-pressure and, for certain airplanes, the cross-feed fuel valves; and corrective action, if necessary. This action is necessary to prevent failure of the low-pressure and/or cross-feed fuel valves, which could result in the inability to shut off the fuel supply to the engine and exacerbate an engine fire, or the inability to cross-feed fuel when required. This action is intended to address the identified unsafe condition.

DATES: Effective May 21, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 21, 2001.

Comments for inclusion in the Rules Docket must be received on or before June 4, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket 2000–NM–352–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–352–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A330 and A340 series airplanes. The DGAC advises that an operator of a Model A340 series airplane experienced an engine shutdown less than a minute after engine startup. Subsequent inspection of the low-pressure fuel valve drive of the engine revealed that a thrust washer was missing from the drive assembly. The reason for the missing washer is unknown. The absence of the washer allowed excessive movement of the spindle in the drive assembly, which caused the spindle to disconnect from the actuator. Because the actuator was not connected to the spindle of the drive assembly, the fuel valve could not be operated. Failure of the low-pressure fuel valve, if not corrected, could result in the inability to shut off the fuel supply to the engine and exacerbate an engine fire.

The subject low-pressure fuel valves are installed on certain Model A330 and A340 series airplanes. Therefore, those Model A330 series airplanes are also subject to the unsafe condition identified in this AD.

Failure of the cross-feed valves could result in the inability to cross-feed fuel when required only on Model A330 series airplanes flying under extended range twin-engine operations (ETOPS).

Relevant Service Information

Airbus has issued Service Bulletins A330–28A3069 (for Model A330 series airplanes) and A340–28A4087 (for Model A340 series airplanes), both dated July 27, 2000. The service bulletins describe procedures for a one-time inspection to verify the proper configuration of the drive assemblies for the low-pressure and cross-feed fuel valves. If the washer is missing, the service bulletins provide procedures for installing a new thrust washer. If excessive movement of the drive spindle is detected, the service bulletins provide procedures for inspecting the drive assembly to detect damage and wear and replacing unserviceable parts with serviceable parts. These actions are intended to adequately address the unsafe condition. The DGAC classified the service bulletins as mandatory and issued French airworthiness directives 2000–406–125(B) and 2000–405–152(B), both dated September 20, 2000, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design that may be registered in the United States at some time in the future, this AD is being issued to prevent failure of the low-pressure and/or cross-feed fuel valves, which could result in the inability to shut off the fuel supply to the engine and exacerbate an engine fire, or the inability to cross-feed fuel when required. This AD requires the actions specified in the service bulletins, described previously.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 16 work hours to accomplish the required actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $960 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket 2000–NM–352–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic

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impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–09–09 Airbus Industrie: Amendment 39–12214. Docket 2000–NM–352–AD.

Applicability: The following airplanes, certificated in any category, listed in the following table:

TABLE 1—APPLICABILITY

Model/series	Having serial numbers—	Equipped with—
A330–202, –223, –243, –301, –321, –322, –323, –341, –342, –343.	0012 through 0314 inclusive, 0316 through 0319 inclusive, 0321, 0322, 0325 through 0328 inclusive.	Low-pressure fuel valves having part number (P/N) HTE900212 or HTE900160, and having a cross-feed valve having P/N HTE900162.
A340–211, –212, –213, –311, –312, –313	0002 through 0327 inclusive	Low-pressure fuel valves having P/N HTE900212 or HTE900160.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the low-pressure and/or cross-feed fuel valves, which could result in the inability to shut off the fuel supply to the engine and exacerbate an engine fire, or the inability to cross-feed fuel when required, accomplish the following:

Inspection

(a) Within 1,450 flight hours after the effective date of this AD, perform a one-time detailed visual inspection of the drive assemblies for the low-pressure and cross-feed fuel valves to detect discrepancies (incorrect configuration including a missing thrust washer and excessive movement of the drive spindle), in accordance with Airbus Service Bulletin A330–28A3069 (for Model A330 series airplanes) or A340–28A4087 (for Model A340 series airplanes), both dated July 27, 2000; as applicable. If any discrepancy is found: Prior to further flight, perform applicable corrective actions (including inserting a new washer, inspecting the drive assembly to detect damage and wear, repairing cracking, and replacing unserviceable parts with serviceable parts) in accordance with the applicable service bulletin.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Spares

(b) As of the effective date of this AD, no person may install on any airplane a low-pressure fuel valve having P/N HTE900212 or HTE900160, unless that valve has been inspected and applicable corrective actions have been performed in accordance with the requirements of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Airbus Service Bulletin A330–28A3069, dated July 27, 2000; and Airbus Service Bulletin A340–28A4087, dated July 27, 2000; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directives 2000–406–125(B) and 2000–405–152(B), both dated September 20, 2000.

Effective Date

(f) This amendment becomes effective on May 21, 2001.

Issued in Renton, Washington, on April 24, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–10726 Filed 5–3–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30246; Amdt. No. 2049]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125), telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (air).

Issued in Washington, DC on April 27, 2001.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

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Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective Upon Publication

FDC date	State	City	Airport	FDC number	Subject
04/11/01	TX	ANAHUAC	CHAMBERS COUNTY	1/3514	RNAV (GPS) RWY 12, ORIG
04/11/01	TX	ANAHUAC	CHAMBERS COUNTY	1/3515	NDB RWY 12, ORIG
04/11/01	TX	HOUSTON	GEORGE BUSH INTERCONTINENTAL AIRPORT/HOUSTON.	1/3528	NDB RWY 26, AMDT 1D
04/12/01	OH	YOUNGSTOWN	YOUNGSTOWN-WARREN REGIONAL.	1/3557	ILS RWY 32, AMDT 25A
04/12/01	ID	CALDWELL	CALDWELL INDUSTRIAL	1/3563	GPS RWY 12, ORIG
04/12/01	ID	CALDWELL	CALDWELL INDUSTRIAL	1/3564	GPS RWY 30, ORIG
04/12/01	TX	MC ALLEN	MC ALLEN MILLER INTL	1/3573	NDB RWY 13, AMDT 6A
04/12/01	TX	MC ALLEN	MC ALLEN MILLER INTL	1/3574	ILS RWY 13, AMDT 8A
04/12/01	OR	PORTLAND	PORTLAND-HILLSBORO	1/3576	ILS RWY 12, AMDT 5B
04/12/01	SD	WATERTOWN	WATERTOWN MUNI	1/3577	ILS RWY 35, AMDT 10
04/13/01	IL	LAWRENCEVILLE	LAWRENCEVILLE-VINCENNES INTL	1/3589	RNAV (GPS) RWY 27, ORIG-A
04/13/01	IL	LAWRENCEVILLE	LAWRENCEVILLE-VINCENNES INTL	1/3590	VOR RWY 27; AMDT 7
04/13/01	OK	ALTUS	ALTUS MUNI	1/3595	VOR/DME RNAV RWY 17, AMDT 2A
04/13/01	OK	ALTUS	ALTUS MUNI	1/3596	GPS RWY 17, AMDT 1A
04/13/01	OK	ALTUS	ALTUS MUNI	1/3597	VOR-A, AMDT 4A
04/13/01	OK	ALTUS	ALTUS MUNI	1/3598	VOR OR GPS-B, ORIG-A
04/13/01	MI	SAULT STE MARIE	CHIPPEWA COUNTY INTL	1/3599	NDB OR GPS RWY 16, AMDT 5B
04/13/01	MI	SAULT STE MARIE	CHIPPEWA COUNTY INTL	1/3600	VOR OR TACAN OR GPS-A, AMDT 5B
04/13/01	TN	CLARKSVILLE	OUTLAW FIELD	1/3604	VOR RWY 35, AMDT 15B NDB OR GPS RWY 35,
04/13/01	TN	CLARKSVILLE	OUTLAW FIELD	1/3605	AMDT 5C
04/13/01	TN	CLARKSVILLE	OUTLAW FIELD	1/3601	LOC RWY 35, AMDT 5C
04/17/01	PA	SCRANTON	WILKES-BARRES/SCRANTON INTL	1/1683	ILS RWY 22 AMDT 4
04/17/01	OH	OTTAWA	PUTNAM COUNTY	1/3650	NDB RWY 27, AMDT 1
04/17/01	AK	ANIAK	ANIAK	1/3658	ILS/DME RWY 10, AMDT 7A
04/18/01	NE	MC COOK	MC COOK MUNI	1/3670	VOR RWY 12, AMDT 11B
04/18/01	NE	MC COOK	MC COOK MUNI	1/3671	VOR OR GPS RWY 30, AMDT 10B
04/18/01	NE	MC COOK	MC COOK MUNI	1/3672	VOR RWY 21, AMDT 4C
04/18/01	NE	MC COOK	MC COOK MUNI	1/3673	GPS RWY 12, ORIG-A
04/18/01	IA	GRINNELL	GRINNELL REGIONAL	1/3676	GPS RWY 13, ORIG
04/18/01	NY	WATERTOWN	WATERTOWN MUNI	1/3689	ILS RWY 7 AMDT 6A
04/18/01	TN	UNION CITY	EVERETT-STEWART	1/3707	VOR/DME OR GPS-A, AMDT 7
04/19/01	TX	CLEVELAND	CLEVELAND MUNI	1/3747	VOR-A, AMDT 4
04/19/01	NM	ALBUQUERQUE	ALBUQUERQUE INTL SUNPORT	1/3749	VOR OR TACAN OR GPS RWY 8, AMDT 19
04/19/01	NM	ALBUQUERQUE	ALBUQUERQUE INTL SUNPORT	1/3750	ILS RWY 8, AMDT 5
04/20/01	IA	DES MOINES	DES MOINES INTL	1/3758	ILS RWY 13L, AMDT 8
04/20/01	IA	DES MOINES	DES MOINES INTL	1/3759	HI-ILS RWY 13L, AMDT 6
04/20/01	IA	DES MOINES	DES MOINES INTL	1/3760	HI-ILS RWY 31R, AMDT 6
04/20/01	IA	DES MOINES	DES MOINES INTL	1/3761	NDB OR GPS RWY 31R, AMDT 19A
04/20/01	IA	DES MOINES	DES MOINES INTL	1/3762	ILS RWY 31R, AMDT 21A
04/20/01	NY	ISLIP	LONG ISLAND MAC ARTHUR	1/3767	ILS RWY 24 AMDT 2A
04/20/01	IA	BURLINGTON	BURLINGTON REGIONAL	1/3780	ILS RWY 36, AMDT 9D
04/23/01	AK	ANIAK	ANIAK	1/3820	LOC/DME RWY 10, AMDT 3A
04/23/01	IA	HAMPTON	HAMPTON MUNI	1/3840	VOR/DME RWY 35 AMDT 1A
04/23/01	AK	JUNEAU	JUNEAU INTL	1/3845	LDA-1 RWY 8 AMDT 10A
04/24/01	IL	CHICAGO	CHICAGO-O'HARE INTL	1/3884	ILS RWY 22L AMDT 4D
04/24/01	IL	CHICAGO	CHICAGO-O'HARE INTL	1/3885	ILS RWY 22R AMDT 7
04/24/01	IL	CHICAGO	CHICAGO-O'HARE INTL	1/3886	GPS RWY 22R ORIG

[FR Doc. 01–11256 Filed 5–3–01; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30245; Amdt. No. 2048]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charge printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airport, Navigation (air).

Dated: Issued in Washington, DC on April 27, 2001.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

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§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

***Effective May 17, 2001*

Pittsburgh, PA, Pittsburgh International, ILS RWY 10C, Orig
Pittsburgh, PA, Pittsburgh International, ILS RWY 28C, Orig
Union City, TN, Everett-Stewart, SDF RWY 1, Amdt 5, CANCELLED
Union City, TN, Everett-Stewart, NDB OR GPS RWY 1, Amdt 6
Union City, TN, Everett-Stewart, ILS RWY 1, Orig

****Effective July 12, 2001*

Dothan, AL, Dothan Regional, RNAV (GPS) RWY 14, Orig
Dothan, AL, Dothan Regional, RNAV (GPS) RWY 18, Orig
Tuskegee, AL, Moton Field Muni, VOR–A, Amdt 4
Tuskegee, AL, Moton Field Muni, RNAV (GPS) RWY 13, Orig
Tuskegee, AL, Moton Field Muni, RNAV (GPS) RWY 31, Orig
Bethel, AK, Bethel, VOR/DME–B, Orig
Bethel, AK, Bethel, RNAV (GPS)–A, Orig
Emmonak, AK, Emmonak, RNAV (GPS) RWY 16, Orig
Emmonak, AK, Emmonak, RNAV (GPS) RWY 34, Orig
Fort Smith, AR, Fort Smith Regional, RNAV (GPS) RWY 1, Orig
Fort Smith, AR, Fort Smith Regional, RNAV (GPS) RWY 7, Orig
Fort Smith, AR, Fort Smith Regional, RNAV (GPS) RWY 25, Orig
Fort Smith, AR, Fort Smith Regional, ILS RWY 25, Amdt 21
Fort Smith, AR, Fort Smith Regional, NDB RWY 7, Amdt 8
Fort Smith, AR, Fort Smith Regional, VOR/DME OR TACAN RWY 7, Amdt 11
Fort Smith, AR, Fort Smith Regional, RADAR–1, Amdt 8
Gainesville, FL, Gainesville Regional, RNAV (GPS) RWY 6, Orig
Gainesville, FL, Gainesville Regional, RNAV (GPS) RWY 10, Orig
Gainesville, FL, Gainesville Regional, RNAV (GPS) RWY 24, Orig
Gainesville, FL, Gainesville Regional, RNAV (GPS) RWY 28, Orig
Gainesville, FL, Gainesville Regional, GPS RWY 6, Orig, CANCELLED
Gainesville, FL, Gainesville Regional, GPS RWY 10, Orig, CANCELLED
Gainesville, FL, Gainesville Regional, GPS RWY 24, Orig, CANCELLED
Gainesville, FL, Gainesville Regional, GPS RWY 28, Orig, CANCELLED
Thomson, GA, Thomson-McDuffie County, NDB RWY 10, Orig
Thomson, GA, Thomson-McDuffie County, ILS RWY 10, Orig
Colby, KS, Shaltz Field, RNAV RWY 17, Orig
Colby, KS, Shaltz Field, RNAV RWY 35, Orig
Colby, KS, Shaltz Field, NDB RWY 17, Amdt 1
Pittsburg, KS, Atkinson Muni, RNAV (GPS) RWY 3, Orig
Pittsburg, KS, Atkinson Muni, RNAV (GPS) RWY 16, Orig
Pittsburg, KS, Atkinson Muni, RNAV (GPS) RWY 21, Orig
Pittsburg, KS, Atkinson Muni, RNAV (GPS) RWY 34, Orig
Pittsburg, KS, Atkinson Muni, NDB–A, Orig
Pittsburg, KS, Atkinson Muni, VOR/DME RWY 3, Amdt 3
Pittsburg, KS, Atkinson Muni, NDB OR GPS RWY 16, Amdt 3A, CANCELLED
St. James, MN, St. James Muni, RNAV (GPS) RWY 15, Orig
St. James, MN, St. James Muni, RNAV (GPS) RWY 33, Orig
Columbia, MO, Columbia Regional, VOR RWY 13, Amdt 3
Columbia, MO, Columbia Regional, VOR RWY 20, Amdt 4
Columbia, MO, Columbia Regional, VOR/DME RWY 20, Amdt 3
Columbia, MO, Columbia Regional, NDB RWY 2, Amdt 9
Columbia, MO, Columbia Regional, RNAV (GPS) RWY 2, Orig
Columbia, MO, Columbia Regional, RNAV (GPS) RWY 13, Orig
Columbia, MO, Columbia Regional, RNAV (GPS) RWY 20, Orig
Columbia, MO, Columbia Regional, RNAV (GPS) RWY 31, Orig
Lebanon, MO, Floyd W. Jones Lebanon, RNAV RWY 18, Orig
Lebanon, MO, Floyd W. Jones Lebanon, RNAV RWY 36, Orig
Lebanon, MO, Floyd W. Jones Lebanon, NDB RWY 36, Amdt 6
Lebanon, MO, Floyd W. Jones Lebanon, SDF RWY 36, Amdt 5
Salem, MO, Salem Memorial, VOR–A, Orig
Salem, MO, Salem Memorial, RNAV (GPS) RWY 17 Orig
Salem, MO, Salem Memorial, RNAV (GPS) RWY 35, Orig
Washington, MO, Washington Memorial, RNAV RWY 16, Orig
Washington, MO, Washington Memorial, RNAV RWY 34, Orig
Washington, MO, Washington Memorial, VOR RWY 16, Amdt 2
Lehighton, PA, Jake Arner Memorial, NDB RWY 8, Amdt 3
Lehighton, PA, Jake Arner Memorial, NDB RWY 26, Amdt 4
Lehighton, PA, Jake Arner Memorial, RNAV (GPS) RWY 8, Orig
Lehighton, PA, Jake Arner Memorial, RNAV (GPS) RWY 26, Orig
Rapid City, SD, Rapid City Regional, VOR OR TACAN RWY 14, Orig-B
Rapid City, SD, Rapid City Regional, RNAV (GPS) RWY 14, Orig
Knoxville, TN, McGhee Tyson, RNAV (GPS) RWY 5L, Orig
Knoxville, TN, McGhee Tyson, RNAV (GPS) RWY 23R, Orig
Appleton, WI, Outagamie County Regional, RNAV (GPS) RWY 29, Orig

Note: The FAA published the following procedures in Docket No. 30243, Amdt. No. 2046 to Part 97 of the Federal Aviation Regulation (VOL 66, No. 78, Page 20392, dated Monday, April 23, 2001) under section 97.33 effective May 17, 2001, which are hereby amended as follows:

Change effective date to 12 July 2001 for the following procedures:

Dothan, AL, Dothan Regional, RNAV (GPS) RWY 14, Orig
Dothan, AL, Dothan Regional, RNAV (GPS) RWY 18, Orig
Emmonak, AK, Emmonak, RNAV (GPS) RWY 16, Orig
Emmonak, AK, Emmonak, RNAV (GPS) RWY 34, Orig

Note: The FAA published the following procedures in Docket No. 30243, Amdt. No. 2046 to Part 97 of the Federal Aviation Regulation (VOL 66, No. 78, Page 20392, dated Monday, April 23, 2001) under section 97.33 effective July 12, 2001, which are hereby amended as follows:

Wilmington, NC, Wilmington Intl, GPS RWY 6, Amdt 1A, Should Read: GPS RWY 6 Amdt 1A CANCELLED
Wilmington, NC, Wilmington Intl, GPS RWY 24, Amdt 1A, Should Read: GPS RWY 24 Amdt 1A CANCELLED

[FR Doc. 01–11255 Filed 5–3–01; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

RIN 3067–AD13

National Flood Insurance Program (NFIP); Letter of Map Revision and Letter of Map Revision Based on Fill Requests

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This final rule changes procedures for issuing Letters of Map Revision (also referred to as LOMRs) and Letters of Map Revision Based on Fill (also referred to as LOMR–Fs). We use these criteria to determine whether a LOMR–F can be issued to remove unimproved land or land with structures from the Special Flood Hazard Area (SFHA) by raising ground elevations using engineered earthen fill.

EFFECTIVE DATE: June 4, 2001.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Technical Services Division, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3461, (facsimile) (202) 646–4596, or (email) *matt.miller@fema.gov*.

SUPPLEMENTARY INFORMATION:

Comments

On October 10, 2000, we (FEMA) published a proposed rule at 65 FR 60159 that would revise the procedures under which we issue LOMRs and LOMR–Fs.

We received eight letters and e-mail messages about the proposed rule. Many of these contained multiple comments and, in a number of cases, the submissions raised similar issues and concerns. One organization submitted two sets of comments.

The following submitted comments on the proposed rule:

- Four State water resource agencies;
- One State association for the building industry;
- One national association for floodplain management;
- One regional association for communities;
- One private legal firm.

Each of the following sections treats an issue raised by the public during the comment period and explains our reasons for adopting, modifying, or rejecting a given recommendation.

General Comments. One commenter supported the proposed rule as written and urged its expeditious adoption. One commenter generally supported the rule change.

Our Response: None.

Burden on Local Officials. Two commenters expressed the opinion that the requirement for local communities to assure a building site as "reasonably safe from flooding" would impose a burden on them, and one suggested that FEMA should make the review and provide the assurance, if appropriate.

Our Response: It is important to note that the requirement for local communities to determine "whether proposed building sites will be reasonably safe from flooding" is not a new requirement. It has been a part of the NFIP regulations since at least January 8, 1973 (36 FR 24762, December 22, 1971, as amended at 38 FR 1001, January 8, 1973). Currently, this requirement applies to any community that has applied for and been accepted for participation in the NFIP. Further, the community may require that the property owner's design professional provide the assurance that the structure is "reasonably safe from flooding". We are also providing Technical Bulletin 10–00 to assist communities and design professionals in evaluating structures. This final rule simply emphasizes the long-standing requirement outlined in paragraph 60.3(a)(3) and therefore, does not impose any new burden on local communities.

Certification of Data. One commenter felt that the determination that land or structures are "reasonably safe from flooding" was beyond the expertise of many registered professional engineers and certified land surveyors. They suggested that the determination be made by a qualified design professional with appropriate expertise.

Our Response: The complexity of these determinations is highly dependent on site-specific conditions that will vary within the participating community. Furthermore, the ability of local governments to make these decisions will vary from community to community as will State laws regarding professional accreditation, certification, and licensing. This variability makes it difficult to prescribe a single solution applicable in all cases. We therefore will rely upon the judgment of the participating community and expect them to meet all State or local requirements regarding the use of design professionals when making these determinations.

Communities May Lack Qualified Staff. One commenter felt that many communities may not have qualified staff or resources to determine whether land or a structure is "reasonably safe from flooding", and may choose not to make the determination.

Our Response: The technical bulletin is being provided to give guidance for determining when land or structures can be considered "reasonably safe from flooding". In lieu of using the guidance in the technical bulletin, a community may choose to require the floodplain map revision requester's qualified design professional assure the land or structures to be removed from the SFHA are "reasonably safe from flooding". The participating community can then rely on the qualified design professional's assurance if it so chooses. However, it is ultimately the participating community's responsibility for assuring that the areas being removed from the SFHA are "reasonably safe from flooding."

Conflict with Section 60.3. Three commenters noted that the proposed change to paragraph 65.5(a)(4) violates the provisions of paragraph 60.3(c)(2), in that it allows lowest floor elevations to be below the Base (100-year) Flood Elevation (BFE) and allows the structure to be removed from the SFHA, which in turn allows Federal financial assistance without the requirement of flood insurance coverage.

Our Response: It is not the intent of the rule to encourage or allow violations of existing Federal regulations. Therefore, the rule has been reworded to emphasize the minimum floodplain management requirements of § 60.3 must be met before a revision to the SFHA can be made. The rule does allow for the removal of land or a structure when violations have occurred, but only after all violations have been remedied by the community to the maximum extent possible and the land or structures have been determined by the community to be "reasonably safe from flooding."

Use of Design Professionals. Two commenters felt that a determination of "reasonably safe from flooding" should be made by a qualified design professional instead of the participating community.

Our Response: The participating community may, if it wishes, require that the party requesting removal of land or structures from the SFHA provide assurance by a qualified design professional that standard professional practices have been applied and that the criteria described in Technical Bulletin 10–00 have been, or will be met. If it so chooses, the community may rely on the design professional for assurance that the land or structures being removed from the SFHA are "reasonably safe from flooding." However, it is ultimately the participating community's responsibility to assure areas being removed from the SFHA are "reasonably safe from flooding."

Education Needed Before Rule Change. One commenter supported the rule change but felt that education for community officials and property owners was needed first.

Our Response: The technical bulletin is being provided to guide and educate community officials, design professionals, and property owners considering development in SFHAs. The technical bulletin discourages unwise and unsafe building practices and emphasizes elevation as the preferred means of ensuring land and structures are "reasonably safe from flooding."

Flood-Proofed Residential Basements. One commenter felt that the rule would create a variance for floodproofed residential basements outlined in § 60.6(c) without formal FEMA recognition, which would lead to requests for floodproofed rates for the structures. Another commenter felt that the requirements outlined in § 60.6(c) should be simplified so that all communities could allow floodproofed basements.

Our Response: The purpose of the rule is not to allow planning and construction of lowest floors below the BFE in filled floodplains. Rather the purpose is to provide a means of removing from the floodplain lands that

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have been filled to or above the BFE. In some situations this process may result in revising flood hazard areas where violations of NFIP minimum floodplain management regulations have occurred. However, this will only occur if the violations are remedied to the maximum extent possible and the land or structures have been determined by the community to be "reasonably safe from flooding." If the community cannot do so, the LOMR–F will not be issued. If an area or structure is removed from the SFHA, the federally mandated purchase of flood insurance will not apply and the cost of flood insurance will likely go down. Flood-proofed residential structures built in communities in compliance with approved basement exception procedures are eligible for consideration under paragraph 65.5 (a)(4) of this final rule.

Infrastructure. One commenter asked the meaning of "infrastructure" in the proposed definition in § 65.2(c).

Our Response: The term "infrastructure" has been removed from the definition in the final rule.

Insurance Waiver. Two commenters suggested that, instead of allowing removal of land or structures from the SFHA designation, FEMA should simply issue a waiver of the insurance requirement.

Our Response: The requirement for flood insurance coverage for property located in an SFHA is statutory (42 U.S.C. 4012a(b)). The Flood Disaster Protection Act of 1973, as amended, requires that regulated lending institutions, Federal agency lenders, and government sponsored enterprises for housing examine the NFIP map to determine whether a property for which it is contemplating making, extending, or renewing a loan is in an SFHA. If so, they must place the requirement for flood insurance coverage on the property before completing the loan transaction. The requirement for flood insurance purchase is placed by the lending institution underwriting the loan and cannot be waived by any other party without a change in the Act.

Status of States. One commenter asked whether a State is considered a "community" with respect to the rule.

Our Response: A State is considered an NFIP community when it regulates its own actions on State lands and is exempt from local permitting requirements. Most States have separate statutory authority, regulations, or executive orders that apply to their own actions. In these situations the State agency responsible for overseeing floodplain development by the State would determine if an area was "reasonably safe from flooding." In some instances a State and a community may both have permitting authority over development that takes place in that community. In these situations it is a matter of State law to determine whether the State or the community is the appropriate body to determine if an area is "reasonably safe from flooding."

Unimproved Land Removed From SFHA. Two commenters questioned how structures built after filled areas are removed from the SFHA would be affected by NFIP and community floodplain management requirements.

Our Response: Once the filled area is removed from the SFHA, it is by definition no longer subject to the minimum Federal requirements of § 60.3. However, this does not preclude participating communities or States from imposing additional restrictions should they choose to do so. Before land or structures can be removed from the SFHA, the community must assure that the areas are and will be "reasonably safe from flooding." It is up to the participating community to decide how this will be accomplished. However, in order to make this assurance they will likely have to know the location or proposed location of any buildings on the site or have other requirements in place to ensure that future development is constructed so that it will not be damaged during the base flood. See the Technical Bulletin 10–00 for further guidance on this issue.

Revised Procedures

This section discusses changes in the procedures used to process LOMR–F requests. These procedures will apply to single and multi-lot LOMR–F requests, which may involve one structure or multiple structures. These procedures also apply to LOMRs and they supersede the interim procedures published September 1, 1999, at 64 FR 47813. We will process all LOMR and LOMR–F requests received after June 4, 2001, as follows:

- Paragraphs 65.5(a)(1) through 65.5(a)(7) will apply to requests to remove land and structures involving the placement of engineered earthen fill.
- Paragraphs 65.6(a)(1) through 65.6(a)(15) will apply to requests for LOMRs.
- Community officials must continue to review map revision requests involving the placement of engineered earthen fill within the SFHA on the community's FIRM. As part of the community acknowledgement of LOMR and LOMR–F requests, the community must continue to assure that the minimum floodplain management criteria outlined in § 60.3 have been met.
- FEMA will not review a request for a LOMR or LOMR–F without community assurances that the request meets the requirements of § 60.3.
- We will consider structures built in identified SFHAs that do not meet the requirements of § 60.3 violations of NFIP regulations and will take appropriate action. Further, we will suspend review of these requests and others that are potentially in violation of NFIP regulations until the issues are resolved and all identified violations have been remedied through appropriate State and Federal entities including FEMA or its designee. Once all violations have been remedied by the community to the maximum extent possible and the community assures the land or structures are "reasonably safe from flooding," we will process the map revision request using the criteria outlined in § 65.5(a). Technical Bulletin 10–00 provides further guidance to community officials when determining whether land or structures are "reasonably safe from flooding."
- FEMA will review previously issued determinations for conformity with these revised procedures upon written request.
- New LOMR and LOMR–F requests and requests for redeterminations will be subject to the current fee schedule established in 44 CFR part 72.

National Environmental Policy Act

FEMA will not prepare an environmental analysis under NEPA since this rule would address an apparent administrative inconsistency that has no bearing on building practices or on the built or natural environment. This rule removes the current distinction between fill placed in an SFHA containing structures and fill placed in an SFHA without structures, both of which are allowable under current laws and regulations governing participation in the National Flood Insurance Program. Removing this distinction resolves an apparent inconsistency in the floodprone status of a subset of structures built on fill within the SFHA. These apparent inconsistencies resulted from differences in the administrative processes followed by communities who permit development in floodplains rather than from physical differences in the built environment. We will continue to allow earthen fill and other types of development within the SFHA when applicable, and we will continue to require residential structures built in identified flood hazard areas have their lowest floor (including basement) elevated to or above the base flood.

Regulatory Planning and Review

We have prepared and reviewed this rule under the provisions of Executive Order 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rule changes the criteria that we use to determine whether we can issue a LOMR or LOMR–F to remove unimproved land or land with structures from the SFHA by raising ground elevations using earthen fill. We know of no conditions that would qualify the rule as a "significant regulatory action" within the definition of section 3(f) of the Executive Order. To the extent possible this rule adheres to the principles of regulation as set forth in Executive Order 12866. This rule has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866.

Paperwork Reduction Act

In accordance with the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, the OMB approved the collections of information applicable to this rule: OMB Number 3067–0147, Report to Submit Technical or Scientific Data to Correct Mapping Deficiencies Unrelated to Community-Wide Elevation Determinations (Amendments & Revisions to National Flood Insurance Program Map).

Following is a summary of how each form will be used:

(a) *FEMA Form 81–87. Property Information.* This form describes the location of the property, what is being requested, and what data are required to support the request.

(b) *FEMA Form 81–87E. Credit Card Information.* This form outlines the information needed to process a request when the requester is paying processing fees by credit card.

(c) *FEMA Form 81–87A. Elevation Information.* This form indicates what the BFE for the property is, how the BFE was determined, the lowest ground elevation on the property, and/or the elevation of the lowest adjacent grade to any structures on the property. This information is required for FEMA to determine whether the property that is being requested to be removed from the SFHA is at or above the BFE.

(d) *FEMA Form 81–87C. Community Acknowledgment of Requests Involving Fill.* This form ensures that the participating community is aware of the revision request and that the requirements of § 60.3 have been met.

(e) *FEMA Form 81–87D. Summary of Elevations—Individual Lot Breakdown.* This form is used in conjunction with the Elevation Information Form for requests involving multiple lots or structures. It provides a table to allow the required submitted data to be presented in a manner for quick and efficient review.

The estimated burden on individual property owners is:

Property Information—1.63 hours
Credit Card Form—0.1 hour
Elevation Information—0.63 hour
Community Acknowledgment of Requests Involving Fill—0.88 hour
Summary of Elevations—Individual Lot Breakdown—0.67 hour

The number of requesters will vary from year to year, as we have no control over the number of people who will seek to have determinations made for their properties. For the purposes of this rule we estimate the following annual burdens:

Requesters—2,500
Hours per response—3.91
Total hours—9,775

Regulatory Flexibility Act, 5 U.S.C. 601

Under the Regulatory Flexibility Act agencies must consider the impact of their rulemakings on "small entities" (small businesses, small organizations and local governments). When an agency is required by 5 U.S.C. 553 to publish a notice of rulemaking, a regulatory flexibility analysis is required for both the notice and the final rule if the rulemaking could "have a significant economic impact on a substantial number of small entities." The Act also provides that if a regulatory flexibility analysis is not required, the agency must certify in the rulemaking document that the rulemaking will not "have a significant economic impact on a substantial number of small entities."

For the reasons that follow I certify that a regulatory flexibility analysis is not required for this rule because it would not have a significant economic impact on a substantial number of small entities. This rule is a clarification of existing policy and removes confusion and apparent inconsistencies in the current rule. We expect the rule to remove the current rule's adverse impact on property owners, including small entities. We expect the rule to enhance the ability of local officials to make sound floodplain management decisions more readily than under the current rule. We also expect the rule to reduce the administrative burden on property owners, including small entities. We further expect the rule will reduce certain building costs, without increasing the risks of flooding either to the owners or to the National Flood Insurance Program.

Executive Order 13132, Federalism

Executive Order 13132, Federalism, dated August 4, 1999, sets forth principles and criteria to which agencies must adhere in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

We have reviewed this rule under E.O.13132 and have concluded that the rule does not have federalism implications as defined by the Executive Order. As noted under Regulatory Planning and Review, this rule changes the criteria that we would use to determine whether we can issue a LOMR or LOMR–F to remove unimproved land or land with structures from the SFHA by raising ground elevations using engineered earthen fill. We know of no substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government that would result from this rule.

The OMB has reviewed this rule under the provisions of Executive Order 13132.

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List of Subjects in 44 CFR Part 65

Flood insurance, Reporting and recordkeeping requirements.

Accordingly, amend 44 CFR part 65 as follows:

PART 65—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Amend § 65.2 by adding paragraph (c) to read as follows:

§ 65.2 Definitions.

* * * * *

(c) For the purposes of this part, "reasonably safe from flooding" means base flood waters will not inundate the land or damage structures to be removed from the SFHA and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

3. Revise § 65.5 to read as follows:

§ 65.5 Revision to special hazard area boundaries with no change to base flood elevation determinations.

(a) *Data requirements for topographic changes.* In many areas of special flood hazard (excluding V zones and floodways) it may be feasible to elevate areas with engineered earthen fill above the base flood elevation. Scientific and technical information to support a request to gain exclusion from an area of special flood hazard of a structure or parcel of land that has been elevated by the placement of engineered earthen fill will include the following:

(1) A copy of the recorded deed indicating the legal description of the property and the official recordation information (deed book volume and page number) and bearing the seal of the appropriate recordation official (*e.g.*, County Clerk or Recorder of Deeds).

(2) If the property is recorded on a plat map, a copy of the recorded plat indicating both the location of the property and the official recordation information (plat book volume and page number) and bearing the seal of the appropriate recordation official. If the property is not recorded on a plat map, FEMA requires copies of the tax map or other suitable maps to help in locating the property accurately.

(3) A topographic map or other information indicating existing ground elevations and the date of fill. FEMA's determination to exclude a legally defined parcel of land or a structure from the area of special flood hazard will be based upon a comparison of the base flood elevations to the lowest ground elevation of the parcel or the lowest adjacent grade to the structure. If the lowest ground elevation of the entire legally defined parcel of land or the lowest adjacent grade to the structure are at or above the elevations of the base flood, FEMA will exclude the parcel and/or structure from the area of special flood hazard.

(4) Written assurance by the participating community that they have complied with the appropriate minimum floodplain management requirements under § 60.3. This includes the requirements that:

(i) Existing residential structures built in the SFHA have their lowest floor elevated to or above the base flood;

(ii) The participating community has determined that the land and any existing or proposed structures to be removed from the SFHA are "reasonably safe from flooding", and that they have on file, available upon request by FEMA, all supporting analyses and documentation used to make that determination;

(iii) The participating community has issued permits for all existing and proposed construction or other development; and

(iv) All necessary permits have been received from those governmental agencies where approval is required by Federal, State, or local law.

(5) If the community cannot assure that it has complied with the appropriate minimum floodplain management requirements under § 60.3, of this chapter, the map revision request will be deferred until the community remedies all violations to the maximum extent possible through coordination with FEMA. Once the remedies are in place, and the community assures that the land and structures are "reasonably safe from flooding," we will process a revision to the SFHA using the criteria set forth in § 65.5(a). The community must maintain on file, and make available upon request by FEMA, all supporting analyses and documentation used in determining that the land or structures are "reasonably safe from flooding."

(6) Data to substantiate the base flood elevation. If we complete a Flood Insurance Study (FIS), we will use those data to substantiate the base flood elevation. Otherwise, the community may submit data provided by an authoritative source, such as the U.S. Army Corps of Engineers, U.S. Geological Survey, Natural Resources Conservation Service, State and local water resource departments, or technical data prepared and certified by a registered professional engineer. If base flood elevations have not previously been established, we may also request hydrologic and hydraulic calculations.

(7) A revision of floodplain delineations based on fill must demonstrate that any such fill does not result in a floodway encroachment.

(b) *New topographic data.* A community may also follow the procedures described in paragraphs (a)(1) through (6) of this section to request a map revision when no physical changes have occurred in the area of special flood hazard, when no fill has been placed, and when the natural ground elevations are at or above the elevations of the base flood, where new topographic maps are more detailed or more accurate than the current map.

(c) *Certification requirements.* A registered professional engineer or licensed land surveyor must certify the items required in paragraphs (a)(3) and (6) and (b) of this section. Such certifications are subject to the provisions under § 65.2.

(d) *Submission procedures.* Submit all requests to the appropriate address serving the community's geographic area or to the FEMA Headquarters Office in Washington, DC.

4. Amend § 65.6 by adding paragraphs (a)(14) and (15) as follows:

§ 65.6 Revision of base flood elevation determinations.

(a) * * *

(14) The participating community must provide written assurance that they have complied with the appropriate minimum floodplain management requirements under § 60.3 of this chapter. This includes the requirements that:

(i) Existing residential structures built in the SFHA have their lowest floor elevated to or above the base flood;

(ii) The participating community has determined that the land and any existing or proposed structures to be removed from the SFHA are "reasonably safe from flooding," and that they have on file, available upon request by FEMA, all supporting analyses and documentation used to make that determination;

(iii) The participating community has issued permits for all existing and proposed construction or other development; and

(iv) All necessary permits have been received from those governmental agencies where approval is required by Federal, State, or local law.

(15) If the community cannot assure that it has complied with the appropriate minimum floodplain management requirements under § 60.3, of this chapter the map revision request will be deferred until the community remedies all violations to the maximum extent possible through coordination with FEMA. Once the remedies are in place, and the community assures that the land and structures are "reasonably safe from flooding," we will process a revision to the SFHA using the criteria set forth under § 65.6. The community must maintain on file, and make available upon request by FEMA, all supporting analyses and documentation used in determining that the land or structures are "reasonably safe from flooding."

* * * * *

Dated: April 30, 2001.

Joe M. Allbaugh,

Director.

[FR Doc. 01–11156 Filed 5–3–01; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067–AD20

Disaster Assistance; Public Assistance Program and Community Disaster Loan Program

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim final rule.

SUMMARY: We, FEMA, are publishing an interim final rule to implement portions of the Disaster Mitigation Act of 2000 that affect large in-lieu contributions (alternate projects), irrigation facilities, critical/non-critical private nonprofit facilities, and community disaster loans.

DATE: Effective October 30, 2000. Comments on this interim final rule should be received by July 3, 2001.

ADDRESSES: Please send any comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, room 840, 500 C Street, SW., Washington, DC 20472, or (fax) (202) 646–4536, or (email) *rules@fema.gov.*

FOR FURTHER INFORMATION CONTACT: Margaret Earman, Response and Recovery Directorate, Federal Emergency Management Agency, room 401, 500 C Street, SW., Washington, DC 20472, or call (202) 646–4172 or (email) *margie.earman@fema.gov.*

SUPPLEMENTARY INFORMATION:

Large in-lieu contributions. The Disaster Mitigation Act of 2000 (DMA 2000), Pub. L. 106–390, 114 Stat. 1552 *et seq.*, amended the Federal contribution for Large in Lieu Contributions, which is known as "alternate projects" and is authorized under section 406(c) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5172, from 90 percent of the Federal share of the Federal estimate to 75 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility. There is an exception to this change for publicly-owned or -controlled facilities. When a State or local government applicant selects an alternate project because unstable soil at the site of the damaged facility makes repair or restoration of that facility infeasible, the Federal contribution remains at 90 percent. The soil conditions at the project site, which make restoration infeasible, will be established in a geo-technical report that the applicant must submit. All alternate projects are still approved on a project-by-project basis.

Irrigation facilities. The DMA 2000 amended section 102(9) of the Stafford Act, 42 U.S.C 5122 to add "irrigation" to the definition of private nonprofit (PNP) facilities. However, not all PNP irrigation facilities are eligible for assistance. The legislative history indicates that eligible irrigation facilities include those that supply water for "essential services of a governmental nature to the general public" (which is the requirement for any PNP to be eligible), such as fire suppression, generating and supplying electricity, and drinking water supply. They do *not* include those that supply water for agricultural purposes. If an irrigation system serves both eligible and ineligible purposes, assistance for those portions that serve both purposes will be prorated on the basis of the proportional share of water used. For those portions that serve an eligible purpose exclusively, all disaster-related damages to that portion would be eligible. Those portions serving an ineligible purpose exclusively will not be eligible.

Critical/non-critical PNP facilities. Under section 406(a)(3) of the Stafford Act, 42 U.S.C. 5172, as amended by the DMA 2000 and before receiving assistance under the Stafford Act certain non-critical PNP facilities must apply first to the Small Business Administration (SBA) for a disaster loan for permanent restoration work in those disasters when the SBA activates its disaster loan program. DMA 2000 defines those critical services where the owner or operator need not apply to SBA to include: Water (including water provided by an irrigation organization or facility as discussed above), sewer, wastewater treatment, communications, and emergency medical care. We propose to add fire department services, emergency rescue, and nursing homes to the list of critical services. Communication services means transmission, switching and distribution of telephone traffic. Emergency medical care includes essential direct patient care to persons and includes hospitals, clinics, outpatient services, and nursing homes. Owners and operators of these critical service facilities may apply directly to FEMA for assistance.

Other eligible, but non-critical, PNP facility owners or operators must apply to SBA for a disaster loan, and if SBA declines their application they may apply to FEMA for a grant. In addition, if the maximum loan for which they are eligible does not cover all eligible damages, they may apply to FEMA for the excess damages. The requirement for owners or operators of non-critical facilities to go first to SBA applies only to permanent restoration work. All eligible PNP facility owners and operators may make requests for assistance for debris removal and emergency protective measures directly to FEMA.

Community Disaster Loans. The DMA 2000 made two amendments to the Community Disaster Loan (CDL) program, section 417 of the Stafford Act, 42 U.S.C. 5184. The DMA 2000 sets a cap of $5,000,000 on the amount of any community disaster loan that FEMA might make, and states that a local government will not be eligible for further community disaster loan assistance if the community is in arrears on any required repayment of a previous community disaster loan. We propose to amend 44 CFR 206.361 and 206.363 to reflect these statutory changes.

Administrative Procedure Act Statement

This interim final rule implements certain mandatory provisions of the Disaster Mitigation Act of 2000 that relate to the Public Assistance Program and the Community Disaster Loan Program, provisions that the Congress intended to go into effect upon enactment. In keeping with that intent, we are making this rule retroactively effective as of the date of enactment, October 30, 2000, for all disasters declared on or after that date. We seek and invite public comments, nevertheless, on this interim final rule,

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which we will consider in our preparation of the final rule. Accordingly, under the authority of 5 U.S.C. 553(b)(3)(B), I find that notice and public procedure on this interim final rule are impracticable and contrary to the public interest.

National Environmental Policy Act (NEPA)

NEPA imposes requirements for considering the environmental impacts of agency decisions. It requires that an agency prepare an Environmental Impact Statement (EIS) for "major federal actions significantly affecting the quality of the human environment." If an action may or may not have a significant impact, the agency must prepare an environmental assessment (EA). If, as a result of this study, the agency makes a Finding of No Significant Impact (FONSI), no further action is necessary. If it will have a significant effect, then the agency uses the EA to develop an EIS.

Categorical Exclusions. Agencies can categorically identify actions (for example, repair of a building damaged by a disaster) that do not normally have a significant impact on the environment. The purpose of this interim final rule is to amend our Stafford Act rules to incorporate part of the changes mandated by the Disaster Mitigation Act of 2000 for the Public Assistance Program and for Community Disaster Loans. Accordingly, we have determined that this rule is excluded from the preparation of an environmental assessment or environmental impact statement under 44 CFR 10.8(d)(2)(ii), where the rule is related to actions that qualify for categorical exclusion. The changes reflected in this rule are exempt from NEPA because they reflect administrative changes to the programs that have no potential to affect the environment. We would perform an environmental review under 44 CFR part 10, Environmental Considerations, on each proposed project that we would fund and implement under the authorities covered in this rule.

Paperwork Reduction Act

This rule is not subject to the provisions of the Paperwork Reduction Act. It does not require any new information collections and therefore would not revise the number and types of responses, frequency, and burden hours.

Regulatory Planning and Review

We have prepared and reviewed this interim final rule under the provisions of Executive Order 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This interim final rule implements certain mandatory provisions of the Disaster Mitigation Act of 2000 that relate to the Public Assistance Program and the Community Disaster Loan Program. The authorities mandated would not of themselves have an annual effect on the economy of $100 million or more. We anticipate that the impacts of the alternate projects provision will be neutral, expecting that the savings from reducing the Federal share of the Federal estimate from 90 percent to 75 percent will be offset by fewer applications for assistance under this authority. We do not anticipate any change in costs by adding irrigation facilities to the definition of eligible private nonprofit facilities inasmuch as the rule reflects the statute and codifies our current policy and practices. Most of the private nonprofit organizations that will have to apply for SBA disaster loans before being eligible to apply for FEMA disaster assistance have damages well below the SBA loan limit of $1,500,000. We do not expect this provision will have an impact of $100,000,000 or more per year. Finally, we do not anticipate that savings from amendments to the Community Disaster Loan provision will exceed $100,000,000 over a several-year period—our experience is that disaster loan forgiveness rates are between 60 and 70 percent. Over the last 25 years, the annual amount of money forgiven has been an average of $2.7 million.

We know of no conditions that would qualify the rule as a "significant regulatory action" within the definition of section 3(f) of the Executive Order. To the extent possible this rule adheres to the principles of regulation as set forth in Executive Order 12866. The Office of Management and Budget has not reviewed this rule under the provisions of Executive Order 12866.

Executive Order 13132, Federalism

Executive Order 13132 sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

We have reviewed this interim final rule under Executive Order 13132 and have determined that the rule does not have federalism implications as defined by the Executive Order. The rule would define and establish the conditions and criteria under which FEMA would grant public assistance and make community disaster loans. The rule would in no way that we foresee affect the distribution of power and responsibilities among the various levels of government or limit the policymaking discretion of the States.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Community facilities, Disaster Assistance, Grant programs, Loan programs, Reporting and recordkeeping requirements.

Accordingly, amend 44 CFR Part 206 as follows:

1. The authority citation of part 206 continues to read:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

2. Amend § 206.203 as follows:

(a) Redesignate paragraphs (d)(2)(iii) and (d)(2)(iv) as paragraphs (d)(2)(iv) and (d)(2)(v); and

(b) Revise paragraph (d)(2)(ii) and add new paragraph (d)(2)(iii) to read as follows:

§ 206.203 Federal grant assistance.

* * * * *

(d) *Funding options*—* * *

(2) *Alternate projects.* * * *

(ii) Federal funding for such alternate projects will be 75 percent of the Federal share of the approved Federal estimate of eligible costs.

(iii) If soil instability at the alternate project site makes the repair, restoration or replacement of a State or local government-owned or -controlled facility infeasible, the Federal funding for such an alternate project will be 90 percent of the Federal share of the approved Federal estimate of eligible costs.

* * * * *

3. Amend § 206.221 as follows:

(a) Redesignate paragraphs (e)(3) through (e)(6) as paragraphs (e)(4) through (e)(7); and

(b) Add new paragraph (e)(3) to read as follows:

§ 206.221 Definitions.

* * * * *

(e) *Private nonprofit facility* * * *

(3) *Irrigation facility* means those facilities that provide water for essential services of a governmental nature to the general public. Irrigation facilities include water for fire suppression, generating and supplying electricity, and drinking water supply; they do not include water for agricultural purposes.

* * * * *

4. Amend § 203.226 as follows:

(a) Redesignate paragraphs (b) through (i) as paragraphs (c) through (j); and

(b) Add new paragraph (b) to read as follows:

§ 206.226 Restoration of damaged facilities.

* * * * *

(b) *Private nonprofit facilities.* Eligible private nonprofit facilities may receive funding under the following conditions:

(1) The facility provides critical services, which include power, water (including water provided by an irrigation organization or facility in accordance with § 206.221(e)(3)), sewer services, wastewater treatment, communications, emergency medical care, fire department services, emergency rescue, and nursing homes; or

(2) The private nonprofit organization not falling within the criteria of § 206.226(b)(1) has applied for a disaster loan under section 7(b) of the Small Business Act (15 U.S.C.636(b)) and

(i) The Small Business Administration has declined the organization's application; or

(ii) Has eligible damages greater than the maximum amount of the loan for which it is eligible, in which case the excess damages are eligible for FEMA assistance.

* * * * *

5. Revise § 206.361(b) to read as follows:

§ 206.361 Loan program.

* * * * *

(b) *Amount of loan.* The amount of the loan is based upon need, not to exceed 25 percent of the operating budget of the local government for the fiscal year in which the disaster occurs, but shall not exceed $5 million. The term *fiscal year* as used in this subpart means the local government's fiscal year.

* * * * *

6. Revise § 206.363(b)(1) to read as follows:

§ 206.363 Eligibility criteria.

* * * * *

(b) *Loan eligibility*—(1) *General.* To be eligible, the local government must show that it may suffer or has suffered a substantial loss of tax and other revenues as a result of a major disaster or emergency, must demonstrate a need for financial assistance in order to perform its governmental functions, and must not be in arrears with respect to any payments due on previous loans. Loan eligibility is based on the financial condition of the local government and a review of financial information and supporting documentation accompanying the application.

* * * * *

Dated: April 30, 2001.

Joe M. Allbaugh,

Director.

[FR Doc. 01–11155 Filed 5–3–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[WT Docket No. 97–207; FCC 01–125]

Calling Party Pays Service Offering in the Commercial Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule, petition for reconsideration.

SUMMARY: This document denies a petition for reconsideration of a previous Declaratory Ruling in this proceeding. This decision also terminates this proceeding regarding calling party pays service offering without taking any specific action on the issues raised in the proceeding.

FOR FURTHER INFORMATION CONTACT: Joseph A. Levin or David H. Siehl, 202–418–1310; [TTY: 202–418–7233].

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order on Reconsideration and Order Terminating Proceeding in WT Docket No. 97–207, FCC 01–125, adopted April 9, 2001, and released April 13, 2001. The complete text of the released document is available on the Commission's Internet site, at *www.fcc.gov*. The full text is also available for inspection and copying during normal business hours in the FCC Reference Information Center (Courtyard level), 445 12th Street, SW., Washington, DC 20554, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), (202) 857–3800, 445 12th Street, SW., CY–B400, Washington, DC 20054.

Synopsis of Memorandum Opinion and Order on Reconsideration and Order Terminating Proceeding

1. This Memorandum Opinion and Order on Reconsideration and Order Terminating Proceeding (MO&O) denies a Petition for Reconsideration of the Declaratory Ruling and Notice of Proposed Rulemaking in this proceeding (64 FR 38313, July 16, 1999; 64 FR 38396, July 16, 1999) regarding calling party pays service, and terminates the proceeding without action.

2. The Ohio Public Utilities Commission (Ohio Petition) alleges that the Declaratory Ruling contains ambiguous and potentially conflicting conclusions that should be clarified. As discussed in paragraphs 7 through 19 of the MO&O, because the Commission's rules permit parties to file petitions for reconsideration only for final rules, the MO&O considers only that part of the Ohio Petition which argues that calling party pays is not properly classified as a commercial mobile radio service because it does not meet the interconnected service criteria. The Commission denies the Ohio Petition, finding that calling party pays service is an interconnected for profit service to the public and, therefore, constitutes commercial mobile radio service under the Communications Act.

3. The MO&O also terminates the calling party pays proceeding without taking action. The MO&O, in paragraphs 20–24 of the full text of the MO&O, finds that it is unclear that regulatory intervention by the Commission is warranted. The Commission emphasizes, however, that the existing rules do not prevent a carrier from offering a calling party pays service to its subscribers. In terminating this

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proceeding, the Commission removes any remaining regulatory uncertainty regarding calling party pays occasioned by the pendency of the proceeding.

Ordering Clauses

4. The Petition for Reconsideration of the Declaratory Ruling in this proceeding, filed by the Public Utility Commission of Ohio on August 16, 1999, is denied.

5. The proceeding is terminated without further action.

6. This action is taken pursuant to sections 1, 4(i), 7, 201, 202, 303(r), and 332 of the Communications Act of 1934 as amended, 47 U.S.C. 151, 154(i), 157, 201, 202, 303(r), 332.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–11169 Filed 5–3–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 97–213; FCC 01–126]

Communications Assistance for Law Enforcement Act

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: In this document the Commission responds to petitions for reconsideration of previous Commission decisions in this proceeding which implements the Communications Assistance for Law Enforcement Act (CALEA). The Commission makes minor revisions to the Commission's rules to clarify the arrangements telecommunications carriers subject to CALEA must make to ensure that law enforcement agencies can contact them when necessary, and to clarify the interception activity that triggers a record keeping requirement. The Commission makes additional clarifications without altering the rules, but otherwise denies the requests for reconsideration.

DATES: Effective June 4, 2001.

FOR FURTHER INFORMATION CONTACT: John Spencer or Susan Kimmel, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Order on Reconsideration (Second Order) in CC Docket No. 97–213; FCC 01–126, adopted April 9, 2001, and released April 16, 2001. The complete text of this Second Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), CY–B400, 445 12th Street, SW., Washington, DC.

Synopsis of the Second Order on Reconsideration

1. This Second Order on Reconsideration (Second Order) resolves two petitions for reconsideration of the Report and Order (R&O) in this proceeding (64 FR 51462, September 23, 1999) and one petition for reconsideration of the Second Report and Order (Second R&O) in this proceeding (64 FR 55164, October 12, 1999). These decisions implemented sections 102, 105, and 301 of the Communications Assistance for Law Enforcement Act (CALEA) (Communications Assistance for Law Enforcement Act, Public Law 104–414, 108 Stat. 4279, 1994.) The Second Order makes minor revisions to 47 CFR 64.2103 and 64.2104 to clarify the arrangements telecommunications carriers subject to CALEA must make to ensure that law enforcement agencies can contact them when necessary, and the interception activity that triggers a record keeping requirement. The Second Order makes additional clarifications without altering the Commission's rules, but otherwise denies the requests for reconsideration.

2. The U.S. Department of Justice and the Federal Bureau of Investigation (FBI) seek stronger personnel security measures than those adopted in the First R&O, in order to "ensure the trustworthiness of the private-company employees who have become increasingly responsible for implementing electronic surveillance." As discussed in paragraphs 4 through 14 of the Second Order, the Commission denies the FBI's request. However, the Commission encourages carriers to consider voluntarily adopting, as internal procedures, measures to respond to the concerns presented by the FBI, as appropriate, and making them part of their systems security and integrity (SSI) policies and procedures.

3. The FBI also proposes a requirement that carriers generate an automated message that would permit law enforcement agencies (LEAs) to confirm periodically that the software used to conduct an interception is working correctly and is accessing the equipment, facilities, or services of the correct subscriber. The Commission, as detailed in paragraphs 15 through 17 of the Second Order, similarly denies this proposal. In so doing, however, the Commission notes that "there is nothing that would prevent carriers from providing this capability either on a voluntary basis or with compensation from LEAs."

4. The FBI next asks the Commission to modify the rules, adopted in the R&O requiring that carriers report acts of unauthorized electronic surveillance that occur on their premises and compromises of their SSI procedures involving the execution of electronic surveillance "within a reasonable period of time upon discovery." The FBI recommends that the Commission modify the rule to require reporting "as soon after discovery as is reasonable in light of privacy and safety concerns and the needs of law enforcement." The Commission, as indicated in paragraphs 18 through 20 of the Second Order, shares the FBI's concern about the importance of prompt reporting of systems security breaches and expects carriers to report breaches with due diligence and dispatch. However, in the absence of significant problems to date, the Commission declines to adopt additional factors to further define how quickly a carrier should report a security breach to law enforcement.

5. The FBI seeks modification of the Commission's record keeping requirement in 47 CFR 64.2104(a)(1), pertaining to the commencement of interceptions. Specifically, FBI argues that the current language could lead to interpretations when the circuit is open for the duration of "multiple intercepts, the carrier's records of these various intercepts would all show the same 'start date and time,' " as opposed to recording individual interceptions. Thus, FBI asks the Commission to modify the phrase in § 64.2104(a)(1) from "date and time of the opening of the circuit" to "date and time at which the interception of communications or access to call identifying information was enabled." The Commission, in paragraphs 21 through 24 of the Second Order, grants the FBI's request and modifies the rules accordingly with slight modification.

6. The National Telephone Cooperative Association (NCTA) asks that the Commission clarify the language of 47 CFR 64.2103 "to make it obvious that a single person in not responsible for being law enforcement's point of contact[for CALEA matters], 24 hours a day, 7 days a week." The Commission agrees with NCTA and, as indicated in paragraphs 25 through 28 of the Second Order, modifies § 64.2102 accordingly. The Commission additionally makes two other clarifications regarding carrier SSI policies and procedures. First, the Commission revises § 64.2103 to require carriers to place their information regarding responsible personnel and contacts in a separate appendix to their SSI policies and procedures. Second, the Commission clarifies that it will routinely make available to law enforcement agencies the carriers' responsible personnel and contact information. Finally, as discussed in paragraph 31 of the Second, Order, the Commission declines to adopt other FBI proposals contained in its late-filed supplement.

7. The Commission, in paragraphs 32 through 34 of the Second Order, denies NCTA's request that the Commission exempt small, rural telephone companies from the requirement to file with the Commission the policies and procedures they use to comply with the systems security and integrity rules. The Commission notes that small entitities have the flexibility to tailor their policies and procedures to its own unique circumstances.

8. Finally, as discussed in paragraphs 35 through 38 of the Second Order, FBI, in its petition for reconsideration and/or clarification of the Second R&O asks the Commission to clarify carriers' responsibility for CALEA compliance in resale situations. The Second R&O held that as telecommunications carriers, resellers are generally subject to all provisions of CALEA, but that "resellers' responsibility under CALEA should be limited to their own facilities." FBI is concerned that law enforcement might be effectively disabled from enforcing CALEA's assistance capability obligations in certain resale situations. The FBI asks that the Commission clarify either that (1) a carrier that sells telecommunications services to a reseller is itself a "telecommunications carrier" under CALEA with respect to such services; or (2) if an underlying facilities-based service provider is not a "telecommunications carrier," the reseller remains responsible in full for ensuring that the telecommunications services it provides to the public, and the equipment and facilities involved in providing that service, are CALEA-compliant. The Second Order clarifies that the language in the Second R&O regarding resellers exempts them from CALEA to the extent that they resell services of other, facilities-based carriers. The Commission clarifies that that decision was premised on the obligations of the underlying facilities-based carriers to comply with CALEA. Thus, to the extent that a reseller resells services or relies on facilities or equipment of an entity that is not a telecommunications carrier for purposes of the CALEA and thus is not subject to CALEA's assistance capability requirements, the Commission did not intend to exempt the reseller from its overall obligation to ensure that its services satisfy all the assistance capability requirements of section 103.

Final Regulatory Flexibility Act Certification

9. The First Report and Order in this proceeding incorporated a Final Regulatory Flexibility Analysis of the effect on small entities of the CALEA rules adopted at that time, and the Second Report and Order incorporated a Final Regulatory Flexibility Analysis of the effect on small entities of the actions taken therein, which did not include CALEA rules. The Regulatory Flexibility Act of 1980, as amended (RFA) requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities." (The RFA, 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration.

10. This Second Order on Reconsideration does not make major revisions to the existing CALEA rules or enact new requirements, but does make minor revisions to 47 CFR 64.2103 and 64.2104. First, it clarifies the arrangements that telecommunications carriers subject to CALEA must make to ensure that law enforcement agencies can contact them when necessary, by requiring the use of a "pull-off" page for submitting contact information to the Commission. Second, it clarifies the definition of the interception activity that triggers a record keeping requirement. Neither change requires the collection of additional information or increases the frequency of record keeping, and the cost of complying with these revisions is nominal. Third, it clarifies without rule change that resellers are not exempt from the obligation to ensure that their services satisfy all the assistance capability requirements of section 103 of CALEA. As such, this action imposes no reporting, recordkeeping or other compliance requirement beyond those imposed by CALEA itself. Accordingly, the Commission certifies, pursuant to section 605(b), that the rule revisions adopted in this Second Order on Reconsideration will not have a significant economic impact on a substantial number of small entities.

11. The Commission will send a copy of the Second Order on Reconsideration, including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. The Commission will also send a copy of the Second Order on Reconsideration, including this final certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Paperwork Reduction Act of 1995 Analysis

12. This Second Order does not contain a new information collection, but only requires a change of format for future submissions of a carrier's SSI filing. Specifically, as described in paragraph 24, and in conformance with revised § 64.2103(b)(4) of the Commission's rules, 47 CFR 64.2103(b)(4), point of contact information must appear in a separate appendix attached to the SSI report.

13. This action is taken pursuant to sections 1, 2, 4(i) and (j), 201, 229, 303(f) and (r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i) and (j), 201, 229, 303(f) and (r), and 332.

Ordering Clauses

14. Part 64 of the Commission's rules is amended.

15. The rule amendments made by this Second Order shall become effective June 4, 2001. *It Is Further Ordered* that the Consumer Information Bureau, Reference Operations Division, *shall send* a copy of this Second Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

16. The DOJ/FBI Motion to File Consolidated Reply to Oppositions to Petition for Reconsideration Exceeding Ten Pages in Length is granted.

17. The Motion for Acceptance of Supplemental Comments filed by the

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Department of Justice/Federal Bureau of Investigation is granted.

18. The Petition for Reconsideration of section 105 Report and Order filed by the Department of Justice/Federal Bureau of Investigation is granted to the extent indicated herein, and is otherwise denied.

19. The Petition for Reconsideration and/or Clarification filed by the National Telephone Cooperative Association is granted to the extent indicated herein, and is otherwise denied.

20. The Petition for Reconsideration and/or Clarification filed by the Department of Justice/Federal Bureau of Investigation is granted to the extent indicated herein, and is otherwise denied.

List of Subjects in 47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 47 U.S.C. 225, 47 U.S.C. 251(e)(1), 151, 154, 201, 202, 205, 218–220, 254, 302, 303, and 337, unless otherwise noted. Interpret or apply section 201, 218, 225, 226, 227, 229, 332, 48 Stat. 1070, as amended, 47 U.S.C. 201–204, 208, 225, 226, 227, 229, 332, 501 and 503 unless otherwise noted.

2. Section 64.2103 is revised to read as follows:

§ 64.2103 Policies and procedures for employee supervision and control.

A telecommunications carrier shall:

(a) Appoint a senior officer or employee responsible for ensuring that any interception of communications or access to call-identifying information effected within its switching premises can be activated only in accordance with a court order or other lawful authorization and with the affirmative intervention of an individual officer or employee of the carrier.

(b) Establish policies and procedures to implement paragraph (a) of this section, to include:

(1) A statement that carrier personnel must receive appropriate legal authorization and appropriate carrier authorization before enabling law enforcement officials and carrier personnel to implement the interception of communications or access to call-identifying information;

(2) An interpretation of the phrase "appropriate authorization" that encompasses the definitions of appropriate legal authorization and appropriate carrier authorization, as used in paragraph (b)(1) of this section;

(3) A detailed description of how long it will maintain its records of each interception of communications or access to call-identifying information pursuant to § 64.2104;

(4) In a separate appendix to the policies and procedures document:

(i) The name and a description of the job function of the senior officer or employee appointed pursuant to paragraph (a) of this section; and

(ii) Information necessary for law enforcement agencies to contact the senior officer or employee appointed pursuant to paragraph (a) of this section or other CALEA points of contact on a seven days a week, 24 hours a day basis.

(c) Report to the affected law enforcement agencies, within a reasonable time upon discovery:

(1) Any act of compromise of a lawful interception of communications or access to call-identifying information to unauthorized persons or entities; and

(2) Any act of unlawful electronic surveillance that occurred on its premises.

3. Section 64.2104 is amended by revising paragraph (a)(1)(ii) to read as follows:

§ 64.2104 Maintaining secure and accurate records.

(a) * * *

(1) * * *

(ii) The start date and time that the carrier enables the interception of communications or access to call identifying information;

* * * * *

[FR Doc. 01–11168 Filed 5–3–01; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1078, MM Docket No. 01–30, RM–10042]

Digital Television Broadcast Service; Bozeman, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of KCTZ Communications, Inc., licensee of station KBZK(TV), substitutes DTV channel 13 for DTV channel 16 at Bozeman, Montana. *See* 66 FR 9062, February 6, 2001. DTV channel 13 can be allotted to Bozeman in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (45–40–24 N. and 110–52–02 W.) with a power of 160, HAAT of 305 meters and with a DTV service population of 79 thousand. Since the community of Bozeman is located within 400 kilometers of the U.S.-Canadian border, concurrence by the Canadian government has been obtained for this allotment.

With this action, this proceeding is terminated.

DATES: Effective June 15, 2001.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–30, adopted April 27, 2001, and released May 1, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Montana, is amended by removing DTV channel 16 and adding DTV channel 13 at Bozeman.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01–11173 Filed 4–3–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 01–1018; MM Docket No. 92–214; RM–8062, 8144, 8145, 8146 & 8147]

Radio Broadcasting Services; Columbia, Bourbon, Leasburg, Gerald, Dixon and Cuba, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This document takes action on two separately filed petitions for reconsideration of the Report and Order in MM Docket No. 92–214. *See* 60 FR 62219, published December 5, 1995. The Commission dismissed as moot the petition for reconsideration filed by Lake Broadcasting, Inc., licensee of Station KBMX(FM), Channel 270A, Eldon, Missouri, and permittee for Station KFXE(FM), Channel 271A, Cuba, Missouri. The Commission dismissed Lake's petition for reconsideration following the denial of certiorari by the U.S. Supreme Court in Lake's appeal of the revocation of its licenses and construction permits. *See Contemporary Media, Inc., et al., v. Federal Communications Commission,* 214 F.3d 187 (D.C. Cir 2000), *cert. denied,* 532 U.S. _____ (2001). Michael Rice, Lake's sole owner and president, had been convicted of the felonies of deviate sexual conduct and sodomy of minors. Lake and other licensees owned or controlled by Rice also made repeated misrepresentations to the Commission as to Rice's continued involvement with their stations.

The Commission also denies the petition for reconsideration filed by Central Missouri Broadcasting, Inc. Central Missouri failed to provide information demonstrating that the allotment of Channel 221A at Dixon, Missouri, was an unusable channel or that the public interest would be better served by the allotment of Channel 243A in lieu of Channel 221A at Dixon.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, MM Docket No. 92–214, adopted April 16, 2001, and released April 20, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–11177 Filed 5–3–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1017; MM Docket No. 91–352; RM–7866]

Radio Broadcasting Services; Ava, Branson and Mountain Grove, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: The Commission dismissed as moot the petition for reconsideration filed by Lake Broadcasting, Inc., licensee of Station KBMX(FM), Channel 270A, Eldon, Missouri, and permittee for Station KFXE(FM), Channel 271A, Cuba, Missouri. Lake has requested reconsideration of the *Report and Order,* 60 FR 62220, published December 5, 1995. The Commission dismissed Lake's petition for reconsideration following the denial of certiorari by the U.S. Supreme Court in Lake's appeal of the revocation of its licenses and construction permits. *See Contemporary Media, Inc., et al.,* v. *Federal Communications Commission,* 214 F.3d 187 (D.C. Cir 2000), *cert. denied,* 532 U.S. _____ (2001). Michael Rice, Lake's sole owner and president, had been convicted of the felonies of deviate sexual conduct and sodomy of minors. Lake and other licensees owned or controlled by Rice also made repeated misrepresentations to the Commission as to Rice's continued involvement with their stations. With this action, the proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, MM Docket No. 91–352, adopted April 16, 2001, and released April 20, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–11175 Filed 5–3–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–968, MM Docket No. 00–134; RM–9922, RM–10023]

Radio Broadcasting Services; Brighton and Stowe, VT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of Linda A. Davidson, this document allots Channel 295A to Brighton, Vermont. This document also denies a counterproposal filed by Radio Vermont Classics, L.L.C. to upgrade Station WCVT, Channel 269A, Stowe, Vermont, to specify operation on Channel 269C3. *See* 65 FR 51575, published August 24, 2000. The reference coordinates for the Channel 295A allotment at Brighton, Vermont, are 44–49–44 and 71–54–45. Canadian concurrence in the allotment of this channel has been requested but not yet received. Therefore, if a construction permit is issued , it may be conditioned on concurrence from the Canadian government. A filing window for the Channel 295A allotment at Brighton, Vermont, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order. With this action, the proceeding is terminated.

DATES: Effective June 5, 2001.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* in MM Docket No. 00–134, adopted April 11, 2001, and released April 20, 2001. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information

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Center at Portals II, CY–A257, 445 12th Street, SW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, D.C. 20036.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Vermont, is amended by adding Brighton, Channel 295A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch Policy and Rules Division Mass Media Bureau.

[FR Doc. 01–11170 Filed 5–3–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1065; MM Docket No. 00–123, RM 9903]

Radio Broadcasting Services; Rincon, PR.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document denies a Petition for Reconsideration filed by Jose J. Arzuaga, Jr., d/b/a Ocean Communications directed to the *Report and Order* in this proceeding which denied a proposal for a Channel 300B allotment at Rincon, Puerto Rico. *See* 66 FR 10658, February 16, 2001. With this action, the proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 00–123, adopted April 18, 2001, and released April 24, 2001. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3805, 1231 M Street, NW., Washington, DC 20036.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–11171 Filed 5–3–01; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1016; MM Docket No. 90–195, RM–7152]

Radio Broadcasting Services; Brookline, Missouri

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This document dismisses as moot a Petition for Reconsideration filed by Lake Broadcasting, licensee of Station KBMX(FM), Channel 270A, Eldon, Missouri and permittee of Station KFXE(FM), Channel 271A, Cuba Missouri, of the *Report and Order* in this proceeding, which allotted Channel 271 at Brookline, Missouri, as a first local service. *See* 60 FR 62219 published December 5, 1995. Lake had argued that the Brookline allotment prejudices Lake's reconsideration petition in MM Docket 89–120 for an upgrade of its Eldon station, but the staff ruled that the Brookline petition was moot in view of the Commission's revocation of Lake's license for its Eldon and other stations, the affirmance by the U.S. Court of Appeals for the DC Circuit, and the denial of certirorari by the U.S. Supreme Court and in view of the Commission's dismissal of Lake's reconsideration petition in MM Docket 89–120. This document also denies Lake's motion to set aside the *Report and Order*, holding that the Brookline allotment is valid even though the original rulemaking proponent did not file an application for the allotment because four other parties did file applications. With this action, the proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Andrew Rhodes, Mass Media Bureau (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 90–195, adopted April 11, 2001, and released April 20, 2001. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3805, 1231 M Street, NW., Washington, DC 20036.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–11176 Filed 5–3–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 000218048–1095–03; I.D. 013100A]

RIN 0648–AN59

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Naval Activities

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS, upon application from the U.S. Navy is issuing regulations to govern the unintentional take of a small number of marine mammals incidental to shock testing the USS WINSTON S. CHURCHILL (DDG-81) in the offshore waters of the Atlantic Ocean off Mayport, FL. Issuance of regulations governing unintentional incidental takes of marine mammals in connection with particular activities is required by the Marine Mammal Protection Act (MMPA) when the Secretary of Commerce (Secretary), after notice and opportunity for comment, finds, as here, that such takes will have a negligible impact on the species and stocks of marine mammals and will not have an unmitigable adverse impact on the availability of them for subsistence uses. These regulations do not authorize the Navy activity as such authorization is not within the jurisdiction of the Secretary. Rather, these regulations

authorize the unintentional incidental take of marine mammals in connection with such activities and prescribe methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses.

DATES: Effective May 1 through September 30, 2001.

ADDRESSES: Copies of the Letter of Authorization (LOA), the Navy application, and the NMFS Biological Opinion and Incidental Take Statement may be obtained by writing to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226 or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**). A copy of the Navy's Final Environmental Impact Statement (FEIS) for conducting the shock trial are available by contacting Will Sloger, U.S. Navy, at (843) 820–5797.

Comments regarding the burden-hour estimate or any other aspect of the collection of information requirement contained in this final rule should be sent to the preceding address and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: NOAA Desk Officer, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead (301) 713–2055, ext. 128.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*) (MMPA) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations governing the taking are issued.

Permission may be granted for periods of 5 years or less if the Secretary finds that the taking will have no more than a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking.

Summary of Request

On January 12, 2000, NMFS received an application for an LOA under section 101(a)(5)(A) of the MMPA from the U.S. Navy to take a small number of marine mammals incidental to shock testing the USS WINSTON S. CHURCHILL in the offshore waters of the Atlantic Ocean off either Mayport, FL, or Norfolk, VA or the offshore waters of the Gulf of Mexico off Pascagoula, MS. However, based, in part, on findings and determinations made under the National Environmental Policy Act (NEPA), the Navy has determined that Mayport, FL is the preferred location for the shock trial. As a result, NMFS has conducted its analysis of impacts on marine mammal stocks based only on this location. For the Navy to make a determination to conduct the shock trial at another location, a new negligible impact determination and a modification of these regulations would be necessary before an LOA could be issued.

Section 2366, Title 10, United States Code (10 U.S.C 2366) requires realistic survivability testing of a covered weapon system to ensure the vulnerability of that system under combat conditions is known. (In this case, the covered weapon system is the USS WINSTON S. CHURCHILL.) Realistic survivability testing means testing for the vulnerability of the ship in combat by firing munitions likely to be encountered in combat with the ship configured for combat. This testing is commonly referred to as "Live Fire Test & Evaluation"(LFT&E). Realistic testing by firing live ammunition at the ship or detonating a real mine against the ship's hull, however, could result in the loss of a multi-million dollar Navy asset. Therefore, the Navy has established an approved LFT&E program to complete the vulnerability assessment of ships,as required by 10 U.S.C. 2366. The LFT&E program includes three major areas that together provide for a complete and comprehensive evaluation of the survivability of ships in a near miss, underwater explosion environment. These areas are computer modeling and analysis, component testing, and an at-sea ship shock trial. While computer modeling and laboratory testing provide useful information, they cannot substitute for shock testing under realistic, offshore conditions as only the at-sea shock trial can provide the real-time data necessary to fully assess ship survivability.

A shock test is a series of underwater detonations that propagate a shock wave through a ship's hull under deliberate and controlled conditions. Shock tests simulate near misses from underwater explosions similar to those encountered in combat. Shock testing verifies the accuracy of design specifications for shock testing ships and systems, uncovers weaknesses in shock sensitive components that may compromise the performance of vital systems, and provides a basis for correcting deficiencies and upgrading ship and component design specifications. To minimize cost and risk to personnel, the first ship in each new class is shock tested and improvements are applied to later ships of the class.

The USS WINSTON S. CHURCHILL is the third ship in a new Flight of 23 ARLEIGH BURKE (DDG 51)-class guided missile destroyers being acquired by the Navy. (A Flight is a subset of a class of ships to which significant modifications/upgrades have been made.) These ships are referred to as the Flight IIA ships and they represent the largest single upgrade to the original DDG 51-class destroyer.

The USS JOHN PAUL JONES (DDG 53) was shock tested off the coast of California in June 1994 to assess the survivability of the original DDG 51-class destroyer. Flight IIA ships are significantly different from the original DDG 51-class destroyers in their design. Major structural changes include the addition of a helicopter hangar, Vertical Launch System foundation changes, and raising the aft radar arrays. Major equipment changes include the addition of a ship-wide Fiber Optic Data Multiplexing System, a Zonal Electrical Power Distribution System involving the addition of switchboards and load centers throughout the ship, and the widespread use of commercial equipment in various mission critical systems to reduce the cost of the ships. Typically the lead ship of a new class or major upgrade is shock tested. The USS WINSTON S. CHURCHILL was selected as the shock trial ship because it has additional design changes that will not be included in the first two Flight IIA ship; therefore, it is more representative of the Flight.

The Navy's proposed action is to conduct a shock trial of the USS WINSTON S. CHURCHILL at an offshore, deep-water location. The ship would be subjected to a series of three or four 4,536 kg (10,000 lb) explosive charge detonations sometime between May and 30 September, 2001. Three detonations are needed to collect adequate data on survivability. A fourth detonation would be conducted by the Navy only if one of the planned three detonations fails to provide technically acceptable data (e.g., due to equipment

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failure or some other technical problem).

The ship and the explosive charge would be brought closer together with each successive detonation to increase the severity of the shock. This gradation in severity would ensure that the survivability of the ship and its systems is fully assessed and the point at which failure modes begin is accurately determined. It would also reduce the chance of significant damage at the highest severity detonation. The shock trial would be conducted at a rate of one detonation per week to allow time to perform detailed inspections of the ship's systems prior to the ship experiencing the next level of shock intensity.

Comments and Responses

On December 12, 2000 (65 FR 77546), NMFS published a proposed rule to authorize the Navy to take small numbers of marine mammals incidental to the exemption and requested comments on the proposed rule and application. During the 45-day public comment period, NMFS received comments from the Marine Mammal Commission (MMC), the American Cetacean Society (ACS), the Cetacean Society International (CSI), Earth Island Institute (EII), the Humane Society of the United States (HSUS), the Natural Resources Defense Council (NRDC), the OrcaLab, the Stop LFAS Worldwide Network (SLFASWN), and the Whale and Dolphin Conservation Society (WDCS).

Activity Concerns

Comment 1: The SLFASWN considered it peculiar that the permit application lacked geo-specific information on the proposed location of the shock trial. It appeared to the commenter that without an exact location, the potential for impact is unknown. The SLFASWN would like to know the process used in determining the location for the shock trial.

Response: The application noted that the shock trial was proposed to take place in one of three locations, off Norfolk, VA, Mayport, FL, or Pascagoula, MS. While the Navy's small take application discussed only the potential impacts to marine mammals (as is appropriate), substantial information on the impacts to the total marine environment was provided in the accompanying draft environmental impact statement (DEIS) that was prepared by the Navy for this proposed action. Likewise, the Navy's DEIS provided detailed discussion on the parameters used in determining the proposed location for the shock trial.

Comment 2: The SLFASWN asked whether the proposed shock trial for the USS WINSTON S. CHURCHILL is a "floating flotilla of future shock tests." The SLFASWN believes the rule would be effective for 5 years and would provide the Navy a "carte blanche" ticket for shock trials.

Response: The proposed shock trial for the USS WINSTON S. CHURCHILL is a single shock trial of three or four detonations that is proposed to take place between May 1 and September 30, 2001. If the Navy proposes future shock trials for other vessels, the Navy would need to meet its responsibilities under NEPA, the MMPA, and the Endangered Species Act (ESA) prior to conducting another shock trial. This final rule does not authorize additional shock trials.

MMPA Concerns

Comment 3: The MMC believes that NMFS' proposal to limit Level B acoustic harassment from explosive detonation events exclusively in terms of temporary threshold shift (TTS) is tantamount to determining that behavioral changes not related to TTS do not constitute harassment as defined in the MMPA. Such a conclusion, the MMC contends, would be inconsistent with the statutory definition of the term harassment.

Response: First, NMFS would like to clarify that the proposed criterion limiting Level B harassment to behavioral responses that are possible as a result of receiving an impairment to hearing (i.e., TTS) is limited to single-event explosions, not multiple explosive events spaced over a relatively short period of time in the same vicinity, such as multiple Signal, Underwater Sound (SUS) charges and live-fire exercises, nor to multiple impulse-noise sources, such as seismic airguns and the pulse-power generator, nor to intermittent and continuous noise sources such as Navy sonars and oceanographic instrumentation. All of these other listed activities have at least the potential to cause significant behavioral responses on the part of marine mammals that are not related to behavioral disruptions caused by TTS.

For those species of marine mammals capable of hearing the distant sounds from the detonation, simply hearing the acoustic signal and not reacting to that noise is not considered a "take." NMFS considers a Level B harassment take to occur within the maximum zone for TTS, which, for this action at Mayport, FL, has been calculated by the Navy as follows:

Water Depth (ft/m)	600/183	1200/366	2,300/701
Odontocetes (nm/km)	7.2/13.3	11.0/20.4	13.6*/25.2
Mysticetes (nm/km)	13.0/24.1	13.0/24.1	15.0/27.8

* determined by the 12 lbs/in² criterion

The different TTS distances between odontocetes and mysticetes are based on their probable differing hearing sensitivity to LF sounds (Navy FEIS, 2001).

Beyond the range for TTS, NMFS has been unable to identify behavioral reactions on the part of a marine mammal from a single-noise event that would both disrupt some behavior pattern in a biologically significant way and have a reasonable probability of occurrence. For a take to be considered to have occurred, the marine mammal would need to show some form of behavioral reaction and the only behavioral reactions possibly occurring from a single noise event are either momentary reactions such as an orientation response relative to the unusual event or other reactions such as a startle response, an interruption in vocalization, or a sensitization.

The definition of Level B harassment, when applied to incidental takings, questions whether a single, minor, reaction (such as a startle, a "heads-up" (alert) display, or a single modified dive sequence by either pinnipeds or cetaceans), that has no biological context, should qualify as a "take" under the definition of "harassment" under the MMPA. As stated by NMFS previously (66 FR 9291, February 7, 2001), if the only reaction to the activity on the part of the marine mammal is within the normal repertoire of actions that are required to carry out that behavioral pattern, NMFS considers the activity not to have caused an incidental disruption of the behavioral pattern, provided the animal's reaction is not otherwise significant enough to be considered disruptive due to length or severity. Therefore, for example, a short-term change in breathing rates or a somewhat shortened or lengthened dive sequence that are within the animal's normal range and that do not have any biological significance (i.e., do not disrupt the animal's overall behavioral pattern of breathing under the circumstances), do not rise to a level requiring a small take authorization. For single explosive events, a determination that these minor effects should not be considered to be harassment of a marine mammal was supported unanimously by the marine mammal scientists attending the NMFS Acoustic Criteria Workshop in 1998. Under a restrictive definition of "harassment" under the MMPA, an incidental taking could be presumed to occur for even a single pinniped lifting or turning its head to look at a passing, offshore, watercraft. NMFS notes that, in 50 CFR 17.3, the U.S. Fish and Wildlife Service defines harass as an action that creates the likelihood of injury to a listed species by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, and sheltering." NMFS supports such a definition when marine mammals are taken incidental to the conduct of a maritime activity. However, the application of Level B harassment as described in this preamble is intended to apply only to incidental taking by harassment for this and similar one-time actions and not for actions directed at marine mammals which may have a lower threshold of application.

Comment 4: The HSUS, in a follow-up comment to NMFS' response number 1 in the proposed rule, questions NMFS considering a permanent threshold shift (PTS) in hearing to be Level A harassment. According to HSUS, Level A harassment should be reserved for the "potential to injure." Since PTS is an injury, in an acoustically oriented species, such as cetaceans, it should be considered as "serious injury," not Level A harassment.

Response: Depending upon the level of severity, PTS may or may not be considered to be a serious injury. For example, a permanent 15 dB loss across the animal's entire hearing range might be considered a severe injury, whereas a permanent loss of 15 dB in only a few frequencies of the hearing range might not be considered severe. It is simply not possible at this time to make a scientific judgement about the severity of different degrees of permanent hearing loss in marine mammals with the present state of scientific knowledge. However, the MMPA does not specifically include "injury" under the definition of "take;" it includes "harass" under the definition of "take" and specifically includes "potential to injure" only under the definition of "Level A harassment." Therefore, the MMPA does not distinguish between "potential to injure" and an actual injury, nor does it distinguish between serious injury and non-serious injury. However, it is NMFS' preference to review all small take applications with the potential to cause serious injury under section 101(a)(5)(A) of the MMPA (as the Navy is doing in this action). This was expressed by NMFS in proposed rulemaking establishing the protocol for issuing authorizations under section 101(a)(5)(D) of the MMPA (60 FR 28379, May 31, 1995).

Comment 5: The CSI, quoting from the National Research Council (NRC, 2000) report on LF sound, notes that the NRC "recommends that in the absence of appropriate, adequately funded research "management of sound in the ocean should remain conservative . . . in the absence of required knowledge." The CSI, noting that in the absence of adequate data, NMFS and the Navy should apply the Precautionary Principle, the fundamental elements of the principle being: the existence of some indication of threat of harm; the harm is serious or irreversible; scientific uncertainty as to the nature or severity of the outcome; and an obligation on decision-makers. Finally, CSI asks whether NMFS refutes the application of this principle to the LOA and rule-making at hand.

Response: The MMPA prohibits the taking of marine mammals unless exempted or permitted. Taking means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. Therefore, NMFS believes that the precautionary principle is already at the core of the MMPA. However, because the MMPA authorizes the taking of marine mammals under section 101(a)(5), provided certain conditions and requirements are met, NMFS must prudently apply the Precautionary Principle through careful analysis of impacts and implementation of measures that will reduce impacts to marine mammals to the lowest level practicable. As described in this document, NMFS believes that it and the Navy have applied the Precautionary Principle to the greatest extent possible for this action through an extensive aerial monitoring and mitigation program that will protect marine mammals to the greatest extent practicable. The mitigation and monitoring program are discussed later in this document. In addition, NMFS and the Navy have applied the precautionary principle by having the decision-making process in the public forum through NEPA and notice and comment rulemaking.

Comment 6: OrcaLab requests that NMFS proceed with caution and reject both the Navy's request for permission to proceed with the ship shock trial and the proposal to classify 182 dB as Level B harassment.

Response: The Navy's proposal to classify the 182 dB (re 1 uPa²–sec) criterion is discussed later in this document. However, NMFS must clarify that the Navy is not requesting an authorization to conduct the shock trial, only the taking of marine mammals incidental to that activity. Whether or not the Navy conducts the shock trial of the USS WINSTON S. CHURCHILL is the responsibility of the Secretary of the Navy, not NMFS.

Comment 7: The ACS requests NMFS provide peer-reviewed, independent scientific studies in support of the 182 dB (re 1 uPa²–sec) criterion level.

Response: There is no requirement to require independent peer-reviewed research studies prior to issuing an authorization under the MMPA. Independent peer-review for marine mammal monitoring or research is required under section 101(a)(5) of the MMPA only for incidental harassment authorizations that affect Arctic subsistence uses. Since the shock trial is not taking place in Arctic waters, or affecting subsistence species, independent peer review is not required. However, it should be understood that several of the documents referenced in the proposed rule and in this document have been peer reviewed prior to publication in scientific journals. For example, the Schlundt et al. (2000) and Finneran *et al.* (2000) research papers, which are discussed later in this document, were peer reviewed prior to publication in the Journal of the Acoustical Society of America.

Comment 8: OrcaLab believes that the cetacean deaths and strandings in the Bahamas in March 2000, which coincided with U.S. Navy activities, should be sufficient evidence of the potential risks to cause NMFS to reject the authorization, at least at this time. OrcaLab and the WDCS recommend that NMFS wait until the ongoing investigation of the causes of the Bahamas strandings are known before allowing the U.S. Navy to carry out further high risk activities that involve exposing marine mammals to potentially harmful underwater sounds. The SLFASWN and others were also concerned about recent marine mammal strandings in the Bahamas and in Florida waters.

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Response: In response to the stranding of beaked whales in the Bahamas on March 15, 2000, the Navy and NMFS are investigating the transit of several ships using standard, hull-mounted sonar operations within normal frequency ranges, power outputs, and duty cycles, which are, respectively: 3.5 and 7.5 kHz, 235 dB (and lower) and "pings" of short duration (about one-tenth of a second or less duration on a standard duty cycle of 24 seconds). Because these sonars have signal and operational characteristics very different from explosives, and because an effective monitoring and mitigation program will be required for protecting marine mammals from injury or mortality from the shock trial, NMFS does not believe it is appropriate to delay issuance of an LOA until the investigation of these strandings is complete. In this action, the Navy has recognized that conducting the ship shock trial can result in a taking of marine mammals, and in that regard, applied for an authorization under the MMPA. It should be understood, that the taking of marine mammals, including mortality, can be authorized under the MMPA, provided the taking is small and would have no more than a negligible impact on affected marine mammal populations. Those determinations will be made in this document.

The cause of the unusual stranding of bottlenose dolphins off the coast of Florida last year remains unknown and under investigation at this time.

Comment 9: The NRDC, in a footnote, expresses concern that, if NMFS continues to consider TTS as being limited to Level B harassment, because the MMPA contains an exemption for scientific research activities that produce only Level B harassment, it might weaken, to an unknown extent, the application of the MMPA.

Response: Current NMFS regulations (50 CFR 216.44(b)) prohibit issuing General Authorizations for Level B harassment for all intrusive research on marine mammals. Intrusive research, which must be authorized under a marine mammal scientific research permit under section 104 of the MMPA, is defined in 50 CFR 216.3 to include the use of a stimulus (e.g., acoustics) directed at the animal.

Rulemaking Concerns

Comment 10: The CSI objects to the arbitrary decision not to address comments of the MMC and the Commonwealth of Virginia (Commonwealth) because "they were limited to the Navy's DEIS for shock testing." CSI states that it is very interested in the NMFS reply to those comments, and, by the time they are available in the Navy's FEIS, the issue at hand may be in court. The MMC also expressed concern that the proposed rule did not address its comments on the Navy DEIS in its response to comments on the Advanced Notice of Proposed Rulemaking (ANPR).

Response: NMFS did not respond to the comments contained in the MMC and Commonwealth letters on the ANPR in the proposed rule document because they did not directly address issues in the proposed rule or the application; those organizations simply attached copies of the letters they submitted to the Navy on the Navy's DEIS without further elaboration or clarification. NMFS does not consider it appropriate to respond in the **Federal Register** to attachments to letters, unless the attachment supports concerns made in the actual letter to NMFS. Although, as a cooperating agency, NMFS may review and comment on the Navy's response to those letters in the FEIS, the responsibility to reply resides with the Navy, not NMFS.

Comment 11: The MMC believes that the proposed rule relies to a significant extent on the Navy's DEIS for its interpretation and justification, and requests that previous comments be considered as incorporated by reference, and addressed in the NMFS final rule, as well as the Navy's FEIS.

Response: As is normal procedure, NMFS has incorporated into its decision-making process all comments submitted on the NEPA document that accompanies the proposed action. In this case this includes the comments submitted by the MMC and other organizations and individuals on the Navy's DEIS, and the responses made by the Navy to these recommendations and concerns as provided in the Navy's recently-released FEIS. Because NMFS has adopted the Navy's FEIS as its own on this matter, these responses can be considered to also reflect NMFS' response. Where necessary, this document provides additional clarification on certain issues raised by the MMC in its March 30, 2000, letter.

However, NMFS clarifies for future reference that it will respond in the **Federal Register** only to comments provided directly to the Agency during the designated comment period that are relevant to the proposed action. Unless NMFS is the responsible Federal agency under NEPA, or is a co-sponsor (as opposed to being a cooperating agency) for the NEPA preparation, NMFS will not respond in the **Federal Register** to comments on NEPA documents prepared by other Federal agencies.

Comment 12: The EII believes that because scientific research is insufficient to judge environmental impact from loud, undersea noise events, it is premature to issue the rule. Additional scientific research must be carried out by the Navy and NMFS in order to address the unknown factors of adverse environmental impacts of noise on marine wildlife.

Response: While NMFS agrees that more scientific research would be desirable to assess impacts from explosive events on marine mammals, NMFS does not agree that the current information is insufficient to issue small take authorizations for this type of an activity. Recognizing the difficulty of directly studying impacts of explosives on live marine mammals, the reluctance of many researchers to risk harm to marine mammals, and the objections by some members of the public to allowing even non-intrusive research on marine mammals, researchers must use either surrogate species or deceased marine mammals. This information is provided in Appendices D and E of the Navy's DEIS and FEIS on this action. NMFS believes that the information contained in the Navy's application, and the Navy's FEIS on the USS WINSTON S. CHURCHILL, along with other information, provide the best scientific information available for making a determination of negligible impact on marine mammal species.

Comment 13: The HSUS expresses concern that nothing in the proposed rule restricts the use of 182 dB (re 1 uPa^2-sec) criterion for inducing TTS to impulsive sounds only. The HSUS requests that NMFS clarify that the criterion established for the USS WINSTON S. CHURCHILL shock test is for impulsive sounds only. The NRDC believes that the proposed rule adopts a new standard for impulse-related threshold shifts (TSs). The CSI believes the proposed rule ignores the distinction between impulse and continuous noise; repetitive impulse sounds have cumulative effects.

Response: See response to Comment 3. In general, NMFS recognizes two categories of sounds in the water, impulsive and intermittent/continuous. Depending upon the rise-time of the signal and its duration, an impulsive sound may be considered as an explosion. Use of the 182 dB (re 1 uPa^2-sec) as one of the two required criteria for determining onset of TTS applies only to those types of impulsive sounds that have the short-rise time indicative of an explosion; it does not apply directly, at this time, to other forms of repetitive impulse sounds (such as seismic airguns), wherein an animal's

hearing is not given sufficient time to fully recover. It also does not apply to intermittent/continuous sounds, such as the Navy's Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) sonar system. For repetitive impulse sounds that are not explosions, NMFS agrees with the scientists participating at the Mineral's Management Service's High Energy Seismic Survey (HESS) Workshop (MMS, 1999) and the NMFS Workshop on Acoustics, that they were apprehensive about levels above 180 dB re 1 uPa (root-mean-squared (rms)) with respect to overt behavioral, physiological, and hearing effects on marine mammals in general (MMS, 1999). It should be clarified here that the 180 dB (re 1 uPa (rms)) refers only to impulse sounds, not intermittent or continuous anthropogenic sounds. Also, as clarified at the 1998 NMFS Acoustics Criteria Workshop, the 180 dB (re 1 uPa (rms)) applies only to cetaceans; a 190 dB (re 1 uPa (rms)) level was established at that meeting for impulse sounds affecting pinniped (seals and sea lions) hearing. However, all parties recognized that the 180 dB (re 1 uPa (rms)) is only an interim criterion until such time as new information becomes available that indicates a different level to be appropriate.

Because the shock trial consists of 3–4 detonations each spaced a week apart, cumulative effects that might be anticipated with other impulse sounds are unlikely.

Comment 14: The HSUS notes that the best available scientific information on TTS in cetaceans (as well as pinnipeds) is both clearly preliminary and extremely limited in scope. Agencies should, therefore, limit its application and should not use it to establish a broad regulatory definition of Level B (acoustic) harassment.

Response: NMFS is in complete agreement with the comment. Use of the 12 psi peak-pressure and the 182 dB (re 1 uPa^2–sec) dual criterion should be limited, at this time, to single-impulse events, and not multiple-events. This was expressed in the shock trial proposed rule and previously in this document.

Comment 15: Several commenters requested NMFS to promulgate a separate proposed rule, subject to public comment and scientific scrutiny, that addresses a new standard for all marine mammal species for onset of TTS at 182 dB (re 1 uPa^2–sec).

Response: NMFS does not agree that separate rulemaking is needed before it can adopt levels for acoustic harassment. Because part of this rulemaking is the criteria NMFS proposes to use to determine levels of harassment and injury incidental to takings of marine mammals by the USS WINSTON S. CHURCHILL shock trial, it was fully available for public review and comment by the public and independent scientists at the proposed rule stage. While this document can be used as guidance for other maritime activities for determining whether an activity might result in a taking of a marine mammal (if that activity uses explosives), as will be demonstrated in this document, codifying such regulations would impede timely modification to adopt new scientific information whenever new data and information become available. For example, a sound pressure level (SPL) of 180 dB (re 1 uPa (rms)) has been generally accepted as a level (for impulse noise only) sufficient to protect marine mammals from anthropogenic noise, but only as an interim measure until additional data becomes available. Future research might indicate that this level was not sufficiently conservative to protect all species of marine mammals (or that it was overly conservative). If codified, NMFS would likely be delayed in the implementation of any new criteria until new amending regulations could be implemented (a minimum of 1 year). This is not warranted at this time because NMFS anticipates significant advances in this area in the near future. However, NMFS anticipates publishing its acoustic criteria for determining impacts from underwater noise on marine mammals shortly. Although this guidance will not be codified, it will provide the latest guidance to the affected public and governmental agencies and will be available for public review and comment.

Comment 16: The CSI objects to the use of multiple criteria in a final rule that is an energy-based TTS criterion of 182 dB (re 1 uPa^2–sec) and a 12 lbs/in2 (psi) peak pressure. Also, the HSUS does not understand the need for dual criteria. The HSUS finds it redundant and confusing and the CSI believes it will be confusing to future reviewers, as it provides no consistent scale between the two boundaries, unless the reviewer is fluent with appropriate mathematical formulas.

Response: The dual criteria were selected to provide the greatest protection for marine mammals by ensuring that future activities calculate the criterion that is most conservative for marine mammals. As explained in detail in Appendix E of the Navy's DEIS and FEIS, in most cases, the 182 dB (re 1 uPa^2-sec) criterion will be the determining factor. Therefore, while it may be difficult for nonprofessionals to calculate the appropriate ranges, acoustical scientists should have little difficulty making these calculations. NMFS believes that it would be appropriate for scientists to provide a clear explanation for reviewers on how they derived the appropriate TTS zones, using the dual criteria. The bottom line, however, is that the criterion that provides the greatest protection for marine mammals is the one that must by used by activity proponents for assessing impacts.

Comment 17: The CSI objects to NMFS' allowing such a variety of defined measurements in permit and LOA applications. Why does the CHURCHILL request use dB (re 1 uPa^2–sec) energy criterion instead of dB (re 1 uPa (rms)), as used in the SURTASS LFA sonar DEIS? Even if the technical distinction is a function of impulse versus continual sources, the scientific community has accepted an SPL of 180 dB (re 1 uPa @ 1 m) as an interim standard for human-caused noise that causes injurious marine mammal hearing threshold shift (TS), but only as an interim measure until additional data became available. Will the SURTASS LFA FEIS be modified to dB defined by energy, to maintain a consistent reference? Why isn't a consistent measure used to aid reviews?

Response: First, NMFS clarifies here that the accepted SPL is 180 dB (re 1 uPa (rms)) received level, not 180 dB (re 1 uPa @ 1 m), which references a source level. NMFS also clarifies that the 180 dB (re 1 uPa (rms)) SPL criterion has not been categorized as the level that causes an injury (or even a threshold shift in marine mammal hearing) from impulse noise, but is a consensus of some scientists and non-scientists that at some unknown SPL above that 180 dB (re 1 uPa (rms)) level, a marine mammal may incur a hearing impairment. This SPL criterion has also not been fully accepted for other types of noise, although it is currently being utilized by activities to delineate a safety zone for marine mammal protection. It is NMFS' intention, through rulemakings similar to this one, to replace this single SPL criterion, one that is not based on science, with science-based criteria, whenever feasible.

As described in the proposed rule, NMFS proposes to use a dual criterion for explosives, one for pressure and one for energy. For the energy criterion, NMFS and the Navy propose to use 182 dB (re 1 uPa^2-sec), cumulative energy flux in any 1/3 octave band above 10 Hz for mysticetes and above 100 Hz for odontocetes (and sea turtles). For the pressure criterion, the Navy and NMFS

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propose using 12 psi peak pressure as suggested by Ketten (1995). Whichever criterion provides the greatest protection for marine mammals is the one that will be used during the shock trial.

The SURTASS LFA sonar rulemaking proposes to use a different criterion than either the dual criterion used in this document or the standard 180 dB (re 1 uPa (rms)). That Navy action and NMFS' proposed rule for a small take authorization for that activity use a criterion of a "180-dB single-ping equivalent," which is the summation of the intensities for all received brief acoustic sounds into an equivalent exposure from one ping, which is always at a higher level than the highest individual ping received (66 FR 15375, March 19, 2001). This criterion is designed to take into account the longer duration of the LFA sonar signal (i.e., 60–100 sec).

Comment 18: The NRDC believes that the present rule establishes a criterion that, based on a single, problematic study, is substantially weaker than earlier criteria.

Response: NMFS believes that the current rulemaking provides significant recognition that marine mammal hearing can be affected by frequency, intensity and duration. Contrary to the commenter's belief, the dual criterion is based on extensive research and analysis (as described in Appendix E of the Navy's DEIS and FEIS), and contrary to the 180 dB (re 1 uPa (rms)) criterion, which while simple and understandable, is one that is not based on science and is recognized by all parties as only an interim measure until better criteria are developed. We believe that the dual criterion is an improvement for one type of anthropogenic noise.

In the small take authorization for the taking of marine mammals incidental to the detonation of conventional military explosives within the waters of the Outer Sea Test Range of the Naval Warfare Center, Pt Mugu, Ventura County, CA (59 FR 5111, February 3, 1994), the Navy and NMFS established a safety zone for the shock trial of the USS JOHN PAUL JONES at 180 dB (re 1 uPa) and a behavioral response zone at 160 dB. The rulemakings for the USS SEAWOLF and the USS WINSTON S. CHURCHILL have provided detailed information on why a behavioral response, outside of TTS, was not appropriate for a single-shot detonation. It should be noted however, that the USS JOHN PAUL JONES shock trial off Southern California established a safety zone based upon a SPL of 180 dB (re 1 uPa)(Chief of Naval Operations, 1993). The Navy calculated the 180 dB SPL would be at 8600 ft/1.4 nm (2621 m) from the detonation point at a depth of 50 ft (15.2 m) from the water surface and at 12,150 ft/2 nm (3703 m) at 1,000 ft (309 m) below the water surface. This distance is significantly less than the Navy's calculated zone for TTS for the USS WINSTON S. CHURCHILL shock trial. Although NMFS believes that the distances would vary somewhat for the USS WINSTON S. CHURCHILL shock trial due to physical parameters of the water at the Atlantic Ocean site, they provide support for NMFS adopting the dual criterion over one established for other forms of impulse noise. Even at maximum depth, the distance for an SPL of 180 dB (re 1 uPa (rms)) would likely remain within the safety zone established for the USS WINSTON S. CHURCHILL shock trial.

Comment 19: The HSUS and CSI are concerned because the rule actually proposed an SPL for the onset of TTS of 192 dB re 1 uPa at 1 m, recalculated as energy flux. They believe that this level is higher than previously recommended by the scientific community.

Response: Please refer to response to Comment 13. Also, a source level cannot predict impacts at various distances. Therefore, NMFS presumes that the reference should be for a received level which would be written "dB re 1 uPa (rms)."

The evidence shows that for a tonal or broadband stimulus lasting more than a quarter second, onset TTS is better predicted by the total amount of energy in the signal than by any other metric. Thus, the current reference for inducing onset TTS (the lowest threshold shift (TS) measurable) with tonal or broadband sound is 192 dB (re 1 uPa^2-sec), cumulative energy flux at the recipient (not at 1 m from the source). It so happens that a 1 sec tone at 192 dB SPL contains exactly 192 dB (re 1 uPa^2–sec) of cumulative energy flux (because the metric's reference is 1 sec). A tone of 192 dB SPL lasting 2 seconds would contain approximately twice as much cumulative energy flux (i.e., 3 dB more) or 195 dB (re 1 uPa^2-sec), cumulative energy flux. Conversely, the SPL of a 2–second tone would have to be dropped to 189 dB SPL to deliver a total of 192 dB (re 1 uPa^2–sec) over the 2–second period. In other words, the 182 dB cumulative energy flux is approximately 1/10 the cumulative energy flux in the reference tonal signal of 1 sec at 192 dB SPL. This is explained in Appendix E of the Navy's FEIS.

Comment 20: The HSUS was unable to find one of the references used by NMFS because NMFS did not provide the full reference.

Response: The Schlundt *et al* (2000) research paper was not cited in the Navy's DEIS because that document had not been published by the time the DEIS was published. NMFS does not provide full references to cited documents in the **Federal Register** because it is NMFS policy to reduce the size of Federal Register documents to the extent practicable due to costs for publication. In lieu of complete citations for all references used, NMFS noted in the proposed rule that a list of references used in the document was available upon request.

Comment 21: The MMC notes that the rationale for using a 50–percent probability of eardrum rupture as a criterion for non-lethal injury, is not clear and appears to be based on data from terrestrial mammals, rather than marine mammals. Further, there is no indication as to why there is a 50–percent probability that the eardrums of different marine mammal species would rupture at the calculated distance or that the ruptures would heal without causing problems. A better explanation of, and justification for using this criterion should be provided.

Response: Terrestrial mammal and marine mammal auditory systems have similarities in structure and function (Ketten, 1995, 1998). There are no detailed experimental results from marine mammals upon which to base a quantitative analysis of the potential effects of a 10,000 lb (4,536 kg) charge detonation on marine mammal auditory systems. Ketten (1995, 1998) addresses these same issues. By using the results from controlled underwater explosion experiments on small terrestrial mammals (dogs and sheep), reasonable assumptions can be made concerning potential auditory system impacts to small marine mammals. Under identical assumed conditions, the Navy FEIS and Ketten (1995, 1998) are consistent in the assumed overall potential impacts to marine mammals.

Fifty-percent eardrum rupture was considered as a criterion for non-lethal injury because it is a standard, statistically meaningful measure that has been estimated in a variety of mammals (Ketten 1995, 1998). Further, it provides an indirect way to estimate the range for PTS, an auditory impact that has never been studied in marine mammals (in terrestrial mammals, 50 percent incidence of TM rupture is associated with 30 percent incidence of PTS). Estimated ranges for eardrum rupture probabilities less than 50 percent would be highly variable. Therefore, instead of estimating an outer

bound for eardrum rupture or calculating a gradient or probability curve, the Navy counts 100 percent of the animals in this range as "injured" even though the incidence of eardrum rupture would be less than 50 percent at this range and the incidence of PTS would be less than 30 percent. By considering 100 percent of all marine mammals within the 50 percent TM rupture zone as being injured, when there is a 50–percent probability of non-injury, NMFS believes that the Navy has accounted for all marine mammals that had even a 1 percent chance of incurring TM rupture. Also adding to the conservative nature of the injury calculations, marine mammals at depths other than where the effect is maximal would also be less vulnerable to eardrum rupture.

Comment 22: The MMC also notes that any use of the probability of eardrum rupture as a criterion for defining non-lethal injury appears to reflect a misunderstanding of underwater hearing. While an eardrum rupture could have little effect on hearing, the cochlea and hair cells could be severely damaged even if no rupture of the eardrum occurred. Thus an eardrum rupture is a questionable measure of acoustic injury in marine mammals.

Response: NMFS agrees. Because the criterion is based upon land mammals rather than marine mammals, and because TM rupture research has not been conducted on marine mammals, it is not the 50–percent TM rupture itself that is the criterion used, but the "impulse" in psi-msec that is associated with other impacts on the body. In this case, the energy flux density that causes either the 50–percent TM rupture or the impulse that causes slight lung hemorrhage is the real criterion. This is illustrated in figures D-9 and D-10 of Appendix D in the Navy's FEIS. NMFS believes this is conservative, even if it is based on terrestrial mammals because the hearing structures of marine mammals are probably more resistant to pressure (for diving) than are terrestrial mammalian ear structures. However, because the impulse estimated to cause slight lung hemorrhage was more conservative (i.e., had a greater range), it is slight lung hemorrhage that is the defining criterion used for determining injury in this action, not the energy flux density used for 50 percent TM rupture.

Marine Mammal Acoustic Impact Concerns

Comment 23: Several commenters noted that TTS in marine mammals results in minor injury at the cellular level. The NRDC argues that common usage of the word "injury" makes no distinction between temporary and permanent impacts. The NRDC also argues that there is evidence obtained through light and electron microscopy of swelling and vacuolization and of shortening of the stereocilia rootlets; evidence of depletion of synaptic bodies and associated vesicles; studies showing a buckling of cochlear pillar bodies and an uncoupling of stereocilia from the tectorial membrane.

Response: NMFS agrees that an injury should not be considered something else simply because it is temporary. However, the term used by NMFS in the proposed rule was impairment, which NMFS argues does not necessarily denote an injury. The source of the information encapsulated in this comment is from Liberman et al. (1987) regarding swelling, vacuolization and rootlet shortening, from Henry et al. (1995) regarding synaptic depletion-both as reported in Appendix E of the Navy's DEIS and FEIS and from Nordmann et al.'s (2000) research on chinchillas regarding pillar buckling and stereocilia uncoupling. Swelling, vacuolization, shortening and depletion were examined at TS levels associated with TTS and were deemed by the authors to be fully recoverable without the loss and replacement of tissue. Nordmann et al. (2000) examined animals at TS averaging 43 dB - levels over 40 dB are associated with slight PTS. However, both pillar cell buckling and stereocilia shortening detach the hair cell from the tectorial membrane in order to protect the hair cells from injury at the expense of a temporary loss of hearing sensitivity. That is, the buckling of pillar cells and shortening of stereocilia together function as a "partially protective response" (Nordmann *et al.*, 2000). In other words, pillar cells and stereocilia are designed to work this way, time after time. Therefore, buckling and shortening can be considered to be adaptations that protect the hair cells from injury, and are not injuries in and of themselves.

NMFS notes however, that whereas TTS does not result in cell destruction, even minor boat propeller strikes on manatees (a comparison used by the HSUS to indicate levels of injury from serious to non-serious) result in the destruction of cellular tissue which must be replaced if recovery is to occur.

Comment 24: The HSUS and the WDCS express concern over NMFS' use of the 182 dB (re 1 uPa^2–sec) criterion for both mysticetes and odontocetes. The HSUS notes that NMFS agrees that the SPL that would cause TTS in cetaceans by explosives has not been tested empirically on live cetaceans. The HSUS questions the appropriateness of using the Ridgway *et al.* (1997) results in the context of shock testing.

Response: The dual criterion was developed for this action as an estimate for impulsive waveforms from available tonal data, not for all waveforms. In the energy portion of the dual criterion, the specified energy in lower frequencies is estimated for mysticetes and in higher frequencies for odontocetes to accommodate for differences in the most sensitive frequencies. The only cross-species assumption made is that the amount of energy required for onset TTS will be similar in both odontocetes and mysticetes.

The first direct tests of explosives on cetaceans have recently been completed by Finneran *et al.* (2000). Those tests delivered 179 dB (re 1 uPa^2–sec) energy at about 10 psi to dolphins in a waveform that simulated a distant blast without inducing onset TTS. Finneran *et al.* (2000) found no TS in masked-hearing thresholds, defined as a 6-dB or larger increase in threshold over pre-exposure levels, had been observed at the highest impulse level generated (500 kg (1102 lbs) at 1.7 km (0.9 nm), peak pressure 70 kPa. Other work is in progress for another type of impulsive waveform that in many respects resembles that from a close explosive source with higher levels of energy and pressure.

Comment 25: The HSUS believes that while TTS may be temporary and fully reversible, animals suffering TTS may be further injured or killed due to a temporary inability to hear approaching ships or predators. The HSUS and the CSI believe that marine mammals may also become disoriented and strand. Because this carries with it the "potential to injure (or even kill)," the HSUS believes TTS should be categorized as Level A harassment. The MMC, while agreeing that defining TTS as Level B harassment is reasonable provided it does not make the affected animals vulnerable to predation or otherwise affect their survival or productivity, believes it is not inconceivable that temporary hearing impairment over a period of a few days could increase the potential for injury or death of an affected animal. If such were the case, TTS would have the potential for injury and would constitute Level A harassment.

Response: As stated in the ANPR, these second level impacts due to a marine mammal having a temporary hearing impairment cannot be predicted and are, therefore, speculative. However, the principal reason that second level impacts are not considered

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in classification is that any Level B disruption of behavior could, with suppositions, be seen as potentially dangerous and, therefore, considered potential Level A harassment as well. Similarly, all Level A injuries could be seen as being accompanied by some disruption of behavior and therefore, Level B disturbances as well as Level A injuries. Such reasoning blurs the distinctions that the definitions of harassment attempt to make. The NMFS believes that Level B harassment, if of sufficient degree and duration, can be very serious and require consideration. For example, moderate TTS does not necessarily mean that the animal cannot hear, only that its threshold of hearing is raised above its normal level. The extent of time that this impairment remains is dependent upon the amount of initial TS which in turn depends on the strength of the received sound and whether the TTS is in a frequency range that the animal depends on for receiving cues that would benefit survival. It should be noted that increased ambient noise levels, due to biologics, storms, shipping, and tectonic events, may also result in short-term decreases in an animal's ability to hear as well as normal. For example, ambient noise in the Hawaiian Islands Humpback Whale Sanctuary increases seasonally in conjunction with an increase in humpback whale abundance, with no known impacts to these animals. NMFS scientists believe that marine mammals have likely adopted behavioral responses, such as decreased spatial separation, slower swimming speeds, and cessation of socialization to compensate for increased ambient noise or hearing threshold levels.

Ship strikes between whales and large vessels suggest that at least certain species of large whales do not use vessel sounds to avoid interactions and there is no indication that smaller whales and dolphins with TTS would modify behavior significant enough to be struck by an approaching vessel. Finally a hypothesis that marine mammals would be subject to increased predation presumes that the predators would either not be similarly affected by the explosion or would travel from areas outside the impact zone, indicating recognition between the signal of a single detonation at distance and potentially debilitated food sources. Therefore, NMFS does not believe the evidence warrants, as suggested by the MMC and the HSUS, that all (or an unknown percentage) of the estimated numbers of Level A (PTS) and Level B (TTS) harassment takes be considered as mortalities. What this document does do, however, is to consider that 100 percent of the marine mammals within the lethal zone (1.35 km/0.73 nm) would be killed, even though larger mammals may survive their injury from the shock wave, and that 100 percent of the marine mammals within the non-lethal injury radius would be injured, even though some animals may not be injured (depending upon the animal's size and depth in the water).

NMFS notes moreover, that TTS does not cause disorientation. Disorientation is caused by vestibular affects to the inner ear, not related to TTS (although an animal having vestibular effects could also suffer from TTS). For example, humans attending certain sport or music events may incur a TTS impairment due to the noise, but are not noted for being disoriented afterwards, unless caused by something other than noise.

Comment 26: The WDCS supports the previous comments by quoting Ketten (1998) that "...sublethal impacts may ultimately be as devastating as lethal impacts, causing death indirectly through behavioral reactions, such as panic, as well as impaired foraging or predator detection, but the potential for this type of extended or delayed impact from any sound source is not well understood for any mammal." Also, the MMC notes that there is the possibility that repeated exposure to sounds capable of causing TTS increases the likelihood that animals would be injured.

Response: The quoted statement was taken out of context. The sentence preceding the one quoted by the WDCS, which clarifies the author's intent, reads: "Sublethal impacts are those in which a hearing loss is caused by exposures to sounds that exceed the ear's tolerance to some acoustic parameter, i.e., auditory damage occurs from metabolic exhaustion or over-extension of one or more inner ear components." In the two quoted sentences, it is clear that Ketten (1998) did not distinguish between TTS and PTS at this point in her paper. NMFS and the Navy do not dispute that marine mammals suffering from acute, long-term, hearing impairment may have decreased survival rates, even though many dolphins and pilot whales thrive in social groupings, even with extreme hearing loss (called presbycusis). However, the rationale for not including TTS (and similarly, PTS) impairments as mortalities has been explained in this document previously.

While there is some recent research indicating that there is no relationship between repeated TTS exposures and an animal incurring a PTS injury, the science indicates that PTS can occur with repeated exposures of TTS without allowing animals to completely recover. However, the shock trial for the USS WINSTON S. CHURCHILL is a set of 3-4 detonations separated by a week between each detonation. Therefore, it is unlikely that animals would be in the TTS zone for more than a single detonation nor that any TTS impairment would not have recovered completely within that time. However, for multiple detonation activities that provide little time for TTS recovery, proponents would need to estimate, to the greatest extent possible, whether marine mammals are likely to be injured due to receiving multiple TTS impairments.

Comment 27: The NRDC is concerned regarding the use of the 182 dB (re 1 uPa^2–sec) criterion that it ignores the fact that a masking of 20–30 dB in the subject dolphins might result in lower TS levels. The NRDC notes that Schlundt *et al.* (2000) recommended caution in using this limited data to support other conclusions. The HSUS expresses similar concerns.

Response: NMFS agrees that a slightly lower TS might have resulted if masking had not been present. Finneran *et al.* (2000) acknowledge the possibility that larger TSs may have been observed without the masking noise. Finneran *et al.* (2000) reference Humes (1990) presentation of data for humans showing that exposure to broadband masking noise sufficient to raise pre-exposure thresholds 20 dB resulted in TTSs that were approximately 5 dB lower than those obtained without masking noise. However, at this time the data do not support the choice of any single dB level over any other level.

Comment 28: The NRDC also believes NMFS ignores the data showing a masked TTS of 8 dB, in one dolphin, at 172 dB (re 1 uPa^2–sec).

Response: According to the Navy, because of the large difference between that animal's TTS level and the other tested dolphins, that single bottlenosed dolphin was retested later and showed TTS levels similar to the other animals tested. That information is expected to be available shortly.

Comment 29: The CSI notes that NMFS has stated that "scientists have noted that a range of only 15–20 dB may exist between onset TTS and onset of...PTS" The CSI asks at what physical range from the detonation does the onset of PTS occur?

Response: The statement in the proposed rule was incomplete. The 15–20 dB difference refers to the difference between the SELs that cause the slightest TTS and onset PTS. Chinchillas experience full recovery from up to 40 dB of TTS (Ahroon *et al.*, 1996) from impulsive noise. In the absence of comparable data for marine mammals, NMFS believes it is precautionary to define the onset of PTS for marine mammals to be 20 dB of TTS. This level would be conservative for chinchillas, and would likely be conservative for marine mammals. Regarding TS's themselves, the preponderance of data on terrestrial species indicates that the difference between an initial TS that results in slight TTS (onset TTS) and the initial TS that results in slight PTS (onset PTS) is about 40–60 dB. In other words, from the lowest initial TS that recovers (i.e., TTS) to the level at which recovery is incomplete by several dB (i.e., PTS), the difference is routinely found to be 40–60 dB of TS. These values are found not only with longer duration stimulation, but with repeated application of impulsive stimuli as well (Ahroon *et al.* 1996). The problem of determining the same values for marine mammals with their marine-adapted ears remains to be solved. Therefore, this remains an avenue for future investigation that NMFS encourages the Navy and others to undertake. However, because the onset of PTS in marine mammals would be expected to be quite variable dependent upon the ear structure of the mammalian group (mysticetes, odontocetes, pinnipeds) and species specific sensitivity, the health of the individual animal, and the characteristics of both the water and the acoustic source, there may not be a single value to establish for determining onset PTS. Therefore, NMFS has decided to reserve detailed discussion or use of this alternative methodology for estimating PTS for a future notice and comment rulemaking and has determined to use an alternative, simpler method for calculating a zone for non-serious injury to hearing for the shock trial of the USS WINSTON S. CHURCHILL. This method derives from human damage risk criteria (DRC) as well as clinical and experimental observations of PTS.

According to Richardson *et al.* (1995), the distances at which marine mammal auditory systems might be at risk for PTS from a single explosive pulse can be estimated based on extrapolations from human DRC. Based on the data presented by Richardson *et al.* (1995), PTS might be expected to occur within distances of about 1.7 nm (3.1 km) from the detonation point for a 10,000–lb (4,536–kg) charge. More relevant for marine mammals, Ketten (1995) hypothesized a PTS/TTS transition zone extending from about 0.9 km (0.5 nm) from the detonation point to 5 km (2.7 nm) from the detonation point for a 10,000–lb (4,536–kg) charge. This is illustrated in figures D-9 and D-10 of Appendix D in the Navy's FEIS. Based on Ketten's calculations, and the fact that shock wave intensity decays exponentially with distance, it would be reasonable to assume that PTS is unlikely to occur beyond the monitored buffer zone (3 nm/5.6 km) for the shock trial of the USS WINSTON S. CHURCHILL. Therefore, the zone between the range that has the potential to produce either the onset of slight lung hemorrhage or 50–percent TM rupture (usually slight lung hemorrhage is the more sensitive indicator), which is 1.22 nm/2.25 km from the detonation, and the outer edge of the buffer zone (3 nm/5.6 km) could be an area wherein marine mammals might incur a non-serious PTS injury. NMFS notes however, that because the Navy has calculated a take by injury wherein 100 percent of the marine mammals within the injury zone would be injured when in fact the incidence of eardrum rupture would be less than 50 percent at this range and the incidence of PTS would be less than 30 percent, there is no need to recalculate take by injury levels due to this slightly extended zone of possible slight injury to the ear.

Comment 30: The CSI continues that the Navy application shows a representative point of injury at 1.22 nm (2.25 km), defined as 25.3 psi-msec, or 175 Pa-sec. A representative point of harassment (TTS) at 17.7 nm (32.8 km) defines the outside of the TTS envelope, where the received level is 182 dB energy. If onset TTS occurs as far out as 17.7 nm (32.8 km) does this imply that the detonations lose only 20 dB over 16.5 nm (39.6 km), from a point somewhere inside the "slight lung hemorrhage injury" zone?

Response: NMFS is unaware of the calculations used by the commenter to determine that detonations lost 20 dB over 16.5 nm (39.6 km) so it is unable to respond directly to the comment. However, it should be noted that the stated distance for onset-TTS should not be taken as an implicit statement about the rate of signal loss out to that distance, but rather as one about the worst-case propagation distances and animal depths that insures that all affected marine mammals are counted. The Navy calculated the farthest extent of TTS harassment for odontocetes at Norfolk at 17.7 nm (32.8 km) and 23 nm (42.6 km) for mysticetes. However, the preferred location for the shock trial is Mayport, FL where those maximum ranges for TTS harassment are 13.6 nm (25.2 km) and 15.0 nm (27.8 km) respectively. These ranges are depth dependent (see table in response to comment 3) and distances were based on whichever of the dual criteria provided the greatest distance for calculating TTS.

Comment 31: The HSUS requested clarification of the discrepancy between the use of 182 re 1 uPa^2–sec used in the proposed rule and the Navy DEIS" use of the term 182 dB re uPa^2–sec.

Response: Both documents should read 182 dB re 1 uPa^2–sec. The two units are interchangeable and mean the same thing once a reader recognizes that the standard reference used in the document is for the water standard (re 1 uPa^2–sec) and not the in-air standard (re 20 uPa^2–sec). Because NMFS processes small take applications for both in-air and in-water incidental takings, it prefers to use the full reference to reduce confusion. This has been noted recently making faulty comparisons between loud underwater noise source levels with received levels of familiar terrestrial noise sources without noting that different standards were being used for each and compensating for those differences (see Chapman and Ellis (1998) for more information).

Comment 32: The WDCS cite Ketten (1998) that "Sharp rise-time signals have been shown also to produce broad spectrum PTS at lower intensities than slow onset signals both in air and in water." and "Although technically a pressure induced injury, hearing loss and the accompanying gross structural damage to the ear from blasts are more appropriately thought of as the result of the inability of the ear to accommodate the sudden, extreme pressure differentials and over-pressures from the shock wave."

Response: Neither NMFS nor the Navy disagree with these statements. The Ketten (1998) document is one of the primary references cited in Appendix D of the Navy's DEIS and FEIS.

Comment 33: The WDCS also cites statements by Croll *et al.* (1999) that baleen whales could suffer temporary auditory damage at noise levels as low as 120 dB and, secondly, that physiological effects could occur well before 180 dB. The WDCS believes that NMFS and the Navy have totally disregarded these statements.

Response: Although NMFS was unable to verify the statements directly to the reference, these dB levels apparently derive from Richardson *et al.*(1995) for effects on marine mammals extrapolated from human DRC and from work done by Malme *et al.*(1983, 1984, 1988). For reasons explained previously

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in this document, one must consider duration of the signal and the type of noise (impulse or intermittent/ continuous) before making generalities on impacts based solely on an SPL.

Comment 34: The HSUS uses the Kastak *et al.* (1999) paper on three species of pinnipeds to support a more precautionary approach to noise standards than suggested by Ridgway *et al.* (1997).

Response: Kastak *et al.* (1999) documented TTS in three species of pinnipeds exposed to varying levels of octave band noise (OBN) for periods on the order of 20 minutes. OBN center frequencies from 100 to 2,000 Hz were used in these tests, and the results presented in the paper pooled the data from each exposure frequency. The results indicate onset of TTS at mean values of 137, 150, and 148 dB (re 1 uPa) for the harbor seal, sea lion and elephant seal, respectively, for 20– to 22–minute exposures of OBN. Because of the pooling effect, these data also have variations around the mean on the order of -5 to +10 dB. As described in the account of the test, these levels can be considered to represent the lower level for onset of TTS for a 20–minute signal. However, NMFS notes that because TTS may result from a brief exposure to a loud sound, intermediate exposure to a sound of intermediate loudness, or prolonged exposure to a faint sound, sound duration and intensity can be considered to trade off with each other in causing TTS, as is indicated in the work by Kastak *et al.* (1999). This is one reason why NMFS advises caution in the widespread advocation for the use of the 180 dB (re 1 uPa (rms)) standard for noise sources other than impulse noise.

Comment 35: The HSUS disagrees with NMFS' concurrence of the Navy's use of the human auditory DRC for determining criteria for marine mammals. The HSUS notes that in the Navy's SURTASS LFA sonar DEIS, the Navy established a safe received level for continuous LF sound for humans at 145 dB (re 1 uPa (rms)), but at 180 dB (re 1 uPa (rms)) for marine mammals. The HSUS, therefore, finds it inconsistent and illogical for NMFS to then claim human auditory DRC are an appropriate standard for marine mammals and if they do so, NMFS and the Navy should consistently apply the most conservative human standards.

Response: In this action, NMFS and the Navy do not use quantitative human DRC to establish criteria for TTS in marine mammals, its only use in this document was to provide support for the qualitative determination that TTS should not be considered as an injury. In the SURTASS LFA sonar action, the Navy did not establish the 145 dB human diver criterion based on human DRC but on a comprehensive study conducted by the Navy in conjunction with a consortium of university and military laboratories (Navy SURTASS LFA Sonar Technical Report 3, 1999). These two acoustic values mentioned by the commenter for intermittent noise represent different criteria: psychological aversion from direct measurements with human divers (145 dB) and the exposure level at or above which all marine mammals are evaluated (180 dB) for impulse noise. The level of potential effects for humans is lower than that for marine mammals primarily because of the inherent physiological and psychological differences. A human diver is in an unnatural, hazardous and unpredictable environment when diving. Breathing compressed air introduces special risks for humans underwater. The potential for a startle response that could have serious consequences is much greater for humans underwater than for a marine mammal whereas marine mammals are in their natural habitat, their ear structure are pressure-adapted to their environment, and they are accustomed to hearing LF sounds underwater.

Comment 36: The HSUS is unable to reconcile the statement that "[t]he criteria for differentiating TTS and PTS zones are not species and media-dependent and may be strongly influenced by the health of the ear" with the extrapolation of human DRC and a single study's (i.e., Ridgway *et al.* (1997)) results to all marine mammals and sea turtles.

Response: As mentioned in the previous comment, the Navy's DEIS and FEIS do not extrapolate specific values from human DRC. NMFS has addressed the methodology for differentiating TTS between mysticetes and odontocetes earlier in this document. Given that there are data on two marine-adapted cetaceans, until additional anatomical or other data become available, these estimates are better than quantitative generalizations from the data of terrestrials or longer chains of extrapolation from general models.

Appendix E Concerns

This section contains responses to comments on Appendix E of the Navy's DEIS that have not been addressed previously in this document.

Comment 37: The HSUS and the CSI note that Appendix E of the Navy's DEIS acknowledges that PTS in humans can be induced by "chronic exposure to nonpainful SPLs and...PTS may not be detected until later in life." This, HSUS notes, is highly relevant to the work done on marine mammals. If chronic exposure to non-painful sounds can cause PTS, which may not be detected until long after exposure to the sounds, then the reliance on behavioral indicators alone for harassment criteria for marine mammals seems questionable. The HSUS understands that this is why the Navy has chosen TS criteria for Level A and Level B harassment, but the speculative nature of these criteria for all marine mammals is also highly questionable.

Response: First, it should be recognized that the quoted sentence means that the detection of PTS long after exposure was the result of not having looked for the PTS a short time after exposure, not that PTS lay hidden or dormant and arose long after the exposure. Second, "chronic exposure" means long-term exposure, a condition that is not relevant to this shock trial (or to other single exposure explosion events). Please refer to the response to comment 34 regarding duration of sounds.

The USS SEAWOLF and the USS WINSTON S. CHURCHILL EISs are the first to date that spell out in detail with full references to the primary literature, the complicated series of questions that must be answered to put marine environmental impact assessments from explosives on a systematic and rational, rather than a speculative, footing.

Comment 38: The WDCS noted that Appendix E states that TTS studies with impulsive stimuli have been conducted, but the results are not yet available. Would the results of these studies not have been considered important here to increase our understanding of such activities?

Response: This research has been completed, published and discussed previously in this document. Other relevant research is in progress. Please refer to the response to Comment 24 on the findings of Finneran *et al.* (2000).

Comment 39: The HSUS finds questionable the extrapolation of the results from Ahroon *et al.* (1996) on chinchillas to generate a broad concept about TTS.

Response: The results of the cited study are discussed in a very extensive review and integration of other studies of other species. In particular, the stated conclusion rests more firmly on the work of Liberman *et al.* (1987) at the electron microscopic level of analysis with the highly systematic study of Ahroon *et al.*(1996) lending support at the light microscope level of analysis. Other studies of various types on various species are also cited that directly and indirectly support the findings of Lieberman et al. (1987) and Ahroon et al. (1996).

Comment 40: The HSUS does not agree with Appendix E's broadly extrapolating the results from Ridgway et al.(1997) as a cautious use of data. The HSUS does not consider these results to be "good" scientific information for marine mammals other than bottlenose dolphins. Given the many caveats that the Navy includes in its discussion of hearing thresholds, the HSUS fails to see how it can then conclude that broadly extrapolating the data from the Ridgway study for management purposes affecting all marine protected species is cautious.

Response: The commenter fails to recognize the wealth of supporting research and discussion contained in Appendix E, in addition to the work by Ridgway *et al.*(1997). Since the determination of levels of impact derived from the analysis contained in Appendix E is far more conservative than the use of a single SPL criterion recommended by several commenters as an alternative, NMFS believes that the extrapolations can be considered cautious. As a result, NMFS is able to conclude that the information contained in this document and other supporting research is the best scientific information available on the subject.

Comment 41: The HSUS strongly disputes the assumptions made to conduct the analyses for calculating TTS impact zones are conservative.

Response: NMFS does not concur. NMFS believes the analysis contained in the Navy's DEIS (and FEIS) uses a series of extremely conservative assumptions regarding propagation-the water depth of greatest propagation in each possible test area, the animal depth of highest pressure or energy regardless of each species' preference, highly reflective boundaries (bottom and surface) and the sound velocity profile of greatest propagation. In other words, the worst case propagation contours were used to derive the longest possible distance and thus, the greatest possible number of animals of each species were subsumed in the count. The basic metrics of pressure and energy used in the analysis were derived as described in Appendix E with a series of conservative assumptions. As explained in that document, even though new data continues to emerge and refinements will inevitably modify estimates up or down by small amounts, the overall series of assumptions and their applications allow for some error while still remaining conservative in their estimates.

LOA Concerns

Comment 42: The MMC notes that not all marine mammal species that might be taken incidental to the shock tests are included in the proposed authorization. Inasmuch as it is unlikely that observers will be able to detect and identify all marine mammals within the vicinity of the test site, the MMC questions whether the applicant will be able to ensure compliance with this provision.

Response: The paragraph in the proposed regulations cited by the MMC is a standard paragraph in all LOAs and IHAs to ensure that the list of those species expected to be taken is as complete as possible. Unless commenters provide NMFS with additional information on those marine mammal species that it suspects might be within the shock test areas that have not been included in the Navy's application, NMFS must rely on its expertise and from the list of marine mammals described in the Navy application and DEIS. The information provided to NMFS was obtained from several aerial surveys and other sources, including seasonal distribution, and is believed to be the best scientific information available. If a marine mammal is taken that is not authorized, then the applicant is considered to be in violation of the conditions of the LOA. If the aerial observers sight and identify a marine mammal of an unauthorized species, then the shock test must be delayed to ensure that a taking does not occur. NMFS has consulted with the Navy to ensure that the list is as complete as possible.

It should be noted that the list of species expected to be taken incidental to the shock trial has been modified in this document because the Navy's FEIS has determined that the Mayport FL site is the preferred alternative. As a result, marine mammal species found in the Gulf of Mexico, and not off the east coast of Florida, have been removed from the list.

Comment 43: The MMC suggests that NMFS advise the applicant that, despite the issuance of the requested LOA, there is the possibility that conducting the shock tests as planned might constitute a violation of the MMPA and encourage the applicant to expand its request to include all marine mammal species that potentially could be taken.

Response: Please see previous response. NMFS and the Navy are unaware of any species of marine mammals that have any potential of being in the offshore waters off Mayport, FL during the period between May and September that have not been included in this document.

Navy Application Concerns

Comment 44: The HSUS notes that the Navy application cites that there were no mortalities or serious injuries detected during the shock trial of the USS JOHN PAUL JONES. The HSUS is concerned by the Navy's (and NMFS') proclivity for maintaining that absence of evidence is evidence of absence.

Response: That no mortalities or serious injuries were detected by the monitoring program during and after the USS JOHN PAUL JONES shock trial is simply a statement of fact. NMFS views this statement, made after extensive aerial and boat surveys after each detonation to locate marine mammals, as different from similar statements made by others when there is not a concerted effort to detect "takes" during an activity. In that context, NMFS agrees with the commenter, noting that there is a potential for marine mammal mortality and injury by this action, and for that reason, the Navy has requested a small take authorization under the MMPA.

Comment 45: The HSUS questions the validity of the Navy's assumption of random spatial distribution of groups when scientific literature indicates that cetacean groups often clump around vital resources which are not always randomly encountered or distributed.

Response: The random distribution of groups is a conservative assumption. If cetacean groups are clumped, the probability of zero groups in the Safety Range will be higher than calculated values. In other words, the probability of encountering a Safety Range with no cetacean groups would be increased. As noted in Appendix C of the Navy DEIS, "The assumption of an approximately random distribution is reasonable for individual turtles and for mammal groups (obviously not for individuals, which are highly aggregated). To the extent that groups are distributed non-randomly, i.e., aggregated, the probability of zero will be underestimated by the Poisson distribution. In other words, if groups are themselves clustered together, then the probability of encountering zero groups in a given Safety Range-sized area will be higher than predicted by a random model. There is considerable evidence that marine mammal groups and sea turtles are not randomly distributed but are associated with certain oceanographic features. For example, cetacean densities are higher inside cold core rings and in the confluence zones between warm and cold core rings (Davis *et al.*, 2000); sea turtles have temperature preferences (Coles, 1999) and are concentrated

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inshore of the Gulf Stream western wall (Fritts *et al.*, 1983). However, as discussed in Section 5.0 of the Navy's DEIS and FEIS, test site selection would use satellite imagery and aerial surveys to avoid areas where marine mammals and turtles are highly concentrated. Therefore, the assumption of random distribution is reasonable, especially for comparing among test areas since the same assumption is applied to all three test areas.

Mitigation and Monitoring Concerns

Comment 46: Given the analysis in the LOA application of the proposed testing sites, the HSUS believes that the Pascagoula (site) exhibits the "best" profile for minimal impact to marine life.

Response: NMFS notes that under NEPA, the Navy must assess impacts on the total human environment, not solely on impacts to marine mammals as illustrated in a table estimating the total number of marine mammal takes anticipated at the three marine sites identified as alternative locations in the Navy's application. The choice of site locations was more fully addressed in the Navy's DEIS and FEIS. In the FEIS, the Navy determined that the Mayport site provided the best location for its needs and the least overall impact to the environment. It will be up to the Navy in the development of its Record of Decision to determine the location for the shock trial.

Comment 47: The SLFASWN believes that mortality and injury will occur and that it will occur largely unobserved. Also the "carnage" will occur slowly over a period of time.

Response: While NMFS agrees that there is some potential for mortality and injury of marine mammals by the shock trial, NMFS does not agree that it will occur largely unobserved over a period of time. The calculations conducted by the Navy, as explained in detail in its DEIS and FEIS, indicated that the Mayport FL site may result in up to 4 mortalities and 6 injuries. As explained elsewhere in this document, the Navy believes that this level is likely an overestimate of takings that will occur during the 4–week shock trial. NMFS concurs. In addition, without further clarification by SLFASWN on its concerns on the effectiveness of the monitoring program, NMFS is unable to concur that mortality and injury will go on unobserved. NMFS believes that post-detonation aerial and surface monitoring, and coordination with the local stranding networks, as described in the Navy application, will be capable of detecting injured or dead marine mammals to the greatest extent practicable.

NEPA, ESA and Executive Order (E.O.) 12866 Concerns

Comment 48: The ACS expresses concern over whether NMFS, in its self-described capacity as a "cooperating" rather than an ESA-required "consulting" agency, is properly performing its mandated role as the gatekeeper of the MMPA. The ACS contends that NMFS, by this action, is abdicating its responsibility to uphold national environmental policy and is, in fact contributing to the degradation of the marine environment rather than protecting it.

Response: NMFS disagrees that it is not upholding its responsibilities under the MMPA, the ESA, and NEPA. NMFS has responsibilities under all three statutes and has met those responsibilities through a program of cooperation and consultation as required under 40 CFR 1501.6 which implements NEPA, section 7 of the ESA, and section 101(a)(5)(A) and other sections of the MMPA. Under the ESA, NMFS concluded consultation with the Navy on this activity on October 10, 2000.

Comment 49: The NRDC believes that NMFS is justifying the proposed rule because of the benefits of the information that the Navy would be required to provide on the effects on the marine environment, particularly marine mammals.

Response: NMFS simply provides in the proposed rule a summary of costs and benefits of the proposed action in compliance with E.O. 12866. NMFS' responsibility is to make a determination of the impacts of an activity on marine mammals and whether or not that impact is negligible; determinations are not made based on the economic benefit of the activity.

Other Concerns

Comment 50: The HSUS contends that the acoustic criteria, discussed previously in this document, were not proposed for public review in the proposed rulemaking governing the taking of marine mammals incidental to the shock trial of the USS SEAWOLF.

Response: While the commenter is correct, it should be understood that the preamble to a rulemaking cannot discuss all aspects of an application and proposed authorization, and often refers to either the application, a NEPA statement, or both for additional information. Therefore, it is important for reviewers to also review the accompanying application and any documents noted as being available for review. However, for the USS SEAWOLF proposal, the proposed rule did not mention using the 182 dB (re 1 uPa^2–sec) criterion because the Navy application and the proposed rule were published prior to the availability of the Ridgway *et al.* (1997) research paper. Based, in part by a concern raised by NMFS in a letter (October 9, 1996) to the Navy regarding its criterion of "acoustic discomfort" for Level B harassment, the U.S. Navy convened a scientific working group to review and revise Appendix E of the USS SEAWOLF DEIS. The FEIS for the USS SEAWOLF, with the revised Appendix E, was released in May, 1998. A similar concern on the Navy's use of "acoustic discomfort" to characterize Level B harassment was also raised by the MMC in its letter to NMFS on September 16, 1996, in response to the proposed rule. NMFS' response to the MMC concern was then addressed in the final rule for the SEAWOLF small take authorization, noting the revision from using only a pressure-based criterion to using both a pressure-based criterion and an energy-based criterion. However, because this was a final rulemaking, the USS WINSTON S. CHURCHILL small take authorization rulemaking provides the public with the first notice and opportunity for comment on using the dual criterion of 182 dB (re 1 uPa^2–sec) and 12 psi criteria for explosive events. As noted previously, this rulemaking is being promulgated under section 101(a)(5) of the MMPA and the Administrative Procedure Act.

Comment 51: In concluding its letter, the HSUS notes, among other items previously addressed in this document, that the preliminary nature of the information provided by the Navy and NMFS is insufficient justification for abandoning truly precautionary acoustic standards for harassment of 140–160 dB re 1 uPa at 1 m.

Response: A source level (dB re 1 uPa at 1 m) cannot predict impacts at various distances. Therefore, NMFS presumes that the HSUS is referring here to a received level (i.e., dB re 1 uPa (rms)). The rationale for not recognizing a behavioral response by marine mammals (other than those resulting from TTS) has been addressed in response to comments 23 and 25. NMFS cautions against using acoustic standards without reference also to the type of noise (e.g., impulse, intermittent, continuous), the frequency of the sound, and the duration of the signal. Consideration should also be given to its oceanic context (e.g., Arctic, inshore, offshore waters).

Comment 52: The SLFASWN expresses concern over the increasing number of acoustic programs occurring in the water simultaneously and wants to know if it was possible to know which other tests might have occurred in the last 15 months.

Response: NMFS does not believe that the number of acoustic programs are increasing substantially, only that these programs are coming to the attention of the public. However, even if all these activities were known, NMFS believes that this would make up only an extremely small percentage of the anthropogenic noise in the ocean. Larger, more persistent, anthropogenic noise sources include shipping, seismic surveys, oceanographic research, and, in certain areas, recreational boating. Cumulative impacts from noise in the vicinity of the proposed shock trial is discussed in the Navy's FEIS on this subject.

Description of Habitat and Marine Mammals Affected by Shock Testing

A description of the U.S. Atlantic environment, its marine life and marine mammal abundance, distribution and habitat can be found in the Navy's DEIS and FEIS on this subject and is not repeated here.

Affected Marine Mammals

A summary of the marine mammal species found in the Mayport FL area is presented here. A complete list of potentially affected marine mammal species can be found later in this document. For more detail on marine mammal abundance, density and the methods used to obtain this information, reviewers are requested to refer to either the Navy application or the Navy's FEIS. Additional information on Atlantic and Gulf coast marine mammals can be found in Waring *et al.* (1999 and 2001).

Up to 27 marine mammal species may be present in the waters off Mayport, FL, including five species of mysticetes and 22 species of odontocetes. Mysticete whales are very unlikely to occur at Mayport during the May through September time period. Odontocetes may include the sperm whale, dwarf and pygmy sperm whale, four species of beaked whales, and 15 species of dolphins and porpoises. These 22 species are listed in 50 CFR 216.151(b).

Potential Impacts to Marine Mammals

Mortality and Injury

Potential impacts to several marine mammal species known to occur in these areas from shock testing include both lethal and non-lethal injury, as well as harassment. Marine mammals may be killed or injured as a result of the explosive blast due to the response of air cavities in the body, such as the lungs and bubbles in the intestines. Effects are more likely to be most severe in near surface waters above the detonation point where the reflected shock wave creates a region of negative pressure called "cavitation." This is a region of near total physical trauma within which no animals would be expected to survive. Based on calculations in Appendix D of the Navy's DEIS or FEIS, the maximum horizontal extent of the cavitation region is estimated to be 683 m (2,240 ft). This region would extend from the surface to a maximum depth of about 23 m (77 ft). A second criterion for mortality is the onset of extensive lung hemorrhage. Extensive lung hemorrhage is considered debilitating and potentially fatal. Suffocation caused by lung hemorrhage is likely to be the major cause of marine mammal death from underwater shock waves. The estimated range for the onset of extensive lung hemorrhage to marine mammals varies depending upon the animal's weight, with the smallest mammals having the greatest potential hazard range. The range predicted for a small marine mammal (e.g., a dolphin calf) is 1.35 km (0.73 nautical miles (nm)) from the detonation point. For estimating the impact from the detonation(s), NMFS and the Navy presume that 100 percent of the marine mammals within this radius would be killed, even though larger mammals may survive their injury from the shock wave.

NMFS and the Navy have established a dual criteria for determining non-lethal injury, the peak pressure that will result in: (1) The onset of slight lung hemorrhage, or (2) a 50-percent probability level for a rupture of the tympanic membrane. These are injuries from which animals would be expected to recover on their own. The range predicted for the onset of slight lung hemorrhage is 2.25 km (1.22 nm). The range predicted for 50 percent probability of eardrum TM rupture varies with the mammal's depth in the water column; the highest value being 2.16 km (1.17 nm) for a mammal at a depth of 335 m (1,100 ft). The criterion with the greater range (in this case, onset of slight lung hemorrhage) was used to estimate the number of potential non-lethal injuries. It is presumed that 100 percent of the marine mammals within this radius would be injured.

However, as noted previously, the mortality calculation based on extensive lung hemorrhage presumes that 100 percent of the animals within a radius of 1.35 km (0.73 nm) would be killed. While all animals within this radius are assumed to be killed, in reality some are unlikely to be even injured.

In addition to a non-lethal injury zone, NMFS has described in this document a method for calculating a zone of slight injury to the ear wherein marine mammals might incur a slight—PTS injury. This zone is based on Ketten (1995, 1998) wherein a PTS/TTS transition zone has been hypothesized extending from about 0.9 km (0.5 nm) from the detonation point to 5 km (2.7 nm) from the detonation point for a 10,000–lb (4,536–kg) charge. This is illustrated in figures D-9 and D-10 of Appendix D in the Navy's FEIS. Based on Ketten's calculations, and the fact that shock wave intensity decays exponentially with distance, it is reasonable to assume that PTS is unlikely to occur beyond the monitored buffer zone (3 nm/5.6 km) for the shock trial of the USS WINSTON S. CHURCHILL. Therefore, the method described by NMFS considers the zone between the range that has the potential to produce impulse levels for causing either the onset of slight lung hemorrhage or the energy flux density to produce 50 percent TM rupture, which is 1.22 nm/2.25 km from the detonation, and the outer edge of the buffer zone (3 nm/5.6 km) to be an area wherein marine mammals might incur a non-serious PTS injury. NMFS notes however, that because the Navy has calculated a take by injury wherein 100 percent of the marine mammals within the injury zone would be injured when in fact the incidence of eardrum rupture would be less than 50 percent at this range and the incidence of PTS would be less than 30 percent, there is no need in the case of the USS WINSTON S. CHURCHILL to recalculate take by injury levels due to this slightly extended slight injury zone.

Finally, the Navy believes it is very unlikely that injury will occur from exposure to the chemical by-products released into the surface waters, and no permanent alteration of marine mammal habitat would occur.

Incidental Harassment

NMFS has described TTS as an example of one form of harassment (60 FR 28379, May 31, 1995). TTS is a change in the threshold of hearing (the quietest sound an animal can hear), which could temporarily affect an animal's ability to hear calls, echolocation sounds, and other ambient sounds. As such, it could result in a temporary disruption of behavioral patterns, as specified in the statutory definition of Level B harassment.

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Since the small take authorization and Navy's FEIS for the USS SEAWOLF shock trial (63 FR 66069, December 1, 1998), the Navy has conducted an extensive analysis of the scientific literature, producing a good perspective on the physiological effects of TTS, as well as its use in human DRC by the Occupational Health and Safety Administration and in the National Institute for Occupational Safety and Health's (NIOSH) Criteria for Recommended Noise Standard (NIOSH, 1998). The best research to date indicates that the distortion and dysfunction of sensory tissue observed during TTS are only temporary and fully reversed upon recovery (i.e., occasional TTS produces no permanent tissue damage to the ear, only the temporary nondestructive impairment of tissue that fully recovers). As described in detail earlier in this document, this type of temporary nondestructive impairment as well as the use of TTS in human DRC are the scientific basis for no longer considering TTS as Level A harassment. Therefore, NMFS and the Navy concur that an impairment of hearing-related behavior during periods of TTS is the most reliable and meaningful estimate of Level B harassment for explosive detonation events.

Based upon information provided in the Navy's application for a small take authorization and in greater detail in Appendix E of the Navy's FEIS, a dual criterion for Level B acoustic harassment has been developed: (1) an energy-based TTS criterion of 182 dB re 1 uPa^2–sec 182 dB (re 1 uPa^2–sec), cumulative energy flux in any 1/3 octave band above 10 Hz for mysticetes and above 100 Hz for odontocetes (and sea turtles) derived from experiments with bottlenose dolphins (Ridgway *et al.*, 1997; Schlundt *et al.*, 2000); and (2) 12 psi peak pressure cited by Ketten (1995) as associated with a "safe outer limit for the 10,000 lb (4,536 kg) charge for minimal, recoverable auditory trauma" (i.e., TTS). The harassment range therefore is the minimum distance at which neither criterion is exceeded.

Using the 182 dB (re 1 uPa^2–sec) criterion, the Navy calculated separate ranges for odontocetes and mysticetes based on their differing sensitivity to low frequency sounds. For those odontocetes which are "high-frequency specialists," all frequencies greater than or equal to 100 Hz were included. For mysticetes, which are "low-frequency specialists," the frequency range was extended down to 10 Hz. Water depth is also an important factor in calculating harassment ranges. However, regardless of water depth, the Navy chose the highest values for TTS harassment ranges. Expected numbers of marine mammals within these radii (and thereby potentially receiving a TTS harassment impact) were calculated using the mean densities for the species expected in each area, and adjusting those estimates to account for submerged (undetectable) individuals. These ranges are as follows:

Water Depth (ft/m)	600/183	1200/366	2,300/701
Odontocetes (nm/km)	7.2/13.3	11.0/20.4	13.6*/25.2
Mysticetes (nm/km)	13.0/24.1	13.0/24.1	15.0/27.8

* determined by the 12 lbs/in^2 criterion

Estimated Level of Marine Mammal Takings

While the Navy does not expect that any lethal takes will result from these detonations (because of mitigation measures taken), calculations indicate that the Mayport site has the potential to result in up to 4 mortalities, 6 non-serious injuries, and 2,885 takings by harassment.

Mitigation and Monitoring Measures

The Navy's proposed action includes mitigation and monitoring that would minimize risk to marine mammals and sea turtles. These mitigation and monitoring measures are as follows:

(1) Through pre-detonation aerial surveys, the Navy will select a primary and two secondary test sites within the test area where potentially, marine mammals and sea turtle populations are the lowest, based on the results of aerial surveys conducted one to two days prior to the first detonation;

(2) Pre-detonation aerial monitoring will be conducted on the day of each detonation to evaluate the primary test site and verify that the safety range and buffer zone are free of visually detectable marine mammals and other critical marine life. If marine mammals are detected in the primary test area, the Navy will survey the secondary areas for marine mammals, and may move the shock test to one of the other two sites;

(3) Independent marine mammal biologists and acousticians will monitor the area visually (aerial and shipboard monitoring) and acoustically (by deploying sonobuoys) before each test and postpone detonation if (a) any marine mammal, sea turtle, large sargassum raft or large concentration of jellyfish is visually detected within a safety zone of 3.7 km (2.0 nm), (b) any marine mammal is acoustically detected within a safety zone of 4.16 km (2.25 nm), or (c) any large fish school, or flock of seabirds is detected within a safety zone of 1.85 km (1 nm);

(4) The area will be monitored visually (aerial and shipboard monitoring) and acoustically (by deploying sonobuoys) before each test and detonation will not occur if any marine mammal or sea turtle is within a buffer zone of an additional 1.85-km (1.0-nm) buffer zone, unless the marine mammals are on a course within the buffer zone that is taking them away from the 3.7–km (2.0nm) safety zone. A detonation will not occur if a listed marine mammal is detected within the buffer zone, and subsequently cannot be detected, until sighting and acoustic teams have searched the area for 2.5 hours (approximately 3 times the typical large whale dive duration). If a North Atlantic right whale is seen, detonation will not occur until the animal is positively relocated outside the buffer zone and at least one additional aerial monitoring of the safety range and buffer zone shows that no other right whales are present;

(5) Detonation will not occur if the sea state exceeds 3 (i.e., whitecaps on 33 to 50 percent of surface; 0.6 m (2 ft) to 0.9 m (3 ft) waves), or the visibility is not 5.6 km (3 nm) or greater, and the ceiling is not 305 m (1,000 ft) or greater;

(6) Detonation will not occur earlier than 3 hours after sunrise or later than 3 hours prior to sunset to ensure adequate daylight for pre- and post-detonation monitoring; and

(7) The area will be monitored for 48 hours after each detonation, and for 7 days following the last detonation, to find, document and track any injured animals. If post-detonation monitoring shows that marine mammals or sea turtles were killed or injured as a result of the test, or if any marine mammals or sea turtles were observed in the safety range immediately after a detonation, testing will be halted until procedures for subsequent detonations can be reviewed and changed as necessary.

Detailed descriptions of the measures for mitigation and monitoring the shock test can be found in Section 5 of the Navy's DEIS or FEIS.

Reporting

Within 120 days of the completion of shock testing, the Navy will submit a final report to NMFS. This report will include the following information: (1) Date and time of each of the detonations; (2) a detailed description of the pre-test and post-test activities related to mitigating and monitoring the effects of explosives detonation on marine mammals and their populations; (3) the results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the detonations and numbers that may have been harassed due to undetected presence within the safety zone; and (4) results of coordination with coastal marine mammal/sea turtle stranding networks.

Substantial Changes to the Proposed Rule

The effective date of the rule is changed from a beginning date of April 1st to a beginning date of May 1st in order to conform with the Navy's small take application. (May 1st had been chosen by the Navy because of a determination that this date provided additional protection to sea turtles which are more abundant off the inshore waters off Mayport in April).

With the decision made by the Navy, through completion of its Record of Decision (part of which was its NEPA documentation), to conduct the shock trial in the offshore waters of the Atlantic Ocean off Mayport, FL, the list of affected marine mammals has been amended to authorize the taking of only those species with some potential to be in the Mayport, FL offshore region between May and September. The following species have therefore been removed: Blue whale (Balaenoptera musculus); fin whale (*B. physalus*); sei whale (*B. borealis*); Bryde's whale (*B. edeni*); minke whale (*B. acutorostrata*); northern right whale (*Eubalaena glacialis*); humpback whale (*Megaptera novaeangliae*); long-finned pilot whale (*Globicephala melas*); northern bottlenose whale (*Hyperoodon ampullatus*); Sowerby's beaked whale (*Mesoplodon bidens*); Atlantic white-sided dolphin (*Lagenorhynchus acutus*); harbor porpoise (*Phocoena phocoena*), and harbor seal (*Phoca vitulina*).

Costs and Benefits

In addition to allowing the Navy to take a small number of marine mammals incidental to conducting the shock trial, this final rule requires the Navy to provide NMFS and the public with information on the shock trial's effect on the marine environment, especially on marine mammals. Besides the improved survivability of U.S. armed forces at sea and the Navy's multi-billion dollar ship assets, this final rule will result in NMFS and the public being provided this information. NMFS believes that obtaining this information is extremely important because shock trials are not the only explosive noise source in the world's oceans, and the scientific findings resulting from monitoring are likely to be directly applicable to future activities. Also, the mitigation measures for protecting marine mammals, sea turtles and other marine life that will be required by the final rule will result in a substantial reduction in impacts on these animals. Without these regulations, these mitigation measures could not be required to be undertaken by the U.S. Navy. Also, the cost to the Navy to comply with the mitigation and monitoring measures that will be required by this rule cannot be fully determined at this time, however NMFS believes that the cost will be approximately $ 1.8 million, due, in large part, to expenses incurred with conducting 8 aerial surveys for humpback whales and other marine mammals annually.

NEPA

On December 10, 1999 (64 FR 69267), a notice of availability of the Navy DEIS was published. The public comment for that document was extended until March 31, 2000. On February 23, 2001 (66 FR 11288), the Navy released an FEIS on this action. NMFS is a cooperating agency, as defined by the Council on Environmental Quality (40 CFR 1501.6), in the preparation of these documents. NMFS has reviewed the Navy's FEIS and does not have any significant concerns with the findings contained therein. As a result, NMFS hereby adopts the Navy FEIS as its own as provided by 40 CFR 1506.3 and finds that it is unnecessary to either prepare its own NEPA documentation on the issuance of these regulations nor to recirculate the Navy FEIS for additional comments.

ESA

The U.S. Navy requested consultation with NMFS under section 7 of the ESA on this action. In that regard, NMFS concluded consultation with the Navy on this activity on October 10, 2000. The finding of that consultation was that the shock trial is not likely to jeopardize the continued existence of any species under the jurisdiction of NMFS. A copy of the Biological Opinion is available upon request (see **ADDRESSES**).

Conclusions

While NMFS believes that detonation of three to four 4,536–kg (10,000–lb) charges may affect some marine mammals, the latest abundance and seasonal distribution estimates indicate that such taking will result in only small numbers of marine mammals being affected, and that this level of impact will have no more than a negligible impact on the populations of marine mammals inhabiting the waters of the U.S. Atlantic Coast. NMFS concurs with the U.S. Navy, as provided in its FEIS and small take application, that impacts can be mitigated by mandating a conservative safety range for marine mammal exclusion, incorporating aerial, shipboard, and acoustic survey monitoring efforts in the program both prior to, and after, detonation of explosives, and provided detonations are not conducted whenever marine mammals are either detected within the safety zone, or may enter the safety zone at the time of detonation, or if weather and sea conditions preclude adequate aerial surveillance. Since the taking will not result in more than the incidental harassment (as defined by the MMPA Amendments of 1994) of small numbers of certain species of marine mammals, will have only a negligible impact on these stocks, will not have an unmitigable adverse impact on the availability of these stocks for subsistence uses, and, through implementation of required mitigation and monitoring measures, will result in the least practicable adverse impact on the affected marine mammal stocks, NMFS has determined that the requirements of section 101(a)(5)(A) of the MMPA have been met and the LOA can be issued.

Authorization

Accordingly, NMFS issued an LOA on the date of this document to the U.S. Navy to take small numbers of marine mammals incidental to conducting a shock trial of the USS WINSTON S. CHURCHILL in the offshore waters off Mayport, FL, provided the previously mentioned mitigation, monitoring, and reporting requirements are carried out.

Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration, when this rule was proposed, that, if adopted,

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it would not have a significant economic impact on a substantial number of small entities since it would apply only to the U.S. Navy and would have no effect, directly or indirectly, on small businesses. It will also affect a small number of contractors providing services related to reporting the impact of the shock trial on marine mammals. Some of the affected contractors may be small businesses, but the number involved would not be substantial. Further, since the monitoring and reporting requirements are what would lead to the need for their services, the economic impact on them would be beneficial. Accordingly, the analytical requirements of the Regulatory Flexibility Act do not apply and a regulatory flexibility analysis has not been prepared.

The Assistant Administrator for Fisheries, NOAA, finds for good cause, under section 553(d)(3) of Title 5 of the U.S.C., namely that it is unnecessary and contrary to public interest to delay the effective date of this rule for 30 days. This rule authorizes the issuance of an LOA by NMFS and sets forth the mitigation, monitoring and reporting requirements that the U.S. Navy must comply with in conjunction with the shock test of the USS WINSTON S. CHURCHILL. Neither NMFS nor the U.S. Navy need any time in order to come into compliance with the requirements of this rule and are prepared to implement them immediately. Further, because the U.S. Navy has completed its requirements under NEPA and has assets ready to conduct the shock trial, a delay of 30 days would be costly to the U.S. Navy and a waste of taxpayer dollars.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: April 26, 2001

Clarence Pautzke,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service

For reasons set forth in the preamble, 50 CFR part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Subpart N is added to read as follows:

Subpart N—Taking of Marine Mammals Incidental to Shock Testing the USS WINSTON S. CHURCHILL by Detonation of Conventional Explosives in the Offshore Waters of the U.S. Atlantic Coast

Sec.

216.151 Specified activity, geographical region, and incidental take levels.
216.152 Effective dates.
216.153 Permissible methods of taking; mitigation.
216.154 Prohibitions.
216.155 Requirements for monitoring and reporting.
216.156 Modifications to the Letter of Authorization.

Subpart N—Taking of Marine Mammals Incidental to Shock Testing the USS WINSTON S. CHURCHILL by Detonation of Conventional Explosives in the Offshore Waters of the U.S. Atlantic Coast

§ 216.151 Specified activity, geographical region, and incidental take levels.

(a) Regulations in this subpart apply only to the incidental taking of marine mammals specified in paragraph (b) of this section by U.S. citizens engaged in the detonation of conventional military explosives within the waters of the U.S. Atlantic Coast offshore Mayport, FL for the purpose of shock testing the USS WINSTON S. CHURCHILL.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited to the following species: Sperm whale (*Physeter macrocephalus*); dwarf sperm whale (*Kogia simus*); pygmy sperm whale (*K. breviceps*); pilot whale (*Globicephala macrorhynchus*); Atlantic spotted dolphin (*Stenella frontalis*); Pantropical spotted dolphin (*S. attenuata*); striped dolphin (*Stenella coeruleoalba*); spinner dolphin (*S. longirostris*); Clymene dolphin (*S. clymene*); bottlenose dolphin (*Tursiops truncatus*); Risso's dolphin (*Grampus griseus*); rough-toothed dolphin (*Steno bredanensis*); killer whale (*Orcinus orca*); false killer whale (*Pseudorca crassidens*); pygmy killer whale (*Feresa attenuata*); Fraser's dolphin (*Lagenodelphis hosei*); melon-headed whale (*Peponocephala electra*); Cuvier's beaked whale (*Ziphius cavirostris*), Blainville's beaked whale (*Mesoplodon densirostris*); Gervais' beaked whale (*M. europaeus*); True's beaked whale (*M. mirus*); and common dolphin (*Delphinus delphis*).

(c) The incidental take of marine mammals identified in paragraph (b) of this section is limited to a total of no more than 4 mortalities, 6 injuries, and 2,885 takings by harassment, except that the incidental taking by serious injury or mortality for species listed in paragraph (b) of this section that are also listed as threatened or endangered under § 7.11 of this title, is prohibited.

§ 216.152 Effective dates.

Regulations in this subpart are effective from May 1, 2001, through September 30, 2001.

§ 216.153 Permissible methods of taking; mitigation.

(a) Under a Letter of Authorization issued pursuant to § 216.106, the U.S. Navy may incidentally, but not intentionally, take marine mammals by harassment, injury or mortality in the course detonating up to 4 4,536 kg (10,000 lb) conventional explosive charges within the area described in § 216.151(a) provided all terms, conditions, and requirements of these regulations and such Letter of Authorization are complied with.

(b) The activity identified in paragraph (a) of this section must be conducted in a manner that minimizes, to the greatest extent possible, adverse impacts on marine mammals and their habitat. When detonating explosives, the following mitigation measures must be utilized:

(1) If marine mammals are observed within the designated safety zone prescribed in the Letter of Authorization, or within the buffer zone prescribed in the Letter of Authorization and on a course that will put them within the safety zone prior to detonation, detonation must be delayed until the marine mammals are no longer within the safety zone or on a course within the buffer zone that is taking them away from the safety zone.

(2) If a marine mammal listed under the Endangered Species Act is detected within the buffer zone, and subsequently cannot be detected, detonation must not occur until sighting and acoustic teams have searched the area for 2.5 hours.

(3) If a northern right whale is seen, detonation must not occur until the animal is positively reacquired outside the buffer zone and at least one additional aerial monitoring of the safety range and buffer zone shows that no other right whales are present;

(4) If weather and/or sea conditions as described in the Letter of Authorization preclude adequate aerial surveillance, detonation must not occur until conditions improve sufficiently for aerial surveillance to be undertaken.

(5) If post-test surveys determine that an injurious or lethal take of a marine mammal has occurred, the test procedure and the monitoring methods must be reviewed and appropriate changes must be made prior to conducting the next detonation.

§ 216.154 Prohibitions.

Notwithstanding takings authorized by § 216.151(b) and by a Letter of Authorization issued under § 216.106, the following activities are prohibited:

(a) The taking of a marine mammal that is other than unintentional.

(b) The violation of, or failure to comply with, the terms, conditions, and requirements of this part or a Letter of Authorization issued under § 216.106.

(c) The incidental taking of any marine mammal of a species not specified in this subpart.

§ 216.155 Requirements for monitoring and reporting.

(a) The holder of the Letter of Authorization is required to cooperate with the National Marine Fisheries Service and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals. The holder must notify the appropriate Regional Director at least 2 weeks prior to activities involving the detonation of explosives in order to satisfy paragraph (f) of this section.

(b) The holder of the Letter of Authorization must designate qualified on-site individuals, as specified in the Letter of Authorization, to record the effects of explosives detonation on marine mammals that inhabit the Atlantic Ocean test area.

(c) The test area must be surveyed by marine mammal biologists and other trained individuals, and the marine mammal populations monitored, 48-72 hours prior to a scheduled detonation, on the day of detonation, and for a period of time specified in the Letter of Authorization after each detonation. Monitoring shall include, but not necessarily be limited to, aerial and acoustic surveillance sufficient to ensure that no marine mammals are within the designated safety zone nor are likely to enter the designated safety zone prior to or at the time of detonation.

(d) Under the direction of a certified marine mammal veterinarian, examination and recovery of any dead or injured marine mammals will be conducted. Necropsies will be performed and tissue samples taken from any dead animals. After completion of the necropsy, animals not retained for shoreside examination will be tagged and returned to the sea. The occurrence of live marine mammals will also be documented.

(e) Activities related to the monitoring described in paragraphs (c) and (d) of this section, or in the Letter of Authorization issued under § 216.106, including the retention of marine mammals, may be conducted without the need for a separate scientific research permit. The use of retained marine mammals for scientific research other than shoreside examination must be authorized pursuant to subpart D of this part.

(f) In coordination and compliance with appropriate Navy regulations, at its discretion, the National Marine Fisheries Service may place an observer on any ship or aircraft involved in marine mammal reconnaissance, or monitoring either prior to, during, or after explosives detonation in order to monitor the impact on marine mammals.

(g) A final report must be submitted to the Director, Office of Protected Resources, no later than 120 days after completion of shock testing the USS WINSTON S. CHURCHILL. This report must contain the following information:

(1) Date and time of all detonations conducted under the Letter of Authorization.

(2) A description of all pre-detonation and post-detonation activities related to mitigating and monitoring the effects of explosives detonation on marine mammal populations.

(3) Results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the detonation and numbers that may have been harassed due to presence within the designated safety zone.

(4) Results of coordination with coastal marine mammal/sea turtle stranding networks.

§ 216.156 Modifications to the Letter of Authorization.

(a) In addition to complying with the provisions of § 216.106, except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to the Letter of Authorization issued pursuant to § 216.106 and subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.151(b), or that significantly and detrimentally alters the scheduling of explosives detonation within the area specified in § 216.151(a), the Letter of Authorization issued pursuant to § 216.106 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the **Federal Register** subsequent to the action.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 001226367–0367–01; I.D. 121500E]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures; Corrections; Trip Limit Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Trip limit adjustments; correction to the 2001 specifications; fishing restrictions for the Pacific Coast groundfish fishery; request for comments.

SUMMARY: NMFS announces changes in the following trip limits for the Pacific Coast groundfish fisheries north and south of 40°10′ N. lat.: limited entry trawl for flatfish north, limited entry fixed gear and open access for minor nearshore rockfish north, open access for minor nearshore rockfish south, and open access for yellowtail rockfish taken with salmon troll gear. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP) are intended to help the fisheries achieve optimum yield (OY) while protecting overfished and depleted stocks. This document also contains corrections relating to the lingcod and boccacio OYs, which were initially announced in the annual specifications and management measures that were published on January 11, 2001.

DATES: Changes to management measures are effective 0001 hours (local time) May 1, 2001, unless modified, superseded, or rescinded. These changes are effective until the effective date of the 2002 annual specifications and management measures for the Pacific Coast groundfish fishery, which will be published in the **Federal Register**. Comments on this rule will be accepted through May 21, 2001.

ADDRESSES: Submit comments to Donna Darm, Acting Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way N.E., Bldg. 1,

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Seattle, WA 98115–0070; or Rebecca Lent, Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier or Becky Renko, Northwest Region, NMFS, 206–526–6140.

SUPPLEMENTARY INFORMATION: The following changes to current management measures were recommended by the Pacific Fishery Management Council (Council,) in consultation with the States of Washington, Oregon, and California, at its April 2–6, 2001, meeting in Sacramento, CA. Pacific Coast groundfish landings will be monitored throughout the year, and further adjustments to the trip limits will be made as necessary to stay within the OYs and allocations announced in the annual specifications and management measures for the groundfish fishery, published in the **Federal Register** at 66 FR 2338, (January 11, 2001), as amended at 66 FR 10211, (February 14, 2001), and at 66 FR 18409, (April 9, 2001).

Limited Entry Trawl Gear Limits for Flatfish North of 40°10′ N. Lat.

A preliminary examination of trawl fleet tow locations from vessel logbook data for May to October 2000 indicates that the fleet has relocated arrowtooth flounder and other flatfish trawl activities away from areas of high canary bycatch. Based on this preliminary examination, the Council recommended increasing previously announced limits for flatfish other than Dover sole. The per month limit for all flatfish except Dover sole taken with a small footrope trawl gear for the May to October period was previously announced as 30,000 lb (13,608 kg). For the May to June period, the limit will be increased to a 50,000-lb (22,680 kg) per month limit for all flatfish except Dover sole, of which no more than 15,000 lb (6,804 kg) may be petrale sole and no more than 10,000 (4,536 kg) may be arrowtooth flounder. For the July to October period, the per month limit for all flatfish except Dover sole taken with a small footrope trawl gear will be 30,000 lb (13,608 kg) as previously announced.

With respect to the incidental catch of canary rockfish, this limit change is more conservative than the previously announced limit that allowed up to 30,000 lb (13,608 kg) of petrale sole or arrowtooth flounder to be landed. Trawl vessels are more likely to encounter canary rockfish when targeting petrale sole and arrowtooth flounder than other flatfish species. Lowering the limits for petrale sole and arrowtooth flounder are expected to reduce opportunities for vessels to take canary rockfish.

The per trip limit for arrowtooth flounder taken with large footrope trawl gear during the January to April periods has been at 20,000 lb (9,072 kg) and was to be reduced to 5,000 lb (2,268 kg) for the May to October period. To provide additional opportunity to harvest arrowtooth flounder and to encourage the harvest of Dover sole on the slope during the month of May, the large footrope trawl allowance for arrowtooth flounder will be set at 15,000 lb (6,804 kg) per trip for May. For the June to October period, the arrowtooth flounder limit will be reduced to 5,000 lb (2,268 kg) per trip as previously announced.

Limited Entry Fixed Gear and Open Access Minor Nearshore Rockfish North of 40°10′ N. Lat.

During the 2000 fishery, more than 50 percent of the available commercial allocations of northern minor nearshore rockfish went unharvested. The limited entry fleet took only 19 percent of its minor nearshore rockfish allocation in 2000, while the open access fishery took approximately 74 percent of its allocation. The best available information at the April Council meeting indicated that limited entry fisheries north of 40°10′ N. lat. had landed 4.3 percent of the minor nearshore rockfish available to the fishery, and that open access fisheries had landed 6.6 percent of their minor nearshore rockfish allocation through February 2001.

Most limited entry fixed gear vessels tend to use open access vertical hook-and-line gear to catch these species, but when using open access gear, they are constrained by the lower open access limits. Operating under open access limits has slowed the pace of harvest by limited entry vessels. The current limited entry fixed gear limit for minor nearshore rockfish north is 10,000 lb (4,536 kg) per 2-month period, no more than 4,000 lb (1,814 kg) of which may be species other than black or blue rockfish. The current open access limit for minor nearshore rockfish north is 3,000 lb (1,361 kg) per 2–month period, no more than 900 lb (408 kg) of which may be species other than black or blue rockfish.

To provide greater access to the allowable harvest levels, the Council recommended applying similar limits to both the limted entry fixed gear and open access portions of the fishery. To provide benefits to both segments of the fishery, without adversely affecting either group, and to reduce the risk of an early open access closure, the Council also recommended managing the limited entry and open access nearshore rockfish allocations collectively in 2001. For the May to December period, the limited entry fixed gear limit for minor nearshore rockfish north will be reduced to 7,000 lb (3,175 kg) per 2–month period, no more than 4,000 lb (1,814 kg) of which may be species other than black or blue rockfish. The current open access limit for minor nearshore rockfish north will be increased to 7,000 lb (3,175 kg) per 2–month period, no more than 900 lb (408 kg) of which may be species other than black or blue rockfish. Maintaining the current limits of species other that black or blue rockfish is intended to prevent excess harvest of species commonly associated with the live-fish fishery.

Open Access Fishery for Minor Nearshore Rockfish South of 40°10′ N. Lat.

The best available information at the April Council meeting indicated that 24.4 percent of the open access minor nearshore rockfish allocation south of 40 o10′ N. lat. fishery had been taken through February 2001. To slow the pace of the fishery and to ensure an open season in late fall when the markets are most desirable, the Council recommended reducing the cumulative limits. The 2-month cumulative limit for the fishery south of 34o 27′ N. lat. was previously announced as 1,800 lb (816 kg) for the March to December period. This limit will be reduced to 1,200 lb (544 kg) per 2 months. The 2-month cumulative limit for the fishery occurring between 40°10′ N. lat. and 34o 27′ N. lat. was previously announced as 1,800 lb (816 kg) shoreward of the 20 fathom depth contour for the May to June period. This limit will be reduced to 1,200 lb (544 kg) per 2-months shoreward of the 20 fathom depth contour for the May to June period; otherwise, this area is closed to nearshore rockfish until July 1, 2001. For the July to December period, the 2–month cumulative limit for the fishery occurring south of 40°10′ N. lat. will be reduced from the previously announced 1,800 lb (816 kg) to 1,200 lb (544 kg).

Open Access for Yellowtail Rockfish Taken With Salmon Troll Gear North of 40°10′ N. Lat.

During the April Council meeting, Washington State salmon troll fishers requested that the Council consider increased monthly limits for yellowtail rockfish taken in the open access fishery north of 40°10′ N. lat. by vessels fishing for salmon with troll gear. Yellowtail rockfish is believed to be at 63 percent of its unfished biomass, and is therefore considered to be a healthy stock. Management measures aimed at protecting canary rockfish, which are often caught in association with yellowtail rockfish, have reduced the catch opportunity for yellowtail rockfish. Therefore, a portion of the yellowtail rockfish allocation is expected to be unharvested during the 2001 fishing year, as was the case in 2000.

The open access 1–month cumulative limit for yellowtail rockfish north is 100 lb (45 kg) for the January to December period. Analysis of landings data from 1997 to 1999, when yellowtail rockfish trip limits were higher, shows that an average of 50–75 lb (22.08–35.02 kg) per trip of yellowtail rockfish were landed by salmon troll vessels. Although the vast majority of deliveries contained no yellowtail rockfish, many individual trips contained more than 100 lb (45 kg). Correlations between yellowtail and canary rockfish were also examined, and it was found that there was not a particularly strong correlation between the two species when taken with salmon troll gear.

To allow the open access yellowtail rockfish allocation to be fully utilized while still protecting canary rockfish, the Council recommended that a monthly cumulative limit of 300 lb (136 kg) be established specifically for the salmon troll fishery. If a vessel fishes with more than one open access gear type, then this limit cannot be added to the general 100 lb (45 kg) per month open access limit. The Council believes that allowing existing yellowtail bycatch taken with salmon troll gear to b+e landed will not provide an additional incentive for salmon trollers to target yellowtail rockfish, thereby placing canary rockfish at a greater risk.

To prevent individuals who do not routinely catch much yellowtail rockfish with salmon from making trips to specifically target on yellowtail, vessels would be restricted from landing yellowtail (round weight) in amounts greater than one half the weight of the salmon (dressed weight) being landed.

Corrections to Lingcod and Boccacio Specifications

The 2001 fishery specifications and management measures for the Pacific Coast groundfish FMP were published in the **Federal Register** on January 11, 2001 (66 FR 2338). The specifications contained errors in the assumed discard rates for lingcod and boccacio that require correction. At the November 2000 Council meeting, the open access and limited entry landed catch targets for lingcod and boccacio that were presented to the Council did not include the discard deductions. The Council recommended that the oversight be corrected. A 16–percent discard adjustment will be made for boccacio and a 20–percent discard adjustment will be made for lingcod.

Corrections

In the annual specification and management measures published in the **Federal Register** at 66 FR 2338 (January 11, 2001), make the following corrections:

1. On page 2343, Table 1a, in footnote b/, the last sentence is corrected to read as follows: "The assumed discard rate in the limited entry fishery is 20 percent, resulting in a limited entry landed catch target of 163 mt. The open access landed catch target remains at 48 mt."

2. On page 2345, Table 1a, in footnote n/ the last sentence is corrected to read as follows: "The assumed discard rate is 16 percent, resulting in a limited entry landed catch target of 24 mt and an open access landed catch target of 19 mt."

NMFS Actions

For the reasons stated here, NMFS concurs with the Council's recommendations and announces the following changes to the 2001 annual management measures (66 FR 2338, January 11, 2001, as amended at 66 FR 10211 February 14, 2001, and at 66 FR 18409 April 9, 2001) to read as follows:

1. In Section IV, under B. *Limited Entry Fishery* Tables 3 and 4 are revised; in Section IV, under C. *Trip Limits in the Open Access Fishery*, Table 5 is revised; and in Section IV, under C. paragraph(5) is revised to read as follows:

IV. NMFS Actions

B. Limited Entry Fishery

* * * * *

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Table 3. 2001 Trip Limits [1/] and Gear Requirements [2/] for Limited Entry Trawl Gear
Read Section IV.A. NMFS Actions before using this table.

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
1	**Minor slope rockfish**						
2	North	1,500 lb/ 2 months		1,500 lb/ 2 months			1,500 lb/ 2 months
3	South	14,000 lb/ 2 months		14,000 lb/ 2 months			14,000 lb/ 2 months
4	**Splitnose - South**	8,500 lb/ 2months		14,000 lb/ 2 months			4,000 lb/ 2 months
5	**Pacific ocean perch** [6/]	1,500 lb/ month		2,500 lb/ month			1,500 lb/ month
6	**DTS complex - North**						
7	Sablefish	5,000 lb/ 2 months		14,000 lb/ 2 months			5,000 lb/ 2 months
8	Longspine thornyhead	6,000 lb/ 2 months		6,000 lb/ 2 months			6,000 lb/ 2 months
9	Shortspine thornyhead	1,500 lb/ 2 months		1,500 lb/ 2 months			1,500 lb/ 2 months
10	Dover sole	65,000 lb/ 2 months		20,000 lb/ 2 months			20,000 lb/ 2 months
11	**DTS complex - South**						
12	Sablefish	8,000 lb/ 2 months		11,000 lb/ 2 months			8,000 lb/ 2 months
13	Longspine thornyhead	6,000 lb/ 2 months		6,000 lb/ 2 months			6,000 lb/ 2 months
14	Shortspine thornyhead	1,500 lb/ 2 months		1,500 lb/ 2 months			1,500 lb/ 2 months
15	Dover sole	35,000 lb/ 2 months		35,000 lb/ 2 months			35,000 lb/ 2 months
16	**Flatfish - North**						
17	Arrowtooth flounder	20,000 lb/ trip		Small footrope: May and June 50,000 lb/ month for all flatfish except Dover sole of which no more than 15,000 lb may be petrale sole and 10,000 lb may be arrowtooth; July to October 30,000 lb/ month for all flatfish except Dover sole. Large footrope: arrowtooth, 15,000 lb/trip for May and 5,000 lb/trip for June to October; petrale sole, prohibited; rex sole, included in all other flatfish; all other flatfish, 1,000 lb/ trip.			20,000 lb/ trip
18	Petrale sole	No restriction					No restriction
19	Rex sole	No limit					No limit
20	All other flatfish [3/]	small footrope, no limit; large footrope, 1,000 lb/ trip					small footrope, no limit; large footrope, 1,000 lb/ trip
21	**Flatfish - South**						
22	Arrowtooth flounder	20,000 lb/ trip		small footrope, no limit; large footrope, 5,000 lb/ trip			20,000 lb/ trip
23	Petrale sole	No restriction		No limit (small footrope required)			No restriction
24	Rex sole	No limit					
25	All other flatfish [3/]	small footrope, no limit; large footrope, 1,000 lb/ trip					
26	**Whiting shoreside** [4/]	20,000 lb/ trip		Primary Season			20,000 lb/ trip
27	**Use of small footrope bottom trawl [5/] or midwater trawl required for landing all of the following species:**						
28	**Minor shelf rockfish**						
29	North	300 lb/ month		1,000 lb/ month			300 lb/ month
30	South	500 lb/ month		1,000 lb/ month			500 lb/ month
31	**Canary rockfish**	100 lb/ month		300 lb/ month			100 lb/ month
32	**Widow rockfish**						
33	mid-water trawl	20,000 lb/ 2 months		10,000 lb/ 2 months	20,000 lb/ 2 months		10,000 lb/ 2 months
34	small footrope trawl	1,000 lb/ month					
35	**Yellowtail - North** [6/]						
36	mid-water trawl	30,000 lb/ 2 months		15,000 lb/ 2 months			20,000 lb/ 2 months
37	small footrope trawl	Without flatfish, 1,500 lb/ month. As flatfish bycatch, per trip limit is the sum of 33% (by weight) of all flatfish except arrowtooth flounder, plus 10% (by weight) of arrowtooth flounder, not to exceed 2,500 lb/ trip and 30,000 lb/ 2 months.		Without flatfish, 1,500 lb/ month. As flatfish bycatch, per trip limit is the sum of 33% (by weight) of all flatfish except arrowtooth flounder, plus 10% (by weight) of arrowtooth flounder, not to exceed 7,500 lb/ trip and not to exceed 15,000 lb/ 2 months.			Without flatfish, 1,500 lb/ month. As flatfish bycatch, per trip limit is the sum of 33% (by weight) of all flatfish except arrowtooth flounder, plus 10% (by weight) of arrowtooth flounder, not to exceed 2,500 lb/ trip and 20,000 lb/ 2 months
38	**Bocaccio - South** [6/]	300 lb/ month		500 lb/ month			300 lb/ month
39	**Chilipepper - South** [6/]						
40	mid-water trawl	25,000 lb/ 2 months					
41	small footrope trawl	7,500 lb/ 2 months					
42	**Cowcod**	**Retention is Prohibited**					
43	**Minor nearshore rockfish**						
44	North	200 lb/ month					
45	South	200 lb/ month					
46	**Lingcod** [7/]	No retention		400 lb/ month			No retention

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N. lat. To the U.S.-Canada border.
"South" means 40°10' N. lat. To the U.S.-Mexico border. 40°10' N. lat is about 20 nm south of Cape Mendocino, CA.
2/ Gear requirements and prohibitions are explained at paragraph IV.A.(14)
3/ "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with a trip limit.
4/ The whiting "per trip" limit in the Eureka area inside 100 fm is 10,000 lb/ trip throughout the year. See IV.B.(3)(c).
The 20,000 lb/ trip limit applies before and after the primary season.
5/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter.
Midwater gear also may be used; the footrope must be bare. See paragraph IV.A. (14)
6/ Yellowtail rockfish and POP in the south, and bocaccio, and chilipepper rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area (Table 2)
7/ The size limit for lingcod is 24 inches (61 cm) total length.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4. 2001 Trip Limits [1/] for Limited Entry Fixed Gear
Read Section IV.A. NMFS Actions before using this table.

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
1	**Minor slope rockfish**						
2	North	1,500 lb/ 2 months		1,500 lb/ 2 months			1,500 lb/ 2 months
3	South	14,000 lb/ 2 months		14,000 lb/ 2 months			14,000 lb/ 2 months
4	**Splitnose - South**	8,500 lb/ 2months		14,000 lb/ 2 months			4,000 lb/ 2 months
5	**Pacific ocean perch** [5/]	1,500 lb/ month		2,500 lb/ month			1,500 lb/ month
6	**Sablefish**						
7	North of 36° N. lat.	300 lb/ day, 2,700 lb/ 2 months					
8	South of 36° N. lat	350 lb/ day, or 1 landing per week of up to 1,050 lb					
9	**Longspine thornyhead**	6,000 lb/ 2 months		6,000 lb/ 2 months			6,000 lb/ 2 months
10	**Shortspine thornyhead**	1,500 lb/ 2 months		1,500 lb/ 2 months			1,500 lb/ 2 months
11	**Dover sole**						
12	North	65,000 lb/ 2 months		20,000 lb/ 2 months			20,000 lb/ 2 months
13	South	35,000 lb/ 2 months		35,000 lb/ 2 months			35,000 lb/ 2 months
14	**Flatfish - North**						
15	Arrowtooth flounder	20,000 lb/ trip		30,000 lb/ month for all flatfish except Dover sole			20,000 lb/ trip
16	Petrale sole	No restriction					No restriction
17	Rex sole	No limit					No limit
18	All other flatfish 2/	No limit					No limit
19	**Flatfish - South**						
20	Arrowtooth flounder	20,000 lb/ trip		No limit			20,000 lb/ trip
21	Petrale sole	No limit					
22	Rex sole	No limit					
23	All other flatfish 2/	No limit					
24	**Whiting 3/**	20,000 lb/ trip		Primary Season			20,000 lb/ trip
25	**Minor shelf rockfish**						
26	North	300 lb/ month		1,000 lb/ month			300 lb/ month
27	South						
28	40°10' - 34°27' N. lat.	500 lb/ month		CLOSED 4/		1,000 lb/ month	500 lb/ month
29	South of 34°27' N. lat.	CLOSED 4/		500 lb/ month			
30	**Canary rockfish**						
31	North	100 lb/ month		300 lb/ month			100 lb/ month
32	South						
33	40°10' - 34°27' N. lat.	100 lb/ month		CLOSED 4/		300 lb/ month	100 lb/ month
34	South of 34°27' N. lat.	CLOSED 4/		100 lb/ month			
35	**Widow rockfish**						
36	North	3,000 lb/ month					
37	South						
38	40°10' - 34°27' N. lat.	3,000 lb/ month		CLOSED 4/		3,000 lb/ month	
39	South of 34°27' N. lat.	CLOSED 4/		3,000 lb/ month			
40	**Yellowtail - North 5/**	1,500 lb/ month					
41	**Bocaccio - South 5/**						
42	40°10' - 34°27' N. lat.	300 lb/ month		CLOSED 4/		500 lb/ month	300 lb/ month
43	South of 34°27' N. lat.	CLOSED 4/		300 lb/ month			
44	**Chilipepper - South 5/**						
45	40°10' - 34°27' N. lat.	2,500 lb/ month		CLOSED 4/		2,500 lb/ month	
46	South of 34°27' N. lat.	CLOSED 4/		2,500 lb/ month			
47	**Cowcod**	**CLOSED 4/ -- All Retention is Prohibited**					
48	**Minor nearshore rockfish**						
49	North	10,000 lb/ 2 months, no more than 4,000 lb of which may be species other than black or blue rockfish 6/		7,000 lb/ 2 months, no more than 4,000 lb of which may be species other than black or blue rockfish 6/			
50	South						
51	40°10' - 34°27' N. lat.	2,000 lb/ 2 months	CLOSED 4/	Shoreward of 20 fm depth: 2,000 lb/ 2 months, otherwise CLOSED 4/		2,000 lb/ 2 months	
52	South of 34°27' N. lat.	Shoreward of 20 fm depth: 2,000 lb/ 2 months, otherwise CLOSED 4/		2,000 lb/ 2 months			
53	**Lingcod 7/**						
54	North	CLOSED 4/		400 lb/ month			CLOSED 4/
55	South						
56	40°10' - 34°27' N. lat.	CLOSED 4/		400 lb/ month			CLOSED 4/
57	South of 34°27' N. lat.	CLOSED 4/		400 lb/ month			CLOSED 4/

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N. lat. To the U.S.-Canada border
"South" means 40°10' N. lat. To the U.S.-Mexico border. 40°10' N. lat is about 20 nm south of Cape Mendocino, CA
2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with a trip limit
3/ The whiting "per trip" limit in the Eureka area inside 100 fm is 10,000 lb/ trip throughout the year. See IV.B.(3)(c)
4/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV.A.(7) in the time or area indicated. See IV.A.(7)
5/ Yellowtail rockfish and POP in the south, and bocaccio, and chilipepper rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area (Table 2)
6/ The "per trip" limit for black rockfish off Washington also applies. See paragraph IV.B.(4)
7/ The size limit for lingcod is 24 inches (61 cm) in the north, and 26 inches (66 cm) in the south, total length
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

* * * * *

C. Trip limits in the Open Access Fishery

* * * * *

Table 5. 2001 Trip Limits[1] for Open Access Gears
Read Section IV.A. NMFS Actions before using this table.
Exceptions for exempted gears at Section IV C.

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
1	**Minor slope rockfish**						
2	North			500 lb/ 2 months			
3	South			5,000 lb/ 2 months			
4	**Splitnose - South**			200 lb/ month			
5	**Pacific ocean perch 4/**			100 lb/ month			
6	**Sablefish**						
7	North of 36° N. lat			300 lb/ day, 2,700 lb/ 2 months			
8	South of 36° N. lat			350 lb/ day			
9	**Thornyheads (longspine and shortspine combined)**						
10	North of 34°27' N. lat			CLOSED 3/ -- Retention is Prohibited			
11	South of 34°27' N. lat			50 lb/ day, no more than 2,000 lb/ 2 months			
12	**Arrowtooth**			200 lb/ month			
13	**Dover sole**			(included in "other" flatfish limit)			
14	**Petrale sole**			(included in "other" flatfish limit)			
15	**Nearshore flatfish**			(included in "other" flatfish limit)			
16	**"Other" flatfish 2/**			300 lb/ month			
17	**Whiting**			300 lb/ month			
18	**Minor shelf rockfish**						
19	North			100 lb/ month			
20	South						
21	40°10' - 34°27' N. lat.	200 lb/ month	CLOSED 3/			200 lb/ month	
22	South of 34°27' N. lat	CLOSED 3/	200 lb/ month				
23	**Canary rockfish**						
24	North			50 lb/ month			
25	South						
26	40°10' - 34°27' N. lat	50 lb/ month	CLOSED 3/			50 lb/ month	
27	South of 34°27' N. lat	CLOSED 3/	50 lb/ month				
28	**Widow rockfish**						
29	North			3,000 lb/ month			
30	South						
31	40°10' - 34°27' N. lat.	3,000 lb/ month	CLOSED 3/			3,000 lb/month	
32	South of 34°27' N. lat.	CLOSED 3/	3,000 lb/ month				
33	**Yellowtail - North 4/ 8/**			100 lb/ month			
34	**Bocaccio - South 4/**						
35	40°10' - 34°27' N. lat	200 lb/ month	CLOSED 3/			200 lb/ month	
36	South of 34°27' N. lat.	CLOSED 3/	200 lb/ month				
37	**Chilipepper - South 4/**						
38	40°10' - 34°27' N. lat.	2,500 lb/ month	CLOSED 3/			2,500 lb/ month	
39	South of 34°27' N. lat.	CLOSED 3/	2,500 lb/ month				
40	**Cowcod**			Closed 3/ -- Retention is Prohibited			
41	**Minor nearshore rockfish**						
42	North 6/	3,000 lb/ 2 months, no more than 900 lb of which may be species other than black or blue rockfish 5/		7,000 lb/ 2 months, no more than 900 lb of which may be species other than black or blue rockfish 5/			
43	South						
44	40°10' - 34°27' N. lat	1,800 lb/ 2 months	CLOSED 3/	Shoreward of 20 fm depth 1,200 lb/ 2 months, otherwise CLOSED 3/		1,200 lb/ 2 months	
45	South of 34°27' N. lat	Shoreward of 20 fm depth 1,800 lb/ 2 months, otherwise CLOSED 3/	1,800 lb/ 2 months	1,200 lb/ 2 months			
46	**Lingcod 7/**						
47	North	CLOSED 3/		400 lb/ month		CLOSED 3/	
48	South						
49	40°10' - 34°27' N. lat	CLOSED 3/			400 lb/ month	CLOSED 3/	
50	South of 34°27' N. lat	CLOSED 3/		400 lb/ month		CLOSED 3/	

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N lat to the U.S. - Canada border. "South" means 40°10' N lat to the U.S.-Mexico border. 40°10' N lat is about 20 nm south of Cape Mendocino, CA.
2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with a trip limit.
3/ Closed means that it is prohibited to take, retain, possess, or land the designated species in the time or area indicated. (See IV.A. (7).)
4/ Yellowtail rockfish and POP in the south, and bocaccio, and chilipepper rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area (Table 2).
5/ The "per trip" limit for black rockfish off Washington also applies. See paragraph IV.B.(4).
6/ See IV.C.(4) for limits specific to Pacific City, Oregon.
7/ The size limit for lingcod is 24 inches (61 cm) in the north, and 26 inches (66 cm) in the south, total length.
8/ See IV.C.(5) for limits specific to the salmon troll fishery.

* * * * *

(5) *Groundfish taken with troll gear by vessels engaged in fishing for salmon north of 40° 10' N. lat.*(a) The cumulative limit for yellowtail rockfish in the open access fishery is 100 lb (45 kg) per month. If a vessel has reached its 100 lb (45 kg) yellowtail cumulative limit, up to 200 lb (91 kg) per month of additional yellowtail rockfish may be taken and retained, possessed or landed, providing the following conditions are met: in any trip in which salmon troll gear, as defined at 50 CFR 660.402, is used to take and land yellowtail rockfish and, no more than one lb (.45 kg) of yellowtail rockfish (round weight) is landed for every two lbs (.91 kg) of salmon landed (dressed weight). Dressed weight for purposes of this paragraph is the weight of salmon that is recorded on the State fish ticket and is salmon with the entrails removed, from which the head and gills may or may not have been removed.

(b) The trip limits in Table 5 apply to all other groundfish taken with troll gear by vessels fishing for salmon.

* * * * *

Classification

These actions are authorized by the regulations implementing the FMP and the annual specifications and management measures published at 66 FR 2369 (January 11, 2001) and are based on the most recent data available.

NMFS finds good cause to waive the requirement to provide prior notice and comment on this action pursuant to 5 U.S.C. 553(b)(B), because providing prior notice and opportunity for comment would be impracticable. It would be impracticable because the cumulative limit period begins on May 1, 2001, and affording additional notice and opportunity for public comment would impede the due and timely execution of the agency's function of managing fisheries to achieve OY. Increases to trip limits relieve burdens on the public and decreases to trip limits must be implemented in a timely manner to stretch the season as long as possible through the year. In addition, the affected public had the opportunity to comment on these actions at the April 2–6, 2001 Council meeting. This action should be implemented before the beginning of the cumulative trip limit period to avoid confusion and to provide fishers the opportunity to achieve the trip limits. For these reasons, good cause also exists to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(3).

These actions are taken under the authority of 50 CFR 660.323(b)(1), and are exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 30, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–11297 Filed 5–1–01; 4:48 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 010319071–1103–02; I.D. 030101H]

RIN 0648–AN71

Fisheries of the Northeastern United States; Spiny Dogfish Fishery; 2001 Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; final specifications.

SUMMARY: NMFS issues final specifications for the 2001 spiny dogfish fishery (May 1, 2001, through April 30, 2002). This final rule establishes a commercial quota and possession limits for the 2001 fishing year to address overfishing of the spiny dogfish resource. In addition, the current trip limits are modified to be possession limits, specified as the maximum amount allowed to be landed within any one 24-hour period (per-calendar-day possession limit). The intent of this action is to comply with implementing regulations for the Fishery Management Plan for the Spiny Dogfish Fishery (FMP), which require NMFS to impose measures for each upcoming fishing year that will prevent overfishing of this fishery.

DATES: The 2001 annual commercial quota is effective from May 1, 2001, to April 30, 2002. The amendments to §§ 648.14(aa)(7), 648.230(d)(1), 648.235(a), and 648.235(b) are effective May 1, 2001.

ADDRESSES: Copies of supporting documents used by the Spiny Dogfish Monitoring Committee (Monitoring Committee), the Regulatory Impact Review (RIR), the Final Regulatory Flexibility Analysis (FRFA) contained within the RIR, and the Environmental Assessment (EA) are available from the Northeast Regional Office, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. The EA/RIR/FRFA is also accessible via the Internet at http://www.nero.gov/ro/doc/nr.htm.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, Fishery Policy Analyst, (978)281–9279, fax (978)281–9135, e-mail rick.a.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: A proposed rule for this action was published in the **Federal Register** on March 30, 2001, (66 FR 17391). The comment period closed on April 14, 2001.

Background

The FMP was developed jointly by the Mid-Atlantic Fishery Management Council (MAFMC) and the New England Fishery Management Council (NEFMC) (Councils). The implementing regulations for the FMP are found at 50 CFR part 648, subpart L.

Pursuant to 50 CFR 648.230, the Administrator, Northeast Region, NMFS (Regional Administrator), imposes measures for each fishing year designed to ensure that the target fishing mortality rate (F) for the fishing year, as specified in the FMP, is not exceeded. The target F for fishing year 2001 and the management measures (i.e., semi-annual commercial quota and possession limits) for that year are summarized here. Detailed background information regarding the development of the specifications for the 2001 spiny dogfish fishing year was provided in the preamble to the proposed specifications (66 FR 17391, March 30, 2001) and is not repeated here.

Annual Commercial Quota

The FMP specifies a target F of 0.03 for 2001, to be attained through a commercial quota and possibly other management measures. This final rule establishes a 2001 fishing year commercial quota of 4 million lb (1.81 million kg), allocated on a semi-annual basis as follows: Quota Period 1 (May 1-October 31) is allocated 57.9 percent of the 4-million lb (1.81-million kg) quota, or 2,316,000 lb (1,050,512 kg); Quota Period 2 (November 1-April 30) is allocated 42.1 percent of the 4-million lb (1.81-million kg) quota, or 1,684,000 lb (763,849 kg). This commercial quota was recommended by the Spiny Dogfish Monitoring Committee (Monitoring Committee) to achieve the target F of 0.03, as required in the FMP for the 2001 fishing year. Although the Monitoring Committee and the Councils also recommended that an additional 500,000 lb (226,796 kg) be allocated for experimental fishing projects, the FMP and its implementing regulations do not contain a provision to allow for the allocation of such a set-aside quota for

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experimental fishing projects. It was only through interim action by the Secretary of Commerce that such a provision was possible for the 2000 fishing year. Therefore, an additional quota set-aside for experimental fishing projects for 2001 is not contained in this final rule.

Possession Limits

The Councils differed in their possession limit recommendations. During the rebuilding period, the objective of the FMP is to rebuild the mature female component of the spiny dogfish stock to prevent possible recruitment failure. This portion of the stock, which is the primary spawning biomass of the stock, has traditionally been targeted by the directed spiny dogfish fishery and, consequently, is most in need of protection and rebuilding. In order to discourage directed fishing for spiny dogfish and to allow dogfish caught incidentally in other fisheries to be landed for the entire quota period, the MAFMC recommended per-calendar-day possession limits of 600 lb (272 kg) for Quota Period 1, and 300 lb (136 kg) for Quota Period 2. The NEFMC, however, recommended a per-calendar-day possession limit of 5,000 lb (2,268 kg) for both quota periods.

A possession limit of 5,000 lb (2,268 kg) could facilitate a directed fishery for spiny dogfish. NMFS believes that a directed fishery is not advisable because that fishery has traditionally targeted mature females, due to their larger size and higher value. The primary objective of the FMP is to rebuild the mature female component of the population. In fact, both the disapproved rebuilding target recommended by the Councils and the rebuilding target supported by the Spiny Dogfish Technical Committee are based upon attaining a specified level of abundance of adult female spiny dogfish. To establish possession limits through these specifications at levels that facilitate a directed fishery on adult female spiny dogfish would be counterproductive. Therefore, this final rule establishes per-calendar-day possession limits of 600 lb (272 kg) and 300 lb (136 kg) for Quota Period 1 and Quota Period 2, respectively, to allow for the retention of spiny dogfish caught incidentally in fisheries for other species throughout the entire fishing year, and to provide protection for adult female spiny dogfish.

This final rule also changes the current landing limits. The landing limits are changed to be the maximum amount of spiny dogfish that may be possessed on board and landed in any 1 calendar day. The intent of this change is to enhance at-sea enforcement and to prohibit multiple landings of spiny dogfish in any 1 day. This change is consistent with recent changes in the landing limits for several other Mid-Atlantic fisheries (Loligo squid, scup, and black sea bass).

Comments and Responses

Two comment letters were submitted to NMFS during the comment period for the proposed rule. One was submitted on behalf of a commercial fishing industry association and the other on behalf of two conservation organizations. These letters addressed two main points: The level of the commercial quota, and the 500,000-lb (2,268-kg) quota set-aside for experimental fisheries.

NMFS considered all comments received during the comment period in making its decision regarding the final specifications and summarizes and responds to these comments here.

Comment 1: One commenter stated that the level of the proposed commercial quota was too low because it was based upon a fishing mortality rate target (F=0.03) that is intended to achieve what the commenter believes to be an inappropriate biomass rebuilding target. The commenter stated that the current biomass rebuilding target is incorrect and that NMFS has rejected other more flexible alternatives proposed by the Councils (167,000 mt in 2000; 180,000 mt in 1999). Further, the commenter believes that achievement of the rebuilding target in the FMP will ultimately result in a record high total level of abundance of spiny dogfish.

Response: The quota of 4.0 million lb (1.81 million kg) will achieve F=0.03 for the 2001 fishing year, as required by the FMP, and as recommended by the Monitoring Committee. A higher quota would be inconsistent with the FMP's approved rebuilding strategy and, therefore, cannot be implemented by NMFS.

Although the rebuilding strategy contained in the FMP has been approved, the FMP does not currently have an approved biomass rebuilding target. An adult female biomass rebuilding target of 200,000 mt (SSBmax) was determined by the Council's Joint Scientific and Statistical Committee on January 19, 1999, to be the most appropriate value for Bmsy (the biomass that achieves maximum sustainable yield), based on current information. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires rebuilding of overfished stocks to a level that will achieve maximum sustainable yield, based upon the best available information. Therefore, NMFS could not approve the adult female biomass rebuilding target of 180,000 mt that was recommended in the original submission of the FMP by the Councils. The Councils must, in the near future, develop an amendment to the FMP to establish an acceptable biomass rebuilding target for spiny dogfish. Some technical work has been done to advance the discussion of this issue. With regard to the commenter's assertion that the Agency rejected an adult female biomass rebuilding target of 167,000 mt, the Council has not submitted such a recommendation to the agency. The 167,000-mt biomass rebuilding target was considered by the Spiny Dogfish Technical Committee as an adjusted figure that could reflect a hypothesized increase in the area covered by the NEFSC survey trawl, as described at the March 6, 2000, meeting of the Spiny Dogfish Technical Committee. However, the Councils have not yet determined if or how they will utilize this information. As a result, no new additional alternatives have been recommended for further action.

NMFS noted in the final rule that implemented the FMP (65 FR 1557, January 11, 2000) that it considered fully the concern that a 200,000-mt adult female biomass rebuilding target would result in a historically high total level of abundance of spiny dogfish (see Comment 22). In summary, the current spiny dogfish age structure has been seriously distorted by the selective removal of mature females by the fishery. The management measures in the FMP, including the commercial quota, reduce fishing mortality rates to allow the total population to return to equilibrium at a lower level of abundance than that observed in 1999. The preliminary projections in the FMP indicated that the total long-term biomass of a sustainable dogfish fishery would be about 416,000 mt, which is lower than the total 1999 biomass of 515,513 mt.

Comment 2: One commenter supported a commercial quota of no more than 4 million lb (1.81 million kg), but asserted that a 3-million lb (1.36 million kg) quota would be more appropriate, given the scientific advice and rebuilding strategy outlined in the FMP.

Response: The quota of 4.0 million lb (1.81 million kg) that NMFS is establishing through these final specifications is consistent with the objective to achieve F=0.03 for the 2001 fishing year, as required by the FMP, and as recommended by the Monitoring Committee. The Monitoring Committee initially calculated the yield projection

at F=0.03 for 2001 to be about 3.5 million lb (1.59 million kg) using a mean estimated population size. After considering the uncertainty and variability in the population estimates for spiny dogfish that were previously described in the interim final rule (65 FR 25887, May 4, 2000), the Monitoring Committee recommended a commercial quota of 4 million lb (1.81 million kg).

Comment 3: One commenter urged NMFS to establish a 500,000-lb (2,268-kg) quota set-aside for experimental fishing projects. The commenter indicated that a failure to do so would delay the collection of additional management and scientific information and delay efforts by the fishing industry to devise gear and fishing modifications to harvest male spiny dogfish exclusively.

Another commenter opposed the establishment of a quota set-aside for experimental projects. The commenter mentioned that no projects were submitted during the 2000 fishing year, so justification for the additional allocation this year is lacking. The commenter wrote that any quota set-aside should be deducted from the overall 4-million lb (1.81 million kg) commercial quota.

Response: Although no proposals were received in 2000 when the provision was included as part of the interim rule, industry members have expressed some interest in investigating alternative fishing methods for male-only dogfish fisheries. A limited experimental fishery was conducted for this purpose in North Carolina state waters. Both Councils proposed that NMFS should allow for a set-aside quota for 2001 and they analyzed the set-aside quota in their submission. However, there is currently no provision in the FMP to allow the establishment of a set-aside quota. The set-aside quota could be implemented through an amendment to the FMP if the Councils decide to pursue this measure.

Changes From the Proposed Rule

The final rule contains a provision not contained in the proposed rule. The final rule revises § 648.230(d)(1) to correct a one-day error in the length of the first allocation period to extend it through October 31 rather than through October 30.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This action establishes annual quotas and related management measures for the spiny dogfish fishery, which are used to control the harvest of spiny dogfish and to restrict landings when quotas are attained. This action must be taken immediately upon the start of the 2001 fishing year on May 1, 2001, to conserve this resource. It would be impracticable to delay implementation of the quota provisions, because doing so would prevent NMFS from carrying out its mandate to prevent overfishing of the spiny dogfish resource. Therefore, there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for the implementation of the 2001 spiny dogfish quotas and related management measures, including the possession limit restrictions, which are needed to enforce effectively the possession limits. With respect to the change to § 648.230(d)(1), which merely corrects a one-day error in the length of the first allocation period, a delay in effective date is unnecessary given that the one-day extension occurs six months from May 1.

NMFS and the MAFMC prepared a FRFA for this action. A copy of the FRFA is available from the Regional Administrator (see **ADDRESSES**). The preamble to the proposed specifications included a detailed summary of the analyses contained in the IRFA, which is not repeated here. A summary of the FRFA focusing upon the impacts of the final measures follows:

A description of the reasons why this action is being taken by the agency and the objectives of this final rule are explained in the preambles to the proposed rule and this final rule. This action does not contain any collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules. There are no compliance costs associated with this final rule.

Public Comments

There were no comments received in reference to the Initial Regulatory Flexibility Analysis (IRFA) description of the expected impacts of the proposed regulations on small entities.

Number of Small Entities

These measures potentially impact a total of 596 vessels that reported (based on vessel trip report data) spiny dogfish landings to NMFS in 1999. However, any of the 2,759 vessels that obtained Federal spiny dogfish permits could potentially be affected by the proposed measures. Data for individual vessels were not available from the 2000 fishing year at the time of analysis.

Minimizing Significant Economic Impact on Small Entities

In the IRFA, NMFS analyzed three alternatives. The MAFMC alternative (Alternative 1) included a commercial quota of 4 million lb (1,814 mt); possession limits of 600 lb (272 kg) during Quota Period 1 and 300 lb (136 kg) during Quota Period 2; and a 500,000-lb (2,268-kg) experimental fishery quota. The NEFMC alternative (Alternative 2) included a commercial quota of 4 million lb (1,814 mt); a possession limit of 5,000 lb (2,268 kg) for both quota periods; and a 500,000-lb (2,268-kg) experimental quota. Alternative 3 was no management action.

In this final rule, NMFS is implementing Alternative 1, without the 500,000-lb (2,268-kg) experimental quota set-aside. This final rule also modifies the trip limits to be possession limits, with the additional provision that these levels are the maximum amount that may be landed in any single calendar day. Although the spiny dogfish quota set-aside of 500,000 lb (2,268 kg) for experimental fisheries was analyzed under the three alternatives in the IRFA by the Councils, there is no authority under the FMP to make such an allocation.

The modification of the trip limits to possession limits and the requirement that these levels be set at the maximum amount that may be landed in 1 calendar day will enhance at-sea enforcement by prohibiting possession of spiny dogfish on board a vessel in excess of the specified levels, rather than simply prohibiting landings in excess of the specified levels. Prohibiting multiple landings of spiny dogfish in 1 day will prevent vessels from landing excessive amounts when spiny dogfish are in nearshore areas. These changes are necessary to adhere to the original intent of the trip limits and to ensure that the conservation objectives of the management measures are not compromised. They are not expected to result in any significant economic impacts or differential impacts on small entities. Such measures should provide fair and equal access of vessels to the spiny dogfish quota.

The measures implemented by this final rule are intended to minimize economic impacts on small entities while achieving the conservation goals and objectives of the FMP and the Magnuson-Stevens Act. The potential change in overall revenues under the 4-million lb (1,814-mt) quota was evaluated relative to landings and revenues derived during the 2000

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fishing year (6.7 million lb (3,039 mt) of landings, valued at $1,072 million). The analysis assumed that the revenues of the 596 vessels that landed spiny dogfish in 1999 would be reduced proportionately by the measures to be implemented by this final rule for the 2001 fishing year. The reduction in overall gross revenues to vessels was estimated to be about $432,000, or about $725 per vessel, compared to the 2000 fishing year. Of the 596 vessels, 36 would be expected to experience a reduction in total gross revenues (all species combined) of more than 5 percent as a result of the 2.7-million lb (1,224-mt) reduction from actual 2000 fishing year landings. This represents 6 percent of the vessels that landed spiny dogfish in 1999. The remaining 560 vessels would be expected to experience a reduction in total gross revenues of less than 5 percent. Although revenues would increase in the short-term without a commercial quota (status-quo, no-action alternative) as compared to year 2000 spiny dogfish landings, long-term revenues from an unregulated fishery would continuously decline as the stock size is further reduced, due to continued overfishing.

Under the possession limits implemented through this final rule, it is projected that landings in Quota Period 1 may reach the semi-annual quota allocation (2,316,000 lb (1,050 mt)) before the close of Quota Period 1 on about July 24, 2001 (128 days into the quota period) and that landings during Quota Period 2 would not achieve the full semi-annual quota allocation (1,684,000 lb (764 mt)) by the end of Quota Period 2 on April 30, 2002. Therefore, landings for the entire 2001 fishing year are projected to reach only 2,930,663 lb (1,329 mt) of the entire 4-million lb (1,814-mt) annual quota. This translates to a reduction in spiny dogfish trips of 21 percent for Quota Period 1 and no reduction in the amount of trips for Quota Period 2. The analysis assumed that trips would be eliminated to the extent that the possession limits on spiny dogfish make those trips unprofitable. However, the analysis did not account for behavioral changes by vessel operators, which could impact the amount of landings. These changes could not be analyzed. Also, since vessels without Federal permits (i.e., state-permitted vessels) are not captured in the analysis, additional landings are likely to occur.

The possession limits implemented by this final rule were preferable to the status quo alternative (no possession limits) and the possession limit recommendation under Alternative 2 (5,000 lb (2,268 kg) for both quota periods) because they achieve conservation benefits consistent with the objectives of the FMP and with the Magnuson-Stevens Act, and provide economic relief to small entities by allowing landings of incidentally caught spiny dogfish for the entire fishing year, thereby possibly reducing discards. The other two alternatives did not achieve the conservation objectives of the FMP and the Magnuson-Stevens Act, or, in the case of Alternative 2, would encourage a short, derby-style fishery lasting approximately 41 days per quota period, after which all landings of spiny dogfish would be prohibited.

The impact of the final specifications for the 2001 fishing year will be greatest in Massachusetts, North Carolina, Maryland, Maine, and New Jersey, which accounted cumulatively for 90 percent of spiny dogfish landings from 1988 through 1997. The communities of Wachapreague, VA, Plymouth, MA, and Scituate, MA, have benefitted from dogfish landings that made up 76 percent, 74 percent, and 21 percent, respectively, of the value of all landed fish, based on 1997 NMFS landings data. Because these communities have recently derived a relatively high percentage of their fishing income from spiny dogfish, they will be most impacted by the commercial quota and possession limits in the final specifications. These impacts were also experienced in the 2000 fishing year. Two of these communities, Plymouth and Scituate, MA, are suburban areas of a large city (Boston) and are substantially engaged in the businesses of the metropolitan area. The other community, Wachapreague, VA, has significant fishing activities, but also attracts retirees and tourism, and is substantially dependent on these two sectors for economic activity. The analysis also concludes that small vessels (25 to 49 ft (7.6 to 14.9 m)) constitute 91 percent of affected vessels (those vessels experiencing a reduction in revenues of greater than 5 percent) under a 4-million lb (1,814-mt) commercial quota. However, if no action is taken, communities benefitting from dogfish landings would experience greater lost revenues in the long term due to stock collapse as a result of allowing a directed fishery in the short term.

A formal section 7 consultation under the Endangered Species Act (ESA) was reinitiated for the FMP by NMFS on May 4, 2000, as a result of recent entanglements of endangered and threatened marine mammals and sea turtles to determine whether this fishery jeopardizes ESA-listed species. In a biological opinion dated August 13, 1999, the Assistant Administrator for Fisheries, NOAA, determined that fishing activities conducted under the FMP and its implementing regulations may adversely affect but are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of right whale critical habitat. For endangered whales, this conclusion assumed the Atlantic Large Whale Take Reduction Plan, as implemented, would be effective at reducing incidental mortality and serious injury of the whales to insignificant levels approaching zero mortality and serious injury rate.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 30, 2001.

John Oliver,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.14, paragraph (aa)(7) is added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(aa) * * *

(7) Possess more than the possessi/on limit of spiny dogfish specified under § 648.235. The possession limit is the maximum amount that may be landed in any 1 calendar day.

* * * * *

3. In § 648.230, paragraph (d)(1) is revised to read as follows:

§ 648.230 Catch quotas and other restrictions.

* * * * *

(d) * * *

(1) The annual quota specified according to the process outlined in paragraph (a) of this section shall be allocated between two semi-annual quota periods as follows: May 1 through October 31 (57.9 percent) and November 1 through April 30 (42.1 percent).

* * * * *

4. Section 648.235 is added to read as follows:

§ 648.235 Possession and landing restrictions.

(a) *Quota Period 1.* From May through October 31, vessels issued a valid Federal spiny dogfish permit specified under § 648.4(a)(11) may:

(1) Possess up to 600 lb (272 kg) of spiny dogfish per trip; and

(2) Land only one trip of spiny dogfish per calendar day.

(b) *Quota Period 2.* From November 1 through April 30, vessels issued a valid Federal spiny dogfish permit specified under § 648.4(a)(11) may:

(1) Possess up to 300 lb (136 kg) of spiny dogfish per trip; and

(2) Land only one trip of spiny dogfish per calendar day.

[FR Doc. 01–11160 Filed 4–30–01; 4:55 pm]

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Proposed Rules

Federal Register
Vol. 66, No. 87
Friday, May 4, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–374–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2–1C, B2–203, B2K–3C, B4–2C, B4–103, and B4–203 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A300 B2–1C, B2–203, B2K–3C, B4–2C, B4–103, and B4–203 series airplanes. This proposal would require a one-time inspection of the space between the fuel quantity indication (FQI) probes and any adjacent structures for minimum clearance, and corrective action, if necessary. This action is necessary to prevent the possibility of electrical arcing to the fuel tank if the airplane should be struck by lightning. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by June 4, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–374–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9–anm–nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–374–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–374–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–374–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Airbus Model A300 B2–1C, B2–203, B2K–3C, B4–2C, B4–103, and B4–203 series airplanes. The DGAC advises that, in order to ensure adequate protection in the event of lightning strikes, the manufacturer carried out investigations of the clearances between the fuel quantity indication (FQI) probes and any adjacent structures or metallic components in the left or right wing fuel tanks which could create a path of electrical conductivity to the fuel tanks. The investigation was carried out on 10 Model A300 series airplanes. Seven airplanes had FQI probes without minimum clearance. This condition, if not corrected, could result in the possibility of electrical arcing to the fuel tank if the airplane should be struck by lightning.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A300–28–0080, dated September 28, 2000, which describes procedures for inspecting the FQI probes to make sure that there is a minimum clearance of 3.0 mm (0.118 in.) between each FQI probe and any adjacent structure and/or component in the wing fuel tanks, and adjustment of the clearance space, if necessary. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 2000–455–322(B), dated November 15, 2000, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 20 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 7 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $8,400, or $420 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 2000–NM–374–AD.

Applicability: All Model A300 B2–1C, B2–203, B2K–3C, B4–2C, B4–103, and B4–203 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the possibility of electrical arcing to the fuel tank if the airplane should be struck by lightning, accomplish the following:

Inspection

(a) Within 4,000 flight hours after the effective date of this AD, inspect the clearance space from each fuel quantity indication (FQI) probe to any adjacent structure or metallic component, in accordance with Airbus Service Bulletin A300–28–0080, dated September 28, 2000.

Clearance Adjustment

(b) If, during the inspection mandated in paragraph (a) of this AD, the clearance between any probe and its adjacent parts, as described in Airbus Service Bulletin A300–28–0080, dated September 28, 2000, is less than 3.0 mm (0.118 in.), prior to further flight, adjust the position of the FQI probe in accordance with paragraph 3.C. of the service bulletin.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 2000–455–322(B), dated November 15, 2000.

Issued in Renton, Washington, on April 30, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–11228 Filed 5–3–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–220–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

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ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes. The proposed AD would have required an eddy current inspection to detect cracks in the upper girder of the two main landing gear (MLG) brackets; and repair of a cracked bracket followed by repetitive inspections, or replacement of a cracked MLG bracket with an improved bracket, as applicable. The proposed AD also provided for an optional terminating action for certain proposed requirements. That proposal was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. This new action revises the proposed rule by adding new repetitive inspections for certain airplanes, and extending the repetitive interval for the repetitive inspections for other airplanes. The actions specified by this new proposed AD are intended to detect and correct cracks in the upper girder of the MLG bracket, which could progress into the vertical stiffeners of the MLG bracket and result in reduced structural integrity of the landing gear.

DATES: Comments must be received by May 29, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–220–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9–anm–nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 99–NM–220–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–220–AD." The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–220–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on November 15, 1999 (64 FR 61796). That NPRM would have required an eddy current inspection to detect cracks in the upper girder of the two main landing gear (MLG) brackets; and repair of a cracked bracket followed by repetitive inspections, or replacement of a cracked MLG bracket with an improved bracket, as applicable. That NPRM also provided for optional terminating action for certain requirements of the proposed AD. That NPRM was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The conditions described in that NPRM, if not corrected, could result in cracks in the upper girder of the MLG bracket, which could progress into the vertical stiffeners of the MLG bracket and result in reduced structural integrity of the landing gear.

Explanation of New Service Information

Since the issuance of that NPRM, Fokker has issued Service Bulletin F28/57–90, Revision 1, dated August 28, 2000. (The NPRM referenced Fokker Service Bulletin F28/57–90, dated March 1, 1999, as the appropriate source of service information for certain proposed actions.) Revision 1 of the service bulletin describes actions similar to those in the original issue of the service bulletin, but recommends new repetitive inspections for airplanes on which no cracking is detected, and increases the repetitive inspection interval from 12 months to 18 months for airplanes on which cracking is detected. Revision 1 of the service bulletin also clarifies the accomplishment instructions by providing more detailed instructions for the eddy current inspections.

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, classified Service Bulletin F28/57–90, Revision 1, as mandatory, and issued Dutch airworthiness directive 1999–045/2, dated October 31, 2000, in order to assure the continued airworthiness of these airplanes in the Netherlands.

Comments

Due consideration has been given to the comments received in response to the NPRM. Certain comments have resulted in changes to the proposed rule, and these comments are addressed below.

Request To Add Repetitive Inspections, Extend Inspection Interval

One commenter requests that the FAA revise the repetitive inspection interval, as proposed in paragraph (a)(2) of the NPRM, to correspond with the inspection interval that the airplane manufacturer intends to incorporate in the Structural Inspection Program (SIP) Document. The interval to which the commenter refers is the 18-month repetitive inspection interval for both uncracked and repaired fittings of the MLG brackets, as provided in Revision 1 of the service bulletin, described previously. As stated above, the FAA has revised the proposal in this supplemental NPRM according to the changes in Revision 1 of the service bulletin. No further change to the proposal is necessary related to this comment.

Request To Correct a Typographical Error

A commenter points out that, in the "Differences Between Proposed Rule, Foreign Airworthiness Directive, and Service Bulletin" section of the NPRM, the FAA states that replacement of a cracked MLG bracket would be required if a crack exceeds 0.0591 inch (15mm) in length. The commenter notes that the referenced crack length should be "0.591." The FAA acknowledges that this was a typographical error, and has ensured that the correct crack length is stated in the parallel section of this supplemental NPRM.

Explanation of Change to Cost Impact Information

In the "Cost Impact" section of the NPRM, the FAA stated that the proposed AD would affect six airplanes of U.S. registry. Since the issuance of the NPRM, two additional airplanes subject to this proposed AD have been added to the U.S. Register. The FAA has revised the "Cost Impact" section of this supplemental NPRM accordingly.

Explanation of New Requirements of Proposal

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this new proposed AD would require repetitive eddy current inspections to detect cracks in the upper girder of the two MLG brackets; and repair of a cracked bracket or replacement of a cracked bracket with an improved bracket, as applicable. Such replacement would terminate the requirements of this proposed AD. For airplanes on which no cracking is detected, replacement of an existing bracket with an improved bracket is provided as an optional terminating action for the repetitive inspections. The actions would be required to be accomplished according to Fokker Service Bulletin F28/57–90, Revision 1 (described previously), and Fokker Proforma Service Bulletin F28/57–92, dated July 1, 1999 (described in the original NPRM), except as noted below. (Operators should note that, although Fokker Proforma Service Bulletin F28/57–92 has not been revised since the original NPRM, a difference between the proposal and that service bulletin that was cited in the original NPRM is restated below for the convenience of operators.)

Differences Between Supplemental NPRM, Foreign Airworthiness Directive, and Service Bulletins

This supplemental NPRM differs from Fokker Service Bulletin F28/57–90, Revision 1, and the parallel Dutch airworthiness directive in that it would require, prior to further flight, replacement of a cracked MLG bracket with an improved bracket, if a crack exceeds 0.591 inch (15 mm) in length. The service bulletin and the Dutch airworthiness directive specify replacement of a cracked MLG bracket prior to further flight only if a crack exceeds 1.576 inches (40 mm) in length. The FAA has determined that, because of the safety implications and consequences associated with such cracking, any subject MLG bracket that is found to have a crack that exceeds 0.591 (15 mm) in length must be replaced prior to further flight.

Operators should note that Fokker Service Bulletin F28/57–90, Revision 1, and the Dutch airworthiness directive specify to replace a cracked MLG bracket in accordance with Fokker Proforma Service Bulletin F28/57–92, or to contact the manufacturer for replacement instructions. However, this supplemental NPRM would require replacement of a cracked MLG bracket to be accomplished in accordance with Fokker Proforma Service Bulletin F28/57–92.

Operators also should note that, although Fokker Proforma Service Bulletin F28/57–92, including any appendix referenced in that proforma service bulletin, may specify that the manufacturer may be contacted if any discrepancies are found during the replacement of the MLG bracket, this proposal would require correction of the discrepancies in accordance with a method approved by the FAA, or the RLD (or its delegated agent). In light of the type of corrective action that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this supplemental NPRM, corrective action approved by either the FAA or the RLD would be acceptable for compliance with this proposed AD.

Conclusion

Since the changes described above expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

The FAA estimates that 8 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $960, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities

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under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker Services B.V.: Docket 99–NM–220–AD.

Applicability: Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes; serial numbers 11003 through 11091 inclusive, 11094 through 11171 inclusive, 11991, and 11992; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracks in the upper girder of the main landing gear (MLG) bracket, which could progress into the vertical stiffeners of the MLG bracket and result in reduced structural integrity of the landing gear, accomplish the following:

Repetitive Inspections and Corrective Actions

(a) Within 12 months after the effective date of this AD, perform an eddy current inspection of the upper girder of the MLG brackets on the left and right sides of the airplane for cracks, in accordance with the Accomplishment Instructions of Fokker Service Bulletin F28/57–90, Revision 1, dated August 28, 2000.

(1) If no cracks are found, repeat the inspection at least every 18 months, until accomplishment of paragraph (d) of this AD.

(2) Except as provided by paragraph (c) of this AD, if any crack is found, prior to further flight, repair as specified in paragraph C.(1) of the Accomplishment Instructions of the service bulletin, in accordance with the service bulletin. Thereafter, repeat the eddy current inspection at intervals not to exceed 18 months, until accomplishment of paragraph (d) of this AD.

Note 2: Inspections accomplished before the effective date of this AD in accordance with Fokker Service Bulletin F28/57–90, dated March 1, 1999, are considered acceptable for compliance with paragraph (a) of this AD.

Reporting Requirement

(b) Within 10 days after accomplishing each inspection required by paragraph (a) of this AD, submit a report of the inspection results to: Fokker Services B.V., Technical Services, Attn: Manager Airline Support, P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Replacement

(c) For airplanes on which a crack greater than 0.591 inch (15 mm) in length is found: Except as provided by paragraph (e) of this AD, prior to further flight, replace the cracked MLG bracket with a new, improved bracket (including measuring the position of the existing MLG bracket, removing the existing bracket and attachment fittings, checking alignment of the fastener holes, measuring gaps, installing a shim, and aligning the new bracket); in accordance with Fokker Proforma Service Bulletin F28/57–92, dated July 1, 1999. Such replacement constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

Optional Terminating Action

(d) Except as provided by paragraph (e) of this AD, replacement of the MLG bracket with a new, improved bracket (including measuring the position of the existing MLG bracket, removing the existing bracket and attachment fittings, checking alignment of the fastener holes, measuring gaps, installing a shim, and aligning the new bracket), in accordance with Fokker Proforma Service Bulletin F28/57–92, dated July 1, 1999; constitutes terminating action for the repetitive inspections specified in paragraph (a) of this AD for the replaced bracket.

(e) If any discrepancy is detected during accomplishment of the replacement procedures, and the service bulletin or any appendix to the service bulletin specifies to contact Fokker for appropriate action: Prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Rijksluchtvaartdienst (or its delegated agent).

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Dutch airworthiness directive 1999–045/2, dated October 31, 2000.

Issued in Renton, Washington, on April 30, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–11227 Filed 5–3–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–274–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model Hawker 800XP Series Airplanes and Model Hawker 800 (U–125A Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Raytheon Model Hawker 800XP series airplanes and certain Model Hawker 800 (U–125A military) airplanes. This proposal would require a one-time inspection of an attachment bolt in the main landing gear (MLG) door system to determine whether the bolt's protruding threads have been peened; and corrective action, if necessary. This action is necessary to prevent the disconnection of the retaining hook (which holds the MLG door up and locked) from its means of actuation, which could result in a gear-up landing and possible injury to passengers and crew. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by June 18, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–274–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–274–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Paul C. DeVore, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4142; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket 2000–NM–274–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket 2000–NM–274–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received results of a routine production-line inspection that identified an unsafe condition on certain Raytheon Model Hawker 800XP series airplanes and certain Model Hawker 800 (U–125A military) airplanes. The inspection concerned attachment bolts on the retaining hooks of the main landing gear (MLG) doors. The bolts are located at the interface between the retaining hooks on the right and left MLG doors and the uplock spring struts. On all of the airplanes inspected, the threads of the attachment bolts had not been peened, as required by the airplanes' type design. Peening is the only positive means specified in the design for retaining the nuts on the attachment bolts. This condition, if not corrected, could result in a gear-up landing and possible injury to passengers and crew.

Explanation of Relevant Service Information

The FAA has reviewed and approved Raytheon Service Bulletin SB 32–3386, dated June 2000. The service bulletin describes procedures for inspecting an attachment bolt of the retaining hook of the MLG door, at the interface between the retaining hook and the uplock spring strut, to determine whether the bolt's protruding threads next to the nut have been peened. Corrective actions described in the service bulletin include peening the threads of any unpeened bolt. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 167 airplanes of the affected design in the worldwide fleet. The FAA estimates that 115 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $6,900, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal

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would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Raytheon Aircraft Company: Docket 2000–NM–274–AD.

Applicability: Model Hawker 800XP series airplanes, and Model Hawker 800 (U–125A military) airplanes; certificated in any category; as listed in Raytheon Service Bulletin SB 32–3386, dated June 2000.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a main landing gear (MLG) gear-up landing and possible injury to passengers and crew, accomplish the following:

Inspection

(a) Within 100 flight hours after the effective date of this AD: Perform a general visual inspection of the MLG attachment bolt at the interface between the right and left MLG door retaining hooks and the uplock spring struts to determine whether the bolt's protruding threads next to the nuts have been peened, in accordance with Raytheon Service Bulletin SB 32–3386, dated June 2000. If the threads have not been peened, prior to further flight, peen the threads in accordance with the service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on April 30, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–11226 Filed 5–3–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–339–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–300 series airplanes. This proposal would require replacing the brake assemblies with modified brake assemblies. This action is necessary to prevent overheating of the brakes, which could result in cracked pistons and consequent leakage and burning of the hydraulic fluid. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by June 4, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–339–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–339–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–339–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–339–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Dornier Model 328–300 series airplanes. The LBA advises that testing was carried out by the manufacturer of the brake assemblies of these airplanes. The results of the testing indicated that the brakes can overheat under certain conditions. These overheat conditions involve applying maximum brake energy (e.g., a high energy rejected takeoff) followed by applying the parking brake. Due to the consequent conductive heat transfer from the brake heat pack to the pistons, the pistons could crack. This condition, if not corrected, could result in leakage and burning of the hydraulic fluid.

Explanation of Relevant Service Information

Dornier has issued Service Bulletin SB–328J–32–029, Revision 1, dated August 4, 2000, which describes procedures for replacing brake assemblies having aluminum pistons with modified brake assemblies having stainless steel pistons. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The LBA classified this service bulletin as mandatory and issued German airworthiness directive 2000–288, dated September 21, 2000, to ensure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Explanation of Proposed Compliance Time

The FAA's proposed 7-week compliance time exceeds that mandated by the parallel German airworthiness directive. In developing an appropriate compliance time for this proposed AD, the FAA considered relevant safety implications as well as recommendations by the LBA and the manufacturer. The manufacturer recommended accomplishment of the inspection by September 30, 2000—14 weeks after issuance of the original service bulletin, and 7 weeks after issuance of Revision 1 (the version mandated by the German airworthiness directive). The original version and Revision 1 contain the same accomplishment instructions. The FAA also considered the fact that the original service bulletin has been available since June 2000 to operators of Model 328–300 series airplanes. In light of these factors, the FAA finds that the proposed compliance time represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

The FAA estimates that 8 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 9 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $4,320, or $540 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

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List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dornier Luftfahrt GMBH: Docket 2000–NM–339-AD.

Applicability: Model 328–300 series airplanes, certificated in any category, serial numbers 3105 through 3144 inclusive, 3146, 3148, 3151 through 3154 inclusive, 3158, and 3159.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating of the brakes, which could result in cracked pistons and consequent leakage and burning of the hydraulic fluid, accomplish the following:

Brake Piston Replacement

(a) Within 7 weeks after the effective date of this AD, replace the left and right brake assemblies having part number (P/N) AHA2227–2 with modified brake assemblies having P/N AHA2227–3, in accordance with Dornier Service Bulletin SB–328J–32–029, Revision 1, dated August 4, 2000.

Note 2: Replacement of the brake assemblies prior to the effective date of this AD in accordance with Dornier Service Bulletin SB–328J–32–029, dated June 14, 2000, is also acceptable for compliance with the requirements of paragraph (a) of this AD.

Spares

(b) As of the effective date of this AD, no person may install a brake assembly having P/N AHA2227–2 on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in German airworthiness directive 2000–288, dated September 21, 2000.

Issued in Renton, Washington, on April 30, 2001.

John W. McGraw,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–11225 Filed 5–3–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–366–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Dornier Model 328–100 series airplanes, that currently requires repetitive inspections of the left and right roll spoiler actuators to check for signs of leakage and deformation of the housing, repetitive inspections of the gap between the left roll spoiler actuator housing cap and the actuator housing, repetitive torque checks of the left roll spoiler actuator housing cap attachment screws, and corrective action, if necessary. This action would require replacement of the double shuttle valves in the roll spoiler actuators with new improved valves. Accomplishment of the proposed replacement would constitute terminating action for the requirements of this AD. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent oil leakage from the roll spoiler actuators, which could result in incorrect roll spoiler operation and reduced controllability of the airplane.

DATES: Comments must be received by June 4, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket Number 2000–NM–366–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–366–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tom Groves, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1503; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–366–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket Number 2000–NM–366–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On October 22, 1999, the FAA issued AD 99–22–15, amendment 39–11393 (64 FR 59117, November 2, 1999), applicable to all Dornier Model 328–100 series airplanes, to require repetitive inspections of the left and right roll spoiler actuators to check for signs of leakage and deformation of the housing, repetitive inspections of the gap between the left roll spoiler actuator housing cap and the actuator housing, repetitive torque checks of the left roll spoiler actuator housing cap attachment screws, and corrective action, if necessary. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to prevent oil leakage from the roll spoiler actuators, which could result in incorrect roll spoiler operation and reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the manufacturer has developed an improved double shuttle valve to replace the existing valves in the roll spoiler actuator, which have been subject to leakage. Replacement of the valves would terminate the need for repetitive inspections of the roll spoiler actuators for leaks.

Explanation of Relevant Service Information

The manufacturer has issued Dornier Service Bulletin SB–328–27–310, dated June 10, 2000, which describes procedures for replacement of the double shuttle valves with the new improved valves. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, classified this service bulletin as mandatory and issued German airworthiness directive 1998–479/3, dated October 5, 2000, in order to assure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral aviation safety agreement. Pursuant to the implementation procedures for airworthiness of this bilateral aviation safety agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 99–22–15 to continue to require repetitive inspections of the left and right roll spoiler actuators to check for signs of leakage and deformation of the housing, repetitive inspections of the gap between the left roll spoiler actuator housing cap and the actuator housing, repetitive torque checks of the left roll spoiler actuator housing cap attachment screws, and corrective action, if necessary. The proposed AD would add the requirement to replace the double shuttle valves in the roll spoiler actuators, which would terminate the repetitive inspections and checks. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

There are approximately 50 airplanes of U.S. registry that would be affected by this proposed AD.

The repetitive inspections and checks that are currently required by AD 99–22–15 take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these inspections and checks on U.S. operators is estimated to be $9,000, or $180 per airplane, per inspection cycle.

The replacement that is proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided at no charge to operators. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $3,000, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal

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would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11393 (64 FR 59117, November 2, 1999), and by adding a new airworthiness directive (AD), to read as follows:

Dornier Luftfahrt GMBH: Docket 2000–NM–366–AD. Supersedes AD 99–22–15, Amendment 39–11393.

Applicability: All Model 328–100 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent oil leakage from the roll spoiler actuators, which could result in incorrect roll spoiler operation and reduced controllability of the airplane, accomplish the following:

Restatement of Requirements of AD 99–22–15

(a) Within 14 days after December 7, 1999 (the effective date of AD 99–22–15, amendment 39–11393), accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD on the left and right roll spoiler actuators, in accordance with Dornier Alert Service Bulletin ASB–328–27–025, Revision 1, dated September 22, 1999. Thereafter, repeat the inspections required by paragraphs (a)(1) and (a)(2) of this AD at intervals not to exceed 400 flight hours.

(1) Perform a detailed inspection to detect leakage of the area around the actuator cap and housing of the roll spoiler actuators. If leakage is found, prior to further flight, replace the actuator and the double shuttle valve with new or serviceable parts.

(2) Perform a detailed inspection to detect flatness of the surface of the cap of the roll spoiler actuators. If the cap surface is not flat, prior to further flight, replace the actuator and the double shuttle valve with new or serviceable parts.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

(b) Within 14 days after December 7, 1999, accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD on the left roll spoiler actuator, in accordance with Dornier Alert Service Bulletin ASB–328–27–025, Revision 1, dated September 22, 1999. Thereafter, repeat the inspections required by paragraphs (b)(1) and (b)(2) of this AD at intervals not to exceed 400 flight hours.

(1) Perform a detailed inspection to detect a gap between the cap of the roll spoiler actuator and the actuator housing. If any gap exists, prior to further flight, replace the actuator and the double shuttle valve with new or serviceable parts.

(2) Perform a torque check of the housing cap attachment screws. If the torque is within the limits specified by the alert service bulletin, prior to further flight, torque the screws to 17.7 lb-in, in accordance with the alert service bulletin. If the torque is outside the limits specified by the alert service bulletin, prior to further flight, replace the left roll spoiler actuator and double shuttle valve with new or serviceable parts, in accordance with the alert service bulletin.

(c) If any left roll spoiler actuator is replaced during any inspection required by paragraph (b)(1) or (b)(2) of this AD, prior to further flight, accomplish the requirements of paragraphs (b)(1) and (b)(2) for the right roll spoiler actuator.

Note 3: Accomplishment of the inspections required by paragraphs (a) and (b) of this AD prior to the effective date of this AD, in accordance with Dornier Alert Service Bulletin ASB–328–27–025, dated October 16, 1998, is acceptable for compliance with the initial inspections required by those paragraphs.

New Actions Required By This AD

Replacement

(d) Within 90 days after the effective date of this AD: Replace the double shuttle valves with new improved double shuttle valves, in accordance with Dornier Service Bulletin SB–328–27–310, dated June 10, 2000. Accomplishment of this action constitutes terminating action for the requirements of this AD.

Spares

(e) As of the effective date of this AD, no person shall install a double shuttle valve having any of the following part numbers on any airplane:

ZCV 193
ZCV 193–1 Revision Letter J
ZCV 193 MOD
ZCV 193–1
ZCV 193–1 MOD
ZCV 193–2 MOD
ZCV 193–3
ZCV 193–4
ZCV 193–5

Alternative Methods of Compliance

(f)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(2) Alternative methods of compliance, approved previously in accordance with AD 99–22–15, amendment 39–11393, are approved as alternative methods of compliance with the requirements of paragraphs (a), (b) and (c) of this AD.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 5: The subject of this AD is addressed in German airworthiness directive 1998–479/3, of which the effective date is October 5, 2000.

Issued in Renton, Washington, on April 30, 2001.

John W. McGraw,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–11224 Filed 5–3–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AEA–08]

Modification of Class E Airspace; Pittsburgh, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend Class E airspace at Pittsburgh, PA. Closure of the Pittsburgh Metro Airport, PA requires its deletion from the Pittsburgh, PA, E5 airspace designation. The area would no longer be depicted on aeronautical charts.

DATES: Comments must be received on or before June 4, 2001.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 01–AEA–08, F.A.A. Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809.

An informal docket may be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, F.A.A. Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809: telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 01–AEA–08." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket closing both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an action to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71). Pittsburgh, PA. The Pittsburgh Metro Airport has closed and therefore there is no need to have airspace designated as Class E for the airport. Pittsburgh, PA. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9H, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation described in this document would be subsequently amended to reflect the deletion in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

Part 71—[Amended]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565; 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9H dated September 1, 2000, and effective September 16, 2000, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5, Pittsburgh, PA [Revised]

Greater Pittsburgh International Airport, Pittsburgh, PA
(Lat. 40°29′29″N., long. 80°13′57″W.)
Allegheny County Airport, PA
(Lat. 40°21′16″N., long. 79°55′48″W.)
STARG OM
(Lat. 40°29′15″N., long 80°22′14″W.)

That airspace extending upward from 700 feet above the surface within a 7.9 mile radius of Greater Pittsburgh International Airport and within 3.1 miles each side of the Greater Pittsburgh Runway 10R localizer course extending from the 7.9-mile radius to 5.7 miles west of the STARG OM and within a 6.6-mile radius of Allegheny County Airport.

Issued in Jamaica, New York on April 23, 2001.

F.D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 01–11258 Filed 5–3–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ASO–5]

Proposed Establishment of Class E5 Airspace; LaFayette, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E5 airspace at LaFayette, GA. Area Navigation (RNAV) Runway (RWY) 02 and RWY 20 Standard Instrument Approach Procedures (SIAP) have been developed for Barwick LaFayette Airport, LaFayette, GA. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP and other Instrument Flight Rules (IFR) operations at Barwick LaFayette Airport. The operating status of the airport would change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

EFFECTIVE DATE: Comments must be received on or before June 4, 2001.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 01–ASO–5, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 01–ASO–5." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs shall also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E5 airspace at LaFayette, GA. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9H, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air)

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 401113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 feet or More Above the Surface of the Earth.

* * * * *

ASO GA E5 LaFayette, GA [NEW]

Barwick LaFayette Airport, GA
(Lat. 34°41′31″N, long. 85°17′43″W)

That airspace extending upward from 700 feet above the surface within a 6.2-mile radius of Barwick LaFayette Airport, excluding that airspace within the Chattanooga, TN, Class E airspace area and that airspace within the Fort Payne, AL, Class E airspace area.

* * * * *

Issued in College Park, Georgia, on April 24, 2001.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 01–11257 Filed 5–3–01; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Household Products Containing Hydrocarbons; Extension of Comment Period on Notice of Data Availability

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of data availability; extension of comment period.

SUMMARY: In the **Federal Register** of April 11, 2001, 66 FR 18738, the Consumer Product Safety Commission ("CPSC" or "Commission") invited comment on: An analysis conducted by CPSC staff on brand name-specific data on exposure to possible hydrocarbon-containing cosmetics; and an additional staff analysis of data available when the Commission issued a Notice of Proposed Rulemaking ("NPR") proposing child-resistant packaging requirements for household chemical and cosmetic products with viscosity less than 100 Saybolt Universal Seconds ("SUS") containing 10 percent or more hydrocarbons, 65 FR 93 (January 3, 2000). In response to a request on behalf of the Cosmetic, Toiletry, and Fragrance Association to extend the comment period on these analyses for 60 days, the Commission is extending it for an additional 30 days, that is, through Monday, June 11, 2001.[1] Today's document does not re-open the comment period on the NPR.

DATES: The Office of the Secretary must receive any comments on the staff analyses not later than June 11, 2001.

ADDRESSES: Comments should be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504–0800. Comments also may be filed by facsimile to (301) 504–0127 or by e-mail to cpsc-os@cpsc.gov. Comments should be captioned "Notice of Additional Hydrocarbon Data."

FOR FURTHER INFORMATION CONTACT: Suzanne Barone, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0477, ext. 1196.

SUPPLEMENTARY INFORMATION: Copies of the staff analyses may be obtained from the Office of the Secretary. The analyses are also available on the CPSC world wide web site at: http://www.cpsc.gov/library/foia/foia01/brief/hydrocar.pdf

Comments on the analyses must be received by the Office of the Secretary not later than Monday, June 11, 2001.

Dated: April 30, 2001.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 01–11199 Filed 5–3–01; 8:45 am]

BILLING CODE 6355–01–P

[1] Commissioners Mary Sheila Gall and Thomas H. Moore voted to extend the comment period by 30 days. Chairman Ann Brown voted to deny the request to extend the comment period.

GENERAL SERVICES ADMINISTRATION

41 CFR Part 300–2 and Chapter 304

[FTR Amendment]

RIN 3090–AE19

Federal Travel Regulation; Payment of Travel Expenses From a Non-Federal Source

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends the Federal Travel Regulation (FTR) for payment of travel expenses from a non-Federal source. This amendment is written in plain language using a question and answer format in continuation of the General Services Administration's (GSA's) efforts to make the FTR easier to understand and to use.

DATES: Comments must be received on or before July 3, 2001.

ADDRESSES: Written comments should be sent to: Mr. Michael E. Hopkins, Regulatory Secretariat (MVR), Office of Governmentwide Policy, General Services Administration, 1800 F Street, NW., Washington, DC 20405–0001. E-Mail: RIN.3090–AE19@gsa.gov

FOR FURTHER INFORMATON CONTACT: Jim Harte, Travel Team Leader, Travel Management Policy Division (MTT), telephone (202) 501–0483.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule revises the coverage published in the **Federal Register** as Interim Rule 3 (56 FR 9878, March 8, 1991) and Interim Rule 4 (57 FR 53283, November 9, 1992). This proposed rule is written in the "plain language" style of regulation writing as a continuation of the General Services Administration's (GSA) effort to make the FTR easier to understand and use. Questions are in the first person, and answers are in the second person. GSA uses a "we" and "you" question when referring to an agency, and an "I", and "you" question when referring to the employee. However, the rules stated in either section apply to both the employee and agency. Another example of GSA's implementation of plain language is the use of the term "meeting" throughout this part instead of the phrase "meeting or similar function." This change is indicated in the definition of "meeting or similar function" and no substantive change is intended by this change.

B. Proposed Changes

1. To permit after-the-fact agency acceptance of payment from a non-Federal source for travel expenses to a meeting under the following two circumstances prescribed in section 304–3.13:

(a) When your agency has not approved acceptance of any payments from that non-Federal source prior to the trip; and

(b) When your agency has approved acceptance of payment for some but not all travel expenses from a non-Federal source prior to the trip. In this case, your agency's prior authorization of acceptance of payment from the non-Federal source in question is deemed authorization for you to accept, on behalf of your agency, payment for additional travel, subsistence, and related expenses from the same non-Federal source, as long as the two following conditions in section 304–3.13(a) are met:

(i) That the expenses paid by the non-Federal source be comparable in value to those offered or purchased by other similarly situated attendees; and

(ii) That your agency has not specifically declined to accept certain payments from a non-Federal source for your trip. If the conditions are not met, you will be subject to the penalties specified in section 304–3.17 (i.e., you may be required to pay the U.S. Treasury the amount of the payment accepted without being eligible for reimbursement from your agency).

2. The removal of the requirement that a meeting or similar function be sponsored or co-sponsored by a Federal agency in order to fall within the scope of this part.

C. Executive Order 12866

GSA has determined that this proposed rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

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D. Regulatory Flexibility Act

This proposed rule is not required to be published in the **Federal Register** for notice and comment. Therefore, the Regulatory Flexibility Act does not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 501, *et seq.*

F. Small Business Regulatory Enforcement Fairness Act

This proposed rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 300–2, 304–1, 304–2, 304–3, 304–4, 304–5, 304–6, 304–7, 304–8, and 304–9

Government employees, Travel and transportation expenses.

For the reasons set forth in the preamble, GSA proposes to amend 41 CFR chapters 300 and 304 as follows:

CHAPTER 300—[AMENDED]

PART 300–2—HOW TO USE THE FTR

1. The authority citation for 41 CFR part 300–2 continues to read as follows:

Authority: 5 U.S.C. 5707; 5 U.S.C. 5738; 5 U.S.C. 5741–5742; 20 U.S.C. 905(a); 31 U.S.C. 1353; 40 U.S.C. 486(c); 49 U.S.C. 40118; E.O. 11609, 3 CFR, 1971–1975 Comp., p. 586.

2. Section 300–2.22 is amended by revising the table to read as follows:

§ 300–2.22 Who is subject to the FTR?

* * * * *

For	The employee provisions are contained in	And the agency provisions are contained in
Chapter 301	Subchapters A, B, and C	Subchapter D.
Chapter 302	Subchapters A, B, C, D, E, and F	Subchapters A, B, C, D, E, and F.
Chapter 303	N/A	Part 303–70.
Chapter 304	Subchapter A	Subchapters B and C.

3. Chapter 304 is revised to read as follows:

CHAPTER 304—PAYMENT OF TRAVEL EXPENSES FROM A NON-FEDERAL SOURCE

Subchapter A—Employee's Acceptance of Payment From A Non-Federal Source for Travel Expenses

Part

304–1 Authority
304–2 Definitions
304–3 Employee responsibility

Subchapter B—Agency Requirements

304–4 Authority
304–5 Agency responsibilities
304–6 Payment guidelines

Subchapter C—Acceptance of Payment for Training

304–7 Authority/applicability
304–8 Definitions
304–9 Contributions and awards

SUBCHAPTER A—EMPLOYEE'S ACCEPTANCE OF PAYMENT FROM A NON-FEDERAL SOURCE FOR TRAVEL EXPENSES

PART 304–1—AUTHORITY

Sec.

304–1.1 To whom do the pronouns "I", "you", and their variants refer throughout this part?
304–1.2 Under what authority may I accept payment of travel expenses from a non-Federal source?

Authority: 5 U.S.C. 5707; 31 U.S.C. 1353.

§ 304–1.1 To whom do the pronouns "I", "you", and their variants refer throughout this part?

Use of pronouns "I", "you", and their variants throughout this part refers to the employee.

§ 304–1.2 Under what authority may I accept payment of travel expenses from a non-Federal source?

Under the authority of this part and 31 U.S.C. 1353, you may accept payment of travel expenses from a non-Federal source on behalf of your agency but not on behalf of yourself when specifically authorized to do so by your agency and only for official travel to a meeting. Except as provided in § 304–3.12 of this subchapter, your agency must approve acceptance of such payments in advance of your travel.

PART 304–2—DEFINITIONS

Authority: 5 U.S.C. 5707; 31 U.S.C. 1353.

§ 304–2.1 What definitions apply to this chapter?

The following definitions apply to this chapter:

Employee means an appointed officer or employee of an agency, including a special Government employee as defined in 18 U.S.C. 202, or an expert or consultant appointed under the authority of 5 U.S.C. 3109.

Meeting or similar function (meeting) means a conference, seminar, speaking engagement, symposium, training course, or similar event that takes place away from the employee's official station. *Meeting* as defined in this chapter does not include a meeting or other event required to carry out an agency's statutory or regulatory functions such as investigations, inspections, audits, site visits, negotiations, or litigation. *Meeting* also does not include promotional vendor training or other meetings held for the primary purpose of marketing the non-Federal sources products or services, or long term TDY or training travel. A meeting or similar function need not be widely attended for purposes of this definition and includes but is not limited to the following:

(1) An event where the employee will participate as a speaker or panel participant focusing on his/her official duties or on the policies, programs, or operations of the agency.

(2) A conference, convention, seminar, symposium or similar event where the primary purpose is to receive training other than promotional vendor training, or to present or exchange substantive information of mutual interest to a number of parties.

(3) An event where the employee will receive an award or honorary degree, which is in recognition of meritorious public service that is related to the employee's official duties, and which may be accepted by the employee consistent with the applicable standards of conduct regulations.

Non-Federal source means any person or entity other than the Government of the United States. The term includes any individual, private or commercial entity, nonprofit organization or association or international or multinational organization (irrespective of whether an agency holds membership in the organization or association), or foreign, State, or local government (including the government of the District of Columbia).

Payment means a monetary payment from a non-Federal source to a Federal agency for travel, subsistence, and related expenses by check or other monetary instrument payable to the Federal agency (i.e., electronic fund transfer (EFT), money order, charge card, etc.) or payment in kind.

Payment in kind means transportation, food, lodging, or other travel-related services provided by a non-Federal source instead of monetary payments to the Federal agency for these services. Payment in kind also includes waiver of any fees that a non-Federal source normally collects from meeting attendees (e.g., registration fees).

Travel, subsistence, and related expenses (travel expenses) means the same types of expenses payable under chapter 301 of this title, the Foreign Affairs Manual (FAM), and the Joint Travel Regulations (JTR) for transportation, food, lodging, or other travel-related services for official travel (e.g., baggage expenses, services of guides, drivers, interpreters, communication services, hire of conference rooms, lodging taxes, laundry/dry cleaning, taxi fares). These expenses also include conference or training fees (in whole or in part), as well as benefits that cannot be paid under the applicable travel regulations, but which are incident to the meeting, provided in kind, and made available by the meeting sponsor(s) to all attendees. For example, this definition as applied to this chapter would allow an employee or spouse to attend sporting event hosted by the sponsor(s) in connection with the meeting that is available to all participants. However, it would not allow the employee to accept tickets to a professional sporting event, concert or similar event, for use at a later date even if such tickets were given to all other participants. The Foreign Affairs Manual is obtainable from: Bureau of Administration, A/IM/CST/MMS/DIR, Room 264, U.S. Department of State, Washington, DC 20520; (202) 647–3602. The Joint Travel Regulations are obtainable from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20342–0001, or available for downloading from the internet at http://www.dtic.mil/perdiem.

PART 304–3—EMPLOYEE RESPONSIBILITY

Subpart A—General

Sec.

304–3.1 To whom do the pronouns "we", "you", and their variants refer throughout this part?
304–3.2 What is the purpose of this part?
304–3.3 May my agency or I accept payment for travel expenses to a meeting from a non-Federal source?
304–3.4 What payments may my agency or I accept from a non-Federal source?
304–3.5 May I solicit payment of my travel expenses from a non-Federal source to attend a meeting?
304–3.6 May I inform a non-Federal source of my agency's authority to accept payment for travel expenses to attend a meeting?
304–3.7 What must I do if I am contracted directly by a non-Federal source offering to pay my travel expenses to attend a meeting?
304–3.8 Must I adhere to the provisions of the Fly America Act when I receive air transportation to a meeting furnished or paid by a non-Federal source?
304–3.9 May I use premium-class other than first-class common carrier accommodations when a non-Federal source pays in full for my transportation expenses to attend a meeting?
304–3.10 May I use first-class common carrier accommodations when a non-Federal source pays in full for my transportation expenses to attend a meeting?
304–3.11 Am I limited to the maximum subsistence allowances (per diem or actual expense) prescribed in applicable travel regulations for travel expenses paid by a non-Federal source?
304–3.12 Must I receive advance approval from my agency before I perform travel paid by a non-Federal source to attend a meeting?
304–3.13 After I begin travel to a meeting, what should I do if a non-Federal source offers to pay for one or more of my travel expenses without my or my agency's prior knowledge?
304–3.14 May a non-Federal source pay for my spouse to accompany me to a meeting?
304–3.15 Am I required to submit a report of payment received from a non-Federal source by my agency?

Subpart B—Reimbursement Claims

304–3.16 What must I submit to my agency for reimbursement when a non-Federal source pays all or part of my travel expenses to attend a meeting?

Subpart C—Penalties

304–3.17 What happens if I accept a payment from a non-Federal source that is in violation of this part?

Subpart D—Relation to Other Authorities

304–3.18 Are there other situations when I may accept payment from a non-Federal source for my travel expenses?

Authority: 5 U.S.C. 5707; 31 U.S.C. 1353.

Subpart A—General

§ 304–3.1 To whom do the pronouns "we", "you", and their variants refer throughout this part?

Use of pronouns "we", "you", and their variants throughout this part refers to the agency.

§ 304–3.2 What is the purpose of this part?

The purpose of this part is to establish Governmentwide policy and guidance for acceptance by a Federal agency of payment for travel expenses from a non-Federal source for employees to attend meetings. It describes how such payments must be accepted by the agency for travel of agency employee(s) and/or his/her spouse for official Government travel. Except as provided in § 304–3.13, advance agency approval is required to receive such payments.

§ 304–3.3 May my agency or I accept payment for travel expenses to a meeting from a non-Federal source?

Yes, you or your agency may accept such a payment from a non-Federal source, but you may only accept when specifically authorized to do so by your agency in connection with official travel under this part. Except as provided in § 304–3.13, your agency must approve acceptance of such payment in advance of your travel.

§ 304.3.4 What payments may my agency or I accept from a non-Federal source?

You or your agency may accept payments from a non-Federal source for all of your official travel expenses to attend a meeting, or any portion of those travel expenses mutually agreed upon between your agency and the non-Federal source. You may not accept payments for travel that is not to attend a meeting under this part. However, you may accept payments under other authorities (see § 304–3.18).

§ 304–3.5 May I solicit payment of my travel expenses from a non-Federal source to attend a meeting?

No, you may not solicit payment for travel expenses from a non-Federal source to attend a meeting.

§ 304–3.6 May I inform a non-Federal source of my agency's authority to accept payment for travel expenses to attend a meeting?

Yes, you or your agency may inform the non-Federal source of your agency's authority to accept payment for travel expenses to attend a meeting.

§ 304–3.7 What must I do if I am contacted directly by a non-Federal source offering to pay my travel expenses to attend a meeting?

If you are contacted directly by a non-Federal source offering to pay any part

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of your travel expenses to attend a meeting, you must inform your agency, so that the authorized agency official can determine whether to accept the payment.

§ 304–3.8 Must I adhere to the provisions of the Fly America Act when I receive air transportation to a meeting furnished or paid by a non-Federal source?

No, if the payment or ticket was paid in full directly by the non-Federal source or reimbursed to your agency by the non-Federal source, the provisions of the Fly America Act do not apply. (See §§ 301–10.131 through 301–10.143 of this title.)

§ 304–3.9 May I use premium-class other than first-class common carrier accommodations when a non-Federal source pays in full for my transportation expenses to attend a meeting?

Yes, you may use premium other than first-class common carrier accommodations if your agency authorizes you to do so as prescribed in § 304–5.6 of this chapter.

§ 304–3.10 May I use first-class common carrier accommodations when a non-Federal source pays in full for my transportation expenses to attend a meeting?

Generally, you may not use first-class common carrier accommodations when a non-Federal source pays in full for your transportation expenses to attend a meeting. However, when you meet one of the criteria for first class travel contained in §§ 301–1.123, 301–10.162 and 301–10.183 of this title and when authorized to do so by your agency in accordance with § 304–5.7 of this chapter, you may use first-class accommodations.

§ 304–3.11 Am I limited to the maximum subsistence allowances (per diem or actual expense) prescribed in applicable travel regulations for travel expenses paid by a non-Federal source?

Generally, you are limited to the maximum subsistence allowances (per diem or actual expense) prescribed in applicable travel regulations for travel expenses paid by a non-Federal source.

(a) Subsistence allowances are usually limited to the maximum subsistence allowances (per diem or actual expense) prescribed in chapter 301 of this title for travel in CONUS, by the Secretary of Defense for travel in non-foreign areas and by the Secretary of State for travel in foreign areas. However, the maximum subsistence allowances established by this title and by the Secretary of Defense may be exceeded as long as:

(1) The non-Federal source pays the full amount of the subsistence expense, as authorized by your agency; and

(2) The subsistence expense paid by the non-Federal source is comparable in value to that offered to or purchased by other meeting attendees.

(b) The maximum subsistence allowances established by the Secretary of State for travel to foreign areas may not be exceeded.

§ 304–3.12 Must I receive advance approval from my agency before I perform travel paid by a non-Federal source to attend a meeting?

Yes, you must receive advance approval from your agency before performing travel paid by a non-Federal source to attend a meeting except as provided in § 304–3.13

§ 304.3.13 After I begin travel to a meeting, what should I do if a non-Federal source offers to pay for one or more of my travel expenses without my or my agency's prior knowledge?

(a) If your agency has already authorized acceptance of payment for some of your travel expenses for that meeting from a non-Federal source, then you may accept on behalf of your agency, payment for any of your additional travel expenses from the same non-Federal source as long as:

(1) The expenses paid or provided in kind are comparable in value to those offered to or purchased by other similarly situated meeting attendees; and

(2) Your agency did not decline to accept payment for those particular expenses in advance of your travel.

(b) If your agency did not authorize acceptance of any payment from the non-Federal-source prior to your travel, then:

(1) You may accept, on behalf of your agency, payment from the non-Federal source for:

(i) Only the types of travel expenses that are authorized by your travel authorization (i.e., meals, lodging, transportation, but not recreation or other personal expenses); and

(ii) Only travel expenses that are within the maximum allowances stated on your travel authorization (i.e., if your travel authorization states that you are authorized to incur lodging expenses up to $100 per night, you may not accept payment from the non-Federal source for a $200 per night hotel room); and

(2) You must request your agency's authorization for acceptance from the non-Federal source within 7 working days after your trip ends; and

(3) If your agency does not authorize acceptance from the non-Federal source, your agency must either:

(i) Reimburse the non-Federal source for the reasonable approximation of the market value of the benefit provided, not to exceed the maximum allowances stated on your travel authorization; or

(ii) Require you to reimburse the non-Federal source that amount and allow you to claim that amount on your travel claim for the trip; and

(4) If you accept payment for a travel expense that exceeds the maximum allowances stated in your travel authorization, you may be subject to the penalties specified in § 304–3.17.

§ 304–3.14 May a non-Federal source pay for my spouse to accompany me to a meeting?

Yes, a non-Federal source may pay for your spouse to accompany you when it is in the interest of and authorized in advance by your agency. All limitations and requirements of this part apply to the acceptance of payment from a non-Federal source for travel expenses and/or agency reimbursement of travel expenses for your accompanying spouse. Your agency may determine that your spouse's presence at an event is in the interest of the agency if your spouse will:

(a) Support the mission of your agency or substantially assist you in carrying out your official duties; or

(b) Attend a ceremony at which you will receive an award or honorary degree.

§ 304–3.15 Am I required to submit a report of payment received from a non-Federal source by my agency?

Yes, you must provide your agency the information it needs to complete Standard Form 326 (SF 326), Semiannual Report of Payments Accepted From a Non-Federal Source (see 304–6.5 of this chapter). As long as payment from the non-Federal source is made to or on behalf of your agency, you are not required to report it as a gift on any confidential or public disclosure report you are personally required to file pursuant to law or Office of Government Ethics (OGE) regulations (5 CFR part 2635). However, you may be required to report any payment that you or your accompanying spouse receive on your own behalf, rather than the agency's behalf, pursuant to other reporting requirements such as those imposed by the Ethics in Government Act of 1978 (Public Law 95–521, 92 Stat. 1824) as amended, including reporting the payment on your financial disclosure report. You may confirm your reporting requirements with your agency ethics counselor.

Subpart B—Reimbursement Claims

§ 304–3.16 What must I submit to my agency for reimbursement when a non-Federal source pays all or part of my travel expenses to attend a meeting?

You must submit a travel claim listing all allowable travel expenses that you incurred which were not paid by a non-Federal source. Do not claim travel expenses that were furnished in kind by a non-Federal source. Your reimbursement is limited to the types of expenses authorized in chapter 301 of this title or analogous provisions of the Joint Travel Regulations or Foreign Affairs Manual. Reimbursement from your agency for expenses will not in any case exceed the amount of the expenses you incur. Such reimbursement will also adhere to established regulatory limitations except where your agency accepts payments or benefits under §§ 304–5.5 or 304–5.6 of this chapter.

Subpart C—Penalties

§ 304–3.17 What happens if I accept a payment from a non-Federal source that is in violation of this part?

If you accept payment from a non-Federal source in violation of this part:

(a) You may be required, in addition to any other penalty provided by law and applicable regulations, to pay the general fund of the Treasury, an amount equal to any payment you accepted; and

(b) In the case of reimbursement under paragraph (a) of this section, you will not be entitled to any reimbursement from the Government for your travel expenses that the payment was intended to cover.

Subpart D—Relation to Other Authorities

§ 304–3.18 Are there other situations when I may accept payment from a non-Federal source for my travel expenses?

Yes, you may also accept payment of travel expenses from a non-Federal source under the following authorities, in addition to this part:

(a) Under 5 U.S.C. 4111 for acceptance of contributions, awards, and other payments from tax-exempt entities for non-Government sponsored training or meetings (see regulations issued by the Office of Personnel Management at 5 CFR part 410);

(b) Under 5 U.S.C. 7342 for receipt and disposition of foreign gifts (See regulations issued by the General Services Administration at 41 CFR part 102–42);

(c) Under 5 U.S.C. 7324(b) when payment is for travel to be performed for a partisan rather than an official purpose by an employee who is exempt from the Hatch Act (5 U.S.C. 7321–7326); or

(d) Pursuant to the applicable standards of ethical conduct regulations concerning personal acceptance of gifts (for example, under 5 CFR 2635.204(a) which authorizes executive branch employees to accept an unsolicited gift with a market value of $20 or less per source per occasion).

SUBCHAPTER B—AGENCY REQUIREMENTS

PART 304–4—AUTHORITY

Sec.

304–4.1 To whom do the pronouns "we", "you", and their variants refer throughout this part?
304–4.2 What is the purpose of this part?
304–4.3 Under what other authority may we accept payment for travel expenses from a non-Federal source?

Authority: 5 U.S.C. 5707; 31 U.S.C. 1353.

§ 304–4.1 To whom do the pronouns "we", "you", and their variants refer throughout this part?

Use of pronouns "we", "you", and their variants throughout this part refers to the agency.

§ 304–4.2 What is the purpose of this part?

The purpose of this part is to establish Governmentwide policy and guidance for acceptance by a Federal agency of payment for travel expenses from a non-Federal source for employees to attend meetings under 31 U.S.C. 1353. It describes how such payments may be accepted.

Note to § 304–4.2: This is the only authority under which you may accept (or authorize your employees to accept on your behalf) payment from a non-Federal source for travel expenses to attend a meeting.

§ 304–4.3 Under what other authority may we accept payment for travel expenses from a non-Federal source?

You may accept payment for travel expenses other than to a meeting from a non-Federal source under the following authorities, in addition to this part:

(a) Under 5 U.S.C. 7342 for receipt and disposition of foreign gifts (see 41 CFR part 102–42 for applicable regulations);

(b) Under 5 U.S.C. 7324(b) when payment is for travel to be performed for a partisan rather than an official purpose in the case of an employee who is exempt from the Hatch Act (5 U.S.C. 7321–7326); or

(c) Pursuant to an agency gift statute or similar statutory authority where payment is for attendance at or participation in an event (other than a meeting) relating to the official duties of the employee.

PART 304–5—AGENCY RESPONSIBILITIES

Sec.

304–5.1 May we limit the amount of payment and/or benefit that we accept from a non-Federal source?
304–5.2 Who must approve acceptance of payment from a non-Federal source for travel expenses to a meeting?
304–5.3 What does our approving official need to consider before authorizing acceptance of payment from a non-Federal source for travel expenses for a meeting?
304–5.4 When may we accept payment from a non-Federal source for travel to a meeting or authorize an employee to accept payment on our behalf?
304–5.5 May we authorize an employee to exceed the maximum subsistence allowances (per diem or actual expense) prescribed in applicable travel regulations where we have authorized acceptance of payment from a non-Federal source for such allowances?
304–5.6 May we authorize an employee to travel by premium other than first-class common carrier accommodations if we accept payment in full from a non-Federal source for such transportation expenses?
304–5.7 May we authorize an employee to travel by first-class common carrier accommodations if we accept payment in full from a non-Federal source for such transportation expenses?
304–5.8 May we authorize acceptance of payment from more than one non-Federal source for a single trip?
304–5.9 Must payments received for travel expenses be reported on employee's confidential or public disclosure reports?

Authority: 5 U.S.C. 5707; 31 U.S.C. 1353.

§ 304–5.1 May we limit the amount of payment and/or benefit that we accept from a non-Federal source?

Yes, you may limit the amount of payment or benefit that you accept from a non-Federal source. For example, you may authorize an employee to attend only a portion of a meeting and limit acceptance of payment accordingly. You may also limit acceptance of payment of any type of benefit offered by a non-Federal source.

§ 304–5.2 Who must approve acceptance of payment from a non-Federal source for travel expenses to a meeting?

An official at the highest practical administrative level who can evaluate the requirements in § 304–5.3, must approve acceptance of such payments.

§ 304–5.3 What does our approving official need to consider before authorizing acceptance of payment from a non-Federal source for travel expenses for a meeting?

(a) Before authorizing acceptance of payment, the approving official must

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determine that acceptance of the payment under the circumstances would not cause a reasonable person with knowledge of all the facts relevant to a particular case to question the integrity of agency programs or operations. The approving official must be guided by all relevant considerations, including but not limited to the:

(1) Identity of the non-Federal source;

(2) Purpose of the meeting;

(3) Identity of other expected participants;

(4) Nature and sensitivity of any matter pending at the agency which may affect the interest of the non-Federal source;

(5) Significance of the employee's role in any such matter; and

(6) Monetary value and character of the travel benefits offered by the non-Federal source.

(b) The agency official may find that, while acceptance from the non-Federal source is permissible, it is in the interest of the agency to qualify acceptance of the offered payment by, for example, authorizing attendance at only a portion of the event or limiting the type or character of benefits that may be accepted.

§ 304–5.4 When may we accept payment from a non-Federal source for travel to a meeting or authorize an employee to accept payment on our behalf?

You may accept payment from a non-Federal source or authorize an employee and/or the employee's spouse to accept payment on your behalf only when:

(a) You have issued the employee (and/or the employee's spouse, when applicable) a travel authorization before the travel begins;

(b) You have determined that the travel is in the interest of the Government;

(c) The travel relates to the employee's official duties; and

(d) The non-Federal source is not disqualified due to a conflict of interest under § 304–5.3.

§ 304–5.5 May we authorize an employee to exceed the maximum subsistence allowances (per diem or actual expense) prescribed in applicable travel regulations where we have authorized acceptance of payment from a non-Federal source for such allowances?

(a) Generally, yes. Subsistence allowances are usually limited to the maximum subsistence allowances (per diem or actual expense) prescribed in chapter 301 of this title for travel in CONUS, by the Secretary of Defense for travel in non-foreign areas, and by the Secretary of State for travel in foreign areas. However, the maximum subsistence allowances established by this title and by the Secretary of Defense may be exceeded as long as:

(1) The non-Federal source pays the full amount of the subsistence expenses, at issue; and

(2) The subsistence expense paid by the non-Federal source is comparable in value to that offered to or purchased by meeting attendees.

(b) The maximum subsistence allowances prescribed by the Secretary of State for travel to foreign areas may not be exceeded.

§ 304–5.6 May we authorize an employee to travel by premium other than first-class common carrier accommodations if we accept payment in full from a non-Federal source for such transportation expenses?

Yes, you may authorize an employee to travel by premium other than first-class common carrier accommodations as long as the:

(a) Non-Federal source makes full payment for such transportation services in advance of travel; and

(b) Transportation accommodations furnished are comparable in value to those offered to, or purchased by, other similarly situated meeting attendees.

§ 304–5.7 May we authorize an employee to travel by first-class common carrier accommodations if we accept payment in full from a non-Federal source for such transportation expenses?

Generally, no; however, you may authorize an employee to travel by first-class common carrier accommodations if the:

(a) Travel meets at least one of the conditions in §§ 301–10.123, 301–10.162 and 301–10.183 of this title;

(b) Non-Federal source makes full payment for such transportation services in advance of travel; and

(c) Transportation accommodations furnished are comparable in value to those offered to, or purchased by, other similarly situated meeting attendees.

§ 304–5.8 May we authorize acceptance of payment from more than one non-Federal source for a single trip?

Yes, you may accept payment from more than one non-Federal source for a single trip, as long as the total of such payments do not exceed the total cost of the trip.

§ 304–5.9 Must payments received for travel expenses be reported on employee's confidential or public disclosure reports?

Generally, no; payments received by an employee (and/or the accompanying spouse, when applicable) for travel expenses to a meeting on behalf of the agency under this part are not required to be reported on confidential or public disclosure reports that an employee is otherwise required to file (See 5 U.S.C. 2634). Acceptance of payments by an employee and/or accompanying spouse on behalf of himself/herself, rather than the agency, may be subject to other reporting requirements such as those required by the Ethics in Government Act of 1978 (see 5 U.S.C. app 101–111 and 5 CFR part 2634), including reporting the payment on the employee's financial disclosure report.

PART 304–6—PAYMENT GUIDELINES

Subpart A—General

Sec.

302–6.1 May we accept a monetary payment in the form of cash from a non-Federal source?
304–6.2 What should we do if a non-Federal source does not pay the full cost for expenses that an employee will incur during travel?
304–6.3 What happens if an employee accepts payment from a non-Federal source that is in violation of this part?

Subpart B—Reports

304–6.4 What form must we use to report payments received by the agency from non-Federal sources?
304–6.5 What guidelines must we follow when using the SF 326?

Subpart C—Valuation

304–6.6 How do we determine the value of payments in kind that are to be reported on SF 326?
304–6.7 Must we report to the Office of Government Ethics (OGE) any information that is protected from disclosure by statute?
304–6.8 Will the reports be made available for public inspection?

Authority: 5 U.S.C. 5707; 31 U.S.C. 1353.

Subpart A—General

§ 302–6.1 May we accept a monetary payment in the form of cash from a non-Federal source?

No, you may not accept a monetary payment in the form of cash from a non-Federal source. Monetary payment(s) received from a non-Federal source must be in the form of a check or similar instrument made payable to the agency.

§ 304–6.2 What should we do if a non-Federal source does not pay the full cost for expenses that an employee will incur during travel?

If you determine in advance of the employee's travel that payment from a non-Federal source will cover some but not all of the employee's allowable travel and subsistence expenses you should state on the employee's travel authorization that the employee will be reimbursed the difference between the full allowances and the payment from the non-Federal source. See chapter 301 of this title, 6 Foreign Affairs Manual, Part 100, or the Joint Travel Regulations (JTR), Chapter 4, Parts L and Q, as applicable to determine the applicable maximum allowances.

§ 304–6.3 What happens if an employee accepts payment from a non-Federal source that is in violation of this part?

If an employee accepts payment from a non-Federal source in violation of this part, the employee:

(a) May be required in addition to any penalty provided by law and applicable regulations, to pay the general fund of the Treasury, an amount equal to the payment so accepted; and

(b) Shall not be entitled to any reimbursement from the Government for such expenses.

Subpart B—Reports

§ 304–6.4 What form must we use to report payments received by the agency from non-Federal sources?

Your agency head or designee must submit Standard Form 326 (SF 326), Semiannual Report of Payments Accepted From a Non-Federal Source, to report payments received from non-Federal sources. This applies to all payments that are more than $250 per event for an employee and accompanying spouse. For purposes of the $250 threshold, payments for an employee and accompanying spouse shall be aggregated.

§ 304–6.5 What guidelines must we follow when using the SF 326?

When completing the SF 326:

(a) You must complete each block on SF 326 with no exception, which includes, but is not limited to:

(1) The name and title of each Federal employee;

(2) The name and other required information for any accompanying spouse, indicating which employee the spouse accompanies;

(3) The benefit received for each event. Benefits accepted as part of a conference or training fee need not be reported separately.

(b) You must also:

(1) Submit the SF 326 no later than May 31 for payments received from the preceding October 1 through March 31;

(2) Submit a SF 326 no later than November 30 for payments received from the preceding April 1 through September 30; and

(c) Submit the SF 326 including negative reports, to:

Director of the Office of Government Ethics (OGE), 1201 New York Avenue, NW., Suite 500, Washington, DC 20005–3917

Subpart C—Valuation

§ 304–6.6 How do we determine the value of payments in kind that are to be reported on SF 326?

The following should be used in the determination of the value of payments in kind for reporting on SF 326:

(a) For conference, training, or similar fees waived or paid by a non-Federal source, you must report the amount charged other participants.

(b) For transportation or lodging, you must report the cost that the non-Federal source paid or usually would have been charged for such event.

(c) For meals or other benefits that are not provided as part of the transportation, lodging, or a conference, training or similar fee, you must report the cost to the non-Federal source or provide a reasonable approximation of the market value of the benefit.

(d) For chartered, corporate or other private aircraft:

(1) When common carrier is available, you must report the first-class rate that would have been charged by a commercial air carrier at the time the event took place.

(2) When a common carrier is not available, you must report the cost of chartering a similar aircraft using a commercially available service.

(e) Lodging where no commercial rate is available: You must report the maximum lodging rate established by GSA for CONUS, Secretary of Defense for non-foreign areas and the Secretary of State for foreign areas. These rates are available on the internet at the GSA website http://policyworks.gov/perdiem, with links to the non-foreign and foreign area rates.

§ 304–6.7 Must we report to the Office of Government Ethics (OGE) any information that is protected from disclosure by statute?

No, however, you must make available upon the request of a properly cleared OGE official any information that is protected from disclosure by statute.

§ 304–6.8 Will the reports be made available for public inspection?

Yes, OGE must make any report filed by an agency under this part (that is not protected from disclosure by statute) available for public inspection and copying on the later of the following two dates:

(a) Within 30 days after the applicable due date; or

(b) Within 30 days after the date OGE actually receives the report.

SUBCHAPTER C—ACCEPTANCE OF PAYMENTS FOR TRAINING

PART 304–7—AUTHORITY/APPLICABILITY

Sec.

304–7.1 What is the purpose of this subchapter?
304–7.2 To whom does this subchapter apply?
304–7.3 Who is exempt from this subchapter?

Authority: 5 U.S.C. 4111(b); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

§ 304–7.1 What is the purpose of this subchapter?

The purpose of this subchapter is to provide for reductions in per diem and other travel reimbursement when employees receive contributions, awards and other payments from non-Federal sources for training in non-Government facilities and attendance at meetings under 5 U.S.C. 4111.

§ 304–7.2 To whom does this subchapter apply?

This subchapter applies to:

(a) Civilian officers and employees of:

(1) Executive departments as defined in 5 U.S.C. 101;

(2) Independent establishments as defined in 5 U.S.C. 104;

(3) Government corporations subject to chapter 91 of title 31 U.S.C.;

(4) The Library of Congress;

(5) The Government Printing Office (GPO);

(6) The government of the District of Columbia; and

(b) Commissioned officers of the National Oceanic and Atmospheric Administration.

§ 304–7.3 Who is exempt from this subchapter?

The following, under 5 U.S.C. 4102 and the implementing regulation at 5 CFR 410.101(b), are exempt from this subchapter:

(a) A corporation supervised by the Farm Credit Administration if private interests elect or appoint a member of the board of directors;

(b) The Tennessee Valley Authority;

(c) An individual (except a commissioned officer of the National Oceanic and Atmospheric Administration) who is a member of a uniformed service during a period in which he is entitled to pay under 37 U.S.C. 204; and

(d) The U.S. Postal Service, Postal Rate Commission and their employees.

PART 304–8—DEFINITIONS

Authority: 5 U.S.C. 4111(b); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

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§ 304–8.1 For the purpose of this subchapter, who is a donor?

A donor, for the purpose of this subchapter, is an non-profit charitable organization described by 26 U.S.C. 501(c)(3), that is exempt from taxation under 26 U.S.C. 501(a).

PART 304–9—CONTRIBUTIONS AND AWARDS

Sec.

304–9.1 May we allow an employee to accept contributions and awards pertaining to training and payments incident to attendance at meetings under this subchapter?
304–9.2 May we pay an employee for expenses that are fully reimbursed by a donor for training in a non-Government facility, or travel expenses incident to attendance at a meeting?
304–9.3 May we reimburse an employee for training expenses that are not fully paid by a donor?
304–9.4 What if the employee is compensated by a donor and by us for the same expenses?
304–9.5 Must we reduce an employee's reimbursement when a donor pays for items for which we are not authorized to reimburse the employee?
304–9.6 Must we obtain data from employees or donors for all expenses received?

Authority: 5 U.S.C. 4111(b); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

§ 304–9.1 May we allow an employee to accept contributions and awards pertaining to training and payments incident to attendance at meetings under this subchapter?

Yes, you may allow an employee to accept contributions and awards pertaining to training and payments incident to attendance at meetings when you specifically authorize them to do so in accordance with OPM guidelines issued under section 401(b) of Executive Order 11348 (see 5 CFR part 410) and section 303(j) of Executive Order 11348 (3 CFR, 1966–1970 Comp., p. 639). The OPM guidelines may be found at 5 CFR part 410.

§ 304–9.2 May we pay an employee for expenses that are fully reimbursed by a donor for training in a non-Government facility, or travel expenses incident to attendance at a meeting?

No, you may not reimburse an employee for expenses that are fully reimbursed by a donor for training in a non-Government facility, or travel expenses incident to attendance at a meeting.

§ 304–9.3 May we reimburse an employee for training expenses that are not fully paid by a donor?

Yes, you may reimburse an employee for training expenses that are not fully paid by a donor an amount considered sufficient to cover the balance of expenses to the extent authorized by law and regulation, including 5 U.S.C. 4109 and 5 U.S.C. 4110.

§ 304–9.4 What if the employee is compensated by a donor and by us for the same expenses?

If you reimburse an employee for expenses that are also paid by a donor, you must establish and carry out policy in accordance with 5 U.S.C. 5514 to recover any excess amount paid to the employee.

§ 304–9.5 Must we reduce an employee's reimbursement when a donor pays for items for which we are not authorized to reimburse the employee?

No, when a donor pays for travel expenses that the Government is not authorized to pay (such as travel expenses for an employee's family) no reduction in payment is required.

§ 304–9.6 Must we obtain data from employees or donors for all expenses received?

Yes, you must set agency policy to ensure collection of expense data in such detail as you deem necessary to carry out this part.

Dated: February 26, 2001.

G. Martin Wagner,

Associate Administrator for Governmentwide Policy.

[FR Doc. 01–11244 Filed 5–3–01; 8:45 am]

BILLING CODE 6820–34–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1021; MM Docket No. 01–95; RM–10093]

Radio Broadcasting Services; Naches, Sunnyside and Benton City, Washington

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition for rule making filed by Butterfield Broadcasting Corporation ("petitioner") licensee of Stations KZTA(FM), Naches, Washington and KZTB(FM), Sunnyside, Washington. Petitioner proposes to substitute Channel 245C2 for 245A at Naches, and to reallot Channel 244A from Sunnyside to Benton City, Washington, as the community's first local transmission service. Channel 245C2 can be allotted at Naches at petitioner's requested site at coordinates NL 46–36–02 and WL 120–56–06 and Channel 244A can be reallotted from Sunnyside to Benton City in compliance with the Commission's minimum distance separation requirements at petitioner's requested site, at coordinates NL 46–14–48 and 120–25–40.

DATES: Comments must be filed on or before June 11, 2001, and reply comments on or before June 26, 2001.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Peter Gutmann, Esq., Pepper and Corazzini, 1776 K Street, NW., Suite 200, Washington, DC 20006. (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, and (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–95 adopted April 11, 2001 and released April 20, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Washington is amended by removing Channel 245A at Naches and adding Channel 245C2 at Naches, and by removing Sunnyside, Channel 244A, and adding Benton City, Channel 244A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–11174 Filed 5–3–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1022; MM Docket No. 01–94; RM–10086]

Radio Broadcasting Services; Corinth, Scotia and Hudson Falls, New York

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition for rule making filed by Vox New York, LLC, licensee of Stations WHTR(FM), Corinth, New York, and WFFG–FM, Hudson Falls, New York, proposing the substitution of Channel 229A for Channel 228A at Corinth, New York, the reallotment of Channel 229A from Corinth to Scotia, New York, as the community's first local service, and the reallotment of Channel 296A from Hudson Falls, New York, to Corinth. Channel 229A is reallotted from Corinth to Scotia at a site 9.9 kilometers (6.2 miles) northwest of the community at coordinates 42–54–27 NL, and 74–00–57 WL. Channel 296A can be reallotted from Hudson Falls to Corinth at petitioner's licensed site 5 kilometers (3.1 miles) east of the community at coordinates 43–14–40 NL and 73–46–18 WL.

DATES: Comments must be filed on or before June 11, 2001, and reply comments on or before June 26, 2001.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Jonathan E. Allen, Rini, Coran, and Lancellotta, P.C., 1350 Connecticut Avenue, NW., Suite 900,Washington, DC 20036–0551 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, at (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–94 adopted April 11, 2001 and released April 20, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by removing Channel 228A at Corinth and adding Channel 296A at Corinth, by removing Channel 296A at Hudson Falls, and by adding Scotia, Channel 229A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–11172 Filed 5–3–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 383, 384, and 390

[Docket No. FMCSA–00–7382]

RIN 2126–AA55

Commercial Driver's License Standards; Requirements and Penalties; Noncommercial Motor Vehicle Violations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FMCSA proposes disqualification regulations for drivers subject to the Commercial Motor Vehicle Safety Act of 1986 (CMVSA). Sections 201(b) and 202(h) of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) amended the CMVSA by adding disqualification requirements for a commercial driver's license (CDL) holder convicted of committing violations while operating a noncommercial motor vehicle (non-CMV). Each State would be required to disqualify the CDL upon conviction by revoking, suspending, or canceling it. Each employer would be required to stop using a driver from driving a commercial motor vehicle (CMV) upon the State's disqualification. The purpose of this proposal is to enhance the safety of CMV operations on our nation's highways.

DATES: You must submit comments on or before August 2, 2001.

ADDRESSES: You can mail, hand deliver, fax, or electronically submit written comments to the Docket Management Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001; FAX: (202) 493–2251, on-line at *http://dmses.dot.gov/submit*.

Please include the docket number that appears in the heading of this document in your comment. You can examine and copy all comments from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays at the docket facility. You can also examine the docket on the Internet at *http://dms.dot.gov*. If you want us to notify you of receipt of your comments, please include a self-addressed, stamped envelope or postcard, or after submitting comments electronically, print the acknowledgment page.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Redmond, (202) 366–9579, and

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for legal issues, Mr. Charles Medalen, (202) 366–1354. Both individuals are at the FMCSA, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: We will consider all comments received before the close of business on the comment closing date indicated in the **DATES** section. We will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. The FMCSA may, however, issue a final rule at any time after the close of the comment period.

This proposed rule uses plain language so those individuals unfamiliar with FMCSA regulations will find it easier to follow. We have made the text clearer, standardizing terms, changing to the active voice, reorganizing material for added clarity, inserting or revising headings to reflect content accurately, and correcting typographical, punctuation, and grammatical errors.

This NPRM focuses on changes to parts 383 and 384 that are required by the MCSIA (Public Law 106–159, December 9, 1999, 113 Stat. 1749). These parts relate to commercial driver licensing standards that affect States, employers, and employees. Part 391 addresses the qualifications that motor carriers must meet in selecting drivers to operate in interstate commerce. These three parts necessarily interact. The FMCSA is interested in any comments on possible changes to part 391 that it should consider in order to increase our stakeholders' understanding of the statutory and regulatory requirements imposed upon them.

Background

For the purposes of this document, the term CMV refers to the definition of a CMV in the CMVSA and codified at 49 U.S.C. 31301 *et seq.* Generally, a CMV is a motor vehicle used in commerce to transport passengers or property that meets any one of the following three conditions.

(1) The motor vehicle has a gross vehicle weight rating or gross vehicle weight (whichever is greater) of at least 26,001 pounds (11,794 kilograms).

(2) The motor vehicle is designed to transport at least 16 passengers including the driver.

(3) The motor vehicle is used to transport material required to be placarded under 49 CFR part 172 subpart F.

For the purposes of this document, the term non-CMV refers to vehicles not covered by this definition of CMV.

Noncommercial Motor Vehicle Violations

The CMVSA disqualifications section, codified at 49 U.S.C. 31310, has specified offenses related to operating a CMV requiring specific periods a State must disqualify a driver from operating a CMV. The MCSIA amended the CMVSA disqualifications at section 31310 by adding specific offenses related to operating a non-CMV. The Secretary may also specify disqualification periods the State must use when disqualifying a driver from operating a CMV.

For example, a CDL holder operates a non-CMV and refuses to take an alcohol test as required by a State's implied consent laws, as defined in 49 CFR 383.72. Under this proposal, a State must disqualify the CDL holder from operating a CMV for one year based on the first conviction for refusing to take an alcohol test after operating the non-CMV.

A second example would be if a CDL holder uses a non-CMV in the commission of a felony involving dispensing a controlled substance. Under this proposal, a State must disqualify the CDL holder from operating a CMV for life even though the conviction involved the operation of a non-CMV. The State may never reinstate the person's privilege to operate a CMV because the CMVSA does not provide reinstatement privileges for felonies related to dispensing controlled substances.

A third example would be a CDL holder who has been convicted of three serious traffic violations in a CMV within a 3-year period. The CDL holder makes erratic or improper traffic lane changes while operating a non-CMV. Under this proposal, a State must disqualify the CDL holder from operating a CMV for 120 days based on a fourth conviction in separate incidents within a 3-year period while operating either a CMV or non-CMV.

This document proposes to implement parts of Sec. 201(b) and all of Sec. 202(h) of the MCSIA. These sections amend 49 U.S.C. 31310 and 31311 to require the disqualifications of CDL holders for certain offenses committed in non-CMVs—typically private automobiles, motorcycles, and light-duty and medium-duty trucks.

Background of CDLIS

This proposed rule would also modify and clarify the FMCSA's Commercial Driver's License Information System (CDLIS). The Secretary of Transportation must maintain an information system that serves as the clearinghouse and depository of information about any person who operates CMVs and his/her identification, licensing history, and disqualification history. 49 U.S.C. 31309. The CDLIS also includes information about a person required to have a CDL who has violated the requirement to obtain a CDL before operating a CMV.

In 1988, the Federal Highway Administration (FHWA) entered into an agreement under Sec. 31309(b) with the American Association of Motor Vehicle Administrators and its affiliate AAMVAnet, Inc. (AAMVAnet), to use its system as the CDLIS. The agreement made AAMVAnet the CDLIS operator. Under Section 106(b) of MCSIA, the agreement transferred to the FMCSA and remains in effect until the FMCSA modifies or terminates it. A copy of the 1988 agreement is in the public docket.

The agreement states that AAMVAnet will "cooperate fully with FHWA [FMCSA] with respect to the operation of CDLIS including, but not limited to, information content and the development of standards relating to access to CDLIS by States and various employers and employees." The FMCSA informs AAMVAnet of the specific driver records and driver identification data necessary to the implementation and enforcement of the disqualifications called for in 49 CFR 383.51. In the State compliance regulations, § 384.231(d) *Recordkeeping requirements* requires each State to maintain driver records and cause driver identification data to be retained on the CDLIS which are necessary to the implementation and enforcement of the disqualifications called for in §§ 384.215 through 384.219. Cross-references in these sections refer to § 383.51 disqualifications.

CMV Offenses

Ensuring that only safe drivers are operating CMVs is an important part of the FMCSA's safety strategy. Section 383.51 specifies that a driver must be disqualified for specific periods for specific disqualifying offenses involving the operation of a CMV. The CMVSA, specifically 49 U.S.C. 31310(b), (c), (d), and (e), requires federally-mandated disqualifications for the following eight offenses:

1. Driving drunk in a CMV.
2. Leaving the scene of an accident in a CMV.
3. Committing general felonies in a CMV.
4. Committing controlled substance-related felonies in a CMV.
5. Speeding excessively in a CMV.
6. Driving recklessly in a CMV.
7. Violating motor vehicle traffic control laws in a CMV and causing an accident resulting in a fatality.
8. Violating other laws or regulations in a CMV that the FMCSA may specify by regulation as serious.

Section 4009 of the Motor Carrier Safety Act of 1991, codified at 49 U.S.C. 31310(i), requires CDL disqualifications for driver violations of out-of-service orders. Section 403 of the ICC Termination Act of 1995 (ICCTA) codified at 49 U.S.C. 31310(j) and 31311(a)(17)), requires CDL disqualifications for CMV drivers who are convicted of violating laws or regulations pertaining to railroad-highway grade crossings.

As part of this rulemaking, several amendments are also proposed to clarify our regulations in §§ 383.5, 383.71, and 383.73 about disqualifying offenses. In addition, an amendment to § 384.231(d) would add an incorporation by reference requiring States to conform to the recordkeeping requirements of AAMVAnet's "Commercial Driver's License Information System (CDLIS) State Procedures," Version 2.0, October 1998. This amendment would also add cross-references to §§ 384.221 through 384.224.

Non-CMV Offenses

The MCSIA amendments proposed in this action prohibit the holder of a CDL from operating a CMV if the CDL holder commits certain offenses while operating a non-CMV. In addition, the amendment to Sec. 31311 requires each State to adopt and enforce the Federal sanctions prescribed by Sec. 31310(g).

The FMCSA believes that a record of convictions for serious traffic violations and other offenses while operating a non-CMV is just as important as a conviction in a CMV in determining whether a driver should retain his or her CDL. This is the essence of our proposal in § 383.51.

While a CDL holder repeatedly convicted of violations in non-CMVs usually does not have a record of similar convictions while operating CMVs, this does not necessarily mean that his/her driving habits in CMVs are superior. The FHWA conducted a study for Congress about the CDL program's effectiveness. The report is entitled "Commercial Driver's License Effectiveness Study," (Volume I, Executive Summary, NTIS# PB99–139792; Volume II, Technical Report, NTIS# PB99–139800; September 1998) (Study). The study documented that many CDL holders receive citations for serious violations in CMVs. (See the docket for a copy of this study.) Many of these violations are not entered into their records as such, because they are either reduced through plea-bargaining and deferral programs or "masked" from public view on their record.

Furthermore, a high percentage of the convictions of CDL holders list the type of vehicle being driven at the time of a violation as "unknown" or "no." The "unknown" indicator is used when a State licensing agency cannot determine whether the conviction occurred in a CMV, based on the information provided to them with the conviction document. Some States, rather than list the vehicle type as "unknown," assume that an unknown vehicle is not a CMV and use the indicator "no" meaning "not in a CMV." This proposal and a subsequent proposal (RIN 2126-AA60) to be published in the **Federal Register** in the near future would attempt to solve 16 CDL-related problems, including:

1. Disqualifying drivers for non-CMV convictions.
2. Defining an imminent hazard.
3. Creating an emergency disqualification of drivers posing an imminent hazard.
4. Creating a new school bus endorsement.
5. Providing emergency grants to States in noncompliance with CDL requirements.
6. Withholding MCSAP funds from States in noncompliance with CDL requirements.
7. Upgrading disqualifications for driving while revoked, suspended, or canceled, or the driver is disqualified from operating a CMV.
8. Upgrading disqualifications for committing homicide by motor vehicle, manslaughter, negligent homicide, or causing a fatality through the criminal operation of a CMV.
9. Creating three new serious traffic violations for driving a CMV when the driver has not obtained a CDL, driving a CMV without a CDL in the driver's possession, and driving a CMV without the driver having met the minimum testing standards for the specific class of CMV being operated or for the type of cargo being transported on the vehicle.
10. Expanding driver record checks.
11. Adding new State notifications between the licensing agency and the judicial system.
12. Prohibiting hardship licenses to a driver who loses his/her base license.
13. Adopting penalties for violating licensing requirements.
14. Maintaining records of all violations.
15. Prohibiting the masking of convictions.
16. Decertifying a State CDL program for noncompliance.

Non-CMV Alcohol Offenses

The National Highway Transportation Safety Administration (NHTSA) and the FHWA promote an alcohol standard of 0.08 for all non-CMV drivers at 23 CFR Part 1225. Most of the non-CMVs subject to the new MCSIA disqualification amendment in this proposal are motorcycles, cars, pickups, and sport utility vehicles also covered by 23 CFR Part 1225. Other non-CMVs covered by the new MCSIA disqualifications amendment in this proposal include commercial vehicles with a gross vehicle weight rating of 11,794 kilograms (26,000 pounds) or less, which are subject to the FMCSA's zero tolerance alcohol standard under 49 CFR 392.5.

The FMCSA is proposing one exception to the non-CMV alcohol-related disqualifying offenses listed under § 383.51. Current § 383.51(b)(2)(i)(A), requiring disqualification for an alcohol concentration of 0.04 or more, is not included in the proposed non-CMV alcohol offenses because it would be difficult to enforce in most States. While all States support the higher standard of 0.04 or more alcohol concentration ("under the influence") for all drivers operating large CMVs, their standard for non-CMV drivers is an alcohol concentration of 0.08 to 0.10 percent ("intoxication" or "impairment").

Requiring states to use two different alcohol standards for drivers of these vehicles—one for CDL holders, one for all other license holders—would be difficult to implement and enforce. CDL holders, virtually all of whom drive private cars or light trucks, constitute less than 5 percent of the total number of drivers licensed to operate non-CMVs. The FMCSA believes that safety, in this situation, would be better served by the strong enforcement of existing intoxication and impairment laws for all non-CMV drivers. Under the proposed requirements, if a CDL holder is convicted of "being under the influence," "intoxicated," or "impaired" while operating a non-CMV and his or her license is suspended, revoked, or canceled, the driver would also be disqualified from operating a CMV.

Non-CMV Railroad-Highway Grade Crossing Violations

The FMCSA proposes to designate a railroad-highway grade crossing violation in a non-CMV as a serious

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offense, as permitted by MCSIA. Section 31310(g) of title 49 U.S.C. permits the Secretary of Transportation to disqualify from operating a CMV a person who has been convicted of "a serious offense involving a motor vehicle (other than a [CMV]) that has resulted in the revocation, cancellation, or suspension of the individual's license * * *" In its report on a predecessor bill which included a disqualification provision virtually identical to 49 U.S.C. 31310(g), as amended by MCSIA, the House Committee on Transportation and Infrastructure said "[t]he Committee expects the Department, in determining the appropriate disqualifying offenses by rulemaking, will focus on serious offenses, such as driving while intoxicated and reckless driving. The Committee does not intend for this rule to include minor traffic citations." H.R. Rep. No. 106–333, at 16 (1999). In section 403 of the ICCTA, codified at 49 U.S.C. 31310(j), Congress added railroad-highway grade crossing violations to the other disqualification offenses. The Conference Report on the ICCTA "directs the Secretary to issue regulations establishing sanctions and fines for operators of [CMVs] who violate railroad-highway crossing laws and regulations." H.R Rep. No. 104–422, at 238 (1995), *reprinted in* 1995 U.S.C.C.A.N. 850, 923.

In considering the MCSIA, the House report states the Secretary is required to issue regulations establishing criteria for disqualifying from operating a CMV an individual who holds a CDL and who has been convicted of serious offenses involving a vehicle other than a CMV. The Congress, therefore, directed the Secretary to conduct a rulemaking to determine the appropriate non-CMV offenses and minimum periods for which a CDL holder should be disqualified. The statute, however, provided that in no case would the types of non-CMV offenses or the time periods for which CDL holders are disqualified for such offenses be more stringent than the offenses and disqualification periods involving a CMV. The FMCSA believes railroad-highway grade crossing violations in non-CMVs are serious offenses that can and do lead to fatalities, bodily injuries, and significant property damage.

The FMCSA is therefore proposing that CDL holders who violate railroad-highway grade crossing regulations in non-CMVs be disqualified from operating a CMV.

Number of CDL Citations

The FMCSA requires AAMVAnet to have in the CDLIS, and each State to maintain on each violation, information on whether the vehicle being operated at the time of the violation was a CMV. Each State accomplishes this requirement by indicating on each traffic citation whether the vehicle being operated at the time of the violation is a CMV. Because of this proposed rule, AAMVAnet must modify the CDLIS and would add a requirement for each State to indicate for every violation whether the driver's license is a CDL. The FMCSA believes each State will accomplish this requirement by indicating on the citation whether the driver's license is a CDL. This proposed new requirement is necessary to identify a CDL holder when he or she is cited for a violation while operating a non-CMV because the violation may result in a serious traffic violation conviction and the revocation, suspension, or cancellation of the CDL.

Once the State records the conviction on the CDL record, the CDL holder would then be disqualified from operating a CMV during the period of suspension, revocation, or cancellation. Without this indicator, there is no way of identifying a CDL holder in CDLIS with any of the information currently captured on a citation. The FMCSA will later propose (in RIN 2126–AA60) a maximum period from violation and conviction to recording on the driver's record in the State of domicile.

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FMCSA must estimate the additional paperwork burden that would be required by this proposal to identify CDL holders on the citation. The FMCSA has a cooperative agreement with TML Services (TML) to perform certain commercial driver licensing functions. In its analysis conducted for the FMCSA, TML used a 1996 sample database of CDL holder records with conviction data from 1992 through 1996. This data was compiled for the Commercial Motor Vehicle Effectiveness Study (discussed earlier in this document). Using Study data, the FMCSA estimated that there were about 1.82 million convictions per year over the 4-year period. In 1996, 1.82 million convictions were tied to 8.3 million CDL records. The FMCSA does not know how many of the 1.82 million convictions were in CMVs and how many were in non-CMVs. Projecting an increase in the number of CDL records at a rate of 40,000 per month through the middle of 2004, the FMCSA estimates that 11.5 million CDL records will generate 2.53 million convictions per year.

Based on the survey of States conducted as part of the Study, the FMCSA concluded that some States were not sending and/or posting all out-of-State convictions. TML assumed that 25 to 75 percent of roughly 600,000 out-of-State convictions were either not sent to the home State or not posted by the home State during the 1992 to 1996 period. If this assumption is correct, an increase in the projected number of convictions must be made. TML calculates that the projected 2.53 million convictions per year should be increased to 2.7 to 3.0 million per year by the year 2004.

The number of convictions is clearly smaller than the number of citations issued to CDL holders. The FMCSA asked AAMVAnet for help determining the conviction rate. The AAMVAnet asked its State members for help. Only Texas was able to provide us with needed information. Based on calendar years 1998 and 1999 data, Texas concluded that 95 percent of CDL holder citations issued in the State resulted in convictions. Using this rate, the FMCSA made national estimates that between 2.84 and 3.16 million citations would be issued in 2004.

Incorporation by Reference

Paragraph (d) of § 384.231 currently has ambiguous language stating that each "* * State shall maintain such driver records and cause such driver identification data to be retained on the CDLIS as the operator of the CDLIS specifies are necessary to the implementation and enforcement of the disqualifications called for in §§ 384.215 through 384.219." This implies that each State must conform their information collection and recordkeeping requirements to what the AAMVAnet specifies is necessary. The FMCSA, however, requires AAMVAnet, as the CDLIS operator under the 1988 designation agreement, to have certain information collected by States with respect to the operation of CDLIS. The numerous pieces of information collected include, but are not limited to, information content and the development of standards relating to access to CDLIS by each State, employer, and employee. Thus, AAMVAnet is acting as a third party in collecting information on behalf of the FMCSA by passing on to each State the information collection requirements specified by the FMCSA as necessary under the 1988 designation agreement.

The FMCSA believes AAMVAnet's CDLIS State Procedures manual should be incorporated by reference to ensure each State uses it. The Version 2.0 published in October 1998 is the most recent version of the AAMVAnet manual. AAMVAnet plans to update this manual to implement MCSIA amendments to the CDL system. Incorporating the manual by reference, however, should ensure that each State complies with the specific version required by AAMVAnet and the FMCSA.

The FMCSA is providing the public an opportunity to comment on the incorporation by reference of this AAMVAnet manual. In addition, the FMCSA would provide additional opportunity for comment on updates to Version 2.0 before any State would be required to comply with any newer AAMVAnet manual in the future.

Incorporating the AAMVAnet standards by reference allows the FMCSA to comply with the requirements in 5 U.S.C. 552 to publish rules in the **Federal Register** by referring to materials already published elsewhere. Section 552 authorizes incorporation by reference with the approval of the Director of the Federal Register to reduce the volume of material published in the **Federal Register** and the CFR. The legal effect of incorporation by reference is that the material is treated as if it were published in the **Federal Register**. This material, like any other properly issued rule, would then have the force and effect of law.

Substantial Compliance

Each State must comply substantially with 24 specific requirements of the CDL program to avoid the withholding of a certain percentage of Federal highway funds otherwise apportioned for its Surface Transportation Program, National Highway System, and Interstate Maintenance System components. See 49 U.S.C. 31311 and 31314. Section 103(e) of the MCSIA added that if a State does not comply substantially with the 24 specific requirements of the CDL program, a State's entire allocation in supplemental funding which the MCSIA added to the Motor Carrier Safety Assistance Program (MCSAP) might be withheld by FMCSA. The requirement to adopt and enforce the disqualifications applicable to a CDL holder who is convicted of serious offenses in a non-CMV was added by section 202(h) of the MCSIA and codified at 49 U.S.C. 31311(a)(20). This requirement adds another condition necessary for states to achieve substantial compliance with the CMVSA of 1986. The FMCSA understands the complexity of revising State statutes and establishing procedures to incorporate the new requirements into existing systems. The FMCSA, therefore, proposes to set a deadline of 3 years after the effective date of this rule for states to achieve substantial compliance with these requirements.

Section Analysis

Section 383.5 Definitions

The FMCSA proposes to revise the current definition of "Disqualification" in § 383.5 to clarify the original intent that disqualification of a CDL holder is only required for driver convictions related to motor vehicle traffic control offenses.

The FMCSA proposes to remove current paragraph (c) that automatically disqualifies a driver from operating a CMV upon conviction of any offense listed in § 383.51. The current paragraph (c) conflicts with standard adjudication practices in most states. Convicting and disqualifying a driver generally involves two separate processes administered by two separate agencies. In most cases, only a court has the authority to convict the driver, while the State licensing agency has the separate authority to suspend, revoke, or cancel the driver's license based upon the court conviction. In addition, a driver has the right to appeal a conviction. Pending the decision of the appellate court, the effect of the conviction is stayed. The conviction, therefore, is not posted by the State licensing agency and no disqualifying action is taken. This conflicts with paragraph (c) of the current definition of *Disqualification*. Moreover, disqualifying a driver who had filed an appeal, in defiance of a court order staying the conviction, would bring a State licensing agency into serious conflict with the judicial system. Appeals are not the only source of delay. A driver can be convicted of an offense listed in § 383.51—and thus automatically disqualified from driving a CMV for a certain period after that date—but the court may fail to notify the State licensing agency of that fact, usually because the court system and licensing agency have not perfected their electronic data transfer systems. "Diversion" programs are even more serious. In many States, courts suspend a conviction, seal or "mask" the driver's record, and purge the conviction completely within some period if no further violations occur. Therefore, the licensing agencies, and thus motor carriers, sometimes learn of a driver's conviction (if at all) only after the disqualification period automatically started by current paragraph (c) is completed. Removal of paragraph (c) will correct some of these problems. As discussed earlier in this document under the heading "Non-CMV Offenses," the FMCSA will address related issues in an NPRM (RIN 2126–AA60) to be published in the **Federal Register** in the future.

The original intent of the CMVSA and its implementing regulations in parts 383 and 384 was to require the disqualification of a CDL holder only for convictions related to motor vehicle traffic control offenses. In fact, however, States have begun to suspend CDLs for failure to pay child support, failure to pay parking tickets, and other matters not directly related to unsafe or criminal behavior in a CMV. In order to restore the original intent of the CMVSA, new paragraph (b) in the definition of *Disqualification* would include "any withdrawal of a person's privileges to drive a CMV by a State or other jurisdiction as the result of a violation of State or local law relating to motor vehicle traffic control (other than parking, vehicle weight or vehicle defect violations)." The phrase "motor vehicle traffic control" is taken directly from the CMVSA. The FMCSA recognizes that driving while under the influence of alcohol or controlled substances may not be a "motor vehicle traffic control" offense in the same way as speeding or illegal lane changes, but Congress used that phrase in the CMVSA and clearly intended drug-and alcohol-related offenses to be covered by the CDL disqualification regulations.

This change would not prevent States from including in CDLIS or NHTSA's National Driver Register (NDR)—which also depends on a distributed database—driver convictions and disqualifications for offenses that are not related to motor vehicle traffic control, should they wish to do so.

We are proposing to add to § 383.5 a new definition for "non-CMV." A non-CMV would be any motor vehicle or combination of motor vehicles not covered by the definition of a CMV in Part 383.

Section 383.51 Disqualification of Drivers

The FMCSA would revise the entire section by using an if-then table format that we believe is more readily understandable than the current regulatory text. The FMCSA would also propose to reserve rows within the table for the proposal to be published in the **Federal Register** in the near future under RIN 2126–AA60.

The revised § 383.51 would combine the non-CMV and CMV convictions of CDL holders for the original offenses under the CMVSA and other offenses

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added in subsequent statutory amendments. In addition, the FMCSA would clarify that a person who operates a CMV must obtain a CDL and is subject to the same disqualifications. This circumstance has always been clear to States and the FMCSA, but employers and drivers have frequently misunderstood this point.

While the MCSIA addresses the type of offenses that must result in a disqualification, it is silent regarding the length of the CMV disqualification. The Congress included both the type of offense and the length of the CMV disqualification in the CMVSA and each of the previous amendments before 1999. The MCSIA, however, only requires that the disqualification period be no longer than for the same or similar offenses that occur while operating a CMV. The FMCSA proposes that CDL holders convicted of serious traffic violations and other offenses in either a non-CMV or a CMV serve the same period of disqualification. The FMCSA invites the public to comment.

Although current regulations disqualify a CDL holder convicted of driving a CMV with an alcohol concentration of 0.04 percent or more [§ 383.51(b)(2)(i)(A)], that standard would not be included in the list of alcohol-related disqualifying offenses committed while operating a non-CMV. The reasons are explained earlier in the preamble section under the heading "Non-CMV Alcohol Offenses."

The FMCSA is also proposing to add railroad-highway grade crossing violations in a non-CMV as a serious traffic violation, as permitted by 49 U.S.C. 31301(12)(G) and 31310(g). See the discussion of the rationale for this proposal earlier in this preamble under the heading "Non-CMV Railroad-Highway Grade Crossing Violations."

Paragraph (f) would be recodified as § 384.203 paragraphs (b) and (c). The FMCSA would also make conforming amendments by correcting § 383.51 cross-references in §§ 383.3(f)(3)(i)(C), 383.53(b), 383.72, 383.77, 384.215, 384.217, 384.218, 384.219, 384.224, and cross references in the two definitions of the term "driving a CMV" in §§ 383.5 and 390.5.

Sections 383.71 Driver Application Procedures and 383.73 State Procedures

Section 383.71(a)(6) requires self-certification, and § 383.73(a)(3) requires each State to check, that a CDL applicant is not subject to any disqualification, revocation, or cancellation "as contained in § 383.51." The FMCSA regulatory interpretation for § 383.73, Question 3, published in the **Federal Register** on April 4, 1997 (62 FR 16396) provides a question and answer that reads as follows:

> To what does the phrase "* * * as contained in § 383.51" refer to in § 383.73(a)(3)?
>
> *Guidance:* The phrase refers only to the word "disqualification." Thus the State must check the applicant's record to ensure that he/she is not subject to any suspensions, revocations, or cancellations for any reason, and is not subject to any disqualifications under § 383.51.

In the phrase "any disqualification, revocation, or cancellation as contained in § 383.51" the phrase "as contained in § 383.51" was intended to modify only the word "disqualification." The FMCSA has no authority to suspend, revoke, or cancel a driver's CDL. The agency therefore proposes to amend §§ 383.71(a)(6) and 383.73(a)(3) to refer to "any disqualification under § 383.51, or any license suspension, revocation, or cancellation under State law * * *"

Section 384.107 Matter Incorporated by Reference

The FMCSA is proposing to incorporate by reference the AAMVAnet publication under § 384.231(d) *Recordkeeping requirements.* See the section analysis for § 384.231 for a complete description of the document and the reasons the FMCSA is proposing its incorporation.

Section 384.203 Driving While Under the Influence

The FMCSA would amend this section to re-codify § 383.51(f) *Substantial compliance by States* at this location. Paragraph (f) fits more appropriately with § 384.203. Both concern the 0.04 alcohol concentration standard and the State substantial compliance issue.

Section 384.222 Violation of Out-of-Service Orders

This section would be added to require each State to have and enforce all necessary laws and regulations applicable to drivers of CMVs and their employers who violate out-of-service orders, which meet the minimum requirements of §§ 383.51(e), 383.37(c), and 383.53(b).

Part 384, State Compliance with Commercial Driver's License Program, was created by an FHWA final rule published on May 18, 1994 [59 FR 26029]. States were not required to disqualify drivers convicted of violating out-of-service (OOS) orders because, according to the preamble, the FHWA "has not yet issued a final rule" on that subject. However, § 384.222 was reserved for such a State requirement when the rule prohibiting violation of OOS orders was completed. In fact, a second final rule which did exactly that was published the same day in the same issue of the **Federal Register** [May 18, 1994, 59 FR 26022] and codified at § 383.51(d). Because of this error, the State requirement to disqualify violators of OOS orders has never been added to § 384.222. The FMCSA is now proposing to correct that oversight.

Section 384.224 Noncommercial Motor Vehicle Violations

As required by section 202(h) of the MCSIA, the FMCSA proposes a new section that would require the States to adopt and enforce the sanctions that are applicable to holders of CDLs who are convicted of offenses in a non-CMV.

Section 384.231 Satisfaction of State Disqualification Requirements

All paragraphs would be amended be replacing the word "shall" with the word "must."

The FMCSA would amend paragraph (a) by including cross references to the disqualifications resulting from railroad-highway grade crossing violations added to § 384.223 by a final rule published in 64 FR 48104, September 2, 1999, and the proposed §§ 384.222 and 384.224 in this document.

Paragraph (b)(2) would be amended by removing the May 18, 1997, compliance date from the heading of the paragraph. The FMCSA also proposes replacing the undefined term "non-CDL holder" with "a person required to have a CDL" within the heading and body of paragraph (b)(2). The intent of this paragraph was to require each State to disqualify any person required to have a CDL who was convicted of a disqualifying offense under § 383.51. The term "non-CDL holder," however, could include a person who is not even required to have a CDL. The FMCSA would correct this potential problem. Paragraph (d) would be amended to incorporate by reference the AAMVAnet State Procedures Manual. This paragraph does not clearly state that the FMCSA imposes recordkeeping requirements upon AAMVAnet, its designated CDLIS operator, and that each State must conform its recordkeeping information systems to the AAMVAnet system manuals. Each State licensing agency has a copy of the most recent version of the CDLIS State Procedures Manual. A copy of the 1998 CDLIS State Procedures Manual is in the public docket.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this regulatory action is not significant within the meaning of Executive Order 12866. The FMCSA has determined this proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order.

This regulatory action also is not significant under the regulatory policies and procedures of the DOT (44 FR 11034, February 26, 1979). The FMCSA believes a full Regulatory Evaluation is unnecessary under paragraph 10e of the regulatory policies and procedures of DOT, because the economic impact of this rule will be minimal.

Estimated Costs

The FMCSA believes the costs of this rule include the following:

1. Information system implementation, modification, and maintenance costs to state government agencies.
2. Labor costs to the state government agencies to handle new data collection and processing.
3. Wage losses (costs) to CDL holders who are suspended or disqualified for committing the new serious traffic violations and disqualifying offenses addressed under this proposed rule.

First-year costs for this proposed rule should total approximately $1.73 million (present value); most of these are for information system developments and modifications by state government agencies. The FMCSA obtained these first-year cost estimates by extrapolating results of an AAMVAnet survey of State motor vehicle administrations on the potential implementation costs of MCSIA. AAMVAnet conducted the survey in 2000. AAMVAnet results are based on data from nine States. The FMCSA used the AAMVAnet survey estimates and calculated the costs to all fifty states and the District of Columbia. A copy of the AAMVAnet report is in the docket.

Total costs occurring between 2004 and 2013 are estimated at $168.7 million (present value); most of these costs are wages lost by CDL holders who would be suspended or disqualified from this proposal's implementation. FMCSA estimates that an average of 9,661 CMV drivers would have their CDLs revoked, suspended, or canceled (withdrawals) annually because of this proposal. In an analysis conducted for the FMCSA using data from the FHWA Study, TML estimated that in calendar year 2000 there were approximately 38,643 CDL withdrawals required by 49 U.S.C. 31310 and 49 CFR 383.51 (CMVSA-required withdrawals). Also, using sample data from the CDLIS for the Commercial Driver's License Effectiveness Study, TML estimated that of all the out-of-state CDL convictions logged, 49 percent noted that the CDL holder was either not operating a CMV at the time of the citation, or that the type of vehicle being driven was not known (e.g., not marked on the citation). For in-state CDL convictions, the ratio of CDL holders either not driving a CMV at the time of the citation, or having an "unknown" status, was even higher, at 88 percent.

For the purposes of estimating the number of "new" CDL withdrawals resulting from this proposal, the FMCSA used a conservative estimate. The FMCSA estimated that annual CMVSA-required withdrawals of CDL holders would increase by 25 percent (or by 9,661 CDL holders annually). The FMCSA conducted an analysis of CDLIS data from the Commercial Drivers License Effectiveness Study on the distribution of convictions for various serious traffic violations (e.g., excessive speeding) and disqualifying (e.g., alcohol-related) offenses and data on the disqualification periods defined for each under § 383.51. Based on this analysis, the FMCSA estimates that the average disqualification period per CDL holder would be 317 days.

The unemployment rate was 4.2 percent in January 2001 and the FMCSA estimates the driver shortage in the motor carrier industry to be 80,000. The FMCSA estimates that those CDL holders who would be disqualified because of this proposal would quickly find alternative work within the industry (or in closely-related industries), albeit at a 10-percent reduction in hourly wages. All the estimates discussed here were used to calculate the wage reduction costs to the 9,661 CDL holders annually disqualified, for an average of 317 days, over the 10-year analysis period.

The FMCSA estimates the total cost of this proposal to industry and government agencies to be approximately $170.4 million (present value) over the ten-year analysis period from 2004 through 2013, using a discount rate of 7 percent.

Estimated Benefits

The primary societal benefits from this proposal are the CMV-related crashes expected to be avoided when high-risk CDL holders are disqualified. Effectively, CDL holders who are convicted of serious traffic violations and disqualifying offenses (as defined under § 383.51) while operating a non-CMV will now have their CDL suspended or withdrawn or be disqualified because of this rule.

The FMCSA estimates conservatively that, on average, approximately 9,661 CDL holders are likely to be disqualified annually between the years 2004 and 2013 if this proposal is made effective. The FMCSA believes no disqualifications would occur in the first full year of implementation since no State would be held to the standard until 2004. Table VM–1 in the FHWA's Highway Statistics 1999 publication contains data on the number of combination trucks registered (e.g., those likely driven by CDL holders) in the United States and the vehicle-miles-traveled (VMT) by these vehicles in 1999. A copy of Table VM–1 is in the docket. A copy is also available on the Internet at. *htt://www.fhwa.dot.gov./ohim/hs99/tables/vm1.pdf.*

The average distance traveled in 1999 per combination truck was 65,261 miles. The FMCSA estimated one driver per vehicle, an average of 9,661 CDL disqualifications each year, and an average disqualification period of close to one year (specifically, 317 working days within 365 calendar days). Using these conditions, the FMCSA estimated the total VMT foregone in combination trucks by these CDL holders would be 630.5 million miles in each year from 2004 through 2013. The involvement rate in police-reported crashes for combination unit trucks is 225.32 per 100 million VMT based on "The Dimensions of Motor Vehicle Crash Risk" by Wang, Knipling, and Blincoe (Journal of Transportation and Statistics, Volume 2, Number 1, BTS Journal, 1999). A copy is in the docket. A copy is also available on the Internet at. *htt://www.bts.gov./jts/V2N1/3wang.pdf.* Using this data, the FMCSA estimates the initial crash reduction benefit of this proposal to be 1,422 CMV-related crashes per year (e.g., 630.5 million VMT times 225.32 crashes per 100 million VMT).

The FMCSA believes CMV operators who have been disqualified are likely to find alternative work within the motor carrier industry or closely related industries. Many of these drivers would switch to driving vehicles not specifically defined as CMVs in § 383.5 (and thus not requiring a CDL). Since many of these drivers will continue to face exposure to motor vehicle crashes, the FMCSA's initial crash reduction benefit estimate should be reduced. For the purposes of this analysis, the

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FMCSA conservatively estimated that two-thirds of disqualified CDL holders would continue to drive as some part of their alternative employment, so that only one-third would eliminate their crash exposure during the 317-day disqualification period. The number of CMV-related crashes avoided resulting from this proposal would be about 474 per year (or one third of the original 1,422 CMV-combination-related crashes).

The FMCSA estimates no reduction in CMV-related crashes during the first year of implementation (2004). Therefore, the FMCSA expects that at least 474 CMV-related crashes will be avoided annually during the years 2004 through 2013 because of the additional CDL holder disqualifications. The FMCSA used a recent comprehensive study to estimate the costs of highway crashes involving large trucks and buses by severity. In Zaloshnja, E., Miller, T., and Spicer, R., "The Costs of Large Truck- and Bus-Involved Crashes," FMCSA, December 14, 2000, they estimated that the average cost of all police-reported crashes (i.e., fatal, injury, and property-damage-only (PDO) crashes) involving trucks with a gross weight rating of more than 10,000 pounds is $75,637 (in 1999 dollars). A copy of the study by Zaloshnja, et al. is in the docket. A copy of the study is also available on the Internet at: *htt://ai.volpe.dot.gov./CarrieResearchResults/CarrierResearchResults.asp?file=PDFs/CCT FinalReport.pdf*

The average cost per large truck crash involving a fatality is $3.54 million, for crashes involving injuries $217,000, and for those involving property damage only $11,300. The FMCSA adjusted these average costs to year 2000 dollars using the Consumer Price Index to yield $3.66 million per fatal crash, $224,378 per injury-related crash, and $11,684 per property-damage-only (PDO) crash. The Large Truck Crash Profile Study (1999) indicates that fatal crashes represented one percent of all truck-related crashes in 1999, injury-related crashes represented 21 percent, and PDO crashes represented the remaining 78 percent. A copy of a report entitled "Trends in Motor Vehicle Crashes; Fatal Crashes 1975–1999 Injury and Property-Damage-Only Crashes 1988–1999" (December 2000) is in the docket. It has the same data as the Large Truck Crash Profile Study. Using this information, the FMCSA estimates annual (unadjusted) crash reduction benefits from this proposal to be approximately $44 million using 474 crashes avoided.

The FMCSA estimates total 2004 through 2013 CMV-related crash reduction benefits from this proposal to equal $268 million (present value), using a discount rate of 7 percent. Examining the total (present value) costs of this proposal, equal to $170.4 million, this proposal's implementation yields a net benefit of $97.6 million over the 10-year analysis period from 2004 through 2013.

The FMCSA invites you to submit comments to the docket about these cost and benefit estimates.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FMCSA has considered whether this proposal would have a significant economic impact on a substantial number of small entities. We have determined that such entities would not be adversely affected by this rule, either in absolute terms or relative to larger carriers. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

In the motor carrier industry, the Small Business Administration (SBA) defines small entities as those firms earning less than $18.5 million in gross receipts annually. The FMCSA examined U.S. Census Bureau data from the 1997 Economic Census, in particular the revenue size of firms in the "General Freight Trucking" sector (North American Industry Classification System Code 4841). The vast majority of firms represented in the sample fall below the SBA annual revenue threshold. While these small entities represent over 90 percent of the firms in the sample, they employ roughly 58 percent of the workers.

The primary focus of this proposal is to improve motor carrier safety by expanding the list of serious traffic violations and other offenses for which a CDL holder can be disqualified to those occurring in non-CMVs. The proposal potentially affects all active CDL holders (estimated from 3.2 million to 8.3 million, with a midpoint of 5.75 million), since all would be subject to the proposal. The 3.2 million CDL holders comes from an estimate of "active" CDL holders reported for calendar year 1999 in the FMCSA's 1999 Drug & Alcohol Survey, OMB No. 2126–0012. This sample-based survey measures the percentage of CDL holders that test positive for controlled substances and/or alcohol, but in so doing, provides a count of CDL holders who have been employed as a driver and operated a CMV within the past year, and therefore provides an estimate of the number of "active" CDL holders nationwide.

The *CDL Effectiveness Study* reported 8.3 million CDL holder records in the CDLIS. Please note that the number of "records" will not match the number of "current" or "active" CDL holders operating a CMV, since there are many CDL holders who have other jobs as their primary employment. Examples include those workers employed in non-driving positions within trucking companies, and those CDL holders, presumably owner-operators, who may suspend operation of CMV services and take alternative employment outside of the trucking industry. The CDLIS does not differentiate among these different types of CDL holders, so one must be cautious when examining this total number of CDL holders within CDLIS. The FMCSA invites the public to comment on whether the agency should use the median of 5.75 million active CDL holders this proposal will potentially affect.

The FMCSA does not currently have evidence that CDL holders employed by small entities are more likely to be disqualified under this rule than those employed by larger entities. Lastly, the number of new driver disqualifications expected annually from this proposal (approximately 9,661) represents only one-tenth to three-tenths of one percent of all active CDL holders (depending on the specific estimate of active CDL records used). Therefore, the number of CDL holders likely to be disqualified annually because of this proposal is very small and should keep it from adversely affecting any entity, large or small.

Therefore, the FMCSA, in compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), has considered the economic impacts of these requirements on small entities and certifies that this rule would not have a significant economic impact on a substantial number of small entities. Comments on this conclusion are welcome and should be submitted to the docket.

Unfunded Mandates Reform Act of 1995

This proposal would not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, taken together, or by the private sector, of $100 million or more in any one year over the period analyzed. (2 U.S.C. 1531 *et seq.*).

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed action is not economically significant and does not concern an environmental risk to health or safety that would disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999 (64 FR 43255, August 10, 1999). The MCSIA requires this rulemaking action. Consultation with States is not required when a rule is required by statute. The FMCSA, however, has determined that this action would not have significant Federalism implications or limit the policymaking discretion of the States. Comments on this conclusion are welcome and should be submitted to the docket.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FMCSA has determined that this action, if promulgated as a final rule, would have an impact upon an existing currently approved information collection.

The information collection requirements relating to Commercial Driver Licensing and Test Standards have been approved by OMB and assigned the OMB control number 2126–0011. This proposed action would require AAMVAnet to amend its state procedures manual to add one additional data element: whether the driver's license is a CDL.

Many States have implemented former AAMVAnet state procedure manual requirements by requiring police officers within those States to note on traffic citations whether a motor vehicle is a CMV. The FMCSA believes States would implement a similar requirement in response to an AAMVAnet amendment resulting from sections 201(b) and 202(h) of the MCSIA and this rulemaking.

The FMCSA estimates that between 2,840,000 and 3,160,000 traffic citations are issued annually to CDL holders. It would take an enforcement official approximately 2 seconds to record the additional data element. Adding the data element would increase the current time burden estimate by 1578 to 1756 hours [(2,840,000 to 3,160,000 citations) (2 seconds) = (5,680,000 to 6,320,000 sec.) / 3600 sec./hr. = 1578 to 1756 hr.], resulting in a revised estimated annual time burden of 691,877 to 692,055 hours.

OMB Control Number: 2126–0011.
Title: Commercial Driver Licensing and Test Standards.
Affected Public: Each State government, the District of Columbia government, and approximately 500,000 motor carriers using approximately 10 million drivers who operate CMVs in interstate and intrastate commerce.
Estimated Annual Hour Burden: 1,578 to 1,756 burden hours.

The FMCSA believes these proposed requirements meet the principles of the Paperwork Reduction Act of 1995 by ensuring—

(1) The information collection is the least burdensome necessary for the proper performance of the FMCSA's safety and licensing mandates.

(2) The information collection does not duplicate information collected by other agencies.

(3) The information collection has practical utility. The FMCSA has sought to minimize the cost to itself of collecting, processing, and using the information, but would not accomplish this by shifting disproportionate costs or burdens onto the public.

The FMCSA seeks public comment on this proposed information collection requirement. Interested parties are invited to send comments regarding any aspect of these information collection requirements, including, but not limited to:

(1) Evaluating whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have a practical use;

(2) Evaluating the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhancing the quality, usefulness, and clarity of the information to be collected; and

(4) Minimizing the burden of collection of information on those who are to respond, including using appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, such as permitting electronic submission of responses.

National Environmental Policy Act

The agency has analyzed this proposal for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined under DOT Order 5610.1C (September 18, 1979) that this action does not require any environmental assessment.

List of Subjects

49 CFR Part 383

Administrative practice and procedure, Alcohol abuse, Commercial driver's license, Commercial motor vehicles, Drug abuse, Highway safety, Motor carriers, Motor vehicle safety.

49 CFR Part 384

Administrative practice and procedure, Alcohol abuse, Commercial driver's license, Commercial motor vehicles, Drug abuse, Highway safety, Intergovernmental relations, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, the FMCSA proposes to amend title 49, Code of Federal Regulations, chapter III, parts 383, 384, and 390 as set forth below:

PART 383—[AMENDED]

1. Revise the authority citation for 49 CFR part 383 to read as follows:

Authority: 49 U.S.C. 31136, 31301 *et seq.*, and 31502; and 49 CFR 1.73.

2. Amend § 383.3(f)(3)(i)(C) by revising the cross-reference "§ 383.51(b)(2)" to read "§ 383.51".

3. Amend § 383.5 to revise the definitions for "Disqualification" and "Driving a commercial motor vehicle

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while under the influence of alcohol," to add a definition for "Non-CMV," and to place the definitions in alphabetical order, to read as follows:

§ 383.5 Definitions.

* * * * *

Disqualification means any of the following three actions:

(1) The suspension, revocation, or cancellation of a CDL by the State of issuance.

(2) Any withdrawal of a person's privileges to drive a CMV by a State or other jurisdiction as the result of a violation of State or local law relating to motor vehicle traffic control (other than parking, vehicle weight or vehicle defect violations).

(3) A determination by the FMCSA that a person is no longer qualified to operate a commercial motor vehicle under part 391 of this chapter.

* * * * *

Driving a commercial motor vehicle while under the influence of alcohol means committing any one or more of the following acts in a CMV: driving a CMV while the person's alcohol concentration is 0.04 or more; driving under the influence of alcohol, as prescribed by State law; or refusal to undergo such testing as is required by any State or jurisdiction in the enforcement of § 383.51(b) or § 392.5(a)(2) of this subchapter.

* * * * *

Non-CMV means a motor vehicle or combination of motor vehicles not defined by the term "commercial motor vehicle (CMV)" in this section.

* * * * *

4. Revise § 383.51 to read as follows:

§ 383.51 Disqualifications of drivers.

(a) *General.* (1) A driver or holder of a CDL who is disqualified must not drive a CMV.

(2) An employer must not knowingly allow, require, permit, or authorize a driver who is disqualified to drive a CMV.

(3) A driver is subject to disqualification sanctions designated in paragraphs (b), (c), and (d) of this section, if the driver drives a CMV or non-CMV and is convicted of the violations.

(4) *Determining first and subsequent violations.* For purposes of determining first and subsequent violations of the offenses specified in this subpart, each conviction for any offense listed in each Table in this section resulting from a separate incident, whether committed in a CMV or non-CMV, must be counted.

(5) *Reinstatement after lifetime disqualification.* A State may reinstate any driver disqualified for life for offenses described in paragraphs (b)(1) through (b)(6) of this section (Table 1) after 10 years if that person has voluntarily entered and successfully completed an appropriate rehabilitation program approved by the State. Any person who has been reinstated in accordance with this provision who is subsequently convicted of a disqualifying offense described in paragraphs (b)(1) through (b)(6) of this section (Table 1) must not be reinstated.

(6) *Non-CMV enforcement.* A State may apply the disqualification sanctions required by paragraph (b)(3) of this section (Table 1) to convictions of a CDL holder who operates a non-CMV with an alcohol concentration of 0.04. Note, however, that the State is not required to do so.

(b) *Disqualification for major offenses.* Table 1 to § 383.51 of this subpart contains a list of the offenses and period for which a driver must be disqualified, depending upon the type of vehicle the driver is operating at the time of the violation, as follows:

TABLE 1 TO § 383.51

If a driver operates a motor vehicle and—	For a first conviction or refusal to be tested while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for—	For a first conviction or refusal to be tested while operating a non-CMV, a CDL holder must be disqualified from operating a CMV for—	For a first conviction or refusal to be tested while operating a CMV transporting hazardous materials required to be placarded under the Hazardous materials Regulations (49 CFR part 172, subpart F), a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for—	For a second conviction or refusal to be tested in a separate incident of any offense in this Table while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for—	For a second conviction or refusal to be tested in a separate incident of any offense in this Table while operating a CMV or a non-CMV, a CDL holder must be disqualified from operating a CMV for—
(1) Is under the influence of alcohol as prescribed by state law.	1 year	1 year	3 years	Life	Life.
(2) Is under the influence of a controlled substance.	1 year	1 year	3 years	Life	Life.
(3) Has an alcohol concentration of 0.04 or greater while operating a CMV.	1 year	Not applicable	3 years	Life	Not applicable.
(4) Refuses to take an alcohol test as required by a State or jurisdiction under its implied consent laws or regulations as defined in § 383.72.	1 year	1 year	3 years	Life	Life.
(5) Leaves the scene of an accident.	1 year	1 year	3 years	Life	Life.
(6) Uses the vehicle to commit a felony, other than a felony described in paragraph (b)(9) of this section.	1 year	1 year	3 years	Life	Life.

TABLE 1 TO § 383.51—Continued

If a driver operates a motor vehicle and—	For a first conviction or refusal to be tested while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for—	For a first conviction or refusal to be tested while operating a non-CMV, a CDL holder must be disqualified from operating a CMV for—	For a first conviction or refusal to be tested while operating a CMV transporting hazardous materials required to be placarded under the Hazardous materials Regulations (49 CFR part 172, subpart F), a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for—	For a second conviction or refusal to be tested in a separate incident of any offense in this Table while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for—	For a second conviction or refusal to be tested in a separate incident of any offense in this Table while operating a CMV or a non-CMV, a CDL holder must be disqualified from operating a CMV for—
(7) [Reserved].					
(8) [Reserved].					
(9) Uses the vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance.	Life—not eligible for 10-year reinstatement.	Life—not eligible for 10-year reinstatement.	Life—not eligible for 10-year reinstatement.	Life—not eligible for 10-year reinstatement.	Life—not eligible for 10-year reinstatement.

(c) *Disqualification for serious traffic violations.* Table 2 to § 383.51 contains a list of the offenses and the periods for which a driver must be disqualified, depending upon the type of vehicle the driver is operating at the time of the violation, as follows:

TABLE 2 TO § 383.51

If the driver operates a motor vehicle and—	For a second conviction of any offense in this Table in a separate incident within a 3-year period while operating a CMV, a pereson required to have a CDL must be disqualified from operating a CMV for—	For a second conviction of any offsense in this Table in a separate incident within a 3-year period while operating a CMV or non-CMV, a CDL holder must be disqualified from operating a CMV for—	For a third or subsequent conviction of any offense in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL must be disqualified from operating a CMV for—	For a third or subsequent conviction of any offense in this Table in a separate incident within a 3-year period while operating a CMV or non-CMV, a CDL holder must be disqualified from operating a CMV for—
(1) Speeds excessively, involving any speed of 24.1 kmph (15 mph) or more above the posted speed limit.	60 days	60 days	120 days	120 days.
(2) Drives recklessly, as defined by State or local law or regulation, including but not limited to offenses of driving a motor vehicle in willful or wanton disregard for the safety of persons or property.	60 days	60 days	120 days	120 days.
(3) Makes improper or erratic traffic lane changes.	60 days	60 days	120 days	120 days.
(4) Follows the vehicle ahead too closely.	60 days	60 days	120 days	120 days.
(5) Violates State or local law relating to motor vehicle traffic control (other than a parking violation) ansing in connection with a fatal accident.	60 days	60 days	120 days	120 days.

(d) *Disqualification for railroad-highway grade crossing offenses.* Table 3 to § 383.51 contains a list of the offenses and the periods for which a driver must be disqualified, depending upon the type of vehicle the driver is operating at the time of the violation, as follows:

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TABLE 3 TO § 383.51

If the driver operates a motor vehicle in violation of a federal, state or local law and—	For a first conviction while operating a CMV, a person required to have a CDL must be disqualified from operating a CMV for—	For a first conviction while operating a CMV or non-CMV, a CDL holder must be disqualified from operating a CMV for—	For a second conviction of any offense in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL must be disqualified from operating a CMV for—	For a second conviction of any offense in this Table in a separate incident within a 3-year period while operating a CMV or non-CMV, a CDL holder must be disqualified from operating a CMV for—	For a third or subsequent conviction of any offense in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL must be disqualified from operating a CMV for—	For a third or subsequent conviction of any offense in this Table in a separate incident within a 3-year period while operating a CMV or non-CMV, a CDL holder must be disqualified from operating a CMV for—
(1) The driver is not required to always stop, but fails to slow down and check that tracks are clear of an approaching train.	No less than 60 days	No less than 60 days	No less than 120 days ...	No less than 120 days ...	No less than 1 year	No less than 1 year.
(2) The driver is not required to always stop, but fails to stop before reaching the crossing, if the tracks are not clear.	No less than 60 days	No less than 60 days	No less than 120 days ...	No less than 120 days ...	No less than 1 year	No less than 1 year.
(3) The driver is always required to stop, but fails to stop before driving onto the crossing.	No less than 60 days	No less than 60 days	No less than 120 days ...	No less than 120 days ...	No less than 1 year	No less than 1 year.
(4) The driver fails to have sufficient space to drive completely through the crossing without stopping.	No less than 60 days	No less than 60 days	No less than 120 days ...	No less than 120 days ...	No less than 1 year	No less than 1 year.
(5) The driver fails to obey a traffic control device or the directions of an enforcement official at the crossing.	No less than 60 days	No less than 60 days	No less than 120 days ...	No less than 120 days ...	No less than 1 year	No less than 1 year.
(6) The driver fails to negotiate a crossing because of insufficient undercarriage clearance.	No less than 60 days	No less than 60 days	No less than 120 days ...	No less than 120 days ...	No less than 1 year	No less than 1 year.

(e) *Disqualification for violating out-of-service orders.* Table 4 to § 383.51 contains a list of the offenses and periods for which a driver must be disqualified when the driver is operating a CMV at the time of the violation, as follows:

TABLE 4 TO § 383.51

If the driver operates a CMV and—	For a first conviction while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for—	For a second conviction in a separate incident within a 10-year period operating a CMV, a person required to have a CDL and a holder must be disqualified from operating a CMV for—	For a third or subsequent conviction in a separate incident within a 10-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for—
(1) Violates a driver or vehicle out-of-service order while transporting nonhazardous materials.	No less than 90 days or more than 1 year.	No less than 1 year or more than 5 years.	No less than 3 years or more than 5 years.
(2) Violates a driver or vehicle out-of-service order while transporting hazardous materials required to be placarded under part 172, subpart F of this title.	No less than 180 days or more than 2 years.	No less than 3 years or more than 5 years.	No less than 3 years or more than 5 years.
(3) Violates a driver or vehicle out-of-service order while operating a vehicle designed or used to transport 16 or more passengers, including the driver.	No less than 180 days or more than 2 years.	No less than 3 years or more than 5 years.	No less than 3 years or more than 5 years.

5. Amend § 383.53(b)(1) by revising the cross-reference "§ 383.51(d)" to read "§ 383.51(e)".

6. Revise § 383.71(a)(6) to read as follows:

§ 383.71 Driver application procedures.

(a) * * *

(6) Certify that he/she is not subject to any disqualification under § 383.51, or any license suspension, revocation, or cancellation under State law, and that he/she does not have a driver's license from more than one state or jurisdiction.

* * * * *

7. Amend § 383.72 by revising the cross-reference "§ 383.51(b)(2)(i)" to read "§ 383.51(b)".

8. Revise the introductory text of paragraph (a)(3) in § 383.73 to read as follows:

§ 383.73 State procedures.

(a) * * *

(3) Initiate and complete a check of the applicant's driving record to ensure that the person is not subject to any disqualification under § 383.51, or any license suspension, revocation, or cancellation under State law, and that the person does not have a driver's license from more than one State or jurisdiction. The record check must include, but not be limited to the following:

* * * * *

9. Amend § 383.77(a)(3) by revising the cross-reference "§ 383.51(b)(2)" to read "§ 383.51(b)".

PART 384—[AMENDED]

10. Revise the authority citation for 49 CFR part 384 to read as follows:

Authority: 49 U.S.C. 31136, 31301 *et seq.*, and 31502; and 49 CFR 1.73.

11. Add § 384.107 to subpart A to read as follows:

§ 384.107 Matter incorporated by reference.

(a) *Incorporation by reference.* This part includes references to certain matter or materials. The text of the materials is not included in the regulations contained in this part. The materials are hereby made a part of the regulations in this part. The Director of the Federal Register has approved the materials incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For materials subject to change, only the specific version approved by the Director of the Federal Register and specified in the regulation are incorporated. Material is incorporated as it exists on the date of the approval and a notice of any change in these materials will be published in the **Federal Register**.

(b) *Materials incorporated.* The AAMVAnet, Inc."s "Commercial Driver's License Information System (CDLIS) State Procedures," Version 2.0, October 1998.

(c) *Addresses.* (1) All of the materials incorporated by reference are available for inspection at:

(i) The Department of Transportation Library, 400 Seventh Street, SW, Washington, DC 20590 in Room 2200. These documents are also available for inspection and copying as provided in 49 CFR part 7.

(ii) The Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

(2) Information and copies of all of the materials incorporated by reference may be obtained by writing to: American Association of Motor Vehicle Administrators, Inc., 4301 Wilson Blvd, Suite 400, Arlington, VA 22203.

12. Revise § 384.203 to read as follows:

§ 384.203 Driving while under the influence.

(a) The State must have in effect and enforce through licensing sanctions the disqualifications prescribed in § 383.51(b) of this subchapter for driving a CMV with a 0.04 alcohol concentration.

(b) Nothing in this section shall be construed to require a State to apply its criminal or other sanctions for driving under the influence to a person found to have operated a CMV with an alcohol concentration of 0.04, except licensing sanctions including suspension, revocation, or cancellation.

(c) A State that enacts and enforces through licensing sanctions the disqualifications prescribed in § 383.51(b) of this subchapter for driving a CMV with a 0.04 alcohol concentration and gives full faith and credit to the disqualification of CMV drivers by other States shall be deemed in substantial compliance with section 12009(a)(3) of the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. 31311(a)).

13. Revise § 384.215(a) to read as follows:

§ 384.215 First offenses.

(a) *General rule.* The State must disqualify from operating a CMV each person who is convicted, as defined in § 383.5 of this subchapter, in any State or jurisdiction, of a disqualifying offense specified in § 383.51(b)(1) through (6) of this subchapter, for no less than one year.

* * * * *

14. Revise § 384.216 to read as follows:

§ 384.216 Second offenses.

(a) *General rule.* The State must disqualify for life from operating a CMV each person who is convicted, as defined in § 383.5 of this subchapter, in any State or jurisdiction, of a subsequent offense as described in § 383.51(b) of this subchapter.

(b) *Special rule for certain lifetime disqualifications.* The State where the disqualified driver resides after 10 years of disqualification have elapsed may reduce the lifetime disqualification of a person disqualified for life under § 383.51(b) of this subchapter, to a minimum of ten years in accordance with § 383.51(a)(5) of this subchapter.

15. Revise § 384.217 to read as follows:

§ 384.217 Drug offenses.

The State must disqualify from operating a CMV for life each person who is convicted, as defined in § 383.5 of this subchapter, in any State or jurisdiction, of using a CMV in the commission of a felony described in § 383.51(b)(9) of this subchapter. The State shall not apply the special rule in § 384.216(b) to lifetime disqualifications imposed for controlled substance felonies as detailed in § 383.51(b)(9) of this subchapter.

16. Revise § 384.218 to read as follows:

§ 384.218 Second serious traffic violation.

The State must disqualify from operating a CMV for a period of not less than 60 days each person who, in a three-year period, is convicted, as defined in § 383.5 of this subchapter, in any State(s) or jurisdiction(s), of two serious traffic violations involving a CMV operated by such person, as specified in § 383.51(c) of this subchapter.

17. Revise § 384.219 to read as follows:

§ 384.219 Third serious traffic violation.

The State must disqualify from operating a CMV for a period of not less than 120 days each person who, in a three-year period, is convicted, as defined in § 383.5 of this subchapter, in any State(s) or jurisdiction(s), of three serious traffic violations involving a CMV operated by such person, as specified in § 383.51(c) of this subchapter. This disqualification period must be in addition to any other previous period of disqualification.

18. Add § 384.222 to read as follows:

§ 384.222 Violation of out-of-service orders.

The State must have and enforce laws and/or regulations applicable to drivers of CMVs and their employers, as defined in § 383.5 of this subchapter, which meet the minimum requirements of §§ 383.51(e), 383.37(c), and 383.53(b) of this subchapter.

19. Revise § 384.223 to read as follows:

§ 384.223 Railroad-highway grade crossing violation.

The State must have and enforce laws and/or regulations applicable to CMV drivers and their employers, as defined in § 383.5 of this subchapter, which meet the minimum requirements of §§ 383.37(d), 383.51(d), and 383.53(c) of this subchapter.

20. Add § 384.224 to read as follows:

§ 384.224 Noncommercial motor vehicle violations.

The State must have and enforce laws and/or regulations applicable to drivers of CMVs, as defined in § 383.5 of this subchapter, which meet the minimum requirements of § 383.51(b) through (d) of this chapter.

21. Revise § 384.231 to read as follows:

§ 384.231 Satisfaction of State disqualification requirement.

(a) *Applicability.* The provisions of §§ 384.203, 384.206(b), 384.210, 384.213, 384.215 through 384.219, 384.221 through 384.224, and 384.231 apply to the State of licensure of the

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person affected by the provision. The provisions of § 384.210 also apply to any State to which a person makes application for a transfer CDL.

(b) *Required action.*—(1) *CDL holders.* A State must satisfy the requirement of this part that the State disqualify a person who holds a CDL by, at a minimum, suspending, revoking, or canceling the person's CDL for the applicable period of disqualification.

(2) *A person required to have a CDL.* A State must satisfy the requirement of this subpart that the State disqualify a person required to have a CDL who is convicted of an offense or offenses necessitating disqualification under § 383.51 of this subchapter. At a minimum, the State must implement the limitation on licensing provisions of § 384.210 and the timing and recordkeeping requirements of paragraphs (c) and (d) of this section so as to prevent such a person from legally obtaining a CDL from any State during the applicable disqualification period(s) specified in this subpart.

(c) *Required timing.* The State must disqualify a driver as expeditiously as possible.

(d) *Recordkeeping requirements.* The State must conform to the requirements of the October 1998 edition of the AAMVAnet, Inc.'s "Commercial Driver's License Information System (CDLIS) State Procedures," Version 2.0. (See § 384.107.) These requirements include the maintenance of such driver records and driver identification data on the CDLIS as the FMCSA finds are necessary to the implementation and enforcement of the disqualifications called for in §§ 384.215 through 384.219, and 384.221 through 384.224.

PART 390—[AMENDED]

22. The authority citation for 49 CFR part 390 continues to read as follows:

Authority: 49 U.S.C. 13301, 13902, 31132, 31133, 31136, 31502, and 31504; sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); and 49 CFR 1.73.

23. Amend § 390.5 to revise the definition for "Driving a commercial motor vehicle while under the influence of alcohol" to read as follows:

§ 390.5 Definitions.

* * * * *

Driving a commercial motor vehicle while under the influence of alcohol means committing any one or more of the following acts in a CMV: Driving a CMV while the person's alcohol concentration is 0.04 or more; driving under the influence of alcohol, as prescribed by State law; or refusal to undergo such testing as is required by any State or jurisdiction in the enforcement of § 383.51(b) or § 392.5(a)(2) of this subchapter.

* * * * *

Issued on: April 23, 2001.

Brian M. McLaughlin,

Acting Deputy Administrator.

[FR Doc. 01–10583 Filed 5–3–01; 8:45 am]

BILLING CODE 4910–EX–P

Notices

Federal Register
Vol. 66, No. 87
Friday, May 4, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Project; Manti-La Sal National Forest, Emery and Sanpete Counties, Utah

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare Environmental Impact Statement.

Authority: The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4346); Council on Environmental Quality Regulations, Title 40, Code of Federal Regulations, parts 1500–1508 (40 CFR parts 1500–1508); and U.S. Department of Agriculture NEPA Regulations, Part 1b (7 CFR 1b).

SUMMARY: Epidemic populations of spruce beetle are found on the Wasatch Plateau. Many susceptible spruce-fir stands have been infested, and it is anticipated that many more will soon be infested with spruce beetle populations. Obviously, the beetle populations could collapse due to natural factors, but at this time the populations remain viable and continue to spread. Scattered 5–10 tree pockets of spruce beetle caused mortality are present in the south end of the Lake project analysis area and if the current level of beetle activity continues without check, it is probable that most of the spruce-fir component on the Wasatch Plateau would be lost. The beetles have already caused severe impacts on several thousand acres of spruce-fir stands adjacent to and south of the analysis area. As a consequence, most spruce trees over eight inches in diameter in the area to the south are dead or dying. The insects are continuing to move in a northward direction and it is anticipated they will continue to invade, infest, and kill most of the spruce trees eight inches or large in diameter throughout this analysis area, as was the case in the adjacent spruce-fir stands to the south.

The Forest Service will prepare an Environmental Impact Statement (EIS) to document the analysis and disclose the environmental impacts of proposed actions to salvage dead, insect infested and dying trees, commercially thin live high risk trees, manage natural and prescribed burning, and restock some stands of trees located in the Spring, Rolfson, and the north and south forks of Lake Canyon drainages within the project analysis area. The project area is located on public lands administered by the Ferron/Price Ranger District approximately 20 miles northwest of Huntington, Utah. It is bordered on the north by State highway 31 located in Huntington Canyon, on the west by Skyline Drive, FDR 150, on the east by the Millers Flat road, FDR 014, and on the south at the divide between Rolfson and Staker canyons. The need for the proposal is to:

- Restore and/or maintain composition, structure, and diversity of the landscape by providing for tree species and stand density levels that will improve resistance to insects and disease;
- Facilitate rapid reestablishment of Englemann spruce through replanting of spruce;
- Enhance the aspen communities that are being lost due to conifer invasion/encroachment and lack of natural fire;
- Contribute to a timber source that helps meet National demands for forest products and recover some of the economic loss of the resource from the dead, dying, insect infested and high-risk green trees;
- Improve public safety by removing hazard trees from roadsides and from dispersed camping areas within the project area.

Portions of the Rolfson-Staker Inventoried Roadless Area are located within the analysis area but are not included in the Proposed Action. The No Action is one alternative that will be considered. Additional alternatives will be formulated based on public issues, and response analysis. The proposed action involves harvesting/salvaging approximately 3.4 MMBF (Million Board Feet) of dead, dying, insect infected and high-risk green trees from approximately 783 acres within an analysis area of about 5,000 acres. Harvest of trees would be by both aerial (helicopter) and ground based methods. Of the 783 acres to be treated, about 574 acres (73%) would be by helicopter, and approximately 209 acres (25%) by tractor. Sixty percent of the treated acres (470) are planned for artificial reforestation (hand planting of seedlings) and 40% (323) acres by natural regeneration. Approximately 3.5 miles of road maintenance, and 2 miles of road construction on existing road prisms would be needed for the project. One half mile of the two miles constructed would be reclaimed. The proposed action does not include road construction, reconstruction or logging in the inventoried roadless area.

DATES: Written comments concerning the scope of the analysis described in this Notice should be received on or before June 4, 2001.

ADDRESSES: Send written comments to Manti-La Sal National Forest, 599 West Price River Drive, Price, Utah 84501.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action and EIS should be addressed to Don Fullmer, Ecosystems Staff, Manti-La Sal National Forest, phone (435) 637–2817.

SUPPLEMENTARY INFORMATION: This EIS will tier to the final EIS for the Manti-La Sal National Forest Land and Resource Management Plan (Forest Plan). The Manti-La Sal Forest Plan provides the overall guidance (Goals, Objectives, Standards, and Management Area Direction) to achieve the Desired Future condition for the area being analyzed, and contains specific management area prescriptions for the entire Forest.

The Forest Service is seeking information and comments from Federal, State, and local agencies as well as individuals and organizations that may be interested in, or affected by the proposed action. The Forest Services invites written comments and suggestions on the issues related to the proposal and the area being analyzed. Information received will be used in preparation of the Draft EIS and Final EIS. For most effective use, comments should be submitted to the Forest Service within 30 days from the date of publication of this Notice in the **Federal Register.**

The Ferron/Price Ranger District of the Manti-La Sal National Forest in Emery and Sanpete Counties in the state of Utah would administer the proposed management activities for this analysis.

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Agency representatives and other interested people are invited to visit with Forest Service officials at any time during the EIS process. Two specific time periods are identified for the receipt of formal comments on the analysis. The two comment periods are: (1) During the scoping process, the next 30 days following publication of this Notice in the **Federal Register**, and (2) during the formal review period of the Draft EIS.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and intentions.

Vermont Yankee Nuclear Power Corp. v. *NRDC, 435* U.S. 519,553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts.

City of Angoon v. *Hodel,* 803 F. 2d 1016, 1022 (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft statement. Comments may also address the adequacy of the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act, 40 CFR 1503.3 in addressing these points.

It is projected the final release of the EIS to be March 4, 2002. The Forest Supervisor for the Manti-La Sal National forest is the responsible official for the EIS. After considering the comments, responses, and environmental consequences discussed in the Final Environment Impact Statement, and applicable laws, regulations, and policies a decision by this official will be made regarding the proposal. The reasons for the decision will be documented in a Record of Decision. The Forest Supervisor's office of the Manti-La Sal National Forest is located at 599 West Price River Drive, Price, Utah 84501, phone: 435–637–2817.

Dated: April 27, 2001.

Elaine J. Zieroth,

Forest Supervisor, Manti-La Sal National Forest.

[FR Doc. 01–11213 Filed 5–3–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

I–90 Wilderness Study for the Wenatchee National Forest, Kittitas County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare a Legislative Environmental Impact Statement.

SUMMARY: Title VI of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999 (also known as the Interstate 90 Land Exchange Act) directed the Secretary of Agriculture to review an area of land comprising approximately 15,000 acres, as generally depicted on an October 1998 map entitled "Alpine Lakes Wilderness Study Area", for its suitability for preservation as wilderness. This study is to be completed no later than three years after the date of enactment of the Act. As directed by section 610 of the Interstate 90 Land Exchange Act, the Forest Service is undertaking the I–90 Wilderness Study in accordance with the process outlined in 40 CFR 1506.8. This process includes development of a legislative environmental impact statement (EIS) to provide a basis for the Secretary's recommendations as to suitability of specific lands for wilderness designation by Congress. This is a non-ground disturbing action that may result in a land management allocation change and Wenatchee National Forest Plan amendment. The agency invites written comments on the scope of this project. In addition, the agency gives notice of this analysis so that interested and affected people are aware of how they may participate and contribute to the final decision.

ADDRESSES: Submit written comments and suggestions to the Cle Elum Ranger District, Attn: Floyd Rogalski, Project Manager, 803 West 2nd Street, Cle Elum, WA 98922.

FOR FURTHER INFORMATION CONTACT: Floyd Rogalski, Project Manager, Cle Elum Ranger District 803 West 2nd Street, Cle Elum, WA 98922, (509) 674–4411.

SUPPLEMENTARY INFORMATION: The Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999 (Pub. L. 105–277, 122 Stat. 2681) included special Title VI legislation known as the Interstate 90 Land Exchange Act of 1998. Section 610 of this act provides that:

> In furtherance of the purposes of the Wilderness Act, if the land exchange directed by this Act is consummated, the area of land comprising approximately 15,000 acres, as generally depicted on a map entitled "Alpine Lakes Wilderness Study Area," dated October 1998, shall be reviewed by the Secretary of Agriculture as to its suitability for preservation as wilderness. The Secretary shall submit a report and findings to the President, and the President shall submit his recommendation to the United States House of Representatives and United States Senate no later than three years after the date of enactment of this Act.

As a result of the passage of this Act, the Forest Service is undertaking the preparation of a legislative EIS to support the recommendation to be made to Congress in accordance with 40 CFR 1506.8. Enactment of the I–90 Exchange Act occurred with the exchange of deeds between the Forest Service and their partners in the exchange, Plum Creek Timber Company, L.P. on December 28, 1999. Accordingly, the EIS and subsequent wilderness recommendations must be presented to Congress no later than December 28, 2002.

The area subject to this study is comprised of Forest Service System lands adjacent to the existing Alpine Lakes Wilderness boundary north of the I–90 corridor on the Cle Elum Ranger District. The major issues that have been identified to date include: the impacts on the mineral potential of the lands in the study area; the impacts to existing recreation uses and to existing special use permittees; identification of those lands having the characteristics that would make them valuable as designated wilderness; and the nature and effect of the management restrictions or opportunities that would exist with respect to any lands allocated as wilderness. Based on these and other issues, a range of alternatives will be developed to serve as the basis for the recommendation to be made to Congress.

Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, Tribe, and local agencies, and other individuals or organizations who may be interested in or affected by the proposed actions. This information will be used in preparation of the draft legislative EIS. Public open houses to discuss this study are scheduled from 4 to 8 p.m. at the following locations: Monday, May 7, 2001, Snoqualmie Ranger District, 42404 SE North Bend Way, North Bend, Washington; Tuesday, May 8, 2001, Summit Inn, 603 State Route 906, Snoqualmie Pass, Washington; and Thursday, May 10, 2001, Hal Holms Community Center, 201 N. Ruby, Ellensburg, Washington.

The draft legislative EIS is expected to be filed with the Environmental Protection Agency (EPA) and is to be available for public review by October 2001. The comment period on the draft legislative EIS will be 60 days from the date the EPA publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court ruling related to public participation in the environmental review process. First, reviewers of a draft legislative EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Cor.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft legislative EIS stage but that are not raised until after completion of the final legislative EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 60 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final legislative EIS.

To assist the Forest Service is identifying and considering issues and concerns on the proposed action, comments on the draft legislative EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft legislative EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The final legislative EIS is schedule to be completed by October 2002. The Forest Service will respond to the comments received during the comment period in the final legislative EIS. These comments will be forwarded to the Congressional committee with jurisdiction over the proposal along with the final legislative EIS and study report.

Dated: April 24, 2001.

Sonny J. O'Neal,

Forest Supervisor.

[FR Doc. 01–11214 Filed 5–3–01; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: June 4, 2001.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Patrick T. Mooney (703) 603–7740.

SUPPLEMENTARY INFORMATION: On August 25, 2000, February 16 and March 9, 2001 the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (65 FR 51794, 66 FR 10664 and 14123) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and service and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List.

Accordingly, the following commodities and service are hereby added to the Procurement List:

Commodities

Power Duster
7045–00–NIB–0164
7045–00–NIB–0165
7045–00–NIB–0166
Wipes, White Board
7510–01–454–1159

Service

Microfilming, Commodities Future Trading Commission, 1155 21st Street, Washington, DC.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Patrick T. Mooney,

Director, Pricing and Program Operations.

[FR Doc. 01–11302 Filed 5–3–01; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from Procurement List.

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SUMMARY: The Committee is proposing to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete services previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 4, 2001.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Patrick T. Mooney (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.
2. The action will result in authorizing small entities to furnish the commodities and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information. The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Flag, National, Interment
8345–00–656–1432

(An additional 20% of the Governments requirement or 360,000 flags whichever is greater)

NPA: Huntsville Rehabilitation Foundation, Huntsville, Alabama
North Bay Rehabilitation Services, Inc., Rohnert Park, California
Goodwill Industries of South Florida, Inc., Miami, Florida
Mop, Anglematic, Deluxe
M.R. 1038
NPA: The Lighthouse for the Blind, Inc., Seattle, Washington
Brush, Bowl, Toilet w/Caddie
M.R. 1047
NPA: Alabama Industries for the Blind Talladega, Alabama

Services

Base Supply Center Fort Belvoir, Virginia
NPA: Virginia Industries for the Blind Richmond, Virginia
HTML Coding of Forest Health Monitoring
USDA, Forest Service, North Central Forest Experiment Station, St. Paul, Minnesota
NPA: North Central Sight Services, Inc. Williamsport, Pennsylvania

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action will result in authorizing small entities to furnish the commodities and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for deletion from the Procurement List.

The following services have been proposed for deletion from the Procurement List:

Services

Acquisition & Distribution of AA-Cell Batteries, Tier AD
6135–00–643–1309
Defense Supply Center—Richmond
Richmond, Virginia
Acquisition & Distribution of 6V Zinc Batteries
6135–00–643–1310
Defense Supply Center—Richmond
Richmond, Virginia

Patrick T. Mooney,
Director, Pricing and Program Operations.
[FR Doc. 01–11304 Filed 5–3–01; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Addition; Correction

In the document appearing on page 42901, FR Doc. 99–20291, in the issue of August 6, 1999, in the first column the Committee published a notice of addition to the Procurement List of, among other things, Skin Protectant, Plus, National Stock Number (NSN) 9999–00–NSH–0001. This NSN was later replaced by the NSNs 6505–01–474–7724, 6505–01–474–7707, and 6505–01–474–7343.

Unless limited in the notice, an addition to the Procurement List applies to the total Government requirement for the commodity noted. However, the Committee recently discovered that the addition of Skin Protectant, Plus was based on the requirement for the U.S. Postal Service, Central Florida District only. The addition notice is therefore amended to read:

Skin Protectant, Plus

6505–01–474–7724
6505–01–474–7707
6505–01–474–7343

(Requirement of U.S. Postal Service, Central Florida District only.)

Patrick T. Mooney,
Director, Pricing and Program Operations.
[FR Doc. 01–11303 Filed 5–2–01; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

[I.D. 043001A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Foreign Fishing Reporting Requirements.
Form Number(s): None.
OMB Approval Number: 0648–0075.
Type of Request: Regular submission.
Burden Hours: 422.
Number of Respondents: 25.
Average Hours Per Response: 6 minutes for an activity or weekly report, 30 minutes per day for joint venture recordkeeping, and 7.5 minutes per day for transport recordkeeping.
Needs and Uses: Foreign fishing activities can be authorized under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et. seq.*). The collection of information from permitted foreign vessels is necessary to monitor vessel activities and location for enforcement purposes. Reports are also necessary for fishery management purposes, monitoring the amounts of fish, if any, permitted vessel harvest or receive from U.S. vessels in joint venture operations.
Affected Public: Business or other for-profit organizations.
Frequency: On occasion, weekly.
Respondent's Obligation: Mandatory.
OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: April 27, 2001.

Madeleine Clayton,
Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.
[FR Doc. 01–11319 Filed 5–3–01; 8:45 am]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 043001C]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Coast Pilot Report.
Form Number(s): NOAA Form 77-6.
OMB Approval Number: 0648–0007.
Type of Request: Regular submission.
Burden Hours: 50.
Number of Respondents: 100.
Average Hours Per Response: 30 minutes.
Needs and Uses: NOAA produces the U.S. Coast Pilot, a series of nine books that supplement marine nautical charts. The Coast Pilot contains information essential to navigators in U.S. coastal and intra-coastal waters but that cannot be shown graphically on charts. The Coast Pilot Report form is offered to the public as a means for recommending changes to the publication.
Affected Public: Individuals and households.
Frequency: On occasion.
Respondent's Obligation: Voluntary.
OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: April 27, 2001

Madeleine Clayton,
Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.
[FR Doc. 01–11320 Filed 5–3–01; 8:45 am]
BILLING CODE 3510–JT–S

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Approval of Triangular Transactions Involving Commodities Covered by a U.S. Import Certificate; Proposed Information Collection

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 3, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Office of the Chief Information Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Dawnielle Battle, BXA ICB Liaison, Office of Planning, Evaluation and Management, Department of Commerce, Room 6883, 14th and Constitution Avenue, NW., Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection provides a means to authorize approved imports to the U.S. to be transhipped to another destination instead of being imported to the U.S. as approved on the Import Certificate.

II. Method of Collection

Written report.

III. Data

OMB Number: 0694–0009.
Form Number: Not Applicable.
Type of Review: Regular submission for extension of a currently approved collection.
Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.
Estimated Number of Respondents: 1.
Estimated Time Per Response: ½ hour per response.
Estimated Total Annual Burden Hours: 1 hour.
Estimated Total Annual Cost: No start-up capital expenditures.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: May 1, 2001.

Madeleine Clayton,
Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.
[FR Doc. 01–11313 Filed 5–3–01; 8:45 am]
BILLING CODE 3510–DT–U

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DEPARTMENT OF COMMERCE

Bureau of Export Administration

Five-Year Record Retention Period; Proposed Information Collection

ACTION: Proposed collection: comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 3, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Office of the Chief Information Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, BXA ICB Liaison, Office of Planning, Evaluation and Management, Department of Commerce, Room 6883, 14th and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The increase corresponds with the five year statute of limitations for criminal actions brought under the Export Administration Act of 1979 and predecessor acts, and the five year statute for administrative compliance proceedings. Without this authority, potential violators could discard records demonstrating violations of the EAR prior to the expiration of the five-year statute of limitations.

II. Method of Collection

Recordkeeping.

III. Data

OMB Number: 0694–0096.
Form Number: Not applicable.
Type of Review: Regular submission for extension of a currently approved collection.
Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.
Estimated Number of Respondents: 154,816.
Estimated Time Per Response: 10 seconds per response.
Estimated Total Annual Burden Hours: 259.
Estimated Total Annual Cost: No start-up capital expenditures.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: May 1, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–11314 Filed 5–3–01; 8:45 am]

BILLING CODE 3510–DT–U

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Procedures for Acceptance or Rejection of a Rated Order; Proposed Information Collection

ACTION: Proposed collection: comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 3, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Office of the Chief Information Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, BXA ICB Liaison, Office of Planning, Evaluation and Management, Department of Commerce. Room 6883, 14th and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The record keeping requirement is necessary for administration and enforcement of delegated authority under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*) and the selective Service Act of 1948 (50 U.S.C. App. 468). Any person (supplier) who receives a priority rated order under DPAS regulation (15 CFR 700) must notify the customer of acceptance or rejection of that order within a specified period of time. Also, if shipment against a priority rated order will be delayed, the supplier must immediately notify the customer.

II. Method of Collection

Written submission.

III. Data

OMB Number: 0694–0092.
Form Number: Not applicable.
Type of Review: Regular submission for extension of a currently approved collection.
Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.
Estimated Number of Respondents: 25,000.
Estimated Time Per Response: 1 to 15 minutes per response.
Estimated Total Annual Burden Hours: 31,500.
Estimated Total Annual Cost: No start-up capital expenditures.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: May 1, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–11315 Filed 5–3–01; 8:45 am]

BILLING CODE 3510–JT–U

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–835, A–549–812]

Continuation of Antidumping Duty Orders: Furfuryl Alcohol From the People's Republic of China and Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Continuation of Antidumping Duty Orders: Furfuryl Alcohol from the People's Republic of China and Thailand.

SUMMARY: On September 5, 2000, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752(c) of the Tariff Act of 1930, as amended ("the Act"), determined that revocation of the antidumping duty orders on furfuryl alcohol from the People's Republic of China ("PRC") and Thailand would likely lead to continuation or recurrence of dumping (65 FR 53701). On April 26, 2001, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty orders on furfuryl alcohol from the PRC and Thailand would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (66 FR 21015). Therefore, pursuant to 751(d)(2) of the Act and 19 CFR 351.218(e)(4), the Department is publishing notice of the continuation of the antidumping duty orders on furfuryl alcohol from the PRC and Thailand.

EFFECTIVE DATE: May 4, 2001.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or James P. Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–5050 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2000, the Department initiated (65 FR 25309), and the Commission instituted (65 FR 25363), sunset reviews of the antidumping duty orders on furfuryl alcohol from the PRC and Thailand, pursuant to section 751(c) of the Act. As a result of its reviews, the Department found that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margins likely to prevail were the orders to be revoked. *See Furfuryl Alcohol From the People's Republic of China and Thailand; Final Results of Antidumping Duty Sunset Reviews*, 65 FR 53701 (September 5, 2000).

On April 26, 2001, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on furfuryl alcohol from the PRC and Thailand would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Furfuryl Alcohol from China and Thailand*, 66 FR 21015 (April 26, 2001) and USITC Publication 3412 (April 2001), Investigations Nos. 731–TA–703 and 705 (Review).

Scope of the Orders

The merchandise covered in these antidumping duty orders is furfuryl alcohol ($C^4 H^3 OCH^2OH$). Furfuryl alcohol is a primary alcohol and is colorless or pale yellow in appearance. It is used in the manufacture of resins and as a wetting agent and solvent for coating resins, nitrocellulose, cellulose acetate, and other soluble dyes. The product subject to these orders is classifiable under subheading 2932.13.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of these orders is dispositive.

Determination

As a result of the determination by the Department and the Commission that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty orders on furfuryl alcohol from the PRC and Thailand. The effective date of continuation of these orders will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of these orders no later than April 2006.

Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

April 30, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Group 1, Import Administration.

[FR Doc. 01–11308 Filed 5–3–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–840]

Manganese Metal From the People's Republic of China; Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of the antidumping duty administrative review.

SUMMARY: In response to February 27, 2001, and February 28, 2001, requests by certain producers/exporters of manganese metal from the People's Republic of China, the Department of Commerce initiated an administrative review of the antidumping duty order on manganese metal from the People's Republic of China, covering the period February 1, 2000, through February 6, 2001. See Initiation of Antidumping and Countervailing Administrative Reviews and Requests for Revocations In Part, 66 FR 16037 (March 22, 2001). Based on timely withdrawals of the requests for review from these companies, we are rescinding this review in its entirety in accordance with § 351.213(d)(1) of our regulations.

EFFECTIVE DATE: May 3, 2001.

FOR FURTHER INFORMATION CONTACT: Greg Campbell or Suresh Maniam, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2239 and (202) 482–0176, respectively.

SUPPLEMENTARY INFORMATION:

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Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's ("Department's") regulations refer to 19 CFR part 351 (2000).

Background

On February 27, 2001, Minmetals Precious & Rare Minerals Import and Export ("Minmetals") and CEIEC-Hunan Company (Electronics) ("CEIEC-Hunan"), producers/exporters of manganese metal from the People's Republic of China, requested an administrative review of the subject merchandise for the period February 1, 2000 through January 31, 2001. On February 28, 2001, London & Scandinavian Metallurgical Co., Ltd. and Shieldalloy Metallurgical Corporation (together referred to as "LSM/SMC"), likewise requested an administrative review of the subject merchandise for the period February 1, 2000 through January 31, 2001. In accordance with 19 CFR 351.221(c)(1)(i), the Department published the initiation of an administrative review of the antidumping duty order. See Initiation of Antidumping and Countervailing Administrative Reviews and Requests for Revocations In Part, 66 FR 16037 (March 22, 2001) ("Initiation Notice").[1] On January April 17, 2001, LSM/SMC withdrew their request for review. On April 24, 2001, Minmetals and CEIEC-Hunan withdrew their request for review.

The Department's regulations, at 19 CFR 351.213(d)(1), provide that the Department will rescind an administrative review if the party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Since all parties requesting review withdrew their requests for an administrative review within the 90-day deadline, the Department is rescinding this administrative review.

[1] We note that the Initiation Notice specified a period of review of February 1, 2000, through February 6, 2001. This period of review was extended beyond the dates initially requested by the respondents to include the 6 days remaining prior to the revocation of this dumping order, which became effective February 6, 2001. See January 2001 Sunset Reviews: Final Result and Revocation, 63 FR 17524 (April 2, 2001).

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: April 27, 2001.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 01–11307 Filed 5–3–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–827]

Static Random Access Memory Semiconductors From Taiwan; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests by various interested parties, the Department of Commerce is conducting an administrative review of the antidumping duty order on static random access memory semiconductors from Taiwan. This review covers the U.S. sales and/or entries of four manufacturers/exporters. In addition, we are rescinding this review with respect to one company. The period of review is April 1, 1999, through March 31, 2000.

We have preliminarily determined that sales have been made below the normal value by each of the companies subject to this review. If these preliminary results are adopted in the final results of this administrative review, we will instruct the Customs Service to assess antidumping duties on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who wish to submit comments in this proceeding are requested to submit with each argument: (1) A statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: May 4, 2001.

FOR FURTHER INFORMATION CONTACT: Irina Itkin, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0656.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2000).

Background

In accordance with 19 CFR 351.213(b)(2), in April 2000, the following two producers/exporters of SRAMs requested an administrative review of the antidumping duty order on SRAMs from Taiwan: Galvantech, Inc. (Galvantech), and GSI Technology, Inc. (GSI Technology). In addition, the petitioner, Micron Technology, Inc., requested an administrative review of GSI Technology, as well as G-Link Technology (G-Link), Integrated Silicon Solution Inc. (ISSI), and Winbond Electronics Corporation (Winbond).

In May 2000, the Department initiated an administrative review for each of these companies (65 FR 35320 (June 2, 2000)) and issued questionnaires to them.

On June 16, 2000, the Department extended the time limit for completion of the preliminary results until April 30, 2001. *See Static Random Access Memory Semiconductors From Taiwan: Notice of Extension of Time Limits for Antidumping Duty Administrative Review*, 65 FR 38809 (June 22, 2000).

In December 2000, we received responses to sections A through C of the questionnaire (*i.e.*, the sections relating to general information, home market sales, and U.S. sales) from each of the respondents. In addition, we also received responses to section D of the questionnaire (*i.e.*, the section relating to cost of production (COP)/constructed value (CV)) from all companies except Galvantech.

On January 9, 2001, the petitioner alleged that Galvantech was selling at prices below the COP in its home market. Based on an analysis of this allegation, the Department initiated an investigation to determine whether Galvantech made home market sales during the period of review (POR) at prices below the COP within the meaning of section 773(b) of the Act. Consequently, we required Galvantech to submit a response to section D of the questionnaire.

In January 2001, we issued a supplemental questionnaire to G-Link. We received a response to this questionnaire in February 2001.

In February 2001, we issued supplemental questionnaires to GSI Technology and Winbond. We received responses to these questionnaires in March 2001.

On February 5, 2001, Galvantech withdrew its request for an administrative review. Accordingly, we are rescinding this review with respect to Galvantech. For further discussion, see the "Partial Rescission of Review" section of this notice, below.

In March 2001, we issued a supplemental questionnaire to ISSI. We received a response to this questionnaire in April 2001.

Scope of the Review

The products covered by this review are synchronous, asynchronous, and specialty SRAMs from Taiwan, whether assembled or unassembled. Assembled SRAMs include all package types. Unassembled SRAMs include processed wafers or die, uncut die and cut die. Processed wafers produced in Taiwan, but packaged, or assembled into memory modules in a third country, are included in the scope; processed wafers produced in a third country and assembled or packaged in Taiwan are not included in the scope. The scope of this review includes modules containing SRAMs. Such modules include single in-line processing modules, single in-line memory modules, dual in-line memory modules, memory cards, or other collections of SRAMs, whether unmounted or mounted on a circuit board. The scope of this review does not include SRAMs that are physically integrated with other components of a motherboard in such a manner as to constitute one inseparable amalgam (*i.e.*, SRAMs soldered onto motherboards). The SRAMs within the scope of this review are currently classifiable under subheadings 8542.13.8037 through 8542.13.8049, 8473.30.10 through 8473.30.90, 8542.13.8005, and 8542.14.8004 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Period of Review

The POR is April 1, 1999, through March 31, 2000.

Partial Rescission of Review

As noted above, on February 5, 2001, Galvantech withdrew its request for an administrative review. No other interested party requested a review of sales of merchandise produced or exported by Galvantech during the POR. Although Galvantech asked to withdraw its review request after the 90-day time limit specified in 19 CFR 351.213(d)(1), the review had not yet progressed beyond a point where it would have been unreasonable to allow Galvantech to withdraw its request for review. Therefore, in accordance with 19 CFR 351.213(d)(1) and consistent with our practice, we are rescinding our review with respect to Galvantech. For further discussion, see the February 8, 2001, memorandum from the Team to Louis Apple, entitled "Request by Cypress Semiconductor Corporation to Withdraw its Request for an Administrative Review in the 1999–2000 Antidumping Duty Administrative Review on Static Random Access Memory Semiconductors from Taiwan."

Duty Absorption

On June 26, 2000, the petitioner requested that the Department determine whether antidumping duties had been absorbed during the POR by the respondents. Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. Because each respondent sold to unaffiliated customers in the United States through an importer that is affiliated, and because this review was initiated two years after the publication of the order, we will make a duty absorption determination in this segment of the proceeding within the meaning of section 751(a)(4) of the Act.

On July 11, 2000, the Department requested evidence from each respondent to demonstrate that U.S. purchasers will pay any ultimately assessed duties charged to them. The Department requested that this information be provided no later than December 11, 2000. No respondent provided such evidence. Consequently, we have preliminarily determined that duty absorption by all respondents has occurred in this administrative review.

As our analysis of the dumping margins may be modified in our final results, if interested parties wish to submit evidence that the unaffiliated purchasers in the United States will pay any ultimately assessed duty charged to affiliated importers, they must do so no later than 15 days after publication of these preliminary results. Any such information will be considered by the Department if we determine in our final results that there are dumping margins on the respondents' U.S. sales.

Normal Value Comparisons

To determine whether sales of SRAMs from Taiwan to the United States were made at less than normal value (NV), we compared the constructed export price (CEP) to the NV for each respondent as specified in the "Constructed Export Price" and "Normal Value" sections of this notice, below.

When making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the foreign market as described in the "Scope of the Review" section of this notice, above, that were in the ordinary course of trade. Where there were no sales of identical merchandise in the foreign market made in the ordinary course of trade to compare to U.S. sales in the same quarter, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade within the quarter, or to CV, as appropriate.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as the CEP. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses (SG&A) and profit. For CEP, the U.S. level of trade is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP

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sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (Nov. 19, 1997).

G-Link claimed that it made home market sales at only one level of trade, while GSI Technology, ISSI, and Winbond claimed that they made home market sales at two levels of trade (*i.e.*, to original equipment manufacturers (OEMs) and distributors). We examined the selling activities at each reported marketing stage for each respondent and found that there was no substantive difference in the selling functions performed at any of these alleged stages. Consequently, we determine that only one level of trade exists with respect to sales made by these companies to all home market customers.

In order to determine whether NV was established at a level of trade which constituted a more advanced stage of distribution than the level of trade of the CEP, we compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, which excludes economic activities occurring in the United States, pursuant to section 772(d) of the Act.

Based on this comparison, we found that G-Link performed essentially the same selling functions in its sales offices in Taiwan for home market and U.S. sales. Therefore, G-Link's home market sales were not at a more advanced stage of marketing and distribution than the constructed U.S. level of trade, which represents an F.O.B. foreign port price after the deduction of expenses associated with U.S. selling activities. Because we find that no difference in level of trade exits between markets, we have not granted a CEP offset to G-Link.

Regarding GSI Technology, we found that this respondent generally performed all selling functions for certain home market sales at its head office in the United States, while it performed additional selling functions for its remaining home market sales through an affiliated party in Taiwan. We also found that this respondent performed all of the selling functions related to its U.S. sales at its U.S. office. These selling functions are associated with those expenses which we deduct from the CEP starting price, as specified in section 772(d) of the Act. Therefore, we find that GSI Technology's sales in the home market were at a more advanced stage of marketing and distribution (*i.e.*, more remote from the factory) than the constructed U.S. level of trade.

Similarly, we found that ISSI performed a number of selling functions and services related to home market sales at its sales office in the United States, in addition to the selling functions performed with respect to these sales by the affiliated entity in Taiwan. We also found that this respondent performed the majority of the selling functions related to its U.S. sales at its U.S. office. These selling functions are associated with those expenses which we deduct from the CEP starting price, as specified in section 772(d) of the Act. Therefore, we find that ISSI's sales in the home market were at a more advanced stage of marketing and distribution (*i.e.*, more remote from the factory) than the constructed U.S. level of trade.

Finally, regarding Winbond, we found that this company performed most of the selling functions and services related to U.S. sales at its sales office in the United States. These selling functions are associated with those expenses which we deduct from the CEP starting price, as specified in section 772(d) of the Act. Therefore, we find that Winbond's sales in the home market were at a more advanced stage of marketing and distribution (*i.e.*, more remote from the factory) than the constructed U.S. level of trade.

Because GSI Technology, ISSI, and Winbond sell at only one level of trade in the home market, we find that the difference in the levels of trade between the home and U.S. markets cannot be quantified. Because the difference in the levels of trade cannot be quantified, but the home market is at a more advanced level of trade, we have granted a CEP offset to GSI Technology, ISSI, and Winbond. For a detailed explanation of our analysis for all four respondents, see the memorandum from the Team to Louis Apple, entitled "Concurrence Memorandum for the Preliminary Results of the 1999–2000 Antidumping Duty Administrative Review on Static Random Access Memory Semiconductors from Taiwan," dated April 30, 2001.

Constructed Export Price

In accordance with section 772(b) of the Act, we used CEP methodology because all sales took place after importation into the United States.

A. G-Link

We calculated CEP based on the starting price to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions for foreign inland freight, foreign brokerage and handling expenses, international freight, foreign inland insurance, marine insurance, U.S. customs duties, U.S. merchandise processing fees, U.S. warehousing, and U.S. freight expenses, in accordance with section 772(c)(2)(A) of the Act.

We made additional deductions from CEP, where appropriate, for commissions, credit expenses and U.S. indirect selling expenses, including U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at the CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by G-Link and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

B. GSI Technology

We based CEP on the starting price to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price for discounts. We also made deductions for foreign inland freight, foreign warehousing, international freight, marine insurance, U.S. merchandise processing fees, U.S. inland freight, U.S. customs duties, and U.S. warehousing expenses, in accordance with section 772(c)(2)(A) of the Act.

We made additional deductions from CEP, where appropriate, for credit expenses, commissions, warranty expenses, and U.S. indirect selling expenses, including U.S. inventory carrying costs and other indirect selling expenses, in accordance with section 772(d)(1) of the Act.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by GSI Technology and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

C. ISSI

We based CEP on the starting price to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price for billing adjustments and discounts. However, we disallowed the negative discounts reported by ISSI because it has not demonstrated that these credits

related to POR sales. We also made deductions for foreign inland freight, foreign warehousing, foreign brokerage and handling, international freight, marine insurance, U.S. inland freight, U.S. merchandise processing fees, U.S. harbor maintenance fees, and U.S. warehousing expenses, in accordance with section 772(c)(2)(A) of the Act.

We made additional deductions from CEP, where appropriate, for credit expenses, commissions, repacking expenses, and U.S. indirect selling expenses, including U.S. inventory carrying costs and other indirect selling expenses, in accordance with section 772(d)(1) of the Act.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at the CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by ISSI and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

D. Winbond

We based CEP on the starting price to the first unaffiliated purchaser in the United States. In accordance with section 772(c)(1)(B) of the Act, we added an amount for uncollected import duties in Taiwan. Where appropriate, we made deductions for foreign inland freight, foreign warehousing, foreign brokerage and handling expenses, inland insurance, international freight, marine insurance, U.S. merchandise processing fees, and U.S. warehousing expenses, in accordance with section 772(c)(2)(A) of the Act.

We made additional deductions from CEP, where appropriate, for commissions, credit expenses, and U.S. indirect selling expenses, including U.S. inventory carrying costs and other indirect selling expenses, in accordance with section 772(d)(1) of the Act.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at the CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Winbond and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

Normal Value

In order to determine whether there was a sufficient volume of sales in the foreign market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared the volume of each respondent's home market sales of the foreign like product to the volume of U.S. sales of subject merchandise, in accordance with 19 CFR 351.404(b). Based on this comparison, we determined that each of the respondents had a viable home market during the POR. Consequently, we based NV on home market sales for each respondent.

Pursuant to section 773(b)(2)(A)(ii) of the Act, there were reasonable grounds to believe or suspect that each respondent had made home market sales at prices below their COPs in this review. In the less-than-fair-value (LTFV) investigation, the Department disregarded below-cost sales for ISSI made in the home market. (*See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8913 (Feb. 23, 1998).) Also, in the most recently completed administrative review, the Department disregarded below-cost sales for G–Link, GSI Technology, and Winbond (ISSI was not reviewed). (*See Static Random Access Memory Semiconductors From Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 65 FR 55005 (Sep. 12, 2000).) As a result, the Department initiated an investigation to determine whether each respondent made home market sales during the POR at prices below their COPs.

We calculated the COP based on the sum of each respondent's cost of materials and fabrication for the foreign like product in each quarter of the POR, plus amounts for general and administrative expenses and financing costs, in accordance with section 773(b)(3) of the Act.

We compared the weighted-average quarterly COP figures to home market prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below their respective COPs. On a product-specific basis, we compared the COP to foreign market prices, less any applicable movement charges, discounts, rebates, selling expenses, and packing expenses.

In determining whether to disregard foreign market sales made at prices below the COP, we examined whether such sales were made: 1) in substantial quantities within an extended period of time; and 2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. *See* section 773(b)(1) of the Act.

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices below the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities."

Where 20 percent or more of a respondent's sales of a given product were at prices below the COP, we found that sales of that model were made in "substantial quantities" within an extended period of time, in accordance with section 773(b)(2)(B) and (C) of the Act. To determine whether prices provided for recovery of costs within a reasonable period of time, we tested whether the prices which were below the per-unit cost of production at the time of the sale were also below the weighted-average per-unit cost of production for the POR, in accordance with section 773(b)(2)(D). If they were, we disregarded the below-cost sales in determining NV. We did not disregard any below-cost sales for GSI Technology.

We found that, for certain models of SRAMs, more than 20 percent of each respondent's foreign market sales within an extended period of time were at prices below the COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded the below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. For those U.S. sales of SRAMs for which there were no comparable home market sales in the ordinary course of trade, we compared CEP to CV, in accordance with section 773(a)(4) of the Act.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of each respondent's cost of materials, fabrication, SG&A (including financing expenses), profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A, financing expenses, and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country.

Company-specific calculations are discussed below.

A. G–Link

Where NV was based on home market sales, we based NV on the starting price to unaffiliated customers. We made deductions from the starting price for foreign inland freight and foreign inland insurance, where appropriate, pursuant to section 773(a)(6)(B) of the Act.

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Pursuant to section 773(a)(6)(C)(iii) of the Act, we also made deductions for home market credit expenses.

Where applicable, in accordance with 19 CFR 351.410(e), we offset any commission paid on a U.S. sale by reducing the NV by home market indirect selling expenses, up to the amount of the U.S. commission.

For all price-to-price comparisons, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

Where NV was based on CV, we deducted from CV the weighted-average foreign market direct selling expenses, in accordance with sections 773(a)(6)(C)(iii) and 773(a)(8) of the Act. Where applicable, we offset any commission paid on a U.S. sale by reducing the NV by the amount of home market indirect selling expenses, up to the amount of the U.S. commission.

B. GSI Technology

We based NV on the starting price to unaffiliated customers. We made deductions from the starting price for foreign warehousing, where appropriate, pursuant to section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act, we also made deductions for home market credit expenses and commissions.

We deducted home market indirect selling expenses, including inventory carrying costs, advertising expenses, and other indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with section 773(a)(7)(B) of the Act. Where applicable, in accordance with 19 CFR 351.410(e), we offset any commission paid on a U.S. sale by reducing the NV by any home market indirect selling expenses remaining after the deduction for the CEP offset, up to the amount of the U.S. commission.

For all price-to-price comparisons, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

Where NV was based on CV, we deducted from CV the weighted-average home market direct selling expenses and commissions, in accordance with sections 773(a)(6)(C)(iii) and 773(a)(8) of the Act. In accordance with section 773(a)(7)(B) of the Act, we granted a CEP offset adjustment, calculated as noted above. Where applicable, we offset any commission paid on a U.S. sale by reducing the NV by any home market selling expenses remaining after the deduction of the CEP offset, up to the amount of the U.S. commission.

C. ISSI

Where NV was based on home market sales, we based NV on the starting price to unaffiliated customers, less rebates, where appropriate. We made deductions from the starting price, where appropriate, for foreign inland freight and foreign inland insurance, pursuant to section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act, we also made deductions for home market credit expenses, bank charges, and industrial park administration fees, where appropriate.

We deducted home market indirect selling expenses, including inventory carrying costs and other indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with section 773(a)(7)(B) of the Act. Where applicable, in accordance with 19 CFR 351.410(e), we offset any commission paid on a U.S. sale by reducing the NV by any home market selling expenses remaining after the deduction for the CEP offset, up to the amount of the U.S. commission.

In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to the NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

Where NV was based on CV, we deducted from CV the weighted-average foreign market direct selling expenses, in accordance with sections 773(a)(6)(C)(iii) and 773(a)(8) of the Act. In accordance with section 773(a)(7)(B) of the Act, we granted a CEP offset adjustment, calculated as explained above. Where applicable, we offset any commission paid on a U.S. sale by reducing the NV by any home market indirect selling expenses remaining after the deduction for the CEP offset, up to the amount of the U.S. commission.

D. Winbond

Where NV was based on home market sales, we based NV on the starting price to unaffiliated customers, less billing adjustments, early payment discounts, and quality discounts, where appropriate. We made deductions from the starting price for foreign inland freight, foreign brokerage and handling, and foreign inland insurance, pursuant to section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act, we also made deductions for home market credit expenses and trade development fees, where appropriate.

We deducted home market indirect selling expenses, including inventory carrying costs and other indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with section 773(a)(7)(B) of the Act. Where applicable, in accordance with 19 CFR 351.410(e), we offset any commission paid on a U.S. sale by reducing the NV by any home market selling expenses remaining after the deduction for the CEP offset, up to the amount of the U.S. commission.

In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

Where NV was based on CV, we deducted from CV the weighted-average foreign market direct selling expenses, in accordance with sections 773(a)(6)(C)(iii) and 773(a)(8) of the Act. In accordance with section 773(a)(7)(B) of the Act, we granted a CEP offset adjustment, calculated as explained above. Where applicable, we offset any commission paid on a U.S. sale by reducing the NV by any home market indirect selling expenses remaining after the deduction for the CEP offset, up to the amount of the U.S. commission.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark for the daily rate, in accordance with established practice.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margins exist for the period April 1, 1999, through March 31, 2000:

Manufacturer/exporter	Percent margin
G-Link Technology	10.68
GSI Technology, Inc	4.22
Integrated Silicon Solution Inc	16.25
Winbond Electronics Corp	0.58

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. Interested parties may request a hearing within 30 days of the publication. Any hearing, if requested, will be held two days after the date rebuttal briefs are filed. Interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication of this notice. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such case briefs, within 120 days of the publication of these preliminary results.

Upon completion of this administrative review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of each importer's sales during the POR. These rates will be assessed uniformly on all entries of particular importers made during the POR. Pursuant to 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties all entries for any importer for whom the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent). The Department will issue appraisement instructions directly to the Customs Service.

Further, the following deposit requirements will be effective for all shipments of SRAMs from Taiwan entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for G-Link, GSI Technology, ISSI, and Winbond will be the rates established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 41.75 percent, the all others rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: April 30, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–11310 Filed 5–3–01; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

(A–489–807)

Certain Steel Concrete Reinforcing Bars From Turkey; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: In response to a request by the petitioner and two producers/exporters of the subject merchandise, the Department of Commerce is conducting an administrative review of the antidumping duty order on certain steel concrete reinforcing bars from Turkey. This review covers four manufacturers/exporters of the subject merchandise to the United States. This is the third period of review, covering April 1, 1999, through March 31, 2000.

We have preliminarily determined that sales have been made below the normal value by the companies subject to this review. If these preliminary results are adopted in the final results of this review, we will instruct the Customs Service to assess antidumping duties on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who wish to submit comments in this proceeding are requested to submit with each argument: (1) a statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: May 4, 2001.

FOR FURTHER INFORMATION CONTACT: Irina Itkin, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone:(202) 482–0656.

Applicable Statue and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (2000).

Background

On April 12, 2000, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on certain steel concrete reinforcing bars (rebar) from Turkey (65 FR 19736).

In accordance with 19 CFR 351.213(b)(2), in April 2000, the Department received requests from Diler Demir Celik Endustrisi ve Ticaret A.S., Yazici Demir Celik Sanayi ve Ticaret A.S. and Diler Dis Ticaret A.S. (collectively "Diler") and ICDAS Celik Enerji Tersane ve Ulasim Sanayi, A.S. (ICDAS) to conduct an administrative review of the antidumping duty order on rebar from Turkey. In accordance with 19 CFR 351.213(b)(1), on May 1, 2000, the Department also received a request for an administrative review

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from the petitioner, AmeriSteel, for the following three producers/exporters of rebar: Colakaglu Metalurji A.S. (Colakoglu), Ekinciler Holding, A.S. and Ekinciler Demir Celik A.S. (collectively "Ekinciler"), and ICDAS.

In May 2000, Diler requested that the Department modify its reporting requirement with respect to home market sales, in light of the fact that Diler only made U.S. sales in certain months of the period of review (POR). In June 2000, we granted this request and shortened Diler's reporting period to May 1 through October 31, 1999. For further discussion, see the memorandum to Louis Apple from Gerald Surowiec, entitled "1999–2000 Antidumping Duty Administrative Review of Concrete Steel Reinforcing Bar from Turkey—Request by Diler for a Shortened Reporting Period," dated June 14, 2000 (*Diler Reporting Period Memo*).

In June and July 2000, the Department initiated an administrative review for Colakoglu, Diler, Ekinciler, and ICDAS (65 FR 35320 (June 2, 2000) and 65 FR 41942 (July 7, 2000)) and issued questionnaires to them.

Also in June and July 2000, Ekinciler and ICDAS requested that the Department similarly modify their reporting requirements with respect to their home market sales data.[1] In July 2000, we also granted these requests and shortened Ekinciler's and ICDAS's reporting periods to October 1, 1999, through March 31, 2000, and April 1 through September 30, 1999, respectively. For further discussion, see the memorandum to Louis Apple from Gerald Surowiec, entitled "1999–2000 Antidumping Duty Administrative Review of Concrete Steel Reinforcing Bar from Turkey—Request by Ekinciler for a Shortened Reporting Period," dated July 7, 2000 (*Ekinciler Reporting Period Memo*), as well as the memorandum to Louis Apple from Gerald Surowiec, entitled "Request by ICDAS for a Shortened Reporting Period in the 1999–2000 Antidumping Duty Administrative Review on Steel Concrete Reinforcing Bars from Turkey," dated July 21, 2000 (*ICDAS Reporting Period Memo*).

In July and August 2000, we received responses to sections A through C of the questionnaire (*i.e.*, the sections regarding sales to the home market and the United States) from each of the respondents. Also in August 2000, we received responses to Section D of the questionnaire (i.e., the section regarding cost of production (COP) and constructed value (CV)) from Colakoglu and Ekinciler.

In August 2000, the petitioner alleged that both Diler and ICDAS were selling at prices below their COPs in the home market. Based on an analysis of these allegations, in August and September 2000, respectively, the Department initiated investigations to determine whether ICDAS and Diler made home market sales at prices below their COPs within the meaning of section 773(b) of the Act. Consequently, we requested that these companies submit responses to section D of the questionnaire. We received responses to these questionnaires in September and October 2000.

In September and October 2000, we issued supplemental questionnaires to the respondents. We received responses to these questionnaires in September, October, and December 2000.

On October 3, 2000, the Department postponed the preliminary results of this review until no later than April 30, 2001. *See Steel Concrete Reinforcing Bars From Turkey; Notice of Extension of Time Limits for Antidumping Duty Administrative Review*, 65 FR 60169 (Oct. 10, 2000).

We verified the sales and cost information submitted by all four respondents in November 2000, as well as in January and February 2001, in accordance with section 782(i) of the Act and 19 CFR 351.307(b)(1)(iv). In March 2001, we requested and received revised databases from Diler, Ekinciler, and ICDAS, incorporating our findings at verification.

Scope of the Review

The product covered by this review is all stock deformed steel concrete reinforcing bars sold in straight lengths and coils. This includes all hot-rolled deformed rebar rolled from billet steel, rail steel, axle steel, or low-alloy steel. It excludes (i) plain round rebar, (ii) rebar that a processor has further worked or fabricated, and (iii) all coated rebar. Deformed rebar is currently classifiable in the *Harmonized Tariff Schedule of the United States* (HTSUS) under item numbers 7213.10.000 and 7214.20.000. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Period of Review

The POR is April 1, 1999, through March 31, 2000.

Level of Trade and Constructed Export Price (CEP) Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine normal value (NV) based on sales in the comparison market at the same level of trade as export price (EP) or CEP. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses (SG&A) and profit. For EP, the U.S. level of trade is also the level of the starting-price sale, which is usually from the exporter to the unaffiliated U.S. customer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (Nov. 19, 1997).

Colakoglu claimed that it made home market sales at more than one level of trade, while the remaining respondents claimed that they made home market sales at only one level of trade. We analyzed the information on the record for each company and found that each respondent, including Colakoglu, performed essentially the same marketing functions in selling to all of its home market customers, regardless of customer category (*e.g.*, end user, distributor, etc.). Therefore, we determined that these sales are at the same level of trade and that no level of trade adjustment is possible for any of the respondents because the record does not contain the type of information to make such an adjustment, given that there is only one level of trade in the home market. For a detailed explanation of this analysis, see the memorandum from the Team to Louis Apple, entitled "Concurrence Memorandum for the Preliminary Results of the 1999–2000 Antidumping Duty Administrative Review on Certain Steel Concrete Reinforcing Bars from Turkey," dated April 30, 2001.

[1] Ekinciler's request was also regarding its cost data.

Comparisons to Normal Value

To determine whether sales of rebar from Turkey were made in the United States at less than normal value, we compared the EP to the NV. Because Turkey's economy experienced significant inflation during the POR, as is Department practice, we limited our comparisons to home market sales made during the same month in which the U.S. sale occurred and did not apply our "90/60" contemporaneity rule (*see, e.g., Certain Porcelain on Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review*, 62 FR 42496, 42503 (Aug. 7, 1997)). This methodology minimizes the extent to which calculated dumping margins are overstated or understated due solely to price inflation that occurred in the intervening time period between the U.S. and home market sales.

We first attempted to compare products sold in the United States to products sold in the home market in the ordinary course of trade that were identical with respect to the following characteristics: grade, size, ASTM specification, and form. Where there were no home market sales of merchandise that were identical in these respects to the merchandise sold in the United States, we compared U.S. products with the most similar merchandise sold in the home market based on the characteristics listed above, in that order of priority.

Regarding Colakoglu, we were unable to make product comparisons for certain models which were produced and sold during 1999 because this respondent failed to report cost information for them, including both difference-in-merchandise and CV data. Consequently, for purposes of the preliminary results, we based the margin for the sales of these products on facts available pursuant to section 776(a)(2)(B) of the Act. As facts available, we used the highest non-aberrant margin calculated for any U.S. transaction for Colakoglu, in accordance with our practice. *See, e.g., Static Random Access Memory Semiconductors From Taiwan; Preliminary Results and Partial Recission of Antidumping Administrative Review*, 65 FR 26577, 26579 (May 8, 2000) (unchanged by the final results); and *Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Germany*, 64 FR 30710, 30732 (June 8, 1999). In selecting a facts-available margin, we sought a margin that is sufficiently adverse so as to effectuate the statutory purposes of the adverse facts-available rule, which is to induce respondents to provide the Department with complete and accurate information in a timely manner. We also sought a margin that is indicative of the respondent's customary selling practices and is rationally related to the transactions to which the adverse facts available are being applied. To that end, we selected the highest margin on an individual sale which fell within the mainstream of Colakoglu's transactions (*i.e.*, transactions that reflect sales of products that are representative of the broader range of models used to determine NV).

Export Price

For all U.S. sales we used EP, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted based on the facts of record.

A. Colakoglu

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions for ocean freight expenses, marine insurance expenses, inspection fees, bill of lading issuance fees, loading charges, and demurrage expenses (offset by freight commission revenue, wharfage revenue, despatch revenue, demurrage commission revenue, and agency fee revenue), where appropriate, in accordance with section 772(c)(2)(A) of the Act.

B. Diler

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions for foreign inland freight expenses, brokerage and handling expenses, port and loading fees, and ocean freight expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act.

C. Ekinciler

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions for foreign inland freight expenses, surveying fees, forklift expenses, dunnage expenses, loading fees, brokerage and handling expenses, ocean freight expenses, and customs clearance fees, where appropriate, in accordance with section 772(c)(2)(A) of the Act.

D. ICDAS

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions for foreign inland freight expenses, surveying fees, brokerage and handling expenses, and ocean freight expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act.

Normal Value

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), we compared the volume of each respondent's home market sales of the foreign like product to the volume of U.S. sales of subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Based on this comparison, we determined that each respondent had a viable home market during the POR. Consequently, we based NV on home market sales.

All four respondents made sales of rebar to affiliated parties in the home market during the POR. Consequently, we tested these sales to ensure that they were made at "arm's-length" prices, in accordance with 19 CFR 351.403(c). To conduct this test, we compared the unit prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Where prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that these sales were made at arm's length (*see Preamble, Antidumping Duties; Countervailing Duties; Final Rule* 62 FR 27295, 27355 (May 19, 1997)). In accordance with the Department's practice, we only included in our margin analysis those sales to the affiliated party that were made at arm's length.

Pursuant to section 773(b)(2)(A)(ii) of the Act, for Colakoglu and Ekinciler, there were reasonable grounds to believe or suspect that these respondents had made home market sales at prices below their COPs in this review because the Department had disregarded sales below the COP for these companies in the most recently completed segment of this proceeding in which these companies participated (*i.e.*, the less-than-fair-value (LTFV) investigation and the first review, respectively). *See Notice of Final Determination of Sales at Less Than*

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Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey, 62 FR 9737, 9740 (Mar. 4, 1997). *See also Certain Steel Concrete Reinforcing Bars From Turkey; Final Results of Antidumping Duty Administrative Review and New Shipper Review*, 64 FR 49150, 49152 (Sept. 10, 1999). Pursuant to section 773(b)(2)(A)(i) of the Act, for Diler and ICDAS, there were reasonable grounds to believe or suspect that these respondents had made home market sales at prices below their COPs in this review because of information contained in the cost allegations properly filed in this review by the petitioner (*see* the memorandum from The Team to Louis Apple, entitled, "Antidumping Duty Administrative Review on Steel Concrete Reinforcing Bars from Turkey: Analysis of the Petitioners' Allegation of Sales Below the Cost of Production for Diler Demir Celik Endustrisi ve Ticaret A.S., Yazici Demir Celik Sanayi ve Ticaret A.S., and Diler Dis Ticaret A.S.," dated September 1, 2000, as well as the memorandum from the Team to Louis Apple, entitled "Antidumping Duty Administrative Review on Steel Concrete Reinforcing bars from Turkey: Analysis of the Petitioners' Allegation of Sales Below the Cost of Production for ICDAS Celik Enerji Tersane ve Ulasim Sanayi A.S.," dated August 29, 2000). As a result, the Department initiated investigations to determine whether each respondent made home market sales during the POR at prices below their respective COPs.

We calculated the COP based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for SG&A and packing costs, in accordance with section 773(b)(3) of the Act. We relied on the latest databases submitted by each respondent, adjusted for our findings at verification. Regarding ICDAS, we adjusted the reported secondary materials costs, which were based on historical costs, to reflect the weighted-average current purchase price at the time of consumption. We also disallowed ICDAS's material offset for sales of short-length rebar.

As noted above, we determined that the Turkish economy experienced significant inflation during the POR. Therefore, in order to avoid the distortive effect of inflation on our comparison of costs and prices, we requested that each respondent submit the product-specific cost of manufacturing (COM) incurred during each month of the reporting period. We calculated a period-average COM for each product after indexing the reported monthly costs during the reporting period to an equivalent currency level using the Turkish Wholesale Price Index from the International Financial Statistics published by the International Monetary Fund. We then restated the period-average COMs in the currency values of each respective month. For further discussion of the reporting periods for Diler, Ekinciler, and ICDAS, see the "Background" section of this notice, above.

We compared the weighted-average COP figures to home market prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges and selling expenses.

In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made: (1) In substantial quantities within an extended period of time; and (2) for Colakoglu only, at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. *See* sections 773(b)(2)(B), (C), and (D) of the Act. Regarding Diler, Ekinciler, and ICDAS, we did not conduct a recovery of cost test because these companies did not report all costs over the POR.[2]

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product were at prices below the COP, we found that sales of that model were made in "substantial quantities" within an extended period of time (as defined in section 773(b)(2)(B) of the Act), in accordance with section 773(b)(2)(C)(i) of the Act. In such cases, for Colakoglu, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, for purposes of this administrative review, we disregarded these below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

[2] We note that each of these companies waived its right to a cost recovery test as a condition of obtaining a modified home market sales and cost reporting period. For further discussion, see the *Diler Reporting Period Memo, Ekinciler Reporting Period Memo*, and the *ICDAS Reporting Period Memo*.

A. Colakoglu

For those comparison products for which there were sales at prices above the COP, we based NV on ex-factory or delivered prices to home market customers. For those home market sales which were negotiated in U.S. dollars, we used the U.S.-dollar price, rather than the Turkish lira (TL) price adjusted for kur farki (*i.e.*, an adjustment to the TL invoice price to account for the difference between the estimated and actual TL value on the date of payment), because the only price agreed upon was a U.S.-dollar price, and this price remained unchanged; the buyer merely paid the TL-equivalent amount at the time of payment. Where appropriate, we made deductions from the starting price for foreign inland freight expenses, in accordance with section 773(a)(6)(B) of the Act.

Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c), we made circumstance-of-sale adjustments for credit expenses, bank charges, and Exporters' Association fees.

We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act.

Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable costs of manufacturing for the foreign like product and subject merchandise, using POR-average costs as adjusted for inflation for each month of the POR, as described above.

B. Diler

For those comparison products for which there were sales at prices above the COP, we based NV on ex-factory or delivered prices to home market customers. For those home market sales which were negotiated in U.S. dollars, we used the U.S.-dollar price, rather than the TL price adjusted for kur farki, for the reasons noted above. Where appropriate, we made deductions from the starting price for foreign inland freight, in accordance with section 773(a)(6)(B) of the Act.

Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c), we made circumstance-of-sale adjustments for credit expenses, as well as Exporters' Association fees.

We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act.

Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable costs of manufacturing for the foreign like product and subject merchandise, using period-average costs as adjusted for inflation for each month of the reporting period, as described above.

C. Ekinciler

For those comparison products for which there were sales at prices above the COP, we based NV on ex-factory, ex-warehouse or delivered prices to home market customers, adjusted for billing errors. We excluded from our analysis home market re-sales by Ekinciler of merchandise produced by unaffiliated companies. Where appropriate, we made deductions from the starting price for foreign inland freight and off-site warehousing expenses, in accordance with section 773(a)(6)(B) of the Act.

Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c), we made circumstance-of-sale adjustments for credit expenses, bank charges, and Exporters' Association fees. We made no adjustment for home market commissions because Ekinciler did not report any U.S. indirect selling expenses for use as an offset. For further discussion, see the memorandum from Elizabeth Eastwood to the File, entitled "Calculations Performed for the Ekinciler Group (Ekinciler) for the Preliminary Results in the 1999–2000 Antidumping Administrative Review on Certain Steel Concrete Reinforcing Bars from Turkey," dated April 30, 2001.

We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act.

Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable costs of manufacturing for the foreign like product and subject merchandise, using period-average costs as adjusted for inflation for each month of the reporting period, as described above.

D. ICDAS

We based NV on delivered prices to home market customers because we found that all home market sales were in the ordinary course of trade. We made deductions from the starting price for foreign inland freight expenses in accordance with section 773(a)(6)(B) of the Act.

Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c), we made circumstance-of-sale adjustments for credit expenses (offset by interest revenue, where appropriate), bank charges, and Exporters' Association fees.

We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act.

Currency Conversion

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. However, the Federal Reserve Bank does not track or publish exchange rates for Turkish Lira. Therefore, we made currency conversions based on the daily exchange rates from the Dow Jones News/Retrieval Service. *See, e.g., Certain Steel Concrete Reinforcing Bars From Turkey; Final Results of Antidumping Duty Administrative Review and New Shipper Review*, 64 FR 49150, 49158 (Sept. 10, 1999).

Preliminary Results of the Review

We preliminarily determine that the following margins exist for the respondents during the period April 1, 1999, through March 31, 2000:

Manufacturer/Producer/Exporter	Margin percentage
Colakoglu Metalurji A.S.	10.47
Ekinciler Holding A.S./Ekinciler Demir Celik A.S.	15.05
Diler Demir Celik Endustrisi ve Ticaret A.S./Yazici Demir Celik Sanayi ve Ticaret A.S./ Diler Dis Ticaret A.S.	0.00
ICDAS Celik Enerji Tersane ve Ulasim Sanayi A.S.	0.00

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. Interested parties may request a hearing within 30 days of publication. Any hearing, if requested, will be held two days after the date rebuttal briefs are filed. Pursuant to 19 CFR 351.309, interested parties may submit cases briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication of this notice. The Department will issue the final results of the administrative review, including the results of its analysis of issues raised in any such written comments, within 120 days of publication of these preliminary results.

Upon completion of the administrative review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), for Diler, we have calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales. Regarding Colakoglu, Ekinciler, and ICDAS, for assessment purposes, we do not have the information to calculate entered value because these companies are not the importers of record for the subject merchandise. Accordingly, we have calculated importer-specific duty assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales. The assessment rate will be assessed uniformly on all entries of that particular importer made during the POR. Pursuant to 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties any of Diler's entries for which the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent). The Department will issue appraisement instructions directly to the Customs Service.

Further, the following deposit requirements will be effective for all shipments of rebar from Turkey entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates established in the final results of this review; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 16.06 percent, the all others rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR

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351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: April 30, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–11309 Filed 5–3–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Wisconsin-Madison; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Docket Number: 01–006. *Applicant:* University of Wisconsin-Madison, Madison, WI 53706. *Instrument:* Photoelectron Emission Microscope, Model PEEM III. *Manufacturer:* ELMITEC Elektronenmikroskopie, Germany. *Intended Use:* See notice at 66 FR 18445, March 26, 2001.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides aberration correction for high transmission and sub 10 nm resolution. The National Institutes of Health advises in its memorandum of March 12, 2001 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 01–11311 Filed 5–3–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Wisconsin-Madison Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 01–007. *Applicant:* University of Wisconsin—Madison, Madison, WI 53706. *Instrument:* Sample Preparation Chamber with accessories. *Manufacturer:* ELMITEC Elektronenmikroskopie, Germany. *Intended Use:* See notice at 66 FR 16445, March 26, 2001.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* This is a compatible accessory for an existing instrument purchased for the use of the applicant. The instrument and accessory were made by the same manufacturer. The National Institutes of Health advises in its memorandum of March 12, 2001, that the accessory is pertinent to the intended uses and that it knows of no comparable domestic accessory.

We know of no domestic accessory which can be readily adapted to the existing instrument.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 01–11312 Filed 5–3–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advanced Technology Program; Announcement of a Public Meeting

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) invites interested parties to attend the Advanced Technology Program (ATP) National Meeting, "Technologies at the Crossroads: Frontiers of the Future". ATP provides a mechanism for industry to extend its technological reach and improve the quality of life and acts as a facilitator to encourage companies, universities, and research organizations to work jointly and creatively to develop new, synergistic technologies that will benefit the nation.

DATES: The National Meeting will be held on June 3, 2001, from 5:00 p.m. to 7:00 p.m. The Meeting will continue on June 4, 2001, from 8:00 a.m. to 7:00 p.m. and on June 5, 2001, from 7:30 a.m. to 4:00 p.m.

ADDRESSES: The meeting will be held at the Wyndham Baltimore Inner Harbor Hotel, 101 West Fayette Street, Baltimore, Maryland 21201. The hotel can be reached at (410) 752–1100.

FOR FURTHER INFORMATION CONTACT: Linda Engelmeier at (301) 975–6026 or e-mail: *Linda.Engelmeier@nist.gov.*

SUPPLEMENTARY INFORMATION: The ATP statute originated in the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418) and was amended by the American Technology Preeminence Act of 1991 (Public Law 102–245). This law is codified at 15 U.S.C. 278n. The ATP implementing regulations are published at CFR part 295, as amended. The ATP is a competitive cost-sharing program designed for the Federal government to work in partnership with industry, universities, and states to accelerate the development and broad dissemination of challenging, high-risk technologies that offer the potential for significant commercial payoffs and widespread benefits for the nation.

The National Meeting will feature keynote and futurist speakers who will provide insights into the "Frontiers of the Future". Meeting sessions are designed to stimulate and encourage attendees to pursue research leading to path-breaking, innovative technologies that will make a difference in people's lives and focus on the technology crossroads that will lead us from today to the frontiers of tomorrow. Highlights of the meeting include eight forums featuring national and international experts in various technology fields; an opportunity to meet with NIST scientists at Poster Sessions demonstrating advances in the chemical, physical, and biological areas of science that have direct impact on advances in all technologies; an ATP/Industry Showcase, featuring quality projects that have received ATP funding assistance; a Venture Capital forum to hear how venture capital firms decide which technologies to fund out of an expanding universe of emerging technologies; and interactive networking opportunities with leaders in "cutting edge" technologies and ATP program managers and business experts. Information on the meeting agenda and the registration requirements can be found at the ATP website at *www.atp.nist.gov*. There is a registration fee of $525.

Dated: April 30, 2001.

Karen H. Brown,

Acting Director.

[FR Doc. 01–11179 Filed 5–3–01; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Call for Applications for Alternate Representatives to the Coral Reef Ecosystem Reserve Council for the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: On December 4, 2000, Executive Order 13178 established the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve). The Executive Order requires the Secretary of Commerce or his or her designee (hereafter Secretary) to establish a Coral Reef Ecosystem Reserve Council (Reserve Council) to provide advice and recommendations on the development of the Reserve Operations Plan and the designation and management of a Northwestern Hawaiian Islands National Marine Sanctuary by the Secretary. The Secretary, through the Office of National Marine Sanctuaries (ONMS), established the Reserve Council and is now seeking applicants for alternates to the citizen/constituent representatives on the Reserve Council. Previous applicants do not need to reapply and will still be considered in the competitive pool.

DATES: Completed applications must be postmarked no later than June 4, 2001.

ADDRESSES: Application kits may be obtained from Robert Smith or Aulani Wilhelm, Northwest Hawaiian Islands Coral Reef Ecosystem Reserve, National Ocean Service, P.O. Box 43, Hawaii National Park, Hawaii 96718–0043, or online at: *http://hawaiireef.noaa.gov.*

Completed applications should be sent to the same address as above.

FOR FURTHER INFORMATION CONTACT: Aulani Wilhelm at (808) 295–1234, or *aulani.wilhelma@noaa.gov*, or visit the web site at: *http://hawaiireef.noaa.gov.*

SUPPLEMENTARY INFORMATION: On December 4, 2000, Executive Order 13178 established the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, pursuant to the National Marine Sanctuaries Act, as amended by the National Marine Sanctuaries Amendments Act of 2000. The Reserve encompasses an area of the marine waters and submerged lands of the Northwestern Hawaiian Islands, extending approximately 1200 nautical miles long and 100 nautical miles wide. The Reserve is adjacent to and seaward of the seaward boundary of Hawaii State waters and submerged lands and the Midway Atoll National Wildlife Refuge, and includes the Hawaiian Islands National Wildlife Refuge to the extent it extends beyond Hawaii State waters and submerged lands. The Reserve will be managed by the Secretary of Commerce pursuant to the National Marine Sanctuaries Act and the Executive Order. The Secretary has also initiated the process to designate the Reserve as a National Marine Sanctuary. The management principles and implementation strategy and requirements for the Reserve are found in the Executive Order, which is part of the application kit and can be found on the web site listed above.

In designating the Reserve, the Secretary of Commerce was directed to establish a Coral Reef Ecosystem Reserve Council, pursuant to section 315 of the National Marine Sanctuaries Act, to provide advice and recommendations on the development of the Reserve Operations Plan and the designation and management of a Northwestern Hawaiian Islands National Marine Sanctuary by the Secretary. The National Marine Sanctuary System (NMSS) has established the Reserve Council and is not accepting applications from interested individuals for alternates for the following fourteen citizen/constituent positions on the Council:

1. Three Native Hawaiian representatives, including one Native Hawaiian elder, with experience or knowledge regarding Native Hawaiian subsistence, cultural, religious, or other activities in the Northwestern Hawaiian Islands.

2. Three representatives from the non-Federal science community with experience specific to the Northwestern Hawaiian Islands and with expertise in at least one of the following areas:

A. Marine mammal science.

B. Coral reef ecology.

C. Native marine flora and fauna of the Hawaiian Islands.

D. Oceanography.

E. Any other scientific discipline the Secretary determines to be appropriate.

3. Three representatives from non-governmental wildlife/marine life, environmental, and/or conservation organizations.

4. One representative from the commercial fishing industry that conducts activities in the Northwestern Hawaiian Islands.

5. One representative from the recreational fishing industry that conducts activities in the Northwestern Hawaiian Islands.

6. One representative from the ocean-related tourism industry.

7. One representative from the non-Federal community with experience in education and outreach regarding marine conservation issues.

8. One citizen-at-large representative.

All individuals who have previously applied do not need to reapply and remain in the competitive pool for the alternates.

The Reserve Council also includes one representative from the State of Hawaii (and an alternate as appropriate) as appointed by the Governor; the manager of the Hawaiian Islands Humpback Whale National Marine Sanctuary as a non-voting member; and one representative each, as non-voting members, from the Department of the Interior, Department of State, National Marine Fisheries Service, Marine Mammal Commission, U.S. Coast Guard, Department of Defense, National Science Foundation, National Ocean Service, and the Western Pacific Regional Fishery Management Council. The non-voting representatives and their alternates are chosen by the agencies and other entities which they represent on the Council. The charter for the Council can be found in the application kit, or on the web site listed above.

Applicants for the fourteen alternate positions now sought from the citizen/

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constituent portion of the Council are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; and philosophy regarding the conservation and management of marine resources. Applicants who are chosen as alternates represent a seat in the absence of the primary Council member and/or may also complete the term if a primary member resigns. Alternates hold the same privileges as members when they are representing the member at a Council meeting. When the member is present at meetings, the alternate may participate as a member of the public. Alternates should expect to serve two- to three-year terms, pursuant to the Council's charter and matching those terms held by the primary seat for which the alternate is chosen. Persons who are interested in applying for membership on the Council may obtain an application from either the person or website identified above. Completed applications must be sent to the address listed above and must be received by June 4, 2001.

Authority: 16 U.S.C. Section 1431 et seq.; Pub. L. 106–513.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)
Dated: April 27, 2001.

Ted I. Lillestolen,

Deputy Assistant Administrator for Oceans and Coastal Zone Management.

[FR Doc. 01–11234 Filed 5–3–01; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Stellwagen Bank National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary System (NMSS), National Ocean Service (NOS, National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Stellwagen Bank National Marine Sanctuary (SBNMS or Sanctuary) is seeking applicants for the following fifteen vacant seats on its Sanctuary Advisory Council (Council): Research (2); Conservation (2); Education (2); Marine Transportation (1); Fixed gear Fishing (1); Mobile gear Fishing (1); Recreation (1); Whale Watching Industry (1); Business/ Industry (1); and Citizen-at-Large (3). Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the conservation and management of marine resources; and the length of residence in the area affected by the Sanctuary. Applicants who are chosen as members should expect to serve two or three-year terms, pursuant to the Council's Charter. Alternates to the fifteen members will also be chosen from the same pool of applicants.

DATES: Applications are due by June 8, 2001.

ADDRESSES: Application kits may be obtained from Sandi Dentino at Stellwagen Bank National Marine Sanctuary, 175 Edward Foster Road, Scituate, MA 02066. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Sandi Dentino, Stellwagen Bank National Marine Sanctuary, 175 Edward Foster Road, Scituate, MA 02066.

SUPPLEMENTARY INFORMATION: The SBNMS Advisory Council was established in 1998 to assure continued public participation in the management of the Sanctuary. The past Council was dissolved in 2000 and this recruitment will establish a new Council to advise the new Superintendent. Since its establishment, the original Council has played a vital role in the decisions affecting the Sanctuary and surrounding waters.

The Council's fifteen voting members represent a variety of local user groups, as well as the general public. Six ex-officio members will represent state and federal governmental jurisdictions.

The Council represents the coordination link between the Sanctuary and the state and federal management agencies, user groups, researchers, educators, policymakers, and other various groups that help to focus efforts and attention on Sanctuary issues.

The Council functions in an advisory capacity to the Sanctuary Superintendent and is instrumental in helping to develop policies and program goals, and to identify education, outreach, research, long-term monitoring, resource protection and revenue enhancement priorities. The Council works in concert with the Sanctuary Superintendent by keeping him informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Superintendent in achieving the goals of the Sanctuary program within the context of SBNMS programs and policies.

Authority: 16 U.S.C. Section 1431 et seq.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: April 27, 2001.

Ted I. Lillestolen,

Deputy Assistant Administrator for Oceans and Coastal Zone Management.

[FR Doc. 01–11233 Filed 5–3–01; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042501G]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability and request for comment.

SUMMARY: Notice is hereby given that the Oregon Department of Fish and Wildlife (ODFW) has submitted four Fisheries Management and Evaluation Plans (FMEP) pursuant to the protective regulations promulgated for Middle Columbia River (MCR) steelhead under the Endangered Species Act (ESA). The FMEPs specify the future management of inland recreational fisheries potentially affecting the MCR steelhead. This document serves to notify the public of the availability of the FMEPs for review and comment before a final approval or disapproval is made by NMFS.

DATES: Written comments on the draft FMEPs must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on June 4, 2001.

ADDRESSES: Written comments and requests for copies of the draft FMEPs should be addressed to Richard Turner, Sustainable Fisheries Division, Hatchery and Inland Fisheries Branch, 525 N.E. Oregon Street, Suite 510, Portland, OR 97232 or faxed to 503–872–2737. The documents are also available on the Internet at *http://www.nwr.noaa.gov/*. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Richard Turner, Portland, OR at phone number 503–736–4737 or e-mail: *rich.turner@noaa.gov*.

SUPPLEMENTARY INFORMATION: This notice is relevant to the Middle Columbia River Steelhead (*Oncorhynchus mykiss*) Evolutionarily Significant Unit (ESU).

Background

ODFW has submitted to NMFS four FMEPs: (1) *Walla Walla River Summer Steelhead and Trout Fisheries*, (2) *Umatilla River Summer Steelhead, Trout and Warmwater Fisheries*, (3) *John Day River Steelhead, Trout and Warmwater Fisheries*, and (4) *Deschutes River, Small Columbia Tributaries: Fifteenmile, Mill and Chenoweth Creeks Summer Steelhead, Trout and Warmwater Fisheries*. These FMEPs are for inland recreational fisheries potentially affecting listed adult and juvenile MCR ESU steelhead. These include fisheries occurring in the Oregon portion of the Walla Walla River, the Umatilla River, the John Day River, the Deschutes River and in the smaller tributaries to the Columbia River in Oregon between the Hood River and the Deschutes River. The objective of these FMEPs is to harvest known, hatchery-origin steelhead and other fish species in a manner that does not jeopardize the survival and recovery of the MCR steelhead ESU. All fisheries included in these FMEPs will be managed such that only adult hatchery-origin steelhead that are adipose fin clipped may be retained. Impacts levels to listed MCR steelhead are specified in the FMEPs. Population viability analysis and risk assessments in the FMEPs indicate the extinction risk for listed steelhead under the proposed fishery impact levels to be low. A variety of monitoring and evaluation tasks are specified in the FMEPs to assess the abundance of steelhead, determine fishery effort and catch of steelhead and angler compliance. A review of compliance with the provisions of the FMEP will be conducted by ODFW annually and a comprehensive review to evaluate the effectiveness of the FMEPs will occur at a minimum of every five years. In the John Day River, ODFW has also proposed a consumptive fishery on listed naturally produced MCR steelhead that would be implemented only after specific conditions are achieved. This fishery is in addition to the selective fishery for hatchery-origin adults described here. The conditions are described in the FMEP "John Day River Steelhead, Trout and Warmwater Fisheries."

ODFW has provided NMFS a draft of the Conservation Assessment of Steelhead Populations in Oregon (Assessment) as part of the FMEP submittal. The Assessment provides the population viability analysis and risk assessment developed for ODFW's FMEPs. This Assessment is also available for review and comment.

As specified in the July 10, 2000 ESA 4(d) rule for salmon and steelhead (65 FR 42422), NMFS may approve an FMEP if it meets criteria set forth in § 223.203 (b)(4)(i)(A) through (I). Prior to final approval of an FMEP, NMFS must publish notification announcing its availability for public review and comment.

Authority

Under section 4 of the ESA, the Secretary of Commerce is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. The ESA salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000) specifies categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. The rule further provides that the prohibitions of paragraph (a) of the rule do not apply to activities associated with fishery harvest provided that an FMEP has been approved by NMFS to be in accordance with the salmon and steelhead ESA 4(d) rule (65 FR 42422, July 10, 2000).

Dated: April 30, 2001.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–11316 Filed 5–3–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042501H]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability and request for comment.

SUMMARY: Notice is hereby given that the Oregon Department of Fish and Wildlife (ODFW) has submitted two Fisheries Management and Evaluation Plans (FMEP) and The Idaho Department of Fish and Game (IDFG) has submitted a FMEP pursuant to the protective regulations promulgated for Snake River (SR) steelhead under the Endangered Species Act (ESA). The FMEPs specify the future management of inland recreational fisheries potentially affecting the SR steelhead. This document serves to notify the public of the availability of the FMEPs for review and comment before a final approval or disapproval is made by NMFS.

DATES: Written comments on the draft FMEPs must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on June 4, 2001.

ADDRESSES: Written comments and requests for copies of the draft FMEPs should be addressed to Richard Turner, Sustainable Fisheries Division, Hatchery and Inland Fisheries Branch, 525 N.E. Oregon Street, Suite 510, Portland, OR 97232 or faxed to 503–872–2737. The documents are also available on the Internet at *http://www.nwr.noaa.gov/*. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Debbie Martin, Boise, ID at phone number: 208–321–2959, or e-mail: *debbie.martin@noaa.gov* , or Richard Turner, Portland, OR at phone number 503–736–4737 or e-mail: *rich.turner@noaa.gov*regarding FMEPs.

SUPPLEMENTARY INFORMATION: This notice is relevant to the Snake River Basin Steelhead (*Oncorhynchus mykiss*) Evolutionarily Significant Unit (ESU).

Background

ODFW has submitted to NMFS an FMEP (*Snake, Grande Ronde, and Imnaha Rivers Warmwater and Sturgeon Recreation Fisheries*) for warmwater and sturgeon recreational fisheries potentially affecting listed adult and juvenile SR steelhead. This includes fisheries occurring in the Snake, Grande Ronde, and Imnaha River Basins. The objective of the FMEP is to provide a catch and release recreational fishing opportunity and harvest on introduced warmwater species in the Oregon portion of the Snake River, the Imnaha River, and the Grande Ronde River and tributaries in a manner that does not jeopardize the survival and recovery of the SR steelhead ESU. The FMEP focuses on the incidental mortality to SR steelhead from these fisheries. Impacts can result from the fisheries themselves and the potential impacts from the resident fish stocking program. Impact levels to listed steelhead populations in the ESU due to catch and release are specified in the FMEP. Population viability analyses and risk assessments in the FMEP indicate the extinction risk for listed steelhead under the proposed fishery impact levels to be low. A variety of monitoring

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and evaluation tasks are specified in the FMEP to assess the abundance of steelhead, determine fishery effort and catch of steelhead, and angler compliance. A comprehensive review of the FMEP to evaluate whether the fisheries and listed steelhead populations are performing as expected will be done through regular creel surveys and angler contacts.

ODFW has submitted to NMFS an FMEP (*Summer Steelhead and Trout Sport Fisheries in Grande Ronde Basin, Imnaha Basin, and Snake River*) for recreational steelhead fisheries in the Grande Ronde, Imnaha, and Snake River Basins. The objective of this FMEP is to harvest known, hatchery-origin steelhead in a manner that does not jeopardize the survival and recovery of the SR steelhead ESU. Only adult hatchery-origin steelhead that are adipose fin clipped may be retained. Impact levels to listed steelhead populations in the ESU due to catch and release are specified in the FMEP. Population viability analyses and risk assessments in the FMEP indicate the extinction risk for listed steelhead under the proposed fishery impact levels to be less than 0.1 percent. A variety of monitoring and evaluation tasks are specified in the FMEP to assess the abundance of steelhead, determine fishery effort and catch of steelhead, and angler compliance. A comprehensive review of the FMEP to evaluate whether the fisheries and listed steelhead populations are performing as expected will be done annually.

ODFW has provided NMFS a draft of the *Conservation Assessment of Steelhead Populations in Oregon* (Assessment) as part of the FMEP submittal. The Assessment provides the population viability analysis and risk assessment developed for ODFW's FMEPs. This Assessment is also available for review and comment.

IDFG has submitted to NMFS an FMEP (*The State of Idaho Resident Fish Species Fishing Program*) for inland, resident, recreational fisheries potentially affecting listed adult and juvenile SR steelhead. This includes fisheries occurring throughout Idaho including the Clearwater and Salmon River Basins. The objective of the FMEP is to provide sufficient sport fishing opportunities in a manner that does not jeopardize the survival and recovery of the ESU. The FMEP focuses mainly on impacts to juvenile steelhead. Impacts can result from the fisheries themselves and the potential impacts from the resident fish stocking program. Impact levels to listed steelhead populations in the ESU due to catch and release are specified in the FMEP. Population viability analyses and risk assessments in the FMEP indicate the extinction risk for listed steelhead under the proposed fishery impact levels to be low. A variety of monitoring and evaluation tasks are specified in the FMEP to assess the abundance of steelhead, determine fishery effort and catch of steelhead, and angler compliance. A comprehensive review of the FMEP to evaluate whether the fisheries and listed steelhead populations are performing as expected will be done through regular creel surveys and angler contacts.

As specified in the July 10, 2000 ESA 4(d) rule for salmon and steelhead (65 FR 42422), NMFS may approve an FMEP if it meets criteria set forth in § 223.203 (b)(4)(i)(A) through (I). Prior to final approval of an FMEP, NMFS must publish notification announcing its availability for public review and comment.

Authority

Under section 4 of the ESA, the Secretary of Commerce is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. The ESA salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000) specifies categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. The rule further provides that the prohibitions of paragraph (a) of the rule do not apply to activities associated with fishery harvest provided that an FMEP has been approved by NMFS to be in accordance with the salmon and steelhead ESA 4(d) rule (65 FR 42422, July 10, 2000).

Dated: May 1, 2001.

Karen Salvini,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–11321 Filed 5–3–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042501F]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability and request for comment.

SUMMARY: Notice is hereby given that the Oregon Department of Fish and Wildlife (ODFW) has submitted two Fisheries Management and Evaluation Plans (FMEP) pursuant to the protective regulations promulgated for Lower Columbia River (LCR) steelhead under the Endangered Species Act (ESA). The FMEPs specify the future management of inland recreational fisheries potentially affecting the LCR steelhead. This document serves to notify the public of the availability of the FMEPs for review and comment before a final approval or disapproval is made by NMFS.

DATES: Written comments on the draft FMEPs must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on June 4, 2001.

ADDRESSES: Written comments and requests for copies of the draft FMEPs should be addressed to Richard Turner, Sustainable Fisheries Division, Hatchery and Inland Fisheries Branch, 525 N.E. Oregon Street, Suite 510, Portland, OR 97232 or faxed to 503–872–2737. The documents are also available on the Internet at *http://www.nwr.noaa.gov/*. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Richard Turner, Portland, OR at phone number 503–736–4737 or e-mail: *rich.turner@noaa.gov*.

SUPPLEMENTARY INFORMATION: This notice is relevant to the Lower Columbia River Steelhead (*Oncorhynchus mykiss*) Evolutionarily Significant Unit (ESU).

Background

ODFW has submitted to NMFS two FMEPs: (1) *Hood River Basin Steelhead, Trout and Warmwater Fisheries, and (2) Lower Columbia River ESU Steelhead, Trout, Sturgeon and Warmwater Fisheries*, for inland recreational fisheries potentially affecting listed adult and juvenile LCR steelhead. These include fisheries occurring in the Hood River; the lower Willamette River and tributaries, including the Clackamas River; the Columbia River tributaries from below the Hood River downstream to the North end of Sauvie Island (near the town of St. Helens, OR); and the Sandy River. The objective of these FMEPs is to harvest known, hatchery-origin steelhead and other fish species in a manner that does not jeopardize the survival and recovery of the LCR steelhead ESU. All fisheries included in these FMEPs will be managed such that only hatchery-origin steelhead that are adipose fin clipped may be retained. Impacts levels to listed LCR steelhead are specified in the FMEPs. Population viability analysis and risk assessments in the FMEPs indicate the extinction risk for listed steelhead under the proposed fishery impact levels to be low. A variety of monitoring and evaluation tasks are specified in the FMEPs to assess the abundance of steelhead, determine fishery effort and catch of steelhead and angler compliance. A review of compliance with the provisions of the FMEP will be conducted by ODFW annually and a comprehensive review to evaluate the effectiveness of the FMEPs will occur at a minimum every 5 years.

ODFW has provided NMFS a draft of the *Conservation Assessment of Steelhead Populations in Oregon*(Assessment) as part of the FMEP submittal. The Assessment provides the population viability analysis and risk assessment developed for ODFW's FMEPs. This Assessment is also available for review and comment.

As specified in the July 10, 2000 ESA 4(d) rule for salmon and steelhead (65 FR 42422), NMFS may approve an FMEP if it meets criteria set forth in § 223.203 (b)(4)(i)(A) through (I). Prior to final approval of an FMEP, NMFS must publish notification announcing its availability for public review and comment.

Authority

Under section 4 of the ESA, the Secretary of Commerce is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. The ESA salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000) specifies categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. The rule further provides that the prohibitions of paragraph (a) of the rule do not apply to activities associated with fishery harvest provided that an FMEP has been approved by NMFS to be in accordance with the salmon and steelhead ESA 4(d) rule (65 FR 42422, July 10, 2000).

Dated: April 30, 2001.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–11322 Filed 5–3–01; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Sri Lanka

April 30, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: May 4, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://www.otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 347/348/847 is being increased for carryforward, and for swing and special shift from Category 359–C/659–C and 647/648.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 69503, published on November 17, 2000.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 30, 2001.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 13, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on May 4, 2001, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
347/348/847	2,129,138 dozen.
359–C/659–C [2]	1,282,727 kilograms.
647/648	1,209,265 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–11212 Filed 5–3–01; 8:45 a.m.

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Army

Final Programmatic Environmental Impact Statement (FPEIS) on Transportable Treatment Systems for Non-Stockpile Chemical Warfare Materiel

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: This FPEIS has been prepared by the Army in compliance with the National Environmental Policy Act of 1969, regulations of the President's Council on Environmental Quality (40 CFR 1500–1508), and Army Regulation 200–2. As the Executive Agent for the DoD, the Army is responsible for destroying that portion of the nation's chemical warfare materiel referred to as "non-stockpile" chemical warfare materiel. This non-stockpile chemical warfare materiel must be destroyed in order to protect human health and

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safety and the environment, comply with an international treaty, and carry out the mandate of the Congress. Non-stockpile chemical warfare materiel covered under this FPEIS includes: (1) Munitions containing chemical warfare agent or industrial chemicals, (2) chemical warfare agents or industrial chemicals contained in other than munitions configurations, and (3) chemical agent identification set items containing small qualities of pure or diluted agent used for training purposes. These items are currently buried and have the potential to be recovered at a number of locations in the United States and its territories and possessions. In addition, materiel has been recovered and is currently stored at several military installations throughout the United States.

DATES: Written public comments received within 30 days of the publication of the Environmental Protection Agency's Notice of Availability will be considered by the Army during final decision making.

ADDRESSES: Questions on the FPEIS or requests for copies of the document should be directed to: Program Manager for Chemical Demilitarization, ATTN: SFAE–CD–NP (Mr. John K. Gieseking/PEIS), Aberdeen Proving Ground, Maryland 21010–4005 or via e-mail at john.gieseking@pmcd.apgea.army.mil.

FOR FURTHER INFORMATION CONTACT: Mr. John Gieseking at (410) 436–3768 or by fax at (410) 436–8737.

SUPPLEMENTARY INFORMATION: The Army has to decide whether it wants to complete development of transportable treatment systems and make the systems available for deployment in the field. The purpose of the FPEIS is to help the Army make this program-level decision with input from the public. The Army's Product Manager for Non-Stockpile Chemical Materiel has analyzed the potential environmental and socioeconomic consequences of two alternative courses of action in the FPEIS with respect to the Army's chemical demilitarization responsibilities. These alternatives are: (1) Completing development and testing of the transportable chemical treatment systems and making them available to be used where needed and appropriate to process non-stockpile chemical warfare materiel. Part of this alternative includes continuing to assess and evaluate the treatment potential of other technologies, methods, and processes, and (2) the no-action alternative, under which the Army would discontinue the development of the transportable treatment systems and continue to the storage of non-stockpile chemical warfare materiel until other suitable technologies are developed.

The Army's preferred alternative based on information in this FPEIS is to complete development of transportable chemical treatment systems and make them available for deployment. Subsequent environmental reviews by the appropriate DoD authorities would address the impacts of actual deployment to specific locations before a decision to deploy would be made. While the no-action alternative was evaluated, it could lead to the United States violating the Chemical Weapons Convention timetable requirements for destroying currently stored non-stockpile chemical warfare materiel.

A series of public meetings were held at nine locations during the public comment period on the Draft PEIS to afford the public the opportunity to provide oral and written comments. These meetings were held in Alexandria, Louisiana; Anchorage, Alaska; Edgewood, Maryland; Huntsville, Alabama; Indianapolis, Indiana; Salt Lake City, Utah; San Antonio, Texas; Santa Rosa, California; and Tampa, Florida. Comments made at these meetings and written comments received during the comment period were used in preparing the FPEIS.

The most frequent concern expressed in public comments was in regard to the possible treatment of secondary wastes from the transportable systems in commercial incinerators. The Army is presently looking into possible options other than commercial incineration for treating wastes from the transportable systems. Implementing the preferred alternative does not preclude developing these non-incineration options.

Copies of the FPEIS can be obtained by calling the Public Outreach and Information Office of the Office of the Program Manager for Chemical Demilitarization at 1–800–488–0648 or (410) 436–3445; fax (410) 436–8737; or e-mail at john.gieseking@pmcd.apgea.army.mil. The FPEIS may be accessed at the following web site: http://www-pmcd.apgea.army.mil/nscmp/index.html.

Dated: April 30, 2001.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA(I&E).

[FR Doc. 01–11293 Filed 5–3–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for the Final Environmental Impact Statement for Shock Trial of WINSTON S. CHURCHILL (DDG 81)

SUMMARY: The Department of the Navy (Navy), pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.*; the regulations implementing NEPA issued by the Council on Environmental Quality (CEQ), 40 Code of Federal Regulations (CFR) Parts 1500–1508; Navy regulations implementing NEPA procedures (31 CFR 775); and Executive Order 12114, "Environmental Effects Abroad of Major Federal Actions"; hereby announces its selection of the area of the Atlantic Ocean offshore of Mayport Naval Station, Jacksonville, Florida for the WINSTON S. CHURCHILL shock trial. NEPA sets out the procedures Federal agencies must follow in analyzing environmental impacts of major Federal actions within U.S. territory. Executive Order 12114 sets out the procedures Federal agencies must follow in analyzing environmental impacts of major Federal actions occurring outside U.S. territory in the global commons or within the territory of another nation. The Navy was the lead agency and the National Marine Fisheries Service (NMFS) was a cooperating agency for the Environmental Impact Statement (EIS).

The WINSTON S. CHURCHILL will be shock tested in a manner consistent with the alternative "Shock Trial At An Offshore Location," described in the Final Environmental Impact Statement (FEIS) as the proposed action. The FEIS analyzed in detail three alternative offshore areas—Mayport, Florida; Norfolk, Virginia; and Pascagoula, Mississippi. The WINSTON S. CHURCHILL will be subjected to a series of up to four 10,000-pound explosive charge detonations sometime between May 1, 2001 and September 30, 2001, conducted at a rate of one per week to allow time to perform detailed inspections of the ship's systems.

The preferred alternative is to conduct a shock trial offshore of Mayport with mitigation to minimize risk to marine mammals and turtles. Although all three test areas meet minimum operational requirements, the Norfolk and Mayport test areas rank higher operationally, whereas the Pascagoula test area is significantly less suitable for supporting the shock trial. Environmentally, the risk of impacts to marine mammals and turtles is higher in the Norfolk test area, and is lower, and about equal, at Mayport and Pascagoula. Therefore, considering all other aspects of the three candidate test areas to be about the same, conducting the shock trial at Mayport would meet the project purpose and need, satisfy operational requirements, and minimize environmental impacts. This Record of Decision leaves the selection of a single primary and two secondary test sites within the Mayport test area to be made based on aerial surveys of marine mammals and turtles done one to two days prior to the first detonation. This will ensure that the final test site selected for the shock trial poses the least possible risk to the marine environment.

Background

WINSTON S. CHURCHILL (DDG 81) is the third ship in a new flight of 23 ARLEIGH BURKE (DDG 51) class guided missile destroyers referred to as the Flight IIA ships. Each new class of ship or major upgrade must be tested to assess the survivability of the hull and the ship's systems and the capability of the ship to protect the crew after a near miss from an underwater explosion.

Section 2366 of title 10, United States Code (10 USC 2366) requires realistic survivability testing of a covered weapon system to ensure the vulnerability of that system under combat conditions is known. Realistic survivability testing means testing for the vulnerability of the ship in combat by firing munitions likely to be encountered in combat with the ship configured for combat, commonly referred to as "Live Fire Test and Evaluation" (LFT&E). The Flight IIA destroyer is a covered system because it is a major weapon system upgrade and the Navy established an approved LFT&E program to complete the vulnerability assessment of Flight IIA ships as required by 10 USC 2366. The LFT&E program includes three major areas that together provide for a complete and comprehensive evaluation of the survivability of Flight IIA ships in a near miss, underwater explosion environment. These areas are computer modeling and analysis, component testing, and an at-sea ship shock trial. Computer modeling and component tests provide valuable information regarding the survivability of the ship. However, only the at-sea shock trial would provide the real-time data necessary to fully assess ship survivability. A shock trial is a series of underwater detonations that propagate a shock wave through the ship's hull under deliberate and controlled conditions. A shock trial assesses a ship's survivability and vulnerability in combat situations by simulating near misses from underwater explosions. The Navy can then measure the effect of the shock wave on the hull, equipment, and personal safety features. This information is used to improve the shock resistance of the ship and follow-on ships of the class, thereby reducing the risk of crew injury.

Alternatives

NEPA requires Navy to evaluate a reasonable range of alternatives for implementing a proposed Federal action. The alternatives evaluated in the FEIS were no-action and conducting a shock trial at one of three potential offshore locations. Alternative offshore areas for shock testing were compared from operational and environmental perspectives. A preferred alternative was identified based on these comparisons.

Under the "no action" alternative only the computer modeling and component testing already completed under the LFT&E would be used to evaluate survivability. The no action alternative was determined to not be a reasonable alternative because it would not provide the information and data necessary to assess the survivability of the ship as required by 10 USC 2366. Therefore the "no action" alternative was not included in the comparative analysis of alternatives.

The EIS analysis focused on alternative offshore locations for a shock trial. The WINSTON S. CHURCHILL will be homeported on the East coast. Therefore, based on PERSTEMPO (Navy personnel tempo regulations requiring a ship to spend a day in homeport for every day away from homeport for crew quality of life and efficiency) considerations, offshore areas other than the East and Gulf coasts were eliminated from consideration. The Navy screened possible East Coast and Gulf of Mexico shock testing areas according to the following operational criteria: PERSTEMPO; proximity to a Naval Station with homeported ships; proximity to a Naval Air Station or other military airbase for aircraft and helicopters; proximity to a Naval Station support facility; proximity to a ship repair facility; proximity to an ordnance loading station; ship traffic; and weather and sea state. A detailed analysis concluded that three test areas could operationally support the shock trial—Mayport, Florida; Norfolk, Virginia; and Pascagoula, Mississippi. Operationally, the Norfolk and Mayport test areas rank higher and are about equal, whereas the Pascagoula test area ranks lower and is significantly less suitable for supporting the shock trial.

Potential environmental impacts of conducting a shock trial at the Mayport, Norfolk, and Pascagoula test areas were analyzed in the Environmental Consequences section of the FEIS. Most environmental impacts of the shock trial would be similar at Mayport, Norfolk, or Pascagoula. However, the three areas differ significantly with respect to potential impacts on marine mammals and sea turtles. Overall, based on the best available scientific data, the risk of mortality and injury to marine mammals and turtles would be higher at Norfolk and lower, and about equal, at Mayport and Pascagoula. Considering all components of the physical, biological, and socioeconomic environment, potential impacts would be less at Mayport or Pascagoula than at Norfolk.

Environmental Impacts

Potential environmental impacts of conducting a shock trial at the Mayport, Norfolk, and Pascagoula test areas are analyzed in the FEIS. The analysis demonstrated that most environmental impacts of the shock trial would be less than significant and were similar at Mayport, Norfolk, or Pascagoula. However, the three areas differ with respect to potential significant impacts on marine mammals and sea turtles.

Potentially significant direct impacts on marine mammals include mortality, injury, and disruption of hearing-based behaviors. Most marine mammals would be detected during pre-detonation aerial surveys, surface observations, and passive acoustic monitoring, minimizing the risk of death or injury. Application of mitigation measures would further reduce risk by allowing selection of a test site with low densities of marine mammals within each of the three test areas. Even with these mitigation measures, there are differences in risk levels among the three test areas due to differences in area-wide marine mammal densities and species composition. Overall, the risk to marine mammals would be higher at Norfolk and lower and about equal at Mayport and Pascagoula.

Potential impacts to sea turtles also include mortality, injury, and disruption of hearing-based behaviors. At Mayport, Norfolk, or Pascagoula, mitigation methods would result in selection of a test site with low densities of sea turtles. However, there are differences in risk among the three areas due to differences in sea turtle densities. Overall, the results indicate that the risk to turtles would be higher at Norfolk

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and lower but about equal at Mayport and Pascagoula.

Considering all components of the physical, biological, and socioeconomic environment, potential impacts would be less at Mayport or Pascagoula than at Norfolk.

Mitigation

A detailed Marine Mammal and Sea Turtle Protection/Mitigation Plan is presented in the FEIS. The plan includes the same type of mitigation and monitoring efforts that were used successfully during the shock trial of USS JOHN PAUL JONES in 1994 off the coast the southern California where marine mammal population densities are significantly greater than at the Mayport, Norfolk, or Pascagoula test areas. No deaths or injuries of marine mammals were detected during the USS JOHN PAUL JONES shock trial. The mitigation plan for the shock trial would avoid impacts and minimize risk to marine mammals and sea turtles in three ways:

Site selection. Initial, general site selection would be based on operational requirements and surveys. Within the test area selected for the shock trial, aerial surveys would be conducted and satellite imagery would be analyzed to select a small test site having low densities of marine mammals and turtles.

Pre-detonation monitoring. Prior to each detonation, aerial and shipboard observers would search for marine mammals and turtles at the selected test site. Passive acoustic surveys would also be used to detect marine mammal calls. If any marine mammal or sea turtle were detected within the Safety Range (a 2 nm radius around the detonation point), testing would be postponed. Testing would also be postponed if large.

Sargassum rafts, debris lines, or jellyfish concentrations (indicators that turtles may be present) were detected in the Safety Range, or if flocks of seabirds or large fish schools were detected within 1 nm of the detonation point. Postponement would also occur in certain circumstances when a marine mammal or turtle is detected in a Buffer Zone extending from 2 to 3 nm from the detonation point. Detonation would not occur until monitoring indicated that the Safety Range is clear of detectable marine mammals, sea turtles, large *Sargassum* rafts and debris lines, and large concentrations of jellyfish.

Post-detonation monitoring. After the explosion, aerial and shipboard observers would survey the test site. A Marine Animal Recovery Team led by a marine mammal veterinarian would document and attempt to recover any dead animals and monitor any animals that appear to be injured. If the survey showed that marine mammals or turtles were killed or injured or if any marine mammals or turtles are detected in the Safety Range immediately following a detonation, testing would be halted until procedures for subsequent detonations could be reviewed and changed as necessary. Communications with stranding network personnel would be maintained throughout the shock trial period.

Coordination and Consultation with the NMFS

Because the NMFS has jurisdiction by law with respect to issues related to endangered species and marine mammals, the NMFS acted as a cooperating agency on the EIS. In addition to a review and comment role, the NMFS had two regulatory roles relative to the proposed shock trail. First, the NMF is responsible for administering the Endangered Species Act as it applies to listed sea turtles and marine mammals. The DEIS served as the Biological Assessment which the Navy submitted to the NMFS, requesting formal consultation under Section 7 of the Endangered Species Act (ESA), (16 USC 1531 *et seq.*). The NMFS subsequently issued a Biological Opinion, dated October 10, 2000, which completed the consultation process under ESA. The NMFS also has a regulatory role under the Marine Mammal Protection Act (MMPA) (16 USC 1361 *et seq.*) When the DEIS was published, the Navy submitted a separate application to the NMFS for an "incidental take authorization" under section 101(a)(5)(A) of the MMPA. The NMFS published a Proposed Rule in the **Federal Register** on December 12, 2000 (65 FR 77546). The Proposed Rule specified mitigation, monitoring, and reporting requirements for the shock trial. A Final Rule must be issued by NMFS before the shock trial can proceed.

Comments Received on the FEIS

After the FEIS was distributed to the public for a 30-day review period ending on March 26, 2001, the Navy received one comment letter. Environmental Protection Agency commented that with properly executed mitigation as discussed in the EIS, that Mayport represents the best compromise among the three testing locations.

Conclusion

Shock testing the WINSTON S. CHURCHILL in an area offshore of Mayport, Florida is the alternative that best meets the project purpose and need, satisfies operational criteria, and minimizes environmental impacts. Potentially significant direct impacts resulting from the test include mortality, injury, and acoustic harassment of marine mammals and sea turtles. While numbers have been calculated to define the potential lethal, injurious, and harassment take that might occur, it is expected that the mitigation and monitoring program will minimize the risk to marine mammals and sea turtles.

The "No Action" alternative would avoid all environmental impacts of a shock trial and is the environmentally preferred alternative. It does not, however, support the development of the best assessment of the survivability characteristics of the ship.

Dated: April 27, 2001.

Paul A. Schneider,

Assistant Secretary of the Navy, (Research, Development and Acquisition) (Acting).

[FR Doc. 01–11270 Filed 5–3–01; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 3, 2001.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 30, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: Field Test Activities and the 2003–2004 Full-Scale Schools and Staffing Survey (SASS): Local Educational Agency (LEA), Principal, School, Teacher, Library.

Frequency: 2 series of field tests and the full-scale SASS.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 2,764.

Burden Hours: 2,232.

Abstract: The National Center for Education Statistics (NCES) will use the field test to assess data collection procedures that are planned for the next full-scale SASS in 2003–2004. Policymakers, researchers and practitioners at the national, state and local levels use SASS data which are representative at the national and state levels. Respondents include public and private school principals, teachers and school and LEA staff persons.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at at her internet address Kathy.Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–11203 Filed 5–3–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by May 7, 2001. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before July 3, 2001.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: April 30, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New.

Title: School Renovation, IDEA, and Technology Grant Application.

Abstract: ED will use the information collected through this application to award grants to approximately 52 State educational agencies that will conduct competitive grant processes to award subgrants to eligible local educational agencies (LEAs). The information will also be used to describe to the Congress and the public how these grants are being used.

Additional Information: The Department of Education is requesting emergency clearance from OMB for the School Renovation, Individuals with Disabilities Education Act (IDEA), and Technology Grant Application due to an unanticipated event and possibly causing public harm. Since the passage of the FY 2001 Appropriations Act with this program's enactment, the Department has been meeting with interested groups and with contact persons in the States to determine how

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best to implement the new program. Funds appropriated for these grants will become available on July 1, 2001. Emergency approval is requested by May 7, 2001 so that States may start their subgrant process as soon as possible and some grantees may have their awards in time to undertake school renovation and repair projects during the summer. Summer is the primary season for LEAs to undertake school facility renovation projects, when schools are not otherwise in use. Failure to make awards on this schedule will likely cause substantial harm to some eligible LEAs since they may be forced to delay their school renovation projects until the following year.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 52; Burden Hours: 104.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov, or should be faxed to 202–708–9346.

Comments regarding burden and/or the collection activity requirements, contact Kathy Axt at her internet address Kathy.Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–11204 Filed 5–3–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 4, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 30, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Extension.

Title: Centers for International Business Education Program.

Frequency: Once every four years.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 50.

Burden Hours: 750.

Abstract: These programs can be used to become nationally recognized centers for the teaching of improved business techniques, strategies and methodologies that emphasize the international context in which business is transacted.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe.Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–11202 Filed 5–3–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Supplement to the Draft Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada

AGENCY: Department of Energy (DOE).

ACTION: Notice of availability and opportunity for comment.

SUMMARY: The Department of Energy (DOE) announces the availability of a Supplement to the Draft Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada (Draft EIS) (DOE/EIS–0250D–S). The Department has prepared this Supplement in accordance with the Nuclear Waste Policy Act of 1982, as amended (NWPA), the National Environmental Policy Act of 1969, as amended (NEPA), the Council on Environmental Quality regulations that implement the procedural provisions of NEPA, and the DOE procedures implementing NEPA. The Council on Environmental Quality NEPA regulations state that an agency may prepare a supplement when it determines that the purposes of NEPA will be furthered by doing so. As anticipated, design enhancements of the proposed repository at Yucca Mountain have evolved since DOE issued the Draft EIS in August 1999. Accordingly, DOE has issued a Supplement to the Draft EIS to address the most recent information on design evolution, including enhancements in design details and operating modes, and associated potential environmental impacts. DOE will provide the public an opportunity to comment on the Supplement and conduct hearings on the Supplement, as described below.

DATES: Comments on the Supplement to the Draft EIS will be accepted during a 45-day public comment period, which ends on June 25, 2001. DOE will consider comments submitted after June 25, 2001, to the extent practicable.

ADDRESSES: DOE will conduct public hearings on the Supplement in Amargosa Valley, Las Vegas, and Pahrump, Nevada. Public hearing locations and further details are provided below in this Notice under "Public Hearings and Invitation to Comment."

Written comments and requests for further information on the Supplement to the Draft EIS or the public hearings, and requests for copies of the document and included CD–ROM should be directed to: Dr. Jane Summerson, EIS Document Manager, M/S 010, U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office, P.O. Box 30307, North Las Vegas, Nevada 89036–0307, Telephone 1–800–967–3477, Facsimile 1–800–967–0739.

Written comments via facsimiles should include the following identifier: "Yucca Mountain Supplement to the Draft EIS." Addresses and locations where the Supplement will be available for public review are listed in this Notice under "Availability of the Supplement to the Draft EIS."

Electronic Format: Internet

Written comments on or requests for copies of the document may also be submitted over the Internet via the Yucca Mountain Project website at *http://www.ymp.gov*, under the listing "Environmental Impact Statement."

FOR FURTHER INFORMATION CONTACT: Dr. Jane Summerson, EIS Document Manager, M/S 010, U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office, P.O. Box 30307, North Las Vegas, Nevada 89036–0307, Telephone 1–800–967–3477, Facsimile 1–800–967–0739.

For general information on the DOE NEPA process, contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, Telephone 1–202–586–4600, or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION: In August 1999, DOE issued the Draft Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada (Draft EIS), in accordance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Nuclear Waste Policy Act, as amended (42 U.S.C. 10101 *et seq.*). The U.S. Environmental Protection Agency (EPA) issued a Notice of Availability (64 FR 44217) of the Draft EIS on August 13, 1999, initiating a public comment period that ended on February 28, 2000. During the 199-day comment period, DOE held 21 public hearings across the United States. The Draft EIS describes the Proposed Action to construct, operate and monitor, and eventually close a geologic repository for the disposal of spent nuclear fuel and high-level radioactive waste at Yucca Mountain. The Draft EIS also describes the potential environmental impacts associated with the Proposed Action.

For the Draft EIS, DOE based the analysis on the repository design described in the Viability Assessment of a Repository at Yucca Mountain. The Draft EIS discussed ongoing evaluations that could result in modifications to that design.

As DOE anticipated in the Draft EIS, repository design has continued to evolve. Although the fundamental aspects of the repository design have not changed from those discussed in the Draft EIS, design options and operating modes (ways in which to operate the repository) are being explored to reduce uncertainties and improve long-term repository performance and operational safety and efficiency. DOE has documented the evolution to date of its design efforts in the Yucca Mountain Science and Engineering Report: Technical Information Supporting Site Recommendation Consideration (YMS&ER), which describes the current design (which the Supplement calls the S&ER flexible design) and a range of possible repository operating modes. The YMS&ER also summarizes current technical information that the Secretary of Energy will use to determine whether to recommend approval of the Yucca Mountain site to the President for development as a repository.

Evaluations are underway to analyze the effect of various operating modes on repository performance. The flexible design discussed in the YMS&ER includes the ability to operate the repository in a range of operating modes that address higher and lower temperatures and associated humidity conditions. The higher-temperature operating mode means that at least a portion of the emplacement drift rock wall would have a maximum temperature above the boiling point of water at the elevation of the repository [96°C (205°F)]. Examples of the lower-temperature operating modes include conditions under which the drift rock wall temperatures would be below the boiling point of water, and conditions under which the waste package surface temperature would not exceed 85°C (185°F). To bound the impact analysis, DOE considered conditions under which the rock wall temperatures would be above the boiling point of water, and conditions under which waste package surface temperatures would not exceed 85°C.

DOE prepared the Supplement to update information presented in the Draft EIS. The Supplement evaluates potential environmental impacts that could occur, based on the design options and range of possible operating modes presented in the YMS&ER. The Supplement compares the impacts associated with the S&ER flexible design to the impacts presented in the Draft EIS.

The basis for the analytical scenarios presented in the Draft EIS was the amount of commercial spent nuclear fuel and its associated thermal output or load that DOE would emplace per unit area of the repository (called areal mass loading). In the Draft EIS, DOE evaluated three thermal load scenarios including high thermal load, a relatively high emplacement density of commercial spent nuclear fuel (85 metric tons of heavy metal (MTHM) per acre), intermediate thermal load (60 MTHM per acre), and low thermal load (25 MTHM per acre). The analytical scenarios described in the Draft EIS were not intended to place a limit on the choices among alternative designs because DOE expected that the repository design would continue to evolve. Rather, DOE selected these scenarios to represent the range of foreseeable design features and operating modes and to ensure that it considered the associated range of potential environmental impacts.

In contrast to focusing on thermal loads, the S&ER flexible design focuses on controlling the temperatures of the rock between the drifts, the waste package surfaces, and the drift walls to meet thermal management goals established for possible repository operating modes. To meet these thermal goals, the S&ER flexible design uses a linear thermal load (heat output per unit length of the emplacement drift) and emplaces waste packages relatively

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closer together than the Draft EIS design. Linear thermal load is expressed in terms of kilowatts per meter.

As with the thermal load analytical scenarios analyzed in the Draft EIS, the range of operating modes under the S&ER flexible design is representative of the range of foreseeable future design features and operating modes. The conservative estimates of the associated potential environmental impacts in the Supplement encompass or bound the potential impacts of foreseeable future repository design evolution.

The Supplement focuses on modifications to the repository design and operating modes addressed in the Draft EIS; it does not analyze aspects of the Proposed Action that have not been modified, such as the transportation of spent nuclear fuel and high-level radioactive waste, or the No-Action Alternative. DOE will address all aspects of the Proposed Action and the No-Action Alternative in the Final EIS. Because repository design has evolved from that considered in the Draft EIS, the Final EIS will evaluate only the S&ER flexible design, including the reasonable range of operating modes, and any enhancements to the flexible design developed as the result of ongoing analyses. DOE invites comments on its intention not to address the Draft EIS design in the Final EIS. DOE will respond to comments on the Draft EIS and on the Supplement in the Final EIS.

Public Hearings and Invitation to Comment

The public is invited to provide oral and written comments on the Supplement to the Draft EIS during the public comment period that ends on June 25, 2001. DOE will consider comments submitted during the comment period in preparation of the Final EIS. Comments submitted after June 25, 2001 will be considered to the extent practicable. DOE will hold public hearings to receive oral and written comments from members of the public at the following times and locations:

May 31, 2001: Longstreet Inn & Casino, Highway 373, Amargosa Valley, Nevada 89020; 5:00 pm–9:00 pm—Poster Session, 6:00 pm–9:00 pm—Hearing

June 5, 2001: Suncoast Hotel & Casino, 9090 Alta Drive, Las Vegas, Nevada 89144; 5:00 pm–9:00 pm—Poster Session, 6:00 pm–9:00 pm—Hearing

June 7, 2001: Bob Ruud Community Center, 150 North Highway #160, Pahrump, Nevada 89048; 5:00 pm–9:00 pm—Poster Session, 6:00 pm–9:00 pm—Hearing

This information will be available on the Yucca Mountain website at (*http://www.ymp.gov*) and on the toll-free information line at 1–800–967–3477.

Each of the public hearings will include a brief session in which an overview of the Supplement will be presented, a general question-and-answer session, and an opportunity to provide comments for the record. Members of the public who plan to present oral comments are asked to register in advance by calling 1–800–967–3477.

Availability of the Supplement to the Draft EIS

Copies of the Supplement are being distributed to Federal, State, and Indian tribal representatives, and other organizations and individuals who have indicated an interest in the EIS process. Copies of this document may be requested by calling 1–800–967–3477 or over the Internet via the Yucca Mountain Project website (*http://www.ymp.gov*). Both the Supplement and the Draft EIS will be available via the Internet on the DOE NEPA website at (*http://tis.eh.doe.gov/nepa*), under the listing DOE NEPA Analyses, or on the Yucca Mountain Project web site listed above. The availability of the Yucca Mountain Science and Engineering Report will be announced in a separate Federal Register Notice. That report will be available or can be requested on the Yucca Mountain Project website (*http://www.ymp.gov*) or by calling 1–800–967–3477.

Copies of references considered in preparation of the Supplement and Draft EIS, including the Yucca Mountain Science and Engineering Report, will be available at the following Public Reading Rooms: University of Nevada—Las Vegas, Nevada; University of Nevada—Reno, Nevada; Beatty Yucca Mountain Science Center, Nevada; Pahrump Yucca Mountain Science Center, Nevada; and the DOE Headquarters Office in Washington, D.C. Addresses of these Public Reading Rooms and of other Public Reading Rooms and libraries where the Supplement and the Draft EIS will be available for public review are listed below.

Public Reading Rooms

Inyo County—Contact: Andrew Remus; (760) 878–0447; Inyo County Yucca Mountain Repository Assessment Office; 168 North Edwards St.; Post Office Drawer L; Independence, CA 93526.

Oakland Operations Office—Contact: Laura Martinez; (510) 637–1762; U.S. Department of Energy Public Reading Room; EIC; 1301 Clay St., Room 700N; Oakland, CA 94612–5208.

National Renewable Energy Laboratory—Contact: John Horst; (303) 275–4709; Public Reading Room; 1617 Cole Blvd.; Golden, CO 80401.

Rocky Flats Public Reading Room—Contact: Gary Morrell; (303) 469–4435; College Hill Library; 3705 112th Ave. B121; Westminster, CO 80030.

Headquarters Office—Contact: Carolyn Lawson; (202) 586–3142; U.S. Department of Energy; Room 1E–190, Forrestal Building; 1000 Independence Ave., SW; Washington, DC 20585.

Atlanta Support Office—Contact: Nancy Mays/Laura Nicholas; (404) 347–2420; Department of Energy; Public Reading Room; 730 Peachtree St., Suite 876; Atlanta, GA 30308–1212.

Southeastern Power Administration—Contact: Joel W. Seymour; (706) 213–3800; U.S. Department of Energy; Reading Room; Samuel Elbert Building; 2 South Public Square; Elberton, GA 30635–2496.

Boise State University Library—Contact: Adrien Taylor; (208) 426–1737; Government Documents; 1910 University Dr.; P.O. Box 46; Boise, ID 83707–0046.

Idaho Operations Office—Contact: Brent Jacobson; (208) 526–1144; Public Reading Room; 1776 Science Center Dr.; Idaho Falls, ID 83402.

Chicago Operations Office—Contact: John Shuler; (312) 996–2738; Document Department; University of Illinois at Chicago; 801 South Morgan St.; Chicago, IL 60607.

Strategic Petroleum Reserve Project Management Office—Contact: Deanna Harvey; (504) 734–4316; U.S. Department of Energy; SPRPMO/SEB Reading Room; 850 Commerce Road, East; New Orleans, LA 70123.

Lander County—Contact: Mickey Yarbo; (775) 635–2882; 315 S. Humboldt St.; Battle Mountain, NV 89820.

Beatty Yucca Mountain Science Center—Contact: Marina Anderson; (775) 553–2130; 100 North E Ave.; Beatty, NV 89003.

Lincoln County—Contact: Jason Pitts; (775) 726–3511; Box 1068; 176 Clover St.; Caliente, NV 89008.

Nevada State Clearinghouse—Contact: Heather Elliot; (775) 684–0209; Department of Administration; 209 E. Musser Street, Room 200; Carson City, NV 89701.

White Pine County—Contact: Josie Larson; (775) 289–2033; 959 Campton St.; Ely, NV 89301.

Eureka County—Contact: Leonard Fiorenzi; (775) 237–5372; 701 S. Main St.; (P.O. Box 714); Eureka, NV 89316.

Churchill County—Contact: Alan Kalt; (775) 423–5136; 155 North Taylor St., Suite 182; Fallon, NV 89046–2478.

Esmeralda County—Contact: George McCorkell; (775) 485–3419; Repository Oversight Program; 233 Crook St.; P.O. Box 295; Goldfield, NV 89316.

Mineral County—Contact: Judy Shankle; (775) 945–2484; First & A Streets; (*Hand Deliverables Only*); (P.O. Box 1600); Hawthorne, NV 89415.

Clark County—Contact: Dennis Bechtel; (702) 455–5178; 500 South Grand Central Parkway #3012; (P.O. Box 551751); Las Vegas, NV 89155–1751.

Las Vegas, Nevada—Contact: Reference Desk; (702) 895–3409; University of Nevada Las Vegas; James R. Dickinson Library; Government Publications; 4505 Maryland Parkway; Las Vegas, NV 89154–7013.

Las Vegas Yucca Mountain Science Center—Contact: Claire Whetsel; (702)295–1312; 4101-B Meadows Lane; Las Vegas, NV 89107.

Nye County—Contact: Les Bradshaw; (775) 727–7727; c/o Department of Natural Resources and Federal Facilities; 1210 E. Basin Ave., Suite 6; Pahrump, NV 89048.

Pahrump Yucca Mountain Science Center—Contact: John Pawlak; (775) 727–0896; 1141 South Highway 160; Pahrump NV, 89041.

Reno, Nevada—Contact: Kathie Brinkerhoff; (775) 784–6500; University of Nevada, Reno; The University of Nevada Libraries; Business and Government Information Center M/S 322; 1664 N. Virginia St.; Reno, NV 89557–0044.

Albuquerque Operations Office—Contact: Dan Berkley; (505) 277–7180; U.S. DOE Contract Reading Room; University of New Mexico; Zimmerman Library; Albuquerque, NM 87131–1466.

Fernald Area Office—Contact: Diane Rayer;(513)648–7480; U.S. Department of Energy; Public Information Room;10995 Hamilton-Cleves Highway M/S 78; Harrison, OH 45030.

Southwestern Power Administration—Contact: Marti Ayres; (918) 595–6609; U.S. Department of Energy; Public Reading Room; 1 West 3rd, Suite 1600; Tulsa, OK 74103.

Bonneville Power Administration—Contact: Bill Zimmerman/Darlene Freestad; (503) 230–7334; U.S. Department of Energy; BPA–C–ACS–1; 905 NE 11th St.; Portland, OR 97232.

Pittsburgh Energy Technology Center—Contact: Ann C. Dunlap; (412) 386–6167; U.S. Department of Energy; Building 922/M210; Cochrans Mill Rd.; Pittsburgh, PA 15236–0940.

Savannah River Operations Office—Contact: Pauline Connell; (803) 725–2497; Gregg-Graniteville Library; University of South Carolina-Aiken; 171 University Parkway; Aiken, SC 29801.

University of South Carolina—Contact: William Suddeth; (803) 777–4841; Thomas Cooper Library; Documents/Microforms Department; Green and Sumter Streets; Columbia, SC 29208.

Oak Ridge Operations Office—Contact: Walter Perry; (865) 241–4780; U.S. Department of Energy; Public Reading Room; P.O. Box 2001; American Museum of Science and Energy; 230 Warehouse Rd.; Oak Ridge, TN 37831.

Southern Methodist University—Contact: Stephen Short; (214) 768–2561; Central Union Libraries Fondren Library; Government Information; Airline and McFarland Streets; Dallas, TX 75275–0135.

University of Utah—Contact: Walter Jones; (801) 581–8863; Marriott Library Special Collections; 295 South 15th East; Salt Lake City, UT 84112–0860.

Richland Operations Center—Contact: Terri Traub; (509) 372–7443; U.S. Department of Energy; Public Reading Room; 2770 University Drive; Room 101L; PO Box 999; Mailstop H2–53; Richland, WA 99352.

Issued in Washington, DC, April 27, 2001.

Lake Barrett,

Acting Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 01–11275 Filed 5–3–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Idaho Operations Office; Industry Materials of the Future (Knowledge Base or Core Activities)

AGENCY: Idaho Operations Office, DOE.

ACTION: Notice of availability of financial assistance solicitation.

SUMMARY: The U.S. Department of Energy, Idaho Operations Office is seeking applications for cost-shared research and development of materials or materials processing methods, in accordance with the Program Plan for the Industrial Materials for the Future Program, available at www.oit.doe.gov. This will be a national effort to research, design, develop, engineer, and test new and improved materials to achieve improvements in energy efficiency, emissions and waste reduction, productivity, product quality, and global competitiveness. Proposals are solicited from universities, and not-for-profit research institutes for research and development leading to new materials and processing methods for eventual use in the Industries of the Future. Universities, and not-for-profits are required to form partnerships for technology development and to work with industry to ensure that core activities will ultimately lead to successful applications in industry. National Labs may partner in these activities but cannot be the prime recipient. Multi-partner collaborations between industry, university, and National Laboratory participants are encouraged. National laboratories will not be eligible for an award under this solicitation.

DATES: The issuance date of Solicitation Number DE–PS07–01ID14123 will be on April 26, 2001. The deadline for receipt of applications will be approximately on May 31, 2001.

ADDRESSES: The solicitation in its full text will be available on the Internet at the following URL address: *http://www.id.doe.gov/doeid/PSD/proc-div.html* or *http://e-center.doe.gov*.

Applications should be submitted to: Seb Klein, Procurement Services Division, U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, Mail Stop 1221, Idaho Falls, Idaho 83401–1563.

FOR FURTHER INFORMATION CONTACT: Seb Klein, Contract Specialist, kleinsm@id.doe gov.

SUPPLEMENTARY INFORMATION: The statutory authority for the program is the Federal Non-Nuclear Energy Research and Development Act of 1974 (Pub. L. 93–577).

The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 81.086.

Issued in Idaho Falls.

R.J. Hoyles,

Director, Procurement Services Division.

[FR Doc. 01–11274 Filed 5–3–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC01–93–000]

Edison Mission Energy on Behalf of Its Public Utility Subsidiaries; Notice of Filing

April 30, 2001.

Take notice that on April 30, 2001, Edison Mission Energy (EME), on behalf of its public utility subsidiaries, tendered for filing an Application pursuant to Section 203 of the Federal Power Act for approval of a transaction whereby EME's stock will be transferred to a new company which will be a subsidiary of The Mission Group. The purpose of the proposed transaction is to permit Edison International (EIX) to

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obtain the financing needed to meet its near-term obligations. The transaction proposed in this Application is intended to permit the unregulated subsidiaries to obtain funds needed to assist the parent. The filing relates to the possible bankruptcy of SCE and/or EIX. Applicants further request that the Commission issue an order approving this Application by no later than May 14, 2001.

Edison Mission Energy served a copy of the Application on the California Public Utilities Commission and on California Governor Gray Davis.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before May 10, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http:/./www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–11252 Filed 5–3–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG01–198–000, et al.]

Ameren Energy Generating Company, et al.; Electric Rate and Corporate Regulation Filings

April 26, 2001.

Take notice that the following filings have been made with the Commission:

1. Ameren Energy Generating Company

[Docket No. EG01–198–000]

Take notice that on April 20, 2001, Ameren Energy Generating Company (AEG), One Ameren Plaza, 1901 Chouteau Plaza, P.O. Box 66149, St. Louis, Missouri, 63166–6149, filed with the Federal Energy Regulatory Commission an application for determination of continuing exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

AEG states that effective as April 10, 2001, it acquired the Kinmundy Unit No. 1, a 115 MW dual fuel (oil and natural gas) combustion turbine generator located at Kinmundy, Illinois. AEG states that all of the electric energy from the facility is and will be sold at wholesale.

Comment date: May 17, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Citizens Communications Company

[Docket No. ER00–3211–003, OA01–5–000]

Take notice that on April 16, 2001, in compliance with the Commission's March 16, 2001 order in this proceeding, Citizens Communications Company (Citizens) tendered for filing revised and original tariff sheets which provide updated standards of conduct governing Citizens' Vermont Electric Division (VED). Citizens also filed a revised VED organization chart and job descriptions. Citizens made several changes to reflect updates to the standards of conduct, organization chart, and job descriptions.

A copy of this filing has been served on the service list in this docket, and on each of Citizens' wholesale customers, as identified in the Certificate of Service attached to the filing. In addition, a copy is available for inspection at the offices of Citizens' VED during regular business hours.

Comment date: May 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. MidAmerican Energy Company

[Docket No. ER01–985–002]

Take notice that on April 23, 2001, MidAmerican Energy Company (MidAmerican), 401 Douglas Street, P.O. Box 778, Sioux City, Iowa 51102, tendered for filing Order 614 a Network Integration Transmission Service Agreement and Network Operating Agreement, designated as Substitute 1st Revised Service Agreement No. 53, entered into by MidAmerican and the City of Sergeant Bluff, Iowa, dated December 29, 2000. The Agreement replaces the Network Integration Transmission Service Agreement and Network Operating Agreement dated April 7, 1997, between the parties.

MidAmerican requests an effective date of January 1, 2001 for the Agreement and seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on the Iowa Utilities Board and the City of Sergeant Bluff, Iowa.

Comment date: May 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Canal Electric Company

[Docket No. ER01–1134–001]

Take notice that on April 23, 2001, Canal Electric Company (Canal) tendered for filing the Amended and Restated Seventh Amendment to the Power Contract between Canal and its retail affiliates Cambridge Electric Light Company and Commonwealth Electric Company (Canal Rate Schedule FERC No. 33, the Seabrook Power Contract). The Amended and Restated Seventh Amendment complies with the Federal Energy Regulatory Commission's Order Accepting for Filing and Suspending Amendment, dated March 29, 2001, which accepted, subject to refund, Canal's filing for effectiveness as of April 1, 2001, and required Canal to revise the Amendment's schedule of annual decommissioning expenses to reflect Canal's current obligation as determined by the New Hampshire Nuclear Decommissioning Financing Committee.

Comment date: May 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Consumers Energy Company

[Docket No. ER01–1285–001]

Take notice that on April 23, 2001 Consumers Energy Company (Consumers) tendered for filing a First Revised Service Agreement No. 52 designated as required by Section 35.9 of the Commission's rules, as directed by the Commission in its April 6, 2001 Order in this docket.

The Service Agreement's effective date is February 5, 2001. Copies of the filing were served upon those on the service list in this proceeding and upon the Customer.

Comment date: May 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. New York Independent System Operator, Inc.

[Docket Nos. ER01–1740–001]

Take notice that on April 13, 2001, the New York Independent System Operator, Inc. (NYISO) tendered for filing revisions to its Market Administration and Control Area Services Tariff (Services Tariff) in order to correct improperly numbered sheets in its April 5, 2001 filing in the above-captioned docket. The NYISO has requested an effective date of May 1, 2001 for the filing.

The NYISO has served a copy of this filing upon parties on the official service lists maintained by the Commission for the above-captioned dockets.

Comment date: May 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Arizona Public Service Company

[Docket No. ER01–1841–000]

Take notice that on April 23, 2001, Arizona Public Service Company (APS) tendered for filing Service Agreements to provide Long-Term Firm Point-to-Point Transmission Service to Arizona Electric Power Cooperative under APS' Open Access Transmission Tariff.

A copy of this filing has been served Arizona Electric Power Cooperative, and the

Comment date: May 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Northern Indiana Public Service Company

[Docket No. ER01–1838–000]

Take notice that on April 20, 2001, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Energy USA–TPC Corp. (Energy USA).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Non-Firm Point-to-Point Transmission Service to Energy USA pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of April 21, 2001.

Copies of this filing have been sent to Energy USA, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Comment date: May 11, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power & Light Company

[Docket No. ER01–1840–000]

Take notice that on April 23, 2001, Florida Power & Light Company (FPL) tendered for filing a Service Agreement with Cargill-Alliant, LLC for service pursuant to Tariff No. 1 for Sales of Power and Energy by Florida Power & Light and a Service Agreement with Calpine Energy Service, L.P. for service pursuant to FPL's Market Based Rates Tariff. FPL requests that the Service Agreements be made effective on April 13, 2001.

Comment date: May 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Illinois Power Company

[Docket No. ER01–1842–000]

Take notice that on April 23, 2001, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 65251–2200, tendered for filing the First Revised Amendment to Service Agreement for Network Integration Transmission Service entered into with MidAmerican Energy Company pursuant to Illinois Power's Open Access Transmission Tariff. Illinois Power requests an effective date of March 13, 2001 for the First Amendment and accordingly seeks a waiver of the Commission's notice requirement. Illinois Power states that a copy of this filing has been sent to MidAmerican Energy Company.

Comment date: May 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Illinois Power Company

[Docket No. ER01–1843–000]

Take notice that on April 23, 2001, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 65251–2200, tendered for filing a Firm Long Term Point to Point Transmission Service Agreement entered into with Entergy Power Marketing Corporation pursuant to Illinois Power's Open Access Transmission Tariff. Illinois Power requests an effective date of April 1, 2001 for the Agreements. Illinois Power states that a copy of this filing has been sent to Entergy Power Marketing Corporation.

Comment date: May 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Black Hills Generation, Inc.

[Docket No. ER01–1844–000]

Take notice that on April 23, 2001, Black Hills Generation, Inc. (Black Hills) tendered for filing an application for an order authorizing Black Hills to make wholesale sales of electric power at market-based rates.

Comment date: May 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Public Service Company of New Mexico

[Docket No. ER01–1845–000]

Take notice that on April 23, 2001, Public Service Company of New Mexico (PNM) tendered for filing First Revised Sheets No. 90, 91, and 92 of PNM's Open Access Transmission Tariff (OATT) to incorporate a change to the pricing methodology for energy provided by PNM for Schedule 4—Energy Imbalance Service. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of the filing have been sent to all PNM Tariff customers, all entities that have pending interconnection requests with PNM and the New Mexico Public Regulation Commission.

Comment date: May 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company

[Docket No. ER01–1846–000]

Take notice that on April 23, 2001, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), tendered for filing an executed Service Agreement between GPU Energy and Duke Energy Trading & Marketing, L.L.C. (Duke Energy), dated April 18, 2001. This Service Agreement specifies that Duke Energy has agreed to the rates, terms and conditions of GPU Energy's Market-Based Sales Tariff (Sales Tariff) designated as FERC Electric Rate Schedule, Second Revised Volume No. 5.

The Sales Tariff allows GPU Energy and Duke Energy to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus capacity and/or energy.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of April 18, 2001 for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: May 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Allegheny Energy Supply Company, LLC

[Docket No. ER01–1847–000]

Take notice that on April 23, 2001, Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) tendered for filing Service Agreement No. 121 to add one (1) new Customer to

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the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements for an effective date of March 23, 2001 for service to the California Department of Water Resources. Confidential treatment of this agreement, pursuant to 18 C.F.R. § 388.112, has been requested.

Comment date: May 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Michigan Electric Transmission Company

[Docket No. ER01–1848–000]

Take notice that on April 23, 2001, Michigan Electric Transmission Company (Michigan Transco) tendered for filing executed Service Agreements for Firm and Non-Firm Point-to-Point Transmission Service with Mirant Americas Energy Marketing, LP and CMS-MS&T Michigan, L.L.C. (Customers) pursuant to the Joint Open Access Transmission Service Tariff filed on February 22, 2001 by Michigan Transco and International Transmission Company (ITC). Michigan Transco is requesting an effective date of April 1, 2001.

Copies of the filed agreement were served upon the Michigan Public Service Commission, ITC and the Customer.

Comment date: May 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Michigan Electric Transmission Company

[Docket No. ER01–1849–000]

Take notice that on April 23, 2001, Michigan Electric Transmission Company (Michigan Transco) tendered for filing an executed Service Agreement for Network Transmission Service with Wolverine Power Marketing Cooperative (Customer) pursuant to the Joint Open Access Transmission Service Tariff filed on February 22, 2001 by Michigan Transco and International Transmission Company (ITC).

Michigan Transco is requesting an effective date of April 16, 2001. Customer is taking service under the Service Agreement in connection with Consumers Energy Company's (Consumers) Electric Customer Choice program.

Copies of the filed agreement were served upon the Michigan Public Service Commission, ITC, Consumers and the Customer.

Comment date: May 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Dayton Power and Light Company

[Docket No. ER01–1850–000]

Take notice that on April 23, 2001, The Dayton Power and Light Company, (DP&L), a wholly owned subsidiary of DPL Inc., tendered for filing its filing describing separation of its transmission and distribution facilities.

Comment date: May 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. Central Maine Power Company

[Docket No. ER01–1851–000]

Please take notice that on April 23, 2001, Central Maine Power Company (CMP) tendered for filing the First Amendment to the Interconnection Agreement by and between CMP and Northeast Empire Limited Partnership #1, designated as FERC Rate Schedule No. 139 and Supplements 1–3 and 5–11.

Comment date: May 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER01–1852–000]

Take notice that on April 23, 2001, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) tendered for filing Service Agreement No. 122 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services. Allegheny Energy Supply requests a waiver of notice requirements for an effective date of April 2, 2001 for Idaho Power.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: May 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 01–11198 Filed 5–3–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1839–000, et al.]

Dominion Nuclear Marketing II, Inc., et al.; Electric Rate and Corporate Regulation Filings

April 27, 2001.

Take notice that the following filings have been made with the Commission:

1. Dominion Nuclear Marketing II, Inc.

[Docket No. ER01–1839–000]

Take notice that on April 24, 2001, Dominion Nuclear Marketing II, Inc. (DNM II) tendered for filing a service agreement providing for sales of power to Virginia Electric and Power Company (Dominion Virginia Power) under DNM II's market-based rate tariff, FERC Electric Tariff, Original Volume No. 1 (the Tariff). DNM II requests that the Commission act on this filing on an expedited basis and make the service agreement effective on the date of the Commission order accepting the service agreement.

Copies of the filing were served upon Dominion Virginia Power, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: May 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. NorthWestern Public Service Company

[Docket No. ER01–1651–001]

Take notice that on April 24, 2001, NorthWestern Public Service Company (NorthWestern) tendered for filing certain information intended to supplement the filing of certain service agreements submitted March 29, 2001 in Docket No. ER01–1651–000. Copies of this filing were served on the transmission customers under the service agreements.

Comment date: May 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. New England Power Company

[Docket No. ER01–817–002]

Take notice that on April 24, 2001, New England Power Company (NEP) tendered for filing non-substantive changes to the cover pages for the service agreements filed on March 27, 2001 in the above-referenced docket, in order to comply with the requirements of the Commission's Order No. 614.

NEP states that a copy of this filing has been served upon each of the parties that was served by NEP in Docket No. ER01–817–000.

Comment date: May 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Company

[Docket No. ER01–820–002]

Take notice that on April 24, 2001, New England Power Company (NEP) tendered for filing non-substantive changes to the cover pages for the service agreements filed on March 27, 2001 in the above-referenced docket, in order to comply with the requirements of the Commission's Order No. 614.

NEP states that a copy of this filing has been served upon each of the parties that was served by NEP in Docket No. ER01–820–000.

Comment date: May 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Carolina Power & Light Company

[Docket No. ER01–1853–000]

Take notice that on April 24, 2001, Carolina Power & Light Company (CP&L) tendered for filing an executed Facility Interconnection and Operating Agreement (Interconnection Agreement) with Lumberton Power, LLC (Lumberton). The Interconnection Agreement sets forth the terms and conditions under which CP&L will provide interconnection service for a 35 MW electric generating facility owned by Lumberton.

CP&L requests waiver of the Commission's notice requirements in order for the Interconnection Agreement to become effective on April 24, 2001.

Copies of the filing were served upon Lumberton and the North Carolina Public Utilities Commission.

Comment date: May 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. FPL Energy Maine Holdings, LLC and Boralex Industries Inc.

[Docket No. ER01–1854–000]

Take notice that on April 24, 2001, FPL Energy Maine Holdings, LLC and Boralex Industries Inc., jointly tendered for filing a notice of succession, notice of change in status and amendments to an existing market-based rate tariff and code of conduct to reflect FPL Energy Maine Holdings, LLC's divestiture, and Boralex Industries Inc.'s acquisition, of AVEC Holdings, LLC, which owns a one hundred percent interest in Aroostook Valley Electric Company, which owns a 31 MW wood-burning power plant in Fort Fairfield, Maine.

Comment date: May 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Commonwealth Edison Company

[Docket No. ER01–1855–000]

Take notice that on April 24, 2001, Commonwealth Edison Company (ComEd) tendered for filing an executed Service Agreement for Network Integration Transmission Service (Service Agreement) between ComEd and the Illinois Municipal Electric Agency (IMEA) and an executed Network Operating Agreement (Operating Agreement) between ComEd and IMEA for service under ComEd's Open Access Transmission Tariff (OATT).

ComEd requests that the Commission substitute the Service Agreement and associated Operating Agreement for the unexecuted agreements with IMEA that were previously filed with and accepted by the Commission in Docket No. ER01–1356–000.

Copies of the filing were served on IMEA and the Illinois Commerce Commission.

Comment date: May 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER01–1856–000]

Take notice that on April 24, 2001, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply Company) tendered for filing First Revised Service Agreement No. 23 to complete the filing requirement for one (1) new Customer of the Market Rate Tariff under which Allegheny Energy Supply offers generation services. First Revised Service Agreement No. 23 supersedes Service Agreement No. 23 and its Supplement No. 1 and will maintain the effective date of November 24, 1999, in accordance with the Commission's Order at Docket No. ER00–863–000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: May 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Heard County Power, L.L.C.

[Docket No. ER01–1857–000]

Take notice that on April 24, 2001, Heard County Power, L.L.C. (Heard County Power) tendered for filing a service agreement (Power Purchase and Sales Agreement) covering transactions between Heard County Power and Dynegy Power Marketing, Inc. under Heard County Power's market-based rate schedule, to be in effect as of April 1, 2001.

Comment date: May 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Riverside Generating Company, L.L.C.

[Docket No. ER01–1858–000]

Take notice that on April 24, 2001, Riverside Generating Company, L.L.C. (Riverside) tendered for filing a service agreement (Power Purchase and Sales Agreement) covering transactions between Riverside and Dynegy Power Marketing, Inc. under Riverside's market-based rate schedule, to be in effect as of April 1, 2001.

Comment date: May 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Carolina Power & Light Company

[Docket No. ER01–1859–000]

Take notice that on April 24, 2001, Carolina Power & Light Company (CP&L) tendered for filing an executed Facility Interconnection and Operating Agreement (Interconnection Agreement) with Elizabethtown Power, LLC (Elizabethtown). The Interconnection Agreement sets forth the terms and conditions under which CP&L will provide interconnection service for a 35 MW electric generating facility owned by Elizabethtown. CP&L requests waiver of the Commission's notice requirements in order for the

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Interconnection Agreement to become effective on April 24, 2001.

Copies of the filing were served upon Elizabethtown and the North Carolina Public Utilities Commission.

Comment date: May 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Cobb Electric Membership Corp.

[Docket No. ER01–1860–000]

Take notice that on April 24, 2001, Cobb Electric Membership Corp. (Cobb), a non-profit electric distribution cooperative located in Marietta, Georgia, tendered for filing a petition for authority to sell power at market-based rates, acceptance of its proposed rate schedule, granting of and certain waivers. Cobb requests an effective date for its proposed rate schedule that would be 60 days from the date of the filing of its petition or the date of the order accepting Cobb's rate schedule for filing, whichever is earlier.

Comment date: May 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Southern California Edison Company

[Docket No. ER01–1861–000]

Take notice, that on April 24, 2001, Southern California Edison Company (SCE) tendered for filing the Amended and Restated SCE–CDWR Capacity Exchange Agreement (Agreement) between SCE and the State of California Department of Water Resources (CDWR), which provides for the terms to redefine the Exchange Ratio in Section 6.1.1 of the Agreement.

SCE requests the Agreement be made effective on the date on which FERC accepts the Agreement for filing; provided that, if FERC enters into a hearing to determine whether the Agreement is just and reasonable, the Agreement shall not become effective until the date when an order no longer subject to judicial review has been issued by FERC determining the Agreement to be just and reasonable without changes or modifications unacceptable to either Party.

Copies of this filing were served upon the Public Utilities Commission of the State of California and CDWR.

Comment date: May 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Southern California Edison Company

[Docket No. ER01–1862–000]

Take notice that on April 24, 2001, Southern California Edison Company (SCE) tendered for filing the Mountain View II Project Interconnection Facilities Agreement (Agreement) between SCE and Mountain View Power Partners II LLC.

SCE requests that the Agreement become effective on April 25, 2001.

Copies of this filing were served upon the Public Utilities Commission of the State of California, Mountain View Power Partners II, LLC, and Mountain View Power Partners 1, LLC.

Comment date: May 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–11197 Filed 5–3–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6974–3]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; NESHAP for Halogenated Solvent Cleaners/ Halogenated Air Pollution (HAP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Subpart T, National Emission Standards for hazardous Air Pollutants (NESHAP) for Halogenated Solvent Cleaning, OMB number 2060–0273, expires May 31, 2001. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 4, 2001.

ADDRESSES: Send comments, referencing ICR No. 1652.04 and OMB Control No. 2060–0273 to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-mail at *Farmer.sandy@epa.gov*, or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1652.04. For technical questions about the ICR contact Acquanetta Delaney at (202) 564–7061.

SUPPLEMENTARY INFORMATION:

Title: NESHAP for Halogenated Solvent Cleaners/Halogenated Hazardous Air Pollutants (HAP), (OMB Control No. 2060–0273; EPA ICR No. 1652.04) expiring May 31, 2001. This is a request for extension of a currently approved collection.

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR 63.460, *et seq.*, Subpart T, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Halogenated Solvent Cleaning. This information notifies EPA when a source becomes subject to the regulations, informs the Agency if a source is in compliance when it begins operation, and informs the Agency if the source remained in compliance during any period of operation. In the Administrator's judgment, emissions of hazardous air pollutants (HAPs) from halogenated solvent cleaners may cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, NESHAP standards were promulgated for this source category, as required under section 112 of the Clean Air Act.

HAP emissions from halogenated solvent cleaners are the result of inadequate equipment design and work practices.

These standards rely on the proper design and operation of halogenated solvent cleaners such as working-mode covers, freeboard ratio of 1.0, and reduced room draft to reduce solvent emissions from halogenated solvent cleaners. Certain records and reports are necessary to enable EPA to identify sources subject to the standards and to ensure that the standards are being achieved. Owners/operators of halogenated solvent cleaners must provide EPA with an initial notification of existing or new solvent cleaning machines, initial statement of compliance, an annual control device monitoring report (owners/operators of batch vapor and in-line cleaning machines), an annual solvent emission report (owners/operators of batch vapor and in-line cleaning machines complying with the alternative standard), and exceedance of monitoring parameters or emissions. The records that the facilities maintain indicate to EPA whether they are operating and maintaining the halogenated solvent cleaners properly to control emissions. In order to ensure compliance with the standards promulgated to protect public health, adequate reporting and recordkeeping is necessary. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on August 17, 2000 (65 FR 50196); no comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 4 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/Operators of solvent cleaning machines.

Estimated Number of Respondents: 3,821.

Frequency of Response: Quarterly, Semi-annually, Annually.

Estimated Total Annual Hour Burden: 45,207 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $4,091.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed about. Please refer to EPA ICR No. 1652.04 and OMB Control No. 2060–0273 in any correspondence.

Dated: April 24, 2001.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 01–11281 Filed 5–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6974–4]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, Transition Program for Equipment Manufacturers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Transition Program for Equipment Manufacturers, OMB Control Number 2060–0369, expiration date: April 30, 2001. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 4, 2001.

ADDRESSES: Send comments, referencing EPA ICR No. 1826.02 and OMB Control No. 2060–0369 to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-mail at farmer.sandy@epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No.1826.02. For technical questions about the ICR contact: Nydia Yanira Reyes-Morales, tel.: (202) 564–9264; fax: (202) 565–2057; or e-mail: reyes-morales.nydia@epa.gov.

SUPPLEMENTARY INFORMATION:

Title: Transition Program for Equipment Manufacturers, EPA ICR Number 1826.02, OMB Control Number 2060–0369, expiration date: April 30, 2001. This is a request for extension of a currently approved collection.

Abstract: In August 1998, EPA established emission standards (Tier I standards) for engines under 37 kW, and tightened existing standards (Tier II standards) for engines above 37 kW. These regulations are likely to cause some engine design changes. During the rulemaking process, some equipment manufacturers expressed concerns about delays in notification from engine manufacturers about engine design changes. These design changes can create problems in fitting the engine to the equipment. Consequently, equipment manufacturers would be unable to sell the volume of equipment they planned for, since they would need to redesign their equipment before any products could be sold. In an effort to provide original equipment manufacturers (OEMs) with some flexibility in complying with the regulations, EPA created the Transition Program for Equipment Manufacturers (TPEM). Under the program, OEMs are allowed to use a number of noncompliant engines (uncertified engines rated below 37 kW or Tier I engines rated at or above 37 kW) in their equipment for up to seven years after the effective date of the standards. Participation in the program is voluntary. Participating OEMs and engine manufacturers who provide the noncompliant engines to the OEMs are required to keep records and submit

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reports of their activities under the program.

The information is collected for compliance purposes by the Engine Programs Group, Certification and Compliance Division, Office of Transportation and Air Quality, Office of Air and Radiation. Confidentiality of proprietary information is granted in accordance with the Freedom of Information Act, EPA regulations at 40 CFR part 2, and class determinations issued by EPA's Office of General Counsel.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on December 29, 2000, (65 FR 83004). No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 146 hours per equipment manufacturer or post-manufacture marinizer, and 72 hours per engine manufacturer. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Nonroad compression ignition engine and equipment manufacturers and post-manufacture marinizers.

Estimated Number of Respondents: 548.

Frequency of Response: Equipment manufacturers and post-manufacture marinizers: On occasion. Engine manufacturers: Annually.

Estimated Total Annual Hour Burden: 66,647 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $18,611.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No.1826.02 and OMB Control No. 2060–0369 in any correspondence.

Dated: April 25, 2001.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 01–11282 Filed 5–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6975–4]

Adequacy Status of Indiana and Kentucky Ozone Attainment Demonstration for Transportation Conformity Purposes for the Louisville Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of inadequacy.

SUMMARY: In this notice, EPA is notifying the public that it has found that the Louisville ozone attainment demonstration state implementation plans (SIP) submitted by Kentucky and Indiana on November 12, 1999, and November 15, 1999, respectively, do not contain motor vehicle emission budgets (MVEBs) that are adequate for transportation conformity purposes. The Louisville moderate one-hour ozone nonattainment area includes Clark and Floyd Counties, Indiana, and Jefferson County, Kentucky, and portions of Bullitt and Oldham Counties in Kentucky. EPA is finding the MVEBs inadequate because, due to a decision by the United States Court of Appeals, one of the significant assumptions of the demonstration has changed. The SIP submittal assumes that regional oxides of nitrogen (NO_X) reductions will be achieved in adjoining States by May 1, 2003. Due to the Court's decision, those reductions will not be assured to occur until May 31, 2004. Since the MVEBs in the SIP submittal could only be adequate if the reductions occur in 2003, they are now being found inadequate. Since the November 15, 1999, submittal does not contain adequate MVEBs, this attainment demonstration submittal cannot be used for future transportation conformity determinations.

FOR FURTHER INFORMATION CONTACT: Ryan Bahr, Environmental Engineer, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4366, bahr.ryan@epa.gov.

Dr. Robert Goodwin, Environmental Scientist, Regulatory Planning Section, Air Planning Branch, Air, Pesticides, and Toxics Management Division, United States Environmental Protection Agency, Region 4, 61 Forsyth St., SW., Atlanta, GA 30303, (404) 562–9044, goodwin.robert@epa.gov.

SUPPLEMENTARY INFORMATION:

Background

Today's notice is simply an announcement of a finding that EPA has already made. EPA Region 5 sent a letter to the Indiana Department of Environmental Management on April 20, 2001, stating that the submitted Louisville ozone attainment demonstration does not contain adequate MVEBs, and EPA Region 4 sent a similar letter to the Kentucky Division for Air Quality on April 20, 2001. This finding will also be announced on EPA's conformity website: http://www.epa.gov/otaq/traq. (Once at EPA's Transportation and Air Quality Center website, click on the "Conformity" button and look for "Adequacy Review of SIP Submissions for Conformity.")

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do. Transportation conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which EPA determines whether a SIP's MVEBs are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if EPA finds a motor vehicle emission budget adequate, the EPA may later disapprove the SIP.

EPA described the process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999, memorandum titled "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision"). EPA followed this guidance in making this determination.

EPA is finding the MVEBs in the submitted Louisville attainment SIP inadequate because the associated SIP assumes that regional NO_X reductions under the NO_X SIP Call will be achieved in adjoining States by May 1, 2003. However, on August 30, 2000, the United States Court of Appeals for the D.C. Circuit issued an order extending the compliance date for the NO_X SIP Call from May 1, 2003, to May 31, 2004. The effect of this ruling is that the regional NO_X emissions reductions cannot be assumed to occur until 2004, and, therefore, 40 CFR 93.118(e)(4)(iv) cannot be satisfied by the submitted MVEBs.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 26, 2001.

David A. Ullrich,

Acting Regional Administrator, Region 5.

Dated: April 20, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 01–11410 Filed 5–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6975–7]

National Drinking Water Advisory Council, Arsenic Cost Working Group, Request for Nominations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for nominations to the Arsenic Cost Working Group of the National Drinking Water Advisory Council.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing the formation of an Arsenic Cost Working Group of the National Drinking Water Advisory Council and soliciting nominations to this working group. The Advisory Council was established to provide practical and independent advice, consultation, and recommendations to the Agency on the activities, functions, and policies related to the implementation of the Safe Drinking Water Act as amended.

Any interested person or organization may nominate qualified individuals for membership on the working group. Nominees should be identified by name, occupation, position, address and telephone number. To be considered, all nominations must include a current resume providing the nominee's background, experience and qualifications.

Following the January 22, 2001 **Federal Register** promulgation of the arsenic rule, a number of concerns were raised to EPA by States, public water systems, and other stakeholders regarding the adequacy of science and the basis for national cost estimates underlying the rule. Because of the importance of the arsenic rule and the national debate surrounding it related to science and costs, EPA's Administrator publicly announced on March 20, 2001, that the Agency would take additional steps to reassess the scientific and cost issues associated with this rule and seek further public input on each of these important issues.

Consistent with that commitment, EPA will work with the National Drinking Water Advisory Council (NDWAC) to convene a panel of nationally recognized technical experts to review the cost of compliance estimates associated with the final arsenic in drinking water rule.

The criteria for selecting working group members and for conducting the review are that working group members are recognized experts in their fields; that working group members are as impartial and objective as possible; that working group members represent an array of backgrounds and perspectives (within their disciplines); that the working group members are available to participate fully in the review, which will be conducted over a relatively short time frame (i.e., within approximately 3–4 months); and that the results of the review be made publicly available for comment. Working group members will be asked to attend a series of meetings (approximately three) over the course of 3–4 months, participate in the discussion of key issues and assumptions at these meetings, and review and finalize the products and outputs of the working group. The working group will make a recommendation to the full NDWAC. The NDWAC will, in turn, make a recommendation to EPA.

Nominations should be submitted to Janet Pawlukiewicz, Designated Federal Officer, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (4601), 1200 Pennsylvania Avenue, NW Washington, D.C. 20460, no later than May 14, 2001. The Agency will not formally acknowledge or respond to nominations.

FOR FURTHER INFORMATION CONTACT: Janet Pawlukiewicz at pawlukiewicz.janet@epa.gov or call (202) 260–9194.

Dated: May 2, 2001.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 01–11423 Filed 5–3–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6617–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or www.epa.gov/oeca/ofa.

Weekly Receipt of Environmental Impact Statements

Filed April 23, 2001 Through April 27, 2001

Pursuant to 40 CFR 1506.9

EIS No. 010136, Draft EIS, AFS, CO, Forest Development Trail (FDT) 1135 (Arapaho Ridge Trail), Forest Development Road (FDR) 711.1 and FDR 711.1A Motorized or Non-Motorized Determination and Trailhead Parking Areas Creation at both ends of the Trail, Routt National Forest, Jackson County, CO, Comment Period Ends: June 18, 2001, Contact: Charles T. Oliver (970) 723–8204.

EIS No. 010137, Draft EIS, AFS, ID, Meadow Face Stewardship Pilot Project, Implementation, Nez Perce National Forest, Clearwater Ranger District, Idaho County, ID, Comment Period Ends: June 18, 2001, Contact: Darcy Pederson (208) 983–1950.

EIS No. 010138, Final EIS, FHW, VA, VA–37 Highway Transportation Improvement, Construction from VA–37/I–81/US–11 (south) to VA–37/US–11 (north), Funding and COE Section 404 Permit, City of Winchester, Frederick County, VA, Wait Period Ends: June 04, 2001, Contact: Roberto Fonseca-Martinez (804) 775–3320.

EIS No. 010139, Final EIS, FHW, TX, TX–130 Construction, I–35 of Georgetown to I–10 near Seguin, Funding, COE Section 404 Permit, Williamson, Travis, Caldwell, Guadalupe Counties, TX, Wait Period Ends: June 04, 2001, Contact: Patrick Bauer (512) 536–5950.

EIS No. 010140, Final EIS, FRA, FL, GA, MD, PA, CA, LA, NV, Programmatic—Maglev Deployment Program, Development and Construction of an Operating Public Transportation System using Magnetic Levitation, Grants Issuance, CA, FL, GA, LA, MD, NV and PA, Wait Period Ends: June

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04, 2001, Contact: David Valenstein (202) 493–6383.

EIS No. 010141, Final EIS, FHW, OH, OH–7 (LAW–7) Relocation, OH–7 and OH–527 to a point Northeast of Rome Township and OH–607 from East Huntington Bridge to an Interchange with proposed OH–7 and OH–775, Funding, Lawrence County, OH, Wait Period Ends: June 04, 2001, Contact: Andy Garnes (614) 280–6856.

EIS No. 010142, Draft EIS, AFS, UT, Uinta National Forest Revised Land and Resource Management Plan, Implementation, Juab, Sanpete, Tooele, Utah and Wasatch Counties, UT, Comment Period Ends: July 26, 2001, Contact: Peter W. Karp (801) 377–5780.

EIS No. 010143, Final EIS, JUS, TX, Immigration and Naturalization Service (INS) Detention Facility Construction in the Houston Area, TX, Wait Period Ends: June 04, 2001, Contact: Eric Verwers (817) 978–0202.

EIS No. 010144, Final EIS, AFS, MT, Discovery Ski Area Expansion, Implementation, Special-Use-Permit and COE Section 404 Permit, Beaverhead-Deerlodge National Forest, Pintler Ranger District, Rumsey Mountain, Granite County, MT, Wait Period Ends: June 04, 2001, Contact: Bob Gilman (406) 859–3211.

EIS No. 010145, Draft EIS, AFS, NY, Finger Lake National Forest, Oil and Gas Leasing, Exploration and Development, Approval and Authorization, Hector Ranger District, Seneca and Schuyler Counties, NY, Due: July 03, 2001, Contact: Martha Twarkins (607) 546–4470.

EIS No. 010146, Draft EIS, TVA, AL, TN, Guntersville Reservoir Land Management Plan, Implementation, Proposal to Update a 1983 Land Allocation Plan, Jackson and Marshall Counties, AL and Marion County, TN, Comment Period Ends: June 18, 2001, Contact: Harold M. Draper (865) 632–6889.

EIS No. 010147, Final EIS, USN, HI, Fort Kamehameha Outfall Replacement for Wastewater Treatment Plant, Navy Public Works Center, Pearl Harbor, HI, Wait Period Ends: June 04, 2001, Contact: Gary Kasaoke (808) 474–5909.

EIS No. 010148, Draft EIS, AFS, UT, Solitude Mountain Resort Master Development Plan Update (MDP), Implementation, Special-Use-Permit, Wasatch-Cache National Forest, Salt Lake County, UT, Comment Periods Ends: June 18, 2001, Contact: Steve Scheid (801) 733–2689.

EIS No. 010149, Final Supplement, NRC, Generic—License Renewal of Nuclear Plants, Arkansas Nuclear One, Unit 1, COE Section 10 and 404 Permits, Pope County, AR (NUREG–1437) , Wait Period Ends: June 04, 2001, Contact: Thomas J. Kenyon (301) 415–1120.

EIS No. 010150, Final EIS, AFS, MT, Spar and Lake Subunits Forest Health Project, Improvements, Kootenai National Forest, Three Rivers Ranger District, Lincoln County, MT, Wait Period Ends: June 04, 2001, Contact: Mike Donald (406) 295–4693.

Amended Notices

EIS No. 010023, Draft Supplement, NOA, AK, Groundfish Fishery Management Plan, Implementation, Bering Sea and Aleutian Islands, AK, Comment Period Ends: July 26, 2001, Contact: James W. Balsiger (907) 586–7221. Revision of FR Notice Published on 02/02/2001: CEQ Review Period Ending on 06/25/2001 has been extended to 07/25/2001.

EIS No. 010124, Final EIS, AFS, CA, Programmatic EIS—Ansel Adams, John Muir and Dinkey Lakes Wildernesses, Proposed New Management Direction, Amending the Land and Resource Management Plans for the Inyo and Sierra National Forests, Implementation, Inyo, Madera, Mono and Fresno Counties, CA, Wait Period Ends: May 21, 2001, Contact: Mary Beth Hennessy (760) 873–2448. Published FR 04–20–01 Correction to Title.

Dated: May 1, 2001.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 01–11296 Filed 5–3–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00717; FRL–6781–9]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: There will be a 3–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act (FQPA) Scientific Advisory Panel (SAP) to review a set of issues being considered by the Agency pertaining to review of nontarget plant toxicity tests under North America Free Trade Association (NAFTA). The meeting is open to the public. Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact Paul Lewis at the address listed under **FOR FURTHER INFORMATION CONTACT** at least 5 business days prior to the meeting so that appropriate arrangements can be made.

DATES: The meeting will be held from June 27 to June 29 from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202. The telephone number for the Sheraton Crystal City Hotel is (703) 486–1111.

Requests to participate may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your request must identify docket control number OPP–00717 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Paul Lewis, Designated Federal Official, Office of Science Coordination and Policy (7202), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5369; fax number: (703) 605–0656; e-mail address: lewis.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA and FQPA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* A meeting agenda is now available; EPA's primary background documents should be available by late May. In addition, the Agency may provide additional background documents as the material becomes available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA SAP Internet Home Page at http://www.epa.gov/scipoly/sap. To access this document on the Home Page select **Federal Register** notice announcing this meeting. You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this meeting under docket control number OPP–00717. The official record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other material information, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. In addition, the Agency may provide additional background documents as the material becomes available. The public version of the official record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting through the mail, in person, or electronically. Do not submit any information in your request that is considered CBI. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00717 in the subject line on the first page of your request. Interested persons are permitted to file written statements before the meeting. To the extent that time permits, and upon advance written request to the person listed under **FOR FURTHER INFORMATION CONTACT**, interested persons may be permitted by the Chair of the FIFRA SAP to present oral statements at the meeting. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). There is no limit on the extent of written comments for consideration by the panel, but oral statements before the panel are limited to approximately 5 minutes. The Agency also urges the public to submit written comments in lieu of oral presentations. Persons wishing to make oral and/or written statements at the meeting should contact the person listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies of their presentation and/or remarks to the panel. The Agency encourages that written statements be submitted before the meeting to provide panel members the time necessary to consider and review the comments.

1. *By mail.* You may submit a request to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your request electronically by e-mail to: "opp-docket@epa.gov." Do not submit any information electronically that you consider to be CBI. Use WordPerfect 6.1/8.0 or ASCII file format and avoid the use of special characters and any form of encryption. Be sure to identify by docket control number OPP–00717. You may also file a request online at many Federal Depository Libraries.

II. Background

A. Purpose of the Meeting

Under the NAFTA, EPA and our Canadian counterpart, the Pest Management Regulatory Agency (PMRA), have conducted a joint review of aquatic and terrestrial plant tests and test methods. The existing data requirements and tests do not provide the information needed to adequately characterize risks to non-target plants. As an example, the number of plant species specified in the plant test guidelines need to be increased. In addition, tests are needed to assess plant reproduction and community impacts. The purpose of this session is to review non-target plant toxicity tests under NAFTA.

B. Panel Report

The Agency anticipates that the Panel's report of their recommendations will be available approximately 60 days after the meeting. The Panel's report will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I. of this document.

List of Subjects

Environmental protection.

Dated: April 26, 2001.

Sherell A. Sterling,

Acting Director, Office of Science Coordination and Policy.

[FR Doc. 01–11284 Filed 5–3–01; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL 6974–8]

Science Advisory Board; Notification of Public Advisory Committee Meeting

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Joint Subcommittee on Industrial Ecology and Environmental Systems Management (the "Subcommittee") of the EPA Science Advisory Board's (SAB) Environmental Engineering Committee will conduct a public teleconference meeting on Tuesday, May 22, 2001 from 1:00–3:00 pm Eastern Time.

The conference call meeting will be coordinated through a conference call connection in room 6450C Ariel Rios Federal Building (North—6th Floor), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20004 (adjacent to the Federal Triangle Metro Station). The public is strongly encouraged to attend the meeting through a telephonic link, but may attend physically if arrangements are made in advance with the SAB staff. In both cases, arrangements should be made with the SAB staff by noon the Wednesday *before* the meeting. Staff may not be able to accommodate the presence of people who appear in person without advance notice. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Mary Winston (see below).

Purpose of the Meeting

The Subcommittee is preparing a commentary on industrial ecology as announced in 66 FR 10496, February 15, 2001. The Subcommittee was not able to complete its work during its previous conference call (April 18, 2001) and is

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scheduling this additional call to discuss the third draft of its commentary.

Availability of the Written Materials in Advance of the Conference Call Meeting

Any written materials prepared by the Subcommittee in advance of the conference call will be posted on the SAB Website (*http://www.epa.gov/sab*). Any other materials, such as written public comment on the previous (second) draft commentary will be made available to the public on request by e-mail before the meeting. For e-mail copies, please contact Ms. Kathleen White Conway (see below). A limited number of paper copies will be available from Ms. Mary Winston (see below).

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the conference call meeting or wishing to submit brief oral comments must contact Ms. Kathleen White Conway, Designated Federal Officer, US EPA Science Advisory Board (1400A), Committee Operations Staff, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone: (202) 564–4559; Fax: (202) 501–0582; or via e-mail at *conway.kathleen@epa.gov*. Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Ms. Conway no later than noon Eastern Time one week prior to the meeting.

Information on attending the teleconference via phone or in person can be obtained from Ms. Mary Winston, Management Assistant, US EPA Science Advisory Board (1400A), Committee Operations Staff, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, telephone: (202) 564–4538; Fax: (202) 501–0582; or via e-mail at: *winston.mary@epa.gov*.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should both e-mail their comments to the DFO in MSWord and WordPerfect formats (suitable for IBM–PC/Windows 95/98) and provide 5 paper copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), because this is a conference call meeting, any comments to be mailed to the Subcommittee in advance of the meeting should be received in the SAB Staff Office by noon at least a week before the meeting. E-mailed comments will be accepted until the day before the meeting, although earlier submission is encouraged; these should be sent in both MSWord and WordPerfect format (suitable for IBM–PC/Windows 95/98).

General Information

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY2000 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access

Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Ms. Winston at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: April 20, 2001.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 01–11283 Filed 5–3–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission

April 26, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 4, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: *OMB Control No.:* 3060–0774.

Title: Federal-State Joint Board on Universal Service, CC Docket No 96–45 (47 CFR Sections 36.611 and 36.612 and Part 54).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 5,554,651 respondents; 6,311,743 responses.

Estimated Time Per Response: .25 hours–100 hours.

Frequency of Response: On occasion, annual, and quarterly reporting requirements, third party disclosure requirement, recordkeeping requirement, and every 5 years reporting requirement.

Total Annual Burden: 1,853,707 hours.

Total Annual Cost: N/A.

Needs and Uses: Congress directed the Commission to implement a new set of universal service support mechanisms that are explicit and sufficient to advance the universal service principles enumerated in 47 U.S.C. 254 and other such principles as the Commission believes are necessary and appropriate for the protection of the public interest, convenience and necessity, and are consistent with the Act. Part 54 promulgates the rules and requirements to preserve and advance universal service.

All the requirements contained herein are necessary to implement the congressional mandate for universal service. These reporting requirements are necessary to calculate the contribution amount owed by each telecommunications carrier or to verify that particular carriers and other respondents are eligible to receive universal service support.

FEDERAL COMMUNICATIONS COMMISSION.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–11241 Filed 5–3–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 01–1125]

Resignation of John R. Hoffman, Chairman of the North American Numbering Council (NANC) and Cancellation of the May 22–23, 2001 NANC Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On May 1, 2001, the Commission released a public notice announcing the resignation of John R. Hoffman, Chairman of the North American Numbering Council (NANC) and cancellation of the May 22–23, 2001 NANC meeting. The intended effect of this action is to make the public aware of the resignation of the NANC Chairman and cancellation of the May NANC meeting.

FOR FURTHER INFORMATION CONTACT: Deborah Blue, Special Assistant to the Designated Federal Officer (DFO) at (202) 418–2320 or *dblue@fcc.gov*. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, The Portals, 445 12th Street, SW., Suite 6A207, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2479]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

April 25, 2001.

Petitions for Reconsideration and Clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by May 21, 2001. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: Amendment of section 73.202(b), Table of Allotments, FM Broadcast Stations (Anniston and Ashland, Alabama, College Park, Covington, and Milledgeville, Georgia) (MM Docket No. 98–112, RM–9027, RM–9268, RM–9384).

Number of Petitions Filed: 2.

Subject: Reexamination of the Comparative Standards for Noncommercial Educational Applicants (MM Docket No. 95–31).

Number of Petitions Filed: 5.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–11178 Filed 5–3–01; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[FCC 01–111]

DTV Construction Deadline Extended for Twenty-Three Television Stations

AGENCY: Federal Communications Commission.

ACTION: Extension to comply with deadline.

SUMMARY: In this document, the FCC extends the digital television (DTV) construction deadline for twenty-three television stations to either July 5, 2001, or October 5, 2001.

DATES: DTV construction must be completed by either July 5, 2001, or October 5, 2001, depending on the television station.

FOR FURTHER INFORMATION CONTACT: Shaun Maher, Video Services Division, Mass Media Bureau at (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a summary of an Order released April 5, 2001. In the Order, the Commission permits television stations additional time to complete construction of their DTV facilities. Pursuant to § 73.624 of the rules, as published at 64 FR 4327 (January 28, 1999), the stations were required under the Commission rules to have completed construction of their DTV facilities by either May 1, 1999, or November 1, 1999. The Order grants extensions of the DTV construction deadline depending on the particular facts and circumstances for each station. This summary does not include the attachment that was included with the Order which sets forth the specific construction deadline for each of the twenty-three television stations.

The complete text of the Order, including attachment, is available for public inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW, Washington, DC 20035, (202) 857–3800. It is also available on the Commission's web site at http://www.fcc.gov.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–11243 Filed 5–3–01; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, May 8, 2001, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single

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vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

• Disposition of minutes of previous Board of Directors' meetings.

• Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

• Memorandum and resolution re: Amended, Revised and Consolidated Systems of Records.

Discussion Agenda

• Memorandum re: SAIF Assessment Rates for the Second Semiannual Assessment Period of 2001.

• Memorandum re: BIF Assessment Rates for the Second Semiannual Assessment Period of 2001.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2089 (Voice); (202) 416–2007 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: May 1, 2001.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 01–11427 Filed 5–2–01; 1:58 pm]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Board, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) (the "agencies") may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Board hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) on behalf of the agencies a request for review of the information collection system described below. The agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

On December 28, 2000, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), requested public comment for 60 days on the revision, without extension, of the currently approved information collection: the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002). The comment period expired February 26, 2001.

DATES: Comments must be submitted on or before June 4, 2001.

ADDRESSES: Interested parties are invited to submit written comments to the agency listed below. All comments, which should refer to the OMB control number, will be shared among the agencies.

Written comments should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, submitted by electronic mail to regs.comments@federalreserve.gov, or delivered to the Board's mailroom between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mailroom and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments received may be inspected in room M–P–500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.12 of the Board's Rules Regarding Availability of Information, 12 CFR 261.12(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A draft copy of the revised FFIEC 002 reporting form may be obtained at the FFIEC's web site (www.ffiec.gov). A copy of the revisions to the collection of information may also be requested from Mary M. West, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Capria Mitchell (202) 872–4984, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Proposal to revise the following currently approved collection of information:

Report Title: Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks.

Form Number: FFIEC 002.

OMB Number: 7100–0032.

Frequency of Response: Quarterly.

Affected Public: U.S. branches and agencies of foreign banks.

Estimated Number of Respondents: 354.

Estimated Total Annual Responses: 1,416.

Estimated Time per Response: 22.50 burden hours.

Estimated Total Annual Burden: 31,860 burden hours.

General Description of Report

This information collection is mandatory: 12 U.S.C. 3105(b)(2), 1817(a)(1) and (3), and 3102(b). Except for select sensitive items, this information collection is not given confidential treatment (5 U.S.C. 552(b)(8)). Small businesses (that is, small U.S. branches and agencies of foreign banks) are affected.

Abstract

On a quarterly basis, all U.S. branches and agencies of foreign banks (U.S. branches) are required to file detailed schedules of assets and liabilities in the form of a condition report and a variety of supporting schedules. This information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data are also used to augment the bank credit, loan, and deposit information needed for monetary policy and other public policy purposes. The Federal Reserve System collects and processes this report on behalf of all three agencies.

Current Actions

The agencies received one comment in response to the notice published in the **Federal Register** on December 28, 2000, (65 FR 82356) requesting public comment on the extension with revision of this information collection. The commenter supports the revisions to the FFIEC 002.

The agencies will implement a number of revisions to streamline the existing reporting requirements of the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002), consistent with eliminations and reductions in detail to the Reports of Condition and Income (Call Report) (FFIEC 031 and 041) filed by insured commercial banks and FDIC-supervised savings banks. The agencies are also endeavoring to improve the relevance of the FFIEC 002 by identifying new types of information necessary to monitor new activities and other recent developments that may expose institutions to new or different types of risk.

The revisions to the FFIEC 002 summarized below have been approved by the FFIEC. The agencies will implement these changes, except for new information on fiduciary and related services, as of the June 30, 2001, reporting date. New information on fiduciary and related services will be effective with the December 31, 2001, reporting date.

A. Specific Deletions, Reductions in Detail, and Redefinitions

Schedule RAL—Assets and Liabilities

1. For item 1.d, "Federal funds sold and securities purchased under agreements to resell," combine items 1.d.(1), "With U.S. branches and agencies of other foreign banks," and 1.d.(2), "With other commercial banks in the U.S.," into a single line item.

2. For item 4.b, "Federal funds purchased and securities sold under agreements to repurchase," combine items 4.b.(1), "With U.S. branches and agencies of other foreign banks," and 4.b.(2), "With other commercial banks in the U.S.," into a single line item.

3. Memorandum item 9, "Mutual fund and annuity sales during the quarter," will be redefined as "Assets under the reporting branch or agency's management in proprietary mutual funds and annuities." For branches and agencies with proprietary mutual funds and annuities, reporting the amount of assets under management should be significantly less burdensome than reporting the quarterly sales volume of both proprietary products and nonproprietary products. Branches and agencies without proprietary mutual funds and annuities will no longer need to report any information on their involvement with these products.

4. Memorandum item 12, "Amount of assets netted against liabilities to nonrelated parties (excluding deposits in insured branches) on the balance sheet in accordance with generally accepted accounting principles," will be eliminated.

5. Statutory or Regulatory Requirement item S.3.a, "FDIC asset maintenance requirement (for FDIC insured branches only): Average liabilities," currently collects average liabilities for the quarter ending on the report date. The agencies will redefine this item to collect average liabilities for the calendar quarter preceding the quarter ending on the report date. This redefinition will ensure that, as of a given report date, the asset maintenance requirement calculation for FDIC-insured branches in Section 347.211 of the FDIC's regulations can be accomplished by using only data filed on the current FFIEC 002 report. For example, using the FFIEC 002 report for the third quarter, eligible assets on the last day of the third quarter (reported in item S.3.b) will be divided by average liabilities for the second quarter (reported in item S.3.a).

Schedule A—Cash and Balances Due from Depository Institutions

Memorandum item 1, "Noninterest-bearing balances due from commercial banks in the U.S. (including their IBFs)," will be deleted.

Schedule C—Loans

The separate loan categories for "Loans to depository institutions" and "Acceptances of other banks" (items 2 and 5, respectively) will be combined.

Schedule E—Deposit Liabilities and Credit Balances

1. The reporting of demand deposits by category of depositor in column B of the body of the deposits schedule will be eliminated, with branches and agencies reporting instead only the total amount of their demand deposits in this column. Branches and agencies will continue to provide a category-by-category breakdown of their total transaction accounts in column A, which includes their demand deposits, but the current duplicate reporting of demand deposits by category in both columns A and B will end.

2. Item 6, "Certified and official checks," will be combined with deposits of "Individuals, partnerships, and corporations" (item 1).

Schedule L—Derivatives and Off-Balance-Sheet Items

1. Item 6, "Participations in acceptances acquired by the reporting (non-accepting) branch or agency," will be deleted.

2. Item 11.b for the gross notional amount of derivative contracts held for purposes other than trading that are not marked to market will be deleted. All derivative contracts, including those held for purposes other than trading, will be marked to market once a branch or agency adopts FASB Statement No. 133, Accounting for Derivative Instruments and Hedging Activities, which is effective for fiscal years beginning after June 15, 2000. Thus, item 11.b will no longer have any relevance in 2001.

3. For branches and agencies with $100 million or more in total assets: Items 12.c.(1) and (2) for the gross positive and gross negative fair values of derivatives held for purposes other than trading that are not marked to market will be deleted because of the effect of FASB Statement No. 133.

Schedule M—Due From/Due to Related Institutions in the U.S. and in Foreign Countries: Part V, Derivatives and Off-Balance Sheet Items With Related Depository Institutions

1. Item 6, "Participations in acceptances acquired from related depository institutions by the reporting (non-accepting) branch or agency," will be deleted.

2. Item 11.b for the gross notional amount of derivative contracts held for purposes other than trading that are not marked to market will be deleted. All derivative contracts, including those held for purposes other than trading, will be marked to market once a branch or agency adopts FASB Statement No. 133, Accounting for Derivative Instruments and Hedging Activities, which is effective for fiscal years beginning after June 15, 2000. Thus, item 11.b will no longer have any relevance in 2001.

3. For branches and agencies with $100 million or more in total assets: Items 12.c.(1) and (2) for the gross positive and gross negative fair values of derivatives held for purposes other than trading that are not marked to market will be deleted because of the effect of FASB Statement No. 133.

Schedule N—Past Due, Nonaccrual, and Restructured Loans

Memorandum item 2.b, "Replacement cost of [past due derivative] contracts with a positive replacement cost," will be deleted. Once branches and agencies adopt FASB Statement No. 133, Accounting for Derivative Instruments and Hedging Activities, all of their derivative contracts will be carried on the balance sheet at fair value. Since the replacement cost of a derivative contract is its fair value and its book value will also be its fair value, Memorandum items 2.a, "Book value of amounts carried as assets," and 2.b will duplicate

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each other. The caption for Memorandum item 2.a will be revised to read "Fair value of amounts carried as assets."

B. New Information

Securitization and Asset Sale Activities

The agencies will revise and expand the information collected in the FFIEC 002 report to facilitate more effective analysis of the impact of securitization and asset sale activities on credit exposures. In this regard, the agencies are proposing to introduce a separate new schedule (Schedule S) that will comprehensively capture information related to securitization and asset sale activities.

Under this proposal, branches and agencies involved in securitization and asset sale activities will report quarter-end data for seven loan and lease categories. These data will cover 1–4 family residential loans, home equity lines, credit card receivables, auto loans, other consumer loans, commercial and industrial loans, and all other loans and all leases. For each loan category, branches and agencies will report: (1) The outstanding principal balance of assets sold and securitized with servicing retained or with recourse or seller-provided credit enhancements, (2) the maximum amount of credit exposure arising from recourse or credit enhancements to securitization structures (separately for those sponsored by the reporting branch or agency and those sponsored by other institutions), (3) the past due amounts on the underlying securitized assets, (4) the amount of any commitments to provide liquidity to the securitization structures, (5) the outstanding principal balance of assets sold with servicing retained or with recourse or seller-provided credit enhancements that have not been securitized, and (6) the maximum amount of credit exposure arising from assets sold with recourse or seller-provided credit enhancements that have not been securitized.

A limited amount of information will also be collected on credit exposures to asset-backed commercial paper conduits. For the home equity line, credit card receivable, and the commercial and industrial loan categories, branches and agencies will also report the amount of any ownership (or seller's) interests in securitizations that are carried as securities and as loans and the past due amounts on the assets underlying the seller's interests carried as securities.

Although the new schedule will collect a considerable amount of information on these securitization activities, Schedule S will not affect most branches and agencies and the increase in reporting burden associated with the schedule's new information will be confined to a relatively small segment of the industry.

On a related matter, the agencies will collect information to facilitate more effective assessments of credit and other exposures related to branch and agency portfolios of asset-backed securities. Currently all asset-backed securities are reported in Schedule RAL, item 1.b, "U.S. Government securities," or item 1.c, "Other bonds, notes, debentures, and corporate stock (including state and local securities)," depending on the issuer or guarantor. The agencies will add two new items on Schedule RAL to segregate branch and agency holdings of mortgage-backed securities and other asset-backed securities. Collection of this information will promote risk-focused supervision by enhancing the agencies' ability to assess credit exposures and asset concentrations.

Reporting of Trust Data

The agencies will change the manner in which branches and agencies report information on their trust activities. Branches and agencies that file the existing Annual Report of Trust Assets (FFIEC 001) will instead file a new Fiduciary and Related Services Schedule (Fiduciary Schedule) (Schedule T) as part of the FFIEC 002. Under this proposal, branches and agencies that have fiduciary or related activity will be required to report certain trust information in Schedule T annually as of December 31.[1] This information includes the number of accounts and the market value of trust assets for eight categories of fiduciary activities. These institutions will also report data on corporate trust activities, collective investment funds and common trust funds, and types of managed assets held in personal trust and agency accounts.

In creating Schedule T, modifications have been made to some of the existing items currently reported on the FFIEC 001 to improve their value and usefulness. However, the total number of separately reportable data items in the Fiduciary Schedule represents a decrease of more than 60 percent in the number of reportable items in the FFIEC 001. Thus, the agencies believe this proposal will not produce an increase in reporting burden for trust institutions.

The agencies are proposing to add the new Fiduciary Schedule to the FFIEC 002 instead of retaining separate trust reports in order to facilitate the timely collection and processing of the information. Institutions filing the current annual trust reports generally must submit their reports within 45 days after year-end. Electronically submitted annual trust reports, first allowed for year-end 1998 reporting, have a 75-day filing deadline. By moving the reporting of fiduciary information into the FFIEC 002, the submission deadline for the FFIEC 002 will apply to this reporting requirement. The length of time that trust institutions will have for completing the Fiduciary Schedule will be reduced from 45 days to 30 days for most institutions and from 75 days to 30 days for institutions that file electronically. The implementation of this Fiduciary Schedule and the modification of the submission deadline for this reporting requirement is consistent with the reporting treatment currently for insured commercial banks and FDIC-supervised savings banks.

C. Other Issue for Which Public Comment Is Requested

Eliminating Confidential Treatment for Certain Past Due and Nonaccrual Data

An important public policy issue for the agencies has been how to use market discipline to complement supervisory resources. Market discipline relies on market participants having information about the risks and financial condition of banking organizations. Disclosure that increases transparency should lead to more accurate market assessments of risk and value. This, in turn, should result in more effective market discipline on banking organizations.

Despite this emphasis on market discipline, the FFIEC and the agencies currently accord confidential treatment to the information branches and agencies report in Schedule N of the FFIEC 002 report on the amounts of their loans, leases, and other assets that are past due, in nonaccrual status, or restructured and in compliance with modified terms. In order to give the public, including branches and agencies, more complete information on the level of and trends in asset quality at individual institutions, the agencies are proposing to eliminate the confidential treatment currently provided for this information beginning with the amounts reported as of June 30, 2001.

Some financial institutions have held that information on loans, leases, and other assets that are past due 30 through 89 days is not a reliable indicator of future loan losses or of general asset quality. They further note that market discipline will be reduced, rather than enhanced, by the release of information that is highly susceptible to misinterpretation to the extent that it could cause an unjustifiable loss of funding to the industry. However, banking supervisors have consistently found information on loans and leases past due 30 through 89 days to be helpful in identifying financial institutions with emerging asset quality problems. Therefore, the agencies believe that such information is a useful indicator of general asset quality and will not represent misleading information to the public.

Currently the agencies publicly disclose information reported by insured commercial banks, FDIC-supervised savings banks, and bank holding companies on loans and leases that are past due 90 days or more and still accruing, in nonaccrual status, or restructured and in compliance with modified terms. The agencies will publicly disclose reported information on loans and leases that are past due 30 through 89 days and still accruing for these institutions effective as of June 30, 2001. However, for periods prior to June 30, 2001, such past due data will not be publicly disclosed on an individual institution basis. Disclosing the information reported on Schedule N of the FFIEC 002 will also provide for a consistent reporting treatment with other U.S. banking institutions.

Request for Comment

Comments submitted in response to this Notice will be shared among the agencies and will be summarized or included in the Board's request for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden as well as other relevant aspects of the information collection requests. Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Board of Governors of the Federal Reserve System, April 30, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–11164 Filed 5–3–01; 8:45 am]

BILLING CODE 6210–01–P

[1] This FFIEC 002 proposal does not address the trust reporting requirements that would be applicable to entities other than U.S. branches and agencies of foreign banks.

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 29, 2001.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Henry State Bancorp, Inc., Henry, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Henry State Bank, Henry, Illinois.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Home Bancshares, Inc., Conway, Arkansas, to acquire 28.6 percent of the voting shares of Russellville Bancshares, Inc., Jonesboro, Arkansas, and thereby acquire First Arkansas Valley Bank, Russellville, Arkansas. In addition, Russellville Bancshares, Inc., also has applied to become a bank holding company by acquiring 86 percent of the First Arkansas Valley-Bank, Russellville, Arkansas.

Board of Governors of the Federal Reserve System, April 30, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–11166 Filed 5–3–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 01-10469) published on pages 21157 and 21158 of the issue for Friday, April 27, 2001.

Under the Federal Reserve Bank of St. Louis heading, the entry for Harrodsburg First Financial Bancorp, Inc., Harrodsburg, Kentucky, is revised to read as follows:

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Harrodsburg First Financial Bancorp, Inc., to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Financial Bank, Glasgow, Kentucky.

In connection with this application, Applicant also has applied to retain ownership of its thrift subsidiary, First Financial Bank, Harrodsburg, Kentucky, and thereby engage in operating a savings association, pursuant to § 225.24(b)(4) of Regulation Y.

Comments on this application must be received by May 21, 2001.

Board of Governors of the Federal Reserve System, April 30, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–11167 Filed 5–3–01; 8:45 am]

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FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 29, 2001.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Commerce Financial Corporation ESOP, Topeka, Kansas; to acquire up to 35 percent of the voting shares of Commerce Financial Corporation, Topeka, Kansas, and thereby indirectly acquire Commerce Bank & Trust, Topeka, Kansas.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Washington First Financial Group, Inc., Seattle, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of Washington First International Bank, Seattle, Washington.

Board of Governors of the Federal Reserve System, May 1, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–11299 Filed 5–3–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 18, 2001.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Banco Espirito Santo, S.A.; Espirito Santo Financial (Portugal) Sociedade Gestora de Participacoes Sociais, S.A.; Bespar Sociedade Gestora de Participacoes Sociais, S.A.; all of Lisbon, Portugal; and E.S. Control Holding S.A.; Espirito Santo Financial Group S.A.; E.S. International Holding S.A.; all of Luxembourg-Kirchberg, Luxembourg; to retain an existing investment in and acquire additional shares of Clarity Incentive Systems, New York, New York, and thereby continue engaging in data processing and management consulting activities pursuant to §§ 225.28(b)(9) and (b)(14) of Regulation Y.

2. Banco Espirito Santo, S.A.; Espirito Santo Financial (Portugal) Sociedade Gestora de Participacoes Sociais, S.A.; Bespar Sociedade Gestora de Participacoes Sociais, S.A.; all of Lisbon, Portugal; and E.S. Control Holding S.A.; Espirito Santo Financial Group S.A.; E.S. International Holding S.A.; all of Luxembourg-Kirchberg, Luxembourg; to retain shares of FiNet.com, Inc., San Ramon, California, and thereby continue engaging in extending credit and activities related to extending credit pursuant to §§ 225.28(b)(1) and (b)(2) of Regulation Y.

Board of Governors of the Federal Reserve System, April 30, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–11165 Filed 5–3–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10 a.m., Wednesday, May 9, 2001.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personal actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Michelle A. Smith, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: May 2, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–11422 Filed 5–3–01; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Notice

TIME AND DATE: 9 a.m. (EDT), May 14, 2001.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. National Finance Center Record Keeping and New TSP System.
2. Congressional/Agency/Participant Liaison
3. Benefits and Investments
4. Participant Communications
5. Approval of the minutes of the April 9, 2001, Board member meeting
6. Thrift Savings Plan Activity Report by the Executive Director
7. Approval of the Update of the FY 2001 Budget and FY 2002 Estimates
8. Investment Policy Review
9. Status of Audit Recommendations

FOR FURTHER INFORMATION CONTACT: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 01–11404 Filed 5–2–01; 12:58 pm]

BILLING CODE 6760–01–M

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission (FTC or "Commission").

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act (PRA). The FTC is seeking public comments on its proposal to extend through August 31, 2004 the current PRA clearance for information collection requirements contained in its regulations under the Comprehensive Smokeless Tobacco Health Education Act of 1986 ("Smokeless Tobacco Act" or the "Act"). That clearance expires on August 31, 2001.

DATES: Comments must be submitted on or before July 3, 2001.

ADDRESSES: Send written comments to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580. All comments should be captioned "Smokeless Tobacco Regulations: Paperwork comment."

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to Rosemary Rosso, Attorney, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326–2174.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the Smokeless Tobacco Act regulations (OMB Control Number 3084–0082).[1]

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency; including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Description of the collection of information and proposed use: The Smokeless Tobacco Act requires that manufacturers, packagers, and importers of smokeless tobacco products include one of three specified health warnings on packages and in advertisements. The Act also requires that each manufacturer, packager, and importer of smokeless tobacco products submit a plan to the Commission specifying the method to rotate, display, and distribute the warning statement required to appear in advertising and labeling. The Commission is required by the Act to determine that these plans provide for rotation, display, and distribution of warnings in compliance with the Act and implementing regulations. With one exception, all of the affected companies have previously filed plans. However, the plan submission requirement continues to apply to a company that amends its plan, or to a new company that enters the market.

Burden Statement

Estimated annual hours burden: 1,000 hours (rounded). The FTC is retaining its existing burden estimate of 1,000 hours. This amount is based on the burden previously estimated for fourteen smokeless tobacco companies to prepare and submit amended compliance plans, and to permit at least three new companies to submit initial compliance plans. Though staff's calculations underlying the estimate totaled 560 hours, staff then conservatively rounded up its estimate to 1,000 hours. Staff firmly believes that this prior rounded estimate will fully incorporate any incremental effects of an additional three companies submitting plans.

Virtually all affected companies long ago filed their plans with the Commission. Additional annual reporting burdens would occur only if those companies opt to change the way they display the warnings required by the Smokeless Tobacco Act. Although it is not possible to predict whether any of these companies will seek to amend an existing approved plan (and possibly none will), staff conservatively assumes that each company will file one amendment per year. This estimate is conservative because, over the past three years, the Commission has reviewed only two minor amendments to plans and the Commission has not changed the relevant regulations.[2] The

[1] The Commission seeks comment on the costs and burdens imposed by the existing smokeless tobacco regulations. In March 2000, the Commission commenced a regulatory review of its smokeless tobacco regulations to determine whether there is a continuing need for the regulations and, if so, what revisions, if any, should be made. 65 FR 11944 (Mar. 7, 2000). In addition to comments sought on the costs and benefits of the existing regulations, the Commission requested comment on whether the regulations are effective in meeting the Smokeless Tobacco Act's format and display requirements and whether the current "safe harbor" approach is sufficiently enforceable. If the Commission determines that the regulations should be amended, it will commence a rulemaking proceeding. Should resulting amendments materially affect PRA burden, the Commission will notify OMB and seek amended clearance.

[2] In March 2000, the Commission commenced a regulatory review of its smokeless tobacco regulations to determine whether there is a continuing need for the regulations and, if so, what revisions, if any, should be made. In addition to questions concerning the costs and benefits of the existing regulations, the Commission requested comment on whether the regulations are effective in meeting the Smokeless Tobacco Act's format and display requirements and whether the current "safe harbor" approach is sufficiently enforceable. If the

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estimated time to prepare the two amended plans is less than 20 hours each. The only major amendment of an approved plan, occurring more than three years ago, required only 40 hours to prepare, which is considerably less time than individual companies spent preparing their initial plans. Commission staff believes it reasonable to assume that each company would consume no more than 40 hours to prepare an amended plan.

Commission staff also estimates that one smokeless tobacco manufacturer will file an initial plan, for an additional burden of approximately 150 hours.[3] When the regulations were first proposed in 1986, representatives of the Smokeless Tobacco Council, Inc. indicated that the six companies it represented would require approximately 700 to 800 hours in total (133 hours apiece) to complete the initial required plans. Staff assumed that other companies, whose plans were prepared by various other representatives, would require more time, on average, to complete their plans. Staff estimated that this latter group of companies would each require approximately 150 hours, and it believes this estimate remains reasonable.

In addition to the estimates above, the Commission anticipates that in the next three years, up to two small importers may submit initial plans, for an additional burden of approximately 80 hours. Over the past three years, two small importers submitted initial plans. Because these plans involved only a limited number of brands and no advertising, the estimated time to prepare the plans was very modest. Staff estimates that the companies spent no more than 40 hours each to prepare the plans.

Based on these assumptions, the total annual hours burden should not exceed 1,000 hours. [(14 companies × 40 hrs. each) + (one company × 150 hours) + (2 companies × 40 hrs.) = 780 total hours, rounded to one thousand hours.]

Commission determines that the regulations should be amended, it will commence a rulemaking proceeding. Should any resulting amendments materially affect burden under the PRA, the Commission will notify OMB and seek amended clearance.

[3] This company has been selling smokeless tobacco products for several years, but failed to submit a plan as required by the Act and the regulations. The company currently is in the process of obtaining approval of a complying rotational plan. Thus, most, if not all, of the 150 estimated burden hours likely will have been expended before August 31, 2001. However, erring on the conservative side, staff has included these hours in its burden estimate.

Estimated annual labor cost burden: $103,000

The total annualized labor cost to these companies should not exceed $103,000. This is based on the assumption that management or attorneys will account for 80% of the estimated 1,000 hours required to rewrite or amend the plans, at an hourly rate of $125, and that clerical support will account for the remaining time (20%) at an hourly rate of $15. (Management and attorneys' time (1,000 hrs. × 0.8 × $15 = $3,000).

Estimated annual non-labor cost burden: $0 or minimal.

The Commission knows of no recordkeeping cost burden associated with the plans for the display of the warnings. The companies may keep copies of their plans to ensure that labeling and advertising complies with the requirements of the Smokeless Tobacco Act. Such recordkeeping would require the use of office supplies, e.g., file folders and paper, all of which the companies should have on hand in the ordinary course of their business.

While companies submitting initial plans may incur one-time capital expenditures for equipment used to print package labels in order to include the statutory health warnings or to prepare acetates for advertising, the warnings themselves disclose information completely supplied by the federal government. As such, the disclosure does not constitute a "collection of information" as it is defined in the regulations implementing the PRA, nor by extension, do the financial resources expended in relation to it constitute paperwork "burden." *See* 5 CFR 1320.3(c)(2). Moreover, any expenditures relating to the statutory health warning requirements would likely be minimal in any event. As noted above, virtually all affected firms have already submitted approved plans. For these companies, there are no capital expenditures. After the Commission approves a plan for the display of the warnings required by the Smokeless Tobacco Act, the companies are required to make additional submissions to the Commission only if there is a change in the way that they choose to display the warnings. Once the companies have prepared plates to print the required warnings on their labels, there are no additional set-up costs associated with the display of the warnings in labeling. Similarly, once the companies have prepared acetates of the required warnings for advertising and promotional materials, there are no additional set-up costs associated with printing the warnings in those materials.

Finally, capital expenditures for small importers are likely to be de minimis. Both firms that submitted plans over the past three years used stickers to place the warnings on their packages. The stickered warnings could be generated with office equipments and supplies such as computers and labels, all of which the companies should have on hand in the ordinary course of their business. Because neither firm engaged in any advertising, no costs associated with advertising were incurred.

Christian S. White,
Acting General Counsel.

[FR Doc. 01–11237 Filed 5–3–01; 8:45 am]
BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act (PRA). The FTC is seeking public comments on its proposal to extend through August 31, 2004 the current PRA clearance for information collection requirements contained in its Telemarketing Sales Rule, 16 CFR part 435 ("TSR" or "Rule"). That clearance expires on August 31, 2001.

DATES: Comments must be submitted on or before June 4, 2001.

ADDRESSES: Send written comments to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580. All comments should be captioned "Telemarketing Sales Rule: Paperwork comment."

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to Karen Leonard, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Room H–238, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–3597.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" means agency requests or requirements that members of the public

submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the TSR (OMB Control Number 3084–0097).

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The TSR implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101–6108 ("Act"). The Act seeks to prevent deceptive or abusive telemarketing practices. It mandates certain disclosures by telemarketers, and directs the Commission to consider recordkeeping requirements in its promulgation of a telemarketing rule to address such practices. As required by the Act, the TSR mandates certain disclosures regarding telephone sales and requires telemarketers to retain certain records regarding advertising, sales, and employees. The disclosures provide consumers with information necessary to make informed purchasing decisions. The records are available for inspection by the Commission and other law enforcement personnel to determine compliance with the Rule. Records may also yield information helpful to measuring and redressing consumer injury stemming from Rule violations.

Burden Statement

Estimated Annual Hours Burden: 2,301,000 Hours

The estimated recordkeeping burden is 50,000 hours for all industry members affected by the Rule. The estimated burden related to the disclosures that the Rule requires is 2,251,000 hours (rounded to nearest thousand) for all affected industry members, for a total of 2,301,000 burden hours.

Recordkeeping: At the time the Commission issued the Rule, it estimated that during the initial and subsequent years after the Rule took effect, 100 new telemarketing entities per year would find it necessary to revise their practices to conform with it, each requiring approximately 100 hours to develop a compliant recordkeeping system, for a cumulative yearly total of 10,000 burden hours. The Commission received no comments relating to this estimate either when it issued the Rule nor during the ensuing rule review and PRA clearance processes, and staff believes the estimate remains representative. There is no reason to believe that the number of affected new entrants each year has increased.

Of the estimated 39,900 industry members who have already assembled and retained the required records in their recordkeeping systems, staff estimates that each member requires only one hour per year to file and store records required by the Rule. For purposes of estimation, staff has rounded by the cumulative sub-total of 39,900 hours to 40,000 hours. Thus, total estimated annual recordkeeping burden for new and existing entities is 50,000 hours.

Disclosure: Staff believes that a substantial majority of telemarketers now make in the ordinary course of business the disclosures the Rule requires because to do so constitutes good business practice.[1] To the extent this is so, the time and financial resources needed to comply with disclosure requirements do not constitute "burden." 16 CFR 1320.3(b)(2). Moreover, many state laws require the same or similar disclosures the Rule mandates. Thus, the disclosure hours burden attributable solely to the Rule is far less than the total number of hours associated with the disclosures overall. As before when last seeking OMB clearance and related public comment, staff estimates that the disclosures the Rule requires would be made in at least 75 percent of telemarketing presentations even absent the Rule. *See* 63 FR 40713, July 30, 1998. Staff received no comments at that time refuting this estimate. Accordingly, staff determined that the hours burden estimate for the Rule's disclosure requirements is 25 percent of the total hours associated with disclosures of the type the TSR requires. Staff estimates the portion attributable to the Rule to be 2,251,000, rounded to the nearest thousand. The components of this total are detailed in the immediately following paragraphs that address hours burden.

In connection with the Rule's issuance and in the ensuing rule review and PRA clearance processes, staff estimated that the 39,900 (rounded to 40,000) industry members make approximately 9 billion calls per year, or 225,000 calls per year per company. The TSR provides that if an industry member chooses to solicit inbound calls from consumers by advertising media other than direct mail or by using direct mail solicitations that make certain required disclosures (providing for an inbound telephone call as a possible response) that member is exempted from complying with the Rule's oral disclosures. Staff estimates that at least 9,000 firms will choose to adopt marketing methods that exempt them from complying with the Rule's oral disclosure requirements. This assumption is based on industry data indicating that slightly over 20% of industry members engage in direct mail solicitations involving telemarketing[2] (and staff's corollary assumption that these solicitations will include written disclosures the Rule alternatively requires).

When the Commission issued the TSR, staff estimated that it takes 7 seconds for telemarketers to disclose the required outbound call information orally. Staff also estimated that a least 60 percent of calls result in "hang-ups" before the seller or telemarketer can make all the required disclosures and the "hang-up" calls consume only 2 seconds. Accordingly, staff estimates that the total time associated with these initial disclosure requirements is approximately 250 hours per firm (90,000 non-hang up calls (.40 × 225,000) × 7 seconds per call) + (135,000 hang-up calls (.60 × 225,000) × 2 seconds per call). Thus, the total time expenditure for the 31,000 firms choosing marketing methods that require these oral disclosures is 7.75 million hours. When it initially published this estimate, the Commission received no comments on it nor had the Commission received related comments in the ensuing Rule review and PRA clearance processes. Staff believes the estimate remains reasonable. Based on the assumption

[1] Although telemarketing fraud causes significant harm to consumers—Congress has estimated that misrepresentations or material omissions in telemarketing sales presentations result in $3 billion to $40 billion annually in consumer injury—the harm caused by telemarketing fraud remains a small fraction of the $400 billion in total annual sales through telemarketing.

[2] Direct Marketing Association Statistical Fact Book 2000 (22d ed. 2000) (based on data for 1997–1998, the two most recent years included within this source information).

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that no more than 25 percent of this time constitutes "burden" imposed solely by the Rule (as opposed to the normal business practices of most affected entities apart from the Rule's requirements), the burden subtotal attributable to these basic disclosures is 1,937,500 hours.

The TSR also requires further disclosures before the customer pays for goods or services. Specifically, telemarketers must disclose the total cost of the offered goods or services; all material restrictions; and all material terms and conditions of the seller's refund, cancellation, exchange, or repurchase policies (if a representation about such a policy is a part of the sales offer). If a prize promotion is involved in connection with the sale of goods or services, the telemarketer must also disclose information about the non-purchase entry method for the prize promotion. Staff estimates that these disclosures consume approximately 10 seconds. However, the Rule requires these disclosures only when a call results in a sale. Staff estimates that sales occur in approximately 6 percent to telemarketing calls. Accordingly, the estimated amount of time for these disclosures is 37.5 hours per firm (13,500 calls resulting in a sale (.06 × 225,000 × 10 seconds) or 1.163 million hours for the 31,000 firms choosing marketing methods that require oral disclosures. When it initially published this estimate, the Commission received no comments on this estimate nor had it received related comments in the ensuing Rule review and PRA clearance processes. Again, staff believes the estimate remains reasonable. Based on the assumption that no more than 25 percent of this time constitutes "burden" imposed solely by the Rule, the burden subtotal attributable to these additional disclosures is 290,750 hours.

As noted above, staff estimates that approximately 9,000 telemarketing firms will choose the written disclosure option. Firms electing this option are likely to be those using written advertising materials. Thus, the burden of adding the required disclosures should be minimal. Staff previously estimated that a typical firm will spend approximately 10 hours per year engaged in activities ensuring compliance with this provision of the Rule, for an estimated total burden of 90,000 hours for all 9,000 firms using written disclosure. As was the case regarding the other estimates stated above, when the Commission initially published this estimate, it received no comments on it nor had the Commission received any such comments in the ensuring Rule review and PRA clearance processes. Staff believes this estimate also remains reasonable. Based on the assumption that no more than 25 percent of this time constitutes "burden" imposed solely by the Rule, residual burden attributable to these written disclosures is 22,500 hours.

Estimated Annual Labor Cost Burden: $34,361,000

The estimated labor cost for recordkeeping is $600,000. Assuming a cumulative burden of 10,000 hours/year to set up compliant recordkeeping systems, and applying to that a skilled labor rate of $20/hour, start-up costs would approximate $200,000 yearly for all new telemarketing entities. Staff also estimates that existing industry members require 40,000 hours, cumulatively, to maintain compliance with the TSR's recordkeeping provisions. Applying a clerical cost rate of $10/hour, cumulative recordkeeping maintenance would cost approximately $400,000 annually. The estimated labor cost for disclosure is $33,765,000, based on an estimate of 2,251,000 disclosure burden hours and a wage rate of $15/hour. Thus total labor cost, rounded to the nearest thousand, is $34,361,000.

Estimated Annual Non-Labor Cost Burden: $10,022,000

Total capital and start-up cost: Staff estimates that the capital and start-up costs associated with the TSR's information collection requirements are de minimis. The Rule's recordkeeping requirements mandate that companies maintain records but not in any particular form. While those requirements necessitate that affected entities have a means of storage, industry members should have that already regardless of the Rule. Even if an entity finds it necessary to purchase a storage device, the cost is likely to be minimal, especially when annualized over the item's useful life. The Rule's disclosure requirements require no capital expenditures.

Other non-labor cost: Affecters entities need some storage media such as file folders, computer diskettes, or paper in order to comply with the Rule's recordkeeping requirements. Although staff believes that most affected entities would maintain the required records in the ordinary course of business, staff estimated that the approximately 40,000 industry members affected by the Rule spend a annual amount of $50 each on office supplies as a result of the Rule's recordkeeping requirements, for a total recordkeeping cost burden of $2,000,000.

To comply with the Rule's disclosure requirements, telemarketing firms likely incur additional cost for telephone service, assuming that the firms spend more time on the telephone with customers due to the required disclosures. As further detailed above, staff believes that the burden relating to the required oral disclosures amounts to 8,913,000 hours (7.75 million initial disclosure hours + 1.163 million hours regarding sales). Assuming all calls to customers are long distance, at a commercial calling rate of 6 cents per minute ($3.60 per hour), affected entities as a whole may incur up to $32,086,800 in telecommunications cost as a result of the Rule's disclosure requirements. However, as also noted above, staff estimates that only 25 percent of such disclosures constitute "burden." Accordingly, the oral disclosure cost burden, adjusted for this apportionment, is $8,022,000, rounded to the nearest thousand.

Staff believes that the estimated 9,000 entities choosing to comply with the Rule through written disclosures incur no additional capital or operating expenses as a result of the Rule's requirements because they are likely to provide written information to prospective customers in the ordinary course of business. Adding the required disclosures to that written information likely requires no supplemental expenditures.

Thus, total estimated non-labor cost burden associated with the Rule is $10,022,000 ($2,000,000 for recordkeeping + $8,022,000 for oral disclosures).

Christian S. White,

Acting General Counsel.

[FR Doc. 01–11238 Filed 5–2–01; 8:45 am]

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GENERAL ACCOUNTING OFFICE

[Document No. JFMIP–SR–01–01]

Joint Financial Management Improvement Program (JFMIP)—Federal Financial Management System Requirements (FFMSR)

AGENCY: Joint Financial Management Improvement Program (JFMIP)

ACTION: Notice of document availability.

SUMMARY: The JFMIP is seeking public comment on an exposure draft entitled "Benefit System Requirements," dated May 2001. The draft is the first Federal Financial Management System Requirements (FFMSR) document to address standard requirements for Federal agency benefit systems. The document is intended to assist agencies when developing, improving or evaluating benefit systems. It provides the baseline functionality that benefit systems must have to support agency missions and comply with laws and regulations. When issued in final, the JFMIP Benefit System Requirements document will augment the existing body of FFMSR that define financial system functional requirements which are used in evaluating compliance with the Federal Financial Management Improvement Act (FFMIA) of 1996.

DATES: Comments are due by July 1, 2001.

ADDRESSES: Copies of the exposure draft have been mailed to agency senior financial officials, together with a cover memo listing the questions on which JFMIP is soliciting feedback. The exposure draft and cover memo are available on the JFMIP website: WWW.JFMIP.GOV

Comments should be addressed to JFMIP, 1990 K Street, NW., Suite 430, Washington, DC 20006.

FOR FURTHER INFORMATION: Steven Fisher, (202) 219–0530 or via Internet: fishers@jfmip.gov.

SUPPLEMENTARY INFORMATION: The FFMIA of 1996 mandated that agencies implement and maintain systems that comply substantially with FFMSR, applicable Federal accounting standards, and the U.S. Government Standard General Ledger at the transaction level. The FFMIA statute codified the JFMIP financial system requirements documents as a key benchmark that agency systems must meet to substantially comply with systems requirements provisions under FFMIA. To support the provisions outlined in the FFMIA, the JFMIP is updating obsolete requirements documents and publishing additional requirements documents.

Comments received will be reviewed and the exposure draft will be revised as necessary. Publication of the final requirements will be mailed to agency senior financial officials and will be available on the JFMIP website.

Dated: May 1, 2001.

Steven A. Fisher,

Senior Management Analyst, Joint Financial Management Improvement Program.

[FR Doc. 01–11323 Filed 5–3–01; 8:45 am]

BILLING CODE 1610–02–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary, Assistant Secretary for Planning and Evaluation; Notice Inviting Applications for New Award for Fiscal Year 2001

AGENCY: Office of the Assistant Secretary for Planning and Evaluation (ASPE), HHS.

ACTION: Announcement of the availability of funds and request for applications from states and large counties for cooperative agreements to study the characteristics of persons receiving cash assistance from the Temporary Assistance to Needy Families (TANF) program.

SUMMARY: The Office of the Assistant Secretary for Planning and Evaluation (ASPE) announces the availability of funds and invites applications for cooperative agreements to conduct research into the characteristics of individuals who receive cash assistance from the Temporary Assistance to Needy Families (TANF) program. Approximately four to five states or large counties will receive funding under a cooperative agreement that will enable them to monitor and conduct research into the characteristics of current TANF recipients and their families. Topics relevant to these studies fall into several interrelated categories: (1) Demographic characteristics of the caseload; (2) employment and economic outcomes of the caseload; and (3) barriers to employment. ASPE is particularly interested in assisting state and local efforts to study their TANF recipients' potential barriers and opportunities for obtaining employment and achieving self-sufficiency using survey data analysis enriched with administrative data. Given the nature of the research involved, competition is open only to state agencies that administer TANF programs and to counties with total populations greater than 500,000 that administer TANF programs.

Cooperative Agreements are assistance mechanisms and subject to the same administrative requirements as grants; however, they are different from either a grant or a contract. Cooperative Agreements allow more involvement and collaboration by the government in the affairs of the project compared to a grant, but provide less direction of project activities than a contract. The Terms of Award are in addition to not in lieu of otherwise applicable guidelines and procedures.

CLOSING DATE: The deadline for submission of applications under this announcement is June 18, 2001.

ADDRESSES: Application instructions and forms should be requested from and submitted to: Adrienne Little, Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Room 405F, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201. Telephone: (202) 690–8794. Requests for forms and administrative questions will be accepted and responded to up to ten (10) working days prior to the closing date.

Copies of this program announcement and many of the required forms may also be obtained electronically at the ASPE World Wide Web Page: *http://aspe.hhs.gov*. You may fax your request to the attention of the Grants Officer at (202) 690–6518. Applications may not be faxed or submitted electronically.

The printed **Federal Register** notice is the only official program announcement. Although reasonable efforts are taken to assure that the files on the ASPE World Wide Web Page containing electronic copies of this program announcement are accurate and complete, they are provided for information only. The applicant bears sole responsibility to assure that the copy downloaded and/or printed from any other source is accurate and complete.

FOR FURTHER INFORMATION CONTACT: Administrative questions should be directed to the Grants Officer at the address or phone number listed above. Programmatic/technical questions should be directed to Susan Hauan, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Room 404E, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201. Telephone: (202) 690–8698. Questions may be faxed to (202) 690–6562 or e-mailed to shauan@osaspe.dhhs.gov.

Part I. Supplemental Information

Legislative Authority

This cooperative agreement is authorized by section 1110 of the Social Security Act (42 U.S.C. 1310) and awards will be made from funds appropriated under the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2001, as enacted by section 1000(a)(4) of the Consolidated Appropriations Act, 2001 (Pub. L. 106–554).

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Eligible Applicants

Given the nature of the research involved, competition is open only to state agencies that administer TANF programs and to counties with total populations greater than 500,000 that administer TANF programs. Consortia of states and counties are also encouraged to apply, as long as their combined total populations exceed 500,000 and a single agency is identified as the lead to handle grant funds and sub-granting. Public or private nonprofit organizations, including universities and other institutions of higher education, may collaborate with states in submitting an application, but the principal grantee will be a state or county. Private for-profit organizations may also apply jointly with states or counties, with the recognition that grant funds may not be paid as profit to any recipient of a grant or subgrant.

The Code of Federal Regulations, Title 45, Part 92 defines a state as: "Any of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937."

Available Funds

Approximately $1,000,000 is available from ASPE, in funds appropriated for fiscal year 2001. ASPE anticipates providing approximately four to five awards of between $200,000 and $250,000 each. If additional funding becomes available in fiscal year 2002, additional projects may be funded or some projects may receive second-year non-competing continuation funding. However, applications for funding under this announcement should describe projects that can be completely carried out with fiscal year 2001 funding at the above anticipated level.

Use of Funds

No federal funds received as a result of this announcement can be used to purchase computer equipment and no funds may be paid to grantees or sub-grantees as profit, i.e., any amount in excess of allowable direct and indirect costs of the recipient (45 CFR 74.81). Our intent is to sponsor state and local survey data collection efforts and administrative data linking and analysis, and grant funds awarded may not be used to pay for assistance programs or the provision of services.

Grantees must provide a minimum of 5 percent of the total approved cost of the project. The total approved cost of the project is the sum of the federal share and the non-federal share. Thus, a project with a total budget of $200,000 must include a match of at least $10,000 and would imply a request for federal funds of no more than $190,000. The non-federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions.

If a study has approved funding from other funding sources, the amount, duration, purpose, and source of the funds should be indicated in materials submitted under this announcement. If completion of the proposed study is contingent upon approval of funding from other sources, the relationship between the funds being sought elsewhere and from ASPE should be discussed in the budget information submitted as part of the application. In both cases, the contribution that ASPE funds will make to the project should be clearly presented.

Background

Welfare caseloads have declined precipitously in recent years. Since January 1993, the number of people receiving welfare benefits has fallen from 14.1 million to 5.8 million recipients, a reduction of nearly 60 percent. This decline is attributable to several factors, including the provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193) and the strong economy. In response to the demand from the public and policymakers, many studies to date address the circumstances of individuals who have left welfare or who applied and were formally or informally diverted from welfare. Fewer studies focus on the status of current TANF recipients. Questions have been raised, however, about who is staying on welfare. How many of the individuals on welfare are "hard-to-employ" or more disadvantaged? How many are at high risk of reaching time limits? What services do recipients need to make the transition to work and success in the labor market? This information is of great interest to policymakers and administrators trying to adapt work programs to serve those remaining on the caseload better. Long-term recipients and those close to reaching time limits are of particular interest.

ASPE is interested in funding studies under this announcement that address the characteristics and circumstances of individuals and families receiving cash assistance from the TANF program at a given point in time. TANF administrative records are an important source of data on the caseload. These administrative records provide valuable data on the characteristics of the TANF caseload; however, the picture they provide is incomplete. These state and county studies on the TANF caseload will help enrich our understanding of the characteristics of TANF recipients.

The studies funded under this announcement continue ASPE's partnership with states and counties in building data infrastructure and, as such, build closely on many previous ASPE-sponsored research projects to study the outcomes of welfare reform. These include projects involving administrative data linking and several earlier rounds of grants to states and large counties.

For the past three years, the Department has received policy research funds targeted by Congressional appropriators to support studies of the outcomes of welfare reform. Additional funds were also included in the fiscal year 2001 appropriation. Projects funded in fiscal years 1998, 1999, and 2000 include studies that measure outcomes for a broad population of low-income families and measure family hardship and well-being, including the utilization of other support programs. A large portion of the welfare outcome funds has been spent on competitive grants to states and large counties to study families leaving welfare, as well as those who have been diverted (formally and informally) from welfare receipt. Based on both linked administrative data and survey data, these projects provide valuable data on welfare outcomes from a variety of perspectives. Additional information on ASPE-funded welfare outcomes studies can be found on the ASPE web site at: http://aspe.os.dhhs.gov/hsp/leavers99/index.htm.

As findings from these studies continue to emerge, forming a valuable knowledge base around welfare outcomes for families who leave welfare, it is appropriate to expand our understanding of the characteristics of current TANF recipients. Current recipients include both those who entered the program recently as well as those who have received welfare cash assistance over a longer period of time. The policy community is particularly interested in understanding the personal, family, and community-level barriers current recipients may face, as well as specific characteristics and skills that may provide opportunities for employment and future self-sufficiency.

There have been several successful efforts to measure the characteristics of welfare recipients beyond

demographics. For example, both Missouri and Nebraska are using telephone interviews to collect data on barriers to employment among current and former welfare recipients. The National Survey of America's Families is another example of a telephone survey that includes questions on a variety of potential barriers to employment including mental health. The Women's Employment Survey collects a rich set of in-person interview data on the characteristics of current and former welfare recipients, including domestic violence and substance abuse, in one Michigan County, and CalWORKS Needs Assessment examines health-related and other barriers to self-sufficiency in Alameda County, California. In March 2001, a workshop sponsored by ASPE and co-organized with Sheldon Danziger, principal investigator for the Women's Employment Survey, explored the use of measures in a telephone survey to capture such potential barriers as domestic violence, mental health, physical health, and substance use and abuse.

Based on studies to date, it is clear that the information required to understand the detailed characteristics and circumstances of this population is not available in administrative data sources. Hence, survey data methods are needed for these state and county-level TANF caseload projects.

Part II. Purpose and Responsibilities

Purpose

The purpose of this announcement is to partner with states and large counties through cooperative agreements to support their research efforts on the characteristics and circumstances of current Temporary Assistance to Needy Families (TANF) recipients. ASPE is committed to using the research funds appropriated by Congress to help build state and local capacity to conduct studies of the outcomes of welfare reform. Through these cooperative agreements, ASPE hopes to support state and local efforts to gather a variety of information about the above individuals and their families, including their demographic characteristics, employment and economic circumstances, and potential personal, family and community-level barriers to employment and economic self-sufficiency. Again, while TANF administrative records include basic data on TANF recipient characteristics, they do not provide sufficiently detailed information on recipient needs, barriers to work, and outcomes.

This research will allow states and large counties to learn about the characteristics of families who receive TANF cash assistance at a given point in time. What are the characteristics of recipients and their families? What are the characteristics of employed recipients? What types of barriers do recipients face and how do these barriers differ between working and non-working recipients? How are such families faring in terms of economic and non-economic family well-being?

While applicants have the flexibility to define their specific study population, states' and localities' understanding of their own caseloads as well as a broader understanding of the circumstances of the TANF population as a whole, is achieved best with some cross-state comparability. The National Academy of Sciences has also indicated that increased comparability across state and local area welfare studies is needed for providing the most useful knowledge to the wider research and policy community and should be a high priority. To achieve cross-study comparability it is preferred that the study populations identified include all single-parent families receiving TANF cash assistance at a given point in time. This preferred study population would include child-only cases where a single parent is present in the household. To meet state-specific policy and research needs, states and counties may also choose to stratify their samples of the study population and/or to broaden their study populations to include additional TANF cash recipients (e.g., two-parent cases, all child-only cases) or recipients of other forms of TANF assistance in the same month.

Applicants are encouraged to propose to draw their sample cohorts of TANF recipients from their TANF administrative data files so as to minimize the amount of time between sample identification and the desired timing for survey implementation. This would maximize the number of survey respondents still receiving TANF at the time of the interview.

Based on prior work, telephone survey instruments have been developed to address this population. ASPE will provide these instruments to the grantees and will work closely with them to finalize a data collection instrument. Grantees will have the opportunity to include questions that meet their own state-specific research and policy needs. It is anticipated that the total time to administer the survey instrument will be approximately 30–40 minutes over the telephone. Applicants should assume a survey instrument will be completed and cleared by the Office of Management and Budget (OMB) by March 2002.

Applicants may propose to draw stratified samples based on subgroups of particular interest to ensure sufficient sample size for analysis. For example, states may want to stratify their samples of single-parent recipients based on length of the current welfare spell or other spell dynamics. Using administrative data on months of past welfare receipt, a grantee could oversample long-term recipients (e.g., recipients for 24 or more months) or "cyclers" (e.g., recipients with multiple spells over a given time period). Grantees may also choose to stratify their samples and conduct subgroup analyses based on state-specific policy interests such as teen parents, immigrants, non-employed recipients, sanctioned recipients, recipients who are close to reaching time limits, or other special populations (e.g., the disabled, those with substance abuse problems). Subgroup comparisons across other characteristics, including race, age and geographic area (including urban/rural) are also encouraged. While ASPE understands that grantees will vary in the types of subgroup analyses that are of interest and that can be conducted, where possible ASPE will work closely with individual grantees to develop common definitions of subgroups across studies (e.g., long-term recipients).

Grantees are also encouraged to augment their survey data with administrative records to capture welfare and work histories. For example, projects could include retrospective data on prior welfare receipt and could continue to track welfare participation data post-interview. These individual records drawn from state TANF data files should be linked with the survey data collected. This combination of survey and administrative data will provide analysts with answers to a wider range of questions than would be possible with only one type of data.

Applicants for the ASPE cooperative agreements may propose to augment their analyses with administrative data from additional programs. For example, some states or localities may choose to look at linked administrative data on TANF and child welfare to address the characteristics of the caseload vis a vis contacts with the child welfare system. Grantees could also choose to examine linked administrative data on earnings (using Unemployment Insurance records) and on participation in multiple public programs (e.g., TANF, Medicaid, the Food Stamp Program, and child care) in an effort to understand

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work and program histories as well as post-interview employment and program participation.

ASPE is interested in funding state and local area studies that examine the interrelationships of demographic characteristics, employment and economic outcomes, and potential barriers to employment and self-sufficiency for a sample of current recipients, with subgroup analyses proposed by the applicants. Below is a list of general topics and some examples of specific items states and localities may want to include in these studies. It is not meant to be exhaustive of all topics that may be included in each individual grantee's study. We encourage applicants to indicate particular topics from the list below that represent the most important data needs for their state or county. In addition, if prospective applicants have additional topics and survey questions they feel are relevant to their own state-specific information needs, they are encouraged to raise these survey topics and the associated questions they wish to answer in their applications. Indication of topics and survey questions by applicants will aid in the background preparation of survey questions to be cleared by the Office of Management and Budget by March 2002.

Anticipated topics fall into three interrelated categories: (1) Demographic characteristics of the caseload; (2) employment and economic outcomes of recipients; and (3) barriers to employment and self-sufficiency.

1. *Demographic Characteristics of the Caseload:* Age (of recipient, children), race/ethnic background, marital status, number of children, educational attainment, household composition, pregnancies and births, and living arrangements (including family and child moves).

2. *Employment and Economic Outcomes of Recipients:* Employment status, reasons not working, participation in work programs and job skills training, utilization of job search services and/or basic work orientation services, earnings, income, child support payments.

3. *Potential Barriers to Employment and Self-Sufficiency.* Personal Barriers: Very low education levels, few job skills, low levels of prior labor force participation, illiteracy, limited English language fluency, lack of basic work orientation skills (*e.g.*, dress, punctuality, attendance, following instructions), physical and mental health problems and disabilities, substance abuse issues, and criminal records or involvement with the legal system.

Family Barriers: The presence of very young children, presence of children or other family members with disabilities or chronic health problems, problems with child care, domestic violence, and presence of family members with criminal records or involvement with the legal system.

Community Barriers: Poor public transportation, high crime rates, housing problems including lack of affordable housing, inadequate child care availability, inadequate job availability, and inadequate availability of services.

Grantees may also be interested in additional topics such as: utilization of specific state program services, receipt of child care benefits, measures of hardship and family well-being, housing subsidies and housing insecurity, health insecurity, food insecurity, extended family support, or other topics of interest to state and federal policymakers. States and counties should include in their applications any additional survey topics or concepts of interest and the related policy questions these survey items will be used to answer. Applicants are encouraged to include examples of these specific survey questions, if available, in an appendix.

Cooperative Agreement

ASPE will make awards under this announcement using the cooperative agreement mechanism. A cooperative agreement is a legal agreement between the Department of Health and Human Services (DHHS) and the recipient in which DHHS provides financial assistance and substantial federal programmatic involvement with the recipient during the performance of the project. In a cooperative agreement, DHHS and the recipient of federal funds share roles and responsibilities. The following two sections outline the responsibilities of the grantee and DHHS (respectively) in conducting activities to achieve the purpose of this project.

Grantee Responsibilities

1. Prior to completion of final work plans, grantees will take part in an ongoing joint discussion of their proposed study designs, a survey instrument under development, and table shells used for reporting selected results. As part of this early process, a meeting will be held for the grantees and relevant federal personnel in Washington, D.C., to discuss the preliminary methodology and design of the research projects. Grantees should plan to attend this meeting. This ongoing process will allow for knowledge sharing across the various projects, as well as encourage peer-to-peer contacts among the grantees.

2. No later than ninety (90) days after the date of award, the grantee shall submit an outline of progress to date, including efforts to secure subcontractors if applicable, and a final work plan that is based on and updates the work plan submitted in the original application.

3. Grantees should provide concise quarterly progress reports fifteen (15) days after the end of each calendar quarter. The specific format and content for these reports will be provided by the Federal Project Officer.

4. To continue the ongoing discussion of project implementation and results, a second meeting for grantees will be held approximately 11 to 12 months after the start of the grant period. Grantees should plan to attend. The meeting will provide the grantees with an opportunity to continue their joint discussions of survey administration and data analysis, and to share their preliminary project results with other grantees.

5. After completing the full project, grantees should provide ASPE with copies of their own state or county final reports. Grantees should provide at least three (3) copies of their final reports to the Grants Officer before the completion of the project. Grantees should plan to provide one unbound copy, suitable for photocopying; if only one is the original (has the original signature, is attached to a cover letter, etc.), it should not be this copy. State or county final reports should also be provided in electronic form on an IBM PC compatible 3 ½ inch diskette in a word processing format compatible with ASPE software (currently WordPerfect 8).

6. To encourage wider analysis, the grantee is required to make all data available to the research community. To the extent practicable, grantees are encouraged to follow guidance previously developed by a workgroup of grantees on producing and documenting data files (see *http://aspe.hhs.gov/hsp/leavers99/datafiles/index.htm* for current guidance for fiscal years 1998 to 2000 Welfare Outcomes grantees). The data file and documentation for all survey and administrative data compiled under this effort should be made available for broader distribution to the research community prior to the completion of the project. If the data file has been edited to ensure confidentiality of individuals, the grantee has the option of designating the data file as a public-use data file. If not, the data file should be made available to researchers under restricted-access conditions to ensure confidentiality.

Grantees should plan to deposit these databases and documentation in an ASPE-designated central and secure depository. For example, ASPE is working with the fiscal years 1998 to 2000 grantees to place most of their Welfare Outcomes data files at the Research Data Center (RDC) of the National Center for Health Statistics in Hyattsville, Maryland. The RDC controls and monitors access by researchers to guard against breaches of confidentiality; associated costs are not the responsibility of the grantees.

ASPE Responsibilities

1. ASPE shall convene two meetings of grantees, federal personnel, and relevant experts in the areas the grantees choose to address. These meetings will allow for technical assistance and peer-to-peer contacts both before final research design and survey instrument decisions have been made and after the first, preliminary results are available.

2. ASPE shall work with grantees to develop a survey instrument.

3. ASPE shall work with grantees to develop table shells for reporting selected results.

4. ASPE shall provide consultation and technical assistance in the planning and operation of grant activities. This will include working closely with states and localities on the production and documentation of data files.

5. ASPE will work with individual grantees on their data analysis and in preparing any reports and/or publications of the results.

6. ASPE shall assist in information exchange and the dissemination of state and local area reports to appropriate federal, state, and local entities.

7. ASPE shall facilitate arrangements to make data files available to the broader research community under restricted-access conditions to ensure confidentiality. ASPE will designate a central, secure depository for the restricted-access databases that grantees will provide at the end of the grant period.

Part III. Application Preparation and Evaluation Criteria

This section contains information on the preparation of applications for submission under this announcement, the forms necessary for submission, and the evaluation criteria under which the applications will be reviewed. Potential grant applicants should read this section carefully in conjunction with the information provided above. The application must contain the required federal forms, title page, table of contents, and sections listed below. All pages of the narrative should be numbered.

The application should include the following elements:

1. *Abstract:* A one-page summary of the proposed project.

2. *Goals and Objectives of the Project:* An overview that describes (1) The project; (2) state-specific information needs and policy questions to be investigated; (3) proposed accomplishments; and (4) knowledge and information to be gained from the project by the applicant, policymakers, and the research community. Applications should include specific policy questions to be answered; particular items of interest on the list of proposed topics for a survey instrument; identified gaps (if any) in the included survey topics; and any additional information that would be helpful for the grantee to gather from the sample of TANF recipients (including any questions the additional survey data would help to answer and examples of specific survey questions if available). The application should also describe how the applicant views the importance of this study and how each applicant plans to use the information collected.

If the study builds on any current project, the applicant should describe how funding under this announcement will enhance, not substitute for, current state or local efforts. Applications from states and counties that received funding from ASPE previously are not precluded from submitting applications under this announcement; however, such applications will be graded only on the Evaluation Criteria listed below and will receive no preferential treatment during the award process.

3. *Methodology and Design:* Provide a description and justification of how the proposed research project will be implemented, including definition of study population, data collection activities, use of existing data sources, methodologies, and an analytic research plan. The research design must appropriately link policy questions, data sources, and analyses, and must employ technically sound and appropriate approaches, design elements and procedures. The research plan should:

(a) Describe in detail the methodology the applicant will use to extract a sample of TANF recipients in the sample month, including detailed information on plans for drawing a stratified sample if applicable. Sample sizes should be large enough to make statistically reliable within-group estimates and comparisons between planned subgroups.

(b) Identify and describe the methodology used to gather survey data including the sampling plan, the survey mode, and the steps that will be taken to address any biases inherent in each. These should include steps planned to ensure a high response rate, such as in-person follow up to locate those who are difficult to contact, and steps taken to analyze differences between respondents and non-respondents, such as comparisons based on administrative data.

(c) If applicant proposes to use administrative data, describe the methods used to clean, standardize and link case-level administrative data from different administrative sources (if applicable) as well as the methods used to match case records between TANF administrative data and survey data.

(d) identify the methodology to be used to analyze the data and organize their final report. Simple tabular analysis, descriptive statistics, and associated tests for statistical significance are appropriate. More complex data analysis is acceptable but not expected.

To the extent that the analysis uses data on individuals from multiple, separate sources, such as administrative databases from several state agencies, the application should discuss measures taken to maintain confidentiality, as well as demonstrate that the grantee has obtained authorized access to those data sources. The preferred form of proof is a signed interagency agreement with each of the relevant agencies/departments. Though not preferable, letters of support from the appropriate agencies are acceptable, provided that the letters clearly state that the proposing agency has the authorization to access and link all necessary data. Grant applicants must ensure that the collected data will only be used for management and research purposes, and that all identifying information will be kept completely confidential. Applicants should present the methods that will be used to ensure confidentiality of records and information once data are made publically available for research purposes.

4. *Experience, Capacity, Qualifications, and Use of Staff:* Briefly describe the grant applicant's organizational capabilities and experience in conducting pertinent research projects. The application should describe the applicant's experience in conducting relevant surveys (*e.g.*, experience in locating respondents and in completing interviews with similar populations) or identify key subcontractors with such experience. For applicants proposing administrative data analysis, the

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application should detail the applicant's experience in linking administrative records across administrative sources and between administrative and survey data sources (as applicable), and in conducting research based on administrative data or identify key subcontractors with such experience.

If the grant applicant plans to contract for any of the work (*e.g.*, survey administration or data-linking), applications should include relevant information on any similar procurement activities and on their experiences in providing oversight on similar data projects. In addition, if the contractors have not been retained, the applicant should describe the process by which they will be selected and the time line for this selection process. Identify the key staff who are expected to carry out the project and provide a resume or curriculum vitae for each person. Provide a discussion of how key staff will contribute to the success of the project, including the percentage of each staff member's time that will be devoted to the project. Finally, applicants should demonstrate access to computer hardware and software for storing and analyzing the data necessary to complete this project.

5. *Work Plan:* A work plan should be included which lists the start and end dates of the project, a time line that indicates the sequence of tasks necessary for the completion of the project, and the responsibilities of each of the key staff. In listing the sequence of tasks, the plan should provide sufficient detail to demonstrate the applicant has carefully thought through the necessary steps to complete the project. The plan should identify the total time commitments of key staff members in both absolute and percentage terms, including other projects and teaching or managerial responsibilities. Grantees should assume a survey instrument will be cleared by the Office of Management and Budget by March 2002 allowing for interviews to begin as early as April 2002. Due to the level of effort needed to conduct these survey data studies, grantees may want to consider work plans with time lines of seventeen months.

The work plan also should include plans for dissemination of the results of the study (*e.g.*, articles in journals, presentations to state legislatures or at conferences) and plans for making resulting data files available to qualified researchers. As noted above, ASPE prefers that appropriately documented data files be placed at a controlled environment such as the Research Data Center of the National Center for Health Statistics or be edited as appropriate for confidentiality and issued as a public-use data file. If the grant applicant does not plan to provide a public-use file or to place the data at a controlled environment, the application should explain why and should fully articulate how the applicant will make the data available to qualified researchers.

6. *Budget:* Grant applicants must submit a request for federal funds using Standard Form 424A and include a detailed breakdown of all federal line items. A narrative explanation of the budget should be included that states clearly how the funds associated with this announcement will be used and describes the extent to which funds will be used for purposes that would not otherwise be incorporated within the project. The applicant should also document the level of funding from other sources and describe how these funds will be expended.

As noted above, applicants should budget for two trips to the Washington, D.C. area, for at least two members of the research team. The preparation and documentation of a public-use data file or other efforts to make the resulting data publically available should also be accounted for in the project budget.

Review Process and Funding Information

Applications will initially be screened for compliance with the timeliness and completeness requirements. Three (3) copies of each application are required. One of these copies must be in an unbound format, suitable for copying. If only one of the copies is the original (i.e., carries the original signature and is accompanied by a cover letter) it should not be this copy. Applicants are encouraged to send an additional two (2) copies to ease processing, but the application will not be penalized if these extra copies are not included. The grant applicant's Standard Form 424 must be signed by a representative of the applicant who is authorized to act with full authority on behalf of the applicant.

A federal review panel will review and score all applications submitted by the deadline date that meet the screening criteria (all information and documents as required by this announcement). The panel will use the evaluation criteria listed below to score each application. The panel results will be the primary element used by the Assistant Secretary for Planning and Evaluation when making funding decisions. The Department reserves the option to discuss applications with other federal or state staff, specialists, experts and the general public. Comments from these sources, along with those of the reviewers, will be kept from inappropriate disclosure and may be considered in making an award decision.

As a result of this competition, four to five grants of $200,000 to $250,000 each are expected to be made from funds appropriated for fiscal year 2001. Additional awards may be made depending on the policy relevance of applications received and the available funding, including funds that may become available in fiscal year 2002.

State Single Point of Contact

DHHS has determined that this program is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs." Applicants are not required to seek intergovernmental review of their applications within the constraints of Executive Order 12372.

Deadline for Submission of Applications

The closing date for submission of applications under this announcement is June 18, 2001. Hand-delivered applications will be accepted Monday through Friday, excluding federal holidays, during the working hours of 9:00 a.m. to 4:30 p.m. in the lobby of the Hubert H. Humphrey building, located at 200 Independence Avenue, SW in Washington, D.C. When hand-delivering an application, call (202) 690–8794 from the lobby for pick up. A staff person will be available to receive applications.

An application will be considered as having met the deadline if it is either received at, or hand-delivered to, the mailing address on or before June 18, 2001, or postmarked before midnight three days prior to June 18, 2001, and received in time to be considered during the competitive review process (within two weeks of the deadline).

When mailing applications, applicants are strongly advised to obtain a legibly dated receipt from the U.S. Postal Service or from a commercial carrier (such as UPS, Federal Express, etc.) as proof of mailing by the deadline date. If there is a question as to when an application was mailed, applicants will be asked to provide proof of mailing by the deadline date. If proof cannot be provided, the application will not be considered for funding. Private metered postmarks will not be accepted as proof of timely mailing. Applications which do not meet the deadline will be considered late applications and will not be considered or reviewed in the current competition. DHHS will send a letter to this effect to each late applicant.

DHHS reserves the right to extend the deadline for all applications due to: (1) Natural disasters, such as floods, hurricanes, or earthquakes; (2) a widespread disruption of the mail; or, (3) if DHHS determines a deadline extension to be in the best interest of the federal government. The Department will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants.

Application Forms

Application instructions and forms should be requested from and submitted to: Adrienne Little, Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Room 405F, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201. Telephone: (202) 690–8794. Requests for forms and questions (administrative and technical) will be accepted and responded to up to ten (10) working days prior to closing date of receipt of applications.

Copies of this program announcement and all of the required forms may also be obtained electronically at the ASPE World Wide Web Page: *http://aspe.hhs.gov*. You may fax your request to the attention of the Grants Officer at (202) 690–6518. Grant applications may not be faxed or submitted electronically.

The printed **Federal Register** notice is the only official program announcement. Although reasonable efforts are taken to assure that the files on the ASPE World Wide Web Page containing electronic copies of this program announcement are accurate and complete, they are provided for information only. The applicant bears sole responsibility to assure that the copy downloaded and/or printed from any other source is accurate and complete.

Also see section entitled "Components of a Complete Application." All of these documents must accompany the application package.

Length of Application

In no case shall an application for the ASPE grant (excluding the resumes, appendices and other appropriate attachments) be longer than thirty (30) single-spaced pages with 12 point font and one-inch margins on top, bottom, left, and right. Applications should not be unduly elaborate, but should fully communicate the applicant's proposed study to the reviewers.

Selection Process and Evaluation Criteria

Selection of successful applicants will be based on the technical and financial criteria described in this announcement. Reviewers will determine the strengths and weaknesses of each application in terms of the evaluation criteria listed below, provide comments, and assign numerical scores. The review panel will prepare a summary of all applicant scores, strengths and weaknesses, and recommendations and submit it to the Assistant Secretary for Planning and Evaluation for final decisions on the award.

The point value following each criterion heading indicates the maximum numerical weight that each section will be given in the review process. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, grant applicants should take care to ensure that all criteria are fully addressed in the applications. Grant applications will be reviewed as follows:

1. *Goals, Objectives, and Potential Usefulness of the Analyses* (25 points). The potential usefulness of the objectives and how the anticipated results of the proposed project will advance policy knowledge and development. If the proposed project builds on previous work, the application should explain how. Applications will be judged on the quality, policy relevance and adequate discussion of proposed questions to be addressed and proposed analyses, including subgroup analyses.

2. *Quality and Soundness of Methodology and Design* (30 points). The appropriateness, soundness, and cost-effectiveness of the methodology, including the research design, selection of existing data sets, definition of the study population, plans for survey administration, adequacy of sample sizes, statistical techniques, and analytical strategies.

Reviewers will evaluate the methodology proposed to gather survey data. In particular, reviewers will evaluate the sampling plan, the survey mode, and the steps that will be taken to address any biases inherent in each. This will include evaluating steps planned to ensure a high response rate, such as in-person follow up to locate those who are difficult to contact, and steps planned to analyze differences between respondents and non-respondents, such as comparisons based on administrative data.

For planned administrative data analysis, a critical scoring element will be the applicant's discussion of the methods used to clean, standardize, and link the individual-level or case-level data from different sources, including links between administrative data and survey data.

Reviewers also will evaluate the proposed data analysis, the planned organization of the applicant's final report, and the applicant's discussion of how different data sources (e.g., data from administrative sources, survey data collection, other research if applicable) will be synthesized to enhance the proposed analyses.

3. *Qualifications of Personnel and Organizational Capability* (20 points). The qualifications of the project personnel for conducting the proposed research as evidenced by professional training and experience, and the capacity of the organization to provide the infrastructure and support necessary for the project. Reviewers will evaluate the principal investigator and staff on research experience and demonstrated research skills.

Applications will be evaluated in terms of the applicant's or subcontractor's experience in conducting relevant surveys, including experience in securing high response rates from welfare recipients or other low-income populations. Applications that involve linking of administrative data and assembling of large databases will be scored on the applicant's or subcontractor's experience with such linking efforts. If the applicant plans to contract for any of the work (e.g., data-linking or survey administration), applicants will be evaluated on any relevant procurement activities and on their experiences in providing oversight on similar data projects. In addition, if the contractors have not been retained, reviewers will consider the process by which they will be selected and the time frame for this selection.

Reviewers may consider references for work completed on prior research projects. Principal investigator and staff time commitments also will be a factor in the evaluation. Reviewers will rate the applicant's pledge and ability to work in collaboration with other scholars or organizations in search of similar goals. Reviewers also will evaluate the applicant's demonstrated capacity to work with a range of government agencies.

4. *Ability of the Work Plan and Budget to Successfully Achieve the Project's Objectives* (20 points). Reviewers will examine: (a) Whether the work plan and budget are reasonable and sufficient to ensure timely implementation and completion of the study; (b) whether the application

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demonstrates an adequate level of understanding by the applicant of the practical problems of conducting such a project; (c) the use of any additional funding and the role that ASPE funds will play in the total project; and (d) whether the applicant has shown how results will be disseminated.

The applicant should also discuss in detail how resulting data will be made available to qualified researchers. As noted above, ASPE prefers that appropriately documented data files be placed at a controlled environment such as the Research Data Center of the National Center for Health Statistics or be edited as appropriate for confidentiality and issued as a public-use data file. If the grant applicant does not plan to provide a public-use file or to place the data at a controlled environment, the application should explain why and should fully articulate how the applicant will make the data available to qualified researchers.

5. *Ability to Sustain Project After Funding* (5 points). One of ASPE's goals is to help states and large counties build their capacity to study the outcomes of welfare reform. Grant applicants should identify an ability to continue their studies after the funding period closes. To this end, reviewers will consider whether the application adequately addresses questions such as the following: To what extent could the survey administered and the administrative data linkages performed on the cohort under study be duplicated for later cohorts? To what extent could additional survey data or data linkages be collected/performed to follow the initial cohort for additional years? What agency(ies) will have responsibility for and jurisdiction over the resulting data sets after the project is completed? Are there any sources of financial and staff support for maintaining the database?

Disposition of Applications

1. *Approval, Disapproval, or Deferral.* On the basis of the review of the application, the Assistant Secretary will either (a) approve the application as a whole or in part; (b) disapprove the application; or (c) defer action on the application for such reasons as lack of funds or a need for further review.

2. *Notification of Disposition.* The Assistant Secretary for Planning and Evaluation will notify the applicants of the disposition of their applications. If approved, a signed notification of the award will be sent to the business office named in the ASPE checklist.

3. *The Assistant Secretary's Discretion.* Nothing in this announcement should be construed as to obligate the Assistant Secretary for Planning and Evaluation to make any awards whatsoever. Awards and the distribution of awards among priority areas are contingent on the needs of the Department at any point in time and the quality of the applications that are received.

The Catalog of Federal Domestic Assistance number is 93–239.

Components of a Complete Application

A complete application consists of the following items in this order:

1. Application for Federal Assistance (Standard Form 424);
2. Budget Information—Non-Construction Programs (Standard Form 424A);
3. Assurances—Non-Construction Programs (Standard Form 424B);
4. Table of Contents;
5. Budget Justification for Section B Budget Categories;
6. Copy of the applicant's Approved Indirect Cost Rate Agreement, if applicable;
7. Project Narrative Statement, organized in five sections, addressing the following topics (limited to thirty (30) single-spaced pages):
   (a) Abstract,
   (b) Goals, Objectives and Usefulness of the Project,
   (c) Methodology and Design,
   (d) Background of the Personnel and Organizational Capabilities and
   (e) Work Plan (timetable);
8. Any appendices or attachments;
9. Certification Regarding Drug-Free Workplace;
10. Certification Regarding Debarment, Suspension, or other Responsibility Matters;
11. Certification and, if necessary, Disclosure Regarding Lobbying;
12. Supplement to Section II—Key Personnel;
13. Application for Federal Assistance Checklist.

Dated: April 26, 2001.

William F. Raub,

Acting Assistant Secretary for Planning and Evaluation.

[FR Doc. 01–11301 Filed 5–3–01; 8:45 am]

BILLING CODE 4154–05–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Statement of Delegation of Authority

Notice is hereby given that I have delegated to the Director, National Institutes of Health, the authorities under Public Law 106–310 (Children's Health Act of 2000), title I, section 104 (a) and (c) as amended, to establish and to administer the Autism Coordinating Committee. I am also delegating the authority under title I, section 104(b)(1) to select as members of the Committee, such Directors of national research institutes and the Centers for Disease Control and Prevention as appropriate. I will retain the authority under title 1, section 104(b) (1) and (2) pertaining to the selection of additional members of the Committee.

This delegation shall be exercised under the Department's existing delegation of authority and policy on regulation. In addition, I ratify and affirm any actions taken by you or your subordinates which involved the exercise of the authorities delegated herein prior to the effective date of this delegation.

This delegation is effective upon date of signature.

Dated: April 25, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–11300 Filed 5–3–01; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Program Announcement 01043]

Program To Conduct and Coordinate Site-Specific Activities; Notice of Availability of Funds

A. Purpose

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program to Conduct and Coordinate Site-Specific Activities. This program addresses the "Healthy People 2010" focus area of Environmental Health.

The purpose of the program is for recipients to conduct site-specific health activities to determine the public health impact of human exposure to hazardous substances at hazardous waste sites or releases. The ultimate goal of this program is to reduce exposures to hazardous substances and mitigate potential adverse health effects from such exposures. Specifically, funds will be used to build capacity in coordination and cooperation with ATSDR to conduct site-specific activities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA),

including public health assessments, health consultations, exposure investigations, community involvement activities, health education, follow-up health investigations/studies and other programs related to exposure to hazardous substances in the environment. ATSDR considers a site as consisting of the actual boundaries of a release or facility along with the resident community and area potentially impacted by the subject release or facility.

B. Eligible Applicants

Assistance will be provided only to the health departments of states or their bona fide agents, and additionally to the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments. In consultation with states, assistance may be provided to political subdivisions of states.

Note: Title 2 of the United States Code, Chapter 26, Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $7,900,000 is available in FY 2001 to fund 23 to 28 awards. It is expected that the average award will be $300,000, ranging from $100,000 to $400,000. It is expected that the awards will begin on or about September 29, 2001, and will be made for a 12-month budget period within a project period of five years. Funding estimates may change.

Approximately $7,400,000 will be available to fund 23 to 28 awards for site specific activities.

Approximately $500,000 will be available to recipients applying to conduct health study activities. These funds will be available for conducting site-specific human health studies after review of site-specific data, submission of a study protocol with a supplemental budget for the proposed study, technical, objective, and peer review and approval of study protocols. If health study activities are not requested with the initial application, requests may be made in subsequent continuation applications. In years subsequent to FY 2001, it is anticipated that funds in the amount of $400,000 to $500,000 will be available for site-specific studies.

Applicants are encouraged to participate in public health activities that are under the jurisdiction of other federal agencies such as the Department of Defense (DOD), Department of Energy (DOE), National Aeronautics and Space Administration (NASA), and Bureau of Indian Affairs (BIA). Applicants must propose specific activities and once approved and funded, the funding for these activities must be tracked separately from the funds received for activities at other sites. In subsequent years of this announcement, recipient's requests for supplemental funds to conduct site-specific activities under the jurisdiction of other federal agencies must be coordinated with the Technical Project Team (TPT).

Applicants must compete for Site-Specific Core Activities (Public Health Assessments/Consultations, Exposure Investigations, Community Involvement and Preventive Health Education). Site-Specific Health Investigations/Studies may be requested as supplemental funding on an as-needed basis.

Continuation awards within an approved project period will be made on the basis of satisfactory progress in meeting the program goals and objectives as evidenced by required reports and the availability of funds.

Grantees currently funded under ATSDR's Program Announcements 607 or 98064 can apply under this announcement. If successful, the current award would replace the previous award (competitive renewal) for a total project period of five years. If a current grantee applies under this competitive renewal announcement and is unsuccessful or chooses not to apply under this announcement, it will not jeopardize the current award; ATSDR will honor the current awards through the expiration of the project period, subject to satisfactory progress and the availability of funds.

Use of Funds

Funds may be expended for reasonable program purposes, such as personnel, travel, supplies and services. Funds for contractual services may be requested. However, the recipient, as the direct and primary recipient of PHS grant funds, must perform a substantive role in carrying out project activities and not merely serve as a conduit for an award to another party or provide funds to an ineligible party.

Equipment may be purchased with cooperative agreement funds. However, the equipment proposed should be appropriate and reasonable for the activity to be conducted. The applicant, as part of the application process, should provide: (1) a justification for the need to acquire the equipment, (2) the description of the equipment, (3) the intended use of the equipment, and (4) the advantages/disadvantages of purchase versus lease of the equipment (if applicable). Requests for equipment purchases will be reviewed and approved only under the following conditions: (1) ATSDR retains the right to request return of all equipment purchased (in operable condition) with cooperative agreement funds at the conclusion of the project period, and (2) equipment purchased must be compatible with ATSDR hardware. Computers purchased with ATSDR funds should be IBM compatible and adhere to the Centers for Disease Control and Prevention (CDC)/ATSDR hardware standards.

Recipient activities may not be conducted with funds from this cooperative agreement program at any federal site where the state is a party to litigation at the site.

Funding Preferences

Funding preferences may be given for the following:

1. Geographic distribution across the entire United States.
2. Number of Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) sites (federal and non-federal) based on most current listing by EPA.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities and 2. Recipient Other Activities, and ATSDR will be responsible for the activities listed under 3. ATSDR Activities and 4. ATSDR Other Activities.

1. Recipient Activities

a. *Public Health Assessment Activities*—Conduct Public Health Assessments, including petitions for National Priorities List (NPL), Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) or other state-designated sites, facilities or releases within the recipient's territorial boundary in accordance with the methodology provided in the ATSDR Public Health Assessment Guidance Manual, ATSDR's Review and Handling Procedures for Public Health Assessments, and other applicable guidance. Prepare additional site evaluations (public health assessments

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or health consultations) to update public health assessments.

b. *Petitions for Public Health Assessment Activities*—Conduct initial data collection and site visit activities to decide how to respond to petitions for public health assessments. Make determinations of public health activities in response to petitions from individuals, physicians, community groups, and others. Review existing information and data pertaining to a site or release identified in a petition.

c. *Health Consultations*—Prepare a written or verbal response to a specific question or specific request for information about health risks posed by a specific site, chemical release, hazardous material, or other emergency response actions. Health consultations may also be written as a follow up to Public Health Assessments. Consultations may include the evaluation of environmental data, community concerns, health outcome data, and demographic characterizations, and the conduct of community outreach and interaction activities and site work plans.

d. *Exposure Investigations*—Exposure Investigations may be conducted as part of the public health assessment or health consultation process to better define human exposures. Exposure investigations include the collection of environmental or biological data and require the approval from the Technical Project Team (TPT) prior to the initiation of sample collection.

e. *Community Involvement*—

(1) Develop a site-specific community involvement plan which, at a minimum, should include: (a) Health communication strategies, (b) an implementation strategy, and (c) an evaluation strategy.

(2) Implement the community involvement plan and, where warranted based on the needs of the community, establish informal community workgroups or Community Assistance Panels.

f. *Site-Specific Health Education*—Site-specific environmental health education is a behavioral science, theory based process. An effective environmental health education intervention provides a clear, appropriate, and audience-specific message to assure sufficient knowledge and skills are in place to make informed decisions. Audiences may include health care providers, community members, elected officials, and sensitive populations such as children and women of child-bearing age.

(1) Prioritize sites where specific actions can be taken to minimize exposures or where significant public health concern exists.

(2) Assess needs and resources of the target audience and document the data in the appropriate Division of Health Education and Promotion (DHEP) reporting tool.

(3) Develop and document the health education intervention plan which includes goals, objectives, activities, and evaluation.

(4) Implement the activities in the intervention plan.

(5) Evaluate the plan by comparing baseline information with information that results after the intervention.

Some suggested tools for planning and evaluating health education activities include the PRECEDE–PROCEED planning model which can be found at the Internet address http://www.med.usf.edu/~kmbrown/PRECEDE_PROCEED_Overview.htm and also, the Evaluation Framework for Community Health Programs (June, 2000, Center for Advancement of Community Based Public Health).

g. *Stakeholder Involvement*—Develop a plan for an integrated program focusing on coordinating site activities with stakeholders such as ATSDR, EPA, tribal communities, state and local health and environmental offices and agencies, communities, etc.

h. *Site-Specific Evaluation Plan*—Develop a site-specific evaluation plan prior to conducting activities. The plan should contain a component for the applicable activities undertaken at the site. Conduct evaluation of activities and projects and site-specific programs to determine if the requestor's needs have been met as well as the intended purpose of the activities. For evaluation planning purposes, formative process and impact/outcome measures should be included in the evaluation plan. Refer to the CDC Framework for Program Evaluation in Public Health (MMWR, September 17, 1999/48 RR11:1–40) as a model. ATSDR is currently developing a data base which will serve as a collection point for information on the impact and outcome of site activities.

i. *Health Investigations/Studies*—Based on the evaluation and recommendation of the TPT or other ATSDR decision-making process, and inclusion in the site public health action plan, follow-up health investigations/studies may be undertaken in populations whose health is or has been impacted by hazardous waste sites. Examples of follow-up health investigations/studies are: Biological Indicators of Exposure Studies, Cluster Investigations, Case Studies, Health Statistics Reviews, Community Health Investigations, and Site-Specific Surveillance.

(1) Develop a protocol and conduct the recommended study for those studies recommended previously by the TPT or other ATSDR decision-making process. This protocol will undergo scientific peer review as required by ATSDR and may require clearance by the Office of Management and Budget (OMB) before data collection can begin.

(2) Provide proof by citing a state code or regulation or other state pronouncement under authority of law, that medical information obtained pursuant to the agreement will be protected from disclosure when the consent of the individual to release identifying information is not obtained.

(3) Evaluation—Develop a site-specific evaluation plan as part of the work plan for Public Health Studies/Investigations, prior to the conduct of activities, as indicated in paragraph h. above.

j. *Annual Plan of Work (APOW)*—Collaborate with the TPT to develop a mutually agreed upon APOW to include the proposed site-specific activities to be conducted for the budget period, and respective time lines. The TPT is made up of representatives from the ATSDR Division of Health Assessment and Consultation (DHAC), ATSDR Division of Health Studies (DHS), ATSDR Division of Health Education and Promotion (DHEP), ATSDR Office of Regional Operations (ORO), and state and local counterparts. The TPT is responsible for assuring the planning, implementation, and evaluation of all public health actions for each site assigned to the team. The TPT meets to review data relative to the site and considers the following questions: is there or has there been a completed exposure pathway, and are humans at health risk?

k. *Annual Program Evaluation*—Collaborate with ATSDR on the evaluation of the total program using a standard evaluation instrument developed for this program. As a part of this effort, recipient will include the effectiveness of their overall capacity building efforts in addressing public health issues in communities living near hazardous waste sites. The results of this evaluation may impact the recipient's funding level in the subsequent years of this program.

2. Recipient Other Activities

a. Participate in the TPT program evaluation, and comply with established review and handling procedures for incorporating the results of recommendations into site evaluation activities.

b. Provide abstraction overview to ATSDR on the APOW and site activities through a shared data base called State Tracking and Reporting System (STARS), or other mechanisms.

c. Review and prepare written comments on EPA's draft Remedial Investigation/Feasibility Study (RI/FS), RI/FS work plans, and Records of Decision, and site-specific documents of the Recipient's environmental department.

d. Workshops—

(1) Participate in local, state, and federal health and environmental workshops and community meetings to discuss and respond to questions concerning a particular site's impact on public health.

(2) Participate in ATSDR-scheduled training classes or workshops to increase knowledge and skills in environmental public health.

e. Respond to ATSDR's requests concerning congressional inquiries/testimonies, program evaluation, or other information in carrying out the purpose of the project.

f. Provide timely responses within two weeks, when possible, to ATSDR's requests for site-specific costs and explanation of activities performed, and supporting documentation for Cost Recovery purposes. (See AR–18 in Attachment I.)

3. ATSDR Activities

a. *Public Health Assessments*—Collaborate with and assist recipient in conducting Public Health Assessment activities on CERCLIS, petition sites, or other state-designated sites, facilities or releases within the recipient's territorial boundary. This includes collaborating and assisting in preparing updates to public health assessments.

b. *Petitions for Public Health Assessment Activities*—Collaborate with and assist recipient in effectively conducting appropriate public health assessment activities in response to petitions from individuals, physicians, community groups, and others.

c. *Health Consultations*—Collaborate with and assist recipient in preparing a written or verbal response to a specific question or specific request for information about health risks posed by a specific site, chemical release, hazardous material, or other emergency response actions.

d. *Exposure Investigations*—Collaborate with and assist recipient in conducting Exposure Investigations.

e. *Community Involvement*—

(1) Assist in developing effective methods to conduct needs assessments in communities near hazardous waste sites and in defining goals and objectives of community involvement activities.

(2) Assist in development, implementation, and evaluation of the community involvement plan.

f. *Site-specific Health Education*—

(1) Collaborate in developing and reviewing all health educational materials to ensure scientific accuracy. Provide existing materials as requested. Collaborate in developing projects for specific target audiences.

(2) Collaborate with the recipient in implementing and evaluating health education programs.

g. *Stakeholder Involvement*—Collaborate with and assist recipient in developing a plan for an integrated program focusing on coordinating site activities with stakeholders.

h. *Site-Specific Evaluation Plan*—Collaborate with and assist recipient in developing a specific evaluation plan prior to conducting activities.

i. *Health Investigations/Studies*—As requested by the recipient, ATSDR is available to provide the following:

(1) Make recommendations regarding appropriate and necessary health investigations/studies.

(2) Provide assistance in both the planning and implementation phases of the field work called for under the study protocol.

(3) Provide consultation and assist in monitoring the data and specimen collection.

(4) Participate in the study analysis.

(5) Collaborate in interpreting the study findings.

(6) ATSDR will conduct technical and peer review.

j. *Annual Plan of Work (APOW)*—Collaborate with and assist recipient in developing a mutually agreed upon APOW that meets the goals of this announcement.

k. *Annual Program Evaluation*—Lead the evaluation of each recipient's total program using a standard evaluation instrument developed for this Program. As a part of this effort, ATSDR will conduct an evaluation of the effectiveness of overall capacity building efforts in addressing public health issues in communities living near hazardous waste sites. The results of this evaluation may impact the recipient's funding level in the subsequent years of this program.

4. ATSDR Other Activities

a. Initiate and conduct the program evaluation by the TPT.

b. Assist with abstraction overview for the database on each site for which site activities have been conducted.

c. Assist with recipient's review and preparation of written comments on EPA's draft Remedial Investigation/Feasibility Study (RI/FS), RI/FS work plans, Records of Decision, and site-specific documents of the recipient's environmental department.

d. Workshops—

(1) Assist recipient with participation in local, state, and Federal health and environmental workshops and community meetings to discuss and respond to questions concerning a particular site's impact on public health.

(2) Initiate and conduct ATSDR-scheduled training classes or workshops to increase recipient's knowledge and skills in environmental public health.

e. Assist recipient with ATSDR's requests concerning congressional inquiries/testimonies, program evaluation, or other information in carrying out the purpose of the project.

f. Provide technical assistance to recipient concerning Cost Recovery requirements.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The application package should be single-spaced, printed on one side, with one-inch margins, and unreduced font. It should not exceed 100 pages, including attachments, and should include a narrative proposal of 60 pages or less.

F. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are available at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm* or in the application kit. On or before July 6, 2001, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or

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(b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by ATSDR. Applicants must compete for site-specific activities, as indicated below in section 1.

The proposed program will account for a total of 50 percent of the score from the evaluation criteria. Applications will be reviewed and evaluated according to the following criteria:

1. Applications for Site-Specific Activities

a. Proposed Program—50 Percent

Applicant's ability to address the following:

(1) Ability to respond to specific public health issues that occur as a result of actual or potential human exposure to a hazardous substance which includes methods to evaluate and analyze toxicological, community, and environmental health data; and ability to conduct and analyze data from exposure investigations.

(2) Description of involvement with communities in response to concern about a particular site's impact on public health. Ability to develop and provide preventive health education in a timely fashion in response to public health issues including appropriateness and thoroughness of the methods used to evaluate preventive health education; and the extent to which the site-specific evaluation plan includes measures of program outcome (i.e., effect of participant's knowledge, attitudes, skills, behaviors, exposure to hazardous substances).

(3) The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

(a) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(b) The proposed justification when representation is limited or absent.

(c) A statement as to whether the design of the study is adequate to measure differences when warranted.

(d) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities and recognition of mutual benefits.

b. Program Personnel—25 Percent

The extent to which the proposal has described or provided biographical data on the:

(1) Manner in which an integrated "site" team will be developed to address components of this program. A consistent site team is vital to this effort. An integrated health team consists of health assessors, health educators, community involvement specialists, and/or epidemiologists or health scientists.

(2) Appropriate qualifications, experience, leadership ability, and percentage of time project director (or principal investigator) will commit to the project.

(3) Appropriate qualifications, experience, and description of how staff will be utilized in relation to the activities to be performed to accomplish the work and their percentage of time to be spent on the project; curriculum vitae should be provided.

c. Capability—25 Percent

Description of the applicant's capability to carry out the proposed project, suitability of facilities, equipment available or to be purchased for the project, and ability to develop an integrated program focusing on coordinating site activities with stakeholders such as ATSDR, EPA, tribal governments, state and local health and environmental offices and agencies, communities, etc.

d. Program Budget—(not scored)

The extent to which the budget relates directly to project activities, is clearly justified, and is consistent with intended use of funds. The budget should include funds for one health assessor, one health educator, and one epidemiologist or health scientist (if a health study is being conducted or anticipated within the next 12 months) to attend the annual training meeting in Atlanta (five days).

e. Human Subjects—(not scored)

Whether or not exempt from the DHHS regulations, are procedures adequate for the protection of human subjects? Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

2. Applications for Site-Specific Health Investigations/Studies

Applications for Health Investigations/Studies will be evaluated using the following criteria.

a. Proposed Program—50 Percent

Applicant's ability to address the following:

(1) An understanding of and capability to conduct human health studies. The application for a site-specific study should include a protocol for a human health study from those previously recommended by ATSDR for sites in the recipient's state for which a study has not commenced.

Site-specific protocol will be reviewed based on the following:

(a) The approach, feasibility, adequacy, and rationale of the proposed study design.

(b) The technical merit of the proposed study, including the methods and procedures (including quality assurance and quality control procedures) for the proposed study.

(c) The proposed time line, including clearly established objectives for which progress toward attainment can and will be measured.

(d) The proposed method to disseminate the results of the study to state and local public health officials, community residents, and other concerned individuals and organizations.

(2) The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

(a) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(b) The proposed justification when representation is limited or absent.

(c) A statement as to whether the design of the study is adequate to measure differences when warranted.

(d) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities and recognition of mutual benefits.

b. Program Personnel—25 Percent

The extent to which the proposal described or provided biographical data on the:

(1) Manner in which an integrated "site" team will be developed to address components of this program. A consistent site team is vital to this effort. An integrated health team consists of health assessors, health educators, community involvement specialists, and/or epidemiologists or health scientists.

(2) Appropriate qualifications, experience, leadership ability, and percentage of time project director (or principal investigator) will commit to the project.

(3) Appropriate qualifications, experience, and description of how staff will be utilized in relation to the activities to be performed to accomplish the work and their percentage of time to be spent on the project; curriculum vitae should be provided.

c. Capability—25 Percent

Description of the applicant's capability to carry out the proposed project, suitability of facilities, equipment available or to be purchased for the project, and ability to develop an integrated program focusing on coordinating site activities with stakeholders such as ATSDR, EPA, tribal governments, state and local health and environmental offices and agencies, communities, etc.

d. Program Budget—(not scored)

The extent to which the budget relates directly to project activities, is clearly justified, and is consistent with intended use of funds. The budget should include funds for one health assessor, one health educator, and one epidemiologist, health scientist or principal investigator to attend the annual training meeting in Atlanta (five days).

e. Human Subjects—(not scored)

Whether or not exempt from the DHHS regulations, are procedures adequate for the protection of human subjects? Does the application adequately address the requirements of 45 CFR part 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements

1. Provide CDC with original plus two copies of:

a. Annual progress reports, no more than 45 days after the end of the quarter. The progress reports must report on progress toward completing activities agreed to by ATSDR and the recipient.

b. Financial status report, no more than 90 days after the end of the budget period; and

c. Final financial and performance reports, no more than 90 days afer the end of the project period.

Send the above reports to the Grants Management Specialist identified in Section J., "Where to Obtain Additional Information" of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–17 Peer and Technical Reviews of Final Reports of Health Studies—ATSDR
AR–18 Cost Recovery—ATSDR
AR–19 Third Party Agreements—ATSDR
AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 104(i) (1)(E), (4), (6), (7), (9), (14) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986 (42 U.S.C. 9604(i)(1) (E), (4), (6), (7), (9), (14) and (15)), and Section 3019 (b) and (c) of the Resource Conservation and Recovery Act (RCRA), as amended (Hazardous and Solid Waste Amendments of 1984) (42 U.S.C. 6939a (b) and (c)). The catalog of Federal Domestic Assistance numbers are 93.161, 93.206, and 93.240.

J. Where To Obtain Additional Information

This and other CDC/ATSDR announcements can be found on the CDC home page Internet address—http://www.cdc.gov. Click on "Funding" then "Grants and Cooperative Agreements."

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have any questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:

Nelda Godfrey, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: 770–488–2722; E-mail address: nag9@cdc.gov

For program technical assistance, contact: Sharon Conley, Funding Resource Specialist, Agency for Toxic Substances and Disease Registry, Mailstop 60, 1600 Clifton Road, NE, Atlanta, GA 30333, Telephone number: 404–639–0559, E-mail address: sac7@cdc.gov

Dated: April 30, 2001.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 01–11219 Filed 5–3–01; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–169]

Public Health Assessments Completed

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces those sites for which ATSDR has completed public health assessments during the period from January through March 2001. This list includes sites that are on or proposed for inclusion on the National Priorities List (NPL), and includes sites for which assessments were prepared in response to requests from the public.

FOR FURTHER INFORMATION CONTACT: Robert C. Williams, P.E., DEE, Assistant Surgeon General, Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–32, Atlanta, Georgia 30333, telephone (404) 639–0610.

SUPPLEMENTARY INFORMATION: The most recent list of completed public health assessments was published in the **Federal Register** on March 23, 2001 (66 FR 16247). This announcement is the responsibility of ATSDR under the regulation, Public Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities (42 CFR Part 90). This rule sets forth ATSDR's procedures for the conduct of public health assessments under section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) (42 U.S.C. 9604(i)).

Availability

The completed public health assessments and addenda are available

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for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Building 33, Executive Park Drive, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. The completed public health assessments are also available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (703) 605–6000. NTIS charges for copies of public health assessments and addenda. The NTIS order numbers are listed in parentheses following the site names.

Public Health Assesssments Completed or Issued

Between January 1 and March 31, 2001, public health assessments were issued for the sites listed below:

NPL Sites

California

Chrome Crankshaft and J&S Chrome Plating—Bell Gardens—(PB21–104090)
March Air Force Base(a/k/a March Air Reserve Base)—March Air Force Base—(PB21–104262)

Connecticut

Scovil Industrial Landfill(a/k/a Scovill Industrial Landfill)—Waterbury—(PB21–103303)

Illinois

Koppers Wood Treating Company(a/k/a Koppers Company Incorporated Forest Production Group)—Carbondale—(PB21–104268) Pfizer, Incorporated—East St. Louis—(PB21–104266)

Iowa

Mid-America Tanning Company—Sergeant Bluff—(PB21–102651)

New Hampshire

Cardinal Landfill—Farmington—(PB21–102637)

New Jersey

Ciba Geigy Corporation—Dover Township—(PB21–104088)
Dover Township Municipal Landfill (a/k/a Dover Township Landfill) and Silverton Private Well Contamination Investigation (a/k/a Silverton Wells)—Dover Township—(PB21–104089)
Reich Farm—Dover Township—(PB21–104087)

New York

Anitec Image Corporation—Binghamton—(PB21–102636)
Lehigh Valley Railroad Derailment Site (a/k/a Lehigh Valley Railroad)—Leroy—(PB21–104263)

North Carolina

Georgia Pacific Corporation Hardwood Sawmill—Plymouth—(PB21–102728)

Ohio

Eagle-Picher Industries, Incorporated/Bunting Bearings Corporation (a/k/a Eagle Picher) Delta—(PB21–104264)

South Carolina

Aqua-Tech Environmental, Incorporated (Groce Laboratories)—Greer—(PB21–104394)

Texas

Star Lake Canal (a/k/a Star Lake Canal Site-Port Neches)—Port Neches—(PB21–104265)
State Road 114 Groundwater Plume—Levelland—(PB21–104085)

Vermont

Pownal Tannery—Pownal—(PB21–102652)

Non NPL Petitioned Sites

Connecticut

Yaworski Landfill (aliases: Yaworski Dump and Packer Road Landfill) and Yaworski Waste Lagoon—Canterbury—(PB21–104531)

Massachusetts

Hercules Dumpsite (a/k/a Hercules Landfill)—Mansfield—(PB21–104267)

Georgia

Newtown Community—Gainsville—(PB21–104261)

West Virginia

Vienna Tetrachloroethene—Vienna—(PB21–103465)

Dated: April 30, 2001.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 01–11220 Filed 5–3–01; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–01–33]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

State Surveys on Intimate Partner Violence (IPV) and Sexual Violence (SV)—NEW—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention. Violence against women has become a major public health issue in the nation. It is the leading cause of injury for women between the ages of 18 and 44. The National Violence Against Women Survey, conducted from November 1995 to May 1996, estimates that approximately 1.9 million women are physically assaulted annually in this country by an intimate partner (e.g., current or former husband, cohabiting partner, boyfriend or date). The 1994 National Crime Victimization Survey estimates that over 432,000 rapes or sexual assaults were perpetrated against U.S. females, age 12 years and older.

The National Center for Injury Prevention and Control has recognized intimate partner violence (IPV) and sexual violence (SV) as public health problems for several years. Survey data are the most common data used to determine incidence and prevalence rates, risk and resiliency factors, and consequences (e.g., physical injuries, psychological trauma) of IPV and SV. The Department of Justice has compiled a number of one-time looks at VAW from a variety of perspectives, primarily provided by the criminal justice system, which counts only those cases that are reported.

There is a need for collection of standardized data on a consistent and continual basis, at the state and community levels in order to target limited resources towards populations in greatest need of prevention and intervention programs and services. As a result CDC plans to develop and pilot test two surveys on IPV and SV for possible inclusion in the Behavioral Risk Factor Surveillance System (BRFSS). The surveys will be administered to non-institutionalized women and men, 18 years of age and older. The pilot test will be conducted through a computer-assisted telephone interviewing system, using a sample of women and men randomly selected from six states. The overall benefit of this pilot is to increase knowledge regarding the magnitude and scope of violence against women and men in the U.S. Ultimately, the CDC intends to establish an on-going data collection system for monitoring IPV and SV at the state level.

The goals of the project are to: (1) determine the questions' utility, participant reactions, and length of surveys; and (2) compile and disseminate the results of the pilot test and prepare a report for submission to the BRFSS coordinators for consideration for inclusion as an optional module for FY 2003. There are no costs to respondents.

Survey IPV/SV	Type of respondent	No. of respondents per survey	No. responses per respondent	Avg. burden per response in hours	Total burden in hours
State 1	Female/Male	2400	1	30/60	1,200
State 2	Female/Male	2400	1	30/60	1,200
State 3	Female/Male	2400	1	30/60	1,200
State 4	Female/Male	2400	1	30/60	1,200
State 5	Female/Male	2400	1	30/60	1,200
State 6	Female/Male	2400	1	30/60	1,200
Total					7,200

Dated: April 27, 2001.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation Centers for Disease Control and Prevention.

[FR Doc. 01–11190 Filed 5–3–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01049]

Prevention of the Complications of Bleeding Disorders through Hemophilia Treatment Centers; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program for the Prevention of the Complications of Bleeding Disorders through Hemophilia Treatment Centers. This program addresses the "Healthy People 2010" focus areas of Access to Quality Health-Services, Disability and Secondary Conditions, HIV, and Immunization and Infectious Diseases. For more information on "Healthy People 2010" visit the internet site: http://www.health.gov/healthypeople.

The purpose of the hemophilia complications prevention cooperative agreement program is to assist in: (1) Providing a regional network of comprehensive prevention services through hemophilia treatment centers to persons with hemophilia and related disorders including women with bleeding disorders to prevent complications through assessment, surveillance, outreach, education, consultation, and management; (2) maintaining a prevention evaluation network to assess the efficacy of these prevention services; (3) participating in blood safety monitoring and surveillance efforts; and (4) collaborating with lay organizations to deliver consistent prevention messages aimed at preventing complications.

B. Eligible Applicants

Assistance will be provided only to hemophilia regional core centers, defined as public or private non-profit entities that provide regional services and support to a network of comprehensive hemophilia treatment centers (HTCs) within their regional catchment area. A HTC is defined as a specialty, prevention, diagnostic and treatment program with the goal of providing family-centered, state-of-the-art medical and psycho-social evaluation and care, dental, education, genetic, research, and support services for individuals and families with bleeding disorders.

Note: Title 2 of the United States Code, chapter 26, section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $6,700,000 is available in FY 2001 to fund approximately 12 awards. It is expected that the average award will be $400,000, ranging from $200,000 to $875,000. It is expected that the awards will begin on or about September 30, 2001, and will be made for a 12-month budget period within a project period of up to five years. The funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Funding Preference

One award per region will be made to support the core center and other collaborating HTC performance sites in the region. For the purposes of these awards, regional breakdowns are as follows: Region I: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont; Region II: New Jersey, New York, Puerto Rico, and the U.S. Virgin Islands; Region III: Delaware, the District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia; Region IV-North: Kentucky, North Carolina, South Carolina, and Tennessee; Region IV-South: Alabama, Florida, Georgia, and Mississippi; Region V-East: Indiana, Michigan, and Ohio; Region V-West: Illinois, Minnesota, North Dakota, South Dakota, and Wisconsin; Region VI: Arkansas, Louisiana, Oklahoma, and Texas; Region VII: Iowa, Kansas, Missouri, and Nebraska; Region VIII:

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Arizona, Colorado, Montana, New Mexico, Utah, and Wyoming; Region IX: California, Hawaii, Nevada, American Samoa, Northern Mariana Islands and Guam; Region X: Alaska, Idaho, Oregon, and Washington.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. On the regional level, the regional core center should:

(1) Develop appropriate management and evaluation systems to ensure that HTCs within the region implement the activities of this program appropriately and comply with federal and other required regulations. Conduct program assessments, site visits, assist HTCs with problem solving, assess local needs and recommend support for subcontracts to a network of centers in their region, and provide technical assistance when needed;

(2) Serve as liaison with CDC to provide input and feedback regarding national programs, implementation and evaluation. Coordinate CDC consultation when necessary;

(3) Facilitate communication within the region to foster opportunities to promote the exchange of information among health care providers;

(4) Increase awareness about the prevention of complications by promoting prevention services and programs within the region among community-based organizations (CBOs) and persons with bleeding disorders to identify new patients eligible for care, and to reestablish contact with patients lost to follow-up;

(5) Facilitate collaborative program development, planning, and communication between the region's HTCs and chapter or other consumer organizations to promote referral to the centers and provide access to educational and support services;

(6) Encourage expansion of HTC populations to include services to women with bleeding disorders and develop programs to identify under served populations including minorities and women;

(7) Coordinate development of HTC program plans, goals and objectives, and progress tracking and reporting for HTCs in the region;

(8) Facilitate access to appropriate training resources and opportunities to orient new HTC personnel, and enhance the skills of current HTC personnel to increase the quality of prevention services; and

(9) Coordinate, annually or bi-annually, with CDC participation, a regional meeting for HTCs and CBOs or ad hoc consumer consultation committees to share information and plan programs. Regional meetings may be jointly sponsored with other regions that have similar needs.

b. The regional core centers should develop and coordinate a plan where HTCs within the region would:

(1) Provide comprehensive prevention services to persons with bleeding disorders directed at attaining and measuring specific outcomes to reduce complications by using a multi-disciplinary team approach. HTC services are provided by a multi-disciplinary team. The core team includes: adult or pediatric hematologist, nurse coordinator, social worker and physical therapist. HTC services include medical and psycho-social assessment and monitoring, home therapy teaching and monitoring, infectious disease management, physical therapy, dental services, rehabilitation and support services. The HTC team works closely with other specialists and local health care providers to meet specific needs of persons with bleeding disorders to increase quality of life from birth throughout life, and assist individuals with the prevention and management of complications.

(2) Assess unmet needs and under served populations, including minorities and women, participate in outreach efforts to identify patients who can benefit from prevention services, and encourage patient participation in HTCs;

(3) Develop mechanisms to deliver prevention programs, messages, and materials to persons with hemophilia and their family members;

(4) Participate in CDC surveillance efforts (including the Universal Data Collection Program, Creutz-feldt Jakob Disease (CJD) Program, investigations of sero-conversions and suspected bloodborne agents) and other data collection and surveillance efforts by complying with federal and other required regulations and offering programs to all active eligible patients;

(5) Advise CDC of any patients who have become infected with HIV or hepatitis A, B, or C viruses (HAV, HBV, or HCV), possibly as a result of contaminated clotting factor concentrates;

(6) Obtain approval from local Institutional Review Board (IRB) for all protocols. Obtain appropriate assurances as required by Office of Human Research Protections (OHRP), OPHS, DHHS. Develop and maintain strict policies on protecting the confidentiality of patients, and ensure the security of databases and other records through controlled access to areas with confidential information, database password protection, locking file cabinets, and other security features; and

(7) Establish mechanism for consumer input and involvement in planning, implementing, and assessing HTC prevention activities that include education and outreach by collaborating with local community based hemophilia consumer organizations, or ad hoc consumer consultation committee.

2. CDC Activities

a. Assist in determining priority areas and long-term goals for prevention of complications of hemophilia as a collaborative effort by encouraging regional core centers to seek input from providers, CBOs and consumer representatives.

b. Provide consultation, scientific and technical assistance in planning, implementing, and evaluating activities to prevent the complications of hemophilia by using surveillance data to develop interventions and assess their effectiveness, coordinate the development, implementation, and evaluation of prevention intervention protocols.

c. Assist in the development of research protocols for IRB review by CDC and all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

d. Assist in the analysis and reporting of aggregate clinical outcomes data, coordinate and consolidate the transfer of tabulated data, analyses, and conclusions among participating HTCs.

e. Provide follow-up and technical assistance to HTCs implementing changes or recommendations resulting from program evaluations, assessments, or activities required to meet required federal and other regulations;

f. Provide information and feedback regularly via teleconference, email and in person meetings to regional coordinators and regional directors serving as liaisons to CDC and their respective regional HTCs.

g. Provide technical assistance and coordinate routine annual testing of patient samples for HAV, HBV, HCV, and reporting of results back to HTCs. Provide technical assistance to designated laboratory for permanent storage of blood samples.

h. Collaborate with HTCs and appropriate State or local health departments to investigate any suspected HIV, HAV, HBV, HCV seroconversions or other reported potential bloodborne agents.

i. Collaborate with Regional Coordinators, National Hemophilia Foundation, HTC personnel, consumers, and designated training centers to develop and provide training resources for providers and consumers.

j. Disseminate current information related to the development, implementation, and evaluation of these regional programs to the funded HTCs and the public as necessary and as requested.

k. Facilitate collaborative research efforts among HTCs to enhance the quality of life of persons with bleeding disorders.

E. Applications

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 20 double-spaced pages, printed on one side, with one-inch margins, and unreduced font.

Budgetary Information

Include all major cost items for implementing the proposed program for twelve months. Submit line-item descriptive justifications for personnel, travel, supplies, and other services on Standard Form 424A, "Budget Information", provided with PHS 5161–1 (Revised 6/99). Separate budgets should be submitted for the regional core center and each HTC performance site that is included in the regional application, plus a totaled budget request for the region.

If the regional core center also serves as an HTC performance site providing prevention services to patients, provide a separate budget for related costs. For each HTC performance site request, include the name and address of the person and organization to receive the contract, as well as a detailed line-item descriptive justification.

Each applicant must provide a brief listing of budgetary requests included in its FY 2001 HRSA HTC comprehensive care grant application, specifying personnel, service, and other costs that are anticipated to be funded by HRSA for the twelve-month period. A budget guidance and preferred format will be included in the application kit.

Supporting Materials

1. Letters of agreement from all contracting or voluntary collaborating HTCs in region detailing specific roles and responsibilities of each party.

2. Letters of support from local consumer organizations representing areas coinciding with HTCs included in application. If areas do not have existing consumer organizations, include letters of support from local consumer leaders indicating their willingness to collaborate in prevention programming.

3. Copies of policies protecting the confidentiality of persons with hemophilia and the security of patient information and records. A copy of the local IRB approval letter, copy of consent form, and assurance information (multiple project assurance number, single project assurance approval letter or signed collaborative inter-institutional amendment) for the regional core center and each participating HTC.

F. Submission and Deadline

Submit the original and three copies of PHS 5161–1 (OMB Number 0937–0189). Forms are available in the application kit and at the following Internet address: www.cdc.gov/od/pgo/forminfo.htm. On or before June 15, 2001, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group.

(Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background and need (20 Points Total)

a. The extent to which the applicant describes the regional hemophilia population in terms of known morbidity, demographics, sources of care, and experience in data collection and surveillance. (10 points)

b. The extent to which the applicant identifies significant problems experienced by the hemophilia community, and how this regional network of HTCs can appropriately address the issues of the target community. (10 points)

2. Goals and Objectives (20 Points)

The extent to which the applicant has included goals which are relevant to the purpose of the proposal and feasible to be accomplished during the project period, and the extent to which these are specific and measurable. The extent to which the applicant has included objectives which are feasible to be accomplished during the budget period, and which address all activities necessary to accomplish the purpose of the proposal. The extent to which the objectives are specific, time-phased, and measurable.

3. Methods and Activities (50 Points Total)

The extent to which the applicant provides:

a. A detailed description of proposed activities and methods used to accomplish each objective within the time frame indicated. (15 points)

b. A description of how proposed methods will provide valid and reliable outcomes needed to accomplish proposed objectives. (10 points)

c. A description of the limitations and anticipated implementation barriers of the principal methods, and how these problems are expected to be resolved. (15 points)

d. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits. (10 points)

4. Program Management and Evaluation (10 Points)

The extent to which the management systems and specific plans of evaluation

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were used to ensure sufficient progress towards achievement of proposed goals and objectives are discussed. The extent to how HTC performance sites were selected is discussed. The extent that the types, frequency, and methods of evaluation were used are described. The extent to how the above information will be used to improve or redirect program operations is explained.

5. Budget (Not Scored)

The extent to which the applicant provides a detailed budget and narrative justification consistent with stated objectives and planned program activities.

6. Human Subjects (Not Scored)

Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects:

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. annual progress report, no more than 90 days after the end of the budget period;

2. financial status report, no more than 90 days after the end of the budget period; and

3. final financial report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist with a copy to the Project Officer identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–15 Proof of Non-Profit Status

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a)(42 U.S.C. 241 (a)) and 317(k)(2)(42 U.S.C. 247b(k)(2)) of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov Click on "Funding" then "Grants and Cooperative Agreements."

To obtain business management technical assistance, contact: Merlin Williams, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Mailstop K–75, Atlanta, GA 30341–4146, Telephone number: 770–488–2765, E-mail: mqw6@cdc.gov.

For program technical assistance, contact: Sally O. Crudder, Director, Hemophilia Treatment Center Program, Hematologic Diseases Branch, National Center for Infectious Diseases, Centers for Diseases Control and Prevention, 1600 Clifton Road, Mailstop E–64, Atlanta, GA 30333, Ph: 404–371–5270 or 5903, Email: sic4@cdc.gov

Dated: April 30, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–11217 Filed 5–3–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01071]

National Health Promotion and Information Center for People With Paralysis; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program to establish a National Health Promotion and Information Center (NHPIC) for People with Paralysis.

The purpose of this cooperative agreement is to develop and expand national efforts for the prevention of secondary conditions and complications, and to improve outcomes and the quality of life for people living with paralysis from multiple causes.

B. Eligible Applicant

Assistance will only be provided to the Christopher Reeve Paralysis Foundation. No other applications are solicited. FY 2001 Federal appropriations specifically direct CDC to award funds to this organization.

C. Availability of Funds

Approximately $1,568,000 is available in FY 2001 to fund this award. It is expected that the award will begin on or about September 30, 2001, and will be made for a 12 month budget period within a one year project period.

D. Where To Obtain Additional Information

This and other CDC announcements may be found on the CDC home page on the Internet at: http://www.cdc.gov.

To obtain business management technical assistance may be obtained from: Nancy Pillar, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Mailstop E–13, Atlanta, Georgia 30341–4146, Telephone: (770) 488–2710, E-Mail address: nfp6@cdc.gov.

General program assistance can be obtained from: Joseph B. Smith, Senior Project Officer, Disability and Health Branch, National Center for Birth Defects and Developmental Disabilities, Disability and Health Branch, 4770 Buford Highway, Building 101, Mailstop F–35, Atlanta, Georgia 30341, Telephone: (770) 488–7082, E-Mail address: jos4@cdc.gov.

Dated: April 30, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–11216 Filed 5–3–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01072]

Public Health Laboratory Biomonitoring Planning Grant; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a grant program to promote planning for the development, implementation, and expansion of State-based biomonitoring programs to help prevent disease resulting from exposure to toxic substances. This program addresses "Healthy People 2010" focus areas of Environmental Health and Public Health Infrastructure.

In this announcement, the term "biomonitoring" refers to the assessment of exposure to toxic substances in people by the laboratory measurement of these substances (or their metabolites) in specimens from humans such as blood, urine and saliva. Biomonitoring measurements assess the concentration of the toxic substance in people and are often referred to as "internal dose" measurements.

Biomonitoring measurements can assess the exposure of a single person or by aggregating data of many people, a population. Biomonitoring measurements complement environmental measurements of toxic substances in air, water, food, soil and dust. Specific uses of biomonitoring measurements in public health include:

1. To measure the prevalence of elevated levels of toxic substances in a population group (e.g., the prevalence of blood lead levels ≥ 10 µg/dL in children living in an inner-city environment);

2. To determine levels of exposure in population groups who may be at increased risk of exposure;

3. To provide levels of human exposure in studies examining the relationship between exposure to a toxic substance (or toxic substances) and adverse health effects;

4. To determine whether levels of toxic substances are higher in potentially more vulnerable population groups such as children, the elderly, or women of childbearing age than in the general population;

5. To track over time, trends in the levels of exposure of a population group to specific toxic substances (e.g., levels of exposure to mercury in a population who consume fish as a major portion of their diet);

6. To assess the effectiveness of public health efforts to reduce the exposure of specific populations to toxic substances.

For biomonitoring measurements to be effective in addressing these public health needs, they should be accurate, precise, sensitive, specific, rugged, and have adequate throughput to complete measurements in a timely manner. For more information about the concept of biomonitoring, please see the references at the website: http://www.cdc.gov/nceh/publications/at-a-glance/Biomonitor/Default.htm

To effectively apply biomonitoring measurements, laboratories must interface with other public health partners, including physicians, epidemiologists, and health professionals at the State and local levels, in academic centers, and in communities. In addition, collaboration with other public health laboratories can be beneficial.

B. Eligible Applicants

Applications may be submitted only by public health laboratories of States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, federally recognized Indian tribal governments, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

In some States, territories, and protectorates, environmental health testing and biomonitoring responsibilities are under the jurisdiction of an agency other than the Public Health Laboratory. In those cases, application for funding under this program announcement will be accepted from other agencies, provided that the Public Health Laboratory in that State, territory, or protectorate is in agreement and submits written documentation of such agreement as part of the application.

Note: Only one application per State, territory, or protectorate may be submitted.

Eligible laboratories may form consortia. Applications from consortia must provide documentation from each member of the consortium of their willingness to collaborate and pool data from each site in their proposed consortium. One laboratory of the consortium must be identified as the designated lead on a multi-site application. The lead laboratory must submit the application and administer the award.

For interested applicants, a telephone conference call for pre-application technical assistance will be held on Thursday, May 24, 2001, from 1:30 p.m. to 3:30 p.m., Eastern Standard Time. The bridge number for the conference call is 1–800–713–1971, and the pass code is 509361. For further information, please contact Charles Buxton at (770) 488–4160.

Note: Effective January 1, 1996, Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986, which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, grant (cooperative agreement), contract, loan, or any other form.

C. Availability of Funds

Approximately $5,000,000 is available in FY 2001 to fund approximately 25 awards. It is expected that the average award will be $200,000, ranging from $100,000 to $300,000. It is expected that the awards will begin on or about September 1, 2001, and will be made for a 12-month budget period within a project period of up to two years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds may be used to develop a biomonitoring plan, to conduct surveys, hire consultants, hire and train personnel, conduct needs assessments and evaluations, conduct travel related to this project, pay for relevant and appropriate services, and perform other activities that enhance the recipient's ability to develop a biomonitoring program plan. Project funds may not be used for the development of testing methods or programs for environmental samples.

Funds may not be used to support activities which would otherwise be under the jurisdiction of Superfund and/or the Agency for Toxic Substances and Disease Registry. However, because toxicants from Superfund sites contribute to the total of human exposure sources, funds may be used for planning purposes to examine the interface between Superfund activities and public health laboratory biomonitoring programs.

Future Plans: CDC anticipates that during the second year of this grant program, a Cooperative Agreement program announcement will be issued with the intent to provide in FY 2003, the funding for approximately five public health laboratories at an anticipated level of $1,000,000 per laboratory, per year (for up to five years) to implement biomonitoring programs.

Eligibility for these Cooperative Agreement funds will be limited to those laboratories that have received funds under this grant program. Criteria for funding under the future Cooperative Agreement Program will include: the quality of the plan developed during this planning grant period; the degree to which the applicant demonstrates cooperation and integration with other public health resources (e.g., epidemiologists, schools of public health, medicine and science); and the assessment of the need for biomonitoring.

CDC anticipates that the awards during the Cooperative Agreement phase will be made with the goal of achieving geographic distribution and

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balance among laboratories which serve people living in diverse settings such as urban, rural, agricultural, and industrial communities.

Funding Preferences

Preference for awards will be given to ensure geographic diversity.

D. Program Requirements

The program areas of interest focus on the development of a plan by which recipients will be able to achieve the following by the end of the two-year project period:

1. Assess the need for biomonitoring within the community served by the applicant. The laboratory should collaborate with other public health partners, including public health physicians and epidemiologists to make this needs assessment. Special consideration should be given to evaluating exposures in racial and ethnic population groups that may be at increased risk from exposure.

2. Develop a plan for implementing or expanding biomonitoring capacity in the public health laboratory. This plan should:

a. Define specific, measurable, and time-framed goals and objectives.

b. Inventory existing biomonitoring methods available to the applicant and specify for each method: toxic substance(s) measured, method of measurement (e.g., GC–MS, atomic absorption), current instrumentation used, the limit of detection for each analyte (and how the limit of detection was determined), known interferences, description of method's quality control, any external proficiency testing program in which the laboratory currently participates for the method, an approximate method sample throughput per day, and approximate number of human specimens analyzed in the past 12 months. (If an applicant is not currently performing biomonitoring testing, but anticipates this need, these needs should be stated as outlined in 2.c.)

c. Identify new biomonitoring capacity needed to address additional toxic substances or expand current methods. Emphasize in this section how the new biomonitoring capacity will be used to address needs identified in 1. As part of this explanation, specify the collaborations with public health partners (State and local health officials, schools of public health, academic centers, community groups, etc.) who will work with the lab to use biomonitoring data to help address these public health needs.

d. For each new biomonitoring method needed, describe additional requirements for personnel, instrumentation, and facilities modification or expansion. Provide cost estimates for facilities modification or expansion.

e. Describe requirements for local Institution Review Board (IRB) or Human Subjects review and approval.

f. Discuss requirements for compliance with the Clinical Laboratory Amendments (CLIA) 1988.

3. Develop an evaluation plan to assess progress in expanding the laboratory's biomonitoring capacity and to assess the impact of biomonitoring measurements on addressing the identified public health needs within the State or community.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria Sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. Please follow the directions indicated in the application kit.

F. Submission and Deadline

Submit the original and five copies of PHS 398 (OMB Number 0925–0001) Forms are in the application kit.

On or before July 2, 2001, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the Objective Review Panel. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be reviewed, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Understanding the Problem (30 Percent)

The extent to which the applicant understands the need for planning a biomonitoring program and the purpose of conducting exposure assessment by measurement of human biological samples (blood, hair, urine, saliva) to identify internal human dose from contact with hazardous environmental chemicals.

a. The analytical challenges associated with identifying extent of exposure based on data obtained from human samples, especially challenges presented by the differences in physiological makeup of individuals, specimen collection and pharmacokinetic and pharmacodynamic factors.

b. The problems related to estimating or extrapolating "internal dose" from "external dose" data, and the value of biomonitoring through direct measurement of samples from humans to provide more meaningful information.

2. Goals and Objectives (20 Percent)

The extent to which the applicant clearly states planning goals and objectives which are consistent with the Purpose and Program Requirements sections as presented in this announcement, and the degree to which the goals and objectives reflect an understanding of the need to reach beyond the laboratory to achieve balanced input from the broader public health community in preparing the biomonitoring plan.

3. Description of Program and Methodology (20 Percent)

Describe in detail how the biomonitoring plan will be developed, what sources of information and expertise will be utilized in establishing the plan. Describe a phased time line of activities leading to completion of the plan, and anticipated uses of the plan.

4. Collaborative Efforts (15 Percent)

Describe anticipated collaborative efforts related to this planning among the applicant laboratory, other components of the public health structure of the community, including epidemiologists, environmental health professionals, other state or local health agencies, health services providers, and academic institutions such as schools of public health, medicine, university departments of chemistry or biochemistry, community and citizens groups, and other interested parties. Letters of support from anticipated collaborators should be provided as attachments to the application package.

5. Evaluation Plan (10 Percent)

The extent to which the applicant describes how progress towards achieving the applicant's goals and objectives will be evaluated, and how, once the plan has been completed, its impact on environmental health and human exposure issues in the applicant's community will be assessed.

6. Staffing, Management System, and Facilities (5 Percent)

The extent to which the applicant describes the staff available or anticipated to conduct the planning activities and how they will be managed. The applicant must describe the organizational setting and facilities available to support the development of the plan, to accumulate and analyze data and other information related to planning. Applicants should also describe planning to provide IRB review when biomonitoring programs are implemented and discuss the impact of the requirements of the Clinical Laboratory Improvement Amendments of 1988 (CLIA) on their plan.

7. Budget (Not Scored)

The extent to which the applicant provides a detailed budget and narrative justification consistent with stated objectives and planned program activities.

H. Other Requirements

Provide CDC with the original plus two copies of:

1. Annual progress reports, no more than 30 days after the end of the report period;

2. Financial status report, no more than 90 days after the end of the budget period;

3. Final financial report and performance report, no more than 90 days after the end of the project period; and

4. Completed planning document, no later than the end of the third quarter of year two.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 1 in the application kit.

AR–7 Executive Order 12372 Review
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301 and 317 of the Public Health Service Act, 42 U.S.C. sections 241 and 247b, as amended. The catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov Click on "Funding" then "Grants and Cooperative Agreements."

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Sonia V. Rowell, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, (MS E–13), Atlanta, GA 30341–4146, Telephone: (770) 488–2724, E-mail address: svp1@cdc.gov.

For program technical assistance contact: Dayton T. Miller, Ph.D., National Center for Environmental Health, Centers for Disease Control and Prevention, 4770 Buford Highway, NE (MS F–18), Atlanta, GA 30341–3724, Telephone: (770) 488–4452, E-mail address: dtm1@cdc.gov.

Dated: April 30, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–11215 Filed 5–3–01; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

CDC Advisory Committee on HIV and STD Prevention: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: CDC Advisory Committee on HIV and STD Prevention.

Times and Dates: 8:30 a.m.–5 p.m., June 4, 2001. Place: Holiday Inn, 130 Clairmont Ave, Decatur, Georgia 30030.

Place: 8:30 a.m.–5 p.m., June 5, 2001. Corporate Square Office Park, Corporate Square Boulevard, Building 8, 1st Floor Conference Room, Atlanta, Georgia 30329.

Status: Open to the public, limited only by the space available. The meeting room will accommodate approximately 100 people.

Purpose: This Committee is charged with advising the Director, CDC, regarding objectives, strategies, and priorities for HIV and STD prevention efforts including maintaining surveillance of HIV infection, AIDS, and STDs, the epidemiologic and laboratory study of HIV/AIDS and STDs, information/education and risk reduction activities designed to prevent the spread of HIV and STDs, and other preventive measures that become available.

Matters to be Discussed: Agenda items include issues pertaining to (1) HIV prevention-care interface (2) HRSA–CDC linkages in terms of preventing STDs other than HIV (3) Syphilis elimination. Agenda items are subject to change as priorities dictate.

For Further Information Contact: Paulette Ford, Committee Management Analyst, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE, Mailstop E–07, Atlanta, Georgia 30333. Telephone 404/639–8008, fax 404/639–3125, e-mail pbf7@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 30, 2001.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 01–11218 Filed 5–3–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0185]

Draft Guidance for Industry on Providing Regulatory Submissions in Electronic Format—Postmarketing Expedited Safety Reports; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the

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availability of a draft guidance for industry entitled "Providing Regulatory Submissions in Electronic Format—Postmarketing Expedited Safety Reports." This is one in a series of guidance documents on providing regulatory submissions to FDA in electronic format. This specific guidance discusses issues related to the electronic submission of postmarketing expedited safety reports for drug products marketed for human use with new drug applications (NDAs) and abbreviated new drug applications (ANDAs), prescription drug products marketed for human use without an approved NDA or ANDA, and therapeutic biological products marketed for human use with biologic license applications (BLAs). This guidance does not apply to vaccines. The submission of these reports in an electronic format will significantly improve the agency's efficiency in processing, archiving, and reviewing the reports.

DATES: Submit written comments on the draft guidance by July 3, 2001. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Deborah Yaplee, Center for Drug Evaluation and Research (HFD–400), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3237, aersesub@cder.fda.gov; or

Michael Fauntleroy, Center for Biologics Evaluation and Research (HFM–588), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–5101, Fauntleroy@cber.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Description of the Guidance

FDA is announcing the availability of a draft guidance for industry entitled "Providing Regulatory Submissions in Electronic Format—Postmarketing Expedited Safety Reports." FDA has cooperated with industry associations and the regulatory authorities of certain other nations to promote international harmonization of regulatory requirements. Much of this effort has been coordinated through the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). Under the auspices of the ICH, standards for electronic submission of safety information for human drug and biological products have been developed, including a standard medical terminology for regulatory purposes, ICH M1; electronic standards for the transfer of regulatory information, ICH M2; and standardized data elements for transmission of individual case safety reports, ICH E2B and E2BM formats.

This draft guidance is intended to provide guidance to industry regarding submission of postmarketing expedited safety reports to FDA electronically using the standards established by the ICH. FDA believes the changes recommended by the ICH will result in more effective and efficient safety reporting to regulatory authorities worldwide.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115; 65 FR 56468, September 19, 2000). The draft guidance represents the agency's current thinking on providing postmarketing expedited safety reports in an electronic format. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Paperwork Reduction Act of 1995

This notice contains no new collections of information. The information requested for marketed human drug and biological products is already covered by the collection of information on postmarketing safety reporting regulations (21 CFR 310.305, 314.80, and 600.80) submitted to the Office of Management and Budget (OMB) for review and clearance. This notice merely provides applicants with an alternative mechanism for submitting postmarketing expedited safety reports to the agency.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), OMB approved the information collection for MedWatch—The FDA Medical Products Reporting Program (Forms FDA 3500 and FDA 3500A) and assigned it OMB control number 0910–0291. The approval for 0910–0291 expires on April 30, 2003.

OMB also approved the information collection for adverse experience reporting for marketed drugs and licensed biological products and assigned them OMB control numbers 0910–0230 and 0910–0308, respectively. The approval for 0910–0230 expires on May 31, 2002, and the approval for 0910–0308 expires on April 30, 2003.

IV. Electronic Access

Persons with access to the Internet may obtain the document at http://www.fda.gov/cder/guidance/index.htm or at http://www.fda.gov/cber/guidelines.htm.

Dated: April 27, 2001.

Ann M. Witt,

Acting Associate Commissioner for Policy.

[FR Doc. 01–11235 Filed 5–3–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for the opportunity for public comment on proposed data collection projects [Section 3506 (c) (2) (A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13], the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on (a) whether the agency needs to collect the proposed information to properly perform its functions and whether the information has any practical utility; (b) whether the agency's estimate of the burden of the proposed collection of information is accurate; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information for respondents (*e.g.*, by using automated collection techniques or other forms of information technology).

Proposed Project: Ryan White CARE Act Dental Reimbursement Program (OMB No. 0915–0151)—Revision

The Dental Reimbursement Program (DRP) under Part F of the Ryan White CARE Act offers grants to accredited dental schools and programs that provide non-reimbursed oral health care to patients with HIV disease. The Ryan White CARE Act Amendments of 2000 expanded eligibility of this program to accredited schools of dental hygiene, in addition to previously funded schools of dentistry and post-doctoral dental education programs.

HRSA requests a revision to the DRP Application that schools and programs use to apply for funding of non-reimbursed costs incurred in providing oral health care to patients with HIV. Awards are authorized under section 776(b) of the Public Health Service Act (42 U.S.C. 294n). The 2001 DRP Application is intended to collect data in three different areas: program information, patient demographics and services, and reimbursement and funding. It also requests applicants to provide narrative descriptions of their services and facilities, as well as their links and collaboration with community-based providers of oral health services.

The primary purpose of collecting this information annually, as part of the DRP Application, is to verify eligibility and determine the reimbursement amount each applicant should receive. This information also allows HRSA to learn about (1) the extent of the involvement of dental schools and programs in treating patients with HIV, (2) the number and characteristics of clients who receive CARE Act-supported oral health services, (3) the types and frequency of the provision of these services, (4) the non-reimbursed costs of oral health care provided to patients with HIV, and (5) how applicants intend to use DRP funds once they are received. In addition to meeting the goal of accountability to Congress, clients, advocacy groups, and the general public, information collected in the DRP Application is critical for HRSA, State and local grantees, and individual providers, to help assess the status of existing HIV-related health service delivery systems.

The reporting burden for reviewing the DRP Application Instructions and completing the Application Form is estimated as:

Collection	Number of responsents	Hours per application	Total burden hours
Reimbursement Request	125	20	2500

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 30, 2001.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 01–11236 Filed 5–3–01; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK): Opportunity for Cooperative Research and Development Agreements (CRADAs) To Perform Intervention Studies To Preserve Pancreatic Beta Cell Function and Prevent Type 1 Diabetes

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) of the National Institutes of Health (NIH) is seeking proposals in the form of capability statements from potential collaborators for a Cooperative Research and Development Agreement (CRADA) to perform intervention studies to preserve pancreatic beta cell function and prevent type 1 diabetes. The clinical research will execute pilot and expanded studies of new agents to prevent or ameliorate type 1 diabetes in populations screened for or enrolled in these studies.

Pursuant to the Federal Technology Transfer Act of 1986 (FTTA, 15 U.S.C. 3710; and Executive Order 12591 of April 10, 1987, as amended by the National Technology Transfer and Advancement Act of 1995), the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) of the National Institutes of Health (NIH) of the Public Health Service (PHS) of the Department of Health and Human Services (DHHS) seeks a Cooperative Research and Development Agreement (CRADA) with a pharmaceutical or biotechnology company to perform intervention studies to preserve pancreatic beta cell function and prevent type 1 diabetes.

The potential Collaborator(s) capability statement should provide proof of expertise in the design and implementation of new intervention studies of Type 1 Diabetes and should include the scientific rationale for the study proposed, the population to be studied, eligibility and exclusion criteria for the study, possible strategies for patient recruitment and data collection methods, primary and secondary endpoints to be determined, and a discussion of the sample size required given associated assumptions. The scientific rationale should include a discussion of what is the current "state-of-the-art", future opportunities, and obstacles in the prevention of type 1 diabetes, and discuss how the field may best be moved forward.

DATES: Only written CRADA capability statements received by the NIDDK on or before July 1, 2001 will be considered; confidential information must be clearly labeled. Potential Collaborators may be invited to meet with the Selection Committee at the Collaborator's expense to provide additional information. The Institute may issue an additional notice of CRADA opportunity. This notice is directed toward companies with resources to support collaborations.

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FOR ADDITIONAL INFORMATION AND QUESTIONS: Capability statements should be submitted to Dr. Michael W. Edwards, Office of Technology Development, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, BSA Building, Suite 350 MSC 2690, 9190 Rockville Pike, Bethesda, MD 20814–3800; Tel: 301/496–7778, Fax: 301/402–0535; Email: mels@nih.gov.

SUPPLEMENTARY INFORMATION: A CRADA is an agreement designed to enable certain collaborations between Government laboratories and non-Government laboratories. It is not a grant, and is not a contract for the procurement of goods/services. The NIDDK is prohibited from transferring funds to a CRADA collaborator. Under a CRADA, NIDDK can contribute facilities, staff, materials, and expertise to the effort. The collaborator typically contributes facilities, staff, materials, expertise, and funding to the collaboration. The CRADA collaborator receives an exclusive option to negotiate an exclusive or non-exclusive license to Government intellectual property rights arising under the CRADA in a pre-determined field of use and may qualify as a co-inventor of new technology developed under the CRADA.

Study Organization: The Type 1 Diabetes TrialNet, or TrialNet, will be a national network of cooperative clinical research groups, consisting of a consortia of clinical centers and core support facilities, whose aim is to recruit patients and to support studies that may eventually result in an improved understanding of type 1 diabetes and the prevention of the disease.

Applicants must include a description of investigators and staff with experience and expertise to collaborate in multicenter clinical trials and Phase II and Phase III studies to assess interventions for preventing or ameliorating type 1 diabetes. Applicants should describe their ability to lead clinical trials that could be performed using Type 1 Diabetes TrialNet resources. Applicants must give evidence of their ability and experience to conduct multicenter clinical trials, with prediabetic or diabetic subjects. If applicants have particular expertise and accomplishments in recruiting individuals from minority groups, these should be described.

Applicants should provide a detailed description of the design of the proposed study, including what eligibility, baseline, and follow-up tests are to be done, what surrogate markers and endpoints will be examined, and the duration of follow-up. Examples of data forms and questionnaires proposed should be given. The process for biologic sample collection, storage and handling needs must be included. A description of the laboratory tests that are needed with appropriate methods for performing them should be provided, as well as other core facilities and interactions with core facilities that are needed. Also included should be the methods that would be used to assure privacy and maintain confidentiality of data. Sample size needs and the criteria and calculations used to estimate sample sizes should be detailed.

Capability Statements: A Selection Committee will utilize the information provided in the "Collaborator Capability Statements" received in response to this announcement to help in its deliberations. It is the intention of the NIDDK that all qualified Collaborators have the opportunity to provide information to the Selection Committee through their capability statements. The Capability Statement should not exceed 10 pages and should address the following selection criteria:

(1) The statement should provide specific details of the method to be utilized in the investigation of promising new approaches to prevent or ameliorate type 1 diabetes.

(2) The statement should include a detailed plan demonstrating the ability to provide sufficient quantities of the agent in a timely manner for the duration of the study.

(3) The statement may include outcome measures of interest to the Collaborator. The specifics of the proposed outcome measures and the proposed support should include but not be limited to the following: Promising new approaches to prevent or ameliorate type 1 diabetes, specific funding commitment to support the advancement of scientific research, Personnel, services, facilities, equipment, or other resources that would contribute to the conduct of the commercial development.

(4) The statement must address willingness to promptly publish research results and ability to be bound by PHS intellectual property policies (see CRADA: http://ott.od.nih.gov/newpages/crada.pdf).

Dated: April 26, 2001.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 01–11189 Filed 5–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Clinical Trials Review Committee.

Date: June 17–19, 2001.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Joyce A. Hunter, Ph.D, Review Branch, Room 7192, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892–7924, 301/435–0277.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 27, 2001.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–11182 Filed 5–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Program Project Review Committee Program Project Review Committee.

Date: June 21, 2001.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Jeffrey H Hurst, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892, (301) 435–0303, hurstj@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 27, 2001.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–11183 Filed 5–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: June 14, 2001.

Open: 8:30 am to 2 p.m.

Agenda: For discussion of program policies and issues.

Place: National Institutes of Health, Building 31, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Closed: 2 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Robert Carlsen, Director, Division of Extramural Affairs, Nat. Heart, Lung, and Blood Institute, NIH, Two Rockledge Center, Room 7100, 6701 Rockledge Drive, Bethesda, MD 20892, 301/435–0260.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 26, 2001.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–11187 Filed 5–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel—Mentored Research Career Development Awards (K23, K25, and K08) and Midcareer Awards in Patient-Oriented Research (K24).

Date: May 31–June 1, 2001.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Mariott Wardman Park Hotel, 2660 Woodley Road N.W., Washington, DC 20008.

Contact Person: Diane M. Reid, MD, Review Branch, Room 7182, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 26, 2001.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–11188 Filed 5–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIEHS.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual grant applications conducted by the National Institute of Environmental Health Sciences, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIEHS.

Date: June 6–8, 2001.

Closed: June 6, 2001, 8:00 pm to 9:30 pm.

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Agenda: To review and evaluate programmatic and personnel issues.

Place: Doubletree Guest Suites, 2515 Meridian Parkway, Research Triangle Park, NC 27709.

Open: June 7, 2001, 8:30 am to 5:00 pm.

Agenda: An overview of the organization and conduct of research in the Laboratory of Molecular Genetics.

Place: Nat. Institute of Environmental Health Sciences, South Campus, Conference Rooms 101 ABC, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: June 8, 2001, 8:30 am to Adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Nat. Institute of Environmental Health Sciences, South Campus, Conference Rooms 101 ABC, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Paul Nettesheim, MD, DMS, Acting Scientific Director, Office of the Scientific Director, Nat. Institute of Environmental Health Sciences, National Institutes of Health, Mail Drop A2–09, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709, 919/541–3205.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: April 26, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–11184 Filed 5–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Advisory allergy and Infectious Diseases Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended.The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: June 4–5, 2001.

Open: June 4, 2001, 1:00 pm to 3:30 pm.

Agenda: The meeting of the full Council will be open to the public for general discussion and program presentations.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Closed: June 4, 2001, 3:30 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: John J McGowan, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council Acquired Immunodeficiency Syndrome Subcommittee.

Date: June 4–5, 2001.

Closed: June 4, 2001, 8:30 am to 1:00 pm.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Open: June 5, 2001, 8:30 am to adjournment.

Agenda: Open program advisory discussions and presentations.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: John J McGowan, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council—Allergy, Immunology and Transplantation Subcommittee.

Date: June 4, 2001.

Closed: June 4, 2001, 8:30 am to 10:00 am.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Open: June 4, 2001, 10:00 am to 1:00 pm.

Agenda: Open program advisory discussions and presentations.

Place: Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Contact Person: John J McGowan, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council Microbiology and Infectious Diseases Subcommittee.

Date: June 4–5, 2001.

Closed: June 4, 2001, 8:30 am to 1:00 pm.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Open: June 5, 2001, 8:30 am to adjournment.

Agenda: Open program advisory discussions and presentations.

Place: Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Contact Person: John J McGowan, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 26, 2001.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–11185 Filed 5–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel ZDK1 GRB–7 C1.

Date: May 24, 2001.

Time: 11:00 am to 12:30 pm.

Agenda: To review and evaluate contract proposals.

Place: Democracy Plaza II, 6707 Democracy Blvd., Rm #754, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 754, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799.

(Catalog of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 26, 2001.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–11186 Filed 5–3–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4653–N–06]

Notice of Proposed Information Collection for Public Comment: 2002 American Housing Survey—Metropolitan Sample

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 3, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Ronald J. Sepanik at (202) 708–1060, Ext. 5887, or Jane M. Kneessi, Bureau of the Census, HHES Division, Washington, DC 20233, (301) 457–3235. (The telephone numbers are not toll-free).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: 2002 American Housing Survey—Metropolitan Sample.

OMB Control Number: 2528–0017.

Description of the need for the information and proposed use: The 2002 American Housing Survey Metropolitan Sample (AHS–MS) provides a periodic measure of the size and composition of the housing inventory in selected metropolitan areas. Title 12, United States Code, Sections 1701Z–1, 1701Z–2(g), and 1710Z–10a mandates the collection of this information.

The 2002 survey is similar to previous AHS–MS surveys and collects data on subjects such as the amount and types of changes in the inventory, the physical condition of the inventory, the characteristics of the occupants, the persons eligible for and beneficiaries of assisted housing by race and ethnicity, and the number and characteristics of vacancies.

Policy analysts, program managers, budget analysts, and Congressional staff use AHS data to advise executive and legislative branches about housing conditions and the suitability of public policy initiatives. Academic researchers and private organizations also use AHS data in efforts of specific interest and concern to their respective communities.

The Department of Housing and Urban Development (HUD) needs the AHS data for two important uses:

1. With the data, policy analysts can monitor the interaction among housing needs, demand and supply, as well as changes in housing conditions and costs, to aid in the development of housing policies and the design of housing programs appropriate for different target groups, such as first-time home buyers and the elderly.

2. With the data, HUD can evaluate, monitor, and design HUD programs to improve efficiency and effectiveness.

Agency Form Numbers: Computerized Versions of AHS–62 and AHS–63.

Members of affected public: Households.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of respondents: 61,000.

Estimate Responses per Respondent: 1 every six years.

Time per respondent: 34 minutes.

Total hours to respond: 34,567.

Respondent's Obligation: Voluntary.

Status of the proposed information collection: Pending OMB approval.

Authority: Title 13 U.S.C. Section 9(a), and Title 12, U.S.C., Section 1701z–1 *et seq.*

Dated: April 25, 2001.

Lawrence L. Thompson,

General Deputy Assistant Secretary, Office of Policy Development and Research.

[FR Doc. 01–11180 Filed 5–3–01; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4644–N–18]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: May 4, 2001.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*,

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No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: April 26, 2001.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 01–11025 Filed 5–3–01; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Conservation Plan and Environmental Assessment for Sherburne National Wildlife Refuge, in Central Minnesota

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a Comprehensive Conservation Plan and Environmental Assessment for Sherburne National Wildlife Refuge.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare a Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) pursuant to the National Environmental Policy Act (NEPA) and its implementing regulations, for the Sherburne National Wildlife Refuge located in Sherburne County, Minnesota. The Service is furnishing this notice in compliance with the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd *et seq.*), to achieve the following:

(1) Advise other agencies and the public our intentions, and

(2) Obtain additional suggestions and information on the scope of alternatives and impacts to be considered.

Open house style meetings and focus group meetings will also be held throughout the scoping phase of the CCP development process. In addition, the Service is inviting comments on archaeological, historic, and traditional cultural sites in support of the National Historic Preservation Act.

Special mailings, newspaper articles, and other media announcements will inform people of the opportunities for written input throughout the CCP planning process.

DATES: The Service is soliciting written comments and will hold two public open house scoping meetings in the School House on the Sherburne National Wildlife Refuge, 17076 293rd Avenue, Zimmerman, Minnesota, on the following dates: May 29, 2001 10:00 a.m.–4:30 p.m., May 30, 2001 6:00 p.m.–9:00 p.m.

ADDRESSES: Address comments to Refuge Manager, Sherburne National Wildlife Refuge, 17076 293rd Avenue, Zimmerman, MN 56346. Comments may also be submitted electronically at R3RW_SHB@fws.gov.

FOR FURTHER INFORMATION CONTACT: Refuge Manager, Sherburne National Wildlife Refuge, 763/389–3323.

SUPPLEMENTARY INFORMATION: By Federal law, all lands within the National Wildlife Refuge System are to be managed in accordance with an approved CCP. The CCP guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes.

The CCP planning process will consider many elements, including wildlife and habitat management, habitat protection and acquisition, wilderness preservation, public recreational activities, industrial use, and cultural resource preservation. Public input into this planning process is essential.

The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the Refuge and how the Service will implement management strategies.

The Service will prepare an Environmental Assessment (EA) in accordance with procedures for implementing NEPA found in the Departmental Manual 516 DM 6, Appendix 1.

The Service will contract for a cultural resources overview study in support of the comprehensive conservation plan. The professional study will identify known sites on the refuge. We are also asking the public to identify any cultural sites that are important to them.

Review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, and Service policies and procedures for compliance with those regulations.

We estimate that the draft environmental documents will be available in summer 2002.

Dated: April 26, 2001.

Marvin E. Moriarty,

Acting Regional Director.

[FR Doc. 01–11221 Filed 5–3–01; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species; Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permit for incidental take of endangered species.

On April 20, 2000, a notice was published in the **Federal Register** (Vol. 65, No. 77 FR 21203) that an application had been filed with the U.S. Fish and Wildlife Service (Service) by Magic Carpet Woods Association (Association), Traverse City, Michigan, for a permit to incidentally take, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 USC 1539), as amended, piping plover (*Charadrius melodus*) on Lake Michigan shoreline owned by the Association pursuant to the terms of the Associations' Habitat Conservation Plan.

Notice is hereby given that on March 20, 2001, as authorized by the provisions of the Act, the Service issued a permit (TE–025433) to the above named party subject to certain conditions set forth therein. The permit was granted only after the Service determined that it was applied for in good faith, that granting the permit will not be to the disadvantage of the endangered species, and that it will be consistent with the purposes and policy set forth in the Endangered Species Act, as amended.

Additional information on this permit may be requested by contacting Peter Fasbender, at (612)713–5343, peter_fasbender@fws.gov.

Dated: April 16, 2001.

Charlie Wooley,

Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 01–11191 Filed 5–3–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to amend endangered species recovery.

The following applicant has applied for an amended permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit Number TE023308–2

Applicant: U.S. Fish and Wildlife Service, Twin Cities Field Office, Bloomington, Minnesota (Russ Peterson, Field Supervisor).

The applicant holds a permit to take (collect, hold in captivity, propagate, and release) endangered Higgins' eye pearlymussels (*Lampsilis higginsi*) from locations within their historic range in the States of Iowa, Minnesota, and Wisconsin. The applicant requests authorization to expand the geographical area permitted for reintroducing artificially propagated specimens into the wild to include all historical locations of the species, including mainstem and tributaries of the Upper Mississippi River including the Chippewa, St. Croix, Black and Wisconsin Rivers in Wisconsin; the Iowa, Cedar and Wapsipinicon Rivers in Iowa; the Illinois, Sangamon, and Rock Rivers in Illinois; and, the Minnesota River in Minnesota. This permit is for the enhancement of survival of the species in the wild to protect from zebra mussel (*Dreissena polymorpha*) infestation, in the interest of recovery.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/713–5343); FAX: (612/713–5292).

Dated: April 20, 2001.

Charlie Wooley,

Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 01–11192 Filed 5–3–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Advisory Committee on Water Information (ACWI); Meeting

AGENCY: United States Geological Survey, Interior.

ACTION: Notice of an open meeting of the Advisory Committee on Water Information (ACWI).

SUMMARY: Notice is hereby given of a meeting of the ACWI. This meeting of the ACWI is to discuss broad policy-related topics relating to national water initiatives, and to hear reports from ACWI subgroups. The proposed agenda will include a series of discussions concerning various U.S. Government policies and programs related to the development and dissemination of water information.

The ACWI has been established under the authority of the Office of Management and Budget Memorandum 92–01 and the Federal Advisory Committee Act. The purpose of the ACWI is to provide a forum for water-information users and professionals to advise the Federal Government of activities and plans which may improve the effectiveness of meeting the Nation's water information needs. More than 30 organizations have been invited by the Secretary of the Interior to name representatives to the ACWI. These include Federal departments, State, local, and tribal government organizations, industry, academia, agriculture, environmental organizations, professional societies, and volunteer groups.

DATES: The formal meeting will convene at 8:30 a.m., on May 15, 2001, and will adjourn on May 16, 2001 at 5 p.m.

ADDRESSES: American Society of Civil Engineers Bechtel Conference Center, 1801 Alexander Bell Drive, Reston, Virginia.

FOR FURTHER INFORMATION CONTACT: Ms. Toni M. Johnson (Executive Secretary), Chief, Water Information Coordination Program, U.S. Geological Survey, 12201 Sunrise Valley Drive, 417 National Center, Reston, VA 20192. Telephone: 703–648–6810; Fax: 703–648–5644.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Up to a half hour will be set aside for public comment. Persons wishing to make a brief presentation (up to 5 minutes) are asked to provide a written request with a description of the general subject to Ms. Johnson at the above address no later than noon, May 11, 2001. It is requested that 40 copies of a written statement be submitted at the time of the meeting for distribution to members of the ACWI and placement in the official file. Any member of the public may submit written information and (or) comments to Ms. Johnson for distribution at the ACWI Meeting.

Dated: April 30, 2001.

Stephen F. Blanchard,

Acting Chief, Office of Information, U.S. Geological Survey.

[FR Doc. 01–11232 Filed 5–3–01; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved off-track wagering Tribal-State compact.

SUMMARY: Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Deputy Assistant Secretary—Indian Affairs (Management), Department of the Interior, through his delegated authority, has approved the Tribal-State Compact between the Absentee Shawnee Tribe and the State of Oklahoma, which was executed on March 28, 2001.

DATES: This action is effective May 4, 2001.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: May 1, 2001.

James H. McDivitt,

Deputy Assistant Secretary—Indian Affairs (Management).

[FR Doc. 01–11418 Filed 5–2–01; 8:45 am]

BILLING CODE 4310–02–M

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Amendment to a Tribal-State Compact.

SUMMARY: Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Deputy Assistant Secretary—Indian Affairs (Management), Department of the Interior, through his delegated authority, has approved the Amendment between the Yankton Sioux Tribe and the State of South Dakota, which was executed on March 5, 2001.

DATES: This action is effective May 4, 2001.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: May 1, 2001.

James H. McDivitt,

Deputy Assistant Secretary—Indian Affairs (Management).

[FR Doc. 01–11419 Filed 5–3–01; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Agency Information Collection Activities Under OMB Review; Comment Request

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of renewal of currently approved collection (OMB No. 1006–0005).

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and comment: Individual Landholder's and Farm Operator's Certification and Reporting Forms for Acreage Limitation, 43 CFR part 426 and 43 CFR part 428, OMB Control Number: 1006–0005. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Your comments must be received on or before June 4, 2001.

ADDRESSES: You may send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior, 725 17th Street, NW., Washington DC 20503. A copy of your comments should also be directed to the Bureau of Reclamation, Attention: D–5200, PO Box 25007, Denver, CO 80225–0007.

FOR FURTHER INFORMATION CONTACT: For further information or a copy of the proposed forms contact Stephanie McPhee, D–5200, PO Box 25007, Denver, CO 80225–0007; or by telephone: (303) 445–2897.

SUPPLEMENTARY INFORMATION:

Title: Individual Landholder's and Farm Operator's Certification and Reporting Forms for Acreage Limitation, 43 CFR part 426 and 43 CFR part 428.

Abstract: This information collection requires certain landholders (direct or indirect landowners or lessees) and farm operators to complete forms demonstrating their compliance with the acreage limitation provisions of Federal reclamation law. These forms establish each landholder's status with respect to landownership limitations, full-cost pricing thresholds, lease requirements, and other provisions of Federal reclamation law. In addition, forms are submitted by certain farm operators to provide information concerning the services they provide and the nature of their farm operating arrangements.

All landholders whose entire westwide landholdings total 40 acres or less are exempt from the requirement to submit Reclamation Reform Act of 1982 (RRA) forms. Landholders who are "qualified recipients" have RRA forms submittal thresholds of 80 acres or 240 acres depending on the district's RRA forms submittal threshold category where the land is held. Only farm operators who provide multiple services to more than 960 acres held in trusts or by legal entities are required to submit forms. This collection of information allows the Bureau of Reclamation (we, our, or us) to establish landholders' compliance with Federal reclamation law.

Changes to the RRA Forms and the Instructions to Those Forms

We made some changes to the current RRA forms and the instructions to those forms that are designed to increase the respondents' understanding of the forms, instructions to the forms, and what information is required to be submitted with the forms to the districts. These changes, as detailed in the ICR, include those resulting from the 60-day comment period initiated by the notice published in the **Federal Register** on January 3, 2001 (66 FR 383, Jan. 3, 2001). All other changes that were made are editorial or typographical in nature, and are designed to increase the clarity and correctness of the forms. The proposed revisions to the RRA forms will be included starting in the 2002 water year.

Frequency: Annually.

Respondents: Landholders and farm operators of certain lands in Bureau of Reclamation projects, whose landholdings exceed specified RRA forms submittal thresholds.

Estimated Total Number of Respondents: 19,202.

Estimated Number of Responses per Respondent: 1.02.

Estimated Total Number of Annual Responses: 19,586.

Estimated Total Annual Burden on Respondents: 14,829 hours.

Estimate of Burden for Each Form:

Form No.	Estimated No. of respondents	Frequency of response	Total annual responses	Burden estimate per form (in minutes)	Total burden hours
Form 7–2180	5,358	1.02	5,465	60	−5,465
Form 7–2180EZ	537	1.02	548	45	411
Form 7–2181	1,758	1.02	1,793	78	2,331
Form 7–2184	40	1.02	41	45	31
Form 7–2190	1,910	1.02	1,948	60	1,948
Form 7–2190EZ	113	1.02	115	45	86
Form 7–2191	891	1.02	909	78	1,182
Form 7–2194	4	1.02	4	45	3

Form No.	Estimated No. of respondents	Frequency of response	Total annual responses	Burden estimate per form (in minutes)	Total burden hours
Form 7–21PE	205	1.02	209	66	230
Form 7–21TRUST	1,331	1.02	1,358	60	1,358
Form 7–21VERIFY	6,452	1.02	6,581	12	1,316
Form 7–21FC	243	1.02	248	30	124
Form 7–21XS	164	1.02	167	30	84
Form 7–21FARMOP	196	1.02	200	78	260
Total	19,202	1.02	19,586		14,829

Comments

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) The accuracy of our burden estimate for the proposed collection of information;

(c) Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Reclamation will display a valid OMB control number on the RRA forms. A **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published in the **Federal Register** on January 3, 2001 (66 FR 383, Jan. 3, 2001). A list of the comments received and our responses to those comments will be sent to: (1) all districts, (2) all commenters, and (3) OMB with this ICR; it is also available from us upon request.

OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days; therefore, public comment should be submitted to OMB within 30 days in order to assure maximum consideration.

Dated: April 27, 2001.

Wayne O. Deason,

Associate Director, Office of Policy.

[FR Doc. 01–11193 Filed 5–3–01; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Agency Information Collection Activities Under OMB Review; Comment Request

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of renewal of a currently approved collection (OMB No. 1006–0006).

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and comment: Certification Summary Form, Reporting Summary Form for Acreage Limitation, 43 CFR part 426 and 43 CFR part 428, OMB Control Number: 1006–0006. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Your comments must be received on or before June 4, 2001.

ADDRESSES: You may send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior, 725 17th Street, NW., Washington DC 20503. A copy of your comments should also be directed to the Bureau of Reclamation, Attention: D–5200, PO Box 25007, Denver, CO 80225–0007.

FOR FURTHER INFORMATION CONTACT: For further information or a copy of the proposed forms contact Stephanie McPhee, D–5200, PO Box 25007, Denver, CO 80225–0007; or by telephone: (303) 445–2897.

SUPPLEMENTARY INFORMATION:

Title: Certification Summary Form, Reporting Summary Form for Acreage Limitation, 43 CFR part 426 and 43 CFR part 428.

Abstract: This information collection requires district offices to complete forms summarizing individual landholder (direct or indirect landowner or lessee) and farm operator certification and reporting forms. This collection of information allows the Bureau of Reclamation (we, our, or us) to confirm districts' compliance with Federal reclamation law.

Changes to the Reclamation Reform Act of 1982 (RRA) Forms and the Instructions to Those Forms

We made a few changes to the current Form 7–21SUMM–C and Form 7–21SUMM–R and the instructions to those forms that are editorial in nature and designed to increase the respondents' understanding of the forms, instructions to the forms, and what information is required to be submitted with the forms to the districts. These changes, as detailed in the ICR, include those resulting from the 60-day comment period initiated by the notice published in the **Federal Register** on January 3, 2001 (66 FR 384, Jan. 3, 2001). The proposed revisions to the RRA forms will be effective in the 2002 water year.

Frequency: Annually.

Respondents: Contracting entities that are subject to the acreage limitation provisions of Federal reclamation law.

Estimated Total Number of Respondents: 276.

Estimated Number of Responses per Respondent: 1.25.

Estimated Total Number of Annual Responses: 345.

Estimated Total Annual Burden on Respondents: 13,800 hours.

Estimate of Burden for Each Form:

Form No.	Estimated No. of respondents	Frequency of response	Total annual responses	Burden hours per responses	Total burden hours
7–21SUMM–C and tabulation sheets	222	1.25	278	40	11,120

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Form No.	Estimated No. of respondents	Frequency of response	Total annual responses	Burden hours per responses	Total burden hours
7–21SUMM–R and tabulation sheets	54	1.25	67	40	2,680
Total	276	1.25	345		13,800

Comments

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) The accuracy of our burden estimate for the proposed collection of information;

(c) Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Reclamation will display a valid OMB control number on the RRA forms. A **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published in the **Federal Register** on January 3, 2001 (66 FR 384, Jan. 3, 2001). A list of the comments received and our responses to those comments will be sent to: (1) all districts, (2) all commenters, and (3) OMB with this ICR; it is also available from us upon request.

OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days; therefore, public comment should be submitted to OMB within 30 days in order to assure maximum consideration.

Dated: April 27, 2001.

Wayne O. Deason,

Associate Director, Office of Policy.

[FR Doc. 01–11194 Filed 5–3–01; 8:45 am]

BILLING CODE 4310–MN–p

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Agency Information Collection Activities Under OMB Review; Proposed New Information Collection

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of proposed new information collection.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and comment: Limited Recipient Identification Sheet, Trust Information Sheet for Acreage Limitation, 43 CFR part 426. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Your comments must be received on or before June 4, 2001.

ADDRESSES: You may send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior, 725 17th Street, NW., Washington DC 20503. A copy of your comments should also be directed to the Bureau of Reclamation, Attention: D–5200, P.O. Box 25007, Denver, CO 80225–0007.

FOR FURTHER INFORMATION CONTACT: For further information or a copy of the proposed forms contact Stephanie McPhee, D–5200, P.O. Box 25007, Denver, CO 80225–0007; or by telephone: (303) 445–2897.

SUPPLEMENTARY INFORMATION:

Title: Limited Recipient Identification Sheet, Trust Information Sheet for Acreage Limitation, 43 CFR part 426.

Abstract: Identification of limited recipients.

Some entities that receive Reclamation irrigation water may believe themselves to be under the Reclamation Reform Act of 1982 (RRA) forms submittal threshold and consequently, may not submit the appropriate RRA form(s). However, some of these entities may in fact have a different RRA forms submittal threshold than what they believe it to be due to the number of natural persons benefitting from each entity and the location of the land held by each entity. In addition, some entities that are exempt from the requirement to submit RRA forms due to the size of their landholdings may in fact be receiving Reclamation irrigation water for which the full-cost rate must be paid because the start of Reclamation irrigation water deliveries occurred after October 1, 1981 (43 CFR 426.6(b)(2)). The information obtained through completion of the Limited Recipient Identification Sheet allows us to establish entities' compliance with Federal reclamation law. The proposed Limited Recipient Identification Sheet will be disbursed at our discretion.

Trust Review

We are required to review and approve all trusts (43 CFR part 426.7(b)(2)) in order to ensure trusts meet the regulatory criteria specified in 43 CFR part 426.7. Land held in trust generally will be attributed to the beneficiaries of the trust rather than the trustee if the criteria are met. When we become aware of trusts with a relatively small landholding (40 acres or less), we may extend to those trusts the option to complete and submit for our review the proposed Trust Information Sheet instead of actual trust documents. If we find nothing on the completed, proposed Trust Information Sheet that would warrant the further investigation of a particular trust, that trustee will not be burdened with submitting trust documents to us for in-depth review.

Changes to the RRA Forms and the Instructions to Those Forms

We made no changes (other than typographical changes) from the version of these forms offered in conjunction with the 60-day comment period initiated by the **Federal Register** notice published on January 3, 2001 (66 FR 385, Jan. 3, 2001). The proposed new forms will be effective in the 2002 water year.

Frequency: Generally, these forms will be submitted once per identified entity or trust. Each year, we expect new responses in accordance with the following numbers.

Respondents: Entity landholders and trusts identified by Reclamation that are subject to the acreage limitation provisions of Federal reclamation law.

Estimated Total Number of Respondents: 1,105.

Estimated Number of Responses per Respondent: 1.00.

Estimated Total Number of Annual Responses: 1,105.

Estimated Total Annual Burden on Respondents: 92 hours.

Estimate of Burden for Each Form:

Form No.	Estimated No. of respondents	Frequency of response	Total annual responses	Burden estimate per form (in minutes)	Total burden hours
Limited Recipient Identification Sheet	635	1.00	635	5	53
Trust Information Sheet	470	1.00	470	5	39
Total	1,105	1.00	1,105		92

Comments

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) The accuracy of our burden estimate for the proposed collection of information;

(c) Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Reclamation will display a valid OMB control number on the "Limited Recipient Identification Sheet" and the "Trust Information Sheet." A **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published in the **Federal Register** on January 3, 2001 (66 FR 385, Jan. 3, 2001). A list of the comments received and our responses to those comments will be sent to: (1) All districts, (2) all commenters, and (3) OMB with this ICR; it is also available from us upon request.

OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days; therefore, public comment should be submitted to OMB within 30 days in order to assure maximum consideration.

Dated: April 27, 2001.

Wayne O. Deason,

Associate Director, Office of Policy.

[FR Doc. 01–11195 Filed 5–3–01; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plans, 30 CFR 784, has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by June 4, 2001, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783, or electronically to jtreleas@osmre.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to renew its approval of the collection of information contained in: Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plans, 30 CFR Part 784. OSM is requesting a 3-year term of approval for the information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1029–0039.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection of information was published on February 7, 2001 (66 FR 9357). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plans, 30 CFR 784.

OMB Control Number: 1029–0039.

Summary: Sections 507(b), 508(a) and 516(b) of Public Law 95–87 require underground coal mine permit applicants to submit an operations and reclamation plan and establish performance standards for the mining operation. Information submitted is used by the regulatory authority to determine if the applicant can comply with the applicable performance and environmental standards required by the law.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Underground coal mining permit applicants and State Regulatory Authorities.

Total Annual Responses: 100.

Total Annual Burden Hours: 96,460.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the following addresses.

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Please refer to the appropriate OMB control numbers in all correspondence.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210—SIB, Washington, DC 20240, or electronically to jtreleas@osmre.gov.

Dated: April 12, 2001.

Kathryn S. O'Toole,

Acting Chief, Division of Regulatory Support.

[FR Doc. 01–11239 Filed 5–3–01; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for the Permanent Program Performance Standards—Underground Mining Activities at 30 CFR 817, has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by June 4, 2001, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783, or electronically to jtrelease@osmre.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to renew its approval of the collection of information contained in: Permanent Program Performance Standards—Underground Mining Activities at 30 CFR 817. OSM is requesting a 3-year term of approval for the information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1029–0048.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection of information was published on February 16, 2001 (66 FR 10742). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: Permanent Program Performance Standards—Underground Mining Activities, 30 CFR 817.

OMB Control Number: 1029–0048.

Summary: Sections 515 and 516 of the Surface Mining Control and Reclamation Act of 1977 provide that permittees conducting surface coal mining operations with underground mining activities shall meet all applicable performance standards of the Act. The information collected is used by the regulatory authority in monitoring and inspecting surface coal mining activities to ensure that they are conducted in compliance with the requirements of the Act.

Bureau Form Number: None.

Frequency of Collection: On occasion, quarterly and annually.

Description of Respondents: Underground coal mining operators.

Total Annual Responses: 20,745.

Total Annual Burden Hours: 95,618.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the following addresses.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 210—SIB, Washington, DC 20240, or electronically to jtreleas@osmre.gov.

Dated: April 17, 2001.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 01–11240 Filed 5–3–01; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–932 (Preliminary)]

Certain Folding Metal Tables and Chairs From China

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–932 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China of certain folding metal tables and chairs, provided for in subheading 9401.71.00, 9401.79.00, and 9403.20.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by June 11, 2001. The Commission's views are due at the Department of Commerce within five business days thereafter, or by June 18, 2001.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: April 27, 2001.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on April 27, 2001, by Meco Corporation, Greeneville, TN.

Participation in the Investigation and Public Service List

Persons (other than petitioner) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on May 18, 2001, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Fred Ruggles (202–205–3187) not later than May 15, 2001, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before May 23, 2001, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: May 1, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–11276 Filed 5–3–01; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–429]

Wheat Trading Practices: Competitive Conditions Between U.S. and Canadian Wheat

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Commission has submitted a request for emergency processing for review and clearance of questionnaires to the Office of Management and Budget (OMB). The Commission has requested OMB approval of this submission by COB May 14, 2001.

EFFECTIVE DATE: April 27, 2001.

PURPOSE OF INFORMATION COLLECTION: The forms are for use by the Commission in connection with investigation No. 332–429, Wheat Trading Practices: Competitive Conditions Between U.S. and Canadian Wheat, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). This investigation was requested by the United States Trade Representative (USTR). The Commission expects to deliver the results of its investigation to the USTR no later than September 24, 2001.

Summary of Proposal

(1) *Number of forms submitted:* 2.

(2) *Title of form:* Purchasers' Questionnaire Wheat Trading Practices: Competitive Conditions Between U.S. and Canadian Wheat and Exporters' Questionnaire Wheat Trading Practices: Competitive Conditions Between U.S. and Canadian Wheat.

(3) *Type of request:* new.

(4) *Frequency of use:* Single data gathering scheduled for May–June, 2001.

(5) *Description of respondents:* U.S. millers, importers, purchasers, and/or processors of Durum or Hard Red Spring wheat and U.S. exporters, merchandisers, and/or shippers of U.S. and/or Canadian Durum and/or Hard Red Spring wheat to Algeria, Brazil, Colombia, Guatemala, Peru, Philippines, South Africa, and/or Venezuela.

(6) *Estimated number of respondents:* 66 (purchasers and exporters).

(7) *Estimated total number of hours to complete the forms:* 3,496 hours.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

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FOR FURTHER INFORMATION CONTACT: Copies of the forms and supporting documents may be obtained from John Reeder (202–205–3319; reeder@usitc.gov) of the Office of Industries. Comments about the proposals should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102 (Docket Library), Washington, DC 20503, ATTENTION: Docket Librarian. All comments should be specific, indicating which part of the questionnaire is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act. Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TTD terminal (telephone No. 202–205–1810). General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at http://dockets/.usitc.gov/eol/public.

Issued: April 30, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–11246 Filed 5–3–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of information collection under review; application to adjust status from temporary to permanent resident.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until July 3, 2001.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Extension of a currently approved information collection.*

(2) *Title of the Form/Collection:* Application to Adjust Status from temporary to Permanent Resident.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–698. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The data collected on this form is used by the Service to determine an applicant's eligibility to adjust status from temporary to permanent resident.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,179 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,179 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 1331 Pennsylvania Avenue, NW., Suite 1220, Washington, DC 20503.

Dated: April 27, 2001.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 01–11324 Filed 5–3–01; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP(BJS)–1317]

Tribal Justice Statistics Assistance Center

AGENCY: Bureau of Justice Statistics, Office of Justice Programs, Justice.

ACTION: Notice of solicitation for award of cooperative agreement.

SUMMARY: The purpose of this notice is to announce a solicitation for the development and implementation of a Tribal Justice Statistics Assistance Center (TJSAC) which will assist Federally recognized American Indian and Alaska Native tribes in improving the collection, quality, and use of criminal and civil justice statistics in Indian Country.

DATES: Proposals must arrive at the Bureau of Justice Statistics (BJS) on or before 5 p.m. EST, Friday, June 18, 2001, or be postmarked on or before June 18, 2001.

ADDRESSES: Proposals should be mailed to: Application Coordinator, Bureau of Justice Statistics, 810 7th Street, NW., Washington, DC 20531; (202) 616–3497.

FOR FURTHER INFORMATION CONTACT: Marika Litras, Ph.D., Statistician, Bureau of Justice Statistics, 810 7th Street, NW., Washington, DC 20531; Phone: (202) 514–4272 [This is not a toll free number]; Email: *marika.litras@usdoj.gov.*

SUPPLEMENTARY INFORMATION:

Statutory Authority

The award(s) made pursuant to this solicitation will be funded by the Bureau of Justice Statistics consistent with the provisions of 42 U.S.C. 3732.

Program Goals

The purpose of this award is to establish a Tribal Justice Statistics Assistance Center (TJSAC) that will work with Federally recognized American Indian and Alaska Native tribes to assist them in the development and/or improvement of tribal justice agencies' internal abilities to generate and use criminal and civil justice statistics. The nature and subject matter of the assistance to be provided by the TJSAC under this grant is broadly defined and will depend on the particular needs of the tribal agency requesting assistance. Assistance may involve, for example, the evaluation of existing data collection capacity and reporting procedures, advising tribal agencies about obtaining the necessary technology, hardware and software to collect, process, maintain, and analyze criminal justice data, and providing training in the use of criminal justice and other data to inform justice decision making in Indian Country.[1] TJSAC will also serve to assist tribal jurisdictions to participate in national data collections such as the National Incident Based Reporting System (NIBRS) and the Uniform Crime Reporting (UCR) program, as well as OJP operated data collections related to corrections, criminal victimization, court processing, and juvenile justice statistics. In addition, TJSAC will provide assistance for tribal participation and access to national law enforcement data systems such as the National Criminal Information Center (NCIC) and the National Protection Order File.

BJS anticipates making one award for a 24-month period under this solicitation. Up to $825,000 will be made available for this project under the FY2001 appropriation.

Background

Implementation of the Tribal Justice Statistics Assistance Center is part of a multi-faceted effort by BJS to expand statistical activities related to American Indian and Alaska Native crime and justice issues.

The lack of criminal justice information and statistics in Indian Country has become increasingly apparent in recent years. Few Indian tribes produce statistical information about their justice systems that describe law enforcement, judicial, corrections, or juvenile justice activities and processes. National statistical programs, moreover, do not routinely contain data on criminal justice activities in Indian Country, while those that do are limited in the level of reliable and representative information they can provide.

Though a recent study found that criminal victimization among American Indians occurs at rates higher than for any other race group (*American Indians and Crime*, BJS, February 1999), tribes tend to lack objective statistical information necessary to monitor crime in their jurisdiction, evaluate criminal justice processing, and inform criminal justice management, resource allocation, and overall decision making. Few law enforcement agencies in Indian Country are able to participate in the National Incident-Based Reporting System (NIBRS) to track the incidence and prevalence of crime in their jurisdiction, and few tribes have access to or participate in the National Criminal Information Center (NCIC), the National Sex Offender Registry (NSOR), or other national criminal history record information systems that could increase tribal member safety through improved information on repeat and serious offenders. Few tribes, moreover, routinely maintain and disseminate statistics about juvenile justice issues such as youth violence and tribal youth in custody. The TJSAC would help tribes collect and disseminate information about reported crime in their jurisdiction, criminal case processing, the use or enforcement of protection orders that could be used to protect victims of rape, and family or intimate partner violence, and other relevant criminal justice statistics. These kinds of data and information systems are necessary for tribal justice policy decision making, the allocation of scarce criminal justice resources, and to assist tribal law enforcement authorities in qualifying for national crime prevention grant programs and other state pass-through funds such as the Byrne formula grant program.

Eligibility Requirements

Both profit making and nonprofit organizations may apply for funds. Consistent with OJP fiscal year requirements, however, no fees may be charged against the project by profit-making organizations.

Scope of Work

The objective of this project is to establish a Tribal Justice Statistics Assistance Center that will provide expertise and technical assistance to tribal justice agencies to improve their collection and use of criminal justice statistical data and criminal justice record keeping practices in Indian Country. Specifically, the recipient of funds will:

1. Implement a Tribal Justice Statistics Assistance Center (TJSAC) that will help American Indian and Alaska Native tribes to understand, identify, plan for, acquire and employ knowledge and tools to improve data collection and use of their criminal justice statistics. Technical assistance requests will vary according to the existing capacities of the tribal agency and the Center must be flexible in handling a wide range of needs. Assistance may range from recommending standardized data definitions and caseload management strategies, to assisting with the ongoing implementation of a NIBRS-compliant crime reporting system, to providing guidance and reference materials for acquiring basic computer access.

2. Provide technical and statistical assistance through both in-house and on-site methods. In-house methods may include, but are not limited to, telephone calls/conferences, electronic and mail correspondence, the publication and distribution (via website and mail) of reference materials, monographs, and technical bulletins. On-site visits should be reserved for more extensive needs assessments and assistance, should be conducted with the consultation and approval of BJS, and should involve considerable coordination with key tribal leaders, criminal justice, and technology staff in addition to relevant local, state, tribal and federal criminal justice agencies.

3. Convene a national or set of regional meetings on the technical, policy, operational, and collaborative aspects of implementing and maintaining criminal justice data in Indian Country. The conference should assemble forums that focus on disseminating information about the benefits tribal agencies can receive from uniform, timely, and reliable statistical systems, the use of statistical data for tribal police departments and court systems, the role of criminal justice statistics in the effective administration of justice, and encouraging cooperation among local, state, tribal, and federal level personnel in these efforts. The conference should include high-level tribal leaders, key members of regional or nationally recognized Native American organizations, and relevant personnel from local, state, tribal and federal levels of government.

4. Maintain documentation summarizing the source and nature of technical assistance requested, type of assistance provided, and action taken by tribes to implement technical assistance needs. Documentation should be provided for both in-house and on-site technical assistance. This

[1] Includes areas established as reservations or trust areas for native peoples of Alaska.

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documentation will be compiled and published by BJS.

5. Develop measures to identify the progress achieved in improving criminal justice statistics in Indian Country and tribal participation in national data collection systems and national law enforcement information systems. The grantee will provide documentation in a report to BJS on assistance provided by the TJSAC during the course of the project, and will monitor and report on the number of tribes participating in national databases and information systems.

Award Procedures and Evaluation Criteria

Proposals should describe the plan and implementation strategy to accomplish each of the activities outlined in the Scope of Work. Applications will be reviewed competitively. The final selection decision will be made by the Director of BJS.

The applicant will be evaluated on the basis of:

1. Knowledge of the development, management, and implementation of criminal justice statistics in the areas of reported crime, arrests and dispositions, judicial caseload and workload, corrections, juvenile justice, and records management systems. This should include knowledge of issues related to information sharing, case processing, and data integration among local, state, tribal, and federal criminal justice agencies. Applicant should demonstrate knowledge of issues related to access and participation in national criminal justice information systems such as, but not limited to, the National Incident-Based Reporting System (NIBRS) and the National Criminal Information Center (NCIC).

2. Knowledge of tribal justice issues and impediments to implementing high-quality criminal justice statistics in Indian Country. Applicant must demonstrate the ability to coordinate and facilitate cooperation among local, state, tribal, and federal agencies in recommending the collection and use of statistics and technical improvements to tribes. Applicant should demonstrate an understanding of the historical, political, and economic factors involved in local, state, tribal, and federal relations and must demonstrate the ability (via knowledge, staff, or sub-contractual agreement) to collaborate with and involve local, regional, and/or national Native American organizations to ensure coordination of priorities in Indian Country. Applicant must detail their strategy for bringing about cooperation among these various levels of government and organizations.

3. Ability to generate awareness of and access to the TJSAC by tribal justice agencies throughout the continental U.S. and Alaska. Applicant should detail how they will make tribal justice agencies aware of the TJSAC, the services it provides, and how they can obtain assistance.

4. Contact and experience in dealing with local, state, tribal, and federal representatives on issues relating to criminal justice statistics standards, data collection, data management, and its practical application in Indian Country. Applicant should demonstrate ability to interact with relevant Federal agencies such as the Federal Bureau of Investigation (FBI), the Bureau of Indian Affairs (BIA), the Department of Justice's Office of Tribal Justice (OTJ), the Office of Community Oriented Policing Services (COPS), the Violence Against Women Office (VAWO), and the Office of Juvenile Justice and Delinquency and Prevention (OJJDP). Applicant also should describe how they will ensure coordination among local, state, and tribal governments. This includes key personnel working in the area of tribal justice, in addition to other relevant criminal justice practitioners, policy makers, and data management personnel.

5. Demonstrated capacity to ensure that provided technical assistance is coordinated with other law enforcement and crime prevention Federal grant resources such as the Office of Community Oriented Policing Services (COPS).

6. Demonstrated ability to conduct conferences and workshops that will promote awareness of the TJSAC and an understanding of the relationship between criminal justice statistics and improved administration of tribal justice. Applicant must demonstrate ability to identify key representatives at the local, state, tribal, and federal levels that will work together to advance the goals of this project.

7. Demonstrated fiscal, management, staff, and organizational capability to provide sound management for this project.

Application and Award Process

An original and five (5) copies of the full proposal must be submitted including:

- Standard Form 424, Application for Federal Assistance
- OJP Form 7150/1, Budget Detail Worksheet
- OJP Form 4000/3, Assurances
- OJP Form 4061/6, Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters; Drug Free Workplace Requirements
- OJP Form 7120–1, Accounting System and Financial Capability Questionnaire (to be submitted by applicants who have not previously received Federal funds from the Office of Justice Programs)

These forms can be obtained online from *http://www2.ojp.usdoj.gov/bjs/apply.htm*.

Proposals must include a project narrative and detailed budget. The project narrative should describe activities as discussed in the Scope of Work and address the evaluation criteria. The detailed budget must provide detailed costs including salaries of staff involved in the project and the portion of those salaries to be paid from the award, fringe benefits paid to each staff person, travel costs, supplies required for the project, sub-contractual agreements, and other allowable costs. The grant award will be made for a period of 24 months.

Dated: April 27, 2001.

Lawrence A. Greenfeld,

Acting Director, Bureau of Justice Statistics.

[FR Doc. 01–11075 Filed 5–3–01; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determination in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersede decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

Withdrawn General Wage Determination Decisions

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, the following General Wage Determinations:

MO010020—See MO010018
MO010044—See MO010018
MO010051—See MO010018
MO010061—See MO010018
MO010066—See MO010018

Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be affected unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

Modification to General Wage Determination Decisions

The number of decisions listed to the Government Printing Office document entitled "General Wage determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC This 26 Day of April 2001.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 01–10949 Filed 5–3–01; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–3–93]

Factory Mutual Research Corporation; Application for Renewal of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the application of Factory Mutual Research Corporation for renewal of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding. This preliminary finding does not constitute an interim or temporary approval of this application.

DATES: Comments submitted by interested parties, or any request for extension of the time to comment, must be received no later than May 18, 2001.

ADDRESSES: Submit written comments concerning this notice to: Docket Office, Docket NRTL–3–93, U.S. Department of Labor, Occupational Safety and Health Administration, Room N2625, 200 Constitution Avenue, N.W., Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648. Submit request for extension of the comment period for this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Room N3653 at the above address, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that Factory Mutual Research Corporation (FMRC) has applied for renewal of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). FMRC requests renewal for its existing scope of recognition. However, this scope will be modified, as explained later in this notice.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition, and is not a delegation or grant of government authority. As a result of recognition, OSHA can accept products "properly certified" by the NRTL. OSHA processes applications related to an NRTL's recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish this public notice of the preliminary finding on an application.

FMRC's scope of recognition appears in OSHA's informational web page for the NRTL (*http://www.osha-slc.gov/dts/otpca/nrtl/fmrc.html*). OSHA maintains such a page for each NRTL. In general, OSHA grants an NRTL's scope of recognition in **Federal Register** notices. Following requirements in 29 CFR 1910.7, the Agency must publish two such notices in processing applications for an NRTL's initial recognition, and for expansions or renewal of this recognition. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on an application. In the case of FMRC, and as further explained below, OSHA has renewed the NRTL's recognition once before, which the Agency announced on March 29, 1995 (60 FR 16167) and granted on August 16, 1995 (60 FR 42590). Following renewal, OSHA granted one expansion to FMRC, which the Agency announced on April 16, 1999 (64 FR 18939) and granted on August 13,1999 (64 FR 44240). The expansion covered a recognition of additional test standards.

The current addresses of the testing facilities (sites) that OSHA recognizes for FMRC are: Factory Mutual Research Corporation, 1151 Boston-Providence Turnpike, Norwood, Massachusetts 02062; and Factory Mutual Research Corporation, 743 Reynolds Road, West Gloucester, Rhode Island 02814.

General Background on the Applicant and the Application

When OSHA published its regulations for the NRTL Program at 29 CFR 1910.7, it temporarily recognized FMRC as a nationally recognized testing laboratory for a five year period from June 13, 1988, through June 13, 1993 (see Appendix A to 1910.7). In Appendix A, OSHA also required that FMRC apply for renewal of its OSHA recognition at the end of this temporary period. FMRC did apply for the renewal, which OSHA announced in March 1995, as noted above. In its renewal application, FMRC stated that it began testing products in 1886 and that its first published listings of approved fire hose appeared in 1907. The Agency granted FMRC's renewal for a period of five years ending on August 16, 2000.

Appendix A to 29 CFR 1910.7 stipulates that the period of recognition of an NRTL is five years and that an NRTL may renew its recognition by applying not less than nine months, nor more than one year, before the expiration date of its current recognition. FMRC has submitted a request, dated November 9, 1999 (see Exhibit 11), to renew its recognition, within the time allotted, and retains its recognition pending OSHA's final decision in this renewal process.

FMRC's existing scope of recognition consists of the facilities listed above, and the test standards and supplemental programs, listed below.

Test Standards

FMRC seeks renewal of its recognition for testing and certification of products to demonstrate compliance to the following 73 test standards, all of which OSHA has determined are appropriate within the meaning of 29 CFR 1910.7(c). Some of the test standards for which OSHA currently recognizes FMRC were no longer appropriate at the time of preparation of this preliminary notice, primarily because they have been withdrawn by the standards developing organization. OSHA has excluded these test standards in the listing below. However, under OSHA policy, the NRTL may request recognition for comparable standards. Since a number of NRTLs are affected by such withdrawn standards, OSHA will publish a separate notice to make the appropriate substitutions for FMRC and other NRTLs that were recognized for these standards. The Agency has contacted these NRTLs regarding this matter.

OSHA's recognition of FMRC or any NRTL for a particular test standard is limited to equipment or materials (i.e., products) for which OSHA standards require third party testing and certification before use in the workplace. As a result, OSHA's recognition of an NRTL for a test

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standard excludes any product(s), falling within the scope of the test standard, for which OSHA has no such requirements.

ANSI ICS 2 Industrial Control Devices, Controllers and Assemblies
ANSI S12.12 Electrical Equipment for Use in Class I, Division 2, Hazardous (Classified) Locations
ANSI S12.15 Hydrogen Sulfide Detection Instruments
ANSI S82.02.01 Electric and Electronic Test, Measuring, Controlling, and Related Equipment: General Requirements
ANSI S82.02.02 Electrical Equipment for Measurement, Control, and Laboratory Use
ANSI Z8.1 Commercial Laundry and Drycleaning Equipment and Operations
UL 8 Foam Fire Extinguishers
ANSI11 Low Expansion Foam and Combined Agent Systems
ANSI 11A Medium-and High-Expansion Foam Systems
ANSI 12 Carbon Dioxide Extinguishing Systems
ANSI 12A Halon 1301 Fire Extinguishing Agent Systems
ANSI 13 Installation of Sprinkler Systems
ANSI 16 Deluge Foam-Water Sprinkler and Spray Systems
ANSI 17 Dry Chemical Extinguishing Systems
ANSI 20 Centrifugal Fire Pumps
UL 38 Manually Actuated Signaling Boxes for Use With Fire-Protective Signaling Systems
ANSI 72 Installation, Maintenance, and Use of Protective Signaling Systems
UL 154 Carbon-Dioxide Fire Extinguishers
UL 162 Foam Equipment and Liquid Concentrates
ANSI 250 Enclosures for Electrical Equipment
UL 299 Dry Chemical Fire Extinguishers
UL 346 Waterflow Indicators for Fire Protective Signaling Systems
UL 347 High-Voltage Industrial Control Equipment
UL 508 Electric Industrial Control Equipment
UL 558 Industrial Trucks, Internal Combustion Engine-Powered
UL 583 Electric-Battery-Powered Industrial Trucks
UL 626 2½ Gallon Stored-Pressure, Water-Type Fire Extinguishers
UL 664 Commercial (Class IV) Electric Dry-Cleaning Machines
UL 674 Electric Motors and Generators for Use in Hazardous (Classified) Locations
UL 698 Industrial Control Equipment for Use in Hazardous (Classified) Locations
UL 711 Rating and Fire Testing of Fire Extinguishers
UL 753 Alarms Accessories for Automatic Water-Supply Control Valves
UL 781 Portable Electric Lighting Units for Use in Hazardous (Classified) Locations
UL 823 Electric Heaters for Use in Hazardous (Classified) Locations
UL 827 Central-Stations for Watchmen, Fire-Alarm, and Supervisory Services
UL 844 Electric Lighting Fixtures for Use in Hazardous (Classified) Locations
UL 863 Time-Indicating and -Recording Appliances
UL 864 Control Units for Fire-Protective Signaling Systems
UL 877 Circuit Breakers and Circuit-Breaker Enclosure for Use in Hazardous (Classified) Locations
UL 886 Electrical Outlet Boxes and Fittings for Use in Hazardous (Classified) Locations
UL 894 Switches for Use in Hazardous (Classified) Locations
UL 913 Intrinsically Safe Apparatus and Associated Apparatus for Use In Class I, II, and III, Division I, Hazardous (Classified) Locations
UL 1002 Electrically Operated Valve for Use in Hazardous (Classified) Locations
UL 1058 Halogen Agent Extinguishing System Units
UL 1093 Halogenated Agent Fire Extinguishers
FMRC 1110 Indicator Posts
UL 1203 Explosion-Proof and Dust-Ignition-Proof Electrical Equipment for Use in Hazardous (Classified) Locations
UL 1206 Electrical Commercial Clothes-Washing Equipment
UL 1207 Sewage Pumps for Use in Hazardous (Classified) Locations
FMRC 1221 Backflow Preventers
UL 1236 Battery Chargers for Charging Engine-Starter Batteries
UL 1240 Electric Commercial Clothes-Drying Equipment
UL 1254 Pre-Engineered Dry Chemical Extinguishing System Units
UL 1262 Laboratory Equipment
FMRC 1321 Controllers for Electric Motor Driven Fire Pumps
FMRC 1333 Diesel Engine Fire Pump Drivers
FMRC 1635 Plastic Pipe and Fittings for Automatic Sprinkler Systems
UL 1950 Information Technology Equipment Including Electrical Business Equipment
FMRC 2000 Automatic Sprinklers for Fire Protection
FMRC 2008 Early Suppression-Fast Response (ESFR) Automatic Sprinklers
FMRC 3260 Flame Radiation Detectors for Automatic Fire Alarm Signaling
FMRC 3600 Electrical Equipment for Use in Hazardous (Classified) Locations, General Requirements
FMRC 3610 Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, I and III, Division 1 Hazardous (Classified) Locations
FMRC 3611 Electrical Equipment for Use in Class I, Division 2; Class II, Division 2; and Class III, Division 1 and 2 Hazardous Locations
FMRC 3615 Explosion proof Electrical Equipment, General Requirements
FMRC 3620 Purged and Pressurized Electrical Equipment for Hazardous (Classified) Locations
FMRC 3810 Electrical and Electronic Test, Measuring, and Process Control Equipment
FMRC 3990 Less or nonflammable Liquid-Insulated Transformers
FMRC 6051 Safety Containers and Filing, Supply and Disposal Containers
FMRC 6310 Combustible Gas Detectors
FMRC 7812 Industrial Trucks—LP-Gas
FMRC 7816 Industrial Trucks—LP-Gas Dual Fuel
FMRC 7820 Industrial Trucks—Electric

Note: Testing and certification of gas operated equipment is limited to equipment for use with "liquefied petroleum gas" ("LPG" or "LP-Gas").

The designations and titles of the above test standards were current at the time of the preparation of this notice.

Many of the test standards listed above are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience in compiling the list, we show the designation of the standards developing organization (e.g., UL 1950) for the standard, as opposed to the ANSI designation (e.g., ANSI/UL 1950). Under our procedures, an NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard, regardless of whether it is currently recognized for the proprietary or ANSI version. Contact ANSI or the ANSI web site to find out whether or not a standard is currently ANSI-approved.

Programs and Procedures

FMRC's renewal also covers use of the supplemental programs listed below, based upon the criteria detailed in the March 9, 1995 **Federal Register** notice (60 FR 12980, 3/9/95). This notice lists nine (9) programs and procedures (collectively, programs), eight of which (called supplemental programs) an NRTL may use to rely on other parties to perform product testing and evaluation activities. An NRTL's initial recognition will always include the first or basic program, which requires that all of these activities be performed in-house by the NRTL that will certify the product. OSHA previously granted FMRC recognition to use these programs, which currently are listed in OSHA's informational web page on the FMRC recognition.

Program 2: Acceptance of testing data from independent organizations, other than NRTLs.

Program 3: Acceptance of product evaluations from independent organizations, other than NRTLs.

Program 4: Acceptance of witnessed testing data.

Program 5: Acceptance of testing data from non-independent organizations.

Program 6: Acceptance of evaluation data from non-independent organizations (requiring NRTL review prior to marketing).

Program 7: Acceptance of continued certification following minor modifications by the client.

Program 8: Acceptance of product evaluations from organizations that function as part of the International Electrotechnical Commission Certification Body (IEC–CB) Scheme.

Program 9: Acceptance of services other than testing or evaluation performed by subcontractors or agents.

OSHA developed the program descriptions to limit how an NRTL may perform certain aspects of its work and to accept the activities covered under a program only when the NRTL meets certain criteria. In this sense, they are special conditions that the Agency places on an NRTL's recognition. OSHA does not consider these programs in determining whether an NRTL meets the requirements for recognition under 29 CFR 1910.7. However, OSHA does treat these programs as one of the three elements that defines an NRTL's scope of recognition.

Preliminary Finding on the Application

FMRC has submitted an acceptable request for renewal of its recognition as an NRTL. While processing this request, OSHA performed an on-site review of FMRC's NRTL testing facilities. FMRC has addressed any discrepancies noted by the assessor following the on-site evaluation, and the assessor has recommended renewal of FMRC's recognition (see Exhibit 12).

Following a review of the application file, the assessor's recommendation, and other pertinent documents, the NRTL Program staff has concluded that OSHA can grant to FMRC the renewal of its recognition as an NRTL to use the facilities, test standards, and programs listed above. The staff, therefore, recommended to the Assistant Secretary that the application be preliminarily approved.

Based upon the recommendation of the staff, the Agency has made a preliminary finding that the Factory Mutual Research Corporation can meet the requirements, as prescribed by 29 CFR 1910.7, for the renewal of its recognition. This preliminary finding does not constitute an interim or temporary approval of the application.

OSHA welcomes public comments, in sufficient detail, as to whether FMRC has met the requirements of 29 CFR 1910.7 for renewal of its recognition as a Nationally Recognized Testing Laboratory. Your comment should consist of pertinent written documents and exhibits. To consider it, OSHA must receive the comment at the address provided above (see **ADDRESS**) no later than the last date for comments (see **DATES** above). Should you need more time to comment, OSHA must receive your written request for extension at the address provided above (also see **ADDRESS**) no later than the last date for comments (also see **DATES** above). You must include your reason(s) for any request for extension. OSHA will limit an extension to 15 days unless the requester justifies a longer period. We may deny a request for extension if it is frivolous or otherwise unwarranted. You may obtain or review copies of FMRC's requests, the memo on the recommendation, and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. You should refer to Docket No. NRTL3–93, the permanent record of public information on FMRC's recognition.

The NRTL Program staff will review all timely comments and, after resolution of issues raised by these comments, will recommend whether to grant FMRC's application for renewal of recognition. The Agency will make the final decision on granting the renewal and, in making this decision, may undertake other proceedings that are prescribed in Appendix A to 29 CFR Section 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Signed at Washington, DC this 26th day of April 2001.

R. Davis Layne,

Acting Assistant Secretary.

[FR Doc. 01–11245 Filed 5–3–01; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2001–16; Exemption Application No. D–10584, et al.]

Grant of Individual Exemptions; New York Life Insurance Company (NYLIC) et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

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Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

New York Life Insurance Company (NYLIC) Located In New York, NY

[Prohibited Transaction Exemption 2001–16 Exemption Application No.: D–10584]

Exemption

I. Transactions

The restrictions of section 406(a)(1)(A) through (D) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code shall not apply to the following transactions, if the conditions set forth in Section II and Section III, below, are satisfied:

(a) The receipt, directly or indirectly, by a sales agent (Sales Agent or Sales Agents), as defined in Section IV(l) below, of a sales commission from NYLIC in connection with the purchase, with plan assets, of an insurance contract (the Insurance Contract or Insurance Contracts), as defined in Section IV(h) below;

(b) The receipt of a sales commission by NYLIC, as principal underwriter for a mutual fund registered under the Investment Company Act of 1940, in connection with the purchase, with plan assets, of securities issued by such mutual fund (the NYLife Fund or NYLife Funds), as defined in Section IV(c) below;

(c) The effecting by NYLIC, as principal underwriter, of a transaction for the purchase, with plan assets, of securities issued by a NYLife Fund, and the effecting by a Sales Agent of a transaction for the purchase, with plan assets, of an Insurance Contract; and

(d) The purchase, with plan assets, of an Insurance Contract from NYLIC.

II. General Conditions

(a) The transactions are effected by NYLIC in the ordinary course of NYLIC's business as an insurance company, or as a principal underwriter to an NYLife Fund, or in the case of a Sales Agent, in the ordinary course of the Sales Agent's business as a Sales Agent.

(b) The transactions are on terms at least as favorable to the plan as an arm's length transaction with an unrelated party would be.

(c) The combined total of all fees, sales commissions, and other consideration received by NYLIC or a Sales Agent: (1) For the provision of services to the plan, and (2) in connection with a purchase of an Insurance Contract or securities issued by a NYLife Fund, is not in excess of "reasonable compensation" within the contemplation of section 408(b)(2) and (c)(2) of the Act and section 4975(d)(2) and (d)(10) of the Code. If such total is in excess of "reasonable compensation" the "amount involved" for purposes of the civil penalties of section 502(i) of the Act and excise taxes imposed by section 4975(a) and (b) of the Code is the amount of compensation in excess of "reasonable compensation."

III. Specific Conditions

(a) NYLIC or the Sales Agent is not—

(1) A trustee of the plan (other than a non-discretionary trustee who does not render investment advice with respect to any assets of the plan or a trustee to a pooled trust (the Pooled Trust), as defined in Section IV(g) below, which will not purchase Insurance Contracts or securities issued by a NYLife Fund pursuant to this exemption);

(2) A plan administrator (within the meaning of section 3(16)(A) of the Act and section 414(g) of the Code;

(3) A fiduciary who is expressly authorized in writing to manage, acquire, or dispose of, on a discretionary basis, those assets of the plan that are or could be invested in Insurance Contracts, securities issued by a NYLife Fund, or units of a Pooled Trust; or

(4) An employer any of whose employees are covered by the plan.

(b) (1) Prior to the execution of a transaction involving the receipt of sales commissions by a Sales Agent in connection with the plan's purchase of an Insurance Contract, NYLIC or the Sales Agent provides to an independent plan fiduciary (the Independent Plan Fiduciary), as defined in Section IV(f) below, disclosures of the following information concerning the Insurance Contract in writing and in a form calculated to be understood by a plan fiduciary who has no special expertise in insurance or investment matters:

(A) An explanation of: (i) the nature of the affiliation or relationship between NYLIC and the Sales Agent recommending the Insurance Contract; and, (ii) the nature of any limitations that such affiliation or relationship, or any agreement between the Sales Agent and NYLIC places on the Sales Agent's ability to recommend Insurance Contracts;

(B) The sales commission, expressed as a percentage of gross annual premium payments for the first year and for each of the succeeding renewal years, that will be paid by NYLIC to the Sales Agent in connection with the purchase of the recommended Insurance Contract, together with a description of any factors that may affect the commission; and

(C) A full and detailed description of any charges, fees, discounts, penalties, or adjustments which may be paid by the plan under the recommended Insurance Contract in connection with the plan's purchase, holding, exchange, termination, or sale of the Insurance Contract, including a description of any factors that may affect the level of charges, fees, discounts, or penalties paid by the plan.

(2) Following receipt of the information required to be provided to the Independent Plan Fiduciary, as described in Section III(b)(1) above, and before execution of the transaction, the Independent Plan Fiduciary acknowledges in writing receipt of such information, and approves the transaction on behalf of the plan. The Independent Plan Fiduciary may be an employer of employees covered by the plan but may not be a Sales Agent involved in the transaction. The Independent Plan Fiduciary may not receive, directly or indirectly (*e.g.* through an affiliate), any compensation or other consideration for his or her own personal account from any party dealing with the plan in connection with the transaction.

(3) With respect to additional purchases of Insurance Contracts, the written disclosure required under Section III(b)(1) need not be repeated, unless—

(A) More than three years have passed since such disclosure was made with respect to the same kind of Insurance Contract, or

(B) The Insurance Contract being recommended for purchase or the commission with respect thereto is materially different from that for which the approval described under Section III(b)(2) was obtained.

(c)(1) With respect to purchases with plan assets of securities issued by a NYLife Fund, or receipt of sales commissions by NYLIC in connection with such purchases, NYLIC provides to an Independent Plan Fiduciary, prior to the execution of the transaction, the following information concerning the

recommended NYLife Fund in writing and in a form calculated to be understood by a plan fiduciary who has no special expertise in insurance or investment matters:

(A) A description of: (i) the investment objectives and policies of the NYLife Fund, (ii) the principal investment strategies that the NYLife Fund may use to obtain its investment objectives, (iii) the principal risk factors associated with investing in the NYLife Fund, (iv) historical investment return information for the NYLife Fund, (v) fees and expenses of the NYLife Fund, including annual operating expenses (*e.g.*, management fees, distribution fees, service fees, and other expenses) and fees paid by shareholders (*e.g.*, sales charges and redemption fees), (vi) the identity of the NYLife Fund adviser, and (vii) the procedures for purchases of securities issued by the NYLife Fund (including any applicable minimum investment requirements and sales charges);

(B) A description of: (i) the expenses of the recommended NYLife Fund, including investment management, investment advisory, or similar services, any fees for secondary services (e.g., for services other than investment management, investment advisory, or similar services, including but not limited to custodial, administrative, or other services), and (ii) any charges, fees, discounts, penalties, or adjustments that may be paid by the plan in connection with the purchase, holding, exchange, termination, or sale of shares of the recommended NYLife Fund securities, together with a description of any factors that may affect the level of charges, fees, discounts, or penalties paid by the plan or the NYLife Fund;

(C) An explanation of (i) the nature of the affiliation or relationship between NYLIC, the NYLife Fund, and (ii) the limitation, if any, that such affiliation, relationship, or any agreement between NYLIC and the NYLife Fund places on NYLIC's ability to recommend securities issued by other investment companies;

(D) The sales commission, if any, that NYLIC will receive in connection with the purchase of securities of the recommended NYLife Fund, expressed either as: (i) a percentage of the dollar amount of the plan's gross payments and the amount actually invested, (ii) an annual percentage of average daily net asset value of securities issued by the NYLife Fund, or (iii) both if applicable, with a description of any factors that may affect the commission; and

(E) A description of the procedure or procedures for redeeming the NYLife Fund securities.

The disclosures required under Section III(c)(1) above shall be deemed to be completed only if, with respect to fees and expenses of NYLife Fund, the type of each fee or expense (*e.g.*, management fees, administrative fees, fund operating expenses, and other fees, including but not limited to fees payable for marketing and distribution services pursuant to Rule 12b–1 under the Investment Company Act of 1940 (the 12b–1 Fees)) and the rate or amount charged for a specified period (*e.g.*, annually) is provided in a written document separate from the prospectus of such NYLife Fund.

(2) Following receipt of the information required to be provided to the Independent Plan Fiduciary, as described in Section III(c)(1) above, and before execution of the transaction, the Independent Plan Fiduciary approves the specific transaction on behalf of the plan. Unless facts and circumstances would indicate the contrary, such approval may be presumed if the Independent Plan Fiduciary directs the transaction to proceed after NYLIC has delivered the written disclosures to the Independent Plan Fiduciary. The Independent Plan Fiduciary may be an employer of employees covered by the plan but may not be NYLIC. The Independent Plan Fiduciary may not receive, directly or indirectly (*e.g.* through an affiliate), any compensation or other consideration for his or her own personal account from any party dealing with the plan in connection with the transaction.

(3) With respect to additional purchases of NYLife Fund securities, NYLIC:

(A) Provides reasonable advance notice of any material change with respect to the NYLife Fund securities being purchased or the commission with respect thereto, and

(B) Repeats the written disclosure required under Section III(c)(1)(A), (C), (D), and (E) once every three years.

(d)(1) NYLIC shall retain or cause to be retained for a period of six (6) years from the date of any transaction covered by this exemption the following:

(A) The information disclosed with respect to such transaction pursuant to Section III(b), and (c) above; and

(B) Any additional information or documents provided to the Independent Plan Fiduciary with respect to the transaction; and

(C) The written acknowledgments described in Section III(b)(2) above.

(2) A prohibited transaction shall not be deemed to have occurred if, due to circumstances beyond the control of NYLIC, such records are lost or destroyed before the end of such six-year period.

(3) Notwithstanding anything to the contrary in sections 504(a)(2) and (b) of the Act, such records shall be unconditionally available for examination during normal business hours by duly authorized employees or representatives of the Department of Labor, the Internal Revenue Service, plan participants and beneficiaries, any employer of plan participants and beneficiaries, and any employee organization any of whose members are covered by the plan.

(e) Neither NYLIC nor a Sales Agent renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to the assets involved in the transaction in connection with a formal advice program under which specific/individualized asset allocation recommendations are made available to participants based on their responses to questionnaires.

IV. Definitions

For purposes of this exemption—

(a) "NYLTC" means the New York Life Trust Company, or any other financial institution supervised under state or federal laws and affiliated with NYLIC;

(b) "NYLIC" means the New York Life Insurance Company and any of its affiliates, including but not limited to NYLTC, as defined in Section IV(a) above;

(c) "NYLife Fund or NYLife Funds" mean any investment company registered under the Investment Company Act of 1940 for which NYLIC serves as investment advisor and as principal underwriter (as that term is defined in section 2(a)(29) of the Investment Company Act of 1940, 15 U.S.C. § 80a–2(a)(29));

(d) An "affiliate" of a person means: (1) any person directly or indirectly controlling, controlled by, or under common control with such person, (2) any officer, director, employee, or relative of any such person, or any partner in such person, and (3) any corporation or partnership of which such person is an officer, director, or employee, or in which such person is a partner. For purposes of this definition, an "employee" includes: (A) any registered representative of NYLIC, where NYLIC or an affiliate is principal underwriter, and (B) any insurance agent or broker or pension consultant acting under a written agreement as NYLIC's agent in connection with the sale of an Insurance Contract, whether or not such registered representative or insurance agent or broker or pension

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consultant is a common law employee of NYLIC;

(e) The term, "control," means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(f) "Independent Plan Fiduciary" means a fiduciary with respect to a plan, which fiduciary has no relationship to or interest in NYLIC that might affect the exercise of such fiduciary's best judgment as a fiduciary;

(g) "Pooled Trust" means any collective investment fund or group trust maintained by NYLTC, provided that, NYLTC its successor or affiliate does not have discretionary authority or responsibility with respect to the management and administration of or provide investment advice with respect to, any assets of the plan that are or could be invested in Insurance Contracts, securities issued by a NYLife Fund, or units of a Pooled Trust;

(h) "Insurance Contract or Insurance Contacts" mean an insurance or annuity contract issued by NYLIC;[1]

(i) A "nondiscretionary trustee" of a plan is a trustee whose powers and duties with respect to any assets of the plan are limited to: (1) The provision of nondiscretionary trust services, as defined in Section IV(j) below, to such plan, and (2) the duties imposed on the trustee by any provision or provisions of the Act or the Code;

(j) "Nondiscretionary trust services" mean custodial services and services ancillary to custodial services, none of which services are discretionary;

(k) A "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in Code section 4975(e)(6), or a brother, a sister, or a spouse of a brother or a sister;

(l) "Sales Agent or Sales Agents" mean any insurance agent, broker, or pension consultant or any affiliate thereof that is affiliated with NYLIC; and

(m) "Principal underwriter" is defined in the same manner as that term is defined in section 2(a)(29) of the Investment Company Act of 1940 (15 U.S.C. 8a–2(a)(29)).

Effective Date

This exemption is effective, as of February 12, 1998, the date of the filing of the application for exemption.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department of Labor (the Department) invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within thirty (30) days of the date of the publication of the Notice in the **Federal Register** on February 15, 2001. All comments and requests for a hearing were due by April 6, 2001.

During the comment period, the Department received no requests for a hearing. However, the Department did receive a comment letter from the applicant. In this regard, in a letter dated April 6, 2001, the applicant requested certain amendments to the language of the Summary of Facts and Representations (the SFR), as published in the Notice. The applicant believes that none of the changes described below involve material changes in any facts or representation made by NYLIC in its application to the Department.

A discussion of each of the applicant's comments and the Department's responses, thereto, are set forth in the numbered paragraphs below. In the language below, words that have been stricken from the text of the SFR appear in the closed brackets, and additions to the SFR appear in bold italics.

1. *Representation 2.* The applicant has informed the Department that NYLIC recently organized a new wholly-owned investment management subsidiary, New York Life Investment Management LLC (NYLIM), and has made other changes to the names or organization of one or more of its subsidiaries. The applicant requests that the Department substitute the language, as set forth in the paragraph below, for the text of Representation 2, as it appeared in the SFR.

The Department concurs. Accordingly, the language, as set forth in the Notice at 66 FR at 10517, column 1, lines 49 to 57 and column 2, lines 1–2 should have read as follows:

The application was filed on behalf of NYLIC and its direct or indirect wholly-owned subsidiaries, New York Life Trust Company (NYLTC), New York Life Benefit Services *LLC* (NYLBS), NYLIFE Distributors Inc. (NYLIFE Distributors), *New York Life Investment Management LLC* (NYLIM), MacKay-Shields *LLC* [Financial Corporation] (MacKay-Shields), [Monitor Capital Advisors, Inc. (Monitor Capital)], and NYLIFE Securities Inc. (NYLIFE Securities).

2. *Representation 3.* The applicant wishes to update the total consolidated assets information, as published in the SFR. In this regard, the applicant represents that the revised numbers, as set forth below, are based on NYLIC's annual report, as of December 31, 2000. It is further represented that this report includes condensed, consolidated financial information for NYLIC and its domestic, wholly-owned life insurance subsidiaries, New York Life Insurance and Annuity Corporation and NYLIC Insurance Company of Arizona.

The Department concurs. Accordingly, the language, as set forth in the Notice at 66 FR at 10517, column 2, lines 5–9 should have read, as follows:

As of December 31, [1996] 2000, NYLIC had *approximately $97.1 billion in* total consolidated assets [of approximately $78.5 billion and net] (*including* policy reserves) *and $88.4 billion in total liabilities* [of $74.5 billion].

In addition, the applicant wishes to clarify the following statement that appeared in Representation 3 in the Notice at 66 FR at 10517, column 2, lines 16–23:

It is represented that all insurance products offered by NYLIC are reviewed and approved by the New York Insurance Department under New York insurance laws and under the applicable insurance laws of any other state where such products are marketed and sold.

The applicant notes that insurance products offered by NYLIC are reviewed and approved by the New York State Insurance Department under New York laws *or* under the applicable insurance laws of another state where such products are marketed and sold. In this regard, NYLIC may not obtain New York State Insurance Department approval for insurance products marketed and sold in states other than New York, although such products are filed with the New York State Insurance Department. In addition, insurance products offered by certain subsidiaries of NYLIC that are organized and supervised by another state are not approved by the New York State Insurance Department but are filed with the New York State Insurance Department if marketed in New York.

The Department acknowledges the clarification as submitted by the applicant.

3. *Representation 6.* The applicant has informed the Department of certain changes with respect to the NYLife Funds, including the renaming of the MainStay Institutional Funds Inc. on

[1] The Department expresses no opinion as to whether any so-called "synthetic guaranteed insurance contracts" offered by NYLIC constitute an Insurance Contract within the meaning of this exemption. The Department further notes that this exemption provides relief from the self-dealing and conflict of interest provisions of the Act in connection with the sale of Insurance Contracts to plans by fiduciaries. It does not provide relief from any acts of self-dealing that do not arise directly in connection with the purchase of specific insurance products. Thus, for example, no relief is provided under this exemption for any act of self-dealing that may arise in connection with the ongoing operation or administration of an Insurance Contract.

December 29, 2000. Therefore, the applicant requests that the Department substitute the language, as set forth in the paragraph below, for the text of Representation 6, as it appeared in the SFR.

The Department concurs. Accordingly, the language, as set forth in the Notice at 66 FR at 10517, column 3, lines 29 to 60 and at 10518, column 1, lines 1–7 should have read as follows:

The NYLife Funds are open-end investment companies registered with the Securities and Exchange Commission (SEC) under the Investment Company Act of 1940. The NYLife Funds are offered to plans directly and through variable life and annuity contracts issued by NYLIC. Currently, the NYLife Funds include [two] The MainStay Funds, which are available to retail and institutional investors (including defined contribution plans) and the [MainStay Institutional] *Eclipse* Funds Inc., *and Eclipse Funds*, which are [only] available to institutional investors, [and to] group individual retirement account customers, *and retail investors*. The MainStay Funds, organized as a Massachusetts business trust, currently include [fourteen (14)] *twenty-five (25)* separate funds, each of which has its own investment objectives and policies. *Eclipse Funds Inc., a Maryland corporation, currently offers thirteen (13)separate funds, and the Eclipse Funds, a Massachusetts business trust, currently offers four (4) separate funds. Both the Eclipse Funds Inc. and the Eclipse Funds are marketed under a combined prospectus.* [MainStay Institutional Funds Inc. currently include eleven (11) separate funds].

Affiliates of NYLIC *provide* [provides] a broad range of services to NYLife Funds. Specifically, the NYLife Funds are managed by *NYLIM*. MacKay-Shields is a *sub-advisor to one or more of the NYLife Funds.* [or Monitor Capital, both of which] *Both* are registered investment advisers and indirect wholly-owned subsidiaries of NYLIC. *NYLIM* [NYLIC] is the administrator to each of the NYLife Funds and provides various services, including administration, accounting, and other similar services and shareholder administration and sub-accounting for which *NYLIM* [NYLIC] and/or its affiliates may receive management fees, administrative fees, and/or shareholder services fees.

4. *Representation 9.* The applicant wishes to clarify the following statement that appeared in Representation 9 in the Notice at 66 FR at 10518, column 2, line 1:

In this regard, it is represented that NYLIC will advise NYLTC in connection with the management of the Collective Trust, although NYLTC will have final decision making authority.

The applicant has informed the Department that NYLIC has engaged NYLIM to advise it in providing investment management services to all of its clients, including services provided by NYLIC to NYLTC for the Collective Trust. However, it is represented that NYLIC remains fully responsible for providing advice and other services under the terms and conditions of the documents governing the Collective Trust, described in Representation 9, as published in the SFR.

The Department acknowledges the clarification as submitted by the applicant.

After giving full consideration to the entire record, including the written comment from the applicant, the Department has decided to grant the exemption, as described, amended, clarified, and concurred in above. In this regard, the comment letter submitted by the applicant to the Department has been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on February 15, 2001, at 66 FR 10514.

For Further Information Contact

Angelena C. Le Blanc of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Indianapolis Life Insurance Company (Indianapolis Life) and AmerUs Group Co. (AmerUs Group) Located in Indianapolis, IN

[Prohibited Transaction Exemption 2001–17; Exemption Application No. D–10930]

Exemption

Section I. Covered Transactions

The restrictions of section 406(a) of the Act (or ERISA) and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to (1) the receipt of common stock (Common Stock) issued by AmerUs Group, which will become the parent of Indianapolis Life, or (2) the receipt of cash (Cash) or policy credits (Policy Credits), by or on behalf of a policyowner of Indianapolis Life who is an eligible member, as defined in Section III (the Eligible Member), which is an employee benefit Plan, including an employee benefit plan that is sponsored by Indianapolis Life and its affiliates for their own employees (the Indianapolis Life Plans; collectively, the Plans), in exchange for such Eligible Member's membership interest in Indianapolis Life, in accordance with the terms of a plan of conversion (the Plan of Conversion), implemented under Indiana law.[2]

In addition, the restrictions of section 406(a)(1)(E) and (a)(2) and section 407(a)(2) of the Act shall not apply to the receipt or holding, by the Indianapolis Life Insurance Company Group Term Life Insurance Plan for Employees, Plan No. 505 (the IL Group Term Life Insurance Plan), of employer securities in the form of excess AmerUs Group Common Stock, in accordance with the terms of the Plan of Conversion.

This exemption is subject to the following conditions set forth below in Section II.

Section II. General Conditions

(a) The Plan of Conversion is subject to approval, review and supervision by the Commissioner of Insurance of the Indiana Department of Insurance (the Commissioner) and is implemented in accordance with procedural and substantive safeguards imposed under Indiana law.

(b) The Commissioner reviews the terms and options that are provided to Eligible Members as part of such Commissioner's review of the Plan of Conversion, and the Commissioner approves the Plan of Conversion following a determination that such Plan is fair, reasonable and equitable to Eligible Members.

(c) Each Eligible Member has an opportunity to vote to approve the Plan of Conversion after full written disclosure is given to the Eligible Member by Indianapolis Life.

(d) Any determination to receive Common Stock, Cash or Policy Credits by an Eligible Member which is a Plan, pursuant to the terms of the Plan of Conversion, is made by one or more Plan fiduciaries which are independent of Indianapolis Life and its affiliates and neither Indianapolis Life nor any of its affiliates exercises any discretion or provides "investment advice" within the meaning of 29 CFR 2510.3–21(c), with respect to such decisions.

(e) After each Eligible Member entitled to receive shares of AmerUs Group Common Stock is allocated at least 12 shares, additional consideration is allocated to Eligible Members who own participating policies based on actuarial formulas that take into account

[2] Unless otherwise noted, all references to Indianapolis Life and its affiliates are deemed to include references to AmerUs Group and its affiliates.

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the actuarial contribution, if any, that each Eligible Member's policy has made (and is expected to make) to Indianapolis Life's statutory surplus, which formulas are subject to review and approval by the Commissioner.

(f) In the case of the Indianapolis Life Plans, the independent fiduciary—

(1) Votes on whether to approve or not to approve the proposed restructuring process (the Restructuring);

(2) Elects between consideration in the form of AmerUs Group Common Stock or Cash;

(3) Determines how to apply the Cash or AmerUs Group Common Stock received for the benefit of the participants and beneficiaries of the Indianapolis Life Plans;

(4) Votes shares of AmerUs Group Common Stock held by all Indianapolis Life Plans, including the IL Group Term Life Insurance Plan, and disposes of such stock held by the IL Group Term Life Insurance Plan exceeding the limitation of section 407(a)(2) of the Act as soon as reasonably practicable, but in no event later than six months after the effective date of the Plan of Conversion.

(5) Provides the Department with a complete and detailed final report as it relates to the Indianapolis Life Plans prior to the effective date of the Restructuring; and

(6) Takes all actions that are necessary and appropriate to safeguard the interests of the Indianapolis Life Plans and their participants and beneficiaries.

(g) All Eligible Members that are Plans participate in the transactions on the same basis as all Eligible Members that are not Plans.

(h) No Eligible Member pays any brokerage commissions or fees in connection with their receipt of AmerUs Group Common Stock or Policy Credits or in connection with the implementation of the commission-free purchase and sale program.

(i) All of Indianapolis Life's policyholder obligations remain in force and are not affected by the Plan of Conversion.

Section III. Definitions

For purposes of this exemption,

(a) The term "Indianapolis Life" means Indianapolis Life Insurance Company and AmerUs Group Co., unless otherwise noted.

(b) An "affiliate" of Indianapolis Life includes —

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Indianapolis Life. (For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) Any officer, director or partner in such person, and

(3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(c) A "policy" is defined as (1) any contract of insurance, annuity contract, or supplemental contract in each case, that has been issued by Indianapolis Life; (2) each certificate issued under any of Indianapolis Life's group annuity contracts as part of a custodial 403(b) or IRA arrangement, or as part of a non-ERISA 403(b) arrangement (the custodian or employer-sponsor holding such group annuity contracts shall not be considered the Eligible Member or owner); and (3) each certificate issued under the group plan established as a convenience by Indianapolis Life to provide life insurance to self-employed agents. The following policies and contracts are deemed not to be policies for purposes of the Plan of Conversion: (1) a certificate issued to an individual pursuant to a group life insurance policy (except as set forth in the preceding sentence); (2) a certificate issued under a group annuity contract (except as set forth in the preceding sentence); and (3) any reinsurance assumed on an indemnity basis (but certificates of assumption constitute policies).

(d) The term "Eligible Member" means a policyholder whose name appears on Indianapolis Life's records as the owner of one or more policies issued by Indianapolis Life on both the date the Board of Directors adopts the Plan of Conversion and the effective date of the Plan of Conversion.

(e) A "supplemental contract" is a policy or contract that has been issued pursuant to a Plan, qualified under section 401(a) of the Code, directly to a Plan participant.

(f) "Policy Credits" will consist of an increase in the dividend accumulation on an Indianapolis Life policy or contract (to which no sales, surrender, or similar charges will be applied), an increase in the accumulation account value of the Indianapolis Life policy or contract (to which no sales, surrender, or similar charge will be applied), an increase in the premium deposit fund under the Indianapolis Life policy or contract, an increase in the amount of the payments distributed under an Indianapolis Life policy or contract that is a supplemental contract, or an extension of the expiry date on an Indianapolis Life policy or contract that is in force as extended term life insurance pursuant to a non-forfeiture provision of a life insurance policy.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 25, 2001 at 66 FR 7802.

Written Comments

The Department received four written comments with respect to the proposed exemption. Two comments were submitted by Plan policyholders of Indianapolis Life. Of these comments, one policyholder said he was in favor of the Department's granting the proposed exemption while the other policyholder said he was opposed to the demutualization and preferred that Indianapolis Life's surplus earnings remain with the insurer in order to enhance the policyholder's existing insurance policies with Indianapolis Life. The third and fourth comments, which were submitted under separate cover by AmerUs Group and Indianapolis Life, expressed specific concerns about the proposed exemption in a number of areas.

The dissenting policyholder's comment, as well as the comments submitted by AmerUs Group and Indianapolis Life, are discussed below. Also discussed below are Indianapolis Life's response to the policyholder comment and the Department's responses to the areas of concern raised by both AmerUs Group and Indianapolis Life.

Policyholder Comment

As stated briefly above, one commenter states that he is opposed to Indianapolis Life's contemplated demutualization and maintains that Indianapolis Life should retain its current status as a mutual insurance company. The commenter indicates that he does not believe the exemption is in his best interest as grounds for his opposition. The commenter explains that he would prefer that Indianapolis Life's surplus remain with the insurer in order to make the policyholder's insurance contracts stronger.

In response, Indianapolis Life disagrees with the commenter's position. As explained in the exemption application, Indianapolis Life emphasizes that the demutualization will not in any way reduce the benefits, values, guarantees, or dividend eligibility of existing policies or contracts that it has issued. Instead, the Restructuring will result in significant benefits to Indianapolis Life policyholders. In this regard, Indianapolis Life states that the Restructuring is designed to enhance its financial strength in access to capital through an affiliation with AmerUs Group that will result in a larger combined organization. Moreover, Indianapolis Life explains that access to capital markets will enable it to invest in new technology, improve customer service, develop new products and channels of distribution, and obtain more financial flexibility with which to maintain its ratings and financial stability. Finally, Indianapolis Life explains that the combination with AmerUs Group will create an opportunity to leverage its corporate capacity and strength and reduce expenses through economies of scale.

In addition, Indianapolis Life notes that, at the special policyholders meeting held earlier this week, over 96 percent of the policyholders who voted on the Restructuring voted to approve it. Because of the overwhelming policyholder vote and the reasons cited for the Restructuring, Indianapolis Life maintains that the view expressed by the commenter should not preclude the Department from granting the final exemption.

AmerUs Group's Comment

In its comment, AmerUs Group notes that the proposed Restructuring will involve both the combination of Indianapolis Life and AmerUs Group and the sponsored demutualization of Indianapolis Life. At the time the demutualization consideration is provided to Indianapolis Life policyholders, AmerUs Group explains that Indianapolis Life will become a second tier subsidiary of AmerUs Group. For this reason, AmerUs Group states that it is important that the exemption cover AmerUs Group and its affiliates as well as Indianapolis Life and its affiliates. However, AmerUs Group notes that the proposed exemption has been issued only under the name of Indianapolis Life. Therefore, AmerUs Group requests that the final exemption be issued in the names of both entities and that the final exemption contain a statement to the effect that the exemption covers the affiliates of both entities.

In response, the Department has modified the title of the exemption to include a reference to AmerUs Group to show that the exemption has been issued to AmerUs Group and Indianapolis Life, jointly. In addition, the Department has inserted a new footnote in the operative language which states that "[f]or purposes of this exemption, all references to Indianapolis Life and its affiliates are deemed to include references to AmerUs Group and its affiliates." Further, the Department has revised Section III(a) of the final exemption by including a reference to AmerUs Group, the future parent of Indianapolis Life. Section III(a) of the final exemption now reads as follows:

> The term "Indianapolis Life" means Indianapolis Life Insurance Company and AmerUs Group Co., unless otherwise noted.

Indianapolis Life's Comments

Indianapolis Life had three major comments to the proposed exemption and a couple of minor comments that were in the nature of technical clarifications designed to enhance the accuracy of the description of the subject transactions and update factual information.

1. *Definition of Indianapolis Life.* Section III(a) of the proposed exemption defines "Indianapolis Life" to include "any affiliate of Indianapolis Life, as defined in paragraph (b) of this Section III." Indianapolis Life requests that the reference to any affiliate be deleted from the definition and that the term "affiliate" as defined in paragraph (b) of Section III be added where needed throughout the exemption. Indianapolis Life notes that it is important to exclude affiliates from the definition of Indianapolis Life because the phrase "Indianapolis Life and its affiliates" is referred to separately in the exemption application, and many of the provisions from the application have been incorporated into the exemption. By lumping Indianapolis Life and its affiliates together in one defined term changes the meanings of many of those provisions, according to Indianapolis Life and may lead to an incongruous result.[3]

In addition, Indianapolis Life notes that there are several other places in the proposed exemption where a distinction between Indianapolis Life and its affiliates is important. Rather than identify all of those places, Indianapolis Life would prefer to remove "affiliates" from the definition of Indianapolis Life and refer separately to affiliates where needed in the proposed exemption. Indianapolis Life also explains that it conducted a word search through the proposed exemption and found only one instance where the term "affiliates" had been inappropriately used. The sentence in question appears in the last sentence in the third paragraph of Representation 23 of the proposed exemption in the Summary of Facts and Representations (the Summary). There, it is stated that "U.S. Trust * * * derives less than one percent of its annual income from Indianapolis Life." Indianapolis Life believes that the sentence should be revised to state that "U.S. Trust derives less than one percent of its annual income from Indianapolis Life and its affiliates."

In response to Indianapolis Life's comment, the Department has already revised Section III(a) of the final exemption (as shown above) by deleting the term "affiliates" and by including a reference to AmerUs Group. The Department also notes Indianapolis Life's revision to Representation 23 of the Summary.

2. *Standard of Commissioner's Review.* Section II(b) of the proposed exemption recites the standard under which the Commissioner will review the Plan of Conversion under Indiana law. Indianapolis Life states that Indiana law requires the Commissioner to determine that the Plan of Conversion is not only fair and equitable but is "reasonable" to Eligible Members before approving the Plan of Conversion. Accordingly, Indianapolis Life requests that "reasonable" be added to the standard described in this subsection.

In response to this comment, the Department has revised Section II(b) of the final exemption to read as follows:

> The Commissioner reviews the terms and options that are provided to Eligible Members as part of such Commissioner's review of the Plan of Conversion, and the Commissioner approves the Plan of Conversion following a determination that such Plan is fair, reasonable and equitable to Eligible Members.

3. *Time Frame for Distributing Notice to Interested Persons.* In the section of the proposed exemption titled "Notice to Interested Persons," Indianapolis Life suggests updating the paragraph contained therein to reflect that Indianapolis Life had provided interested persons with notice of the proposed exemption as well as to show the revised time frame for the comment period. Indianapolis Life states that it requested an 8 day extension of time to provide interested persons with notice of the proposed exemption in order to allow time for mailing its member information statement prior to the dissemination of the proposal. Indianapolis Life also notes that, at the Department's request, the extension of time was granted, provided an additional 3 days were factored into the comment period to allow for mailing

[3] For example, Indianapolis Life refers to the definition of "Eligible Member" in paragraph (d) of Section III. Without distinguishing between it and its affiliates, Indianapolis Life explains that this definition would incorrectly include persons with policies issued by the affiliates as members of Indianapolis Life. Policyholders of Indianapolis Life's affiliates are not members of Indianapolis Life, according to Indianapolis Life.

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time and to ensure that interested persons would have at least 30 days in which to comment. With the increased time, Indianapolis Life explains that comments to the proposed exemption were then due to the Department by March 21, 2001.

4. *Technical Corrections to Sections I–III of the Proposed Exemption.* a. *Section I.* In the operative language of the proposed exemption, Section I states that AmerUs Group Co. is the parent of Indianapolis Life. However, Indianapolis Life explains that this entity will not become Indianapolis Life's parent until the effective date of Indianapolis Life's Restructuring. Also, in that same paragraph of the operative language, Indianapolis Life states that the reference to the term "Eligible Member" should refer to the definition of that term, as defined in Section III, because not all of Indianapolis Life's policyholders are Eligible Members of the insurer.

In response to this comment, the Department has revised part of the operative language of the final exemption to read as follows:

> The restrictions of section 406(a) of the Act (or ERISA) and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to (1) the receipt of common stock (Common Stock) issued by AmerUs Group, which will become the parent of Indianapolis Life, or (2) the receipt of cash (Cash) or policy credits (Policy Credits), by or on behalf of a policyowner of Indianapolis Life who is an eligible member, as defined in Section III (the Eligible Member), which is an employee benefit Plan, including an employee benefit plan that is sponsored by Indianapolis Life and its affiliates for their own employees (the Indianapolis Life Plans; collectively, the Plans), in exchange for such Eligible Member's membership interest in Indianapolis Life, in accordance with the terms of a plan of conversion (the Plan of Conversion), implemented under Indiana law.

b. *Section II(e).* Section II(e) of the proposed exemption states that after each Eligible Member entitled to receive shares of AmerUs Group Common Stock is allocated at least 12 shares, additional consideration will be allocated to Eligible Members owning participating policies based on actuarial formulas that take into account each participating policy's contribution to surplus and asset valuation reserve of Indianapolis Life, which formulas have been approved by the Commissioner.

Indianapolis Life requests that Section II(e) be revised to reflect the language in the Plan of Conversion and to correspond more closely with language used later in the proposed exemption to describe the process for determining the amount of additional consideration, if any, an Eligible Member will receive after being allocated the fixed component of consideration.

In response to this comment, the Department has revised Section II(e) of the final exemption to read as follows:

> After each Eligible Member entitled to receive shares of AmerUs Group Common Stock is allocated at least 12 shares, additional consideration is allocated to Eligible Members who own participating policies based on actuarial formulas that take into account the actuarial contribution, if any, that each Eligible Member's policy has made (and is expected to make) to Indianapolis Life's statutory surplus, which formulas are subject to review and approval by the Commissioner.

c. *Section II(f).* Subparagraph 4 of Section II(f) of the proposed exemption states that U.S. Trust, will vote shares of AmerUs Group Common Stock that are held by the IL Group Term Life Insurance Plan and dispose of any stock held by this plan which exceeds the limitation of section 407(a)(2) of the Act as reasonably as practicable, but in no event later than six months after the effective date of the plan of Conversion. The last paragraph of Representation 23 of the Summary contains a similar provision.

Indianapolis Life wishes to point out that U.S. Trust will vote all shares of AmerUs Group Common Stock that are held by any of the Indianapolis Life Plans and not just those held by the IL Group Term Life Insurance Plan. Therefore, the Department has revised subparagraph (4) of Section II(f) of the final exemption to read as follows:

> Votes shares of AmerUs Group Common Stock held by all Indianapolis Life Plans, including the IL Group Term Life Insurance Plan, and disposes of such stock held by the IL Group Term Life Insurance Plan exceeding the limitation of section 407(a)(2) of the Act as soon as reasonably practicable, but in no event later than six months after the effective date of the Plan of Conversion.

In addition, the Department notes a corresponding revision to the last paragraph of Representation 23 of the Summary.

d. *Section III(c).* Section III(c) of the proposed exemption defines the term "policy," to include, in part, a certificate issued under a group plan established as a convenience by Indianapolis Life to provide life insurance to self-employed agents and under which all premiums have been paid by such agents. At the Commissioner's request, Indianapolis Life states that the Plan of Conversion has been revised to delete the phrase "and under which all premiums were paid by such agents" from the description of the certificates. Therefore, in response to this comment, the Department has revised part of Section III(c) of the final exemption to read as follows:

> * * * each certificate issued under the group plan established as a convenience by Indianapolis Life to provide life insurance to self-employed agents.

e. *Section III(e).* Section III(e) of the proposed exemption defines the term "supplemental contract" as a policy or contract that has been issued pursuant to a Plan participant. Indianapolis Life states that the definition of "supplemental contract" should only include contracts issued to Plan participants by Plans that are qualified under section 401(a) of the Code and do not include contracts issued by a Plan that is not qualified under Code section 401(a). Therefore, the Department has revised Section III(e) of the final exemption to read as follows:

> A "supplemental contract" is a policy or contract that has been issued pursuant to a Plan, qualified under section section 401(a) of the Code, directly to a Plan participant.

5. *Technical Corrections to the Summary.* The Department notes the following clarifications made to the Summary by Indianapolis Life:

a. *Representation 1.* Representation 1 states that Indianapolis Life's rating by Fitch is "AA" whereas its correct rating is "AA – ."

b. *Representation 3.* In the first paragraph, Representation 3 states that Indianapolis Life's principal products include individual retirement accounts. However, Indianapolis Life wishes to point out that such products include "annuities" rather than "accounts" covered under section 408 of the Code.

c. *Representation 4(a).* Representation 4(a) sets forth the total assets of the Indianapolis Life Insurance Company Salary Reduction Plan, Plan No. 007. Indianapolis Life wishes to clarify that the asset and participants totals for this Plan were reported as of June 30, 2000 rather than June 20, 2000.

For further information regarding the comments and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–10930) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Accordingly, after giving full consideration to the entire record, including the written comments, the Department has decided to grant the exemption subject to the modifications and clarifications described above.

For Further Information Contact

Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

UAM Fund Services, Inc., Located in Boston, MA

[Prohibited Transaction Exemption 2001–18; Application No. D–10938]

Exemption

Section I. Transactions

The restrictions of section 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply effective April 30, 2001 to (i) the acquisition of shares of one or more of the UAM Funds (Shares) by a Plan for which a Fund Adviser serves as investment manager, through the in-kind exchange of the Plan's assets held in one or more separate accounts (each, an Account) maintained by a Fund Adviser, and (ii) the redemption of Shares by a Plan for which a Fund Adviser serves as investment manager, through the in-kind exchange of assets from one or more UAM Funds to one or more Account(s), provided that the conditions set forth in Section II below are met.

Section II. Conditions

(a) The Fund Adviser is not an employer of employees covered by the Plan.

(b) The Plan does not pay sales commissions, redemption fees, or other fees in connection with such acquisition or redemption.

(c) The assets transferred pursuant to such acquisition or redemption consist entirely of cash and Transferable Securities.

(d) In the case of an acquisition, the Plan receives Shares of the Funds that have a total Net Asset Value equal to the value of the Plan's assets exchanged for such Shares on the date of the transfer, as determined (with respect to Transferable Securities) in a single valuation performed in the same manner, at the close of the same business day, in accordance with the procedures set forth in Rule 17a–7 under the Investment Company Act of 1940 (the 1940 Act), as amended from time to time, or any successor rule, regulation, or similar pronouncement (Rule 17a–7) (using sources independent of the UAM Funds and the Fund Adviser) and the procedures established by the UAM Funds pursuant to Rule 17a–7.

(e) In the case of a redemption, with respect to Transferable Securities, the Plan receives a pro rata portion of the securities of the UAM Fund that is equal in value to the number of Shares redeemed for such securities, as determined in a single valuation performed in the same manner, at the close of the same business day, in accordance with the procedures set forth in Rule 17a–7 (using sources independent of the UAM Funds and the Fund Adviser). With respect to all other assets, the Plan receives cash equal to its pro rata share of the fair market value of such assets, determined in accordance with Rule 17a–7 of the 1940 Act and the valuation policies and procedures of the UAM Fund.

(f) The price that is paid or received by the Plan for Shares is the Net Asset Value per Share at the time of the transaction and is the same price for the Shares that would have been paid or received by any other investor for Shares of the same class at such time.

(g) Prior to the in-kind acquisition or redemption, an Independent Fiduciary with respect to the Plan receives full and detailed written disclosure of information regarding the in-kind acquisition or redemption, including, without limitation, the following:

(i) A current prospectus for each UAM Fund to or from which Plan assets may be transferred (updated as necessary to reflect the investment mix of the UAM Fund at the time of the in-kind acquisition or redemption);

(ii) A statement describing the rate of fees for investment advisory and other services to be charged to and paid by the Plan (and by the UAM Funds in which the Plan invests) to the Fund Adviser, including the nature and extent of any differential between the rates of the fees paid by the UAM Funds and the rates of the fees otherwise payable by the Plan to the Fund Adviser;

(iii) A statement of the reasons why the Fund Adviser may consider the in-kind acquisition or redemption to be appropriate for the Plan;

(iv) A statement as to whether there are any limitations on the Fund Adviser with respect to which Plan assets may be invested in Shares of the UAM Funds and, if so, the nature of such limitations;

(v) The identity of all securities that are deemed suitable by the Fund Adviser for transfer to the UAM Funds (in the case of an acquisition) or from the UAM Funds (in the case of a redemption);

(vi) The identity of all such securities that will be valued in accordance with the procedures set forth in Rule 17a–7(b)(4) under the 1940 Act; and

(vii) Copies of the proposed and final exemptions pertaining to the exemptive relief provided herein for in-kind acquisitions and redemptions.

(h) On the basis of such disclosures, the Independent Fiduciary, consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Subtitle B of Title I of the Act, (i) makes a determination as to whether the terms of the in-kind acquisition or redemption are fair to the participants of the Plan and are comparable to and no less favorable than terms that would be reached at arms' length between unaffiliated parties, and that the in-kind acquisition or redemption (as opposed to an acquisition or redemption for cash) is in the best interest of the Plan and its participants and beneficiaries, and (ii) gives prior written approval for the in-kind acquisition or redemption, including agreement as to the date on which the in-kind acquisition or redemption will take place.

(i) The authorization by the Independent Fiduciary is terminable at will without penalty to the Plan at any time prior to the date of acquisition or redemption, and any such termination will be effected by the close of the business day following the date of receipt by the Fund Adviser, either by mail, hand delivery, facsimile, or other available means of written or electronic communication at the option of the Independent Fiduciary, of any written notice of termination.

(j) In the case of an acquisition, all of the Plan's assets held in an Account (other than Shares already held in the Account) are transferred in-kind to one or more UAM Funds in exchange for Shares, except that any Plan assets in the Account which are not suitable for acquisition by the UAM Fund shall be liquidated as soon as reasonably practicable, and the cash proceeds shall be invested directly in Shares.

(k) The Fund Adviser sends to the Independent Fiduciary, by regular mail or personal delivery, the following information:

(i) No later than 30 days after the completion of the in-kind transfer, a written confirmation which contains:

(A) The identity of each Transferable Security that was valued for purposes of the in-kind transfer in accordance with Rule 17a–7;

(B) The current market price, as of the date of the in-kind transfer, of each such Transferable Security; and

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(C) The identity of each pricing service or market-maker consulted in determining the current market price of such Transferable Securities.

(ii) No later than 105 days after each in-kind transfer, a written confirmation which contains:

(A) In the case of an in-kind acquisition, the number of Shares in the UAM Funds that are held by the Plan immediately following the acquisition, the related per-Share Net Asset Value, and the total dollar value of such Shares.

(B) In the case of an in-kind redemption, the number of Shares in the UAM Funds that were held by the Plan immediately prior to the redemption, the related per-Share Net Asset Value, and the total dollar value of such Shares.

(l) With respect to each of the UAM Funds in which a Plan continues to hold Shares acquired in connection with an in-kind acquisition, the Fund Adviser provides the Independent Fiduciary with:

(i) A copy of an updated prospectus of such UAM Fund, at least annually; and

(ii) Upon request of the Independent Fiduciary, a report or statement (which may take the form of the most recent financial report, the current statement of additional information, or some other statement) containing a description of all fees paid by the UAM Fund to the Fund Adviser.

(m) The combined total of all fees received by the Fund Adviser for the provision of services to the Plan, and in connection with the provision of services to the UAM Funds in which the Plan holds shares purchased in connection with an in-kind exchange, is not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(n) The Fund Adviser does not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the acquisition or redemption.

(o) All other dealings between the Plan and the UAM Funds are on a basis no less favorable to the Plan than dealings between the UAM Funds and other shareholders holding the same Shares of the same class as the Plan.

(p) The Fund Adviser maintains for a period of six years the records necessary to enable the persons described in paragraph (q) below to determine whether the conditions of this exemption have been met, except that (i) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Fund Adviser, the records are lost or destroyed prior to the end of the six-year period, and (ii) no party in interest other than the Fund Adviser shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (q) below.

(q) (1) Notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (p) above are unconditionally available at their customary locations for examination during normal business hours by (i) any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service; (ii) any fiduciary of the Plan who has authority to acquire or dispose of Shares of the UAM Funds owned by the Plan, or any duly authorized employee or representative of such fiduciary; and (iii) any participant or beneficiary of the Plan or duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in paragraph (q)(1)(ii) and (iii) above shall be authorized to examine trade secrets of the UAM Funds or the Fund Adviser, or commercial or financial information which is privileged or confidential.

Section III. Availability of Prohibited Transaction Exemption 77–4 (PTE 77–4)

Any in-kind acquisition of Shares of the UAM Funds that complies with the conditions of Section II of this exemption shall be treated as a "purchase or sale" of shares of a registered, open-end investment company for purposes of PTE 77–4, 42 FR 18732 (April 8, 1977), and shall be deemed to have satisfied paragraphs (a), (d) and (e) of section II of that exemption.

Section IV. Definitions

For purposes of this exemption:

(a) The term "UAM" means United Asset Management Corporation, a Delaware corporation with headquarters in Boston, Massachusetts, and any affiliate thereof;

(b) The term "UAM Funds" means UAM Funds Inc., UAM Funds, Inc. II, and UAM Funds Trust, each of which is an open-end investment company registered under the 1940 Act, or any portfolio or group of portfolios thereof, for which UAM or a Fund Advisor serves as investment advisor and may provide other services.

(c) The term "Fund Adviser" means (i) any affiliate of UAM which serves as an investment adviser to a UAM Fund, and (ii) any former affiliate of UAM which was divested within 12 months of the acquisition of UAM by Old Mutual, and which serves as an investment adviser to a UAM Fund pursuant to a contractual relationship with UAM, and (iii) any affiliate of an investment adviser identified in subsections (i) or (ii).

(d) An "affiliate" of a person includes:

(i) Any person directly or indirectly through one or more intermediaries controlling, controlled by, or under common control with the person;

(ii) Any officer, director, employee, relative, or partner in any such person;

(iii) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(e) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(f) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, sister, or spouse of a brother or a sister.

(g) The term "Plan" includes any pension, profit sharing or stock bonus plan qualified under section 401(a) of the Code, individual retirement account, simplified employee pension plan, custodial account plans as described in section 403(b) of the Code, or savings incentive match plans for employees.

(h) The term "Independent Fiduciary" means the Plan sponsor or other fiduciary of a Plan who is independent of and unrelated to UAM or the Fund Adviser. For purposes of this exemption, the Independent Fiduciary will not be deemed to be independent of and unrelated to UAM or the Fund Adviser if:

(i) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with UAM or the Fund Adviser;

(ii) Such fiduciary, or any officer, director, partner, employee, or relative of the fiduciary is an officer, director, partner, or employee of UAM or the Fund Adviser (or is a relative of such persons); or

(iii) Such fiduciary directly or indirectly receives compensation or other consideration for his or her own personal account in connection with any transaction described in this exemption.

(i) The term "Transferable Securities" shall mean securities (1) for which market quotations are readily available; and (2) which are not in any of the following categories: (i) securities which may not be publicly offered or sold without registration under the Securities Act of 1933 (the 1933 Act); (ii) securities issued by entities in foreign countries which (A) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the UAM Funds, or (B) permit transfers of ownership or securities to be effected only by transactions conducted on a local stock exchange; (iii) certain portfolio positions (such as forward foreign currency contracts, futures and options contracts, swap transactions, certificates of deposit and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities, or can only be traded with the counterparty to the transaction to effect a change in beneficial ownership; (iv) cash equivalents (such as certificates of deposit, commercial paper, and repurchase agreements); and (v) other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable).

(j) The term "Net Asset Value" means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in the UAM Fund's prospectus and statement of additional information, and other assets belonging to the UAM Fund less the liabilities charged to such UAM Fund, by the number of outstanding Shares.

Effective Date

This exemption is effective for transactions occurring on or after April 30, 2001.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on February 15, 2001 at 66 FR 10529.

Modification

The exemption as proposed contained no specific effective date. In this regard, the proposed exemption would have been effective as of the date the final exemption was granted and published in the **Federal Register**. However, after the exemption was proposed, the applicant requested that the final exemption be made effective as of April 30, 2001, to cover certain transactions occurring on or after that date. Therefore, the final exemption has been modified accordingly.

FOR FURTHER INFORMATION CONTACT Karen Lloyd of the Department, telephone (202) 219–8194. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 1st day of May, 2001.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 01–11305 Filed 5–3–01; 8:45 am]

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NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (1189).

Date/Time: May 30–31, 2001; 8:00 am-5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Fred G. Heineken, Program Director, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 292–7944.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 1, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–11288 Filed 5–3–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Biological Sciences (#1110).

Date/Time: May 9, 10, 11, 2001; 8:30 a.m.–5 p.m.

Place: Room 630, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Part Closed.

Contact Person: Dr. Jane Silverthorne and Dr. Chris Cullis, Program Directors for Plant Genome Research Program, Room 615, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230; Telephone: 703–292–8470.

Purpose of Meeting: To carry out committee of visitors review, including program evaluation and GPRA assessments.

Agenda: Open Sessions—Introduction, program officers discussions, Fastlane discussion.

Closed Sessions—Proposals review, recommendations formulation, COV report drafting.

Reason for Closing: During the closed session, committee will review proposal

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actions that include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 1, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–11286 Filed 5–3–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemical and Transport Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Chemical and Transport Systems (1190).

Date/Time: May 17–18, 2001; 8:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Rm. 360, Arlington, VA

Type of Meeting: Closed.

Contact Persons: Drs. Chaun F. Chen & Thomas W. Chapman, Program Directors, Division of Chemical & Transport Systems, NSF, 4201 Wilson Blvd. Room 525, Arlington, VA 22230. (703) 292–8371.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY 2001 Major Research Instrumentation (MRI) Panel of proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 1, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–11289 Filed 5–3–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Experiment and Integrative Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Experimental & Integrative Activities (1193).

Date/Time: June 11, 2001; 8:30 a.m.–5:30 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Caroline Wardle, CISE Information Technology Workforce (ITWF), Experimental and Integrative Activities, Room 1160, National Science Foundation 4201 Wilson Boulevard, VA 22230 Telephone: (703) 292–8980.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate CISE Information Technology Workforce (ITWF) proposals submitted in response to the program announcement (NSF 01–33).

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 1, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–11290 Filed 5–3–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel for Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel for Geosciences (1756).

Date/Time: May 21–24, 2001; 8:30 a.m. to 5:30 p.m.

Place: Room 515 Stafford-II, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Ms. Jewel Prendeville, Staff Associate for Diversity and Education, Office of the Assistant Director, Room 705, National Science Foundation, Arlington, VA 22230, (703) 292–8500.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate GeoDiversity proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 1, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–11290 Filed 5–3–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel for Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel for Geosciences (1756).

Date/Time: May 21–25, 2001; 8:30 am–5:00 pm.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Mr. Lawrence Clark, Section Head, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–8582.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the proposals submitted to the Ocean Science Research Programs as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt

under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 1, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–11292 Filed 5–3–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Proposal Review; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The majority of these meetings will take place at NSF, 4201 Wilson Blvd., Arlington, Virginia 22230.

All of these meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meetings will no longer be announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF web-site: *www.nsf.gov/home/pubinfo/advisory.htm*. This information may also be requested by telephoning 703/292–8182.

Dated: May 1, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–11287 Filed 5–3–01; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[50–301]

Nuclear Management Company, LLC Duane Arnold Energy Center; Exemption

1.0 Background

Nuclear Management Company, LLC (NMC, the licensee) is the holder of Facility Operating License No. DPR–49 which authorizes operation of the Duane Arnold Energy Center (DAEC). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consists of a boiling water reactor located on NMC's DAEC site, which is located in Linn County, Iowa.

2.0 Purpose

Title 10 of the Code of Federal Regulations (10 CFR) part 50, Appendix G requires that pressure-temperature (P–T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing conditions. Specifically, 10 CFR part 50, appendix G states that, "The appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions." Appendix G of 10 CFR part 50 specifies that the P–T limits must meet the safety margin requirements specified in the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code), Section XI, Appendix G.

To address provisions of the proposed amendments to the technical specification (TS) P–T limits, the licensee requested in its submittal dated October 16, 2000, that the staff exempt DAEC from application of specific requirements of 10 CFR part 50, § 50.60(a) and 10 CFR part 50, Appendix G, and substitute use of ASME Code Case N–640. Code Case N–640 permits the use of an alternate reference fracture toughness (K_{Ic} fracture toughness curve instead of K_{Ia} fracture toughness curve) for reactor vessel materials in determining the P–T limits. The proposed action is in accordance with the licensee's application for exemption contained in the October 16, 2000, submittal, and is needed to support the TS amendment request that is contained in the same submittal. The proposed amendment will revise the P–T limits for heatup, cooldown, and inservice test limitations for the reactor coolant system (RCS) to 25 and 32 effective full power years (EFPYs).

Code Case N–640

The licensee has proposed an exemption to allow use of ASME Code Case N–640 in conjunction with ASME Section XI, 10 CFR 50.60(a) and 10 CFR part 50, Appendix G, to determine that the P–T limits meet the underlying intent of the Nuclear Regulatory Commission (NRC) regulations.

The proposed amendment to revise the P–T limits for DAEC relies in part on the requested exemption. These revised P–T limits have been developed using the K_{Ic} fracture toughness curve shown in ASME Section XI, Appendix A, Figure A–2200–1, in lieu of the K_{Ia} fracture toughness curve of ASME Section XI, Appendix G, Figure G–2210–1, as the lower bound for fracture toughness. The other margins involved with the ASME Section XI, Appendix G process of determining P–T limit curves remain unchanged.

Use of the K_{Ic} curve in determining the lower bound fracture toughness in the development of P–T operating limits curve is more technically correct than the K_{Ia} curve. The K_{Ic} curve appropriately implements the use of static initiation fracture toughness behavior to evaluate the controlled heatup and cooldown process of a reactor vessel. The licensee has determined that the use of the initial conservatism of the K_{Ia} curve when the curve was codified in 1974 was justified. This initial conservatism was necessary due to the limited knowledge of RPV materials. Since 1974, additional knowledge has been gained about RPV materials, which demonstrates that the lower bound on fracture toughness provided by the K_{Ia} curve is well beyond the margin of safety required to protect the public health and safety from potential RPV failure. In addition, P–T curves based on the K_{Ic} curve will enhance overall plant safety by opening the P–T operating window with the greatest safety benefit in the region of low temperature operations. The operating window through which the operator heats up and cools down the RCS is determined by the difference between the maximum allowable pressure determined by Appendix G of ASME Section XI, and the minimum required pressure for the reactor coolant pump seals adjusted for instrument uncertainties.

Since the RCS P–T operating window is defined by the P–T operating and test limit curves developed in accordance with the ASME Section XI, Appendix G procedure, continued operation of DAEC with these P–T curves without the relief provided by ASME Code Case N–640 may unnecessarily restrict the P–

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T operating window, especially at low temperature conditions. The operating window becomes more restrictive with continued reactor vessel service. Implementation of the proposed P–T curves, as allowed by ASME Code Case N–640, does not significantly reduce the margin of safety. Thus, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the regulation will continue to be served.

In summary, the ASME Section XI, Appendix G procedure was conservatively developed based on the level of knowledge existing in 1974 concerning RPV materials and the estimated effects of operation. Since 1974, the level of knowledge about these topics has been greatly expanded. The NRC staff concurs that this increased knowledge permits relaxation of the ASME Section XI, Appendix G requirements by application of ASME Code Case N–640, while maintaining, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the ASME Code and the NRC regulations to ensure an acceptable margin of safety.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. The staff accepts the licensee's determination that an exemption would be required to approve the use of Code Case N–640. The staff examined the licensee's rationale to support the exemption request and concurred that the use of the code case would also meet the underlying intent of these regulations. Based upon a consideration of the conservatism that is explicitly incorporated into the methodologies of 10 CFR part 50, Appendix G; Appendix G of the ASME Code; and regulatory guide (RG) 1.99, Revision 2, the staff concluded that application of the code case as described would provide an adequate margin of safety against brittle failure of the RPV. This is also consistent with the determination that the staff has reached for other licensees under similar conditions based on the same considerations. Therefore, the staff concludes that requesting the exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) is appropriate and that the methodology of Code Case N–640 may be used to revise the P–T limits for the DAEC RCS.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Therefore, the Commission hereby grants NMC an exemption from the requirements of 10 CFR part 50, § 50.60(a) and 10 CFR part 50, Appendix G, for the DAEC.

Pursuant to 10 CFR 51.32, an environmental assessment and finding of no significant impact has been prepared and published in the **Federal Register** (66 FR 20692). Accordingly, based upon the environmental assessment, the Commission has determined that the granting of this exemption will not result in any significant effect on the quality of the human environment.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 27th day of April, 2001.

For the Nuclear Regulatory Commission.

Cynthia A. Carpenter,

Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–11277 Filed 5–3–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8964]

Rio Algom Mining Corp.

AGENCY: Nuclear Regulatory Commission.

ACTION: Final finding of no significant impact; Notice of opportunity for hearing.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) proposes to renew NRC Source Material License SUA–1548 to authorize the licensee, Rio Algom Mining Corporation (RAMC), to continue commercial operations of its in situ leach (ISL) Rio Algom Smith Ranch Uranium Recovery Project in Converse County, Wyoming. This license currently authorizes RAMC to receive, acquire, possess, and transfer uranium at the Rio Algom Smith Ranch Project, which is located approximately 17 miles (27 Kilometers) Northeast of Glenrock, Wyoming. An Environmental Assessment (EA) was performed by the NRC staff in support of its review of RAMC renewal request, in accordance with the requirements of 10 CFR part 51. The conclusion of the Environmental Assessment is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

FOR FURTHER INFORMATION CONTACT: Mr. John H. Lusher, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T8–A33, Washington, DC 20555. Telephone 301/415–7694.

SUPPLEMENTARY INFORMATION:

Background

At the Rio Algom Smith Ranch Facility, ISL uranium recovery method involves: (1) The injection of native groundwater, with added sodium carbonate/bicarbonate and oxygen or hydrogen peroxide, into uranium-bearing orebody through injection wells; (2) the chemical mobilization of the uranium through oxidation and then complexation with the carbonate species; and (3) the extraction of the uranium-bearing solution from the subsurface through a pattern of pumping wells. The uranium is separated from the leach solution by conventional ion exchange methods in the processing facility. The resulting uranium-poor solution is recharged with carbonate and oxygen and returned to the leaching zone for additional uranium recovery. This cycle continues until the ore zone is depleted or recovery of uranium is no longer economically feasible.

The recovered uranium solution is processed further by using ammonia or hydrogen peroxide to precipitate the uranium into a slurry. The resulting slurry is thickened by gravity settling, and then washed and de-watered in a filter press to about 50 percent solids. The filter press solids (cake) are then dried in a natural gas heated oil vacuum dryer, to produce uranium oxide, which is commonly known as "yellowcake." The dried yellowcake is packaged in 55-gallon (208-liter) steel drums for storage and eventual shipment to a fuel processing facility.

RAMC conducts uranium recovery operations within designated areas (wellfield units) of the Rio Algom Smith Ranch site. These wellfield units consist of about 50 acres (20 hectars) in size. A number of well patterns are installed in each wellfield unit, with each pattern typically including four injection wells laid out in a roughly rectangular shape and one centrally-located pumping (production) well. Currently, RAMC is conducting uranium recovery operations in three wellfield units.

Summary of the Environmental Assessment

The NRC staff performed an appraisal of the environmental impacts associated with the continued operation of the Rio Algom Smith Ranch ISL facility, in accordance with 10 CFR part 51, Licensing and Regulatory Policy Procedures for Environmental Protection. In conducting its appraisal, the NRC staff considered the following information: (1) RAMC's license renewal application, as amended; (2) previous environmental evaluations of the RAMC facility; (3) RAMC's amendment request submitted subsequent to its renewal application, and NRC staff approval of such request; (4) data contained in required environmental monitoring reports; (5) results of NRC staff site visits and inspections of the RAMC facility; and (6) consultations with the U.S. Fish and Wildlife Service, the U.S. Bureau of Land Management, and the Wyoming State Historic Preservation Officer. The results of the staff's appraisal are documented in an Environmental Assessment. The safety aspects for the continued operation are discussed separately in a Safety Evaluation Report (SER).

The license renewal would authorize RAMC to continue operating the Rio Algom Smith Ranch ISL facility, such that the plant and satellite facilities throughput does not exceed a flow rate of 12,000 gallons (45,420 liters) per minute, exclusive of the flow involved in restoring the depleted wellfield units. Annual yellowcake production will not be authorized to exceed 3.5 million pounds (1,587,565 kilograms).

All conditions in the renewal license and commitments presented in the renewal application are subject to NRC inspection. Violation of the license may result in enforcement action.

Conclusions

The NRC staff has re-examined actual and potential impacts associated with continued commercial operation of the Rio Algom Smith Ranch ISL facility, and has determined that the renewal of Source Material License SUA–1548 will: (1) Be consistent with requirements of 10 CFR Part 40, (2) not be inimical to the public health and safety; and (3) not have long-term detrimental impacts on the environment. The following statements summarize the conclusions resulting from the staff's environmental assessment, and support the FONSI:

1. The proposed ground water monitoring program is sufficient to detect excursions (vertical and horizontal) of recovery solutions. Furthermore, aquifer testing and previous operations indicate that the production zone is adequately confined, thereby assuring hydrological control of recovery solutions;

2. Liquid process waste will be disposed in accordance with approved waste disposal options. Monitoring programs are in place to ensure appropriate operation of the deep disposal wells and to detect potential leakage from the evaporation ponds;

3. An acceptable environmental and effluent monitoring program is in place to monitor effluent releases and to detect if applicable regulatory limits are exceeded. Radiological effluents from facility operation have been and are expected to remain below the regulatory limits;

4. All radioactive waste generated by facility operations will be disposed offsite at a licensed 11e.(2) byproduct disposal site;

5. Groundwater impacted by recovery operations will be restored to baseline conditions on a wellfield unit average, as a primary goal. If baseline conditions cannot be reasonably achieved, the R&D operations have demonstrated that groundwater can be restored to applicable class-of-use standards; and

6. Because the staff has determined that there will be no significant impacts associated with approval of the license renewal, there can be no disproportionally high and adverse effects or impacts on minority and low-income populations. Consequently, further evaluation of Environmental Justice concerns, as outlined in Executive Order 12898 and NRC's Office of Nuclear Material Safety and Safeguards Policy and Procedures Letter 1–50, Revision 1, is not warranted.

Alternatives to the Proposed Action

The proposed action is to renew NRC Source Material License SUA–1548, for continued operation of the Rio Algom Smith Ranch ISL facility as requested by RAMC. Therefore, the principal alternatives available to NRC are to:

(1) Renew the license with such conditions as are considered necessary or appropriate to protect public health and safety and the environment; or

(2) Renew the license with such conditions as are considered necessary or appropriate to protect public health and safety and the environment, but not allow RAMC to expand its operations beyond those previously approved; or

(3) Deny the renewal of the license.

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action do not warrant either the limiting of RAMC's future operations or the denial of the license renewal. Additionally, in the SER prepared for this action, the staff has reviewed the licensee's proposed action with respect to the criteria for license issuance, specified in 10 CFR part 40, § 40.32, and has no basis for denial of the proposed action. Therefore, the staff considers that Alternative 1 is the appropriate alternative for selection.

Finding of No Significant Impact

The NRC staff has prepared an EA for the proposed renewal of NRC Source Material License SUA–1548, On the basis of this assessment, the NRC staff has concluded that the environmental impacts that may result from the proposed action would not be significant, and therefore, preparation of an Environmental Impact Statement is not warranted.

The EA and other documents related to this proposed action are available for public inspection and copying at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852.

Notice of Opportunity for Hearing

The Commission hereby provides notice that this is a proceeding on an application for a licensing action falling within the scope of 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operators Licensing Proceedings," of the Commission's Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(d), a request for a hearing must be filed within thirty (30) days from the date of publication of this **Federal Register** notice. The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Rulemakings and Adjudications Staff of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or (2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemakings and Adjudications Staff. In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail to:

(1) The applicant, Rio Algom Mining Corporation, 6305 Waterford Blvd, Suite 325, Oklahoma City, OK 73118;

(2) The NRC staff, by delivery to the General Consel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or

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(3) By mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR part 2 of the Commission's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

Any hearing that is requested and granted will be held in accordance with the Commission's "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings" in 10 CFR part 2, subpart L.

Dated at Rockville, Maryland, this 30th day of April 2001.

For the Nuclear Regulatory Commission

Daniel M. Gillen,

Acting Chief, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01–11278 Filed 5–3–01; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

Commission Briefing

AGENCY: Postal Rate Commission.

ACTION: Notice of commission briefing.

SUMMARY: The Commission's Office of the Consumer Advocate will host a briefing on two federal laws relating to electronic signatures: the Uniform Electronic Transactions Act and the Electronic Signature in Global and National Commerce Act. Mr. R. David Whitaker will give the briefing.

DATES: Thursday, May 24, 2001, at 10:30 a.m.

ADDRESSES: The briefing will be held in the Postal Rate Commission's hearing room, 1333 H St. NW., Suite 300, Washington, DC 20268–0001.

FOR MORE INFORMATION CONTACT: Stephen L.Sharfman, General Counsel, 202–789–6820.

Authority: 39 CFR 3002.7(a).

Dated: April 30, 2001.

Steven W. Williams,

Acting Secretary.

[FR Doc. 01–11200 Filed 5–3–01; 8:45 am]

BILLING CODE 7710–FW–M

POSTAL RATE COMMISSION

Tour of Printing and Distribution Facilities

AGENCY: Postal Rate Commission.

ACTION: Notice of commission visit.

SUMMARY: In early May, Postal Rate Commissioners and staff will tour facilities of CTC Corp. and Quebecor Inc. (both in Chicago, IL) and the United Parcel Service (UPS) international air hub (in Louisville, KY). The Quebecor visit will include the logistics center, consolidation facility, and bindery.

DATES: The visit is scheduled as follows:

May 7 (p.m.): CTC Corp.
May 8 (a.m.): Quebecor Inc.
May 8 (p.m.): United Parcel Service

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, Suite 300, 1333 H Street, NW., Washington, DC 20268–0001, 202–789–6820.

Dated: May 1, 2001.

Garry J. Sikora,

Acting Secretary.

[FR Doc. 01–11271 Filed 5–3–01; 8:45 am]

BILLING CODE 7710–FW–M

PRESIDIO TRUST

Notice of Public Meeting

AGENCY: The Presidio Trust.

ACTION: Notice of public meeting.

SUMMARY: In accordance with § 103(c)(6) of the Presidio Trust Act, 16 U.S.C. 460bb note, Title I of Public Law 104–333, 110 Stat. 4097, and in accordance with the Presidio Trust's bylaws, notice is hereby given that a public meeting of the Presidio Trust Board of Directors will be held from 9:00 a.m. to 11:00 a.m. on Wednesday, May 23, 2001, at the Officers' Club, 50 Moraga Avenue, Presidio of San Francisco, California. The Presidio Trust was created by Congress in 1996 to manage approximately eighty percent of the former U.S. Army base known as the Presidio, in San Francisco, California.

The purposes of this meeting are to: (1) Receive staff reports regarding environmental remediation, wildlife at the Presidio, and historic building rehabilitation; (2) receive a staff report and take action regarding the Vegetation Management Program; and (3) receive public comment in accordance with the Trust's Public Outreach Policy.

Time: The meeting will be held from 9:00 a.m. to 11:00 a.m. on Wednesday, May 23, 2001.

ADDRESSES: The meeting will be held at the Officers' Club, 50 Moraga Avenue, Presidio of San Francisco.

FOR FURTHER INFORMATION CONTACT: Craig Middleton, Deputy Director for Operations and Governmental Affairs, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, California 94129–0052, Telephone: (415) 561–5300.

Dated: April 30, 2001.

Karen A. Cook,

General Counsel.

[FR Doc. 01–11222 Filed 5–3–01; 8:45 am]

BILLING CODE 4310–4R–U

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with requirement of section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection: Verification of Supplemental Annuity.

Under Section 2(b) of the Railroad Retirement Act (RRA), the Railroad Retirement Board (RRB) pays supplemental annuities to qualified RRB employee annuitants. A supplemental annuity, which is computed according to section 3(e) of the RRA, can be paid at age 60 if the employee has at least 30 years of creditable railroad service or at age 65 if the employee had 25–29 years of railroad service. In addition to 25 years of service, a "current connection" with the railroad industry is required. Eligibility is further limited to employees who had at least one month of rail service before October 1981 and were awarded regular annuities after June 1966. Further, if an employee's 65th birthday was prior to September 2, 1981, he or she must not have worked in rail service after certain closing dates (generally the last day of the month following the month in which age 65 is attained).

The supplemental annuities paid by the RRB are financed entirely by the railroad employers under 26 USC of 3221 of the Internal Revenue Code. Under 26 USC 3221(c) every employer must pay a "work hour" tax at such a rate as to make available certain funds for the RRB to pay supplemental annuities at the level provided under section 3(e) of the RRA, unless the exception in 26 USC 3221(d) applies.

Also, under 26 U.S.C. 3221(c) a Supplemental Annuity tax credit is due to the railroad for any month for which an employee's RRB Supplemental Annuity is reduced under Section 2(h)(2) of the RRA for an employer private pension approved by the RRB's Bureau of Law, when either the employer pension was not established pursuant to a collective bargaining agreement; or, if the employer pension was established pursuant to a supplemental annuity tax credit allowed is equal (dollar for dollar) to the amount of the reduction in the employee's supplemental annuity for the private pension.

Section 26 USC 3221(d) of the Internal Revenue Code exempts certain employers from the "work hour tax" when the private pension plan, approved by the RRB's Bureau of Law, that was established pursuant to a collective bargaining (union) agreement and the employee was a member of the collective bargaining unit. Instead a supplemental annuity tax liability is billed to the employer as a "special supplemental tax" under any month for which the employee is paid a RRB supplemental annuity. The "special supplemental tax" is equal to the amount of the supplemental annuity being paid, plus a percentage added to reimburse the RRB for administrative cost.

The RRB currently requires the following information from railroad employers to calculate supplemental annuities. (a) The current status of railroad employer pension plans and whether such an employer pension plan causes a reduction to the supplemental annuity; (b) the amount of the employer private pension being paid to the employee; (c) whether or not the railroad employer pension is based on a collective bargaining agreement, (d) whether or not the employee made contributions to the pension; and (e) whether the employer pension plan continues when the employer status under the RRA changes. The requirements for eligibility to a supplemental annuity and a description of an employer pension are prescribed in 20 CFR 216.40–216.42. The computation of the supplemental annuity is prescribed in 20 CFR 227. Evidence requirements for a deemed current connection for a supplemental annuity are prescribed in 20 CFR 216.15.

The RRB currently utilizes Form(s) G–88p (Employer's Supplemental Pension Report), G–88r (Request for Information About New or Revised Pension Plan), and G–88r.1 (Request for Additional Information about Employer Pension Plan in Case of Change of Employer Status or Termination of Pension Plan), to obtain the necessary information from railroad employers. (OMB approved 3220–0089).

In order to ensure that the supplemental annuity is correctly adjusted and the supplemental annuity tax credits or supplemental annuity tax liabilities are correct, the RRB proposes the implementation of a new information collection consisting of two new forms, Form G–88p.1, Request for Verification of Employer Pension Information, and Form G–88p.2, Verification of Employer Collective Bargaining Pension Information.

The completion time for proposed Form G–88p.1 and G–88p.2 is estimated at between 10 to 120 minutes. The RRB estimates that about 75 G–88p.1's and 15 G–88p.2's will be completed annually. One response is requested of each respondent. Completion is mandatory.

FOR FURTHER INFORMATION CONTACT: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp. Railroad Retirement Board. 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 01–11285 Filed 5–3–01; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27387]

Filings Under the Public Utility Holding Company, Act of 1935, as Amended ("Act")

April 27, 2001.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 22, 2001, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After May 22, 2001, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

WGL Holdings, Inc., et al. (70–9653)

WGL Holdings, Inc. ("WGL Holdings"), a registered holding company, its gas utility subsidiary, Washington Gas Light Company, and WGL Holdings' nonutility subsidiary companies, Hampshire Gas Company, Crab Run Gas Company, Washington Gas Resources Corp., and Primary Investors LLC (collectively, "Applicants"), all located at 1100 H Street, NW., Washington, DC 20080, have filed a post-effective amendment to an application-declaration filed under sections 6(a), 7, 9(a), 10, 11, 12(b), 12(c), 12, 32, and 33 of the Act and rules 45, 46, 47, 54, and 80–92 under the Act.

By orders dated October 13, 2000, and November 13, 2000 (Holding Co. Act Release Nos. 27253 and 27276, respectively) ("Prior Orders"), the Commission, through March 31, 2004 ("Authorization Period"), authorized

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certain financing activities related to WGL Holdings and its subsidiaries, including the establishment of a system money pool (the "Money Pool"). The Prior Orders permitted the addition of new subsidiaries as lenders to the Money Pool; however, Commission approval was required for the addition of new borrowers. In addition, the Prior Orders authorized WGL Holdings to invest not more than $100 million ("Investment Limit") in existing or newly formed, direct or indirect nonutility subsidiaries that are engaged in the business of providing financing for purchases of energy-related equipment, goods, or services ("Consumer Finance Subsidiaries").

In accordance with the Prior Orders, WGL Holdings formed a new Consumer Finance Subsidiary, Washington Gas Credit Corp. ("WGCC"). Applicants now request that the Commission authorize WGCC's participation in the Money Pool as a borrower. Applicants state that all the borrowings of WGCC will count against the Investment Limit. Further, Applicants state that the addition of WGCC to the Money Pool requires no changes to the terms and conditions of the System Money Pool Agreement filed as an exhibit to the application-declaration in this matter.

Cascade Investment, L.L.C., and William H. Gates III (70–9865)

Cascade Investment, L.L.C. ("Cascade"), a limited liability company formed under the laws of the State of Washington, 2365 Carillon Point, Kirkland, Washington 98033, and its sole member, William H. Gates III, One Microsoft Way, Redmond, Washington, 98033 ("Mr. Gates," and together with Cascade, "Applicants"), have filed an application under sections 9(a)(2) and 10 of the Act.

Applicants request approval of their acquisition of 5% or more, but less than 10%, of the outstanding voting securities of Avista Corporation ("Avista"), Otter Tail Power Company ("Otter Tail"), and Public Service Company of New Mexico ("PSNM"), each of which is a "public-utility company" as defined in section 2(a)(5) of the Act. Applicants state that neither is an "affiliate," as defined in section 2(a)(11)(A) of the Act, of any other public-utility company.

Mr. Gates is Chairman of the Board, Chief Software Architect, and a major shareholder of Microsoft Corporation, which develops, manufactures, licenses and supports software products for business and person applications. Applicants state that Cascade was formed in 1995 to make and hold certain investments for Mr. Gates, that Cascade invests in and holds the securities of numerous publicly and privately held companies, and that Cascade does not have any active business operations of its own.

Cascade currently holds 2,887,500 shares (or approximately 6.12%) of the outstanding common stock of Avista, 1,399,500 shares (or approximately 5.87%) of the outstanding common stock of Otter Tail, and 2,344,500 shares (or approximately 5.99%) of the outstanding common stock of PSNM. Applicants state that these shares were purchased on the open market solely for the purpose of investment, that they have filed joint statements on Schedule 13G under the Securities Exchange Act of 1934 with respect to each of these three investments, and that neither Cascade nor Gates has any management arrangement with any of these companies.

Avista, a Washington corporation, provides electricity and natural gas distribution and transmission services in a 26,000 square mile area in eastern Washington and northern Idaho with a population of approximately 835,000 and natural gas distribution service in a 4,000 square mile area in northeast and southwest Oregon and in the South Lake Tahoe region of California with a population of approximately 500,000. At December 31, 1999, Avista provided retail electric service to approximately 309,000 customers and retail natural gas service to approximately 269,000 customers. Avista is subject to regulation as to retail rates by the public utilities commissions of Washington, Idaho, Oregon, and California and as to wholesale electric rates by the Federal Energy Regulatory Commission ("FERC").

Otter Tail, a Minnesota corporation, produces, transmits, distributes and sells electric energy in a predominantly agricultural area in western Minnesota, eastern North Dakota and northeastern South Dakota. The population in this service area is approximately 230,000. Otter Tail is subject to regulation as to retail rates by the public utilities commissions in Minnesota, North Dakota and South Dakota and as to wholesale electric rates by the FERC.

PSNM, a New Mexico corporation, generates, transmits, distributes and sells electricity and transmits, distributes and sells natural gas in parts of New Mexico, including the cities of Albuquerque and Santa Fe. As of December 31, 1999, PSNM provided public utility service to approximately 361,000 retail electric customers and 426,000 retail gas customers. PSNM is subject to regulation as to retail rates by the New Mexico Public Regulation Commission and as to wholesale electric rates by the FERC.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–11207 Filed 5–3–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44228; File No. SR–NASD–2001–26]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to a Qualification Examination for a New Limited Registration Category: Limited Representative-Private Securities Offerings (Series 82)

April 27, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 3, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. NASD Regulation has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is filing with the Commission the examination specifications and study outline for the Limited Representative-Private Securities Offerings (Series 82) examination program. The Series 82 examination program is proposed in connection with a proposed change to NASD Rule 1032[5] to implement section 203 of the Gramm-Leach-Bliley Act of 1999 ("GLBA"),[6] which requires the NASD, as a registered securities association, to create a new limited registration category for any associated person of a member whose investment banking and securities business is limited solely to affecting sales of private securities offerings. NASD Regulation is not proposing any textual changes to the By-Laws, Schedules to the By-Laws, or Rules of NASD Regulation or the NASD.

A description of the Series 82 examination is included in a study outline prepared by NASD Regulation. Confidential information on the examination is included in the examination specifications, which have been omitted from this filing and are being submitted under separate cover to the Secretary of the SEC pursuant to Rule 24b–2 under the Act.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of an basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections (A), (B), and (C) bleow, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The GLBA requires the creation of a new limited registration category for private securities offerings. More specifically, Title II of the GLBA, which becomes effective on May 12, 2001 (or such later date on which Title II of GLBA becomes effective), requires the NASD, as a registered securities association, to create a limited registration category for any associated person of a member whose investment banking and securities business is limited solely to effecting sales of private securities offerings. Therefore, pursuant to Section 15(A)(g)(3) of the Act, which requires the NASD to prescribe standards of training, experience, and competence for persons associated with NASD members, the NASD has developed the proposed Series 82 examination program to establish that persons associated with NASD members who are seeking to register under the new limited registration category for private securities offerings have attained specified levels of competence and knowledge.

The proposed Series 82 Limited Representative-Private Securities Offerings examination will be an NASD examination that qualifies an associated person of a member, whose investment banking and securities business is limited solely to effecting sales of private securities offerings, to effect such sales. This examination tests a candidate's knowledge of securities industry rules and regulations pertinent to such products. The Series 82 will not qualify a registered representative in this category to effect sales of municipal or government securities, equity interests in or the debt of direct participation programs (DPP securities), or resales of or secondary market transactions in private placement securities. Persons seeking to effect the aforementioned sales must register in one or more of the other NASD limited representative categories or as a General Securities Registered Representative and pass the appropriate qualification examination(s).

A committee of industry representatives, in conjunction with NASD Regulation staff, developed the series 82 study outline and specifications. The examination will be divided into four topical sections. The topical sections and the number of questions designated to each such section are: Characteristics of Corporate Securities (14); Regulation of The Market for Registered and Unregistered Securities (45); Analyzing Corporate Securities (15); and Handling Customer Accounts and Industry Regulations (26). The specifications for the Series 82 examination, which have been omitted from this filing and are being submitted under separate cover to the Secretary of the SEC pursuant to Rule 24b–2 under the Act, describe additional confidential information regarding the examination.

The examination will be a 150 minutes, 100 multiple choice question examination with 70% as the passing score.

(2) Statutory Basis

NASD Regulation believes that the proposed Series 82 examination program is consistent with the provisions of sections 15A(b)(6) and 15A(g)(3) of the Act, which authorize the NASD to prescribe standards of training, experience, and competence for persons associated with NASD members. The proposed Series 82 examination program also is necessary to implement section 203 of the GLBA.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Association as a "non-controversial" rule change under Rule 19b–4(f)(6) under the Act.[7] Consequently, because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative until May 12, 2001 (or such later date on which Title II of the GLBA becomes effective), more than 30 days after the date on which it was filed, and NASD Regulation provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Letter to Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, Inc. from Belinda Blaine, Associate Director, Division of Market Regulation, SEC, dated July 24, 2000.

[5] On November 28, 2000, the NASD, through its wholly-owned subsidiary, NASD Regulation, filed with the Commission SR–NASD–00–69, proposing amendments to NASD Rule 1032 to create a new limited registration category for private securities offerings. NASD Regulation filed Amendment No. 1 to the proposed rule change on February 28, 2001. Amendment No. 1 replaced the filing in its entirety. *See* Release No. 34–44091 (March 21, 2001), 66 FR 16964 (March 28, 2001).

[6] Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106–102, 113 Stat. 1338 (1999).

[7] 17 CFR 240.19b–4(f)(6).

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arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal of the NASD. All submissions should refer to the file number in the caption above and should be submitted by May 25, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–11208 Filed 5–3–01; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3336]

State of Kansas

As a result of the President's major disaster declaration on April 27, 2001, I find that Barton County in the State of Kansas constitutes a disaster area due to damages caused by severe storms and tornadoes that occurred April 21, 2001 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on June 26, 2001, and for loans for economic injury until the close of business on January 28, 2002 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Ellsworth, Pawnee, Rice, Rush, Russell and Stafford Counties in Kansas.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.625
Homeowners without credit available elsewhere	3.312
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 333611 and for economic injury the number is 9L5900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: April 30, 2001.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 01–11250 Filed 5–3–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3333]

State of Mississippi; (Amendment #1)

In accordance with a notice received from the Federal Emergency Management Agency, dated April 27, 2001, the above-numbered Declaration is hereby amended to include Leake, Neshoba and Pontotoc Counties in the State of Mississippi as disaster areas caused by flooding and severe storms occurring between April 3–5, 2001.

In addition, applications for economic injury loans from small businesses located in Calhoun, Kemper, Lafayette, Lauderdale, Newton and Scott Counties in the State of Mississippi may be filed until the specified date at the previously designated location. Any counties contiguous to the above named primary counties and not listed here have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is June 17, 2001 and for economic injury the deadline is January 17, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: April 27, 2001.

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 01–11248 Filed 5–3–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3334]

State of New York (And Contiguous Counties in Pennsylvania)

Sullivan County and the contiguous counties of Delaware, Orange and Ulster in the State of New York; and Wayne and Pike Counties in the Commonwealth of Pennsylvania constitute a disaster area due to damages caused by flooding that occurred on December 17, 2000. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on June 26, 2001 and for economic injury until the close of business on January 28, 2002 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.000
Homeowners without credit available elsewhere	3.500
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.000
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 333406 for New York and 333506 for Pennsylvania. For economic injury, the numbers are 9L5300 for New York and 9L5400 for Pennsylvania.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: April 27, 2001.

John Whitmore,

Acting Administrator.

[FR Doc. 01–11249 Filed 5–3–01; 8:45 am]

BILLING CODE 8025–01–P

[8] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Ticket To Work and Work Incentives Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice; correction.

SUPPLEMENTARY INFORMATION: The Social Security Administration published a document in the **Federal Register** of April 17, 2001, concerning a meeting of the Ticket to Work and Work Incentives Advisory Panel. The document contained information that has changed for the meeting times and the agenda including times for the public comment period.

FOR FURTHER INFORMATION CONTACT: Kristen M. Breland, 202–358–6423.

Corrections

1. In the **Federal Register** of April 17, 2001, in FR Doc. 01–9511, on page 19829, in the second column, correct the "Date" to read:

Dates:

May 8, 2001, 10 a.m.–6:30 p.m.
May 9, 2001, 9 a.m.–5 p.m.
May 10, 2001, 9 a.m.–4 p.m.

2. In the **Federal Register** of April 17, 2001, in FR Doc. 01–9511, on page 19829, in the second column, correct the "Address" to read:

Address: Almas Temple, Oasis Room, 1315 K Street, NW., Washington, DC 20005, 202–898–1688.

On Tuesday, May 8, 2001 from 4:30 p.m. to 6:30 p.m. ONLY, the public meeting reconvenes at the Ticket to Work and Work Incentives Advisory Panel Office, Social Security Administration, 400 Virginia Avenue, SW., Suite 700, Washington, DC 20024; 202–358–6430.

3. In the **Federal Register** of April 17, 2001, in FR Doc. 01–9511, on page 19830, in the first column, correct the "Agenda" to read:

Agenda: The Public Testimony Comment Period on Ticket to Work and Work Incentives Improvement Act Implementation is now scheduled only on Wednesday, May 9, 2001 from 9:15 a.m. to 10:15 a.m.

Dated: April 30, 2001.

Deborah M. Morrison,

Designated Federal Officer.

Corrected Agenda

Ticket To Work and Work Incentives Advisory Panel, Public Meeting Agenda

Almas Temple, Oasis Room, 1315 K Street, NW., Washington, DC 20005, 202–898–1688

May 8, 9, and 10, 2001

Tuesday, May 8, 2001, Day 1

10:00 a.m.
Meeting Called to Order by Deborah Morrison, Designated Federal Officer
10:00 a.m. to 10:30 a.m.
Welcome, Introductions and Review of the Agenda, Sarah Wiggins Mitchell, Chair, Presiding
10:30 a.m. to 12:00 p.m.
Update on TWWIIA Implementation
12:00 p.m. to 1:30 p.m.
Lunch (On Your Own)
1:30 p.m.
Meeting Reconvenes, Sarah Wiggins Mitchell, Presiding
1:30 p.m. to 2:30 p.m.
Update on TWWIIA Implementation
2:30 p.m. to 3:30 p.m.
Breakout sessions:
Planning and Operations Committee
Evaluation Committee
4:30 p.m. to 6:30 p.m.
Open House and Web site Launch

The public meeting reconvenes at the Ticket to Work and Work Incentives Advisory Panel Office, Social Security Administration, 400 Virginia Avenue, SW, Suite 700, Washington, DC 20024, Phone: 202–358–6430.

Welcome—Sarah Wiggins Mitchell, Presiding
Opening Remarks and Review Agenda
Introduction of Panel Members and Staff
Year One in Review—Annual Interim Progress Report
Presentation and Launch of New Advisory Panel Web Site
Hands-on Demonstration of Panel's New Web Site *www.ssa.gov/work/panel*
Discussion
6:30 p.m.
Adjournment

Wednesday, May 9, 2001, Day 2

Meeting reconvenes at Almas Temple, Oasis Room, 1315 K Street, NW, Washington, DC 20005, 202–898–1688.
9:00 a.m.
Meeting Reconvened, Sarah Mitchell, Chair, Presiding
9:15 a.m. to 10:15 a.m.
Public Testimony Comment Period on TWWIIA Implementation
10:15 a.m. to 10:45 a.m.
Break
10:45 a.m. to 12:00 p.m.
Update on TWWIIA Implementation
12:00 p.m. to 1:30 p.m.
Lunch (On Your Own)
1:30 p.m.
Meeting Reconvenes, Sarah Wiggins Mitchell, Chair, Presiding
1:30 p.m. to 3:00 p.m.
Panel Deliberations on Final Advice Report
3:00 p.m. to 3:30 p.m.
Break
3:30 p.m. to 5:00 p.m.
Continuation of Panel Deliberations on Final Advice Report

Please Note: In the event that the public comments do not take up the scheduled time period, the Panel will use that time to deliberate and conduct other Panel business.

Thursday, May 10, 2001 Day Three

9:00 a.m. to 9:30 a.m.
Meeting Reconvened and Opening Remarks, Sarah Wiggins Mitchell, Chair, Presiding
9:30 a.m. to 10:30 a.m.
Update on TWWIIA Implementation
10:30 a.m. to 11:00 a.m.
Break
11:00 a.m. to 12:00 p.m.
Panel Deliberation on Final Advice Report
12:00 p.m. to 1:30 p.m.
Lunch (On Your Own)
1:30 p.m.
Meeting Reconvenes, Sarah Mitchell, Presiding
1:30 p.m. to 2:30 p.m.
Panel Deliberations and Committee Reports
2:30 p.m. to 4:00 p.m.
Quarterly Business Meeting

Ticket to Work and Work Incentives Advisory Panel Quarterly Business Meeting—2:30 p.m. to 4:00 p.m.

I. Call to Order
II. Approval Minutes of Previous Meetings
February 6, 7 and 8, 2001
March 26, 27 and 28, 2001
III. Administrative Report from Executive Director
IV. Reports from Committees
Evaluation Committee
Planning and Operations Committee
V. Unfinished Business
VI. New Business
VII. Next Meeting
VIII. Wrap-up
4:00 p.m.
Adjournment

[FR Doc. 01–11325 Filed 5–1–01; 4:48 pm]

BILLING CODE 4191–02–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comment on Specific Rules of Origin in the Free Trade Area of the Americas, the U.S.-Chile Free Trade Agreement, and the U.S.-Singapore Free Trade Agreement

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Request for comments.

SUMMARY: The interagency Trade Policy Staff Committee (TPSC) seeks public

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comment by May 25, 2001, as part of its efforts to develop product-specific rules of origin for the Free Trade Area of the Americas (FTAA), the U.S.-Chile Free Trade Agreement (Chile FTA), and the U.S.-Singapore Free Trade Agreement (Singapore FTA).

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative at (202) 395–3475. General questions concerning FTAA and Chile FTA negotiations should be addressed to the agency's Office of Western Hemisphere Affairs at (202) 395–5190. General questions concerning the Singapore FTA negotiations should be addressed to the agency's Office of Asia and the Pacific, at (202) 395–3430. Questions pertaining to this specific request for public comment as it relates to the Chile FTA and the Singapore FTA should be addressed to Matthew Rohde, Director for Customs Affairs, Office of the USTR, at (202) 395–3063 and as regards to the FTAA to Bennett Harman, Deputy Assistant US Trade Representative for Latin America, Office of the USTR, at (202) 395–5190. The official FTAA web site (*www.ftaa-alca.org*) contains information regarding the FTAA process, including official documents.

SUPPLEMENTARY INFORMATION: At the first Summit of the Americas, held in Miami, Florida on December 11, 1994, the President of the United States and 33 other democratically-elected leaders in the Western Hemisphere agreed to conclude an FTAA no later than 2005. Hemispheric leaders formally launched FTAA negotiations at the second Summit of the Americas, held in Santiago, Chile on April 18–19, 1998. The Presidents of the United States and Chile announced plans for a Chile FTA on November 29, 2000, and trade ministers from the two countries launched bilateral negotiations on December 6, 2000. The TPSC has already requested public comment on general U.S. positions and objectives in the FTAA (63 FR 128, July 6, 1998; 64 FR 248, December 28, 1999) and the Chile FTA (65 FR 241, December 14, 2000).

On November 16, 2000, the President of the United States and the Prime Minister of Singapore agreed to negotiate a bilateral free trade agreement. The TPSC has previously requested public comment on negotiating objectives for the agreement and on how specific goods and services and other matters should be treated under the Singapore FTA (65 FR 71197; November 29, 2000 and 65 FR 80982; December 22, 2000).

The United States is seeking rules of origin in the FTAA, the Chile FTA and the Singapore FTA which will ensure that only goods produced in the territories of the parties to those Agreements qualify for preferential tariff treatment. Concurrently, another objective of the United States will be to ensure that the rules of origin in the FTAA, the Chile FTA and the Singapore FTA are transparent, administrable, and trade facilitative. In order to meet these objectives, and based in part on responses to previous requests for public comment, in the negotiations to date on these agreements the United States has advocated pursuing the development of product-specific rules of origin.

A product-specific approach to preferential rules of origin will require negotiators to establish, for each product or product sector, the degree of working or processing necessary within the Parties to the FTAA, Chile FTA, and the Singapore FTA to transform non-originating component materials into originating goods eligible for preferential tariff treatment. In the North American Free Trade Agreement (NAFTA), the predominant approach used for preferential rules of origin was a product-specific "tariff shift" approach, whereby the degree of working or processing is represented by a specified change in Harmonized Tariff System tariff classification for each product or sector.

The product-specific "tariff shift" approach is to be contrasted with rules of origin based upon a single generally-applicable rule, such as a "regional value content" test , or a single uniformly applied "tariff shift" standard. Comments previously submitted as well as experience over the years in administration of rules of origin suggest important advantages related to greater certainty in the administration of product-specific rules of origin than with a generally applicable "regional value content" rule of origin. The product-specific "tariff shift" approach also has advantages over a uniform "tariff shift" approach because Harmonized System tariff nomenclature was not drafted for the purpose of reflecting a particular transformation for all products by virtue of a shift between a single uniform level of digits within the Harmonized System.

The NAFTA preferential rules of origin are listed at General Note 12 to the Harmonized Tariff Schedule of the United States (HTSUS), available on the U.S. International Trade Commission (ITC) web site at *http://dataweb.usitc.gov/SCRIPTS/tariff/toc.html*. A detailed summary of the current U.S. negotiating position on market access issues in the FTAA, including rules of origin, can be found on the USTR web site at www.ustr.gov/regions/whemisphere/ftaa.shtml.

The TPSC invites comments on all matters related to the development of product-specific rules of origin for the FTAA, the Chile FTA, and the Singapore FTA. It is recognized that comments or advice may or may not differ as to issues presented, respectively, by the FTAA, Chile FTA, and Singapore FTA. To the greatest extent possible, comments specifically should address the following questions, with clear designation as to the particular product or sector and the Harmonized System category or categories to which such comments apply.

- What, if any, are the specific market concerns or commercial practices for a particular product or sector that should be taken into account in the development of preferential rules of origin in the FTAA, the Chile FTA, and the Singapore FTA?
- Would it be appropriate to propose product-specific preferential rules of origin that are similar to, if not the same as, existing NAFTA preferential rules of origin?
- Alternatively, would it be appropriate to propose product-specific rules of origin that differ from existing NAFTA preferential rules of origin in order to take into account changed market conditions or different production and sourcing practices in Singapore, Chile or the rest of the Western Hemisphere?
- A number of the NAFTA preferential rules of origin include qualifications on product-specific tariff-shift rules, such as an additional value-content criterion. Would it be appropriate to propose simpler preferential rules of origin for the FTAA, Chile FTA, or Singapore FTA that either rely solely on a product- or sector-specific tariff shift? Alternatively, in the event that an additional qualification on a product-specific tariff-shift rule may be deemed necessary, would a formulation of a value-content criterion that is simpler than what exists in NAFTA be appropriate?
- Would it be appropriate to propose product-specific rules of origin that differ from existing NAFTA preferential rules of origin where the United States has or will soon have a most favored nation tariff rate of zero?
- Would it be appropriate to propose for certain products or sectors that the parties to the FTAA, Chile FTA or Singapore FTA establish a common external tariff and forego preferential rules of origin?

Request for Comments

Request for public comment on specific rules of origin for the FTAA, the Chile FTA and the Singapore FTA. Those persons wishing to provide written comments should submit twenty (20) typed copies, no later than noon, May 25, 2001, to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the U.S. Trade Representative, Room F516, 1724 F Street, NW., Washington, DC 20508. Nonconfidential comments may be submitted via the Internet to *gblue@ustr.gov*. Comments should clearly state the position taken and present evidence to support that position. Any business confidential material must be clearly marked as such on the cover page (or letter) and succeeding pages. Such submissions must be accompanied by a nonconfidential summary thereof.

Nonconfidential submissions will be available for public inspection at the USTR Reading Room, Office of the U.S. Trade Representative, Room 3, 1724 F Street, NW., Washington, DC. An appointment to review the file may be made by calling Brenda Webb at (202) 395–6186. The Reading Room is open to the public from 10 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday.

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 01–11306 Filed 5–3–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Surplus Property Release at Smyrna Airport, Smyrna, Tennessee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: Under the provisions of 49 U.S.C. 47153(c), notice is being given that the FAA is considering a request from the Smyrna/Rutherford County Airport Authority to waive the requirement that a 23.934-acre parcel of surplus property, located at the Smyrna Airport, be used for aeronautical purposes.

DATES: Comments must be received on or before June 4, 2001.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, 3385 Airways Boulevard, Suite 302, Memphis, TN 38116–3841.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. John R. Black, Executive Director of the Smyrna/Rutherford County Airport Authority at the following address: 660 Fitzhugh Blvd., Smyrna, TN 37167.

FOR FURTHER INFORMATION CONTACT: Cynthia K. Wills, Program Manager, Memphis Airports District Office, 3385 Airways Boulevard, Suite 302, Memphis, TN 38116–3841, (901) 544–3495 extension 16. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by Smyrna/Rutherford County Airport Authority to release 25.934 acres of surplus property at the Smyrna Airport. The property will be purchased by the Town of Smyrna and used for the expansion of the Smyrna Wastewater Treatment Plant. The property fronts East Sam Ridley Parkway and is adjacent and east of the existing Smyrna Wastewater Treatment Plan. The expansion activities will include two(2) aeration basins and two(2) clarifying ponds. The net proceeds from the sale of this property will be used for airport purposes. The USDA has evaluated the proposed use of the land for expansion of the wastewater treatment facility and has indicated the proposed usage will be compatible with airport operations if USDA recommendations are followed.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Smyrna/Rutherford County Airport Authority.

Issued in Memphis, Tennessee, on April 26, 2001.

Charles L. Harris,

Assistant Manager, Memphis Airports District Office, Southern Region.

[FR Doc. 01–11264 Filed 5–3–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–20001–34]

Petitions for Exemption; Summary of Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on April 30, 2001.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Disposition of Petitions

Docket No: FAA–2001–9034.

Petitioner: Bombardier Aerospace, Inc.

Section of 14 CFR Affected: 14 CFR 25.1435(b)(1).

Description of Relief Sought/Disposition: To permit type certification of the Model BD–100–1A10 by conducting applicable testing specified in accordance with (1) hydraulic system components, lines, and installation are individually tested to 1.5 times the design operating pressure as part of qualifications tests, and (2) the complete hydraulic system is functionally tested on the airplane over the range of motion of all associated user systems at the system relief pressure setting of 3,400 psid. *Partial Grant, 04/18/2001, Exemption No. 7508.*

Docket No.: FAA–2001–8866.

Petitioner: Celsius Aerotech, Inc.

Section of 14 CFR Affected: 14 FR 145.45(f).

Description of Relief Sought/Disposition: To permit Celsius to establish and maintain a number of fixed locations within Celsius for the repair station Inspection Procedures Manual (IPM) and to assign IPM's to key individuals within departments. *Grant, 04/10/2001, Exemption No. 6657B.*

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Docket No.: FAA–2001–9091 (previously Docket No. 29479).
Petitioner: Skydive U, Inc. formerly known as Skydive Utah, Inc.
Section of 14 CFR Affected: 14 CFR 105.43(a).
Description of Relief Sought/ Disposition: To permit SUI's nonstudent foreign nationals to participate in SUI-sponsored parachute jumping events held at SUI's facilities without complying with the parachute equipment and packing requirement of § 105.43(a). *Grant, 04/10/2001, Exemption No. 6928A.*

Docket No.: FAA–2001–8741 (previously Docket No. 29218).
Petitioner: Cessna Aircraft Company.
Section of 14 CFR Affected: 14 CFR 91.409(b).
Description of Relief Sought/ Disposition: To permit owners and operators of Cessna Model 172R, 172S, and 182S (C–172R, C–172S, and C–182S, respectively) airplanes to use Cessna's PhaseCard Inspection Program rather than completing the required 100-hour inspection. *Grant, 04/10/201, Exemption No. 6901B.*

Docket No.: 29975
Petitioner: Express Airlines I, Inc.
Section of 14 CFR Affected: 14 CFR 121.434(c)(1)(ii).
Description of Relief Sought/ Disposition: To permit Express to substitute a qualified and authorized check airman in place of an FAA inspector to observe a qualifying pilot in command who is completing initial or upgrade training specified in § 121.424 during at least one flight leg that includes a takeoff and a landing. *Grant, 04/12/2001, Exemption No. 7504.*

Docket No.: FAA–2001–8877.
Petitioner: Piedmont Aviation Services, Inc.
Section of 14 CFR Affected: 14 CFR 25.857(c), and 25.858, 121.314(c).
Description of Relief Sought/ Disposition: To permit two Boeing Model 737–200 airplanes to operate from March 20, 2001, until September 15, 2001, without being fitted with fire suppression equipment. *Denial, 03/13/ 2001, Exemption No. 7457.*

Docket No.: FAA–2000–8492.
Petitioner: The Boeing Company.
Section of 14 CFR Affected: 14 CFR 25.1435(b)(1).
Description of Relief Sought/ Disposition: To permit amended type certification of the Boeing Models 777–200LR and 777–300ER by conducting a 3400 psig (the system relief pressure) test of the modified or added hydraulic tubing runs and any rerouted sections while verifying that adequate clearances exist. *Partial Grant, 03/28/2001, Exemption No. 7478.*

[FR Doc. 01–11259 Filed 5–3–01; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–35]

Petitions for Exemption, Summary of Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on April 30, 2001.

Donald P. Byrne,
Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2001–9010.
Petitioner: Kitty Hawk Charters, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Kitty Hawk to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 04/16/2001, Exemption No. 7506.*

Docket No.: FAA–2001–8787.
Petitioner: Flight Alaska, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Flight Alaska to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 04/16/2001, Exemption No. 7505.*

Docket No.: FAA–2001–8865.
Petitioner: Corporate Air, LLC.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Corporate Air to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 04/12/2001, Exemption No. 7498.*

Docket No.: FAA–2001–9033.
Petitioner: Silverhawk Aviation, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Silverhawk to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 04/12/2001, Exemption No. 7499.*

Docket No.: FAA–2001–9105.
Petitioner: Ameristar Jet Charter, Inc.
Section of 14 CFR Affected: 14 CFR 135.13(c)(2).
Description of Relief Sought/ Disposition: To permit Ameristar to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 04/12/2001, Exemption No. 7500.*

Docket No.: FAA–2001–9031.
Petitioner: Houston Helicopters, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit HHI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 04/12/ 2001, Exemption No. 7501.*

Docket No.: FAA–2001–9100.
Petitioner: Tex-Air Helicopters, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Tex-Air to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 04/12/2001, Exemption No. 7502.*

Docket No.: FAA–2001–8871.
Petitioner: Mentone Flying Club, Inc.
Section of 14 CFR Affected: 14 CFR 135.231, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/ Disposition: To permit Mentone to conduct sightseeing flights at Fulton County Airport for the one-day Round Barn Festival charitable event in June 2001, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant, 04/12/2001, Exemption No. 7503.*

Docket No.: FAA–2001–9081.
Petitioner: Helicopter Experts, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit HEI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 04/12/ 2001, Exemption No. 7497.*

Docket No.: FAA–2001–9166 (previously Docket No. 30076).
Petitioner: TACA International Airlines.
Section of 14 CFR Affected: 14 CFR 121.344(b).
Description of Relief Sought/ Disposition: To permit TAI to operate five Airbus A300 airplanes (Registration Nos. N59106, N59107, N59139, N59140, and N68142) without installing the required DFDR on each airplane until August 20, 2001. *Grant, 04/17/2001, Exemption No. 7350A.*

Docket No.: FAA–2001–9166 (previously Docket No. 28828).
Petitioner: North American Airlines Inc.
Section of 14 CFR Affected: 14 CFR 119.67(a)(1).
Description of Relief Sought/ Disposition: To permit Edward F. Dascoli to act as the Director of Operations for NAA without holding an airline transport pilot certificate. *Grant, 04/13/2001, Exemption No. 7510.*

[FR Doc. 01–11260 Filed 5–3–01; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Chico Municipal Airport, Chico, CA

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Chico Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before June 4, 2001.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210 Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert A. Grierson, Airport Manager of the Chico Municipal Airport, at the following address: City of Chico, P.O. Box 3420, Chico, CA 95927. Air carriers and foreign air carriers may submit copies of written comments previously provided to the city of Chico under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone (650) 876–2806. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from PFC at Chico Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). On April 4, 2001, the FAA determined that the application to impose and use a PFC submitted by the city of Chico was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 3, 2001.

The following is a brief overview of the impose and use application No. 01–04–C–00–CIC:

Level of proposed PFC: $3.00.
Proposed charge effective date: November 1, 2001.
Proposed charge expiration date: September 1, 2006.
Total estimated PFC revenue: $536,747.
Brief description of the proposed projects: Access road and drainage facilities between Fortress Street and aircraft parking apron development including complete engineering design and construction; Rehabilitate underground electrical duct and cable system-electrical vault to terminal to airport traffic control tower to apron edge; Runway 13L/31R pavement rehabilitation; Fortress Street overlay and reconstruction; Commercial road development-road construction and gate controls-Boeing Avenue, Convair Court, Fairchild Court, Lockheed Court, Piper Court, and Alley Road; New airfield sweeper: Replace airfield guidance signs-3 and noise abatement signs-2; Overlay runway 13R/31L and taxiways B, D, E & F between parallel runways; Expand T-hangar area taxiway and connect T-hangar taxiway to taxiway A; Acquire insulation suits for aircraft fire and rescue personnel; Airport master plan study; infield grading; Extend security fence ditch crossings; Improve emergency access and service road to west side of airport; and Installation of automated weather observation system.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the city of Chico.

Issued in Hawthorne, California, on April 4, 2001.

Herman C. Bliss,
Manager, Airports Division, Western-Pacific Region.

[FR Doc. 01–11263 Filed 5–3–01; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (01–05–C–00–EGE) To Impose and To Use a Passenger Facility Charge (PFC) at the Eagle County Regional Airport, Submitted by the County of Eagle, CO

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at the Walker Field Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before June 4, 2001.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration;

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26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. James P. Elwood, Airport Manager, at the following address: Eagle County Regional Airport, P.O. Box 850, Eagle, Colorado 81631.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to the Eagle County Regional Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Schaffer, (303) 342–1258; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (01–05–C–00–EGE) to impose and use a PFC at the Eagle County Regional Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 23, 2001, the FAA determined that the application to impose and use a PFC submitted by the County of Eagle, Colorado, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 21, 2001.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: April 1, 2009.

Proposed charge expiration date: July 1, 2018.

Total requested for use approval: $8,132,130.

Brief description of proposed project: Commercial Terminal Building Expansion.

Class or classes of air carriers, which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Eagle County Regional Airport.

Issued on Renton, Washington on April 23, 2001.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 01–11262 Filed 5–3–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In March 2001, there were 12 applications approved. This notice also includes information on one application, approved in January 2001, inadvertently left off the January 2001 notice. Additionally, seven approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Hattiesburg-Laurel Regional Airport Authority, Hattiesburg, Mississippi.

Application Number: 01–03–C–00–PIB.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved In This Decision: $149,610.

Earliest Charge Effective Date: June 1, 2001.

Estimated Charge Expiration Date: December 1, 2003.

Class of Air Carriers Not Required To Collect PFC'S: None.

Brief Description of Projects Approved for Collection and Use:

Acquire aircraft rescue and firefighting (ARFF) vehicle.
Design phase of runway overlay.
Install security fencing.
Install new airfield signage.
Acquire land for development.
Acquire security vehicle.
Construct ramp edge taxiway and apron expansion.
Acquire security communications equipment.
Terminal renovations, phase I.
Acquire security vehicle.
Terminal renovations, phase II.
Airfield erosion control, ditch #1.
Rehabilitate security system.
Terminal renovations, phase III.

Decision Date: January 10, 2001.

For Further Information Contact: Patrick Vaught, Jackson Airports District Office, (601) 664–9885.

Public Agency: Milwaukee County, Milwaukee, Wisconsin.

Application Number: 00–06–C–00–MKE.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $22,667,375.

Earliest Charge Effective Date: May 1, 2004.

Estimated Charge Expiration Date: July 1, 2006.

Class of Air Carriers Not Required To Collect PFC'S: Part 135 air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at General Mitchell International Airport (MKE).

Brief Description of Projects Approved for Collection at MKE and Use at MKE:

Pavement replacement taxiways A and A3.
Reconstruct perimeter road.
Rehabilitate runway 7R/25L.
C concourse stem and six-gate expansion—design.
Acquire flight information display and paging systems.
Master plan update.
Terminal apron joint repair.
Sealcoat runways 7L/25R and 13/31 and associated taxiways.
Electrical master plan.
Rehabilitate taxiway B.
Construct abrasive storage building.
Upgrade security system.
Runway 1L/19R centerline and touchdown zone lights.
C concourse taxiway expansion.
Rehabilitate baggage claim area—design.
Rehabilitate taxiway M.
Construct maintenance storage building.
Hush house notice suppressor—design.

Brief Description of Project Approved for Collection at MKE and Use at Lawrence J. Timmerman Airport:

Rehabilitate apron and taxilanes.

Brief Description of Project Approved for Collection at MKE:

C concourse stem and six-gate expansion—construction.

Decision Date: March 8, 2001.

FOR FURTHER INFORMATION CONTACT: Sandra E. DePottey, Minneapolis Airports District Office, (612) 713–4363.

Public Agency: Town of Islip, New York.

Application Number: 01–04–C–00–ISP.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $441,949.

Earliest Charge Effective Date: June 1, 2005.

Estimated Charge Expiration Date: August 1, 2005.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Long Island Mac Arthur Airport.

Brief Description of Projects Approved for Collection and Use:

Rehabilitation of runway 10/28.
Terminal master plan and airport layout plan update.
Acquisition of an ARFF vehicle.
Acquisition of two airport vacuum sweepers.
Purchase one airport incident command vehicle.
Purchase snow removal equipment;
Purchase two airport security vehicles.
Rehabilitate taxiway A.

Decision Date: March 12, 2001.

FOR FURTHER INFORMATION CONTACT: Dan Vornea, New York Airports District Office, (416) 227–3812.

Public Agency: County of Kern, Bakersfield, California.

Application Number: 01–03–C–00–BFL.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $9,086,000.

Earliest Charge Effective Date: May 1, 2002.

Estimated Charge Expiration Date: January 1, 2015.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Project Approved for Collection and Use: New passenger terminal.

Brief Description of Project Approved for Use: Land acquisition for airport expansion.

Decision Date: March 16, 2001.

FOR FURTHER INFORMATION CONTACT: David Delshad, Western Pacific Region Airports Division, (310) 725–3627.

Public Agency: Pitt-Greenville Airport Authority, Greenville, North Carolina.

Application Number: 01–02–C–00–PGV.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $1,480,404.

Earliest Charge Effective Date: July 1, 2001.

Estimated Charge Expiration Date: May 1, 2009.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Environmental assessment.
Relocate Highway 39.
Update airport layout plan.
Taxiway A extension.
Realignment/rehabilitation of taxiways A and B and air carrier apron (design only).
Rehabilitate ARFF building.
Rehabilitate runways.
Rehabilitate airfield lighting.
Rehabilitate navigational aids.
Rehabilitate terminal building.
Prepare PFC application.
Runway 2 safety area improvements.
Taxiway A relocation.
Air carrier apron rehabilitation.
Taxiway B relocation.
Acquire ARFF vehicle.
Land acquisition.

Brief Description of Projects Approved for Use:

Approach lighting system for runway 20.
Extend runway 20 by 500 feet.

Decision Date: March 19, 2001.

FOR FURTHER INFORMATION CONTACT: Rans D. Black, Atlanta Airports District Office, (404) 305–7141.

Public Agency: County of Clinton, Plattsburgh, New York.

Application Number: 01–04–I–00–PLB.

Application Type: Impose a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $46,275.

Earliest Charge Effective Date: June 1, 2001.

Estimated Charge Expiration Date: December 1, 2002.

Class if Air Carriers Not Required To Collect PFC's: Non scheduled/on-demand operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Clinton County Airport.

Brief Description of Projects Approved for Collection:

On airport obstruction removal (phases I and II).
Transient apron rehabilitation.

Decision Date: March 22, 2001.

FOR FURTHER INFORMATION CONTACT: Robert Levine, New York Airports District Office, (516) 227–3807.

Public Agency: Lehigh-Northampton Airport Authority, Allentown, Pennsylvania.

Application Number: 01–05–C–00–ABE.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $2,807,572.

Earliest Charge Effective Date: June 1, 2001.

Estimated Charge Expiration Date: June 1, 2003.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Lehigh Valley International Airport.

Brief Description of Projects Approved for Collection and Use:

Land acquisition—runway 24 noise—Toye.
Land acquisition—runway 24 runway protection zone—Piechota, Stahley, Fegley, and Festa-A-Pizza.
Land acquisition—Runway 13 approach—Sovereign Bank and Allentown-Bethlehem Industrial.
Land acquisition for runway 24 noise compatibility.
Land acquisition—runway 13 approach—Willow Brook and Willow Brook east.
Land acquisition—24—Dr. Prah and Partridge/Peartree.
Mimic panel.
ARFF vehicle.
Master plan.
Rehabilitate runway 6/24.
Air cargo apron (phase I).
Noise monitoring system.
Part 150 study.
RON apron.

Decision Date: March 26, 2001.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sullivan, Harrisburg Airports District Office, (717) 730–2832.

Public Agency: Regional Airport Authority of Louisville and Jefferson County, Louisville, Kentucky.

Application Number: 01–02–C–00–SDF.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved In This Decision: $16,398,940.

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Earliest Charge Effective Date: January 1, 2015.

Estimated Charge Expiration Date: June 1, 2018.

Classes of Air Carriers Not Required To Collect PFC's: Any (1) air taxi and commercial operator; (2) Certified air carriers; and (3) certified route air carriers having fewer than 500 annual enplanements at Louisville International Airport (SDF).

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each approved class accounts for less than 1 percent of the total annual enplanements at SDF.

Brief Description of Projects Approved for Collection and Use:

West perimeter road.
Flight track monitoring system.
ARFF station.
Passenger terminal modifications.
Charger terminal/customs facility.
Northeast terminal apron.

Decision Date: March 27, 2001.

FOR FURTHER INFORMATION CONTACT: Jerry O. Bowers, Memphis Airports District Office, (901) 544–3495, extension 21.

Public Agency: Indiana Airport Authority, Indianapolis, Indiana.

Application Number: 01–03–C–00–IND.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $444,022,707.

Earliest Charge Expiration Date: April 1, 2022.

Estimated Charge Expiration Date: April 1, 2022.

Class of Air Carriers Not Required To Collect PFC's: Non-scheduled on-demand air carriers.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Indianapolis International Airport.

Brief Description of Project Approved for Collection and Use at a $4.50 PFC Level: Midfield terminal.

Brief Description of Projects Approved for Collection and Use at a $3.00 PFC Level:

Preparation of PFC application (2000).
Preparation of PFC amendment and application (1996).

Decision Date: March 28, 2001.

FOR FURTHER INFORMATION CONTACT: Gary K. Regan, Chicago Airports District Office, (847) 294–7525.

Public Agency: City of Manchester, New Hampshire.

Application Number: 01–09–C–00–MHT.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $700,000.

Earliest Charge Effective Date: April 1, 2017.

Estimated Charge Expiration Date: June 1, 2017.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Manchester Airport.

Brief Description of Project Approved for Collection and Use: Acquire ARFF vehicle.

Decision Date: March 28, 2001.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Scott, New England Region Airports Division, (781) 238–7614.

Public Agency: Kenton County Airport Board, Covington, Kentucky.

Application Number: 01–06–C–00–CVG.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $21,117,000.

Earliest Charge Effective Date: November 1, 2001.

Estimated Charge Expirotion Date: June 1, 2002.

Classes of Air Carriers Not Required To Collect PFC's: (1) Part 121 supplemental operators which operate at the airport without an operating agreement with the public agency and enplane less than 1,500 passengers per year; (2) Part 135 on-demand air taxis, both fixed wing and rotary.

Determination: Approved. Based on the information contained in the public agency's application, the FAA has determined that each approved class accounts for less than 1 percent of the total annual enplanements at Cincinnati/Northern Kentucky International Airport.

Brief Description of Projects Approved for Collection and Use:

Noise compatibility program measures—1999 Part 150 update.
South detention basin closure.
Part 107.14 security system acquisition (original acquisition).

Brief Description of Project Approved in Part for Collection and Use: ARFF training facility upgrades.

Determination: Partially approved. The new propane-fired five-story concrete fire training tower is not eligible under the Airport Improvement Program in accordance with Program Guidance Letter, "Regional Burn Pits" (June 4, 1991). There are no Part 139 requirements for structural fire training and exercises involving elevated evacuations of a height commensurate with the largest aircraft using the airport. The approved amount was reduced from the amount requested by the estimated cost of the proposed fire training tower.

Decision Date: March 28, 2001.

FOR FURTHER INFORMATION CONTACT: Jerry O. Bowers, Memphis Airports District Office, (901) 544–3495, extension 21.

Public Agency: Cheyenne Airport Board, Cheyenne, Wyoming.

Application Number: 01–02–C–00–CYS.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $407,728.

Earliest Charge Effective Date: August 1, 2005.

Estimated Charge Expiration Date: January 1, 2011.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Land acquisition for noise.
Glycol containment system.
Taxiway A extension.
Noise compatibility land development.
Storm drainage master plan.
Runways 12/30 and 8/26 safety area improvements.
Construct commercial service apron.

Decision Date: March 28, 2001.

FOR FURTHER INFORMATION CONTACT: Christopher J. Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: Jackson Hole Airport Board, Jackson, Wyoming.

Application Number: 01–07–C–00–JAC.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $111,930.

Earliest Charge Effective Date: June 1, 2002.

Estimated Charge Expiration Date: October 1, 2002.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Install medium intensity approach lighting system.
Air carrier apron reconstruction.

Brief Description of Projects Approved in Part for Collection and Use: Snow removal equipment and PFC administration.

Determination: The replacement of the snow plow attachment is considered maintenance and is not PFC eligible. The approved amount was reduced from the amount requested by the estimated cost of the snow plow attachment.

Brief Description of Project Withdraw: Aircraft parking apron extension.

Determination: This project was withdrawn by the public agency by letter dated December 18, 2000. Therefore, the FAA did not rule on this project in this decision.

Decision Date: March 30, 2001.

FOR FURTHER INFORMATION CONTACT: Christopher J. Schaffer, Denver Airports District Office, (303) 342–1258.

AMENDMENTS TO PFC APPROVALS

Amendment No., city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
93–01–C–03–DAB, Daytona Beach, FL	02/28/01	$8,702,230	$4,336,534	02/01/01	08/01/97
98–05–C–01–ESC, Escanaba, MI	02/28/01	196,095	182,700	10/01/00	07/01/00
98–04–C–01–JST, Johnstown, PA*	03/02/01	496,540	628,121	04/01/03	10/01/06
92–01–C–03–TWF, Twin Falls, ID*	03/12/01	1,140,567	1,145,067	07/01/02	07/01/02
00–02–C–01–TWF, Twin Falls, ID*	03/12/01	483,040	483,040	01/01/07	07/01/05
92–01–C–04–GJT, Grand Junction, CO	03/21/01	1,794,117	1,787,415	04/01/03	04/01/03
96–02–U–03–GJT, Grand Junction, CO	03/21/01	NA	NA	04/01/03	04/01/03

Note: The amendments denoted by an asterisk (*) include a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Johnstown, PA, this change is effective on May 1, 2001. For Twin Falls, ID, this change is effective on June 1, 2001.

Issued in Washington, DC, on April 26, 2001.

Eric Gabler,

Manager, Passenger Facility Charge Branch.

[FR Doc. 01–11265 Filed 5–3–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (#01–04–C–00–GJT) To Impose and To Use a Passenger Facility Charge (PFC) at the Walker Field Airport, Submitted by the Walker Field Airport Authority, Grand Junction, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at the Walker Field Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before June 4, 2001.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Corinne C. Nystrom, Airport Manager, at the following address: Walker field Airport Authority, 2828 Walker Field Drive, Suite 211, Grand Junction, Colorado 81506.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to the Walker Field Airport Authority, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Schaffer, (303) 342–1258; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#01–04–C–00–GJT) to impose and use a PFC at the Walker Field Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 23, 2001, the FAA determined that the application to impose and use a PFC submitted by the Walker Field Airport Authority, Grand Junction, Colorado, was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 24, 2001.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: October 1, 2001.

Proposed charge expiration date: September 1, 2006.

Total requested for use approval: $50,000.00.

Brief description of proposed projects: Runaway 4/22 Runway End Identifier Lights (REILS), Electrical Vault Replacement, Air Carrier Ramp Expansion, and Expansion of Terminal Building Boarding Area, Concourses, and Loading Bridges.

Class or classes of air carriers, which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Walker Field Airport.

Issued in Renton, Washington on April 23, 2001.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 01–11261 Filed 5–3–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Agency Information Collection Activities: Submission for OMB Review

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) for review and comment. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on February 12, 2001 (66 FR 9890). We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by June 4, 2001.

ADDRESSES: You may send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Wether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burdens could be minimized, including the use of electronic technology, without reducing the quality of the collected information.

FOR FURTHER INFORMATION CONTACT: Byron E. Dover, 202–366–2161, Office of Safety Design, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

OMB Control No: 2125–0579 (Expiration Date: June 30, 2001).

Title: Drug Offender's Drivers' License Suspension Certification.

Abstract: States are legally required to enact and enforce laws that revoke or suspend the drivers' licenses of any individual convicted of a drug offense and to make annual certifications to the FHWA on their actions. The implementing regulations of the Department of Transportation and Related Agencies Appropriation Act, 1993 (Pubic Law 102–388, October 6, 1992) require annual certifications by the Governors. In this regard, the State must submit by January 1 of each year either a written certification, signed by the Governor, stating that the State is in compliance with 23 U.S.C. 159; or a written certification stating that the Governor is opposed to the enactment or enforcement, and that the State legislature has adopted a resolution expressing its opposition to 23 U.S.C. Section 159.

Beginning in fiscal year 1996, States' failure to comply by October 1 of each fiscal year will result in a withholding penalty of 10 percent from major categories of Federal-aid funds (i.e., National Highway System, Surface Transportation Program and Interstate) from States' apportionments for the fiscal year. Any funds withheld in FY 1996 and thereafter cannot be restored and will be redistributed.

Respondents: 50 States and the District of Columbia and Puerto Rico 1.

Estimated Annual Burden Hours: Annual average of 5 hours for each respondent; 260 total annual burden hours.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: April 30, 2001.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. 01–11269 Filed 5–3–01; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2001–9586]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ANTARES.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before June 4, 2001.

ADDRESSES: Comments should refer to docket number MARAD–2001–9586. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: ANTARES. Owner: Carl W. Roth.

(2) Size, capacity and tonnage of vessel. According to the applicant: "Gross tonnage: 16 tons, Net tonnage: 14 tons, Length: 40.8 feet, Breadth: 14.1 feet, Depth: 5.6 feet "

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "Passenger Charters of no more than 12 passengers. Plan to travel with this Vessel in U.S. waters in the Gulf of Mexico, Atlantic Ocean, and Great Lakes and would like to offer "part-time" charter services to interested passengers. Minimally requesting a waiver for the "Primary Region" which encompass the waters of the vessel's Home Port. Would also like to have the waiver encompass "Secondary Regions A, B, & C" for flexibility in offering "part-time" charter services in those waters as well.

a. Primary Region: Florida Atlantic and Gulf coastal and inland waters tributary thereto of the U.S. (From Pensacola, Florida to Fernandina Beach, Florida)

b. Secondary Region A: Gulf of Mexico coastal and inland waters tributary thereto of the U.S. (From Brownsville, Texas to Pensacola, Florida)

c. Secondary Region B: Atlantic coastal and inland waters tributary thereto of the U.S. (From Fernandina Beach, Florida to Eastport, Maine)

d. Secondary Region C: Great Lakes (Lake Ontario from Cape Vincent, NY to Niagara Falls, NY; Lake Erie from Buffalo, NY to Toledo, Ohio; Lake Huron From Port Huron, Michigan to Mackinaw City, Michigan; Lake Michigan from Mackinaw City, Michigan to Chicago, Illinois; and Lake Superior from Sault Ste. Marie, Michigan to Duluth, Minnesota) waters tributary thereto of the U.S."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1984. Place of construction: St. Hilaire de Riez, France.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "I believe that granting this waiver will not unduly adversely affect any of the 3300–3500 sailboat charter companies offering potentially comparable services in these Regions. The "part-time" nature of my single vessel charter services and geographic distribution should minimize any adverse economic impacts to other operators. The following estimates were identified researching companies providing sailboat charter, boat building/repairing, and commercial shipyard services in the Regions of interest.

a. Primary Region: Estimate approximately 950–1000 sailboat charter companies offering boats, 1500–1600 boat building/repair companies and 8–10 companies offering commercial shipyard services in this Region.

b. Secondary Region A: Estimate approximately 650–700 sailboat charter companies offering boats, 1000–1100 boat building/repair companies and 35–40 companies offering commercial shipyard services in this region.

c. Secondary Region B: Estimate approximately 1250–1300 sailboat charter companies offering boats, 2200–2300 boat building/repair companies and 20–25 companies offering commercial shipyard services in this Region.

d. Secondary Region C: Estimate approximately 450–500 sailboat charter companies offering boats, 1700–1800 boat building/repair companies and 5–10 companies offering commercial shipyard services in this Region."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "I believe that granting this waiver will not unduly adversely affect any of the 75–80 commercial U.S. Shipyards identified since they support much larger vessels."

Dated: April 30, 2001.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 01–11266 Filed 5–3–01; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2001–9584]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel TOP DOG.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before June 4, 2001.

ADDRESSES: Comments should refer to docket number MARAD–2001–9584. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

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Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: TOP DOG. Owner: Lauren Burch.

(2) Size, capacity and tonnage of vessel. According to the applicant: "30 foot Californian Gross tons 12 Net tons 9."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "Vessel will be used for 6 passenger charter use in Southeast Alaska. Fishing, sightseeing, wildlife viewing, transportation."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: Unknown. Place of construction: Builder unknown.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "There will be no impact on other commercial passenger vessel operators. I already operate a vessel, and can only operate one at a time. There will be zero impact beyond what is already being experienced. There are several hundred charter boats in southeast Alaska. Most do hourly or day trips. A few dozen do multiple day trips with 6 or more passengers. I do multiple day trips for groups of 2–4. I know of no other boats that cater to small groups that do not wish to go on larger party boats. I occasionally do one day trips through the internet. Most of the day boat fleet work through the cruise ships."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "The vessel will have no impact on U.S. shipyards. It is a small fiberglass boat that will never know the inside of a shipyard. I anticipate that it will spend the remainder of its life here in southeast Alaska, and continue to have work done on it locally."

Dated: April 30, 2001.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 01–11268 Filed 5–3–01; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2001–9585]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel VENTURE II.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before June 4, 2001.

ADDRESSES: Comments should refer to docket number MARAD–2001–9585. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66. Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: VENTURE II. Owner: Raymond W. Cayer.

(2) Size, capacity and tonnage of vessel. According to the applicant: "Length:44, breadth:13.7, draft:6', gross tons 22, 12 passengers"

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant:

"I intend to use this sailing vessel to do long term charters along the eastern seaboard from Maine to the Virgin Islands and beyond. I don't have one particular place that I intend to work solely out of and I don't intend to do daily in/out charters though a one day charter might arise. I intend to work through local charter brokers who are eager to have such a vessel available to their clients. Term charters would be a weekend to a week long trip to different places. I don't have any one geographic area planned to base the vessels use out of. I would like to charter the vessel in the northeast waters in the summer months and down in the Virgin Islands in the winter months."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1982. Place of construction: Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "I have spoken with local charter boat owners who all seem enthusiastic for my pursuit to try and make a living by taking people for an adventure sail. I have not received any negative responses regarding the introduction of this vessel's operation into the local charter business. According to the local charter brokers there is a shortage of qualified "captain" owned and operated vessels to serve the trade."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "The impact on US shipyards should be a positive one as I will be hauling and servicing the boat at local yards."

Dated: April 30, 2001.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 01–11267 Filed 5–3–01; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–9324]

Highway Safety Programs; Conforming Products List of Screening Devices To Measure Alcohol in Bodily Fluids

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice amends the Conforming Products List (CPL) of devices that conform to the Model Specifications for Screening Devices that Measure Alcohol in Bodily Fluids (59 FR 39382).

EFFECTIVE DATE: May 4, 2001.

FOR FURTHER INFORMATION CONTACT: Dr. James F. Frank, Office of Research and Traffic Records, Research and Evaluation Division (NTS–31), National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; Telephone: (202) 366–5593.

SUPPLEMENTARY INFORMATION: On August 2, 1994, Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids were published in the **Federal Register** (59 FR 39382). In these model specifications, NHTSA recognized industry efforts to develop new technologies. These specifications established performance criteria and methods for testing alcohol screening devices using either breath or other bodily fluids to measure alcohol content. NHTSA established these specifications to support State laws that target youthful offenders (i.e., "zero tolerance" laws) and the Department of Transportation's workplace alcohol testing program. NHTSA published its first CPL for screening devices on December 2, 1994 (59 FR 61923; with a correction in 59 FR 65128). Five devices were on that first list.

On August 15, 1995, NHTSA amended its CPL of screening devices to measure alcohol in bodily fluids in the **Federal Register** (60 FR 42214) by adding two additional devices to the list, thereby bringing the list to seven devices.

Since the publication of that list, five additional devices have been evaluated at the Volpe National Transportation Systems Center in Cambridge, MA and found to conform to the model specifications. Accordingly, these five devices, listed in alphabetical order, are being added to the CPL.

The first new listing is the "Alcohol √™" disposable breath alcohol tubes manufactured by Akers Laboratories, Inc., of Thorofare, NJ. These are disposable tubes that use a potassium dichromate color change to indicate whether the BAC of a breath sample is above the 0.02 threshold. These devices passed all requirements of the model specifications except when read under sodium vapor lighting conditions. Hence, they are approved for use except under sodium vapor lighting conditions, and the manufacturer's package insert specifies this limitation.

The second new listing is the Alco Check 9000 manufactured by Alco Check International of Hudsonville, MI. This device differs from the Alco Check 3000 D.O.T. and the Alco Screen 3000 (the same device sold under two different names) in that it allows for the storage and retrieval of test data by use of an added memory chip. As the Alco Check 3000 D.O.T. and the Alco Screen 3000 already conform to these model specifications, and the added memory chip does not change the alcohol-measuring capability of the device, NHTSA did not require the new Alco Check 9000 to be retested before listing it on this CPL for screening devices.

The third new device on the CPL is the ABI (Alcohol Breath Indicator) manufactured by HAN International Co. Ltd. of Seoul, Korea. This is an electronic device with a two-digit numerical display that uses a semi-conductor sensor.

The last two devices are the "PAS IIIa" and the "PAS Vr" manufactured by PAS Systems International, Inc. of Fredericksburg, VA. These are both electronic devices that use a fuel cell sensor with a two-digit numerical display. The PAS IIIa and PAS Vr are modifications of two different passive alcohol sensors made by the same company, but with a disposable mouthpiece added so that an appropriate deep-lung air sample can be obtained for breath measurements.

Two housekeeping items are also addressed in this notice. First, the company previously listed as STC Diagnostics, Inc. has changed its name to OraSure Technologies, Inc. and the new CPL reflects the inclusion of the new company name in addition to the old one. The name of its product, the Q.E.D. A150 Saliva Alcohol Test, remains the same. Second, there are a number of handheld breath test devices on the NHTSA CPL for Evidential Breath Testers that frequently are used as screening devices. It should be noted that any device on the most recent NHTSA CPL for EBTs which was published on July 21, 2000 (65 FR 45419) that was tested against the 1993 Model Specifications for Evidential Breath Testers (58 FR 48705) also fully meets the requirements of the Model Specifications for Screening Devices that Measure Alcohol in Bodily Fluids. Both procedures evaluate the performance of instruments at the 0.020 BAC level.

The Conforming Products List is therefore amended as follows:

CONFORMING PRODUCTS LIST OF ALCOHOL SCREENING DEVICES

Manufacturer	Device(s)
Akers Laboratories, Inc., Thorofare, NJ	Alcohol √™ [2]
Alco Check International[1], Hudsonville, MI	Alco Check 3000 D.O.T.
	Alco Screen 3000
	Alco Check 9000
Chematics, Inc., North Webster, IN	ALCO-SCREEN 02™ [3]
Guth Laboratories, Inc., Harrisburg, PA	Alco Tector Mark X
	Mark X Alcohol Checker
Han International Co., Ltd., Seoul, Korea	A.B.I. (Alcohol Breath Indicator)
OraSure Technologies, Inc., Bethlehem, PA (Formerly STC Technologies, Inc.)	Q.E.D. A150 Saliva Alcohol Test
PAS Systems International, Inc., Fredericksburg, VA	PAS IIIa
	PAS Vr
Repco Marketing, Inc., Raleigh, NC	Alco Tec III
Roche Diagnostic Systems, Branchburg, NJ	On-Site Alcohol [4]
STC Technologies, Inc.	Q.E.D. A150 Saliva Alcohol Test

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CONFORMING PRODUCTS LIST OF ALCOHOL SCREENING DEVICES—Continued

Manufacturer	Device(s)
Sound Off, Inc.[1], Hudsonville, MI	Digitox D.O.T. Alco Screen 1000

[1] The devices listed by these manufacturers are the same devices sold under diffreent names.
[2] It should be noted that the Alcohol √ disposable breath alcohol screening device manufactured by Akers Laboratories, Inc. passed the model specifications under all lighting conditions except one, namely sodium vapor lighting. The device is being listed on this CPL with the understanding that the manufacturer will specify in written instructions accompanying the product that the device should not be used under sodium vapor lighting conditions. It passed the testing under all other conditions.
[3] While the ALCO-SCREEN 02™ saliva-alcohol screening device manufactured by Chematics, Inc. passed the requirements of the model specifications when tested at 40°C (104°F), the manufacturer has indicated that the device cannot exceed storage temperatures of 27°C (80°F). Instructions to this effect are stated on all packaging accompanying the device. Accordingly, the device should not be stored at temperatures above 27°C (80°F) and, if the device is stored at or below 27°C (80°F) and used at higher temperatures (i.e., within a minute), the devices met the model specifications and the results persisted for 10–15 minutes. When these devices were stored at or below 27°C (80°F) and were equilibrated at 40°C (104°F) for an hour prior to sample application, the devices failed to meet the model specifications. Storage at temperatures above 27°C (80°F), for even brief periods of time, may result in false negative readings.
[4] While this device passed all of the requirements of the model specifications, readings should be taken only after the time specified by the manufacturer. For valid readings, the user should follow the manufacturer's instructions. Readings should be taken one (1) minute after a sample is introduced at or above 30°C (86°F); readings should be taken after two (2) minutes at 18°C–29°C (64.4°–84.2°F); and readings should be taken after five (5) minutes when testing at temperatures at or below 17°C (62.6°F). If the reading is taken before five (5) minutes has elapsed under the cold conditions, the user is likely to obtain a reading that underestimates the actual saliva-alcohol level.

Note that the device made by Akers Laboratories, Inc. is a single-use, disposable breath test device. The devices manufactured by Chematics, Inc., OraSure Technologies, Inc., Roche Diagnostic Systems, Inc., and STC Technologies, Inc. are all single-use, disposable saliva alcohol test devices. The other devices listed are electronic breath testers. Those manufactured by PAS Systems International, Inc. use a fuel-cell sensor, whereas those manufactured by Alco Check International, Guth Laboratories, Han International Co., Ltd., Repco marketing, Inc., and Sound Off, Inc. use semi-conductor sensors.

Issued on: May 1, 2001.

Rose A. McMurray,

Associate Administrator for Traffic Safety Programs.

[FR Doc. 01–11318 Filed 5–3–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–9318]

RIN 2127–AG19

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment; Review: Effectiveness of Retroreflective Tape; Evaluation Report

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments on technical report.

SUMMARY: This notice announces NHTSA's publication of a Technical Report reviewing and evaluating its existing Safety Standard 108, Lamps, Reflective Devices, and Associated Equipment. The report's title is The Effectiveness of Retroreflective Tape on Heavy Trailers.

DATES: Comments must be received no later than September 4, 2001.

ADDRESSES: *Report:* You may obtain a copy of the report free of charge by sending a self-addressed mailing label to Publications Ordering and Distribution Services (NAD–51), National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. A summary of the report is available on the Internet for viewing on line at *www.nhtsa.dot.gov/cars/rules/regrev/evaluate/809222.html*. The full report is available on the Internet in PDF format at *www.nhtsa.dot.gov/cars/rules/regrev/evaluate/pdf/809222.pdf*.

Comments: All comments should refer to the Docket number of this notice (NHTSA–2001–9318). You may submit your comments in writing to: U. S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. You may also submit your comments electronically by logging onto the Dockets Management System website at *http://dms.dot.gov*. Click on "Help & Information" or "Help/Info" to obtain instructions for filing the document electronically.

You may call Docket Management at 202–366–9324 and visit the Docket from 10:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Charles J. Kahane, Chief, Evaluation Division, NPP–22, Plans and Policy, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW, Washington, DC 20590. Telephone: 202–366–2560. FAX: 202–366–2559. E-mail: *ckahane@nhtsa.dot.gov*.

For information about NHTSA's evaluations of the effectiveness of existing regulations and programs: Visit the NHTSA web site at *http://www.nhtsa.dot.gov* and click "Regulations & Standards" underneath "Car Safety" on the home page; then click "Regulatory Evaluation" on the "Regulations & Standards" page.

SUPPLEMENTARY INFORMATION: The technical report evaluates the effectiveness of retroreflective tape in enhancing the visibility of heavy trailers and reducing side and rear impacts by other vehicles into these trailers during dark conditions. It is based on a statistical analysis of 10,959 crash cases investigated by the Florida Highway Patrol and the Pennsylvania State Police in 1997–1999.

The tape is quite effective. It reduced side and rear impacts into trailers, in dark conditions (including "dark-not-lighted," "dark-lighted," "dawn," and "dusk") by 29 percent. In "dark-not-lighted" conditions, the tape reduced side and rear impact crashes by 41 percent. Tape is especially effective in reducing injury crashes. In dark conditions, it reduced side and rear impacts that resulted in fatalities or injuries to drivers of any vehicle by 44 percent.

How Can I Influence NHTSA's Thinking on This Evaluation?

NHTSA welcomes public review of the technical report and invites reviewers to submit comments about the data and the statistical methods used in the analyses. NHTSA will submit to the Docket a response to the comments and, if appropriate, additional analyses that supplement or revise the technical report.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the Docket number of this document (NHTSA–2001–9318) in your comments.

Your primary comments must not be more than 15 pages long (49 CFR 553.21). However, you may attach additional documents to your primary comments. There is no limit on the length of the attachments.

Please send two paper copies of your comments to Docket Management or submit them electronically. The mailing address is U.S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. If you submit your comments electronically, log onto the Dockets Management System website at *http://dms.dot.gov* and click on "Help & Information" or "Help/Info" to obtain instructions.

We also request, but do not require you to send a copy to Christina Morgan, Evaluation Division, NPP–22, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW., Washington, DC 20590 (alternatively, FAX to 202–366–2559 or e-mail to *tmorgan@nhtsa.dot.gov*). She can check if your comments have been received at the Docket and she can expedite their review by NHTSA.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NCC–01, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, SW., Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR part 512).

In addition, send two copies from which you have deleted the claimed confidential business information to Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590, or submit them electronically.

Will the Agency Consider Late Comments?

In our response, we will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments that Docket Management receives after that date.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

How Can I Read the Comments Submitted by Other People?

You may read the comments by visiting Docket Management in person at Room PL–401, 400 Seventh Street, SW., Washington, DC from 10:00 a.m. to 5:00 p.m., Monday through Friday.

You may also see the comments on the Internet by taking the following steps:

a. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov*).

b. On that page, click on "search."

c. On the next page (*http://dms.dot.gov/search/*) type in the four-digit Docket number shown at the beginning of this Notice (6545). Click on "search."

d. On the next page, which contains Docket summary information for the Docket you selected, click on the desired comments. You may also download the comments.

AUTHORITY: 49 U.S.C. 30111, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

William H. Walsh,

Associate Administrator for Plans and Policy.

[FR Doc. 01–11163 Filed 5–3–01; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209446–82]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–209446–82 (TD 8852), Passthrough of Items of an S Corporation to its Shareholders (§ 1.1366–1).

DATES: Written comments should be received on or before July 3, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Passthrough of Items of an S Corporation to its Shareholders.

OMB Number: 1545–1613.

Regulation Project Number: REG–209446–82.

Abstract: Section 1366 requires shareholders of an S corporation to take into account their pro rata share of separately stated items of the S corporation and nonseparately computed income or loss. Section 1.1366–1 of the regulation provides that an S corporation must report, and a shareholder is required to take into account in the shareholder's return, the shareholder's pro rata share, whether or not distributed, of the S corporation's items of income, loss, deduction, or credit.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

This reporting requirement is reflected in the burden of Form 1040, U.S. Individual Income Tax Return, and Form 1120S, U.S. Income Tax Return for an S Corporation.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 26, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–11294 Filed 5–3–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 88–30 and Notice 88–132

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning two existing notices, Notice 88–30, Diesel Fuel and Aviation Fuel Taxes Imposed at Wholesale Level, and Notice 88–132, Diesel and Aviation Fuel Taxes; Rules Effective 1/1/89.

DATES: Written comments should be received on or before July 3, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the notices should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: *Title:* Notice 88–30, Diesel Fuel and Aviation Fuel Taxes Imposed at Wholesale Level, and Notice 88–132, Diesel and Aviation Fuel Taxes; Rules Effective 1/1/89.

OMB Number: 1545–1043.

Notice Number: Notice 88–30 and Notice 88–132.

Abstract: Notice 88–30 and Notice 88–132 require certain persons involved with diesel or aviation fuel (1) to be registered with the Internal Revenue Service, (2) to maintain certain records, and (3) to provide certificates to support exempt purchases. Because of the Code amendments made by the Omnibus Budget Reconciliation Act of 1993, these requirements now apply only with respect to aviation fuel.

Current Actions: There are no changes being made to the notices at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, farms, and state, local or tribal governments.

Estimated Number of Respondents: 3,500.

Estimated Time Per Respondent: 1 hour, 6 minutes.

Estimated Total Annual Burden Hours: 3,850.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 26, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–11295 Filed 5–3–01; 8:45 am]

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Federal Register

Friday,
May 4, 2001

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 405, 412, 413, etc.
Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2002 Rates; Proposed Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 412, 413, 485, and 486

[HCFA–1158–P]

RIN 0938–AK73

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2002 Rates

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: We are proposing to revise the Medicare hospital inpatient prospective payment systems for operating and capital costs to: Implement applicable statutory requirements, including a number of provisions of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (Public Law 106–554); and implement changes arising from our continuing experience with these systems. In addition, in the Addendum to this proposed rule, we are describing proposed changes to the amounts and factors used to determine the rates for Medicare hospital inpatient services for operating costs and capital-related costs. These changes would be applicable to discharges occurring on or after October 1, 2001. We also are setting forth proposed rate-of-increase limits as well as proposed policy changes for hospitals and hospital units excluded from the prospective payment systems.

We also are proposing changes to the policies governing payments to hospitals for the direct costs of graduate medical education and critical access hospitals.

DATES: Comments will be considered if received at the appropriate address, as provided below, no later than 5 p.m. on July 3, 2001.

ADDRESSES: Mail written comments (an original and three copies) to the following address ONLY: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1158–P, P.O. Box 8010, Baltimore, MD 21244–1850.

If you prefer, you may deliver by courier your written comments (an original and three copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–14–03, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to those addresses specified as appropriate for courier delivery may be delayed and could be considered late.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1158–P.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

For comments that relate to information collection requirements, mail a copy of comments to the following addresses:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Attn: John Burke, HCFA–1158–P; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer.

FOR FURTHER INFORMATION CONTACT:

Steve Phillips, (410) 786–4548, Operating Prospective Payment, Diagnosis-Related Groups (DRGs), Wage Index, Hospital Geographic Reclassifications, and Sole Community Hospital Issues

Tzvi Hefter, (410) 786–4487, Capital Prospective Payment, Excluded Hospitals, Graduate Medical Education and Critical Access Hospital Issues

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room C5–12–08 of the Health Care Financing Administration, 7500 Security Blvd., Baltimore, MD, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. Please call (410) 786–7197 to arrange to view these comments.

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I. Background

A. Summary

Section 1886(d) of the Social Security Act (the Act) sets forth a system of payment for the operating costs of acute care hospital inpatient stays under Medicare Part A (Hospital Insurance) based on prospectively set rates. Section 1886(g) of the Act requires the Secretary to pay for the capital-related costs of hospital inpatient stays under a prospective payment system. Under these prospective payment systems, Medicare payment for hospital inpatient operating and capital-related costs is made at predetermined, specific rates for each hospital discharge. Discharges are classified according to a list of diagnosis-related groups (DRGs).

Under section 1886(d)(1)(B) of the Act in effect without consideration of the amendments made by the Balanced Budget Act of 1997 (Public Law 105–33), the Balanced Budget Refinement Act of 1999 (Public Law 106–113, and the recent Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (Public Law 106–554, enacted on December 21, 2000), certain specialty hospitals are excluded from the hospital inpatient prospective payment system: Psychiatric hospitals and units, rehabilitation hospitals and units, children's hospitals, long-term care hospitals, and cancer hospitals. For these hospitals and units, Medicare payment for operating costs is based on reasonable costs subject to a hospital-specific annual limit, until the payment provisions of Public Laws 105–33, 106–113, and 106–554 that are applicable to three classes of these hospitals are implemented, as discussed below.

Various sections of Public Laws 105–33, 106–113, and 106–554 provide for the transition of rehabilitation hospitals and units, psychiatric hospitals and units, and long-term care hospitals from being paid on an excluded hospital basis to being paid on an individual prospective payment system basis. These provisions are as follows:

- Rehabilitation Hospitals and Units. Section 1886(j) of the Act, as added by section 4421 of Public Law 105–33 and amended by section 125 of Public Law 106–113 and section 305 of Public Law 106–554, authorizes the implementation of a prospective payment system for inpatient hospital services furnished by rehabilitation hospitals and units. Section 4421 of Public Law 105–33 amended the Act by adding section 1886(j). Section 1886(j) of the Act provides for a fully implemented prospective payment system for inpatient rehabilitation hospitals and rehabilitation units, effective for cost reporting periods beginning on or after October 2002, with payment provisions during a transitional period of October 1, 2000 to October 1, 2002 based on target amounts specified in section 1886(b) of the Act. Section 125 of Public Law 106–113 amended section 1886(j) of the Act to require the Secretary to use a discharge as the payment unit for inpatient rehabilitation services under the prospective payment system and to establish classes of patient discharges by functional-related groups. Section 305 of Public Law 106–554 further amended section 1886(j) of the Act to allow hospitals to elect to be paid the full Federal prospective payment rather than the transitional period payments specified in the Act. A brief discussion of the November 3, 2000 proposed rule (65 FR 66304) that we issued to propose implementation of the prospective payment system for inpatient rehabilitation hospitals and rehabilitation units is included under section VI.A.4. of this preamble.
- Psychiatric Hospitals and Units. Sections 124(a) and (c) of Public Law 106–113 provide for the development of a per diem prospective payment system for payment for inpatient hospital services of psychiatric hospitals and units under the Medicare program, effective for cost reporting periods beginning on or after October 1, 2002. This system must include an adequate patient classification system that reflects the differences in patient resource use and costs among these hospitals and must maintain budget neutrality. We are in the process of developing a proposed rule, to be followed by a final rule, to implement the prospective payment system for psychiatric hospitals and units, effective for October 1, 2002.
- Long-Term Care Hospitals. Sections 123(a) and (c) of Public Law 106–113 provide for the development of a per discharge prospective payment system for payment for inpatient hospital services furnished by long-term care hospitals under the Medicare program, effective for cost reporting periods beginning on or after October 1, 2002. Section 307(b)(1) of Public Law 106–554 provides that payments under the long-term care prospective payment system will be made on a prospective payment basis rather than a cost basis. The long-term care hospital prospective payment system must include a patient classification system that reflects the differences in patient resource use and costs, and must maintain budget neutrality. We are planning to develop a proposed rule, to be followed by a final rule, to implement the prospective payment system for long-term care hospitals, effective for October 1, 2002. Section 307 of Public Law 106–554 provides that if the Secretary is unable to develop a prospective payment system for long-term care hospitals that can be implemented by October 1, 2002, the Secretary must implement a prospective payment system that bases payment under the system using the existing acute hospital DRGs, modified where feasible to account for resource use of long-term care hospital patients using the most recently available hospital discharge data for long-term care services.

Under sections 1820 and 1834(g) of the Act, payments are made to critical access hospitals (CAHs) (that is, rural hospitals or facilities that meet certain statutory requirements) for inpatient and outpatient services on a reasonable cost basis. Reasonable cost is determined under the provisions of section 1861(v)(1)(A) of the Act and existing regulations under Parts 413 and 415.

Under section 1886(a)(4) of the Act, costs of approved educational activities are excluded from the operating costs of inpatient hospital services. Hospitals with approved graduate medical education (GME) programs are paid for the direct costs of GME in accordance with section 1886(h) of the Act; the amount of payment for direct GME costs for a cost reporting period is based on the hospital's number of residents in that period and the hospital's costs per resident in a base year.

The regulations governing the hospital inpatient prospective payment system are located in 42 CFR Part 412. The regulations governing excluded hospitals and hospital units are located in Parts 412 and 413. The regulations governing GME payments and payments to CAHs are located in Part 413.

On August 1, 2000, we published a final rule in the **Federal Register** (65 FR 47054) that implemented both statutory requirements and other changes to the Medicare hospital inpatient prospective payment systems for both operating costs and capital-related costs, as well as changes addressing payment for excluded hospitals and payments for GME costs. Generally, these changes were effective for discharges occurring on or after October 1, 2000. On March 2, 2001, we published correction notices in the **Federal Register** (66 FR 13020) relating to the calculation of certain wage indexes and the labeling of certain DRGs.

Public Law 106–554 made a number of changes to the Act relating to prospective payments to hospitals for inpatient services and payments to excluded hospitals. This proposed rule would implement amendments enacted by Public Law 106–554 relating to FY 2002 payments for hospital inpatient services, new medical services and technology, GME costs, the payment adjustment for disproportionate share hospitals (DSHs), the indirect medical education (IME) adjustment for teaching hospitals, sole community hospitals (SCHs), and CAHs. It would also implement changes affecting hospitals' geographic reclassifications and wage index. These changes are addressed in sections II., III., IV., and VI. of this preamble.

Other provisions of Public Law 106–554 that relate to Medicare payments to hospitals effective prior to October 1, 2001 (that is, for FY 2001 or for the period between April 1, 2001 and September 30, 2001), are addressed in a separate interim final rule with comment period (HCFA–1178–IFC).

B. Major Contents of This Proposed Rule

In this proposed rule, we are setting forth proposed changes to the Medicare hospital inpatient prospective payment systems for operating costs and for capital-related costs in FY 2002. We also are proposing changes relating to payments for GME costs and payments to excluded hospitals and units and CAHs. The proposed changes would be

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effective for discharges occurring on or after October 1, 2001.

The following is a summary of the major changes that we are proposing to make:

1. Proposed Changes to the DRG Reclassifications and Recalibrations of Relative Weights

As required by section 1886(d)(4)(C) of the Act, we adjust the DRG classifications and relative weights annually. Based on analyses of Medicare claims data, we are proposing to establish a number of new DRGs and make changes to the designation of diagnosis and procedure codes under other existing DRGs. Our proposed changes for FY 2002 are set forth in section II. of this preamble.

We also address the provisions of section 533 of Public Law 106–544 regarding development of a mechanism for adequate payment for new medical services and technologies and the required report to Congress on expeditiously introducing new medical services and technology into the DRGs.

2. Proposed Changes to the Hospital Wage Index

In section III. of this preamble, we discuss proposed revisions to the wage index and the annual update of the wage data. Specific issues addressed in this section include the following:

- The FY 2002 wage index update, using FY 1998 wage data.
- The transition to excluding from the wage index Part A physician wage costs that are teaching-related, as well as resident and Part A certified registered nurse anesthetist (CRNA) costs.
- The costs of contracted pharmacy and laboratory services.
- The collection of occupational mix data, as required by section 304(c) of Public Law 106–554.
- Revisions to the wage index based on hospital redesignations and reclassifications, including changes to reflect the provisions of sections 304(a) and (b) of Public Law 106–554 relating to 3-year wage index reclassifications by the MGCRB, the use of 3 years of wage data for evaluating reclassification requests for FYs 2003 and later, and the application of a statewide wage index for reclassifications beginning in FY 2003.
- Requests for wage data corrections and modification of the process and timetable for updating the wage index, and a proposed revision of that timetable.

3. Other Decisions and Proposed Changes to the Prospective Payment System for Inpatient Operating and Graduate Medical Education Costs

In section IV. of this preamble, we discuss several provisions of the regulations in 42 CFR Parts 412 and 413 and set forth certain proposed changes concerning the following:

- Sole community hospitals.
- Rural referral centers.
- Changes relating to the IME adjustment as a result of section 302 of Public Law 106–554.
- Changes relating to the DSH adjustment as a result of section 303 of Public Law 106–554.
- The establishment of policies relating to the 3-year application of wage index reclassifications by the MGCRB, the use of 3 years of wage data in evaluating reclassification requests to the MGCRB for FYs 2003 and later, and the use of a statewide wage index for reclassifications beginning in FY 2003, as required by sections 304(a) and (b) of Public Law 106–554.
- Proposed requirements for additional payments for new medical services and technology, as required by section 533(b) of Public Law 106–554.
- Changes relating to payment for the direct costs of GME, including changes as a result of section 511 of Public Law 106–554.

4. Prospective Payment System for Capital-Related Costs

In section V. of this preamble, we specify the proposed payment requirements for capital-related costs, including the special exceptions payment, beginning October 1, 2002.

5. Proposed Changes for Hospitals and Hospital Units Excluded from the Prospective Payment Systems

In section VI. of this preamble, we discuss the following proposals concerning excluded hospital and hospital units and CAHs:

- Limits on and adjustments to the proposed target amounts for FY 2002.
- Revision of the methodology for wage neutralizing the hospital-specific target amounts using preclassified wage data.
- Updated caps for new excluded hospitals and units as well as changes in the effective date of classifications of excluded hospitals and units.
- The prospective payment system for inpatient rehabilitation hospitals and units.
- Payments to CAHs, including exclusion from the payment window requirements; the availability of CRNA pass-through payments; payment for emergency room on-call physicians; treatment of ambulance services; the use of certain qualified practitioners for preanesthesia and postanesthesia evaluations; and clarification of location requirements for CAHs.

6. Determining Prospective Payment Operating and Capital Rates and Rate-of-Increase Limits

In the Addendum to this proposed rule, we set forth proposed changes to the amounts and factors for determining the FY 2002 prospective payment rates for operating costs and capital-related costs. We also establish the proposed threshold amounts for outlier cases. In addition, we address update factors for determining the rate-of-increase limits for cost reporting periods beginning in FY 2002 for hospitals and hospital units excluded from the prospective payment system.

7. Impact Analysis

In Appendix A, we set forth an analysis of the impact that the proposed changes described in this proposed rule would have on affected entities.

8. Capital Acquisition Model

Appendix B contains the technical appendix on the proposed FY 2002 capital cost model.

9. Report to Congress on the Update Factor for Hospitals Under the Prospective Payment System and Hospitals and Units Excluded From the Prospective Payment System

Section 1886(e)(3) of the Act requires the Secretary to report to Congress on our initial estimate of a recommended update factor for FY 2002 for payments to hospitals included in the prospective payment systems, and hospitals excluded from the prospective payment systems. This report is included as Appendix C to this proposed rule.

10. Proposed Recommendation of Update Factor for Hospital Inpatient Operating Costs

As required by sections 1886(e)(4) and (e)(5) of the Act, Appendix D provides our recommendation of the appropriate percentage change for FY 2002 for the following:

- Large urban area and other area average standardized amounts (and hospital-specific rates applicable to sole community and Medicare-dependent, small rural hospitals) for hospital inpatient services paid for under the prospective payment system for operating costs.
- Target rate-of-increase limits to the allowable operating costs of hospital inpatient services furnished by hospitals and hospital units excluded from the prospective payment system.

11. Discussion of Medicare Payment Advisory Commission Recommendations

Under section 1805(b) of the Act, the Medicare Payment Advisory Commission (MedPAC) is required to submit a report to Congress, not later than March 1 of each year, that reviews and makes recommendations on Medicare payment policies. This annual report makes recommendations concerning hospital inpatient payment policies. In section VII. of this preamble, we discuss the MedPAC recommendations and any actions we are proposing to take with regard to them (when an action is recommended). For further information relating specifically to the MedPAC March 1 report or to obtain a copy of the report, contact MedPAC at (202) 653–7220 or visit MedPAC's website at: www.medpac.gov.

II. Proposed Changes to DRG Classifications and Relative Weights

A. Background

Under the prospective payment system, we pay for inpatient hospital services on a rate per discharge basis that varies according to the DRG to which a beneficiary's stay is assigned. The formula used to calculate payment for a specific case takes an individual hospital's payment rate per case and multiplies it by the weight of the DRG to which the case is assigned. Each DRG weight represents the average resources required to care for cases in that particular DRG relative to the average resources used to treat cases in all DRGS.

Congress recognized that it would be necessary to recalculate the DRG relative weights periodically to account for changes in resource consumption. Accordingly, section 1886(d)(4)(C) of the Act requires that the Secretary adjust the DRG classifications and relative weights at least annually. These adjustments are made to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources. The proposed changes to the DRG classification system, and the proposed recalibration of the DRG weights for discharges occurring on or after October 1, 2001, are discussed below.

B. DRG Reclassification

1. General

Cases are classified into DRGs for payment under the prospective payment system based on the principal diagnosis, up to eight additional diagnoses, and up to six procedures performed during the stay, as well as age, sex, and discharge status of the patient. The diagnosis and procedure information is reported by the hospital using codes from the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM). Medicare fiscal intermediaries enter the information into their claims processing systems and subject it to a series of automated screens called the Medicare Code Editor (MCE). These screens are designed to identify cases that require further review before classification into a DRG.

After screening through the MCE and any further development of the claims, cases are classified into the appropriate DRG by the Medicare GROUPER software program. The GROUPER program was developed as a means of classifying each case into a DRG on the basis of the diagnosis and procedure codes and demographic information (that is, sex, age, and discharge status). It is used both to classify past cases in order to measure relative hospital resource consumption to establish the DRG weights and to classify current cases for purposes of determining payment. The records for all Medicare hospital inpatient discharges are maintained in the Medicare Provider Analysis and Review (MedPAR) file. The data in this file are used to evaluate possible DRG classification changes and to recalibrate the DRG weights.

In the July 30, 1999 final rule (64 FR 41500), we discussed a process for considering non-MedPAR data in the recalibration process. In order for the use of particular data to be feasible, we must have sufficient time to evaluate and test the data. The time necessary to do so depends upon the nature and quality of the data submitted. Generally, however, a significant sample of the data should be submitted by August 1, approximately 8 months prior to the publication of the proposed rule, so that we can test the data and make a preliminary assessment as to the feasibility of using the data. Subsequently, a complete database should be submitted no later than December 1 for consideration in conjunction with the next year's proposed rule.

Currently, cases are assigned to one of 503 DRGs (including one DRG for a diagnosis that is invalid as a discharge diagnosis and one DRG for ungroupable diagnoses) in 25 major diagnostic categories (MDCs). Most MDCs are based on a particular organ system of the body (for example, MDC 6 (Diseases and Disorders of the Digestive System)). However, some MDCs are not constructed on this basis because they involve multiple organ systems (for example, MDC 22 (Burns)).

In general, cases are assigned to an MDC based on the principal diagnosis, before assignment to a DRG. However, there are five DRGs to which cases are directly assigned on the basis of procedure codes. These are the DRGs for liver, bone marrow, and lung transplants (DRGs 480, 481, and 495, respectively) and the two DRGs for tracheostomies (DRGs 482 and 483). Cases are assigned to these DRGs before classification to an MDC.

Within most MDCs, cases are then divided into surgical DRGs (based on a surgical hierarchy that orders individual procedures or groups of procedures by resource intensity) and medical DRGs. Medical DRGs generally are differentiated on the basis of diagnosis and age. Some surgical and medical DRGs are further differentiated based on the presence or absence of complications or comorbidities (CC).

Generally, the GROUPER does not consider other procedures; that is, nonsurgical procedures or minor surgical procedures generally not performed in an operating room are not listed as operating room (OR) procedures in the GROUPER decision tables. However, there are a few non-OR procedures that do affect DRG assignment for certain principal diagnoses, such as extracorporeal shock wave lithotripsy for patients with a principal diagnosis of urinary stones.

The major changes we are proposing to make to the DRG classification system for FY 2002 are summarized in Charts 1, 2, and 3 below, followed by detailed discussions in individual sections according to MDC assignment. Other issues concerning DRGs are also set forth below. Unless otherwise noted, our DRG analysis is based on data from 100 percent of the FY 2000 MedPAR file containing hospital bills received through May 31, 2000 for discharges in FY 2000.

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CHART 1.—SUMMARY OF PROPOSED CHANGES IN DRG ASSIGNMENTS

Diagnosis related groups (DRGs)	Added as new	Removed
Pre-MDC:		
DRG 512 (Simultaneous Pancreas/Kidney Transplant)	X	
DRG 513 (Pancreas Transplants)	X	
MDC 5 (Diseases and Disorders of the Circulatory System):		
DRG 112 (Percutaneous Cardiovascular Procedures)		X
DRG 514 (Cardiac Defibrillator Implant with Cardiac Catheterization)	X	
DRG 515 (Cardiac Defibrillator Implant without Cardiac Catheterization)	X	
DRG 516 (Percutaneous Cardiovascular Procedures with Acute Myocardial Infarction (AMI))	X	
DRG 517 (Percutaneous Cardiovascular Procedures without AMI, with Coronary Artery Stent Implant	X	
DRG 518 (Percutaneous Cardiovascular Procedures without AMI, without Coronary Artery Stent Implant	X	
MDC 8 (Diseases and Disorders of the Musculoskeletal System and Connective Tissue):		
DRG 519 (Cervical Spinal Fusion with CC)	X	
DRG 520 (Cervical Spinal Fusion without CC)	X	
MDC 20 (Alcohol/Drug Use and Alcohol/Drug-Induced Organic Mental Disorders):		
DRG 434 Alcohol/Drug Abuse or Dependency, Detoxification or Other Symptomatic Treatment with CC)		X
DRG 435 (Alcohol/Drug Abuse or Dependency, Detoxification or Other Symptomatic Treatment without CC)		X
DRG 436 (Alcohol/Drug Dependence with Rehabilitation Therapy)		X
DRG 437 (Alcohol/Drug Dependence, Combined Rehabilitation and Detoxification Therapy)		X
DRG 521 (Alcohol/Drug Abuse or Dependence with CC)	X	
DRG 522 (Alcohol/Drug Abuse or Dependence without CC, with Rehabilitation Therapy)	X	
DRG 523 (Alcohol/Drug Abuse or Dependence without CC, without Rehabilitation Therapy)	X	

CHART 2.—SUMMARY OF PROPOSED ASSIGNMENT OR REASSIGNMENT OF DIAGNOSIS OR PROCEDURE CODES IN EXISTING DRGS

Diagnosis/procedure codes	Removed from DRG	Reassigned to DRG
MDC 5 (Diseases and Disorders of the Circulatory System):		
Principal Diagnosis Code:		
410.01 Acute myocardial infarction of anterolateral wall, initial episode of care.	116	516
410.11 Acute myocardial infarction of other anterior wall, initial episode of care.	116	516
410.21 Acute myocardial infarction of inferolateral wall, initial episode of care.	116	516
410.31 Acute myocardial infarction of inferoposterior wall, initial episode of care.	116	516
410.41 Acute myocardial infarction of other inferior wall, initial episode of care.	116	516
410.51 Acute myocardial infarction of other lateral wall, initial episode of care.	116	516
410.61 True posterior wall infarction, initial episode of care	116	516
410.71 Subendocardial infarction, initial episode of care	116	516
410.81 Acute myocardial infarction of other specified sites, initial episode of care.	116	516
410.91 Acute myocardial infarction of unspecified site, initial episode of care	116	516
Procedure Codes:		
37.94 Implantation or replacement of automatic cardioverter/defibrillation, total system (AICD).	104, 105	514, 515
37.95 Implantation of automatic cardioverter/defibrillator lead(s) only	104, 105	514, 515
37.96 Implantation of automatic cardioverter/defibrillator pulse generator only.	104, 105	514, 515
37.97 Replacement of automatic cardioverter/ defibrillator lead(s) only	104, 105	514, 515
37.98 Replacement of automatic cardioverter/defibrillator pulse generator only.	104, 105	514, 515
Operating Room Procedures:		
35.96 Percutaneous valvuloplasty	116	516, 517, 518
36.01 Single vessel percutaneous transluminal coronary angioplasty (PTCA) or coronary atherectomy without mention of thrombolytic agent.	116	516, 517, 518
36.02 Single vessel percutaneous transluminal coronary angioplasty (PTCA) or coronary atherectomy with mention of thrombolytic agent.	116	516, 517, 518
36.05 Multiple vessel percutaneous transluminal coronary angioplasty (PTCA) or coronary atherectomy performed during the same operation, with or without mention of thrombolytic agent.	116	516, 517, 518
36.09 Other removal of coronary artery obstruction	116	516, 517, 518
37.34 Catheter ablation of lesion or tissues of heart	116	516, 517, 518
92.27 Implantation or insertion of radioactive elements	Non–OR in MDC–5	517
Nonoperating Room Procedures:		
36.06 Insertion of coronary artery stent(s)	116	517
37.21 Right heart cardiac catheterization	104	514

CHART 2.—SUMMARY OF PROPOSED ASSIGNMENT OR REASSIGNMENT OF DIAGNOSIS OR PROCEDURE CODES IN EXISTING DRGS—Continued

Diagnosis/procedure codes	Removed from DRG	Reassigned to DRG
37.22 Left heart cardiac catheterization	104	514
37.23 Right and left heart cardiac catheterization	104	514
37.26 Cardiac electrophysiologic stimulation and recording studies	104, 112	514, 516, 517, 518
37.27 Cardiac mapping	112	516, 517, 518
88.52 Angiocardiography of right heart structures	104	514
88.53 Angiocardiography of left heart structures	104	514
88.54 Combined right and left heart angiocardiography	104	514
88.55 Coronary arteriography using a single catheter	104	514
88.56 Coronary arteriography using two catheters	104	514
88.57 Other and unspecified coronary arteriography	104	514
88.58 Negative-contrast cardiac roentgenography	104	514
MDC 8 (Diseases and Disorders of the Musculoskeletal System and Connective Tissue):		
Procedure Codes:		
81.02 Other cervical fusion, anterior technique	497, 498	519, 520
81.03 Other cervical fusion, posterior technique	497, 498	519, 520
MDC 15 (Newborns and Other Neonates with Conditions Originating in the Perinatal Period)		
Diagnosis Codes:		
773.0 Hemolytic disease due to RH isoimmunization	389	390
773.1 Hemolytic disease due to ABO isoimmunization	389	390
Secondary Diagnosis Codes:		
478.1 Other diseases of nasal cavity and sinuses	390	391
520.6 Disturbances in tooth eruption	390	391
623.8 Other specified noninflammatory disorders of vagina	390	391
709.00 Dyschroma, unspecified	390	391
709.01 Vitiglio	390	391
709.09 Dyschromia, Other	390	391
744.1 Accessory Auricle	390	391
754.61 Congenital pes planus	390	391
757.33 Congenital pigmentary anomalies of skin	390	391
757.39 Other specified anomaly of skin	390	391
764.08 "Light for dates" without mention of fetal malnutrition, 2,000–2,499 grams.	390	391
764.98 Fetal growth retardation, unspecified, 2,000–2,499 grams	390	391
772.6 Cutaneous hemorrhage	390	391
794.15 Abnormal and auditory function studies	390	391
796.4 Other abnormal clinical findings	390	391
V20.2 Routine infant or child health check	390	391
V72.1 Examination of ears and hearing	390	391

CHART 3.—SUMMARY OF PROPOSED RETITLED DRGS

MDC	DRG No.	Current name	Proposed name
MDC 5	DRG 116	Other Permanent Cardiac Pacemaker Implantation, or PTCA, with Coronary Artery Stent Implant.	Other Cardiac Pacemaker Implantation.
MDC 8	DRG 497	Spinal Fusion with CC	Spinal Fusion except Cervical with CC.
MDC 8	DRG 498	Spinal Fusion without CC	Spinal Fusion except Cervical without CC.

2. MDC 5 (Diseases and Disorders of the Circulatory System)

a. Removal of Defibrillator Cases From DRGs 104 and 105

DRGs 104 (Cardiac Valve & Other Major Cardiothoracic Procedures with Cardiac Catheterization) and 105 (Cardiac Valve & Other Major Cardiothoracic Procedures without Cardiac Catheterization) include the replacement or open repair of one or more of the four heart valves. These valves may be diseased or damaged, resulting in either leakage or restriction of blood flow to the heart, compromising the ability of the heart to pump blood. This procedure requires the use of a heart-lung bypass machine, as the heart must be stilled and opened to repair or replace the valve.

Cardiac defibrillators are implanted to correct episodes of fibrillation (very fast heart rate) caused by malfunction of the conduction mechanism of the heart. Through implanted cardiac leads, the defibrillator mechanism senses changes in heart rhythm. When very fast heart rates occur, the defibrillator produces a burst of electric current through the leads to restore the normal heart rate. An implanted defibrillator constantly monitors heart rhythm. The implantation of this device does not require the use of a heart-lung bypass machine, and would be expected to be very different in terms of resource usage, although both procedures currently group to DRGs 104 and 105.

As part of our ongoing review of DRGs, we examined Medicare claims data on DRG 104 and DRG 105. We reviewed 100 percent of the FY 2000 MedPAR file containing hospital bills received through May 31, 2000, for

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discharges in FY 2000, and found that the average charges across all cases in DRG 104 were $84,060, while the average charges across all cases in DRG 105 were $66,348. Carving out code 37.94 (Implantation or replacement of automatic cardioverter/defibrillator, total system [AICD]) from DRGs 104 and 105 increased those average charges to $91,366 for DRG 104 and $67,323 for DRG 105. We identified 11,021 defibrillator cases in DRG 104 (out of 25,112 total cases), with average charges of $74,719, and 2,434 defibrillator cases in DRG 105 (out of 20,094 total cases), with average charges of $59,267.

We performed additional review on cases containing code 37.95 (Implantation of automatic cardioverter/defibrillator lead(s) only) with code 37.96 (Implantation of automatic cardioverter/defibrillator pulse generator only) and on cases containing code 37.97 (Replacement of automatic cardioverter/defibrillator lead(s) only) with code 37.98 (Replacement of automatic cardioverter/defibrillator pulse generator only). This subgrouping contained only 56 patients. The average charges for the 18 patients in DRG 104 were $58,847. The average charges for the 38 patients in DRG 105 were $54,891.

Because we believe the defibrillator cases are significantly different from other cases in DRGs 104 and 105, we are proposing to create two new DRGs: DRG 514 (Cardiac Defibrillator Implant with Cardiac Catheterization) and DRG 515 (Cardiac Defibrillator Implant without Cardiac Catheterization).

We are proposing to remove procedure codes 37.94, 37.95 and 37.96, and 37.97 and 37.98 from DRGs 104 and 105 to form the new DRGs 514 and 515. The proposed new DRGs 514 and 515 would include principal diagnosis codes and procedure codes as reflected in Chart 4 below:

CHART 4.—COMPOSITION OF PROPOSED NEW DRGS 514 AND 515 IN MDC 5

Diagnosis and procedure codes	Included in proposed DRG 514	Included in proposed DRG 515
Principal Diagnosis Codes:		
All of the principal diagnosis codes assigned to MDC–5	X	X
Principal or Secondary Procedure Code:		
37.94 Implantation or replacement of automatic cardioverter/defibrillation, total system (AICD)	X	X
Combination Operating Procedure Codes:		
37.95 Implantation of automatic cardioverter/defibrillator lead(s) only; plus		
37.96 Implantation of automatic cardioverter/defibrillator pulse generator only;	X	X
Or		
37.97 Replacement of automatic cardioverter/defibrillator lead(s) only; plus		
37.98 Replacement of automatic cardioverter/defibrillator pulse generator only	X	X
Plus: One of the Following Nonoperating Room Procedure Codes:		
37.21 Right heart cardiac catheterization	X	
37.22 Left heart cardiac catheterization	X	
37.23 Combined right and left heart cardiac catheterization	X	
37.26 Cardiac electrophysiologic stimulation and recording studies	X	
88.52 Angiocardiography of right heart structures	X	
88.53 Angiocardiography of left heart structures	X	
88.54 Combined right and left heart angiocardiography	X	
88.55 Coronary arteriography using a single catheter	X	
88.56 Coronary arteriography using two catheters	X	
88.57 Other and unspecified coronary arteriography	X	
88.58 Negative-contrast cardiac roentgenography	X	

b. Percutaneous Cardiovascular Procedures

We reviewed other DRGs within MDC 5 in order to determine if there were also logic changes that could be made to these DRGs. The data was arrayed in a variety of ways displaying myriad permutations, resulting in the following proposed changes. A percutaneous transluminal coronary angioplasty (PTCA) is an acute intervention intended to minimize cardiac damage by restarting circulation to the heart. Some patients with an acute myocardial infarction (AMI) are now treated by performing a PTCA during the hospitalization for the AMI. Currently, PTCAs with a coronary stent implant are assigned to DRG 116 (Other Permanent Cardiac Pacemaker Implantation, or PTCA with Coronary Artery Stent Implant), along with pacemaker implants. The remaining percutaneous cardiovascular procedures are assigned to DRG 112 (Percutaneous Cardiovascular Procedures).

The volume of percutaneous cardiovascular procedures has grown dramatically, with 186,669 cases identified in the FY 2000 MedPAR file containing hospital bills submitted through May 31, 2000. Because of the high volume, we decided to review the DRG for percutaneous cardiovascular procedures. As a first step in the evaluation, we combined the percutaneous cardiovascular procedures from DRGs 112 and 116. We then subdivided the combined percutaneous cardiovascular procedure group into two groups based on the principal diagnosis (Pdx) of AMI.

Group	Count	Average charge
With Pdx of AMI	50,442	$31,722
Without Pdx of AMI	136,227	23,989

Each of these groups was further evaluated by subdividing them based on whether a coronary stent was implanted. The vast majority of patients with an AMI had a coronary stent implanted. Patients without an AMI were subdivided into two groups based on whether a coronary stent was implanted.

Group	Count	Average charge
Without Pdx of AMI with stent	111,441	$24,745

Group	Count	Average charge
Without Pdx of AMI without stent	24,786	20,589

Based on this analysis, we are proposing to remove the PTCAs with coronary artery stent from DRG 116, thus limiting DRG 116 to permanent cardiac pacemaker implantation. This removal will leave approximately 68,000 non-PTCA cases in DRG 116.

In conjunction with this evaluation, we considered a new technology, intravascular brachytherapy, that is being used to treat coronary in-stent stenosis. A gamma-radiation-impregnated tape is threaded through the affected vessel for a specified amount of dwell time, and then the tape is removed. Intravascular brachytherapy was approved by the Food and Drug Administration in November 2000.

Intravascular brachytherapy is assigned to procedure code 92.27 (Implantation or insert of radioactive elements). With the use of angioplasty, these cases are currently assigned to DRG 112 (Percutaneous Cardiovascular Procedures). Therefore, cases involving this new technology will be implicated by these proposed changes.

We are proposing to retitle DRG 116 "Other Cardiac Pacemaker Implantation," remove DRG 112, and create three new DRGs: DRG 516 (Percutaneous Cardiovascular Procedures with Acute Myocardial Infarction (AMI)); DRG 517 (Percutaneous Cardiovascular Procedures without AMI, with Coronary Artery Stent Implant; and DRG 518 (Percutaneous Cardiovascular Procedures without AMI, without Coronary Artery Stent Implant). The principal diagnosis codes and operating room and nonoperating room procedure codes that are proposed to be included in the new DRGs 516, 517, and 518 are reflected in Chart 5.

In order to be assigned to new DRG 516, cases must contain one of the principal diagnoses *plus* the operating room procedures listed in Chart 5. Because DRG 516 contains acute myocardial infarction, which is hierarchically ordered before DRGs 517 and 518, any AMI cases also containing codes 92.27 or 36.06 would automatically be assigned to DRG 516. We are proposing to assign patients with a percutaneous cardiovascular procedure and intravascular radiation treatment to new DRG 517. As more data become available, we will reassess the assignment of intravascular radiation treatment to DRG 517. Proposed new DRG 518 would contain the same operating room and nonoperating room procedures as new proposed DRG 517, with the exception of codes 92.27 and 36.06.

CHART 5.—COMPOSITION OF PROPOSED NEW DRGS 516, 517, AND 518 IN MDC 5

Diagnosis and procedure codes	Included in Proposed DRG 516	Included in Proposed DRG 517	Included in Proposed DRG 518
Principal Diagnosis Codes:			
410.01 Acute myocardial infarction of anterolateral wall, initial episode of care	X		
410.11 Acute myocardial infarction of other anterior wall, initial episode of care	X		
410.21 Acute myocardial infarction of inferolateral wall, initial episode of care	X		
410.31 Acute myocardial infarction of inferoposterior wall, initial episode of care	X		
410.41 Acute myocardial infarction of other inferior wall, initial episode of care	X		
410.51 Acute myocardial infarction of other lateral wall, initial episode of care	X		
410.61 True posterior wall infarction, initial episode of care	X		
410.71 Subendocardial infarction, initial episode of care	X		
410.81 Acute myocardial infarction of other specified sites, initial episode of care.	X		
410.91 Acute myocardial infarction of unspecified site, initial episode of care	X		
plus: Operating Room Procedures:			
35.96 Percutaneous valvuloplasty	X	X	X
and			
36.01 Single vessel percutaneous transluminal coronary angioplasty (PTCA) or coronary atherectomy without mention of thromolytic agent	X	X	X
or			
36.02 Single vessel percutaneous transluminal coronary angioplasty (PTCA) or coronary atherectomy with mention of thrombolytic agent	X	X	X
or			
36.05 Multiple vessel percutaneous transluminal coronary angioplasty (PTCA) or coronary atherectomy performed during the same operation, with or without mention of thrombolytic agent	X	X	X
and			
36.09 Other removal of coronary artery obstruction	X	X	X
and			
37.34 Catheter ablation of lesion or tissues of heart	X	X	X
92.27 Implantation or insertion of radioactive elements		X	
OR: Nonoperating Room Procedures:			
36.06 Insertion of coronary artery stent(s)		X	
37.26 Cardiac electrophysiologic stimulation and recording studies	X	X	X
37.27 Cardiac mapping	X	X	X

DRG 121 (Circulatory Disorders with AMI and Major Complication, Discharged Alive), DRG 122 (Circulatory Disorders with AMI without Major Complication, Discharged Alive), and DRG 123 (Circulatory Disorders with AMI, Expired) are not affected by these changes.

c. Removal of Heart Assist Systems

The ICD–9–CM Coordination and Maintenance Committee considered the nonoperative removal of heart assist systems at its November 17, 2000 meeting. A device called the intra-aortic balloon pump (IABP) is one of the most common types of ventricular assist systems. A balloon catheter is placed

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into the patient's descending thoracic aorta, and inflates and deflates with each heartbeat. This device is timed with the patient's own heart rhythm, and inflates and circulates blood to the heart and other organs. This allows the heart to rest and recover. The IABP may be used preoperatively, intraoperatively, or postoperatively. It supports the patient from a few hours to several days.

Code 37.64 (Removal of heart assist system) already exists, and it is considered by the GROUPER to be an operative procedure. However, the nonoperative removal of a heart assist system can be done at the patient's bedside, is noninvasive, and requires no anesthesia. Therefore, the Committee created code 97.44 (Nonoperative removal of heart assist system) for use with discharges beginning on or after October 1, 2001.

In the past, we have assigned new ICD–9–CM codes to the same DRG to which the predecessor code was assigned. If this practice were to be followed, we would have proposed that code 97.44 be assigned to MDC 5, DRGs 478 (Other Vascular Procedures with CC) and 479 (Other Vascular Procedures without CC). After hospital charge data became available, we would have considered moving it to other DRGs. However, in accordance with section 533(a) of Public Law 106–554, which requires a more expeditious technique of recognizing new medical services or technology for the hospital inpatient prospective payment system, we will reconsider this longstanding practice when possible. Therefore, as code 97.44 was designed to capture heart assist system removal that is clearly nonoperative, we are not proposing to designate 97.44 as a code which the GROUPER recognizes as a procedure. This assignment can be found in Table 6B, New Procedure Codes in the addendum to this proposed rule. Therefore, these cases will be assigned by the GROUPER to a medical DRG based on the principal diagnosis, or to a surgical DRG if a surgical procedure recognized by the GROUPER is performed.

3. MDC 8 (Diseases and Disorders of the Musculoskeletal System and Connective Tissue)

a. Refusions

We have received questions from correspondents regarding the appropriateness of the spinal fusion DRGs: DRG 496 (Combined Anterior/Posterior Spinal Fusion); DRG 497 (Spinal Fusion with CC); and DRG 498 (Spinal Fusion without CC). Several correspondents expressed concern about the inclusion of all refusions of the spine into one procedure code, 81.09 (Refusion of spine, any level or technique). The correspondents pointed out that because all refusions using any technique or level are in this one code, all of these cases are assigned to DRG 497 and DRG 498. They also pointed out that fusion cases involving both an anterior and posterior technique are assigned to DRG 496. Although cases with the refusion code that involve anterior and posterior techniques would appear to be more appropriately assigned to DRG 496, this is not the case.

We recognized this limitation in the refusion codes and further acknowledged that this limitation in the ICD–9–CM coding system creates DRG problems by preventing the assignment to DRG 496 even when both anterior and posterior techniques are used for refusion cases. Therefore, we referred the issue to the ICD–9–CM Coordination and Maintenance Committee and requested the Committee to consider code revisions for the refusions of the spine during its year 2000 public meetings.

After its deliberations, the Committee approved a series of new procedure codes for refusion of the spine that could lead to improvements within DRGs 497 and 498. These new codes, listed below, go into effect on October 1, 2001.

81.30 Refusion of spine, not otherwise specified
81.31 Refusion of atlas-axis spine
81.32 Refusion of other cervical spine, anterior technique
81.33 Refusion of other cervical spine, posterior technique
81.34 Refusion of dorsal and dorsolumbar spine, anterior technique
81.35 Refusion of dorsal and dorsolumbar spine, posterior technique
81.36 Refusion of lumbar and lumbosacral spine, anterior technique
81.37 Refusion of lumbar and lumbosacral spine, lateral transverse process technique
81.38 Refusion of lumbar and lumbosacral spine, posterior technique
81.39 Refusion of spine, not elsewhere classified

As previously stated, all refusions of the spine and corrections of the pseudarthrosis of the spine are assigned to code 81.09. Code 81.09, which is always assigned to DRG 497 or DRG 498, includes refusions at any level of the spine using any technique. With the creation of the new procedure codes listed above, it will be possible to determine the level of the spine at which the refusion is performed, as well as the technique used, and assign the case to a more appropriate DRG.

These new procedure codes should greatly improve our ability to determine the level and technique used in the refusion.

In the past, we have assigned new ICD–9–CM codes to the same DRG to which the predecessor code was assigned. If this practice were followed, these new codes would have been assigned to DRG 497 and 498 as they are currently. After data became available, we would have considered moving them to other DRGs. However, in accordance with section 533(a) of Public Law 106–554, which requires more expeditious methods of recognizing new medical services or technology under the inpatient hospital prospective payment system, we will reconsider this longstanding practice when possible. Since the new codes clearly allow us to identify cases where the technique was either anterior or posterior and these cases are clinically similar and, therefore, should be handled in the same fashion, we are proposing to immediately assign these cases on the same basis as the fusion codes (81.00 through 81.09). We would not wait for actual claims data before making this change. These proposed assignments are reflected in Chart 6 and also can be found in Table 6B, in section V. of the Addendum to this proposed rule.

b. Fusion of Cervical Spine

We have received an additional inquiry concerning the spinal DRGs that focused on fusions of the cervical spine. The inquirer stated that there was a significant difference between inpatients who undergo anterior cervical spinal fusion and other types of spinal fusion in regard to treatment, recovery time, costs, and risk of complications. Anterior cervical spinal fusions are assigned to procedure code 81.02, Other cervical fusion, anterior technique. The inquirer pointed out that anterior cervical fusions differ significantly from anterior techniques at other levels since the anatomic approach is far less invasive. Thoracic anterior techniques require working around the cardiac and respiratory systems in the chest cavity, while lumbar anterior working around bowel and digestive system and the abdominal muscles. The inquirer recommended that code 81.02 be removed from DRGs 497 and 498 and grouped separately.

We analyzed claims data from 100 percent of the FY 2000 MedPAR file containing hospital bills received through May 31, 2000, and confirmed

that charges are lower for fusions of the cervical spine than fusions of the thoracic and lumbar spine. This was true for both anterior and posterior cervical fusions of the spine. Our medical consultants agree that the data and their clinical analysis support the creation of new DRGs for cervical fusions of the spine. Therefore, we are proposing to remove procedure codes 81.02 and 81.03 from the spinal fusion DRGs (currently, DRGs 497 and 498) and assign them to new DRGs for cervical spinal fusion with and without CC. We are proposing to make four groupings for fusion DRGs. We believe that the net effect of this proposal would be an increase in the weights for DRGs 497 and 498, since the lower charges for the cervical fusions would be removed. The average standardized charge for all spinal fusions with CCs was $26,957. For all spinal fusions without CCs, the average charge was $16,492. The table below also shows average standardized charges for these types of cases before and after the proposed revisions.

Proposed revised spinal fusion DRGs	Average charge before proposed revisions	Average charge after revisions
DRG 497 Spinal Fusion Except Cervical with CC	$26,957	$36,821
DRG 498 Spinal Fusion Except Cervical without CC	17,492	26,297
DRG 519 Cervical Spinal Fusion with CC		26,957
DRG 520 Cervical Spinal Fusion without CC		16,492

Based on the proposed groupings, we would create two new DRGs: DRG 519 (Cervical Spinal Fusion with CC); and DRG 520 (Cervical Spinal Fusion without CC). The procedure codes that would be included in the proposed DRGs 519 and 520 are reflected in Chart 6 below.

We are also proposing to add the new ICD–9–CM procedure codes for refusion of the cervical spine (81.32 and 81.33) to the new cervical spine fusion DRGs because they are clinically similar.

We are proposing to retitle DRG 497 "Spinal Fusion Except Cervical with CC" and DRG 498 "Spinal Fusion Except Cervical without CC." The retitled DRGs 497 and 498 would retain fusion codes 81.00, 81.01, and 81.04 through 81.08 and include the proposed new refusion codes 81.30, 81.31, and 81.34 through 81.39, as reflected in Chart 6 below.

c. Posterior Spinal Fusion

We received other correspondence regarding the current DRG assignment for code 81.07, Lumbar and lumbosacral fusion, lateral transverse process technique. The correspondent stated that physicians consider code 81.07 to be a posterior procedure. The patient is placed prone on the operating table and the spine is exposed through a vertical midline incision. The correspondent pointed out that code 81.07 is not classified as a posterior procedure within DRG 496 (Combined Anterior/Posterior Spinal Fusion). Therefore, when 81.07 is reported with one of the anterior techniques fusion codes, it is not assigned to DRG 496. The correspondent recommended that code 81.07 be added to the list of posterior spinal fusion codes for use in determining assignment to DRG 496.

We have consulted with our clinical advisors and they agree that this addition should be made. Since we are proposing to handle the new refusion codes in the same manner as the fusion codes, we also are proposing to assign DRG 496 when 81.37 is used with one of the anterior technique fusion or refusion codes. This would be similar to the manner in which code 81.07 is classified. For assignment to DRG 496, we would consider codes 81.01, 81.04, 81.06, 81.32, 81.34, and 81.36 to be anterior techniques and codes 81.03, 81.05, 81.07, 81.08, 81.33, 81.35, and 81.38 to be posterior techniques.

CHART 6.—PROPOSED REVISED COMPOSITION OF DRGS 496, 497, AND 498 AND PROPOSED COMPOSITION OF PROPOSED DRG 519 AND 520 IN MDC 8

Diagnosis and procedure codes	Existing DRG 496		Proposed to be retained in or added to existing DRG 497	Proposed to be retained in or added to existing DRG 498	Included in proposed DRG 519	Included in proposed DRG 520
	Proposed to be assigned as anterior techniques	Proposed to be assigned as posterior techniques				
Principal or Secondary Procedure Codes:						
81.00 Spinal fusion, not otherwise specified			X	X		
81.01 Atlas-axis fusion			X	X		
81.02 Other cervical fusion, anterior technique	X				X	X
81.03 Other cervical fusion, posterior technique		X			X	X
81.04 Lumbar and lumbosacral fusion, anterior technique	X		X	X		
81.05 Lumbar and lumbosacral fusion, posterior technique		X	X	X		
81.06 Lumbar and lumbosacral fusion, anterior technique	X		X	X		
81.07 Lumbar and lumbosacral fusion, lateral transverse process technique		X	X	X		
81.08 Lumbar and lumbosacral fusion, posterior technique		X	X	X		
81.30 Refusion of spine, not otherwise specified			X	X		
81.31 Refusion of atlas-axis spine			X	X		
81.32 Refusion of other cervical spine, anterior technique	X				X	X

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CHART 6.—PROPOSED REVISED COMPOSITION OF DRGS 496, 497, AND 498 AND PROPOSED COMPOSITION OF PROPOSED DRG 519 AND 520 IN MDC 8—Continued

Diagnosis and procedure codes	Existing DRG 496		Proposed to be retained in or added to existing DRG 497	Proposed to be retained in or added to existing DRG 498	Included in proposed DRG 519	Included in proposed DRG 520
	Proposed to be assigned as anterior techniques	Proposed to be assigned as posterior techniques				
81.33 Refusion of other cervical spine, posterior technique		X			X	X
81.34 Refusion of dorsal and dorsolumbar spine, anterior technique	X		X	X		
81.35 Refusion of dorsal and dorsolumbar spine, posterior technique		X	X	X		
81.36 Refusion of lumbar and lumbosacral spine, anterior technique	X		X	X		
81.37 Refusion of lumbar and lumbosacral spine, posterior technique		X	X	X		
81.38 Refusion of lumbar and lumbosacral spine, posterior technique		X	X	X		
81.39 Refusion of spine, not elsewhere classified			X	X		

d. Spinal Surgery

The California Division of Workers' Compensation notified us of a possible problem with the following spinal DRGs:

DRG 496 (Combined Anterior/Posterior Spinal Fusion)
DRG 497 (Spinal Fusion with CC)
DRG 498 (Spinal Fusion without CC)
DRG 499 (Back & Neck Procedures except Spinal Fusion with CC)
DRG 500 (Back & Neck Procedures except Spinal Fusion without CC)

The Division of Workers' Compensation uses the DRG categories developed by HCFA to classify types of hospital care. However, instead of using HCFA's weights for determining reimbursement for inpatient services, the Division sets a global fee for all inpatient medical services not otherwise exempted. This fee is established by multiplying the product of the DRG weight (or revised DRG weight for a small number of categories) and the health facility's composite factor by 1.20 to get the maximum amount for worker compensation admissions.

The Division of Workers' Compensation has received reports that the formula it uses for reimbursing cases may be providing inadequate reimbursement. California hospitals and orthopedists have reported that certain spinal surgery DRGs (DRGs 496 through 500) may involve different types of care and/or technologies than those in use at the time these groups were formulated. Health care providers in California report "recent increased use of the new implantation devices, hardware, and instrumentation, coupled with requirements for intensive hospital services accompanying use of new procedures, has led to inadequate reimbursement in these DRGs." As a short-term response to these concerns, the California Division of Workers' Compensation is exempting the costs of hardware and instrumentation from the global fee of the fee schedule for DRGS 496 through 500. The Division also requested that HCFA examine these DRGs for any potential problem under the Medicare reimbursement system.

The ICD–9–CM coding system does not capture specific types of implantation devices, hardware, and instrumentation. Therefore, we were not able to verify the claim that these new devices have led to increased costs in specific cases. As discussed in section II.D. of this preamble, we believe that the adoption of a more detailed coding system, such as ICD–10–PCS, would supply greater amounts of detail on these items. However, in the short term, it is not possible to identify a specific problem that involves implantation devices, hardware, and instrumentation.

4. MDC 12 (Diseases and Disorders of the Male Reproductive System)

At its May 11, 2000 public meeting, the ICD–9–CM Coordination and Maintenance Committee considered a request from a manufacturer to create a unique code for the procedure, Penile plethysmography with nerve stimulation, in DRG 334 (Major Male Pelvic Procedures with CC). The penile plethysmography is a test that can be performed during a radical prostatectomy procedure. During the course of the procedure, the physician places a probe within an area where the prostatic nerves are thought to be located and is able to detect minor changes in penile tumescence or detumescence. This reaction tells the physician that the nerve bundles have been located, which may aid the physician in performing a nerve-sparing radical prostatectomy procedure with precision. The nerve bundles can also be restimulated at the conclusion of the procedure, providing immediate feedback as to whether erectile function will be restored after surgery.

After a presentation on the nerve identifying procedure and review of existing ICD–9–CM codes, the ICD–9–CM Coordination and Maintenance Committee determined that the existing code 89.58 (Plethysmogram) adequately describes this test.

Radical prostatectomies for patients with cancer of the prostate are grouped in either DRG 334 (Major Male Pelvic Procedures with CC) or DRG 335 (Major Male Pelvic Procedures without CC). We have received a request from a manufacturer of a nerve-identifying device to assign cases containing code 89.58 into DRG 334 only, not into DRG 335, resulting in higher payments to hospitals. During FY 2001, DRG 334 had a relative weight of 1.5591, and DRG 335 had a relative weight of 1.1697. The manufacturer requested that we designate code 89.58 as an operating room procedure code that would be recognized by the GROUPER software, and make that code applicable only to DRG 334. The manufacturer believed that this would serve to take any cases of nerve sparing out of the lower paying DRG 335, and would make the technology more attractive to hospitals. As paired DRGs 334 and 335 are currently structured, they differ only in whether or not a secondary diagnosis identified as a CC is recorded.

Using 100 percent of the FY 2000 MedPAR file which contains hospital bills for FY 2000 through May 31, 2000, we examined those cases in DRG 334 to which the procedure code for prostatectomy was assigned. Of the total 7,241 cases in DRG 334 identified, 5,611 of these cases contained procedure code 60.5 (Radical prostatectomy). Only three of the prostatectomy cases included code 89.58. There is not a sufficient number of cases on which to base an assessment of the payment for this procedure. Therefore, we are not proposing to modify the assignment of code 89.58.

5. MDC 15 (Newborns and Other Neonates With Conditions Originating in the Perinatal Period)

DRG 390 (Neonate with Other Significant Problems) contains newborn or neonate cases with other significant problems, not assigned to DRGs 385 through 389, DRG 391, or DRG 469. To be assigned to DRG 389 (Full Term Neonate with Major Problems), the neonate must have one of the principal or secondary diagnosis listed under this DRG. A neonate is assigned to DRG 390 when the neonate has a principal or secondary diagnosis of newborn or neonate with other significant problems that are not assigned to DRG 385 through 389, 391, or 469.

We have received correspondence suggesting a number of changes to be made to DRGs 398 and 391. These changes involve removing two codes from DRG 389 and adding 17 codes to DRG 391, as described below.

a. DRG 389 (Full Term Neonate With Major Problems)

The correspondent suggested removing the following codes from DRG 389 and assigning them to DRG 390:

773.0 Hemolytic disease due to RH isoimmunization
773.1 Hemolytic disease due to ABO isoimmunization

The correspondent stated that hemolytic disease due to RH isoimmunization or due to ABO isoimmunization should not be considered a major problem. The correspondent recommended that these two conditions be classified as significant problems instead and thus assigned to DRG 390.

Our medical consultants sought additional advice from the National Association of Children's Hospitals and Related Institutions (NACHRI). (HCFA contracts with the 3M Health Information Systems to maintain the DRG system. The medical experts at 3M evaluate proposed DRG changes from a clinical perspective. These medical consultants assist HCFA in evaluating alternative proposals.) NACHRI and our medical consultants agree that it is appropriate to remove codes 773.0 and 773.1 from DRG 389. Therefore, we are proposing to remove 773.0 and 773.1 from DRG 389 so that neonates with these conditions are assigned to DRG 390.

b. DRG 391 (Normal Newborn)

We also have received correspondence with recommendations for changes to DRG 391. The correspondent pointed out that the following secondary codes currently lead to the assignment of the neonate to DRG 390 (Neonate with Other Significant Problems). The correspondent believed that the conditions described by these codes should not cause the neonate to be classified under DRG 390 when reported as a secondary diagnosis. The correspondent recommended that these conditions be listed under DRG 391 (Normal Newborn).

478.1 Other diseases of nasal cavity and sinuses
520.6 Disturbances in tooth eruption
623.8 Other specified noninflammatory disorders of vagina
709.00 Dyschroma, unspecified
709.01 Vitiglio
709.09 Dyschromia, Other
744.1 Accesory auricle
754.61 Congenital pes planus
757.33 Congenital pigmentary anomalies of skin
757.39 Other specified anomaly of skin, Other
764.08 "Light for dates" without mention of fetal malnutrition, 2,000–2,499 grams
764.98 Fetal growth retardation, unspecified, 2,000–2,499 grams
772.6 Cutaneous hemorrhage
794.15 Abnormal and auditory function studies
796.4 Other abnormal clinical findings
V20.2 Routine infant or child health check
V72.1 Examination of ears and hearing

Our medical consultants also sought the advice of NACHRI on this recommendation. NACHRI reviewed the list of codes and agreed that none of these conditions should be considered to be a significant problem for a neonate. NACHRI concurred that neonates with these secondary diagnoses should be classified as normal newborns. Therefore, we are proposing to add the codes listed above to DRG 391 and not classify them to DRG 390 when reported as a secondary diagnosis.

c. Medicare Code Editor Changes

The Medicare Code Editor (MCE) is a front-end software program that detects and reports errors in the coding of claims data. The age conflict edit detects inconsistencies between a patient's age and any diagnosis on the patient's record. A subset of diagnoses is considered valid only for patients over the age of 14 years. These diagnoses are identified as "adult" diagnoses and range in age from 15 through 124 years. Therefore, any codes included on the Newborn Diagnoses edit are valid only for patients under age 14.

It has come to our attention that cases including the ICD–9–CM code 770.7, Chronic respiratory disease arising in the perinatal period, are being rejected. However, a condition such as bronchopulmonary dysplasia always originates in the perinatal period, so regardless of the patient's age, this condition is always coded as 770.7. The age at which the diagnosis was established or the age at continuing treatment does not affect the assignment of code 770.7.

Because correct coding is causing these claims to be rejected, we are proposing to remove code 770.7 from the Newborn Diagnoses edit in the MCE, as well as remove it from DRG 387 (Prematurity with Major Problems) and DRG 389 (Full Term Neonate with Major Problems). Clinical conditions in code 770.7, such as pulmonary fibrosis, would group to DRG 92 (Interstitial Lung Disease with CC) and DRG 93 (Interstitial Lung Disease without CC). Therefore, we are proposing the addition of code 770.7 to DRGs 92 and 93, as they are most similar clinically. We will monitor these cases in upcoming MedPAR data to ascertain that the cases consume similar resources.

6. MDC 20 (Alcohol/Drug Use and Alcohol/Drug-Induced Organic Mental Disorders)

DRG 434 (Alcohol/Drug Abuse or Dependency, Detoxification or Other Symptomatic Treatment with CC is assigned when the patient has a principal diagnosis of alcohol or drug abuse or dependence along with a secondary diagnosis classified as a CC. If these patients do not have a CC, they are assigned to DRG 435 (Alcohol/Drug Abuse or Dependency, detoxification or Other Symptomatic Treatment without CC). When the patients receive rehabilitation and detoxification therapy during the stay, they are assigned to DRG 437 (Alcohol/Drug Dependence, Combined Rehabilitation and Detoxification Therapy). If the patients receive only rehabilitation therapy, they are assigned to DRG 436 (Alcohol/Drug Dependence with Rehabilitation Therapy).

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We have received inquiries as to why the relative weight for DRG 437, which includes both rehabilitation and detoxification (for FY 2001, the relative weight is .6606, with a geometric mean length of stay of 7.5) is lower than the FY 2001 relative weight for DRG 434, which includes only detoxification (.7256, with a geometric mean length of stay of 3.9). Likewise, the FY 2001 relative weight for DRG 436, which includes only rehabilitation (.7433), is higher than the FY 2001 relative weight for DRG 437, which includes combined rehabilitation and detoxification therapy (.6606). The inquirers indicated that those patients receiving the combination therapy would be expected to have a longer length of stay, require more services, and, therefore, be more costly to treat.

We analyzed data from 100 percent of the FY 2000 MedPAR file which contains hospital bills received through May 31, 2000, and did not find support for the inquirers' assertion that combination therapy is more costly to treat. The relative weights indicate that the presence of a CC in DRG 434 leads to a significantly higher weight than is found in DRG 435, which does not have a CC. Therefore, we analyzed the alcohol/drug DRGs and focused on eliminating the distinction between rehabilitation and rehabilitation with detoxification and assessing the impact of CCs. We combined data on DRGs 436 and 437 and then subdivided the data based on the presence or absence of a CC. The following table contains the results of the analysis.

AVERAGE CHARGES FOR CASES—WITH AND WITHOUT CCS

DRGs	With CC			Without CC		
	Count	Charge	Length of stay	Count	Charge	Length of stay
Detoxification Cases—DRG 434 and DRG 435	3,298	$8,548	5.0	9,689	$5,111	4.1
All Rehabilitation Cases—DRG 436 and DRG 437	3,298	8,117	10.1	4,473	7,407	9.6

We found that, for both the detoxification and rehabilitation DRGs, the with-CC group has higher charges than the without-CC group. However, the with-CC groups still contain the anomaly that the detoxification DRG 434 has a slightly higher average charge than the combined rehabilitation DRGs 436 and 437. It appears that any significant medical problems as indicated by the presence of a CC dominate the cost incurred by hospitals for treating alcohol and drug abuse patients. For the without-CC groups, the detoxification DRG 435 has substantially lower average charges than the combined rehabilitation DRGs 436 and 437. Because the average charges of the with-CC for both the detoxification DRG 434 and combined rehabilitation DRGs 436 and 437 have similar average charges, we are proposing to combine these two groups.

Based on the results of our analysis, we are proposing to restructure MDC 20 as follows. We first identified those cases with a principal diagnosis within MDC 20 where the patient left against medical advice. These cases are found in DRG 433 (Alcohol/Drug Abuse or Dependence, Left Against Medical Advice (AMA)). We next identified all remaining cases with a principal diagnosis within MDC 20 where there was a CC. We assigned these cases to a proposed new DRG, Alcohol/Drug Abuse or Dependence with CC). The remaining cases (without CC and did not leave against medical advice) were then divided into two proposed new DRGs based on whether or not the patient received rehabilitation (Alcohol/Drug Abuse or Dependence without CC, with Rehabilitation Therapy; and Alcohol/Drug Abuse or Dependence without CC, without Rehabilitation Therapy).

The following table illustrates the number of patients and average charges for each of the four proposed DRGs.

FREQUENCIES AND AVERAGE CHARGES FOR NEW DRGS

DRG	Group title	Number of cases	Average charges
433	Alcohol/Drug Abuse or Dependence, Left Against Medical Advice	3,509	$3,855
521	Alcohol/Drug Abuse or Dependence with CC	18,235	8,470
522	Alcohol/Drug Abuse or Dependence without CC, with Rehabilitation Therapy	4,473	7,407
523	Alcohol/Drug Abuse or Dependence without CC, without Rehabilitation Therapy	9,689	5,111

This table illustrates that groups based first on the presence of CC and then on whether or not the patient receives rehabilitation therapy provide a much better explanation of differences in charges. Therefore, we are proposing to retain DRG 433, make DRGs 434 through 437 invalid, and create new DRGs 521, 522, and 523 to include the diagnosis and procedure codes reflected in Chart 7 below.

CHART 7.—PROPOSED RESTRUCTURE OF MDC 20

[Alcohol/drug use and alcohol/drug-induced organic mental disorders]

Diagnosis and procedure code	Included in existing DRG 433	Included in proposed DRG 521	Included in proposed DRG 522	Included in proposed DRG 523
Principal diagnosis:				
All principal diagnosis within existing MDC 20 involving cases in which patients left against medical advice (AMA)	X			

CHART 7.—PROPOSED RESTRUCTURE OF MDC 20—Continued

[Alcohol/drug use and alcohol/drug-induced organic mental disorders]

Diagnosis and procedure code	Included in existing DRG 433	Included in proposed DRG 521	Included in proposed DRG 522	Included in proposed DRG 523
All principal diagnoses within existing MDC 20 where there is a CC and where patient did not leave against medical advice (AMA)		X		
All principal diagnoses within existing MDC 20 without CC and where patient did not leave against medical advice (AMA)			X	
All principal diagnoses in existing MDC 20 involving cases where patients did not leave against medical advice (AMA)				X
Procedure Codes:				
94.61 Alcohol rehabilitation			X	
94.63 Alcohol rehabilitation and detoxification			X	
94.64 Drug rehabilitation			X	
94.66 Drug rehabilitation and detoxification			X	
94.67 Combined alcohol and drug rehabilitation			X	
94.69 Combined alcohol and drug rehabilitation and detoxification			X	

7. MDC 25 (Human Immunodeficiency Virus Infections)

Effective October 1, 2000, ICD–9–CM diagnosis codes 783.2 (Abnormal loss of weight) and 783.4 (Lack of expected normal physiological development) were made invalid (65 FR 47171). These two old diagnosis codes were expanded to five digits and the following new diagnosis codes were created:

783.21 Loss of weight
783.22 Underweight
783.40 Unspecified lack of normal physiological development
783.41 Failure to thrive
783.42 Delayed milestones
783.43 Short stature

These six revised codes were created in response to an industry request. Specifically, code 783.2 did not differentiate between whether the patient had lost weight recently or whether the patient was underweight. Code 783.4 was expanded to capture concepts such as failure to thrive, delayed milestones, and short stature. None of these concepts were captured in the old codes.

We listed these new codes in the August 1, 2000 final rule on the hospital inpatient prospective payment system in Table 6A—New Diagnosis Codes (65 FR 47169). At the time the final rule was published, all of these codes were assigned to DRGs 296 through 298. After the final rule was published, we received an inquiry as to why these new diagnosis codes were not included in MDC 25 as human immunodeficiency virus (HIV)-related conditions. The inquirer pointed out that the predecessor codes (783.2 and 783.4) were included in MDC 25 as HIV-related conditions and suggested that the new codes be added to MDC 25. These cases will be assigned to other MDCs if the patient does not have HIV.

We agree that the expanded codes should have been placed in the MDC 25 as HIV-related conditions. The omission was an oversight. Therefore, we are proposing to add diagnosis codes 783.21, 783.22, 783.40, 783.41, 783.42, and 783.43 as HIV-related conditions within MDC 25. When these six revised codes are reported with code 042 HIV, the patient will be classified within MDC 25.

8. Surgical Hierarchies

Some inpatient stays entail multiple surgical procedures, each one of which, occurring by itself, could result in assignment of the case to a different DRG within the MDC to which the principal diagnosis is assigned. Therefore, it is necessary to have a decision rule by which these cases are assigned to a single DRG. The surgical hierarchy, an ordering of surgical classes from resource intensive most least, performs that function. Its application ensures that cases involving multiple surgical procedures are assigned to the DRG associated with the most resource-intensive surgical class.

Because the relative resource intensity of surgical classes can shift as a function of DRG reclassification and recalibration, we reviewed the surgical hierarchy of each MDC, as we have for previous reclassifications, to determine if the ordering of classes coincided with the intensity of resource utilization, as measured by the same billing data used to compute the DRG relative weights.

A surgical class can be composed of one or more DRGs. For example, in MDC 11, the surgical class "kidney transplant" consists of a single DRG (DRG 302) and the class "kidney, ureter and major bladder procedures" consists of three DRGs (DRGs 303, 304, and 305). Consequently, in many cases, the surgical hierarchy has an impact on more than one DRG. The methodology for determining the most resource-intensive surgical class involves weighting each DRG for frequency to determine the average resources for each surgical class. For example, assume surgical class A includes DRGs 1 and 2 and surgical class B includes DRGs 3, 4, and 5. Assume also that the average charge of DRG 1 is higher than that of DRG 3, but the average charges of DRGs 4 and 5 are higher than the average charge of DRG 2. To determine whether surgical class A should be higher or lower than surgical class B in the surgical hierarchy, we would weight the average charge of each DRG by frequency (that is, by the number of cases in the DRG) to determine average resource consumption for the surgical class. The surgical classes would then be ordered from the class with the highest average resource utilization to that with the lowest, with the exception of "other OR procedures" as discussed below.

This methodology may occasionally result in a case involving multiple procedures being assigned to the lower-weighted DRG (in the highest, most resource-intensive surgical class) of the available alternatives. However, given that the logic underlying the surgical hierarchy provides that the GROUPER searches for the procedure in the most resource-intensive surgical class, this result is unavoidable.

We note that, notwithstanding the foregoing discussion, there are a few instances when a surgical class with a lower average relative weight is ordered above a surgical class with a higher average relative weight. For example, the "other OR procedures" surgical class is uniformly ordered last in the surgical hierarchy of each MDC in which it occurs, regardless of the fact that the relative weight for the DRG or

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DRGs in that surgical class may be higher than that for other surgical classes in the MDC. The "other OR procedures" class is a group of procedures that are least likely to be related to the diagnoses in the MDC but are occasionally performed on patients with these diagnoses. Therefore, these procedures should only be considered if no other procedure more closely related to the diagnoses in the MDC has been performed.

A second example occurs when the difference between the average weights for two surgical classes is very small. We have found that small differences generally do not warrant reordering of the hierarchy since, by virtue of the hierarchy change, the relative weights are likely to shift such that the higher-ordered surgical class has a lower average weight than the class ordered below it.

Based on the preliminary recalibration of the DRGs, we are proposing to modify the surgical hierarchy as set forth below. As we stated in the September 1, 1989 final rule (54 FR 36457), we are unable to test the effects of proposed revisions to the surgical hierarchy and to reflect these changes in the proposed relative weights due to the unavailability of the revised GROUPER software at the time the proposed rule is prepared. Rather, we simulate most major classification changes to approximate the placement of cases under the proposed reclassification and then determine the average charge for each DRG. These average charges then serve as our best estimate of relative resource use for each surgical class. We test the proposed surgical hierarchy changes after the revised GROUPER is received and reflect the final changes in the DRG relative weights in the final rule. Further, as discussed in section II.C. of this preamble, we anticipate that the final recalibrated weights will be somewhat different from those proposed, because they will be based on more complete data. Consequently, further revision of the hierarchy, using the above principles, may be necessary in the final rule.

At this time, we are proposing to revise the surgical hierarchy for the pre-MDC DRGs, MDC 5 (Diseases and Disorders of the Circulatory System), MDC 8 (Diseases and Disorders of the Musculoskeletal System & Connective Tissue) and MDC 20 (Alcohol/Drug Use & Alcohol/Drug Induced Organic Mental Disorders), as these are proposed to be revised under sections II.B.2., II.B.3., and II.B.6. of this preamble, as follows:

- In the pre-MDC DRGs, we are proposing to reorder Lung Transplant (DRG 495) above Bone Marrow Transplant (DRG 481). We are also proposing to reorder Simultaneous Pancreas/Kidney Transplant (DRG 512) and Pancreas Transplant (DRG 513) above Lung Transplant (DRG 495).
- In MDC 5, we are proposing to reorder Cardiac Defibrillator Implants (DRGs 514 and 515) above Other Cardiothoracic Procedures (DRG 108). We are also proposing to reorder Percutaneous Cardiovascular Procedures (DRGs 516, 517, and 518) above Other Vascular Procedures (DRGs 478 and 479).
- In MDC 8, we are proposing to reorder Cervical Spinal Fusion (DRGs 519 and 520) above Back & Neck Procedures Except Spinal Fusion (DRGs 499 and 500).
- In MDC 20, we are proposing to order as follows: Alcohol/Drug Abuse or Dependence, Left AMA (DRG 433) above Alcohol/Drug Abuse or Dependence With CC (DRG 521); Alcohol/Drug Abuse or Dependence With CC (DRG 521) above Alcohol/Drug Abuse or Dependence With Rehabilitation Therapy Without CC (DRG 522); and Alcohol/Drug Abuse or Dependence With Rehabilitation Therapy Without CC (DRG 522) above Alcohol/Drug Abuse or Dependence Without Rehabilitation Therapy Without CC (DRG 523).

9. Refinement of Complications and Comorbidities (CC) List

In the September 1, 1987 final notice (52 FR 33143) concerning changes to the DRG classification system, we modified the GROUPER logic so that certain diagnoses included on the standard list of CCs would not be considered a valid CC in combination with a particular principal diagnosis. Thus, we created the CC Exclusions List. We made these changes for the following reasons: (1) To preclude coding of CCs for closely related conditions; (2) to preclude duplicative coding or inconsistent coding from being treated as CCs; and (3) to ensure that cases are appropriately classified between the complicated and uncomplicated DRGs in a pair. We developed this standard list of diagnoses using physician panels to include those diagnoses that, when present as a secondary condition, would be considered a substantial complication or comorbidity. In previous years, we have made changes to the standard list of CCs, either by adding new CCs or deleting CCs already on the list. At this time, we do not propose to delete any of the diagnosis codes on the CC list.

In the May 19, 1987 proposed notice (52 FR 18877) concerning changes to the DRG classification system, we explained that the excluded secondary diagnoses were established using the following five principles:

- Chronic and acute manifestations of the same condition should not be considered CCs for one another (as subsequently corrected in the September 1, 1987 final notice (52 FR 33154)).
- Specific and nonspecific (that is, not otherwise specified (NOS)) diagnosis codes for a condition should not be considered CCs for one another.
- Conditions that may not coexist, such as partial/total, unilateral/bilateral, obstructed/unobstructed, and benign/malignant, should not be considered CCs for one another.
- The same condition in anatomically proximal sites should not be considered CCs for one another.
- Closely related conditions should not be considered CCs for one another.

The creation of the CC Exclusions List was a major project involving hundreds of codes. The FY 1988 revisions were intended only as a first step toward refinement of the CC list in that the criteria used for eliminating certain diagnoses from consideration as CCs were intended to identify only the most obvious diagnoses that should not be considered complications or comorbidities of another diagnosis. For that reason, and in light of comments and questions on the CC list, we have continued to review the remaining CCs to identify additional exclusions and to remove diagnoses from the master list that have been shown not to meet the definition of a CC. (See the September 30, 1988 final rule (53 FR 38485) for the revision made for the discharges occurring in FY 1989; the September 1, 1989 final rule (54 FR 36552) for the FY 1990 revision; the September 4, 1990 final rule (55 FR 36126) for the FY 1991 revision; the August 30, 1991 final rule (56 FR 43209) for the FY 1992 revision; the September 1, 1992 final rule (57 FR 39753) for the FY 1993 revision; the September 1, 1993 final rule (58 FR 46278) for the FY 1994 revisions; the September 1, 1994 final rule (59 FR 45334) for the FY 1995 revisions; the September 1, 1995 final rule (60 FR 45782) for the FY 1996 revisions; the August 30, 1996 final rule (61 FR 46171) for the FY 1997 revisions; the August 29, 1997 final rule (62 FR 45966) for the FY 1998 revisions; the July 31, 1998 final rule (63 FR 40954) for the FY 1999 revisions, and the August 1, 2000 final rule (65 FR 47064) for the FY 2001 revisions. In the July 30, 1999 final rule (64 FR 41490) we did not modify the CC Exclusions List for FY 2000 because we did not make any changes to the ICD-9-CM codes for FY 2000.

We are proposing a limited revision of the CC Exclusions List to take into account the changes that will be made in the ICD-9-CM diagnosis coding system effective October 1, 2001. (See section II.B.11. below, for a discussion of ICD-9-CM changes.) These proposed changes are being made in accordance with the principles established when we created the CC Exclusions List in 1987.

Tables 6F and 6G in section V. of the Addendum to this proposed rule contain the proposed revisions to the CC Exclusions List that would be effective for discharges occurring on or after October 1, 2001. Each table shows the principal diagnoses with proposed changes to the excluded CCs. Each of these principal diagnoses is shown with an asterisk, and the additions or deletions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

CCs that are added to the list are in Table 6G—Additions to the CC Exclusions List. Beginning with discharges on or after October 1, 2001, the indented diagnoses will not be recognized by the GROUPER as valid CCs for the asterisked principal diagnosis.

CCs that are deleted from the list are in Table 6H—Deletions from the CC Exclusions List. Beginning with discharges on or after October 1, 2001, the indented diagnoses will be recognized by the GROUPER as valid CCs for the asterisked principal diagnosis.

Copies of the original CC Exclusions List applicable to FY 1988 can be obtained from the National Technical Information Service (NTIS) of the Department of Commerce. It is available in hard copy for $133.00 plus shipping and handling. A request for the FY 1988 CC Exclusions List (which should include the identification accession number (PB) 88-133970) should be made to the following address: National Technical Information Service, United States Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161; or by calling (800) 553-6847.

Users should be aware of the fact that all revisions to the CC Exclusions List (FYs 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, and 1999) and those in Tables 6F and 6G of this document must be incorporated into the list purchased from NTIS in order to obtain the CC Exclusions List applicable for discharges occurring on or after October 1, 2001. (Note: There was no CC Exclusions List in FY 2000 because we did not make changes to the ICD-9-CM codes for FY 2000.)

Alternatively, the complete documentation of the GROUPER logic, including the current CC Exclusions List, is available from 3M/Health Information Systems (HIS), which, under contract with HCFA, is responsible for updating and maintaining the GROUPER program. The current DRG Definitions Manual, Version 18.0, is available for $225.00, which includes $15.00 for shipping and handling. Version 19.0 of this manual, which includes the final FY 2002 DRG changes, will be available in October 2001 for $225.00. These manuals may be obtained by writing 3M/HIS at the following address: 100 Barnes Road, Wallingford, CT 06492; or by calling (203) 949-0303. Please specify the revision or revisions requested.

10. Review of Procedure Codes in DRGs 468, 476, and 477

Each year, we review cases assigned to DRG 468 (Extensive OR Procedure Unrelated to Principal Diagnosis), DRG 476 (Prostatic OR Procedure Unrelated to Principal Diagnosis), and DRG 477 (Nonextensive OR Procedure Unrelated to Principal Diagnosis) to determine whether it would be appropriate to change the procedures assigned among these DRGs.

DRGs 468, 476, and 477 are reserved for those cases in which none of the OR procedures performed is related to the principal diagnosis. These DRGs are intended to capture atypical cases, that is, those cases not occurring with sufficient frequency to represent a distinct, recognizable clinical group. DRG 476 is assigned to those discharges in which one or more of the following prostatic procedures are performed and are unrelated to the principal diagnosis:

60.0 Incision of prostate
60.12 Open biopsy of prostate
60.15 Biopsy of periprostatic tissue
60.18 Other diagnostic procedures on prostate and periprostatic tissue
60.21 Transurethral prostatectomy
60.29 Other transurethral prostatectomy
60.61 Local excision of lesion of prostate
60.69 Prostatectomy NEC
60.81 Incision of periprostatic tissue
60.82 Excision of periprostatic tissue
60.93 Repair of prostate
60.94 Control of (postoperative) hemorrhage of prostate
60.95 Transurethral balloon dilation of the prostatic urethra
60.99 Other operations on prostate

All remaining OR procedures are assigned to DRGs 468 and 477, with DRG 477 assigned to those discharges in which the only procedures performed are nonextensive procedures that are unrelated to the principal diagnosis. The original list of the ICD-9-CM procedure codes for the procedures we consider nonextensive procedures, if performed with an unrelated principal diagnosis, was published in Table 6C in section IV. of the Addendum to the September 30, 1988 final rule (53 FR 38591). As part of the final rules published on September 4, 1990 (55 FR 36135), August 30, 1991 (56 FR 43212), September 1, 1992 (57 FR 23625), September 1, 1993 (58 FR 46279), September 1, 1994 (59 FR 45336), September 1, 1995 (60 FR 45783), August 30, 1996 (61 FR 46173), and August 29, 1997 (62 FR 45981), we moved several other procedures from DRG 468 to 477, and some procedures from DRG 477 to 468. No procedures were moved in FY 1999, as noted in the July 31, 1998 final rule (63 FR 40962); in FY 2000, as noted in the July 30, 1999 final rule (64 FR 41496); or in FY 2001, as noted in the August 1, 2000 final rule (65 FR 47064).

a. Moving Procedure Codes From DRGs 468 or 477 to MDCs

We annually conduct a review of procedures producing assignment to DRG 468 or DRG 477 on the basis of volume, by procedure, to see if it would be appropriate to move procedure codes out of these DRGs into one of the surgical DRGs for the MDC into which the principal diagnosis falls. The data are arrayed two ways for comparison purposes. We look at a frequency count of each major operative procedure code. We also compare procedures across MDCs by volume of procedure codes within each MDC.

Using 100 percent of the FY 2000 MedPAR file containing bills submitted through May 31, 2000 for discharges in FY 2000, we determined that the quantity of cases in DRG 477 totaled 17,153. There were 106 instances where the major operative procedure appeared only once (6.4 percent of the time), resulting in assignment to DRG 477.

Using the same 100 percent sample of the FY 2000 MedPAR file, we reviewed DRG 468. There were a total of 40,429 cases, with one major operative code causing the DRG assignment 311 times (or 8 percent) and 230 instances where the major operative procedure appeared only once (or 6 percent of the time).

Our medical consultants then identified those procedures occurring in conjunction with certain principal diagnoses with sufficient frequency to justify adding them to one of the surgical DRGs for the MDC in which the

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diagnosis falls. Based on this year's review, we did not identify any necessary changes in procedures under DRG 477 and, therefore, are not proposing to move any procedures from DRG 477 to one of the surgical DRGs. However, our medical consultants have identified a number of procedure codes that should be removed from DRG 468 and put into more clinically coherent DRGs. The movement of these codes are specified in the charts below:

MOVEMENT OF PROCEDURE CODES FROM DRG 468

Procedure code	Description	Included in DRG	Description
MDC 1—Diseases and Disorders of the Nervous System			
5495	Peritoneal Incision	7	Peripheral and Cranial Nerve and Other Nervous System Procedures with CC
5495	Peritoneal Incision	8	Peripheral and Cranial Nerve and Other Incision Nervous System Procedures without CC
MDC 3—Diseases and Disorders of the Ear			
3821	Blood Vessel Biopsy	63	Other Ear, Nose, Mouth and Throat OR Procedure
MDC 4—Diseases and Disorders of the Respiratory System			
3821	Blood Vessel Biopsy	76	Other Respiratory System OR Procedures with CC
3821	Blood Vessel Biopsy	77	Other Respiratory System OR Procedures without CC
3929	Vascular Shunt & Bypass NEC	76	Other Respiratory System OR Procedures with CC
3929	Vascular Shunt & Bypass NEC	77	Other Respiratory System OR Procedures without CC
3931	Suture of Artery	76	Other Respiratory System OR Procedures with CC
3931	Suture of Artery	77	Other Respiratory System OR Procedures without CC
5411	Exploratory Laparotomy	76	Other Respiratory System OR Procedures with CC
5411	Exploratory Laparotomy	77	Other Respiratory System OR Procedures without CC
7749	Bone Biopsy NEC	76	Other Respiratory System OR Procedures with CC
7749	Bone Biopsy NEC	77	Other Respiratory System OR Procedures without CC
8669	Free Skin Graft NEC	76	Other Respiratory System OR Procedures with CC
8669	Free Skin Graft NEC	77	Other Respiratory System OR Procedures without CC
MDC 5—Diseases and Disorders of the Circulatory System			
3402	Exploratory Thoracotomy	120	Other Circulatory System OR Procedures
3403	Reopen Thoracotomy Site	120	Other Circulatory System OR Procedures
3421	Transpleura Thoracoscopy	120	Other Circulatory System OR Procedures
3422	Mediastinoscoy Circulatory	120	Other Circulatory System OR Procedures
3426	Open Mediastinal Biopsy	120	Other Circulatory System OR Procedures
436	Distal Gastrectomy	120	Other Circulatory System OR Procedures
437	Partial Gastrectomy with Jejunal Anastamosis.	120	Other Circulatory System OR Procedures
4389	Partial Gastrectomy	120	Other Circulatory System OR Procedures
4399	Total Gastrectomy	120	Other Circulatory System OR Procedures
14561	Multiple Segment Small Bowel Excision.	120	Other Circulatory System OR Procedures
4562	Partial Small Bowel Resectomy NEC.	120	Other Circulatory System OR Procedures
4572	Cecectomy	120	Other Circulatory System OR Procedures
4573	Right Hemicolectomy	120	Other Circulatory System OR Procedures
4574	Transverse Colon Resectomy	120	Other Circulatory System OR Procedures
4575	Left Hemicolectomy	120	Other Circulatory System OR Procedures
4579	Partial Large Bowel Excision NEC	120	Other Circulatory System OR Procedures
458	Total Intra-Abdominal Colectomy	120	Other Circulatory System OR Procedures
4593	Small-to-Large Bowel NEC	120	Other Circulatory System OR Procedures
4603	Large Bowel Exteriorization	120	Other Circulatory System OR Procedures
4613	Permanent Colostomy	120	Other Circulatory System OR Procedures
4709	Other Appendectomy	120	Other Circulatory System OR Procedures
4862	Anterior Rectal Resction With Colostomy.	120	Other Circulatory System OR Procedures
4863	Anterior Rectal Resection NEC	120	Other Circulatory System OR Procedures
4869	Rectal Resection	120	Other Circulatory System OR Procedures
5012	Open Liver Biopsy	120	Other Circulatory System OR Procedures
540	Abdominal Wall Incision	120	Other Circulatory System OR Procedures
MDC 6—Diseases and Disorders of the Digestive System			
5122	Cholecystectomy	170	Other Digestive System OR Procedures with CC
5122	Cholecystectomy	171	Other Digestive System OR Procedures without CC
5123	Laparoscopic Cholecystectomy	170	Other Digestive System OR Procedures with CC
5132	GB-To-Intestine Anastomy	170	Other Digestive System OR Procedures with CC
5136	Choledochoenterostomy	170	Other Digestive System OR Procedures with CC

MOVEMENT OF PROCEDURE CODES FROM DRG 468

Procedure code	Description	Included in DRG	Description
5136	Choledochoenterostomy	171	Other Digestive System OR Procedures without CC
5137	Hepatic Duct-GI Anastomy	170	Other Digestive System OR Procedures with Anastomy CC
5137	Hepatic Duct-GI Anastomy	171	Other Digestive System OR Procedures without CC
5159	Bile Duct Incision NEC	170	Other Digestive System OR Procedures with CC
5159	Bile Duct Incision NEC	171	Other Digestive System OR Procedures without CC
MDC 7—Diseases and Disorders of the Hepatobiliary System and Pancreas			
540	Abdominal Wall Incision	201	Other Hepatobiliary and Pancreas Procedure
MDC 8—Diseases and Disorders of the Musculoskeletal System and Connective Tissue			
3479	Other Chest Wall Repair	233	Other Musculoskeletal System & Connective Tissue OR Procedure with CC
3479	Other Chest Wall Repair	234	Other Musculoskeletal System & Connective Tissue OR Procedure without CC
MDC 11—Diseases and Disorders of the Kidney and Urinary Tract			
540	Abdominal Wall Incision	315	Other Kidney & Urinary Tract OR Procedure
5451	Laparoscopic Periton Adhesiolysis	315	Other Kidney & Urinary Tract OR Procedure
5459	Other Periton Adhesiolysis	315	Other Kidney & Urinary Tract OR Procedure

b. Reassignment of Procedures Among DRGs 468, 476, and 477

We also annually review the list of ICD–9–CM procedures that, when in combination with their principal diagnosis code, result in assignment to DRGs 468, 476, and 477, to ascertain if any of those procedures should be moved from one of these DRGs to another of these DRGs based on average charges and length of stay. We look at the data for trends such as shifts in treatment practice or reporting practice that would make the resulting DRG assignment illogical. If our medical consultants were to find these shifts, we would propose moving cases to keep the DRGs clinically similar or to provide payment for the cases in a similar manner. Generally, we move only those procedures for which we have an adequate number of discharges to analyze the data. Based on our review this year, we are not proposing to move any procedures from DRG 468 to DRGs 476 or 477, from DRG 476 to DRGs 468 or 477, or from DRG 477 to DRGs 468 or 476.

c. Adding Diagnosis Codes to MDCs

Based on our review this year, we are not proposing to add any diagnosis codes to MDCs.

11. Changes to the ICD–9–CM Coding System

As described in section II.B.1. of this preamble, the ICD–9–CM is a coding system that is used for the reporting of diagnoses and procedures performed on a patient. In September 1985, the ICD–9–CM Coordination and Maintenance Committee was formed. This is a Federal interdepartmental committee, co-chaired by the National Center for Health Statistics (NCHS) and HCFA, charged with maintaining and updating the ICD–9–CM system. The Committee is jointly responsible for approving coding changes, and developing errata, addenda, and other modifications to the ICD–9–CM to reflect newly developed procedures and technologies and newly identified diseases. The Committee is also responsible for promoting the use of Federal and non-Federal educational programs and other communication techniques with a view toward standardizing coding applications and upgrading the quality of the classification system.

The NCHS has lead responsibility for the ICD–9–CM diagnosis codes included in the *Tabular List* and *Alphabetic Index for Diseases*, while HCFA has lead responsibility for the ICD–9–CM procedure codes included in the *Tabular List* and *Alphabetic Index for Procedures*.

The Committee encourages participation in the above process by health-related organizations. In this regard, the Committee holds public meetings for discussion of educational issues and proposed coding changes. These meetings provide an opportunity for representatives of recognized organizations in the coding field, such as the American Health Information Management Association (AHIMA) (formerly American Medical Record Association (AMRA)), the American Hospital Association (AHA), and various physician specialty groups as well as physicians, medical record administrators, health information management professionals, and other members of the public to contribute ideas on coding matters. After considering the opinions expressed at the public meetings and in writing, the Committee formulates recommendations, which then must be approved by the agencies.

The Committee presented proposals for coding changes for implementation in FY 2002 at public meetings held on May 11, 2000 and November 17, 2000, and finalized the coding changes after consideration of comments received at the meetings and in writing by January 8, 2001.

Copies of the Coordination and Maintenance Committee minutes of the 2000 meetings can be obtained from the HCFA home page at: http://www.hcfa.gov/medicare/icd9cm.htm. Paper copies of these minutes are no longer available and the mailing list has been discontinued. We encourage commenters to address suggestions on coding issues involving diagnosis codes to: Donna Pickett, Co-Chairperson; ICD–9–CM Coordination and Maintenance Committee; NCHS; Room 1100; 6525 Belcrest Road; Hyattsville, MD 20782. Comments may be sent by E-mail to: dfp4@cdc.gov.

Questions and comments concerning the procedure codes should be addressed to: Patricia E. Brooks, Co-Chairperson; ICD–9–CM Coordination and Maintenance Committee; HCFA, Center for Health Plans and Providers, Purchasing Policy Group, Division of Acute Care; C4–07–07; 7500 Security

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Boulevard; Baltimore, MD 21244–1850. Comments may be sent by E-mail to: pbrooks@hcfa.gov.

The ICD–9–CM code changes that have been approved will become effective October 1, 2001. The new ICD–9–CM codes are listed, along with their proposed DRG classifications, in Tables 6A and 6B (New Diagnosis Codes and New Procedure Codes, respectively) in section V. of the Addendum to this proposed rule. As we stated above, the code numbers and their titles were presented for public comment at the ICD–9–CM Coordination and Maintenance Committee meetings. Both oral and written comments were considered before the codes were approved. Therefore, we are soliciting comments only on the proposed DRG classification of these new codes.

Further, the Committee has approved the expansion of certain ICD–9–CM codes to require an additional digit for valid code assignment. Diagnosis codes that have been replaced by expanded codes or other codes or have been deleted are in Table 6C (Invalid Diagnosis Codes). These invalid diagnosis codes will not be recognized by the GROUPER beginning with discharges occurring on or after October 1, 2001. For codes that have been replaced by new or expanded codes, the corresponding new or expanded diagnosis codes are included in Table 6A (New Diagnosis Codes). There were no procedure codes that were replaced by expanded codes or other codes, or were deleted. Revisions to diagnosis code titles are in Table 6E (Revised Diagnosis Code Titles), which also include the proposed DRG assignments for these revised codes. Revisions to procedure code titles are in Table 6F (Revised Procedure Codes Titles).

In September 2000, the Department implemented a policy of paying for inpatient hospital stays for Medicare beneficiaries participating in clinical trials (HCFA Program Memorandum AB 00–89, September 19, 2000). Hospitals were encouraged to identify the patients involved by reporting an ICD–9–CM code. This would allow the examination of data on the patients involved in clinical trials. However, there was no clear ICD–9–CM diagnosis code for patients who took part in a clinical trial. There was a code for patients receiving an examination as part of the control group for clinical trials. This control group code was V70.7 (Examination for normal comparison or control in clinical research). Hospitals were instructed to use V70.5 (Health examination of defined subpopulations), for patients participating in a clinical trial.

This coding directive has created some confusion because of the title and description of the two codes. Hospitals also have requested that all clinical patients be captured under one code. They indicated that the use of one code would be especially useful because patients frequently do not know if they are part of the control group or are receiving new therapy.

To help alleviate the confusion, the ICD–9–CM Coordination and Maintenance Committee revised code V70.7. Effective October 1, 2001, the new title of code V70.7 is "Examination of patient in clinical trial." This revision will make it easier to capture data on Medicare beneficiaries who are participating in a clinical trial.

12. Other Issues

a. Pancreas Transplant

Effective July 1, 1999, Medicare covers whole organ pancreas transplantation if the transplantation is performed simultaneously with or after a kidney transplant (procedure codes 55.69 (Other kidney transplantation), or diagnosis code V42.0 (Organ or tissue replaced by transplant, Kidney), along with 52.80 (Pancreatic transplant, not otherwise specified), or 52.82 (Homotransplant of pancreas)). A discussion of the history of these coverage decisions and codes can be found in the August 1, 2000 final rule on the prospective payment system for FY 2001 (65 FR 47067).

We discussed the appropriate DRG classification for these cases in both the July 30, 1999 final rule (64 FR 41497) and the August 1, 2000 final rule (65 FR 47067). Currently, cases can be assigned to one of two major DRGs depending on principal diagnosis. If a kidney transplant and a pancreas transplant are performed simultaneously on a patient with chronic renal failure secondary to diabetes with renal manifestations (diagnosis codes 250.40 through 250.43), the cases will be assigned to DRG 302 (Kidney Transplant). If a pancreas transplant is performed following a kidney transplant (during a different hospital admission) on a patient with chronic renal failure secondary to diabetes with renal manifestations, the case is assigned to DRG 468 (Extensive OR Procedure Unrelated to Principal Diagnosis). This is because pancreas transplant is not assigned to MDC 11 (Diseases and Disorders of the Kidney and Urinary Tract), the MDC to which a principal diagnosis of chronic renal failure secondary to diabetes is assigned.

In the August 1, 2000 final rule, we noted that we would continue to monitor these transplant cases to determine the appropriateness of establishing a new DRG. For this proposed rule, using 100 percent of the data in the FY 2000 MedPAR file (which contains hospital bills received for FY 2000 through May 31, 2000), we analyzed the cases for which procedure codes 52.80 and 52.82 were reported. (Our data showed that 15 of the cases were coded using 52.83 (Heterotransplant of pancreas), which is not a covered procedure under any circumstances.) We identified a total of 221 cases for this time period. The United Network for Organ Sharing (UNOS) reported it had identified 270 cases through September 2000.

These 221 MedPAR cases were distributed over 6 DRGs, with the majority (158 cases or 72 percent) assigned to DRG 302, and 23 cases (10 percent) assigned to DRG 468. The remaining 40 cases were distributed between 4 other DRGs, with the majority (25 cases) being assigned to DRG 292 (Other Endocrine, Nutritional and Metabolic OR Procedures with CC). Four cases were assigned to DRG 483 (Tracheostomy with Principal Diagnosis except Face, Mouth and Neck Diagnoses) in the Pre-MDC grouping, which took precedence over any other DRG assignment.

We arrayed the data based on the presence or absence of kidney transplant; that is, pancreas transplant codes with or without 55.69. The majority of cases (166 or 75 percent) had the combined kidney-pancreas transplant in one operative episode, with 55 (25 percent) of the cases having pancreas transplant subsequent to the kidney transplant. Differences in hospital charges were significantly higher for a pancreas transplant plus a kidney transplant ($138,809) than a pancreas transplant alone ($85,972), and both were higher than average standardized charges in DRG 302 ($64,760) or DRG 468 ($39,707), although it must be noted that these figures do reflect the resource intensive patients assigned to DRG 483. Those patients in DRG 483 had average standardized charges of $377,934.

Because these categories of patients do not fit into existing DRGs from either a clinical or resource perspective, we are proposing to create two new DRGs that would reflect these patients' unique clinical profiles: DRG 512 (Simultaneous Pancreas/Kidney Transplant) and DRG 513 (Pancreas Transplants). Cases grouped to either proposed DRGs 512 or 513 must have a principal or secondary diagnosis code and procedure code or combination of

procedure codes as indicated in the chart below:

COMPOSITION OF PROPOSED DRGS 512 AND 513

Diagnosis and procedure codes	Included in proposed DRG 512	Included in proposed DRG 513
Principal or Secondary ICD–9–CM Diabetes Mellitus Code:		
250.00 Diabetes mellitus without mention of complication, Type II or unspecified type, not stated as uncontrolled	X	X
250.01 Diabetes mellitus without mention of complication, Type I, not stated as uncontrolled	X	X
250.02 Diabetes mellitus without mention of complication, Type I,	X	X
250.03 Diabetes mellitus without mention of complication, Type I, uncontrolled	X	X
250.10 Diabetes with ketoacidosis, Type II or Unspecified type, not stated as uncontrolled	X	X
250.11 Diabetes with ketoacidosis, Type I, not stated as uncontrolled	X	X
250.12 Diabetes with ketoacidosis, Type II or unspecified type, uncontrolled	X	X
250.13 Diabetes with ketoacidosis, Type I, controlled	X	X
250.20 Diabetes with hyperosmolarity, Type II or unspecified type, not stated as uncontrolled	X	X
250.21 Diabetes with hyperosmolarity, Type I, not stated as uncontrolled	X	X
250.22 Diabetes with hyperosmolarity, Type II or unspecified type, uncontrolled	X	X
250.23 Diabetes with hyperosmolarity, Type I, uncontrolled	X	X
250.30 Diabetes with other coma, Type II or unspecified type, not stated as uncontrolled.		
250.31 Diabetes with other coma, Type I, not stated as uncontrolled	X	X
250.32 Diabetes with other coma, Type II or unspecified type, uncontrolled	X	X
250.33 Diabetes with other coma, Type I, uncontrolled	X	X
250.40 Diabetes with renal manifestations, Type II or unspecified type, not stated as uncontrolled	X	X
250.41 Diabetes with renal manifestations, Type I, not stated as uncontrolled	X	X
250.42 Diabetes with renal manifestations, Type II unspecified type, uncontrolled	X	X
250.43 Diabetes with renal manifestations, Type I, uncontrolled	X	X
250.50 Diabetes with ophthalmic manifestations, Type II or unspecified type, not stated as uncontrolled	X	X
250.51 Diabetes with ophthalmic manifestations, Type I, not stated as uncontrolled	X	X
250.52 Diabetes with ophthalmic manifestations, Type II or unspecified type, uncontrolled	X	X
250.53 Diabetes with ophthalmic manifestations, Type I, uncontrolled	X	X
250.60 Diabetes with neurological manifestations, Type II or unspecified type, not stated as uncontrolled	X	X
250.61 Diabetes with neurological manifestations, Type I, not stated as uncontrolled	X	X
250.62 Diabetes with neurological manifestations, Type II or unspecified type, uncontrolled	X	X
250.63 Diabetes with neurological manifestations, Type I uncontrolled	X	X
250.70 Diabetes with peripheral circulatory disorders, Type II or unspecified type, not stated as uncontrolled	X	X
250.71 Diabetes with peripheral circulatory disorders, Type I, not stated as uncontrolled	X	X
250.72 Diabetes with peripheral circulatory disorders, Type II or unspecified type, uncontrolled	X	X
250.73 Diabetes with peripheral circulatory disorders, Type I, uncontrolled	X	X
250.80 Diabetes with other specified manifestations, Type II or unspecified type, not stated as uncontrolled	X	X
250.81 Diabetes with other specified manifestations, Type I, not stated as uncontrolled	X	X
250.82 Diabetes with other specified manifestations, Type II or unspecified type, uncontrolled	X	X
250.83 Diabetes with other specified manifestations, Type I, uncontrolled	X	X
250.90 Diabetes with unspecified complication, Type II or unspecified type, not stated as uncontrolled	X	X
250.91 Diabetes with unspecified complication, Type I, not stated as uncontrolled	X	X
250.92 Diabetes with unspecified complication, Type II or unspecified type, uncontrolled	X	X
250.93 Diabetes with unspecified complication, Type I, uncontrolled	X	X
Principal or Secondary Diagnosis Code:		
585 Chronic renal failure	X	X
403.01 Hypertensive renal disease, malignant, with renal failure	X	X
403.11 Hypertensive renal disease, benign, with renal failure	X	X
403.91 Hypertensive renal disease, unspecified, with renal failure	X	X
404.02 Hypertensive heart & renal disease, malignant, with renal failure	X	X
404.03 Hypertensive heart & renal disease, malignant, with congestive heart failure and renal disease	X	X
404.12 Hypertensive heart & renal disease, benign, with renal failure	X	X
404.13 Hypertensive heart & renal disease, benign, with congestive heart failure and renal disease	X	X
404.92 Hypertensive heart & renal disease, unspecified, with renal failure	X	X
404.93 Hypertensive heart & renal disease, unspecified, with congestive heart failure and renal failure	X	X
V42.0 Organ or tissue replaced by transplant, kidney	X	X
V43.89 Organ or tissue replaced by other means, other (Kidney)	X	X
Procedure Code:		
52.80 Pancreatic transplant, not otherwise specified		X
52.82 Homotransplant of pancreas		X
Combination Procedure Codes:		
52.80 Pancreatic transplant, not otherwise specified, plus		
55.69 Other kidney transplantation	X	
or		
52.82 Homotransplant of pancreas plus		
55.69 Other kidney transplantation	X	

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The logic for the proposed DRG 512 accepts the pair of diagnosis codes in any position (principal/secondary or secondary/secondary). The pair of procedure codes must be present along with the two diagnosis codes. This DRG would be placed in the Pre-MDC GROUPER logic immediately following DRG 480 (Liver Transplant).

The logic for DRG 513 accepts the pair of diagnosis codes in any position (principal/secondary or secondary/secondary). Only one procedure code must be used along with the two diagnosis codes. This DRG would be placed in the Pre-MDC GROUPER logic immediately following proposed new DRG 512 (Simultaneous Pancreas/Kidney Transplant).

b. Intestinal Transplantation

Effective April 1, 2001, Medicare covers intestinal transplantation for the purpose of restoring intestinal function in patients with irreversible intestinal failure (Medicare Program Memorandum Transmittal No. AB–00–130, December 22, 2000). This procedure is covered only when performed for patients who have failed total parenteral nutrition (TPN) and only when performed in centers that meet approval criteria.

Intestinal failure is defined as the loss of absorptive capacity of the small bowel secondary to severe primary gastrointestinal disease or surgically induced short bowel syndrome. Intestinal failure prevents oral nutrition and may be associated with both mortality and profound morbidity.

If an intestinal transplantation alone is performed on a patient with an intestinal principal diagnosis, the case would be assigned to either DRG 148 (Major Small & Large Bowel Procedures With CC) or DRG 149 (Major Small & Large Bowel Procedures Without CC). If an intestinal transplantation and a liver transplantation are performed simultaneously, the case would be assigned to DRG 480 (Liver Transplant).

If an intestinal transplantation and a pancreas transplantation are performed simultaneously, currently the case would be assigned to either DRG 148 or DRG 149. As we have proposed in section II.B.12.A. of this proposed rule, effective October 1, 2001, the case would be assigned to DRG 513 (Pancreas Transplant). We are proposing to make a conforming change to the regulations at § 412.2(e)(4) and § 486.302 to include intestines (and multivisceral organs) in the list of organs for which Medicare pays for the acquisition costs on a reasonable cost basis.

Effective October 1, 2000, procedure code 46.97 (Transplant of intestine) was created. We have examined our Medicare claims data to determine whether it is appropriate to propose a new intestinal transplant DRG. We examined 100 percent of the data in the FY 2000 MedPAR file containing bills submitted through May 31, 2000. Therefore, we focused our examination on the previous code assignment for intestinal transplant, code 46.99 (Other operations on intestines), and facilities that are currently performing intestinal transplantation. We were able to identify only one case, with an average charge of approximately $10,738 as compared to the average standardized charges for DRGs 148 and 149, which are approximately $37,961, and $16,965, respectively. We will continue to monitor these cases to determine whether it may be appropriate in the future to establish a new DRG.

C. Recalibration of DRG Weights

We are proposing to use the same basic methodology for the FY 2002 recalibration as we did for FY 2001 (August 1, 2000 final rule (65 FR 47069)). That is, we would recalibrate the weights based on charge data for Medicare discharges. However, we propose to use the most current charge information available, the FY 2000 MedPAR file. (For the FY 2001 recalibration, we used the FY 1999 MedPAR file.) The MedPAR file is based on fully coded diagnostic and procedure data for all Medicare inpatient hospital bills.

The proposed recalibrate DRG relative weights are constructed from FY 2000 MedPAR data (discharges occurring between October 1, 1999 and September 30, 2000), based on bills received by HCFA through December 31, 2000, from all hospitals subject to the prospective payment system and short-term acute care hospitals in waiver States. The FY 2000 MedPAR file includes data for approximately 11,008,302 Medicare discharges.

The methodology used to calculate the proposed DRG relative weights from the FY 2000 MedPAR file is as follows:

- To the extent possible, all the claims were regrouped using the proposed DRG classification revisions discussed in section II.B. of this preamble. As noted in section II.B.8., due to the unavailability of the revised GROUPER software, we simulated most major classification changes to approximate the placement of cases under the proposed reclassification. However, there are some changes that cannot be modeled.
- Charges were standardized to remove the effects of differences in area wage levels, indirect medical education and disproportionate share payments, and, for hospitals in Alaska and Hawaii, the applicable cost-of-living adjustment.
- The average standardized charge per DRG was calculated by summing the standardized charges for all cases in the DRG and dividing that amount by the number of cases classified in the DRG.
- We then eliminated statistical outliers, using the same criteria used in computing the current weights. That is, all cases that are outside of 3.0 standard deviations from the mean of the log distribution of both the charges per case and the charges per day for each DRG are eliminated.
- The average charge for each DRG was then recomputed (excluding the statistical outliers) and divided by the national average standardized charge per case to determine the relative weight. A transfer case is counted as a fraction of a case based on the ratio of its transfer payment under the per diem payment methodology to the full DRG payment for nontransfer cases. That is, transfer cases paid under the transfer methodology equal to half of what the case would receive as a nontransfer would be counted as 0.5 of a total case.
- We established the relative weight for heart and heart-lung, liver, and lung transplants (DRGs 103, 480, and 495) in a manner consistent with the methodology for all other DRGs except that the transplant cases that were used to establish the weights were limited to those Medicare-approved heart, heart-lung, liver, and lung transplant centers that have cases in the FY 1999 MedPAR file. (Medicare coverage for heart, heart-lung, liver, and lung transplants is limited to those facilities that have received approval from HCFA as transplant centers.)
- Acquisition costs for kidney, heart, heart-lung, liver, lung, and pancreas transplants continue to be paid on a reasonable cost basis. Unlike other excluded costs, the acquisition costs are concentrated in specific DRGs (DRG 302 (Kidney Transplant); DRG 103 (Heart Transplant); DRG 480 (Liver Transplant); DRG 495 (Lung Transplant); and proposed new DRGs 512 (Simultaneous Pancreas/Kidney Transplant) and 513 (Pancreas Transplant). Because these costs are paid separately from the prospective payment rate, it is necessary to make an adjustment to prevent the relative weights for these DRGs from including the acquisition costs. Therefore, we subtracted the acquisition charges from the total charges on each transplant bill that showed acquisition charges before computing the average charge for the DRG and before eliminating statistical outliers.

When we recalibrated the DRG weights for previous years, we set a threshold of 10 cases as the minimum number of cases required to compute a reasonable weight. We propose to use that same case threshold in recalibrating the DRG weights for FY 2002. Using the FY 2000 MedPAR data set, there are 39 DRGs that contain fewer than 10 cases. We computed the weights for these 39 low-volume DRGs by adjusting the FY 2001 weights of these DRGs by the percentage change in the average weight of the cases in the other DRGs.

The new weights are normalized by an adjustment factor (1.44813) so that the average case weight after recalibration is equal to the average case weight before recalibration. This adjustment is intended to ensure that recalibration by itself neither increases nor decreases total payments under the prospective payment system, and accounts for the gradual shift in cases toward higher-weighted DRGs over time.

Section 1886(d)(4)(C)(iii) of the Act requires that, beginning with FY 1991, reclassification and recalibration changes be made in a manner that assures that the aggregate payments are neither greater than nor less than the aggregate payments that would have been made without the changes. Although normalization is intended to achieve this effect, equating the average case weight after recalibration to the average case weight before recalibration does not necessarily achieve budget neutrality with respect to aggregate payments to hospitals because payment to hospitals is affected by factors other than average case weight. Therefore, as we have done in past years and as discussed in section II.A.4.b. of the Addendum to this proposed rule, we are proposing to make a budget neutrality adjustment to ensure that the requirement of section 1886(d)(4)(C)(iii) of the Act is met.

D. Incorporating New Medical Services and Technologies in the Inpatient Hospital Prospective Payment System

Much attention recently has focused on how well Medicare incorporates the cost of new medical services and technologies into its payment systems. Of particular concern is the adequacy of Medicare's payment systems in facilitating access to new technologies for Medicare beneficiaries. Section 533 of Public Law 106–554 directs the Secretary to develop a mechanism for ensuring adequate payment under the hospital inpatient prospective payment system for new medical services and technologies, and to report to Congress on ways to more expeditiously incorporate new services and technologies into that system. This discussion addresses the requirements of section 533 of Public Law 106–554.

1. Overview

Medicare payment for an inpatient hospital discharge under the inpatient prospective payment system is determined by multiplying the relative weight associated with a particular DRG by the national average standardized amount (adjusted for other hospital characteristics such as a geographic wage index, teaching status, and treating a high percentage of low-income patients). Cases are classified into DRGs for payment under the prospective payment system based on the principal diagnosis, up to eight additional diagnoses, and up to six procedures performed during the stay, as well as age, sex, and discharge status of the patient. The diagnosis and procedure information is reported by the hospital using codes from the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM). The DRG relative weights are recalculated each year to reflect the average resources expended across all hospitals to treat patients within a particular DRG.

In general, the inpatient prospective payment system makes payments for new medical services and technologies as soon as these items are payable. New items or services generally fit within existing DRGs, and hospitals using these items and services will be paid at established payment rates for the applicable DRGs. Payment rates may subsequently be adjusted through the annual process of evaluating the assignment of cases within DRGs and recalculating the relative weights associated with each DRG based on average charges. These annual changes are made to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources.

Since the prospective payment system was first implemented in October 1983, the pace of innovation in medical technology has been rapid. Generally speaking, the system appears to have accommodated these innovations without occasioning significant concerns regarding access to new technologies. In its March 2001 report to the Congress, the Medicare Payment Advisory Commission stated "the design of the inpatient PPS (prospective payment system) makes it easier to ensure an appropriate distribution of payments while accommodating technological advances" (page 44).

2. Current Practice—Coding and Payment

A number of issues arise relating to present methods of incorporation of new technologies in the inpatient hospital prospective payment system. One issue is the appropriate ICD–9–CM code to be assigned to the new technology. This issue is discussed in detail below. Assuming the new technology is or can be covered by Medicare, a determination must be made concerning to which DRG should the new technology be assigned. The DRG (and the value of the relative weight associated with that DRG) to which the new technology is assigned determines the payment rate for the new technology. Under the DRG system, the condition of the patient is the primary consideration in the decision to assign a new technology to a DRG. Therefore, a new technology generally will be assigned to the same DRG as the DRG's predecessor technologies and treatment modalities. In this way, hospitals can receive payment for new technology under the inpatient hospital prospective payment system quickly. As use of the new technology diffuses among hospitals, HCFA will gradually and largely automatically recalibrate DRG payment rates based on hospital claims data to reflect increasing or decreasing costs of cases assigned to the DRG. Generally, it takes 2 years for claims data to be reflected in recalibrated DRG weights. Considering the actual costs as reflected in the claims data, HCFA may also reassign new technologies to different DRGs. However, because a new technology is often more costly initially than the predecessor technologies, the adequacy of the initial payment rate occasionally becomes an issue.

At present, if payment is to be made other than by routine assignment of the new technology to an existing DRG, it is necessary to establish a new ICD–9–CM code. The lag between application for a new code and its being made effective for payment is at least a year. Because we use actual charge data from hospitals, additional costs or savings from the new technology are not reflected in the DRG weight for 2 years after a new code is effective. For example, the costs or savings attributable to any new technologies that were assigned new ICD–9–CM codes effective October 1, 1999, will be reflected in the DRG relative weights effective for discharges on or after October 1, 2001.

The lag before new technology affected payment has been viewed by some observers as a useful check on payment changes, helping to ensure that

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these changes reflect the benefit of a new technology. Hospitals would adopt and utilize the new technology, it was reasoned, with a speed and to a degree commensurate with its medical advantages. Any differences in the resource requirements between the new and existing technologies would then be reflected over time in claims data and in changes in the DRG weights. To the extent particular new technologies may have been initially given relatively low payment, the design of the system provided incentives to compensate by achieving efficiencies elsewhere. Conversely, if a particular new technology reduced costs compared to existing technologies, hospitals would reap the payment benefits until such time as the DRG weights began to reflect the lower costs.

3. Current Practice—Data

Recently, HCFA provided an explicit avenue to permit more rapid payment adjustment through use of additional data. The Conference Report that accompanied the Balanced Budget Act of 1997 (Public Law 105–33) stated that "in order to ensure that Medicare beneficiaries have access to innovative new drug therapies, the conferees believe that HCFA should consider, to the extent feasible, reliable, validated data other than Medicare Provider Analysis and Review (MedPAR) data in annually recalibrating and reclassifying the DRGs" (H.R. Conf. Rep. No. 105–217, 105th Cong., 1st Sess., at 734 (1997)). The MedPAR contains records for all Medicare hospital discharges and is the source data used for DRG recalibration. Although we had never precluded the use of non-MedPAR data, we established an explicit process for the submission of such data in a manner consistent with the annual recalibration of the DRG weights. We stated in the July 30, 1999 **Federal Register** that, in the case of external data, a significant sample of the data should be submitted by August 1, approximately 8 months prior to the publication of the proposed rule. This would allow us to verify and test the data and make a preliminary assessment as to the feasibility of the data's use (64 FR 41499). Subsequently, a complete database must be submitted no later than December 1, approximately 4 months prior to the publication of the proposed rule. On the issue of the use of sample data, we stated in the **Federal Register** that we were not establishing specific criteria regarding sample sizes or data collection methodologies prior to gaining experience that would enable us to realistically reflect the availability of external data based on actual experience. We also encouraged anyone interested in submitting such data in the future to contact us to discuss the specific data they wish to submit and whether the data may be adequate.

4. New Legislation

Section 533 of Public Law 106–554 addresses the issue of how new technologies are introduced into the DRGs, and how DRG payment rates must be adapted to accommodate them. Specifically, the provision requires that the Secretary:

- Not later than April 1, 2001, submit a report to Congress on methods of expeditiously incorporating new medical services and technologies into the clinical coding system.
- Not later than October 1, 2001, implement the preferred methods described in the report.
- Effective October 1, 2001, establish a mechanism to recognize the costs of new medical services and technologies after notice and opportunity for public comment.
- Establish criteria to identify new medical services or technologies after notice and an opportunity for public comment.

5. DRG Assignment Issues

As background for discussion of how the DRGs should be changed to better accommodate new technology, this section will discuss the rationale for basing the initial DRG assignment on patient condition. The underlying assumption of the prospective payment system is that because hospitals are responsible for the delivery of care they can respond to the incentives to control costs inherent in the system. The success of any payment system that is predicated on providing incentives for cost control is almost totally dependent on the effectiveness with which the incentives are communicated. The DRGs were designed to be a management tool that is used also as the basis for prospective payments. The key distinction between a management tool and payment method is the ability of the hospital to use the information to take action in response to the incentives in the system. Thus, a management tool communicates information in a form and at a level of detail that can lead to specific actions. The effectiveness of any incentive-based payment system is enhanced if the payment method is simultaneously a management tool.

Because the DRGs were developed to group clinically similar patients, an extremely important means of communication between the clinical and financial aspects of care was created. DRGs provided administrators and physicians with a meaningful basis for evaluating both the process of providing care and the associated financial impacts. Development of care pathways by DRG and profit-and-loss reports by DRG product lines became commonplace. With the adoption of these new management methods, length of stay and the use of ancillary services dropped dramatically.

The DRGs not only provided a communications tool for hospital management, but they also provided an effective means for hospitals and Medicare to communicate. Instead of accountants and lawyers arguing the fine points of cost accounting, the focus of payment deliberations became the determination of a fair payment rate for patients with specific clinical problems. The vast majority of modifications to the DRGs since the inception of the Medicare inpatient hospital prospective payment system have resulted from recommendations from hospitals. The recommendations have almost always been the result of clinicians identifying specific types of patients with unique needs. A recent example of such a clinical dialogue relates to the DRGs for burns. The FY 1999 update to the DRGs included a major restructuring of the burn DRGs. This restructuring was the direct result of detailed and specific clinical recommendations provided to HCFA by burn specialists.

Central to the success of the Medicare inpatient hospital prospective payment system is that DRGs have remained a clinical description of why the patient required hospitalization. We believe it would be undesirable to transform DRGs into detailed descriptions of the technology and processes used by the hospital to treat the patient. If such a transformation were to happen, the DRGs would become largely a repackaging of fee-for-service without the management and communication benefits. A fundamental assumption underlying DRGs is that the hospital has the responsibility for deciding what technology and process to employ in treating a particular type of patient. As hospitals in the aggregate make treatment decisions, these decisions are reflected in the DRG payment weights. The separation of the clinical and payment weight methodologies allows a stable clinical methodology to be maintained while the payment weights evolve in response to changing practice patterns. The packaging of all services associated with the care of a particular type of patient into a single payment amount provides the incentive for efficiency inherent in a DRG-based prospective payment system. Substantial disaggregation of the DRGs into smaller units of payment, or a substantial number of cases receiving extra payments, would undermine the incentives and communication value in the DRG system.

6. Coding Issues

To permit us to identify use of a new technology on hospital claims and hence to make different payments than would otherwise be applicable, we would require a code that can be used to specify when that technology is used.

a. Process for Establishing New Codes

The ICD–9–CM Coordination and Maintenance Committee is responsible for discussing potential changes to ICD–9–CM. This is a Federal interdepartmental committee, co-chaired by the National Center for Health Statistics (NCHS) and HCFA. The NCHS has lead responsibility for the ICD–9–CM diagnosis codes, while HCFA has lead responsibility for the ICD–9–CM procedure codes. The committee holds meetings twice a year, usually in May and November. Agendas for the discussions about procedure codes are published on HCFA's Internet website a month before the meeting. A **Federal Register** notice is also published listing topics to be discussed. The meetings are open to the public and are held usually in Baltimore, Maryland. Shortly afterwards, an extensive summary of the meeting is published on HCFA's website and the public is given an additional opportunity to comment. Final comments are due by early January. A complete, current timeline is included in the Summary Report of the Committee at: www.hcfa.gov/medicare/icd9cm.htm.

For a topic to be discussed at one of the two yearly meetings of the committee, the committee must receive a request 2 months prior to the meeting. This timeframe allows HCFA to publish the agendas in the **Federal Register** notices and allows individuals and organizations to review the agenda and to determine if they wish to attend the public meetings. The timeframe is also necessary to allow the committee to research the topic and prepare a draft solution in time for the meeting. During the meetings, the committee provides a brief description of the topic (such as a new technology that may not be adequately identified by the current code) and then describes the technology or procedure through a formal presentation. Frequently, medical experts who perform the procedure make a presentation to describe the procedure and how it might be different from other procedures in the current code. Proposals are made to either continue capturing the procedure in the existing code, revise existing codes, or create a new code. The public then discusses the merits of the proposals and offers any alternate suggestions.

The ICD–9–CM is updated once a year, effective October 1. This date coincides with the annual updates to the DRGs within the inpatient hospital prospective payment system. Each spring HCFA publishes a proposed rule that includes proposed changes to the inpatient hospital prospective payment system. This notice also includes final decisions on changes to ICD–9–CM codes. By August 1, HCFA publishes the new codes in the Addendum to the final rule, which is a technical presentation of actual changes to be made in both the index and tabular sections of the ICD–9–CM coding books. The Addendum is available on HCFA's website and is also sent to organizations such as the American Hospital Association (AHA) and the American Health Information Management Association (AHIMA) to distribute to their members. By October 1 of each year, the Department of Health and Human Services also produces a CD–ROM version of the ICD–9–CM, which may be purchased at the Government Printing Office. Since the ICD–9–CM is not a copyrighted system, many publishers and organizations distribute and sell books or other publications that include the changes to ICD–9–CM.

Although the committee's process for discussing proposed changes to the ICD–9–CM fully involves and informs the public, the deliberative nature of the process does require some time. Topics discussed at the May and November 2000 meetings of the Committee are for changes to ICD–9–CM in October 2001. Therefore, depending on whether a request is considered at the May or November meeting, resulting changes may not be effective for approximately a year to a year-and-a-half later.

b. Options To Expedite the Implementation of Coding Changes

Several constraints upon the system would complicate implementing extensive changes. One significant complication is the interaction between the DRG system and the ICD–9–CM diagnosis and procedure codes (in the case of new services and technologies, the discussion focuses on procedure rather than diagnosis codes). When a new procedure code is created, a decision must be made as to whether the new code affects DRG assignment (for example, resulting in a case being assigned to a surgical rather than a medical DRG). Currently, new technology is generally assigned to the same DRG as its predecessor codes. Even if new codes do not affect DRG assignment, the GROUPER software (used to assign cases to DRGs) must be reprogrammed to recognize and classify all the new codes. This is necessary to allow Medicare's claims processing systems to process the claim.

In addition to the changes to the GROUPER software, implementing changes to ICD–9–CM codes is a detailed and far-reaching process involving modifications to code books and software coding systems, as well as changes to hospitals' claims processing systems. As described above, the current process is organized around the annual publication of coding changes in the **Federal Register** as part of the updates and changes to the inpatient hospital prospective payment system. The changes are made available during the summer, and communicated via multiple channels to hospitals. This process allows for the necessary processing changes to be thoroughly tested prior to implementation, both by HCFA and by the hospitals. This testing procedure is essential given the volume (generally 11 million claims annually) and dollar impact (approximately $75 billion during FY 2001) of Medicare inpatient discharges.

Another important issue when considering expediting the process of making coding changes is that the annual DRG reclassification and recalibration of the relative weights must be made in a manner that ensures that aggregate payments to hospitals are not affected (section 1886(d)(4)(C)(iii) of the Act). If ICD–9–CM changes were made at multiple times during the year, the budget neutrality requirement would mean the standardized amounts, and potentially the cost outlier thresholds, would change as well. These changes would compromise the prospective nature of the payment system, whereby hospitals are able to project their revenues for the year and plan accordingly. Because we do not believe the requirement in section 533 of Public Law 106–554 to explore ways to expedite coding changes was intended to disrupt the prospective nature of the payment system, we did not consider options that would require revising the DRG weights and the standardized amounts more than once a year.

With these considerations in mind, we explored the potential for shortening the current process.

First, we are proposing to move the November meeting of the Coordination and Maintenance Committee to December without significant disruption. To move it further would

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disrupt the process for production of the annual inpatient prospective payment system regulation. This step would shorten the code assignment process by a month and permit coding changes resulting in payment changes to be implemented in a year.

Second, we are proposing to expedite the process by issuing new coding decisions resulting from the spring meeting of the Committee (currently in May) that would be effective the following October 1. It may be necessary to move the May meeting to April to accommodate this procedure. Because the timing of this process would not allow the coding changes to be incorporated into the proposed rule published in the spring, cases with the new codes would have to be assigned to the same DRG to which they would have been assigned without the new code and no other payment adjustments would be possible. These coding changes would thus not affect the DRG weights or the budget neutrality calculations. However, more rapid introduction of new codes would permit reflection of the codes in claims data more quickly, and thus would permit eventual adjustment of payment rates sooner than otherwise possible. This capability could be of particular use where otherwise available data were not sufficient to support an immediate payment change, because hospital claims data permitting identification of use of the new technology would be available more quickly.

This change would reduce the time between discussion of a proposed code and its implementation from a minimum of 11 months to 6 months. It would allow for the collection of MedPAR data a full year earlier than under the current process, providing the possibility that DRG revisions based on new codes could be expedited by up to 1 year.

There would be significant challenges to making this proposed process work. Because the changes would not be published in the proposed rule, the public would be given less opportunity to consider the merits of the proposals, and it would have to either attend the spring meeting of the Committee or respond to the summary report within a few weeks. The decisions from the spring meeting must be finalized by the middle of June in order for us to include the changes in the Addendum of the final rule and in order to make changes in the GROUPER software to be effective October 1; it may be necessary to schedule the spring meeting earlier to meet this deadline. The opportunity to solicit additional input from industry groups and experts would be curtailed because of the short time lines. There would be an increased risk of errors related to revisions in the procedure code index (a manual process performed by HCFA), as there would be less time available to review and revise the procedure index to ensure that all changes are accurately reflected.

For example, we are creating a new procedure code to capture percutaneous gastrojejunostomy (code 44.32). All coding instructions (indexing, inclusion terms, and exclusion terms) must be verified so that the procedure is appropriately indexed. If one of the many index entries for gastrojejunostomy is not correctly updated, percutaneous gastrojejunostomy would be assigned to another gastroenterostomy (code 44.39), which is an operating room procedure. This can have a significant impact on national health care data. Coders at different hospitals may follow different entries and arrive at different codes. To limit the potential for confusion in the hospital and coding communities resulting from two separate schedules for implementing code changes, we would limit these changes to those that meet our definition of new technology eligible for special treatment as proposed below. It would not be necessary, however, to demonstrate that the cases involving the new technology would be inadequately paid, since there would be no payment impacts of these changes.

The changes would be included in the Addendum of the proposed rule for the inpatient hospital prospective payment system, and placed on the website for use by the industry in updating books and software systems. They also would be published in the final rule, and included in the CD–ROM version of ICD–9–CM that is distributed by the Government Printing Office. We are requesting public comments on this proposal.

c. Limitations of ICD–9–CM

While the updating process currently in use may not lend itself to expeditiously incorporating new medical services and technologies into the ICD–9–CM coding system, another important factor is the dated and limited structure of the ICD–9–CM system. The ICD–9–CM system was developed in the 1970s and implemented in 1979. Dramatic advances have occurred in medicine since that time. Although the ICD–9–CM Coordination and Maintenance Committee has attempted to make coding modifications to capture new technology, it has sometimes been difficult to achieve a reasonable result.

The ICD–9–CM procedure codes are made up of four digits: two numerical characters followed by a decimal, and then two additional numerical characters. The first two digits indicate a category, such as 36—Operations on the vessels of the heart. The third digit provides additional breakdown, such as 36.0—Removal of coronary artery obstruction and insertion of stents. When the fourth digit is added, the code is fully described. There are only 10 codes available within each category (fourth digits 0–9). Once a category is full, we must either combine types of similar procedures under one code, or find a place in another section of the codebook for a new code. The benefit of such a system is that we can collapse the codes into categories when analyzing claims data to capture a wide range of similar procedures. However, if similar codes are placed in separate sections of the code book, coders may not easily find them. Errors may occur when trying to identify particular types of cases when codes are not carefully placed within a system such as the current ICD–9–CM.

ICD–9–CM is 22 years old and the premises on which the coding system was established are dated. A number of approaches and techniques used for procedures such as lasers and the use of scopes were not anticipated when the structure of ICD–9–CM was developed. Consequently, the basic categories were established on technology that is now outdated. Making needed coding changes each year has been quite difficult and involves making compromises that effect the precision of the coding.

d. Short-Term Solutions Within the ICD–9–CM Structure

To consider how we might better respond to requests for new codes in the short term, we examined ICD–9–CM to attempt to identify an open series of codes that could be used for new procedures and technologies. There are currently 16 chapters of procedure codes. However, codes 17.00 through 17.99 are not in use. These codes are found between Chapter 3, "Operations on the Eye," and Chapter 4, "Operations on the Ear." This series of 100 codes could be used to provide codes for new procedures and technology. To fully utilize this new series of codes, we would assign new procedures to the next available code.

A limitation of this approach would be that this new chapter would capture a diverse group of procedures potentially affecting all body systems. Assigning procedure codes to this new chapter would undoubtedly create considerable confusion for coders. Currently, procedures are grouped by body system, and similar procedures are placed in categories. This arrangement assists the coder in choosing the most appropriate code because he or she can quickly review closely related codes that are together. Using Chapter 17 for new technology codes, on the other hand, would mean that closely related codes would be widely separated.

Use of Chapter 17 would also require a major revision of coding rules since coders are taught to identify codes within a group of similar procedures. They are not accustomed to looking for a list of unrelated procedures in a separate section of the coding book.

To supplement the Chapter 17 codes, the Coordination and Maintenance Committee may be able to assign vacant codes in other chapters. However, large numbers of sequences are already fully or nearly fully occupied, and this strategy would only provide limited availability of new codes.

e. Alternative Short-Term Approaches

Some observers have expressed concern that the additional codes available within the ICD–9–CM code set may not be adequate to accommodate both routine changes in coding and the new technologies under consideration here, particularly if a long-term change, such as adoption of ICD–10–PCS, is significantly delayed. We have examined several alternative short-term options in the event the additional available codes are used before a long-term solution is reached. In evaluating these alternatives, one must consider the changes each entails to hospitals' and HCFA's coding and claims processing systems, and the time necessary to implement such changes (balanced against the timeframe for adopting a long-term coding solution).

Expanding ICD–9–CM procedure codes by making them alphanumeric or adding a fifth digit would make available a substantial number of new codes for new technology but would require substantial system changes and create standards issues. This approach was extensively discussed in meetings of the ICD–9–CM Coordination and Maintenance Committee prior to the development of ICD–10–PCS. Input from the public indicated that such a significant modification to a limited and dated system would only make the system worse. The time it would take to make this system work well would be longer than that required to build a new system and the resources needed for system changes would be significant. Such a modification of the ICD–9–CM standard code set would require the formal standards setting process prescribed by the regulations implementing the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191). We solicit comments from the public about the desirability of pursuing expansion and modification of the ICD–9–CM standards for this purpose.

Using the V-code section of ICD–9–CM diagnosis codes to report new technology would not require any systems changes or create any standards issues and would create a moderate number of codes for new technology. We have discussed this recommendation with NCHS. NCHS opposed this option as an inappropriate use of diagnosis codes. While "V" codes are used for the classification of factors influencing health status and contact with health services, they are not a substitute for procedure coding. By adding procedure coding concepts to the diagnosis coding system, confusion could easily lead to increased errors. Furthermore, the V-code section has only a limited number of available spots.

We also considered using HCFA Common Procedure Coding System (HCPCS) codes to report use of new technology for inpatient cases. However, using HCPCS would require a moderate amount of systems change and may require the formal standards setting process prescribed by Public Law 104–191, since the HCPCS code set is not the standard for inpatient services. However, it would make a substantial number of codes available for new technology. Alphanumeric HCPCS codes are currently used in outpatient departments and physician offices for reporting services, and they are used on a limited basis by hospitals in reporting specific inpatient services. For instance, alphanumeric HCPCS codes are used for reporting the use of hemophilia clotting factors used during an inpatient stay.

Use of HCPCS codes would require that a new service or technology either be assigned a code through otherwise applicable processes for HCPCS coding or that HCFA assign a specific, temporary code for use in connection with new technology payments for inpatient hospital services. Specifically assigned codes could be assigned relatively quickly. However, use of such codes would run the risk of confusion if other codes were assigned to the same service or items when used in other settings. More generally, HCPCS coding would duplicate information found in the ICD–9–CM procedure codes. Careful attention to integration of coding across the two systems would be necessary, and dissemination of information about correct coding to hospital coders would present challenges. Even with excellent integration and dissemination, the risk of confusion by hospital coders would be high.

The use of HCPCS codes would also raise questions on how the accuracy of claims data will be assessed. HCFA contracts with Peer Review Organizations (PROs) to validate the accuracy of coded data. Consideration would need to be given to how the accuracy of these data could be verified. If two separate coding systems with overlapping information are used, considerable variations in reporting practices might arise.

Similar to the option of using alphanumeric ICD–9–CM procedure codes, changes in systems and in hospital coding procedures that would be associated with this approach would take time and resources to implement for hospitals, HCFA, and potentially other payers such as Medicare secondary insurers.

In recognition of these considerations, we do not propose to proceed with use of HCPCS codes for this purpose at the present. We believe this possibility should be revisited later if the ICD–9–CM codes in fact prove inadequate and if a longer term solution is not yet available. However, we are encouraging public comments on the concept of using HCPCS codes to identify specific new technologies on inpatient hospital claims.

f. Development of ICD–10–PCS; A Possible Long-Term Solution

While acknowledging the limitations of the ICD–9–CM system, the Secretary designated the ICD–9–CM system as the national standard in a final rule in the **Federal Register** on August 17, 2000 (65 FR 50311) following notice and comment rulemaking in accordance with Public Law 104–191. In that same final rule, the public was advised that there would be a need in the near future to replace this dated coding system with a system that could better capture today's health care information. At that time, work was proceeding on an updated variant of the ICD system, ICD–10, that could replace ICD–9–CM, but this system was not yet completed. The World Health Organization developed ICD–10 as an international diagnosis coding system. NCHS has been modifying ICD–10 to replace the diagnosis section of ICD–9–CM. This system is being referred to as ICD–10–CM. At the same time, HCFA has been developing the ICD–10–Procedure Coding System (ICD–10–PCS) as a possible replacement for the ICD–9–CM procedure codes.

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Criteria for the development of a new procedure coding system were established by the National Committee on Vital and Health Statistics (NCVHS). The criteria included the following:

- Completeness—all substantially different procedures have a unique code.
- Expandability—the structure of the system allows incorporation of new procedures and technologies as unique codes.
- Standardized terminology—the coding system includes definitions of the terminology used. While the meaning of the specific words can vary in common usage, the coding scheme does not include multiple meanings for the same term. Each term is assigned a specific meaning.
- Multiaxial—the system has a multiaxial structure with each code character having the same meaning within the specific procedure section and across procedure sections to the extent possible.
- Diagnostic information is not included in the procedure description.

The ICD–10–PCS was developed using these criteria by HCFA through a contract with 3M Health Information Systems. The ICD–10–PCS system provides much greater code capacity because all substantially different procedures have a unique code. While the ICD–9–CM procedure coding system is limited to a maximum of 10,000 codes, the current draft of ICD–10–PCS contains 197,769 codes and the number could be expanded further.

g. Public Meeting on Implementing ICD–10–PCS

The Department of Health and Human Services is starting the process of soliciting public comments on whether it should proceed to adopt ICD–10–PCS as the national standard for coding inpatient hospital services to replace ICD–9–CM procedures. A public meeting on this issue has been scheduled for May 17, 2001, in the HCFA Auditorium in Baltimore, Maryland. Information on this meeting can be found in the Summary Report of the November 2000 meeting of the ICD–9–CM Coordination and Maintenance Committee at: www.hcfa.gov/medicare/icd9cm.htm. The public is encouraged to attend and participate in the discussion on whether ICD–10–PCS should become a national standard. Organizations and groups will be given the opportunity to make a brief presentation on their members' behalf. Groups wishing to be scheduled to present should contact Pat Brooks, HCFA, at (410) 786–5318. This meeting will begin the process of evaluating ICD–10–PCS as a future national standard.

h. Proposed Methods of Expeditiously Incorporating New Medical Services and Technologies Into the Coding System

In summary, we are proposing a two-part strategy for expeditiously incorporating new medical services and technologies into the clinical coding system used with respect to payment for inpatient hospital services. First, we are proposing to shorten the timeframe for implementing new codes by processing changes that do not have payment implications without first publishing them in the proposed rule in the spring. This means new codes approved at the spring meeting of the ICD–9–CM Coordination and Maintenance Committee could be implemented by October of the same year. We also are proposing to move the November meeting to December. These proposed changes would reduce the time it currently takes to implement new codes, as well as reduce the time required to collect data through the MedPAR by up to a year in many cases.

Second, to make more codes available to identify new technology, we will immediately begin to work with the public to use Chapter 17 of ICD–9–CM procedures. This will provide room for 100 additional procedure codes. We also will continue the current process of adding and revising codes within the current chapters as room and structure allow. Our long-range strategy is to consider the implementation of ICD–10–PCS as a replacement system for ICD–9–CM. However, because of the need to address any such change through notice and public rulemaking procedures (a proposed and final rule), in addition to the need to revise both our payment systems and those of hospitals, this could occur no earlier than October 2003.

7. New Requirements Relative to New Services and Technologies

Section 533 of Public Law 106–554 addresses the process by which new technologies and services are introduced into the DRGs and how DRG payment rates are to be adapted to accommodate them. Section 533(b) added new section 1886(d)(5)(K) to the Act, which specifies that the Secretary must establish criteria to use to identify a new technology after notice and an opportunity for public comment. Under new section 1886(d)(5)(K)(ii)(I) of the Act, effective for discharges occurring on or after October 1, 2001, the Secretary is required to apply a mechanism to recognize the costs of new technologies if, "based on the estimated costs incurred with respect to discharges involving such service or technology, the DRG prospective payment rate otherwise applicable to such discharges under this subsection is inadequate." Further, new section 1886(d)(5)(K)(v) stipulates that the requirement for an additional payment for a new medical service or technology may be satisfied by means of "an add-on payment, a payment adjustment, or any other similar mechanism for increasing the amount otherwise payable with respect to a discharge under this subsection." Section 533(b) also added a new section 1886(d)(5)(L) to the Act which states that the requirement for an additional payment for a new medical service or technology may also be met through establishing "new-technology groups into which a new medical service or technology will be classified."

In section IV.F. of this preamble, we are setting forth, for public comment, our policy proposals to implement section 1886(d)(5)(K) of the Act, as added by section 533(b) of Public Law 106–554. In summary, the proposed policies include—

- Proposed criteria for identifying new medical services and technologies for additional payments beyond the DRG prospective payment system payment.
- The proposed methodology for determining the adequacy of current payments for new services and technology.
- The proposed methodology for determining the amount of the additional payment and for payment mechanism for new medical services and technologies.

III. Proposed Changes to the Hospital Wage Index

A. Background

Section 1886(d)(3)(E) of the Act requires that, as part of the methodology for determining prospective payments to hospitals, the Secretary must adjust the standardized amounts "for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level." In accordance with the broad discretion conferred under the Act, we currently define hospital labor market areas based on the definitions of Metropolitan Statistical Areas (MSAs), Primary MSAs (PMSAs), and New England County Metropolitan Areas (NECMAs) issued by the Office of Management and Budget (OMB). The OMB also designates Consolidated MSAs (CMSAs). A CMSA is a metropolitan area with a population of one million or more, comprising two or more PMSAs (identified by their separate economic and social character). For purposes of the hospital wage index, we use the PMSAs rather than CMSAs since they allow a more precise breakdown of labor costs. If a metropolitan area is not designated as part of a PMSA, we use the applicable MSA. Rural areas are areas outside a designated MSA, PMSA, or NECMA. For purposes of the wage index, we combine all of the rural counties in a State to calculate a rural wage index for that State.

We note that, effective April 1, 1990, the term Metropolitan Area (MA) replaced the term MSA (which had been used since June 30, 1983) to describe the set of metropolitan areas consisting of MSAs, PMSAs, and CMSAs. The terminology was changed by OMB in the March 30, 1990 **Federal Register** to distinguish between the individual metropolitan areas known as MSAs and the set of all metropolitan areas (MSAs, PMSAs, and CMSAs) (55 FR 12154). For purposes of the prospective payment system, we will continue to refer to these areas as MSAs.

Beginning October 1, 1993, section 1886(d)(3)(E) of the Act requires that we update the wage index annually. Furthermore, this section provides that the Secretary base the update on a survey of wages and wage-related costs of short-term, acute care hospitals. The survey should measure, to the extent feasible, the earnings and paid hours of employment by occupational category, and must exclude the wages and wage-related costs incurred in furnishing skilled nursing services. As discussed below in section III.F. of this preamble, we also take into account the geographic reclassification of hospitals in accordance with sections 1886(d)(8)(B) and 1886(d)(10) of the Act when calculating the wage index.

B. FY 2002 Wage Index Update

The proposed FY 2002 wage index values in section V of the Addendum to this proposed rule (effective for hospital discharges occurring on or after October 1, 2001 and before October 1, 2002) are based on the data collected from the Medicare cost reports submitted by hospitals for cost reporting periods beginning in FY 1998 (the FY 2001 wage index was based on FY 1997 wage data).

The proposed FY 2002 wage index includes the following categories of data associated with costs paid under the hospital inpatient prospective payment system (as well as outpatient costs), which were also included in the FY 2001 wage index:

- Salaries and hours from short-term, acute care hospitals.
- Home office costs and hours.
- Certain contract labor costs and hours.
- Wage-related costs.

Consistent with the wage index methodology for FY 2001, the proposed wage index for FY 2002 also continues to exclude the direct and overhead salaries and hours for services not paid through the inpatient prospective payment system such as skilled nursing facility (SNF) services, home health services, or other subprovider components that are not subject to the prospective payment system.

We calculate a separate Puerto Rico-specific wage index and apply it to the Puerto Rico standardized amount. (See 62 FR 45984 and 46041.) This wage index is based solely on Puerto Rico's data. Finally, section 4410 of Public Law 105–33 provides that, for discharges on or after October 1, 1997, the area wage index applicable to any hospital that is not located in a rural area may not be less than the area wage index applicable to hospitals located in rural areas in that State.

C. FY 2002 Wage Index Proposal

Because it is used to adjust payments to hospitals under the prospective payment system, the hospital wage index should, to the extent possible, reflect the wage costs associated with the areas of the hospital included under the hospital inpatient prospective payment system. In response to concerns within the hospital community related to the removal, from the wage index calculation, of costs related to graduate medical education (GME) (teaching physicians and residents) and certified registered nurse anesthetists (CRNAs), which are paid by Medicare separately from the prospective payment system, the American Hospital Association (AHA) convened a workgroup to develop a consensus recommendation on this issue. The workgroup recommended that costs related to GME and CRNAs be phased out of the wage index calculation over a 5-year period. Based upon our analysis of hospitals' FY 1996 wage data, and consistent with the AHA workgroup's recommendation, we specified in the July 30, 1999 final rule (64 FR 41505) that we would phase-out these costs from the calculation of the wage index over a 5-year period, beginning in FY 2000. In keeping with the decision to phase-out costs related to GME and CRNAs, the proposed FY 2002 wage index is based on a blend of 40 percent of an average hourly wage including these costs, and 60 percent of an average hourly wage excluding these costs.

Beginning with the FY 1998 cost reports, we revised the Worksheet S–3, Part II so that hospitals can separately report teaching physician Part A costs on lines 4.01, 10.01, 12.01, and 18.01. Therefore, it is no longer necessary for us to conduct the special survey we used for the FY 2000 and FY 2001 wage indexes (64 FR 41505 and 65 FR 47071).

1. Health Insurance and Health-Related Costs

In the August 1, 2000 final rule, we clarified our definition of "purchased health insurance costs" and "self-insurance" for hospitals that provide health insurance to employees (65 FR 47073). For purposes of the wage index, purchased or self-funded health insurance plan costs include the hospitals' insurance premium costs, external administration costs, and the share of costs for services delivered to employees.

In response to a comment received concerning this issue, we stated that, for self-funded health insurance costs, personnel costs associated with hospital staff that deliver the services to the employees must continue to be excluded from wage-related costs if the costs are already included in the wage data as salaries on Worksheet S–3, Part II, Line 1. However, after further consideration of this policy, particularly with respect to concerns expressed by our fiscal intermediaries about the level of effort required during the wage index desk review process to ensure hospitals are appropriately identifying and excluding these costs, we are proposing a revision. Effective with the calculation of the FY 2003 wage index, for either purchased or self-funded health insurance, we would allow health insurance personnel costs, associated with hospital staff that deliver services to employees, to be included as part of the wage-related costs. We believe this proposed revised policy will ensure that health insurance costs are consistently reported by hospitals. Health insurance costs would continue to be developed using generally accepted accounting principles.

In the August 1, 2000 final rule (65 FR 47073), we further clarified that health-related costs (including employee physical examinations, flu shots, and clinic visits, and other services that are not covered by employees' health insurance plans but are provided at no cost or at discounted rates to employees of the hospital) may be included as "other" wage-related costs if, among

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other criteria, the combined cost of all such health-related costs is greater than one percent of the hospital's total salaries (less excluded area salaries).

For purposes of calculating the FY 2003 wage index (which will be based on data for cost reporting periods beginning in FY 1999), we are proposing to revise this policy to allow hospitals to include health-related costs as allowable core wage-related costs.

2. Costs of Contracted Pharmacy and Laboratory Services

Our policy concerning inclusion of contract labor costs for purposes of calculating the wage index has evolved over the years. We recognize the role of contract labor in meeting special personnel needs of many hospitals. In addition, improvements in the wage data have allowed us to more accurately identify contract labor costs and hours. As a result, effective with the FY 1994 wage index, we included the costs of direct patient care contract services in the wage index calculation. The FY 1999 wage index included the costs and hours of certain management contract services, and the FY 2000 wage index included the costs for contract physician Part A services. (The 1996 proposed rule (61 FR 27456) provided an in-depth background to the issues related to the inclusion of contract labor costs in the wage index calculation.)

We revised the 1998 cost report to collect the data associated with contract pharmacy, Worksheet S–3, Part II, Line 9.01, and contract laboratory, Worksheet S–3, Part II, Line 9.02. The cost reporting instructions for these line numbers followed that for all contract labor lines; that is, to include the amount paid for services furnished under contract for direct patient care, and not include cost for equipment, supplies, travel expenses, and other miscellaneous or overhead items (Medicare Provider Reimbursement Manual, Part 2, Cost Reporting Forms and Instructions, Chapter 36, Transmittal 6, page 36–32). Effective with the FY 2002 wage index, which uses FY 1998 wage data, we are proposing to include the costs and hours of contract pharmacy and laboratory.

3. Collection of Occupational Mix Data

Section 304(c) of Public Law 106–554 amended section 1886(d)(3)(E) of the Act to require that the Secretary must provide for the collection of data every 3 years on the occupational mix of employees for each short-term, acute care hospital participating in the Medicare program, in order to construct an occupational mix adjustment to the wage index. The initial collection of these data must be completed by September 30, 2003, for application beginning October 1, 2004.

Currently, the wage data collected by HCFA on the cost report reflect the sum of wages, hours, and wage-related costs for all hospital employees. There is no separate collection by occupational categories of employees, such as registered nurses or physical therapists. Total salaries and hours reflect management decisions made by hospitals in terms of how many employees within a certain occupation to employ to treat different types of patients. For example, a large academic medical center may tend to hire more high-cost specialized employees to treat its more acutely ill patient population. The argument is that the higher labor costs incurred to treat this patient population are reflected in the higher case mix of these hospitals, and therefore, reflecting these costs in the wage index is essentially counting them twice.

An occupational mix adjustment can be used to account for hospital management decisions about how many employees to hire in each occupational category. Occupational mix data measure the price the hospital must pay for employees within each category. A wage index that reflected only these market prices would remove the impact of management decisions about the mix of employees needed and, therefore, better capture geographic variations in the labor market.

We have examined this issue previously. In the May 27, 1994 **Federal Register** (59 FR 27724), we discussed the outcome of consideration of this issue by a hospital workgroup. At that time, the workgroup's consensus was that the data required to implement an occupational mix adjustment were not available and the likelihood of obtaining such data would be minimal. There seemed to be little support among hospital industry representatives for developing a system that would create additional reporting burdens with an unproven or minimal impact on the distribution of payments. Also, in the August 30, 1991 **Federal Register** (56 FR 43219), we stated our belief that the collection of these data would be costly and difficult.

In considering the format to collect occupational mix data, we looked to data currently being collected by the Bureau of Labor Statistics (BLS), which conducts an annual mail survey to produce estimates of employment and wages for specific occupations. This program, Occupational Employment Statistics (OES), collects data on wage and salary workers in nonfarm establishments in order to produce employment and wage estimates for over 700 occupations.

The OES survey collects wage data in 12 hourly rate intervals. Employers report the number of employees in an occupation per each wage range. To illustrate, the wage intervals used for the 1999 survey are as follows:

Interval	Hourly wages	Annual wages
Range A	Under $6.75	Under $14,040
Range B	6.75 to 8.49	14,040 to 17,659
Range C	8.50 to 10.74	17,660 to 22,359
Range D	10.75 to 13.49	22,360 to 28,079
Range E	13.50 to 16.99	28,080 to 35,359
Range F	17.00 to 21.49	35,360 to 44,719
Range G	21.50 to 27.24	44,720 to 56,679
Range H	27.25 to 34.49	56,680 to 71,759
Range I	34.50 to 43.74	71,760 to 90,999
Range J	43.75 to 55.49	91,000 to 115,439
Range K	55.50 to 69.99	115,440 to 145,599
Range L	70,000 and over	145,600 and over

It should be noted that this table is for illustrative purposes, and we may update the data ranges in our actual collection instrument.

Although we initially considered using the OES data, section 304(c) of Public Law 106–554 requires us to collect data from every short-term, acute care hospital. The OES data are a sample survey and, therefore, as currently conducted, are not consistent with the statutory requirement to include data from every hospital. Another issue with using OES data is that, for purposes of the Medicare wage index, the hospitals' data must be reviewed and verified by the fiscal intermediaries. The OES survey is a voluntary survey.

Although we decided to pursue a separate data collection effort than OES, we propose to model our format after the one used by OES. In this way, hospitals participating in the OES survey, should have no additional recordkeeping and reporting requirements beyond those of the OES survey.

The OES survey of the hospital industry is designed to capture all occupational categories within the industry. For purposes of adjusting the wage index for occupational mix, we do not believe it is necessary to collect data from such a comprehensive scope of categories. Furthermore, because the data must be audited, a comprehensive list of categories would be excessively burdensome.

In deciding which job categories to include, we reviewed the occupational categories collected by OES and identified those with at least 35,000 hospital employees. Our goal is to collect data from a sample of job categories that provides a valid measure of wage rates within a geographical area. Using this threshold of at least 35,000 employees within a category nationally, we are proposing to collect the number of employees by wage range as illustrated in the above table, for the occupational categories listed below. The following data are based on the 1999 OES survey:

OES code	Category	Employees	Percent of total hospital employees	Mean hourly wage
15008	Medicine and Health Services Managers	93,680	1.9	$27.38
27302	Social Workers, Medial and Psychiatric	53,360	1.1	16.33
32102	Physicians and Surgeons	125,640	2.6	43.76
32308	Physical Therapists	39,840	0.8	26.14
32502	Registered Nurses	1,231,980	25.0	21.12
32505	Licensed Practical Nurses	206,360	4.2	13.39
32517	Pharmacists	46,860	1.0	28.62
32911, 32928, 32931	Clinical Technologists and Technicians	122,380	2.50	11.69
51002, 55105, 55108, 55305 55332, 56347	First-Line Supervisors and Clerical Workers	445,730	9.5	11.39
65038, 67002, 67005	Food Preparation Workers and Housekeeping.	218,440	4.5	8.17
66008	Nursing Aides, Orderlies, and Attendants	301,240	6.2	8.67

We believe this list of occupational categories provides a good representation of the employee mix at most hospitals. Definitions for each occupational category are available on the BLS website at http://stats.bls.gov/oes/1999/oes_alph.htm.

We have yet to settle on the methodology on how to use the occupational mix index. One option would be to weight each hospital's wage index by its occupational mix index. This requires calculating a national occupational mix index and then breaking it down by MSA and by hospital, similar to how the wage index is broken down. In this way, the wage index would capture geographic differences in wage rates. The decision about how to apply the occupational mix index to the wage index depends on the quality of the data collected, since this effort will be the first time wage and hour data by occupation are collected in this audited manner.

Section 304(c) directs the Secretary to provide for the collection of these data by September 30, 2003, and to apply them in the wage index by October 1, 2004. Therefore, the data are to be incorporated in the FY 2005 wage index. Under our current timetable, the FY 2005 wage index will be based on wage data collected from hospitals' cost reporting periods beginning during FY 2001. In order to facilitate the fiscal intermediaries' review of these data, we believe the occupational mix data should coincide with the data otherwise used to calculate the cost report. Therefore, we will conduct a special survey of all short-term acute-care hospitals that are required to report wage data to collect these data coinciding with hospitals' FY 2001 cost reports. More specific procedural information regarding this survey will be included in the FY 2002 final rule scheduled to be published by August 1, 2001.

D. Verification of Wage Data From the Medicare Cost Report

The data for the proposed FY 2002 wage index were obtained from Worksheet S–3, Parts II and III of the FY 1998 Medicare cost reports. The data file used to construct the proposed wage index includes FY 1998 data submitted to HCFA as of mid-February 2001. As in past years, we performed an intensive review of the wage data, mostly through the use of edits designed to identify aberrant data.

We asked our fiscal intermediaries to revise or verify data elements that resulted in specific edit failures. Some unresolved data elements are included in the calculation of the proposed FY 2002 wage index pending their resolution before calculation of the final FY 2002 wage index. We have instructed the intermediaries to complete their verification of questionable data elements and to transmit any changes to the wage data no later than April 9, 2001. We expect that all unresolved data elements will be resolved by that date. The revised data will be reflected in the final rule.

Also, as part of our editing process, we removed data for 47 hospitals that failed edits. For 23 of these hospitals, we were unable to obtain sufficient documentation to verify or revise the data because the hospitals are no longer participating in the Medicare program or are in bankruptcy status. Twenty-four hospitals had incomplete or inaccurate data resulting in zero or negative average hourly wages. Therefore, they were removed from the calculation. The data for these hospitals will be included in the final wage index if we receive corrected data that pass our edits. As a result, the proposed FY 2002 wage index is calculated based on FY 1998 wage data for 4,868 hospitals.

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E. Computation of the Proposed FY 2002 Wage Index

We note a proposed technical change to the FY 2002 calculation. For the FY 2001 wage index calculation, we initially proposed to subtract Line 13 of Worksheet S–3, Part III from total hours when determining the excluded hours ratio used to estimate the amount of overhead attributed to excluded areas (65 FR 26299). However, the formula resulted in large and inappropriate increases in the average hourly wages for some hospitals (65 FR 47074), particularly hospitals that have large overhead and excluded area costs. Therefore, for the final FY 2001 wage index calculation, we reverted to the FY 2000 excluded hours ratio formula, which did not subtract Line 13.

We, and others in the hospital community, continued to believe that subtracting Part III, Line 13 from total hours is the correct formula for determining the excluded hours ratio. We analyzed how the application of this formula resulted in overstated average hourly wages for some hospitals and how we could improve the overall accuracy of the overhead allocation methodology. We became aware that the problem was not in the excluded hours ratio formula. Rather, our wage index calculation did not also remove the overhead wage-related costs associated with excluded areas, an amount that must be estimated before it can be subtracted from the calculation. The combined effect of applying the excluded hours ratio formula, which appropriately removes salaries of lower-wage, overhead employees, and not subtracting overhead wage-related costs associated with excluded areas, resulted in overstated salary costs and average hourly wages.

For the FY 2002 wage index calculation, we are proposing to apply the excluded hours ratio formula that subtracts Part III, Line 13 from total hours. Additionally, for the first time in the wage index calculation, we estimated and subtracted overhead wage-related costs allocated to excluded areas.

After we applied this new calculation, there were still a few hospitals that experienced large increases in their average hourly wages. The intermediaries verified that the hospitals' wage data were accurate, so we kept the data in the wage index calculation. These hospitals primarily function as SNFs, psychiatric hospitals, or rehabilitation hospitals that have few acute care beds. The hospitals' higher average hourly wages reflect the costs of the higher salaried employees that remain in the wage index calculation after we subtract the costs of excluded area and associated overhead employees.

The method used to compute the proposed FY 2002 wage index follows.

Step 1—As noted above, we are proposing to base the FY 2002 wage index on wage data reported on the FY 1998 Medicare cost reports. We gathered data from each of the non-Federal, short-term, acute care hospitals for which data were reported on the Worksheet S–3, Parts II and III of the Medicare cost report for the hospital's cost reporting period beginning on or after October 1, 1997 and before October 1, 1998. In addition, we included data from any hospital that had cost reporting periods beginning before October 1997 and reported a cost reporting period covering all of FY 1998. These data were included because no other data from these hospitals would be available for the cost reporting period described above, and because particular labor market areas might be affected due to the omission of these hospitals. However, we generally describe these wage data as FY 1998 data. We note that, if a hospital had more than one cost reporting period beginning during FY 1998 (for example, a hospital had two short cost reporting periods beginning on or after October 1, 1997 and before October 1, 1998), we included wage data from only one of the cost reporting periods, the longest, in the wage index calculation. If there was more than one cost reporting period and the periods were equal in length, we included the wage data from the latest period in the wage index calculation.

Step 2—Salaries—The method used to compute a hospital's average hourly wage is a blend of 40 percent of the hospital's average hourly wage including all GME and CRNA costs, and 60 percent of the hospital's average hourly wage after eliminating all GME and CRNA costs.

In calculating a hospital's average salaries plus wage-related costs, including all GME and CRNA costs, we subtracted from Line 1 (total salaries) the Part B salaries reported on Lines 3 and 5, home office salaries reported on Line 7, and excluded salaries reported on Lines 8 and 8.01 (that is, direct salaries attributable to skilled nursing facility services, home health services, and other subprovider components not subject to the prospective payment system). We also subtracted from Line 1 the salaries for which no hours were reported on Lines 2, 4, and 6. To determine total salaries plus wage-related costs, we added to the net hospital salaries the costs of contract labor for direct patient care, certain top management, pharmacy, laboratory, and physician Part A services (Lines 9, 9.01, 9.02, 10, and 10.01), home office salaries and wage-related costs reported by the hospital on Lines 11, 12, and 12.01, and nonexcluded area wage-related costs (Lines 13, 14, 16, 18, 18.01, and 20).

We note that contract labor and home office salaries for which no corresponding hours are reported were not included. In addition, wage-related costs for specific categories of employees (Lines 16, 18, 18.01, and 20) are excluded if no corresponding salaries are reported for those employees (Lines 2, 4, 4.01, and 6, respectively).

We then calculated a hospital's salaries plus wage-related costs by subtracting from total salaries the salaries plus wage-related costs for teaching physicians, Lines (4.01, 10.01, 12.01, and 18.01), Part A CRNAs (Lines 2 and 16), and residents (Lines 6 and 20).

Step 3—Hours—With the exception of wage-related costs, for which there are no associated hours, we computed total hours using the same methods as described for salaries in Step 2.

Step 4—For each hospital reporting both total overhead salaries and total overhead hours greater than zero, we then allocated overhead costs to areas of the hospital excluded from the wage index calculation. First, we determined the ratio of excluded area hours (sum of Lines 8 and 8.01 of Worksheet S–3, Part II) to revised total hours (Line 1 minus the sum of Part II, Lines 3, 5, 7, and Part III, Line 13 of Worksheet S–3). We then computed the amounts of overhead salaries and hours to be allocated to excluded areas by multiplying the above ratio by the total overhead salaries and hours reported on Line 13 of Worksheet S–3, Part III. Next, we computed the amounts of overhead wage-related costs to be allocated to excluded areas using three steps: (1) We determined the ratio of overhead hours (Part III, Line 13) to revised hours (Line 1 minus the sum of Lines 3, 5, and 7); (2) we computed overhead wage-related costs by multiplying the overhead hours ratio by wage-related costs reported on Part II, Lines 13, 14, 16, 18, 18.01, and 20; and (3) we multiplied the computed overhead wage-related costs by the above excluded area hours ratio. Finally, we subtracted the computed overhead salaries, wage-related costs, and hours associated with excluded areas from the total salaries (plus wage-related costs) and hours derived in Steps 2 and 3. Using the above method for computing overhead salaries, wage-related costs, and hours to allocate to excluded areas, we also computed these costs excluding all costs associated with GME and CRNAs (Lines 2, 4.01, 6, 10.01, 12.01, and 18.01).

Step 5—For each hospital, we adjusted the total salaries plus wage-related costs to a common period to determine total adjusted salaries plus wage-related costs. To make the wage adjustment, we estimated the percentage change in the employment cost index (ECI) for compensation for each 30-day increment from October 14, 1997 through April 15, 1999 for private industry hospital workers from the Bureau of Labor Statistics' *Compensation and Working Conditions*. We use the ECI because it reflects the price increase associated with total compensation (salaries plus fringes) rather than just the increase in salaries. In addition, the ECI includes managers as well as other hospital workers. This methodology to compute the monthly update factors uses actual quarterly ECI data and assures that the update factors match the actual quarterly and annual percent changes. The factors used to adjust the hospital's data were based on the midpoint of the cost reporting period, as indicated below.

MIDPOINT OF COST REPORTING PERIOD

After	Before	Adjustment factor
12/14/97	01/15/98	1.03292
01/14/98	02/15/98	1.03048
02/14/98	03/15/98	1.02828
03/14/98	04/15/98	1.02621
04/14/98	05/15/98	1.02411
05/14/98	06/15/98	1.02200
06/14/98	07/15/98	1.01973
07/14/98	08/15/98	1.01714
08/14/98	09/15/98	1.01424
09/14/98	10/15/98	1.01137
10/14/98	11/15/98	1.00885
11/14/98	12/15/98	1.00669
12/14/98	01/15/99	1.00462
01/14/99	02/15/99	1.00239
02/14/99	03/15/99	1.00000
03/14/99	04/15/99	0.99746

For example, the midpoint of a cost reporting period beginning January 1, 1998 and ending December 31, 1998 is June 30, 1998. An adjustment factor of 1.01973 would be applied to the wages of a hospital with such a cost reporting period. In addition, for the data for any cost reporting period that began in FY 1998 and covered a period of less than 360 days or more than 370 days, we annualized the data to reflect a 1-year cost report. Annualization is accomplished by dividing the data by the number of days in the cost report and then multiplying the results by 365.

Step 6—Each hospital was assigned to its appropriate urban or rural labor market area before any reclassifications under section 1886(d)(8)(B) or section 1886(d)(10) of the Act. Within each urban or rural labor market area, we added the total adjusted salaries plus wage-related costs obtained in Step 5 (with and without GME and CRNA costs) for all hospitals in that area to determine the total adjusted salaries plus wage-related costs for the labor market area.

Step 7—We divided the total adjusted salaries plus wage-related costs obtained under both methods in Step 6 by the sum of the corresponding total hours (from Step 4) for all hospitals in each labor market area to determine an average hourly wage for the area.

Because the proposed FY 2002 wage index is based on a blend of average hourly wages, we then added 40 percent of the average hourly wage calculated without removing GME and CRNA costs, and 60 percent of the average hourly wage calculated with these costs excluded.

Step 8—We added the total adjusted salaries plus wage-related costs obtained in Step 5 for all hospitals in the nation and then divided the sum by the national sum of total hours from Step 4 to arrive at a national average hourly wage (using the same blending methodology described in Step 7). Using the data as described above, the national average hourly wage is $22.0545.

Step 9—For each urban or rural labor market area, we calculated the hospital wage index value by dividing the area average hourly wage obtained in Step 7 by the national average hourly wage computed in Step 8.

Step 10—Following the process set forth above, we developed a separate Puerto Rico-specific wage index for purposes of adjusting the Puerto Rico standardized amounts. (The national Puerto Rico standardized amount is adjusted by a wage index calculated for all Puerto Rico labor market areas based on the national average hourly wage as described above.) We added the total adjusted salaries plus wage-related costs (as calculated in Step 5) for all hospitals in Puerto Rico and divided the sum by the total hours for Puerto Rico (as calculated in Step 4) to arrive at an overall average hourly wage of $10.8100 for Puerto Rico. For each labor market area in Puerto Rico, we calculated the Puerto Rico-specific wage index value by dividing the area average hourly wage (as calculated in Step 7) by the overall Puerto Rico average hourly wage.

Step 11—Section 4410 of Public Law 105–33 provides that, for discharges on or after October 1, 1997, the area wage index applicable to any hospital that is located in an urban area may not be less than the area wage index applicable to hospitals located in rural areas in that State. Furthermore, this wage index floor is to be implemented in such a manner as to ensure that aggregate prospective payment system payments are not greater or less than those that would have been made in the year if this section did not apply. For FY 2002, this change affects 240 hospitals in 41 MSAs. The MSAs affected by this provision are identified in Table 4A by a footnote.

F. Revisions to the Wage Index Based on Hospital Redesignation

Under section 1886(d)(8)(B) of the Act, hospitals in certain rural counties adjacent to one or more MSAs are considered to be located in one of the adjacent MSAs if certain standards are met. Under section 1886(d)(10) of the Act, the MGCRB considers applications by hospitals for geographic reclassification for purposes of payment under the prospective payment system.

1. Provisions of Public Law 106–554

Section 304 of Public Law 106–554 made changes to several provisions of section 1886(d)(10) of the Act relating to hospital reclassifications and the wage index:

- Section 304(a) amended section 1886(d)(10)(D) of the Act by adding a clause (v) to provide that, beginning with FY 2001, an MGCRB decision on a hospital reclassification for purposes of the wage index is effective for 3 years, unless the hospital elects to terminate the reclassification. Section 304(a) also provides that the MGCRB must use the 3 most recent years' average hourly wage data in evaluating a hospital's reclassification application for FY 2003 and any succeeding fiscal year (section 1886(d)(10)(D)(vi) of the Act).
- Section 304(b) provides that, by October 1, 2001, the Secretary must establish a mechanism under which a statewide entity may apply to have all of the geographic areas in the State treated as a single geographic area for purposes of computing and applying a single wage index, for reclassifications beginning in FY 2003. Section 304(b) further requires that, if the Secretary applies a statewide wage index to an area, an application by an individual hospital in that area would not be considered.

We address our policy proposals relating to implementation of these three provisions of sections 304(a) and (b) of Public Law 106–554 in section IV. of this proposed rule. The following

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discussion of the proposed revisions to the wage index based on hospital redesignations reflects these proposed policies.

2. Effects of Reclassification

The methodology for determining the wage index values for redesignated hospitals is applied jointly to the hospitals located in those rural counties that were deemed urban under section 1886(d)(8)(B) of the Act and those hospitals that were reclassified as a result of the MGCRB decisions under section 1886(d)(10) of the Act. Section 1886(d)(8)(C) of the Act provides that the application of the wage index to redesignated hospitals is dependent on the hypothetical impact that the wage data from these hospitals would have on the wage index value for the area to which they have been redesignated. Therefore, as provided in section 1886(d)(8)(C) of the Act, the wage index values were determined by considering the following:

- If including the wage data for the redesignated hospitals would reduce the wage index value for the area to which the hospitals are redesignated by 1 percentage point or less, the area wage index value determined exclusive of the wage data for the redesignated hospitals applies to the redesignated hospitals.
- If including the wage data for the redesignated hospitals reduces the wage index value for the area to which the hospitals are redesignated by more than 1 percentage point, the area wage index determined inclusive of the wage data for the redesignated hospitals (the combined wage index value) applies to the redesignated hospitals.
- If including the wage data for the redesignated hospitals increases the wage index value for the area to which the hospitals are redesignated, both the area and the redesignated hospitals receive the combined wage index value.
- The wage index value for a redesignated urban or rural hospital cannot be reduced below the wage index value for the rural areas of the State in which the hospital is located.
- Rural areas whose wage index values would be reduced by excluding the wage data for hospitals that have been redesignated to another area continue to have their wage index values calculated as if no redesignation had occurred.
- Rural areas whose wage index values increase as a result of excluding the wage data for the hospitals that have been redesignated to another area have their wage index values calculated exclusive of the wage data of the redesignated hospitals.
- Currently, the wage index value for an urban area is calculated exclusive of the wage data for hospitals that have been reclassified to another area.

For the FY 2002 wage index, we are proposing to include the wage data for a reclassified urban hospital in both the area to which it is reclassified and the MSA where the hospital is physically located. We believe this will improve consistency and predictability in hospital reclassification and wage indices, as well as alleviate the fluctuations in the wage indexes due to reclassifications. For example, hospitals applying to reclassify into another area will know which hospitals' data will be included in calculating the wage index, because even if some hospitals in the area are reclassified, their data will be included in the calculation of the wage index of the area where they are geographically located. Also, in some cases, excluding the data of hospitals reclassified to another MSA could have a large downward impact on the wage index of the MSA in which the hospital is physically located. The negative impact of removing the data of the reclassified hospitals from the wage index calculation could lead to large wage disparities between the reclassified hospitals and other hospitals in the MSA, as the remaining hospitals would receive reduced payments due to a lower wage index. Our proposed approach would promote consistency, and simplify our rules, with respect to how we construct the wage indexes of rural and urban areas. As noted above, in the case of rural hospitals redesignated to another area, the wage index of the rural area where the hospitals are geographically located is calculated by including the wage data of the redesignated hospitals (unless doing so would result in a lower wage index).

Finally, we note that the Medicare Payment Advisory Commission (MedPAC), in its March 2001 "Report to the Congress: Medicare Payment Policy," recommended this policy (p. 82). (Section VII. of this preamble includes a discussion of MedPAC's recommendations and our responses.) To illustrate the potential negative impact on hospitals in an area where reclassifications of some hospitals to another area results in a decline in the wage index after the reclassified hospitals are excluded from the wage index calculation, MedPAC points out that hospitals in several MSAs have organized to pay qualifying hospitals not to reclassify. Our proposed policy change would remove this distorted incentive.

The proposed wage index values for FY 2002 are shown in Tables 4A, 4B, 4C, and 4F in the Addendum to this proposed rule. Hospitals that are redesignated should use the wage index values shown in Table 4C. Areas in Table 4C may have more than one wage index value because the wage index value for a redesignated urban or rural hospital cannot be reduced below the wage index value for the rural areas of the State in which the hospital is located. When the wage index value of the area to which a hospital is redesignated is lower than the wage index value for the rural areas of the State in which the hospital is located, the redesignated hospital receives the higher wage index value; that is, the wage index value for the rural areas of the State in which it is located, rather than the wage index value otherwise applicable to the redesignated hospitals.

As mentioned earlier, section 304(a) of Public Law 106–554 amended section 1886(d)(10)(D) of the Act by adding a new clause (v) to provide that a reclassification of a hospital by the MGCRB for purposes of the wage index is effective for 3 years (instead of 1 year) unless, under procedures established by the Secretary, the hospital elects to terminate the reclassification before the end of the 3-year period. Section 304(a) of Public Law 106–554 also amended section 1886(d)(10)(D) of the Act to specify that, for applications for reclassification for the wage index for FYs 2003 and later, the MGCRB must base any comparison of the average hourly wage of the hospital with the average hourly wage for hospitals in the area in which it is located and the area to which it seeks reclassification, using data from the most recently published hospital wage survey (as of the date of the hospital's application), as well as data from each of the two immediately preceding surveys. (Our policy proposals to incorporate the provisions of section 304(a) of Public Law 106–554 in the regulations are addressed in section IV.E. of this proposed rule).

Consistent with the section 304(a) amendment, Tables 3A and 3B list the 3-year average hourly wage for each labor market area before the redesignation of hospitals, based on FY 1996, 1997, and 1998 wage data. In addition, Table 2 in the Addendum to this proposed rule includes the adjusted average hourly wage for each hospital from the FY 1996 and FY 1997 cost reporting periods, as well as the FY 1998 period. Table 2 also shows the 3-year average (as well as hospitals' average hourly wages for each of the 3 years) that the MGCRB will use (as published in the final rule following this proposed rule) to evaluate a hospital's application for reclassification for FY 2003 (unless that average hourly wage is later revised in accordance with § 412.63(w)(2)). The 3-year averages are calculated by dividing the sum of the dollars (adjusted to a common reporting period using the method described previously in this section) across all 3 years, by the sum of the hours. If a hospital is missing data for any of the previous years, its average hourly wage for the 3-year period is calculated based on the data available during that period.

Applications for FY 2003 reclassifications are due to the MGCRB by September 1, 2001. (We note that the new location and mailing address of the MGCRB and the Provider Reimbursement Review Board (PRRB) is: 2520 Lord Baltimore Drive, Suite L, Baltimore, MD 21244–2670. The MGCRB and PRRB will be functioning at this new location as of May 21, 2001. Also, please specify whether the mail is intended for the MGCRB or the PRRB.)

At the time this proposed wage index was constructed, the MGCRB had completed its review of FY 2002 reclassification requests. The proposed FY 2002 wage index values incorporate all 643 hospitals redesignated for purposes of the wage index (hospitals redesignated under section 1886(d)(8)(B) or section 1886(d)(10) of the Act for FY 2002. The final number of reclassifications may vary because some MGCRB decisions are still under review by the Administrator and because some hospitals may withdraw their requests for reclassification.

Any changes to the wage index that result from withdrawals of requests for reclassification, wage index corrections, appeals, and the Administrator's review process will be incorporated into the wage index values published in the final rule following this proposed rule. The changes may affect not only the wage index value for specific geographic areas, but also the wage index value redesignated hospitals receive; that is, whether they receive the wage index value for the area to which they are redesignated, or a wage index value that includes the data for both the hospitals already in the area and the redesignated hospitals. Further, the wage index value for the area from which the hospitals are redesignated may be affected.

Under § 412.273, hospitals that have been reclassified by the MGCRB are permitted to withdraw their applications within 45 days of the publication of this proposed rule in the **Federal Register**. The request for withdrawal of an application for reclassification that would be effective in FY 2002 must be received by the MGCRB by June 18, 2001. A hospital that requests to withdraw its application may not later request that the MGCRB decision be reinstated.

In addition, because the 3-year effect of the amendment made by section 304(a) of Public Law 106–554 is applicable to reclassifications for FY 2001 (which had already taken place prior to the date of enactment of Public Law 106–554) and because the application process for reclassification for FY 2002 had already been completed by the date of enactment, we are deeming hospitals that are reclassified for purposes of the wage index to one area for FY 2001 and are reclassified for purposes of the wage index or the standardized amount to another area for FY 2002 to be reclassified to the area for which they applied for FY 2002, unless they elect to receive the wage index reclassification they were granted for FY 2001. Consistent with our application withdrawal procedures under § 412.273, we are allowing hospitals that wish to receive, for FY 2002, the reclassification they were granted for FY 2001, to withdraw their applications within 45 days of the publication of this proposed rule (that is, by June 18, 2001. (These procedures are discussed in detail under section IV.E.1. of this preamble.)

3. Statewide Wage Index

As stated earlier, section 304(b) of Public Law 106–554 requires the Secretary to establish, by October 1, 2001, a process (based on the voluntary process utilized by the Secretary under section 1848 of the Act) under which an appropriate statewide entity may apply to have all the geographic areas in the State treated as a single geographic area for purposes of computing and applying a single wage index, for reclassification beginning in FY 2003. Section 304(b) further requires that, if the Secretary applies a statewide wage index to an area, an application by an individual hospital in that area would not be considered. We believe the reference to the voluntary process utilized by the Secretary under section 1848 of the Act refers to the process whereby we allow a State containing multiple physician fee schedule payment areas (and thus multiple geographic adjustment factors) to voluntarily convert to a single statewide payment area with a single geographic adjustment factor (see § 414.4(b), as discussed in the June 24, 1994 **Federal Register** (59 FR 32759).

Section IV.E. of this proposed rule contains our policy proposal for implementing the provisions of section 304(b) in regulations. We are proposing that hospitals that seek a statewide geographic reclassification under the amendments made by section 304(b) of Public Law 106–554 apply to the MGCRB with the same deadlines as other hospitals. An approved application by the MGCRB would mean that the data of all the hospitals in the State would be used in computing and applying the wage index for that State. We are proposing that the statewide wage index would be applicable for 3 years from the date of approval or until all of the participating hospitals terminate their approved statewide wage index reclassification (effective with the next full fiscal year after their termination request), whichever occurs first.

4. Section 402 of Public Law 106–113

Beginning October 1, 1988, section 1886(d)(8)(B) of the Act required us to treat a hospital located in a rural county adjacent to one or more urban areas as being located in the MSA to which the greatest number of workers in the county commute, if the rural county would otherwise be considered part of an urban area under the standards published in the **Federal Register** on January 3, 1980 (45 FR 956) for designating MSAs (and for designating NECMAs), and if the commuting rates used in determining outlying counties (or, for New England, similar recognized areas) were determined on the basis of the aggregate number of resident workers who commute to (and, if applicable under the standards, from) the central county or counties of *all* contiguous MSAs (or NECMAs). Hospitals that met the criteria using the January 3, 1980 version of these OMB standards were deemed urban for purposes of the standardized amounts and for purposes of assigning the wage data index.

During FY 1994, we incorporated the revised MSA definitions based on 1990 census population data. As a result, some counties that previously were treated as an adjacent county under section 1886(d)(8)(B) of the Act officially became part of certain MSAs. However, as specified in the Act, we continued to utilize the January 3, 1980 standards. For FY 2000, there were 27 hospitals in 22 counties affected by this provision.

On March 30, 1990, OMB issued revised 1990 standards (55 FR 12154). There has been an increasing amount of interest by the hospital industry in using the 1990 standards as opposed to the 1980 standards to determine which hospitals qualify under the provisions set forth in section 1886(d)(8)(B) of the Act. Section 402 of Public Law 106–113 provides that, with respect to FYs 2001

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and 2002, a hospital may elect to have the 1990 standards applied to it for purposes of section 1886(d)(8)(B) and that, beginning with FY 2003, hospitals will be required to use the standards published in the **Federal Register** by the Director of OMB based on the most recent decennial census.

We worked with staff of the Population Distribution Branch within the Population Division of the United States Census Bureau to compile a list of hospitals that meet the March 30, 1990 standards using 1990 census population data and information prepared for the Metropolitan Area Standards Review Project. The conditions that must be met for a hospital located in a rural county adjacent to one or more urban areas to be treated as being located in the urban area to which the greatest number of workers in the rural county commute are as follows:

• The rural county would otherwise be considered part of an MSA but for the fact that the rural county does not meet the standard established by OMB relating to the commuting rate of workers between the county and the central county or counties of any adjacent MSA.

• The county would meet the commuting standard if commuting to (and where applicable, from) the central county or central counties of all adjacent MSAs or NECMAs (rather than to just one) were considered.

A county meeting the above commuting standards must also meet the other standards established by OMB for inclusion in an MSA as an outlying county. In order to meet these requirements, the rural county must have a degree of "metropolitan character." "Metropolitan character" is established by meeting one of the following OMB standards, which were published in the **Federal Register** on March 30, 1990:

a. At least 50 percent of the employed workers residing in the county commute to the central county/counties, and either—

• The population density of the county is at least 25 persons per square mile; or

• At least 10 percent of the population, or at least 5,000 persons, lives in the qualifier urbanized area(s).

b. From 40 to 50 percent of the employed workers commute to the central county/counties, and either—

• The population density is at least 35 persons per square mile; or

• At least 10 percent of the population, or at least 5,000 persons, lives in the qualifier urbanized area(s).

c. From 25 to 40 percent of the employed workers commute to the central county/counties and either the population density of the county is at least 50 persons per square mile, or any two of the following conditions exist:

• Population density is at least 35 persons per square mile.

• At least 35 percent of the population is urban.

• At least 10 percent of the population, or at least 5,000 persons, lives in the qualifier urbanized area(s).

d. From 15 to 25 percent of the employed workers commute to the central county/counties, the population density of the county is at least 50 persons per square mile, and any two of the following conditions also exist:

• Population density is at least 60 persons per square mile.

• At least 35 percent of the population is urban.

• Population growth between the last two decennial censuses is at least 20 percent.

• At least 10 percent of the population, or at least 5,000 persons, lives in the qualifier urbanized area(s).

Also accepted as meeting this commuting requirement under item d. are:

• The number of persons working in the county who live in the central county/counties is equal to at least 15 percent of the number of employed workers living in the county; or

• The sum of the number of workers commuting to and from the central county/counties is equal to at least 20 percent of the number of employed workers living in the county.

e. From 15 to 25 percent of the employed workers commute to the central county/counties, the population density of the county is less than 50 persons per square mile, and any two of the following conditions also exist:

• At least 35 percent of the population is urban.

• Population growth between the last two decennial censuses is at least 20 percent.

• At least 10 percent of the population, or at least 5,000 persons, lives in the qualifier urbanized area(s).

f. At least 2,500 of the population lives in a central city of the MSA located in the qualifier urbanized area(s).

When we apply the 1990 standards as opposed to 1980 standards, the number of qualifying counties increases from 22 to 31. On the basis of the evaluation of these data, effective for discharges occurring on or after October 1, 2001, hospitals located in the first column of the following table are proposed to be considered, for purposes of assigning the inpatient standardized amount and the wage index, to be located in the corresponding urban area in the second column:

Rural County	MSA
Chilton, AL	Birmingham, AL.
Marshall, AL	Huntsville, AL.
Talladega, AL	Anriston, AL.
Bradford, FL	Jacksonville, FL.
Hendry, FL	West Palm Beach-Boca Raton, FL.
Putnam, FL	Gainesville, FL.
Jackson, GA	Athens, GA.
Christian, IL	Springfield, IL.
Macoupin, IL	St. Louis, MO–IL.
Piatt, IL	Champaign-Urbana, IL.
Brown, IN	Indianapolis, IN.
Carroll, IN	Lafayette, IN.
Henry, IN	Indianapolis, IN.
Jefferson, KS	Topeka, KS.
Barry, MI	Kalamazoo-Battle Creek, MI.
Cass, MI	Benton Harbor, MI.
Ionia, MI	Grand Rapids-Muskegon-Holland, MI.
Shiawassee, MI	Flint, MI.
Tuscola, MI	Saginaw-Bay City-Midland, MI
Caswell, NC	Greensboro-Winston Salem-High Point, NC.
Greene, NC	Greenville, NC.
Harnett, NC	Raleigh-Durham-Chapel Hill, NC.
Wilson, NC	Rocky Mount, NC.
Preble, OH	Dayton-Springfield, OH.
Van Wert, OH	Lima, OH.
Adams, PA	York, PA.
Lawrence, PA	Pittsburgh, PA.
Monroe, PA	Newark, NJ.
Schuylkill, PA	Reading, PA.
Jefferson, WI	Milwaukee-Waukesha, WI.
Walworth, WI	Milwaukee-Waukesha, WI.

There are 14 counties that meet the qualifying criteria using 1990 standards that did not meet the criteria using the 1980 standards. These 14 counties are:

Chilton, AL
Talladega, AL
Bradford, FL
Hendry, FL
Putnam, FL
Jackson, GA
Piatt, IL
Brown, IN
Carroll, IN
Greene, NC
Wilson, NC
Adams, PA
Monroe, PA
Schuylkill, PA

In addition, when we apply the 1980 standards for three of the counties, the MSA assigned is different from the MSA that would be assigned using the 1990 standards. These counties are as follows:

Rural county	1980 MSA designation	1990 MSA designation
Ionia, MI	Lansing-East Lansing, MI	Grand Rapids-Muskegon-Holllan, MI.
Caswell, NC	Danville, VA	Greensboro-Winston Salem-High Point, NC.
Harnett, NC	Fayetteville, NC	Raleigh-Durham-Chapel Hill, NC.

Section 402 of Public Law 106–113 states that hospitals may elect to use either the January 3, 1980 standards or the March 30, 1990 standards for payments during FY 2001 and FY 2002. We are assuming hospitals will elect to go to the MSA resulting in the highest payment amount accounting for the applicable wage indexes and standardized amounts. Based on our analysis, we believe all hospitals in the designated rural counties would benefit by being included in the respective MSAs shown above. Therefore, we are proposing to assign the FY 2002 standardized amount and wage index of each respective MSA to the affected hospitals. Hospitals electing not to use the 1990 standards would be required to notify their fiscal intermediary in writing of such election prior to September 1, 2001, in order to allow sufficient time to reflect this change in our payment systems. (For FY 2001, we are providing further information related to this election, including recalculated wage indexes, through separate instruction.)

We note that five rural counties no longer meet the qualifying criteria when we apply the revised OMB standards. These rural counties are as follows: Indian River, FL; Mason, IL; Owen, IN; Morrow, OH; and Lincoln, WV. For FY 2002, we propose to continue to treat these hospitals as attached to an MSA on the basis of the 1980 standards. Beginning FY 2003, they must meet the 1990 standards to continue to be treated as such.

We stated in the August 1, 2000 final rule that implemented changes to the prospective payment system for FY 2001 that we were in the process of working with OMB to identify the hospitals that would be affected by section 402 of Public Law 106–113 (65 FR 47076). We further indicated we would revise payments to hospitals in the affected counties as soon as data were available. Now that the affected counties have been identified, hospitals in the 14 counties identified above will be offered the opportunity to elect this designation, as previously described. (For FY 2001, we are providing further information related to this election, including recalculated wage indexes, through separate instructions.)

Finally, three hospitals located in counties affected by the revised OMB standards also have been reclassified by the MGCRB. The affected hospitals are listed below. If the hospitals do not wish to be reclassified for FY 2002 based on their new designation as described above, they must follow the procedures described above for requesting that their reclassification be withdrawn.

Provider Number	1990 MSA designation	FY 2002 reclassification, MSA
34–0071	Raleigh-Durham-Chapel Hill, NC	Fayetteville, NC.
34–0124	Raleigh-Durham-Chapel Hill, NC	Fayetteville, NC.
34–0126	Rocky Mount, NC	Raleigh-Durham-Chapel Hill, NC (wage index only.)

G. Requests for Wage Data Corrections

As stated in section II.D. of this preamble, the data file used to construct the proposed wage index includes FY 1998 data submitted to HCFA as of mid-February 2001. In a memorandum dated February 5, 2001, we instructed all Medicare intermediaries to inform the prospective payment hospitals they service of the availability of the wage data file and the process and timeframe for requesting revisions. The wage data file was made available on February 13, 2001 through the Internet at HCFA's home page (http://www.hcfa.gov). We also instructed the intermediaries to advise hospitals of the availability of these data either through their representative hospital organizations or directly from HCFA. Additional details on ordering this data file are discussed in section IX.A of this preamble, "Requests for Data from the Public."

In addition, Table 2 in the Addendum to this proposed rule contains each hospital's adjusted average hourly wage used to construct the proposed wage index values for the past 3 years, including the FY 1998 data used to construct the proposed FY 2002 wage index. It should be noted that the hospital average hourly wages shown in Table 2 do not reflect any changes made to a hospital's data after mid-February 2001. Changes approved by a hospital's fiscal intermediary and forwarded to HCFA by April 9, 2001, will be reflected on the final public use wage data file scheduled to be made available on or about May 4, 2001.

We believe hospitals have sufficient time to ensure the accuracy of their FY 1998 wage data. Moreover, the ultimate responsibility for accurately completing the cost report rests with the hospital, which must attest to the accuracy of the data at the time the cost report is filed. Hospitals should know what wage data were submitted on their cost reports. Additionally, they are notified of any changes to their data as a result of their intermediary's review. However, if a hospital believed that its FY 1998 wage data were incorrectly reported, the hospital was to submit corrections along with complete, detailed supporting documentation to its intermediary by March 9, 2001. Hospitals were notified of this deadline, and of all other possible deadlines and requirements, through written communications from their fiscal intermediaries in early February 2001.

After reviewing requested changes submitted by hospitals, intermediaries transmitted any revised cost reports to HCFA and forwarded a copy of the revised Worksheet S–3, Parts II and III to the hospitals. In addition, fiscal intermediaries were to notify hospitals of the changes or the reasons that changes were not accepted. This procedure ensures that hospitals have every opportunity to verify the data that will be used to construct their wage index values. We believe that fiscal intermediaries are generally in the best position to make evaluations regarding the appropriateness of a particular cost and whether it should be included in the wage index data. However, if a hospital disagrees with the intermediary's resolution of a requested change, the hospital may contact HCFA in an effort to resolve policy disputes. We note that the April 9, 2001 deadline also applies to these requested changes. We will not consider factual determinations at this time, as these

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should have been resolved earlier in the process.

Any wage data corrections to be reflected in the final wage index must have been reviewed and verified by the intermediary and transmitted to HCFA on or before April 9, 2001. (The deadline for hospitals to request changes from their fiscal intermediaries was March 9, 2001.) These deadlines are necessary to allow sufficient time to review and process the data so that the final wage index calculation can be completed for development of the final prospective payment rates to be published by August 1, 2001.

We have created the process described above to resolve all substantive wage data correction disputes before we finalize the wage data for the FY 2002 payment rates. Accordingly, hospitals that do not meet the procedural deadlines set forth above will not be afforded a later opportunity to submit wage data corrections or to dispute the intermediary's decision with respect to requested changes. Specifically, our policy is that hospitals that do not meet the procedural deadlines set forth above will not be permitted to later challenge, before the Provider Reimbursement Review Board, HCFA's failure to make a requested data revision (See *W. A. Foote Memorial Hospital* v. *Shalala*, No. 99–CV–75202–DT (E.D. Mich. 2001)).

The final wage data public use file will be released by May 4, 2001. Hospitals should examine both Table 2 of this proposed rule and the May 4 final public use wage data file (which reflects revisions to the data used to calculate the values in Table 2) to verify the data HCFA is using to calculate the wage index. Hospitals will have until June 4, 2001, to submit requests to correct errors in the final wage data due to data entry or tabulation errors by the intermediary or HCFA. The correction requests that will be considered at that time will be limited to errors in the entry or tabulation of the final wage data that the hospital could not have known about before the release of the final wage data public use file.

As with the file made available in February 2001, HCFA will make the final wage data file released in May 2001 available to hospital associations and the public on the Internet. However, the May 2001 file will be made available solely for the limited purpose of identifying any potential errors made by HCFA or the intermediary in the entry of the final wage data that result from the correction process described above (with the March 9 deadline). Hospitals are encouraged to review their hospital wage data promptly after the release of the final file. Data presented at this time cannot be used by hospitals to initiate new wage data correction requests.

If, after reviewing the final file, a hospital believes that its wage data are incorrect due to a fiscal intermediary or HCFA error in the entry or tabulation of the final wage data, it should send a letter to both its fiscal intermediary and HCFA. The letters should outline why the hospital believes an error exists and provide all supporting information, including dates. These requests must be *received* by HCFA and the intermediaries no later than June 4, 2001. Requests mailed to HCFA should be sent to: Health Care Financing Administration; Center for Health Plans and Providers; Attention: Wage Index Team, Division of Acute Care; C4–07–07; 7500 Security Boulevard; Baltimore, MD 21244–1850. Each request must also be sent to the hospital's fiscal intermediary. The intermediary will review requests upon receipt and contact HCFA immediately to discuss its findings.

At this point in the process, that is, between release of the May 2001 wage index file and June 4, 2001, changes to the hospital wage data will only be made in those very limited situations involving an error by the intermediary or HCFA that the hospital could not have known about before its review of the final wage data file. Specifically, neither the intermediary nor HCFA will accept the following types of requests at this stage of the process:

- Requests for wage data corrections that were submitted too late to be included in the data transmitted to HCFA on or before April 9, 2001.
- Requests for correction of errors that were not, but could have been, identified during the hospital's review of the February 2001 wage data file.
- Requests to revisit factual determinations or policy interpretations made by the intermediary or HCFA during the wage data correction process.

Verified corrections to the wage index received timely (that is, by June 4, 2001) will be incorporated into the final wage index to be published by August 1, 2001 and effective October 1, 2001.

Again, we believe the wage data correction process described above provides hospitals with sufficient opportunity to bring errors in their wage data to the intermediary's attention. Moreover, because hospitals will have access to the final wage data by early May 2001, they will have the opportunity to detect any data entry or tabulation errors made by the intermediary or HCFA before the development and publication of the FY 2002 wage index by August 1, 2001 and the implementation of the FY 2002 wage index on October 1, 2001. If hospitals avail themselves of this opportunity, the wage index implemented on October 1 should be accurate. Nevertheless, in the event that errors are identified after that date, we retain the right to make midyear changes to the wage index under very limited circumstances.

Specifically, in accordance with § 412.63(w)(2), we may make midyear corrections to the wage index only in those limited circumstances in which a hospital can show (1) that the intermediary or HCFA made an error in tabulating its data; and (2) that the hospital could not have known about the error, or did not have an opportunity to correct the error, before the beginning of FY 2002 (that is, by the June 4, 2001 deadline). As indicated earlier, since a hospital will have the opportunity to verify its data, and the intermediary will notify the hospital of any changes, we do not foresee any specific circumstances under which midyear corrections would be necessary. However, should a midyear correction be necessary, the wage index-change for the affected area will be effective prospectively from the date the correction is made.

H. Modification of the Process and Timetable for Updating the Wage Index

Although the wage data correction process described above has proven successful in the past for ensuring that the wage data used each year to calculate the wage indexes are generally reliable and accurate, we are concerned about the growing volume of wage data revisions initiated by hospitals during February and the first week of March. We first discussed this issue in the FY 1998 proposed rule (62 FR 29918). At that time, we noted that, in developing the FY 1997 wage index, the wage data were revised between the proposed and final rules for more than 13 percent of the hospitals (approximately 700 of 5,200). Last year, in developing the FY 2001 wage index, the wage data were revised between the proposed and final rules for more than 32 percent of the hospitals (1,605 of 4,950).

Since hospitals are expected to submit complete and accurate cost report data, and intermediaries review and request hospitals to correct problematic wage data before the data are submitted to HCFA in mid-November, we believe there should be limited revisions at this stage of the process. We remind the hospital community that the primary purpose of this file is to allow hospitals to verify that we have their correct data on file. However, according to information received from the intermediaries, these late revisions are frequently due to hospitals' lack of responsiveness in providing sufficient information to the intermediaries during the desk reviews (that is, during the intermediary's review of the hospital's cost report).

We are proposing two changes to the wage index development process and timetable beginning with the FY 2003 wage index. We believe these changes will encourage earlier submissions of wage data revisions by hospitals and will allow intermediaries more time to address the heavy volume of revisions requested after the intermediaries have completed their desk reviews of these data. First, we are proposing to release the preliminary wage data file by early January rather than early February. As with the current preliminary file, the January file would include desk reviewed wage data that intermediaries submitted to HCFA by November of the previous year and any timely revisions HCFA received from intermediaries prior to release of the January file. Hospitals would be allowed until early February to submit requests for wage data revisions to their intermediaries. Second, intermediaries would be allowed approximately 8 weeks from the hospitals' deadline for submitting revision requests (that is, until early March) to review and transmit revised wage data to HCFA.

We believe this proposed revised schedule will improve the quality of the wage index by allowing intermediaries more time to sufficiently review wage data revisions before the data are submitted to HCFA. Further, we believe the proposed revised process will encourage hospitals to submit revisions earlier, so the proposed wage index, from which hospitals base geographic reclassification decisions, is more accurate.

IV. Other Decisions and Proposed Changes to the Prospective Payment System for Inpatient Operating Costs and Graduate Medical Education Costs

A. Sole Community Hospitals (SCHs) (§§ 412.63, 412.71, 412.72, 412.73, 412.75, 412.77, and 412.92)

For the benefit of the reader, in this proposed rule, we are discussing and seeking to clarify many of the rules and policies governing SCHs because of the legislative changes that have occurred in recent years. It has been several years since the SCH criteria have been published in one location. Rather than continue to refer to various **Federal Register** documents and sections of the Code of Federal Regulations; we are publishing a detailed discussion of these policies, proposing to make further changes to incorporate the provisions of sections 213, 302, 303, 304, and 311 of Public Law 106–554, and proposing to clarify other related policies.

Under the hospital inpatient prospective payment system, special payment protections are provided to an SCH. Section 1886(d)(5)(D)(iii) of the Act defines an SCH as a hospital that, by reason of factors such as isolated location, weather conditions, travel conditions, absence of other like hospitals (as determined by the Secretary), or historical designation by the Secretary as an Essential Access Community Hospital (EACH), is the sole source of inpatient hospital services reasonably available to Medicare beneficiaries. The regulations that set forth the criteria that a hospital must meet to be classified as an SCH are at § 412.92. To be classified as an SCH, a hospital must either have been designated as an SCH prior to the beginning of the prospective payment system on October 1, 1983, and must be located more than 35 miles from other like hospitals, or the hospital must be located in a rural area and meet one of the following requirements:

- It is located more than 35 miles from other like hospitals.
- It is located between 25 and 35 miles from other like hospitals, and it—
  - —Serves at least 75 percent of all inpatients, or 75 percent of Medicare beneficiary inpatients, within a 35-mile radius or, if larger, within its service area; or
  - —Has fewer than 50 beds and would qualify on the basis of serving 75 percent of its area's inpatients except that some patients seek specialized care unavailable at the hospital.
- It is located between 15 and 25 miles from other like hospitals, and because of local topography or extreme weather conditions, the other like hospitals are inaccessible for at least 30 days in each of 2 out of 3 years.
- The travel time between the hospital and the nearest like hospital is at least 45 minutes because of distance, posted speed limits, and predictable weather conditions.
- Effective with hospital cost reporting periods beginning on or after April 1, 1990, section 1886(d)(5)(D)(i) of the Act, as amended by section 6003(e) of Public Law 101–239, provides that SCHs are paid based on whichever of the following rates yields the greatest aggregate payment:
- The Federal rate applicable to the hospital.
- The updated hospital-specific rate based on FY 1982 costs per discharge.
- The updated hospital-specific rate based on FY 1987 costs per discharge.

Effective with hospital cost reporting periods beginning on or after October 1, 2000, section 1886(b)(3)(I)(i) of the Act, as added by section 405 of Public Law 106–113 and amended by section 213 of Public Law 106–554, provides for other options, in addition to the three bulleted options in the above paragraph, for determining which rate would yield the greatest aggregate payment. For discharges for FY 2001 through FY 2003, these additional optional rates are—

- A phase-in blended rate of the updated hospital-specific rate based on FY 1982 costs per discharge and an FY 1996 hospital-specific rate; or
- A phase-in blended rate of the updated hospital-specific rate based on FY 1987 costs per discharge and an FY 1996 hospital-specific rate.

For discharges beginning in FY 2004, the additional optional rate would be 100 percent of the FY 1996 hospital-specific rate.

For each cost reporting period, the fiscal intermediary determines which of the payment options will yield the highest rate of payment. Payments are automatically made at the highest rate using the best data available at the time the fiscal intermediary makes the determination. However, it may not be possible for the fiscal intermediary to determine in advance precisely which of the rates will yield the highest payment by year's end. In many instances, it is not possible to forecast the update factor for the Federal rates, outlier payments, the amount of the DSH adjustment, or the IME adjustment, all of which are applicable only to payments based on the Federal rate. The fiscal intermediary makes a final adjustment at the close of the cost reporting period to determine precisely which of the payment rates would yield the highest payment to the hospital.

If a hospital disagrees with the fiscal intermediary's determination regarding the final amount of program payment to which it is entitled, it has the right to appeal the fiscal intermediary's decision in accordance with the procedures set forth in Subpart R of Part 405, which concern provider payment determinations and appeals.

In calculating a hospital-specific rate for an SCH based on its FY 1996 cost reporting period, we will, to the extent possible, use the same methodology that we used to calculate the hospital-specific rate based on either the FY 1982 or FY 1987 cost reporting period. That

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methodology is set forth in §§ 412.71, 412.72, 412.73, 412.75 and 412.77.

- If a hospital has a cost reporting period ending in FY 1982, it will be paid a hospital-specific rate based on its FY 1982 costs; or a hospital-specific rate based on its FY 1987 costs; or a hospital-specific rate based on its FY 1996 costs (which, until FY 2004, would be a blend of the greater of the FY 1982 or FY 1987 costs and the FY 1996 costs); or it will be paid based on the Federal rate.
- If a hospital has no cost reporting period ending in FY 1982, it will be paid a hospital-specific rate based on its FY 1987 costs; or a hospital-specific rate based on its FY 1996 costs (which, until FY 2004, would be a blend of its FY 1987 costs and FY 1996 costs); or it will be paid based on the Federal rate.
- If a hospital has no cost reporting period ending in either FY 1982 or FY 1987, it will be paid based on its FY 1996 costs; or it will be paid based on the Federal rate.
- If a hospital has no cost reporting period ending in FY 1982, FY 1987, or FY 1996, it cannot be paid based on a hospital-specific rate; it will be paid based on the Federal rate.
- If a hospital was operating during any or all of FY 1982, FY 1987, or FY 1996, but, for some reason, the cost report records are no longer available, the hospital will be treated as if it had no cost report for the applicable period. The hospital will not be allowed to substitute any other base period for the FY 1982, FY 1987, or FY 1996 base period.

For each SCH, the fiscal intermediary will calculate a hospital-specific rate based on the hospital's FY 1982, FY 1987, or FY 1996 cost report as follows:

- Determine the hospital's total allowable Medicare inpatient operating cost, as stated on the cost report.
- Divide the total Medicare operating cost by the number of Medicare discharges (without adjusting for transfers) in the cost reporting period to determine the base period cost per case.
- In order to take into consideration the hospital's individual case-mix, the base year cost per case is divided by the hospital's case-mix index applicable to the cost reporting period. This step is necessary to adjust the hospital's base period cost for case mix. This is done to remove the effects of case mix from the base period costs per case. Payments using these base period costs are then adjusted to reflect the actual case mix during the payment year. A hospital's case mix is computed based on its Medicare patient discharges subject to DRG-based payment.

The fiscal intermediary will inform each SCH of its hospital-specific rate based on its applicable cost reporting period within 180 days after the start of its cost reporting period.

An SCH is also eligible for a payment adjustment if, for reasons beyond its control, it experiences a decline in volume of greater than 5 percent compared to its preceding cost reporting period. This adjustment is also available to hospitals that could qualify as SCHs but choose not to be paid as SCHs; that is, hospitals that qualify and successfully apply to be designated as SCHs but continue to receive payments based on the Federal rate. In addition, section 6003(c)(1) of Public Law 101–239 deleted the sunset date on the 5-percent volume decline adjustment, thus allowing SCHs to receive the adjustment indefinitely. The sunset provision was included under section 1886(d)(5)(C)(ii) of the Act. (Section 6003(c)(1) of Public Law 101–239 amended that provision and redesignated it as section 1886(d)(5)(D) of the Act.)

In the September 1, 1983, issue of the **Federal Register** (48 FR 39781), we stated that any hospital designated as an SCH would retain that status until it experienced a change in circumstances. Section 6003(e)(3) of Public Law 101–239 specifically stated that any hospital classified as an SCH as of the date of enactment of Public Law 101–239 (December 19, 1989), will retain its SCH status even if the hospital did not meet the criteria established under section 6003(e)(1) of that law. These hospitals are the "grandfathered" SCH hospitals. Therefore, we have continued to allow hospitals designated as SCHs prior to December 19, 1989, to be "grandfathered" under current criteria.

In the June 4, 1991, **Federal Register**, we stated that a hospital's special status as an SCH would not be retained in light of the hospital's geographic reclassification for purposes of the standardized amount. In the event the hospital's reclassification ceases, it must reapply for special status and must meet all of the applicable qualifying criteria in effect at the time it seeks requalification (56 FR 25482). However, in the event a "grandfathered" SCH was successfully reclassified, it would be reinstated as an SCH if its reclassification ceased.

Section 401(a) of Public Law 106–113 established that any subsection (d) hospital (section 1886(d) of the Act) located in an urban area may be redesignated as being located in a rural area if the hospital meets one of several criteria established by the legislation. One of these criteria is that the hospital could qualify as an SCH if the hospital were located in a rural area. Under this provision, an urban hospital that may have been "grandfathered" as an SCH could now qualify and receive payment as an SCH if it met the criteria of a rural SCH. Given this extension of SCH eligibility, we no longer believe it is necessary to extend special protection to "grandfathered" SCHs that successfully apply for geographic reclassification through the MGCRB for the standardized amount after their MGCRB reclassification ends. This circumstance falls under the provisions of §§ 412.92(b)(3) and (b)(5), which state that an approved classification as an SCH remains in effect without need for reapproval unless there is a change in the circumstances under which the classification was approved. We believe that a successful reclassification by the MGCRB fits the definition of a change in circumstances.

Because some hospitals may not have understood the effect reclassification would have on their special status, under existing § 412.273(a) we are permitting affected hospitals the option to withdraw their applications for reclassification for FY 2002, even if the MGCRB has issued a decision, by submitting a withdrawal request to the MGCRB within 45 days of publication of this proposed rule. Finally, just as a competing hospital that closes leaves an opportunity for an existing hospital to qualify as an SCH, a new hospital that opens in an area with an existing hospital designated as an SCH endangers the SCH status of the existing hospital.

As of October 1, 1997, no designations of hospitals as EACHs can be made. The EACHs designated by HCFA before October 1, 1997, will continue to be paid as SCHs for as long as they comply with the terms, conditions, and limitations under which they were designated as EACHs.

Under § 412.92(b)(2), we define the effective dates for several situations in which a hospital gains or gives up SCH status. First, SCH status and the associated payment adjustment is effective 30 days after HCFA's written notification to the SCH. Thus, 30 days after the issuance of HCFA's notice of approval, the hospital is considered to be an SCH and the payment adjustment is applied to discharges occurring on or after that date.

Second, § 412.92(b)(4)(ii) defines the effective date when a hospital chooses to give up its SCH status. Our policy has always been that an SCH can elect to give up its SCH status at any time by submitting a written request to the appropriate HCFA regional office through its fiscal intermediary. The change to fully national rates becomes effective no later than 30 days after the hospital submits its request. We believe that the "no later than 30 days" policy for the effective date for cancelling SCH status is in keeping with the prospective nature of the prospective payment system. In addition, the 30-day timeframe to give up SCH status provides the fiscal intermediaries with enough time to alter their automated payment systems prospectively, thus avoiding expensive and time-consuming reprocessing of claims. The variable timeframe of "no later than 30 days from the date of the hospital's request" also permits the regional office, the fiscal intermediary, and the hospital to select a mutually agreeable date, for example, at the end of a month, to facilitate the change in SCH status. We expect that hospitals will anticipate when they wish to give up SCH status and to submit their requests in sufficient time to permit the 30-day period for making the change.

In addition, § 412.92(b)(2)(ii) defines the effective date of SCH status in the situation where a final and nonappealable administrative or judicial decision reverses HCFA's denial of SCH status to a hospital. In this situation, if the hospital's application was submitted on or after October 1, 1983, the effective date will be 30 days after the date of HCFA's original written notification of denial.

Under § 412.92(b)(2)(iii), we define retroactive approval of SCH status. If a hospital is granted retroactive approval of SCH status by a final and nonappealable court order or an administrative decision under subpart R of Part 405 of the regulations, and it wishes its SCH status terminated prior to the current date (that is, it wishes to be paid as an SCH for a time-limited period, all of which is in the past), it must submit written notice to the HCFA regional office through its fiscal intermediary within 90 days of the court order or the administrative decision. This written notice must clearly state that, although SCH status was granted retroactively by the court order or by the administrative decision, the hospital wants this status terminated as of a specific date. If written notice is not received within 90 days of the court order or the administrative decision, SCH status will continue. Written requests to terminate SCH status that are received subsequent to the 90-day period will be effective no later than 30 days after the request is submitted, as discussed above.

Under § 412.92(c)(1), we define mileage. We believe that mileage should continue to be measured by the shortest route over improved roads maintained by any local, State, or Federal Government entity for public use. We consider improved roads to include the paved surface up to the front entrance of the hospital because this portion of the distance is utilized by the public to access the hospital. This definition provides consistency with the interpretation of the MGCRB when considering hospital reclassification applications. The MGCRB measures the distance between the hospital and the county line of the area to which it seeks reclassification beginning with the paved area outside the front entrance of the hospital. This provides a consistent, national definition that is easily recognizable for each hospital. Finally, rounding of mileage is not permissible. this is also consistent with the MGCRB definition of mileage (56 FR 25483). We are proposing to revise the definition of "miles" under § 412.92(c)(1) to state that an improved road includes the paved surface up to the front entrance of the hospital.

Under § 412.92(c)(2), we define "like" hospital. We consider like hospitals to be those hospitals furnishing short-term acute care. That is, a hospital may not qualify for an SCH classification on the grounds that neighboring hospitals offer specialty services, thereby seeking to exclude close-by competitors as like hospitals, in order to meet the mileage criteria by measuring to a like hospital that is located further away. For example, we believe that competing hospitals within a given area may each have their own specialty services, while all the facilities continue to be considered short-term acute care hospitals. We note that under § 412.92(a)(1)(ii), a hospital with fewer than 50 beds may qualify for SCH status under a special provision if patients that it would normally serve are seeking care elsewhere due to the unavailability of specialty services. This means that, if a hospital can prove that the patients from its service area are seeking specialty services elsewhere (such as, among others, heart surgery, transplants, and burn care), rather than routine care, and, because of that fact, that it otherwise would have met the criteria of section § 412.92(a)(1)(i), it can qualify as an SCH.

We note that § 412.92(b)(1)(iii)(A) retains an outdated reference to "hospitals located within a 50 mile radius of the hospital." With the issuance of the September 1, 1989 **Federal Register** (54 FR 36481, 36482), the 50 mile radius was determined to be unreasonable and all references should have been changed to 35 miles in accordance with § 412.92(a)(1)(i). We are proposing to revise the reference to "a 50 mile radius" in § 412.92(b)(1)(iii)(A) to read "a 35 mile radius".

We note that the travel time and weather conditions criteria set forth in § 412.92(a)(3) were discussed in detail in the September 4, 1990 **Federal Register** (55 FR 36050 through 36055 and 36162 through 36163).

Under § 412.92(a)(1)(i) and (b)(1)(ii), we define the market area analysis criteria used to determine SCH status. There are several points concerning these requests for SCH status that we would like to clarify in this proposed rule. First, a hospital seeking an SCH designation based on these criteria must make its initial request to the fiscal intermediary with all the appropriate documents as will be discussed below (§ 412.92(b)(1)(i)). The fiscal intermediary will make a recommendation on the request, based on receipt of all the appropriate documentation and its own investigation and analysis, and that recommendation will be forwarded to the HCFA regional office for another level of review and final approval or disapproval. The fiscal intermediary would forward its recommendation to the HCFA regional office located in the hospital's area as opposed to the fiscal intermediary's area, if there is a difference in these areas. As discussed above, an approval of the request for SCH status will be effective 30 days after HCFA issues the approval letter. If a determination on the request requires the use of data that are available at HCFA central office only, upon receipt of the fiscal intermediary's recommendation, the HCFA regional office will forward the request and the fiscal intermediary's recommendation to the appropriate contact at HCFA central office where the determination will be made.

Second, a hospital must provide patient origin data (the number of patients from each zip code from which the hospital draws inpatients) for all inpatient discharges to document the boundaries of its service area (§ 412.92(b)(1)(ii)(A)). Or, the hospital can request that HCFA develop patient origin data to define its service area based on the number of patients from each zip code from which the hospital draws Medicare Part A inpatients (§ 412.92(b)(1)(iii)). Then, the lowest number of zip codes in descending percentage order of Medicare inpatients that meets the 75-percent threshold will be used to represent the hospital's service area. We note that hospitals cannot substitute zip codes elsewhere

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on the list in order to manipulate the service area. See (*Howard Young Medical Center, Inc.* v. *Shalala*, 207 F.3d 437 (7th Cir. 2000).)

Third, the hospital must provide patient origin data from all other hospitals located within a 35-mile radius of it or, if larger, within its service area, to document that no more than 25 percent of either all of the population or the Medicare beneficiaries residing in the hospital's service area and hospitalized for inpatient care were admitted to other like hospitals for care (§ 412.92(b)(1)(ii)(B)). Again, HCFA central office can develop patient origin data for other hospitals within the requesting hospital's service area if the hospital is requesting SCH status based on an examination of Medicare Part A inpatient utilization. In either case, the requesting hospital is required to submit a comprehensive list of hospitals located within a 35-mile radius or, if larger, within its service area. This list will be checked by both the fiscal intermediary and HCFA. Again, a requesting hospital cannot argue that a competing hospital should be excluded from the service area based on the existence of specialty services at that hospital if both hospitals are short-term acute care facilities. Distances between all reported hospitals will be checked by both the fiscal intermediary and HCFA, through electronic geographic mapping services (such as Yahoo or Mapquest) or by physically driving the distance involved.

In addition, data will be analyzed based on the year for which the hospital requests SCH status. Subsequent hospital mergers or terminations will not be taken into consideration in processing the request. For example, if a hospital requests SCH status using data for FY 1999, and that data show that there is a competing hospital in existence that subsequently closed its doors in FY 2000, the data will be analyzed with the terminated hospital in existence, unless the hospital seeking SCH status applies using later data, such as FY 2001. This principle is consistent with how we analyze wage index data. If a terminated hospital has a viable cost report for the year of wage data that is being analyzed to produce the wage index, its data are included as part of the computation.

B. Rural Referral Centers (§ 412.96)

Under the authority of section 1886(d)(5)(C)(i) of the Act, the regulations at § 412.96 set forth the criteria a hospital must meet in order to receive special treatment under the prospective payment system as a rural referral center. For discharges occurring before October 1, 1994, rural referral centers received the benefit of payment based on the other urban amount rather than the rural standardized amount. Although the other urban and rural standardized amounts were the same for discharges beginning with that date, rural referral centers would continue to receive special treatment under both the disproportionate share hospital (DSH) payment adjustment and the criteria for geographic reclassification.

Section 401 of Public Law 106–113 amended section 1886(d)(8) of the Act by adding subparagraph (E), which creates a mechanism, separate and apart from the MGCRB, permitting an urban hospital to apply to the Secretary to be treated as being located in the rural area of the State in which the hospital is located. The statute directs the Secretary to treat a qualifying hospital as being located in the rural area for purposes of provisions under section 1886(d) of the Act. Congress clearly intended hospitals that become rural under section 1886(d)(8)(E) of the Act to receive some benefit as a result. In addition, one of the criteria under section 1886(d)(8)(E) of the Act is that the hospital would qualify as an SCH or a rural referral center if it were located in a rural area. An SCH would be eligible to be paid on the basis of the higher of its hospital-specific rate or the Federal rate. On the other hand, the only benefit under section 1886(d) of the Act for an urban hospital to become a rural referral center would be waiver of the proximity requirements that are otherwise applicable under the MGCRB process, as set forth in § 412.230(a)(3)(i).

When we implemented section 401 of Public Law 106–113 in the August 1, 2000 final rule (65 FR 47089), we stated that we believed Congress contemplated that hospitals might seek to be reclassified as rural under section 1886(d)(8)(E) of the Act in order to become rural referral centers so that the hospitals would be exempt from the MGCRB proximity requirement and could be reclassified by the MGCRB to another urban area. Therefore, in that final rule we sought a policy approach that would appropriately address our concern that these urban to rural redesignations not be utilized inappropriately, and that would benefit hospitals seeking to reclassify under the MGCRB process by achieving rural referral center status. (We became aware of several specific hospitals that were rural referral centers for FY 1991, but subsequently lost their status when the county in which they were located became urban, and had expressed their wish to be redesignated as a rural referral center in order to be eligible to reclassify.) Accordingly, in light of section 1886(d)(8)(E) of the Act and the language in the accompanying Conference Report, effective as of October 1, 2000, hospitals located in what is now an urban area, if they were ever a rural referral center, were reinstated to rural referral center status.

In addition, as discussed in 62 FR 45999 and 63 FR 26317, under section 4202 of Public Law 105–33, a hospital that was classified as a rural referral center for FY 1991 is to be classified as a rural referral center for FY 1998 and later years so long as that hospital continued to be located in a rural area and did not voluntarily terminate its rural referral center status. Otherwise, a hospital seeking rural referral center status must satisfy applicable criteria. One of the criteria under which a hospital may qualify as a rural referral center is to have 275 or more beds available for use. A rural hospital that does not meet the bed size requirement can qualify as a rural referral center if the hospital meets two mandatory prerequisites (specifying a minimum case-mix index and a minimum number of discharges) and at least one of three optional criteria (relating to specialty composition of medical staff, source of inpatients, or referral volume). With respect to the two mandatory prerequisites, a hospital may be classified as a rural referral center if its—

- Case-mix index is at least equal to the lower of the median case-mix index for urban hospitals in its census region, excluding hospitals with approved teaching programs, or the median case-mix index for all urban hospitals nationally; and
- Number of discharges is at least 5,000 per year, or if fewer, the median number of discharges for urban hospitals in the census region in which the hospital is located. (The number of discharges criterion for an osteopathic hospital is at least 3,000 discharges per year.)

1. Case-Mix Index

Section 412.96(c)(1) provides that HCFA will establish updated national and regional case-mix index values in each year's annual notice of prospective payment rates for purposes of determining rural referral center status. The methodology we use to determine the proposed national and regional case-mix index values is set forth in regulations at § 412.96(c)(1)(ii). The proposed national case-mix index value includes all urban hospitals nationwide, and the proposed regional values are the median values of urban hospitals within each census region, excluding those

with approved teaching programs (that is, those hospitals receiving indirect medical education payments as provided in § 412.105). These values are based on discharges occurring during FY 1999 (October 1, 1998 through September 30, 1999) and include bills posted to HCFA's records through December 1999.

We are proposing that, in addition to meeting other criteria, hospitals with fewer than 275 beds, if they are to qualify for initial rural referral center status for cost reporting periods beginning on or after October 1, 2001, must have a case-mix index value for FY 2000 that is at least—

- 1.3286; or
- The median case-mix index value for urban hospitals (excluding hospitals with approved teaching programs as identified in § 412.105) calculated by HCFA for the census region in which the hospital is located.

The median case-mix values by region are set forth in the following table:

Region	Case-mix index value
1. New England (CT, ME, MA, NH, RI, VT)	1.2377
2. Middle Atlantic (PA, NJ, NY)	1.2305
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	1.3055
4. East North Central (IL, IN, MI, OH, WI)	1.2613
5. East South Central (AL, KY, MS, TN)	1.2537
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	1.1653
7. West South Central (AR, LA, OK, TX)	1.2484
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	1.3286
9. Pacific (AK, CA, HI, OR, WA)	1.2693

The preceding numbers will be revised in the final rule to the extent required to reflect the updated FY 2000 MedPAR file, which will contain data from additional bills received through March 31, 2001.

Hospitals seeking to qualify as rural referral centers or those wishing to know how their case-mix index value compares to the criteria should obtain hospital-specific case-mix values from their fiscal intermediaries. Data are available on the Provider Statistical and Reimbursement (PS&R) System. In keeping with our policy on discharges, these case-mix index values are computed based on all Medicare patient discharges subject to DRG-based payment.

2. Discharges

Section 412.96(c)(2)(i) provides that HCFA will set forth the national and regional numbers of discharges in each year's annual notice of prospective payment rates for purposes of determining rural referral center status. As specified in section 1886(d)(5)(C)(ii) of the Act, the national standard is set at 5,000 discharges. We are proposing to update the regional standards based on discharges for urban hospitals' cost reporting periods that began during FY 1999 (that is, October 1, 1998 through September 30, 1999). That is the latest year for which we have complete discharge data available.

Therefore, we are proposing that, in addition to meeting other criteria, a hospital, if it is to qualify for initial rural referral center status for cost reporting periods beginning on or after October 1, 2001, must have as the number of discharges for its cost reporting period that began during FY 1999 a figure that is at least—

- 5,000; or
- The median number of discharges for urban hospitals in the census region in which the hospital is located, as indicated in the following table:

Region	Number of discharges
1. New England (CT, ME, MA, NH, RI, VT)	7083
2. Middle Atlantic (PA, NJ, NY)	8371
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	8202
4. East North Central (IL, IN, MI, OH, WI)	7430
5. East South Central (AL, KY, MS, TN)	6505
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	4708
7. West South Central (AR, LA, OK, TX)	4911
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	8287
9. Pacific (AK, CA, HI, OR, WA)	7001

These numbers will be revised in the final rule based on the latest FY 1999 cost report data.

We reiterate that an osteopathic hospital, if it is to qualify for rural referral center status for cost reporting periods beginning on or after October 1, 2001, must have at least 3,000 discharges for its cost reporting period that began during FY 2000.

C. Indirect Medical Education (IME) Adjustment (§ 412.105)

1. IME Adjustment Factor Formula Multiplier (Section 302 of Public Law 106–554 and § 412.105(d)(3))

Section 1886(d)(5)(B) of the Act provides that prospective payment hospitals that have residents in an approved graduate medical education (GME) program receive an additional payment to reflect the higher indirect operating costs associated with GME. The regulations regarding the calculation of this additional payment, known as the indirect medical education (IME) adjustment, are located at § 412.105. The additional payment is based in part on the applicable IME adjustment factor. The IME adjustment factor is calculated using a hospital's ratio of residents to beds, which is represented as r, and a multiplier, which is represented as c, in the following equation: $c \times [(1 + r)^{.405} - 1]$. The formula is traditionally described in terms of a certain percentage increase in

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payment for every 10-percent increase in the resident-to-bed ratio.

Section 302 of Public Law 106–554 amended section 1886(d)(5)(B) of the Act to modify the transition for the IME formula multiplier, or c, that was first established by Public Law 105–33 and revised by Public Law 106–113.

Section 302(a) of Public Law 106–554 provides that, for discharges occurring during FY 2002, the formula multiplier is 1.6. For discharges occurring during FY 2003 and thereafter, the formula multiplier is 1.35. (Section 302(b) of Public Law 106–554 provides for a special payment rule which states that, for discharges occurring on or after April 1, 2001 and before October 1, 2001, IME payments are to be made if "c" equalled 1.66 rather than 1.54. We are issuing a separate interim final rule with comment period (HCFA–1178–IFC) to include this change for payments in FY 2001.) The multiplier of 1.6 for FY 2002 represents a 6.5-percent increase for every 10-percent increase in the resident-to-bed ratio. The multiplier for FY 2003 and thereafter (1.35) represents a 5.5-percent increase for every 10-percent increase in the resident-to-bed ratio.

We are proposing to revise § 412.105(d)(3)(vi) to reflect the change in the formula multiplier for FY 2002 to 1.6 as made by section 302(a) of Public Law 106–554 for discharges occurring during FY 2002. We also are proposing to add § 412.105(d)(3)(vii) to incorporate the formula multiplier of 1.35 for discharges occurring on or after October 1, 2002.

2. Resident-to-Bed Ratio Cap (§ 412.105(a)(1))

It has come to our attention that there is some misunderstanding about § 412.105(a)(1) regarding the determination of the resident-to-bed ratio that is used in calculating the IME adjustment. Section 4621(b)(1) of Public Law 105–33 amended section 1886(d)(5)(B) of the Act by adding a new clause (vi) to provide that, effective for cost reporting periods beginning on or after October 1, 1997, the resident-to-bed ratio may not exceed the ratio calculated during the prior cost reporting period (after accounting for the cap on the hospital's number of full-time equivalent (FTE) residents). We implemented this policy in the August 29, 1997 final rule (62 FR 46003) and the May 12, 1998 final rule (63 FR 26323) under regulations at § 412.105(a)(1). Existing § 412.105(a)(1) specifies that "[e]xcept for the special circumstances for affiliated groups and new programs described in paragraphs (f)(1)(vi) and (f)(1)(vii) of this section, for a hospital's cost reporting periods beginning on or after October 1, 1997, this ratio may not exceed the ratio for the hospital's most recent prior cost reporting period." We are proposing to clarify § 412.105(a)(1) to add a provision that this ratio may not exceed the ratio for the hospital's most recent prior cost reporting period *after accounting for the cap on the number of FTE residents.*

In general, the resident-to-bed ratio from the prior cost reporting period, which is to be used as the cap on the resident-to-bed ratio for the current payment cost reporting period, should only include an FTE count that is subject to the FTE cap on the number of allopathic and osteopathic residents, but is *not* subject to the rolling average. (An explanation of rolling average appears in section IV.G.3. of this preamble.)

The following illustrates the steps for determining the resident-to-bed ratio for the current payment year cost reporting period and the cap on the resident-to-bed ratio:

Current payment year cost reporting period resident-to-bed ratio:

Step 1. Determine the hospital's number of FTE residents in the current payment year cost reporting period.

Step 2. Compare the number of FTEs from step 1 to the hospital's FTE cap (§ 412.105(f)(1)(iv)). If the number of FTEs from step 1 exceeds the FTE cap, replace it with the number of FTEs in the FTE cap.

Step 3. Determine the 3-year rolling average of the FTE residents using the FTEs from the current payment year cost reporting period and the prior two cost reporting periods (subject to the FTE cap in each cost reporting period). (Include podiatry and dental residents, and exclude residents in new programs in accordance with § 412.105(f)(1)(iv) and proposed revised (f)(1)(v). Residents in new programs are added to the quotient of the rolling average.)

Step 4. Determine the hospital's number of beds (see § 412.105(b)) in the current payment year cost reporting period.

Step 5. Determine the ratio of the number of FTEs from step 3 to the number of beds from step 4. The lower of this resident-to-bed ratio or the resident-to-bed ratio cap (calculated below) from the immediately preceding cost reporting period is used to calculate the hospital's IME adjustment factor for the current payment year cost reporting period.

Resident-to-bed ratio cap:

Step 1. Determine the hospital's number of FTE residents in its cost reporting period that immediately precedes the current payment year cost reporting period.

Step 2. Compare the number of FTEs from step 1 to the hospital's FTE cap. If the number of FTEs from step 1 exceeds the FTE cap, replace it with the number of FTEs in the FTE cap. (If there is an increase in the number of FTEs in the current payment year cost reporting period due to a new program or an affiliation agreement, these FTEs are added to FTEs in the preceding cost reporting period after comparison to the FTE cap.)

Step 3. Determine the hospital's number of beds (§ 412.105(b)) in its cost reporting period that immediately precedes the current payment year cost reporting period.

Step 4. Determine the ratio of the number of FTEs in step 2 to the number of beds in step 3. This ratio is the resident-to-bed ratio cap for the current payment year cost reporting period.

Step 5. Compare the resident-to-bed ratio cap in step 4 to the resident-to-bed ratio in the current payment year cost reporting period. The lower of the resident-to-bed ratio from the current payment year cost reporting period or the resident-to-bed ratio cap from the immediately preceding cost reporting period is used to calculate the hospital's IME adjustment factor for the current payment year cost reporting period.

We note that the resident-to-bed ratio cap is a cap on the resident-to-bed ratio calculated for all residents, including allopathic, osteopathic, dental, and podiatry residents (63 FR 26324, May 12, 1998). However, as described in existing § 412.105(a)(1), the resident-to-bed ratio cap may be adjusted to reflect an increase in the current cost reporting period's resident-to-bed ratio due to residents in a new GME program or an affiliation agreement. While this exception does not apply if the resident-to-bed ratio increases because of an increase in the number of podiatry or dentistry residents or because of a change in the number of beds, the ratio could increase after a one-year delay. An increase in the current cost reporting period's ratio (while subject to the cap on the overall number of allopathic and osteopathic residents) thereby establishes a higher cap for the following cost reporting period.

The following is an example of the application of the cap on the resident-to-bed ratio:

Example—Part 1:

• Assume Hospital A has 50 FTEs in its cost reporting period ending September 30, 1996, thereby establishing an IME FTE resident cap of 50 FTEs.

• In its cost reporting period of October 1, 1996 to September 30, 1997 (the prior year), it has 50 FTEs and 200 beds, so that its resident-to-bed ratio for this period is 50/200 = .25.

• In the (current year) cost reporting period of October 1, 1997 to September 30, 1998 (the first cost reporting period in which the FTE resident cap, the resident-to-bed ratio cap, and the rolling average apply), Hospital A has 50 FTEs and 200 beds.

• Hospital A s FTEs do not exceed its FTE cap, so its current number of FTEs (50) is used to calculate the 2-year rolling average: (50 + 50)/2 = 50.

• The result of the rolling average is used as the numerator of the resident-to-bed ratio. Thus, the resident-to-bed ratio is 50/200 = .25.

• .25 is compared to the resident-to-bed ratio from the prior period of October 1, 1996 to September 30, 1997. Because the FTE resident cap and the rolling average were not yet effective in the period of October 1, 1996 to September 30, 1997, that period's resident-to-bed ratio does not have to be recalculated to account for the FTE resident cap. Accordingly, the resident-to-bed ratio cap for October 1, 1997 to September 30, 1998 is .25.

• Because the resident-to-bed ratio does not exceed the prior year ratio, Hospital A would use the resident-to-bed ratio of .25 to determine the IME adjustment in its cost reporting period of October 1, 1997 to September 30, 1998.

Example—Part 2:

• In the (current year) cost reporting period of October 1, 1998 to September 30, 1999, Hospital A adds 1 podiatric and 1 dental resident, so that it has a total of 52 FTEs and 200 beds. Since the FTE resident cap only includes allopathic and osteopathic residents, Hospital A has not exceeded its FTE resident cap with the addition of a podiatric and a dental resident.

• Accordingly, the (now) 3-year rolling average would be (52 + 50 + 50)/3 = 50.67.

• 50.67 is used in the numerator of the current payment year's resident-to-bed ratio, so that the resident-to-bed ratio is 50.67/200 = .253.

• .253 is compared to the resident-to-bed ratio from the prior year's cost reporting period of October 1, 1997 to September 30, 1998 that is recalculated to account for the FTE resident cap. Because Hospital A did not exceed its FTE resident cap of 50 FTEs in this period of October 1, 1997 to September 30, 1998, the recalculated resident-to-bed ratio would be 50/200 = .25.

• Compare the current year resident-to-bed ratio (.253) to the resident-to-bed ratio cap (.25); .253 *does exceed* .25.

• Therefore, the resident-to-bed ratio in the period of October 1, 1998 to September 30, 1999 is capped at .25, which is to be used in calculating Hospital A's IME adjustment for October 1, 1998 to September 30, 1999.

Example—Part 3:

• In the cost reporting period of October 1, 1999 to September 30, 2000, Hospital A adds 2 internal medicine residents so that it has a total of 54 FTEs and 200 beds. While podiatric and dental residents are not included in the FTE resident cap, internal medicine residents are included. Hospital A has exceeded its IME FTE resident cap of 50 by 2 FTEs. Thus, 2 FTEs are excluded from the FTE count.

• Accordingly, the rolling average would be (52 + 52 + 50)/3 = 51.33.

• 51.33 is used in the numerator of the resident-to-bed ratio, so that the resident-to-bed ratio is 51.33/200 = .257.

• .257 is compared to the resident-to-bed ratio from October 1, 1998 to September 30, 1999 that is recalculated to only account for the FTE resident cap. The recalculated resident-to-bed ratio would be 50 allopathic or osteopathic FTEs plus 1 podiatric and 1 dental resident, which is 52/200 = .26.

• .26 is the resident-to-bed ratio cap for October 1, 1999 to September 30, 2000. .257 *does not exceed* .26.

• Therefore, the resident-to-bed ratio in the period of October 1, 1998 to September 30, 1999 is .257, which is to be used in calculating this period s IME adjustment.

If a hospital starts a new GME program, the adjustment to the resident-to-bed ratio cap applies for the period of years equal to the minimum accredited length for that type of program. (For example, for a new internal medicine program, the period of years equals 3; for a new surgery program, the period of years equals 5.) Within these program years, the number of new FTE residents in the current cost reporting period is added to the FTE resident count used in the numerator of the resident-to-bed ratio from the previous cost reporting period. The lower of the resident-to-bed ratio from the current cost reporting period or the adjusted resident-to-bed ratio from the preceding cost reporting period is used to calculate the hospital's IME adjustment for the current cost reporting period. If a hospital continues to expand its program after the period of years, the numerator of the resident-to-bed ratio from the preceding cost reporting period would not be adjusted to reflect these additional residents. However, an increase in the ratio of the current cost reporting period would establish a higher cap for the following cost reporting period. We also are proposing to add a provision that the exception for new programs described in § 412.105(f)(1)(vii) applies for the period of years equal to the minimum accredited length for that type of program.

Similarly, if a hospital increases the number of FTE residents in the current cost reporting period because of an affiliation agreement, the number of additional FTEs is added to the FTE resident count used in the numerator of the resident-to-bed ratio from the previous cost reporting period. The lower of the resident-to-bed ratio from the current cost reporting period or the adjusted resident-to-bed ratio from the preceding cost reporting period is used to calculate the hospital's IME adjustment for the current cost reporting period.

3. Conforming Changes (§ 412.105(f)(1)(ii)(C) and (f)(1)(v))

In the August 29, 1997 final rule with comment period (62 FR 46003), the May 12, 1998 final rule (63 FR 26323), and the July 31, 1998 final rule (63 FR 40986), to implement the provisions of Public Law 105–33, we set forth certain policies that affected payment for both direct and indirect GME. Some of these policies related to the FTE cap on allopathic and osteopathic residents, the rolling average, and payment for residents training in nonhospital settings. When we amended the regulations under § 413.86 for direct GME, we inadvertently did not make certain conforming changes in § 412.105 for IME. We are proposing to make the following conforming changes:

• To revise § 412.105(f)(1)(ii)(C) to specify that, effective for discharges occurring on or after October 1, 1997, the time residents spend training in a nonhospital setting in patient care activities under an approved medical residency training program may be counted towards the determination of full-time equivalency if the criteria set forth at § 413.86(f)(3) or § 413.86(f)(4), as applicable, are met.

• To revise § 412.105(f)(1)(v) to specify that residents in new residency programs are not included in the rolling average for a period of years equal to the minimum accredited length for the type of program.

In addition, we are proposing to revise § 412.105(f)(1)(ix) to specify, for IME purposes, a temporary adjustment to a hospital's FTE cap to reflect residents added because of another hospital's closure of its medical residency program (to conform to the

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proposed change for GME discussed in section IV.G.5. of this preamble).

D. Payments to Disproportionate Share Hospitals (§ 412.106)

Effective for discharges beginning on or after May 1, 1986, hospitals that serve a significantly disproportionate number of low-income patients (as defined in section 1886(d)(5)(F) of the Act) receive additional payments through the DSH adjustment.

Section 1886(d)(5)(F)(ix) of the Act, as amended by section 112 of Public Law 106–113, specifies a percentage reduction in the payments a hospital would otherwise receive under the disproportionate share formula. Prior to enactment of section 303 of Public Law 106–554, the reduction percentages were as follows: 3 percent for FY 2001, 4 percent for FY 2002, and 0 percent for FY 2003 and each subsequent fiscal year.

Section 303 of Public Law 106–554 revised the amount of the percent reductions to 2 percent for discharges occurring in FY 2001, and to 3 percent for discharges occurring in FY 2002. The reduction continues to be 0 percent for FY 2003 and each subsequent fiscal year. Section 303 of Public Law 106–554 contains a special rule for FY 2001: For discharges occurring on or after October 1, 2000 and before April 1, 2001, the reduction is to be 3 percent, and for discharges occurring on or after April 1, 2001 and before October 1, 2001, the reduction is to be 1 percent. Changes made by section 303 with respect to FY 2001 discharges are being implemented in a separate interim final rule with comment period (HCFA–1178–IFC).

We are proposing to revise § 412.106(e) to reflect the change in the percentage for FY 2002 made by section 303 of Public Law 106–554. We also are proposing to make a technical change in the heading of paragraph (e).

E. Medicare Geographic Classification Review Board (Proposed New § 412.235 and Existing §§ 412.256, 412.273, 412.274(b), and 412.276)

With the creation of the Medicare Geographic Classification Review Board (MGCRB), beginning in FY 1991, under section 1886(d)(10) of the Act, hospitals could request reclassification from one geographic location to another for the purpose of using the other area's standardized amount for inpatient operating costs or the wage index value, or both (September 6, 1990 interim final rule with comment period (55 FR 36754), June 4, 1991 final rule with comment period (56 FR 25458), and June 4, 1992 proposed rule (57 FR 23631)). Implementing regulations in Subpart L of Part 412 (§§ 412.230 *et seq.*) set forth criteria and conditions for redesignations from rural to urban, rural to rural, or from an urban area to another urban area with special rules for SCHs and RRCs.

Section 304 of Public Law 106–554 contained several provisions related to the wage index and reclassification decisions made by the MGCRB. In summary, section 304 first establishes that hospital reclassification decisions by the MGCRB for wage index purposes are effective for 3 years, beginning with reclassifications for FY 2001. Second, it provides that the MGCRB must use the 3 most recent years of average hourly wage data in evaluating a hospital's reclassification application for FY 2003 and subsequent years. Third, it provides that an appropriate statewide entity may apply to have all of the geographic areas in a State treated as a single geographic area for purposes of computing and applying the wage index, for reclassifications beginning in FY 2003. A discussion of how we are proposing to implement these three provisions follows. (Section III.F. of this preamble discusses the application of these proposed policy changes to the development of the proposed FY 2002 and later wage indexes based on hospital reclassification under the provisions of section 304 of Public Law 106–554.)

1. Three-Year Reclassifications for Wage Index Purposes

Section 304(a) of Public Law 106–554 amended section 1886(d)(10)(D) of the Act by adding clause (v), which provides that, if a hospital is approved for reclassification by the MGCRB for purposes of the wage index, the reclassification is effective for 3 years. The amendment made by section 304(a) is effective for reclassifications for FY 2001 and subsequent years. In addition, the legislation specifies that the Secretary must establish a mechanism under which a hospital may elect to terminate such reclassification during the 3-year period.

Consistent with new section 1886(d)(10)(D)(v) of the Act, we are proposing to revise § 412.274(b) to provide under new paragraph (b)(2) that any hospital that is reclassified for a particular fiscal year for purposes of receiving the wage index value of another area would receive that reclassification for 3 years beginning with discharges occurring on the first day (October 1) of the second Federal fiscal year in which a hospital files a complete application. This 3-year reclassification would remain in effect unless the hospital terminates the reclassification under proposed revised procedures that we are establishing under new proposed § 412.273(b). The proposed provision would apply to hospitals that are reclassified for purposes of the wage index only, as well as those that are reclassified for both the wage index and the standardized amount. However, in the latter case, only the wage index reclassification would be extended for 2 additional years beyond the 1 year provided for in the existing regulations (3 years total). Hospitals seeking reclassification for purposes of the standardized amount must continue to reapply to the MGCRB on an annual basis.

a. Special Rule for a Hospital That Was Reclassified for FY 2001 and FY 2002 to Different Areas

Because the 3-year effect of the amendment made by section 304(a) of Public Law 106–554 is applicable to reclassifications for FY 2001 (which had already taken place prior to the date of enactment of section 304(a) (December 21, 2000), and because the application process for reclassifications for FY 2002 had already been completed by the date of enactment, we are establishing special procedures for hospitals that are reclassified for purposes of the wage index to one area for FY 2001, and are reclassified for purposes of the wage index or the standardized amount to another area for FY 2002. We are deeming such a hospital to be reclassified to the area for which it applied for FY 2002, unless the hospital elects to receive the wage index reclassification it was granted for FY 2001. Consistent with our procedures for withdrawing an application for reclassification (§ 412.273), we are allowing a hospital that wishes to receive the reclassification it was granted for FY 2001 to withdraw its FY 2002 application by making a written request to the MGCRB within 45 days of the publication date of this proposed rule (that is, by June 18, 2001). Again, only the wage index reclassification is extended for 2 additional years (3 years total). Hospitals seeking reclassification for purposes of the standardized amount must continue to reapply to the MGCRB on an annual basis.

(We note that the new location and mailing address of the MGCRB and the Provider Reimbursement Review Board (PRRB) is: 2520 Lord Baltimore Drive, Suite L, Baltimore, MD 21244–2670. The MGCRB and PRRB will be functioning at this new location as of May 21, 2001. Also, please specify whether the mail is intended for the MGCRB or the PRRB.)

b. Overlapping Reclassifications Are Not Permitted

Under the broad authority delegated to the Secretary by section 1886(d)(10) of the Act, we are proposing that a hospital that is reclassified to an area for purposes of the wage index may not extend the 3-year effect of the reclassification under section 304(a) of Public Law 106–554 by subsequently applying for reclassification to the same area for purposes of the wage index for a fiscal year that would be within the 3-year period. For example, if a hospital is reclassified for purposes of the wage index to Area A for FY 2002, is approved to receive Area A's wage index for 3 years (FYs 2002, 2003, and 2004), and reapplies to be reclassified to Area A for FYs 2003, 2004, and 2005 (3 years) for purposes of the wage index, the hospital would not be permitted to receive Area A's wage index for FY 2005 as a result of the reapplication. Instead, we are proposing that if the hospital wishes to extend the FY 2002 3-year reclassification for fiscal years beyond FY 2004, it would have to apply for reclassification for FY 2005.

We believe new section 1886(d)(10)(D)(v) of the Act replaces the current annual reclassification cycle with a 3-year reclassification cycle. We believe this policy was intended to provide consistency and predictability in hospital reclassification and wage index data, as well as to alleviate the year-to-year fluctuations in the ability of some hospitals to qualify for reclassification. We do not believe it was intended to be used to extend reclassifications for which hospitals otherwise would not be eligible (by reapplying during the second year of a 3-year reclassification because a hospital fears it may not be eligible for reclassification after its current 3-year reclassification expires).

c. Withdrawals of Applications and Terminations of Approved Reclassifications

(1) General

Under § 412.273(a), a hospital, or group of hospitals, may withdraw its application for reclassification at any time before the MGCRB issues its decision or, if after the MGCRB issues its decision, within 45 days of publication of our annual notice of proposed rulemaking concerning changes to the inpatient hospital prospective payment system and proposed payment rates for the fiscal year for which the application was filed. We are proposing that the withdrawal procedures and the applicable timeframes in the existing regulations would apply to hospitals that would receive 3-year reclassification for wage index purposes. For example, if a hospital applied for reclassification to Area A for purposes of the wage index for FY 2002, but wished or wishes to withdraw its application, it must have done so prior to the MGCRB issuing a decision on its application or, if the MGCRB issued such a decision, within 45 days of the publication date of this proposed rule. Such a withdrawal, if effective, means that the hospital would not be reclassified to Area A for purposes of the wage index for FY 2002 (and would not receive continued reclassification for FYs 2003 and 2004). In other words, a withdrawal, if accepted, prevents a reclassification from ever becoming effective.

On the other hand, a reclassification decision that is terminated upon the request of the hospital has partial effect. Section 1886(d)(10)(D)(v) of the Act, as added by section 304(a) of Public Law 106–554, provides that a reclassification for purposes of the wage index is effective for 3 years "except that the Secretary shall establish procedures under which a * * * hospital may elect to terminate such reclassification before the end of such period." Consistent with section 1886(d)(10)(D)(v) of the Act, we are proposing to allow a hospital to terminate its approved 3-year reclassification for 1 or 2 years of the 3-year effective period (proposed § 412.273(b)). For example, a hospital that has been reclassified for purposes of the wage index for FY 2001 is also reclassified for FYs 2002 and 2003 (3 years). Such a hospital could terminate its approved reclassification so that the reclassification is effective only for FY 2001, or only for FYs 2001 and 2002. Consistent with the prospective nature of reclassifications, we would not permit a hospital to terminate its approved 3-year reclassification for part of a fiscal year. A termination would be effective for the next fiscal year. In order to terminate an approved 3-year reclassification, we would require the hospital to notify the MGCRB in writing within 45 days of the publication date of the annual proposed rule for changes to the inpatient hospital prospective payment system. A termination request, once accepted, is effective for the balance of the 3-year period (as discussed below under reapplying within original 3-year period, following a termination).

We are establishing a special procedural rule for handling FY 2001 reclassifications. As noted above, the amendments made by section 304(a) of Public Law 106–554 are effective for reclassifications for FYs 2001 and beyond, and reclassification applications for FY 2001 had already been submitted prior to the date of enactment of section 304(a). We are deeming those hospitals that were reclassified for FY 2001 to be reclassified for FYs 2002 and 2003. Therefore, if a deemed hospital that was reclassified for purposes of the wage index for FY 2001 does not wish to continue its reclassification for FY 2002 and FY 2003, the hospital must notify the MGCRB in writing within 45 days after the publication of this proposed rule (that is, by June 18, 2001).

(2) Reinstatement After a Withdrawal of Application or a Termination of an Approved Reclassification

We are proposing that if a hospital elects to withdraw its 3-year reclassification application after the MGCRB has issued its decision, it may cancel its withdrawal in a subsequent fiscal year and request the MGCRB to reinstate its reclassification for the remaining fiscal years of the 3-year reclassification period. (This proposal is consistent with our proposal that 3-year reclassification periods may not overlap, as discussed in section IV.E.1.b. of this preamble.) Alternatively, a hospital may apply for reclassification to a different area (that is, an area different from the one to which it was originally reclassified), and if successful, the reclassification effect would be for 3 years.

Example 1: Hospital A files an application and the MGCRB issues a decision to reclassify it to Area A for purposes of wage index for FY 2002 through FY 2004 (3 years). Within 45 days after the publication of this proposed rule, Hospital A withdraws its application. Within the time for applying for a FY 2003 reclassification, Hospital A cancels its withdrawal for classification to Area A. Its reclassification to Area A is reinstated, but only for FYs 2003 and 2004.

Example 2: Hospital B files an application for reclassification for wage index purposes for FY 2002 through FY 2004 and the MGCRB issues a decision for reclassification to Area B. Within 45 days after publication of this proposed rule, Hospital B withdraws its application. Hospital B does not cancel its withdrawal of the application. Hospital B timely applies and is reclassified to Area B for 3 years, beginning with FY 2003. In this case, the reclassification to Area B would be for FYs 2003 through 2005.

Similarly, and for the same reasons, we are proposing that if a hospital elects to terminate its accepted 3-year reclassification, it may cancel that termination and have its original reclassification reinstated for the duration of the original 3-year period. Alternatively, a hospital could apply for reclassification to a different area and receive a new 3-year period of reclassification.

Example 3: Hospital C is reclassified to Area A for purposes of the wage index for FY

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2002, and terminates its 3-year reclassification effective for FYs 2003 and 2004. Within the timeframe for applying for FY 2004 reclassification, Hospital C cancels its termination. Its reclassification to Area A would be reinstated for FY 2004 only.

Example 4: Hospital D has the same circumstances as Hospital C in Example 3, except that instead of canceling its termination, Hospital D applies and is reclassified to Area B for FY 2004. In this case, the reclassification would be for FYs 2004 through 2006.

d. Special Rules for Group Reclassifications

Section 412.232 discusses situations where all hospitals in a rural county are seeking urban redesignation, and § 412.234 discusses criteria where all hospitals in an urban county are seeking redesignation to another urban county. In these cases, hospitals submit an application as a group, and all hospitals in the county must be a party to the application. The reclassification is effective both for purposes of the wage index and the standardized amount of the area to which the hospitals are reclassified.

Section 304(a) of Public Law 106–554 does not specifically address the group reclassification situations under §§ 412.232 and 412.234. However, we believe that, in the case of hospitals reclassified under these group reclassification procedures, it would be appropriate to extend the 3-year reclassification provision to these situations for the wage index only. In order to be reclassified for the standardized amount during the second and third years of a 3-year reclassification for the wage index, the hospitals located in these counties would have to reapply on an annual basis to the MGCRB either as a group or as individual hospitals and meet the criteria outlined in §§ 412.232(a) and 412.234(a).

Hospitals that are part of a group reclassification would be able to withdraw or terminate their 3-year wage index reclassifications in the same manner as described above. If one hospital within the group elects to withdraw or terminate its reclassification, the reclassification of other hospitals in the group would be unaffected.

Under section 152(b) of Public Law 106–113, hospitals in certain counties were deemed to be located in specified areas for purposes of payment under the hospital inpatient prospective payment system, for discharges occurring on or after October 1, 2000. For payment purposes, these hospitals are to be treated as though they were reclassified for purposes of both the standardized amount and the wage index. Section 152(b) also requires that these reclassifications be treated for FY 2001 as though they are reclassification decisions by the MGCRB. For purposes of applying the 3-year extension of wage index reclassifications, we are proposing to extend section 1886(d)(10)(D)(v) to hospitals reclassified under section 152(b) of Public Law 106–113. These hospitals also would have to apply for the standardized amount on an annual basis to the MGCRB.

e. Administrator Authority To Cancel Inappropriate Reclassification Decisions

Under the provisions of § 412.278(g), the Administrator has the authority to review an inappropriate reclassification decision made by the MGCRB, as discovered by either the hospital or HCFA, including 3-year reclassifications in the second and third year, and to determine whether or not to cancel that decision as a result of the review of the facts. Hospitals that are concerned that they have been inappropriately reclassified should follow the procedures outlined in § 412.278.

2. Three-Year Average Hourly Wages

Section 304(a) of Public Law 106–554 amended section 1886(d)(10)(D) of the Act by adding clause (vi) which provides that the MGCRB must use the average of the 3 most recent years of hourly wage data for the hospital when evaluating a hospital's request for reclassification. Specifically, the MGCRB must base its evaluation on an average of the average hourly wage for the most recent years for the hospital seeking reclassification and the area to which the hospital seeks to reclassify. This provision is effective for reclassifications for FY 2003 and subsequent years. (Section III.F. of this preamble discusses the development and application of the proposed 3-year average hourly wage data (Table 2 in the Addendum to this proposed rule) that the MGCRB would use to evaluate hospitals' applications for reclassifications for FY 2003; and the 3-year average hourly wage data (Tables 3A and 3B in the Addendum to this proposed rule) for hospital reclassification applications for FY 2001.)

We are proposing to revise §§ 412.230(e)(2) and 412.232(d)(2) to incorporate the provisions of section 1886(d)(10)(D)(vi) of the Act as added by section 304(a) of Public Law 106–554. Specifically, we are providing that, for redesignations effective beginning FY 2003, for hospital-specific data, the hospital must provide a 3-year average of its average hourly wages using data from the HCFA hospital wage survey used to construct the wage index in effect for prospective payment purposes. For data for other hospitals, we are proposing to require hospitals to provide a 3-year average of the average hourly wage in the area in which the hospital is located and a 3-year average of the average hourly wage in the area to which the hospital seeks reclassification. The wage data would be taken from the HCFA hospital wage survey used to construct the wage index for prospective payment purposes. The 3-year averages are calculated by dividing the sum of the dollars (adjusted to a common reporting period using the method described in section III. of the proposed rule) across all 3 years, by the sum of the hours.

3. Statewide Wage Index

As stated earlier, section 304(b) of Public Law 106–554 provides for a process under which an appropriate statewide entity may apply to have all the geographic areas in the State treated as a single geographic area for purposes of computing and applying the area wage index for reclassifications beginning in FY 2003.

Section 304 does not indicate the duration of the application of these statewide wage indexes. However, it should be noted that the statutory language does refer to these applications as reclassifications. We are proposing that these statewide wage index applications be processed similar to MGCRB applications, with the same effective dates of the decisions and the withdrawal process. Therefore, similar to wage index reclassification decisions under section 1886(d)(10)(D)(v) of the Act as added by section 304(a) of Public Law 106–554, the statewide wage index reclassification would be effective for a total of 3 years. The same deadlines and timetable applicable to MGCRB reclassification applications would apply for statewide wage index applications.

We are proposing to establish a new § 412.235 to include the requirements for statewide wage indexes. We are proposing to apply the following criteria to determine whether hospitals would be approved for a statewide geographic wage index reclassification (proposed § 412.235(a)):

- There must be unanimous support for a statewide wage index among hospitals in the State in which the statewide wage index would be applied. We would require a signed affidavit on behalf of all the hospitals in the State of this support as part of the application for reclassification.

- All hospitals in the State must apply through a signed single application for the statewide wage index in order for the application to be considered by the MGCRB. We believe this is necessary to ensure that every hospital in the State is included in the application, since the payment of every hospital would be affected by the statewide wage index.
- There must be unanimous support for the termination or withdrawal of a statewide wage index among hospitals in the State in which the statewide index would be applied. We would require a signed affidavit for this agreement.
- All hospitals in the State waive their rights to any wage index that they would otherwise receive absent the statewide wage index, including a wage index that any of the hospitals might have received through individual or group geographic reclassification under § 412.273(a).

An individual hospital within the State may receive a wage index that could be higher or lower under the statewide wage index reclassification in comparison to its wage index otherwise (proposed § 412.235(b)). Specifically, hospitals must be aware that there may be a reduction in the wage index as a result of participation on a statewide basis.

We are proposing to consider statewide wage index applications under the same process we use for hospital reclassification applications, including the effective dates of the MGCRB decision and the withdrawal process (proposed § 412.235(c)). We are proposing that applications for the statewide wage index would be effective for 3 years beginning with discharges occurring on the first day (October 1) of the second Federal fiscal year following the Federal fiscal year in which the hospitals file a complete application unless all of the participating hospitals terminate their approved statewide wage index classification earlier, as discussed below. Once approved by the MGCRB, an application for a statewide wage index can only be withdrawn or terminated as a result of a signed affidavit on behalf of all the hospitals in the State indicating their request that the statewide reclassification be withdrawn or terminated. A request for withdrawal or termination must be submitted within 45 days of the publication of the annual proposed rule for the inpatient hospital prospective payment system announcing the reclassification. New hospitals that open prior to the deadline for submitting an application for a statewide wage index, but after a group application has been submitted, would be required to agree to the statewide wage index in order for the group application to remain viable. New hospitals that open after the deadline for submitting an application would receive the statewide wage index. The agreement of new hospitals would also be required in order to withdraw or terminate a statewide wage index reclassification. The proposed rules discussed under section IV.E.1.c. of this preamble for withdrawals of applications and terminations of approved 3-year wage index reclassification decisions would apply to decisions regarding statewide wage index reclassifications.

We also are proposing to allow hospitals outside a State in which hospitals have received approval of a statewide wage index classification to seek reclassification for the statewide wage index into that State. In that case, an outside hospital(s) that is reclassified into the statewide wage index area would receive a wage index calculated based on the statewide wage index reclassification. However, the support of such an outside hospital(s) would not be needed in the case of withdrawal or termination of a statewide wage index reclassification.

F. New Medical Services and Technology: Additional Payments Under the Inpatient Hospital Prospective Payment System (Proposed New §§ 412.87 and 412.88)

Section 533(b) of Public Law 106–554 amended section 1886(d)(5) of the Act to add new subparagraphs (K) and (L) to address a process of identifying and ensuring adequate payment for new medical services and technologies under Medicare. Under new section 1886(d)(5)(K)(i) of the Act, effective for discharges beginning on or after October 1, 2001, the Secretary is required to establish (after notice and opportunity for public comment) a mechanism to recognize the costs of new services and technologies under the inpatient hospital prospective payment system. New section 1886(d)(5)(K)(ii)(I) of the Act specifies that the mechanism must apply to a new medical service or technology if, "based on the estimated costs incurred with respect to discharges involving such service or technology, the DRG prospective payment rate otherwise applicable to such discharges * * * is inadequate." New section 1886(d)(5)(K)(vi) of the Act specifies that a medical service or technology will be considered "new" if it meets criteria established by the Secretary (after notice and opportunity for public comment).

New sections 1886(d)(5)(K)(ii) through (vi) of the Act further provide—

- For an additional payment for new medical services and technology in an amount beyond the DRG prospective payment system payment rate that adequately reflects the estimated average cost of the service or technology.
- That the requirement for an additional payment for a new service or technology may be satisfied by means of a new-technology group (described in new section 1886(d)(5)(L) of the Act), an add-on payment, a payment adjustment, or any other similar mechanism for increasing the amount otherwise payable with respect to a discharge.
- For the collection of data relating to the cost of new medical service, or technology for not less than 2 years and no more than 3 years after an appropriate inpatient hospital services code is issued. The statute further provides that discharges involving new services or technology that occur after the collection of these data will be classified within a new or existing DRG group with a weighting factor derived from cost data collected for discharges occurring during such period.

A discussion of how we are proposing to implement the provisions of section 533(b) of Public Law 106–554 follows. Section II.D. of this preamble discusses the Report to Congress required by section 533(a) of Public Law 106–553 relating to methods of expeditiously incorporating new medical services and technologies into the clinical coding system used for payments for inpatient hospital services and our preferred method of achieving this purpose.

1. Criteria for Identifying New Medical Services and Technology

New section 1886(d)(5)(K)(vi) of the Act specifies that a medical service or technology will be considered "new" if it meets criteria established by the Secretary (after notice and opportunity for public comment). (For convenience, hereafter we refer to "new medical services and technology" as "new technology.") We are proposing that a new technology would be an appropriate candidate for an additional payment when, in the judgment of the Secretary, it represents an advance in medical technology that substantially improves, relative to technologies previously available, the diagnosis or treatment of Medicare beneficiaries (proposed § 412.87(b)(1)). This criterion is to ensure that new technology can be demonstrated to provide a substantial clinical improvement based on verifiable evidence. Because any additional payments made under this

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provision will be financed by reducing the payments made for all other services (in order to maintain budget neutrality as discussed under section IV.F.4. of this preamble), we believe that these payments should be focused on those technologies that afford clear improvements over use of previously available technologies. As explained below, we are proposing that new technologies meeting this clinical definition also must be demonstrated to be inadequately paid otherwise under the DRG system to receive special payment treatment (proposed § 412.87(b)(3)). Hospitals adopting other new technologies that do not meet these standards would be paid for these technologies through other applicable DRG payments. These payments would be recalibrated over time to reflect actual use of the new technology.

We expect to implement this criterion by considering the clinical benefits for beneficiaries. We are aware that some technologies may offer substantial clinical improvements for small subsets of beneficiaries, such as those who have not responded to other treatments, and we expect to recognize such substantial advantages in these instances.

In addition to the clinical and cost criteria, we are proposing that, in order to qualify for the special payment treatment provided under new section 1886(d)(5)(K)(ii)(I) of the Act, a specific technology must be new (proposed § 412.87(b)(2)). We believe the new provision contemplates the special payment treatment for new technologies until such time as data are available to reflect the cost of the technology in the DRG weights through recalibration (generally 2 years). Specifically, new section 1886(d)(5)(K)(ii)(II) of the Act states that the Secretary must "provide for the collection of data with respect to the costs of a new medical service or technology * * * for a period of not less than two years and not more than three years beginning on the date on which an inpatient hospital code is issued with respect to the service or technology." In addition, new section 1886(d)(5)(K)(ii)(III) states that the Secretary must "provide for additional payment to be made * * * with respect to discharges involving a new medical service or technology described in subclause (I) that occur during the period described in subclause (II) in an amount that adequately reflects the estimated average costs of such service or technology."

We are proposing to make determinations regarding which technologies meet this criterion using a panel of Federal clinical and other experts, supplemented as appropriate with outside expertise. The results of all such determinations would be announced in the **Federal Register** as part of the annual updates and changes to the inpatient hospital prospective payment system (proposed § 412.87(b)(1)). We note that this determination is separate and distinct from the coverage decision process. In the case of new technologies that have gone through the national coverage determination process, we would expect that the evidence reviewed in that process would, in general, be sufficient for making these determinations as well.

Requests to recognize new technology for special payment treatment under new section 1886(d)(5)(K)(ii)(I) of the Act would be evaluated against this proposed criterion based on evidence submitted by the requestor. These requests should be submitted in conjunction with the initial submission of data on the costs of the new technology. In general, we encourage interested parties to initiate this process by August of the year preceding the year in which a new code identifying the new technology would become effective. This will allow maximum time to review the requestor's data and clinical material. In particular, it affords an opportunity to work with the requestor to resolve any problems or questions that may arise. At a minimum, requests should be submitted by early October of that year. It should be noted that submitting requests as late as October may not afford the opportunity for HCFA to work with the requestor to resolve problems or questions. Requests must be submitted by early October to allow adequate time to consider all aspects of a request prior to making a determination to be included in the proposed rule. Work begins on preparing the DRG changes for the following fiscal year by the middle of December, and any decisions to recognize particular new technologies should be taken into account at that time.

We are soliciting comments on these proposals. In particular, given that this process is the result of new legislation with possibly major implications for the hospital inpatient prospective payment system, we invite public comment on: our definition of new medical services and technologies; the use of Federal clinical and other experts to make determinations regarding which criteria meet our definition of a new service or technology; the information necessary to determine whether payment would be inadequate; and our payment mechanism (see following discussions for these latter two issues).

2. Determining Adequacy of Current Payments for New Services and Technology

Because the inpatient hospital prospective payment system includes costs associated with all aspects of a patient's stay in the hospital, it is not enough to simply identify a technology as "new" and pay an additional amount. A single DRG may encompass many different treatment approaches for a particular illness, with an array of costs associated with those approaches. Clinicians are expected to select the appropriate approach based on the needs of the patient, with the payments averaging out over time to approximate the level of resources needed to treat the average patient in the DRG.

Section 1886(d)(b)(K)(ii) of the Act, as added by section 533(b) of Public Law 106–554, requires that the Secretary make a determination whether the payment otherwise applicable under the existing DRG is inadequate compared to the estimated costs incurred with respect to new technology (as defined previously). We believe that, in order to evaluate whether the DRG payment inadequately reflects the costs of new technology, we must be able to assess the costs of cases involving the new technology against other cases in the DRG. In other words, the criteria for identifying new technology that will receive special payment treatment should reflect whether the new technology is so expensive that hospitals are unlikely to offset the higher costs with other less costly cases within the DRG. We are proposing that this threshold be set at one standard deviation beyond the mean standardized charge for all cases in the DRG to which the new technology is assigned (or the case-weighted average of all relevant DRGs, if the new technology occurs in many different DRGs) (proposed § 412.87(b)(3)). (Standardization adjusts the actual charges of a case by the payment factors such as the wage index, the indirect medical education adjustment factor, and the disproportionate share adjustment factor.)

This comparison would preferably be done using Medicare cases identifiable in our MedPAR database, although data from a clinical trial (including Food and Drug Administration clinical trials) where no bills were submitted for payment may be considered. To the extent possible, HCFA intends to rely on existing information in making these determinations. In most instances, the information would include the Medicare provider number of the hospital where each case was treated, the beneficiary identification numbers of the Medicare patients, the dates of admission and discharge, the charges associated with each case, and all relevant ICD–9–CM codes associated with each case. We would then assess the charges of identified cases involving the new technology, accounting for the additional costs of the new technology that might not be included in the charges if the new technology is being provided by the manufacturer as part of the clinical trial. If the costs of the new technology are not included in the total charges, the requestor must submit adequate documentation upon which to formulate an estimate of the likely costs to hospitals of the new technology.

A significant sample of the data should be submitted no later than early October, approximately 6 months prior to the publication of the proposed rule. Subsequently, a complete database must be submitted no later than mid-December. This timetable is necessary to allow adequate time to assess and verify the data, as well as to work with the submitters to deal with any unique situations with respect to data availability. It is also necessary to allow us to accurately incorporate the data into the proposed rule, which we begin preparing in January. We are soliciting public comments on this process.

To illustrate the proposed use of the standard deviation thresholds, consider DRG 8 (Peripheral and Cranial Nerve and Other Nervous System Procedures Without CC). The average standardized charge of cases assigned to this DRG based on discharges during FY 2000 was $13,212, and the standard deviation was $8,978. Therefore, if a requestor were to seek assignment of a new technology that would otherwise be assigned to DRG 8 to a different DRG, the requestor would be expected to provide data indicating that the average standardized charge of cases receiving this new technology will exceed $22,190. These data must be of a sufficient sample size to demonstrate a significant likelihood that the true mean across all cases likely to receive the new technology will exceed the mean for the cases in DRG 8 by one standard deviation.

Using standard deviation as the threshold takes into account the distribution of charges associated with different treatment modalities around the mean charge for a particular DRG, and the extent to which lower cost cases in the DRG should be expected to offset higher cost cases. Using this method, new technology in a DRG with very little variation in charges would be more likely to meet the criteria. This would be appropriate because there are fewer opportunities within such a DRG to recover the costs of very high cost cases from excess payments for very low cost cases.

We note that, although we anticipate a limited number of new technologies will qualify under this proposed threshold, we will continue to evaluate the appropriateness of all DRG assignments. This applies not only to new technology but existing technologies as well.

3. Developing a Payment Mechanism

Section 1886(d)(5)(K)(v) of the Act, as added by section 533(b) of Public Law 106–554, provides flexibility to the Secretary in terms of deciding exactly how the requirement for an additional payment will be satisfied: a new-technology group, an add-on payment, a payment adjustment, or any other similar mechanism for increasing the amount otherwise payable. We believe the approach most consistent with the design and incentives of the inpatient hospital prospective payment system would be to assign new technology to the most appropriate DRG based on the condition of the patient as described above, and adjust payments for individual cases that involve the new technology when the costs of those cases exceed a threshold amount. That is, we would not pay an additional amount for every case involving the new technology, but only where the costs of the entire case exceed the DRG payment amount. We are concerned that the establishment of new DRGs specifically for the purpose of recognizing costly new technology could potentially severely disrupt the DRG classification structure. In particular, we are concerned that some new technologies may involve large numbers of cases across multiple DRGs. Creating new DRGs specifically for new technology would pull cases out of existing DRGs, possibly leading to severe distortions in the relative weights and inadequate payments for cases remaining in the existing DRGs.

We are proposing that Medicare provide higher payments for cases with higher costs involving identified new technologies, while preserving some of the incentives under the average-based payments for all treatment modalities for a particular patient category. The payment mechanism we are proposing would be based on the cost to hospitals for the new technology. We are proposing under § 412.88 that Medicare would pay a marginal cost factor of 50 percent for the costs of the new technology in excess of the full DRG payment. This would be calculated before any outlier payments under section 1886(d)(5)(A) of the Act, if applicable. Similarly, cases involving new technology would be eligible for outlier payments, with the additional amounts paid for the new technology included in the base payment amount. Costs would be determined by applying the cost-to-charge ratio in a manner identical to that currently used for outlier payments. If the costs of a new technology case exceed the DRG payment by more than the estimated costs of the new technology, Medicare payment would be limited to the DRG payment plus 50 percent of the estimated costs of the new technology, except if the case qualified for outlier payments. (We are proposing a conforming change to § 412.80 by adding a new paragraph (a)(3) to provide that outlier qualifying thresholds and payments would be in addition to standard DRG payments and additional payments for new medical services and technology (effective October 1, 2001).)

For example, consider a new technology estimated to cost $3,000, in a DRG that pays $20,000. A hospital submits three claims for cases involving this new technology. After applying the hospital's cost-to-charge ratio, it is determined the costs of these three cases are $19,000, $22,000, and $25,000. Under our proposal, Medicare would pay $20,000 (the DRG payment) for the first claim. For the second claim, Medicare would pay one half of the amount by which the costs of the case exceed the DRG payment, up to the estimated cost of the new technology, or $21,000 ($20,000 plus one half of $2,000). For the third claim, Medicare would pay $21,500 ($20,000 plus one half of the total estimated costs of the new technology).

We believe it is appropriate to limit the additional payment to 50 percent of the additional cost to appropriately balance the incentives. This limit would provide hospitals an incentive for continued cost-effective behavior in relation to the overall costs of the case. In addition, hospitals would face an incentive to balance the desirability of using the new technology versus the old; otherwise, there would be a large and perhaps inappropriate incentive to use the new technology. For example, in the late 1980s, we considered whether to establish a special payment adjustment for tissue plasminogen activator (TPA), a thrombolytic agent used in treating blockages of coronary arteries, reflecting the high costs of the drug. We did not establish such an adjustment because we believed that the updates to the standardized amounts, combined with the potential for continuing improvements in hospital

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productivity, would be adequate to finance appropriate care of Medicare patients. In fact, the costs of the drug were offset by shorter hospital stays and an overall reduction in costs per case. As clinical experience with TPA accumulated, furthermore, it appeared that the drug was not as widely beneficial as its original proponents expected. Establishing an add-on payment for this drug might have actually led to more extensive use of this drug for patients who would not have benefited, and might have even been harmed, by its blood-thinning characteristics.

4. Budget Neutrality

The report language accompanying section 533 of Public Law 106–554 directs that the Secretary implement the new mechanism on a budget neutral basis (H.R. Conf. Rep. No. 106–1033, 106th Cong., 2d Sess. at 897 (2000)). Section 1886(d)(4)(C)(iii) of the Act requires that the adjustments to annual DRG classifications and relative weights must be made in a manner that ensures that aggregate payments to hospitals are not affected. Therefore, we would simulate projected payments under this provision for new technology during the upcoming fiscal year at the same time we estimate the payment effect of changes to the DRG classifications and recalibration. The impact of those additional payments would then be factored into the budget neutrality factor, which is applied to the standardized amounts.

Because any additional payments directed toward new technology under this provision would be offset to ensure budget neutrality, it is important to carefully consider the extent of this provision and ensure that only technologies representing substantial advances are recognized for additional payments. In that regard, we would discuss in the annual proposed and final regulations implementing changes to the inpatient hospital prospective payment system those technologies that were considered under this provision; our determination as to whether a particular new technology meets our criteria for a new technology; whether it is determined further that cases involving the new technology would be inadequately paid under the existing DRG payment; and any assumptions that went into the budget neutrality calculations related to additional payments for that new technology, including the expected number, distribution, and costs of these cases.

The payments made under this provision would be redistributed from all other payments made under the inpatient prospective payment system; DRG payments would be reduced by amounts we estimate to be necessary to pay for the estimated aggregate new technology payments. Our projections of the aggregate payments for new technology would involve not only estimates of the effect of the new technology on the entire cost per case but also estimates of the volume of cases expected to involve the new technology during the upcoming year. Given the uncertainty in both of these aspects of the projections, we believe it is important to expose our estimates to public comment before implementing them.

G. Payment for Direct Costs of Graduate Medical Education (§ 413.86)

1. Background

Under section 1886(h) of the Act, Medicare pays hospitals for the direct costs of graduate medical education (GME). The payments are based in part on the number of residents trained by the hospital. Section 1886(h) of the Act, as amended by section 4623 of Public Law 105–33, caps the number of residents that hospitals may count for direct GME.

Section 1886(h)(2) of the Act, as amended by section 9202 of the Consolidated Omnibus Reconciliation Act (COBRA) of 1985 (Public Law 99–272), and implemented in regulations at § 413.86(e), establishes a methodology for determining payments to hospitals for the costs of approved GME programs. Section 1886(h)(2) of the Act, as amended by COBRA, sets forth a payment methodology for the determination of a hospital-specific, base-period per resident amount (PRA) that is calculated by dividing a hospital's allowable costs of GME for a base period by its number of residents in the base period. The base period is, for most hospitals, the hospital's cost reporting period beginning in FY 1984 (that is, the period of October 1, 1983 through September 30, 1984). The PRA is multiplied by the number of FTE residents working in all areas of the hospital complex (or nonhospital sites, when applicable), and the hospital's Medicare share of total inpatient days to determine Medicare's direct GME payments. In addition, as specified in section 1886(h)(2)(D)(ii) of the Act, for cost reporting periods beginning on or after October 1, 1993, through September 30, 1995, each hospital's PRA for the previous cost reporting period is not updated for inflation for any FTE residents who are not either a primary care or an obstetrics and gynecology resident. As a result, hospitals with both primary care and obstetrics and gynecology residents and nonprimary care residents have two separate PRAs beginning in FY 1994: one for primary care and one for nonprimary care.

Section 1886(h)(2) of the Act was further amended by section 311 of Public Law 106–113 to establish a methodology for the use of a national average PRA in computing direct GME payments for cost reporting periods beginning on or after October 1, 2000, and on or before September 30, 2005. Generally, section 1886(h)(2) of the Act establishes a "floor" and a "ceiling" based on a locality-adjusted, updated, weighted average PRA. Each hospital's PRA is compared to the floor and ceiling to determine whether its PRA should be revised. PRAs that are below the floor, that is, 70 percent of the locality-adjusted, updated, weighted average PRA, would be revised to equal 70 percent of the locality-adjusted, updated, weighted average PRA. PRAs that exceed the ceiling, that is, 140 percent of the locality-adjusted, updated, weighted average PRA, would, depending on the fiscal year, either be frozen and not increased for inflation, or increased by a reduced inflation factor. We implemented section 311 of Public Law 106–113 in the hospital inpatient prospective payment system final rule published on August 1, 2000 (65 FR 47090). In that final rule, we set forth the methodology for calculating the weighted average PRA and outlined the steps for determining whether a hospital's PRA would be revised.

2. Amendments Made by Section 511 of Public Law 106–554 (§ 413.86(e)(4)(ii)(C) and (e)(5)(iv))

Section 511 of Public Law 106–554 amended section 1886(h)(2)(D)(iii) of the Act by increasing the floor to 85 percent of the locality-adjusted national average PRA. In general, section 511 provides that, effective for cost reporting periods beginning on or after October 1, 2001, and before October 1, 2002, PRAs that are below 85 percent of the respective locality-adjusted national average PRA would be increased to equal 85 percent of that locality-adjusted national average PRA. Accordingly, we are proposing to implement section 511 by revising § 413.86(e)(4)(ii)(C)(*1*) to incorporate this change and by outlining the methodology for determining whether a hospital's PRA(s) will be adjusted in FY 2002 relative to the increased floor of the locality-adjusted national average PRA.

In the August 1, 2000 final rule (65 FR 47091 and 47092), as implemented at

§ 413.86(e)(4), we determined, in accordance with section 311 of Public Law 106–113, that the weighted average PRA for cost reporting periods ending during FY 1997 is $68,464. We described the procedures for updating the weighted average PRA of $68,464 for inflation to FY 2001 and for adjusting this average for the locality of each individual hospital. We then outlined the steps for comparing each hospital's PRA(s) to the locality-adjusted national average PRA to determine if, for cost reporting periods beginning on or after October 1, 2000, and before October 1, 2001, the PRAs should be revised to equal the 70-percent floor.

In accordance with section 511 of Public Law 106–554, in this proposed rule, we are proposing that, for cost reporting periods beginning during FY 2002, the FY 2002 PRAs of hospitals that are below 85 percent of the respective locality-adjusted national average PRA for FY 2002 be increased to equal 85 percent of that locality-adjusted national average PRA. Specifically, to determine which PRAs (primary care and nonprimary care separately) for each hospital are below the 85-percent floor, each hospital's locality-adjusted national average PRA for FY 2002 is multiplied by 85 percent. This resulting number is then compared to each hospital's PRA that is updated for inflation to FY 2002. If the hospital's PRA would be less than 85 percent of the locality-adjusted national average PRA, the individual PRA is *replaced* with 85 percent of the locality-adjusted national average PRA for that cost reporting period, and in future years the new PRA would be updated for inflation by the Consumer Price Index for All Urban Consumers (CPI–U) as compiled by the Bureau of Labor Statistics.

There may be some hospitals with both primary care and nonprimary care PRAs that are below the floor, and both PRAs are, therefore, replaced with 85 percent of the locality-adjusted national average PRA. In these situations, the hospitals would receive a single PRA; a distinction between PRAs would no longer be made for differences in inflation (under § 413.86(e)(3)(ii)). On the other hand, hospitals may have primary care PRAs that are above the floor, and nonprimary care PRAs that are below the floor. In these situations, only the nonprimary care PRAs would be revised to equal 85 percent of the locality adjusted national average PRA, and the prior year primary care PRAs would be updated for inflation by the CPI–U.

For example, if the FY 2002 locality-adjusted national average PRA for Area X is $100,000, then 85 percent of that amount is $85,000. If, in Area X, Hospital A has a primary care FY 2002 PRA of $84,000 and a nonprimary care FY 2002 PRA of $82,000, both of Hospital A's FY 2002 PRAs are replaced by the $85,000 floor. Thus, $85,000 is the amount that would be used to determine Hospital A's direct GME payments for both primary care and nonprimary care FTEs in its cost reporting period beginning in FY 2002, and the $85,000 PRA would be updated for inflation by the CPI-U in subsequent years. However, Hospital B, also located in Area X, has a primary care FY 2002 PRA of $86,000 and a nonprimary care FY 2002 PRA of $84,000. Thus, for Hospital B, only the nonprimary care PRA of $84,000 is replaced by the $85,000 floor. This new PRA of $85,000 would be updated for inflation by the CPI-U in subsequent years. Hospital B's primary care PRA of $86,000 and its nonprimary care PRA of $85,000 would be used to determine its direct GME payments in its cost reporting period beginning in FY 2002.

We note that section 511 of Public Law 106–554 only affects hospitals with PRAs below the 85-percent floor, and does not affect hospitals with PRAs that are either between the floor and ceiling or exceed the ceiling. Thus, with the exception of the change in the floor as provided by section 511, the policy regarding the use of a national average PRA for making direct GME payments remains as implemented in the regulations at § 413.86(e)(4).

We are proposing to amend § 413.86(e)(4)(ii)(C)(*1*) to add the rules implementing section 1886(h)(2)(D)(iii) of the Act as amended by section 511 of Public Law 106–554.

We also are proposing to amend § 413.86(e)(5) regarding the determination of base year PRAs for new teaching hospitals for cost reporting periods beginning during FYs 2001 through 2005. In the August 1, 2000 final rule, we made a conforming change to § 413.86(e)(5) to account for situations in which hospitals do not have a 1984 base year PRA and establish a PRA in a cost reporting period beginning on or after October 1, 2000. Existing § 413.86(e)(5)(iv) specifies that the new base year PRAs of such hospitals are subject to the regulations regarding the floor and the ceiling of the locality-adjusted national average PRA. Although the determination of new base year PRAs is subject to the national average methodology, it is not necessary to include this provision in the regulations. Therefore, we are proposing to remove § 413.86(e)(5)(iv).

We would like to clarify that, for purposes of calculating a base year PRA for a new teaching hospital, when calculating the weighted mean value of PRAs of hospitals located in the same geographic area or the weighted mean value of the PRAs in the hospital's census region (as defined in § 412.62(f)(1)(i)), the PRAs used in the weighted average calculation must not be less than the floors for cost reporting periods beginning during FY 2001 or FY 2002, or if they exceed the ceiling, they must either be frozen for FYs 2001 and 2002 or updated with the CPI-U minus 2 percent for FYs 2003 through 2005. In addition, existing § 413.86(e)(5) provides that the PRA for a new teaching hospital is based on the *lower of* the hospital's actual costs incurred in connection with the GME program or the weighted mean value of PRAs. For cost reporting periods beginning during FYs 2001 and 2005, the PRA for a new teaching hospital also would be subject to the floor and the ceiling of the national average PRA methodology. If a hospital's actual costs of the GME program during its cost reporting period beginning during FY 2001 or FY 2002 are *less* than the floors, the hospital's PRA would *not* be based on the actual costs. Instead, it would be equal to 70 percent in FY 2001, or 85 percent during FY 2002, of the locality-adjusted national average PRA. The floor applies to hospitals with existing PRAs in FYs 2001 and 2002, or to hospitals that are establishing new base year PRAs in FYs 2001 and 2002. We are proposing to clarify that if a hospital establishes a new base year PRA in a cost reporting period beginning *after* FY 2002, its PRA would *not* be increased to equal the floor if it is less than the floor. Similarly, the ceiling applies to hospitals with existing PRAS in FYs 2001 through 2005, or to hospitals that are establishing new base year PRAs in FYs 2001 through 2005.

3. Determining the 3-Year Rolling Average for Direct GME Payments (§ 413.86(g)(4) and (g)(5))

Section 1886(h)(4)(G)(iii) of the Act, as added by section 4623 of Public Law 106–33, provides that for the hospital's first cost reporting period beginning on or after October 1, 1997, the hospital's weighted FTE count for direct GME payment purposes equals the average of the weighted FTE count for that cost reporting period and the preceding cost reporting period. For cost reporting periods beginning on or after October 1, 1998, section 1886(h)(4)(G) of the Act requires that hospitals' direct medical education weighted FTE count for payment purposes equal the average of the actual weighted FTE count for the payment year cost reporting period and

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the preceding two cost reporting periods (rolling average). This provision phases in the associated reduction in payment over a 3-year period for hospitals that are reducing their number of residents.

In the August 29, 1997 final rule with comment period (62 FR 46004), we revised § 413.86(g)(5) accordingly, and outlined the methodology for determining a hospital's direct GME payment. Based on what we explained in the 1997 final rule, for cost reporting periods beginning on or after October 1, 1997, we would determine a hospital's direct GME payment as follows:

Step 1. Determine the average of the weighted FTE counts for the payment year cost reporting period and the prior two immediately preceding cost reporting periods (with exception of the hospital's first cost reporting period beginning on or after October 1, 1997, which will be based on the average of the weighted average for that cost reporting period and the immediately preceding cost reporting period).

Step 2. Determine the hospital's direct GME amount without regard to the FTE cap (before determining Medicare's share). That is, take the sum of (a) the product of the primary care PRA and the primary care weighted FTE count in the current payment year, and (b) the product of the nonprimary care PRA and the nonprimary care weighted FTE count in the current payment year.

Step 3. Divide the hospital's direct GME amount by the total number of FTE residents (including the effect of weighting factors) for the cost reporting period to determine the weighted average PRA (this amount reflects the FTE weighted average of the primary and nonprimary care PRAs) for the cost reporting period.

Step 4. Multiply the weighted average PRA for the cost reporting period by the 3-year average weighted count to determine the hospital's allowable direct GME costs. This product is then multiplied by the hospital's Medicare patient load for the cost reporting period to determine Medicare's direct GME payment to the hospital.

Steps 2 and 3 above describe the methodology for combining a hospital's primary care PRA and nonprimary care PRA to determine the hospital's single weighted average PRA for the payment year cost reporting period. (This step accounts for hospitals that were training residents in both primary care and nonprimary care residency programs in FYs 1994 and 1995, when, as described in § 413.86(e)(3)(ii), each hospital's PRA for the previous cost reporting period was not adjusted for any resident FTEs who were not either a primary care resident or an obstetrics or a gynecology resident. As a result, such hospitals have two PRAs for direct GME payment; one for primary care and obstetrics and gynecology residents, and one for all other, or nonprimary care, residents. Hospitals that train either only primary care (including obstetrics and gynecology) residents or only nonprimary care residents follow the methodology described above, with the exception of combining two PRAs). Step 4 then dictates that the resulting average PRA is multiplied by the 3-year rolling average, which, in turn, is multiplied by the hospital's Medicare patient load in the current year to determine Medicare's direct GME payment to the hospital for that cost reporting period.

In implementing this provision in the August 29, 1997 final rule with comment period, we believed that the methodology described above was appropriate because it was consistent with the methodology described under section 1886(h)(3)(B) of the Act. This section specifies that, in order to arrive at the average PRA, or "aggregate approved amount," HCFA must multiply a hospital's PRA by the "weighted average number of [FTE] residents * * * in the hospital's approved medical residency training programs *in that period*" (emphasis added).

We also believed the methodology outlined above and in the August 29, 1997 rule was appropriate because it was consistent with the intent of the statute that, after October 1, 1997, direct GME payments should be based on a rolling average. Specifically, section 4623 of Public Law 106–33 provides that, "For cost reporting periods beginning on or after October 1, 1997 * * * *the total number of full-time equivalent residents for determining a hospital's graduate medical education payment shall equal the average* of the actual full-time equivalent resident counts for the cost reporting period and the preceding two cost reporting periods" (emphasis added). Thus, while the statute does not include a specific methodology for computing the direct GME payments, it clearly indicates that the payment should be based on a 3-year average of the weighted number of residents, *not* the weighted number of residents in the current payment year cost reporting period.

As stated above, Congress provided that the direct GME payments should be made based on a 3-year average of the weighted number of residents in order to phase in the associated reduction in payment over a 3-year period for hospitals that are reducing the number of residents they are training. However, in steps 2 and 3 above, when combining a hospital's primary care PRA and nonprimary care PRA, we weight the respective PRAs by *current year* residents. This introduces the number of residents that a hospital is training in the *current cost reporting period* into the payment formula. A payment formula that incorporates the number of current year residents "dilutes" the effect of the rolling average as related to direct GME payments. After further consideration, we believe that, consistent with the statute, the formula should be based on rolling average counts of residents. We are proposing an alternative methodology in which the direct GME payment would be the sum of (a) the product of the primary care PRA and the primary care and obstetrics and gynecology rolling average, and (b) the product of the nonprimary care PRA and the nonprimary care rolling average. (This sum would then be multiplied by the Medicare patient load.) We note that IME payments would not be affected because, although they also are based on a 3-year rolling average, there is no distinction between primary care and nonprimary care residents.

The new methodology would be effective for cost reporting periods beginning on or after October 1, 2001. The proposed methodology for determining a hospital's direct GME payment is as follows:

Step 1. Determine that the hospital's total unweighted FTE counts in the payment year cost reporting period and the prior two immediately preceding cost reporting periods for all residents in allopathic and osteopathic medicine do not exceed the hospital's FTE cap for these residents in accordance with § 413.86(g)(4). If the hospital's total unweighted FTE count in a cost reporting period exceeds its cap, the hospital's weighted FTE count, for primary care and obstetrics and gynecology residents and nonprimary care residents, respectively, will be reduced in the same proportion that the number of these FTE residents for that cost reporting period exceeds the unweighted FTE count in the cap. The proportional reduction is calculated *for primary care and obstetrics and gynecology residents and nonprimary care residents separately* in the following manner:

(FTE cap/unweighted total FTEs in the cost reporting period) × (weighted primary care and obstetrics and gynecology FTEs in the cost reporting period)

plus

(FTE cap/unweighted total FTEs in the cost reporting period) × (weighted nonprimary care FTEs in the cost reporting period).

Add the two products to determine the hospital's reduced cap.

Step 2. Determine the 3-year average of the weighted FTE count for primary care and obstetrics and gynecology residents in the payment year cost reporting period and the two immediately preceding cost reporting periods. Determine the 3-year average of the weighted FTE count for nonprimary care residents in the payment year cost reporting period and the two immediately preceding cost reporting periods.

Step 3. Determine the product of the primary care PRA and the primary care and obstetrics and gynecology 3-year average from step 2. Determine the product of the nonprimary care PRA and the nonprimary care 3-year average from step 2.

Step 4. Sum the products of step 3.

Step 5. Multiply the sum from step 4 by the hospital's Medicare patient load for the cost reporting period to determine Medicare's direct GME payment to the hospital.

Existing § 413.86(g)(5) specifies that residents in new programs are excluded from the rolling average calculation for a period of years equal to the minimum accredited length for the type of program, and are added to the payment formula after applying the averaging rules. Accordingly, for hospitals that qualify for an adjustment to their FTE caps for residents training in new programs under § 413.86(g)(6), primary care and obstetrics and gynecology residents in new programs would be added to the quotient of the primary care and obstetrics and gynecology 3-year average, and nonprimary care residents in new programs would be added to the quotient of the nonprimary care 3-year average. The sums of the respective 3-year averages and new residents would then be multiplied by the respective PRAs.

The following example illustrates the determination of direct GME payment under the proposed rolling average methodology for an existing teaching hospital with no new programs:

Example: Assume a hospital with a cost reporting period ending September 30, 1996 (beginning October 1, 1995) had 100 unweighted FTE residents and 90 weighted FTE residents. The hospital's FTE cap is 100 unweighted residents.

Step 1. In its cost reporting period beginning in FY 2000, it had 100 unweighted residents and 90 weighted residents (50 primary care and 40 nonprimary care).

• The hospital had 90 unweighted residents and 85 weighted residents (50 primary care and 35 nonprimary care) for its cost reporting period beginning in FY 2001.

• In its cost reporting period beginning in FY 2002, the hospital had 80 unweighted residents and 80 weighted residents (50 primary care and 30 nonprimary care).

Step 2. The 3-year average of weighted primary care and obstetrics and gynecology residents is (50 + 50 + 50)/3 = 50. The 3-year average of weighted nonprimary care residents is (40 + 35 + 30)/3 = 35.

Step 3. Primary care: $80,000 PRA × 50 weighted primary care and obstetrics and gynecology FTEs = $4,000,000. Nonprimary care: $78,000 × 35 weighted nonprimary care FTEs = $2,730,000.

Step 4. $4,000,000 + $2,730,000 = $6,730,000.

Step 5. If the hospital's Medicare patient load for the payment cost reporting period is .20, Medicare's direct GME payment would be $6,730,000 × .20 = $1,346,000.

Whether the proposed methodology results in a payment difference for a hospital is dependent upon whether or not the number and mix (primary care and nonprimary care) of FTEs changes in a 3-year period. If the number and mix of FTEs does not change in a 3-year period, there would be no difference in a direct GME payment amount derived using the proposed methodology versus the existing methodology. For example, if a hospital has 90 weighted FTEs (50 primary care and 40 nonprimary care) in the current year and the 2 previous years (using the PRAs and the Medicare patient load from the example above), the payment amounts derived from the existing methodology and the proposed methodology would be equal.

If the number and mix of FTEs varies from year to year, there will be a difference in the results of the two methodologies. In some instances the existing methodology would result in a higher payment, and in other instances the proposed methodology would result in a higher payment. In the example above, the hospital has reduced its number of weighted residents by 5 FTEs in FYs 2001 and 2002. Calculating this hospital's direct GME payment amount using the existing methodology (using the PRAs and the Medicare patient load from the example) would result in a payment of $1,347,250, which is $1,250 more than $1,346,000, the amount calculated in the example using the proposed methodology.

In a scenario where a hospital makes larger reductions to the number of FTEs, the proposed methodology may be more beneficial. For example, using the PRAs and the Medicare patient load from the example above, assume a hospital has 90 weighted FTEs (50 primary care and 40 nonprimary care) in FY 2000, 85 weighted FTEs (50 primary care and 35 nonprimary care) in FY 2001, and 70 weighted FTEs (35 primary care and 35 nonprimary care) in FY 2002. If the proposed methodology is used, the payment amount of $1,292,050 would be calculated, which is $1,666 more than $1,290,386, the amount calculated if the existing methodology is used.

We are proposing to revise § 413.86(g)(4) to specify that, effective for cost reporting periods beginning on or after October 1, 2001, if the hospital's total unweighted FTE count in a cost reporting period exceeds its cap, the hospital's weighted FTE count, for primary care and obstetrics and gynecology residents and nonprimary care residents, respectively, will be reduced in the same proportion that the number of these FTE residents for that cost reporting period exceeds the unweighted FTE count in the cap. We also are proposing to revise § 413.86(g)(5) to specify that, effective for cost reporting periods beginning on or after October 1, 2001, the direct GME payment will be calculated using two separate rolling averages, one for primary care and obstetrics and gynecology residents and one for nonprimary care residents.

4. Counting Research Time as Direct and Indirect GME Costs (§§ 412.105 and 413.86)

It has come to our attention that there appears to be some confusion in the provider community as to whether the time that residents spend performing research is countable for the purposes of direct and indirect GME reimbursement. Although we are not proposing to make any policy changes in this proposed rule, we would like to reiterate our longstanding policy regarding time that residents spend in research and propose to incorporate this policy in the IME regulations.

Section 413.86(f) specifies that, for the purposes of determining the total number of FTE residents for the direct GME payment, residents in an approved program working in all areas of the hospital complex may be counted. Accordingly, the time the residents spend performing research as part of an approved program anywhere in the hospital complex may be counted for direct GME payment purposes. If the requirements listed at §§ 413.86(f)(3) and (f)(4) are met, a hospital may also count the time residents spend doing research in non-hospital settings for direct GME payment.

For purposes of determining the IME payment, § 412.105(f)(ii) specifies that

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the time residents spend training in parts of the hospital that are subject to the inpatient prospective payment system, in the outpatient departments, or (effective on or after October 1, 1997, in accordance with §§ 413.86(f)(3) and (f)(4)) in nonhospital settings, may be counted. Section 2405.3.F.2. of the Provider Reimbursement Manual (PRM) further states that a resident must not be counted for the IME adjustment if the resident is engaged exclusively in research. Resident time spent "exclusively" in research means that the research is not associated with the treatment or diagnosis of a particular patient of the hospital. Therefore, although the research component may be part of an approved program, *the time that residents devote specifically to performing research that is not related to delivering patient care,* whether it occurs in the hospital complex or in non-hospital settings, *may not be counted for IME payment purposes.* "Exclusively research" time is not allowable for IME purposes irrespective of whether the resident is engaged only in research or spends only part of his or her time on research. Accordingly, time spent exclusively in research over the course of a program year should be subtracted from the total FTE for that year. For example, if a resident is required to spend 3 months in a particular program year engaged in research activities unrelated to delivering patient care, that amount of time should be subtracted from the total FTE, whether or not the research time is fulfilled in one block of time, or is distributed throughout the training year.

We note that in order to count residents for both direct GME and IME payment purposes, the residents' training must be part of an approved program. *This applies whether or not the residents are doing work that is clinical in nature.* There are situations where residents have completed their residency program requirements but remain for an additional period of time to continue their training (that is, to conduct research or other activities) outside the context of a formally organized approved program. As we explained in the September 29, 1989 final rule (54 FR 40306), these residents are *not* countable for direct GME or IME reimbursement. Rather, patient care services provided by these residents should be paid as Part B services.

We are proposing to amend § 412.105(f)(1)(iii) to add a paragraph (B) to incorporate language that reflects this policy.

5. Temporary Adjustments to FTE Cap To Reflect Residents Affected by Residency Program Closure

In the July 30, 1999 hospital inpatient prospective payment system final rule (64 FR 41522), we indicated that we would allow a temporary adjustment to a hospital's FTE resident cap under limited circumstances and if certain criteria are met when a hospital assumes the training of additional residents because of another hospital's closure. We made this change because hospitals had indicated a reluctance to accept additional residents from a closed hospital without a temporary adjustment to their caps. When we proposed this change 2 years ago, we received several comments suggesting that we include lost accreditation of a program (that is, a program's closure) in the temporary adjustment policy. We explained in our response to these comments (64 FR 41522) that we did not believe it was appropriate to expand our policy to cover any acts other than a hospital's closure. We made this decision because, unless the hospital terminates its Medicare agreement, the hospital would retain its statutory FTE cap and could affiliate with other hospitals to enable the residents to finish their training.

It has come to our attention that, despite a hospital's ability to affiliate with other hospitals when it shuts down a residency program, some hospitals for various reasons do not affiliate before their programs close, particularly when the program closes abruptly towards the end of the program year (the deadline to submit Medicare affiliation agreements is July 1 of the upcoming program year). Therefore, we are proposing that if a hospital that closes its residency training program agrees to temporarily reduce its FTE cap, another hospital(s) may receive a temporary adjustment to its FTE cap to reflect residents added because of the closure of the former hospital's residency training program. For purposes of this proposed policy on closed programs, we are proposing to define "closure of a hospital residency training program" as when the hospital ceases to offer training for residents in a particular approved medical residency training program (proposed § 413.86(g)(8)(i)(B)). The methodology for adjusting the caps for the "receiving hospital" and the "hospital that closed its program" is described below.

a. *Receiving hospital.* We are proposing that a hospital(s) may receive a temporary adjustment to its (or their) FTE cap to reflect residents added because of the closure of another hospital's residency training program if—

- The hospital is training additional residents from the residency training program of a hospital that closed its program; and
- No later that 60 days after the hospital begins to train the residents, the hospital submits to its fiscal intermediary a request for a temporary adjustment to its FTE cap, documents that the hospital is eligible for this temporary adjustment by identifying the residents who have come from another hospital's closed program and have caused the hospital to exceed its cap, specifies the length of time the adjustment is needed, and submits to its fiscal intermediary a copy of the FTE cap reduction statement by the hospital closing the program, as specified in paragraph (g)(8)(iii)(B)(*2*).

In general, the above criteria we are proposing for the temporary adjustment are reflective of the criteria for the temporary adjustment for taking on the training of displaced residents from closed hospitals. We note that we are proposing that more than one hospital would be eligible to apply for the temporary adjustment, because residents from one closed program may go to different hospitals, or they may finish their training at more than one hospital. We also note that only to the extent a hospital would exceed its FTE cap by training displaced residents would it be eligible for the temporary adjustment.

Finally, we note that we are proposing that hospitals that meet the above proposed criteria would be eligible to receive temporary adjustments (for cost reporting periods beginning on or after October 1, 2001, for direct GME and with discharges beginning on or after October 1, 2001 for IME) for training the displaced residents from programs that closed even before the effective date of this policy. We mention this because hospitals may have closed programs in the recent past and the residents from the closed programs may not have completed their training as of the effective date of this policy. For instance, if a 5-year residency program, such as surgery, closed on July 1, 1997, the 5th program year residents may still be training during this residency year (2001). We are proposing that if both the receiving hospital(s) and the hospital that closed the program in this example follow the criteria described in this preamble, the receiving hospital may receive a temporary adjustment to its FTE cap for 9 months (October 1, 2001 through June 30, 2002) to accommodate the 5th year surgery residents. However, we note that hospitals would not be eligible to receive a temporary adjustment for training the residents until the effective date of this rule.

b. *Hospital that closed its program(s).* We are proposing that a hospital that agrees to train residents who have been displaced by the closure of another hospital's program may receive a temporary FTE cap adjustment only if the hospital with the closed program(s)—

- Temporarily reduces its FTE cap by the number of FTE residents in each program year training in the program at the time of the program's closure. The yearly reduction would be determined by deducting the number of those residents who would have been training in the program year during each year had the program not closed; and
- No later than 60 days after the residents who were in the closed program begin training at another hospital, submits to its fiscal intermediary a statement signed and dated by its representative that specifies that it agrees to the temporary reduction in its FTE cap to allow the hospital training the displaced residents to obtain a temporary adjustment to its cap; identifies the residents who were training at the time of the program's closure; identifies the hospitals to which the residents are transferring once the program closes; and specifies the reduction for the applicable program years.

Unlike the closed hospital policy at § 413.86(g)(8), we are proposing under this closed program policy (which we are proposing to amend § 413.86(g)(8) to include), that in order for the receiving hospital(s) to qualify for a temporary adjustment to its FTE cap, the hospitals that are closing their programs would need to reduce their FTE cap for the duration of time the displaced residents would need to finish their training. We are proposing this change because, as explained below, the hospital that closes the program still has the FTE slots in its cap, even if the hospital chooses not to fill the slots with residents. We believe it is inappropriate to allow an increase to the receiving hospital's cap without an attendant decrease to the cap of the hospital with the closed program, even if the increase is only temporary. We note that even under this proposed closed program policy, the hospital that closes its program may choose instead to affiliate with another hospital by July 1 of the next residency year so that the residents can more easily finish their training.

We are proposing that the cap reduction for the hospital with the closed program would be based on the number of FTE residents in each program year who were in the program at the program's closure, and who began training at another hospital, rather than the count of residents each year at the hospital(s) receiving the temporary adjustment(s). We believe it would be too burdensome administratively to require the hospital closing the program to keep track of the status of the residents when they are training at other hospitals. For instance, Joe Smith, a resident who is a PGY 1 when Hospital X closes its pathology residency program, may then finish his training at Hospital Y. The resident trains for one year at Hospital Y as a PGY 2, but decides to drop out of the program before finishing. It would be burdensome to require Hospital X to keep track of Joe Smith's status while he is training at Hospital Y for purposes of the reduction in Hospital X's cap. Therefore, we are proposing to "freeze" the basis for the reduction of the FTE cap of the hospital that closed the program based on the count and status of the residents when the hospital closes the program.

Example: Hospital A, which has a direct GME FTE cap of 20 FTEs and an IME FTE cap of 18 FTEs, is experiencing financial difficulties and decides to close down its internal medicine residency training program effective June 30, 2002. As of June 30, 2002, Hospital A is training 2 PGY 1s, 4 PGY 2s, and 6 PGY 3s in its internal medicine program. Hospitals B, C, and D take on the training of the displaced residents. These hospitals are eligible to receive temporary adjustments to their FTE caps if they follow the proposed criteria stated above. In order for Hospitals B, C, and D to receive the temporary adjustments, however, Hospital A must agree to reduce its FTE cap. According to the proposed criteria stated above, Hospital A's reduction would be:

July 1, 2002 through June 30, 2003

Direct GME FTE cap: 14 FTEs, (20 FTEs cap—2 PGY 2s—4 PGY 3s)

IME FTE cap: 12 FTEs (18 FTEs—2 PGY 2s—4 PGY 3s)

We note that no downward adjustment for the 6 PGY 3s for either cap is necessary since these residents will have completed their training in that program by the July 1, 2000 through June 30, 2003 program year.

July 1, 2003 through June 30, 2004

Direct GME FTE cap: 18 FTEs (20 FTEs cap—2 PGY 3s)

IME FTE cap: 16 FTEs (18 FTEs cap—2 PGY 3s)

July 1, 2004 through June 30, 2005

Direct GME FTE cap: 20 FTEs

IME FTE cap: 18 FTEs

We also are proposing to revise § 412.105(f)(1)(ix) to make the provision relating to the adjustment to FTE caps to reflect residents affected by closure of hospitals' medical residency training programs applicable to determining the IME payment.

6. Conforming Change to Regulations Governing Payment to Federally Qualified Health Centers (§ 405.2468(f))

We have discovered a technical error in the regulations at § 405.2468(f) regarding payment to federally qualified health centers (FQHCs) and rural health centers (RHCs) for the costs of graduate medical education. Specifically, § 405.2468(f)(6)(ii)(D) provides that "The costs associated with activities described in § 413.85(d) of this chapter" are not allowable graduate medical education costs. We recently amended § 413.85 in a final rule (66 FR 3358, January 12, 2001) regarding Medicare pass-through payment for approved nursing and allied health education programs. However, we inadvertently did not make a conforming change to § 405.2468(f)(6)(ii)(D). Section 405.2468(f)(6)(ii)(D) should read "The costs associated with activities described in § 413.85(h) of this chapter." We are proposing to revise § 405.2468(f)(6)(ii)(D) to reflect this change.

V. Proposed Changes to the Prospective Payment System for Capital-Related Costs

A. End of the Transition Period

Federal fiscal year (FY) 2001 is the last year of the 10-year transition period established to phase in the prospective payment system for hospital capital-related costs. For the readers' benefit in this proposed rule, we are providing a summary of the statutory basis for the system, the development and evolution of the system, the methodology used to determine capital-related payments to hospitals, and the policy for providing exceptions payments during the transition period.

Section 1886(g) of the Act requires the Secretary to pay for the capital-related costs of inpatient hospital services "in accordance with a prospective payment system established by the Secretary." Under the statute, the Secretary has broad authority in establishing and implementing the capital prospective payment system. We initially implemented the capital prospective payment system in the August 30, 1991 final rule (56 FR 43409), in which we

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established a 10-year transition period to change the payment methodology for Medicare inpatient capital-related costs from a reasonable cost-based methodology to a prospective methodology (based fully on the Federal rate).

The 10-year transition period established to phase in the prospective payment system for capital-related costs is effective for cost reporting periods beginning on or after October 1, 1991 (FY 1992) and before October 1, 2001 (FY 2002). Beginning in FY 2001, the last year of the 10-year transition period for the prospective payment system for hospital capital-related costs, capital prospective payment system payments are based solely on the Federal rate for the vast majority of hospitals. Since FY 2001 is the final year of the capital transition period, we will no longer determine a hospital-specific rate for FY 2002 in section IV. of the Addendum of this proposed rule. For cost reporting periods beginning on or after October 1, 2001, payment for capital-related costs for all hospitals, except those defined as new hospitals under § 412.30(b), will be determined based solely on the capital standard Federal rate.

Generally, during the transition period, inpatient capital-related costs are paid on a per discharge basis, and the amount of payment depended on the relationship between the hospital-specific rate and the Federal rate during the hospital's base year. A hospital with a base year hospital-specific rate lower than the Federal rate is paid under the fully prospective payment methodology during the transition period. This method is based on a dynamic blend percentage of the hospital's hospital-specific rate and the applicable Federal rate for each year during the transition period. A hospital with a base period hospital-specific rate greater than the Federal rate is paid under the hold-harmless payment methodology during the transition period.

During the transition period, a hospital paid under the hold-harmless payment methodology receives the higher of (1) a blended payment of 85 percent of reasonable cost for old capital plus an amount for new capital based on a portion of the Federal rate; or (2) a payment based on 100 percent of the adjusted Federal rate. The amount recognized as old capital is generally limited to the allowable Medicare capital-related costs that were in use for patient care as of December 31, 1990. Under limited circumstances, capital-related costs for assets obligated as of December 31, 1990, but put in use for patient care after December 31, 1990, also may be recognized as old capital if certain conditions were met. These costs are known as obligated capital costs. New capital costs are generally defined as allowable Medicare capital-related costs for assets put in use for patient care after December 31, 1990.

Hospitals that are defined as "new" for the purposes of capital payments during the transition period (see § 412.300(b)) will continue to be paid according to the applicable payment methodology outlined in § 412.324. During the transition period, new hospitals are exempt from the prospective payment system for capital-related costs for their first 2 years of operation and are paid 85 percent of their reasonable capital-related costs during that period. The hospital's first 12-month cost reporting period (or combination of cost reporting periods covering at least 12 months), beginning at least 1 year after the hospital accepts its first patient, serves as the hospital's base period. Those base year costs qualify as old capital and are used to establish its hospital-specific rate used to determine its payment methodology under the capital prospective payment system. Effective with the third year of operation, the hospital will be paid under either the fully prospective methodology or the hold-harmless methodology. If the fully prospective methodology is applicable, the hospital is paid using the appropriate transition blend of its hospital-specific rate and the Federal rate for that fiscal year until the conclusion of the transition period, at which time the hospital will be paid based on 100 percent of the Federal rate. If the hold-harmless methodology is applicable, the hospital will receive hold-harmless payment for assets in use during the base period for 8 years, which may extend beyond the transition period.

The basic methodology for determining capital prospective payments based on the Federal rate is set forth in § 412.312. For the purpose of calculating payments for each discharge, the standard Federal rate is adjusted as follows:

(Standard Federal Rate) × (DRG Weight) × (GAF) × (Large Urban Add-on, if applicable) × (COLA Adjustment for Hospitals Located in Alaska and Hawaii) × (1 + DSH Adjustment Factor + IME Adjustment Factor)

Hospitals may also receive outlier payments for those cases that qualify under the thresholds established for each fiscal year. Section 412.312(c) provides for a single set of thresholds to identify outlier cases for both inpatient operating and inpatient capital-related payments.

In accordance with section 1886(d)(9)(A) of the Act, under the prospective payment system for inpatient operating costs, hospitals located in Puerto Rico are paid for operating costs under a special payment formula. Prior to FY 1998, hospitals in Puerto Rico were paid a blended rate that consisted of 75 percent of the applicable standardized amount specific to Puerto Rico hospitals and 25 percent of the applicable national average standardized amount. However, effective October 1, 1997, under amendments to the Act enacted by section 4406 of Public Law 105–33, operating payments to hospitals in Puerto Rico are based on a blend of 50 percent of the applicable standardized amount specific to Puerto Rico hospitals and 50 percent of the applicable national average standardized amount. In conjunction with this change to the operating blend percentage, effective with discharges on or after October 1, 1997, we compute capital payments to hospitals in Puerto Rico based on a blend of 50 percent of the Puerto Rico rate and 50 percent of the Federal rate as specified in the regulations at § 412.374. For capital-related costs, we compute a separate payment rate specific to Puerto Rico hospitals using the same methodology used to compute the national Federal rate for capital-related costs.

In the August 30, 1991 final rule (56 FR 43409), we established a capital exceptions policy, which provided for exceptions payments during the transition period (§ 412.348). Section 412.348 provides that, during the transition period, a hospital may receive additional payment under the exceptions process when its regular payments are less than a minimum percentage, established by class of hospital, of the hospital's reasonable capital-related costs. The amount of the exceptions payment is the difference between the hospital's minimum payment level and the payments the hospital would have received under the capital prospective payment system in the absence of an exceptions payment. The comparison is made on a cumulative basis for all cost reporting periods during which the hospital has been subject to the capital prospective payment transition rules. The minimum payment percentages throughout the transition period for regular capital exceptions payments by class of hospitals are:

- For sole community hospitals, 90 percent;
- For urban hospitals with at least 100 beds that have a disproportionate share patient percentage of at least 20.2 percent or that received more than 30 percent of their net inpatient care revenues from State or local governments for indigent care, 80 percent;
- For all other hospitals, 70 percent of the hospital's reasonable inpatient capital-related costs.

The provision for regular exceptions payments expires at the end of the transition period, that is, on September 30, 2001. Capital prospective payment system payments are no longer adjusted to reflect regular exceptions payments at § 412.348 after that date. Accordingly, for cost reporting periods beginning on or after October 1, 2001, all hospitals other than those defined as "new" under § 412.300(b) will receive only the per discharge payment based on the Federal rate for capital costs (plus any applicable DSH or IME and outlier adjustments) unless a hospital qualifies for a special exceptions payment under § 412.348(g).

B. Special Exceptions Process

In the August 30, 1991 final rule (56 FR 43409), we established a capital exceptions policy at § 412.348, which provided for *regular* exception payments during the transition period. In the September 1, 1994 final rule (59 FR 45385), we added the *special* exceptions process, describing it as "* * * narrowly defined, focusing on a small group of hospitals who found themselves in a disadvantaged position. The target hospitals were those who had an immediate and imperative need to begin major renovations or replacements just after the beginning of the capital prospective payment system. These hospitals would not be eligible for protection under the old capital and obligated capital provisions, and would not have been allowed any time to accrue excess capital prospective payments to fund these projects."

Under the special exceptions provisions at § 412.348(g), an additional payment may be made through the 10th year beyond the end of the capital prospective payment system transition period for eligible hospitals that meet (1) a project need requirement as described at § 412.348(g)(2), which, in the case of certain urban hospitals, includes an excess capacity test; and (2) a project size requirement as described at § 412.348(g)(5). Eligible hospitals include sole community hospitals, urban hospitals with at least 100 beds that have a disproportionate share percentage of at least 20.2 percent, and hospitals with a combined Medicare and Medicaid inpatient utilization of at least 70 percent.

When we established the special exceptions process, we selected the hospital's cost reporting period beginning before October 1, 2001, as the project completion date in order to limit cost-based exceptions payments to a period of not more than 10 years beyond the end of the transition to the fully Federal capital prospective payment system. Therefore, hospitals are eligible to receive special exceptions payments for the 10 years after the cost reporting year in which they complete their project. Generally, if a project is completed in the hospital cost reporting period ending September 29, 2002, exceptions payments would continue through September 29, 2012. In addition, we believe that, for projects completed after the deadline, hospitals would have had the opportunity to reserve their prior years' capital prospective payment system payments for financing projects. We note that the August 1, 2000 final rule (65 FR 47095) incorrectly stated that special exceptions payments could extend through September 30, 2011; the date should have been September 29, 2012.

For each cost reporting period, the amount of the special exceptions payment is determined by comparing the cumulative payments made to the hospital under the capital payment system to the cumulative minimum payment levels applicable to the hospital for each cost reporting period subject to the prospective payment system. This comparison is offset or reduced by (1) any amount by which the hospital's cumulative payments exceed its cumulative minimum payments under the regular exceptions process for all cost reporting periods during which the hospital has been subject to the capital prospective payment system; and (2) any amount by which the hospital's current year Medicare inpatient operating and capital prospective payment system payments (excluding 75 percent of its operating DSH payments) exceed its Medicare inpatient operating and capital costs (or its Medicare inpatient margin). During the capital prospective payment system transition period, the minimum payment level under the regular exceptions process varied by class of hospital as set forth in § 412.348(c) and described in section V.A. of this preamble. After the transition period and for the duration of the special exceptions provision, the minimum payment level is 70 percent as set forth in § 412.348(g)(6).

In the July 31, 1998 final rule (63 FR 40999), we stated that a few hospitals had expressed concern with the required completion date of October 1, 2001, and other qualifying criteria for the special exceptions payment. Therefore, we solicited certain information from hospitals on major capital construction projects that might qualify for the capital special exceptions payments so we could determine if any changes in the special exceptions criteria or process were necessary. In the May 7, 1999 proposed rule (64 FR 24736), we reported that four hospitals had responded timely to our solicitation with information on their major capital construction projects. The hospitals submitted information about their location, the cost of the project, the date that the certificate of need approval was received, the start date of the project, and the anticipated completion date. Some hospitals also suggested changing a number of the requirements of the special exception provision.

When we issued the May 7, 1999 proposed rule, we had no specific proposal to revise the special exceptions process. However, we invited comments and suggestions from hospitals and other interested parties on the revision to the special exceptions process (64 FR 24738). We noted that, because the capital special exceptions process is budget neutral, any liberalization of the policy would require a commensurate reduction in the capital rate paid to all hospitals. That is, we will continue to make an adjustment to the capital Federal rate in a budget neutral manner to pay for exceptions as long as an exceptions policy is in force, just as we have for regular exceptions during the transition period. We also stated that, based on the comments we received, we may make changes to the special exceptions criteria in the final regulation or propose changes in the FY 2001 proposed rule.

In the July 30, 1999 final rule (64 FR 41526), we responded to the six comments we received on potential changes to the special exceptions process. In that same final rule, we also described our attempt to obtain information on hospital projects that might qualify for special exceptions payments in order to assess the impact of the recommended changes to the existing policy. In conjunction with the most recent cost report data readily available at that time (FY 1996), we attempted to estimate which of the hospital construction projects might qualify for special exception payments under the existing policy and how that universe of hospitals might change as a result of the recommended revisions to the special exceptions criteria.

Because exception payments to a hospital for a given cost reporting period are based on a percentage of the

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capital costs incurred during the cost reporting period, we were unable to determine a precise estimate of the amount of payments to hospitals that might be eligible for special exceptions. In addition, hospitals are not eligible for special exception payments until the assets are put into use for patient care. Once eligibility for special exceptions payment has been demonstrated, it is some time before completed and settled cost reports are available to determine these payments.

Based on our research, we determined that it is difficult to predict whether particular hospitals will be able to meet all of the special exceptions eligibility criteria (DSH percentage, completion date, project size, and project need requirements) as well as qualify to receive special exception payments after taking into account the appropriate offsets, such as inpatient operating and capital margins. However, we believe that any changes to the special exceptions policy may affect a significant number of hospitals.

Based on our belief that these changes may have an impact on a significant number of hospitals, our evaluation of the comments, and careful consideration of all the issues, we stated in the July 30, 1999 final rule that the more appropriate forum for addressing changes to the capital special exceptions policy is the legislative process in Congress rather than the regulation process (64 FR 41528).

As we also indicated in the July 30, 1999 final rule (64 FR 41526), we have little information about the number of hospitals that may qualify for special exceptions payments or the projected dollar amount of special exception payments, because no hospitals are currently being paid under the special exceptions process. Until FY 2002, the special exceptions provision pays either the same as the regular exceptions process or less for high DSH and sole community hospitals. In accordance with § 412.348(g)(7), a qualifying hospital may receive additional payments for up to 10 years from the year in which it completes a project that meets the project need and project size requirements of the special exception provision in §§ 412.348(g)(2) through (g)(5). Because a qualifying project under the special exceptions provision at § 412.348(g) must be completed (put into use for patient care) by the end of the hospital's last cost reporting period beginning before the end of the transition period (September 30, 2001), a hospital may receive special exception payments for 10 years through September 30, 2012. For example, an eligible hospital that completes a qualifying project in October 1993 (FY 1994) will be eligible to receive special exception payments up through FY 2003 (September 30, 2003).

In order to assist our fiscal intermediaries in determining the end of the 10-year period in which an eligible hospital will no longer be entitled to receive special exception payments, we are proposing to add a new § 412.348(g)(9) to require that hospitals eligible for special exception payments under § 412.348(g) submit documentation to the intermediary indicating the completion date of their project (the date the project was put in use for patient care) that meets the project need and project size requirements outlined in §§ 412.348(g)(2) through (g)(5). We are proposing that, in order for an eligible hospital to receive special exception payments, this documentation would have to be submitted in writing to the intermediary by the later of October 1, 2001, or within 3 months of the end of the hospital's last cost reporting period beginning before October 1, 2001, during which a qualifying project was completed. For example, if a hospital completed a qualifying project in March 1995, it would be required to submit documentation to the intermediary by October 1, 2001. If a hospital with a 12-month cost reporting period beginning on July 1 completed a qualifying project in November 2001, it would be required to submit documentation to the intermediary no later than September 30, 2002, which is 3 months after the end of its 12-month cost reporting period that began on July 1, 2001.

C. Exceptions Minimum Payment Level

Section 412.348(h) limits the estimated aggregate amount of exceptions payments under both the regular exceptions and special exceptions process to no more than 10 percent of the total estimated capital prospective payment system payments in a given fiscal year. Consistent with the requirements for regular exceptions at § 412.348(c), we are proposing that if we estimate that special exception payments would exceed 10 percent of total capital prospective payment system payments for a given fiscal year, we will adjust the minimum payment level of 70 percent by one percentage point increments until the estimated payments are within the 10-percent limit. For example, we could set the minimum payment level at 69 percent to ensure that estimated aggregate special exceptions payments do not exceed 10 percent of estimated total capital prospective payment system payments. If the estimate of aggregate special exceptions payments were still projected to exceed 10 percent of total capital prospective payment system payments, we would continue reducing the minimum payment level by one percentage point increments until the requirements in § 412.348(h) were satisfied. We are proposing to revise § 412.348(g)(6) accordingly to reflect this policy.

D. Exceptions Adjustment Factor

Section 412.308(c)(3) requires that the standard capital Federal rate be reduced by an adjustment factor equal to the estimated proportion of additional payments for both regular exceptions and special exceptions under § 412.348 relative to total capital prospective payment system payments. In estimating the proportion of regular exceptions payments to total capital prospective payment system payments during the transition period, we used the model originally developed for determining budget neutrality (described in Appendix B of this proposed rule) to determine the exception adjustment factor, which was applied to both the Federal and hospital-specific rates. Below we describe our proposed methodology for determining the special exceptions adjustment used in establishing the Federal capital rate.

Under the special exceptions provision specified at § 412.348(g)(1), eligible hospitals include SCHs, urban hospitals with at least 100 beds that have a disproportionate share percentage of at least 20.2 percent or qualify for DSH payments under § 412.106(c)(2), and hospitals with a combined Medicare and Medicaid inpatient utilization of at least 70 percent. An eligible hospital may receive special exception payments if it meets (1) a project need requirement as described at § 412.348(g)(2), which, in the case of certain urban hospitals, includes an excess capacity test; (2) an age of assets test as described at § 412.348(g)(3); and (3) a project size requirement as described at § 412.348(g)(5).

In order to determine the estimated proportion of special exceptions payments to total capital payments, we attempted to identify the universe of eligible hospitals that may potentially qualify for special exception payments. First, we identified hospitals that met the eligibility requirements at § 412.348(g)(1). Then we determined each hospital's average fixed asset age in the earliest available cost report starting in FY 1992 and later. For each of those hospitals, we calculated the average fixed asset age by dividing the accumulated depreciation by the current year's depreciation. In accordance with § 412.348(g)(3), a hospital must have an average age of buildings and fixed assets above the 75th percentile of all hospitals in the first year of capital prospective payment system. In the September 1, 1994 final rule (59 FR 45385), we stated that, based on the June 1994 update of the cost report files in HCRIS, the 75th percentile for buildings and fixed assets for FY 1992 was 16.4 years. However, we noted that we would make a final determination of that value on the basis of more complete cost report information at a later date. In the August 29, 1997 final rule (62 FR 46012), based on the December 1996 update of HCRIS and the removal of outliers, we finalized the 75th percentile for buildings and fixed assets for FY 1992 as 15.4 years. Thus, we eliminated any hospitals from the potential universe of hospitals that may qualify for special exception payments if its average age of fixed assets did not exceed 15.4 years.

For the hospitals remaining in the potential universe, we estimated project-size by using the fixed capital acquisitions shown on Worksheet A7 from the following HCRIS cost reports updated through December 2000.

PPS year	Cost reports periods beginning in
IX	FY 1992
X	FY 1993
XI	FY 1994
XII	FY 1995
XIII	FY 1996
XIV	FY 1997
XV	FY 1998
XVI	FY 1999

Because the project phase-in may overlap 2 cost reporting years, we added together the fixed acquisitions from sequential pairs of cost reports to determine project size. Under § 412.348(g)(5), the project-size must meet the following requirements: (1) $200 million; or (2) 100 percent of its operating cost during the first 12-month cost reporting period beginning on or after October 1, 1991. We calculated the operating costs from the earliest available cost report starting in FY 1992 and later by subtracting inpatient capital costs from inpatient costs (for all payers). We did not subtract the direct medical education costs as those costs are not available on every update of the HCRIS minimum data set. If the hospital met the project size requirement, we assumed that it also met the project need requirements at § 412.348(g)(2) and the excess capacity test for urban hospitals at § 412.348(g)(4).

Because we estimate that so few hospitals will qualify for special exceptions, projecting costs, payments, and margins would result in high statistical variance. Consequently, we decided to model the effects of special exceptions using historical data based on hospitals' actual cost experiences. If we determined that a hospital may qualify for special exceptions, we modeled special exceptions payments from the project start date through the last available cost report (FY 1999). For purposes of modeling we used the cost and payment data on the cost reports from HCRIS assuming that special exceptions would begin at the start of the qualifying project. In other words, when modeling costs and payment data, we ignored any regular exception payments that these hospitals may otherwise have received as if there had not been regular exceptions during the transition period. In projecting an eligible hospital's special exception payments, we applied the 70-percent minimum payment level, the cumulative comparison of current year capital prospective payment system payments and costs, and the cumulative operating margin offset (excluding 75 percent of operating DSH payments).

Because hospitals may receive regular exception payments up through the end of their last cost reporting period beginning before October 1, 2001, hospitals with cost reporting periods beginning on a day other than October 1 will continue to receive regular exception payments until the end of their FY 2002 cost reporting period. Therefore, these hospitals will only receive special exception payments for the remainder of Federal FY year 2002. Consequently, the special exceptions payments made in FY 2002 will be less than for subsequent years since they are only being paid a special exception payment for a portion of FY 2002.

Our modeling of special exception payments produced the following results:

Cost report	Number of hospitals eligible for special exceptions	Special exceptions as a fraction of capital payments to all hospitals	Special exceptions as a fraction of capital payments to all hospitals weighted by portion of FY 2002 for which special exceptions are paid
PPS IX			
PPS X			
PPS XI	3		
PPS XII	6	0.0002	0.0001
PPS XIII	8	0.0001	0.0000
PPS XIV	14	0.0002	0.0001
PPS XV	18	0.0016	0.0002
PPS XVI	22	0.0011	0.0008

Currently, the PPS XVI cost reports in HCRIS are incomplete because there is a 2-year lag time between the end of a hospital's cost reporting period and the submission and processing of the cost reports for HCRIS. In particular, hospitals whose cost reporting periods begin July 1 are missing. We expect more hospitals to qualify for special exceptions once data from later HCRIS updates are available. In addition, hospitals still have two more cost reporting periods (PPS XVII and PPS XVIII) to complete their projects in order to be eligible for special exceptions. We estimate that about 30 additional hospitals could qualify for special exceptions. Thus, we project

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that special exception payments as a fraction of capital payments to all hospitals could be approximately 0.0025. However, after weighting this amount to account for the FY 2002 phase-in of special exception payments, we project that this factor would be approximately 0.0012. Because special exceptions are budget neutral, we propose to offset the Federal capital rate by 0.12 percent for special exceptions for FY 2002. Therefore, the proposed exceptions adjustment factor would equal 0.9988 (1 minus 0.0012) to account for special exception payments in FY 2002. We will revise this projection of the special exception adjustment factor in the final rule based on the latest available data.

VI. Proposed Changes for Hospitals and Hospital Units Excluded From the Prospective Payment System

A. Limits on and Adjustments to the Target Amounts for Excluded Hospitals and Units (§§ 413.40(b)(4) and (g))

1. Updated Caps for Existing Hospitals and Units

Section 1886(b)(3) of the Act (as amended by section 4414 of Public Law 105–33) established caps on the target amounts for certain existing hospitals and units excluded from the prospective payment system for cost reporting periods beginning on or after October 1, 1997 through September 30, 2002. The caps on the target amounts apply to the following three classes of excluded hospitals: psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals.

In addition, section 4416 of Public Law 105–33 limited payments for psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals that first received payments on or after October 1, 1997. Payment for these hospitals and units is limited to the lesser of the hospital's operating costs per case or 110 percent of the national median of target amounts for the same class of hospitals for cost reporting periods ending during FY 1996, updated and adjusted for differences in area wage levels.

A discussion of how the caps on the target amounts and the payment limitation were calculated can be found in the August 29, 1997 final rule with comment period (62 FR 46018); the May 12, 1998 final rule (63 FR 26344); the July 31, 1998 final rule (63 FR 41000), and the July 30, 1999 final rule (64 FR 41529). For purposes of calculating the caps for existing facilities, the statute required the Secretary to estimate the national 75th percentile of the target amounts for each class of hospital (psychiatric, rehabilitation, or long-term care) for cost reporting periods ending during FY 1996 without adjusting for differences in area wage levels. Under section 1886(b)(3)(H)(iii) of the Act, the resulting amounts are updated by the market basket percentage to the applicable fiscal year.

Section 121 of Public Law 106–113 amended section 1886(b)(3)(H) of the Act to also provide for an appropriate wage adjustment to the caps on the target amounts for existing psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals, effective for cost reporting periods beginning on or after October 1, 1999, through September 30, 2002. On August 1, 2000, we published an interim final rule with comment period that implemented this provision for cost reporting periods beginning on or after October 1, 1999 and before October 1, 2000 (65 FR 47026) and a final rule that implemented this provision for cost reporting periods beginning on or after October 1, 2000 (65 FR 47054). This proposed rule addresses the wage adjustment to the caps and payment limitations for cost reporting periods beginning on or after October 1, 2001.

For purposes of calculating the caps, section 1886(b)(3)(H)(ii) of the Act requires the Secretary to first "estimate the 75th percentile of the target amounts for such hospitals within such class for cost reporting periods ending during fiscal year 1996." Furthermore, section 1886(b)(3)(H)(iii), as added by Public Law 106–113, requires the Secretary to also provide for existing hospitals "an appropriate adjustment to the labor-related portion of the amount determined under such subparagraph to take into account the differences between average wage-related costs in the area of the hospital and the national average of such costs within the same class of hospital."

Consistent with the broad authority conferred on the Secretary by section 1886(b)(3)(H)(iii) of the Act to determine the appropriate wage adjustment, we account for differences in wage-related costs by adjusting the caps to account for the following:

First, we adjust each hospital's target amount to account for area differences in wage-related costs. For each class of hospitals (psychiatric, rehabilitation, and long-term care), we determine the labor-related portion of each hospital's FY 1996 target amount by multiplying its target amount by the actuarial estimate of the labor-related portion of costs (or 0.71553). Similarly, we determine the nonlabor-related portion of each hospital's FY 1996 target amount by multiplying its target amount by the actuarial estimate of the nonlabor-related portion of costs (or 0.28447).

Next, we account for wage differences among hospitals within each class by dividing the labor-related portion of each hospital's target amount by the hospital's wage index under the hospital inpatient prospective payment system. Within each class, each hospital's wage-neutralized target amount was calculated by adding the wage-neutralized labor-related portion of its target amount and the nonlabor-related portion of its target amount. Then, the wage-neutralized target amounts for hospitals within each class were arrayed in order to determine the national 75th percentile caps on the target amounts for each class.

Taking into account the national 75th percentile of the target amounts for cost reporting periods ending during FY 1996 (wage-neutralized using the FY 2000 acute care wage index), the wage adjustment provided for under Public Law 106–113, and the applicable update factor based on the market basket percentage increase for FY 2001, in the August 1, 2000 final rule (65 FR 47096), we established the FY 2001 caps on the target amounts as follows:

Class of excluded hospital or unit	FY 2001 labor-related share	FY 2001 nonlabor-related share
Psychiatric	$8,131	$3,233
Rehabilitation	15,164	6,029
Long Term Care	29,284	11,642

In reviewing our methodology for wage neutralizing the hospital specific target amounts, it appears that we incorrectly used the FY 2000 hospital inpatient prospective payment system wage index published in Tables 4A and 4B of the July 30, 1999 final rule (64 FR 41585 through 41593), which is based on wage data after taking into account geographic reclassification under section 1886(d)(8) of the Act. We are proposing to revise the methodology of wage neutralizing the hospital-specific target amounts using pre-reclassified wage data. We propose to recalculate the limit for new excluded hospitals and units, as well as calculate the cap for existing excluded hospitals and units, using the pre-reclassification wage index. The pre-reclassification wage index is the same wage index used under the prospective payment system for skilled nursing facilities (SNFs) and was included in Table 7 of the July 30, 1999 SNF final rule (64 FR 41690). (We note that both SNFs and ambulatory surgical centers use the prospective payment system inpatient wage index without regard to the prospective payment system reclassification as a proxy for variations in local costs.)

As we stated in the August 1, 2000 final rule, long-term care hospitals, rehabilitation hospitals and units, and psychiatric hospitals and units that are exempt from the prospective payment system are not subject to the prospective payment system hospital reclassification system under section 1886(d)(10)(A) of the Act. This section establishes the MGCRB for the purpose of evaluating applications from short-term, acute care providers. There is no equivalent statutory mandate for HCFA to develop an alternative board for long-term care hospitals, psychiatric hospitals and units, and rehabilitation hospitals and units. In addition, while it would be feasible to allow units physically located in prospective payment system hospitals that have been reclassified by the MGCRB to use the wage index for the area to which that hospital has been reclassified, at the present time there is no process in place to make reclassification determinations for freestanding excluded providers. There are approximately 1,000 freestanding excluded providers. Therefore, in the interest of equity, we believe that, in determining a hospital's wage-adjusted cap on its target amount, it is appropriate for excluded hospitals and units to use the wage index associated with the area in which they are physically located (MSA or rural area) and the prospective payment system reclassification under section 1886(d)(10) of the Act is not applicable. This policy is also consistent with the policy for SNFs and ambulatory surgical centers that use the acute care, inpatient hospital prospective payment system wage index and that does not allow for reclassifications since there is no analogous determinations process to the MGCRB. The MGCRB only has authority over the prospective payment system for acute care hospitals.

Therefore, based on the broad authority conferred on the Secretary by section 1886(b)(3)(H)(iii) of the Act to determine the appropriate wage adjustment to the caps, we have determined the labor-related and nonlabor-related portions of the proposed caps on the target amounts for FY 2002 using the methodology outlined above.

Class of excluded hospital or unit	FY 2002 proposed labor-related share	FY 2002 proposed nonlabor-related share
Psychiatric	$8,404	$3,341
Rehabilitation	15,689	6,237
Long-Term Care	31,399	12,483

These labor-related and nonlabor-related portions of the proposed caps on the target amounts for FY 2002 are based on the current estimate of the market basket increase for excluded hospitals and units for FY 2002 of 3.0 percent and reflect the change in applying the pre-reclassified hospital inpatient prospective payment system wage index as discussed above. Furthermore, in accordance with section 307(a) of Public Law 106–554, which amended section 1886(b)(3) of the Act, the labor-related and nonlabor-related portions of the proposed cap for long-term care hospitals for FY 2002 are increased by 2 percent. We are providing a further discussion of this provision in an interim final rule with comment period that will implement provisions of Public Law 106–554 for FY 2001 and for periods in FY 2001 from April 1, 2001 through September 30, 2001 (HCFA–1178–IFC).

Finally, to determine payments described in § 413.40(c), the cap on the hospital's target amount per discharge is determined by adding the hospital's nonlabor-related portion of the national 75th percentile cap to its wage-adjusted, labor-related portion of the national 75th percentile cap. A hospital's wage-adjusted, labor-related portion of the target amount is calculated by multiplying the labor-related portion of the national 75th percentile cap for the hospital's class by the hospital's applicable wage index. For FY 2002, a hospital's applicable wage index is the pre-reclassified wage index under the hospital inpatient prospective payment system (see § 412.63). The proposed wage index values are computed based on the same data used to compute the proposed FY 2002 wage index values for the hospital inpatient prospective payment system without taking into account changes in geographic reclassification under section 1886(d)(8)(B) of the Act for certain rural hospitals or reclassifications based on MGCRB decisions or the Secretary's decisions under sections 1886(d)(8) through (d)(10) of the Act. For cost reporting periods beginning on or after October 1, 2001 and before October 1, 2002, the pre-reclassified wage index is in Tables 4G and 4H of this proposed rule. A hospital's applicable wage index corresponds to the area in which the hospital or unit is physically located (MSA or rural area).

2. New Excluded Hospitals and Units

a. Updated Caps (§ 413.40(f))

Section 1886(b)(7) of the Act establishes a payment methodology for new psychiatric hospitals and units, new rehabilitation hospitals and units, and new long-term care hospitals. Under the statutory methodology, for a hospital that is within a class of hospitals specified in the statute and first receives payments as a hospital or unit excluded from the prospective payment system on or after October 1, 1997, the amount of payment will be determined as follows: For the first two 12-month cost reporting periods, the amount of payment is the lesser of (1) the operating costs per case; or (2) 110 percent of the national median of target amounts for the same class of hospitals for cost reporting periods ending during FY 1996, updated to the first cost reporting period in which the hospital receives payments as adjusted for differences in area wage levels.

As discussed earlier, in reviewing our methodology for wage neutralizing the hospital-specific target amounts, it appears we incorrectly used the FY 2000 hospital inpatient prospective payment system wage index published in Tables 4A and 4B of the July 30, 1999 final rule, which is based on wage data after taking into account geographic reclassifications under section 1886(d)(8) of the Act. Therefore, we also are proposing to revise the methodology of wage neutralizing the hospital-specific target amounts using pre-reclassified wage data in our calculation of the limit for new excluded hospitals and units.

The proposed amounts included in the following table reflect the updated and recalculated 110 percent of the wage neutralized national median target amounts for each class of excluded hospitals and units for cost reporting periods beginning during FY 2002. These figures are updated to reflect the projected market basket increase of 3.0 percent. For a new provider, the labor-related share of the target amount is multiplied by the appropriate geographic area wage index, without regard to prospective payment system reclassifications, and added to the nonlabor-related share in order to determine the per case limit on payment under the statutory payment methodology for new providers.

Class of excluded hospital or unit	FY 2002 proposed labor-related share	FY 2002 proposed nonlabor-related share
Psychiatric	$6,795	$2,701
Rehabilitation	13,425	5,337

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Class of excluded hospital or unit	FY 2002 proposed labor-related share	FY 2002 proposed nonlabor-related share
Long-Term Care	16.651	6.620

b. Changes in Type of Hospital Classification (§§ 412.23 and 412.25)

Section 1886(b)(3) of the Act (as amended by section 4414 of Public Law 105–33) establishes caps on the target amounts for existing psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals for cost reporting periods beginning on or after October 1, 1997 through September 30, 2002. Section 4416 of Public Law 105–33 amended section 1886(b)(7) of the Act to provide for a limitation on payment for new excluded psychiatric hospitals and units, new rehabilitation hospitals and units, and new long-term care hospitals. Since the establishment of the caps on target amounts and the payment limitations, there has been an increase in the number of hospitals requesting a change from one classification type to another (for example, from rehabilitation to long-term care). Regulations at § 412.22(d) state that "For purposes of exclusion from the prospective payment systems under this subpart, the status of each currently participating hospital (excluded or not excluded) is determined at the beginning of each cost reporting period and is effective for the entire cost reporting period. Any changes in the status of the hospital are made only at the start of a cost reporting period." Even though the existing regulations directly address only a hospital that changes from a prospective payment system hospital to an excluded hospital, our longstanding policy has been that a change of any classification type can be effective only at the beginning of the provider's cost reporting period. Although the existing regulations do not directly address changes in a classification type of excluded hospital, we believe that a change from one classification type of excluded hospital to another type of excluded hospital is analogous to a change from a prospective payment system hospital to an excluded hospital. Therefore, we believe it would be consistent with our longstanding policy to amend our regulations to specify that a change from one excluded hospital classification type to another type is allowed only at the beginning of the hospital's cost reporting period.

The rationale underlying our present policy of requiring that these types of changes should only be effective at the beginning of the cost reporting period is the need to avoid any undue (and possibly significant) administrative burden that could result from doing otherwise (for example, cost allocation, cost reporting requirements, certification issues). If we were to accept changes in an excluded hospital's classification type from one type of classification to another, other than at the beginning of the cost reporting period, the hospital would need to file a terminating cost report with respect to its original classification as well as file a separate cost report for the remainder of the cost reporting period with respect to its new classification. Filing these cost reports would involve gathering the appropriate cost data, allocating the data, and apportioning the data between the two hospital classes. Additionally, we would have to validate the cost reports. To allow these types of changes in the middle of a cost reporting period would result in a significant administrative burden. We would point out that this burden is applicable equally for either a change from a prospective payment system hospital to an excluded hospital, or a change from one excluded hospital classification type to another classification type. Therefore, we are proposing to amend the regulations to provide that the effective date of any of these classification changes is only at the beginning of a provider's cost reporting period (proposed § 412.23(i), for excluded hospitals, and proposed § 412.25(f), for excluded units).

3. Effective Date of Exclusion of Long-Term Care Hospitals

Existing regulations at § 412.23(e) require a newly established long-term care hospital to operate for at least 6 months with an average length of stay in excess of 25 days in order to qualify for exclusion from the inpatient hospital prospective payment system as a long-term care hospital. Other regulations at § 412.22(d) allow changes in a hospital's status from not excluded to excluded to occur only at the start of a cost reporting period. These two regulations, taken together, typically require a hospital to operate for at least 6 months under the prospective payment system before becoming eligible for payment at the more favorable rate under section 1886(b)(3) of the Act.

These regulations were challenged in litigation by a chain organization that operates a large number of long-term care hospitals (*Transitional Hospital Corporation of Louisiana, Inc.* v. *Shalala*, 222 F.3d 1019 (D.C. Cir. 2000) (*THC*)). Although the court of appeals in this case found that the Secretary has ample authority to adopt current regulatory provisions, it also concluded that the Secretary has not adequately considered other policy options. Consequently, it remanded the case to the agency for the agency to consider whether it wanted to continue its existing policy or adopt a policy of either "self-certification" or "retroactive adjustment." Generally, under a self-certification approach, hospitals that have not yet demonstrated the required average length of stay would be excluded from the prospective payment system based on a commitment to maintain such a length of stay. Under a retroactive adjustment approach, a hospital's long-term care classification would be made effective with the beginning of the 6-month period in which it demonstrated the required average length of stay. Payments for that period initially would be made under the prospective payment system and then adjusted retroactively to amounts payable for an excluded long-term care hospital once length of stay was successfully established.

As directed by the court of appeals, we are reviewing the issues raised in this case in light of the court's decision, and are specifically considering the options of self-certification and retroactive adjustment. Our current proposals and the alternatives we considered before arriving at them are set forth below. To assist us in completing the review process, we are requesting public comment on our proposals, taking into account the following considerations.

a. Demonstrating Required Average Length of Stay

Although we understand that we have discretion to select other policy options, we are proposing to continue our policy of requiring hospitals seeking long-term care hospital classification to demonstrate the required average length of stay based on 6 months of data, instead of permitting these hospitals to "self-certify" the required average length of stay.

We note that the statute provides the agency with broad authority to determine the methodology by which facilities can qualify for exclusion as long-term care hospitals (section 1886(d)(1)(B)(iv)(I) of the Act specifies that "a hospital which has an average inpatient length of stay (as determined by the Secretary) of greater than 25 days" qualifies for exclusion as a long-term care hospital). As the court of appeals decided, the parenthetical phrase *as determined by the Secretary* "gives the Secretary considerable leeway to determine whether to require prospective, contemporaneous, or retrospective evaluation and payment." (*THC* at 1026.)

Although we have considered the self-certification option, we do not believe that it is appropriate to permit long-term care hospitals to self-certify. Long-term care hospitals "are licensed as acute care hospitals in the States in which they operate [and] their only distinguishing characteristic is their long average length of stay" (ProPAC March 1, 1997 Report and Recommendations to the Congress, Recommendation 30). For this reason, and because average length of stay can be difficult, if not impossible, to forecast when a new hospital first opens its doors for service, it would not be appropriate to allow new hospitals to self-certify that they will have an average length of stay exceeding 25 days.

Requiring newly participating hospitals to collect at least 6 months of length of stay data before permitting them to qualify as long-term care hospitals is consistent with treatment of other types of excluded hospitals in the regulations. Like long-term care hospitals, children's hospitals, which by statute are also excluded from the prospective payment system, also have just one distinguishing characteristic from acute care hospitals; namely, having inpatients who are predominantly individuals under 18 years of age (section 1886(d)(1)(B)(iii) of the Act). As with long-term care hospitals, we do not permit children's hospitals to self-certify that they will meet this requirement as to a future cost reporting period (§ 412.23(d)).

Although we permit rehabilitation hospitals to self-certify that they meet certain elements of the definition for such a hospital, important differences between rehabilitation hospitals and long-term care hospitals render such a scheme inappropriate for the latter. The differences in the two types of excluded hospitals begin with the statute, which excludes from the prospective payment system "a rehabilitation hospital (as defined by the Secretary)" and "a hospital which has an average inpatient length of stay (as defined by the Secretary) of greater than 25 days"; that is, a long-term care hospital (sections 1886(d)(1)(B)(ii) and 1886(d)(1)(B)(iv)(I) of the Act). Thus, Congress delegated broad authority to the Secretary to define rehabilitation hospitals, but provided the definition of long-term care hospitals in the statute itself (and then, as discussed above, gave the agency broad authority to determine how to apply that definition).

In exercising our authority to define a rehabilitation hospital, we promulgated regulations that contain several defining features that a facility must possess to be considered such a hospital, as opposed to the one statutorily mandated feature (average length of stay) that defines long-term care hospitals (§ 412.23(b)). The requirements that a rehabilitation hospital must meet include a showing that 75 percent of its patients are of a certain type, the existence of a preadmission screening process, assurance that patients will receive close medical supervision and that the hospital will furnish certain types of therapy through the use of qualified personnel, the presence of a director of rehabilitation with certain qualifications, evidence of a plan of treatment for each inpatient that is established and monitored by a physician, and the use of a coordinated interdisciplinary team approach in the rehabilitation of each patient (§ 412.23(b)(1) through (b)(7)). With the exception of the "75 percent rule," all of these requirements are "characteristics of the patients and types of services that the facility furnishes" that "can be assessed at a given point in time" (ProPAC March 1, 1997 Report and Recommendations to the Congress, Recommendation 30).

Thus, rehabilitation hospitals are defined primarily by static and observable features, most of which can be accurately assessed when a new rehabilitation hospital is first certified under the Medicare program. As a result, the regulations permit a new rehabilitation hospital to provide written certification that it will meet the 75 percent rule, provided we find that it also meets the six other elements of the definition of a rehabilitation facility (§ 412.23(b)(8)). The hospital's demonstrated ability to meet the six remaining requirements provides an adequate level of assurance that the hospital will also meet the 75-percent requirement if it so certifies. No such assurance is available, however, regarding whether a hospital might, during a future period, meet the sole requirement for qualification as a long-term care hospital—the average length of stay of its patients.

b. Effective Date of Exclusion From the Prospective Payment System

Because we propose to continue our policy of not allowing a hospital to self-certify the required average length of stay in order to be paid as an excluded long-term care hospital, it is necessary to consider the effective date of excluded status for a hospital that has demonstrated the required average length of stay. We considered making long-term care classification effective retroactively with the beginning of the 6-month period in which the hospital demonstrated the required average length of stay. Doing so would mean, for example, that a hospital that admitted its first patient on January 1, 2001, and demonstrated that its average length of stay exceeded 25 days for the period January 1 through June 30, and that was approved for long-term care classification on July 15, would be paid for its discharges from January 1, 2001 forward as an excluded long-term care hospital rather than under the prospective payment system, as long as it continued to demonstrate the requisite average length of stay. However, we believe that such retroactive application of excluded status is inappropriate.

For the reasons below, we are proposing to continue our policy that a hospital's payment as a long-term care hospital would be effective with the beginning of the hospital's cost reporting period that follows the determination to classify the hospital as a long-term care hospital. From the first rulemaking implementing the inpatient acute hospital prospective payment system payment methodology, the agency has generally applied decisions regarding various elements of the prospective payment system payment methodology prospectively only, and the courts have upheld that action. (*THC* at 1022 ("status" decisions regarding whether a hospital is subject to or excluded from the prospective payment system); *County of Los Angeles* v. *Shalala* 192 F.3d 1005 (D.C. Cir. 1999) (decisions regarding criteria for receipt of "outlier" payments); *Methodist Hospital of Sacramento* v. *Shalala*, 38 F.3d 1225 (D.C. Cir. 1994) (decisions to revise "wage index" component of the prospective payment system payment rate); *Hennepin County* v. *Sullivan*, 883 F.2d 85, 91 (D.C. Cir. 1989) ("there is nothing inherently arbitrary or capricious about an agency's decision to apply new data prospectively only"); 57 FR 39746 and 39798 (1992).)

For the same reasons that existed in the cases cited above, we believe that prospective implementation of the statutory exclusion for long-term care hospitals is fully consistent with Congress' goals in enacting the prospective payment system. It allows both the hospital and us to know with certainty at the beginning of each cost reporting period of the hospital whether the hospital is subject to or excluded from the prospective payment system for that cost reporting period and thus

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promotes certainty and predictability of payment for both providers and the agency. *County of Los Angeles* at 1019; *Methodist Hospital of Sacramento* at 1232 ("because the Secretary's prospectivity policy permits hospitals to rely with certainty on one additional element in the PPS calculation rate * * * the Secretary could reasonably conclude that it will promote efficient and realistic cost saving targets").

Moreover, retroactive application of a prospective payment system excluded status decision would entail a significant administrative burden as it would require reprocessing of large numbers of a hospital's claims for hospital inpatient services. See 49 FR 234 and 271 (1984) (making retroactive changes in decisions regarding providers' status as "sole community hospitals" would require us "to reprocess every inpatient hospital claim submitted for the hospital and make adjustment payments at the new rate). It is reasonable to conclude that such a burden outweighs any "increase in accuracy that would result" from retroactive application of decisions regarding long-term care hospital exclusions (*Methodist Hospital of Sacramento* at 1233).

Finally, we apply our prospective-only policy evenhandedly, regardless of whether it results in a hospital's being subject to, or excluded from, the prospective payment system. Thus, retroactive adjustments in hospitals' status are as likely to hurt providers that slip below the required average length of stay during a cost reporting period as they are to help them by furnishing reimbursement for a past period in which they met that requirement (*Methodist Hospital of Sacramento* at 1232, 1233). Any adverse effect of the prospective only policy that might be perceived by new long-term care facilities is also lessened by the availability of a short initial cost reporting period and outlier payments for extraordinarily lengthy cases during the initial period when the hospital is subject to the prospective payment system.

In addition to believing that it is appropriate to make payment as a long-term care hospital effective prospectively rather than retroactively, we believe it is also appropriate to continue our policy of making payment effective with the beginning of the hospital's next cost reporting period rather than as of the date of approval of long-term care status. This policy is consistent with how we treat changes in status (that is, from excluded to nonexcluded or from nonexcluded to excluded) for all types of hospitals. As we explain in more detail in section VI.A.2.b of this proposed rule, the rationale for requiring changes in a hospital's status, or changes in a hospital's classification (that is, from one type of excluded hospital to another), only at the start of the hospital's cost reporting period is to alleviate the administrative burden and potential confusion that would result from doing otherwise.

As noted earlier, we request public comments on the proposals described above.

4. Development of Prospective Payment System for Inpatient Rehabilitation Hospitals and Units

Section 1886(j) of the Act, as added by section 4421 of Public Law 105–33, provided the phase-in of a case-mix adjusted prospective payment system for inpatient rehabilitation services (freestanding hospitals and units) for cost reporting periods beginning on or after October 1, 2000 and before October 1, 2002, with a fully implemented system for cost reporting periods beginning on or after October 1, 2002. Section 1886(j) of the Act was amended by section 125 of Public Law 106–113 to require the Secretary to use the discharge as the payment unit under the prospective payment system for inpatient rehabilitation services and to establish classes of patient discharges by functional-related groups. Section 305 of Public Law 106–554 further amended section 1886(j) of the Act to allow hospitals to elect to be paid the full Federal prospective payment rather than the transitional period payments specified in the Act.

On November 3, 2000, we issued a notice of proposed rulemaking in the **Federal Register** (65 FR 66303) on the proposed establishment of the prospective payment system for inpatient rehabilitation facilities, to be effective on April 1, 2001. Due to the scope and complexity of the proposed system and requests from the public for more time to comment on the proposed rule, we extended the public comment period for an additional 30 days, from January 3, 2001 to February 1, 2001. As a result of the extension of the comment period, it would have been technically impossible to publish a final rule 60 days prior to implementing the prospective payment system for rehabilitation facilities by April 1. We anticipate publication of a final rule in May 2001 and intend to announce our plans for implementation at that time.

B. Critical Access Hospitals (CAHs)

1. Exclusion of CAHs From Payment Window Requirements

Section 1886 of the Act specifies the requirements governing payment to full-service hospitals for the operating costs of inpatient hospital services under both the inpatient hospital prospective payment system and the limits on the target amounts for hospitals excluded from the prospective payment system. "Operating costs of inpatient hospital services" are defined in section 1886(a)(3) of the Act, which provides in part that costs of certain services provided to a beneficiary during the 3 days (or in the case of an excluded hospital or unit, during the 1 day) immediately preceding the patient's admission are to be included in the payments for costs under the inpatient hospital prospective payment system, or the target amount for excluded hospitals and units. This part of the definition is sometimes referred to as the "payment window" requirement. Regulations implementing the payment window requirement are found at § 412.2(c)(5) for hospitals subject to the prospective payment system, and § 413.40(c)(2) for hospitals excluded from the prospective payment system.

Payment to CAHs for inpatient services is not made under section 1886 of the Act, nor are CAHs considered to be hospitals excluded from the inpatient hospital Prospective Payment System. Instead, payment is made on a reasonable cost basis, as mandated by section 1814(l) of the Act. Neither section 1814(l) nor section 1861(v) of the Act (which defines "reasonable cost") requires application of the payment window to services furnished on an outpatient basis immediately before admission to a CAH. Therefore, we have determined that the payment window provision does not apply to CAHs. To clarify this point and avoid possible misapplication of the payment window, we are proposing to amend § 413.70(a)(l) to provide that the requirements of §§ 412.2(c)(5) and 413.40(c)(2) do not apply to CAHs.

2. Availability of CRNA Pass-Through for CAHs

Generally, anesthesia services furnished to a hospital patient by a certified registered nurse anesthetist (CRNA) must be billed to the Part B carrier and payment is made under the applicable fee schedule provisions of § 414.60. However, certain rural hospitals that furnish no more than 500 surgical procedures requiring anesthesia per year and meet other specified requirements are exempted from the fee schedule. These hospitals are paid on a reasonable cost basis for their costs of anesthesia services furnished by qualified nonphysician anesthetists. The exemption is provided in accordance with section 9320(k) of the Omnibus Budget Reconciliation Act of 1986 (Public Law 99–509) (as added by section 608(c)(2) of the Family Support Act of 1988 (Public Law 100–185), as amended by section 6132 of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101–239)). HCFA has codified this exemption at § 412.113(c).

Although § 412.113(c) does not specifically extend eligibility for the pass-through payment for CRNAs to CAHs, some CAHs have pointed out that they are similar to the rural hospitals that are eligible for this payment, in that they also furnish low volumes of surgical procedures requiring anesthesia and could face the same problem of potentially inadequate payment for CRNA services if they are not allowed to qualify for the pass-through payment. We share this concern.

We recognize that the legislation cited above, which provides the legal basis for the pass-through payments, refers only to "hospitals," not to CAHs. Moreover, section 1861(e) of the Act states that "the term "hospital" does not include, unless the context otherwise requires, a critical access hospital * * *." It is clear from section 1861(e) of the Act that CAHs are not to be considered hospitals under the Medicare law for most purposes. However, the reference to "context" in the provision indicates that CAHs may be classified as hospitals where, in specific contexts, it would be consistent with the purpose of the legislation to do so.

We believe this is the case with the statutory provisions authorizing pass-through payments for CRNA costs. The purpose of the pass-through legislation is to provide small rural hospitals with low surgical volumes with relief from the difficulties they might otherwise have in furnishing CRNA services for their patients. CAHs are by definition limited-service facilities located in rural areas and, as such, they serve a population much like those served by hospitals eligible for the pass-through payments. In some cases, an institution that now participates as a CAH may even have been eligible for the pass-through payments when it participated as a hospital. Such an institution would clearly be disadvantaged if it were to lose this status. Thus, in accordance with section 1861(e) of the Act and in light of the context of the pass-through legislation cited above, we consider CAHs to be "hospitals" for purposes of extending eligibility for the CRNA pass-through payments to them.

Therefore, we are proposing to add a new § 413.70(a)(3) and revise §§ 413.70(a)(2), (b)(1), and (b)(6) to permit CAHs that meet the criteria for the pass-through payments in § 412.113(c) to qualify for pass-through payments for the costs of anesthesia services for both inpatient and outpatient surgeries, on the same basis as full service rural hospitals. As an unrelated technical correction, we are proposing to revise § 413.70(b)(2)(i)(C) to delete the incorrect reference to § 413.130(j)(2) and replace it with a reference to reduction in capital costs under § 413.130(j). We also are proposing to revise § 412.113(c) by changing the term "hospital" to "hospital or CAH".

3. Payment to CAHs for Emergency Room On-Call Physicians (Proposed § 413.70(b)(4))

Under section 1834(g) of the Act, Medicare payment to a CAH for facility services to Medicare outpatients is the reasonable costs of the CAH in providing such services. The term "reasonable cost" is defined in section 1861(v) of the Act and in regulations at 42 CFR Part 413, including, with specific reference to CAHs, § 413.70. Consistent with the general policies stated in section 2109 of the Medicare Provider Reimbursement Manual (PRM), Part I (HCFA Publication 15–1), the reasonable cost of CAH services to outpatients may include reasonable costs of compensating physicians who are on standby status in the emergency room (that is, physicians who are present and ready to treat patients if necessary). However, under existing policy, the reasonable cost of CAH services to outpatients may not include any costs of compensating physicians who are not present in the facility but are on call.

Section 204 of Public Law 106–554 further amended section 1834(g) of the Act (as amended by section 201 of Public Law 106–554) by adding a new paragraph (5). New section 1834(g)(5) of the Act provides that, in determining the reasonable costs of outpatient CAH services under sections 1834(g)(1) and 1834(g)(2)(A) of the Act, the Secretary shall recognize as allowable costs amounts (as defined by the Secretary) for reasonable compensation and related costs for emergency room physicians who are on call (as defined by the Secretary) but who are not present on the premises of the CAH involved, are not otherwise furnishing physicians' services, and are not on call at any other provider or facility. The provisions of section 204 of Public Law 106–554 are effective for cost reporting periods beginning on or after October 1, 2001.

To implement the provisions of section 1834(g)(5) of the Act, we are proposing to add a new paragraph (4) to § 413.70(b). The proposed § 413.70(b)(4) would permit the reasonable costs of CAH outpatient services to include the reasonable compensation and related costs of emergency room on-call physicians under the terms and conditions specified in the statute. As directed in the statute, under § 413.70(b)(4)(ii)(A) of this proposed rule, we are defining "amounts for reasonable compensation and related costs" as those allowable costs of compensating emergency room physicians for being on call, to the extent these costs are found to be reasonable under the rules in § 413.70(b)(2).

In addition, as specified under § 413.70(b)(4)(ii)(A) of this proposed rule, we are defining an "emergency room physician who is on call" as a doctor of medicine or osteopathy with training or experience in emergency care who is immediately available by telephone or radio contact, and who is available on site within the timeframes specified in our existing regulations under § 485.618(d). Existing § 485.618(d) specifies that the physician must be available on site (1) within 30 minutes, on a 24-hour a day basis, if the CAH is located in an area other than an area described in item (2); or (2) within 60 minutes, on a 24-hour a day basis, if all of the following requirements are met:

- The CAH is located in an area designated as a frontier area (that is, an area with fewer than six residents per square mile based on the latest population data published by the Bureau of the Census) or in an area that meets criteria for a remote location adopted by the State in its rural health care plan, and approved by HCFA, under section 1820(b) of the Act.
- The State has determined under criteria in its rural health care plan that allowing an emergency response time longer than 30 minutes is the only feasible method of providing emergency care to residents of the area served by the CAH.
- The State maintains documentation showing that the response time of up to 60 minutes at a particular CAH it designates is justified because other available alternatives would increase the time needed to stabilize a patient in an emergency.

We also believe that it is essential that physicians who are paid to be in on-call status in fact come to the facility when

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summoned. Therefore, we are proposing to specify that costs of on-call emergency room physicians are allowable only if the costs are incurred under written contracts that require them to come to the CAH when their presence is medically required.

4. Treatment of Ambulance Services Furnished by Certain Critical Access Hospitals (Proposed § 413.70(b)(5))

Under section 1861(s)(7) of the Act, Medicare Part B covers and pays for ambulance services, to the extent prescribed in regulations, when the use of other methods of transportation would be contraindicated. Various Congressional reports indicate that Congress intended that (1) the ambulance benefit cover transportation services only if other means of transportation are contraindicated by the beneficiary's medical condition; and (2) only ambulance services to local facilities be covered unless necessary services are not available locally, in which case, transportation to the nearest facility furnishing those services is covered. (H.R. Rept. No. 89–213, 89th Cong., 1st Sess. at 37 (1995) and S. Rept. No. 89–404, 89th Cong., 1st Sess., Pt. I, at 43 (1995).)

The Medicare program currently pays for ambulance services on a reasonable cost basis when furnished by a provider and on a reasonable charge basis when furnished by a supplier. (The term "provider" includes all Medicare-participating institutional providers that submit claims for Medicare ambulance services (hospitals, CAHs, SNFs, and home health agencies). The term "supplier" means an entity that is independent of any provider. The reasonable charge methodology that is the basis of payment for ambulance services is determined by the lowest of the customary, prevailing, actual, or inflation indexed charge.

Section 4531(a)(1) of Public Law 105–33 amended section 1861(v)(1) of the Act and imposed an additional per trip limitation on reasonable cost payment to hospitals and CAHs for ambulance service. As amended, the statute provides that, in determining the reasonable cost of ambulance services furnished by a provider of services, the Secretary shall not recognize the cost per trip in excess of the prior year's reasonable cost per trip updated by an inflation factor. This trip limit provision was first effective for services furnished during Federal fiscal year 1998 (October 1, 1997 through September 30, 1998).

Section 205 of Public Law 106–554 amended section 1834(l) of the Act by adding a new paragraph (8) to that section. New section 1834(l)(8) provides that the Secretary is to pay the reasonable costs incurred in furnishing ambulance services if such services are furnished by a CAH (as defined in section 1861(mm)(1) of the Act), or by an entity owned or operated by the CAH. This provision in effect eliminates any trip limit that CAHs had been subject to as a result of section 1861(v)(1) of the Act, as amended by Public Law 105–33. However, section 205 further states that in order to receive reasonable cost reimbursement for the furnishing of ambulance services, the CAH or entity must be the only provider or supplier of ambulance services located within a 35-mile drive of the CAH. Section 205 is effective for services furnished on or after December 21, 2000, the date of enactment of Public Law 106–554.

To implement the provisions of section 1834(l)(8) of the Act, we are proposing to add a new paragraph (5) to § 413.70(b). Proposed § 413.70(b)(5) would permit a CAH, or an entity owned or operated by a CAH, to be paid for furnishing ambulance services on a reasonable cost basis if the CAH or entity is the only provider or supplier of ambulance services within a 35-mile drive of the CAH. In determining whether there is any other provider or supplier of ambulance services within a 35-mile drive of a CAH or entity, we would first identify the site where the nearest other ambulance provider or supplier garages its vehicles, and then determine whether that site is within 35 miles, calculated as the shortest distance in miles measured over improved roads. An improved road for this purpose would be defined as any road that is maintained by a local, State, or Federal government entity, and is available for use by the general public. Consistent with the change we are proposing in § 412.92(c)(1) relating to SCH determinations (as explained in section IV. of this preamble), we would consider improved roads to include the paved surface up to the front entrance of the hospital and, for purposes of § 413.70(b)(5), the front entrance of the garage.

5. Qualified Practitioners for Preanesthesia and Postanesthesia Evaluation in CAHs

Section 1820 of the Act sets forth the conditions for designating certain hospitals as CAHs. Implementing regulations for section 1820 of the Act are located in 42 CFR part 485, Subpart F. Among the conditions of participation regulations for CAHs in subpart F is the condition for surgical services (§ 485.639). Existing § 485.639 specifies that preanesthesia and postanesthesia services in a CAH can only be performed by a doctor of medicine or an osteopathic practitioner; a doctor of dental surgery or dental medicine; or a doctor of podiatric medicine. This Medicare condition of participation requirement regarding preanesthesia and postanesthesia evaluations for CAHs differs from, and is more restrictive than, the current requirement for acute care hospitals in general. In an acute care hospital, the CRNA is listed among the practitioners who may perform the preanesthesia and postanesthesia evaluations.

Our principal consideration in regulating providers is to ensure patient safety and high quality patient outcomes. As circumstances and health care environments change, we reassess regulations and propose changes accordingly.

When the regulations for the initial Rural Primary Care Hospital (RPCH) program (which later became the CAH program) were adopted, RPCHs were limited to patient stays of no more than 72 hours and to bed counts of no more than 6 acute care beds. We initially viewed RPCHs as very limited-service facilities that would be unlikely to perform any surgery beyond what might be done in a physician's office; therefore, we did not have a condition of participation for surgery. Section 102(a)(1) of the Social Security Amendments of 1994, Public Law 103–432, specifically authorized surgical care in RPCHs. In June 1995, we proposed a surgical condition of participation that incorporated the ambulatory surgery center (ASC) standards. We expected that the types of procedures done in a RPCH would most likely be those that could be done in ASCs. At the time, we received no comments in response to the proposed standards and therefore adopted them in the final RPCH conditions of participation that were published on September 1, 1995 (60 FR 45851).

In 1997, the RPCH (now CAH) program was expanded through a statutory change to include all States and to allow for an increase in bed size and length of stay (August 29, 1997 final rule, 62 FR 46035). Since that time, the program's original conditions of participation have been revised to remove possible barriers to access to care. One example of this effort is the final rule to eliminate the Federal requirement for physician supervision of CRNAs in CAHs as well as acute care hospitals and ASCs that was published in the **Federal Register** on January 18, 2001 (66 FR 96570).

Recently, provider and medical groups have suggested that CAHs may be at risk of losing the ability to provide access to appropriate surgical services without the full support of available CRNAs. They indicated that the existing regulations place the responsibility of the preanesthesia and postanesthesia evaluations on the operating practitioner, thereby creating a higher standard for CAHs than for other hospitals.

In an effort to eliminate or minimize potential access issues in rural areas and to recognize the CAH's program expansion, we are proposing to revise § 485.639(b) to allow CRNAs to perform preanesthesia and postanesthesia evaluations in a CAH. As with any licensed independent health care provider, the proposed change would not permit CRNAs to practice beyond his or her licensed scope of practice or the approved policies and procedures of the CAH.

6. Clarification of Location Requirements for CAHs

Under section 1820(c)(2)(B)(i) of the Act, a facility seeking designation by the State as a CAH must meet two distinct types of location requirements. First, the facility must either be actually located in a county or equivalent unit of local government in a rural area, as defined in section 1886(d)(2)(D) of the Act, or it must be located in an urban area as defined in section 1886(d)(2)(D) of the Act, but be treated as being located in a rural area under section 1886(d)(8)(E) of the Act. Second, the facility must also be located more than a 35-mile drive (or, in the case of mountainous terrain or in areas with only secondary roads available, a 15-mile drive) from a hospital or similar facility described in section 1820(c) of the Act, or it must be certified by the State as being a necessary provider of health care services to residents in the area. Implementing regulations for these provisions were published in an interim final rule with comment period in the **Federal Register** on August 1, 2000 (65 FR 47026) and are set forth at § 485.610(b).

Recently, concern has been expressed that § 485.610(b) does not accurately reflect the fact that a facility may satisfy the "rural location" requirement either by actually being located in a rural area or by being located in an urban area but qualifying for treatment as rural under section 1886(d)(8)(E) of the Act. In addition, we have received questions as to whether a potential CAH must meet both the rural location requirement and the requirement for location relative to other facilities (or certification by the State as a "necessary provider").

To avoid any further confusion, and ensure that our regulations reflect the provisions of the law accurately, we are proposing to revise § 485.610(b) to clarify that a potential CAH must either be actually located in a rural area, or be treated as being rural under section 1886(d)(8)(E) of the Act. In addition, we are proposing to place the provisions of the existing § 485.610(b)(5) in a newly created paragraph (c) entitled, "Location relative to other facilities or necessary provider certification". We are proposing to relocate this provision in order to clarify that these criteria are separate from the rural location criteria. These proposed changes do not reflect any change in policy; they are merely an attempt to improve the clarity of the regulations.

VII. MedPAC Recommendations

We have reviewed the March 1, 2001 report submitted by MedPAC to Congress and have given it careful consideration in conjunction with the proposals set forth in this document. Recommendation 5A concerning the update factor for inpatient hospital operating costs and for hospitals and hospital distinct-part units excluded from the prospective payment system are discussed in Appendix D to this proposed rule. Other MedPAC recommendations and our responses are set forth below.

A. Accounting for New Technology in Hospital Prospective Payment Systems (Recommendations 3D and 3E)

Recommendation 3D: For the inpatient payment system, the Secretary should develop formalized procedures for expeditiously assigning codes, updating relative weights, and investigating the need for patient classification changes to recognize the costs of new and substantially improved technologies.

Response: Section 533 of Public Law 106–554 directs the Secretary to develop a mechanism for ensuring adequate payment under the hospital inpatient prospective payment system for new medical services and technologies, and to report to Congress on ways to more expeditiously incorporate new services and technologies into that system. The discussion relating to new medical services and technologies is found in section II.D. of this proposed rule and addresses MedPAC's concern regarding the process of assigning new codes. In addition, MedPAC acknowledges, and we agree, that the process of updating the relative weights has an established track record.

MedPAC states that a more formal system for assigning codes and investigating the need for DRG changes would have enabled the current system to more adequately respond to new technology. Although we believe the current process for assigning new codes has the advantage of being well-understood, the proposed new process we described in section II. of this proposed rule should improve the ability of the system to respond to the introduction of new technology.

Recommendation 3E: Additional payments in the inpatient payment system should be limited to new or substantially improved technologies that add significantly to the cost of care in a diagnosis related group and should be made on a budget-neutral basis.

Response: Section 533 of Public Law 106–554 directed the Secretary to establish a mechanism to make these payments beginning with discharges on or after October 1, 2001, and we are proposing implementation of this provision under section IV.F. of this proposed rule.

B. Occupational-Mix Adjusted Wage Index for FY 2005 (Recommendation 4)

Recommendation: To implement an occupation-mix adjusted wage index in FY 2005, the Secretary should collect data on wage rates by occupation in the fiscal year 2002 Medicare cost reports. Hospital-specific wage rates for each occupation should be supplemented by data on the mix of occupations for each provider type. The Secretary also should continue to improve the accuracy of the wage index by investigating differences in wages across areas for each type of provider and in the substitution of one occupation for another.

Response: We are proposing to collect occupational mix data from hospitals through a supplemental survey to the cost report for cost reporting periods beginning during FY 2001. A more complete discussion of our proposed methodology can be found in section III. of this proposed rule.

C. Financial Performance and Inpatient Payment Issues (Recommendations 5B, 5C, and 5D)

Recommendation 5B: In collecting sample patient-level data, HCFA should seek to balance the goals of minimizing payment errors and furthering understanding of the effects of coding on case-mix change.

Response: The sample data referred to by MedPAC is the Payment Error Prevention Program (PEPP) Surveillance Sample. These data are collected to monitor the payment error rate for Medicare inpatient prospective payment system services and provide outcome data to measure PROs' performance in

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reducing payment errors in their respective States. This information can be appropriately weighted to reflect the true distribution of DRGs nationally. The sample data supplant the DRG validation sample that MedPAC used in its original 1996 through 1998 estimates. The current PEPP Surveillance Sample doubles the size of the earlier DRG validation sample. It is comprised of approximately 60,000 cases per year. We believe this is a sufficient number of cases to both monitor case-mix index changes and PRO performance on payment error reduction.

Recommendation 5C: Although the Benefits Improvement and Protection Act of 2000 improved the equity of the hospital disproportionate share adjustment, Congress still needs to reform this adjustment by:

- Including the costs of all poor patients in calculating low-income shares used to distribute disproportionate share payments; and
- Using the same formula to distribute payments to all hospitals covered by prospective payment.

Response: HCFA is participating a Medicare Technical Advisory Group workgroup concerning technical issues related to the collection of uncompensated care data relative to the Medicare disproportionate share formula. A worksheet and instructions to collect these data will be sent out for prior consultation this summer for revisions to the cost reports applicable for cost reporting periods beginning on or after October 1, 2001.

Recommendation 5E: The Congress should protect urban hospitals from the adverse effect of nearby hospitals being reclassified to areas with higher wage indexes by computing each area's wage index as if none of the hospitals located in the area had been reassigned.

Response: With this rule, HCFA has proposed to include the wage data for a reclassified hospital in both the area to which it is reclassified and the area where the hospital is physically located. We agree with MedPAC and believe that this will provide consistency and predictability in hospital reclassification and wage indices.

D. Specialties With Training Beyond the Initial Residency Period (Recommendation 10)

Recommendation: The Congress should eliminate the weighting factors that currently determine Medicare's direct graduate medical education payments and count all residencies equally through completion of residents' first specialty or combined program and subspecialty if one is pursued. Residents training longer than the minimum number of years required for board eligibility in a specialty, combined program, or subspecialty should not be included in hospitals' direct graduate medical education resident counts. These policy changes should be implemented in a budget-neutral manner through adjustments to the per resident payment amounts.

Response: Currently, Medicare payments to hospitals for direct GME is dependent, in part, on the initial residency period of the residents. Generally, the initial residency period is defined at § 413.86(g)(1) as the minimum number of years required for board eligibility, not to exceed 5 years. For purposes of determining the direct GME payment, residents are weighted at 1.0 FTE within the initial residency period, and at .5 FTE beyond the initial residency period. The limitation on the initial residency period was designed by Congress to limit full Medicare direct GME payment to the time required to train in a single specialty.

MedPAC states that Medicare's current direct GME payment policy of limiting full funding to the first specialty in which a resident trains provides a disincentive for hospitals to offer training in subspecialties or combined programs, and therefore, may influence hospitals' decisions on the types of residents that they train. MedPAC believes that Medicare should not influence workforce policy and recommends that the disincentive be removed to make Medicare payments policies neutral with regard to programs with prerequisites, subspecialties, and combined programs. Accordingly, MedPAC recommends that Congress eliminate the weighting factors associated with direct GME payment so that all residents would be counted for full direct GME payment through the completion of their first specialty, combined program, or subspecialty. Residents training beyond the minimum number of years required for board eligibility in a specialty, combined program, or subspecialty should not be counted for purposes of the direct GME payment.

MedPAC also believes that eliminating the weighting factors could potentially increase Medicare's direct GME payments by approximately 5 to 8 percent. Therefore, MedPAC recommends that hospitals' per resident amounts (PRAs), which are used to calculate the direct GME payment, be reduced so that this change can be implemented, to the extent possible, in a budget-neutral manner. MedPAC explains that, although further research is needed, it appears that hospitals with substantial subspecialty training (that is, at least 15 percent of the resident mix) would likely see a small net increase in payments, despite the reduction to the PRAs, while hospitals that do not have subspecialty training would likely see a small decrease in payments.

In response to MedPAC's recommendation, we question MedPAC's estimate that eliminating the weighting factors could increase Medicare direct GME payments by only 5 to 8 percent. We believe that subspecialty training constitutes a significant portion of all GME programs, and, consequently, the elimination of the weighting factors could potentially increase payments by far more than 8 percent. If budget neutrality is to be maintained, this could mean that the attendant reductions to the PRAs could be much greater than MedPAC might assume. For those teaching hospitals that have substantial subspecialty training, there is no guarantee that the decreases in the PRAs will be offset by the increases in the direct GME payments due to the elimination of the weighting factors.

While the recommendation would remove the existing disincentive for training in subspecialties, we believe the reductions to the PRAs, whether they are minimal or more significant, will be far more detrimental to the smaller teaching hospitals that have little or no subspecialty training. Many of these hospitals provide care to beneficiaries in rural, underserved areas and in nonhospital settings. We believe these conditions may discourage the expansion of residency training in these areas. It may be inappropriate to limit the direct GME funding to such hospitals, considering Congress' initiatives to encourage residency training in rural, underserved areas and in nonhospital settings. We also are unclear as to how MedPAC would implement the proposed reduction to the PRAs. MedPAC did not explain in its recommendation how it would propose to do this.

VIII. Other Required Information

A. Requests for Data From the Public

In order to respond promptly to public requests for data related to the prospective payment system, we have established a process under which commenters can gain access to raw data on an expedited basis. Generally, the data are available in computer tape or cartridge format; however, some files are available on diskette as well as on the Internet at http://www.hcfa.gov/stats/pubfiles.html. Data files, and the cost for each, are listed below. Anyone wishing to purchase data tapes, cartridges, or diskettes should submit a written request along with a company check or money order (payable to HCFA–PUF) to cover the cost to the following address: Health Care Financing Administration, Public Use Files, Accounting Division, P.O. Box 7520, Baltimore, Maryland 21207–0520, (410) 786–3691. Files on the Internet may be downloaded without charge.

1. Expanded Modified MedPAR–Hospital (National)

The Medicare Provider Analysis and Review (MedPAR) file contains records for 100 percent of Medicare beneficiaries using hospital inpatient services in the United States. (The file is a Federal fiscal year file, that is, discharges occurring October 1 through September 30 of the requested year.) The records are stripped of most data elements that would permit identification of beneficiaries. The hospital is identified by the 6-position Medicare billing number. The file is available to persons qualifying under the terms of the Notice of Proposed New Routine Uses for an Existing System of Records published in the **Federal Register** on December 24, 1984 (49 FR 49941), and amended by the July 2, 1985 notice (50 FR 27361). The national file consists of approximately 11 million records. Under the requirements of these notices, an agreement for use of HCFA Beneficiary Encrypted Files must be signed by the purchaser before release of these data. For all files requiring a signed agreement, please write or call to obtain a blank agreement form before placing an order. Two versions of this file are created each year. They support the following:

- Notice of Proposed Rulemaking (NPRM) published in the **Federal Register**. This file, scheduled to be available by the end of April, is derived from the MedPAR file with a cutoff of 3 months after the end of the fiscal year (December file).
- Final Rule published in the **Federal Register**. The FY 2000 MedPAR file used for the FY 2002 final rule will be cut off 6 months after the end of the fiscal year (March file) and is scheduled to be available by the end of April.

Media: Tape/Cartridge
File Cost: $3,655.00 per fiscal year
Periods Available: FY 1988 through FY 2000

2. Expanded Modified MedPAR-Hospital (State)

The State MedPAR file contains records for 100 percent of Medicare beneficiaries using hospital inpatient services in a particular State. The records are stripped of most data elements that will permit identification of beneficiaries. The hospital is identified by the 6-position Medicare billing number. The file is available to persons qualifying under the terms of the Notice of Proposed New Routine Uses for an Existing System of Records published in the December 24, 1984 **Federal Register** notice, and amended by the July 2, 1985 notice. This file is a subset of the Expanded Modified MedPAR-Hospital (National) as described above. Under the requirements of these notices, an agreement for use of HCFA Beneficiary Encrypted Files must be signed by the purchaser before release of these data. Two versions of this file are created each year. They support the following:

- NPRM published in the **Federal Register**. This file, scheduled to be available by the end of April, is derived from the MedPAR file with a cutoff of 3 months after the end of the fiscal year (December file).
- Final Rule published in the **Federal Register**. The FY 2000 MedPAR file used for the FY 2002 final rule will be cut off 6 months after the end of the fiscal year (March file) and is scheduled to be available by the end of April.

Media: Tape/Cartridge
File Cost: $1,130.00 per State per year
Periods Available: FY 1988 through FY 2000

3. HCFA Wage Data

This file contains the hospital hours and salaries for FY 1998 used to create the proposed FY 2002 prospective payment system wage index. The file will be available by the beginning of February for the NPRM and the beginning of May for the final rule.

Processing year	Wage data year	PPS fiscal year
2001	1998	2002
2000	1997	2001
1999	1996	2000
1998	1995	1999
1997	1994	1998
1996	1993	1997
1995	1992	1996
1994	1991	1995
1993	1990	1994
1992	1989	1993
1991	1988	1992

These files support the following:

- NPRM published in the **Federal Register**.
- Final Rule published in the **Federal Register**.

Media: Diskette/most recent year on the Internet
File Cost: $165.00 per year
Periods Available: FY 2002 PPS Update

4. HCFA Hospital Wages Indices (Formerly: Urban and Rural Wage Index Values Only)

This file contains a history of all wage indices since October 1, 1983.

Media: Diskette/most recent year on the Internet
File Cost: $165.00 per year
Periods Available: FY 2002 PPS Update

5. PPS SSA/FIPS MSA State and County Crosswalk

This file contains a crosswalk of State and county codes used by the Social Security Administration (SSA) and the Federal Information Processing Standards (FIPS), county name, and a historical list of Metropolitan Statistical Area (MSA).

Media: Diskette/Internet
File Cost: $165.00 per year
Periods Available: FY 2002 PPS Update

6. Reclassified Hospitals New Wage Index (Formerly: Reclassified Hospitals by Provider Only)

This file contains a list of hospitals that were reclassified for the purpose of assigning a new wage index. Two versions of these files are created each year. They support the following:

- NPRM published in the **Federal Register**.
- Final Rule published in the **Federal Register**.

Media: Diskette/Internet
File Cost: $165.00 per year
Periods Available: FY 2002 PPS Update

7. PPS–IV to PPS–XII Minimum Data Set

The Minimum Data Set contains cost, statistical, financial, and other information from Medicare hospital cost reports. The data set includes only the most current cost report (as submitted, final settled, or reopened) submitted for a Medicare participating hospital by the Medicare fiscal intermediary to HCFA. This data set is updated at the end of each calendar quarter and is available on the last day of the following month.

Media: Tape/Cartridge
File Cost: $770.00 per year

	Periods beginning on or after	And before
PPS–IV	10/01/86	10/01/87
PPS–V	10/01/87	10/01/88
PPS–VI	10/01/88	10/01/89
PPS–VII	10/01/89	10/01/90
PPS–VIII	10/01/90	10/01/91
PPS–IX	10/01/91	10/01/92
PPS–X	10/01/92	10/01/93
PPS–XI	10/01/93	10/01/94
PPS–XII	10/01/94	10/01/95

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Note: The PPS–XIII, PPS–XIV, PPS–XV, and PPS–XVI Minimum Data Sets are part of the PPS–XIII, PPS–XIV, PPS–XV, and PPS XVI Hospital Data Set Files.

8. PPS–IX to PPS–XII Capital Data Set

The Capital Data Set contains selected data for capital-related costs, interest expense and related information and complete balance sheet data from the Medicare hospital cost report. The data set includes only the most current cost report (as submitted, final settled or reopened) submitted for a Medicare certified hospital by the Medicare fiscal intermediary to HCFA. This data set is updated at the end of each calendar quarter and is available on the last day of the following month.

Media: Tape/Cartridge
File Cost: $770.00 per year

	Periods beginning on or after	And before
PPS–IX	10/01/91	10/01/92
PPS–X	10/01/92	10/01/93
PPS–XI	10/01/93	10/01/94
PPS–XII	10/01/94	10/01/95

Note: The PPS–XIII, PPS–XIV, PPS–XV, and PPS–XVI Capital Data Sets are part of the PPS–XIII, PPS–XIV, PPS–XV, and PPS–XVI Hospital Data Set Files.

9. PPS–XIII to PPS–XVI Hospital Data Set

The file contains cost, statistical, financial, and other data from the Medicare Hospital Cost Report. The data set includes only the most current cost report (as submitted, final settled, or reopened) submitted for a Medicare-certified hospital by the Medicare fiscal intermediary to HCFA. The data set are updated at the end of each calendar quarter and is available on the last day of the following month.

Media: Diskette/Internet
File Cost: $2,500.00

	Periods beginning on or after	And before
PPS–XIII	10/01/95	10/01/96
PPS–XIV	10/01/96	10/01/97
PPS–XV	10/01/97	10/01/98
PPS–XVI	10/01/98	10/01/99

10. Provider-Specific File

This file is a component of the PRICER program used in the fiscal intermediary's system to compute DRG payments for individual bills. The file contains records for all prospective payment system eligible hospitals, including hospitals in waiver States, and data elements used in the prospective payment system recalibration processes and related activities. Beginning with December 1988, the individual records were enlarged to include pass-through per diems and other elements.

Media: Diskette/Internet
File Cost: $265.00
Periods Available: FY 2002 PPS Update

11. HCFA Medicare Case-Mix Index File

This file contains the Medicare case-mix index by provider number as published in each year's update of the Medicare hospital inpatient prospective payment system. The case-mix index is a measure of the costliness of cases treated by a hospital relative to the cost of the national average of all Medicare hospital cases, using DRG weights as a measure of relative costliness of cases. Two versions of this file are created each year. They support the following:

- NPRM published in the **Federal Register**.
- Final rule published in the **Federal Register**.

Media: Diskette/most recent year on Internet
Price: $165.00 per year/per file
Periods Available: FY 1985 through FY 2000

12. DRG Relative Weights (Formerly Table 5 DRG)

This file contains a listing of DRGs, DRG narrative description, relative weights, and geometric and arithmetic mean lengths of stay as published in the **Federal Register**. The hard copy image has been copied to diskette. There are two versions of this file as published in the **Federal Register:**

- NPRM.
- Final rule.

Media: Diskette/Internet
File Cost: $165.00
Periods Available: FY 2002 PPS Update

13. PPS Payment Impact File

This file contains data used to estimate payments under Medicare's hospital inpatient prospective payment systems for operating and capital-related costs. The data are taken from various sources, including the Provider-Specific File, Minimum Data Sets, and prior impact files. The data set is abstracted from an internal file used for the impact analysis of the changes to the prospective payment systems published in the **Federal Register**. This file is available for release 1 month after the proposed and final rules are published in the **Federal Register**.

Media: Diskette/Internet
File Cost: $165.00
Periods Available: FY 2002 PPS Update

14. AOR/BOR Tables

This file contains data used to develop the DRG relative weights. It contains mean, maximum, minimum, standard deviation, and coefficient of variation statistics by DRG for length of stay and standardized charges. The BOR tables are "Before Outliers Removed" and the AOR is "After Outliers Removed." (Outliers refers to statistical outliers, not payment outliers.) Two versions of this file are created each year. They support the following:

- NPRM published in the **Federal Register**.
- Final rule published in the **Federal Register**.

Media: Diskette/Internet
File Cost: $165.00
Periods Available: FY 2002 PPS Update

For further information concerning these data tapes, contact the HCFA Public Use Files Hotline at (410) 786–3691.

Commenters interested in obtaining or discussing any other data used in constructing this rule should contact Stephen Phillips at (410) 786–4531.

B. Information Collection Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comments on each of these issues for the sections that contain information collection requirements.

Proposed New § 412.230(e)(2)(ii) Criteria for an Individual Hospital Seeking Redesignation to Another Rural Area or an Urban Area; Proposed New § 412.232(d)(2)(ii) Criteria for All Hospitals in a Rural County Seeking Urban Redesignation; Proposed New § 412.235 Criteria for All Hospitals in a State Seeking a Statewide Wage Index; and Proposed Revised § 412.273 Withdrawing an Application or Terminating an Approved 3-Year Reclassification

Proposed §§ 412.230(e)(2)(ii) and 412.232(d)(2)(ii) specify that, for hospital-specific data for wage index changes for redesignations effective beginning FY 2003, the hospital must provide a 3-year average of its average hourly wages using data from the HCFA hospital wage survey used to construct the wage index in effect for prospective payment purposes. For other data, the hospital must provide a weighted 3-year average of the average hourly wage in the area in which the hospital is located and a weighted 3-year average of the average hourly wage in the area to which the hospital seeks reclassification. Proposed new § 412.235 specifies that in order for all prospective payment system hospitals in a State to use a statewide wage index, the hospitals as a group must submit an application to the MGCRB for a decision for reclassifications for wage index purposes. The proposed changes to § 412.273 would incorporate proposed revised procedures for hospitals that request withdraw of their wage index application or termination of their wage index reclassification. These proposed changes, discussed in detail in section IV.E. of this proposed rule, implement sections 304(a) and (b) of Public Law 106–554.

The information collection requirements associated with a hospital's application to the MGCRB for geographic reclassifications, including reclassifications for wage index purposes and the required submittal of wage data, that are codified in Part 412 are currently approved by OMB under OMB Approval Number 0938–0573, with an expiration date of September 30, 2002.

Proposed § 412.348(g)(9) Exception Payments

As discussed in section V. of this proposed rule, Medicare makes special exceptions payments for capital-related costs through the 10th year beyond the end of the capital prospective payment system transition period for eligible hospitals that complete a project that meets certain requirements specified in § 412.348. In order to assist our fiscal intermediaries in determining the end of the 10-year period in which an eligible hospital will no longer be entitled to receive special exception payments, we are proposing to add a new § 412.348(g)(9) to require that hospitals eligible for special exception payments under § 412.348(g) submit documentation to the intermediary indicating the completion date of their project (the date the project was put in use for patient care) that meets the project need and project size requirements outlined in §§ 412.348(g)(2) through (g)(5). We are proposing that, in order for an eligible hospital to receive special exception payments, this documentation would have to be submitted in writing to the intermediary by the later of October 1, 2001, or within 3 months of the end of the hospital's last cost reporting period beginning before October 1, 2001, during which a qualifying project was completed.

We estimate that the information collection requirement of preparing and submitting the documentation on a hospital's capital project would impose a burden of approximately 1 hour for approximately 30 hospitals.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following addresses:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850, Attn: John Burke HCFA–1158–P; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer.

These new information collection and recordkeeping requirements have been submitted to the Office of Management and Budget (OMB) for review under the authority of PRA. We have submitted a copy of the proposed rule to OMB for its review of the information collection requirements. These requirements will not be effective until they have been approved by OMB.

C. Public Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments concerning the provisions of this proposed rule that we receive by the date and time specified in the **DATES** section of this preamble and respond to those comments in the preamble to that rule. We emphasize that section 1886(e)(5) of the Act requires the final rule for FY 2002 to be published by August 1, 2001, and we will consider only those comments that deal specifically with the matters discussed in this proposed rule.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 485

Grant programs-health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 486

Health professions, Medicare, Organ procurement, X-rays.

42 CFR Chapter IV is proposed to be amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. Part 405 is amended as set forth below:

1. The authority citation for Part 405 continues to read as follows:

Authority: Secs. 1102, 1861, 1862(a), 1871, 1874, 1881, and 1886(k) of the Social Security Act (42 U.S.C. 1302, 1395x, 1395y(a), 1395hh, 1395kk, 1395rr, and 1395ww(k), and sec. 353 of the Public Health Service Act (42 U.S.C. 263a).

2. In § 405.2468, paragraph (f)(6)(ii) is republished and paragraph (f)(6)(ii)(D) is revised to read as follows.

§ 405.2468 Allowable costs.

* * * * * *

(f) *Graduate medical education.*

* * *

(6) * * *

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(ii) The following costs are not allowable graduate medical education costs:

* * * * *

(D) The costs associated with activities described in § 413.85(h) of this chapter.

* * * * *

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

B. Part 412 is amended as follows:

1. The authority citation for Part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 412.2 is amended as follows:

a. The introductory text of paragraph (e) is republished.

b. Paragraph (e)(4) is revised.

c. The introductory text of paragraph (f) is republished.

d. A new paragraph (f)(9) is added.

§ 412.2 Basis of payment.

* * * * *

(e) *Excluded costs.* The following inpatient hospital costs are excluded from the prospective payment amounts and are paid on a reasonable cost basis:

* * * * *

(4) The acquisition costs of hearts, kidneys, livers, lungs, pancreas, and intestines (or multivisceral organs) incurred by approved transplantation centers.

* * * * *

(f) *Additional payments to hospitals.* In addition to payments based on the prospective payment system rates for inpatient operating and inpatient capital-related costs, hospitals receive payments for the following:

* * * * *

(9) Special additional payment for certain new technology as specified in § 412.87 and 412.88 of Subpart F.

3. Section 412.23 is amended by adding a new paragraph (i) to read as follows:

§ 412.23 Excluded hospitals: Classifications.

* * * * *

(i) *Changes in classification of hospitals.* For purposes of exclusions from the prospective payment system, the classification of a hospital is effective for the hospital's entire cost reporting period. Any changes in the classification of a hospital are made only at the start of a cost reporting period.

4. Section 412.25 is amended by adding a new paragraph (f) to read as follows:

§ 412.25 Excluded hospital units: Common requirements.

* * * * *

(f) *Changes in classification of hospital units.* For purposes of exclusions from the prospective payment system under this section, the classification of a hospital unit is effective for the unit's entire cost reporting period. Any changes in the classification of a hospital unit is made only at the start of a cost reporting period.

5. Section 412.63 is amended by revising paragraphs (t) and (u) to read as follows:

§ 412.63 Federal rates for inpatient operating costs for fiscal years after Federal fiscal year 1984.

* * * * *

(t) *Applicable percentage change for fiscal years 2002 and 2003.* The applicable percentage change for fiscal years 2002 and 2003 is the percentage increase in the market basket index for prospective payment hospitals (as defined in § 413.40(a) of this subchapter) minus 0.55 percentage points for hospitals in all areas.

(u) *Applicable percentage change for fiscal year 2004 and for subsequent fiscal years.* The applicable percentage change for fiscal year 2004 and for subsequent years is the percentage increase in the market basket index for prospective payment hospitals (as defined in § 413.40(a) of this subchapter) for hospitals in all areas.

* * * * *

6. The title of Subpart F is revised to read as follows:

Subpart F—Payment for Outlier Cases and Special Treatment Payment for New Technology

7. A new undesignated center heading is added after the Subpart F heading and before § 412.80; the section heading of § 412.80 is revised; and a new paragraph (a)(3) is added to read as follows:

Payment for Outlier Cases

§ 412.80 Outlier cases: General provisions.

(a) *Basic rule.*

* * * * *

(3) *Discharges occurring on or after October 1, 2001.* For discharges occurring on or after October 1, 2001, except as provided in paragraph (b) of this section concerning transfers, HCFA provides for additional payment, beyond standard DRG payments and beyond additional payments for new medical services or technology specified in §§ 412.87 and 412.88, to a hospital for covered inpatient hospital services furnished to a Medicare beneficiary if the hospital's charges for covered services, adjusted to operating costs and capital costs by applying cost-to-charge ratios as described in § 412.84(h), exceed the DRG payment for the case (plus payments for indirect costs of graduate medical education (§ 412.105), payments for serving a disproportionate share of low-income patients (§ 412.106), and additional payments for new medical services or technologies) plus a fixed dollar amount (adjusted for geographic variation in costs) as specified by HCFA.

* * * * *

8. A new undesignated center heading and §§ 412.87 and 412.88 are added immediately following § 412.86, to read as follows:

Additional Special Payment for Certain New Technology

§ 412.87 Additional payment for new medical services and technologies: General provisions.

(a) *Basis.* Sections 412.87 and 412.88 implement sections 1886(d)(5)(K) and 1886(d)(5)(L) of the Act, which authorizes the Secretary to establish a mechanism to recognize the costs of new medical services and technologies under the hospital inpatient prospective payment system.

(b) *Eligibility criteria.* For discharges occurring on or after October 1, 2001, HCFA provides for additional payments (as specified in § 412.88) beyond the standard DRG payments and outlier payments to a hospital for discharges involving covered inpatient hospital services that are new medical services and technologies, if the following conditions are met:

(1) A new medical service or technology represents an advance that substantially improves, relative to technologies previously available, the diagnosis or treatment of Medicare beneficiaries. HCFA will determine whether a new medical service or technology meets this criterion and announce the results of its determinations in the **Federal Register** as a part of its annual updates and changes to the hospital inpatient prospective payment system.

(2) A medical service or technology may be considered new within 2 or 3 years after it becomes available on the market (depending on when a new code is assigned and data on the new service or technology become available for DRG recalibration). After HCFA has recalibrated the DRGs, based on available data, to reflect the costs of an otherwise new medical service or technology, the medical service or technology will no longer be considered "new" under the criterion of this section.

(3) The DRG prospective payment rate otherwise applicable to discharges involving the medical service or technology is determined to be inadequate, based on application of a threshold amount to estimated costs incurred with respect to such discharges. To determine whether the payment would be adequate, HCFA will determine whether the costs of the cases involving a new medical service or technology will exceed a threshold amount set at one standard deviation beyond the mean standardized charge for all cases in the DRG to which the new medical service or technology is assigned (or the case-weighted average of all relevant DRGs if the new medical service or technology occurs in many different DRGs). Standardized charges reflect the actual charges of a case adjusted by the prospective payment system payment factors applicable to an individual hospital, such as the wage index, the indirect medical education adjustment factor, and the disproportionate share adjustment factor.

§ 412.88 Additional payment for new medical service or technology.

(a) For discharges involving new medical services or technologies that meet the criteria specified in § 412.87, Medicare payment will be:

(1) The standard DRG payment; plus

(2) If the costs of the discharge (determined by applying cost-to-charge ratios as described in § 412.84(h)) exceed the standard DRG payment, an additional amount equal to the lesser of—

(i) 50 percent of the costs of the new medical service or technology; or

(ii) 50 percent of the amount by which the costs of the case exceed the standard DRG payment.

(b) Unless a discharge case qualifies for outlier payment under § 412.84, Medicare will not pay any additional amount beyond the DRG payment plus 50 percent of the estimated costs of the new medical service or technology.

9. Section 412.92 is amended as follows:

a. Paragraph (b)(1)(iii)(A) is amended by revising the phrase "50 mile radius" to read "35 mile radius."

b. Paragraph (c)(1) is revised.

§ 412.92 Special treatment: Sole community hospitals.

* * * * *

(c) *Terminology.* * * *

(1) The term *miles* means the shortest distance in miles measured over improved roads. An improved road for this purpose is any road that is maintained by a local, State, or Federal government entity and is available for use by the general public. An improved road includes the paved surface up to the front entrance of the hospital.

* * * * *

10. Section 412.105 is amended as follows:

a. The introductory text of paragraph (a) is republished.

b. Paragraph (a)(1) is revised.

c. Paragraph (d)(3)(vi) is revised.

d. A new paragraph (d)(3)(vii) is added.

e. Paragraph (f)(1)(ii)(C) is revised.

f. Paragraph (f)(1)(iii) is revised.

g. Paragraph (f)(1)(v) is amended by adding four sentences at the end.

h. Paragraph (f)(1)(ix) is revised.

§ 412.105 Special treatment: Hospitals that incur indirect costs for graduate medical education programs.

* * * * *

(a) *Basic data.* HCFA determines the following for each hospital:

(1) The hospital's ratio of full-time equivalent residents, except as limited under paragraph (f) of this section, to the number of beds (as determined under paragraph (b) of this section). Except for the special circumstances for affiliated groups and new programs described in paragraphs (f)(1)(vi) and (f)(1)(vii) of this section, for a hospital's cost reporting periods beginning on or after October 1, 1997, this ratio may not exceed the ratio for the hospital's most recent prior cost reporting period after accounting for the cap on the number of full-time equivalent residents as described in paragraph (f)(1)(iv) of this section. The exception for new programs described in paragraph (f)(1)(vii) of this section applies for the period of years equal to the minimum accredited length for that type of program.

* * * * *

(d) *Determination of education adjustment factor.*

* * * * *

(3) * * *

(vi) For discharges occurring during fiscal year 2002, 1.6.

(vii) For discharges occurring on or after October 1, 2002, 1.35.

* * * * *

(f) *Determining the total number of full-time equivalent residents for cost reporting periods beginning on or after July 1, 1991.*

(1) * * *

(ii) * * *

(C) Effective for discharges occurring on or after October 1, 1997, the time spent by a resident in a non-hospital setting in patient care activities under an approved medical residency training program is counted towards the determination of full-time equivalency if the criteria set forth in § 413.86(f)(3) or § 413.86 (f)(4), as applicable, are met.

(iii) (A) Full-time equivalent status is based on the total time necessary to fill a residency slot. No individual may be counted as more than one full-time equivalent. If a resident is assigned to more than one hospital, the resident counts as a partial full-time equivalent based on the proportion of time worked in any of the areas of the hospital listed in paragraph (f)(1)(ii) of this section, to the total time worked by the resident. A part-time resident or one working in an area of the hospital other than those listed under paragraph (f)(1)(ii) of this section (such as a freestanding family practice center or an excluded hospital unit) would be counted as a partial full-time equivalent based on the proportion of time assigned to an area of the hospital listed in paragraph (f)(1)(ii) of this section, compared to the total time necessary to fill a full-time residency slot.

(B) The time spent by a resident in research that is not associated with the treatment or diagnosis of a particular patient of the hospital is not countable.

* * * * *

(v) * * * If a hospital qualified for an adjustment to the limit established under paragraph (f)(1)(iv) of this section for new medical residency programs created under paragraph (f)(1)(vii) of this section, the count of residents participating in new medical residency training programs above the number included in the hospital's FTE count for the cost reporting period ending during calendar year 1996 is added after applying the averaging rules in this paragraph for a period of years. Residents participating in new medical residency training programs are included in the hospital's FTE count before applying the averaging rules after the period of years has expired. For purposes of this paragraph, the period of years equals the minimum accredited length for the type of program. The period of years begins when the first resident begins training.

* * * * *

(ix) A hospital may receive a temporary adjustment to its full-time equivalent cap to reflect residents added because of another hospital's closure if the hospital meets the criteria specified in §§ 413.86(g)(8)(i) and (g)(8)(ii) of this

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subchapter. If a hospital that closes its residency training program agrees to temporarily reduce its FTE cap according to the criteria specified in §§ 413.86(g)(8)(i) and (g)(8)(iii)(B) of this subchapter, another hospital(s) may receive a temporary adjustment to its FTE cap to reflect residents added because of the closure of the residency training program if the criteria specified in §§ 413.86(g)(8)(i) and (g)(8)(iii)(A) of this subchapter are met.

* * * * *

11. Section 412.106 is amended by revising the heading of paragraph (e) and paragraph (e)(5) to read as follows:

§ 412.106 Special treatment: Hospitals that serve a disproportionate share of low-income patients.

* * * * *

(e) *Reduction in payments beginning FY 1998.* * * *

(5) For FY 2002, 3 percent.

* * * * *

§ 412.113 [Amended]

12. In § 412.113(c), including the heading for paragraph (c), the term "hospital", wherever it appears, is revised to read "hospital or CAH" (16 times).

13. Section 412.230 is amended by revising paragraph (e)(2) to read as follows:

§ 412.230 Criteria for an individual hospital seeking redesignation to another rural area or an urban area.

* * * * *

(e) *Use of urban or other rural area's wage index.*

* * * * *

(2) *Appropriate wage data.* For a wage index change, the hospital must submit appropriate wage data as follows:

(i) For redesignations effective through FY 2002:

(A) For hospital-specific data, the hospital must provide data from the HCFA hospital wage survey used to construct the wage index in effect for prospective payment purposes during the fiscal year prior to the fiscal year for which the hospital requests reclassification.

(B) For data for other hospitals, the hospital must provide data concerning the average hourly wage in the area in which the hospital is located and the average hourly wage in the area to which the hospital seeks reclassification. The wage data are taken from the HCFA hospital wage survey used to construct the wage index in effect for prospective payment purposes during the fiscal year prior to the fiscal year for which the hospital requests reclassification.

(C) If the hospital is requesting reclassification under paragraph (e)(1)(iv)(B) of this section, the hospital must provide occupational-mix data to demonstrate the average occupational mix for each employment category in the area to which it seeks reclassification. Occupational-mix data can be obtained from surveys conducted by the American Hospital Association.

(ii) For redesignations effective beginning FY 2003:

(A) For hospital-specific data, the hospital must provide a weighted 3-year average of its average hourly wages using data from the HCFA hospital wage survey used to construct the wage index in effect for prospective payment purposes.

(B) For data for other hospitals, the hospital must provide a weighted 3-year average of the average hourly wage in the area in which the hospital is located and a weighted 3-year average of the average hourly wage in the area to which the hospital seeks reclassification. The wage data are taken from the HCFA hospital wage survey used to construct the wage index in effect for prospective payment purposes.

* * * * *

14. Section 412.232 is amended by revising paragraph (d)(2) to read as follows:

§ 412.232 Criteria for all hospitals in a rural county seeking urban redesignation.

* * * * *

(d) *Appropriate data.*

* * * * *

(2) *Appropriate wage data.* The hospitals must submit appropriate data as follows:

(i) For redesignations effective through FY 2002:

(A) For hospital-specific data, the hospitals must provide data from the HCFA wage survey used to construct the wage index in effect for prospective payment purposes during the fiscal year prior to the fiscal year for which the hospitals request reclassification.

(B) For data for other hospitals, the hospitals must provide the following:

(*1*) The average hourly wage in the adjacent area, which is taken from the HCFA hospital wage survey used to construct the wage index in effect for prospective payment purposes during the fiscal year prior to the fiscal year for which the hospitals request reclassification.

(*2*) Occupational-mix data to demonstrate the average occupational mix for each employment category in the adjacent area. Occupational-mix data can be obtained from surveys conducted by the American Hospital Association.

(ii) For redesignations effective beginning FY 2003:

(A) For hospital-specific data, the hospital must provide a weighted 3-year average of its average hourly wages using data from the HCFA hospital wage survey used to construct the wage index in effect for prospective payment purposes.

(B) For data for other hospitals, the hospital must provide a weighted 3-year average of the average hourly wage in the area in which the hospital is located and a weighted 3-year average of the average hourly wage in the area to which the hospital seeks reclassification. The wage data are taken from the HCFA hospital wage survey used to construct the wage index in effect for prospective payment purposes.

15. Section 412.235 is added to read as follows:

§ 412.235 Criteria for all hospitals in a State seeking a statewide wage index redesignation.

(a) *General criteria.* For all prospective payment system hospitals in a State to be redesignated to a statewide wage index, the following conditions must be met:

(1) All prospective payment system hospitals in the State must apply as a group for reclassification to a statewide wage index through a signed single application.

(2) All prospective payment system hospitals in the State must agree to the reclassification to a statewide wage index through a signed affidavit on the application.

(3) All prospective payment system hospitals in the State must agree, through an affidavit, to withdrawal of an application or to termination of an approved statewide wage index reclassification.

(4) All hospitals in the State must waive their rights to any wage index classification that they would otherwise receive absent the statewide wage index classification, including a wage index that any of the hospitals might have received through individual geographic reclassification.

(5) New hospitals that open within the State prior to the deadline for submitting an application for a statewide wage index reclassification (September 1), regardless of whether a group application has already been filed, must agree to the use of the statewide wage index as part of the group application. New hospitals that open within the State after the deadline for submitting a statewide wage index reclassification application or during the approved reclassification period will be considered a party to the statewide wage index application and reclassification.

(b) *Effect on payments.* (1) An individual hospital within the State may receive a wage index that could be higher or lower under the statewide wage index reclassification in comparison to its otherwise redesignated wage index.

(2) Any new prospective payment system hospital that opens in the State during the effective period of an approved statewide wage index reclassification will be designated to receive the statewide wage index for the duration of that period.

(3) A hospital located in an area outside a State in which all participating hospitals have received an approved statewide wage index reclassification may apply to be reclassified into the statewide wage index area. In that case, such a hospital that is reclassified into a statewide wage index area will receive a wage index calculated based on the statewide wage index reclassification.

(c) *Terms of the decision.* (1) A decision by the MGCRB on an application for a statewide wage index reclassification will be effective for 3 years beginning with discharges occurring on the first day (October 1) of the second Federal fiscal year following the Federal fiscal year in which the hospitals filed a complete application.

(2) The procedures and timeframes specified in § 412.273 apply to withdrawals of applications for redesignation to a statewide wage index and terminations of approved statewide wage index reclassifications, including the requirement that, to withdraw an application or terminate an approved reclassification, the request must be made in writing by all hospitals that are party to the application, except hospitals reclassified into the State for purposes of receiving the statewide wage index.

16. Section 412.273 is amended as follows:

a. The title of the section is revised.

b. Paragraphs (b) and (c) are redesignated as paragraphs (c) and (d), respectively.

c. A new paragraph (b) is added.

d. Redesignated paragraph (c) is revised.

§ 412.273 Withdrawing an application or terminating an approved 3-year reclassification.

* * * * *

(b) *Request for termination of approved 3-year wage index reclassifications.*

(1) A hospital, or a group of hospitals, that has been issued a decision on its application for a 3-year reclassification for wage index purposes only or for redesignation to a statewide wage index and has not withdrawn that application under the procedures specified in paragraph (a) of this section may request termination of its approved 3-year wage index reclassification under the following conditions:

(i) The request to terminate must be received by the MGCRB within 45 days of the publication of the annual notice of proposed rulemaking concerning changes to the inpatient hospital prospective payment system and proposed payment rates for the fiscal year for which the termination is to apply.

(ii) A request to terminate a 3-year reclassification will be effective only for the full fiscal year(s) remaining in the 3-year period at the time the request is received. Requests for terminations for part of a fiscal year will not be considered.

(2) *Reapplication within the approved 3-year period.*

(i) If a hospital elects to withdraw its wage index application after the MGCRB has issued its decision, it may terminate its withdrawal in a subsequent fiscal year and request the MGCRB to reinstate its wage index reclassification for the remaining fiscal year(s) of the 3-year period.

(ii) A hospital may apply for reclassification for purposes of the wage index to a different area (that is, an area different from the one to which it was originally reclassified for the 3-year period). If the application is approved, the reclassification will be effective for 3 years.

(c) *Written request only.* A request to withdraw an application or terminate an approved reclassification must be made in writing to the MGCRB by all hospitals that are party to the application or reclassification.

* * * * *

17. Section 412.274 is amended by revising paragraph (b) to read as follows:

§ 412.274 Scope and effect of an MGCRB decision.

* * * * *

(b) *Effective date and term of the decision.* (1) A standardized amount classification change is effective for one year beginning with discharges occurring on the first day (October 1) of the second Federal fiscal year following the Federal fiscal year in which the complete application is filed and ending effective at the end of that Federal fiscal year (the end of the next September 30).

(2) A wage index classification change is effective for 3 years beginning with discharges occurring on the first day (October 1) of the second Federal fiscal year in which the complete application is filed.

* * * * *

18. Section 412.348 is amended by revising paragraph (g)(6) and adding a new paragraph (g)(9) to read as follows:

§ 412.348 Exception payments.

* * * * *

(g) *Special exceptions process.* * * *

(6) *Minimum payment level.*

(i) The minimum payment level for qualifying hospitals will be 70 percent.

(ii) HCFA will adjust the minimum payment level in one percentage point increments as necessary to satisfy the requirement specified in paragraph (h) of this section that total estimated payments under the exceptions process not exceed 10 percent of the total estimated capital prospective payment system payments for the same fiscal year.

* * * * *

(9) *Notification requirement.* Eligible hospitals must submit documentation to the intermediary indicating the completion date of a project that meets the project need requirement under paragraph (g)(2) of this section, the project size requirement under paragraph (g)(5) of this section, and, in the case of certain urban hospitals, an excess capacity test under paragraph (g)(4) of this section, by the later of October 1, 2001 or within 3 months of the end of the hospital's last cost reporting period beginning before October 1, 2001, during which a qualifying project was completed.

* * * * *

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

C. Part 413 is amended as follows:

1. The authority citation for Part 413 is revised to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395hh, 1395rr, 1395tt, and 1395ww).

2. Section 413.70 is amended as follows:

a. Paragraph (a)(1) introductory text is republished.

b. A new paragraph (a)(1)(iv) is added.

c. Paragraph (a)(2) is revised.

d. A new paragraph (a)(3) is added.

e. Paragraph (b)(1) is revised.

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f. Paragraph (b)(2)(i)(C) is revised.

g. New paragraphs (b)(4), (b)(5) and (b)(6) are added.

§ 413.70 Payment for services of a CAH.

(a) *Payment for inpatient services furnished by a CAH.*

(1) Payment for inpatient services of a CAH is the reasonable costs of the CAH in providing CAH services to its inpatients, as determined in accordance with section 1861(v)(1)(A) of the Act and the applicable principles of cost reimbursement in this part and in Part 415 of this chapter, except that the following payment principles are excluded when determining payment for CAH inpatient services:

* * * * *

(iv) The payment window provisions for preadmission services, specified in § 412.2(c)(5) of this subchapter and § 413.40(c)(2).

(2) Except as specified in paragraph (a)(3) of this section, payment to a CAH for inpatient services does not include any costs of physician services or other professional services to CAH inpatients, and is subject to the Part A hospital deductible and coinsurance, as determined under subpart G of part 409 of this chapter.

(3) If a CAH meets the criteria in § 412.113(c) of this subchapter for pass-through of costs of anesthesia services furnished by qualified nonphysician anesthetists employed by the CAH or obtained under arrangements, payment to the CAH for the costs of those services is made in accordance with § 412.113(c).

(b) *Payment for outpatient services furnished by CAH.*—(1) *General.* (i) Unless the CAH elects to be paid for services to its outpatients under the method specified in paragraph (b)(3) of this section, the amount of payment for outpatient services of a CAH is the amount determined under paragraph (b)(2) of this section.

(ii) Except as specified in paragraph (b)(6) of this section, payment to a CAH for outpatient services does not include any costs of physician services or other professional services to CAH outpatients.

* * * * *

(2) *Reasonable costs for facility services.*

(i) * * *

(C) Any type of reduction to operating or capital costs under § 413.124 or § 413.130(j).

* * * * *

(4) *Costs of emergency room on-call physicians.* (i) Effective for cost reporting periods beginning on or after October 1, 2001, the reasonable costs of outpatient CAH services under paragraph (b) of this section may include amounts for reasonable compensation and related costs for an emergency room physician who is on call but who is not present on the premises of the CAH involved, is not otherwise furnishing physicians' services, and is not on call at any other provider or facility.

(ii) For purposes of this paragraph (b)(4)—

(A) "Amounts for reasonable compensation and related costs" means all allowable costs of compensating emergency room physicians who are on call to the extent the costs are found to be reasonable under the rules specified in paragraph (b)(2) of this section and the applicable sections of Part 413. Costs of compensating emergency room physicians are allowable only if the costs are incurred under written contracts that require the physician to come to the CAH when the physician's presence is medically required.

(B) An "emergency room physician who is on call' means a doctor of medicine or osteopathy with training or experience in emergency care who is immediately available by telephone or radio contact, and is available on site within the timeframes specified in § 485.618(d) of this chapter.

(5) *Costs of ambulance services.* (i) Effective for services furnished on or after December 21, 2000, payment for ambulance services furnished by a CAH or an entity that is owned and operated by a CAH is the reasonable costs of the CAH or the entity in furnishing those services, but only if the CAH or the entity is the only provider or supplier of ambulance services located within a 35-mile drive of the CAH or the entity.

(ii) For purposes of paragraph (b)(5) of this section, the distance between the CAH or the entity and the other provider or supplier of ambulance services will be determined as the shortest distance in miles measured over improved roads between the CAH or the entity and the site at which the vehicles of the closest provider or supplier of ambulance services are garaged. An improved road for this purpose is any road that is maintained by a local, State, or Federal government entity and is available for use by the general public. An improved road will be considered to include the paved surface up to the front entrance of the hospital and the front entrance of the garage.

(6) If a CAH meets the criteria in § 412.113(c) of this subchapter for pass-through of costs of anesthesia services furnished by nonphysician anesthetists employed by the CAH or obtained under arrangement, payment to the CAH for the costs of those services is made in accordance with § 412.113(c).

* * * * *

3. Section 413.86 is amended as follows:

a. Paragraph (e)(4)(ii)(C)(1) is revised.

b. Paragraph (e)(5)(iv) is removed.

c. Paragraph (g)(4) is revised.

d. Paragraph (g)(5) is revised.

e. Paragraph (g)(8) is revised.

§ 413.86 Direct graduate medical education payments.

* * * * *

(e) *Determining per residents amounts for the base period.* * * *

(4) * * *

(ii) * * *

(C) *Determining necessary revisions to the per resident amount.* * * *

(*1*) Floor. (*i*) For cost reporting periods beginning on or after October 1, 2000, and before October 1, 2001, if the hospital's per resident amount would otherwise be less than 70 percent of the locality-adjusted national average per resident amount for FY 2001 (as determined under paragraph (e)(4)(ii)(B) of this section), the per resident amount is equal to 70 percent of the locality-adjusted national average per resident amount for FY 2001.

(*ii*) For cost reporting periods beginning on or after October 1, 2001, and before October 1, 2002, if the hospital's per resident amount would otherwise be less than 85 percent of the locality-adjusted national average per resident amount for FY 2002 (as determined under paragraph (e)(4)(ii)(B) of this section), the per resident amount is equal to 85 percent of the locality-adjusted national average per resident amount for FY 2002.

(*iii*) For subsequent cost reporting periods beginning on or after October 1, 2002, the hospital's per resident amount is updated using the methodology specified under paragraph (e)(3)(i) of this section.

* * * * *

(g) *Determining the weighted number of FTE residents.* * * *

(4) For purposes of determining direct graduate medical education payments—

(i) For cost reporting periods beginning on or after October 1, 1997, a hospital's unweighted FTE count for residents in allopathic and osteopathic medicine may not exceed the hospital's unweighted FTE count (or, effective for cost reporting periods beginning on or after April 1, 2000, 130 percent of the unweighted FTE count for a hospital located in a rural area) for these residents for the most recent cost reporting period ending on or before December 31, 1996.

(ii) If a hospital's number of FTE residents in a cost reporting period beginning on or after October 1, 1997, and before October 1, 2001, exceeds the limit described in this paragraph (g), the hospital's total weighted FTE count (before application of the limit) will be reduced in the same proportion that the number of FTE residents for that cost reporting period exceeds the number of FTE residents for the most recent cost reporting period ending on or before December 31, 1996.

(iii) If the hospital's number of FTE residents in a cost reporting period beginning on or after October 1, 2001 exceeds the limit described in this paragraph (g), the hospital's weighted FTE count (before application of the limit), for primary care and obstetrics and gynecology residents and nonprimary care residents, respectively, will be reduced in the same proportion that the number of FTE residents for that cost reporting period exceeds the number of FTE residents for the most recent cost reporting period ending on or before December 31, 1996.

(iv) Hospitals that are part of the same affiliated group may elect to apply the limit on an aggregate basis.

(v) The fiscal intermediary may make appropriate modifications to apply the provisions of this paragraph (g)(4) based on the equivalent of a 12-month cost reporting period.

(5) For purposes of determining direct graduate medical education payment—

(i) For the hospital's first cost reporting period beginning on or after October 1, 1997, the hospital's weighted FTE count is equal to the average of the weighted FTE count for the payment year cost reporting period and the preceding cost reporting period.

(ii) For cost reporting periods beginning on or after October 1, 1998, and before October 1, 2001, the hospital's weighted FTE count is equal to the average of the weighted FTE count for the payment year cost reporting period and the preceding two cost reporting periods.

(iii) For cost reporting periods beginning on or after October 1, 2001, the hospital's weighted FTE count for primary care and obstetrics and gynecology residents is equal to the average of the weighted primary care and obstetrics and gynecology counts for the payment year cost reporting period and the preceding two cost reporting periods, and the hospital's weighted FTE count for nonprimary care residents is equal to the average of the weighted nonprimary care FTE counts for the payment year cost reporting period and the preceding two cost reporting periods.

(iv) The fiscal intermediary may make appropriate modifications to apply the provisions of this paragraph (g)(5) based on the equivalent of 12-month cost reporting periods.

(v) If a hospital qualifies for an adjustment to the limit established under paragraph (g)(4) of this section for new medical residency programs created under paragraph (g)(6) of this section, the count of the residents participating in new medical residency training programs above the number included in the hospital's FTE count for the cost reporting period ending during calendar year 1996 is added after applying the averaging rules in this paragraph (g)(5) for a period of years. Residents participating in new medical residency training programs are included in the hospital's FTE count before applying the averaging rules after the period of years has expired. For purposes of this paragraph (g)(5), the period of years equals the minimum accredited length for the type of program. The period of years begins when the first resident begins training.

* * * * *

(8) *Closure of hospital or hospital residency program.*

(i) *Definitions.* For purposes of this paragraph (g)(8)—

(A) "Closure of a hospital" means the hospital terminates its Medicare agreement under the provisions of § 489.52 of this chapter.

(B) "Closure of a hospital residency training program" means the hospital ceases to offer training for residents in a particular approved medical residency training program.

(ii) *Closure of a hospital.* A hospital may receive a temporary adjustment to its FTE cap to reflect residents added because of another hospital's closure if the hospital meets the following criteria:

(A) The hospital is training additional residents from a hospital that closed on or after July 1, 1996.

(B) No later than 60 days after the hospital begins to train the residents, the hospital submits a request to its fiscal intermediary for a temporary adjustment to its FTE cap, documents that the hospital is eligible for this temporary adjustment by identifying the residents who have come from the closed hospital and have caused the hospital to exceed its cap, and specifies the length of time the adjustment is needed.

(iii) *Closure of a hospital's residency training program.* If a hospital that closes its residency training program voluntarily agrees to temporarily reduce its FTE cap according to the criteria specified in paragraph (g)(8)(iii)(B) of this section, another hospital(s) may receive a temporary adjustment to its FTE cap to reflect residents added because of the closure of the residency training program if the criteria specified in paragraph (g)(8)(iii)(A) of this section are met.

(A) *Receiving hospital(s).* A hospital may receive a temporary adjustment to its FTE cap to reflect residents added because of the closure of another hospital's residency training program if—

(*1*) The hospital is training additional residents from the residency training program of a hospital that closed a program; and

(*2*) No later than 60 days after the hospital begins to train the residents, the hospital submits to its fiscal intermediary a request for a temporary adjustment to its FTE cap, documents that it is eligible for this temporary adjustment by identifying the residents who have come from another hospital's closed program and have caused the hospital to exceed its cap, specifies the length of time the adjustment is needed, and submits to its fiscal intermediary a copy of the FTE reduction statement by the hospital that closed its program, as specified in paragraph (g)(8)(iii)(B)(*2*) of this section.

(B) *Hospital that closed its program(s).* A hospital that agrees to train residents who have been displaced by the closure of another hospital's program may receive a temporary FTE cap adjustment only if the hospital with the closed program—

(*1*) Temporarily reduces its FTE cap based on the FTE residents in each program year training in the program at the time of the program's closure. This yearly reduction in the FTE cap will be determined based on the number of those residents who would have been training in the program during that year had the program not closed; and

(*2*) No later than 60 days after the residents who were in the closed program begin training at another hospital, submit to its fiscal intermediary a statement signed and dated by its representative that specifies that it agrees to the temporary reduction in its FTE cap to allow the hospital training the displaced residents to obtain a temporary adjustment to its cap; identifies the residents who were in training at the time of the program's closure; identifies the hospitals to which the residents are transferring once the program closes; and specifies the reduction for the applicable program years.

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PART 485—CONDITIONS OF PARTICIPATION: SPECIALIZED PROVIDERS

D. Part 485 is amended as follows:

1. The authority citation for part 485 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Act (42 U.S.C. 1302 and 1395hh).

2. Section 485.610 is amended by revising paragraph (b) and adding a new paragraph (c) to read as follows:

§ 485.610 Condition of participation: Status and location.

* * * * *

(b) *Standard: Location in a rural area or treatment as rural.* The CAH meets the requirements of either paragraph (b)(1) or (b)(2) of this section.

(1) The CAH meets the following requirements:

(i) The CAH is located outside any area that is a Metropolitan Statistical Area, as defined by the Office of Management and Budget, or that has been recognized as urban under § 412.62(f) of this chapter;

(ii) The CAH is not deemed to be located in an urban area under § 412.63(b) of this chapter; and

(iii) The CAH has not been classified as an urban hospital for purposes of the standardized payment amount by HCFA or the Medicare Geographic Classification Review Board under § 412.230(e) of this chapter, and is not among a group of hospitals that have been redesignated to an adjacent urban area under § 412.232 of this chapter.

(2) The CAH is located within a Metropolitan Statistical Area, as defined by the Office of Management and Budget, but is being treated as being located in a rural area in accordance with § 412.103 of this chapter.

(c) *Standard: Location relative to other facilities or necessary provider certification.* The CAH is located more than a 35-mile drive (or, in the case of mountainous terrain or in areas with only secondary roads available, a 15-mile drive) from a hospital or another CAH, or the CAH is certified by the State as being a necessary provider of health care services to residents in the area.

3. Section 485.639 is amended by revising paragraph (b) to read as follows:

§ 485.639 Condition of participation: Surgical services.

* * * * *

(b) *Anesthetic risk and evaluation.* (1) A qualified practitioner, as specified in paragraph (a) of this section, must examine the patient immediately before surgery to evaluate the risk of the procedure to be performed.

(2) A qualified practitioner, as specified in paragraph (c) of this section, must examine each patient before surgery to evaluate the risk of anesthesia.

(3) Before discharge from the CAH, each patient must be evaluated for proper anesthesia recovery by a qualified practitioner, as specified in paragraph (c) of this section.

* * * * *

4. Section 485.643 is amended by revising paragraph (f) to read as follows:

§ 485.643 Condition of participation: Organ, tissue, and eye procurement.

* * * * *

(f) For purposes of these standards, the term "organ" means a human kidney, liver, heart, lung, pancreas, or intestines (or multivisceral organs).

PART 486—CONDITIONS FOR COVERAGE OF SPECIALIZED SERVICES FURNISHED BY SUPPLIERS

F. Part 486 is amended as follows:

1. The authority citation for Part 486 continues to read as follows:

Authority: Sections 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 486.302 is amended by revising the definition of "organ" to read as follows:

§ 486.302 Definitions.

* * * * *

"Organ" means a human kidney, liver, heart, lung, pancreas, or intestines (or multivisceral organs).

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 15, 2001.

Michael McMullan,

Acting Deputy Administrator, Health Care Financing Administration.

Dated: April 3, 2001.

Tommy G. Thompson,

Secretary.

Editorial Note: The following Addendum and appendixes will not appear in the Code of Federal Regulations.

Addendum—Proposed Schedule of Standardized Amounts Effective With Discharges Occurring On or After October 1, 2001 and Update Factors and Rate-of-Increase Percentages Effective With Cost Reporting Periods Beginning On or After October 1, 2001

I. Summary and Background

In this Addendum, we are setting forth the proposed amounts and factors for determining prospective payment rates for Medicare inpatient operating costs and Medicare inpatient capital-related costs. We are also setting forth proposed rate-of-increase percentages for updating the target amounts for hospitals and hospital units excluded from the prospective payment system.

For discharges occurring on or after October 1, 2001, except for SCHs, MDHs, and hospitals located in Puerto Rico, each hospital's payment per discharge under the prospective payment system will be based on 100 percent of the Federal national rate.

SCHs are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal national rate, the updated hospital-specific rate based on FY 1982 cost per discharge, the updated hospital-specific rate based on FY 1987 cost per discharge, or, if qualified, 50 percent of the updated hospital-specific rate based on FY 1996 cost per discharge, plus the greater of 50 percent of the updated FY 1982 or FY 1987 hospital-specific rate or 50 percent of the Federal DRG payment rate. Section 213 of Public Law 106–554 amended section 1886(b)(3) of the Act to allow all SCHs to rebase their hospital-specific rate based on their FY 1996 cost per discharge.

Under section 1886(d)(5)(G) of the Act, MDHs are paid based on the Federal national rate or, if higher, the Federal national rate plus 50 percent of the difference between the Federal national rate and the updated hospital-specific rate based on FY 1982 or FY 1987 cost per discharge, whichever is higher.

For hospitals in Puerto Rico, the payment per discharge is based on the sum of 50 percent of a Puerto Rico rate and 50 percent of a Federal national rate. (See section II.D.3. of this Addendum for a complete description.)

As discussed below in section II. of this Addendum, we are proposing to make changes in the determination of the prospective payment rates for Medicare inpatient operating costs for FY 2002. The changes, to be applied prospectively, would affect the calculation of the Federal rates. In section III. of this Addendum, we discuss our proposed changes for determining the prospective payment rates for Medicare inpatient capital-related costs for FY 2002. Section IV. of this Addendum sets forth our proposed changes for determining the rate-of-increase limits for hospitals excluded from the prospective payment system for FY 2002. The tables to which we refer in the preamble to this proposed rule are presented at the end of this Addendum in section V.

II. Proposed Changes to Prospective Payment Rates for Inpatient Operating Costs for FY 2002

The basic methodology for determining prospective payment rates for inpatient operating costs is set forth at § 412.63. The basic methodology for determining the prospective payment rates for inpatient operating costs for hospitals located in Puerto Rico is set forth at §§ 412.210 and 412.212. Below, we discuss the proposed factors used for determining the prospective payment rates. The Federal and Puerto Rico rate changes, once issued as final, will be effective with discharges occurring on or after October 1, 2001.

In summary, the proposed standardized amounts set forth in Tables 1A and 1C of section V. of this Addendum reflect—

- Updates of 2.55 percent for all areas (that is, the market basket percentage increase of 3.1 percent minus 0.55 percentage points);
- An adjustment to ensure budget neutrality of hospital geographic reclassification, as provided for under sections 1886(d)(4)(C)(iii) and (d)(3)(E) of the Act, by applying new budget neutrality adjustment factors to the large urban and other standardized amounts;
- An adjustment to ensure budget neutrality as provided for in section 1886(d)(8)(D) of the Act by removing the FY 2001 budget neutrality factor and applying a revised factor;
- An adjustment to apply the revised outlier offset by removing the FY 2001 outlier offsets and applying a new offset; and
- An adjustment in the Puerto Rico standardized amounts to reflect the application of a Puerto Rico-specific wage index.

A. Calculation of Adjusted Standardized Amounts

1. Standardization of Base-Year Costs or Target Amounts

Section 1886(d)(2)(A) of the Act required the establishment of base-year cost data containing allowable operating costs per discharge of inpatient hospital services for each hospital. The preamble to the September 1, 1983 interim final rule (48 FR 39763) contains a detailed explanation of how base-year cost data were established in the initial development of standardized amounts for the prospective payment system and how they are used in computing the Federal rates.

Section 1886(d)(9)(B)(i) of the Act required us to determine the Medicare target amounts for each hospital located in Puerto Rico for its cost reporting period beginning in FY 1987. The September 1, 1987 final rule (52 FR 33043, 33066) contains a detailed explanation of how the target amounts were determined and how they are used in computing the Puerto Rico rates.

The standardized amounts are based on per discharge averages of adjusted hospital costs from a base period or, for Puerto Rico, adjusted target amounts from a base period, updated and otherwise adjusted in accordance with the provisions of section 1886(d) of the Act. Sections 1886(d)(2)(B) and (d)(2)(C) of the Act required us to update base-year per discharge costs for FY 1984 and then standardize the cost data in order to remove the effects of certain sources of cost variations among hospitals. These effects include case-mix, differences in area wage levels, cost-of-living adjustments for Alaska and Hawaii, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients.

Under sections 1886(d)(2)(H) and (d)(3)(E) of the Act, in making payments under the prospective payment system, the Secretary estimates from time to time the proportion of costs that are wages and wage-related costs. Since October 1, 1997, when the market basket was last revised, we have considered 71.1 percent of costs to be labor-related for purposes of the prospective payment system. The average labor share in Puerto Rico is 71.3 percent. We are proposing to revise the discharge-weighted national standardized amount for Puerto Rico to reflect the proportion of discharges in large urban and other areas from the FY 2000 MedPAR file.

2. Computing Large Urban and Other Area Averages

Sections 1886(d)(2)(D) and (d)(3) of the Act require the Secretary to compute two average standardized amounts for discharges occurring in a fiscal year: one for hospitals located in large urban areas and one for hospitals located in other areas. In addition, under sections 1886(d)(9)(B)(iii) and (d)(9)(C)(i) of the Act, the average standardized amount per discharge must be determined for hospitals located in large urban and other areas in Puerto Rico. Hospitals in Puerto Rico are paid a blend of 50 percent of the applicable Puerto Rico standardized amount and 50 percent of a national standardized payment amount.

Section 1886(d)(2)(D) of the Act defines "urban area" as those areas within a Metropolitan Statistical Area (MSA). A "large urban area" is defined as an urban area with a population of more than 1 million. In addition, section 4009(i) of Public Law 100–203 provides that a New England County Metropolitan Area (NECMA) with a population of more than 970,000 is classified as a large urban area. As required by section 1886(d)(2)(D) of the Act, population size is determined by the Secretary based on the latest population data published by the Bureau of the Census. Urban areas that do not meet the definition of a "large urban area" are referred to as "other urban areas." Areas that are not included in MSAs are considered "rural areas" under section 1886(d)(2)(D) of the Act. Payment for discharges from hospitals located in large urban areas will be based on the large urban standardized amount. Payment for discharges from hospitals located in other urban and rural areas will be based on the other standardized amount.

Based on 1999 population estimates published by the Bureau of the Census, 63 areas meet the criteria to be defined as large urban areas for FY 2002. These areas are identified in Table 4A.

3. Updating the Average Standardized Amounts

Under section 1886(d)(3)(A) of the Act, we update the average standardized amounts each year. In accordance with section 1886(d)(3)(A)(iv) of the Act, we are proposing to update the large urban areas' and the other areas' average standardized amounts for FY 2002 using the applicable percentage increases specified in section 1886(b)(3)(B)(i) of the Act. Section 1886(b)(3)(B)(i)(XVII) of the Act as amended by section 301 of Public Law 106–554 specifies that the update factor for the standardized amounts for FY 2002 is equal to the market basket percentage increase minus 0.55 percentage points for hospitals in all areas. Section 301 also established that the update factor for FY 2003 is equal to the market basket percentage increase minus 0.55 percentage points. We are proposing to revise § 412.63 to reflect these changes.

The percentage change in the market basket reflects the average change in the price of goods and services purchased by hospitals to furnish inpatient care. The most recent forecast of the hospital

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market basket increase for FY 2002 is 3.1 percent. Thus, for FY 2002, the proposed update to the average standardized amounts equals 2.55 percent for hospitals in all areas.

As in the past, we are adjusting the FY 2001 standardized amounts to remove the effects of the FY 2001 geographic reclassifications and outlier payments before applying the FY 2002 updates. That is, we are increasing the standardized amounts to restore the reductions that were made for the effects of geographic reclassification and outliers. We then apply the new offsets to the standardized amounts for outliers and geographic reclassifications for FY 2002.

Although the update factors for FY 2002 are set by law, we are required by section 1886(e)(3) of the Act to report to the Congress our initial recommendation of update factors for FY 2002 for both prospective payment hospitals and hospitals excluded from the prospective payment system. For general information purposes, we have included the report to Congress as Appendix C to this proposed rule. Our proposed recommendation on the update factors (which is required by sections 1886(e)(4)(A) and (e)(5)(A) of the Act) is set forth as Appendix D to this proposed rule.

4. Other Adjustments to the Average Standardized Amounts

a. *Recalibration of DRG Weights and Updated Wage Index—Budget Neutrality Adjustment.* Section 1886(d)(4)(C)(iii) of the Act specifies that, beginning in FY 1991, the annual DRG reclassification and recalibration of the relative weights must be made in a manner that ensures that aggregate payments to hospitals are not affected. As discussed in section II. of the preamble, we normalized the recalibrated DRG weights by an adjustment factor, so that the average case weight after recalibration is equal to the average case weight prior to recalibration.

Section 1886(d)(3)(E) of the Act requires us to update the hospital wage index on an annual basis beginning October 1, 1993. This provision also requires us to make any updates or adjustments to the wage index in a manner that ensures that aggregate payments to hospitals are not affected by the change in the wage index.

To comply with the requirement of section 1886(d)(4)(C)(iii) of the Act that DRG reclassification and recalibration of the relative weights be budget neutral, and the requirement in section 1886(d)(3)(E) of the Act that the updated wage index be budget neutral, we used FY 2000 discharge data to simulate payments and compared aggregate payments using the FY 2001 relative weights and wage index to aggregate payments using the proposed FY 2002 relative weights and wage index. The same methodology was used for the FY 2001 budget neutrality adjustment. (See the discussion in the September 1, 1992 final rule (57 FR 39832).) Based on this comparison, we computed a budget neutrality adjustment factor equal to 0.992493. We also adjust the Puerto Rico-specific standardized amounts for the effect of DRG reclassification and recalibration. We computed a budget neutrality adjustment factor for Puerto Rico-specific standardized amounts equal to 0.994677. These budget neutrality adjustment factors are applied to the standardized amounts without removing the effects of the FY 2001 budget neutrality adjustments. We do not remove the prior budget neutrality adjustment because estimated aggregate payments after the changes in the DRG relative weights and wage index should equal estimated aggregate payments prior to the changes. If we removed the prior year adjustment, we would not satisfy this condition.

In addition, we are proposing to apply these same adjustment factors to the hospital-specific rates that are effective for cost reporting periods beginning on or after October 1, 2001. (See the discussion in the September 4, 1990 final rule (55 FR 36073).)

b. *Reclassified Hospitals—Budget Neutrality Adjustment.* Section 1886(d)(8)(B) of the Act provides that, effective with discharges occurring on or after October 1, 1988, certain rural hospitals are deemed urban. In addition, section 1886(d)(10) of the Act provides for the reclassification of hospitals based on determinations by the Medicare Geographic Classification Review Board (MGCRB). Under section 1886(d)(10) of the Act, a hospital may be reclassified for purposes of the standardized amount or the wage index, or both.

Under section 1886(d)(8)(D) of the Act, the Secretary is required to adjust the standardized amounts so as to ensure that aggregate payments under the prospective payment system after implementation of the provisions of sections 1886(d)(8)(B) and (C) and 1886(d)(10) of the Act are equal to the aggregate prospective payments that would have been made absent these provisions. To calculate this budget neutrality factor, we used FY 2000 discharge data to simulate payments, and compared total prospective payments (including indirect medical education and disproportionate share hospital payments) prior to any reclassifications to total prospective payments after reclassifications. Based on these simulations, we are applying an adjustment factor of 0.991054 to ensure that the effects of reclassification are budget neutral.

The adjustment factor is applied to the standardized amounts after removing the effects of the FY 2001 budget neutrality adjustment factor. We note that the proposed FY 2002 adjustment reflects wage index and standardized amount reclassifications approved by the MGCRB or the Administrator as of February 28, 2001, and the effects of section 304 of Public Law 106–554 to extend wage index reclassifications for 3 years. The effects of any additional reclassification changes resulting from appeals and reviews of the MGCRB decisions for FY 2002 or from a hospital's request for the withdrawal of a reclassification request will be reflected in the final budget neutrality adjustment published in the final rule for FY 2002.

c. *Outliers.* Section 1886(d)(5)(A) of the Act provides for payments in addition to the basic prospective payments for "outlier" cases, cases involving extraordinarily high costs (cost outliers). Section 1886(d)(3)(B) of the Act requires the Secretary to adjust both the large urban and other area national standardized amounts by the same factor to account for the estimated proportion of total DRG payments made to outlier cases. Similarly, section 1886(d)(9)(B)(iv) of the Act requires the Secretary to adjust the large urban and other standardized amounts applicable to hospitals in Puerto Rico to account for the estimated proportion of total DRG payments made to outlier cases. Furthermore, under section 1886(d)(5)(A)(iv) of the Act, outlier payments for any year must be projected to be not less than 5 percent nor more than 6 percent of total payments based on DRG prospective payment rates.

i. *FY 2002 outlier thresholds.* For FY 2001, the fixed loss cost outlier threshold was equal to the prospective payment rate for the DRG plus the IME and DSH payments plus $17,550 (16,036 for hospitals that have not yet entered the prospective payment system for capital-related costs). The marginal cost factor for cost outliers (the percent of costs paid after costs for the case exceed the threshold) was 80 percent. We applied an outlier adjustment to the FY 2001 standardized amounts of 0.948908 for the large urban and other areas rates and 0.9409 for the capital Federal rate.

For FY 2002, we propose to establish a fixed loss cost outlier threshold equal to the prospective payment rate for the DRG plus the IME and DSH payments plus $21,000. The capital prospective payment system is fully phased in, effective FY 2002. Therefore, we no longer are establishing a separate threshold for hospitals that have not yet entered the prospective payment system for capital-related costs. We propose to maintain the marginal cost factor for cost outliers at 80 percent.

To calculate FY 2002 outlier thresholds, we simulated payments by applying FY 2002 rates and policies to the December 2000 update of the FY 2000 MedPAR file and the December 2000 update of the provider-specific file. As we have explained in the past, to calculate outlier thresholds, we apply a cost inflation factor to update costs for the cases used to simulate payments. For FY 2000, we used a cost inflation factor of zero percent. For FY 2001, we used a cost inflation factor (or cost adjustment factor) of 1.8 percent. To set the proposed FY 2002 outlier thresholds, we are using a 2-year cost inflation factor of 5.5 percent (to inflate FY 2000 charges to FY 2002). This factor reflects our analysis of the best available cost report data as well as calculations (using the best available data) indicating that the percentage of actual outlier payments for FY 2000 is higher than we projected before the beginning of FY 2000, and that the percentage of actual outlier payments for FY 2001 will likely be higher than we projected before the beginning of FY 2001. The calculations of "actual" outlier payments are discussed further below.

ii. *Other changes concerning outliers.* In accordance with section 1886(d)(5)(A)(iv) of the Act, we calculated proposed outlier thresholds so that outlier payments are projected to equal 5.1 percent of total payments based on DRG prospective payment rates. In accordance with section 1886(d)(3)(E), we reduced the proposed FY 2002 standardized amounts by the same percentage to account for the projected proportion of payments paid to outliers.

As stated in the September 1, 1993 final rule (58 FR 46348), we establish outlier thresholds that are applicable to both inpatient operating costs and inpatient capital-related costs. When we modeled the combined operating and capital outlier payments, we found that using a common set of thresholds resulted in a higher percentage of outlier payments for capital-related costs than for operating costs. We project that the proposed thresholds for FY 2002 will result in outlier payments equal to 5.1 percent of operating DRG payments and 5.7 percent of capital payments based on the Federal rate.

The proposed outlier adjustment factors to be applied to the standardized amounts for FY 2002 are as follows:

	Operating standardized amounts	Capital federal rate
National	0.948910	0.974711
Puerto Rico	0.942593	0.970336

We apply the proposed outlier adjustment factors after removing the effects of the FY 2001 outlier adjustment factors on the standardized amounts.

Table 8A in section V. of this Addendum contains the updated Statewide average operating cost-to-charge ratios for urban hospitals and for rural hospitals to be used in calculating cost outlier payments for those hospitals for which the fiscal intermediary is unable to compute a reasonable hospital-specific cost-to-charge ratio. These Statewide average ratios would replace the ratios published in the August 1, 2000 final rule (65 FR 47054). Table 8B contains comparable statewide average capital cost-to-charge ratios. These average ratios would be used to calculate cost outlier payments for those hospitals for which the fiscal intermediary computes operating cost-to-charge ratios lower than 0.1908357 or greater than 1.3133937 and capital cost-to-charge ratios lower than 0.0120498 or greater than 0.1668928. This range represents 3.0 standard deviations (plus or minus) from the mean of the log distribution of cost-to-charge ratios for all hospitals. We note that the cost-to-charge ratios in Tables 8A and 8B would be used during FY 2002 when hospital-specific cost-to-charge ratios based on the latest settled cost report are either not available or outside the three standard deviations range.

iii. *FY 2000 and FY 2001 outlier payments.* In the August 1, 2000 final rule (65 FR 47054), we stated that, based on available data, we estimated that actual FY 2000 outlier payments would be approximately 6.2 percent of actual total DRG payments. This was computed by simulating payments using the March 2000 update of the FY 1999 bill data available at the time. That is, the estimate of actual outlier payments did not reflect actual FY 2000 bills but instead reflected the application of FY 2000 rates and policies to available FY 1999 bills. Our current estimate, using available FY 2000 bills, is that actual outlier payments for FY 2000 were approximately 7.4 percent of actual total DRG payments. We note that the MedPAR file for FY 2000 discharges continues to be updated. Thus, the data indicate that, for FY 2000, the percentage of actual outlier payments relative to actual total payments is higher than we projected before FY 2000 (and thus exceeds the percentage by which we reduced the standardized amounts for FY 2000). In fact, the data indicate that the proportion of actual outlier payments for FY 2000 exceeds 6.0 percent. Nevertheless, consistent with the policy and statutory interpretation we have maintained since the inception of the prospective payment system, we do not plan to recoup money and make retroactive adjustments to outlier payments for FY 2000.

We currently estimate that actual outlier payments for FY 2001 will be approximately 5.9 percent of actual total DRG payments, 0.8 percent higher than the 5.1 percent we projected in setting outlier policies for FY 2001. This estimate is based on simulations using the December 2000 update of the provider-specific file and the December 2000 update of the FY 2000 MedPAR file (discharge data for FY 2000 bills). We used these data to calculate an estimate of the actual outlier percentage for FY 2001 by applying FY 2001 rates and policies to available FY 2000 bills.

5. FY 2002 Standardized Amounts

The adjusted standardized amounts are divided into labor and nonlabor portions. Table 1A contains the two national standardized amounts that we are proposing to be applicable to all hospitals, except hospitals in Puerto Rico. Under section 1886(d)(9)(A)(ii) of the Act, the Federal portion of the Puerto Rico payment rate is based on the discharge-weighted average of the national large urban standardized amount and the national other standardized amount (as set forth in Table 1A). The labor and nonlabor portions of the national average standardized amounts for Puerto Rico hospitals are set forth in Table 1C. This table also includes the Puerto Rico standardized amounts.

B. Adjustments for Area Wage Levels and Cost of Living

Tables 1A and 1C, as set forth in this Addendum, contain the proposed labor-related and nonlabor-related shares that would be used to calculate the prospective payment rates for hospitals located in the 50 States, the District of Columbia, and Puerto Rico. This section addresses two types of adjustments to the standardized amounts that are made in determining the prospective payment rates as described in this Addendum.

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1. Adjustment for Area Wage Levels

Sections 1886(d)(3)(E) and 1886(d)(9)(C)(iv) of the Act require that we make an adjustment to the labor-related portion of the prospective payment rates to account for area differences in hospital wage levels. This adjustment is made by multiplying the labor-related portion of the adjusted standardized amounts by the appropriate wage index for the area in which the hospital is located. In section III. of this preamble, we discuss the data and methodology for the proposed FY 2002 wage index. The proposed wage index is set forth in Tables 4A, 4B, 4C, and 4F of this Addendum.

2. Adjustment for Cost-of-Living in Alaska and Hawaii

Section 1886(d)(5)(H) of the Act authorizes an adjustment to take into account the unique circumstances of hospitals in Alaska and Hawaii. Higher labor-related costs for these two States are taken into account in the adjustment for area wages described above. For FY 2002, we propose to adjust the payments for hospitals in Alaska and Hawaii by multiplying the nonlabor portion of the standardized amounts by the appropriate adjustment factor contained in the table below. If the Office of Personnel Management releases revised cost-of-living adjustment factors before July 1, 2001, we will publish them in the final rule and use them in determining FY 2002 payments.

TABLE OF COST-OF-LIVING ADJUSTMENT FACTORS, ALASKA AND HAWAII HOSPITALS

Alaska—All areas	1.25
Hawaii:	
County of Honolulu	1.1650
County of Hawaii	1.2325
County of Kauai	1.2325
County of Maui	1.2375
County of Kalawao	1.2375

(The above factors are based on data obtained from the U.S. Office of Personnel Management.)

C. DRG Relative Weights

As discussed in section II. of the preamble, we have developed a classification system for all hospital discharges, assigning them into DRGs, and have developed relative weights for each DRG that reflect the resource utilization of cases in each DRG relative to Medicare cases in other DRGs. Table 5 of section V. of this Addendum contains the relative weights that we are proposing to use for discharges occurring in FY 2002. These factors have been recalibrated as explained in section II. of the preamble.

D. Calculation of Prospective Payment Rates for FY 2002

General Formula for Calculation of Prospective Payment Rates for FY 2002

The prospective payment rate for all hospitals located outside of Puerto Rico, except SCHs and MDHs, equals the Federal rate.

The prospective payment rate for SCHs equals whichever of the following rates yields the greatest aggregate payment: the Federal national rate, the updated hospital-specific rate based on FY 1982 cost per discharge, the updated hospital-specific rate based on FY 1987 cost per discharge, or, if qualified, 50 percent of the updated hospital-specific rate based on FY 1996 cost per discharge, plus the greater of 50 percent of the updated FY 1982 or FY 1987 hospital-specific rate or 50 percent of the Federal DRG payment rate. Section 213 of Public Law 106–554 amended section 1886(b)(3) of the Act to allow all SCHs to rebase their hospital-specific rate based on their FY 1996 cost per discharge.

The prospective payment rate for MDHs equals 100 percent of the Federal rate, or, if the greater of the updated FY 1982 hospital-specific rate or the updated FY 1987 hospital-specific rate is higher than the Federal rate, 100 percent of the Federal rate plus 50 percent of the difference between the applicable hospital-specific rate and the Federal rate.

The prospective payment rate for Puerto Rico equals 50 percent of the Puerto Rico rate plus 50 percent of a discharge-weighted average of the national large urban standardized amount and the Federal national other standardized amount.

1. Federal Rate

For discharges occurring on or after October 1, 2001 and before October 1, 2002, except for SCHs, MDHs, and hospitals in Puerto Rico, the hospital's payment is based exclusively on the Federal national rate.

The payment amount is determined as follows:

Step 1—Select the appropriate national standardized amount considering the type of hospital and designation of the hospital as large urban or other (see Table 1A in section V. of this Addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the applicable wage index for the geographic area in which the hospital is located (see Tables 4A, 4B, and 4C of section V. of this Addendum).

Step 3—For hospitals in Alaska and Hawaii, multiply the nonlabor-related portion of the standardized amount by the appropriate cost-of-living adjustment factor.

Step 4—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount (adjusted, if appropriate, under Step 3).

Step 5—Multiply the final amount from Step 4 by the relative weight corresponding to the appropriate DRG (see Table 5 of section V. of this Addendum).

2. Hospital-Specific Rate (Applicable Only to SCHs and MDHs)

Section 1886(b)(3)(C) of the Act provides that SCHs are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal national rate, the updated hospital-specific rate based on FY 1982 cost per discharge, the updated hospital-specific rate based on FY 1987 cost per discharge, or, if qualified, 50 percent of the updated hospital-specific rate based on FY 1996 cost per discharge, plus the greater of 50 percent of the updated FY 1982 or FY 1987 hospital-specific rate or 50 percent of the Federal DRG payment rate.

Section 1886(d)(5)(G) of the Act provides that MDHs are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal rate or the Federal rate plus 50 percent of the difference between the Federal rate and the greater of the updated hospital-specific rate based on FY 1982 and FY 1987 cost per discharge.

Hospital-specific rates have been determined for each of these hospitals based on either the FY 1982 cost per discharge, the FY 1987 cost per discharge or, for qualifying SCHs, the FY 1996 cost per discharge. For a more detailed discussion of the calculation of the hospital-specific rates, we refer the reader to the September 1, 1983 interim final rule (48 FR 39772); the April 20, 1990 final rule with comment (55 FR 15150); the September 4, 1990 final rule (55 FR 35994); and the August 1, 2000 final rule (65 FR 47082).

a. *Updating the FY 1982, FY 1987, and FY 1996 Hospital-Specific Rates for FY 2002.* We are proposing to increase the hospital-specific rates by 2.55 percent (the hospital market basket percentage increase minus 0.55 percentage points) for SCHs and MDHs for FY 2002. Section 1886(b)(3)(C)(iv) of the Act provides that the update factor applicable to the hospital-specific rates for SCHs equal the update factor provided under section 1886(b)(3)(B)(iv) of the Act, which, for SCHs in FY 2002, is the market basket rate of increase minus 0.55 percentage points. Section 1886(b)(3)(D) of the Act provides that the update factor applicable to the hospital-specific rates for MDHs equals the update factor provided under section 1886(b)(3)(B)(iv) of the Act, which, for FY 2002, is the market basket rate of increase minus 0.55 percentage points.

b. *Calculation of Hospital-Specific Rate.* For SCHs, the applicable FY 2002 hospital-specific rate would be based on the following: the hospital-specific rate calculated using the greater of the FY 1982 or FY 1987 costs, increased by the applicable update factor of 2.55 percent; or, if the hospital-specific rate based on cost per case in FY 1996 is greater than the hospital-specific rate using either the FY 1982 or the FY 1987 costs, the greater of 50 percent of the hospital-specific rate based on the FY 1982 or FY 1987 costs, increased by the applicable update factor, or 50 percent of the Federal rate plus 50 percent of its rebased FY 1996 hospital-specific rate updated through FY 2002. For MDHs, the applicable FY 2002 hospital-specific rate would be calculated by increasing the hospital's hospital-specific rate for the preceding fiscal year by the applicable update factor of 2.55 percent, which is the same as the update for all prospective payment hospitals. In addition, for both SCHs and MDHs, the hospital-specific rate would be adjusted by the budget neutrality adjustment factor (that is, by 0.992493) as discussed in section II.A.4.a. of this Addendum. The resulting rate is used in determining the payment under which rate an SCH or a MDH is paid for its discharges beginning on or after October 1, 2001.

3. General Formula for Calculation of Prospective Payment Rates for Hospitals Located in Puerto Rico Beginning On or After October 1, 2001 and Before October 1, 2002

a. *Puerto Rico Rate.* The Puerto Rico prospective payment rate is determined as follows:

Step 1—Select the appropriate adjusted average standardized amount considering the large urban or other designation of the hospital (see Table 1C of section V. of the Addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the appropriate Puerto Rico-specific wage index (see Table 4F of section V. of the Addendum).

Step 3—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount.

Step 4—Multiply the result in Step 3 by 50 percent.

Step 5—Multiply the amount from Step 4 by the appropriate DRG relative weight (see Table 5 of section V. of the Addendum).

b. *National Rate.* The national prospective payment rate is determined as follows:

Step 1—Multiply the labor-related portion of the national average standardized amount (see Table 1C of section V. of the Addendum) by the appropriate national wage index (see Tables 4A and 4B of section V. of the Addendum).

Step 2—Add the amount from Step 1 and the nonlabor-related portion of the national average standardized amount.

Step 3—Multiply the result in Step 2 by 50 percent.

Step 4—Multiply the amount from Step 3 by the appropriate DRG relative weight (see Table 5 of section V. of the Addendum).

The sum of the Puerto Rico rate and the national rate computed above equals the prospective payment for a given discharge for a hospital located in Puerto Rico.

III. Proposed Changes to Payment Rates for Inpatient Capital-Related Costs for FY 2002

The prospective payment system for hospital inpatient capital-related costs was implemented for cost reporting periods beginning on or after October 1, 1991. Effective with that cost reporting period and during a 10-year transition period extending through FY 2001, hospital inpatient capital-related costs are paid on the basis of an increasing proportion of the capital prospective payment system Federal rate and a decreasing proportion of a hospital's historical costs for capital.

The basic methodology for determining Federal capital prospective rates is set forth at §§ 412.308 through 412.352. Below we discuss the factors that we used to determine the proposed Federal for FY 2002. The rates, which will be effective for discharges occurring on or after October 1, 2001. As we stated in section V of the preamble of this proposed rule, we are no longer determining an update to the capital hospital-specific rate, since EY 2001 is the last year of the 10-year transition period, and beginning in FY 2002 all hospitals (except those defined as "new" under § 412.300) will be paid based on 100 percent of the capital Federal rate.

For FY 1992, we computed the standard Federal payment rate for capital-related costs under the prospective payment system by updating the FY 1989 Medicare inpatient capital cost per case by an actuarial estimate of the increase in Medicare inpatient capital costs per case. Each year after FY 1992, we update the standard Federal rate, as provided in § 412.308(c)(1), to account for capital input price increases and other factors. Also, § 412.308(c)(2) provides that the Federal rate is adjusted annually by a factor equal to the estimated proportion of outlier payments under the Federal rate to total capital payments under the Federal rate. In addition, § 412.308(c)(3) requires that the Federal rate be reduced by an adjustment factor equal to the estimated proportion of payments for (regular and special) exceptions under § 412.348. Furthermore, § 412.308(c)(4)(ii) requires that the Federal rate be adjusted so that the annual DRG reclassification and the recalibration of DRG weights and changes in the geographic adjustment factor are budget neutral. For FYs 1992 through 1995, § 412.352 required that the Federal rate also be adjusted by a budget neutrality factor so that aggregate payments for inpatient hospital capital costs were projected to equal 90 percent of the payments that would have been made for capital-related costs on a reasonable cost basis during the fiscal year. That provision expired in FY 1996. Section 412.308(b)(2) describes the 7.4 percent reduction to the rate that was made in FY 1994, and § 412.308(b)(3) describes the 0.28 percent reduction to the rate made in FY 1996 as a result of the revised policy of paying for transfers. In the FY 1998 final rule with comment period (62 FR 45966), we implemented section 4402 of Public Law 105–33, which requires that for discharges occurring on or after October 1, 1997, and before October 1, 2002, the unadjusted standard Federal rate is reduced by 17.78 percent. A small part of that reduction will be restored effective October 1, 2002.

To determine the appropriate budget neutrality adjustment factor and the regular exceptions payment adjustment, we developed a dynamic model of Medicare inpatient capital-related costs, that is, a model that projects changes in Medicare inpatient capital-related costs over time. With the expiration of the budget neutrality provision, the model is still used to estimate the regular exceptions payment adjustment and other factors. The model and its application are described in greater detail in Appendix B of this proposed rule.

In accordance with section 1886(d)(9)(A) of the Act, under the prospective payment system for inpatient operating costs, hospitals located in Puerto Rico are paid for operating costs under a special payment

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formula. Prior to FY 1998, hospitals in Puerto Rico were paid a blended rate that consisted of 75 percent of the applicable standardized amount specific to Puerto Rico hospitals and 25 percent of the applicable national average standardized amount. However, effective October 1, 1997, as a result of section 4406 of Public Law 105–33, operating payments to hospitals in Puerto Rico are based on a blend of 50 percent of the applicable standardized amount specific to Puerto Rico hospitals and 50 percent of the applicable national average standardized amount. In conjunction with this change to the operating blend percentage, effective with discharges on or after October 1, 1997, we compute capital payments to hospitals in Puerto Rico based on a blend of 50 percent of the Puerto Rico rate and 50 percent of the Federal rate.

Section 412.374 provides for the use of this blended payment system for payments to Puerto Rico hospitals under the prospective payment system for inpatient capital-related costs. Accordingly, for capital-related costs, we compute a separate payment rate specific to Puerto Rico hospitals using the same methodology used to compute the national Federal rate for capital.

A. Determination of Federal Inpatient Capital-Related Prospective Payment Rate Update

In the August 1, 2000 final rule (65 FR 47122), we established a Federal rate of $382.03 for FY 2001. In a separate interim final rule with comment, as a result of implementing section 301(a) of Public Law 106–554 we are establishing a Federal rate of $380.85 for discharges occurring on or after April 1, 2001 and before October 1, 2001. In accordance with section 547 of Public Law 106–554, the special increases and adjustments provided by Public Law 106–554 effective between April and October 2001 do not apply for discharges occurring after FY 2001 and should not be included in determining the payment rates in subsequent years. Thus, the adjustments and rates published in the August 1, 2000 final rule were used in determining the proposed FY 2002 rates. As a result of the changes we are proposing to the factors used to establish the Federal rate in this addendum, the proposed FY 20021 Federal rate is $389.09.

In the discussion that follows, we explain the factors that were used to determine the proposed FY 2002 Federal rate. In particular, we explain why the proposed FY 2002 Federal rate has increased 1.85 percent compared to the FY 2001 Federal rate (published in the August 1, 2000 final rule (65 FR 47122)). We also estimate aggregate capital payments will increase by 3.80 percent during this same period. This increase is primarily due to the increase in the number of hospital admissions and the increase in case-mix. This increase in capital payments is less than last year (5.48 percent) because with the end of the transition period the remaining hold harmless hospitals receiving "cost-based" payments will begin being paid based on 100 percent of the Federal rate.

Total payments to hospitals under the prospective payment system are relatively unaffected by changes in the capital prospective payments. Since capital payments constitute about 10 percent of hospital payments, a 1 percent change in the capital Federal rate yields only about 0.1 percent change in actual payments to hospitals. Aggregate payments under the capital prospective payment transition system are estimated to increase in FY 2002 compared to FY 2001.

1. Standard Federal Rate Update

a. *Description of the Update Framework.* Under § 412.308(c)(1), the standard Federal rate is updated on the basis of an analytical framework that takes into account changes in a capital input price index and other factors. The update framework consists of a capital input price index (CIPI) and several policy adjustment factors. Specifically, we have adjusted the projected CIPI rate of increase as appropriate each year for case-mix index-related changes, for intensity, and for errors in previous CIPI forecasts. The proposed update factor for FY 2002 under that framework is 1.1 percent. This proposal is based on a projected 0.5 percent increase in the CIPI, a 0.3 percent adjustment for intensity, a 0.0 percent adjustment for case-mix, a 0.0 percent adjustment for the FY 2000 DRG reclassification and recalibration, and a forecast error correction of 0.3 percent. We explain the basis for the FY 2002 CIPI projection in section II.D. of this Addendum. Below we describe the policy adjustments that have been applied.

The case-mix index is the measure of the average DRG weight for cases paid under the prospective payment system. Because the DRG weight determines the prospective payment for each case, any percentage increase in the case-mix index corresponds to an equal percentage increase in hospital payments.

The case-mix index can change for any of several reasons:

- The average resource use of Medicare patients changes ("real" case-mix change);
- Changes in hospital coding of patient records result in higher weight DRG assignments ("coding effects"); and
- The annual DRG reclassification and recalibration changes may not be budget neutral ("reclassification effect").

We define real case-mix change as actual changes in the mix (and resource requirements) of Medicare patients as opposed to changes in coding behavior that result in assignment of cases to higher weighted DRGs but do not reflect higher resource requirements. In the update framework for the prospective payment system for operating costs, we adjust the update upwards to allow for real case-mix change, but remove the effects of coding changes on the case-mix index. We also remove the effect on total payments of prior changes to the DRG classifications and relative weights, in order to retain budget neutrality for all case-mix index-related changes other than patient severity. (For example, we are adjustinged for the effects of the FY 2000 DRG reclassification and recalibration as part of our FY 2002 update recommendation.) We have adopted this case-mix index adjustment in the capital update framework as well.

For FY 2002, we are projecting a 1.0 percent increase in the case-mix index. We estimate that real case-mix increase will equal 1.0 percent in FY 2002. Therefore, the proposed net adjustment for case-mix change in FY 2002 is 0.0 percentage points.

We estimate that FY 2000 DRG reclassification and recalibration will result in a 0.0 percent change in the case-mix when compared with the case-mix index that would have resulted if we had not made the reclassification and recalibration changes to the DRGs. Therefore, we are making a 0.0 percent adjustment for DRG reclassification and recalibration in the update recommendation for FY 2002.

The capital update framework contains an adjustment for forecast error. The input price index forecast is based on historical trends and relationships ascertainable at the time the update factor is established for the upcoming year. In any given year there may be unanticipated price fluctuations that may result in differences between the actual increase in prices and the forecast used in calculating the update factors. In setting a prospective payment rate under the framework, we make an adjustment for forecast error only if our estimate of the change in the capital input price index for any year is off by 0.25 percentage points or more. There is a 2-year lag between the forecast and the measurement of the forecast error. A forecast error of 0.3 percentage points was calculated for the FY 2000 update. That is, current historical data indicate that the FY 2000 CIPI used in calculating the forecasted FY 2000 update factor (0.6 percent) understated the actual realized price increases (0.9 percent) by 0.3 percent. This under-prediction was due to prices from municipal bond yields declining slower than expected. Therefore, we are making a 0.3 percent adjustment for forecast error in the update for FY 2002.

Under the capital prospective payment system framework, we also make an adjustment for changes in intensity. We calculate this adjustment using the same methodology and data as in the framework for the operating prospective payment system. The intensity factor for the operating update framework reflects how hospital services are utilized to produce the final product, that is, the discharge. This component accounts for changes in the use of quality-enhancing services, changes in within-DRG severity, and expected modification of practice patterns to remove cost-ineffective services.

We calculate case-mix constant intensity as the change in total charges per admission, adjusted for price level changes (the CPI for hospital and related services), and changes in real case-mix. The use of total charges in the calculation of the proposed intensity factor makes it a total intensity factor, that is, charges for capital services are already built into the calculation of the factor. Therefore, we have incorporated the intensity adjustment from the operating update framework into the capital update framework. Without reliable estimates of the proportions of the overall annual intensity increases that are due, respectively, to ineffective practice patterns and to the combination of quality-enhancing new technologies and within-DRG complexity, we assume, as in the revised operating update framework, that one-half of the annual increase is due to each of these factors. The capital update framework thus provides an add-on to the input price index rate of increase of one-half of the estimated annual increase in intensity to allow for within-DRG severity increases and the adoption of quality-enhancing technology.

For FY 2002, we have developed a Medicare-specific intensity measure based on a 5-year average using FY 1996 through 2000 data. In determining case-mix constant intensity, we found that observed case-mix increase was 1.6 percent in FY 1996, 0.3 percent in FY 1997, −0.4 percent in FY 1998, and −0.3 in FY 1999, and −0.7 percent in FY 2000. Since we found an increase in case-mix of 1.6 for FY 1996, which was outside of the range of 1.0 to 1.4 percent, we estimate that real case-mix increase was 1.0 to 1.4 percent for that year. The estimate of 1.0 to 1.4 percent is supported by past studies of case-mix change by the RAND Corporation. The most recent study was "Has DRG Creep Crept Up? Decomposing the Case Mix Index Change Between 1987 and 1988" by G. M. Carter, J. P. Newhouse, and D. A. Relles, R–4098–HCFA/ProPAC (1991). The study suggested that real case-mix change was not dependent on total change, but was usually a fairly steady 1.0 to 1.4 percent per year. We use 1.4 percent as the upper bound because the RAND study did not take into account that hospitals may have induced doctors to document medical records more completely in order to improve payment. Following that study, we consider up to 1.4 percent of observed case-mix change as real for FY 1996 through FY 2000. Based on this analysis, we believe that all of the observed case-mix increase for FY 1997, FY 1998, and FY 1999, and FY 2000 is real. The increases for FY 1996 was in excess of our estimate of real case-mix increase.

We calculate case-mix constant intensity as the change in total charges per admission, adjusted for price level changes (the CPI for hospital and related services), and changes in real case-mix. Based upon an upper limit of 1.0 percent real case-mix increase, we estimate that case-mix constant intensity increased by an average 0.3 percent during FYs 1996 through 2000, for a cumulative increase of 1.4 percent given estimates of real case-mix of 1.0 percent for FY 1996, 0.3 percent for FY 1997, −0.4 for FY 1998, and −0.3 for FY 1999, and −0.7 percent for FY 2000. Based upon an upper limit of 1.4 percent real case-mix increase, we estimate that case-mix constant intensity increase by an average 0.2 percent during FYs 1996 through 2000, for a cumulative increase of 1.2 percent, given that real case-mix increase was 1.4 percent for FY 1996, 0.3 percent for FY 1997, −0.4 for FY 1998, −0.3 for FY 1999, and −0.7 percent for FY 2000. Since we estimate that intensity has increased during that period, we are recommending a 0.3 percent intensity adjustment for FY 2002.

b. *Comparison of HCFA and MedPAC Update Recommendations.* In its March 2001 Report to Congress, MedPAC presented a combined operating and capital update for hospital inpatient prospective payment system payments for FY 2002. Currently, section 1886(b)(3)(B)(i)(XVII) of the Act sets forth the FY 2002 percentage increase in the prospective payment system operating cost standardized amounts. The prospective payment system capital update is set at the discretion of the Secretary under the framework outlined in § 412.308(c)(1).

For FY 2002, MedPAC's update framework supports a combined operating and capital update for hospital inpatient prospective payment system payments of 1.5 percent to 3.0 percent (or between the increase in the combined operating and capital market basket minus 1.3 percentage points and the increase in the combined operating and capital market basket plus 0.2 percentage points). MedPAC also notes that while the number of hospitals with negative inpatient hospital margins have increased in FY 1999 (from 33.7 percent in FY 1998 to 36.7 percent in FY 1999 (page 71)), overall high inpatient Medicare margins generally offset hospital losses on other lines of Medicare services. MedPAC continues to project substantially improved hospital total margins for FY 2000 based on performance in the first half of the fiscal year (page 72).

MedPAC's FY 2002 combined operating and capital update framework uses a weighted average of HCFA's forecasts of the operating (PPS Input Price Index) and capital (CIPI) market baskets. This combined market basket is used to develop an estimate of the change in overall operating and capital prices. MedPAC calculated a combined market basket forecast by weighting the operating market basket forecast by 0.92 and the capital market basket forecast by 0.08, since operating costs are estimated to represent 92 percent of total hospital costs (capital costs are estimated to represent the remaining 8 percent of total hospital costs). MedPAC's combined market basket for FY 2002 is estimated to increase by 2.8 percent, based on HCFA's December 2000 forecasted operating market basket increase of 3.0 percent and HCFA's December 2000 forecasted capital market basket increase of 0.8 percent.

Response: As we stated in the August 1, 2000 final rule (65 FR 47119), our long-term goal is to develop a single update framework for operating and capital prospective payments and that we would begin development of a unified framework. However, we have not yet developed such a single framework as the actual operating system update has been determined by Congress through FY 2003 (as amended by Public Law 106–554). In the meantime, we intend to maintain as much consistency as possible with the current operating framework in order to

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facilitate the eventual development of a unified framework.

Our recommendation for updating the prospective payment system capital Federal rate is supported by the following analyses that measure changes in scientific and technological advances, practice pattern changes, changes in case-mix, the effect of reclassification and recalibration, and forecast error correction. MedPAC recommends a 1.5 to 3.0 percent combined operating and capital update for hospital inpatient prospective payments. Under our existing capital update framework, we are recommending a 1.1 percent update to the capital Federal rate. For purposes of comparing HCFA's capital update recommendation and MedPAC's update recommendation for FY 2002, we have isolated the capital component of MedPAC's combined market basket forecast, which was based on HCFA's December 2000 CIPI forecast of 0.8 percent. As a result, MedPAC's update recommendation for FY 2002 for capital payments is between −0.9 percent and 0.6 percent (see Table 1).

There are some differences between HCFA's and MedPAC's update frameworks, which account for the difference in the respective update recommendations. In its combined FY 2002 update recommendation, MedPAC uses HCFA's capital input price index (the CIPI) as the starting point for estimating the change in prices since the previous year. HCFA's CIPI includes price measures for interest expense, which are an indicator of the interest rates facing hospitals during their capital purchasing decisions. Previously, MedPAC's capital market basket did not include interest expense; instead it included a financing policy adjustment when necessary to account for the prolonged changes in interest rates. HCFA's CIPI is vintage-weighted, meaning that it takes into account price changes from past purchases of capital when determining the current period update. In the past, MedPAC's capital market basket was not vintage-weighted, and only accounted for the current year price changes. Beginning last year, both HCFA's and MedPAC's FY 2002 update frameworks use HCFA's CIPI. MedPAC used HCFA's December 2000 CIPI in preparing its FY 2002 recommendation, which was forecast at 0.8 percent. Currently, the CIPI is forecast at 0.5 percent (March 2001).

MedPAC and HCFA also differ in the adjustments they make to their price indices. (See Table 1 for a comparison of HCFA and MedPAC's update recommendations.) MedPAC makes an adjustment for scientific and technological advances, which is offset by a fixed standard for productivity growth and one-time factors. HCFA has not adopted a separate adjustment for capital science and technology or productivity and efficiency.

In addition, MedPAC includes, when appropriate, an adjustment for one-time factors expected to affect costs in FY 2002 and the removal of the adjustment for FY 2002 one-time factors in its science and technology adjustment. MedPAC concluded that a one-time adjustment of 0.5 percent for the Health Insurance Portability and Accountability Act of 1996 (HIPAA) regulatory requirements be reflected in its FY 2002 payment update. Additionally, since MedPAC believes that the costs associated with one-time factors should not be built permanently into the rates, it recommended that the FY 2002 payment rates be reduced by 0.5 percent to offset the increase it recommended in the FY 2000 update for the costs associated with year 2000 (Y2K) computer improvements. Thus, MedPAC's combined FY 2002 adjustment for science and technological advances is 0.0 percent to 0.5 percent.

Instead, we have identified a total intensity factor, which reflects scientific and technological advances, but we have not identified an adequate total productivity measure. MedPAC also includes a site-of-care substitution adjustment (unbundling of the payment unit) to account for the decline in the average length of Medicare acute inpatient stays. This adjustment is designed to shift funding along with associated costs when Medicare patients are discharged to postacute settings that replace acute inpatient days. Other factors, such as technological advances that allow for a decreased need in follow-up care and BBA mandated policy on payment for transfer cases that limits payments within certain DRGs, are reflected in the site-of-care substitution adjustment as well. We agree with MedPAC that the site-of-care substitution effect is real and believe that it is factored into our intensity recommendation.

For FY 2002, MedPAC recommends a −2.0 to −1.0 percent combined adjustment for site-of-care substitutions. MedPAC recommends a 0.0 to a 0.5 percent combined adjustment for scientific and technological advances, which was offset by a fixed productivity standard of 0.5 percent and a 0.0 percent adjustment for one-time factors for FY 2002. We recommend a 0.3 intensity adjustment.

Additionally, MedPAC includes an adjustment for Medicare policy changes affecting financial status in its section of factors affecting current level of payments in its FY 2002 update recommendation. While MedPAC's update framework has not considered such costs in the past, MedPAC believes that it is appropriate to account for significant costs incurred as a result of new Medicare policy. For FY 2002, MedPAC believes that legislated updates will match cost growth and that the overall net affects of legislative changes (from Public Law 105–33, Public Law 106–113, and Public Law 106–554) will be small. Thus, it did not recommend any additional allowance for these costs for FY 2002. Accordingly, MedPAC recommended a 0.0 percent adjustment for Medicare policy changes.

MedPAC makes a two-part adjustment for case-mix changes, which takes into account changes in case-mix in the past year. It recommends a 0.0 percent combined adjustment for DRG coding change and a 0.0 percent combined adjustment for within-DRG complexity change. This results in a combined total case-mix adjustment of 0.0 percent. We recommend a 0.0 adjustment for case-mix, since we are projecting a 1.0 percent increase in case-mix index and we estimate that real case-mix increase will equal 1.0 percent in FY 2002.

We recommend a 0.3 percent adjustment for forecast error correction. MedPAC's combined FY 2002 update recommendation includes a 0.7 percent adjustment for forecast error correction. However, it noted that this forecast error adjustment is a result of the difference between the forecasted FY 2000 operating market basket of 2.9 percent and the actual FY 2000 operating market basket increase of 3.6 percent. The FY 2000 capital market basket was forecast at 0.6 percent, while the actual observed increase equaled 0.9 percent for capital costs. Therefore, we have included 0.3 percent adjustment for FY 2000 forecast error correction in the comparison of MedPAC's and HCFA's update recommendations for FY 2002 shown below in Table 1.

We applied MedPAC's ratio of hospital capital costs to total hospital costs (8 percent) to the adjustment factors in its update framework for comparison with HCFA's capital update framework. The net result of these adjustments is that MedPAC has recommended a −0.9 to 0.6 percent update to the capital Federal rate for FY 2002. MedPAC believes that the annual updates to the capital and operating payments under the prospective payment system should not differ substantially, even though they are determined separately, since they correspond to costs generated by providing the same inpatient hospital services to the same Medicare patients. We describe the basis for our 1.1 percent total capital update for FY 2002 in the preceding section. Our recommendation of 1.1 percent is 0.5 percent higher than the upper limit of the range recommended by MedPAC due to MedPAC's −2.0 to −1.0 percent combined (operating and capital) adjustment for unbundling of the payment unit for FY 2002. If we had applied only the portion of that adjustment attributable to capital-related services, our proposed update recommendation would most likely have fallen with in the range of MedPAC's update recommendation for capital for FY 2002. While in previous years, our update recommendation has fallen within the range recommended by MedPAC, since MedPAC has developed its combined operating and capital update recommendation beginning in FY 2001, we have only been outside of that range by 0.5 percent. For FY 2001, our update recommendation of 0.9 percent was only 0.5 percentage points below MedPAC's lower limit of its FY 2002 recommendation.

TABLE 1.—HCFA'S FY 2002 UPDATE FACTOR AND MEDPAC'S RECOMMENDATION

	HCFA's update factor	MedPAC's recommendation
Capital Input Price Index	0.5	0.8[1]
Policy Adjustment Factors:		
Intensity	0.3	(2)
Science and Technology		0.0 to 0.5.
Real within DRG Change		(3)
Site-of-Care Substitution		−2.0 to −1.0.
One-Time Factors	(4)	0.0
Subtotal	0.3	−2.0 to −0.5.
Medicare Policy Change;		0.0
Case-Mix Adjustment Factors:		
Projected Case-Mix Change	−1.0	
Real Across DRG Change	1.0	
Coding Change		0.0
Real within DRG Change	(4)	0.0
Subtotal	0.0	0.0
Effect of FY 2000 Reclassification and Recalibration	0.0	
Forecast Error Correction	0.3	0.3
Total Update	1.1	−0.9 to 0.6.

[1] Used HCFA's December 2000 capital marker basket forecast in its combined update recommendation.
[2] Included in MedPAC's productivity offset in its science and technology adjustment.
[3] Included in MedPAC's case-mix adjustment.
[4] Included in HCFA's intensity factor.

2. Outlier Payment Adjustment Factor

Section 412.312(c) establishes a unified outlier methodology for inpatient operating and inpatient capital-related costs. A single set of thresholds is used to identify outlier cases for both inpatient operating and inpatient capital-related payments. Section 412.308(c)(2) provides that the standard Federal rate for inpatient capital-related costs be reduced by an adjustment factor equal to the estimated proportion of capital-related outlier payments to total inpatient capital-related PPS payments. The outlier thresholds are set so that operating outlier payments are projected to be 5.1 percent of total operating DRG payments.

In the August 1, 2000 final rule, we estimated that outlier payments for capital in FY 2001 would equal 5.91 percent of inpatient capital-related payments based on the Federal rate (65 FR 47121). Accordingly, we applied an outlier adjustment factor of 0.9409 to the Federal rate. Based on the thresholds as set forth in section II.A.4.d. of this Addendum, we estimate that outlier payments for capital will equal 5.74 percent of inpatient capital-related payments based on the Federal rate in FY 2002. Therefore, we are proposing an outlier adjustment factor of 0.9426 to the Federal rate. Thus, the projected percentage of capital outlier payments to total capital standard payments for FY 2002 is lower than the percentage for FY 2001.

The outlier reduction factors are not built permanently into the rates; that is, they are not applied cumulatively in determining the Federal rate. As explained previously, in accordance with section 547 of Public Law 106–554, the proposed FY 2002 rates are based on the FY 2001 adjustments and rates published in the August 1, 2000 final rule (65 FR 47122). Therefore, the proposed net change in the outlier adjustment to the Federal rate for FY 2002 is 1.0018 (0.9426/0.9409). The outlier adjustment increases the FY 2002 Federal rate by 0.18 percent compared with the FY 2001 outlier adjustment.

3. Budget Neutrality Adjustment Factor for Changes in DRG Classifications and Weights and the Geographic Adjustment Factor

Section 412.308(c)(4)(ii) requires that the Federal rate be adjusted so that aggregate payments for the fiscal year based on the Federal rate after any changes resulting from the annual DRG reclassification and recalibration and changes in the geographic adjustment factor (GAF) are projected to equal aggregate payments that would have been made on the basis of the Federal rate without such changes. We use the actuarial model, described in Appendix B of this proposed rule, to estimate the aggregate payments that would have been made on the basis of the Federal rate without changes in the DRG classifications and weights and in the GAF. We also use the model to estimate aggregate payments that would be made on the basis of the Federal rate as a result of those changes. We then use

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these figures to compute the adjustment required to maintain budget neutrality for changes in DRG weights and in the GAF.

For FY 2001, we calculated a GAF/DRG budget neutrality factor of 0.9979. For FY 2002, we are proposing a GAF/DRG budget neutrality factor of 0.9913. The GAF/DRG budget neutrality factors are built permanently into the rates; that is, they are applied cumulatively in determining the Federal rate. This follows from the requirement that estimated aggregate payments each year be no more than they would have been in the absence of the annual DRG reclassification and recalibration and changes in the GAF. As explained previously, in accordance with section 547 of Public Law 106–554, the proposed FY 2002 adjustments and rates are based on the FY 2001 adjustment and rates published in the August 1, 2000 final rule (65 FR 47122). The proposed incremental change in the adjustment from FY 2001 to FY 2002 is 0.9913. The proposed cumulative change in the rate due to this adjustment is 0.9906 (the product of the incremental factors for FY 1993, FY 1994, FY 1995, FY 1996, FY 1997, FY 1998, FY 1999, FY 2000, FY 2001 and the proposed incremental factor for FY 2002: 0.9980 × 1.0053 × 0.9998 × 0.9994 × 0.9987 × 0.9989 × 1.0028 × 0.9985 × 0.9979 × 0.9913 = 0.9906).

This proposed factor accounts for DRG reclassifications and recalibration and for changes in the GAF. It also incorporates the effects on the GAF of FY 2002 geographic reclassification decisions made by the MGCRB compared to FY 2001 decisions. However, it does not account for changes in payments due to changes in the DSH and IME adjustment factors or in the large urban add-on.

4. Exceptions Payment Adjustment Factor

Section 412.308(c)(3) requires that the standard Federal rate for inpatient capital-related costs be reduced by an adjustment factor equal to the estimated proportion of additional payments for exceptions under § 412.348 relative to total capital payments payments under the hospital-specific rate and Federal rate. We use the model originally developed for determining the budget neutrality adjustment factor to determine the regular exceptions payment adjustment factor. We describe that model in Appendix B to this proposed rule. An adjustment for regular exceptions is necessary for determining the FY 2002 rates because we will continue to pay regular exceptions for cost reporting periods beginning before October 1, 2001 but ending in FY 2002 in accordance with § 412.312(c)(3). In FY 2003 and later, no payments will be made under the regular exceptions provision, hence we will only compute a budget neutrality adjustment under § 412.348(d) for special exceptions. We describe the proposed methodology to determine to special exceptions adjustment in section V.D. of this proposed rule. For FY 2002, the exceptions adjustment is a combination of the adjustment that would be made under the regular exceptions provision and under the special exceptions provision under § 412.348(g).

For FY 2001, we estimated that exceptions payments would equal 2.15 percent of aggregate payments based on the Federal rate and the hospital-specific rate. Therefore, we applied an exceptions reduction factor of 0.9785 (1 − 0.0215) in determining the Federal rate. For this proposed rule, we estimate that regular exceptions payments for FY 2002 will equal 0.63 percent of aggregate payments based on the Federal rate we estimate that special exceptions payments for FY 2002 will equal 0.12 percent of aggregate payments based on the Federal rate. Therefore, we estimate that total exceptions payments for FY 2002 will equal 0.75 percent (0.63 + 0.12 = 0.75) of aggregate payments based on the Federal rate and we are proposing an exceptions payment reduction factor of 0.9925 (1 − 0.0075) to the Federal rate for FY 2002. The proposed exceptions reduction factor for FY 2002 is 1.43 percent higher than the factor for FY 2001 published in the August 1, 2000 final rule. This increase is primarily due to the expiration of the regular exceptions provision and the narrowly defined nature of the special exceptions policy.

The exceptions reduction factors are not built permanently into the rates; that is, the factors are not applied cumulatively in determining the Federal rate. As explained previously, in accordance with section 547 of Public Law 106–554, the proposed FY 2002 adjustments and rates are based on the FY 2001 adjustments and rates published in the August 1, 2000 final rule (65 FR 47122). Therefore, the proposed net adjustment to the FY 2002 Federal rate is 0.9925/0.9785, or 1.0143.

5. Standard Capital Federal Rate for FY 2002

For FY 2001, the capital Federal rate was $383.06 for discharges occurring between October 1, 2000 and April 1, 2001. As a result of implementing section 301(a) of Public Law 106–554, for discharges occurring from April to October 2001, the capital Federal rate was $380.85. However, as explained previously, in accordance with section 547 of Public Law 106–554, the proposed FY 2002 adjustments and rates are based on the FY 2001 adjustments and rates published in the August 1, 2000 final rule (65 FR 47122). As a result of changes we are proposing to the factors used to establish the Federal rate, the proposed FY 2002 Federal rate is $389.09. The proposed Federal rate for FY 2002 was calculated as follows:

- The proposed FY 2002 update factor is 1.0110; that is, the proposed update is 1.10 percent.
- The proposed FY 2002 budget neutrality adjustment factor that is applied to the standard Federal payment rate for changes in the DRG relative weights and in the GAF is 0.9913.
- The proposed FY 2002 outlier adjustment factor is 0.9426.
- The proposed FY 2002 (regular and special) exceptions payments adjustment factor is 0.9925.

Since the Federal rate has already been adjusted for differences in case-mix, wages, cost-of-living, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients, we propose to make no additional adjustments in the standard Federal rate for these factors other than the budget neutrality factor for changes in the DRG relative weights and the GAF.

We are providing a chart that shows how each of the factors and adjustments for FY 2002 affected the computation of the proposed FY 2002 Federal rate in comparison to the FY 2001 Federal rate. The proposed FY 2002 update factor has the effect of increasing the Federal rate by 1.10 percent compared to the FY 2001 rate published in the August 1, 2000 final rule, while the proposed geographic and DRG budget neutrality factor has the effect of decreasing the Federal rate by 0.87 percent. The proposed FY 2002 outlier adjustment factor has the effect of increasing the Federal rate by 0.18 percent compared to the FY 2001 rate published in the August 1, 2000 final rule. The proposed FY 2002 (regular and special) exceptions reduction factor has the effect of increasing the Federal rate by 1.43 percent compared to the exceptions reduction for FY 2001. The combined effect of all the proposed changes is to increase the proposed Federal rate by 1.85 percent compared to the Federal rate for FY 2001.

COMPARISON OF FACTORS AND ADJUSTMENTS: FY 2001 FEDERAL RATE AND PROPOSED FY 2002 FEDERAL RATE

	FY 2001	Proposed FY 2002	Change	Percent change
Update factor [1]	1.0090	1.0110	1.0110	1.10
GAF/DRG Adjustment Factor [1]	0.9979	0.9913	0.9913	−0.87
Outlier Adjustment Factor [2]	0.9409	0.9426	1.0018	0.18
Exceptions Adjustment Factor [2]	0.9785	0.9925	1.0143	1.43
Federal Rate	$382.03	$38.09	1.018	1.85

[1] The update factor and the GAF/DRG budget neutrality factors are built permanently into the rates. Thus, for example, the incremental change from FY 2000 to FY 2001 resulting from the application of the 0.9913 GAF/DRG budget neutrality factor for FY 2001 is 0.9913.

[2] The outlier reduction factor and the exceptions reduction factor are not built permanently into the rates; that is, these factors are not applied cumulatively in determining the rates. Thus, for example, the net change resulting from the application of the FY 2001 outlier reduction factor is 0.9426/0.9409, or 1.0018.

6. Special Rate for Puerto Rico Hospitals

As explained at the beginning of section IV of this Addendum, hospitals in Puerto Rico are paid based on 50 percent of the Puerto Rico rate and 50 percent of the Federal rate. The Puerto Rico rate is derived from the costs of Puerto Rico hospitals only, while the Federal rate is derived from the costs of all acute care hospitals participating in the prospective payment system (including Puerto Rico). To adjust hospitals' capital payments for geographic variations in capital costs, we apply a GAF to both portions of the blended rate. The GAF is calculated using the operating prospective payment system wage index and varies depending on the MSA or rural area in which the hospital is located. We use the Puerto Rico wage index to determine the GAF for the Puerto Rico part of the capital-blended rate and the national wage index to determine the GAF for the national part of the blended rate.

Because we implemented a separate GAF for Puerto Rico in FY 1998, we also apply separate budget neutrality adjustments for the national GAF and for the Puerto Rico GAF. However, we apply the same budget neutrality factor for DRG reclassifications and recalibration nationally and for Puerto Rico. The Puerto Rico GAF budget neutrality factor is 0.99941, while the DRG adjustment is 0.9943, for a combined cumulative adjustment of 0.9937.

In computing the payment for a particular Puerto Rico hospital, the Puerto Rico portion of the rate (50 percent) is multiplied by the Puerto Rico-specific GAF for the MSA in which the hospital is located, and the national portion of the rate (50 percent) is multiplied by the national GAF for the MSA in which the hospital is located (which is computed from national data for all hospitals in the United States and Puerto Rico). In FY 1998, we implemented a 17.78 percent reduction to the Puerto Rico rate as a result of Public Law 105–33.

For FY 2001, before application of the GAF, the special rate for Puerto Rico hospitals was $185.06. As explained previously, in accordance with section 547 of Public Law 106–554, the proposed FY 2002 adjustments and rates are based on the FY 2001 rates published in the August 1, 2000 final rule. With the changes we are proposing to the factors used to determine the rate, the proposed FY 2002 special rate for Puerto Rico is $188.67.

B. Calculation of Inpatient Capital-Related Prospective Payments for FY 2002

With the end of the capital prospective payment system transition period, all hospitals (except those defined as "new" under § 412.300(b)) will be paid based on 100 percent of the Federal rate in FY 2002. The applicable Federal rate was determined by making adjustments as follows:

- For outliers, by dividing the standard Federal rate by the outlier reduction factor for that fiscal year; and
- For the payment adjustments applicable to the hospital, by multiplying the hospital's GAF, disproportionate share adjustment factor, and IME adjustment factor, when appropriate.

For purposes of calculating payments for each discharge during FY 2002, the standard Federal rate is adjusted as follows:

(Standard Federal Rate) × (DRG weight) × (GAF) × (Large Urban Add-on, if applicable) × (COLA adjustment for hospitals located in Alaska and Hawaii) × (1 + Disproportionate Share Adjustment Factor + IME Adjustment Factor, if applicable).

The result is the adjusted Federal rate.

Hospitals also may receive outlier payments for those cases that qualify under the thresholds established for each fiscal year. Section 412.312(c) provides for a single set of thresholds to identify outlier cases for both inpatient operating and inpatient capital-related payments. The proposed outlier thresholds for FY 2002 are in section II.A.4.c. of this Addendum. For FY 2002, a case qualifies as a cost outlier if the cost for the case (after standardization for the indirect teaching adjustment and disproportionate share adjustment) is greater than the prospective payment rate for the DRG plus $20,900.

During the capital prospective payment system transition period, a hospital also may receive an additional payment under the regular an exceptions process through its cost reporting period beginning before October 1, 2001 but ending in FY 2002 if its total inpatient capital-related payments are less than a minimum percentage of its allowable Medicare inpatient capital-related costs. The minimum payment level is established by class of hospital under § 412.348(c). Under § 412.348(d), the amount of a regular exceptions payment is determined by comparing the cumulative payments made to the hospital under the capital prospective payment system to the cumulative minimum payment levels applicable to the hospital for each cost reporting period subject to that system. Any amount by which the hospital's cumulative payments exceed its cumulative minimum payment is deducted from the additional payment that would otherwise be payable for a cost reporting period.

An eligible hospital may qualify for a special exception payment under § 412.348(g) through the 10th year beyond the end of the capital transition period if meets (1) a project need requirement described at § 412.348(g)(2), which in the case of certain urban hospitals includes an excess capacity test; and (2) a project size requirement as described at § 412.348(g)(5). Eligible hospitals include sole community hospitals, urban hospitals with at lest 100 beds that have a DSH percentage of at least

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20.2 percent, and hospitals that have a combined Medicare and Medicaid inpatient utilization of at least 70 percent. Under § 412.348(g)(8), the amount of a special exceptions payment is determined by comparing the cumulative payments made to the hospital under the capital prospective payment system to the cumulative minimum payment level. This amount is offset by (1) any amount by which a hospital's cumulative capital payments exceed its cumulative minimum payment levels applicable under the regular exceptions process for cost reporting periods beginning during which the hospital has been subject to capital PPS; and (2) any amount by which a hospital's current year operating and capital payments (excluding 75 percent of operating DSH payments) exceed its operating and capital costs. The minimum payment level is 70 percent for all eligible hospitals under § 412.348(g).

New hospitals as defined under § 412.300 are exempted from the capital prospective payment system for their first 2 years of operation and are paid 85 percent of their reasonable costs during that period. A new hospital's old capital costs are its allowable costs for capital assets that were put in use for patient care on or before the later of December 31, 1990, or the last day of the hospital's base year cost reporting period, and are subject to the rules pertaining to old capital and obligated capital as of the applicable date. Effective with the third year of operation, we will pay the hospital under either the fully prospective methodology, using the appropriate transition blend in that Federal fiscal year, or the hold-harmless methodology. If the hold-harmless methodology is applicable, the hold-harmless payment for assets in use during the base period would extend for 8 years, even if the hold-harmless payments extend beyond the normal transition period.

C. Capital Input Price Index

1. Background

Like the operating input price index, the capital input price index (CIPI) is a fixed-weight price index that measures the price changes associated with costs during a given year. The CIPI differs from the operating input price index in one important aspect—the CIPI reflects the vintage nature of capital, which is the acquisition and use of capital over time. Capital expenses in any given year are determined by the stock of capital in that year (that is, capital that remains on hand from all current and prior capital acquisitions). An index measuring capital price changes needs to reflect this vintage nature of capital. Therefore, the CIPI was developed to capture the vintage nature of capital by using a weighted-average of past capital purchase prices up to and including the current year.

Using Medicare cost reports, American Hospital Association (AHA) data, and Securities Data Company data, a vintage-weighted price index was developed to measure price increases associated with capital expenses. We periodically update the base year for the operating and capital input prices to reflect the changing composition of inputs for operating and capital expenses. Currently, the CIPI is based to FY 1992 and was last rebased in 1997. The most recent discussion of the cost category weights in the CIPI was in the final rule with comment period for FY 1998 published on August 29, 1997 (62 FR 46050).

2. Forecast of the CIPI for Federal Fiscal Year 2001

We are forecasting the CIPI to increase 0.9 percent for FY 2002. This reflects a projected 1.5 percent increase in vintage-weighted depreciation prices (building and fixed equipment, and movable equipment) and a 3.5 percent increase in other capital expense prices in FY 2002, partially offset by a 1.3 percent decline in vintage-weighted interest rates in FY 2002. The weighted average of these three factors produces the 0.9 percent increase for the CIPI as a whole.

IV. Proposed Changes to Payment Rates for Excluded Hospitals and Hospital Units: Rate-of-Increase Percentages

The inpatient operating costs of hospitals and hospital units excluded from the prospective payment system are subject to rate-of-increase limits established under the authority of section 1886(b) of the Act, which is implemented in regulations at § 413.40. Under these limits, a hospital-specific target amount (expressed in terms of the inpatient operating cost per discharge) is set for each hospital, based on the hospital's own historical cost experience trended forward by the applicable rate-of-increase percentages (update factors). In the case of a psychiatric hospital or hospital unit, a rehabilitation hospital or hospital unit, or a long-term care hospital, the target amount may not exceed the updated figure for the 75th percentile of target amounts adjusted to take into account differences between average wage-related costs in the area of the hospital and the national average of such costs within the same class of hospital for hospitals and units in the same class (psychiatric, rehabilitation, and long-term care) for cost reporting periods ending during FY 1996. The target amount is multiplied by the number of Medicare discharges in a hospital's cost reporting period, yielding the ceiling on aggregate Medicare inpatient operating costs for the cost reporting period.

Each hospital-specific target amount is adjusted annually, at the beginning of each hospital's cost reporting period, by an applicable update factor.

Section 1886(b)(3)(B) of the Act, which is implemented in regulations at § 413.40(c)(3)(vii), provides that for cost reporting periods beginning on or after October 1, 1998 and before October 1, 2002, the update factor for a hospital or unit depends on the hospital's or hospital unit's costs in relation to the ceiling for the most recent cost reporting period for which information is available. For hospitals with costs exceeding the ceiling by 10 percent or more, the update factor is the market basket increase. For hospitals with costs exceeding the ceiling by less than 10 percent, the update factor is the market basket minus .25 percent for each percentage point by which costs are less than 10 percent over the ceiling. For hospitals with costs equal to or less than the ceiling but greater than 66.7 percent of the ceiling, the update factor is the greater of 0 percent or the market basket minus 2.5 percent. For hospitals with costs that do not exceed 66.7 percent of the ceiling, the update factor is 0.

The most recent forecast of the market basket increase for FY 2002 for hospitals and hospital units excluded from the prospective payment system is 3.0 percent. Therefore, the update to a hospital's target amount for its cost reporting period beginning in FY 2002 would be between 0.5 and 3.0 percent, or 0 percent, depending on the hospital's or unit's costs in relation to its rate-of-increase limit.

In addition, § 413.40(c)(4)(iii) requires that for cost reporting periods beginning on or after October 1, 1998 and before October 1, 2002, the target amount for each psychiatric hospital or hospital unit, rehabilitation hospital or hospital unit, and long-term care hospital cannot exceed a cap on the target amounts for hospitals in the same class.

Section 1886(b)(3)(H) of the Act, as amended by section 121 of Public Law 106–113, provides for an appropriate wage adjustment to the caps on the target amounts for psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals, effective for cost reporting periods beginning on or after October 1, 1999, through September 30, 2002. On August 1, 2000, we published an interim final rule with comment period that implemented this provision for cost reporting periods beginning on or after October 1, 1999 and before October 1, 2000 (65 FR 47026) and a final rule that implemented the provision for cost reporting periods beginning on or after October 1, 2000 and before October 1, 2001 (65 FR 47054). This proposed rule addresses the wage adjustment to the caps for cost reporting periods beginning on or after October 1, 2001.

As discussed in section VI. of the preamble of this proposed rule, the cap on the target amount per discharge is determined by adding the hospital's nonlabor-related portion of the national 75th percentile cap to its wage-adjusted, labor-related portion of the national 75th percentile cap (the labor-related portion of costs equals 0.71553 and the nonlabor-related portion of costs equals 0.28447). A hospital's wage-adjusted, labor-related portion of the target amount is calculated by multiplying the labor-related portion of the national 75th percentile cap for the hospital's class by the wage index under the hospital inpatient prospective payment system (see § 412.63), without taking into account reclassifications under sections 1886(d)(8)(B) and (d)(10) of the Act.

As discussed in section VI. of the preamble of this proposed rule, we are proposing to make an adjustment to the caps on target amounts for new and existing excluded hospitals and units. In calculating the wage-adjusted caps on target amounts for new and existing excluded and units for FY 2001, we inadvertently made an error. In wage neutralizing FY 1996 target amounts, we used the FY 2000 hospital inpatient prospective payment system wage index published in Tables 4A and 4B of the July 30, 1999 final rule (64 FR 41585 through 41593), which is based on wage data after taking into account geographic reclassifications under section 1886(d)(8) of the Act. We are proposing to use pre-reclassified wage data in our recalculation of the caps for FY 2002. We propose to recalculate the limits for new excluded hospitals and units, as well as calculate the cap for existing excluded hospitals and units using the same wage index used under the prospective payment system for skilled nursing facilities (SNF) as shown in Table 7 of the July 30, 1999 SNF final rule (64 FR 41690). We do not anticipate a significant impact on overall payments to these hospitals and units.

Section 307(a) of Public Law 106–554 amended section 1886(b)(3) of the Act to provide for a 2-percent increase to the wage-adjusted 75th percentile cap on the target amount for long-term care hospitals, effective for cost reporting periods beginning during FY 2001. This provision is applicable to long-term care hospitals that were subject to the cap for existing excluded hospitals and units, as specified in § 413.40(c).

In addition to the increase to the cap on target amounts for long-term care hospitals, section 307(a) of Public Law 106–554 amended section 1886(b)(3)(A) of the Act to make the section applicable to all long-term care hospitals, effective for cost reporting periods beginning during FY 2001. This provision requires a revision to the determination of each long-term care hospital's FY 2001 target amount as specified in § 413.40(c)(4). For cost reporting periods beginning during FY 2001, the hospital-specific target amount otherwise determined for a long-term care hospital as specified under § 413.40(c)(4)(ii) is multiplied by 1.25 (that is, increased by 25 percent). However, the revised FY 2001 target amount for a long-term care hospital cannot exceed its wage-adjusted national cap as required by section 1886(b)(3) of the Act, as amended by section 307(a) of Public Law 106–554.

For cost reporting periods beginning in FY 2002, the proposed caps are as follows:

Class of excluded hospital or unit	Labor-related share	Nonlabor-related share
Psychiatric	$8,404	$3,341
Rehabilitation	15,689	6,237
Long-Term Care	31,399	12,483

Regulations at § 413.40(d) specify the formulas for determining bonus and relief payments for excluded hospitals and specify established criteria for an additional bonus payment for continuous improvement. Regulations at § 413.40(f)(2)(ii) specify the payment methodology for new hospitals and hospital units (psychiatric, rehabilitation, and long-term care) effective October 1, 1997.

V. Tables

This section contains the tables referred to throughout the preamble to this proposed rule and in this Addendum. For purposes of this proposed rule, and to avoid confusion, we have retained the designations of Tables 1 through 5 that were first used in the September 1, 1983 initial prospective payment final rule (48 FR 39844). Tables 1A, 1C, 1D, 2, 3A, 3B, 4A, 4B, 4C, 4F, 4G, 4H, 5, 6A, 6B, 6C, 6D, 6E, 6F, 6G, 6H, 7A, 7B, 8A, and 8B are presented below. The tables presented below are as follows:

Table 1A—National Adjusted Operating Standardized Amounts, Labor/Nonlabor
Table 1C—Adjusted Operating Standardized Amounts for Puerto Rico, Labor/Nonlabor
Table 1D—Capital Standard Federal Payment Rate
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Table 4B—Wage Index and Capital Geographic Adjustment Factor (GAF) for Rural Areas
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Table 4F—Puerto Rico Wage Index and Capital Geographic Adjustment Factor (GAF)
Table 4G—Pre-Reclassified Wage Index for Urban Areas
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Table 6A—New Diagnosis Codes
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Table 6D—Invalid Procedure Codes
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Table 6F—Revised Procedure Code Titles
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Table 6H—Deletions to the CC Exclusions List
Table 7A—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 2000 MedPAR Update 12/00 GROUPER V18.0
Table 7B—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 2000 MedPAR Update 12/00 GROUPER V20.0
Table 8A—Statewide Average Operating Cost-to-Charge Ratios for Urban and Rural Hospitals (Case Weighted) March 2001
Table 8B—Statewide Average Capital Cost-to-Charge Ratios (Case Weighted) March 2001

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TABLE 1A.—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR

Large urban areas		Other areas	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
$2,940.89	$1,195.38	$2,894.33	$1,176.46

TABLE 1C.—ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR PUERTO RICO, LABOR/NONLABOR

	Large urban areas		Other areas	
	Labor	Nonlabor	Labor	Nonlabor
National	$2,915.45	$1,185.04	$2,915.45	$1,185.04
Puerto Rico	1,414.18	569.25	1,391.79	560.23

TABLE 1D.—CAPITAL STANDARD FEDERAL PAYMENT RATE

	Rate
National	$389.09
Puerto Rico	188.67

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2000 (1996 WAGE DATA), 2001 (1997 WAGE DATA) AND 2002 (1998 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES

Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
010001	15.8484	16.4088	17.1352	16.4665
010004	15.0194	17.9732	19.0010	17.1863
010005	16.2615	17.5985	18.6554	17.4986
010006	17.3081	16.7480	17.3537	17.1306
010007	14.8048	15.4798	15.6788	15.3288
010008	17.6549	14.7443	17.4728	16.6080
010009	17.5328	18.7731	18.4390	18.2439
010010	15.9090	16.4468	16.4664	16.2848
010011	20.6261	20.7972	21.9311	21.1001
010012	19.2992	17.7171	15.8686	17.5430
010015	18.3461	15.4510	18.7062	17.3913
010016	16.1311	17.2473	18.6772	17.4112
010018	18.9617	17.6449	18.9388	18.5180
010019	15.4910	16.3493	17.0672	16.3245
010021	14.6297	16.2919	15.1241	15.3000
010022	20.5050	18.5879	17.6435	18.8422
010023	16.2581	16.1025	16.3209	16.2283
010024	16.0263	16.2900	16.2974	16.2091
010025	14.5311	15.1356	15.1548	14.9441
010027	14.9278	11.7900	16.8595	14.1053
010029	16.4103	17.6461	18.3605	17.4403
010031	18.0194	18.7835	18.5180	18.4445
010032	12.6540	12.5995	15.3590	13.6017
010033	19.6797	20.3923	21.1818	20.4188
010034	14.7342	15.0959	15.3639	15.0606
010035	17.4788	20.1853	16.0377	17.7343
010036	17.2880	17.8140	17.0366	17.3872
010038	18.3309	18.2671	19.6098	18.7632
010039	18.8080	20.1045	20.3406	19.7778
010040	19.1030	18.9376	19.9152	19.2851
010043	16.2022	30.7489	18.6640	19.9982
010044	17.0229	22.0091	24.0265	20.8906
010045	15.0065	15.2200	17.0417	15.7248
010046	17.1822	17.3970	18.9737	17.8750
010047	16.3803	13.3521	15.4332	15.2044
010049	14.4823	14.7590	15.5246	14.9487
010050	15.4159	18.5163	17.3895	17.0820

* Wage data not available for the provider that year.
** For Federal Fiscal Year 2002 only, the average hourly wage is based upon data on file as of February 15, 2001. It does not reflect changes processed after that date.
*** The 3-year average hourly wage is weighted by salaries and hours.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2000 (1996 WAGE DATA), 2001 (1997 WAGE DATA) AND 2002 (1998 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
010051	9.9390	11.9275	11.8108	11.1940
010052	13.8649	16.5486	18.0653	16.1248
010053	13.1778	14.6267	15.5649	14.5406
010054	17.1246	18.5103	19.5148	18.4901
010055	18.1930	18.9526	18.8590	18.6711
010058	12.7809	16.1702	16.9715	15.1274
010059	18.1886	19.1286	18.8020	18.7124
010061	15.9215	14.9547	14.5003	15.1112
010062	13.5690	14.7732	12.3259	13.5151
010064	20.8966	20.4139	19.5256	20.2712
010065	15.6357	16.4049	16.8752	16.3279
010066	12.0681	15.4317	13.1559	13.4757
010068	18.7367	12.0525	12.9616	14.2644
010069	13.5684	13.8636	14.7211	14.0429
010072	14.3481	14.9526	16.2339	15.1957
010073	12.8328	13.8601	14.1273	13.6015
010078	17.7110	17.9202	18.1028	17.9134
010079	16.8701	16.4421	14.5611	15.8427
010080	13.8473	*	*	13.8473
010081	16.9823	18.9474	17.2996	17.7081
010083	16.2146	16.8933	18.0312	17.0916
010084	18.7794	18.4965	18.7769	18.6812
010085	18.8696	18.4744	19.6888	19.0044
010086	14.9255	16.6694	16.5711	16.0968
010087	18.3889	19.0033	17.3321	18.3237
010089	16.6090	16.8042	17.7800	17.0521
010090	18.1121	18.3866	18.9445	18.4882
010091	16.3620	13.9405	17.0799	15.6820
010092	16.4980	16.9900	17.8144	17.1322
010094	18.5603	*	*	18.5603
010095	11.8993	12.4525	12.2597	12.2090
010097	12.8955	13.0413	12.7286	12.8889
010098	14.2787	15.9165	14.0300	14.6833
010099	15.9309	15.9874	15.5619	15.8073
010100	15.4826	17.2011	17.7237	16.8503
010101	15.4173	15.3859	14.4460	15.0721
010102	12.7251	13.7933	13.8136	13.4259
010103	19.3115	17.9358	16.6514	17.9628
010104	18.0997	17.7126	15.9964	17.2534
010108	20.7914	17.9017	19.4617	19.3047
010109	14.0870	15.3107	14.6834	14.6934
010110	15.9066	15.6317	15.8283	15.7917
010112	15.1056	15.1401	16.8271	15.6716
010113	17.2440	16.9683	13.9413	15.9844
010114	17.2612	15.2454	17.0136	16.4485
010115	13.7524	14.6268	14.9632	14.4787
010118	16.6889	18.8477	17.0834	17.5145
010119	18.1707	18.8024	20.7741	19.7059
010120	17.0332	17.2336	18.2567	17.5146
010121	15.1806	14.6444	14.5262	14.8160
010123	18.1604	16.7344	19.2140	17.9949
010124	16.2666	16.2846	16.7465	16.4273
010125	14.4153	15.5304	16.0136	15.3557
010126	17.6405	19.5710	19.1065	18.7347
010127	19.6095	19.5190	18.2786	19.1726
010128	12.5747	14.5056	14.4322	13.6385
010129	14.4267	14.7286	16.1733	15.1385
010130	16.3465	16.6809	18.1314	16.9797
010131	17.9076	17.8260	20.1883	18.6602
010134	10.7817	18.8835	19.9856	15.8677
010137	15.9348	12.1217	20.4561	15.8609
010138	12.1295	12.8675	14.5254	13.1763
010139	19.9487	19.0001	20.6815	19.8355

* Wage data not available for the provider that year.
** For Federal Fiscal Year 2002 only, the average hourly wage is based upon data on file as of February 15, 2001. It does not reflect changes processed after that date.
*** The 3-year average hourly wage is weighted by salaries and hours.

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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2000 (1996 WAGE DATA), 2001 (1997 WAGE DATA) AND 2002 (1998 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
010143	15.7144	16.7911	17.6212	16.7651
010144	17.1211	17.1320	17.7580	17.3377
010145	20.7460	20.8434	20.5895	20.7209
010146	18.8561	18.5198	19.1415	18.8309
010148	14.6443	12.2214	15.8349	13.9784
010149	17.0836	18.6333	18.0156	17.9216
010150	16.9749	17.8951	18.8977	17.9203
010152	17.3835	17.8306	18.2173	17.8172
010155	16.7028	9.0300	15.0689	12.5183
010158	*	17.3227	18.3957	17.8637
020001	27.9690	28.1747	27.4110	27.8426
020002	26.9145	24.5815	25.1987	25.5092
020004	26.3979	30.5667	25.4679	27.5927
020005	29.0068	30.2920	29.2378	29.5337
020006	26.7706	31.2404	28.1417	28.8630
020007	24.9555	27.8319	32.3852	28.0097
020008	30.4712	29.4146	30.8691	30.2487
020009	23.1801	20.1930	18.4660	20.3801
020010	18.6417	23.6727	22.7559	21.4818
020011	29.4697	30.4727	28.0658	29.3006
020012	23.9259	24.8543	25.5320	24.7635
020013	26.8172	23.8847	28.1557	26.0576
020014	24.0932	27.3823	24.9201	25.4246
020017	24.9714	26.8319	27.6501	26.5037
020024	22.7263	24.0872	25.3205	24.0621
020025	27.1529	21.7557	20.2583	22.6334
030001	19.8695	20.3673	21.7869	20.6506
030002	21.6263	21.5977	21.8375	21.6886
030003	23.6722	23.4833	22.6804	23.3063
030004	17.7333	14.0711	15.5478	15.4308
030006	17.6409	18.2668	19.7289	18.5307
030007	18.5602	19.6708	21.5169	19.9379
030008	*	22.2758	22.2190	22.2524
030009	17.9343	18.1794	18.7557	18.2786
030010	18.7997	19.0907	19.5123	19.1422
030011	20.0784	19.2973	19.4310	19.5785
030012	19.4245	18.9918	20.6585	19.6997
030013	21.0182	20.7458	19.6369	20.4298
030014	19.4697	19.9315	19.7966	19.7342
030016	20.5606	19.3967	19.4785	19.8559
030017	20.4185	22.8765	21.7938	21.6805
030018	18.9115	20.2032	20.8980	20.0193
030019	19.9211	21.7005	21.2540	20.9846
030022	15.7886	19.2966	17.3485	17.0947
030023	22.4365	23.6697	24.1678	23.4686
030024	21.6692	22.2541	22.6199	22.1974
030025	17.6759	12.7254	11.9894	13.7385
030027	17.5796	15.7554	17.6555	16.9563
030030	21.6249	20.8303	21.6932	21.3795
030033	16.8396	20.0044	20.2820	18.9069
030034	19.0868	16.8241	20.8689	18.8279
030035	19.7153	19.2781	20.0226	19.6580
030036	18.9449	20.7567	21.6371	20.4743
030037	21.4376	22.8266	23.7615	22.6712
030038	22.0777	22.6776	22.9822	22.5885
030040	17.9722	18.5456	19.7636	18.7537
030041	17.4389	15.8921	18.8717	17.2718
030043	20.7721	20.9341	20.5598	20.7468
030044	16.4654	16.8649	17.6575	17.0214
030047	19.6916	22.6401	21.4412	21.2271
030049	19.0896	19.0881	19.3580	19.1639
030054	14.4861	15.3338	15.0657	14.9801
030055	18.2751	16.3613	20.2991	18.2684

* Wage data not available for the provider that year.
** For Federal Fiscal Year 2002 only, the average hourly wage is based upon data on file as of February 15, 2001. It does not reflect changes processed after that date.
*** The 3-year average hourly wage is weighted by salaries and hours.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2000 (1996 WAGE DATA), 2001 (1997 WAGE DATA) AND 2002 (1998 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
030059	21.7100	24.0465	22.6279	22.7570
030060	16.7661	19.2461	18.6313	18.2043
030061	17.3470	18.9063	19.9047	18.7238
030062	17.4825	17.6738	18.0603	17.7568
030064	18.5391	19.5673	19.9437	19.3687
030065	19.9277	20.5130	20.7838	20.4254
030067	15.6207	14.4446	17.2778	15.7364
030068	17.3482	17.3614	17.7208	17.4823
030069	19.0013	19.0961	21.0936	19.7255
030080	19.9865	20.5144	20.6581	20.3684
030083	23.6433	23.3355	23.5229	23.4991
030085	17.8402	21.0954	20.8611	19.9420
030086	18.5030	19.5436	*	19.0352
030087	20.0469	21.4084	21.9465	21.1838
030088	19.5772	19.8682	20.4978	20.0029
030089	19.9018	20.4019	20.9516	20.4404
030092	21.5628	20.6986	21.8308	21.3646
030093	19.4688	19.7262	20.4314	19.9052
030094	19.4773	21.6218	22.8123	21.4086
030095	14.2499	13.7293	13.7664	13.9087
030099	18.0747	16.1541	18.2263	17.4781
030100	*	*	23.7609	23.7609
030101	*	*	19.2547	19.2547
030102	*	*	18.2413	18.2413
040001	15.5735	15.1624	16.9178	15.8741
040002	14.0865	13.0592	15.1107	14.0333
040003	14.0027	14.2089	15.5740	14.5731
040004	17.2926	17.8476	17.9034	17.6718
040005	12.8825	13.2597	11.1318	12.3937
040007	19.5299	21.9583	18.6998	19.9568
040008	12.6974	15.3040	14.7985	14.3087
040010	17.6231	18.6023	19.4913	18.6031
040011	12.2654	14.5319	16.0995	14.1756
040014	15.3853	17.6340	18.1434	17.0051
040015	14.6045	16.5891	15.5207	15.5649
040016	17.5431	19.0295	20.2321	18.9152
040017	14.9533	13.5098	15.4686	14.6576
040018	17.5602	17.6027	18.7463	17.9749
040019	25.7080	22.6769	23.4163	23.8479
040020	14.8059	16.4827	18.9844	16.6335
040021	16.4628	17.6398	19.6835	17.8176
040022	16.0006	17.0397	14.8398	15.8797
040024	15.7282	14.4541	17.6523	15.9585
040025	10.9496	11.5079	13.4705	11.8847
040026	18.2398	19.5563	19.7924	19.1863
040027	14.5406	16.0975	17.4431	16.0716
040028	12.8409	14.6584	13.9946	13.7921
040029	17.7777	17.8787	21.1370	18.9480
040030	14.1541	13.5428	11.2402	12.7784
040032	13.3280	13.7030	13.2872	13.4471
040035	11.2123	12.8300	10.9569	11.6408
040036	17.9080	18.9757	20.0835	18.9954
040037	13.4815	14.6559	14.0941	14.0704
040039	13.8386	14.3576	14.7177	14.3115
040040	17.4283	18.0895	19.1984	18.2668
040041	13.3613	15.9896	16.4624	15.2103
040042	14.6641	15.2142	15.2057	15.0333
040044	11.4422	12.6275	13.3501	12.5381
040045	18.7724	14.9429	16.2469	16.4870
040047	16.3948	16.8654	17.5336	16.9538
040048	15.8203	*	*	15.8203
040050	11.7934	13.3818	14.0036	13.0341
040051	16.2803	15.8627	16.6039	16.2390

* Wage data not available for the provider that year.
** For Federal Fiscal Year 2002 only, the average hourly wage is based upon data on file as of February 15, 2001. It does not reflect changes processed after that date.
*** The 3-year average hourly wage is weighted by salaries and hours.

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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2000 (1996 WAGE DATA), 2001 (1997 WAGE DATA) AND 2002 (1998 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
040053	15.8193	16.3610	15.0219	15.7502
040054	15.0412	15.3219	14.2577	14.8844
040055	16.1029	17.1269	17.7214	16.9813
040058	15.6706	17.6766	16.4278	16.6344
040060	11.4686	12.8148	17.9805	13.6105
040062	17.2757	18.2048	17.8902	17.8204
040064	12.4007	10.7255	11.5029	11.4801
040066	17.6429	18.3377	17.8338	17.9377
040067	13.4930	14.6014	14.4741	14.1956
040069	16.1147	17.5052	17.0026	16.8681
040070	15.4757	16.9027	16.9700	16.4358
040071	16.3022	16.9610	17.2834	16.8497
040072	15.8425	16.0895	17.4622	16.4893
040074	17.3819	18.3224	18.7542	18.1968
040075	12.7496	13.3623	14.0975	13.3977
040076	18.5512	19.0732	20.5840	19.3801
040077	12.4625	12.9211	13.9114	13.0965
040078	17.8573	18.7600	18.5821	18.4100
040080	15.7397	19.2461	19.3707	18.0636
040081	10.6791	11.3169	11.1332	11.0311
040082	16.5127	16.2152	15.1331	15.9302
040084	17.2469	17.2613	17.7295	17.4070
040085	15.7765	16.8957	16.5216	16.3838
040088	15.6710	17.9636	17.1624	16.9372
040090	17.5503	17.8282	19.0824	18.0989
040091	17.0444	19.8700	20.1378	18.8893
040093	12.9010	12.3537	13.9741	13.0114
040100	14.9688	14.7587	15.6833	15.1704
040105	14.2409	15.3319	14.3896	14.6616
040106	15.4000	15.6545	18.1341	16.4515
040107	19.6184	18.8120	17.8628	18.6841
040109	13.9807	14.6266	16.6278	15.0815
040114	18.3133	18.8743	21.1110	19.3778
040116	19.5695	20.2716	*	19.9151
040118	17.4300	19.3720	18.2123	18.3407
040119	15.3847	15.5338	16.7730	15.9002
040124	17.2547	19.1349	19.2889	18.5723
040126	11.6845	12.5368	11.6517	11.9404
040132	13.1760	17.5179	10.3875	13.4483
040134	*	18.0787	19.0185	18.5701
040135	*	22.6761	23.0084	22.8797
050002	27.6006	37.8295	36.9630	33.5586
050006	19.5272	19.5594	18.2061	19.0382
050007	29.5398	30.7126	30.8676	30.4910
050008	25.8570	26.2458	26.3682	26.1654
050009	26.2506	26.8159	28.0701	27.0878
050013	24.8541	23.2201	28.0569	25.1985
050014	24.5302	22.8478	23.6745	23.6450
050015	25.3838	26.2481	27.7731	26.4938
050016	20.1542	20.5566	21.2045	20.6377
050017	23.6639	23.9625	24.4598	24.0349
050018	14.6622	15.4721	15.2903	15.1444
050021	28.5003	25.8966	*	27.2682
050022	22.9583	24.0318	24.5254	23.8802
050024	20.3427	21.3989	22.4274	21.4070
050025	21.9952	23.3896	23.9879	23.0936
050026	28.6850	27.8736	27.0130	27.8531
050028	16.4531	16.4671	17.6138	16.8496
050029	23.2911	25.1259	24.6839	24.3441
050030	21.0096	20.9812	21.5621	21.1955
050032	22.5868	25.2010	24.3598	24.0616
050033	24.5609	24.9328	31.7747	27.1293
050036	20.4703	21.2420	20.1678	20.6131

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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2000 (1996 WAGE DATA), 2001 (1997 WAGE DATA) AND 2002 (1998 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
050038	27.8274	28.6528	29.9698	28.8293
050039	22.2524	22.7117	22.5974	22.5195
050040	30.6664	32.1287	30.4110	31.0613
050042	22.2343	24.8067	24.5260	23.8317
050043	33.2286	32.9958	33.8255	33.3456
050045	20.7307	19.8831	21.1474	20.5973
050046	31.3831	25.3185	25.2005	27.4555
050047	29.4412	29.9255	29.9580	29.7840
050051	17.8401	17.8945	18.7809	18.1179
050054	19.3686	20.7212	22.0982	20.7075
050055	29.0872	29.3984	29.2730	29.2593
050056	23.8507	27.4321	23.8058	24.9609
050057	21.7581	21.1554	20.7050	21.1842
050058	25.7261	23.1641	23.3009	23.9601
050060	20.9219	20.7747	20.5450	20.7207
050061	23.7443	23.5454	24.5488	23.9503
050063	23.0724	24.8851	25.7593	24.5061
050065	21.1848	24.0420	24.3835	23.0762
050066	21.4187	16.5725	16.1649	17.6784
050067	21.3029	23.1966	25.8857	23.3989
050068	28.4804	20.6851	19.3615	22.4409
050069	29.2980	25.9420	24.6153	26.4351
050070	32.5964	32.5166	33.0195	32.7172
050071	33.1379	33.1850	33.3740	33.2367
050072	32.9660	33.2858	38.5136	34.8941
050073	34.6111	33.3922	31.4874	33.0669
050075	33.5246	33.9095	32.6142	33.3899
050076	33.8835	27.7797	32.7847	31.3195
050077	23.2986	24.1019	24.2083	23.8775
050078	22.8023	23.0736	24.3150	23.3638
050079	34.4253	33.2432	30.0167	32.3461
050082	21.7004	22.1009	23.7617	22.5498
050084	23.0966	23.5866	25.4517	24.0054
050088	24.0634	20.8406	24.9641	23.1779
050089	20.0194	20.9117	21.9331	20.9434
050090	23.8969	23.4097	23.9183	23.7390
050091	22.2220	25.2792	23.7713	23.6457
050092	15.3841	16.7969	17.1211	16.4241
050093	24.0837	25.2130	25.6647	24.9860
050095	33.3761	33.6718	32.5552	33.2492
050096	21.6752	20.0487	22.7394	21.3870
050097	22.6147	16.7054	22.5991	20.1968
050099	24.2921	24.8091	23.5693	24.1958
050100	30.0552	29.8758	25.0335	28.0584
050101	30.0132	31.0264	31.8957	30.9871
050102	21.2947	22.2937	24.0014	22.4745
050103	25.3384	24.7932	25.4133	25.1832
050104	25.4407	25.5797	26.8367	25.9399
050107	21.7649	21.2690	22.2019	21.7497
050108	25.2116	23.5564	25.1307	24.5504
050109	26.4768	*	*	26.4768
050110	20.1769	20.1870	19.9589	20.1175
050111	21.7397	21.5487	20.7897	21.3840
050112	26.2922	25.3015	26.8182	26.1335
050113	27.7805	28.8420	28.5224	28.4025
050114	25.9073	24.7286	26.6757	25.7599
050115	21.0499	21.3291	23.0182	21.8124
050116	25.5919	25.2130	24.9196	25.2412
050117	20.4379	23.3612	22.2123	21.9903
050118	23.9976	23.7698	23.7129	23.8243
050121	18.8818	19.5252	18.4827	18.9563
050122	*	26.3172	26.9546	26.6358
050124	23.0193	22.7736	24.5069	23.3667

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
050125	24.0434	29.6147	32.0230	28.3742
050126	23.8424	23.9247	24.6752	24.1448
050127	19.7654	22.1937	20.9157	20.9577
050128	24.1801	25.7240	26.6132	25.5185
050129	27.1586	26.5030	23.0719	25.3795
050131	29.0570	31.0732	32.5462	30.8106
050132	22.9139	24.0834	24.0173	23.6527
050133	24.4011	24.9746	23.2093	24.1354
050135	27.0341	23.2361	24.7157	24.9796
050136	24.4336	24.7921	24.4162	24.5396
050137	30.0725	32.6507	31.5620	31.4326
050138	37.4088	37.3286	40.3920	38.3945
050139	31.3785	32.9351	30.3774	31.5037
050140	33.6644	34.1499	31.6524	33.0748
050144	25.7483	27.8751	27.4069	26.9409
050145	33.0620	32.3857	34.5185	33.3152
050148	21.0584	21.9211	20.0971	20.9748
050149	23.3754	24.6078	26.8674	24.8666
050150	23.4777	24.9073	24.6596	24.3771
050152	27.7504	34.0766	33.3305	31.5833
050153	29.5915	30.5714	32.3389	30.8441
050155	22.9420	21.0257	25.3354	22.9852
050158	27.9789	27.5623	28.6071	28.0313
050159	25.2105	23.2912	22.5313	23.6099
050167	21.6778	21.9128	21.8796	21.8226
050168	25.2504	23.3511	25.1937	24.5830
050169	24.6361	22.3888	24.8407	23.8796
050170	22.1989	23.9574	24.3654	23.4164
050172	17.6976	20.1841	19.6120	19.1630
050173	23.3255	24.5545	24.8694	24.1923
050174	31.2136	30.2140	30.1320	30.4943
050175	27.7875	27.2806	24.7548	26.2477
050177	20.2485	21.7943	21.1396	21.0728
050179	19.2861	21.7175	23.8868	21.4573
050180	32.1883	31.8947	33.3257	32.5107
050183	19.9765	20.3638	*	20.1665
050186	21.9062	22.4155	23.6288	22.6119
050188	27.4364	28.0918	28.2364	27.9460
050189	23.2415	22.8687	27.4071	24.6245
050191	26.7297	20.8321	25.2399	24.1511
050192	17.8095	18.6701	14.0828	16.5416
050193	23.7260	22.6316	24.9444	23.7567
050194	28.2701	29.7371	29.3310	29.0932
050195	34.7789	35.5621	36.9068	35.7823
050196	16.6866	18.5180	18.2411	17.8430
050197	31.4513	35.7449	32.0779	32.9661
050204	24.3944	23.6105	22.7099	23.5849
050205	21.1545	23.6831	24.1691	23.0778
050207	20.8576	21.6214	22.9941	21.8243
050211	31.2175	31.6084	31.7280	31.5153
050213	20.7338	21.4806	21.4438	21.1694
050214	20.8704	21.7335	24.0276	22.1888
050215	28.4058	29.8563	32.4402	30.1364
050217	19.8913	19.6010	20.2042	19.9076
050219	25.4730	21.7444	21.2458	22.6404
050222	27.0713	27.4809	26.9958	27.1794
050224	23.7942	23.5316	23.5101	23.6043
050225	20.7978	23.3480	21.6206	21.8948
050226	26.9297	27.7315	24.4443	26.2380
050228	30.3772	34.0711	34.2596	32.7722
050230	25.3640	27.7357	26.6291	26.5638
050231	25.5798	26.1508	26.7319	26.1758
050232	23.3849	24.3072	24.5245	24.0793

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
050233	31.3954	*	*	31.3954
050234	*	*	28.5188	25.7035
050235	25.8595	25.2527	27.0922	26.0726
050236	26.2723	26.9803	25.9458	26.4027
050238	24.0043	24.2922	24.5823	24.2994
050239	20.4071	22.6625	21.9889	21.6674
050240	25.2540	26.3657	26.7736	26.0561
050241	27.2198	26.3740	29.8345	27.7426
050242	30.1432	31.1576	31.9079	31.0590
050243	22.9123	28.9635	26.4627	26.1049
050245	24.3969	23.8124	23.2716	23.7873
050248	27.4214	26.2015	27.6457	27.0910
050251	18.4990	21.6574	23.6360	21.1907
050253	20.0658	16.0701	16.7540	17.4281
050254	19.6899	19.3126	20.1176	19.7146
050256	23.5302	23.6887	23.4835	23.5723
050257	19.5923	15.2306	15.0481	16.3402
050260	23.5201	23.2421	27.4234	24.5032
050261	20.4496	20.0552	20.1040	20.2029
050262	29.0054	28.8785	29.5550	29.1532
050264	29.4542	32.1312	36.0219	32.4654
050267	24.7464	26.2264	26.0401	25.6690
050270	23.7260	24.0439	25.3757	24.3521
050272	21.4374	22.4247	23.1111	22.3118
050274	21.1943	20.0422	*	20.6204
050276	28.5051	29.8624	33.3302	30.5715
050277	22.3125	20.0520	26.0822	22.5131
050278	23.8434	24.7787	23.9289	24.1853
050279	21.0570	20.8444	21.8949	21.2309
050280	24.4267	25.2149	25.4011	25.0356
050281	18.5907	19.6888	24.2251	20.7934
050282	24.4593	28.8261	25.4428	26.2214
050283	27.8763	29.7734	31.7669	30.1598
050286	17.8045	16.5708	18.5915	17.4822
050289	26.7185	34.1393	30.4750	30.2632
050290	26.3745	28.6231	29.6796	28.2631
050291	26.4908	30.2748	28.3483	28.3026
050292	22.4878	21.6243	20.8410	21.6183
050293	19.1761	22.2963	24.1875	21.4642
050295	20.7393	21.2892	21.5335	21.1814
050296	25.3166	27.2948	28.3906	27.0098
050298	20.5181	24.4477	23.2006	22.6781
050299	25.7697	26.4543	25.5035	25.9187
050300	22.7423	23.5116	25.9228	24.1102
050301	26.0355	22.5201	21.1403	23.0323
050302	29.2007	*	*	29.2007
050305	32.7082	34.5185	36.7908	34.7340
050307	27.9830	17.2147	*	21.7503
050308	28.4019	29.3803	28.9284	28.9113
050309	24.4034	23.7884	25.3515	24.5133
050310	20.6181	*	*	20.6181
050312	23.7936	26.7617	26.0015	25.5439
050313	23.1009	21.7577	25.6827	23.5594
050315	21.9227	24.7086	22.7359	23.0264
050317	19.4479	21.6937	*	20.5789
050320	30.6054	30.4101	32.4809	31.1252
050324	26.2735	26.6049	25.3694	26.0738
050325	23.2355	24.4862	23.6327	23.7872
050327	22.8511	23.9484	25.6450	24.1469
050328	23.1889	*	*	23.1889
050329	21.4125	19.7455	15.1669	18.2146
050331	25.5252	22.2536	25.0230	24.1261
050333	20.1468	19.4589	19.1449	19.5671

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
050334	32.0169	34.2330	34.2557	33.5307
050335	20.2013	23.0258	22.9926	22.0827
050336	20.0980	20.7979	21.3402	20.7523
050342	19.3524	20.1841	20.8255	20.1210
050343	17.3394	17.2085	*	17.2799
050348	20.7505	23.8779	25.1085	23.3219
050349	15.0515	14.9754	15.0667	15.0310
050350	25.0676	24.8340	26.4161	25.4163
050351	24.6936	25.4791	24.8121	24.9948
050352	23.5927	26.1380	26.0974	25.3078
050353	23.2468	23.0564	23.2699	23.1944
050355	17.1597	17.2778	21.0969	18.0157
050357	23.6411	22.6545	24.5345	23.6386
050359	20.4005	17.7907	21.7548	19.8316
050360	31.7608	31.3526	31.7583	31.6236
050366	21.3442	23.7528	19.6823	21.4770
050367	29.4763	28.2805	30.7328	29.5063
050369	24.2604	27.0548	26.2234	25.8174
050373	26.6548	26.9776	28.0655	27.2088
050376	25.3036	26.5840	28.5679	26.7332
050377	25.6401	17.1764	17.0012	20.1035
050378	22.2363	25.9810	26.9101	24.8709
050379	15.4994	15.2022	17.8958	16.1098
050380	30.5790	31.4343	31.9578	31.3600
050382	26.1465	26.1398	25.9244	26.0725
050385	25.9188	24.6083	20.1687	23.1378
050388	13.7863	19.1512	22.0122	17.5709
050390	22.5668	25.0426	24.2700	23.9349
050391	22.4881	18.9266	20.0615	20.3952
050392	21.9324	21.6729	22.9430	22.1487
050393	23.1387	25.6964	24.1981	24.3082
050394	22.2424	23.0604	23.1526	22.8333
050396	23.6322	24.0636	25.3729	24.3512
050397	20.7698	20.2601	20.6397	20.5453
050401	17.7807	20.7473	18.4593	18.9557
050404	19.2754	17.3396	15.9839	17.4356
050406	16.8931	17.3016	17.8596	17.3407
050407	30.1222	29.9642	30.8346	30.2996
050410	16.4735	17.6769	19.8508	17.8663
050411	32.2364	34.8899	32.2157	33.0639
050414	24.4243	24.2060	23.9069	24.1441
050417	21.8884	21.5739	23.3005	22.2456
050419	23.1162	23.7584	23.4936	23.4646
050420	22.6819	22.3166	23.1651	22.7188
050423	23.3296	17.3771	21.3552	20.6272
050424	23.7788	22.8350	24.0727	23.5641
050425	33.6911	32.8364	33.8624	33.4842
050426	23.7082	25.2453	29.2475	25.9886
050427	20.0698	20.1674	16.4330	18.6499
050430	21.3428	23.8788	21.2275	22.2136
050432	21.4984	24.4133	24.5630	23.4427
050433	16.8035	17.4643	18.9021	17.7004
050434	15.6348	19.7591	*	17.6624
050435	32.9865	25.6676	23.3426	26.8858
050436	16.3594	14.8121	*	15.5729
050438	24.0828	25.0138	22.5006	23.8790
050440	21.1100	23.5167	22.6946	22.4056
050441	28.7067	28.9804	31.8774	29.8169
050443	16.4308	19.9020	17.2875	17.7906
050444	24.6741	21.4533	22.4530	22.8550
050446	20.5383	20.4908	22.3422	21.1378
050447	18.4183	17.9751	18.9851	18.4558
050448	20.0757	19.7046	21.7718	20.5035

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
050449	22.1784	23.8001	23.4614	23.1469
050454	28.6857	28.7432	30.9487	29.5840
050455	19.9209	20.1643	20.2611	20.1204
050456	17.6229	20.1254	18.1585	18.5890
050457	31.2489	34.4949	32.1910	32.6376
050459	37.0914	*	*	37.0914
050464	22.3142	25.3292	25.7710	24.4665
050468	23.1701	23.3050	22.2926	22.8998
050469	23.4404	23.8759	24.5205	23.8915
050470	17.0353	16.0292	15.7832	16.2133
050471	24.2887	25.6172	26.2221	25.3560
050476	23.1428	22.4754	24.0253	23.2552
050477	27.7855	27.9595	27.5819	27.7866
050478	23.0530	24.5401	26.3306	24.6133
050481	26.8293	28.9722	27.7973	27.8692
050482	16.9268	18.1217	16.0114	17.0134
050483	21.6038	22.7182	*	22.1632
050485	23.1933	24.1983	24.6906	24.0174
050486	24.4967	*	*	24.4967
050488	32.8620	34.6939	31.7481	33.0979
050491	25.1011	26.8703	27.4600	26.4606
050492	21.4156	19.5457	20.5030	20.4277
050494	25.4078	29.2621	29.1296	27.9125
050496	33.0168	32.5168	34.9704	33.4862
050497	*	13.8110	15.4115	14.5264
050498	24.8445	24.9677	26.1716	25.3085
050502	22.6253	22.3788	24.3517	23.0821
050503	23.5911	24.4069	23.3745	23.7879
050506	21.2165	25.0845	25.0333	23.8164
050510	33.4617	33.3774	32.6940	33.1728
050512	34.3138	35.3581	33.4465	34.3098
050515	35.0412	35.3419	32.6021	34.2147
050516	25.1850	24.7992	26.1969	25.4171
050517	20.3733	20.9550	22.0985	21.1081
050522	31.7326	35.3784	35.2780	33.9529
050523	28.4235	27.0544	31.2522	28.8864
050526	26.9206	23.8099	26.4014	25.6096
050528	18.6898	19.0611	18.9155	18.8867
050531	20.7332	22.7308	21.3948	21.6689
050534	23.3026	24.0700	24.0001	23.7954
050535	24.2257	25.4215	26.8511	25.4120
050537	22.2073	22.2256	23.8790	22.8084
050539	23.2501	20.7129	21.2318	21.6610
050541	34.6195	34.4573	35.5912	34.9089
050542	17.8537	16.0892	17.7737	17.2018
050543	23.0437	22.3994	21.6795	22.3610
050545	27.5713	26.3304	31.7280	27.9472
050546	27.7557	26.1949	38.8087	28.7303
050547	27.0845	26.8305	37.7681	28.7499
050548	26.5922	28.8083	29.8516	28.2370
050549	27.9098	27.2765	28.5457	27.9239
050550	25.7546	24.8048	25.6588	25.4034
050551	24.0488	25.4652	24.8084	24.7966
050552	22.8731	21.5216	20.3239	21.6775
050557	22.1385	21.1243	22.2562	21.8314
050559	24.6689	23.5759	24.7866	24.3485
050561	33.9268	34.5791	32.3907	33.5772
050564	24.5099	23.5922	24.2091	24.0891
050565	22.8785	23.7829	20.8349	22.3644
050566	18.3297	17.4423	22.3448	19.2949
050567	24.2349	24.6454	25.0787	24.6746
050568	20.5205	19.5816	20.5376	20.2025
050569	24.9453	26.5479	27.3429	26.2484

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
050570	24.4961	25.2294	26.1015	25.2629
050571	24.3741	26.2039	23.6702	24.7124
050573	25.1398	24.9644	25.6589	25.2612
050575	*	19.5611	20.7090	20.0979
050577	20.5177	25.1549	23.5487	22.9797
050578	28.9073	28.5379	28.3177	28.5843
050579	30.0694	30.4952	29.9348	30.1803
050580	23.9183	25.9004	24.6962	24.8350
050581	23.5660	23.8584	24.1233	23.8604
050583	23.3609	24.3987	25.8800	24.5448
050584	23.1610	21.2366	19.5805	21.2667
050585	26.4985	25.9426	24.2824	25.5872
050586	23.8402	23.4079	23.1850	23.4570
050588	30.3873	25.3094	24.5472	26.4705
050589	24.3453	24.8698	23.8109	24.3084
050590	*	22.4480	23.9599	23.1967
050591	22.3224	23.9412	24.8356	23.6641
050592	26.0528	21.1745	22.1174	23.0414
050594	22.7826	27.1584	27.7002	25.6455
050597	23.1789	22.8523	23.3280	23.1176
050598	28.1062	24.3597	23.9202	25.2869
050599	26.3191	29.1221	26.0892	27.1846
050601	32.8704	31.8670	29.7417	31.4201
050603	22.7500	23.3390	21.7031	22.5608
050604	33.3239	34.0461	34.3923	33.9347
050607	24.1052	*	*	24.1052
050608	16.1529	18.0947	17.6170	17.2527
050609	31.9340	34.9935	32.3640	33.0668
050613	23.4779	23.3835	30.2413	25.4419
050615	23.7015	23.8815	27.5682	24.9089
050616	22.7960	22.7437	24.9843	23.5101
050618	21.7032	21.6509	21.4895	21.6219
050623	30.3208	29.1806	33.3458	30.6877
050624	22.3419	22.7148	26.4659	23.7251
050625	24.3503	26.4849	27.5816	26.1377
050630	24.0961	23.9159	23.9834	23.9961
050633	21.9790	23.1918	25.4283	23.5401
050635	37.8481	*	*	37.8481
050636	20.8349	21.2618	23.5257	21.8335
050638	23.6341	18.2859	18.2159	19.5807
050641	21.3605	21.8315	17.1258	19.7042
050644	23.1229	22.3456	22.1489	22.5048
050661	20.4769	19.6780	*	20.1699
050662	28.2910	26.9606	35.0989	28.9225
050663	23.7097	30.6591	24.9110	25.8492
050667	24.1064	24.9979	27.5045	25.1663
050668	39.9001	42.0974	61.7751	44.9671
050670	21.8750	20.0152	24.6101	21.9523
050674	36.2361	34.7380	31.4935	33.9505
050675	15.8423	15.6794	*	15.7602
050676	17.5302	18.6672	52.8683	22.3243
050677	33.7056	35.6503	32.6045	33.9333
050678	22.6591	26.8741	22.7756	23.9129
050680	27.3188	28.0584	31.4839	28.9200
050682	17.9715	26.2882	17.3566	19.6443
050684	21.8067	22.3398	23.3697	22.4849
050685	32.1330	31.1725	35.1307	32.7762
050686	33.2515	35.2631	32.3401	33.5425
050688	29.9990	30.6635	31.0648	30.5922
050689	34.1851	30.7295	30.9399	31.8127
050690	33.8277	32.8204	33.7648	33.4827
050693	33.2977	26.8265	25.5662	28.3155
050694	22.5719	23.2293	23.5572	23.1120

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
050695	23.5215	21.1377	24.3451	23.0440
050696	26.4103	28.0015	28.3291	27.6235
050697	21.4716	21.1566	18.2338	20.1433
050699	28.4754	25.7843	17.5296	23.1610
050700	28.4522	*	*	28.4522
050701	27.6190	22.6959	24.3055	24.7548
050702	12.2518	*	*	12.2518
050704	20.7568	22.8716	22.7618	22.3025
050707	27.5065	26.2732	27.8958	27.2979
050708	21.9149	22.7821	24.8647	23.2324
050709	19.4255	21.9598	19.4977	20.2535
050710	26.8095	26.9060	26.7221	26.8057
050713	15.3027	17.7259	16.8538	16.6077
050714	*	28.9314	30.1925	29.4900
050715	19.1151	*	*	19.1151
050717	*	25.9534	29.6608	27.7154
050718	*	17.6062	18.0940	17.8064
050719	*	25.5506	23.0833	23.8495
050720	*	*	25.8677	25.8677
060001	20.5908	21.3659	21.1819	21.0411
060003	19.3243	19.8023	20.4682	19.8685
060004	21.7899	22.8750	21.4496	22.0469
060006	17.8613	19.3651	20.0213	19.0568
060007	16.3833	17.4682	18.2977	17.3945
060008	17.0944	18.0333	18.4590	17.8646
060009	21.1795	21.4312	22.6084	21.7644
060010	22.7241	24.0872	23.6827	23.5135
060011	21.9727	23.4366	22.6254	22.6752
060012	19.7746	20.1442	19.4932	19.7974
060013	19.1369	22.7346	18.4230	20.1121
060014	20.5353	24.2459	23.8228	22.8253
060015	23.5675	20.9773	23.0206	22.5102
060016	15.9627	16.4707	20.2408	17.3661
060018	21.8607	20.3183	21.5083	21.2146
060020	17.7250	18.3099	18.8985	18.3187
060022	19.6488	21.0558	21.0830	20.6200
060023	19.6534	19.2373	21.2785	20.0409
060024	22.8347	21.9955	22.5663	22.4704
060027	21.6731	20.9846	21.7448	21.4691
060028	22.2461	23.2065	23.1792	22.8860
060029	21.4111	20.8585	18.2938	20.0752
060030	20.0345	20.5002	20.3452	20.2923
060031	19.3998	21.1649	22.0161	20.8402
060032	22.3702	23.4162	21.7060	22.5248
060033	13.8165	15.9085	16.0760	15.2591
060034	21.4110	22.4791	22.1375	22.0321
060036	19.2386	15.0698	18.5988	17.4095
060037	14.0458	15.5611	15.4513	15.0213
060038	14.3084	14.0791	14.3249	14.2429
060041	14.8299	14.8934	19.1263	15.9980
060042	20.0815	19.1892	20.8597	19.9134
060043	13.0544	13.6717	13.4443	13.3963
060044	22.5286	19.7039	20.8673	21.1240
060046	20.4359	19.4567	22.2699	20.7384
060047	15.1181	15.8770	17.1534	15.9786
060049	20.6427	21.7797	25.5038	22.5344
060050	16.8012	18.2238	19.0832	18.0606
060052	12.5517	13.4210	14.6309	13.5896
060053	14.9399	15.9806	18.0232	16.2596
060054	19.3943	22.8985	20.4160	20.8278
060056	17.0509	18.2831	18.1263	17.9597
060057	23.3804	26.4046	25.4185	25.1123
060058	16.9064	15.4856	13.8539	15.6088

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
060060	14.8894	15.6469	15.6018	15.4330
060062	14.9354	17.2991	16.8640	16.3901
060063	15.0896	*	*	15.0896
060064	20.9349	21.2207	22.6830	21.6302
060065	24.3032	21.6305	23.7162	23.1229
060066	14.0672	16.3485	17.2537	15.7129
060068	19.6355	*	*	19.6355
060070	16.5821	17.3184	18.8960	17.6173
060071	16.9545	17.5987	17.4068	17.3254
060073	15.8385	15.7860	17.0846	16.2338
060075	22.8498	24.1550	23.8724	23.6295
060076	19.2861	24.8732	20.3265	21.3796
060085	13.4761	13.6277	14.3409	13.7955
060087	21.0277	*	*	21.0277
060088	16.6753	25.2786	13.7174	17.2655
060090	14.5096	22.2974	16.3760	17.6196
060096	23.1232	21.9623	20.8937	21.9261
060100	21.9983	23.5986	22.9395	23.0367
060103	22.3414	24.8151	23.5320	23.5039
060104	22.3008	22.2295	21.0656	21.8025
060107	13.6449	14.2698	21.9221	15.1674
070001	26.5150	26.0878	26.1878	26.2690
070002	25.4570	26.2801	26.2089	25.9775
070003	26.0894	25.6949	27.3062	26.3527
070004	23.2664	22.4871	24.2567	23.3158
070005	25.5739	26.6483	26.7916	26.3250
070006	28.7139	27.5674	28.4368	28.2423
070007	27.1867	26.9505	26.0179	26.7076
070008	26.0269	23.0227	24.2971	24.3585
070009	23.4686	24.6201	24.1871*	24.0886
070010	25.9375	26.2354	28.0116	26.6816
070011	23.9603	23.3638	23.0883	23.4486
070012	25.1022	23.0321	28.8067	25.3536
070015	25.3317	23.8240	25.4250	24.8350
070016	26.3005	24.9148	24.4633	25.2035
070017	24.8038	26.2923	26.0424	25.7039
070018	28.8776	28.0689	30.6864	29.1923
070019	24.7025	25.7283	24.9249	25.1145
070020	23.7227	23.9987	25.0719	24.2498
070021	26.5173	25.2978	27.1879	26.2849
070022	25.0845	26.5691	26.5225	26.0295
070024	25.1491	25.2983	24.8948	25.1061
070025	25.4055	25.1315	25.0631	25.2037
070026	18.7892	*	*	18.7892
070027	23.6381	23.6412	26.8450	24.6648
070028	24.6913	24.6788	25.6145	24.9846
070029	22.7507	22.0080	23.9682	22.8885
070030	24.9676	28.9117	22.1578	25.5338
070031	21.6565	23.4419	24.1198	23.0342
070033	28.8099	30.4214	31.4671	30.2045
070034	29.1220	28.9200	29.1514	29.0628
070035	23.0574	23.0869	23.7003	23.2881
070036	28.9463	28.8400	29.9470	29.2263
070039	21.7791	22.9032	22.3356	22.3067
080001	25.2849	25.4836	24.2845	25.0307
080002	15.5964	19.6011	20.1965	18.4286
080003	22.3957	22.1856	22.6814	22.4058
080004	19.7725	21.9391	23.0537	21.6106
080005	14.4289	*	*	14.4289
080006	22.2632	20.0792	21.1059	21.1131
080007	20.3833	19.6213	21.2441	20.4479
090001	25.8921	21.7526	19.4884	22.5234
090002	19.6997	19.4191	21.5726	20.1912

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
090003	28.6092	22.1090	23.1268	24.5792
090004	24.4267	24.3367	25.4836	24.6979
090005	24.8766	23.8620	26.1199	24.9264
090006	20.0816	20.8675	22.0789	21.0107
090007	21.6551	22.1973	29.2840	24.7855
090008	21.5972	20.2166	25.2708	22.3042
090010	15.8676	24.1287	23.6616	20.2595
090011	27.3741	27.4781	25.5395	26.7683
100001	17.6948	19.5796	19.4948	18.9110
100002	21.3243	20.7136	20.8100	20.9384
100004	15.2465	14.6283	15.4149	15.0845
100006	20.6302	20.1133	21.0230	20.6052
100007	21.7217	21.7242	21.8476	21.7676
100008	20.7232	20.4980	20.8381	20.6876
100009	24.2947	22.6419	20.1263	22.1819
100010	21.9101	21.9078	23.0637	22.2904
100012	18.5169	19.6177	20.4659	19.5030
100014	19.8352	19.8023	19.5770	19.7276
100015	18.2394	18.4779	18.0654	18.2696
100017	17.7739	19.0608	19.8655	18.9086
100018	20.8392	21.0332	21.0971	20.9923
100019	19.8134	22.6152	22.9645	21.7772
100020	26.1783	21.3848	20.7816	22.5004
100022	25.8853	26.4094	26.5695	26.2778
100023	21.1068	19.9739	19.1787	20.0604
100024	20.7760	21.8791	22.1332	21.6047
100025	19.1219	18.7774	19.4159	19.1009
100026	20.7591	20.5641	20.9461	20.7639
100027	12.9410	19.1481	14.7916	15.3484
100028	19.7491	19.3757	19.3371	19.4791
100029	19.1768	20.8745	20.8950	20.2753
100030	18.8229	22.8204	20.6176	20.6840
100032	19.3165	19.8127	19.7451	19.6185
100034	18.2314	17.8743	19.5282	18.5138
100035	19.5842	20.1540	23.7366	21.2058
100038	24.7851	23.3578	24.5864	24.2183
100039	20.2529	21.5297	21.7861	21.1854
100040	18.6417	19.0449	18.4371	18.7010
100043	17.5215	18.7993	18.8206	18.3605
100044	21.1370	21.4764	22.3808	21.6907
100045	20.7688	20.9216	20.5433	20.7423
100046	21.2094	21.6207	22.0001	21.5991
100047	18.8677	20.0114	20.6068	19.8263
100048	13.5021	15.0584	15.7790	14.8232
100049	18.5598	18.8535	19.1025	18.8421
100050	16.6058	17.2377	17.9039	17.2452
100051	18.8377	23.1273	17.9453	19.6449
100052	16.1855	17.9537	18.1780	17.4312
100053	18.7103	20.1724	19.6800	19.5213
100054	18.1853	23.5491	21.1710	20.9429
100055	17.6226	18.0547	18.8760	18.1971
100056	23.6545	25.7863	21.8506	23.8349
100057	18.7489	19.9712	19.5319	19.4242
100060	22.3904	23.2561	23.5983	23.0794
100061	21.7923	22.1133	22.9176	22.2483
100062	17.9575	19.4370	21.4424	19.6570
100063	16.2324	19.2629	18.4642	17.9066
100067	17.3950	18.0877	18.4851	17.9682
100068	18.6480	19.9305	19.8148	19.4667
100069	16.1393	16.8271	17.3666	16.7757
100070	20.3358	18.7408	19.5034	19.4826
100071	16.4756	17.5451	17.7234	17.2640
100072	19.2223	21.0225	20.1930	20.2012

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
100073	18.1554	21.1898	22.2812	20.4948
100075	18.0548	18.3688	19.4480	18.6211
100076	16.2469	17.8733	17.8612	17.3644
100077	19.6214	22.3438	18.0424	19.9689
100078	18.2791	18.4499	19.2891	18.6609
100080	21.1603	22.1966	21.4042	21.5955
100081	13.9564	14.8313	15.4253	14.7661
100082	19.8033	18.8998	*	19.3432
100084	20.4002	22.3674	22.0600	21.6577
100085	21.0802	22.1231	*	21.5986
100086	21.1625	21.6997	23.3718	22.0734
100087	23.1162	23.6090	23.3607	23.3648
100088	20.0571	20.3693	20.5566	20.3435
100090	17.8768	19.1479	19.7695	18.9939
100092	18.1953	17.9216	20.1760	18.7907
100093	16.6310	16.5128	16.8422	16.6633
100098	19.0319	19.2427	20.8315	19.7124
100099	15.2983	15.7823	15.7591	15.6112
100102	19.3330	18.9701	19.7673	19.3542
100103	18.1019	17.2364	18.7844	18.0201
100105	21.5028	21.6604	21.8268	21.6611
100106	19.3113	17.2527	17.4958	17.9164
100107	18.0142	20.1281	20.0396	19.3936
100108	11.4692	19.9593	20.1125	16.4375
100109	22.1715	20.8440	19.8488	20.8649
100110	19.6439	20.8995	20.1853	20.2509
100112	9.7706	25.2570	15.2128	15.6728
100113	22.2584	23.2020	28.8892	24.7828
100114	23.4501	21.6262	22.8178	22.5825
100117	18.8619	20.7624	20.6962	20.1889
100118	19.7608	22.8702	20.7323	21.1427
100121	19.3435	*	18.2789	18.7785
100122	18.0551	19.8783	19.2567	19.0659
100124	19.0527	17.0713	20.4022	18.8192
100125	17.3358	18.9535	19.6097	18.6719
100126	18.0943	19.5413	19.3103	18.9490
100127	19.8727	19.9860	19.2122	19.6859
100128	21.3653	20.1536	22.8826	21.4045
100129	18.5723	19.1936	*	18.8646
100130	19.1052	18.6751	20.0947	19.3019
100131	22.1680	23.4373	21.1195	22.2597
100132	16.8978	18.1167	18.7863	17.9218
100134	13.4711	15.1764	15.9733	14.8260
100135	17.4785	18.8253	19.0430	18.4539
100137	19.0464	18.6955	19.5562	19.1372
100138	11.0135	17.1373	14.9539	13.7935
100139	15.6444	15.6514	15.2532	15.5227
100140	17.3518	17.1389	19.0584	17.8826
100142	18.6812	19.6815	13.0623	16.5381
100144	15.0197	12.2877	*	13.4059
100145	19.1143	*	*	19.1143
100146	17.8692	18.1267	21.3359	19.1001
100147	14.6751	14.6616	15.2348	14.8665
100150	21.0224	21.2807	21.5057	21.2659
100151	19.3990	21.6087	23.8489	21.6478
100154	19.8485	20.0015	20.4068	20.1020
100156	17.1335	19.4980	18.4779	18.3856
100157	21.0324	22.6744	22.6195	22.1032
100159	16.3778	10.2793	6.3232	9.8839
100160	21.6339	20.5581	23.3121	21.8278
100161	21.5025	22.2994	22.4181	22.0895
100162	19.8748	20.1411	14.1842	17.5642
100165	18.5739	19.0388	22.6622	20.3299

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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2000 (1996 WAGE DATA), 2001 (1997 WAGE DATA) AND 2002 (1998 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
100166	20.4228	20.0250	21.2309	20.5491
100167	21.8138	23.4075	23.2969	22.8605
100168	20.1260	20.1994	20.2632	20.1979
100169	20.7778	20.9506	20.6223	20.7811
100170	15.1167	18.5088	19.3005	17.5325
100172	15.1848	14.3446	14.8826	14.8099
100173	17.3416	18.5662	17.1337	17.6572
100174	20.5125	26.1826	21.9807	22.2819
100175	17.8237	18.1692	20.5477	19.0035
100176	24.6978	22.8604	24.3089	23.9493
100177	22.0034	24.4296	23.5394	23.2665
100179	20.9053	22.3015	18.4114	20.3782
100180	18.4754	20.2130	21.5180	19.9976
100181	24.5704	23.0800	18.9510	21.8206
100183	20.8579	24.6121	23.0654	22.6623
100187	20.6938	20.2533	18.7750	19.8300
100189	21.0102	21.3147	26.5962	23.0255
100191	18.4692	19.9879	18.8676	19.1050
100199	23.3713	21.7193	*	22.5030
100200	22.2575	22.4579	23.8729	22.8861
100203	18.8628	*	*	18.8628
100204	20.2049	20.8995	19.6128	20.2366
100206	20.3511	19.5710	20.1171	20.0138
100207	15.9173	*	*	15.9173
100208	20.8337	21.2117	20.7029	20.9220
100209	19.7329	22.4577	22.7340	21.6408
100210	19.1799	21.3575	21.8545	20.7662
100211	25.5277	20.6427	20.7516	21.9172
100212	25.3441	21.1187	20.6343	22.0357
100213	19.1238	20.6558	21.1818	20.2975
100217	19.8700	20.5909	22.7335	21.0211
100220	19.9121	21.2796	21.1605	20.7655
100221	22.2517	17.3965	21.2672	20.0933
100222	22.1958	*	*	22.1958
100223	18.7580	20.6302	18.6039	19.2991
100224	24.7023	20.0251	21.8799	21.8886
100225	20.6404	20.6802	21.1013	20.8046
100226	24.8641	20.6858	22.0308	22.2904
100228	23.6986	21.3168	20.9039	21.8386
100229	18.2070	19.6908	18.2350	18.7682
100230	20.6018	20.5051	22.5650	21.2357
100231	17.4002	17.9226	18.3597	17.8974
100232	17.3171	19.3491	19.8002	18.8267
100234	21.5763	20.9104	21.6362	21.3290
100235	17.6648	17.1622	*	17.4262
100236	21.8111	20.3766	19.9007	20.6153
100237	22.9344	22.0865	23.2408	22.7368
100238	17.6310	19.6367	20.8252	19.4032
100239	19.7605	21.3193	19.4481	20.1474
100240	17.9339	20.4340	21.0606	19.8014
100241	13.8344	14.7224	17.1063	15.0865
100242	17.1154	17.9260	18.6938	17.9097
100243	20.3838	21.2644	20.8041	20.8228
100244	17.4124	18.6227	20.5352	18.9148
100246	21.2160	19.6376	20.8989	20.5473
100248	21.5399	20.7007	21.3017	21.1691
100249	19.0243	19.2808	18.1397	18.8067
100252	17.8726	17.7778	19.8032	18.4710
100253	20.6014	21.3232	21.8890	21.2952
100254	20.9080	19.6598	19.5489	19.9883
100255	21.0224	25.2119	21.0284	22.2338
100256	23.5640	20.9356	20.8947	21.6340
100258	21.8764	21.3501	20.0300	21.0257

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
100259	19.8600	20.3815	21.1160	20.4723
100260	21.2224	21.0506	24.6599	22.2640
100262	19.5874	20.0433	21.0927	20.2558
100263	16.9012	*	*	16.9012
100264	17.6085	19.1556	19.9394	18.8935
100265	19.8571	18.8301	18.2291	18.8491
100266	17.7319	18.2993	19.3623	18.4763
100267	17.0986	20.1141	21.7430	19.6266
100268	23.5863	23.9249	24.0538	23.8633
100269	21.2047	21.6724	22.5114	21.8200
100270	19.8576	15.1462	16.7148	17.2012
100271	19.9208	20.4824	20.8695	20.4494
100275	21.3273	20.9188	21.2396	21.1563
100276	21.9797	22.3646	24.1022	22.8308
100277	16.1410	16.6255	19.7241	17.0041
100279	23.0213	22.9095	21.5291	22.5018
100280	16.5851	17.3676	18.1972	17.4129
100281	22.0202	22.4392	23.0142	22.5262
100282	19.7717	19.1978	17.7837	18.9361
100284	*	*	18.9448	18.9448
110001	18.0571	19.1971	20.1150	19.1086
110002	17.3674	17.1406	19.5113	18.0107
110003	16.9099	18.1168	17.1450	17.3940
110004	18.9468	19.5591	19.7733	19.4194
110005	19.2639	17.7348	21.4023	19.6576
110006	20.1273	20.7820	21.0601	20.6571
110007	23.4976	21.9505	25.0143	23.4851
110008	18.2642	22.0081	18.5265	19.5622
110009	14.8218	16.3069	17.4306	16.2843
110010	24.5493	23.3213	23.8794	23.9073
110011	18.2846	18.6144	18.9823	18.6368
110013	16.0264	16.2811	18.9160	17.1183
110014	16.1168	16.0658	18.1787	16.7192
110015	19.4769	21.2146	20.9926	20.5614
110016	15.2967	22.5321	14.2398	16.6540
110017	10.5399	13.1960	21.4010	15.0953
110018	21.0415	19.6064	22.1480	20.9298
110020	18.5251	18.3147	19.4457	18.7684
110023	18.6460	21.1994	21.8081	20.5099
110024	19.7923	20.7297	20.7345	20.4144
110025	18.6463	19.5749	20.4232	19.5033
110026	16.1414	17.2977	16.2484	16.5517
110027	14.6834	16.0642	14.8266	15.2090
110028	19.8894	20.1547	29.1670	22.3800
110029	20.0507	20.2906	19.6048	19.9639
110030	17.6785	18.8105	19.6354	18.7183
110031	21.5794	19.9482	20.0553	20.4598
110032	16.1859	15.7349	18.2014	16.6413
110033	21.4143	22.1879	25.1743	22.8060
110034	18.1882	19.6055	19.5554	19.0987
110035	21.1670	19.3795	22.7950	21.1658
110036	24.4181	22.2498	20.7284	22.3301
110038	16.3750	17.7060	17.5767	17.2140
110039	20.7710	20.6011	20.4998	20.6248
110040	16.4043	17.0743	16.8083	16.7529
110041	16.6927	18.8035	20.2755	18.6583
110042	20.6503	24.0153	25.2331	23.2575
110043	17.2175	20.1016	20.6150	19.2219
110044	19.5983	16.3624	17.2087	17.5794
110045	19.9445	20.2498	21.3049	20.4714
110046	19.2327	19.7377	21.4905	20.1167
110048	15.6463	16.3148	15.6113	15.8483
110049	14.2135	16.1817	16.8639	15.7669

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
110050	18.7516	20.7619	19.2291	19.5578
110051	15.7475	17.0070	17.2292	16.6496
110052	15.0562	*	*	15.0562
110054	19.2712	*	20.2638	19.7639
110056	16.4960	15.6202	15.8122	15.9689
110059	17.6984	16.6678	16.7990	17.0253
110061	13.7196	15.0367	16.3557	15.0889
110062	12.2107	18.8019	17.0053	16.1264
110063	17.9743	16.9612	18.5071	17.7965
110064	18.3368	18.9515	19.1203	18.8163
110065	13.3245	15.6771	16.3546	15.1604
110066	20.6502	21.0207	22.4189	21.3274
110069	18.3519	19.3109	20.9575	19.5384
110070	18.2264	21.0227	17.3438	18.7743
110071	14.8902	14.5984	18.8321	15.8863
110072	12.4303	12.7877	12.7625	12.6652
110073	15.1377	15.4261	16.4658	15.6663
110074	20.7572	21.3945	22.3769	21.5169
110075	17.0067	18.5199	20.1757	18.5793
110076	20.4430	21.2867	21.9798	21.2384
110078	24.7069	22.3718	24.0893	23.6954
110079	20.1385	21.0593	22.1070	21.0913
110080	23.4336	18.4768	19.1839	20.1449
110082	22.0078	23.8768	24.2358	23.3923
110083	21.3578	23.1219	23.1463	22.5746
110086	14.9756	18.2815	16.6374	16.5417
110087	20.5420	21.7773	22.7069	21.7189
110089	18.5761	18.5587	19.0889	18.7374
110091	21.3789	19.5114	21.5328	20.7784
110092	15.0890	17.3479	16.9725	16.4433
110093	14.8049	*	16.9827	15.7486
110094	13.8658	14.5641	16.9503	15.0650
110095	15.9478	16.4670	17.2273	16.5433
110096	16.3202	16.8541	17.4157	16.8647
110097	15.6164	15.5811	17.4558	16.1121
110098	14.0067	16.3532	16.0597	15.3226
110100	20.3764	18.6978	19.0764	19.3213
110101	11.7278	10.8187	18.8491	12.7872
110103	11.9352	13.6842	21.1837	14.0859
110104	15.3184	15.7781	15.8542	15.6538
110105	16.5196	16.8909	16.7775	16.7306
110107	17.3921	19.3609	19.3897	18.7335
110108	15.1401	19.7938	25.2161	19.3940
110109	16.3703	15.9359	16.4031	16.2270
110111	17.3215	18.5108	18.3951	18.0800
110112	19.1288	19.0619	19.8617	19.3018
110113	15.1896	16.8179	15.9532	15.9721
110114	15.1303	14.6888	16.4812	15.4358
110115	24.8332	43.9427	22.9566	28.0177
110118	15.3992	20.5368	19.7509	18.5122
110120	15.1878	15.2589	17.7429	15.9886
110121	15.5792	16.2711	19.1640	17.0021
110122	18.8497	21.1365	21.1469	20.3688
110124	17.1306	17.5732	18.3366	17.6460
110125	17.3254	19.1311	18.0692	18.1623
110127	13.7612	14.6143	20.3765	16.2641
110128	18.9705	18.1845	18.0835	18.4293
110129	18.1208	18.9388	19.0001	18.6851
110130	13.0779	16.0580	14.6011	14.6559
110132	15.0231	16.0419	16.3943	15.8158
110134	11.5583	12.5723	18.6076	14.6296
110135	17.0834	17.4380	17.3504	17.2967
110136	16.1680	18.0639	16.9629	16.8702

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
110140	17.8806	17.8870	17.7915	17.8571
110141	12.5051	13.2501	14.4935	13.4024
110142	12.3029	14.6144	13.9525	13.5947
110143	21.6898	20.1603	22.5926	21.5352
110144	17.9766	16.8685	17.5112	17.4397
110146	17.6068	16.1316	17.1835	16.9320
110149	22.2256	17.7535	32.1975	23.0615
110150	18.7724	20.2644	21.2909	20.0962
110152	14.7674	15.3996	15.1324	15.1011
110153	18.6862	19.2744	20.5068	19.4781
110154	14.8067	14.9636	17.3761	15.6408
110155	17.1370	15.5306	16.5146	16.3434
110156	15.3422	14.7477	16.3876	15.4698
110161	20.8657	21.7153	22.2861	21.6563
110163	18.2016	20.4202	18.6088	18.9884
110164	19.4946	20.2074	21.2301	20.2993
110165	18.9974	21.2577	20.8030	20.3401
110166	19.8510	20.5882	20.5637	20.3331
110168	19.8178	20.6646	21.8508	20.8181
110169	18.7189	20.6385	22.6648	20.4216
110171	20.0874	23.7893	25.5187	22.6232
110172	25.4390	23.3730	23.6761	24.1702
110174	14.2978	13.7339	14.6199	14.1905
110176	22.3971	*	*	22.3971
110177	19.5888	20.7187	21.2661	20.5227
110178	16.8555	18.8306	*	17.8083
110179	20.5161	22.7841	22.8884	21.9497
110181	13.7195	14.0941	12.9798	13.6399
110183	21.1797	23.3826	22.5148	22.3473
110184	20.9465	22.1970	22.1920	21.7791
110185	16.2487	16.7246	17.7925	16.9013
110186	17.3398	17.4287	18.3013	17.6927
110187	21.4462	20.1154	19.8419	20.4516
110188	20.0548	24.8376	23.7089	22.6478
110189	18.8627	22.2715	20.8786	20.7023
110190	19.4318	18.5728	18.3649	18.7761
110191	19.1065	20.2033	21.4033	20.2583
110192	20.7660	21.4951	21.0390	21.1032
110193	18.7807	20.6380	20.7867	20.0518
110194	15.0937	15.1480	14.8115	15.0165
110195	10.5227	13.9135	12.7261	12.3146
110198	26.1898	24.1999	24.4684	24.9086
110200	17.2129	18.1862	16.0807	17.1358
110201	19.2438	20.4699	21.0011	20.2421
110203	20.2958	26.8148	22.7453	23.1944
110204	20.5728	19.7317	30.7342	21.7754
110205	26.1154	21.1435	21.3617	22.7145
110207	12.8710	12.9727	14.7154	13.5335
110208	14.8907	15.1742	15.6161	15.1789
110209	20.4640	17.9190	18.6404	18.9942
110211	21.8226	20.9372	26.9151	23.1427
110212	12.6583	11.8545	14.3790	12.8830
110213	13.1976	14.3651	*	13.7453
110215	*	20.1928	18.1539	19.0047
110216	*	*	27.1878	27.1878
110217	*	*	34.0758	34.0758
120001	26.7134	27.9213	29.0427	27.8237
120002	24.3780	25.0744	25.2021	24.8896
120003	23.8452	25.9059	23.9115	24.5394
120004	24.0456	23.9208	24.8632	24.2413
120005	20.5380	23.3975	24.1662	22.6197
120006	23.7151	25.0895	25.8943	24.8700
120007	23.2684	22.7200	22.8772	22.9509

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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2000 (1996 WAGE DATA), 2001 (1997 WAGE DATA) AND 2002 (1998 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
120009	19.0216	17.4693	16.4621	17.5649
120010	25.3976	25.1480	24.1923	24.8868
120011	33.5459	35.0582	37.2759	35.3313
120012	22.5219	23.1144	21.8507	22.5391
120014	24.0467	22.8866	24.0359	23.6453
120015	29.0747	32.9906	42.6465	33.1800
120016	29.4104	27.9127	45.6878	31.2151
120018	25.6088	24.5031	31.1879	26.2841
120019	21.9199	22.9341	25.5659	23.4285
120021	19.4236	23.4508	23.1839	21.8865
120022	17.9306	21.7868	19.0792	19.4460
120024	22.2846	29.4808	32.2514	26.8486
120025	19.0197	20.1065	50.6376	21.3455
120026	23.2237	26.0787	25.1314	24.7719
120027	24.5549	24.7255	24.4535	24.5737
120028	23.4873	27.5023	27.0897	25.8902
130001	24.9511	18.8471	17.6306	20.1752
130002	16.1853	16.6620	16.9867	16.6200
130003	19.9499	21.7313	22.3600	21.3642
130005	20.1678	20.7169	21.2386	20.7149
130006	18.8705	19.3392	20.4614	19.5797
130007	19.8442	20.8338	21.8107	20.8426
130008	12.9177	12.5506	13.6018	12.9892
130009	18.2958	19.1837	15.9701	17.7296
130010	21.4325	17.6795	17.5119	18.7875
130011	19.0816	20.5031	20.1147	19.9190
130012	22.6153	22.9813	24.9976	23.5891
130013	19.2170	17.4038	15.1129	17.1523
130014	17.9836	18.9769	19.1105	18.6941
130015	15.2662	15.7233	18.5913	16.3849
130016	16.9987	17.3942	19.0516	17.7864
130017	16.8822	17.1710	19.6875	17.7220
130018	17.9651	19.7368	19.8425	19.2288
130019	17.2317	18.6648	19.1711	18.3322
130021	12.2562	12.8588	15.6155	13.6528
130022	19.5040	16.5270	18.9127	18.2241
130024	18.3789	19.3634	19.0703	18.9600
130025	15.2691	17.5213	16.4627	16.4881
130026	20.5535	21.5934	21.8106	21.3093
130027	20.7044	21.4279	20.5344	20.8883
130028	18.2074	19.1093	20.9674	19.4388
130029	20.3153	18.4263	18.7694	19.1364
130030	18.3981	17.8440	17.5759	17.9347
130031	17.6458	16.2397	16.7766	16.8967
130034	18.8164	16.9873	18.9483	18.2785
130035	20.4708	19.3478	20.7770	20.1943
130036	13.7942	13.7933	13.6362	13.7373
130037	17.7374	18.8071	18.6856	18.3986
130043	16.0686	16.5102	16.7904	16.4511
130044	13.1816	17.8160	13.4513	14.6424
130045	16.4655	16.0990	19.0208	17.0869
130048	15.0924	16.0899	16.7900	15.9311
130049	20.3928	20.3129	22.4440	21.0760
130054	17.7802	17.2729	17.7085	17.5766
130056	15.6551	14.6862	20.9476	16.5492
130058	17.7462	*	*	17.7462
130060	20.8508	21.8662	22.7399	21.8288
130061	16.7839	15.4006	14.7394	15.6929
130062	15.1086	16.5672	19.8157	17.1915
130063	*	15.9441	18.8024	17.8420
140001	15.4448	16.3372	17.7990	16.4814
140002	19.2575	19.0248	19.9284	19.3999
140003	18.0001	21.2886	17.8595	18.9466

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
140004	17.5200	15.7042	17.4574	16.8965
140005	10.8718	11.6127	12.3002	11.5858
140007	22.4015	22.9799	23.0743	22.8202
140008	21.2844	21.6548	22.0157	21.6522
140010	25.2227	31.8207	28.4268	28.3237
140011	17.2856	17.8676	18.6164	17.9499
140012	19.4406	23.0653	21.0475	21.1353
140013	17.3488	18.3060	19.6722	18.4213
140014	20.7563	22.4737	23.0372	21.9976
140015	15.0232	16.6735	17.6805	16.4314
140016	12.5363	13.1278	14.4938	13.3972
140018	21.4147	22.3070	24.6202	22.7573
140019	15.3435	16.6548	16.4254	16.1654
140024	14.6674	16.8271	15.3782	15.5912
140025	16.9489	16.9462	18.5135	17.4713
140026	15.9557	16.6612	18.3220	16.9446
140027	17.5023	18.7553	19.2149	18.5013
140029	21.0358	22.8322	26.0833	23.2140
140030	22.4414	21.9475	22.1760	22.1946
140031	15.9442	19.5731	17.6067	17.6942
140032	17.3363	18.1058	19.0383	18.1645
140033	22.5583	24.1722	25.1639	23.9291
140034	19.1482	19.5278	19.7903	19.4886
140035	12.9963	15.2649	15.5040	14.5633
140036	17.0419	18.5771	19.1076	18.2935
140037	12.5012	13.0764	14.1083	13.2105
140038	17.6094	18.3035	18.4624	18.1246
140040	16.2462	19.9267	16.7450	17.5895
140041	17.2829	17.6582	23.7556	19.4569
140042	15.6092	15.4095	15.8892	15.6354
140043	18.9464	19.4683	20.1176	19.5022
140045	20.6541	15.5807	17.7799	17.9528
140046	16.4621	18.9763	18.6371	18.0097
140047	16.3298	17.1539	13.3610	15.4382
140048	20.5773	24.0913	22.7155	22.4684
140049	21.5937	28.4958	26.9483	25.7338
140051	20.8455	23.8264	23.0662	22.5696
140052	19.6045	19.6409	17.5433	18.8875
140053	17.8218	19.1892	19.5761	18.8494
140054	26.1497	22.1921	23.2565	23.8024
140055	14.8031	16.3404	14.3603	15.1391
140058	17.2716	17.4927	18.6861	17.8100
140059	15.3934	15.0195	*	15.1978
140061	15.9612	17.3012	18.2039	17.1185
140062	27.0912	28.0877	28.6768	27.9630
140063	22.3882	25.3641	24.0303	23.8508
140064	19.2549	19.1023	18.9379	19.0960
140065	23.1610	24.1128	25.3336	24.1516
140066	16.1759	17.3902	13.6491	15.5770
140067	18.4031	19.3267	19.5292	19.0846
140068	18.8739	19.9691	21.6188	20.0995
140069	16.1453	16.7544	17.3879	16.7949
140070	19.2995	22.9678	22.7153	21.2244
140074	19.0077	19.3504	21.6052	19.9120
140075	22.5083	21.6313	21.0600	21.7539
140077	16.6447	17.5305	17.3647	17.1709
140079	21.9205	23.3020	23.6928	22.9153
140080	20.9999	21.0739	22.0345	21.3383
140081	15.5103	16.2247	16.9808	16.1897
140082	22.6227	23.8960	29.6534	24.8396
140083	18.1349	19.3145	21.0096	19.4873
140084	20.0133	20.9709	22.3467	21.0939
140086	17.3717	18.3803	19.1613	18.3356

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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2000 (1996 WAGE DATA), 2001 (1997 WAGE DATA) AND 2002 (1998 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
140087	18.3639	16.1009	17.1147	17.1839
140088	24.2568	25.2369	22.0679	23.8109
140089	17.2086	17.6366	18.3157	17.7164
140090	23.5888	26.4325	27.0060	25.4162
140091	20.7039	20.9018	21.9322	21.1441
140093	19.1469	18.2899	20.1528	19.1437
140094	20.6129	21.4709	21.9383	21.3227
140095	21.5376	24.0549	23.3001	22.8780
140097	16.8997	17.5081	21.1719	18.4160
140100	19.0588	21.3581	23.1399	21.1571
140101	26.0894	21.5473	21.7186	22.8766
140102	15.0777	17.1500	17.5729	16.5644
140103	17.8586	19.2783	18.1303	18.4145
140105	20.9068	22.6573	22.6913	22.0594
140107	12.7573	13.7533	11.8383	12.6800
140108	28.6028	25.4742	26.9971	26.9964
140109	15.4724	15.7465	14.5498	15.2467
140110	18.8112	19.1822	19.2888	19.0728
140112	16.2399	17.6856	17.6974	17.1885
140113	17.9151	19.0592	18.8593	18.5977
140114	20.4808	21.1639	21.8154	21.1561
140115	20.0939	21.1926	21.0433	20.7564
140116	21.8290	23.1177	23.7281	22.8966
140117	19.6445	21.5671	20.4740	20.5537
140118	23.0797	23.5952	24.2708	23.6385
140119	26.5042	29.1419	27.2387	27.6111
140120	14.8375	18.0743	17.9716	16.8874
140121	9.5268	16.0397	16.6993	13.2257
140122	23.7473	24.6470	25.8773	24.7639
140124	26.9706	27.1906	27.9517	27.3458
140125	17.0974	17.6759	16.9735	17.2524
140127	19.4259	19.8973	17.5075	18.9895
140128	17.6751	19.4955	23.1327	20.0664
140129	15.2494	18.2639	20.2868	17.8627
140130	23.7682	22.2285	23.1873	23.0442
140132	23.0443	23.5475	23.3054	23.2992
140133	19.9083	21.4090	21.1453	20.7897
140135	17.6927	17.8100	17.3985	17.6268
140137	16.5141	16.8969	18.6330	17.3470
140138	14.5877	16.7420	17.1968	16.2121
140139	16.5794	14.0619	11.0397	13.5138
140140	15.2985	17.8243	17.6845	16.9747
140141	15.1782	17.5204	19.1097	17.2133
140143	18.7616	19.1862	18.9984	18.9893
140144	19.7913	21.3245	22.2864	21.1022
140145	16.6111	17.5471	18.1788	17.4556
140146	23.7400	21.9573	19.9704	21.7285
140147	24.8191	16.1336	18.8049	19.2135
140148	19.5026	18.6598	17.9816	18.6917
140150	27.8485	27.3378	26.7896	27.3222
140151	19.3016	21.3896	20.0310	20.2086
140152	22.4270	24.6333	24.9613	23.9173
140155	17.3131	19.9738	19.5083	18.8605
140158	22.2666	22.7639	22.7988	22.5990
140160	17.8822	17.7691	17.7921	17.8132
140161	19.0448	20.0948	20.3799	19.8258
140162	18.4167	19.6464	20.3452	19.4479
140164	18.6120	18.7806	18.6589	18.6860
140165	15.4186	14.9156	14.7223	15.0080
140166	17.5434	17.5496	18.2503	17.7751
140167	16.5671	17.1479	17.6525	17.1325
140168	16.4638	16.6770	17.7453	16.9752
140170	14.1360	16.1621	16.4107	15.5211

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
140171	14.7316	14.1637	15.0237	14.6354
140172	20.7982	23.8431	21.0186	21.8883
140173	18.4788	15.1487	16.3924	16.7054
140174	19.9216	20.5339	40.5916	23.4138
140176	21.4129	23.2866	24.0512	22.8950
140177	18.1692	18.2648	15.0827	17.1204
140179	22.6989	21.1948	21.9258	21.9422
140180	23.2536	22.4548	22.5661	22.7489
140181	20.5461	20.8709	21.9155	21.0777
140182	20.7013	22.0170	22.5552	21.7590
140184	14.9763	17.8155	17.2401	16.6194
140185	17.3616	17.6514	18.2867	17.7696
140186	18.9878	22.7890	21.0934	20.9521
140187	17.6910	17.9201	18.3331	17.9863
140188	14.8373	15.2479	16.1907	15.4001
140189	19.0791	21.0616	20.6627	20.2758
140190	15.8770	16.3366	17.5263	16.5534
140191	24.7368	25.8835	25.2628	25.2833
140193	15.5196	15.8022	17.4057	16.2409
140197	17.9828	18.6394	19.3774	18.6752
140199	18.8333	18.3507	18.0450	18.4044
140200	21.6508	21.5220	20.0559	21.0333
140202	22.1800	22.1939	22.2334	22.2042
140203	20.7854	19.9194	21.0848	20.5915
140205	17.2369	17.4751	20.0784	18.0505
140206	20.5096	21.3295	22.5109	21.4570
140207	20.2048	21.9779	22.3905	21.3996
140208	23.9441	25.9900	26.2527	25.3856
140209	17.7889	18.1206	20.1557	18.6405
140210	12.6648	15.6899	14.8248	14.4319
140211	20.9615	21.8891	22.6265	21.8594
140213	26.2041	27.0645	23.9146	25.7381
140215	14.4544	15.9949	15.2893	15.2456
140217	23.3192	24.8229	25.4896	24.5129
140218	15.0750	14.9459	14.9851	15.0038
140220	16.7341	17.6370	17.8450	17.4280
140223	21.4725	24.9249	24.8504	23.6225
140224	22.9945	25.8668	32.8061	26.7812
140228	18.6731	19.6988	19.7113	19.3775
140230	16.5979	18.0918	18.2983	17.6740
140231	21.6062	23.9176	24.5019	23.4404
140233	18.3703	19.4542	21.8857	19.8854
140234	18.7156	18.9945	*	18.8552
140236	13.1341	*	12.9253	13.0112
140239	18.8785	18.8127	19.6792	19.1309
140240	24.2141	23.6860	24.4498	24.1185
140242	22.6679	24.5428	25.1416	24.1471
140245	15.5554	13.4839	14.2481	14.3597
140246	12.8238	13.4639	11.6267	12.5798
140250	23.4127	25.0876	23.6449	24.0578
140251	20.5813	21.4385	21.8059	21.2700
140252	24.4856	25.2246	24.9718	24.8965
140253	16.7356	18.5511	19.5858	18.2440
140258	21.1321	23.2973	25.0755	23.1842
140271	15.3606	15.5079	12.0079	14.1590
140275	17.9597	20.1699	23.8171	20.5857
140276	23.7163	26.6777	25.3078	25.2303
140280	18.8420	20.2360	18.8300	19.2649
140281	23.3433	24.0192	25.2719	24.2302
140285	14.7087	18.1181	17.3787	16.8092
140286	19.9500	20.3735	22.1015	20.8673
140288	21.8213	25.2327	24.4331	23.7989
140289	16.4542	17.1388	18.1747	17.3055

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
140290	21.2384	21.1784	22.8465	21.7717
140291	22.4352	25.0911	24.9537	24.1790
140292	22.7136	20.8560	21.4533	21.6516
140294	17.5226	17.7226	17.7301	17.6645
140297	21.4692	*	*	21.4692
140300	23.2560	25.3662	27.8436	25.5898
150001	21.6990	22.8109	24.0620	22.8643
150002	18.7568	19.3401	19.7035	19.2828
150003	19.3117	19.7661	20.8636	19.9824
150004	19.7020	20.3685	21.2449	20.4349
150005	18.9964	20.6260	21.1610	20.2631
150006	20.0433	20.8158	20.6523	20.5130
150007	19.5255	20.1826	20.6635	20.1487
150008	20.9684	21.4545	21.8457	21.4285
150009	18.2168	18.7073	18.5540	18.4858
150010	18.4776	21.7125	20.5570	20.1836
150011	19.1957	18.3742	18.3041	18.6202
150012	20.5193	22.4751	22.1402	21.6785
150013	16.0043	17.0352	16.9327	16.6522
150014	21.2812	22.0143	21.5168	21.6212
150015	22.0452	22.5409	21.9037	22.1546
150017	18.8898	18.7664	19.5361	19.0702
150018	19.5612	20.4947	20.7080	20.2547
150019	15.2892	16.6327	17.8585	16.5672
150020	14.4592	15.1120	16.6600	15.3745
150021	19.0162	19.5096	21.5636	20.0344
150022	17.9206	19.1555	17.9222	18.3309
150023	18.6641	18.3598	19.0270	18.6729
150024	17.8311	18.4140	19.0380	18.3973
150025	18.1490	17.7007	12.7222	15.7084
150026	20.5085	18.8417	22.4284	20.5038
150027	16.4846	17.3284	18.0335	17.2600
150029	21.7414	23.0546	23.2454	22.7440
150030	17.3296	17.9992	18.6947	18.0196
150031	18.0060	17.2429	18.3463	17.8675
150032	20.6391	*	*	20.6391
150033	21.6854	21.8768	22.7658	22.1130
150034	21.2868	22.1317	23.1533	22.1845
150035	19.8177	20.4477	21.2374	20.5107
150036	20.3848	20.8692	21.4567	20.9448
150037	17.7868	21.7109	24.0213	21.0127
150038	20.2503	21.2193	22.0572	21.2025
150039	17.4919	18.4729	19.6215	18.5025
150042	17.1241	18.1632	20.0557	18.3464
150043	17.9834	19.0120	20.1741	18.9948
150044	17.6432	18.4381	19.1309	18.4093
150045	17.0395	16.8121	18.1670	17.3563
150046	17.3210	17.6342	18.2543	17.7460
150047	24.8819	19.7441	22.0305	22.1067
150048	16.9573	19.3329	19.1648	18.5048
150049	16.8529	17.0141	18.5099	17.4307
150050	17.1442	16.8354	17.7354	17.2410
150051	18.1990	19.0130	19.1637	18.7924
150052	15.3618	15.8590	17.3750	16.2411
150053	18.7463	19.1421	18.8632	18.9165
150054	17.3296	17.3825	18.3916	17.7528
150056	23.2991	22.4087	21.5774	22.2457
150057	16.8630	16.5882	16.9736	16.8076
150058	20.9537	20.8178	23.0807	21.5904
150059	20.8004	21.2535	22.7360	21.5830
150060	16.0098	17.0743	18.0032	17.0216
150061	17.2141	17.3887	19.7968	18.0770
150062	18.4110	20.5415	20.8274	20.0239

* Wage data not available for the provider that year.
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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
150063	21.0899	22.0925	22.6525	21.9213
150064	17.0309	18.1400	20.3865	18.5718
150065	19.0051	19.8913	21.2153	20.0425
150066	14.5977	15.3373	19.5313	16.4634
150067	17.0829	18.2926	18.8862	18.0821
150069	17.3918	21.5310	23.3969	20.9447
150070	17.1992	17.9260	18.0827	17.7417
150071	14.7306	13.4760	13.5111	13.9122
150072	16.1091	16.2054	15.0765	15.7702
150073	19.0292	22.2968	*	20.5664
150074	18.8597	20.4175	20.1054	19.7802
150075	14.9786	15.5603	16.7532	15.7414
150076	22.3407	22.9382	22.6424	22.6387
150077	17.5750	*	*	17.5750
150078	19.0096	19.2718	19.9668	19.4018
150079	15.4545	17.2436	18.0265	16.8569
150082	17.8796	17.5265	17.8162	17.7421
150084	22.9159	23.2506	23.9940	23.3857
150086	17.3442	18.9735	18.2185	18.1968
150088	19.4475	18.9869	20.3366	19.5726
150089	22.9458	23.8791	21.3690	22.6571
150090	19.0595	20.7726	21.0945	20.2459
150091	19.8912	20.4053	22.4640	20.9087
150092	15.9174	16.7434	16.9179	16.5364
150094	18.3410	16.5788	17.5244	17.5067
150095	17.1187	17.1324	19.2749	17.7838
150096	20.0281	23.2764	20.2897	21.1086
150097	18.3103	19.3802	19.7751	19.1545
150098	14.2953	15.0943	13.8800	14.4383
150099	18.9718	22.4229	*	20.3545
150100	17.4776	18.4148	19.8066	18.6620
150101	17.5554	16.4604	15.9718	16.6097
150102	11.5034	19.7426	23.7180	17.1422
150103	17.3064	18.4781	18.7036	18.2137
150104	17.2642	17.6981	20.0765	18.3399
150105	19.1709	20.0431	22.4412	20.4692
150106	18.9097	16.1510	15.7497	16.7986
150109	18.2289	18.8077	19.6344	18.8790
150110	18.5752	18.6627	21.9336	19.5289
150111	16.1707	18.4556	19.2355	17.8619
150112	19.8155	20.4109	20.5253	20.2569
150113	19.1988	20.3780	19.6603	19.7455
150114	16.9638	19.5183	17.9877	18.1743
150115	17.0627	17.4315	18.2882	17.5968
150122	19.3545	18.7139	17.7867	18.6097
150123	15.1552	14.1105	15.1583	14.8238
150124	15.0706	14.6245	15.6449	15.1149
150125	20.3198	20.6735	21.3115	20.7738
150126	20.2958	21.3697	20.6857	20.7640
150127	22.8129	17.1994	17.0052	18.8048
150128	19.9205	18.5100	19.5158	19.3219
150129	23.4718	24.7711	28.6211	25.2796
150130	16.4144	18.1971	18.4846	17.6635
150132	19.4805	20.1684	20.9443	20.1836
150133	16.4910	17.3966	16.0923	16.6709
150134	17.0612	19.2526	19.3632	18.5912
150136	19.2819	20.1245	21.8097	20.3987
150145	*	16.6851	*	16.6851
150146	*	*	19.0204	19.0204
160001	19.0279	18.6035	19.0085	18.8767
160002	15.3724	15.9534	16.6003	15.9668
160003	15.7747	16.0862	16.2208	16.0221
160005	15.2320	17.6153	17.9405	16.9144

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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2000 (1996 WAGE DATA), 2001 (1997 WAGE DATA) AND 2002 (1998 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
160007	15.6638	13.2101	15.1738	14.6237
160008	14.9698	15.9742	16.6410	15.8545
160009	16.0919	16.8391	17.9886	16.9591
160012	16.5409	16.4827	16.7112	16.5761
160013	17.0602	18.3996	18.6304	18.0298
160014	15.0861	15.9086	16.7146	15.8981
160016	18.3710	19.6322	19.9747	19.3376
160018	14.1634	14.5946	15.6141	14.7975
160020	14.4135	15.4712	15.5384	15.1417
160021	15.4860	16.5049	16.7617	16.2368
160023	14.2015	15.0665	15.0099	14.7723
160024	18.9548	19.7050	19.4764	19.3806
160026	18.6624	18.8379	19.5260	19.0040
160027	15.7403	16.3477	16.9417	16.3376
160028	20.5416	19.9595	21.0000	20.4893
160029	20.4003	20.4678	21.3457	20.7382
160030	17.9860	19.9508	19.6182	19.1837
160031	15.2831	15.2448	16.1267	15.5484
160032	16.1820	17.3202	18.3168	17.2888
160033	18.3736	18.8673	18.8205	18.6982
160034	14.5053	15.0019	16.5957	15.3739
160035	15.9199	15.2211	16.3991	15.8029
160036	19.1984	17.8849	17.4558	18.1820
160037	18.3968	19.0532	19.5211	18.9895
160039	17.6272	17.4758	17.8647	17.6551
160040	16.8295	18.1949	18.0667	17.6917
160041	15.4700	16.7850	17.4435	16.5782
160043	15.6261	15.6909	14.8564	15.3356
160044	16.0385	16.7439	17.8323	16.9072
160045	20.1154	20.1236	19.4334	19.7761
160046	14.7672	14.5655	16.2737	15.1831
160047	16.6926	18.3593	19.0787	18.0537
160048	13.1417	14.6144	15.6856	14.5140
160049	13.3614	14.5457	15.5673	14.5017
160050	16.4161	17.4912	17.7878	17.2196
160051	14.2660	14.6400	16.4261	15.1036
160052	17.5509	18.0941	21.7647	19.2313
160054	15.7093	16.1753	16.1981	16.0321
160055	14.0647	14.7600	15.1674	14.6539
160056	15.3758	16.1575	17.0172	16.1537
160057	17.4101	18.1776	19.1378	18.2553
160058	20.3402	21.1159	22.1061	21.1598
160060	15.9527	16.0436	17.2825	16.3968
160061	17.5707	17.3215	16.6061	17.1891
160062	14.4433	17.8086	17.4388	16.4393
160063	16.2960	16.8834	16.3583	16.5061
160064	19.9135	20.5496	21.0458	20.5185
160065	16.5087	16.9373	17.1043	16.8758
160066	16.2651	17.1875	17.9971	17.1716
160067	17.8551	17.8514	16.7833	17.4322
160068	15.8526	17.9892	19.0572	17.5565
160069	18.4857	19.7280	19.1640	19.1095
160070	15.6647	16.7017	18.4588	16.9299
160072	14.1920	14.9536	14.4141	14.5422
160073	15.0526	11.8261	11.4997	12.6736
160074	16.4772	19.5092	17.9513	18.0038
160075	17.8870	19.4948	18.4613	18.6342
160076	17.3086	17.9381	17.8824	17.7060
160077	11.4028	12.8826	13.6658	12.6451
160079	17.7050	17.6187	18.6333	17.9899
160080	17.8143	18.6687	19.4925	18.6704
160081	16.5150	17.0052	17.4466	17.0164
160082	18.7630	19.6499	19.5322	19.3143

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
160083	18.4078	20.6189	19.7542	19.5937
160085	18.5510	18.0063	21.2557	19.2281
160086	16.4558	17.3271	17.5308	17.0998
160088	17.5331	20.2331	22.3655	19.9346
160089	16.7419	16.9538	17.3449	17.0079
160090	16.6002	17.1090	17.9614	17.2461
160091	12.1893	12.8516	14.2573	13.0755
160092	15.7979	15.5011	17.0633	16.0971
160093	15.9525	17.7457	18.5675	17.5141
160094	16.5609	18.7653	17.6094	17.6731
160095	14.2649	15.1895	15.2722	14.9322
160097	15.2079	15.9263	16.6790	15.9380
160098	15.5385	16.3135	16.8670	16.2509
160099	13.7864	13.9053	15.0880	14.2533
160101	17.8654	18.3705	18.9788	18.3824
160102	18.3631	18.8765	20.1161	19.0875
160103	17.1519	17.0973	18.2741	17.4869
160104	19.7387	18.8301	17.4829	18.7797
160106	16.6624	16.9639	17.3474	16.9910
160107	16.5622	18.0634	18.0097	17.5762
160108	15.4183	16.0529	16.7779	16.0861
160109	16.4885	16.5593	17.9873	16.9740
160110	18.8056	19.1420	20.6215	19.5351
160111	13.1689	14.1644	14.9965	14.0808
160112	16.2829	16.8332	17.2450	16.7911
160113	14.5838	14.7097	15.4834	14.9308
160114	15.5812	16.1423	16.5006	16.0651
160115	15.7566	15.8995	16.5654	16.0764
160116	16.6927	16.9534	16.6993	16.7818
160117	17.2914	17.9410	18.7615	17.9848
160118	15.8351	17.2523	19.4472	17.5046
160120	12.5642	10.5992	15.6789	12.4454
160122	18.5214	18.9252	18.1469	18.5357
160124	17.1642	18.0908	19.1600	18.1198
160126	17.7397	17.8142	19.4903	18.3068
160129	15.8914	16.7131	17.2112	16.5953
160130	15.4477	16.0528	15.6666	15.7242
160131	14.6874	15.4898	16.0424	15.4292
160134	13.3246	13.4743	15.3012	14.0359
160135	16.3294	18.2682	18.7711	17.7744
160138	15.7076	16.8699	17.1491	16.5906
160140	18.7962	18.4007	18.5630	18.5823
160142	16.1372	16.2875	18.1467	16.8318
160143	15.9240	16.6154	17.4497	16.6799
160145	15.1745	13.9152	16.9092	15.2763
160146	16.3532	16.6024	17.7010	16.8728
160147	18.3917	17.4880	19.4041	18.3938
160151	15.7384	16.8257	17.2177	16.5833
160152	15.2179	15.6170	15.9500	15.5914
160153	19.6927	20.2316	21.2085	20.3741
170001	17.4383	17.9304	17.9218	17.7616
170004	13.0635	15.0636	16.1442	14.7434
170006	19.3075	17.2192	17.5982	17.9438
170008	13.9009	14.9124	16.8412	15.1327
170009	19.5867	20.7795	23.1349	21.2143
170010	17.8995	18.7384	19.4584	18.6890
170012	16.7886	17.8719	18.3965	17.6979
170013	17.8949	18.6454	19.4667	18.6963
170014	17.3379	17.9349	18.4616	17.9223
170015	15.8887	16.5750	17.1302	16.5216
170016	19.6393	19.2130	20.0675	19.6307
170017	17.8690	17.7958	19.5994	18.4143
170018	14.2759	15.2984	15.3237	14.9817

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
170019	16.6611	15.2094	16.9362	16.2597
170020	16.1460	17.3400	18.1325	17.2351
170022	17.9383	18.5309	19.1888	18.5543
170023	19.3585	19.1351	19.2441	19.2444
170024	13.0566	13.6803	14.3604	13.6835
170025	16.3716	17.8667	18.7182	17.6087
170026	13.3122	15.0470	14.8974	14.3412
170027	16.3859	17.3604	17.8690	17.2095
170030	15.2397	14.6530	15.9282	15.2488
170031	13.4670	13.9601	14.2151	13.8715
170032	14.4835	15.6093	16.3449	15.4817
170033	16.0529	16.4059	19.1952	17.1087
170034	14.6349	15.8202	16.9586	15.7633
170035	15.6240	18.5885	17.0945	17.0832
170036	14.1732	*	*	14.1732
170038	14.2092	14.7776	13.8582	14.2922
170039	14.2952	15.8635	17.0774	15.7642
170040	20.1419	21.6440	19.4713	20.4318
170041	11.4691	11.7566	12.4488	11.8690
170044	14.7801	15.3011	17.3254	15.8168
170045	12.1066	14.0875	24.6556	16.5680
170049	18.5821	19.9415	20.7921	19.8083
170051	14.1572	15.0889	16.4851	15.2703
170052	14.6176	15.0108	15.2283	14.9500
170053	9.0407	16.5102	14.6133	11.9759
170054	12.7655	14.4353	14.6354	13.9214
170055	14.9875	16.9800	18.2607	16.7698
170056	14.8656	17.0442	18.2840	16.8012
170057	15.0892	13.0007	*	13.9776
170058	18.3389	18.6983	19.5415	18.8159
170060	17.2271	17.3482	18.9853	17.7512
170061	14.1380	15.6527	15.0258	14.9459
170063	11.3284	12.8082	14.1185	12.6216
170064	12.4183	*	*	12.4183
170066	14.4790	15.5322	16.2891	15.4168
170067	12.7846	14.7492	14.9921	14.1535
170068	15.8175	15.1790	17.0022	15.9795
170070	12.8158	14.2445	14.0627	13.7083
170072	13.3379	12.6329	12.7709	12.9159
170073	16.4690	17.5368	17.7056	17.2186
170074	14.4009	17.5537	17.3699	16.4326
170075	11.2598	12.4212	13.6816	12.5950
170076	13.5820	14.5866	14.6109	14.2394
170077	12.7244	13.5235	13.9104	13.3651
170079	14.2859	13.5261	11.5902	13.1470
170080	12.2012	12.6014	14.8293	13.1562
170081	12.5122	13.8077	14.6823	13.7421
170082	12.3902	12.8563	13.7464	12.9855
170084	12.1611	12.5410	13.0519	12.5742
170085	14.5069	15.4518	17.5422	15.9150
170086	19.8496	20.4068	19.7182	19.9991
170088	11.7505	13.4542	13.4860	12.9031
170089	18.0823	18.8136	15.4860	17.4574
170090	11.2747	11.9147	10.9444	11.3947
170092	12.8507	*	*	12.8507
170093	12.7780	13.5490	14.0276	13.4193
170094	17.7091	20.1985	21.2035	19.6936
170095	15.7469	15.5463	15.3532	15.5482
170097	15.8504	16.4608	17.6255	16.6758
170098	14.1026	15.5259	16.6210	15.4425
170099	13.5509	13.6033	14.3370	13.8072
170100	14.4700	*	*	14.4700
170101	12.8847	14.5629	18.0143	14.7718

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
170102	13.2434	13.6321	14.2048	13.6933
170103	16.6578	17.2844	17.9530	17.2887
170104	19.7645	20.6182	20.9336	20.4421
170105	15.9290	16.5408	16.7403	16.4083
170106	14.6773	18.5479	17.7467	16.9030
170109	16.9421	17.2629	16.9782	17.0622
170110	15.5549	16.9823	18.5731	17.1658
170112	13.3908	14.3855	15.4049	14.4270
170113	13.3935	13.9038	14.6486	13.9920
170114	14.5116	14.4545	16.0283	14.9432
170115	12.6815	12.6997	12.9216	12.7709
170116	15.7566	16.8714	18.0591	16.9087
170117	15.2818	15.7875	16.8237	15.8968
170119	13.9673	15.1990	15.2708	14.7822
170120	16.2122	17.6748	17.4917	17.1241
170122	20.1266	20.0615	20.5347	20.2343
170123	21.4168	23.1697	23.5468	22.6616
170124	10.2089	11.1249	15.0596	11.8247
170126	12.1268	12.8096	13.5736	12.8129
170128	14.9919	14.8891	14.1676	14.6301
170131	13.0978	10.1000	*	11.3849
170133	17.1103	18.0243	15.7918	16.8958
170134	14.2252	14.1085	14.6799	14.3402
170137	17.4151	17.8290	19.3118	18.1884
170139	13.3896	14.1967	14.3001	13.9545
170142	17.3234	*	17.7134	17.5177
170143	15.8802	15.6509	16.0415	15.8575
170144	16.0860	19.0929	20.4392	18.4073
170145	16.7499	17.1837	19.0142	17.6442
170146	19.9725	20.9075	21.7919	20.9132
170147	16.2829	22.3017	17.8070	18.7377
170148	17.2497	16.9183	19.9697	17.9186
170150	15.4283	15.5651	15.9072	15.6422
170151	13.3674	13.8934	14.3668	13.8637
170152	13.6846	14.9139	15.6423	14.7323
170160	13.3087	13.7108	14.4732	13.8369
170164	15.5597	16.6542	17.4072	16.5279
170166	17.5681	27.5567	12.7507	18.3396
170171	13.8059	12.5200	13.1792	13.1761
170175	17.8802	19.0232	19.9694	18.9232
170176	20.3194	21.3400	23.0743	21.5773
170180	*	16.6921	8.6352	11.8552
170182	14.1971	22.2164	21.0546	19.7649
170183	19.0919	20.3505	19.5182	19.7036
170184	27.0152	*	*	27.0152
180001	19.5188	17.9906	20.4885	19.3882
180002	18.1348	17.9669	17.5798	17.8819
180004	15.9921	17.2581	17.7149	16.9654
180005	20.6280	21.1390	22.4634	21.3796
180006	11.2254	11.4398	10.3400	11.0123
180007	17.1997	17.6776	17.9491	17.6005
180009	20.8103	21.4730	21.0608	21.1163
180010	17.5452	19.1100	19.6311	18.7406
180011	16.9311	17.1050	19.0526	17.8588
180012	18.7350	18.7223	18.9481	18.8031
180013	17.4487	18.2354	19.6031	18.4802
180014	20.8033	21.4856	21.3242	21.1722
180016	18.8422	19.8892	21.1458	20.0187
180017	15.1699	15.4140	15.6583	15.4240
180018	18.9020	17.1692	15.4575	17.0460
180019	16.7648	17.3970	17.2177	17.1400
180020	17.7782	17.7288	18.0111	17.8397
180021	15.1627	15.4580	17.0618	15.8957

* Wage data not available for the provider that year.
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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
180023	15.2219	15.8803	17.4717	16.1885
180024	15.3299	16.1731	16.5040	15.9951
180025	17.1688	14.1841	15.4180	15.4826
180026	14.1571	14.6804	15.0118	14.6082
180027	14.8869	16.4116	17.5286	16.2087
180028	19.3519	19.5276	15.7005	18.0068
180029	18.0191	17.7729	17.7248	17.8352
180030	17.0234	17.3430	17.9543	17.4342
180031	13.7862	13.9844	13.1848	13.6178
180032	16.0941	16.8318	17.2784	16.7976
180033	13.7667	17.7344	15.4131	15.5472
180034	17.3158	15.3369	16.3991	16.3000
180035	19.4485	20.1305	21.3666	20.2870
180036	19.1922	19.8398	19.8830	19.6408
180037	18.8053	19.9737	21.2184	19.9797
180038	17.1643	17.7626	18.4077	17.7880
180040	19.4450	19.5337	20.6296	19.8636
180041	15.1703	15.0785	16.3699	15.5655
180042	16.2924	16.7691	17.1519	16.7450
180043	16.6077	16.8027	13.8503	15.6793
180044	17.8196	18.5571	19.4984	18.6534
180045	17.7272	17.7130	20.8455	18.9499
180046	17.9096	19.2523	21.2465	19.4702
180047	15.0354	16.2304	18.6938	16.6027
180048	19.5681	18.3442	17.7816	18.5208
180049	16.0799	16.4319	16.5459	16.3594
180050	18.4753	17.8540	17.1493	17.7884
180051	15.6796	16.3960	17.5441	16.5170
180053	14.6299	15.9284	15.8994	15.5002
180054	16.3875	19.4858	20.0946	18.5771
180055	14.6446	15.2663	15.8422	15.2446
180056	16.6240	17.0056	17.5728	17.0694
180058	14.3562	15.9685	14.5355	14.9226
180059	14.2605	13.3955	14.7032	14.1102
180060	7.2139	*	*	7.2139
180063	11.9120	13.1036	12.4448	12.4785
180064	14.4872	15.2424	15.5066	15.0871
180065	20.0286	12.0629	11.1934	13.8815
180066	18.5635	19.2981	19.7883	19.2237
180067	18.5288	20.6322	19.8756	19.6602
180069	17.2956	17.7911	16.2916	17.1149
180070	13.8370	13.1923	15.9362	14.2840
180072	17.8554	16.9021	17.2347	17.3229
180075	15.0701	*	*	15.0701
180078	19.1615	21.1170	21.7116	20.6787
180079	13.4072	15.1636	15.9048	14.8197
180080	15.8327	16.4989	16.6428	16.3363
180087	14.9660	14.9167	15.6089	15.1555
180088	22.5349	22.0374	22.4148	22.3261
180092	16.3099	18.2405	18.3597	17.6633
180093	16.8286	17.0132	17.9623	17.2606
180094	12.5074	13.5490	13.6233	13.2263
180095	13.3991	13.8021	13.9050	13.6989
180099	13.6988	13.3631	13.2991	13.4593
180101	19.5644	18.4883	*	18.9778
180102	17.8751	17.9618	18.5018	18.0941
180103	19.2182	19.8965	20.3774	19.8456
180104	18.8730	18.9281	19.4139	19.0718
180105	14.0811	15.2394	16.6997	15.2994
180106	13.6062	14.3505	15.2895	14.3903
180108	14.6222	14.8187	13.9862	14.4793
180115	17.1079	16.7003	16.9096	16.9026
180116	16.9389	18.0392	18.2848	17.7647

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
180117	18.3821	17.7857	23.0192	19.6584
180118	12.1533	15.8597	16.9250	14.8270
180120	17.8145	16.1591	15.3115	16.3371
180121	14.5134	15.0983	20.0494	16.3330
180122	16.9678	18.5094	18.1930	17.8754
180123	18.9995	21.0613	21.1067	20.4023
180124	18.4064	17.4994	18.7682	18.2003
180125	19.7341	19.6416	14.9314	17.5744
180126	12.3959	12.9228	14.3551	13.2733
180127	17.3452	19.2581	17.5540	18.0362
180128	17.0508	17.6385	18.2817	17.6802
180129	17.8600	16.8378	22.3536	18.8696
180130	19.0110	19.8192	20.6684	19.8450
180132	17.2657	17.7744	19.1884	18.0615
180133	22.2325	21.6794	21.7800	21.8995
180134	13.6287	13.1935	12.5041	13.1008
180136	17.7146	17.3542	*	17.5359
180138	18.6149	19.3692	19.9343	19.3216
180139	18.7679	18.7198	18.0041	18.4600
180140	20.3953	16.8152	15.2719	17.3915
180141	20.0075	20.9820	23.8930	21.4590
180142	*	*	20.7510	20.7510
190001	17.0159	17.6832	18.1514	17.6263
190002	18.8381	19.1924	19.8834	19.2931
190003	22.1543	19.7749	19.9121	20.4811
190004	17.5385	17.7710	18.3620	17.8959
190005	16.7149	17.2422	17.3078	17.0856
190006	17.7335	17.8036	17.5911	17.7112
190007	13.6014	13.8189	14.4720	13.9833
190008	16.8916	18.6664	19.2456	18.2327
190009	14.2085	15.3555	15.9731	15.1819
190010	17.0192	16.2805	16.5020	16.6088
190011	15.1715	15.9534	15.6351	15.5881
190013	16.5706	16.8181	15.5019	16.2739
190014	17.0170	17.0959	17.7761	17.3018
190015	18.1943	18.6266	18.9896	18.6153
190017	15.7894	16.2393	17.5381	16.5250
190018	16.9761	15.0668	11.1898	14.5841
190019	17.4006	18.5257	18.3788	18.1281
190020	17.3084	17.5256	17.6840	17.5059
190025	16.0738	18.6369	15.8910	16.9047
190026	17.2166	18.1622	18.5015	17.9532
190027	16.1856	17.0827	17.4761	16.9034
190029	17.1103	16.5239	19.1967	17.5497
190033	10.7448	*	*	10.7448
190034	16.5066	16.8503	18.0754	17.1513
190036	19.9456	20.1780	19.1695	19.7802
190037	12.0237	17.6945	19.9878	16.0686
190039	17.1687	19.4713	19.0376	18.5119
190040	20.3180	21.4634	21.7075	21.1804
190041	17.8975	17.6646	18.0991	17.8870
190043	12.5660	15.5580	15.5618	14.5094
190044	17.1984	17.2892	17.4471	17.3108
190045	21.6948	21.6107	21.2853	21.5139
190046	19.3538	19.7964	20.4273	19.8671
190048	16.3404	16.6683	16.8136	16.6153
190049	16.4250	17.2280	17.7417	17.1570
190050	15.3771	16.1980	16.2854	15.9545
190053	12.4980	13.2159	13.0080	12.9160
190054	16.4683	19.1738	18.9059	18.1924
190059	15.8443	15.6942	15.8373	15.7915
190060	18.3689	14.7186	17.5317	16.6606
190064	19.9047	20.4482	18.2466	19.4909

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
190065	19.3856	20.9927	18.4695	19.5739
190071	13.5908	14.4827	16.4138	14.8320
190077	12.8290	15.7805	16.5536	15.0793
190078	13.4990	14.8826	16.9383	14.8793
190079	17.2909	17.7120	17.9403	17.6368
190081	12.0190	15.3198	14.9707	14.2301
190083	16.1374	18.8895	18.4951	17.8399
190086	14.9295	15.8694	16.5074	15.7738
190088	19.6328	20.5531	19.9362	20.0391
190089	12.7879	13.0503	15.0395	13.5823
190090	16.5580	16.6664	*	16.6122
190092	18.0655	*	*	18.0655
190095	15.7316	16.2287	17.3258	16.3915
190098	19.2175	20.4897	21.0847	20.2301
190099	18.9255	19.9018	*	19.4679
190102	19.0477	20.0300	20.5106	19.8707
190103	15.5698	12.1389	14.4158	13.8580
190106	17.7468	18.5813	*	18.1836
190109	14.5288	15.5767	15.8187	15.3068
190110	12.9925	15.8052	15.7313	14.8387
190111	20.0376	19.7514	20.6508	20.1574
190112	19.2067	21.0232	22.0741	20.6951
190113	18.9922	12.5777	*	15.7380
190114	12.9083	12.6366	13.9209	13.1568
190115	20.4914	20.2473	22.3441	21.0026
190116	12.5881	15.5481	17.3757	15.1678
190118	12.9537	14.7876	16.3776	14.7222
190120	13.6938	13.9591	17.2309	14.9846
190122	14.8255	15.4793	15.3742	15.2287
190124	22.3825	20.6222	20.1206	20.9375
190125	18.6287	20.4517	19.8298	19.6458
190128	19.7127	20.4688	20.8770	20.3583
190130	12.4307	15.1467	14.0379	13.8956
190131	19.5984	20.7565	18.8958	19.7536
190133	13.4750	13.5383	15.1393	13.9917
190134	12.6774	12.1749	12.4507	12.4351
190135	21.3511	21.6875	21.1206	21.3903
190136	11.3250	12.4091	15.1662	13.0730
190138	22.7088	*	*	22.7088
190140	12.0285	14.2256	14.6829	13.6611
190142	14.9820	15.4861	16.2280	15.5517
190144	16.8360	16.2068	18.4405	17.1561
190145	13.9893	15.2345	16.2505	15.1638
190146	20.0941	21.2825	22.0000	21.1693
190147	14.3219	14.4345	14.7202	14.4910
190148	14.0180	16.6337	15.5338	15.4604
190149	15.1862	17.5997	16.4722	16.4169
190151	11.9190	14.7333	15.5210	14.0028
190152	20.3951	22.2070	22.0319	21.4716
190155	11.0800	*	*	11.0800
190156	12.4786	15.7478	16.0442	14.6766
190158	19.6164	20.4637	20.4078	20.1474
190160	18.4746	17.1003	18.4662	18.0078
190161	14.6295	15.5737	15.9280	15.3544
190162	19.5027	20.6143	20.1962	20.0440
190164	16.3328	15.1783	18.2379	16.4778
190167	16.2880	16.6681	17.7611	16.9143
190170	13.5772	14.1750	14.5222	14.0895
190173	19.6362	23.6398	22.5148	21.9224
190175	20.6908	19.3625	20.1330	20.0312
190176	18.8205	24.0574	22.0869	21.4121
190177	20.3177	18.6715	19.7794	19.5846
190178	10.4941	11.0657	12.0372	11.1714

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
190182	20.0267	20.2855	20.7102	20.3281
190183	16.1064	16.7671	16.0752	16.3134
190184	14.8645	17.2044	19.8436	17.2547
190185	19.3707	20.1444	20.3479	19.9607
190186	16.3586	18.7568	17.4078	17.5306
190189	26.5419	*	*	26.5419
190190	18.6656	17.4642	15.8985	17.1134
190191	18.1353	20.4975	19.6911	19.4475
190196	14.8699	17.9225	18.6138	17.2784
190197	17.9166	19.5569	20.2082	19.2721
190199	13.4222	16.0637	15.3522	14.6078
190200	19.4148	22.0391	21.6852	21.0397
190201	19.1432	18.7079	19.7539	19.2099
190202	17.8959	*	*	17.8959
190203	21.3096	21.7350	21.7931	21.5975
190204	21.2119	21.4624	20.7215	21.1251
190205	18.1007	19.6587	19.3737	19.0483
190206	20.0648	21.7012	21.3307	21.0222
190207	17.6712	20.5082	19.0961	19.1272
190208	14.6096	20.0065	16.9641	17.1855
190218	18.1627	19.7518	19.2992	19.0335
190223	19.2550	*	*	19.2550
190227	12.1086	*	*	12.1086
190231	16.8850	15.8287	17.7247	16.7665
190235	18.2702	*	*	18.2702
190236	22.1837	19.3395	21.1982	20.9440
190238	*	*	20.6799	20.6799
190239	*	*	19.7601	19.7601
190240	*	*	14.3579	14.3579
200001	17.4890	18.0527	18.1207	17.8991
200002	18.7745	19.3629	22.9761	20.4367
200003	16.7389	16.9566	18.1540	17.2860
200006	19.7984	17.6586	21.0922	19.4856
200007	17.8859	18.7992	18.0655	18.2525
200008	20.5020	21.7489	21.2206	21.1621
200009	20.6433	22.2280	21.3591	21.4199
200012	17.0130	18.3484	20.0235	18.4600
200013	16.4933	18.0566	18.2737	17.6653
200015	20.1117	*	*	20.1117
200016	17.6623	18.0866	17.4335	17.7276
200017	19.6462	17.2930	*	18.7598
200018	17.2422	18.5397	18.2644	17.9737
200019	18.6399	19.2348	20.1070	19.3592
200020	20.5967	22.4526	22.5506	21.8845
200021	19.4052	19.9133	20.7565	20.0011
200023	14.9164	16.1707	18.8427	16.3595
200024	18.6518	19.4329	21.0233	19.7086
200025	19.0659	20.2259	20.4823	19.9499
200026	17.2842	18.1194	17.8759	17.7682
200027	18.2775	18.5659	19.6658	18.8842
200028	16.9306	19.5708	19.9218	18.7752
200031	15.9043	16.2217	16.3382	16.1598
200032	17.9160	18.9315	19.6907	18.8137
200033	21.4031	21.8634	22.0783	21.7858
200034	19.2407	20.1519	20.4939	19.9679
200037	18.2419	18.6713	19.2304	18.7348
200038	19.2147	23.3851	21.9205	21.5084
200039	20.2901	19.8589	20.2311	20.1007
200040	19.2970	19.5503	19.0188	19.2835
200041	17.6559	19.3563	18.4593	18.4719
200043	16.5368	16.7224	18.3804	17.1882
200050	18.0805	20.1214	13.1684	16.5253
200051	19.5925	22.1525	22.0712	21.5149

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
200052	15.1216	17.2099	17.8551	16.7641
200055	17.1729	18.8422	18.6877	18.2119
200062	16.5139	17.2273	18.2221	17.3074
200063	19.6658	19.9331	25.6527	21.3771
200066	16.3431	17.0289	17.1538	16.8395
210001	18.7266	20.4841	18.6617	19.2372
210002	22.8448	19.9219	20.4315	21.0189
210003	25.3730	20.3446	26.0447	23.6583
210004	23.5884	24.2909	24.9760	24.2880
210005	19.6162	21.4929	21.3829	20.7876
210006	17.7721	18.9436	19.3682	18.7016
210007	21.5415	23.1007	23.8840	22.8043
210008	19.5006	21.1768	21.2895	20.6531
210009	21.8111	20.5447	20.7479	21.0282
210010	14.3783	18.7197	19.5908	17.3758
210011	21.2422	21.4862	21.4043	21.3727
210012	23.4317	20.7203	21.3977	21.7764
210013	18.8455	19.7288	19.4505	19.3405
210015	16.6898	16.1912	18.6087	17.1516
210016	22.1469	23.8739	26.5193	24.0991
210017	17.1747	18.8928	18.5079	18.1448
210018	21.4055	22.2135	22.8553	22.1574
210019	19.0899	19.3046	20.6025	19.6453
210022	21.8160	22.6389	24.3016	22.9230
210023	21.7988	23.1950	22.9989	22.6719
210024	19.5645	20.6011	21.1669	20.3654
210025	19.5704	19.5876	21.2769	20.0208
210026	11.6440	12.1348	13.3494	12.4124
210027	18.4862	17.6855	17.1060	17.7943
210028	18.8623	19.6408	19.4157	19.3091
210029	22.3876	21.2167	22.7191	22.0801
210030	21.0169	21.7403	20.9574	21.2261
210031	15.5873	16.2299	*	15.9014
210032	18.4983	17.7228	20.1955	18.7972
210033	19.9144	20.8053	23.7588	21.3886
210034	16.1216	15.7322	25.0849	18.5047
210035	20.6092	20.2731	20.8317	20.5720
210037	18.7361	18.3072	20.5528	19.2053
210038	23.2616	23.4971	24.9762	23.8679
210039	20.7291	19.9901	21.3559	20.7067
210040	25.0770	21.5014	23.4252	23.3184
210043	18.5891	19.6474	22.4000	20.0973
210044	22.2438	22.5781	23.0917	22.6329
210045	9.6862	11.6086	12.1467	11.1781
210048	22.3923	23.0537	24.6921	23.3434
210049	17.6697	19.0821	19.3022	18.6991
210051	20.7633	22.4335	23.6476	22.3235
210054	23.5122	22.3559	23.2730	23.0396
210055	20.1012	29.2539	26.5272	25.0062
210056	20.9445	19.2662	22.9654	21.0453
210057	22.5717	23.8289	26.0076	24.0668
210058	21.4976	22.0753	16.3191	20.0884
210059	23.1274	22.6766	25.6052	23.5899
210060	*	*	26.5846	26.5846
210061	20.0203	17.2240	16.1931	17.8181
220001	26.3207	21.9369	22.9064	22.9526
220002	22.5808	24.1285	24.7920	23.8005
220003	19.1383	16.9246	17.9319	17.9948
220004	20.0058	*	*	20.0058
220006	22.1228	22.3085	22.6469	22.3611
220008	21.8873	24.4691	22.0796	22.7689
220010	21.9226	21.8582	22.0067	21.9297
220011	28.5673	26.1827	29.5290	28.2047

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
220012	29.5051	32.0829	31.2303	30.9286
220015	21.7813	22.5773	23.1893	22.4843
220016	23.1440	23.3750	23.0951	23.2050
220017	25.2630	22.4605	24.9576	24.2129
220019	19.1264	19.5613	19.8551	19.5190
220020	19.9925	21.4152	22.2245	21.2040
220021	23.6313	*	*	23.6313
220023	18.7625	16.1885	*	18.0910
220024	21.5871	21.5363	21.9316	21.6947
220025	19.9398	20.7882	22.8593	21.1235
220028	22.0721	22.8036	21.0630	21.9530
220029	21.8711	23.1509	25.6560	23.4858
220030	14.5383	18.5441	18.7429	17.2580
220031	28.1584	30.2430	29.3091	29.1415
220033	20.4120	20.0695	20.2601	20.2365
220035	21.9974	21.6396	23.1892	22.2365
220036	24.1570	24.6470	24.4091	24.3977
220038	22.3494	22.6518	22.3162	22.4382
220041	23.1483	23.4720	27.5034	24.5999
220042	25.2852	25.0779	26.0473	25.4181
220046	22.4677	22.7068	23.3149	22.8459
220049	23.0283	26.0025	26.3191	25.1679
220050	20.8345	22.0144	22.5265	21.7871
220051	20.4765	21.1033	21.7357	21.0973
220052	23.1376	23.7650	23.5225	23.4708
220053	21.2679	19.1280	*	20.2813
220055	21.5706	21.3743	*	21.4727
220057	23.0010	25.3902	25.8064	24.6606
220058	20.1888	19.9369	26.8345	22.1915
220060	26.1753	28.0843	28.0794	27.4392
220062	20.0560	20.4685	20.2254	20.2505
220063	20.9547	20.3951	20.8079	20.7132
220064	22.1785	22.3260	22.7497	22.4060
220065	20.1974	20.1364	20.1424	20.1584
220066	20.4586	20.7826	21.7186	21.0071
220067	25.7414	26.4443	27.5405	26.5452
220068	6.4548	*	*	6.4548
220070	19.7678	19.7528	19.0333	19.5401
220071	24.6508	25.6184	26.8257	25.6808
220073	25.8680	25.6025	26.1328	25.8683
220074	24.0523	25.6390	24.8429	25.0647
220075	21.5418	22.8057	22.5329	22.2794
220076	24.7783	22.6668	23.2795	23.6106
220077	24.8019	25.2646	25.5336	25.1941
220079	21.0090	22.6256	17.9964	20.4339
220080	20.5007	21.5238	22.1971	21.3825
220081	25.3370	29.1726	29.6682	28.0686
220082	20.0175	21.6726	22.1453	21.2140
220083	23.0759	23.9156	22.5815	23.1732
220084	24.6624	23.6641	21.3072	23.1862
220086	30.4649	23.8705	27.6595	26.7829
220088	23.3783	22.9067	23.4258	23.2384
220089	21.7884	23.0965	25.4106	23.3099
220090	21.6353	22.0041	23.2456	22.2523
220092	17.0409	18.5239	24.2591	19.3548
220094	21.9853	*	*	21.9853
220095	21.4468	21.4831	21.7851	21.5735
220098	20.8596	21.5906	23.1547	21.8533
220100	25.3484	25.7077	27.5841	26.2007
220101	24.3260	25.9204	27.0711	25.7662
220104	27.5297	28.0021	28.7258	28.0695
220105	21.6873	21.4129	21.9185	21.6684
220106	24.5518	25.6577	25.9277	25.3659

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
220107	20.2719	*	*	20.2719
220108	22.6372	21.9115	23.4975	22.6709
220110	29.1927	28.7071	28.8697	28.9201
220111	23.0475	23.8066	24.7510	23.8707
220116	24.9744	26.1662	32.0049	27.4579
220118	30.5213	*	*	30.5213
220119	22.8586	23.3216	23.8785	23.3181
220123	27.3063	25.8994	32.4678	28.6276
220126	20.9557	22.5218	22.9620	22.1062
220128	20.5636	*	*	20.5636
220133	35.2747	25.4596	29.3911	30.0324
220135	25.0798	25.6522	26.6636	25.7967
220153	23.8981	22.9592	*	23.4152
220154	22.1261	22.4770	21.1563	22.0118
220163	27.3527	29.1143	29.6933	28.6971
220171	23.4340	24.5553	25.2585	24.4462
230001	19.2015	19.8020	20.0438	19.6841
230002	21.9058	22.7991	23.3790	22.7047
230003	19.6118	19.8420	21.2215	20.2501
230004	22.0310	23.1036	20.5005	21.8004
230005	19.4040	18.5644	17.0943	18.3438
230006	18.4681	19.1041	20.4978	19.3271
230007	19.4339	15.5538	*	18.1334
230012	18.6663	15.0803	*	16.5807
230013	20.6322	20.8018	22.2211	21.1847
230015	20.4264	20.1104	20.6464	20.3967
230017	20.3975	22.2822	22.4824	21.6902
230019	21.3222	22.2622	22.1491	21.9247
230020	21.3206	22.1280	22.1198	21.8771
230021	18.5670	18.9636	19.8256	19.1973
230022	19.7598	18.8006	21.9129	20.1618
230024	27.9551	23.7326	24.9664	25.4314
230027	18.0285	14.6950	19.6393	17.2624
230029	21.0636	19.4911	22.1092	20.9014
230030	17.7040	18.3916	18.6230	18.2489
230031	17.5352	19.3162	19.9465	18.8845
230032	20.6821	21.8845	24.8930	22.4347
230034	17.2302	19.0473	19.4366	18.6363
230035	17.5607	17.5109	17.7490	17.6051
230036	21.7565	23.2119	23.8398	22.9390
230037	19.0688	20.4747	23.2751	20.8659
230038	23.3876	23.5251	21.9692	22.9521
230040	20.3897	21.4393	20.7841	20.8605
230041	19.0278	20.3131	21.7364	20.3273
230042	19.4937	22.1043	21.0266	20.8816
230046	25.9482	25.5696	25.3206	25.6107
230047	20.6379	21.5381	22.4279	21.5449
230053	22.1781	25.4968	25.5139	24.3278
230054	19.5427	20.6963	20.8014	20.3482
230055	19.8381	20.7932	20.8908	20.4862
230056	16.4101	16.0766	18.9203	17.0117
230058	18.2349	20.4165	21.0303	19.9623
230059	19.5098	19.9240	20.7092	20.0517
230060	17.8716	19.8021	19.4211	19.0237
230062	16.2952	17.1540	18.8039	17.3634
230063	20.2211	20.4171	*	20.3143
230065	21.1507	22.3459	22.3216	22.0094
230066	21.5116	22.1768	23.0475	22.2618
230069	21.7909	23.2076	24.1210	23.0181
230070	20.0645	20.2505	21.5666	20.8098
230071	22.1556	22.9052	23.1337	22.7304
230072	20.4308	20.6944	20.4456	20.5245
230075	19.4316	20.0545	22.5866	20.6203

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
230076	23.8201	24.4547	24.7010	24.2886
230077	20.3937	21.0178	19.7982	20.3917
230078	16.2486	17.5577	17.9868	17.2435
230080	18.9084	19.7687	20.2104	19.6745
230081	17.9510	19.0345	19.0199	18.6644
230082	17.7417	18.2992	19.0419	18.3501
230085	17.5447	20.2096	23.4996	20.3924
230086	16.9754	18.9420	20.1857	18.6805
230087	15.7694	18.9034	19.9700	18.0112
230089	21.3914	23.9100	22.6994	22.6194
230092	18.9567	20.0145	20.8313	19.9501
230093	20.1928	20.4655	20.6425	20.4363
230095	16.7830	17.3313	17.6444	17.2565
230096	22.5613	22.8410	22.7785	22.7256
230097	20.0960	21.2854	21.1254	20.8481
230099	20.2529	21.1933	21.7513	21.0709
230100	13.1107	17.1336	17.3842	16.0282
230101	18.6098	20.0932	20.5315	19.7445
230103	19.6014	22.7696	11.3429	17.7532
230104	23.4703	23.1457	24.1238	23.5809
230105	20.8765	21.5210	22.6098	21.6727
230106	18.3508	20.7997	21.6825	20.2936
230107	14.6673	16.5966	17.1386	15.9949
230108	17.4231	18.8631	20.3437	18.8600
230110	17.8017	18.9825	19.7262	18.8384
230113	11.1676	14.9411	*	12.8926
230115	16.4728	18.4050	19.2636	18.0559
230116	16.3563	16.5419	14.5692	15.7763
230117	23.9389	25.9318	25.6797	25.1927
230118	21.7089	21.3028	20.6797	21.2068
230119	23.9568	21.1918	22.5415	22.5507
230120	19.6400	18.5264	20.3306	19.4421
230121	20.0786	20.3158	21.3342	20.5789
230122	18.0903	20.9078	*	19.5648
230124	18.8938	20.3608	18.6352	19.2618
230125	15.3497	*	*	15.3497
230128	23.5787	24.9081	24.0724	24.1436
230130	22.5204	23.5170	22.1775	22.7280
230132	26.1727	26.6386	26.2269	26.3491
230133	17.5688	17.6894	17.1058	17.4473
230134	15.3248	*	*	15.3248
230135	22.7401	22.5258	20.5637	22.0738
230137	18.3431	19.1813	*	18.7522
230141	23.0496	22.1299	22.4570	22.5592
230142	20.1242	22.2940	23.3483	21.7608
230143	16.4468	16.3043	16.7948	16.5112
230144	20.9906	22.1108	23.3502	22.1007
230145	16.5986	20.2542	19.2638	18.8354
230146	18.6293	20.5044	21.1818	20.1337
230147	20.5144	21.8496	23.2755	21.8616
230149	14.1740	20.7691	18.8005	17.7545
230151	20.8884	22.1713	23.1152	21.9998
230153	17.3280	19.5633	18.7403	18.5291
230154	14.5846	15.4456	15.4362	15.1635
230155	16.9857	17.2076	20.5409	18.1875
230156	23.6126	24.7587	25.5835	24.6629
230157	19.7197	20.3667	17.3571	19.2380
230159	18.8426	20.0749	*	19.3914
230162	17.7689	21.4636	21.7148	20.3064
230165	23.3147	23.0106	23.2019	23.1727
230167	20.3210	21.5048	22.1550	21.3066
230169	22.8606	23.0652	24.3780	23.4313
230171	14.9595	13.3863	17.1282	15.0778

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
230172	20.2191	20.6417	21.4675	20.7898
230174	20.8542	23.0272	22.7304	22.1820
230175	21.8097	16.8909	*	19.0428
230176	21.8618	22.7772	23.8883	22.8410
230178	16.0818	16.9156	17.3030	16.7485
230180	15.4837	15.8769	18.5744	16.6297
230184	17.2928	19.0604	19.7717	18.6605
230186	*	19.5337	16.4977	18.0186
230188	15.5563	15.7112	16.2975	15.8821
230189	15.9089	16.6838	17.9218	16.8493
230190	23.7134	26.8196	26.4687	25.7543
230191	17.1221	19.0013	18.4861	18.1647
230193	20.1805	19.7066	19.2961	19.7939
230195	22.3745	21.7775	22.5842	22.2594
230197	21.6184	24.0184	23.3951	22.9141
230199	18.4012	19.4451	20.6580	19.5586
230201	15.3206	17.2141	18.0787	16.9556
230204	22.9506	25.4181	23.4966	23.9387
230205	13.8861	14.3788	15.9314	14.6555
230207	20.3538	20.6375	21.2483	20.7256
230208	17.1501	16.0733	15.8925	16.3949
230211	17.5087	18.6744	21.8581	19.0214
230212	22.1370	23.3021	24.2611	23.2193
230213	15.3159	15.1908	15.5469	15.3407
230216	19.5921	20.3359	21.0710	20.3422
230217	20.9510	21.2707	22.2698	21.4978
230219	20.7018	19.1549	20.0442	19.9745
230221	21.5000	*	*	21.5000
230222	20.8430	22.1785	22.0823	21.7090
230223	21.4990	21.1528	22.2627	21.6325
230227	21.3801	23.7259	22.7599	22.5824
230230	22.5346	22.2385	22.3092	22.3585
230232	12.6373	*	*	12.6373
230235	15.9466	16.8684	17.7197	16.8275
230236	23.2178	24.3835	25.9676	24.5556
230239	19.2349	18.0942	17.8168	18.3625
230241	18.8451	19.1000	20.0497	19.3344
230244	21.0758	21.7413	22.2697	21.6892
230253	21.9497	20.5945	21.0433	21.1989
230254	21.2786	21.9402	22.6335	21.9383
230257	20.4721	19.6982	21.3695	20.4944
230259	21.1519	22.2393	22.3969	21.9147
230264	15.1818	17.1319	17.4864	16.5360
230269	22.8138	23.3105	24.0992	23.4229
230270	20.0803	22.6187	21.5711	21.3628
230273	23.4000	22.9199	22.8715	23.0744
230275	17.5975	17.7487	20.8985	18.2554
230276	18.5750	21.3722	25.8709	21.5415
230277	22.5012	23.1456	23.9771	23.2364
230278	16.6645	18.2110	*	17.3814
230279	16.0437	17.6973	17.8074	17.2147
230280	14.2249	15.6654	18.3497	15.8025
230283	*	27.9480	22.5082	24.9202
240001	22.8480	24.6207	25.6936	24.3586
240002	23.0240	22.7981	23.2225	23.0151
240004	23.9195	25.1908	23.8151	24.2981
240005	16.9775	17.9563	20.3193	18.3770
240006	27.1133	25.1602	23.0715	24.9568
240007	16.9802	17.7625	19.0850	17.9138
240008	21.8068	20.2158	23.3783	21.6628
240009	16.6910	16.8965	17.1187	16.9211
240010	23.6323	23.6477	25.4752	24.2587
240011	18.9559	20.5192	21.5875	20.3298

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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2000 (1996 WAGE DATA), 2001 (1997 WAGE DATA) AND 2002 (1998 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
240013	18.9705	20.3282	21.7544	20.2656
240014	21.8560	23.0025	24.3446	23.0734
240016	19.8624	20.4017	22.2011	20.8274
240017	17.2325	18.3585	18.9272	18.1627
240018	19.0671	20.8501	18.4268	19.4219
240019	20.9869	22.1501	23.1477	22.1062
240020	19.5727	21.1937	20.8849	20.5389
240021	17.3968	18.7515	20.1457	18.6569
240022	19.1554	21.7889	21.3234	20.7594
240023	20.3923	21.5087	22.8224	21.4999
240025	17.2464	18.8345	20.0308	18.7384
240027	16.2531	19.1017	16.7758	17.3367
240028	19.3781	19.7918	25.1934	21.5071
240029	17.9880	21.1329	20.0164	19.6781
240030	18.4358	18.8547	20.1653	19.1669
240031	18.0652	18.1566	19.3983	18.5009
240036	20.3270	22.2460	22.1721	21.6421
240037	18.4564	19.2345	20.1195	19.3188
240038	26.3539	25.3061	24.3957	25.3169
240040	19.9022	20.4813	23.1352	21.0482
240041	19.2127	19.2864	21.8655	20.0389
240043	17.3064	17.7335	16.9859	17.3013
240044	18.9217	18.8411	20.3339	19.3394
240045	20.9873	21.1396	24.1557	22.0716
240047	21.8576	22.6152	23.8098	22.7467
240048	23.3110	*	*	23.3110
240049	22.1345	*	*	22.1345
240050	24.5027	25.2983	21.6499	22.6550
240051	18.2287	19.9195	22.5855	20.1307
240052	19.2190	20.7749	*	19.9948
240053	21.1987	22.9611	23.8858	22.7864
240056	22.2927	23.4226	23.7139	23.1375
240057	23.2377	24.2159	24.3404	23.9501
240058	14.9141	14.9697	18.1695	15.9021
240059	21.9575	23.6215	23.7808	23.1092
240061	25.5581	27.2603	25.9951	26.2655
240063	23.5426	23.7866	24.4031	23.9101
240064	20.7602	23.2860	22.6742	22.2043
240065	12.5547	12.7867	14.8734	13.4307
240066	22.0542	23.0698	24.1143	23.1023
240069	19.1834	19.8282	21.7991	20.2573
240071	19.1913	20.2101	21.1721	20.2070
240072	18.0015	21.1824	20.9529	20.0007
240073	15.6318	16.0840	17.3559	16.3592
240075	21.1934	21.2654	21.4157	21.2934
240076	21.0702	21.8795	22.3280	21.7859
240077	14.9493	15.3794	20.3445	16.8827
240078	22.7122	23.9150	25.1082	23.9382
240079	17.8206	18.4338	18.8345	18.3648
240080	23.7286	24.3399	25.5619	24.7160
240082	18.0272	18.3555	18.7995	18.3952
240083	19.2922	19.7637	21.0317	20.0094
240084	19.6078	19.4739	21.7421	20.2965
240085	18.0214	22.5736	20.9778	20.5540
240086	15.3302	16.9392	18.1401	16.9654
240087	17.0624	18.8352	21.3323	19.0315
240088	21.0202	21.6858	23.1056	21.8928
240089	18.4171	20.7239	21.1989	20.0227
240090	18.0490	19.2968	19.2166	18.8331
240093	18.6788	18.7092	20.2400	19.2268
240094	20.5705	20.9446	22.0247	21.2053
240096	18.3365	20.1644	21.0417	19.7961
240097	23.6230	24.2662	27.7781	25.0667

* Wage data not available for the provider that year.
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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2000 (1996 WAGE DATA), 2001 (1997 WAGE DATA) AND 2002 (1998 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
240098	20.6036	21.3467	24.2296	22.0643
240099	14.3759	14.4649	15.4964	14.7485
240100	19.1921	20.8302	18.9953	19.6501
240101	17.7478	19.2120	20.0872	18.9539
240102	15.5644	14.6067	16.3659	15.5008
240103	16.8805	19.1540	18.7510	18.2532
240104	24.0175	23.2178	23.5351	23.5902
240105	14.7904	14.3965	*	14.6094
240106	23.7818	23.5148	23.5005	23.6022
240107	19.0299	20.3983	20.9004	20.0558
240108	16.4605	15.3547	18.2427	16.5529
240109	13.1537	13.5537	16.3216	14.2359
240110	17.2834	19.4828	21.0675	19.2326
240111	17.0408	17.2100	17.8617	17.3567
240112	15.3246	15.8350	16.6242	15.9307
240114	15.4919	16.2505	17.3682	16.3794
240115	22.1575	23.7765	23.8675	23.3187
240116	15.1757	16.6731	18.3520	16.6014
240117	17.5676	18.0636	17.9941	17.8845
240119	22.4981	20.6126	21.8289	21.5894
240121	21.3747	23.4018	22.2266	22.3266
240122	18.0396	19.1811	21.2876	19.5090
240123	15.5968	16.5098	18.3941	16.7420
240124	19.0505	19.4400	20.4728	19.6473
240125	13.1505	12.3627	14.9708	13.5694
240127	14.7670	15.8966	17.9724	16.1476
240128	16.0759	17.2513	16.3608	16.5520
240129	15.4226	14.4212	16.5209	15.4258
240130	15.6477	14.9399	16.4271	15.6650
240132	24.4998	23.0669	23.1452	23.5239
240133	18.5216	19.2126	19.5294	19.1081
240135	13.6014	14.3069	15.7015	14.4270
240137	19.1770	20.3750	21.5073	20.3195
240138	13.7359	15.2062	16.7332	15.1922
240139	17.0163	20.8053	20.5496	19.6213
240141	21.9909	23.8066	23.1009	22.9648
240142	20.6139	25.2770	29.2238	24.5024
240143	14.2790	16.6172	*	15.4691
240144	15.8710	18.2604	21.4469	18.2664
240145	14.9997	17.2778	19.0689	17.4197
240146	16.7496	16.0652	16.5412	16.4544
240148	11.3388	18.8779	19.5204	16.6060
240150	12.8255	13.8786	20.8331	15.4453
240152	20.2020	21.1678	22.4744	21.2973
240153	15.6079	16.5412	19.3336	17.0363
240154	17.0625	17.5769	21.5052	18.6158
240155	20.4189	19.8762	20.9385	20.4180
240157	14.6914	17.4168	15.2821	15.8915
240160	16.6034	15.9492	15.9014	16.1454
240161	15.4160	15.7996	16.8809	15.9681
240162	19.0404	16.6292	19.1542	18.1964
240163	17.8714	18.8320	20.4760	18.9698
240166	16.3907	17.3233	19.4131	17.7688
240169	18.6155	16.6725	16.3958	17.2174
240170	17.6501	18.8762	20.3779	18.9004
240171	16.7237	17.2886	18.5172	17.5402
240172	16.0711	18.2852	20.8606	18.2323
240173	16.7411	17.2655	18.5190	17.5028
240179	16.6464	17.5116	20.4007	18.1225
240184	14.3996	15.3793	16.8917	15.4746
240187	17.5154	19.9230	21.2736	19.5789
240193	16.3004	17.8226	18.4664	17.4827
240196	23.2666	24.3472	25.3479	24.3358

* Wage data not available for the provider that year.
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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
240200	14.7295	14.3415	14.9076	14.6539
240207	23.3339	24.1127	25.2814	24.2879
240210	23.8391	24.2218	24.5664	24.2274
240211	20.5548	19.7399	30.6260	22.1746
250001	18.1407	18.4233	19.2756	18.6319
250002	15.6036	17.2501	18.6938	17.1218
250003	15.6560	17.6539	16.7570	16.6622
250004	17.1177	17.8868	18.3860	17.7913
250005	12.0032	12.5993	12.5834	12.3909
250006	15.7036	16.9048	17.5192	16.6995
250007	19.1555	19.2913	19.7562	19.3984
250008	13.3179	14.1760	15.8506	14.4224
250009	16.1847	18.5610	17.7283	17.5396
250010	13.3372	13.3905	14.6101	13.7324
250012	18.4756	14.1623	16.7579	16.4800
250015	11.0747	13.5274	11.7249	11.9737
250017	17.3006	17.9410	20.5976	18.5334
250018	13.4707	11.9311	13.1687	12.7895
250019	17.1501	16.7425	18.0956	17.3536
250020	14.0618	13.4476	16.2698	14.4562
250021	9.0772	9.4318	10.5844	9.6552
250023	13.5440	13.9116	12.3434	13.2963
250024	11.5940	12.7127	12.9899	12.4525
250025	17.8890	19.0390	20.3625	19.2022
250027	12.4241	14.9519	14.5445	13.9032
250029	14.8456	16.4834	16.0682	15.8412
250030	13.6277	17.3636	26.6173	19.2750
250031	18.7663	17.9715	18.3825	18.3676
250032	17.2983	17.1339	17.5957	17.3467
250033	15.7646	17.8257	15.0941	16.2509
250034	18.1269	16.6988	17.0399	17.2230
250035	17.4148	15.2353	16.8349	16.3942
250036	13.7928	15.8445	16.1913	15.3676
250037	10.3212	15.4325	12.7156	12.4979
250038	13.6207	16.8454	17.7019	16.0182
250039	16.5105	14.1556	15.1409	15.2552
250040	15.6367	17.3430	18.3364	17.1495
250042	16.4728	16.3867	17.6050	16.8239
250043	13.6492	16.0729	16.6500	15.4718
250044	16.7462	16.1218	16.7321	16.5323
250045	19.4788	22.0839	21.8988	21.2480
250047	12.0953	13.3706	14.7461	13.3242
250048	15.7073	16.8932	17.6649	16.7793
250049	10.7578	11.6715	12.1635	11.5642
250050	13.9220	14.3949	15.1159	14.4819
250051	9.6017	9.3464	10.4900	9.8032
250057	14.2863	15.9237	16.1838	15.4582
250058	15.4206	15.5327	15.7197	15.5555
250059	14.2997	16.2845	16.6494	15.7755
250060	7.9882	13.0301	16.1804	11.2768
250061	13.9655	11.0308	11.5108	11.9846
250063	14.9743	13.2540	13.3092	13.7869
250065	12.6803	12.8853	13.6904	13.0682
250066	14.3274	15.6760	16.1742	15.4025
250067	15.2871	16.4120	16.8522	16.2039
250068	11.4272	13.6768	13.4127	12.8087
250069	15.7653	17.8960	16.8980	16.8834
250071	11.2079	14.3781	12.3488	12.5425
250072	16.9263	18.2218	18.9487	18.0776
250076	*	10.5098	*	10.5098
250077	11.4135	12.2564	13.7404	12.5026
250078	15.4571	15.6336	15.9627	15.6858
250079	19.0587	16.2712	16.5835	17.1998

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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2000 (1996 WAGE DATA), 2001 (1997 WAGE DATA) AND 2002 (1998 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
250081	16.1412	17.3325	19.0358	17.4600
250082	14.0249	16.0975	17.1427	15.7611
250083	9.2019	14.2634	16.6065	13.1746
250084	19.7390	17.0189	20.6429	19.0165
250085	13.8487	14.3797	15.4477	14.5716
250088	16.7514	17.8674	18.2736	17.6409
250089	13.0481	13.4238	14.3027	13.5884
250093	15.0918	15.2044	16.1506	15.4926
250094	17.8539	18.0852	18.5063	18.1422
250095	16.3574	17.0039	17.4217	16.9079
250096	17.0713	19.0688	19.0584	18.3546
250097	18.4099	16.9905	15.5741	16.9320
250098	14.3017	13.1341	*	13.6607
250099	14.4142	14.8528	15.1265	14.8018
250100	16.6033	17.1682	17.8688	17.2128
250101	16.3083	18.4685	17.7194	17.5079
250102	20.0190	23.9329	18.9348	20.8793
250104	17.5421	18.2502	18.7651	18.1832
250105	14.5986	14.5401	15.5133	14.8921
250107	13.6296	15.1496	15.0737	14.6455
250109	14.5496	22.1551	21.3867	18.8951
250112	14.2023	15.5610	16.3640	15.3179
250117	14.5171	16.1225	16.9787	15.9014
250119	12.7379	15.2199	16.1218	14.6728
250120	14.4126	15.3433	16.7182	15.4420
250122	17.7079	18.9417	19.2990	18.6619
250123	17.4068	18.8690	18.7863	18.3698
250124	12.6677	13.1823	13.2490	13.0310
250125	14.4867	20.8895	21.2660	18.4338
250126	14.7083	18.2355	21.9101	17.8900
250128	12.9968	14.0048	16.1418	14.4375
250131	10.2765	12.6056	12.4557	11.6657
250134	17.9755	17.0671	18.5142	17.8554
250136	18.0538	18.9689	21.3497	19.3579
250138	17.5999	18.4028	20.4550	18.6918
250141	17.1247	19.0113	19.6692	18.6505
250145	11.4047	10.2507	11.2120	10.9506
250146	13.2763	14.4924	14.7781	14.1955
250148	14.8234	18.0980	19.4233	17.4956
250149	12.9840	12.9569	15.2318	13.7102
250150	*	*	21.8599	21.8599
260001	17.5520	18.0971	19.7805	18.4701
260002	20.5878	22.1183	21.6400	21.4524
260003	14.3537	14.6553	15.4482	14.8108
260004	13.7528	13.0133	13.7035	13.4793
260005	19.7058	19.5554	23.9681	21.0036
260006	18.9408	19.7467	20.0994	19.6144
260008	16.2451	13.8495	16.8893	15.5719
260009	17.9364	18.5080	18.2863	18.2469
260011	18.3378	19.1027	19.5059	18.9819
260012	14.4594	14.3645	17.1662	15.3316
260013	15.5388	15.9884	16.1825	15.8932
260015	21.3327	16.5822	17.8817	18.4578
260017	15.8013	16.7916	14.7406	15.7355
260018	12.2293	12.0060	12.5301	12.2688
260019	23.6727	18.6113	*	20.6992
260020	21.8585	20.5142	20.2241	20.8205
260021	17.5694	22.1017	21.6237	20.1803
260022	19.3454	17.2462	17.7772	17.8898
260023	15.8235	16.4705	17.8649	16.6827
260024	13.4737	15.2356	15.7815	14.8371
260025	14.9377	15.4935	17.0965	15.8836
260027	21.0084	21.2977	21.3033	21.2013

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
260029	17.4744	19.7484	21.1858	19.3784
260030	11.2434	12.5118	11.9215	11.8847
260031	18.3039	19.4921	19.6943	19.1343
260032	20.8097	20.1988	19.6728	20.2222
260034	17.8986	17.4233	20.4902	18.5746
260035	12.5886	13.1065	13.0071	12.9052
260036	18.3128	16.7430	18.8104	17.9282
260039	14.1980	14.1866	14.6644	14.3527
260040	15.3853	17.3099	18.0140	16.9033
260042	17.4459	18.7567	18.7514	18.2697
260044	17.1177	15.9927	15.9206	16.3491
260047	17.2768	19.0112	19.2247	18.5386
260048	21.4309	20.0885	21.0602	20.8622
260050	18.7366	15.6908	16.8520	17.0991
260052	17.7502	18.0553	18.0914	17.9657
260053	12.0098	15.2236	16.5166	14.4005
260054	17.3708	20.0199	19.9510	19.1024
260055	13.7961	12.0118	15.4214	13.6790
260057	15.3276	17.4636	19.7144	17.7259
260059	15.7887	16.1000	17.0546	16.3478
260061	15.0099	14.7175	15.7112	15.1405
260062	20.2655	20.1477	21.3138	20.5946
260063	16.8474	18.2309	18.6551	17.9110
260064	16.5033	16.5934	17.8033	16.9429
260065	18.4654	19.4382	20.0975	19.3238
260066	14.4163	14.9640	15.3460	14.8934
260067	12.1588	14.2249	15.1837	13.8617
260068	19.8261	20.2418	19.4240	19.8242
260070	21.6873	*	13.9510	17.3672
260073	13.0075	14.2550	15.9182	14.4333
260074	15.4480	19.0350	19.8915	18.1123
260077	18.2594	18.6473	19.4482	18.8035
260078	15.4754	15.6381	14.9463	15.3700
260079	14.8281	14.2985	16.1453	15.0169
260080	12.5631	13.5384	14.6832	13.5392
260081	18.9629	21.0151	20.3053	20.0653
260082	15.7880	15.9407	15.9858	15.9090
260085	19.5153	20.4669	20.5247	20.1531
260086	14.8730	14.3164	15.2927	14.8291
260091	19.6081	19.9987	21.4056	20.5321
260094	15.8705	18.0085	18.5395	17.5281
260095	19.7672	19.6944	20.3468	19.9375
260096	21.7176	23.0282	22.5972	22.4661
260097	15.7899	16.5582	19.0632	17.1704
260100	15.7324	15.7047	16.6523	16.0345
260102	16.3653	20.1264	20.6361	18.8983
260103	17.3541	18.5957	19.7146	18.4987
260104	19.1158	21.0138	20.3176	20.0928
260105	20.8006	24.7223	24.8181	23.3052
260107	18.4618	19.8422	19.6490	19.2823
260108	19.2422	19.4609	20.0034	19.5906
260109	13.4400	13.9129	14.8181	14.0725
260110	16.9952	17.8375	18.3227	17.7209
260113	14.8968	14.6756	16.2223	15.2316
260115	17.8971	19.2259	17.4698	18.2033
260116	14.5715	16.2774	14.9812	15.2548
260119	16.2000	16.8836	17.2942	16.7641
260120	17.1269	16.3755	16.4904	16.6414
260122	14.5390	14.9697	16.0931	15.2238
260123	13.9960	14.6444	14.6822	14.4496
260127	15.9481	18.3572	18.4026	17.5109
260128	11.2705	13.0481	12.6414	12.2813
260129	14.6353	*	*	14.6353

*Wage data not available for the provider that year.
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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2000 (1996 WAGE DATA), 2001 (1997 WAGE DATA) AND 2002 (1998 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
260131	19.7491	17.7686	18.4154	18.5978
260134	16.5834	16.2832	17.5127	16.7877
260137	15.2169	17.9531	19.4697	17.5188
260138	21.3885	22.6491	22.1044	22.0654
260141	17.9598	19.1580	19.1893	18.7555
260142	16.0299	17.1248	17.3084	16.7937
260143	11.9389	12.7867	13.9040	12.7859
260147	13.6568	14.0778	14.7769	14.1672
260148	10.3383	11.8674	11.3524	11.2072
260158	12.4020	12.3005	12.7699	12.4966
260159	18.2232	20.3177	19.7951	19.3893
260160	16.1922	15.8394	16.5792	16.2009
260162	20.7103	19.5655	21.4099	20.5728
260163	14.8051	16.4245	15.8593	15.6940
260164	14.3089	14.9372	15.1211	14.8191
260166	19.5343	20.1025	20.3449	20.0093
260172	12.4851	15.4163	16.0772	14.6285
260173	11.9777	12.8523	14.2090	13.1471
260175	16.2940	16.9023	17.5625	16.9246
260176	19.5449	26.8712	21.6044	22.7500
260177	20.7457	21.2578	21.9014	21.3180
260178	21.4080	19.6638	20.2796	20.4480
260179	20.7397	21.4906	22.7185	21.6624
260180	18.5398	19.5819	18.9881	19.0361
260183	20.1940	20.0712	21.3175	20.5306
260186	18.0588	19.3238	19.6026	19.0698
260188	18.5772	20.6388	21.6920	20.2650
260189	10.7518	11.3004	16.4233	12.7425
260190	18.1639	18.5168	19.4910	18.7481
260191	19.3386	17.9812	18.1604	18.4767
260193	20.5055	21.1588	20.2577	20.6284
260195	15.9518	17.7237	19.7068	17.8042
260197	16.4605	19.2840	20.5453	18.3884
260198	17.6381	11.9751	19.7552	15.6949
260200	18.8755	20.5339	20.6888	20.0233
260205	*	17.6210	*	17.6210
270002	17.1866	28.9959	19.2387	20.5385
270003	22.1299	22.0995	22.5019	22.2424
270004	21.3442	19.6292	19.4834	20.1660
270006	16.1872	16.0238	17.0715	16.3653
270007	13.1679	11.3143	13.8824	12.6774
270009	17.7016	17.2292	20.4393	18.3783
270011	19.8229	20.2669	21.1653	20.3748
270012	22.8770	19.7346	19.7878	20.8557
270013	20.4012	*	*	20.4012
270014	18.5595	19.0872	19.9219	19.1986
270016	19.7675	19.6717	18.6149	19.4350
270017	19.5798	21.0800	20.0152	20.2382
270019	12.7812	18.1099	15.4128	15.4635
270021	16.6541	17.1787	16.9457	16.9258
270023	20.3641	22.2639	22.7181	21.7139
270026	15.6381	17.5102	18.0568	17.0775
270027	9.7758	13.1392	17.2091	12.8885
270028	17.2132	21.1492	19.1177	19.1160
270029	17.8852	16.5666	17.3710	17.2639
270032	17.0285	17.7393	16.0946	16.9320
270033	16.4554	16.9602	15.3447	16.2871
270035	17.6482	16.8295	16.4302	16.9974
270036	14.0815	14.2537	16.8552	14.8821
270039	15.3501	15.9368	19.6796	16.7774
270040	19.1901	18.8145	20.1242	19.3585
270041	16.7791	19.0327	25.8153	19.7981
270044	13.4559	16.7710	17.6489	15.9061

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
270046	17.1048	*	*	17.1048
270048	15.8403	17.0154	18.0666	16.8972
270049	21.1670	22.2444	22.9547	22.1282
270050	18.0448	16.7110	19.9356	18.1546
270051	18.9468	20.2735	20.1950	19.8100
270052	14.8042	14.4773	11.6737	13.7344
270057	20.0080	21.1317	20.6714	20.6119
270058	14.0669	14.7481	16.1412	14.9510
270059	15.5957	14.7530	19.1808	16.3576
270060	14.0212	15.2727	20.4148	16.5316
270063	14.2287	12.6108	15.1049	13.8837
270073	15.5281	14.4569	16.1937	15.3359
270079	15.0277	15.6873	16.7048	15.7603
270080	14.0437	16.3171	15.0705	15.0926
270081	15.5207	15.6262	16.7389	15.9424
270082	16.1280	17.3443	23.1245	18.7794
270083	20.8231	18.4432	17.8554	18.9597
270084	16.2075	16.6243	16.2958	16.3734
280001	17.8928	17.3541	18.1831	17.7825
280003	21.9957	22.3179	23.0213	22.4564
280005	18.7477	19.2405	23.6949	20.6104
280009	18.7541	19.8145	20.9643	19.8453
280010	16.5417	17.4859	20.0462	17.5272
280011	13.9627	15.8573	15.9614	15.3328
280012	16.4079	*	*	16.4079
280013	22.1767	22.8063	22.3488	22.4214
280014	15.2414	15.9596	16.8368	15.9667
280015	14.6353	17.0281	16.6939	16.1405
280017	14.1897	14.2059	13.9939	14.1278
280018	14.8492	15.1328	15.4496	15.1512
280020	19.3963	19.9667	21.0924	20.2072
280021	16.6949	17.1048	17.6345	17.1389
280022	15.7059	16.7179	16.8184	16.3693
280023	21.2387	25.8494	22.3433	23.0540
280024	13.9115	14.2186	15.3050	14.4398
280025	14.2701	15.5850	21.4764	16.6875
280026	16.0599	16.6861	16.5851	16.4520
280028	15.8871	17.3176	18.0793	17.1201
280029	19.0519	23.1292	24.4359	21.9196
280030	28.7091	24.5366	24.1113	25.6720
280031	13.2242	13.5654	9.6321	12.1542
280032	19.3884	18.8964	19.1191	19.1301
280033	14.9334	15.7583	17.4745	16.1329
280034	15.2821	*	*	15.2821
280035	15.3304	15.9170	16.6872	15.8969
280037	16.1684	16.7952	17.1064	16.6926
280038	16.4685	17.0878	18.2503	17.2635
280039	15.1916	16.0442	16.1587	15.8239
280040	18.9717	19.5333	20.7630	19.0033
280041	13.3901	16.4083	16.5503	15.4920
280042	15.3029	16.1191	16.6239	16.0122
280043	15.7858	16.6570	17.5937	16.7160
280045	14.2741	16.9048	15.7630	15.6286
280046	13.7155	17.9221	17.3214	16.1724
280047	18.3743	18.3407	16.6409	17.7457
280048	14.0702	15.8723	15.8100	15.1939
280049	15.6343	18.3605	18.4365	17.4677
280050	15.3413	16.6432	19.9901	17.5838
280051	15.8504	15.6336	17.1942	16.1502
280052	13.6489	14.0819	14.1201	13.9629
280054	17.5819	18.7992	18.7575	18.3765
280055	12.9933	13.5667	13.8129	13.4587
280056	14.0151	12.6475	15.6135	14.0018

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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2000 (1996 WAGE DATA), 2001 (1997 WAGE DATA) AND 2002 (1998 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
280057	15.7623	18.0454	20.0686	17.7576
280058	17.8798	19.6752	21.4868	19.6876
280060	28.6047	19.7527	20.7022	22.2434
280061	17.9511	17.1629	18.6370	17.9240
280062	13.6738	14.4896	15.6018	14.6170
280064	15.5092	16.2977	16.8330	16.2046
280065	18.5327	19.2932	20.6502	19.5213
280066	11.6416	11.6621	11.7207	11.6766
280068	10.1327	9.4943	10.5987	10.0463
280070	13.7353	17.7400	22.6201	17.5276
280073	17.0583	17.4244	17.7698	17.4266
280074	15.2182	16.4310	16.7879	16.0977
280075	13.7875	15.5327	13.2230	14.1041
280076	13.9203	14.8469	16.7488	15.0947
280077	19.0145	19.2068	20.0148	19.4096
280079	9.9132	10.4540	16.6117	11.4307
280080	14.3528	15.3308	16.9487	15.6285
280081	20.9196	21.0771	20.1127	20.6778
280082	13.1250	14.3399	14.6173	14.0723
280083	17.5544	18.2992	21.5336	19.2134
280084	11.6868	12.5836	13.6536	12.6157
280085	21.5793	20.4302	20.4825	20.9817
280088	22.1147	20.2961	*	21.2560
280089	17.4696	18.1668	18.9567	18.1923
280090	14.7191	14.1362	15.1274	14.6962
280091	15.2184	15.8436	16.1866	15.7538
280092	14.1998	14.1945	14.7912	14.4303
280094	15.8843	17.6873	16.3474	16.6450
280097	14.2990	14.1734	13.8223	14.0824
280098	10.1686	13.0029	12.5875	12.0141
280101	17.4168	13.5261	16.9973	15.7528
280102	12.9367	14.0102	*	13.4735
280104	13.3842	13.2819	16.1207	14.1161
280105	18.7851	18.6575	21.0735	19.5325
280106	15.5396	16.1247	16.0679	15.9189
280107	13.4553	13.3311	14.4679	13.7065
280108	17.2185	17.5625	17.1961	17.3277
280109	11.0622	12.6803	12.4408	12.0678
280110	12.2950	12.7546	14.2136	13.0914
280111	23.0856	21.8773	19.6283	21.4131
280114	13.5580	15.7160	17.3076	15.4628
280115	16.4282	16.7041	18.1480	17.1049
280117	16.8216	17.7276	18.8279	17.8057
280118	16.9228	16.8687	18.6524	17.4822
280123	20.7732	14.0637	11.8582	15.0281
280125	*	16.1332	16.3944	16.2644
290001	22.4188	22.8226	22.4085	22.5500
290002	20.9442	17.2554	16.5419	18.3712
290003	25.0066	22.8840	23.7504	23.8240
290005	17.8609	19.4888	21.9814	19.6686
290006	19.8815	21.8070	22.4063	21.4371
290007	29.6864	29.7706	30.9075	30.1389
290008	20.2506	20.6190	24.1255	21.5150
290009	22.7399	23.3620	23.8871	23.3177
290010	14.4800	15.6423	16.4476	15.5219
290011	16.4419	20.1564	21.1234	19.0261
290012	21.5139	21.8275	25.0430	22.8581
290013	17.0883	18.2713	15.7932	17.0224
290014	18.3755	18.9743	18.7829	18.7144
290015	17.6303	22.3487	19.4504	19.7229
290016	12.7869	14.3542	23.8656	16.2244
290019	20.9336	21.2509	22.2045	21.4895
290020	26.1502	20.8733	21.2380	22.7207

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
290021	21.1250	21.5806	22.8732	21.8512
290022	24.0856	24.5468	25.4709	24.7290
290027	16.4289	16.7786	13.4076	15.4211
290032	22.7882	22.8447	23.4661	23.0210
290036	18.6112	*	12.9074	15.9259
290038	23.1402	20.6753	27.7030	22.6435
290039	25.8004	25.3864	24.6317	25.1994
290041	*	*	26.1003	26.1003
290042	*	*	18.7527	18.7527
290043	*	*	27.9053	27.9053
300001	21.4192	22.0909	23.8567	22.4761
300003	23.3777	22.9111	24.1297	23.4634
300005	19.9876	20.7545	22.2858	20.9804
300006	18.9331	23.7793	18.9745	20.5179
300007	19.3447	20.2372	20.2433	19.9403
300008	16.4649	20.7702	19.6149	18.9666
300009	20.0057	18.0602	20.0938	19.3221
300010	19.3833	19.3940	20.2130	19.6671
300011	21.2429	22.4325	23.0279	22.1850
300012	23.8859	24.5673	24.5672	24.3274
300013	18.9664	19.1247	20.1669	19.4250
300014	19.7969	20.3292	20.1774	20.0987
300015	19.9308	20.4916	19.6627	20.0406
300016	18.5037	21.8659	17.8148	19.4173
300017	22.3408	21.6563	22.7231	22.2428
300018	20.8947	21.2381	21.6385	21.2565
300019	20.6090	20.9753	19.6728	20.4155
300020	21.9725	21.9165	22.6627	22.2032
300021	17.3477	18.6211	19.3101	18.4253
300022	17.1864	18.3507	19.1875	18.2148
300023	20.3909	22.1210	22.1608	21.5715
300024	17.9460	19.9116	21.5842	19.6334
300028	18.0515	17.4075	19.9359	18.5255
300029	20.8961	22.5748	22.5952	22.0043
300033	19.8506	17.1869	17.1632	17.9333
300034	23.5215	25.5182	24.3286	24.4526
310001	27.5967	28.1329	25.3674	26.9474
310002	27.8735	28.3434	28.9800	28.3940
310003	27.4152	29.1096	27.2582	27.9096
310005	23.0493	22.1146	21.7223	22.2720
310006	21.5557	21.5957	22.0894	21.7417
310008	24.9483	23.5084	23.6523	24.0400
310009	23.1906	23.6371	21.1082	22.6736
310010	21.1064	22.5682	21.7892	21.7942
310011	23.4038	23.1977	24.2885	23.6223
310012	26.3249	26.5242	26.5603	26.4724
310013	22.1062	21.2251	22.0058	21.7900
310014	28.6964	27.4614	23.1544	26.3494
310015	26.7584	27.4331	27.5468	27.2399
310016	26.0518	24.3838	23.8492	24.7461
310017	26.0703	25.7902	24.5976	25.5018
310018	24.5312	22.8428	22.4779	23.3087
310019	23.0888	24.0542	24.9914	24.0619
310020	19.2663	24.1848	24.4152	22.3484
310021	22.6456	23.9369	24.5562	23.6719
310022	20.7276	21.2706	20.8258	20.9386
310024	22.7831	24.2353	24.9521	23.9428
310025	22.8129	24.3513	24.1812	23.7695
310026	23.8726	23.5491	22.1997	23.2228
310027	21.7666	21.8846	22.5696	22.0722
310028	23.5188	23.4577	23.9428	23.6444
310029	23.3801	22.6629	23.5968	23.2088
310031	25.1780	26.1567	26.8214	26.0435

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
310032	23.3017	24.3528	24.4098	24.0274
310034	21.6851	23.2729	23.9672	22.9482
310036	19.8178	20.1905	24.0906	21.3182
310037	27.4447	27.7823	29.3440	28.1550
310038	25.3832	26.7209	30.4319	27.5814
310039	22.0259	22.1754	22.7317	22.2988
310040	23.9864	26.1492	24.5150	24.8208
310041	23.7829	24.8960	23.5559	24.0709
310042	24.3292	23.2472	*	23.7901
310043	22.0887	21.9022	21.6128	21.8925
310044	20.4309	21.6677	23.1076	21.6842
310045	28.1570	28.4854	28.2393	28.2925
310047	24.5225	25.1101	26.1921	25.2615
310048	23.3295	23.6118	25.2088	24.0558
310049	24.7617	24.8299	26.1668	25.1997
310050	22.5877	25.1752	24.7988	24.2032
310051	25.2762	27.1265	26.9716	26.4268
310052	22.5753	22.9326	23.0520	22.8616
310054	24.7413	26.1726	27.2074	25.9539
310057	20.4484	21.1686	22.2572	21.2802
310058	26.2243	26.5308	26.3765	26.3747
310060	19.1119	19.1992	20.3713	19.5633
310061	20.8023	23.2646	33.9582	25.0082
310062	19.2729	22.9073	*	21.3672
310063	21.8540	21.9045	21.9181	21.8914
310064	24.2115	24.8567	25.1096	24.7198
310067	22.2740	25.0888	23.9278	23.7333
310069	24.1662	23.7531	24.2916	24.0734
310070	25.0448	26.0903	28.4556	26.4357
310072	22.2231	21.7606	22.5611	22.1704
310073	25.6299	28.5149	26.6390	26.9057
310074	24.4638	23.8340	23.6327	23.9943
310075	26.4606	23.3266	23.5841	24.4497
310076	28.8981	30.0797	33.7139	30.9519
310077	25.0569	25.2500	26.0801	25.4318
310078	23.4788	23.8841	24.0587	23.7967
310081	23.8898	22.0762	22.4086	22.8084
310083	23.6761	23.8852	24.8204	24.1353
310084	24.0915	26.6753	24.6049	25.1157
310086	21.4350	22.1674	22.7566	22.1186
310087	20.8875	20.7243	21.1297	20.9153
310088	22.3419	22.3160	23.1722	22.6064
310090	24.2426	23.8284	24.7947	24.2732
310091	22.0103	22.7978	23.2969	22.6743
310092	22.3446	20.5165	20.1062	20.9829
310093	21.2302	22.4291	23.7251	22.4166
310096	26.3041	25.1572	24.5759	25.3591
310105	24.4851	25.5891	26.9400	25.6544
310108	22.8801	22.4756	25.2476	23.5055
310110	20.1400	21.8341	23.2594	21.7903
310111	21.7218	21.1066	22.1022	21.6426
310112	22.5213	23.6701	24.7914	23.6656
310113	22.9536	23.6841	23.1961	23.2803
310115	20.0667	21.7320	21.3837	21.0468
310116	25.2429	22.9812	23.4566	23.8506
310118	24.5443	26.4625	26.5492	25.7555
310119	29.4809	33.6686	32.7858	31.9394
310120	21.6852	23.9681	23.3200	22.9127
310121	18.7365	*	*	18.7365
320001	17.8522	19.1150	20.6225	19.1818
320002	22.4623	22.6175	23.0983	22.7062
320003	15.3484	15.9504	13.9079	15.0840
320004	17.2353	18.5824	19.6642	18.5890

* Wage data not available for the provider that year.
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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
320005	19.8698	21.6103	21.0411	20.8577
320006	18.6472	18.9019	20.3863	19.2674
320009	17.6400	18.2883	19.3500	18.4218
320011	16.5481	20.0601	18.4503	18.4082
320012	15.9972	16.4355	16.7110	16.3828
320013	23.8390	22.9573	27.8924	25.0936
320014	15.9666	16.3598	16.8412	16.4003
320016	18.9296	20.5398	18.7247	19.3888
320017	18.1545	18.6388	19.4498	18.7392
320018	18.1944	18.8479	19.2336	18.7690
320019	19.2600	24.4707	26.9637	23.5577
320021	17.1647	17.8705	18.6167	17.8360
320022	15.8391	16.1777	17.1375	16.3840
320023	16.4170	18.0548	22.5706	18.5691
320030	16.5266	16.5495	18.6943	17.2018
320031	13.9914	19.6768	25.1715	19.2605
320032	18.7536	18.8097	21.1505	19.5091
320033	20.3137	25.0777	21.0621	21.9427
320035	25.7392	21.5186	15.0612	19.2882
320037	17.0846	17.0305	19.8700	17.9947
320038	16.2896	16.8117	22.2664	18.6619
320046	19.0033	18.3190	25.1691	21.0078
320048	19.1705	19.9642	16.8769	18.5918
320063	19.8320	18.3237	17.3297	18.4052
320065	16.1046	16.7933	18.6525	17.1721
320067	57.4818	33.8654	15.3228	25.9798
320068	18.1809	17.4785	18.4868	18.1081
320069	11.3058	13.0094	14.4212	12.8497
320074	18.6545	19.3406	20.2290	19.3600
320079	17.0696	18.2828	19.5946	18.2729
330001	25.2067	26.5533	27.3996	26.4208
330002	26.3926	26.5370	26.9827	26.6287
330003	18.0549	19.4102	18.8260	18.7489
330004	19.9573	22.5298	20.9501	21.1368
330005	24.2795	24.8338	20.9401	22.5763
330006	25.9186	25.0576	25.8006	25.5856
330007	18.7956	18.9024	19.3974	18.8931
330008	18.0684	19.0045	18.5531	18.5296
330009	30.4220	30.6918	31.3435	30.8056
330010	14.7382	17.4512	16.5924	16.1266
330011	18.0419	18.2986	18.6748	18.3483
330012	31.5135	32.7624	*	32.1317
330013	19.9929	19.0856	19.7303	19.6038
330014	27.5704	32.3370	36.6670	32.2107
330016	17.4069	16.9717	16.8016	17.0572
330019	32.4515	35.9822	32.8743	33.7601
330020	14.5488	15.5527	15.1142	15.0641
330023	24.2708	24.4006	25.6145	24.7662
330024	33.6175	34.1682	37.3316	34.9189
330025	16.0290	16.2033	16.8687	16.3599
330027	32.4959	33.4738	35.5255	33.7629
330028	27.0752	28.2089	29.5294	28.2349
330029	16.5552	18.1567	17.0016	17.2536
330030	15.0551	17.4977	19.1085	16.8779
330033	16.7497	18.5353	17.0721	17.4766
330034	30.7840	31.3997	27.7738	30.5701
330036	24.3239	23.9874	25.2820	24.5370
330037	16.0026	16.1140	16.4866	16.2081
330038	16.0153	16.2549	17.3429	16.5336
330039	12.4666	*	*	12.4666
330041	30.4192	24.5215	31.4871	28.4761
330043	27.6286	28.7467	27.4661	27.9537
330044	18.6969	20.0238	19.5219	19.4106

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
330045	27.1759	28.0758	27.9919	27.7401
330046	31.9802	32.4189	35.2703	33.1562
330047	17.6895	18.1815	18.5536	18.1416
330048	17.6239	17.8787	19.1093	18.1878
330049	19.3136	19.4993	20.5731	19.7930
330053	15.6659	17.4430	17.8082	16.9823
330055	30.7330	36.1109	28.8026	31.5674
330056	30.2206	30.4525	30.0945	30.2540
330057	18.6891	18.7478	19.0732	18.8421
330058	16.9805	17.0014	17.7672	17.2379
330059	32.2285	34.1705	34.2426	33.4744
330061	25.0674	25.7331	25.4082	25.4024
330062	15.2819	17.6067	18.1318	16.9856
330064	32.8724	33.1269	33.6447	33.2084
330065	18.3686	19.8940	19.9327	19.3474
330066	19.9455	19.5611	19.9424	19.8214
330067	21.2872	20.9443	22.1065	21.4528
330072	29.3096	30.8019	30.4171	30.1659
330073	15.8849	16.2898	16.4518	16.2013
330074	18.1636	18.0005	17.7308	17.9678
330075	17.4266	17.2298	17.6385	17.4324
330078	17.4863	16.7949	19.0779	17.7511
330079	16.7608	17.4555	18.7622	17.6535
330080	26.8766	29.2686	21.2449	25.8366
330084	23.0327	18.0435	19.2211	19.8357
330085	18.7835	20.2926	20.4054	19.8243
330086	30.6954	31.2980	23.6496	28.6407
330088	25.6160	25.6626	25.7940	25.6905
330090	18.6833	19.3954	19.4896	19.1855
330091	18.5334	19.0953	19.7776	19.1249
330092	12.6540	14.0671	13.3723	13.3059
330094	17.7196	17.5585	17.8413	17.7095
330095	18.5502	20.1073	21.1096	19.8197
330096	16.5963	17.9641	18.5149	17.6975
330097	16.9626	16.2169	16.4433	16.5145
330100	28.1060	27.0661	29.0916	28.0415
330101	31.3075	32.4105	30.3486	31.0539
330102	17.5230	17.5755	19.0058	18.0012
330103	16.5212	15.7197	16.8110	16.3435
330104	28.7669	31.6471	31.2074	30.5068
330106	35.8740	40.2686	35.0511	36.9438
330107	28.0780	28.5580	27.7797	28.1411
330108	17.0846	17.3605	17.7326	17.3908
330111	15.2047	19.5314	15.9321	16.7001
330114	18.2390	17.3522	17.0581	17.5626
330115	16.5581	17.4430	17.1354	17.0407
330116	24.2266	24.4622	14.9610	20.6732
330118	20.7550	20.6936	21.8568	21.0906
330119	34.7478	34.8385	33.3533	34.3131
330121	15.8468	16.1052	16.3385	16.0964
330122	21.2021	20.8204	20.2417	20.7389
330125	19.7456	19.8494	18.7943	19.4752
330126	22.6990	23.7938	23.8190	23.4522
330127	29.3317	31.9046	29.0166	30.1127
330128	27.8693	29.0222	26.1374	27.7856
330132	14.7006	15.7633	14.3673	14.9673
330133	32.3812	37.2494	35.3576	34.8196
330135	18.3346	18.7120	22.2670	19.6717
330136	17.6041	18.2422	18.7546	18.1908
330140	19.5016	19.1438	18.5579	19.0661
330141	25.1371	26.4956	26.7096	26.0966
330144	15.5068	14.0566	14.5344	14.7317
330148	15.0400	16.8151	16.2552	16.0122

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
330151	13.9700	16.0714	15.8490	15.2603
330152	29.4818	30.5409	31.2106	30.3169
330153	17.4996	18.9689	17.7451	18.0540
330157	20.8239	22.0792	22.3804	21.7687
330158	26.0476	25.7569	27.1228	26.3184
330159	18.0211	19.1536	19.6027	18.8964
330160	30.5678	32.7840	28.8043	30.6325
330162	27.7162	27.1166	27.6010	27.4784
330163	20.4555	18.7816	20.7456	19.9795
330164	19.4831	19.8647	20.8018	20.0537
330166	14.1815	15.0954	15.4420	14.8722
330167	31.1834	29.3634	30.2346	30.2561
330169	33.4462	37.2655	35.4794	35.3665
330171	25.4314	25.5307	24.8035	25.2597
330175	16.6851	17.3290	18.3116	17.4443
330177	14.5378	17.2907	16.3704	16.0830
330179	12.6857	13.4999	13.8953	13.3684
330180	15.5304	16.8787	17.7604	16.6634
330181	32.4718	32.5192	33.0908	32.6900
330182	30.9260	32.9371	33.5756	32.5197
330183	19.9964	19.9207	20.1294	20.0163
330184	27.4859	30.0400	31.3706	29.6316
330185	26.9496	25.6112	26.8344	26.4445
330188	18.7208	20.9587	18.8000	19.4696
330189	17.6585	15.1253	18.4498	16.9610
330191	18.8586	18.6206	19.0348	18.8384
330193	29.8042	36.5481	30.2260	31.8162
330194	35.5748	34.6785	35.2036	35.1664
330195	31.3915	33.3254	34.8966	33.0747
330196	28.4465	30.8165	23.7924	27.8886
330197	16.9990	17.6646	18.3527	17.6922
330198	23.8113	24.6038	24.8590	24.4203
330199	27.6605	28.7609	24.3024	26.9772
330201	30.3293	32.1149	27.8738	30.0899
330202	30.7869	31.4435	25.5880	29.1884
330203	19.2353	20.7575	*	19.9954
330204	29.3662	29.4418	23.6548	27.7204
330205	19.4642	20.5793	22.3490	20.7832
330208	25.8201	26.1822	26.6682	26.2220
330209	24.8834	23.9924	25.1281	24.6749
330211	19.0968	19.5064	19.5405	19.3836
330212	21.1777	21.7705	24.7681	22.5597
330213	18.5066	18.7722	19.6796	18.9552
330214	32.1966	36.4447	31.4165	33.0084
330215	17.5818	19.6926	17.9863	18.3902
330218	21.7072	21.4796	21.1890	21.4557
330219	22.1476	23.9908	23.4310	23.1411
330221	32.2081	27.8485	33.4064	31.2763
330222	17.8140	18.3666	18.8006	18.3281
330223	17.2754	17.6199	17.8306	17.5845
330224	21.9728	19.6410	19.2734	20.3025
330225	25.8043	25.5823	27.0379	26.0910
330226	17.6708	16.6711	23.2189	18.8201
330229	16.2509	16.8026	17.5326	16.8453
330230	28.8625	29.7626	29.6283	29.3810
330231	29.0917	30.0923	21.4675	27.3980
330232	19.5042	17.9083	19.1787	18.8569
330233	33.3008	30.9241	44.1265	35.0751
330234	33.3286	35.1777	35.0720	34.4830
330235	19.4532	21.0842	19.5880	20.0417
330236	30.7017	29.5913	31.3463	30.5397
330238	14.7951	15.6245	17.3976	15.9047
330239	17.2808	17.4462	18.5079	17.7328

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
330240	30.4765	29.7082	23.8099	28.5234
330241	22.6046	24.6076	23.8638	23.6409
330242	24.7401	28.2612	27.6384	26.8305
330245	17.2803	17.6767	18.5221	17.8508
330246	26.6587	28.1090	28.1205	27.6612
330247	27.6203	28.5310	27.7465	27.9483
330249	16.4818	16.2687	17.1320	16.6304
330250	19.5553	19.5823	19.9619	19.7058
330252	17.0379	*	*	17.0379
330254	16.7252	18.4057	15.9123	17.0146
330258	30.4656	29.7426	31.8910	30.6921
330259	25.2526	26.2661	25.9994	25.8364
330261	26.1654	25.7244	29.1996	27.0324
330263	19.6388	20.4149	18.7378	19.6517
330264	23.1359	22.8672	22.8099	22.9301
330265	15.6249	18.0193	17.7470	17.0706
330267	23.5561	24.5183	24.5939	24.2287
330268	14.6249	13.0595	15.9060	14.5364
330270	28.2392	34.4254	33.6294	31.8926
330273	25.8910	23.1511	26.0565	24.9430
330275	17.4223	19.0548	18.5826	18.2987
330276	17.7452	18.2870	19.0228	18.3342
330277	17.1570	18.3169	19.1761	18.2131
330279	19.9079	19.5983	20.7107	20.0436
330285	22.4717	23.5264	23.3068	23.0987
330286	25.0948	26.7633	27.6508	26.5469
330290	32.5792	33.5056	30.4706	32.2470
330293	15.3782	16.2158	16.9238	16.1248
330304	29.3687	26.7683	27.3562	27.8227
330306	27.6214	27.3798	29.5186	28.1311
330307	20.7362	21.0673	21.7142	21.1685
330308	36.8361	*	*	36.8361
330314	24.7399	24.5444	25.9937	25.0514
330316	28.7872	27.6102	27.9543	28.1177
330327	16.9724	16.4611	20.3874	17.9258
330331	31.0405	31.6216	33.1276	32.0298
330332	27.1554	27.6914	25.3689	26.7855
330333	*	29.1931	39.5812	33.8163
330336	30.1708	29.7689	29.8294	29.9290
330338	23.0077	22.4581	21.2670	22.2755
330339	19.6730	20.0111	20.1028	19.9220
330340	26.9201	28.8419	28.4129	28.0687
330350	30.3754	30.8889	30.9763	30.7427
330353	33.5519	32.1984	34.2431	33.3163
330357	34.7492	36.5928	33.5805	35.0171
330359	29.2920	*	*	29.2920
330372	22.5027	28.8482	33.3771	27.5982
330381	29.2438	31.0091	31.8602	30.6612
330385	28.8373	35.6722	26.5687	30.6041
330386	24.6713	17.6383	20.4231	20.5236
330389	32.4234	30.2505	37.3749	32.9392
330390	29.7936	31.1577	30.8744	30.5843
330393	27.9901	26.4958	28.7973	27.7348
330394	18.7724	19.2392	19.1086	19.0396
330395	37.6805	32.8749	32.7494	34.3792
330396	30.7228	34.8648	24.4840	30.2958
330397	31.0043	33.9061	32.6068	32.3768
330398	30.3217	28.7707	29.2872	29.6846
330399	35.5212	32.9100	27.1103	31.5503
330400	*	*	16.2707	16.2707
340001	19.0159	18.1814	19.7093	18.9605
340002	18.7790	20.8858	20.5253	20.0921
340003	21.9674	20.2540	19.5145	20.4958

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
340004	17.8923	19.0695	20.8540	19.2829
340005	14.0941	15.8205	16.7176	15.5039
340006	17.8145	16.9818	16.5709	17.0955
340007	17.1708	17.2356	18.3399	17.5929
340008	18.3769	21.2889	20.3756	20.0138
340009	20.5011	20.5023	20.9178	20.6132
340010	17.6500	18.3380	19.4302	18.4900
340011	14.9215	13.6554	14.4798	14.3110
340012	16.6574	18.8701	17.5112	17.6905
340013	17.4302	20.1747	19.4613	19.0754
340014	19.9203	20.5748	27.5775	22.0875
340015	19.0056	20.1562	19.4256	19.5364
340016	16.3977	17.5404	18.8958	17.5664
340017	19.2203	19.4192	20.2775	19.6581
340018	15.1579	14.0930	18.1751	15.6569
340019	13.5919	14.8980	15.2887	14.5682
340020	16.7515	18.6334	18.0897	17.8512
340021	19.6658	19.8020	20.5813	20.0277
340022	16.7211	17.8178	18.7714	17.7886
340023	17.2054	18.5414	19.3146	18.3540
340024	16.6389	17.3824	17.9130	17.3104
340025	16.8198	17.2648	18.4628	17.5179
340027	17.2971	18.0816	19.4548	18.2602
340028	17.7196	18.4787	19.9403	18.7490
340030	20.0530	21.1420	22.4709	21.2046
340031	12.3895	14.6951	14.6370	13.8761
340032	20.4735	20.0049	20.7444	20.4083
340035	18.0988	20.2312	18.9930	19.1067
340036	16.9674	18.2190	17.7619	17.6323
340037	15.5347	16.6576	17.5829	16.5842
340038	17.0154	17.3762	18.1493	17.5050
340039	20.1470	20.5876	21.3711	20.7125
340040	20.1214	20.4282	21.9720	20.8376
340041	17.7626	15.1419	15.5873	16.0395
340042	16.6300	16.9298	17.0034	16.8680
340044	16.3657	18.8687	18.0863	17.7757
340045	12.4152	13.0538	13.6182	12.9769
340047	19.6050	20.0602	20.0744	19.9132
340049	16.4988	19.2050	19.5127	18.2917
340050	18.5570	20.0090	19.6726	19.4142
340051	18.5953	16.5617	19.3627	18.0980
340052	21.3746	22.8173	23.2134	22.4161
340053	19.4881	20.9495	19.9915	20.1403
340054	14.4722	15.5993	15.5090	15.2167
340055	18.1786	19.6056	19.0861	18.9634
340060	17.9167	18.7137	19.3410	18.6670
340061	20.8474	21.5385	21.9695	21.4360
340063	16.9232	17.0249	16.7377	16.9005
340064	17.2584	20.7125	18.5069	18.8299
340065	18.3212	17.5414	17.5818	17.8131
340067	18.6132	19.3785	19.7187	19.2365
340068	16.7015	16.6305	17.8065	17.0483
340069	19.9948	21.0840	21.6728	20.9166
340070	18.6270	19.7796	20.5881	19.6815
340071	16.3701	17.1424	18.0767	17.2043
340072	15.6014	16.7400	17.7129	16.7307
340073	20.6905	21.9761	23.5832	22.0016
340075	18.2060	18.7090	20.8934	19.2370
340080	16.8453	22.2533	18.2061	19.0642
340084	21.7813	17.1532	19.0103	19.0182
340085	16.2355	17.3462	18.3179	17.3020
340087	16.6987	17.3884	18.2255	17.4652
340088	19.8314	21.0226	22.2322	21.0156

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*** The 3-year average hourly wage is weighted by salaries and hours.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2000 (1996 WAGE DATA), 2001 (1997 WAGE DATA) AND 2002 (1998 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
340089	13.8633	13.8535	15.4760	14.4308
340090	17.8457	17.0584	18.6263	17.8484
340091	19.3955	20.5923	20.2909	20.1016
340093	15.1615	16.3276	16.8903	16.0870
340094	15.9568	19.0406	*	17.4328
340096	17.9764	17.8189	19.4696	18.4348
340097	21.3700	18.8412	18.2399	19.4192
340098	20.1671	21.4135	21.9578	21.2065
340099	15.0888	16.6305	15.3752	15.7269
340101	15.3610	13.9994	15.6509	14.9555
340104	15.8729	13.0462	11.5169	13.4465
340105	18.9007	20.2954	*	19.5963
340106	18.0769	17.7220	18.1211	17.9704
340107	16.9503	18.0205	19.3197	18.0904
340109	17.9576	18.7746	19.0532	18.6067
340111	14.9247	16.3344	16.5976	15.9665
340112	14.5966	14.7562	15.5142	14.9625
340113	20.8821	21.2906	21.7973	21.3226
340114	20.8195	21.2166	20.7261	20.9197
340115	18.6700	19.7578	21.7586	20.0594
340116	19.4786	20.4255	20.6800	20.2116
340119	16.8537	18.8507	19.3687	18.3855
340120	14.3822	15.0410	15.8240	15.1047
340121	15.9686	16.3295	17.8771	16.7251
340123	16.2227	16.9114	18.9078	17.3848
340124	14.0462	15.5779	17.4185	15.7171
340125	19.6252	19.7164	20.2270	19.8478
340126	17.7214	18.8100	19.2911	18.6445
340127	17.3849	19.3925	19.3842	18.7105
340129	19.7332	20.4605	20.5809	20.2641
340130	19.4430	19.7422	19.8707	19.6940
340131	18.9361	19.7908	21.3849	20.0481
340132	16.9369	17.3448	17.5711	17.3015
340133	14.3501	16.4766	17.2138	16.0568
340137	*	21.0249	31.7702	23.8273
340138	19.2807	20.7618	*	20.0092
340141	22.2234	21.3754	22.7090	22.1155
340142	16.0912	17.1525	18.0766	17.1107
340143	20.9509	21.3604	24.4098	22.2423
340144	19.1919	20.9113	22.9183	20.9333
340145	19.1964	20.1081	20.5002	19.9671
340146	13.0119	15.9203	17.3051	15.3284
340147	19.1087	19.6827	20.5069	19.7958
340148	18.4227	18.5875	18.9912	18.6555
340151	16.5671	16.7275	18.4733	17.2579
340153	20.6588	20.6420	20.7533	20.6847
340155	20.4236	20.5792	22.6127	21.1834
340158	17.2565	18.1439	19.0843	18.2232
340159	16.8048	17.3893	19.0255	17.7569
340160	15.5298	16.1778	16.7170	16.1477
340162	16.6362	14.3472	*	16.3541
340164	19.6820	21.2523	21.5769	20.8240
340166	19.1743	20.0434	20.8270	20.0663
340168	14.7508	15.2919	15.6071	15.2494
340171	20.0495	21.5973	22.4779	21.4041
340173	20.2132	19.3353	21.0898	20.2512
350001	11.7345	14.9080	16.6551	14.4005
350002	17.2834	17.5259	18.3459	17.7122
350003	17.4276	18.2470	19.0720	18.2341
350004	17.9049	20.6518	23.7016	20.6528
350005	16.0259	18.3792	19.8486	18.1602
350006	16.6241	18.4107	19.0343	17.9691
350007	13.2771	13.3292	14.7114	13.7285

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
350008	21.6983	20.4777	22.3784	21.4889
350009	18.2818	19.1611	18.3688	18.6099
350010	15.2762	16.2808	16.7899	16.1032
350011	18.4931	18.2008	19.1944	18.6474
350012	12.7287	15.7033	18.2524	15.6975
350013	16.6784	16.4579	17.2596	16.7923
350014	15.7906	16.8403	18.0997	16.8353
350015	15.8651	16.3397	16.4878	16.2122
350016	11.6255	11.6524	*	11.6395
350017	17.7835	17.6278	17.5124	17.6446
350018	13.6366	14.4928	16.4939	14.8276
350019	19.4037	19.3063	20.1608	19.6008
350021	12.6885	16.2898	16.8617	15.2799
350023	12.7952	17.9048	17.4983	16.4355
350024	14.3740	14.7529	15.7902	14.9309
350025	16.2400	17.1199	15.0469	16.0889
350027	17.1177	15.0835	15.5175	15.9198
350029	12.7950	13.5219	14.6177	13.6003
350030	17.3497	17.7209	18.1131	17.7195
350033	14.8953	14.9012	16.0870	15.2715
350034	18.3180	18.7245	19.6445	18.8742
350035	10.1561	10.4570	11.7675	10.7676
350038	18.7357	17.6666	19.6852	18.6647
350039	17.3128	17.0361	16.6280	17.0025
350041	14.6772	14.6680	19.1341	15.9095
350042	16.7544	16.7402	19.3309	17.4345
350043	17.1573	16.8876	16.7433	16.9224
350044	10.5296	10.2154	11.0178	10.5670
350047	17.9270	14.4628	18.0094	16.8202
350049	14.5330	14.8019	18.1993	15.6280
350050	10.5733	11.4921	11.2484	11.0842
350051	17.5323	17.7279	17.0183	17.4309
350053	13.9379	14.6398	15.9165	14.8076
350055	12.3722	14.5691	15.7916	14.3152
350056	14.7382	14.8293	15.0995	14.8885
350058	14.3484	15.9378	16.7034	15.7009
350060	9.5962	10.3666	10.3076	10.0926
350061	14.5894	15.7269	18.8790	16.4237
360001	17.3933	17.0791	18.9348	17.8110
360002	17.3955	18.0139	18.1923	17.9206
360003	22.0351	22.7471	22.9625	22.5524
360006	22.0906	21.8048	22.4436	22.1137
360007	17.0955	18.0941	14.8213	16.6387
360008	17.8185	18.5439	18.7961	18.3915
360009	17.5328	18.9322	18.8403	18.4150
360010	18.0886	19.2288	19.1852	18.8325
360011	18.9491	19.3835	21.3659	19.9105
360012	19.2221	19.9881	19.8772	19.7036
360013	20.8112	20.6021	21.3690	20.9190
360014	19.8844	20.2390	20.7419	20.2907
360016	18.7709	17.8065	21.2505	19.1632
360017	22.4972	21.7543	22.2740	22.1696
360018	21.3436	23.5219	24.6686	23.0168
360019	20.1726	18.7147	20.6480	19.8139
360020	22.9512	21.7806	22.1751	22.3268
360024	18.5412	19.8508	20.0395	19.4699
360025	19.2918	20.3638	20.2531	19.9763
360026	17.0378	18.2222	17.9523	17.7450
360027	20.3568	21.0406	21.7259	21.0412
360028	17.2681	17.0177	18.7174	17.5937
360029	18.2193	18.7622	19.2928	18.7626
360030	15.3535	17.5748	17.6058	16.8173
360031	19.8987	19.3858	21.0687	20.1028

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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2000 (1996 WAGE DATA), 2001 (1997 WAGE DATA) AND 2002 (1998 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
360032	17.9274	18.6559	19.8020	18.7667
360034	15.5649	14.9534	17.9594	16.1258
360035	20.3358	20.5557	21.1368	20.6811
360036	19.1835	20.2107	20.9916	20.1250
360037	22.5240	23.5094	22.4361	22.8217
360038	19.8921	21.2457	22.7344	21.1378
360039	17.4033	18.7791	18.8648	18.5318
360040	18.1238	18.1618	18.7425	18.3503
360041	18.4244	19.5744	19.7968	19.2697
360042	16.1187	17.4306	17.1952	16.9328
360044	16.7925	17.0612	17.6882	17.1993
360045	21.1814	22.1471	22.4018	21.8209
360046	19.3198	20.4755	20.4607	20.0909
360047	15.3399	17.1871	15.2922	15.8884
360048	21.1719	22.5857	22.4890	22.0646
360049	18.8084	20.4564	20.8393	20.0008
360050	12.8888	12.9873	15.0568	13.6080
360051	20.9461	20.8338	20.8757	20.8844
360052	20.0182	19.6233	18.7143	19.4845
360054	16.1875	17.2574	17.4911	16.9860
360055	23.2671	21.5585	21.3101	22.0600
360056	18.7606	19.0474	19.9428	19.2810
360057	13.8094	15.0146	15.8569	14.8518
360058	17.9178	18.6992	19.3306	18.6392
360059	21.9689	20.5618	19.3576	20.6833
360062	20.3111	20.7588	22.2132	21.0473
360063	22.7866	18.4512	17.5108	19.4998
360064	20.6416	20.4846	19.6315	20.2734
360065	19.4531	20.0532	19.6199	19.7128
360066	20.0285	21.6015	22.8175	21.4937
360067	14.5687	15.3157	14.2745	14.7189
360068	21.2199	21.2789	22.5953	21.7071
360069	17.8329	16.6982	14.6597	16.2292
360070	17.5300	17.3758	18.8406	17.9171
360071	23.8013	17.9756	18.9990	20.2321
360072	17.9697	18.1467	19.0028	18.3949
360074	18.2614	20.8275	16.3870	18.3729
360075	18.4733	22.4523	26.0663	21.4074
360076	19.5864	20.0700	20.3028	19.9910
360077	20.8202	21.1053	21.5517	21.1550
360078	20.7940	21.4392	21.4033	21.2167
360079	22.0033	22.1096	21.6644	21.9274
360080	16.6414	17.3892	17.6369	17.2080
360081	19.6354	21.7342	20.4614	20.6451
360082	22.8585	22.9460	20.7610	22.1460
360083	18.4635	*	*	18.4635
360084	20.0914	20.4894	22.0492	20.8664
360085	21.6670	21.9051	22.0445	21.8712
360086	17.0389	19.5378	19.3701	18.5836
360087	20.0395	20.1684	20.7969	20.3249
360088	22.3121	24.0097	24.0822	23.4637
360089	20.5610	18.3881	18.1941	19.0415
360090	20.3955	21.0376	20.8971	20.7887
360091	21.0335	21.3126	21.8447	21.4132
360092	15.9095	20.4534	21.5073	18.9727
360093	18.5744	19.3292	19.0261	18.9905
360094	18.3105	18.8780	20.1227	19.0848
360095	18.7079	20.4149	19.8521	19.6643
360096	17.1617	18.2215	16.7129	17.3379
360098	18.3361	19.5314	19.7705	19.2208
360099	18.5523	18.5855	19.6241	18.9389
360100	17.6554	17.8989	18.0434	17.8622
360101	22.3121	21.3914	20.2635	21.3487

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
360102	19.7700	19.4345	18.5367	19.2837
360103	22.6228	*	*	22.6228
360106	16.1843	18.9752	19.1778	18.1964
360107	18.6195	19.7599	22.1359	20.1794
360108	16.5076	17.5832	20.0681	18.0497
360109	19.5162	20.1032	19.9237	19.8530
360112	22.5676	22.5589	24.6335	23.2167
360113	22.4584	24.2654	21.4926	22.7777
360114	16.3288	17.8761	18.7509	17.6758
360115	18.1859	18.8059	20.5842	19.2284
360116	18.0835	18.8882	18.8319	18.6000
360118	18.6098	19.3732	19.9141	19.3196
360121	21.0979	22.1093	22.2175	21.8088
360123	19.1313	20.3236	20.9792	20.1480
360125	18.1756	19.0774	20.5508	19.2432
360126	20.4558	19.0036	24.5387	21.1181
360127	16.9228	17.5882	16.4582	16.9587
360128	15.5823	16.1243	17.0515	16.2361
360129	15.5241	15.5002	16.6114	15.8783
360130	15.3356	17.2009	18.4539	16.9275
360131	18.2897	19.2241	18.4688	18.6543
360132	18.2733	19.9171	21.3493	19.8413
360133	19.0349	19.4316	20.3421	19.5683
360134	20.2383	20.6876	20.8407	20.5767
360136	17.8473	17.7827	18.2194	17.9464
360137	20.2581	20.1756	21.6611	20.6928
360140	19.1263	20.2791	21.2881	20.2299
360141	22.8496	23.0016	23.4448	23.0886
360142	17.3154	17.0059	18.3188	17.5468
360143	20.4378	20.1989	21.0336	20.5552
360144	21.9159	23.2191	20.9033	21.9858
360145	19.3907	19.6413	20.0513	19.6956
360147	16.5898	16.6616	17.6779	16.9779
360148	18.8914	19.2816	19.1393	19.1100
360149	18.7891	19.9808	*	19.3785
360150	20.6253	21.1327	22.3752	21.3686
360151	17.4863	16.6019	19.2788	17.7101
360152	21.9978	20.8328	21.6005	21.4611
360153	14.8948	15.4132	16.7399	15.6460
360154	13.7761	14.3270	14.3593	14.1608
360155	20.8977	22.5347	22.4566	21.9588
360156	17.9155	17.8787	18.9095	18.2225
360159	20.7119	20.2841	21.5695	20.8609
360161	19.4122	19.1983	20.3933	19.6539
360162	18.6084	*	*	18.6084
360163	20.3821	20.7275	21.2689	20.8164
360164	16.1643	*	*	16.1643
360165	19.4831	18.2571	18.2417	18.6524
360166	16.9778	18.7321	*	17.8568
360170	17.1779	16.4653	20.4407	17.9153
360172	18.4690	18.6720	19.7088	19.0739
360174	19.0887	19.9725	20.2255	19.8619
360175	20.4133	21.1685	21.5450	21.0739
360176	15.4730	15.9430	16.6228	16.0305
360177	19.4122	18.7898	18.9576	19.0368
360178	17.3985	18.8704	16.7962	17.7254
360179	19.1417	21.1309	21.1234	20.4340
360180	22.0949	21.3826	21.0146	21.4888
360184	19.3502	19.1224	*	19.2391
360185	18.6697	18.7291	19.4858	18.9599
360186	20.8579	18.3246	20.7572	19.9570
360187	18.0209	18.5109	19.6535	18.7427
360188	17.5327	17.1044	18.3057	17.6838

* Wage data not available for the provider that year.
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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2000 (1996 WAGE DATA), 2001 (1997 WAGE DATA) AND 2002 (1998 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
360189	17.3713	17.8981	18.5940	17.9373
360192	20.9980	21.6365	22.7846	21.8042
360193	17.6874	*	*	17.6874
360194	17.6890	17.1884	17.6140	17.4968
360195	19.0173	19.9302	20.5828	19.8368
360197	19.4250	20.0603	20.5062	19.9981
360200	17.7583	16.2306	17.9623	17.3129
360203	15.6212	16.3181	15.9609	15.9716
360204	19.3543	22.2494	*	20.5754
360210	20.2809	20.9955	21.8629	21.0428
360211	19.5762	19.9895	20.6081	20.0860
360212	20.2288	21.1123	20.6987	20.6781
360213	18.3253	19.4765	19.0584	18.9547
360218	18.4140	18.9469	18.8204	18.7231
360230	21.4385	21.9763	20.8042	21.3850
360231	13.5586	12.9588	14.4168	13.6102
360234	22.4324	23.2588	19.5102	21.8679
360236	19.4881	17.8426	19.9971	19.0637
360239	19.8584	20.1854	19.5907	19.8872
360241	22.0795	23.5318	25.3741	23.5406
360243	13.5835	14.8694	*	14.2018
360244	10.5518	*	*	10.5518
360245	15.0579	16.4622	15.9782	15.8310
360247	18.1116	16.3092	17.0776	17.0967
360248	21.6499	*	*	21.6499
360249	*	*	25.4331	25.4331
370001	21.2714	22.5214	24.1929	22.6419
370002	14.0847	14.7315	15.4333	14.7194
370004	16.7671	19.3236	18.5233	18.1546
370005	17.3817	15.1654	15.3881	15.9167
370006	12.9493	16.6484	16.4995	15.3118
370007	17.1535	15.2905	15.8312	16.0498
370008	17.3048	16.6566	17.5553	17.1688
370011	14.6397	14.9701	14.9186	14.8316
370012	10.8003	11.7265	12.4942	11.6228
370013	18.0385	19.3398	18.9584	18.7911
370014	19.6543	20.6512	20.2858	20.2276
370015	17.8247	17.0319	20.8765	18.5256
370016	16.6401	19.1191	19.1613	18.3470
370017	12.9837	12.6400	13.6531	13.1239
370018	14.2438	18.5107	17.7054	16.6955
370019	16.8801	14.2277	14.6216	15.1546
370020	13.4787	14.3798	15.1035	14.3356
370021	11.2639	12.0474	12.9030	12.0738
370022	17.9015	17.2344	17.3302	17.4722
370023	16.8215	17.7630	17.5148	17.3665
370025	16.3970	17.4988	18.4375	17.4425
370026	16.8991	18.3371	18.0412	17.7563
370028	19.7118	18.4445	21.1086	19.7253
370029	13.8930	16.4924	18.2580	16.0663
370030	15.4736	16.3269	16.5803	16.1058
370032	16.6432	18.2821	18.1538	17.7030
370033	12.3910	13.5216	11.3210	12.4595
370034	14.5101	15.6386	15.6288	15.2811
370035	18.9629	25.5764	*	21.9610
370036	11.4593	12.4026	12.4070	12.0833
370037	17.7491	16.7012	18.8472	17.7402
370038	12.8135	13.3084	13.0210	13.0660
370039	16.2661	15.5206	19.4498	17.0406
370040	14.2582	14.4672	15.5109	14.7638
370041	17.4123	16.7356	16.2316	16.8488
370042	14.6146	14.9175	15.2764	14.9764
370043	16.0764	15.9534	17.0892	16.3549

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
370045	12.4352	10.1994	11.3560	11.2236
370046	18.1499	18.8334	*	18.4831
370047	15.6716	16.7554	17.8769	16.7444
370048	17.4356	18.2150	15.6803	17.1206
370049	19.8397	20.7176	19.4868	19.9892
370051	12.1816	11.6736	12.5171	12.1083
370054	16.5598	16.9049	18.0787	17.1343
370056	18.8774	18.4558	18.1432	18.4804
370057	14.6564	16.7261	15.1228	15.5054
370059	16.4578	18.1386	18.3314	17.6259
370060	15.1169	16.5403	19.3051	16.8157
370063	17.0645	14.4132	16.7342	16.0603
370064	8.7499	10.9676	11.9954	10.6741
370065	16.5638	16.6898	18.1349	17.1281
370071	14.9472	16.1439	16.4567	15.8354
370072	14.6497	14.4742	13.6519	14.2760
370076	12.8568	13.5694	14.3555	13.5818
370077	17.6236	*	*	17.6236
370078	17.2370	18.4086	19.2412	18.2505
370079	13.5976	16.6861	16.9201	15.7005
370080	14.3445	13.9239	14.7323	14.3058
370082	13.5434	13.9634	15.0669	14.1855
370083	11.4905	13.1519	13.1316	12.6096
370084	21.7484	22.0545	13.1197	17.8063
370085	11.8844	11.2842	48.1271	14.9179
370086	13.5646	15.4404	11.1900	13.1933
370089	14.4968	16.0966	17.2638	15.9758
370091	17.5839	19.1698	20.1860	18.9733
370092	14.6757	14.9802	15.7678	15.1529
370093	18.5747	18.4600	19.7008	19.0469
370094	18.3796	18.0002	19.5462	18.6588
370095	14.1319	12.6383	13.4202	13.3755
370097	23.3116	22.9714	23.2056	23.1716
370099	16.2649	15.4549	18.9823	16.7206
370100	17.1036	14.0168	18.8274	16.6764
370103	15.8967	19.2353	18.2685	17.7516
370105	17.6811	21.3352	20.7890	19.9853
370106	18.6238	18.5485	18.7413	18.6375
370108	12.2379	12.3279	12.7470	12.4421
370112	15.2488	14.8539	15.3039	15.1287
370113	16.2043	16.1046	17.6107	16.6143
370114	15.9801	16.5268	17.4009	16.6473
370121	19.5506	22.5611	21.3099	21.1472
370122	12.1514	15.0645	15.4375	13.9736
370123	16.3609	18.9159	19.4409	18.1517
370125	13.5453	15.6284	13.9436	14.3107
370126	18.2447	23.9654	15.8020	19.1824
370131	16.2403	17.5689	15.7261	16.4650
370133	10.0169	10.9575	12.9545	11.1921
370138	15.9372	16.4005	17.5551	16.6500
370139	13.3023	14.8612	14.9964	14.3624
370140	15.2265	16.0721	17.1393	16.1657
370141	12.1420	18.4101	20.7798	16.3574
370146	12.5581	12.6402	13.0399	12.7467
370148	16.4147	20.6458	20.6612	19.2220
370149	16.7218	16.1850	17.0929	16.6647
370153	15.3218	17.8352	16.4669	16.5507
370154	15.9128	15.5127	15.6093	15.6789
370156	13.6363	13.9255	14.5696	14.0273
370158	15.0865	15.6917	15.6994	15.4906
370159	17.8319	28.0536	21.1267	21.7006
370163	14.5609	17.6361	20.4217	17.2893
370165	13.2174	13.0910	13.0375	13.1156

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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2000 (1996 WAGE DATA), 2001 (1997 WAGE DATA) AND 2002 (1998 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
370166	17.8154	17.2849	21.0944	18.6510
370169	9.4807	12.5243	12.7138	11.5273
370176	16.0355	15.9476	18.9951	16.9629
370177	11.8757	11.2536	14.6481	12.5743
370178	11.6384	10.5726	11.6200	11.2422
370179	19.2677	17.2829	21.3002	18.9651
370183	7.6164	10.2945	16.9318	11.0088
370186	13.3454	13.6192	15.4533	14.1321
370190	13.7032	14.1397	19.3570	15.3737
370192	16.7402	18.4614	19.6967	18.2866
370197	21.5718	*	*	21.5718
370198	*	21.3136	*	21.3136
370200	*	*	22.5299	22.5299
380001	22.0255	20.3127	26.4822	22.5494
380002	19.4764	24.0241	21.9185	21.9840
380003	24.7434	21.7826	20.9007	22.2865
380004	23.1432	23.1451	23.3609	23.2208
380005	23.2415	24.0838	25.0750	24.1485
380006	20.5375	21.2731	21.3520	21.0653
380007	24.2933	25.2995	32.2678	27.0282
380008	21.1888	20.7063	22.1442	21.3538
380009	25.1702	23.8104	24.3851	24.4234
380010	19.7477	23.7488	22.7276	21.8451
380011	21.1353	21.1151	20.3357	20.8683
380013	20.1038	18.6818	19.8180	19.5721
380014	23.4819	24.6574	25.9828	24.7413
380017	23.8231	26.0578	25.3954	25.0552
380018	22.0776	22.3525	22.9822	22.4971
380019	20.7700	22.1215	20.8176	21.2209
380020	21.3556	20.1464	22.9568	21.5448
380021	20.6356	21.1590	23.8499	21.8371
380022	21.6110	22.6408	24.5974	22.8841
380023	19.2357	20.5462	21.3831	20.3976
380025	24.6738	26.3652	26.9346	25.9824
380026	19.2663	20.4706	20.6972	20.1525
380027	20.1576	20.8647	21.5490	20.8958
380029	18.5699	19.4246	20.1471	19.4015
380031	22.8346	23.3181	23.1696	23.1091
380033	23.2881	25.2454	26.7146	25.0303
380035	21.6533	22.4099	23.9719	22.6232
380036	19.3269	27.1587	27.2157	23.8613
380037	21.2347	21.9158	22.1774	21.7911
380038	25.5750	26.0869	26.7759	26.1419
380039	22.1235	23.1746	22.8048	22.6937
380040	21.6378	26.2717	22.5477	23.4095
380042	19.8096	21.1176	24.4172	21.7244
380047	21.9511	23.0718	24.2524	23.1258
380048	18.3847	17.5885	18.3005	18.0671
380050	18.2486	20.3934	20.3205	19.6254
380051	21.2358	22.3568	22.3207	21.9927
380052	17.8741	19.4570	18.6299	18.6300
380055	21.2459	*	*	21.2459
380056	17.1600	19.5185	18.4961	18.3892
380060	23.2923	24.2670	25.2553	24.2520
380061	22.5983	22.3736	22.8781	22.6217
380062	18.5229	20.7716	18.2148	19.1910
380063	19.3566	20.4077	*	19.9113
380064	19.8719	19.9826	22.9160	20.8404
380065	22.1706	26.1404	22.9608	23.6770
380066	20.4189	22.0349	23.2794	21.9793
380068	22.7573	22.3178	*	22.5559
380069	19.5793	19.8300	20.4882	19.9809
380070	24.7116	27.2541	27.7790	26.6130

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
380071	20.4707	22.6386	25.1808	22.8743
380072	16.3169	19.1553	19.4346	18.3236
380075	22.1703	22.3625	22.4139	22.3203
380078	19.1035	20.2507	21.0903	20.1439
380081	20.5902	20.9882	20.4082	20.6790
380082	22.5856	22.2275	22.9606	22.5990
380083	21.8096	21.3859	21.7431	21.6440
380084	23.6412	24.2844	27.1689	24.9815
380087	14.0976	16.5309	17.0380	15.8783
380088	19.5204	21.5225	19.5346	20.1728
380089	23.7413	19.5255	25.2908	23.0572
380090	27.0867	29.2702	24.9351	26.9453
380091	22.8333	27.5560	25.3062	25.1774
390001	18.6384	19.2989	19.6732	19.2277
390002	18.0787	21.8353	*	19.8326
390003	17.2435	17.1371	18.1025	17.4798
390004	18.8899	19.2277	20.1410	19.4180
390005	16.4459	17.3506	*	16.9145
390006	19.6012	20.2959	21.1173	20.3037
390007	21.4093	21.7506	15.6739	19.2842
390008	16.7440	17.8297	18.1339	17.5605
390009	20.1181	20.6507	20.7869	20.5095
390010	17.2315	17.5127	17.3335	17.3583
390011	18.0683	18.1717	18.3257	18.1941
390012	20.0227	20.6523	21.0569	20.5659
390013	19.3300	19.2698	19.6562	19.4200
390015	12.9372	13.1337	13.7352	13.2647
390016	17.0679	16.9892	17.0438	17.0335
390017	16.2170	16.7493	18.6113	17.1752
390018	19.1241	21.3626	19.0279	19.8558
390019	16.3965	16.7848	17.9046	17.0403
390022	22.8967	21.5064	24.3824	22.9198
390023	19.5639	21.8270	21.0689	20.8880
390024	25.0359	24.9437	25.5672	25.1781
390025	15.7111	15.6155	15.6650	15.6645
390026	22.7645	22.3902	22.6877	22.6120
390027	27.6893	26.8878	31.2135	28.5811
390028	20.1087	22.7700	24.0895	22.1870
390029	19.6883	21.5729	21.2661	20.8012
390030	18.3978	17.9580	18.6645	18.3352
390031	19.5175	19.2755	18.3572	19.0574
390032	18.1492	17.8041	21.5105	19.0439
390035	18.5146	20.2029	18.5192	19.0782
390036	18.8657	19.9880	19.7671	19.5278
390037	22.2359	21.0616	20.4263	21.2243
390039	16.5438	17.1046	17.5268	17.0466
390040	15.1211	15.9612	16.6876	15.9078
390041	19.5760	19.8080	20.1482	19.8333
390042	21.1276	22.7693	22.6393	22.1864
390043	16.3561	17.2607	17.4764	17.0230
390044	19.5419	20.2813	13.2304	16.8712
390045	18.4591	18.5574	19.2907	18.7716
390046	20.4608	20.7303	16.6014	19.0179
390047	24.5824	27.6661	18.9455	23.5893
390048	18.3801	19.0920	19.7685	19.0433
390049	21.1318	21.1217	22.1009	21.4604
390050	20.9240	22.8808	22.2639	22.0253
390051	26.0485	25.7910	20.3683	23.9994
390052	17.0988	20.9306	19.2727	19.0857
390054	17.4382	17.8852	18.4975	17.9431
390055	25.8961	24.2211	23.5510	24.5324
390056	17.1692	17.7858	19.3901	18.0977
390057	19.7459	20.2059	16.4148	18.5380

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
390058	19.2543	19.7379	19.8418	19.6169
390060	13.6276	*	*	13.6276
390061	20.4819	21.2392	23.8722	21.8310
390062	16.4505	16.6721	17.3750	16.8291
390063	19.6373	20.0125	19.4965	19.7211
390065	20.0001	19.9361	15.3313	18.1038
390066	18.7064	19.8539	18.8152	19.1167
390067	20.6515	20.9688	21.2031	20.9451
390068	17.5524	18.3158	19.1109	18.3267
390069	19.2858	19.6466	*	19.4555
390070	20.1862	16.1988	21.8549	19.3957
390071	16.2298	15.7165	16.0100	15.9856
390072	15.5565	16.3133	16.2919	16.0432
390073	20.6859	20.5581	21.2623	20.8422
390074	16.5971	18.4806	18.3093	17.7465
390075	17.2676	17.9840	18.1131	17.7404
390076	21.4307	20.2475	21.3290	20.9889
390078	18.2328	19.2089	19.0156	18.8052
390079	18.1969	18.3312	18.9269	18.4731
390080	19.5180	18.8028	21.4768	19.8681
390081	23.9922	24.8351	*	24.4080
390083	20.5919	*	*	20.5919
390084	16.3463	16.4026	20.2529	17.4556
390086	17.2481	18.5265	18.6854	18.1599
390088	23.4941	23.6173	22.3275	23.2063
390090	20.6463	21.6437	21.3759	21.2068
390091	18.3746	18.1569	18.2060	18.2472
390093	16.6336	17.7171	18.4442	17.6019
390095	13.0459	16.3357	16.6933	15.2336
390096	19.3118	19.1171	22.4382	20.4516
390097	21.4115	23.5963	25.2738	23.2417
390100	20.3014	20.7859	20.9809	20.6913
390101	17.0534	17.9499	18.5039	17.8169
390102	19.4924	19.0461	21.5496	20.0293
390103	17.7054	18.4312	18.8667	18.3176
390104	15.9605	15.9008	16.3255	16.0548
390106	16.2783	16.6666	16.8439	16.6044
390107	19.1793	19.5178	21.0429	19.9329
390108	21.2872	21.0899	21.1820	21.1861
390109	14.6645	16.4597	16.5299	15.8639
390110	21.3191	21.5282	21.5388	21.4672
390111	28.7875	27.5193	32.0778	29.4304
390112	14.0439	14.9427	*	14.5099
390113	17.9377	19.1945	19.3634	18.8262
390114	22.9698	19.6295	*	21.2139
390115	24.7244	23.3461	21.3119	23.0378
390116	20.6016	21.4877	21.3671	21.1457
390117	16.9036	17.9393	18.0769	17.6425
390118	16.8962	18.3440	18.9507	18.0638
390119	18.5935	18.2951	18.8353	18.5714
390121	18.6422	20.8780	19.0503	19.5401
390122	17.4645	17.1902	17.7734	17.4764
390123	20.8412	20.8344	21.3974	21.0254
390125	15.9356	16.7983	17.5446	16.7393
390126	20.9383	20.6498	*	20.8020
390127	21.8849	21.7724	22.4555	22.0398
390128	19.4132	19.6792	19.3165	19.4699
390130	17.3253	17.7049	18.3695	17.7936
390131	16.8349	16.0986	19.2096	17.3202
390132	20.5528	21.1931	22.4903	21.3712
390133	24.6131	23.3489	19.9376	22.5639
390135	21.2497	21.5782	22.1905	21.6491
390136	17.6128	16.9737	20.6286	18.3801

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
390137	16.5598	17.5687	18.5397	17.5480
390138	18.8601	19.6212	20.6936	19.7394
390139	22.9351	24.4515	23.2945	23.5528
390142	26.7954	26.8086	27.9193	27.2106
390145	20.3393	20.3731	20.4228	20.3787
390146	17.7020	18.7922	18.6505	18.3503
390147	21.1085	20.9651	21.2492	21.1067
390150	19.6575	20.7294	20.3155	20.2474
390151	20.5084	21.6000	22.5206	21.5535
390152	19.1525	20.3353	19.4017	19.6203
390153	23.1183	23.7013	22.5900	23.1296
390154	15.8478	17.4036	*	16.6285
390156	21.1629	21.8498	22.5648	21.8420
390157	19.8268	19.6578	18.9868	19.5005
390158	21.6045	*	*	21.6045
390160	20.7676	21.4810	19.4463	20.4967
390161	12.3743	16.4799	*	14.3389
390162	21.0228	21.4095	21.9188	21.4386
390163	15.6227	16.8013	17.5312	16.6546
390164	21.5890	24.6765	24.9750	23.5327
390166	19.9612	19.0405	*	19.5017
390167	22.9136	19.8973	*	21.3982
390168	18.9936	18.7400	18.8863	18.8736
390169	18.9878	20.2382	22.0547	20.4487
390170	22.9877	26.5891	*	24.5773
390173	17.8568	18.5370	18.3816	18.2561
390174	25.2407	25.4189	25.4110	25.3577
390176	17.3577	17.8740	20.8368	18.6587
390178	17.7036	16.6993	17.0534	17.1490
390179	21.4093	21.6901	21.8593	21.6579
390180	25.1191	25.7074	*	25.4305
390181	17.0860	19.4654	23.1403	19.5445
390183	19.0834	17.8306	17.9848	18.2942
390184	20.7489	20.8060	20.9349	20.8256
390185	17.6516	18.8798	19.6989	18.7466
390189	18.6668	20.0889	5.6954	10.5640
390191	16.1993	16.3240	17.2270	16.5760
390192	16.3696	17.4537	17.2512	17.0206
390193	16.4663	16.7874	18.1209	17.0634
390194	20.1547	20.7953	21.2689	20.7092
390195	23.6920	24.6855	23.1069	23.8298
390197	18.9857	19.2690	19.7956	19.3317
390198	15.4508	15.9721	15.8833	15.7671
390199	16.6644	17.0515	17.9068	17.2031
390200	13.5898	15.1399	14.9496	14.6311
390201	20.5011	20.6296	20.3533	20.4916
390203	21.1895	20.9432	21.5141	21.2139
390204	20.8483	20.1779	22.5626	21.1871
390206	18.5746	18.4027	*	18.4910
390209	16.9558	17.4792	18.7059	17.7155
390211	17.9132	17.8638	18.4213	18.0846
390213	17.4453	18.8555	19.1553	18.5312
390215	21.4291	20.7084	21.1303	21.0799
390217	19.2926	19.1406	19.9837	19.4647
390219	21.6295	18.8292	19.6226	19.9600
390220	18.5178	18.7178	*	18.6191
390222	20.9080	21.5739	22.1548	21.5483
390223	22.6498	23.6482	21.4738	22.5019
390224	15.9058	15.3015	*	15.5965
390225	18.1752	18.6125	18.7290	18.5053
390226	23.1638	21.8268	21.7882	22.2642
390228	19.8129	19.4083	19.8180	19.6802
390231	24.4852	22.7544	19.7578	22.1186

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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2000 (1996 WAGE DATA), 2001 (1997 WAGE DATA) AND 2002 (1998 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
390233	18.7707	19.4887	20.0152	19.4302
390235	24.6044	25.0857	21.4200	24.0078
390236	17.0339	16.2397	17.5043	16.9210
390237	21.7479	19.5230	22.2221	21.1193
390238	*	17.8211	17.1055	17.4821
390242	18.0943	*	*	18.0943
390244	14.4133	15.4611	8.2241	11.8858
390245	20.1544	26.0194	*	22.9968
390246	17.9214	18.9733	18.1348	18.3253
390247	20.6671	20.9526	21.2151	20.8919
390249	10.7336	12.7920	13.1657	12.2298
390256	23.7828	20.9469	20.5812	21.7018
390258	21.3629	21.9207	22.6852	21.9998
390260	21.1917	21.9509	15.1540	18.9540
390262	18.6684	18.2379	*	18.4504
390263	20.0939	20.6855	20.2304	20.3363
390265	19.5089	20.3580	20.4950	20.1207
390266	16.2372	17.1666	17.1290	16.8341
390267	20.5125	21.2974	19.2665	20.4773
390268	21.0161	21.3486	22.0909	21.4791
390270	17.8280	19.0925	9.3834	13.7053
390277	27.0983	*	*	27.0983
390278	19.2019	18.2865	*	18.7672
390279	13.6992	14.3241	14.8655	14.2998
390283	*	*	22.5490	22.5490
390284	*	*	34.3904	34.3904
400001	9.8615	9.9463	10.5757	10.1359
400002	9.3063	10.1417	13.0494	10.8249
400003	9.9865	10.8821	12.4078	11.0633
400004	8.4811	8.9864	8.5648	8.6695
400005	7.8494	9.5632	7.7432	8.3858
400006	10.5281	10.3444	10.1048	10.3288
400007	7.8637	6.4490	8.0174	7.3754
400009	8.3727	8.4207	8.8650	8.5497
400010	11.6642	10.6518	10.8011	10.9779
400011	5.6825	7.4979	8.5426	7.2512
400012	7.8134	8.2412	8.4728	8.1883
400013	8.2066	8.4579	9.2624	8.6839
400014	9.5354	9.5235	9.4798	9.5126
400015	10.3326	10.9505	14.4076	11.3577
400016	12.0743	13.2756	13.3922	12.9125
400017	8.5675	8.6421	9.2577	8.8024
400018	9.4534	10.4557	9.7049	9.8618
400019	10.1512	10.4332	10.8940	10.5307
400021	9.9121	10.6988	12.1434	10.9538
400022	11.1204	11.5861	12.2199	11.6336
400024	7.5594	7.8984	9.2409	8.1615
400026	7.1236	5.6454	5.8335	6.1312
400027	8.4862	9.5899	*	9.0120
400028	8.3991	8.8597	9.1794	8.7817
400031	9.7826	8.2660	*	8.9857
400032	9.7291	10.5498	10.0448	10.1074
400044	11.7484	11.9704	11.9486	11.8844
400048	8.9224	9.1701	15.1405	10.3604
400061	12.2770	12.4493	13.0988	12.5813
400079	7.0830	*	9.7203	8.1082
400087	10.3972	9.5097	9.8534	9.8687
400094	7.8208	8.9116	7.9187	8.1829
400098	7.2098	9.3308	9.7791	8.8630
400102	7.7288	9.8536	9.9903	9.1668
400103	10.7316	11.2069	11.5359	11.1167
400104	9.9416	11.0672	14.8764	11.3347
400105	10.1726	9.3049	9.0556	9.5335

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
400106	8.5143	9.3123	9.1611	8.9912
400109	10.1786	10.9826	11.8760	11.0486
400110	10.5250	10.3326	10.5277	10.4760
400111	9.5600	9.5583	10.9665	10.1021
400112	12.8478	10.1755	*	11.5026
400113	9.4835	9.2238	8.3168	9.0068
400114	6.4076	9.0496	7.0510	7.4630
400115	9.1311	9.8244	8.5487	9.1780
400117	10.0381	10.2295	10.8756	10.3823
400118	8.6964	9.4398	11.4051	9.9004
400120	9.7425	9.5274	10.6584	9.9956
400121	7.1061	7.8052	9.8322	8.2686
400122	8.4806	8.1911	7.6413	8.0571
400123	9.0217	7.8099	10.2367	9.0130
400124	11.4839	12.0999	12.2452	11.9729
400125	*	*	10.2056	10.2056
410001	22.5322	23.2808	22.0088	22.6048
410004	22.3212	22.4801	21.0638	22.0103
410005	21.2407	23.1444	22.7170	22.3365
410006	21.9798	23.3968	23.8700	23.0621
410007	20.9489	22.1452	23.1325	22.1106
410008	22.6133	23.0662	24.9726	23.5244
410009	24.0769	24.4899	23.9378	24.1687
410010	27.1426	26.9813	26.7847	26.9663
410011	24.3676	25.2926	26.0035	25.2143
410012	21.3337	24.5811	24.1695	23.4018
410013	25.0050	24.5122	24.8800	24.7951
420002	20.2049	19.4845	19.6477	19.7465
420004	19.4079	19.7968	20.8633	20.0389
420005	15.9906	17.3510	17.9694	17.1171
420006	18.2374	18.3439	19.1760	18.5687
420007	17.5783	18.2096	18.6456	18.1319
420009	17.2515	18.5456	19.8532	18.5742
420010	17.9141	17.1184	18.0252	17.6914
420011	14.9944	16.5664	18.0970	16.4913
420014	16.7219	16.6065	18.0519	17.0894
420015	17.1802	18.8411	20.1164	18.5841
420016	18.1451	15.6241	15.5485	16.2939
420018	19.7285	19.7367	21.8775	20.3791
420019	15.5521	16.9990	17.1726	16.5419
420020	17.9011	20.9449	20.2563	19.6716
420023	20.9663	19.4855	19.3278	19.8743
420026	21.8968	20.3476	21.8749	21.3678
420027	18.0774	16.8457	18.4837	18.4697
420029	18.3557	*	*	18.3557
420030	17.8215	19.1453	20.6448	19.3038
420031	13.0718	14.1855	8.2516	11.1227
420033	21.0863	21.7279	23.1303	21.9705
420036	19.7421	17.6136	21.3791	19.4718
420037	21.9603	21.7908	22.7099	22.1669
420038	16.1498	17.6726	18.6568	17.4393
420039	16.9646	15.8385	18.3017	17.0260
420042	14.6567	*	*	14.6567
420043	18.3607	19.4521	19.7570	19.1785
420048	18.0286	18.4367	18.8070	18.4223
420049	19.2340	17.5854	19.2946	18.6845
420051	18.2518	19.5001	19.2163	19.0146
420053	16.5452	16.9599	16.8300	16.7761
420054	16.5474	18.2702	20.2574	18.3229
420055	16.1823	19.2048	16.8717	17.3777
420056	15.5966	14.8695	15.1835	15.1636
420057	14.5006	15.9849	24.0765	18.1532
420059	19.1303	15.8160	17.1483	17.3325

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
420061	16.1310	16.5555	17.3543	16.6881
420062	18.9513	17.8205	21.3792	19.3650
420064	15.4531	16.7227	16.0794	16.0985
420065	19.0645	19.6902	19.9435	19.5673
420066	15.5001	15.1804	18.0042	16.2261
420067	18.3106	18.8610	19.7824	19.0239
420068	17.2144	18.5030	18.5481	18.0958
420069	16.3189	17.0788	18.1298	17.2134
420070	17.4486	18.0057	17.3876	17.6174
420071	18.2878	19.4482	20.3902	19.3836
420072	12.6013	13.8550	15.0158	13.8117
420073	19.2011	19.1604	19.8502	19.4076
420074	13.8038	16.9292	17.7050	16.1034
420075	16.2946	14.2931	12.8158	14.3372
420078	20.6818	20.7317	21.2688	20.9023
420079	18.7710	20.8639	21.0874	20.2636
420080	24.8321	22.3443	21.9968	22.9897
420081	20.4211	*	*	20.4211
420082	18.8848	20.4653	21.4326	20.2642
420083	23.3425	20.1472	22.6376	21.9902
420085	18.5502	19.9603	21.6791	20.1188
420086	19.3054	25.7179	20.2878	21.4636
420087	18.4016	19.1403	19.8388	19.1412
420088	17.9063	17.1938	19.9919	18.3046
420089	21.6608	20.2537	20.5360	20.7623
420091	18.5723	18.8687	20.3092	19.2195
420093	16.7734	17.4689	18.3902	17.5654
420094	32.6768	*	*	32.6768
430004	17.8435	18.5438	19.6344	18.6310
430005	15.8449	16.3059	16.4560	16.2068
430007	14.0586	14.1078	14.6331	14.2620
430008	16.7640	17.6640	18.1323	17.5240
430010	16.1093	17.1766	19.8191	17.5891
430011	16.4234	16.9848	17.4750	16.9703
430012	17.7809	17.2775	17.5713	17.5419
430013	17.2424	18.1338	18.4817	17.9391
430014	18.4417	16.8925	19.9484	18.3095
430015	16.4123	18.0019	18.2875	17.5236
430016	18.9715	19.4759	20.8850	19.7559
430018	14.9100	14.8854	16.2244	15.3323
430022	12.9532	13.4905	14.5118	13.6222
430023	11.6383	12.2331	16.2164	13.2302
430024	13.9942	15.4709	16.1801	15.3449
430026	10.8532	*	*	10.8532
430027	18.6367	19.1461	20.2591	19.2968
430028	16.7185	18.2312	17.1574	17.3521
430029	15.1010	16.6500	17.6986	16.5066
430031	12.4631	13.1258	12.4660	12.6792
430033	14.6423	15.3003	17.3652	15.6688
430034	12.8513	15.4064	14.2491	14.1740
430036	13.7807	13.6967	15.6258	14.3461
430037	15.9545	16.5368	18.1293	16.8632
430038	11.9419	13.7167	18.4078	14.2118
430040	13.3722	13.6745	14.4509	13.8057
430041	12.6235	13.1936	14.8816	13.4964
430043	13.4288	13.6908	14.9949	14.0204
430044	16.4488	18.4970	21.0823	18.5195
430047	15.6227	17.4956	17.9823	16.9377
430048	17.2589	18.3524	19.6010	18.3783
430049	14.4354	15.5381	15.2237	15.0640
430051	17.2139	17.0574	18.8070	17.6987
430054	13.5011	14.7251	14.8003	14.3524
430056	11.4117	11.7627	9.7578	10.9731

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
430057	15.1516	15.4390	17.2805	15.9601
430060	8.6409	9.0358	10.0176	9.2343
430062	10.8879	*	*	10.8879
430064	12.7394	14.4367	14.2184	13.7779
430065	12.7660	*	*	12.7660
430066	13.4380	14.3557	15.6660	14.4524
430073	14.9784	16.1133	15.3776	15.4839
430076	12.2452	12.7608	13.9883	12.9521
430077	17.7126	19.3012	19.8558	18.9586
430079	12.9780	13.6836	14.1815	13.5924
430087	10.4491	*	*	10.4491
430089	17.0065	17.8908	17.9790	17.6658
430090	*	21.5239	21.5974	21.5592
430091	*	19.2146	18.1567	18.5152
430092	*	*	21.3807	21.3807
430093	*	*	19.5013	19.5013
440001	15.3134	14.8713	15.5897	15.2550
440002	18.5411	19.1498	20.3740	19.3756
440003	17.4736	18.3658	19.3042	18.3967
440006	20.6559	19.6021	21.1072	20.4264
440007	7.7632	12.1230	14.8959	11.0241
440008	15.4701	17.2848	18.8994	17.1822
440009	15.4558	17.8424	17.4831	16.9676
440010	13.5118	19.9829	16.3283	16.4644
440011	17.1591	17.6948	18.3375	17.7161
440012	19.0606	15.9837	19.5537	18.2430
440014	14.6093	15.9195	16.1143	15.5705
440015	21.0884	18.2632	22.0659	20.4116
440016	14.9409	15.4097	16.2964	15.5583
440017	21.1258	19.6215	20.4426	20.3788
440018	18.2080	16.4115	17.4995	17.3550
440019	28.2242	20.0416	21.0768	22.6204
440020	15.5889	18.1154	17.4666	17.0702
440022	19.0214	15.8459	*	17.5909
440023	14.1410	15.4721	16.6111	15.3545
440024	18.1028	18.4432	18.4046	18.3183
440025	15.2826	15.8784	16.3140	15.8395
440026	22.9174	23.0550	23.2566	23.0549
440029	18.5183	19.4326	20.7050	19.5797
440030	15.5718	16.2941	16.9925	16.3267
440031	14.3023	15.5432	17.0211	15.6197
440032	13.5996	13.9775	13.8140	13.7931
440033	14.0409	14.5304	13.7328	14.1227
440034	17.9315	19.5470	19.5135	19.0190
440035	18.1578	18.9026	19.3034	18.7862
440039	19.3747	19.9439	21.6560	20.3432
440040	17.4965	16.3740	16.9275	16.9214
440041	13.6279	14.6621	14.9545	14.4249
440046	16.8798	18.1654	19.0756	18.0134
440047	17.0037	16.6646	17.8092	17.1528
440048	18.1449	19.4498	21.4993	19.5981
440049	16.7066	17.9292	20.8371	18.4663
440050	16.7627	19.1328	18.2511	18.0098
440051	14.9074	13.1901	16.0421	14.6532
440052	16.2693	16.6541	*	16.4546
440053	17.6873	18.5515	19.6494	18.6583
440054	12.3134	13.8716	13.3967	13.1942
440056	14.2534	15.9821	16.2742	15.4778
440057	12.7190	12.7925	13.7257	13.0446
440058	18.7381	18.8118	16.5104	18.0102
440059	17.5274	18.5418	19.6018	18.6049
440060	15.8599	18.0586	19.7916	17.7309
440061	16.8442	14.9708	24.0082	18.4685

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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2000 (1996 WAGE DATA), 2001 (1997 WAGE DATA) AND 2002 (1998 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
440063	18.2923	19.3222	18.5737	18.7318
440064	17.6154	17.7652	18.8038	18.0538
440065	18.6943	18.5825	16.6540	17.9684
440067	22.0655	16.2811	17.1917	18.2178
440068	17.4513	19.4695	19.1569	18.6340
440070	15.0440	13.7035	14.0437	14.2715
440071	16.2691	17.0186	16.9416	16.7371
440072	16.7675	17.5995	19.1522	17.8026
440073	18.5576	19.1714	19.5554	19.1079
440078	13.0916	15.0849	16.0188	14.6728
440081	17.9702	18.3587	18.9886	18.4558
440082	23.0805	22.2857	20.3664	21.8599
440083	35.0978	14.8525	13.7423	17.4998
440084	13.3678	13.4378	13.7731	13.5305
440091	19.7250	19.6114	20.1065	19.8343
440100	13.9487	13.8437	14.7113	14.1637
440102	13.9575	14.3510	14.5500	14.2949
440103	19.2083	20.3052	18.6990	19.3857
440104	22.3883	22.4403	22.6754	22.4883
440105	16.0338	16.7131	17.1172	16.6050
440109	14.2491	16.0446	17.7443	15.8919
440110	15.9174	21.1716	17.4123	17.8783
440111	21.0682	23.2425	23.2254	22.5309
440114	13.6095	14.4997	15.0036	14.3318
440115	12.9668	17.4514	18.5457	16.2205
440120	18.2993	17.2384	16.3115	17.2831
440125	16.1067	15.6588	19.0514	16.9328
440130	16.6750	17.8223	17.4857	17.3264
440131	14.6752	15.5048	16.1214	15.4186
440132	15.9069	16.6553	16.8871	16.4950
440133	21.5116	21.5313	22.7184	21.8977
440135	20.9029	19.2010	22.2707	20.8388
440137	14.6966	14.5632	15.0070	14.7511
440141	12.4774	13.5308	15.9429	13.7977
440142	13.0059	15.7287	16.7797	15.0556
440143	17.8429	17.7821	18.2061	17.9416
440144	16.6666	17.6415	18.4330	17.5831
440145	13.6577	17.0608	18.3948	16.1716
440147	22.0069	21.4304	26.1464	23.0399
440148	17.6438	19.2435	19.4598	18.7842
440149	17.1496	16.6923	14.8350	16.2240
440150	13.0775	20.1411	20.0178	17.1910
440151	15.4250	17.4248	18.1216	16.9820
440152	17.8399	21.0287	22.7664	20.2196
440153	16.0954	16.7769	16.0572	16.3283
440156	19.6117	29.5557	21.0346	22.8749
440157	11.3982	16.9265	18.4249	15.5384
440159	17.6237	17.7158	20.9371	18.4872
440161	20.7643	21.8013	22.1611	21.5480
440162	14.4121	14.7637	*	14.5681
440166	18.1413	19.6684	19.2159	18.9985
440168	15.9513	18.6535	19.1509	17.9995
440173	18.4683	18.6402	19.1299	18.7524
440174	17.0080	17.3294	18.0865	17.4583
440175	17.6107	20.0802	15.5827	17.7347
440176	18.7529	18.0294	18.9159	18.5457
440180	17.3412	19.7773	20.4039	19.2011
440181	11.8471	16.4878	17.7709	15.0662
440182	20.3202	17.7487	19.7094	19.1341
440183	19.4374	22.7067	21.3465	21.1277
440184	18.0603	17.2037	16.8880	17.4646
440185	18.7286	19.3870	*	19.0562
440186	18.5312	19.3948	15.8016	17.9134

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
440187	16.2530	18.9713	15.3044	16.8551
440189	16.1906	*	18.5252	17.4309
440192	19.9669	19.0839	16.5173	18.5279
440193	18.3952	19.0811	18.2608	18.5816
440194	20.3343	19.8682	22.2384	20.8427
440197	23.1080	21.9618	21.3772	22.0839
440200	16.0619	17.9575	19.5226	17.9170
440203	16.6132	18.3400	16.2861	17.0710
440206	15.5462	16.4429	*	16.0270
440209	14.7466	*	*	14.7466
440210	12.3292	11.0218	11.0719	11.3670
440211	*	14.8972	*	14.8972
440212	*	17.0685	*	17.0685
440213	*	19.5760	*	19.5760
440214	*	*	28.0285	28.0285
440215	*	*	22.2928	22.2928
450002	19.9195	21.3749	21.4770	20.9126
450004	15.2751	16.6723	16.7850	16.2360
450005	15.5888	18.3600	16.6396	16.8103
450007	15.7536	16.9681	19.1910	17.3218
450008	15.7458	17.0832	17.6582	16.7901
450010	16.0790	16.5001	17.6677	17.0234
450011	18.0137	17.1942	20.5022	18.5856
450014	18.2173	17.9495	17.5550	17.8927
450015	18.4400	18.9895	20.0974	19.1233
450016	17.3054	18.4463	18.3456	18.0337
450018	20.4133	21.4788	22.8298	21.4884
450020	16.9661	17.8415	19.1153	18.0122
450021	22.6910	23.0843	21.7842	22.5219
450023	16.6408	16.0831	17.6360	16.7896
450024	16.5604	17.3518	18.5649	17.4769
450025	16.4396	17.0004	*	16.7280
450028	18.4287	18.8764	17.4971	18.2201
450029	17.6909	17.4716	17.5595	17.5741
450031	20.8992	22.2222	29.6945	23.8280
450032	15.2404	17.3317	13.9785	15.3652
450033	20.8634	19.7437	20.7772	20.4518
450034	18.9068	19.6721	18.7154	19.0969
450035	16.8132	20.0951	20.3500	19.0191
450037	18.6549	19.5411	19.8210	19.3526
450039	22.0811	19.8143	17.9888	20.0023
450040	17.5179	16.8534	19.6370	18.0669
450042	17.5906	19.8921	18.4417	18.6126
450044	21.0399	24.7961	20.1028	21.8870
450046	17.0917	18.6536	18.0851	17.8763
450047	13.9022	13.4486	16.9028	14.6102
450050	13.0037	14.7669	15.9701	14.4910
450051	20.0763	21.0236	20.2292	20.4528
450052	13.5278	13.8881	15.2911	14.2591
450053	17.3139	17.0467	14.3712	16.3666
450054	21.9835	22.8960	15.9388	20.5562
450055	14.8119	15.0433	15.8526	15.2415
450056	20.0008	21.8436	20.4781	20.7787
450058	16.9832	18.0967	17.4599	17.5079
450059	14.2072	15.2168	19.7037	16.2518
450063	13.8126	14.3815	12.7037	13.6024
450064	16.4165	17.4093	19.7682	17.8341
450065	19.6087	21.4934	23.3797	21.3723
450068	22.6924	22.8998	21.9406	22.5334
450072	17.3794	19.0111	18.0307	18.1442
450073	16.6168	17.1002	17.4642	17.0560
450078	13.4875	11.7265	13.2820	12.8188
450079	19.4899	21.0518	19.5823	20.0919

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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2000 (1996 WAGE DATA), 2001 (1997 WAGE DATA) AND 2002 (1998 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
450080	16.3147	17.4553	19.5691	17.8032
450081	16.1653	16.3448	17.5737	16.7023
450082	13.2952	16.1585	18.1087	15.9363
450083	20.1830	21.5884	20.8111	20.8940
450085	14.2167	18.3602	20.0085	17.2728
450087	21.4764	22.0273	21.8971	21.7995
450090	13.9101	15.0939	15.7102	14.9065
450092	15.7316	16.8260	17.9520	16.8805
450094	19.4249	21.3158	23.0087	21.3016
450096	16.6300	17.8813	18.6802	17.7158
450097	18.2740	19.5723	19.7187	19.2252
450098	15.4796	20.5754	19.1707	18.3853
450099	22.8834	19.2258	20.4181	20.6312
450101	16.9628	17.1330	18.1155	17.3801
450102	18.8465	18.6707	18.5587	18.6892
450104	15.9781	16.6744	16.9800	16.5575
450107	20.7359	25.1986	23.0798	22.8910
450108	16.1451	15.6324	15.2394	15.6277
450109	12.7654	13.8127	10.7641	12.1774
450110	21.4421	19.5821	*	20.4354
450111	19.2749	19.6350	*	19.4562
450112	14.7610	16.0441	14.3254	14.9837
450113	18.5356	20.9777	20.8306	19.9901
450118	15.8317	17.9053	*	16.9195
450119	18.3166	20.2853	20.1852	19.6454
450121	18.2278	20.4641	21.6525	20.0695
450123	19.1912	15.7618	14.1755	16.0237
450124	21.0925	22.7480	21.9767	21.9459
450126	17.4512	21.7233	21.4686	19.9524
450128	15.8881	18.2184	18.1446	17.4552
450130	17.8722	20.4156	17.4027	18.5777
450131	17.6163	19.2589	17.4168	18.0711
450132	18.0745	18.1713	16.8847	17.6996
450133	19.9259	23.6366	26.0763	23.0339
450135	20.8065	21.0306	22.0320	21.2622
450137	23.9555	22.4590	23.1148	23.1794
450140	18.0743	20.2280	17.2060	18.5255
450143	14.4623	14.5270	14.8917	14.6528
450144	16.3037	18.1121	18.7521	17.8369
450145	14.8441	15.6078	15.8542	15.4241
450146	14.2041	17.8572	15.5030	15.8115
450147	18.0664	18.9363	18.5236	18.5193
450148	22.0269	18.6758	24.1780	21.4997
450149	24.0005	19.7521	21.7219	21.7182
450150	15.2061	16.3719	17.8612	16.4235
450151	14.8373	15.2906	16.4209	15.5098
450152	17.3780	18.0061	17.7265	17.7015
450153	19.9447	19.4419	17.3002	18.8465
450154	13.1810	13.8731	13.9119	13.6623
450155	23.7678	11.5841	13.3456	14.7760
450157	14.6623	15.6371	15.3083	15.2158
450160	8.7503	16.6533	10.6852	11.1452
450162	22.1981	20.9560	21.9218	21.6852
450163	16.9811	17.5403	18.1128	17.5693
450164	20.0368	16.9741	17.7723	18.1030
450165	15.1561	13.9218	14.3250	14.4625
450166	10.2801	11.4772	11.0097	10.9389
450169	15.8793	13.1990	*	14.1674
450170	14.8131	14.2997	14.3234	14.4821
450176	16.3031	16.9674	17.2576	16.8653
450177	14.7280	14.9241	15.2440	14.9810
450178	16.7550	17.8508	16.0280	16.8828
450181	14.0192	15.5622	16.9427	15.5485

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
450184	19.9674	21.1263	18.7419	19.9896
450185	13.0632	14.0714	11.1599	12.6084
450187	17.5702	16.6945	18.2036	17.4833
450188	13.7757	14.3938	15.1954	14.4624
450191	18.8023	20.1222	20.9512	19.9757
450192	19.3352	20.3795	21.2497	20.3207
450193	22.7325	23.1963	23.2623	23.0664
450194	19.1466	20.5187	20.4842	20.0547
450196	16.4929	17.1955	18.1011	17.2598
450200	17.3756	18.7387	19.2228	18.4203
450201	17.0548	16.9908	16.9500	16.9956
450203	18.6552	20.6712	19.0752	19.4944
450209	18.6566	19.0811	19.8943	19.1865
450210	14.2317	13.9758	16.5059	14.8500
450211	17.1433	17.9857	18.6419	17.9272
450213	18.4472	17.7631	18.3953	18.2239
450214	17.2465	19.0475	20.9959	19.0269
450217	11.6893	12.8457	12.7647	12.4509
450219	15.4207	15.3976	17.6884	16.1962
450221	16.9935	16.3700	15.0701	16.0556
450222	18.4542	20.3129	19.8967	19.5439
450224	22.8300	24.9046	16.2265	20.5869
450229	16.4116	16.4503	16.7853	16.5551
450231	17.7045	19.1564	18.8419	18.8309
450234	13.3012	16.1945	16.3955	15.4391
450235	13.4177	15.2332	16.1851	15.0198
450236	15.6774	16.6703	16.4957	16.3054
450237	17.3984	20.7930	18.0874	18.7189
450239	13.6376	17.1308	17.8401	16.0311
450241	14.8674	12.5675	16.4240	14.4148
450243	12.3626	11.9099	13.1754	12.4894
450246	17.9702	16.5478	16.7959	17.0548
450249	11.6279	12.0302	11.7658	11.8055
450250	14.9133	10.2844	13.6787	12.3052
450253	15.3542	12.2402	13.2177	13.4392
450258	13.2334	16.0466	16.7337	15.4196
450259	17.8488	*	*	17.8488
450264	13.8879	13.8929	14.5956	14.1447
450269	14.9334	12.3594	12.3957	13.0850
450270	12.7018	12.8381	14.1324	13.1772
450271	15.4998	16.6319	16.7831	16.3572
450272	17.9514	19.9331	18.4344	18.7713
450276	12.7053	13.1155	14.0745	13.3159
450278	13.7894	14.8291	15.2950	14.5985
450280	19.4926	22.2984	20.1523	20.6175
450283	13.8916	14.5664	15.1950	14.5306
450286	12.1212	*	*	12.1212
450288	15.9878	16.2502	18.3824	16.7799
450289	18.3478	20.3104	20.0002	19.5531
450292	19.5050	16.9693	16.1840	17.4483
450293	14.4281	16.0132	15.8531	15.4701
450296	20.6628	21.6000	22.3430	21.5410
450299	17.9678	21.5672	*	19.7778
450303	12.6720	12.4582	12.8996	12.6812
450306	13.3165	13.8216	14.3639	13.8801
450307	16.6779	16.4622	17.0691	16.7424
450309	16.2055	13.1480	11.4661	13.2592
450315	20.8043	22.8140	21.4684	21.6913
450320	19.6331	20.0946	20.6596	20.1159
450321	13.3932	13.1752	14.6055	13.7332
450322	12.4570	22.7667	29.1884	20.6852
450324	17.8697	17.7886	18.6228	18.0773
450327	16.0935	11.7511	13.3639	13.4001

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
450330	18.4163	18.9425	19.8066	19.0827
450334	12.2721	12.8051	13.7850	12.9653
450337	17.4208	17.1073	25.1355	18.7580
450340	15.8519	17.6914	*	16.7663
450341	19.1828	18.9429	*	19.0666
450346	17.1038	17.5367	18.9475	17.8083
450347	17.6908	17.1099	19.2848	18.0094
450348	12.9414	13.9535	13.2741	13.3967
450351	15.9772	18.4116	18.7311	17.7343
450352	17.8528	18.7480	20.1871	18.9532
450353	15.0020	17.7539	16.0003	16.2513
450355	14.3182	11.9473	11.7765	12.5557
450358	21.2812	22.3235	23.2886	22.3172
450362	15.3536	15.8847	18.1747	16.4652
450369	15.1854	15.2233	14.4262	14.9370
450370	15.4368	12.6061	14.6709	14.1203
450371	11.8996	24.6339	16.0236	16.3341
450372	19.8589	20.0924	19.9926	19.9822
450373	17.5998	17.4183	17.9531	17.6605
450374	12.8264	13.6099	15.1750	13.8338
450378	23.1598	23.5789	23.4599	23.4221
450379	20.2756	22.7632	22.8756	21.9542
450381	15.6215	16.4166	15.2513	15.8628
450388	17.5561	19.2499	18.9920	18.6062
450389	18.1478	18.1797	18.6769	18.3421
450393	18.7387	20.2784	22.4992	20.3300
450395	16.6754	18.3768	17.5097	17.5123
450399	16.3066	15.7845	15.3491	15.8113
450400	14.0761	19.5379	18.6668	17.2665
450403	21.3691	20.1989	22.7969	21.4798
450411	14.0463	14.4832	14.8054	14.4468
450417	13.8517	13.4983	15.3591	14.2291
450418	20.5847	21.9161	21.9690	21.5007
450419	21.8196	20.6325	22.8505	21.7461
450422	24.5309	26.4848	28.0257	26.2815
450423	19.4352	22.7132	*	20.9607
450424	17.5658	18.9741	18.7478	18.4717
450429	11.3811	13.8723	*	12.4654
450431	16.2696	19.6304	20.8421	18.7034
450438	16.5461	19.5028	14.5873	16.7445
450446	21.9685	13.0986	20.7592	18.0346
450447	16.6124	18.0376	18.1815	17.5795
450451	19.6424	18.8948	18.1921	18.8786
450457	19.7689	24.7880	19.6569	21.1382
450460	14.2156	15.1765	14.5364	14.6270
450462	20.1347	22.6212	17.9464	20.1419
450464	13.4714	13.2931	15.5908	14.0563
450465	15.2203	15.5650	15.4731	15.4326
450467	15.6034	10.6184	16.8658	13.7380
450469	22.1012	19.6269	21.1652	20.9069
450473	14.1895	19.9761	19.7148	17.9827
450475	16.2489	16.3404	16.4898	16.3610
450484	19.5869	16.8131	18.2663	18.1595
450488	18.6813	19.3457	19.2173	19.0899
450489	14.5747	9.9326	15.8517	12.9537
450497	11.9242	15.0886	15.1284	14.0029
450498	12.0249	13.8551	14.4713	13.5076
450508	19.8722	18.8069	18.7309	19.1164
450514	22.2791	21.3243	20.0144	21.2387
450517	12.8702	27.8815	14.3191	16.6822
450518	19.0112	19.8116	21.4888	20.0420
450523	20.2589	20.0792	20.8894	20.3958
450530	22.9101	22.8623	21.1634	22.2676

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
450534	24.0835	19.9376	20.1520	21.2600
450535	21.2659	19.6645	21.0513	20.6461
450537	21.7432	20.8438	20.1161	20.8690
450538	19.6864	*	*	19.6864
450539	14.2536	16.4921	17.7681	16.1703
450544	19.3848	23.9283	23.8271	21.9636
450545	16.9674	19.5558	20.2823	18.9428
450547	13.8074	14.8248	17.8756	15.6065
450551	13.9069	16.9439	16.6237	15.8128
450558	20.0164	22.2574	20.7404	21.0120
450559	13.4572	*	*	13.4572
450561	16.8162	*	*	16.8162
450563	30.3744	19.9218	21.3788	22.6596
450565	16.4545	16.2652	17.3803	16.7063
450570	17.7135	18.9532	19.0336	18.5591
450571	16.9705	17.5598	18.2784	17.6264
450573	15.6698	12.2502	17.0111	14.8796
450574	14.2411	14.5965	14.6128	14.4845
450575	19.0613	19.3925	22.5621	20.3955
450578	16.8731	15.4783	17.7906	16.6611
450580	15.3581	15.8321	16.5934	15.9704
450583	15.5040	15.6580	14.4411	15.1895
450584	13.3747	14.2321	14.7876	14.1390
450586	12.8439	14.3773	13.7155	13.6793
450587	17.1124	17.0230	18.5905	17.5554
450591	17.9151	17.8981	17.7442	17.8480
450596	14.8232	22.5420	21.6729	19.1117
450597	16.1797	17.0776	17.6667	16.9974
450603	12.7682	11.6442	23.5572	15.3844
450604	15.4790	16.4535	17.2702	16.4273
450605	20.1541	21.1400	19.4580	20.2362
450609	10.7323	15.9753	16.7508	14.5094
450610	16.7464	18.9924	19.2006	18.3347
450614	13.8304	17.9853	16.5754	15.9153
450615	14.7457	14.8562	15.1188	14.9156
450617	19.5381	20.3387	20.8919	20.3006
450620	13.7063	15.8360	16.0987	15.2421
450623	21.8275	22.1950	15.3964	19.4094
450626	19.7896	18.1673	18.4349	18.7617
450628	16.8345	20.5611	18.6078	18.6471
450630	19.1904	21.6876	20.9444	20.5676
450631	17.5555	20.0417	21.5359	19.4585
450632	12.7295	11.7587	13.9147	12.7814
450633	20.7209	19.5183	19.3340	19.8372
450634	20.2932	23.5333	22.9877	22.3295
450638	19.6968	23.1437	22.1704	21.6228
450639	20.3050	23.1936	20.9189	21.4283
450641	13.5049	16.5125	15.7019	15.1464
450643	17.4268	18.7054	16.8152	17.6481
450644	20.7904	23.6587	22.7721	22.2903
450646	19.9866	19.8274	18.0467	19.2248
450647	22.4196	24.7981	24.1058	23.8008
450648	14.7541	14.8488	14.8968	14.8343
450649	15.8156	16.4496	16.6577	16.3245
450651	20.7304	22.7664	22.6977	22.1014
450652	16.6461	13.4389	17.2445	15.4912
450653	19.2847	18.1834	19.2349	18.8580
450654	13.8833	14.5258	14.5423	14.3223
450656	18.7328	17.6723	18.2606	18.1968
450658	15.1477	16.2657	17.2630	16.2787
450659	20.5609	22.2550	23.0108	21.9106
450661	20.2196	19.7160	18.9071	19.5857
450662	18.6797	18.2284	18.5812	18.4954

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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2000 (1996 WAGE DATA), 2001 (1997 WAGE DATA) AND 2002 (1998 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
450665	15.4395	15.2015	14.3068	14.9933
450666	19.3456	20.3248	20.2549	19.9584
450668	18.7218	20.6965	21.0972	20.1590
450669	22.2832	21.7632	21.4199	21.7939
450670	18.2030	16.8893	20.2632	18.5133
450672	21.2079	21.8559	21.4175	21.4876
450673	13.8444	13.9620	12.4735	13.3217
450674	20.6151	22.2796	22.2305	21.7310
450675	23.2587	22.4961	21.4164	22.2737
450677	18.7905	22.6839	20.6556	20.7200
450678	20.7453	23.2617	24.1301	22.6596
450683	21.1748	20.9143	26.4385	22.7231
450684	22.8552	19.7005	21.9962	21.3850
450686	15.0122	16.5661	16.4632	15.9861
450688	20.8988	19.6250	20.1831	20.2348
450690	22.4118	21.6578	22.4707	22.1725
450694	18.4917	17.4758	17.4643	17.7613
450696	17.5701	24.9636	*	21.1885
450697	15.9259	18.8405	19.4949	18.0008
450698	14.3983	14.6680	15.2170	14.7605
450700	15.1153	14.6421	15.9050	15.2506
450702	21.0157	20.8223	*	20.9141
450703	18.8029	*	*	18.8029
450704	21.6236	20.9821	20.7987	21.1724
450705	22.3175	30.0116	20.5505	24.0294
450706	21.3777	21.2072	22.0884	21.5769
450709	19.7741	20.8889	22.1490	21.0078
450711	18.2350	19.8126	19.3400	19.1455
450712	16.8942	13.6240	15.9298	15.4007
450713	23.6009	20.8065	21.5813	21.8464
450715	19.7719	22.0413	22.5711	21.5401
450716	19.9871	20.5544	20.9088	20.4817
450717	19.4546	20.7192	20.6551	20.2618
450718	19.0679	19.6886	22.1765	20.3069
450723	19.7044	19.7563	20.0191	19.8245
450724	20.0667	20.3235	20.3706	20.2569
450725	19.5572	*	*	19.5572
450727	17.7508	13.5458	17.0205	15.9095
450728	12.9277	17.5284	19.8308	16.6330
450730	20.9129	22.0819	23.0054	22.0459
450733	20.3718	20.7693	20.0619	20.4133
450735	8.0014	13.8767	*	10.0108
450742	20.7775	22.7655	21.8392	21.8145
450743	15.9493	18.8937	19.6015	18.1561
450746	20.7534	12.7904	30.2677	19.9077
450747	17.3842	19.2585	20.3914	18.9599
450749	12.9542	16.2130	19.1488	16.2577
450750	14.7207	14.6914	13.8098	14.4310
450751	22.2491	21.2198	18.8616	21.0697
450754	14.8896	16.0860	16.6057	15.9050
450755	14.7070	17.9904	18.0760	16.8948
450757	13.9636	13.8675	14.9434	14.2422
450758	18.6513	21.8669	19.0221	19.8347
450760	18.0690	17.4852	19.2225	18.2582
450761	11.1444	13.6152	15.7681	13.3382
450763	17.5603	18.2123	18.6092	18.1083
450766	21.8103	22.4348	23.3879	22.5926
450769	13.6183	14.5858	18.4163	15.2554
450770	16.8250	16.5458	19.0183	17.4436
450771	21.5814	22.4542	20.4326	21.4743
450774	16.5198	17.9964	16.2948	16.9482
450775	19.9651	19.8897	21.3504	20.4169
450776	10.1953	15.7750	13.8230	13.0171

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
450777	19.5923	21.0682	19.0380	19.9747
450779	22.9697	21.4546	20.8027	21.5263
450780	15.2800	19.1498	18.9543	17.5846
450785	18.5475	18.4976	*	18.5211
450788	20.9806	19.1463	19.0680	19.4275
450794	18.3981	18.2229	*	18.3485
450795	14.1682	16.6494	22.5753	17.9737
450796	17.4472	16.5362	19.2059	17.6627
450797	18.5901	15.9188	16.4923	16.8594
450798	9.2165	9.4634	*	9.3327
450801	16.6095	17.5669	17.9548	17.3668
450802	18.9018	19.9168	17.1435	18.5477
450803	16.2047	18.3767	21.6653	19.3492
450804	20.2223	19.4846	19.0893	19.5891
450807	13.2256	11.3192	10.7200	11.6398
450808	45.4728	16.9915	17.4917	21.1577
450809	19.0266	20.0202	19.5101	19.5395
450811	18.3847	19.0961	19.9168	19.1389
450812	20.7383	*	*	20.7383
450813	*	15.9166	11.2807	13.4305
450815	*	*	21.2741	21.2741
450819	*	*	16.5521	16.5521
450820	*	*	25.8653	25.8653
450822	*	*	24.2740	24.2740
460001	20.6336	21.7996	22.2735	21.5846
460003	20.5958	20.0452	22.6289	21.0329
460004	20.8196	21.3744	21.7234	21.3231
460005	17.5818	19.7069	22.5252	19.8732
460006	19.6485	20.6252	21.0700	20.4918
460007	20.5677	20.8026	21.1773	20.8773
460008	21.0338	18.8661	19.1153	19.6864
460009	21.1084	21.9016	22.5295	21.8515
460010	21.2473	21.9830	22.4948	21.9354
460011	16.7114	18.8660	19.7731	18.3715
460013	20.3331	20.7326	20.3976	20.4959
460014	19.5465	18.3865	18.5370	18.7488
460015	20.0987	20.6593	21.0470	20.6197
460016	18.0791	18.2408	21.9105	19.2998
460017	26.0310	17.7103	18.9929	19.9984
460018	16.8566	17.6235	17.0063	17.1606
460019	17.3683	16.2671	17.8690	17.1417
460020	17.0271	17.3467	17.2663	17.2239
460021	20.2613	21.0470	21.5174	20.9913
460022	18.2100	20.1534	21.3614	19.7210
460023	21.3321	22.3535	22.9265	22.2381
460024	13.0279	*	*	13.0279
460025	12.5083	19.4247	17.3494	16.5301
460026	17.3431	19.9241	20.2577	19.0203
460027	20.8331	21.8868	22.2955	21.6637
460029	17.2501	20.5154	20.8366	19.2190
460030	17.2196	17.6071	17.1705	17.3275
460032	19.5474	21.1006	21.4832	20.7171
460033	15.7233	19.5372	19.2664	18.1972
460035	14.2802	16.0021	16.1685	15.4874
460036	22.3788	23.5893	23.4573	23.1384
460037	18.7665	18.6850	17.7399	18.3920
460039	24.4781	24.9134	24.4808	24.6217
460041	21.6926	21.0623	20.2035	20.9715
460042	17.8455	18.8814	19.5662	18.7473
460043	23.8970	24.4779	23.2819	23.8380
460044	20.6897	21.4696	21.8485	21.3516
460046	17.1085	18.2224	*	17.6742
460047	21.3843	23.0433	22.7384	22.4725

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
460049	18.8206	19.6483	20.8283	19.8892
460050	26.2485	*	*	26.2485
460051	20.9797	19.4761	22.1758	20.8643
460052	*	*	19.8961	19.8961
470001	19.6108	20.2299	21.3817	20.4021
470003	22.5949	23.6949	21.6305	22.6336
470004	18.0952	16.8842	18.1879	17.7051
470005	21.5151	21.9191	23.1808	22.1962
470006	18.3898	17.8699	20.2829	18.8123
470008	19.4136	19.6069	20.1969	19.7378
470010	19.4652	20.2961	21.0616	20.2790
470011	21.2014	21.7675	22.2415	21.7386
470012	18.5162	18.5339	18.9444	18.6579
470015	19.2552	19.5366	20.2125	19.6399
470018	20.4161	21.5426	21.2406	21.0610
470020	18.9884	20.6643	21.5688	20.4558
470023	20.6391	20.4511	21.7139	20.9439
470024	20.4087	20.8510	21.9807	21.0777
490001	24.7604	21.9755	20.0570	22.0422
490002	12.9871	15.2287	15.7365	14.6222
490003	18.0034	19.1040	20.3237	19.1299
490004	18.7731	19.2126	19.7074	19.2382
490005	16.9087	20.5517	21.3318	19.6257
490006	15.2276	15.9537	12.3253	14.5928
490007	18.4330	18.7740	19.9391	19.0604
490009	22.9513	23.9344	23.7659	23.5499
490010	18.5780	21.7424	*	19.9381
490011	18.7508	18.6071	19.3983	18.9085
490012	13.7788	15.9973	15.2965	15.0022
490013	16.9324	17.3318	18.2396	17.5085
490014	24.5557	25.8315	23.5266	24.6242
490015	19.3608	19.6363	20.0667	19.6821
490017	17.3152	18.4361	19.4810	18.4236
490018	17.9433	18.3435	18.5508	18.2858
490019	17.5309	19.6178	21.0024	19.4180
490020	17.6655	18.5691	18.9621	18.4232
490021	19.4490	19.3945	20.0496	19.6794
490022	20.7223	21.2183	22.9170	21.6052
490023	18.9587	20.6694	21.5683	20.4224
490024	16.8904	17.7221	18.4314	17.8400
490027	14.4234	16.2761	16.7556	15.8360
490030	10.5029	9.1789	8.6446	9.5559
490031	15.8213	14.9539	16.0003	15.5875
490032	21.5592	22.4262	22.0162	21.9790
490033	18.3265	21.1723	19.2908	19.5511
490037	15.9704	16.3759	17.0113	16.4399
490038	15.7099	21.0218	17.6324	17.9048
490040	22.5237	22.7061	23.9490	23.0684
490041	16.5542	18.3589	20.8247	18.4498
490042	15.2717	16.4666	17.0972	16.2668
490043	20.6775	22.1574	21.5808	21.5222
490044	17.6282	18.3137	19.7842	18.6148
490045	19.6325	20.5468	20.6436	20.2902
490046	18.6112	18.4825	19.5729	18.9042
490047	17.1631	25.0438	17.5833	19.3625
490048	17.8907	18.4361	19.5417	18.6005
490050	22.7129	23.0729	23.3668	23.0530
490052	16.9363	16.8600	16.4787	16.7609
490053	15.6883	15.6996	16.8410	16.1062
490054	15.5516	15.4734	19.5780	16.7024
490057	19.0668	19.9210	20.3160	19.7770
490059	20.3744	20.8662	21.4801	20.8999
490060	19.2006	17.6308	18.5917	18.4363

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
490063	28.2527	28.6536	31.0113	29.3929
490066	16.5024	20.6972	15.9322	17.5889
490067	17.1922	17.0195	17.8487	17.3549
490069	15.6986	17.3297	19.9963	17.6603
490071	19.4701	21.8879	23.3511	21.4480
490073	26.1420	20.7960	26.0957	24.1488
490074	19.3417	*	*	19.3417
490075	19.1906	18.6983	19.0566	18.9744
490077	19.7866	21.3670	22.6504	21.2469
490079	16.4379	17.0815	17.7016	17.0749
490083	16.6406	*	*	16.6406
490084	16.3846	16.7834	18.0555	17.0646
490085	16.3979	17.4584	17.6158	17.1539
490088	15.5982	16.4362	17.9141	16.6068
490089	15.8618	17.7692	18.2290	17.2642
490090	16.2785	17.0199	17.4735	16.9381
490091	19.9949	20.8734	25.0272	21.8088
490092	15.6893	16.9533	16.7502	16.4464
490093	16.4767	17.3711	17.8275	17.2502
490094	16.7880	18.9204	22.3033	19.3562
490095	18.2495	*	*	18.2495
490097	15.8586	15.5780	16.9518	16.0789
490098	14.6971	15.1403	16.0488	15.2544
490099	16.8667	17.9665	18.3985	17.7293
490100	17.2189	22.5010	*	19.8823
490101	25.0907	24.7616	23.5502	24.4252
490104	28.4910	25.6889	27.6495	27.0461
490105	18.2461	18.5765	21.4428	19.2491
490106	16.9117	17.6596	22.1448	18.3912
490107	22.4054	23.5240	22.9283	22.9660
490108	19.7478	20.2112	24.1232	21.0559
490109	21.1589	23.6620	25.9475	23.4402
490110	15.8408	16.5131	18.1561	16.8181
490111	17.3453	17.1768	17.8510	17.4580
490112	20.5239	21.4532	22.0815	21.3493
490113	23.0840	23.2235	23.9043	23.4071
490114	16.9083	17.3047	18.0359	17.4375
490115	17.1023	16.5203	23.9711	20.3158
490116	16.4436	16.6170	17.2040	16.7676
490117	13.8429	14.0104	14.7944	14.2244
490118	20.8707	21.4674	21.5687	21.3058
490119	17.8686	17.9147	18.6046	18.1353
490120	19.9810	19.3707	20.5777	19.9742
490122	23.9695	23.8801	25.2027	24.3250
490123	16.8505	17.7461	19.3056	18.0001
490124	19.3616	22.0884	21.3818	20.8857
490126	18.2276	18.6844	20.4294	19.0254
490127	14.4815	16.0516	16.5993	15.6547
490129	27.4701	22.5885	28.6868	25.1130
490130	16.2779	16.4322	17.6943	16.7915
490132	17.0204	18.6570	18.4671	18.0649
500001	21.3476	22.1896	23.4901	22.3320
500002	21.0375	21.6332	19.8476	20.7811
500003	24.3055	24.2814	24.4333	24.3392
500005	23.4808	22.3955	21.7512	22.5379
500007	22.4269	26.0599	21.9911	23.4148
500008	24.1930	25.3064	25.9291	25.1336
500011	25.1836	24.0162	24.6554	24.5938
500012	22.2815	20.7032	24.2799	22.3541
500014	23.9276	24.3419	24.0990	24.1249
500015	23.2435	23.9297	24.9923	24.0554
500016	23.9034	24.3938	24.9439	24.4287
500019	22.3668	22.4213	23.2054	22.6470

* Wage data not available for the provider that year.
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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2000 (1996 WAGE DATA), 2001 (1997 WAGE DATA) AND 2002 (1998 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
500021	24.4622	25.9198	27.6490	25.9957
500023	27.1892	26.6535	27.1025	26.9568
500024	24.0453	23.7472	26.6452	24.7736
500025	23.9557	26.4810	24.4825	24.9695
500026	23.3491	23.8005	26.9884	24.7238
500027	25.0529	22.2158	20.9576	22.6384
500028	18.8588	19.2675	18.9556	19.0337
500029	16.8083	17.9237	18.5042	17.7373
500030	24.1321	24.9039	26.3828	25.1714
500031	23.3659	29.2707	23.6099	25.1784
500033	21.3906	22.3527	22.5462	22.1428
500036	21.8950	22.1096	23.6333	22.5254
500037	19.6803	20.7139	21.4059	20.6062
500039	23.3211	23.8918	24.0007	23.7403
500041	24.8556	23.9608	24.9237	24.5799
500042	22.1286	22.9125	*	22.5386
500043	20.2509	20.9459	22.0466	21.0230
500044	23.1128	23.3364	24.2212	23.5535
500045	22.0982	20.8881	24.0526	22.2906
500048	19.3029	22.1906	20.3207	20.5960
500049	22.9534	24.0489	24.5997	23.8657
500050	20.9445	22.0065	22.6563	21.9092
500051	24.4769	24.8203	25.9447	25.1087
500053	22.0515	23.9397	22.8399	22.9429
500054	22.9024	22.8829	23.8089	23.1889
500055	22.8769	23.7446	23.8622	23.5097
500057	18.0424	18.2737	19.0479	18.4516
500058	23.3984	24.7882	24.1106	24.0962
500059	22.5412	23.3506	26.6270	24.1016
500060	23.5360	25.0233	28.3655	25.4628
500061	20.3957	21.7013	20.8624	20.9851
500062	19.4607	18.6329	19.0557	19.0333
500064	24.5283	25.5748	26.7000	25.6273
500065	21.4254	21.9308	23.5671	22.3106
500068	18.6960	19.6574	19.2638	19.2003
500069	20.6262	21.3592	21.4542	21.1522
500071	19.3810	19.1906	19.1428	19.2439
500072	24.4599	25.3928	25.2001	25.0228
500073	21.4303	21.2469	21.7698	21.4835
500074	18.6506	18.9679	19.5981	19.0849
500077	23.2056	22.8536	23.9410	23.3357
500079	22.9809	24.2036	23.1041	23.4248
500080	13.8000	15.6630	18.3883	15.5897
500084	22.2169	23.4032	24.4044	23.3798
500085	28.6121	21.4403	20.4517	22.7948
500086	22.3132	23.3288	22.8829	22.8469
500088	23.6988	23.2701	24.7822	23.9172
500089	17.9399	18.7080	19.7166	18.7736
500090	16.3297	16.1576	20.4429	17.2562
500092	17.2881	16.7913	19.2028	17.7527
500094	18.1080	18.5835	15.7866	17.6577
500096	20.9580	21.0151	23.3564	21.7716
500097	20.8010	19.7706	20.8774	20.4568
500098	12.9935	16.3511	15.2040	14.9340
500101	19.4498	19.7337	15.8000	18.3994
500102	20.3321	20.9389	21.8963	21.0615
500104	22.5849	22.8154	24.9389	23.3843
500106	18.7087	18.6041	19.1465	18.7914
500107	17.2987	18.1201	17.9489	17.8064
500108	27.2126	26.2939	28.6229	27.3944
500110	21.4053	21.4553	22.9775	21.9505
500118	22.9245	23.8397	24.8034	23.8697
500119	21.5704	22.4373	22.1192	22.0436

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
500122	21.9135	22.4268	23.5264	22.6230
500123	19.5855	20.3181	19.6646	19.8819
500124	24.1473	23.2836	23.7742	23.7287
500125	16.6272	15.1112	14.7910	15.5165
500129	23.5952	26.1575	25.4685	25.1115
500132	19.3567	15.6717	23.1822	19.3937
500134	20.9570	17.7457	17.2430	18.5700
500139	20.8816	22.2297	22.3022	21.8369
500141	22.9358	23.8838	29.9695	25.5485
500143	17.6031	18.0343	18.2570	17.9797
500146	17.8558	21.6003	*	19.6218
510001	17.8282	19.1492	20.0429	18.9855
510002	17.3409	20.1527	17.0646	18.0884
510005	14.4330	14.2503	13.8621	14.1872
510006	17.8821	18.7313	19.9609	18.8717
510007	20.2483	21.2729	21.7064	21.0952
510008	17.3653	18.3296	19.0513	18.2388
510012	16.5037	15.8390	15.6089	15.9887
510013	16.6194	17.8527	19.5798	17.9628
510015	14.7904	14.9039	16.7310	15.5192
510016	12.0276	*	*	12.0276
510018	16.4757	18.5269	18.5358	17.8403
510020	12.6472	13.1837	14.1211	13.3435
510022	19.8375	20.1763	21.5770	20.5146
510023	15.9417	16.0129	16.7777	16.2444
510024	18.7982	19.0941	18.7461	18.8794
510026	13.4586	13.6888	13.7952	13.6491
510027	17.5759	17.2900	18.5945	17.8135
510028	20.7306	20.0628	19.9208	20.2198
510029	17.0519	17.7124	18.4668	17.7625
510030	18.3137	17.4198	17.7603	17.8189
510031	18.4887	28.6673	18.6341	21.0020
510033	18.8061	18.4082	18.4718	18.5670
510035	18.6471	16.5007	18.3164	17.7425
510036	13.1995	13.4559	13.8786	13.5021
510038	14.3433	15.8132	15.5576	15.2710
510039	16.0555	16.9398	17.1461	16.7060
510043	14.2872	14.0662	13.1308	13.8129
510046	17.7320	17.3821	18.5896	17.9120
510047	19.1202	19.8963	20.8101	19.9042
510048	20.3734	21.0407	17.1647	19.5052
510050	16.5681	16.9136	18.4036	17.3154
510053	15.5856	16.1036	17.5798	16.4010
510055	22.8376	23.7248	24.1069	23.5675
510058	17.9786	18.4156	18.2634	18.2213
510059	16.7732	16.5854	16.1044	16.5068
510060	15.6581	17.5594	*	16.5969
510061	14.2227	13.8204	14.1968	14.0767
510062	17.6276	19.3881	18.1588	18.4173
510065	14.5882	*	*	14.5882
510066	12.7164	12.2943	*	12.5091
510067	18.1079	16.7161	17.3067	17.3634
510068	16.2864	18.7938	14.3582	16.2743
510070	16.3616	18.5146	18.4252	17.8444
510071	16.2390	17.2148	18.0278	17.1797
510072	17.6579	15.6262	15.9257	16.4174
510077	16.4111	18.0668	18.2947	17.6316
510080	14.7966	17.4485	16.3453	16.1690
510081	13.0020	13.6359	11.9701	12.8648
510082	13.6905	17.4538	13.5946	14.7307
510084	12.4820	17.2395	13.5339	14.4076
510085	18.6367	17.5624	18.5207	18.2217
510086	13.7937	13.4763	14.2241	13.8304

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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
510088	*	*	14.8854	14.8854
520002	18.3521	19.7447	19.6755	19.2773
520003	16.4334	17.1248	18.7956	17.5028
520004	18.1744	19.6512	20.4591	19.4206
520006	20.4446	21.5313	21.4884	21.1400
520007	13.1087	16.2001	18.4629	16.0134
520008	22.8024	22.8024	24.9395	23.5372
520009	18.5094	18.6002	21.3967	19.4603
520010	20.3447	22.7703	22.3311	21.8215
520011	20.3797	20.7410	21.5223	20.8830
520013	21.6289	20.3965	20.5944	20.8585
520014	16.3989	17.1646	18.0841	17.1764
520015	18.3185	18.6078	19.7672	18.9031
520016	13.2889	17.3018	18.4320	16.1862
520017	19.3179	19.6008	19.4780	19.4685
520018	18.6441	21.1941	20.5761	20.1814
520019	18.3143	19.5440	20.9164	19.5698
520021	20.0355	21.3471	21.9531	21.1390
520024	14.6107	14.0175	14.4750	14.3609
520025	18.1086	18.2430	20.3838	18.8661
520026	19.8131	21.5453	20.8546	20.7335
520027	18.9085	19.9324	19.3257	19.4032
520028	19.1370	21.2852	21.5674	20.6109
520029	16.7520	19.5750	21.4197	19.2161
520030	20.0043	20.5039	20.8529	20.4556
520031	18.7066	20.4814	20.9875	19.9520
520032	17.9007	19.5697	20.1439	19.2148
520033	18.8906	19.2954	20.2520	19.4725
520034	16.6858	17.1282	20.4307	18.0336
520035	17.0997	18.9452	18.7135	18.2608
520037	20.0516	20.6686	21.4693	20.7219
520038	17.7074	19.6294	20.6130	19.3169
520039	19.5990	20.7641	23.3687	21.1069
520040	20.7420	20.4677	20.4895	20.5693
520041	15.3666	17.1959	17.5718	16.7004
520042	17.6577	18.5843	18.9667	18.4230
520044	17.7932	18.4014	19.1877	18.4535
520045	19.6736	20.5917	20.7203	20.3442
520047	17.8702	18.3048	20.3487	18.7633
520048	19.1712	20.6583	19.5238	19.7870
520049	19.5727	20.3559	20.1667	20.0444
520051	19.7416	21.6497	23.1309	21.4330
520053	16.4887	17.3945	18.0851	17.3336
520054	15.9873	15.1747	16.6782	15.9073
520057	18.3186	19.0872	19.6305	19.0102
520058	18.1264	19.7283	21.2500	19.7133
520059	19.8530	20.9913	21.5796	20.8254
520060	17.1675	17.9258	18.7639	17.9403
520062	17.8000	19.1482	19.7038	18.8681
520063	20.7744	19.6136	20.5262	20.3055
520064	21.4586	22.7423	22.0878	22.0905
520066	22.4419	22.8837	23.9506	23.0411
520068	18.0798	18.9943	19.6855	18.9053
520069	17.9133	20.2934	20.1770	19.3716
520070	17.8192	18.5938	19.2094	18.5389
520071	18.7861	18.7304	19.1628	18.8949
520074	18.6923	20.4601	20.9007	20.0036
520075	19.0891	19.8457	20.5199	19.8188
520076	16.5072	17.6088	19.5360	17.8404
520077	15.5427	17.7830	18.7119	17.3266
520078	20.5559	21.3380	20.5439	20.8226
520082	16.7417	17.7405	*	17.1848
520083	22.5715	23.8849	23.5787	23.3411

* Wage data not available for the provider that year.
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Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
520084	18.9475	20.8427	23.3327	20.9981
520087	19.3942	20.3624	20.6863	20.1537
520088	20.1529	20.6312	21.8931	20.8632
520089	20.6110	21.5456	22.1055	21.4053
520090	18.0026	18.9343	19.8314	18.9411
520091	20.0693	20.9927	20.9440	20.6686
520092	17.5577	17.6500	18.6248	17.9402
520094	19.7791	20.3611	20.6179	20.2438
520095	18.5066	20.3269	18.6425	19.1370
520096	19.2980	19.7757	20.6668	19.9365
520097	19.6470	20.2354	20.8016	20.2268
520098	20.0289	22.3348	23.4707	21.9054
520100	18.3788	18.3832	19.4788	18.7419
520101	17.8453	19.5186	19.9875	19.1542
520102	19.8354	20.1898	21.0138	20.3351
520103	21.2324	19.4809	20.0842	20.2050
520107	20.5441	20.3747	21.7907	20.8828
520109	18.6322	19.1303	19.7609	19.1753
520110	20.0319	20.4494	21.0055	20.5065
520111	17.2388	17.7834	17.7673	17.6163
520112	18.1827	19.1797	18.5706	18.6454
520113	20.5925	21.1485	21.8852	21.2341
520114	17.3799	16.6616	17.8476	17.2735
520115	17.3755	18.2980	19.2248	18.2555
520116	18.5698	19.8509	20.6922	19.7165
520117	17.4242	18.5414	18.3963	18.1365
520118	12.4422	4.2326	14.8626	13.8369
520120	15.6205	18.7437	*	17.3887
520121	17.5851	19.7305	20.8492	19.5992
520122	16.7552	16.2436	16.9335	16.6326
520123	17.4135	17.3980	17.7986	17.5610
520124	16.3902	17.2619	17.9205	17.1864
520130	15.1639	15.6845	17.1679	16.0030
520131	18.8043	18.7295	20.2591	19.2549
520132	17.2759	15.6379	18.1630	16.9564
520134	17.6094	18.0953	18.8150	18.1846
520135	14.4748	15.8246	17.3476	15.9083
520136	19.9935	19.8480	20.4404	20.0986
520138	20.8922	21.2260	22.5103	21.5421
520139	21.2797	20.9988	21.4042	21.2251
520140	21.4175	21.5207	22.0849	21.6757
520141	16.9543	*	*	16.9543
520142	17.7003	20.5858	21.9432	19.9586
520144	16.6231	18.5701	19.9120	18.4107
520145	17.2356	18.2654	18.7958	18.1015
520146	15.7318	17.9585	18.2370	17.3448
520148	16.9293	17.2421	19.1502	17.8057
520149	13.3032	14.1901	12.8928	13.4360
520151	18.0771	17.3267	18.7070	18.0230
520152	21.3333	19.5858	22.5980	21.0747
520153	15.4467	15.9753	17.0863	16.1441
520154	17.9229	18.5403	19.5994	18.6875
520156	19.8396	21.3377	20.9638	20.7243
520157	17.2784	17.1974	19.6008	18.0185
520159	18.7423	18.6760	17.7649	18.3871
520160	18.8444	19.4173	20.1406	19.4824
520161	18.5742	19.4905	18.7197	18.9334
520170	22.5033	21.5233	21.0637	21.6831
520171	15.7316	17.4560	18.0785	17.1053
520173	20.1410	21.3016	20.5744	20.6635
520177	21.7609	22.7221	22.9673	22.4954
520178	17.0411	18.6936	20.9010	18.7748
520188	*	13.9135	*	13.9135

* Wage data not available for the provider that year.
** For Federal Fiscal Year 2002 only, the average hourly wage is based upon data on file as of February 15, 2001. It does not reflect changes processed after that date.
*** The 3-year average hourly wage is weighted by salaries and hours.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2000 (1996 WAGE DATA), 2001 (1997 WAGE DATA) AND 2002 (1998 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FFY 2000	Average hourly wage FFY 2001	Average** hourly wage FFY 2002	Average*** hourly wage (3 years)
530002	17.5888	19.3273	21.1066	19.4048
530003	15.7813	16.2139	15.9523	15.9820
530004	16.1862	15.0497	13.3788	14.7758
530005	15.1487	13.3529	15.3255	14.5529
530006	19.3403	18.5894	19.1305	19.0082
530007	18.0601	18.5161	17.7897	18.1450
530008	22.9625	18.8349	19.0113	20.0471
530009	19.4478	22.5009	21.7795	21.2113
530010	18.9317	21.6092	14.1699	17.7467
530011	17.4412	18.7354	19.4606	18.5542
530012	19.4829	18.9923	21.1854	19.8564
530014	17.3158	18.0869	18.5571	17.9899
530015	22.6465	22.4568	23.4040	22.8118
530016	17.7084	18.1562	19.3205	18.4153
530017	13.7131	16.3478	17.7736	15.9421
530018	17.8699	18.3783	19.5986	18.6254
530019	16.7630	18.5430	20.1097	18.3351
530022	17.8781	18.5002	19.6136	18.7082
530023	20.7527	20.1948	20.0677	20.3449
530025	20.3200	21.2598	22.0300	21.1974
530026	18.9175	17.0118	19.8969	18.4992
530027	29.7722	18.1664	25.5067	22.9705
530029	17.7993	16.5092	19.3361	17.7626
530031	13.3775	18.3322	20.1734	17.2600
530032	20.2143	21.0361	20.0132	20.4281

* Wage data not available for the provider that year.
** For Federal Fiscal Year 2002 only, the average hourly wage is based upon data on file as of February 15, 2001. It does not reflect changes processed after that date.
*** The 3-year average hourly wage is weighted by salaries and hours.

TABLE 3A.—3-YEAR AVERAGE HOURLY WAGE FOR URBAN AREAS

[Based on salaries and hours computed for Federal fiscal years 2000, 2001, and 2002]

Urban area	Average hourly wage
Abilene, TX	17.6806
Aguadilla, PR	9.2769
Akron, OH	21.5297
Albany, GA	22.3923
Albany-Schenectady-Troy, NY	18.7002
Albuquerque, NM	19.8373
Alexandria, LA	17.4211
Allentown-Bethlehem-Easton, PA	21.3670
Altoona, PA	20.1636
Amarillo, TX	18.6302
Anchorage, AK	27.5223
Ann Arbor, MI	24.5218
Anniston, AL	18.1347
Appleton-Oshkosh-Neenah, WI	19.6303
Arecibo, PR	10.1229
Asheville, NC	19.9864
Athens, GA	21.2433
Atlanta, GA	21.9106
Atlantic-Cape May, NJ	24.4342
Auburn-Opelika, AL	17.4403
Augusta-Aiken, GA–SC	20.3525
Austin-San Marcos, TX	20.2151
Bakersfield, CA	20.7098
Baltimore, MD	20.9279
Bangor, ME	20.7547
Barnstable-Yarmouth, MA	29.3802

TABLE 3A.—3-YEAR AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

[Based on salaries and hours computed for Federal fiscal years 2000, 2001, and 2002]

Urban area	Average hourly wage
Baton Rouge, LA	18.6271
Beaumont-Port Arthur, TX	18.6898
Bellingham, WA	25.1714
Benton Harbor, MI	18.7937
Bergen-Passaic, NJ	25.5796
Billings, MT	21.1153
Biloxi-Gulfport-Pascagoula, MS	17.8351
Binghamton, NY	18.8043
Birmingham, AL	18.8368
Bismarck, ND	16.8910
Bloomington, IN	18.7924
Bloomington-Normal, IL	19.1663
Boise City, ID	19.6729
Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH	24.5501
Boulder-Longmont, CO	21.3227
Brazoria, TX	18.3793
Bremerton, WA	23.7403
Brownsville-Harlingen-San Benito, TX	19.2833
Bryan-College Station, TX	18.7394
Buffalo-Niagara Falls, NY	20.6480
Burlington, VT	22.4607
Caguas, PR	10.2778
Canton-Massillon, OH	19.0700
Casper, WY	19.8564

TABLE 3A.—3-YEAR AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

[Based on salaries and hours computed for Federal fiscal years 2000, 2001, and 2002]

Urban area	Average hourly wage
Cedar Rapids, IA	19.1268
Champaign-Urbana, IL	19.9316
Charleston-North Charleston, SC	19.7508
Charleston, WV	20.0108
Charlotte-Gastonia-Rock Hill, NC–SC	20.3826
Charlottesville, VA	23.1481
Chattanooga, TN–GA	20.9509
Cheyenne, WY	17.9899
Chicago, IL	23.8495
Chico-Paradise, CA	21.8173
Cincinnati, OH–KY–IN	20.5080
Clarksville-Hopkinsville, TN–KY	17.8563
Cleveland-Lorain-Elyria, OH	20.7803
Colorado Springs, CO	20.7284
Columbia, MO	19.2453
Columbia, SC	20.5806
Columbus, GA–AL	18.4599
Columbus, OH	21.1200
Corpus Christi, TX	18.5130
Corvallis, OR	24.7413
Cumberland, MD–WV	18.4566
Dallas, TX	20.9635
Danville, VA	18.9744
Davenport-Moline-Rock Island, IA–IL	19.0733

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TABLE 3A.—3-YEAR AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

[Based on salaries and hours computed for Federal fiscal years 2000, 2001, and 2002]

Urban area	Average hourly wage
Dayton-Springfield, OH	20.3789
Daytona Beach, FL	19.7030
Decatur, AL	18.8129
Decatur, IL	17.6940
Denver, CO	22.1471
Des Moines, IA	19.3257
Detroit, MI	22.6805
Dothan, AL	17.1181
Dover, DE	21.6106
Dubuque, IA	18.6795
Duluth-Superior, MN–WI	22.1000
Dutchess County, NY	22.7121
Eau Claire, WI	19.2432
El Paso, TX	19.8290
Elkhart-Goshen, IN	20.3382
Elmira, NY	18.4943
Enid, OK	18.0515
Erie, PA	19.4310
Eugene-Springfield, OR	23.8559
Evansville, Henderson, IN–KY	17.5189
Fargo-Moorhead, ND–MN	19.3632
Fayetteville, NC	19.0183
Fayetteville-Springdale-Rogers, AR	16.7888
Flagstaff, AZ–UT	22.9479
Flint, MI	23.9198
Florence, AL	16.9094
Florence, SC	18.9644
Fort Collins-Loveland, CO	22.4773
Fort Lauderdale, FL	22.1771
Fort Myers-Cape Coral, FL	19.9058
Fort Pierce-Port St. Lucie, FL	21.3915
Fort Smith, AR–OK	17.3369
Fort Walton Beach, FL	19.5052
Fort Wayne, IN	19.4642
Fort Worth-Arlington, TX	20.8053
Fresno, CA	21.9101
Gadsden, AL	18.7282
Gainesville, FL	23.1249
Galveston-Texas City, TX	21.5574
Gary, IN	20.5266
Glens Falls, NY	18.3428
Goldsboro, NC	18.4900
Grand Forks, ND–MN	19.5346
Grand Junction, CO	20.1153
Grand Rapids-Muskegon-Holland, MI	22.0624
Great Falls, MT	20.7979
Greeley, CO	21.0411
Green Bay, WI	19.9641
Greensboro-Winston-Salem-High Point, NC	20.0548
Greenville, NC	20.8376
Greenville-Spartanburg-Anderson, SC	19.7086
Hagerstown, MD	19.2372
Hamilton-Middletown, OH	19.7210
Harrisburg-Lebanon-Carlisle, PA	20.6541
Hartford, CT	24.9991
Hattiesburg, MS	16.3812
Hickory-Morganton-Lenoir, NC	19.9779
Honolulu, HI	25.2556
Houma, LA	17.3111
Houston, TX	20.7505
Huntington-Ashland, WV–KY–OH	21.1928
Huntsville, AL	19.2325
Indianapolis, IN	21.1949
Iowa City, IA	21.1012
Jackson, MI	19.7797
Jackson, MS	18.6455
Jackson, TN	19.1864
Jacksonville, FL	19.6584
Jacksonville, NC	16.8680
Jamestown, NY	17.1876
Janesville-Beloit, WI	20.9802
Jersey City, NJ	24.8343
Johnson City-Kingsport-Bristol, TN–VA	18.5293
Johnstown, PA	19.0781
Jonesboro, AR	16.9923
Joplin, MO	17.7354
Kalamazoo-Battlecreek, MI	22.4822
Kankakee, IL	20.0356
Kansas City, KS–MO	20.4279
Kenosha, WI	20.4490
Killeen-Temple, TX	19.9750
Knoxville, TN	19.0855
Kokomo, IN	19.9881
La Crosse, WI–MN	19.8516
Lafayette, LA	18.3710
Lafayette, IN	19.3581
Lake Charles, LA	16.7150
Lakeland-Winter Haven, FL	19.6666
Lancaster, PA	20.1757
Lansing-East Lansing, MI	21.3476
Laredo, TX	17.5925
Las Cruces, NM	18.7690
Las Vegas, NV–AZ	24.0639
Lawrence, KS	18.1884
Lawton, OK	19.7127
Lewiston-Auburn, ME	19.7957
Lexington, KY	18.9597
Lima, OH	20.0697
Lincoln, NE	21.3984
Little Rock-North Little Rock, AR	19.2004
Longview-Marshall, TX	18.7809
Los Angeles-Long Beach, CA	26.0786
Louisville, KY–IN	20.4511
Lubbock, TX	18.6166
Lynchburg, VA	19.4241
Macon, GA	19.2084
Madison, WI	21.9843
Mansfield, OH	18.7455
Mayaguez, PR	10.2295
McAllen-Edinburg-Mission, TX	18.1641
Medford-Ashland, OR	22.6022
Melbourne-Titusville-Palm Bay, FL	20.8444
Memphis, TN–AR–MS	19.0229
Merced, CA	21.5061
Miami, FL	21.8283
Middlesex-Somerset-Hunterdon, NJ	24.6509
Milwaukee-Waukesha, WI	21.3110
Minneapolis-St. Paul, MN–WI	23.8021
Missoula, MT	20.0852
Mobile, AL	17.4552
Modesto, CA	22.6578
Monmouth-Ocean, NJ	24.1662
Monroe, LA	18.0030
Montgomery, AL	16.5093
Muncie, IN	22.6571
Myrtle Beach, SC	18.6825
Naples, FL	20.9923
Nashville, TN	20.6183
Nassau-Suffolk, NY	30.2198
New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	26.6547
New London-Norwich, CT	26.0295
New Orleans, LA	19.8085
New York, NY	31.0941
Newark, NJ	25.6043
Newburgh, NY–PA	23.8506
Norfolk-Virginia Beach-Newport News, VA–NC	18.4034
Oakland, CA	32.8350
Ocala, FL	20.5545
Odessa-Midland, TX	19.5695
Oklahoma City, OK	18.8746
Olympia, WA	23.8947
Omaha, NE–IA	21.4322
Orange County, CA	24.7717
Orlando, FL	20.8479
Owensboro, KY	17.7880
Panama City, FL	19.7652
Parkersburg-Marietta, WV–OH	17.9669
Pensacola, FL	18.0417
Peoria-Pekin, IL	18.6783
Philadelphia, PA–NJ	23.6329
Phoenix-Mesa, AZ	20.7971
Pine Bluff, AR	16.8497
Pittsburgh, PA	20.9887
Pittsfield, MA	22.3291
Pocatello, ID	19.9570
Ponce, PR	11.0089
Portland, ME	20.7444
Portland-Vancouver, OR–WA	23.9502
Providence-Warwick, RI	23.3619
Provo-Orem, UT	21.5657
Pueblo, CO	19.0481
Punta Gorda, FL	20.1726
Racine, WI	20.1696
Raleigh-Durham-Chapel Hill, NC	21.0052
Rapid City, SD	18.9541
Reading, PA	17.8899
Redding, CA	24.6813
Reno, NV	22.8615
Richland-Kennewick-Pasco, WA	24.4034
Richmond-Petersburg, VA	20.8459
Riverside-San Bernardino, CA	24.1711
Roanoke, VA	18.3527
Rochester, MN	24.8162
Rochester, NY	19.9290
Rockford, IL	19.3616
Rocky Mount, NC	19.3552
Sacramento, CA	26.0254
Saginaw-Bay City-Midland, MI	20.6078
St. Cloud, MN	21.3050
St. Joseph, MO	19.6144
St. Louis, MO–IL	19.5920
Salem, OR	21.8859
Salinas, CA	31.8419
Salt Lake City-Ogden, UT	21.4139
San Angelo, TX	17.4362
San Antonio, TX	18.2088
San Diego, CA	25.4124
San Francisco, CA	30.6978
San Jose, CA	29.9903
San Juan-Bayamon, PR	10.2202
San Luis Obispo-Atascadero-Paso Robles, CA	23.3041
Santa Barbara-Santa Maria-Lompoc, CA	23.3594
Santa Cruz-Watsonville, CA	30.3548
Santa Fe, NM	22.5866
Santa Rosa, CA	27.7113
Sarasota-Bradenton, FL	21.5493
Savannah, GA	20.9278
Scranton-Wilkes Barre-Hazleton, PA	17.9530
Seattle-Bellevue-Everett, WA	24.0679
Sharon, PA	17.4923
Sheboygan, WI	18.1442
Sherman-Denison, TX	19.5991
Shreveport-Bossier City, LA	19.4652
Sioux City, IA–NE	18.6963
Sioux Falls, SD	19.3356
South Bend, IN	21.7219
Spokane, WA	23.1813
Springfield, IL	18.6860
Springfield, MO	18.1563
Springfield, MA	23.1451
State College, PA	19.7984
Steubenville-Weirton, OH–WV	18.6797
Stockton-Lodi, CA	23.2294
Sumter, SC	17.6174
Syracuse, NY	20.3619
Tacoma, WA	25.1530
Tallahassee, FL	18.3753
Tampa-St. Petersburg-Clearwater, FL	19.5103
Terre Haute, IN	18.3195
Texarkana, AR-Texarkana, TX	17.9743
Toledo, OH	21.2747
Topeka, KS	19.8271
Trenton, NJ	21.9528
Tucson, AZ	19.1755
Tulsa, OK	18.4006
Tuscaloosa, AL	17.6510
Tyler, TX	20.1434
Utica-Rome, NY	18.2674
Vallejo-Fairfield-Napa, CA	28.6820
Ventura, CA	24.2443
Victoria, TX	17.9789
Vineland-Millville-Bridgeton, NJ	22.7446
Visalia-Tulare-Porterville, CA	21.3962
Waco, TX	17.7862
Washington, DC–MD–VA–WV	23.8268
Waterloo-Cedar Falls, IA	18.0820
Wausau, WI	20.4556
West Palm Beach-Boca Raton, FL	21.2892
Wheeling, OH–WV	16.9419
Wichita, KS	20.5727
Wichita Falls, TX	16.8194
Williamsport, PA	18.2904
Wilmington-Newark, DE–MD	23.9928
Wilmington, NC	20.9815
Yakima, WA	22.3174
Yolo, CA	21.5151
York, PA	18.9397
Youngstown-Warren, OH	20.9566
Yuba City, CA	23.0076
Yuma, AZ	20.4298

TABLE 3A.—3-YEAR AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

[Based on salaries and hours computed for Federal fiscal years 2000, 2001, and 2002]

Urban area	Average hourly wage
San Luis Obispo-Atascadero-Paso Robles, CA	23.3041
Santa Barbara-Santa Maria-Lompoc, CA	23.3594
Santa Cruz-Watsonville, CA	30.3548
Santa Fe, NM	22.5866
Santa Rosa, CA	27.7113
Sarasota-Bradenton, FL	21.5493
Savannah, GA	20.9278
Scranton-Wilkes Barre-Hazleton, PA	17.9530
Seattle-Bellevue-Everett, WA	24.0679
Sharon, PA	17.4923
Sheboygan, WI	18.1442
Sherman-Denison, TX	19.5991
Shreveport-Bossier City, LA	19.4652
Sioux City, IA–NE	18.6963
Sioux Falls, SD	19.3356
South Bend, IN	21.7219
Spokane, WA	23.1813
Springfield, IL	18.6860
Springfield, MO	18.1563
Springfield, MA	23.1451
State College, PA	19.7984
Steubenville-Weirton, OH–WV	18.6797
Stockton-Lodi, CA	23.2294
Sumter, SC	17.6174
Syracuse, NY	20.3619
Tacoma, WA	25.1530
Tallahassee, FL	18.3753
Tampa-St. Petersburg-Clearwater, FL	19.5103
Terre Haute, IN	18.3195
Texarkana, AR-Texarkana, TX	17.9743
Toledo, OH	21.2747
Topeka, KS	19.8271
Trenton, NJ	21.9528
Tucson, AZ	19.1755
Tulsa, OK	18.4006
Tuscaloosa, AL	17.6510
Tyler, TX	20.1434
Utica-Rome, NY	18.2674
Vallejo-Fairfield-Napa, CA	28.6820
Ventura, CA	24.2443
Victoria, TX	17.9789
Vineland-Millville-Bridgeton, NJ	22.7446
Visalia-Tulare-Porterville, CA	21.3962
Waco, TX	17.7862
Washington, DC–MD–VA–WV	23.8268
Waterloo-Cedar Falls, IA	18.0820
Wausau, WI	20.4556
West Palm Beach-Boca Raton, FL	21.2892
Wheeling, OH–WV	16.9419
Wichita, KS	20.5727
Wichita Falls, TX	16.8194
Williamsport, PA	18.2904
Wilmington-Newark, DE–MD	23.9928
Wilmington, NC	20.9815
Yakima, WA	22.3174
Yolo, CA	21.5151
York, PA	18.9397
Youngstown-Warren, OH	20.9566
Yuba City, CA	23.0076
Yuma, AZ	20.4298

TABLE 3B.—3-YEAR AVERAGE HOURLY WAGE FOR RURAL AREAS

[Based on salaries and hours computed for Federal fiscal years 2000, 2001, and 2002]

Nonurban area	Average hourly wage
Alabama	16.1119
Alaska	26.3477
Arizona	18.5108
Arkansas	16.0724
California	21.4448
Colorado	19.2806
Connecticut	26.3210
Delaware	20.0732
Florida	19.2209
Georgia	17.8809
Hawaii	23.8315
Idaho	18.9021
Illinois	17.5886
Indiana	18.6071
Iowa	17.4515
Kansas	16.5492
Kentucky	17.3334
Louisiana	16.4052
Maine	18.8730
Maryland	18.9527
Massachusetts	24.6681
Michigan	19.4455
Minnesota	19.2586
Mississippi	16.1955
Missouri	16.7949
Montana	18.5783
Nebraska	17.6014
Nevada	20.3129
New Hampshire	21.4174
New Jersey [1]	
New Mexico	18.5917
New York	18.5351
North Carolina	18.3321
North Dakota	16.8478
Ohio	18.8435
Oklahoma	16.1793
Oregon	21.7904
Pennsylvania	18.4680
Puerto Rico	9.5092
Rhode Island [1]	
South Carolina	18.2462
South Dakota	16.6515
Tennessee	16.8980
Texas	16.3672
Utah	19.5943
Vermont	20.4055
Virginia	17.7547
Washington	22.5228
West Virginia	17.6572
Wisconsin	19.3313
Wyoming	19.1675

[1] All counties within the State are classified as urban.

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS

Urban area (Constituent counties)	Wage index	GAF
0040 Abilene, TX Taylor, TX	0.8118	0.8669
0060 Aguadila, PR Aguada, PR Aguadilla, PR Moca, PR	0.4738	0.5996
0080 Akron, OH Portage, OH Summit, OH	0.9924	0.9948
0120 Albany, GA Dougherty, GA Lee, GA	1.0675	1.0457
0160 Albany-Schenectady-Troy, NY Albany, NY Montgomery, NY Rensselaer, NY Saratoga, NY Schenectady, NY Schoharie, NY	0.8597	0.9017
0200 Albuquerque, NM Bernalillo, NM Sandoval, NM Valencia, NM	0.9855	0.9900
0220 Alexandria, LA Rapides, LA	0.8137	0.8683
0240 Allentown-Bethlehem-Easton, PA Carbon, PA Lehigh, PA Northampton, PA	0.9443	0.9615
0280 Altoona, PA Blair, PA	0.9225	0.9463
0320 Amarillo, TX Potter, TX Randall, TX	0.8706	0.9095
0380 Anchorage, AK Anchorage, AK	1.2605	1.1718
0440 Ann Arbor, MI Lenawee, MI Livingston, MI Washtenaw, MI	1.1220	1.0820
0450 Anniston, AL Calhoun, AL	0.8360	0.8846
0460 Appleton-Oshkosh-Neenah, WI Calumet, WI Outagamie, WI Winnebago, WI	0.9203	0.9447
0470 Arecibo, PR Arecibo, PR Camuy, PR Hatillo, PR	0.4683	0.5948
0480 Asheville, NC Buncombe, NC Madison, NC	0.9307	0.9520
0500 Athens, GA Clarke, GA Madison, GA Oconee, GA	0.9956	0.9970
0520 [1] Atlanta, GA Barrow, GA Bartow, GA Carroll, GA Cherokee, GA Clayton, GA Cobb, GA Coweta, GA DeKalb, GA Douglas, GA Fayette, GA	1.0176	1.0120

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TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
Forsyth, GA Fulton, GA Gwinnett, GA Henry, GA Newton, GA Paulding, GA Pickens, GA Rockdale, GA Spalding, GA Walton, GA		
0560 Atlantic-Cape May, NJ Atlantic, NJ Cape May, NJ	1.1349	1.0905
0580 Auburn-Opelika, AL Lee, AL	0.8325	0.8820
0600 Augusta-Aiken, GA–SC Columbia, GA McDuffie, GA Richmond, GA Aiken, SC Edgefield, SC	1.0090	1.0062
0640 [1] Austin-San Marcos, TX Bastrop, TX Caldwell, TX Hays, TX Travis, TX Williamson, TX	0.9327	0.9534
0680 [2] Bakersfield, CA Kern, CA	0.9870	0.9911
0720 [1] Baltimore, MD Anne Arundel, MD Baltimore, MD Baltimore City, MD Carroll, MD Harford, MD Howard, MD Queen Anne's, MD	0.9723	0.9809
0733 Bangor, ME Penobscot, ME	0.9559	0.9696
0743 Barnstable-Yarmouth, MA Barnstable, MA	1.3539	1.2306
0760 Baton Rouge, LA Ascension, LA East Baton Rouge, LA Livingston, LA West Baton Rouge, LA	0.8258	0.8772
0840 Beaumont-Port Arthur, TX Hardin, TX Jefferson, TX Orange, TX	0.8508	0.8953
0860 Bellingham, WA Whatcom, WA	1.1963	1.1306
0870 [2] Benton Harbor, MI Berrien, MI	0.9115	0.9385
0875 [1] Bergen-Passaic, NJ Bergen, NJ Passaic, NJ	1.1669	1.1115
0880 Billings, MT Yellowstone, MT	0.9623	0.9740
0920 Biloxi-Gulfport-Pascagoula, MS Hancock, MS Harrison, MS Jackson, MS	0.8538	0.8974
0960 Binghamton, NY Broome, NY Tioga, NY	0.8595	0.9015
1000 Birmingham, AL Blount, AL Jefferson, AL St. Clair, AL Shelby, AL	0.8648	0.9053
1010 [2] Bismarck, ND Burleigh, ND Morton, ND	0.7965	0.8557
1020 [2] Bloomington, IN Monroe, IN	0.8757	0.9131
1040 Bloomington-Normal, IL McLean, IL	0.8545	0.8979
1080 Boise City, ID Ada, ID Canyon, ID	0.9190	0.9438
1123 [1,2] Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH (MA Hospitals) Bristol, MA Essex, MA Middlesex, MA Norfolk, MA Plymouth, MA Suffolk, MA Worcester, MA Hillsborough, NH Merrimack, NH Rockingham, NH Strafford, NH	1.1586	1.1061
1123 [1] Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH (NH Hospitals) Bristol, MA Essex, MA Middlesex, MA Norfolk, MA Plymouth, MA Suffolk, MA Worcester, MA Hillsborough, NH Merrimack, NH Rockingham, NH Strafford, NH	1.1483	1.0993
1125 Boulder-Longmont, CO Boulder, CO	0.9836	0.9887
1145 Brazoria, TX Brazoria, TX	0.8299	0.8801
1150 Bremerton, WA Kitsap, WA	1.0882	1.0596
1240 Brownsville-Harlingen-San Benito, TX Cameron, TX	0.8783	0.9150
1260 Bryan-College Station, TX Brazos, TX	0.9296	0.9512
1280 [1] Buffalo-Niagara Falls, NY Erie, NY Niagara, NY	0.9405	0.9589
1303 Burlington, VT Chittenden, VT Franklin, VT Grand Isle, VT	0.9826	0.9881
1310 Caguas, PR Caguas, PR Cayey, PR Cidra, PR Gurabo, PR San Lorenzo, PR	0.5158	0.6355
1320 Canton-Massillon, OH Carroll, OH Stark, OH	0.9059	0.9346
1350 Casper, WY Natrona, WY	0.9606	0.9728
1360 Cedar Rapids, IA Linn, IA	0.8711	0.9098
1400 Champaign-Urbana, IL Champaign, IL	0.9264	0.9490
1440 Charleston-North Charleston, SC Berkeley, SC Charleston, SC Dorchester, SC	0.9293	0.9510
1480 Charleston, WV Kanawha, WV Putnam, WV	0.9369	0.9563
1520 [1] Charlotte-Gastonia-Rock Hill, NC–SC Cabarrus, NC Gaston, NC Lincoln, NC Mecklenburg, NC Rowan, NC Stanly, NC Union, NC York, SC	0.9469	0.9633
1540 Charlottesville, VA Albemarle, VA Charlottesville City, VA Fluvanna, VA Greene, VA	1.0688	1.0466
1560 Chattanooga, TN–GA Catoosa, GA Dade, GA Walker, GA Hamilton, TN Marion, TN	0.9446	0.9617
1580 [2] Cheyenne, WY Laramie, WY	0.8855	0.9201
1600 [1] Chicago, IL Cook, IL DeKalb, IL DuPage, IL	1.1011	1.0682

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
Grundy, IL Kane, IL Kendall, IL Lake, IL McHenry, IL Will, IL		
1620 Chico-Paradise, CA Butte, CA	0.9909	0.9938
1640 [1] Cincinnati, OH–KY–IN Dearborn, IN Ohio, IN Boone, KY Campbell, KY Gallatin, KY Grant, KY Kenton, KY Pendleton, KY Brown, OH Clermont, OH Hamilton, OH Warren, OH	0.9574	0.9706
1660 Clarksville-Hopkinsville, TN–KY Christian, KY Montgomery, TN	0.8481	0.8933
1680 [1] Cleveland-Lorain-Elyria, OH Ashtabula, OH Cuyahoga, OH Geauga, OH Lake, OH Lorain, OH Medina, OH	0.9496	0.9652
1720 Colorado Springs, CO El Paso, CO	0.9754	0.9831
1740 Columbia, MO Boone, MO	0.8787	0.9153
1760 Columbia, SC Lexington, SC Richland, SC	0.9589	0.9717
1800 Columbus, GA–AL Russell, AL Chattahoochee, GA Harris, GA Muscogee, GA	0.8471	0.8926
1840 [1] Columbus, OH Delaware, OH Fairfield, OH Franklin, OH Licking, OH Madison, OH Pickaway, OH	0.9724	0.9810
1880 Corpus Christi, TX Nueces, TX San Patricio, TX	0.8203	0.8731
1890 Corvallis, OR Benton, OR	1.1781	1.1188
1900 [2] Cumberland, MD–WV (MD Hospitals) Allegany, MD Mineral, WV	0.8962	0.9277
1900 Cumberland, MD–WV (WV Hospital) Allegany, MD Mineral, WV	0.8402	0.8876
1920 [1] Dallas, TX Collin, TX Dallas, TX Denton, TX Ellis, TX Henderson, TX Hunt, TX Kaufman, TX Rockwall, TX	0.9506	0.9659
1950 Danville, VA Danville City, VA Pittsylvania, VA	0.8641	0.9048
1960 Davenport-Moline-Rock Island, IA–IL Scott, IA Henry, IL Rock Island, IL	0.8790	0.9155
2000 Dayton-Springfield, OH Clark, OH Greene, OH Miami, OH Montgomery, OH	0.9323	0.9531
2020 Daytona Beach, FL Flagler, FL Volusia, FL	0.9069	0.9353
2030 Decatur, AL Lawrence, AL Morgan, AL	0.8817	0.9174
2040 [2] Decatur, IL Macon, IL	0.8140	0.8686
2080 [1] Denver, CO Adams, CO Arapahoe, CO Denver, CO Douglas, CO Jefferson, CO	1.0289	1.0197
2120 Des Moines, IA Dallas, IA Polk, IA Warren, IA	0.8881	0.9219
2160 [1] Detroit, MI Lapeer, MI Macomb, MI Monroe, MI Oakland, MI St. Clair, MI Wayne, MI	1.0478	1.0325
2180 Dothan, AL Dale, AL Houston, AL	0.8005	0.8587
2190 Dover, DE Kent, DE	1.0453	1.0308
2200 Dubuque, IA Dubuque, IA	0.8617	0.9031
2240 Duluth-Superior, MN–WI St. Louis, MN Douglas, WI	1.0401	1.0273
2281 Dutchess County, NY Dutchess, NY	1.0639	1.0433
2290 [2] Eau Claire, WI Chippewa, WI Eau Claire, WI	0.9121	0.9389
2320 El Paso, TX El Paso, TX	0.9162	0.9418
2330 Elkhart-Goshen, IN Elkhart, IN	0.9646	0.9756
2335 Elmira, NY Chemung, NY	0.8530	0.8968
2340 Enid, OK Garfield, OK	0.8454	0.8914
2360 Erie, PA Erie, PA	0.8911	0.9241
2400 Eugene-Springfield, OR Lane, OR	1.1485	1.0995
2440 [2] Evansville-Henderson, IN–KY (IN Hospitals) Posey, IN Vanderburgh, IN Warrick, IN Henderson, KY	0.8757	0.9131
2440 [2] Evansville-Henderson, IN–KY (KY Hospitals) Posey, IN Vanderburgh, IN Warrick, IN Henderson, KY	0.8019	0.8597
2520 Fargo-Moorhead, ND–MN Clay, MN Cass, ND	0.9374	0.9567
2560 Fayetteville, NC Cumberland, NC	0.9132	0.9397
2580 Fayetteville-Springdale-Rogers, AR Benton, AR Washington, AR	0.7587	0.8277
2620 Flagstaff, AZ–UT Coconino, AZ Kane, UT	1.0678	1.0459
2640 Flint, MI Genesee, MI	1.0920	1.0621
2650 Florence, AL Colbert, AL Lauderdale, AL	0.7927	0.8529
2655 Florence, SC Florence, SC	0.8843	0.9192
2670 Fort Collins-Loveland, CO Larimer, CO	1.0161	1.0110
2680 [1] Ft. Lauderdale, FL Broward, FL	1.0906	1.0612
2700 Fort Myers-Cape Coral, FL Lee, FL	0.9380	0.9571
2710 Fort Pierce-Port St. Lucie, FL Martin, FL St. Lucie, FL	1.0067	1.0046
2720 Fort Smith, AR–OK	0.8076	0.8639

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TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
Crawford, AR		
Sebastian, AR		
Sequoyah, OK		
2750 [2]Fort Walton Beach, FL	0.8733	0.9114
Okaloosa, FL		
2760 Fort Wayne, IN	0.9186	0.9435
Adams, IN		
Allen, IN		
De Kalb, IN		
Huntington, IN		
Wells, IN		
Whitley, IN		
2800 [1]Forth Worth-Arlington, TX	0.9452	0.9621
Hood, TX		
Johnson, TX		
Parker, TX		
Tarrant, TX		
2840 Fresno, CA	0.9972	0.9981
Fresno, CA		
Madera, CA		
2880 Gadsden, AL	0.8845	0.9194
Etowah, AL		
2900 Gainesville, FL	1.2133	1.1416
Alachua, FL		
2920 Galveston-Texas City, TX	1.0271	1.0185
Galveston, TX		
2960 Gary, IN	0.9571	0.9704
Lake, IN		
Porter, IN		
2975 [2]Glens Falls, NY	0.8530	0.8968
Warren, NY		
Washington, NY		
2980 Goldsboro, NC	0.8810	0.9169
Wayne, NC		
2985 Grand Forks, ND–MN	0.9173	0.9426
Polk, MN		
Grand Forks, ND		
2995 Grand Junction, CO	0.9816	0.9874
Mesa, CO		
3000 [1]Grand Rapids-Muskegon-Holland, MI	1.0161	1.0110
Allegan, MI		
Kent, MI		
Muskegon, MI		
Ottawa, MI		
3040 Great Falls, MT	0.9301	0.9516
Cascade, MT		
3060 Greeley, CO	0.9604	0.9727
Weld, CO		
3080 Green Bay, WI	0.9440	0.9613
Brown, WI		
3120 [1]Greensboro-Winston-Salem-High Point, NC	0.9616	0.9735
Alamance, NC		
Davidson, NC		
Davie, NC		
Forsyth, NC		
Guilford, NC		
Randolph, NC		
Stokes, NC		
Yadkin, NC		
3150 Greenville, NC	0.9963	0.9975
Pitt, NC		
3160 Greenville-Spartanburg-Anderson, SC	0.9110	0.9382
Anderson, SC		
Cherokee, SC		
Greenville, SC		
Pickens, SC		
Spartanburg, SC		
3180 [2]Hagerstown, MD	0.8962	0.9277
Washington, MD		
3200 Hamilton-Middletown, OH	0.9269	0.9493
Butler, OH		
3240 Harrisburg-Lebanon-Carlisle, PA	0.9311	0.9523
Cumberland, PA		
Dauphin, PA		
Lebanon, PA		
Perry, PA		
3283 [1,2]Hartford, CT	1.2357	1.1560
Hartford, CT		
Litchfield, CT		
Middlesex, CT		
Tolland, CT		
3285 [2]Hattiesburg, MS	0.7612	0.8296
Forrest, MS		
Lamar, MS		
3290 Hickory-Morganton-Lenoir, NC	0.9517	0.9667
Alexander, NC		
Burke, NC		
Caldwell, NC		
Catawba, NC		
3320 Honolulu, HI	1.1658	1.1108
Honolulu, HI		
3350 Houma, LA	0.8043	0.8615
Lafourche, LA		
Terrebonne, LA		
3360 [1]Houston, TX	0.9604	0.9727
Chambers, TX		
Fort Bend, TX		
Harris, TX		
Liberty, TX		
Montgomery, TX		
Waller, TX		
3400 Huntington-Ashland, WV–KY–OH	0.9700	0.9794
Boyd, KY		
Carter, KY		
Greenup, KY		
Lawrence, OH		
Cabell, WV		
Wayne, WV		
3440 Huntsville, AL	0.8854	0.9200
Limestone, AL		
Madison, AL		
3480 [1]Indianapolis, IN	0.9771	0.9843
Boone, IN		
Hamilton, IN		
Hancock, IN		
Hendricks, IN		
Johnson, IN		
Madison, IN		
Marion, IN		
Morgan, IN		
Shelby, IN		
3500 Iowa City, IA	0.9973	0.9982
Johnson, IA		
3520 Jackson, MI	0.9387	0.9576
Jackson, MI		
3560 Jackson, MS	0.8589	0.9011
Hinds, MS		
Madison, MS		
Rankin, MS		
3580 Jackson, TN	0.9117	0.9387
Madison, TN		
Chester, TN		
3600 [1]Jacksonville, FL	0.9040	0.9332
Clay, FL		
Duval, FL		
Nassau, FL		
St. Johns, FL		
3605 [2]Jacksonville, NC	0.8632	0.9042
Onslow, NC		
3610 [2]Jamestown, NY	0.8530	0.8968
Chautauqua, NY		
3620 Janesville-Beloit, WI	0.9840	0.9890
Rock, WI		
3640 Jersey City, NJ	1.1216	1.0818
Hudson, NJ		
3660 Johnson City-Kingsport-Bristol, TN–VA	0.8540	0.8976
Carter, TN		
Hawkins, TN		
Sullivan, TN		
Unicoi, TN		
Washington, TN		
Bristol City, VA		
Scott, VA		
Washington, VA		
3680 Johnstown, PA	0.8959	0.9275
Cambria, PA		
Somerset, PA		
3700 Jonesboro, AR	0.8523	0.8963
Craighead, AR		
3710 Joplin, MO	0.8736	0.9116
Jasper, MO		
Newton, MO		
3720 Kalamazoo-Battlecreek, MI	1.0696	1.0472
Calhoun, MI		
Kalamazoo, MI		
Van Buren, MI		
3740 Kankakee, IL	0.9268	0.9493
Kankakee, IL		
3760 [1]Kansas City, KS–MO	0.9430	0.9606
Johnson, KS		
Leavenworth, KS		
Miami, KS		
Wyandotte, KS		
Cass, MO		
Clay, MO		
Clinton, MO		
Jackson, MO		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
Lafayette, MO		
Platte, MO		
Ray, MO		
3800 Kenosha, WI	0.9678	0.9778
Kenosha, WI		
3810 [2]Killeen-Temple, TX	0.7673	0.8341
Bell, TX		
Coryell, TX		
3840 Knoxville, TN	0.8904	0.9236
Anderson, TN		
Blount, TN		
Knox, TN		
Loudon, TN		
Sevier, TN		
Union, TN		
3850 Kokomo, IN	0.9290	0.9508
Howard, IN		
Tipton, IN		
3870 La Crosse, WI–MN	0.9328	0.9535
Houston, MN		
La Crosse, WI		
3880 Lafayette, LA	0.8600	0.9019
Acadia, LA		
Lafayette, LA		
St. Landry, LA		
St. Martin, LA		
3920 Lafayette, IN	0.9165	0.9420
Clinton, IN		
Tippecanoe, IN		
3960 Lake Charles, LA	0.7810	0.8443
Calcasieu, LA		
3980 Lakeland-Winter Haven, FL	0.9167	0.9422
Polk, FL		
4000 Lancaster, PA	0.9413	0.9594
Lancaster, PA		
4040 Lansing-East Lansing, MI	0.9653	0.9761
Clinton, MI		
Eaton, MI		
Ingham, MI		
4080 Laredo, TX	0.7877	0.8492
Webb, TX		
4100 [2]Las Cruces, NM	0.8835	0.9187
Dona Ana, NM		
4120 [1]Las Vegas, NV–AZ	1.1238	1.0832
Mohave, AZ		
Clark, NV		
Nye, NV		
4150 Lawrence, KS	0.8756	0.9130
Douglas, KS		
4200 Lawton, OK	0.8783	0.9150
Comanche, OK		
4243 Lewiston-Auburn, ME	0.9451	0.9621
Androscoggin, ME		
4280 Lexington, KY	0.8850	0.9197
Bourbon, KY		
Clark, KY		
Fayette, KY		
Jessamine, KY		
Madison, KY		
Scott, KY		
Woodford, KY		
4320 Lima, OH	0.9558	0.9695
Allen, OH		
Auglaize, OH		
4360 Lincoln, NE	1.0272	1.0185
Lancaster, NE		
4400 Little Rock-North Little Rock, AR	0.9053	0.9341
Faulkner, AR		
Lonoke, AR		
Pulaski, AR		
Saline, AR		
4420 Longview-Marshall, TX	0.8439	0.8903
Gregg, TX		
Harrison, TX		
Upshur, TX		
4480 [1]Los Angeles-Long Beach, CA	1.2071	1.1376
Los Angeles, CA		
4520 [1]Louisville, KY–IN	0.9596	0.9722
Clark, IN		
Floyd, IN		
Harrison, IN		
Scott, IN		
Bullitt, KY		
Jefferson, KY		
Oldham, KY		
4600 Lubbock, TX	0.8547	0.8981
Lubbock, TX		
4640 Lynchburg, VA	0.9208	0.9451
Amherst, VA		
Bedford, VA		
Bedford City, VA		
Campbell, VA		
Lynchburg City, VA		
4680 Macon, GA	0.9077	0.9358
Bibb, GA		
Houston, GA		
Jones, GA		
Peach, GA		
Twiggs, GA		
4720 Madison, WI	1.0462	1.0314
Dane, WI		
4800 Mansfield, OH	0.8827	0.9181
Crawford, OH		
Richland, OH		
4840 Mayaguez, PR	0.4917	0.6150
Anasco, PR		
Cabo Rojo, PR		
Hormigueros, PR		
Mayaguez, PR		
Sabana Grande, PR		
San German, PR		
4880 McAllen-Edinburg-Mission, TX	0.8433	0.8898
Hidalgo, TX		
4890 Medford-Ashland, OR	1.0433	1.0295
Jackson, OR		
4900 Melbourne-Titusville-Palm Bay, FL	0.9883	0.9920
Brevard, Fl		
4920 [1]Memphis, TN–AR–MS	0.9435	0.9610
Crittenden, AR		
DeSoto, MS		
Fayette, TN		
Shelby, TN		
Tipton, TN		
4940 Merced, CA	0.9870	0.9911
Merced, CA		
5000 [1]Miami, FL	0.9934	0.9955
Dade, FL		
5015 [1]Middlesex-Somerset-Hunterdon, NJ	1.1952	1.1299
Hunterdon, NJ		
Middlesex, NJ		
Somerset, NJ		
5080 [1]Milwaukee-Waukesha, WI	0.9898	0.9930
Milwaukee, WI		
Ozaukee, WI		
Washington, WI		
Waukesha, WI		
5120 [1]Minneapolis-St. Paul, MN–WI	1.1000	1.0674
Anoka, MN		
Carver, MN		
Chisago, MN		
Dakota, MN		
Hennepin, MN		
Isanti, MN		
Ramsey, MN		
Scott, MN		
Sherburne, MN		
Washington, MN		
Wright, MN		
Pierce, WI		
St. Croix, WI		
5140 Missoula, MT	0.9453	0.9622
Missoula, MT		
5160 Mobile, AL	0.7766	0.8410
Baldwin, AL		
Mobile, AL		
5170 Modesto, CA	1.0945	1.0638
Stanislaus, CA		
5190 [1]Monmouth-Ocean, NJ	1.1514	1.1014
Monmouth, NJ		
Ocean, NJ		
5200 Monroe, LA	0.8296	0.8799
Ouachita, LA		
5240 Montgomery, AL	0.7502	0.8213
Autauga, AL		
Elmore, AL		
Montgomery, AL		
5280 Muncie, IN	0.9689	0.9786
Delaware, IN		
5330 Myrtle Beach, SC	0.8855	0.9201
Horry, SC		
5345 Naples, FL	0.9566	0.9701
Collier, FL		
5360 [1]Nashville, TN	0.9602	0.9726
Cheatham, TN		
Davidson, TN		
Dickson, TN		
Robertson, TN		
Rutherford TN		
Sumner, TN		

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TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
Williamson, TN Wilson, TN		
5380 [1] Nassau-Suffolk, NY	1.3841	1.2493
Nassau, NY Suffolk, NY		
5483 [1][2] New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2357	1.1560
Fairfield, CT New Haven, CT		
5523 [1][2] New London-Norwich, CT	1.2357	1.1560
New London, CT		
5560 [1] New Orleans, LA	0.9054	0.9342
Jefferson, LA Orleans, LA Plaquemines, LA St. Bernard, LA St. Charles, LA St. James, LA St. John The Baptist, LA St. Tammany, LA		
5600 [1] New York, NY	1.3923	1.2544
Bronx, NY Kings, NY New York, NY Putnam, NY Queens, NY Richmond, NY Rockland, NY Westchester, NY		
5640 [1] Newark, NJ	1.2004	1.1332
Essex, NJ Morris, NJ Sussex, NJ Union, NJ Warren, NJ		
5660 Newburgh, NY–PA	1.1235	1.0830
Orange, NY Pike, PA		
5720 [1] Norfolk-Virginia Beach-Newport News, VA–NC	0.8630	0.9040
Currituck, NC Chesapeake City, VA Gloucester, VA Hampton City, VA Isle of Wight, VA James City, VA Mathews, VA Newport News City, VA Norfolk City, VA Poquoson City, VA Portsmouth City, VA Suffolk City, VA Virginia Beach City VA Williamsburg City, VA York, VA		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
5775 [1] Oakland, CA	1.5416	1.3450
Alameda, CA Contra Costa, CA		
5790 Ocala, FL	0.9579	0.9710
Marion, FL		
5800 Odessa-Midland, TX	0.9017	0.9316
Ector, TX Midland, TX		
5880 [1] Oklahoma City, OK	0.8728	0.9110
Canadian, OK Cleveland, OK Logan, OK McClain, OK Oklahoma, OK Pottawatomie, OK		
5910 Olympia, WA	1.1481	1.0992
Thurston, WA		
5920 Omaha, NE–IA	0.9696	0.9791
Pottawattamie, IA Cass, NE Douglas, NE Sarpy, NE Washington, NE		
5945 [1] Orange County, CA	1.1354	1.0909
Orange, CA		
5960 [1] Orlando, FL	0.9464	0.9630
Lake, FL Orange, FL Osceola, FL Seminole, FL		
5990 Owensboro, KY	0.8346	0.8835
Daviess, KY		
6015 Panama City, FL	0.9166	0.9421
Bay, FL		
6020 Parkersburg-Marietta, WV–OH (WV Hospitals)	0.8192	0.8723
Washington, OH Wood, WV		
6020 [2] Parkersburg-Marietta, WV–OH (OH Hospitals)	0.8761	0.9134
Washington, OH Wood, WV		
6080 [2] Pensacola, FL	0.8733	0.9114
Escambia, FL Santa Rosa, FL		
6120 Peoria-Pekin, IL	0.8883	0.9221
Peoria, IL Tazewell, IL Woodford, IL		
6160 [1] Philadelphia, PA–NJ	1.0626	1.0425
Burlington, NJ Camden, NJ Gloucester, NJ Salem, NJ Bucks, PA Chester, PA Delaware, PA Montgomery, PA Philadelphia, PA		
6200 [1] Phoenix-Mesa, AZ	0.9654	0.9762

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
Maricopa, AZ Pinal, AZ		
6240 Pine Bluff, AR	0.7837	0.8463
Jefferson, AR		
6280 [1] Pittsburgh, PA	0.9714	0.9803
Allegheny, PA Beaver, PA Butler, PA Fayette, PA Washington, PA Westmoreland, PA		
6323 [2] Pittsfield, MA	1.1586	1.1061
Berkshire, MA		
6340 Pocatello, ID	0.9557	0.9694
Bannock, ID		
6360 Ponce, PR	0.5278	0.6456
Guayanilla, PR Juana Diaz, PR Penuelas, PR Ponce, PR Villalba, PR Yauco, PR		
6403 Portland, ME	0.9501	0.9656
Cumberland, ME Sagadahoc, ME York, ME		
6440 [1] Portland-Vancouver, OR–WA	1.1291	1.0867
Clackamas, OR Columbia, OR Multnomah, OR Washington, OR Yamhill, OR Clark, WA		
6483 [1] Providence-Warwick-Pawtucket, RI	1.0781	1.0528
Bristol, RI Kent, RI Newport, RI Providence, RI Washington, RI		
6520 Provo-Orem, UT	0.9967	0.9977
Utah, UT		
6560 [2] Pueblo, CO	0.8909	0.9239
Pueblo, CO		
6580 Punta Gorda, FL	0.8818	0.9175
Charlotte, FL		
6600 Racine, WI	0.9441	0.9614
Racine, WI		
6640 [1] Raleigh-Durham-Chapel Hill, NC	0.9901	0.9932
Chatham, NC Durham, NC Franklin, NC Johnston, NC Orange, NC Wake, NC		
6660 Rapid City, SD	0.8971	0.9283
Pennington, SD		
6680 [2] Reading, PA	0.8473	0.8927
Berks, PA		
6690 Redding, CA	1.1222	1.0822
Shasta, CA		
6720 Reno, NV	1.0456	1.0310
Washoe, NV		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
6740 Richland-Kennewick-Pasco, WA	1.1086	1.0732
Benton, WA Franklin, WA		
6760 Richmond-Petersburg, VA	0.9712	0.9802
Charles City County, VA Chesterfield, VA Colonial Heights City, VA Dinwiddie, VA Goochland, VA Hanover, VA Henrico, VA Hopewell City, VA New Kent, VA Petersburg City, VA Powhatan, VA Prince George, VA Richmond City, VA		
6780 [1] Riverside-San Bernardino, CA	1.1012	1.0682
Riverside, CA San Bernardino, CA		
6800 [2] Roanoke, VA	0.8473	0.8927
Botetourt, VA Roanoke, VA Roanoke City, VA Salem City, VA		
6820 Rochester, MN	1.1595	1.1067
Olmsted, MN		
6840 [1] Rochester, NY	0.9238	0.9472
Genesee, NY Livingston, NY Monroe, NY Ontario, NY Orleans, NY Wayne, NY		
6880 Rockford, IL	0.9194	0.9441
Boone, IL Ogle, IL Winnebago, IL		
6895 Rocky Mount, NC	0.9197	0.9443
Edgecombe, NC Nash, NC		
6920 [1] Sacramento, CA	1.1809	1.1206
El Dorado, CA Placer, CA Sacramento, CA		
6960 Saginaw-Bay City-Midland, MI	0.9662	0.9767
Bay, MI Midland, MI Saginaw, MI		
6980 St. Cloud, MN	1.0040	1.0027
Benton, MN Stearns, MN		
7000 St. Joseph, MO	0.9113	0.9384
Andrew, MO Buchanan, MO		
7040 [1] St. Louis, MO–IL	0.9024	0.9321
Clinton, IL Jersey, IL Madison, IL Monroe, IL St. Clair, IL Franklin, MO Jefferson, MO Lincoln, MO St. Charles, MO St. Louis, MO St. Louis City, MO Warren, MO		
7080 [2] Salem, OR	1.0156	1.0107
Marion, OR Polk, OR		
7120 Salinas, CA	1.4854	1.3112
Monterey, CA		
7160 [1] Salt Lake City-Ogden, UT	0.9976	0.9984
Davis, UT Salt Lake, UT Weber, UT		
7200 San Angelo, TX	0.8288	0.8793
Tom Green, TX		
7240 [1] San Antonio, TX	0.8333	0.8826
Bexar, TX Comal, TX Guadalupe, TX Wilson, TX		
7320 [1] San Diego, CA	1.1480	1.0991
San Diego, CA		
7360 [1] San Francisco, CA	1.4319	1.2787
Marin, CA San Francisco, CA San Mateo, CA		
7400 [1] San Jose, CA	1.4249	1.2744
Santa Clara, CA		
7440 [1] San Juan-Bayamon, PR	0.4812	0.6060
Aguas Buenas, PR Barceloneta, PR Bayamon, PR Canovanas, PR Carolina, PR Catano, PR Ceiba, PR Comerio, PR Corozal, PR Dorado, PR Fajardo, PR Florida, PR Guaynabo, PR Humacao, PR Juncos, PR Los Piedras, PR Loiza, PR Luguillo, PR Manati, PR Morovis, PR Naguabo, PR Naranjito, PR Rio Grande, PR San Juan, PR Toa Alta, PR Toa Baja, PR Trujillo Alto, PR Vega Alta, PR Vega Baja, PR Yabucoa, PR		
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.1117	1.0752
San Luis Obispo, CA		
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.0927	1.0626
Santa Barbara, CA		
7485 Santa Cruz-Watsonville, CA	1.4049	1.2621
Santa Cruz, CA		
7490 Santa Fe, NM	1.0312	1.0213
Los Alamos, NM Santa Fe, NM		
7500 Santa Rosa, CA	1.2727	1.1796
Sonoma, CA		
7510 Sarasota-Bradenton, FL	1.0118	1.0081
Manatee, FL Sarasota, FL		
7520 Savannah, GA	0.9349	0.9549
Bryan, GA Chatham, GA Effingham, GA		
7560 [2] Scranton—Wilkes-Barre—Hazleton, PA	0.8473	0.8927
Columbia, PA Lackawanna, PA Luzerne, PA Wyoming, PA		
7600 [1] Seattle-Bellevue-Everett, WA	1.1056	1.0712
Island, WA King, WA Snohomish, WA		
7610 [2] Sharon, PA	0.8473	0.8927
Mercer, PA		
7620 [2] Sheboygan, WI	0.9121	0.9389
Sheboygan, WI		
7640 Sherman-Denison, TX	0.9163	0.9419
Grayson, TX		
7680 Shreveport-Bossier City, LA	0.9165	0.9420
Bossier, LA Caddo, LA Webster, LA		
7720 Sioux City, IA–NE	0.8868	0.9210
Woodbury, IA Dakota, NE		
7760 Sioux Falls, SD	0.9245	0.9477
Lincoln, SD Minnehaha, SD		
7800 South Bend, IN	1.0303	1.0207
St. Joseph, IN		
7840 Spokane, WA	1.0791	1.0535
Spokane, WA		
7880 Springfield, IL	0.8502	0.8948
Menard, IL Sangamon, IL		
7920 Springfield, MO	0.8666	0.9066
Christian, MO		

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TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
Greene, MO		
Webster, MO		
8003 [2] Springfield, MA	1.1586	1.1061
Hampden, MA		
Hampshire, MA		
8050 State College, PA	0.9239	0.9472
Centre, PA		
8080 [2] Steubenville-Weirton, OH–WV (OH Hospitals)	0.8761	0.9134
Jefferson, OH		
Brooke, WV		
Hancock, WV		
8080 Steubenville-Weirton, OH–WV (WV Hospitals)	0.8737	0.9117
Jefferson, OH		
Brooke, WV		
Hancock, WV		
8120 Stockton-Lodi, CA	1.1114	1.0750
San Joaquin, CA		
8140 [2] Sumter, SC	0.8606	0.9023
Sumter, SC		
8160 Syracuse, NY	0.9247	0.9478
Cayuga, NY		
Madison, NY		
Onondaga, NY		
Oswego, NY		
8200 Tacoma, WA	1.1751	1.1168
Pierce, WA		
8240 [2] Tallahassee, FL	0.8733	0.9114
Gadsden, FL		
Leon, FL		
8280 [1] Tampa-St. Petersburg-Clearwater, FL	0.9095	0.9371
Hernando, FL		
Hillsborough, FL		
Pasco, FL		
Pinellas, FL		
8320 [2] Terre Haute, IN	0.8757	0.9131
Clay, IN		
Vermillion, IN		
Vigo, IN		
8360 Texarkana, AR-Texarkana, TX	0.8414	0.8885
Miller, AR		
Bowie, TX		
8400 Toledo, OH	0.9815	0.9873
Fulton, OH		
Lucas, OH		
Wood, OH		
8440 Topeka, KS	0.9015	0.9315
Shawnee, KS		
8480 Trenton, NJ	1.0172	1.0117
Mercer, NJ		
8520 Tucson, AZ	0.9002	0.9305
Pima, AZ		
8560 Tulsa, OK	0.8949	0.9268
Creek, OK		
Osage, OK		
Rogers, OK		
Tulsa, OK		
Wagoner, OK		
8600 Tuscaloosa, AL	0.8265	0.8777
Tuscaloosa, AL		
8640 Tyler, TX	0.9109	0.9381
Smith, TX		
8680 [2] Utica-Rome, NY	0.8530	0.8968
Herkimer, NY		
Oneida, NY		
8720 Vallejo-Fairfield-Napa, CA	1.3535	1.2303
Napa, CA		
Solano, CA		
8735 Ventura, CA	1.1088	1.0733
Ventura, CA		
8750 Victoria, TX	0.8354	0.8841
Victoria, TX		
8760 Vineland-Millville-Bridgeton, NJ	1.0473	1.0322
Cumberland, NJ		
8780 [2] Visalia-Tulare-Portenville, CA	0.9870	0.9911
Tulare, CA		
8800 Waco, TX	0.8268	0.8779
McLennan, TX		
8840 [1] Washington, DC–MD–VA–WV	1.1176	1.0791
District of Columbia, DC		
Calvert, MD		
Charles, MD		
Frederick, MD		
Montgomery, MD		
Prince Georges, MD		
Alexandria City, VA		
Arlington, VA		
Clarke, VA		
Culpeper, VA		
Fairfax, VA		
Fairfax City, VA		
Falls Church City, VA		
Fauquier, VA		
Fredericksburg City, VA		
King George, VA		
Loudoun, VA		
Manassas City, VA		
Manassas Park City, VA		
Prince William, VA		
Spotsylvania, VA		
Stafford, VA		
Warren, VA		
Berkeley, WV		
Jefferson, WV		
8920 Waterloo-Cedar Falls, IA	0.8608	0.9024
Black Hawk, IA		
8940 Wausau, WI	0.9516	0.9666
Marathon, WI		
8960 [1] West Palm Beach-Boca Raton, FL	0.9785	0.9852
Palm Beach, FL		
9000 [2] Wheeling, WV–OH (WV Hospitals)	0.8145	0.8689
Belmont, OH		
Marshall, WV		
Ohio, WV		
9000 [2] Wheeling, WV–OH (OH Hospitals)	0.8761	0.9134
Belmont, OH		
Marshall, WV		
Ohio, WV		
9040 Wichita, KS	0.9541	0.9683
Butler, KS		
Harvey, KS		
Sedgwick, KS		
9080 Wichita Falls, TX	0.8015	0.8594
Archer, TX		
Wichita, TX		
9140 Williamsport, PA	0.8503	0.8949
Lycoming, PA		
9160 Wilmington-Newark, DE–MD	1.0757	1.0512
New Castle, DE		
Cecil, MD		
9200 Wilmington, NC	0.9971	0.9980
New Hanover, NC		
Brunswick, NC		
9260 Yakima, WA	1.0690	1.0468
Yakima, WA		
9270 [2] Yolo, CA	0.9870	0.9911
Yolo, CA		
9280 [2] York, PA	0.8473	0.8927
York, PA		
9320 Youngstown-Warren, OH	0.9480	0.9641
Columbiana, OH		
Mahoning, OH		
Trumbull, OH		
9340 Yuba City, CA	1.0479	1.0326
Sutter, CA		
Yuba, CA		
9360 Yuma, AZ	0.8904	0.9236
Yuma, AZ		

[1] Large Urban Area
[2] Hospitals geographically located in the area are assigned the statewide rural wage index for FY 2002.

TABLE 4B.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS

Nonurban area	Wage index	GAF
Alabama	0.7483	0.8199
Alaska	1.2006	1.1334
Arizona	0.8747	0.9124
Arkansas	0.7561	0.8258
California	0.9870	0.9911
Colorado	0.8909	0.9239
Connecticut	1.2357	1.1560
Delaware	0.9487	0.9646
Florida	0.8733	0.9114
Georgia	0.8341	0.8832
Hawaii	1.1235	1.0830
Idaho	0.8820	0.9176
Illinois	0.8140	0.8686
Indiana	0.8757	0.9131
Iowa	0.8194	0.8725
Kansas	0.7850	0.8472
Kentucky	0.8019	0.8597
Louisiana	0.7755	0.8402
Maine	0.8714	0.9100
Maryland	0.8962	0.9277
Massachusetts	1.1586	1.1061
Michigan	0.9115	0.9385
Minnesota	0.9109	0.9381
Mississippi	0.7612	0.8296
Missouri	0.7838	0.8464
Montana	0.8642	0.9049
Nebraska	0.8233	0.8753
Nevada	0.9785	0.9852
New Hampshire	0.9914	0.9941
New Jersey [1]		
New Mexico	0.8835	0.9187
New York	0.8530	0.8968
North Carolina	0.8632	0.9042
North Dakota	0.7965	0.8557
Ohio	0.8761	0.9134
Oklahoma	0.7646	0.8321
Oregon	1.0156	1.0107
Pennsylvania	0.8473	0.8927
Puerto Rico	0.4654	0.5923
Rhode Island [1]		
South Carolina	0.8606	0.9023
South Dakota	0.7934	0.8534
Tennessee	0.7901	0.8510
Texas	0.7673	0.8341
Utah	0.9156	0.9414
Vermont	0.9576	0.9708
Virginia	0.8473	0.8927
Washington	1.0301	1.0205
West Virginia	0.8145	0.8689
Wisconsin	0.9121	0.9389
Wyoming	0.8855	0.9201

[1] All counties within the State are classified as urban.

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED

Area	Wage index	GAF
Abilene, TX	0.8118	0.8669
Akron, OH	0.9924	0.9948
Albany, GA	1.0675	1.0457
Albuquerque, NM	0.9748	0.9827
Alexandria, LA	0.8137	0.8683
Allentown-Bethlehem-Easton, PA	0.9443	0.9615
Altoona, PA	0.9225	0.9463
Amarillo, TX	0.8485	0.8936
Anchorage, AK	1.2605	1.1718
Ann Arbor, MI	1.1220	1.0820
Anniston, AL	0.7922	0.8526
Asheville, NC	0.9307	0.9520
Athens, GA	0.9818	0.9875
Atlanta, GA	1.0066	1.0045
Augusta-Aiken, GA–SC	1.0090	1.0062
Austin-San Marcos, TX	0.9327	0.9534
Barnstable-Yarmouth, MA	1.3415	1.2229
Baton Rouge, LA	0.8258	0.8772
Bellingham, WA	1.1427	1.0957
Benton Harbor, MI	0.9115	0.9385
Bergen-Passaic, NJ	1.1669	1.1115
Billings, MT	0.9623	0.9740
Biloxi-Gulfport-Pascagoula, MS	0.8198	0.8728
Binghamton, NY	0.8595	0.9015
Birmingham, AL	0.8648	0.9053
Bismarck, ND	0.7965	0.8557
Bloomington-Normal, IL	0.8545	0.8979
Boise City, ID	0.9190	0.9438
Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH	1.1483	1.0993
Burlington, VT	0.9606	0.9728
Caguas, PR	0.4993	0.6215
Casper, WY	0.9454	0.9623
Champaign-Urbana, IL	0.9264	0.9490
Charleston-North Charleston, SC	0.9293	0.9510
Charleston, WV	0.8991	0.9298
Charlotte-Gastonia-Rock Hill, NC–SC	0.9469	0.9633
Chattanooga, TN–GA	0.9207	0.9450
Chicago, IL	1.0887	1.0599
Cincinnati, OH–KY–IN	0.9574	0.9706
Clarksville-Hopkinsville, TN–KY	0.8481	0.8933
Cleveland-Lorain-Elyria, OH	0.9496	0.9652
Columbia, MO	0.8787	0.9153
Columbia, SC	0.9264	0.9490
Columbus, GA–AL	0.8471	0.8926
Columbus, OH	0.9724	0.9810
Corpus Christi, TX	0.8203	0.8731
Dallas, TX	0.9506	0.9659
Davenport-Moline-Rock Island, IA–IL	0.8790	0.9155
Dayton-Springfield, OH	0.9323	0.9531
Denver, CO	1.0289	1.0197
Des Moines, IA	0.8881	0.9219
Dothan, AL	0.8005	0.8587
Dover, DE	0.9957	0.9971
Duluth-Superior, MN–WI	1.0299	1.0204
Eau Claire, WI	0.9121	0.9389
Elkhart-Goshen, IN	0.9516	0.9666
Erie, PA	0.8780	0.9148
Eugene-Springfield, OR	1.1073	1.0723
Fargo-Moorhead, ND–MN	0.9247	0.9478
Fayetteville, NC	0.8970	0.9283
Flagstaff, AZ–UT	1.0222	1.0151
Flint, MI	1.0920	1.0621
Florence, AL	0.7927	0.8529
Florence, SC	0.8843	0.9192
Fort Collins-Loveland, CO	1.0161	1.0110
Ft. Lauderdale, FL	1.0906	1.0612
Fort Pierce-Port St. Lucie, FL	1.0067	1.0046
Fort Smith, AR–OK	0.7889	0.8501
Fort Walton Beach, FL	0.8547	0.8981
Fort Wayne, IN	0.9059	0.9346
Forth Worth-Arlington, TX	0.9452	0.9621
Gadsden, AL	0.8446	0.8908
Gainesville, FL	1.1855	1.1236
Grand Forks, ND–MN (ND Hospitals)	0.9022	0.9319
Grand Forks, ND–MN (MN Hospital)	0.9109	0.9381
Grand Junction, CO	0.9816	0.9874
Grand Rapids-Muskegon-Holland, MI	1.0052	1.0036
Great Falls, MT	0.9301	0.9516
Greeley, CO	0.9604	0.9727
Green Bay, WI	0.9440	0.9613
Greensboro-Winston-Salem-High Point, NC	0.9474	0.9637
Greenville, NC	0.9751	0.9829
Greenville-Spartanburg-Anderson, SC	0.9110	0.9382
Harrisburg-Lebanon-Carlisle, PA	0.9068	0.9352
Hartford, CT	1.1586	1.1061
Hattiesburg, MS	0.7612	0.8296
Hickory-Morganton-Lenoir, NC	0.9517	0.9667
Honolulu, HI	1.1658	1.1108
Houston, TX	0.9604	0.9727
Huntington-Ashland, WV–KY–OH	0.9286	0.9505
Huntsville, AL	0.8657	0.9060
Indianapolis, IN	0.9666	0.9770
Iowa City, IA	0.9820	0.9876
Jackson, MS	0.8589	0.9011
Jackson, TN	0.8945	0.9265
Jacksonville, FL	0.9040	0.9332
Johnson City-Kingsport-Bristol, TN–VA	0.8540	0.8976
Jonesboro, AR	0.8093	0.8651
Joplin, MO	0.8560	0.8990
Kalamazoo-Battlecreek, MI	1.0537	1.0365
Kansas City, KS–MO	0.9430	0.9606
Knoxville, TN	0.8904	0.9236
Kokomo, IN	0.9290	0.9508
Lafayette, LA	0.8430	0.8896
Lansing-East Lansing, MI	0.9653	0.9761
Las Vegas, NV–AZ	1.1238	1.0832
Lawton, OK	0.8372	0.8854
Lexington, KY	0.8675	0.9072
Lima, OH	0.9558	0.9695
Lincoln, NE	0.9945	0.9962
Little Rock-North Little Rock, AR	0.8938	0.9260
Longview-Marshall, TX	0.8439	0.8903
Los Angeles-Long Beach, CA	1.2071	1.1376
Louisville, KY–IN	0.9481	0.9642
Lubbock, TX	0.8547	0.8981
Lynchburg, VA	0.8897	0.9231
Macon, GA	0.9077	0.9358
Madison, WI	1.0462	1.0314
Mansfield, OH	0.8827	0.9181
Medford-Ashland, OR	1.0156	1.0107
Melbourne-Titusville-Palm Bay, FL	0.9883	0.9920
Memphis, TN–AR–MS	0.9152	0.9411
Miami, FL	0.9934	0.9955

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TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area	Wage index	GAF
Milwaukee-Waukesha, WI	0.9898	0.9930
Minneapolis-St. Paul, MN–WI	1.1000	1.0674
Missoula, MT	0.9273	0.9496
Mobile, AL	0.7766	0.8410
Modesto, CA	1.0945	1.0638
Monmouth-Ocean, NJ	1.1514	1.1014
Monroe, LA	0.8191	0.8723
Montgomery, AL	0.7502	0.8213
Myrtle Beach, SC	0.8663	0.9064
Nashville, TN	0.9433	0.9608
New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2357	1.1560
New London-Norwich, CT	1.1578	1.1055
New Orleans, LA	0.9054	0.9342
New York, NY	1.3923	1.2544
Newark, NJ	1.2004	1.1332
Newburgh, NY–PA	1.0838	1.0567
Norfolk-Virginia Beach-Newport News, VA–NC	0.8632	0.9042
Oakland, CA	1.5313	1.3388
Odessa-Midland, TX (TX Hospitals)	0.8769	0.9140
Odessa-Midland, TX (NM Hospitals)	0.8835	0.9187
Oklahoma City, OK	0.8728	0.9110
Omaha, NE–IA	0.9696	0.9791
Orange County, CA	1.1354	1.0909
Orlando, FL	0.9464	0.9630
Peoria-Pekin, IL	0.8883	0.9221
Philadelphia, PA–NJ	1.0626	1.0425
Pine Bluff, AR	0.7837	0.8463
Pittsburgh, PA	0.9550	0.9690
Pittsfield, MA	1.0018	1.0012
Pocatello, ID	0.9264	0.9490
Portland, ME	0.9501	0.9656
Portland-Vancouver, OR–WA	1.1291	1.0867
Provo-Orem, UT	0.9840	0.9890
Raleigh-Durham-Chapel Hill, NC	0.9901	0.9932
Rapid City, SD	0.8849	0.9197
Reading, PA	0.8473	0.8927
Redding, CA	1.1222	1.0822
Reno, NV	1.0456	1.0310
Richland-Kennewick-Pasco, WA	1.0478	1.0325
Richmond-Petersburg, VA	0.9712	0.9802
Roanoke, VA	0.8468	0.8924
Rochester, MN	1.1595	1.1067
Rockford, IL	0.9080	0.9360
Sacramento, CA	1.1809	1.1206
Saginaw-Bay City-Midland, MI	0.9662	0.9767
St. Cloud, MN	1.0040	1.0027
St. Joseph, MO	0.8953	0.9271
St. Louis, MO–IL	0.8911	0.9241
Salinas, CA	1.4738	1.3042
Salt Lake City-Ogden, UT	0.9976	0.9984
San Diego, CA	1.1480	1.0991
Santa Fe, NM	1.0013	1.0009
Santa Rosa, CA	1.2408	1.1592
Sarasota-Bradenton, FL	1.0118	1.0081
Savannah, GA	0.9349	0.9549
Seattle-Bellevue-Everett, WA	1.1056	1.0712
Sherman-Denison, TX	0.8899	0.9232
Shreveport-Bossier City, LA	0.9165	0.9420
Sioux City, IA–NE	0.8868	0.9210
Sioux Falls, SD	0.9037	0.9330
South Bend, IN	1.0176	1.0120
Spokane, WA	1.0663	1.0449
Springfield, IL	0.8502	0.8948
Springfield, MO	0.8454	0.8914
Stockton-Lodi, CA	1.1114	1.0750
Syracuse, NY	0.9247	0.9478
Tampa-St. Petersburg-Clearwater, FL	0.9095	0.9371
Texarkana, AR-Texarkana, TX	0.8414	0.8885
Toledo, OH	0.9815	0.9873
Topeka, KS	0.8850	0.9197
Tucson, AZ	0.9002	0.9305
Tulsa, OK	0.8815	0.9173
Tuscaloosa, AL	0.8265	0.8777
Tyler, TX	0.8905	0.9237
Victoria, TX	0.8212	0.8738
Waco, TX	0.8268	0.8779
Washington, DC–MD–VA–WV	1.1024	1.0690
Waterloo-Cedar Falls, IA	0.8608	0.9024
Wausau, WI	0.9516	0.9666
West Palm Beach-Boca Raton, FL	0.9785	0.9852
Wichita, KS	0.9218	0.9458
Wichita Falls, TX	0.8015	0.8594
Wilmington-Newark, DE–MD	1.0757	1.0512
Rural Alabama	0.7483	0.8199
Rural Florida	0.8733	0.9114
Rural Illinois (IA Hospital)	0.8194	0.8725
Rural Illinois (MO Hospital)	0.8140	0.8686
Rural Kentucky	0.8019	0.8597
Rural Louisiana	0.7755	0.8402
Rural Michigan	0.9115	0.9385
Rural Minnesota	0.9109	0.9381
Rural Missouri (AK Hospital)	0.7838	0.8464
Rural Missouri (KS Hospital)	0.7850	0.8472
Rural Montana	0.8642	0.9049
Rural Nebraska	0.8233	0.8753
Rural Nevada	0.9219	0.9458
Rural Oregon	1.0156	1.0107
Rural Texas	0.7673	0.8341
Rural Washington	1.0301	1.0205
Rural Wisconsin	0.9121	0.9389
Rural Wyoming	0.8855	0.9201

TABLE 4F.—PUERTO RICO WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF)

Area	Wage index	GAF	Wage index—Reclass. hospitals	GAF—Reclass. hospitals
Aguadilla, PR	0.9666	0.9770		
Arecibo, PR	0.9555	0.9693		
Caguas, PR	1.0523	1.0355	1.0188	1.0128
Mayaguez, PR	1.0031	1.0021		
Ponce, PR	1.0768	1.0520		
San Juan-Bayamon, PR	0.9817	0.9874		
Rural Puerto Rico	0.9495	0.9651		

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS

Urban area (Constituent counties)	Wage index
0040 Abilene, TX	0.8057
Taylor, TX	
0060 Aguadilla, PR	0.4738
Aguada, PR	
Aguadilla, PR	
Moca, PR	
0080 Akron, OH	0.9924
Portage, OH	
Summit, OH	
0120 Albany, GA	1.0675
Dougherty, GA	
Lee, GA	
0160 Albany-Schenectady-Troy, NY	0.8597
Albany, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Schoharie, NY	
0200 Albuquerque, NM	0.9855
Bernalillo, NM	
Sandoval, NM	
Valencia, NM	
0220 Alexandria, LA	0.8121
Rapides, LA	
0240 Allentown-Bethlehem-Easton, PA	0.9443
Carbon, PA	
Lehigh, PA	
Northampton, PA	
0280 Altoona, PA	0.9225
Blair, PA	
0320 Amarillo, TX	0.8706
Potter, TX	
Randall, TX	
0380 Anchorage, AK	1.2454
Anchorage, AK	
0440 Ann Arbor, MI	1.1220
Lenawee, MI	
Livingston, MI	
Washtenaw, MI	
0450 Anniston, AL	0.8360
Calhoun, AL	
0460 Appleton-Oshkosh-Neenah, WI	0.9203
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
0470 Arecibo, PR	0.4683
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
0480 Asheville, NC	0.9307
Buncombe, NC	
Madison, NC	
0500 Athens, GA	0.9956
Clarke, GA	
Madison, GA	
Oconee, GA	
0520 Atlanta, GA	1.0176
Barrow, GA	
Bartow, GA	
Carroll, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
DeKalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Pickens, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
0560 Atlantic-Cape May, NJ	1.1349
Atlantic, NJ	
Cape May, NJ	
0580 Auburn-Opelika, AL	0.8325
Lee, AL	
0600 Augusta-Aiken, GA–SC	1.0090
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Edgefield, SC	
0640 Austin-San Marcos, TX	0.9327
Bastrop, TX	
Caldwell, TX	
Hays, TX	
Travis, TX	
Williamson, TX	
0680 Bakersfield, CA	0.9387
Kern, CA	
0720 Baltimore, MD	0.9723
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Anne's, MD	
0733 Bangor, ME	0.9559
Penobscot, ME	
0743 Barnstable-Yarmouth, MA	1.3539
Barnstable, MA	
0760 Baton Rouge, LA	0.8258
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
0840 Beaumont-Port Arthur, TX	0.8508
Hardin, TX	
Jefferson, TX	
Orange, TX	
0860 Bellingham, WA	1.1963
Whatcom, WA	
0870 Benton Harbor, MI	0.8912
Berrien, MI	
0875 Bergen-Passaic, NJ	1.1549
Bergen, NJ	
Passaic, NJ	
0880 Billings, MT	0.9623
Yellowstone, MT	
0920 Biloxi-Gulfport-Pascagoula, MS	0.8538
Hancock, MS	
Harrison, MS	
Jackson, MS	
0960 Binghamton, NY	0.8595
Broome, NY	
Tioga, NY	
1000 Birmingham, AL	0.8648
Blount, AL	
Jefferson, AL	
St. Clair, AL	
Shelby, AL	
1010 Bismarck, ND	0.7955
Burleigh, ND	
Morton, ND	
1020 Bloomington, IN	0.8689
Monroe, IN	
1040 Bloomington-Normal, IL	0.8448
McLean, IL	
1080 Boise City, ID	0.9151
Ada, ID	
Canyon, ID	
1123 Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH (NH Hospitals)	1.1483
Bristol, MA	
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Worcester, MA	
Hillsborough, NH	
Merrimack, NH	
Rockingham, NH	
Strafford, NH	
1125 Boulder-Longmont, CO	0.9836
Boulder, CO	
1145 Brazoria, TX	0.8299
Brazoria, TX	
1150 Bremerton, WA	1.0882
Kitsap, WA	
1240 Brownsville-Harlingen-San Benito, TX	0.8783
Cameron, TX	
1260 Bryan-College Station, TX	0.9296
Brazos, TX	
1280 Buffalo-Niagara Falls, NY	0.9405
Erie, NY	
Niagara, NY	
1303 Burlington, VT	0.9826
Chittenden, VT	
Franklin, VT	
Grand Isle, VT	
1310 Caguas, PR	0.5158
Caguas, PR	
Cayey, PR	
Cidra, PR	
Gurabo, PR	
San Lorenzo, PR	
1320 Canton-Massillon, OH	0.9059
Carroll, OH	
Stark, OH	
1350 Casper, WY	0.9606
Natrona, WY	
1360 Cedar Rapids, IA	0.8711
Linn, IA	
1400 Champaign-Urbana, IL	0.9264
Champaign, IL	
1440 Charleston-North Charleston, SC	0.9293
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
1480 Charleston, WV	0.9369
Kanawha, WV	
Putnam, WV	
1520 Charlotte-Gastonia-Rock Hill, NC–SC	0.9400

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TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Stanly, NC	
Union, NC	
York, SC	
1540 Charlottesville, VA	1.0688
Albemarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
1560 Chattanooga, TN–GA	0.9446
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
1580 Cheyenne, WY	0.8414
Laramie, WY	
1600 Chicago, IL	1.1011
Cook, IL	
DeKalb, IL	
DuPage, IL	
Grundy, IL	
Kane, IL	
Kendall, IL	
Lake, IL	
McHenry, IL	
Will, IL	
1620 Chico-Paradise, CA	0.9909
Butte, CA	
1640 Cincinnati, OH–KY–IN	0.9574
Dearborn, IN	
Ohio, IN	
Boone, KY	
Campbell, KY	
Gallatin, KY	
Grant, KY	
Kenton, KY	
Pendleton, KY	
Brown, OH	
Clermont, OH	
Hamilton, OH	
Warren, OH	
1660 Clarksville-Hopkinsville, TN–KY	0.8433
Christian, KY	
Montgomery, TN	
1680 Cleveland-Lorain-Elyria, OH	0.9496
Ashtabula, OH	
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Lorain, OH	
Medina, OH	
1720 Colorado Springs, CO	0.9754
El Paso, CO	
1740 Columbia, MO	0.8787
Boone, MO	
1760 Columbia, SC	0.9589
Lexington, SC	
Richland, SC	
1800 Columbus, GA–AL	0.8471
Russell, AL	
Chattahoochee, GA	
Harris, GA	
Muscogee, GA	
1840 Columbus, OH	0.9724
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
1880 Corpus Christi, TX	0.8203
Nueces, TX	
San Patricio, TX	
1890 Corvallis, OR	1.1781
Benton, OR	
1900 Cumberland, MD–WV (WV Hospital)	0.8402
Allegany, MD	
Mineral, WV	
1920 Dallas, TX	0.9506
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Henderson, TX	
Hunt, TX	
Kaufman, TX	
Rockwall, TX	
1950 Danville, VA	0.8641
Danville City, VA	
Pittsylvania, VA	
1960 Davenport-Moline-Rock Island, IA–IL	0.8790
Scott, IA	
Henry, IL	
Rock Island, IL	
2000 Dayton-Springfield, OH	0.9323
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
2020 Daytona Beach, FL	0.9069
Flagler, FL	
Volusia, FL	
2030 Decatur, AL	0.8817
Lawrence, AL	
Morgan, AL	
2040 Decatur, IL	0.8056
Macon, IL	
2080 Denver, CO	1.0289
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
2120 Des Moines, IA	0.8881
Dallas, IA	
Polk, IA	
Warren, IA	
2160 Detroit, MI	1.0478
Lapeer, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
St. Clair, MI	
Wayne, MI	
2180 Dothan, AL	0.7959
Dale, AL	
Houston, AL	
2190 Dover, DE	1.0453
Kent, DE	
2200 Dubuque, IA	0.8617
Dubuque, IA	
2240 Duluth-Superior, MN–WI	1.0401
St. Louis, MN	
Douglas, WI	
2281 Dutchess County, NY	1.0639
Dutchess, NY	
2290 Eau Claire, WI	0.8893
Chippewa, WI	
Eau Claire, WI	
2320 El Paso, TX	0.9162
El Paso, TX	
2330 Elkhart-Goshen, IN	0.9646
Elkhart, IN	
2335 Elmira, NY	0.8530
Chemung, NY	
2340 Enid, OK	0.8454
Garfield, OK	
2360 Erie, PA	0.8911
Erie, PA	
2400 Eugene-Springfield, OR	1.1485
Lane, OR	
2440 Evansville-Henderson, IN–KY (IN Hospitals)	0.7808
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
2520 Fargo-Moorhead, ND–MN	0.9374
Clay, MN	
Cass, ND	
2560 Fayetteville, NC	0.9132
Cumberland, NC	
2580 Fayetteville-Springdale-Rogers, AR	0.7587
Benton, AR	
Washington, AR	
2620 Flagstaff, AZ–UT	1.0678
Coconino, AZ	
Kane, UT	
2640 Flint, MI	1.0920
Genesee, MI	
2650 Florence, AL	0.7875
Colbert, AL	
Lauderdale, AL	
2655 Florence, SC	0.8843
Florence, SC	
2670 Fort Collins-Loveland, CO	1.0161
Larimer, CO	
2680 Ft. Lauderdale, FL	1.0407
Broward, FL	
2700 Fort Myers-Cape Coral, FL	0.9380
Lee, FL	
2710 Fort Pierce-Port St. Lucie, FL	1.0067
Martin, FL	
St. Lucie, FL	
2720 Fort Smith, AR–OK	0.8076
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
2750 Fort Walton Beach, FL	0.8695
Okaloosa, FL	
2760 Fort Wayne, IN	0.9186
Adams, IN	
Allen, IN	
De Kalb, IN	
Huntington, IN	
Wells, IN	
Whitley, IN	
2800 Forth Worth-Arlington, TX	0.9452
Hood, TX	
Johnson, TX	

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index
Parker, TX	
Tarrant, TX	
2840 Fresno, CA	0.9972
Fresno, CA	
Madera, CA	
2880 Gadsden, AL	0.8845
Etowah, AL	
2900 Gainesville, FL	1.2133
Alachua, FL	
2920 Galveston-Texas City, TX	1.0271
Galveston, TX	
2960 Gary, IN	0.9571
Lake, IN	
Porter, IN	
2975 Glens Falls, NY	0.8432
Warren, NY	
Washington, NY	
2980 Goldsboro, NC	0.8810
Wayne, NC	
2985 Grand Forks, ND–MN	0.9173
Polk, MN	
Grand Forks, ND	
2995 Grand Junction, CO	0.9579
Mesa, CO	
3000 Grand Rapids-Muskegon-Holland, MI	1.0161
Allegan, MI	
Kent, MI	
Muskegon, MI	
Ottawa, MI	
3040 Great Falls, MT	0.8972
Cascade, MT	
3060 Greeley, CO	0.9604
Weld, CO	
3080 Green Bay, WI	0.9269
Brown, WI	
3120 Greensboro-Winston-Salem-High Point, NC	0.9616
Alamance, NC	
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
3150 Greenville, NC	0.9963
Pitt, NC	
3160 Greenville-Spartanburg-Anderson, SC	0.9096
Anderson, SC	
Cherokee, SC	
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
3180 Hagerstown, MD	0.8462
Washington, MD	
3200 Hamilton-Middletown, OH	0.9269
Butler, OH	
3240 Harrisburg-Lebanon-Carlisle, PA	0.9311
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
3283 Hartford, CT	1.1536
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
3285 [2]Hattiesburg, MS	0.7559
Forrest, MS	
Lamar, MS	
3290 Hickory-Morganton-Lenoir, NC	0.9517
Alexander, NC	
Burke, NC	
Caldwell, NC	
Catawba, NC	
3320 Honolulu, HI	1.1653
Honolulu, HI	
3350 Houma, LA	0.8043
Lafourche, LA	
Terrebonne, LA	
3360 Houston, TX	0.9604
Chambers, TX	
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
3400 Huntington-Ashland, WV–KY–OH	0.9700
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
3440 Huntsville, AL	0.8854
Limestone, AL	
Madison, AL	
3480 Indianapolis, IN	0.9771
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Madison, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
3500 Iowa City, IA	0.9973
Johnson, IA	
3520 Jackson, MI	0.9387
Jackson, MI	
3560 Jackson, MS	0.8589
Hinds, MS	
Madison, MS	
Rankin, MS	
3580 Jackson, TN	0.9117
Madison, TN	
Chester, TN	
3600 Jacksonville, FL	0.9040
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
3605 Jacksonville, NC	0.7710
Onslow, NC	
3610 Jamestown, NY	0.8143
Chautauqua, NY	
3620 Janesville-Beloit, WI	0.9840
Rock, WI	
3640 Jersey City, NJ	1.1216
Hudson, NJ	
3660 Johnson City-Kingsport-Bristol, TN–VA	0.8540
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
3680 Johnstown, PA	0.8959
Cambria, PA	
Somerset, PA	
3700 Jonesboro, AR	0.8523
Craighead, AR	
3710 Joplin, MO	0.8736
Jasper, MO	
Newton, MO	
3720 Kalamazoo-Battlecreek, MI	1.0696
Calhoun, MI	
Kalamazoo, MI	
Van Buren, MI	
3740 Kankakee, IL	0.9268
Kankakee, IL	
3760 Kansas City, KS–MO	0.9430
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Clinton, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
3800 Kenosha, WI	0.9678
Kenosha, WI	
3810 Killeen-Temple, TX	0.7376
Bell, TX	
Coryell, TX	
3840 Knoxville, TN	0.8904
Anderson, TN	
Blount, TN	
Knox, TN	
Loudon, TN	
Sevier, TN	
Union, TN	
3850 Kokomo, IN	0.9232
Howard, IN	
Tipton, IN	
3870 La Crosse, WI–MN	0.9328
Houston, MN	
La Crosse, WI	
3880 Lafayette, LA	0.8600
Acadia, LA	
Lafayette, LA	
St. Landry, LA	
St. Martin, LA	
3920 Lafayette, IN	0.9165
Clinton, IN	
Tippecanoe, IN	
3960 Lake Charles, LA	0.7810
Calcasieu, LA	
3980 Lakeland-Winter Haven, FL	0.9167
Polk, FL	
4000 Lancaster, PA	0.9413
Lancaster, PA	
4040 Lansing-East Lansing, MI	0.9653
Clinton, MI	
Eaton, MI	
Ingham, MI	
4080 Laredo, TX	0.7877
Webb, TX	

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TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index
4100 Las Cruces, NM	0.8721
Dona Ana, NM	
4120 Las Vegas, NV–AZ	1.1238
Mohave, AZ	
Clark, NV	
Nye, NV	
4150 Lawrence, KS	0.8756
Douglas, KS	
4200 Lawton, OK	0.8783
Comanche, OK	
4243 Lewiston-Auburn, ME	0.9451
Androscoggin, ME	
4280 Lexington, KY	0.8850
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Madison, KY	
Scott, KY	
Woodford, KY	
4320 Lima, OH	0.9558
Allen, OH	
Auglaize, OH	
4360 Lincoln, NE	1.0272
Lancaster, NE	
4400 Little Rock-North Little Rock, AR	0.9053
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
4420 Longview-Marshall, TX	0.8322
Gregg, TX	
Harrison, TX	
Upshur, TX	
4480 Los Angeles-Long Beach, CA	1.2062
Los Angeles, CA	
4520 [1]Louisville, KY–IN	0.9596
Clark, IN	
Floyd, IN	
Harrison, IN	
Scott, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
4600 Lubbock, TX	0.8547
Lubbock, TX	
4640 Lynchburg, VA	0.9208
Amherst, VA	
Bedford, VA	
Bedford City, VA	
Campbell, VA	
Lynchburg City, VA	
4680 Macon, GA	0.9064
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Twiggs, GA	
4720 Madison, WI	1.0456
Dane, WI	
4800 Mansfield, OH	0.8809
Crawford, OH	
Richland, OH	
4840 Mayaguez, PR	0.4917
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
Sabana Grande, PR	
San German, PR	
4880 McAllen-Edinburg-Mission, TX	0.8433
Hidalgo, TX	
4890 Medford-Ashland, OR	1.0433
Jackson, OR	
4900 Melbourne-Titusville-Palm Bay, FL	0.9857
Brevard, FL	
4920 Memphis, TN–AR–MS	0.9435
Crittenden, AR	
DeSoto, MS	
Fayette, TN	
Shelby, TN	
Tipton, TN	
4940 Merced, CA	0.9870
Merced, CA	
5000 Miami, FL	0.9934
Dade, FL	
5015 Middlesex-Somerset-Hunterdon, NJ	1.1952
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
5080 Milwaukee-Waukesha, WI	0.9898
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
5120 Minneapolis-St. Paul, MN–WI	1.1000
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Sherburne, MN	
Washington, MN	
Wright, MN	
Pierce, WI	
St. Croix, WI	
5140 Missoula, MT	0.9453
Missoula, MT	
5160 Mobile, AL	0.7754
Baldwin, AL	
Mobile, AL	
5170 Modesto, CA	1.0945
Stanislaus, CA	
5190 Monmouth-Ocean, NJ	1.0930
Monmouth, NJ	
Ocean, NJ	
5200 Monroe, LA	0.8296
Ouachita, LA	
5240 Montgomery, AL	0.7502
Autauga, AL	
Elmore, AL	
Montgomery, AL	
5280 Muncie, IN	0.9689
Delaware, IN	
5330 Myrtle Beach, SC	0.8855
Horry, SC	
5345 Naples, FL	0.9566
Collier, FL	
5360 Nashville, TN	0.9602
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
5380 Nassau-Suffolk, NY	1.3841
Nassau, NY	
Suffolk, NY	
5483 New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2267
Fairfield, CT	
New Haven, CT	
5523 New London-Norwich, CT	1.1578
New London, CT	
5560 New Orleans, LA	0.9054
Jefferson, LA	
Orleans, LA	
Plaquemines, LA	
St. Bernard, LA	
St. Charles, LA	
St. James, LA	
St. John The Baptist, LA	
St. Tammany, LA	
5600 New York, NY	1.3893
Bronx, NY	
Kings, NY	
New York, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
5640 Newark, NJ	1.2004
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Warren, NJ	
5660 Newburgh, NY–PA	1.1235
Orange, NY	
Pike, PA	
5720 Norfolk-Virginia Beach-Newport News, VA–NC	0.8629
Currituck, NC	
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
Isle of Wight, VA	
James City, VA	
Mathews, VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson City, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City VA	
Williamsburg City, VA	
York, VA	
5775 Oakland, CA	1.5416
Alameda, CA	
Contra Costa, CA	
5790 Ocala, FL	0.9579
Marion, FL	
5800 Odessa-Midland, TX	0.9017
Ector, TX	
Midland, TX	
5880 Oklahoma City, OK	0.8728
Canadian, OK	

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
5910 Olympia, WA	1.1481
Thurston, WA	
5920 Omaha, NE–IA	0.9696
Pottawattamie, IA	
Cass, NE	
Douglas, NE	
Sarpy, NE	
Washington, NE	
5945 Orange County, CA	1.1242
Orange, CA	
5960 Orlando, FL	0.9464
Lake, FL	
Orange, FL	
Osceola, FL	
Seminole, FL	
5990 Owensboro, KY	0.8346
Daviess, KY	
6015 Panama City, FL	0.9166
Bay, FL	
6020 Parkersburg-Marietta, WV–OH	0.8192
Washington, OH	
Wood, WV	
6080 Pensacola, FL	0.8367
Escambia, FL	
Santa Rosa, FL	
6120 Peoria-Pekin, IL	0.8883
Peoria, IL	
Tazewell, IL	
Woodford, IL	
6160 Philadelphia, PA–NJ	1.0626
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Salem, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
6200 Phoenix-Mesa, AZ	0.9654
Maricopa, AZ	
Pinal, AZ	
6240 Pine Bluff, AR	0.7837
Jefferson, AR	
6280 Pittsburgh, PA	0.9714
Allegheny, PA	
Beaver, PA	
Butler, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
6323 Pittsfield, MA	1.0396
Berkshire, MA	
6340 Pocatello, ID	0.9557
Bannock, ID	
6360 Ponce, PR	0.5278
Guayanilla, PR	
Juana Diaz, PR	
Penuelas, PR	
Ponce, PR	
Villalba, PR	
Yauco, PR	
6403 Portland, ME	0.9501
Cumberland, ME	
Sagadahoc, ME	
York, ME	
6440 Portland-Vancouver, OR–WA	1.1263
Clackamas, OR	
Columbia, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Clark, WA	
6483 Providence-Warwick-Pawtucket, RI	1.0781
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
6520 Provo-Orem, UT	0.9967
Utah, UT	
6560 Pueblo, CO	0.8704
Pueblo, CO	
6580 Punta Gorda, FL	0.8818
Charlotte, FL	
6600 Racine, WI	0.9441
Racine, WI	
6640 Raleigh-Durham-Chapel Hill, NC	0.9901
Chatham, NC	
Durham, NC	
Franklin, NC	
Johnston, NC	
Orange, NC	
Wake, NC	
6660 Rapid City, SD	0.8971
Pennington, SD	
6680 Reading, PA	0.6780
Berks, PA	
6690 Redding, CA	1.1222
Shasta, CA	
6720 Reno, NV	1.0456
Washoe, NV	
6740 Richland-Kennewick-Pasco, WA	1.1086
Benton, WA	
Franklin, WA	
6760 Richmond-Petersburg, VA	0.9712
Charles City County, VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
6780 Riverside-San Bernardino, CA	1.1012
Riverside, CA	
San Bernardino, CA	
6800 Roanoke, VA	0.8468
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
6820 Rochester, MN	1.1595
Olmsted, MN	
6840 Rochester, NY	0.9238
Genesee, NY	
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
6880 Rockford, IL	0.9194
Boone, IL	
Ogle, IL	
Winnebago, IL	
6895 Rocky Mount, NC	0.9197
Edgecombe, NC	
Nash, NC	
6920 Sacramento, CA	1.1809
El Dorado, CA	
Placer, CA	
Sacramento, CA	
6960 Saginaw-Bay City-Midland, MI	0.9662
Bay, MI	
Midland, MI	
Saginaw, MI	
6980 St. Cloud, MN	0.9966
Benton, MN	
Stearns, MN	
7000 St. Joseph, MO	0.9113
Andrew, MO	
Buchanan, MO	
7040 St. Louis, MO–IL	0.9024
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
Lincoln, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Warren, MO	
7080 Salem, OR	1.0127
Marion, OR	
Polk, OR	
7120 Salinas, CA	1.4854
Monterey, CA	
7160 Salt Lake City-Ogden, UT	0.9976
Davis, UT	
Salt Lake, UT	
Weber, UT	
7200 San Angelo, TX	0.8288
Tom Green, TX	
7240 San Antonio, TX	0.8333
Bexar, TX	
Comal, TX	
Guadalupe, TX	
Wilson, TX	
7320 San Diego, CA	1.1480
San Diego, CA	
7360 San Francisco, CA	1.4319
Marin, CA	
San Francisco, CA	
San Mateo, CA	
7400 San Jose, CA	1.4249
Santa Clara, CA	
7440 San Juan-Bayamon, PR	0.4812
Aguas Buenas, PR	
Barceloneta, PR	
Bayamon, PR	

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TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index
Canovanas, PR	
Carolina, PR	
Catano, PR	
Ceiba, PR	
Comerio, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Morovis, PR	
Naguabo, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trujillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Yabucoa, PR	
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.1117
San Luis Obispo, CA	
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.0927
Santa Barbara, CA	
7485 Santa Cruz-Watsonville, CA	1.4049
Santa Cruz, CA	
7490 Santa Fe, NM	1.0312
Los Alamos, NM	
Santa Fe, NM	
7500 Santa Rosa, CA	1.2727
Sonoma, CA	
7510 Sarasota-Bradenton, FL	1.0118
Manatee, FL	
Sarasota, FL	
7520 Savannah, GA	0.9349
Bryan, GA	
Chatham, GA	
Effingham, GA	
7560 Scranton—Wilkes-Barre—Hazleton, PA	0.8071
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Wyoming, PA	
7600 Seattle-Bellevue-Everett, WA	1.1040
Island, WA	
King, WA	
Snohomish, WA	
7610 Sharon, PA	0.8013
Mercer, PA	
7620 Sheboygan, WI	0.8524
Sheboygan, WI	
7640 Sherman-Denison, TX	0.9163
Grayson, TX	
7680 Shreveport-Bossier City, LA	0.9165
Bossier, LA	
Caddo, LA	
Webster, LA	
7720 Sioux City, IA–NE	0.8868
Woodbury, IA	

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index
Dakota, NE	
7760 Sioux Falls, SD	0.9245
Lincoln, SD	
Minnehaha, SD	
7800 South Bend, IN	1.0303
St. Joseph, IN	
7840 Spokane, WA	1.0791
Spokane, WA	
7880 Springfield, IL	0.8502
Menard, IL	
Sangamon, IL	
7920 Springfield, MO	0.8666
Christian, MO	
Greene, MO	
Webster, MO	
8003 Springfield, MA	1.0747
Hampden, MA	
Hampshire, MA	
8050 State College, PA	0.9239
Centre, PA	
8080 Steubenville-Weirton, OH–WV (WV Hospitals)	0.8737
Jefferson, OH	
Brooke, WV	
Hancock, WV	
8120 Stockton-Lodi, CA	1.0939
San Joaquin, CA	
8140 Sumter, SC	0.7884
Sumter, SC	
8160 Syracuse, NY	0.9243
Cayuga, NY	
Madison, NY	
Onondaga, NY	
Oswego, NY	
8200 Tacoma, WA	1.1751
Pierce, WA	
8240 Tallahassee, FL	0.8402
Gadsden, FL	
Leon, FL	
8280 Tampa-St. Petersburg-Clearwater, FL	1.0118
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
8320 Terre Haute, IN	0.8498
Clay, IN	
Vermillion, IN	
Vigo, IN	
8360 Texarkana, AR-Texarkana, TX	0.8414
Miller, AR	
Bowie, TX	
8400 Toledo, OH	0.9815
Fulton, OH	
Lucas, OH	
Wood, OH	
8440 Topeka, KS	0.9015
Shawnee, KS	
8480 Trenton, NJ	1.0172
Mercer, NJ	
8520 Tucson, AZ	0.8990
Pima, AZ	
8560 Tulsa, OK	0.8949
Creek, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
8600 Tuscaloosa, AL	0.8265

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index
Tuscaloosa, AL	
8640 Tyler, TX	0.9109
Smith, TX	
8680 Utica-Rome, NY	0.8425
Herkimer, NY	
Oneida, NY	
8720 Vallejo-Fairfield-Napa, CA	1.3535
Napa, CA	
Solano, CA	
8735 Ventura, CA	1.1088
Ventura, CA	
8750 Victoria, TX	0.8354
Victoria, TX	
8760 Vineland-Millville-Bridgeton, NJ	1.0473
Cumberland, NJ	
8780 Visalia-Tulare-Porterville, CA	0.9706
Tulare, CA	
8800 Waco, TX	0.8249
McLennan, TX	
8840 Washington, DC–MD–VA–WV	1.1176
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Clarke, VA	
Culpeper, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Fauquier, VA	
Fredericksburg City, VA	
King George, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Spotsylvania, VA	
Stafford, VA	
Warren, VA	
Berkeley, WV	
Jefferson, WV	
8920 Waterloo-Cedar Falls, IA	0.8134
Black Hawk, IA	
8940 Wausau, WI	0.9455
Marathon, WI	
8960 West Palm Beach-Boca Raton, FL	0.9785
Palm Beach, FL	
9000 Wheeling, WV–OH	0.8077
Belmont, OH	
Marshall, WV	
Ohio, WV	
9040 Wichita, KS	0.9541
Butler, KS	
Harvey, KS	
Sedgwick, KS	
9080 Wichita Falls, TX	0.7933
Archer, TX	
Wichita, TX	
9140 Williamsport, PA	0.8503
Lycoming, PA	
9160 Wilmington-Newark, DE–MD	1.0757

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index
New Castie, DE	
Cecil, MD	
9200 Wilmington, NC	0.9971
New Hanover, NC	
Brunswick, NC	
9260 Yakima, WA	1.0690
Yakima, WA	
9270 Yolo, CA	0.9830
Yolo, CA	
9280 York, PA	0.7840
York, PA	
9320 Youngstown-Warren, OH	0.9480
Columbiana, OH	
Mahoning, OH	
Trumbull, OH	
9340 Yuba City, CA	1.0479
Sutter, CA	
Yuba, CA	
9360 Yuma, AZ	0.8904
Yuma, AZ	

TABLE 4H.—PRE-RECLASSIFIED WAGE INDEX FOR RURAL AREAS

Nonurban area	Wage index
Alabama	0.7420
Alaska	1.2006
Arizona	0.8747
Arkansas	0.7561
California	0.9870
Colorado	0.8909
Connecticut	1.2357
Delaware	0.9487
Florida	0.8709
Georgia	0.8341
Hawaii	1.1235
Idaho	0.8820
Illinois	0.8140
Indiana	0.8757
Iowa	0.8194
Kansas	0.7850
Kentucky	0.8019
Louisiana	0.7649
Maine	0.8714
Maryland	0.8962
Massachusetts	1.1586
Michigan	0.9106
Minnesota	0.9109
Mississippi	0.7612
Missouri	0.7826
Montana	0.8642
Nebraska	0.8233

TABLE 4H.—PRE-RECLASSIFIED WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Nevada	0.9785
New Hampshire	0.9914
New Jersey [1]	
New Mexico	0.8835
New York	0.8530
North Carolina	0.8634
North Dakota	0.7965
Ohio	0.8761
Oklahoma	0.7646
Oregon	1.0150
Pennsylvania	0.8473
Puerto Rico	0.4654
Rhode Island [1]	
South Carolina	0.8606
South Dakota	0.7934
Tennessee	0.7901
Texas	0.7671
Utah	0.9156
Vermont	0.9576
Virginia	0.8473
Washington	1.0301
West Virginia	0.8145
Wisconsin	0.9118
Wyoming	0.8855

[1] All counties within the State are classified as urban.

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY

DRG	MDC	Type	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
1	01	SURG	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	3.2546	7.6	10.2
2	01	SURG	CRANIOTOMY FOR TRAUMA AGE >17	3.3742	8.8	11.1
3	01	SURG	*CRANIOTOMY AGE 0–17	1.9527	12.7	12.7
4	01	SURG	SPINAL PROCEDURES	2.4074	5.5	8.1
5	01	SURG	EXTRACRANIAL VASCULAR PROCEDURES	1.3612	2.3	3.2
6	01	SURG	CARPAL TUNNEL RELEASE	.7238	2.1	3.0
7	01	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W CC	2.6736	8.5	11.3
8	01	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC	1.3727	2.3	3.4
9	01	MED	SPINAL DISORDERS & INJURIES	1.3411	5.3	7.0
10	01	MED	NERVOUS SYSTEM NEOPLASMS W CC	1.2655	5.5	7.2
11	01	MED	NERVOUS SYSTEM NEOPLASMS W/O CC	.8455	3.3	4.3
12	01	MED	DEGENERATIVE NERVOUS SYSTEM DISORDERS	.8985	4.9	6.3
13	01	MED	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	.8107	4.5	5.5
14	01	MED	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	1.1667	4.8	6.1
15	01	MED	TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS	.7349	3.0	3.7
16	01	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	1.1833	5.1	6.5
17	01	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	.6706	2.7	3.5
18	01	MED	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	.9762	4.6	5.8
19	01	MED	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	.6770	3.1	3.9
20	01	MED	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	2.7628	9.0	11.4
21	01	MED	VIRAL MENINGITIS	1.4606	5.6	7.1
22	01	MED	HYPERTENSIVE ENCEPHALOPATHY	1.0073	4.0	5.1
23	01	MED	NONTRAUMATIC STUPOR & COMA	.8101	3.4	4.4
24	01	MED	SEIZURE & HEADACHE AGE >17 W CC	1.0182	4.0	5.3
25	01	MED	SEIZURE & HEADACHE AGE >17 W/O CC	.5945	2.7	3.3
26	01	MED	SEIZURE & HEADACHE AGE 0–17	.5846	2.3	2.8
27	01	MED	TRAUMATIC STUPOR & COMA, COMA >1 HR	1.3456	3.7	5.6
28	01	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W CC	1.3526	5.2	6.8
29	01	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC	.6903	3.0	3.8
30	01	MED	*TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0–17	.3303	2.0	2.0
31	01	MED	CONCUSSION AGE >17 W CC	.9098	3.5	4.8

*MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM 19 STATES FOR LOW VOLUME DRGS.
**DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: ARITHMETIC MEAN IS PRESENTED FOR INFORMATIONAL PURPOSES ONLY.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

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TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGs), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

DRG	MDC	Type	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
32	01	MED	CONCUSSION AGE >17 W/O CC	.5191	2.0	2.6
33	01	MED	*CONCUSSION AGE 0–17	.2075	1.6	1.6
34	01	MED	OTHER DISORDERS OF NERVOUS SYSTEM W CC	1.0065	4.2	5.4
35	01	MED	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	.5886	2.7	3.5
36	02	SURG	RETINAL PROCEDURES	.6586	1.2	1.5
37	02	SURG	ORBITAL PROCEDURES	1.1220	2.9	4.3
38	02	SURG	PRIMARY IRIS PROCEDURES	.4730	2.0	2.6
39	02	SURG	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	.5882	1.5	1.9
40	02	SURG	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	.8274	2.4	3.6
41	02	SURG	*EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0–17	.3362	1.6	1.6
42	02	SURG	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	.6273	1.6	2.3
43	02	MED	HYPHEMA	.4570	2.8	3.3
44	02	MED	ACUTE MAJOR EYE INFECTIONS	.6556	4.3	5.2
45	02	MED	NEUROLOGICAL EYE DISORDERS	.6765	2.7	3.3
46	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W CC	.7983	3.9	5.0
47	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W/O CC	.5013	2.6	3.4
48	02	MED	*OTHER DISORDERS OF THE EYE AGE 0–17	.2962	2.9	2.9
49	03	SURG	MAJOR HEAD & NECK PROCEDURES	1.7590	3.8	5.2
50	03	SURG	SIALOADENECTOMY	.8139	1.5	1.9
51	03	SURG	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	.7928	1.8	2.7
52	03	SURG	CLEFT LIP & PALATE REPAIR	.7608	1.5	1.9
53	03	SURG	SINUS & MASTOID PROCEDURES AGE >17	1.1741	2.3	3.7
54	03	SURG	*SINUS & MASTOID PROCEDURES AGE 0–17	.4801	3.2	3.2
55	03	SURG	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES	.8500	1.8	2.7
56	03	SURG	RHINOPLASTY	.8771	2.0	2.7
57	03	SURG	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17.	1.1547	2.8	4.2
58	03	SURG	*T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17.	.2726	1.5	1.5
59	03	SURG	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	.8324	1.9	2.8
60	03	SURG	*TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17	.2076	1.5	1.5
61	03	SURG	MYRINGOTOMY W TUBE INSERTION AGE >17	1.3536	3.2	5.6
62	03	SURG	*MYRINGOTOMY W TUBE INSERTION AGE 0–17	.2940	1.3	1.3
63	03	SURG	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES	1.3658	3.3	4.7
64	03	MED	EAR, NOSE, MOUTH & THROAT MALIGNANCY	1.2289	4.8	6.9
65	03	MED	DYSEQUILIBRIUM	.5321	2.4	2.9
66	03	MED	EPISTAXIS	.5538	2.6	3.3
67	03	MED	EPIGLOTTITIS	.7556	3.0	3.7
68	03	MED	OTITIS MEDIA & URI AGE >17 W CC	.6687	3.6	4.3
69	03	MED	OTITIS MEDIA & URI AGE >17 W/O CC	.4988	2.8	3.4
70	03	MED	OTITIS MEDIA & URI AGE 0–17	.4556	2.5	3.0
71	03	MED	LARYNGOTRACHEITIS	.6714	3.1	4.0
72	03	MED	NASAL TRAUMA & DEFORMITY	.6722	2.9	3.7
73	03	MED	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17	.8016	3.6	4.7
74	03	MED	*OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0–17	.3341	2.1	2.1
75	04	SURG	MAJOR CHEST PROCEDURES	3.2016	8.8	10.8
76	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.9628	10.0	12.6
77	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	1.2254	4.1	5.4
78	04	MED	PULMONARY EMBOLISM	1.3317	6.3	7.2
79	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC	1.7116	7.6	9.3
80	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	.9285	5.0	6.0
81	04	MED	*RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0–17	1.5125	6.1	6.1
82	04	MED	RESPIRATORY NEOPLASMS	1.4325	6.0	7.6
83	04	MED	MAJOR CHEST TRAUMA W CC	.9783	4.8	5.9
84	04	MED	MAJOR CHEST TRAUMA W/O CC	.5455	2.9	3.5
85	04	MED	PLEURAL EFFUSION W CC	1.2505	5.5	6.9
86	04	MED	PLEURAL EFFUSION W/O CC	.6776	3.0	3.8
87	04	MED	PULMONARY EDEMA & RESPIRATORY FAILURE	1.4280	5.5	6.9
88	04	MED	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	.9137	4.5	5.4
89	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	1.0636	5.3	6.3
90	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	.6385	3.7	4.3
91	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE 0–17	.8141	3.9	4.8
92	04	MED	INTERSTITIAL LUNG DISEASE W CC	1.2313	5.6	6.8
93	04	MED	INTERSTITIAL LUNG DISEASE W/O CC	.7311	3.5	4.2
94	04	MED	PNEUMOTHORAX W CC	1.2011	5.4	6.9
95	04	MED	PNEUMOTHORAX W/O CC	.5833	3.2	3.9

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TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGs), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

DRG	MDC	Type	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
96	04	MED	BRONCHITIS & ASTHMA AGE >17 W CC	.7638	4.1	4.9
97	04	MED	BRONCHITIS & ASTHMA AGE >17 W/O CC	.5664	3.2	3.8
98	04	MED	BRONCHITIS & ASTHMA AGE 0–17	.7073	3.1	4.4
99	04	MED	RESPIRATORY SIGNS & SYMPTOMS W CC	.6971	2.6	3.3
100	04	MED	RESPIRATORY SIGNS & SYMPTOMS W/O CC	.5206	1.8	2.2
101	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	.8605	3.6	4.7
102	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	.5226	2.1	2.7
103	PRE	SURG	HEART TRANSPLANT	19.8195	38.6	57.5
104	05	SURG	CARDIAC VALVE & OTH MAJOR CARDIOTHORACIC PROC W CARD CATH.	7.7605	13.2	15.3
105	05	SURG	CARDIAC VALVE & OTH MAJOR CARDIOTHORACIC PROC W/O CARD CATH.	5.6465	8.8	10.4
106	05	SURG	CORONARY BYPASS W PTCA	7.4382	10.7	12.3
107	05	SURG	CORONARY BYPASS W CARDIAC CATH	5.3005	9.7	10.9
108	05	SURG	OTHER CARDIOTHORACIC PROCEDURES	5.4994	9.2	11.2
109	05	SURG	CORONARY BYPASS W/O PTCA OR CARDIAC CATH	3.8957	7.0	8.0
110	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES W CC	4.1492	8.1	10.2
111	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES W/O CC	2.2835	4.3	5.1
112	05	SURG	NO LONGER VALID	.0000	.0	.0
113	05	SURG	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE.	2.6625	9.8	12.8
114	05	SURG	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	1.6689	7.2	9.3
115	05	SURG	PRM CARD PACEM IMPL W AMI, HRT FAIL OR SHK, OR AICD LEAD OR GN.	3.3784	7.2	9.2
116	05	SURG	OTHER PERMANENT CARDIAC PACEMAKER IMPLANT	2.2011	3.6	4.8
117	05	SURG	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	1.3197	2.8	4.4
118	05	SURG	CARDIAC PACEMAKER DEVICE REPLACEMENT	1.4322	1.8	2.7
119	05	SURG	VEIN LIGATION & STRIPPING	1.3557	3.3	5.3
120	05	SURG	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	2.3452	6.7	9.9
121	05	MEQ	CIRCULATORY DISORDERS W AMI & MAJOR COMP, DISCHARGED ALIVE.	1.5799	5.6	6.9
122	05	MED	CIRCULATORY DISORDERS W AMI W/O MAJOR COMP, DISCHARGED ALIVE.	1.0268	3.2	3.9
123	05	MED	CIRCULATORY DISORDERS W AMI, EXPIRED	1.5882	3.2	5.0
124	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG.	1.4057	3.6	4.6
125	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG.	1.0395	2.2	2.8
126	05	MED	ACUTE & SUBACUTE ENDOCARDITIS	2.6700	10.5	12.9
127	05	MED	HEART FAILURE & SHOCK	1.0110	4.5	5.6
128	05	MED	DEEP VEIN THROMBOPHLEBITIS	.7343	5.2	5.9
129	05	MED	CARDIAC ARREST, UNEXPLAINED	1.0273	1.7	2.8
130	05	MED	PERIPHERAL VASCULAR DISORDERS W CC	.9401	5.0	6.1
131	05	MED	PERIPHERAL VASCULAR DISORDERS W/O CC	.5775	3.6	4.5
132	05	MED	ATHEROSCLEROSIS W CC	.6490	2.5	3.1
133	05	MED	ATHEROSCLEROSIS W/O CC	.5567	1.9	2.3
134	05	MED	HYPERTENSION	.5829	2.7	3.4
135	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC	.9117	3.7	4.8
136	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC.	.5606	2.2	2.8
137	05	MED	*CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0–17	.8150	3.3	3.3
138	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	.8231	3.3	4.2
139	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	.4973	2.1	2.5
140	05	MED	ANGINA PECTORIS	.5367	2.2	2.7
141	05	MED	SYNCOPE & COLLAPSE W CC	.7231	3.0	3.8
142	05	MED	SYNCOPE & COLLAPSE W/O CC	.5392	2.2	2.7
143	05	MED	CHEST PAIN	.5198	1.7	2.1
144	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	1.1995	4.3	5.8
145	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	.5919	2.2	2.8
146	06	SURG	RECTAL RESECTION W CC	2.7740	9.6	10.8
147	06	SURG	RECTAL RESECTION W/O CC	1.6036	6.2	6.7
148	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	3.5315	11.1	13.1
149	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.5103	6.2	6.7
150	06	SURG	PERITONEAL ADHESIOLYSIS W CC	2.9493	10.5	12.2
151	06	SURG	PERITONEAL ADHESIOLYSIS W/O CC	1.3502	5.3	6.3
152	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W CC	1.9465	7.4	8.7

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153	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.1614	5.1	5.6
154	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC.	4.3487	11.9	14.7
155	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC.	1.3356	3.5	4.5
156	06	SURG	*STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0–17	.8392	6.0	6.0
157	06	SURG	ANAL & STOMAL PROCEDURES W CC	1.2606	4.4	5.9
158	06	SURG	ANAL & STOMAL PROCEDURES W/O CC	.6237	2.0	2.5
159	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC.	1.3620	4.2	5.4
160	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC.	.7678	2.2	2.7
161	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC	1.1388	3.2	4.5
162	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	.6145	1.6	1.9
163	06	SURG	*HERNIA PROCEDURES AGE 0–17	.6885	2.1	2.1
164	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	2.3980	7.8	9.0
165	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	1.3000	4.5	5.0
166	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	1.4919	4.2	5.4
167	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	.8778	2.2	2.6
168	03	SURG	MOUTH PROCEDURES W CC	1.3056	3.6	5.2
169	03	SURG	MOUTH PROCEDURES W/O CC	.6981	1.8	2.3
170	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	3.0651	9.6	12.7
171	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	1.1773	3.9	5.0
172	06	MED	DIGESTIVE MALIGNANCY W CC	1.3972	5.9	7.6
173	06	MED	DIGESTIVE MALIGNANCY W/O CC	.6929	2.9	3.9
174	06	MED	G.I. HEMORRHAGE W CC	.9915	4.1	5.1
175	06	MED	G.I. HEMORRHAGE W/O CC	.5435	2.6	3.0
176	06	MED	COMPLICATED PEPTIC ULCER	1.0908	4.4	5.6
177	06	MED	UNCOMPLICATED PEPTIC ULCER W CC	.8938	3.9	4.8
178	06	MED	UNCOMPLICATED PEPTIC ULCER W/O CC	.6424	2.7	3.2
179	06	MED	INFLAMMATORY BOWEL DISEASE	1.0861	5.1	6.4
180	06	MED	G.I. OBSTRUCTION W CC	.9581	4.6	5.7
181	06	MED	G.I. OBSTRUCTION W/O CC	.5245	3.0	3.5
182	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W CC.	.7959	3.6	4.6
183	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC.	.5586	2.4	3.0
184	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0–17.	.4123	2.5	3.0
185	03	MED	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17.	.8675	3.6	4.8
186	03	MED	*DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0–17.	.3199	2.9	2.9
187	03	MED	DENTAL EXTRACTIONS & RESTORATIONS	.7960	3.2	4.2
188	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC	1.1234	4.6	6.0
189	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	.5791	2.5	3.3
190	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0–17	1.1905	4.5	7.5
191	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W CC	4.6065	12.1	15.5
192	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	1.8181	6.0	7.0
193	07	SURG	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC.	3.5045	11.6	13.6
194	07	SURG	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC.	1.7226	6.3	7.3
195	07	SURG	CHOLECYSTECTOMY W C.D.E. W CC	3.0850	9.4	10.9
196	07	SURG	CHOLECYSTECTOMY W C.D.E. W/O CC	1.6183	5.3	6.1
197	07	SURG	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W CC.	2.5761	8.1	9.6
198	07	SURG	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W/O CC.	1.2114	4.2	4.7
199	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	2.4813	8.3	10.8
200	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY.	3.1972	8.5	12.0
201	07	SURG	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	3.8125	12.4	15.6
202	07	MED	CIRRHOSIS & ALCOHOLIC HEPATITIS	1.3280	5.5	7.0
203	07	MED	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	1.3598	5.7	7.3
204	07	MED	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	1.2076	4.9	6.2

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205	07	MED	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W CC	1.2206	5.2	6.7
206	07	MED	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W/O CC	.7345	3.3	4.1
207	07	MED	DISORDERS OF THE BILIARY TRACT W CC	1.1138	4.3	5.5
208	07	MED	DISORDERS OF THE BILIARY TRACT W/O CC	.6397	2.4	3.0
209	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY.	1.9943	4.6	5.1
210	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC.	1.7528	6.1	6.9
211	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC.	1.2261	4.6	5.0
212	08	SURG	*HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0–17	.8428	11.1	11.1
213	08	SURG	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS.	1.9283	7.7	10.0
214	08	SURG	NO LONGER VALID	.0000	.0	.0
215	08	SURG	NO LONGER VALID	.0000	.0	.0
216	08	SURG	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE.	2.3133	8.5	10.9
217	08	SURG	WND DEBRID & SKN GRFT EXCEPT HAND, FOR MUSCSKELET & CONN TISS DIS.	3.1808	11.0	15.1
218	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W CC.	1.5448	4.7	5.7
219	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W/O CC.	.9972	2.8	3.3
220	08	SURG	*LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE 0–17.	.5814	5.3	5.3
221	08	SURG	NO LONGER VALID	.0000	.0	.0
222	08	SURG	NO LONGER VALID	.0000	.0	.0
223	08	SURG	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC.	.9734	2.1	2.9
224	08	SURG	SHOULDER, ELBOW OR FOREARM PROC, EXC MAJOR JOINT PROC, W/O CC.	.7724	1.6	1.9
225	08	SURG	FOOT PROCEDURES	1.1177	3.8	5.3
226	08	SURG	SOFT TISSUE PROCEDURES W CC	1.5897	5.2	7.3
227	08	SURG	SOFT TISSUE PROCEDURES W/O CC	.7937	2.1	2.8
228	08	SURG	MAJOR THUMB OR JOINT PROC, OR OTH HAND OR WRIST PROC W CC.	1.0885	2.7	4.0
229	08	SURG	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	.7168	1.9	2.5
230	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR.	1.3559	3.9	5.8
231	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR.	1.4317	3.6	5.4
232	08	SURG	ARTHROSCOPY	.9556	1.8	2.9
233	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC	2.0909	6.2	8.4
234	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC	1.2075	2.7	3.6
235	08	MED	FRACTURES OF FEMUR	.7548	4.1	5.4
236	08	MED	FRACTURES OF HIP & PELVIS	.6882	3.9	4.9
237	08	MED	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	.5323	3.0	3.7
238	08	MED	OSTEOMYELITIS	1.4035	7.3	9.3
239	08	MED	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY.	1.0017	5.4	6.7
240	08	MED	CONNECTIVE TISSUE DISORDERS W CC	1.3701	5.6	7.2
241	08	MED	CONNECTIVE TISSUE DISORDERS W/O CC	.6337	3.3	4.0
242	08	MED	SEPTIC ARTHRITIS	1.0920	5.7	7.2
243	08	MED	MEDICAL BACK PROBLEMS	.7299	4.0	4.9
244	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	.7150	4.1	5.1
245	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	.4655	2.9	3.6
246	08	MED	NON-SPECIFIC ARTHROPATHIES	.5711	3.2	4.0
247	08	MED	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE.	.5594	2.8	3.5
248	08	MED	TENDONITIS, MYOSITIS & BURSITIS	.8148	4.1	5.1
249	08	MED	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE.	.6767	2.7	3.9
250	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W CC.	.6809	3.5	4.3
251	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC.	.4555	2.4	2.9

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252	08	MED	*FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0–17	.2525	1.8	1.8
253	08	MED	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE >17 W CC.	.7398	4.0	5.0
254	08	MED	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE >17 W/O CC.	.4297	2.8	3.3
255	08	MED	*FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE 0–17	.2941	2.9	2.9
256	08	MED	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES.	.8170	4.2	5.5
257	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY W CC	.8801	2.2	2.8
258	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.6970	1.7	1.9
259	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	.8736	1.8	2.7
260	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.6431	1.3	1.4
261	09	SURG	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION.	.9218	1.7	2.3
262	09	SURG	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	.8377	3.0	4.2
263	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W CC	2.1570	9.4	12.7
264	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC.	1.1826	6.0	7.7
265	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC.	1.6900	5.2	7.6
266	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC.	.8435	2.5	3.4
267	09	SURG	PERIANAL & PILONIDAL PROCEDURES	.9421	3.3	4.5
268	09	SURG	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	1.2255	2.5	3.6
269	09	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROC W CC	1.8049	6.9	9.3
270	09	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC	.8020	2.6	3.8
271	09	MED	SKIN ULCERS	1.1503	6.5	8.3
272	09	MED	MAJOR SKIN DISORDERS W CC	1.0243	5.2	6.7
273	09	MED	MAJOR SKIN DISORDERS W/O CC	.5658	3.4	4.2
274	09	MED	MALIGNANT BREAST DISORDERS W CC	1.1892	5.5	7.2
275	09	MED	MALIGNANT BREAST DISORDERS W/O CC	.6594	3.0	4.6
276	09	MED	NON-MALIGANT BREAST DISORDERS	.6954	4.0	5.0
277	09	MED	CELLULITIS AGE >17 W CC	.8585	5.1	6.1
278	09	MED	CELLULITIS AGE >17 W/O CC	.5638	3.9	4.6
279	09	MED	*CELLULITIS AGE 0–17	.6610	4.2	4.2
280	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W CC	.6940	3.5	4.4
281	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC	.4591	2.5	3.1
282	09	MED	*TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0–17	.2557	2.2	2.2
283	09	MED	MINOR SKIN DISORDERS W CC	.7154	3.8	4.9
284	09	MED	MINOR SKIN DISORDERS W/O CC	.4216	2.5	3.2
285	10	SURG	AMPUTAT OF LOWER LIMB FOR ENDOCRINE, NUTRIT, & METABOL DISORDERS.	2.1315	9.1	11.4
286	10	SURG	ADRENAL & PITUITARY PROCEDURES	2.2277	5.3	6.9
287	10	SURG	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS.	1.9616	8.9	11.7
288	10	SURG	O.R. PROCEDURES FOR OBESITY	2.1682	4.9	6.0
289	10	SURG	PARATHYROID PROCEDURES	.9529	1.9	3.0
290	10	SURG	THYROID PROCEDURES	.8853	1.7	2.3
291	10	SURG	THYROGLOSSAL PROCEDURES	.5910	1.5	1.8
292	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC	2.7588	9.1	11.9
293	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC	1.2638	4.5	6.0
294	10	MED	DIABETES AGE >35	.7623	3.8	4.9
295	10	MED	DIABETES AGE 0–35	.7468	3.1	3.9
296	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC	.8632	4.3	5.5
297	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	.5070	2.9	3.5
298	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0–17	.3944	2.2	2.9
299	10	MED	INBORN ERRORS OF METABOLISM	.8939	4.3	5.6
300	10	MED	ENDOCRINE DISORDERS W CC	1.1234	5.3	6.6
301	10	MED	ENDOCRINE DISORDERS W/O CC	.6063	3.0	3.8
302	11	SURG	KIDNEY TRANSPLANT	3.2881	7.9	9.3
303	11	SURG	KIDNEY, URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM.	2.4853	7.5	9.0
304	11	SURG	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC.	2.4558	7.4	9.7
305	11	SURG	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC.	1.1486	3.1	3.8

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TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

DRG	MDC	Type	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
306	11	SURG	PROSTATECTOMY W CC	1.3006	4.3	6.2
307	11	SURG	PROSTATECTOMY W/O CC	.6054	1.9	2.3
308	11	SURG	MINOR BLADDER PROCEDURES W CC	1.6788	4.8	6.9
309	11	SURG	MINOR BLADDER PROCEDURES W/O CC	.8935	1.8	2.3
310	11	SURG	TRANSURETHRAL PROCEDURES W CC	1.1342	3.3	4.7
311	11	SURG	TRANSURETHRAL PROCEDURES W/O CC	.5952	1.5	1.8
312	11	SURG	URETHRAL PROCEDURES, AGE >17 W CC	1.0749	3.3	4.8
313	11	SURG	URETHRAL PROCEDURES, AGE >17 W/O CC	.6598	1.8	2.3
314	11	SURG	*URETHRAL PROCEDURES, AGE 0–17	.4927	2.3	2.3
315	11	SURG	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	2.1396	4.8	8.2
316	11	MED	RENAL FAILURE	1.3732	5.6	7.3
317	11	MED	ADMIT FOR RENAL DIALYSIS	.6157	2.0	2.9
318	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W CC	1.1710	5.0	6.5
319	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W/O CC	.5918	2.1	2.8
320	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC	.8610	4.6	5.6
321	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	.5592	3.3	3.9
322	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE 0–17	.5234	3.6	4.3
323	11	MED	URINARY STONES W CC, &/OR ESW LITHOTRIPSY	.7969	2.5	3.3
324	11	MED	URINARY STONES W/O CC	.4447	1.6	1.9
325	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC	.6332	3.1	4.0
326	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC	.4118	2.1	2.7
327	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0–17	.3741	2.8	3.2
328	11	MED	URETHRAL STRICTURE AGE >17 W CC	.7216	2.9	3.8
329	11	MED	URETHRAL STRICTURE AGE >17 W/O CC	.4388	1.6	2.0
330	11	MED	*URETHRAL STRICTURE AGE 0–17	.3174	1.6	1.6
331	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC	1.0625	4.6	6.0
332	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	.6057	2.6	3.4
333	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0–17	.8056	4.0	5.4
334	12	SURG	MAJOR MALE PELVIC PROCEDURES W CC	1.4761	4.0	4.5
335	12	SURG	MAJOR MALE PELVIC PROCEDURES W/O CC	1.1081	3.0	3.2
336	12	SURG	TRANSURETHRAL PROSTATECTOMY W CC	.9149	2.9	3.9
337	12	SURG	TRANSURETHRAL PROSTATECTOMY W/O CC	.5769	1.9	2.2
338	12	SURG	TESTES PROCEDURES, FOR MALIGNANCY	1.2150	3.7	5.6
339	12	SURG	TESTES PROCEDURES, NON-MALIGNANCY AGE >17	1.2384	3.5	5.5
340	12	SURG	*TESTES PROCEDURES, NON-MALIGNANCY AGE 0–17	.2820	2.4	2.4
341	12	SURG	PENIS PROCEDURES	1.2740	1.9	3.1
342	12	SURG	CIRCUMCISION AGE >17	.7866	2.6	3.6
343	12	SURG	*CIRCUMCISION AGE 0–17	.1533	1.7	1.7
344	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY.	1.1746	1.6	2.4
345	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY.	1.2518	3.9	5.6
346	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	1.0311	4.9	6.4
347	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	.5701	2.3	3.0
348	12	MED	*BENIGN PROSTATIC HYPERTROPHY W CC	.7105	6.2	6.2
349	12	MED	*BENIGN PROSTATIC HYPERTROPHY W/O CC	.4357	4.9	4.9
350	12	MED	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	.7173	3.8	4.6
351	12	MED	*STERILIZATION, MALE	.2352	1.3	1.3
352	12	MED	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	.6878	3.0	4.2
353	13	SURG	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY.	1.8386	5.4	6.8
354	13	SURG	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC.	1.5275	5.1	6.1
355	13	SURG	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC.	.9039	3.1	3.3
356	13	SURG	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES.	.7469	2.0	2.3
357	13	SURG	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY.	2.4424	7.5	9.2
358	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC	1.1910	3.7	4.4
359	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	.8191	2.6	2.8
360	13	SURG	VAGINA, CERVIX & VULVA PROCEDURES	.8530	2.4	2.9
361	13	SURG	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	1.0927	2.2	3.0
362	13	SURG	*ENDOSCOPIC TUBAL INTERRUPTION	.3006	1.4	1.4
363	13	SURG	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	.8149	2.6	3.6
364	13	SURG	D&C, CONIZATION EXCEPT FOR MALIGNANCY	.8190	2.9	4.1

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DRG	MDC	Type	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
365	13	SURG	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	2.0115	5.8	8.1
366	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	1.2739	5.6	7.4
367	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	.5582	2.4	3.2
368	13	MED	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	1.1384	5.6	7.0
369	13	MED	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS.	.5584	2.5	3.4
370	14	SURG	CESAREAN SECTION W CC	1.0417	4.6	6.1
371	14	SURG	CESAREAN SECTION W/O CC	.6848	3.3	3.7
372	14	MED	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	.5578	2.6	3.3
373	14	MED	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	.3764	2.0	2.3
374	14	SURG	VAGINAL DELIVERY W STERILIZATION &/OR D&C	.7103	2.6	3.2
375	14	SURG	VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	.6081	2.1	2.3
376	14	MED	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE.	.4954	2.5	3.2
377	14	SURG	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE.	1.6465	3.7	5.6
378	14	MED	ECTOPIC PREGNANCY	.7984	2.0	2.4
379	14	MED	THREATENED ABORTION	.4502	2.4	3.5
380	14	MED	ABORTION W/O D&C	.4196	1.6	2.1
381	14	SURG	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	.6654	1.8	2.5
382	14	MED	FALSE LABOR	.1607	1.2	1.3
383	14	MED	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	.4856	2.8	3.8
384	14	MED	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS.	.3412	1.6	2.2
385	15	MED	*NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY.	1.3696	1.8	1.8
386	15	MED	*EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE.	4.5165	17.9	17.9
387	15	MED	*PREMATURITY W MAJOR PROBLEMS	3.0846	13.3	13.3
388	15	MED	*PREMATURITY W/O MAJOR PROBLEMS	1.8612	8.6	8.6
389	15	MED	FULL TERM NEONATE W MAJOR PROBLEMS	2.0857	7.9	13.7
390	15	MED	NEONATE W OTHER SIGNIFICANT PROBLEMS	1.1337	3.5	4.3
391	15	MED	*NORMAL NEWBORN	.1519	3.1	3.1
392	16	SURG	SPLENECTOMY AGE >17	3.3890	8.3	10.8
393	16	SURG	*SPLENECTOMY AGE 0–17	1.3416	9.1	9.1
394	16	SURG	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS.	1.8266	5.1	8.1
395	16	MED	RED BLOOD CELL DISORDERS AGE >17	.8194	3.5	4.7
396	16	MED	RED BLOOD CELL DISORDERS AGE 0–17	1.0480	3.9	5.0
397	16	MED	COAGULATION DISORDERS	1.2664	4.2	5.6
398	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC	1.3049	5.1	6.4
399	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC	.6690	3.0	3.7
400	17	SURG	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE	2.9273	7.4	10.5
401	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC	2.9814	9.9	12.8
402	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC.	1.1619	3.1	4.4
403	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	1.8486	6.8	9.0
404	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	.8711	3.4	4.6
405	17	MED	*ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0–17	1.9021	4.9	4.9
406	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC.	2.9692	8.4	11.0
407	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC.	1.2484	3.8	4.7
408	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC.	2.2150	6.0	9.2
409	17	MED	RADIOTHERAPY	1.1469	4.9	6.3
410	17	MED	CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS.	.9972	3.3	4.1
411	17	MED	HISTORY OF MALIGNANCY W/O ENDOSCOPY	.4401	1.8	2.3
412	17	MED	HISTORY OF MALIGNANCY W ENDOSCOPY	.6073	1.9	2.4
413	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC	1.3898	6.1	7.8
414	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC	.7422	3.5	4.5
415	18	SURG	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	3.8811	12.6	16.2
416	18	MED	SEPTICEMIA AGE >17	1.6209	6.4	8.1
417	18	MED	SEPTICEMIA AGE 0–17	.8498	4.5	5.3
418	18	MED	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	1.0452	5.3	6.6

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DRG	MDC	Type	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
419	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W CC	.8617	4.0	5.0
420	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	.6114	3.0	3.6
421	18	MED	VIRAL ILLNESS AGE >17	.6646	3.2	3.9
422	18	MED	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0–17	.4800	2.6	3.2
423	18	MED	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	1.8405	6.7	9.0
424	19	SURG	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS	2.4350	10.7	15.6
425	19	MED	ACUTE ADJUSTMENT REACTION & PSYCHOSOCIAL DYSFUNCTION.	.6799	3.2	4.2
426	19	MED	DEPRESSIVE NEUROSES	.5276	3.5	4.7
427	19	MED	NEUROSES EXCEPT DEPRESSIVE	.5438	3.6	5.0
428	19	MED	DISORDERS OF PERSONALITY & IMPULSE CONTROL	.7200	5.0	7.6
429	19	MED	ORGANIC DISTURBANCES & MENTAL RETARDATION	.8357	5.2	6.8
430	19	MED	PSYCHOSES	.7653	6.7	8.9
431	19	MED	CHILDHOOD MENTAL DISORDERS	.6309	5.0	6.8
432	19	MED	OTHER MENTAL DISORDER DIAGNOSES	.7068	3.4	5.1
433	20	MED	ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	.2852	2.3	3.2
434	20	MED	NO LONGER VALID	.0000	.0	.0
435	20	MED	NO LONGER VALID	.0000	.0	.0
436	20	MED	NO LONGER VALID	.0000	.0	.0
437	20	MED	NO LONGER VALID	.0000	.0	.0
438	20		NO LONGER VALID	.0000	.0	.0
439	21	SURG	SKIN GRAFTS FOR INJURIES	1.9350	6.7	9.5
440	21	SURG	WOUND DEBRIDEMENTS FOR INJURIES	2.0732	7.1	10.3
441	21	SURG	HAND PROCEDURES FOR INJURIES	.9273	2.3	3.3
442	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W CC	2.5349	6.8	9.6
443	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W/O CC	.9896	2.7	3.6
444	21	MED	TRAUMATIC INJURY AGE >17 W CC	.7244	3.4	4.4
445	21	MED	TRAUMATIC INJURY AGE >17 W/O CC	.4713	2.4	3.0
446	21	MED	*TRAUMATIC INJURY AGE 0–17	.2949	2.4	2.4
447	21	MED	ALLERGIC REACTIONS AGE >17	.4851	1.9	2.5
448	21	MED	*ALLERGIC REACTIONS AGE 0–17	.0970	2.9	2.9
449	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC	.8306	2.8	3.9
450	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	.4161	1.6	2.0
451	21	MED	*POISONING & TOXIC EFFECTS OF DRUGS AGE 0–17	.2618	2.1	2.1
452	21	MED	COMPLICATIONS OF TREATMENT W CC	1.0125	3.8	5.2
453	21	MED	COMPLICATIONS OF TREATMENT W/O CC	.4997	2.2	2.8
454	21	MED	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC	.8713	3.4	4.9
455	21	MED	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC	.4617	1.9	2.6
456	22		NO LONGER VALID	.0000	.0	.0
457	22	MED	NO LONGER VALID	.0000	.0	.0
458	22	SURG	NO LONGER VALID	.0000	.0	.0
459	22	SURG	NO LONGER VALID	.0000	.0	.0
460	22	MED	NO LONGER VALID	.0000	.0	.0
461	23	SURG	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES.	1.1994	2.5	4.6
462	23	MED	REHABILITATION	1.2033	10.4	12.3
463	23	MED	SIGNS & SYMPTOMS W CC	.6818	3.4	4.3
464	23	MED	SIGNS & SYMPTOMS W/O CC	.4630	2.5	3.1
465	23	MED	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS.	.6065	2.5	3.6
466	23	MED	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS.	.6630	2.5	4.2
467	23	MED	OTHER FACTORS INFLUENCING HEALTH STATUS	.5762	2.7	4.1
468			EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	3.8458	11.3	14.5
469			**PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS	.0000	.0	.0
470			**UNGROUPABLE	.0000	.0	.0
471	08	SURG	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY.	2.9929	5.0	5.7
472	22	SURG	NO LONGER VALID	.0000	.0	.0
473	17	SURG	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	3.9044	9.7	15.0
474	04	SURG	NO LONGER VALID	.0000	.0	.0
475	04	MED	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	3.9155	10.0	12.7
476		SURG	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	2.2902	10.0	12.3

*MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM 19 STATES FOR LOW VOLUME DRGS.
**DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: ARITHMETIC MEAN IS PRESENTED FOR INFORMATIONAL PURPOSES ONLY.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

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TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

DRG	MDC	Type	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
477	.....	SURG	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	1.9571	6.7	9.3
478	05	SURG	OTHER VASCULAR PROCEDURES W CC	2.4276	5.9	8.2
479	05	SURG	OTHER VASCULAR PROCEDURES W/O CC	1.4024	2.8	3.7
480	PRE	SURG	LIVER TRANSPLANT	10.6132	17.7	22.8
481	PRE	SURG	BONE MARROW TRANSPLANT	7.8889	23.4	25.6
482	PRE	SURG	TRACHEOSTOMY FOR FACE, MOUTH & NECK DIAGNOSES	3.8343	11.4	14.3
483	PRE	SURG	TRACHEOSTOMY EXCEPT FOR FACE, MOUTH & NECK DIAGNOSES.	15.2827	34.0	41.0
484	24	SURG	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	5.1265	11.5	14.5
485	24	SURG	LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT TRA.	3.1094	8.5	10.3
486	24	SURG	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA	5.2547	11.0	14.3
487	24	MED	OTHER MULTIPLE SIGNIFICANT TRAUMA	1.9199	6.3	8.2
488	25	SURG	HIV W EXTENSIVE O.R. PROCEDURE	5.1474	15.0	19.8
489	25	MED	HIV W MAJOR RELATED CONDITION	1.8802	7.0	9.4
490	25	MED	HIV W OR W/O OTHER RELATED CONDITION	1.0475	4.3	5.8
491	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY.	1.6364	3.0	3.5
492	17	MED	CHEMOTHERAPY W ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS.	4.8853	13.6	19.0
493	07	SURG	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W CC	1.8468	4.9	6.3
494	07	SURG	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC	.9800	1.9	2.5
495	PRE	SURG	LUNG TRANSPLANT	8.8879	13.8	16.2
496	08	SURG	COMBINED ANTERIOR/POSTERIOR SPINAL FUSION	5.6865	8.5	10.3
497	08	SURG	SPINAL FUSION EXCEPT CERVICAL W CC	3.1996	5.8	6.8
498	08	SURG	SPINAL FUSION EXCEPT CERVICAL W/O CC	2.2996	3.9	4.3
499	08	SURG	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W CC	1.4471	3.8	5.0
500	08	SURG	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W/O CC	.9375	2.2	2.6
501	08	SURG	KNEE PROCEDURES W PDX OF INFECTION W CC	2.7466	9.8	12.0
502	08	SURG	KNEE PROCEDURES W PDX OF INFECTION W/O CC	1.5591	5.9	6.9
503	08	SURG	KNEE PROCEDURES W/O PDX OF INFECTION	1.2336	3.3	4.2
504	22	SURG	EXTENSIVE 3RD DEGREE BURNS W SKIN GRAFT	13.8097	28.2	33.6
505	22	MED	EXTENSIVE 3RD DEGREE BURNS W/O SKIN GRAFT	1.4893	2.0	3.4
506	22	SURG	FULL THICKNESS BURN W SKIN GRAFT OR INHAL INJ W CC OR SIG TRAUMA.	4.9149	15.7	19.9
507	22	SURG	FULL THICKNESS BURN W SKIN GRFT OR INHAL INJ W/O CC OR SIG TRAUMA.	1.8331	7.2	9.2
508	22	MED	FULL THICKNESS BURN W/O SKIN GRFT OR INHAL INJ W CC OR SIG TRAUMA.	1.2966	6.0	8.3
509	22	MED	FULL THICKNESS BURN W/O SKIN GRFT OR INH INJ W/O CC OR SIG TRAUMA.	.7323	3.7	4.9
510	22	MED	NON-EXTENSIVE BURNS W CC OR SIGNIFICANT TRAUMA	1.3509	5.8	8.0
511	22	MED	NON-EXTENSIVE BURNS W/O CC OR SIGNIFICANT TRAUMA	.7558	3.6	5.1
512	PRE	SURG	SIMULTANEOUS PANCREAS/KIDNEY TRANSPLANT	6.6413	13.4	16.5
513	PRE	SURG	PANCREAS TRANSPLANT	6.6497	10.3	13.4
514	05	SURG	CARDIAC DEFIBRILLATOR IMPLANT W CARDIAC CATH	6.4169	6.8	9.0
515	05	SURG	CARDIAC DEFIBRILLATOR IMPLANT W/O CARDIAC CATH	5.0652	4.3	6.8
516	05	SURG	PERCUTANEOUS CARDIOVASC PROC W AMI	2.7250	4.1	5.0
517	05	SURG	PERC CARDIO PROC W CORONARY ARTERY STENT W/O AMI	2.1497	1.9	2.7
518	05	SURG	PERC CARDIO PROC W/O CORONARY ARTERY STENT OR AMI	1.6673	2.5	3.6
519	08	SURG	CERVICAL SPINAL FUSION W CC	2.2654	3.4	5.1
520	08	SURG	CERVICAL SPINAL FUSION W/O CC	1.5709	2.0	2.8
521	20	MED	ALCOHOL/DRUG ABUSE OR DEPENDENCE W CC	.7354	4.2	5.4
522	20	MED	ALC/DRUG ABUSE OR DEPEND W REHABILITATION THERAPY W/O CC.	.6631	9.0	10.7
523	20	MED	ALC/DRUG ABUSE OR DEPEND W/O REHABILITATION THERAPY W/O CC.	.3983	3.5	4.3

*MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM 19 STATES FOR LOW VOLUME DRGS.
**DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR TRANSFER CASES.
NOTE: ARITHMETIC MEAN IS PRESENTED FOR INFORMATIONAL PURPOSES ONLY.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

TABLE 6A.—NEW DIAGNOSIS CODES

Diagnosis code	Description	CC	MDC	DRG
256.31	Premature menopause	N	13	358, 359, 369
256.39	Other ovarian failure	N	13	358, 359, 369
277.7	Dysmetabolic Syndrome X	N	10	299
464.00	Acute laryngitis, without mention of obstruction	N	3	68, 69, 70
			pre	482
464.01	Acute laryngitis, with obstruction	N	3	68, 69, 70
			pre	482
464.50	Unspecified supraglottis, without mention of obstruction	N	3	68, 69, 70
			pre	482
464.51	Unspecified supraglottis, with obstruction	N	3	68, 69, 70
			pre	482
521.00	Unspecified dental caries	N	3	185, 186, 187
			pre	482
521.01	Dental caries limited to enamel	N	3	185, 186, 187
			pre	482
521.02	Dental caries extending into dentine	N	3	185, 186, 187
			pre	482
521.03	Dental caries extending into pulp	N	3	185, 186, 187
			pre	482
521.04	Arrested dental caries	N	3	185, 186, 187
			pre	482
521.05	Odontoclasia	N	3	185, 186, 187
			pre	482
521.09	Other dental caries	N	3	185, 186, 187
			pre	482
525.10	Unspecified acquired absence of teeth	N	3	185, 186, 187
			pre	482
525.11	Loss of teeth due to trauma	N	3	185, 186, 187
			pre	482
525.12	Loss of teeth due to periodontal disease	N	3	182, 183, 184
			pre	482
525.13	Loss of teeth due to caries	N	3	185, 186, 187
			pre	482
525.19	Other loss of teeth	N	3	185, 186, 187
			pre	482
530.12	Acute esophagitis	N	6	182, 183, 184
564.00	Unspecified constipation	N	6	182, 183, 184
564.01	Slow transit constipation	N	6	182, 183, 184
564.02	Outlet dysfunction constipation	N	6	182, 183, 184
564.09	Other constipation	N	6	182, 183, 184
602.3	Dysplasia of prostate	N	12	352
608.82	Hematospermia	N	12	352
608.87	Retrograde ejaculation	N	12	352
692.76	Sunburn of second degree	N	9	283, 284
692.77	Sunburn of third degree	N	9	283, 284
718.70	Developmental dislocation of joint, site unspecified	N	8	256
718.71	Developmental dislocation of joint, shoulder region	N	8	256
718.72	Developmental dislocation of joint, upper arm	N	8	256
718.73	Developmental dislocation of joint, forearm	N	8	256
718.74	Developmental dislocation of joint, hand	N	8	256
718.75	Developmental dislocation of joint, pelvic region and thigh	N	8	256
718.76	Developmental dislocation of joint, lower leg	N	8	256
718.77	Developmental dislocation of joint, ankle and foot	N	8	256
718.78	Developmental dislocation of joint, other specified sites	N	8	256
718.79	Developmental dislocation of joint, multiple sites	N	8	256
733.93	Stress fracture of tibia or fibula	Y	8	239
733.94	Stress fracture of the metatarsals	Y	8	239
733.95	Stress fracture of other bone	Y	8	239
772.10	Intraventricular hemorrhage, unspecified grade	Y	15	387, 389
772.11	Intraventricular hemorrhage, Grade I	Y	15	387, 389
772.12	Intraventricular hemorrhage, Grade II	Y	15	387, 389
772.13	Intraventricular hemorrhage, Grade III	Y	15	387, 389
772.14	Intraventricular hemorrhage, Grade IV	Y	15	387, 389
779.7	Perventricular leukomalacia	Y	15	387, 389
793.80	Unspecified abnormal mammogram	N	9	276
793.81	Mammographic microcalcification	N	9	276
793.89	Other abnormal findings on radiological examination breast	N	9	276
840.7	Superior glenoid labrum lesions (SLAP)	N	8	253, 254, 255
			24	487

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TABLE 6A.—NEW DIAGNOSIS CODES—Continued

Diagnosis code	Description	CC	MDC	DRG
997.71	Vascular complications of mesenteric artery	Y	6	188, 189, 190
			15	387,[1] 389[1]
997.72	Vascular complications of renal artery	Y	11	331, 332, 333
			15	387,[1] 389[1]
997.79	Vascular complications of other vessels	Y	5	130, 131
			15	387,[1] 389[1]
V10.53	Personal history of malignant neoplasm, renal pelvis	N	17	411, 412
V45.84	Dental restoration status	N	23	467
V49.82	Dental sealant status	N	23	467
V83.01	Asymptomatic hemophilia A carrier	N	23	467
V83.02	Symptomatic hemophilia A carrier	N	23	467

TABLE 6B.—NEW PROCEDURE CODES

Procedure code	Description	OR	MDC	DRG
37.28	Intracardiac echocardiography	N		
44.32	Percutaneous [endoscopic] gastrojejunostomy	Y	6	154–156
			7	201
			10	288
			17	400, 406, 407
67.51	Transabdominal cerclage of cervix	Y	13	360
			14	372, 373
			21	442, 443
			24	486
67.59	Other repair of internal cervical os	Y	13	360
			14	372, 373
			21	442, 443
			24	486
75.38	Fetal pulse oximetry	N		
81.30	Refusion of spine, not otherwise specified	Y	1	4
			8	497, 498
			21	442, 443
			24	486
81.31	Refusion of Atlas-axis spine	Y	1	4
			8	497, 498
			21	442, 443
			24	486
81.32	Refusion of other cervical spine, anterior technique	Y	1	4
			8	496, 519, 520
			21	442, 443
			24	486
81.33	Refusion of other cervical spine, posterior technique	Y	1	4
			8	496, 519, 520
			21	442, 443
			24	486
81.34	Refusion of dorsal and dorsolumbar spine, anterior technique	Y	1	4
			8	496, 497, 498
			21	442, 443
			24	486
81.35	Refusion of dorsal and dorsolumbar spine, posterior technique	Y	1	4
			8	496, 497, 498
			21	442, 443
			24	486
81.36	Refusion of lumbar and lumbosacral spine, anterior technique	Y	1	4
			8	496, 497, 498
			21	442, 443
			24	486
81.37	Refusion of lumbar and lumbosacral spine, lateral transverse process technique.	Y	1	4
			8	496, 497, 498
			21	442, 443
			24	486
81.38	Refusion of lumbar and lumbosacral spine, posterior technique	Y	1	4
			8	496, 497, 498
			21	442, 443
			24	486

TABLE 6B.—NEW PROCEDURE CODES—Continued

Procedure code	Description	OR	MDC	DRG
81.39	Refusion of spine, not elsewhere classified	Y	1	4
			8	497, 498
			21	442, 443
			24	486
97.44	Nonoperative removal of heart assist system	N		

TABLE 6C.—INVALID DIAGNOSIS CODES

Diagnosis code	Description	CC	MDC	DRG
256.3	Other ovarian failure	N	13	358, 359, 369
464.0	Acute laryngitis	N	3	68, 69, 70
			pre	482
521.0	Dental caries	N	3	185, 186, 187
			pre	482
525.1	Loss of teeth due to accident, extraction, or local periodontal disease	N	3	185, 186, 187
			pre	482
564.0	Constipation	N	6	182, 183, 184
772.1	Intraventricular hemorrhage	Y	15	387,389
793.8	Nonspecific abnormal findings on radiological and other examinations of body structure, breast.	N	9	276

TABLE 6D.—INVALID PROCEDURE CODES

Procedure code	Description	OR	MDC	DRG
67.5	Repair of internal cervical os	Y	13	360
			14	372, 373
			21	442, 442
			24	486
81.09	Refusion of spine, any level or technique	Y	1	4
			8	497, 498
			21	442, 443
			24	486

TABLE 6E.—REVISED DIAGNOSIS CODE TITLES

Diagnosis code	Description	CC	MDC	DRG
411.81	Acute coronary occlusion without myocardial infarction	Y	5	124, 140
493.00	Extrinsic asthma without mention of status asthmaticus or acute exacerbation or unspecified.	N	4	96, 97, 98
493.10	Intrinsic asthma without mention of status asthmaticus or acute exacerbation or unspecified.	N	4	96, 97, 98
493.20	Chronic obstructive asthma without mention of status asthmaticus or acute exacerbation or unspecified.	Y	4	88
493.90	Asthma, unspecified without mention of status asthmaticus or acute exacerbation or unspecified.	N	4	96, 97, 98
V70.7	Examination of participant in clinical trial	N	23	467

TABLE 6F.—REVISED PROCEDURE CODES

Procedure code	Description	OR	MDC	DRG
75.34	Other fetal monitoring	N		

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TABLE 6G.—ADDITIONS TO THE CC EXCLUSIONS LIST

CCs that are added to the list are in Table 6F-Additions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

*25631	80600	82010	80637	80606	82021	77212	77210
2580	80601	82011	80638	80607	82022	77213	77211
2581	80602	82012	80639	80608	82030	77214	77212
2588	80603	82013	8064	80609	82031	7797	77213
2589	80604	82019	8065	80610	82032	*7729	77214
*25639	80605	82020	80660	80611	8208	77210	7797
2580	80606	82021	80661	80612	8209	77211	*7769
2581	80607	82022	80662	80613	82100	77212	77210
2588	80608	82030	80669	80614	82101	77213	77211
2589	80609	82031	80670	80615	82110	77214	77212
*6023	80610	82032	80671	80616	82111	7797	77213
5960	80611	8208	80672	80617	*7720	*7760	77214
5996	80612	8209	80679	80618	77210	77210	7797
6010	80613	82100	8068	80619	77211	77211	*7797
6012	80614	82101	8069	80620	77212	77212	7722
6013	80615	82110	8080	80621	77213	77213	7797
6021	80616	82111	8082	80622	77214	77214	*7798
78820	80617	*73394	8083	80623	7797	7797	77210
78829	80618	73310	80843	80624	*77210	*7761	77211
*60887	80619	73311	80849	80625	77210	77210	77212
5970	80620	73312	80851	80626	77211	77211	77213
5994	80621	73313	80852	80627	77212	77212	77214
*73310	80622	73314	80853	80628	77213	77213	7797
73393	80623	73315	80859	80629	77214	77214	*9972
73394	80624	73316	8088	80630	7722	7797	99771
73395	80625	73319	8089	80631	7797	*7762	99772
*73311	80626	73393	82000	80632	*77211	77210	99779
73393	80627	73394	82001	80633	77210	77211	*99771
73394	80628	73395	82002	80634	77211	77212	53640
73395	80629	8058	82003	80635	77212	77213	53641
*73312	80630	8059	82009	80636	77213	77214	53642
73393	80631	80600	82010	80637	77214	7797	53649
73394	80632	80601	82011	80638	7722	*7763	56962
73395	80633	80602	82012	80639	7797	77210	9974
*73313	80634	80603	82013	8064	*77212	77211	99771
73393	80635	80604	82019	8065	77210	77212	99772
73394	80636	80605	82020	80660	77211	77213	99779
73395	80637	80606	82021	80661	77212	77214	*99772
*73314	80638	80607	82022	80662	77213	7797	9975
73393	80639	80608	82030	80669	77214	*7764	99771
73394	8064	80609	82031	80670	7722	77210	99772
73395	8065	80610	82032	80671	7797	77211	99779
*73315	80660	80611	8208	80672	*77213	77212	*99779
73393	80661	80612	8209	80679	77210	77213	9972
73394	80662	80613	82100	8068	77211	77214	99771
73395	80669	80614	82101	8069	77212	7797	99772
*73316	80670	80615	82110	8080	77213	*7765	99779
73393	80671	80616	82111	8082	77214	77210	*99791
73394	80672	80617	*73395	8083	7722	77211	99771
73395	80679	80618	73310	80843	7797	77212	99772
*73319	8068	80619	73311	80849	*77214	77213	99779
73393	8069	80620	73312	80851	77210	77214	*99799
73394	8080	80621	73313	80852	77211	7797	99771
73395	8082	80622	73314	80853	77212	*7766	99772
*73393	8083	80623	73315	80859	77213	77210	99779
73310	80843	80624	73316	8088	77214	77211	*99881
73311	80849	80625	73319	8089	7722	77212	99771
73312	80851	80626	73393	82000	7797	77213	99772
73313	80852	80627	73394	82001	*7722	77214	99779
73314	80853	80628	73395	82002	77210	7797	*99883
73315	80859	80629	8058	82003	77211	*7767	99771
73316	8088	80630	8059	82009	77212	77210	99772
73319	8089	80631	80600	82010	77213	77211	99779
73393	82000	80632	80601	82011	77214	77212	*99889
73394	82001	80633	80602	82012	7797	77213	99771
73395	82002	80634	80603	82013	*7728	77214	99772
8058	82003	80635	80604	82019	77210	7797	99779
8059	82009	80636	80605	82020	77211	*7768	*9989
99771							
99772							
99779							

TABLE 6H.—DELETIONS TO THE CC EXCLUSIONS LIST

CCs that are deleted from the list are in Table 6G—Deletions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

*2563	
2580	
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*7769	
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*7798	
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TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY
[FY2000 MEDPAR update 12/00 Grouper V18.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
1	33822	8.9935	2	3	6	12	19
2	6772	9.9778	3	5	8	13	20
3	2	43.5000	35	35	52	52	52
4	6035	7.1639	1	2	5	9	15
5	93311	3.1649	1	1	2	3	7
6	366	2.9672	1	1	2	4	6
7	12470	9.9739	2	4	7	12	20
8	4164	3.2759	1	1	2	4	7
9	1610	6.3491	1	3	5	8	13
10	17577	6.5503	2	3	5	8	13
11	3128	4.0767	1	2	3	5	8
12	46758	5.8962	2	3	4	7	11
13	6415	5.2011	2	3	4	6	9
14	319523	5.8762	2	3	5	7	11
15	145366	3.5498	1	2	3	4	7
16	11155	6.0293	2	3	5	7	12
17	3519	3.3231	1	2	3	4	6
18	25961	5.4162	2	3	4	7	10
19	8638	3.6972	1	2	3	5	7
20	5629	10.1482	3	5	8	13	20
21	1309	6.5516	2	3	5	8	13
22	2535	4.8174	1	2	4	6	9
23	9464	4.1855	1	2	3	5	8
24	52753	4.9830	1	2	4	6	10
25	25370	3.2236	1	2	3	4	6
26	31	2.7097	1	1	2	3	6
27	3441	5.0584	1	1	3	6	11
28	11316	6.2100	1	3	5	8	13
29	4486	3.6097	1	2	3	5	7
30	1	1.0000	1	1	1	1	1
31	3488	4.4903	1	2	3	5	8
32	1738	2.5621	1	1	2	3	5
33	1	1.0000	1	1	1	1	1
34	20249	5.0786	1	2	4	6	10
35	5728	3.3959	1	2	3	4	6
36	3190	1.4649	1	1	1	1	2
37	1452	4.0296	1	1	2	5	9
38	102	2.6569	1	1	2	3	5
39	912	1.9079	1	1	1	2	4
40	1545	3.4252	1	1	2	4	7
42	2223	2.2852	1	1	1	3	5
43	85	3.1882	1	2	3	4	6
44	1238	4.9548	2	3	4	6	9
45	2444	3.1678	1	2	3	4	6
46	3051	4.6834	1	2	4	6	9
47	1281	3.2560	1	1	3	4	6
49	2241	4.8104	1	2	3	6	9
50	2488	1.9425	1	1	1	2	3
51	203	2.6995	1	1	1	2	6
52	220	1.9318	1	1	1	2	3
53	2478	3.5557	1	1	2	4	8
54	2	1.5000	1	1	2	2	2
55	1505	2.7442	1	1	1	3	6
56	503	2.7256	1	1	2	3	5
57	708	3.9492	1	1	2	5	9
59	107	2.7850	1	1	2	3	5
60	2	3.5000	2	2	5	5	5
61	231	5.0996	1	1	2	6	12
62	3	1.3333	1	1	1	2	2
63	2934	4.3889	1	2	3	5	8
64	3033	6.1800	1	2	4	8	13
65	34466	2.8420	1	1	2	4	5
66	6978	3.1635	1	1	2	4	6
67	495	3.5960	1	2	3	4	7
68	16724	4.1158	1	2	3	5	7
69	5435	3.2736	1	2	3	4	6
70	24	2.9167	1	2	2	4	5
71	82	3.8049	1	2	3	4	7
72	883	3.5663	1	2	3	4	6
73	6630	4.4065	1	2	3	6	9

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY2000 MEDPAR update 12/00 Grouper V18.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentiie	75th percentile	90th percentile
75	39010	9.9124	3	5	7	12	19
76	38998	11.2677	3	5	9	14	21
77	2352	4.9184	1	2	4	7	10
78	32087	6.7848	3	4	6	8	11
79	169783	8.4892	3	4	7	11	16
80	9018	5.6618	2	3	5	7	10
81	4	18.2500	3	3	4	8	58
82	61883	6.9447	2	3	5	9	14
83	6446	5.5496	2	3	4	7	10
84	1508	3.3455	1	2	3	4	6
85	20572	6.3122	2	3	5	8	12
86	2118	3.6643	1	2	3	5	7
87	60110	6.2840	1	3	5	8	12
88	389694	5.1207	2	3	4	6	9
89	525838	5.9470	2	3	5	7	11
90	53895	4.1549	2	3	4	5	7
91	54	4.5185	2	2	3	5	10
92	13774	6.3499	2	3	5	8	12
93	1672	4.0353	1	2	3	5	7
94	12030	6.2988	2	3	5	8	12
95	1595	3.7179	1	2	3	5	7
96	61986	4.6292	2	3	4	6	8
97	31444	3.6560	1	2	3	5	7
98	18	4.2222	1	2	2	4	6
99	18996	3.1991	1	1	2	4	6
100	7619	2.1869	1	1	2	3	4
101	19997	4.3938	1	2	3	5	9
102	5146	2.6570	1	1	2	3	5
103	475	46.6021	9	13	25	60	98
104	36578	11.3165	7	11	28	60	98
105	29726	9.2831	5	6	8	15	98
106	3401	11.4963	5	7	10	14	20
107	87868	10.3783	5	7	9	12	17
108	6048	10.2116	3	5	8	13	19
109	60265	7.6926	4	5	6	9	12
110	52595	9.2013	2	5	7	11	18
111	8545	4.7604	1	2	5	6	8
113	42250	12.1885	3	6	9	15	24
114	8712	8.3768	2	4	7	10	16
115	14329	8.1687	1	4	7	11	16
116	330888	3.6061	2	9	7	11	16
117	3717	4.1512	1	1	2	5	9
118	7667	2.6849	1	1	1	3	6
119	1307	4.8829	1	1	3	6	12
120	35929	8.1178	1	2	5	10	16
121	162112	6.3821	2	3	5	8	12
122	78969	3.7027	1	2	3	5	7
123	40659	4.5833	1	1	3	6	11
124	132801	4.3427	1	2	3	5	8
125	80169	2.7657	1	1	2	4	5
126	5150	11.6882	3	6	9	14	22
127	678903	5.2745	2	3	4	7	10
128	9424	5.6175	2	4	5	7	9
129	4140	2.7621	1	1	1	3	6
130	86009	5.6760	2	3	5	7	10
131	28236	4.2426	1	2	4	6	7
132	147648	3.0002	1	1	2	4	6
133	8321	2.3367	1	1	2	3	4
134	36118	3.2406	1	2	3	4	6
135	7266	4.5531	1	2	3	6	9
136	1221	2.7158	1	1	2	3	5
138	194087	3.9932	1	2	3	5	8
139	82604	2.5072	1	1	2	3	5
140	69724	2.6533	1	1	2	3	5
141	90403	3.6691	1	2	3	5	7
142	45776	2.6508	1	1	2	3	5
143	203918	2.1253	1	1	2	3	4
144	81577	5.3196	1	2	4	7	11
145	7224	2.7460	1	1	2	3	5
146	10683	10.2826	5	7	9	12	17

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TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY2000 MEDPAR update 12/00 Grouper V18.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
147	2629	6.4196	3	5	6	8	9
148	129247	12.1904	5	7	10	15	22
149	18462	6.5184	4	5	6	8	9
150	19795	11.2770	4	7	10	14	20
151	4814	5.8286	2	3	5	8	10
152	4381	8.1438	3	5	7	9	14
153	2083	5.3711	3	4	5	7	8
154	28660	13.1491	4	7	10	16	25
155	6596	4.2179	1	2	3	6	8
156	4	7.5000	1	1	5	6	18
157	7903	5.3790	1	2	4	7	11
158	4630	2.5395	1	1	2	3	5
159	16309	4.9926	1	2	4	6	10
160	11655	2.6619	1	1	2	3	5
161	11119	4.2027	1	1	3	5	9
162	7199	1.9267	1	1	1	2	4
163	5	4.4000	1	1	3	4	13
164	4824	8.4279	4	5	7	10	15
165	2066	4.8049	2	3	5	6	8
166	3532	5.0337	2	2	4	6	10
167	3269	2.5990	1	2	2	3	5
168	1327	4.7641	1	2	3	6	10
169	834	2.3405	1	1	2	3	5
170	10975	11.1690	2	5	8	14	22
171	1284	4.6597	1	2	4	6	9
172	30412	6.9363	2	3	5	9	14
173	2685	3.6648	1	1	3	5	7
174	240400	4.7974	2	3	4	6	9
175	32375	2.9414	1	2	3	4	5
176	15101	5.2286	2	3	4	6	10
177	9190	4.5348	2	2	4	6	8
178	3597	3.0703	1	2	3	4	6
179	12291	5.9729	2	3	5	7	11
180	85599	5.3567	2	3	4	7	10
181	26315	3.4185	1	2	3	4	6
182	243506	4.3356	1	2	3	5	8
183	83969	2.9155	1	1	2	4	5
184	79	2.9620	1	2	2	4	6
185	4760	4.5210	1	2	3	6	9
186	3	9.3333	1	1	9	18	18
187	646	3.9164	1	1	3	5	8
188	75558	5.5580	1	2	4	7	11
189	11984	3.1542	1	1	2	4	6
190	49	7.0204	2	3	4	5	8
191	8889	13.7967	4	6	10	17	28
192	1105	6.5122	2	4	6	8	11
193	5258	12.5369	5	7	10	16	22
194	718	6.7869	2	4	6	8	12
195	4327	10.1470	4	6	9	12	17
196	1162	5.7212	2	4	5	7	10
197	18754	8.9335	3	5	7	11	16
198	5751	4.5416	2	3	4	6	8
199	1704	9.5827	2	4	7	13	20
200	1063	10.3518	1	3	7	13	22
201	1398	13.7790	3	6	11	17	25
202	25975	6.4045	2	3	5	8	13
203	29017	6.6364	2	3	5	9	13
204	57319	5.7964	2	3	4	7	11
205	22900	6.1735	2	3	5	8	12
206	1948	3.9168	1	2	3	5	7
207	30817	5.0832	1	2	4	6	10
208	10061	2.8946	1	1	2	4	6
209	343375	5.0786	3	3	4	6	8
210	120891	6.8189	3	4	6	8	11
211	31665	4.9325	3	4	4	6	7
212	6	13.5000	1	4	4	29	29
213	9144	8.9604	2	4	7	11	18
216	5956	9.6949	2	4	8	12	20
217	16333	13.1971	3	5	9	16	28
218	21296	5.4123	2	3	4	7	10

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY2000 MEDPAR update 12/00 Grouper V18.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
219	19530	3.2240	1	2	3	4	6
220	6	4.0000	1	1	3	7	7
223	13251	2.8497	1	1	2	3	6
224	11112	1.9343	1	1	2	2	3
225	5734	4.8575	1	2	3	6	11
226	5148	6.5874	1	2	4	8	14
227	4695	2.7242	1	1	2	3	5
228	2340	3.7970	1	1	2	5	8
229	1108	2.4838	1	1	2	3	5
230	2365	5.2592	1	2	3	6	11
231	11343	4.9395	1	2	3	6	11
232	807	2.8872	1	1	1	3	7
233	5059	7.5181	2	3	6	10	15
234	3168	3.4419	1	1	3	4	7
235	5036	5.0473	1	2	4	6	9
236	38265	4.8164	1	3	4	6	9
237	1687	3.5033	1	2	3	4	6
238	7930	8.5212	3	4	6	10	16
239	49088	6.2151	2	3	5	8	12
240	11318	6.6744	2	3	5	8	13
241	3168	3.8570	1	2	3	5	7
242	2434	6.6348	2	3	5	8	13
243	87407	4.6676	1	2	4	6	9
244	12162	4.8047	1	2	4	6	9
245	5130	3.4458	1	2	3	4	6
246	1386	3.8117	1	2	3	5	7
247	16832	3.3990	1	1	3	4	7
248	10529	4.8161	1	2	4	6	9
249	11336	3.6591	1	1	2	4	8
250	3456	4.1062	1	2	3	5	7
251	2406	2.8579	1	1	2	4	5
253	19677	4.7732	1	3	4	6	9
254	10449	3.1906	1	2	3	4	6
255	1	3.0000	3	3	3	3	3
256	6054	5.0766	1	2	4	6	10
257	16333	2.7359	1	1	2	3	5
258	15978	1.9342	1	1	2	2	3
259	3773	2.6801	1	1	1	2	6
260	4896	1.4167	1	1	1	2	2
261	1844	2.2749	1	1	1	3	5
262	612	3.9477	1	1	3	5	8
263	18146	12.0208	3	5	8	14	24
264	3608	7.4088	2	4	6	9	14
265	3681	6.8036	1	2	4	8	14
266	2698	3.3039	1	1	2	4	7
267	233	4.2060	1	1	3	6	9
268	878	3.4989	1	1	2	4	7
269	7390	8.2441	1	3	6	10	17
270	2623	3.5783	1	1	2	5	8
271	9621	7.6144	2	4	6	9	14
272	5459	6.1597	2	3	5	8	12
273	1286	4.0420	1	2	3	5	8
274	2334	6.5900	1	3	5	8	13
275	246	4.3130	1	1	3	5	9
276	1177	4.6669	1	2	4	6	8
277	85183	5.7309	2	3	5	7	10
278	33396	4.4205	2	3	4	6	8
279	3	2.3333	1	1	2	4	4
280	15577	4.1954	1	2	3	5	8
281	7128	3.0464	1	1	3	4	6
282	3	1.6667	1	1	2	2	2
283	5629	4.5756	1	2	4	6	9
284	1868	3.1124	1	1	2	4	6
285	6195	10.3080	3	5	8	13	20
286	2070	6.4396	2	3	5	7	13
287	5676	10.5374	3	5	7	12	21
288	2639	5.7704	2	3	4	6	9
289	4765	3.0002	1	1	2	3	7
290	8753	2.3103	1	1	2	2	4
291	65	1.8462	1	1	1	2	3

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TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY2000 MEDPAR update 12/00 Grouper V18.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
292	4702	10.4872	2	4	8	14	22
293	624	5.5096	1	2	4	7	12
294	87857	4.6066	1	2	4	6	9
295	3277	3.7376	1	2	3	5	7
296	235003	5.1556	2	2	4	6	10
297	43573	3.4124	1	2	3	4	6
298	86	2.8256	1	1	2	3	5
299	1178	5.2199	1	2	4	7	10
300	15999	6.1363	2	3	5	8	12
301	3208	3.6234	1	2	3	4	7
302	8018	9.0636	4	5	7	11	19
303	19452	8.4231	4	5	7	10	15
304	11767	8.7339	2	4	6	11	18
305	2984	3.6384	1	2	3	5	7
306	7320	5.6291	1	2	3	8	13
307	2082	2.2517	1	1	2	3	4
308	7463	6.1733	1	2	4	8	14
309	4096	2.2954	1	1	2	3	4
310	23873	4.4002	1	1	3	6	10
311	7963	1.8339	1	1	1	2	3
312	1487	4.4654	1	1	3	6	10
313	591	2.3316	1	1	1	3	5
315	29749	6.9546	1	1	4	9	15
316	104601	6.6228	2	3	5	8	13
317	1507	2.8779	1	1	2	3	6
318	5584	5.9979	1	3	5	8	12
319	422	2.7725	1	1	2	3	6
320	186678	5.3171	2	3	4	6	10
321	30428	3.7951	1	2	3	5	7
322	61	4.1475	2	2	3	5	8
323	17241	3.2172	1	1	2	4	7
324	7479	1.8826	1	1	1	2	3
325	8160	3.8241	1	2	3	5	7
326	2676	2.6648	1	1	2	3	5
327	11	3.0909	1	1	3	4	5
328	663	3.6305	1	1	3	5	8
329	77	2.0130	1	1	1	2	4
331	46045	5.5426	1	3	4	7	11
332	4930	3.2917	1	1	2	4	7
333	281	5.0569	1	2	4	6	10
334	8654	4.4386	2	3	4	5	7
335	10721	3.1791	2	2	3	4	5
336	9563	3.7848	1	2	3	4	8
337	3041	2.1500	1	1	2	3	3
338	1226	5.1117	1	2	3	7	11
339	1344	4.9821	1	1	3	7	12
340	1	1.0000	1	1	1	1	1
341	2738	3.1088	1	1	1	3	6
342	298	3.4094	1	1	2	4	7
344	3502	2.3829	1	1	1	2	5
345	410	5.1244	1	2	3	6	10
346	4441	5.8726	1	3	4	7	12
347	365	2.9479	1	1	2	4	6
350	6270	4.3933	1	2	4	5	8
352	756	3.9577	1	2	3	5	8
353	2533	6.4212	2	3	5	7	12
354	7562	5.8375	3	3	4	7	11
355	5504	3.2862	2	3	3	4	5
356	25128	2.2924	1	1	2	3	4
357	5548	8.4874	3	4	7	10	16
358	20294	4.3121	2	3	3	5	7
359	29890	2.7295	2	2	3	3	4
360	15941	2.8557	1	2	2	3	5
361	378	2.9233	1	1	2	3	5
363	2862	3.4693	1	2	2	3	7
364	1644	3.8534	1	1	3	5	8
365	1722	7.2410	1	3	5	9	16
366	4410	6.7329	1	3	5	8	14
367	583	3.0617	1	1	2	4	6
368	3110	6.4810	2	3	5	8	12

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY2000 MEDPAR update 12/00 Grouper V18.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
369	3133	3.2515	1	1	2	4	7
370	1095	5.8429	3	3	4	5	10
371	1307	3.6526	2	3	3	4	5
372	927	3.2891	1	2	2	3	5
373	3734	2.2499	1	2	2	3	3
374	120	3.1583	1	2	2	3	4
375	10	2.3000	1	2	2	3	4
376	247	3.0931	1	2	2	4	6
377	48	5.0000	1	1	3	6	12
378	157	2.4140	1	1	2	3	4
379	337	3.4303	1	1	2	4	6
380	58	2.1207	1	1	1	2	5
381	152	2.5132	1	1	1	3	5
382	45	1.2889	1	1	1	1	2
383	1707	3.5817	1	1	2	4	7
384	114	2.1842	1	1	1	3	5
385	1	1.0000	1	1	1	1	1
389	15	11.7333	1	3	6	10	24
390	14	4.0000	1	2	3	6	7
391	1	4.0000	4	4	4	4	4
392	2323	9.6750	3	4	7	12	20
394	1870	7.1428	1	2	4	8	16
395	86911	4.4001	1	2	3	6	9
396	15	4.6667	1	2	4	6	7
397	17554	5.1678	1	2	4	7	10
398	17526	5.9417	2	3	5	7	11
399	1721	3.5758	1	2	3	5	7
400	6444	9.1189	1	3	6	12	20
401	5581	11.2575	2	5	9	15	23
402	1498	4.1128	1	1	3	6	9
403	31732	8.0627	2	3	6	10	17
404	4639	4.2720	1	2	3	6	9
406	2513	9.8607	3	4	7	12	20
407	720	4.4417	1	2	4	5	8
408	2178	8.0317	1	2	5	10	18
409	2822	5.9072	2	3	4	6	12
410	33412	3.9069	1	2	4	5	6
411	13	2.3077	1	1	2	2	5
412	29	2.4483	1	1	2	3	4
413	6419	7.0662	2	3	5	9	14
414	767	4.2529	1	2	3	5	9
415	38683	14.2779	4	6	11	18	28
416	183557	7.3848	2	4	6	9	14
417	16	5.0000	2	2	4	6	9
418	22822	6.1160	2	3	5	7	11
419	15294	4.7204	2	2	4	6	9
420	3109	3.5002	1	2	3	4	6
421	11464	3.7872	1	2	3	5	7
422	80	3.0625	1	2	3	4	6
423	7452	8.1162	2	3	6	10	16
424	1275	13.4204	2	5	9	16	26
425	15710	3.9945	1	2	3	5	8
426	4443	4.4510	1	2	3	5	9
427	1633	4.6418	1	2	3	6	9
428	835	6.8192	1	2	4	8	14
429	25967	6.3055	2	3	5	7	12
430	58669	8.0151	2	3	6	10	16
431	313	6.2045	1	3	5	7	11
432	469	4.7271	1	2	3	5	9
433	5418	3.0945	1	1	2	4	6
439	1343	8.4080	1	3	5	10	19
440	5131	9.0209	2	3	6	11	20
441	601	3.2313	1	1	2	4	7
442	15366	8.4839	1	3	6	10	18
443	3730	3.4399	1	1	3	4	7
444	5185	4.1338	1	2	3	5	8
445	2427	2.9250	1	1	2	4	5
447	5451	2.4748	1	1	2	3	5
449	28048	3.7457	1	1	3	5	8
450	6867	2.0051	1	1	1	2	4

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TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY2000 MEDPAR update 12/00 Grouper V18.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
451	3	1.3333	1	1	1	2	2
452	22666	4.8553	1	2	3	6	10
453	5068	2.8035	1	1	2	3	6
454	3940	4.5652	1	2	3	5	9
455	931	2.5994	1	1	2	3	5
461	3490	4.3739	1	1	2	5	11
462	12994	11.2271	4	6	9	14	21
463	21790	4.1239	1	2	3	5	8
464	6533	2.9963	1	1	2	4	6
465	154	3.4481	1	1	2	4	7
466	1470	3.9925	1	1	2	5	9
467	534	3.8390	1	1	2	4	8
468	58990	12.9159	3	6	10	17	30
471	11639	5.5322	3	4	4	6	9
473	7599	12.5038	1	3	7	18	32
475	107089	11.1800	2	5	9	15	22
476	4126	10.8924	2	5	9	14	21
477	24823	8.1004	1	3	6	11	17
478	106999	7.3166	1	3	5	9	15
479	24939	3.5376	1	1	3	5	7
480	541	20.4843	7	9	13	25	43
481	377	23.9310	10	18	22	27	38
482	5686	12.9474	4	7	10	15	25
483	42093	39.0315	14	22	33	49	70
484	313	12.6773	2	6	10	17	26
485	2880	9.5955	4	5	7	11	18
486	1856	12.4402	1	5	10	16	25
487	3339	7.3612	1	3	6	10	15
488	770	17.0078	3	7	13	22	36
489	14005	8.4383	2	3	6	10	17
490	5378	5.3405	1	2	4	6	10
491	12205	3.4483	2	2	3	4	6
492	2672	15.6662	3	5	8	25	34
493	54859	5.7621	1	3	5	7	11
494	29900	2.4482	1	1	2	3	5
495	153	15.0261	7	9	12	18	26
496	1444	9.5824	4	5	7	12	18
497	23721	6.1748	3	4	7	12	18
498	22152	3.3273	3	4	6	12	18
499	30284	4.6986	1	2	3	6	9
500	43962	2.6146	1	1	2	3	5
501	2180	10.9670	4	6	8	13	21
502	586	6.5648	3	4	5	8	11
503	5551	3.9996	1	2	3	5	7
504	114	29.5877	9	14	24	41	54
505	145	3.3517	1	1	1	3	7
506	915	17.4000	4	8	14	22	35
507	290	8.2621	2	4	7	11	18
508	657	7.4718	2	3	5	9	15
509	176	4.5455	1	2	4	6	9
510	1619	7.1779	2	3	5	9	15
511	602	4.7591	1	2	3	6	10
512			1	2	3	6	10
513			1	2	3	6	10
514			1	2	3	6	10
515			1	2	3	6	10
516			1	2	3	6	10
517			1	2	3	6	10
518			1	2	3	6	10
519			1	2	3	6	10
520			1	2	3	6	10
521			1	2	3	6	10
522			1	2	3	6	10
523			1	2	3	6	10
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TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY
[FY2000 MEDPAR update 12/00 Grouper V19.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
1	33822	8.9935	2	3	6	12	19
2	6772	9.9778	3	5	8	13	20
3	2	43.5000	35	35	52	52	52
4	6035	7.1639	1	2	5	9	15
5	93311	3.1649	1	1	2	3	7
6	366	2.9672	1	1	2	4	6
7	12470	9.9739	2	4	7	12	20
8	4164	3.2759	1	1	2	4	7
9	1610	6.3491	1	3	5	8	13
10	17577	6.5503	2	3	5	8	13
11	3128	4.0767	1	2	3	5	8
12	46758	5.8962	2	3	4	7	11
13	6415	5.2011	2	3	4	6	9
14	319523	5.8762	2	3	5	7	11
15	145366	3.5498	1	2	3	4	7
16	11155	6.0293	2	3	5	7	12
17	3519	3.3231	1	2	3	4	6
18	25961	5.4162	2	3	4	7	10
19	8638	3.6972	1	2	3	5	7
20	5629	10.1482	3	5	8	13	20
21	1309	6.5516	2	3	5	8	13
22	2535	4.8174	1	2	4	6	9
23	9464	4.1855	1	2	3	5	8
24	52753	4.9830	1	2	4	6	10
25	25370	3.2236	1	2	3	4	6
26	31	2.7097	1	1	2	3	6
27	3441	5.0584	1	1	3	6	11
28	11316	6.2100	1	3	5	8	13
29	4486	3.6097	1	2	3	5	7
30	1	1.0000	1	1	1	1	1
31	3488	4.4903	1	2	3	5	8
32	1738	2.5621	1	1	2	3	5
33	1	1.0000	1	1	1	1	1
34	20249	5.0786	1	2	4	6	10
35	5728	3.3959	1	2	3	4	6
36	3190	1.4649	1	1	1	1	2
37	1452	4.0296	1	1	2	5	9
38	102	2.6569	1	1	2	3	5
39	912	1.9079	1	1	1	2	4
40	1545	3.4252	1	1	2	4	7
42	2223	2.2852	1	1	1	3	5
43	85	3.1882	1	2	3	4	6
44	1238	4.9548	2	3	4	6	9
45	2444	3.1678	1	2	3	4	6
46	3051	4.6834	1	2	4	6	9
47	1281	3.2560	1	1	3	4	6
49	2241	4.8104	1	2	3	6	9
50	2488	1.9425	1	1	1	2	3
51	203	2.6995	1	1	1	2	6
52	220	1.9318	1	1	1	2	3
53	2478	3.5557	1	1	2	4	8
54	2	1.5000	1	1	2	2	2
55	1505	2.7442	1	1	1	3	6
56	503	2.7256	1	1	2	3	5
57	708	3.9492	1	1	2	5	9
59	107	2.7850	1	1	2	3	5
60	2	3.5000	2	2	5	5	5
61	231	5.0996	1	1	2	6	12
62	3	1.3333	1	1	1	2	2
63	3003	4.4409	1	2	3	5	9
64	3033	6.1800	1	2	4	8	13
65	34466	2.8420	1	1	2	4	5
66	6978	3.1635	1	1	2	4	6
67	495	3.5960	1	2	3	4	7
68	16724	4.1158	1	2	3	5	7
69	5435	3.2736	1	2	3	4	6
70	24	2.9167	1	2	2	4	5
71	82	3.8049	1	2	3	4	7
72	883	3.5663	1	2	3	4	6
73	6630	4.4065	1	2	3	6	9

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TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY2000 MEDPAR update 12/00 Grouper V19.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
75	39010	9.9124	3	5	7	12	19
76	38998	11.2677	3	5	9	14	21
77	2352	4.9184	1	2	4	7	10
78	32087	6.7848	3	4	6	8	11
79	169783	8.4892	3	4	7	11	16
80	9018	5.6618	2	3	5	7	10
81	4	18.2500	3	3	4	8	58
82	61883	6.9447	2	3	5	9	14
83	6446	5.5496	2	3	4	7	10
84	1508	3.3455	1	2	3	4	6
85	20572	6.3122	2	3	5	8	12
86	2118	3.6643	1	2	3	5	7
87	60110	6.2840	1	3	5	8	12
88	389694	5.1207	2	3	4	6	9
89	525838	5.9470	2	3	5	7	11
90	53895	4.1549	2	3	4	5	7
91	54	4.5185	2	2	3	5	10
92	13774	6.3499	2	3	5	8	12
93	1672	4.0353	1	2	3	5	7
94	12030	6.2988	2	3	5	8	12
95	1595	3.7179	1	2	3	5	7
96	61986	4.6292	2	3	4	6	8
97	31444	3.6560	1	2	3	5	7
98	18	4.2222	1	2	2	4	6
99	18996	3.1991	1	1	2	4	6
100	7619	2.1869	1	1	2	3	4
101	19997	4.3938	1	2	3	5	9
102	5146	2.6570	1	1	2	3	5
103	475	46.6021	9	13	25	60	98
104	19650	14.1922	6	8	12	17	25
105	25952	9.7562	4	6	8	11	17
106	3401	11.4963	5	7	10	14	20
107	87868	10.3783	5	7	9	12	17
108	6047	10.2128	3	5	8	13	19
109	60265	7.6926	4	5	6	9	12
110	52587	9.2019	2	5	7	11	18
111	8545	4.7604	1	2	5	6	8
113	42250	12.1885	3	6	9	15	24
114	8712	8.3768	2	4	7	10	16
115	14329	8.1687	1	4	7	11	16
116	91838	4.4683	1	2	3	6	9
117	3717	4.1512	1	1	2	5	9
118	7667	2.6849	1	1	1	3	6
119	1307	4.8829	1	1	3	6	12
120	37500	8.5321	1	2	6	11	19
121	162112	6.3821	2	3	5	8	12
122	78969	3.7027	1	2	3	5	7
123	40659	4.5833	1	1	3	6	11
124	132801	4.3427	1	2	3	5	8
125	80169	2.7657	1	1	2	4	5
126	5150	11.6882	3	6	9	14	22
127	678903	5.2745	2	3	4	7	10
128	9424	5.6175	2	4	5	7	9
129	4140	2.7621	1	1	1	3	6
130	86009	5.6760	2	3	5	7	10
131	28236	4.2426	1	2	4	6	7
132	147648	3.0002	1	1	2	4	6
133	8321	2.3367	1	1	2	3	4
134	36118	3.2406	1	2	3	4	6
135	7266	4.5531	1	2	3	6	9
136	1221	2.7158	1	1	2	3	5
138	194087	3.9932	1	2	3	5	8
139	82604	2.5072	1	1	2	3	5
140	69724	2.6533	1	1	2	3	5
141	90403	3.6691	1	2	3	5	7
142	45776	2.6508	1	1	2	3	5
143	203918	2.1253	1	1	2	3	4
144	81577	5.3196	1	2	4	7	11
145	7224	2.7460	1	1	2	3	5
146	10683	10.2826	5	7	9	12	17

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY2000 MEDPAR update 12/00 Grouper V19.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
147	2629	6.4196	3	5	6	8	9
148	129247	12.1904	5	7	10	15	22
149	18462	6.5184	4	5	6	8	9
150	19795	11.2770	4	7	10	14	20
151	4814	5.8286	2	3	5	8	10
152	4381	8.1438	3	5	7	9	14
153	2083	5.3711	3	4	5	7	8
154	28660	13.1491	4	7	10	16	25
155	6596	4.2179	1	2	3	6	8
156	4	7.5000	1	1	5	6	18
157	7903	5.3790	1	2	4	7	11
158	4630	2.5395	1	1	2	3	5
159	16309	4.9926	1	2	4	6	10
160	11655	2.6619	1	1	2	3	5
161	11119	4.2027	1	1	3	5	9
162	7199	1.9267	1	1	1	2	4
163	5	4.4000	1	1	3	4	13
164	4824	8.4279	4	5	7	10	15
165	2066	4.8049	2	3	5	6	8
166	3532	5.0337	2	2	4	6	10
167	3269	2.5990	1	2	2	3	5
168	1327	4.7641	1	2	3	6	10
169	834	2.3405	1	1	2	3	5
170	10975	11.1690	2	5	8	14	22
171	1284	4.6597	1	2	4	6	9
172	30412	6.9363	2	3	5	9	14
173	2685	3.6648	1	1	3	5	7
174	240400	4.7974	2	3	4	6	9
175	32375	2.9414	1	2	3	4	5
176	15101	5.2286	2	3	4	6	10
177	9190	4.5348	2	2	4	6	8
178	3597	3.0703	1	2	3	4	6
179	12291	5.9729	2	3	5	7	11
180	85599	5.3567	2	3	4	7	10
181	26315	3.4185	1	2	3	4	6
182	243506	4.3356	1	2	3	5	8
183	83969	2.9155	1	1	2	4	5
184	79	2.9620	1	2	2	4	6
185	4760	4.5210	1	2	3	6	9
186	3	9.3333	1	1	9	18	18
187	646	3.9164	1	1	3	5	8
188	75558	5.5580	1	2	4	7	11
189	11984	3.1542	1	1	2	4	6
190	49	7.0204	2	3	4	5	8
191	8867	13.7982	4	6	10	17	27
192	1105	6.5122	2	4	6	8	11
193	5258	12.5369	5	7	10	16	22
194	718	6.7869	2	4	6	8	12
195	4327	10.1470	4	6	9	12	17
196	1162	5.7212	2	4	5	7	10
197	18754	8.9335	3	5	7	11	16
198	5751	4.5416	2	3	4	6	8
199	1704	9.5827	2	4	7	13	20
200	1063	10.3518	1	3	7	13	22
201	1430	13.8098	3	6	11	18	27
202	25975	6.4045	2	3	5	8	13
203	29017	6.6364	2	3	5	9	13
204	57319	5.7964	2	3	4	7	11
205	22900	6.1735	2	3	5	8	12
206	1948	3.9168	1	2	3	5	7
207	30817	5.0832	1	2	4	6	10
208	10061	2.8946	1	1	2	4	6
209	343375	5.0786	3	3	4	6	8
210	120891	6.8189	3	4	6	8	11
211	31665	4.9325	3	4	4	6	7
212	6	13.5000	1	4	4	29	29
213	9144	8.9604	2	4	7	11	18
216	5956	9.6949	2	4	8	12	20
217	16333	13.1971	3	5	9	16	28
218	21296	5.4123	2	3	4	7	10

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TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY2000 MEDPAR update 12/00 Grouper V19.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
219	19530	3.2240	1	2	3	4	6
220	6	4.0000	1	1	3	7	7
223	13251	2.8497	1	1	2	3	6
224	11112	1.9343	1	1	2	2	3
225	5734	4.8575	1	2	3	6	11
226	5148	6.5874	1	2	4	8	14
227	4695	2.7242	1	1	2	3	5
228	2340	3.7970	1	1	2	5	8
229	1108	2.4838	1	1	2	3	5
230	2365	5.2592	1	2	3	6	11
231	11343	4.9395	1	2	3	6	11
232	807	2.8872	1	1	1	3	7
233	5059	7.5181	2	3	6	10	15
234	3168	3.4419	1	1	3	4	7
235	5036	5.0473	1	2	4	6	9
236	38265	4.8164	1	3	4	6	9
237	1687	3.5033	1	2	3	4	6
238	7930	8.5212	3	4	6	10	16
239	49088	6.2151	2	3	5	8	12
240	11318	6.6744	2	3	5	8	13
241	3168	3.8570	1	2	3	5	7
242	2434	6.6348	2	3	5	8	13
243	87407	4.6676	1	2	4	6	9
244	12162	4.8047	1	2	4	6	9
245	5130	3.4458	1	2	3	4	6
246	1386	3.8117	1	2	3	5	7
247	16832	3.3990	1	1	3	4	7
248	10529	4.8161	1	2	4	6	9
249	11336	3.6591	1	1	2	4	8
250	3456	4.1062	1	2	3	5	7
251	2406	2.8579	1	1	2	4	5
253	19677	4.7732	1	3	4	6	9
254	10449	3.1906	1	2	3	4	6
255	1	3.0000	3	3	3	3	3
256	6054	5.0766	1	2	4	6	10
257	16333	2.7359	1	1	2	3	5
258	15978	1.9342	1	1	2	2	3
259	3773	2.6801	1	1	1	2	6
260	4896	1.4167	1	1	1	2	2
261	1844	2.2749	1	1	1	3	5
262	612	3.9477	1	1	3	5	8
263	18146	12.0208	3	5	8	14	24
264	3608	7.4088	2	4	6	9	14
265	3681	6.8036	1	2	4	8	14
266	2698	3.3039	1	1	2	4	7
267	233	4.2060	1	1	3	6	9
268	878	3.4989	1	1	2	4	7
269	7390	8.2441	1	3	6	10	17
270	2623	3.5783	1	1	2	5	8
271	9621	7.6144	2	4	6	9	14
272	5459	6.1597	2	3	5	8	12
273	1286	4.0420	1	2	3	5	8
274	2334	6.5900	1	3	5	8	13
275	246	4.3130	1	1	3	5	9
276	1177	4.6669	1	2	4	6	8
277	85183	5.7309	2	3	5	7	10
278	33396	4.4205	2	3	4	6	8
279	3	2.3333	1	1	2	4	4
280	15577	4.1954	1	2	3	5	8
281	7128	3.0464	1	1	3	4	6
282	3	1.6667	1	1	2	2	2
283	5629	4.5756	1	2	4	6	9
284	1868	3.1124	1	1	2	4	6
285	6195	10.3080	3	5	8	13	20
286	2070	6.4396	2	3	5	7	13
287	5676	10.5374	3	5	7	12	21
288	2639	5.7704	2	3	4	6	9
289	4765	3.0002	1	1	2	3	7
290	8753	2.3103	1	1	2	2	4
291	65	1.8462	1	1	1	2	3

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY2000 MEDPAR update 12/00 Grouper V19.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
292	4654	10.4850	2	4	8	13	21
293	624	5.5096	1	2	4	7	12
294	87857	4.6066	1	2	4	6	9
295	3277	3.7376	1	2	3	5	7
296	235003	5.1556	2	2	4	6	10
297	43573	3.4124	1	2	3	4	6
298	86	2.8256	1	1	2	3	5
299	1178	5.2199	1	2	4	7	10
300	15999	6.1363	2	3	5	8	12
301	3208	3.6234	1	2	3	4	7
302	7703	8.8384	4	5	7	10	15
303	19452	8.4231	4	5	7	10	15
304	11765	8.7340	2	4	6	11	18
305	2984	3.6384	1	2	3	5	7
306	7320	5.6291	1	2	3	8	13
307	2082	2.2517	1	1	2	3	4
308	7463	6.1733	1	2	4	8	14
309	4096	2.2954	1	1	2	3	4
310	23873	4.4002	1	1	3	6	10
311	7963	1.8339	1	1	1	2	3
312	1487	4.4654	1	1	3	6	10
313	591	2.3316	1	1	1	3	5
315	30147	7.0663	1	1	4	9	16
316	104601	6.6228	2	3	5	8	13
317	1507	2.8779	1	1	2	3	6
318	5584	5.9979	1	3	5	8	12
319	422	2.7725	1	1	2	3	6
320	186678	5.3171	2	3	4	6	10
321	30428	3.7951	1	2	3	5	7
322	61	4.1475	2	2	3	5	8
323	17241	3.2172	1	1	2	4	7
324	7479	1.8826	1	1	1	2	3
325	8160	3.8241	1	2	3	5	7
326	2676	2.6648	1	1	2	3	5
327	11	3.0909	1	1	3	4	5
328	663	3.6305	1	1	3	5	8
329	77	2.0130	1	1	1	2	4
331	46045	5.5426	1	3	4	7	11
332	4930	3.2917	1	1	2	4	7
333	281	5.0569	1	2	4	6	10
334	8654	4.4386	2	3	4	5	7
335	10721	3.1791	2	2	3	4	5
336	9563	3.7848	1	2	3	4	8
337	3041	2.1500	1	1	2	3	3
338	1226	5.1117	1	2	3	7	11
339	1344	4.9821	1	1	3	7	12
340	1	1.0000	1	1	1	1	1
341	2738	3.1088	1	1	1	3	6
342	298	3.4094	1	1	2	4	7
344	3502	2.3829	1	1	1	2	5
345	410	5.1244	1	2	3	6	10
346	4441	5.8726	1	3	4	7	12
347	365	2.9479	1	1	2	4	6
350	6270	4.3933	1	2	4	5	8
352	756	3.9577	1	2	3	5	8
353	2533	6.4212	2	3	5	7	12
354	7562	5.8375	3	3	4	7	11
355	5504	3.2862	2	3	3	4	5
356	25128	2.2924	1	1	2	3	4
357	5548	8.4874	3	4	7	10	16
358	20294	4.3121	2	3	3	5	7
359	29890	2.7295	2	2	3	3	4
360	15941	2.8557	1	2	2	3	5
361	378	2.9233	1	1	2	3	5
363	2862	3.4693	1	2	2	3	7
364	1644	3.8534	1	1	3	5	8
365	1722	7.2410	1	3	5	9	16
366	4410	6.7329	1	3	5	8	14
367	583	3.0617	1	1	2	4	6
368	3110	6.4810	2	3	5	8	12

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TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY2000 MEDPAR update 12/00 Grouper V19.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
369	3133	3.2515	1	1	2	4	7
370	1095	5.8429	3	3	4	5	10
371	1307	3.6526	2	3	3	4	5
372	927	3.2891	1	2	2	3	5
373	3734	2.2499	1	2	2	3	3
374	120	3.1583	1	2	2	3	4
375	10	2.3000	1	2	2	3	4
376	247	3.0931	1	2	2	4	6
377	48	5.0000	1	1	3	6	12
378	157	2.4140	1	1	2	3	4
379	337	3.4303	1	1	2	4	6
380	58	2.1207	1	1	1	2	5
381	152	2.5132	1	1	1	3	5
382	45	1.2889	1	1	1	1	2
383	1707	3.5817	1	1	2	4	7
384	114	2.1842	1	1	1	3	5
385	1	1.0000	1	1	1	1	1
389	15	11.7333	1	3	6	10	24
390	14	4.0000	1	2	3	6	7
391	1	4.0000	4	4	4	4	4
392	2323	9.6750	3	4	7	12	20
394	1870	7.1428	1	2	4	8	16
395	86911	4.4001	1	2	3	6	9
396	15	4.6667	1	2	4	6	7
397	17554	5.1878	1	2	4	7	10
398	17526	5.9417	2	3	5	7	11
399	1721	3.5758	1	2	3	5	7
400	6444	9.1189	1	3	6	12	20
401	5581	11.2575	2	5	9	15	23
402	1498	4.1128	1	1	3	6	9
403	31732	8.0627	2	3	6	10	17
404	4639	4.2720	1	2	3	6	9
406	2513	9.8607	3	4	7	12	20
407	720	4.4417	1	2	4	5	8
408	2178	8.0317	1	2	5	10	18
409	2822	5.9072	2	3	4	6	12
410	33412	3.9069	1	2	4	5	6
411	13	2.3077	1	1	2	2	5
412	29	2.4483	1	1	2	3	4
413	6419	7.0662	2	3	5	9	14
414	767	4.2529	1	2	3	5	9
415	38683	14.2779	4	6	11	18	28
416	183557	7.3848	2	4	6	9	14
417	16	5.0000	2	2	4	6	9
418	22822	6.1160	2	3	5	7	11
419	15294	4.7204	2	2	4	6	9
420	3109	3.5002	1	2	3	4	6
421	11464	3.7872	1	2	3	5	7
422	80	3.0625	1	2	3	4	6
423	7452	8.1162	2	3	6	10	16
424	1275	13.4204	2	5	9	16	26
425	15710	3.9945	1	2	3	5	8
426	4443	4.4510	1	2	3	5	9
427	1633	4.6418	1	2	3	6	9
428	835	6.8192	1	2	4	8	14
429	25967	6.3055	2	3	5	7	12
430	58669	8.0151	2	3	6	10	16
431	313	6.2045	1	3	5	7	11
432	469	4.7271	1	2	3	5	9
433	5418	3.0945	1	1	2	4	6
439	1343	8.4080	1	3	5	10	19
440	5131	9.0209	2	3	6	11	20
441	601	3.2313	1	1	2	4	7
442	15366	8.4839	1	3	6	10	18
443	3730	3.4399	1	1	3	4	7
444	5185	4.1338	1	2	3	5	8
445	2427	2.9250	1	1	2	4	5
447	5451	2.4748	1	1	2	3	5
449	28048	3.7457	1	1	3	5	8
450	6867	2.0051	1	1	1	2	4

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY2000 MEDPAR update 12/00 Grouper V19.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
451	3	1.3333	1	1	1	2	2
452	22666	4.8553	1	2	3	6	10
453	5068	2.8035	1	1	2	3	6
454	3940	4.5652	1	2	3	5	9
455	931	2.5994	1	1	2	3	5
461	3490	4.3739	1	1	2	5	11
462	12994	11.2271	4	6	9	14	21
463	21790	4.1239	1	2	3	5	8
464	6533	2.9963	1	1	2	4	6
465	154	3.4481	1	1	2	4	7
466	1470	3.9925	1	1	2	5	9
467	534	3.8390	1	1	2	4	8
468	56874	12.7662	3	6	10	16	25
471	11639	5.5322	3	4	4	6	9
473	7599	12.5038	1	3	7	18	32
475	107089	11.1800	2	5	9	15	22
476	4126	10.8924	2	5	9	14	21
477	24823	8.1004	1	3	6	11	17
478	106997	7.3166	1	3	5	9	15
479	24939	3.5376	1	1	3	5	7
480	540	20.1370	7	9	13	25	43
481	377	23.9310	10	18	22	27	38
482	5686	12.9474	4	7	10	15	25
483	42087	39.0295	14	22	33	49	70
484	313	12.6773	2	6	10	17	26
485	2880	9.5955	4	5	7	11	18
486	1856	12.4402	1	5	10	16	25
487	3339	7.3612	1	3	6	10	15
488	770	17.0078	3	7	13	22	36
489	14005	8.4383	2	3	6	10	17
490	5378	5.3405	1	2	4	6	10
491	12205	3.4483	2	2	3	4	6
492	2672	15.6662	3	5	8	25	34
493	54859	5.7621	1	3	5	7	11
494	29900	2.4482	1	1	2	3	5
495	153	15.0261	7	9	12	18	26
496	1468	9.5320	4	5	7	12	19
497	17184	6.5116	3	4	5	7	11
498	12708	4.1701	2	3	4	5	6
499	30284	4.6986	1	2	3	6	9
500	43962	2.6146	1	1	2	3	5
501	2180	10.9670	4	6	8	13	21
502	586	6.5648	3	4	5	8	11
503	5551	3.9996	1	2	3	5	7
504	114	29.5877	9	14	24	41	54
505	145	3.3517	1	1	1	3	7
506	915	17.4000	4	8	14	22	35
507	290	8.2621	2	4	7	11	18
508	657	7.4718	2	3	5	9	15
509	176	4.5455	1	2	4	6	9
510	1619	7.1779	2	3	5	9	15
511	602	4.7591	1	2	3	6	10
512	328	15.2439	7	8	11	17	28
513	112	12.6161	6	7	8	12	20
514	16927	7.9786	2	3	6	10	16
515	3774	6.0297	1	1	4	8	14
516	75742	4.7497	2	2	4	6	9
517	171198	2.7066	1	1	2	3	6
518	47731	3.4397	1	1	2	4	8
519	5448	4.7412	1	2	3	6	11
520	10509	2.7887	1	1	2	3	6
521	22732	5.0204	1	2	4	6	9
522	11649	9.7928	3	5	8	12	20
523	14818	4.1079	1	2	3	5	7
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TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) MARCH 2001

State	Urban	Rural
ALABAMA	0.344	0.410
ALASKA	0.417	0.696
ARIZONA	0.356	0.491
ARKANSAS	0.466	0.446
CALIFORNIA	0.339	0.436
COLORADO	0.422	0.577
CONNECTICUT	0.497	0.506
DELAWARE	0.511	0.450
DISTRICT OF COLUMBIA	0.508	.....
FLORIDA	0.352	0.369
GEORGIA	0.459	0.470
HAWAII	0.413	0.554
IDAHO	0.545	0.561
ILLINOIS	0.406	0.502
INDIANA	0.524	0.533
IOWA	0.486	0.612
KANSAS	0.421	0.635
KENTUCKY	0.479	0.492
LOUISIANA	0.410	0.488
MAINE	0.615	0.543
MARYLAND	0.759	0.819
MASSACHUSETTS	0.512	0.571
MICHIGAN	0.460	0.563
MINNESOTA	0.494	0.589
MISSISSIPPI	0.452	0.447
MISSOURI	0.405	0.479
MONTANA	0.537	0.594
NEBRASKA	0.449	0.610
NEVADA	0.306	0.498
NEW HAMPSHIRE	0.549	0.581
NEW JERSEY	0.394	.....
NEW MEXICO	0.466	0.491
NEW YORK	0.528	0.609
NORTH CAROLINA	0.516	0.464
NORTH DAKOTA	0.620	0.654
OHIO	0.501	0.570
OKLAHOMA	0.409	0.494
OREGON	0.613	0.595
PENNSYLVANIA	0.398	0.525
PUERTO RICO	0.486	0.583
RHODE ISLAND	0.520	.....
SOUTH CAROLINA	0.440	0.463
SOUTH DAKOTA	0.529	0.638
TENNESSEE	0.438	0.453
TEXAS	0.402	0.494
UTAH	0.497	0.586
VERMONT	0.572	0.599
VIRGINIA	0.454	0.494
WASHINGTON	0.583	0.638
WEST VIRGINIA	0.568	0.527
WISCONSIN	0.525	0.611
WYOMING	0.522	0.717

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS (CASE WEIGHTED) MARCH 2001

State	Ratio
ALABAMA	0.044
ALASKA	0.058
ARIZONA	0.037
ARKANSAS	0.049
CALIFORNIA	0.034
COLORADO	0.045
CONNECTICUT	0.036
DELAWARE	0.051
DISTRICT OF COLUMBIA	0.040
FLORIDA	0.043
GEORGIA	0.051
HAWAII	0.038
IDAHO	0.046
ILLINOIS	0.040
INDIANA	0.056
IOWA	0.050
KANSAS	0.050
KENTUCKY	0.046
LOUISIANA	0.048
MAINE	0.040
MARYLAND	0.013
MASSACHUSETTS	0.053
MICHIGAN	0.044
MINNESOTA	0.047
MISSISSIPPI	0.044
MISSOURI	0.044
MONTANA	0.058
NEBRASKA	0.054
NEVADA	0.030
NEW HAMPSHIRE	0.061
NEW JERSEY	0.036
NEW MEXICO	0.045
NEW YORK	0.051
NORTH CAROLINA	0.046
NORTH DAKOTA	0.072
OHIO	0.048
OKLAHOMA	0.046
OREGON	0.046
PENNSYLVANIA	0.039
PUERTO RICO	0.045
RHODE ISLAND	0.029
SOUTH CAROLINA	0.046
SOUTH DAKOTA	0.059
TENNESSEE	0.049
TEXAS	0.046
UTAH	0.047
VERMONT	0.052
VIRGINIA	0.055
WASHINGTON	0.063
WEST VIRGINIA	0.045
WISCONSIN	0.051
WYOMING	0.065

Appendix A—Regulatory Impact Analysis

I. Introduction

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless we certify that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all hospitals to be small entities. We estimate the total impact of these changes for FY 2002 payments compared to FY 2001 payments to be approximately a $1.7 billion increase. Therefore, we have prepared an impact analysis for this proposed rule.

Also, section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds that is located outside of a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA). Section 601(g) of the Social Security Amendments of 1983 (Public Law 98–21) designated hospitals in certain New England counties as belonging to the adjacent NECMA. Thus, for purposes of the hospital inpatient prospective payment systems, we classify these hospitals as urban hospitals.

It is clear that the changes being proposed in this document would affect both a substantial number of small rural hospitals as well as other classes of hospitals, and the effects on some may be significant. Therefore, the discussion below, in combination with the rest of this proposed rule, constitutes a combined regulatory impact analysis and regulatory flexibility analysis.

We have reviewed this proposed rule under the threshold criteria of Executive Order 13132, Federalism, and have determined that the proposed rule will not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

Section 202 of the Unfunded Mandate Reform Act of 1995 (Public Law 104–4) also requires that agencies assess anticipated costs and benefits before issuing any proposed rule (or a final rule that has been preceded by a proposed rule) that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This proposed rule would not mandate any requirements for State, local, or tribal governments.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

II. Objectives

The primary objective of the hospital inpatient prospective payment system is to create incentives for hospitals to operate efficiently and minimize unnecessary costs while at the same time ensuring that payments are sufficient to adequately compensate hospitals for their legitimate costs. In addition, we share national goals of preserving the Medicare Trust Fund.

We believe the proposed changes would further each of these goals while maintaining the financial viability of the hospital industry and ensuring access to high quality health care for Medicare beneficiaries. We expect that these proposed changes would ensure that the outcomes of this payment system are reasonable and equitable while avoiding or minimizing unintended adverse consequences.

III. Limitations of Our Analysis

As has been the case in our previously published regulatory impact analyses, the following quantitative analysis presents the projected effects of our proposed policy changes, as well as statutory changes

effective for FY 2002, on various hospital groups. We estimate the effects of individual policy changes by estimating payments per case while holding all other payment policies constant. We use the best data available, but we do not attempt to predict behavioral responses to our policy changes, and we do not make adjustments for future changes in such variables as admissions, lengths of stay, or case-mix. As we have done in previous proposed rules, we are soliciting comments and information about the anticipated effects of these changes on hospitals and our methodology for estimating them.

IV. Hospitals Included In and Excluded From the Prospective Payment System

The prospective payment systems for hospital inpatient operating and capital-related costs encompass nearly all general, short-term, acute care hospitals that participate in the Medicare program. There were 44 Indian Health Service hospitals in our database, which we excluded from the analysis due to the special characteristics of the prospective payment method for these hospitals. Among other short-term, acute care hospitals, only the 67 such hospitals in Maryland remain excluded from the prospective payment system under the waiver at section 1814(b)(3) of the Act. Thus, as of February 2001, we have included 4,583 hospitals in our analysis. This represents about 80 percent of all Medicare-participating hospitals. The majority of this impact analysis focuses on this set of hospitals.

The remaining 20 percent are specialty hospitals that are excluded from the prospective payment system and continue to be paid on the basis of their reasonable costs (subject to a rate-of-increase ceiling on their inpatient operating costs per discharge). These hospitals include psychiatric, rehabilitation, long-term care, children's, and cancer hospitals. The impacts of our final policy changes on these hospitals are discussed below.

V. Impact on Excluded Hospitals and Units

As of February 2001, there were 1,058 specialty hospitals excluded from the prospective payment system and instead paid on a reasonable cost basis subject to the rate-of-increase ceiling under § 413.40. Broken down by specialty, there were 517 psychiatric, 203 rehabilitation, 253 long-term care, 75 children's, and 10 cancer hospitals. In addition, there were 1,457 psychiatric units and 925 rehabilitation units in hospitals otherwise subject to the prospective payment system. These excluded units are also paid in accordance with § 413.40. Under § 413.40(a)(2)(i)(A), the rate-of-increase ceiling is not applicable to the 67 specialty hospitals and units in Maryland that are paid in accordance with the waiver at section 1814(b)(3) of the Act.

As required by section 1886(b)(3)(B) of the Act, the update factor applicable to the rate-of-increase limit for excluded hospitals and units for FY 2002 would be between 0.5 and 3.0 percent, or 0 percent, depending on the hospital's or unit's costs in relation to its limit for the most recent cost reporting period for which information is available.

The impact on excluded hospitals and units of the update in the rate-of-increase limit depends on the cumulative cost increases experienced by each excluded hospital or unit since its applicable base period. For excluded hospitals and units that have maintained their cost increases at a level below the percentage increases in the rate-of-increase limits since their base period, the major effect will be on the level of incentive payments these hospitals and units receive. Conversely, for excluded hospitals and units with per-case cost increases above the cumulative update in their rate-of-increase limits, the major effect will be the amount of excess costs that would not be reimbursed.

We note that, under § 413.40(d)(3), an excluded hospital or unit whose costs exceed 110 percent of its rate-of-increase limit receives its rate-of-increase limit plus 50 percent of the difference between its reasonable costs and 110 percent of the limit, not to exceed 110 percent of its limit. In addition, under the various provisions set forth in § 413.40, certain excluded hospitals and units can obtain payment adjustments for justifiable increases in operating costs that exceed the limit. At the same time, however, by generally limiting payment increases, we continue to provide an incentive for excluded hospitals and units to restrain the growth in their spending for patient services.

VI. Graduate Medical Education Impact

A. National Average Per Resident Amount (PRA)

As discussed in detail in section IV.G.2. of this proposed rule, we are proposing to implement section 511 of Public Law 106–554, which increases the floor of the locality-adjusted national average (PRA for the purposes of computing direct GME payments for cost reporting periods beginning during FY 2002. The national average PRA payment methodology, as provided in section 311 of Public Law 106–113, establishes a "floor" and "ceiling" based on a locality-adjusted, updated national average PRA for cost reporting periods beginning on or after October 1, 2000 and before October 1, 2005. Section 511 of Public Law 106–554 increased the floor from 70 percent to equal 85 percent of a locality-adjusted national average PRA for FY 2002.

For this purpose rule, we have calculated an estimated impact of this proposed policy on teaching hospital's PRAs for FY 2002, making assumptions about update factors and geographic adjustment factors (GAF) for each hospital. Generally, using FY 1997 data, we calculated a floor based on 70 percent of the national average PRA and a floor based on 85 percent of the national average PRA. We then determined the amount of direct GME payments that would have been paid had the floor remained at 70 percent of the national average PRA. Next, we determined the amount of direct GME payments that would be paid with the floor increased to equal 85 percent of the national average PRA. We subtracted the difference between the two and inflated the difference to FY 2002 to determine the impact of this provision.

The figures we use in this impact, except for the FY 1997 weighted PRA of $68,464, are estimations and are for demonstrative purposes only. Hospitals must use the methodology stated in section IV.G. of this proposed rule to revise (if appropriate) their individual PRAs.

In calculating this impact, we used Medicare cost report data for all cost reports ending in FY 1997. We excluded hospitals that file manual cost reports because we did not have access to their Medicare utilization data. We also excluded all teaching hospitals in Maryland, because these hospitals are paid on a Medicare waiver outside of the prospective payment system, and those hospitals' PRAs do not determine their level of direct GME payments. For hospitals that had two cost reporting periods ending in FY 1997, we used the later of the two periods. A total of 1,231 teaching hospitals were included in the analysis.

Using the FY 1997 weighted average PRA of $68,464, we determined an 85 percent floor of $58,194 for FY 1997. We then determined that, for cost reporting periods ending in FY 1997, approximately 562 hospitals had PRAs that were below $58,194 (336 hospitals of these hospitals had PRAs that were below the 70-percent floor, and 226 hospitals had PRAs that were above the 70-percent floor but below the 85-percent floor). The estimated total cost to the Medicare program in FY 2002 of replacing the PRAs of the 562 hospitals with the 85-percent floor is $104.4 million.

B. Closed Training Programs or Hospitals That Close Their Training Programs

As discussed in IV.G.5. of this proposed rule, we are proposing to allow a hospital to receive a temporary adjustment to its FTE cap to reflect residents added because of the closure of another hospital's GME program if the hospital that closed its program agrees to temporarily reduce its FTE cap. We have calculated an estimated impact on the Medicare program for FY 2002 as a result of this proposal. We used the best available cost report data from the FY 1997 HCRIS in our analysis.

We estimate that approximately 5 to 10 programs, each with an average of 25 residents, close each year without advance warning, displacing the residents before they complete their training. Therefore, the number of residents displaced each year could be between 125 and 250. We estimated the impact of this proposed change based on direct GME and IME payment amounts in FY 1997 to determine a total GME amount and updated the total with the CPI–U for FY 2002. At most, the estimated impact for this proposed provision for FY 2002 is moving payments of between $10 and $20 million among different hospitals. This would result from redirecting these payments from the hospital that closed its program to the hospital(s) that takes on the residents.

VII. Quantitative Impact Analysis of the Proposed Policy Changes Under the Prospective Payment System for Operating Costs

A. Basis and Methodology of Estimates

In this proposed rule, we are announcing policy changes and payment rate updates for

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the prospective payment systems for operating and capital-related costs. We have prepared separate impact analyses of the proposed changes to each system. This section deals with changes to the operating prospective payment system.

The data used in developing the quantitative analyses presented below are taken from the FY 2000 MedPAR file and the most current provider-specific file that is used for payment purposes. Although the analyses of the changes to the operating prospective payment system do not incorporate cost data, the most recently available hospital cost report data were used to categorize hospitals. Our analysis has several qualifications. First, we do not make adjustments for behavioral changes that hospitals may adopt in response to these proposed policy changes. Second, due to the interdependent nature of the prospective payment system, it is very difficult to precisely quantify the impact associated with each proposed change. Third, we draw upon various sources for the data used to categorize hospitals in the tables. In some cases, particularly the number of beds, there is a fair degree of variation in the data from different sources. We have attempted to construct these variables with the best available source overall. For individual hospitals, however, some miscategorizations are possible.

Using cases in the FY 2000 MedPAR file, we simulated payments under the operating prospective payment system given various combinations of payment parameters. Any short-term, acute care hospitals not paid under the general prospective payment systems (Indian Health Service hospitals and hospitals in Maryland) are excluded from the simulations. Payments under the capital prospective payment system, or payments for costs other than inpatient operating costs, are not analyzed here. Estimated payment impacts of proposed FY 2001 changes to the capital prospective payment system are discussed in section IX. of this Appendix.

The proposed changes discussed separately below are the following:

- The effects of the annual reclassification of diagnoses and procedures and the recalibration of the diagnosis-related group (DRG) relative weights required by section 1886(d)(4)(C) of the Act.
- The effects of changes in hospitals' wage index values reflecting wage data from hospitals' cost reporting periods beginning during FY 1998, compared to the FY 1997 wage data.
- The effects of our proposal to increase the accuracy of the wage index calculation by changing the overhead allocation method used so that the salaries and hours of lower-range, overhead employees and the overhead wage-related costs associated with the excluded areas of the hospital are more accurately removed when calculating the overhead costs attributable to wages.
- The effects of our proposal to include the contract labor costs of laboratories and pharmacies from Worksheet S–3 Part II Lines 9.01 and 9.02 in the wage index calculation.
- The combined effects of our proposed changes to the wage index data and calculations and the changes in the DRG recalibration.
- The effects of geographic reclassifications by the Medicare Geographic Classification Review Board (MGCRB) that will be effective in FY 2002 not including the effects of our proposed policy to hold-harmless other hospitals in an urban area where certain hospitals are reclassified elsewhere by including the wage data of reclassified hospitals in their geographic area as well as the area to which they are reclassified.
- The effects of geographic reclassifications by the MGCRB that will be effective in FY 2002 including the effects of our proposed policy to hold-harmless other hospitals in an urban area where certain hospitals are reclassified elsewhere by including the wage data of reclassified hospitals in their geographic area as well as the area to which they are reclassified.
- The total change in payments based on FY 2002 policies relative to payments based on FY 2001 policies.

To illustrate the impacts of the FY 2002 proposed changes, our analysis begins with a FY 2002 baseline simulation model using: the FY 2001 DRG GROUPER (version 18.0); the FY 2001 wage index; and no MGCRB reclassifications. Outlier payments are set at 5.1 percent of total DRG plus outlier payments.

Each proposed and statutory policy change is then added incrementally to this baseline model, finally arriving at an FY 2002 model incorporating all of the changes. This allows us to isolate the effects of each change.

Our final comparison illustrates the percent change in payments per case from FY 2001 to FY 2002. Five factors have significant impacts here. The first is the update to the standardized amounts. In accordance with section 1886(d)(3)(A)(iv) of the Act, as amended by section 301 of Public Law 106–554, we are proposing to update the large urban and the other areas average standardized amounts for FY 2002 using the most recently forecasted hospital market basket increase for FY 2002 of 3.1 percent minus 0.55 percentage points (for an update of 2.55 percent). Under section 1886(b)(3) of the Act, the updates to the hospital-specific amounts for sole community hospitals (SCHs) and for Medicare-dependent small rural hospitals (MDHs) is equal to the market basket increase of 3.1 percent minus 0.55 percentage points (for an update of 2.55 percent).

A second significant factor that impacts changes in hospitals' payments per case from FY 2001 to FY 2002 is the change in MGCRB status from one year to the next. That is, hospitals reclassified in FY 2001 that are no longer reclassified in FY 2002 may have a negative payment impact going from FY 2001 to FY 2002; conversely, hospitals not reclassified in FY 2001 that are reclassified in FY 2002 may have a positive impact. In some cases, these impacts can be quite substantial, so if a relatively small number of hospitals in a particular category lose their reclassification status, the percentage change in payments for the category may be below the national mean. This effect may be alleviated somewhat by section 304(a) of Public Law 106–554, which provided that reclassifications for purposes of the wage index are for a 3 year period.

A third significant factor is that we currently estimate that actual outlier payments during FY 2001 will be 5.9 percent of actual total DRG payments. When the FY 2001 final rule was published, we projected FY 2001 outlier payments would be 5.1 percent of total DRG plus outlier payments; the standardized amounts were offset correspondingly. The effects of the higher than expected outlier payments during FY 2001 (as discussed in the Addendum to this proposed rule) are reflected in the analyses below comparing our current estimates of FY 2001 payments per case to estimated FY 2002 payments per case.

Fourth, section 213 of Public Law 106–554 provided that all SCHs may receive payment on the basis of their costs per case during their cost reporting period that began during 1996. For FY 2001, eligible SCHs that are rebased receive a hospital-specific rate comprised of the greater of 50-percent of the higher of their FY 1982 or FY 1987 hospital-specific rate or 50-percent of the federal rate, and 50-percent of their FY 1996 hospital-specific rate.

Fifth, sections 302 and 303 of Public Law 106–554 affect payments for indirect medical education (IME) and disproportionate share hospitals (DSH), respectively. These sections increased IME and DSH payments during FY 2001 (effective with discharges on or after April 1, 2001). For FY 2002, section 302 established IME payments at the same level as FY 2001 (6.5 percent), and section 303 established DSH payments at the adjustment the hospital would otherwise receive minus 3 percent.

Table I demonstrates the results of our analysis. The table categorizes hospitals by various geographic and special payment consideration groups to illustrate the varying impacts on different types of hospitals. The top row of the table shows the overall impact on the 4,795 hospitals included in the analysis. This number is 93 fewer hospitals than were included in the impact analysis in the FY 2001 final rule (65 FR 47191).

The next four rows of Table I contain hospitals categorized according to their geographic location (all urban (which is further divided into large urban and other urban) and rural). There are 2,721 hospitals located in urban areas (MSAs or NECMAs) included in our analysis. Among these, there are 1,563 hospitals located in large urban areas (populations over 1 million), and 1,158 hospitals in other urban areas (populations of 1 million or fewer). In addition, there are 2,074 hospitals in rural areas. The next two groupings are by bed-size categories, shown separately for urban and rural hospitals. The final groupings by geographic location are by census divisions, also shown separately for urban and rural hospitals.

The second part of Table I shows hospital groups based on hospitals' FY 2002 payment classifications, including any reclassifications under section 1886(d)(10) of the Act. For example, the rows labeled urban, large urban, other urban, and rural show that the number of hospitals paid based on these categorizations (after consideration of geographic reclassifications) are 2,766, 1,643, 1,123, and 2,029, respectively.

The next three groupings examine the impacts of the proposed changes on hospitals

grouped by whether or not they have residency programs (teaching hospitals that receive an IME adjustment) or receive DSH payments, or some combination of these two adjustments. There are 3,674 non-teaching hospitals in our analysis, 881 teaching hospitals with fewer than 100 residents, and 240 teaching hospitals with 100 or more residents.

In the DSH categories, hospitals are grouped according to their DSH payment status, and whether they are considered urban or rural after MGCRB reclassifications. Hospitals in the rural DSH categories, therefore, represent hospitals that were not reclassified for purposes of the standardized amount or for purposes of the DSH adjustment. (They may, however, have been reclassified for purposes of the wage index.) We note that section 211 of Public Law 106–554 reduced the qualifying DSH threshold to 15 percent for all hospitals (this threshold previously applied to urban hospitals with 100 or more beds and rural hospitals with 500 or more beds). Consequently, many more hospitals qualify for DSH. In the FY 2001 final rule, there were 3,070 hospitals that did not receive a DSH adjustment (65 FR 47192). In Table I, that number declines to 1,879. The number of urban hospitals with fewer than 100 beds receiving DSH increases from 72 prior to section 211 to 325 after its implementation. Among rural hospitals with fewer than 100 beds, 103 received DSH prior to section 211; for FY 2002 that number increases to 443.

The next category groups hospitals considered urban after geographic reclassification, in terms of whether they receive the IME adjustment, the DSH adjustment, both, or neither.

The next five rows examine the impacts of the proposed changes on rural hospitals by special payment groups (SCHs, rural referral centers (RRCs), and MDHs), as well as rural hospitals not receiving a special payment designation. The RRCs (165), SCHs (667), MDHs (328), and SCH and RRCs that are not included in the SCH or the RRC categories (69) shown here were not reclassified for purposes of the standardized amount. There are 20 RRCs, 1 MDH, 5 SCHs and 2 SCH and RRCs that will be reclassified as urban for the standardized amount in FY 2002 and, therefore, are not included in these rows.

The next two groupings are based on type of ownership and the hospital's Medicare utilization expressed as a percent of total patient days. These data are taken primarily from the FY 1999 Medicare cost report files, if available (otherwise FY 1998 data are used). Data needed to determine ownership status or Medicare utilization percentages were unavailable for 46 and 78 hospitals, respectively. For the most part, these are new hospitals.

The next series of groupings concern the geographic reclassification status of hospitals. The first grouping displays all hospitals that were reclassified by the MGCRB for FY 2002. The next two groupings separate the hospitals in the first group by urban and rural status. The final row in Table I contains hospitals located in rural counties but deemed to be urban under section 1886(d)(8)(B) of the Act.

TABLE I.—IMPACT ANALYSIS OF CHANGES FOR FY 2002 OPERATING PROSPECTIVE PAYMENT SYSTEM

[Percent changes in payments per case]

	Number of hosps.[1] (0)	DRG re-calib.[2] (1)	New wage data[3] (2)	New overhead alloc.[4] (3)	Include contract labor[5] (4)	DRG & WI changes[6] (5)	MCGRB reclassification[7] (6)	Reclassification hold-harmless policy[8] (7)	All FY 2001 changes[9] (8)
By Geographic Location:									
All hospitals	4,795	0.5	0.2	0.0	0.0	0.0	−0.2	0.2	1.9
Urban hospitals	2,721	0.6	0.2	0.0	0.0	0.0	−0.7	0.2	1.7
Large urban areas (populations over 1 million)	1,563	0.7	−0.1	0.0	0.0	−0.1	−0.8	0.3	1.5
Other urban areas (populations of 1 million of fewer)	1,158	0.5	0.6	0.0	0.0	0.2	−0.5	0.1	2.0
Rural hospitals	2,074	−0.1	0.5	0.1	0.1	−0.2	2.7	0.1	3.2
Bed Size (Urban):									
0–99 beds	712	−0.1	0.3	0.0	0.0	−0.4	−0.8	0.2	2.1
100–199 beds	943	0.4	0.2	0.0	0.0	−0.2	−0.7	0.3	1.6
200–299 beds	530	0.6	0.3	0.0	0.1	0.1	−0.7	0.3	1.8
300–499 beds	391	0.7	0.1	0.0	0.0	0.0	−0.7	0.2	1.6
500 or more beds	145	1.0	0.0	0.0	0.0	0.2	−0.6	0.1	1.5
Bed Size (Rural):									
0–49 beds	1,209	−0.4	0.5	0.1	0.1	−0.5	0.4	0.0	3.0
50–99 beds	520	−0.2	0.5	0.1	0.1	−0.4	1.1	0.0	3.3
100–149 beds	204	−0.1	0.6	0.1	0.1	−0.1	3.2	0.2	3.0
150–199 beds	75	0.1	0.4	0.1	0.1	−0.1	5.2	0.2	3.4
200 or more beds	66	0.3	0.4	0.1	0.1	0.0	5.2	0.1	3.6
Urban by Region:									
New England	139	0.6	2.2	−0.1	0.0	1.3	−0.2	0.0	1.7
Middle Atlantic	417	0.7	−1.2	−0.1	0.0	−1.4	−0.8	0.6	0.2
South Atlantic	395	0.7	0.9	0.0	0.0	0.9	−0.8	0.3	2.8
East North Central	462	0.5	0.1	0.0	0.1	−0.2	−0.6	0.1	1.6
East South Central	160	0.6	1.1	0.1	0.0	1.1	−0.7	0.0	3.0
West North Central	189	0.6	0.5	0.1	0.1	0.3	−0.7	0.0	2.0
West South Central	342	0.7	−0.8	0.0	0.0	−0.9	−0.7	0.0	−0.7
Mountain	137	0.6	0.9	0.0	0.0	0.7	−0.7	0.0	2.4
Pacific	434	0.7	0.4	0.1	0.0	0.4	−0.8	0.2	2.2
Puerto Rico	46	0.4	1.3	0.1	0.0	1.0	−0.5	−0.3	2.6
Rural by Region:									

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TABLE I.—IMPACT ANALYSIS OF CHANGES FOR FY 2002 OPERATING PROSPECTIVE PAYMENT SYSTEM [PERCENT CHANGES IN PAYMENTS PER CASE]—Continued

	Number of hosps.[1] (0)	DRG re-calib.[2] (1)	New wage data[3] (2)	New overhead alloc.[4] (3)	Include contract labor[5] (4)	DRG & WI changes[6] (5)	MCGRB reclassification[7] (6)	Reclassification hold-harmless policy[8] (7)	All FY 2001 changes[9] (8)
New England	49	0.0	0.6	0.1	0.0	−0.1	3.0	0.1	3.7
Middle Atlantic	74	0.0	−0.2	0.0	0.0	−1.0	2.5	0.0	2.2
South Atlantic	267	0.1	0.6	0.1	0.1	0.0	2.9	0.1	3.6
East North Central	273	−0.2	0.6	0.0	0.1	−0.3	2.2	0.2	2.8
East South Central	263	0.0	0.5	0.1	0.1	−0.2	3.3	0.0	3.6
West North Central	479	−0.3	0.8	0.2	0.1	−0.1	2.1	0.1	2.5
West South Central	331	−0.1	0.7	0.1	0.1	0.0	3.5	0.1	4.2
Mountain	194	−0.1	0.4	0.2	0.0	−0.4	1.9	0.0	2.9
Pacific	139	0.0	−0.2	0.1	0.1	−0.9	2.3	0.1	2.7
Puerto Rico	5	−0.3	3.9	0.1	0.0	2.9	1.9	−0.8	8.4
By Payment Classification:									
Urban hospitals	2,766	0.6	0.2	0.0	0.0	0.0	−0.7	0.2	1.7
Large urban areas (populations over 1 million)	1,643	0.7	−0.1	0.0	0.0	−0.1	−0.7	0.3	1.5
Other urban areas (populations of 1 million of fewer)	1,123	0.5	0.6	0.0	0.0	0.2	−0.6	0.1	2.0
Rural areas	2,029	−0.1	0.5	0.1	0.1	−0.2	2.5	0.0	3.2
Teaching Status:									
Non-teaching	3,674	0.3	0.4	0.0	0.0	−0.1	0.2	0.2	2.2
Fewer than 100 Residents	881	0.6	0.3	0.0	0.0	0.1	−0.6	0.2	1.9
100 or more Residents	240	1.0	−0.2	0.0	0.0	0.0	−0.5	0.1	1.3
Urban DSH:									
Non-DSH	1,879	0.4	0.2	0.0	0.0	−0.1	−0.2	0.3	1.7
100 or more beds	1,378	0.7	0.2	0.0	0.0	0.1	−0.7	0.2	1.7
Less than 100 beds	325	0.0	0.4	0.1	0.0	−0.3	−0.8	0.3	3.3
Rural DSH:									
Sole Community (SCH)	540	−0.2	0.4	0.1	0.0	−0.5	0.4	0.0	3.1
Referral Center (RRC)	157	0.2	0.5	0.1	0.1	0.0	5.3	0.1	3.7
Other Rural:									
100 or more beds	73	−0.1	0.7	0.1	0.1	−0.1	1.3	0.1	3.2
Less than 100 beds	443	−0.2	0.5	0.1	0.1	−0.4	0.6	0.0	4.3
Urban teaching and DSH:									
Both teaching and DSH	754	0.8	0.1	0.0	0.0	0.0	−0.7	0.2	1.6
Teaching and no DSH	295	0.7	0.2	0.0	0.1	0.0	−0.6	0.3	1.6
No teaching and DSH	949	0.4	0.4	0.0	0.0	0.1	−0.6	0.3	2.0
No teaching and no DSH	768	0.3	0.2	0.0	0.0	−0.2	−0.6	0.3	1.5
Rural Hospital Types:									
Non special status hospitals	800	−0.3	0.7	0.1	0.1	−0.2	0.9	0.0	3.6
RRC	165	0.2	0.5	0.1	0.1	0.0	6.3	0.1	3.6
SCH	667	−0.2	0.4	0.1	0.0	−0.5	0.4	0.0	2.5

TABLE I.—IMPACT ANALYSIS OF CHANGES FOR FY 2002 OPERATING PROSPECTIVE PAYMENT SYSTEM [PERCENT CHANGES IN PAYMENTS PER CASE]—Continued

	Number of hosps.[1] (0)	DRG re-calib.[2] (1)	New wage data[3] (2)	New overhead alloc.[4] (3)	Include contract labor[5] (4)	DRG & WI changes[6] (5)	MCGRB reclassification[7] (6)	Reclassification hold-harmless policy[8] (7)	All FY 2001 changes[9] (8)
Medicare-dependent hospitals (MDH)	328	−0.3	0.5	0.1	0.1	−0.5	0.5	0.0	3.2
SCH and RRC	69	0.1	0.4	0.0	0.0	−0.3	2.5	0.0	2.7
Type of Ownership:									
Voluntary	2,785	0.6	0.2	0.0	0.0	−0.1	−0.3	0.2	1.8
Proprietary	777	0.6	0.2	0.1	0.0	0.1	−0.3	0.2	2.0
Government	1,187	0.5	0.6	0.1	0.0	0.3	0.1	0.1	2.5
Unknown	46	0.3	1.3	0.0	0.0	0.7	−1.7	1.0	2.6
Medicare Utilization as a Percent of Inpatient Days:									
0–25	396	0.9	0.2	0.0	0.0	0.4	−0.5	0.1	2.2
25–50	1,886	0.7	0.1	0.0	0.0	0.0	−0.6	0.2	1.7
50–65	1,843	0.4	0.4	0.0	0.0	0.0	0.1	0.2	2.2
Over 65	592	0.2	0.2	0.0	0.1	−0.2	0.2	0.3	1.9
Unknown	78	0.5	−2.1	−0.1	0.0	−2.4	−0.7	0.1	−1.1
Hospitals Reclassified by the Medicare Geographic Classification Review Board: FY 2002									
Reclassifications:									
All Reclassified Hospitals	636	0.3	0.6	0.0	0.1	0.2	4.5	0.3	2.9
Standardized Amount Only	74	0.1	0.7	0.0	0.0	0.0	1.9	1.0	4.0
Wage Index Only	391	0.3	0.5	0.1	0.1	0.1	5.3	0.1	2.5
Both	58	0.4	0.7	0.0	0.1	0.4	4.1	0.6	0.0
Nonreclassified Hospitals	4,246	0.6	0.2	0.0	0.0	0.0	−0.8	0.2	1.9
All Reclassified Urban Hospitals	119	0.7	0.8	0.0	0.1	0.6	2.8	0.4	2.0
Urban Non-reclassified Hospitals	18	0.2	0.5	0.0	0.0	−0.2	−1.2	1.9	−0.6
Standardized Amount Only	81	0.8	0.7	0.0	0.1	0.6	3.3	0.1	2.2
Wage Index Only	20	0.5	1.4	0.0	0.1	1.1	1.9	2.1	2.5
Both	2,564	0.6	0.2	0.0	0.0	0.0	−0.9	0.2	1.6
All Reclassified Rural Hospitals	517	0.1	0.5	0.1	0.1	−0.1	5.6	0.2	3.6
Standardized Amount Only	19	−0.2	0.5	0.1	0.0	−0.5	3.9	1.5	2.0
Wage Index Only	475	0.1	0.5	0.1	0.1	−0.1	5.5	0.1	3.6
Both	23	0.1	0.8	0.1	0.1	0.2	7.7	1.5	4.2
Rural Nonreclassified Hospitals	1,554	−0.3	0.5	0.1	0.1	−0.4	−0.6	0.0	2.8
Other Reclassified Hospitals (Section 1886(D)(8)(B))	41	−0.1	−6.1	0.1	0.1	0.4	0.3	0.1	3.9

[1] Because data necessary to classify some hospitals by category were missing, the total number of hospitals in each category may not equal the national total. Discharge data are from FY 2000, and hospital cost report data are from reporting periods beginning in FY 1999 and FY 1998.

[2] This column displays the payment impact of the recalibration of the DRG weights based on FY 2000 MedPAR data and the DRG reclassification changes, in accordance with section 1886(d)(4)(C) of the Act.

[3] This column shows the payment effects of updating the data used to calculate the wage index with data from the FY 1998 cost reports.

[4] This column displays the impact of removing the salaries and hours of lower-range, overhead employees and the overhead wage-related costs associated with the excluded areas of the hospital from the wage index calculation.

[5] This column displays the impact of including contract pharmacy and contract laboratory costs and hours in the wage index calculation.

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[6] This column displays the combined impact of the reclassification and recalibration of the DRGs, the updated and revised wage data used to calculate the wage index, the revised overhead allocation, the laboratory and pharmacy contract labor costs, and the budget neutrality adjustment factor for these two changes, in accordance with sections 1886(d)(4)(C)(iii) and 1886(d)(3)(E) of the Act. Thus, it represents the combined impacts shown in columns 1, 2 3, and 4, and the FY 2002 budget neutrality factor of .992394.

[7] Shown here are the effects of geographic reclassifications by the Medicare Geographic Classification Review Board (MGCRB). The effects demonstrate the FY 2002 payment impact of going from no reclassifications to the reclassifications scheduled to be in effect for FY 2002. Reclassification for prior years has no bearing on the payment impacts shown here.

[8] Shown here are the effects of geographic reclassifications by the MGCRB including the effects of our proposed policy to hold-harmless other hospitals in an urban area where certain hospitals are reclassified elsewhere by including the wage data of reclassified hospitals in their geographic area as well as the area to which they are reclassified.

[9] This column shows changes in payments from FY 2001 to FY 2002. It incorporates all of the changes displayed in columns 5, 6, and 7 (the changes displayed in columns 1, 2, 3, and 4 are included in column 5). It also displays the impact of the FY 2002 update, changes in hospitals' reclassification status in FY 2002 compared to FY 2001, and the difference in outlier payments from FY 2001 to FY 2002. It also reflects section 213 of Public Law 106–554, which permitted all SCHs to rebase for a 1996 hospital-specific rate. The sum of these columns may be different from the percentage changes shown here due to rounding and interactive effects.

B. Impact of the Proposed Changes to the DRG Reclassifications and Recalibration of Relative Weights (Column 1)

In column 1 of Table I, we present the combined effects of the DRG reclassifications and recalibration, as discussed in section II. of the preamble to this proposed rule. Section 1886(d)(4)(C)(i) of the Act requires us to annually make appropriate classification changes and to recalibrate the DRG weights in order to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources.

We compared aggregate payments using the FY 2001 DRG relative weights (GROUPER version 18) to aggregate payments using the proposed FY 2002 DRG relative weights (GROUPER version 19). Overall payments increase 0.5 percent due to the DRG reclassification and recalibration. We note that, consistent with section 1886(d)(4)(C)(iii) of the Act, we have applied a budget neutrality factor to ensure that the overall payment impact of the DRG changes is budget neutral. This budget neutrality factor of 0.992493 is applied to payments in Column 5.

The DRG changes we are proposing in this proposed rule would result in higher payments to urban hospitals (0.6 percent) and somewhat lower payments to rural hospitals (-0.1). The changes also would result in higher payments to larger hospitals than to smaller hospitals. This impact is consistent for both urban and rural bed size groups.

This distributional impact likely results from the changes we are proposing to major diagnostic category (MDC) 5 "Diseases and Disorders of the Circulatory System." As described in section II., we are proposing to remove cardiac defribrillator cases from DRGs 104 and 105, and create two new DRGs for these cases. In addition, we are proposing to revise the basis of the DRG assignment for cases involving percutaneous transluminal coronary angioplasty based on whether the patient experienced an acute myocardial infarction. Because MDC 5 is a high volume category, refining the categorizations of these cases has a noticeable impact.

C. Impact of Updating the Wage Data and the Proposed Changes to the Wage Index Calculation (Columns 2, 3 & 4)

Section 1886(d)(3)(E) of the Act requires that, beginning October 1, 1993, we annually update the wage data used to calculate the wage index. In accordance with this requirement, the proposed wage index for FY 2002 is based on data submitted for hospital cost reporting periods beginning on or after October 1, 1997 and before October 1, 1998. As with column 1, the impact of the new data on hospital payments is isolated in column 2 by holding the other payment parameters constant in the two simulations. That is, column 2 shows the percentage changes in payments when going from a model using the FY 2001 wage index (based on FY 1997 wage data before geographic reclassifications to a model using the FY 2002 pre-reclassification wage index based on FY 1998 wage data).

The wage data collected on the FY 1998 cost reports are similar to the data used in the calculation of the FY 2001 wage index. For a thorough discussion of the data used to calculate the wage index, see section III.B of this proposed rule.

The results indicate that the new wage data are estimated to provide a 0.2 percent increase for hospital payments overall (prior to applying the budget neutrality factor, see column 5). Rural hospitals appear to experience the greatest benefit from the update to the 1998 wage data, with an increase of 0.5 percent. Rural hospitals in Nevada, Connecticut and Arizona experience wage index increases of more than 5 percent. Rural hospitals in Puerto Rico experience a 3.9 percent increase.

Urban hospitals as a group are not significantly affected by the updated wage data. While large urban hospitals appear to experience a 0.1 percent decline, estimated payments to urban hospitals overall showed an increase of 0.2 percent. Payments in other urban areas increase by 0.6 percent. Among urban census divisions, the New England division experiences a 2.2 percent increase, Middle Atlantic a 1.2 percent decrease, East South Central a 1.1 percent increase, and Puerto Rico a 1.3 percent increase.

Columns 3 and 4, respectively, show that the proposed change to the overhead calculation and the proposal to include contract labor costs in the wage index discussed in detail in Section III.C. of this proposed rule both appear to have negligible impacts on hospital payments overall. Urban hospitals as a group are not effected by these proposals as there is a 0.0 percent impact to their payments from each proposed change. Rural hospitals, however, do appear to benefit slightly from these changes, as evidenced by the estimated 0.1 percent increase in payments to this group.

We note that the wage data used for the proposed wage index are based upon the data available as of February 22, 2001 and, therefore, do not reflect revision requests received and processed by the fiscal intermediaries after that date. To the extent these requests are granted by hospitals' fiscal intermediaries, these revisions will be reflected in the final rule. In addition, we continue to verify the accuracy of the data for hospitals with extraordinary changes in their data from the prior year.

The following chart compares the shifts in wage index values for labor market areas for FY 2001 relative to FY 2002. This chart demonstrates the impact of the proposed changes for the FY 2002 wage index relative to the FY 2001 wage index. The majority of labor market areas (318) experience less than a 5-percent change. A total of 36 labor market areas experience an increase of more than 5 percent with 4 having an increase greater than 10 percent. A total of 13 areas experience decreases of more than 5-percent. Of those, 4 decline by 10 percent or more.

Percentage change in area wage index values	Number of labor market areas	
	FY 2001	FY 2002
Increase more than 10 percent	1	4
Increase more than 5 percent and less than 10 percent	20	36
Increase or decrease less than 5 percent	339	318
Decrease more than 5 percent and less than 10 percent	14	13
Decrease more than 10 percent	1	4

Among urban hospitals, 163 would experience an increase of between 5 and 10 percent and 16 more than 10 percent. A total of 33 rural hospitals have increases greater than 5 percent, but none greater than 10 percent. On the negative side, 121 urban hospitals have decreases in their wage index values of at least 5 percent but less than 10 percent. Five urban hospitals have decreases in their wage index values greater than 10 percent. There are no rural hospitals with decreases in their wage index values greater than 5 percent or with increases of more than 10 percent. The following chart shows the projected impact for urban and rural hospitals.

Percentage change in area wage index values	Number of hospitals	
	Urban	Rural
Increase more than 10 percent	16	0
Increase more than 5 percent and less than 10 percent	101	15
Increase or decrease less than 5 percent	2,395	2,135
Decrease more than 5 percent and less than 10 percent	121	0
Decrease more than 10 percent	5	0

D. Combined Impact of DRG and Wage Index Changes—Including Budget Neutrality Adjustment (Column 5)

The impact of DRG reclassifications and recalibration on aggregate payments is required by section 1886(d)(4)(C)(iii) of the Act to be budget neutral. In addition, section 1886(d)(3)(E) of the Act specifies that any updates or adjustments to the wage index are to be budget neutral. As noted in the Addendum to this proposed rule, we compared simulated aggregate payments using the FY 2001 DRG relative weights and wage index to simulated aggregate payments using the proposed FY 2002 DRG relative weights and blended wage index. Based on this comparison, we computed a wage and recalibration budget neutrality factor of 0.992493. In Table I, the combined overall impacts of the effects of both the DRG reclassifications and recalibration and the updated wage index are shown in column 5. The 0.0 percent impact for all hospitals demonstrates that these changes, in combination with the budget neutrality factor, are budget neutral.

For the most part, the changes in this column are the sum of the changes in columns 1, 2, 3 and 4, minus approximately 0.7 percent attributable to the budget neutrality factor. There may be some variation of plus or minus 0.1 percent due to rounding.

E. Impact of MGCRB Reclassifications (Columns 6 & 7)

Our impact analysis to this point has assumed hospitals are paid on the basis of their actual geographic location (with the exception of ongoing policies that provide that certain hospitals receive payments on bases other than where they are geographically located, such as hospitals in rural counties that are deemed urban under section 1886(d)(8)(B) of the Act). The changes in column 5 reflect the per case payment impact of moving from this baseline to a simulation incorporating the MGCRB decisions for FY 2002. The changes in column 6 add in the post-reclassified wage index values resulting from the proposed change to include the wage data for a reclassified hospital in both the area to which it is reclassified and the area where the hospital is physically located. As noted below, these decisions affect hospitals' standardized amount and wage index area assignments.

By February 28 of each year, the MGCRB makes reclassification determinations that will be effective for the next fiscal year, which begins on October 1. The MGCRB may approve a hospital's reclassification request for the purpose of using the other area's standardized amount, wage index value, or both.

The proposed FY 2002 wage index values incorporate all of the MGCRB's reclassification decisions for FY 2002. The wage index values also reflect any decisions made by the HCFA Administrator through the appeals and review process for MGCRB decisions as of February 28, 2001. Additional changes that result from the Administrator's review of MGCRB decisions or a request by a hospital to withdraw its application will be reflected in the final rule for FY 2002.

The overall effect of geographic reclassification is required by section 1886(d)(8)(D) of the Act to be budget neutral. Therefore, we applied an adjustment of 0.991054 to ensure that the effects of reclassification are budget neutral. (See section II.A.4.b. of the Addendum to this proposed rule.) This results in a larger budget neutrality offset than the FY 2001 factor of 0.993187. This larger offset is accounted for by the extension of wage index reclassifications for 3 years as a result of section 304 of Public Law 106–554, and our proposed policy to hold-harmless the calculation of urban areas' wage indexes for reclassifications out of the area (see Column 7). We have identified 162 hospitals that were reclassified for FY 2001 but not FY 2002, that will nonetheless continue to be reclassified due to section 304 of Public Law 106–554.

As a group, rural hospitals benefit from geographic reclassification. Their payments rise 2.7 percent in Column 6. Payments to urban hospitals decline 0.7 percent. Hospitals in other urban areas see a decrease in payments of 0.5 percent, while large urban hospitals lose 0.8 percent. Among urban hospital groups (that is, bed size, census division, and special payment status), payments generally decline.

A positive impact is evident among most of the rural hospital groups. The smallest increase among the rural census divisions is 1.9 percent for Mountain and Puerto Rico regions. The largest increases are in rural West South Central and New England. These regions receive increases of 3.5 and 3.0 percent respectively.

Among all the hospitals that were reclassified for FY 2002, the MGCRB changes are estimated to provide a 4.5 percent increase in payments. Urban hospitals reclassified for FY 2002 are anticipated to receive an increase of 2.8 percent, while rural reclassified hospitals are expected to benefit from the MGCRB changes with a 5.6 percent increase in payments. Overall, among hospitals that were reclassified for purposes of the standardized amount only, a payment increase of 3.3 percent is expected, while those reclassified for purposes of the wage index only show a 1.9 percent increase in payments. Payments to urban and rural hospitals that did not reclassify are expected to decrease slightly due to the MGCRB changes, decreasing by 1.2 for urban hospitals and 0.6 for rural hospitals. Those hospitals located in rural counties but deemed to be urban under section 1886(d)(8)(B) of the Act are expected to receive an increase in payments of 0.3 percent.

Column 7 shows the impacts of our proposed policy to include the wage data for a reclassified hospital in both the area to which it is reclassified and the area where the hospital is physically located. This change affects overall payments by 0.2 percent, partially accounting for the larger budget neutrality factor compared to FY 2001. The payment impacts are generally largest in urban hospital groups, with the largest impact, 0.6 percent, experienced by urban hospitals in the Middle Atlantic census division.

The foregoing analysis was based on MGCRB and HCFA Administrator decisions made by February 28, 2001. As previously noted, there may be changes to some MGCRB decisions through the appeals, review, and applicant withdrawal process. The outcome of these cases will be reflected in the analysis presented in the final rule.

F. All Changes (Column 8)

Column 8 compares our estimate of payments per case, incorporating all changes reflected in this proposed rule for FY 2002 (including statutory changes), to our estimate of payments per case in FY 2001. It includes the effects of the 2.55 percent update to the standardized amounts and the hospital-specific rates for MDHs and SCHs. It also reflects the 0.8 percentage point difference between the projected outlier payments in FY 2001 (5.1 percent of total DRG payments) and the current estimate of the percentage of actual outlier payments in FY 2001 (5.9 percent), as described in the introduction to this Appendix and the Addendum to this proposed rule.

We also note that section 211 of Public Law 106–554 changed the criteria for hospitals to qualify for DSH payment status. Since more hospitals are now eligible to receive DSH payments for the full FY 2002, as opposed to for just the second 6 months of FY 2001, DSH payments to providers in FY 2002 would increase and this change is also captured in column 8.

Section 213 of Public Law 106–554 provided that all SCHs may elect to receive payment on the basis of their costs per case during their cost reporting period that began during 1996. For FY 2002, eligible SCHs that rebase receive a hospital-specific rate comprised of 50 percent of the higher of their FY 1982 or FY 1987 hospital-specific rate or their Federal rate, and 50 percent of their 1996 hospital-specific rate. The impact of this provision is modeled in column 8 as well.

There might also be interactive effects among the various factors comprising the payment system that we are not able to isolate. For these reasons, the values in column 7 may not equal the sum of the changes in columns 5 and 6, plus the other impacts that we are able to identify.

Hospitals in urban areas experience a 1.7 percent increase in payments per case compared to FY 2001. The 0.7 percent

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negative impact due to reclassification is offset by a similar negative impact for FY 2001 of 0.4 percent (65 FR 47196). Hospitals in rural areas, meanwhile, experience a 3.2 percent payment increase. This is primarily due to the change in the DSH threshold to 15 percent for all hospitals enacted by section 211 of Public Law 106–554 and effective for discharges on or after April 1, 2001, and the positive effect of the reclassification changes (2.7 percent increase, plus an additional 0.1 percent increase from the proposal to include the wage data for a reclassified hospital in both the area to which it is reclassified and the area where the hospital is physically located).

The impact of lowering the DSH threshold is demonstrated in Column 8, although we would note that the estimated FY 2001 payments do reflect 6 months of payments to hospitals affected by this change. The impacts are seen in the rows displaying urban hospitals with fewer than 100 beds receiving DSH (3.3 percent increase), and all rural DSH categories.

Among urban census divisions, payments increased between 0.2 and 3.0 percent between FY 2001 and FY 2002. The rural census division experiencing the smallest increase in payments was the Mid-Atlantic region (2.2 percent). The largest increases by rural hospitals is in Puerto Rico, where payments appear to increase by 8.4 percent and West South Central, where payments appear to increase by 4.2 percent. Rural New England and South Atlantic regions also benefited with 3.7 and 3.6 percent respectively.

Among special categories of rural hospitals, those hospitals receiving payment under the hospital-specific methodology (SCHs, MDHs, and SCH/RRCs) experience payment increases of 3.1 percent, 3.7 percent, and 3.2 percent, respectively. This outcome is primarily related to the fact that, for hospitals receiving payments under the hospital-specific methodology, there are no outlier payments. Therefore, these hospitals do not experience negative payment impacts from the decline in outlier payments from FY 2001 to FY 2002 (from 5.9 percent of total DRG plus outlier payments to 5.1 percent) as do hospitals paid based on the national standardized amounts.

Among hospitals that were reclassified for FY 2002, hospitals overall are estimated to receive a 2.9 percent increase in payments. Urban hospitals reclassified for FY 2002 are anticipated to receive an increase of 2.0 percent, while rural reclassified hospitals are expected to benefit from reclassification with a 3.6 percent increase in payments. Overall, among hospitals reclassified for purposes of the standardized amount, only a payment increase of 4.0 percent is expected, while those hospitals reclassified for purposes of the wage index only show an expected 2.5 percent increase in payments. Those hospitals located in rural counties but deemed to be urban under section 1886(d)(8)(B) of the Act are expected to receive an increase in payments of 3.9 percent.

TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 2001 OPERATING PROSPECTIVE PAYMENT SYSTEM

[Payments per case]

	Number of hosps. (1)	Average FY 2001 payment per case [1] (2)	Average FY 2001 payment per case [1] (3)	All FY 2001 changes (4)
By Geographic Location:				
All hospitals	4,795	6,969	7,100	1.9
Urban hospitals	2,721	7,548	7,674	1.7
Large urban areas (populations over 1 million)	1,563	8,087	8,207	1.5
Other urban areas (populations of 1 million of fewer)	1,158	6,854	6,989	2.0
Rural hospitals	2,074	4,705	4,856	3.2
Bed Size (Urban):				
0–99 beds	712	5,114	5,220	2.1
100–199 beds	943	6,294	6,397	1.6
200–299 beds	530	7,192	7,320	1.8
300–499 beds	391	8,127	8,261	1.6
500 or more beds	145	9,946	10,099	1.5
Bed Size (Rural):				
0–49 beds	1,209	3,922	4,041	3.0
50–99 beds	520	4,410	4,554	3.3
100–149 beds	204	4,780	4,922	3.0
150–199 beds	75	5,291	5,470	3.4
200 or more beds	66	5,961	6,173	3.6
Urban by Region:				
New England	139	8,077	8,214	1.7
Middle Atlantic	417	8,561	8,579	0.2
South Atlantic	395	7,183	7,386	2.8
East North Central	462	7,210	7,323	1.6
East South Central	160	6,771	6,973	3.0
West North Central	189	7,287	7,430	2.0
West South Central	342	7,039	7,087	0.7
Mountain	137	7,282	7,454	2.4
Pacific	434	8,840	9,037	2.2
Puerto Rico	46	3,235	3,319	2.6
Rural by Region:				
New England	49	5,615	5,821	3.7
Middle Atlantic	74	5,052	5,165	2.2
South Atlantic	267	4,871	5,046	3.6
East North Central	273	4,743	4,875	2.8
East South Central	263	4,398	4,556	3.6
West North Central	479	4,506	4,620	2.5
West South Central	331	4,177	4,351	4.2
Mountain	194	5,020	5,166	2.9
Pacific	139	5,762	5,920	2.7
Puerto Rico	5	2,529	2,742	8.4
By Payment Classification:				
Urban hospitals	2,766	7,526	7,652	1.7

TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 2001 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Payments per case]

	Number of hosps. (1)	Average FY 2001 payment per case [1] (2)	Average FY 2001 payment per case [1] (3)	All FY 2001 changes (4)
Large urban areas (populations over 1 million)	1,643	8,002	8,121	1.5
Other urban areas (populations of 1 million of fewer)	1,123	6,870	7,008	2.0
Rural areas	2,029	4,687	4,838	3.2
Teaching Status:				
Non-teaching	3,674	5,605	5,728	2.2
Fewer than 100 Residents	881	7,309	7,445	1.9
100 or more Residents	240	11,258	11,410	1.3
Urban DSH:				
Non-DSH	1,879	6,354	6,461	1.7
100 or more beds	1,378	8,129	8,267	1.7
Less than 100 beds	325	4,925	5,089	3.3
Rural DSH:				
Sole Community (SCH)	540	4,295	4,427	3.1
Referral Center (RRC)	157	5,521	5,723	3.7
Other Rural:				
100 or more beds	73	4,304	4,441	3.2
Less than 100 beds	443	3,928	4,095	4.3
Urban teaching and DSH:				
Both teaching and DSH	754	9,091	9,238	1.6
Teaching and no DSH	295	7,562	7,683	1.6
No teaching and DSH	949	6,298	6,424	2.0
No teaching and no DSH	768	5,932	6,022	1.5
Rural Hospital Types:				
Non special status hospitals	800	4,042	4,186	3.6
RRC	165	5,434	5,630	3.6
SCH	667	4,562	4,676	2.5
Medicare-dependent hospitals (MDH)	328	3,844	3,966	3.2
SCH and RRC	69	5,649	5,803	2.7
Type of Ownership:				
Voluntary	2,785	7,136	7,261	1.8
Proprietary	777	6,580	6,712	2.0
Government	1,187	6,486	6,651	2.5
Unknown	46	6,283	6,449	2.6
Medicare Utilization as a Percent of Inpatient Days:				
0–25	396	9,504	9,713	2.2
25–50	1,886	8,030	8,164	1.7
50–65	1,843	6,012	6,142	2.2
Over 65	592	5,393	5,497	1.9
Unknown	78	10,244	10,132	−1.1
Hospitals Reclassified by the Medicare Geographic Classification Review Board: FY 2002 Reclassifications:				
All Reclassified Hospitals	636	6,153	6,334	2.9
Standardized Amount Only	74	5,200	5,407	4.0
Wage Index Only	391	6,004	6,152	2.5
Both	58	6,818	6,816	0.0
All Nonreclassified Hospitals	4,246	7,105	7,236	1.9
All Urban Reclassified Hospitals	119	8,253	8,415	2.0
Urban Nonreclassified Hospitals	18	6,176	6,136	−0.6
Standardized Amount Only	81	8,946	9,141	2.2
Wage Index Only	20	6,193	6,346	2.5
Both	2,564	7,531	7,654	1.6
All Reclassified Rural Hospitals	517	5,277	5,466	3.6
Standardized Amount Only	19	4,658	4,750	2.0
Wage Index Only	475	5,283	5,472	3.6
Both	23	5,396	5,622	4.2
Rural Nonreclassified Hospitals	1,554	4,153	4,268	2.8
Other Reclassified Hospitals (Section 1886(D)(8)(B))	41	4,841	5,032	3.9

[1] These payment amounts per case do not reflect any estimates of annual case-mix increase.

Table II presents the projected impact of the proposed changes for FY 2002 for urban and rural hospitals and for the different categories of hospitals shown in Table I. It compares the estimated payments per case for FY 2001 with the average estimated per case payments for FY 2002, as calculated under our models. Thus, this table presents, in terms of the average dollar amounts paid per discharge, the combined effects of the changes presented in Table I. The percentage changes shown in the last column of Table II equal the percentage changes in average payments from column 8 of Table I.

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VIII. Impact for Critical Access Hospitals (CAHs)

There are approximately 365 facilities that qualify as CAHs. These CAHs are paid based on reasonable costs for their services to inpatients and outpatients. We examined several parts of the proposed rule, as discussed in detail in section VI.B. of the preamble, for their potential impact on CAHs.

A. Exclusion of CAHs From Payment Window Requirements

In this proposed rule, we are proposing to clarify the policy that CAHs are not subject to the payment window provisions of section 1886(a)(3) of the Act. Existing regulations do not require that these provisions be applied to CAHs, and we are not aware of specific situations in which they are now being applied. Consequently, we do not expect any increase or decrease in Medicare spending based on this clarification.

B. Availability of CRNA Pass-Through for CAHs

Under existing § 412.113(c), CRNA pass-through payment is available only to hospitals that either qualified for the pass-through of costs of anesthesia services furnished in calendar year 1989, or employed or contracted with a qualified nonphysician anesthetist as of January 1, 1988, to perform anesthesia services. We are proposing that certain CAHs that meet the pass-through criteria would qualify for pass-through payments. Under the existing criterion, the only facilities that could qualify for the pass-through as CAHs are those that would have qualified for the pass-through if they had elected to continue participating in Medicare as hospitals rather than converting to CAH status. We do not expect any increase or decrease in Medicare spending based on the proposed change in the regulations.

C. Payment for Emergency Room On-Call Physicians

In accordance with the amendments made by section 204 of Public Law 106–544, we are proposing to recognize as allowable costs, amounts for reasonable compensation and related costs for emergency room physicians who are on call but who are not present on the premises of a CAH. We expect that at least some CAHs will elect to compensate emergency room physicians for being on call, and that as a result, Medicare spending for CAH services will increase. However, we do not have information to develop a reliable estimate of how many CAHs will make this election, or how much physician compensation costs they will incur for on call time.

D. Treatment of Ambulance Services Furnished by Certain CAHs

In accordance with the provisions of section 205 of Public Law 106–554, we are proposing to amend the existing CAH regulations to provide for payment to CAHs for the reasonable costs of ambulance services furnished by a CAH or an entity owned or operated by the CAH if certain statutory requirements are met. We expect that at least some CAHs or entities owned or operated by CAHs will be able to qualify for payment for their ambulance services. To the extent that CAHs or CAH owned or operated entities furnish these services under the conditions specified in the law, ambulance services will be paid for at higher rates than would otherwise apply. As a result, Medicare spending for ambulance services will increase. However, we do not have sufficient information or data to develop a reliable estimate of how many CAHs or entities will qualify or the dollar amount of ambulance service costs they will incur.

E. Qualified Practitioners for Preanesthesia and Postanesthesia Evaluations in CAHs

As discussed in section VI.B. of this proposed rule, in an effort to eliminate or minimize potential issues relating to beneficiary access to medical services in rural areas, we are proposing to allow CRNAs who administer the anesthesia to conduct the preanesthesia and postanesthesia evaluations in a CAH. As with any licensed independent health care provider, the proposed change would not permit CRNAs to practice beyond his or her licensed scope of practice.

We believe that this proposal would increase flexibility of providers in furnishing medical services in rural areas. However, we do not have information or data to develop a reliable estimate of how many CRNAs would be used to conduct preanesthesia and postanesthesia evaluations in CAHs or what the associated costs would be.

IX. Impact of Proposed Changes in the Capital Prospective Payment System

A. General Considerations

We now have cost report data for the 8th year of the capital prospective payment system (cost reports beginning in FY 1999) available through the December 2000 update of the HCRIS. We also have updated information on the projected aggregate amount of obligated capital approved by the fiscal intermediaries. However, our impact analysis of payment changes for capital-related costs is still limited by the lack of hospital-specific data on several items. These are the hospital's projected new capital costs for each year, its projected old capital costs for each year, and the actual amounts of obligated capital that will be put in use for patient care and recognized as Medicare old capital costs in each year. The lack of this information affects our impact analysis in the following ways:

- Major investment in hospital capital assets (for example, in building and major fixed equipment) occurs at irregular intervals. As a result, there can be significant variation in the growth rates of Medicare capital-related costs per case among hospitals. We do not have the necessary hospital-specific budget data to project the hospital capital growth rate for individual hospitals.
- Our policy of recognizing certain obligated capital as old capital makes it difficult to project future capital-related costs for individual hospitals. Under § 412.302(c), a hospital is required to notify its intermediary that it has obligated capital by the later of October 1, 1992, or 90 days after the beginning of the hospital's first cost reporting period under the capital prospective payment system. The intermediary must then notify the hospital of its determination whether the criteria for recognition of obligated capital have been met by the later of the end of the hospital's first cost reporting period subject to the capital prospective payment system or 9 months after the receipt of the hospital's notification. The amount that is recognized as old capital is limited to the lesser of the actual allowable costs when the asset is put in use for patient care or the estimated costs of the capital expenditure at the time it was obligated. We have substantial information regarding fiscal intermediary determinations of projected aggregate obligated capital amounts. However, we still do not know when these projects will actually be put into use for patient care, the actual amount that will be recognized as obligated capital when the project is put into use, or the Medicare share of the recognized costs. Therefore, we do not know actual obligated capital commitments for purposes of the FY 2002 capital cost projections. In Appendix B of this proposed rule, we discuss the assumptions and computations that we employ to generate the amount of obligated capital commitments for use in the FY 2002 capital cost projections.

In Table III of this section, we present the redistributive effects that are expected to occur between "hold-harmless" hospitals and "fully prospective" hospitals in FY 2002. In addition, we have integrated sufficient hospital-specific information into our actuarial model to project the impact of the proposed FY 2002 capital payment policies by the standard prospective payment system hospital groupings. While we now have actual information on the effects of the transition payment methodology and interim payments under the capital prospective payment system and cost report data for most hospitals, we still need to randomly generate numbers for the change in old capital costs, new capital costs for each year, and obligated amounts that will be put in use for patient care services and recognized as old capital each year. We continue to be unable to predict accurately FY 2002 capital costs for individual hospitals, but with the most recent data on hospitals' experience under the capital prospective payment system, there is adequate information to estimate the aggregate impact on most hospital groupings.

B. Projected Impact Based on the Proposed FY 2002 Actuarial Model

1. Assumptions

In this impact analysis, we model dynamically the impact of the capital prospective payment system from FY 2001 to FY 2002 using a capital cost model. The FY 2002 model, as described in Appendix B of this proposed rule, integrates actual data from individual hospitals with randomly generated capital cost amounts. We have capital cost data from cost reports beginning in FY 1989 through FY 1999 as reported on the December 2000 update of HCRIS, interim payment data for hospitals already receiving capital prospective payments through PRICER, and data reported by the intermediaries that include the hospital-specific rate determinations that have been made through January 1, 2001 in the provider-specific file. We used these data to determine the proposed FY 2002 capital rates. However, we do not have individual hospital data on old capital changes, new capital formation, and actual obligated capital costs. We have data on costs for capital in use in FY 1999, and we age that capital by a formula described in Appendix B. Therefore, we need to randomly generate only new capital acquisitions for any year after FY 1999. All Federal rate payment parameters are assigned to the applicable hospital. We will continue to pay regular exceptions during cost reporting periods beginning before October 1, 2001 but ending in FY 2002. However, in FY 2003 and later, payments will no longer be made under the regular exceptions provision, hence, we will no longer require the actuarial model described in Appendix B of this proposed rule.

For purposes of this impact analysis, the proposed FY 2002 actuarial model includes the following assumptions:

- Medicare inpatient capital costs per discharge will change at the following rates during these periods:

AVERAGE PERCENTAGE CHANGE IN CAPITAL COSTS PER DISCHARGE

Fiscal year	Percentage change
2000	1.39
2001	1.37
2002	2.58

- We estimate that the Medicare case-mix index will increase by 0.0 percent in FY 2001 and will increase by 1.0 percent in FY 2002.
- The Federal capital rate and the hospital-specific rate were updated beginning in FY 1996 by an analytical framework that considers changes in the prices associated with capital-related costs and adjustments to account for forecast error, changes in the case-mix index, allowable changes in intensity, and other factors. The proposed FY 2002 update is 1.1 percent (see section IV. of the Addendum to this proposed rule).

2. Results

We have used the actuarial model to estimate the change in payment for capital-related costs from FY 2001 to FY 2002. Table III shows the effect of the capital prospective payment system on low capital cost hospitals and high capital cost hospitals. We consider a hospital to be a low capital cost hospital if, based on a comparison of its initial hospital-specific rate and the applicable Federal rate, it will be paid under the fully prospective payment methodology. A high capital cost hospital is a hospital that, based on its initial hospital-specific rate and the applicable Federal rate, will be paid under the hold-harmless payment methodology. We are no longer displaying a column for the hospital-specific payments in Table III since the FY 2001 transition blend percentage for fully prospective hospitals is 100 percent of the Federal rate and zero percent of the hospital-specific rate, and all hospitals (except those defined as "new" under § 412.300) are paid based on 100 percent of the Federal rate for FY 2002. Based on our actuarial model, the breakdown of hospitals is as follows:

CAPITAL TRANSITION PAYMENT METHODOLOGY FOR FY 2002

Type of hospital	Percent of hospitals	Percent of discharges	Percent of capital costs	Percent of capital payments
Low Cost Hospital	66	62	57	61
High Cost Hospital	34	38	43	39

A low capital cost hospital may request to have its hospital-specific rate redetermined based on old capital costs in the current year, through the later of the hospital's cost reporting period beginning in FY 1994 or the first cost reporting period beginning after obligated capital comes into use (within the limits established in § 412.302(c) for putting obligated capital into use for patient care). If the redetermined hospital-specific rate is greater than the adjusted Federal rate, these hospitals will be paid under the hold-harmless payment methodology. Regardless of whether the hospital became a hold-harmless payment hospital as a result of a redetermination, we continue to show these hospitals as low capital cost hospitals in Table III.

Assuming no behavioral changes in capital expenditures, Table III displays the percentage change in payments from FY 2001 to FY 2002 using the above described actuarial model. With the proposed Federal rate, we estimate aggregate Medicare capital payments will increase by 3.80 percent in FY 2002. This increase is somewhat lower than last year's (5.48 percent) due in part to the fact that because the transition period ends after FY 2001, there is no longer an increase in the Federal blend percentage, which increased from 90 to 100 percent from FY 2000 to FY 2001, for fully prospective hospitals.

TABLE III.—IMPACT OF PROPOSED CHANGES FOR FY 2002 ON PAYMENTS PER DISCHARGE

	Number of hospitals	Discharges	Adjusted Federal payment	Average Federal percent	Hold harmless payment	Exceptions payment	Total payment	Percent change over FY 2001
FY 2001 Payments per Discharge								
Low Cost Hospitals	3,128	6,718,804	$626.20	99.70	$2.38	$5.69	$634.27	
Fully Prospective	2,945	6,231,764	627.54	100.00		5.09	632.63	
100% Federal Rate	163	451,843	627.89	100.00		7.75	635.64	
Hold Harmless	20	35,197	367.32	50.30	454.71	85.44	907.47	
High Cost Hospitals	1,577	4,110,246	636.96	97.69	19.34	10.64	666.93	
100% Federal Rate	1,386	3,744,619	648.86	100.00		8.82	657.68	
Hold Harmless	191	365,627	515.12	75.29	217.38	29.23	761.73	
Total Hospitals	4,705	10,829,050	630.28	98.92	8.82	7.57	646.67	
FY 2002 Payments per Discharge								
Low Cost Hospitals	3,128	6,826,288	647.17	100.00		3.19	650.36	2.54

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TABLE III.—IMPACT OF PROPOSED CHANGES FOR FY 2002 ON PAYMENTS PER DISCHARGE—Continued

	Number of hospitals	Discharges	Adjusted Federal payment	Average Federal percent	Hold harmless payment	Exceptions payment	Total payment	Percent change over FY 2001
Fully Prospective	2,945	6,331,437	646.59	100.00		2.96	649.55	2.68
100% Federal Rate	183	494,852	654.56	100.00		6.11	660.67	3.94
High Cost Hospitals	1,577	4,176,324	671.77	100.00		5.72	677.49	1.58
100% Federal Rate	1,577	4,176,324	671.77	100.00		5.72	677.49	3.01
Total Hospitals	4,705	11,002,612	656.51	100.00		4.15	660.66	2.16

We project that low capital cost hospitals paid under the fully prospective payment methodology will experience an average increase in payments per case of 2.54 percent, and high capital cost hospitals will experience an average increase of 1.58 percent. These results are due to the fact that there is no longer an increase in the Federal blend percentage with the conclusion of the capital transition period in FY 2001 for fully prospective hospitals. Beginning FY 2002, all hospitals (except those defined as "new" under § 412.300) are paid based on 100 percent of the Federal rate for FY 2002.

For hospitals paid under the fully prospective payment methodology, the Federal rate payment percentage remains at 100 percent from FY 2001 (last year of the transition period) since they no longer receive payments based on the hospital-specific rate. The Federal rate payment percentage in FY 2001 for hospitals paid under the hold-harmless payment methodology is based on the hospital's ratio of new capital costs to total capital costs. The average Federal rate payment percentage for high cost hospitals receiving a hold-harmless payment for old capital in FY 2001 will increase from 75.29 percent to 100 percent since the transition period will have ended. All hold-harmless hospitals will be paid based on 100 percent of the Federal rate in FY 2002. We estimate that high cost hospitals (paid based on 100 percent of the Federal rate) will receive a decrease in exceptions payments from $8.82 per discharge in FY 2001 to $5.72 per discharge in FY 2002. This is primarily due to the expiration of the regular exceptions provision in FY 2002.

We are no longer presenting the average hospital-specific rate payment per discharge in Table III because the FY 2001 transition blend percentage for fully prospective hospitals is 100 percent of the Federal rate and zero percent of the hospital-specific rate, and all hospitals (except those defined as "new" under § 412.300) will be paid based on 100 percent of the Federal rate for FY 2002.

As stated previously, we will continue to pay regular exceptions for cost reporting periods beginning before October 1, 2001, but ending in FY 2002. However, in FY 2003 and later, regular exception payments will no longer be made under the regular exceptions provision, however, eligible hospitals could receive special exception payments under § 412.348(g).

We estimate that regular exceptions payments will decrease from 1.17 percent of total capital payments in FY 2001 to 0.63 percent of payments in FY 2002. These results are primarily due to the expiration of the regular exceptions after FY 2001 and the limited nature of the special exceptions policy in FY 2002. The projected distribution of the exception payments is shown in the chart below:

ESTIMATED FY 2002 EXCEPTIONS PAYMENTS

Type of hospital	Number of hospitals	Percent of exceptions payments
Low Capital Cost	122	48
High Capital Cost	116	52
Total	238	100

In the past we presented a cross-sectional summary of hospital groupings by the capital prospective payment transition period methodology generated by our actuarial model (Appendix B). We are no longer including such a comparison since all hospitals (except those defined as "new" under § 412.300) will be paid based on 100 percent of the Federal rate in FY 2002 with the conclusion of the 10-year capital transition period.

C. Cross-Sectional Analysis of Changes in Aggregate Payments

We used our FY 2002 actuarial model to estimate the potential impact of our proposed changes for FY 2002 on total capital payments per case, using a universe of 4,705 hospitals. The individual hospital payment parameters are taken from the best available data, including: The January 1, 2001 update to the provider-specific file, cost report data, and audit information supplied by intermediaries. In Table IV we present the results of the cross-sectional analysis using the results of our actuarial model and the aggregate impact of the proposed FY 2002 payment policies. As we explain in Appendix B of this proposed rule, we were not able to use 90 of the 4,795 hospitals in our database due to insufficient (missing or unusable) data. Consequently, the payment methodology distribution is based on 4,705 hospitals. These data should be fully representative of the payment methodologies that will be applicable to hospitals. Columns 3 and 4 show estimates of payments per case under our model for FY 2001 and FY 2002. Column 5 shows the total percentage change in payments from FY 2001 to FY 2002. Column 6 presents the percentage change in payments that can be attributed to Federal rate changes alone.

Federal rate changes represented in Column 6 include the 1.85 percent increase in the Federal rate, a 1.0 percent increase in case mix, changes in the adjustments to the Federal rate (for example, the effect of the new hospital wage index on the geographic adjustment factor), and reclassifications by the MGCRB. Column 5 includes the effects of the Federal rate changes represented in Column 6. Column 5 also reflects the effects of all other changes, including the change for all hold-harmless hospitals being paid based on 100 percent of the Federal rate, and changes in exception payments. The comparisons are provided by: (1) Geographic location, (2) region, and (3) payment classification.

The simulation results show that, on average, capital payments per case can be expected to increase 2.2 percent in FY 2002. The results show that the effect of the Federal rate change alone is to increase payments by 3.0 percent. In addition to the increase attributable to the Federal rate change, a 0.8 percent decrease is attributable to the effects of all other changes.

Our comparison by geographic location shows an overall increase in payments to hospitals in all areas. This comparison also shows that urban and rural hospitals will experience slightly different rates of increase in capital payments per case (2.3 percent and 1.2 percent, respectively). This difference is due to the lower rate of decrease for urban hospitals relative to rural hospitals (0.7 percent and 1.7 percent, respectively) from the effect of all other changes. Urban hospitals will gain approximately the same as rural hospitals (3.0 percent versus 2.9 percent, respectively) from the effects of Federal rate changes alone.

Most regions are estimated to receive increases in total capital payments per case, partly due to the fact that payments to all hospitals (except those defined as "new" under § 412.300) will be based on 100 percent of the Federal rate in FY 2002. Changes by region vary from a minimum maximum decrease of 0.6 percent (Mountain urban region) to a maximum increase of 3.0 percent (New England urban rural region).

By type of ownership, voluntary hospitals are projected to have the largest rate of increase of total payment changes (2.5 percent, a 3.0 percent increase due to the Federal rate changes, and a 0.5 percent decrease from the effects of all other changes). Similarly, payments to government hospitals will increase 2.2 percent (a 3.0 percent increase due to Federal rate changes, and a 0.8 percent decrease from the effects of all other changes), while payments to proprietary hospitals will increase 0.5 percent (a 2.9 percent increase due to Federal rate changes, and a 2.4 percent decrease from the effects of all other changes). This 2.4 percent decrease from all other changes is primarily due to the estimated decrease in exceptions payments and the change for all hold-harmless hospitals being paid based on 100 percent of the Federal rate.

Section 1886(d)(10) of the Act established the MGCRB. Hospitals may apply for reclassification for purposes of the standardized amount, wage index, or both and for purposes of DSH for FYs 1999 through 2001. Although the Federal capital rate is not affected, a hospital's geographic classification for purposes of the operating standardized amount does affect a hospital's capital payments as a result of the large urban adjustment factor and the disproportionate share adjustment for urban hospitals with 100 or more beds. Reclassification for wage index purposes also affects the geographic adjustment factor, since that factor is constructed from the hospital wage index.

To present the effects of the hospitals being reclassified for FY 2001 compared to the effects of reclassification for FY 2000, we show the average payment percentage increase for hospitals reclassified in each fiscal year and in total. For FY 2001 reclassifications, we indicate those hospitals reclassified for standardized amount purposes only, for wage index purposes only, and for both purposes. The reclassified groups are compared to all other nonreclassified hospitals. These categories are further identified by urban and rural designation.

Hospitals reclassified for FY 2001 as a whole are projected to experience a 2.0 percent increase in payments (a 3.0 percent increase attributable to Federal rate changes and a 1.0 percent decrease attributable to the effects of all other changes). Payments to nonreclassified hospitals will increase slightly more (2.2 percent) than reclassified hospitals (2.0 percent) overall. Payments to nonreclassified hospitals will increase the same as reclassified hospitals from the Federal rate changes (3.0 percent), and they will lose less from the effects of all other changes (0.8 percent compared to 1.0 percent, respectively).

TABLE IV.—COMPARISON OF TOTAL PAYMENTS PER CASE

[FY 2001 Payments Compared to FY 2002 Payments]

	Number of hospitals	Average FY 2001 payments/case	Average FY 2002 payments/case	All changes	Portion attributable to Federal rate change
By Geographic Location:					
All hospitals	4,705	647	661	2.2	3.0
Large urban areas (populations over 1 million)	1,519	749	766	2.3	3.0
Other urban areas (populations of 1 million or fewer)	1,125	635	650	2.4	3.0
Rural areas	2,061	439	444	1.2	2.9
Urban hospitals	2,644	699	716	2.3	3.0
0–99 beds	654	522	507	−2.8	2.8
100–199 beds	927	596	607	1.8	2.9
200–299 beds	528	667	684	2.6	3.0
300–499 beds	390	739	762	3.1	3.0
500 or more beds	145	902	925	2.6	2.9
Rural hospitals	2,061	439	444	1.2	2.9
0–49 beds	1,200	369	372	1.0	2.9
50–99 beds	516	412	416	1.0	2.9
100–149 beds	204	452	457	1.1	2.9
150–199 beds	75	485	495	2.2	2.9
200 or more beds	66	548	553	1.0	3.0
By Region:					
Urban by Region	2,644	699	716	2.3	3.0
New England	138	745	768	3.0	3.0
Middle Atlantic	407	782	800	2.4	2.9
South Atlantic	393	669	684	2.2	3.0
East North Central	448	672	690	2.7	3.0
East South Central	156	638	655	2.7	2.9
West North Central	181	688	708	2.9	3.0
West South Central	321	665	673	1.3	2.9
Mountain	127	702	698	−0.6	2.9
Pacific	427	787	808	2.7	3.0
Puerto Rico	46	295	304	3.1	3.1
Rural by Region	2,061	439	444	1.2	2.9
New England	49	522	534	2.3	3.0
Middle Atlantic	73	463	469	1.5	2.9
South Atlantic	267	457	458	0.1	2.9
East North Central	273	449	455	1.4	2.9
East South Central	260	410	415	1.2	2.9
West North Central	477	422	428	1.4	2.9
West South Central	325	390	398	2.1	2.9
Mountain	193	466	467	0.1	2.8
Pacific	139	520	530	2.0	3.0
By Payment Classification:					
All hospitals	4,705	647	661	2.2	3.0
Large urban areas (populations over 1 million)	1,599	742	759	2.3	3.0
Other urban areas (populations of 1 million or fewer)	1,090	636	651	2.4	3.0
Rural areas	2,016	437	442	1.2	2.9

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TABLE IV.—COMPARISON OF TOTAL PAYMENTS PER CASE—Continued
[FY 2001 Payments Compared to FY 2002 Payments]

	Number of hospitals	Average FY 2001 payments/case	Average FY 2002 payments/case	All changes	Portion attributable to Federal rate change
Teaching Status:					
Non-teaching	3,586	533	540	1.3	2.9
Fewer than 100 Residents	879	675	695	2.9	3.0
100 or more Residents	240	999	1,026	2.7	2.9
Urban DSH:					
100 or more beds	1,374	734	752	2.4	3.0
Less than 100 beds	317	489	491	0.4	2.8
Rural DSH:					
Sole Community (SCH/EACH)	540	395	390	−1.3	2.8
Referral Center (RRC/EACH)	157	504	511	1.4	2.9
Other Rural:					
100 or more beds	73	409	419	2.4	2.9
Less than 100 beds	439	369	380	2.8	3.0
Urban teaching and DSH:					
Both teaching and DSH	753	814	836	2.7	3.0
Teaching and no DSH	294	717	740	3.3	3.0
No teaching and DSH	938	585	595	1.7	2.9
No teaching and no DSH	704	590	595	0.9	2.9
Rural Hospital Types:					
Non special status hospitals	788	384	394	2.8	3.0
RRC/EACH	165	504	517	2.6	3.0
SCH/EACH	667	423	417	−1.5	2.8
Medicare-dependent hospitals (MDH)	327	363	365	0.7	2.9
SCH, RRC and EACH	69	510	508	−0.4	2.8
Hospitals Reclassified by the Medicare Geographic Classification Review Board:					
Reclassification Status During FY01 and FY02:	482	564	576	2.1	3.0
Reclassified During FY02 Only	153	571	580	1.6	2.9
FY02 Reclassifications:					
All Reclassified Hospitals	635	566	577	2.0	3.0
All Nonreclassified Hospitals	4,157	659	674	2.2	3.0
All Urban Reclassified Hospitals	119	741	763	2.9	3.0
Urban Nonreclassified Hospitals	2,487	699	715	2.3	3.0
All Reclassified Rural Hospitals	516	492	499	1.4	2.9
Rural Nonreclassified Hospitals	1,542	388	392	0.9	2.9
Other Reclassified Hospitals (Section 1886(D)(8)(B))	41	461	455	−1.3	2.9
Type of Ownership:					
Voluntary	2,769	660	677	2.5	3.0
Proprietary	755	639	642	0.5	2.9
Government	1,179	581	594	2.2	3.0
Medicare Utilization as a Percent of Inpatient Days:					
0–25	389	825	846	2.5	3.0
25–50	1,872	736	755	2.5	3.0
50–65	1,832	568	580	2.2	3.0
Over 65	585	522	519	−0.7	2.9

Appendix B: Technical Appendix on the Capital Cost Model and Required Adjustments

Under section 1886(g)(1)(A) of the Act, we set capital prospective payment rates for FY 1992 through FY 1995 so that aggregate prospective payments for capital costs were projected to be 10 percent lower than the amount that would have been payable on a reasonable cost basis for capital-related costs in that year. To implement this requirement, we developed the capital acquisition model to determine the budget neutrality adjustment factor. Even though the budget neutrality requirement expired effective with FY 1996, we must continue to determine the recalibration and geographic reclassification budget neutrality adjustment factor and the reduction in the Federal and hospital-specific rates for exceptions payments. To determine these factors, we must continue to project capital costs and payments.

We will continue to pay regular exceptions for cost reporting periods beginning before October 1, 2001 but ending in FY 2002. In FY 2003 and later, no payments will be made under the regular exceptions policy, hence we will not compute a budget neutrality factor for regular exceptions in FY 2003 and later. As described in section V.D. of the preamble of this proposed rule, the budget neutrality adjustment for special exceptions will be based on historical costs. Consequently, there will be no need to estimate capital costs with the capital acquisition model. We will not publish this appendix after the final rule for the FY 2002 capital rates.

We used the capital acquisition model from the start of prospective payments for capital costs through FY 1997. We now have 8 years of cost reports under the capital prospective payment system. For FY 1998, we developed a new capital cost model to replace the capital acquisition model. This revised model makes use of the data from these cost reports.

The following cost reports are used in the capital cost model for this proposed rule: the December 31, 2000 update of the cost reports for PPS–IX (cost reporting periods beginning in FY 1992), PPS–X (cost reporting periods beginning in FY 1993), PPS–XI (cost reporting periods beginning in FY 1994), PPS–XII (cost reporting periods beginning in FY 1995), PPS–XIII (cost reporting periods beginning in FY 1996), PPS–XIV (cost reporting periods beginning in FY 1997), PPS–XV (cost reporting periods beginning in FY 1998), and PPS–XVI (cost reporting periods beginning in FY 1999). In addition, to model payments, we use the January 1, 2001 update of the provider-specific file, and the March 1995 update of the intermediary audit file.

Since hospitals under alternative payment system waivers (that is, hospitals in Maryland) are currently excluded from the capital prospective payment system, we excluded these hospitals from our model.

We developed FY 1992 through FY 2001 hospital-specific rates using the provider-specific file and the intermediary audit file. (We used the cumulative provider-specific file, which includes all updates to each hospital's records, and chose the latest record for each fiscal year.) We checked the consistency between the provider-specific file and the intermediary audit file. We ensured that increases in the hospital-specific rates were at least as large as the published updates (increases) for the hospital-specific rates each year. We were able to match hospitals to the files as shown in the following table:

Source	Number of hospitals
No match	4
Audit file only	90
Provider-specific file only	185
Provider-specific and audit file	4,516
Total	4,795

One hundred eighteen of the 4,795 hospitals had unusable or missing data, or had no cost reports available. For 52 of the 118 hospitals, we were unable to determine a hospital-specific rate from the available cost reports. However, there was adequate cost information to determine that these hospitals were paid under the hold-harmless methodology. Since the hospital-specific rate is not used to determine payments for hospitals paid under the hold-harmless methodology, there was sufficient cost report information available to include these 52 hospitals in the analysis. We were able to estimate hospital-specific amounts from the cost reports as shown in the following table.

Cost report	Number of hospitals
PPS–9	1
PPS–12	1
PPS–13	1
PPS–14	1
PPS–15	2
PPS–16	8
Total	14

Hence we were able to use 66 (52 plus 14) of the 118 hospitals. The remaining 52 of the 118 hospitals could not be used in the analysis because we were not able to estimate their hospital-specific amount. An additional 38 hospitals could not be used in the analysis because we could not determine their capital costs, either because we had no cost reports for them or because there was insufficient cost report data. Accordingly, we used 4,705 hospitals for the analysis. Ninety (52 plus 38) hospitals could not be used in the analysis because of insufficient (missing or unusable) information. These hospitals account for about 0.3 percent of admissions. Therefore, any effects from the elimination of their cost report data should be minimal.

We analyzed changes in capital-related costs (depreciation, interest, rent, leases, insurance, and taxes) reported in the cost reports. We found a wide variance among hospitals in the growth of these costs. For hospitals with more than 100 beds, the distribution and mean of these cost increases were different for large changes in bed-size (greater than ±20 percent). We also analyzed changes in the growth in old capital and new capital for cost reports that provided this information. For old capital, we limited the analysis to decreases in old capital. We did this since the opportunity for most hospitals to treat "obligated" capital put into service as old capital has expired. Old capital costs should decrease as assets become fully depreciated and as interest costs decrease as the loan is amortized.

The new capital cost model separates the hospitals into three mutually exclusive groups. Hold-harmless hospitals with data on old capital were placed in the first group. Of the remaining hospitals, those hospitals with fewer than 100 beds comprise the second group. The third group consists of all hospitals that did not fit into either of the first two groups. Each of these groups displayed unique patterns of growth in capital costs. We found that the gamma distribution is useful in explaining and describing the patterns of increase in capital costs. A gamma distribution is a statistical distribution that can be used to describe patterns of growth rates, with the greatest proportion of rates being at the low end. We use the gamma distribution to estimate individual hospital rates of increase as follows:

(1) For hold-harmless hospitals, old capital cost changes were fitted to a truncated gamma distribution, that is, a gamma distribution covering only the distribution of cost decreases. New capital costs changes were fitted to the entire gamma distribution, allowing for both decreases and increases.

(2) For hospitals with fewer than 100 beds (small), total capital cost changes were fitted to the gamma distribution, allowing for both decreases and increases.

(3) Other (large) hospitals were further separated into three groups:

- Bed-size decreases over 20 percent (decrease).
- Bed-size increases over 20 percent (increase).
- Other (no change).

Capital cost changes for large hospitals were fitted to gamma distributions for each bed-size change group, allowing for both decreases and increases in capital costs. We analyzed the probability distribution of increases and decreases in bed size for large hospitals. We found the probability somewhat dependent on the prior year change in bed size and factored this dependence into the analysis. Probabilities of bed-size change were determined. Separate sets of probability factors were calculated to reflect the dependence on prior year change in bed size (increase, decrease, and no change).

The gamma distributions were fitted to changes in aggregate capital costs for the entire hospital. We checked the relationship between aggregate costs and Medicare per discharge costs. For large hospitals, there was a small variance, but the variance was larger for small hospitals. Since costs are used only for the hold-harmless methodology and to determine exceptions, we decided to use the gamma distributions fitted to aggregate cost increases for estimating distributions of cost per discharge increases.

Capital costs per discharge calculated from the cost reports were increased by random numbers drawn from the gamma distribution to project costs in future years. Old and new capital were projected separately for hold-harmless hospitals. Aggregate capital per discharge costs were projected for all other hospitals. Because the distribution of increases in capital costs varies with changes in bed size for large hospitals, we first projected changes in bed size for large hospitals before drawing random numbers from the gamma distribution. Bed-size changes were drawn from the uniform distribution with the probabilities dependent on the previous year bed-size change. The gamma distribution has a shape parameter and a scaling parameter. (We used different parameters for each hospital group, and for old and new capital.)

We used discharge counts from the cost reports to calculate capital cost per discharge. To estimate total capital costs for FY 2000 (the MedPAR data year) and later, we use the number of discharges from the MedPAR data. Some hospitals had considerably more discharges in FY 2000 than in the years for which we calculated cost per discharge from the cost report data. Consequently, a hospital with few cost report discharges would have a high capital cost per discharge, since fixed costs would be allocated over only a few discharges. If discharges increase substantially, the cost per discharge would decrease because fixed costs would be allocated over more discharges. If the projection of capital cost per discharge is not adjusted for increases in discharges, the projection of exceptions would be overstated. We address this situation by recalculating the cost per discharge with the MedPAR discharges if the MedPAR discharges exceed the cost report discharges by more than 20 percent. We do not adjust for increases of less than 20 percent because we have not received all of the FY 2000 discharges, and we have removed some discharges from the analysis because they are statistical outliers. This adjustment reduces our estimate of exceptions payments, and consequently, the reduction to the Federal rate for exceptions is smaller. We will continue to monitor our modeling of exceptions payments and make adjustments as needed.

The average national capital cost per discharge generated by this model is the combined average of many randomly generated increases. This average must equal the projected average national capital cost per discharge, which we projected separately

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(outside this model). We adjusted the shape parameter of the gamma distributions so that the modeled average capital cost per discharge matches our projected capital cost per discharge. The shape parameter for old capital was not adjusted since we are modeling the aging of "existing" assets. This model provides a distribution of capital costs among hospitals that is consistent with our aggregate capital projections.

Once each hospital's capital-related costs are generated, the model projects capital payments. We use the actual payment parameters (for example, the case-mix index and the geographic adjustment factor) that are applicable to the specific hospital.

To project capital payments, the model first assigns the applicable payment methodology (fully prospective or hold-harmless) to the hospital as determined from the provider-specific file and the cost reports. The model simulates Federal rate payments using the assigned payment parameters and hospital-specific estimated outlier payments. The case-mix index for a hospital is derived from the FY 2000 MedPAR file using the FY 2002 DRG relative weights included in section VI. of the Addendum to this proposed rule. The case-mix index is increased each year after FY 2000 based on analysis of past experiences in case-mix increases. Based on analysis of recent case-mix increases, we estimate that case-mix will increase 0.0 percent in FY 2001. We project that case-mix will increase 1.0 percent in FY 2002. (Since we are using FY 2000 cases for our analysis, the FY 2000 increase in case-mix has no effect on projected capital payments.)

Changes in geographic classification and revisions to the hospital wage data used to establish the hospital wage index affect the geographic adjustment factor. Changes in the DRG classification system and the relative weights affect the case-mix index.

Section 412.308(c)(4)(ii) requires that the estimated aggregate payments for the fiscal year, based on the Federal rate after any changes resulting from DRG reclassifications and recalibration and the geographic adjustment factor, equal the estimated aggregate payments based on the Federal rate that would have been made without such changes. For FY 2001, the budget neutrality adjustment factors were 0.99933 for the national rate and 1.00508 for the Puerto Rico rate. In determining these factors, we used the factors from the first half of FY 2001 (October 2000 through March 2001) published in the August 1, 2000 final rule since section 547 of Public Law 106–554 specifies that the special increases and adjustments in effect between April and October 2001 do not apply for discharges occurring after FY 2001 and should not be included in determining the payment rates in subsequent years.

Since we implemented a separate geographic adjustment factor for Puerto Rico, we applied separate budget neutrality adjustments for the national geographic adjustment factor and the Puerto Rico geographic adjustment factor. We applied the same budget neutrality factor for DRG reclassifications and recalibration nationally and for Puerto Rico. Separate adjustments were unnecessary for FY 1998 and earlier since the geographic adjustment factor for Puerto Rico was implemented in FY 1998.

To determine the factors for FY 2002, we first determined the portions of the Federal national and Puerto Rico rates that would be paid for each hospital in FY 2002 based on its applicable payment methodology. Using our model, we then compared, separately for the national rate and the Puerto Rico rate, estimated aggregate Federal rate payments based on the FY 2001 DRG relative weights and the FY 2001 geographic adjustment factor to estimated aggregate Federal rate payments based on the FY 2001 relative weights and the FY 2002 geographic adjustment factor. In making the comparison, we held the FY 2002 Federal rate portion constant and set the other budget neutrality adjustment factor and the regular and special exceptions reduction factors to 1.00. To achieve budget neutrality for the changes in the national geographic adjustment factor, we applied an incremental budget neutrality adjustment of 0.99703 for FY 2002 to the previous cumulative FY 2001 adjustment of 0.99933, yielding a cumulative adjustment of 0.99637 through FY 2002. For the Puerto Rico geographic adjustment factor, we applied an incremental budget neutrality adjustment of 0.99943 for FY 2002 to the previous cumulative FY 2001 adjustment of 1.00508, yielding a cumulative adjustment of 1.00450 through FY 2002. We then compared estimated aggregate Federal rate payments based on the FY 2001 DRG relative weights and the FY 2002 geographic adjustment factors to estimated aggregate Federal rate payments based on the FY 2002 DRG relative weights and the FY 2002 geographic adjustment factors. The incremental adjustment for DRG classifications and changes in relative weights would be 0.99428 nationally and for Puerto Rico. The cumulative adjustments for DRG classifications and changes in relative weights and for changes in the geographic adjustment factors through FY 2002 would be 0.99067 nationally and 0.99876 for Puerto Rico. The following table summarizes the adjustment factors for each fiscal year:

BUDGET NEUTRALITY ADJUSTMENT FOR DRG RECLASSIFICATIONS AND RECALIBRATION AND THE GEOGRAPHIC ADJUSTMENT FACTORS

Fiscal year	National				Puerto Rico			
	Incremental adjustment				Incremental adjustment			
	Geographic adjustment factor	DRG reclassifications and recalibration	Combined	Cumulative	Geographic adjustment factor	DRG reclassifications and recalibration	Combined	Cumulative
1992				1.00000				
1993			0.99800	0.99800				
1994			1.00531	1.00330				
1995			0.99980	1.00310				
1996			0.99940	1.00250				
1997			0.99873	1.00123				
1998			0.99892	1.00015				1.00000
1999	0.99944	1.00335	1.00279	1.00294	0.99898	1.00335	1.00233	1.00233
2000	0.99857	0.99991	0.99848	1.00142	0.99910	0.99991	0.99901	1.00134
2001 [1]	0.99846	1.00019	0.99865	0.99933	1.00365	1.00009	1.00374	1.00508
2001 [2]	[3] 0.99771	[3] 1.00009	[3] 0.99780	0.99922	[3] 1.00365	[3] 1.00009	[3] 1.00374	1.00508
2002	[4] 0.99703	[4] 0.99428	[4] 0.99133	0.99067	[4] 0.99943	[4] 0.99428	[4] 0.99371	0.99876

[1] Factors effective for the first half of FY 2001 (October 2000 through March 2001).
[2] Factors effective for the second half of FY 2001 (April 2001 through September 2001).
[3] Incremental factors are applied to FY 2000 cumulative factors.
[4] Incremental factors are applied to the cumulative factors for the first half of FY 2001.

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The methodology used to determine the recalibration and geographic (DRG/GAF) budget neutrality adjustment factor is similar to that used in establishing budget neutrality adjustments under the prospective payment system for operating costs. One difference is that, under the operating prospective payment system, the budget neutrality adjustments for the effect of geographic reclassifications are determined separately from the effects of other changes in the hospital wage index and the DRG relative weights. Under the capital prospective payment system, there is a single DRG/GAF budget neutrality adjustment factor (the national rate and the Puerto Rico rate are determined separately) for changes in the geographic adjustment factor (including geographic reclassification) and the DRG relative weights. In addition, there is no adjustment for the effects that geographic reclassification has on the other payment parameters, such as the payments for serving low-income patients or the large urban add-on payments.

In addition to computing the DRG/GAF budget neutrality adjustment factor, we used the model to simulate total payments under the prospective payment system.

Additional payments under the exceptions process are accounted for through a reduction in the Federal and hospital-specific rates. For FY 2002 additional payments for the "regular" exceptions are made only for cost reporting periods that begin before October 1, 2001. The adjustment for "special" exceptions payments (see § 412.348(g)) is described in section V.D. of the preamble of this proposed rule. Therefore, we used the model to calculate the exceptions reduction factor. This exceptions reduction factor ensures that aggregate payments under the capital prospective payment system, including exceptions payments, are projected to equal the aggregate payments that would have been made under the capital prospective payment system without an exceptions process. In modeling exceptions for FY 2002, we calculated exceptions only for qualifying cost reporting periods. Since changes in the level of the payment rates change the level of payments under the exceptions process, the exceptions reduction factor must be determined through iteration.

In the August 30, 1991 final rule (56 FR 43517), we indicated that we would publish each year the estimated payment factors generated by the model to determine payments for the next 5 years. Since we will no longer use the model after the final notice for the FY 2002 rates, we propose to discontinue publishing this table after the final notice for the FY 2002 rates. The table below provides the actual factors for FYs 1992 through 2001, the proposed factors for FY 2002, and the estimated factors that would be applicable through FY 2006. We caution that these are estimates for FYs 2002 and later, and are subject to revisions resulting from continued methodological refinements, receipt of additional data, and changes in payment policy. We note that in making these projections, we have assumed that the cumulative national DRG/GAF budget neutrality adjustment factor will remain at 0.99067 (0.99876 for Puerto Rico) for FY 2002 and later because we do not have sufficient information to estimate the change that will occur in the factor for years after FY 2002.

The projections are as follows:

Fiscal year	Update factor	Exceptions reduction factor	Budget neutrality factor	DRG/GAF adjustment factor [1]	Outlier adjustment factor	Federal rate adjustment	Federal rate (after outlier reduction)
1992	N/A	0.9813	0.9602	.....	0.9497	.....	415.59
1993	6.07	.9756	.9162	.9980	.9496	.....	417.29
1994	3.04	.9485	.8947	1.0053	.9454	[2].9260	378.34
1995	3.44	.9734	.8432	.9998	.9414	.....	376.83
1996	1.20	.9849	N/A	.9994	.9536	[3].9972	461.96
1997	0.70	.9358	N/A	.9987	.9481	.....	438.92
1998	0.90	.9659	N/A	.9989	.9382	[4].8222	371.51
1999	0.10	.9783	N/A	1.0028	.9392	.....	378.10
2000	0.30	.9730	N/A	.9985	.9402	.....	377.03
2001 [5]	0.90	.9785	N/A	.9979	.9409	.....	382.03
2002	1.10	[6].9925	N/A	0.9913	.9426	.....	389.09
2003	0.60	.9975	N/A	[7] 1.0000	[7].9426	[4] 1.0255	403.44
2004	0.90	.9975	N/A	1.0000	.9426	.....	407.07
2005	1.10	.9975	N/A	1.0000	.9426	.....	411.55
2006	1.10	.9975	N/A	1.0000	.9426	.....	416.07

[1] Note: The incremental change over the previous year.
[2] Note: OBRA 1993 adjustment.
[3] Note: Adjustment for change in the transfer policy.
[4] Note: Balanced Budget Act of 1997 adjustment.
[5] Note: Rates are for the first half of FY 2001 (October 1, 2000 through March 31, 2001).
[6] Note: Product of general exceptions factor (0.9937) and special exceptions factor (0.9988).
[7] Note: Future adjustments are, for purposes of this projection, assumed to remain at the same level.

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Appendix C—Report to Congress

THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

MAY 2 2001

The Honorable Richard B. Cheney
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

Section 1886(e)(3) of the Social Security Act (the Act) requires me to report to Congress the initial estimate of the applicable percentage increase in hospital inpatient payment rates for fiscal year (FY) 2002 that I will recommend for hospitals subject to the Medicare prospective payment system (PPS) and for hospitals and units excluded from PPS. This submission constitutes the required report.

Current law mandates, and the President's FY 2002 budget includes, an update for PPS hospitals equal to the market basket minus 0.55 percentage points. The President's FY 2002 budget estimated the PPS market basket rate of increase for FY 2002 to be 3.6 percent. Based on this estimate, we recommend an update for hospitals in both large urban and other areas of 3.05 percent.

Sole community hospitals (SCHs) are the sole source of care in their area and are afforded special payment protection in order to maintain access to services for Medicare beneficiaries. Medicare-dependent, small rural hospitals (MDHs) are a major source of care for Medicare beneficiaries in their area and are afforded special payment protection in order to maintain access to services for beneficiaries. SCHs and MDHs are PPS hospitals. However, SCHs are paid the higher of a hospital-specific rate or the Federal PPS rate and MDHs are paid the Federal PPS rate, or, if their hospital-specific rate exceeds the Federal PPS rate, the Federal rate plus 50 percent of the difference between the hospital-specific rate and the Federal rate. We recommend an update of 3.05 percent to the hospital-specific rate.

Hospitals and distinct part hospital units excluded from PPS are paid based on their reasonable costs subject to a limit under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). Current law mandates that the update for all hospitals and distinct part units excluded from PPS equals the rate of increase in the excluded hospital market basket less a percentage between 0 and 2.5 percentage points, depending on the hospital's costs in relation to its limit, or 0 if costs do not exceed two thirds of the limit. The President's FY 2002 budget incorporates an increase to the TEFRA limit using 3.6 percent for the excluded hospital market basket increase. Therefore, depending on the hospital's costs in relation to its limit, the update would be the market basket increase minus a percentage between 0 and 2.5 percentage points, or 0, resulting in an increase in the TEFRA limits of between 1.1 and 3.6 percent, or 0.

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Page 2 – The Honorable Richard B. Cheney

My recommendation for the updates is based on cost projections used in the President's FY 2002 budget. A final recommendation on the appropriate percentage increases for FY 2002 will be made nearer the beginning of the new Federal fiscal year based on the most current market basket projection available at that time. The final recommendation will incorporate our analysis of the latest estimates of all relevant factors, including recommendations by the Medicare Payment Advisory Commission (MedPAC). Section 1886(d)(4)(C)(iv) of the Act also requires that I include in my report recommendations with respect to adjustments to the diagnosis-related group (DRG) weighting factors. At this time I do not anticipate recommending any across-the-board adjustment to the DRG weighting factors for FY 2002.

I am pleased to provide this recommendation to you. I am also sending a copy of this letter to the Speaker of the House of Representatives. Please feel free to call me if you have any concerns or questions.

Sincerely,

Tommy G. Thompson

THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

MAY 2 2001

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

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Page 2 – The Honorable J. Dennis Hastert

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I am pleased to provide this recommendation to you. I am also sending a copy of this letter to the President of the Senate. Please feel free to call me if you have any concerns or questions.

Sincerely,

Tommy G. Thompson

Appendix D: Recommendation of Update Factors for Operating Cost Rates of Payment for Inpatient Hospital Services

I. Background

Several provisions of the Act address the setting of update factors for inpatient services furnished in FY 2002 by hospitals subject to the prospective payment system and by hospitals or units excluded from the prospective payment system. Section 1886(b)(3)(B)(i)(XVII) of the Act, as amended by Section 301 of Public Law 106–554, sets the FY 2002 percentage increase in the operating cost standardized amounts equal to the rate of increase in the hospital market basket minus 0.55 percent for prospective payment hospitals in all areas. Section 1886(b)(3)(B)(iv) of the Act sets the FY 2002 percentage increase in the hospital-specific rates applicable to SCHs and MDHs equal to the rate set forth in section 1886(b)(3)(B)(i) of the Act, that is, the same update factor as all other hospitals subject to the prospective payment system, or the rate of increase in the market basket minus 0.55 percentage points.

Under section 1886(b)(3)(B)(ii) of the Act, the FY 2002 percentage increase in the rate-of-increase limits for hospitals and units excluded from the prospective payment system ranges from the percentage increase in the excluded hospital market basket less a percentage between 0 and 2.5 percentage points, depending on the hospital's or unit's costs in relation to its limit for the most recent cost reporting period for which information is available, or 0 percentage point if costs do not exceed two-thirds of the limit.

In accordance with section 1886(d)(3)(A) of the Act, we are proposing to update the standardized amounts, the hospital-specific rates, and the rate-of-increase limits for hospitals and units excluded from the prospective payment system as provided in section 1886(b)(3)(B) of the Act. Based on the first quarter 2001 forecast of the FY 2002 market basket increase of 3.1 percent for hospitals and units subject to the prospective payment system, the proposed update to the standardized amounts is 2.55 percent (that is, the market basket rate of increase minus 0.55 percent percentage points) for hospitals in both large urban and other areas. The proposed update to the hospital-specific rate applicable to SCHs and MDHs is also 2.55 percent. The proposed update for hospitals and units excluded from the prospective payment system would range from the percentage increase in the excluded hospital market basket (currently estimated at 3.0 percent) minus a percentage between 0 and 2.5 percentage points, or 0 percentage points, resulting in an increase in the rate-of-increase limit between 0.5 and 3.0 percent, or 0 percent.

Section 1886(e)(4) of the Act requires that the Secretary, taking into consideration the recommendations of the Medicare Payment Advisory Commission (MedPAC), recommend update factors for each fiscal year that take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. Under section 1886(e)(5) of the Act, we are required to publish the update factors recommended under section 1886(e)(4) of the Act. Accordingly, this Appendix provides the recommendations of appropriate update factors and the analysis underlying our recommendations and our response to MedPAC's recommendations concerning the update factors.

In its March 1, 2001 report, MedPAC stated that the legislated update of market basket minus 0.55 percentage points would provide a reasonable level of payments to hospitals. MedPAC did not make a separate recommendation for the hospital-specific rate applicable to SCHs and MDHs. We discuss MedPAC's recommendations concerning the update factors and our responses to these recommendations in section III. below.

II. Secretary's Recommendations

Under section 1886(e)(4) of the Act, we are recommending that an appropriate update factor for the standardized amounts is 2.55 percentage points for hospitals located in large urban and other areas. We are also recommending an update of 2.55 percentage points to the hospital-specific rate for SCHs and MDHs. As MedPAC states in its March 2001 report, there are signs of substantial improvement in hospitals' financial performance in FY 2000 as a result of the enactment of Public Law 106–113 and Public Law 106–554. In conjunction with the various "give-back" provisions in Public Law 106–113 and Public Law 106–554 and the continuation of positive (MedPAC estimates 12 percent for FY 1999 (page 64)) Medicare hospital inpatient margins, we believe these recommended update factors for FY 2002 would ensure that Medicare acts as a prudent purchaser and provide incentives to hospitals for increased efficiency, thereby contributing to the solvency of the Medicare Part A Trust Fund.

We recommend that hospitals excluded from the prospective payment system receive an update of between 0.5 and 3.0 percentage points, or 0 percentage points. The update for excluded hospitals and units is equal to the increase in the excluded hospital operating market basket less a percentage between 0 and 2.5 percentage points, or 0 percentage points, depending on the hospital's or unit's costs in relation to its rate-of-increase limit for the most recent cost reporting period for which information is available. The market basket rate of increase for excluded hospitals and units is currently forecast at 3.0 percent.

As required by section 1886(e)(4) of the Act, we have taken into consideration the recommendations of MedPAC in setting these recommended update factors. Our responses to the MedPAC recommendations concerning the update factors are discussed below.

III. MedPAC Recommendations for Updating the Prospective Payment System Operating Standardized Amounts

In its March 2001 Report to Congress, MedPAC recommended a combined operating and capital update for hospital inpatient prospective payment system payments for FY 2002. With the end of the transition to fully prospective capital payments ending with FY 2001, both operating and capital prospective system payments will be made using standard Federal rates adjusted by hospital specific payment variables. Currently, section 1886(b)(3)(B)(i)(XVII) of the Act sets forth the FY 2002 percentage increase in the prospective payment system operating cost standardized amounts. The prospective payment system capital update is set at the discretion of the Secretary under the framework outlined in § 412.308(c)(1).

MedPAC's FY 2001 combined operating and capital update framework uses a weighted average of HCFA's forecasts of the operating (prospective payment system input price index) and the capital input price index. This combined market basket was used to develop an estimate of the change in overall operating and capital prices. MedPAC calculated a combined market basket forecast by weighting the operating market basket forecast by 0.92 and the capital market basket forecast by 0.08, since operating costs are estimated to represent 92 percent of total hospital costs (capital costs are estimated to represent the remaining 8 percent of total hospital costs). MedPAC's combined market basket for FY 2002 is estimated to increase by 2.8 percent, based on HCFA's December 2000 forecasted operating market basket increase of 3.0 percent and HCFA's December 2000 forecasted capital market basket increase of 0.8 percent.

For FY 2002, MedPAC's update framework would support a combined operating and capital update for hospital inpatient prospective payment system payments of 1.5 percent to 3.0 percent (or between the increase in the combined operating and capital market basket minus 1.3 percentage points and the increase in the combined operating and capital market basket plus 0.2 percentage points). In its update recommendation, MedPAC studied factors affecting the adequacy of payments in FY 2001 and factors expected to affect hospital costs in FY 2002. MedPAC concluded, "there is no compelling reason to change current law setting an operating update for fiscal year 2002 of 0.55 percent below the rate of increase in the operating market basket "(page 73). MedPAC also notes that while the number of hospitals with negative inpatient hospital margins have increased in FY 1999 (from 33.7 percent in 1998 to 36.7 percent in 1999) (page 71), overall high inpatient Medicare margins generally offset hospital losses on other lines of Medicare services (page 68). MedPAC continues to project substantially improved hospital total margins for FY 2000 based on performance in the first half of the fiscal year (page 72).

Response: Our long-term goal is to develop a single update framework for operating and capital prospective payments. However, the operating system update has been determined by Congress through FY 2003 (as amended by section 301 of Public Law 106–554). In the meantime, we intend to maintain as much consistency as possible with the current operating framework in order to facilitate the eventual development of a unified framework.

We agree with MedPAC's recommendation that the current law update for FY 2002 of the market basket minus 0.55 percentage points is appropriate for the operating system update. The following analyses measure changes in hospital productivity, scientific and technological advances, practice pattern changes, changes in case-mix, the effect of reclassification on recalibration, and forecast error correction.

A. Productivity

Service level labor productivity is defined as the ratio of total service output to full-time equivalent employees (FTEs). While we recognize that productivity is a function of many variables (for example, labor, nonlabor material, and capital inputs), we use the portion of productivity attributed to direct labor since this update framework applies to operating payment. To recognize that we are apportioning the short-run output changes to the labor input and not considering the nonlabor inputs, we weight our productivity measure by the share of direct labor services in the market basket to determine the expected effect on cost per case.

Our recommendation for the service productivity component is based on historical trends in productivity and total output for both the hospital industry and the general economy, and projected levels of future hospital service output. MedPAC's predecessor, the Prospective Payment Assessment Commission (ProPAC), estimated cumulative service productivity growth to be 4.9 percent from 1985 through 1989, or 1.2 percent annually. At the same time, ProPAC estimated total output growth at 3.4 percent annually, implying a ratio of service productivity growth to output growth of 0.35.

Since it is not possible at this time to develop a productivity measure specific to Medicare patients, we examined productivity (output per hour) and output (gross domestic product) for the economy. Depending on the exact time period, annual changes in productivity range from 0.3 to 0.35 percent of the change in output (that is, a 1.0 percent increase in output would be correlated with a 0.3 to 0.35 percent change in output per hour).

Under our framework, the recommended update is based in part on expected productivity—that is, projected service output during the year, multiplied by the historical ratio of service productivity to total service output, multiplied by the share of direct labor in total operating inputs, as calculated in the hospital market basket. This method estimates an expected productivity improvement in the same proportion to expected total service growth that has occurred in the past and assumes that, at a minimum, growth in FTEs changes proportionally to the growth in total service output. Thus, the recommendation allows for unit productivity to be smaller than the historical averages in years that output growth is relatively low and larger in years that output growth is higher than the historical averages. Based on the above estimates from both the hospital industry and the economy, we have chosen to employ the range of ratios of productivity change to output change of 0.30 to 0.35.

The expected change in total hospital service output is the product of projected growth in total admissions (adjusted for outpatient usage), projected real case-mix growth, expected quality-enhancing intensity growth, and net of expected decline in intensity due to reduction of cost-ineffective practice. Case-mix growth and intensity numbers for Medicare are used as proxies for those of the total hospital, since case-mix increases (used in the intensity measure as well) are unavailable for non-Medicare patients. Thus, expected FY 2002 hospital output growth is simply the sum of the expected change in intensity (0.3 percent), projected admissions change (1.6 percent for FY 2002), and projected real case-mix growth (1.0 percent), or 2.9 percent. The share of direct labor services in the market basket (consisting of wages, salaries, and employee benefits) is 61.4 percent.

Multiplying the expected change in total hospital service output (2.9 percent) by the ratio of historical service productivity change to total service growth of 0.30 to 0.35 and by the direct labor share percentage 61.4, provides our productivity standard of -0.6 to -0.5 percent.

In past years, MedPAC made an adjustment for productivity improvement to reflect the level of improvement in the production of health care services, without affecting the quality of those services. Typically, MedPAC made a downward adjustment in its framework to reflect expected improvements in hospital productivity. In its FY 2002 combined update framework, MedPAC did not make an adjustment for productivity. Instead, MedPAC believes that the costs associated with scientific and technological advances should be financed partially

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through improvements in hospital productivity. As a result, MedPAC offset its adjustment for scientific and technological advances by a fixed standard of expected productivity growth of 0.5 percent for FY 2002. Our productivity adjustment of −0.6 to −0.5 percent is consistent with the range of MedPAC's fixed standard of expected productivity growth of 0.5 percent for FY 2002.

B. Intensity

We base our intensity standard on the combined effect of three separate factors: changes in the use of quality enhancing services, changes in the use of services due to shifts in within-DRG severity, and changes in the use of services due to reductions of cost-ineffective practices. For FY 2002, we recommend an adjustment of 0.2 to 0.3 percent. The basis of this recommendation is discussed below.

We have no empirical evidence that accurately gauges the level of quality-enhancing technology changes. A study published in the Winter 1992 issue of the *Health Care Financing Review*, "Contributions of case mix and intensity change to hospital cost increases" (pages 151–163), suggests that one-third of the intensity change is attributable to high-cost technology. The balance was unexplained but the authors speculated that it is attributable to fixed costs in service delivery.

Typically, a specific new technology increases cost in some uses and decreases cost in other uses. Concurrently, health status is improved in some situations while in other situations it may be unaffected or even worsened using the same technology. It is difficult to separate out the relative significance of each of the cost-increasing effects for individual technologies.

Other things being equal, per-discharge fixed costs tend to fluctuate in inverse proportion to changes in volume. Fixed costs exist whether patients are treated or not. If volume is declining, per-discharge fixed costs will rise, but the reverse is true if volume is increasing.

Following methods developed by HCFA's Office of the Actuary for deriving hospital output estimates from total hospital charges, we have developed Medicare-specific intensity measures based on a 5-year average using FYs 1996 through 2000 MedPAR billing data. Case-mix constant intensity is calculated as the change in total Medicare charges per discharge adjusted for changes in the average charge per unit of service as measured by the Consumer Price Index (CPI) for hospital and related services and changes in real case-mix. Thus, in order to measure changes in intensity, one must measure changes in real case-mix.

We calculate case-mix constant intensity as the change in total charges per admission, adjusted for price level changes (the CPI for hospital and related services), and changes in real case-mix. Without reliable estimates of the proportions of the overall annual intensity increases due, respectively, to ineffective practice patterns and to the combination of quality-enhancing new technologies and within-DRG complexity, we assume that one-half of the annual increase is due to each of these factors.

For FY 2002, we have developed a Medicare-specific intensity measure based on a 5-year average using FY 1996 through 2000 data. In determining case-mix constant intensity, we estimate that real case-mix increase was 1.0 to 1.4 percent each year. The estimate for those years is supported by past studies of case-mix change by the RAND Corporation. The most recent study was "Has DRG Creep Crept Up? Decomposing the Case Mix Index Change Between 1987 and 1988" by G. M. Carter, J. P. Newhouse, and D. A. Relles, R–4098–HCFA/ProPAC (1991). The study suggested that real case-mix change was not dependent on total change, but was usually a fairly steady 1.0 to 1.4 percent per year. Following that study, we consider up to 1.4 percent of observed case-mix change as real for FY 1996 through FY 2000.

We calculate case-mix constant intensity as the change in total charges per admission, adjusted for price level changes (the CPI for hospital and related services), and changes in real case-mix. The average percentage change in charge per discharge was 4.7 percent and the average annual change in the CPI for hospital and related services was 4.2 percent. Dividing the change in charge per discharge by the quantity of the real case-mix index change and the CPI for hospital and related services yields an average annual change in intensity of −0.9 percent. Assuming the technology/fixed cost ratio still holds (.33), technology would account for a −0.3 percent annual decline while fixed costs would account for a −0.6 percent annual decline. The decline in fixed costs per discharge makes intuitive sense as volume, measured by total discharges, has increased during the period.

For FYs 1995 through 1999, observed case-mix index change ranged from a low of −0.7 percent to a high of 1.6 percent, with a 5-year average change of 0.2 percent. If we assume that the upper bound of real case-mix was 1.0 percent, we estimate that case-mix constant intensity increased by an average 0.3 percent during FYs 1996 through 2000, for a cumulative increase of 1.4 percent. If we assume that the upper bound of real case-mix increase was 1.4 percent, we estimate that case-mix constant intensity increased by an average 0.2 percent during FYs 1996 through 2000, for a cumulative increase of 1.2 percent. Thus, we are recommending an intensity adjustment for FY 2002 between 0.2 and 0.3 percent.

MedPAC does not make an adjustment for intensity per se, but its combined update recommendation for FY 2002 includes two categories that we consider to be comparable with our intensity recommendation. MedPAC is recommending a 0.0 to 0.5 update for scientific and technological advances to account for anticipated uses of emerging technologies that enhance the quality of hospital services, but increase costs of hospital care. MedPAC recognized an allowance for science and technological advances of 0.5 percent to 1.0 percent. It believes that the costs associated with scientific and technological advances should be financed at least in part through improvements in hospital productivity. Hence, MedPAC offsets its allowance for science and technology by 0.5 percent for productivity. In addition, MedPAC includes, when appropriate, an adjustment for one-time factors expected to affect costs in FY 2002 and the removal of the adjustment for FY 2002 one-time factors in its science and technology adjustment. MedPAC concluded that a one-time adjustment of 0.5 percent for the Health Insurance Portability and Accountability Act of 1996 (HIPAA) regulatory requirements should be reflected in the FY 2002 payment update. Additionally, since MedPAC believes that the costs associated with one-time factors should not be built permanently into the rates, it recommended that the FY 2002 payment rates be reduced by 0.5 percent to offset the increase it recommended in the FY 2000 update for the costs associated with year 2000 (Y2K) computer improvements. Thus, MedPAC's combined FY 2002 adjustment for science and technological advances is 0.0 percent to 0.5 percent.

MedPAC's recommendation also takes into account the trend of some acute care providers to shift care to a postacute care facility. While this can occur for many reasons and the shifting of costs may maintain or improve quality of care for Medicare beneficiaries, it leads to an inappropriate distribution of payments and reduces the resources available for acute care providers to pay for services to other Medicare beneficiaries. We agree with MedPAC that the site-of-care substitution effect is real and believe that it is factored into our intensity recommendation.

C. Change in Case-Mix

Our analysis takes into account projected changes in case-mix, adjusted for changes attributable to improved coding practices. For our FY 2002 update recommendation, we are projecting a 1.0 percent increase in the case-mix index. We define real case-mix change as actual changes in the mix (and resource requirements) of Medicare patients as opposed to changes in coding behavior that result in assignment of cases to higher-weighted DRGs, but do not reflect greater resource requirements. Unlike in past years, where we differentiated between "real" case-mix increase and increases attributable to changes in coding behavior, we do not believe changes in coding behavior will impact the overall case-mix in FY 2002. As such, for FY 2002, we estimate that real case-mix is equal to projected change in case-mix. Thus, we are recommending a 0.0 percent adjustment for case-mix.

MedPAC's analysis indicates that coding change has reduced case-mix index growth. In the past, MedPAC has recommended a negative adjustment when DRG coding changes has led to case-mix index growth (upcoding) and has recommended a positive adjustment when DRG coding changes have led to a decline in case-mix (downcoding). In light of evidence that coding had no significant effect on case-mix change, MedPAC recommended an adjustment of 0.0 percent for FY 2002.

MedPAC also makes an adjustment for within-DRG severity. In past years, MedPAC has included an adjustment for increased case complexity not captured by the DRG classification system. MedPAC recognizes

that as the DRG system matures, it should account for more of the variation in costs by DRG assignment, leaving less within-DRG variation in case complexity and costliness (page 76). Therefore, MedPAC recommended an adjustment of 0.0 percent for FY 2002.

D. Effect of FY 2000 DRG Reclassification and Recalibration

We estimate that DRG reclassification and recalibration for FY 2000 resulted in a 0.0 percent change in the case-mix index when compared with the case-mix index that would have resulted if we had not made the reclassification and recalibration changes to the GROUPER.

E. Forecast Error Correction

We make a forecast error correction if the actual market basket changes differ from the forecasted market basket by 0.25 percentage points or more. There is a 2-year lag between the forecast and the measurement of forecast error. The estimated market basket percentage increase used to update the FY 2000 payment rates was 2.9 percent. Our most recent data indicates the actual FY 2000 increase was 3.6 percent. The resulting forecast error in the FY 2000 market basket rate of increase is 0.7 percentage points. This forecast error is a result of prices for wages, benefits, and chemicals increasing more rapidly than expected. Market conditions enabled hospitals to be less restrictive with pay increases than initially projected. Prices for chemicals were underestimated due to the unanticipated surge in oil prices in FY 2000.

MedPAC also made a recommendation in its FY 2002 combined update framework to adjust for any error in the market basket forecasts used to set FY 2000 payment rates. It recommended a combined adjustment for FY 2000 forecast error correction of 0.7 percent. MedPAC determined this forecast error adjustment by weighting the difference between the actual and forecasted operating (92 percent) and capital (8 percent) market basket increases for FY 2000. The forecasted FY 2000 operating market basket was 2.9 percent and the actual FY 2000 operating market basket increase was 3.6 percent. The FY 2000 capital market basket was forecasted to increase by 0.6 percent and the actual market basket increase was 0.9 percent. This implies that MedPAC's combined operating and capital market basket was forecasted at 2.7 percent and the combined actual operating and capital market basket was 3.4 percent. Accordingly, MedPAC recommended a 0.7 percent forecast error correction for its FY 2002 combined update recommendation.

F. Medicare Policy Change

In developing its update recommendation for FY 2002, MedPAC includes an adjustment for Medicare policy changes affecting financial status in its section of factors affecting current level of payments. While MedPAC's update framework has not considered such costs in the past, MedPAC believes that it is appropriate to account for significant costs incurred as a result of new Medicare policy. For FY 2002, MedPAC believes that legislated updates will match cost growth and that the overall net affects of legislative changes (from Public Law 105–33, Public Law 106–113, and Public Law 106–554) will be small. Thus, it did not recommend any additional allowance for these costs for FY 2002. Accordingly, MedPAC recommended a 0.0 percent adjustment for Medicare policy changes in its update framework for FY 2002.

COMPARISON OF FY 2002 UPDATE RECOMMENDATIONS

Market basket	HHS MB	MedPAC [1] MB [1]
Policy Adjustment Factors:		
Productivity	−0.6 to −0.5	([2])
Site-of-Service Substitution	([3])	−2.0 to −1.0.
Intensity	0.2 to 0.3	
Science & Technology		0.0 to 0.5.
Real Within DRG Change		([4])
One-Time Factors		0.0
Medicare Policy Changes		0.0
Subtotal	−0.4 to −0.2	−2.0 to −0.5
Case-Mix Adjustment Factors:		
Projected Case-Mix Change	1.0	
Real Across DRG Change	1.0	0.0
Subtotal	0.0	0.0
Effect of FY 2000 DRG Reclass/Recalibration	0.0	
Forecast Error Correction	0.7	0.7
Total Recommendation Update	MB + 0.3 to MB + 0.5	MB [1] − 1.3 to MB [1] + 0.2.

[1] Used HCFA's December 2000 operating and capital market basket forecast in its combined update recommendation.
[2] Included in MedPAC's Science and Technology Adjustment.
[3] Included in HHS' Intensity Factor.
[4] Included in MedPAC's Case-Mix Adjustment.

While the above analysis would suggest an update between operating market basket plus 0.3 percentage points and the operating market basket plus 0.5 percentage points, consistent with current law, we are recommending an update of market basket increase minus 0.55 percentage points (or 2.55 percent). Just as MedPAC believes that market basket minus 0.55 percentage points will provide a reasonable level of payments for FY 2002, we believe that a 2.55 update factor for FY 2002 will appropriately reflect current trends in health care delivery, including the recent decreases in the use of hospital inpatient services and the corresponding increase in the use of hospital outpatient and postacute care services.

Also consistent with current law, we are recommending that the hospital-specific rates applicable to SCHs and MDHs be increased by the same update, 2.55 percentage points. As MedPAC states in its March 2001 report, there are signs of substantial improvement in hospital financial performance in FY 2000. In conjunction with the various "give-back" provisions in Public Law 106–113 and Public Law 106–554 and the continuation of positive (12 percent for FY 1999) Medicare hospital inpatient margins, we believe these recommended update factors for FY 2002 would ensure that Medicare acts as a prudent purchaser and provide incentives to hospitals for increased efficiency, thereby contributing to the solvency of the Medicare Part A Trust Fund.

[FR Doc. 01–11062 Filed 5–3–01; 8:45 am]
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Part III

The President

Executive Order 13210—President's Commission To Strengthen Social Security

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Presidential Documents

Title 3—

The President

Executive Order 13210 of May 2, 2001

President's Commission To Strengthen Social Security

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and to preserve Social Security for senior Americans while building wealth for younger Americans, it is hereby ordered as follows:

Section 1. *Establishment.* There is established the President's Commission to Strengthen Social Security (Commission).

Sec. 2. *Membership.* The Commission shall be composed of sixteen members appointed by the President, of which no more than eight shall be members of the same political party. The President shall also designate two members of the Commission to act as co-chairs. The two co-chairs shall not be members of the same political party.

Sec. 3. *Mission.* The mission of the Commission shall be to submit to the President bipartisan recommendations to modernize and restore fiscal soundness to the Social Security system according to the following principles:
(a) Modernization must not change Social Security benefits for retirees or near-retirees;

(b) The entire Social Security surplus must be dedicated to Social Security only;

(c) Social Security payroll taxes must not be increased;

(d) Government must not invest Social Security funds in the stock market;

(e) Modernization must preserve Social Security's disability and survivors components; and

(f) Modernization must include individually controlled, voluntary personal retirement accounts, which will augment the Social Security safety net.

Sec. 4. *Administration.* (a) The Social Security Administration shall, to the extent permitted by law, provide administrative support and funding for the Commission.

(b) Members of the Commission shall serve without any compensation for their work on the Commission. Members appointed from among private citizens of the United States, however, while engaged in the work of the Commission, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in Government service (5 U.S.C. 5701–5707), to the extent funds are available.

(c) The Commission shall have a staff headed by an Executive Director, who shall be selected by the President. To the extent permitted by law, office space, analytical support, and additional staff support for the Commission shall be provided by executive branch departments and agencies as directed by the President.

(d) The Commission shall receive input from and provide briefings to the Congress, by procedures determined by the President in consultation with the congressional leadership and the Commission. Public hearings shall be held at the call of the co-chairs, in consultation with the President.

(e) The functions of the President under the Federal Advisory Committee Act, as amended, except for those in section 6 of that Act, that are applicable to the Commission, shall be performed by the Social Security Administration,

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in accordance with the guidelines that have been issued by the Administrator of General Services.

Sec. 5. *Reports.* The Commission shall submit reports to the President as follows: (a) *Interim Report.* An interim report shall describe the challenges facing the Social Security system and the criteria by which the Commission will evaluate reform proposals. These criteria may include but are not limited to: solvency, sustainability, benefit adequacy, fair treatment across generations and demographic groups, total annual cost obligations, net impact on the Federal budget, impact upon national savings, impact on workforce participation, impact on employer-provided pension plans, rates of return, and protections against poverty.

(b) *Final Report.* The final report will set forth the Commission's recommendations, in accordance with its stated mission in section 3 of this order, regarding how to strengthen Social Security with personal accounts. The Commission shall submit its final report during the fall of 2001. The submission date shall be determined by the co-chairs in consultation with the President.

Sec. 6. *Termination.* The Commission shall terminate 30 days after submitting its final report.

THE WHITE HOUSE,
May 2, 2001.

[FR Doc. 01–11505
Filed 5–3–01; 10:58 am]
Billing code 3195–01–P

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Part IV

Department of Justice

28 CFR Part 25

National Instant Criminal Background Check System Regulation; Delay of Effective Date; Final Rule

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DEPARTMENT OF JUSTICE

28 CFR Part 25

[AG Order No. 2425–2001; FBI 105F]

RIN 1110–AA02

National Instant Criminal Background Check System Regulation; Delay of Effective Date

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Final rule; delay of effective date.

SUMMARY: In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled "Regulatory Review Plan," published in the **Federal Register** on January 24, 2001 (66 FR 7702), the Department of Justice temporarily delayed for 60 days (66 FR 12854) the effective date of the final rule entitled "National Instant Criminal Background Check System Regulation" (66 FR 12854, March 1, 2001), originally published in the **Federal Register** on January 22, 2001 (66 FR 6470). This action temporarily postpones for an additional 60 days the effective date of that final rule. This temporary 60-day delay in effective date is necessary to give Department of Justice officials further opportunity to review the rule, with the goal of adopting a regulation that will resolve issues regarding audit requirements, privacy interests, and other considerations identified during the recent 60-day review period.

DATES: The effective date of the final rule amending 28 CFR Part 25 published in the **Federal Register** on January 22, 2001, at 66 FR 6470 is delayed for an additional 60 days, from May 4, 2001, until July 3, 2001. This action is effective immediately upon publication.

FOR FURTHER INFORMATION CONTACT: Fanny Haslebacher, Attorney-Advisor, Federal Bureau of Investigation, Module A–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0147, (304) 625–2000.

SUPPLEMENTARY INFORMATION: To the extent that 5 U.S.C. section 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(A). Alternatively, the Department's implementation of this action without opportunity for public comment, effective immediately upon publication today in the **Federal Register** is based on the good cause exceptions in 5 U.S.C. 553(b)(B) and 553(d)(3). The new Department officials must have sufficient, limited time to review the rule and its administrative record thoroughly in order to determine whether the rule sufficiently addresses questions concerning the implementation of the audit requirements, important privacy interests, and other considerations identified during the recent 60-day review period. Accordingly, the Department finds that there is good cause for this limited delay of the effective date, without notice and comment, and that this action is in the public interest. Any additional delays will be ordered only after notice-and-comment rulemaking on the question of such delay.

Dated: May 3, 2001.

John Ashcroft,

Attorney General.

[FR Doc. 01–11507 Filed 5–3–01; 10:59 am]

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H.R. 132/P.L. 107–6
To designate the facility of the United States Postal Service located at 620 Jacaranda Street in Lanai City, Hawaii, as the "Goro Hokama Post Office Building". (Apr. 12, 2001; 115 Stat. 8)

H.R. 395/P.L. 107–7
To designate the facility of the United States Postal Service located at 2305 Minton Road in West Melbourne, Florida, as the "Ronald W. Reagan Post Office of West Melbourne, Florida". (Apr. 12, 2001; 115 Stat. 9)

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106th Congress, 2nd Session, 2000

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Rules and Regulations

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 362 and 381

[Docket No. 01–045IF]

RIN 0583–AC84

Mandatory Inspection of Ratites and Squabs

Editorial Note: Federal Register rule document 01–10679 originally appeared in the issue of Tuesday, May 1, 2001 at 66 FR 21631–21639. Due to several errors (repeated text and missing text on page 21635) the document is being reprinted in its entirety.

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Interim final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Poultry Products Inspection Regulations (Part 381) and the Voluntary Poultry Inspection Regulations (Part 362) to include ratites and squabs under the mandatory poultry products inspection regulations. The Agency is responding to the FY 2001 Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act (the Appropriations Act), signed by the President on October 28, 2000, which provides that 180 days after the date of its enactment, U.S. establishments slaughtering or processing ratites or squabs for distribution into commerce as human food will be subject to the requirements of the Poultry Products Inspection Act (PPIA), rather than the voluntary poultry inspection program under section 203 of the Agricultural Marketing Act of 1946 (AMA). The provision of the Appropriations Act specifying that ratites and squabs come under the Agency's mandatory inspection requirements is effective on April 26, 2001. Interested parties may comment on this interim final rule.

DATES: This interim final rule will be effective April 26, 2001. Comments must be received on this interim final rule by July 2, 2001.

ADDRESSES: Submit one original and two copies of written comments within the scope of the rulemaking to FSIS Docket Clerk, Docket #01–045IF, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. All comments submitted in response to this proposal will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For information about the interim final rule, contact Dr. Arshad Hussain, Director, Inspection and Enforcement Standards Development Staff, Office of Policy, Program Development, and Evaluation, FSIS, U.S. Department of Agriculture, Room 202, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700, (202) 720–3219.

SUPPLEMENTARY INFORMATION:

Background

On October 28, 2000, the President signed the Appropriations Act, which provides that 180 days after the date of its enactment, U.S. establishments that slaughter or process ratites (such as ostriches, emus, and rheas) or squabs for distribution into commerce as human food will be subject to the requirements of the PPIA (21 U.S.C. 451, *et seq.*), rather than the voluntary poultry inspection program under section 203 of the AMA (7 U.S.C. 1622). This provision of the Appropriation Act is effective on April 26, 2001.

Ratites are members of a superorder (Ratitae) of flightless birds that have small or rudimentary wings and flat breastplates, e.g., ostriches, emus, and rheas. Squabs are young pigeons that have not yet flown.

Ratites are currently inspected under the Voluntary Poultry Inspection Regulations as an experimental program. Operators who wish to continue to slaughter or process ratites or squabs after April 26, 2001, for transport or sale in commerce must apply to FSIS for a grant of inspection for mandatory inspection service (§§ 381.6 and 381.16). As of April 26, 2001, grants of voluntary inspection for ratites and squabs will no longer be valid. Fees for ratite and squab inspection services will no longer be charged, except for overtime and holiday inspection services. Applications for mandatory inspection must be submitted on an FSIS application form available from any FSIS District Office or from FSIS Headquarters, Washington, DC 20250. FSIS will give notice in writing to each applicant granted (or denied) inspection.

Under the regulations that implement the PPIA, before being granted Federal inspection, an establishment must have written Sanitation Standard Operating Procedures (SOPs) (§ 381.22(a)) and a Hazard Analysis and Critical Control Point (HACCP) plan that the establishment has validated (§ 381.22 (b) and (c)). Establishments can receive conditional grants of inspection for a period of not more than 90 days while they validate their HACCP plans (§ 381.22(b)).

Import Inspection

This interim final rule will be effective on April 26, 2001. Within 18 months of that date, imported ratite or squab products will have to originate in countries that are eligible to export poultry to the United States and will have to be processed in establishments certified by the government of the foreign country as eligible to export to the United States. Currently, these countries include Canada, France, Great Britain, and Israel. Hong Kong and Mexico have not yet been approved by the United States to slaughter poultry; therefore, they are only eligible to export to the United States processed poultry products that originate from Canada, France, Great Britain, Israel, or the United States (§ 381.196).

All countries exporting or wanting to export ratite and squabs products to the United States, regardless of their current eligibility status regarding meat and poultry product exports to the United States, may do so for the next 18 months subject to the following. Countries already eligible to export poultry to the United States will be able to export ratites and squabs as soon as they certify to FSIS those establishments eligible to export to the United States. These countries are Canada, Israel, Great Britain, and France. Animal health

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restrictions continue to apply so there is no change with regard to the eligibility of specific products based on APHIS regulations.

Countries eligible to export meat to the United States will be permitted to export ratites to the United States provided the animals are slaughtered in an establishment certified to export to the Unites States and provided the countries submit a request for establishing equivalency. Certified establishments are required to meet FSIS HACCP and Pathogen Reduction requirements. At this point, Australia and New Zealand, which are both eligible to export meat to the United States, have indicated that they want to export ratites.

Countries not eligible to export meat or poultry to the United States will need to submit a request for equivalency and FSIS will need to make an equivalency determination according to 9 CFR Part 327.

As indicated above, however, each country desiring to begin or continue exporting such products to the United States will have to apply for an equivalence determination of its ratite and squab inspection system. Countries' ratite and squab export inspection systems must be found to be equivalent with the U.S. domestic inspection system within 18 months of the effective date of the Agency's new mandatory ratite and squab inspection requirements (April 26, 2001).

After the 18 month period has ended, all shipments of ratites and squabs from eligible countries must be accompanied with the appropriate veterinary health certificate (§ 381.197) and must be presented to FSIS for import reinspection prior to entry (§ 381.199).

Countries wanting to export ratites and squab to the United States should make a written request to export poultry to FSIS through the United States Embassy located in the country. FSIS will conduct both a document review and an on-site audit to determine if the country operates an equivalent poultry inspection system.

During the review, FSIS will work cooperatively with the Animal and Plant Health Inspection Service, which approves the entry of poultry products according to the disease status of the exporting country.

If the country's export inspection system is found to be equivalent with the U.S. domestic inspection system, FSIS will publish a proposal in the **Federal Register** to list the country as eligible to export poultry products to the United States. After the public has had 60 days to comment on this proposed rule, FSIS will review all of the public comments and make a final determination of equivalence. The determination to list a country as equivalent, and, therefore, eligible to export poultry products to the United States, is published as a final rule in the **Federal Register**, along with FSIS's responses to the public comments. At that time, the country's inspection service may certify establishments for export of poultry products, including ratites and squabs, to the United States.

Summary of Interim Final Rule

FSIS is making a number of technical changes in its regulations, which it believes are noncontroversial, to provide for the inspection of ratites and squabs. The Agency is amending 9 CFR 362.1(d) to remove squab from the definition of "Poultry" in the Voluntary Poultry Inspection Regulations. FSIS is also amending § 362.1(e) to include ratites and squabs with chickens, turkeys, ducks, geese, and guineas in the definition of "Poultry Product." The Agency is also amending § 381.1(b) to include ratites and squabs within the definition of "Poultry" in the Poultry Products Inspection Regulations.

FSIS is amending § 381.36(b) to require a pen for the ante mortem inspection of ratites. It is necessary to specify that a pen be available for ratites because ante mortem inspection of ratites is done on an individual bird basis, rather than a lot basis as is done for other amenable poultry.

The Agency is amending § 381.66 to exempt ratites from the chilling requirements of § 381.66 paragraphs (b), (c), and all of (d), except for (d)(1). Ratites are air-chilled rather than water-chilled, as is the case with most amenable poultry.

FSIS is amending § 381.67 to include squabs with young chickens under traditional inspection procedures. The two types of birds are of similar size and weight and thus can be inspected in a similar manner.

The Agency is amending § 381.70 to permit an exception to examining and inspecting ratites on the day of slaughter for humane reasons or, for low volume establishments, under certain conditions. This amendment allows the humane handling of ratites to be the same as that for livestock.

FSIS is amending § 381.71 to provide information on how suspect and condemned ratites are to be handled. This amendment is necessary because the treatment of suspect and condemned ratites is different than the treatment of suspect and condemned birds of other amenable species.

FSIS is amending § 381.72 to reflect the fact that ratites showing disease symptoms at ante mortem will be handled differently than other diseased poultry.

The Agency is amending § 381.76 to add Ratite Inspection as the fifth post mortem poultry inspection system. This amendment is necessary because inspection of ratites must be done in a different manner than inspection of other amenable poultry species. Thus, inspection of ratites cannot be done under the existing four inspection systems.

FSIS is amending § 381.96 to provide that ratite carcasses and parts that are shipped unpacked must bear the official brand. This addition is necessary because ratites are the only species of amenable species that are likely to be shipped unpacked.

Finally, FSIS is proposing to make some editorial changes to § 362.1 to correct inaccuracies and to provide for greater clarity.

Regulatory Impact Analysis

Basis for Regulatory Action

Currently, ratites and squabs are inspected on a voluntary, fee-for-service basis under section 203 of the AMA. The interim final rule will amend § 362.1(d) to remove squab from the definition of poultry in the Voluntary Poultry Inspection Regulations and will amend § 381.1 to include ratites and squabs under the Agency's mandatory poultry inspection requirements.

Congress mandated, in the FY 2001 Agriculture Appropriation Act, that 180 days from the date of enactment (April 26, 2001) U.S. establishments that slaughter or process ratites or squabs will come under mandatory inspection by FSIS.

Baseline

Ratites and squabs are considered non-amenable species and are currently inspected by the Agency on a voluntary, fee-for-service basis.[1] These species are also inspected on a mandatory or voluntary basis under State programs. Ratites are an order of flightless birds that includes ostriches, emus, rheas, cassowaries, and kiwis. The most economically important species of ratites are the ostrich and the emu. Squabs are young domesticated pigeons that have never flown. Ratite and squab meat is valued for its flavor and nutritional characteristics.

[1] The FMIA and PPIA do not mandate the inspection of ratites and squabs. FSIS provides, on a fee-for-service basis, voluntary inspection services under the Agricultural Marketing Act of 1946 for these species and others such as reindeer, elk, deer, antelope, water buffalo, bison, migratory water fowl, game birds, and rabbits. The Food and Drug Administration has primary statutory authority over all food animals and birds not covered by the FMIA and the PPIA.

Since 1992, when FSIS first granted a request for voluntary inspection for ostriches, approximately 166 establishments have been issued a grant of inspection for ratite operations. Currently 99 establishments possess a grant of inspection. In 1999, there were a total of 48,286 (76%) ratites inspected in Federal establishments and 14,427 (24%) ratites inspected in State establishments, or a total of 62,713 ratites inspected (Table 1). Ostriches made up the largest share (69%) of the ratites inspected under the Federal program, whereas emus made up the largest share (56%) of the ratites inspected under State programs.

TABLE 1.—RATITES AND SQUAB INSPECTION VOLUME AND ESTABLISHMENTS, FY 1999

Species	Federal establishments		State establishments		Total inspected
	Number inspected	% of total	Number inspected	% of total	
Ratites					
Ostrich	33,521	86	5,254	14	38,775
Emu	14,745	64	8,068	36	22,813
Other	20	2	1,105	98	1,125
Ratites Total	48,286	76	14,427	24	62,713
Squabs	175,496	14	1,122,131	86	1,297,627
Totals	223,782	16	1,136,558	84	1,360,240
Ests.	Number		Number		
Squabs	2		2		
Ratites	99		95		

In 1999, states with a large share of ratites inspected under the Federal program were California, Georgia, Illinois, Louisiana, Oklahoma, and Texas. Alabama, California, Mississippi, North Carolina, Ohio, and Texas inspected a large share of ratites under State programs. There were almost an equal number of establishments involved in slaughter of ratites under the Federal (99) and State (95) inspection programs.

Ostriches

Ostrich is the largest bird in the world, standing about seven to eight feet tall and weighing 300–400 pounds when fully grown. Industry representatives indicate that there were about 600 ostrich growers 1998, down from 1000 growers in 1996. There is significant uncertainty about the annual production of ostriches and other ratites at this time. The Agency requests reliable information on the annual number of ratites and squab produced and the number of producers.

Ostriches are slaughtered at an average age of 12 months. The average weight at slaughter is 350 pounds. Ostrich meat is sold as steaks, fillets, medallions, roasts, and ground meat. Currently, ostriches are processed in establishments that are equipped to process other red meat species such as cattle, sheep, goats, and swine.

Emus

A mature emu reaches a height of 5 to 6 feet tall, weighing 90 to 120 pounds. In 1999, 22,813 emus were inspected under Federal and State programs (Table 1). There are a number of valuable products derived from emus in addition to their meat.

There is also significant uncertainty about the annual production of emus. Some source indicate that there may be as many as 500,000 birds on 5,000 to 6,000 farms in the U.S., with the majority of them in Texas, Oklahoma, and elsewhere in the Southwest.

Squabs

Squabs are young domesticated pigeons that have never flown. Squabs usually weigh 1 pound or less at the time of slaughter (about 4 weeks old). In 1999, California and Oregon were the only two states that inspected squabs under the Federal voluntary inspection program. In that year, 175,496 squabs were inspected (Table 1). During that same period 1,122,131 squabs were inspected under the inspection programs of California and South Carolina.

Regulatory Alternatives

FSIS considered two options in developing its interim final rule. The first option the Agency considered was to only change the definition of poultry in the Poultry Products Inspection Regulations to include ratites and squabs. This approach may have caused confusion in the industry because it would be difficult to apply some of the current poultry regulations to ratites and squabs, e.g., chilling and certain handling requirements.

The Agency's second option was to make the changes required by statute and other changes as noted above. FSIS selected this option because it will provide a more orderly transition from voluntary inspection to mandatory inspection of ratites and squabs than the first option at little or no additional cost.

Benefits

There are three primary benefits that may result from extending mandatory inspection services to ratites and squabs: industry growth, public health, and industry cost savings.

Having the inspection mark on the ratite and squab products could lead to greater consumer confidence and acceptability of the products. Demand could be expected to increase as a result. Establishments that are able to capitalize on the change in consumer preference may realize increased sales of these products. To the extent that inspection promotes growth in the ratite and squab industry, society could benefit also from the increased employment and earnings of workers in these establishments. Studies are not available to identify the potential growth in the industry that may occur.

The public health benefits of inspection are related to the reduction

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in risk associated with consumption of all ratite and squab meat that must be inspected using the same procedures employed in the meat and poultry industries. HACCP systems, Sanitation SOPs, and process control practices have been shown to reduce contamination by harmful foodborne pathogens.

A shift to the mandatory inspection system will eliminate the payment of fees for inspection services. This is not a benefit from an economic perspective as the costs of inspection are transferred elsewhere in the economy. Since FSIS will recover these costs through appropriated funds, the change to a mandatory inspection system results in an income transfer from the public to the ratite and squab industry. The total cost savings to the industry would be about $2 million in 2001, with the possibility of increasing over time with the expansion of the industry.

Industry Costs

The compliance cost of extending mandatory inspection to ratite and squab species will be negligible. All establishments involved in slaughtering amenable species, as of January 25, 2000, must be in compliance with the provisions of Pathogen Reduction/ Hazard Analysis Critical Control Point (PR/HACCP) final rule. Under the provisions of the rule, all slaughter establishments under mandatory inspection are required to have HACCP plans and meet process control requirements. Nearly all establishments that slaughter and process ratites and squabs because they also slaughter other species under mandatory inspection have already implemented HACCP, Sanitation SOPs, and other measures consistent with the requirements of this rule. These establishments will still be required to make changes to their HACCP or sanitation procedures to include ratites and squabs. Establishments that have not included ratites and squabs in their HACCP plans [2] would incur minimal costs associated with HACCP plan modification.

As poultry is subject to mandatory Federal inspection, ratites and squabs will be subject to *E. coli* testing requirements. Establishments that slaughter more than one kind of poultry and livestock are required to test the kind of species slaughtered in the greatest number. The number of establishments where ratites and squabs will be the species being slaughtered in the greatest number is very low. Consequently, very few establishments will be required to perform additional *E. coli* testing for process control verification. The costs per establishment for *E. coli* testing are shown in Table 2. The Agency is requesting information on the number of establishments where ratites or squabs are, or would become, the major species for slaughter.

For those establishments slaughtering and processing ratites and squabs under voluntary inspection, the transition to mandatory inspection will not require changes in equipment and processing methods. Ratites are currently being slaughtered and processed in establishments that are equipped to process cattle, sheep, goats, and swine. Squabs are processed using the same equipment and procedures as those used for young chickens.

The Agency estimates that 50% of the Federal establishments (50 establishments) and 25% of the State establishments (24 establishments) may be required to make minor changes in their HACCP plan to accommodate mandatory inspection requirements for ratites.

TABLE 2.—POTENTIAL COSTS FOR MANDATORY FEDERAL INSPECTION

Costs	Per est. (dollars)	Industry ($thousand)
Start up Cost:		
HACCP Plan Modification	500	37.0
SSOP Modification	100	7.4
Recurring Cost: *E. coli Sampling* (26 samples@$20 per sample per establishment)	520	38.5
Recordkeeping	300	22.2
Total	1,420	105.1

The Agency seeks comment or further information pertaining to its cost figures for mandatory inspection.

Other additional costs that would apply to all establishments applying for Federal mandatory inspection will be the application cost. This cost will be negligible, as it is limited to a one-time cost for filling out an application, about $10. The total compliance cost to the establishments identified above are estimated to be $105,100.

FSIS is aware that some State inspected ratite product may contain sodium nitrite and/or sodium nitrate even though the Food and Drug Administration (FDA) regulations do not authorize such use of these substances for ratite products. However, once ratites are officially defined as poultry under PPIA regulations, such use will not be allowed in FSIS inspected products. FSIS does not have information on the types or amounts of product affected by this change, but is seeking information.

FSIS Costs

The Agency anticipates the need to conduct baseline microbiological and chemical residue studies. These studies constitute the major costs to the Agency totaling $600,000.

Microbiological Testing

The microbiological studies would help the Agency determine the prevalence of harmful bacteria or pathogens in ratites and squabs. These studies can also be used to develop performance standards for pathogen reduction. The costs of a microbiological baseline testing for ratites are $110,000 and for squabs, $95,000 (Tables 3 and 4).

Chemical Residue Testing

Chemical residue studies would help the Agency determine the presence of violative chemical and drug residues in ratites and squabs. Chemical residue testing would be necessary to determine how these additional species would be incorporated in the Agency's annual residue testing program. FSIS' one-time costs for chemical residue studies for ratites and squabs are $210,000 and $185,000, respectively (Tables 3 and 4).

[2] HACCP plans are not required to cover non-amenable species.

TABLE 3.—COST TO FSIS OF A MANDATORY RATITE INSPECTION PROGRAM

One-time costs	Inspection hours	Thousands of dollars
Chemical Residue Study		210.0
Microbiological Baseline		110.0
Total		320.0
Transfer Payment:[1] Federally-Inspected Ests	38,524	1,959.0

[1] The hourly rate for Federal inspection in FY 2000 is estimated to be $38.44 per hour.

TABLE 4.—FSIS MANDATORY SQUAB INSPECTION PROGRAM COSTS

One-time costs	Inspection hours	Thousands of dollars
Chemical Residue Study		185.0
Microbiological Baseline		95.0
Total		280.0
Transfer Payment:[1] Federally-Inspected Ests	322	16.4

[1] The hourly rate for Federal inspection in FY 2000 is estimated to be $38.44 per hour.

Transfer Payments

Under voluntary inspection, establishments pay for inspection services. The funds for mandatory inspection activities are appropriated from Federal tax revenues. The transition from voluntary to mandatory inspection changes the source of inspection program funding. The Agency estimates that the industry cost of inspection of ratites and squabs for 1999 in Federal establishments was $1,975,000, of which ratites accounted for $1,959,000 and squabs, $16,400, including overhead (Tables 3 and 4).

When ratite and squab inspection becomes mandatory, it is possible that the volume of ratites and squabs inspected at Federally inspected establishments will increase beyond what is currently being inspected. First, there may be significant volumes of ratites and squabs that are currently slaughtered and consumed without inspection that would be brought under inspection. Second, an establishment currently under a State inspection program that is shipping ratites and squabs in interstate commerce would have to shift to Federal inspection to maintain its markets. It is expected that 25% of the establishments under State voluntary inspection would migrate to the Federal mandatory program. The analysis does not take into account the potential increase in the demand for inspection services. Both species currently account for an extremely small share of meat and poultry inspection. Changes in the required level of inspection program personnel are not expected to be significant in the near-term.

The estimated total cost of inspection in State establishments is $554,400 for 14,427 ratites and 1,122,131 squabs for FY 1999. Under the current agreement the Agency has with state having a voluntary inspection program, the Agency pays half of the inspection program costs, or $277,191 (Table 5).

Under a mandatory program, states would no longer be able to collect fees for inspection services. States may decide to terminate their ratite and squab inspection program. If this occurs, FSIS will take over inspection at the facilities operating under a State program and thereby absorb the total costs of inspection at these establishments. For those states that do not have a State voluntary program for ratites and squabs, the impact of a Federal mandatory inspection program will be minimal. The payment of these costs at previously State inspected establishments is an income transfer similar to that occurring for Federally inspected establishments.

The total transfer payment to Federal and State establishments is $2,252,000 (1,975,000 plus 277,000).

TABLE 5.—RATITES AND SQUABS INSPECTION COST AT STATE ESTABLISHMENTS—FY 1999

Species	Number inspected	Total inspection hours required	Total cost of inspections [1] ($thousand)
Ratites	14,427	11,510	442.4
Squabs	1,122,131	2,912	111.9
Total	1,136,558	14,422	554.4

[1] FSIS hourly base rate of $38.44 times inspection hours required.

Consumer Cost

In large part, the costs of ratite and squab inspection are transferred from producers to taxpayers. As the burden of paying for inspection service is eliminated, establishments may transfer these cost savings to consumers through lower prices.

Economic Impact on International Trade Assessment

Countries that previously had little interest in export certification may petition FSIS if additional species come under mandatory inspection. Foreign

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establishments that specialize in exotic species may seek to broaden their markets by exporting to the United States. The Agency may need to evaluate the equivalence of a greater number of foreign food regulatory inspection systems.

Executive Order 12866 and Regulatory Flexibility Act

Because this interim final rule has been determined to be significant, the Office of Management and Budget (OMB) has reviewed it under Executive Order 12866.

The Administrator, FSIS, has determined that this interim final rule would not have a significant economic impact, as defined by the Regulatory Flexibility Act (5 U.S.C. 601), on a substantial number of small entities.

Small establishments will not be adversely affected by this interim final rule. Few establishments slaughter and process ratites or squabs exclusively. They usually slaughter and process both amenable and non-amenable species. For small slaughtering establishments as well as large ones, ratites and squabs do not comprise all or even most of their business. Of the 100 establishments that slaughter or process ratites and squabs, only two slaughter over 90% of the squabs consumed in the market. There are no establishments that dominate the slaughtering of ratites. Small entities will benefit along with the rest of the industry with the increased marketability of their product and the cost savings realized because they will no longer have to pay fees to either FSIS or the state for voluntary inspection service.

Executive Order 12988

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This interim final rule: (1) Preempts State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 306.5, 381.35, and 590.320 through 590.370, respectively, must be exhausted before any judicial challenge of the application of the provisions of this proposed rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the PPIA.

Executive Order 13132

Executive Order 13132, "Federalism," requires that Agencies assess the federalism implications of their policy statements and actions, i.e., the effects of those statements and actions on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) preempt State and local laws in regard to the manufacture and distribution of meat and poultry products. Therefore, FSIS policy statements and actions impact federalism within the context of these statutory preemptions.

States and local jurisdictions are preempted by the FMIA and PPIA from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA and the PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are within their jurisdiction and outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA and PPIA, or, in the case of imported articles, that are not at such an establishment, after their entry into the United States.

Specifically, under section 301 of the FMIA and section 5 of the PPIA, a State may administer State meat and poultry inspection programs provided that it has developed and is effectively enforcing State meat and poultry inspection requirements at least equal to those imposed under titles I and IV of the FMIA and sections 1–4, 6–10, and 12–22 of the PPIA. These titles contemplate continuous ongoing programs. When States can no longer effectively enforce meat and poultry inspection requirements at least equal to Federal requirements, they must be "designated" by the Secretary to receive Federal inspection.

When FSIS revises its meat and poultry inspection requirements, States that administer their own inspection programs may be impacted, since they must continue to enforce requirements equal to those of FSIS. To minimize any additional costs States must incur to modify their inspection programs, FSIS grants the States significant flexibility under the "equal to" provisions of the FMIA and PPIA. Further, States are eligible to receive up to 50 percent Federal matching funds to cover the costs of their inspection programs.

Paperwork Reduction Act Requirements

Title: Mandatory Inspection of Ratites and Squabs.

Type of Collection: New.

The paperwork and recordkeeping requirements in this final rule will be approved on an emergency basis by OMB under control number 0583–01120. FSIS is seeking comments on the paperwork and recordkeeping requirements in this interim final rule so that the Agency may receive a three-year approval for these requirements.

Abstract: FSIS has reviewed the paperwork and record keeping requirements in this interim final rule in accordance with the Paperwork Reduction Act. Under this proposed rule, FSIS is requiring several information collection and record keeping activities. FSIS is requiring that establishments slaughtering and processing ratites and squabs apply for Federal Inspection. Also, these establishments will need to develop and maintain Sanitation SOPs, HACCP plans, and perform testing for *E. coli.*

Estimate of Burden: FSIS estimates that the time to apply for inspection would be two hours. The time to develop a Sanitation SOP will be two days (16 hours) and five minutes to file. FSIS estimates that an establishment will spend about 5 minutes a day developing an average of eight monitoring records, per Sanitation SOP, and two minutes a day filing each record. The time to develop a HACCP plan or process schedule would take an average of two days (16 hours) and five minutes to file. FSIS estimates that an establishment will spend about five minutes a day developing an average of eight monitoring records, per HACCP plan or process schedule, and two minutes a day filing each record. The time to record *E. coli* testing results would be five minutes a day.

Respondents: Meat and poultry product establishments and irradiation facilities.

Estimated Number of Respondents: 105 (100 ratite and 5 squab establishments).

Estimated Number of Responses per Respondent: 8,252.

Estimated Total Annual Burden on Respondents: 54,758 hours.

Copies of this information collection assessment can be obtained from Lee Puricelli, Paperwork Specialist, Food Safety and Inspection Service, USDA, 112 Annex, 300 12th SW., Washington, DC 20250.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used: (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments are requested by July 2, 2001. To be most effective, comments should be sent to OMB within 30 days of the publication date.

List of Subjects

9 CFR Part 362

Poultry and poultry products.

9 CFR Part 381

Poultry and poultry products.

PART 362—VOLUNTARY POULTRY INSPECTION REGULATIONS

For the reasons stated in the preamble, FSIS is amending 9 CFR chapter III as follows:

1. The authority citation for part 362 is revised to read as follows:

Authority: 7 U.S.C. 1622; 7 CFR 2.18 (g) and (i) and 2.53.

2. Sections 362.1 and 362.2 are revised to read as follows:

§ 362.1 Definitions.

The definitions in § 381.1 are incorporated in this part except for the definitions excluded in § 362.2(a). In addition to those definitions, the following definitions will be applicable to the regulations in this part.

(a) *Act.* "Act" means the Agricultural Marketing Act of 1946, as amended (60 Stat. 1087, as amended; 7 U.S.C. 1621 et seq.).

(b) *Inspector.* "Inspector" means any officer or employee of the Department authorized to perform any duties under the regulations in this part.

(c) *Person.* "Person" means any individual, corporation, company, association, firm, partnership, society, or joint stock company, or other organized business unit.

(d) *Poultry.* "Poultry" means any migratory water fowl or game bird, whether dead or alive.

(e) *Poultry Product.* "Poultry product" means any poultry carcass or part thereof; or any human food product which is made wholly or in part from the carcass of any domesticated bird (as defined in § 381.1(b) of this chapter) and is excepted from the inspection requirements of the Poultry Products Inspection Act (21 U.S.C. 451 et seq.).

§ 362.2 Types and availability of service.

Upon application, in accordance with § 362.3, the following types of service may be furnished under the regulations in this part:

(a) Inspection service. An inspection and certification service for wholesomeness relating to the slaughter and processing of poultry and the processing of poultry products. All provisions of Part 381 and §§ 416.1 through 416.6 of this chapter shall apply to the slaughter of poultry, and the preparation, labeling, and certification of the poultry and poultry products processed under this poultry inspection service except for the following provisions: the definitions of "Act," "animal food manufacturer," "Inspection Service," "inspector," "Inspector in Charge," "poultry," "poultry product," "poultry food product," "poultry products broker," "renderer," and "U.S. Refused Entry" in §§ 381.1 (b), 381.3 (a), 381.6, 381.10, 381.13–381.17, 381.21, 381.29, 381.39–381.42, 381.175 (a)(2), 381.175 (a)(3), 381.179, 381.185–381.187, 381.192, and 381.195–381.225.

(b) Export certification service. At the request of any person intending to export any slaughtered poultry or poultry product, inspectors may make certification regarding products for human food purposes, to be exported, as meeting conditions or standards that are not imposed or are in addition to those imposed by the regulations in this chapter and the laws under which such regulations were issued.

(c) Identification Service. (1) Poultry or other product that is federally inspected and passed at an official establishment, or upon importation, under the Poultry Products Inspection Act, is officially marked to identify it as federally inspected and passed. In order to facilitate the division of such poultry or other product into smaller portions or its combination into larger units and still maintain its identify as product which has been federally inspected and passed and so marked, inspectors may supervise the handling and weighing of the product and mark such portions and units with the official mark of inspection when they determine that identify has been maintained.

(2) At the time service is furnished, product must be sound, wholesome, and fit for human food. The service will be available only on premises other than those of an official establishment. The sanitation of the place or area where service is furnished must comply with provisions of §§ 416.1 through 416.6 of this chapter.

(3) The mark of inspection shall be applied only under the immediate supervision of an inspector.

(4) This service does not cover further cutting and processing of products. These activities must take place at an official establishment.

(5) The registration and recordkeeping requirements enumerated in Part 381, subpart Q, of this chapter shall apply to persons requesting voluntary identification service under this paragraph (c).

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

3. The authority citation for Part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 USC 451–470; 7 CFR 2.18, 2.53.

4. Section 381.1 (b) is amended by revising the definition of poultry to read as follows:

Poultry. "Poultry" means any domesticated bird (chickens, turkeys, ducks, geese, guineas, ratites, or squabs, also termed young flightless pigeons), whether live or dead.

* * * * *

5. Amend § 381.36 by revising the first sentence of paragraph (b) to read as follows:

§ 381.36 Facilities required.

(b) *Facilities for ante mortem inspection.* A suspect pen is required for adequate ratite inspection. * * *

* * * * *

6. Amend § 381.66 by revising the headings of paragraphs (b) and (c), and by revising paragraph (d)(1) to read as follows:

§ 381.66 Temperatures and chilling and freezing procedures.

* * * * *

(b) *General chilling requirements, except for ratites.* * * *

(c) *Ice and water chilling requirements, except for ratites.* * * *

(d) (1) *Moisture absorption and retention limits.*

(1) Poultry washing, chilling, and draining practices and procedures shall be such as will minimize moisture absorption and retention at time of packaging. Ratites must meet the requirements of this paragraph but are exempt from the rest of § 381.66(d).

* * * * *

7. Amend § 381.67, by revising the text preceding the table and the heading of the table, to read as follows:

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§ 381.67 Young chicken and squab slaughter inspection rate maximums under traditional inspection procedure under traditional inspection procedure.

The maximum number of birds to be inspected by each inspector per minute under the traditional inspection procedure for the different young chicken and squab slaughter line configurations are specified in the following table. These maximum rates will not be exceeded. The inspector in charge will be responsible for reducing production line rates where in the inspector's judgment the prescribed inspection procedure cannot be adequately performed within the time available, either because the birds are not presented by the official establishment in such a manner that the carcasses, including both internal and external surfaces and all organs, are readily accessible for inspection, or because the health conditions of a particular flock dictate a need for a more extended inspection procedure. The standards in 381.170(a) of this part specify which classes of birds constitute young chickens and squabs. Section 381.76(b) specifies when either the traditional inspection procedure or the modified traditional inspection procedure can or must be used.

Maximum Production Line Rates—Chickens and Squabs-Traditional Inspection Procedures

* * * * *

8. Amend § 381.70 by designating the text as paragraph (a) and by adding paragraph (b) to read as follows:

§ 381.70 Ante mortem inspection; when required; extent.

* * * * *

(b) The examination and inspection of ratites will be on the day of slaughter, except:

(1) When it is necessary for humane reasons to slaughter an injured animal at night or on a Sunday or holiday, and the FSIS veterinary medical officer cannot be obtained; or

(2) In low volume establishments, when ante mortem inspection cannot be done on the day of slaughter, and the birds to be slaughtered have received ante mortem inspection in the last 24 hours, provided the establishment has an identification and control system over birds that have received ante mortem inspection.

9. Amend § 381.71 by designating the text as paragraph (a) and by adding paragraphs (b), (c), (d), (e), and (f) to read as follows:

§ 381.71 Condemnation on ante mortem inspection.

* * * * *

(b) Dead-on-arrival ratite carcasses and ratites condemned on ante mortem inspection will be tagged "U.S. Condemned" by an establishment employee under FSIS supervision and disposed of by one of the methods prescribed in § 381.95.

(c) All seriously crippled ratites and non-ambulatory ratites, commonly termed "downers," shall be identified as "U.S. Suspects."

(d) Ratites exhibiting signs of drug or chemical poisoning shall be withheld from slaughter.

(e) Ratites identified as "U.S. Suspects" or "U.S. Condemned" may be set aside for treatment. The "U.S. Suspect" or "U.S. Condemned" identification device will be removed by an establishment employee under FSIS supervision following treatment if the bird is found to be free of disease. Such a bird found to have recovered from the condition for which it was treated may be released for slaughter or for purposes other than slaughter, provided that in the latter instance permission is first obtained from the local, State, or Federal sanitary official having jurisdiction over movement of such birds.

(f) When it is necessary for humane reasons to slaughter an injured ratite at night or Sunday or a holiday, and the Agency veterinary medical officer cannot be obtained, the carcass and all parts shall be kept for inspection, with the head and all viscera except the gastrointestinal tract held by the natural attachment. If all parts are not so kept for inspection, the carcass shall be condemned. If on inspection of a carcass slaughtered in the absence of an inspector, any lesion or other evidence is found indicating that the bird was sick or diseased, or affected with any other condition requiring condemnation of the animal on ante mortem inspection, or if there is lacking evidence of the condition that rendered emergency slaughter necessary, the carcass shall be condemned. Ratites that are sick, dying, or that have been treated with a drug or chemical and presented for slaughter before the required withdrawal period, are not covered by emergency slaughter provisions.

10. Revise § 381.72 to read as follows:

§ 381.72 Segregation of suspects on ante mortem inspection.

(a) All birds, except ratites, that on ante mortem inspection do not plainly show, but are suspected of being affected with, any disease or condition that under §§ 381.80 to 381.93 of this Part may cause condemnation in whole or in part on post mortem inspection, shall be segregated from the other poultry and held for separate slaughter, evisceration, and post mortem inspection. The inspector shall be notified when such segregated lots are presented for post mortem inspection, and inspection of such birds shall be conducted separately. Such procedure for the correlation of ante mortem and post mortem findings by the inspector, as may be prescribed or approved by the Administrator, shall be carried out.

(b) All ratites showing symptoms of disease will be segregated, individually tagged as "U.S. Suspects" by establishment personnel under FSIS supervision with a serially numbered metal or plastic leg band or tag bearing the term "U.S. Suspect," and held for further examination by an FSIS veterinarian. Depending upon the findings of the veterinarian's examination, these birds will either be passed for regular slaughter, slaughtered as suspects, withheld from slaughter, or condemned on ante mortem. Those ratites affected with conditions that would be readily detected on post mortem inspection need not be individually tagged on ante mortem inspection with the "U.S. Suspect" tag provided that such ratites are segregated and otherwise handled as "U.S. Suspects." All ratites identified as "U.S. Condemned" shall be tagged by establishment personnel, under FSIS supervision, with a serially numbered metal or plastic leg band or tag bearing the term "U.S. Condemned."

11. Amend § 381.76 by revising the introductory text of paragraph (b) (1) to read as follows:

§ 381.76 Post-mortem inspection, when required; extent; traditional, Streamlined Inspection System (SIS), New Line Speed (NELS) Inspection System and the New Turkey Inspection (NTI) System; rate of inspection.

* * * * *

(b)(1) There are five systems of post-mortem inspection: Streamlined Inspection System (SIS) and the New Line Speed (NELS) Inspection System, both of which shall be used only for broilers and cornish game hens; the New Turkey Inspection (NTI) System, which shall be used only for turkeys; Traditional Inspection; and Ratite Inspection.

* * * * *

12. Revise § 381.96 to read as follows:

§ 381.96 Wording and form of the official inspection legend.

Except as otherwise provided in this subpart, the official inspection legend required to be used with respect to inspected and passed poultry products shall include wording as follows: "Inspected for wholesomeness by U.S. Department of Agriculture." This wording shall be contained within a circle. The form and arrangement of such wording shall be exactly as indicated in the example in Figure 1, except that the appropriate official establishment number shall be shown, and if the establishment number appears elsewhere on the labeling material in the manner prescribed in § 381.123(b), it may be omitted from the inspection mark. The administrator may approve the use of abbreviations of such inspection mark; and such approved abbreviations shall have the same force and effect as the inspection mark. The official inspection legend, or the approved abbreviation thereof, shall be printed on consumer packages and other immediate containers of inspected and passed poultry products, or on labels to be securely affixed to such containers of such products and may be printed or stenciled thereon, but shall not be applied by rubber stamping. When applied by a stencil, the legend shall not be less than 4 inches in diameter. An official brand must be applied to inspected and passed carcasses and parts of ratites that are shipped unpacked.

Done at Washington, DC, on: April 25, 2001.

Thomas J. Billy,

Administrator.

[FR Doc. 01–10679 Filed 4–26–01; 1:36 pm]

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Editorial Note: Federal Register rule document 01-10679 originally appeared in the issue of Tuesday, May 1, 2001 at 66 FR 21631-21639. Due to several errors (repeated text and missing text on page 21635) the document is being reprinted in its entirety.

[FR Doc. R1–10679 Filed 5–4–01; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 9

[3150–AG78]

Charges for Reproducing Records

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is revising its regulations to permit its contractor to increase the charges for copying publicly available documents at the NRC's Public Document Room (PDR). The increases are necessary to adjust for inflation and a decrease in the projected volume of copying by the NRC contractor. In addition, the revisions will provide for electronic copying to CD–ROM.

EFFECTIVE DATE: The rule is effective June 6, 2001.

FOR FURTHER INFORMATION CONTACT: Thomas E. Smith, Acting Chief, Public Document Room, Office of the Chief Information Officer, Nuclear Regulatory Commission, Washington, DC 20555, 301–415–7204, or 1–800–397–4209 (toll-free).

SUPPLEMENTARY INFORMATION: The PDR retains a copy service to reproduce for a fee publicly available documents whatever their format. Since the NRC's Agency-wide Document Access and Management System (ADAMS) was implemented in November 2000, making recently released documents available in full text online, there has been a significant reduction in the volume of document reproduction. The total volume of copying has fallen from over 3,000,000 pages a year to 1,600,000 in 2000. Based on first quarter data, the projected level of copying for 2001 will be just under 1,000,000 pages. Since the copy service contract is at no cost to the government, the contractor must provide all supplies and equipment. The NRC believes that the price increase is reasonable and in line with the prices charged by other Federal agencies. A market survey showed that the average price is 20 cents per page for paper-to-paper copies and 27 cents for microfiche-to-paper copies.

The contractor will offer two new services to the public: copying documents from ADAMS to CD–ROM and copying color documents from ADAMS to paper. The contractor will be able to accept orders directly online from ADAMS through the new ADAMS Online Order Module scheduled to be released shortly.

Because this amendment concerns an agency practice and procedure, the NRC has determined that notice and comment under the Administrative Procedures Act, 5 U.S.C. 553(b) (A) and (B), is unnecessary and that good cause exists to dispense with the comment.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22 (c) (1) and (2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

A regulatory analysis has not been prepared for this final rule because the final rule makes only minor conforming changes to the regulations that reference Section 202 of the Energy Reorganization Act and minor changes to other regulations.

Backfit Analysis

The NRC has determined that these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1); therefore a backfit analysis need not be prepared.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 9

Criminal penalties, freedom of information, privacy, reporting and recordkeeping requirements, the Sunshine Act.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 9.

PART 9—PUBLIC RECORDS

1. The authority citation for Part 9 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Subpart A is also issued under 5 U.S.C. 552 and 31 U.S.C. 9701; (Pub. L. 99–570). Subpart B is also issued under 5 U.S.C. 552a. Subpart C is also issued under 5 U.S.C. 552b.

2. Section 9.35 is amended by revising paragraph (a)(1) to read as follows:

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§ 9.35 Duplication fees.

(a)(1) The charges by the duplicating service contractor for the duplication of records made available under § 9.21 at the NRC Public Document Room (PDR), One White Flint North, 11555 Rockville Pike, Room O–1F23, Rockville, MD. are as follows:

(i) Paper-to-paper reproduction is $0.15 per page for standard size (up to 11″ × 14″). Pages 11″ × 17″ are $0.30 per page. Pages larger than 11″ × 17″, including engineering drawings, are $2.50 per square foot.

(ii) Color drawings are $2.00 per 8½″ × 11″ page. Pages larger than 8½″ × 11″ are $12.00 per square foot.

(iii) Microfiche-to-paper reproduction is $0.15 per page. Aperture cards are $2.50 per square foot.

(iv) The charges for Electronic Full Text (EFT) (ADAMS documents) copying are as follows:

(A) Electronic Full Text (EFT) copying of ADAMS documents to paper (applies to images, OCR TIFF, and PDF text) is $0.15 per page.

(B) Electronic Full Text (EFT) copying of ADAMS documents to CD–ROM is $10.00 for the first document on the CD–ROM and $5.00 for each additional document per accession number on the same CD–ROM.

(C) CD–ROM-to-paper reproduction is $0.15 per page.

(v) Priority rates (rush processing) are as follows:

(A) The priority rate is offered for standard size paper-to-paper reproduction, microfiche-to-paper reproduction, electronic full text (EFT) copying of ADAMS documents to paper, and CD–ROM-to-paper production at $0.20 per page. The priority rate for standard size color prints is $2.50 per print. The priority rate for color drawings larger than 8½″ × 11″ is $15.00 per square foot.

(B) The priority rate for aperture cards is $3.50 per square foot. The priority rate for electronic full text (EFT) to CD–ROM is $15.00 for the first document on the CD–ROM and $7.50 per each additional document on the same CD–ROM.

(vi) Facsimile charges are $0.30 per page for local calls; $0.50 per page for U.S. long distance calls, and $1.00 per page for foreign long distance calls.

* * * * *

Dated in Rockville, Maryland, this 25th day of April 2001.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 01–11387 Filed 5–4–01; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–68–AD; Amendment 39–12210; AD 2001–09–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310–324, A310–325, and A300 B4–622R Series Airplanes Equipped with Pratt & Whitney PW4000 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Airbus Model A310–324, A310–325, and A300 B4–622R series airplanes equipped with Pratt & Whitney PW4000 series engines. This action requires revising the Airplane Flight Manuals (AFM) for the Model A310 and Model A300–600 series airplanes. This action is necessary to prevent acceleration and climb performance less than that specified in the AFM, which could result in runway overruns or impact with obstacles or terrain. This action is intended to address the identified unsafe condition.

DATES: Effective May 22, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 22, 2001.

Comments for inclusion in the Rules Docket must be received on or before June 6, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket Number 2001–NM–68–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–68–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, ANM–116, International Branch, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA has received reports that Pratt & Whitney Model PW4000 series engines with certain early-production fan blades (Phase 0/1, FB2B or FB2T) installed on Airbus Model A310–324, A310–325, and A300 B4–622R series airplanes do not produce the amount of thrust indicated in the AFM. This thrust shortfall is due to erosion of the fan blade's leading edge. The flight crew has no indication of this shortfall in thrust. This condition results in acceleration and climb performance less than that specified in the AFM, which, if not corrected, could result in an overrun of the runway or impact with an obstacle or terrain.

Explanation of Relevant Service Information

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has requested that Airbus prepare revisions to the AFM to take into account the reduction in performance associated with PW4000 series engines fitted with early-production fan blades and to incorporate the necessary adjustments in performance. Those revisions are expected to be available from Airbus in mid-2001. Meanwhile, Airbus has issued the following Temporary Revisions (TR) to the AFM, each dated January 22, 2001:

- A310 Flight Manual TR 5.03.00/01 (for Airbus Model A310–324 series airplanes);
- A310 Flight Manual TR 5.03.00/02 (for Airbus Model A310–325 series airplanes); and
- A300–600 Flight Manual TR 5.03.00/01 (for Airbus Model A300 B4–622R series airplanes).

These TR's contain performance adjustments for the AFM for Model A310–324, A310–325, and A300 B4–622R series airplanes equipped with one or more Pratt & Whitney Model PW4000 series engine with early-production fan blades. The DGAC classified these TR's as mandatory and issued French airworthiness directive 2001–086(B), dated March 7, 2001, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent acceleration and climb performance less than that specified in the AFM, which could result in runway overruns or impact with obstacles or terrain. This AD requires revising the Performance section of the FAA-approved AFM's for Model A310–324, A310–325, and 300 B4–622R series airplanes to incorporate certain adjustments in performance.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–68–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–09–05 Airbus Industrie: Amendment 39–12210. Docket 2001–NM–68–AD.

Applicability: Model A310–324, A310–325, and A300 B4–622R series airplanes; certificated in any category; equipped with Pratt & Whitney PW4000 series engines, except for airplanes fitted with current-production FB2C fan blades (Phase 3 fan blades) on both engines.

Note 1: Airbus Modification 10925 installs Phase 3 engines, and these are equipped with FB2C (Phase 3) fan blades. Therefore, this AD is not applicable to airplanes with that modification.

Compliance: Required as indicated, unless accomplished previously.

To prevent acceleration and climb performance less than that specified in the Airplane Flight Manual (AFM), which could result in runway overruns or impact with obstacles or terrain, accomplish the following:

AFM Revision

(a) For Model A310–324 and –325 series airplanes: Within 30 days after the effective date of this AD, revise the FAA-approved AFM to incorporate specified adjustments in performance by inserting the following Airbus A310 Flight Manual Temporary Revisions (TR), all dated January 22, 2001, as applicable, into the Performance section of the AFM: 5.03.00/01 (for Airbus Model A310–324 series airplanes); or 5.03.00/02 (for Airbus Model A310–325 series airplanes).

(b) For Model A300 B4–622R series airplanes: Within 30 days after the effective date of this AD, revise the FAA-approved AFM to incorporate specified adjustments in performance by inserting the following A300–600 Flight Manual TR, dated January 22, 2001 into the Performance section of the AFM: 5.03.00/01 (for Airbus Model A300 B4–622R series airplanes).

(c) When the information in the TR's specified in paragraphs (a) and (b) of this AD, has been incorporated into FAA-approved general revisions of the applicable AFM's,

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the general revisions may be incorporated in the applicable AFM, and the TR's may be removed from the AFM's.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, International Branch.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The actions shall be done in accordance with Airbus A310 Flight Manual Temporary Revision 5.03.00/01, dated January 22, 2001; Airbus A310 Flight Manual Temporary Revision 5.03.00/02, dated January 22, 2001; and Airbus A300–600 Flight Manual Temporary Revision 5.03.00/01, dated January 22, 2001; as applicable. (Note: Only the first page to each of these Temporary Revisions are date stamped; no other pages of the Temporary Revisions contain the revision date.) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 2001–086(B), dated March 7, 2001.

Effective Date

(g) This amendment becomes effective on May 22, 2001.

Issued in Renton, Washington, on April 23, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–10591 Filed 5–4–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–74–AD; Amendment 39–12219; AD 2001–09–12]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727–100, –100C, and –200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 727–100, –100C, and –200 series airplanes, that, for certain airplanes, requires a one-time inspection of certain fuselage circumferential skin joints to determine the type of fasteners installed, and replacement of any aluminum fasteners with steel fasteners, if necessary; or modification of certain fuselage circumferential skin joints; as applicable. For certain other airplanes, this amendment also requires repetitive inspections to detect corrosion, sealant deterioration, cracking, or disbonding; repair, if necessary; and modification of certain fuselage circumferential skin joints. This amendment is prompted by reports of corrosion between the body skins and cold-bonded doublers at the fuselage circumferential skin joints. The actions specified by this AD are intended to prevent delamination of the cold-bonded doublers, which could result in corrosion of the body skins and doublers, and consequent reduced structural capability of the fuselage circumferential skin joints.

DATES: Effective June 11, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 11, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walt Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2774; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 727–100, –100C, and –200 series airplanes was published in the **Federal Register** on December 6, 1999 (64 FR 68062). For certain airplanes, that action proposed to require a one-time inspection of certain fuselage circumferential skin joints to determine the type of fasteners installed, and replacement of any aluminum fasteners with steel fasteners, if necessary; or modification of certain fuselage circumferential skin joints; as applicable. For certain other airplanes, that action also proposed to require repetitive inspections to detect corrosion, sealant deterioration, cracking, or disbonding; repair, if necessary; and modification of certain fuselage circumferential skin joints.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Delete Certain Sections of Proposed AD

One commenter requests that Boeing Model 727 series airplanes, line numbers 153, 339, 416, and 540, be deleted from the applicability section of the proposed AD; and that paragraphs (c) and (d) of the proposal, which apply only to those airplanes, also be deleted. The commenter states that the manufacturer of those airplanes has determined that they cannot be repaired, and they were taken out-of-service.

The FAA does not concur with the commenter's request; however, the FAA agrees with the commenter's intent. Part 39 of the Federal Aviation Regulations (14 CFR part 39) states that, "No person may operate a product to which an airworthiness directive applies except in accordance with the requirements of that airworthiness directive." The Part 39 regulation provides compliance relief for airplanes that are not being operated, because affected airplanes need only be in compliance prior to return to operation. In light of this fact, the airplanes having the line numbers listed above have been deleted from the Cost Impact paragraph, below; however, the applicability section and paragraphs (c) and (d) will remain in the final rule should these airplanes be returned to operation.

Request To Delay or Revise Final Rule

One commenter requests that issuance of the final rule be delayed until the FAA and the B–727 Working Group (Cargo Airline Association members) can develop a solution for the airplanes that have been converted from a passenger configuration to an all-cargo configuration. The commenter states that, if the FAA and industry are to work cooperatively to enhance safety, the more appropriate course of action would have been to place the issues addressed in the proposed rule before the Working Group, in lieu of issuing the proposed rule. The commenter notes that the FAA has worked successfully with this group in the past to identify and correct any cargo conversion problems.

The FAA does not concur. To delay this action would be inappropriate, since the FAA has determined that an unsafe condition exists and that inspections must be conducted to ensure continued safety.

A second commenter requests that the proposed AD be revised to allow for the structural benefits of the installation of the freighter conversion external doubler and the numerous inspections that are currently part of the basic airplane maintenance program, as well as the additional inspections required by AD 98–23–51, amendment 39–10932 (63 FR 67771, December 9, 1998). (That AD requires inspection/modification of fuselage skin longitudinal lap joints and is applicable to Model 727 series airplanes.) This revision of the proposal would be specific to those areas covered by the external doubler and, as such, would exempt converted freighters from the requirements of the proposed rule in the area covered by the external cargo door doubler. The commenter states that the report provided with its comments was used to obtain approval of an alternative method of compliance (AMOC) for AD 98–23–51. The report shows that the external doubler used in the cargo door modification is able to carry the loads that the skin and lap joints currently carry, even in the event that the lap joints in that area were to fail. The commenter notes that these same data can be used for the circumferential skin joints that are the subject of this AD.

The FAA does not concur to revise the final rule for the following reasons:

1. Paragraph (a) is applicable to airplanes on which the modification recommended in Boeing Service Bulletin 727–53–0084, Revision 2, dated June 5, 1972, and the additional actions (including additional fastener replacement locations) specified in Boeing Document No. D6–54860, Revision C, dated December 11, 1989, "Aging Airplane Service Bulletin Structural Modification Program—Model 727;" or the modification specified in Boeing Service Bulletin 727–53–0084, Revision 3, dated September 28, 1989; HAS been accomplished. Operators that have modified their airplanes in accordance with Revision 3 of the service bulletin may have had the steel fasteners removed and replaced with aluminum rivets. Paragraph (a) requires operators to inspect their airplanes to determine the type of fastener installed, and, if aluminum fasteners are found, replace them with the correct steel fasteners. The need to accomplish these actions is not affected by the freighter conversion referenced by the commenter.

2. The actions specified in paragraph (b) of the final rule are essentially the same as those required by paragraph (a) of AD 90–06–09 amendment 39–6488 (55 FR 8370, March 7, 1990). But paragraph (b) of this final rule requires that future modifications be accomplished in accordance with Revision 4 of the referenced service bulletin, which ensures that the correct steel fasteners will be installed. If the installation of the cargo conversion interferes with the ability to accomplish these actions, the operator should request approval of an AMOC, as provided by paragraph (g)(1) of this AD.

3. The AMOC approved for AD 98–23–51 was for the longitudinal lap joints. The report the commenter provided supports that AMOC request and addresses the structural integrity of the longitudinal lap joints with the cargo door doubler, but it does not demonstrate that the cargo door doubler provides an acceptable level of safety for the circumferential skin joints. Based on this, the FAA finds that the technical data presented does not justify revising the final rule. The FAA will consider approval of AMOC's if the appropriate technical justification is submitted.

4. Paragraphs (c), (d), and (f) of the final rule address four airplanes that were inadvertently omitted from the applicability specified in AD 90–26–09. AD 90–26–09 requires that inspections be accomplished, and cracks repaired, in the same areas specified in this AD. The FAA has reviewed its files regarding AMOC's to this AD and has found several that pertain to airplanes that have been converted from a passenger configuration to an all-cargo configuration. Because the four airplanes that were omitted from the applicability of AD 90–26–09 have not been converted to an all-cargo configuration (some have the original equipment manufacturer's cargo door, not an after-market door), there is no concern about inspecting through the doubler to the lower skin on those airplanes. No change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 549 airplanes of the affected design in the worldwide fleet. Based on a records review, the FAA estimates that only 374 of those airplanes are still in service. The FAA estimates that 280 airplanes of U.S. registry still in service will be affected by this AD.

The number of airplanes that will be subject to the required one-time inspection to determine the type of fasteners installed is unknown. For affected airplanes, it will take approximately 45 work hours per airplane to accomplish the required one-time inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection on U.S. operators is estimated to be $2,700 per airplane.

For affected airplanes, it will take approximately 192 work hours per airplane to accomplish the required modification of the cold-bonded doublers of certain fuselage circumferential skin joints, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,250. Based on these figures, the cost impact of this modification on U.S. operators is estimated to be $12,770 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–0912 Boeing: Amendment 39–12219. Docket 99–NM–74–AD.

Applicability: Model 727–100, –100C, and –200 series airplanes; line numbers 1 through 549 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent delamination of the cold-bonded doublers, which could result in corrosion of the body skins and doublers, and consequent reduced structural capability of the fuselage circumferential skin joints, accomplish the following:

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

One-Time Inspection/Replacement

(a) For airplanes on which the modification specified in Boeing Service Bulletin 727–53–0084, Revision 2, dated June 5, 1972, and the additional actions (including additional fastener replacement locations) specified in Boeing Document No. D6–54860, Revision C, dated December 11, 1989, "Aging Airplane Service Bulletin Structural Modification Program—Model 727"; or the modification specified in Boeing Service Bulletin 727–53–0084, Revision 3, dated September 28, 1989; has been accomplished: Within 36 months after the effective date of this AD, perform a one-time inspection of the fuselage circumferential skin joints to determine the type of fastener installed, in accordance with Figure 7 of Boeing Service Bulletin 727–53–0084, Revision 4, dated August 2, 1990.

(1) If no aluminum fasteners are found, no further action is required by this AD.

(2) If any aluminum fasteners are found, prior to further flight, replace with steel fasteners, in accordance with Boeing Service Bulletin 727–53–0084, Revision 4, dated August 2, 1990.

Modification

(b) For airplanes listed in Boeing Document No. D6–54860, Revision C, dated December 11, 1989, "Aging Airplane Service Bulletin Structural Modification Program—Model 727" on which the modification specified in Boeing Service Bulletin 727–53–0084, Revision 2, dated June 5, 1972, and the additional actions specified in Boeing Document No. D6–54860, Revision C, dated December 11, 1989; or the modification specified in Boeing Service Bulletin 727–53–0084, Revision 3, dated September 28, 1989; has not been accomplished prior to the effective date of this AD: Prior to the accumulation of 60,000 total flight cycles, modify the fuselage circumferential skin joints in accordance with Part IV of the Accomplishment Instructions of Boeing Service Bulletin 727–53–0084, Revision 4, dated August 2, 1990. Such action constitutes terminating action for the modification in that area required by AD 90–06–09, amendment 39–6488.

Repetitive Inspections

(c) For airplanes having line numbers 153, 339, 416, and 540: Accomplish the requirements of paragraphs (c)(1), (c)(2), and (c)(3) of this AD at the compliance time specified in those paragraphs.

(1) Within 15 months after the effective date of this AD, perform an external detailed visual inspection and a low frequency eddy current (LFEC) inspection of the fuselage circumferential skin joints to detect corrosion or sealant deterioration, in accordance with Parts II.A. and II.B. of the Accomplishment Instructions of Boeing Service Bulletin 727–53–0084, Revision 4, dated August 2, 1990. Repeat the external detailed visual inspection thereafter at intervals not to exceed 15 months, and repeat the LFEC inspection thereafter at intervals not to exceed 30 months.

(2) Within 3,000 flight cycles or 30 months after the effective date of this AD, whichever occurs first, perform a high frequency eddy current (HFEC) inspection of the fuselage circumferential skin joints to detect cracking, in accordance with Part II.D. of the Accomplishment Instructions of Boeing Service Bulletin 727–53–0084, Revision 4, dated August 2, 1990. Repeat the HFEC inspection thereafter at intervals not to exceed 4,000 flight cycles or 48 months, whichever occurs first, until accomplishment of paragraph (f) of this AD.

(3) Within 48 months after the effective date of this AD, perform an internal detailed visual inspection of the fuselage circumferential skin joints to detect cracking, disbonding, or sealant deterioration; in accordance with Part II.C. of the Accomplishment Instructions of Boeing Service Bulletin 727–53–0084, Revision 4, dated August 2, 1990. Repeat the internal detailed visual inspection thereafter at intervals not to exceed 48 months.

Repair

(d) For airplanes having line numbers 153, 339, 416, and 540: If any discrepancy is detected during any inspection required by paragraph (c) of this AD, accomplish paragraph (d)(1) or (d)(2) of this AD, as applicable.

(1) If any corrosion, cracking, or disbonding is detected during any inspection required by paragraph (c) of this AD, prior to further flight, repair in accordance with Part III of the Accomplishment Instructions of Boeing Service Bulletin 727–53–0084, Revision 4, dated August 2, 1990, except as provided by paragraph (e) of this AD. No further action is required by this AD for that area.

(2) If the sealant has deteriorated but no corrosion, cracking, or disbonding is detected during any inspection required by paragraph (c) of this AD, prior to further flight, reseal in accordance with Figure 5 or 6, as applicable, of Boeing Service Bulletin 727–53–0084, Revision 4, dated August 2, 1990.

(e) Where the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, or a Boeing DER, as required by this paragraph, the approval letter must specifically reference this AD.

Modification

(f) For airplanes having line numbers 153, 339, 416, and 540: Prior to the accumulation of 60,000 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later, modify the fuselage circumferential skin joints in accordance with Part IV of the Accomplishment Instructions of Boeing Service Bulletin 727–53–0084, Revision 4, dated August 2, 1990. Such action constitutes terminating action for the requirements of paragraph (c)(2) of this AD.

Alternative Methods of Compliance

(g)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) An alternative method of compliance for paragraph (f) of this AD that provides an acceptable level of safety may be used in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(i) Except as provided by paragraph (e) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 727–53–0084, Revision 4, dated August 2, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on June 11, 2001.

Issued in Renton, Washington, on April 26, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–10939 Filed 5–4–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–27–AD; Amendment 39–12217; AD 2001–09–11]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 412 Helicopters and Agusta S.p.A. Model AB412 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) that applies to certain serial-numbered Bell Helicopter Textron, Inc. (Bell) Model 412 helicopters and Agusta S.p.A. (Agusta) Model AB412 helicopters. That AD currently requires a temporary reduction of the never-exceed velocity (Vne) limitation until an inspection of the tail rotor yoke (yoke) assembly for fatigue damage and installation of a redesigned yoke flapping stop are accomplished. Recurring periodic and special inspections to detect occurrences of yoke overload are also required. This amendment requires the same actions as the previous AD but expands the applicability of the AD to all Bell Model 412, 412CF, 412EP, and Agusta Model AB412 helicopters. This amendment is prompted by the determination that the unsafe condition exists on all Bell Model 412 and all Agusta Model AB412 helicopters, regardless of serial number. The actions specified by this AD are intended to prevent static and dynamic overload damage to the yoke that could result in loss of the tail rotor and subsequent loss of control of the helicopter.

DATES: Effective June 11, 2001.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of April 8, 1998 (63 FR 14026, March 24, 1998), as corrected on July 20, 1998 (63 FR 38742).

ADDRESSES: The service information referenced in this AD may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280–3391, fax (817) 280–6466 for the Bell Model 412 helicopters; and Agusta S.p.A., 21017 Cascina Costa di Samarate (VA), Italy, Via Giovanni Agusta 520, telephone 39 (0331) 229111, fax 39 (0331) 229605–222595 for the Agusta Model AB412 helicopters. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–07–03, Amendment 39–10421 (63 FR 14026, March 24, 1998), which applies to certain serial-numbered Bell Model 412 helicopters and Agusta Model AB412 helicopters, was published in the **Federal Register** on January 22, 2001 (66 FR 6494). That action proposed to require a reduction of the Vne limitation until an inspection of the yoke assembly for static and dynamic overload damage and installation of a redesigned yoke flapping stop are accomplished and includes periodic and special inspections to detect a yoke overload. A correction to a technical bulletin date referenced in that AD was issued on July 10, 1998 (63 FR 38742, July 20, 1998).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for clarifying changes that were made in paragraph (a) to better explain the intent of the AD and editorial changes in paragraph (d). The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 135 helicopters of U.S. registry will be affected by this AD, that it will take approximately 6.5 work hours per helicopter to install the placard, inspect the yoke assembly, and install the yoke. Required parts will cost approximately $511 per helicopter. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $121,635.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various

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levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10421 (63 FR 14026, March 24, 1998, and 63 FR 38742, July 20, 1998), and by adding a new airworthiness directive (AD), Amendment 39–12217, to read as follows:

2001–09–11 Bell Helicopter Textron, Inc. and Agusta S.p.A.: Amendment 39–12217. Docket No. 99–SW–27–AD. Supersedes AD 98–07–03, Amendment 39–10421, Docket No. 97–SW–58–AD.

Applicability: Bell Helicopter Textron, Inc. Model 412, 412CF, and 412EP helicopters and Agusta S.p.A. Model AB412 helicopters, with tail rotor yoke assembly, part number (P/N) 212–011–702–all dash numbers, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent static and dynamic overload damage to the tail rotor yoke (yoke) that could result in loss of the tail rotor and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, review the historical records of the yoke assembly for any static or dynamic overload damage that could have imposed a bending load on the yoke. The damage may not have required replacing the yoke assembly; for example, an incident in which a damaged tail rotor blade was replaced due to a blade strike. If the records indicate that overload damage may have occurred, replace the yoke with an airworthy yoke.

(b) Before further flight, unless the requirements of paragraph (c) of this AD have been accomplished previously:

(1) Install a Never Exceed Velocity (Vne) red line at 120 knots indicated airspeed (KIAS) on the pilot and copilot airspeed indicators using red tape or paint and a slippage indicator on the instrument case and glass.

(2) Install a placard made of material that is not easily erased, disfigured, or obscured on the instrument panel in clear view of the pilot and copilot:

"Observe temporary Maximum Never Exceed (Vne) airspeed red line (marked at 120 knots indicated airspeed (KIAS)). Vne is 20 KIAS less than the value presented on the airspeed limitation placard for each ambient condition."

(3) Insert the applicable Bell Helicopter Textron (BHT) 412 Temporary Revision, dated August 16, 1996, into the Model 412 Rotorcraft Flight Manual (RFM) or the applicable section of Agusta AB412 Temporary Revision No. 2, dated April 17, 1997, into the Model AB412 RFM.

(c) Within 180 calendar days:

(1) Remove yoke assembly, P/N 212–011–702-all dash numbers, and replace it with an airworthy yoke assembly, P/N 212–011–702-all dash numbers, with zero hours time-in-service (TIS), or an airworthy yoke (regardless of TIS) that has passed a one-time x-ray diffraction inspection in accordance with BHT Alert Service Bulletin (ASB) 412–96–89, Revision A, dated October 17, 1997; BHT ASB 412CF–96–01, dated September 3, 1996; or Agusta Bolletino Tecnico (Technical Bulletin) No. 412–65, dated April 17, 1997, whichever is applicable.

(2) Install an airworthy tail rotor flapping stop, P/N 212–011–713–103.

(3) After the requirements of paragraphs (c)(1) and (c)(2) of this AD are accomplished, remove the 120 KIAS redline from the pilot and copilot airspeed indicators; remove the Vne airspeed restriction placard; and remove the BHT 412 Temporary Revision, dated August 16, 1996; BHT ASB 412CF–96–01, dated September 3, 1996; or Agusta AB412 Temporary Revision No. 2, as applicable, from the RFM.

(d) After accomplishing the requirements of paragraph (c) of this AD, at intervals not to exceed 25 hours TIS, inspect the yoke assembly and tail rotor flapping stop (stop) in accordance with Part III, Recurring 25-Hour Special Inspection and Conditional Inspection Requirement, of BHT ASB 412–96–89, Revision A, dated October 17, 1997; BHT ASB 412CF–96–01, dated September 3, 1996; or Agusta Technical Bulletin No. 412–65, dated April 17, 1997, as applicable. Replace any unairworthy yoke assembly or stop with an airworthy yoke assembly or stop before further flight.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter at airspeeds not to exceed 120 KIAS to a location where the requirements of this AD can be accomplished.

(g) The inspections and installations shall be done in accordance with Bell Helicopter Textron Alert Service Bulletin 412–96–89, Revision A, dated October 17, 1997; Bell Helicopter Textron Alert Service Bulletin 412CF–96–01, dated September 3, 1996; or Agusta Bolletino Tecnico (Technical Bulletin) No. 412–65, dated April 17, 1997. The incorporation by reference of those documents was approved previously by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of April 8, 1998 (63 FR 14026, March 24, 1998), as corrected on July 20, 1998 (63 FR 38742). Copies may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280–3391, fax (817) 280–6466; or Agusta, 21017 Cascina Costa di Samarate (VA), Via Giovanni Agusta 520, telephone (0331) 229111, fax (0331) 229605–222595. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on June 11, 2001.

Note 3: The subject of this AD is addressed in Registro Aeronautico Italiano (Italy) AD 97–223, dated August 1, 1997.

Issued in Fort Worth, Texas, on April 20, 2001.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 01–10731 Filed 5–4–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–263–AD; Amendment 39–12213; AD 2001–09–08]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA), Model CN–235 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all CASA Model CN–235 series airplanes, that requires installing a second electrical connector in the electrical Master Central Unit. The actions specified by this AD are intended to prevent the loss of electrical power, other than that provided by the emergency system, in the event of disconnection of the single electrical connector within the electrical Master Central Unit. This action is intended to address the identified unsafe condition.

DATES: Effective June 11, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 11, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, ANM–116, International Branch, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all CASA Model CN–235 series airplanes was published in the **Federal Register** on January 22, 2001 (66 FR 6497). That action proposed to require installing a second electrical connector in the electrical Master Central Unit.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 1 airplane of U.S. registry will be affected by this AD, that it will take approximately 8 work hours to accomplish the required installation, and that the average labor rate is $60 per work hour. Required parts will cost approximately $877. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,357.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–09–08 Construcciones Aeronauticas, S.A. (CASA): Amendment 39–12213. Docket 2000–NM–263–AD.

Applicability: All Model CN–235 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of electrical power, other than that provided by the emergency system, in the event of disconnection of the single electrical connector within the electrical Master Central Unit, accomplish the following:

Installation

(a) Within 6 months after the effective date of this AD: Install a second electrical connector in the Master Central Unit, in accordance with CASA Service Bulletin SB–235–24–14, dated June 27, 2000.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

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Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with CASA Service Bulletin SB–235–24–14, dated June 27, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Spanish airworthiness directive 06/00, dated June 27, 2000.

Effective Date

(e) This amendment becomes effective on June 11, 2001.

Issued in Renton, Washington, on April 24, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–10727 Filed 5–4–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 241

[Release No. 34–44238]

Commission Guidance to Broker-Dealers on the Use of Electronic Storage Media Under the Electronic Signatures in Global and National Commerce Act of 2000 With Respect to Rule 17a–4(f)

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation.

SUMMARY: The Commission is publishing guidance on the operation of its rule permitting electronic storage of broker-dealer records in light of the recently enacted Electronic Signatures in Global and National Commerce Act of 2000. In particular, we are publishing guidance on how the electronic storage requirements of Rule 17a–4(f) under the Securities Exchange Act of 1934 meet, and are consistent with, the requirements of the Electronic Signatures in Global and National Commerce Act.

EFFECTIVE DATE: The guidance is effective on May 7, 2001.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, 202/942–0131; Thomas K. McGowan, Assistant Director, 202/942–4886; Randall W. Roy, Special Counsel, 202/942–0798, or Mathew Comstock, Attorney, 202/942–0156, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–1001.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is publishing guidance on how Rule 17a–4(f) (17 CFR 240.17a–4(f)) under the Securities Exchange Act of 1934 ("Exchange Act") is consistent with the Electronic Signatures in Global and National Commerce Act of 2000.

I. Introduction

The Electronic Signatures in Global and National Commerce Act of 2000 (the "Electronic Signatures Act")[1] seeks to promote electronic commerce by providing greater legal certainty to transactions effected by electronic means. To this end, the Electronic Signatures Act provides that the legal validity of a signature or contract cannot be denied solely because it is in electronic form.[2] It also encourages electronic record storage by providing that any statute, regulation, or other rule of law that requires the retention of contracts or other records relating to transactions in or affecting interstate or foreign commerce may, with certain exceptions, be complied with by storing the documents electronically.[3] However, the Electronic Signatures Act requires that the electronically stored documents must accurately reflect the information in the contracts or transactional records and be accessible to all persons entitled to review them under statute, regulation, or rule of law in a form that is capable of being accurately reproduced for later reference.[4] The Electronic Signatures Act does not define how these requirements are to be met. Instead, it preserves the ability of regulatory agencies to interpret them with respect to statutes under which such agencies have rulemaking authority.[5]

On March 1, 2001, the Electronic Signatures Act became effective with respect to any existing state or federal regulatory requirement that a contract or transactional record be retained.[6] This effective date is delayed, however, if an agency has announced, proposed or initiated, but not completed, a rulemaking proceeding under the authority preserved in the Electronic Signatures Act.[7] On February 28, 2001, the Commission announced that it would act shortly to provide interpretive guidance and, where appropriate, propose or adopt rules consistent with the Electronic Signatures Act, thereby delaying the effective date with respect to Commission recordkeeping rules to June 1, 2001.[8]

Since 1939, the Commission has required broker-dealers, through rules authorized under the Exchange Act, to make and maintain certain records deemed necessary to ensure compliance with federal securities laws and regulations.[9] In 1997, after requests by industry representatives, the Commission amended its record retention rule to allow broker-dealers to store these records using any electronic storage medium, subject to certain requirements set forth in the rule.[10] These requirements are safeguards designed to ensure the accuracy, accessibility, and accurate reproduction of the electronically stored records. The rule's evolution from a strictly paper requirement to its present electronic storage provisions reflects the Commission's approach of promoting the use of available technologies to the benefit of broker-dealers and investors.

In anticipation of the June 1, 2001 effective date for the electronic storage provisions of the Electronic Signatures Act, we are publishing this release to explain how the electronic storage requirements of the broker-dealer record retention rule meet, and are consistent with, the requirements of the Electronic Signatures Act.

II. Background

A. Broker-Dealer Books and Records Rules

Section 17(a)(1) of the Exchange Act authorizes the Commission to issue rules requiring broker-dealers to make and keep for prescribed periods, and furnish copies thereof, such records as necessary or appropriate in the public

[1] Pub. L. 106–229, 114 Stat. 464 (2000).

[2] Electronic Signatures Act Section 101(a).

[3] Electronic Signatures Act Section 101(d)(1).

[4] *Id.*

[5] Electronic Signatures Act Section 104(b).

[6] Electronic Signatures Act Section 107(b)(1).

[7] Electronic Signatures Act Section 107(b)(1)(B).

[8] Exchange Act Release No. 44014 (Feb. 28, 2001), 66 FR 13273 (March 5, 2001), <http://www.sec.gov/news/digest.shtml>.

[9] Exchange Act Release No. 2304 (Nov. 13, 1939), 4 FR 4578 (Jan. 2, 1940).

[10] Exchange Act Release No. 38245 (Feb. 5, 1997), 62 FR 6469 (Feb. 12, 1997) ("Adopting Release").

interest, for the protection of investors or otherwise in furtherance of the purposes of the Exchange Act.[11] In 1939, the Commission adopted Rules 17a–3 (17 CFR 240.17a–3) and 17a–4 (17 CFR 240.17a–4), pursuant to this authority.[12] Rule 17a–3 requires broker-dealers to make certain records, including trade blotters, asset and liability ledgers, income ledgers, customer account ledgers, securities records, order tickets, trade confirmations, trial balances, and various employment related documents.[13] Rule 17a–4 specifies the manner and length of time that the records created in accordance with Rule 17a–3, and certain other records produced by broker-dealers, must be maintained.[14] In combination, Rules 17a–3 and 17a–4 require broker-dealers to create, and preserve in an accessible manner, a comprehensive record of each securities transaction they effect and of their securities business in general. These rules impose minimum recordkeeping requirements that are based on standards a prudent broker-dealer should follow in the normal course of business. The requirements are an integral part of the investor protection function of the Commission, and other securities regulators, in that the preserved records are the primary means of monitoring compliance with applicable securities laws, including antifraud provisions and financial responsibility standards.

Originally, Rule 17a–4 had a paper-only requirement for the initial retention of records; now, the rule allows broker-dealers to choose between storing records in paper form, on microfilm or microfiche ("micrographic media") or using electronic storage media. This progression from paper to electronic media is indicative of how the Commission encourages the use of technological innovation when both broker-dealers and investors will benefit.[15]

As mentioned, Rule 17a–4, when adopted in 1939, required broker-dealers to maintain records in paper form for the first two years of the specified retention period, and on microfilm thereafter.[16] In 1970, the Commission amended the rule to allow the records to be stored immediately on microfilm.[17] This amendment recognized that broker-dealers were increasingly using automated systems in their back office operations, and that the records generated on such systems could be transferred to microfilm more quickly than to paper, and at substantially less expense. As the Commission noted at the time, "the retention of reels of microfilm as against bulky hard copy records should enable an organization to effect substantial savings in storage space and man hours."[18] The rule specifies certain requirements on the use of microfilm intended to "preserve the basic safeguards designed by [Rules 17a–3 and 17a–4] for the protection of public investors."[19] Broker-dealers who use micrographic media must: (1) Maintain facilities to protect the records and reproduce them in an easily readable format; (2) arrange the records and their indexes in a manner that permits the immediate location of a particular record; and (3) store a second copy of the records in a separate location.

In 1991, the Securities Industry Association ("SIA"), on behalf of its broker-dealer members, requested that the Division of Market Regulation ("Division") amend Rule 17a–4 to permit broker-dealers to store records electronically.[20] The following year, the SIA requested that the Division not recommend enforcement action if broker-dealers stored records using an electronic storage technology known as optical disk.[21] In its no-action request, the SIA set forth a list of safeguards that it believed were appropriate. These safeguards included that the storage system: be non-rewriteable and non-erasable (or write once, read many "WORM"); automatically verify the accuracy of stored information; serialize and time-date the records; and create indexes of the records. The SIA estimated that the savings realized by switching from microfilm to optical disk would range from $250,000 a year for a medium-sized firm to $1.6 million a year for a large firm.

In 1993, the Division issued a no-action letter in response to the SIA's 1992 request. The no-action letter permitted broker-dealers to meet the record retention requirements of Rule 17a–4 using optical disk storage technology.[22] This allowed broker-dealers to take advantage of the savings and of the increased productivity and quicker access to archived records provided by optical disk. At the same time, the Division recognized that the use of an electronic storage system raised audit and examination concerns. Consequently, the Division established certain conditions for using optical disk to help ensure that records stored in this manner would be accurate and accessible for examination purposes. These conditions were consistent with the safeguards proposed by the SIA in its 1992 no-action request. For example, the optical disk technology stores digital information by employing a laser heat source to burn a pattern on the disk, which makes the records non-rewriteable and non-erasable. The letter also required: (1) Broker-dealers to file an undertaking signed by a third-party in which the third-party represents that it will access the records at the request of the Commission; (2) the optical disk system to automatically verify the quality and accuracy of the recording process; (3) the optical disk system to serialize the original and any duplicate units of the storage medium and time-date information stored on the medium; and (4) the optical disk system to have the capacity to download indices and records.

In 1997, the Commission, in many respects, codified the Division's no-action letter by amending paragraph (f) of Rule 17a–4 to allow broker-dealers to store records electronically.[23] However, one significant difference was that the final rule did not limit broker-dealers to using optical disk. Instead, it allowed them to employ any electronic storage medium, subject to certain requirements. For the most part, these requirements are the same safeguards proposed by the SIA in its 1992 no-action request and later required by the Division in its 1993 no-action letter. It is these requirements of Rule 17a–4 that we now find meet, and are consistent with, the Electronic Signatures Act.[24]

[11] 15 U.S.C. 78q(a)(1).

[12] Exchange Act Release No. 2304 (Nov. 13, 1939), 4 FR 4578 (Jan. 2, 1940).

[13] 17 CFR 240.17a–3.

[14] 17 CFR 240.17a–4.

[15] The Commission continues to be interested in exploring ways in which technology can be used to create efficiencies without sacrificing the Commission's regulatory objectives.

[16] Exchange Act Release No. 2304 (Nov. 13, 1939), 4 FR 4578 (Jan. 2, 1940).

[17] Exchange Act Release No. 8875 (Apr. 30, 1970), 35 FR 7644 (May 16, 1970).

[18] *Id.*

[19] *Id.*

[20] Letter from Edward I. O'Brien, President, SIA, to William Heyman, Deputy Director, Division, (May 1, 1991).

[21] Letter from Michael D. Udoff, Chairman, Ad Hoc Record Retention Committee, SIA, to Michael Macchiaroli, Assistant Director, Division, (May 19, 1992).

[22] Letter from Michael A. Macchiaroli, Associate Director, Division, to Michael D. Udoff, Chairman, Ad Hoc Record Retention Committee, SIA (June 18, 1993).

[23] Adopting Release 34–38245, 62 FR 6469 (Feb. 12, 1997).

[24] The requirements for using electronic storage media for broker-dealer records are set forth in subsections (2)(i), (2)(ii)(A)–(D), and (3)(i)–(vii) of paragraph (f) of Rule 17a–4. These subsections are the requirements that are generally referred to throughout this release as, among other terms, "the electronic storage requirements of Rule 17a–4(f)."

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B. The Electronic Storage Requirements of the Electronic Signatures Act

Section 101(d)(1) of the Electronic Signatures Act permits persons who are legally required to retain contracts or records relating to transactions in or affecting interstate or foreign commerce to do so using electronic means. However, Section 101(d)(1) also requires persons who opt to store such records in electronic form to proceed in a manner that ensures the records are accurate, accessible, and capable of accurate reproduction for later reference. As Section 101(d)(1) reads in full,

> If a statute, regulation, or other rule of law requires that a contract or other record relating to a transaction in or affecting interstate or foreign commerce be retained, that requirement is met by retaining an electronic record of the information in the contract or other record that—
>
> (A) accurately reflects the information set forth in the contract or other record; and
>
> (B) remains accessible to all persons who are entitled to access by statute, regulation, or rule of law, for the period required by such statute, regulation, or rule of law, in a form that is capable of being accurately reproduced for later reference, whether by transmission, printing, or otherwise.[25]

The Electronic Signatures Act does not specify the conditions under which an electronic record would be deemed to have met these requirements. However, it does preserve the ability of regulatory agencies to interpret them with respect to statutes under which they have rulemaking authority.[26] The exercise of this interpretive authority is subject to certain guidelines. First, the interpretation must be "consistent" with Section 101 of the Act.[27] Second, the interpretation may not "add to the requirements" of Section 101.[28] Third, the agency, in issuing the interpretation, must find that: (1) There is substantial justification for the interpretation; (2) the methods selected to carry out that purpose are substantially equivalent to the requirements imposed on records that are not electronic; (3) the methods selected to carry out that purpose will not impose unreasonable costs on the acceptance and use of electronic records; and (4) the methods selected to carry out that purpose do not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification.[29] We believe the electronic storage requirements of Rule 17a–4(f) meet these guidelines.

[25] Electronic Signatures Act § 101(d)(1).
[26] Electronic Signatures Act § 104(b).
[27] Electronic Signatures Act § 104(b)(2)(A).
[28] Electronic Signatures Act § 104(b)(2)(B).
[29] Electronic Signatures Act § 104(b)(2)(C).

III. Analysis

The Electronic Signatures Act becomes effective on June 1, 2001 with respect to Rule 17a–4.[30] To the extent Rule 17a–4 requires the retention of the types of contracts and transactional records identified in the Electronic Signatures Act, broker-dealers will be able to retain them electronically under Section 101(d)(1), provided the electronic records are accurate, accessible, and capable of being accurately reproduced for later reference. Under paragraph (f) of Rule 17a–4, broker-dealers are already permitted to retain all required records—not just these contracts and transactional records—using electronic means, subject to the requirements set forth in that paragraph. Pursuant to the Commission's interpretive authority preserved by the Electronic Signatures Act, we find that the electronic storage requirements of Rule 17a–4(f) meet, and are consistent with, the accuracy, accessibility, and accurate reproduction requirements of Section 101(d)(1) of the Electronic Signatures Act. Therefore, broker-dealers must continue to comply with the electronic storage requirements of Rule 17a–4(f) after June 1, 2001.[31]

A. The Electronic Storage Requirements of Rule 17a–4(f) Are Consistent With Section 101(d) of the Electronic Signatures Act

The electronic storage requirements of Rule 17a–4(f) are consistent with Section 101(d) of the Electronic Signatures Act. First, the Electronic Signatures Act provides that statutes or regulations requiring the retention of certain contractual or transactional records may be complied with by storing them electronically. Rule 17a–4(f) allows for the retention of documents in electronic form. In fact, the rule is broader than the Electronic Signatures Act because it does not limit its applicability to contracts or other records that relate to transactions in or affecting interstate or foreign commerce. Rather, it permits broker-dealers to electronically store all records they are required to retain under Rule 17a–4. Moreover, Rule 17a–4(f) makes specific provision for the use of new technologies as they become available, which is consistent with the technology-neutral requirements in the Electronic Signatures Act.

Second, the Electronic Signatures Act and the electronic storage requirements of Rule 17a–4(f) were each designed to allow affected parties to take advantage of the increased productivity and cost savings arising from the use of electronic storage systems. To quote Representative Sessions, "the underlying legislation will allow all Americans to benefit from the efficiencies resulting from advances in technology."[32] Similarly, the Commission, when adopting its electronic storage rule, stated that the amendments were "a recognition of technological developments that will provide economic as well as time-saving advantages for broker-dealers by expanding the scope of recordkeeping options.* * *"[33]

Third, there is explicit support in the legislative history for our finding that Rule 17a–4(f) is consistent with the Electronic Signatures Act. As noted by Representative Dingell, "[t]he standards set forth in the SEC's existing electronic recordkeeping rule, Rule 17a–4(f), such as the requirement that an electronic recordkeeping system preserve records in a non-rewriteable and non-erasable manner, are essential to the SEC's investor protection mission and are consistent with the provisions of the conference report [on the Electronic Signatures Act]."[34]

B. The Electronic Storage Requirements of Rule 17a–4(f) Do Not Add Requirements to Section 101(d) of the Electronic Signatures Act

The electronic storage requirements of Rule 17a–4(f) do not add to the requirements of Section 101(d) of the Electronic Signatures Act. The Electronic Signatures Act requires electronic records to be stored in a manner that ensures they are accurate, accessible, and capable of being accurately reproduced for later reference. Rule 17a–4(f) permits broker-dealers to store electronic records in a manner consistent with the Electronic Signatures Act. For example, the WORM requirement is designed to ensure that electronic records are capable of being accurately reproduced for later reference by maintaining the records in an unalterable form. The automatic verification requirement is designed to ensure the records are accurate by providing verification that a record has been accurately stored in the electronic system. Indexing is designed to ensure that the records are accessible by providing a means to search for specific records among the many that have been stored. The third-party download requirement is designed to ensure that records remain accessible by providing that a person with the appropriate knowledge and expertise will access the system at the Commission's request. The serialization provision is intended to ensure both the accuracy and accessibility of the records by indicating the order in which records are stored, thereby making specific records easier to locate and authenticating the storage process.

[30] See 66 FR 13273 (March 5, 2001).
[31] We also note that, during the debate on the Electronic Signatures Act, a concern was raised as to whether the validity of a contract could be challenged because it was not retained in an accurate or accessible manner. 146 Cong. Rec. H4349 (daily ed. June 14, 2000) (statement of Rep. Dreier). The electronic storage requirements of Rule 17a–4(f) are designed to ensure that electronic records are kept in an accurate and accessible manner.
[32] 146 Cong. Rec. H4347 (daily ed. June 14, 2000) (statement of Rep. Sessions).
[33] Adopting Release, 62 FR at 6469.
[34] 146 Cong. Rec. H4358 (daily ed. June 14, 2000) (statement of Rep. Dingell) (emphasis added).

C. The Commission Makes the Findings Required by Section 104(b)(2)(C) of the Electronic Signatures Act

In exercising its authority to interpret its statutes, as preserved in the Electronic Signatures Act, the Commission must make four findings: (1) That there is substantial justification for the interpretation; (2) that the methods selected to carry out that purpose are substantially equivalent to the requirements imposed on records that are not electronic; (3) that the methods selected to carry out that purpose will not impose unreasonable costs on the acceptance and use of electronic records; and (4) that the methods selected to carry out that purpose do not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification.[35]

1. There Is Substantial Justification for the Commission's Interpretation of Rule 17a–4(f)

The electronic storage requirements of Rule 17a–4(f) are substantially justified by the need to protect investors and ensure the soundness of the securities markets. Over the last several years, there has been significant growth in the number of investors entering these markets. For example, we estimate that the number of securities accounts at U.S. broker-dealers has grown from approximately 35 million in 1990 to 82 million in 1999. In part, this growth has been driven by advances in information and trade processing technology, which make it easier for investors to purchase and hold securities. The increase in the number of investors has emphasized the need for a safe and sound market place.

The Commission is responsible for interpreting and enforcing federal securities laws and regulations—such as anti-fraud, sales practice and financial responsibility requirements—aimed at ensuring safe and sound securities markets. Because broker-dealers play a critical role in these markets, the Commission has established rules requiring them to act in a manner that foremost is protective of the interests of their customers and other market participants. These rules, along with rules promulgated by the self-regulatory organizations ("SROs"), seek to ensure that broker-dealers operate in a financially sound manner, maintain adequate custody of customer assets, and refrain from deceptive and manipulative practices. To monitor compliance with these rules, the Commission requires broker-dealers to make and maintain records that document their transactions with customers and overall securities operations. Commission and SRO examiners review these records to determine whether broker-dealers are acting within the requirements of the securities laws, regulations and SRO rules. Accordingly, if investors are to be adequately protected, regulators must be able to rely on these records as providing a true account of a broker-dealer's operations.

Commission enforcement actions against unscrupulous broker-dealers that improperly altered or destroyed records demonstrate the need for measures aimed at maintaining the integrity of broker-dealer records. These cases have included situations in which broker-dealer employees have changed or destroyed order tickets and other transactional records in an effort to shift firm losses to their customers or to conceal fraudulent activities.[36]

Moreover, the complexity of the securities business makes accurate and comprehensive recordkeeping vital to the financial well being of broker-dealers and, as a result, investors and the securities markets. Many securities firms process large volumes of transactions on a daily basis across diverse markets, business groups and geographic areas. Each trade generates several separate records that must be retained. In addition, broker-dealers hold cash and a wide range of domestic and foreign securities on behalf of their customers. The amount of securities under a firm's control constantly changes as it effects transactions. Moreover, the securities for which a broker-dealer has custodial responsibility are frequently maintained in different locations throughout the world. This complexity of operations makes the accurate and comprehensive keeping of broker-dealer books and records crucial to the securities industry. A failure to maintain accurate, accessible, and true records may lead to situations where a firm cannot account for customer property or its own assets. For these reasons, the Commission's broker-dealer recordkeeping requirements are an important part of managing systemic risk in the industry.

2. The Electronic Storage Requirements of Rule 17a–4(f) Are Substantially Equivalent to the Requirements for Records That Are Not Electronic

The electronic storage requirements of Rule 17a–4(f) are intended to ensure the prompt production of legible, true, and complete records, a requirement applicable to the storage of all broker-dealer records regardless of their form. Accordingly, the requirements for electronic storage are substantially equivalent to the requirements for the other methods of record storage.

The examination process, which is fundamental to the regulation of broker-dealers, depends on the ability of examiners to quickly obtain records that are relevant to a particular examination and that reflect the information as originally entered into the record. This need is complicated by the record-intensive nature of the securities industry. Rule 17a–4 seeks to address the tension between the need for quick production of specific records and the volume of records generated on a daily basis, by requiring that more current records be retained in an easily accessible place. It also requires that every broker-dealer "shall furnish promptly * * * legible, true and complete copies of those records" requested by representatives of the Commission.[37]

These requirements apply regardless of whether the records are stored in paper form, on micrographic media, or using electronic media. However, given the differences in the methods of storage, the rule sets forth, with respect to micrographic and electronic media, certain requirements designed to ensure the prompt production of legible, true, and complete records. These requirements do not impose greater burdens on broker-dealers for using micrographic or electronic storage methods; rather, they address the unique characteristics of each storage

[35] Electronic Signatures Act § 104(b)(2)(C).
[36] *See e.g., In the Matter of Del Mar Financial Services, Inc., et al.*, Exchange Act Release No. 42421 (Feb. 14, 2000); *In the Matter of A.S. Goldmen & Co., Inc., et al.*, Exchange Act Release No. 41601 (July 7, 1999).
[37] 17 CFR 240.17a–4(j).

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method and seek to put them all on an equal footing. For example, the ability to promptly produce legible, true, and complete paper records requires keeping them in an accessible location and filed in a way that particular documents can be identified and retrieved. Conversely, it is not enough to simply keep microfilm tapes or optical disks easily accessible. There must also be facilities to locate the appropriate records, to read them, and to print them. Therefore, paragraph (f) of Rule 17a–4 specifies that broker-dealers using micrographic or electronic media must have such retrieval facilities available.[38] Requiring such facilities for electronically stored records is similar to requiring that paper records be in an accessible place. Moreover, the indexing requirement for records stored using micrographic or electronic media allows for the retrieval of specific records in a manner equivalent to the way that particular paper records can be pulled from designated files.

Furthermore, paper and micrographic media both store exact images of the information as it was originally entered into the record. Electronic media, on the other hand, store the original information in digital or computerized form. The WORM provision is designed to ensure that the original information is preserved in an unalterable manner so that it can be accurately reproduced for later reference.

Paper records are accessible if examiners can obtain and use them. In contrast, accessing electronic storage media systems requires varying degrees of technical expertise (depending on the medium used) and, very likely, knowledge of the proprietary characteristics (*e.g.*, passwords and source codes) of a given system. Therefore, Rule 17a–4(f) requires an undertaking that a third party can provide access to these records. In the absence of such an undertaking, examiners could find it difficult, if not impossible, to obtain electronic records from a broker-dealer that had gone out of business or was refusing to cooperate. Consequently, attempting to retrieve records from an electronic storage medium without the requisite technological knowledge would be no different than attempting to obtain records from a broker-dealer that stored paper records in an inaccessible place.

[38] 17 CFR 240.17a-4(f)(3)(i) and (ii).

3. The Electronic Storage Requirements of Rule 17a–4(f) Do Not Impose Unreasonable Costs on the Acceptance and Use of Electronic Records

The costs associated with the electronic storage requirements of Rule 17a–4(f) are reasonable, given their investor protection objective and goal of reducing storage expenses. Broker-dealers have had the option since 1993 of storing records electronically on optical disk, and since 1997 on any type of electronic media. The requirements for using electronic storage media (*e.g.*, WORM, automatic verification, indexing, third-party undertaking) have been in place since the Division's 1993 no-action letter. Our interpretation today does not add to these requirements, and therefore, will not increase the costs of electronic storage, which have likely decreased since 1993 and should continue to drop as technological advances occur. Moreover, the costs of storing large volumes of records electronically are likely to be substantially lower than storing them on paper or on micrographic media.

We believe the electronic storage requirements in Rule 17a–4(f) are necessary to ensure the accuracy, accessibility, and accurate reproduction of broker-dealer records stored electronically. Accordingly, we believe they are reasonable, particularly when measured against the problems that could arise if the ability of securities regulators to enforce compliance with securities laws and regulations was compromised due to inadequate and unreliable electronic recordkeeping. Moreover, as discussed in the next section, the requirements are technology-neutral and, therefore, allow for the use of new technologies as they become available. This flexibility is incorporated in the rule to keep record retention costs as low as possible.

4. The Electronic Storage Requirements of Rule 17a–4(f) Do Not Require, or Accord Greater Legal Status or Effect to, the Implementation or Application of a Specific Technology or Technical Specification

The Commission first proposed amending Rule 17a–4 to allow electronic storage in 1993.[39] The proposed amendments would have limited broker-dealers to using optical disk. However, the Commission ultimately adopted a rule that allows the use of any electronic storage medium that meets the general requirements of the rule.[40] Moreover, in discussing the WORM provision of the rule, the Commission made clear that this did not mean only one type of storage methodology. As the Commission stated in the release,

> In the Proposing Release, the Commission did not intend the definition of optical storage technology to include only ablative methodology of storage. The Commission recognizes that other methods of electronic storage technology exist, including optical tape and CD–ROM, which is available in a WORM, non-rewriteable version. The Commission is adopting a rule today, which, instead of specifying the type of storage technology that may be used, sets forth standards that the electronic storage media must satisfy to be considered an acceptable method of storage under Rule 17a–4. Specifically, because optical tape, CD–ROM, and certain other methods of electronic storage are available in WORM and can provide the same safeguards against data manipulation and erasure that optical disk provides, the final rule clarifies that broker-dealers may employ any electronic storage media that meets the conditions set forth in the final rule.[41]

The Commission also acknowledged that, with respect to the WORM provision, several storage methodologies, in addition to the ablative method mentioned above, were available.[42] For these reasons, the electronic storage requirements of Rule 17a–4 do not require, or accord greater legal status to, the implementation or application of a specific technology or technical specification.

D. The Electronic Storage Requirements of Rule 17a–4(f) Would Be Permissible Performance Standards Under Section 104(b)(3) of the Electronic Signatures Act

Even if the electronic storage requirements of Rule 17a–4(f) accorded greater legal status to the implementation or application of a specific technology or technical specification, the requirements would still be permissible under the Electronic Signatures Act. The Electronic Signatures Act contains an exception to the limitation against the implementation or application of a specific technology or technical specification.[43] The exception permits an agency to specify performance standards to ensure the accuracy, accessibility, and integrity of records that are required to be retained, even if

[39] Exchange Act Release No. 32609 (July 9, 1993), 58 FR 38092 (July 15, 1993).

[40] Adopting Release, 62 FR 6469.

[41] Adopting Release, 62 FR at 6470.

[42] Adopting Release, 62 FR at 6470 n.10 (The other methodologies identified in the release were alloying, bubble-forming, moth-eye (Plasmon), phase-change, dye/polymer, and magneto-optic).

[43] Electronic Signatures Act Section 104(b)(3)(A).

those standards require implementation or application of a specific technology or technical specification. Under the Electronic Signatures Act, such performance standards must: (1) Serve an important governmental objective; and (2) be substantially related to the achievement of that objective.[44] Even if the electronic storage requirements of Rule 17a–4(f) must be evaluated under Section 104(b)(3)(A) of the Electronic Signatures Act, they serve an important governmental objective and are substantially related to achieving that objective.

1. The Electronic Storage Requirements of Rule 17a–4(f) Serve an Important Governmental Interest

Section 17(a)(1) of the Exchange Act authorizes the Commission to issue rules requiring broker-dealers to make and keep for prescribed periods, and furnish copies thereof, such records as necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Exchange Act.[45] This grant of authority recognizes the importance of broker-dealer recordkeeping to the Commission's regulatory function and investor protection objective. Rule 17a–4, adopted by the Commission pursuant to this authority, sets forth the requirements for keeping and furnishing broker-dealer records. In so doing, the rule serves the important governmental interest of assisting adequate supervision of broker-dealers by the Commission and the SROs. During the debate on the Electronic Signatures Act, the importance of accurate recordkeeping in regulated industries was noted. To quote a statement by Senators Hollings, Wyden and Sarbanes, "bank and other financial regulators need to require that records be retained in order that their examiners can insure the safety and soundness of the institutions and compliance with all relevant regulatory requirements."[46]

Investor protection depends on the examination process, which, in turn, relies on the records that broker-dealers are required to make and maintain. The electronic storage requirements of Rule 17a–4(f) are designed to ensure that broker-dealers will meet their obligation under Section 17(a)(1) and Rule 17a–4 to promptly furnish legible, true and complete copies of such records as are requested by the Commission or its representatives. This is crucial to the Commission's mandate to protect investors. Accordingly, the Commission's regulatory function is undermined to the extent that these records are inaccurate, retained in a non-accessible manner, or capable of alteration. The Commission's enforcement record against unscrupulous broker-dealers that have changed or destroyed records demonstrates how such conduct can harm investors and the public interest.[47]

2. The Electronic Storage Requirements of Rule 17a–4(f) Are Substantially Related to the Important Governmental Interest

The electronic storage requirements are designed to ensure that the Commission can promptly obtain legible, true, and complete records. Because the Commission relies on this ability to fulfill its responsibilities, the requirements are substantially related to the Commission's regulatory function. The Commission, in the release adopting the electronic storage requirements of Rule 17a–4, noted the "importance for recordkeeping of ready access, reliability, and permanence of records."[48] Therefore, the release made clear that the electronic storage requirements were intended as "safeguards against data erasure" and to "facilitate full access to the records during examinations."[49] As noted by Senator Leahy, the Electronic Signatures Act specifically authorizes agencies "to set performance standards to assure the accuracy, integrity, and accessibility of records that are required to be retained."[50] Statements of Senators Hollings, Wyden and Sarbanes, and of Representative Dingell indicate that the intent behind this section of the Electronic Signatures Act was to allow agencies to have standards designed to, among other things, prevent companies from retaining materials in an easily alterable form.[51] The electronic storage requirements of Rule 17a–4(f), such as WORM, are designed for this purpose.

IV. Conclusion

For the foregoing reasons, we find that the electronic storage requirements of Rule 17a–4(f) meet, and are consistent with, the requirements of the Electronic Signatures Act.

List of Subjects in 17 CFR Part 241

Securities.

Amendments to the Code of Federal Regulations

For the reasons set forth in the preamble, the Commission is amending title 17, chapter II of the Code of Federal Regulations as set forth below:

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

1. Part 241 is amended by adding Release No. 34–44238 and the release date of May 1, 2001 to the list of interpretive releases.

Dated: May 1, 2001.
By the Commission.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01–11333 Filed 5–4–01; 8:45 am]
BILLING CODE 8010–01–U

[44] *Id.*

[45] 15 U.S.C. 78q(a)(1).

[46] 146 Cong. Rec. S5230 (daily ed. June 14, 2000) (statement of Sens. Hollings, Wyden, and Sarbanes).

[47] *See e.g., In the Matter of Del Mar Financial Services, Inc., et al.*, Exchange Act Release No. 42421 (Feb. 14, 2000); *In the Matter of A.S. Goldmen & Co., Inc., et al.*, Exchange Act Release No. 41601 (July 7, 1999).

[48] Adopting Release, 62 FR at 6470.

[49] *Id.*

[50] 146 Cong. Rec. S5221 (daily ed. June 15, 2000) (statement of Sen. Leahy).

[51] *See* 146 Cong. Rec. S5230 (daily ed. June 15, 2000) (statement of Sens. Hollings, Wyden and Sarbanes); 146 Cong. Rec. H4358 (daily ed. June 14, 2000) (statement of Rep. Dingell).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 00F–1487]

Secondary Direct Food Additives Permitted in Food for Human Consumption

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of acidified sodium chlorite solutions as a component of a post-chill carcass spray or dip when applied to poultry meat, organs, or related parts or trim. This action is in response to a petition filed by Alcide Corp.

DATES: This rule is effective May 7, 2001. Submit written objections and requests for a hearing by June 6, 2001.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, Washington, DC 20204–0001, 202–418–3074.

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SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 11, 2000 (65 FR 54855), FDA announced that a food additive petition (FAP 0A4722) had been filed by Alcide Corp., 8561 154th Ave., NE., Redmond, WA 98052. The petition proposed to amend the food additive regulations in § 173.325 *Acidified sodium chlorite solution* (21 CFR 173.325) to provide for the safe use of acidified sodium chlorite solutions as a component of a post-chill carcass spray or dip when applied to poultry meat, organs, or related parts or trim.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive is safe, that the additive will achieve its intended technical effect, and, therefore, that the regulation in § 173.325 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

In the notice of filing, FDA gave interested parties an opportunity to submit comments on the petitioner's environmental assessment. FDA received no comments in response to that notice.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by June 6, 2001. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 173

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 173 is amended as follows:

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 173 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

2. Section 173.325 is amended by removing "or" at the end of paragraph (b)(1)(iii), removing the period at the end of paragraph (b)(1)(iv) and adding "; or" in its place, and adding paragraph (b)(1)(v) to read as follows:

§ 173.325 Acidified sodium chlorite solutions.

* * * * *

(b)(1) * * *

(v) As a component of a post-chill carcass spray or dip solution when applied to poultry meat, organs, or related parts or trim.

* * * * *

Dated: April 27, 2001.

L. Robert Lake,

Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 01–11330 Filed 5–4–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. 45–216; FRL–6924–3]

Approval and Promulgation of Implementation Plans; New York; Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is announcing the approval of a State Implementation Plan revision submitted by New York. This revision consists of New York's demonstration of the effectiveness of the enhanced motor vehicle inspection and maintenance (I/M) program decentralized testing network which satisfies the requirements of section 348 of the National Highway Systems Designation Act (NHSDA). In addition, EPA is approving New York's test method, NYTEST, and its effectiveness in relation to the IM240 test method and the regulations implementing the program. The intended effect of this action is to fully approve New York's enhanced I/M program, a requirement of the Clean Air Act.

EFFECTIVE DATE: This rule will be effective June 6, 2001.

ADDRESSES: Copies of the State submittals are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866; New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233; and Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Judy-Ann Mitchell, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10278, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

I. Background

On October 2, 2000 (65 FR 58698), EPA published a notice of proposed rulemaking for the State of New York. The notice proposed approval of revisions to the State Implementation Plan (SIP) for New York's enhanced inspection and maintenance (I/M) program. The formal SIP revision was submitted on May 24, 1999 and additional information was submitted on October 7, 1999 and October 29, 1999. A description of New York's submittals and EPA's rationale for our proposed action were presented in the proposal and will not be restated here.

II. Public Comments/Response to Comments

One comment was submitted to the docket during the comment period for the notice of proposed rulemaking published in the October 2, 2000 **Federal Register**. Copies of the original comment letter are available at EPA's Region II Office at the address listed in the **ADDRESSES** section of this document.

The commentor, an emissions inspection and automotive repair station owner, commented on problems he has been experiencing with his NYTEST equipment including the responsiveness of the New York State Department of Environmental Conservation (NYSDEC) and the equipment manufacturer. Through discussions with the NYSDEC, EPA has learned that the State has been working with the commentor to address his concerns. These comments to the docket do not address the approvability of New York's I/M program nor do they address the emissions reduction effectiveness of the NYTEST test type. Therefore, these comments will not be addressed in this document.

III. Conclusion

EPA is approving New York's enhanced I/M program SIP revision pursuant to section 348 of the NHSDA and the Clean Air Act. By so doing, EPA is finding that New York has adequately remedied the six de minimus deficiencies previously identified and has demonstrated that its decentralized I/M program network is substantially as effective as a centralized program network in achieving emission reductions according to the following:

- 88 percent as effective for HC emission reductions.
- 84 percent as effective for CO emission reductions.
- 86 percent as effective for NO_X emission reductions.

In addition, EPA is affording emissions reduction credit to the NYTEST as follows:

- 95 percent of IM240 credit for HC.
- 99 percent of IM240 credit for CO.
- 99 percent of IM240 credit for NO_X.

EPA is approving the latest revisions to the enhanced I/M program regulations. Specifically, these are found at 6NYCRR Part 200, General Provisions, Section 200.9 and Part 217, Motor Vehicle Emissions, Subparts 217–1, 217–2, and 217–4, that became effective on May 22, 1997. These are also found at 15NYCRR Part 79, Motor Vehicle Inspection, Sections 79.1–79.15, 79.17, 79.20, 79.21, 79.24–79.26, that became effective on June 4, 1997.

This approval removes the interim status of EPA's interim approval promulgated on October 24, 1997 (64 FR 32411).

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this final action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This final action merely approves State law as meeting federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this final rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This final rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a State rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This final rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this final rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2). This rule will be effective June 6, 2001.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 6, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Volatile organic compounds.

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Dated: December 15, 2000.

William J. Muszynski,

Acting Regional Administrator, Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart HH—New York

2. Section 52.1670 is amended by adding new paragraph (c)(99) to read as follows:

§ 52.1670 Identification of plan.

* * * * *

(c) * * *

* * * * *

(99) Revisions to the New York State Implementation Plan (SIP) for the Motor Vehicle Inspection and Maintenance Program, submitted on March 6, 1996, May 24, 1999, October 7, 1999, October 29, 1999, and May 22, 2000 by the New York State Department of Environmental Conservation.

(i) Incorporation by reference. Revision to 6NYCRR Part 217, Motor Vehicle Emissions, Subparts 217–1, 217–2, and 217–4, that became effective on May 22, 1997 and revisions to 15NYCRR Part 79, Motor Vehicle Inspection, Sections 79.1–79.15, 79.17, 79.20, 79.21, 79.24–79.26, that became effective on June 4, 1997.

(ii) Additional material:

(A) March 6, 1996, submittal of revisions to the enhanced motor vehicle inspection and maintenance program.

(B) May 24, 1999, submittal of the demonstration of the effectiveness of New York's decentralized inspection and maintenance program network.

(C) October 7, 1999, supplemental submittal of the demonstration of the effectiveness of New York's decentralized inspection and maintenance program network.

(D) October 29, 1999, letter clarifying October 7, 1999, supplemental submittal.

(E) May 22, 2000, Instrumentation/Protocol Assessment Pilot Study analysis of the NYTEST.

3. In § 52.1679, the table is amended by:

a. Adding a new heading for "Title 6" to the beginning of the table;

b. Revising the entry for part 217;

c. Adding a new heading for "Title 15" and new entries for part 79 to the end of the table.

The revisions and entries read as follows:

§ 52.1679 EPA-approved New York State regulations.

New York State regulation	State effective date	Latest EPA approval date	Comments
Title 6:			
. . . . .			
Part 217, Motor Vehicle Emissions:			
Subpart 217–1, Motor Vehicle Enhanced Inspection and Maintenance Program Requirements.	May 22, 1997	May 7, 2001, 66 FR 22924.	
Subpart 217–2, Motor vehicle NY91 Inspection and Maintenance Program Requirements.	May 22, 1997	May 7, 2001, 66 FR 22924.	
Subpart 217–4, Inspection and Maintenance Program Audits.	May 22, 1997	May 7, 2001, 66 FR 22924.	
. . . . .			
Title 15:			
Part 79, Motor Vehicle Inspection:			
Sections 79.1–79.15, 79.17, 79.20, 79.21, and 79.24–79.26.	June 4, 1997	May 7, 2001, 66 FR 22924.	

§ 52.1683 [Amended]

4. Section 52.1683 is amended by removing and reserving paragraphs (b), (c), (d), and (e).

[FR Doc. 01–10429 Filed 5–4–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD 064/109/111/113–3065a; FRL–6973–3]

Approval and Promulgation of Air Quality Implementation Plans; State of Maryland; Approval of Revisions to Volatile Organic Compounds, Regulations and Miscellaneous Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the Maryland State Implementation Plan (SIP) submitted by the Maryland Department of Environment (MDE). The revisions replace the existing regulation and adopt a new regulation for control of volatile organic compounds (VOC) from expandable polystyrene operations (EPO), establish VOC reasonably available control technology (RACT) standards for facilities that recycle bakery and confectionary waste, adopt by reference the EPA definition of VOC and include other miscellaneous revisions. EPA is approving these revisions to the State of Maryland's SIP in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on July 6, 2001 without further notice, unless EPA receives adverse written comment by June 6, 2001. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Rose Quinto at (215) 814–2182, or by e-mail at quinto.rose@epa.gov for information concerning the EPO regulation or Kelly L. Bunker at (215) 814–2177, or by e-mail at bunker.kelly@epa.gov for the remaining regulation revisions.

SUPPLEMENTARY INFORMATION:

I. Summary of SIP Revision

On February 6, 1998, October 20, 2000, October 31, 2000 and November 16, 2000 the State of Maryland submitted formal revisions to its SIP. The SIP revisions consist of a new regulation which replaces the existing regulation for control of VOC from EPOs (COMAR 26.11.19.19), establish VOC RACT regulations for facilities that recycle bakery and confectionary waste (COMAR 26.11.19.28), adopt by reference the EPA definition of VOC (COMAR 26.11.01.01B(53)), update the Maryland regulation references to the federal definition of VOC at 40 CFR 51.100(s) and the federal PSD regulations at 40 CFR 52.21 PSD (COMAR 26.11.01.01B(37) and (53) and COMAR 26.11.06.14) and include other miscellaneous revisions (COMAR 26.11.01.01B(6–1) and COMAR 26.11.06.06A(1)(d)) . These regulatory revisions became effective on October 2, 2000, October 16, 2000, June 30, 1997 and September 22, 1997.

The amendment to COMAR 26.11.01.01B adds the definition of "commercial bakery oven" to the general definitions section of the Maryland air regulations. EPA approved Maryland's commercial bakery oven RACT regulation, including a definition for "commercial bakery oven", found at COMAR 26.11.19.21 on October 15, 1997 (62 FR 53544). The definition for "commercial bakery oven" found in COMAR 26.11.19.21 is identical to the definition being added at COMAR 26.11.01.01B(6–1). The addition of the definition for the term "commercial bakery oven" is approvable.

The amendment to COMAR 26.11.01.01B(53) adopts by reference the EPA definition of "volatile organic compound" found at Title 40, Part 51.100(s) of the Code of Federal Regulations (CFR), as per the 1996 edition. The amendment ensures that Maryland's definition of the term is identical to the federal definition. EPA defines VOCs as any organic compound that contributes to ground-level ozone formation and lists as exclusions the compounds that have negligible photochemical reactivity. As EPA completes its reactivity testing, the list of exempt compounds expands. In the past, each time that EPA amended its' definition of VOC to include another exempt compound Maryland then had to amend its definition of VOC to add the newly exempted compound. Amending Maryland's definition requires draft regulations to be prepared, processed, put through public hearing and comment, adopted and then submitted to EPA. Since Maryland accepts the EPA test results on VOC exempt compounds it is appropriate for Maryland to adopt the federal definition of VOC as it appears in 40 CFR § 51.100 (s) as of a specified date.

COMAR 26.11.01.01B(53) was subsequently amended to update the federal reference for incorporation of the EPA definition of VOC found at 40 CFR § 51.100(s) from the 1996 to the 1999 edition of the CFR.

The amendments to COMAR 26.11.01.01B(37) and COMAR 26.11.06.14 update the reference for incorporation of the federal PSD regulations found at 40 CFR § 52.21 from the 1993 to the 1996 edition and then again from the 1996 to the 1999 edition. These revisions are approvable.

The amendment to COMAR 26.11.06.06 A(1)(d) will clarify the general VOC regulation and will affect VOC sources that are currently, or will be in the future, subject to a RACT regulation in Chapter 19, VOCs from Specific Processes. The amendment will exempt any source that is subject to a source specific regulation in Chapter 19 from the general VOC requirements in COMAR 26.11.06.06. These modifications are approvable.

The amendment to COMAR 26.11.19.19 will replace the existing regulation and adopt a new regulation for control of VOCs from expandable polystyrene operations (EPO). On October 15, 1997 (62 FR 53544) EPA approved a new regulation which established VOC RACT for EPOs. The existing regulation requires VOC emissions to be reduced through the use of various control options including incineration and a combination of low VOC beads (7 percent or less) and recycled material use. Since the adoption of the existing regulation, the bead manufacturers have been successful in producing an "ultra low VOC" bead (6 percent or less). These "ultra low VOC" beads, however, cannot be used for all products. But the production of the "ultra low VOC" bead has made available other cost-effective compliance options for specific product types at the EPO facilities. The existing regulation is being replaced with a new regulation which allows the use of conventional VOC control methods and adds the use of ultra low VOC beads as an additional alternative control option. This regulation will further reduce VOC emissions, encourage use of recycled materials and is approvable.

A new regulation, COMAR 26.11.19.28, is being added for the control of VOC emissions from bread and snack food drying operations. The purpose of the regulation is to establish RACT standards for facilities that recycle bakery and confectionary waste products for use as animal feed. The facilities dry the waste products to reduce moisture content and in the process VOCs are released. The new regulation requires a source with VOC emissions of 25 tons or more per year to install a control device with 85% or more removal efficiency to reduce emissions from the dryer stack. The regulation applies statewide and includes compliance testing, monitoring and recordkeeping requirements. The regulation will reduce VOC emissions and is approvable.

A more detailed analysis of Maryland's submittal is contained in a Technical Support Document (TSD) which is available from the Region III office listed in the **ADDRESSES** section of this notice.

II. Final Action

EPA is approving revisions to the Maryland SIP that replace the existing regulation and adopt a new regulation for control of VOC from EPOs (COMAR 26.11.19.19), establish VOC RACT regulations for facilities that recycle bakery and confectionary waste (COMAR 26.11.19.28), adopt by reference the EPA definition of VOC found at 40 CFR 51.100(s) (COMAR 26.11.01.01B(53)), update the Maryland regulation references to the federal definition of VOC at 40 CFR 51.100(s) (COMAR 26.11.01.01B(53)) and the federal PSD regulations at 40 CFR 52.21 (COMAR 26.11.01.01B(37) and 26.11.06.14), add a definition for the term "commercial bakery oven" (COMAR 26.11.01.01B(6–1) and other miscellaneous revisions (COMAR 26.11.06.06A(1)(d)). The revisions became effective on October 2, 2000, October 16, 2000, June 30, 1997 and September 22,1997.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment since the revisions are administrative changes to the state regulations. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on July 6, 2001 without further notice unless EPA receives adverse

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comment by June 6, 2001. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

III. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 6, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action granting full approval of the State of Marylands' volatile organic compounds regulations and miscellaneous revisions may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: April 24, 2001.

William C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(156) through (c)(159) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(156) Revision to the Maryland Regulations replacing the existing regulation and adopting a new regulation for control of volatile organic compounds (VOC) from expandable polystyrene operations (EPO) submitted on October 20, 2000 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of October 20, 2000 from the Maryland Department of the Environment transmitting the EPO regulations.

(B) The Maryland EPO regulations found at COMAR 26.11.19.19, effective October 2, 2000. This rule replaces COMAR 26.11.19.19, effective July 3, 1995.

(ii) Additional Material.—Remainder of the October 20, 2000 submittal.

(157) Revision to the Maryland Regulations establishing VOC reasonably available control technology (RACT) standards for facilities that recycle bakery and confectionary waste submitted on October 31, 2000 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of October 31, 2000 from the Maryland Department of the Environment transmitting the VOC RACT regulations for facilities that recycle bakery and confectionary waste.

(B) The Maryland VOC RACT regulations for facilities that recycle bakery and confectionary waste found at COMAR 26.11.19.28, effective October 2, 2000.

(ii) Additional Material.—Remainder of the October 31, 2000 submittal.

(158) Revision to the Maryland Regulations which adopt by reference the EPA definition of VOC found at 40 CFR 51.100(s), update the Maryland regulation references to the federal PSD regulations at 40 CFR 52.21 and include other miscellaneous revisions submitted on February 6, 1998 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of February 6, 1998 from the Maryland Department of the Environment transmitting the adoption of the federal definition of VOC, federal reference updates and other miscellaneous revisions.

(B) The amendment to COMAR 26.11.01.01B(37) and COMAR 26.11.06.14 which updates the references for incorporation of the federal PSD regulations found at 40 CFR 52.21 from the 1993 to the 1996 edition of the CFR and include other miscellaneous revisions (COMAR 26.11.01.01B(6–1) and COMAR 26.11.06.06A(1)(d)), effective June 30, 1997.

(C) The amendment to COMAR 26.11.01.01B(53) which adopts by reference the EPA definition of VOC found at 40 CFR 51.100(s), 1996 edition of CFR, effective September 22, 1997.

(ii) Additional Material.—Remainder of the February 6, 1998 submittal.

(159) Revision to the Maryland Regulations updating the references to the federal definition of VOC at 40 CFR 51.100(s) and the federal PSD regulations at 40 CFR 52.21, submitted on November 16, 2000 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of November 16, 2000 from the Maryland Department of the Environment transmitting the updates to the Maryland regulation references to the federal definition of VOC at 40 CFR 51.100(s) and the federal PSD regulations at 40 CFR 52.21.

(B) The amendments to COMAR 26.11.01.01B(37) and COMAR 26.11.06.14 which update the reference for incorporation of the federal PSD regulations found at 40 CFR 52.21 from the 1996 to the 1999 edition of the CFR and the amendment to COMAR 26.11.01.01B(53) which updates the federal reference for incorporation of the EPA definition of VOC found at 40 CFR 51.100(s) from the 1996 to the 1999 edition of the CFR, effective October 16, 2000.

(ii) Additional Material.—Remainder of the November 16, 2000 submittal.

[FR Doc. 01–11279 Filed 5–4–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[SC–038–200102(a); FRL–6973–9]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: South Carolina

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (EPA) is approving the section 111(d)/129 Plan submitted by the South Carolina Department of Health and Environmental Control (DHEC) for the State of South Carolina on September 19, 2000, to implement and enforce the Emissions Guidelines (EG) for existing Hospital/Medical/Infectious Waste Incinerator (HMIWI) units.

DATES: This direct final rule is effective on July 6, 2001, without further notice, unless EPA receives adverse comment by June 6, 2001. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should address comments on this action to Gregory Crawford, EPA Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104.

Copies of all materials considered in this rulemaking may be examined during normal business hours at the following locations: EPA Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104; and at the South Carolina Department of Health and Environmental Control, Bureau of Air Quality Control, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Gregory Crawford at (404) 562–9046 or Scott Davis at (404) 562–9127.

SUPPLEMENTARY INFORMATION:

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I. What Action Is Being Taken by EPA Today?

We are approving the South Carolina State Plan, as submitted on September 19, 2000, for the control of air emissions from HMIWIs, except for those HMIWIs located in Indian Country. When EPA developed our New Source Performance Standard (NSPS) for HMIWIs, we also developed EG to control air emissions from older HMIWIs. (See 62 FR 48348–48391, September 15, 1997, 40 CFR part 60, subpart Ce [Emission Guidelines and Compliance Times for HMIWIs] and subpart Ec [Standards of Performance for HMIWIs for Which Construction is Commenced After June 20, 1996]). The South Carolina DHEC developed a State Plan, as required by sections 111(d) and 129 of the Clean Air Act (the Act), to adopt the EG into their body of regulations, and we are acting today to approve it.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the revision should significant, material, and adverse comments be filed. This action is effective July 6, 2001, unless by June 6, 2001, adverse or critical comments are received. If we receive such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, this action is effective July 6, 2001.

II. The HMIWI State Plan Requirement

What Is a HMIWI State Plan?

A HMIWI State Plan is a plan to control air pollutant emissions from existing incinerators which burn hospital waste or medical/infectious waste. The plan also includes source and emission inventories of these incinerators in the State.

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Why Are We Requiring South Carolina To Submit a HMIWI State Plan?

States are required under sections 111(d) and 129 of the Act to submit State Plans to control emissions from existing HMIWIs in the State. The State Plan requirement was triggered when EPA published the EG for HMIWIs under 40 CFR part 60, subpart Ce (see 62 FR 48348, September 15, 1997).

Under section 129, EPA is required to promulgate EG for several types of existing solid waste incinerators. These EG establish the Maximum Achievable Control Technology (MACT) standards that States must adopt to comply with the Act. The HMIWI EG also establishes requirements for monitoring, operator training, permits, and a waste management plan that must be included in State Plans.

The intent of the State Plan requirement is to reduce several types of air pollutants associated with waste incineration.

Why Do We Need To Regulate Air Emissions From HMIWIs?

The State Plan establishes control requirements which reduce the following emissions from HMIWIs: particulate matter; sulfur dioxide; hydrogen chloride; nitrogen oxides; carbon monoxide; lead; cadmium; mercury; and dioxin/furans. These pollutants can cause adverse effects to the public health and the environment. Dioxin, lead, and mercury bioaccumulate through the food web. Serious developmental and adult effects in humans, primarily damage to the nervous system, have been associated with exposures to mercury. Exposure to dioxin and furans can cause skin disorders, cancer, and reproductive effects such as endometriosis. Dioxin and furans can also affect the immune system. Acid gases affect the respiratory tract, as well as contribute to the acid rain that damages lakes and harms forests and buildings. Exposure to particulate matter has been linked with adverse health effects, including aggravation of existing respiratory and cardiovascular disease and increased risk of premature death. Nitrogen oxide emissions contribute to the formation of ground level ozone, which is associated with a number of adverse health and environmental effects.

What Criteria Must a HMIWI State Plan Meet To Be Approved?

The criteria for approving a HMIWI State Plan include requirements from sections 111(d) and 129 of the Act and 40 CFR part 60, subpart B. Under the requirements of sections 111(d) and 129 of the Act, a State Plan must be at least as protective as the EG regarding applicability, emission limits, compliance schedules, performance testing, monitoring and inspections, operator training and certification, waste management plans, and recordkeeping and reporting. Under section 129(e), State Plans must ensure that affected HMIWI facilities submit Title V permit applications to the State by September 15, 2000. Under the requirements of 40 CFR part 60, subpart B, the criteria for an approvable section 111(d) plan include demonstration of legal authority, enforceable mechanisms, public participation documentation, source and emission inventories, and a State progress report commitment.

III. What Does the South Carolina State Plan Contain?

The South Carolina DHEC adopted the Federal EG and NSPS into Chapter 61 of the South Carolina Code, Regulation No. 61–62.5, Standard Number 3.1, "Hospital/Medical/Infectious Waste Incinerators." The State rules were effective on May 26, 2000. The South Carolina State Plan contains:

1. A demonstration of the State's legal authority to implement the section 111(d)/129 State Plan;
2. State rule, Standard Number 3.1, as the enforceable mechanism;
3. An inventory of approximately 4 known designated facilities, along with estimates of their potential air emissions;
4. Emission limits that are as protective as the EG;
5. A compliance date of May 26, 2001;
6. Testing, monitoring, reporting and recordkeeping requirements for the designated facilities;
7. Records from the public hearing on the State Plan; and,
8. Provisions for progress reports to EPA.

IV. Is My HMIWI Subject to These Regulations?

The EG for existing HMIWIs affect any HMIWI built on or before June 20, 1996. If your facility meets this criterion, you are subject to these regulations.

V. What Steps Do I Need To Take?

You must meet the requirements listed in South Carolina Regulation No. 61–62.5, Standard Number 3.1, summarized as follows:

1. Determine the size of your incinerator by establishing its maximum design capacity.
2. Each size category of HMIWI has certain emission limits established which your incinerator must meet. See Table I of Section III (Emission Limitations) of Standard Number 3.1, to determine the specific emission limits which apply to you. The emission limits apply at all times, except during startup, shutdown, or malfunctions, provided that no waste has been charged during these events.
3. There are provisions to address small rural incinerators (if your unit is applicable).
4. You must meet a 10% opacity limit on your discharge, averaged over a six-minute block.
5. You must have a qualified HMIWI operator available to supervise the operation of your incinerator. This operator must be trained and qualified through a State-approved program, or a training program that meets the requirements listed under Section IX (Operator Training and Qualification Requirements) of Standard Number 3.1.
6. Your operator must be certified, as discussed in 5 above, no later than May 26, 2001.
7. You must develop and submit to South Carolina DHEC a waste management plan. This plan must be developed under guidance provided by the American Hospital Association publication, An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities, 1993, and must be submitted to South Carolina DHEC no later than 60 days following the initial performance test for the affected unit.
8. You must conduct an initial performance test to determine your incinerators compliance with these emission limits. This performance test must be completed no later than May 26, 2001, and as required under 40 CFR 60.37e and Section IV (Performance Specifications) of Standard Number 3.1.
9. You must install and maintain devices to monitor the parameters listed under Table IV of Section V (Monitoring Requirements) of Standard 3.1.
10. You must document and maintain information concerning pollutant concentrations, opacity measurements, charge rates, and other operational data. This information must be maintained for a period of five years.
11. You must submit an annual report to South Carolina DHEC containing records of annual equipment inspections, any required maintenance, and unscheduled repairs. This annual report must be signed by the facilities manager.y

VI. Why Is the South Carolina HMIWI State Plan Approvable?

EPA compared the South Carolina rules (Chapter 61 of the South Carolina Code, Regulation No. 61–62.5, Standard Number 3.1) against our HMIWI EG. EPA finds the South Carolina rules to be at least as protective as the EG. The South Carolina State Plan was reviewed for approval against the following criteria: 40 CFR 60.23 through 60.26, *Subpart B—Adoption and Submittal of State Plans for Designated Facilities;* 40 CFR 60.30e through 60.39e, *Subpart Ce—Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators;* and, 40 CFR 62.14400 through 62.14495, *Subpart HHH—Federal Plan Requirements for Hospital/Medical/Infectious Waste Incinerators Constructed on or before June 20, 1996.* The South Carolina State Plan satisfies the requirements for an approvable section 111(d)/129 plan under subparts B and Ce of 40 CFR part 60 and subpart HHH of 40 CFR part 62. For these reasons, we are approving the South Carolina HMIWI State Plan.

VII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 6, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Hospital/medical/infectious waste incineration, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 12, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 62 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart PP—South Carolina

2. Section 62.10100 is amended by adding paragraphs (b)(5) and (c)(5) to read as follows:

§ 62.10100 Identification of plan.

* * * * *

(b) * * *

(5) South Carolina Designated Facility Plan (Section 111(d)/129) for Hospital/Medical/Infectious Waste Incinerators, submitted on September 19, 2000, by the South Carolina Department of Health and Environmental Control.

(c) * * *

(5) Existing hospital/medical/infectious waste incinerators.

3. Subpart PP is amended by adding a new § 62.10170 and a new undesignated center heading to read as follows:

Air Emissions From Hospital/Medical/Infectious Waste Incinerators

§ 62.10170 Identification of sources.

The plan applies to existing hospital/medical/infectious waste incinerators for which construction, reconstruction, or modification was commenced before June 20, 1996, as described in 40 CFR part 60, subpart Ce.

[FR Doc. 01–10988 Filed 5–4–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301122; FRL–6781–4]

RIN 2070–AB78

Forchlorfenuron; Time-Limited Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance forresidues of Forchlorfenuron; *N*-(2-chloro-4-pyridinyl)-*N'*-phenylurea in or on almond, apple, blueberry, cranberry, fig, grapes, kiwifruit, olive, pear, and plums (fresh). Siemer & Associates Incorporated, agent for KIM-C1, LLC requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire on April 1, 2004.

DATES: This regulation is effective May 7, 2001. Objections and requests for hearings, identified by docket control number OPP–301122 must be received by EPA on or before July 6, 2001.

ADDRESSES: Written objections and hearing requests may besubmitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301122 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–305–7740; and e-mail address: giles-parker.cynthia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**FederalRegister**—Environmental Documents." You can also godirectly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_180/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301122. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of July 28, 1998 (63 FR 40273)(FRL–5799–3), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP 7G4906) for tolerance by KIM-C1, LLC, 6333 East Liberty Avenue, Fresno, California 93727. This notice included a summary of the petition prepared by KIM-C1, the registrant.

The petition requested that 40 CFR part 180 be amended by establishing a time-limited tolerance for residues of the plant growth regulator *N*-(2-chloro-4-pyridinyl)-*N'*-phenylurea, in or on almond, apple, blueberry, cranberry, fig, grapes, kiwifruit, olive, pear, and plums (fresh) at 0.01 part per million (ppm). The tolerance will expire on April 1, 2004.

One comment was received in response to the Notice of Filing. The comment was received on December 7, 2000 as a letter dated December 1, 2000 from Mr. Robert Bianco, Desert Grape Growers League of California. The League requested that the Agency reduce the number of table grape acres, investigate allegations regarding taste, and that the Experimental Use Permit be crop destruct. In response to the first issue, it is noted that the registrant has subsequently submitted a revised testing program that incorporates a reduced number of table grape acres. Regarding the issue of requiring a crop destruct condition on the grapes treated in the Experimental Use Permit due to a difference in taste of the harvested grapes, the Agency has determined that requiring a crop destruct condition may be imposed only in response to concerns relating to human health.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of *N*-(2-chloro-4-pyridinyl)-*N'*-phenylurea on almond, apple, blueberry, cranberry, fig, grapes, kiwifruit, olive, pear, and plums (fresh) at 0.01 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by *N*-(2-chloro-4-pyridinyl)-*N'*-phenylurea are discussed in the following Table 1 as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.— SUBCHRONIC, CHRONIC, AND OTHERTOXICITY

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity rodents	NOAEL = M*≥400; F*=84 mg/kg/day; LOAEL = M*=not determined, F=428 mg/kg/day based on decrease BW*, BW gain & food efficiency.
870.3150	90–Day oral toxicity in nonrodents	NOAEL = M=1608; F=19.1 mg/kg/day; LOAEL = M=162.4; F=188.7 mg/kg/day based on decreases (≥10%) in BW gain, FC & food efficiency.
870.3700a	Prenatal developmental in rodents	Maternal NOAEL = 200 mg/kg/day; LOAEL = 400 mg/kg/day based on increased incidence of alopecia; decrease in BW & BW gains. Developmental NOAEL = 200 mg/kg/day; LOAEL = 400 mg/kg/day based on decreased mean fetalBW.
870.3700b	Prenatal developmental in nonrodents	Maternal NOAEL = ≥100 mg/kg/day; LOAEL = not determined. Developmental NOAEL = ≥100 mg/kg/day; LOAEL = not determined.
870.3800	Reproduction and fertility effects	Parental/Systemic NOAEL = M=11/13;F=13/15 mg/kg/day; LOAEL = 144–202 mg/kg/day based on decreasedFC F0 & F1; clinical signs of toxicity & lower BW in F1M& F and growth retardation in F1 & F2 pups. Reproductive NOAEL = M144/168; F=169/202 mg/kg/day; LOAEL = 544–926 mg/kg/day based on increased pup mortality (F1a, F1b and F2a), emaciation in F1b, anddecrease in F1 pups litter.
870.4300	Carcinogenicity mice	NOAEL = M=7; F=9 mg/kg/day; LOAEL = M=93; F=122 mg/kg/day based on reduced BW & BW gain & FC; kidney toxicity (M=suppurative inflammation, F = non-suppurative interstitial nephritis. no evidence of carcinogenicity.

*M=Male; F=Female; BW=Body Weight; FC=Food Consumption

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from thetoxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used todetermine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q^*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q^* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q^* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk

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assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for *N*-(2-chloro-4-pyridinyl)-*N'*-phenylurea used for human risk assessment is shown in the following Table 2:

TABLE 2.— SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR N-(2-CHLORO-4-PYRIDINYL)-*N'*-PHENYLUREA FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF (mg/kg/day)	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary		None	
Chronic Dietary	NOAEL = 7.0	Decreases in body weight, body weight gain and food consumption as well as effects on the kidney at the LOAEL of 93 and 122 mg/kg/day for males and females, respectively. The risk assessment is required..	2–year rat feeding study
	UF = 100; FQPA = 10X	Chronic RfD=0.07 mg/kg/day cPAD=0.007 mg/kg/day Apply to all population subgroups.	
Short-Term Dermal	NOAEL=200	Decreases in maternal body weights and body weight gains as well as decrease in mean fetal body weights..	developmental rat study
Intermediate-Term Dermal	NOAEL=17	Based on decreases in body weight gain and food consumption..	90–day feeding study in dogs
Long-Term Dermal		None	
Short-Term Inhalation	NOAEL=200	Same as short-term dermal.	developmental rat study
Intermediate-Term Inhalation	NOAEL=17	Same as intermediate-term dermal..	90–day feeding study in dogs
Long-Term Inhalation		None	
Cancer		Not yet classified	

* The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Risk assessments were conducted by EPA to assess dietary exposures from *N*-(2-chloro-4-pyridinyl)-*N'*-phenylurea in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. An acute exposure assessment is unnecessary because no toxicological endpoint was selected.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM®) analysisevaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: This chronic dietary DEEM® analysis was a Tier 1 (assumptions: time-limited tolerance level residues of the subject commodities and 100% crop treated). The DEEM® default concentration factors were used for the processed commodities of all the subject crops. The resulting dietary food exposures occupy 1.5% of the cPAD for the most highly exposed population subgroup, non-nursing infants. These results should be viewed as conservative (health protective) risk estimates. Refinements such as the use of percent crop-treated information (this is a limited acreage EUP use) and/or anticipated residue values would yield lower estimates of chronic dietary exposure.

iii. *Cancer.* No concern for cancer risks were identified. Data from available studies do not indicate a treatment-related tumor problem and cancer risk endpoints have not been identified.

2. *Dietary exposure from drinking water.* The Agency lackssufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for *N*-(2-chloro-4-pyridinyl)-*N'*-phenylurea in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of *N*-(2-chloro-4-pyridinyl)-*N'*-phenylurea.

The Agency uses the Generic Estimated Environmental Concentration(GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System(PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in groundwater. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to *N*-(2-chloro-4-pyridinyl)-*N'*-phenylurea they are further discussed in the aggregate risk sections below.

Based on the GENEEC and SCI-GROW models the EECs of *N*-(2-chloro-4-pyridinyl)-*N'*-phenylurea for acute and chronic exposures are estimated to be 4.7 parts per billion (ppb) (peak and 56–day average) for surface water and 26 ppb (acute and chronic) for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

N-(2-Chloro-4-pyridinyl)-*N'*-phenylurea is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanismof toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether *N*-(2-chloro-4-pyridinyl)-*N'*-phenylurea has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, *N*-(2-chloro-4-pyridinyl)-*N'*-phenylurea does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that *N*-(2-chloro-4-pyridinyl)-*N'*-phenylurea has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *Safety factor for infants and children—In general.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Conclusion.* There is an adequate toxicity databasefor *N*-(2-chloro-pyridinyl)-*N'*-phenylurea for this EUP and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. For the purposes of the experimental use permit only, the FQPA safety factor will be retained (10X) and applied to all groups for assessing chronic dietary risk.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking waterconsumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, the Office of Pesticide Programs (OPP) concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential

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impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Not applicable; no acute dietary endpointwas identified.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to *N*-(2-chloro-4-pyridinyl)-*N'*-phenylurea from food will utilize 0.3% of the cPAD for the U.S. population, 1.5% of the cPAD for non-nursing infants and 1.0% of the cPAD for children (1–6 years). There are no residential uses for *N*-(2-chloro-4-pyridinyl)-*N'*-phenylurea that result in chronic residential exposure to *N*-(2-chloro-4-pyridinyl)-*N'*-phenylurea. In addition, there is potential for chronic dietary exposure to *N*-(2-chloro-4-pyridinyl)-*N'*-phenylurea in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 3:

TABLE 3.— AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO N-(2-CHLORO-4-PYRIDINYL)-N'-PHENYLUREA

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population (total)	0.007	0.3	4.7	26	240
Females (13–50 years)	0.007	0.1	4.7	26	210
Infants/Children	0.007	0.4-1.5	4.7	26	70
Other	0.007	0.3	4.7	26	240

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

N-(2-Chloro-4-pyridinyl)-*N'*-phenylurea is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Intermediate-term risk.* Intermediate-termaggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

N-(2-Chloro-4-pyridinyl)-*N'*-phenylurea is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population.* No concern for cancer risks were identified. Data from available studies do not indicate a treatment-related tumor problem and cancer risk endpoints have not been identified.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to *N*-(2-chloro-4-pyridinyl)-*N'*-phenylurea residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

1. *Plants.* The proposed enforcement method is a high performance liquid chromatography using ultraviolet detection (HPLC/UV) procedure which measures parent *N*-(2-chloro-4-pyridinyl)-*N'*-phenylurea. For the purpose of the Experimental Use Permit, the method has been adequately validated. The limit of quantitation (LOQ) is 0.01 ppm and the limit of detection is 0.003 ppm.

2. *Animals.* Depending on the results of a ruminant metabolism study, an enforcement method for the regulated residue in animal commodities may be required to support a Section 3 registration with permanent tolerances.

Adequate enforcement methodology is available to enforce the toleranceexpression. The method may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

There are no Codex, Canadian, or Mexican IRLs for *N*-(2-chloro-4-pyridinyl)-*N'*-phenylurea.

C. Conditions

There are no conditions for the registration.

V. Conclusion

Therefore, the time-limited tolerance is established for residues of *N*-(2-chloro-4-pyridinyl)-*N'*-phenylurea in or on almond, apple, blueberry, cranberry, fig, grapes, kiwifruit, olive, pear, and plums (fresh) at 0.01 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any personmay file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301122 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 6, 2001.

1. *Filing the request.* Your objection must specify thespecific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900),Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection orrequest a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when inthe judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301122, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) inresponse to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations

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that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule."

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, asadded by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure,Agricultural commodities, Pesticides and pests, Reporting and recordkeepingrequirements.

Dated: April 30, 2001.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180— [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.569 is added to read as follows:

§ 180.569 Forchlorfenuron; tolerances for residues.

(a) *General.* Time-limited tolerances are established forresidues of the plant growth regulator forchlorfenuron; *N*-(2-chloro-4-pyridinyl)-*N'*-phenylurea in or on the food commodities:

Commodity	Parts per million	Expiration/ Revocation Date
Almond	0.01	4/1/04
Apple	0.01	4/1/04
Blueberry	0.01	4/1/04
Cranberry	0.01	4/1/04
Fig	0.01	4/1/04
Grape	0.01	4/1/04
Kiwifruit	0.01	4/1/04
Olive	0.01	4/1/04
Pear	0.01	4/1/04
Plum (fresh).	0.01	4/1/04

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional restrictions.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 01–11414 Filed 5–4–01; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7761]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management.measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Donna M. Dannels, Division Director, Policy and Assessment Division, Mitigation Directorate, 500 C Street, S.W., Room 411, Washington, D.C. 20472, (202) 646–3098.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because

communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region I				
Maine: Winslow, town of, Kennebec County	230071	May 22, 1974, Emerg., September 30, 1987, Reg. May 7, 2001, Susp.	May 7, 2001	May 7, 2001.
Region II				
New York: Litchfield, town of, Herkimer County.	360309	July 19, 1983, Emerg., September 24, 1984, Reg. May 7, 2001, Susp.	do	Do.
Region IV				
Georgia: Decatur, city of, DeKalb County	135159	June 19, 1970, Emerg., June 11, 1971, Reg. May 7, 2001, Susp.	do	Do.
Region VI				
Arkansas: Mansfield, city of, Sebastian County	050202	July 29, 1975, Emerg., June 18, 1987, Reg. May 7, 2001, Susp.	do	Do.
Sebastian County, unincorporated areas.	050462	January 27, 1983, Emerg., April 1, 1988, Reg. May 7, 2001, Susp.	do	Do.
New Mexico: Raton, city of, Colfax County.	350008	December 5, 1974, Emerg., March 1, 1986, Reg. May 7, 2001, Susp.	do	Do.
Texas:				
Huntsville, city of, Walker County	480639	January 20, 1975, Emerg., February 4, 1981, Reg. May 7, 2001, Susp.	do	Do.
Walker County, unincorporated areas	481042	August 18, 1978, Emerg., May 1, 1987, Reg. May 7, 2001, Susp.		
Region IX				
California:				
Solano County, unincorporated areas	060631	March 23, 1979, Emerg., August 2, 1982, Reg. May 7, 2001, Susp.	do	Do.
Vacaville, city of, Solano County	060373	February 18, 1975, Emerg., August 2, 1982, Reg. May 7, 2001, Susp.	May 21, 2001	May 21, 2001.
Region I				
Rhode Island: Coventry, town of Kent County.	440004	November 21, 1973, Emerg., September 1, 1978, Reg. May 21, 2001, Susp.		
Region II				
New Jersey: Stafford, township of, Ocean County.	340393	September 15, 1972, Emerg., September 14, 1979, Reg., May 21, 2001, Susp.	do	Do.
New York: Holland Patent, village of, Oneida County.	360530	April 25, 1975, Emerg., April 17, 1985, Reg. May 21, 2001, Susp.		

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State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region III				
Pennsylvania:				
Bern, township of, Berks County	421050	March 25, 1974, Emerg., November 19, 1980, Reg. May 21, 2001, Susp.	.....do	Do.
Heidelberg, township of, Berks County	421069	March 7, 1977, Emerg., May 3, 1990, Reg. May 21, 2001, Susp.	.....do	Do.
Leesport, borough of, Berks County	420138	December 26, 1973, Emerg., May 16, 1977, Reg. May 21, 2001, Susp.	.....do	Do.
Marion, township of, Berks County	421079	October 28, 1975, Emerg., January 2, 1981, Reg. May 21, 2001, Susp.	.....do	Do.
Muhlenberg, township of, Berks County.	420144	March 9, 1973, Emerg., September 1, 1977, Reg. May 21, 2001, Susp.	.....do	Do.
Ontelaunee, township of, Berks County	420966	September 5, 1973, Emerg., June 1, 1977, Reg. May 21, 2001, Susp.	.....do	Do.
Spring, township of, Berks County	421108	June 27, 1974, Emerg., April 18, 1983, Reg. May 21, 2001, Susp.	.....do	Do.
Tulpehocken, township of, Berks County.	421115	April 19, 1978, Emerg., August 4, 1988, Reg. May 21, 2001, Susp.	.....do	Do.
Wyomissing, borough of, Berks County	421375	August 28, 1974, Emerg., April 18, 1983, Reg. May 21, 2001, Susp.		
Region V				
Illinois: Winnebago, unincorporated areas ..	170720	February 16, 1973, Emerg., November 19, 1980, Reg. May 21, 2001, Susp.		
Region VII				
Kansas: Augusta, city of, Butler County	200038	June 25, 1975, Emerg., August 15, 1980, Reg. May 21, 2001, Susp.		
Region VIII				
Colorado:				
Durango, city of, La Plata County	080099	April 30, 1974, Emerg., January 17, 1979, Reg. May 21, 2001, Susp.	.....do	Do.
La Plata County, unincorporated areas	080097	December 12, 1974, Emerg., December 15, 1981, Reg. May 21, 2001, Susp.	.....do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp—Suspension.

Dated: April 25, 2001.

Margaret E. Lawless,

Acting Executive Associate Director for Mitigation.

[FR Doc. 01–11363 Filed 5–4–01; 8:45 am]

BILLING CODE 6718–05–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG14

Endangered and Threatened Wildlife and Plants; Final Determination of Critical Habitat for the Great Lakes Breeding Population of the Piping Plover

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat pursuant to the Endangered Species Act (Act) of 1973, as amended for the Great Lakes breeding population of the piping plover. The Great Lakes breeding population of the piping plover is listed as an endangered species under the Act. A total of approximately 325 km (201 mi) of Great Lakes shoreline (extending 500 m (1640 ft) inland) in 26 counties in Minnesota, Wisconsin, Michigan, Illinois, Indiana, Ohio, Pennsylvania, and New York, is designated as critical habitat for the Great Lakes population of the piping plover. The total length of designated shoreline is divided among 35 separate critical habitat units.

Section 7 of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to destroy or adversely modify critical habitat. As required by section 4 of the Act, we considered economic and other relevant impacts prior to making a final decision on what areas to designate as critical habitat.

EFFECTIVE DATE: This final rule is effective June 6, 2001.

ADDRESSES: The complete administrative record for this rule, including comments and materials received, as well as supporting documentation used in the preparation of this final rule, will be available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, MN 55111.

FOR FURTHER INFORMATION CONTACT: Laura J. Ragan at the above address (telephone 612/713–5157; facsimile 612/713–5292). TTY users may contact us through the Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

The piping plover (*Charadrius melodus*), named for its melodic mating call, is a small, pale-colored North American shorebird. It weighs 43–63 grams (1.5–2.5 ounces) and is 17–18 centimeters (cm) (6–7 inches (in.)) long (Haig 1992). Its light, sand-colored plumage blends in well with the sandy beach, its primary habitat. Plumage and leg color help distinguish this bird from other plover species. During the breeding season, the legs are bright orange, and the short, stout bill is orange with a black tip. There are two single dark bands, one around the neck and one across the forehead between the eyes. The female's neck band is often incomplete and is usually thinner than the male's (Haig 1992). In winter, the bill turns black, the legs fade to pale orange, and the black plumage bands on the head and neck are lost. Chicks have speckled gray, buff, and brown down, black beaks, pale orange legs, and a white collar around the neck. Juveniles resemble wintering adults and obtain their adult plumage the spring after they fledge (USFWS 1994).

Dominant plants within Great Lakes piping plover habitat include marram grass (*Ammophila brevigulota*), beach wormwood (*Artemesia campestris*), silverweed (*Potentilla anserina*), Lake Huron tansy (*Tanacetum huronense*), pitcher's thistle (*Cirsium pitcheri*), beach pea (*Lathyrus maritimus* var. *glaber*), sea rocket (*Cakile edentula*), sedges (*Carex* spp.), goldenrods (*Solidago* spp.), sand cherry (*Prunus pumila*), bearberry (*Arctostophylus uva-ursi*), creeping juniper (*Juniper horizontalis*), cottonwood (*Populus deltoides*), and willow (*Salix* spp.).

The breeding range of the piping plover extends throughout the northern Great Plains, the Great Lakes, and the Atlantic Coast in the United States and Canada. Based on this distribution, three breeding populations of piping plovers have been described: the Northern Great Plains population, the Great Lakes population, and the Atlantic Coast population.

The northern Great Plains breeding range extends from southern Alberta, northern Saskatchewan, and southern Manitoba, south to eastern Montana, the Dakotas, southeastern Colorado, Iowa, Minnesota, and Nebraska, and east to Lake of the Woods in north-central Minnesota. The majority of the United States pairs in this population are in the Dakotas, Nebraska, and Montana (USFWS 1994). Occasionally, Great Plains birds nest in Oklahoma and Kansas. On the Atlantic coast, piping plovers nest from Newfoundland, southeastern Quebec, and New Brunswick to North Carolina. Sixty-eight percent of all nesting pairs breed in Massachusetts, New York, New Jersey, and Virginia (USFWS 1999). In the Great Lakes watershed, piping plovers formerly nested throughout much of the north-central United States and south-central Canada on beaches in Illinois, Indiana, Michigan, Minnesota, Ohio, Pennsylvania, New York, Wisconsin, and in Ontario, Canada. Currently they are limited to northern Michigan and, recently, at one site in northern Wisconsin.

Piping plovers are migratory birds. They leave the breeding grounds between late July and early September and head for their wintering grounds, where they spend more than eight months of the year. Although the breeding ranges of the three piping plover populations are separate, their wintering ranges overlap and extend along the Atlantic and Gulf Coasts from North Carolina to Mexico and into the West Indies and Bahamas. Resightings of color-banded birds from the Great Lakes breeding population have occurred along the coastlines of North and South Carolina, Georgia, Florida, Louisiana, and Texas.

Pre-settlement populations of piping plovers in the Great Lakes are estimated at 492–682 breeding pairs (Russell 1983), although these estimates may be high (F. Cuthbert, professor, University of Minnesota, Minneapolis, pers. comm., 2000). In recent decades, piping plover populations have declined drastically, especially in the Great Lakes, coinciding with industrial development, urbanization, and increased recreational pressures. In 1973, the piping plover was placed on the National Audubon Society's Blue List of threatened species. By that time, piping plovers had been extirpated from beaches in Illinois, Indiana, Ohio, New York, Pennsylvania, and Ontario, and only a few birds were continuing to nest in Wisconsin (Russell, 1983). By 1977, the Great Lakes breeding population had decreased to 31 nesting pairs (Lambert and Ratcliff 1981) and by the time the species was listed under the Endangered Species Act in 1985, the Great Lakes breeding population had dwindled to only 17 breeding pairs, and the breeding areas had been reduced from sites in eight States to only portions of northern Michigan.

Since the species was listed, the Great Lakes breeding population has gradually increased and expanded its range within Michigan and into Wisconsin. In 1999, 31 pairs of piping plovers nested on the Great Lakes shoreline of northern Michigan and 1 pair nested in northern Wisconsin (Stucker and Cuthbert, 1999). In 2000, 30 pairs were documented, all in northern Michigan (Stucker et al. 2000). The slow population increase over the past 15 years has been aided by intense State, Tribal, Federal, and private conservation actions directed at the protection of the piping plover. Activities such as habitat surveys, beach restoration, public education, habitat protection and enhancement, and the protection of nests from predators and disturbance through the use of predator exclosure fencing have all contributed to the improving status of the Great Lakes piping plover.

Great Lakes piping plovers nest on shoreline and island sandy beaches with sparse vegetation and the presence of small stones (greater than 1 cm (0.4 in.)) called cobble. Piping plovers spend 3 to 4 months a year on the breeding grounds. Nesting in the Great Lakes region begins in early to mid-May. Plovers lay 3 to 4 eggs in a small depression they scrape in the sand among the cobblestones and are, therefore, very difficult to see. Both sexes are involved in incubating the eggs, which hatch in about 28 days. Young plovers can walk almost as soon as they hatch, but remain vulnerable to predation and disturbance for another 21–30 days until they are able to fly.

Nesting piping plovers are highly susceptible to disturbance by people and pets on the beach. Human disturbance disrupts adult birds' care of their nests and young and may inhibit incubation of eggs (USFWS 1994). Furthermore, adults may leave the nest to lure away an intruder, leaving the eggs or chicks vulnerable to predators and exposure to weather. Ultimately, disturbance may lead to the abandonment of nests (USFWS 1994). As a result of disturbance and other natural and human-caused factors such as high water levels, flooding, eroding beaches, and beach-front commercial, recreational, and residential development, reproduction of Great Lakes piping plovers has been severely affected, resulting in perilously low numbers of nesting plovers (USFWS 1994).

This rule applies only to the breeding range of the Great Lakes population in the United States.

Previous Federal Actions

On December 30, 1982, we published a notice of review in the **Federal Register** (47 FR 58454) that identified vertebrate animal taxa being considered for addition to the List of Threatened and Endangered Wildlife. We included the piping plover in that review list as a Category 2 Candidate species, indicating that we believed the species might warrant listing as threatened or endangered, but that we had insufficient data to support a proposal to list at that time. Subsequent review of additional data indicated that the piping plover warranted listing, and in November, 1984, we published a proposed rule in the **Federal Register** (49 FR 44712) to list the piping plover as endangered in the Great Lakes watershed and as threatened along the Atlantic Coast, the Northern Great Plains, and elsewhere in

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their range. The proposed listing was based on the decline of the species and the existing threats, including habitat destruction, disturbance by humans and pets, high levels of predation, and contaminants.

After a review of the best scientific data available and all comments received in response to the proposed rule, we published the final rule (50 FR 50726) on December 11, 1985, listing the piping plover as endangered in the Great Lakes watershed (Illinois, Indiana, Michigan, northeastern Minnesota, New York, Ohio, Pennsylvania, Wisconsin, and Ontario, Canada) and as threatened along the Atlantic coast (Quebec, Newfoundland, Maritime Provinces, and States from Maine to Florida), and in the Northern Great Plains region (Iowa, northwestern Minnesota, Montana, Nebraska, North Dakota, South Dakota, Alberta, Manitoba, and Saskatchewan). All piping plovers on migratory routes outside of the Great Lakes watershed or on their wintering grounds are considered threatened. We did not designate critical habitat for the species at that time.

After 1986, we focused our efforts on recovery by forming two recovery teams, the Great Lakes/Northern Great Plains Piping Plover Recovery Team and the Atlantic Coast Piping Plover Recovery Team. In 1988 the Great Lakes and Northern Great Plains (USFWS 1988b) and Atlantic Coast (USFWS 1988a) Recovery Plans were published. In 1994, the Great Lakes/Northern Great Plains Recovery Team began to revise the Recovery plan for these two populations (USFWS 1994). The 1994 draft included updated information on the species and was distributed for public comment. Subsequently, we decided that the recovery of these two inland populations would benefit from separate recovery plans. Individual recovery plans for the Great Lakes and Northern Great Plains populations are presently under development.

The final listing rule for the piping plover indicated that designation of critical habitat was not determinable. Thus, designation was deferred. No further action was subsequently taken to designate critical habitat for piping plovers. On December 4, 1996, Defenders of Wildlife (Defenders) filed a suit (*Defenders of Wildlife and Piping Plover* v. *Babbitt*, Case No. 96CV02965) against the Department of the Interior and the Service over the lack of designated critical habitat for the Great Lakes population of the piping plover. Defenders filed a similar suit (*Defenders of Wildlife and Piping Plover* v. *Babbitt*, Case No. 97CV000777) for the Northern Great Plains piping plover population in 1997. During November and December 1999, and January 2000, we began negotiating a schedule for piping plover critical habitat decisions with Defenders. On February 7, 2000, before the settlement negotiations were concluded, the United States District Court for the District of Columbia issued an order directing us to publish a proposed critical habitat designation for nesting and wintering areas of the Great Lakes population of the piping plover by June 30, 2000, and for nesting and wintering areas of the Northern Great Plains piping plover population by May 31, 2001. A subsequent order, after requesting the court to reconsider its original order relating to final critical habitat designation, directs us to finalize the critical habitat designations for the Great Lakes population by April 30, 2001, and for the Northern Great Plains population by March 15, 2002. For biological and practical reasons, we chose to propose critical habitat for the Great Lakes breeding birds and for all wintering birds in two separate rules published concurrently.

On July 6, 2000, we published a proposed determination for the designation of critical habitat for the Great Lakes breeding population of the piping plover (65 FR 41812). A total of approximately 305 km (189 mi) (extending 1 km (0.6 mi) inland) was proposed as critical habitat for this piping plover population in 27 counties in Minnesota, Wisconsin, Michigan, Illinois, Indiana, Ohio, Pennsylvania, and New York. The comment period was open until September 5, 2000. During this 60-day comment period, we held seven public hearings (Ashland, Wisconsin, on July 17; Green Bay, Wisconsin, on July 18; Newberry, Michigan, on July 19; Traverse City, Michigan, on July 20; Indiana Dunes, Indiana, on July 24; Cleveland, Ohio, on July 25; and Watertown, New York, on July 27). On September 19, 2000, we published a document (65 FR 56530) announcing the reopening of the comment period on the proposal to designate critical habitat for the Great Lakes breeding population of the piping plover and a notice of the availability of the draft economic analysis on the proposed determination. Our intention was for this comment period to be reopened for 60 days, but the document stated that the comment period closed on October 19, 2000, or 30 days. Therefore, on September 28, 2000, we published a document (65 FR 58258) correcting the closing date of the reopened comment period to November 20, 2000.

Critical Habitat

Critical habitat is defined in section 3 of the Act as (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protections; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ". . . the direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Critical habitat designation would not afford any additional protections under the Act against activities on private or other non-Federal lands that do not involve a Federal nexus because the requirement for consultation under section 7 of the Act does not apply to activities on these types of lands.

In order to be included in a critical habitat designation, the habitat must first be "essential to the conservation of the species." Critical habitat designations identify, based on the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Within the geographic area occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species (primary constituent elements). We will not speculate about what areas might be found to be essential if better information became available, or what other areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation. Within the geographic area occupied by the species, we will not designate areas that do not now have the primary constituent elements, as defined at 50 CFR 424.12(b), that provide essential life cycle needs of the species.

Our regulations state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species" (50 CFR 424.12(e)). Accordingly, unless the best scientific and commercial data demonstrates that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species. However, if unoccupied areas are essential to the recovery of the species, they may be designated as critical habitat.

The Service's policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires Service biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished materials (i.e. gray literature).

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, it should be understood that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. Federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

In determining areas that are essential to conserve the Great Lakes breeding population of the piping plover, the best scientific and commercial data available included information solicited from knowledgeable biologists and available information pertaining to habitat requirements of the species. In an effort to map areas essential to the conservation of the species, we used data of known piping plover breeding locations, records of historical nesting sites, International Census data, and those areas that were identified in the 1988 recovery plan and 1994 draft recovery plan as essential for the recovery of the population. We have chosen the 35 critical habitat units in order to protect adequate habitat to meet the recovery criteria, contained in the recovery plan and draft recovery plan, of 100 breeding pairs in Michigan and 50 breeding pairs in the other Great Lakes States combined. In addition, information provided in comments on the proposed designation and draft economic analysis were evaluated and taken into consideration in the development of this final designation.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available. We also are required to consider those physical and biological features that are essential to the conservation of the species and that may require special management considerations and protection. Such features include, but are not limited to: space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing of offspring; and habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of a species.

The primary constituent elements for the Great Lakes breeding population of the piping plover are those habitat components that are essential for successful foraging, nesting, rearing of young, intra-specific communication, genetic exchange, roosting, dispersal, or sheltering.

The primary constituent elements required to sustain the Great Lakes breeding population of the piping plover are found on Great Lakes islands and mainland shorelines that support open, sparsely vegetated sandy habitats, such as sand spits or sand beaches, that are associated with wide, unforested systems of dunes and inter-dune wetlands. In order for habitat to be physically and biologically suitable for piping plovers, it must have a total shoreline length of at least 0.2 km (0.12 mi) of gently sloping, sparsely vegetated (less than 50 percent herbaceous and low woody cover) sand beach with a total beach area of at least 2 hectares (ha) (5 acres (ac)).

Appropriately sized sites must also have areas of at least 50 meters (m) (164 feet (ft)) in length where (1) the beach width is more than 7 m (23 ft), (2) there is protective cover for nests and chicks, and (3) the distance to the treeline (from the normal high water line to where the forest begins) is more than 50 m (164 ft). Beach width is defined as the distance from the normal high water line to the foredune (a low barrier dune ridge immediately inland from the beach) edge, or to the sand/vegetation boundary in areas where the foredune is absent. The beach width may be narrower than 7 m (23 ft) if appropriate sand and cobble areas of at least 7 m (23 ft) exist between the dune and the treeline.

Protective cover for nests and chicks consists of small patches of herbaceous vegetation, cobble (stones larger than 1 cm (0.4 inches (in)) diameter), gravel (stones smaller than 1 cm (0.4 in)

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diameter), or debris such as driftwood, wrack, root masses, or dead shrubs. These areas must have a low level of disturbance from human activities and from domestic animals. As the nesting season progresses, the level of disturbance tolerated by piping plovers increases. A lower level of disturbance is required at the beginning of the nesting period during nest site selection, egg laying, and incubation. Beach activities that may be associated with a high level of disturbance include, but are not limited to, walking pets off leash, loud noise, driving all terrain vehicles (ATVs), or activities that significantly increase the level of people using the beach. The level of disturbance is relative to the proximity to the nest, intensity, and frequency of these and other similar activities.

The dynamic ecological processes that create and maintain piping plover habitat are also important primary constituent elements. These geologically dynamic lakeside regions are controlled by processes of erosion, accretion, plant succession, and lake-level fluctuations. The integrity of the habitat depends upon regular sediment transport processes, as well as episodic, high-magnitude storm events. By their nature, Great Lakes shorelines are in a constant state of change; habitat features may disappear, or be created nearby. The critical habitat boundaries reflect these natural processes and the dynamic character of Great Lakes shorelines.

Criteria Used To Identify Critical Habitat

All of the designated critical habitat areas are considered essential to the conservation of the Great Lakes breeding population of the piping plover as described in the approved 1988 Recovery Plan for the Great Lakes and Northern Great Plains Piping Plover (Plan) and the 1994 Draft Revised Recovery Plan for the Great Lakes Piping Plover. The designation encompasses those areas considered necessary to achieve the recovery goals of 150 breeding pairs (USFWS 1988b, 1994) for this population.

To identify critical habitat units, we first examined those sites identified as "essential habitat" in the approved Recovery Plan and draft revised Recovery Plan. We began by evaluating those essential habitat areas that are currently (at least once during the past 5 years) or were recently (in the last 5 to 15 years) occupied by piping plovers in the Great Lakes. Through site visits and consultation with local habitat experts, we determined which of these sites still contain the primary constituent elements. Piping plover occupied habitat in the Great Lakes has declined from historical occupation of more than 70 sites in eight States to approximately 32 sites in two States (Wemmer 2000). The currently occupied sites and recently occupied (since 1985) sites in Michigan may have the capacity to support an estimated 56 to 136 breeding pairs (Wemmer 2000). Because of this severe reduction in range and numbers of piping plovers, we have determined it is essential to the conservation of this species to include all currently occupied habitat and all recently occupied habitat that still contains the primary constituent elements in this critical habitat designation.

As we proceed with recovery efforts, expansion of the present small population will require more habitat than is currently occupied by piping plovers along the Great Lakes (Wemmer 2000, USFWS 1988b, 1994). In an effort to protect sufficient habitat to allow for the expansion of the species, our second step was to evaluate the essential habitat areas outlined in the Recovery Plan that are documented as historical piping plover habitat. In addition to evaluating those areas identified by the Recovery Plan as essential habitat, we solicited information from habitat experts on areas that contain the primary constituent elements and that would provide suitable piping plover nesting habitat. Based upon consultation with Great Lakes piping plover habitat experts, we determined which historically occupied sites contain the primary constituent elements and are suitable for supporting nesting piping plovers. We designated historically occupied habitat in the Great Lakes watershed (in the United States) that still contain the primary constituent elements.

Much known historical habitat in the Great Lakes region has been destroyed or altered in such ways that it can no longer support piping plovers (Wemmer 2000, USFWS 1988b). As a result, suitable habitat areas that are currently/recently occupied, or that were documented to be historically occupied, are not sufficient to meet the conservation goals outlined in the approved Recovery Plan and draft revised Recovery Plan. Thus, as a final step, we evaluated those essential habitat areas identified in the Recovery Plan where occupation has not been documented, but habitat features similar to currently occupied sites occur. To reach the minimum amount of habitat sufficient to meet the recovery plan goals, we designated those areas that are known to contain the primary constituent elements as critical habitat.

Critical habitat designation is effective year-round, even if the primary constituent elements are temporarily obscured by snow, ice, or other temporary features.

In defining critical habitat boundaries, it was not possible to exclude all existing human-made features and structures, such as buildings, roads, marinas, piers, parking lots, bridges, boat ramps, lighthouses, and other such human-made features, within the area designated. These features do not contain most or all of the primary constituent elements and thus are not considered to be critical habitat despite their being within the geographic boundaries. Federal actions limited to those features, therefore, would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements within a critical habitat unit.

In summary, in determining areas that are essential to the conservation of the Great Lakes breeding population of the piping plover, we used the best scientific and commercial information available to us. The critical habitat areas described below constitute our best assessment of areas needed for the species' conservation and recovery.

Critical Habitat Designation

At this time, the critical habitat units discussed below are our best appraisal of areas needed for the conservation of the Great Lakes breeding population of the piping plover. Very little suitable piping plover habitat remains in the Great Lakes region, and all the areas identified here are essential for the recovery of the species because these areas represent the habitat necessary to achieve the recovery goal of 100 breeding pairs in Michigan and 50 breeding pairs in the other Great Lakes States combined. Critical habitat designations may be subsequently revised if new information becomes available after this final rule is published. Any additional areas of critical habitat will be designated, or other changes made to this designation, only after a formal proposal and opportunity for public comment.

The approximate length of proposed critical habitat shoreline identified by land ownership is shown in Table 1. Critical habitat includes Great Lakes piping plover habitat throughout the species' breeding range in the United States. Lands proposed as critical habitat are under private, State, municipal, Tribal, and Federal ownership, with Federal lands including lands managed by the National Park Service, U.S. Forest Service, U.S. Coast Guard, U.S. Army Corp of Engineers, and by us. Estimates reflect the total area within critical habitat unit boundaries.

TABLE 1.—KILOMETERS OF GREAT LAKES SHORELINE PROPOSED AS CRITICAL HABITAT UNITS FOR THE PIPING PLOVER IN EACH GREAT LAKES STATE SUMMARIZED BY FEDERAL, STATE, MUNICIPAL, PRIVATE AND OTHER OWNERSHIP

	Ownership km shoreline (% within each State)					
	Federal	State	Municipal	Private	Other	Total
Michigan	40.9 (18.3)	107.9 (48.1)	6.9 (3.1)	66.1 (29.1)	1.6 TNC (0.7)	223.4
Minnesota	0	0.2 (100)	0	0	0	0.2
Wisconsin	18.1 (40.0)	8.7 (19.2)	4.4 (9.7)	9.0 (19.9)	5.1 Tribal (11.2)	45.3
Illinois	0	4.7 (46.1)	1.3 (12.7)	4.2 (41.2)	0	10.2
Indiana	2.9 (36.7)	5.0 (63.3)	0	0	0	7.9
Ohio	0	2.0 (50)	0	2.0 (50)	0	4.0
Pennsylvania	0	6.0 (100)	0	0	0	6.0
New York	0	12.4 (45.3)	0	14.6 (53.3)	0.4 TNC (1.5)	27.4
Total (% of)	61.9 (19.1)	146.9 (45.2)	12.6 (3.9)	95.9 (29.5)	7.1 (2.2)	324.4

Critical habitat has been designated in 35 units in the Great Lakes region. All critical habitat unit boundaries extend 500 meters (1640 feet) inland from the normal high water line, although the inland edge of the area that contains the primary constituent elements may vary depending on the extent of the open dune system. This area is needed to provide foraging habitat as well as incorporate cobble pans between the dunes where piping plovers occasionally nest. A brief description of each unit and reasons for designating it as critical habitat are presented below and in Table 2. More detailed descriptions are included with the maps.

TABLE 2.—LOCATION, OWNERSHIP, PIPING PLOVER USE, AND ESTIMATED LENGTH OF CRITICAL HABITAT AREAS WITHIN MAPPED CONSERVATION UNITS IN THE U.S. GREAT LAKES REGION

Habit unit	Location name	County	USGS 7.5′ quad map(s) 1:24,000 scale	Land ownership [1]	Plover use [2]	Est. length (km)
Whitefish Point to Grand Marais—						
MI–1	Whitefish Point	Chippewa	Whitefish Point (1951)	Federal (USFWS), private.	Recent past, transient	2.5
	Vermilion/ Weatherhogs Beach.	Luce	Vermilion (1951)	Private	Current	2.3
	Crisp Point	Luce	Betsy Lake North (1968).	Municipal private	Recent past	1.0
	Little Lake Harbor	Luce	Betsy Lake North (1968).	Private	Recent past	1.6
	Deer Park	Luce	Muskallonge Lake East (1968); Muskallonge Lake West (1968).	State, private	Recent past	2.8
	Grand Marais Inner Harbor and Lonesome Point.	Alger	Grand Marais (1968)	Multiple private, municipal.	Current	2.9
	Grand Marais Superior Beach.	Alger	Grand Marais (1968)	Multiple private, Federal (NPS).	Current	1.2
MI–2	Point Aux Chenes	Mackinac	Pointe Aux Chenes (1964, photorevised 1975).	Federal (USFS), private.	Current	2.0
MI–3	Port Inland	Schoolcraft Mackinac.	Hughes Point (1972)	Private/State	Current	3.0
Waugoshance Point to beach west of McCort Hill—						
MI–4	Waugoshance Point Temperance and Crane Islands.	Emmet	Big Stone Bay (1964, photoinspected 1975), Waugoshance Island (provisional 1982).	State	Current	5.0
	Sturgeon Bay	Emmet	Bliss (1982)	State	Current	3.9
	Bliss Township Park	Emmet	Bliss (1982)	Municipal	Current	1.1
	Sturgeon Bay Point	Emmet	Bliss (1982) Cross Village (1982).	Multiple private	Current	2.4

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TABLE 2.—LOCATION, OWNERSHIP, PIPING PLOVER USE, AND ESTIMATED LENGTH OF CRITICAL HABITAT AREAS WITHIN MAPPED CONSERVATION UNITS IN THE U.S. GREAT LAKES REGION—Continued

Habit unit	Location name	County	USGS 7.5′ quad map(s) 1:24,000 scale	Land ownership [1]	Plover use [2]	Est. length (km)
	Cross Village Beach ..	Emmet	Cross Village (1982) ..	Municipal, multiple private.	Current	1.3
	Beach West McCort Hill.	Emmet	Cross Village (1982) ..	Multiple private	Current	1.4
Sevenmile Point to Thorneswift Nature Preserve—						
MI–5	Sevenmile Point	Emmet	Forest Beach (1983 provisional).	Multiple private	Suitable	0.5
	Thorneswift Nature Preserve.	Emmet	Forest Beach (1983 provisional).	Multiple private	Current	0.4
MI–6	Petoskey State Park ..	Emmet	Harbor Springs (1983 provisional).	State, private	Historical	2.0
MI–7	North Point	Charlevoix	Ironton (1983), Charlevoix (1983).	Municipal	Suitable	1.1
MI–8	Fisherman's Island State Park.	Charlevoix	Charlevoix (1983)	State	Current	1.3
Indian Point to McCauley's Point, Beaver Island—						
MI–9	Donegal Bay-Beaver Island.	Charlevoix	Garden Island West (1980), Beaver Island North (1986).	Multiple private	Current	2.0
	McCauley's Point-Beaver Island.	Charlevoix	Beaver Island North (1986).	State	Recent past	0.6
MI–10	Greenes Bay-Beaver Island.	Charlevoix	Beaver Island North (1986).	State/private	Recent past	0.8
MI–11	High Island	Charlevoix	High Island (1986)	State	Current	1.8
Cathead Bay to Christmas Cove—						
MI–12	Cathead Bay	Leelanau	Northport (provisional 1983).	State/private	Current	2.6
	Cathead Point to Christmas Cove.	Leelanau	Northport/Northport NW (provisional 1983).	Private	Suitable	2.5
MI–13	South Fox Island	Leelanau	South Fox Island (provisional 1986).	State	Historical	6.0
MI–14	North Manitou	Leelanau	North Manitou Island (provisional 1983).	Federal (NPS)	Current	3.3
MI–15	Crystal Run to Empire Beach.	Leelanau	Glen Arbor (1983), Glen Haven (1983), Empire (1983).	Municipal, Federal	Suitable	18.6
Esch Road to Sutter Road and Point Betsie—						
MI–16	Platte Bay and Platte River Point and beach.	Benzie	Empire (1983), Beulah (provisional 1983).	Federal (NPS)	Suitable/current	13.8
	Point Betsie	Benzie	Frankfort (1983)	Federal (USCG) TNC managed, private.	Historical	4.8
MI–17	Nordhouse Dunes to Ludington.	Mason	Manistee NW (provisional 1982), Hamlin Lake (1982).	Federal (USFS), State	Transient, historical	13.4
MI–18	Muskegon State Park	Muskegon	Muskegon West (1972, photoinspected 1980).	State	Historical	2.5
MI–19	Lake Superior State Forest, St. Vital Point.	Chippewa	Albany Island (1964, photoinspected 1976), DeTour Village (1964).	State	Historical	3.0
Lighthouse Point to Cordwood Point—						
MI–20	Lighthouse Point	Cheboygan	Cheboygan (1982)	State	Recent past	1.4
	Grass Bay	Cheboygan	Cordwood Point (1982).	TNC preserve	Historical transient	1.6

TABLE 2.—LOCATION, OWNERSHIP, PIPING PLOVER USE, AND ESTIMATED LENGTH OF CRITICAL HABITAT AREAS WITHIN MAPPED CONSERVATION UNITS IN THE U.S. GREAT LAKES REGION—Continued

Habit unit	Location name	County	USGS 7.5′ quad map(s) 1:24,000 scale	Land ownership [1]	Plover use [2]	Est. length (km)
MI–21	PH Hoeft State Park ..	Pesque Isle	Roger's City (1971), Moltke (1971).	State	Suitable	3.7
MI–22	Thompson's Harbor ...	Presque Isle ...	Thompson's Harbor (1971).	State, private	Suitable	2.8
MI–23	Tawas Point State Park.	Iosco	East Tawas (1989)	State	Suitable, transient	2.0
MN/WI–1	Duluth Harbor	St. Louis	West Duluth (1953, photorevised 1969).	State, private	Recent past	0.6
WI–1	Wisconsin Point	Douglas	Parkland (1954, photorevised 1975), Superior (1954, photorevised 1983).	Municipal, Federal (USACE).	Historical	4.0
WI–2	Long Island-Chequamegon Pt.	Ashland	Cedar (1964, photorevised 1975), Chequamegon Point (1964, photorevised 1975), Long Island (1964).	Federal (NPS) tribal (Bad River), private.	Current	25.3
WI–3	Western Michigan Island.	Ashland	Michigan Island (1963).	Federal (NPS)	Suitable	6.5
WI–4	Seagull Bar	Marinette	Marinette East (1963, photorevised 1969).	State, municipal	Suitable	1.5
WI–5	Point Beach State Forest.	Manitowoc	Two Rivers (1978)	State	Suitable	8.0
IL–1	Illinois Beach State Park to Waukegan Beach.	Lake	Zion, Ill. (1993), Waukegan (1993).	Municipal, State, private.	Historical	10.2
IN–1	Indiana Dunes National Lakeshore/Indiana Dunes State Park.	Porter	Ogden Dunes (1991), Dunes Acres (1991).	Federal (NPS), State	Historical, transient	7.9
OH–1	Sheldon Marsh	Erie	Huron (1969), Sandusky (1969, photorevised 1975).	State, private	Transient	3.2
OH–2	Headlands Dunes	Lake	Mentor (1963, revised 1992).	State	Historical/suitable	0.8
PA–1	Presque Isle State Park.	Erie	Erie North (1957, revised 1969 and 1975, photoinspected 1977).	State	Historical, transient	6.0
NY–1	Salmon River to Stony Point.	Oswego, Jefferson.	Pulaski (1956), Ellisburg (1958), Henderson (1959).	State, multiple private	Historical	27.4

[1] USACE = U.S. Army Corp of Engineers;NPS = National Park Service;TNC = The Nature Conservancy;USFS = U.S. Forest Service;USFWS = U;S. Fish and Wildlife Service;USCG = U.S. Coast Guard.
[2] Current = used for nesting since 1995; recent past = used for nesting since 1985; historical = used for nesting prior to 1985; transient = recent (since 1990) sightings of piping plovers; suitable = no known record of use but habitat appears suitable for nesting and is within the historic range of piping plover.

Michigan

Unit MI–1: Whitefish Point to Grand Marais

This unit encompasses approximately 83.5 km (50 mi) of Lake Superior shoreline in Chippewa, Luce, and Alger Counties on the Upper Peninsula of Michigan. It includes long stretches of habitat that have been recently used by piping plovers in addition to areas currently used by plovers. Approximately 47 km (29.2 mi) are part of Muskallonge State Park and Lake Superior State Forest, approximately 36 km (22.4 mi) are privately owned, and approximately 0.5 km (0.3 mi) are part of Whitefish Point National Wildlife Refuge. This unit also includes a small area of municipal property at Crisp Point. This unit extends from just southwest of Whitefish Point, around and including the Point, and westward to the Pictured Rocks National Lakeshore property boundary, excluding the area from the junction of Highway 58 and Morris Road to the breakwall north of the harbor near the former Coast Guard station in Grand Marais.

Unit MI–2: Pointe Aux Chenes

This unit encompasses approximately 1.7 km (1.1 mi) of Lake Michigan shoreline in Mackinac County on the Upper Peninsula of Michigan. It includes areas that are currently occupied by piping plovers. The majority of the unit (1.1 km (0.7 mi)) is within the Hiawatha National Forest and is being considered for a Research and Natural Area. The rest of the unit (approximately 0.6 km (0.4 mi)) is privately owned land. This unit extends from the mouth of the Pointe Aux

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Chenes river to the Hiawatha National Forest property boundary.

Unit MI–3: Port Inland to Hughes Point

This unit encompasses approximately 3 km (1.8 mi) of Lake Michigan shoreline in western Mackinac and eastern Schoolcraft Counties on the Upper Peninsula of Michigan. It includes areas that are currently occupied by piping plovers. Approximately 0.8 km (0.5 mi) of the designated shoreline is owned by Port Inland Stone and Dolomite Quarry and the remaining 2.2 km (1.4 mi) are part of the Lake Superior State Forest. This unit extends from the westernmost breakwall at the Port Inland Gaging Station to the mouth of Swan Creek.

Unit MI–4: Waugoshance Point to McCort Hill Beach

This unit encompasses approximately 32 km (19.2 mi) of Lake Michigan shoreline in Emmet County, Michigan, and includes Temperance and Waugoshance islands. It includes areas that are currently occupied by piping plovers and supports about half of the current Great Lakes piping plover population. Approximately 8.5 km (5.3 mi) are privately owned and 1 km (0.6 mi) is municipal land (Bliss Township beach and Cross Village beach). The remaining 22.5 km (14 mi) are part of Wilderness State Park. This unit extends from the junction of the northeast corner of T39N R5W section 28 and the Lake Michigan shoreline in Wilderness State Park, including Waugoshance and Temperance Islands, to the southwest boundary of T37N R6W section 5 south of Cross Village.

Unit MI–5: Sevenmile Point to Thornswift Nature Preserve

This unit encompasses approximately 7 km (4.3 mi) of Lake Michigan shoreline in Emmet County, Michigan. It includes areas of suitable piping plover nesting habitat and areas that are currently occupied by piping plovers. The entire designated area is under private ownership. It extends from the junction of the Lake Michigan shoreline and the northwest boundary of T36N R6W section 30 to the junction of the shoreline and the southeast corner of T35N R6W section 9.

Unit MI–6: Petoskey State Park

This unit encompasses approximately 2 km (1.2 mi) of Lake Michigan shoreline in Emmet County, Michigan. It includes areas of historical piping plover habitat. Approximately 0.7 km (0.4 mi) is privately owned land and 1.3 km (0.8 mi) are part of Petoskey State Park. This unit extends from the mouth of Tannery Creek to Mononaqua Beach.

Unit MI–7: North Point

This unit encompasses approximately 1.1 km (0.7 mi) of Lake Michigan shoreline in Charlevoix County, Michigan. It includes areas of suitable piping plover nesting habitat. The entire designated area is a city park owned by the city of Charlevoix. It includes all Lake Michigan shoreline within T34N R8W section 14.

Unit MI–8: Fisherman's Island State Park

This unit encompasses approximately 1.3 km (0.8 miles) of Lake Michigan shoreline in Charlevoix County, Michigan. It includes areas that are currently occupied by piping plovers. The entire designated area is within Fisherman's Island State Park. This unit extends from the junction of the line separating T34N R8W section 31 and T33N R8W section 6 from the Lake Michigan shore to the Fisherman's Island State Park property boundary at the end of Lakeshore Drive, including Fisherman Island.

Unit MI–9: Indian Point to McCauley's Point, Beaver Island

This unit encompasses approximately 5 km (3.1 mi) of Lake Michigan shoreline on Beaver Island in Charlevoix County, Michigan. It includes areas that are currently occupied, as well as areas that have been recently used by piping plovers. Approximately 4.4 km (2.7 mi) are privately owned and 0.6 km (0.4 mi) is part of Beaver Islands State Wildlife Research Area. This unit extends from Indian Point southward to the junction of the dividing line of T39 N R10W and T38N R10W and the Lake Michigan shoreline.

Unit MI–10: Greenes Bay, Beaver Island

This unit encompasses approximately 0.8 km (0.5 mi) of Lake Michigan shoreline on Beaver Island in Charlevoix County, Michigan. It includes areas that have been recently used by piping plovers. Approximately 0.3 km (0.2 mi) is part of the Beaver Islands State Wildlife Research Area and the remaining 0.5 km (0.3 mi) is privately owned land. This unit encompasses Greenes Bay on the western side of Beaver Island.

Unit MI–11: High Island

This unit encompasses approximately 1.8 km (1.1 mi) of Lake Michigan shoreline on High Island in Charlevoix County, Michigan. It includes areas that are currently occupied by piping plovers. The entire designated area is part of the Beaver Islands State Wildlife Research Area. This unit includes all Lake Michigan shoreline within T39N R11W section 32 and T38N R11W section 5 on the western side of the island and within T39N R11W section 27 on the northeastern corner of the island.

Unit MI–12: Cathead Bay to Christmas Cove

This unit encompasses approximately 5.1 km (3.2 mi) of Lake Michigan shoreline in Leelanau County, Michigan. It includes areas that are currently occupied by piping plovers and areas of suitable piping plover nesting habitat. Approximately 1.9 km (1.2 mi) are part of Leelanau State Park, and the remaining 3.2 km (2.0 mi) are privately owned land. This unit extends from the northwest end of Cathead Bay southward to just north of Christmas Cove, excluding lands of the Magic Carpet Woods Association HCP.

Unit MI–13: South Fox Island

This unit encompasses approximately 6 km (3.8 mi) of Lake Michigan shoreline on South Fox Island in Leelanau County, Michigan. It includes areas that were historically occupied by piping plovers. The entire designated area is part of the Beaver Island State Wildlife Research Area. This unit includes all Lake Michigan shoreline within T34N R13W sections 15, 16, and 21 on the south end of the island and within T35N R13W section 30 on the north end of the island.

Unit MI–14: North and South Manitou Islands

This unit encompasses approximately 3.3 km (2.1 mi) of Lake Michigan shoreline on North Manitou Island in Leelanau County, Michigan. It includes areas that are currently occupied by piping plovers. The entire designated area is part of Sleeping Bear Dunes National Lakeshore. This unit includes Dimmick's Point and Donner's Point on the southern end of North Manitou Island.

Unit MI–15: Crystal Run to Empire Beach

This unit encompasses approximately 18.6 km (11.6 mi) of Lake Michigan shoreline in Leelanau County, Michigan. It includes areas of suitable piping plover nesting habitat. Approximately 4.8 km (3.0 mi) are municipal beach in Glen Arbor Township, and the remaining 13.8 km (8.6 mi) are part of Sleeping Bear Dunes National Lakeshore. This unit extends from Crystal Run to the southern Sleeping Bear Dunes National Lakeshore property boundary.

Unit MI–16: Esch Road to Sutter Road and Point Betsie

This unit encompasses approximately 18.6 km (11.6 mi) of Lake Michigan shoreline in Benzie County, Michigan. It includes areas that are currently occupied by piping plovers, areas that were historically occupied, and areas of suitable piping plover nesting habitat. The majority of the unit (13.8 km (8.6 mi)) is part of Sleeping Bear Dunes National Lakeshore, 3.8 km (2.4 mi) are private land, and the remaining 1.0 km (0.6 mi) is U.S. Coast Guard land that is managed by The Nature Conservancy, a private conservation organization. This unit extends from Esch Road to the Sleeping Bear Dunes National Lakeshore property boundary at Sutter Road. The unit then continues from the Point Betsie Natural Area northern property boundary south to include all shoreline within T26N R16W section 4.

Unit MI–17: Nordhouse Dunes and Ludington State Park

This unit encompasses approximately 13.4 km (8.3 mi) of Lake Michigan shoreline in Mason County, Michigan. It includes areas that were historically occupied by piping plovers. At least one pair of piping plovers were sighted in the area in 1999, but no nests were found. Approximately 7.4 km (4.6 mi) are part of the Manistee National Forest/Nordhouse Dunes Wilderness Area, and the remaining 6.0 km (3.7 mi) are part of Ludington State Park. This unit extends from the mouth of Cooper Creek to the mouth of the Big Sable River.

Unit MI–18: Muskegon State Park

This unit encompasses approximately 2.5 km (1.6 mi) of Lake Michigan shoreline in Muskegon County, Michigan. It includes areas that were historically occupied by piping plovers. In the early 1950s, several pairs of piping plovers were reported nesting in this unit, but the last known nesting was in 1953. The entire designated area is part of Muskegon State Park. This unit extends from the north breakwall of the canal joining Muskegon Lake and Lake Michigan to the northern Muskegon State Park property boundary at the shoreline.

Unit MI–19: Lake Superior State Forest-St. Vital Point

This unit encompasses approximately 3.0 km (1.9 mi) of Lake Huron shoreline in Chippewa County, Michigan. It includes areas that were historically occupied by piping plovers. The entire designated area is within Lake Superior State Forest. This unit extends from the Lake Superior State Forest boundary to the mouth of Joe Straw Creek.

Unit MI–20: Lighthouse Point to Cordwood Point

This unit encompasses approximately 5.2 km (3.3 mi) of Lake Huron shoreline in Cheboygan County, Michigan. It includes areas that were historically occupied by piping plovers and currently serve as foraging areas. Approximately 3 km (1.9 mi) are part of Cheboygan State Park, and approximately 1.6 km (1 mi) are Nature Conservancy property. The remaining 0.6 km (0.4 mi) is privately owned land. This unit extends from the junction of the Lake Huron shoreline and the western boundary of T38N R1W section 22 near Lighthouse Point to just west of Cordwood Point.

Unit MI–21: P.H. Hoeft State Park

This unit encompasses approximately 3.7 km (2.3 mi) of Lake Huron shoreline in Presque Isle County, Michigan. It includes areas of suitable piping plover nesting habitat. The entire designated area is part of P.H. Hoeft State Park. This unit includes Lake Huron shoreline within T35N R5E section 6 northwestward to the junction of Nagel Road and Forty Mile Road.

Unit MI–22: Thompson's Harbor State Park

This unit encompasses approximately 2.8 km (1.7 mi) of Lake Huron shoreline in Presque Isle County, Michigan. It includes areas of suitable piping plover nesting habitat. Most of this designated area is within Thompson's Harbor State Park with a small portion of privately owned land. This unit extends along the Lake Huron shoreline from Black Point to Grand Lake Outlet.

Unit MI–23: Tawas Point State Park

This unit encompasses approximately 2.0 km (1.2 mi) of Lake Huron shoreline in Iosco County, Michigan. It includes areas used for foraging by transient piping plovers and suitable nesting habitat. The entire designated area is part of Tawas Point State Park. This unit extends from the Tawas Sate Park boundary on the east side of Tawas Point including all shoreline within T22N R8E section 34 and offshore sand spits.

Minnesota/Wisconsin

Unit MN/WI–1: Interstate Island

This unit encompasses approximately 0.6 km (0.4 mi) of Lake Superior shoreline on Interstate Island in St. Louis County, Minnesota and Douglas County, Wisconsin. Although piping plover nesting has not been documented on this island, it contains viable piping plover habitat. A portion of the 0.6 km (0.4 mi) of island shoreline on Interstate Island is in Minnesota, and a portion is in Wisconsin. Approximately 0.2 km (0.1 mi) of Interstate Island shoreline is owned by the State of Minnesota and is a State Wildlife Management Area and bird sanctuary. The remaining 0.4 km (0.2 mi) of Interstate Island shoreline is in Wisconsin and is private land owned by C. Rice Coal and Burlington Northern Railroad. This unit is comprised of Interstate Island.

Wisconsin

Unit WI–1: Wisconsin Point

This unit encompasses approximately 4.0 km (2.5 mi) of Lake Superior shoreline in Douglas County, Wisconsin. It includes areas that were historically occupied by piping plovers. Approximately 0.4 km (0.2 mi) of the unit is Army Corps of Engineers land. The rest of the designated area is municipal land belonging to the city of Superior. This unit extends from the mouth of Dutchman Creek to the Douglas and St. Louis County line.

Unit WI–2: Long Island/Chequamegan Point

This unit encompasses approximately 25.3 km (15.7 mi) of Lake Superior shoreline in Ashland County, Wisconsin. It includes areas currently occupied by piping plovers. Nesting occurred in this unit in 1998 and 1999. Approximately 11.2 km (6.9 mi) are part of the Apostle Islands National Lakeshore, approximately 9.0 km (5.6 mi) are private land, and the remaining 5.1 km (3.2 mi) are Tribal lands belonging to the Bad River Band of Lake Superior Tribe of Chippewa Indians. This unit extends from the base of Chequamegon Point (where it meets the mainland) to Chequamegon Point Light.

Unit WI–3: Western Michigan Island Beach and Dunes

This unit encompasses approximately 6.5 km (4 mi) of Lake Superior shoreline on Michigan Island in Ashland County, Wisconsin. It includes areas of suitable piping plover nesting habitat. The entire designated area is part of the Apostle Island National Lakeshore. This unit includes all Lake Superior shoreline on Michigan Island within T51N R1W sections 28, 20, and 21.

Unit WI–4: Seagull Bar

This unit encompasses approximately 1.5 km (0.9 mi) of Lake Michigan shoreline in Marinette County, Wisconsin. It includes areas of suitable piping plover nesting habitat. About one

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half of the unit is State owned and the other half is municipal property owned by the city of Marinette. This unit extends from the end of Leonard Street at Red Arrow Park to the south end of Seagull Bar including nearshore sand bars.

Unit WI–5: Point Beach State Forest

This unit encompasses approximately 8 km (5 mi) of Lake Michigan shoreline in Manitowoc County, Wisconsin. It includes areas of suitable piping plover nesting habitat. The entire designated area is part of the Point Beach State Forest. This unit extends from the southwest property boundary of Point Beach State Forest to Rawley Point.

Illinois

Unit IL–1: Illinois Beach State Park and Nature Preserve to Waukegan Beach

This unit encompasses approximately 10.2 km (6.3 mi) of Lake Michigan shoreline in Lake County, Illinois. It includes areas that were historically occupied by piping plovers. Approximately 4.7 km (2.9 mi) are part of the Illinois Beach State Park and Nature Preserve, approximately 1.3 km (0.8 mi) are municipal property (Zion municipal park and Waukegan municipal beach), and the remaining 4.2 km (2.6 mi) are privately owned. This unit extends from 17th Street and the Lake Michigan shoreline in Illinois Beach State Park southward to the northernWaukegan Beach breakwall at North Beach Park, excluding the public beach and campground to just south of the Illinois Beach State Park Lodge and Conference Center.

Indiana

Unit IN–1: Indiana Dunes National Lakeshore and Indiana Dunes State Park Beaches

This unit encompasses approximately 7.9 km (4.9 mi) of Lake Michigan shoreline in Porter County, Indiana. It includes areas that were historically occupied by piping plovers. 5 km (3.1 mi) are part of Indiana Dunes State Park and the remaining 2.9 km (1.8 mi) are part of Indiana Dunes National Lakeshore. This unit extends from the western boundary of the Cowels Bog/ Dune Acres Unit, east of the Port of Indiana and the NIPSCO Baily Generating Station and along the Indiana Dunes State Park to Kemil Road at Beverly Shores.

Ohio

Unit OH–1: Sheldon Marsh

This unit encompasses approximately 3.2 km (2.0 mi) of Lake Erie shoreline in Erie County, Ohio. It includes foraging areas for transient piping plovers and suitable nesting habitat. Approximately 1.2 km (0.7 mi) are part of Sheldon Marsh State Nature Preserve, and the remaining 2.0 km (1.2 mi) are privately owned land. This unit extends from the mouth of Sawmill Creek to the western property boundary of Sheldon Marsh State Natural Area.

Unit OH–2: Headland Dunes

This unit encompasses approximately 0.8 km (0.5 mi) of Lake Erie shoreline in Lake County, Ohio. It includes historical nesting habitat and areas of suitable piping plover nesting habitat. The entire designated area is part of Headland Dunes State Nature Preserve. This unit extends from the eastern boundary line of Headland Dunes Nature Preserve to the western boundary of the Nature Preserve and Headland Dunes State Park.

Pennsylvania

Unit PA–1: Gull Point Natural Area, Presque Isle State Park

This unit encompasses approximately 6.0 km (3.7 mi) of Lake Erie shoreline in Erie County, Pennsylvania. It includes foraging areas for transient piping plovers and areas that were historically used for nesting. The entire unit is part of the Presque Isle State Park. This unit extends from the lighthouse north of Peninsula Drive on the north side of Presque Isle to the southern terminus of the hiking trail on the southeast side of Gull Point. It includes any new beach habitat that may accrete along the present shoreline portion of the unit.

New York

Unit NY–1: Salmon River to Stony Point

This unit encompasses approximately 27.4 km (17 mi) of Lake Ontario shoreline in Jefferson and Oswego Counties, New York. It includes areas that were historically occupied by piping plovers. Approximately 12.4 km (7.7 mi) are State land (New York State Department of Environmental Conservation (DEC) Wildlife Management Area/ New York DEC Unique Area and New York State Park), approximately 14.6 km (9.1 mi) are privately owned, and the remaining 0.4 km (0.2 mi) belong to The Nature Conservancy. This unit extends from the mouth of the Salmon River to the Eldorado Road.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires all Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, Tribes, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires all Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its proposed or designated critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must consult with us. Through this consultation we would ensure that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a Federal action is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that we believe would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat. Further, some Federal agencies may have conferenced with us on proposed critical habitat. We may adopt the formal conference report as the biological opinion when critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

Activities on Federal lands that may affect the piping plover or its critical habitat will require section 7 consultation. Activities on private, State or Tribal lands requiring a permit from the U.S. Army Corps of Engineers (Army Corps) under section 404 of the Clean Water Act, or some other Federal action, including funding (e.g from the Federal Highway Administration, Environmental Protection Agency, or Federal Emergency Management Agency) will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to evaluate briefly in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to the extent that the value of critical habitat for both the survival and recovery of the Great Lakes breeding population of the piping plover is appreciably diminished. We note that such activities may also jeopardize the continued existence of the species.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to "jeopardize the continued existence" of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to "destroy or adversely modify" critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned when the area of the proposed action is occupied by the species. In those cases, it is highly unlikely that additional modifications to the action would be required as a result of designating critical habitat. However, critical habitat may provide benefits toward recovery when designated in areas unoccupied by the species.

Designation of critical habitat could affect Federal agency activities. Federal agencies already consult with us on activities that may affect the species to ensure that their actions do not jeopardize the continued existence of the species. These actions include, but are not limited to: (1) Marina and boat launch construction and maintenance; (2) harbor dredging and dredge spoil placement and disposal; (3) fill of interdunal wetlands for residence, driveway, or other construction; (4) waste-water discharge from communities; (5) all-terrain vehicular activity on beaches or the construction of facilities that increase such activity; (6) beach stabilization activities that impede natural overwash processes including beach nourishment, planting of vegetation, and construction and maintenance of seawalls, breakwaters, and other off-shore stabilizing devices; (7) sale, exchange, or lease of Federal land that contains suitable habitat that is likely to result in the habitat being destroyed or appreciably degraded; (8) oil and other hazardous material spills and cleanup; and (9) stormwater and wastewater discharge from communities. Additionally, public access may be temporarily or seasonally restricted on beaches under Federal ownership or jurisdiction to reduce disturbance so that piping plovers in search of suitable nesting sites could utilize them. Some of these closures may be voluntary by governmental and private land managers. Most closures would end prior to the time the public would frequent these beaches.

This section serves in part as a general guide to clarify activities that may affect or destroy or adversely modify critical habitat. However, specific Federal actions should be reviewed by the action agency. If the agency determines the activity may affect critical habitat, they will consult with us under section 7 of the Act. We will work with the agencies and affected public early in the consultation process to avoid or minimize potential conflicts and, whenever possible, find a solution that protects listed species and their habitat while allowing the action to go forward in a manner consistent with its intended purpose.

Exclusions Under Section 4(b)(2)

Subsection 4(b)(2) of the Act allows us to exclude areas from critical habitat designation where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. For the following reasons, we believe that in most instances the benefits of excluding areas covered by approved Habitat Conservation Plans (HCPs) from critical habitat designations will outweigh the benefits of including them.

(1) Benefits of Inclusion

The benefits of including HCP lands in critical habitat are normally small. The principal benefit of any designated critical habitat is that Federal activities in such habitat that may affect it require consultation under section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid adverse modification of critical habitat. Where HCPs are in place, our experience indicates that this benefit is small or non-existent. Currently approved and permitted HCPs are already designed to ensure the long-term survival of covered species within the plan area. Where we have an approved HCP, lands that we ordinarily would define as critical habitat for the covered species will normally be protected in reserves and other conservation lands by the terms of the HCP and its implementation agreements. The HCP and implementation agreements include management measures and protections for conservation lands that are crafted to protect, restore, and enhance their value as habitat for covered species.

In addition, a 10(a)(1)(B) permit issued by us as a result of an HCP application must itself undergo

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consultation. While this consultation may not look specifically at the issue of adverse modification of critical habitat, it will look at the very similar concept of jeopardy to the listed species in the plan area. Since HCPs, particularly large regional HCPs, address land use within the plan boundaries, habitat issues within the plan boundaries will have been thoroughly addressed in the HCP and the consultation on the HCP. Our experience is also that, under most circumstances, consultations under the jeopardy standard will reach the same result as consultations under the adverse modification standard. Implementing regulations (50 CFR Part 402) define "jeopardize the continued existence of" and "destruction or adverse modification of" in virtually identical terms. Jeopardize the continued existence of means to engage in an action "that reasonably would be expected to reduce appreciably the likelihood of both the survival and recovery of a listed species." Destruction or adverse modification means an "alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species." Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species, in the case of critical habitat by reducing the value of the habitat so designated. Thus, actions satisfying the standard for adverse modification are nearly always found to also jeopardize the species concerned, and the existence of a critical habitat designation does not materially affect the outcome of consultation. Additional measures to protect the habitat from adverse modification are not likely to be required.

Further, HCPs typically provide for greater conservation benefits to a covered species than section 7 consultations because HCPs assure the long term protection and management of a covered species and its habitat, and funding for such management through the standards found in the 5-Point Policy for HCPs (64 FR 35242) and the HCP No Surprises regulation (63 FR 8859). Such assurances are typically not provided by section 7 consultations which, in contrast to HCPs, often do not commit the project proponent to long term special management or protections. Thus, a consultation typically does not accord the lands it covers the extensive benefits an HCP provides.

The development and implementation of HCPs provide other important conservation benefits, including the development of biological information to guide conservation efforts and assist in species recovery and the creation of innovative solutions to conserve species while allowing for development. The educational benefits of critical habitat, including informing the public of areas that are important for the long-term survival and conservation of the species, are essentially the same as those that would occur from the public notice and comment procedures required to establish an HCP, as well as the public participation that occurs in the development of many regional HCPs. For these reasons, then, we believe that designation of critical habitat has little benefit in areas covered by HCPs.

(2) Benefits of Exclusion

The benefits of excluding HCPs from being designated as critical habitat may be more significant. During two public comment periods on our critical habitat policy, we received several comments about the additional regulatory and economic burden of designating critical habitat. These include the need for additional consultation with the Service and the need for additional surveys and information gathering to complete these consultations. HCP applicants have also stated that they are concerned that third parties may challenge HCPs on the basis that they result in adverse modification or destruction of critical habitat, should critical habitat be designated within the HCP boundaries.

The benefits of excluding HCPs include relieving landowners, communities and counties of any additional minor regulatory review that might be imposed by critical habitat. Many HCPs, particularly large regional HCPs, take many years to develop and, upon completion, become regional conservation plans that are consistent with the recovery of covered species. Many of these regional plans benefit many species, both listed and unlisted. Imposing an additional regulatory review after HCP completion may jeopardize conservation efforts and partnerships in many areas and could be viewed as a disincentive to those developing HCPs. Excluding HCPs provides us with an opportunity to streamline regulatory compliance and confirms regulatory assurances for HCP participants.

A related benefit of excluding HCPs is that it would encourage the continued development of partnerships with HCP participants, including States, local governments, conservation organizations, and private landowners, that together can implement conservation actions we would be unable to accomplish alone. By excluding areas covered by HCPs from critical habitat designation, we preserve these partnerships, and, we believe, set the stage for more effective conservation actions in the future.

In general, we believe the benefits of critical habitat designation to be small in areas covered by approved HCPs. We also believe that the benefits of excluding HCPs from designation are significant. Weighing the small benefits of inclusion against the benefits of exclusion, including the benefits of relieving property owners of an additional layer of approvals and regulation, together with the encouragement of conservation partnerships, would generally result in HCPs being excluded from critical habitat designation under Section 4(b)(2) of the Act.

Not all HCPs are alike with regard to species coverage and design. Within this general analytical framework, we need to individually evaluate completed and legally operative HCPs in the range of the Great Lakes breeding population of the piping plover to determine whether the benefits of excluding these particular areas outweigh the benefits of including them.

Presently, one approved HCP exists for the piping plover in the Great Lakes region. The Magic Carpet Woods Association HCP covers approximately 792 meters (2,600 feet) of shoreline within the proposed Cathead Bay critical habitat unit in Leelanau County, Michigan. This plan addresses the piping plover as a covered species and provides conservation management and protection for the species. We evaluated this plan and determined that the conservation management measures and protection afforded the piping plover are sufficient to assure its conservation on the involved lands. Consequently, we have determined that the benefits of excluding this area outweigh the benefits of inclusion, and have excluded the area covered by the HCP from the fixed critical habitat designation.

In the event that future HCPs covering the Great Lakes breeding population of the piping plover are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of the piping plover by either directing development and habitat modification to nonessential areas or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the piping plover. The process also enables us to conduct detailed evaluations of the importance of such lands to the long term survival of the species.

We will provide technical assistance and work closely with applicants throughout the development of future HCPs to identify lands essential for the long-term conservation of the piping plover and appropriate management for those lands. The take minimization and mitigation measures provided under these HCPs are expected to protect the essential habitat lands designated as critical habitat in this rule. If an HCP that addresses the piping plover as a covered species is ultimately approved, the Service will reassess the critical habitat boundaries in light of the HCP. The Service will seek to undertake this review when the HCP is approved, but funding constraints may influence the timing of such a review.

Should additional information become available that changes our analysis of the benefits of excluding any of these (or other) areas compared to the benefits of including them in the critical habitat designation, we may revise this final designation accordingly.

Similarly, if new information indicates any of these areas should not be included in the critical habitat designation because they no longer meet the definition of critical habitat, we may revise this final critical habitat designation. If, consistent with available funding and program priorities, we elect to revise this designation, we will do so through a subsequent rulemaking.

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, or requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits contact the U.S. Fish and Wildlife Service (see addresses section).

Summary of Comments and Recommendations

In the July 6, 2000, proposed rule (65 FR 41812), we requested all interested parties to submit comments on the specifics of the proposal including information, policy, treatments of HCPs, and proposed critical habitat boundaries as provided in the proposed rule. The first comment period closed on September 5, 2000. The comment period was reopened for 30 days, from September 19 to October 20, 2000 (65 FR 56530), to allow for additional comments on the proposed rule and comments on the draft economic analysis of the proposed critical habitat. Since our intention was to reopen the comment period for 60 days, we published a correction on September 28, 2000 (65 FR 58258), correcting the closing date of the reopened comment period to November 20, 2000. Comments received from July 6 to November 20, 2000, were entered into the administrative record.

We contacted all appropriate State and Federal agencies, Tribes, County governments, elected officials, and other interested parties and invited them to comment. In addition, we invited public comments through the publication of notices in newspapers in Minnesota, Wisconsin, Michigan, Illinois, Indiana, Ohio, Pennsylvania, and New York. In these notices and the proposed rule, we announced the dates and times of seven public hearings to be held on the proposed rule. Their dates and locations are specified above in the section "Previous Federal Actions". Transcripts of these hearings are available for inspection (see addresses section). We posted copies of the proposed rule and draft economic analysis on our internet site (http://midwest.fws.gov/).

We requested three ornithologists and conservation biologists, who have familiarity with the piping plover and its habitat requirements, to peer review the proposed critical habitat designation. All three responded by the close of the comment period. They provided valuable information about the biology, status, and historical range of the species, and suggested removing some areas from the critical habitat designation that no longer meet the criteria of piping plover critical habitat and provided data on other areas that may deserve critical habitat designation at a later date. These comments are addressed in this section, and relevant data provided by the reviewers have been incorporated throughout the rule.

We received a total of 140 written and 36 oral comments during the 2 public comment periods. Several people submitted comments more than once. In total, oral and written comments were received from 7 Federal agencies, 14 State agencies, 5 Tribal representatives, 3 elected officials, 10 local governments, 31 private organizations, and 97 private individuals. Comments were received from residents in 13 States, with Michigan sources submitting the most of any one State. All comments received were reviewed for substantive issues and new data regarding critical habitat and the biology and status of the Great Lakes breeding population of the piping plover, and economic information. We address all relevant comments received during the comment periods and public hearing testimonies in the following summary of issues. Comments of a similar nature are grouped into a single issue. Comments that we incorporated into this final rule are discussed in the "Summary of Changes from Proposed Rule" section of this document.

Issue 1: Biological Justification and Methodology

The following comments and responses involve issues related to the biological basis for the designation.

(1A) *Comment:* The broad scale of the proposed critical habitat includes areas that do not contain the primary constituent elements for the Great Lakes piping plover.

Response: We recognize that not all parcels of land within designated critical habitat units will contain the habitat components essential to piping plover conservation. We are required to designate critical habitat based on the best available information and to describe critical habitat (50 CFR 424.12(c)) with specific limits using reference points and specific definable boundaries. In preparation of the final determination, we used information gathered during the public comment period to more accurately define the written critical habitat boundaries. Despite our efforts to exclude areas that do not contain the primary constituent elements for the piping plover from critical habitat unit boundaries, it is not practicable to develop unit boundaries and provide maps and legal descriptions that exclude all developed areas such as towns, housing developments, or other developed lands unlikely to provide for the piping plover. Because of the time constraints imposed by the Court, and the absence of detailed Geographic Information System (GIS) coverage we defined the critical habitat unit boundaries as specifically as practicable but, due to the mapping scale, some areas not essential to the conservation of the piping plover were included within the boundaries of proposed critical habitat. However, developed areas such as buildings, marinas, paved areas, boat ramps, piers, bridges, lighthouses, and similar human-made structures are not being designated as critical habitat.

(1B) *Comment:* Designating critical habitat for the piping plover will result in such high public animosity that the designation will cause more harm to the species than benefit.

Response: Public support is a vital asset in the protection of endangered species and their habitat, but, by law we must designate essential areas as critical habitat even if it will cause public backlash due to misconceptions about its impacts. In an effort to clear up misunderstandings about critical habitat and to increase public support for piping plovers, we are increasing our education and outreach programs.

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(1C) *Comment:* One person commented that there is a lack of data to support the proposed measures and no data to support that designating critical habitat will result in an increased piping plover population.

Response: In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to designate as critical habitat, we are basing this critical habitat determination on the best scientific and commercial data available at the time of designation. The designation indicates the areas that we believe are essential to the conservation of the species. Designation of critical habitat is only one tool to use towards the recovery of the piping plover, and we will continue to work with other Federal agencies, State and local agencies, Tribes, the scientific community, local landowners, and the public to eliminate and reduce the range of threats that endanger this species.

(1D) *Comment:* Inland lakes are mentioned in the 1988 Recovery Plan as potential breeding habitat around the Great Lakes. Were smaller, inland lakes considered for designation?

Response: Inland lake records of piping plovers in the Great Lakes are very few and from long ago. Cottrille (1957) cites four records of piping plovers at three inland locations in Michigan between 1938 and 1954, but no such sightings have been made in recent years. Additionally, there are no inland lakes in the Great Lakes area that are presently known to contain the primary constituent elements for this population of piping plovers.

(1E) *Comment:* There is no mention of migratory sites or habitat needs during migration.

Response: Areas used by piping plovers on migratory routes are likely very important for survival to the next breeding season. Extraordinarily little is known, however, about important stop-over sites and habitat needs of the piping plover during migration. Because so little is known about where essential migratory stop-over sites are located, we did not designate migratory habitat in this rule. Important migratory sites may be added to the critical habitat designation (by following the complete proposal process and soliciting public comments) when we have a better understanding of migratory habitat requirements.

(1F) *Comment:* Why is unoccupied habitat being designated as critical habitat?

Response: The inclusion of unoccupied areas in this critical habitat designation is in accordance with section 3(5)(A) of the Act, which provides that areas outside the geographic area currently occupied by the species may meet the definition of critical habitat upon a determination that they are essential for the conservation of the species. Our regulations also provide for the designation of areas outside the geographical area currently occupied if we find that a designation limited to its present range would be inadequate to ensure the conservation of the species (50 CFR 424.12(e)).

In 2000, there were about 30 breeding pairs of piping plovers in the Great Lakes area, all of which occur in Michigan (Stucker et al. 2000). The Great Lakes and Northern Great Plains Piping Plover Recovery Plan (USFWS 1988b) establishes a recovery goal of 150 breeding pairs in the Great Lakes watershed. This number is considered a minimum for the recovery of the species and eventual removal from the protections of Act. Of these 150 breeding pairs, at least 100 are to be in Michigan and at least 50 in other Great Lakes States. In order to achieve this recovery goal, additional habitat areas are needed beyond those currently occupied by the species. We have designated currently unoccupied areas as critical habitat on the basis of historical piping plover occurrences and the existence of most or all of the primary constituent elements at other sites lacking historical occurrences. Additionally, all of the currently unoccupied areas designated as critical habitat are included as essential habitat in the draft revised Recovery Plan (USFWS 1994).

Issue 2: Policy and Regulations

The following comments and responses involve issues related to public involvement in the designation process and compliance with the Act and other laws, regulations, and policies.

(2A) *Comment:* Several commenters were supportive of the policy that lands covered by approved HCPs that provide incidental take authorization for the piping plover should be excluded from critical habitat. Other commenters believe that critical habitat designation should occur within the boundaries of such HCPs.

Response: We recognize that critical habitat is only one of many conservation tools for federally listed species. HCPs are one of the most important tools for reconciling land use with the conservation of listed species on non-Federal lands. Section 4(b)(2) of the Act allows us to exclude areas from critical habitat designation where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We believe that in most instances the benefits of excluding HCPs from critical habitat designations will outweigh the benefits of including them. For this designation, we find that the benefits of exclusion outweigh the benefits of designation for the one legally operative HCP issued for the piping plover in the Great Lakes.

We anticipate that future HCPs in the range of the Great Lakes breeding population of piping plovers will include it as a covered species and provide for its long term conservation. We expect that HCPs undertaken by local jurisdictions (e.g. counties, cities) and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of the plans that are essential for the long term conservation of the species. Section 10(a)(1)(B) of the Act sates that HCPs must meet issuance criteria, including minimizing and mitigating any take of the listed species covered by the permit to the extent practicable, and that the taking must not appreciably reduce the likelihood of the survival and recovery of the species in the wild. We fully expect that our future analyses of HCPs and section 10(a)(1)(B) permits under section 7 will show that covered activities carried out in accordance with the provisions of the HCP and section 10(a)(1)(B) permits will not result in the destruction or adverse modification of critical habitat designated for the piping plover.

In the event that future HCPs covering the Great Lakes breeding population of the piping plover are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of the piping plover by either directing development and habitat modification to nonessential areas or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the piping plover. We will provide technical assistance and work closely with applicants throughout the development of future HCPs to identify lands essential for the long term conservation of the species and appropriate management of those lands. If the piping plover is a covered species under future HCPs, the plans should provide for the long term conservation

of the species. The take minimization and mitigation measures provided under these HCPs are expected to adequately protect the essential habitat lands designated as critical habitat in this rule, such that the value of these lands for the survival and recovery of the Great Lakes breeding population of the piping plover is not appreciably diminished through direct or indirect alterations. If an HCP that addresses the piping plover as a covered species is ultimately approved, the Service will reassess the relevant critical habitat boundaries in light of the protection and management provided by the HCP. The Service will seek to undertake this review when the HCP is approved, but funding constraints may influence the timing of such a review. However, an HCP can proceed without a concurrent amendment to the critical habitat designation should all involved parties agree.

(2B) *Comment:* Specific lands should be excluded using the exemption afforded pursuant to 4(b)(2) of the Act. The biological benefits of critical habitat are outweighed by the benefits of exclusion.

Response: Section 4(b)(2) of the Act and 50 CFR 424.19 require us to consider the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude any area from critical habitat if we determine that the benefits of exclusion outweigh the benefits of designating the area as critical habitat, unless that exclusion will lead to extinction of the species. As discussed in this final rule, we have determined that no significant adverse economic effects will result from this critical habitat designation. Consequently, none of the proposed lands have been excluded from the designation based on economic impacts. As discussed in the response to the comment above, we have excluded the one legally operative HCP from the designation pursuant to section 4(b)(2) of the Act based on other relevant impacts.

(2C) *Comment:* We received three written requests to extend the comment period for the proposed designation and draft economic analysis.

Our Response: Following the publication of the proposed critical habitat designation on July 6, 2000, we opened a 60 day public comment period which closed on September 5, 2000, held seven public hearings during July, and conducted outreach notifying elected officials, local jurisdictions, interest groups, and property owners. We conducted much of this outreach through legal notices in regional newspapers, telephone calls, letters and news releases mailed to affected elected officials, local jurisdictions, and interest groups, and publication of the proposed determination and associated materials on our internet site. We published a document in the **Federal Register** on September 19, 2000, announcing the availability of the draft economic analysis and reopening the comment period until October 19, 2000. On September 28, 2000, in order to fulfill our intention that the comment period be reopened for 60 days, we published a document correcting the closing date of the comment period, to November 20, 2000. Because of the court-ordered ten month time frame for completing the designation, we were not able to extend or open an additional public comment period beyond the four and one-half months we provided.

(2D) *Comment:* We received two requests to hold additional public hearings on the proposed designation.

Our Response: We are required to hold one public hearing on a proposed action, if it is requested. Due to the short time between proposal and the court-ordered deadline for publication of the final rule, we chose to announce public hearings at the time the proposal was published. We published notification of the hearings in the **Federal Register** as part of the proposal, published legal notices in regional newspapers, posted information on our internet site, and issued news releases about the hearings. During the month of July, 2000, we held seven public hearings throughout the Great Lakes States affected by the proposed critical habitat designation. Additional public hearings were requested in locations near one of the seven hearings. Because of the court-ordered deadline and the broad coverage of the original public hearings, we chose not to hold additional public hearings.

(2E) *Comment:* One commenter suggested that we post the hearing transcripts and all of the comments received during the public comment period on the internet.

Response: We have not posted copies of hearing transcripts and the comments received on a proposed action on the internet in the past. The volume of public comments received on some proposals is very large, thus it is not practicable to post them on the internet at this time. The hearing transcripts and comments on the proposal to designate critical habitat for the Great Lakes breeding population of the piping plover are available during normal business hours at the U.S. Fish and Wildlife Service offices at: Bishop Henry Whipple Building, 1 Federal Drive, Fort Snelling, Minnesota 55111; and 2651 Coolidge Road, Suite 101, East Lansing, Michigan 48823. Call our Ecological Services office in Fort Snelling at 612–713–5350 for more information on how to view the transcripts and comments.

(2F) *Comment:* Alternatives to designating critical habitat were not considered.

Response: By law, according to section 4(a)(3) of the Act, we are required to designate critical habitat "to the maximum extent prudent" for all listed species. Furthermore, in the case of the piping plover, we were ordered by the United States District Court for the District of Columbia to designate critical habitat for the Great Lakes breeding population of this species. Other conservation actions are important to the recovery of the piping plover and will be carried out as part of the recovery process, but they are not legal alternatives to designating critical habitat.

(2G) *Comment:* A few commenters recommended that we postpone issuing a final determination until a more specific and defensible critical habitat proposal can be written and an accurate and quantitative economic analysis be conducted.

Response: We are required to use the best available information in designating critical habitat. We are under a court order to complete the designation of critical habitat for the Great Lakes breeding population of the piping plover by April 30, 2001. We did solicit new biological data and public participation during the comment periods on the proposed rule and draft economic analysis. These comments have been taken into consideration in the development of the final economic analysis and this final determination. Furthermore, we will continue to monitor and collect new information and may revise the critical habitat designation in the future if new information indicates a change is needed, given our available funding and priorities.

(2H) *Comment:* The maps presented in the proposed rule are difficult to interpret and therefore will be difficult to use in planning efforts.

Response: The maps published in the **Federal Register** are provided for reference purposes to guide Federal agencies and other interested parties in identifying the general boundaries within which the critical habitat is located. While the verbal descriptions of each critical habitat unit are meant to provide a more precise reference for actual boundaries, we recognize the value to the public and resource managers of more detailed maps. Due to

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the time constraints of the court ordered deadline and our limited Geographic Information System (GIS) capabilities, we have not been able to produce more detailed maps to match our verbal descriptions. We have made it a priority to complete more detailed GIS maps of the designated areas and make these maps available for public use.

Issue 3: Economic and Other Relevant Impacts

(3A) *Comment:* Designation of critical habitat will cause private property values to decline and will negatively affect businesses.

Response: The economic analysis indicates that designation of critical habitat for the Great Lakes breeding population on the piping plover will not have a significant economic impact. The economic analysis does acknowledge that the designation of critical habitat may have some effect on private property values. We believe that this short-term effect would occur from market uncertainty and public misperception of the impacts of the critical habitat designation on private land use. We also believe that this short-term effect on property values would diminish over time as the uncertainty and misperceptions are dispelled. We did not find supporting evidence during the preparation of the economic analysis to estimate or document this potential short-term effect on property values. The economic analysis determined that there will be an insignificant impact to businesses.

(3B) *Comment:* Several commenters expressed concern about a quick response to emergency maintenance activities, specifically emergency erosion control and environmental clean-up, and questioned whether emergency activities are exempt from consultation under section 7 of the Act.

Response: Emergency activities are not exempt from consultation under section 7 of the Act. However, the regulations at 50 CFR 402.05 allow for informal consultation where emergency circumstances mandate the need to consult in an expedited manner. Formal consultation must be initiated as soon as possible after the emergency is under control. In addition, programmatic consultations can be conducted prior to an emergency to address response activities which can be reasonably anticipated.

(3C) *Comment:* Some commenters voiced concern that they were not directly contacted for their opinions on the economic impacts of critical habitat designations or why their specific land parcels were not addressed.

Response: We did not feel it was necessary to contact every potential stakeholder in order for us to develop a draft economic analysis. Especially in light of the limited resources and time available to us, we believe that we were adequately able to understand the issues of concern to local communities based on public comments submitted on the proposed rule, on transcripts from public hearings, and from detailed discussions among our staff and with representatives from other Federal, State, Tribal, and local government agencies, as well as some landowners. When the draft economic analysis was completed, we reopened the comment period to request public comment, in particular on the adequacy of the economic analysis.

(3D) *Comment:* Several commenters expressed concern about the impact critical habitat will have on future development projects and the maintenance of existing structures.

Response: The designation of critical habitat does not necessarily restrict further development. Within critical habitat boundaries, Federal agencies must make special efforts to protect the important characteristics of these areas, therefore, if a proposed development project with a Federal nexus were to affect critical habitat of the piping plover, consultation under section 7 of the Act would be required. Because the Great Lakes population of the piping plover is listed as an endangered species under the Act, section 7 consultations would be required for development projects in areas with piping plovers, even if these areas are not designated critical habitat.

Existing human-made structures, such as buildings, parking lots, and boat ramps are not critical habitat, therefore, many maintenance projects on such structures will not affect critical habitat. Only those projects with a Federal nexus that modify the primary constituent elements to such a degree as to cause the habitat to be unsuitable for breeding piping plovers will be affected.

We understand the importance of beach nourishment and dredging for maintaining beach areas and harbors in the Great Lakes. Additionally, these activities, if conducted in an appropriate manner, may be beneficial to nesting piping plovers. These activities, however, do alter the habitat, and thus will likely require consultation. For these types of ongoing activities, programmatic consultations can be conducted to reduce the time necessary for annual consultations.

In those cases where consultation is required, we will work cooperatively with Federal agencies to see that necessary work can proceed in concert with the requirements of the Act to conserve the piping plover and its habitat. In cases where critical habitat has been designated for areas occupied by the piping plover, consultations would likely have been required, regardless of the designation of critical habitat.

(3E) *Comment:* A number of commenters expressed concern about the impact on recreational activities, tourism, and the possibility of restricted beach access within designated critical habitat.

Response: Most recreational activities on the majority of beaches within critical habitat will not be impacted by critical habitat designation. Since non-Federal activities are not affected by critical habitat designation, beach use would only be affected if a Federal agency funds, authorizes, or carries out an action that will result in a level of human use that precludes successful piping plover breeding. In those cases, we will work with the Federal agency involved to protect potential breeding habitat while having as minimal an effect as possible on people's enjoyment of the areas. On non-Federal lands, recreational beach activities such as walking, jogging, sunning, swimming, and picnicking will not be affected by the critical habitat designation.

The recovery of piping plovers in the Great Lakes area can be consistent with recreational and other economic activities. According to the 1996 National Survey of Fishing, Hunting, and Wildlife Associated Recreation, wildlife observation is one of the fastest growing outdoor activities. The presence of piping plovers on Michigan's beaches should continue to attract bird watchers who are excited to view this rare species in its natural habitat.

Issue 4: Site Specific Issues

The following comments and responses involve issues related to the inclusion or exclusion of specific areas, or our methods for selecting appropriate areas for designation as critical habitat.

(4A) *Comment:* Several comments pointed out errors in mileages, locations, or descriptions of critical habitat units in the proposed rule.

Response: Corrections have been made in the final rule to reflect these comments, where appropriate.

(4B) *Comment:* A number of commenters identified specific areas that they thought should not be designated as critical habitat.

Response: Where site specific documentation was submitted to us providing a rationale as to why an area should not be designated as critical habitat, we evaluated that information in accordance with the definition of critical habitat pursuant to section 3 of the Act and made a determination as to whether modifications to the proposal were appropriate. Based on the comments we received, we excluded lands from the final designation that we determined to be nonessential to the conservation of the piping plover (i.e., areas that did not contain the primary constituent elements) or that were located within an approved HCP for the piping plover (refer to the "Summary of Changes from Proposed Rule" section for specific areas that were excluded). None of the proposed lands have been excluded from the final designation based on economic impacts. We included in the final designation those lands that we still consider essential to the recovery of the Great Lakes breeding population of piping plovers.

(4C) *Comment:* Multiple commenters recommended adding specific lands to critical habitat or further investigating additional areas for suitable habitat.

Response: During the Federal rule-making process for designating critical habitat, we may, based upon information received during the public comment period, remove proposed critical habitat lands from a final designation and refine proposed boundaries. However, according to section 4(b)(4) of the Act, we may not add new critical habitat units without first proposing these lands in the **Federal Register** and providing a public comment period. Therefore, potential critical habitat units that were not included in the proposal for the Great Lakes population of the piping plover are not designated as critical habitat in this final determination.

Some of the lands recommended for addition to critical habitat were not included in the proposal because we earlier concluded that these lands were not essential for the conservation of the species or did not meet the definition of piping plover critical habitat. After reassessing the requested additional lands on South Fox Island in Michigan, we continue to believe that these lands, at this time, do not meet the definition of critical habitat because they do not contain the primary constituent elements required by piping plovers.

Several of the other requested sites were excluded from the proposed designation because information on current habitat suitability was not available. These sites will require further investigation to determine whether they are essential to the conservation of the species. Data gathered following the publication of the proposed rule indicates that some of the requested lands contain suitable nesting habitat and may be essential to the conservation of the species. For example, we received a comment from the National Park Service requesting that a portion of Sleeping Bear Dunes National Lakeshore on South Manitou Island, Michigan be included in the designation because it is an important piping plover foraging area. We will continue to investigate potential piping plover critical habitat and may revise the critical habitat designation in the future if new information supports a change, and as available funding and other priorities allow. The data on additional sites that were provided to us during the comment period will be important in any future revisions to designated critical habitat.

Issue 5: Other Relevant Issues

(5A) *Comment:* Two people commented that we should also designate critical habitat for piping plovers that breed along the north Atlantic coast.

Response: We are currently required to complete a significant number of listing-related actions, pursuant to court orders and judicially approved settlement agreements. Complying with these court orders and settlement agreements will require the Service to spend nearly all of its listing and critical habitat funding for fiscal year 2001, and a substantial amount in fiscal year 2002. We are currently working to prioritize our critical habitat workload within the ESA listing budget allocated by Congress. The priority for designating critical habitat for the Atlantic Coast breeding population of piping plovers relative to other species and pending litigation has not yet been determined.

(5B) *Comment:* Piping plovers that nest at Lake of the Woods, Minnesota represent an important genetic link between the Great Lakes and Great Plains populations. Piping plovers at Lake of the Woods should be considered part of the endangered Great Lakes breeding population instead of part of the threatened Great Plains breeding population.

Response: We agree that the piping plovers that nest at Lake of the Woods, Minnesota represent an important link between the Great Lakes and Great Plains populations. Piping plovers that nest at Lake of the Woods are considered part of the Great Plains population because current data suggested that they are more closely associated with plovers in nearby Manitoba, Canada (Haig and Oring, 1988). Proposed critical habitat for piping plovers at Lake of the Woods will be considered in the proposal to designate critical habitat for the Great Plains piping plover, to be published on or before May 31, 2001.

(5C) *Comment:* Many commenters suggested additional protection for piping plovers, beyond the designation of critical habitat.

Response: Other conservation actions, besides the designation of critical habitat, are crucial to the recovery and survival of the piping plover. These other actions, including public education, predator control, law enforcement, and monitoring are addressed in the 1988 and 1994 Recovery Plans for Piping Plovers Breeding in the Great Lakes and Northern Great Plains. We are currently revising these recovery plans and the public will be provided the opportunity to comment on the draft revised plan.

(5D) *Comment:* One commenter stated that the effect of critical habitat should include situations that are not funded, authorized, or carried out by a Federal agency.

Response: Once designated, critical habitat has only one regulatory impact: under section 7(a)(2) of the Act, Federal agencies must, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. By law, the effect of critical habitat does not extend to situations that do not involve a Federal nexus.

Summary of Changes From Proposed Rule

Based on a review of public comments received on the proposed determination of critical habitat for the Great Lakes breeding population of the piping plover, we re-evaluated our proposed designation of critical habitat for the piping plover. This re-evaluation resulted in the following changes that are reflected in this final determination.

Removal of Proposed Units

Based on comments received on the proposal and site visits following the publication of the proposal, we removed three sites—Pensaukee Harbor and Peshtigo Point, Wisconsin and Erie Pier/Hearding Island, Minnesota— from this final critical habitat designation. We determined that these sites do not have, and are unlikely to develop, the features and habitat characteristics that are necessary to sustain the species and thus we no longer consider these areas to be essential for the conservation of the species.

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Change in Extent of Inland Boundary

The proposed 1 km (0.6 mi.) inland boundary was intended to incorporate dune blow-out areas and extensive dune-wetland systems. These inland areas provide important foraging habitat, as well as cobble pans between the dunes where plovers occasionally nest. Data gathered during the public comment period indicate that the majority of the dune systems within designated critical habitat do not extend further than 500 m (1,640 ft) inland from the normal high water line. Therefore, in this final determination, the inland boundary for all critical habitat units was changed from the proposed 1 km (0.6 mi) to 500 m (1,640 ft) inland from normal high water line.

Errors in Unit Descriptions

Several comments pointed out corrections or clarifications to unit descriptions. We applied this corrected information to the final rule and adjusted the verbal descriptions of 10 units; White Fish Point to Grand Marais (MI–1), Seven Mile Point to Thornswift Nature Preserve (MI–5), Petoskey Sate Park (MI–6), Greenes Bay-Beaver Island (MI–10), High Island (MI–11), South Fox Island (MI–13), Esch Road to Sutter Road and Point Betsie (MI–16), Lighthouse Point to Cordwood Point (MI–20), Thompson's Harbor (MI–22), and Illinois Beach State Park/Waukegan Beach (IL–1). None of the changes resulted in any significant alteration of the units.

Refined Unit Boundaries

The boundaries of several of the units were refined to better reflect the areas that are essential to the conservation of the Great Lakes breeding population of the piping plover. The southeastern boundary of the unit at Long Island-Chequamegon Point, Wisconsin (WI–2) was moved northwestward approximately 5 km (3.1 mi) to the base of Chequamegon Point at the southern boundary of T48N R3W, section 1. This change was the result of discussions with the Bad River Band of Lake Superior Chippewa Indians and the Wisconsin Department of Natural Resources. The revised boundary excludes areas that do not have the required habitat features for nesting piping plovers and, therefore, are not essential to the conservation of the species. Additionally, the description of this unit given in the proposal, although inclusive of the entire peninsula, only calculated the length of the peninsula, not the perimeter shoreline of the peninsula. The calculation of the length of this unit as presented in this final determination includes the entire perimeter of the peninsula, and therefore appears to be larger, when in actuality it has been reduced by approximately 5 km (3.1 mi). The proposal states that the unit was 18 km (11.2 mi) long when, consistent with the verbal description and calculating both sides of the peninsula, it was actually 30.3 km (18.8 mi) long. Therefore, this unit is being reduced from 30.3 km (18.8 mi) to 25.3 km (15.7 mi) in this final determination.

The western boundary of the Indiana Dunes (IN–1) unit was moved approximately 549 meters (1,800 feet) eastward to the western boundary of Indiana Dunes National Lakeshore. This revised boundary excludes lands owned by the Northern Indiana Public Service Company (NIPSCO) that do not have the required habitat features for nesting piping plovers and, therefore, are not essential to the conservation of the species.

The southeastern boundary of the Pennsylvania unit (PA–1) at Gull Point Natural Area/Presque Isle State Park was moved approximately 2.3 km (1.4 mi) north. The refined boundary excludes the public beach area that does not have the required habitat features for nesting piping plovers and, therefore, is not essential to the conservation of the species. Additionally, the length of this unit was miscalculated in the proposed rule. The proposal states that the unit was 1.5 km (0.9 mi) long when, consistent with the verbal description, it was actually 8.3 km (5.1 mi) long. Therefore, this unit is being reduced from 8.3 km (5.1 mi) to 6.0 km (3.7 mi) in this final determination.

Exclusions Under Section 4(b)(2) of the Act

In our proposed determination of critical habitat for the Great Lakes population of the piping plover, we asked for public comment on the appropriate relationship between approved HCPs and designated critical habitat. After considering the comments we received, we have chosen to evaluate areas covered by an approved HCP for the piping plover for exclusion under the benefits-balancing test found in section 4(b)(2) of the Act. This section allows us to exclude areas upon determination that the benefits of excluding the area outweigh the benefits of including the are in the critical habitat designation, provided the exclusion would not result in the extinction of the species. Our application of this balancing test to lands covered by HCPs for the piping plover is described in detail in the preamble.

Presently, one approved HCP exists for the piping plover in the Great Lakes region. The Magic Carpet Woods Association HCP covers approximately 792 m (2,600 ft) of shoreline within the proposed Cathead Bay critical habitat unit in Leelanau County, Michigan. This plan addresses the piping plover as a covered species and provides conservation management and protection for the species. We evaluated this plan and determined that the conservation management measures and protection afforded to the piping plover are sufficient to assure its conservation on the involved lands. Among other features, the plan requires residences be set back from the beach, biological monitoring, the presence of a piping plover steward, containing garbage, and restraining pets. Therefore, we have excluded the lands covered by the Magic Carpet Woods Association HCP from the final determination of critical habitat for the Great Lakes breeding population of the piping plover.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial data available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species.

The economic analysis must examine the incremental economic effects of the critical habitat designation above those effects of the listing. Economic effects are measured as changes in national income, regional jobs, and household income. A draft analysis of the economic effects of the critical habitat designation for the Great Lakes breeding population of the piping plover was prepared (Industrial Economics, Incorporated, 2000) and made available for public review (September 19 to November 20, 2000; 65 FR 56530 and 65 FR 58258). We also completed a final economic analysis that incorporated public comments, information gathered since the draft analysis, and changes to the critical habitat designation. The analysis found that there would be an economic impact from the designation that would vary on a situational level, and that most of the impact would come in the form of new section 7 consultations in unoccupied habitat units. In the economic analysis, we estimate that, over the next ten years, the total costs by landowners associated with consultation and technical assistance attributable to this rulemaking will range between $314,200 and $592,000. Our economic analysis also recognizes that there may be costs from delays associated with reinitiating previously completed consultations after the critical habitat designation is made final. There may also be economic effects due to the reaction of the real estate market to critical habitat designation, as real estate values may be lowered due to a perceived increase in the regulatory burden. However, we believe this impact will be minor and short-term. We have determined that these economic impacts do not warrant excluding any areas from the designation.

A copy of the final economic analysis is included in our administrative record and may be obtained by contacting our office (see **ADDRESSES** section).

Required Determinations

Regulatory Planning and Review

This document has been designated as significant and reviewed by the Office of Management and Budget (OMB), in accordance with Executive Order 12866. OMB makes the final determination of significance under Executive Order 12866.

(a) This rule will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The Great Lakes breeding population of piping plover was listed as an endangered species in 1985. In fiscal years 1992 through 2000, we conducted only one formal section 7 consultation with other Federal agencies to ensure that their actions would not jeopardize the continued existence of the piping plover in the Great Lakes watershed. We have also issued one section 10(a)(1)(B) incidental take permit for an entity that has prepared an HCP involving piping plover habitat.

Approximately 236 km (146 mi) of the areas encompassing proposed critical habitat for the Great Lakes breeding population of piping plovers are currently unoccupied by piping plovers. The remaining 89 km (55 mi) of the total designated critical habitat are currently occupied by piping plovers. Under the Act, critical habitat may not be adversely modified or destroyed by a Federal agency action; it does not impose any restrictions on non-Federal entities unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency (see Table 3 below). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species.

TABLE 3.—ACTIVITIES POTENTIALLY IMPACTED BY PIPING PLOVER LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by species listing only [1]	Additional activities potentially affected by critical habitat designation [2]
Federal Activities Potentially Affected.[3]	Direct take and activities such as removing or destroying piping plover breeding habitat, whether by mechanical, chemical, or other means (e.g., construction, road building, boat launch and marina construction or maintenance, beach nourishment); recreational activities that significantly deter the use of suitable habitat areas by piping plovers or alter habitat through associated maintenance activities (e.g., off-road vehicle parks, paved walking paths); sale, exchange, or lease of Federal land that contains suitable habitat that may result in the habitat being destroyed or appreciably degraded (e.g., shoreline development, building of recreational facilities such as off-road vehicle parks, road building); activities that may result in increased human activity and disturbance.	Activities by Federal agencies in any unoccupied critical habitat areas.
Private and other non-Federal Activities Potentially Affected.[4]	Direct take and activities such as removing or destroying piping plover habitat, whether by mechanical, chemical, or other means (e.g., construction, road building, boat launch and marina construction or maintenance, beach nourishment) and appreciably decreasing habitat value or quality (e.g., increased predation, invasion of exotic species, increased human presence or disturbance) that require a Federal action (permit, authorization, or funding).	Funding, authorization, or permitting actions by Federal Agencies in any unoccupied critical habitat areas.

[1] This column represents the activities potentially affected by listing the piping plover as an endangered species (December 11, 1985; 50 FR 50726) under the Endangered Species Act.
[2] This column represents the activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[3] Activities initiated by a Federal agency.
[4] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

Based upon our experience with the species and its needs, we conclude that any Federal action or authorized action that could potentially cause adverse modification of designated occupied critical habitat would currently be considered "jeopardy" under the Act. Accordingly, the designation of areas within the geographic range occupied by the piping plover will not likely have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. The designation of areas outside the geographic range already occupied by the species may have incremental impacts on what activities may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. However, our analysis did not identify any significant incremental effects. Non-Federal persons that do not have a Federal "sponsorship" of their actions are not restricted by the designation of critical habitat, although they continue to be bound by the provisions of the Act concerning "take" of the species.

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of piping plovers

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since the listing in 1985. The prohibition against adverse modification of critical habitat is not expected to impose any substantial additional restrictions to those that currently exist. Because of the potential for impacts on other Federal agency activities, we will continue to review this action for any inconsistencies with other Federal agency actions.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and, as discussed above, we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have any significant incremental effects in areas of occupied habitat. The critical habitat designation may have some additional effects on the unoccupied areas of proposed critical habitat, but we expect these to be minor.

(d) OMB has determined that this rule may raise novel legal or policy issues and, as a result, this rule has undergone OMB review.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis, we determined that designation of critical habitat will not have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this designation of critical habitat for the Great Lakes breeding population of the piping plover is not expected to have a significant economic impact. As indicated on Table 1 (see Critical Habitat Designation section), we designated property owned by Federal, State, Tribal, and local governments and private property.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the U.S. Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Regulation of water flows, water delivery, and diversion by Federal agencies;

(3) Sale, exchange, or lease of lands owned by a Federal agency;

(4) Road construction and maintenance and right-of-way designation;

(5) Funding of low-interest loans to facilitate the construction of low-income housing by the Department of Housing and Urban Development;

(6) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency;

(7) Promulgation of air and water quality standards under the Clean Air Act and the Clean Water Act and the cleanup of toxic waste and superfund sites under the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act by the U.S. Environmental Protection Agency;

(8) Issuance of Endangered Species Act section 10(a)(1)(B) permits by the Fish and Wildlife Service; and

(9) Activities funded, carried out, or authorized by any Federal agency.

Some of these activities sponsored by Federal agencies within the critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed above, these actions are largely required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have significant additional effects on these activities in areas of critical habitat occupied by the species. Designation of critical habitat in areas that are unoccupied by this species will not likely result in significant additional effects because only actions involving a Federal nexus will be affected.

For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of the species remain in effect, and this final determination will have no additional restrictions.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we determined that designation of critical habitat will not cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this determination.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any of their actions involving Federal funding or authorization must not destroy or adversely modify the critical habitat in areas where they have not previously undergone consultation to avoid jeopardizing the species.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications, and a takings implication assessment is not required. This determination will not "take" private property and will not alter the long-term value of private property. As discussed above, the designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of the piping plover. Due to current public knowledge of the species protection, the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions, we do not anticipate that property values will be affected by the critical habitat designation. While real estate market values may temporarily decline following designation, due to the perception that critical habitat designation may impose additional regulatory burdens on land use, we expect any such impacts to be short term. Additionally, critical habitat designation does not preclude development of HCPs and issuance of incidental take permits. Landowners in areas that are included in the designated critical habitat will continue to have the opportunity to utilize their property in ways consistent with the conservation of the piping plover.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, the Service requested information from and coordinated development of this critical habitat proposal with appropriate State resource agencies in Minnesota, Wisconsin, Michigan, Illinois, Indiana, Ohio, Pennsylvania, and New York, as well as during the listing process. We will continue to coordinate any future designation of critical habitat for the Great Lakes piping plover with the appropriate State agencies. The designation of critical habitat for the piping plover imposes few additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary for the conservation of the species are specifically identified. This definition and identification may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Act. The determination uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Great Lakes breeding population of piping plover.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

National Environmental Policy Act

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act as amended. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This final determination does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Government" (59 FR 22951), Executive Order 13175, and the Department of the Interior's requirement at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a Government-to-Government basis. We believe that certain Tribal lands are essential for the conservation of the piping plover because they support essential populations and habitat. We coordinated with the Bad River Band of Lake Superior Chippewa Indians in determining which Tribal lands constitute critical habitat, and have included that area in the critical habitat designation.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Fort Snelling Regional Office (see **ADDRESSES** section).

Author

The primary author of this notice is Laura J. Ragan (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

Regulations Promulgation

For the reasons given in the preamble, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h) revise the first entry for "Plover, piping" under "BIRDS" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic Range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
BIRDS							
Plover, piping	*Charadrius melodus.*	U.S.A. Great Lakes northern Great Plains, Atlantic and Gulf coasts, PR, VI), Canada, Mexico, Bahamas, West Indies.	Great Lakes watershed in States of IL, IN, MI, MN, NY, OH, PA, and WI and Canada (Ont.)..	E	211	17.95(b)	NA

3. Amend § 17.95(b) by adding critical habitat for the Great Lakes piping plover (*Charadrius melodus*) under paragraph (b) in the same alphabetical order as this species occurs in § 17.11 (h) to read as follows:

§ 17.95 Critical habitat-fish and wildlife.

* * * * *

(b) *Birds.*

* * * * *

PIPING PLOVER (*Charadrius melodus*)—Great Lakes Breeding Population

1. Critical habitat units are depicted for St. Louis County, Minnesota; Douglas, Ashland, Marinette, and Manitowoc Counties, Wisconsin; Lake County, Illinois; Porter County, Indiana; Erie and Lake Counties, Ohio; Erie County, Pennsylvania; Oswego and

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Jefferson Counties, New York; and Alger, Schoolcraft, Luce, Mackinac, Chippewa, Iosco, Presque Isle, Cheboygan, Emmet, Charlevoix, Leelanau, Benzie, Mason, and Muskegon Counties, Michigan, on the maps below.

2. i. The primary constituent elements required to sustain the Great Lakes breeding population of the piping plover are found on Great Lakes islands and mainland shorelines that support open, sparsely vegetated sandy habitats, such as sand spits or sand beaches, that are associated with wide, unforested systems of dunes and inter-dune wetlands. In order for habitat to be physically and biologically suitable for piping plovers, it must have a total shoreline length of at least 0.2 km (0.12 mi) of gently sloping, sparsely vegetated (less than 50 percent herbaceous and low woody cover) sand beach with a total beach area of at least 2 hectares (ha) (5 acres (ac)) and a low level of disturbance from human activities and from domestic animals. As the nesting season progresses, the level of disturbance tolerated by piping plovers increases. A lower level of disturbance is required at the beginning of the nesting period during nest site selection, egg laying, and incubation. Beach activities that may be associated with a high level of disturbance include, but are not limited to, walking pets off leash, loud noise, driving ATVs, or significantly increased human presence. The level of disturbance is relative to the proximity to the nest, intensity, and frequency of these and other similar activities.

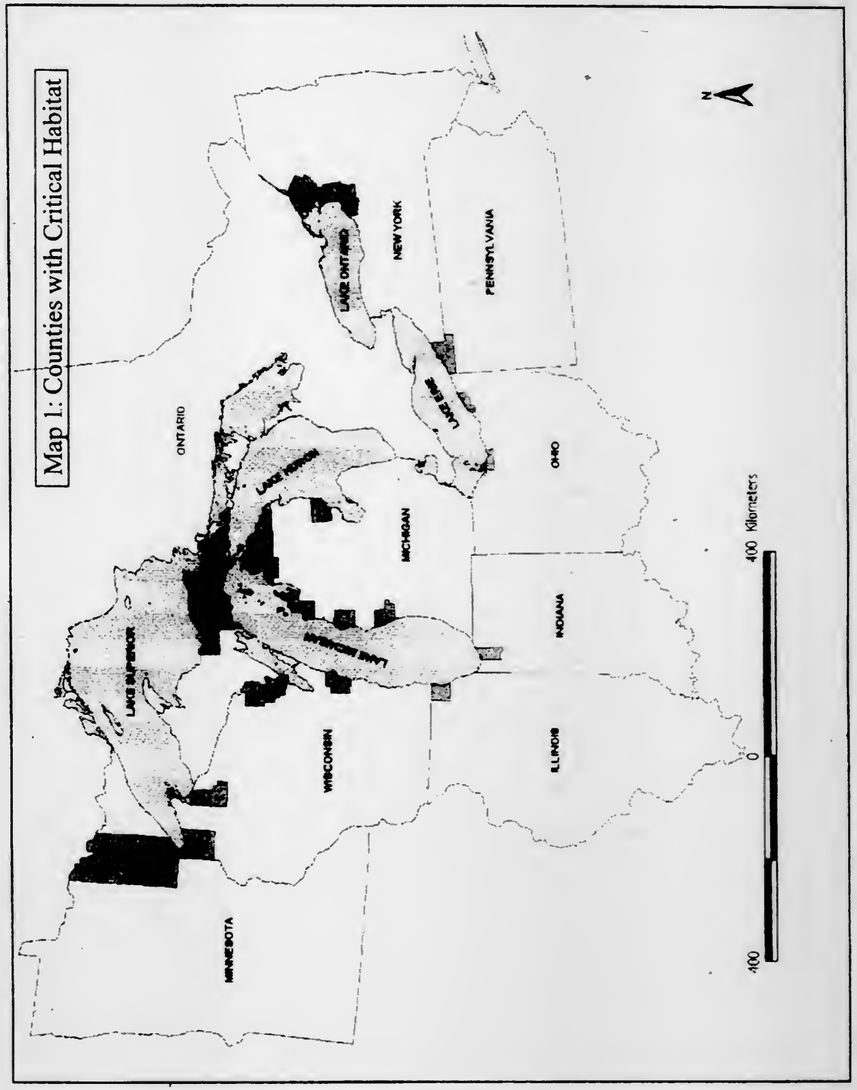
ii. Appropriately sized sites must also have areas of at least 50 meters (m) (164 feet (ft)) in length where the beach width is more than 7 m (23 ft), there is protective cover for nests and chicks, and the distance to the treeline (from the normal high water line to where the forest begins) is more than 50 m (164 ft). Beach width is defined as the distance from the normal high water line to the foredune (a low barrier dune ridge immediately inland from the beach) edge, or to the sand/vegetation boundary in areas where the foredune is absent. The beach width may be narrower than 7 m (23 ft) if appropriate sand and cobble areas of at least 7 m (23 ft) exist between the dune and the treeline. Protective cover for nests and chicks consists of small patches of herbaceous vegetation, cobble (stones larger than 1 cm (0.4 inches (in)) diameter), gravel (stones smaller than 1 cm (0.4 in) diameter), or debris such as driftwood, wrack, root masses, or dead shrubs.

iii. The dynamic ecological processes that create and maintain piping plover habitat are also important primary constituent elements. These geologically dynamic lakeside regions are controlled by processes of erosion, accretion, plant succession, and lake-level fluctuations. The integrity of the habitat components depends upon regular sediment transport processes, as well as episodic, high-magnitude storm events. By their nature, Great Lakes shorelines are in a constant state of change; habitat features may disappear, or be created nearby. The critical habitat boundaries reflect these natural processes and the dynamic character of Great Lakes shorelines.

3. Critical habitat does not include existing features and structures, such as buildings, marinas, paved areas, boat ramps, piers, bridges, lighthouses, and similar structures not containing one or more of the primary constituent elements.

Note: Maps follows:

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Map of Units MN/WI–1, WI–1, WI–2, and WI–3

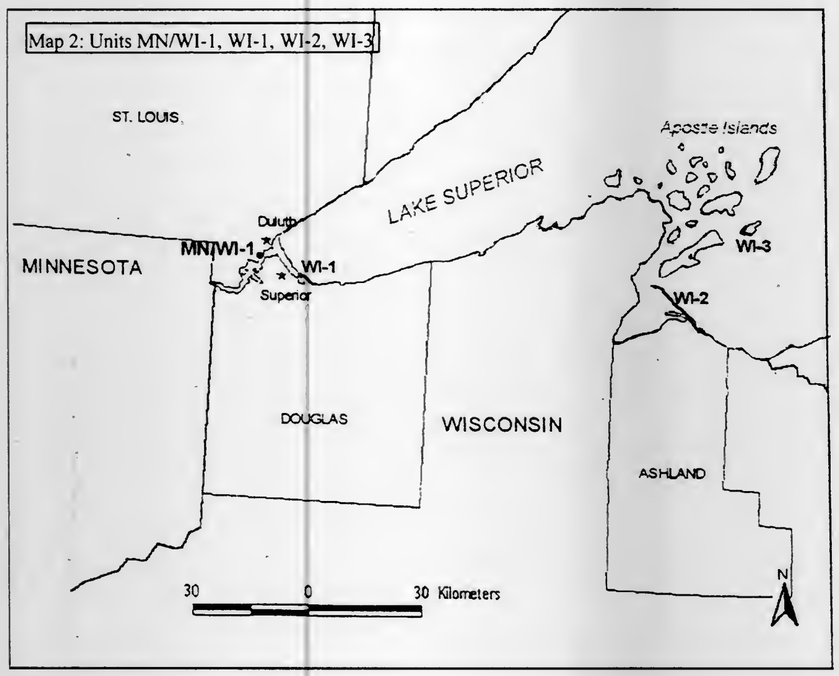
MN/WI–1: St Louis County, Minnesota. From USGS 1:24,000 quadrangle map West Duluth, Minnesota (1953, photorevised 1969). Lands 500 m (1640 feet) inland from normal high water line on Interstate Island in T49N R14W S10

WI–1: Douglas County, Wisconsin. From USGS 1:24,000 quadrangle maps Parkland, Wisconsin (1954, photorevised 1975) and Superior, Wisconsin (1954, photorevised 1983). Lands 500 meters (1640 feet) inland from normal high water line from the mouth of Dutchman Creek west-northwestward along the Lake Superior shoreline to the breakwall forming the Superior Front Channel opening to Lake Superior at the Douglas and St. Louis County line.

WI–2: Ashland County, Wisconsin. From USGS 1:24,000 quadrangle maps Cedar, Wisconsin (1964, photorevised 1975); Chequamegon Point, Wisconsin (1964, photorevised 1975); and Long Island, Wisconsin (1964). Lands 500 meters (1640 feet) inland from normal high water line from the southern boundary of T48N R3W, section 1 northwestward along the Lake Superior shoreline to Chequamegon Point Light.

WI–3: Ashland County, Wisconsin. From USGS 1:24,000 quadrangle map Michigan Island, Wisconsin (1963). Lands 500 meters (1640 feet) inland from normal high water line on Michigan Island within T51N R1W sections 28, 20, and 21.

Note: Map follows:

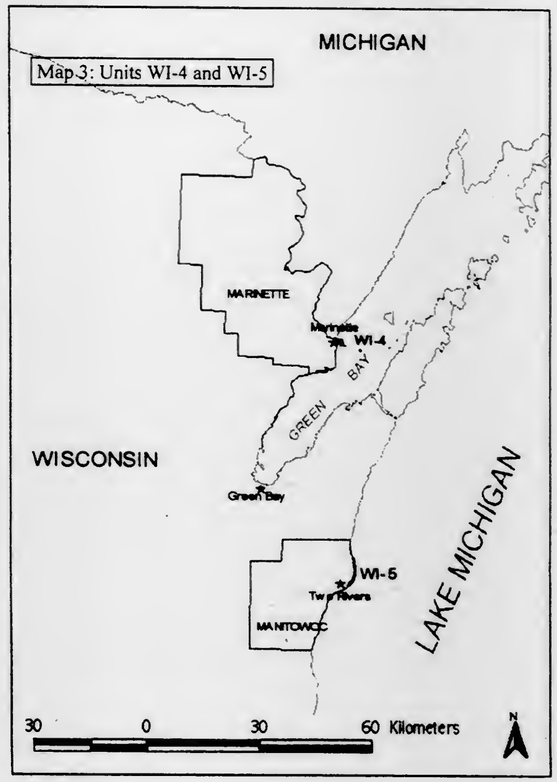


Map of Units WI–4 and WI–5

WI–4: Marinette County, Wisconsin. From USGS 1:24,000 quadrangle map Marinette East, Wisconsin (1963, photorevised 1969). Lands 500 m (1640 ft) inland from normal high water line from the end of Leonard Street at Red Arrow Park in T30N R24E section 9 south-southeastward to the south end of Seagull Bar including nearshore sand bars.

WI–5: Manitowoc County, Wisconsin. From USGS 1:24,000 quadrangle map Two Rivers, Wisconsin (1978). Lands 500 m (1640 ft) inland from normal high water line from the southwest property boundary of Point Beach State Forest near Neshotah Park in the city of Twin Rivers (T20N R25E section 31) northwestward along the Lake Michigan shoreline to the south boundary of section 9, T20N R25E, at Rawley Point.

Note: Map follows:



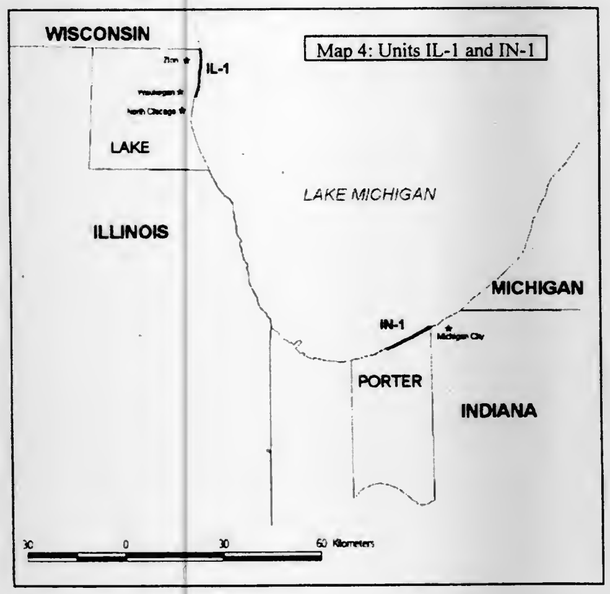
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Map of Units IL–1 and IN–1

IL–1: Lake County, Illinois. From USGS 1:24,000 quadrangle maps Zion, Illinois (1993) and Waukegan, Illinois (1993). Lands 500 m (1640 ft) inland from normal high water line from 17th Street and the Lake Michigan shoreline in Illinois Beach State Park T46N R12E section 14 (Zion, Ill. quad) southward along the Lake Michigan shoreline (excluding the portion of Lake Michigan shoreline from dividing line of T46N R12E sections 23 and 26 to 500 m (1,640 ft) south of the Illinois Beach State Park Lodge and Conference Center) to the Waukegan Beach breakwall at North Beach Park T45N R12E section 22 (Waukegan quad).

IN–1: Porter County, Indiana. From USGS 1:24,000 quadrangle maps Ogden Dunes, Indiana (1991) and Dune Acres, Indiana (1991). Lands 500 m (1640 ft) inland from normal high water line from the western boundary of the Cowels Bog/Dune Acres Unit, (located east of the Port of Indiana and the NIPSCO Baily Generating Station) east-northeastward along the Indiana Dunes State Park to Kemil Road at Beverly Shores.

Note: Map follows:



Map of Units MI–1 through MI–23

MI–1: Chippewa, Luce, and Alger Counties, Michigan. From USGS 1:24,000 quadrangle maps Whitefish Point, Michigan (1951); Vermilion, Michigan (1951); Betsy Lake North, Michigan (1968); Muskallonge Lake East, Michigan (1968); Muskallonge Lake West, Michigan (1968); and Grand Marais, Michigan (1968). Lands 500 m (1640 ft) inland from normal high water line within the junction of the southern boundary of T50N R5W section 6 (Whitefish Point quad) and including the shore of Lake Superior following the shoreline northeast to Whitefish Point, then following the Lake Superior shoreline westward around the point(Vermilion SE, Vermilion quads), crossing the Luce County line and continuing westward (Betsy Lake North, Betsy Lake Northwest) across the Alger County line (Grand Marais East) to Lonesome Point and the East Bay of the Sucker River (Grand Marais quad) and following the shoreline along the inner bay of Grand Marais Harbor past Carpenter Creek and ending at the shoreline north of the east end of the private road originating at the junction of Highway 58, Morris Road, and Veteran Road. The unit then continues from the breakwall north of the harbor, along the Lake Superior shoreline of Grand Marais near the former Coast Guard station (Grand Marais quad) westward along the Lake Superior shoreline to the Pictured Rocks National Lakeshore property boundary in T49N R14W section 1.

MI–2: Mackinac County, Michigan. From USGS 1:24,000 quadrangle map Pointe Aux Chenes, Michigan (1964, photorevised 1975). Lands 500 m (1640 ft) inland from normal high water line from the mouth of the Pointe Aux Chenes river following the Lake Michigan shoreline northwestward to the Hiawatha National Forest property boundary at the junction of T41N R5W sections 23 and 26.

MI–3: Schoolcraft and Mackinac Counties, Michigan. From USGS 1:24,000 quadrangle map Hughes Point, Michigan (1972). Lands 500 m (1640 ft) inland from normal high water line from the westernmost breakwall at the Port Inland Gaging Station following the Lake Michigan shoreline eastward along Hughes Point to the mouth of Swan Creek.

MI–4: Emmet County, Michigan. From USGS 1:24,000 quadrangle maps Big Stone Bay, Michigan (1964, photoinspected 1975); Waugoshance Island, Michigan (provisonal 1982); Bliss, Michigan (1982); Cross Village, Michigan (1982). Lands 500 m (1640 ft) inland from normal high water line from the junction of the northeast corner of T39N R5W section 28 (Big Stone Bay quad) and Lake Michigan shoreline westward along the shoreline around and including Temperance and Waugoshance islands and any nearshore sandbars (Waugoshance Island quad), along the southern side of Waugoshance Point following the shoreline southeastward to Big Sucker Creek, continuing southward and southwestward along Sturgeon Bay Point (Bliss quad) and continuing southward along the Lake Michigan shoreline to the southwest boundary of T37N R6W section 5.

MI–5: Emmet County, Michigan. From USGS 1:24,000 quadrangle map Forest Beach, Michigan. Lands 500 m (1640 ft) inland from normal high water line from the junction of Lake Michigan shoreline and the northwest boundary of T36N R6W section 30 south-southeastward along Lake Michigan shoreline to the junction of the shoreline and the southeast corner of T35N R6W section 9.

MI–6: Emmet County, Michigan. From USGS 1:24,000 quadrangle map Harbor Springs, Michigan. Lands 500 m (1640 ft) inland from normal high water line from the mouth of Tannery Creek north along Lake Michigan shoreline of Little Traverse Bay crossing the northern property boundary of Petoskey State Park to include the shoreline of Mononaqua Beach within T35N R5W sections 22 and 21.

MI–7: Charlevoix County, Michigan. From USGS 1:24,000 quadrangle maps Ironton, Michigan (1983) and Charlevoix, Michigan (1983). Lands 500 m (1640 ft) inland from normal high water line within T34N R8W section 14.

MI–8: Charlevoix County, Michigan. From USGS 1:24,000 quadrangle map Charlevoix, Michigan (1983). Lands 500 m (1640 ft) inland from normal high water line from the junction of the line separating T34N R8W section 31 and T33N R8W section 6 with the Lake Michigan shore then extends southwestward along the shoreline and including Fisherman's Island to the Fisherman's Island State Park property boundary at the end of Lakeshore Drive where it meets the line between T33N R9W sections 12 and 1.

MI–9: Charlevoix County, Michigan. From USGS 1:24,000 quadrangle maps Garden Island West, Michigan (1980) and Beaver Island North (1986). Lands 500 m (1640 ft) inland from normal high water line from Indian Point (Garden Island West quad) T39N R10W section 20 southward along the west Lake Michigan shoreline of Beaver Island including Donegal Bay and McCauley Point and ending at the junction of the dividing line of T39 N R10W and T38N R10W and the Lake Michigan shoreline (Beaver Island North quad).

MI–10: Charlevoix County, Michigan. From USGS 1:24,000 quadrangle map Beaver Island North (1986). Lands 500 m (1640 ft) inland from normal high water line from the junction of Lake Michigan and the northwest corner of T38N R11W section 25 southward along the Lake Michigan shoreline to the junction of the Lake Michigan shoreline and the dividing line between T39N and T38N R11W.

MI–11: Charlevoix County, Michigan. From USGS 1:24,000 quadrangle map High Island(1986). Lands 500 m (1640 ft) inland from normal high water line within T39N R11W sections 27 and 32 and T38N R11W section 5.

MI–12: Leelanau County, Michigan. From USGS 1:24,000 quadrangle maps Northport, Michigan (provisional 1983)and Northport NW, Michigan (provisional 1983). Lands 500 m (1640 ft) inland from normal high water line from the intersection of the Lake Michigan shoreline and the line between T32N R11W section 12 and T32N R10W section 7—excluding lands covered by the Magic Carpet Woods Association HCP, approximately 2,600 feet of frontage on Cathead Bay within the east half of the southwest quarter and the west half of the southeast quarter of Section 14, T32N, R11W in Leelanau Township—then following the shoreline southwestward and past Cathead Point in T32N R11W section 15 (Northport quad) southwestward along the Lake Michigan shoreline to the intersection of the shoreline with the southern boundary of T32N R11W section 16 north of Christmas Cove (Northport NW quad).

MI–13: Leelanau County, Michigan. From USGS 1:24,000 quadrangle map South Fox Island (provisional 1986). Lands 500 m (1640 ft) inland from normal high water line within T34N R13W sections 15, 16, and 21 and T35R13W section 30.

MI–14: Leelanau County, Michigan. From USGS 1:24,000 quadrangle map North Manitou Island (provisional 1983). Lands 500 m (1640 ft) inland from normal high water line within T31N R14W sections 22, 23, 27 and 28 on North Manitou Island.

MI–15: Leelanau County, Michigan. From USGS 1:24,000 quadrangle maps Glen Arbor, Michigan (1983); Glen Haven, Michigan (1983); and Empire, Michigan (1983). Lands 500 m (1640 ft) inland from normal high water line from Crystal Run in T29N R14W section 14 (Glen Arbor quad) south-southwestward and westward along the Lake Michigan shoreline, then west-northwestward to Sleeping Bear Point (Glen Haven quad) and southwestward and south to the southern Sleeping Bear Dunes National Lakeshore property boundary in T28N R15W section 13 (Empire quad).

MI–16: Benzie County, Michigan. From USGS 1:24,000 quadrangle maps Empire, Michigan (1983); Beulah, Michigan (provisional 1983); and Frankfort, Michigan (1983). Lands 500 m (1640 ft) inland from normal high water line from Esch Road in T27N R15W section 1 (Empire quad) south-southwestward along the shoreline of Lake Michigan at Platte Bay (Beulah quad), then westward along the shoreline of Lake Michigan to Platte River Point (Frankfort quad) continuing west-southwestward to the Sleeptng Bear Dunes National Lakeshore property boundary at Sutter Road in T27N R16Wsection 26. Continuing from the junction of Lake Michigan shoreline and Point Betsie Natural Area property boundary in T27N R16W section 33 southward along the Lake Michigan shoreline to include all shoreline within T26N16W section 4.

MI–17: Mason County, Michigan. From USGS 1:24,000 quadrangle maps Manistee NW, Michigan (provisional 1923) and Hamlin Lake, Michigan (1982). Lands 500 m (1640 ft) inland from normal high water line from the mouth of Cooper Creek T20N R18W section 13 (Manistee NW quad) south-southwestward following the Lake Michigan shoreline along Big Sable Point (Hamlin Lake quad) to the mouth of the Big Sable River T19N R18W section 19.

MI–18: Muskegon County, Michigan. From USGS 1:24,000 quadrangle map Muskegon West (1972, photoinspected 1980) and Dalton (1983). Lands 500 m (1640 ft) inland from normal high water line from the north breakwall of the canal joining Muskegon Lake and Lake Michigan (Muskegon West quad) north along the Lake Michigan shoreline to the northern Muskegon State Park property boundary at the shoreline (Dalton quad).

MI–19: Chippewa County, Michigan. From USGS 1:24,000 quadrangle maps Albany Island, Michigan (1964, photoinspected 1976) and DeTour Village, Michigan (1964). Lands 500 m (1640 ft) inland from normal high water line from the State Forest boundary in T41N R3E section 11 (Albany Island quad) and follows the Lake Huron shoreline east south eastward around and including St. Vital Point and then north to the mouth of Joe Straw Creek in T41N R3E section 12(De Tour Village quad).

MI–20: Cheboygan County, Michigan. From USGS 1:24,000 quadrangle maps Cheboygan, Michigan (1982) and Cordwood Point, Michigan (1982). Lands 500 m (1640 ft) inland from normal high water line from the junction of the Lake Huron shoreline and the western boundary of T38N R1W section 22 (Cheboygan quad) eastward along the Lake Huron shoreline of Grass Bay, continuing to the western boundary of T38N R1E section 20 (Cordwood Point quad).

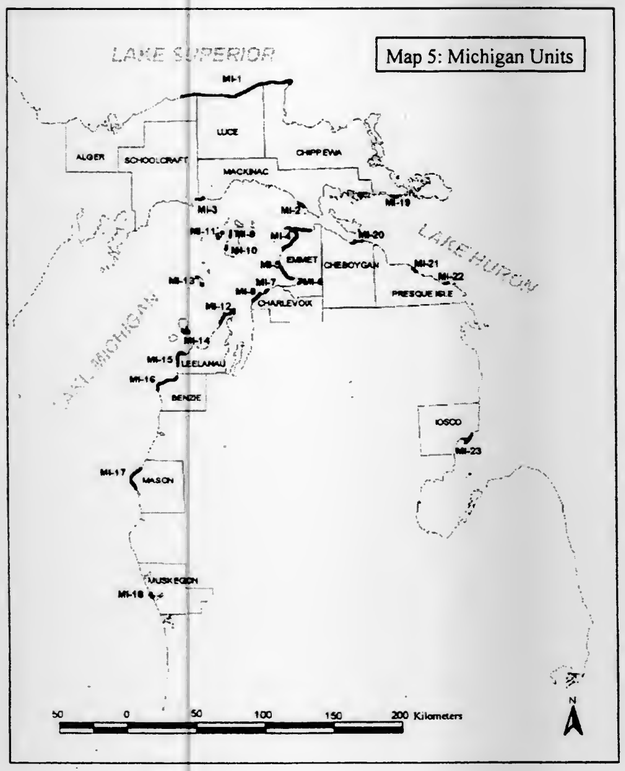
MI–21: Presque Isle County, Michigan. From USGS 1:24,000 quadrangle maps Roger's City, Michigan (1971) and Moltke, Michigan (1971). Lands 500 m (1640 ft) inland from normal high water line within T35N R5E section 6 and T36N R5E section 31 (Roger's City quad) continuing northwestward to the junction of Nagel Rd and Forty Mile Road at the junction of T36N R4E section 25 and T36N R5E section 30 (Moltke quad).

MI–22: Presque Isle County, Michigan. From USGS 1:24,000 quadrangle map Thompson's Harbor, Michigan (1971). Lands 500 m (1640 ft) inland from normal high water line from Black Point to Grand Lake Outlet including shoreline within T34N R7E sections 10, 11, 14, and 15.

MI–23: Iosco County, Michigan. From USGS 1:24,000 quadrangle map East Tawas, Michigan (1989). Lands 500 m (1640 ft) inland from normal high water line from the Tawas Sate Park boundary at the U.S. Coast Guard Station on the east side of Tawas Point southward along the Lake Huron shoreline including offshore sand spits and along the tip of the point and northeastward including all shoreline in T22N R8E section 34.

Note: Map follows:

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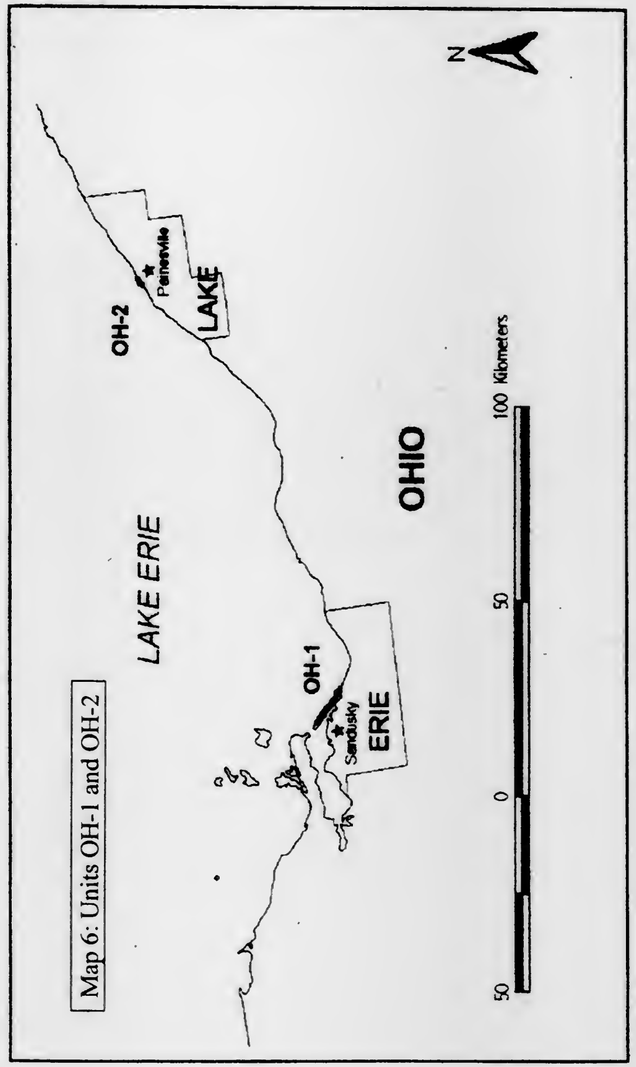


Map of Units OH–1 and OH–2

OH–1: Erie County, Ohio. From USGS 1:24,000 quadrangle maps Huron, Ohio (1969) and Sandusky, Ohio (1969, photorevised 1975). Lands 500 m (1640 ft) inland from normal high water line from the mouth of Sawmill Creek (Huron quad) northwestward along the Lake Erie shoreline to the western property boundary of Sheldon Marsh State Natural Area in T6N R23W (Sandusky quad) at the point where the Cedar Point causeway turns west and south toward Sandusky.

OH–2: Lake County, Ohio. From USGS 1:24,000 quadrangle map Mentor, Ohio (1963, revised 1992). Lands 500 m (1640 ft) inland from normal high water line from the eastern boundary line Headland Dunes Nature Preserve westward along the Lake Erie shoreline to the western boundary of the Nature Preserve and Headland Dunes State Park.

Note: Map follows:



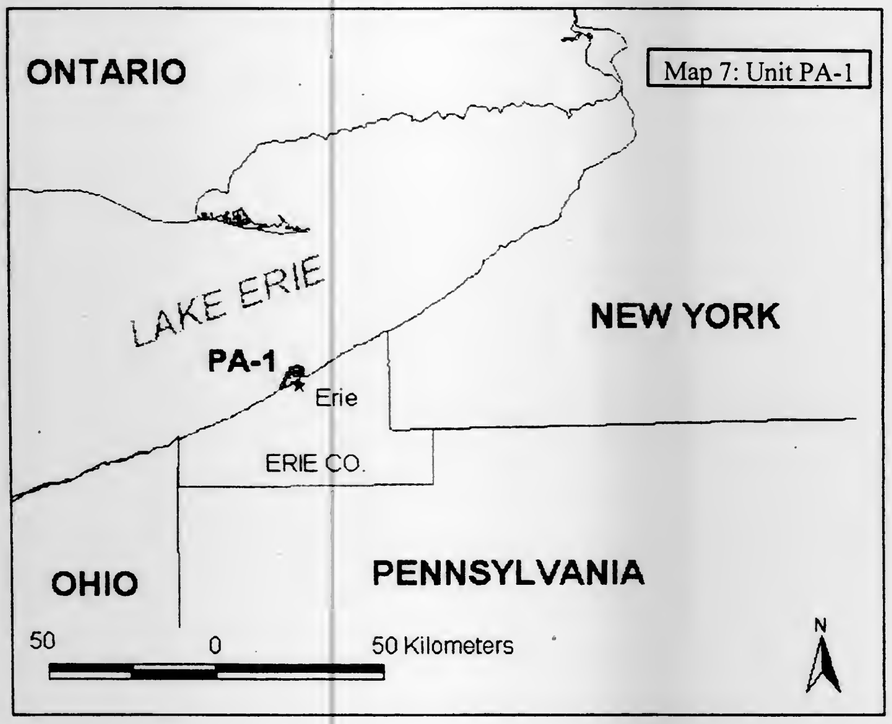
Map 6: Units OH-1 and OH-2

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Map of Unit PA–1

PA–1: Erie County, Pennsylvania. From USGS 1:24,000 quadrangle map Erie North, Pennsylvania (1957, revised 1969 and 1975, photoinspected 1977). Lands 500 m (1640 ft) inland from normal high water line from the lighthouse north of Peninsula Drive on the north side of Presque Isle (located at approximately 042 degrees 09′ 57.41″ N and 080 degrees 06′57.57″ W) eastward along the Lake Erie shoreline around the tip of Presque Isle peninsula to the southern terminus of the hiking trail on the southeast side of Gull Point (located at approximately 042 degrees 10′ 3.13″ N and 080 degrees 04″ 29.56″ W). It includes any new beach habitat that may accrete along the present shoreline portion of the unit.

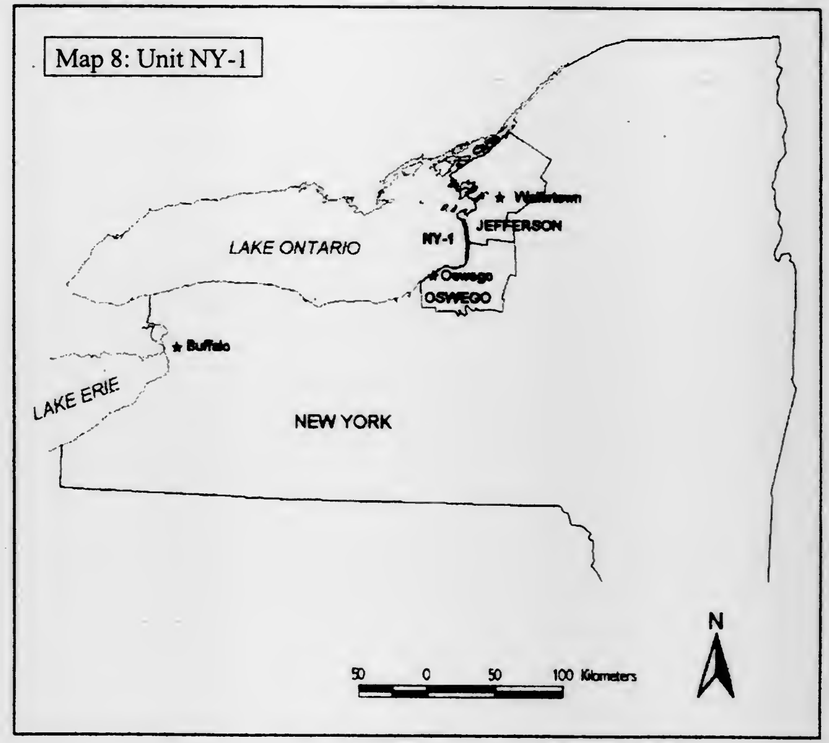
Note: Map follows:



Map of Unit NY–1

NY–1: Oswego County, New York. From USGS 1:24,000 quadrangle maps Pulaski, New York (1956), Ellisburg, New York (1958), and Henderson, New York (1959). Lands 500 m (1640 ft) inland from normal high water line from the mouth of the Salmon River (Pulaski quad) northward along the Lake Ontario shoreline to the Oswego County-Jefferson County line (Ellisburg quad) and northward to the Eldorado Road (Henderson quad).

Note: Map follows:



* * * * *

Dated: April 30, 2001.

Joseph E. Doddridge,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 01–11205 Filed 5–2–01; 12:41 pm]

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Proposed Rules

Federal Register
Vol. 66, No. 88
Monday, May 7, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD 064/109/111/113–3065b; FRL–6973–2]

Approval and Promulgation of Air Quality Implementation Plans; State of Maryland; Approval of Revisions to Volatile Organic Compounds Regulations and Miscellaneous Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve State Implementation Plan (SIP) revisions submitted by the State of Maryland. The revisions replace the existing regulation and adopt a new regulation for control of volatile organic compounds (VOC) from expandable polystyrene operations (EPO), establish VOC reasonably available control technology (RACT) standards for facilities that recycle bakery and confectionary waste, adopt by reference the EPA definition of VOC and include other miscellaneous revisions. In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If EPA receives no adverse comments, EPA will not take further action. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by June 6, 2001.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Rose Quinto at (215) 814–2182, or by e-mail at quinto.rose@epa.gov for information concerning the EPO regulation or Kelly L. Bunker at (215) 814–2177, or by e-mail at bunker.kelly@epa.gov for the remaining regulation revisions.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: April 24, 2001.

William C. Early,

Acting Regional Administrator,Region III.

[FR Doc. 01–11280 Filed 5–4–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[SC–38–200102(b); FRL–6973–8]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: South Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the Section 111(d)/129 Plan for the State of South Carolina submitted by the South Carolina Department of Health and Environmental Control (DHEC) on September 19, 2000, for implementing and enforcing the Emissions Guidelines applicable to existing Hospital/Medical/Infectious Waste Incinerators. The Plan was submitted by the South Carolina DHEC to satisfy certain Federal Clean Air Act requirements. In the Final Rules Section of this **Federal Register,** EPA is approving the South Carolina State Plan submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates that it will not receive any significant, material, and adverse comments. A detailed rationale for the approval is set forth in the direct final rule and incorporated by reference herein. If no significant, material, and adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action.

DATE: Comments on this proposed rule must be received in writing by June 6, 2001.

ADDRESSES: Written comments should be addressed to Gregory Crawford at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3014. Gregory Crawford, (404) 562–9046.

South Carolina Department of Health and Environmental Control, Bureau of Air Quality Control, 2600 Bull Street, Columbia, South Carolina 29201. Telephone (803) 898–4123.

FOR FURTHER INFORMATION CONTACT: Gregory Crawford at (404) 562–9046 or Scott Davis at (404) 562–9127.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register** and incorporated by reference herein.

Dated: April 12, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 01–10989 Filed 5–4–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 144 and 146

[FRL–6975–3]

Underground Injection Control Program—Notice of Proposed Determination for Class V Wells

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Determination.

SUMMARY: Today, the Environmental Protection Agency (EPA) is proposing a determination for all categories of Class V injection wells not included in the final rulemaking on Class V motor vehicle waste disposal wells and large-capacity cesspools (64 FR 68546, December 7, 1999). These include shallow non-hazardous industrial waste injection wells, large-capacity septic systems, agricultural and storm water drainage wells, and other wells. The Agency proposes that additional Federal underground injection control (UIC) regulations are not needed at this time to prevent Class V wells from endangering underground sources of drinking water (USDWs). The Agency will, instead, implement its continuing statutory obligations and use existing authorities under the Safe Drinking Water Act to protect USDWs from any threatening underground injection activities. This proposed determination is based on The Class V Underground Injection Control Study (EPA Document Number EPA/816–R–99–014, dated September 1999) and other information that has been placed in the public docket for comment.

DATES: EPA will accept public comment, in writing, on the proposed determination and the 1999 Class V Study until July 6, 2001. The Class V Study can also be found on EPA's Web site at www.epa.gov/safewater/uic/cl5study.html.

ADDRESSES: Send written comments to the UIC Class V, W–98–05 Comment Clerk, Water Docket (MC–4101); U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460. Comments may be hand-delivered to the Water Docket, U.S. Environmental Protection Agency, 401 M Street, SW, East Tower Basement, Room 57, Washington, DC 20460.

Comments: Send one original and three copies of your comments and enclosures (including any references). Please submit all references cited in your comments. Facsimiles (faxes) can not be accepted. Commenters who would like EPA to acknowledge receipt of their comments should include a self-addressed, stamped envelope. To ensure that EPA can read, understand and therefore properly respond to comments, the Agency would prefer that commenters cite, where possible, the paragraph(s) or sections in the notice or supporting documents to which each comment refers. Commenters should use a separate paragraph for each issue discussed.

Comments may also be submitted electronically to ow-docket@epa.gov. Electronic comments must be submitted as an ASCII, WP5.1, WP6.1 or WP8 file avoiding the use of special characters and form of encryption. Electronic comments must be identified by the docket number W–98–05. Comments and data will also be accepted on disks in WP 5.1, 6.1, 8 or ASCII file format.

The record for this rulemaking has been established under docket number W–98–05 and includes supporting documentation as well as printed, paper versions of electronic comments. The record is available for inspection from 9 to 4 p.m., Monday through Friday, excluding legal holidays at the Water Docket, EB 57, USEPA Headquarters, 401 M., Washington, DC. For access to docket materials, please call 202/260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: For technical inquiries, contact Joan Harrigan-Farrelly, Office of Ground Water and Drinking Water (mailcode 4606), EPA, 1200 Pennsylvania Ave, NW, Washington, DC 20460. Phone: 202–260–7077. For general information, contact the Safe Drinking Water Hotline, phone 800–426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 9:00 a.m. to 5:30 p.m. Eastern Standard Time.

SUPPLEMENTARY INFORMATION: *Affected Entities:* Although no new regulations are being proposed, this notice applies to owners or operators of any type of Class V well that is not a large-capacity cesspool or motor vehicle waste disposal well, as described in 40 CFR 144.81(2) and (16), respectively. The following table lists categories and examples of entities that may have such wells. This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by or interested in this action. Other types of entities not listed in the table could also be interested in it. To determine whether your injection well is affected by this action, you should carefully examine the applicability criteria in 40 CFR 144.1(g). If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Category	Examples of entities potentially affected by this action
Industry and Commerce	Farms, animal feeding operations, and other agricultural sites that drain excess surface or subsurface water into wells; sites that have storm water drainage wells, facilities operating large-capacity septic systems, or nonhazardous waste disposal wells; facilities that extract minerals from brine and then inject the spent brine underground; mines that backfill materials into mine shafts, pipelines, or other holes that are deeper than they are wide; aquaculture facilities that dispose of wastewater in underground wells; solution mines that use injection wells in the recovery of minerals from ore bodies that have already been conventionally mined; sites that use injection wells as part of aquifer remediation activities; geothermal power plants that reinject fluids into the ground; facilities that extract direct heat from geothermal fluids and then return those fluids underground; and sites that use "open-loop" heat pump/air conditioning systems.
State and Local Government.	Municipalities that use storm water drainage wells; publicly owned treatment works that inject sewage treatment effluent underground; State and local government entities that inject water underground for the purpose of aquifer recharge or aquifer storage and recovery.
Federal Government	Any Federal Agency that owns or operates one of the above entities.

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I. Background

A. Statutory and Regulatory Framework

Class V wells are regulated under the authority of Part C of the Safe Drinking Water Act (SDWA or the Act) (42 U.S.C. 300h *et seq.*). The SDWA authorizes EPA to protect the quality of drinking water in the United States, and Part C specifically mandates the regulation of underground injection of fluids through wells. The Agency has promulgated a series of underground injection control (UIC) regulations under this authority.

Section 1421 of the Act requires EPA to propose and promulgate regulations specifying minimum requirements for effective State programs to prevent underground injection that endangers drinking water sources. EPA promulgated administrative and permitting regulations, now codified in 40 CFR parts 144 and 146, on May 19, 1980 (45 FR 33290), and technical requirements in 40 CFR part 146 on June 24, 1980 (45 FR 42472). The regulations were subsequently amended on August 27, 1981 (46 FR 43156), February 3, 1982 (47 FR 4992), January 21, 1983 (48 FR 2938), April 1, 1983 (48 FR 14146), July 26, 1988 (53 FR 28118), December 3, 1993 (58 FR 63890), June 10, 1994 (59 FR 29958), December 14, 1994 (59 FR 64339), June 29, 1995 (60 FR 33926), and December 7, 1999 (64 FR 68546).

Section 1422 of the Act provides that States may apply to EPA for primary enforcement responsibility to administer the UIC program; those States receiving such authority are referred to as "primacy States." Where States do not seek this responsibility or fail to demonstrate that they meet EPA's minimum requirements, EPA is required to prescribe a UIC program for such States by regulation. These direct implementation (DI) program regulations were issued in two phases, on May 11, 1984 (49 FR 20138) and November 15, 1984 (49 FR 45308). For the remainder of this preamble, references to the UIC Program "Director" mean either the Director of the EPA program (where the program is implemented directly by EPA) or the Director of the primacy State program (where the State is responsible for implementing the program). Also, currently all UIC Programs in Indian Country are directly implemented by EPA. Therefore, for the remainder of this preamble, references to DI programs include UIC programs in Indian Country.

B. Requirements Applicable To Class V Wells

The UIC regulations establish five classes of injection wells. Class I wells are used to inject hazardous and non-hazardous waste beneath the lowermost formation containing an underground source of drinking water (USDW) within one-quarter mile of the well bore. Class II wells are used to inject fluids associated with oil and natural gas recovery and storage of liquid hydrocarbons. Class III wells are used in connection with the solution mining of minerals from ore bodies that have not been conventionally mined. Class IV wells are used to inject hazardous or radioactive wastes into or above a formation that is within one-quarter mile of a USDW. (Class IV wells are generally prohibited by 40 CFR 144.13.) Class V wells are defined in the regulations as any well not included in Classes I through IV.

Class V wells, other than motor vehicle waste disposal wells and large-capacity cesspools, are currently authorized by rule (§§ 144.24(a) and 144.84(a)). Rule authorization expires upon the effective date of a permit issued pursuant to §§ 144.25, 144.31, 144.33, or 144.34; upon meeting one of the conditions specified in § 144.84(b); or upon proper closure of the well as described in § 144.82(b). Existing Class V motor vehicle waste disposal wells in "ground water protection areas" and "other sensitive ground water areas" [1] are banned with a provision that allows owners and operators of such wells to seek a waiver from the ban and obtain a permit (§ 144.88(b)). New Class V motor vehicle waste disposal wells and new and existing large-capacity cesspools were banned nationwide (§§ 144.88(a) and (b)). These new requirements affecting motor vehicle waste disposal wells and large-capacity cesspools are minimum Federal standards—primacy States may impose more stringent requirements.

In addition to these provisions, Class V UIC Program Directors have many obligations and authorities under the SDWA to ensure the protection of USDWs. Specifically, the current regulations subject Class V wells to the general statutory and regulatory

[1] A ground water protection area is defined in § 144.86(c) as a geographic area near and/or surrounding community and non-transient non-community water systems that use ground water as a source of drinking water These areas receive priority for the protection of drinking water supplies and States are required to delineate and assess these areas under section 1453 of the SDWA. Other sensitive ground water areas are defined in § 144.85(g) as additional State-defined areas that are critical to protecting USDWs from contamination. The other sensitive ground water areas may include areas overlying sole-source aquifers; highly productive aquifers supplying private wells; continuous and highly productive aquifers at points distant from public water supply wells; areas where water supply aquifers are recharged; karst aquifers that discharge to surface reservoirs serving as public water supplies; vulnerable or sensitive hydrogeologic settings, such as glacial outwash deposits, eolian sands, and fractured volcanic rock; and areas of special concern selected based on a combination of factors, such as hydrogeologic sensitivity, depth to ground water, significance as a drinking water source, and prevailing land use practices.

prohibitions against endangerment of USDWs, as well as some specific requirements. Under § 144.12(a) and § 144.82(a), owners or operators of all injection wells, including Class V injection wells, are prohibited from engaging in any injection activity that allows the movement of fluid containing any contaminant into USDWs, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR part 141 or may otherwise adversely affect human health. Sections 144.12(c), (d), and (e) prescribe mandatory and discretionary actions to be taken by the Director if a well is not in compliance with § 144.12(a). These actions may include requiring the well operator to apply for an individual permit, ordering such action as closure of the well to prevent endangerment, taking an enforcement action, and/or taking an emergency action.

Owners or operators of Class V injection wells must also submit basic inventory and assessment information under § 144.26 and § 144.83. In addition, Class V wells are subject to the general program requirements of § 144.25 and § 144.84 under which the Director may require a permit, if necessary, to protect USDWs. Moreover, under § 144.27 and § 144.83, EPA may require owners or operators of any Class V well, in EPA-administered programs, to submit additional information deemed necessary to protect USDWs. Owners or operators who fail to submit the information required under §§ 144.26, 144.27, or 144.83 are prohibited from using their injection wells.

C. History of This Rulemaking

1. 1987 Report to Congress

In accordance with the 1986 Amendments to the SDWA, EPA summarized information on 32 categories of Class V wells in a Report to Congress entitled Class V Injection Wells—Current Inventory; Effects on Ground Water; and Technical Recommendations, September 1987 (EPA Document Number 570/9–87–006). This report presents a national overview of Class V injection practices and State recommendations for Class V design, construction, installation, and siting requirements. These State recommendations, however, did not give EPA a clear mandate on what, if any, additional measures were needed to control Class V wells on the national level. For any given type of well, the recommendations varied broadly and were rarely made by more than two or three States. For example, the recommendations for septic systems range from further studies (3 States) to statewide ground water monitoring (1 State). For industrial waste water wells, some States recommended immediate action and closure while others recommended monitoring and ground water evaluation studies.

2. 1994 Consent Decree With the Sierra Club

On December 30, 1993, the Sierra Club filed a complaint in the United States District Court for the District of Columbia alleging that EPA failed to comply with section 1421 of the SDWA regarding publication of proposed and final regulations for Class V injection wells. The complaint alleged that EPA's then current regulations regarding Class V wells did not meet the SDWA's statutory requirements to "prevent underground injection which endangers drinking water sources." (Complaint, Paragraph 15)

To resolve the issue, EPA entered into a consent decree with the Sierra Club on August 31, 1994. This consent decree required that, no later than August 15, 1995, the Administrator sign a notice to be published in the **Federal Register** proposing regulatory action that fully discharges the Administrator's rulemaking obligation under section 1421 of the SDWA, 42 U.S.C. 300h, with respect to Class V injection wells. A final rulemaking on the matter was required to be signed by no later than November 15, 1996.

3. 1995 Proposed Determination

On August 15, 1995, the Administrator signed a notice of proposed rulemaking that proposed a regulatory determination on Class V injection wells intended to fulfill EPA's obligation under the 1994 consent decree with the Sierra Club (60 FR 44652, August 28, 1995). In this notice, EPA proposed not to adopt additional Federal regulations for any types of Class V wells. Instead, the Agency proposed to address the risks posed by certain wells using existing authorities and a Class V management strategy designed to: (1) Speed up the closure of potentially endangering wells, and (2) promote the use of best management practices to ensure that other Class V wells of concern do not endanger USDWs. Several factors led EPA to propose this approach, including: (1) The wide diversity in the types of fluids being injected, ranging from high risk to not likely to endanger; (2) the large number of facilities to be regulated; and (3) the nature of the regulated community, which consists of a large proportion of small businesses.

4. 1997 Modified Consent Decree

Based on public comments received on the 1995 proposal, EPA decided to reconsider its proposed approach. Because this reconsideration would extend the time necessary to complete the rulemaking for Class V wells, EPA and the Sierra Club entered into a modified consent decree on January 28, 1997 (D.D.C. No. 93–2644) that extended the dates for rulemaking that had been in the 1994 decree. The modified decree requires three actions.

First, by no later than June 18, 1998, the EPA Administrator was required to sign a notice to be published in the **Federal Register** proposing regulatory action that fully discharged the Administrator's rulemaking obligation under section 1421 of the SDWA with respect to those types of Class V injection wells determined to be high risk for which EPA did not need additional information. The Administrator was required to sign a final determination for these endangering Class V wells by no later than October 29, 1999. Thirty-day extensions were subsequently granted for both of these deadlines.

Second, by no later than September 30, 1999, EPA was required to complete a study of all Class V wells not included in the first rulemaking on endangering Class V injection wells. Based on this study, EPA may find that some of these other types of Class V wells also endanger USDWs.

Third, by no later than April 30, 2001, the EPA Administrator was required to sign a notice to be published in the **Federal Register** proposing to discharge the Administrator's rulemaking obligations under section 1421 of the Safe Drinking Water Act (SDWA) with respect to all Class V injection wells not included in the first rulemaking for Class V injection wells. The Consent Decree requires that the Administrator either (1) propose regulations fully implementing section 1421 with respect to all such Class V injection wells. (2) propose a decision that no further rulemaking is necessary in order to fully discharge the Administrator's rulemaking obligations under section 1421 with respect to all such Class V injection wells, or (3) propose regulations fully implementing section 1421 with respect to some of these remaining Class V injection wells and propose a decision that no further rulemaking is necessary in order to fully discharge the Administrator's rulemaking obligations under section 1421 with respect to all other Class V injection wells not already covered. The Administrator must sign a final

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determination for these remaining Class V wells by no later than May 31, 2002.

5. 1998 Proposal and 1999 Final Rule

On July 29, 1998 (63 FR 40586), in response to the first action required under the modified consent decree with the Sierra Club, EPA proposed revisions to the Class V UIC regulations that would add new requirements for three categories of Class V wells that were believed to endanger underground sources of drinking water. According to this proposal, Class V motor vehicle waste disposal wells in ground water protection areas (as defined in footnote 1 above) would either be banned, or would have to get a permit that requires fluids released in those wells to meet the drinking water maximum contaminant levels (MCLs) and other health-based standards at the point of injection. Class V industrial waste disposal wells in ground water protection areas also would be required to meet the MCLs and other health-based standards at the point of injection, and large-capacity cesspools in such areas would be banned.

EPA received substantial public input on the 1998 proposal. The input included 97 letters from public commenters as well as recommendations from the National Drinking Water Advisory Council (NDWAC), which formed a Federal Advisory Committee Act (FACA) working group to address Class V UIC and Source Water Protection Program integration issues. This FACA workgroup met twice in 1999 to discuss the proposed Class V regulation. In addition, on May 21, 1999 (64 FR 27741), the Agency published a notice of data availability (NODA) and further request for comment related to the 1998 proposal. A total of 14 public comment letters were received in response to this request.

Taking all the public input into account, EPA issued final revisions to the Class V UIC regulations on December 7, 1999 (64 FR 68546). The final rule added new requirements for (1) existing motor vehicle waste disposal wells located in ground water protection areas delineated for community water systems and non-transient non-community water systems that use ground water as a source and in other sensitive ground water areas delineated by the States; and (2) new and existing large-capacity cesspools and new motor vehicle waste disposal wells nationwide. The final rule, however, did not adopt the proposed additional requirements for industrial waste disposal wells to meet the MCLs and other health based standards at the point of injection. Many commenters questioned why the Agency chose to regulate a wide range of industries with different disposal practices with one approach. Some commenters thought the industrial category was too diverse and types of industrial waste streams should be regulated based on their specific characteristics and risks. After considering these comments, EPA agreed that the industrial category is diverse and represents a variety of waste streams that required additional review before deciding on the need for additional Federal regulations.

6. 1999 Class V Study

On September 30, 1999, in response to the second action required under the modified consent decree with the Sierra Club, EPA published a study of all Class V wells not included in the 1998 proposal (EPA Document Number EPA/816–R–99–014). The study consisted of two major components: (1) An information collection effort for the remaining universe of Class V wells, which was divided into 23 different categories for the purpose of analysis; and (2) an "inventory modeling" exercise to estimate the number of storm water drainage wells and large-capacity septic systems, two types of wells that were believed to be quite prevalent, but for which adequate inventory information was particularly lacking.

As described in detail in Volume 1 of the final Study report, the information collection effort consisted of a comprehensive literature search, State and EPA Regional data collection, requests to the public for data, and peer review. As part of the State and EPA Regional data collection, the Agency distributed nearly 700 questionnaires to EPA Regional, State, and local program staff in all 50 States and U.S. territories, including staff responsible for Class V well control on Indian Lands in EPA Regions 5, 8, 9, and 10. The Agency supplemented the information from the questionnaires with follow-up telephone interviews and on-site file searches in 11 primacy States, 3 DI States, and 2 Regional Offices with DI States. The Agency also supplemented the survey results with visits to a number of injection well sites, including geothermal electric power well sites in California and food processing waste disposal well sites in Tennessee and Maine.

For the inventory modeling, EPA selected and visited a sample of 99 census tracts across the nation to collect data on the numbers of storm water drainage wells and large-capacity septic systems that exist and factors that influence their prevalence. Storm water drainage wells were found in 22 of the 99 census tracts visited and large-capacity septic systems were found in 88 of the 99 census tracts visited. EPA used the data collected from the visits to develop mathematical models for predicting the numbers of these wells nationwide.

D. Scope of Today's Proposed Determination

Today's proposed regulatory determination addresses all of the Class V well types not covered by the 1999 final rule, in response to the third action required under the modified consent decree with the Sierra Club. For the purpose of this notice, these other well types are discussed in the following categories that track with the earlier proposals described above as well as the categories addressed in the Class V Study: Agricultural drainage wells, storm water drainage wells, large-capacity septic systems, sewage treatment effluent wells, spent brine return flow wells, mine backfill wells, aquaculture waste disposal wells, solution mining wells, in-situ fossil fuel recovery wells, special drainage wells, experimental wells, aquifer remediation wells, geothermal electric power wells, geothermal direct heat wells, heat pump/air conditioning return flow wells, saltwater intrusion barrier wells, aquifer recharge and aquifer storage and recovery wells, subsidence control wells, and industrial wells (including, but not limited to, carwash wells, food processing waste disposal wells, laundromat wells, and non-contact cooling water wells). These categories are the same as the ones defined in the existing regulations in 40 CFR § 144.81. However, in some cases the categories have been combined or separated to facilitate the discussion of the data and rationale used to support this determination. This determination, however, does not propose to change the Class V well categories currently defined in the UIC regulations to the ones discussed here.

It is also important to clarify that this notice satisfies the Agency's obligations under the modified consent decree with the Sierra Club, but it does not end EPA's obligations, requirements, and actions to prevent Class V wells from endangering USDWs. As described in Section I.B above, UIC Program Directors have many obligations and authorities under the SDWA to ensure the protection of USDWs from the risks posed by Class V wells. The Agency will continue to fulfill these obligations and using existing authorities for all Class V wells (Section IV.F.3 below summarizes some of the actions UIC Program

Directors take for Class V industrial wells using these existing authorities). In addition, nothing in this notice precludes a State or local government from promulgating requirements more stringent than the minimum Federal requirements. Also, today's proposed determination does not affect EPA's authority to impose any necessary regulations in the future on any of the well types addressed in today's notice.

II. Factors Considered in Making the Proposed Determination

A. Criteria Proposed in 1995

The Agency proposed two criteria in 1995 for evaluating the different categories of Class V wells to determine whether any category warranted additional regulation: the potential to endanger USDWs and the anticipated effectiveness of additional Federal regulation under the UIC program in preventing endangerment to USDWs.

For wells with a low or no potential to contaminate USDWs, the Agency proposed that the then existing regulations provided sufficient authorities to handle the few cases where mismanagement of one of these wells could create an endangering situation. To assess the need for additional UIC regulation for the other wells, the 1995 proposal was guided by the following principles:

(1) Additional Federal UIC regulations are not necessary where adequate State or local regulations are already in place,

(2) Additional Federal UIC regulations are not necessary where the Class V wells are not the principal source of endangerment from a widespread environmental problem,

(3) Additional Federal UIC regulations are not necessary where endangerments are localized problems, e.g., wells that are found only in one or two counties or in one or two States. For these wells, EPA will work with the States, if necessary, to bring about better controls,

(4) Additional Federal UIC regulations are not necessary where other Federal programs address the endangerment caused by certain Class V wells.

B. Public Comments on the 1995 Proposed Approach

EPA received 57 public comment letters on the 1995 proposal, several of which addressed the proposed decision-making criteria summarized above. Many comments supported the Agency's proposal to not impose more regulations for Class V wells based on these criteria. However, EPA also received a number of comments that raised concerns about the overall approach, including the above criteria and the related rationale proposed for some well types. The opposing comments are best represented by nine main points made by the Sierra Club, which are addressed in turn below.

First, the Sierra Club asserted that blanket authorization of Class V wells by rule, based on any criteria, violates the SDWA. The basis for this comment was the Sierra Club's interpretation that SDWA requires EPA to prescribe regulatory standards for State programs. EPA disagrees that the Class V regulations violate the SDWA. SDWA section 1421(b) requires EPA to issue regulations for effective State programs to prevent endangerment of drinking water sources by underground injection. The statute specifically States that the regulations "may permit a State to authorize underground injection by rule." Section 1421(b)(1)(A). EPA has provided such authority to States for Class V regulations; the authorization by rule requirements for such wells include requirements for reporting and avoiding endangerment of drinking water sources. As discussed in more detail below, EPA has found that these requirements are generally effective in preventing endangerment from the Class V wells discussed in today's proposed determination. Thus, EPA has met the statutory mandate of prescribing regulations for "effective" State programs "to prevent * * * endangerment" from Class V UIC wells.

Second, the Sierra Club stated that continued reliance on the non-endangerment provision in 40 CFR 144.12 and the authority in 40 CFR 144.25 to require a permit does not fulfill EPA's statutory duty to specify minimum requirements for State UIC programs. EPA disagrees with this analysis. The minimum requirements for State UIC Class V programs are specified in EPA's regulations; these include reporting and non-endangerment requirements. While these may not be as specific and detailed as the requirements for the other UIC well classes, they are nonetheless "minimum requirements for * * * (State) programs" as required by SDWA section 1421(b). Because these requirements, general as they are, have been effective in preventing endangerment from these wells, no more is required under the statute.

Third, the Sierra Club argued that the existence of State or local regulations does not justify a decision not to impose more Federal regulations. While EPA agrees that the mere presence of State or local regulations governing UIC wells does not justify a decision not to impose Federal requirements under section 1421(b), such State or local regulations may be an important factor in determining the extent of "endangerment" from Class V wells and the "effectiveness" of additional Federal requirements. For example, as discussed below, in determining the extent of "endangerment" posed by various Class V well types, EPA relied heavily upon actual contamination incidents; however, the adequacy of State and local requirements was also a factor that helped EPA determine the likelihood of future contamination from such wells. Similarly, EPA believes that comprehensive State and local regulation of a Class V well type, such as septic systems discussed below, may make additional Federal regulation entirely duplicative, if not disruptive. Where such regulation exists, further Federal regulation may be futile in terms of ensuring "effective" State programs; rather, Federal efforts may be better focused on implementation of and education regarding existing regulations and programs than merely adding yet another layer of redundant or duplicative requirements. Thus, EPA continues to believe that the extent of State and local regulation remains a highly relevant consideration in meeting the section 1421(b) mandate. At its core, the statute clearly envisions that the UIC program be a State-run program and the Federal role is to ensure that existing State UIC programs become or remain effective in addressing any endangerments from underground injection wells.

Fourth, the Sierra Club claimed that a decision not to impose additional regulations cannot be justified on the grounds that Class V wells are not the principal source of endangerment from a widespread environmental problem, because partial or incremental solutions are better than none at all. In order for this criterion to be valid, the Sierra Club asserted that EPA would have to show that additional Federal regulations yield a gain of trivial or no value. As noted below, EPA has dropped this criterion as a basis for deciding not to establish further regulations for Class V wells. However, EPA continues to believe that the extent of contamination from Class V wells, based on actual incidents of contamination, remains a critical factor in determining whether sufficient "endangerment" is posed by Class V wells to warrant additional Federal requirements.

Fifth, the Sierra Club argued that EPA cannot decide against additional Class V regulations based on a finding that endangerments are localized problems. According to the comment, nothing in SDWA exempts from regulation endangerments that occur in one or a

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few places, and nothing prevents these localized problems from emerging in other areas in the future. While EPA agrees that "endangerments" that are "localized" may still warrant Federal regulation since, as a factual matter, most well contamination will endanger only a localized area, EPA strongly believes that additional Federal regulation is not necessary where the endangerment posed by a particular well type appears to be isolated and rare. No amount of Federal regulation (or any other regulation) can prevent all contamination; the fact that an isolated incident of contamination from a UIC well occurs does not mean that the State program for that well is ineffective in preventing endangerment. Rather, EPA believes that under Section 1421(b) Federal regulations for UIC wells are reserved for situations, such as with motor vehicle waste disposal wells (addressed in the December 7, 1999, final revised Class V UIC regulations (64 FR 68546)), where existing State programs are not generally "effective" in preventing endangerment from certain well types. With respect to assurance that wells may not contaminate in the future, EPA believes that it has a continuing obligation under 1421(b) to determine whether additional Federal regulation is necessary for any UIC well types. Today's proposed determination does not affect EPA's authority to impose any necessary regulation in the future on any of the well types addressed in today's notice.

Sixth, the Sierra Club asserted that EPA's duty to regulate under SDWA is not removed by other Federal programs that also address Class V wells. Moreover, the fact that Federal programs overlap in subject matter is no obstacle to regulation, and in many cases, other Federal programs do not address the endangerment fully. As discussed below, EPA has not used other Federal programs as a criterion for determining whether to impose additional UIC requirements in today's notice. However, EPA does believe that the existence of other Federal programs that address Class V wells may be highly relevant in determining whether an "endangerment" exists and whether additional SDWA regulation would be "effective" in addressing that endangerment.

Seventh, the Sierra Club objected to the proposal that additional regulations could not be developed for some Class V well types because of diversity in local hydrogeologic conditions or in types of fluids injected. According to the Sierra Club, such variability is not grounds for a regulatory exemption under SDWA and could be addressed by establishing targeted regulations for more narrowly defined subcategories of wells. While EPA agrees that such diversity in conditions is not in itself a reason for EPA to determine that Federal regulations are unnecessary, EPA believes that such diversity may be a factor in determining whether additional Federal regulation would promote more "effective" State programs to address the well type in question.

Eighth, the Sierra Club commented that the existence of large numbers of regulated entities and an alleged lack of facility-specific data do not justify a decision not to regulate further. In support of this comment, the Sierra Club said that the size of a regulated community is always workable, and that EPA has an obligation to collect the data necessary to perform its rulemaking duties. EPA has not used either of the factors Sierra Club mentions as a basis for today's proposed determination.

Ninth, the Sierra Club argued that EPA cannot decide against additional regulations for some well types based on the criterion that a large proportion of the regulated community is comprised of small businesses. Among other points made in support of this argument, the Sierra Club stated that SDWA creates no exemption for small businesses and that EPA did not show that the burden on small businesses would be severe. EPA has not used the type of regulated community as a basis for today's proposed determination.

C. Proposed Criteria for Today's Notice

EPA is proposing today to use the two main criteria proposed in 1995—potential to endanger USDWs and the anticipated effectiveness of additional Federal UIC regulation—to determine whether other categories of Class V wells warrant additional regulation. The Agency is now better able to apply these criteria using additional information gathered from the 1999 Class V Study. Based on the above comments and responses, however, the Agency is dropping from consideration some of the principles used in 1995.

The potential to endanger USDWs is by far the more important of the two criteria, given the SDWA mandate to ensure non-endangerment. EPA evaluated this potential based in large part on the record of documented incidents of ground water and other environmental contamination caused by the operation of the different well types. While the Agency also evaluated the potential for such contamination based on such factors as the quality of fluids injected, the characteristics of the injection zone, well design and operating features, the vulnerability of the wells to spills or illicit discharges, and the adequacy of existing State and Federal UIC programs for addressing any potentially endangering situations, EPA believes that the absence of frequent, widespread, or significant cases of actual contamination is compelling evidence of a low potential to endanger that does not warrant additional Federal regulation at this time.

EPA considered the anticipated effectiveness of additional Federal UIC regulation for only a few well categories for which a sound determination could not be based on the potential to endanger alone. In evaluating the anticipated effectiveness of additional regulation, EPA considered such factors as the degree to which additional Federal UIC regulations would simply duplicate existing State programs without increasing the "effectiveness" of these programs. While the Agency also considered the possibility of the UIC program joining forces with other existing or emerging programs to achieve greater results in an integrated fashion, it did not use the existence of other Federal programs that also address Class V wells as a basis for deciding against additional UIC regulation. In addition, EPA did not use the diversity in conditions, the existence of large numbers of regulated entities, the lack of facility-specific data, or the existence of a large proportion of small businesses as decision making criteria.

III. Class V Wells Found To Have a Low Potential To Endanger in the 1995 Proposal

A. 1995 Proposed Finding

Based on the data available at the time, the Agency proposed in 1995 (see 60 FR 44652, August 28, 1995) that several types of Class V injection wells generally had a low potential to endanger USDWs, including: (1) Salt water intrusion barrier wells, (2) subsidence control wells, (3) heat pump/air conditioning return flow wells, (4) spent brine wells, (5) swimming pool and landslide control wells (i.e., "special drainage" wells), and (6) solution mining wells. This finding was based on such factors as good injection quality (e.g., comparable to or better than the fluids in the injection zone), appropriate well construction and maintenance, injection zone characteristics, and existing regulatory oversight. In addition, EPA found that the following well types generally had a low-to-moderate or moderate potential to endanger: (1) Aquifer recharge[2] and aquifer storage and recovery wells, (2) aquifer remediation, (3) geothermal direct heat wells, (4) geothermal electric power wells, (5) aquaculture wells, (6) experimental technology wells, and (7) in-situ fossil fuel recovery wells. In general, EPA found that the fluids injected into these wells were of lower quality than those injected into the six types of wells first discussed above, but well construction, operation, and maintenance in combination with locational factors and existing Federal and State programs safeguard against endangerment. In the case of in-situ fossil fuel recovery wells, the Agency also noted that no wells of this type were known to be operating.

B. Public Comments on Well Types

In response to the 1995 proposal, EPA received no comments on five of these 13 well types: (1) Salt water intrusion barrier wells, (2) subsidence control wells, (3) special drainage wells, (4) geothermal direct heat wells, and (5) aquaculture wells. EPA received limited comments that did not disagree with the Agency's characterization of the potential of the wells to endanger USDWs for another five of these 13 well types: (1) Spent brine return flow wells, (2) solution mining wells, (3) aquifer recharge and aquifer storage and recovery wells, (4) aquifer remediation wells, and (5) experimental technology wells. Of the remaining wells, one commenter disagreed with the Agency's characterization of heat pump/air conditioning return flow wells and geothermal electric power wells as having a low potential to endanger USDWs. The commenter indicated that heat pump/air conditioning return flow wells could allow the introduction of contaminants (*e.g.*, refrigerants, lead, copper) into ground water and possible cross-contamination between aquifers. In addition, the commenter indicated that electric power geothermal injection wells are "not innocuous" because high temperatures and contaminants picked up in the power plant may degrade ground water. Another commenter indicated that ground water in the vicinity of five in-situ fossil fuel recover projects has been contaminated.

[2] EPA found that some aquifer recharge wells pose a moderate to high threat of USDW contamination when they are operated as dual purpose wells that alternately withdraw water for irrigation and inject irrigation drainage water. These wells are more similar to other agricultural drainage wells and are included below in the discussion of agricultural drainage wells.

C. 1999 Class V Study

The Class V Underground Injection Control Study (EPA/816–R–99–014, September 1999) presents additional information about each of these 13 well types that was collected following the 1995 proposal. The Agency believes that this information confirms the findings proposed in 1995, although some of the supporting details are new or different. For example, in 1995, EPA found that there is little chance that fluids injected into spent brine return flow wells (in seven States) would reach USDWs because the wells were adequately constructed with multiple layers of protection and inject into deep confined formations. The Class V Study found that spent brine return flow wells regulated under Class V now only occur in two States and that in all cases the wells have individual permits and inject below the lowermost USDW. Similarly, in 1995 EPA found that salt water intrusion barrier wells have a low potential to contaminate USDWs because they generally inject fluids of equivalent or better quality than the injection zone fluids. The Class V Study found that waters of varying quality are injected into these wells, but typically the injected water meets primary and secondary drinking water standards. In addition, ground water monitoring and associated studies have shown no measurable adverse effects on either ground water quality or the health of the population ingesting the water when the injectate was treated wastewater effluent.

Of the 13 well types in this group, the Class V Study identified reported contamination incidents associated with the operation of only three types. For in-situ fossil fuel recovery wells, the Class V Study confirmed the information submitted by a commenter that ground water contamination had occurred in the vicinity of in-situ fossil fuel recovery operations. The Class V Study also confirmed, however, that no wells of this type are known to be in operation. For heat pump/air conditioning return flow wells, the Class V Study identified a few sites where ground water contamination has been reported. Thus, EPA agrees with the commenter who indicated that operation of these wells could result in ground water contamination. The available information indicates, however, that such occurrences are very rare in light of the estimated 35,000 wells of this type in over 40 States. For aquifer remediation wells, the Class V Study identified a single reported contamination incident that resulted from an equipment failure, but confirmed that these wells are controlled as part of Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and State remediation programs in addition to the UIC program.

For electric power geothermal injection wells, the Class V Study did not identify any reported incidents of USDW contamination, but the Class V Study did find that injected fluids at some plants may include a mixture of surface water, treated wastewater effluent, and/or storm water in addition to geothermal fluids. Thus, there is the potential for the injected fluids to contain contaminants not present in the geothermal fluids, as indicated by one commenter. The Class V Study confirmed, however, that geothermal fluids used for power production are not typically of potable quality, and that typical well construction, operation, and maintenance are not expected to allow fluid injection into unintended ground water zones.

Based on the information available at this time, including the Class V Study, EPA concludes that the 13 wells types discussed in this section have a low potential to endanger USDWs. As a result, EPA concludes that no additional Federal regulations applicable to these wells are needed at this time. Where isolated incidences of endangerment occur or are threatened, EPA will use its existing authorities to require permitting, closure or corrective action to address the endangerment.

IV. Other Class V Wells

A. Sewage Treatment Effluent Wells

1. 1995 Proposed Finding

EPA found that the overall potential for sewage treatment effluent wells to contaminate USDWs was moderate. The Agency also found that the potential to endanger USDWs ranged from low to high, in large part due to the range in the type of treatment provided prior to injection. Specifically, the Agency found that some wells inject clarified effluent that has undergone secondary or tertiary treatment and have a low potential to endanger USDWs, but effluent that has undergone only primary treatment creates a higher potential to contaminate USDWs. Further, EPA found that the majority of the wells of concern were located in Florida and Hawaii and were being addressed at the State level. Based on this information, the Agency proposed that no additional Federal regulations were needed at the time for sewage treatment effluent wells.

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2. Public Comments

EPA received only one comment on its 1995 proposal for these wells. This commenter asserted that additional Federal regulations were needed because only a "majority" (and not all) of the wells with a high potential to contaminate USDWs were being addressed at the State level.

3. 1999 Class V Study

The Class V Study shows that more than 95 percent of documented sewage treatment effluent wells are located in five States: Arizona, California, Florida, Hawaii, and Massachusetts. Individual permits are required for the wells in all five of these States and the wells are prohibited in some situations (*e.g.*, in ground water protection zones in Hawaii). Requirements in other States with sewage treatment effluent wells include minimum treatment requirements prior to injection (*e.g.*, secondary treatment, compliance with MCLs), compliance with MCLs outside the ground water discharge zone (at a designated compliance point), individual permits, and/or compliance with specified well construction and operating requirements.

The Study identified approximately 1,700 wells, but only two incidents in which ground water contamination was attributed to the injection of treated sewage effluent through a Class V well. One of these incidents occurred more than 25 years ago. Nutrient enrichment of surface waters, with resulting algal blooms, has also been reported in offshore waters near some sites where effluent injection occurs in some coastal areas in Florida and Hawaii. This issue is receiving considerable research and regulatory attention. For example, EPA, the U.S. Geological Survey, the National Oceanic and Atmospheric Administration, the Florida Department of Environmental Protection, the University of South Florida, the University of Miami, the Florida Keys National Marine Sanctuary, and several other organizations have conducted studies to evaluate the impacts of sewage disposal, including the injection of sewage treatment effluent in Class V wells, on offshore water quality. These studies suggest that the operation of sewage treatment effluent wells and other disposal practices in the Florida Keys can lead to rapid nutrient enrichment and fecal contamination of marine waters in the Keys, although the concentrations eventually reaching surface waters are greatly diluted. To combat this problem, Florida currently requires sewage treatment effluent wells to be individually permitted and to meet primary drinking water standards at the point of injection. In addition, owners or operators of sewage treatment effluent wells in Monroe County, which encompasses the Keys, are required as part of the Class V operating permit application to provide reasonable assurance that operation of their wells will not cause or contribute to a violation of surface water quality standards.

4. Proposed Determination

Based on the information available at this time, including the Class V Study, EPA concludes that sewage treatment effluent wells have a low potential to endanger USDWs due to a combination of factors. These factors, which may vary from well to well, include good injection quality, well construction and maintenance, and existing regulatory oversight. The most pressing documented problem—injectate migration and contamination of offshore water and coral reefs in the Florida Keys—is already being studied by many researchers and addressed at both the Federal and State levels. The incidence of contamination from these wells has also been rare. Thus, EPA proposes that no additional Federal regulations applicable to these wells are needed at this time. The Agency will use its existing permitting and enforcement authorities as necessary to prevent any sewage treatment effluent wells from endangering USDWs.

B. Mine Backfill Wells

1. 1995 Proposed Finding

In 1995, EPA found that mine backfill wells, in general, had a moderate potential to contaminate USDWs. This finding was in part based on the fact that injected slurries had the potential to react with acid mine water to mobilize potential ground water contaminants. However, USDWs interconnected with, and therefore potentially affected by the mine backfill activities, were generally of moderate to poor quality. In addition, mine backfill injection had been shown to improve overall ground water quality in some situations, even when contaminants were released from the injected slurry. The 1995 proposed finding also recognized that most backfill wells were regulated under State water quality or mining programs in addition to the UIC program. Based on these considerations, EPA proposed that additional Federal regulations for these wells were not needed at the time to ensure the protection of USDWs.

2. Public Comments

Several comments on the 1995 proposal were supportive of EPA's determination that no additional UIC regulations were needed and specifically discussed the adequacy of current requirements for backfilling of hard rock mines. No commenters directly opposed the proposed determination, although one commenter indicated that they favored the addition of a general permit authority.

3. 1999 Class V Study

The Study documented that mine backfill wells are used in many mining regions of the country to inject a mixture of water, sand, mill tailings, or other materials such as coal combustion ash and flue gas desulfurization sludge into underground mines. Information collected and compiled in the Study is consistent with the information available in 1995 that showed that ground water quality within a mine is often poor (e.g., due to acid mine drainage) and that backfill wells are just one of many possible sources (including natural sources) of ground water contamination. No incidents of contamination directly attributable to these wells were reported, and in some cases information shows that backfill wells have negligible or positive effects on ground water quality. In other cases, however, backfill material has been shown to leach contaminants more readily than predicted by standard tests and increase contaminant concentrations in ground water. The chance that backfill injection will contribute to ground water contamination is highly dependent on site conditions, such as site hydrogeology, mine mineralogy, backfill characteristics and injection practices.

More than 90 percent of the documented mine backfill wells reported in the Study are located in four States that have primacy for the Class V portion of the UIC wells. Two of these States require individual permits for the wells while the other two States issue permits by rule as long as USDW endangerment does not result. Other States regulate mine backfill wells by rule authorizing them and implementing existing UIC authorities, or by issuing general (or area) permits or individual permits.

4. Fossil Fuel Combustion Waste Report to Congress

Also in 1999, EPA issued a *Report to Congress on Wastes from the Combustion of Fossil Fuels* (EPA 530–S–99–010). Based on the findings of this report, comments and additional data

received, and additional analysis of the available information, the Agency made a regulatory determination in May 2000 (65 FR 32214) that additional regulations under Subtitle D of RCRA and/or possibly modifications to existing regulations established under Surface Mining Control and Reclamation Act (SMCRA) authority are warranted when coal combustion wastes are used to fill surface or underground mines (i.e., minefilled). In making this determination, the Agency explained that although placement of coal combustion waste in a mine has not been documented to cause increased damage to ground water, minefilling is an increasingly common practice that could present a danger to human health and the environment under certain circumstances (e.g., placement directly into the ground water). EPA found that available information indicates that if the chemistry of the mine relative to the chemistry of the coal combustion wastes is not properly taken into account, the addition of coal combustion wastes to certain environmental settings can lead to an increase in hazardous metals (e.g., arsenic) released into the environment. The Agency also noted that management of coal combustion wastes in the presence of acid-generating pyritic wastes has caused metals to leach from the combustion wastes at much higher levels than are predicted by leach test data for coal combustion wastes when strongly acidic conditions are not present. Further, the Agency noted that a recent study of cement kiln dust showed that placement directly in contact with ground water led to substantially greater release of hazardous metal constituents than EPA predicted would occur when not placed in ground water.

In addition, EPA explained that there are few States that operate comprehensive programs that specifically address the unique circumstances of minefilling, making it more likely that damage to human health or the environment could go unnoticed. In particular, the Agency found that government oversight has not "caught up" with recent and rapidly expanding minefilling of coal combustion wastes and that serious gaps exist in State programs, such as a lack of adequate controls and restrictions on unsound practices, e.g., no requirement for ground water monitoring and no control or prohibitions on waste placement in the aquifer.

5. Proposed Determination

Based on the information available at this time, EPA concludes that mine backfill wells generally have a low potential to endanger USDWs because no incidents of contamination directly attributable to these wells were reported, and in some cases information shows that backfill wells have negligible or positive effects on ground water quality. As discussed above, however, injection of coal combustion wastes may threaten ground water under some circumstances. The Agency has recently initiated efforts to improve its understanding of this potential threat to ground water and address it for both surface and underground minefilling (including underground injection) using the regulatory authorities of RCRA and/or SMCRA. As a result, EPA proposes not to develop any additional Federal UIC regulations applicable to mine backfill wells at this time. Rather, the Agency will continue to assess any potential endangerment of USDWs by individual mine backfill wells and address any such potential endangerment with existing permitting and enforcement authorities and any new requirements to be developed under RCRA and/or SMCRA.

C. Storm Water Drainage Wells

1. 1995 Proposed Finding and 1998 Proposal

EPA found that storm water drainage wells had a moderate potential to endanger USDWs. This proposed finding considered the fact that storm water can acquire contaminant loads from streets, roofs, landscaped areas, industrial areas, and constructions sites. The most significant concern identified was wells located in industrial settings (e.g., near loading docks, process areas) where chemical spills may occur and enter the well unless a physical barrier (e.g., berm) is present to contain a spill. In other settings, EPA found that storm water would normally not contain contaminants in concentrations that exceed drinking water standards. Moreover, available contamination studies did not show that area-wide degradation of ground water quality had resulted from storm water drainage wells.

Based on this information, EPA proposed not to develop any additional Federal UIC regulations applicable to storm water drainage wells at that time. However, recognizing the potential concern associated with such wells at industrial sites, EPA proposed to categorize storm water drainage wells located in industrial settings as industrial wells unless an adequate barrier is in place to prevent spilled materials from entering the well. According to the 1995 proposal, these so-called "industrial drainage" wells were to be addressed with additional guidance as well as outreach and education to make sure they did not endanger USDWs.

The Agency extended this proposal for storm water drainage wells at industrial sites as part of the 1998 proposal. Specifically, the Agency proposed that industrial drainage wells would be subject to the proposed new requirement to meet MCLs at the point of injection, just like other kinds of Class V industrial wells. This new proposal, however, was predicated on EPA's ability to establish a clear and enforceable definition of an industrial drainage well that would be subject to the new requirement, versus a storm water drainage well at an industrial site that would not be subject to the new requirement because it had a low potential to receive chemical spills or highly contaminated drainage. The 1998 proposal specifically requested public comment on the practicality of making this distinction (see 63 FR 40598, July 29, 1998 for more detail).

2. Public Comments

No comments were received that opposed EPA's 1995 proposed determination that additional Federal UIC regulations were not needed for storm water drainage wells. However, some commenters opposed EPA's approach to considering wells located in industrial settings to be industrial wells. In particular, some commenters asserted that industrial settings and acceptable barriers were not sufficiently well defined. Other commenters indicated that the barrier requirement was impractical, that sound management practices are at least as effective as physical barriers in preventing contaminants from reaching a well, and that storm water wells at service stations should not be regulated as industrial wells.

In response to the 1998 proposal, some commenters supported EPA's revised proposal that wells receiving storm water in industrial settings be considered storm water wells (rather than industrial wells) even if they had the potential to receive waste due to leaks, drips, and spills as long as the amounts of waste would be insignificant. Other commenters maintained that wells with the potential to receive any leaks, drips, or spills should be considered industrial wells. Many commenters expressed concern about EPA's proposed distinction between storm water drainage wells and industrial drainage wells at industrial facilities and requested that EPA make the distinction between the two types of wells more clear and definitive. Still

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other commenters requested that all storm water wells be subject to stringent requirements, with some commenters specifically suggesting a ban of storm water drainage wells in source water protection areas, in part due to their vulnerability to spills and misuse.

3. 1999 Class V Study

The Study identified approximately 71,000 documented storm water drainage wells and estimated that approximately 248,000 may actually exist in the United States. Despite this large number of wells operating throughout the country, the Study reports only 12 documented incidents of contamination of ground water by storm water drainage wells; eight of these incidents were associated with storm water drainage from industrial/commercial activities. In addition, the Study identified storm water drainage wells as potentially vulnerable to spills or illicit discharges if they are located near roadways, parking lots, and areas of commercial/industrial activities. However, these problems are more hypothetical than actual. About half of the States with storm water drainage wells permit these wells by rule while the other half have individual permit/registration systems. Four States ban the wells entirely or under certain circumstances. In addition, when industrial stormwater drainage wells are found, EPA Regions or States require them to either close or get a permit.

4. Proposed Determination

Based on the information available at this time, including the Class V Study, EPA concludes that additional Federal regulations under the UIC program are not required at this time. The available information indicates that endangerment of USDWs by storm water drainage wells occurs only rarely, considering the relatively small number of contamination incidents relative to the number of wells known or estimated to exist. Although there is a concern that storm water drainage wells may be vulnerable to spills and illicit discharges, there is little evidence that this is a problem other than at industrial facilities. Even at industrial facilities, endangerment of USDWs by storm water drainage wells does not appear to be a widespread problem but instead is limited to isolated, relatively infrequent incidents. To a much lesser extent, this proposal is also based on the impracticality (as supported by public comments on the 1998 proposal) of distinguishing between industrial drainage wells that might be subject to additional regulations and other storm water drainage wells that would not. Therefore, any attempt to target a new regulation to the few isolated cases that might pose an endangerment would also capture and impose needless burdens on many wells that are not a concern. EPA believes the situation would be better addressed by continuing to use existing authorities to close or otherwise address problem wells on an individual basis to prevent these wells from endangering USDWs. In doing so, the Agency will coordinate the efforts of the UIC program with those of the National Pollutant Discharge Elimination System (NPDES) storm water program.

D. Large-Capacity Septic Systems

1. 1995 Proposed Finding

EPA found that large-capacity septic systems (LCSSs) do not pose a significant national problem. This assessment is different from that contained in the 1987 Report to Congress on Class V Injection Wells (EPA 570/9–87–006) because that report considered systems that receive industrial and commercial wastes whereas LCSSs as now defined receive only sanitary waste.[3] In addition, the Report to Congress considered single-family systems, which are not within the scope of the UIC program. EPA also found in 1995 that insufficient spacing between systems was the major cause of ground water contamination from LCSSs. The Agency concluded that land use planning and siting requirements tailored to local conditions by State and local authorities, coupled with additional UIC program implementation and technical guidance, was the most effective approach to protecting USDWs.

2. Public Comments

Some commenters supported EPA's proposed finding that no additional UIC regulations were required as well as the Agency's plan to issue guidance, while some other commenters argued that LCSSs should be excluded from UIC regulation altogether. Other commenters supported additional Federal regulations, including suggestions that EPA require ground water elevation monitoring, establish monitoring provisions and management strategies to address loss of system integrity, require individual permits, or ban septic systems in sensitive ground water areas. One commenter argued that State and local programs with tailored standards to prevent ground water endangerment by LCSSs were not in place.

[3] The Agency considers systems that do not receive solely sanitary waste to be industrial wells rather than LCSSs.

3. 1999 Class V Study

The Study identified three documented cases of ground water contamination incidents attributable to LCSSs and 24 documented cases of system failures where the extent of resulting ground water contamination, if any, is not known. Thus, the prevalence of contamination cases appears to be low relative to the number of systems in use (approximately 350,000), even if there are additional LCSS failures (which seems likely) that were not identified during the Study. The Study also found that LCSSs are used nationwide and that although all States have applicable regulations, the regulations vary from stringent siting, construction, and operating requirements to general construction permitting. State regulations also vary with respect to the size standard definitions that determine which systems are considered "large" (and thus subject to UIC regulation) rather than small.

4. Guidelines for Management of Onsite Wastewater Systems

On October 6, 2000, EPA published for review and comment a draft of its Guidelines for Management of Onsite/Decentralized Wastewater Systems and an outline for a guidance manual that will supplement the guidelines addressing all sizes of septic systems. EPA's development of these guidelines was described in the Clean Water Action Plan released by the Agency in 1998 and is in response to State agency reports that septic systems, which are predominantly single family septic systems, constitute the third most common source of ground water contamination because systems have failed due to inappropriate siting or design or inadequate long-term maintenance. Thus, the purpose of the guidelines is to raise the quality of management programs, establish minimum levels of activity, and institutionalize the concept of management for all sizes of septic systems. The guidelines apply to both existing and new septic systems and to systems of any size for residential and commercial wastewater treatment and disposal. The guidelines contain a set of model programs that rely on coordinating responsibilities and actions among the State, tribal or local regulatory agency, the management entity or service provider, and the system owner.

5. Proposed Determination

Based on the information available at this time and the actions the Agency is currently undertaking to improve the performance of septic systems through the development of management guidance, EPA concludes that additional Federal regulations under the UIC program are not required at this time. This conclusion is reached because (1) based on the results of the Class V Study, actual contamination from these wells is relatively isolated and (2) an additional layer of Federal UIC requirements, placed on top of existing State and local LCSS regulations, would not be effective in further preventing endangerments from these wells. EPA believes that the development and implementation of management guidance is a preferable approach to development of additional UIC requirements for preventing endangerment of ground water by LCSSs for several reasons. First, the approach is comprehensive—it address all types and sizes of septic systems, of which LCSSs regulated under the UIC program are just one small part. Second, use of an integrated and comprehensive approach for all septic systems will • expedite implementation and avoid potential confusion or disruption of current programs that have varying approaches to distinguishing "large" from "small" systems. Third, the management guidance approach is designed to accommodate regional differences in environmental sensitivity and the level of management activities needed to achieve water quality and public health protection. Finally, this approach avoids the additional administrative burden on States and the regulated community that would come from additional Federal UIC regulations that the Agency believes are not likely to be effective in preventing endangerments from these wells. This is chiefly due to the fact that existing State and local requirements are already more specifically tailored to local hydrologic conditions than new Federal UIC regulations could be. Adding another layer of generalized Federal requirements will not add any real safe guards in protecting underground sources of drinking water. EPA believes that any gap in environmental protection associated with these wells is caused by a lack of effective and proper implementation, not a lack of standards; thus additional standards would not address this problem. Rather, EPA's approach is to spur better implementation of existing standards.

E. Agricultural Drainage Wells

1. 1995 Proposed Finding

Based on the 1987 Report to Congress, EPA found that agricultural drainage wells have a high potential to contaminate USDWs because they may inject sediment, nutrients, pesticides, metals, and pathogens. The Agency also found that additional Federal UIC regulations for agricultural drainage wells were not likely to be effective in protecting USDWs in agricultural areas due to the wide range of contamination sources such as fertilizer and pesticide application and land use practices. In addition, EPA found that agricultural drainage wells were concentrated primarily in three States. As a result, EPA concluded that it could best achieve the goal of protecting USDWs from contamination by agricultural drainage wells by assisting States in promoting the use of best management practices (BMPs) that are best suited to local conditions and to addressing potential ground water contamination sources in a holistic fashion. EPA proposed not to develop any additional Federal UIC regulations applicable to agricultural drainage wells and instead to rely on technical guidance, existing authorities (such as requiring a permit under 40 CFR 144.12), and other Agency programs targeted at improving the quality of agricultural runoff.

2. Public Comments

One commenter opposed EPA's finding that no new UIC regulations were necessary or appropriate given other EPA reports that indicated agricultural runoff was a widespread threat to drinking water quality in the midwest. Another commenter indicated that EPA's finding failed to meet the requirements of the SDWA because the Agency may choose not to regulate only if it demonstrates that injection will not endanger USDWs. Two commenters indicated that the guidance document that EPA proposed to develop to facilitate implementation of BMPs should be developed with State input and public review and comment.

3. 1999 Class V Study

The Class V Study identified four documented cases of ground water contamination clearly attributable to agricultural drainage wells. Two of these cases occurred in the 1970's. In addition, six other studies point to agricultural drainage wells as contributing to the more general problem of nitrate contamination in ground water in agricultural areas. The Study also found that the potential for agricultural drainage wells to endanger USDWs is highest when the wells are located near animal waste management areas such as manure lagoons and/or in settings where manure is land applied; however, no actual cases of contamination involving spills or leaks from manure lagoons migrating through agricultural drainage wells are known to have occurred. In addition, the Study found that more than 95 percent of the approximately 1,100 documented wells in the country are concentrated in just five States (Idaho, Iowa, Ohio, Texas, and Minnesota). Four of these five States require individual permits/authorizations or ban the wells under certain circumstances. For example, Iowa bans agricultural drainage wells in areas that have anaerobic lagoons or earthen manure storage structures, and Minnesota bans wells that inject into an aquifer (i.e., saturated zone).

4. Concentrated Animal Feeding Operations Proposal

On December 15, 2000, the EPA Administrator signed proposed revisions to the NPDES permit regulations and effluent guidelines that would address the water quality impacts of manure, wastewater, and other process waters generated by concentrated animal feeding operations (CAFOs) (66 FR 2960, January 12, 2001). The proposal, which is a step in implementing the EPA and U.S. Department of Agriculture's *Unified Strategy for Animal Feeding Operations* developed in March 1999, would apply to as many as 39,000 CAFOs across the country. According to alternate definitions that were proposed, CAFOs would be defined as facilities that maintain anywhere from 300 to more than 1,000 "animal units" in confinement, including cattle, swine, turkeys, chickens, horses, sheep or lambs, and ducks. The rule would apply to production areas at CAFOs (animal confinement areas, manure storage areas, raw material storage areas, and waste containment areas) and areas under the control of CAFO owners or operators where manure is land applied.

The proposal explicitly recognizes and addresses the risk of animal wastes from CAFOs migrating through agricultural drainage wells into ground water that has a direct hydrologic connection to surface waters. Specifically, the proposal would prohibit the application of animal wastes within 100 feet of sinkholes and intake structures or agricultural well heads. EPA requested comment on the presence of such features in crop land and the extent to which the 100-foot setback around such features would interfere with the land application of manure.

The proposal includes several other features that would have the effect of protecting ground water quality and reducing the endangerment associated

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with agricultural drainage wells at or near CAFOs. For example, for animal confinement and manure storage areas, the proposal would adopt a zero discharge requirement with no overflow allowance for swine, veal, and poultry CAFOs, would require routine inspections of the production area to ensure that wastewater and manure handling and storage are functioning properly, and would require proper closure of manure storage units. The proposal also would require CAFO operators to land apply manure at proper agronomic rates, which would reduce the potential for excess manure and associated contaminants to migrate overland or underground into agricultural drainage wells.

5. Proposed Determination

Although there are potential concerns associated with agricultural drainage wells, EPA does not believe the available information on contamination incidents and the potential for these wells to endanger USDWs suggests the need to develop additional Federal UIC requirements at this time. The incidence of contamination from these wells is very low. States where the vast majority of agricultural drainage wells are known to exist are already implementing effective programs. The CAFO proposal, if promulgated, would take a significant step to address the greatest remaining threat identified for these wells: the potential for contamination from large manure lagoons and from the land application of manure. EPA will continue to look for situations where these and other threats might exist and, if found, take action on a case-by-case basis to prevent endangerment using existing authorities.

F. Industrial Wells

1. 1995 Proposed Finding

In the 1995 proposal, industrial wells were defined to include Class V motor vehicle waste disposal wells and other kinds of wells used to inject industrial and commercial waste that did not fall into one of the other proposed categories of Class V wells. Using this broad definition, the 1995 proposal found that some types of industrial wells may have a high potential to endanger USDWs. The Agency, however, proposed that these wells are best addressed using existing authorities and that additional Federal UIC regulations to protect USDWs would be inappropriate. One of the main reasons for this position was the diversity in the types of fluids being injected into industrial wells, which would make it difficult to establish one set of national minimum requirements. Another important reason was a lack of facility-specific data that EPA would need to develop a tailored regulatory approach appropriate to the different kinds of industrial wells and their respective degrees of endangerment.

2. Public Comments

While EPA received some comments supporting the 1995 proposal for industrial wells, such as from State agencies that believed they already had sufficient authority and knowledge to address these wells, a number of commenters opposed the 1995 approach. Much of the opposition came from the Sierra Club. As discussed in Section II.B above, the Sierra Club stated that the diversity of fluids injected into industrial wells is not grounds for a decision against additional Federal regulations and could be addressed by establishing targeted regulations for more narrowly defined subcategories of wells. The Sierra Club further commented that EPA has an obligation to collect any additional facility-specific data deemed necessary to perform its rulemaking duties.

3. Subsequent Actions

Based on public comments on the 1995 proposal, and in accordance with the 1997 modified consent decree with the Sierra Club, EPA issued a revised proposal in 1998. This revision proposed to separate motor vehicle waste disposal wells from the other kinds of industrial wells considered in the 1995 notice, and to either ban motor vehicle waste disposal wells in ground water protection areas or to require such wells to be permitted. Other wells left in the industrial well category, when located in ground water protection areas, would be required to meet MCLs and other health-based standards at the point of injection, according to the 1998 proposal. The 1999 final rule expanded this approach for motor vehicle waste disposal wells to include Other Sensitive Ground Water Areas as defined by the States. A final decision on how to address the remaining industrial wells was delayed, mainly because of continuing public concern that the industrial well category was still too diverse and included many kinds of wells that do not endanger USDWs. Some State and EPA Regional UIC programs also maintained that additional Federal regulations for industrial wells were unwarranted because the programs already had ample authority and were already adequately addressing these wells.

Therefore, instead of finalizing the 1998 proposal for other kinds of industrial wells not addressed by the 1999 rule on motor vehicle waste disposal wells, EPA decided to conduct further review to decide whether additional Federal regulations are needed. This additional review consisted of the following three components, which are summarized in turn below: (1) public notice and review of additional information on contamination incidents potentially attributable to Class V industrial wells; (2) more detailed study of four specific types of Class V industrial wells; and (3) evaluation of Class V UIC program activities to address industrial wells using existing authorities.

The NODA EPA published on May 21, 1999 (64 FR 27741) presented additional information on, among other topics, contamination incidents potentially attributable to Class V industrial wells. That information was collected as part of the Class V UIC Study, which was still ongoing at the time, as well as from separate file searches conducted at the EPA Region II and Region VIII offices. All of the information was placed in EPA's Water Docket for public review when the NODA was published. As noted by several commenters on the NODA, and as determined upon review by EPA, these reported incidents do not provide compelling evidence of significant problems caused by Class V industrial wells. The primary limitation is that most of the incidents are associated with illegally operating Class IV (i.e., shallow hazardous waste) injection wells, which are generally prohibited under the current UIC regulations, rather than Class V wells. EPA recognizes that this problem can be addressed by greater enforcement of the existing ban of Class IV wells and does not necessarily require additional Federal regulations on Class V industrial wells. Moreover, many of the potential contamination incidents included in the NODA are more than 10 years old and not relevant to today's practices, are based on anecdotal information or secondary references of questionable credibility, involve contamination that remained below levels of concern, are not clearly linked to Class V wells as opposed to other pollutant sources, and involve only possible contamination rather than actual documented contamination. Altogether, information from the Class V Study placed in the NODA revealed only three documented cases of contamination that site-specific reports clearly attribute to the operation of Class V industrial wells, and two of these

cases were discovered in the 1970's and one was discovered in 1987. This is a very low contamination frequency considering the thousands of wells estimated to be operating, and it does not suggest a widespread current problem that warrants new Federal regulations.

The Class V Study also included a more detailed examination of four specific types of Class V industrial wells: (1) Wells used to dispose of washwater at carwashes that do not clean undercarriages or engines; (2) wells used to dispose of food preparation-related wastewater and food processing equipment or facility wash down water; (3) wells used to inject fluids from laundromats where no onsite dry cleaning is performed or where no organic solvents are used for laundering; and (4) wells used to inject noncontact cooling water that contains no additives and has not been chemically altered. EPA does not believe the information compiled for these well types, presented in Volumes 4, 6, 8, and 22, respectively, of the Class V Study report, demonstrates a potential to endanger that warrants additional regulation. For example, across all four well types, the Study found only one documented contamination incident (involving a lobster processing/holding facility in Maine) and two possible contamination incidents (involving carwashes in Hawaii). There remains concern about some wells at carwashes being vulnerable to spills or illicit discharges when an attendant is not onsite, but the Study did not find evidence showing that such problems associated with carwash wells are actually occurring and warrant the development of new UIC regulations.

EPA also reevaluated how Class V UIC primacy States in their regions address industrial wells using existing authorities. Class V primacy States have demonstrated the ability to use existing authorities to take some form of action to ensure that Class V industrial wells do not endanger USDWs. Some States have an outright ban of industrial wells while other States require permits for industrial wells. Some States ban the wells under some situations but permit them under others. When a previously unidentified industrial well is discovered, the existing UIC programs investigate the situation and decide on the best way to address it, which may include requiring the well to close or get a permit, depending on site-specific conditions and threats. Such follow up investigation and action is usually taken immediately after a Class V industrial well is discovered, or as soon thereafter as possible given a State's workload relative to available resources to implement the Class V portion of their UIC program. Limited resources, not regulatory authorities, appears to be the primary factor that would constrain a primacy State from taking immediate action to address the risks posed by Class V industrial waste disposal wells. Therefore, an additional layer of Federal regulation would providing no real safe guards for protecting underground sources of drinking water.

In States where EPA directly implements the Class V portion of the UIC program, the EPA Regional Offices always address endangering Class V wells as soon as they are identified, as a matter of routine policy under the existing UIC regulations and authorities. Although the exact nature and timing of actions required vary from one Regional Office to the next, the DI programs typically require endangering industrial wells to close or get a permit, and require site investigation and remediation in response to any contamination that may have occurred. Such actions have been found to send a strong message to owners or operators of uninventoried industrial wells that they too should close their wells. EPA also communicates this message officially in outreach materials distributed to well owners and operators in DI programs and to staff in primacy States for them to use as part of their programs.

4. Proposed Determination

The 1999 final rule included new stringent regulations targeting the subcategory of Class V industrial wells believed to have the highest potential to endanger USDWs at the time of the 1995 proposal: Motor vehicle waste disposal wells. Further review of the remaining types of Class V industrial wells (1) indicates that they have not been the source of frequent contamination incidents and (2) confirms that existing UIC programs in States where most industrial wells are known to exist are already using existing authorities to adequately address these wells and protect USDWs. As a result, EPA does not believe there is a need to develop additional Federal UIC regulations applicable to Class V industrial wells at this time. Instead, the Agency will continue to prevent endangerment from individual wells using existing authorities. This effort will include enforcing the existing prohibition of Class IV wells to prevent accidental or illicit abuses of Class V industrial wells and continuing to provide technical assistance and support to State UIC programs, where needed, to make sure these wells are being adequately controlled. EPA also will explore additional opportunities to communicate UIC requirements and obligations to certain industry sectors in association with the effluent guideline program implemented under the Clean Water Act.

V. Comment Solicitation

EPA is soliciting public comment on the underlying data and rationale supporting this proposed determination that additional Federal UIC regulations are not needed at this time to prevent Class V wells from endangering underground sources of drinking water. This proposed determination is based on The Class V Underground Injection Control Study (EPA Document Number EPA/816–R–99–014, dated September 1999) and other information that has been placed in the public docket for comment. Also, EPA is soliciting any new data or information relevant to the findings in this proposed determination and the Class V injection well types it addresses.

Dated: April 30, 2001.

Diane C. Regas,

Acting Assistant Administrator for Water.

[FR Doc. 01–11413 Filed 5–4–01; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG13

Endangered and Threatened Wildlife and Plants; Notice of New Schedule for Final Determination of Critical Habitat for Wintering Piping Plovers

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of 60-day delay for final determination of critical habitat.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a 60-day delay in making our final determination of critical habitat for wintering piping plovers, subject to further court proceedings. This additional time will allow us to complete the analyses required under section 4(b)(2) of the Endangered Species Act of 1973, as amended (Act), for designation of critical habitat. We will publish our final determination in the **Federal Register.**

DATES: We will make our final determination on the designation of

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critical habitat for wintering piping plovers by June 29, 2001.

ADDRESSES: Questions about this document should be directed to the Chief, Division of Conservation and Classification, U.S. Fish and Wildlife Service, 4401 North Fairfax, Room 420, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Chris Nolin at the above address or telephone (703) 358–2171.

SUPPLEMENTARY INFORMATION:

Background:

The piping plover (Charadrius melodus) is a small North American shorebird that breeds in the Great Plains, Great Lakes, and upper Atlantic Coast states; its wintering areas include the lower Atlantic and Gulf coasts of the United States. On December 11, 1985, we published a final rule (50 FR 50720), listing the piping plover as endangered in the Great Lakes watershed (Illinois, Indiana, Michigan, northeastern Minnesota, New York, Ohio, Pennsylvania, Wisconsin, and Ontario) and as threatened elsewhere within its range. All piping plovers on migratory routes outside of the Great Lakes watershed or on their wintering grounds are considered threatened. We did not designate critical habitat for the species at that time.

In December 1996, Defenders of Wildlife (Defenders) filed a lawsuit against the Department of the Interior and the Service for failing to designate critical habitat for the Great Lakes population of the piping plover. Defenders filed a second similar lawsuit for the Northern Great Plains piping plover population in 1997. These lawsuits were subsequently combined (Defenders of Wildlife et al. v. Bruce Babbitt et al., Consolidated Cases Civil No. 1:96–CV–02695AER and Civil No. 1:97–CV00777AER). In February 2000, the court issued an order directing us to publish a proposed critical habitat designation for the Great Lakes population of the piping plover by June 30, 2000. Publication of a similar proposal for nesting areas of the Northern Great Plains population of piping plover by May 31, 2001, was also ordered. A subsequent order directs us to finalize the critical habitat designations for the Great Lakes population by April 30, 2001, including its wintering habitat, and for the Northern Great Plains population by March 15, 2002.

Since we cannot distinguish the Great Lakes and Great Plains birds on their wintering grounds, we felt it was appropriate to propose critical habitat for all wintering piping plovers collectively. Further, we determined that the appropriate course of action would be to propose critical habitat for all U.S.-wintering piping plovers on the same schedule required, under court order, for the Great Lakes breeding population. We proposed critical habitat for wintering piping plovers on July 6, 2000 (65 FR 41782), and published extensions of the comment period on August 30, 2000 (65 FR 52691), and October 27, 2000 (65 FR 64414), so that the comment period closed on November 24, 2000. We later reopened the comment period from February 22, 2001, through March 1, 2001 (66 FR 11134), to accept additional information. The proposal includes 146 areas along the coasts of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas. This includes approximately 2,691 kilometers (1,672 miles) of shoreline along the Gulf and Atlantic coasts and along margins of interior bays, inlets, and lagoons.

Section 4(b)(2) of the Endangered Species Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species. We prepared and made available a draft economic analysis concerning the proposed critical habitat designation (65 FR 52691). We received considerable public comment on our draft analysis of the economic effects of the proposed critical habitat designation; we reopened the comment period the last time (66 FR 11134) primarily to accept additional information into the record on potential economic effects of the designation.

Given the extent and detail of the comments on our draft economic analysis, and especially the significant portion of these comments that arrived after we reopened the comment period in late February, we were only able to develop a draft final economic analysis on April 17, 2001, and a revised draft one week later. We are currently reviewing this revised draft. The final economic analysis is a critically important part of the analysis required under section 4(b)(2) of the Act; without the economic analysis, we are unable to complete an adequate and effective 4(b)(2) analysis.

We, therefore, have delayed by 60 days our final decision on critical habitat for wintering piping plovers. Since the current court order requires this decision to have been made by April 30, 2001, we have requested the court to extend the deadline by 60 days, or until June 29, 2001. We will base our final determination on material and information already in the record for this critical habitat determination and will publish our determination in the **Federal Register**.

Elsewhere in the **Federal Register** today we are publishing a final rule designating critical habitat in the breeding areas of the endangered Great Lakes population of piping plovers. In addition, by May 30, 2001, we will make a proposed determination of critical habitat for the breeding areas of the threatened population of piping plovers in the northern Great Plains.

Author

The primary authors of this document are Wendi Weber and Patrick Leonard, Division of Conservation and Classification, Arlington, Virginia.

Authority

The authority for this action is the Endangered Species Act (16 U.C.S. 1531 *et seq.*).

Dated: April 30, 2001.

Marshall P. Jones, Jr.,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 01–11206 Filed 5–2–01; 12:41 pm]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition To List the Washington Population of Western Sage Grouse (*Centrocercus urophasianus phaios*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding for a petition to list the Washington population of western sage grouse (*Centrocercus urophasianus phaios*) under the Endangered Species Act of 1973, as amended (Act). We find that the petitioned action is warranted, but precluded by higher priority listing actions. We will develop a proposed rule to list this population segment pursuant to our Listing Priority Guidance (LPG). We made this finding in accordance with a court-approved settlement in the case of Northwest Ecosystem Alliance v. Babbitt (No. 00–520–EAS(D.D.C)).

DATES: The finding announced in this document was made on April 30, 2001.

ADDRESSES: Submit information, comments, or questions concerning this petition finding to the Supervisor, Upper Columbia Fish and Wildlife Office, U.S. Fish and Wildlife Service, 11103 East Montgomery Drive, Spokane, Washington 99206. The petition, administrative finding, supporting information, and comments received are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Chris Warren, Fish and Wildlife Biologist, at the above address, by phone at (509) 891–6839, facsimile at (509) 891–6748, or electronic mail at chris_warren@fws.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires that, for any petition that contains substantial information, we conduct a status review and make a finding within 12 months of the date of receipt of the petition on whether the petitioned action is: (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority. Upon making a 12-month finding, we must promptly publish such notice in the **Federal Register**.

On May 28, 1999, we received a petition, dated May 14, 1999, from the Northwest Ecosystem Alliance, Bellingham, Washington, and Biodiversity Legal Foundation, Boulder, Colorado. The petitioners requested that the Washington population of western sage grouse (*Centrocercus urophasianus phaios*) be listed as threatened or endangered under the Act. The petition clearly identified itself as such and contained the names, addresses, and signatures of the petitioning organizations' representatives. Accompanying the petition was information relating to the taxonomy, ecology, threats, and the past and present distribution of western sage grouse.

The petitioners requested listing of the Washington population of western sage grouse based upon threats to the population and its isolation from the remainder of the taxon, and they provided biological and ecological support for this argument. We considered this request appropriate because, while we do not base listing decisions on political subdivisions other than international boundaries, we must consider for listing under the Act any population of vertebrate taxa (species or subspecies) if it can be recognized as a distinct population segment (DPS) (61 FR 4722). The criteria under which we recognize DPSs are based upon the population's discreteness from the remainder of the taxon and its significance to the taxon to which it belongs. Therefore, our status review considered the population segment of western sage grouse in Washington as it relates to the remainder of the taxon.

In July, 2000, the American Ornithologists' Union (AOU) recognized sage grouse (*Centrocercus urophasianus*) by the common name of greater sage grouse. In addition, the AOU recognized sage grouse inhabiting southwestern Colorado and extreme southeastern Utah as a congeneric species (*C. minimus*), referred to as Gunnison sage grouse (AOU 2000). The western subspecies of greater sage grouse (*C. u. phaios*) was first described in 1946 (Aldrich 1946) and was recognized by the AOU in 1957 (AOU 1957). Compared to the eastern subspecies (*C. u. urophasianus*), western sage grouse have reduced white markings and darker grayish-brown feathering, resulting in a more dusky overall appearance. We adopted the above nomenclature and recognized ranges of these taxa for this finding.

We condensed information regarding the description and natural history of greater sage grouse from the following sources—Aldrich 1963, Dalke *et al.* 1963, Johnsgard 1973, Connelly *et al.* 1988, Fischer *et al.* 1993, Drut 1994, WDFW 1995, Western Sage and Columbian Sharp-tailed Grouse Workshop (WSCSGW) 1996 and 1998, and Schroeder *et al.* 1999.

Grouse are gallinaceous (chicken-like, ground-nesting) birds, and greater sage grouse are the largest North American grouse species. Males and females have dark grayish-brown body plumage with many small gray and white speckles, fleshy yellow combs over the eyes, long pointed tails, and dark-green toes. Males also have blackish chin and throat feathers, specialized erectile feathers at the back of the head and neck, and white feathers around the neck and upper belly. During breeding displays, males also exhibit patches of bare, olive-green skin on their breasts.

Greater sage grouse depend on shrub steppe habitats throughout their life cycle, and are particularly tied to several species of sagebrush (*Artemesia* spp.). Adult greater sage grouse rely on sagebrush throughout much of the year to provide roosting cover and food, and depend almost exclusively on sagebrush for food during the winter. A wide variety of forbs (broad-leaved herbaceous plants) are also used by greater sage grouse during the spring and summer periods. Greater sage grouse hens require sufficient forb abundance for their pre-laying and nesting periods, and an assortment of forb and insect species form important nutritional components for chicks during the early stages of development. Greater sage grouse may disperse up to 160 kilometers (km) (100 miles (mi)) between seasonal use areas, however, average movements are generally less than 35 km (21 mi).

During the spring breeding season, male greater sage grouse gather together and perform courtship displays on relatively open areas called leks. Leks are often surrounded by more dense shrub steppe cover where males and females may disperse to roost or escape predators during the breeding season. Males defend individual territories within leks and perform elaborate displays with their specialized plumage and vocalizations to attract females for mating. Relatively few, dominant males account for the majority of breeding on a given lek.

Females typically select nest sites under sagebrush cover, although other vegetation is sometimes used. The simple nests consist of scrapes on the ground, which are sometimes lined with feathers and vegetation. Clutch sizes range from 6 to 13 eggs, and females may renest with loss of their first clutch. Nest success ranges from 10 to 63 percent and is relatively low compared to other prairie grouse species. Chicks begin to fly at 2 to 3 weeks of age and broods remain together for up to 12 weeks. Shrub canopy and the cover provided by grasses and forbs act to conceal nesting hens and their broods.

The annual mortality rate for greater sage grouse is roughly 50 to 55 percent, which is relatively low compared to other prairie grouse species. Most juvenile mortality occurs during nesting and the chicks' flightless stage and is due primarily to predation or severe weather conditions. Up to 50 percent of all greater sage grouse mortality is caused by predation, from both avian (e.g., hawks, eagles, and ravens) and ground (e.g., coyotes, badgers, and ground squirrels) predators.

Historically, greater sage grouse occurred in 12 States and 3 Canadian provinces (after Schroeder *et al.* 1999);

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their range extended from southeastern Alberta and southwestern Saskatchewan, Canada, south to northwestern Colorado, west to eastern California, Oregon, and Washington, and north to southern British Columbia, Canada. Range-wide, the distribution of greater sage grouse has declined in a number of areas. Currently, greater sage grouse occur in 11 States and 2 Canadian provinces; they were extirpated from Nebraska and British Columbia (after Braun 1998). There have also been considerable declines in the abundance of greater sage grouse from historic levels (Hornaday 1916, Crawford and Lutz 1985, Drut 1994, WDFW 1995, Coggins and Crawford 1996, Braun 1998, Schroeder *et al.* 1999, among others).

The historic distribution of western sage grouse extended from south-central British Columbia southward throughout eastern Washington and Oregon, except in extreme southeastern Oregon near the Idaho/Nevada borders (Figure 1). Populations in northern California and western Nevada are thought to represent an intermediate form between the western and eastern subspecies of greater sage grouse (AOU 1957, Aldrich 1963). Currently, western sage grouse occupy central and southern Oregon and two relatively small areas in central Washington.

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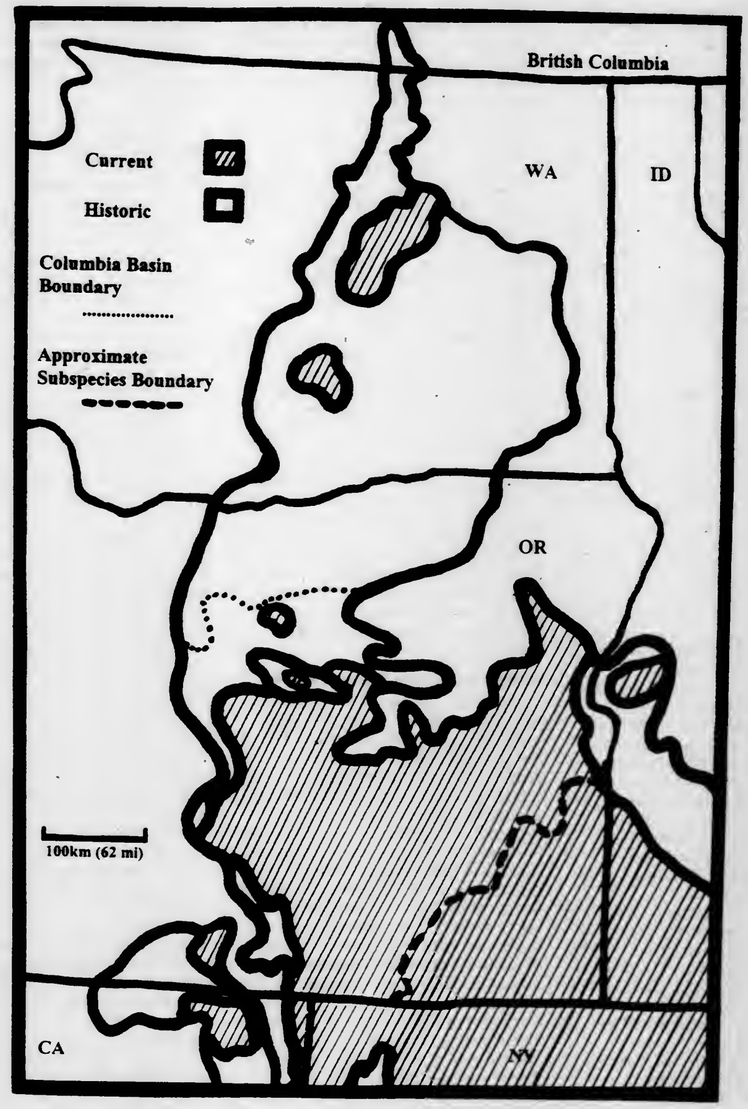


Figure 1. The historic and current distribution of western sage grouse (after Aldrich 1963 and WDFW 2000) and the southern boundary of the Columbia Basin ecosystem (see text).

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Except for Wallowa County, western sage grouse were distributed throughout the sagebrush-dominated habitats of eastern Oregon until the early 1900s (Gabrielson and Jewett 1940). By 1920, western sage grouse populations had decreased and the birds were considered scarce except for areas in central and southern Oregon (Gabrielson and Jewett 1940, Drut 1994). Presently, Malheur, Harney, and Lake Counties harbor the bulk of greater sage grouse in Oregon (roughly 24,000 to 58,000 birds, both subspecies combined), with the balance of Oregon's western sage grouse population (roughly 3,000 to 8,000 birds) split among Baker, Crook, Deschutes, Grant, Klamath, Union, and Wheeler Counties (after Willis *et al.* 1993).

Historically, western sage grouse in Washington ranged from Oroville in the north, west along the Cascade foothills, east to the Spokane River, and south to the Oregon border (Yocom 1956). Historic references indicate there were large numbers of western sage grouse in Washington (in Sveum 1995 and WDFW 1995), and annual State harvests averaged roughly 1,800 birds from 1951 to 1973. Harvest rates declined from 1974 (n = 900) to 1987 (n = 18), and Washington closed the hunting season in 1988 (WDFW 1995). Western sage grouse currently occupy approximately 10 percent of their historic distribution in the State. There are two subpopulations of western sage grouse remaining in Washington, totaling approximately 1,000 birds (WSGWG 1998). The northern subpopulation occurs primarily on private and State-owned lands in Douglas County (roughly 650 birds); the southern subpopulation occurs at the Yakima Training Center (YTC), administered by the U.S. Department of the Army (Army), in Kittitas and Yakima Counties (roughly 350 birds).

Rough estimates, based on the historic distribution of western sage grouse (after WDFW 2000) and contemporary density projections (Johnsgard 1973; Drut *et al.* 1994a; WDFW 1995; Schroeder, WDFW, pers. comm. 1999), indicate that there may have been between 200,000 and 2,000,000 western sage grouse historically. Using best- and worst-case scenarios, western sage grouse abundance has declined between 66 percent and 99 percent from historic levels, respectively.

Previous Federal Action

We added the western sage grouse to our candidate species list on September 18, 1985, as a category 2 species (50 FR 37958). Category 2 species were those for which we possessed information indicating that a proposal to list as endangered or threatened was possibly appropriate, but for which conclusive data on biological vulnerability and threats were not available to support a proposed rule. On February 28, 1996, we discontinued the designation of category 2 species as candidates for listing under the Act (61 FR 7596).

In 1992, we entered into a voluntary Conservation Agreement with the Army and the WDFW for western sage grouse occurring at the YTC. The Conservation Agreement expired April 30, 2000. Efforts to update and implement a revised Conservation Agreement for western sage grouse throughout Washington are ongoing.

We published a 90-day finding for the subject petition on August 24, 2000 (65 FR 51578), which concluded that substantial information was available to indicate that the petitioned action may be warranted and that a status review would commence. The original public comment period ended October 23, 2000, but was reopened on January 9, 2001 until February 16, 2001, to provide additional opportunity for input from interested parties (66 FR 1632). This 12-month finding is made in accordance with a court-ordered settlement in the case of *Northwest Alliance v. Babbitt* (No. 00–520–EAS(D.D.C.)), which requires us to complete a finding by May 1, 2001.

Distinct Population Segment Review

Under the Act, we must consider for listing any species, subspecies, or, for vertebrates, any DPS of these taxa if there is sufficient information to indicate that such action may be warranted. To implement the measures prescribed by the Act and its Congressional guidance, we (along with the National Marine Fisheries Service) developed policy that addresses the recognition of DPSs for potential listing actions (61 FR 4722). The policy allows for more refined application of the Act that better reflects the biological needs of the taxon being considered and avoids the inclusion of entities that do not require its protective measures.

Under our DPS policy, we use two elements to assess whether a population segment under consideration for listing may be recognized as a DPS. The elements are: (1) The population segment's discreteness from the remainder of the taxon; and (2) the population segment's significance to the taxon to which it belongs. If we determine that a population segment being considered for listing represents a DPS, then the level of threat to the population segment is evaluated based on the five listing factors established by the Act to determine if listing it as either threatened or endangered is warranted.

Below, we assess the population segment of western sage grouse that remains in Washington under our DPS policy.

Discreteness—A population segment of a vertebrate species may be considered discrete if it satisfies either one of the following two conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation. (2) It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant with regard to conservation of the taxon. We did not address the international boundary criterion in this 12-month petition finding because western sage grouse have been extirpated from British Columbia.

The two subpopulations of western sage grouse that remain in central Washington are separated by approximately 55 km (34 mi). While this distance is well within the species' maximum estimated dispersal distance, a number of recent telemetry studies have never documented their intermixing (Schroeder pers. comm. 1999; Pounds, YTC, pers. comm. 1999). However, until recently, the two subpopulations were considered relatively continuous and may now represent isolated components of a single metapopulation (WDFW 1995, Schroeder *et al.* 2000). In addition, sporadic sightings outside current concentrations indicate there may be some minimal interaction and, possibly, genetic interchange between them (WDFW 1995).

The next closest western sage grouse to the population in Washington are located over 185 km (115 mi) to the south, in central Oregon. Historically, there was a greater level of continuity and interaction between the population segments of western sage grouse in these two regions (Drut 1994). However, bottlenecks in the distribution of western sage grouse may have existed historically across central Oregon (Figure 1). In this area, western sage grouse range is confined to relatively narrow corridors of lower elevation, shrub steppe habitats that transect higher elevation, forested habitats. In addition, the shrub steppe habitats and land forms found in central Oregon may further restrict western sage grouse

distribution within this region (see below).

It is currently unclear to what extent the restrictions of shrub steppe habitats in central Oregon may have acted to isolate population segments of western sage grouse historically. Nevertheless, with regard to western sage grouse seasonal movements, dispersal behavior, and recent census information (Schroeder pers. comm. 1999; Pounds pers. comm. 1999; Ferry, Oregon Department of Fish and Wildlife, pers. comm. 2001), the population segment remaining in Washington is now considered physically discrete from the population segment in central and southern Oregon (WDFW 1995, WSGWG 1998, Schroeder *et al.* 2000). It is likely that the population segments within these two regions have been physically discrete since at least the early-1900s (Gabrielson and Jewett 1940, Crawford and Lutz 1985, Drut 1994).

Based on the above information, we find that the population segment of western sage grouse that occurs in Washington is discrete from the remainder of the taxon.

Significance—Our DPS policy provides several examples of the types of information that may demonstrate the significance of a population segment to the remainder of its taxon, including—(a) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; and (b) evidence that the discrete population segment differs markedly from other population segments in its genetic characteristics; and (c) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon. We address these significance factors below as they relate to the population segment of western sage grouse that remains in Washington.

(a) Persistence in an unusual or unique ecological setting—The broad shrub steppe biome historically occupied by greater sage grouse across their range consists of a number of variable habitat types that grade from one to the next, and which may be considerably different between the regions occupied by the species (Miller and Eddleman 2000). The different habitats historically and currently occupied by greater sage grouse are a reflection of the different geologic, climatic, and edaphic (soil) conditions and disturbance regimes influencing the various regions within the shrub steppe biome (Miller and Eddleman 2000). Necessarily, greater sage grouse have adapted to the mosaic of shrub steppe habitat types found throughout their historic distribution (Schroeder *et al.* 1999).

With regard to the historic range of western sage grouse, several studies defined and mapped landscape-level ecosystem components of the northwestern United States (Franklin and Dyrness 1988, Quigley *et al.* 1997), while others focused on the management and conservation of natural resources within these regional ecosystems (Wisdom *et al.* 1998, Miller and Eddleman 2000). Although there are a number of differences between these studies and their stated objectives, the ecosystem mapping units that result are surprisingly consistent (Quigley *et al.* 1997). Use of this biogeographic information is important in determining if the population segment of western sage grouse that remains in Washington occupies an unusual or unique ecological setting. In addition, it is important for delineating the bounds of any potential DPS in the region, as required by our DPS policy.

Four (and potentially five) of the ecosystems identified by the above studies provide essential habitat requirements for western sage grouse. For the purposes of this finding, we refer to the ecosystems historically occupied by western sage grouse as the Columbia Basin, High Lava Plains, Northern Great Basin, Owyhee Uplands, and, potentially, the Modoc Plateau (after Quigley *et al.* 1997). The Columbia Basin occurs in Washington and northern Oregon, while the other four ecosystems occur in central and southern Oregon. These ecosystems are interspersed to varying degrees with forested habitats of the Southern and Eastern Cascades ecosystems to the west, Okanogan Highlands to the north, and the Bitterroot and Blue Mountains to the east; and steppe (grassland) habitats of the Palouse Prairie to the east.

The population segment of western sage grouse that remains in Washington occurs entirely within the Columbia Basin and is the only representation of the taxon within this ecosystem. The population segment of western sage grouse in central and southern Oregon shows nearly continuous occupation across the High Lava Plains, Northern Great Basin, and Owyhee Uplands. Given the available information, it is unclear if the disjunct subpopulation of greater sage grouse in the vicinity of Gerber Reservoir in extreme south-central Oregon (Modoc Plateau) represents western sage grouse or the northern extent of intermediate populations in northern California. This area is not considered further for the purposes of this finding.

A number of significant differences are found between the Columbia Basin and the balance of historic western sage grouse range in central and southern Oregon (Table 1). In general, the Columbia Basin is lower in elevation, contains deeper soils of varying origin, and has been influenced by different geological processes. These structural differences, combined with regional climatic conditions, significantly influence the broad plant associations found within each ecosystem (Daubenmire 1988, Franklin and Dyrness 1988). Historically, transitional steppe habitats were much more prevalent within the Columbia Basin than within the ecosystems of central and southern Oregon. In contrast, juniper (*Juniperus* spp.) woodlands and salt-desert shrub habitats were much more common in central and southern Oregon. Finally, there are significant differences in the type and distribution of sagebrush taxa among the ecosystems historically occupied by western sage grouse.

Table 1.—Differences in Ecosystem Elements Between Regions Occupied by the Extant Population Segments of Western Sage Grouse (After Winward 1980, Daubenmire 1988, Franklin and Dyrness 1988, McNab and Avers 1994, Dobler et al. 1996, Quigley et al. 1997, and Miller and Eddleman 2000)

	Ecosystem Elements—Geologic, Edaphic, and Transitional Habitats						
Population segment	Elevations	Soils	Channeled scablands	Internally-drained playas	Steppe	Juniper woodland	Salt-desert shrub
Columbia Basin	<3,000 ft	Deep/Loamy Glacial/ Eolian.	Prominent (north).	Rare/Absent	Abundant (east).	Rare/Absent	Rare/Absent.

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ECOSYSTEM ELEMENTS—GEOLOGIC, EDAPHIC, AND TRANSITIONAL HABITATS—Continued

Population segment	Elevations	Soils	Channeled scablands	Internally-drained playas	Steppe	Juniper woodland	Salt-desert shrub
Central/Southern Oregon.	>3,500 ft	Thin/Rocky Volcanic/Alluvial.	Rare/Absent	Prominent (NGB, OU) [1].	Rare/Absent	Abundant (HLP) Present (NGB, OU).	Abundant (NGB, OU).

[1] Element primarily applies to the ecosystems noted: HLP—High Lava Plains; NGB—Northern Great Basin; OU—Owyhee Uplands.

ECOSYSTEM ELEMENTS—SAGEBRUSH (*Artemesia*) TAXA[1]

Population segment	Basin ssp	Wyoming ssp	Mountain ssp	Low	Three-Tip	Stiff	Early	Silver	Black
Columbia Basin.	Dominant ..	Rare/Absent.	Rare/Absent.	Rare/Absent.	Abundant (north).	Abundant .:	Rare/Absent	Rare/Absent.	Rare/Absent.
Central/Southern Oregon.	Rare/Absent.	Dominant ..	Abundant ..	Abundant ..	Present (OU)	Present	Present (HLP)	Present (NGB, OU).	Present (NGB, OU).

[1] Big Sagebrush (*A. tridentata*) Subspecies (ssp): Basin—*A.t. tridentata*, Wyoming—*A.t. wyomingensis*, Mountain—*A.t. vaseyana;* Low—*A. arbuscula;* Three-tip—A. tripartita; Stiff—*A. rigida;* Early—*A. longiloba;* Silver—*A. cana;* Black—*A. nova.*

There are a number of broad habitat associations in common between the Columbia Basin and the ecosystems of central and southern Oregon (Daubenmire 1988, Franklin and Dyrness 1988). However, even within these common habitat associations, notable differences exist. In general, the composition of forb species differs considerably between the Columbia Basin and the ecosystems in central and southern Oregon (Daubenmire 1988 and Franklin and Dyrness 1988). Even when the same forb species may be present, the two regions typically support different subspecies and/or varieties of these taxa (Hitchcock and Cronquist 1973).

The differences noted above between the Columbia Basin and the ecosystems of central and southern Oregon affect the essential habitat requirements of western sage grouse within these different regions, as described below.

Greater sage grouse are sagebrush "obligates" and depend on sagebrush to a great degree to provide essential food and cover requirements, especially during winter (Drut 1994, Barnett and Crawford 1994, WDFW 1995, Schroeder *et al.* 1999). Greater sage grouse display preferential use of different taxa of sagebrush as winter food (Remington and Braun 1985, Welch *et al.* 1991) and, in some areas, low sagebrush may be preferred over big sagebrush (in Schroeder *et al.* 1999). In addition, greater sage grouse display preference for the different subspecies of big sagebrush as food, showing the highest preference for mountain big sagebrush, followed by Wyoming big sagebrush, then basin big sagebrush (Welch *et al.* 1991). The different growth forms of sagebrush taxa (Winward 1980 and 1981, Meyer 1992) also provide different cover conditions for greater sage grouse, and their winter movements are associated with locating appropriate sites (WDFW 1995, Schroeder *et al.* 1999). The sagebrush taxa that are available as winter food and cover for western sage grouse differ between the Columbia Basin and the ecosystems of central and southern Oregon (Table 1).

During the breeding season, adult greater sage grouse undergo a nutritional deficit and lose weight (WDFW 1995, Schroeder *et al.* 1999). During this period and continuing into summer, forbs and insects become increasingly important as food items for greater sage grouse. Western sage grouse hens require sufficient forb abundance for their pre-laying and nesting periods, and an assortment of forb and insect species form important nutritional components for chicks during the early stages of their development (Gregg *et al.* 1993, Barnett and Crawford 1994, Drut *et al.* 1994b, Hanf *et al.* 1994). Preferential use of food resources by greater sage grouse is believed to be associated with the foods' nutritive values, the dietary needs of the birds, and, ultimately, the birds' reproductive fitness and survival (Remington and Braun 1985, Johnson and Boyce 1990, Barnett and Crawford 1994, Drut *et al.* 1994a, Drut *et al.* 1994b, Hanf *et al.* 1994, WDFW 1995, Schroeder *et al.* 1999). Many of the native forb species and varieties that differ between the Columbia Basin and the ecosystems of central and southern Oregon (Hitchcock and Cronquist 1973, Franklin and Dyrness 1988) form important food items for greater sage grouse from spring through summer, including those within the genera *Agoseris, Astragalus, Crepis, Aster, Erigeron, Eriogonum,* and *Lomatium* (Sveum 1995, Miller and Eddleman 2000).

From spring through fall, sagebrush canopies provide vertical cover for greater sage grouse, while grasses and forbs provide horizontal cover. This variety of cover is very important for concealing nesting hens and their broods from potential avian and ground predators, as well as providing protection from inclement weather. Western sage grouse in central and southern Oregon use different sagebrush habitat associations (e.g., mountain big sagebrush, low sagebrush) throughout the spring and summer periods (Gregg *et al.* 1993, Barnett and Crawford 1994, Drut *et al.* 1994a, Hanf *et al.* 1994). The sagebrush habitat associations preferentially selected by western sage grouse in central and southern Oregon are not available to the population segment within the Columbia Basin (Table 1).

Juniper woodlands and salt-desert shrub communities are notable primarily for their potential to exclude western sage grouse and the management implications that result. As juniper becomes more abundant and areas become increasingly closed woodlands, use by greater sage grouse is precluded. The exclusion of fire from juniper woodlands allow these communities to expand. Active invasion of sagebrush habitat associations by juniper woodlands has occurred over the last 130 years (Miller and Eddleman 2000). Likewise, salt-desert shrub habitats are not typically used by greater sage grouse. Intense grazing pressure and other local activities that can affect the hydrology of an area (e.g., irrigation, mining, impoundments) may alter the composition and distribution of salt-desert shrub communities. The historic, present, and predicted future occurrence of juniper woodlands and salt-desert shrub communities differ between the Columbia Basin and the ecosystems of central and southern Oregon (Table 1, Keane *et al.* 1996).

Based on the above information, we conclude that the Columbia Basin represents a unique ecological setting due to its geologic, climatic, edaphic, and plant community components. In addition, the unique elements of the Columbia Basin ecosystem affect the essential habitat requirements of western sage grouse. Necessarily, the population segment of western sage grouse occupying the Columbia Basin must differentially exploit the resources that are available, as compared to the population segment within the ecosystems of central and southern Oregon. The different habitat use patterns of western sage grouse within the Columbia Basin have bearing on their food and cover preferences, distribution, movements, reproductive fitness, and, ultimately, their survival. The unique elements of the Columbia Basin also hold different management implications for western sage grouse within this ecosystem (see below).

(b) Markedly different genetic characteristics—To date, most genetic research on greater sage grouse has concentrated on clarifying issues surrounding the taxonomic separation of Gunnison sage grouse in Colorado. Results of this research show Gunnison sage grouse to have a dissimilar genetic profile and less genetic diversity than greater sage grouse populations in Colorado (Quinn *et al.* 1997, Oyler-McCance *et al.* 1999).

This information supports the new species designation for these birds (AOU 2000). The genetic information concerning Gunnison sage grouse demonstrates that the genus may differentiate significantly within a relatively small geographic region. In addition, this information is important for helping to determine the extent of genetic differentiation between population segments of greater sage grouse, and whether such differentiation may be significant to the remainder of the taxon.

Additional studies to investigate the range-wide genetic profiles of greater sage grouse are ongoing (Quinn *et al.* 1997; Benedict and Quinn 1998; Benedict *et al.* 2001). To date, range-wide investigations include samples from Colorado, Utah, Nevada, California, Oregon, and Washington. Sample sizes are minimal for portions of the range, and the results are preliminary and have been used primarily to guide further investigation (Oyler-McCance, University of Denver, pers. comm. 1999; Quinn pers. comm. 1999).

The range-wide investigations into the genetic profiles of greater sage grouse have identified a number of rare and unique haplotypes (from mitochondrial DNA). In addition, haplotype frequencies and the level of genetic diversity vary among the local populations sampled (Quinn *et al.* 1997, Benedict and Quinn 1998, Benedict *et al.* 2001). So far, there are several notable results from this range-wide work (Benedict *et al.* 2001). First, the population sampled from the Mono Lake area in California and Nevada stands out for having an unusually high proportion of novel haplotypes, sharing only a single haplotype (represented by just one individual) with the rest of the range. This population represents the extreme southwestern extent of historic greater sage grouse range. Second, there is no apparent genetic distinction between the recognized eastern and western subspecies. Third, the population segment that remains within the Columbia Basin stands out for having very low genetic diversity, with just three haplotypes represented among the two subpopulations. Thirteen individuals sampled from the northern subpopulation (n = 18) and all of the individuals sampled from the southern subpopulation (n = 18) represent a single, widespread haplotype that is shared with most of the other sampled locales. The remaining five individuals from the northern subpopulation are represented by a novel (n = 3) or rare (n = 2) haplotype (Benedict *et al.* 2001).

The comparatively low genetic diversity of the population segment of western sage grouse that remains within the Columbia Basin is consistent with a recent and severe bottleneck in its effective population size (i.e., the number of individuals contributing to reproduction), reduced or no gene flow to this population segment from other regions, or both (Benedict *et al.* 2001, Oyler-McCance *et al. in litt.* 2001). The results from the range-wide work on the regional genetic profiles of greater sage grouse are suggestive and demonstrate a marked difference between the population segment of western sage grouse within the Columbia Basin and the population segment in central and southern Oregon. However, these results do not necessarily indicate that genetic differentiation of this population segment is significant to the remainder of the taxon. To what extent the forces of isolation, adaptive change, genetic drift, and/or inbreeding may have influenced the regional genetic profiles of greater sage grouse, including those that remain within the Columbia Basin, merits further investigation (Benedict *et al.* 2001, Oyler-McCance *et al. in litt.* 2001).

(c) Significant gap in the range of the taxon—Western sage grouse represent the extreme northwestern extent of greater sage grouse range. In addition, the population segment that remains within the Columbia Basin represents an isolated portion of the northern-most extent of the historic distribution of western sage grouse. The Columbia Basin historically encompassed roughly 55 percent of the entire range of western sage grouse (Figure 1). Currently, western sage grouse occupy approximately 5 percent of their historic distribution within this ecosystem.

A number of studies address the characteristics of peripheral and/or isolated populations and their potential influences on, and importance to, the remainder of the taxon. Peripheral and isolated populations may experience increased directional selection due to marginal or varied habitats or species compositions at range peripheries, exhibit adaptations specific to these differing selective pressures, demonstrate genetic consequences of reduced gene flow dependent on varying levels of isolation, and/or have different responses to anthropogenic influences (Levin 1970, MacArthur 1972, Morain 1984, Lacy 1987, Hengeveld 1990, Saunders *et al.* 1991, Hoffmann and Blows 1994, Furlow and Armijo-Prewitt 1995, Garcia-Ramos and Kirkpatrick 1997, among others).

Recent discussions addressed the attributes of isolated and peripheral populations and their potential importance to conservation efforts. Some investigations would emphasize genetic distinctiveness (Lesica and Allendorf 1995, Waples 1998), while others suggest a spectrum of influences may demonstrate the value of discrete populations (Pennock and Dimmick 1997, Ruggiero *et al.* 1999). The purposes of the Act are to conserve species "* * * of esthetic, ecological, educational, historical, recreational, and scientific value. * * *" As addressed above, the DPS policy reflects this broader objective and does not limit the concept of significance strictly to genetic distinctiveness.

The available information regarding the historic distribution and potential isolation of western sage grouse within the Columbia Basin demonstrates that this population segment is likely experiencing increased directional selection due to marginal and varied

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habitats at the taxon's range periphery, exhibiting genetic consequences of reduced gene flow from other population segments, and responding (and will continue to respond) to the different anthropogenic influences in the region.

Based on the above information, we conclude that loss of the population segment of western sage grouse that remains within the Columbia Basin would represent a significant gap in the historic range of the taxon (i.e., the loss of a conspicuous peripheral and isolated extension of historic range and representation of the taxon within a unique ecological setting).

Conclusion

To summarize, we find that the discrete population segment of western sage grouse that occurs in Washington is significant to the remainder of the taxon, and thus represents a distinct population segment. The significance of this population segment is primarily due to its persistence in the unique ecological setting of the Columbia Basin. In addition, information concerning the historic and current distribution of western sage grouse indicates that the loss of the Columbia Basin population segment would represent a significant gap in the historic range of the taxon. Finally, the available genetic information on western sage grouse, while inconclusive, further supports the recognition of this population as a DPS. We have determined that extirpation of this population segment may result in the loss of unique characteristics within the taxon, likely precluding further scientific inquiry into potential differentiation of these characteristics.

As required by our DPS policy, we determined that the bounds of this DPS are conterminous with the historic distribution of western sage grouse within the Columbia Basin ecosystem (Figure 1). Consequently, we refer to this population segment as the Columbia Basin DPS for the remainder of this finding.

Consideration of threats to, and conservation measures for, the Columbia Basin DPS are addressed below.

Summary of Factors Affecting the DPS

The Act establishes five categories of threat that, either singly or in combination, indicate a DPS may be threatened or endangered. The five listing factors that must be considered are—(1) present or threatened destruction, modification, or curtailment of habitat or range; (2) over-utilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; and (5) other natural or human-caused factors affecting the DPS' continued existence.

(1) Present or threatened destruction, modification, or curtailment of habitat or range. A number of influences have been implicated in the decline of greater sage grouse distribution and abundance throughout the species' range (Crawford and Lutz 1985, Blus *et al.* 1989, Braun *et al.* 1994, Drut 1994, WDFW 1995, Fischer *et al.* 1996, Connelly and Braun 1997, Schroeder *et al.* 1999). Of primary concern are impacts to native shrub steppe habitats, which include conversion for agriculture, urban and mineral resources developments, construction of utility and transportation corridors, and habitat degradation through overgrazing, brush control, altered fire frequencies, and exotic species invasions. Other potential influences that may be associated with greater sage grouse population declines include predation, excessive hunting, disease and parasitism, chemical applications for pest control, weather cycles, and recreational activities. As a result of these combined influences, greater sage grouse distribution and abundance have continued to decline over the past decade, and a number of populations may now be at risk of extinction throughout the species' range (in WSCSGW 1996 and 1998). Currently, greater sage grouse populations may be considered secure in five States, including Montana, Wyoming, Idaho, Nevada, and Oregon (Connelly and Braun 1997).

Native Americans began grazing horses in the Columbia Basin in the mid-1700s and, by the mid-1800s, European settlers had established extensive cattle and horse grazing operations throughout the shrub steppe habitats used by western sage grouse (Daubenmire 1988, WDFW 1995, Livingston 1998). By the late 1800s, sheep production became increasingly important and large flocks were grazed along with other previously established livestock herds. Concurrent with significant declines in native shrub steppe habitats (see below), contemporary grazing levels are much reduced from historic levels. However, large livestock operations continue within the shrub steppe habitats of the Columbia Basin to the present. From 1986 to 1993, roughly 500,000 cattle were being supported in nine central Washington counties that historically harbored western sage grouse (WDFW 1995).

There is some evidence that the shrub steppe habitats of the Columbia Basin evolved in the absence of substantial grazing pressure from large native herbivores since the latest period of glaciation, roughly 12,000 years before present (Mack and Thompson 1982, Daubenmire 1988). Excessive grazing pressure can have significant impacts on the shrub steppe ecosystems found throughout the historic range of greater sage grouse (Fleischner 1994), and these impacts may be exacerbated in the Columbia Basin. In this region, excessive grazing removes current herbaceous growth and residual cover of native grasses and forbs, and can increase the canopy cover and density of sagebrush and invasive species (Daubenmire 1988, WDFW 1995, Livingston 1998). These impacts may be especially critical to western sage grouse populations during the spring nesting and brood rearing periods, and may negatively affect their reproductive potential (Crawford 1997, Connelly and Braun 1997, Schroeder *et al.* 1999).

The latest available estimate (1993) of the number of cattle supported in Douglas County, which also supports the northern subpopulation of the Columbia Basin DPS, is roughly 20,000 (WDFW 1995). It is currently unclear if this level of livestock use in the county may have negative effects on western sage grouse or their habitats. Prior to 1992, livestock grazing pressure was intense throughout the area of Kittitas and Yakima Counties that now comprises the YTC, which supports the southern subpopulation of the Columbia Basin DPS. In 1992, grazing intensity was reduced at the YTC within the western sage grouse protection areas identified by the Army. In 1995, cattle grazing was eliminated throughout the installation (Livingston 1998). Twice annually during spring and fall, flocks of sheep are trailed through the YTC over a period of several weeks (Pounds pers. comm. 1999). It is unknown to what degree current livestock use levels may be impacting western sage grouse or their habitat at the YTC. However, impacts from past livestock grazing are still evident throughout the installation (Livingston 1998).

During the first half of the 1900s, large portions of the shrub steppe habitats on deeper soils within the Columbia Basin were converted for dryland crop production (Daubenmire 1988, Franklin and Dyrness 1988, WDFW 1995). During the mid-1900s, a number of hydro-electric dams were developed on the Columbia and Snake Rivers in Washington and Oregon. The reservoirs formed by these projects impacted native shrub steppe habitats adjacent to the rivers and led to further conversion of large expanses of upland shrub steppe habitats in the Columbia Basin for irrigated agriculture (WDFW 1995, Franklin and Dyrness 1988). It has been estimated that approximately 60 percent of the original shrub steppe habitat in Washington has been converted, primarily for agricultural uses (Dobler 1994). While at much reduced levels, shrub steppe habitats within the Columbia Basin continue to be converted for both dryland and irrigated crop production. In addition, the U.S. Bureau of Reclamation retains options for further development of the Columbia Basin Irrigation Project in central Washington (USDI 1998). Major portions of Washington's shrub steppe ecosystem are considered among the least protected areas in the state (Cassidy 1997).

Large areas of privately owned lands in Douglas County are currently withdrawn from crop production and planted to native and non-native cover under the federal Conservation Reserve Program (CRP), established in 1985 (USDA 1998). Lands under the CRP are very important to the northern subpopulation of the Columbia Basin DPS (Schroeder pers. comm. 1999). These areas, some of which have been set aside since the late 1980s, can provide the essential grass and shrub cover requirements of western sage grouse on lands previously used for agriculture. The juxtaposition of CRP lands with the remaining areas of native shrub steppe habitats and crop lands may further increase the value of these habitat patches for western sage grouse (Schroeder pers. comm. 1999). A number of CRP contracts in Washington have expired since 1995, and more are scheduled to expire from now through 2002. New contracts completed in 1998 for Douglas County have increased the acreage of CRP lands potentially available for use by western sage grouse. However, contracts extend for just 10 years and new standards for CRP lands will be implemented that may require replanting of significant acreage under existing contracts (USDA 1998; Schroeder pers. comm. 1999). Presently, it is unclear what effects these changes have had, or will have, on the northern subpopulation of the Columbia Basin DPS.

In 1991, the Army expanded the YTC along its northern boundary by approximately 24,000 ha (60,000 ac) to form its present configuration and size of approximately 130,000 ha (325,000 ac). One of the primary justifications for expansion of the installation was to reduce impacts to heavily used areas by allowing rotational training exercises and rehabilitation of impacted sites (USDD 1989). In 1994, the Army restationed mechanized and armored combat forces to Fort Lewis in western Washington (USDD 1994). This action was undertaken to accommodate brigade-level maneuver exercises and may result in an increase in overall training activity and associated impacts at the YTC. Large-scale training exercises at the YTC are scheduled to occur at 18- to 24-month intervals and may involve more than 10,000 troops and 1,000 tracked and wheeled vehicles. Small-scale training exercises are also conducted annually at the YTC by other United States' (e.g., Washington National Guard) and allied military units (USDD 1989, Livingston 1998).

In the fall of 1995, the Army conducted its first large-scale training exercise at the YTC following the restationing action. Analysis of the impacts from this exercise indicated that over 9 percent of the sagebrush plants within the western sage grouse protection areas experienced major structural damage. In addition, modeling exercises indicated that sagebrush cover would decline due to similar training scenarios if conducted on a biannual basis (Cadwell *et al.* 1996). Analyses of the potential impacts to other shrub steppe components that may be important to western sage grouse at the YTC (e.g., grass, forb, and insect quality and abundance), or those associated with the smaller, ongoing training activities, are not currently available. However, it has been suggested that native vegetation on impacted sites with limited soil disturbance will recover following large-scale maneuver exercises (Cadwell *et al.* 1996). In addition, the YTC conducts aggressive revegetation efforts for sagebrush and native grasses within the western sage grouse protection areas (Livingston 1998) and has eliminated season-long grazing on the installation (USDD 1996). Evaluation of the quality or quantity of naturally recovered areas and the efficacy of revegetation efforts is currently not available.

Natural and human-caused fire is a significant threat to western sage grouse throughout the Columbia Basin because, at increased frequencies, it can remove sagebrush from the vegetation assemblage (USDI 1994, WDFW 1995). Sagebrush is easily killed by fire (Daubenmire 1988) and, in the absence of a sufficient seed source, may not readily reinvade sites where it has been removed. Fire may be especially damaging at the YTC where military training activities provide multiple ignition sources, vegetative cover is relatively continuous, and invasive species such as cheatgrass (*Bromus tectorum*) and knapweed (*Centauria* spp) may provide fine fuels that can carry a fire. The Army considered fire management and control in its planning efforts for the restationing action (USDD 1996), and the YTC has since developed a detailed fire management plan (USDD 1998). However, the potential for relatively large range fires to occur at the YTC remains. In 1996, over 25,000 ha (60,000 ac) of shrub steppe habitat, much of it currently and potentially used by western sage grouse, was burned as a result of training activities. A fire of this magnitude within the identified western sage grouse protection areas would jeopardize the subspecies' persistence at the installation (Livingston 1998).

(2) Over-utilization for commercial, recreational, scientific, or educational purposes. Recent scientific investigations in Washington have resulted in some mortality of western sage grouse. However, the level of mortality incurred is not likely to significantly influence the viability of the Columbia Basin DPS (Schroeder pers. comm. 1999; Pounds pers. comm. 1999).

The northern subpopulation of the Columbia Basin DPS occurs primarily on private lands and is not subject to extensive viewing by the general public or other recreational activities (Schroeder pers. comm. 1999). The YTC closely manages recreation and sage grouse viewing by the general public using the installation, and these activities are not believed to be significant to the well-being of the southern subpopulation of the Columbia Basin DPS (Pounds pers. comm. 1999).

The Columbia Basin DPS has not been subject to hunting since 1987 (WDFW 1995).

(3) Disease or predation. Greater sage grouse are subject to a number of mortality factors related to disease and predation (WDFW 1995). However, there are apparently no documented severe episodes of disease or predation that have played a significant role in the population declines and range reduction of western sage grouse. Episodes of disease or altered predation patterns may play an important role in the dynamics of small and isolated populations, and increase the risk of their extirpation (see below).

(4) Inadequacy of existing regulatory mechanisms. Revegetation standards under the CRP promote the improvement of habitat conditions for the northern subpopulation of the Columbia Basin DPS, and the CRP restricts livestock grazing on contract lands except under extraordinary circumstances. However, these measures are not specifically promulgated for the protection of

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western sage grouse, and there are few other mechanisms that regulate grazing practices or the conversion of native habitats on privately owned lands.

The Service is currently assisting with development of a county-wide Habitat Conservation Plan (HCP) for private lands in central Washington (Foster Creek Conservation District, Douglas County). When completed, the HCP will include measures to protect the northern subpopulation of the Columbia Basin DPS. However, the Act does not provide regulatory protections for unlisted species during development of HCPs (USDI 1996).

Some illegal or accidental shooting of western sage grouse may occur in Washington in association with hunting seasons for other upland game species. However, the state hunting moratorium and hunting regulations implemented by the Army at the YTC appear to be sufficient to control this form of mortality, and it is not likely to significantly influence the viability of the Columbia Basin DPS (Schroeder pers. comm. 1999; Pounds pers. comm. 1999).

The Army implements a number of regulations at the YTC to promote environmental protection of the installation's natural resources. However, various impacts to the habitats important to western sage grouse occur, and are primarily the result of training-related fire and direct damage to vegetation communities from training maneuvers (see above).

(5) *Other natural or human-caused factors affecting the DPS' continued existence.* The fragmented, isolated nature of the Columbia Basin DPS is a concern for conservation of the taxon within the Columbia Basin ecosystem. A preliminary viability analysis conducted by the WSGWG (1998) indicates that neither subpopulation is likely viable over the long term (approximately 100 years). In addition to the relatively large-scale impacts on native shrub steppe habitats (above), other naturally occurring impacts and human influences of lesser magnitude may pose threats to the Columbia Basin's isolated subpopulations. Potential risks include direct impacts to individuals from inclement weather conditions, altered predator demographics or behavior, agricultural practices (e.g., cultivation, harvest, etc.), vehicle collisions, pest control measures, scientific investigations, and military training (e.g., smoke obscurant and live-fire exercises, etc.). Impacts may also result from indirect disturbance of the subpopulations caused by agricultural and grazing activities, transportation corridors, recreation, and military training events (over-flights, troop movements, etc.). Small, isolated populations may also be at greater risk to the effects of inbreeding (Benedict *et al.* 2001, Oyler-McCance *et al. in litt.* 2001). Although it is unlikely that any one of these factors have played a significant role in the population declines and range reductions of western sage grouse, these combined influences may now play an important role in the dynamics of the relatively small and isolated subpopulations that make up the Columbia Basin DPS.

Finding

We reviewed the petition, information available in our files, other published and unpublished information submitted to us during the public comment period following our 90-day petition finding and consulted with recognized prairie grouse experts and other federal, state, and tribal resource agencies within the historic range of western sage grouse. On the basis of the best scientific and commercial information available, we find that listing the Columbia Basin DPS of western sage grouse as threatened is warranted, but precluded by higher priority listing actions.

In making this finding, we recognize that there have been declines in the distribution and abundance of western sage grouse throughout the Columbia Basin, primarily attributed to the loss and degradation of native shrub steppe habitats. These impacts are likely due to a combination of factors including crop production, fire, military training, over-grazing by livestock, rural and suburban development, and dam construction. The Columbia Basin DPS of western sage grouse is also at increased risk from inbreeding depression and random environmental influences due to its small size and level of fragmentation. We also recognize that various state and Federal agencies in Washington and Oregon, and throughout the species' historic distribution, are actively managing the birds to try to improve their overall population status and/or attempting to restore them to currently unoccupied habitats.

Due to a backlog of listing decisions and funding constraints, a proposed rule to list the Columbia Basin DPS of western sage grouse will be developed in accordance with our October 22, 1999, (or subsequent) LPG (64 FR57114). Under the LPG, we prioritize our listing activities based upon the magnitude of threats to a listable entity, followed by the immediacy of the threats, and, finally, by the taxonomy of an entity (i.e., monotypic genus, followed by species, then subspecies / DPS). The two subpopulations of the Columbia Basin DPS are subject to different threats of varying magnitude. However, we conclude that the overall magnitude of threats to the Columbia Basin DPS of western sage grouse is moderate, and that the overall immediacy of these threats is imminent. Under our listing and recovery priority guidance (48 FR 43098), a DPS for which threats are moderate and imminent is assigned a Listing Priority Number of 9.

We intend that any proposed listing action for the Columbia Basin DPS of western sage grouse will be as accurate and effective as possible. Therefore, we will continue to accept additional information and comments from other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

References Cited

A complete list of references cited herein is available upon request from the Upper Columbia Fish and Wildlife Office (see **ADDRESSES** section).

Author

This document was prepared by Chris Warren, Upper Columbia Fish and Wildlife Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 30, 2001.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 01–11356 Filed 5–4–01; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 010319074–1104–02; I.D. 022201B]

RIN 0648–AP13

Atlantic Highly Migratory Species (HMS) Fisheries; Pelagic Longline Management

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; withdrawal.

SUMMARY: NMFS withdraws its proposal to extend the closure of the Charleston Bump area to pelagic longline fishing through May 31, 2001. Through a previously issued final rule, the Charleston Bump area remains closed to pelagic longline fishing annually from February 1 through April 30.

DATES: The proposed rule published on March 30, 2001 (66 FR 17389), is withdrawn as of May 2, 2001.

ADDRESSES: Copies of the Final Environmental Assessment and Regulatory Impact Review that accompany this notification of withdrawal can be obtained from Christopher Rogers, Acting Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz, NMFS, at (301) 713–2347 or by email at karyl.brewster-geisz@noaa.gov, or Jill Stevenson, NMFS-Southeast Regional Office at (727) 570–5447 or by email at jill.stevenson@noaa.gov.

SUPPLEMENTARY INFORMATION: A final rule (65 FR 47214, August 1, 2000) to implement a regulatory amendment to the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks included a provision to close the Charleston Bump area to pelagic longline fishing on an annual basis from February 1 through April 30. NMFS subsequently delayed the effective date of the closed area for 2001 to March 1 to correct the coordinates of the closed areas and to distribute this information to affected fishermen and law enforcement (66 FR 8903, February 5, 2001). On March 30, 2001, NMFS proposed to extend the closure period of the Charleston Bump area through May 31, 2001 (66 FR 17389).

The intent of the proposed action was to partially recover environmental benefits in terms of bycatch reduction that were likely lost when the closure was delayed from February 1, 2001, until March 1, 2001. In a draft Environmental Assessment prepared in support of the proposed action, NMFS evaluated the costs and benefits of the extension consistent with the objectives of the final rule previously implementing the seasonal closure. The proposed action would not have affected the closure dates for the Charleston Bump area in future years. NMFS requested comments from the public and held a public hearing on April 3, 2001.

NMFS received many comments on the proposed rule. Some of the comments supported the proposed rule and noticed the environmental benefits in terms of bycatch reduction. Other comments did not support the proposed rule and stated that the proposed extension would have little impact over the long-term to these fish on a stock-wide basis and that the extension has no scientific basis. NMFS also received comments stating that the extension should last through the month of June to recoup lost bycatch reduction benefits for the delay of the East Florida Coast closure as well as the delay of the Charleston Bump closure. Additional comments noted that NMFS' estimates of the number of vessels that fish in February in the Charleston Bump is high, especially for this year due to bad weather, and that fishermen should not be punished because NMFS made an error.

NMFS also received comments regarding the economic impacts that the proposed extension could have on the fishermen and dealers in the Charleston Bump area. These comments included: fishermen fishing in the Charleston Bump in May and June target dolphin fish, not swordfish; dolphin fish fishing costs less (shorter leaders, no lightsticks, less bait, etc.) and, therefore, profits are higher in May than any other time of year; 25 percent of a fisherman's annual income is received in May; the Small Business Administration has declared South Carolina a disaster area due to the shrimp fishery failure and an extension would further exacerbate the problem for these communities; the short notice of the extension would not give fishermen sufficient time to adjust fishing patterns to minimize economic and social impacts; fishermen and dealers around both the Charleston Bump and East Florida Coast have been relying on and planning for the area to reopen on May 1 since the closure dates were announced last August; and recreational fishing is economically valuable to the communities and any reduction in longline bycatch could benefit the communities especially given the tournaments that open in May.

NMFS also received miscellaneous comments that included: the comment period was too short given the length of a longline trip; U.S. fishermen already take voluntary action to reduce bycatch and additional regulations may have negative impacts in negotiating conservation measures internationally; if NMFS closes the Charleston Bump for an extended period, fishermen will be forced to fish offshore even if it is unsafe to do so; NMFS should evaluate the effectiveness of existing closures before proposing new ones; and NMFS needs to research and implement other methods of bycatch reduction and VMS.

NMFS is concerned about bycatch and bycatch mortality in all Atlantic highly migratory species fisheries and will continue to evaluate existing bycatch reduction measures as well as pursue additional measures as necessary. However, due to the large economic impacts extending the closure could have, the short time period in which fishermen and dealers would have to adjust fishing patterns to avoid the Charleston Bump, and the fact that NMFS does not know at this time the actual impact on bycatch reduction of both the delay in the Charleston Bump and East Florida coast closures and the actual time/area closures, NMFS has determined that extending the closure of the Charleston Bump area through May 31 is unwarranted.

Additional analyses described in the final Environmental Assessment indicate that while effort in the Charleston Bump was low compared to past years, the fishermen who did fish in February caught slightly more billfish and sea turtles than the average. Thus, extending the closure could possibly regain some of the bycatch reductions that may have been lost due to the delay. However, the degree of bycatch reduction achieved by a May 2001 closure would not contribute significantly to bycatch reduction in the pelagic longline fishery beyond the immediate short-term; on the other hand, the economic impacts from this one-time extension could be very significant for fishermen, particularly in light of the August 1, 2000, final rule. In the August 1, 2000, final rule and its accompanying Final Supplemental Environmental Impact Statement, NMFS determined that it was not necessary to close the Charleston Bump in May in order to achieve the objectives of the final rule and reduce bycatch and bycatch reduction. Despite the delay in the closure of the Charleston Bump, because the objectives of the proposed rule were the same as the August 1, 2000, final rule, NMFS agrees with its earlier decision and feels it is necessary to wait until more data are gathered regarding the result of the existing closures and any bycatch reductions gained before adjusting the August 1, 2000, final rule any further.

NMFS acknowledges that bycatch in the pelagic longline fishery is an international issue that requires international cooperation. The United States is working to develop international conservation measures and will continue to negotiate at the International Commission for the Conservation of Atlantic Tunas in support of U.S. fisheries, to the extent that their prosecution is consistent with U.S. domestic legislation. While NMFS is aware that the comment period for the proposed rule was shorter than 45 days,

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the timing of the proposal required a short comment period in the event that final regulations and supporting documents needed to be prepared. Additionally, NMFS agrees that recreational fishing is economically valuable to communities; however, NMFS must manage fisheries consistent with the Magnuson-Stevens Fishery Conservation and Management Act and its implementing guidelines, which require consideration of traditional fisheries. Safety is the responsibility of each fisherman. While NMFS works to reduce safety concerns related to regulatory actions, fishermen should account for the distance from shore if an area is closed and they redistribute their fishing effort.

Withdrawal of Proposed Rule

Accordingly, for the reasons stated in the preamble, the proposed rule that was published in the **Federal Register** on March 30, 2001 (66 FR 17389) is withdrawn.

Dated: May 1, 2001.

John Oliver,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 01–11420 Filed 5–2–01; 4:25 pm]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 66, No. 88

Monday, May 7, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[FV–01–332]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the intention of the Agricultural Marketing Service (AMS) to request an extension for and revision to a currently approved information collection in support of the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables and Related Products.

DATES: Comments may be submitted on or before July 6, 2001.

ADDITIONAL INFORMATION OR COMMENTS: Contact James R. Rodeheaver, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0247, 1400 Independence Avenue, SW, Washington, DC 20250–0247; fax (202) 690–1527; or e-mail "james.rodeheaver@usda.gov".

SUPPLEMENTARY INFORMATION: *Title:* "Regulations Governing Inspection and Certification of Processed Fruits and Vegetables and Related Products—7 CFR 52".

OMB Number: 0581–0123.

Expiration Date of Approval: December 31, 2001.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) (AMA) directs and authorizes the Department to develop standards of quality, grades, grading programs, and services which facilitate trading of agricultural products and assure consumers of quality products which are graded and identified under USDA programs. To provide programs and services, section 203(h) of the AMA directs and authorizes the Secretary of Agriculture to inspect, certify, and identify the grade, class, quality, quantity, and condition of agricultural products under such rules and regulations as the Secretary may prescribe, including assessment and collection of fees for the cost of the service. The regulations in 7 CFR part 52 provide a voluntary program for grading processed fruits and vegetables and related products on the basis of U.S. standards and grades. AMS also provides other types of voluntary services under the regulations, *e.g.*, contract and specification acceptance services, facility assessment services and certifications of quantity and quality. Voluntary grading services are available on a resident basis or a lot-fee basis. Respondents may request resident service on a continuous basis or on an as-needed basis. The service is paid for by the user (user-fee). Because this is a voluntary program, respondents need to request or apply for the specific service they wish, and in doing so, they provide information. Since the AMA requires that the cost of service be assessed and collected, information is collected to establish the Agency's cost. The information collection requirements in this request are essential to carry out the intent of the AMA, to provide the respondents the type of service they request, and to administer the program. The information collected is used only by authorized representatives of the USDA (AMS, Fruit and Vegetable Programs' national staff; regional directors and their staffs; Area Officers-in Charge and their staffs; and resident Federal graders). The information is used to administer and to conduct and carry out the grading services requested by the respondents. The Agency is the primary user of the information. Information is needed to carry out inspection and grading services to evaluate products as to quality for compliance with the respective grade standards or product specifications. Affected public may include any partnership, association, business trust, corporation, organized group, and State, County or Municipal government, and any authorized agent that has a financial interest in the commodity involved.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.0007 hours per response (33,492 total hours divided by 48,127 total annual responses).

Respondents: Applicants who are applying for grading and inspection services, and the Qualified Through Verification Program.

Estimated Number of Respondents: 1,672.

Estimated Number of Responses per Respondent: 28.784.

Estimated Total Annual Burden on Respondents: 33,492.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Mr. James R. Rodeheaver, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 0709, South Building, STOP 0247, P.O. Box 96456, Washington, DC 20090–4693; faxed to (202) 690–1087; or e-mailed to james.rodeheaver@usda.gov.

All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: May 1, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–11429 Filed 5–4–01; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. PY–01–006]

Notice of Request for an Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the intention of the Agricultural Marketing Service (AMS) to request an extension of a currently approved information collection in support of customer-focused improvement initiatives for USDA-procured poultry, livestock, fruit, and vegetable products.

DATES: Comments on this notice must be received by July 6, 2001.

FOR FURTHER INFORMATION CONTACT: Contact David Bowden, Jr., Standardization Branch, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 0259, Washington, DC 20250–0259, (202) 720–3506.

SUPPLEMENTARY INFORMATION:

Title: Customer Service Survey for USDA-Donated Food Products

OMB Number: 0581–0182.

Expiration Date, as approved by OMB: 12/31/2001.

Type of Request: Extension of a currently approved information collection.

Abstract: Starting with a 1996 pilot project by AMS, customers have been able to use the Customer Opinion Postcard, Form AMS–11, a 4- by 6-inch postcard to voluntarily submit their perceptions of poultry, livestock, fruit, and vegetable products procured by USDA for school lunch and other domestic food programs. These cards have proven to be a quick and inexpensive way for AMS to learn customer perception of USDA commodities; helping the Agency make improvements to its products. AMS would like to continue the use of the customer opinion postcards to get voluntary customer feedback on various products each year by reapproval of the Customer Opinion Postcard, Form AMS–11. In this way AMS will be better able to meet the quality expectations of school food service personnel and the 26 million school children who consume these products daily.

Information about customers' perceptions of USDA-procured products is sought as a sound management practice to support AMS activities under 7 CFR 250, regulations for "Donation of Foods for Use in the United States, Its Territories and Possessions and Areas Under Its Jurisdiction." The information collected will be used primarily by authorized representatives of USDA (AMS, and the Food and Nutrition Service) and shared with State government agencies and product suppliers. To enable customers to mail cards directly to the commodity program that is soliciting the information, several versions of Form AMS–11 will be used, each with a different return address. Response information about products produced by a particular supplier may be shared with that supplier. Similarly, response information from customers located in a particular State may be shared with government agencies within that State.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.083 hours (5 minutes) per response.

Respondents: State, local, and tribal governments, and not-for-profit businesses.

Estimated Number of Respondents: 8,400.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 700 hours.

Copies of this information collection can be obtained from David Bowden, Jr., Standardization Branch, at (202) 720–3506.

Send comments regarding, but not limited to, the following: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to: David Bowden, Jr., Chief, Standardization Branch, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 0259, Washington, DC 20250–0259.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: May 1, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–11430 Filed 5–4–01; 8:45 am]

BILLING CODE 3410–32–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Meeting on Agreement Between the United States and the European Community on Sanitary Measures To Protect Public and Animal Health in Trade in Live Animals and Animal Products

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Foreign Agricultural Service (FAS) is informing the public of a meeting to be held on May 15, 2001, at the U.S. Department of Agriculture (USDA) to discuss the general U.S. negotiating objectives, particularly item-specific export priorities under the U.S. and European Community (EC) Veterinary Equivalency Agreement (VEA). This would include specific sanitary measures and certification issues that currently impede or prohibit trade or potential regulatory changes that would facilitate trade in live animals and animal products between the United States and the EC. U.S. Government agencies, including the Food Safety Inspection Service, Agricultural Marketing Service, Animal and Plant Health Inspection Service, USDA. Food and Drug Administration, National Marine Fisheries Service, and Office of the U.S. Trade Representative will be participating in the meeting.

DATES: The meeting will be held on May 15, 2001, from 9 a.m. to 11 a.m. This meeting may close early if all business is finished.

ADDRESSES: The meeting will be held at the U.S. Department of Agriculture, 1400 Independence Avenue SW., South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Otte or Mr. Bobby Richey at (202) 720–1340.

SUPPLEMENTARY INFORMATION: In July 20, 1999, the United States and the EC signed the Veterinary Equivalency Agreement. The Agreement entered into force on August 1, 1999, and covers more than $3 billion in combined U.S. and EC live animal and animal product trade.

The objective of the Agreement is to facilitate trade in live animals and animal products between the EC and United States by establishing a mechanism for the recognition of equivalence of sanitary measures maintained by each Party consistent with the protection of public and animal health and to improve communication and cooperation on sanitary measures.

The Agreement calls for a Joint Management Committee to meet each year and identify progress and set priorities on outstanding issues for the future. Prior to the Joint Management Committee meeting currently scheduled for June 2001, the U.S. Government would like to receive input from U.S. industries on priority areas for immediate and future attention. The U.S. Government is requesting input on general U.S. negotiating objectives, particularly item-specific export priorities under the VEA. This would include specific sanitary measures and certification issues that currently impede or prohibit trade or potential regulatory changes that would facilitate trade in live animals and animal products. Input received will be considered by the Executive Branch in formulating U.S. positions and objectives in this area.

A complete copy of the agreement can be viewed on the FDA International Cooperative Agreements Web Site at: http://www.fda.gov/oia/default.htm. The document is the second listed under the European Community and is titled "Veterinary Equivalence Framework Agreement."

Public Meeting

The public meeting will take place at the U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, DC, back of the cafeteria, South Building. All visitors should enter at Wing 2 on the C Street side of the South Building. To accommodate all public meeting participants, we request that individuals planning to attend should so inform the Department in advance by contacting: Foreign Agricultural Service, International Trade Policy, Europe, Africa and Middle East Division, Stop 1024, South Building, 1400 Independence Avenue SW., Washington, DC 20250; phone: (202) 720–1340; facsimile: (202) 690–2079. Please indicate the organization represented, if any, including the names and titles of individuals attending.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact FAS at the above location as soon as possible.

Signed at Washington, DC on May 2, 2001.

Mattie R. Sharpless,

Acting Administrator.

[FR Doc. 01–11426 Filed 5–4–01; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Availability of an Environmental Assessment for an amendment to the Finger Lakes National Forest Land and Resource Management Plan; Schuyler Country, New York

AGENCY: Forest Service, USDA.

ACTION: Notice of Availability of an Environmental Assessment.

SUMMARY: On March 26, 1999, Finger Lakes National Forest District Ranger, Martha Twarkins, set forth a proposal to amend the 1987 Finger Lakes National Forest Land and Resource Management Plan (Forest Plan). In mid May of 2001, Acting Forest Supervisor Tamara Malone (responsible official) plans to make the resultant Environmental Assessment available for a 30 day public comment period. Copies of the environmental Assessment will be available upon request. The current preferred alternative (the Mountain Bike Alternative), would relocate a one mile portion of the No-Tan-Takto Trail from off of a busy town road and onto newly acquired land. The newly acquired land would be classified into Management Area 3.1, (which emphasizes evenaged timber management and roaded natural recreation). It would also allow for mountain bike use on the Trail. All comments received will be evaluated, and may result in supplementation of the Environmental Assessment or be incorporated into the final decision.

This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6, 453 FR 55990) and National Forest System Land and Resource Management Planning regulations (36 CFR 219.35, 65 FR 6745145)).

DATES: On March 26, 1999, Finger Lakes National Forest District Ranger, Martha Twarkins, set forth a proposal to amend the 1987 Finger Lakes National Forest Land and Resource Management Plan (Forest Plan). In mid May of 2001, Acting Forest Supervisor Tamara Malone (responsible official) plans to make the resultant Environmental Assessment available for a 30 day public comment period.

ADDRESSES: Send requests for documents to: Forest Supervisor, Green Mountain and Finger Lakes National Forest, 231 North Main Street, Rutland, Vermont 05701.

FOR FURTHER INFORMATION CONTACT: Christopher Zimmer, Forester/Recreation Planner, at 607–546–4470 ext. 311 TDD 607–546–4476; or direct electronic mail to: *czimmer@fs.fed.us.*

RESPONSIBLE OFFICIAL: Tamara S. Malone, Acting Forest Supervisor, 231 North Main Street, Rutland, Vermont 05701.

SUPPLEMENTARY INFORMATION: This amendment would apply to the No-Tan-Takto Trail and 71 acres of newly acquired land on the Finger Lakes National Forest in the form of amending the Land and Resource Management Plan to allow for Mountain use on the No-Tan-Takto Trail as well as long term management of the newly acquired lands. This is a non-significant amendment.

Dated: April 30, 2001.

Tamara S. Malone,

Acting Forest Supervisor.

[FR Doc. 01–11373 Filed 5–4–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Southern Illinois Power Cooperative; Notice of finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality regulations (40 CFR parts 1500–1508), and RUS Environmental Policies and Procedures (7 CFR part 1794), has made a finding of no significant impact (FONSI) with respect to a project proposed by Southern Illinois Power Cooperative (SIPC) of Marion, Illinois. The project consists of re-powering of Units 1 through 3 located at Marion Generating Station owned by SIPC. The three existing coal fired boilers will be replaced with a new Circulating

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Fluidized Bed (CFB) boiler that will provide the total capacity of 120 MW.

The CFB boiler will normally be fired with Illinois Bituminous coal and/or Illinois Bituminous coal refuse. No additional transmission facilities will be required. The Marion Generating Station is located approximately eight miles south of Marion in Williamson County, Illinois. RUS may provide financial assistance to SIPC for this project.

RUS has concluded that the impacts of the proposed project would not be significant and the proposed action is not a major federal action significantly affecting the quality of the human environment. Therefore, the preparation of an environmental impact statement is not necessary.

FOR FUTHER INFORMATION CONTACT: Nurul Islam, Environmental Protection Specialist, Rural Utilities Service, Engineering and Environmental Staff, Stop 1571, 1400 Independence Avenue, SW., Washington, DC 20250–1571, telephone: (202) 720–1414, e-mail: nislam@rus.usda.gov. Information is also available from Mr. Dick Myott, Environmental & Planning Department Manager, Southern Illinois Power Cooperative, 11543 Lake of Egypt Road, Marion, Illinois 62959, telephone (618) 964–1448, Ext. 268. His e-mail address is: rmyott@sipower.org.

SUPPLEMENTARY INFORMATION: RUS, in accordance with its environmental policies and procedures, required that SIPC prepare an Environmental Analysis reflecting the potential impacts of the proposed facilities. The Environmental Analysis, which includes input from federal, state, and local agencies, has been reviewed and accepted as RUS' Environmental Assessment (EA) for the project in accordance with 7 CFR 1794.41. SIPC published notices of the availability of the EA and solicited public comments per 7 CFR 1792.42. The 30-day comment period on the EA for the proposed CFB boiler project ended April 16, 2001. The U.S. Environmental Protection Agency, Region 5, reviewed the EA and stated that the proposed project should not adversely affect human health or significantly degrade the environment. They further stated that the use of appropriate measures for the control of dust, noise, and erosion during construction activities should be sufficient to alleviate the moderate or short-term impacts that are likely to occur. No other comments were received on the EA.

Based on the EA, RUS has concluded that the proposed action will not have a significant effect to various resources, including important farmland, floodplains, wetlands, cultural resources, threatened and endangered species and their critical habitat, air and water quality, and noise. RUS has also determined that there would be no negative impacts of the proposed project on minority communities and low-income communities as a result of the construction of the project.

The EA and the FONSI is available for public review at the RUS or the headquarters of SIPC at the addresses provided in this notice and at the following location:

Marion Carnegie Library, 206 South Market Street, Marion, Illinois 62959, Tel: (618) 993–5935.

Dated: May 1, 2001.

Blaine D. Stockton,

Assistant Administrator, Electric Program, Rural Utilities Service.

[FR Doc. 01–11405 Filed 5–4–01; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Michigan Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Michigan Advisory Committee to the Commission will convene at 9 a.m. and adjourn at 1 p.m. on Thursday, May 17, 2001, at the Holiday Inn Fairlane-Dearborn, 5801 Southfield Service Drive, Detroit, Michigan 48228. The purpose of the meeting is to hold a press conference to release the Committee's report, Civil Rights Issues Facing Arab Americans in Michigan. Also, the Committee will discuss current events and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 1, 2001.

Edward A. Hailes, Jr.,

General Counsel.

[FR Doc. 01–11370 Filed 5–4–01; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Pennsylvania Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Pennsylvania Advisory Committee to the Commission will convene at 12 p.m. and adjourn at 5 p.m. on Wednesday, May 23, 2001, at Philadelphia Convention Center, Conference Room B, 12th and Arch Streets, Philadelphia, Pennsylvania 19107. The purpose of the meeting is to have the Committee review and vote on its report, "Barriers to Minority and Women Owned Businesses in Pennsylvania," and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 1, 2001.

Edward A. Hailes, Jr.,

General Counsel.

[FR Doc. 01–11369 Filed 5–4–01; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the South Carolina Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Thursday, May 31, 2001, at the Adam's Mark Columbia, 1200 Hampton Street, Columbia, South Carolina 29201. The purpose of the meeting is to meet with invited representatives of the South Carolina Department of Education who will update the Committee on the progress and/or problems regarding the implementation of the South Carolina Education Accountability Act of 1998.

Persons desiring additional information, or planning a presentation to the Committee, should contact Bobby D. Doctor, Director of the Southern Regional Office, 404–562–7000 (TDD 404–562–7004). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 1, 2001.

Edward A. Hailes, Jr.,

General Counsel.

[FR Doc. 01–11368 Filed 5–4–01; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 20–2001]

Foreign-Trade Zone 35—Philadelphia, Pennsylvania, Area Application For Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Philadelphia Regional Port Authority, grantee of Foreign-Trade Zone 35, requesting authority to expand its zone to include the Philadelphia International Airport fuel system and related facilities within the Philadelphia Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 1, 2001.

FTZ 35 was approved on March 24, 1978 (Board Order 128, 43 FR 14531, 4/6/78) and expanded on August 21, 1980 (Board Order 162, 45 FR 58388, 9/3/80) and on December 29, 1993 (Board Order 678, 59 FR 1372, 1/10/94). The zone project currently consists of seven sites in the Philadelphia area: *Site 1* (176,541 sq. ft.)—located at Pier 78 South, Philadelphia; *Site 2* (24 acres)—located at Pier 98 South Annex, Philadelphia; *Site 3* (341,000 sq. ft.)—consisting of Piers 38 and 40, Philadelphia; *Site 4* (35 acres)—Penn Terminals Complex, One Saville Avenue, Eddystone; *Site 5* (19 acres)—warehouse complex located at 3033 S. 63rd Street, Philadelphia; *Site 6* (32 acres)—Publicker Site, located at 2937 Christopher Columbus Boulevard, Philadelphia; and, *Site 7* (2 acres)—American Foodservice Corporation's cold storage facility, located at 400 Drew Court, King of Prussia.

The applicant is now requesting authority to expand the general-purpose zone to include the jet fuel storage and distribution system (approx. 7 acres) at the Philadelphia International Airport in Philadelphia and Tinicum Township, Pennsylvania. The site consists of jet fuel storage tanks (130,000 barrels), pipelines, and other facilities and structures for loading and unloading fuel. The facility is owned by the City of Philadelphia. The jet fuel system activity is currently handled by Aircraft Service International, Inc.

No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 6, 2001. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to July 23, 2001).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations: U.S. Department of Commerce, Export Assistance Center, The Curtis Center, Suite 580 West, 6th & Walnut Streets, Philadelphia, PA 19106; Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: May 1, 2001.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–11433 Filed 5–4–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 19–2001]

Proposed Foreign-Trade Zone—Jefferson County, Pennsylvania Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the North Central Pennsylvania Regional Planning and Development Commission (a Pennsylvania not-for-profit corporation), to establish a general-purpose foreign-trade zone in Washington Township, Jefferson County, Pennsylvania, adjacent to the Pittsburgh Customs port of entry. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on April 27, 2001. The applicant is authorized to make the proposal under Pennsylvania Consolidated Statute, Title 66, Chapter 31 of Act 116 of 1978.

The proposed zone would be the second general-purpose zone in the Pittsburgh Customs port of entry area. The existing zone is FTZ 33 in Pittsburgh, Pennsylvania (Grantee: Regional Industrial Development Corporation of Southwestern Pennsylvania, Board Order 124, 42 FR 59398, 11/17/77).

The proposed new zone (337 acres) would be located at the DuBois-Jefferson County Airport complex, Route 830, Washington Township, Falls Creek. The proposed zone project is part of the applicant's economic development efforts which cover a six county region (Cameron, Clearfield, Elk, Jefferson, McKean and Potter). The proposed zone site is owned by the Clearfield-Jefferson Counties Regional Airport Authority and is also part of the Keystone Opportunity Zone, a local and state tax exemption program.

The application indicates a need for foreign-trade zone services in the north central Pennsylvania region. Several firms have indicated using zone procedures for such items as powdered metal parts, wood products, electronic card connectors, and glass food containers. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on June 5, 2001, at 1 p.m., Jefferson County Court House, Main Court Room, Brookville, Pennsylvania 15825.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 6, 2001. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to July 23, 2001).

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A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations: DuBois-Jefferson County Airport, Route 830, Falls Creek, PA 15840; Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: April 30, 2001.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–11434 Filed 5–4–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

American Management and Business Internship Training (AMBIT) Program: Applications

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 6, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Email *Mclayton@doc.gov.*, Department of Commerce, Room 6086, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be directed to: Tracy M. Rollins, SABIT, Room 3319, Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; phone (202) 482–0073, fax (202) 482–2443.

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Department of Commerce's International Trade Administration (ITA), in collaboration with the International Fund for Ireland (IFI), has established the American Management & Business Internship Training (AMBIT) program. AMBIT provides one-week to six-month training programs for managers and technical experts from Northern Ireland and the Border Counties of Ireland, thereby improving their skills while enhancing U.S. commercial opportunities in the region. AMBIT was launched in 1995 to demonstrate America's interest in supporting the peace process by encouraging economic development in Northern Ireland and the Six Border Counties of Ireland.

The U.S. Department of Commerce works in partnership with the IFI, an organization established in 1986 by the British and Irish Governments to promote economic/social progress and to encourage contact, dialog, and reconciliation in the region. The United States, the European Union, Canada, Australia, and New Zealand contribute to the IFI budget.

II. Method of Collection

The intern applications are sent to intern candidates via facsimile, e-mail, or mail upon request by a delegated agency of the IFI. Feedback surveys are given to participating companies and interns at the completion of the programs.

III. Data

OMB Number: 0625–0224.
Form Number: N/A.
Type of Review: Regular submission.
Affected Public: Business or other non-profit, individuals (non-U.S. citizens).
Estimated Number of Respondents: 450.
Estimated Time per Response: 1–3 hours.
Estimated Total Annual Burden Hours: 1,050.
Estimated Total Annual Cost: $63,000.00.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 1, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–11331 Filed 5–4–01; 8:45 am]

BILLING CODE 3510–HE–P

DEPARTMENT OF COMMERCE

International Trade Administration

SABIT: Applications and Questionnaires

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c) (2) (A)).

DATES: Written comments must be submitted on or before July 6, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Email Mclayton@doc.gov., Department of Commerce, Room 6086, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be directed to: Tracy M. Rollins, SABIT, Room 3319, Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; phone (202) 482–0073, fax (202) 482–2443.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Special American Business Internship Training (SABIT) programs of the Department of Commerce's International Trade Administration (ITA), are a key element in the U.S. Government's efforts to support the economic transition of the Newly Independent States (NIS) of the former Soviet Union. SABIT places business executives and scientists from the Independent States in U.S. firms for one-to-six month internships to gain firsthand experiences working in a market economy. This unique private sector-U.S. Government partnership was created in order to tap the U.S. private sector's expertise in assisting the NIS's transition to a market economy while boosting U.S.-NIS long-term trade.

Under the "regular" (grants) SABIT program, qualified U.S. firms will receive funds through a cooperative agreement with ITA to help defray the cost of hosting interns. The information collected by the Application is needed by the SABIT staff to recruit and screen respondents and provide U.S. firms with a pool of eligible candidates from which to select interns. Intern applications are required to determine the suitability of candidates for SABIT internships. Feedback surveys and end-of-internship reports are needed to enable SABIT to track the success of the program as regards trade between the U.S. and NIS, as well as to improve the content and administration of the programs.

The closing date for applications and supplemental materials is approximately 120 days after date of publication in the **Federal Register**. Pursuant to section 632(a) of the Foreign Assistance Act of 1961, as amended (the "Act") funding for the program will be provided by the Agency for International Development (A.I.D.).

II. Method of Collection

The applications are sent to U.S. companies and intern candidates via facsimile or mail upon request. Feedback surveys are given to participating U.S. companies and interns at the completion of the programs.

III. Data

OMB Number: 0625–0225.
Form Number: N/A.
Type of Review: Regular submission.
Affected Public: Business or other non-profit, individuals (non-U.S. citizens).
Estimated Number of Respondents: 1,600.
Estimated Time per Response: 2 hours.
Estimated Total Annual Burden Hours: 3,200.
Estimated Total Annual Cost: $80,000.00.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 1, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–11332 Filed 5–4–01; 8:45 am]

BILLING CODE 3510–HE–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–826]

Certain Cut-To-Length Carbon-Quality Steel Plate From Italy: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review.

SUMMARY: On March 22, 2001, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on certain cut-to-length carbon-quality steel plate from Italy, for the period July 29, 1999, through January 31, 2001, pursuant to a request made by Bethlehem Steel Corporation, U.S. Steel Group, a unit of USX Corporation, Ispat Inland Inc., National Steel Corporation, and LTV Steel Company, Inc., (collectively petitioners) and Palini & Bertoli S.p.A. (Palini) on February 28, 2001 (66 FR 16037, 16038). In accordance with 19 CFR 351.213(d)(1), the Department is rescinding this administrative review because the producer, Palini, and petitioners have withdrawn their requests for an administrative review in a timely manner.

EFFECTIVE DATE: May 7, 2001.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor or Zev Primor, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5831 or (202) 482–4114, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (2000).

Background

On February 14, 2001, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on certain cut-to-length carbon-quality steel plate from Italy (66 FR 10269, 10270). On March 22, 2001, the Department initiated an administrative review for the period July 29, 1999, through January 31, 2001, pursuant to requests made by petitioners and Palini on February 28, 2001 (66 FR 16037, 16038). On March 27, 2001, Palini withdrew its request that the Department conduct an administrative review. On April 25, 2001, petitioners withdrew their request that the Department conduct an administrative review.

Rescission of Review

Section 351.213(d)(1) of the Department's regulations provides that a party that requests an administrative review may withdraw the request within 90 days after the date of publication of the notice of initiation of the requested administrative review. The Department is rescinding this review because the requesting parties, petitioners and Palini, have withdrawn their requests for an administrative review within the 90 day time limit and no other interested parties have requested a review.

The notice is in accordance with section 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: May 1, 2001.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 01–11436 Filed 5–4–01; 8:45 am]

BILLING CODE 3510–DS–P

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–502]

Certain Welded Carbon Steel Pipes and Tubes From Thailand: Notice of Court Decision and Suspension of Liquidation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 22, 2001, in *Allied Tube and Conduit, Corp.* v. *United States*, Court No. 99–11–00715, Slip. Op. 01–31 (CIT 2001), a lawsuit challenging the Department of Commerce's ("the Department's") final results of administrative review of the antidumping order on certain welded carbon steel pipes and tubes from Thailand, the Court of International Trade (CIT) affirmed the Department's remand determination and entered a judgment order. In its remand determination, the Department addressed the issue of use of facts available for the duty drawback amount received by producer/exporter Saha Thai Steel Pipe Co., Ltd. (Saha Thai). As a result of the remand determination, the final antidumping duty rate for Saha Thai was increased from 9.65 percent to 9.84 percent. This decision was not in harmony with the Department's original final determination. Consistent with the decision of the U.S. Court of Appeals for the Federal Circuit in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the Department will continue to order the suspension of liquidation of the subject merchandise until there is a "conclusive" decision in this case. If the case is not appealed, or if it is affirmed on appeal, the Department will instruct Customs to liquidate Saha Thai's entries of subject merchandise during the March 1997–February 1998 period of review.

EFFECTIVE DATE: May 7, 2001.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos or Sally Gannon, AD/CVD Enforcement Group III, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2243 or (202) 482–0162, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published notice of its final results of administrative review of the antidumping order on certain welded carbon steel pipes and tubes, on October 21, 1999. *Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Administrative Review*, 64 FR 56759 (October 21, 1999) (*Final Results*).

Following publication of the *Final Results*, Allied Tube and Conduit, Corp., petitioner in this case, filed a lawsuit with the CIT challenging the Department's date of sale and duty drawback determinations in the *Final Results*. On January 18, 2001, the CIT remanded the above-referenced proceeding to the Department of Commerce for reconsideration of the following issue: (1) To explain why the Department's duty drawback methodology, which employed facts available, is consistent with the objectives of the facts available provision, 19 U.S.C. 1677(e)(a), and accounts for gaps in respondent's information; or alternatively calculate a new duty drawback adjustment which is consistent with this objective. *See Allied Tube and Conduit Corp.* v. *United States*, Court No. 99–11–00715, Slip Op. 01–03 (CIT 2001). On February 14, 2001, the Department issued its Draft Results of Redetermination to the plantiff and defendant-intervenor to comment.

In the Draft Results of Redetermination, we reconsidered our methodology in accordance with the CIT's order and determined that the simple average methodology applied did not adequately function as a modified duty drawback adjustment for respondent. Therefore, we recalculated the adjustment using the weighted average of the duty drawback unit values by invoice. Neither party submitted comments to the Department on the Draft Results of Redetermination. The Department's Final Results of Redetermination were identical to the Draft Results of Redetermination.

The CIT affirmed the Department's Final Results of Redetermination on March 22, 2001. *See Allied Tube and Conduit, Corp.* v. *United States*, Court No. 99–11–00715, Slip. Op. 01–31 (CIT 2001).

Suspension of Liquidation

The U.S. Court of Appeals for the Federal Circuit in Timken held that the Department must publish notice of a decision of the CIT or the Federal Circuit which is not "in harmony" with the Department's final determination. Publication of this notice fulfills that obligation. The Federal Circuit also held that the Department must suspend liquidation of the subject merchandise until there is a "conclusive" decision in the case. Therefore, pursuant to Timken, the Department must continue to suspend liquidation pending the expiration of the period to appeal the CIT's March 22, 2001 decision or, if that decision is appealed, pending a final decision by the Federal Circuit. The Department will instruct Customs to liquidate relevant entries covering the subject merchandise effective May 22, 2001, in the event that the CIT's ruling is not appealed.

Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: April 30, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–11437 Filed 5–4–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042501E]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability and request for comment.

SUMMARY: Notice is hereby given that the Oregon Department of Fish and Wildlife (ODFW) has submitted a Fisheries Management and Evaluation Plan (FMEP) pursuant to the protective regulations promulgated for Upper Willamette River (UWR) steelhead under the Endangered Species Act (ESA). The FMEP specify the future management of inland recreational fisheries potentially affecting the UWR steelhead. This document serves to notify the public of the availability of the FMEP for review and comment before a final approval or disapproval is made by NMFS.

DATES: Written comments on the draft FMEPs must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on June 6, 2001.

ADDRESSES: Written comments and requests for copies of the draft FMEPs should be addressed to Lance Kruzic, Sustainable Fisheries Division, Hatchery and Inland Fisheries Branch, Roseburg Field Office, 2900 NW Stewart Parkway, Roseburg, OR 97470 or fax (541) 957–3386. The documents are also available on the Internet at *http://www.nwr.noaa.gov/*. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Lance Kruzic, Roseburg, OR at phone number 541–957–3381 or e-mail: *lance.kruzic@noaa.gov*,.

SUPPLEMENTARY INFORMATION: This notice is relevant to the Upper Willamette River Steelhead (*Oncorhynchus mykiss*) Evolutionarily Significant Unit (ESU).

Background

ODFW has submitted to NMFS an FMEP (*Upper Willamette River Winter Steelhead in Sport Fisheries of the Upper Willamette Basin*) for inland recreational fisheries potentially affecting listed adult and juvenile UWR steelhead. These include fisheries occurring in the Willamette River and tributaries above Willamette Falls, including the North and South Santiam Rivers, and the Molalla River. The objective of the FMEP is to harvest known, hatchery-origin steelhead and other fish species in a manner that does not jeopardize the survival and recovery of the UWR steelhead ESU. All fisheries included in this FMEP will be managed such that only hatchery-origin steelhead that are adipose fin clipped may be retained. Impacts levels to listed UWR steelhead are specified in the FMEP. Population viability analysis and risk assessments in the FMEP indicate the extinction risk for listed steelhead under the proposed fishery impact levels to be low. A variety of monitoring and evaluation tasks are specified in the FMEP to assess the abundance of steelhead, determine fishery effort and catch of steelhead and angler compliance. A review of compliance with the provisions of the FMEP will be conducted by ODFW annually and a comprehensive review to evaluate the effectiveness of the FMEP will occur at a minimum of every 5 years.

ODFW has provided NMFS a draft of the *Conservation Assessment of Steelhead Populations in Oregon* (Assessment) as part of the FMEP submittal. The Assessment provides the population viability analysis and risk assessment developed for ODFW's FMEP. This Assessment is also available for review and comment.

As specified in the July 10, 2000 ESA 4(d) rule for salmon and steelhead (65 FR 42422), NMFS may approve an FMEP if it meets criteria set forth in § 223.203 (b)(4)(i)(A) through (I). Prior to final approval of an FMEP, NMFS must publish notification announcing its availability for public review and comment.

Authority

Under section 4 of the ESA, the Secretary of Commerce is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. The ESA salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000) specifies categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. The rule further provides that the prohibitions of paragraph (a) of the rule do not apply to activities associated with fishery harvest provided that an FMEP has been approved by NMFS to be in accordance with the salmon and steelhead ESA 4(d) rule (65 FR 42422, July 10, 2000).

Dated: April 30, 2001.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–11421 Filed 5–4–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 6, 2001.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 1, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: National Study of Title I Schools—Data Collection Instruments.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 22,000.

Burden Hours: 23,225.

Abstract: This National Study of Title I Schools will be the main source of nationally-representative school-level information on the implementation of Title I provisions and standards-based reform generally, over a three-year period from the 2001–02 through 2003–04 school years. The study will examine and describe how Title I schools are using standards-based reforms to assist in improving learning, with a particular focus on implementation of provisions in the Title I program that are designed to support such improvements. The study will also examine more specifically the quality of instruction and instructional support in Title I schools, with a focus on implementation of Title I provisions designed to support more effective instruction and instructional support.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C.

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20202–4651. Requests may Washington also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address Jackie.Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–11339 Filed 5–4–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA No. 84.215F]

Office of Elementary and Secondary Education: Physical Education for Progress Grant Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001

SUMMARY: The Secretary invites applications for new awards for FY 2001 under the Physical Education for Progress Grant Program competition (84.215F). The Office of Elementary and Secondary Education, Safe and Drug-Free Schools Program will administer this competition.

Purpose of Program: To assist local educational agencies (LEAs) to initiate, expand, and improve physical education programs in LEAs.

Eligible Applicants: Only LEAs are eligible to submit an application under this competition.

Applications Available: May 3, 2001.

Deadline for Transmittal of Applications: June 18, 2001.

Deadline for Intergovernmental Review: August 10, 2001.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 97, 98, and 99; (b) The regulations in 34 CFR part 299; and (c) the final priority and selection criteria for this grant competition as published elsewhere in this issue of the **Federal Register**.

Award Information: The estimated range of awards under this competition is $200,000—$400,000, with an average award of $300,000. We estimate that approximately 16 awards will be made. Please note that the range of awards, average size of awards, number of awards, and available funding in this notice are estimates only. The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

FOR APPLICATIONS AND FURTHER INFORMATION CONTACT: Safe and Drug-Free Schools Program, 400 Maryland Avenue, SW, 3E332, Washington, DC 20202–6123. Telephone: 202/401–2140. Fax: 202/260–7767. Email:

Connie.Deshpande@ed.gov. *Internet:* http://www.ed.gov/offices/OESE/SDFS

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–888–877–8339. Individuals with disabilities may obtain a copy of this document, or an application package, in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact listed under **FOR APPLICATIONS AND FURTHER INFORMATION CONTACT.** However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation /FedRegister.*

To use PDF, you must have the Adobe Acrobat Reader, which is available free at the previous site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free at 1/888/293–6498; or in the Washington, DC area at 202–512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 8351.

Dated: April 27, 2001.

Thomas M. Corwin,

Acting Deputy Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 01–11440 Filed 5–4–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CDFA No. 84.215F]

Physical Education for Progress Grant Program

AGENCY: Department of Education.

ACTION: Notice of final priority and selection criteria for Fiscal Year (FY) 2001.

SUMMARY: The Secretary announces the final priority and selection criteria under the Elementary and Secondary Education Act of 1965, Title X, Part L, Physical Education for Progress Grant Program. The Office of Elementary and Secondary Education will administer this grant competition. The Secretary takes this action to help initiate, expand, and improve physical education programs in local educational agencies.

EFFECTIVE DATE: This priority and selection criteria are effective June 18, 2001.

FOR FURTHER INFORMATION CONTACT: Connie Ann Deshpande, U.S. Department of Education, 400 Maryland Avenue, SW—Room 3E332, Washington, DC 20202–6123. Telephone: (202) 401–2140, email address: Connie.Deshpande@ed.gov.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–888–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed at the beginning of this section.

Note: This notice does not solicit applications. In any year in which the Secretary chooses to use this final priority and selection criteria, we invite applications through a notice in the **Federal Register.** A notice inviting applications under this competition is published elsewhere in this issue of the **Federal Register.**

SUPPLEMENTARY INFORMATION:

General

In making awards under this grant competition, the Secretary shall ensure an equitable distribution of awards between local educational agencies serving urban and rural areas, and between local educational agencies serving large and small numbers of students. Contingent upon the availability of funds, the Secretary may make additional awards in FY 2002 from the rank-ordered list of nonfunded applications from this competition.

Administrative Costs

Not more than 5 percent of the grant funds made available to a local educational agency under this program in any fiscal year may be used for administrative costs.

Federal Share

The Federal share for grants under this program may not exceed 90 percent of the total cost of a project.

Prohibition Against Supplanting

Grant funds made available under this program shall be used to supplement and not supplant other Federal, State, and local funds available for physical education activities.

Participation of Home Schooled or Private School Students

An applicant for funds under this program may provide for the participation of home schooled children and their parents and teachers, or children enrolled in private non-profit elementary and secondary schools, and their parents and teachers. Applicants are not required to propose services for these groups.

Special Rule

Grant funds made available under this program shall not be used to fund extracurricular activities.

Absolute Priority: Under 34 CFR 75.105(c)(3) and Title X, Part L of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8351 *et seq.*), the Secretary gives an absolute preference to applications that meet the following priority, and funds under this competition only those applications that meet the following absolute priority: Local educational agency (LEA) projects to initiate, expand, and improve physical education programs in schools. Such programs must be designed to assist the LEA in making progress toward meeting State standards for physical education, by providing funds for training and education of teachers and staff, and for equipment and support, to enable students in one or more grades kindergarten through 12 to participate actively in physical education activities. Under this absolute priority, to be considered for funding, an applicant is required to:

(1) Have conducted a needs assessment of how well its current physical education program is enabling the LEA to attain State standards for physical education;

(2) Based on the results of that needs assessment, include in its application a description of how the proposed activities will help the LEA make progress toward meeting State standards for physical education; and;

(3) Set measurable goals and objectives for the proposed project and provide a description of how progress toward achieving goals will be measured annually.

Competitive Preference: Within the absolute priority in this notice, the Secretary gives preference to applications that meet the following competitive priority: Applicants that provide an assurance that at least one-half of the funding provided to them under this program will be used to benefit students who attend schools identified for improvement by their States, consistent with the requirements in Title I, Section 1116(c) of the Elementary and Secondary Education Act of 1965.

Under 34 CFR 75.105(c)(2) the Secretary awards 5 points to an application that meets this competitive priority. These points are in addition to any points the applicant earns under the selection criteria for the program.

Selection Criteria

The Secretary uses the following selection criteria to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion or factor under that criterion is indicated in parentheses.

(1) *Need for project.* (20 points)

In determining the need for the proposed project, the following factors are considered:

(a) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project. (10 points)

(b) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses. (10 points)

(2) *Significance.* (20 points)

In determining the significance of the proposed project, the following factors are considered:

(a) The likelihood that the proposed project will result in system change or improvement. (10 points)

(b) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies. (5 points)

(c) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement. (5 points)

(3) *Quality of the project design.* (45 points)

In determining the quality of the design of the proposed project, the following factors are considered:

(a) The extent to which the proposed activities constitute a coherent, sustained program of training in the field. (20 points)

(b) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice. (10 points)

(c) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (5 points)

(d) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (10 points)

(4) *Quality of the project evaluation.* (15 points)

In determining the quality of the evaluation, the following factors are considered:

(a) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (5 points)

(b) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible. (5 points)

(c) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (5 points)

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on a proposed priority and selection criteria. However, in order to make timely grant awards in fiscal year (FY) 2001, the Secretary has decided to issue this notice without first publishing a proposed priority and selection criteria for public comment. This priority will apply to the FY 2001 grant competition only. The Secretary takes this action under section 437(d)(1) of the General Education Provisions Act.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

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This document provides early notification of our specific plans and actions for this program.

Applicable Program Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 97, 98, and 99. (b) The regulations in 34 CFR part 299.

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(Catalog of Federal Domestic Assistance Number 84.215F; Physical Education for Progress Grant Program)

Program Authority: 20 U.S.C. 8351.

Dated: April 27, 2001.

Thomas M. Corwin,

Acting Deputy Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 01–11441 Filed 5–4–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA No.: 84.310A]

Parental Assistance Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001

Purpose of Program: The purpose of the Parental Assistance Program, 20 U.S.C. 5911, *et seq.*, is to (1) increase parents' knowledge of and confidence in child-rearing activities, such as teaching and nurturing their young children; (2) strengthen partnerships between parents and professionals in meeting the educational needs of children aged birth through five years and the working relationship between home and school; and (3) enhance the developmental progress of the children assisted under the program.

Eligible Applicants: Nonprofit organizations, and nonprofit organizations in consortia with local educational agencies (LEAs).

From the available funds, awards will initially be made to successful applicants from States in which the current Parental Assistance Program grants are expiring. Thus, in this competition, a grant will first be awarded to a successful applicant from each of the following twelve jurisdictions: Alabama, Arkansas, Guam, Illinois, Indiana, Louisiana, Mississippi, Nebraska, North Dakota, Oregon, Rhode Island, and South Carolina. The remaining funds will be used to award grants to successful applicants from any of the States, the District of Columbia, Puerto Rico, and the outlying areas. As a result, all states will have at least one parental information and resource center; some States will have a second center funded.

An LEA, by itself, is not eligible for an award. However, an LEA may be part of a consortium with a nonprofit organization that applies. In those instances, the award would be made to the nonprofit organization, which would serve as the fiscal agent.

For purposes of this competition, nonprofit organizations do not include institutions of higher education, State educational agencies, LEAs, intermediate school districts, schools, government entities, or hospitals.

Applications Available: May 7, 2001.

Deadline for Transmittal of Applications: June 21, 2001.

Deadline for Intergovernmental Review: August 7, 2001.

Available Funds: $12,000,000. Of this amount, approximately $5.5 million will be used to award a grant to successful applicants from each of the twelve jurisdictions specifically identified above. The remaining amount will be used to award grants to successful applicants from any State, the District of Columbia, Puerto Rico, or the outlying areas. The Department will fund no more than two parent centers in any jurisdiction.

Estimated Range of Awards: $200,000 to $700,000.

Note: Due to anticipated variances in the scope of proposed activities and the number of program beneficiaries, the estimated range is very broad.

Estimated Number of Awards: 25. Of this number, a grant will be awarded to a successful applicant from each of the twelve jurisdictions identified above. The remaining thirteen awards will be made to successful applicants from any State, the District of Columbia, Puerto Rico, or the outlying areas.

Note: These estimates are projections for the guidance of potential applicants. The Department of Education is not bound by any estimates in this notice.

Project Period: Up to 12 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, and 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) apply to an LEA that is part of a consortium receiving assistance.

(1) *Competitive Preference:* The Secretary has published elsewhere in this issue of the **Federal Register** a notice of final priorities, which establishes a competitive preference of up to 10 additional points in this competition.

Invitational Priority: Schools must provide a safe, disciplined environment conducive to learning. Projects funded under this program are in a unique position to incorporate in their services activities that assist parents, schools, and the community in implementing strategies to reduce youth violence. The Secretary invites applicants to include as part of their proposals activities to help parents recognize early warning signs that relate to violence and other troubling behaviors. However, under 34 CFR 75.105(c)(1), an applicant that meets this invitational priority receives no competitive or absolute preference over applications that do not meet the priority.

Description of Program: The Parental Assistance Program supports parental information and resource centers that are designed to meet the unique training, information, and support needs of parents of children from birth through five years of age and of parents of children enrolled in elementary and secondary schools, particularly parents who are economically or educationally disadvantaged. Funded centers must serve both urban and rural areas, and use at least half of their grant award to serve areas with high concentrations of low-income families. Activities of the center must focus on serving parents of low-income, minority, and limited-English proficient parents. Each center must use part of its funds to support Parents as Teachers Programs or Home Instruction Programs for Preschool Youngsters. (Descriptions of these programs are in the application package.)

Applicants should be aware that the legislation at 20 U.S.C. 5912 establishes specific requirements for the organizational structure, operation, and activities of the parent centers. *To be eligible for funding, an applicant must meet these statutory requirements.* (A copy of the program legislation is included in the application package.)

In instances in which more than one parent center is funded in a jurisdiction, the centers should collaborate with each other as part of their networking responsibilities. (A list of current grantees is included in the application package.)

Applicants should be aware that section 1118(g) of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994, requires schools and districts receiving Title I funds to assist parents and parent organizations by informing them of the existence and purpose of the parent information and resource center in their State, providing them with a description of the services and programs provided by the center, advising parents on how to use the center, and helping them contact the center. Consequently, applicants should be prepared to address the demand for their services created by this requirement.

Selection Criteria: The Secretary will use selection criteria and factors from 34 CFR 75.210 to evaluate applications under this competition. The specific selection criteria and factors that will be used in evaluating applications are detailed in the application package.

The maximum score for all of the selection criteria is 100 points. The total maximum score of an application is 110 points (100 points under the selection criteria and a maximum of 10 points under the competitive preference referenced elsewhere in this notice and published separately in this issue of the **Federal Register**.)

The maximum points for each criterion are as follows:

(1) Need for project—20 points.

(2) Quality of the project design—22 points.

(3) Quality of project services—20 points.

(4) Quality of project personnel—9 points.

(5) Adequacy of resources—7 points.

(6) Quality of the project evaluation—22 points.

Intergovernmental Review: This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79. (Intergovernmental Review instructions are contained in the application package.)

For Applications and Information Contact: Rachael Couch, (202) 401–0039, U.S. Department of Education, 400 Maryland Avenue, SW, FOB 6, Room 3E243, Mail Stop 6400, Washington, DC 20202. The e-mail address for Ms. Couch is: *rachael couch@ed.gov.*

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–888–877–8339.

Individuals with disabilities may obtain this document in an alterntive format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed above.

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Program Authority: 20 U.S.C. 5911 *et seq.*

Dated: May 1, 2001.

Thomas M. Corwin,

Acting Deputy Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 01–11438 Filed 5–4–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA No. 84.310A]

Parental Assistance Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of Final Priority for Fiscal Year (FY) 2001.

SUMMARY: The Secretary announces a final funding priority for the FY 2001 grant competition under Parental Assistance Program (20 U.S.C. 5911 *et seq.*). This program provides grants to eligible non-profit organizations, and eligible non-profit organizations in consortium with local educational agencies (LEAs), to establish parental information and resource centers. Under the funding priority, the Secretary gives competitive preference to eligible non-profit organizations that apply in consortium with one or more LEAs with low-performing schools and propose to implement comprehensive strategies designed to strengthen school-family-community partnerships in order to help children in low-performing schools reach challenging academic standards.

EFFECTIVE DATE: June 6, 2001.

SUPPLEMENTARY INFORMATION: On January 12, 2001, we published in the **Federal Register** a notice of proposed priority (NPP) for the FY 2001 grant competition under the Parental Assistance Program. In the NPP we announced our intent to give applicants that meet the preference up to 10 additional points in the competition with the number of points awarded to be determined on the basis of how well the applicant addressed the competitive preference. This notice of final funding priority announces the final competitive preference for the competition.

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition is published elsewhere in this issue of the **Federal Register**.

Analysis of Comments and Changes

Four parties submitted comments in response to the proposed priority. Two of the parties supported the priority, one party requested that the Department specify the percentage of grant funds that should be focused on the priority, and another party indicated that a parent center-LEA consortium priority would eliminate the autonomy and effectiveness of the centers. The comments of the latter two parties are summarized below.

Comment: One commenter recommended that the Department indicate the amount of staff and funds that should be focused on the priority.

Discussion: The Secretary believes that applicants should be given as much flexibility as possible in designing proposals that best address the funding priority. The number of points that an applicant receives under the priority should be based on how well the applicant addresses the priority, and not on the amount of resources that the applicant proposes to spend on the priority.

Changes: None.

Comment: One commenter indicated that requiring parent centers to work more formally with school districts in a consortium would eliminate the autonomy and effectiveness of the

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centers. The commenter believes that by working independently of schools, the centers can better assist families who do not feel connected with the schools and provide families with the tools needed to create change in the schools.

Discussion: The Secretary is not requiring non-profit organizations to apply in consortium with one or more LEAs. However, the Secretary believes that strengthening school-community-family partnerships will help children in low-performing schools succeed in school. Under the priority, the parent centers still will have considerable autonomy in designing proposals that best meet local needs and in coordinating with low-performing schools in implementing comprehensive strategies to assist children in these schools. The Secretary notes that the legislation explicitly supports consortia of non-profit organizations and school districts. The priority is designed to encourage such consortia.

Changes: None.

Competitive Preference: Under 34 CFR 75.105(c)(2), the Secretary gives a competitive preference in the FY 2001 competition under the Parental Assistance Program. To receive this preference, an applicant must—

(1) Consist of a consortium that includes a non-profit organization and one or more LEAs with low-performing schools. The low-performing schools must be schools identified as in need of improvement under section 1116(c) of Title I of the Elementary and Secondary Education Act of 1965, as amended.

(2) Propose to implement comprehensive strategies designed to strengthen school-family-community partnerships in order to help children in the low-performing schools reach challenging academic standards. The applicant must clearly describe the role of the non-profit organization and the LEA(s) in conducting these activities with the low-performing schools.

(3) Provide documentation from the identified low-performing schools demonstrating that the schools will cooperate and coordinate with the applicant in implementing the proposed activities.

An applicant that meets the competitive preference will receive up to 10 points in the competition. These points are in addition to any points the applicant earns under the selection criteria. The number of points that will be awarded will be determined on the basis of how well the applicant addresses the competitive preference.

FOR FURTHER INFORMATION CONTACT: Rachael Couch, (202) 401–0039, U.S. Department of Education, 400 Maryland Avenue, SW., FOB 6, Room 3E243, Mail Stop 6400, Washington, DC 20202. The e-mail address for Ms. Couch is: *Rachael.couch@ed.gov.*

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Program Authority: 20 U.S.C. 5911 *et seq.*

Dated: May 1, 2001.

Thomas M. Corwin,

Acting Deputy Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 01–11439 Filed 5–4–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Advance Notice of Intent To Prepare an Environmental Impact Statement for Depleted Uranium Hexafluoride Conversion Facilities

AGENCY: Department of Energy.

ACTION: Advance notice of intent.

SUMMARY: The U.S. Department of Energy (DOE) is providing advance notice of its intent to prepare an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA) on the proposed construction, operation, and decontamination/decommissioning of two depleted uranium hexafluoride (DUF_6) conversion facilities, at Portsmouth, Ohio and Paducah, Kentucky. DOE intends to use the proposed facilities to convert its inventory of DUF_6 to a more stable chemical form suitable for storage, beneficial use or disposal. Approximately 700,000 metric tons of DUF_6 in about 57,700 cylinders are stored at DOE's Paducah, Portsmouth, and Oak Ridge, Tennessee, sites.

DOE is issuing this Advance Notice pursuant to 10 CFR 1021.31(b) to inform the public and interested parties early about the proposed action, the range of alternatives, and the nature of impact analysis to be considered in the EIS. DOE intends later to issue a formal Notice of Intent (NOI) and conduct a public scoping process during which DOE will invite the public to comment on the scope, proposed action, and possible alternatives considered in the EIS. DOE seeks comments on this Advance Notice, and they can be submitted as explained below.

DATES: DOE plans to issue the NOI later this year. After the NOI is issued, DOE will conduct public scoping meetings to assist in defining the scope of the EIS and to identify significant issues to be addressed. The dates and locations of all scoping meetings will be announced in the NOI or subsequent **Federal Register** notices and in local media before the meetings.

ADDRESSES: Please direct comments or suggestions on the scope of the EIS and questions concerning the proposed project to: Kevin Shaw, U.S. Department of Energy, Office of Environmental Management, Office of Site Closure—Oak Ridge Office (EM–32), 19901 Germantown Road, Germantown, Maryland 20874, fax (301) 903–2978, e-mail *DUF6.Comments@em.doe.gov* (please use 'A–NOI Comments' for the subject).

For general information on the DOE NEPA process, please contact Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119, telephone (202) 586–4600 or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background

Depleted UF_6 results from the process of making uranium suitable for use as fuel in nuclear reactors or for military applications. The use of uranium in these applications requires increasing the proportion of the uranium-235 isotope found in natural uranium, which is approximately 0.7% (by weight), through an isotopic separation process. A U–235 "enrichment" process called gaseous diffusion has historically been used in the United States. The gaseous diffusion process uses uranium in the form of UF_6, primarily because UF_6 can conveniently be used in the gas form for processing, in the liquid form for filling or emptying containers, and in the solid form for storage. Solid UF_6 is a white, dense, crystalline material that resembles rock salt.

Over the last five decades, large quantities of uranium were enriched using gaseous diffusion. "Depleted" UF_6 (DUF_6) is a product of the process and was stored at the three uranium enrichment sites located at Paducah, Kentucky; Portsmouth, Ohio; and the East Tennessee Technology Park (ETTP—formerly known as the K–25 Site) in Oak Ridge, Tennessee. Depleted uranium is uranium that, through the enrichment process, has been stripped of a portion of the uranium-235 that it once contained so that it has a lower uranium-235 proportion than the 0.7 weight-percent found in nature. The uranium in most of DOE's DUF_6 has between 0.2 to 0.4 weight-percent uranium-235.

DOE has management responsibility for approximately 700,000 metric tons (MT) of DUF_6 contained in about 57,700 steel cylinders at the Portsmouth, Paducah, and ETTP sites, where it has stored such material since the 1950s. The characteristics of UF_6 pose potential health and environmental risks. UF_6 emits low levels of gamma and neutron radiation. Also, when released to the atmosphere, UF_6 reacts with water vapor in the air to form hydrogen fluoride (HF) and uranyl fluoride (UO_2F_2), both chemically toxic substances. In light of such characteristics, DOE stores UF_6 in a manner designed to minimize the risk to workers, the public, and the environment.

In October 1992, the Ohio Environmental Protection Agency (OEPA) issued a Notice of Violation (NOV) alleging that DUF_6 stored at the Portsmouth facility is subject to regulation under state hazardous waste laws applicable to the Portsmouth Gaseous Diffusion Plant. The NOV stated that OEPA had determined DUF_6 to be a solid waste and that DOE had violated Ohio laws and regulations by not evaluating whether such waste was hazardous. DOE disagreed with this assessment, and in February 1998, DOE and OEPA reached an agreement. This agreement sets aside the issue of whether the DUF_6 is subject to Resource Conservation and Recovery Act regulation and institutes a negotiated management plan governing the storage of the Portsmouth DUF_6. The agreement also requires DOE to continue its efforts to evaluate potential use or reuse of the material. The agreement expires in 2008.

In 1994, DOE began work on the Programmatic Environmental Impact Statement for Alternative Strategies for the Long-Term Management and Use of Depleted Uranium Hexafluoride (DUF_6 PEIS). The DUF_6 PEIS was completed in 1999 and identified conversion of DUF_6 to another chemical form for use or long-term storage as part of a preferred management alternative. In the corresponding Record of Decision for the Long-Term Management and Use of Depleted Uranium Hexafluoride (ROD) (64 FR 43358, August 10, 1999), DOE decided to promptly convert the DUF_6 inventory to depleted uranium oxide, depleted uranium metal, or a combination of both. The ROD further explained that depleted uranium oxide will be used as much as possible and the remaining depleted uranium oxide will be stored for potential future uses or disposal, as necessary. In addition, according to the ROD, conversion to depleted uranium metal will occur only if uses are available.

During the time that DOE was analyzing its long-term strategy for managing the DUF_6 inventory, several other events occurred related to DUF_6 management. In 1995, the Department began an aggressive program to better manage the DUF_6 cylinders, known as the DUF_6 Cylinder Project Management Plan. In part, this program responded to the Defense Nuclear Facilities Safety Board (DNFSB) Recommendation 95–1, Safety of Cylinders Containing Depleted Uranium. This program included more rigorous and frequent inspections, a multi-year program for painting and refurbishing of cylinders, and construction of concrete-pad cylinder yards. Implementation of the DUF_6 Cylinder Project Management Plan has been successful, and, as a result, on December 16, 1999, the DNFSB closed out Recommendation 95–1.

In February 1999, DOE and the Tennessee Department of Environment and Conservation (TDEC) entered into a consent order which included a requirement for the performance of two environmentally beneficial projects: the implementation of a negotiated management plan governing the storage of the small inventory (relative to other sites) of all UF_6 (depleted, low enriched, and natural) cylinders stored at the ETTP site, and the removal of the DUF_6 from the ETTP site or the conversion of the material by December 31, 2009.

In July 1998, the President signed Public Law (Pub. L.) 105–204. This law directed the Secretary of Energy to prepare "a plan to ensure that all amounts accrued on the books" of the United States Enrichment Corporation (USEC) for the disposition of DUF_6 would be used to commence construction of, not later than January 31, 2004, and to operate, an onsite facility at each of the gaseous diffusion plants at Paducah and Portsmouth, to treat and recycle DUF_6 consistent with the National Environmental Policy Act (NEPA). DOE responded to Pub. L. 105–204 by issuing the Final Plan for the Conversion of Depleted Uranium Hexafluoride (referred to herein as the "Conversion Plan") in July 1999. The Conversion Plan describes DOE's intent to chemically process the DUF_6 to create products that would present both a lower long-term storage hazard and provide a material that would be suitable for use or disposal.

DOE initiated the Conversion Plan with the announced availability of a draft Request for Proposals (RFP) on July 30, 1999, for a contractor to design, construct, and operate DUF_6 conversion facilities at the Paducah and Portsmouth uranium enrichment plant sites. Based on comments received on the draft RFP, DOE revisited some of the assumptions about management of the DUF_6 inventory made previously in the PEIS and ROD. For example, as documented in the Oak Ridge National Laboratory study, Assessment of Preferred Depleted Uranium Disposal Forms (ORNL/TM–2000/161, June 2000), four potential conversion forms (triuranium octoxide (U_3O_8), uranium dioxide (UO_2), uranium tetrafluoride (UF_4), and uranium metal) were evaluated and found to be acceptable for near-surface disposal at low-level radioactive waste disposal sites such as those at DOE's Nevada Test Site and Envirocare of Utah, Inc. Therefore, the RFP was modified to allow for a wide range of potential conversion product forms and process technologies. However, any of the proposed conversion forms must have an assured, environmentally acceptable path for final disposition.

On October 31, 2000, DOE issued a final RFP to procure a contractor to design, construct and operate DUF_6 conversion facilities at the Paducah and Portsmouth plant sites. The conversion plants that result from this procurement will convert the DUF_6 to a more stable chemical form that is suitable for either beneficial use or disposal. The selected

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contractor will design the conversion plants using the technology it proposes and construct the plants. The selected contractor also will operate the plants for a five-year period, which will include maintaining depleted uranium and product inventories, transporting all uranium hexafluoride storage cylinders in Tennessee to a conversion plant at Portsmouth, as appropriate, and transporting converted product for which there is no use to a disposal site. The selected contractor will be expected to prepare excess material for disposal at an appropriate site. DOE is evaluating the five proposals it received and anticipates awarding a contract during the first quarter of 2002. Since the site specific NEPA process will not be completed prior to contract award, the contract will be structured such that the NEPA process will be completed in advance of a go/no-go decision. (See NEPA Process below.)

Purpose and Need for Agency Action

DOE needs to convert its inventory of DUF_6 to a more stable chemical form for storage, use or disposal. This need follows directly from the decision presented in the August 1999 Record of Decision for Long-Term Management and Use of Depleted Uranium Hexafluoride, namely to begin conversion of the DUF_6 inventory as soon as possible.

This EIS will assess the potential environmental impacts of constructing, operating and decontaminating/decommissioning DUF_6 conversion facilities at the Portsmouth and Paducah sites, as well as other reasonable alternatives. The EIS will aid decisionmaking on DUF_6 conversion by evaluating the environmental impacts of the range of reasonable alternatives, as well as providing a means for public input into the decisionmaking process. The Department is committed to ensuring that the public has ample opportunity to participate in this review.

Preliminary Alternatives

Below is a preliminary list of alternatives to be considered in the EIS. This list of alternatives is subject to modifications in response to comments received during the public scoping process.

Preferred Alternative. Under the preferred alternative, two conversion facilities would be built: One at the Paducah Gaseous Diffusion Plant site and another at the Portsmouth Gaseous Diffusion Plant site. The cylinders currently stored at the ETTP site near Oak Ridge, Tennessee, would be transported to Portsmouth for conversion. The conversion products (i.e., depleted uranium as well as fluorine components produced during the conversion process) would be stored, put to beneficial uses, or disposed of at an appropriate disposal facility. This alternative is consistent with the Conversion Plan, which DOE submitted to Congress in July 1999, in response to Pub. L. 105–204. Technology subalternatives for the preferred alternative will include those technology processes identified in response to the final RFP for DUF_6 conversion services, plus any other technologies that DOE believes must be considered. (Technologies specify the processes used for conversion and the products of conversion.) Local siting subalternatives for building and operating conversion facilities within the Paducah and Portsmouth plant boundaries will be considered. Timing options, such as staggering the start of the construction and operation of the two conversion facilities, will also be considered for the preferred alternative.

One Conversion Plant Alternative. An alternative of building and operating only one conversion facility at either the Portsmouth or the Paducah site will be considered. This plant could differ in size or production capacity from the two proposed for Portsmouth and Paducah. Technology and local siting subalternatives will be considered as with the preferred alternative.

Use of Existing UF_6 Conversion Capacity Alternative. DOE will consider using already-existing UF_6 conversion capacity at commercial nuclear fuel fabrication facilities in lieu of constructing one or two new conversion plants. DOE is currently evaluating the feasibility of using existing conversion capacity, although no expression of interest has been received from such facilities.

No Action Alternative. Under the "no action" alternative, cylinder management activities (handling, inspection, monitoring, and maintenance) would continue the "status quo" at the three current storage sites indefinitely, consistent with the DUF_6 Cylinder Project Management Plan and the consent orders, which includes actions needed to meet safety and environmental requirements.

Where applicable under the alternatives listed above, transportation options, such as truck, rail, and barge, will be considered for shipping DUF_6 cylinders to a conversion facility and conversion products to a storage or disposal facility. Also, for each technology alternative, alternatives for conversion products, including storage, use, and disposal at one or more disposal sites, will be considered. Further, DOE would appreciate comments regarding whether there are additional siting alternatives for one or more new conversion facilities that should be considered.

Preliminary Environmental Analysis

This EIS represents the second level of a tiered environmental review process being used to evaluate and implement the DUF_6 management program. Tiering refers to the process of first addressing general (programmatic) matters in a PEIS followed by more narrowly focused (project level) environmental review that incorporates by reference the more general discussions. The DUF_6 PEIS, issued in April 1999, was the first level of this tiered approach.

The DUF_6 PEIS addressed the potential environmental impacts of broad strategy alternatives, including analyses of the general impacts of (1) continued storage of DUF_6 at DOE's current storage sites, (2) technologies for converting the DUF_6 to other chemical forms, (3) storage of conversion products for subsequent use or disposal, (4) use of conversion products, (5) transportation of materials, and (6) disposal. The ROD for the DUF_6 PEIS declared DOE's decision to promptly convert the DUF_6 inventory to a more stable chemical form. This tiered EIS will address specific issues associated with the implementation of the DUF_6 PEIS ROD.

NEPA Process

The EIS for the proposed project will be prepared pursuant to the NEPA of 1969 (42 U.S.C. 4321 et seq.), Council on Environmental Quality (CEQ) NEPA Regulations (40 CFR Parts 1500—1508), and DOE's NEPA Implementing Procedures (10 CFR Part 1021). Following the publication of the Notice of Intent, DOE will hold scoping meetings, prepare and distribute the draft EIS for public review, hold public hearings to solicit public comment on the draft EIS, and publish a final EIS. Not less than 30 days after the publication of the U.S. Environmental Protection Agency's (EPA's) Notice of Availability of the final EIS, DOE may issue a ROD documenting its decision concerning the proposed action.

In addition to the above steps, DOE will consider environmental factors in selecting a contractor for the conversion services through the procurement process, including preparation of an environmental critique and synopsis pursuant to 10 CFR 1021.216. The environmental critique will evaluate the environmental data and information submitted by each offeror and will be subject to the confidentiality requirements of the procurement process. DOE will prepare a publicly available environmental synopsis, based on the environmental critique, to document the consideration given to environmental factors in the contractor selection process. The environmental synopsis will be filed with the EPA and will be incorporated into the EIS. In accordance with 10 CFR 1021.216(i), since the NEPA process will not be completed prior to contract award, the contract will be structured to allow the NEPA review process to be completed in advance of a go/no-go decision.

Preliminary Identification of EIS Issues

DOE intends to address the following issues when assessing the potential environmental impacts of the alternatives in this EIS. Potential environmental impacts will be evaluated for the site-specific conditions found at the Portsmouth, Paducah, and ETTP sites, and at other sites, as appropriate. DOE invites comment on these and any other issues that should be addressed in the EIS:

—Potential effects on the public and workers from exposure to radiological and hazardous materials from normal operations and reasonably foreseeable accidents at the sites and during transportation of DUF_6 cylinders and conversion products between sites.
—Potential effects on air, soil, ecological resources, water quality and cultural resources.
—Potential socioeconomic impacts associated with the workforce needed for construction and operations, and environmental justice issues.
—Compliance with applicable Federal, state, local requirements and agreements.
—Pollution prevention, waste minimization, and energy and water use reduction technologies to eliminate or reduce use of energy, water, and hazardous substances and to minimize environmental impacts.
—Potential impacts on local and DOE-wide waste management capabilities.
—Potential impacts on available resources, including land, materials, and energy.
—Potential cumulative impacts of the past, present, and reasonably foreseeable future actions (including impacts resulting from the activities of the United States Enrichment Corporation).
—Potential irreversible and irretrievable commitment of resources.
—Relationship between short-term use of the environment and long-term productivity.

Related NEPA Reviews

Final Programmatic Environmental Impact Statement for Alternative Strategies for the Long-Term Management and Use of Depleted Uranium Hexafluoride (DOE/EIS–0269, April 1999); Final Waste Management Programmatic Environmental Impact Statement for Managing Treatment, Storage, and Disposal of Radioactive and Hazardous Waste (DOE/EIS–0200–F, May 1997); Disposition of Surplus Highly Enriched Uranium, Final Environmental Impact Statement (DOE/EIS–0240, June 1996); Environmental Assessment for the Refurbishment of Uranium Hexafluoride Cylinder Storage Yards C–745–K, L, M, N, and P and Construction of a New Uranium Hexafluoride Cylinder Storage Yard (C–745–T) at the Paducah Gaseous Diffusion Plant, Paducah, Kentucky (DOE/EA–1118, July 1996); Environmental Assessment for DOE Sale of Surplus Natural and Low Enriched Uranium (DOE/EA–1172, October 1996); and Environmental Assessment for the Lease of Land and Facilities within the East Tennessee Technology Park, Oak Ridge, Tennessee (DOE/EA–1175, 1997).

Scoping Meetings

The purpose of this Advance Notice is to inform the public and interested parties early about DOE's plans to prepare an EIS for proposed DUF_6 conversion facilities and to encourage early public involvement in the EIS process. DOE intends to hold public scoping meetings in Oak Ridge, Tennessee; Paducah, Kentucky; and Portsmouth, Ohio, to solicit both oral and written comments from interested parties. The dates and times of such meetings will be announced in the NOI, which DOE plans to issue later this year, or in subsequent **Federal Register** notices and in local media before the meetings.

Signed in Washington, DC, this 1st day of May, 2001.

Steven V. Cary,

Acting Assistant Secretary, Office of Environment, Safety and Health.

[FR Doc. 01–11384 Filed 5–4–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Civilian Radioactive Waste Management; Yucca Mountain Science and Engineering Report; Site Recommendation Consideration and Request for Comment

AGENCY: Office of Civilian Radioactive Waste Management, Department of Energy.

ACTION: Notice of availability of report and initiation of public comment period.

SUMMARY: The Department of Energy (the Department or DOE) announces the initiation of a public comment period on the possible recommendation of the Yucca Mountain Site in Nevada by the Secretary of Energy to the President for development as a spent nuclear fuel and high-level nuclear waste geologic repository. To facilitate the public review and comment process, the Department announces today the availability of the Yucca Mountain Science and Engineering Report (YMS&ER). This report provides the public with a summary of the information and data collected to date by the Department in its multi-year study and characterization of the Yucca Mountain site as a potential spent nuclear fuel and high-level waste repository. A decision to recommend the site has not been made; the YMS&ER is being issued to describe the results of site characterization studies completed to date, the waste forms to be disposed, a repository and waste package design, and updated assessments of the long term performance of the potential repository. The Department intends for the YMS&ER, and its supporting documents, to be used by the public as an aid in providing comments on the technical information and data underlying the Department's consideration of a possible recommendation of the site. This summer, after the release of additional information, DOE will announce the dates, locations and times for public hearings on the possible recommendation and the date for the end of the public comment period. In addition, in recognition of the fact that technical and scientific analyses are continuing, and that the pertinent regulatory framework is not currently in final form, the issuance of additional information, beyond that anticipated for release this summer, may be warranted. By making the large amount of information developed by the Department on the Yucca Mountain site available in stages, the Department intends to provide the public and interested parties with ample time to review all the available materials and formulate their comments regarding a possible site recommendation by the Secretary.

DATES: The public may submit written comments at this time. DOE will issue additional information this summer and will at that point announce the dates, locations and times of public hearings

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on the Secretary's consideration of a potential site recommendation.

ADDRESSES: Written comments should be addressed to Carol Hanlon, U.S. Department of Energy, Yucca Mountain Site Characterization Office, (M/S #025), P.O. Box 30307, North Las Vegas, Nevada 89036–0307, or provided by electronic mail to YMP_SR@ymp.gov. Written comments should be identified on the outside of the envelope, and on the comments themselves, with the designation: "Possible Site Recommendation for Yucca Mountain." Comments can also be submitted by facsimile to 1–800–967–0739. Copies of any written comments, and documents referenced in this notice may be inspected and photocopied in the DOE Freedom of Information Act Reading Room located at the Yucca Mountain Science Center, 4101B Meadows Lane, Las Vegas, Nevada, (702) 295–1312, between the hours of 8 a.m. and 5 p.m., Monday through Friday, except for Federal holidays. Documents referenced in this notice may also be found on the Internet at http://*www.ymp.gov* and at http://*www.rw.doe.gov* (YMS&ER only). For more information concerning public participation, please refer to the Opportunity for Public Comment section of this notice.

Copies of the YMS&ER may be requested by telephone (1–800–967–3477) or over the Internet via the Yucca Mountain Project website using the document ordering form at http://*www.ymp.gov* under the listing "Yucca Mountain Science and Engineering Report."

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office, (M/S #025), P.O. Box 30307, North Las Vegas, Nevada 89036–0307, 1–800–967–3477.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Yucca Mountain Site Characterization

In 1982, Congress passed the Nuclear Waste Policy Act (NWPA) (Public Law 97–425), designating the federal government as the responsible entity for the safe and permanent disposal of spent nuclear fuel and high-level radioactive waste. Also in the NWPA, Congress established a comprehensive framework for the siting, construction and operation of a geologic repository as the primary mechanism by which the federal government would ensure the safe and permanent disposal of such radioactive material. In 1987, Congress amended the NWPA. In the Nuclear Waste Policy Amendments Act of 1987 (Public Law No. 100–203), Congress directed the Department to characterize only the Yucca Mountain, Nevada site for a possible geologic repository.

The Department has studied Yucca Mountain for over 20 years. Over the course of those years, the Department has performed detailed scientific investigations of the geology, hydrology, geochemistry, and other characteristics of the site to determine whether it is a suitable place to build a geologic repository. The DOE has also developed a preliminary design for a potential repository and for the waste packages in which spent nuclear fuel and high-level radioactive waste might be stored. The results of these scientific investigations and the preliminary design efforts have been analyzed to assess the possible future performance of the potential repository in the geologic setting of the site. The YMS&ER provides a summary of these studies and design efforts to date.

B. Site Recommendation Process

Under Section 114 (a)(1) of the NWPA, as amended, the Secretary's decision whether to recommend the site will be made following the completion of public hearings and completion of site characterization activities under section 113 of the NWPA, as amended.

The following steps describe the process for the Secretary's determination whether to recommend the site to the President; for the President's decision whether to approve the site; and for the role of the state of Nevada and Congress in the approval or denial of any recommendation by the President. Also summarized are the steps necessary for the DOE to prepare a license application to the Nuclear Regulatory Commission (NRC) and for the NRC to grant an authorization to begin construction, if the site is approved.

Step 1. The NWPA, as amended, requires the Secretary to hold public hearings in the vicinity of the Yucca Mountain site. The hearings will provide the DOE with an opportunity to inform residents of the area that the site is being considered for possible recommendation for development of a repository and receive their comments. The YMS&ER, issued this date, provides a summary of scientific and technical information relevant to the site recommendation process. This summer, DOE will be issuing additional information that the Secretary will use in his consideration of a possible recommendation for the Yucca Mountain site. This information will include the results of ongoing sensitivity studies and uncertainty study analyses (Supplemental Science and Performance Analyses), as well as the results of a preliminary evaluation of the Yucca Mountain site's preclosure and postclosure performance against the Department's proposed site suitability guidelines (Preliminary Site Suitability Evaluation). That preliminary evaluation will consider any newly available information in addition to the information provided in the YMS&ER. Although there is no statutory requirement for development or issuance of these documents, the DOE is providing the documents to facilitate public comments before and during the public hearings.

Step 2. Comments received during the public comment period will be considered by the Secretary before a decision is made whether to recommend the site to the President. After considering the comments received, if the Secretary decides to recommend the site, the NWPA requires the Secretary to notify the governor and legislature of the state of Nevada and wait at least 30 days before submitting the recommendation to the President. If the Secretary decides not to recommend the site, appropriate notification will be made to the Congress and the State of Nevada.

Step 3. If the Secretary decides to recommend approval of the site and 30 days has elapsed since notification of the State of Nevada, the Secretary would then provide the recommendation to the President along with the basis for the recommendation, as required under section 114(a)(1) of the NWPA. That basis for recommendation would include, among other items, comments received on the YMS&ER and subsequent documents; the views and comments submitted by the governor and legislature of any state, along with the Secretary's response to such views; the preliminary comments of the NRC concerning the extent to which the at-depth site characterization analysis and the waste form proposal seem to be sufficient for inclusion in any subsequent license application; and a final Environmental Impact Statement (EIS) for the Yucca Mountain site. (The Department is in the process of preparing this EIS. For more information on the status of that process see a separate **Federal Register** Notice of May 4, 2001.) Upon submission to the President, the Secretary's recommendation and basis for the recommendation would be available to the public.

Step 4. If, after receiving a recommendation by the Secretary and the basis for the recommendation, the President considers the Yucca Mountain site qualified for application for a construction authorization for a repository, the President may approve the site for the development of a repository and recommend the site to Congress. The President's recommendation to Congress would be accompanied by the Secretary's recommendation, and the basis for the recommendation.

Step 5. If the President submits a recommendation of the site to Congress, the state of Nevada will have 60 days to submit a notice of disapproval to Congress. If Nevada does not submit a notice, the Yucca Mountain site designation will become effective, 60 days after the President's recommendation is submitted to Congress. If the state of Nevada does submit a notice, the Yucca Mountain site designation would be disapproved unless, during the first 90 days of continuous session after the notice of disapproval is submitted, Congress passes a joint resolution of repository siting approval and the President signs it into law.

Step 6. If the site designation becomes effective, the Secretary will subsequently submit a license application to the NRC for authorization to construct a repository and provide a copy to the governor and legislature of Nevada. The NWPA requires the NRC to issue a final decision approving or disapproving the construction authorization within three years after receiving the application. However, the law provides that the NRC can extend the deadline by up to one year if it submits to the Secretary of Energy and Congress a written report explaining the reason for the NRC's failure to meet the three-year deadline.

C. Information for the Public Comment Process

As explained above, the Department is making available the YMS&ER in conjunction with the initiation of the site recommendation process. The report describes the results of site characterization, the waste forms to be disposed of, the preliminary design of the repository and the waste packages, and the results of assessments of potential repository performance. The information presented provides the Department's existing technical basis for public and stakeholder comments on the possible recommendation. The Department will continue to collect and refine its analysis and information base, in response to public comments and as part of its ongoing characterization activities, before reaching any decision on a possible site recommendation.

The information and analyses in the YMS&ER are also based on the status of regulations, as presently proposed, that would govern the public health and safety standard for a spent nuclear fuel and high-level waste repository at Yucca Mountain (EPA standards proposed for codification at 40 CFR part 197), the licensing requirements for such a repository (NRC requirements proposed for codification at 10 CFR part 63), and the suitability of the Yucca Mountain site for a repository (DOE guidelines proposed for codification at 10 CFR part 963). The Department expects that the subject regulations will be finalized in the near future. The currently proposed regulations provide a reasonable basis for the consideration of a possible site recommendation. In recognition of the fact that technical and scientific analyses are continuing, and that the pertinent regulatory framework is not currently in final form, the issuance of additional information or analyses, beyond that anticipated for release this summer, may be warranted.

The YMS&ER is available on the Internet, on compact disc, and in print.

The document contains information that would be included in the basis for any site recommendation from the Secretary to the President, as specified by Section 114(a)(1)(A), (B), and (C) of the NWPA. The organization of the YMS&ER is consistent with the order of information identified in Section 114 of the NWPA. Section 1 introduces the report and provides background information on the site recommendation approval process and a summary of the information in the succeeding sections of the report. Section 2 describes the design of the potential repository at Yucca Mountain, including preliminary engineering specifications for the facility. Section 3 describes the waste forms to be disposed and proposed waste package designs. Section 4 discusses the data related to the safety of the Yucca Mountain site, including a description of how the natural and engineered repository systems would work together to protect public health and limit the release of radionuclides to the environment. It explains the relationship between the waste form, the waste package, and the geologic medium at Yucca Mountain. It also describes analyses of the future long-term performance of a Yucca Mountain repository. Section 5 describes the analyses performed to evaluate the safety of the potential repository during operation and before final closure.

The YMS&ER references numerous supporting documents, which are available on the Internet (http://*www.ymp.gov*) or in print. The public is encouraged to review these documents, in addition to the YMS&ER, in developing comments on the possible site recommendation. The supporting documents incorporate an extensive foundation of scientific, engineering, and programmatic research that analyzed the Yucca Mountain site, the proposed repository and waste package designs, and other information. The supporting documents are hierarchically organized: at the top are comprehensive integrating documents that support this report directly, and an extensive set of technical reports that explain in more detail the basis for the analyses presented. Some of the major integrating documents are:

The Total System Performance Assessment—Site Recommendation.

The Preliminary Preclosure Safety Assessment for a Monitored Geologic Repository.

The Draft Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada.

The Yucca Mountain Site Description.

The Monitored Geologic Repository Project Description Document.

Key technical references include nine process model reports that describe how the natural and engineered systems at a potential repository are expected to behave. For example, these reports describe how water would move from the surface to the repository and how the waste package would perform over time. Reports summarizing hundreds of scientific and engineering studies on a wide variety of topics support the YMS&ER in more detail, including:

Analysis model reports describing the detailed scientific models of how the potential repository might behave in the future;

Scientific reports of the results of site characterization investigations, regional studies, and studies of natural analogues to a potential repository;

Descriptions of design requirements, design analyses, and design alternative studies for the repository surface and subsurface facilities, engineered barrier systems, and waste packages.

Concurrent with the release of the YMS&ER, DOE will also be issuing a Supplement to the Draft Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada. The availability of that document was announced in a separate **Federal Register** Notice, dated May 4, 2001, together with information on the opportunities for public comment on the document and public hearings to be held.

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II. Opportunity for Public Comment

A. Participation in Comment Process

Interested persons are invited to participate in the comment process by submitting written data, views, or comments with respect to the subject set forth in this notice. The Department encourages the maximum level of public participation possible in this process. Individuals, coalitions, states or other government entities, and others are urged to submit written comments on the possible recommendation of the Yucca Mountain site.

B. Written Comment Procedures

The DOE invites the public to comment on a possible site recommendation for the Yucca Mountain site. Written comments should be identified on the outside of the envelope, and on the comments themselves, with the designation: "Possible Site Recommendation for Yucca Mountain." In the event any person wishing to submit written comments cannot provide them directly, alternative arrangements can be made by calling [(800) 967–3477]. All comments received and other relevant information will be considered by the DOE before a decision is made on the potential site recommendation. All comments submitted will be available for examination at the Yucca Mountain Science Center in Las Vegas, Nevada. Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data that is believed to be confidential, and which may be exempt by law from public disclosure, should submit one complete copy, as well as two copies from which the information considered confidential has been deleted. The Department of Energy will make its own determination of any such claim and treat it accordingly.

Issued in Washington, DC on April 27, 2001.

Lake Barrett,

Acting Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 01–11383 Filed 5–4–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1381–000]

AES Medina Valley Cogen, L.L.C.; Notice of Issuance of Order

May 1, 2001.

AES Medina Valley Cogen, L.L.C. (AES Medina) submitted for filing a rate schedule under which AES Medina will engage in wholesale electric power and energy transactions at market-based rates. AES Medina also requested waiver of various Commission regulations. In particular, AES Medina requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by AES Medina.

On April 11, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by AES Medina should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, AES Medina is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of AES Medina's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 11, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order may also be viewed on the Internet at *http://www.ferc.fec.us/online/rims.htm* (call 202–208–222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11343 Filed 5–4–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1807–001]

Carolina Power & Light Company and Florida Power Corporation; Notice of Filing

May 1, 2001.

Take notice that on April 26, 2001, Carolina Power & Light Company (CP&L) and Florida Power Corporation (FPC), tendered for filing revision to the modification of the Open Access Transmission Tariff (OATT) of CP&L and FPC that was tendered for filing April 16, 2001 in this docket. The modification consists of a complete copy of the OATT in the format required by Order No. 614. The modification is being made to comply with the requirement of Order No. 614 that when a tariff or rate schedule is revised, the entire tariff or rate schedule must be refiled in the format required by that order. The filing also incorporates amendments to the OATTs of CP&L and FPC that the Commission accepted for filing prior to the consummation of their merger.

Copies of the filing were served upon the public utility's jurisdictional customers, North Carolina Utilities Commission and South Carolina Public Service Commission.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before May 17, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–11351 Filed 5–4–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–384–000]

Chandeleur Pipe Line Company; Notice of Compliance Filing

May 1, 2001.

Take notice that on April 23, 2001, Chandleleur Pipe Line Company (Chandeleur) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective May 1, 2001:

Third Revised Sheet No. 18
Fourth Revised Sheet No. 29
First Revised Sheet No. 18A
Original Sheet No. 29A
Fourth Revised Sheet No. 19
Third Revised Sheet No. 32
Fifth Revised Sheet No. 19A
Second Revised Sheet No. 48
Original Sheet No. 19A.01
First Revised Sheet No. 67A
Original Sheet No. 19A.02
Sixth Revised Sheet No. 69
Fourth Revised Sheet No. 19B
Fifth Revised Sheet No. 69A
Second Revised Sheet No. 19C
First Revised Sheet No. 69B

Chandeleur states that the purpose of this filing is to comply with the Commission's order issued November 30, 2000, in RM96–1–015 wherein the Commission adopted, by reference in Section 284 of its Regulations (18 CFR 284.12), Version 1.4 of the GISB standards implementing certain standardized business practices.

Any person desiring to be heard or to protest said filing should file a notion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11344 Filed 5–4–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–028]

Dominion Transmission, Inc.; Notice of Tariff Filing

May 1, 2001.

Take notice that on April 26, 2001, Dominion Transmission, Inc. (DTI) filed with the Commission the following tariff sheet to correct and update the description of a previously filed negotiated rate transaction:

First Revised Sheet No. 1402

DTI requests an effective date of April 1, 2001, for the negotiated rate.

DTI states that copies of the filing have been served on all parties on the official service list, DTI's customers, and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11347 Filed 5–4–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER01–1353–000, ER01–1354–000 and ER01–1355–000 (Not consolidated)]

PacifiCorp; Notice of Convening Session

May 1, 2001.

In *PacifiCorp*, 95 FERC ¶ 61,122 (2001), the Commission addressed various proposed unexecuted service agreements filed by PacifiCorp for service to Utah Associated Municipal Power Systems, Utah Municipal Power Agency and Deseret Generation and Transmission Cooperative (collectively, "Customers"). Pursuant to the order, the Commission stated that the dispute regarding whether PacifCorp properly filed proposed agreements with these Customers as well as appropriate terms of such service may best be resolved through good faith negotiations between the parties. Accordingly, the Commission directed the Commission's Dispute Resolution Service (DRS) to convene a meeting of the parties within 7 days to explore the use of an ADR process to foster negotiation and agreement.

The convening session in this matter will be held via conference call with the parties to the three dockets listed above. The conference will be held on May 3, 2001 at 2 p.m. EST. Participating parties should contact Amy Blauman for the necessary call-in information. Her telephone number is (202) 208–2143 and her e-mail address is *Amy.Blauman@ferc.fed.us.*

The purpose of the convening session will be to assist the parties developing an ADR process to achieve a resolution of the issues.

David P. Boergers,

Secretary.

[FR Doc. 01–11341 Filed 5–4–01; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER01–1178–000, ER01–1178–001, ER01–1178–002]

Sempra Energy Resources; Notice of Issuance of Order

May 1, 2001.

Sempra Energy Resources (Sempra) submitted for filing a rate schedule under which Sempra will engage in wholesale electric power and energy transactions at market-based rates. Sempra also requested waiver of various Commission regulations. In particular, Sempra requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Sempra.

On April 10, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Sempra should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Sempra is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Sempra's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 10, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11342 Filed 5–4–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–387–000]

Texas Eastern Transmission, LP; Notice of Proposed Changes in FERC Gas Tariff

May 1, 2001.

Take notice that on April 26, 2001, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1 and First Revised Volume No. 2, revised tariff sheets to be effective June 1, 2001 as listed on Appendix A to the filing.

Texas Eastern states that the purpose of this filing is to increase the ASA Usage Surcharge from zero to the various amounts, by zone, shown on Appendix B. For transportation from the East La Zone to the M–3 Zone, the ASA Usage Surcharge is proposed to be set at $0.0354 per dth. The need to increase the ASA Usage Surcharge at this time is the result of the significant increase in the Applicable Shrinkage Deferred Account balance from $26,602 as of August 31, 2000 to $22,625,398 as of March 31, 2001. In order to ameliorate the impact on customers' rates of this buildup in the Applicable Shrinkage Deferred Account balance, Texas Eastern is proposing to commerce recovery of such costs effective June 1, 2001, rather that waiting until December 1, 2001. The practical result of commencing recovery of those costs effective June 1, 2001 is to spread the recovery of such costs over eighteen months (June 1, 2001 through November 30, 2002) rather than 12 months (December 1, 2001 through November 30, 2002) if Texas Eastern waited until its October 31, 2001 annual ASA filing.

Texas Eastern states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11348 Filed 5–4–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP01–236–001, RP00–481–001, and RP00–553–004]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

May 1, 2001.

Take notice that on April 19, 2001, Transcontinental Gas Pipe Line Corporation (Transco) in compliance with the Commission's order issued March 30, 2001 in the referenced dockets, (March 30 Order), tendered this filing to explain how its proposed tariff revisions filed on February 28, 2001, in Docket No. RP01–236 (February 28 Filing) relate to Transco's compliance with Order Nos. 637 and 587–L.

In addition, Transco submits herein, pursuant to the commission's directive in the March 30 Order, certain new and revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheets were submitted on a pro forma basis in Transco's previous Order No. 637 compliance filing in Docket No. RP00–481–000 and were not superseded by the February 28 Filing. The enclosed tariff sheets, which are enumerated in Appendix A to the filing, are proposed to be effective as described more fully herein.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before May 8, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11346 Filed 5–4–01; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–71–027]

Transcontinental Gas Pipe Line Corporation; Notice of Refund Report

May 1, 2001.

Take notice that on April 25, 2001 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing with the Commission a refund report showing that on November 1, 2000 and March 26, 2001, Transco submitted refunds/surcharges to all affected shippers in docket No. RP97–71–000, et. al. Transco states that the total refund amounts, including interest, were $89,302,453.55 and $25,132,257.36, respectively.

Transco states that copies of the filing are being mailed to its affected customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before May 8, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11349 Filed 5–4–01; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–385–000]

USG Pipeline Company; Notice of Compliance Filing

May 1, 2001.

Take notice that on April 23, 2001, USG Pipeline Company (USGPC) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets: First Revised Sheet No. 34, First Revised Sheet No. 52, First Revised Sheet No. 56, and First Revised Sheet No. 71.

USGPC states that the purpose of this filing is to comply with the Commission's Order No. 587–M issued November 30, 2000, in Docket No. RM96–1–015. USGPC states that it proposes to place these revised tariff sheets into effect on May 1, 2001.

USGPC states that complete copies of this filing are being provided to its sole customer, United States Gypsum Company, which receives service as certificated under Part 157 of the Commission's regulations, and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://ww.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11345 Filed 5–4–01; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–386–000]

Williams Gas Pipelines Central, Inc.; Notice of Filing of Cash-Out Report

May 1, 2001.

Take notice that on April 23, 2001, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing, pursuant to Article 9.8(d) of the General Terms and Conditions of its FERC Gas Tariff, its report of net cash out activity.

Williams states that pursuant to the cash-out mechanism contained in Section 9.8(a)(iv) of Williams' tariff, Shippers are given the option of resolving their imbalances by the end of the calendar month following the month in which the imbalance occurred by cashing out such imbalances at 100% of the spot market price applicable to Williams as published in the first issue of Inside FERC's Gas Market Report for the month in which the imbalance occurred. Net monthly imbalances which are not resolved by the end of the second month following the month in which the imbalance occurred and which exceed the tolerance specified in Section 9.8(b) are cashed out at a premium or discount from the spot price according to the schedules set forth in Section 9.8(c).

Williams states that it is filing its report of net cash out activity, which shows net cash out costs to the company of $474,851.98 for the twelve months ended September 30, 2000.

Williams states that a copy of its filing was served on all jurisdictional

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customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before May 8, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11350 Filed 5–4–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1869–000, *et al.*]

PJM Interconnection, L.L.C., *et al.*; Electric Rate and Corporate Regulation Filings

April 30, 2001.

Take notice that the following filings have been made with the Commission:

1. PJM Interconnection, L.L.C.

[Docket No. ER01–1869–000]

Take notice that on April 25, 2001 PJM Interconnection, L.L.C. (PJM), tendered for filing an executed interconnection service agreement between PJM and FPL Energy MH50, L.P. and an interim interconnection service agreement between PJM and Calpine Construction Finance Company, L.P.

PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective dates agreed to by the parties.

Copies of this filing were served upon each of the parties to the agreements and the state regulatory commissions within the PJM control area.

Comment date: May 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. California Independent System Operator Corporation

[Docket No. ER98–3594–007]

Take notice that on April 25, 2001, the California Independent System Operator Corporation (ISO) tendered for filing revised ISO Tariff sheets to comply with the Commission's March 28, 2001 Order in the above-referenced docket.

The ISO states that the filing has been served on each person designated on the official service list compiled by the Secretary in this proceeding.

Comment date: May 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Sithe Edgar LLC, et al.

[Docket Nos. ER98–1943–002, ER98–2782–001, ER99–2404–001, ER98–107–001]

Take notice that on April 23, 2001, Sithe Edgar LLC, Sithe New Boston LLC, Sithe Framingham LLC, Sithe West Medway LLC, Sithe Wyman LLC, Sithe Mystic LLC, AG-Energy, L.P., Power City Partners, L.P., Seneca Power Partners, L.P., Sterling Power Partners, L.P., Sithe Power Marketing, L.P., and Sithe Power Marketing, Inc. (the Sithe Jurisdictional Affiliates) tendered for filing an updated market-power analysis in compliance with the requirement in the orders granting them authority to make power sales at market-based rates.

Comment date: May 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Public Service Company of New Mexico

[Docket No. ER01–615–002]

Take notice that on April 25, 2001, Public Service Company of New Mexico (PNM) tendered for filing an amended filing in compliance with the Commission's January 24, 2001 order in Docket Nos. ER01–592–000 and ER01–615–000, Western Resources, Inc. and Public Service Company of New Mexico, 94 FERC ¶ 61,050 (2001) (January 24 Order). On February 23, 2001, PNM filed to revise Section 4 of its market-based sales tariff in compliance with the January 24 Order.

PNM states that the amended compliance filing consists of tariff sheets redesignated to conform to the tariff designation reflected in the January 24 Order, and contains no substantive changes to its February 23 compliance filing.

Comment date: May 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Valley Electric Association, Inc.

[Docket No. ER01–1229–001]

Take notice that on April 25, 2001, Valley Electric Association, Inc. tendered for filing an amendment to its filing in this proceeding.

Comment date: May 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. FirstEnergy Operating Companies: The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, The Toledo Edison Company

[Docket No. EL01–69–000]

American Transmission Systems, Inc.

Take notice that on April 25, 2001, the FirstEnergy Operating Companies and American Transmission Systems, Inc. tendered for filing pursuant to Rule 207, 18 CFR 385.207 a petition for a declaratory order confirming the identification of local distribution facilities made by the Ohio Public Utilities Commission and the Pennsylvania Public Utility Commission.

Comment date: May 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. California Independent System Operator Corporation

[Docket No. ER01–1863–000]

Take notice that on April 25, 2001, the California Independent System Operator Corporation tendered for filing a Meter Service Agreement for ISO Metered Entities between the ISO and Calpine Construction Finance Company, L.P. for acceptance by the Commission.

The ISO states that this filing has been served on Calpine Construction Finance Company, L.P. and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement for ISO Metered Entities to be made effective April 11, 2001.

Comment date: May 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Moses Lake Generating LLC

[Docket No. EG01–199–000]

Take notice that on April 25, 2001, Moses Lake Generating LLC tendered for filing an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant is a limited liability company organized under the laws of the State of Delaware that is engaged directly and exclusively in developing, owning, and operating one or two facilities which will be eligible facilities in Grant County, Washington. The facilities will consist of multiple small duel-fueled (diesel/natural gas) generators, which in the aggregate will be capable of generating up to 60 MW of power, and equipment necessary to interconnect the facilities to the transmission grid.

Comment date: May 16, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

9. PacifiCorp

[Docket No. EC01–91–000]

Take notice that on April 25, 2001, PacifiCorp (PacifiCorp) tendered for filing an application pursuant to Section 203 of the Federal Power Act and Part 33 of the Regulations of the Commission for authorization of a disposition of jurisdictional facilities whereby NA General Partnership will transfer all of the outstanding common stock of PacifiCorp to newly-formed PacifiCorp Holdings, Inc. (PHI) in exchange for the capital stock of PHI. PacifiCorp will remain an indirect subsidiary of Scottish Power plc. PacifiCorp intends to transfer over time the non-regulated business of PacifiCorp Group Holdings Company (PGHC) and its subsidiaries to PHI.

The proposed restructuring plan also includes the transfer of the common stock of PacifiCorp's power marketing affiliate, PacifiCorp Power Marketing, Inc. to PHI. As a result of this transfer, control over PPM One LLC and PPM Six LLC effectively transfers from PacifiCorp to PHI, although ScottishPower retains ultimate power and control. PacifiCorp filed no Section 205 rate proceeding in this application, and states that the transaction will change only PacifiCorp's internal upstream corporate structure, and have no impact on competition, rates or regulation. Applicant has requested Commission approval of the transaction as early as practicable.

Comment date: May 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. California Independent System Operator Corporation

[Docket No. ER01–1864–000]

Take notice that on April 25, 2001, the California Independent System Operator Corporation tendered for filing a Participating Generator Agreement between the ISO and Calpine Construction Finance Company, L.P. for acceptance by the Commission.

The ISO states that this filing has been served on Calpine Construction Finance Company, L.P. and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective April 11, 2001.

Comment date: May 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Entergy Services, Inc.

[Docket No. ER01–1866–000]

Take notice that on April 25, 2001, Entergy Services, Inc. (Entergy Services) tendered for filing with the Federal Energy Regulatory Commission an unexecuted Network Integration Transmission Service Agreement (the NITSA), and an unexecuted Network Operating Agreement (the NOA) between Entergy Services and the following parties: (1) Mississippi Delta Energy Agency (MDEA), a joint action agency organized and existing under the laws of the State of Mississippi, composed of the Clarksdale Public Utilities Commission of the City of Clarksdale, Mississippi (Clarksdale) and the Public Service Commission of Yazoo City of the City of Yazoo City Mississippi (Yazoo City); (2) Clarksdale; and (3) Yazoo City.

Entergy Services requests that the NITSA and NOA be accepted for filing effective as of May 1, 2001, and requests waiver of the Commission's regulations to the extent necessary to permit the NITSA and NOA to become effective that date.

Comment date: May 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Carolina Power & Light Company

[Docket No. ER01–1867–000]

Take notice that on April 25, 2001, Carolina Power & Light Company (CP&L) tendered for filing an executed Service Agreement between CP&L and the following eligible buyer, Dynegy Power Marketing, Inc. Service to this eligible buyer will be in accordance with the terms and conditions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4, for sales of capacity and energy at market-based rates.

CP&L requests an effective date of April 15, 2001 for this Service Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: May 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. PP Southwest Generation Holdings, LLC

[Docket No. ER01–1870–000]

Take notice that on April 25, 2001, PPL Southwest Generation Holdings, LLC (PPL Southwest Generation Holdings) tendered for filing an Application for Authority to sell electric energy, capacity and specified ancillary services at market-based rates.

PPL Southwest Generation Holdings requests that the Commission permit its Market-Based Rate Tariff to become effective one business day from the date of filing.

Comment date: May16, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Moses Lake Generating LLC

[Docket No. ER01–1871–000]

Take notice that on April 25, 2001, Moses Lake Generating LLC (Moses Lake), an electric power developer organized under the laws of Delaware, tendered for filing acceptance of its market-based rate tariff, waiver of certain requirements under Subparts B and C of Part 35 of the Commission's regulations, and preapproval of transactions under Part 34 of the regulations.

Moses Lake is intending to construct, own, and operate a facility with a capacity up to 60 MW in Grant County, Washington.

Comment date: May 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Arizona Public Service Company

[Docket No. ER01–1872–000]

Take notice that on April 25, 2001, Arizona Public Service Company (APS) tendered for filing umbrella Service Agreements to provide Short-Term Firm and Non-Firm Point-to-Point Transmission Service to Conoco, Inc. under APS Open Access Transmission Tariff.

A copy of this filing has been served on Conoco, Inc., and the Arizona Corporation Commission.

Comment date: May 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. American Transmission Company LLC

[Docket No. ER01–1873–000]

Take notice that on April 25, 2001, American Transmission Company LLC (ATCLLC) tendered for filing a Short-Term Firm and Short-Term Non-Firm

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Point-to-Point Service Agreement between ATCLLC and Aquila Energy Marketing Corporation. ATCLLC requests an effective date of March 26, 2001.

Comment date: May 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11340 Filed 5–4–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–42212C; FRL–6778–2]

Endocrine Disruptor Screening Program; Establishment of an Endocrine Disruptor Methods Validation Subcommittee under the National Advisory Council for Environmental Policy and Technology; Request for Nominations for Membership

AGENCY: Environmental Protection Agency (EPA).

ACTIONS: Notice; request for nominations for membership.

SUMMARY: As mandated by the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996, EPA is implementing an Endocrine Disruptor Screening Program (EDSP). This notice proposes the establishment of an Endocrine Disruptor Methods Validation Subcommittee (EDMVS) as a Subcommittee under the National Advisory Council for Environmental Policy and Technology (NACEPT), and requests nominations for members of the EDMVS from interested organizations. NACEPT is a chartered federal advisory committee subject to the provisions of the Federal Advisory Committee Act. Through NACEPT, the EDMVS will provide technical advice an recommendations to EPA regarding validation of the Tier 1 Screening and Tier 2 Testing methods for its Endocrine Disruptor Screening Program (EDSP). Background information regarding the Agency's Endocrine Disruptor Screening Program (EDSP) and the mission of the EDMVS are discussed in Unit IV. of **SUPPLEMENTARY INFORMATION.** This information is being provided to allow interested organizations to review the scope of proposed activities to nominate qualified individuals for membership on the EDMVS.

DATES: Nominations must be received on or before June 6, 2001.

ADDRESSES: Nominations for membership may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your request must identify docket control number OPPTS–42212C in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: TSCA Hotline, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Telephone: 202–554–1404; TDD: 202–554–0551; e-mail: TSCA-Hotline@epa.gov.

For technical information contact: Anthony Maciorowski, Senior Technical Advisor, Office of Prevention, Pesticides and Toxic Substances; telephone: 202–260–3048; e-mail address: maciorowski.anthony@epa.gov or

Gary Timm, Senior Technical Advisor, Office of Prevention, Pesticides and Toxic Substances; telephone: 202–260–1859; e-mail address: timm.gary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does This Notice Apply to Me?

This action is directed to the public in general. You may be interested in nominating members to the subcommittee set forth in this notice if you produce, manufacture, use, consume, work with, or import pesticide chemicals, substances that may have an effect cumulative to an effect of a pesticide, or substances found in sources of drinking water. To determine whether you or your business may have an interest in this notice you should carefully examine section 408(p) of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996 (Public Law 104–170), 21 U.S.C. 346a(p) and amendments to the Safe Drinking Water Act (SDWA) (Public Law 104–182), 42 U.S.C. 300j–17. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical persons listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Additional Information, Including Copies of This Document or Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/scipoly. To access this document, on the Home Page select "Endocrine Disruptors" which will take you to the OSCP Endocrine Disruptor Screening Program web site.

2. *In person*. The Agency has established an administrative record for the EDMVS under docket control number OPPTS–42212C. The administrative record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other information related to the Endocrine Disruptor Methods Validation Subcommittee Organizational Meeting. This administrative record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the administrative record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

III. How Can I Nominate Potential Members to the Endocrine Disruptor Methods Validation Subcommittee?

You may nominate technically qualified persons for membership to the Endocrine Disruptor Methods Validation Subcommittee through the mail, in person, or electronically. Nominations for membership should be submitted by the nominating organization, and must include a curriculum vitae of the nominee detailing his or her specific area of relevant scientific expertise. Members of the EDMVS will be selected on the basis of their relevant scientific expertise and diversity of perspectives on mammalian, ecological, and *in vitro* endocrine disruptor screening and testing methods and procedures, toxicity test methods standardization and validation, and chemical and pesticide regulatory processes. Members will be appointed for 2 years. Subcommittee members shall be appointed with balanced representation from among the following sectors: the agrichemical and commodity chemical industries; environmental/public interest organizations; public health organizations; animal welfare organizations; Federal agencies; State, local and tribal governments; academia; consumers, and the public. Your nomination must be received by EPA on or before June 6, 2001. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–42212C in the subject line on the first page of your request.

1. *By mail*. You may submit a written nomination to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. You may deliver a written nomination to: OPPT Document Control Office (DCO) in the East Tower Rm. G-099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically*. You may submit your nomination electronically by e-mail to: oppt.ncic@epa.gov. Use Wordperfect 6.1/8.0 or ASCII file format and avoid the use of special characters and any form of encryption. All comments in electronic form must be identified by docket control number OPPTS–42212C.

IV. Background

A. Authorities

Two laws enacted in 1996 authorize the Agency to screen pesticides and other chemicals found in food or in drinking water sources to determine whether they may cause estrogenic or other endocrine effects in humans. The impetus for development of EPA's Endocrine Disruptor Screening Program was an amendment to FFDCA, contained in the FQPA of 1996 (Public Law 104–170). The FFDCA (21 U.S.C. 346a(p) as amended requires EPA to:

> develop a screening program, using appropriate validated test systems and other scientifically relevant information, to determine whether certain substances may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect as the Administrator may designate.

21 U.S.C. 346a(p)(3), also states that in carrying out its screening program, EPA

> (A) shall provide for the testing of all pesticide chemicals and (B) may provide for the testing of any other substance that may have an effect that is cumulative to an effect of a pesticide chemical if the Administrator determines that a substantial population may be exposed to such a substance.

Additionally, Congress amended the SDWA (42 U.S.C. 300j–17) authorizing EPA to provide for the testing under the screening program authorized in the FFDCA

> . . .of any other substance that may be found in sources of drinking water if the Administrator determines that a substantial population may be exposed to such substance. (42 U.S.C. 300j–17).

Through the amended FFDCA, Congress directed EPA to develop an endocrine disruptor screening program using appropriate validated test systems and other scientifically relevant information by August 3, 1998, implement the program by August 3, 1999, and report progress to Congress by August 3, 2000.

EPA may rely upon FIFRA and TCSA testing authority. Under FIFRA section 3(c)(2)(B), if EPA determines that additional data are required to maintain in effect an existing pesticide registration, it can require pesticide registrants to provide EPA with additional data in support of the registrant. Likewise, TSCA section 4 provides EPA authority to require testing of certain industrial chemicals.

B. Development of EPA's Endocrine Disruptor Screening Program

Prior to the passage of the FQPA and SDWA, the Agency initiated several endocrine disruptors investigations including: the development of a special report and effects assessment (Ref. 6); a series of endocrine disruptor methods workshops funded by the World Wildlife Fund, Chemical Manufacturer's Association, and the Agency (Refs. 1, 3, and 7); and co-sponsorship (with the National Institute of Environmental Health Sciences and Department of the Interior) of an independent critical analysis of the literature on hormonally active agents in the environment by the National Academy of Sciences (Ref. 5). The foregoing activities coincided with the establishment and deliberationsof the Endocrine Disruptor Screening and Testing Advisory Committee (Ref. 2).

The complexity of the scientific and regulatory issues surrounding the endocrine disruptor issue led EPA to seek broad expert advice and counsel beyond the Agency. EPA held a public meeting in May of 1996 requesting advice on how to develop a scientifically defensible, pragmatic approach to endocrine disruptor screening and testing. The stakeholder feedback indicated that a broad based multi-sector stakeholder committee should be established under the Federal Advisory Committee Act. Following a second public meeting and analysis of stakeholder interests (Keystone Center Convening Report, see www.epa.gov/scipoly/oscpendo), the Agency chartered the Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC).

EDSTAC was charged with providing advice and recommendations to the Agency regarding a strategy for testing chemical substances to determine whether they may have an effect in humans similar to an effect produced by naturally occurring hormones. EDSTAC consisted of 39 representatives from industry, environmental and public health advocacy groups, state government, other Federal agencies, and academic scientists. Over a 2–year period, EDSTAC held eight meetings. To facilitate regional public comment on the process, the meetings were held in different parts of the country (Chicago, San Francisco, New York, Houston, Orlando, Baltimore and Washington) and provided opportunities for public comment. In its final report, EDSTAC (Ref. 2, available at www.epa.gov/scipoly/oscpendo) provided 71 consensus recommendations regarding an endocrine disruptor screening program. Considering the EDSTAC's diverse membership, EPA found its consensus recommendations compelling and scientifically rigorous. Therefore, EPA closely followed EDSTAC's advice and recommendations in developing its Endocrine Disruptor Screening Program (EDSP).

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EPA's EDSP is outlined in the August 11, 1998 **Federal Register** (63 FR 42852) (FRL–6021–3), and further developed as a proposed statement of policy in the December 28, 1998 **Federal Register** (63 FR 71542) (FRL–6052–9), available at www.epa.gov/fedrgstr/EPA-TOX/1998/December/Day-28/t34298.htm). The EDSP proposed statement of policy, including public comments, was subsequently reviewed by a joint panel of the FIFRA Scientific Advisory Panel (SAP) and the EPA Science Advisory Board (SAB) in May 1999. Like Gray et al. (Ref. 3), EDSTAC (Ref. 2) and the NRC (Ref. 5), the SAP/SAB (Ref. 8) final report concluded that a tiered approach relying on a combination of *in vivo* and *in vitro* screens for Tier 1 and a set of *in vivo* Tier 2 tests was scientifically reasonable. This conclusion was based upon each group's assessment of the current state-of-the-science on the evaluation of agents impacting the endocrine system. Another consistent conclusion was the need to validate the individual screens and tests in EDSP. The validation and peer review are science-based process steps, which are prerequisite to the final development and approval of test guidelines for regulatory use (Ref. 4).

EPA also received public comments on the proposed statement of policy which were considered by the SAP/SAB joint panel review. The Agency will respond to these public comments in a future **Federal Register** notice and final statement of policy prior to requiring regulatory testing.

C. Implementation of EPA's Endocrine Disruptor Screening Program

EPA's ongoing implementation of Endocrine Disruptor Screening Program (EDSP) is science-driven, and based on the recommendations and comments of EDSTAC (Ref. 2), the FIFRA SAP/SAB Joint Panel (Ref. 8), and the NAS (Ref. 5). In keeping with its FFDCA-mandated deadline, the Agency forwarded a Report to Congress in August 2000, providing the Agency's progress on implementation of the EDSP. The above referenced **Federal Register** Notices, SAB/SAP report, Endocrine Disruptor Screening Program Report to Congress, and other EPA EDSP-related information are available at www.epa.gov/scipoly/oscpendo. The Agency's Implementation is currently proceeding on two fronts. EPA is completing development of the Endocrine Disruptor Priority Setting Database and the compartment-based approach that the Agency will use to establish priorities for screening chemicals at a later stage of implementation. EPA has also initiated prevalidation and validation studies on some of the of Tier 1 and Tier 2 assays that are likely to be part of the EDSP. The Endocrine Disruptor Methods Validation Subcommittee will provide advice and comment on both the ongoing and new studies necessary to validate the EDSP assays.

1. *Priority setting.* Priority setting processes will not be included in the mission statement to the EDMVS, but EPA's ongoing activities are briefly summarized here for background information purposes. As many as 87,000 chemicals may be sorted into categories for priority setting. However, EPA anticipates that tens of thousands of chemicals will be exempted from screening. Priority setting tools and processes are being developed by EPA, its contractors and cooperators. Until the Agency completely finalizes its priority setting tools and process, accurate estimates of how many chemicals may actually be candidates for screening remain premature. Yet, EPA expects that 10% or less of the universe of chemicals will undergo actual screening.

Public review and comment during development of the EDSP priority setting process has been provided through two public workshops held in January 1999 and June 2000 (**Federal Register** notices and workshop reports are available at www.epa.gov/scipoly/oscpendo). The priority setting approach is based on development and application of a relational database titledThe Endocrine Disruptor Priority Setting Database (EDPSD). The EDPSD consolidates existing information and data on exposure and effects to rank chemicals. The chemicals are ranked within compartments. A number of compartments may be configured on the basis of exposure and effects characteristics, separately or in combination. The current version of the EDPSD may be examined at http://www.ergweb.com/endocrine.

Recognizing that little relevant effects information for endocrine disruption exists for the vast majority of chemicals, the Agency is considering approaches for providing additional information to assist priority setting. Initially, high throughput pre-screening (HTPS) technology was viewed as an approach to provide information on the ability of a chemical to bind with hormone receptors, thereby improving the assignment of a high screening priority for endocrine active chemicals. An HTPS feasibility study was completed by the Agency in 1999. Following external scientific peer review by the FIFRA SAP/EPA SAB Joint Panel (Ref. 8), the HTPS reporter gene methods used in the feasibility study were deemed unreliable for routine regulatory use. Presently, EPA is not conducting any Agency-sponsored studies on HTPS. The Agency is continuing discussions with the Japanese Government on the development of a different reporter gene based HTPS system. However, the Japanese studies remain ongoing, and must await completion and scientific evaluation before being further considered.

EPA has also engaged in the development of QSAR models to predict endocrine receptor binding activity from the molecular structure of chemicals. The Agency is presently working with the Food and Drug Administration to refine and validate two-dimensional pharmacophore screening models and three-dimensional CoMFA (comparative molecular field analysis) models, as well as the Unversity of Bourgas on three dimensional COREPA (Common Reactivity Pattern) models. The Agency is developing estrogen and androgen receptor binding data to verify the model results. The QSAR model approaches have the potential to be incorporated in the EDPSD, provided they prove to be reliable upon completion of ongoing studies and scientific peer review.

Priority setting is not part of the charge to the EDMVS. However, the Agency will keep the subcommittee informed of these activities, in that the results have implications for the development of *in vitro* screening and pre-screening methods. The latter will be part of the charge to the subcommittee.

2. *Validation of EDSP assays.* The EDSP assays that EPA is developing and validating on a priority basis are identified below:

Tier 1 Screening Battery Methods

- Estrogen (ER) and androgen receptor (AR) binding assays
- ER and AR assays with w/ transcriptional activation
- Steroidogenesis assay
- Uterotrophic assay
- Hershberger assay
- Pubertal female assay w/thyroid endpoints
- Frog metamorphosis
- Fish reproductive screening assay

Tier 1 Screening Battery Alternate Methods

- Pubertal male assay w/thyroid endpoints
- Aromatase assay
- Rodent *in utero* through lactation assay

Tier 2 Testing Battery Methods

- Two-generation mammalian reproductive toxicity study with endocrine endpoints
- Two-generation avian reproductive toxicity study with endocrine endpoints
- Two-generation fish reproductive study with endocrine endpoints
- Two-generation mysid shrimp reproductive study with endocrine endpoints

3. *The Validation Process.* As a charter member and co-chair of the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM), EPA (and the EDMVS) will follow the interagency validation framework outlined in *Validation and Regulatory Acceptance of Toxicological Test Methods* (Ref. 4) for validating the EDSP screening and testing methods. The National Institute of Environmental Health Sciences (NIEHS) established ICCVAM as a standing committee of Federal agencies to coordinate and facilitate interagency validation, acceptance, and harmonization of toxicological test methods with an emphasis on reducing animal use, refining procedures involving animals to make them less stressful and replacing animals where scientifically appropriate.

The ICCVAM validation process was designed as a flexible, adaptable framework applicable to conventional and alternative methods, and to meet the needs of diverse test sponsors, Federal agencies and regulatory processes. The framework provides a number of stages and outcomes including research, methods development, prevalidation, validation, peer review, and regulatory acceptance. All stages and outcomes are part of the interagency ICCVAM process. However, as indicated in *Validation and Regulatory Acceptance of Toxicological Test Methods*: "ICCVAM does not ordinarily address methods applicable to only one agency" (Ref. 4, p. 46); and "test method sponsors may elect to arrange for independent peer review by third parties prior to submission of a method to an agency or ICCVAM" (Ref. 4, p. 47). Regulatory approval of test guidelines remains the sole responsibility of each regulatory agency.

Although there is widespread interest in EPA's EDSP, the screening and testing methods are being developed and validated with the specific goal of developing test guidelines for EPA regulatory use. The test guidelines will ultimately be used by chemical manufacturers, pesticide registrants, and other entities to develop data for submission to EPA in support of the Agency's statutorily mandated chemical risk management programs.

EPA will manage the validation process for the EDSP with substantial involvement of ICCVAM personnel. EPA and ICCVAM have mutually agreed to this administrative arrangement to ensure that EDSP validation meets ICCVAM interagency validation principles (Ref. 4), as well as EPA guideline development, review, and regulatory approval processes for EPA's chemical risk management programs. EPA will manage the process set forth by ICCVAM for the validation of all of the specific *in vitro* and *in vivo* EDSP methods. ICCVAM and the National Toxicology Program will manage and peer review a background review document and summarize literature derived performance criteria into a generic guidance document that could be used for validating estrogen receptor and androgen receptor binding/reporter gene assays.

In addition to EPA's domestic EDSP validation program, certain screening assays and tests for international use are also being conducted by the Organization for Economic Cooperation and Development (OECD) Test Guidelines Program. EPA is an active member of the OECD Test Guidelines Program activities, as well as the latter's Endocrine Disruptor Testing and Assessment Workgroup. EPA will rely upon the OECD mechanism for validating those EDSP screens and tests of international interest. The OECD, EPA and ICCVAM have also mutually agreed to this administrative arrangement to ensure that all appropriate validation and peer review steps are achieved in both domestic and international efforts.

4. *Studies initiated to date by EPA.* A number of studies have been initiated by EPA to provide the data necessary for the validation of individual methods. The results of these ongoing studies, as well as advice regarding the design of new studies will be the primary work of the EDMVS. A summary of studies that have been initiated by EPA is shown below.

Assays/tests	Literature review	Initial protocol demonstration	Prevalidation studies	Validation studies
ER/AR binding assay	•	•	•	•
Uterotrophic assay	•	•	•	•
Hershberger assay	•	•	•	•
Pubertal female assay	•	•	•	
Pubertal male assay	•	•	•	
Frog metamorphosis assay		•		
Fish reproductive screen		•		
Mammalian 2-generation test		•		
Avian 2-generation test		•		
Invertebrate 2-generation test		•		

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V. Endocrine Disruptor Methods Validation Subcommittee Mission Statement

A. Purpose and Authority

This mission statement establishes the Endocrine Disruptor Methods Validation Subcommittee (EDMVS) in accordance with the Federal Advisory Subcommittee Act (5 U.S.C. App. 2 section 9(c)). The EDMVS is being established as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. The purpose of the EDMVS is to provide advice and counsel to the EPA on scientific issues associated with the conduct of studies necessary for validation of Tier 1 and Tier 2 methods for the EPA's Endocrine Disruptor Screening Program (63 FR 71542). The EDMVS will provide advice and recommendations regarding: the development of initial protocols; prevalidation study designs; validation study designs; and synthesis of prevalidation and validation study results for the EDSP Tier 1 and Tier 2 methods into documents suitable for external peer review. The EDMVS advice and recommendations will be forwarded to the Agency through NACEPT. Taking into account this advice and recommendations, EPA will manage and conduct prevalidation and validation laboratory studies.

B. Objectives

EDMVS provides independent advice and counsel to the Agency through NACEPT, on scientific and technical issues related to validation of EDSP Tier 1 and Tier 2 methods, including the reduction of animal pain suffering and use. Following validation of the individual screening methods, the collective data will be integrated and evaluated to optimize the configuration of the Tier 1 screening battery. EDMVS may also examine new or innovative methods that may be applicable for inclusion in a second phase of validation. Specific areas for advice and counsel include:

1. *Initial protocol development.* The development and/or review of Endocrine Disruptor Screening Program (EDSP) initial protocols based on existing information and experience (past and current research). The initial protocols will serve as the starting point for all subsequent prevalidation studies. EPA will prepare a Background Review Document (BRD) addressing all critical areas outlined in *Validation and Regulatory Acceptance of Toxicological Test Methods* (Ref. 4) will be prepared for each method to summarize, explain, and document decisions regarding the relevant principles, methods and techniques for the initial protocol.

2. *Prevalidation studies.* The further development and optimization of specific EDSP initial protocols through targeted investigations. The targeted investigations will be designed to address questions necessary for an optimized, transferable protocol suitable for inter-laboratory validation studies.

3. *Validation studies.* The design and interpretation of comparative inter-laboratory studies to establish the reliability and relevance of the EDSP optimized transferable protocols. Following validation, the optimized transferable protocols will provide the basis for endocrine disruptor test guidelines for regulatory use.

4. *Preparation of EDSP Method Validation documents for external peer review.* All EDSP methods must be peer reviewed prior to approval for regulatory use. With advice and recommendations of the EDMVS, EPA will synthesize and interpret data and information generated in protocol development, prevalidation studies and validation studies into EDSP method-specific documents suitable for external peer review. External scientific peer review of the EDSP methods will be arranged by EPA through an Agency-approved external scientific peer review panel.

C. Scope of the Activity

The EDMVS and NACEPT will provide a forum for a diverse group of individuals representing a broad range of interests and backgrounds from across the country to consult with and make recommendations to the Agency on matters relating to the validation and external scientific peer review of endocrine disruptor screening and testing methods. The subcommittee will analyze issues, review data and protocols, compile information, make recommendations to the Agency, and undertake other activities necessary to meet its responsibilities.

D. Composition

The EDMVS shall be composed of 25 members approved by the Administrator. Members will be selected on the basis of their relevant scientific expertise and diversity of perspectives on endocrine disruptor screening and testing methods and procedures, toxicity test methods standardization and validation, and chemical and pesticide regulatory processes. Members will be appointed for 2 years. Subcommittee members shall be appointed with balanced representation from the following sectors: The agrichemical and commodity chemical industries; environmental/public interest organizations; public health organizations; animal welfare organizations; Federal agencies; State, local and tribal governments; academia; consumers, and the public. The Agency will appoint a Chair and Deputy Chair for the Subcommittee.

E. Workgroups and Ad Hoc Teams

Workgroups and ad hoc teams may be established on an as-needed basis consisting of EDMVS members, or supplemented with specialists qualified in the technical area of the workgroup or team appointed by the Agency. Such teams will develop in-depth technical issues or analyses that may be necessary for the EDMVS to conduct its deliberations.

F. Meetings

The EDMVS will hold up to six meeting a year. A regular employee of EPA will act as the Designated Federal Officer who will be present or represented at all meetings and is authorized to adjourn any such meetings whenever the official determines it to be in the public interest. All EDMVS meetings will be called, announced, and held in accordance with FACA and NACEPT rules, which require open meetings and an opportunity for interested persons to file comments before or after meetings, or to make statements during the public meetings to the extent time permits. The date, time, location and any public participation instructions for each meeting will be announced in the **Federal Register** at least 30 days before the meeting date. Each meeting shall be conducted in accordance with an agenda approved in advance by the Designated Federal Officer. The meeting information and agenda will be posted on the Agency's web site as soon as it is available, and no later than 15 days before the meeting date.

VI. References

1. Ankley, G. T. et al. 1998. Overview of a workshop on screening methods for detecting (anti)-estrogenic/androgenic chemicals in wildlife. *Environmental Toxicology Chemistry*. 17: 68-87.

2. Endocrine Disruptor Screening and Testing Advisory Committee: Final Report. 1998. U. S. Environmental Protection Agency, Office of Prevention, Pesticides, and Toxic Substances, Washington, DC.

3. Gray. L. E. et al. 1997. Endocrine Screening Methods Workshop Report: Detection of Estrogenic and Androgenic Hormonal and Antihormonal Activity for Chemicals that Act via Receptor or Steroidogenic Enzyme Mechanisms. *Reproductive Toxicology* 11:719-750.

4. National Institute of Environmental Health Sciences. 1997. Validation and Regulatory Acceptance of Toxicological Test Methods: A report of the ad hoc Interagency Coordinating Committee on the Validation of Alternative Methods. NIH Publication No. 97-3981, NIEHS, Research Triangle Park, NC,105 pp.

5. National Research Council. Hormonally Active Agents in the Environment. National Academy Press, Washington, DC, 429 pp.

6. U. S. EPA. 1997. Special Report on Environmental Endocrine Disruptors: An Effects Assessment and Analysis. U. S. Environmental Protection Agency, Office of Research and Development, EPA/630/R-96/012, Washington, DC, 116 pp.

7. U.S. EPA. 1997. Screening Methods for Chemicals that Alter Thyroid Hormone Action, Function, and Homeostasis. U. S. Environmental Protection Agency, Office of Research and Development, EPA/6000/R-98/057, Washington, DC, 44 pp.

8. U. S. EPA. 1999. Review of the EPA's Proposed Environmental Endocrine Disruptor Screening Program. U. S. Environmental Protection Agency, Science Advisory Board, EPA-SAB-EC-99-013, Washington, DC, 35 pp.

List of Subjects

Environmental protection.

Dated: April 24, 2001.

Stephen L. Johnson,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 01–11412 Filed 5–4–01 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

April 30, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 6, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0029.
Title: Application for TV Broadcast Station License.
Form No.: FCC Form 302–TV.
Type of Review: Revision of a currently approved collection.
Respondents: Business or other for-profit and not-for-profit institutions.
Number of Respondents: 83.
Estimated Time Per Response: 4–10 hours (1–2 hours for respondent; 2–6 hours for consulting engineer).
Frequency of Response: On occasion reporting requirement.
Total Annual Burden: 224 hours.
Total Annual Cost: $61,390.
Needs and Uses: FCC Form 302–TV is used by licensees and permittees of TV broadcast stations to obtain a new or modified station license, and/or to notify the Commission of certain changes in the licensed facilities. The data is used by FCC staff to confirm that the station has been built to terms specified in the outstanding construction permit and to ensure that any changes made to the station will not have an impact on other stations and the public. Data is extracted from FCC Form 302–TV for inclusion in the license to operate the station.

OMB Control No.: 3060–0978.
Title: Compatibility with E911 Emergency Calling Systems, Fourth Report and Order.
Form No.: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Business or other for-profit.
Number of Respondents: 4,000 respondents; 16,000 responses.
Estimated Time Per Response: 8 hours.
Frequency of Response: Quarterly reporting requirement.
Total Annual Burden: 32,000 hours.
Total Annual Cost: N/A.
Needs and Uses: The Fourth Report and Order mandates that digital wireless E911 service providers must be capable of transmitting 911 calls made using TTY devices by June 30, 2002. In order to ensure that carriers comply with this rule and to keep the Commission informed of technological advancements in this regard, the Fourth Report and Order requires that carriers file a quarterly TTY progress report, either individually or through an industry forum.

OMB Control No.: 3060–0970.
Title: Section 90.621(e)(2), Selection and Assignment of Frequencies.
Form No.: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Business or other for-profit and state, local or tribal government.
Number of Respondents: 1,000.
Estimated Time Per Response: .5 hours.
Frequency of Response: On occasion reporting requirement.
Total Annual Burden: 500 hours.
Total Annual Cost: N/A.
Needs and Uses: Section 90.621 requires applicants proposing to modify operations to use channels for commercial purposes in certain frequency bands in 800 MHz to provide written notice of the modification to all Public Safety licensees within 70 miles of the site of the channels for which the authorization for commercial use is sought that operate within 25 kHz of the center of those channels. This requirement seeks to avoid the potential of interference that could result from the modification of a Private Land Mobile radio facility to commercial use. If the information were not available there would be an increased risk of interference in this band.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–11328 Filed 5–4–01; 8:45 am]

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FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed continuing information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning FEMA's Debt Collection Financial Statement, which requests personal financial data from its individual debtors.

SUPPLEMENTARY INFORMATION: Under FEMA's debt collection regulations, 44 CFR 11.36(b), FEMA is required to maintain current credit data on FEMA's debtors including, the individual debtor's own financial statement, executed under penalty for false claim, concerning his/her assets and liabilities and his/her income and expenses. FEMA Form 22–13, Debt Collection Financial Statement, collects such data directly from the individual debtor. FEMA uses this data to determine the debtor's ability to pay debts due FEMA and to locate the debtor's assets.

Collection of Information

Title: Debt Collection Financial Statement.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067–0122.

Form Numbers: FEMA Form 22–13, Debt Collection Financial Statement.

Abstract: FEMA may request a debtor to provide personal financial information on FEMA Form 22–13 concerning his or her current financial position. This information includes the debtor's home and employment addresses, name of spouse (if any), name and age of children (if any), amount and sources of the debtor's and spouse's (if any) salaries, stocks, bonds and other securities, real and personal property owned, bank accounts and names of creditors and amounts owed to these creditors.

With this information, FEMA can evaluate whether to allow a debtor to pay the FEMA debts under installment repayment agreements and, if so, under what terms and amounts. FEMA also uses this data to determine whether FEMA should suspend or terminate collection efforts or compromise the respondent's debts. This data is also used to locate the debtor's assets if the debts are to be judicially enforced.

Providing information on FEMA Form 22–13 is voluntary on the part of the debtor. However, if the debtor does not provide the information requested, FEMA may use more severe collection methods.

Affected Public: Individuals or Households.

Number of Respondents: 600.

Frequency of Responses: On Occasion.

Hours Per Response: 75.

Estimated Total Annual Burden Hours: 450 hours.

Estimated Cost: The cost to respondents is estimated to be $7,074. The cost to the Federal Government is estimated to be $7,128.

Comments

Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interest persons should submit written comments to Muriel B. Anderson, Chief, Records Management Branch, Program Services Division, Operations Support Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Robin D. Maresco, Accountant, FEMA Office of Financial Management, Financial Policy Division, Policy and Standards Branch, 500 C Street, SW, Washington, DC 20742, telephone number (202) 646–4287 for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at telephone number (202) 646–3347 or e:mail muriel.anderson@fema.gov.

Dated: May 1, 2001.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 01–11361 Filed 5–4–01; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the proposed new information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning The National Flood Insurance Telephone Response Center (TRC) and Leads Application Program.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP) plays a critical role in FEMA's mission for reducing flood losses. Through the NFIP, communities must adopt and enforce floodplain management ordinances to reduce future flood losses. In exchange, FEMA's NFIP makes federally backed flood insurance available to property owners in these participating communities. According to the Flood Disaster Protection Act of 1973, Congress Findings and Declaration of Purpose, Section 2(a)(6), Congress finds that it is the public interest for persons already living in flood prone areas to have an opportunity to purchase flood insurance and access to more adequate limits of coverage, so that they will be indemnified for their losses in the event of future flood disasters. In accordance with this finding, FEMA attempts to fulfill the requirement of The Flood Disaster Protection Act of 1973 by informing and educating potential purchasers of the requirements to purchase flood insurance, when they call the National Flood Insurance Telephone Response Center (TRC).

Collection of Information

Title: National Flood Insurance Telephone Response Center (TRC) and Leads Application Program.

Type of Information Collection: New.

Form Numbers: FEMA Form 81–95, Free Flood Insurance Leads.

Abstract: The National Flood Insurance Telephone Response Center (TRC) and Leads Application Program were established as part of FEMA Cover America Advertising Campaign in 1995. The TRC is designed to respond to customer inquires about flood insurance, offers to send customers general information on the National Flood Insurance Program (NFIP), refer customers to insurance agents, and inform customers of insurance agents that can write flood insurance policies in the area in which they live.

Affected Public: Individuals or Households, and Business or Other For-Profit.

Estimated Total Annual Burden Hours:

	No. of respondents (A)	Frequency of response (B)	Hours per response (C)	Annual burden hours (A × B × C)
Callers to the Telephone Response Center	72,000	1	3	3,600
Lead Program Application FEMA Form 81–95	448	1	2	15
Outbound Calls Follow-up	6,000	1	3	300
Total	78,448	1	8	3,915

Estimated Cost: $1,050,000 for Contracts.

Comments

Written comments are solicited to: (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Branch, Program Services Division, Operations Support Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Carolyn Goss, Federal Insurance Administration, Marketing Division, 202–646–3468 for additional information. You may contact Ms. Anderson at (202) 646–2625 or facsimile number (202) 646–3347 or by email at *muriel.Anderson@fema.gov* for copies of the proposed collection of information.

Dated: April 30, 2001.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 01–11362 Filed 5–4–01; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1365–DR]

Mississippi; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi, (FEMA–1365–DR), dated April 17, 2001, and related determinations.

EFFECTIVE DATE: April 27, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Mississippi is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 17, 2001:

Leake and Neshoba Counties for Individual Assistance (already designated for Public Assistance).

Pontotoc County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 01–11360 Filed 5–4–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: 10 a.m.—May 10, 2001.

PLACE: 800 North Capitol Street, N.W., First Floor Hearing Room, Washington, D.C.

STATUS: A portion of the meeting will be open to the public. The remainder of the meeting will be closed.

MATTERS TO BE CONSIDERED: The open portion of the meeting:

1. Shipper Export Declaration (SED) Fees
2. Commission Alternative Dispute Resolution Program

The closed portion of the meeting:

1. Executive Tug Franchises—Marine Terminal Operators Serving the Lower Mississippi River
2. Exclusive Tug Arrangements in Florida Ports

CONTACT PERSON FOR MORE INFORMATION: Bryant L. VanBrakle, Secretary, (202) 523–5725.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–11581 Filed 5–3–01; 4:26 pm]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01089]

Grant for Childhood Injury Prevention Program in Alaska; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a grant for a Childhood Injury Prevention Program in Alaska. This program addresses the "Healthy People 2010" focus area of Injury and Violence Prevention. The purpose of this program is to reduce injuries among Alaskan children.

B. Eligible Applicant

Assistance will be provided only to the Alaska Injury Prevention Center (AIPC). FY 2001 federal appropriations specifically directs CDC to award funds to this organization. No other applications are solicited.

Note: Title 2 of the United States Code, chapter 26, section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $700,000 is available in FY 2001 to fund one award. It is expected that the award will begin on or about September 30, 2001, and will be made for a 12-month budget and project period. Approximately $470,000 of this total is available for a statewide childhood injury prevention program in Alaska. Approximately $230,000 of this total is available for collaboration with the State of Alaska Department of Health and Social Services.

D. Where to Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov. Click on "Funding" then "Grants and Cooperative Agreements." If you have questions after reviewing the content of all the documents, business management and assistance may be obtained from:Ty Weaver, Grants Management Specialist,Grants Management Branch, Procurement and Grants Office,Announcement 01089,Centers for Disease Control and Prevention (CDC),2920 Brandywine Road, Suite 3000, Mailstop E13,Atlanta, GA 30341–4146,Telephone: (770) 488–2710,Email address: tmw9@cdc.gov

For program technical assistance, contact:Tim Groza,Centers for Disease Control and Prevention,National Center for Injury Prevention and Control 4770 Buford Highway N.E., Mailstop K63,Atlanta, GA 30341–3724,Telephone: (770) 488–4676,Email: tgroza@cdc.gov

Dated: May 1, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–11380 Filed 5–4–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01083]

Grant To Build Research Capacity in the Area of Behavioral Disorders and Youth Violence Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a grant program to build research capacity in the area of behavioral disorders and youth violence. This program addresses the "Healthy People 2010" focus area of Violence and Abuse Prevention. The purpose of the program is to build capacity for further research that will discover new approaches to intervene and prevent complex behavior problems in children and youth resulting from genetic and environmental conditions in early childhood that significantly impact the problem of youth violence.

B. Eligible Applicants

Assistance will be provided only to the Kennedy Krieger Institute. No other applications are solicited.

Eligibility is limited only to the Kennedy Krieger Institute because fiscal year 2001 Federal Appropriations specifically directs CDC to award this non-profit institute funds to develop new approaches to help prevent youth violence and behavioral problems.

C. Availability of Funds

Approximately $810,288 is available in FY 2001 to fund this award. It is expected that the award will begin on or about September 1, 2001, and will be made for 12-month budget period within a project period of one year. Funding estimates may change.

D. Where to Obtain Additional Information

This and all other CDC Announcements may be found and downloaded from the CDC homepage. Internet address: *http://www.cdc.gov* Click on "Funding" then "Grants and Cooperative Agreements".

To obtain business management technical assistance, contact: Ty Weaver, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 01083, Centers for Disease Control and Prevention (CDC),2920 Brandywine Road, Suite 3000, Mailstop E13,Atlanta, GA 30341–4146,Telephone: (770) 488–2710,E-Mail address: *tmw9@cdc.gov.*

For program technical assistance, please contact: John Hemphill, Project Officer, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K–60, Atlanta, GA 30341–3724, Telephone: (770) 488–1285, E-Mail address: *jhemphill@cdc.gov.*

Dated: May 1, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–11374 Filed 5–4–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01051]

Grant for a Program To Promote Training and Education in Basic Life Support for Children and Adolescents; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a grant program to promote training and education in Basic Life Support for children and adolescents. This program addresses the "Healthy People 2010 focus area of Injury and Violence Prevention." The purpose of this program is to reduce child and adolescent morbidity and mortality sustained by illness and injury.

B. Eligible Applicants

Assistance for this project will be provided only to the Save a Life Foundation. FY 2001 Federal appropriations specifically directs CDC to award funds to the Save a Life Foundation. No other applications are solicited.

Note: Title 2 of the United States Code, chapter 26, section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $810,000 is available in FY 2001 to fund one award. It is expected that the award will begin on or about September 1, 2001, and will be made for a 12-month budget period within a project period of one year. Funding estimates may change.

D. Where to Obtain Additional Information

For program technical assistance, contact:

Paul Burlack, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, 4770 Buford Highway N.E., Mailstop F42, Atlanta, GA 30341–3724, Telephone (770) 488–4713, Email: PBurlack@cdc.gov

To obtain business management technical assistance, contact:

Angelia Hill, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 01051, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Suite 3000, Mailstop E13, Atlanta, GA 30341–4146, Telephone 770–488–2785, Email: aph8@cdc.gov

Dated: May 1, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–11381 Filed 5–4–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Injury Research Grant Review Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Injury Research Grant Review Committee (IRGRC).

Times and Dates: 6:30 p.m.–9 p.m., May 20, 2001. 8 a.m.–5:30 p.m., May 21, 2001.

Place: The Westin Atlanta Airport, 4736 Best Road, College Park, Georgia 30337.

Status: Open: 6:30 p.m.–7 p.m., May 20, 2001. Closed: 7 p.m.–9 p.m., May 20, 2001, through 5:30 p.m., May 21, 2001.

Purpose: This committee is charged with advising the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the scientific merit and technical feasibility of grant applications received from academic institutions and other public and private profit and nonprofit organizations, including State and local government agencies, to conduct specific injury research that focus on prevention and control and to support injury prevention research centers.

Matters To Be Discussed: Agenda items include a budget update, recent awards, future meeting dates, discussion of the review process and panelists responsibilities, and review of grant applications. Beginning at 7 p.m., May 20, through 5:30 p.m., May 21, the Committee will review individual research grant applications submitted in response to Program Announcements 01013, 01014, 01015, and 01016. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Deputy Director for Program Management, CDC, pursuant to Pub. L. 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Richard W. Sattin, M.D., Acting Executive Secretary, IRGRC, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway, NE, M/S K58, Atlanta, Georgia 30341–3724, telephone 770/488–4330.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 25, 2001.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 01–11378 Filed 5–4–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Vaccine Advisory Committee, Subcommittee on Vaccine Safety and Communication Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory Subcommittee meeting.

NAME: National Vaccine Advisory Committee (NVAC) Subcommittee on Vaccine Safety and Communications.

TIME AND DATE: 2 p.m.—5 p.m., June 5, 2001.

PLACE: Hubert H. Humphrey Building, Room 800, 200 Independence Avenue, SW, Washington, DC 20201.

STATUS: Open to the public, limited only by the space available.

NOTICE: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, persons without a government identification card should plan to arrive at the building between 12:30 p.m. and 1 p.m. Entrance to the meeting at other times during the day cannot be assured.

STATUS: Open to the public, limited only by the space available.

PURPOSE: This Subcommittee reviews issues relevant to vaccine safety and adverse reactions to vaccines.

MATTERS TO BE DISCUSSED: Review of the agenda; review of National Infant Immunization Week; discussion on strengthening the vaccine supply; follow-up to the "Workshop on Vaccine Communications'; review of the Institute of Medicine's (IOM) report on Measles-Mumps-Rubella Vaccine and Autism, discussion of the process for suggesting and selecting immunization safety issues for review by the IOM in 2002; public comment on immunization safety issues for review in 2002; and committee discussion.

Special Note: The Subcommittee on Vaccine Safety and Communications will provide a forum for input from the public regarding potential issues and topics for

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review in 2002 by the IOM's Immunization Safety Review Committee. This will be the first opportunity for the public to provide comments on the hypotheses that are being considered for future review.

Agenda items are subject to change as priorities dictate. A complete meeting agenda of the Subcommittee on VaccineSafety and Communications can be found on the NationalVaccine Program Office's web site at *www.cdc.gov/od/nvpo/calendar.*

CONTACT PERSON FOR MORE INFORMATION: Ms. Shaunette Crawford, Associate Director for Health Communications and Legislation, NVPO, CDC, 1600 Clifton Road, NE, M/S D–66, Atlanta, Georgia 30333, telephone 404/687–6672.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 1, 2001.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 01–11371 Filed 5–4–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0530]

FDA Modernization Act of 1997: Modifications to the List of Recognized Standards, Recognition List Number: 005

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a publication containing modifications the agency is making to the list of standards FDA will recognize for use in premarket reviews (FDA Recognized Consensus Standards). This publication entitled "Modifications to the List of Recognized Standards, Recognition List Number: 005" (Recognition List Number: 005) will assist manufacturers who elect to declare conformity with consensus standards to meet certain requirements for medical devices.

DATES: Submit written comments concerning this document at any time. See section VI of this document for the effective date of the recognition of standards announced in this document.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of "Modification to the List of Recognized Standards, Recognition List Number: 005," to the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your requests, or fax your request to 301–443–8818. Submit written comments concerning this document to the contact person (address below). Comments should be identified with the docket number found in brackets in the heading of this document. This document may also be accessed on FDA's Internet site at http://www.fda.gov/cdrh/fedregin.html. See section V of this document for electronic access to the searchable database for the current list of "FDA Recognized Consensus Standards," including Recognition List Number: 005 modifications, and other standards related information.

FOR FURTHER INFORMATION CONTACT: To comment on this document and/or to recommend additional standards for recognition: Carol L. Herman, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4766, ext. 156.

SUPPLEMENTARY INFORMATION:

I. Background

Section 204 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115) amended section 514 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360d). Amended section 514 allows FDA to recognize consensus standards, developed by international and national organizations, for use in satisfying portions of device premarket review submissions or other requirements.

In a notice published in the **Federal Register** of February 25, 1998 (63 FR 9561), FDA announced the availability of the guidance entitled "Recognition and Use of Consensus Standards." This notice described how FDA will implement its standards program recognizing the use of certain standards and provided the initial list of recognized standards.

In **Federal Register** notices published on October 16, 1998 (63 FR 55617), July 12, 1999 (64 FR 37546), and November 15, 2000 (65 FR 69022), FDA modified its initial list of recognized standards. These notices described the addition, withdrawal, and revision of certain standards recognized by FDA. When these notices were published, the agency maintained "html" and "pdf" versions of the list of "FDA Recognized Consensus Standards." Both versions were publicly accessible at the agency's Internet site. The agency maintains the current list in a searchable database accessible to the public. See section V of this document for electronic access information.

II. Discussion of Modifications to the List of Recognized Standards, Recognition List Number: 005

FDA is announcing the addition, withdrawal, correction, and revision of certain consensus standards the agency will recognize for use in satisfying premarket reviews for devices. FDA will incorporate these modifications in the list of "FDA Recognized Consensus Standards" in the agency's searchable database. FDA will use the term "Recognition List Number: 005" to identify: (1) Supplementary information sheets for standards added to the list for the first time, (2) standards added to replace withdrawn standards, and (3) still recognized standards for which minor revisions are made to clarify the application of the standards.

At the end of this notice, FDA lists modifications the agency is making that involve: (1) The initial addition of standards not previously recognized by FDA and (2) the addition of standards in conjunction with the withdrawal of other standards that are replaced by these later, amended, or different standards.

In this section, FDA describes modifications that involve the withdrawal of standards and their replacement by others. In this notice, all changes of this type are in the sterility category of the complete list of recognized standards.

1. ASTM–F1140:1996 is withdrawn under previous item 59. ASTM–F1140:2000 is added under current item 67.

2. ASTM–F1585:1995 is withdrawn under previous item 61. ASTM F1585:2000 is added under current item 68.

3. ASTM–1608:1995 is withdrawn under previous item 62. ASTM F1608:2000 is added under current item 69.

III. List of Recognized Standards

FDA maintains the agency's current list of "FDA Recognized Consensus Standards" in a searchable database that may be accessed directly at FDA's Intranet site at http://www.acessdata.fda.gov/scripts/cdrh/cfdocs/cfStandards/search.cfm. FDA will incorporate the modifications and minor revisions described in this notice into the database and, upon publication in the **Federal Register**, this recognition of consensus standards will be effective.

FDA will announce additional modifications and minor revisions to the list of recognized consensus standards, as needed, in the **Federal Register** once a year, or more often, if necessary.

IV. Recommendation of Standards for Recognition by FDA

Any person may recommend consensus standards as candidates for recognition under the new provision of section 514 of the act by submitting such recommendations, with reasons for the recommendation, to the contact person (address above). To be properly considered, such recommendations should contain, at a minimum, the following information: (1) Title of standards, (2) any reference number and date, (3) name and address of the national or international standards development organization, (4) a proposed list of devices for which a declaration of conformity to this standard should routinely apply, and (5) a brief identification of the testing or performance or other characteristics of the device(s) that would be addressed by a declaration of conformity.

V. Electronic Access

In order to receive "Guidance on the Recognition and Use of Consensus Standards" via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number 321 followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of "Guidance on the Recognition and Use of Consensus Standards" may also do so by using the Internet. CDRH maintains a site on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes this guidance as well as the current list of recognized standards and other standards related documents. After publication in the **Federal Register**, this notice announcing "Modifications to the List of Recognized Standards, Recognition List Number: 005" will be available on the CDRH home page. The CDRH home page may be accessed at http://www.fda.gov/cdrh. The "Guidance on the Recognition and Use of Consensus Standards," and the searchable database for "FDA Recognized Consensus Standards," may be accessed through hyper links at http://www.fda.gov/cdrh/stdsprog.html. This **Federal Register** notice of modifications in FDA's recognition of consensus standards will be available, upon publication, at http://www.fda.gov/cdrh/fedregin.html.

VI. Submission of Comments and Effective Date

Interested persons may, at any time, submit to the contact person (address above) written comments regarding this document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments will be considered in determining whether to amend the current listing of "Modifications to the List of Recognized Standards, Recognition List Number: 005."

The recognition of standards announced in this notice of modifications will become effective on May 7, 2001.

VII. Listing of New Entries

The listing of new entries and consensus standards added as "Modifications to the List of Recognized Standards," under Recognition List Number: 005, is as follows:

Item Number	Title of Standards	Reference Number and Date
	Anesthesia	
34	Standard Test Method for Evaluation the Ignition Sensitivity and Fault Tolerance of Oxygen Regulators Used for Medical and Emergency Applications	ASTM PS127:2000
	Cardiovascular/Neurology	
31	Standard Practice for Evaluating and Specifying Implantable Shunt Assemblies for Neurosurgical Applications	ASTM F647–94
32	Standard Specification for the Requirements and Disclosure of Self-Closing Aneurysm Clips	ASTM F1542–94 (2000)
33	Neurosurgical Implants–Sterile, Single-Use Hydrocephalus Shunts and Components	ISO 7197:1997
	General	
25	Standard for the Development of an Electrostatic Discharge Control Program	ANSI/ESD S20.20–1999
26	Medical Devices–Application of Risk Management to Medical Devices	ISO 14971:2000
	Sterility	
67	Standard Test Methods for Internal Pressurization Failure Resistance of Unrestrained Packages for Medical Applications	ASTM F1140:2000
68	Standard Guide for Integrity Testing of Porous Barrier Medical Packages	ASTM F1585:2000
69	Standard Test Method for Microbial Ranking of Porous Packaging Materials (Exposure Chamber Method)	ASTM F1608:2000

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Dated: April 24, 2001.

David W. Feigal, Jr.,

Director, Center for Devices and Radiological Health.

[FR Doc. 01–11329 Filed 5–4–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Application for the Pharmacology Research Associate Program

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute of General Medical Sciences (NIGMS), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on February 6, 2001, pages 9089–9090, and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Application for the Pharmacology Research Associate Program. *Type of Information Collection Request:* Extension of a currently approved collection. *Need and Use of Information Collection:* The Pharmacology Research Associate (PRAT) Program will use the applicant and referee information to award opportunities for training and experience in laboratory or clinical investigation to individuals with a PhD. degree in pharmacology or a related science, M.D., or other professional degree through appointments as PRAT Fellows at the National Institutes of Health or the Food and Drug Administration. The goal of the program is to develop leaders in pharmacological research for key positions in academic, industrial, and Federal research laboratories. *Frequency of Response:* Once a year. *Affected Public:* Individuals or households; Businesses or other for-profit.

The annual reporting burden is as follows:

Type and numbers of respondents	Estimated number of responses per respondent	Estimated total responses	Average burden hours per responses	Estimated total annual burden hours requested
Applicants—50	1	50	2.00	100
Referees—150	1	150	0.167	25

Total Number of Respondents: 200
Total Number of Responses: 200
Total Hours: 125
The annualized cost to respondents is estimated at:
Applicants: $5,500.00
Referees: $1,250.00
There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments:

Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Ms. Sally Lee, NIGMS, NIH, Natcher Building, Room 2AN–18H, 45 Center Drive, MSC 6200, Bethesda, MD 20892–6200. Phone (301) 594–2755, facsimile (301) 402–0156, or electronic mail: LeeS@nigms.nih.gov.

Comments Due Date:

Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: April 30, 2001.

Martha Pine,

Associated Director for Administration and Operations, National Institute of General Medical Sciences.

[FR Doc. 01–11392 Filed 5–4–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Case-Cohort Study of Cancer and Related Disorders Among Benzene-Exposed Workers in China

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on December 28, 2000, pages 82382–82383 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Case-Cohort (formerly Case-Control) Study of Cancer and Related Disorders Among Benzene-Exposed Workers in China, OMB Number 0925–0454, Revised. *Need and Use of Information Collection:* A case-cohort study will be performed to examine the risks of lymphohematopoietic cancers, other lymphohematopoietic disorders, benzene poisoning, and lung cancer among workers exposed to benzene. The study will attempt to determine with greater precision the risks of these disorders at low levels of benzene exposure, and to characterize the dose and time-specific relationship between benzene exposure and disease risk. Cases and controls will be selected from an existing cohort of 75,000 benzene-exposed workers and 36,000 comparison workers in 12 Chinese cities. There are 3 changes to the 60-day **Federal Register** notice for this study published on December 28, 2000: (1) more subjects will be evaluated in the currently planned case-cohort study (N=1,770, including 225 with benzene poisoning) than in the previously described case-control study (N=1,545); (2) each subject (or their next of kin will be asked fewer questions (average hours per response will decrease from 0.42 to 0.3674 hours); and (3) the more efficient case-cohort design will be used, rather than an individually-matched case-control study design. *Frequency of Response:* Single-time study. *Affected Public:* Individuals or households. *Type of Respondents:* Cases with lymphohematopoietic malignancies and related disorders, benzene poisoning and lung cancer among Chinese benzene-exposed and comparison workers; controls consist of a random sample of the Chinese worker cohort without these disorders. The annual reporting burden is as follows: *Estimated Number of Respondents:* 590; *Estimated Number of Respondents per Respondent:* 1; *Average Burden Hours per Response:* 0.3674; and *Estimated Total Annual Burden Hours Requested:* 216. The annualized cost to respondents is estimated at $216. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection or information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Richard Hayes, OEB/EBP/DECEG/NCI 6120 Executive Blvd., EPS Room 8114, Bethesda, MD 20892, or call non-toll-free number (301) 435–3973 or E-mail your request, including your address to: *HayesR@mail.nih.gov*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received on or before June 6, 2001.

Dated: April 27, 2001.

Reesa Nichols,

NCI Project Clearance Liaison.

[FR Doc. 01–11401 Filed 5–4–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Research Resources Council, May 17, 2001, 9:15 a.m. to May 17, 2001, 5 p.m., National Center for Research Resources, National Institutes of Health, Conference Room 10, Building 31, Bethesda, MD 20892 which was published in the **Federal Register** on March 14, 2001, 66 FR 14911.

The meeting of the Executive Subcommittee scheduled for 8 a.m. to 9 a.m. on May 17, 2001, in Conference Room 3B13 has been cancelled. The meeting is partially Closed to the public.

Dated: April 30, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–11394 Filed 5–4–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel NCCAM SEP C–11.

Date: May 23–25, 2001.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 805 Russell Avenue, Gaithersburg, MD 20879.

Contact Person: John C. Chah, PhD, Scientific Review Administrator, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Boulevard, Rm. 106, Bethesda, MD 20892–5495, 301–402–4334, chahj@mail.nih.gov.

Dated: April 30, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–11393 Filed 5–4–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Board on Medical Rehabilitation Research.

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The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Advisory Board on Medical Rehabilitation Research.
Date: May 24–25, 2001.
Time: May 24, 2001, 9 a.m. to 5 p.m.
Agenda: The agenda will include reports by the Director, NICHD and Director, NCMRR, update on NCMRR Training activities, discussion of the future of medical rehabilitation, and other business of the Board.
Place: Holiday Inn, 8777 Georgia Avenue, Silver Spring, MD 20910.
Time: May 25, 2001, 8:30 a.m. to adjournment.
Agenda: Same as above.
Place: Holiday Inn, 8777 Georgia Avenue, Silver Spring, MD 20910.
Contact Person: Ralph M Nitkin, PhD, Director, BSCD, National Center for Medical Rehabilitation Research, National Institute of Child Health and Human Development, NIH, 6100 Building, Room 2A03, Bethesda, MD 20892, (301) 402–4206.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: April 30, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–11395 Filed 5–4–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applicants and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Initial Review Group, Biomedical Research and Research Training Review Subcommittee B.
Date: June 13, 2001.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Carole H. Latker, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building Room 1AS–13, Bethesda, MD 20892, (301) 594–3663.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: April 30, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–11396 Filed 5–4–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Nome of Committee: National Institute of General Medical Sciences Initial Review Group, Biomedical Research and Research Training Review Subcommittee A
Date: June 12, 2001.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contract Person: Carole H. Latker, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13, Bethesda, MD 20892, (301) 594–2848, latkerc@nigms.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: April 30, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–11397 Filed 5–4–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Minority Programs Review Committee, MARC Review Subcommittee A.
Date: June 26–27, 2001.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, The Delaware Room, Bethesda, MD 20814.
Contact Person: Richard I. Martinez, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–19G, Bethesda, MD 20892–6200, (301) 594–2849.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: April 30, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–11398 Filed 5–4–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The portions of the meeting devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended. Premature disclosure of the titles of the journals as potential titles to be indexed by the National Library of Medicine, the discussions, and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

Name of Committee: Literature Selection Technical Review Committee.
Date: June 21–22, 2001.
Open: June 21, 2001, 9 a.m. to 11 a.m.
Agenda: Administrative reports and program developments.
Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.
Closed: June 21, 2001, 11 a.m. to 5 p.m.
Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.
Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bldg 38, Rm 2E–09, Bethesda, MD 20894.
Closed: June 22, 2001, 8:30 a.m. to 2 p.m.
Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.
Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.
Contact Person: Sheldon Kotzin, BA, Chief, Bibliographic Services Division, Division of Library Operations, National Library of Medicine, 8600 Rockville Pike, Bldg 38A/Room 4N419, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: April 30, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 01–11400 Filed 5–4–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; Meeting of the NTP Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the National Toxicology Program (NTP) Board of Scientific Counselors, U.S. Public Health Service, in Rooms A & B of the Rodbell Auditorium, Rall Building, South Campus, National Institute of Environmental Health Sciences (NIEHS), 111 T.W. Alexander Drive, Research Triangle Park, North Carolina on May 25, 2001.

The NTP Board of Scientific Counselors (the Board) is composed of scientists from the public and private sector and provides primary scientific oversight to the NTP.

Agenda

The May 25th meeting is open to the public from 8:30 a.m. to adjournment with attendance limited only by the space available. A draft agenda with tentative schedule is provided below. Primary agenda topics include: (1) Review and discussion of draft guidelines for the NTP Center for the Evaluation of Risks to Human Reproduction's (CERHR) expert panels, (2) the NTP Interagency Committee for Chemical Evaluation and Coordination's (ICCEC) testing recommendations for substances nominated for future NTP studies, (3) the NTP's tentative study plans for hexavalent chromium, and (4) presentations about chemical disposition and toxicokinetic studies of substances by the NTP and use of this data in pharmacokinetic modeling. There will also be updates on activities of the Board's Report on Carcinogens and Technical Reports Review Subcommittees. The Board will review a concept proposal for the continued use of a contract mechanism to investigate the mechanisms of toxicity, absorption, tissue distribution, metabolism and clearance of substances under study by the NTP. Time is allotted during the meeting for the public to present comments to the Board and NTP staff on agenda topics.

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CERHR Draft Guidelines for Expert Panels

The Draft Guidelines are posted on the CERHR web site (*http://cerhr.niehs.nih.gov*) or can be obtained in hard copy from the Executive Secretary (see below). Written public comments are being solicited on the Draft Guidelines (see the **Federal Register** notice posted on the NTP web site: *http://ntp-server.niehs.nih.gov*, under Announcements or contact the Executive Secretary). Persons wishing to provide oral comments to the Board and/or NTP staff may register to do so as instructed below. However, if the public submits written comments in response to the **Federal Register** notice noted above, they are under consideration and do not need to be resubmitted or readdressed.

ICCEC Testing Recommendations for Substances Nominated for Future NTP Studies

Information about substances nominated to the NTP for toxicology and carcinogenesis studies and the ICCEC's testing recommendations are provided in the **Federal Register** notice dated December 4, 2000 (Vol. 65, No. 233, pages 75727–75730). The **Federal Register** notice and supporting documents for each nomination are available on the NTP web site at *http://ntp-server.niehs.nih.gov/htdocs/liason/ICCEC102700finalFR.html* or may be obtained by contacting the Executive Secretary. Substances under consideration are listed below.

Substances recommended for testing: Aluminum complexes found in drinking water (Aluminum fluoride and Aluminum citrate), Bilberry fruit extract, Black cohosh, Blue-Green algae (dietary supplement), Cefuroxime, Clarithromycin, D&C Red No. 27 and D&C Red No. 28, N,N-Dimethyl-p-toluidine, Lemon Oil and Lime Oil, Local anesthetics that metabolize to 2,6-xylidine or o-toluidine (Bupivacaine and Prilocaine), Microcystin-LR, Organotins occurring in drinking water (Monomethyltin trichloride, Dimethyltin dichloride, Monobutyltin trichloride, and Dibutyltin dichloride), All-trans-retinyl palmitate, S-Adenosylmethionine, and Senna.

Substances for which a testing recommendation is deferred pending receipt and consideration of additional information: 1,3-Dichloropropane, 2,2-Dichloropropane, and 1,1-Dichloropropene; Hydergine; and Yohimbe bark extract and Yohimbine.

Hexavalent Chromium

A study of the carcinogenic potential of hexavalent chromium administered in drinking water (CAS number 18540–29–9) was nominated to the NTP by the California Congressional delegation, the California Environmental Protection Agency, and the California Health and Human Services Agency. Although hexavalent chromium is an established human lung carcinogen in certain occupational settings, presumably as a result of inhalation exposure, there is uncertainty regarding long-term consequences of exposure to hexavalent chromium compounds in the water supply. Toxicological data on the chronic toxicity and carcinogenicity of hexavalent chromium after oral exposure are largely inadequate to establish or characterize the hazard. The NTP will present to the Board tentative study plans for its review and comment. This meeting also provides an opportunity for the public to offer comment to the Board and NTP staff on any issues to be considered in the design of the NTP rodent study on the carcinogenic potential of hexavalent chromium administered in drinking water. Persons may register to provide oral comments or submit written comments as instructed below. A primary source of background material on hexavalent chromium is a document prepared by the California Environmental Protection Agency's (EPA) Office of Environmental Health Hazard Assessment entitled "Public Health Goal for Chromium in Drinking Water" and is available on the California EPA's web site *http://calepa.ca.gov/*.

Public Comment Encouraged

Public input at the meeting is invited and time is set aside for the presentation of public comments on any agenda topic. At least seven minutes will be allotted to each speaker, and if time permits, may be extended to 10 minutes. Persons registering to make oral comments are asked to provide their name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization (if any). Each organization is allowed one time slot per agenda topic. To facilitate planning for the meeting, persons interested in providing formal oral comments are asked to notify Dr. Mary Wolfe, NTP Board Executive Secretary, NIEHS, P.O. Box 12233, MD A3–07, Research Triangle Park, NC 27709 (telephone 919–541–3971, fax 919–541–0295, and e-mail *wolfe@niehs.nih.gov*). Persons registering to make oral comments are asked, if possible, to provide a copy of their statement to the Executive Secretary by May 16, to enable review by the Board and NTP staff prior to the meeting. Written statements can supplement and may expand the oral presentation. Individuals will also be able to register to give oral public comments on-site at the meeting. However, if registering on-site and reading from written text, please bring 25 copies of the statement for distribution to the Board and NTP staff and to supplement the record.

Persons may also submit written comments in lieu of making oral comments. Written comments should be sent to the Executive Secretary and must be received by May 16, to enable review by the Board and NTP staff prior to the meeting as well as to supplement the record. Persons submitting written comments should include their name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization (if any) in the document.

Additional Information About Meeting

Prior to the meeting, a copy of the agenda and a roster of the Board's members will be available on the NTP web site at *http://ntp-server.niehs.nih.gov* and upon request to the Executive Secretary (contact information provided above). Following the meeting, summary minutes will be prepared and available through the NTP web site and upon request to Central Data Management, NIEHS, P.O. Box 12233, MD E1–02, Research Triangle Park, NC 27709; telephone 919–541–3419; fax 919–541–3687; and e-mail *CDM@niehs.nih.gov*.

NTP Board of Scientific Counselors

The Board is a technical advisory body comprised of scientists from the public and private sectors who provide primary scientific oversight to the overall Program and to the NTP Center for the Evaluation of Risks to Human Reproduction. Specifically, the Board advises the NTP on matters of scientific program content, both present and future, and conducts periodic review of the Program for the purposes of determining and advising on the scientific merit of its activities and their overall scientific quality. Its members are selected from recognized authorities knowledgeable in fields such as toxicology, pharmacology, pathology, biochemistry, epidemiology, risk assessment, carcinogenesis, mutagenesis, molecular biology, behavioral and neurotoxicology, immunotoxicology, reproductive toxicology or teratology, and biostatistics. The NTP strives for equitable geographic distribution and minority and female representation on the Board. Its members are invited to serve overlapping terms of up to four years and meetings are held once or twice annually for the Board and its two subcommittees (the Report on Carcinogens Subcommittee and the Technical Reports Review Subcommittee).

Dated: April 19, 2001.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

Preliminary Agenda —National Toxicology Program (NTP),Board of Scientific Counselors—May 25, 2001

National Institute of Environmental Health Sciences, Rall Building, South Campus, Rodbell Conference Auditorium, Rooms A & BResearch Triangle Park, North Carolina

8:30 a.m.
- Welcome and Opening Comments
- NTP Update
- Presentation on NTP Chemical Disposition and Toxicokinetic Studies
- Presentation on Pharmacokinetic Modeling of Compounds Studied by the NTP
- Concept Review (ACTION)
- NTP CERHR—Draft Guidelines for Expert Panels
- Public Comments

12:15 p.m.
- Lunch

1:15 p.m.
- ICCEC Testing Recommendations for Future NTP Studies
- Public Comments
- Hexavalent Chromium
- Public Comments
- NTP Board Subcommittee Reviews—Updates
  - Report on Carcinogens
  - Technical Reports
- Public Comments

4–4:30 p.m.
- Adjourn

[FR Doc. 01–11391 Filed 5–4–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Participant Feedback Forms for Two CMHS Mental Health Education Training Initiatives—New—This project will collect feedback from mental health professionals who receive training from any of the CMHS-supported Minority Community Based Organizations or Behavioral Health Professional Association contractors. The forms proposed for use in collecting the feedback are refined versions of feedback forms required for use by the Mental Health Care Provider Education in HIV/AIDS Program II and approved by OMB under control number 0930–0195.

The range of mental health issues covered is broad and, depending on the needs of the audiences, the training sites may use any of the following types of curricula: General, ethics, neuropsychiatric, neuropsychiatric designed for non-psychiatrists, and an adherence curriculum. Education sites also vary the complexity and intensity of the training sessions, resulting in sessions of variable length. Service providers attending sessions shorter than 6 hours will provide feedback by completing a single form at the end of the training session. Those attending sessions 6 hours or longer will be asked to complete forms both before and after the training session in order to assess both satisfaction and perceived knowledge gain. Education sites funded under these initiatives will vary considerably in their prior experience in conducting trainings, with some organizations having significant prior experience while others will be developing their training programs. The burden estimates below incorporate and reflect reasonable assumptions regarding the volume, type and length of training sessions conducted by the various organizations likely to be funded under these two initiatives.

The Minority HIV/AIDS Mental Health Services Initiative is expected to be comprised of 12 minority community-based organizations providing mental health HIV/AIDS education trainings to traditional and non-traditional mental health service providers. Estimates of the numbers of mental health professionals trained and types of training sessions conducted are based on the assumption that half (6) of the funded education sites will be existing education programs and the other half will be new education sites. The six new education sites are expected to train about 300 individuals annually using the general curriculum (and corresponding form—The Participant Feedback Form) with their training sessions being less than 6 hours long. These sites will conduct, on average about 15 training sessions per year with approximately 20 people attending each session.

The remaining six sites are expected to be education sites with existing education training programs and are expected to conduct a total of 25 training sessions each per year with about 20 individuals attending each training session. These six sites should therefore train a total 500 individuals each per year. The majority of these sessions will be less than 6 hours long (about 76% or 19 sessions of the 25 sessions). In contrast to the new education sites, however, these sites are likely to use all of the following curricula: General, ethics, neuropsychiatric, neuropsychiatric designed for non-psychiatrists, and the adherence curriculum. Of the 19 training sessions that are shorter than 6 hours, 10 are expected to use the general curriculum, 3 will use the adherence curriculum, and 2 sessions each for the ethics, neuropsychiatric, neuropsychiatric for non-psychiatrists. Four of the 6 sessions that are longer than 6 hours are expected to use the general curriculum and corresponding pre/post participant forms, and 2 will use the neuropsychiatric curriculum with the accompanying corresponding pre/post neuropsychiatric participant forms. Burden estimates are presented in Table 1 below.

The Behavioral Health Professional Health Association Training Initiative is a continuation effort. This initiative will consist of three Associations providing training to mental health professionals both within and outside of their disciplines. These Associations are required to train a minimum of 1,000 mental health professionals per year using the general, ethics, neuropsychiatric, neuropsychiatric for non-psychiatrists, and adherence curricula. They all have prior experience training mental health professionals and will conduct sessions that are of variable length (i.e., shorter and longer than 6 hours long). Each Association will conduct about 57 trainings per year, the majority of which

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(about 90% or about 51 training sessions) will be less than 6 hours long. Of the shorter trainings, each Association will conduct about 20 using the general curriculum, 6 using the ethics curriculum, 12 using the neuropsychiatric curriculum, 9 using the adherence curriculum and 4 using the neuropsychiatric curriculum for non-psychiatrists. The appropriate post-training feedback form will be administered to trainees after each session. Each Association will also conduct about 6 longer trainings per year; 4 using the neuropsychiatric curriculum and 2 using the general curriculum. The corresponding pre/post feedback form will be administered at each training session. Table 2 below uses these assumptions to calculate the burden estimate.

TABLE 1.—MINORITY HIV/AIDS MENTAL HEALTH SERVICES INITIATIVE

Form	Responses per respondent	Estimated number of respondents	Estimated completion time (in hours)	Total hours
Minority HIV/AIDS Mental Health Services Initiative—12 Sites				
All Sessions—One form per session completed by Program staff/trainer				
Session Report Form	1	240	0.08	19
Sessions less than 6 hours				
Participant Feedback Form	1	3,000	0.167	501
Neuropsychiatric Participant Feedback Form	1	240	0.167	40
Ethics Participant Feedback Form	1	240	0.167	40
Adherence Participant Feedback Form	1	360	0.167	60
Neuropsychiatric Participant Feedback Form Non-Physicians	1	240	0.167	40
Sessions 6 hours or longer				
Pre-Training Participant Inventory	1	480	0.167	80
Post-Training Participant Inventory	1	480	0.25	120
Neuropsychiatric Pre-Training Participant Inventory	1	240	0.167	40
Neuropsychiatric Post-Training Participant Inventory	1	240	0.25	60
Total		5,760		1,000

TABLE 2.—BEHAVIORAL HEALTH PROFESSIONAL ASSOCIATION TRAINING INITIATIVE

Form	Responses per respondent	Estimated number of respondents	Estimated completion time (in hours)	Total hours
Behavioral Health Professional Association Training Initiative—3 Sites				
All Sessions—One form per session completed by Program staff/trainer				
Session Report Form	1	171	0.08	14
Sessions less than 6 hours				
Participant Feedback Form	1	1,200	0.167	200
Neuropsychiatric Participant Feedback Form	1	720	0.167	120
Ethics Participant Feedback Form	1	360	0.167	60
Adherence Participant Feedback Form	1	540	0.167	90
Neuropsychiatric Participant Feedback Form Non-Physicians	1	240	0.167	40
Sessions 6 hours or longer				
Pre-Training Participant Inventory	1	120	0.167	20
Post-Training Participant Inventory	1	120	0.25	30
Neuropsychiatric Pre-Training Participant Inventory	1	240	0.167	40
Neuropsychiatric Post-Training Participant Inventory	1	240	0.25	60
Total		3,951		674

TABLE 3.—COMBINED ANNUAL BURDEN ESTIMATE

Form	Responses per respondent	Estimated number of respondents	Estimated completion time (in hours)	Total hours
Behavioral Health Professional Association Training Initiative—3 Sites				
All Sessions—One form per session completed by Program staff/trainer				
Session Report Form	1	411	0.08	33
Sessions less than 6 hours				
Participant Feedback Form	1	4,200	0.167	701
Neuropsychiatric Participant Feedback Form	1	960	0.167	160
Ethics Participant Feedback Form	1	600	0.167	100
Adherence Participant Feedback Form	1	900	0.167	150
Neuropsychiatric Participant Feedback Form Non-Physicians	1	480	0.167	80
Sessions 6 hours or longer				
Pre-Training Participant Inventory	1	600	0.167	100
Post-Training Participant Inventory	1	600	0.25	150
Neuropsychiatric Pre-Training Participant Inventory	1	480	0.167	80
Neuropsychiatric Post-Training Participant Inventory	1	480	0.25	120
Total		9,711		1,674

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 30, 2001.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 01–11372 Filed 5–4–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–31]

Notice of Submission of Proposed Information Collection to OMB; Issuer's Monthly Remittance Advice and Issuer's Monthly Serial Note Remittance Advice

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 6, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2503–0015) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Issuer's Monthly Remittance Advice and Issuer's Monthly Serial Note Remittance Advice.

OMB Approval Number: 2503–0015.

Form Numbers: HUD–11714, HUD–11714SN.

Description of the Need for the Information and its Proposed Use: Government National Mortgage Associations (GNMA) issuers are required to provide summary information to the holder of each GNMA mortgage-backed security with respect to the current month's account transaction and calculations of the holder's fractional share of total cash distribution. The Information collected is used to advise each security holder of the current moth's account transactions and calculation of holder's fractional share of total cash distribution.

Respondents: Business or other for-profit, Federal Government.

Frequency of Submission: Monthly.

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Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
445		591		1		2,633

Total Estimated Burden Hours: 2,633.
Status: Reinstatement, with change.

Authority: Sec. 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 1, 2001.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 01–11435 Filed 5–4–01; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Present for Public Review and Comment the Draft Comprehensive Conservation Plans for Lower Suwannee and Cedar Keys National Wildlife Refuges, Located in Dixie and Levy Counties, Florida, and Levy County, Florida, Respectively

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service, Southeast Region, has made available for public review and comment the Draft Comprehensive Conservation Plan for each refuge. The Service plans to conduct a public meeting in the vicinity of the refuges to solicit public comments on the draft plans. The Service is furnishing this notice in compliance with its comprehensive conservation planning policy, the National Environmental Policy Act, and implementing regulations to achieve the following:

(1) Advise other agencies and the public of our intentions, and

(2) obtain comments on the proposed plans and other alternatives considered in the planning process.

DATES: The Service will hold the public meeting on Tuesday,June 5, 2001, at 7 p.m., at the Tommy Usher Center in Chiefland, Florida. The Center is located at 506 SW 4th Avenue (County Road 345).

ADDRESSES: Comments and requests for copies of the draft plans should be addressed to Mr. Kenneth Litzenberger, Refuge Manager, Lower Suwannee National Wildlife Refuge, 16450 NW 13th Place, Chiefland, Florida 32626, or by calling (352) 493–0238. Comments must be received by Friday, July 6, 2001, to be considered in the development of the final plan. Information concerning these refuges may be found at the following website: http://lowersuwannee.fws.gov

If you wish to comment, you may submit comments by any one of several methods. You may mail your comments to the above address.You may also comment via the Internet to the following address: K__Litzenberger@fws.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact Kenneth Litzenberger directly at the above address. Finally, you may hand-deliver comments to Mr. Litzenberger at the above address. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also maybe circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION: Lower Suwannee National Wildlife Refuge, consisting of 53,000 acres, was established in 1979, to protect one of the largest remaining undeveloped estuaries in the country. The refuge encompasses 20 miles of habitat flanking both sides of the famous Suwannee River and more than 20 miles of pristine coastal marsh habitat. Lower Suwannee Refuge provides important habitat for bald eagles, swallow-tailed kites, gopher tortoises, manatees, sea turtles, and migratory birds.

Cedar Keys National Wildlife Refuge, consisting of 13 islands and more than 800 acres of pristine coastal barrier island habitat, was established in 1929, as a refuge for wading birds and wildlife. Four of the islands are designated wilderness areas. Seahorse Key is home to one of the largest colonial wading bird rookeries in North Florida and contains one of Florida's historic lighthouses, which is used for marine science education and research by the University of Florida.

Dated: April 17, 2001.

Judy L. Pulliam,

Acting Regional Director.

[FR Doc. 01–11358 Filed 5–4–01; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Conduct Public Scoping Meeting To Obtain Suggestions and Information on Issues to Include in the Preparation of a Comprehensive Conservation Plan for Roanoke River National Wildlife Refuge in North Carolina

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service intends to gather information necessary to prepare a Comprehensive Conservation Plan and associated environmental documents for this refuge in pursuant to the National Environmental Policy Act and implementing regulations.

The meetings are scheduled as follows: Tuesday, May 22, 2001, 6 p.m.–9 p.m., Bertie County Courthouse, 108 Dundee Street, Windsor, North Carolina 27983; Thursday, May 24, 2001, 6 p.m.–9 p.m., Halifax County Agricultural Center, 359 Ferrell Lane, Halifax, North Carolina 27839.

DATES: Written comments should be received on or before June 6, 2001.

ADDRESSES: Comments and requests for information concerning this refuge may be addressed to D.A. Brown, M.S., P.W.S., 1106 West Queen Street, P.O. box 329, Edenton, North Carolina 27932, 252/482–2364, 252/482–3855 (fax), 252/337–5283 (cell).

Information concerning this refuge may be found at the following website: http://rtncf.rci.ral.r4.fws.gov

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the above address. You may also comment via the Internet to the following address: D__A__Brown@fws.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact D.A. Brown directly at the above address. Finally, you may hand-deliver comments to Mr. Brown at 1106 West Queen Street, Edenton, North Carolina. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we could withhold from the rulemaking record a respondent's identify, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION: It is the policy of the Fish and Wildlife Service to have all lands within the National Wildlife Refuge System managed in accordance with an approved Comprehensive Conservation Plan. The plan guides management decisions and identifies the goals, objectives, and strategies for achieving refuge purposes. Public input into this planning process is encouraged. The plan will provide other agencies and the public with a clear understanding of the desired conditions of the refuge and how the Service will implement management strategies.

Roanoke River National Wildlife Refuge was established in August 1989, to protect and enhance wooded wetlands consisting of bottomland hardwoods and swamps with high waterfowl value along the Roanoke River.

Dated: April 17, 2001.

Judy L. Pulliam,

Acting Regional Director.

[FR Doc. 01–11357 Filed 5–4–01; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Applicant: The Denver Zoo, Denver, CO, PRT–039869.

The applicant request a permit to import 2.1 African wild dogs (*Lycaon pictus*) from South Africa for the purpose of enhancement of the survival of the species through captive propagation.

Applicant: Robert Thuman, Lancaster, NY, PRT–041545.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Steven Leinberger, Saginaw, MI, PRT–041670.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Frederick L. McNair, Austin, TX, PRT–041580.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Carter Davis, Tyrone, GA, PRT–041585.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: John Guitar, III, Abilene, TX, PRT–041590.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Henry M. Witmyer, III, Hamburg, PA, PRT–041824.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

University of California, Berkeley, CA, PRT–040159.

The applicant requests a permit to import samples of hair, saliva swabs, and tissue samples from wild Amur leopards (*Panthera pardus orientalis*) and Amur tigers (*Panthera tigris altaica*) collected in Primorie Krai, Far East Russia for the purpose of scientific research. This notification covers activities conducted by the applicant over a five year period.

Applicant: Sedgwick County Zoo, Wichita, KS, PRT–037732.

The applicant requests a permit to import one captive born male Sumatran orangutan (*Pongo pygmaeus abelii*) from the Calgary Zoo, Alberta, Canada, for the purpose of enhancement of the survival of the species through captive propagation.

Applicant: Jay E. Wagner, Columbus, OH, PRT–035482.

The applicant requests a permit to import three captive-born female Jamaican boas (*Epicrates subflavus*) from Jacquet Gerald, Blairmont, Belgium, for the purpose of enhancement of the survival of the species through captive propagation.

Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with marine mammals. The application(s) was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Written data, comments or requests for copies of these complete applications or requests for a public hearing on these applications should be sent to the U.S. Fish and Wildlife Service, Division of Management

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Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281. These requests must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Karl W. Minor, Rockdale, IL, PRT–041679.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Landcaster Sound polar bear population, in Canada for personal use, taken in March 2001.

Applicant: David W. Dillard, Fairbanks, AK, PRT–041031.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Northern Beaufort Sea polar bear population in Canada for personal use taken March 2000.

Applicant: Lee R. Anderson, Sr., Minneapolis, MN, PRT–042004.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population in Canada for personal use taken March 2001.

Applicant: William Bricker, Antwerp, OH, PRT–042025.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population in Canada for personal use taken March 2001.

The U.S. Fish and Wildlife has information collection approval from OMB through February 28, 2001. OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: April 27, 2001.

Anna Barry,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 01–11379 Filed 5–4–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[HE–952–9911–EK]

OMB Approval Number 1004–0179; Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On November 28, 2000, the BLM published a notice in the **Federal Register** (65 FR 70932) requesting comment on this proposed collection. The comment period ended on January 29, 2001. The BLM received no comments from the public in response to that notice. You may obtain copies of the proposed collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB is required to respond to this request within 60 days but may respond after O.S.C 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0179), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a copy of your comments to the Bureau Information Clearance Officer (WO–630), 1849 C St., NW, Mail Stop 401LS, Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: In-Kind Crude Helium Sales Contract (43 CFR 3195).

OMB Approval Number: 1004–0179.

Bureau Form Number: None.

Abstract: The Bureau of Land Management is proposing to renew the approval of an information collection for the regulations located at 43 CFR part 3195. The respondents are Federal agencies and helium suppliers (contractors) who purchase major helium requirements and report to BLM the sales information for an accurate account of helium to Federal agencies from Federal helium suppliers.

Frequency: Quarterly and annually.

Description of Respondents: Federal agencies and helium contractors.

Estimated Completion Time: 3 hours (1 hour for the In-Kind Crude Helium Sales Contract and 15 minutes to 2 hours for the required information under 43 CFR part 3195).

Annual Responses: 304.

Filing Fee Per Response: 0.

Annual Burden Hours: 912.

Bureau Clearance Officer: Michael Schwartz, 202–452–5033.

Dated: February 15, 2001.

Michael Schwartz,

BLM Information Collection Clearance Officer.

[FR Doc. 01–11375 Filed 5–4–01; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–6310–PF–01–24 1A]

OMB Approval Number 1004–0168; Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On December 12, 2000, the BLM published a notice in the **Federal Register** (65 FR 77664) requesting comments on this proposed collection. The comment period ended on February 12, 2001. The BLM received no comments from the public in response to that notice. You may obtain copies of the proposed collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer, (1004–0168), Office of Information and Regulatory Affairs, Washington, DC

20503. Please provide a copy of your comments to the Bureau Information Clearance Officer (WO–630), 1849 C St., NW., Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Report of Road Use (43 CFR 2812).

OMB Approval Number: 1004–0168.

Bureau Form Number: OR 2812–6.

Abstract: BLM requires specific information that permittees must furnish to determine road use and maintenance fees and to monitor and verify road use authorizations. BLM uses this information to calculate road use and maintenance fees for use of BLM roads to transport timber and other forest products.

Frequency: Quarterly.

Description of Respondents: Respondents are road use permit holders (individuals, partnerships, and corporations) who wish to use BLM roads to transport timber and other forest products.

Estimated Completion Time: 1 hour.

Annual Responses: 1,600.

Filing Fee Per Response: $0.

Annual Burden Hours: 1,600.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: March 20, 2001.

Michael Schwartz,

BLM Information Collection Clearance Officer.

[FR Doc. 01–11377 Filed 5–4–01; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–100–1060–PC; CO–110–1060–PC]

Notice of Public Hearings and the Intent to Remove Wild Horses on Public Lands in Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Wild, Free-Roaming Horse and Burro Act (Pub. L. 92–195), as amended, provides, among other things, that excess wild horses shall be removed from public lands.

The Bureau of Land Management plans to complete removal operations in August and September, 2001 in the West Douglas Herd Area and in the Sand Wash Herd Management Area. Dates are approximate and depend upon whether conditions and factors unforseen at this time.

The Bureau of Land Management plans to remove approximately 115 wild horses from the West Douglas Herd Area. The number of horses removed from the Sand Wash herd will be determined following establishment in late June, 2001 of a herd appropriate management level.

Pursuant to the requirements noted above, the BLM will conduct a public hearing on the use of helicopters in Colorado for gathering operations during the calendar year of 2001, and a public hearing addressing the removal of horses from the Oil Spring Mountain Wilderness Study Area, associated with the West Douglas Herd Area. A meeting will be held following the hearings to discuss the two planned gathers. The hearings are scheduled to begin at 7 MST on June 11th, 2001 at the White River Field Office of the BLM located at 73544 Highway 64 in Meeker, Colorado.

For additional information regarding the West Douglas Herd Area contact Jim Cagney, White River Field Office; 970–878–3601.

For additional information regarding the Sand Wash Herd management Area contact John Husband at the Little Snake Filed Office; 970–826–5000.

James A. Cagney,

White River Field Office Manager.

[FR Doc. 01–11376 Filed 5–4–01; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed collection, Comment Request; Deaths In Custody, 2001

ACTION: Notice of information collection under review; revision of a currently approved collection.

The Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until July 6, 2001.

If you have additional comments, suggestions, or additional information, especially regarding the estimated public burden and associated response time, please write to Lawrence A. Greenfeld, Acting Director, Bureau of Justice Statistics, 810 Seventh St., NW, Washington, DC 20531. If you need a copy of the collection instruments with instructions, or have additional information, please contact Christopher Mumola at (202) 307–5995, or via facsimile at 202–514–1757. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the Form/Collection:* Deaths In Custody, 2000—

Quarterly Summary of Inmate Deaths in State Prison; State Prison Inmate Death Report

Quarterly Summary of Deaths in State Juvenile Residential Facilities; State Juvenile Residential Death Report

Quarterly Report on Inmates Under Jail Jurisdiction; Annual Summary on Inmates Under Jail Jurisdiction;

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Quarterly Report on Inmates in Private and Multi-Jurisdiction Jails;
Annual Summary on Inmates in Private and Multi-Jurisdiction Jails.

(3) *The agency form number and the applicable component of the Department sponsoring the collection:* Forms: NPS–4, NPS–4A, NPS–5, NPS–5A, CJ–9, CJ–9a, CJ–10 and CJ–10A. Corrections Statistics Unit, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: Local jail administrators, (one reporter from each of the 3,083 local jail jurisdictions in the United States), State prison administrators (one reporter from each of the 50 States and the District of Columbia) and State juvenile correctional administrators (one reporter from each of the 50 States and the District of Columbia) responsible for keeping records on inmates will be asked to provide information for the following categories:

(a) During each reporting quarter, the numbers of deaths of persons in their custody; and

(b) As of January 1 and December 31 of each reporting year, the number of male and female inmates in their custody (local jails only); and

(c) Between January 1 and December 31 of each reporting year, the number of male and female inmates admitted to their custody (local jails only); and

(d) The name, date of birth, gender, race/ethnic origin, and date of death for each inmate who died in their custody during each reporting quarter; and

(e) The admission date, legal status, and current offenses for each inmate who died in their custody during the reporting quarter; and

(f) Whether or not an autopsy was conducted by a medical examiner or coroner to determine the cause of each inmate death that took place in their custody during the reporter quarter; and

(g) The location and cause of each inmate death that took place in their custody during the reporting quarter; and

(h) In cases where the cause of death was illness/natural causes (including AIDS), whether or not the cause of each inmate death was the result of a pre-existing medical condition, and whether or not the inmate had been receiving treatment for that medical condition; and

(i) In cases where the cause of death was accidental injury, suicide, or homicide, when and where the incident causing the inmate's death took place.

As part of the conference agreement for FY2000 appropriations, the Bureau of Justice Statistics was directed by the U.S. Congress "to implement a voluntary annual reporting system of all deaths occurring in law enforcement custody." BJS received OMB approval to conduct such an annual collection (OMB No. 1121–0249). In the time since submitting that collection for OMB aproval, the President signed The Deaths in Custody Act of 2000 into law (PL 106–297). To comply with PL 106–297's new requirement for a quarterly collection of inmate death data from local jails, State prisons, juvenile facilities and police custody, BJS is now submitting for clearance the following series of forms:NPS–4, NPS–4A, NPS–5, NPS–5A, CJ–9, CJ–9a, CJ–10 and CJ–10A.

This collection will supplement the annual data on prison inmate deaths which the Bureau of Justice Statistics already collects as part of the National Prisoners Statistics program and the National Corrections Reporting Program. The Bureau of Justice Statistics will use this new information to publish an annual report on deaths in custody. The report will be made available to the U.S. Congress, Executive Office of the President, practitioners, researchers, students, the media, and other interested in criminal justice statistics and data.

(5) *An estimate of the total number of respondents and the amount of time needed for an average respondent to respond is broken down as follows:* The total number of respondents for this information collection is 3,185 and the time per survey is as follows:

Local jails/quarterly—3,083 respondents (average response time=5 minutes+30 minutes per reported death)
Local jails/annual—3,083 respondents (average response time=15 minutes)
State prisons/quarterly—51 respondents (average response time=5 minutes)
State prisons addendum/quarterly—51 respondents (average response time=30 minutes per reported death)
State juvenile corrections/quarterly—51 respondents (average response time=5 minutes)
State juvenile corrections addendum/quarterly—51 respondents (average response time=30 minutes per reported death)

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,802 burden hours.

If additional information is required, contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, National Place, Suite 1220, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Dated: April 30, 2001.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 01–11353 Filed 5–4–01; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request; Census of Juveniles in Residential Placement

ACTION: Notice of information collection under review; reinstatement, without change, of a previously approved collection for which approval has expired.

The Department of Justice, Office of Justice Programs, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on February 20, 2001, allowing for a 60-day public comment period office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** and allowed 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comments form the date listed at the top of this page in the **Federal Register**. This process is conducted in accordance with 5 Code of Federal Regulation, § 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, National Place Suite 1220, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/components, including whether the information will have practical utility;

(2) evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of information collection: reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Census of Juveniles in Residential Placement.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection. Form: CJ–14, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. Primary: Public and private juvenile detention, correctional, shelter, facilities. Other: None.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 3,350 respondents and average 4 hours to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 11,142 biennial burden hours.

Dated: April 30, 2001.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 01–11352 Filed 5–4–01; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

April 30, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or by E–Mail: King-Darrin@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), on or before June 6, 2001.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Veterans' Employment and Training Service (VETS).

Title: Federal Contractor Veterans' Employment Report.

OMB Number: 1293–0005.

Affected Public: Business or other for-profit and Not-for-profit institutions.

Frequency: Annually.

Number of Respondents: 194,580.

Number of Annual Responses: 194,580.

Estimated Time Per Response: 30 minutes.

Total Burden Hours: 97,290.

Total Annualized Capitol/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Federal Contractor Veterans' Employment Report VETS–100, administered by the U.S. Department of Labor, is used to facilitate Federal contractor and subcontractor reporting of their employment and new hiring activity. Title 38 U.S.C., section 4212(d) requires the collection of information from entities holding contracts of $25,000 or more with Federal departments or agencies to report annually on (a) the number of current employees in each job category and at each hiring location who are special disabled veterans, the number who are veterans of the Vietnam era and the number who are other veterans who served on active duty during a war or a campaign or expedition for which a campaign badge has been authorized; (b) the total number of employees hired during the report period and of those, the number of special disabled, the number who are veterans of the Vietnam era, and the number who are other veterans; and the maximum and minimum number of employees employed by the contractor at each hiring location.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01–11406 Filed 5–4–01; 8:45 am]

BILLING CODE 4510–79–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

April 30, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or E-Mail to King-Darrin@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for OSHA, Office of Management and Budget, Room 10235, Washington, DC 20503

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((202) 395–7316), on or before June 6, 2001.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Occupational Safety and Health Administration (OSHA).

Title: Application for Training Grant.

OMB Number: 1218–0020.

Affected Public: Not-for-profit institutions and State, Local, or Tribal Government.

Frequency: Annually.

Number of Respondents: 200.

Number of Annual Responses: 200.

Estimated time Per Response: 55 hours.

Total Burden Hours: 11,050.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The application for Training Grant is submitted by non-profit organizations interested in obtaining OSHA training grants. It is used by OSHA staff to select organizations to receive funds.

Type of Review: Extension of a currently approved collection.

Agency: Occupational Safety and Health Administration (OSHA).

Title: Grantee Quarterly Progress Report.

OMB Number: 1218–0100.

Affected Public: Not-for-profit institutions and State, Local, or Tribal Government.

Frequency: Quarterly.

Number of Respondents: 61.

Number of Annual Responses: 244.

Estimated Time Per Response: 12 hours.

Total Burden Hours: 2,928.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Grantee Quarterly Progress Report (OSHA–171) is used to collect information concerning activities conducted under OSHA training grant programs. The information is used to monitor the use of Federal grant funds.

Type of Review: Extension of a currently approved collection.

Agency: Occupational Safety and Health Administration (OSHA).

Title: Procedures for the Handling of Discrimination Complaints under Federal Employee Protection Statutes.

OMB Number: 1218–0236.

Affected Public: Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; and State, Local, or Tribal Government.

Frequency: Once per complaint.

Number of Respondents: 200.

Number of Annual Responses: 200.

Estimated Time Per Response: 1 hour.

Total Burden Hours: 200.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: 29 CFR Part 24 requires employees who believe they have been discriminated against by employers, in violation of whistleblower provisions in certain laws for reporting unlawful practices that adversely affect the environment, to place their allegations in writing so they may where appropriate be investigated by the Department of Labor.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01–11407 Filed 5–4–01; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c) (2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the Annual Refiling Survey (ARS). A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section below on or before July 6, 2001.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (See Addresses section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Standard Industrial Classification (SIC) system was replaced by the North American Industry Classification System (NAICS) in 1997 as the standard for industrial classification. As a result of this change, the Bureau of Labor Statistics (BLS) has been converting SIC codes to NAICS codes in the ARS. The conversion is planned to be completed with Fiscal Year 2001 ARS processing, at which time industrial classifications in the ARS will be based on the 2002 NAICS.

ARS forms used in the conversion were designed to gather respondent information necessary for converting SIC codes to NAICS codes. The BLS currently is requesting Office of Management and Budget clearance of revised ARS survey forms that will be used to verify and update existing 2002 NAICS codes. They also will be used to update employers' business names and addresses and other geographical information. The revised ARS forms have been redesigned to be easier to read and understand.

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Action

The BLS uses the Annual Refiling Survey (ARS) forms to gather industrial and geographical data on business establishments. The revised ARS forms are designed to verify and update NAICS codes, geographical information, and multiple worksite information.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Annual Refiling Survey.

OMB Number: 1220–0032.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal government; State, local, or tribal government.

Total Respondents: 2,272,998.

Frequency: Annually.

Total Responses: 2,272,998.

Form	Total respondents	Frequency	Total responses	Average time per response	Estimated total burden (hours)
3023–NVS	2,092,708	Once	2,092,708	.083	173,695
3023–NVM	37,334	Once	37,334	.25	9,334
3023–NCA	142,956	Once	142,956	.167	23,874
Totals	2,272,998		2,272,998		206,903

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC this 1st day of May 2001.

W. Stuart Rust, Jr.,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 01–11409 Filed 5–4–01; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0121(2001)]

Powered Platforms for Building Maintenance (29 CFR 1910.66); Extension of the Office of Management and Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits public comment concerning its request to decrease and extend the information-collection requirements specified in the standard on Powered Platforms for Building Maintenance (29 CFR 1910.66).

DATES: Submit written comments on or before July 6, 2001.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0121(2001), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to: (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2222. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified by the standard on Powered Platforms for Building Maintenance is available for inspection and copying in the Docket Office, or by requesting a copy from Theda Kenney at (202) 693–2222 or Todd Owen at (202) 693–2444. For electronic copies of the ICR, contact OSHA on the Internet at http://www.osha.gov/comp-links.html, and select "Information Collection Requests."

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information-collection burden is correct.

Paragraph (e)(9) of the § 1910.66 (hereafter, the "Standard") requires that employers develop and implement a written emergency-action plan for each type of powered-platform operation. The plan must explain the emergency procedures that employees are to follow if they encounter a disruption of the power supply, equipment failure, and other emergency. Prior to operating a powered platform, employers must notify employees how they can inform themselves about alarm systems and emergency-escape routes, and emergency procedures that pertain to the building on which they will be working. Employers are to review with each employee those parts of the emergency-action plan that the employee must know to ensure their protection during an emergency; these reviews must occur when the employee receives an initial assignment involving a powered-platform operation and after the employer revises the emergency-action plan.

According to paragraph (f)(5)(i)(C), employers must affix a load-rating plate to a conspicuous location and on each suspended unit that states the unit's

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weight and its rated load capacity. Paragraph (f)(5)(ii)(N) requires employers to mount each emergency electric-operating device in a secured compartment and label the device with instructions for its use. After installing a suspension wire rope, paragraphs (f)(7)(vi) and (f)(7)(vii) mandate that employers attach a corrosion-resistant tag with specified information to one of the wire-rope fastenings if the rope is to remain at one location. In addition, paragraph (f)(7)(viii) requires employers who resocket a wire rope to either stamp specified information on the original tag or put that information on a supplemental tag and attach it to the fastening.

Paragraphs (g)(2)(i) and (g)(2)(ii) require that building owners, at least annually, have a competent person: Inspect the supporting structures of their buildings; inspect and, if necessary, test the components of the powered platforms, including control systems; inspect/test components subject to wear (*e.g.,* wire ropes, bearings, gears, and governors); and certify these inspections and tests. Under paragraph (g)(2)(iii), building owners must maintain and, on request, disclose to OSHA a written certification record of these inspections/tests; this record must include the date of the inspection/test, the signature of the competent person who performed it, and the number/identifier of the building support structure and equipment inspected/tested.

Paragraph (g)(3)(i) mandates that building owners use a competent person to inspect and, if necessary, test each powered-platform facility according to the manufacture's recommendations every 30 days, or prior to use if the work cycle is less than 30 days. Under paragraph (g)(2)(iii), building owners must maintain and, on request, disclose to the Agency a written certification record of these inspections/tests; this record is to include the date of the inspection/test, the signature of the competent person who performed it, and the number/identifier of the powered-platform facility inspected/tested.

According to paragraph (g)(5)(iii), building owners must have suspension wire ropes thoroughly inspected for a number of specified conditions by a competent person once a month, or before placing the wire ropes into service if the ropes are inactive for 30 days or longer. Paragraph (g)(5)(v) requires building owners to maintain and, on request, disclose to OSHA a written certification record of these monthly inspections; this record must consist of the date of the inspection, the signature of the competent person who performed it, and the number/identifier of the wire rope inspected.

Paragaraph (i)(1)(iv) requires employers to develop written work procedures for the operation, safe use, and inspection of powered platforms, and to provide these procedures to their employees for training purposes. In meeting these requirements, an employer may use pictorial methods and operating manuals supplied by the manufacturers of the system components. In addition, paragraph (i)(1)(ii) mandates that employers train employees in: Recognizing safety hazards associated with their work tasks and developing measures to prevent these hazards; general recognition and prevention of safety hazards associated with the operation of powered platforms, including the powered platforms they operate; the emergency-action plan and work procedures developed under paragraphs (e)(9) and (i)(1)(iv), respectively; and the inspection, maintenance, use, and performance of their personal fall-arrest system. On completion of this training, paragraph (i)(1)(v) specifies that employers must prepare a written certification that includes the identity of the employee trained, the signature of the employer or the trainer, and the date the employee completed the training. In addition, the employer must maintain an employee's training certificate for the duration of their employment and, on request, make it available to OSHA.

Emergency-action plans allow employers and employees to anticipate, and effectively respond to, emergencies that may arise during powered-platform operations. Affixing load-rating plates to suspended units, instructions to emergency electric-operating devices, and tags to wire-rope fasteners prevent workplace accidents by providing information to employers and employees regarding the conditions under which they can safely operate these system components. Requiring building owners to establish and maintain written certification of inspections and testing conducted on the supporting structures of buildings, powered-platform systems, and suspension wire ropes provides employers and employees with assurance that they can operate safely from the buildings using equipment that is in safe operating condition. The training requirements increase employee safety by allowing them to develop the skills and knowledge necessary to effectively operate, use, and inspect powered platforms, recognize and prevent safety hazards associated with platform operation, respond appropriately under emergency conditions, and maintain and use their fall-protection arrest system. Training certification permits employers to review the training provided to their employees, thereby ensuring that the employees received the necessary training. In addition, the paperwork requirements specified by the Standard provide the most efficient means for an OSHA compliance officer to determine whether or not employers and building owners are providing the required notification, certification, and training.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions; used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

III. Proposed Actions

OSHA is proposing to decrease the existing burden-hour estimate, and to extend OMB approval, of the collection-of-information requirements specified in the Standard. In this regard, the Agency is proposing to decrease the current burden-hour estimate from 246,498 hours to 119,497 hours, a total reduction of 127,001 hours. OSHA will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of these information-collection requirements.

Type of Review: Extension of a currently-approved information-collection requirement.

Title: Powered Platforms for Building Maintenance (29 CFR 1910.66).

OMB Number: 1218–0121.

Affected Public: Business or other for-profit, not-for-profit institutions; Federal government; State, local or tribal governments.

Number of Respondents: 900.

Frequency of Response: Annually; monthly; occasionally.

Average Time per Response: Varies from 1 minute (0.02 hour) (to maintain a training record) to 10 hours (to inspect/test building-support structures and the components of a powered platform).

Estimated Total Burden Hours: 119,497 hours.

Estimated Cost (Operation and Maintenance): $0.

IV. Authority and Signature

R. Davis Layne, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 3–2000 (65 FR 50017).

Signed at Washington, DC on May 1st, 2001.

R. Davis Layne,

Acting Assistant Secretary of Labor.

[FR Doc. 01–11389 Filed 5–4–01; 8:45 am]

BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

[50–305]

Nuclear Management Company, LLC; Kewaunee Nuclear Power Plant; Exemption

1.0 Background

Nuclear Management Company, LLC (the licensee) is the holder of Facility Operating License No. DPR–43, which authorizes operation of the Kewaunee Nuclear Power Plant (KNPP). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consists of a pressurized water reactor located on the licensee's KNPP site in Kewaunee County, Wisconsin.

2.0 Request

By letter dated June 7, 1999, as supplemented February 4, September 26, December 18, 2000, and March 12, 2001, Wisconsin Public Service Corporation (WPSC) proposed three exemptions and a license amendment which affect the licensing basis of the KNPP reactor pressure vessel (RPV). Subsequently, WPSC was succeeded by Nuclear Management Company, LLC (NMC), as the licensed operator of the KNPP. By letter dated October 5, 2000, NMC (the licensee) requested the Nuclear Regulatory Commission (NRC) staff continue to process and disposition licensing actions previously docketed and requested by WPSC. By letter dated December 18, 2000, the licensee withdrew the license amendment.

The three exemptions requested by the licensee address portions of the following regulations: (1) Appendix G to 10 CFR Part 50, which sets forth fracture toughness requirements for ferritic materials of pressure-retaining components of the reactor coolant pressure boundary of light water nuclear power reactors to provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests, to which the pressure boundary may be subjected over its service lifetime; (2) 10 CFR 50.61, which sets forth fracture toughness requirements for protection against pressurized thermal shock (PTS) events; and (3) Appendix H to 10 CFR Part 50, which requires the establishment of a RPV material surveillance program.

The licensee requested an exemption from Appendix G to 10 CFR Part 50 to replace the required use of the existing Charpy V-notch and drop weight-based methodology and allow the use an alternate methodology to incorporate the use of fracture toughness test data for evaluating the integrity of the KNPP RPV circumferential beltline weld based on the use of the 1997 Edition of American Society for Testing and Materials (ASTM) Standard Test Method E 1921 (E 1921–97) and American Society for Mechanical Engineering (ASME) Code Case N–629. The exemption is required since Appendix G to 10 CFR Part 50, through reference to Appendix G to Section XI of the ASME Code pursuant to 10 CFR 50.55(a), requires the use of a methodology based on Charpy V-notch and drop weight data.

The licensee requested an exemption from 10 CFR 50.61 to use an alternate methodology to allow the use of fracture toughness test data for evaluating the integrity of the KNPP RPV circumferential beltline weld based on the use of the 1997 Edition of ASTM E 1921–97 and ASME Code Case N–629. The exemption is required since the methodology for evaluating RPV material fracture toughness in 10 CFR 50.61 requires the use of the Charpy V-notch and drop weight data for establishing the PTS reference temperature (RT_{PTS}).

The licensee requested an exemption from Appendix H to 10 CFR Part 50 to modify the basis for the KNPP RPV surveillance program to allow the acquisition and use of fracture toughness data instead of the Charpy V-notch impact testing required by Appendix H to 10 CFR Part 50. The exemption is required since Appendix H to 10 CFR Part 50 does not address the testing of surveillance specimens for direct measurement of fracture toughness.

3.0 Discussion

10 CFR 50.12(a)(2)(ii) enables the Commission to grant exemptions from the requirements of Part 50 when special circumstances are present such that application of the regulation in the particular circumstances would not serve the underlying purpose of the rule, or is not necessary to achieve the underlying purpose of the rule.

The underlying purpose of Appendix G to 10 CFR Part 50 is to set forth fracture toughness requirements for ferritic materials of pressure-retaining components of the reactor coolant pressure boundary of light water nuclear power reactors to provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests, to which the pressure boundary may be subjected over its service lifetime.

The methodology underlying the requirements of Appendix G to 10 CFR Part 50 is based on the use of Charpy V-notch and drop weight data. The licensee proposes to replace the use of the existing Charpy V-notch and drop weight-based methodology by a fracture toughness-based methodology to demonstrate compliance with Appendix G to 10 CFR Part 50. The NRC staff has concluded that the exemption is justified based on the licensee utilizing the fracture toughness methodology specified in Appendix A of the NRC staff safety evaluation (SE), dated May 1, 2001. The use of the methodology specified in Appendix A of the NRC staff SE will ensure that P–T limits developed for the KNPP RPV will continue to be based on an adequately conservative estimate of RPV material properties and ensure that the pressure-retaining components of the reactor coolant pressure boundary retain adequate margins of safety during any condition of normal operation, including anticipated operational occurrences. Also, when additional fracture toughness data relevant to the evaluation of the KNPP RPV circumferential weld is acquired as part of the KNPP surveillance program, this data must be incorporated into the evaluation of the KNPP RPV using the methodology of Appendix A of the NRC staff SE. With these conditions, which were agreed to by licensee letter, dated March 12, 2001, the licensee's requested exemption from the use of the Charpy V-notch and drop weight-based methodology required by Appendix G to 10 CFR Part 50 may be granted in accordance with 10 CFR 50.12(ii) in that

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special circumstances are present since application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The foregoing exemption only modifies the methodology to be used by the licensee for demonstrating compliance with the requirements of Appendix G to 10 CFR Part 50, and does not exempt the licensee from meeting any other requirement of Appendix G to 10 CFR Part 50.

The underlying purpose of 10 CFR 50.61 is to establish requirements which ensure that a licensee's RPV will be protected from failure during a PTS event by evaluating the fracture toughness of RPV materials.

The licensee seeks an exemption to 10 CFR 50.61 requirement to use a methodology for the "determination of adjusted/indexing reference temperatures." The licensee proposes to use ASME Code Case N–629 and the methodology outlined in its submittal, which are based on the use of fracture toughness data, as an alternative to the Charpy V-notch and drop weight-based methodology required by 10 CFR 50.61 for establishing the PTS RT_{PTS}. The NRC staff has concluded that the exemption is justified based on the licensee utilizing the methodology specified in Appendix A of the NRC staff SE, dated May 1, 2001. The use of the methodology specified in Appendix A of the NRC staff SE will ensure the PTS evaluation developed for the KNPP RPV will continue to be based on an adequately conservative estimate of RPV material properties and ensure the RPV will be protected from failure during a PTS event. Also, when additional fracture toughness data relevant to the evaluation of the KNPP RPV circumferential weld is acquired as part of the KNPP surveillance program, this data must be incorporated into the evaluation of the KNPP RPV using the methodology of Appendix A of the NRC staff SE. With these conditions, which were as agreed to by licensee letter, dated March 12, 2001, the licensee's requested exemption from the use of the Charpy V-notch and drop weight-based methodology required by 10 CFR 50.61 may be granted in accordance with 10 CFR 50.12(ii) in that special circumstances are present since application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The foregoing exemption only modifies the methodology to be used by the licensee for demonstrating compliance with the requirements of 10 CFR 50.61, and does not exempt the licensee from meeting any other requirement of 10 CFR 50.61.

Appendix H to 10 CFR Part 50 requires that, "[f]or each capsule withdrawal, the test procedures and reporting requirements must meet the requirements of ASTM E 185–82 [the 1982 edition] to the extent practicable for the configuration of the specimens in the capsule." ASTM Standard Practice E 185–82 requires Charpy V-notch impact testing, but does not address the testing of surveillance specimens for direct measurement of fracture toughness, either as a requirement or as an optional action. The exemption would permit the licensee to utilize alternative surveillance program testing requirements and permit the acquisition of fracture toughness data for the surveillance weld as the basis for the KNPP RPV surveillance program.

The underlying purpose of Appendix H to 10 CFR Part 50 is to acquire data to, "* * * monitor changes in the fracture toughness properties of ferritic materials in the reactor vessel beltline region of light water nuclear power reactors which result from exposure of these materials to neutron irradiation and the thermal environment." As discussed in the NRC staff SE, dated May 1, 2001, the licensee's alternate surveillance program requirements and the acquisition of data will adequately monitor the change in RPV fracture toughness and provide input to the approved fracture toughness-based methodology for RPV integrity. Therefore, the NRC staff concludes that this exemption may be granted because the special circumstances required by 10 CFR 50.12(a)(ii) are present in that application of the regulation [i.e., the Charpy V-Notch-based testing practices specified by Appendix H to 10 CFR Part 50] in the particular circumstances is not necessary to achieve the underlying purpose of the rule.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemptions are authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Therefore, the Commission hereby grants Nuclear Management Company, LLC, exemptions from portions of the requirements of Appendix G to 10 CFR Part 50; 10 CFR 50.61; and, Appendix H to 10 CFR Part 50, to allow an alternative methodology that is based on using of fracture toughness test data for evaluating the integrity of the KNPP RPV circumferential beltline weld with the following conditions:

(1) The licensee must utilize the methodology specified in Appendix A of the NRC staff SE, dated May 1, 2001;

(2) When additional fracture toughness data relevant to the evaluation of the KNPP RPV circumferential weld is acquired as part of the KNPP surveillance program, this data must be incorporated into the evaluation of the KNPP RPV using the methodology of Appendix A of the NRC staff SE; and

(3) The licensee must obtain the following regarding the next surveillance capsule: (a) a valid measurement of the fracture toughness-based T_0 parameter for the KNPP RPV surveillance weld, (b) an estimate of the Charpy V-notch 30 ft-lb transition temperature shift for the surveillance weld, and (c) an estimate of the upper shelf energy drop for the surveillance weld.

Pursuant to 10 CFR 51.32, an environmental assessment and finding of no significant impact has been prepared and published in the **Federal Register** (66 FR 21787). Accordingly, based upon the environmental assessment, the Commission has determined that the granting of this exemption will not result in any significant effect on the quality of the human environment.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 1st day of May 2001.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–11388 Filed 5–4–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Docket No. 72–5

Nuclear Management Corporation; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an exemption, pursuant to 10 CFR 72.7, from the provisions of 10 CFR 72.48 to Nuclear Management Corporation (NMC). The requested exemption would allow NMC to implement the amended 10 CFR 72.48 requirements on September 7, 2001, for the Independent Spent Fuel Storage Installation (ISFSI) at the Point Beach Nuclear Plant (PBNP) in Manitowoc County, Wisconsin.

Environmental Assessment (EA)

Identification of Proposed Action: By letter dated March 20, 2001, as supplemented April 6, 2001, NMC requested a scheduler exemption from the implementation date of April 5, 2001, for the revised 10 CFR 72.48. NMC plans to implement its revised 10 CFR 50.59 and 10 CFR 72.48 programs simultaneously. The planned date for implementing the revised 10 CFR 50.59 requirements is September 7, 2001.

Need for Proposed Action: The applicant wants the implementation date of 10 CFR 50.59 and 10 CFR 72.48 to coincide. The applicant stated in the March 20, 2001, submittal that administering separate programs to satisfy the current 10 CFR 72.48 schedule could become burdensome and create confusion.

Environmental Impacts of the Proposed Action: There are no significant environmental impacts associated with the proposed action. The new revision of 10 CFR 72.48 is considered less restrictive than the current requirements, with the exception of the additional reporting requirements. Continued implementation of the existing 10 CFR 72.48 until September 7, 2001, is acceptable to the NRC as stated in Regulatory Issues Summary 2001–03 which states that it is the NRC's view that both the old rule and the new rule provide an acceptable level of safety. Extending the current requirements until September 7, 2001, has no significant impact on the environment.

Alternative to the Proposed Action: Since there are no environmental impacts associated with the proposed action, alternatives are not evaluated other than the no-action alternative. The alternative to the proposed action would be to deny approval of the scheduler exemption and, therefore, not allow NMC to implement the revised 10 CFR 72.48 requirements on the desired date, September 7, 2001. However, the environmental impacts of the proposed action and the alternative would be the same.

Agencies and Persons Consulted: On April 10, 2001, Wisconsin state official, Mr. Jeff Kitsembel, Nuclear Engineer, Public Service Commission of Wisconsin, was contacted regarding the environmental assessment for the proposed action and had no comment.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR Part 51. Based upon the foregoing EA, the Commission finds that the proposed action of granting an exemption from 10 CFR 72.48, so that NMC may implement the amended requirements on September 7, 2001, will not significantly impact the quality of human environment. Accordingly, the Commission has determined that an environmental impact statement for the proposed action is not necessary.

The request for exemption was docketed under 10 CFR Part 72, Docket 72–5. For further details with respect to this action, see the exemption request dated March 20, 2001, as supplemented April 6, 2001, which is available for public inspection at the Commission's Public Document Room, One White Flint North Building, 11555 Rockville Pike, Rockville, Maryland 20852, or from the publicly available records component of NRC's agencywide documents access and management system (ADAMS).

ADAMS is accessible from the NRC web site at *http://www.nrc.gov/NRC/ADAMS/index.html* (the Public Electronic Reading Room).

Dated at Rockville, Maryland, this 25th day of April 2001.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01–11386 Filed 5–4–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATES: Weeks of May 7, 14, 21, 28, June 4, 11, 2001.

PLACE: Commissioiners' Conference Room, 11555 Rockville Pikc, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of May 7, 2001

Thursday, May 10, 2001

10:25 a.m.
Affirmation Session (Public Meeting) (Tentative)
a: Northeast Nuclear Energy Company (Millstone Nuclear Power Station, Unit No. 3; Facility Operating License NPF–49) Partial Review of LBP–00–26 (10/26/00), as directed by CLI–01–03 (1/17/01) Regarding Interpretation of GDC 62, Prevention of Criticality in Fuel Storage & Handling
10:30 a.m.
Briefing on Office of Nuclear Regulatory Research (RES) Programs and Performance (Public Meeting) (Contact: James Johnson, 301–415–6802)

Friday, May 11, 2001

10:30 a.m.
Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: John Larkins, 301–415–7360)

Week of May 14, 2001—Tentative

There are no meetings scheduled for the Week of May 14, 2001.

Week of May 21, 2001—Tentative

There are no meetings scheduled for the Week of May 21, 2001.

Week of May 28, 2001—Tentative

Wednesday, May 30, 2001

10:25 a.m.
Affirmation Session (Public Meeting) (If needed)

Week of June 4, 2001—Tentative

Tuesday, June 5, 2001

9:25 a.m.
Affirmation Session (Public Meeting) (If needed)
2 p.m.
Discussion of Management Issues (Closed-Ex. 2)

Wednesday, June 6, 2001

10:30 a.m.
All Employees Meeting (Public Meeting)
1:30 p.m.
All Employees Meeting (Public Meeting)

Week of June 11, 2001—Tentative

Thursday, June 14, 2001

9:25 a.m.
Affirmation Session (Public Meeting) (If needed)
9:30 a.m.
Meeting with Nuclear Waste Technical Review Board (Public Meeting)
1:30 p.m.
Briefing on License Renewal Program (Public Meeting) (Contact: David Solorio, 301–415–1973)

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please

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contact the Office of the Secretary, Washington, D.C. 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: May 3, 2001.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 01–11513 Filed 5–3–01; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Extension: Rule 15Bc3–1 and Form MSDW; SEC File No. 270–93; OMB Control No. 3235–0087]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this collection of information to the Office of Management and Budget for extension and approval.

Rule 15Bc3–1 under the Securities Exchange Act of 1934 provides that a notice of withdrawal from registration with the Commission as a bank municipal securities dealer must be filed on Form MSDW.

The Commission uses the information submitted on Form MSDW in determining whether it is in the public interest to permit a bank municipal securities dealer to withdraw its registration. This information is also important to the municipal securities dealer's customers and to the public, because it provides, among other things, the name and address of a person to contact regarding any of the municipal securities dealer's unfinished business.

The staff estimates that approximately 20 respondents in total will utilize this notice procedure annually, with a total burden of 10 hours for all respondents, based upon past submissions. The staff estimates that the average number of hours necessary for one respondent to comply with the requirements of Rule 15Bc3–1 is .5 hours. The average cost per hour is approximately $101. Therefore, the total cost of compliance for all respondents is $1,010 ($101 × .5 × 20 = $1,010).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC 20549.

Dated: April 26, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–11334 Filed 5–4–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Extension: Rule 17a–1; SEC File No. 270–244; OMB Control No. 3235–0208]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is publishing the following summary of collection for public comment.

Rule 17a–1 under the Securities Exchange Act of 1934 requires that all national securities exchanges, national securities associations, registered clearing agencies, and the Municipal Securities Rulemaking Board keep on file for a period of five years, two years in an accessible place, all documents which it makes or receives respecting its self-regulatory activities, and that such documents be available for examination by the Commission. The average number of hours necessary for compliance with the requirements of Rule 17a–1 is 50 hours per year. There are 24 entities required to comply with the rule: 9 national securities exchanges, 1 national securities association, 13 registered clearing agencies, and the Municipal Securities Rulemaking Board. The total number of hours required for all respondents to comply with the rule is thus 1,200 hours annually.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: April 27, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–11385 Filed 5–4–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27389]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

April 30, 2001.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 25, 2001, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After May 25, 2001, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Alliant Energy Corporation, et al. (70–9323)

Alliant Energy Corporation ("Alliant Energy"), a registered holding company, and its subsidiary nonutility holding company, Alliant Energy Corporation ("AER"), both located at 222 West Washington Avenue, Madison, Wisconsin 53703, and AER's indirect nonutility subsidiary, Heartland Properties, Inc. ("Heartland") (together, "Applicants"), 122 West Washington Avenue, 6th Floor, Madison, Wisconsin 53703 have filed a post-effective amendment to their application under section 9(c)(3) of the Act and rule 54 under the Act.

By Commission order dated April 14, 1998 (HCAR No. 26856) ("1998 Order"), the Applicants, through Heartland, were authorized to retain passive, limited partnership interest ("Investments") in 84 in low-income, multi-family housing projects that were located primarily in Alliant Energy's service territory and qualified for Low Income Housing Tax Credits ("LIHCT") under section 42 of the Internal Revenue Code ("Code").[1] By subsequent order dated August 13, 1999 (HCAR No. 27060) ("1999 Order"), the Applicants were authorized to make additional Investments in LIHTC properties in the Alliant Energy service territory in an aggregate amount of up to $50 million from time to time, through August 13, 2004.[2] The 1999 Order provided that the Applicant's Investments in LIHTC properties would be undertaken for the sole purpose of obtaining the related tax credits and that all Investments would be self-liquidating as the LIHTCs expired.[3] As of December 31, 2000, Heartland had invested approximately $15.5 million of the amount authorized in the 1999 Order.

The Applicants now request that the Commission modify the authority granted in the 1999 Order. In particular, Applicants request that the Commission eliminate the restriction in the 1999 Order limiting new LIHTC investments to properties located in Alliant Energy's service territory,[4] and permit the Applicants to acquire membership units in limited liability companies ("LLCs") formed to invest in LIHTC properties.[5] The Applicants state that each LLC will be managed by an unaffiliated manager and that the rights of an Applicant as a member of the LLC will be equivalent to those of a limited partner in a limited partnership. The Applicants are not requesting any other modifications to the authority granted in, or the limitations imposed by, the 1999 Order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–11335 Filed 5–4–01; 8:45 am]

BILLING CODE 8010–01–M

[1] Specifically, the Commission determined that the Investments were retainable under section 9(c)(3) of the Act, because the interests were acquired to generate tax credits under the Code and they were being converted into passive investments, which would wind down as the credits expired.

[2] An intervening order dated July 10, 1999 (HCAR No. 27198) authorized the Applicants to reacquire the limited partnership interest in a fund holding seventeen LIHTC properties, which the Commission determined to be retainable under the 1998 Order. Nine of the LIHTC properties held in that fund were located outside of the Alliant Energy service territory.

[3] LIHTCs are available in the form of equal annual tax credits that are earned over a ten-year period in the first eleven years of the project, with the first and last years prorated. However, in order for the tax credits to vest, the term of the investment must be for at least fifteen years. Once the credits are vested, an investments is fully recovered; that is, the Applicants' economic return is not dependent upon cash flow from the project or any residual value of the asset.

[4] *See Exelon Corp.*, (HCAR No. 27256; October 19, 2000) (The Commission allowed a registered public utility holding company to retain limited partnership interests in nine different LIHTC funds holding properties in housing projects located throughout the United States. The Commission concluded that these investments were retainable under the standards of section 11(b)(1) of the Act, because they were passive in nature, made solely for the purpose of obtaining tax credits and would self-liquidate when the terms of the tax credit expired).

[5] *See NiSource, Inc.*, (HCAR No. 27263; October 30, 2000) (The Commission allowed a registered public utility holding company to retain passive investments in LIHTC ventures nrganized as LLCs).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of May 7, 2001.

A closed meeting will be held on Thursday, May 10, 2001, at 11 a.m..

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(A), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(i), (9)(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

The subject matters of the closed meeting scheduled for Thursday, May 10, 2001 will be:

institution and settlement of injunctive actions; and

institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: May 3, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–11516 Filed 5–3–01; 12:05 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44236; File No. SR–CBOE–00–22]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Automatic Execution of Certain Orders on the Electronic Limit Order Book

April 30, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

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("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 1, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the CBOE. On February 23, 2001, the Exchange filed Amendment No. 1 to the proposed rule change. On April 10, 2001, the Exchange filed Amendment No. 2 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange hereby proposes to amend its rules to provide for the automatic execution of certain orders resting in the Exchange's electronic limit order book when they become marketable. Below is the text of the proposed rule change. Proposed new language is *italicized*. Proposed deletions are in [brackets].

* * * * *

Chicago Board Options Exchange, Inc., Rules

* * * * *

Chapter VI—Doing Business on the Exchange Floor, Section A: General, RAES Operations

* * * * *

Rule 6.8.

(a)–(c) No change.

(d) Execution on RAES.

(i) When RAES receives an order, the system automatically will attach to the order its execution price, determined by the prevailing market quote at the time of the order's entry to the system, except as otherwise provided in this Rule 6.8 and the Interpretations to this Rule. A buy order will pay the offer, a sell order will sell at the bid. Marketable limit orders will not be executed to sell for less or buy for more than the specified price, but the order can be executed to sell for a higher price or buy for a lower price. However, if the order's limit price is under $3, RAES will execute the order only if the necessary bid or offer is ½ point or less from the limit price. If the order's limit price is $3 or more, RAES will execute the order only if the necessary bid or offer is one dollar or less from the limit price.

(ii) A Market-Maker logged on to participate in RAES (a "Participating Market-Maker") will be designated as contra-broker on the trade.

(iii) A trade executed on RAES at an erroneous quote should be treated as a trade reported at an erroneous price and adjusted to reflect the accurate market after receiving a Floor Official's approval.

(iv) When the best bid or offer on the Exchange's book constitutes the best bid or offer on the Exchange and is for a size less than the RAES order eligibility size for that class, such fact shall be denoted in the Exchange's disseminated quote by a "Book Indicator". It is possible that the best bid or offer on the Exchange's book constitutes the prevailing market bid or offer. In those instances, a RAES order will be executed against the order in the book. In the event, the order in the book is for a smaller number of contracts than the RAES order, the balance of the RAES order will be assigned to participating market-makers at the same price at which the initial portion of the order was executed up to an amount prescribed by the appropriate Floor Procedure Committee on a class-by-class basis (the "Book Price Commitment Quantity"). Any remaining balance thereafter shall be (i) routed to the crowd PAR terminal if Autoquote is not in effect for that series; (ii) assigned to participating market-makers at the Autoquote price if Autoquote constitutes the new prevailing market bid or offer; or (iii) executed against any order in the book that constitutes the new prevailing market bid or offer with the balance of the RAES order being assigned to participating market-makers at that price up to the Book Price Commitment Quantity. Any additional remaining balance of a RAES order shall be handled in accordance with (ii) or (iii) of this paragraph.

(v) Notwithstanding sub-paragraph (d)(iv), [for a six month pilot program ending August 21, 2001,] *for classes of options as determined by the appropriate Floor Procedure Committee*, for any series of options where the bid or offer generated by the Exchange's Autoquote system (or any Exchange approved proprietary quote generation system used in lieu of the Exchange's Autoquote system) *is equal to or* crosses [or locks] the Exchange's best bid or offer as established by an order in the Exchange's [customer] limit order book, *orders in the book for options of that series will be automatically executed against participants on RAES up to the number of contracts equal to the applicable maximum size of RAES-eligible orders for that series of options ("Trigger"). In the event the order in the book is for a larger number of contracts than the applicable RAES contract limit, the balance of the book order will be executed manually by the trading crowd. In the limited circumstance where contracts remain in the book after an automatic execution of a book order up to the applicable RAES contract limit, and the disseminated quote remains crossed or locked with the Autoquote bid or offer, or for any series where Trigger has not yet been implemented by the appropriate Floor Procedure Committee*, orders in RAES for options of that series will not be automatically executed but instead will be rerouted on ORS to the crowd PAR terminal or to another location in the event of system problems or contrary firm routing instructions.

(e)–(g) No change.

. . . Interpretations and Policies:

.01–.08 No change.

* * * * *

Chapter VII—Order Book Officials and Board Brokers, Section A: General

RULE 7.4 (a)–(g) No change.

. . . Interpretations and Policies

.01–.06 No change.

.07 Electronic execution of certain orders on the Exchange's electronic limit order book is provided for under sub-paragraphs (d) (iv) and (v) of Rule 6.8.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the CBOE modified the proposed rule change to provide that the appropriate Floor Procedure Committee would determine its application to a particular option class. In Amendment No. 2, the CBOE modified the proposed rule change to reflect recent changes relating to the recent re-organization and re-numbering of certain provisions of CBOE Rule 6.8 *See* letters from Jaime Galvin, Attorney, CBOE, to Andrew Shipe, Attorney, Division of Market Regulation, SEC, dated February 22 and April 10, 2001.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is developing a system enhancement to its electronic limit order book ("EBook"), called AutoQuote Triggered EBook Execution ("Trigger"), that will allow certain orders resting in the book to be automatically executed in the limited situation where the bid or offer for a series of options generated by the Exchange's Autoquote system (or any Exchange approved proprietary quote generation system used in lieu of the Exchange's AutoQuote system) is equal to or crosses the Exchange's best bid or offer for that series as established by a booked order.

The Trigger enhancement to EBook will provide for more timely and efficient execution of book orders. Currently, when the AutoQuote bid or offer crosses a booked order, the disseminated quote is changed to reflect the order in the book, due to book priority, and will not change unless the booked order is traded. A ticket is printed which alerts the book staff and the crowd that one or more orders in the book are inverted with the quote and that a trade should take place to take the order out of the book. This situation can occur for several series within the same class and can continue undetected for some time, particularly since many classes are on call-up displays which can make it difficult for the Designated Primary Market Maker ("DPM") staff to identify such situations. By providing for the automatic execution of book orders in this situation, Trigger will significantly reduce the burden on DPMs to execute book orders, particularly in fast markets.[4]

Only series in which AutoQuote (or any Exchange approved quote generation system) is employed are eligible for Trigger. If Trigger has been activated for a particular class of options, as Autoquote changes and the quote either touches or crosses an order in the book, the Trigger process will be initiated and the book order(s) will be automatically traded up to the RAES contract limit applicable for that particular class of options. The booked order will be immediately taken out of the book and a last sale will be disseminated. A ticket will be printed on the book printer notifying the book clerk that a trade has been executed and an endorsement is required. After the book clerk verifies with the DPM that the trade is valid based on movements in the underlying security, the trade will be endorsed by the book clerk.[5] In most instances, the trade will be endorsed to the RAES "wheel" up to the applicable RAES contract limit, however, the Trigger system will have the functionality to allow the trade to be endorsed manually (as is done today) when appropriate.

The Trigger will execute, at most, a quantity equal to the applicable RAES contract limit. If a number of contracts greater than the applicable RAES contract limit exist in the book, the crowd will manually execute the remaining contracts in the book. In the limited circumstance where contracts remain in the book after a Trigger execution and the out-of-line disseminated quote has not changed, orders in RAES for options of that series will be "kicked-out" of RAES and will be immediately and automatically routed to a broker's PAR terminal in the trading crowd (absent contrary instructions of the firm), where they will be represented by the broker and, if executable, will ordinarily be executed in seconds. Because these orders remain RAES eligible, they will be entitled to receive firm quote treatment when they are represented in the crowd.

The following examples illustrate the operation of the Trigger process. Assume that there is a 10 contract buy order in the book for $5. Assume that the disseminated quote for the particular series is 5–5⅛ and the RAES limit is 50 contracts. When the underlying moves, the Exchange's AutoQuote system will also update the quotes for the options overlying that stock. Now assume that the underlying stock ticks down, causing AutoQuote to go down to 4⅞–5. In this instance, the Trigger process will initiate and the following sequence of events will occur. The CBOE's disseminated quote will remain 5–5⅛ because of the order in the book. Trigger will be activated and the book order will be automatically executed for 10 contracts. The quote will change to 4⅞–5, if that is still the current quote from AutoQuote.

Normally, the Trigger process will involve the execution of small orders, such as in the above example. If in the above example, the order in the book is 100 contracts instead of 10 contracts, the following sequence of events will occur. Trigger will automatically execute the book order up to 50 contracts, the RAES contract limit. CBOE's disseminated quote will still be 5–5⅛, because of the remaining 50 contracts in the book. A ticket will be printed on the book printer notifying the clerk that 50 contracts were executed at $5 and that 50 contracts remain in the book. The remaining 50 contracts will be handled manually by the crowd. Once the remaining 50 contracts are executed, the quote will change to 4⅞–5, if that is still the current quote from AutoQuote. If prior to execution of the remaining contracts, the AutoQuote subsequently ticks back to 5–5⅛, the Trigger will be re-set and the remaining 50 contracts will be automatically executed if the AutoQuote returns to 4⅞–5. If prior to the execution of the remaining contracts, orders are entered into RAES for the particular series of options, and AutoQuote remains unchanged at 4⅞–5 (*i.e.*, AutoQuote remains out-of-line with CBOE's disseminated quote), the RAES orders will be kicked-out of RAES and automatically routed to the trading crowd.

The Exchange believes that by providing for orders resting in the book to be automatically executed in the limited situation where the AutoQuote bid or offer touches or crosses the bid or offer of a booked order, customer orders in the book will be executed in a more timely manner. Eliminating manual execution of these orders will also significantly reduce the burden on DPMs to execute book orders, particularly in fast moving markets. The number of book trade-throughs should also be reduced. It should be noted that the Exchange expects that Trigger will eliminate the vast majority of RAES kick-outs currently provided for in paragraph (c) of Exchange Rule 6.8. To protect the integrity of the Trigger system, the Exchange will gradually roll out the Trigger enhancement to all options classes throughout the floor.

The Exchange also proposes to add an interpretation .08 to Exchange Rule 7.4, that references the electronic execution of certain orders on the electronic limit order book that is provided for by paragraphs (b) and (c) of Exchange Rule 6.8.

2. Statutory Basis

The proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,[6] in that it is designed to remove impediments to a free and open market

[4] It is expected that the implementation of Trigger will also eliminate the vast majority of orders "kicked-out" of RAES in the situation where firms seeking out pricing anomalies detect the skewed quote and submit a RAES eligible order(s) to trade at the book price.

[5] If the DPM determines that the trade is not valid, such as if the trade was based on an erroneous print in the underlying, the order will be re-booked and the last sale will be canceled.

[6] 15 U.S.C. 78f(b)(5).

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and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. CBOE–00–22 and should be submitted by May 29, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–11336 Filed 5–4–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44226; File No. SR–GSCC–2001–02]

Self-Regulatory Organizations; The Government Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Inclusion of Netting-Eligible Federal Home Loan Mortgage Corporation Securities in Auction Takedown Service

April 26, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 5, 2001, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") and on March 12, 2001, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow GSCC to expand its auction takedown service to include netting-eligible Federal Home Loan Mortgage Corporation ("Freedie Mac") securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

GSCC introduced its auction takedown service in 1994.[3] The service enables GSCC to accept data on a locked-in basis with respect to proprietary purchases of Treasury notes, bills, and bonds made at auction by members of GSCC's netting system; to net the purchases with when-issued trades of such members in these securities; and to deliver the purchased securities through GSCC's settlement mechanism. In its approval of GSCC's rule filing, the Commission noted, "By including auction securities in GSCC's netting system, the level of potential netting is increased and the number of required movements of securities are reduced. Netting of auction securities also may have the effect of increasing a member's liquidity. Previously, a GSCC member with a short position would have its required margin payments calculated based on its short position, even if it had an offsetting long position in auction purchases. Once the positions are netted, the member's margin payments will be calculated based on the position after taking into account the auction purchases, perhaps creating a lower margin payment. the additional liquidity may assist in the prompt and accurate clearance and settlement of securities transactions. In this manner, the proposal removes impediments to the national system for the prompt and accurate clearance and settlement of securities transactions, and fosters cooperation and coordination with persons engaged in clearance and settlement of securities transactions."[4] The auction takedown service also reduces the counterparty risk to the Department of the Treasury and makes the information that GSCC maintains on the net settlement position of its members more complete for risk management purposes.

GSCC has recently been approached by Freddie Mac to extend GSCC's comparison and netting services to include netting-eligible Freddie Mac securities purchased at auction commencing in February 2001. Agency securities are steadily constituting an increasing portion of GSCC's processing activity.[5] Including Freddie Mac securities in GSCC's auction takedown service would provide GSCC and its members that trade these securities with all the benefits described above.

In order to meet the February deadline, it is necessary for GSCC to apply its current auction takedown procedures without any material alteration to the Freddie Mac auctions. Only minor changes to GSCC's rules are necessary. Such changes include the following:

The Department of the Treasury utilizes the Federal Reserve Banks, its fiscal agents, to furnish details of its auction awards to GSCC. GSCC therefore designated both the Treasury Department and the Federal Reserve Banks as locked-in trade sources when it instituted the auction takedown service. GSCC will now add Freddie Mac as a locked-in trade source. The Commission has already given GSCC permission to designate locked-in trade sources on an as-needed basis. It should be noted that Freddie Mac will furnish details of its auction awards directly to GSCC without the involvement of its fiscal agent, the Federal Reserve Bank of New York.

Various definitions will be expanded to include Freddie Mac and its securities in the rules referencing the auction takedown service.

Freddie Mac has indicated that, unlike the Department of the Treasury, it desires that awards made to non-netting members also be handled by GSCC to the extent possible. GSCC thus will make changes to its existing rules, which already allow for secondary market trades executed by non-members to be submitted by members for the net, to specify that it will process auction purchases made by its netting members for their customers as well as for their proprietary accounts. The netting members will remain liable to GSCC as principals with respect to all auction purchase awarded to them whether the purchase is for their own accounts or for customers.

Unlike the Treasury Department, Freddie Mac does not require the clearing banks to effectively guarantee payment in advance for any newly issued securities. thus, there will be no need for the execution of autocharge agreements by the clearing banks.

Freddie Mac retains the right to cancel auctions. GSCC has made it clear in its rules what has always been implicit for an issuer of auction awards that GSCC will have no obligation with respect to any when-issued trades if securities are not ultimately issued by Freddie Mac. GSCC has also added the right to delete or modify trade data with respect to when-issued trades if any event occurs that gives rise to the obligation to substitute securities under guidelines published by The Bond Market Association.

The Department of the Treasury is not a member of GSCC and is therefore not required to make any clearing fund deposits or funds settlement payments to GSCC. Since Freddie Mac is a GSCC netting member and would otherwise be responsible for these deposits and payments, GSCC has exempted Freddie Mac from these requirements but only in connection with its auction deliveries.

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it will enhance GSCC's auction takedown service by making it more responsive to the needs of GSCC's members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have an impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. Members will be notified of the rule change filing and comments will be solicited by an Important Notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act and Rule 19b–4(f)(4) thereunder, because the proposed rule is effecting a change in an existing service that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency and does not significantly affect the respective rights or obligations of the clearing agency or person using the service. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR–GSCC–2001–02 and should be submitted by May 29, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–11338 Filed 5–4–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44234; File No. SR–PCX–00–03]

Self-Regulatory Organizations Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Implementing a One-Year Pilot Program Relating to Its Automatic Executive System

April 30, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 15, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been

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[7] 17 CFR 200.30-3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by GSCC.

[3] Securities Exchange Act Release No. 33984 (May 2, 1994), 59 FR 24491 (order authorizing GSCC to include in its comparison and netting services U.S. Treasury securities purchases at auction).

[4] *Id.*

[5] In 2000, GSCC processed 88 percent more agency security transactions than in 1999, and, in 2000, the par value of agency security transactions increased 131 percent over the par value of these transactions in 1999.

[1] 15 U.S.C. 78S(b)(1).

[2] 17 CFR 240.19b–4.

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prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to allow automatic executions of orders in its Limit Order Book ("Limit Order Book" or "Book") when those orders become marketable. Below is the text of the proposed rule change. Proposed new language is *italicized*.

* * * * *

¶5231 Automatic Execution System

Rule 6.87(a)–(k)—No change.

(1) *Auto-Ex Book Function*

(A) *The Auto-Ex Book function of POETS will permit orders in the Limit Order Book to be executed via the Auto-Ex system when those orders become marketable, subject to the following procedures:*

(i) When one or more orders in the Limit Order Book become marketable, as indicated by a locked or crossed market being displayed on the trading floor, the LMM may direct the OBO to initiate the Auto-Ex Book function, which will cause marketable orders in the Limit Order Book to be automatically executed against the accounts of market makers who are participating on the Auto-Ex system at the time.

(B) The Auto-Ex Book function is subject to a one-year pilot program which is set to expire [insert date one year from date of SEC approval].

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments its received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

At the PCX, limit orders of public customers may be placed in the Exchange's Options Limit Order Book[3] either electronically (via POETS[4]) or manually, by an options floor broker. At this time, only limit orders of "public customers" are eligible to be placed in the Limit Order Book.[5] Orders not eligible to be placed in the Limit Order Book must be manually represented by a floor broker at the trading post.

Currently, orders in the Limit Order Book can be executed in two ways. First, they can be executed *electronically* against incoming market or limit orders that a member firm has entered through POETS. For example, if a customer order to buy 20 option contracts at $5 is being represented in the Book, an incoming market order to sell 20 contracts (or limit order to sell 20 contracts at $5) entered electronically will execute against that order in the Book.[6]

Second, orders in the Book can be executed *manually*. To execute an order in the Book manually, a floor member[7] must vocalize a bid or offer for the option contracts being represented in the Book. This requires that the floor member gain the attention of the Order Book Official ("OBO"[8]) and make an appropriate vocalization, *e.g.*, "sell 20 XYZ calls to the Book at $5."[9] To consummate the trade, the OBO must perform the following actions: (1) call up the appropriate page for that particular option on the class display; (2) highlight the appropriate series (*e.g.*, March 30 calls); (3) enter either the buy key or the sell key; (4) enter either the put key or the call key; (5) type in the number of contracts to be purchased or sold; (6) enter the floor member's acronym (*e.g.*, MO1) and; (7) press the "enter" key to execute at the limit price or, alternatively, to improve the limit price, enter the better price (*e.g.*, 4 7/8) and press the "enter" key.

The current manual process for executing orders in the Book is used when an order in the Book becomes marketable and a trade occurs.[10] For example, assume that the PCX market is 5 bid, 5 1/8 asked, with 20 contracts in the Book to buy at 5. Next, assume that the underlying stock ticks down 1/8 of a point, and the new market in the option becomes 4 7/8 bid, 5 asked. As long as the order to buy at 5 remains in the Book, the market will be locked at 5 bid, 5 asked.[11] To unlock the market, the order in the Book, which is now marketable, must be traded—but to do so will require a member of the trading crowd to obtain the OBO's attention, vocalize an offer for some or all of the contracts available at 5, and wait for the OBO to type in the information on the trade.

The Exchange believes that the current manual process for executing orders in the Book is inefficient. During times of heavy trading, it can be difficult for the OBO to type in specific trade details when that OBO may be involved in trades in other option series or other option issues. The inefficiencies of the current process have also become exacerbated due to rapid swings in prices that have been occurring recently in the marketplace, particularly in options overlying so-called "internet stocks."

Accordingly, the Exchange is proposing to effect a system change that will cause orders in the Book to be executed more efficiently when they become marketable. Specifically, marketable orders in the Book will be executed via the Auto-Ex system when the Lead Market Maker ("LMM") directs the OBO to operate the Auto-Ex Book Function. For example, if there are 30 contracts in the Book to buy at $5 and the trading crowd's offer to sell changes to a price of $5,[12] rather than locking the market (5 bid, 5 asked), the system will, upon the instruction of the LMM, execute the orders in the Book via the Auto-Ex System.[13] The 30 contracts to buy in the Book at $5 will then be executed against the accounts of market makers who are logged on to Auto-Ex at that time.

The function will also permit orders in the Book at various prices to be executed almost simultaneously. For example, assume that there are multiple orders in the Book, including orders to buy 50 contracts at $5, 50 contracts to buy at 4 3/4 and 50 contracts to buy at 4 1/2. If the underlying stock price moves significantly, resulting in the PCX offering price of the overlying option price moving from 5 1/4 down to 4 1/2, the LMM may direct the OBO to initiate the Auto-Ex Book feature so that all of the buy orders in the Book referred to above will be automatically executed at their limit prices. This result simply speeds up the process for what currently may occur manually, with individual members of the trading crowd selling options against the buy orders in the book at their limit prices. Alternatively, however, the LMM or members of the trading crowd may determine to provide price improvement to the customer orders in the book, and may direct that all of those buy orders in the example (including those with limit prices of $5, 4 3/4 and 4 1/2) be filled at 4 1/2. In this instance, of course, the Auto-Ex Book feature would not be used.

The Exchange is proposing to implement the use of the Auto-Ex Book function on a one-year pilot program basis. This will allow the Exchange to study the operation of the system and to report back to the Commission at least sixty days prior to seeking permanent approval of the system change.

The Exchange notes that the proposed Auto-Ex Book feature will operate in a manner that is similar to the Exchange's Automated Opening Rotation ("AOR") system, which automates the execution of orders in the Book at the opening of trading.[14] Specifically, the AOR system permits the OBO to establish a single price opening for executing market and marketable limit orders in the POETS system. It executes any imbalance of orders that existed at the opening at a single price, against the accounts of market makers who are participating on the Auto-Ex System at the time. The Exchange believes that approval of the Auto-Ex Book proposal, like the Commission's approval of the AOR system, will facilitate execution of orders in POETS, eliminate problems and inefficiencies associated with manual trading, eliminate backlogs of unexecuted orders, promote fair participation in trading against orders in the Book by all participants, and in general, improve market efficiency on the PCX.

In conclusion, the Exchange believes that use of the proposed feature will help to assure that customers' orders in the Book are filled more promptly. It will also help to prevent delays in trading and prompt resolution of problems in the crowd, because OBO's will not have to take as much time to respond to requests to execute marketable orders in the Book.

2. Basis

The Exchange believes that this proposal is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Section 6(b)(5)[16] in particular, in that it is designed to facilitate transactions in securities, promote just and equitable principles of trade, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–00–03 and should be submitted by [May 29, 2001.]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–11337 Filed 5–4–01; 8:45 am]

BILLING CODE 8010–01–M

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[3] The rules applicable to the Limit Order Book are set forth in PCX Rules 6.51–6.58.

[4] Pacific Options Exchange Trading System. *See* Securities Exchange Act Release No. 28633 (January 18, 2990), 55 FR 2466 (January 24, 1990).

[5] *See* PCX Rule 6.87.

[6] If there were no orders in the Book to buy at $5, and a bid of $5 was being disseminated by the PCX, then an incoming market order to sell (or a limit order to sell at $5) would be automatically executed by the Auto-Ex feature of POETS, with PCX market makers as the contra side to the trade. *See* note 14, *infra*.

[7] Floor members include market makers and floor brokers. Only members and Exchange employees who have been approved to perform a floor function may consummate transactions on the trading floor. *See* PCX Rule 6.2, Commentary .01.

[8] *See generally* PCX Rules 6.51–6.58 (rules relating to Order Book Officials ("OBOs")). The Exchange notes that currently, all OBOs are employed by the PCX. However, the Commission recently approved an Exchange proposal to permit LMMs to use their own employees to operate the Book, which would include performing the function of the OBO. *See* Securities Exchange Act Release No. 41595 (July 2, 1999), 64 FR 38064 (July 14, 1999) (order approving SR–PCX–98–02). Therefore, the term "OBO" as used in this proposal includes OBOs currently employed by the Exchange and any employees of LMMs who are performing the function of the OBO.

[9] Floor members must trade against orders in the Book ahead of orders then being manually represented in the trading crowd at the same price, because orders in the Book have priority over orders in the trading crowd. *See* PCX Rule 6.75(a)–(b).

[10] A limit order to buy is marketable when the order's limit price is equal to or greater than the current offering price and a limit order to sell is marketable when the order's limit price is equal to or less than the current bid price. At the PCX, when the market on the screen on the trading floor is locked or crossed, the prices in the affected series are displayed in the purple, which alerts the members on the floor that there are buyers and sellers who are ready and willing to trade.

[11] A similar result would occur if a market maker in the trading crowd offered to sell options at 5, or a floor broker in the crowd representing an order made an offer to sell at 5, while concurrently there was an existing bid in the Book at the same price, *i.e.*, in theory, there would be a locked market. In practice, however, the market maker or floor broker willing to sell at 5 would vocalize an acceptance of the bid in the Book to trade at 5. If the size of the market maker's or floor broker's offer was greater than the size of the order in the Book, the offer at 5 would continue in effect until it was satisfied or withdrawn.

[12] As noted above, this offer may be generated automatically by Auto-Quote, as a result of a change in the market in the underlying stock, or it may be generated manually by a member of the crowd vocalizing an offer, which is entered into POETS by the Market Quote Terminal Operator and subsequently disseminated.

[13] The Auto-Ex feature of POETS permit eligible market or marketable limit orders sent from member firms to be executed automatically at the displayed bid or offering price. Participating market makers are designated as the contra side to each Auto-Ex order. Participating market makers are assigned by Auto-Ex on a rotating basis, with the first market maker selected at random from the list of signed-on market makers. Auto-Ex preserves book priority in all options. *See* PCX Rule 6.87; *see also* Securities Exchange Act Release No. 41823 (September 1, 1999), 64 FR 49265 (September 10, 1999) (order approving PXC proposal to increase the size of orders that may be automatically executed via Auto-Ex). The Auto-Ex system is also used to execute any imbalance of orders that there may be at the opening via the Automated Opening Rotation System. *See* Note 14, *infra*.

[14] *See* Securities Exchange Act Release No. 43187 (August 21, 2000), 65 FR 54264 (August 29, 2000) (order approving one year extension of pilot program).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 17 CFR 200.30–3(a)(12).

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DEPARTMENT OF STATE

Bureau of Oceans and International Environmental and Scientific Affairs

[Public Notice 3656]

30-Day Notice of Information Collection; Form DS–2031, Shrimp Exporter's/Importer's Declaration; OMB #1405–0095

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Collection approval.
Originating Office: OES/OMC.
Title of Information Collection: Shrimp Importer's/Exporter's Declaration.
Frequency: 10,000.
Form Number: DS–2031.
Respondents: Shrimp exporters and importers.
Estimated Number of Respondents: 3,000.
Average Hours Per Response: 10 minutes.
Total Estimated Burden: 1,667 hours.

Comments

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from David Hogan, Office of Marine Conservation, rm. 5806, U.S. Department of State, Washington, DC 20520, ph 202–647–2335. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, (202) 395–3897.

Dated: April 10, 2001.

David A. Balton,

Acting Deputy Assistant Secretary for Fisheries and Oceans, Department of State.

[FR Doc. 01–11416 Filed 5–4–01; 8:45 am]

BILLING CODE 4710–09–U

DEPARTMENT OF STATE

[Public Notice 3655]

Culturally Significant Objects Imported for Exhibition Determinations: "Rediscovering Caesarea Philippi, the Ancient City of Pan or The Banias"

AGENCY: Department of State.

ACTION: Notice; correction.

SUMMARY: On December 26, 2000, Notice was published on page 81555 of the **Federal Register** (Volume 65, Number 248) by the Department of State pursuant to Pub. L. 89–259 relating to the exhibit "Rediscovering Caesarea Philippi, the Ancient City of Pan or The Banias." The referenced Notice is corrected as follows: In the **SUMMARY** after "May 5, 2001," add the following additional venue: "and at the Averett College, Danville, Virginia, from on or about August 15, 2001, to on or about December 31, 2001, is in the national interest."

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Carol Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6981). The address is U.S. Department of State, SA–44; 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: April 30, 2001.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 01–11415 Filed 5–4–01; 8:45 am]

BILLING CODE 4710–08–U

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Annual Report on Discrimination in Foreign Government Procurement Pursuant to Executive Order 13116 ("Title VII")

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Notice is hereby given that the United States Trade Representative ("USTR") has submitted the annual report on discrimination in foreign government procurement, published herein, to the Committees on Finance and on Governmental Affairs of the United States Senate and the Committees on Ways and Means and on Government Reform and Oversight of the United States House of Representatives, pursuant to Executive Order No. 13116 of March 31, 1999.

DATES: The report was submitted on April 30, 2001.

FOR FURTHER INFORMATION CONTACT: Mélida Hodgson, Associate General Counsel, Office of the US Trade Representative, 600 17th Street, N.W., Washington, DC 20508, 202–395–3582.

SUPPLEMENTARY INFORMATION: The text of the USTR report is as follows:

Annual Report on Discrimination in Foreign Government Procurement

April 30, 2001.

I. Introduction

A longstanding objective of U.S. trade policy has been to open opportunities for U.S. suppliers to compete on a level playing field for foreign government contracts. The first major breakthrough in this area was the 1979 conclusion of the Government Procurement Agreement (GPA), followed by the ten-fold expansion of that Agreement during the Uruguay Round negotiations that led to the creation of the World Trade Organization (WTO). The WTO estimates that, under the GPA, the United States and the 26 other GPA Parties provide their suppliers with non-discriminatory access to government tendering procedures worth more that $300 billion annually. In 1995, Mexico agreed to provide comparable access to its government procurement markets under the North American Free Trade Agreement (NAFTA).

The Administration continues to push for the reciprocal removal of discriminatory government procurement practices in a wide range of multilateral, regional and bilateral fora. As a result of our efforts, the 34 countries of North, South and Central America that are participating in negotiations to create a Free Trade Area of the Americas (FTAA) have agreed that the FTAA will provide for openness and transparency of government procurement processes and non-discrimination in tendering procedures within a scope to be negotiated. The Administration is also urging the early conclusion of an Agreement on Transparency in Government Procurement that would apply to all 140 Members of the WTO. Within the Asia-Pacific Economic Cooperation (APEC) forum, the United States and other economies in the region are pushing for concrete steps that will build on the progress APEC has made in developing non-binding principles on government procurement.

The "Title VII" process, initially established under Title VII of the Omnibus Trade and Competitiveness Act of 1988 ("Title VII"), as amended, provides a vehicle for identifying priorities for international negotiations that may address discriminatory foreign government procurement practices and for monitoring and enforcing existing international agreements. After the Title VII legislation expired in 1996, the process was re-instituted by Executive Order 13116 on March 31, 1999.

II. Summary

The Executive Order mandates that the United States Trade Representative ("USTR") submit a report to the Congressional committees of jurisdiction within 30 days of the submission of the National Trade Estimate Report for the years 1999, 2000, and 2001, and publish these reports in the **Federal Register**. This is the third of the three annual reports required by the Executive Order.

USTR's 1992 identification of the European Union ("EU") for discriminatory procurement practices applied by government-owned telecommunications entities in certain member states, as well as the resulting sanctions, remains outstanding. There are no other outstanding Title VII identifications.

As in previous years, however, this report describes a number of foreign procurement practices that are of significant concern to U.S. exporters and that the United States is monitoring closely. Those practices, discussed in detail below, are:

- Japan: Various discriminatory practices relating to procurement for public works.
- Taiwan: Certain discriminatory practices and procedural barriers.
- Canada: Provincial governments' discriminatory procurement practices.
- Germany: Exclusion of certain suppliers affected by discriminatory "sect filters."

The United States is working actively in a range of bilateral and multilateral fora to resolve these issues. As a result of recent bilateral consultations with Germany, this report announces that our concerns relating to the use of "sect filters" appear to have been resolved.

III. Provisions of the Executive Order

Under Executive Order 13116, USTR is required to submit to the Congress each year a report identifying foreign countries that:

(1) have failed to comply with their obligations under the WTO Agreement on Government Procurement ("GPA"), Chapter 10 of the North American Free Trade Agreement, or other agreements relating to government procurement to which that country and the United States are parties; or

(2) maintain, in government procurement, a significant pattern or practice of discrimination against U.S. products or services which results in identifiable harm to U.S. businesses, when those countries' products or services are acquired in significant amounts by the U.S. Government.

If any country is identified under one or both of these criteria, the Executive Order requires USTR to initiate an investigation under section 302 of the Trade Act of 1974. If the matter is not resolved within 90 days of the submission of the report and USTR determines that the rights of the United States under an international procurement agreement are being violated or that a significant pattern or practice of discrimination exists, the Executive Order permits USTR, inter alia, to initiate formal dispute settlement proceedings under relevant international agreements or withdraw any waivers of U.S. purchasing requirements that have been granted to the discriminating foreign country.

International dispute settlement procedures are available to address discriminatory government procurement practices covered by the WTO Government Procurement Agreement (GPA) and the North American Free Trade Agreement (NAFTA). Under authority provided in the Trade Agreements Act of 1979, as amended, the United States waives domestic purchasing requirements for countries that are Parties to the GPA and the NAFTA, for certain Caribbean Basin Initiative countries; and for countries included on the United Nations' list of "least developed countries."

IV. Identification of Specific Discriminatory Foreign Procurement Practices

EU—Telecommunications: In 1992, USTR identified EU telecommunications entities that have "special and exclusive rights" in certain member state markets as engaging in discriminatory procurement practices. Those entities were required to apply discriminatory practices under the 1990 EU "Utilities Directive." After bilateral negotiations did not resolve this issue, the United States imposed sanctions in May 1993. Those sanctions remain in place today.

In 1999, the European Commission informed the United States that it considered telecommunications operators in most EU member states to be no longer bound by the procurement requirements in the Utilities Directive, and requested that the United States remove the sanctions imposed in 1993. The Administration has asked the Commission for clarification of the legal requirements currently in effect in the EU and what further steps the Commission is taking to revise Utilities Directive requirements. Once agencies have evaluated the information received from the Commission, the Administration will review the overall market access conditions in the EU telecommunications market, with a view toward deciding whether the 1993 sanctions are still warranted.

In developing this report, USTR has given careful consideration to a wide range of views and information, including the recommendations of other executive agencies and U.S. embassies and consulates overseas, private sector responses to USTR's request for comments for this year's Title VII report (published in the **Federal Register** on February 28, 2001), and information on foreign government procurement practices reported in the 2001 National Trade Estimates Report.

On the basis of this information, and after consultation with other agencies, USTR has determined that no practices meet the criteria for Title VII identification this year. As in previous years, however, there remain a number of foreign government procurement practices of concern which the Administration is pursuing in bilateral and multilateral fora, or that require continued monitoring and study.

V. Other Foreign Government Procurement Practices of Concern to the United States

Japan—Public Works

U.S. companies are well-known around the world for their excellence in design/consulting and construction. Yet the U.S. share of Japan's $300 billion public works market was only $50 million in 1999 (the most recent year for which data are available).

The United States has repeatedly expressed concern to Japan that Japanese procuring entities continue to engage in discriminatory procurement practices that impede American design/consulting and construction companies from participating in Japan's public works sector. These practices include: failure to address rampant bid-rigging; unreasonable restrictions on the formation of joint ventures, including the three-company joint venture rule; the use of discriminatory qualification and evaluation criteria; and the structuring of individual procurements so they fall below thresholds established in international agreements.

The United States is seriously disappointed by the lack of progress in addressing these practices, and also is concerned that Japan has repeatedly refused the U.S.'s request to continue regular bilateral consultations since the consultative mechanism set forth in the 1994 U.S.-Japan Public Works Agreement expired last year. The United States will continue to monitor Japan's public works sector and urges Japan to take immediate, concrete steps to address these concerns, strengthen the integrity of its system for procurement of public works, and eliminate discriminatory practices which prevent U.S. suppliers and workers from participating in this market.

Taiwan—Discriminatory Practices and Procedural Barriers: Taiwan is in the process of acceding to the World Trade Organization (WTO), and has committed to join the WTO Government Procurement Agreement (GPA) as soon as it enters the WTO. Taiwan's accession to the GPA will allow U.S. exporters to compete on a level playing field for major projects worth billions of dollars, including in the power generation, transport, environmental, and other infrastructure sectors.

The 2000 Title VII report noted a number of U.S. concerns with existing discriminatory practices and other barriers to Taiwan's government procurement market. As a result of ongoing bilateral consultations intended to clarify the terms of Taiwan's GPA accession and address other bilateral concerns, significant progress has been made on these issues. However, the United States continues to have serious concerns relating to the following:

- restrictions on the ability of suppliers to joint tender, based on market considerations;
- the need for appropriate and predictable contract provisions relating to contingent liabilities, consistent with international norms.

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The Administration continues to urge the Taiwan authorities to take concrete steps to bring these practices into conformity with GPA requirements and ensure that they do not constitute an unnecessary barrier to fair and open competition in Taiwan's government procurement market.

Canada—Provincial Government Restrictions: A number of Canadian provinces apply price preferences and other significant restrictions that discriminate against U.S. suppliers interested in bidding on provincial government procurement contracts. To date, the Administration has identified particular concerns with respect to procurement restrictions applied by the provinces of Ontario, Quebec and British Colombia. The Administration is concerned that the application of such restrictions may result in a significant imbalance of bilateral market access opportunities in government procurement. Canada is the only GPA Party that has yet to open its sub-Federal procurement markets. Working closely with interested U.S. states, the Administration continues to urge Canada to bring provincial governments and other government-owned entities within the scope of NAFTA and GPA procurement rules.

Germany—"Sect Filters": In September 1998, the German Ministry of Economics promulgated a "protection clause" (commonly referred to as a "sect filter") meant to be incorporated into government contracts for certain training and consultation services. Among other elements, the clause would have prohibited firms from bidding on German government contracts if they have employees that attend or participate in Scientology seminars. Following the promulgation of this "protection clause," the United States expressed concern in bilateral consultations and in the 2000 Title VII report about the clause's potentially discriminatory effects on government procurement. In subsequent consultations with German government and industry representatives, the Administration urged Germany to rescind the sect filter requirements.

In response, the German government has revised its "protection clause" in a manner that no longer prohibits firms from competing for government contracts on the basis of the affiliation of its management or employees with the Church of Scientology. This decision represents significant progress in addressing U.S. concerns relating to the use of "sect filters." The Administration will continue to monitor the implementation of the revised policy to ensure that U.S. firms and workers are not discriminated against in procurement by German Federal and sub-Federal governments.

A. Jane Bradley,

Assistant U.S. Trade Representative for Monitoring and Enforcement.

[FR Doc. 01–11354 Filed 5–4–01; 8:45 am]

BILLING CODE 3190–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Report on Trade Expansion Priorities Pursuant to Executive Order 13116 ("Super 301")

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The United States Trade Representative (USTR) is providing notice that it submitted the report on U.S. trade expansion priorities published herein to the Committee on Finance of the United States Senate and Committee on Ways and Means of the United States House of Representatives pursuant to the provisions (commonly referred to as "Super 301") set forth in Executive Order No. 13116 of March 31, 1999.

DATES: The report was submitted on April 30, 2001.

FOR FURTHER INFORMATION CONTACT: Demetrios Marantis, Associate General Counsel, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20508, 202–395–9626.

SUPPLEMENTARY INFORMATION: The text of the USTR report is as follows.

Identification of Trade Expansion Priorities Pursuant to Executive Order 13116: April 30, 2001

The Bush Administration has an ambitious trade agenda, reflecting the importance President Bush assigns to trade. This is an opportune moment to reassert America's leadership in setting trade policy and to build a post-Cold War world on the cornerstones of freedom, security, democratic values, open trade, and free markets.

The Office of the United States Trade Representative (USTR) submits this "Super 301" report pursuant to Executive Order 13116 of March 31, 1999. This report sets forth U.S. trade expansion priorities for 2001. The Administration intends to expand trade on multiple fronts, through negotiation of new agreements and by ensuring that existing agreements are fully implemented by U.S. trading partners. At the same time, the Administration intends to ensure that Americans are able to reap the benefits of market-opening agreements by resolving problems that confront U.S. exporters. The USTR prepared this report in close consultation with U.S. Government agencies on the basis of the 2001 Trade Policy Agenda, the 2001 NTE Report, public comments submitted to USTR, and information received from U.S. Embassies abroad.

I. Trade Expansion Priorities for 2001

President Bush spoke at the recent Summit of the Americas in Quebec City about the benefits of trade: "Free and open trade creates new jobs and new income. It lifts the lives of all our people, applying the power of markets to the needs of the poor. It spurs the process of economic and legal reform. And open trade reinforces the habit of liberty that sustains democracy over the long haul." Trade policy is the bridge between the President's international and domestic agendas. As the former governor of a major border state, President Bush has seen that the free exchange of goods and services sparks economic growth, opportunity, dynamism, fresh ideas, and democratic values.

To fulfill the President's vision, the Office of the U.S. Trade Representative sets forth the following two trade expansion priorities for 2001: (1) Reestablish a bipartisan consensus on free trade and (2) move on multiple fronts to expand trade.

A. Reestablishing a Bipartisan Consensus on Free Trade

The United States faces key decisions about the future course of our trade policy. Just as the World War II generation forged a bipartisan consensus that sustained successful trade expansion throughout the Cold War, we must build a new consensus to promote open markets for trade in the decades to come.

There have been some encouraging developments in the area of open trade in the past year. Congress enhanced the Caribbean Basin Initiative, passed the African Growth and Opportunity Act, and enacted legislation to grant permanent normal trading relations to China. More recently, the United States and the European Union (EU) have reached an agreement to resolve the long-standing dispute over bananas, and the United States and Chile have pledged to complete negotiations on a free trade agreement by the end of the year. On April 22, President Bush and the leaders of 33 other nations in the Western Hemisphere signed a declaration at the Summit of the Americas in Quebec City pledging their support for completing the negotiations on a Free Trade Area of the Americas (FTAA) no later than January 2005. The FTAA will be the world's largest free trade area, representing 800 million people.

There has also been encouraging progress recently on resolving a number of trade disputes through the World Trade Organization (WTO) and the North American Free Trade Agreement (NAFTA). Greece has moved to counter the piracy of U.S. films and television programs, Mexico has agreed to allow dry beans from the United States to be imported in a more timely and predictable manner, and India has lifted its restrictions on U.S. agricultural, textile, and industrial products.

But there also have been setbacks. When the House of Representatives voted in 1998 to deny the President trade negotiation authority, it marked the first time the Congress had ever rejected granting this authority. And the failure to launch the global trade talks in Seattle in December 1999 handed a high-profile victory to the opponents of free trade, global competition, and economic opportunity.

The history books recount the economic, political, and indeed national dangers of a breakdown in America's trade policy. For the first 150 years of the United States, there were contentious Congressional debates over tariff bills, some even leading to movements for Nullification and Secession. Then the disastrous experience of setting protectionist tariffs for over 20,000 individual items in the Smoot-Hawley bill of 1930 led the Congress four years later to try a different approach: a partnership with the Executive to negotiate lower barriers to trade around the world. Launched by strong and innovative leaders, Franklin D. Roosevelt and Cordell Hull, this effort between the Congress and the Executive became a bipartisan partnership, and eventually produced prosperity, opportunity, and liberty beyond the greatest expectations of its supporters.

Federal Reserve Chairman Alan Greenspan has put this success in historical perspective by pointing out that the growth in trade as a share of the world economy over the past 50 years has finally managed to reverse the losses from the calamities of the early 20th century, and now approximates the degree of globalization around 1900. So today, just like Americans at the turn of the last century, we face critical decisions about the future course for our country, trade, and the world.

The Benefits of Trade

There are three principal reasons why further trade liberalization is important to the American people. First, expanded trade—imports as well as exports—improves the well being of Americans. It leads to better jobs, with bigger paychecks, in more competitive businesses—as well as to more choices of goods and inputs, with lower prices, for hard-working families and hard-driving entrepreneurs.

Exports accounted for over one-quarter of U.S. economic growth over the last decade and support an estimated 12 million jobs. In the American agricultural sector, one in three acres are planted for export purposes, and last year American farmers sold more than $50 billion worth of agricultural products in foreign markets. Imports helped keep prices down as jobs, compensation, and productivity increased.

Votes for agreements like NAFTA and the Uruguay Round may not have been easy to cast. Yet those agreements contributed to the longest period of economic growth in U.S. history, with levels of full employment, and without inflationary pressures, beyond the forecasts of any economist. Conservative estimates of the higher income and lower prices stemming from the Uruguay Round and NAFTA indicate an annual benefit of between $1,260 and $2,040 for an average American family of four.

The expanding global trade and the expanding economic growth in the United States are not coincidental; they are achieved in concert. One strengthens and reinforces the other. Moreover, restrictions on trade have victims: farmers, school teachers, factory and office workers, small business people, and many others who have to pay more for clothing or food or homes or equipment because of visible and invisible taxes on trade.

Second, as President Bush has stated, free trade is about freedom: "Economic freedom creates habits of liberty. And habits of liberty create expectations of democracy." During the Summit of the Americas in Quebec City, President Bush met with Mexico's President Fox, the first president elected from the opposition since the Mexican revolution. It is not an accident that after Mexico embraced the opening of its economic system, as embodied in NAFTA, it was drawn to a democratic opening as well.

Free trade reduces government barriers and encourages vibrant private and civic societies governed by the rule of law. It opens societies to people, to ideas, to debate, to competition, and also to impartial transparent rules. That freedom creates openings for the free press and for NGOs, not just for businesses and entrepreneurs. And it creates openings to the outside world through the Internet, books, and a whole series of new networks.

Third, expanded trade affects our nation's security. The crises of the first 45 years of the last century—the economic retrogression referred to by Chairman Greenspan—were inextricably linked with hostile protectionism and national socialism. Communism could not compete with democratic capitalism, because economic and political freedom creates energy, competition, opportunity, and independent thinking.

Take an example from today. Colombia is waging a battle to defend the rule of law against those who finance their terror through complicity in drug trafficking. President Pastrana has said that one way to counter this threat would be for Congress to renew the Andean Trade Preferences Act (ATPA), which expires in December. Renewal, he says, would stimulate job creation, strengthen the democratically elected government, and diminish the appeal of the drug trade. With a renewed and robust ATPA, the United States and Colombia can broaden our efforts on behalf of freedom—from aid to trade.

Building Public Support for Trade

These benefits of open trade can only be achieved if we build public support for trade at home. To do so, the Administration must enforce, vigorously and with dispatch, our trade laws against unfair practices. In the world of global economics, justice delayed can become justice lost.

For the United States to maintain an effective trade policy and an open international trading system, Americans must have confidence that trade is fair and works for their benefit. That means ensuring that other countries live up to their obligations under the trade agreements they sign.

Change, particularly rapid adjustments, can be very difficult—even frightening—for many hard-working people. We need to help people adapt and benefit from change—whether prompted by trade, technology, e-commerce, new business models, or other causes. Therefore, a successful trade policy over the long term should be accompanied by better schools, worker adjustment assistance, tax policies that enable people to keep and save more of their paychecks, and reforms of Social Security and Medicare so older Americans have a safer retirement.

In order to build continued support for free trade, the United States, and all nations, will need to be more adroit in aligning trade with our values. That means responding to concerns that trade undermines environmental protection and labor standards—while not permitting these issues to be used for protectionist ends. By tackling these issues today, we can help shape the thinking about how to address them.

Getting Back in the Trading Game

To strengthen and speed America's trade and economic policy, we will need to reestablish the bipartisan Congressional-Executive negotiating partnership that has delivered so much. In President Bush's address at the Summit of the Americas, he made clear that achieving U.S. Trade Promotion Authority was one of his top priorities. This authority, as he has pointed out, has been granted to each of the previous five presidents. The Bush Administration is committed to attaining U.S. Trade Promotion Authority before the end of the year, and will be working with the Congress to build the broadest possible support.

In the absence of this authority, other countries have been moving forward with trade agreements while America has stalled. We are in danger of being left behind. There was a time when U.S. involvement in international trade negotiations was a prerequisite for them to succeed. That is no longer true. Other countries are writing the rules of the international trading system as they negotiate without us.

The EU has free trade or customs agreements with 27 countries, and 20 of these agreements have been signed since 1990. The EU is in the process of negotiating 15 more. Last year, the European Union and Mexico—the second-largest market for American exports—entered into a free trade agreement. The EU is also negotiating free-trade agreements with the Mercosur nations and the countries of the Gulf Cooperation Council. Japan is negotiating a free trade agreement with Singapore, and is exploring free trade agreements with Mexico, Korea, and Chile. There are approximately 130 free trade agreements in force globally, but the United States has only two agreements in force: one is with Canada and Mexico (NAFTA), and the other with Israel.

In the long run, our deadlock hurts American businesses, workers, and farmers. They will find themselves shut out of the many preferential trade and investment agreements negotiated by our trading partners. To cite one example, while U.S. exports to Chile face an eight percent tariff, the Canada-Chile trade agreement will free Canadian imports of this duty. As a result, U.S. wheat farmers are losing markets in Chile to Canadian exports. To correct the disparity in tariffs, USTR is pursuing negotiations with Chile on a free trade agreement.

We cannot afford to stand still—or be mired in partisan division—while other nations seize the mantle of leadership on trade from the United States. This would be a huge missed opportunity, indeed an historic mistake.

B. Moving on Multiple Fronts To Expand Trade

In the 21st century, the economic and political future of the United States will be increasingly linked to those of our hemispheric neighbors. U.S. trade and investment with the hemisphere is projected to exceed that with Europe by the end of this decade. U.S. shipments to Latin America

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have increased by 137% in the past decade, compared to a 96% increase for exports to the rest of the world.

As Latin America grows, the United States benefits. In recent years, every one percent expansion in Latin America's GDP was associated with an additional $1.6 billion worth of U.S. exports to the region. In the months and years ahead, the Bush Administration will be negotiating the FTAA. A free trade area linking the Americas will provide incentives and rewards for governments pursuing difficult economic reforms. A hemispheric free trade agreement would also send a valuable signal—a signal of confidence—to potential investors that Latin American and Caribbean nations have agreed to abide by common rules governing trade, to create a truly hemispheric marketplace, and that this mutual effort offers not just stability, but opportunity. Even as we negotiate the FTAA, we are open to pursuing other complementary opportunities to foster free trade with our neighbors, for example, through bilateral free trade negotiations, such as the current negotiations with Chile.

Of course, America's trade and economic interests extend far beyond this hemisphere. At the core of the WTO's agenda this year will be negotiations mandated by the Uruguay Round agreements to pursue further agricultural reform and liberalization in services. We also want to launch a new round of global trade negotiations in the WTO, emphasizing a key role for agriculture. We will also seek to negotiate regional and bilateral agreements to open markets around the world. There are opportunities in the Asia Pacific and with APEC. We will start with a free trade agreement with Singapore and will work with the Congress to pass the basic trade agreement with Vietnam negotiated by the Clinton Administration. We will urge Japan to deregulate, restructure and open its economy, which is long overdue.

Further reforms in the Middle East and Africa need our encouragement. We are committed to working with the Congress to enact legislation for a free trade agreement with Jordan, and to implement the provisions of laws to help Africa and the Caribbean. Providing technical assistance to African and Caribbean countries will be a key part of the implementation process.

As India reforms its economy and taps its great potential, we should explore ways to achieve mutual benefits. To help developing nations appreciate that globalization and open markets can assist their own efforts to reform and grow, we will need to extend the legislation authorizing the Generalized System of Preferences program.

Of vital importance, we will seek to work closely with the EU and its candidate members in Central and Eastern Europe, both to fulfill the promise of a trans-Atlantic marketplace already being created by business investment and trade, as well as to reinvigorate, improve, and strengthen the WTO processes. The total amount of two-way investment in the EU and the United States amounts to over $1.1 trillion, with each partner employing about 3 million people in the other. We would be remiss to neglect our common interests while working to resolve more immediate disputes.

Now that there is a fragile peace in the Balkans, we must secure it by pointing people toward economic hope and regional integration. Therefore, we would like to work with the Congress to follow through on the prior administration's proposal to offer trade preferences to countries in Southeast Europe.

As we move on multiple fronts to expand trade, we will continue to emphasize WTO accessions. The accession process is an opportunity for reforming economies to adopt trade liberalizing policies and practices within the framework of WTO obligations. It also provides a context for the United States to expand market access opportunities for its exports of goods and services and to address outstanding trade issues. WTO accessions are based on full implementation of WTO obligations and the establishment of commercially meaningful market access for other Members' exports. This strengthens the international trading system.

These principles have formed the basis for the completion of WTO accession negotiations with a number of countries, including Albania, Georgia, Estonia, Latvia, the Kyrgyz Republic, Jordan, and Oman. In other ongoing negotiations with countries such as Russia, Ukraine, and Saudi Arabia, U.S. participation in the accession process will enhance the rule of law in trade and enhanced market access, while demonstrating support for the reform agendas of these countries.

The Administration will also continue efforts to complete China's accession to the WTO. Completing this process will provide substantially greater market access for industrial goods, services, and agricultural products. It will require China to comply with specific rules on import surges, anti-dumping and subsidies practices, while eliminating many of the conditions China requires for the approval of imports and investment. We will also work to ensure that Taiwan's accession to the WTO is approved at the same session of the WTO General Council.

The Opportunity Ahead

The United States has an unparalleled opportunity to shape the international trading order. But we have to get back into this game and take the lead. We are certainly in a position to do so. The United States is prepared to pursue a number of bilateral and regional free trade agreements in the years ahead, as well as the global trade negotiations in the WTO. By moving on multiple fronts, we hope we can create a competition in trade liberalization. The message we are sending to other countries is that the United States is willing to negotiate. We are willing to open if they open. But if some countries are slow, we will move without them.

II. Monitoring Trade Agreements and Resolving Disputes

The Bush Administration will continue to work with Congress and American businesses, farmers, workers and consumers to ensure effective monitoring of U.S. trade agreements and quick responses to non-compliance—including through the use of WTO and other dispute settlement procedures, WTO oversight committees, and U.S. trade laws. At the same time, the Administration will seek to prevent or reduce problems facing U.S. exporters by working with U.S. trading partners, including through technical assistance where appropriate, so that consultation and training will help head off problems before they arise. Likewise, together with the Departments of Agriculture, Commerce and State, and other agencies, USTR will continue to work bilaterally with our trading partners to resolve disputes quickly and expeditiously before these issues become serious problems.

To ensure the enforcement of WTO agreements, the United States has been one of the world's most frequent users of WTO dispute settlement procedures. In enforcing the WTO agreements, the United States has focused in particular on foreign practices that could pose serious problems to the international trading system if they proliferated in many markets. Therefore, USTR aims not only at challenging existing barriers but also at preventing the future adoption of similar barriers around the world.

A. Ensuring Compliance

Efforts to promote compliance with trade agreements have used three principal tools: (1) the WTO and NAFTA dispute settlement mechanisms; (2) the various WTO oversight bodies; and (3) enforcement of U.S. trade law. Vigorous enforcement enhances the ability of the United States to reap the benefits of trade agreements that USTR negotiates, ensures that we can continue to open markets, and builds confidence in the trading system.

1. WTO and NAFTA Dispute Settlement Results

WTO and NAFTA dispute settlement procedures have enabled the United States to resolve problems arising from the failure of trading partners to implement their international obligations, and to resolve disputes over interpretation of various provisions in the WTO or NAFTA agreements. Our hope in filing cases is, of course, to secure U.S. benefits rather than to engage in prolonged litigation. Therefore, whenever possible we have sought to reach favorable settlements that address U.S. concerns without having to resort to panel proceedings. We have been able to achieve this preferred result in 14 of the 32 cases concluded so far, and have prevailed through litigation in 15 cases. During the past year, we have achieved the following results:

• Argentina-Patents: In May 1999, the United States requested WTO consultations with Argentina regarding its failure to provide a system of exclusive marketing rights for pharmaceutical products and other issues relating to Argentina's obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement"). The United States expanded its claims last year to address Argentina's failure to fully implement its remaining TRIPS obligations that came due on January 1, 2000, such as Argentina's failure to protect confidential test data submitted to government regulatory authorities for pharmaceuticals and agricultural chemicals and its denial of certain exclusive rights for patents. We are pleased that recent consultations with the Argentina have been constructive and are encouraged by the dialogue that has developed to possibly resolve certain claims in the case. However, there are still some outstanding issues that must be addressed before the dispute settlement case can be fully concluded.

• Australia-Prohibited Export Subsidies on Leather: On June 21, 2000, the United States resolved its dispute with Australia regarding subsidization of Australia's sole exporter of automotive leather. Under a bilateral settlement agreement, the subsidy recipient agreed to a partial repayment of the prohibited export subsidy it received, and the Australian Government committed that it will exclude this industry from current and future subsidy programs and provide no other direct or indirect subsidies. This agreement resulted from a WTO case brought by the United States in 1998.

• Canada-Patent Protection Term: The United States prevailed in its WTO challenge of Canada's failure to provide patent protection consistent with its obligations under the TRIPS Agreement. The United States initiated this dispute in its 1999 "Special 301" review of intellectual property protection abroad. On September 18, 2000, the WTO Appellate Body upheld a WTO panel ruling that Canada had not complied with its TRIPS obligation to provide to all Canadian patents in existence since January 1, 1996, a term of protection of at least twenty years from the date of filing the patent application. Canada is to comply with this ruling by August 12, 2001.

• Denmark-Enforcement of Intellectual Property Rights: The United States used the dispute settlement procedures in this case to encourage legislative action by Denmark to implement its TRIPS obligations, particularly the requirement that WTO members make available *ex parte* search and seizure remedies to authorize *ex parte* searches and seizures in civil intellectual property rights enforcement proceedings. On March 28, 2001, the Danish Government enacted legislation that provides this provisional remedy.

• European Union (EU)-Banana Regime: On April 11, 2001, the United States and the EU reached an Understanding on a way to resolve the bananas dispute, which originated in the early 1990s. Beginning in 1997, the United States obtained various WTO rulings against the EU's banana regime as well as the right to impose retaliatory duties on $191.4 million of EU trade due to the EU's failure to comply with WTO rulings. In 1999, the EU finally sought to change its regime in a way that would be consistent with WTO provisions and to consult actively with the United States on ways to construct a WTO-consistent regime. The U.S.-EU Understanding achieves fundamental U.S. objectives of reducing discrimination against U.S. companies, increasing market access for Latin American bananas, and securing Caribbean banana exports to the EU.

• Greece-Television Piracy: Prior to resolving this dispute, a significant number of television stations in Greece regularly broadcasted copyrighted motion pictures and television programs without the authorization of the copyright owners, and effective remedies against such copyright infringements were not provided. Following WTO consultations, the Greek government enacted new legislation to crack down on pirate stations. In addition, the rate of television piracy in Greece fell significantly. On March 22, 2001, in a notification to the WTO regarding the settlement of this dispute, Greece committed to provide effective deterrence against any increase in the level of television piracy, to continue its efforts in enforcing its intellectual property laws, and to prevent any recurrence of the television piracy problem.

• India-Import Quotas on Agricultural, Textile and Industrial Products: On April 1, 2001, India completed its compliance with a WTO ruling obtained by the United States regarding India's import restrictions on over 2,700 tariff items. The United States and India agreed that India would implement the WTO rulings and recommendations by April 1, 2000 for approximately 73 percent of the tariff items at issue, and by April 1, 2001 for the remaining items. In announcing India's new export-import policy on March 31, 2001, Indian Commerce and Industry Minister Maran explicitly cited the WTO ruling as the reason for removing these quantitative restrictions.

• Ireland—Copyright and Neighboring Rights. The United States used WTO dispute settlement consultations to encourage Ireland to take further steps to implement its TRIPS obligations. As a result of these consultations, Ireland committed in February 1998 to accelerate its implementation of comprehensive copyright reform legislation, and agreed to pass a separate bill, on an expedited basis, to address certain particularly pressing enforcement issues. Consistent with this agreement, Ireland enacted legislation in July 1998 raising criminal penalties for copyright infringement. On July 10, 2000, Ireland passed its comprehensive copyright legislation, and implemented this legislation on January 1, 2001. Based on these developments, the parties notified the WTO that a mutually satisfactory solution had been reached.

• Korea—Beef Imports: The United States prevailed through litigation in this dispute, which challenged Korea's regulatory scheme that discriminates against imported beef by confining sales of imported beef to specialized stores, limiting the manner of its display, and otherwise constraining opportunities for the sale of imported beef. Korea is to comply with the adverse WTO rulings by September 10, 2001, and the United States will monitor Korea's implementation to ensure that it is consistent with these WTO rulings.

• Mexico—Basic Telecommunications Services: The United States used WTO consultations to encourage Mexico to ensure competition in its $12 billion telecommunications market. The United States held two rounds of WTO consultations with Mexico and requested the establishment of a WTO panel on a variety of issues, including Mexico's failure to (1) prevent Telmex (Mexico's dominant telecom carrier) from engaging in anti-competitive practices, (2) ensure that Telmex offers its competitors cost-oriented interconnection rates, (3) require Telmex to interconnect with competitors at the local level, and (4) permit competitive international traffic arrangements at cost-oriented rates. Thus far, Mexico has taken positive steps to address the first three issues. The Government has issued dominant carrier rules to regulate Telmex; encouraged carriers to agree to substantial interconnection rate cuts for 2001; and ensured that competitors obtain local interconnection from Telmex. However, Mexico has not yet addressed the key issue of international traffic or enforced its dominant carrier rules. Absent progress on these issues by June 1, the United States will determine whether additional action is necessary, including moving the pending WTO case forward.

• Mexico—Beans: For several years, Mexico had not permitted U.S. dry beans to enter Mexico in a timely and predictable manner under the NAFTA duty-free tariff-rate quota (TRQ). On November 30, 2000, the United States requested NAFTA consultations on this matter. As a result, on April 18, 2001, USTR reached an understanding with Mexico's Secretary of Economy on Mexico's allocation of the TRQ. Mexico will now allocate the NAFTA TRQ for beans on a regular schedule, with auctions to be held each March and June. In addition, Mexico has agreed to modify several administrative provisions that prevented effective use of the TRQ. Under the NAFTA, exports of dry beans to Mexico—one of our largest export markets—will be free of all duties in 2008.

• Romania—Customs Valuation: Last May, the United States requested WTO consultations with Romania concerning its customs valuation regime, which established arbitrary minimum and maximum import prices for products such as meat, eggs, fruits and vegetables, clothing, footwear, and certain distilled spirits, as referenced in a database. Romania's customs valuation regime appeared to violate its obligations under the WTO Customs Valuation Agreement, the GATT, and the WTO Agreement on Agriculture. After fruitful consultations in July, Romania modified its customs valuation procedures so that, in practice, it no longer imposes minimum reference prices on most U.S. exports. USTR is working with Romania on the amendments to its laws and regulations necessary to finally bring its customs valuation regime into compliance with its WTO obligations.

2. WTO Oversight Bodies

Through WTO oversight bodies, the United States works to secure implementation of WTO commitments. These oversight bodies monitor implementation of the various WTO agreements, review WTO Members' laws and regulations, identify potential problems, and offer technical assistance or other expertise when necessary to help ensure compliance and implementation of commitments. The United States actively asserts its rights and pursues its interests through these mechanisms.

• The WTO Committee on Agriculture oversees the implementation of the Agreement on Agriculture and provides a forum for WTO Members to consult on

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matters related to provisions of the Agreement. In many cases, the Committee resolves problems so that Members do not need to refer them to WTO dispute settlement. For example, U.S. pressure on Hungary regarding restrictive import policies for beef products resulted in Hungary's decision to open a special quota for high-quality North American beef. Questions directed to Korea regarding its annual rice import requirements led to improvements in that country's administration of its tariff rate quota commitments. The Committee also provided a forum for the United States to raise questions concerning the agricultural practices in many of our trading partners, including elements of Canada's domestic support programs, the export subsidy amounts associated with the European Communities' inward processing arrangements for dairy products, and the amount of product entered under tariff-rate quotas in Norway. The United States also raised extensive questions on the EU's support regime for horticultural products.

• The Committee on Customs Valuation has actively considered issues relating to individual deadlines of more than 50 developing country members to implement the WTO Agreement on Customs Valuation. Some members have requested additional time to assume the Agreement's obligations in full. The United States and others, working through the Committee, have consulted with these members to craft individualized extension decisions which provide for benchmarked work programs toward full implementation, along with progress reporting requirements.

• The Committee on Technical Barriers to Trade (TBT) has addressed specific technical regulations which might be perceived as creating unnecessary obstacles to trade. For example, in 2000, the United States continued to express concerns with draft EU directives on (1) waste from electrical and electronic equipment, (2) the restriction of the use of certain hazardous substances in electrical and electronic equipment, and (3) batteries and accumulators. In this Committee, the United States and other countries have also expressed concern that EU notifications of draft technical regulations are made too late to allow a meaningful opportunity for comment as foreseen under the TBT Agreement. Finally, the United States has raised questions and alerted other WTO members to issues relating to restrictive origin requirements in the Protocols to the Europe Agreements on Conformity Assessment under negotiation by the EU.

• In the Committee on Balance of Payments (BOP) Restrictions, the effective use of consultation procedures resulted in the elimination by the end of 2000 of both Romania's and the Slovak Republic's import restrictions based on balance-of-payment concerns. Furthermore, as a result of consultations, both Pakistan and Bangladesh submitted plans to eliminate all of their balance-of-payments restrictions, which means that all of the few remaining countries imposing such restrictions now have liberalization plans in place.

• The United States actively uses the Committee of the Parties to the Government Procurement Agreement (GPA) for monitoring individual Parties' implementation of GPA commitments. In particular, the Agreement establishes a process for reviewing how each Party has implemented GPA requirements in its national legislation. In 2001, the Committee will be reviewing the implementing legislation of Israel, Japan and Korea.

• The United States has used the Council for Trade in Services and its subsidiary bodies, especially the Committee on Trade in Financial Services, to help ensure full implementation of obligations under the General Agreement on Trade in Services (GATS). The United States has consistently and successfully pressed countries to fulfill their obligations to ratify and implement their commitments under the Financial Services and Basic Telecommunications Agreements. As a result, in 2000, three more countries—Ghana, Nigeria, and Kenya—brought their GATS financial services commitments into force under the GATS, and one more country—Dominica—brought its basic telecom commitments into force under the GATS. In the Council, the United States also promoted an agreement between the WTO and the International Telecommunications Union (ITU) to help ensure that ITU technical assistance assists in implementation of countries' basic telecom obligations, including those related to regulation.

• The TRIPS Council monitors implementation of the TRIPS Agreement, provides a forum in which WTO Members can consult on intellectual property matters and carries out the specific responsibilities assigned to the Council in the TRIPS Agreement. During 2000, the TRIPS Council monitored the Agreement's implementation by developing country Members and newly-acceding Members; provided assistance to developing country Members so they can fully implement the provisions of TRIPS; and concentrated on institution-building, both internally and with the World Intellectual Property Organization (WIPO). The TRIPS Agreement has yielded significant benefits for U.S. industries and individuals, from those engaged in the pharmaceutical, agricultural chemical, and biotechnology industries to those producing motion pictures, sound recordings, software, books, magazines and consumer goods.

• Finally, the Trade Policy Review Mechanism has been instrumental in the identification of potentially WTO-inconsistent practices in members' regimes, and provides a forum in which pressure can be brought to urge reform or elimination of such practices. The trade policy review of Brazil in November 2000 provided an opportunity for the United States to question the Brazilian Government about its lack of notification to the WTO of its current import licensing system and the WTO consistency of this system. The United States was joined by several other delegations including the EU, India and Colombia in expressing dissatisfaction with the licensing system. In response to this criticism Brazil promised to review its import licensing system, reduce the products subject to licensing, and notify the revised system to the WTO.

3. U.S. Trade Laws

U.S. trade laws are an important means of ensuring enforcement of U.S. rights and interests in trade. In the past year, use of Section 301, Section 1377, Super 301, Special 301, and Title VII has enabled the United States to challenge market access barriers to U.S. goods and services, protect U.S. intellectual property rights, ensure compliance with telecommunications agreements, and address discriminatory foreign government procurement practices. Through its trade preference programs, the United States also seeks to ensure that beneficiary countries meet the statutory conditions, which can include providing internationally recognized worker rights and adequate intellectual property protection.

• Section 301: Section 301 of the Trade Act of 1974 is the principal U.S. statute for addressing foreign government practices affecting U.S. exports of goods or services. Section 301 may be used to enforce U.S. rights under international trade agreements and may also be used to respond to unreasonable, unjustifiable, or discriminatory foreign government practices that burden or restrict U.S. commerce. In response to a petition from the North Dakota Wheat Commission regarding allegedly unreasonable trade practices of the Government of Canada and the Canadian Wheat Board, the USTR initiated an investigation of such practices on October 23, 2000. This investigation is currently pending.

• Special 301: Section 182 of the Trade Act of 1974 (commonly known as "Special 301") requires USTR to identify annually those countries that deny adequate and effective intellectual property (IP) protection or that deny fair and equitable market access to U.S. IP products. Implementation of the law involves the placement of countries of concern into three separate categories—Priority Foreign Country, Priority Watch List, and Watch List. These designations are determined in terms of the seriousness of IP problems, with countries having the most serious IP problems designated as Priority Foreign Countries, which will result in the initiation of a section 301 investigation within 30 days of designation. On March 13, 2001, the United States self-initiated a section 301 investigation following the identification of Ukraine as a Priority Foreign Country under Special 301 for Ukraine's persistent failure to take effective action against significant levels of optical media piracy and to implement adequate and effective intellectual property laws.

• Super 301: Super 301 (mandated by Executive Order 13116 of March 31, 1999) provides a mechanism for the USTR annually to review U.S. trade expansion priorities and focus U.S. resources on eliminating significant trade impediments to U.S. exports. In the past year, the United States made important progress on issues raised in past Super 301 reports, including productive discussions with Japan concerning deregulation of Japan's insurance market and resolution of an outstanding textiles dispute with India concerning the establishment and notification to the WTO of India's tariff bindings on a wide range of textile and apparel products of importance to U.S. exporters.

• Section 1377: In the past year, use of Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 has led to the successful resolution of a number of key telecommunications trade barriers, including those in Canada, Germany, Japan, Mexico, and Peru. For instance, high interconnection rates in Japan were a subject of last year's Section 1377 review. On July 18, 2000, the United States and Japan reached agreement to substantially lower interconnection rates in Japan, saving competitive telecom carriers more than $2 billion in two years. In addition, in November 2000, the Canadian telecom regulator reformed Canada's contribution collection (universal service) regime, which was also subject to last year's Section 1377 review. These reforms are expected to save competitive service providers millions of dollars.

• Title VII: The Title VII report (mandated by Executive Order 13116 of March 31, 1999) identifies trading partners engaging in discriminatory government procurement practices. The annual Title VII report highlights a number of foreign procurement practices that are of significant concern to the United States and that the Administration is pursuing in a range of international fora.

• U.S. trade preference programs—including the Generalized System of Preferences (GSP), the African Growth and Opportunity Act (AGOA), the Caribbean Basin Initiative (CBI), and the Andean Trade Preferences Act (ATPA)—are designed to stimulate economic growth and alleviate poverty in developing countries through their integration into the international trading system. To be eligible for these preferences, a beneficiary country must meet certain statutory requirements. Though the requirements are not identical in the various programs, they include providing internationally recognized worker rights, intellectual property rights, market access, and having other laws and practices that will reinforce the incentives provided. Recently, Swaziland enacted a new labor law providing internationally recognized workers rights in order to retain GSP benefits and to become eligible for AGOA. Likewise, Bangladesh agreed to extend national labor laws to its export processing zones and establish a transition mechanism of worker elected councils. The Administration is carefully monitoring the situation to ensure full implementation of the commitments undertaken by the Bangladeshi authorities. Deficiencies in Moldova's intellectual property protection were remedied, and market access improved in India. The Administration is continuing to review Guatemala's continued eligibility for preferences under both the GSP and CBI programs based on serious concerns about labor practices in that country.

While promoting free trade abroad, we vigorously enforce our trade laws in order to give Americans the confidence needed to keep markets open. The Administration is committed to aggressively enforcing U.S. trade laws to address the adverse impact that unfairly traded steel imports have on U.S. steel companies and U.S. jobs. There are currently more than 150 anti-dumping and countervailing duty actions in effect or under investigation relating to steel products. In addition, the steel industry is currently receiving import relief under Section 201 of the Trade Act of 1974 for line pipe and steel wire rod products. In addition to actively enforcing U.S. trade laws, the Administration will engage key steel producing countries to address bilaterally and multilaterally the underlying structural distortions that foster unfair trade in steel. Despite the trade remedies that are currently in place, the Administration is very concerned about the health of the steel industry. The Administration is monitoring closely the global steel market and steel trade practices and will take additional actions as needed.

B. Status of WTO Disputes

In the April 2000 Super 301 Report, USTR announced its intention to resort to WTO dispute settlement procedures as a means of resolving concerns in seven instances. This section reports on the status of those disputes.

• Argentina-Patents: As discussed above, progress has been made toward resolving this dispute.

• Brazil-Customs Valuation: U.S. exporters of textile products have reported that Brazil uses officially-established minimum reference prices as a requirement to obtain import licenses and/or as a base requirement for import. In practice, this system works to prohibit the import of products with declared values below the established minimum prices. The Brazilian practice appears inconsistent with Brazil's WTO obligations, including those under the Agreement on Customs Valuation. The United States and Brazil held WTO consultations on this matter in July 2000. The United States is monitoring the operation of the Brazilian regime and consulting with U.S. exporters on possible next steps.

• Brazil-Patent Protection: Although Brazil has a largely WTO-consistent patent regime, there remains one provision in Brazil's patent law that the United States considers inconsistent with the TRIPS Agreement. This provision requires all patent owners—regardless of the subject matter of the patent—to manufacture their products in Brazil in order to maintain full patent rights. Having been unable to resolve this issue for over five years, the United States resorted to WTO dispute settlement procedures and requested consultations with Brazil in May 2000. The parties held consultations in June and December 2000, but failed to reach a mutually agreed resolution to the dispute. As a result, the United States requested the establishment of a WTO panel to resolve this dispute. This panel was established in February 2001.

• Denmark-Enforcement of Intellectual Property Rights: As discussed above, this dispute has been successfully resolved with the enactment of legislation in 2001 to implement Denmark's TRIPS obligations.

• India-Measures Affecting Trade and Investment in the Motor Vehicle Sector: This dispute, which challenges the WTO consistency of Indian measures that apply to investment in the automotive industry, is currently before a WTO dispute settlement panel. The measures at issue require manufacturing firms in the motor vehicle sector to achieve specified levels of local content, neutralize foreign exchange by balancing the value of certain imports with the value of exports of cars and components over a stated period, and limit imports to a value based on the previous year's imports. These measures appear to violate the WTO Agreement on Trade Related Investment Measures (TRIMs) and GATT.

• Philippines-Measures Affecting Trade and Investment in the Motor Vehicles Sector: On November 17, 2000, a WTO panel was established to examine a U.S. challenge to certain measures in the Philippines automotive sector. Among other things, the measures require producers to incorporate specified amounts of locally produced inputs, precluding the purchase of U.S. parts. There is also a requirement that imports be balanced in an amount related to a company's foreign exchange earnings. Under the WTO TRIMs Agreement, the Philippines was required to remove these measures by January 1, 2000, unless the Philippines received an extension. No such extension has been granted and therefore the Philippines appears to be in violation of its TRIMs obligations.

• Romania—Customs Valuation: As discussed above, considerable progress was made in consultations, and this dispute is close to resolution.

C. New Requests for Consultations

In addition to the disputes discussed above, the United States has invoked WTO dispute settlement procedures in three other disputes since last year's Super 301 report:

• Mexico—Measures Affecting Trade in Live Swine: On July 10, 2000, the United States requested consultations with Mexico regarding a Mexican antidumping measure on live swine from the United States as well as sanitary and other restrictions imposed by Mexico on imports of live swine weighing more than 110 kilograms. Consultations were held September 7, 2000. Following the consultations, Mexico issued a protocol which is designed to allow a resumption of U.S. shipments of live swine weighing 110 kilograms or more into Mexico. At about the same time, Mexico self-initiated a review of its threat of injury determination based on information, including a shortage of slaughter hogs, that suggests that market conditions have changed substantially in Mexico. The United States is closely monitoring this situation.

• Belgium—Rice Imports: Belgian customs authorities have disregarded the actual transaction values of rice imported from the United States from July 1, 1997 to December 31, 1998, in computing the applicable customs duties. By not using transaction values to compute customs duties, Belgium has assessed duties on rice that are higher than the levels provided for in its WTO commitments. Belgium's administration of its tariff regime for rice, moreover, has contributed to substantial uncertainty regarding the rate of duty that will be applicable to shipments of imported rice. The United States requested WTO consultations in November 2000 with Belgium on these issues, and on March 12, 2001, a WTO panel was established to examine the matter.

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• EU—Import Surcharge on Corn Gluten Feed: This dispute involves a tariff-rate quota of 5 euros per metric ton imposed by the EU on the first 2,730,000 metric tons of corn gluten feed imported into the EU from the United States. The EU imposed this import surcharge in response to the U.S. import safeguard measure imposed on wheat gluten imported into the United States from the EU. The United States considers that the EU failed to satisfy the requirements of the WTO Safeguard Agreement for such suspension of concessions, and therefore the United States requested consultations with the EU on January 25, 2001.

III. Realizing the Benefits of Trade

The Bush Administration is carefully monitoring practices a number of foreign practices, using all the available tools to address the concerns of U.S. exporters. These include measures that occur in many markets and across many sectors. The barriers discussed below are just some examples of the practices that the Administration is carefully monitoring.

A. Import Policies

Restrictive or burdensome import policies can undermine the ability of U.S. exporters to realize the full benefits of market access commitments. Such policies occur in many forms. Provided below are examples of three types of import policies that currently represent serious barriers to U.S. exports.

Reference Prices: The WTO Customs Valuation Agreement stipulates that the transaction price is the primary basis for customs valuation determinations. However, certain countries appear to rely on "reference prices," which can artificially inflate the customs value of imported goods. The United States has actively pursued the issue of reference prices in the WTO Committee on Customs Valuation and has engaged in WTO dispute settlement consultations with Romania and Brazil regarding such practices. As discussed above, WTO consultations with Romania appear to have addressed many concerns, and the United States remains in WTO consultations with Brazil in an effort to resolve similar issues. India continues to maintain a minimum import price system for imports of primary and secondary steel products. In early 2000, the Government of India removed primary steel products from the regime. This action was challenged in the Indian courts, which reapplied the regime to primary steel products. The United States is considering appropriate steps to take, which could include WTO dispute settlement action.

The continued existence of such practices in Mexico remains of serious concern. On October 1, 2000, Mexico significantly increased the costs associated with its reference price system by imposing a burdensome new cash deposit guarantee requirement for subject goods. Cash deposits based on reference prices are not returned for at least six months, and Mexican banks charge high fees to open and maintain customs accounts. Bilateral discussions with Mexico are planned for mid-2001. Based on these consultations, the United States will consider what additional steps are necessary, including WTO dispute settlement action.

Dealer Protection Laws: Several Central American and Carribean countries (e.g., Honduras, Guatemala, Costa Rica, El Salvador, Dominican Republic and Haiti) have in place laws, regulations and other measures which appear to have the objective of preventing foreign exporters from terminating importation and distribution contracts with local companies except under very stringent conditions often requiring payments of large indemnities to the local company. To the extent that they apply only to imports, such laws may be inconsistent with GATT national treatment requirements. Application of these laws can have harmful effects on the economy as a whole and on consumers. U.S. exporters report that distributors' profit margins are extremely high in these countries and that distributors often refuse to service certain segments of the local market. Faced with such conditions, exporters are often prevented from bringing their products to the market most effectively, and consumers face high costs and limited choice of products. We will address this issue in a variety of contexts, notably in bilateral discussions with our trading partners.

Motor Vehicle Policies: Certain of our trading partners maintain restrictive motor vehicle policies which limit market access for U.S. exporters. For instance, lack of foreign access to the motor vehicle market of Korea remains of significant concern. The United States and Korea concluded a Memorandum of Understanding (MOU) in October 1998 according to which Korea agreed to undertake a number of specific actions. Although Korea has taken steps to implement specific provisions of the MOU, foreign access remains severely restricted, as evidenced by the tiny foreign share of the Korean auto market, which totaled 0.3 percent in 2000. Korea's high tariffs and cascading tax structure on motor vehicles continue to impair the competitiveness of imported motor vehicles. Moreover, Korean consumers continue to believe they will face public opprobrium for purchasing a foreign car, the legacy of years of government-sponsored anti-import campaigns. Although Korea recently acceded to the 1998 Global Agreement for the harmonization of world automotive standards, it continues to develop overly-burdensome standards that impede imports and are contrary to the spirit of global harmonization and the 1998 MOU. The United States will continue to push Korea to fulfill the objectives of the 1998 MOU and to develop a package of meaningful measures that will result in substantial increases in market access for foreign motor vehicles.

U.S. exporters are experiencing related problems in Japan. The 1995 U.S.-Japan Automotive Agreement, which sought to eliminate market access barriers and significantly expand sales opportunities in this sector, expired on December 31, 2000. Although some progress was made under the 1995 agreement, the overall objectives of the 1995 agreement were not met. There are a number of factors contributing to the disappointing results, one of which has been the weakness of the domestic Japanese economy over the past three years. However, the effects of the Japanese recession have been disproportionately felt by foreign firms. In addition, the pace of deregulation has slowed significantly. Lack of transparency in both procurement and rule-making persists, and keiretsu ties continue to impede full and fair competition in this market. Further, while investment opportunities in the vehicle market have increased notably, opportunities for automotive parts makers remain largely unchanged. This situation, coupled with recent trends in bilateral automotive trade, has underscored the need for further market-opening efforts by Japan. The United States hopes to work closely and cooperatively with Japan on this issue in the coming months.

B. Technical Regulations and Rule-Making

WTO Members have developed disciplines—primarily through the Agreement on Technical Barriers to Trade (TBT)—to ensure that standards, testing, conformity assessment procedures, and related measures are developed and applied in a transparent and non-discriminatory manner. These disciplines have served to prevent trading partners from using such technical requirements for protectionist purposes. Nevertheless, U.S. exporters continue to face adverse conditions in several important markets. Although there are many other such barriers around the world, we highlight the following two examples:

Technical Regulations: Such regulations can impose onerous conditions on U.S. exports. For instance, in Mexico, certain regulations require the inspection and approval of manufacturing facilities in order to obtain a sanitary license to sell certain herbal and nutritional products in Mexico. However, Mexican authorities refuse to inspect U.S.-based manufacturing facilities. Denying U.S. exporters the ability to have their facilities inspected and approved on the same basis as their Mexican counterparts raises serious concerns about Mexico's adherence to its trade agreement obligations. The United States has raised these concerns with Mexico. Mexican authorities have advised us that they are looking at ways to address our concerns consistent with NAFTA and WTO obligations; however, to date, we have seen no progress. If this problem is not resolved in a timely manner that will allow U.S. companies without Mexican-based production facilities to resume exporting their products to Mexico, the United States will consider whether to request consultations under the NAFTA or the WTO to resolve this issue.

Transparency in Rule-Making: An important aspect in the development of technical regulations is transparency in the regulatory process. Assuring transparency and effective participation in the rule-making process can be extremely useful in preventing trade problems associated with such measures. A growing number of U.S. trade concerns stem from the lack of transparency in the development of the technical regulations of the EU. EU procedures for the development of EU technical regulations appear to undermine multilateral provisions intended to provide an opportunity for meaningful comment on draft regulations, because the EU notification to the WTO is only made *after* the European Commission has finalized its proposal (and forwarded it to other EU institutions for consideration/approval). As a result, the United States and other interested parties are unlikely to have a meaningful opportunity to have any input or concerns addressed or reflected in a directive's provisions. Furthermore, while European regional standards can be used to meet an EU directive's "essential" requirements, EU procedures do not provide a meaningful opportunity to provide comments on the relationship of these standards to the EU directive's requirements. The lack of transparency in EU rulemaking raises serious questions about EU compliance with obligations under the WTO TBT Agreement. The United States will closely monitor developments and will consider all options to ensure that these obligations are fully met.

C. Agricultural Practices and SPS Measures

The WTO Agreement on Agriculture and on Sanitary and Phytosanitary (SPS) Measures have been instrumental to the ability of the U.S. agricultural sector to take advantage of its competitiveness and export its products abroad. The United States continues to be vigilant in its effort to prevent our trading partners from maintaining trade-distorting practices that disadvantage U.S. agricultural exports. For example, as discussed above, in response to a petition filed, the USTR is currently investigating practices of Canada and the Canadian Wheat Board under Section 301 of U.S. trade laws. We also are examining information gathered from U.S. agricultural exporters to assist us in our negotiations on agriculture in the WTO, the FTAA and bilateral negotiations, including public comments received in preparation for this year's Super 301 report.

In addition, the United States has serious concerns that Japan, in an unprecedented manner, is taking actions affecting access to its markets for agricultural products. In early April 2001, Japan implemented a new quarantine inspection system for fresh vegetables, strawberries and melons, which limited the number of daily inspections at Japan's air and seaports. Japan took this action without prior consultation with trading partners or adequate explanation of a scientific rationale for the new system. Japan is also considering taking, for the first time, import safeguard actions on a wide range of agricultural and other products. It has announced that it will implement safeguard measures on three agricultural products—fresh shiitake mushrooms, stone leeks (i.e., welsh onions) and tatami mat reeds—beginning April 23, 2001. Among the other products Japan is investigating are lumber, onions, and tomatoes, which are of commercial interest to the United States. U.S. exports (CY 2000) of these products totaled over $240 million. The U.S. Government, at senior levels, has raised with the Japanese Government its serious concerns about these measures affecting imports. The United States will closely monitor Japan's import measures to ensure they comply with WTO obligations.

The United States also has serious concerns regarding the process of import risk assessment for SPS measures in Australia. SPS measures protect against risks associated with plant or animal borne pests and diseases, additives, contaminants, toxins, and disease-causing organisms in foods, beverages, or feedstuffs. The WTO SPS Agreement establishes rules and procedures to ensure that SPS measures address legitimate human, animal, and plant health concerns, do not arbitrarily or unjustifiably discriminate between Members' agricultural or food products, and are not disguised restrictions on international trade. Transparency is an integral aspect of the development of SPS measures and is often extremely useful in preventing trade problems associated with SPS measures. Although Australia revised and published its import risk assessment procedures in 2000, the process in Australia remains non-transparent and fraught with delays. Australia's continued ban on the importation of California table grapes illustrates problems encountered, and other countries have comparable complaints. The United States has been seeking entry into Australia's market, in some cases for more than a decade, for Florida citrus, pork, poultry, stone fruit, and apples in addition to California table grapes.

D. Government Procurement

The 2001 "Title VII" report, which USTR releases simultaneously with the Super 301 report on April 30 (available on the USTR web site (*www.ustr.gov*)), addresses a number of discriminatory government procurement practices, including implementation of the EU "Utilities Directive" by government telecommunications utilities, various discriminatory practices in the public works sector of Japan, discriminatory practices and procedural barriers to trade in Taiwan, discrimination in Canada against U.S. suppliers in provincial government procurement procedures, and the potential discriminatory effects of "sect filters" in Germany. The "Title VII" report provides background on these issues and the steps the Administration is taking to address them.

E. Subsidy Practices

Unfair government subsidies distort the free flow of goods and adversely affect U.S. business in the global marketplace. Rules covering industrial subsidies have evolved and are intended to prohibit or discourage the most distortive kinds of subsidies, and to allow governments to use less distortive subsidies in order to achieve the broader social or economic objectives of interest to them under certain circumstances. Provided below are representative examples of subsidy practices that the Administration is monitoring closely.

The United States continues to be concerned about the prospect of further subsidization of the Airbus consortium by Member State governments of the EU. Since the inception of Airbus in 1967, Airbus member governments have provided massive subsidies to their respective member companies to aid in the development, production and marketing of the Airbus family of large civil aircraft. Airbus partner governments have borne 75 to 100 percent of the development costs for all major lines of Airbus aircraft and provided other forms of support, including equity infusions, debt forgiveness, debt rollovers and marketing assistance. Some loans for Airbus programs, repayable from royalties on aircraft sold, have been effectively forgiven because projected sales did not materialize. The EU also supports Airbus indirectly through government funded research targeted at specific civil aircraft projects. Government support of Airbus raises serious concerns about EU Member State compliance with their bilateral and multilateral obligations in this sector. The United States has urged the Airbus member governments to ensure that their planned support for the Airbus A380 aircraft program is on commercial terms, reflecting the fact that Airbus is now a highly competitive global producer of aircraft. The European Commission recently informed the United States that seven EU Member State governments have committed to substantial direct support to develop the A380 aircraft. The United States is examining the information that the European Commission provided and plans to seek further information in future discussions with the EU.

In addition, the Government of Korea, through the Korean Development Bank (KDB), has initiated a program aimed at providing direct financial support to several large companies that are encountering severe cash flow problems. For example, the KDB purchased $200 million worth of newly issued Hyundai Electronics Industries (HEI) bonds in January 2001. The KDB made similar purchases of the newly issued bonds of five other cash-strapped, debt-burdened Korean companies, three of which are other Hyundai subsidiaries. The KDB reportedly plans to provide additional financing in the future to HEI and other companies to cover $15–20 billion in bonds coming due in 2001. The Korean Government maintains that only viable companies will benefit from temporary KDB support and that the KDB support will terminate at the end of 2001. The United States has expressed its concern to Korea about the negative implications of this type of government-directed lending for Korea's restructuring efforts and the Korean economy. The United States also has noted that a significant share of the benefits under this program has been provided thus far to companies that are largely export focused and has raised with Korea its concerns over the potential inconsistency of this intervention with the WTO Agreement on Subsidies and Countervailing Measures.

F. Services and Investment Barriers

Services are what most Americans do for a living. Service industries account for nearly 80 percent of both U.S. employment and GDP. U.S. cross-border exports of commercial services (i.e., excluding military and government) were $255 billion in 1999, supporting over 4 million services and manufacturing jobs in the United States. U.S. services exports have more than doubled over the last 10 years, increasing from $118 billion in 1989 to $255 billion last year.

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Likewise, foreign investment provides capital that fuels economic expansion, increases productivity, improves living standards, and provides links to the international marketplace. Access to overseas investment markets allows U.S. companies to remain competitive in a world of new and changing opportunities. U.S.-owned companies with affiliates abroad accounted for 64% of total U.S. goods exports in 1998.

These statistics reveal the importance of services and investment in promoting open markets. Continued liberalization in this area represents a "force multiplier" for structural reforms abroad and for economic growth domestically.

Unfortunately, as discussed below, we continue to encounter barriers to the supply of U.S. services and to investment by U.S. businesses, particularly with respect to telecommunications regulations, trade-related investment measures (TRIMs) in the automobile sector, and retail store laws. We therefore make it a priority to intensify our efforts to promote the dynamism of this sector and reduce trade barriers.

Telecommunications Trade Barriers: Since the WTO Basic Telecommunications Agreement came into force in February 1998, telecommunications markets overseas have rapidly opened to competition. U.S. companies have invested billions of dollars to build global networks, partner with foreign companies, and expand their commercial presence in foreign markets. However, as discussed in USTR's review of telecommunications trade agreements under "Section 1377", released on April 2, 2001 (see *www.ustr.gov*), practices of certain trading partners raise serious concern about compliance with their international telecommunications obligations.

For instance, in Taiwan, telecommunications regulations impose serious limitations on the competitive offering of telecommunications services and undermine the ability of new entrants to compete in Taiwan's market. These restrictions also appear to be inconsistent with the commitments undertaken by Taiwan as part of its bilateral WTO accession negotiations with the United States to liberalize its telecommunications market by July 1, 2001. USTR welcomes the ongoing regulatory review of Taiwan's telecom regulations and expects this review to result in the promised liberalization of its market. If Taiwan does not appear to be taking the necessary steps to liberalize its market consistent with its commitments, USTR will consider appropriate action, including under Section 1374 of the 1988 Trade Act. In addition, as discussed above, the United States remains seriously concerned that Mexico has not yet addressed the key issue of ensuring competition in the market for international calls or enforcing certain rules designed to address anti-competitive conduct in telecommunications services. Absent progress on these issues by June 1, the United States will determine whether additional action is necessary, including moving the pending WTO case forward.

Auto TRIMS: The WTO Agreement on Trade Related Investment Measures (TRIMs) limits the ability of foreign governments to develop programs that favor the purchase or use of goods produced locally. Such measures often reduce the export of U.S.-manufactured goods and also impede a company that operates in a market with TRIMs from acting in an economically efficient manner. The maintenance of TRIMs has been a particular problem in the motor vehicle sector. As discussed above, the United States currently has two pending WTO cases on this issue, challenging the maintenance by India and the Philippines of measures affecting trade and investment in the motor vehicle sector.

The United States also has serious concerns about local content requirements imposed by Malaysia on the production of motor vehicles. Under the TRIMs Agreement, Malaysia was required to remove these measures by January 1, 2000 unless additional time was granted by the WTO. On December 29, 1999, Malaysia made a formal request for an additional two years to bring these measures into compliance with its obligations under the Agreement. The United States has noted its willingness to agree to an extension, but is concerned by conflicting statements made by the Government of Malaysia with regard to its intentions. For this reason, the United States will continue to monitor Malaysia's compliance with its WTO obligations in the motor vehicle sector.

Retail Store Laws: Retail store laws that discriminate with regard to the country of origin of the goods that a retailer can sell harm not only the firms operating in this sector, but also harm consumers by limiting access to products that may be more competitive in terms of price and quality. The Philippines requires that certain foreign retailers source at least 30 percent of their inventory, by value, in the Philippines. Additionally, firms specializing in luxury goods must source at least 10 percent of their inventory, by value, in the Philippines. These requirements appear to violate the Philippines' commitments under several WTO agreements. The United States will monitor this issue to determine what action should be taken to address these concerns.

G. Lack of Intellectual Property Protection

The USTR is releasing the "Special 301" report today (see *www.ustr.gov*), which identifies those countries that deny adequate and effective intellectual property protection or that deny fair and equitable market access to U.S. intellectual property products. As discussed above, on March 13, 2001, the United States self-initiated a section 301 investigation following the identification of Ukraine as a Priority Foreign Country under Special 301 for Ukraine's persistent failure to take effective action against significant levels of optical media piracy and to implement adequate and effective intellectual property laws. In addition, this year's Special 301 report addresses a number of key issues, including (1) failure of numerous economies, including Brazil and Taiwan, to take effective enforcement action that provides adequate deterrence against commercial piracy and counterfeiting; (2) failure of the European Union to provide national treatment for the protection of geographical indications for agricultural products and foodstuffs; (3) failure by Argentina, Hungary and Israel, among others, to provide adequate protection for the confidential test data of pharmaceutical and agricultural chemical companies; (4) the insufficient term of protection for patents in trading partners such as the Dominican Republic and India; (5) the inadequate protection for pre-existing works in numerous trading partners, particularly in Armenia, Azerbaijan, Belarus, Kazakhstan, Tajikistan, Turkmenistan, and Uzbekistan; (6) the failure of the Philippines to provide adequate enforcement, including making available ex parte search remedies; and (7) lax border enforcement against pirate and counterfeit goods in many of our trading partners.

H. Barriers to Trade in Electronic Commerce

Barriers to electronic commerce can occur at various points in the e-commerce value chain, such as restrictions on basic telecommunications services, Internet access services, and services provided through the Internet. For example, Israel is pursuing a policy that would disadvantage U.S. companies wishing to offer Internet access services over the cable platform and would favor the state-owned telecommunications company (Bezeq). Although Israel has licensed Bezeq to enter the high-speed Internet access market without any licensing fees, it has introduced legislation that will require cable television companies seeking to enter this market to pay licensing fees (above their cable franchise fees). The United States is seriously concerned that regulatory favoritism undermines the investment environment in Internet services in Israel. We will closely monitor developments in Israel as well as in other markets.

I. Other Barriers

Not all trade obstacles fit neatly into one category. There are many exporters facing conditions in overlapping categories that combine to limit market access to U.S. goods and services, and unfavorable treatment of a certain foreign industry by any given country often involves a multitude of overlapping barriers. One illustration of how numerous trade measures can affect the conditions for access to overseas markets can be found in the textile and apparel industries. U.S. industry has raised a series of concerns regarding a number of measures, often used in combination, that impede access to overseas markets, including: high tariffs, additional import taxes and charges, some of which may be forgiven for goods destined for the export market, excessive and impractical marking and labeling requirements, reference pricing and non-automatic licensing, burdensome certificates of origin requirements, lack of intellectual property protection, and pre-shipment inspection requirements. Ironically, some of the countries with the most protected internal markets are also the most significant beneficiaries of the WTO Agreement on Textiles and Clothing's liberalization and elimination provisions, as applied by the United States. The United States will continue its efforts to work within the WTO and with our trading partners to ensure that all countries meet their WTO obligations to open their market to textile and apparel products.

The United States has continuing concerns about treatment of foreign, research-based pharmaceuticals under the reimbursement pricing systems in place in Korea and Taiwan. These reimbursement pricing systems lack transparency and appear arbitrary, raising questions about whether they are being implemented in a fair and non-discriminatory manner. These systems also create an uncertain business environment for pharmaceutical manufacturers. In addition, burdensome and non-science-based regulatory requirements are applied to pharmaceutical products in Korea and Taiwan, including requirements relating to the acceptance of foreign clinical test data, testing, and approval of new drugs. Korea and Taiwan need to undertake significant improvements in their systems to make them fair, non-discriminatory and transparent. Finally, while the Korean Government has been responsive to some U.S. concerns in the pharmaceutical sector, serious questions remain regarding the lack of IPR protection for these products. In particular, the lack of coordination between the Korea Food and Drug Administration and the Korea Intellectual Property Office concerning marketing approval for pharmaceuticals and inadequate data protection, discourage the introduction of innovative drugs. The U.S. Government will continue to pursue these issues with the Korean Government to ensure that foreign pharmaceuticals are provided fair and non-discriminatory treatment in the Korean market.

Finally, the U.S. flat glass industry continues to experience serious market access problems in Japan, owing mainly to the continued domination of the Japanese flat glass market by domestic flat glass manufacturers. Over the past year, U.S. industry has strengthened its business and marketing activities in Japan. However, despite better quality, technology and competitive prices, U.S. flat glass manufacturers have failed to gain access to the Japanese market commensurate with their level of access in the rest of the world. The domination by Japanese flat glass manufacturers of distributors is a key problem for U.S. firms. The leading Japanese flat glass producers exert tight control over flat glass distribution by majority ownership, equity and financing ties, employee exchanges, and purchasing quotas. The U.S. Government remains very concerned about the closed distribution channels in the oligopolistic flat glass sector. To address these concerns, the U.S. Government has proposed, under the bilateral Enhanced Initiative on Deregulation and Competition Policy, that the Japanese Government take further steps to promote competition in wholesale and retail distribution channels for a range of products, including flat glass. The U.S. Government will continue to monitor closely the flat glass industry and urges the Japanese Government to promote competition and eliminate unhealthy oligopolistic behavior in the flat glass sector.

A. Jane Bradley,

Assistant U.S. Trade Representative for Monitoring and Enforcement.

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2000–7392]

Transportation Equity Act for the 21st Century; Implementation Guidance for the National Corridor Planning and Development Program and the Coordinated Border Infrastructure Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comments; solicitation of intent to apply for fiscal year (FY) 2002 grants.

SUMMARY: This document provides implementation guidance on sections 1118 and 1119 of the Transportation Equity Act for the 21st Century (TEA–21). These sections established the National Corridor Planning and Development Program (NCPD program) and the Coordinated Border Infrastructure Program (CBI program). The NCPD and the CBI programs are discretionary grant programs funded by a single funding source. These programs provide funding for planning, project development, construction and operation of projects that serve border regions near Mexico and Canada and high priority corridors throughout the United States. States and metropolitan planning organizations (MPOs) are, under the NCPD program, eligible for discretionary grants for: Corridor feasibility; corridor planning; multistate coordination; environmental review; and construction. Border States and MPOs are, under the CBI program, eligible for discretionary grants for: Transportation and safety infrastructure improvements, operation and regulatory improvements, and coordination and safety inspection improvements in a border region.

DATES: Intentions to make grant applications should be received by FHWA Division Offices no later than July 6, 2001. Specific information required for intentions to make grant applications is provided in Section IV of this notice. Comments on program implementation should be sent as soon as appropriate. The FHWA will consider comments received in developing the FY 2002 and FY 2003 solicitations of grant applications as well as the implementation of the NCPD/CBI program. More information on the type of comments sought by the FHWA is provided in Section III of this notice.

ADDRESSES: Submit written, signed comments on program implementation for fiscal year FY 2003 to FHWA Docket No. FHWA–2000–7392, the Docket Clerk, U.S. Dockets, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments should include a self-addressed, stamped envelope or postcard.

Intent to make applications for FY 2002 grants under the NCPD and CBI programs should be submitted to the FHWA Division Office in the State where the applicant is located.

FOR FURTHER INFORMATION CONTACT: For program issues: Mr. Martin Weiss, Office of Intermodal and Statewide Programs, HEPS–10, (202) 366–5010; or for legal issues: Mr. Robert Black, Office of the Chief Counsel, HCC–30, (202) 366–1359; Federal Highway Administration, 400 Seventh Street, SW., Washington D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara*. In addition, a number of documents and links concerning the NCPD and the CBI programs are available through the home page of the Corridor/Border Programs: *http://www.fhwa.dot.gov/hep10/corbor/corbor.html*.

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Background

Sections 1118 and 1119 of the TEA–21, Public Law 105–178, 112 Stat. 107, at 161, established the NCPD and CBI programs, respectively. These programs respond to substantial interest dating from 1991. In that year, the Intermodal Surface Transportation Efficiency Act (ISTEA), Public Law 102–240, 105 Stat. 1914, designated a number of high priority corridors. Subsequent legislation modified the corridor descriptions and designated additional corridors. Citizen and civic groups promoted many of these corridors as, for example, a means to accommodate international trade. Similarly, since 1991, a number of studies identified infrastructure and operational deficiencies near the U.S. borders with Mexico and Canada. Also various groups, some international and/or intergovernmental, studied opportunities to improve infrastructure and operations.

The NCPD and CBI programs are funded by a single funding source. The combined authorized funding for these two programs is $140 million in each year from FY 1999 to FY 2003 (a total of $700 million). Program funds are limited by the requirements of section 1102 (Obligation Ceiling) of the TEA–21. Further, projects selected for funding have been and may again be affected by legislative language, colloquially called 'earmarks', placed in Federal law or related reports. This latter situation was the case in both FY 2000 and FY 2001. In these situations, the solicitation was made in August 1999 and June 2000 respectively and, in both cases, Congressional direction a few months later established project specific language. As a matter of long standing general policy, the FHWA opposes project specific legislative language. However, subsequent to the inclusion of such language in law or related reports, the FHWA makes program administration decisions respecting the authority Congress has to develop such language.

Under the NCPD program, funds are available to States and MPOs for coordinated planning, design, and construction of corridors of national significance, economic growth, and international or interregional trade. Under the CBI program, funds are available to border States and MPOs for projects to improve the safe movement of people and goods at, or across, the border between the United States and Canada, and the border between the United States and Mexico. Based on the factors noted above (i.e., obligation limitations and legislative language), the FHWA anticipates that between $20 million and $130 million will be available for allocation for projects.

The Federal share for these funds is set by 23 U.S.C. 120 (generally 80 percent plus the sliding scale adjustment in States with substantial public lands). The period of availability for obligation is the fiscal year for which the funds are authorized and the three years following. States which receive an allocation of funds under these programs will, at the same time, receive an increase in obligation authority equal to the allocation. Under section 1102 of TEA–21, obligation authority for discretionary programs that is provided during a fiscal year is extinguished at the end of the fiscal year. Funds allocated to projects which, under the NCPD/CBI programs, receive an obligation authority for FY 2002, must therefore be obligated during FY 2002 or have the FY 2002 obligation authority withdrawn for redistribution.

This notice includes four sections:

Section I—Program Background and Implementation of the NCPD/CBI discretionary program in FY 2001
Section II—Eligibility and Selection Criteria for FY 2002 grants
Section III—Request for comments on program implementation in FY 2002, FY 2003
Section IV—Solicitation of applicants for FY 2002 grants

Section I—Program Background, Implementation of the NCPD/CBI Discretionary Program in FY 2001 and changes for FY 2002

The FHWA implements the NCPD/CBI programs with specific goals. In developing the FY 2002 solicitation, the FHWA will consider the following: Comments received at outreach sessions; information received during program discussions within the DOT; and information received during discussions between officials. In FY 1999, the FHWA established program implementation goals. They were:

1. Respect both the letter and the intent of existing statutes.
2. Minimize administrative additions to statutory requirements.
3. Minimize grant application paperwork.
4. Maximize administrative control of grants by FHWA field personnel rather than FHWA Headquarters personnel.
5. Encourage substantive coordination of grant applications and grant administration by State and local officials.
6. Encourage appropriate private/public, State/local, intermodal, interregional, multistate and multinational coordination.
7. Encourage grant applications that have realistic objectives and time horizons.

In FY 2000 and FY 2001, the FHWA retained these program implementation goals. However, overarching these program goals were FHWA and DOT strategic goals established in those years which resulted in a program emphasis on four specific areas (motor carrier safety enforcement facilities, integrated trade transportation processing systems to improve border crossings, multistate freight planning efforts, and applications of operational strategies, including ITS applications). In FY 2002, as noted below in Section II, Evaluation Considerations for both the NCPD and the CBI Program, there may be a goal(s) added regarding the safety of commercial vehicles in the region near the U.S. border with Mexico. Emphasis areas are not available for this solicitation of intent to submit full applications for FY 2002. Emphasis areas may be established for the solicitation of full applications.

Summary of Selection Process—FY 2001

The FHWA received approximately 150 applications for NCPD/CBI funding, all of which were at least partially eligible for consideration (e.g., some applications included work components that were not eligible and also included work components that were eligible). The requests for funding totaled approximately $2 billion. Both the number of applications and requested funding were about the same as in FY 1999 and FY 2000. Approximately 66 percent of the total funds awarded and 61 percent of the projects funded for FY 2001 were for projects cited in Congressional language. The legislative language containing these citations for FY 2001 is available at URL: *http://www.fhwa.dot.gov/hep10/corbor/fy01earmark.html.*

As in FY 1999 and FY 2000, the FHWA established an evaluation panel comprised of officials from various agencies within the DOT (e.g., the Federal Railroad Administration, the Maritime Administration, the Federal Motor Carrier Safety Administration, the Office of the Secretary of Transportation, as well as the FHWA). This panel reviewed the FY 2001 applications and tabulated summaries of applications. The evaluation panel identified individual applications that were "well qualified" and those which were "qualified" based on summary information prepared by the FHWA program office (e.g., positive aspects and other aspects of each application). We expect to follow a similar process with the FY 2002 full grant applications for funds available after legislative language is considered.

On November 3, 2000, then U.S. Transportation Secretary Rodney E. Slater announced that $123 million in grants would be provided to 32 states for 50 projects and to the General Services Administration for four other projects as part of the NCPD/CBI programs for FY 2001. The FY 2001 NCPD/CBI program grant recipients, by state, project and total allocation, are listed at the URL: *http://www.fhwa.dot.gov/hep10/corbor/fy01awards.html.* These include both projects cited in legislative language and projects not cited in legislative language. In addition, section 1311 of the TEA–21, as amended, requires a report for the fiscal quarter covering the FY 2001 selections, containing the reasons for selection of projects. At the time of this notice, the report is not available. When completed, it will also be available on FHWA's website: *http://www.fhwa.dot.gov/discretionary/quarterly.html.*

Summary of Comments to Docket No. FHWA–2000–7392

On June 16, 2000, at 65 FR 37819, the FHWA published a notice, requesting comments on how the NCPD/CBI programs implementation could be improved in FY 2002, as well as other aspects of the program. Commenters were asked specifically for improvements that could be made at the discretion of the FHWA that would more effectively meet the seven implementation goals established for the program.

One comment was posted. This was a letter from Senator Jon Kyl of Arizona expressing his support for an application for funding for the Hoover Dam bypass. The FHWA considered Senator Kyl's support in the FY 2001 award process.

Other Program Evaluation Information Received

The FHWA has received information on program implementation through a number of instruments. One is by reading and analyzing the applications themselves. Another is through post-award feedback from applicants who have, through the FHWA field division offices, requested a debriefing from the FHWA program office regarding how their application was evaluated. Still another is through NCPD/CBI related discussions between applicants and other grant seeking interests, FHWA division offices and the FHWA program office at a wide variety of meetings that take place during the year on project, program, or policy matters. A substantial amount of the information was received from coordinators, evaluators, preparers, reviewers and/or supporters of specific grant applications or groups of grant applications. Many such persons felt time and effort had been wasted, or partially wasted, because projects selected which were cited in legislative language effectively reduced the consideration provided to the applications in which they were directly involved.

Changes in the FY 2002 Process from Previous Years

Based on consideration of the above, the FHWA is proposing to change the solicitation process for FY 2002. A full solicitation for FY 2002 will not occur until after Congress has passed and the President has signed an Appropriations Act for the Department of Transportation. Instead, at this time, the FHWA is soliciting only statements of intent to submit an application. Several factors contributed to this decision. First, as noted previously, a substantial number of projects were cited in legislative language in FY 2000 and FY 2001, restricting the Department's discretion in making selections and there is a substantial possibility that this will occur in FY 2002. Second, without a realistic idea of the funds available to support applications State and MPOs unnecessarily expend resources developing and coordinating detailed applications. Third, by soliciting intent at this time and deferring submission of the complete applications, the immediate paperwork burden on States and MPOs will likely be reduced while allowing additional time for coordination of projects for which an application is ultimately made. Fourth, by soliciting intent at this time, the FHWA will, if Congress requests information on interest in the program, be able to provide such information to Congress contemporaneously with development of Appropriations legislation and related reports. Finally, as noted below in Section IV, States and MPOs that do not send in a statement of intent may subsequently respond to any solicitation for full applications, assuming there is a reasonable basis for doing so, i.e., an explanation which sets forth the reasons why a statement of intent was not submitted.

Section II—Eligibility and Selection Criteria for FY 2002 Grants

In general, the eligibility and selection criteria for FY 2002 grants are expected to be the same as those used for FY 2001 grants with only minor modifications (e.g., possibly different emphasis areas).

Eligibility—NCPD Program

Projects eligible for funding include the following:

1. Feasibility studies.
2. Comprehensive corridor planning and design activities.
3. Location and routing studies.
4. Multistate and intrastate coordination for corridors.
5. Environmental review or construction after review by the Secretary of a development and management plan for the corridor or useable section of the corridor (hence called "corridor plan").

Work in the pre-feasibility stage of a project, e.g., development of metropolitan and State plans and programs, is not considered eligible for support with Federal aid under section 1118 funds. Project development planning and multistate planning coordination are eligible for such support.

The FHWA construes the phrase "environmental review," as used above, as being the portion of the environmental documentation requiring formal interagency review. Examples of such documentation are the environmental assessment/finding of no significant impact (EA/FONSI) and the environmental impact statement (EIS). Thus, even without review of the corridor plan, work needed to produce the pre-draft EIS and to revise the draft would be eligible for support with Federal aid under section 1118. However, work subsequent to the FHWA approval of the draft EIS (or equivalent) would not be eligible for such support until review of the corridor plan. Subsequent to review of the corridor plan, work on a final EIS and any other necessary environmental work would be eligible for funding under this section.

Eligibility for funds from the NCPD program is limited to high priority corridors identified in section 1105(c) of the ISTEA, as amended, and any other significant regional or multistate highway corridors selected by the Secretary after consideration of the criteria listed for selecting projects for NCPD funding. Fund allocation to a corridor does not constitute designation of the corridor as a high priority corridor. The FHWA has no statutory authority to make such a designation.

Eligibility—CBI Program

Projects eligible for funding include the following:

1. Improvements to existing transportation and supporting infrastructure that facilitate cross border vehicle and cargo movements.

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2. Construction of highways and related safety and safety enforcement facilities that will facilitate vehicle and cargo movements related to international trade.

3. Operational improvements, including improvements relating to electronic data interchange and use of telecommunications, to expedite cross border vehicle and cargo movement.

4. Modifications to regulatory procedures to expedite cross border vehicle and cargo movements.

5. International coordination of planning, programming, and border operation with Canada and Mexico relating to expediting cross border vehicle and cargo movements.

6. Activities of Federal inspection agencies.

The TEA–21 requires projects to be in a border region. The FHWA considers projects within 100 km (62 miles) of the U.S./Canada or U.S./Mexico border to be in a border region.

Selection Criteria for the NCPD Program Funding

The TEA–21 provides criteria to be used in identifying corridors, in addition to those statutorily designated for eligibility. The following criteria will be used for selecting projects for funding:

1. The extent to which the annual volume of commercial vehicle traffic at the border stations or ports of entry of each State has increased since the date of enactment of the North American Free Trade Agreement (NAFTA), and is projected to increase in the future.

2. The extent to which commercial vehicle traffic in each State has increased since the date of enactment of the NAFTA, and is projected to increase in the future.

3. The extent to which international truck-borne commodities move through each State.

4. The reduction in commercial and other travel time through a major international gateway or affected port of entry expected as a result of the proposed project, including the level of traffic delays at major highway/rail grade crossings in trade corridors.

5. The extent of leveraging of Federal funds, including use of innovative financing; combination with funding provided under other sections of the TEA–21 and title 23, U.S.C.; and combination with other sources of Federal, State, local, or private funding including State, local and private matching funds.

6. The value of the cargo carried by commercial vehicle traffic, to the extent that the value of the cargo and congestion impose economic costs on the Nation's economy.

7. Encourage or facilitate major multistate or regional mobility and economic growth and development in areas underserved by existing highway infrastructure.

Specific aspects of the NCPD program require the FHWA to interpret these criteria. Based on the goals noted above in Section I, the FHWA intends to use a flexible interpretation. For example, while the date of the enactment of NAFTA was December 8, 1993, traffic data which provides an average for the calendar year 1993 could be used for the pre-NAFTA information. For another example, since businesses use both imported and domestically produced materials in a constantly changing component mix to produce higher valued products and, because interregional trade is noted as part of the purpose of the section, either interstate traffic or interregional traffic could be used as a surrogate for "international truck-borne commodities." Similarly, where determining the value of cargo carried by commercial vehicle traffic would be impossible without using proprietary information, a reasonable surrogate could be based on the vehicle traffic multiplied by an imputed value for various classes of cargo.

Selection Criteria for the CBI Program Funding

The selection criteria in the TEA–21 are as follows:

1. Expected reduction in commercial and other motor vehicle travel time through an international border crossing as a result of the project.

2. Improvements in vehicle and highway safety and cargo security related to motor vehicles crossing a border with Canada or Mexico.

3. Strategies to increase the use of existing, underutilized border crossing facilities and approaches.

4. Leveraging of Federal funds, including use of innovative financing, combination of such funds with funding provided under other sections of the TEA–21 and combination with other sources of Federal, State, local or private funding.

5. Degree of multinational involvement in the project and demonstrated coordination with other Federal agencies responsible for the inspection of vehicles, cargo, and persons crossing international borders and their counterpart agencies in Canada and Mexico.

6. Improvements in vehicle and highway safety and cargo security in and through the gateway or affected port of entry concerned.

7. The extent to which the innovative and problem solving techniques of the proposed project would be applicable to other border stations or ports of entry.

8. Demonstrated local commitment to implement and sustain continuing comprehensive border or affected port of entry planning processes and improvements programs.

As in the NCPD program criteria, the FHWA intends to use a flexible interpretation of the CBI program selection criteria. For example, because local agencies and organizations (e.g., business association, civic, county, municipal, utility) sometimes have very small capital improvement budgets, that local commitment for continuing planning and improvement will be considered in the context of local program cooperation with State projects in the border regions, as well as in the context of local financial support for such projects.

Selection Criteria Common to Both Programs

In addition to the statutory criteria for each program, there are some considerations that apply to both programs since both are funded by a single funding source. One such consideration is that during the evaluation process, applications for both programs are evaluated by a single evaluation panel comprised of officials from various offices within the DOT, not just the FHWA (this process is described above in more detail in the Summary of Selection Process). The use of non-FHWA personnel in evaluating applications should be understood by applicants as a statement by the FHWA that non-highway issues are an important project selection consideration. Another consideration is that, as the concept of equity and congressional priority were important in the development of the TEA–21, national geographic distribution among all discretionary programs and congressional direction or guidance will be considered in the selection of projects for discretionary funds.

Evaluation Considerations for both the NCPD and the CBI Program

To adequately evaluate the extent to which selection criteria noted above are met by individual projects, the FHWA expects to consider the following in each grant application:

1. Likelihood of expeditious completion of a useable project or product.

2. Amount of the program grant request in comparison to likely accomplishments (e.g., grant requests that exceed about 10 percent of the available NCPD and CBI program funding in a given year would be expected to be subject to extra scrutiny to determine whether the likely consequences would be commensurate with that level of funding).

3. Clarity and conciseness of the grant application in submission of the required information, especially regarding the work to be accomplished and the source and amount of the non federal share of funds.

4. State priorities and endorsement of, or opposition to, projects by other States, MPOs, and other public and private agencies or organizations, as well as the status of the project on the State transportation improvement program (STIP) and the metropolitan transportation improvement program (TIP).

5. The extent to which the project may be eligible under both the NCPD and the CBI program.

6. Other quantitative information that relates to the strategic goals of the FHWA, the other DOT modal agencies and the DOT as a whole at the time of the full solicitation. At the time of this notice, the FHWA anticipates that a goal(s) related to the safety of commercial vehicles in the region near the U.S. border with Mexico will be important at the time full applications are evaluated and selected.

Section III—Request for Comments on Program Implementation in FY 2002, FY 2003.

The FHWA is specifically requesting comments NCPD/CBI program implementation. In addition, agencies that wish to reconsider their previous comment(s) or make additional comments on other aspects of program implementation are invited to do so. Commenters should reference the docket number noted in the beginning of this notice.

Section IV—Solicitation of Intent to submit Applications for FY 2002 Grants

As explained earlier, the FHWA is requesting only statements of intent to submit grant applications at this time. Send such statements of intent to submit applications for grants to the division office in the State where the applicant is located. If a project is located in more than one State, send the application to the division office in the lead State. The FHWA will not penalize a State or MPO that, subsequent to the Appropriations Act and subsequent solicitation for full applications, chooses not to apply for funding or submits an application that is close to but not the same as the submittal of intent or where priorities are reestablished between the submittal of intent and the submittal of the application. In fact, the FHWA expects project definitions and priorities to evolve in complex and/or multistate projects. Future applications will not be precluded if the State or MPO did not submit their intent in response to this request. However, those States or MPOs must demonstrate a reasonable basis for failing to submit their intent as requested. The FHWA anticipates that the actual format for full applications will be very similar to that of FY 2001 with a decrease in the amount of narrative requested on some points and some additional clarification of financial information. However, the suggested format for the intent to submit is as follows:

Format for Intention to Submit an Application for NCPD or CBI Discretionary Funds

1. State (if a multistate or multi MPO project, list the lead State/MPO and participating States/MPO);

2. Work to be funded and location of work to be funded.

3. Amount of federal funds to be requested.

4. State priority, as of time the intent is established.

Note 1: Please provide 2 copies of intention to submit a grant application.

Note 2: Assuming that funds are available for discretionary allocation, the FHWA would solicit full applications for such funds. Awards for the funds available for discretionary allocation should be expected to be announced by late spring calendar 2002.

(Authority: 23 U.S.C. 315; secs. 1118 and 1119, Pub. L. 105–178, 112 Stat. 107, at 161 (1998); and 49 CFR 1.48)

Issued on: April 27, 2001.

Vincent F. Schimmoller,

Deputy Executive Director, Federal Highway Administration.

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket FHWA–98–4300]

Transportation Equity Act for the 21st Century; Implementation for Participation in the Value Pricing Pilot Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; solicitation for participation.

SUMMARY: This notice invites State or local governments or other public authorities to make applications for participation in the Value Pricing Pilot Program (Pilot Program) authorized by section 1012(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Public Law 102–240, 105 Stat. 1914), as amended by 1216(a) of the Transportation Equity Act for the 21st Century (TEA–21) (Public Law No. 105–178, 112 Stat. 107 (1998)) and presents guidelines for program applications. This notice updates an October 5, 1998, notice by providing revised procedures, processes and timelines. This document also describes the statutory basis for the Pilot Program and procedures that will be used to implement the program. The FHWA will accept comments on these administrative guidelines throughout the life of the Pilot Program and, as necessary, will issue additional guidance in response to public comments and program experience.

DATES: The solicitation for participation in the Pilot Program will continue to be held open until further notice. To ensure that all projects receive fair consideration, the FHWA encourages all potential grant applicants to submit their proposals no later than October 1, 2001, for fiscal year (FY) 2002 funds and October 1, 2002, for FY 2003 funds.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick DeCorla-Souza, Highway Pricing and System Analysis Team (202) 366–4076; or Mr. Steven Rochlis, Office of the Chief Counsel, (202) 366–1395; FHWA, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dms.dot.gov/submit*. Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

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Background

Section 1012(b) of the ISTEA, as amended by section 1216(a) of the TEA–21, authorizes the Secretary of Transportation (the Secretary) to create a Pilot Program by entering into cooperative agreements with up to 15 State or local governments or other public authorities, to establish, maintain, and monitor local value pricing pilot programs. The statute provides that any value pricing project included under these programs may involve the use of tolls on the Interstate system. This is an exception to the general provisions concerning tolls on the Interstate system as contained in 23 U.S.C. 129 and 301. A maximum of $11 million is authorized for each of the fiscal years 2000 through 2003 to be made available to carry out Pilot Program requirements. The Federal share payable under the program is 80 percent of the cost of the project. Funds allocated by the Secretary to a State under this section shall remain available for obligation by the State for a period of three years after the last day of the fiscal year for which funds are authorized. If, on September 30 of any year, the amount of funds made available for the Pilot Program, but not allocated, exceeds $8 million, the excess amount will be apportioned to all States for purposes of the Surface Transportation Program.

Funds available for the Pilot Program can be used to support pre-project study activities and to pay for implementation costs of value pricing projects.

Section 1216(a)(5) of the TEA–21 amends section 1012(b) of the ISTEA by adding subsection (6) which provides that a State may permit vehicles with fewer than two occupants to operate in high occupancy vehicle (HOV) lanes if the vehicles are part of a local value pricing pilot program under this section. This is an exception to the general provision contained in 23 U.S.C. 102, that no fewer than two occupants per vehicle are allowed on HOV lanes. Potential financial effects of value pricing projects on low-income drivers shall be considered and, where such effects are expected to be significant, possible mitigation measures should be identified, such as providing new or expanded transit service as an integral part of the value pricing project. The costs of such mitigation measures can be included as part of the value pricing project implementation cost. The Secretary is required to report to Congress every two years on the effects of local value pricing pilot programs.

The Value Pricing Pilot Program is a continuation of the Congestion Pricing Pilot Program authorized by section 1012(b) of the ISTEA. Under this program, pricing projects have reached the implementation stage in San Diego, California; Lee County, Florida; Houston, Texas; and San Francisco, California. In addition, pre-program planning activities have been completed or are on-going in the following States: Oregon, California, Colorado, Minnesota, Washington, Florida, Maryland, Texas, and New York. Funds were also used to support the California DOT's monitoring and evaluation study of the private, variable-priced toll lanes along State Route 91 in Orange County, California.

Discussion of Comments

The FHWA received three comments to our previous notice published on October 5, 1998, at 63 FR 53487. One was a comment from a private citizen, one from a metropolitan planning organization, and one from a national trade association. Two of the comments were favorable. The third commenter, a national trade association expressed support for the value pricing concept. However, as a matter of policy, the association opposes new or increased peak period tolls on Interstate highways because it does not consider such tolls to be efficient and truckers do not have the same flexibility with regard to their schedules as motorists engaged in personal travel. However, based on the pilot projects to date that have implemented pricing programs on Interstates, tolling has only been implemented on special-use lanes, and has actually improved traffic flow slightly in the regular unrestricted use lanes by shifting some traffic from them to the tolled lanes.

Purpose

The purpose of this notice is to provide general information about the Pilot Program and the FWHA's plans for implementing the program, and to invite State or local governments or other public authorities to make applications for participation in the Pilot Program.

Definitions

"Value pricing," "congestion pricing," "peak-period pricing," "variable pricing," or "variable tolling," are all terms used to refer to direct time-of-travel charges for road use, possibly varying by location, time of day, severity of congestion, vehicle occupancy, or type of facility. By shifting some trips to off-peak periods, to mass transit or other higher-occupancy vehicles, or to routes away from congested facilities, or by encouraging consolidation of trips, value pricing charges are intended to promote economic efficiency both generally and within the commercial freight sector. They also reduce congestion, improve air quality, conserve energy, and meet transit productivity goals.

A "value pricing project" means any implementation of value pricing concepts or techniques meeting the definitions contained in this notice and included under a "local value pricing pilot program" under this section, where a local value pricing pilot program includes one or more value pricing projects serving a single geographic area, such as a metropolitan area. "Cooperative agreement" means the agreement signed between the FHWA and a State or local government, or other public authority to implement local value pricing pilot programs under this section (See 49 CFR part 18).

Program Objective

The overall objective of the Pilot Program is to support efforts by State and local governments or other public authorities to establish local value pricing pilot programs, to provide for the monitoring and evaluation of value pricing projects included in such programs, and to report on their effects. While the Pilot Program's primary focus is on value pricing on roads, consideration will also be given to the use of other market-based approaches to congestion relief, such as parking pricing, freight access pricing, electronic payment services linked to value pricing, or pay-as-you-drive services, such as usage based auto insurance, provided the project incorporates significant price variations by time, location, and/or level of congestion.

Potential Project Types

The FHWA is seeking proposals to use value pricing projects to reduce congestion, improve system performance, and promote mobility. Value pricing charges are expected to accomplish this purpose by encouraging the use of alternative times, modes, routes, or trip patterns. To increase the likelihood of generating information on a variety of useful value pricing strategies, proposed projects having as many of the following characteristics as possible will receive highest priority for Federal support. Projects of interest include:

1. Applications of value pricing which are comprehensive, such as area wide pricing, pricing of multiple facilities or corridors, and/or combinations of road pricing and parking pricing.

2. Pricing may be available at key traffic bottlenecks, single traffic corridors, or pricing on single highway facilities, including bridges and tunnels. Proposals to shift from a fixed to a variable toll schedule on existing toll facilities are encouraged (*i.e.*, combinations of peak-period surcharges and off-peak discounts). Pricing of queue jumps is also eligible. A queue jump is defined as a facility that can be used by certain types of traffic to bypass points on the transportation network where congestion is particularly severe and occurs in a predictable pattern (colloquially called "bottlenecks"). Queue jumps can be as elaborate as an elevated facility or as simple as an at-grade lane addition.

3. There are other applications of value pricing that are also acceptable, including pricing on lanes otherwise reserved for high occupancy vehicles, known as high occupancy toll (HOT) lanes, or pricing on newly constructed lanes. Highest priority will be given to lane pricing proposals that cover multiple facilities and/or offer innovative pricing, enforcement, or operational technologies. In order to protect the integrity of HOV programs, the FHWA will give priority to those HOT lane proposals where it is clear that an HOV lane is underutilized and where local officials can demonstrate that the pilot project would not undermine a long term regional strategy to increase ridesharing. In addition, areas proposing HOT lane projects are encouraged to use revenues from the project to promote improved transit service or other programs that will encourage transit use and ridesharing.

4. Innovative time-of-day parking pricing strategies, provided the level and coverage of proposed parking charges, is sufficient to reduce congestion. Parking pricing strategies that are integrated with other market-based pricing strategies (*e.g.*, value pricing) are encouraged. Parking pricing strategies should be designed to influence trip-making behavior, and might include peak-period parking surcharges, or policies such as parking cash-out, where cash is offered to employees in lieu of subsidized parking. Pricing of a single parking facility, coverage of a few employee spaces, or pricing of parking spaces in a small area, for example, are unlikely to receive priority treatment, unless they incorporate a truly unique element which might facilitate broader applications of value pricing across local areas and States.

5. Projects with anticipated value pricing charges that have as the key characteristic that they are targeted at vehicles causing congestion, and are set at levels significant enough to encourage drivers to use alternative times, routes, modes, or trip patterns during congested periods, are likely to receive favorable consideration. Proposed projects that contemplate value pricing charges that are not significant enough to influence demand, such as minor increases in fees during peak-periods, or moderate toll increases instituted primarily for financing purposes, will be given low priority.

6. Projects that are likely to add to the base of knowledge about the various design, implementation, effectiveness, operational, and acceptability dimensions of value pricing are eligible for consideration under the Pilot Program. The FHWA is seeking information related to the impacts of value pricing on the following: travel behavior (mode use, time-of-travel, trip destinations, trip generation, etc., by private and commercial trips); on traffic conditions (trip lengths, speeds, level of service); on implementation issues (technology, innovative pricing techniques, public acceptance, administration, operation, enforcement, legality, institutional issues, etc.); on revenues, their uses and financial plans; on different types of users and businesses; and on measures designed to mitigate possible adverse impacts and their effectiveness. These diverse information needs mean that the FHWA may fund different types of value pricing applications in different local contexts to maximize the potential of the pilot program.

7. Projects that do not have adverse effects on alternative routes or modes, or on low-income or other transportation disadvantaged groups, are encouraged under the Pilot Program. If such effects are anticipated, proposed pricing programs should incorporate measures to mitigate any major adverse impacts, including enhancement of transportation alternatives for peak-period travelers, services such as "life-line" toll rates aimed at low income travelers, and toll credits earned by motorists in regular lanes which can be used to pay tolls on priced lanes.

While the FHWA is seeking proposals that incorporate some or all of these project characteristics, these guidelines are intended only to illustrate selection priorities, not to limit potential program participants from proposing new and innovative pricing approaches for incorporation in the program.

Pre-Project Studies

A small amount of Pilot Program funds will be used to assist State and local governments in carrying out pre-project study activities designed to lead to implementation of a value pricing project, including activities such as pre-project planning, public participation, consensus building, modeling, impact assessment, financial planning studies, and work necessary to meet any Federal or State environmental or other planning requirements that assist in establishing value pricing projects and programs. The intent of the pre-project study phase of the Pilot Program is to support efforts to identify and evaluate value pricing project alternatives, and to prepare the necessary groundwork for possible future implementation. Purely academic studies of value pricing (not designed to lead to possible project implementation), or broad, area-wide planning studies which incorporate value pricing as an option, will not be funded under this program. Broad planning studies can be funded with regular Federal-aid highway or transit planning funds. Proposals for pre-project studies will be selected based on the likelihood that they will lead to implementation of pilot tests of value pricing meeting the characteristics described in the previous section.

Eligible Costs

Funds available for the Pilot Program can be used to support pre-project study activities and to pay for implementation costs of value pricing projects. Costs eligible for reimbursement include costs of planning for, setting up, managing, operating, monitoring, evaluating, and reporting on local value pricing pilot projects. Examples of specific costs eligible for reimbursement include the following:

1. *Pre-Project Study Costs*—Pre-project study activity costs allowed include: pre-project planning, public participation, consensus building, marketing, impact assessment, modeling, financial planning, technology assessments and specifications, and other pre-implementation work that relate to the establishment of the value pricing project. Costs of pre-project study activities cannot be reimbursed for longer than three years.

2. *Implementation Costs*—Implementation costs are costs necessary for implementation of specific value pricing projects such as costs for setting up, managing, operating, evaluating, and reporting on a value pricing project, including:

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a. Costs associated with implementation of a value pricing project, including necessary salaries and expenses or other administrative and operational costs, such as installation of equipment necessary for operation of a pilot project (e.g., AVI technology, video equipment for traffic monitoring, other instrumentation), enforcement costs, costs of monitoring and evaluating project operations, and costs of continuing public relations activities during the period of implementation.

b. Costs of providing transportation alternatives, such as new or expanded transit service provided as an integral part of the value pricing project. Funds are not available to replace existing sources of support for transit services.

c. Depending on the availability of funds, a limited amount of funds may be made available to toll authorities to purchase an insurance policy that will cover unanticipated lost revenue resulting from a pilot test of value pricing. This may be necessary to avoid jeopardizing a toll authority's bond covenants. If an agency decides to purchase an insurance policy to cover anticipated loss of revenue, federal participation would be no more than 50 percent of the total cost or a dollar cap. For example, a toll authority might propose a revenue-neutral pricing strategy with peak-period surcharges and off-peak discounts designed to shift demand patterns and improve customer service, or to reduce the need for future capacity expansion. Even though no reduction in toll revenues is intended, the FHWA recognizes that forecasting traffic and revenue changes is inherently uncertain, and that an insurance policy to offset any unintended toll revenue losses would be designed to help overcome institutional barriers to the testing and use of value pricing by existing toll authorities.

Project implementation costs can be supported for a period of at least one year, and thereafter until such time that the project generates sufficient revenues to fund its implementation costs without Federal support, except that implementation costs for a pilot project cannot be reimbursed for longer than three years. Each implementation project included in a local value pricing pilot program will be considered separately for this purpose. Funds may not be used to pay for activities conducted prior to approval of Pilot Program participation. Funds may not be used to construct new highway through lanes, bridges, etc., even if those facilities are to be priced, but toll ramps or minor pavement additions needed to facilitate toll collection or enforcement are eligible.

Complementary actions such as construction of HOV lanes, the implementation of traffic control systems or transit projects can be funded through other highway and transit programs eligible under TEA–21 and from new revenues raised as a result of a pilot. Those interested in participating in the Pilot Program are encouraged to explore opportunities for combining funds from these other programs with Pilot Program funds. This is not meant to imply that Federal funds may be used to match Pilot Program funds unless specific statutory authority permits such matching.

Eligible Uses of Revenue

The FHWA will provide up to the legislatively allowable 80 percent share of the estimated costs of an approved project. Any revenues generated by a pilot project must be applied first to pay for pilot project implementation costs. Any project revenues in excess of pilot project implementation expenses may be used for any programs eligible under title 23, U.S. Code. Uses of revenue are encouraged which will support the goals of the value pricing program, particularly uses designed to provide benefits to those traveling in the corridor where the project is being implemented.

Applying for Program Participation

Qualified applicants include local, regional and State government agencies, as well as public tolling authorities. Although project agreements must be with public authorities, a local value pricing program partnership may also include private tolling authorities and non-profit organizations. To streamline the process of applying for program participation as much as possible, it is suggested that, prior to submitting a formal application for program participation, potential applicants contact their State FHWA Division Office and/or the FHWA Highway Pricing and Systems Analysis Team in the Office of Transportation Policy Studies to discuss their interest in the Pilot Program and the general nature of the proposed local value pricing Pilot Program or pre-project study. The FHWA will then be able to provide materials and technical support to assist in the development of the application. Following this initial contact, potential applicants should submit a sketch plan for the proposed pricing program before developing a full-scale proposal. To facilitate a streamlined application process, the sketch plan need not exceed 15 pages. The sketch plan should provide a brief description of the following:

1. Congestion problem to be addressed.
2. Nature of proposed or potential pricing projects to respond to that problem, including overall project goals, potential facilities to be included, time line for study and possible implementation of value pricing projects.
3. Parties proposed as being signatories to the cooperative agreement with the FHWA. At a minimum, by the time the refined proposal is submitted, the local Metropolitan Planning Organization (MPO) and the owner/operator of the facility or facilities to be priced should express support for the program. Indications of support from affected parties, including representatives of business, labor, industry, transportation users, and/or local residents, or plans for obtaining such support should be included.
4. Extent of public participation in the development of the proposal, or of plans for future public participation activities. Potential equity consequences of any proposed projects should be portrayed in general terms, and if adverse impacts are anticipated, preliminary plans for responding to such problems should be identified.
5. Legal and administrative authority needed to carry out a value pricing project, extent to which these have been obtained, and further steps needed to obtain necessary authority.
6. Plans for pre-project study, or findings from complete pre-project studies. The sketch plan should be submitted through the State Department of Transportation to the appropriate FHWA Division Administrator, who will forward the plan to FHWA's Director, Office of Transportation Policy Studies. To expedite the review, the applicant should concurrently send a copy directly to the FHWA Highway Pricing and System Analysis Team at 400 Seventh Street, SW., Washington, D.C. 20590.

Based on initial review of the sketch plan, the FHWA will work with the proposing authority to develop a refined proposal for review by the Federal Interagency Review Group which provides support to the FHWA in evaluating program applications (see the caption "Review Process," in this preamble below). Ideally, the refined proposal will include:

1. A description of the congestion problem being addressed (current and projected);
2. A description of the proposed pricing program and its goals, including description of facilities included, and, for implementation projects, expected pricing schedules, technology to be used, enforcement programs, and so on;
3. Preliminary estimates of the social and economic effects of the pricing program, including potential equity impacts, and a plan or methodology for further refining these estimates for all pricing project(s) included in the program;
4. The role of alternative transportation modes in the project, and anticipated enhancements proposed to be included in the pricing program;
5. A time line for the pre-project study and implementation phases of the project (proposals indicating early implementation of pricing projects that will allow evaluation during the life of TEA–21 will receive priority);
6. A description of tasks to be carried out as part of each phase of the project, and an estimate of costs associated with each;
7. Plans for monitoring and evaluating value pricing implementation projects, including plans for data collection and analysis, before and after assessment, and long term monitoring and documenting of project effects;
8. A detailed finance and revenue plan, including for implementation projects a budget for capital and operating costs; a description of all funding sources, planned expenditures, proposed uses of revenues, and a plan for projects to become financially self-sustaining (without Federal support) within three years of implementation;
9. Plans for involving key affected parties, coalition building, media relations, etc., including either demonstration of previous public involvement in the development of the proposed pricing program, or plans to ensure adequate public involvement prior to implementation;
10. Plans for meeting all Federal, State and local legal and administrative requirements for project implementation, including necessary Federal-aid planning and environmental requirements. The FHWA will give priority to proposals where projects are included as a part of (or are consistent with) a broad program addressing congestion, mobility, air quality and energy conservation, where an area has congestion management systems (CMS) for Transportation Management Areas (urbanized areas over 200,000 population or those designated by the Secretary) and the congestion mitigation and air quality (CMAQ) program.

If some of these items are not available or fully developed at the time the proposal is submitted, proposals will still be considered for support if they meet some of the priority interests of the FHWA as described in this preamble under the caption "Potential Project Types," and include some of the proposal characteristics described in this section, and there is a strong indication that these items will be completed within a short time.

Review Process

Upon receipt of the detailed proposal, the FHWA's Highway Pricing and Systems Analysis Team will arrange for a review of the proposal by the Federal Interagency Review Group established to assist the FHWA in assessing the likelihood that proposed local value pricing programs will provide valid and useful tests of value pricing concepts. The Review Group is composed of representatives of several concerned offices in the U.S. DOT, including offices in the FHWA, the Federal Transit Administration, the Office of the Secretary of Transportation, and the Office of Intermodalism. The U.S. Environmental Protection Agency and the U.S. Department of Energy are also represented on the Review Group. To facilitate review, applicants should submit an electronic copy of their application, plus an unbound reproducible hard copy of the proposal. As with the sketch plan, detailed proposals should be submitted through the MPO and/or State DOT to the appropriate FHWA Division Administrator, who will forward the plan to the FHWA's Director, Office of Transportation Policy Studies. The FHWA will review applications received and make program participant selections based on the criteria contained in this notice.

To ensure that all projects receive fair consideration, the FHWA encourages all potential grant applicants to submit their proposals no later than October 1, 2001, for FY 2002 funds and October 1, 2002, for FY 2003 funds. This timeline will allow for a fair comparison among proposals received and will also allow the FHWA to make timely recommendations to the Secretary regarding how to expend available funds in accordance with the criteria discussed in this preamble.

Cooperative Agreement

Based on the recommendations of the Review Group, the FHWA will identify those Pilot Program proposals which have the greatest potential for promoting the objectives of the Pilot Program, including demonstrating the effects of value pricing on driver behavior, traffic volume, ridesharing, transit ridership, air quality, availability of funds for transportation programs, and other measures of the effects of value pricing. Those Pilot Program candidates will then be invited to enter into negotiations with the FHWA to develop a cooperative agreement to define the scope of work for the value pricing program. The cooperative agreement will be governed by the Federal statutes and regulations cited in the agreement and 49 CFR part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, as they relate to the acceptance and use of Federal funds for this program.

Prior to the FHWA approval of pricing project implementation, value pricing programs must be shown to be consistent with Federal metropolitan and statewide planning requirements.

Implementation projects outside metropolitan areas must be included in the approved statewide transportation improvement program and be selected in accordance with the requirements set forth in section 1204(f)(3) of the TEA–21.

Implementation projects in metropolitan areas must be: (a) Included in, or consistent with, the approved metropolitan transportation plan (if the area is in nonattainment for a transportation related pollutant, the metropolitan plan must be in conformance with the State air quality implementation plan); (b) included in the approved metropolitan and statewide transportation improvement programs (if the metropolitan area is in a nonattainment area for a transportation related pollutant, the metropolitan transportation improvement program must be in conformance with the State air quality implementation plan); (c) selected in accordance with the requirements in Public Law No. 105–178, section 1203(h)(5) or (i)(2); and (d) consistent with any existing congestion management system in transportation management areas, developed pursuant to 23 U.S.C. 134(i)(3).

Authority: 23 U.S.C. 315; sec. 1216(a), Pub. L. 105–178, 112 Stat. 107; 49 CFR 1.48

Issued on: April 27, 2001.

Vincent F. Schimmoller,

Deputy Executive Director.

[FR Doc. 01–11403 Filed 5–4–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2000–8210]

Notice of Request To Renew Approval of an Information Collection: OMB No. 2126–0011 (Commercial Driver Licensing and Test Standards)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: This notice announces that FMCSA intends to submit a request to the Office of Management and Budget (OMB) for renewed approval of the information collection described below. This information collection is needed to ensure that motor carriers and the States are complying with notification requirements for information about licensing, violations, convictions, and disqualifications within certain time periods as required by the Commercial Motor Vehicle Safety Act of 1986 (CMVSA), as amended. This notice is required by the Paperwork Reduction Act.

DATES: Your comments must be submitted by July 6, 2001.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit*. Be sure to include the docket number appearing in the heading of this document on your comment. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you would like to be notified when your comment is received, you must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Slade, (202) 366–5721, Office of Safety Programs, State Programs Division (MC–ESS), Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590. Office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: *Title:* Commercial Driver Licensing and Test Standards.

OMB Number: 2126–0011.

Background: In 1986, Congress enacted the Commercial Motor Vehicle Safety Act (CMVSA), Pub. L. 99–570, Title XII, among other things, to establish minimum standards for testing and licensing persons who want to operate a commercial motor vehicle (CMV) by weight or use category, and requiring drivers to have a single commercial driver's license (CDL) and driving history record. Under 49 CFR 383.5, a CMV is defined as a motor vehicle or combination of motor vehicles which: (a) has a gross combination weight rating of 11,794 or more kilograms (kg) (26,001 or more pounds (lbs)) inclusive of a towed unit with a gross vehicle weight rating (GVWR) of more than 4,536 kg (10,000 lbs); (b) has a GVWR of 11,794 kg or more (26,001 or more lbs); (c) is designed to transport 16 or more passengers, including the driver; or (d) is of any size and is used to transport hazardous materials which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR part 172, subpart F.

The CMVSA requires a driver to notify both their employer and the licensing official in the driver's State of licensure of all violations of any State or local laws relating to traffic control (except parking violations). A person whose CDL is suspended, revoked, or canceled by a State, or who is disqualified from operating a CMV for any period, also must notify their employer of such actions. A person applying for employment as a CMV driver also must notify prospective employers of their employment history as a CMV driver for the previous ten years.

Under section 31309, Title 49, U.S.C. (49 U.S.C. 31309), the Secretary of Transportation must maintain an information clearinghouse and depository of information about the issuance of license, identification, and disqualification of CMV operators, in conjunction with § 31106. The Secretary must consult with the States in carrying out this section. States must certify that they are in compliance with the CDL program. If a State does not substantially comply with these requirements, the FMCSA may penalize the State until compliance is achieved. The information required to be collected by the States will be used to determine whether the States are in substantial compliance with these requirements.

This request for renewed approval includes additional burdens for recordkeeping requirements under 49 CFR 384.231(d) concerning retention and updating of driver records on the Commercial Driver's License Information System (CDLIS).

Respondents: Motor carriers, CMV drivers, and State government.

Estimated Total Annual Burden: 938,995 hours. The information collection is comprised of four components:

(1) Notification of convictions: Estimated number of annual responses = 3,333,333 (10 million CDL drivers/3 = 3,333,333). It takes approximately 10 minutes to notify a motor carrier concerning convictions. Each driver averages approximately 1 conviction every 3 years. The notification requirement has an estimated annual burden of 555,556 burden hours. (10 million /3 × 10/60 = 555,556 hours);

(2) Employment history: Estimated annual turnover rate = 14%. There are an estimated 1,400,000 annual responses to this requirement (10 million × .14 = 1,400,000). It takes approximately 15 minutes to complete this requirement. The employment history requirement has an estimated annual burden of 350,000 hours (10 million × .25 × .14 = 350,000 hours);

(3) State compliance and certification: There are 51 responses to this requirement (50 States and the District of Columbia). The compliance and certification requirement has an estimated annual burden of 1,632 hours (51 × 32 hours = 1,632 hours); and

(4) CDLIS Recordkeeping: 50 States and the District of Columbia are required to enter data into CDLIS and to perform record checks before issuing, renewing or upgrading a CDL or allowing a CDL transfer. We estimate that the average amount of time for each CDLIS inquiry is 2 minutes. The total burden hours is 31,807 for these combined activities: 10, 761 hours for all States to create a new driver; 3,560 hours for all States to change the state of record; and 17,486 hours for all States to change data.

Public Comments Invited

We invite you to comment on any aspect of this information collection, including, but not limited to (1) whether the collection of information is necessary for the proper performance of the functions of the FMCSA, including whether the information is practical and useful; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, usefulness, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

Electronic Access and Filing

You may submit or retrieve comments online through the Docket Management System (DMS) at *http://dmses.dot.gov/submit*. Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site. You may also download an electronic copy of this document from the DOT Docket Management System on the Internet at *http://dms.dot.gov/search.htm*. Please include the docket number appearing in the heading of this document.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.73.

Issued on: May 2, 2001.

Brian M. McLaughlin,

Acting Deputy Administrator.

[FR Doc. 01–11417 Filed 5–4–01; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34035]

The Central Illinois Railroad Company–Acquisition and Operation Exemption–Rail Lines of Union Pacific Railroad Company and Canadian Pacific Rail System at Elk Grove Village, Cook and DuPage Counties, IL

The Central Illinois Railroad Company (CIRY), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire by lease and operate rail lines owned by the Union Pacific Railroad Company (UP) and the Canadian Pacific Rail System (CP). CIRY describes the track in greater detail as follows: the Centex Industrial Park Trackage owned by UP, or jointly by UP and CP, beginning at the west edge of York Road, which is the west end of UP's approximately 800-foot Elk Grove lead track that extends from UP's Milwaukee Subdivision, at milepost 7.8, consisting of approximately 25 miles of tracks.[1]

The transaction was scheduled to be consummated no earlier than April 30, 2001, the effective date of the exemption (7 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34035, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas F. McFarland, Jr., Esq., McFarland & Herman, 20 North Wacker Drive, Suite 1330, Chicago, IL 60606–2902.

Board decisions and notices are available on our website at *www.stb.dot.gov*.

Decided: May 1, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–11367 Filed 5–4–01; 8:45 am]

BILLING CODE 4915–00–P

[1] On April 25, 2001, a petition to stay the effective date of the exemption was filed by Joseph C. Szabo, for and on behalf of United Transportation Union-Illinois Legislative Board. The petition for stay was denied in *The Central Illinois Railroad Company–Acquisition and Operation Exemption–Rail Lines of Union Pacific Railroad Company and Canadian Pacific Rail System at Elk Grove Village, Cook and DuPage Counties, IL*, STB Finance Docket No. 34035 (STB served Apr. 27, 2001).

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0144]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed on the residential loan application.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 6, 2001.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or *irmnkess@vba.gov*. Please refer to "OMB Control No. 2900–0144" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: HUD/VA Addendum to Uniform Residential Loan Application, VA Form 26–1802a, and Freddie Mac 65/Fannie Mae Form 1003, Uniform Residential Loan Application.

OMB Control Number: 2900–0144.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–1802a serves as a joint loan application for both VA and the Department of Housing and Urban Development (HUD). Lenders and veterans use the form to apply for guaranty of home loans.

Affected Public: Individuals or households and Business or other for-profit.

Estimated Annual Burden: 20,000 hours.

Estimated Average Burden Per Respondent: 6 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 200,000.

Dated: March 30, 2001.

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By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–11431 Filed 5–4–01; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0383]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to apply for Educational Assistance Test Program benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 6, 2001.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0383" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Educational Assistance Test Program Benefits, VA Form 22–8889.

OMB Control Number: 2900–0383.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans and servicepersons pursuing approved programs of education under the Educational Assistance Test Program (EATP) use VA Form 22–8889 to apply for educational assistance. The information collected is used to determine eligibility for and entitlement to EATP benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 6 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 12.

Dated: March 30, 2001.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–11432 Filed 5–4–01; 8:45 am]

BILLING CODE 8320–01–P



Federal Register

Monday,
May 7, 2001

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 21 et al.

Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 25, 91, 121, 125, and 129

[Docket No. FAA–1999–6411; Amendment Nos. 21–78, 25–102, 91–266, 121–282, 125–36, 129–30]

RIN 2120–AG62

Transport Airplane Fuel Tank System Design Review, Flammability Reduction, and Maintenance and Inspection Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule requires design approval holders of certain turbine-powered transport category airplanes, and of any subsequent modifications to these airplanes, to substantiate that the design of the fuel tank system precludes the existence of ignition sources within the airplane fuel tanks. It also requires developing and implementing maintenance and inspection instructions to assure the safety of the fuel tank system. For new type designs, this rule also requires demonstrating that ignition sources cannot be present in fuel tanks when failure conditions are considered, identifying any safety-critical maintenance actions, and incorporating a means either to minimize development of flammable vapors in fuel tanks or to prevent catastrophic damage if ignition does occur. These actions are based on accident investigations and adverse service experience, which have shown that unforeseen failure modes and lack of specific maintenance procedures on certain airplane fuel tank systems may result in degradation of design safety features intended to preclude ignition of vapors within the fuel tank.

EFFECTIVE DATE: June 6, 2001.

FOR FURTHER INFORMATION CONTACT: Michael E. Dostert, FAA, Propulsion/Mechanical Systems Branch, ANM–112, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2132, facsimile (425) 227–1320; e-mail: mike.dostert@faa.gov.

SUPPLEMENTARY INFORMATION:

Availability of Final Rules

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (http://dms.dot.gov/search).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the final rule.

(4) To view or download the document click on either "Scanned Image (TIFF)" or "Adobe PDF."

You can also get an electronic copy using the Internet through FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the **Federal Register's** web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this final rule.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBREFA on the Internet at our site, http://www.gov/avr/arm/sbrefa.htm. For more information on SBREFA, e-mail us at 9–AWA–SBREFA@faa.gov.

Background

On October 26, 1999, the FAA issued Notice of Proposed Rulemaking (NPRM) 99–18, which was published in the **Federal Register** on October 29, 1999 (64 FR 58644). That notice proposed three separate requirements:

First, a requirement was proposed for the design approval holders of certain transport category airplanes to conduct a safety review of the airplane fuel tank system and to develop specific fuel tank system maintenance and inspection instructions for any items determined to require repetitive inspections or maintenance.

Second, a requirement was proposed to prohibit the operation of those airplanes beyond a specified time, unless the operators of those airplanes incorporated instructions for maintenance and inspection of the fuel tank system into their inspection programs.

Third, for new designs, the proposal included a requirement for minimizing the flammability of fuel tanks, a requirement concerning detailed failure analysis to preclude the presence of ignition sources in the fuel tanks and including mandatory fuel system maintenance in the limitations section of the Instructions for Continued Airworthiness.

Issues Prompting This Rulemaking Activity

On July 17, 1996, a 25-year old Boeing Model 747–100 series airplane was involved in an inflight breakup after takeoff from Kennedy International Airport in New York, resulting in 230 fatalities. The accident investigation conducted by the National Transportation Safety Board (NTSB) indicated that the center wing fuel tank exploded due to an unknown ignition source. The NTSB issued recommendations intended to:

- Reduce heating of the fuel in the center wing fuel tanks on the existing fleet of transport airplanes,
- Reduce or eliminate operation with flammable vapors in the fuel tanks of new type certificated airplanes, and
- Reevaluate the fuel system design and maintenance practices on the fleet of transport airplanes.

The accident investigation focused on mechanical failure as providing the energy source that ignited the fuel vapors inside the tank.

The NTSB announced their official findings of the TWA 800 accident at a public meeting held August 22–23, 2000, in Washington, DC. The NTSB determined that the probable cause of the explosion was ignition of the flammable fuel/air mixture in the center wing fuel tank. Although the ignition source could not be determined with certainty, the NTSB determined that the most likely source was a short circuit outside of the center wing tank that allowed excessive voltage to enter the tank through electrical wiring associated with the fuel quantity indication system (FQIS). Opening remarks at the hearing also indicated that:

"* * * This investigation and several others have brought to light some broader issues regarding aircraft certification. For example, there are questions about the adequacy of the risk analyses that are used as the basis for demonstrating compliance with many certification requirements."

This accident prompted the FAA to examine the underlying safety issues surrounding fuel tank explosions, the adequacy of the existing regulations, the service history of airplanes certificated to these regulations, and existing maintenance practices relative to the fuel tank system.

Flammability Characteristics

The flammability characteristics of the various fuels approved for use in transport airplanes results in the presence of flammable vapors in the vapor space of fuel tanks at various times during the operation of the airplane. Vapors from Jet A fuel (the typical commercial turbojet engine fuel) at temperatures below approximately 100°F are too lean to be flammable at sea level; at higher altitudes the fuel vapors become flammable at temperatures above approximately 45°F (at 40,000 feet altitude).

However, the regulatory authorities and aviation industry have always presumed that a flammable fuel air mixture exists in the fuel tanks at all times and have adopted the philosophy that the best way to ensure airplane fuel tank safety is to preclude ignition sources within fuel tanks. This philosophy has been based on the application of fail-safe design requirements to the airplane fuel tank system to preclude ignition sources from being present in fuel tanks when component failures, malfunctions, or lightning encounters occur.

Possible ignition sources that have been considered include:

- Electrical arcs,
- Friction sparks, and
- Autoignition. (The autoignition temperature is the temperature at which the fuel/air mixture will spontaneously ignite due to heat in the absence of an ignition source.)

Some events that could produce sufficient electrical energy to create an arc include:

- Lightning,
- Electrostatic charging,
- Electromagnetic interference (EMI), or
- Failures in airplane systems or wiring that introduce high-power electrical energy into the fuel tank system.

Friction sparks may be caused by mechanical contact between certain rotating components in the fuel tank, such as a steel fuel pump impeller rubbing on the pump inlet check valve. Autoignition of fuel vapors may be caused by failure of components within the fuel tank, or external components or systems that cause components or tank surfaces to reach a high enough temperature to ignite the fuel vapors in the fuel tank.

Existing Regulations/Certification Methods

The current 14 CFR part 25 regulations that are intended to require designs that preclude the presence of ignition sources within the airplane fuel tanks are as follows:

Section 25.901 is a general requirement that applies to all portions of the propulsion installation, which includes the airplane fuel tank system. It requires, in part, that the propulsion and fuel tank systems be designed to ensure fail-safe operation between normal maintenance and inspection intervals, and that the major components be electrically bonded to the other parts of the airplane.

Sections 25.901(c) and 25.1309 provide airplane system fail-safe requirements. Section 25.901(c) requires that "no single failure or malfunction or probable combination of failures will jeopardize the safe operation of the airplane." In general, the FAA's policy has been to require applicants to assume the presence of foreseeable latent (undetected) failure conditions when demonstrating that subsequent single failures will not jeopardize the safe operation of the airplane.

Certain subsystem designs must also comply with § 25.1309. That section requires airplane systems and associated systems to be:

"* * * designed so that the occurrence of any failure condition which would prevent the continued safe flight and landing of the airplane is extremely improbable, and the occurrence of any other failure conditions which would reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions is improbable."

Compliance with § 25.1309 requires an analysis, and testing where appropriate, considering possible modes of failure, including malfunctions and damage from external sources, the probability of multiple failures and undetected failures, the resulting effects on the airplane and occupants, considering the stage of flight and operating conditions, and the crew warning cues, corrective action required, and the capability of detecting faults.

This provision has the effect of mandating the use of "fail-safe" design methods, which require that the effect of failures and combinations of failures be considered in defining a safe design. Detailed methods of compliance with §§ 25.1309(b), (c), and (d) are described in Advisory Circular (AC) 25.1309–1A, "System Design Analysis," and are intended as a means to evaluate the overall risk, on average, of an event occurring within a fleet of aircraft. The following guidance involving failures is offered in that AC:

- In any system or subsystem, a single failure of any element or connection during any one flight must be assumed without consideration as to its probability of failing. This single failure must not prevent the continued safe flight and landing of the airplane.
- Additional failures during any one flight following the first single failure must also be considered when the probability of occurrence is not shown to be extremely improbable. The probability of these combined failures includes the probability of occurrence of the first failure.

As described in the AC, the FAA fail-safe design concept consists of the following design principles or techniques intended to ensure a safe design. The use of only one of these principles is seldom adequate. A combination of two or more design principles is usually needed to provide a fail-safe design (i.e., to ensure that catastrophic failure conditions are not expected to occur during the life of the fleet of a particular airplane model).

- Design integrity and quality, including life limits, to ensure intended function and prevent failures.
- Redundancy or backup systems that provide system function after the first failure (e.g., two or more engines, two or more hydraulic systems, dual flight controls, etc.)
- Isolation of systems and components so that failure of one element will not cause failure of the other (sometimes referred to as system independence).
- Detection of failures or failure indication.
- Functional verification (the capability for testing or checking the component's condition).
- Proven reliability and integrity to ensure that multiple component or system failures will not occur in the same flight.
- Damage tolerance that limits the safety impact or effect of the failure.
- Designed failure path that controls and directs the failure, by design, to limit the safety impact.
- Flightcrew procedures following the failure designed to assure continued safe flight by specific crew actions.
- Error tolerant design that considers probable human error in the operation, maintenance, and fabrication of the airplane.
- Margins of safety that allow for undefined and unforeseeable adverse flight conditions.

These regulations, when applied to typical airplane fuel tank systems, are

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intended to prevent ignition sources inside fuel tanks. The approval of the installation of mechanical and electrical components inside the fuel tanks was typically based on a qualitative system safety analysis and component testing which showed that:

- Mechanical components would not create sparks or high temperature surfaces in the event of any failure; and
- Electrical devices would not create arcs of sufficient energy to ignite a fuel-air mixture in the event of a single failure or probable combination of failures.

Section 25.901(b)(2) requires that the components of the propulsion system be "constructed, arranged, and installed so as to ensure their continued safe operation between normal inspection or overhauls." Compliance with this regulation is typically demonstrated by substantiating that the propulsion installation, which includes the fuel tank system, will safely perform its intended function between inspections and overhauls defined in the maintenance instructions.

Section 25.901(b)(4) requires electrically bonding the major components of the propulsion system to the other parts of the airplane. The affected major components of the propulsion system include the fuel tank system. Compliance with this requirement for fuel tank systems has been demonstrated by showing that all major components in the fuel tank are electrically bonded to the airplane structure. This precludes accumulation of electrical charge on the components and the possible arcing in the fuel tank that could otherwise occur. In most cases, electrical bonding is accomplished by installing jumper wires from each major fuel tank system component to airplane structure. Advisory Circular 25–8, "Auxiliary Fuel Tank Installations," also provides guidance for bonding of fuel tank system components and means of precluding ignition sources within transport airplane fuel tanks.

Section 25.954 requires that the fuel tank system be designed and arranged to prevent the ignition of fuel vapor within the system due to the effects of lightning strikes. Compliance with this regulation is typically shown by incorporation of design features such as minimum fuel tank skin thickness, location of vent outlets out of likely lightning strike areas, and bonding of fuel tank system structure and components. Guidance for demonstrating compliance with this regulation is provided in AC 20–53A, "Protection of Aircraft Fuel Systems Against Fuel Vapor Ignition Due to Lightning."

Section 25.981 requires that the applicant determine the highest temperature allowable in fuel tanks that provides a safe margin below the lowest expected autoignition temperature of the fuel that is approved for use in the fuel tanks. No temperature at any place inside any fuel tank where fuel ignition is possible may then exceed that maximum allowable temperature. This must be shown under all probable operating, failure, and malfunction conditions of any component whose operation, failure, or malfunction could increase the temperature inside the tank. Guidance for demonstrating compliance with this regulation has been provided in AC 25.981–1A, "Guidelines For Substantiating Compliance With the Fuel Tank Temperature Requirements." The AC provides a listing of failure modes of fuel tank system components that should be considered when showing that component failures will not create a hot surface that exceeds the maximum allowable fuel tank component or tank surface temperature for the fuel type for which approval is being requested. Manufacturers have demonstrated compliance with this regulation by testing and analysis of components to show that design features, such as thermal fuses in fuel pump motors, preclude an ignition source in the fuel tank when failures such as a seized fuel pump rotor occur.

Airplane Maintenance Manuals and Instructions for Continued Airworthiness

Historically, manufacturers have been required to provide maintenance-related information for fuel tank systems in the same manner as for other systems. Prior to 1970, most manufacturers provided manuals containing maintenance information for large transport category airplanes, but there were no standards prescribing minimum content, distribution, and a timeframe in which the information must be made available to the operator.

Section 25.1529, as amended by Amendment 25–21 in 1970, required the applicant for a type certificate (TC) to provide airplane maintenance manuals (AMM) to owners of the airplanes. This regulation was amended in 1980 to require that the applicant for type certification provide Instructions for Continued Airworthiness (ICA) prepared in accordance with Appendix H to part 25. In developing the ICA, the applicant is required to include certain information such as a description of the airplane and its systems, servicing information, and maintenance instructions, including the frequency and extent of inspections necessary to provide for the continuing airworthiness of the airplane (including the fuel tank system). As required by Appendix H to part 25, the ICA must also include an FAA-approved Airworthiness Limitations section enumerating those mandatory inspections, inspection intervals, replacement times, and related procedures approved under § 25.571, relating to structural damage tolerance. Before this amendment, the Airworthiness Limitations section of the ICA applied only to airplane structure and not to the fuel tank system.

One method of establishing initial scheduled maintenance and inspection tasks is the Maintenance Steering Group (MSG) process, which develops a Maintenance Review Board (MRB) document for a particular airplane model. Operators may incorporate those provisions, along with other maintenance information contained in the ICA, into their maintenance or inspection program.

Section 21.50 requires the holder of a design approval, including a TC or supplemental type certificate (STC) for an airplane, aircraft engine, or propeller for which application was made after January 28, 1981, to furnish at least one set of the complete ICA to the owner of the product for which the application was made. The ICA for original type certificated products must include instructions for the fuel tank system. A design approval holder who has modified the fuel tank system must furnish a complete set of the ICA for the modification to the owner of the product.

Type Certificate Amendments Based on Major Change in Type Design

Over the years, design changes have been introduced into fuel tank systems that may affect their safety. There are three ways in which major design changes can be approved:

1. The TC holder may be granted an amendment to the type design.

2. Any person, including the TC holder, wanting to alter a product by introducing a major change in the type design not great enough to require a new application for a TC, may be granted an STC.

3. In some instances, a person may also make an alteration to the type design and receive a field approval. The field approval process is a method for obtaining approval of relatively simple modifications to airplanes. In this process, an authorized FAA Flight Standards Inspector can approve the alteration by use of FAA Form 337.

Maintenance and Inspection Program Requirements

Airplane operators are required to have extensive maintenance or inspection programs that include provisions relating to fuel tank systems.

Section 91.409(e), which generally applies to other than commercial operations, requires an operator of a large turbojet multiengine airplane or a turbopropeller-powered multiengined airplane to select one of the following four inspection programs:

1. A continuous airworthiness inspection program that is part of a continuous airworthiness maintenance program currently in use by a person holding an air carrier operating certificate, or an operating certificate issued under part 119 for operations under parts 121 or 135, and operating that make and model of airplane under those parts;

2. An approved airplane inspection program approved under § 135.419 and currently in use by a person holding an operating certificate and operations specifications issued under part 119 for part 135 operations;

3. A current inspection program recommended by the manufacturer; or

4. Any other inspection program established by the registered owner or operator of that airplane and approved by the Administrator.

Section 121.367, which is applicable to those air carrier and commercial operations covered by part 121, requires operators to have an inspection program, as well as a program covering other maintenance, preventative maintenance, and alterations.

Section 125.247, which is generally applicable to operation of large airplanes, other than air carrier operations conducted under part 121, requires operators to inspect their airplanes in accordance with an inspection program approved by the Administrator.

Section 129.14 requires a foreign air carrier and each foreign operator of a U.S. registered airplane in common carriage, within or outside the U.S., to maintain the airplane in accordance with an FAA-approved program.

In general, the operators rely on the TC data sheet, MRB reports, ICA's, the Airworthiness Limitations section of the ICA, other manufacturers' recommendations, and their own operating experience to develop the overall maintenance or inspection program for their airplanes.

The intent of the rules governing the inspection and/or maintenance program is to ensure that the inherent level of safety that was originally designed into the system is maintained and that the airplane is in an airworthy condition.

Historically, for fuel tank systems these required programs include:

- Operational checks (e.g., a task to determine if an item is fulfilling its intended function);
- Functional checks (e.g., a quantitative task to determine if functions perform within specified limits);
- Overhaul of certain components to restore them to a known standard; and
- General zonal visual inspections conducted concurrently with other maintenance actions, such as structural inspections.

However, specific maintenance instructions to detect and correct conditions that degrade fail-safe capabilities have not been deemed necessary because it has been assumed that the original fail-safe capabilities would not be degraded in service.

Design and Service History Review

The FAA has examined the service history of transport airplanes and performed an analysis of the history of fuel tank explosions on these airplanes. While there were a significant number of fuel tank fires and explosions that occurred during the 1960's and 1970's on several airplane types, in most cases, the fire or explosion was found to be related to design practices, maintenance actions, or improper modification of fuel pumps. Some of the events were apparently caused by lightning strikes. Extensive design reviews were conducted to identify possible ignition sources, and actions were taken that were intended to prevent similar occurrences. However, fuel tank system-related accidents have occurred in spite of these efforts.

On May 11, 1990, the center wing fuel tank of a Boeing Model 737–300 exploded while the airplane was on the ground at Nimoy Aquino International Airport, Manila, Philippines. The airplane was less than one year old. In the accident, the fuel-air vapors in the center wing tank exploded as the airplane was being pushed back from a terminal gate prior to flight. The accident resulted in 8 fatalities and injuries to an additional 30 people. Accident investigators considered a plausible scenario in which damaged wiring located outside the fuel tank might have created a short between 115-volt airplane system wires and 28 volt wires to a fuel tank level switch. This, in combination with a possible latent defect of the fuel level float switch, was investigated as a possible source of ignition. However, a definitive ignition source was never confirmed during the accident investigation. This unexplained accident occurred on a newer airplane, in contrast to the July 17, 1996, accident that occurred on an older Boeing Model 747 airplane that was approaching the end of its initial design life.

The Model 747 and 737 accidents indicate that the development of an ignition source inside the fuel tank may be related to both the design and maintenance of the fuel tank systems.

National Transportation Safety Board (NTSB) Recommendations

Since the July 17, 1996, accident, the FAA, NTSB, and aviation industry have been reviewing the design features and service history of the Boeing Model 747 and certain other transport airplane models. Based upon its review, the NTSB has issued the following recommendations to the FAA intended to reduce exposure to operation with flammable vapors in fuel tanks and address possible degradation of the original type certificated fuel tank system designs on transport airplanes.

The following recommendations relate to "Reduced Flammability Exposure":

"A–96–174: Require the development of and implementation of design or operational changes that will preclude the operation of transport-category airplanes with explosive fuel-air mixtures in the fuel tanks:

LONG TERM DESIGN MODIFICATIONS:

(a) Significant consideration should be given to the development of airplane design modification, such as nitrogen-inerting systems and the addition of insulation between heat-generating equipment and fuel tanks. Appropriate modifications should apply to newly certificated airplanes and, where feasible, to existing airplanes."

"A–96–175: Require the development of and implementation of design or operational changes that will preclude the operation of transport-category airplanes with explosive fuel-air mixtures in the fuel tanks:

NEAR TERM OPERATIONAL

(b) Pending implementation of design modifications, require modifications in operational procedures to reduce the potential for explosive fuel-air mixtures in the fuel tanks of transport-category aircraft. In the B–747, consideration should be given to refueling the center wing fuel tank (CWT) before flight whenever possible from cooler ground fuel tanks, proper monitoring and management of the CWT fuel temperature, and maintaining an appropriate minimum fuel quantity in the CWT."

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"A–96–176: Require that the B–747 Flight Handbooks of TWA and other operators of B–747s and other aircraft in which fuel tank temperature cannot be determined by flightcrews be immediately revised to reflect the increases in CWT fuel temperatures found by flight tests, including operational procedures to reduce the potential for exceeding CWT temperature limitations."

"A–96–177: Require modification of the CWT of B–747 airplanes and the fuel tanks of other airplanes that are located near heat sources to incorporate temperature probes and cockpit fuel tank temperature displays to permit determination of the fuel tank temperatures."

The following recommendations relate to "Ignition Source Reduction":

"A–98–36: Conduct a survey of fuel quantity indication system probes and wires in Boeing Model 747's equipped with systems other than Honeywell Series 1–3 probes and compensators and in other model airplanes that are used in Title 14 Code of Federal Regulations Part 121 service to determine whether potential fuel tank ignition sources exist that are similar to those found in the Boeing Model 747. The survey should include removing wires from fuel probes and examining the wires for damage. Repair or replacement procedures for any damaged wires that are found should be developed."

"A–98–38: Require in Boeing Model 747 airplanes, and in other airplanes with fuel quantity indication system (FQIS) wire installations that are co-routed with wires that may be powered, the physical separation and electrical shielding of FQIS wires to the maximum extent possible."

"A–98–39: Require, in all applicable transport airplane fuel tanks, surge protection systems to prevent electrical power surges from entering fuel tanks through fuel quantity indication system wires."

Service History

The FAA has reviewed service difficulty reports for the transport airplane fleet and evaluated the certification and design practices utilized on these previously certificated airplanes. An inspection of fuel tanks on Boeing Model 747 airplanes also was initiated. Representatives from the Air Transport Association (ATA), Association of European Airlines (AEA), the Association of Asia Pacific Airlines (AAPA), the Aerospace Industries Association of America, and the European Association of Aerospace Industries initiated a joint effort to inspect and evaluate the condition of the fuel tank system installations on a representative sample of airplanes within the transport fleet. The fuel tanks of more than 800 airplanes were inspected. Data from inspections conducted as part of this effort and shared with the FAA have assisted in establishing a basis for developing corrective action for airplanes within the transport fleet.

In addition to the results from these inspections, the FAA has received reports of anomalies on in-service airplanes that have necessitated actions to preclude development of ignition sources in or adjacent to airplane fuel tanks.

The following provides a summary of findings from design evaluations, service difficulty reports, and a review of current airplane maintenance practices.

Aging Airplane Related Phenomena

Fuel tank inspections initiated as part of the Boeing Model 747 accident investigation identified aging of fuel tank system components, contamination, corrosion of components and sulfide deposits on components as possible conditions that could contribute to development of ignition sources within the fuel tanks. Results of detailed inspection of the fuel pump wiring on several Boeing Model 747 airplanes showed debris within the fuel tanks consisting of lockwire, rivets, and metal shavings. Debris was also found inside scavenge pumps. Corrosion and damage to insulation on FQIS probe wiring was found on 6 out of 8 probes removed from one in-service airplane.

In addition, inspection of airplane fuel tank system components from out-of-service (retired) airplanes, initiated following the accident, revealed damaged wiring and corrosion buildup of conductive sulfide deposits on the FQIS wiring on some Boeing Model 747 airplanes. The conductive deposits or damaged wiring may result in a location where arcing could occur if high power electrical energy was transmitted to the FQIS wiring from adjacent wires that power other airplane systems.

While the effects of corrosion on fuel tank system safety have not been fully evaluated, the FAA has initiated a research program to better understand the effects of sulfide deposits and corrosion on the safety of airplane fuel tank systems.

Wear or chafing of electrical power wires routed in conduits that are located inside fuel tanks can result in arcing through the conduits. On December 23, 1996, the FAA issued Airworthiness Directive (AD) 96–26–06, applicable to certain Boeing Model 747 airplanes, which required inspection of electrical wiring routed within conduits to fuel pumps located in the wing fuel tanks and replacement of any damaged wiring. Inspection reports indicated that many instances of wear had occurred on Teflon sleeves installed over the wiring to protect it from damage and possible arcing to the conduit.

Inspections of wiring to fuel pumps on Boeing Model 737 airplanes with over 35,000 flight hours have shown significant wear to the insulation of wires inside conduits that are located in fuel tanks. In nine reported cases, wear resulted in arcing to the fuel pump wire conduit on airplanes with greater than 50,000 flight hours. In one case, wear resulted in burnthrough of the conduit into the interior of the 737 main tank fuel cell. On May 14, 1998, the FAA issued a telegraphic AD, T98–11–52, which required inspection of wiring to Boeing Model 737 airplane fuel pumps routed within electrical conduits and replacement of any damaged wiring. Results of these inspections showed that wear of the wiring occurred in many instances, particularly on those airplanes with high numbers of flight cycles and operating hours.

The FAA also has received reports of corrosion on bonding jumper wires within the fuel tanks on one in-service Airbus Model A300 airplane. The manufacturer investigating this event did not have sufficient evidence to determine conclusively the level of damage and corrosion found on the jumper wires. Although the airplane was in long-term storage, it does not explain why a high number of damaged/corroded jumper wires were found concentrated in a specific area of the wing tanks. Further inspections of a limited number of other Airbus models did not reveal similar extensive corrosion or damage to bonding jumper wires. However, they did reveal evidence of the accumulation of sulfide deposits around the outer braid of some jumper wires. Tests by the manufacturer have shown that these deposits did not affect the bonding function of the leads. Airbus has developed a one-time-inspection service bulletin for all its airplanes to ascertain the extent of the sulfide deposits and to ensure that the level of jumper wire damage found on the one Model A300 airplane is not widespread.

On March 30, 1998, the FAA received reports of three recent instances of electrical arcing within fuel pumps installed in fuel tanks on Lockheed Model L–1011 airplanes. In one case, the electrical arc had penetrated the pump and housing and entered the fuel tank. Preliminary investigation indicates

that features incorporated into the fuel pump design that were intended to preclude overheating and arc-through into the fuel tank may not have functioned as intended due to discrepancies introduced during overhaul of the pumps. Emergency AD 98–08–09 was issued April 3, 1998, to specify a minimum quantity of fuel to be carried in the fuel tanks for the purpose of covering the pumps with liquid fuel and thereby precluding ignition of vapors within the fuel tank until such time as terminating corrective action could be developed.

Unforeseen Fuel Tank System Failures

After an extensive review of the Boeing Model 747 design following the July 17, 1996, accident, the FAA determined that during original certification of the fuel tank system, the degree of tank contamination and the significance of certain failure modes of fuel tank system components had not been considered to the extent that more recent service experience indicates is needed. For example, in the absence of contamination, the FQIS had been shown to preclude creating an arc if FQIS wiring were to come in contact with the highest level of electrical voltage on the airplane. This was shown by demonstrating that the voltage needed to cause an arc in the fuel probes due to an electrical short condition was well above any voltage level available in the airplane systems.

However, recent testing has shown that if contamination, such as conductive debris (lock wire, nuts, bolts, steel wool, corrosion, sulfide deposits, metal filings, etc.) is placed within gaps in the fuel probe, the voltage needed to cause an arc is within values that may occur due to a subsequent electrical short or induced current on the FQIS probe wiring from electromagnetic interference caused by adjacent wiring. These anomalies, by themselves, could not lead to an electrical arc within the fuel tanks without the presence of an additional failure. If any of these anomalies were combined with a subsequent failure within the electrical system that creates an electrical short, or if high-intensity radiated fields (HIRF) or electrical current flow in adjacent wiring induces EMI voltage in the FQIS wiring, sufficient energy could enter the fuel tank and cause an ignition source within the tank.

On November 26, 1997, in Docket No. 97–NM–272–AD, the FAA proposed a requirement for operators of Boeing Model 747–100, –200, and –300 series airplanes to install components for the suppression of electrical transients and/or the installation of shielding and separation of fuel quantity indicating system wiring from other airplane system wiring. After reviewing the comments received on the proposed requirements, the FAA issued AD 98–20–40 on September 23, 1998, that requires the installation of shielding and separation of the electrical wiring of the fuel quantity indication system. On April 14, 1998, the FAA proposed a similar requirement for Boeing Model 737–100, –200, –300, –400, and –500 series airplanes in Docket No. 98–NM–50–AD, which led to the FAA issuing AD 99–03–04 on January 26, 1999. The action required by those two airworthiness directives is intended to preclude high levels of electrical energy from entering the airplane fuel tank wiring due to electromagnetic interference or electrical shorts. Several manufacturers have been granted approval for the use of alternative methods of compliance (AMOC) with these AD's that permit installation of transient suppressing devices in the FQIS wiring that prevent unwanted electrical power from entering the fuel tank. All later model Boeing Model 747 and 737 FQIS's have wire separation and fault isolation features that may meet the intent of these AD actions. This rulemaking will require evaluation of these later designs and the designs of other transport airplanes.

Other examples of unanticipated failure conditions include incidents of parts from fuel pump assemblies impacting or contacting the rotating fuel pump impeller. The first design anomaly was identified when two incidents of damage to fuel pumps were reported on Boeing Model 767 airplanes. In both cases objects from a fuel pump inlet diffuser assembly were ingested into the fuel pump, causing damage to the pump impeller and pump housing. The damage could have caused sparks or hot debris from the pump to enter the fuel tank. To address this unsafe condition, the FAA issued AD 97–19–15. This AD requires revision of the airplane flight manual to include procedures to switch off the fuel pumps when the center tank approaches empty. The intent of this interim action is to maintain liquid fuel over the pump inlet so that any debris generated by a failed fuel pump will not come in contact with fuel vapors and cause a fuel tank explosion.

The second design anomaly was reported on Boeing Model 747–400 series airplanes. The reports indicated that inlet adapters of the override/jettison pumps of the center wing fuel tank were worn. Two of the inlet adapters had worn down enough to cause damage to the rotating blades of the inducer. The inlet check valves also had significant damage. An operator reported damage to the inlet adapter so severe that contact had occurred between the steel disk of the inlet check valve and the steel screw that holds the inducer in place. Wear to the inlet adapters has been attributed to contact between the inlet check valve and the adapter. Such excessive wear of the inlet adapter can lead to contact between the inlet check valve and inducer, which could result in pieces of the check valve being ingested into the inducer and damaging the inducer and impellers. Contact between the steel disk of the inlet check valve and the steel rotating inducer screw can cause sparks. To address this unsafe condition, the FAA issued an immediately adopted rule, AD 98–16–19, on July 30, 1998.

Another design anomaly was reported in 1989 when a fuel tank ignition event occurred in an auxiliary fuel tank during refueling of a Beech Model 400 airplane. The auxiliary fuel tank had been installed under an STC. Polyurethane foam had been installed in portions of the tank to minimize the potential of a fuel tank explosion if uncontained engine debris penetrated those portions of the tank. The accident investigation indicated that electrostatic charging of the foam during refueling resulted in ignition of fuel-air vapors in portions of the adjacent fuel tank system that did not contain the foam. The fuel vapor explosion caused distortion of the tank and fuel leakage from a failed fuel line. Modifications to the design, including use of more conductive polyurethane foam and installation of a standpipe in the refueling system, were incorporated to prevent reoccurrence of electrostatic charging and a resultant fuel tank ignition source.

Review of Fuel Tank System Maintenance Practices

In addition to the review of the design features and service history of the Boeing Model 747 and other airplane models in the transport airplane fleet, the FAA also has reviewed the current fuel tank system maintenance practices for these airplanes.

Typical transport category airplane fuel tank systems are designed with redundancy and fault indication features such that single component failures do not result in any significant reduction in safety. Therefore, fuel tank systems historically have not had any life-limited components or specific detailed inspection requirements, unless mandated by airworthiness directives.

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Most of the components are "on condition," meaning that some test, check, or other inspection is performed to determine continued serviceability, and maintenance is performed only if the inspection identifies a condition requiring correction. Visual inspection of fuel tank system components is by far the predominant method of inspection for components such as boost pumps, fuel lines, couplings, wiring, etc. Typically, these inspections are conducted concurrently with zonal inspections or internal or external fuel tank structural inspections. These inspections normally do not provide information regarding the continued serviceability of components within the fuel tank system, unless the visual inspection indicates a potential problem area. For example, it would be difficult, if not impossible, to detect certain degraded fuel tank system conditions, such as worn wiring routed through conduit to fuel pumps, debris inside fuel pumps, corrosion to bonding wire interfaces, etc., without dedicated intrusive inspections that are much more extensive than those normally conducted.

Listing of Deficiencies

The list provided below summarizes fuel tank system design deficiencies, malfunctions, failures, and maintenance-related actions that have been determined through service experience to result in a degradation of the safety features of airplane fuel tank systems. This list was developed from service difficulty reports and incident and accident reports. These anomalies occurred on in-service transport category airplanes despite regulations and policies in place to preclude the development of ignition sources within airplane fuel tank systems.

1. *Pumps:*
- Ingestion of the pump inducer into the pump impeller and generation of debris into the fuel tank.
- Pump inlet case degradation, allowing the pump inlet check valve to contact the impeller.
- Stator winding failures during operation of the fuel pump. Subsequent failure of a second phase of the pump resulting in arcing through the fuel pump housing.
- Deactivation of thermal protective features incorporated into the windings of pumps due to inappropriate wrapping of the windings.
- Omission of cooling port tubes between the pump assembly and the pump motor assembly during fuel pump overhaul.
- Extended dry running of fuel pumps in empty fuel tanks, which was contrary to the manufacturer's recommended procedures.
- Use of steel impellers that may produce sparks if debris enters the pump.
- Debris lodged inside pumps.
- Arcing due to the exposure of electrical connections within the pump housing that have been designed with inadequate clearance to the pump cover.
- Thermal switches resetting over time to a higher trip temperature.
- Flame arrestors falling out of their respective mounting.
- Internal wires coming in contact with the pump rotating group, energizing the rotor and arcing at the impeller/adapter interface.
- Poor bonding across component interfaces.
- Insufficient ground fault current protection capability.
- Poor bonding of components to structure.

2. *Wiring to pumps in conduits located inside fuel tanks:*
- Wear of Teflon sleeving and wiring insulation allowing arcing from wire through metallic conduits into fuel tanks.

3. *Fuel pump connectors:*
- Electrical arcing at connections within electrical connectors due to bent pins or corrosion.
- Fuel leakage and subsequent fuel fire outside of the fuel tank caused by corrosion of electrical connectors inside the pump motor which lead to electrical arcing through the connector housing (connector was located outside the fuel tank).
- Selection of improper materials in connector design.

4. *FQIS wiring:*
- Degradation of wire insulation (cracking), corrosion and sulfide deposits at electrical connectors
- Unshielded FQIS wires routed in wire bundles with high voltage wires.

5. *FQIS probes:*
- Corrosion and sulfide deposits causing reduced breakdown voltage in FQIS wiring.
- Terminal block wiring clamp (strain relief) features at electrical connections on fuel probes causing damage to wiring insulation.
- Contamination in the fuel tanks causing a reduced arc path between FQIS probe walls (steel wool, lock wire, nuts, rivets, bolts; or mechanical impact damage to probes).

6. *Bonding straps:*
- Corrosion to bonding straps.
- Loose or improperly grounded attachment points.
- Static bonds on fuel tank system plumbing connections inside the fuel tank worn due to mechanical wear of the plumbing from wing movement and corrosion.

7. *Electrostatic charge:*
- Use of non-conductive reticulated polyurethane foam that holds electrostatic charge buildup.
- Spraying of fuel into fuel tanks through inappropriately designed refueling nozzles or pump cooling flow return methods.

Fuel Tank Flammability

In addition to the review of potential fuel tank ignition, the FAA has undertaken a parallel effort to address the threat of fuel tank explosions by eliminating or significantly reducing the presence of explosive fuel air mixtures within the fuel tanks of new type designs, in-production, and the existing fleet of transport airplanes.

On April 3, 1997, the FAA published a notice in the **Federal Register** (62 FR 16014) that requested comments concerning the 1996 NTSB recommendations regarding reduced flammability listed earlier in this notice. That notice provided significant discussion of service history, background, and issues relating to reducing flammability in transport airplane fuel tanks. Review of the comments submitted to that notice indicated that additional information was needed before the FAA could initiate rulemaking action to address the recommendations.

On January 23, 1998, the FAA published a notice in the **Federal Register** that established and tasked an Aviation Rulemaking Advisory Committee (ARAC) working group, the Fuel Tank Harmonization Working Group (FTHWG), to provide additional information prior to rulemaking. The ARAC consists of interested parties, including the public, and provides a public process to advise the FAA concerning development of new regulations.

Note: The FAA formally established ARAC in 1991 (56 FR 2190, January 22, 1991), to provide advice and recommendations concerning the full range of the FAA's safety-related rulemaking activity.

The FTHWG evaluated numerous possible means of reducing or eliminating hazards associated with explosive vapors in fuel tanks. On July 23, 1998, the ARAC submitted its report to the FAA. The full report is in the docket created for this ARAC working group (Docket No. FAA--1998–4183). This docket can be reviewed on the U.S. Department of Transportation electronic Document Management System on the Internet at *http://dms.dot.gov*. The full report is also in the docket for this rulemaking.

The report provided a recommendation for the FAA to initiate rulemaking action to amend § 25.981, applicable to new type design airplanes, to include a requirement to limit the time transport airplane fuel tanks could operate with flammable vapors in the vapor space of the tank. The recommended regulatory text proposed, "Limiting the development of flammable conditions in the fuel tanks, based on the intended fuel types, to less than 7 percent of the expected fleet operational time, or providing means to mitigate the effects of an ignition of fuel vapors within the fuel tanks such that any damage caused by an ignition will not prevent continued safe flight and landing." The report discussed various options of showing compliance with this proposal, including managing heat input to the fuel tanks, installation of inerting systems or polyurethane fire suppressing foam, and suppressing an explosion if one occurred, etc.

The level of flammability defined in the proposal was established based upon comparison of the safety record of center wing fuel tanks that, in certain airplanes, are heated by equipment located under the tank, and unheated fuel tanks located in the wing. The FTHWG concluded that the safety record of fuel tanks located in the wings was adequate and that if the same level could be achieved in center wing fuel tanks, the overall safety objective would be achieved. Results from thermal analyses documented in the report indicate that center wing fuel tanks that are heated by air conditioning equipment located beneath them contain flammable vapors, on a fleet average basis, for up to 30 percent of the fleet operating time.

During the ARAC review it was also determined that certain airplane types do not locate heat sources adjacent to the fuel tanks. These airplanes provide significantly reduced flammability exposure, near the 5 percent value of the wing tanks. The group therefore determined that it would be feasible to design new airplanes such that fuel tank operation in the flammable range would be limited to near that of the wing fuel tanks. The primary method of compliance with the requirement proposed by the ARAC would likely be to control heat transfer into and out of fuel tanks such that heating of the fuel would not occur. Design features such as locating the air conditioning equipment away from the fuel tanks, providing ventilation of the air conditioning bay to limit heating and cool fuel tanks, and/or insulating the tanks from heat sources, would be practical means of complying with the regulation proposed by the ARAC.

In addition to its recommendation to revise § 25.981, the ARAC also recommended that the FAA continue to evaluate means for minimizing the development of flammable vapors within the fuel tanks to determine whether other alternatives, such as ground based inerting of fuel tanks, could be shown to be cost effective.

To address the ARAC recommendations, the FAA initiated research and development activity to determine the feasibility of requiring ground-based inerting. The results of this activity are documented in report No. DOT/FAA/AR–00/19, "The Cost of Implementing Ground-Based Fuel Tank Inerting in the Commercial Fleet." A copy of the report is in the docket for this rulemaking. In addition, on July 14, 2000 (65 FR 43800), the FAA tasked the ARAC to conduct a technical evaluation of certain fuel tank inerting methods that would reduce the flammability of the fuel tanks on both new type designs and in-service airplanes.

The FAA is also evaluating the potential benefits of using directed ventilation methods to reduce the flammability exposure of fuel tanks that are located near significant heat sources.

Discussion of the Final Rule

The FAA review of the service history, design features, and maintenance instructions of the transport airplane fleet indicates that aging of fuel tank system components and unforeseen fuel tank system failures and malfunctions have become a safety issue for the fleet of turbine-powered transport category airplanes. The FAA is amending the current regulations in four areas.

The first area of concern encompasses the possibility of the development of ignition sources within the existing transport airplane fleet. Many of the design practices used on airplanes in the existing fleet are similar. Therefore, anomalies that have developed on specific airplane models within the fleet could develop on other airplane models. As a result, the FAA considers that a one-time safety review of the fuel tank system for transport airplane models in the current fleet is needed.

The second area of concern encompasses the need to require the design of future transport category airplanes to more completely address potential failures in the fuel tank system that could result in an ignition source in the fuel tank system.

Third, certain airplane types are designed with heat sources adjacent to the fuel tank, which results in heating of the fuel and a significant increase in the formation of flammable vapors in the tank. The FAA considers that fuel tank safety can be enhanced by reducing the time fuel tanks operate with flammable vapors in the tank and is therefore adopting a requirement to provide means to minimize the development of flammable vapors in fuel tanks, or to provide means to prevent catastrophic damage if ignition does occur.

Fourth, the FAA considers that it is necessary to impose operational requirements so that all required maintenance or inspection actions will be included in each operator's FAA-approved maintenance or inspection program.

These regulatory initiatives are being codified as a Special Federal Aviation Regulation (14 CFR part 21), amendments to the airworthiness regulations (14 CFR part 25), and amendments to the operating requirements (14 CFR parts 91, 121, 125, 129)

Part 21 Special Federal Aviation Regulation (SFAR)

Historically, the FAA works with the TC holders when safety issues arise to identify solutions and actions that need to be taken. Some of the safety issues that have been addressed by this voluntary cooperative process include those involving aging aircraft structure, thrust reversers, cargo doors, and wing icing protection. Although some manufacturers have aggressively completed these safety reviews, others have not applied the resources necessary to complete these reviews in a timely manner, which delayed the adoption of corrective action. Although these efforts have frequently been successful in achieving the desired safety objectives, a more uniform and expeditious response is considered necessary to address fuel tank safety issues.

While maintaining the benefits of FAA-TC holder cooperation, the FAA considers that a Special Federal Aviation Regulation (SFAR) provides a means for the FAA to establish clear expectations and standards, as well as a timeframe within which the design approval holders and the public can be confident that fuel tank safety issues on the affected airplanes will be uniformly examined.

This final rule is intended to ensure that the design approval holder completes a comprehensive assessment of the fuel tank system and develops any required inspections, maintenance instructions, or modifications.

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Safety Review

The SFAR requires the design approval holder to perform a safety review of the fuel tank system to show that fuel tank fires or explosions will not occur on airplanes of the approved design. In conducting the review, the design approval holder must demonstrate compliance with the new standards adopted for § 25.981(a) and (b) (discussed below) and the existing standards of § 25.901. As part of this review, the design approval holder must submit a report to the cognizant FAA Aircraft Certification Office (ACO) that substantiates that the fuel tank system is fail-safe.

The FAA intends that those failure conditions identified earlier in this document, and any other foreseeable failures, should be assumed when performing the safety review needed to substantiate that the fuel tank system design is fail-safe. The safety review should be prepared considering all airplane inflight, ground, service, and maintenance conditions, assuming that an explosive fuel air mixture is present in the fuel tanks at all times, unless the fuel tank has been purged of fuel vapor for maintenance. The design approval holder is expected to develop a failure modes and effects analysis (FMEA) for all components in the fuel tank system. Analysis of the FMEA would then be used to determine whether single failures, alone or in combination with foreseeable latent failures, could cause an ignition source to exist in a fuel tank. A subsequent quantitative fault tree analysis should then be developed to determine whether combinations of failures expected to occur in the life of the affected fleet could cause an ignition source to exist in a fuel tank system.

Because fuel tank systems typically have few components within the fuel tank, the number of possible internal sources of ignition is limited. The safety review required by this final rule includes all components or systems that could introduce a source of fuel tank ignition. This may require analysis of not only the fuel tank system components, (e.g., pumps, fuel pump power supplies, fuel valves, fuel quantity indication system probes, wiring, compensators, densitometers, fuel level sensors, etc.), but also other airplane systems that may affect the fuel tank system. For example, failures in airplane wiring or electromagnetic interference from other airplane systems that were not properly accounted for in the original safety assessment could cause an ignition source in the airplane fuel tank system under certain conditions and therefore would have to be included in the system safety analysis.

The intent of the safety review is to assure that each fuel tank system design that is affected by this action will be fully assessed and that the design approval holder identifies any required modifications, added flight deck or maintenance indications, and/or maintenance actions necessary to meet the fail-safe criteria.

Maintenance Instructions

The FAA anticipates that the safety review will identify critical areas of the fuel tank and other related systems that require maintenance actions to account for the affects of aging, wear, corrosion, and possible contamination on the fuel tank system. For example, service history indicates that sulfide deposits may form on fuel tank components, including bonding straps and FQIS components, which could degrade the intended design capabilities by providing a mechanism by which arcing could occur. Therefore, it might be necessary to provide maintenance instructions to identify and eliminate such deposits.

The SFAR requires the design approval holder to develop any specific maintenance and inspection instructions necessary to maintain the design features required to preclude the existence or development of an ignition source within the fuel tank system. These instructions must be established to ensure that an ignition source will not develop throughout the remaining operational life of the airplane.

Possible Airworthiness Directives

The safety review may also result in identification of unsafe conditions on certain airplane models that would require issuance of airworthiness directives. For example, the FAA has required or proposed requirements for design changes to the following airplanes:

- Boeing Models 737, 747, and 767;
- Boeing Douglas Products Division (formerly, McDonnell Douglas) Model DC–9 and DC–10;
- Lockheed Model L–1011;
- Bombardier (Canadair) Model CL–600;
- Airbus Models A300–600R, A319, A320, and A321;
- CASA Model C–212;
- British Aerospace (Jetstream) Model 4100; and
- Fokker Model F28.

Design practices used on these models may be similar to those of other airplane types; therefore, the FAA expects that modifications to airplanes with similar design features may also be required.

The number and scope of any possible AD's may vary by airplane type design. For example, wiring separation and shielding of FQIS wires on newer technology airplanes significantly reduces the likelihood of an electrical short causing an electrical arc in the fuel tank; many newer transport airplanes do not route electrical power wiring to fuel pumps inside the airplane fuel tanks. Therefore, some airplane models may not require significant modifications or additional dedicated maintenance procedures.

Other models may require significant modifications or more maintenance. For example, the FQIS wiring on some older technology airplanes is routed in wire bundles with high voltage power supply wires. The original failure analyses conducted on these airplane types did not consider the possibility that the fuel quantity indication system may become degraded, allowing a significantly lower voltage level to produce a spark inside the fuel tank. Causes of degradation observed in service include aging, corrosion, or undetected contamination of the system. As previously discussed, the FAA has issued AD actions for certain Boeing Model 737 and 747 airplanes to address this condition. Modification of similar types of installations on other airplane models may be required to address this unsafe condition and to achieve a fail-safe design.

It should be noted that any design changes might, in themselves, require maintenance actions. For example, transient protection devices typically require scheduled maintenance in order to detect latent failure of the suppression feature. As a part of the required safety review, the manufacturer is expected to define the necessary maintenance procedures and intervals for any required maintenance actions.

Applicability of the SFAR

The requirements of the SFAR are applicable to holders of TC's, and STC's for modifications that affect the fuel tank systems of turbine-powered transport category airplanes, for which the TC was issued after January 1, 1958, and the airplane has either a maximum type certificated passenger capacity of 30 or more, or a maximum type certificated payload capacity of 7,500 pounds or more.

The SFAR is also applicable to applicants for type certificates, amendments to a type certificate, and supplemental type certificates affecting the fuel tank systems for those airplanes identified above, if the application was filed before the effective date of the SFAR and the certificate was not issued before the effective date of the SFAR.

The FAA has determined that turbine-powered airplanes, regardless of whether they are turboprops or turbojets, should be subject to the rule, because the potential for ignition sources in fuel tank systems is unrelated to the engine design. This results in the coverage of the large transport category airplanes where the safety benefits and public interest are greatest. This action affects approximately 7,000 U.S. registered airplanes in part 91, 121, 125, and 129 operations.

The date January 1, 1958, was chosen so that only turbine-powered airplanes, except for a few 1953–1958 vintage Convair 340s and 440s converted from reciprocating power, will be included. No reciprocating-powered transport category airplanes are known to be used currently in passenger service, and the few remaining in cargo service would be excluded. Compliance is not required for those older airplanes because their advanced age and small numbers would likely make compliance impractical from an economic standpoint. This is consistent with similar exclusions made for those airplanes from other requirements applicable to existing airplanes, such as the regulations adopted for flammability of seat cushions (49 FR 43188, October 24, 1984); flammability of cabin interior components (51 FR 26206, July 21, 1986); cargo compartment liners (54 FR 7384, February 17, 1989); access to passenger emergency exits (57 FR 19244, May 4, 1992); and Class D cargo or baggage compartments (63 FR 8032, February 17, 1998).

In order to achieve the benefits of this rulemaking for large transport airplanes as quickly as possible, the FAA has decided to limit the applicability of the SFAR to airplanes with a maximum certificated passenger capacity of at least 30 or at least 7,500 pounds payload. Compliance is not required for smaller airplanes because it is not clear at this time that the possible benefits for those airplanes would be commensurate with the costs involved. For now, the applicability of the rule will remain as proposed in the notice. The FAA will need to conduct the economic analysis to determine if the rule should be applied to smaller airplanes. Should the results of the analysis be favorable, the FAA will develop further rulemaking to address the smaller transports.

Applicability of SFAR to Supplemental Type Certificate (STC) Holders

The SFAR applies to STC holders as well, because a significant number of STC's effect changes to fuel tank systems, and the objectives of this rule would not be achieved unless these systems are also reviewed and their safety ensured. The service experience noted in the background of this rule indicates modifications to airplane fuel tank systems incorporated by STC's may affect the safety of the fuel tank system.

Modifications that could affect the fuel tank system include those that could result in an ignition source in the fuel tank. Examples include installation of auxiliary fuel tanks and installation of, or modification to, other systems such as the fuel quantity indication system, the fuel pump system (including electrical power supply), airplane refueling system, any electrical wiring routed within or adjacent to the fuel tank, and fuel level sensors or float switches. Modifications to systems or components located outside the fuel tank system may also affect fuel tank safety. For example, installation of electrical wiring for other systems that was inappropriately routed with FQIS wiring could violate the wiring separation requirements of the type design. Therefore, the FAA intends that a fuel tank system safety review be conducted for any modification to the airplane that may affect the safety of the fuel tank system. The level of evaluation that is intended would be dependent upon the type of modification. In most cases a simple qualitative evaluation of the modification in relation to the fuel tank system, and a statement that the change has no effect on the fuel tank system, would be all that is necessary. In other cases where the initial qualitative assessment shows that the modification may affect the fuel tank system, a more detailed safety review would be required.

Design approvals for modification of airplane fuel tank systems approved by STC's require the applicant to have knowledge of the airplane fuel tank system in which the modification is installed. The majority of these approvals are held by the original airframe manufacturers or airplane modifiers that specialize in fuel tank system modifications, such as installation of auxiliary fuel tanks. Therefore, the FAA expects that the data needed to complete the required safety review identified in the SFAR would be available to the STC holder.

Compliance With SFAR

This rule provides an 18-month compliance time from the effective date of the final rule, or within 18 months after the issuance of a certificate for which application was filed before the effective date of this SFAR, whichever is later, for design approval holders to conduct the safety review and develop the compliance documentation and any required maintenance and inspection instructions. (Applicants whose applications have not been approved as of the effective date would be allowed 18 months after the approval to comply.) The FAA expects each design approval holder to work with the cognizant FAA Aircraft Certification Office (ACO) and Aircraft Evaluation Group (AEG) to develop a plan to complete the safety review and develop the required maintenance and inspection instructions within the 18-month period. The plan should include periodic reviews with the ACO and AEG of the ongoing safety review and the associated maintenance and inspection instructions.

During the 18-month compliance period, the FAA is committed to working with the affected design approval holders to assist them in complying with the requirements of the SFAR. However, failure to comply within the specified time would constitute a violation of the requirements and may subject the violator to certificate action to amend, suspend, or revoke the affected certificate in accordance with 49 U.S.C. § 44709. In accordance with 49 U.S.C. § 46301, it may also subject the violator to a civil penalty of not more than $1,100 per day until the SFAR is complied with.

Changes to Operating Requirements

This rule requires the affected operators to incorporate FAA-approved fuel tank system maintenance and inspection instructions in their maintenance or inspection program required under the applicable operating rule within 36 months of the effective date of the rule. If the design approval holder has complied with the SFAR and developed an FAA-approved program, the operator can incorporate that program, including any revisions needed to address any modifications to the original type design, to meet the proposed requirement. The operator also has the option of developing its own program independently, and is ultimately responsible for having an FAA-approved program, regardless of the action taken by the design approval holder.

The rule prohibits the operation of certain transport category airplanes operated under parts 91, 121, 125, and 129 beyond the specified compliance time, unless the operator of those airplanes has incorporated FAA-approved fuel tank maintenance and inspection instructions in its maintenance or inspection program, as

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applicable. The rule requires approval of the maintenance and inspection instructions by the FAA ACO, or office of the Transport Airplane Directorate, having cognizance over the type certificate for the affected airplaneThe operator would need to consider the following five issues:

1. The fuel tank system maintenance and inspection instructions that would be incorporated into the operator's existing maintenance or inspection program must be approved by the FAA ACO having cognizance over the type certificate or supplemental type certificate. If the operator can establish that the existing maintenance and inspection instructions fulfill the requirements of this rule, then the ACO may approve the operator's existing maintenance and inspection instructions without change.

2. The means by which the FAA-approved fuel tank system maintenance and inspection instructions are incorporated into a certificate holder's FAA-approved maintenance or inspection program is subject to approval by the certificate holder's principal maintenance inspector (PMI) or other cognizant airworthiness inspector. The FAA intends that any escalation to the FAA-approved inspection intervals will require the operator to receive approval of the amended program from the cognizant ACO or office of the Transport Airplane Directorate. Any request for escalation to the FAA approved inspection intervals must include data to substantiate that the proposed interval will provide the level of safety intended by the original approval. If inspection results and service experience indicate that additional or more frequent inspections are necessary, the FAA may issue AD's to mandate such changes to the inspection program.

3. This rule does not impose any new reporting requirements; however, normal reporting required under 14 CFR 121.703 and 125.409 still applies.

4. This rule does not impose any new FAA recordkeeping requirements. However, as with all maintenance, the current operating regulations (e.g., 14 CFR 121.380 and 91.417) already impose recordkeeping requirements that apply to the actions required by this rule. When incorporating the fuel tank system maintenance and inspection instructions into its approved maintenance or inspection program, each operator should address the means by which it will comply with these recordkeeping requirements. That means of compliance, along with the remainder of the program, are subject to approval by the cognizant PMI or other cognizant airworthiness inspector.

5. The maintenance and inspection instructions developed by the TC holder under the rule generally do not apply to portions of the fuel tank systems modified in accordance with an STC, field approval, or otherwise, including any auxiliary fuel tank installations. Similarly, STC holders are required to provide instructions for their STC's. The operator, however, is still responsible for incorporating specific maintenance and inspection instructions applicable to the entire fuel tank system of each airplane that meets the requirements of this rule. This means that the operator must evaluate the fuel tank systems and any alterations to the fuel tank system not addressed by the instructions provided by the TC or STC holder, and then develop, submit, and gain FAA approval of the maintenance and inspection instructions to evaluate changes to the fuel tank systems.

The FAA recognizes that operators may not have the resources to develop maintenance or inspection instructions for the airplane fuel tank system. The rule therefore requires the TC and STC holders to develop fuel tank system maintenance and inspection instructions that may be used by operators. If however, the STC holder is out of business or otherwise unavailable, the operator will independently have to acquire the FAA-approved inspection instructions. To keep the airplanes in service, operators, either individually or as a group, could hire the necessary expertise to develop and gain approval of maintenance and inspection instructions. Guidance on how to comply with this aspect of the rule will be provided in AC 25.981–1B.

After the PMI having oversight responsibilities is satisfied that the operator's continued airworthiness maintenance or inspection program contains all of the elements of the FAA-approved fuel tank system maintenance and inspection instructions, the airworthiness inspector will approve the maintenance or inspection program revision. This approval has the effect of requiring compliance with the maintenance and inspection instructions.

Applicability of the Operating Requirements

This rule prohibits the operation of certain transport category airplanes operated under 14 CFR parts 91, 121, 125, and 129 beyond the specified compliance time, unless the operator of those airplanes has incorporated FAA-approved specific maintenance and inspection instructions applicable to the fuel tank system in its approved maintenance or inspection program, as applicable. The operational applicability was established so that all airplane types affected by the SFAR, regardless of type of operation, are subject to FAA approved fuel tank system maintenance and inspection procedures. As discussed earlier, this rule includes each turbine-powered transport category airplane model, provided its TC was issued after January 1, 1958, and it has either a maximum type certificated passenger capacity of 30 or more, or a maximum type certificated payload capacity of 7,500 pounds or more.

Affect on Field Approvals

A significant number of changes to transport category airplane fuel tank systems have been incorporated through field approvals issued to the operators of those airplanes. These changes may also significantly affect the safety of the fuel tank system. The operator of any airplane with such changes is required to develop the fuel tank system maintenance and inspection program instructions and submit it to the FAA for approval, together with the necessary substantiation of compliance with the safety review requirements of the SFAR.

Compliance With Operating Requirements

This rule establishes a 36-month compliance time from the effective date of the rule for operators to incorporate FAA-approved, long-term, fuel tank system maintenance and inspection instructions into their approved program. The FAA expects each operator to work with the airplane TC holder or STC holder to develop a plan to implement the required maintenance and inspection instructions within the 36-month period. The plan should include periodic reviews with the cognizant ACO and AEG responsible for approval of the associated maintenance and inspection instructions.

The fuel tank safety review may result in maintenance actions that are overdue prior to the effective date of the operational rules. The plan provided by the operator should include recommended timing of initial inspections or maintenance actions that are incorporated in the long term maintenance or inspection program. An analysis of and supporting evidence for the proposed timing of the initial action should be provided to the FAA. For example, it may be determined that an inspection of a certain component should be conducted after 50,000 flight hours. Some airplanes within the fleet may have accumulated over 50,000 flight hours. The timing of the initial inspection must be approved by the FAA and would be dependent upon an evaluation of the safety impact of the inspection. It is desirable to incorporate these inspections in the current heavy maintenance program, such as a "C" or "D" check, without taking airplanes out of service. However, it may be determined that more expeditious action is required, which may be mandated by AD.

Changes to Part 25

Currently, § 25.981 defines limits on surface temperatures within transport airplane fuel tank systems. In order to address future airplane designs, § 25.981 is revised to address both prevention of ignition sources in fuel tanks, and reduction in the time fuel tanks contain flammable vapors. The first part explicitly includes a requirement for effectively precluding ignition sources within the fuel tank systems of transport category airplanes. The second part requires minimizing the formation of flammable vapors in the fuel tanks.

Fuel Tank Ignition Source—Section 25.981

The title of § 25.981 is changed from "Fuel tank temperature" to "Fuel tank ignition prevention." The substance of existing paragraph (a), which requires the applicant to determine the highest temperature that allows a safe margin below the lowest expected auto ignition temperature of the fuel, is retained. Likewise, the substance of existing paragraph (b), which requires precluding the temperature in the fuel tank from exceeding the temperature determined under paragraph (a), is also retained. These requirements are redesignated as (a)(1) and (2) respectively.

Compliance with these paragraphs requires the determination of the fuel flammability characteristics of the fuels approved for use. Fuels approved for use on transport category airplanes have differing flammability characteristics. The fuel with the lowest autoignition temperature is JET A (kerosene), which has an autoignition temperature of approximately 450°F at sea level. The autoignition temperature of JP–4 is approximately 470°F at sea level. Under the same atmospheric conditions, the autoignition temperature of gasoline is approximately 800°F. The autoignition temperature of these fuels increases at increasing altitudes (lower pressures). For the purposes of this rule, the lowest temperature at which autoignition can occur for the most critical fuel approved for use should be determined. A temperature providing a safe margin is at least 50°F below the lowest expected autoignition temperature of the fuel throughout the altitude and temperature envelopes approved for the airplane type for which approval is requested.

This rulemaking also adds a new paragraph (a)(3) to require that a safety analysis be performed to demonstrate that the presence of an ignition source in the fuel tank system could not result from any single failure, from any single failure in combination with any latent failure condition not shown to be extremely remote, or from any combination of failures not shown to be extremely improbable.

These new requirements define three scenarios that must be addressed in order to show compliance with paragraph (a)(3). The first scenario is that any single failure, regardless of the probability of occurrence of the failure, must not cause an ignition source. The second scenario is that any single failure, regardless of the probability occurrence, in combination with any latent failure condition not shown to be at least extremely remote (i.e., not shown to be extremely remote or extremely improbable), must not cause an ignition source. The third scenario is that any combination of failures not shown to be extremely improbable must not cause an ignition source.

For the purpose of this rule, "extremely remote" failure conditions are those not anticipated to occur to each airplane during its total life, but which may occur a few times when considering the total operational life of all airplanes of the type. This definition is consistent with that proposed by the ARAC for a revision to FAA AC 25.1309–1A and that currently used by the JAA in AMJ 25.1309. "Extremely improbable" failure conditions are those so unlikely that they are not anticipated to occur during the entire operational life of all airplanes of one type. This definition is consistent with the definition provided in FAA AC 25.1309–1A and retained in the draft revision to AC 25.1309–1A proposed by the ARAC.

The severity of the external environmental conditions that should be considered when demonstrating compliance with this rule are those established by certification regulations and special conditions (e.g., HIRF), regardless of the associated probability. The rule also requires that the effects of manufacturing variability, aging, wear, and likely damage be taken into account when demonstrating compliance.

These requirements are consistent with the general powerplant installation failure analysis requirements of § 25.901(c) and the systems failure analysis requirements of § 25.1309, as they have been applied to powerplant installations. This additional requirement is needed because the general requirements of §§ 25.901 and 25.1309 have not been consistently applied and documented when showing that ignition sources are precluded from transport category airplane fuel tanks. Compliance with § 25.981 requires an analysis of the airplane fuel tank system using analytical methods and documentation currently used by the aviation industry in demonstrating compliance with §§ 25.901 and 25.1309. In order to eliminate any ambiguity as to the necessary methods of compliance, the rule explicitly requires that the existence of latent failures be assumed unless they are extremely remote, which is currently required under § 25.901, but not under § 25.1309. The analysis should be conducted assuming design deficiencies listed in the background section of this document, and any other failure modes identified within the fuel tank system functional hazard assessment.

Based upon the evaluations required by § 25.981(a), a new requirement is added to paragraph (b) to require that critical design configuration control limitations, inspections, or other procedures be established as necessary to prevent development of ignition sources within the fuel tank system, and that they be included in the Airworthiness Limitations section of the ICA required by § 25.1529. This requirement is similar to that contained in § 25.571 for airplane structure. Appendix H to part 25 is also revised to add a requirement to provide any mandatory fuel tank system inspections or maintenance actions in the Airworthiness Limitations section of the ICA.

Critical design configuration control limitations include any information necessary to maintain those design features that have been defined in the original type design as needed to preclude development of ignition sources. This information is essential to ensure that maintenance, repairs, or alterations do not unintentionally violate the integrity of the original fuel tank system type design. An example of a critical design configuration control limitation for current designs discussed previously would be maintaining wire separation between FQIS wiring and other high power electrical circuits. The original design approval holder must define a method to ensure that this essential information will be evident to those that may perform and approve repairs and alterations. Visual means to

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alert the maintenance crew must be placed in areas of the airplane where inappropriate actions may degrade the integrity of the design configuration. In addition, this information should be communicated by statements in appropriate manuals, such as Wiring Diagram Manuals.

Flammability Requirements

The FAA agrees with the intent of the regulatory text recommended by the ARAC. However, due to the short timeframe that the ARAC was provided to complete the tasking, a sufficient detailed economic evaluation was not completed to determine if practical means, such as ground based inerting, were available to reduce the exposure below the specified value of 7 percent of the operational time included in the ARAC proposal. The FAA is adopting a more objective regulation that is intended to minimize exposure to operation with flammable conditions in the fuel tanks.

As discussed previously, the ARAC has submitted a recommendation to the FAA that the FAA continue to evaluate means for minimizing the development of flammable vapors within the fuel tanks. Development of a definitive standard to address this recommendation will require additional effort that will likely take some time to complete. In the meantime, however, the FAA is aware that historically certain design methods have been found acceptable that, when compared to readily available alternative methods, increase the likelihood that flammable vapors will develop in the fuel tanks. For example, in some designs, including the Boeing Model 747, air conditioning packs have been located immediately below a fuel tank without provisions to reduce transfer of heat from the packs to the tank.

Therefore, in order to preclude the future use of such design practices, § 25.981 is revised to add a requirement that fuel tank installations be designed to minimize the development of flammable vapors in the fuel tanks. Alternatively, if an applicant concludes that such minimization is not advantageous, it may propose means to mitigate the effects of an ignition of fuel vapors in the fuel tanks. For example, such means might include installation of fire suppressing polyurethane foam.

This rule is not intended to prevent the development of flammable vapors in fuel tanks because total prevention has currently not been found to be feasible. Rather, it is intended as an interim measure to preclude, in new designs, the use of design methods that result in a relatively high likelihood that flammable vapors will develop in fuel tanks when other practicable design methods are available that can reduce the likelihood of such development. For example, the rule does not prohibit installation of fuel tanks in the cargo compartment, placing heat exchangers in fuel tanks, or locating a fuel tank in the center wing. It does, however, require that practical means, such as transferring heat from the fuel tank (e.g., use of ventilation or cooling air), be incorporated into the airplane design if heat sources were placed in or near the fuel tanks that significantly increased the formation of flammable fuel vapors in the tank, or if the tank is located in an area of the airplane where little or no cooling occurs. The intent of the rule is to require that fuel tanks are not heated, and cool at a rate equivalent to that of a wing tank in the transport airplane being evaluated. This may require incorporating design features to reduce flammability, for example cooling and ventilation means or inerting for fuel tanks located in the center wing box, horizontal stabilizer, or auxiliary fuel tanks located in the cargo compartment. At such time as the FAA has completed the necessary research and identified an appropriate definitive standard to address this issue, new rulemaking will be considered to revise the standard adopted in this rulemaking.

Applicability of Part 25 Change

The amendments to part 25 apply to all transport category airplane models for which an application for type certification is made after the effective date of the rule, regardless of passenger capacity or size. In addition, as currently required by the provisions of § 21.50, applicants for any future changes to existing part 25 type certificated airplanes, including STC's, that could introduce an ignition source in the fuel tank system are required to provide any necessary Instructions for Continued Airworthiness, as required by § 25.1529 and the change to the Airworthiness Limitations section, paragraph H25.4 of Appendix H. In cases where it is determined that the existing ICA are adequate for the continued airworthiness of the altered product, then it should be noted on the STC, PMA supplement, or major alteration approval.

FAA Advisory Material

In addition to the amendments presented in this rulemaking, the FAA is continuing development of AC 25.981–1B, "Fuel Tank Ignition Source Prevention Guidelines" (a revision to AC 25.981–1A), and a new AC 25.981–2, "Fuel Tank Flammability Minimization."

AC 25.981–1B includes consideration of failure conditions that could result in sources of ignition of vapors within fuel tanks, and provides guidance on how to substantiate that ignition sources will not be present in airplane fuel tank systems following failures or malfunctions of airplane components or systems. This AC also includes guidance for developing any limitations for the ICA that may be generated by the fuel tank system safety review.

AC 25.981–2 provides information and guidance concerning compliance with the new requirements identified in this rulemaking pertaining to minimizing the formation or mitigation of hazards from flammable fuel air mixtures within fuel tanks.

Discussion of Comments

Thirty four commenters responded to Notice 99–18, including private citizens, foreign aviation authorities, manufacturers of inerting equipment, individual airplane manufacturers and operators (both foreign and domestic), an organization representing the interests of manufacturers of general aviation airplanes, an airline pilots representative, an organization representing the consolidated interests of the aviation industry worldwide, and the National Transportation Safety Board. The majority of commenters agree in principle with the proposals. A discussion of these comments follows, including FAA's response, grouped by subject matter.

Discussion of Comments on Proposed SFAR

For ease of reference, throughout the following discussion, the term "designer" is used to refer to all persons subject to the requirements of the Special Federal Aviation Regulation (SFAR).

General Favorable Comments

Several commenters, including representatives of manufacturers and operators, agree in principle with the safety review that would be required by the proposed new SFAR to part 21 and have, in fact, already engaged in an industry-wide initiative in this area. These commenters state that they believe firmly that the objective of the proposed safety review will enhance the level of safety that already exists in the transport fleet.

Request to Include Smaller Part 25 Airplanes, Rotorcraft, and Part 23 Airplanes in SFAR Applicability

Several commenters disagree with the proposal to limit applicability of the SFAR to larger airplanes (30 or more passengers) due to the time needed to conduct a thorough economic analysis and the possible impact it would have on small businesses. However, the commenters request that this evaluation be completed and that smaller transport airplanes be included because of the design similarities of the smaller airplanes to larger airplanes.

Additionally, one commenter notes that, because the proposal excludes a significant portion of the fleet, the proposal is not in keeping with the FAA's stated goals of the "One level of Safety" initiative. This commenter also notes that the FAA stated in the notice that applying the proposed requirements to certain regional airliners would not significantly increase the expected quantitative benefits of the rule because there have been no in-flight fuel tank explosions on those airplanes. The commenter is concerned that the FAA may be using "faulty reasoning" to eliminate the need for any follow-on action to address this segment of the fleet.

Another commenter strongly recommends that the SFAR be extended to include part 23 aircraft and part 27 rotorcraft because these types of aircraft may be susceptible to fuel tank system problems similar to those addressed in the proposed rule.

FAA's Response: The FAA agrees that, even though the fuel tank systems of smaller transport category airplanes may be simpler, similarities in the designs of the fuel systems of those airplanes may result in a need to apply the standard to them. As discussed in the notice, we plan to conduct the appropriate economic analysis to determine if the rule should be applied to smaller transport airplanes. Should the results of that analysis indicate that the SFAR requirements should be applied to smaller transports, we will consider developing further rulemaking to address those airplanes. For now, the applicability of the final rule will remain as proposed in the notice.

We do not agree that the proposed SFAR should be applied to part 23 aircraft and part 27 rotorcraft at this time. Service experience has not indicated that immediate action is necessary to address the fuel tank systems of those types of aircraft at this time. However, we may reconsider this action if future service experience indicates that it is warranted.

Request to Exclude Mitsubishi YS–11 Airplanes and Lockheed Electra Airplanes

Mitsubishi Heavy Industries America, Inc., requests that the Mitsubishi Model YS–11 airplane be excluded from the SFAR applicability. The commenter's justification for this exclusion is that none of these airplane models is currently being operated in the U.S. and none are likely to be operated in the future. The commenter further states that there has never been a fuel tank-related incident or accident on any of these airplane models. The commenter refers to the FAA's statement in the preamble to the notice that certain older reciprocating engine-powered and converted turbine-powered transport airplanes should be excluded from the rule because:

> "• • • the few remaining such airplanes are in cargo service and because their advanced age and small numbers would make compliance impractical from an economic standpoint."

The commenter asserts that the same rationale should be applicable to the Model YS–11 because not one such airplane is currently operating in the U.S. and the possibility of such airplanes ever returning to cargo service, much less passenger service, in the U.S. is virtually non-existent. Therefore, there are no benefits to be achieved by the design review.

Similarly, Lockheed Martin also requests that its airplane model, the Lockheed Model L–188 Electra airplane, be excluded from the applicability of the SFAR. Like the first commenter, this commenter refers to the statement in the preamble to the notice that certain older reciprocating and turbine-powered airplanes should be excluded because compliance would be impractical from an economic standpoint. The commenter suggests that the Model L–188 Electra also falls into this category and should be excluded from the rule's applicability. The commenter further suggests that the retroactive application of the new requirements to any older model include provisions in the rule that would permit favorable service experience to be submitted instead of extensive failure analysis. The commenter refers to a safety study conducted of the Model L–188 Electra fuel system which shows that the fuel system service experience is excellent.

FAA's Response: The FAA does not concur with these commenters' requests to revise the applicability of the SFAR. As stated in Notice 99–18, parts 91, 121, 125, and 129 would be amended to require operators to incorporate FAA-approved fuel tank system maintenance and inspection instructions into their current maintenance or inspection program of transport category airplanes type-certificated after January 1, 1958. That date was chosen so that all turbine-powered transport category airplanes would be included, except for a few 1947 vintage Grumman Mallards, and 1953–1958 vintage Convair Model 340 and 440 airplanes converted from reciprocating to turbine power.

We do not consider the information presented by either of the commenters sufficient to warrant a general exclusion of either the Model YS–11 or the Model L–188 Electra from the applicability of the SFAR. We do acknowledge, however, that the current operations of Model L–188 Electra airplanes to remote Aleutian points and on military contract flights do involve unique circumstances worthy of further consideration. For example, we might conclude that, while full compliance is not cost effective, some lesser degree of fuel tank system evaluation is necessary.

While there is insufficient basis on which to exclude the Model L–188 Electra airplanes in general, the TC holder may petition the FAA for an exemption from the provisions of this final rule showing that it would be in the public interest. Similarly, we would consider petitions for exemption from the SFAR for the Model YS–11 or any other airplane not currently operated under U.S. registry. Such requests for exemption would be handled outside of this rulemaking action. Even if an exemption were granted from the SFAR to a design approval holder, operators of the affected airplanes would still be subject to the requirements of the operating rules established by this final rule. Petitions for exemption by the operators would involve different considerations.

Request to "Harmonize" the Rule With European Authorities

Several commenters, including representatives from aviation officials of the JAA and Transport Canada, state that the proposed SFAR should have been developed through the Aviation Rulemaking Advisory Committee (ARAC) and its harmonization process. These commenters contend that harmonizing the proposed rule would:

- simplify operations,
- reduce the cost of compliance without compromising safety, and
- extend the latest safety benefits more broadly in the world fleet.

The commenters also state that issuing the rule under the harmonization process would have facilitated eventual delegation of the SFAR compliance findings between the

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FAA and the JAA. Some commenters request that the disposition of public comments be handled through the ARAC process.

FAA's Response: The FAA does not concur with the commenters. When this rulemaking was initiated, we faced a choice between proceeding unilaterally or proceeding through the harmonization process involving the JAA and the public through ARAC. At that time, we chose to proceed unilaterally in order to address the important safety need on an expedited basis. In a separate action, we did task ARAC with developing proposed regulatory text to eliminate or reduce flammability in airplane fuel tanks. The fundamentals of ARAC's proposal are included in this rule.

With the issuance of this rule, we consider that the safety need has been addressed and we are now open to a harmonization effort. To facilitate harmonization, we have coordinated the proposal with the JAA and Transport Canada. Comments from the JAA and Transport Canada indicate their agreement in principle with our actions, and they have stated their intention to mandate similar fuel tank safety actions. While we will ensure compliance with the SFAR, the operating rules, and the part 25 design standards as adopted in this final rule, we will continue discussions with Transport Canada and the JAA concerning possible harmonization efforts relating to the part 25 change.

The safety improvements provided by this rule are as urgent now as they were when we decided to proceed unilaterally. The comments do not persuade us that the policy judgments reflected in the notice were incorrect. Because expedited adoption of this final rule is necessary, and because further discussion of comments within ARAC would not change the FAA's policy determinations, further review of the proposed rule by ARAC would not be appropriate.

Request To Delegate Compliance Findings

Several commenters request that the FAA delegate SFAR compliance findings to the prime certification authority in accordance with the approved bilateral agreement.

FAA's Response: The FAA interprets the reference to "prime certification authority" to mean the "state of design," as that term is used in ICAO Annex 8. Because the SFAR imposes requirements on existing designers, the bilateral airworthiness agreements, which address new certifications, do not directly apply. To the extent that bilateral countries choose to become involved in reviewing submissions for compliance with the SFAR, we will work closely with them. This should facilitate the harmonization efforts described previously. However, under the SFAR the FAA must approve the design approval holder's submission.

Request for Definition of Safety Review

One commenter notes that the terms "safety review," "design review," "safety analysis," and "functional hazard assessment" appear to be used interchangeably throughout the notice. However, each of these terms could have significantly different meanings. The commenter requests that, if it is the intent of the FAA to have different meanings for these terms, then the definitions should be clearly stated and the terms should be used in the appropriate context.

The commenter offers the following definitions in an attempt to establish a unified understanding of the objectives:

- "Safety Review"—a comprehensive assessment of the fuel tank system that meets all the requirements of the Special Federal Aviation Regulation.
- "Safety Analysis"—process of ensuring that the fuel system is fail-safe by conducting a design review and failure modes and effects analysis.
- "Design Review"—process of reviewing all relevant engineering design drawings to ensure that appropriate design practices have been used and identify failure modes.
- "Failure Modes Analysis"—process of evaluating all identified failure modes resulting from the design review by conducting a failure modes and effects analysis (FMEA) and a fault tree analysis (FTA).

The commenter requests that a similar set of definitions be provided in the SFAR to clarify the intentions of the regulation.

FAA's Response: The FAA concurs that clarification is appropriate. The objective of the SFAR is to require designers to conduct "safety reviews," which is the broadest term defined by the commenter. The term "safety review" is the correct term that is used in the text of the SFAR. For clarification sake, we have used the term "safety review" throughout the discussions in this preamble to describe the action required by the SFAR. No change to the final rule text is necessary in this regard, however.

Question on the Need for a System Safety Review

One commenter considers that the proposed safety review required under the new part 21 SFAR is excessive. This commenter regards the proposal as essentially a requirement to re-certify the fuel systems of all turbine-powered commercial transports, with respect to avoiding fuel tank fires and explosions. The commenter points out that, while more than 450 million hours of service experience on these airplanes have identified valuable lessons learned, this same service experience also demonstrates the largely successful outcome of the previously certified designs. The extent of the safety review that the proposed SFAR would require goes beyond what is commensurate with the historical data.

FAA's Response: The FAA does not concur with the commenter that the service history of the affected airplanes does not warrant the type of safety review proposed. Specifically, we disagree that past service has been "largely successful." While the commenter states that the fleet has achieved a good safety record, we point out that, as discussed in detail in the preamble to the notice, there has been extensive service history data related to anomalies, system failures, aging-related problems, etc., of the fuel tanks of transport category airplanes. Service data show that there have been 16 fuel tank explosion events. Further, the fact that the FAA has issued over 40 airworthiness directives to correct fuel tank safety hazards affecting a large cross section of the transport airplane fleet indicates that extensive revalidation of the fuel tank systems, as proposed, is necessary.

Question on Quantitative vs. Qualitative Safety Review of Older Airplane Designs

One commenter suggests that the proposed SFAR should allow aircraft certificated prior to Amendment 25–23 and § 25.1309 reliability requirements to undergo a qualitative—rather than quantitative—safety review. Then, from the results of the review, an inspection or maintenance plan could be developed, and, finally, a one-time inspection of the entire fleet could be performed. The commenter supports this type of assessment for several reasons:

1. The current version of § 25.1309 requires a safety review and a quantitative assessment to validate that a system is fail-safe. However, accurate statistical reliability information needed to conduct the safety analysis is likely to be unavailable for fuel system components used nearly 30 years ago.

2. When conducting a safety review, conservative assumptions are required when accurate reliability data is unavailable. These conservative assumptions could lead to false and detrimental failure probability results. This circumstance could occur multiple times during the analysis, or even cause compounded error effects, requiring even more severe corrective actions.

3. By the methods proposed in the proposed rule, a "representative" fuel tank system would be created based on 30-year-old drawings that would be "fraught with unavoidable assumptions," while at the same time be required to meet the "extremely improbable" failure condition probability criteria of 1×10^{-9}. This would lead to unnecessary inspections, maintenance, repairs, and modifications.

To meet the intent of the SFAR more effectively, the commenter proposes that a qualitative safety review be conducted, based on:

- The investigative efforts of the FAA and NTSB,
- AD's,
- Service bulletins,
- Lessons learned,
- Performance history of the aircraft, and
- Results of the recent industry-wide fuel tank inspection program.

In addition, the labor and time costs for a qualitative analysis would be dramatically lower than for a quantitative analysis. A qualitative analysis could be conducted using the knowledge and experience of current in-house personnel and applying familiar methods of evaluation. It likely would take less time, as well.

Several other commenters also question the practicality of requiring the proposed safety review if the latest standards are to be applied to older airplane designs. These commenters maintain that the proposed SFAR effectively requires recertification of older airplanes' fuel tanks to show compliance with the quantitative system safety assessment requirements introduced in § 25.1309 of Amendment 25–23. The commenters point out that those requirements were neither developed nor in effect for the airplanes whose certification basis was approved prior to the time that Amendment 25–23 was issued in May 1970. The majority of the airplanes affected by the proposed SFAR fall into this category.

Further, the commenters note that quantitative analysis methods for showing compliance with the requirements of Amendment 25–23 were not even developed or approved by the FAA until June 1988, when the FAA issued guidance on this subject in Advisory Circular 25.1309–1A. These methods were not necessarily applied to aircraft certified before that date. Thus, the certification documentation and technical archives of pre-amendment 25–23 aircraft may be limited in their usefulness to support a formalized analysis.

These commenters also state that re-evaluation of older aircraft types using today's quantitative analysis methodologies, such as a failure modes and effects analysis (FMEA), would be impractical and present "insurmountable difficulties," given the unavailability of data and the resources required. One commenter states that this type of safety review would be extremely labor-and resource-intensive, and would have both short- and long-term adverse economic effects on the aviation industry.

Another commenter states that the proposal does not provide a simple design-assessment method that is compatible with the technical information available to TC and STC holders. (The commenter gave no examples of incompatibility, however.)

FAA's Response: The FAA recognizes that the fuel tank systems of most older transport airplane designs were not evaluated during certification using the quantitative safety assessment methods associated with § 25.1309. For these airplanes, the FAA agrees that a qualitative, rather than quantitative, approach can and should be used where possible for the fuel tank system safety review. The level of analysis required to show that ignition sources will not develop will depend upon the specific design features of the fuel tank system being evaluated. Detailed quantitative analysis should not be necessary if a qualitative safety assessment shows that features incorporated into the fuel tank system design protect against the development of ignition sources within the fuel tank system. For example, for wiring entering the fuel tanks, compliance demonstration could be shown in three steps.

- First, the wiring could be shown to have protective features such as separation, shielding, or transient suppression devices;
- Second, the effectiveness of those features could be demonstrated; and
- Third, any long-term maintenance requirements or critical design configuration limitations could be defined so that the protective features are not degraded.

Another example would be showing that fuel pumps are installed in such a way that the fuel pump inlet remains covered whenever the fuel pump is operating throughout the airplane operating attitude envelope, including anticipated low fuel operations and ground conditions. This could be a satisfactory method of meeting the fail-safe requirement for the fuel pump mechanical components, although it would not necessarily address fuel pump motor failure modes. (Advisory Circular 25.981–1B provides additional guidance on the acceptability of qualitative assessments where fail-safe features are provided.)

Additionally, if fail-safe features are incorporated into the design in such a way that the effects of other systems on the fuel tank system can be shown to be benign, then no additional design assessment and inspections would be required. Designers using this approach would be required to provide substantiation that the design features preclude the need for detailed design assessment of the system and future inspections. Designers considering using this approach should coordinate as early as possible with the cognizant ACO.

On the other hand, the fact that a quantitative assessment and related data do not currently exist for some older airplane types does not mean that a similar safety assessment cannot be accomplished on these airplanes. It is feasible to use a modern safety assessment method on older airplanes that will recognize and evaluate potential failures and their effects, and will identify actions that could eliminate or reduce the chance of a potential failure from occurring.

Methods for conducting a quantitative analysis of any system are well-established and readily available. For example, the FMEA and fault tree analysis methodology is widely accepted and understood. In fact, there currently are several software packages available commercially that are specifically designed for assisting in developing FMEA's; these have proven to be particularly useful in reducing the amount of time, labor, clerical support, and monetary burden that normally would be entailed.

In light of this, we anticipate that all affected TC and STC holders will be fully capable of complying with the SFAR requirements.

No change to the final rule is necessary with regard to these comments. The rule requires that applicants "conduct a safety review" of the airplane, but does not specify any particular method of review.

Question on Intent of Safety Review

One commenter questions the FAA's intent regarding the safety review. This commenter notes that the proposed SFAR states, "* * * single failures will not jeopardize the safe operation * * * " and "* * * latent failures have to be assumed * * *" However, there are a

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number of single failures identified in the SFAR that have the capability to create an ignition source within the fuel tank. Examples include:

- Various mechanical pump failure modes,
- Various electrical pump failure modes, and
- Arcing of pump power cables to the conduit.

There are a number of single failures within the examples listed above that would not be acceptable to show compliance in accordance with the current application of § 25.1309, which requires that " * * * failure of any single component should be assumed * * * and not prevent continued safe flight * * *" In light of this, the commenter asks if the FAA is expecting modifications to cover all these cases; if not, there is a risk that the interpretation of § 25.1309 may be degraded.

The commenter further states that there are a number of latent failures in fuel tanks that could create an ignition source within the fuel tank, for example:

- Loss of pump over-temperature protection, and
- Loss of bonding (electro-static and lightning protection).

These types of latent failures are not easy to detect without a physical inspection inside the tank. The commenter asks how these types of latent failures will be considered when assessing the safety of fuel tanks. Clearly, frequent internal inspections of fuel tanks are not acceptable, and some means for agreeing to certain design practices on existing aircraft may be needed.

FAA's Response: The intent of the safety review, as stated in the notice, is to apply current system safety assessment standards to the affected airplanes in the existing transport fleet. We fully expect that, where fail-safe features do not exist, modifications to designs and changes to maintenance practices will be required for a significant portion of the fleet to address the single and multiple failures noted by the commenter. If inspections to detect latent failures are impractical, it would be necessary to modify the design to provide fail-safe features or indications to eliminate latency.

Request for a Lessons Learned Approach

Certain commenters state that the proposed safety review would be more useful if it were based strictly on lessons learned, and request that the proposal be changed accordingly. The commenters propose an alternative method that would be based on service experience (lessons learned) and regulated as a "prescriptive-type rule." As an example, the commenters suggest that the FAA first define a comprehensive list of items that may not have been considered adequately in the original fuel system design and for which there is some service experience. The list could include such items as:

- Fuel pumps,
- Wiring to pumps in conduits located inside fuel tanks,
- Fuel pump connectors,
- Fuel quantity indicating system wiring and probes, and
- Component bonding.

The FAA could then require that fuel system designs be evaluated against this "checklist" to determine if adequate consideration has been made regarding the potential effects of each item listed. Any single failures shown to cause an ignition source in the fuel tank would warrant a design change. A quantitative fault tree analysis could then be developed for combinations of failures shown to cause ignition sources, to determine if such failure combinations could be expected to occur in the remaining fleet life of the affected aircraft type.

These commenters state that among the benefits of this prescriptive design review approach would be:

- A common evaluation criterion for each aircraft type, regardless of its certification basis.
- A more objective evaluation process that simplifies delegating the compliance-finding task by the FAA and ensures equal treatment for each manufacturer and operator.
- Faster completion of the task, submittal of the report to the FAA, and resolution of any deficiencies in the existing fleet.
- Development of a standardized report or checklist to ease the compliance-finding process.
- A far greater pool of people able to accomplish the task, because a prescriptive review method would not demand engineers with detailed expertise in fuel systems and safety assessment methodology.

These commenters maintain that the FAA's safety review proposed in the SFAR would be merely an additional burden that could interfere with realizing the benefits of lessons learned. They consider that their suggested alternative approach is more practical, and equally effective in enhancing fuel system safety.

FAA's Response: The FAA does not concur with these commenters' request. To conduct a safety review based solely on lessons learned would not provide the level of safety that is intended by the proposal. A lessons learned focus would address problems that were known to have occurred in the past; however, it would not necessarily address potential problems and risks that could occur in the future. Thus, a lessons learned focus is a reactive, not a proactive, approach. There may be unforeseen failure modes that would not necessarily be accounted for by only evaluating failure modes that have occurred in the past, as would be done with a lessons-learned approach.

One example is in AC 25.981–1A, published originally in 1971, which included a list of failure modes, based upon lessons learned at that time, that should have been considered in showing compliance with the requirements of § 25.981. Since that AC was published, however, numerous unforeseen failures have occurred, thus, resulting in a much longer list that is now included in the revision to that AC. While such a list is valuable in providing guidance for conducting a safety assessment, it is not all-inclusive and we do not consider it adequate for conducting a comprehensive safety assessment.

On the other hand, the qualitative approach to the required safety review will result in consideration of, and means to address, potential failure modes, even if they have not yet been encountered in service. For example, if a qualitative assessment indicated that a particular design feature could result in a high voltage electrical surge into the fuel tank, then the assessment would conclude that measures should be taken to prevent such an occurrence, regardless of whether it is a "lesson learned" based on past occurrences.

Request for Risk Assessment Only of Remaining Fleet Life

One commenter suggests that the safety review methodology proposed by the FAA should provide a risk assessment over the remaining fleet life of each aircraft type. Many of the aircraft types that would be affected by the proposed SFAR are approaching the end of their fleet lives. The commenter asserts that, when determining if safety reviews and resulting design changes are warranted, the consideration should be based upon a risk assessment based on the remaining fleet life.

FAA's Response: The FAA agrees that the remaining fleet life could be one consideration in establishing a basis for an exemption from the requirement to perform a safety review for particular models, but it is not a general basis for limiting the applicability of the proposal. While some models of airplanes have exceeded their economic design goal (for example the Boeing Model 727 and McDonnell Douglas Model DC–9), there are individual airplanes of those models that are still in service, and extensive future service life is planned for them. Consequently, exposure to the risk of fuel tank explosions remains as valid for these models as for any others in service.

Regarding whether resulting design changes are warranted, those changes would necessarily be mandated by separate regulatory actions (AD's). Therefore, whether the changes are warranted will be assessed in the context of those actions.

Request for Change in Compliance Time for Conducting Safety Review

Several commenters state that the 12-month compliance time for completing the required actions proposed under the SFAR is unrealistic, and request a longer period for compliance. The reasons that these commenters give are as follows:

First, industry lacks the resources to accomplish the requirements within the proposed timeframe. There are limited qualified personnel to conduct the level of safety review that the proposed SFAR would require. Formalized system safety analysis of the type outlined in AC 25.1309–1A requires specialists with extensive knowledge of the system architecture, component details, and service history, as well as the analysis methodology.

Second, the flow time necessary to perform the proposed safety review would exceed the proposed compliance time. The commenters point out that over 100 airplane models would need to be reviewed, and the proposed safety review methodology would require two to four years of effort per major model for large transport aircraft. Some major models of airplanes have numerous minor model variations. These minor model variations would add significant additional review effort. Availability of qualified engineers does not allow these reviews to be conducted in a completely parallel fashion. Assuming a 9-month flow time to accomplish each review and the capability to conduct up to three reviews simultaneously, some manufacturers would require well in excess of 45 months to complete the proposed reviews. In other instances, the resources available to some TC or STC holders may limit their capability to one safety review at a time. These estimates take into account work already accomplished by the industry over the past 4 years.

Third, development of the maintenance instructions could not possibly be accomplished within the proposed 12-month compliance time. As written, the proposed SFAR would require "all maintenance and inspection instructions necessary" to be submitted as part of the safety review report. However, the commenters assert that effective development of a maintenance program cannot practically start until the safety review is completed, and it must be developed in coordination with the operators and regulatory agencies. Therefore, submittal of the maintenance and inspection instructions as part of the safety review report is not feasible. The commenters request that the proposal be revised to allow a period of 6 to 8 months for the development of these instructions once the FAA has approved the safety review report.

Fourth, necessary design changes identified as a result of the safety review could not be developed, evaluated, and shown to comply with the new requirements within the proposed compliance time. The commenters request that the compliance time for design change activity be treated separately from the SFAR review activity.

Fifth, the FAA itself lacks resources to support timely review of the safety review reports required by the SFAR within the 12-month time proposed to complete the review. The commenters believe that the FAA has grossly underestimated its own flow times regarding coordination and approval of the SFAR-mandated safety reviews and resulting compliance substantiation documents. Experience has shown that the FAA typically takes 60 to 90 days to review and approve of documents of this kind. Multiplied by 100 reports or more, it would appear that the FAA itself would require more than the proposed 12 months compliance time to complete its review and approval cycle once the reports are submitted by the industry.

Another commenter considers that the proposed compliance time for developing the maintenance and inspection program is inadequate. The commenter asserts that, without the insights gained through the SFAR design review assessment process, any attempts to accurately revise existing maintenance and inspection programs would be "counterproductive" to the goals of the proposed rule. The commenter maintains that the FAA underestimates the time necessary to prepare and develop the maintenance program, receive approval, and implement the program. This commenter requests that the proposed rule be changed to allow more time for revising the operator's maintenance or inspection programs, and that this time start only after the completion of the design review and the manufacturers' maintenance program for each airplane model.

Certain other commenters request that the proposal be changed to include the following text:

"Compliance time:

(a) All design review reports must be submitted to the Administrator no later than 36 months after the effective date of this rule or within 18 months of the issuance of a certificate for which application was filed before [effective date of the rule], whichever is later.

(b) Maintenance and inspection instructions must be submitted to the Administrator no later than 8 months after the FAA has approved the design review report for the applicable aircraft type."

Others request that the compliance time for completion of the safety review should be extended to 54 months.

FAA's Response: The FAA has considered the reasons for the commenters' requests and concurs that the compliance time should be extended somewhat. We have revised the final rule to provide a compliance time of 18 months for conducting the safety reviews and submitting them to the FAA. Even for those designers who work closely with the appropriate ACO's in conducting their reviews, we acknowledge that, following submission, some time will be required for FAA review and for any necessary revisions, and we consider that 6 months should be adequate for those activities. We are aware that when the FAA has mandated maintenance program changes in the past, we have typically allowed operators 12 months to incorporate those changes into their programs. Therefore, we have revised the operating rules to require that operators incorporate the maintenance program changes within 36 months after the effective date.

Designers may allocate the 18-month compliance time between the safety review and the development of maintenance and inspection instructions as they deem appropriate. In evaluating the information presented by the commenters and the relevant safety concerns, we have determined that this revision can be made without significantly affecting safety.

These revised compliance times are not as long as those requested by the commenters for the following reasons:

- The commenters based their estimates on the assumption that a quantitative assessment would be required. As discussed previously, in most cases a less time-consuming qualitative assessment will be sufficient.
- There is a substantial degree of commonality in design features of the affected models. Such commonality will

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allow analysis to be conducted by similarity to previously reviewed designs. In light of this, we do not foresee designers needing to conduct a separate safety analysis "from scratch" for each model.

• Since the TWA 800 accident over 4 years ago, many manufacturers already have completed significant reviews of service history and analysis of fuel tank designs for many airplane types. This will significantly reduce the time and resources that will be needed to complete the requirements of the SFAR.

• We expect that industry will work closely with the cognizant ACO in planning the safety review, and providing feedback as the evaluation progresses. This should allow expedited approval by the local office.

Given the additional time provided in the final rule, we are confident that the technical capability exists and that industry will expend the resources needed to address this critical safety issue in a timely manner.

As for the compliance time for development of needed design changes, we have revised the text of the final rule to include a provision that would allow extensions of the compliance time on a case-by-case basis. The final rule states that the FAA may grant an extension of the compliance time if:

• The safety review is completed within the compliance time, and

• Necessary design changes are identified within the compliance time, and

• Additional time can be justified.

Request for Clarification of SFAR Applicability to STC Holders

Two commenters state that, as worded, the proposed SFAR text does not clearly specify that it applies to holders of STC modifications that may have no direct relationship to the fuel system, but could have an effect on fuel tank safety. The commenters are concerned that some readers may misconstrue the current text as referring only to STC's for modifications directly to the fuel tank system, and not STC's that are adjacent to the fuel tank and may indirectly affect them.

One of these commenters recommends that the proposed phrase "supplemental type certificates affecting the airplane fuel tank system" be revised to "supplemental type certificates *capable* of affecting the airplane fuel tank system." The other commenter suggests that the phrase be revised to "supplemental type certificates *modifying* the airplane fuel tank system."

The commenters consider that adding the suggested words would make it clear that the SFAR applies not just to fuel system STC's, but to all STC's that could affect the fuel system.

FAA's Response: The FAA concurs with the commenters that a change in the text of the SFAR is necessary to clarify the intent. It was the FAA's intent that the SFAR requirements were to apply to holders of STC's that may affect the fuel system or result in a fuel tank ignition source. This was explained in detail in the preamble to the notice, and that discussion is repeated in this final rule under the heading, "Supplemental Type Certificates," above.

Based on the comments, we recognize that the proposed text could be construed too narrowly; that is, construed to mean that the requirements apply only to STC modifications that actually change the fuel tank system. We also recognize that it may not be possible to determine whether a modification actually affects the safety of the fuel tank system without conducting at least a rudimentary qualitative evaluation. In order to clarify this point, we have revised the text of the final rule to state that the SFAR applies to all holders of type certificates and supplemental type certificates that "may affect" the safety of the fuel tank system.

Request for Clarification of SFAR Requirements for STC's Not Directly Related to Fuel Tanks

One commenter raises concerns about the requirements of the proposed rule as they apply to STC approvals of modifications that are not specifically fuel tank system modifications. These types of approvals are referred to as "non-ATA 28 STC approvals." ("ATA 28 STC's" refers to approvals that actually change the fuel tank system.) Specifically, the commenter questions the feasibility of conducting a safety review on the types of modifications whose installation(s) do not actually change, but could affect, the airplane fuel tank system.

The commenter requests that the FAA consider a separate requirement in the SFAR for assessing the effect of these non-ATA 28 STC's on the fuel system. The commenter asserts that airplanes on which non-ATA 28 STC's are installed should only be assessed qualitatively or by inspection, and that only two key areas need to be examined:

1. *The modification of wiring next to or near wiring that enters the fuel tank.* These commenters suggest that the effects of these STC's could be assessed by a one-time inspection performed on each aircraft model by a specific time, such as:

• At the next heavy-maintenance inspection interval where the area or zone is opened and accessed, or

• In conjunction with any downtime necessitated by a modification program resulting from the safety review required by the proposed SFAR.

The objective of the suggested inspection would be to examine wiring that enters the fuel tank and assess whether any STC modifications introduce non-conformities that may compromise the fail-safe design concept or may be a possible fuel tank ignition source. (Only the wiring external to the tank would need to be inspected.) The nonconformity would be established based on a listing of specific inspection guidelines issued by either the FAA (possibly in the revised AC 25.981–1B) or the OEM's for each aircraft model. As with the SFAR safety review, any non-conformity would be identified and reported to the design approval holder.

As alternatives to this one-time inspection, the commenter suggests:

• A qualitative design review could be conducted, if sufficient technical information is available regarding the installation of the pertinent STC's.

• Alternative methods could be conducted that ensure the continued airworthiness of the airplane (with respect to wiring that enters the fuel tank). For example, installation of a transient suppression device should eliminate the need to inspect or conduct design reviews of modifications that might otherwise affect FQIS wiring.

2. *The effect of modifications to the environmental control system (ECS) and other system modifications capable of generating autoignition temperature into the tank structure.* The commenter states that a qualitative review of these systems should be conducted by reviewing whether the approved configuration has been altered. If it has been altered, the operator would identify the alteration and "report it to the person responsible" (i.e., the design approval holder of the design modification).

The commenter states that a one-time inspection process, as described above, would need to be developed using:

• The OEM's or STC holder's list of general design practices and precautions obtained during their SFAR safety reviews, and

• The revised maintenance program produced from the SFAR safety review.

The commenters foresee this information as providing operators with guidelines on what to inspect, how to inspect, and what the pass/fail criteria are.

The commenter suggests that this inspection should not repeat the inspections that have been performed to date by the operator. (For example, the operator should receive credit for any inspections performed because of an airworthiness directive or part of the industry-wide Fuel System Safety Program.)

FAA's Response: The FAA does not concur with the commenter's suggestion for several reasons. Although the commenter characterizes its proposal as a "qualitative review," it would only result in an inspection for "non-conformities," with the inspection results forwarded to the design approval holder. The suggestion does not specify what, if any, obligation the design approval holder would have to address these non-conformities, which, by definition, are not part of the holder's approved design. It would be unreasonable to impose an obligation on design approval holders to conduct reviews of designs for which they are not responsible. In light of this commenter's adverse comments regarding imposing a requirement for such holders to review their own designs, imposing an additional obligation is inconsistent.

In addition, the commenter's suggestion would result in a long delay in completion of the safety review of the fuel tank system. For example, the commenter suggests that the inspection take place during a heavy maintenance inspection; however, the heavy maintenance inspection intervals are typically every 4 to 5 years. Once the airplane configuration was determined, additional time would be needed to complete the assessment and to develop any necessary maintenance and inspection programs or design changes. The alternative process suggested by the commenters could effectively postpone addressing the effects of wiring on the fuel tank system by as much as 7 or 8 years. The elapsed time to complete this process would not provide the level of safety intended by the FAA or expected by the public.

Question on SFAR Requirements for STC's Where No Technical Data Is Available

Several commenters raise a concern about the proposed SFAR requirements as they pertain to a safety review of pertinent STC's where the STC holder is out of business and the necessary technical data is not readily available. The commenters expect that, for these cases, the burden would fall on the operators to conduct the review required by the SFAR. The commenters are concerned that, for a large number of these operators, the review process for these types of STC's may present "an insurmountable burden" for the following reasons:

• A full review of modifications accomplished by the operators over the decades that some of the affected airplanes have been operated is impracticable.

• Where operators have sold aircraft to another party, it is possible that the current owner of the airplane may come back to the operator and require such an evaluation. This situation is unmanageable.

• Operators will have difficulty performing any type of quantitative analysis due to lack of intensive familiarity with these types of methods.

• The technical information required to perform a quantitative or qualitative analysis may not be available or may not pertain to the specific aircraft model.

• Involvement by the original equipment manufacturer (OEM) in providing operators with assistance is viewed by the operators as likely to be minimal.

The commenters are particularly concerned that the OEM's are probably not familiar with many of the STC's that have been incorporated on the aircraft. Further, the chance of obtaining an assistance contract with the OEMs is slim because they will be stretched for manpower supporting OEM responsibilities relating to the proposed SFAR.

Additionally, the commenters are concerned that technical assistance from the FAA's fuel system specialists cannot be ensured for the operators. The FAA may be prepared to work with the affected type certificate holders to assist them in complying with the requirements of the proposed SFAR, but such assistance may not be possible for operators in this situation due to a lack of manpower.

FAA's Response: The FAA does not agree that the proposed rule would impose "insurmountable burdens" on operators. As with all operating rules, the person ultimately responsible for compliance is the operator. But this rulemaking is unique in the extent to which current designers are required to provide operators with analysis and documentation of maintenance programs to support operators in fulfilling their obligations.

The existing operating rules generally require operators to maintain their aircraft in an airworthy condition. A prerequisite for maintaining an airplane is the ability to understand its configuration, at least with respect to safety critical systems. This is reflected in operating rules such as § 121.380(a)(2)(vii), which requires a list of current major alterations to be retained permanently, and § 121.380a, which requires that these records be transferred with the airplane.

This rulemaking originated from the FAA's conclusion that fuel tank systems on current transport category airplanes may not be airworthy, and that the seriousness of this safety issue warrants substantial efforts to identify safety problems in order to prevent future accidents such as TWA 800. It is unacceptable for operators to claim not only that they are currently unable to understand the configurations of these systems on their airplanes, but that it is unreasonable to expect them to gain that understanding. The objective of this rulemaking would be defeated if operators of airplanes with configuration changes were allowed to rely solely on the instructions developed by TC and STC holders that may not reflect the actual configurations. This would allow for hazards introduced by the configuration changes to remain unaddressed.

As discussed previously, this same commenter suggests a one-time inspection to identify certain aspects of the configuration. We concur that, for those operators who cannot otherwise identify their airplanes' configurations, a one-time inspection of the entire system may be an appropriate means of determining the configurations. Once the configuration is known, the operator can perform a safety review of configuration changes not included in the TC holder and relevant STC holder reviews. As discussed previously, this type of review may be qualitative and does not require a quantitative analysis. In performing this review, the operator can use the guidance provided in AC 25.981–1B and the TC and relevant STC holder maintenance and inspection programs.

These operators could begin inspecting these airplanes immediately so that the differences from the TC and STC configurations can be documented and taken into consideration in the system safety assessment and any subsequent maintenance and inspection instructions. While operators may not have adequate engineering resources to complete the evaluations and may not be able to rely on TC holders for support in evaluating these changes, technical assistance contracts and use of Designated Engineering Representatives (DERs) are possible methods of completing the necessary work.

While we are confident that operators are capable of complying with these requirements, we recognize the validity of the operators concerns regarding the compliance time. Because it is important that this review be done

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properly, the compliance time for implementing the resulting maintenance and inspection programs is extended from 18 months to 36 months. This provides the operators an additional 18 months after the TC and STC holders are required to complete their programs, to complete the safety review of any field approvals on their airplanes, develop a comprehensive maintenance or inspection program, and implement the FAA approved maintenance or inspection program. We consider this sufficient to address any design changes identified by the operators.

Question on Applicability of SFAR to Modifications Installed via Field Approvals

One commenter points out that, in the preamble to the notice where changes to the operating requirements were explained, the FAA included a discussion of the effect of those requirements on field approvals. ["Field approvals" are defined as those design changes approved by an authorized FAA aviation safety inspector (e.g., Principal Maintenance Inspector, PMI) on an FAA Form 337, "Major Repair and Alteration," or other document (e.g., an airline engineering order).] However, the preamble did not include a discussion of field approvals in the context of the proposed SFAR. Further, the proposed text of neither the SFAR nor the operating requirements contains any mention of field approvals. Thus, the commenter questions whether the proposed rule actually applies to field approvals whose installations may affect the airplane fuel tank system. Additionally, the commenter questions whether other forms of repairs or modifications permitted on in-service aircraft and not specifically mentioned in the SFAR (for example, approvals used by airlines via SFAR 36 repairs) need to be considered within the context of the proposed rule.

If the FAA intends that all repairs be considered under the rule's requirements, then the commenter requests that field approvals, approved repairs, and so on, be considered in the same fashion as non-ATA 28 STC's (discussed above).

Similarly, another commenter states that modifications approved under a field approval may prove to be problematic when attempting to comply with the safety review analysis that would be required by the proposed SFAR. These types of modifications were discussed in the preamble to the notice, but were not accounted for in the economic analysis. The commenter considers that more details are needed as to how to address them. The field approval does not have the same visibility as an STC, and it could be substantially more difficult to identify which of these types of modification could affect the fuel systems. Furthermore, many might have been approved by an inspector, without certification engineering analysis and data; this would certainly complicate the safety review analysis required by the SFAR. Such modifications are of interest even to foreign parties as they might have been incorporated on aircraft that are now on foreign registries. The commenter requests that the FAA provide more details as to how it intends to apply the SFAR to the modifications approved under a field approval.

FAA's Response: The FAA recognizes that some clarification is necessary. The preamble to the notice and the Discussion of the Final Rule section of this preamble state that the proposed requirements are intended to apply to type designs, supplemental type designs, and field approvals.

The FAA is aware that a significant number of changes to transport category airplane fuel tank systems have been incorporated through field approvals. These changes may significantly affect the safety of the fuel tank system. As discussed previously, the operator of any airplane with such changes would be required to identify them, complete a safety assessment taking into consideration the safety assessments completed by the TC and STC holders, and to develop applicable maintenance and inspection instructions and submit them to the FAA for approval, together with the necessary substantiation of compliance with the safety review requirements of the SFAR. To eliminate any misunderstanding, the operational final rules have been revised to state that the instructions for maintenance and inspection of the fuel tank system must address the actual configuration of each affected airplane.

Question on Applicability of SFAR to Repairs

One commenter requests more details concerning how the proposed safety review required by the SFAR would be applicable to repairs that currently exist on an airplane. The commenter points out that the proposed SFAR text omits any mention of repairs. The commenter states that it would be very difficult to trace back all the repairs, and their supporting engineering data, so that a proper safety analysis could be carried out. The commenter believes that these repairs, like "orphan STC's," might render the design review by safety analysis approach unworkable in many cases. To help the operators, the manufacturers should be required to provide for an alternative to the safety assessment.

FAA's Response: As discussed above, the FAA intends that the instructions required by the operating rules address the actual configurations of the airplanes. As required by 14 CFR 43.13, a repair must restore the airplane to its original or properly altered condition. Therefore, repairs should not adversely affect fuel tank system safety. To the extent that known repairs may have changed design features affecting fuel tank system safety, they should be addressed in the maintenance and inspection instructions. We recognize that, unlike records of major alterations, repair records are not required to be retained permanently. If operators are unaware of such repairs, this rule does not require that inspections be conducted solely for the purpose of identifying them. On the other hand, if such repairs are identified as a result of inspections performed to identify configuration changes, those repairs must be addressed in the instructions.

Request for Clarification on Role of the Principal Maintenance Inspector in SFAR Actions

One commenter requests a clarification of the role of the principal maintenance inspector (PMI) in the fuel tank safety review process that would be required by the SFAR. The commenter states that there must be technical information available at the airline or PMI level to effectively carry out the objective of the proposed SFAR. However, the commenter is concerned that, even though there will be guidelines available in the new AC 25.981–1B, a PMI "will not have the expertise to be able to evaluate whether an alternative truly satisfies the SFAR."

FAA's Response: The FAA does not intend that the PMI would evaluate the technical design information. As stated in the preamble to the notice and the Discussion of the Final Rule section of this preamble, the FAA would require that this information be submitted to the cognizant FAA Aircraft Certification Office (ACO). The maintenance and inspection program that is generated also would be approved by the cognizant ACO. The PMI would be responsible for oversight of the operator to verify that any mandatory maintenance or inspection actions are incorporated into the operators' maintenance or inspection programs.

Request for a One-Time Inspection Program

One commenter requests a revision to the proposed rule to require that, prior to conducting a system safety review and analysis for each aircraft type, a detailed inspection should be conducted of the fuel tanks of several representative airplanes for each type certificated aircraft. The purpose of the inspection would be to determine the specific health of the fleet. The inspection should span both old and newer airplanes, and include at least two operators and at least 10 airplanes. The commenter suggests that this should be a very aggressive inspection, which would involve removal and teardown of components and inspection of difficult-to-reach areas. The deficiencies and failures listed in the notice, as well as the findings of the industry-wide inspections of the Boeing 747 fuel tanks, could provide a starting point for defining the nature of the inspections. Based on findings of these inspections, appropriate corrective action could be determined and mandated. Required design changes would become apparent as a result of this inspection program.

The commenter states that there are precedents to this type of inspection. For example, the United States Air Force conducted aggressive inspections of B–52 and KC–135 aircraft in the 1980's to establish the condition of these aircraft, and required corrective action for continued safe operation of these aging aircraft. These inspection programs, referred to as Condition Assessment/Inspection Programs (CA/IP), were conducted for many of the same concerns that were raised in the notice, although the programs covered other aircraft systems as well (i.e., electrical, avionic, hydraulic, pneumatic, etc.). The CA/IP findings resulted in numerous fuel system corrective actions to enhance safety, including maintenance actions and intervals, and design improvements.

FAA's Response: The FAA does not concur with the suggestions of this commenter for several reasons:

There already have been ample inspections, service history reviews, and other assessments of the transport fleet that have confirmed, without question, that the safety of the fuel tank systems on these airplanes must be improved. Most recently, the industry-led Fuel Tank Safety Team conducted an inspection of over 800 transport category airplane fuel tanks, which revealed such things as repairs and alterations that may result in a fuel tank system that does not meet the original type design; improperly installed parts; improperly routed wiring; etc.

We do not consider that the commenters' suggested one-time inspection is necessary for airplanes for which the configuration can be identified by other means. Nevertheless, the development of critical design configuration control limitations and mandatory maintenance and inspection items will likely result in eventual inspection of all critical fuel tank system-related areas of airplanes in the transport fleet.

Question on Redundant vs. Single-Thread Fuel Tank Systems

One commenter questions a statement in the preamble to the notice that introduced the FAA's discussion of its review of maintenance practices for the fuel tank system. The statement read,

> Typical transport category airplane fuel tank systems are designed with redundancy and fault indication features such that single component failures do not result in any significant reduction in safety.

The commenter maintains that just the opposite is true: Current designs are single-thread systems. That is because there will be an explosive mixture in the tank on a regular basis, and there is likely to be debris in the tank, so any single failure, such as a hot short, will compromise safety. The same is true for pump insulation failures.

FAA's Response: The FAA disagrees with this commenter's observations in part. Regulations applicable to airplanes affected by this rulemaking require that "no single failure or likely combination of failures may result in a hazard." However, we do agree that the investigation of fuel tank system designs has shown certain installations do not meet this requirement. This is one of the purposes for the requirements of this rulemaking action.

Request for Clarification of Statement of Probability

One commenter disagrees with a statement that appeared in the preamble to the notice, which stated:

> The proposed SFAR would require the design approval holder to perform a safety review of the fuel tank system to show that fuel tank fires or explosions will not occur on airplanes of the approved design.

The commenter states that it is impossible to show that "fuel tank fires or explosions will not occur," because the probability of such an event, in terms of a system safety analysis, cannot be shown to be equal to zero. The commenter believes that this is not what the FAA intended. The commenter suggests that this phrase be removed because the essence of the requirement of the proposed SFAR is captured in another passage that appeared immediately after the cited phrase in the preamble to the notice, which read:

> * * * In conducting the review, the design approval holder would be required to demonstrate compliance with the standards proposed in this notice for § 25.981(a) and (b) * * * and the existing standards of § 25.901."

The commenter points out that the standards proposed in the notice neither suggest nor require that the probability of the occurrence of a fire or explosion should be zero.

Alternatively, the commenter suggests that the intent of the regulation could be clarified to require practical elimination of ignition sources with the intent to eliminate all sources by use of new technology and design architecture.

FAA's Response: The FAA considers that some clarification is necessary. We agree with the commenter that it is impossible to show that the probability of a fuel tank explosion is equal to zero in numerical terms. The statement cited in the notice was intended to express in very general terms the objective of the proposed rule—that "fuel tank fires or explosions will not occur." The intended level of safety is clearly defined in the regulatory text. We concur with the clarification of intent provided by the commenter.

Request To Address Third Party Maintenance Activity in Safety Review

One commenter notes that experience has shown that unauthorized processes and materials are sometimes used by third party repair businesses, possibly even unknown to the designer. This may result in service problems that would be unforeseen by the designer, and possibly a reduced level of safety. The commenter argues that it does not seem reasonable to expect a survey of the safety of fuel system designs to take into account the effect of unauthorized and, therefore, unforeseeable maintenance activities. There may be features of the design that are critical to the safe operation of the equipment, but not obvious to a third party. The commenter requests that the FAA consider revising the proposed regulation to ensure that maintenance action carried out by parties not cognizant of the safety consequences of their procedures do not jeopardize the safety of aircraft in service.

FAA's Response: The FAA agrees in part with this commenter. The fuel tank safety review required by this rule must include failures that are foreseeable as well as any that have occurred in service. The evaluation also must

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include consideration of susceptibility to maintenance errors. The requirement to develop critical design configuration control limitations, discussed later, is intended to provide maintenance personnel with precisely the type of safety critical information identified by the commenter.

Discussion of Comments on § 25.981, Fuel Tank Ignition Prevention

Request for Revision to Requirement for Addressing Latent Failures

One commenter believes that the proposed § 25.981(a)(3), which would require demonstrating that an ignition source could not result from single or latent failures, is too severe. The commenter asserts that it presents requirements that are outside the scope of § 25.1309 and § 25.901(c); these are the same standards that the FAA states in the preamble to be the baseline for the proposed requirements relative to the ignition source prevention assessment. These regulations provide a defined method for assessing latent failures (although the regulations do not specifically address latent failures). The commenter favors the continued use of the fail-safe design concept as defined in AC 25.1309–1A. The commenter maintains that the new wording proposed by the FAA imposes a requirement on latent failure conditions that are just one part of a larger set of combinations leading to the hazard of "ignition sources present in fuel tanks." It is the larger set that § 25.1309 imposes a requirement on, thus taking into account the complete set of all combinations. The commenter states that the proposed wording of § 25.981(a)(3) "adversely penalizes" the resulting outcome of the analysis, in particular the definition of maintenance intervals and the means for determining whether an added safety feature is required to mitigafe or prevent the event.

FAA's Response: The FAA disagrees with the commenter's assertion that current industry practice is adequate to address fuel tank safety issues. Paragraph 5.a.1. of AC 25.1309–1A, which the commenter supports, states in part:

> In any system or subsystem, the failure of any single element, component or connection should be assumed to occur during *any one flight* regardless of the likelihood that it would fail. Any such single-failure should not prevent the continued safe flight and landing of the airplane, nor significantly impair the ability of the crew to cope with the resulting conditions.

Consequently, if "any one flight" is taken literally, this includes flights anticipated to originate with pre-existing failures. However, we recognize that the meaning of "any one flight" has been a contentious issue for many years, and we have agreed to work within ARAC to try and resolve the issue of "specific risk" for the more generally applicable rules, such as § 25.901(c) and § 25.1309. Furthermore, as noted earlier, if a more appropriate means of addressing this issue should result from these ARAC activities, this rule will be amended accordingly to retain consistency. This commitment to ARAC notwithstanding, the FAA is also committed to assuring that transport category airplane designs are acceptably fail-safe on each flight, not just on a typical flight of mean duration or on flights where the airplane initially has no failures present.

The FAA disagrees with the commenters' assertion that the requirements of § 25.981(a)(3) are "outside the scope of § 25.1309 and § 25.901(c)." As stated previously in the notice and in this final rule, the FAA's policy for compliance with § 25.901(c), in general, has been to require applicants to assume the presence of foreseeable latent (operationally undetected) failure conditions when demonstrating that subsequent single failures will not jeopardize the safe operation of the airplane. This requirement (referred to as "latent plus one") simply provides the same single fault tolerance for aircraft operating with an anticipated latent failure as would be provided by FAA Master Minimum Equipment List (MMEL) policies if that failure is known to exist (i.e., not latent).

As for § 25.1309, the commenter appears to be confusing the objective of the rule (i.e., to prevent the occurrence of catastrophic failure conditions that can be anticipated) with a conditionally acceptable means of demonstrating compliance, as described in AC 25.1309–1A (i.e., that catastrophic failure conditions must have an "average probability per flight hour" of less than 1×10^{-9}). Since this same misconception has presented itself many times before, the following discussion is intended to clarify the intent of the term "extremely improbable" and the role of "average probability" in demonstrating that a condition is "extremely improbable."

The term "extremely improbable" (or its predecessor term, "extremely remote") has been used in 14 CFR part 25 for many years. The objective of this term has been to describe a condition (usually a failure condition) that has a probability of occurrence so remote that it is not anticipated to occur in service on any transport category airplane. While a rule sets a minimum standard for all the airplanes to which it applies, compliance determinations are necessarily limited to individual type designs. Consequently, all that has been required of applicants is a sufficiently conservative demonstration that a condition is not anticipated to occur in service on the type design being assessed.

The means of demonstrating that the occurrence of an event is extremely improbable varies widely, depending on the type of system, component, or situation that must be assessed. There has been a tendency, as evidenced by the comment, to confuse the meaning of this term with the particular means used to demonstrate compliance in those various contexts. This has led to a misunderstanding that the term has a different meaning in different sections of part 25.

As a rule, failure conditions arising from a single failure are not considered extremely improbable; thus, probability assessments normally involve failure conditions arising from multiple failures. Both qualitative and quantitative assessments are used in practice, and both are often necessary to some degree to support a conclusion that an event is extremely improbable.

Qualitative methods are techniques used to structure a logical foundation for any credible assessment. While a best-estimate quantitative analysis is often valuable, there are many situations where the qualitative aspects of the assessment and engineering judgment must be relied on to a much greater degree. These situations include those where:

- There is insufficient reliability information (e.g., unknown operating time or conditions associated with failure data);
- Dependencies among assessment variables are subtle or unpredictable (e.g., independence of two circuit failures on the same microchip, size and shape of impact damage due to foreign objects);
- The range of an assessment variable is extreme or indeterminate; and
- Human factors play a significant role (e.g., safe outcome dependent totally upon the flightcrew immediately, accurately, and completely identifying and mitigating an obscure failure condition).

Qualitative compliance guidance usually involves selecting combinations of failures that, based on experience and engineering judgment, are considered to be just short of "extremely improbable", and then demonstrating that they will not cause a catastrophe. In some cases, examples of combinations of failures necessary for a qualitative assessment are directly provided in the rule. For example, § 25.671 (concerning flight controls) sets forth several examples of combinations of failures that are intended to help define the outermost boundary of events that are not "extremely improbable." Judgment would dictate that other combinations, equally likely or more likely, would also be included as not "extremely improbable." However, combinations less likely than the examples would be considered so remote that they are not expected to occur and are, therefore, considered extremely improbable. Another common qualitative compliance guideline is to assume that any failure condition anticipated to be present for more than one flight, occurring in combination with any other single failure, is not "extremely improbable." This is the guideline, often used to find compliance with § 25.901(c), that the FAA is adopting as a standard in § 25.981(a)(3).

Quantitative methods are those numerical techniques used to predict the frequency or the probability of the various occurrences within a qualitative analysis. Quantitative methods are vital for supporting the conclusion that a complex condition is extremely improbable. When a quantitative probability analysis is used, one has to accept the fact that the probability of zero is not attainable for the occurrence of a condition that is physically possible. Therefore, a probability level is chosen that is small enough that, when combined with a conservative assessment and good engineering judgment, it provides convincing evidence that the condition would not occur in service.

For conditions that lend themselves to average probability analysis, a guideline on the order of 1 in 1 billion is commonly used as the maximum average probability that an "extremely improbable" condition can have during a typical flight hour. This 1 in 1 billion "average probability per flight hour" criterion was originally derived in an effort to assure the proliferation of critical systems would not increase the historical accident rate. This criterion was based on an assumption that there would be no more than 100 catastrophic failure conditions per airplane. This criterion was later adopted as guidance in AC 25.1309. The historical derivation of this criterion should not be misinterpreted to mean that the rule is only intended to limit the frequency of catastrophe to that historic 1×10^{-7} level. The FAA conditionally accepts the use of this guidance only because, when combined with a conservative assessment and good engineering judgment, it has been an effective indicator that a condition is not anticipated to occur, at least not for the reasons identified and assessed in the analysis. Furthermore, decreasing this criterion to anything greater than 1×10^{-12} would not result in substantially improved designs, only increased line maintenance. The FAA has concluded that the resulting increased exposure to maintenance error would likely counteract any benefits from such a change. An ARAC working group has validated these conclusions.

When using "averages," care must be taken to assure that the anticipated deviations around that "average" are not so extreme that the "peak" values are unacceptably susceptible to inherent uncertainties. That is to say, the risk on one flight cannot be extremely high simply because the risk on another flight is extremely low. An important example of the flaw in relying solely on consideration of "average" risk is the "specific risk" that results from operation with latent (not operationally detectable) failures. It is this risk that is being addressed by § 25.981(a)(3), as adopted in this final rule. For example, latent failures have been identified as the primary or contributing cause of several accidents. In 1991, a thrust reverser deployment occurred during climb from Bangkok, Thailand, on a Boeing Model 767 due to a latent failure in the reversing system. In 1996, a thrust reverser deployment on a Fokker Model F–100 airplane occurred following takeoff from Sao Paulo, Brazil, due to a latent failure in the system. As noted earlier, the NTSB determined that the probable cause of the TWA 800 accident was ignition of fuel vapors in the center wing fuel from an ignition source:

> • • • The source of ignition energy for the explosion could not be determined with certainty but, of the sources evaluated by the investigation, the most likely was a short circuit outside of the center wing tank that allowed excessive voltage to enter it through electrical wiring associated with the fuel quantity indication system [FQIS].

A latent failure or condition creating a reduced arc gap in the FQIS would have to be present to result in an ignition source. This rule is intended to require designs that prevent operation of an airplane with a preexisting condition or failure such as a reduced arc gap in the FQIS (latent failure) and a subsequent single failure resulting in a short circuit that causes an electrical arc inside the fuel tank.

Due to variability and uncertainty in the analytical process, predicting an average probability of 1 in 1 billion does not necessarily mean that a condition is extremely improbable; it is simply evidence that can be used to support the conclusion that a condition is extremely improbable. Wherever part 25 requires that a condition be "extremely improbable," the compliance method, whether qualitative, quantitative, or a combination of the two, along with engineering judgment, must provide convincing evidence that the condition will not occur in service.

Request To Revise Definition of Critical Design Configuration Control Limitations

One commenter requests that proposed § 25.981(b) be changed to revise or delete the reference to "critical design configuration control limitations." This commenter cannot agree with the definition stated in the notice as:

> • • • any information necessary to maintain those design features that have been defined in the original type design as needed to preclude development of ignition sources.

The commenter raises several concerns regarding the definition and implications of critical design configuration control limitations:

First, the commenter is concerned that within the definition, "any information necessary" can be interpreted as being not only the provision of maintenance and inspection instructions, but also the provision of the fuel tank design features itself. This could include material specifications, specific manufacturing processes, dimensions, etc. The commenter states that this means the type certificate holder would be required to list its proprietary design approach, which could lead to a loss of competitive edge and an infringement on proprietary intellectual property. The commenter objects to this requirement because it would allegedly sacrifice the hard earned competitive advantage that manufacturers derive through their expertise and continuing investment in research and development. As an example, the commenter asserts, "if a certain pump is qualified on the airplane, the industry does not believe it is appropriate or necessary to list all of the features inherent to that pump itself that were qualified as part of the units approval. This approved parts list and the associated installation and maintenance manuals suffice for maintaining the airworthiness of this pump."

Second, the commenter is concerned that this would put an unprecedented liability risk on the type certificate holder if it omits some features, either

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through error or because it did not realize a supplementary function provided by the features. (The commenter provided no further explanation or substantiation of this concern, however.)

Third, the commenter states that the notion of critical design configuration control limitations goes beyond the notion of inspection and maintenance. In this regard, it does not imply the same compliance requirement as § 25.571, which is the FAA's stated precedent for the proposed rule.

Fourth, the commenter considers that critical design configuration control limitations go against standard industry practice regarding what manufacturers should provide to users.

Fifth, the commenter states that the notion of critical design configuration control limitations attempts to cover deficiencies in the STC and the airline modification approval process by indirectly "implicating" the manufacturer in changes to the certificated configuration that the manufacturer may not have known about or performed.

For these reasons, the commenter requests that the proposed rule be revised to delete or change the requirement concerning critical design configuration control limitations.

FAA's Response: The FAA does not concur with the commenter's request to revise the rule, and provides the following disposition of each of the commenter's concerns.

1. *Concern about release of proprietary information.* The FAA has always required manufacturers to provide information that is necessary to maintain the safety of a product. For example, information that is contained in many maintenance manuals might be considered proprietary in nature, but the FAA requires each manufacturer to develop instructions for continued airworthiness for their products containing this information. Defining features of an airplane design, such as wire separation, explosion proof features of a fuel pump, maintenance intervals for transient suppression devices, minimum bonding jumper resistance levels, etc., is needed so that any maintenance actions or subsequent changes to the product made by operators or the manufacturer do not degrade the level of safety of the original type design. The definition of critical design configuration control limitations does not include "all of the features inherent" in the design; it only includes information that is necessary to ensure safety of fuel tank systems. The policy determination underlying this requirement is that design approval applicants subject to this requirement should be required to develop this information and make it available to operators of affected airplanes. This is consistent with the policy regarding airworthiness limitations required by § 25.571 ("Damage-tolerance and fatigue evaluation of structure").

2. *Concern about liability of type certificate holders.* The FAA disagrees that risk of liability is an issue. If conscientiously implemented, this requirement will significantly reduce the risk of accidents from fuel tank explosions. This, in turn, will reduce the liability risk of design approval holders.

3. *Concern about new inspection and maintenance requirements.* The FAA agrees in part with the commenter. While it is true that the term "critical design configuration control limitations" is new and may result in new inspection and maintenance requirements, the very intent of this rule is to require mandatory maintenance and inspection for the fuel tank system. We agree that the compliance requirements are different between § 25.571 and § 25.981. However, these differences are due to the differences between structures and systems. For example, service experience indicates that alterations have been made to systems affecting fuel tank safety without consideration of the effects of the alterations. One purpose of critical design configuration control limitations is to ensure that maintenance personnel are informed of and address these effects. In the context of structures, the primary concern has been aging phenomena such as fatigue, and the limitations are intended to ensure that these phenomena are identified and addressed before they become critical. The result in both instances is mandatory maintenance and inspection requirements for both fuel tank systems and structures. We have determined that the fuel tank system warrants mandatory minimum maintenance criteria to prevent catastrophic failure. By placing these requirements in the Airworthiness Limitations section of the Instructions for Continued Airworthiness, the design approval holder provides consistent mandatory baseline maintenance standards for the fleet.

4. *Concern that the requirement goes against standard industry practice regarding what manufacturers should provide to users.* The FAA agrees that the proposed rule may differ from historical industry practice. However, the purpose of this rule is to improve both the safety of the fleet and the practices within the industry. The information we are requiring the design approval holder to provide to the operator is basic information needed by the industry to operate airplanes safely. It will provide operators with a baseline document to develop a maintenance and inspection program that will enhance safety within the fleet. It will also aid the operator in establishing the configuration requirements that must be accounted for during any subsequent alterations to the airplane.

5. *Concern about covering deficiencies in the STC and modification approval process by indirectly implicating the manufacturer.* The FAA disagrees that the definition of critical design configuration control limitations "implicates" the TC holder in configuration changes made by others. On the contrary, these limitations provide TC holders with the ability to limit the types of changes that may be made to their designs that could adversely affect their safety.

Request To Delete Use of Placards and Decals

One commenter requests that § 25.981(b) of the proposed rule be revised to delete the requirements concerning placement of placards or decals in the areas where "maintenance, repairs, or alterations may violate the critical design configuration limitations." The commenter agrees that adequate information regarding general design practices and precautions must be available to those who perform and approve repairs and alterations to the airplane. However, the commenter argues that placing placards and decals on the airplane may not be practical, considering that they might not remain in place or be readable over time. The commenter suggests that a more effective way to convey fuel system general practices information to operators is via the standard-practices section of the Aircraft Maintenance Manual (or a similar section of another appropriate manual). The commenter does agree that the fuel quantity indicating system (FQIS) wiring could be better identified, and suggests that manufacturers work with the appropriate agencies to develop a standardized system (similar to that for oxygen lines) to identify critical fuel systems wiring for future aircraft designs.

FAA's Response: The FAA concurs in part with the commenter. The rule is meant to be a performance-based rule; therefore, the FAA's objective is not to mandate the use of any specific means of providing visual identification of critical design control limitations. Although the text suggests the use of placards and decals, the rule allows visible means other than placards and decals to be used. Placards are normally used in many locations of transport airplanes to convey information to maintenance personnel, but placards are only one option of identifying critical design configuration limitations. The FAA also recognizes that installation and maintenance of placards in certain locations of the airplane may not be practical.

The objective of this requirement is to provide a means to assist maintenance personnel in reducing maintenance errors. Adverse service experience demonstrates that modifications have inadvertently resulted in routing of high power wiring with FQIS wiring. The need to provide visible identification of critical design configuration control limitations will depend upon the particular airplane configuration.

As an example, the FAA anticipates that the requirements of this rule will result in modifications either to separate FQIS wiring from high power sources, or to install transient suppression devices. If transient suppression devices are incorporated into the FQIS, the FAA would not consider separation of the wiring from other high power wiring a critical design configuration item and, therefore, would not require visible identification. If separation of FQIS from high power sources wiring is critical, the FAA will require a visible means of identification. One acceptable means of compliance in this case would be to install color-coded tape at specified intervals along critical wiring.

To clarify the intent of this requirement, we have revised the wording within the rule to eliminate reference to placards and decals. The text of the final rule states only that a visible means of identification must be provided.

Discussion of Comments on Appendix H25.4, Instructions for Continued Airworthiness

Request To Mandate Certification Maintenance Requirements Instead of Appendix

One commenter opposes the proposed Appendix H25.4(a)(2), which would require revising the Instructions for Continued Airworthiness (ICA) to set forth each mandatory replacement time, inspection interval, related inspection procedure, and all critical design configuration control limitations approved under § 25.981 for the fuel tank system. The commenter considers that singling out just the fuel system for this requirement is not justified because all systems have their own criticalities that must be documented. The commenter asserts that this proposed requirement fails to recognize that equivalent systems-related tasks are already defined under Certification Maintenance Requirements (CMR), a process that has been in place since the early 1980's and formalized in 1994. [CMR's are maintenance requirements that identify aircraft system-related safety tasks for "dormant" (latent) failure conditions related to hazardous and catastrophic failure conditions.] The commenter states that CMR's are considered the systems equivalent of the structural airworthiness limitations and are part of today's certification process, even though CMR's are not included in part 25. The FAA Aircraft Certification Offices (ACO) and other prime certifying authorities regularly approve CMR's, and all operators' maintenance programs use these same CMR's. This commenter states that the proposed requirement indirectly regroups all maintenance tasks associated with the prevention of fuel tank ignition sources under the responsibility of the ACO, and this undermines the MRB process as well as the FAA's Aircraft Evaluation Groups' (AEG) responsibility in approving maintenance programs.

In light of this, the commenter suggests that rather than regulate the CMR concept system-by-system as the proposed Appendix would do, the FAA should pursue a separate regulatory initiative that would give official recognition of the CMR's and make them enforceable. The commenter states that doing so would "fix a long-standing regulatory deficiency." The advantage of such an alternative rulemaking approach is that it would:

- Keep current procedures and processes in place and avoid the creation of another bureaucratic approval process;
- Accomplish the FAA objective of requiring manufacturers to create an Airworthiness Limitations section in the Instructions for Continued Airworthiness similar to that approved under § 25.571 for structure; and
- Eliminate the need to enforce mandatory inspection or other procedures via § 25.981(b).

Similarly, another commenter believes that the FAA should formally recognize the CMR concept in the proposed rule. This commenter states that in doing so, the concept of declaring "critical configuration control limitations," as proposed in § 25.981(b), would be unnecessary. The commenter recommends the rule be revised to allow use of the Certification Maintenance Coordination Committee (CMCC) process, as described in AC 25–19 ("Certification Maintenance Requirements," issued November 28, 1994), to allow operators to absorb tasks within the existing maintenance programs if a MSG–3 task is identified. This reduces costs associated with tracking additional Airworthiness Limitations, which would be required in accordance with the proposed Appendix H requirements.

FAA's Response: The FAA does not concur that the rule should be revised to include the CMR process. The concept of this rule goes beyond the current CMR process. CMR's only address mandatory maintenance that is applied to the airplane at the time of original certification. The requirement of this rule for configuration design control limitations will address not only mandatory maintenance actions, but also design features (e.g., wire separation, pump impeller material specification) that cannot be altered except in accordance with the Instructions for Continued Airworthiness (ICA). The configuration design control limitations will be made part of the Airworthiness Limitations section of the ICA; therefore, they will be mandatory in accordance with § 91.403(c).

Further, the current MRB process does not provide a mandatory, legally enforceable means to require mandatory maintenance tasks; nor does it provide the critical control limitations that are needed to assist operators when making future repairs and alterations to an aircraft.

There would be some value in changing the regulations to mandate either application of the CMR process to all systems or including all systems in the Limitations Section of the ICA. However, such action is beyond the scope of the current rulemaking, and would significantly delay action to address fuel tank safety issues. We are considering tasking ARAC to address this issue. If the ARAC process develops an improved proposal, amendment of the regulations to adopt an alternative to the actions required by this final rule can be made at that time.

Discussion of Comments on Operating Rules

Request To Revise Maintenance Operations Requirements

One commenter agrees in principle with the intent of the proposed changes to §§ 91.410, 121.370, and 125.248, and supports the concept of reviewing and revising, if necessary, the fuel tank system maintenance and inspection program. However, the commenter disagrees with the FAA's proposed

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methodology and time frame for fulfilling this intent.

As for the FAA's methodology, the commenter opposes mandating changes to maintenance programs via operations rules. Instead, the commenter requests that mandatory maintenance tasks be introduced using current industry practices, such as the use of the Maintenance Review Board (MRB) process and MSG guidelines. The commenter states that the inspection programs developed using these processes are based on a foundation of information derived from various sources using a defined process.

Further, the commenter states that the manufacturers' recommended maintenance and inspection programs already serve as the basis for developing operators' individual maintenance and inspection programs. Within these established programs, safety issues are identified and addressed at both the type certification and continued-airworthiness levels. The FAA has internal processes for managing the approval of manufacturer-developed maintenance and inspections programs, safety tasks, and the final individual-operator maintenance and inspection programs.

However, the commenter maintains that it appears that the proposed requirements will "dissolve" this existing process only to require meeting a calendar deadline. The commenter does not consider that this will lead to a safety enhancement.

This commenter suggests the following alternative for implementing a new or revised maintenance program:

First, the fuel tank system maintenance programs should be reexamined in context both with the results of the required SFAR safety review and with the existing MRB and other mandated programs [such as the Corrosion Protection Control Program (CPCP) and Supplemental Structural Inspection Program (SSID)].

Second, the approval process described in AC 25–19, "Certification Maintenance Requirements (CMR)," should be used, as appropriate, to determine the task classification, interval, and method of task transmission (for example, via service bulletins or via the existing program update process).

Third, the FAA should mandate via AD's the service bulletins or program interval changes developed as an outcome of this process. This way, any changes in maintenance and inspection programs can be communicated to operators in an approved format that is compatible with the aircraft certification basis.

Based on this suggested alternative, the commenter requests that the rule be revised to delete the proposed §§ 91.410, 121.370, and 125.248.

FAA's Response: The FAA does not concur with this commenter. First, the MRB process is not a means to mandate compliance; it is a means to identify manufacturers' recommended minimum initial scheduled inspection and maintenance tasks for new aircraft. Further, in light of service history regarding fuel tank events, it is apparent that the MRB using the MSG–3 process has previously been unable to develop adequate maintenance procedures to address various fuel tank safety issues. Second, for the reasons discussed previously, the FAA does not agree that changing the current approach to CMR's is appropriate in this rulemaking. Third, while AD's are enforceable, they generally are limited to safety issues of specific aircraft models. As discussed in the preamble to the notice and previously in this final rule, there is no advantage in addressing this industry-wide safety issue in a piecemeal fashion. We anticipate that in complying with this rule both designers and operators will take advantage of many of the methods developed in existing cooperative programs noted by the commenter.

Request for Definition of "Administrator"

One commenter requests clarification of the term "the Administrator," as it is used in proposed §§ 91.410, 121.320, 125.248, and 129.14. The commenter interprets the term "Administrator" to mean "the Federal Aviation Administration or any person to whom he has delegated his authority in the matter concerned." This is consistent with the definition of the term that appears in 14 CFR part 1 (§ 1.1).

The commenter objects to the inconsistent definition that appeared in the proposal that identified "the Administrator" as "the manager of the cognizant FAA Aircraft Certification Office (ACO)." Instead, the commenter requests that the FAA revise the proposed rule to reflect the formalized, industry-recognized roles of other authority entities, such as the PMI and the MRB process. Specifically, the commenter requests the following revision:

- For approval of the development of the designer's maintenance and inspection program, "the Administrator" is the FAA ACO, the FAA Aircraft Evaluation Group (AEG), or the non-U.S. airworthiness authority (if the FAA ACO has delegated its authority via a bilateral agreement).
- For approval of the individual operator's maintenance program, "the Administrator" is the Principal Maintenance Inspector (PMI).

FAA's Response: The FAA concurs that clarification is necessary. Part 1 of 14 CFR does define the Administrator to include those delegated the authority to act on her behalf. However, in the case of this rule, we have determined that the cognizant ACO is the appropriate entity that can address the myriad of technical and practical issues faced by implementing and enforcing compliance with this rule. As discussed elsewhere, neither the PMI nor the MRB process is authorized to perform these duties. The final rule has been revised to specifically reference the cognizant ACO, or office of the Transport Airplane Directorate, as the appropriate official for approving the initial and any revisions of the instructions for maintenance and inspection of the fuel tank systems required by the rule.

Request for Extension of Compliance Time

Several commenters request that the proposed compliance time for the required actions of §§ 91.410, 121.320, 125.248, and 129.14 be extended. These commenters state that incorporating the new instructions into maintenance and inspection programs cannot possibly be accomplished within 18 months as would be provided by the proposal. These commenters request a minimum compliance time of 54 months.

FAA's Response: The FAA concurs that the compliance time can be extended somewhat. As discussed previously in this preamble, we have revised the compliance time to 36 months.

Request To Issue Airworthiness Directives To Change Maintenance Programs Instead of Operating Rules

One commenter disagrees with the proposed requirement to change operators' maintenance programs through changes to the operating requirements. The commenter suggests that the FAA mandate such maintenance actions via Airworthiness Directives specific to each model type, rather than by modifying the operational rules. The AD's will allow both the FAA and the industry to:

- Assess the actual impact of the maintenance program (cost versus benefit);
- Ensure that the appropriate compliance time scale is mandated versus the effective date of the rule and the resources available; and
- Ensure that foreign authorities and operators are notified of the mandatory continuing-airworthiness information via a recognized document (ICAO obligation, Annex 8, paragraph 4.2.2).

Similarly, another commenter states that the proposed operating rule changes are not needed. This commenter asserts that, if the instructions for maintenance and inspections are developed through the MSG–3 process, there is no need to include them in the Airworthiness Limitation section, as would be required by the proposed rule. If they should be mandatory, then the FAA should mandate them by AD's.

FAA's Response: The FAA does not concur with either of these commenters. As discussed in the notice and elsewhere in this final rule, we will issue AD's to mandate any design changes identified as needed as a result of the design review required by the SFAR established by this final rule. However, the FAA considers it inappropriate to delay requiring implementation of the maintenance programs developed as a result of the SFAR. It is evident that existing maintenance programs are generally inadequate to ensure the safety of fuel tanks systems and that program improvements are necessary. As reflected in the regulatory evaluation prepared for this rulemaking, this approach has been found to be cost effective.

As discussed previously, we have carefully considered the first commenters' concerns regarding compliance times, and have extended the times to address those concerns. Finally, foreign authorities have been fully informed of the FAA's activities, and we will continue to include foreign authorities in future discussions of these issues.

Unlike AD's, the operating rule changes adopted by this final rule do not require the adoption of particular programs developed by design approval holders. Rather, the rules require adoption of programs that meet the objective of providing an acceptable level of safety for fuel tank systems. While the programs developed by design approval holders will provide a foundation for operators' programs, the individual operator is responsible to ensure that its programs address the actual configurations of its fuel tank systems.

In the preamble of the notice, we also discussed use of a SFAR and changes to the operating rules, instead of AD's, as the primary means of achieving the regulatory objective. As we stated, we consider that an SFAR provides a means for the FAA to establish clear expectations and standards, as well as a timeframe within which the design approval holders and the public can be confident that fuel tank safety issues on the affected airplanes will be uniformly examined.

This rule ensures that the designer completes a comprehensive assessment of the fuel tank system and develops any required inspections, maintenance instructions, and modifications, if needed. As such, the requirements of this final rule are intended to provide maintenance requirements that will prevent unsafe conditions from developing. This proactive approach provides predictability and efficiency.

Discussion of Comments on Flammability Minimization—§ 25.981(c)

General Agreement With Reducing Flammability

All comments received support the overall goal of reducing fuel tank flammability. Several commenters strongly support the FAA's position that, despite compliance with the proposed flammability reduction portion of the rule, the applicant must ensure compliance with the ignition source prevention requirements.

Other commenters support the proposed rule, but suggest other alternatives. For example, one commenter asks the FAA to consider increasing the scope of the proposal to minimize fuel tank flammability to totally preventing operation of fuel tanks with flammable vapors. Similarly, another commenter requests that the applicability of the proposal be increased so that the flammability of vapors in certain in-service airplanes would be reduced. Other commenters suggest the FAA mandate the installation of means to mitigate the effects of fuel tank ignition, such as metal foils or polyurethane foam should be mandated. Each of these proposals is discussed below.

Request To Retain Assumption of Flammable Ullage

Several commenters recognize that fuel system design has been based on the assumption that the ullage fuel/air mixture is always flammable. However, these commenters express concern that the proposal to require minimization of fuel tank flammability could result in a relaxation of the requirements for precluding ignition sources within the fuel tanks. One commenter asserts that the FAA has retained this assumption for now, but "seems to indicate a willingness to eventually entertain designs that would rely more on flammability minimization and mitigation, potentially allowing designers to assume the absence of a flammable ullage under certain conditions." This commenter considers that that affordable technology is remote and, therefore, it should be made clear that the design philosophy behind the proposed § 25.981 has firmly retained the assumption of flammable ullage.

FAA's Response: As noted by the commenter, we affirmed that we are not considering a change to the current philosophy of assuming a flammable ullage. However, if technological changes are developed, such as full-time fuel tank inerting, and prove to be a superior method of eliminating the risk of fuel tank ignition, the FAA could consider a change in this philosophy in future rulemaking.

Request To Mandate Means to Preventing Flammable Vapors—Inerting

Several commenters suggest that flammable vapors in the fuel tank should be prevented and that practical technologies currently exist that should be mandated. One commenter suggests that even with § 25.981(c) in place, circumstances might occur operationally in which even an unheated wing tank has a flammable ullage with a relatively low ignition energy threshold, and that these conditions may warrant attention through amending the rule to further reduce flammability in the future.

FAA's Response: The FAA does not concur that mandating fuel tank inerting technology has been shown to be feasible at this time. This was discussed in detail in the preamble to the notice. We are continuing to evaluate further safety improvements, and are conducting research and development to investigate the feasibility of incorporating nitrogen inerting on both in-service and new type design airplanes. As noted previously in this preamble, we tasked the ARAC on July 14, 2000 (65 FR 43800), to evaluate both on-board and ground-based fuel tank inerting systems. If further improvement is found to be practicable, we may consider initiating further rulemaking to address such improvements. In the meantime, this final rule requires a means to minimize flammability or a means to mitigate the effects of ignition. As a performance-based regulation, this allows the use of any effective, approved means, but does not require the use of any one particular means.

Request To Revise Proposed Flammability Standard

One commenter believes that the ARAC report referenced in the preamble to the notice is flawed in its logic,

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which arrived at a suggested exposure time to explosive conditions not to exceed "7 percent" of fleet operating time. This recommendation was based on comparison of the incident rate of fuel tank explosions and ignition events for center tanks to that for wing tanks. The commenter states that, due to operating procedures, the wing tanks are seldom empty and are not located near any heat sources. While wing tank vapors may be explosive when taxiing on a hot runway for extended periods, they are never as explosive as are those that often exist in empty center tanks. The most serious situation for wing fuel tanks would be when the airplane lands on a hot runway with nearly empty tanks. However, taxi time at landing is usually short. At takeoff, even with a long taxi, the wing tanks will be nearly full with relatively cool fuel. The commenter concludes that to have comparable safety margins for center tanks as for wing tanks, the degree of explosiveness would have to be equivalent.

Another commenter asserts that the proposed flammability requirement is not sufficiently detailed to ensure that compliance can be achieved without having to resort to external guidance, not published in the rule. The commenter is concerned that the proposed rule text is sufficiently vague to promote lack of standardization in findings of compliance with the regulation. Although relevant material is available in the associated AC 25.981–2, the commenter is aware that guidance in the AC is not mandatory and is concerned that the wording of the rule essentially requires an interpretation of "minimize flammability" from the relevant AC.

FAA's Response: The FAA considers that additional clarification is necessary.

As for the first comment, the ARAC recommendation of a 7 percent flammability standard did not provide an equivalent level of flammability to that of the wing (main) tanks, which the ARAC determined were the tanks with an acceptable level of fuel tank safety in relation to ignition or explosion events. The ARAC calculated a range of 3 to 5 percent for wing tanks. We considered this concern when developing the regulatory text for this rule, and this is why the proposal requires flammability to be "minimized" rather than accepting the ARAC recommendation of 7 percent.

In response to the second commenter, we consider it appropriate to further clarify the intent of the rule by incorporating a definition of the term "minimize" in the text of § 25.981(c), as follows:

In the context of this rule, 'minimize' means to incorporate practicable design methods to reduce the likelihood of flammable vapors.

"Practicable design methods" are feasible means, such as transferring heat from the fuel tank (e.g., use of ventilation or cooling air). We have provided further guidance in AC 25.981–2, which describes how demonstrating that the flammability of the fuel tank is equivalent to that of an unheated wing fuel tank would be one acceptable means of showing compliance. As with all new performance based standards, it will be necessary for the Transport Airplane Directorate to participate in the review of proposed means of compliance to ensure standardization.

Request That Rule Based on Flammability Be Delayed Until Standard Is Established

One commenter representing manufacturers and operators agrees in principle with the FAA's overall intent to enhance the fuel system safety of future aircraft designs through measures to reduce fuel tank flammability exposure. The commenter agrees that action should be taken, as identified by the ARAC Fuel Tank Harmonization Working Group, "to address flammability mitigation as a new layer of protection to the fuel system." However, the commenter disagrees with the proposed § 25.981(c) that would require minimization of fuel tank flammability, because "there is not an agreed-to definitive industry standard for assessing flammability of aircraft fuel tanks."

In light of this, the commenter requests that a rule based on flammability be delayed until a standard is defined. In its place, the commenter recommends a new rule that would accomplish some degree of flammability reduction, even though a definitive flammability standard does not exist. The commenter suggests that the new rule should require practical measures to reduce heat transfer from adjacent heat sources into fuel tanks, and proposes the following text for the rule:

§ 25.981(c):

If systems adjacent to fuel tanks could cause significant heat transfer to the tanks:

(1) Means to reduce heating of fuel tanks by adjacent systems shall be provided; or (2) Equivalent flammability reduction means shall be provided to offset flammability increases that would otherwise result from heating; or

(3) Means to mitigate the effects of an ignition of fuel vapors within fuel tanks shall be provided such that no damage caused by an ignition will prevent continued safe flight and landing.

FAA's Response: The FAA does not agree with either the commenter's proposal to delay the rule relating to fuel tank flammability or the commenter's proposed regulatory text. The proposal offered by the commenter would require only that a "means to reduce heating of fuel tanks by adjacent systems shall be provided * * *" The proposed text suggested by the comment does not require any measurable reduction in flammability, which is the objective of this rulemaking. For example, under the commenter's suggested standard, if a fuel tank initially contains a flammable fuel-air mixture, a "means to reduce heating of the tank" may reduce the temperature of the fuel, but not necessarily to the extent that the temperature would remain below the flammable range for the duration of the flight.

The commenter asserts that there is no standard for assessing flammability of airplane fuel tanks. However, industry members represented by the commenter were members of the ARAC group that recommended that the regulatory text mandate a maximum fuel tank flammability of 7 percent of the operating time. The ARAC report provides numerous calculations of fuel tank flammability that were conducted by industry representatives. We are confident that industry is capable of assessing fuel tank flammability, and we have provided guidance in AC 25.981–2, which defines methods of demonstrating compliance with the flammability requirements of the rule. One method described in the AC for showing compliance is to demonstrate that the flammability of the tank is equal to or less than that of an unheated wing tank on the airplane type. As discussed previously, § 25.981(c) has been clarified by adding a definition of "minimize." For applicants who are unable to demonstrate equivalent flammability to an unheated wing tank, the use of "practicable design methods," such as transferring heat from the fuel tank, will be required. The final rule is adopted with the change noted.

Request Not To Mandate Fuel Tank Flammability to the Level Proposed

The commenter does not agree with the FAA's statement in the preamble to the notice that read:

"* * * the intent of the proposal is to require that fuel tanks are not heated, and cool at a rate equivalent to that of a wing tank in the transport airplane being evaluated."

For example, directed ventilation systems may *reduce* heating of adjacent fuel tanks, but they do not *eliminate* heating. Furthermore, the commenter

asserts that there should not be a requirement to "cool at a rate equivalent to that of a wing tank." The studies conducted by the ARAC Fuel Tank Harmonization Working Group did not conclude that such a requirement was necessary or achievable. The commenter requests that the FAA not mandate minimizing fuel tank flammability to the level proposed in the notice, because it would not be practical to cool tanks within the fuselage to the same level as tanks located in the wing.

FAA's Response: The FAA disagrees. The rule only affects new type designs. Therefore, possible design considerations to comply with the rule would include:

- Locating heat sources away from fuel tanks;
- Introduction of cool air from outside sources into air gaps between heat sources and fuel tanks to transfer heat from tanks while inflight; and
- Introducing cool air from ground or airplane sources during ground operations.

Some of these features are already incorporated into certain models of the transport fleet. These methods are technically feasible and could provide an equivalent level of exposure to operation with flammable vapors to that of unheated wing fuel tanks—the fuel tanks with a safety level that the ARAC defined as an acceptable standard. The commenter provided no data to support the assertion that "it would not be practical to cool tanks within the fuselage to the same level as tanks located in the wing."

Request To Provide Alternatives to Minimizing Flammability

Two commenters request that alternative regulatory text be included in the proposed rule concerning the requirement to minimize flammability.

The first commenter believes that the FAA's intent, as stated in the preamble to the notice and restated in draft AC 25.981–2X, is "to require that the exposure to formation or presence of flammable vapors is equivalent to that of an unheated wing tank in the transport airplane being evaluated." The commenter considers this a reasonable objective. The commenter recommends that the FAA reword the proposed rule text to clearly frame the intent within the rule itself, and believes that the wording would be more specific and less prone to misinterpretation if it contained the following statement:

A means must be provided to ensure that the net heat balance within any tank will be equivalent to that of an unheated wing fuel tank during any portion of the passenger carrying operation.

The commenter adds that, if an unheated wing fuel tank does not exist on a particular design, then one could be modeled and used as the reference standard for all tanks on that design.

The second commenter recommends that the FAA consider an alternative to have the applicant determine an acceptable heat transfer rate at a critical fuel load, rather than determining if a temperature limitation is exceeded, given that the tank ullage is considered flammable. This would alleviate the difficulties of working with a high number of parameters inherent in the numerous aircraft types and conditions (including the effects of pumping, vibration, altitude, fuel load, etc.) by considering a generic installation.

FAA's Response: The FAA does not agree with either commenter. Minimizing flammability is the ultimate objective of the rule. We considered many options when establishing the regulatory text, and determined that a performance-based rule is most appropriate because it allows the designer to control fuel tank flammability by using any number of methods. It also allows the use of new technology designs that may be developed in the future. On the other hand, the commenters' proposals focus only on heat balance and heat transfer, rather than flammability. Their proposals would not allow the designer the flexibility to introduce other means of reducing flammability, other than controlling heating/cooling of the tank, such as with nitrogen inerting. Further, the commenters' proposals would not significantly simplify the compliance demonstration over that of the options described in AC 25.981–2X. In light of this, the commenters' proposals are not accepted.

Request To Require Retroactive Reduction in Flammability

One commenter states that the designs of some in-service airplanes have shown undesirable characteristics. Because the proposed flammability requirements would only affect new airplane type designs, this commenter seeks insurance from the FAA that older and current designs also will be assessed, and suggests a case-by-case approach.

FAA's Response: The FAA agrees that some in-service airplanes have undesirable levels of fuel tank flammability. To address this issue, we tasked the ARAC in 1998 to provide advice and recommendations on methods that could eliminate or significantly reduce the exposure of transport airplane fuel tanks to flammable vapors. Our review of the ARAC report indicates that additional time is needed to perform the in-depth research and economic evaluations necessary to determine if certain technologies that could reduce or eliminate fuel tank flammability would be practical for use on the existing fleet of transport airplanes. As noted previously, we also are studying concepts such as ventilating spaces adjacent to fuel tanks, and recently tasked the ARAC to evaluate inerting systems for possible retrofit into the existing transport fleet. We will consider initiating additional rulemaking if further improvements are found to be effective and practicable.

Request To Ban Use of Low Flash Point Fuels

Several commenters suggest that the use of lower flash point fuels, such as JP–4 or Jet B, should be disallowed because these fuels cause a much greater exposure to flammable vapors. One commenter notes that while it appears that these fuels are no longer commonly used, they may still exist as approved alternative fuels for several transport aircraft. If any operators routinely use Jet B or JP–4 type fuel, then their risk would be much greater than the risk for operators using Jet A.

FAA's Response: The FAA agrees that use of lower flash point fuels increases the exposure to operation with flammable fuels in the fuel tank. In fact, this rule does require consideration of fuel type. The limited use of these fuels on a temporary basis to allow operation from remote airports is discussed in AC 25.981–2. The FAA does not agree that use of these fuels should be banned for in-service airplanes. Data available indicates that these fuels are not routinely used in U.S. operations. However, in some cases, airplanes may divert into locations where JP–4 fuel is the only fuel available. Use of this fuel on a temporary basis allows continuation of the flight without requiring tankering of Jet A fuel to a remote alternate airport and the associated delays and inconvenience to the flying public. If use of lower flash point fuels increases due to market conditions, the FAA will consider rulemaking to limit their use.

Request To Require Use of Means To Prevent Fire Within Fuel Tank

Several commenters request that the FAA revise § 25.981(c)(2) to require the use of specific means to address the requirement to mitigate the effect of an ignition of fuel vapors within the fuel tanks. Some of the commenters' suggestions include flame quenching metallic foils and polyurethane foam. These commenters state that such

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technologies as these are available and consider them effective in preventing propagation of flame or explosion within the fuel tanks

FAA's Response: The FAA does not agree that a change to the proposed rule is necessary. As stated previously, the final rule is a performance-based regulation. As such, it may permit the use of such means as those suggested by commenters, but the rule does not require the use of any one particular means. AC 25.981–2 provides guidance on use of these means.

Discussion of Comments Concerning Cost of the Rule

The detailed responses and the impacts of the comments on the costs of the rule are contained in the Final Regulatory Evaluation, which is available in the docket. The quantitative effects of the comments on the assumptions and the cost estimates are summarized in the Economic Evaluation discussion later in this final rule. The following discussion is a more general disposition of the comments concerning the cost of the rule.

Number of Airplanes, TC's, and STC's Affected

One commenter notes that the FAA assumed that a U.S. fleet size of 6,006 airplanes would be affected by the proposed rule. While this number may have been appropriate in 1996, the commenter states that by the time the final rule is issued, there likely will be more than 7,000 affected airplanes.

Additionally, the commenter notes that the number of affected type certificates counted by the FAA did not include the Fokker Model F27 Mark 50 or the Boeing Model 717. Further, the FAA's listing of fuel system STC's was incomplete; for example, there were no fuel tank system STC's listed for any Airbus, Fokker, Bombardier, or Aerospatiale airplanes.

Finally, the commenter states that the FAA's cost estimate should take into account the worldwide impact that the proposed rule will have, as other regulatory authorities adopt identical or similar rules. Thus, the true cost of this activity will far exceed the cost associated with only the U.S. fleet.

FAA's Response: The FAA concurs with the commenter that the number of airplanes in the U.S. fleet has increased since the data set used in the notice was collected. As a result, we now estimate that 7,875 U.S.-registered airplanes will undergo the fuel tank system inspections beginning in the year 2004. The economic analysis has been modified accordingly.

We agree with the commenter that our analysis had not included any Fokker Model F27 Mark 50 or Boeing Model 717 airplanes in the fleet. The reason was that the fleet data set that we used contained no U.S.-registered Model F27 Mark 50 airplanes. The more recent data set we used for the final regulatory evaluation also contains no U.S.-registered Model F27 Mark 50 airplanes; thus, those airplanes are not included in the analysis. We did not include any Model 717 airplanes because that fleet data was based on a 1996 listing when no Model 717 airplanes had yet been manufactured. The airplane data set that we used in the final regulatory evaluation is based on 1999 data and contains Model 717 airplanes. We also note that even though the 1999 fleet data set reported no U.S. registered Airbus Model A321, A330, or A340 airplanes, we assumed that these models will enter the U.S. fleet eventually and, therefore, the costs to review these fuel tank systems were included in the analysis.

We agree with the commenter that the analysis had not included all of the fuel tank system STC's. After further research, we discovered one fuel tank system STC for an Airbus airplane model, one fuel tank system STC for a Bombardier airplane model, and no fuel tank system STC's for Fokker or Aerospatiale airplane models. The economic analysis has been adjusted accordingly.

We do not agree with the commenter regarding consideration of worldwide impact of this rulemaking. The FAA is not required to account for costs to foreign operators not operating in the U.S. because those operators are not subject to these rules.

Cost of Evaluating Non-Fuel System-Related STC's

One commenter agrees with the FAA that only a small number of non-fuel-system STC's will require a system assessment. However, the commenter asserts that the FAA's analysis does not account for the significant effort and associated cost that would be required to determine whether or not these non-fuel system-related STC's affect the fuel system and thus merit further attention. Such a determination would be required under the proposed SFAR requirements.

FAA's Response: The FAA agrees that the costs to determine which STC's affect the fuel tank system should be included in the economic analysis. However, we have determined that 90 percent of the non-fuel tank system STC's will need only a minimal degree of engineering effort (with a resultant minimal cost) for a qualitative evaluation of their effects on the fuel tank system. We also have determined that 325 non-fuel tank system STC holders will each need to conduct a more detailed engineering review that will involve an average of 75 hours of engineering time. The economic analysis has been revised accordingly.

Cost of Use of Proprietary Data

One commenter raises concerns regarding the costs associated with STC holders obtaining data from the type approval holder. The commenter points out that, in the "Regulatory Evaluation" section of the notice, the FAA stated:

> Many STC holders would be able to incorporate a large portion of a TC holder's fuel tank system assessment into its assessment.

The commenter states that, in practice, the release of such proprietary information to a third party would need to occur under a technical assistance contract. Therefore, the cost of this transaction should be added to the FAA's cost analysis.

FAA's Response: The FAA disagrees with this commenter. While a technical assistance contract may be needed to obtain this information, the overall cost to the aviation industry is not affected because the payment to the data holder will offset some of the engineering costs associated with the fuel tank system design review. As a result, the overall cost of the rule is not affected by these contracts, although the distribution of a part of these costs will shift from certain TC holders to certain STC holders.

Cost of Fuel Tank System Safety Review Required by SFAR

One commenter disagrees with the FAA's estimate of $14.4 million for the costs of completing the fuel tank system reviews required by the proposed SFAR. The commenter points out that the FAA estimated that the review would require 0.5 to 2 engineering years per airplane model. However, the commenter calculates the actual level of effort required will be more like 2 to 4 engineering years for each major model. Minor model variation will add additional effort that is difficult to quantify, but could easily increase the total effort by 30 to 50 percent. In addition, the commenter states that systems do evolve with time, leading to additional permutations that must be considered.

In light of this, the commenter believes that the basic safety reviews will require two to three times more effort and cost than identified by the FAA. Accordingly, the cost of the basic design review may be in the range of $28 million to $52 million, plus an additional $14 million to account for the variations within models.

FAA's Response: The FAA agrees that the number of engineering hours to review the fuel tank systems should be increased but disagrees about the amount of the increase. As discussed later in more detail in the Economic Evaluation section of this preamble, we determined that there were two types of fuel tank system reviews:

- The first, which is referred to as the "full-scale" review, is the first fuel tank review done for a model that has several series.
- The second, which is referred to as the "derivative" review, are the reviews of the other series in that model.

Using the Boeing Model 737–300/–400/–500 as an example, we determined that this model will involve one "full-scale" review and two "derivative" reviews. In addition, the fuel tank system reviews performed for all "extended range" series and freighter series are evaluated as "derivative" reviews. On that basis, we determined that, depending upon the model, it will take 6 months to 4 years of engineering time to perform a "full-scale" fuel tank system review. The FAA also determined that it will take 6 months to 1 year of engineering time to perform a "derivative" fuel tank system review. (See the commonality of design discussion presented earlier in this preamble for an engineering explanation why the review of a model's series after the first review will take less time than the first review.)

The FAA agrees that the number of fuel tank system reviews needs to be increased, but disagrees about the extent of the increase. The FAA determined that the rule will require 46 "full-scale" reviews and 52 "derivative" reviews. The impact on the total cost of these reviews is provided in the Economic Evaluation section of this preamble.

Cost of Safety Review of Older Type Designs

One commenter, Lockheed Martin, considers that the FAA clearly underestimated the costs to conduct the safety review required under the new SFAR on older airplanes, such as the Lockheed Model L–188 Electra. The commenter notes that the FAA's economic analysis of the cost of the design review proposed in the notice is based on a fleet-wide consideration. This approach results in a per-aircraft-cost basis that does not appear unreasonable. However, the expense to perform the design reviews and prepare service documents will be the same for Lockheed as for other manufacturers that have twenty or thirty operators and hundreds of operating aircraft. (They commenter reports that there are only 13 Model L–188 Electras currently operating in the U.S.)

The commenter requests that the FAA take into consideration the following information when finalizing the economic analysis of the proposed rule:

1. The FAA's cost benefit analysis identifies an engineering effort to perform the SFAR safety review and preparation of documents as taking from three-quarters to three person years to perform. However, because the Model L–188 Electra was certified prior to the issuance of § 25.901 and § 25.1309, the SFAR safety review will require all new analysis and possibly testing to prove that the design meets the requirement for all operating conditions. The effort to do this will likely exceed the maximum FAA estimate of three person years.

2. Then, the time to familiarize a new staff with the design, to locate pertinent files, to relate those files to the long history of the aircraft, and to develop test and compliance documents for new regulations are time-consuming tasks that will add significant time and costs to the FAA's estimates.

3. If the analysis shows that the design does not meet the newly imposed requirements, redesign will be necessary. Such redesign would increase the expense by a factor of 3 to 5, depending on the detail. It would also increase considerably the expense to the operator of installing the new design.

FAA's Response: The FAA agrees that additional time and costs will be required to review the designs on some airplane types where design information is not readily available. However, the FAA does not agree that all of the work identified by the commenter is necessarily required. As discussed previously in this preamble, the FAA extended the compliance time for conducting the actions required by the SFAR, which addresses the commenter's concern about the needed time. Further, the FAA increased the number of engineering years to complete a Model L–188 fuel tank system design review to 4 years. Additionally, as noted in the earlier disposition of the comment relating to the applicability of the SFAR, the FAA will consider the merits of exemptions to the requirements of the SFAR based upon the number of airplanes in service and the safety benefits that could be achieved by a safety review.

Cost of Safety Review of STC's on Older Airplanes

While commenters generally agree that the design review should apply to STC's and field modifications, several commenters express concern that the design review will be difficult to conduct on older airplanes. In particular, reviewing non-fuel tank related STC's and field approvals could be unmanageable for airplanes with a long service life and with multiple owners. The commenters note that the FAA did not make any accounting in the notice for the cost of addressing these modifications.

One commenter proposes an alternative approach: A one-time inspection to determine the configuration of the airplane and to verify that wiring entering the fuel tank, and systems capable of generating auto-ignition temperature into fuel tank structure, have not been compromised by STC modifications. The commenter asserts that such an inspection would require about 50 to 100 labor hours to perform. The resultant inspection labor costs alone could amount to $28 million to $52 million, depending upon the number of airplanes to be inspected (for example, 7,000 airplanes × 100 hours per airplane × $70 per labor-hour). This estimate does not include the cost of the downtime (and resultant revenue loss) required to accomplish such an inspection; yet the proposed compliance time of 12 months would require airplanes to be pulled from revenue service for special inspection. In the notice, the FAA had estimated that an annual increase in out-of-service time of 11.5 hours to 32 hours would occur, depending upon the model, and that this would result in lost net revenues of $6.4 million for a 12-month period. The commenter maintains that the one-time inspection alternative would also require this much downtime.

FAA's Response: The FAA agrees that the costs associated with reviewing non-fuel tank-related STC's and field approvals needs to be addressed. However, we disagree with the commenter as to the direction and magnitude of the effort that will be needed to evaluate these factors. Specifically, we agree that a "paper review" of the airplane's service history will be needed for compliance. We disagree that this review will necessitate an airplane inspection that is separate from the initial fuel tank system inspection and that the labor hours for any such airplane inspection have been included in the labor hours to complete the initial fuel tank inspection. We agree that the amount of effort to complete

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this "paper review" will vary across individual airplanes. Airplanes that have been in near-continuous operation by major, national, and regional airlines (the majority of the airplanes affected by the rule) should possess well-documented service history records such that those operators will need a minimal amount of time to complete the paper reviews for those airplanes. However, we realize that there will be smaller operators that will spend more time to trace their airplanes' service histories—particularly if the airplane has had multiple operators and owners. As a result, we have determined that it will take an average of one engineering day (a cost of $880 per airplane) for an operator to complete this paper review for every airplane.

Cost of Design Changes

Several commenters raise concerns about accounting for the costs of new design changes that could be required under the proposed SFAR requirements. One commenter representing manufacturers and operators agrees, in general, that any design changes resulting from the safety review should be handled outside the scope of the SFAR. However, there would be additional costs associated with developing the necessary design changes identified by the SFAR safety reviews. The commenter points out that, in the notice, the FAA stated:

> • • • the design review may identify conditions that would be addressed by specific service bulletins or unsafe conditions that would result in FAA issuance of an airworthiness directive (AD). However, those future costs would be the result of compliance with the service bulletin or the AD and are not costs of compliance with the proposed rulemaking. Those costs would be estimated for each individual AD, when proposed.

This commenter does not consider it appropriate for the FAA to assert that *none* of these costs are attributable to the proposed rulemaking. In those instances where new rules are created that go beyond existing rules—essentially raising the current level of safety—the cost of any design change driven by these new rules should be considered as part of the total cost of the rule.

The commenter points to § 25.981(a)(3) as such a rule that proposes new, more-stringent requirements associated with evaluating the effects of latent failures. Should compliance with this specific rule require design changes broadly across the fleet, the costs would be substantial. For example, *if* this rule were to affect half the U.S. fleet (about 3,500 airplanes), and new design change costs averaged $40,000 per airplane, the total cost would be $140 million.

The commenter acknowledges that it is not possible to predict what effect the proposed rule would actually have on the fleet, but the potential obviously exists for costs that range between $100 million and $200 million, or more.

FAA's Response: The FAA disagrees that the cost of new design change requirements should be included in the cost analysis for this rule. As discussed in the notice, new design change requirements will be implemented through the AD process, during which the FAA will fully analyze the costs and the public will have an opportunity to comment on the FAA's estimates.

Cost of Developing Maintenance and Inspection Instructions

One commenter disagrees with the FAA's assumption that the development of maintenance and inspection instructions would simply be part of the required SFAR safety review. On the contrary, this commenter states that this work, in fact, must be done after completion of the safety review. However, the commenter states that, if one assumes that this effort represents 20 to 30 percent of the effort associated with the basic safety review, then the cost could be on the order of $10 million.

FAA's Response: The FAA partially disagrees that the costs of developing the maintenance instructions were not included in the cost analysis of the rule. The estimated labor hours required for the design review specifically included an estimate of 0.15 year to one year of engineering time for the TC holders, and 0.1 year to 0.25 year for the fuel tank system STC holders, to develop the inspection and maintenance recommendations. Further, we had assumed that the design approval holder recommendations would have been completed after the fuel tank system review. Nevertheless, as the proposed compliance time was 1 year, the fact that developing the recommendations after completing the fuel tank system review had no effect on the present value of the estimated costs because all of the expenditures would have occurred in the first year. This is not the case for the 18-month compliance time provided in the final rule. We have determined that all of the engineering costs to develop the recommendations will occur during the second year after the effective date of the rule. We have included those costs in the final economic analysis.

Cost To Comply With the SFAR

One commenter asserts that the combined cost of the safety review and development of instructions may well be $180 to $330 million, rather than the $16 million estimated by the FAA.

FAA's Response: The FAA disagrees with the underlying assumptions made by the commenter to develop this estimate. The commenter's first assumption is that $100 million to $200 million of these costs are based on the commenter's argument that, "Should compliance with this specific rule require design changes broadly across the fleet, the costs would be substantial. For example, *if* [emphasis FAA] this rule were to impact half the U.S. fleet (about 3,500 airplanes) and modification costs averaged $40,000 per airplane, the total cost would be $140 million. It is not possible to predict what effect this new rule would actually have on the fleet, but the potential obviously exists for costs that range between $100 million and $200 million, or more." [The commenter is referring to the requirements of § 25.981(a)(3) of the rule, which involve evaluating the effects of latent failures.]

This argument assumes that the cost of the potential future AD's should be attributed to this rule. As stated earlier, we maintain that the cost of complying with potential future AD's is attributed specifically to those individual AD's when they are issued. As a result, we have determined that there are no compliance costs attributable to this rule for any future design changes that will be accomplished through an AD.

The commenter's second assumption is that the fuel tank system review costs will be two to three times the $16 million estimated by the FAA, plus there will be an additional $14 million to review the fuel tanks for the variations within models. As noted earlier, we disagree with the amount of engineering time assumed by the commenter, as well as the number of fuel tank reviews that will be performed. We have recalculated the estimated compliance cost and determined that it will be about $30 million.

Finally, the commenter assumes that each airplane will need a one-time inspection to verify that previous airplane modifications have not compromised the wiring entering the fuel tank and entering the systems capable of generating autoignition temperatures into fuel tank structure. The commenter estimates this will cost $28 million to $52 million for labor, and $6.4 million for lost net revenue due to out-of-service time. As noted earlier, we

agree that an individual airplane review will be needed, but we disagree in that the labor hours have been included as part of the labor hours to perform the initial fuel tank system inspection. We have, however, calculated a $5.5 million cost for a "paper review" of every airplane's service history.

Based on these figures, we conclude that the costs to comply with the SFAR will be $35.5 million. (More details concerning these costs are explained later in this preamble.)

Cost of Operating Rule Changes

One commenter agrees with the statement in the notice that read:

> The FAA intends that any additional fuel tank system inspection and maintenance actions resulting from the SFAR review would occur during an airplane's regularly scheduled major maintenance checks. From a safety standpoint, repeated entry increases the risk of damage to the airplane. Thus, the proposal would not require air carriers to alter their maintenance schedules, and the FAA anticipates that few or no airplanes would be taken out of service solely to comply with the proposal unless an immediate safety concern is identified.

This commenter strongly recommends that the FAA ensure that the final rule does not penalize the industry by requiring inspection intervals more frequent than truly necessary, or lead to unnecessary hard-timing of (placing life-limits on) components.

FAA's Response: The FAA responds to this commenter by reiterating that the intent is to have the maintenance and inspections generated by this rule be developed so that the tasks can be performed during regularly scheduled maintenance.

Cost of Inspections

One commenter disagrees with the number of hours that the FAA estimated would be required to conduct the added inspections required by the rule. The commenter calculates that the metric will be 300 to 500 labor hours per airplane every 9 to 11 years, plus any parts replacement costs yet to be defined by the manufacturer.

Another commenter suggests that the cost analysis needs to be adjusted to address in-tank inspections. The commenter asserts that the FAA assumes that much of the in-tank inspection work will be accomplished during heavy maintenance checks when the tanks are open and purged. However, for some aircraft, the tanks are opened only once every eight years for scheduled maintenance. Therefore, if in-tank inspections are mandated, some aircraft will have to be removed from scheduled service and the costs associated with this should be considered in the rule. Also, the costs of preparing tanks for entry should be considered.

FAA's Response: The FAA agrees with the first commenter. Assuming the commenter's airplanes were manufactured between 1960 and 1980, we calculated that the initial fuel tank system inspection, plus the two reinspections that will occur during a 12-year period, will result in a total number of 330 labor hours per airplane.

We disagree with the second commenter. The commenter states that 60 percent of the initial fuel tank system inspections will be performed during a "C" check , which will require that the fuel tank be opened, drained, and vented. We included these costs in the number of labor hours for the initial inspection, which are twice the number of labor hours for the later reinspections that will be performed during "D" checks. Further, we included a value for the lost net revenue to the aviation system as a result of the additional number of out-of-service days (from one to three days) for the initial fuel tank system inspections performed during the "C" check.

Cost of Complying With New Method of Addressing Latent Failures

One commenter states that the new treatment of latent failures (to maintain the probability of occurrence of a given latent failure to less than 1×10^{-7}), as would be required by § 25.981(a)(3), will lead to enormous costs with no attendant benefit. As an example, a component with a latent failure rate of 1×10^{-9} per flight-hour would have to be inspected (or hard-timed) every 100 hours (or 200 hours, if an average exposure time is assumed to be T/2) to keep the probability of failure under 1×10^{-7}. A component failure rate of 1×10^{-8} per flight-hour would require inspection every day (10 hours). The commenter asserts that the benefit derived from performing such inspections or hard-timing is nil, and the implications of such a rule are self-evident.

Further, this commenter points out that the FAA's cost estimate for the operational rule changes is $154 million over 10 years, and that is based upon the assumption that the required maintenance and inspection programs will coincide with an airplane's regularly scheduled major maintenance checks. However, the commenter states that the situation described above would result in numerous inspections that would not align with these regularly scheduled checks. In addition, it could lead to widespread hard-timing of components (e.g., pumps). The commenter notes that the FAA did not consider either of these possibilities in the cost analysis; however, the magnitude of the cost impact could extend into the billions of dollars.

FAA's Response: The FAA does not concur. The conclusion of this commenter that the costs of compliance with § 25.981(a)(3) "could extend into the billions of dollars" is based upon an assumption concerning the impact of the requirement. The example provided by the commenter, which assumes that the requirement limits the probability of latent failure to less than 1×10^{-7}, indicates a misinterpretation of the requirement. The rule does not allow a single failure to hazard the airplane, regardless of the probability of its occurrence. The FAA expects that designs that have single failures that can result in an ignition source will be modified to include fail-safe features. Modifications may also be necessary to address combinations of failures. If a fuel tank system is designed such that the safety level is heavily dominated by one of the components or features in the combinations of failures, then added inspections, hard-timing, or installation of annunciation features to eliminate latency are exactly what was intended by the regulation. The need for inspections and hard-timing can be limited by providing redundancy and fail-safe features and/or by eliminating latency. Therefore, inspection or replacement of components at the rate noted by the commenter would not be required.

The FAA position is supported by another commenter who provided information regarding transient suppression units (TSU) developed for the Boeing Model 737 and 747 airplanes. The commenter states, "The TSU eliminates the need to inspect harnesses, probe terminations, etc. The TSU itself would be subject to periodic (25,000 hours) inspections." It should be noted that heavy maintenance checks typically occur on transport airplane models prior to accumulating 25,000 hours time in service; therefore, the cost of inspections for the TSU units would be low.

The speculation by the commenter that "the magnitude of the cost impact could extend into the billions of dollars" is based on a misunderstanding of the final rule and, therefore, was not considered in the final economic analysis.

Costs of New Modifications

One commenter expresses concern that the cost analysis is "greatly flawed" because it did not consider all the costs

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that will result from the requirements of the SFAR, such as high cost items like aircraft modifications and "hard timing" of components. The cost analysis takes credit for the benefits that will result from these modifications; however, the commenter considers that the costs should be included as well.

As an example of the potential costs of modifications, this commenter provided the following specific information concerning how the proposal would affect its fleet of airplanes: The commenter owns approximately 160 Boeing Model 727 airplanes. As a result of the proposed SFAR safety review, some of the modifications that might be mandated for these airplanes are:

- Replacement of the analog FQIS with a digital FQIS;
- Installation of current suppression devices;
- Installation of flame arrestors; and
- Possibly, replacement of fuel boost pumps.

The cost of these modifications alone, based on data received from the equipment manufacturers, is approximately $125,000 per airplane. Since some of the commenter's airplanes already have a FQIS installed, the cost to modify the commenter's fleet would be approximately $17,000,000. This figure does not include other modifications that might be mandated for the airplanes. The commenter points out that this is the modification cost for only one aircraft type for one airline. If all costs for all U.S. registered aircraft were to be included, the result would be far greater than the total indicated in FAA's cost analysis presented in the notice.

FAA's Response: The FAA does not agree that the cost analysis concerning possible modifications was flawed. Section 25.901(b)(2) requires that the "Components of the installation must be constructed, arranged and installed so as to ensure their continued safe operation between normal inspections and or overhauls." As stated in the notice, "Typical transport category airplane fuel tank systems are designed with redundancy and fault indications features such that single component failures do not result in any significant reduction in safety. Therefore, fuel tank systems historically have not had any life-limited components or specific detailed inspection requirements unless mandated by AD." We agree that some past design practices have been deficient and that adding the specific requirement in § 25.981(a)(3) to address latent failures may require new design features for existing airplanes. We also agree with the commenter that modifications to the FQIS and/or any other wiring entering the fuel tank system may be required (such as separation and shielding of FQIS wiring or, for older airplanes, installation of transient suppression devices). We do not agree that the rule would mandate replacement of analog FQIS with digital systems, although this may be one method used on certain portions of the fleet. However, because correcting those design deficiencies will be accomplished through the AD process, those compliance costs will be estimated when the relevant AD is proposed.

The SFAR does not require installation of flame arrestors in fuel tank vents. We have initiated tasking an ARAC group to provide recommendations addressing both a part 25 amendment and retroactive operational requirement for installation of flame arrestors in fuel tank vent outlets. If any rulemaking is subsequently proposed based on the recommendations, the FAA will conduct separate economic analyses for those proposals.

Cost of Changes to Part 25 on Future Designs

One commenter disagrees with the FAA's cost analysis regarding the affects of changes to part 25 requiring "minimizing flammability." This commenter points to a statement in the notice that read:

> The FAA anticipates that the proposed part 25 change would have minimal effect on the cost of future type certificated airplanes because compliance with the proposed change would be done during the design phase of the airplane model before any new airplanes would be manufactured.

The commenter considers that the FAA's assumption is incorrect. Proposed § 25.981(c)(1) would require that the fuel tank installation include "a means to minimize the development of flammable vapors in the fuel tanks." Moreover, the FAA states that it intends that the body tanks "cool at a rate equivalent to that of a wing tank."

The commenter asserts that, based on this requirement, the cost impact to future airplane designs could be substantial. As an example, the commenter presents a preliminary cost assessment of a directed ventilation system, below. The commenter derived the cost estimates from a report prepared by an ARAC working group (Fuel Tank Harmonization Working Group). These fuel tank cooling cost estimates are divided into the categories indicated. The analysis considers the costs associated with small, medium, and large airplane designs. (It should be noted that directed ventilation systems of the type evaluated would not cool a center wing tank at a rate equivalent to that of a wing tank.)

1. Development costs per airplane design = $2.8 million.
2. Installation costs per production airplane = $21,200.
3. Additional airplane operational costs per airplane per year:
   - Small airplane = $30,408.
   - Medium airplane = $39,295.
   - Large airplane = $50,518.

Using these numbers, a simple calculation may be performed to estimate the recurring costs associated with such a system over a 10-year period. These costs would consist of the installation costs per production airplane and the additional operational costs per airplane per year, applied to a fleet of a new airplane design with an assumed production rate. The following table presents the results of this simple estimate for a 10-year period (ignoring inflation, cost of capital, and so on):

Size	Annual production rate	Production cost	Operational cost	Total cost
Small	180	$38,160,000	$301,039,200	$339,199,200
Medium	72	15,264,000	155,608,200	170,872,200
Large	60	15,264,000	129,673,500	144,937,500

Although the above example is simplistic in nature, the commenter maintains that the conclusion may be drawn that the overall potential costs are indeed substantial, even if the initial developmental costs are not.

FAA's Response: The FAA disagrees with the commenter. The requirements of the final rule should result in very little increased production costs. Certain airplane models in production today locate sources of heat away from the center wing fuel tanks. Other models locate the air conditioning packs below the center wing fuel tank, but incorporate air gaps that are ventilated such that heat transfer into the center wing tank is significantly reduced. Other airplane models incorporate directed ventilation means for areas below the heated center wing tanks.

The FAA does not agree with the cost assessment provided by the commenter. The cost estimate referenced by the commenter is stated to apply to "present airplane designs." It assumes that the environmental control system (ECS) packs will be located adjacent to the center wing tank, and that heat shields and ventilation air would be used to remove heat from the center wing fuel tank. This approach results in added weight and drag penalties. New designs allow the designer numerous options to achieve an optimized design. Air conditioning equipment can, and has been, located away from fuel tanks. Cooling air is available from the ECS system, ground sources and outside air in flight. Incorporation of these features in the initial design would result in little added cost over that of features noted in the preceding paragraph on many airplane designs.

The ARAC report, from which the commenter has gathered data for its cost estimates, includes a discussion to "locate significant heat sources away from fuel tanks." The report states that, "* * * quantifying the impact of this method would only be possible for specific new designs," and the report provides little data regarding the costs for locating packs away from fuel tanks. We agree with the commenter that cooling air may be needed to meet the requirements of this regulation and this can result in additional operating costs during certain flight operations. However, these costs are airplane model design-specific and could not be estimated without input from the industry. Nevertheless, in the absence of specific industry design and cost data, we maintain that these additional operating costs will be minimal. Further, these costs will occur on airplanes that will be manufactured many years in the future and, as a result, the present value of those operating costs will be even less.

Paperwork Reduction Act

There are no new requirements for information collection associated with this amendment that would require approval from the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Economic Evaluation, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only if the agency makes a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards. Where appropriate, agencies are directed to use those international standards as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules. This requirement applies only to rules that include a Federal mandate on State, local, or tribal governments, likely to result in a total expenditure of $100 million or more in any one year (adjusted for inflation).

In conducting these analyses, the FAA has determined that this rule: (1) Has benefits which justify its costs and is a "significant regulatory action;" (2) will have a significant impact on a substantial number of small entities; (3) has minimal effects on international trade; and (4) does not impose an unfunded mandate on state, local or tribal governments or the private sector. The FAA has placed these analyses in the docket and summarizes them as follows.

Data Sources

- The principal data sources used for this analysis are:
- The public comments submitted to the notice for this rulemaking action;
- The *World Jet Inventory at Year-End 1999;*
- *Back Aviation Solutions* (Fleet PC, Version 4.0);
- Information from service bulletins; and
- FAA discussions with industry engineers.

Affected Airplanes and Aviation Sectors

In the notice, the FAA, using 1996 data, estimated that the proposal would have affected 6,006 airplanes. Of this number:

- 5,700 airplanes were operated by 114 air carriers under part 121 service,
- 193 airplanes were operated by 7 carriers that operated under both part 121 and part 135,
- 22 airplanes were operated by 10 carriers under part 125 service, and
- 91 airplanes were operated by 23 carriers operating U.S.-registered airplanes under part 129.

At that time, the FAA did not have information on airplanes operating under part 91 that would have been affected by the proposal; however, the FAA had stated its belief that very few airplanes operating under part 91 would have been affected by the proposal.

The FAA also estimated that the proposed rule would have affected:

- 12 manufacturers holding 35 part 25 type certificates (TC's);
- 26 manufacturers, airlines, and repair stations holding 168 supplemental type certificates (STC's) for part 25 fuel tank systems, of which 69 were for different modifications;
- Manufacturers of future, new part 25 type certificated airplane models; and
- Holders of future, new part 25 STC's for new fuel tank systems.

At that time, the FAA was unable to predict the number of new airplane TC's but, based on the average of the previous 10 years, the FAA had anticipated that 17 new fuel tank system STC's would be granted annually. The FAA had requested comments on these estimates.

In order to update the aviation industry data, the FAA used a different database for this final rule from what it used for the analysis of the proposed rule. However, as this more current database does not report the same information as that reported in the previous database, an exact comparison between the two databases is not possible. Consequently, using 1999 data, the FAA determined that the final rule affects 6,971 airplanes, of which 6,252 are turbojets and 719 are turboprops. Of these 6,971 airplanes:

- 6,485 (5,802 turbojets and 683 turboprops) are operated by 143 scheduled and non-scheduled air carriers,

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- 117 are operated by 76 private operators (primarily corporations), and
- 369 are currently held by 112 manufacturers and brokers and leasing companies.

The FAA also determined that the final rule affects:

- 13 manufacturers holding 37 part 25 type certificates (TC's);
- 46 manufacturers, airlines, and repair stations holding 173 supplemental type certificates (STC's) for part 25 fuel tank systems, of which 79 are for different fuel tank system modifications;
- 325 non-fuel tank system STC holders that will need to evaluate their STC's to determine their impacts on fuel tank systems;
- Manufacturers of future, new part 25 type certificated airplane models; and
- Holders of future, new part 25 STC's for new fuel tank systems.

Based on the previous 10 years, the FAA projects that there will be between two and four new part 25 TC airplane models during the next 10 years. Using the same methodology, the FAA projects that there will be three to four new fuel tank system STC's annually granted during the next 10 years.

Benefits

In the notice, the FAA had assumed that the potential U.S. fuel tank explosion rate due to an unknown internal fuel tank ignition was the same as that rate for the worldwide fleet over the years 1989 through 1998. On that basis, the FAA had estimated that, if no preventative actions were to be taken, then between one and two (the statistically expected value was 1.25) fuel tank explosions would be projected to occur during the next 10 years (2000 through 2009) in U.S. operations. The FAA also determined that the probability that such an accident would have occurred prior to 2006 was equal to the probability that it would have occurred after 2006.'

In order to quantify the potential benefits from preventing a "representative" commercial aviation mid-air explosion, the FAA had used:

- A value of $2.7 million to prevent a fatality,
- An average of 130 passengers and crew on a commercial flight,
- A value of $20 million for a destroyed airplane, and
- A cost of $30 million for an investigation of a mid-air explosion accident.

Thus, a total loss would be $401 million.

In the notice, the FAA had assumed that compliance with the proposal would prevent between 75 percent and 90 percent of the future fuel tank explosions. The basis for this prevention is derived primarily from the incorporation of design changes to enhance fail-safe features of design and enhanced fuel tank system inspections that will discover conditions that could result in an ignition source before ignition of flammable fuel vapors could occur. The fuel tank system review, by itself, will have little direct effect on preventing these future accidents, unless it uncovers an immediately hazardous condition that results in an AD being issued. As stated earlier, the FAA has initiated 40 AD's to address unsafe fuel tank system features on numerous airplane types within the current fleet. While the FAA expects these actions will significantly improve safety, an in-depth analysis of all airplane models required by this rule has not been completed and it would be difficult to predict the overall effect on the accident rate. Therefore, the cost/benefit analysis assumes that the accident rate for fuel tank explosions will remain constant until the reviews are complete.

With the proposed 18-month compliance time, the FAA estimated the benefits based on these inspections starting in 2001. The resulting probability analysis indicated that the first such accident would occur in 2006 and the second accident (if a second one would occur) in 2009. On that basis, the estimated present value of the expected benefits discounted over 10 years to 1999 at 7 percent would have been:

- $260 million for one prevented accident and
- $520 million for two prevented accidents.

For the final rule, the FAA revised these earlier estimates to include the effect that lengthening the compliance time from 18 months to 36 months has on the potential benefits. As a result, the 3-year compliance time indicates that, with the exception noted in the previous paragraph, the first benefits from improved fuel tank system inspections will not occur until 2004.

The FAA also revised the earlier estimates to substitute more current fleet and operations data into the calculations. The FAA also noted that 2 years without a mid-air explosion have passed since the analysis of the proposal, which makes the years 1989 through 2000 (rather than 1989 through 1998) the appropriate timeframe for calculating the historical accident rate. On that basis, the FAA calculated that, if no preventative actions were taken, between one and two (the expected value is 1.09) fuel tank explosions would be expected to occur during the 10-year time period of 2004 through 2013. Further, the FAA determined that the probability that the first accident would occur on or before the year 2008 is the same as the probability that it would occur after 2008.

Thus, based on a loss of $401 million for a "representative" accident, the FAA calculated that the present values of the losses from future mid-air explosions that would occur between 2004 and 2013 are:

- $233.7 million for one prevented accident and
- $400.4 million for two prevented accidents

(The statistically expected value is $248.9 million for the 1.09 accidents.)

For this final rule analysis, the FAA reviewed the public comments and its previous analysis for the notice, and determined that the data are insufficient to permit a credible estimate of the percentage of future mid-air explosion accidents that the final rule would prevent. The uncertainty of the causes of the two accidents and the uncertainty of the effects of the 40 AD's on preventing future explosions does not allow a quantitative estimate of the potential effectiveness of the final rule. Thus, although the FAA believes that the rule will significantly reduce the risk of a future accident, the FAA does not calculate quantified benefits resulting from the final rule.

Sources of Compliance Costs for the Proposal and the Final Rule

The costs to comply with the SFAR derive from the engineering time to comprehensively review fuel tank system designs by the design approval holders (i.e., part 25 TC holders, part 25 fuel tank system STC holders, and certain part 25 non-fuel tank system STC holders). There also are costs to operators that derive from the engineering time to conduct the design review for any field approvals on their airplanes and to develop any necessary fuel tank system inspections and maintenance recommendations for operators and repair stations.

These reviews may also identify conditions that will subsequently need to be addressed by specific service bulletins, or unsafe conditions that would subsequently require the FAA to issue AD's. However, those future costs are not the costs of compliance with this SFAR; rather, they are costs to conform to the service bulletin or to comply with the AD, and would be estimated for each individual service bulletin or AD when it is issued or proposed.

The costs to comply with the operational rule changes of this final rule derive from the requirements that operators incorporate these recommendations into their maintenance manuals and then inspect and maintain the fuel tank systems accordingly. As a result, additional airplane mechanic labor time will be needed during an airplane inspection to perform an enhanced inspection of the fuel tank system and components. However, the costs to repair and replace equipment and wiring that the inspection identifies as needing repair or replacement is not a cost of compliance with the operational rules changes. Although these costs can be substantial, they are attributable to existing FAA regulations that require such repairs and replacements to be made in order to assure the airplane's continued airworthiness.

Finally, the part 25 revisions of this final rule may require some future TC and STC's to employ designs of fuel tank systems and other aviation systems that would not have been used were it not for these revised certification requirements.

Estimated Total Compliance Costs for the Proposal

As seen in Table 1, the FAA had estimated in the notice that the present value in 1999 of the compliance costs with the proposal during the time period 2000–2011 would have been about $170 million ($9.5 million for TC holders, $4.9 million for STC holders, and $153 million for operators). The following sections briefly summarize the discussions in the notice about these various cost estimates.

TABLE 1.—PRESENT VALUE IN 1999 OF THE COSTS OF COMPLIANCE WITH THE PROPOSED RULE

[As estimated in the preliminary regulatory evaluation]

Source of cost	Present value in 1999 of the compliance costs (in 1998 $ millions)
Fuel Tank Review (Total)	14.4
[For TC Holders: 9.5]	
[For STC Holders: 4.9]	
Maintenance and Inspection	100.0
Lost Net Revenue	35.6
Additional Recordkeeping	17.4
Total	167.4

Proposed Costs of Fuel Tank System Design Review

By way of explanation, for the purpose of this analysis, an airplane "model" is defined to refer to a type certificate airplane (for example, a Model 737); whereas, an airplane "series" is defined to refer to a version (often under an Amended TC) of a model (for example, a Model 737–300).

In the notice, the FAA had estimated that 35 TC's and 68 fuel tank system STC's would have needed a fuel tank system design review. Depending upon the airplane model, the FAA had estimated that a fuel tank system design review would have taken between 0.5 to 2.0 engineer years for a TC holder, and an average of 0.25 engineer year for a fuel tank system STC holder. The FAA had also estimated that developing manual revisions and service bulletins would have taken between 0.25 to 1.0 engineer years for a TC holder, and an average of 0.1 engineer year for a fuel tank system STC holder.

Using a total engineer compensation rate (salary and fringe benefits, plus a mark-up for hours spent by management, legal, etc. on the review) of $100 an hour, the FAA had estimated that the one-time fuel tank system design review would have cost TC holders $9.5 million, and it would have cost STC holders $4.9 million.

Proposed Costs of Fuel Tank System Inspections—Operational Rule Changes

The costs to operators of complying with the proposed operational requirements would have been the additional airplane mechanic labor hours and the lost net revenue from the airplane's additional time out-of-service in order to complete the fuel tank system inspections and maintenance. The FAA had assumed that the design approval holders' recommendations would have required fuel tank systems to be inspected only during the regularly scheduled major maintenance checks. As a result, the FAA had expected that no airplanes would have been taken out of service solely to inspect the fuel tank system unless the fuel tank system review would have identified an immediate safety concern. In that case, the corrective action would have been mandated by an AD.

On that basis, the FAA had determined that operators would have needed to take four actions to comply with the proposal that would have either required an expenditure of resources or lost revenue:

- The first action involves the labor time to incorporate the design approval holders' recommendations into the maintenance manuals.
- The second action involves the labor time to perform the enhanced fuel tank system inspections, which includes testing of fuel tank system equipment and wiring.
- The third action involves the lost net revenue from an airplane's increased out-of-service time due to the enhanced fuel tank system inspection.
- The fourth action involves the labor time to provide the increased documentation, recording, and reporting the results from the fuel tank system inspections and tests.

The FAA had assumed that each operator has one maintenance manual for each airplane model in its fleet. The FAA then determined that there were 290 individual airplane model/operator combinations. The FAA estimated that it would have taken 5 engineer days (at a cost of $4,000 per manual) to incorporate these recommendations into the various maintenance manuals. On that basis, the FAA had calculated that this total cost would have been $1.16 million. As these expenses would have occurred in the second year, the present value of these costs was $1.084 million.

With respect to the costs of fuel tank system inspections, the FAA had estimated that it would have taken between 60 and 330 additional labor hours per airplane to complete the initial fuel tank system inspection, and it would have taken between 30 and 180 additional labor hours per airplane for later fuel tank system reinspections. All of the initial inspections would have been completed during the first 3 years after the maintenance manual changes had been approved by the FAA (i.e., during the years 2002 through 2004). Each airplane would have been reinspected every 3 years after the initial fuel tank system inspection. Using a total compensation rate (wages and fringe benefits, plus a mark-up for time spent by supervisors, management, etc. on the inspections) of $70 an hour for airplane mechanics, the FAA had estimated that the initial fuel tank system inspection would have cost between $4,200 and $23,100 per airplane and fuel tank system reinspections would have cost between $2,100 and $12,600 per airplane. The present value of the total fuel tank system inspection costs, discounted at 7 percent over the period 2002 through 2011, would have been $99 million.

In the notice, the FAA had assumed that the initial fuel tank system inspection would have been performed during a "C" or a "D" check. On that basis, the FAA had estimated that the additional out-of-service time would have been between 36 hours and 96 hours per airplane for each airplane inspected during a "C" check, and would have been zero hours for each airplane inspected during a "D" check. Similarly, the FAA had estimated that the additional out-of-service time would

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have been between 24 hours and 72 hours for each airplane fuel tank system reinspection that would have occurred during a "C" check, and would have been zero hours if the reinspection would have occurred during a "D" check.

The economic cost of out-of-service time is the lost net revenue to the aviation system. Most of the passengers who would have flown on an airplane that has been taken out of service will take another flight. As a result, most of the lost revenue for that out-of-service airplane is actually captured by other airplane flights. The cost of the rule is the loss to the aviation system—not to the individual airplane operator. On that basis, the FAA computed the lost revenue to the aviation system by using the Office of Management and Budget (OMB) determination that the average annual risk-free productive rate of return on capital is 7 percent of the average value of the airplane model. Thus, the FAA had calculated that the out-of-service lost aviation net revenue per fuel tank system inspection would have ranged from $50 to $9,750 per airplane per day. The present value of this total lost aviation net revenue, discounted at 7 percent over 10 years, would have been $35.6 million.

The FAA had determined that the increased annual documentation and reporting time would have been 1 hour of recordkeeping for every 8 hours of labor time for the initial fuel tank system inspection, and would have been 1 hour of recordkeeping for every 10 hours of labor time for the reinspections. Thus, the per airplane documentation cost would have been between $450 and $2,550 for the initial fuel tank system inspection and $300 to $1,620 for a fuel tank system reinspection. The present value of the total recordkeeping cost discounted at 7 percent for 10 years would have been $17.4 million.

Proposed Costs of Future Fuel Tank System Design Changes—Revised Part 25

The FAA had determined that the part 25 changes would have a minimal effect on the cost of future type certificated airplanes because compliance with the proposed changes would be done during the design phase of the airplane model before any new airplanes would be manufactured. In addition, the FAA had determined that the part 25 changes would have a minimal impact on future fuel tank system STC's because current industry design practices could be adapted to allow compliance with the requirement.

Differences in Assumptions and Values Between the Notice and the Final Rule

The most significant difference between the proposal and the final rule is that the proposal allowed only 12 months for design approval holders to complete their fuel tank system reviews and recommendations. The proposal also allowed operators only 6 months to incorporate these recommendations into their maintenance manuals. The final rule allows design approval holders 18 months to be in compliance and also allows operators 18 months after that to incorporate the recommendations into their maintenance manuals.

Table 2 lists the most significant differences in the assumptions made, data used, and the different requirements between the proposal and the final rule. Although there are other differences that have altered the calculated costs, the differences listed in Table 2 are the significant ones.

TABLE 2.—SIGNIFICANT DIFFERENCES IN ASSUMPTIONS AND VALUES BETWEEN THE PRELIMINARY REGULATORY EVALUATION AND THE FINAL REGULATORY EVALUATION

Assumption or value	Preliminary regulatory analysis	Final regulatory analysis
Number of Airplanes	6,006 (in 1996)	6,971 (in 1999).
Timeframe for Analysis	2000–2011	2001–2013
Net Rate of Fleet Growth	4.3 percent	3.0 percent.
Hourly Compensation per: Engineer; Mechanic	$100; $70	$110; $75.
Number of Fuel Tank System TC Reviews	35	98 (46 "full-scale" and 52 "derivative").
Number of Engineering Years for TC Review	0.5 to 2	0.5 to 3.
Number of Fuel Tank System STC Reviews	68	74
Number of Engineering Years for Fuel Tank System STC Review.	0.35	0.15
Number of Non-Fuel tank system STC Reviews	None (Asked for Comments)	325
Number of Engineering Years for Non-Fuel tank system STC Review.	None (Asked for Comments)	0.0375
Operator Paper Review of Airplane Fuel Tank System-Field Approvals/STC's.	None	1 engineer day per existing airplane.
Number Months to Compete Safety Review Fuel Tanks.	12	18
Number Months to Revise Maintenance Manual (After Review).	6	18
Number Years to Complete Initial Inspection (After Manual Revision).	3 years (Completed between 2002 and 2004)	2 years (Completed during 2004 and 2005).
Determinants of Number Inspection Hours	Airplane Model	Airplane Model plus Year Manufactured.
Time before Initial Inspections Begin	18 months	36 months.
Number Years to Complete Initial Inspection	3 years	2 years.
Number Labor Hours for Initial Inspection	50 to 198	49 to 218.
Number Days Out-of-Service for Initial Inspection.	0 to 4 (40 percent inspections done at "C" checks).	0 to 4 (60 percent of inspections done at "C" checks).
Year Reinspections Start	2004 (immediately after initial inspections)	2008 (2 years after initial inspections).
Reinspection Frequency	Every 3 years (Some done during "C" checks).	Every 5 years (All done during "D" checks).
Number Hours for Reinspection	40 to 160	25 to 87.
Reduced Inspection Hours Due to AD's Already Issued.	All Model 747 hours not included; 50 hours for Mode 737's not included.	No adjustment.
Number Days Out-of-Service for Reinspection	0 to 3 (40 percent of reinspections done at "C" checks).	0 (All reinspections done at "D" checks).

Cost of Compliance With the Final Rule

As seen in Table 3, based on the public comments and the changes in assumptions and values listed in Table 2, the FAA has determined that the present value of the costs of compliance with the rule over the time period 2001—2013 are $165.1 million. This figure includes:

- $27.1 million for TC holders,
- $2.8 million for fuel tank system STC holders,
- $2.6 million for non-fuel tank system STC holders, and
- $132.5 million for operators.

The following sections summarize the results in the Final Regulatory Evaluation.

TABLE 3.—PRESENT VALUE OF THE COSTS OF COMPLIANCE WITH THE FINAL RULE

Source of cost	Present value in 2001 of the compliance costs (in 2000 $ millions)
Part 25 Fuel Tank Design .... (For TC Airplanes: Minimal). (For Fuel Tank STC Holders: 0.315).	0.315
Fuel Tank Review (Total) ..... (For TC Holders: 27.107). (For Fuel Tank STC Holders: 2.522). (For Non-Fuel-Tank STC Holders: 2.594). (For Operators: 5.934).	38.157
Maintenance and Inspection	92.043
Lost Net Revenue	24.224
Additional Recordkeeping	10.338
Total	165.077

Costs of Fuel Tank System Design Review

In the Final Regulatory Evaluation, the FAA has determined that existing TC holders will need to complete 46 "full-scale" fuel tank system reviews for the individual airplane models, and 52 "derivative" fuel tank system reviews for the separate series in the models. Using the Model 737–300/400/500 family of airplanes as an illustration, the FAA determined that Boeing will need to complete one "full-scale" review and two "derivative" reviews for this family of airplanes. In addition, each airplane series that has an extended range modification or a freighter modification will require a "derivative" fuel tank system review.

Depending upon the airplane model and the date it was first manufactured, the FAA determined the following average numbers of engineer years for the "full-scale" fuel tank system design review:

- 3 years for large turbojets (1969–1980),
- 2 years for large turbojets (1980–1988),
- 1 year for large turbojets (post-1988),
- 0.5 to 0.75 year for regional jets,
- 0.5 to 0.75 year for large turboprops, and
- 0.5 year for small turbojets and turboprops.

With respect to the "derivative" fuel tank system design reviews, the FAA determined that these will take between 0.5 year and one year for large turbojets, and 0.5 year for regional turbojets and for turboprops.

The FAA determined that the amount of engineering time to develop the recommendations for the maintenance manuals will be 20 percent of the amount of time to complete the fuel tank system review.

Using a total engineer compensation rate of $110 an hour, the FAA calculated that the one-time fuel tank system design review will cost between $200,000 and $1.525 million per airplane model, with most of the individual costs in the range of $500,000 to $800,000. These costs will be about $125,000 to $150,000 for turboprops.

As the TC holder will have 18 months to comply with the final rule, the FAA determined that one-half of the review costs will occur in the first year (2002) and one-half will occur in the second year (2003), and all of the costs to develop recommendations will occur in the second year (2003). On that basis, the present value of the total one-time cost of compliance to TC holders will be $27.1 million, of which $22.7 million will be for the fuel tank system review and $4.390 million will be to develop recommendations for the maintenance manuals.

For part 25 fuel tank system STC holders, the FAA determined that there are 74 fuel tank system STC's that will need to undergo a review. The FAA also determined that it will take an average of 0.15 engineering year to complete the review because the STC holder had to complete a substantial amount of engineering work to obtain FAA approval of the STC, and many of the STC's affect only a part of the fuel tank system. On that basis, the FAA determined that the average cost for a fuel tank system STC review will be $33,000.

As the fuel tank system STC holder will have 18 months to comply with the final rule, the FAA determined that one-half of the review costs will occur in the first year (2002) and one-half will occur in the second year (2003), while all of the time to develop recommendations will occur in the second year (2003). On that basis, the present value of the total one-time cost of compliance will be $2.5 million.

Certain part 25 non-fuel tank system STC holders will also need to complete more than a cursory review of their modifications for the potential impact on the fuel tank system. The FAA determined that there are 325 non-fuel tank system STC's that will need to undergo a review. The FAA also determined that this review will take one quarter of the engineer time to complete a fuel tank system STC review (or 0.375 engineer year). On that basis, the FAA determined that the average cost for a non-fuel tank system STC review will be $8,250.

As the non-fuel tank system STC holder will have 18 months to comply with the final rule, the FAA determined that one-half of the review costs will occur in the first year (2002) and one-half will occur in the second year (2003), while all of the time to develop recommendations will occur in the second year (2003). On that basis, the present value of the total one-time cost of compliance will be $2.6 million.

Finally, based on the comments, the FAA determined that each operator will perform a paper review of each airplane to determine the modifications (including field approvals) that have been made on the airplane. Although the vast majority of these airplanes have been purchased by major, national, and regional airlines that should possess well-documented maintenance history records, a significant minority of these airplanes have had multiple owners or lessors and the maintenance records may not be quite as complete. Thus, the FAA determined that, on average, this paper review will take one day per airplane. On that basis, the average cost per airplane will be $880.

In order to meet the 36-month compliance date, operators will need to discover if their airplanes have any "orphan" STC's or if there are any field approvals that affect the fuel tank system. Completing these paper reviews will then give the operators 18 months, after the TC and STC holders complete their required reviews, to complete any additional fuel tank system engineering reviews and to make the resultant changes to their maintenance manuals. Therefore, the FAA determined that one-half of the review costs will occur in the first year (2002) and one-half will occur in the second year (2003). On that basis, the present value of the total one-

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time cost of compliance will be $5.9 million.

There is also the potential that this "paper review" will reveal a field approval or an "orphan" STC that affects the safety of the fuel tank system. In that case, the operator would be responsible for the engineering review and for developing inspection and maintenance procedures for the maintenance manual. The FAA did not receive any data on this factor, but maintains that it is likely to infrequently occur and, further, the amount of engineering needed would be relatively minor.

Costs of Fuel Tank System Inspections—Operational Rule Changes

As was true for the analysis in the notice, the costs to operators of complying with the final rule's operational requirements do not include the costs of corrective actions undertaken to repair deficiencies in the fuel tank system that were found because of a fuel tank system inspection, because the airplanes are required to be maintained as airworthy.

On that basis, the FAA determined that operators will take four actions that will generate costs or lost revenue to comply with the final rule.

- The first action involves the labor time to incorporate the design approval holders' recommendations into the maintenance manuals.
- The second action involves the labor time to perform the enhanced fuel tank system inspections, which includes testing of fuel tank system equipment and wiring.
- The third action involves the lost net revenue from an airplane's increased out-of-service time due to the enhanced fuel tank system inspection.
- The fourth action involves the labor time to provide the increased documentation, recording, and reporting the results from the fuel tank system inspections and tests.

In calculating the compliance costs for maintenance manual revisions due to TC holder recommendations, the FAA revised its assumption made in the notice that each operator has one maintenance manual for each model in its fleet. However, the FAA determined that its assumption of 5 days of engineer time to modify a maintenance manual is valid. Since the issuance of the notice, the FAA has been informed that nearly all airlines with fewer than 20 airplanes contract their major maintenance checks to third party (or other operators') repair stations. The FAA determined that 49 airlines (each with 20 or more airplanes) perform their own maintenance. For those 49 airlines, there are 165 airplane model/operator combinations, which produces a cost of $726,400. As these manual changes will not be made until the year 2003, the present value of these compliance costs is $635,000.

The FAA also determined that 15 repair stations will perform these fuel tank system inspections for the smaller operators and, on average, each repair station will perform these inspections for 10 different airplane models. The compliance costs for these repair stations will be $660,000, which will be passed on to the operators. However, as these manual changes will not be made until the year 2003, the present value of these compliance costs is $576,475.

The FAA determined that it will take, on average, one engineer day (or $880) for each maintenance manual to incorporate the recommendations from a fuel tank system STC holder. The FAA also determined that each of the 79 fuel tank system STC's will produce inspection and maintenance recommendations that will affect, on average, two maintenance manuals. On that basis, the compliance costs will be $139,000. However, as these manual changes will not be made until the year 2003, the present value of these compliance costs is $121,450.

The FAA anticipates that implementation of the final rule will result in the initial fuel tank system inspection to be performed at the first major maintenance check after the maintenance manual modifications have been approved by the FAA. As the FAA defines a "C" check (or its equivalents) as a major maintenance check, the FAA determined that all of the affected airplanes will receive an initial fuel tank system inspection by 2 years after the maintenance manuals have been modified. Thus, the FAA determined that all of the initial fuel tank system inspections will be performed in either 2004 or 2005.

The FAA made four adjustments to the number of airplane mechanic hours for an initial fuel tank system inspection as estimated in the notice:

The first adjustment is that the FAA added 20 labor hours across the board in order to account for any unanticipated inspection recommendations from the product approval holders.

The second adjustment is that the FAA varied the number of labor hours not only by certification date but also by manufactured date of the airplane. Older airplanes of an airplane model will require, on average, more labor hours to complete an initial fuel tank system inspection than will newer airplanes. As a result, the FAA separated airplanes into 3 categories based on the date the airplane was manufactured.

- For the 1960–1980 group, the number of labor hours estimated in the notice plus 20 hours was used.
- Airplanes manufactured between 1981 and 1995 require 20 percent fewer labor hours than those for the 1960–1980 group.
- Airplanes manufactured between 1995 and 2003 will require 30 percent fewer labor hours than those for the 1960–1980 group.

The third adjustment is that the number of labor hours to reinspect fuel tank systems will be one-half of the number of labor hours needed for the initial fuel tank system inspection, based on the last year that the airplane model was manufactured.

The fourth adjustment is that the number of labor hours for the first inspection of a future manufactured airplane's fuel tank system will be the same as for later reinspections, and is the same number as that to reinspect the newest airplane category.

Using those adjustments and the changes listed in Table 2, the FAA determined that it will take between 49 and 218 labor hours to complete an initial fuel tank system inspection, and it will take between 25 and 108 labor hours to complete a fuel tank system reinspection. Using a total compensation rate (wages plus fringe benefits) of $75 an hour for airplane mechanics, the FAA estimated that the initial fuel tank system inspection will cost between $3,625 and $16,350 per airplane, and fuel tank system reinspections will cost between $1,875 and $8,100 per airplane. The present value of the total labor cost discounted at 7 percent for the period 2004 through 2013 is $92.043 million.

As stated earlier, the FAA had determined that the initial fuel tank system inspection will be performed during a "C" or a "D" check. The duration and process of major inspections varies by airline and airplane type. Some airlines choose to conduct these checks during one time block of typically 7 to 10 days for a "C" check and 20 to 25 days for a "D" check. Other airlines conduct segmented checks where the airplane is taken out of service for several shorter time intervals that allow the overall task to be completed. The FAA has determined that an airplane undergoing a segmented "C" check is, on average, out-of-service for two days, whereas a segmented "D" check takes an airplane out of service for 14 to 21 days. The FAA determined that two mechanics can simultaneously work on a fuel tank system inspection. On that basis, the FAA determined that no additional out-of-service days will occur for 1 to 48 additional labor hours. Each additional 48 labor hours after the first 48 labor hours will add one day to the out-of-service time. On that basis, the initial fuel tank system inspection will produce between 0 and 4 additional out-of-service days.

The economic cost of out-of-service time is the lost services from a capital asset, which is computed by multiplying the airplane value by the number of days out of service and by 7 percent (the OMB risk-free rate of return). The average residual value of the turbojet models is based on the AVITAS *2nd Half 1999 Jet Aircraft Values*, and the average value of the turboprop models is based on the AVITAS *2nd Half 1997 Turboprop Aircraft Values*. Thus, the FAA calculated that the out-of-service lost capital services from the initial fuel tank system inspection will be between $200 and $86,000 per airplane per day.

As noted earlier, the FAA determined that one-half of the airplanes will undergo an initial fuel tank system inspection in 2004 and one-half will undergo an initial fuel tank system inspection in 2005. However, 20 percent of these airplanes each year will receive this inspection during a "D" check, in which there are no additional out-of-service days due to the fuel tank system inspection. As a result, the FAA calculated that the present value of the total lost net revenue from the additional out-of-service days is $24.224 million.

For the final rule, the FAA determined that its original estimate that every 8 hours of airplane mechanic labor for the initial fuel tank system inspection will produce one hour of documentation and recordkeeping labor hours is valid. However, the FAA determined that it had overestimated the amount of recordkeeping for reinspections, and used the ratio of 12 hours of reinspection airplane mechanic labor time for 1 hour of documentation and recordkeeping. On that basis, the present value of the recordkeeping cost is $10.338 million.

Costs of Future Fuel Tank System Design Changes—Revised Part 25

The FAA had determined that the part 25 change will have a minimal effect on the cost of future type certificated airplanes because compliance with the proposed change would be done during the design phase of the airplane model before any new airplanes would be manufactured. In addition, the FAA determined that the part 25 changes will have a minimal impact on future fuel tank system STC's because current industry design practices could be adapted to allow compliance with the requirement.

Benefit-Cost Comparison

As noted, the FAA has not quantified the potential benefits from this final rule because there is uncertainty about the actual ignition sources in the two fuel tanks. However, using a "representative" commercial airplane, the FAA calculated that the losses from a mid-air explosion would be $401.6 million. In addition, the FAA determined that the present value of the compliance costs is $165.1 million.

If the final rule would prevent one such accident by the year 2014, the present value of the prevented losses would be greater than the present value of the compliance costs.

Therefore, based on these factors and analysis, the FAA considers the final rule to be cost-beneficial.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination finds that it will, the agency must prepare a Regulatory Flexibility Analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify, and a Regulatory Flexibility Analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

For the proposed rule, the FAA had conducted an Initial Regulatory Flexibility Analysis, which established that it would have a significant impact on a substantial number of small entities. As a result, the FAA had specifically requested public comment on the potential impact of the proposed rule on small entities.

Need for and Objectives of the Rule

The final rule is being issued in order to reduce the risk of a mid-air airplane fuel tank explosion with the resultant loss of life (as evidenced by TWA Flight 800). Existing fuel tank system inspections have not provided comprehensive, systematic prevention and control of ignition sources in airplane fuel tanks, thereby allowing a small, but unacceptable risk of a fuel tank explosion.

The objective of the final rule is to ensure the continuing airworthiness of airplanes certificated for 30 or more passengers or with a payload of more than 7,500 pounds. Design approval holders (including TC holders, fuel tank system STC holders, and holders of certain non-fuel tank system STC's) will be required to complete a fuel tank system design review and to provide recommendations and instructions to operators and repair stations concerning fuel tank system inspections and equipment and wiring testing. This review may result in the development of service bulletins and AD's. All operators covered by Title 14, Code of Federal Regulations (CFR) parts 91, 121, and 125, and all U.S.-registered airplanes used in scheduled operations under part 129, will be required to incorporate these recommendations into their maintenance manuals and to perform the inspections and tests as required. In addition, repair stations that are contracted to perform maintenance are also required to comply with these requirements.

Summary of Comments Made in Response to the Initial Regulatory Flexibility Analysis

There were two commenters that indirectly discussed issues of concern in the Initial Regulatory Flexibility Analysis:

The General Aviation Manufacturing Association (GAMA) supported the FAA's decision to exclude airplanes certificated for 30 passengers or fewer from the final rule. Although they did not address the small business aspect of this decision, nearly every operator of these excluded airplanes is a small entity. However, GAMA opposed the proposed part 25 future design requirements as not appropriate for business jets and stated that these airplanes should be excluded from the part 25 requirements. The FAA disagreed with this comment because a future business jet that has a 7,500 pound payload is a large airplane and

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its fuel tank system faces the same potential for explosion as other large transport category airplanes.

The Regional Airline Association (RAA) supported the FAA's decision to exclude airplanes certificated for 30 passengers or fewer from the final rule. They, too, did not directly address the small business aspect of this decision. However, they opposed the FAA's decision to include airplanes certificated for fewer than 60 passengers or for less than a 15,000 pound payload. Their primary argument in favor of this exclusion is that these airplanes do not have a history of these types of accidents. The FAA disagreed with this comment because, by itself, the accident histories of specific types and classes of airplanes are insufficient to demonstrate that their fuel tank systems attain the required level of safety. An important consideration in these accident histories is that these airplanes have not accumulated the number of flight hours as those of the larger transport category airplanes. As fuel tank explosions are rare events, there is the possibility that such an accident has not occurred in these airplanes because not enough hours have been flown. In addition, it may be that the fuel tank system design review will reveal that these systems do not have the same risk as the risk associated with larger transport category airplanes. In that case, the impact of the rule on operators of these airplanes will be much less than estimated by the FAA. However, until the fuel tank system design review is completed, the FAA does not know what the potential is for these airplanes to have a mid-air explosion and, as the FAA cannot rule out the possibility, the FAA cannot exclude these airplanes from coverage under the final rule.

Description and Estimate of the Number of Small Entities Affected by the Final Rule

The FAA determined that there are a total of 143 U.S. airlines, 76 private operators (primarily corporations with corporate jets), and 112 manufacturers, airplane brokers, and airplane leasing companies affected by the final rule. Of the 143 U.S. airlines, 107 are small airlines. Nearly all of the 76 private operators are large corporations that can afford to operate and maintain a corporate jet airplane. Most of the airplane brokers and airplane leasing companies are privately held corporations or partnerships, and the FAA was unable to establish whether or not most of them are small entities.

Reporting and Recordkeeping Requirements

The final rule requires that operators maintain a record of the results of the fuel tank system inspections and maintenance done on the airplane. For the small operators that contract their maintenance to third party repair stations (nearly all of the small airlines and other operators), they will be required to keep a copy of the report that the repair station will give them. Small entities will not need to acquire additional professional skills to prepare these reports.

Description of the Alternatives Evaluated

In the Initial Regulatory Flexibility Analysis, the FAA had evaluated three alternatives to the proposed rule:

- The first alternative was to require all airplanes with 10 or more seats be covered by the proposed rule.
- The second alternative was to require all airplanes with 30 or more seats and all airplanes with 10 or more seats in commercial service be covered by the proposal.
- The third alternative was to require only turbojet airplanes in commercial service be covered by the proposal.

There were no comments from the public in support of these alternatives. A complete discussion of these alternatives is available in the public docket for this rulemaking.

Differences Between the Proposed Rule and the Final Rule Requirements

The primary change from the proposed rule is that the final rule allows operators 36 months to comply whereas the proposed rule had required compliance within 18 months. In addition, the FAA determined that fewer fuel tank reinspections will be needed than the FAA had estimated in the Preliminary Regulatory Evaluation. As a result, the present value of the costs to operators will be approximately 20 percent less per airplane under the final rule than they would have been under the proposed rule.

Conclusion

Both the proposed and final rule will have a significant impact on a substantial number of small entities. Consistent with SBA guidance, the FAA conducted an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA). The initial regulatory flexibility analysis provided a detailed analysis of the impact on small entities. The FRFA directly addresses five requirements. While no comments specifically addressed the IRFA, the FAA addresses comments related to small entities.

As published in the notice, the FAA did not require fuel tank inspections for aircraft with a payload under 7,500 pounds. The primary difference between the proposed rule and the final rule is that the FAA extended operator compliance time from 18 to 36 months. In addition, the FAA determined that fewer fuel tank reinspections will be needed than originally estimated in the NPRM.

As a result of these changes, about 140 airplanes that would have been required to undergo a fuel tank inspection under the proposed rule will not be required to undergo a fuel tank inspection under the final rule because they will have been retired during the additional 18 months allowed for compliance. In addition, all of the inspections and reinspections would have had to be completed 18 months earlier under the proposed rule than under the final rule, resulting in a higher present value of the compliance costs. Consequently, recalculating (due to the greater number of airplanes and other values) the present value of the costs to operators to comply with the proposed rule would result in a cost of $172.2 million, which is approximately 36 percent more than the $126.6 million costs to operators to comply with the final rule.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries, and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA assessed the potential effect of this final rule and determined that it will have only a domestic impact and, therefore, a minimal effect on any trade-sensitive activity.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

As seen in Table IV–13 in the Final Regulatory Evaluation (contained in the docket to this rule), this final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 3132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this final rule does not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of this final rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as she considers appropriate. The FAA, therefore, specifically requested comments on whether there is justification for applying the proposed rule differently to intrastate operations in Alaska. Although one commenter expressed a concern related to a particular Alaskan intrastate operation involving Lockheed Model L–188 Electra airplanes, no comments were received concerning such justification in general. Since no comments in that regard were received, and since the FAA is not aware of any justification for such regulatory distinction, the final rule is not applied differently to intrastate operations in Alaska.

List of Subjects

14 CFR Parts 21, 25, 91, and 125

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 129

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends parts 21, 25, 91, 121, 125, and 129 of Title 14, Code of Federal Regulations, as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

1. The authority citation for Part 21 continues to read as follows:

Authority: 42 U.S.C. 7572; 40105; 40113; 44701–44702, 44707, 44709, 44711, 44713, 44715, 45303.

2. In part 21, add SFAR No. 88 in numerical order at the beginning of the part to read as follows:

* * * * *

SFAR No. 88—Fuel Tank System Fault Tolerance Evaluation Requirements

1. *Applicability.* This SFAR applies to the holders of type certificates, and supplemental type certificates that may affect the airplane fuel tank system, for turbine-powered transport category airplanes, provided the type certificate was issued after January 1, 1958, and the airplane has either a maximum type certificated passenger capacity of 30 or more, or a maximum type certificated payload capacity of 7,500 pounds or more. This SFAR also applies to applicants for type certificates, amendments to a type certificate, and supplemental type certificates affecting the fuel tank systems for those airplanes identified above, if the application was filed before June 6, 2001, the effective date of this SFAR, and the certificate was not issued before June 6, 2001.

2. *Compliance:* No later than December 6, 2002, or within 18 months after the issuance of a certificate for which application was filed before June 6, 2001, whichever is later, each type certificate holder, or supplemental type certificate holder of a modification affecting the airplane fuel tank system, must accomplish the following:

(a) Conduct a safety review of the airplane fuel tank system to determine that the design meets the requirements of §§ 25.901 and 25.981(a) and (b) of this chapter. If the current design does not meet these requirements, develop all design changes to the fuel tank system that are necessary to meet these requirements. The FAA (Aircraft Certification Office (ACO), or office of the Transport Airplane Directorate, having cognizance over the type certificate for the affected airplane) may grant an extension of the 18-month compliance time for development of design changes if:

(1) The safety review is completed within the compliance time;

(2) Necessary design changes are identified within the compliance time; and

(3) Additional time can be justified, based on the holder's demonstrated aggressiveness in performing the safety review, the complexity of the necessary design changes, the availability of interim actions to provide an acceptable level of safety, and the resulting level of safety.

(b) Develop all maintenance and inspection instructions necessary to maintain the design features required to preclude the existence or development of an ignition source within the fuel tank system of the airplane.

(c) Submit a report for approval to the FAA Aircraft Certification Office (ACO), or office of the Transport Airplane Directorate, having cognizance over the type certificate for the affected airplane, that:

(1) Provides substantiation that the airplane fuel tank system design, including all necessary design changes, meets the requirements of §§ 25.901 and 25.981(a) and (b) of this chapter; and

(2) Contains all maintenance and inspection instructions necessary to maintain the design features required to preclude the existence or development of an ignition source within the fuel tank system throughout the operational life of the airplane.

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

3. The authority citation for part 25 continues to read:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, and 44704.

4. Section 25.981 is revised to read as follows:

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§ 25.981 Fuel tank ignition prevention.

(a) No ignition source may be present at each point in the fuel tank or fuel tank system where catastrophic failure could occur due to ignition of fuel or vapors. This must be shown by:

(1) Determining the highest temperature allowing a safe margin below the lowest expected autoignition temperature of the fuel in the fuel tanks.

(2) Demonstrating that no temperature at each place inside each fuel tank where fuel ignition is possible will exceed the temperature determined under paragraph (a)(1) of this section. This must be verified under all probable operating, failure, and malfunction conditions of each component whose operation, failure, or malfunction could increase the temperature inside the tank.

(3) Demonstrating that an ignition source could not result from each single failure, from each single failure in combination with each latent failure condition not shown to be extremely remote, and from all combinations of failures not shown to be extremely improbable. The effects of manufacturing variability, aging, wear, corrosion, and likely damage must be considered.

(b) Based on the evaluations required by this section, critical design configuration control limitations, inspections, or other procedures must be established, as necessary, to prevent development of ignition sources within the fuel tank system and must be included in the Airworthiness Limitations section of the Instructions for Continued Airworthiness required by § 25.1529. Visible means to identify critical features of the design must be placed in areas of the airplane where maintenance actions, repairs, or alterations may be apt to violate the critical design configuration limitations (e.g., color-coding of wire to identify separation limitation).

(c) The fuel tank installation must include either—

(1) Means to minimize the development of flammable vapors in the fuel tanks (in the context of this rule, "minimize" means to incorporate practicable design methods to reduce the likelihood of flammable vapors); or

(2) Means to mitigate the effects of an ignition of fuel vapors within fuel tanks such that no damage caused by an ignition will prevent continued safe flight and landing.

5. Paragraph H25.4 of Appendix H to part 25 is revised to read as follows:

Appendix H to Part 25—Instructions for Continued Airworthiness

* * * * *

H25.4 *Airworthiness Limitations section.*

(a) The Instructions for Continued Airworthiness must contain a section titled Airworthiness Limitations that is segregated and clearly distinguishable from the rest of the document. This section must set forth—

(1) Each mandatory replacement time, structural inspection interval, and related structural inspection procedures approved under § 25.571; and

(2) Each mandatory replacement time, inspection interval, related inspection procedure, and all critical design configuration control limitations approved under § 25.981 for the fuel tank system.

(b) If the Instructions for Continued Airworthiness consist of multiple documents, the section required by this paragraph must be included in the principal manual. This section must contain a legible statement in a prominent location that reads: "The Airworthiness Limitations section is FAA-approved and specifies maintenance required under § § 43.16 and 91.403 of the Federal Aviation Regulations, unless an alternative program has been FAA approved."

PART 91—GENERAL OPERATING AND FLIGHT RULES

6. The authority citation for part 91 continues to read:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 21, 1983).

7. Amend § 91.410 by revising the section heading; redesignating the introductory text, paragraphs (a) introductory text, (a)(1), (a)(2) and (a)(3), and paragraphs (b) through (l) as paragraph (a) introductory text, paragraphs (a)(l) introductory text, (a)(1)(i), (a)(1)(ii), and (a)(1)(iii), and paragraphs (a)(2) through (a)(12); and adding a new paragraph (b) to read as follows:

§ 91.410 Special maintenance program requirements.

* * * * *

(b) After June 7, 2004, no person may operate a turbine-powered transport category airplane with a type certificate issued after January 1, 1958, and either a maximum type certificated passenger capacity of 30 or more, or a maximum type certificated payload capacity of 7,500 pounds or more, unless instructions for maintenance and inspection of the fuel tank system are incorporated into its inspection program. These instructions must address the actual configuration of the fuel tank systems of each affected airplane, and must be approved by the FAA Aircraft Certification Office (ACO), or office of the Transport Airplane Directorate, having cognizance over the type certificate for the affected airplane. Operators must submit their request through the cognizant Flight Standards District Office, who may add comments and then send it to the manager of the appropriate office. Thereafter, the approved instructions can be revised only with the approval of the FAA Aircraft Certification Office (ACO), or office of the Transport Airplane Directorate, having cognizance over the type certificate for the affected airplane. Operators must submit their request for revisions through the cognizant Flight Standards District Office, who may add comments and then send it to the manager of the appropriate office.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

8. The authority citation for part 121 continues to read:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

9. Amend § 121.370 by revising the section heading; redesignating the introductory text, paragraphs (a) introductory text, (a)(1), (a)(2) and (a)(3), and paragraphs (b) through (l) as paragraph (a) introductory text, paragraphs (a)(l) introductory text, (a)(1)(i), (a)(1)(ii), and (a) (1)(iii), and paragraphs (a)(2) through (a)(12); and adding a new paragraph (b) to read as follows:

§ 121.370 Special maintenance program requirements.

* * * * *

(b) After June 7, 2004, no certificate holder may operate a turbine-powered transport category airplane with a type certificate issued after January 1, 1958, and either a maximum type certificated passenger capacity of 30 or more, or a maximum type certificated payload capacity of 7,500 pounds or more, unless instructions for maintenance and inspection of the fuel tank system are incorporated in its maintenance program. These instructions must address the actual configuration of the fuel tank systems of each affected airplane and must be approved by the FAA Aircraft Certification Office (ACO), or office of the Transport Airplane Directorate, having cognizance over the type certificate for the affected airplane. Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the manager of the appropriate office.

Thereafter, the approved instructions can be revised only with the approval of the FAA Aircraft Certification Office (ACO), or office of the Transport Airplane Directorate, having cognizance over the type certificate for the affected airplane. Operators must submit their requests for revisions through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the manager of the appropriate office.

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

10. The authority citation for part 125 continues to read:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

11. Amend § 125.248 by revising the section heading; redesignating the introductory text, paragraphs (a) introductory text, (a)(1), (a)(2) and (a)(3), and paragraphs (b) through (l) as paragraph (a) introductory text, paragraphs (a)(l) introductory text, (a)(1)(i), (a)(1)(ii), and (a) (1)(iii), and paragraphs (a)(2) through (a)(12); and adding a new paragraph (b) to read as follows:

§ 125.248 Special maintenance program requirements.

* * * * *

(b) After June 7, 2004, no certificate holder may operate a turbine-powered transport category airplane with a type certificate issued after January 1, 1958, and either a maximum type certificated passenger capacity of 30 or more, or a maximum type certificated payload capacity of 7,500 pounds or more unless instructions for maintenance and inspection of the fuel tank system are incorporated in its inspection program. These instructions must address the actual configuration of the fuel tank systems of each affected airplane and must be approved by the FAA Aircraft Certification Office (ACO), or office of the Transport Airplane Directorate, having cognizance over the type certificate for the affected airplane. Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the manager of the appropriate office. Thereafter, the approved instructions can be revised only with the approval of the FAA Aircraft Certification Office (ACO), or office of the Transport Airplane Directorate, having cognizance over the type certificate for the affected airplane. Operators must submit their requests for revisions through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the manager of the appropriate office.

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

12. The authority citation for part 129 continues to read:

Authority: 49 U.S.C. 106(g), 40104–40105, 40113, 40119, 44701–44702, 44712, 44716–44717, 44722, 44901–44904, 44906.

13. Amend § 129.32 by revising the section heading; redesignating the introductory text, paragraphs (a) introductory text, (a)(1), (a)(2) and (a)(3), and paragraphs (b) through (l) as paragraph (a) introductory text, paragraphs (a)(l) introductory text, (a)(1)(i), (a)(1)(ii), and (a) (1)(iii), and paragraphs (a)(2) through (a)(12); and adding a new paragraph (b) to read as follows:

§ 129.32 Special maintenance program requirements.

* * * * *

(b) For turbine-powered transport category airplanes with a type certificate issued after January 1, 1958, and either a maximum type certificated passenger capacity of 30 or more, or a maximum type certificated payload capacity of 7,500 pounds or more, no later than June 7, 2004, the program required by paragraph (a) of this section must include instructions for maintenance and inspection of the fuel tank systems. These instructions must address the actual configuration of the fuel tank systems of each affected airplane and must be approved by the FAA Aircraft Certification Office (ACO), or office of the Transport Airplane Directorate, having cognizance over the type certificate for the affected airplane. Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the manager of the appropriate office. Thereafter the approved instructions can be revised only with the approval of the FAA Aircraft Certification Office (ACO), or office of the Transport Airplane Directorate, having cognizance over the type certificate for the affected airplane. Operators must submit their requests for revisions through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the manager of the appropriate office.

Issued in Washington, DC, on April 19, 2001.

Jane F. Garvey,

Administrator.

[FR Doc. 01–10129 Filed 5–4–01; 8:45 am]

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Federal Register

Monday,
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Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 9, et al.
Federal Acquisition Regulation; Contractor Responsibility, Labor Relations Costs, and Costs Relating to Legal and Other Proceedings: Revocation; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 9, 14, 15, 31, and 52

[FAR Case 2001–014 (Extension and Public Meeting)]

RIN 9000–AJ10

Federal Acquisition Regulation; Contractor Responsibility, Labor Relations Costs, and Costs Relating to Legal and Other Proceedings—Revocation

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule; extension of comment period; notice of public meeting.

SUMMARY: The Federal Acquisition Regulatory Council (FAR Council) published in the **Federal Register** at 65 FR 80255, December 20, 2000, a final rule addressing contractor responsibility, labor relations costs and costs relating to legal and other proceedings. The FAR Council is reconsidering its position and published in the **Federal Register** at 66 FR 17758, April 3, 2001, a proposed rule with request for public comments revoking the December 20, 2000, final rule. The proposed rule specified a June 4, 2001, due date for receipt of comments. The FAR Council has decided to extend that due date until July 6, 2001, to ensure all potential commentors have adequate time to prepare their submissions. Also, to ensure an open dialogue between the Government and interested parties on the proposed rule, the FAR Council will hold a public meeting on the proposed rule on June 18, 2001.

DATES: *Comments:* Interested parties should submit comments in writing on or before July 6, 2001, to be considered in the formulation of a final rule.

Public Meeting: A public meeting will be conducted at the address shown below starting at 12 noon to 4:00 p.m., local time, on June 18, 2001, to ensure an open dialogue between the Government and interested parties on the proposed rule.

ADDRESSES: Submit written comments on the proposed rule to be considered in the formulation of a final rule to General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to:

farcase.2001–014@gsa.gov

Please submit comments only, including public meeting presentations to be considered as comments, and cite FAR case 2001–014 in all correspondence related to this case.

Public Meeting: The location of the public meeting will be at the—National Aeronautics and Space Administration, Headquarters Auditorium 300 E Street, SW, First Floor, West Lobby, Washington, DC 20546.

If you wish to attend the meeting and/or make presentations on the proposed rule, please contact and submit a copy of your presentation by June 4, 2001, to—General Services Administration, Acquisition Policy Division (MVP), 1800 F Street, NW., Room 4035, ATTN: Ralph DeStefano, Washington, DC 20405, Telephone: (202) 501–0692.

Submit electronic materials via the Internet to—

meeting.2001–014@gsa.gov.

Please submit presentations only and cite Meeting 2001–014 in all correspondence related to this public meeting. The submitted presentations will be the only record of the public meeting. If you intend to have your presentation considered as a public comment on the proposed rule, the presentation must be submitted separately as a public comment as instructed above.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. Contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501–1758 for clarification of content. Please cite FAR case 2001–014. Contact Ms. LaRhonda Erby at (202) 501–0692 for information pertaining to time and location of the public meeting.

Dated: May 2, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–11382 Filed 5–4–01; 8:45 am]

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H.R. 132/P.L. 107–6
To designate the facility of the United States Postal Service located at 620 Jacaranda Street in Lanai City, Hawaii, as the "Goro Hokama Post Office Building". (Apr. 12, 2001; 115 Stat. 8)

H.R. 395/P.L. 107–7
To designate the facility of the United States Postal Service located at 2305 Minton Road in West Melbourne, Florida, as the "Ronald W. Reagan Post Office of West Melbourne, Florida". (Apr. 12, 2001; 115 Stat. 9)

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[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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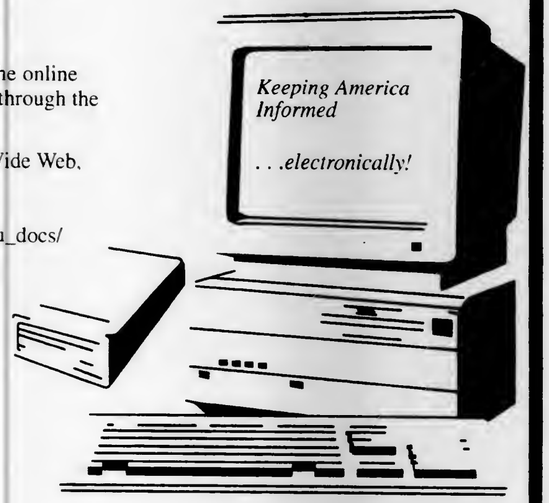
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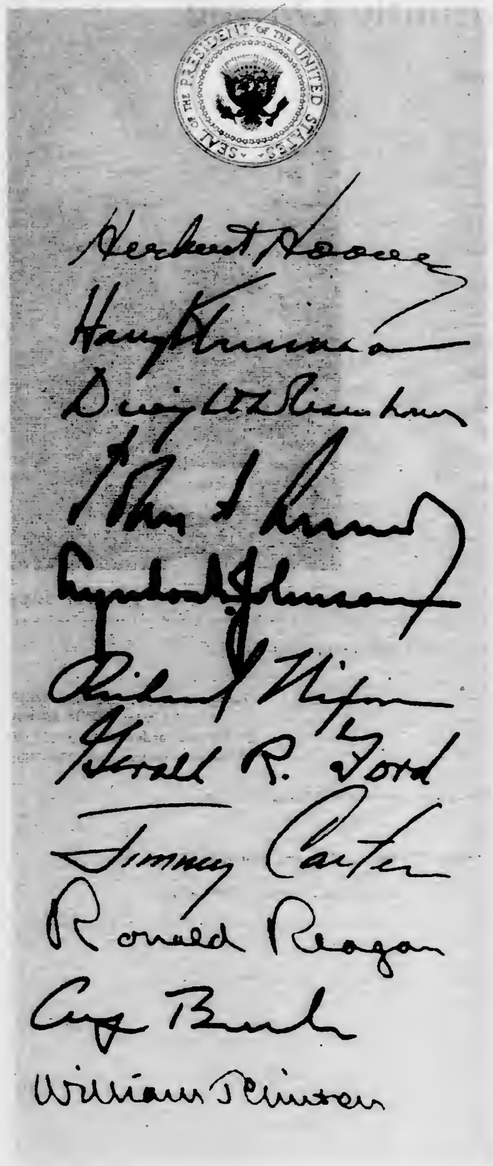
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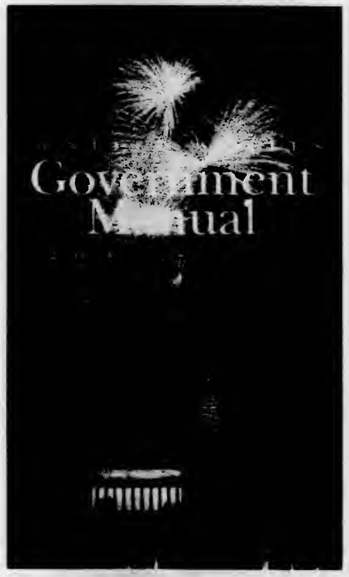
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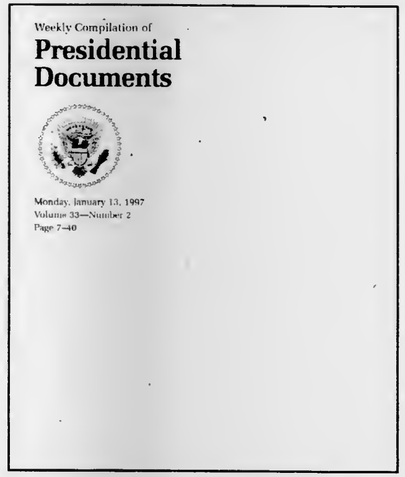
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Rules and Regulations

Federal Register
Vol. 66, No. 89
Tuesday, May 8, 2001

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1779 and 1780

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1980

RIN 0572–AB57

Water and Waste Disposal Programs Guaranteed Loans

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) is discontinuing the use of its existing regulations for its Water and Waste Disposal (WW) Guaranteed Loan Program, and implementing a new regulation for its WW Guaranteed Loan Program. This action is needed to streamline and update the WW Guaranteed Loan Program. The intended effect is to simplify and clarify the regulation; shift some responsibility for loan documentation and analysis from the Government to the lenders; make the program more responsive to the needs of lenders, local community public bodies, and nonprofit corporations; and provide for smoother processing of applications.

EFFECTIVE DATE: June 7, 2001.

FOR FURTHER INFORMATION CONTACT: Linda Scott, Water Programs Division Loan Specialist, Rural Utilities Service, U.S. Department of Agriculture, STOP 1570, 1400 Independence Ave. SW., Washington, DC 20250–1570, telephone: (202) 720–9639.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Information Collection and Recordkeeping Requirements

The information collection and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and were assigned OMB control number 0572–0122, in accordance with the Paperwork Reduction Act of 1995. Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. This final rule does not impose any new information recordkeeping.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Regulatory Flexibility Act Certification

RUS has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS Water and Waste loan and grant programs provide loans to borrowers at interest rates and on terms that are more favorable than those generally available from the private sector. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of that Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted, no retroactive effect will be given to this rule, and, in accordance with Sec. 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. Sec. 6912(e)), administrative appeal procedures, if any, must be exhausted before an action against the Department or its agencies may be initiated.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Intergovernmental Consultation

This program is listed in the Catalog of Federal Domestic Assistance under number 10.760 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325. An electronic version is available at www.cfda.gov.

Discussion of the Final Rule

This action replaces the Water and Waste Disposal facilities portion of the guaranteed loan program administered under 7 CFR part 1980, subparts A and I. Under the final rule, this guaranteed loan program will be more flexible and place more reliance on lenders. There are fewer specific requirements for lenders. The lender has added responsibility for analyzing credit quality; for making, securing, and servicing the loan; and for monitoring construction. Application processing procedures will be more efficient; less burdensome for borrowers, lenders, and Rural Development staff; and will provide for more rapid decisions.

The WW Guaranteed Loan program was authorized by the Rural Development Act of 1972. The loans are made by private lenders to public bodies, nonprofit corporations, and Indian tribes for the purpose of

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improving rural living standards and for other purposes that create safe and affordable drinking water and waste disposal facilities located in rural areas or towns with a population not exceeding 10,000 inhabitants.

These loans can be made to construct or improve drinking water or waste disposal facilities serving the most financially needy communities. The rates and terms of the loan are negotiated between the borrower and the lender. This regulation is a high-priority effort to streamline the administration and operation of the program, respond to the requests of users of the program, and assist the field staff administering the program. The revised regulation is simpler, clearer, and more logically organized. The volume of regulatory material which a lender must review to request, make, or service a WW guaranteed loan under the new regulation is significantly less than the current regulation.

The President and the Secretary of Agriculture are committed to streamlining all Federal regulations. This WW regulation streamlines our application procedures, reduces loan application processing time by placing greater emphasis on State resources, and allows more management flexibility and decision-making capacity at the State Office level.

The Agency has implemented revisions to make the program more user-friendly for lenders and borrowers. Also, the Agency recognizes that changes are necessary to make the program more effective in creating jobs and stimulating economic activity (particularly in chronically low-income rural areas). Under the new WW regulation, the material that must be submitted to, and reviewed by, the Agency before approval of the guarantee has been reduced. Some responsibilities for credit analysis and application processing tasks will be shifted from the Agency to the lender, where feasible. Following is a discussion of some of the most significant policy revisions included in the final regulation.

To streamline the regulation, the Agency has combined applicable portions of the Direct Water and Waste Disposal Loan and Grant Program (7 CFR part 1780), Water and Waste Loans and Grants, General Guaranteed Regulation (7 CFR part 1980, subparts A and I), and program requirements contained in forms which were not in regulations into the Guaranteed Water and Waste Disposal Programs Regulation (7 CFR part 1779). The Agency also divided the regulation into general, processing, and servicing sections. These actions should significantly reduce the amount of regulatory material that a lender and a borrower must review to determine eligibility and complete the application. This will also simplify making and servicing a WW guaranteed loan.

Additionally, the necessary information contained in the preapplication package can be submitted simultaneously with the application. Except the year that loan funds are received, the types of audited financial statements will be determined by the lender (with Agency concurrence).

Under the new regulation, the lender is responsible for ensuring that all loan requirements are met, the loan is properly secured, documents are duly executed and binding, and all necessary certifications are furnished. The lender will not only be able to negotiate interest rates, but will also be able to negotiate incremental increases and caps for each loan. This will give the lender more flexibility to fit the WW guaranteed loan program into its lending policies and procedures. The lender does not have to be a local lender provided it can demonstrate the ability to adequately service the loan. This will permit an expansion of eligible lenders to include such organizations as State bond banks, Co-Bank, the Rural Utilities Cooperative Finance Corporation, and other lenders that are subject to credit examination and supervision by a State or Federal entity that supervises and regulates credit institutions. All of these organizations have expressed an interest in the WW guaranteed lending program in the past.

Discussion of Comments

The proposed rule was published in the **Federal Register** on October 7, 1997 (62 FR 52277), for public comment. All comments received were from Rural Development employees. Three State Directors, one Program Director, the National Association of Credit Specialists, and one Programs Specialist submitted comments. All of the comments received expressed support for the changes in this streamlined regulation. The comments ranged from making the regulation easier to read and follow to agreeing that the regulatory burden was lessened on the lenders as well as on our field employees. Also, the ability to change interest rates on a quarterly basis was supported as more in line with industry standards. Other changes which were supported are: permitting the lender to monitor construction rather than the Agency; permitting the preapplication information and the application to be completed as one process; and making the lender responsible for ensuring that all loan requirements are met, the loan is properly secured, documents are duly executed and binding, and all necessary certifications are furnished. The comments relating to the Community Facilities (CF) Programs portion of the proposed rule were addressed in a Final Rule published on May 26, 1999, at 64 FR 28333 (7 CFR part 3575).

General

One respondent requested consistent wording concerning the 5 percent which the lender must retain in its portfolio. The wording has been changed to clarify that the amount which the lender must hold will be 5 percent of the total loan amount and that this amount must be from the unguaranteed portion of the loan.

One respondent wanted to know what is contained in chapter 37 of title 31 of the United States Code. This chapter is commonly referred to as the Debt Collection Act.

Definitions

One respondent suggested that all Rural Development program areas have similar definitions for "rural" and "rural area." The Agency agrees that similar definitions would make the programs easier for our field employees to implement. However, the definitions of "rural" and "rural area" are mostly statutory and cannot be changed regulatorily.

Eligibility

One respondent wanted to include sole-member corporations as eligible for the Community Facilities (CF) program. This does not pertain to WW guaranteed loans. The CF response may be found in 7 CFR part 3575.

One respondent suggested that business incubators be made an eligible purpose. Because this suggestion pertains solely to the CF program, it was addressed in 7 CFR part 3575.

One respondent indicated that combining the floodplain management plan requirements with flood insurance would eliminate service to most of his State. The Agency did not intend to change the existing floodplain requirements. However, in our efforts to streamline the regulations, we combined two requirements and used a conjunction which tied the two requirements together. The Agency has separated and reworded these requirements in this final regulation. The requirements are the same as our existing regulation. To make a loan in a Federal Emergency Management Agency designated 100-year floodplain, a floodplain management plan must be in place. Also, National Flood Insurance must be available, and the lender must require such insurance.

As a result of internal discussions, the Environmental Requirements section has been expanded slightly in order to highlight the requirement imposed on the applicant to take no actions that would either limit the range of alternatives to be considered or which might adversely effect the environment prior to completion of the Agency's environmental review process.

Equal Opportunity and Fair Housing Act Requirements

One respondent suggested listing all the specific individual requirements under these laws. This comment pertains to the CF programs. The CF response may be found in 7 CFR part 3575.

One respondent requested clarification concerning the Agency's review of the equal opportunity and nondiscrimination requirements when evaluating an application. The Agency will further clarify our employees' responsibilities for reviewing loan applications in Agency instructions.

Rates and Terms

One respondent supported permitting both variable and fixed interest rates in the same loan but pointed out that the restriction which requires the guaranteed portion of the loan to always have a lower interest rate than the unguaranteed portion of the loan would prevent lenders from making the guaranteed portion fixed and the unguaranteed portion variable when the interest rate market is declining. We agree, and have removed the last sentence of § 1779.33(e) to ensure consistency when determining an acceptable interest rate.

Design and Construction

One respondent said that this regulation seems to say that if the Agency guarantees a loan on an existing building, we would not require any changes to make the building meet the Americans with Disabilities Act (ADA). The ADA does not require that existing buildings be made accessible unless they are remodeled. Then only the portion which is remodeled must be made accessible. For example, if four interior offices were remodeled, only those four offices would have to be made accessible. But the restrooms or the entry way would not have to be accessible. If you remodeled the building front, then the front entry would have to be made accessible. In conclusion, any new work must be accessible and designed in accordance with the ADA. Any area of the existing structure that is not remodeled does not have to meet the ADA. This concept will be clarified for our employees in our instructions.

One respondent suggested a standard certification form for the lender to complete certifying that construction has been completed in accordance with the proper building codes. To maintain flexibility and keep the regulations and public paperwork at a minimum, we have incorporated this as a lender certification.

One respondent suggested amending our concurrence to preliminary architectural or engineering reports or plans because many projects do not require complex reports but rather simple drawings and estimates of project costs. We agree. This was our original intent in the proposed general portion of the design and construction requirements section. We have added the words "or plans" to this section.

One respondent questioned the lack of a reference to procurement utilizing free and open competition. The borrower and the lender both benefit from free and open competition. In the spirit of reducing the regulatory burden to the public, the lender will now be responsible for determining the best method to ensure that the project is completed within budget. If the lender determines that design and build is a better method than sealed bids, the lender will have the flexibility to approve such construction.

Feasibility Requirements

One respondent strongly supported the loan approval official being able to determine if an independent feasibility analysis is necessary. The respondent also stated that the economic section of the regulation confuses the lender credit analysis with the feasibility report. The Agency intends that the loan approval official will determine whether or not an independent feasibility analysis is necessary. Consequently, the lender's financial credit analysis may serve as a feasibility analysis when the loan approval official concludes sufficient economic information is provided in its analysis. A sentence has been added to clarify this issue.

Processing

One respondent indicated that we should have included a timeframe to provide the lender an answer. While we agree, this is an administrative matter within the Agency and will be incorporated into our field employee instructions.

One respondent suggested moving the subsection concerning changing the scope of the project from the section describing the conditions precedent to issuing a loan note guarantee to the section discussing the review of requirements in the conditional commitment. This subsection has been moved as suggested.

One respondent suggested that the number of customers discussed in the loan application evaluation section should apply only to Water and Waste Disposal projects. This comment is directed to Community Facilities Programs and was addressed in 7 CFR part 3575. However, the respondent is correct in that WW projects do require that the number of customers is used when evaluating a loan application.

One respondent questioned whether the certifications listed under the conditions precedent to issuance of the loan note guarantee section met all applicable requirements contained out in the regulations. It was suggested clarification was needed. The Agency listed the items which the lender must certify to before the loan note guarantee could be issued. By certifying to these conditions, the lender is stating that it has met the requirements contained in the regulation.

One respondent requested clarification concerning the title report under the lender's certifications in the conditions precedent to issuance of a loan note guarantee. The respondent wanted to know whether or not the title report was referring to a final title opinion or a preliminary title opinion. The Agency intends this to be the lender's legal counsel's opinion which states that the loan has been closed and proper title has been obtained in accordance with the security instrument and other agreements between the lender and the Agency.

One respondent requested further clarification of the guaranteed loan closing report. This report is a Rural Development form. All references to specific form numbers have been eliminated from the actual text of the **Federal Register**. The actual form numbers will appear in the Agency instructions to our field employees. Only the form names appear in the **Federal Register**.

One respondent questioned the need to require a parity lien position. We agree, the lender should determine that adequate security is obtained for the loan and the Agency can either concur or choose not to guarantee the loan accordingly. This requirement has been deleted.

One respondent requested that the Agency eliminate the test for credit. The respondent further points out that the Rural Development Business and

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Industry (B&I) program does not require such a test for credit to be eligible for a guaranteed loan. The Agency is bound by statute and must require this test for credit. The B&I program is exempt from this statutory provision.

One respondent suggested that finder and packaging fees be considered an eligible loan purpose. This comment also suggested paying real estate broker fees. This comment is directed to Community Facilities Programs and was addressed in 7 CFR part 3575.

One respondent requested clarification concerning whether or not the preapplication forms are still necessary when the Agency receives an application for a loan guarantee from a lender without going through the preapplication process. The Agency will accept applications without a preapplication package.

Servicing

Two respondents strongly suggested that the audit requirements should be the lender's responsibility. We agree, based upon discussions with our sister agencies and the Office of Management and Budget (OMB), we have determined that we do not have continuing compliance requirements as described in the OMB circular A–133. Consequently, in the year that funds are received by the borrower, the Agency will require an audit in accordance with the OMB circular A–133. In subsequent years, the lender (with Agency concurrence) will determine the type of financial reporting and financial audits that will be required for the duration of the loan.

One respondent noted that the lender and borrower visits were omitted and suggested that they should be required periodically. While we agree, this is an administrative matter and will be addressed in the Agency's field instruction.

One respondent wanted to clarify that the sale of one lender to another in a merger situation did not constitute a transfer of lender. We agree.

One respondent suggested that we increase the amount of protective advances from $500 to $5,000 dollars. This amount would be consistent with other mission area regulations and would be consistent with inflation. We agree, the amount of protective advances which the lender can make without Agency concurrence has been increased from $500 to $5,000.

List of Subjects

7 CFR Part 1779

Guaranteed loans, Loan programs, Waste treatment and disposal, Water supply

7 CFR Part 1780

Business and industry, Community development, Community facilities, Grant programs—housing and community development, Rural areas, Waste treatment and disposal, Water supply

7 CFR Part 1980

Loan programs—agriculture, Loan programs—business and industry, Loan programs—housing and community development, Rural development assistance

Accordingly, chapters XVII and XVIII, title 7, Code of Federal Regulations, are amended as follows:

Chapter XVII—Rural Utilities Service, Department of Agriculture

1. Add a new part 1779 to read as follows:

PART 1779—WATER AND WASTE DISPOSAL PROGRAMS GUARANTEED LOANS

Sec.

1779.1 General.
1779.2 Definitions.
1779.3 Full faith and credit.
1779.4 Conditions of guarantee.
1779.5–1779.7 [Reserved]
1779.8 Access to lender's records.
1779.9 Environmental requirements.
1779.10–1779.11 [Reserved]
1779.12 Inspections.
1779.13 Appeals.
1779.14–1779.16 [Reserved]
1779.17 Exception authority.
1779.18–1779.19 [Reserved]
1779.20 Eligibility.
1779.21–1779.23 [Reserved]
1779.24 Eligible loan purposes.
1779.25 Ineligible loan purposes.
1779.26 [Reserved]
1779.27 Eligible lenders.
1779.28 Transfer of lenders or borrowers (prior to issuance of Loan Note Guarantee).
1779.29 Fees and charges by lender.
1779.30 Loan guarantee limitations.
1779.31–1779.32 [Reserved]
1779.33 Interest rates.
1779.34 Terms of loan repayment.
1779.35–1779.36 [Reserved]
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1779.38–1779.41 [Reserved]
1779.42 Design and construction requirements.
1779.43 Other Federal, State, and local requirements.
1779.44–1779.46 [Reserved]
1779.47 Economic feasibility requirements.
1779.48 Security.
1779.49–1779.51 [Reserved]
1779.52 Processing.
1779.53 Evaluation of application.
1779.54–1779.58 [Reserved]
1779.59 Review of requirements.
1779.60–1779.62 [Reserved]
1779.63 Conditions precedent to issuance of the Loan Note Guarantee.
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1779.65 Lender's sale or assignment of the guaranteed portion of loan.
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1779.70–1779.72 [Reserved].
1779.73 Replacement of loss, theft, destruction, mutilation, or defacement of Loan Note Guarantee or Assignment Guarantee Agreement.
1779.74 [Reserved]
1779.75 Defaults by borrower.
1779.76–1779.77 [Reserved]
1779.78 Repurchase of loan.
1779.79 [Reserved]
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1779.94 Determination and payment of loss.
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1779.100 OMB control number.

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, 16 U.S.C. 1005.

§ 1779.1 General.

(a) This part contains the regulations for Water and Waste Disposal (WW) loans guaranteed by the Agency and applies to lenders, holders, borrowers, and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans.

(b) The purpose of the WW guaranteed loan program is to provide a loan guarantee for the construction or improvement of water and waste projects serving the financially needy communities in rural areas. This purpose is achieved through bolstering the existing private credit structure through the guarantee of quality loans which will provide lasting benefits.

§ 1779.2 Definitions.

The following general definitions are applicable to the terms used in this part:

Agency. The Rural Utilities Service which is within the Rural Development mission area of the United States Department of Agriculture or its successor agencies with authority delegated by the Secretary of Agriculture to administer the Water and Waste Disposal Programs.

Application. An Agency prescribed form to request an Agency guarantee (available in any Agency office).

Arm's length transaction. The sale, release, or disposition of assets in which

the title to the property passes to a ready, willing, and able third party who is not affiliated with, or related to, and has no security, monetary, or stockholder interest in the borrower or transferor at the time of the transaction.

Assignment Guarantee Agreement. The signed agreement among the Agency, the lender, and the holder setting forth the terms and conditions of an assignment of the guaranteed portion of a loan or any part thereof (available in any Agency office).

Borrower. The entity that borrows money from the lender.

Collateral. Property pledged to secure the guaranteed loan.

Conditional Commitment for Guarantee. The Agency's written statement to the lender that the material submitted is approved subject to the completion of all conditions and requirements contained in the commitment (available in any Agency office).

Guaranteed loan. A loan made and serviced by a lender for which the Agency and lender have entered into a Lender's Agreement and for which the Agency has issued a Loan Note Guarantee.

Holder. The person or entity (other than the lender) who holds all or a part of the guaranteed portion of the loan with no servicing responsibilities. When the lender assigns part or all of the guaranteed portion of the loan to an assignee, the assignee becomes a holder when the Assignment Guarantee Agreement is signed by all parties.

Immediate family. Individuals who are closely related by blood or by marriage, or within the same household, such as a spouse, parent, child, brother, sister, aunt, uncle, grandparent, grandchild, niece, or nephew.

In-house expenses. In-house expenses include, but are not limited to, employees' salaries, retainers being paid to lawyers, travel, and overhead.

Insurance. Fire, windstorm, lightning, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, builder's risk, liability, property damage, flood or mudslide, worker's compensation, fidelity bond, malpractice, or any similar insurance that is available and needed to protect the security or that is required by law.

Joint financing. Two or more lenders (or any combination of lenders and other financial sources) making separate relatively contemporaneous loans or grants to supply the funds required by one borrower. For example, such joint financing may consist of the Agency's financial assistance with the Economic Development Administration, Department of Housing and Urban Development (HUD), or other Federal and State agencies, and private and quasi-public financial institutions.

Lender. The person or organization making and responsible for servicing the loan. The lender is also referred to in this part as the applicant who is requesting a guarantee during the preapplication and application stage of processing.

Lender's Agreement. The signed agreement between the Agency and the lender containing the lender's responsibilities when the Loan Note Guarantee is issued (available in any Agency office).

Loan Note Guarantee. The signed commitment issued by the Agency containing the terms and conditions of the guarantee of an identified loan (available in any Agency office).

Market value. The amount for which property would sell for its highest and best use at a voluntary sale in an arm's length transaction.

Note. An evidence of debt. In those instances where the Agency guarantees a bond issue, "note" shall also be construed to include a bond or other evidence of indebtedness, as appropriate.

Participation. Sale of an interest in a loan in which the lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

Principals of borrowers. The owners, officers, directors, entities, and supervisors directly involved in the operation and management of the borrower.

Protective advances. Advances made by the lender for the purpose of preserving and protecting the collateral where the debtor has failed to, and will not or cannot, meet obligations to protect or preserve collateral.

Report of loss. An Agency form used by lenders when reporting a loss under an Agency guarantee (available in any Agency office).

Rural and rural area. Any area not in a city or town with a population in excess of 10,000 inhabitants, according to the latest decennial census of the United States

Service area. The area reasonably expected to be served by the project being financed by the guaranteed loan.

State. Any of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, Commonwealth of the Northern Mariana Islands, Republic of the Marshall Islands, Republic of Palau, and the Federated States of Micronesia.

State Bond Banks and State Bond Pools. An entity authorized by the State to issue State debt instruments and utilize the funds received to finance the construction or improvement of drinking water or waste disposal facilities.

State Director. The Rural Development State Director or the staff member who has been delegated authority to perform action on behalf of the State Director.

Substantive change. Any change in the purpose of the loan or any change in the financial condition of the borrower or the collateral which would jeopardize the performance of the loan.

Transfer and assumption. The conveyance by a debtor to an assuming party of the assets, collateral, and liabilities of the loan in return for the assuming party's binding promise to pay the outstanding debt.

Waste disposal. Sanitary sewer (treatment and collection), solid waste, and storm drainage facilities.

WW. An acronym for Water and Waste Disposal.

§ 1779.3 Full faith and credit.

The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is not contestable except for fraud or misrepresentation (including negligent misrepresentation) of which the lender or holder has actual knowledge, participates in, or condones. A note which provides for the payment of interest on interest shall not be guaranteed and any Loan Note Guarantee or Assignment Guarantee Agreement attached to, or relating to, a note which provides for payment of interest on interest is void. The Loan Note Guarantee will not be enforceable by the lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which the Agency acquires knowledge of the foregoing. Any losses occasioned will not be enforceable by the lender to the extent that loan funds are used for purposes other than those specifically approved by the Agency in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act, but also not acting in a timely manner, acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity, or until a final loss is paid. The Loan Note Guarantee or Assignment Guarantee Agreement in the hands of a

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holder shall not cover interest accruing 90 days after the holder has demanded repurchase by the lender, nor shall the Loan Note Guarantee or Assignment Guarantee Agreement in the hands of a holder cover interest accruing 90 days after the lender or Agency has requested the holder to surrender the evidence of debt for repurchase.

§ 1779.4 Conditions of guarantee.

A loan guarantee under this part will be evidenced by a Loan Note Guarantee issued by the Agency. Each lender will also execute a Lender's Agreement.

(a) The entire loan will be secured by the same security with equal lien priority for the guaranteed and non-guaranteed portions of the loan. The non-guaranteed portion of the loan will not be paid first nor given any preference or priority over the guaranteed portion.

(b) The lender will be responsible for servicing the entire loan and will remain mortgagee or secured party of record notwithstanding the fact that another party may hold a portion of the loan.

(c) When a guaranteed portion of a loan is sold to a holder, the holder shall have all rights of the lender under the Loan Note Guarantee to the extent of the portion purchased. The lender will remain bound by all the obligations under the Loan Note Guarantee, Lender's Agreement, and Agency program regulations. If the Agency makes a payment to a holder, then the lender must reimburse the Agency.

(d) A lender will receive all payments of principal and interest on the account of the entire loan and will promptly remit to each holder a pro rata share, less any lender servicing fee.

(e) The lender may retain all of the unguaranteed portion of the loan or may sell part of the unguaranteed portion of the loan through participation. However, the lender is required to retain 5 percent of the loan amount from the unguaranteed portion in their portfolio.

§§ 1779.5–1779.7 [Reserved]

§ 1779.8 Access to lender's records.

Upon request by the Agency, the lender will permit representatives of the Agency (or other agencies of the U.S. Department of Agriculture authorized by that Department or the U.S. Government) to inspect and make copies of any of the records of the lender pertaining to the guaranteed loans. Such inspection and copying may be made during regular office hours of the lender or at any other time the lender and the Agency agree upon.

§ 1779.9 Environmental requirements.

Facilities financed must undergo an environmental impact analysis in accordance with the National Environmental Policy Act and Agency requirements as contained in part 1794 of this chapter. In accordance with Agency guidance documents (RUS Bulletin 1794A–602; this document is available in any Agency State Office or online at http://www.usda.gov/rus/water/ees/index.htm), the environmental review requirements shall be performed by the applicant simultaneously and concurrently with the project's engineering planning and design. This should provide flexibility to consider reasonable alternatives to the project and development methods to mitigate any adverse environmental effects. Facility planning and design must not only be responsive to the owner's needs but must consider the environmental consequences of the proposed project. Facility design will incorporate and integrate, where practicable, mitigation measures that avoid or minimize adverse environmental impacts. The lender must assist the Agency in ensuring that the borrower complies with the Agency's environmental review process and implements any mitigation measure identified in the environmental review document or Conditional Commitment for Guarantee. This assistance includes ensuring that the borrower takes no action (for example, initiation of construction) or incur any obligations that will have an adverse environmental impact or limit the range of alternatives to be considered prior to completion of the environmental review process. If construction is started prior to completion of the environmental review and the Agency is deprived of its opportunity to fulfill its obligation to comply with applicable environmental requirements, the application for financial assistance may be denied. Satisfactory completion of the environmental review process must occur prior to the approval of the applicant's request or commitment of Agency resources.

§§ 1779.10–1779.11 [Reserved]

§ 1779.12 Inspections.

The lender will notify the Agency of any scheduled field inspections during construction and after issuance of the Loan Note Guarantee. The Agency may attend such field inspections. Any inspections or review conducted by the Agency, including those with the lender, are for the benefit of the Agency only and not for the benefit of other parties in interest. Agency inspections do not relieve any parties in interest of their responsibilities to conduct necessary inspections.

§ 1779.13 Appeals.

Only the borrower, lender, or holder can appeal an Agency decision. In cases where the Agency has denied or reduced the amount of final loss payment to the lender, the adverse decision may be appealed only by the lender. A decision by a lender adverse to the interest of the borrower is not a decision by the Agency, whether or not concurred in by the Agency. Appeals will be handled in accordance with the regulations of the National Appeals Division, U.S. Department of Agriculture, published at 7 CFR part 11.

§§ 1779.14–1779.16 [Reserved]

§ 1779.17 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this part which is not inconsistent with the authorizing statute or other applicable law and is determined to be in the Government's interest.

§§ 1779.18–1779.19 [Reserved]

§ 1779.20 Eligibility.

(a) *Availability of credit from other sources.* The Agency must determine that the borrower is unable to obtain the required credit without the loan guarantee from private, commercial, or cooperative sources at reasonable rates and terms for loans for similar purposes and periods of time. The Agency must also determine if an outstanding judgment obtained by the United States in a Federal Court (other than the U.S. Tax Court) has been entered against the borrower or if the borrower has an outstanding delinquent debt with any Federal agency. Such judgment or delinquency shall cause the potential borrower to be ineligible to receive a loan guarantee until the judgment is paid in full or otherwise satisfied or the delinquency is cured.

(b) *Legal authority and responsibility.* (1) Each borrower must have, or will obtain, the legal authority necessary to construct, operate, and maintain the proposed facility and services. They must also have legal authority for obtaining, giving security for, and repaying the proposed loan.

(2) The borrower shall be responsible for operating, maintaining, and managing the facility and services, and providing for the continued availability and use of the facility and services at reasonable rates and terms.

(c) *Applicant.* Eligible entities are:

(1) A public body such as a municipality, county, district, authority, or other political subdivision of a State located in a rural area.

(2) An organization operated on a not-for-profit basis, such as an association, cooperative, or private corporation. The organization must be an association controlled by a local public body or bodies, or have a broadly based ownership by or membership of people of the local community; or

(3) Indian tribes on Federal and State reservations and other federally recognized Indian tribes.

(d) *Facility location.* Facilities must be located in rural areas, except: For utility services such as drinking water, sanitary sewer, solid waste disposal or storm drainage facilities serving both rural and non-rural areas. In such cases, Agency funds may be used to finance only that portion serving rural areas, regardless of facility location.

(e) *Facilities for public use.* All facilities financed under the provisions of this part shall be for public purposes.

(1) Facilities will be installed to serve any user within the service area who desires service and can be feasibly and legally served.

(2) In no case will boundaries for the proposed service area be chosen in such a way that any user or area will be excluded because of race, color, religion, sex, marital status, age, disability, or national origin.

(3) The lender will determine that, when feasible and legally possible, inequities within the proposed project's service area for the same type service proposed will be remedied by the owner on, or before, completion of the project. Inequities are defined as unjustified variations in availability, adequacy, or quality of service. User rate schedules for portions of existing systems or facilities that were developed under different financing, rates, terms, or conditions do not necessarily constitute inequities.

§§ 1779.21–1779.23 [Reserved]

§ 1779.24 Eligible loan purposes.

(a) To construct, enlarge, extend, or otherwise improve rural drinking water, sanitary sewage, solid waste disposal, and storm wastewater disposal facilities.

(b) To construct or relocate public buildings, roads, bridges, fences, or utilities, and to make other public improvements necessary for the successful operation or protection of facilities authorized in paragraph (a) of this section.

(c) To relocate private buildings, roads, bridges, fences, or utilities, and other private improvements necessary for the successful operation or protection of facilities authorized in paragraph (a) of this section.

(d) For payment of other utility connection charges as provided in service contracts between utility systems.

(e) When a necessary part of the project relates to those facilities authorized in paragraphs (a), (b), (c) or (d) of this section the following may be considered:

(1) Reasonable fees and costs such as: legal, engineering, administrative services, fiscal advisory, recording, environmental analyses and surveys, possible salvage or other mitigation measures, planning, establishing or acquiring rights;

(2) Costs of acquiring interest in land: rights, such as water rights; leases; permits; rights-of-way; and other evidence of land or water control or protection necessary for development of the facility;

(3) Purchasing or renting equipment necessary to install, operate, maintain, extend, or protect facilities;

(4) Cost of additional applicant labor and other expenses necessary to install and extend service;

(5) In unusual cases such as a low-income area, the cost for connecting the user to the main service line;

(6) Interest incurred during construction in conjunction with multiple advances or interest on interim financing;

(7) Initial operating expenses, including interest, for a period ordinarily not exceeding one year when the applicant is unable to pay such expenses;

(8) The purchase of existing facilities when it is necessary either to improve service or prevent the loss of service; and

(9) Refinancing non-Agency debts incurred by, or on behalf of, an applicant when all of the following conditions exist:

(i) The debts being refinanced are a secondary part of the total loan unless the debt being refinanced is an Agency direct loan;

(ii) The debts were incurred for the facility or service being financed or any part thereof; and

(iii) Arrangements cannot be made with the creditors to extend or modify the terms of the debts so that a sound basis will exist for making a loan.

(10) Refinancing Agency debts.

§ 1779.25 Ineligible loan purposes.

Loan funds may not be used to finance:

(a) Facilities which are not modest in size, design, and cost;

(b) Loan or grant finder's fees;

(c) The construction of any new combined storm and sanitary sewer facilities;

(d) Any portion of the cost of a facility which does not serve a rural area;

(e) That portion of project costs normally provided by a business or industrial user, such as wastewater pretreatment;

(f) Rental for the use of equipment or machinery owned by the applicant;

(g) For other purposes not directly related to operating and maintenance of the facility being installed or improved; or

(h) The payment of a judgment which would disqualify an applicant for a loan under § 1779.20(a).

§ 1779.26 [Reserved]

§ 1779.27 Lenders.

(a) *Eligible lenders.* Eligible lenders may participate in the loan guarantee program. These lenders must be subject to credit examination and supervision by an appropriate agency of the United States or a State that supervises and regulates credit institutions. A lender must have the capability to adequately service loans for which a guarantee is requested. Eligible lenders are:

(1) Any Federal or State chartered bank or savings and loan association;

(2) Any mortgage company that is a part of a bank holding company;

(3) Co-Bank, National Rural Utilities Cooperative Finance Corporation, Farm Credit Bank of the Federal Land Bank, or other Farm Credit System institution with direct lending authority authorized to make loans of the type guaranteed by this part;

(4) An insurance company regulated by a State or National insurance regulatory agency;

(5) State Bond Banks or State Bond Pools; and

(6) Other lenders that possess the legal powers necessary and incidental to making and servicing guaranteed loans involving community development-type projects. Lenders under this category must be approved by the National Office prior to the issuance of the loan guarantee.

(b) *Conflict of interest.* When the lender's officers, stockholders, directors, or partners (including their immediate families) or the borrower, its officers, stockholders, directors, or partners (including their immediate families) own, or have management responsibilities in each other, the lender must disclose such business or ownership relationships. The Agency will determine if such relationships are likely to result in a conflict of interest.

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This does not preclude lender officials from being on the borrower's board of directors.

§ 1779.28 Transfer of lenders or borrowers (prior to issuance of Loan Note Guarantee).

(a) Prior to issuance of the loan guarantee, the Agency may approve the transfer of an outstanding Conditional Commitment for Guarantee from the present lender to a new eligible lender: Provided, That:

(1) The former lender states in writing why it does not wish to continue to be the lender for this project;

(2) No substantive changes in ownership or control of the borrower has occurred;

(3) No substantive changes in the borrower's written plan, scope of work, or changes in the purpose or intent of the project has occurred; and

(4) No substantive changes in the loan agreement or Conditional Commitment for Guarantee are required.

(b) The substitute lender must execute a new application for loan and guarantee (available in any Agency office).

(c) If approved, the Agency will issue a letter of amendment to the original Conditional Commitment for Guarantee reflecting the new lender who will acknowledge acceptance of the offer in writing.

(d) Once the Conditional Commitment for Guarantee is issued, the Agency will not approve any substitution of borrowers, including changes in the form of the legal entity, except a change in the legal entity may be requested when the original borrower is replaced with substantially the same individuals or officers with the same interest as originally approved.

§ 1779.29 Fees and charges by lender.

(a) *Routine charges and fees.* The lender may establish charges and fees for the loan if they do not exceed those charged other borrowers for similar types of transactions. "Similar types of transactions" mean those transactions involving the same type of loan for which a non-guaranteed loan borrower would be assessed charges and fees.

(b) *Late payment fees.* Late payment charges will not be covered by the Loan Note Guarantee. Such charges may not be added to the principal and interest due under any guaranteed note. Late payment charges may be made only if:

(1) They are routinely made by the lender in all types of loan transactions;

(2) Payment has not been received within the customary timeframe allowed by the lender; or

(3) The lender agrees with the borrower, in writing, that the rate or method of calculating the late payment charges will not be changed to increase charges while the Loan Note Guarantee is in effect.

(c) *Guarantee fees.* The guaranteed loan fee will be the applicable guarantee fee rate multiplied by the principal loan amount multiplied by the percent of guarantee. The one-time guarantee fee is paid when the Loan Note Guarantee is issued.

(1) The fee will be paid to the Agency by the lender and is nonreturnable. The lender may pass the fee to the borrower.

(2) The guarantee fee rates are available in any Agency office.

§ 1779.30 Loan guarantee limitations.

(a) The guarantee will be 90 percent of eligible loss.

(b) The lender will retain a minimum of 5 percent of the total loan amount. The retained amount must be from the unguaranteed portion of the loan and cannot be participated to another lender.

§§ 1779.31–1779.32 [Reserved]

§ 1779.33 Interest rates.

(a) *General.* Rates will be negotiated between the lender and the borrower. They may be either fixed or variable rates. Interest rates will be those rates customarily charged borrowers in similar circumstances in the ordinary course of business and are subject to Agency review and approval.

(b) *Variable rate publication.* A variable interest rate must be tied to a base rate published periodically in a recognized national or regional financial publication specifically agreed to by the lender and borrower. Such an agreement must be documented in the borrower or lender loan agreement.

(1) Interest rate caps and incremental adjustment limitations will also be negotiated between the lender and the borrower. Notice of any interest rate change proposed by the lender should allow a sufficient time period for the borrower to obtain any required State or other regulatory approval and to implement any user rate adjustments necessary as a result of the interest rate change. The intervals between interest rate adjustments will be specified in the loan agreement (but not more often than quarterly).

(2) The lender must incorporate within the variable rate note, the provision for adjustment of payments coincident with an interest rate adjustment. This will ensure the outstanding principal balance is properly amortized within the prescribed loan maturity and eliminate the possibility of a balloon payment at the end of the loan.

(c) *Changes.* Any change in the interest rate between the date of issuance of the Conditional Commitment for Guarantee and before the issuance of the Loan Note Guarantee must be approved by the Agency. Approval of such change will be shown as an amendment to the Conditional Commitment for Guarantee.

(d) *Different rates on guaranteed and unguaranteed portion of the loan.* It is permissible to have one interest rate on the guaranteed portion of the loan and another interest rate on the unguaranteed portion of the loan, provided the lender and borrower agree, and:

(1) The rate on the unguaranteed portion does not exceed that currently being charged on loans for similar purposes to borrowers under similar circumstances; and

(2) The rate on the guaranteed portion of the loan will not exceed the rate on the unguaranteed portion. This requirement does not apply when the unguaranteed rate is variable and the guaranteed portion is fixed.

(e) *Multi-rates.* When multi-rates are used, the lender will provide the Agency with the overall effective interest rate for the entire loan. Multi-rate loans may be either fixed, variable, or a combination of fixed and variable.

§ 1779.34 Terms of loan repayment.

(a) *General.* Principal and interest on the loan will be due and payable as provided in the note except, any interest accrued as the result of the borrower's default on the guaranteed loan over and above that which would have accrued at the note rate on the guaranteed loan will not be guaranteed by the Agency. The lender will structure repayments as established in the loan agreement between the lender and borrower. Ordinarily, such installments will be scheduled for payment as agreed upon by the lender and borrower on terms that reasonably ensure repayment of the loan. However, the first installment to include a repayment of principal may be scheduled for payment after the project is operable and has begun to generate income. Such installment must be due and payable within 3 years from the date of the note and at least annually thereafter. Interest will be due at least annually from the date of the note. Monthly payments will be required except for borrowers with income limited to less frequent intervals.

(b) *Term length.* The maximum time allowable for final maturity for a guaranteed WW loan will be limited to the useful life of the facility, not to exceed 40 years.

(c) *Balloon payments.* The principal balance should be properly amortized within the prescribed loan maturity. Balloon payments at the end of the loan are prohibited.

§§ 1779.35–1779.36 [Reserved]

§ 1779.37 Insurance and fidelity bonds.

The lender must provide evidence that the borrower has adequate insurance and fidelity bond coverage by loan closing or start of construction, whichever occurs first. Adequate coverage must be maintained for the life of the loan and is subject to Agency review and approval.

§§ 1779.38–1779.41 [Reserved]

§ 1779.42 Design and construction requirements.

The lender will provide the Agency with a written certification at the end of construction that all funds were utilized for authorized purposes. The borrower and the lender will authorize designs and plans based upon the preliminary architectural and engineering reports or plans approved by the lender and concurred in by the Agency. The borrower will take into consideration any lender or Agency comments when the facility is being designed.

(a) *Architectural and engineering practices.* All project facilities must be designed utilizing accepted architectural and engineering practices and must conform to applicable Federal, State, and local codes and requirements. The lender must ensure that the planned project will be completed within the available funds and, once completed, will be suitable for the borrower's needs.

(b) *Construction monitoring.* The lender will monitor the progress of construction and undertake the reviews and inspections necessary to ensure that construction proceeds in accordance with the approved plans, specifications, and contract documents and that funds are used for eligible project costs. The lender must expeditiously report any problems in project development to the Agency.

(c) *Equal employment opportunities.* For all construction contracts in excess of $10,000, the contractor must comply with Executive Order 11246 (30 FR 12319, 3 CFR, 1964–1965 Comp., p. 339) entitled "Equal Employment Opportunity" as amended and as supplemented by applicable Department of Labor regulations (41 CFR part 60–1). The borrower and lender are responsible for ensuring that the contractor complies with these requirements.

(d) *Americans with Disabilities Act.* WW loans which involve the construction of, or addition to, facilities that accommodate the public and commercial facilities as defined by the Americans with Disabilities Act (42 U.S.C. 12181—*et seq.*) must comply with that Act. The lender and borrower are responsible for compliance.

(e) *Administrative.* When the Agency reviews the preliminary architectural and engineering reports or plans, they must also consider all applicable Federal laws such as the seismic requirements of Executive Order 12699 (55 FR 835, 3 CFR, 1990 Comp., p. 269), the debarment requirements of 7 CFR part 3017, and the Copeland Anti-Kickback Act (18 U.S.C. 874).

§ 1779.43 Other Federal, State, and local requirements.

In addition to the specific requirements of this part and beginning on the date of issuance of the Loan Note Guarantee, proposals for facilities financed in whole or in part with a loan guaranteed by the Agency will be coordinated with all appropriate Federal, State, and local agencies. Borrowers and lenders will be required to comply with any Federal, State, or local laws or regulatory commission rules which are in existence and which affect the project including, but not limited to:

(a) Applicant's authority to design, construct, develop, operate, and maintain the proposed facilities;

(b) Borrowing money, giving security, and raising revenues for repayment;

(c) Land use zoning;

(d) Health, safety, and sanitation standards as well as design and installation standards; and

(e) Protection of the environment and consumer affairs.

§§ 1779.44–1779.46 [Reserved]

§ 1779.47 Economic feasibility requirements.

All projects financed under the provisions of this section must be based on taxes, assessments, revenues, fees, or other sources of revenues in an amount sufficient to provide for facility operation and maintenance, a reasonable reserve, and debt payment. The lender is responsible for determining the credit quality and economic feasibility of the proposed loan and must address all elements of the credit quality in a written financial feasibility analysis which includes adequacy of equity, cash flow, security, history, and management capabilities. Financial feasibility reports must take into consideration any interest rate adjustment which may be instituted under the terms of the note. The lender's financial credit analysis may also serve as the feasibility analysis when sufficient evidence is included to determine economic feasibility as well as financial viability. The borrower's consulting engineer may complete the financial feasibility analysis for WW systems. If the facility is used by businesses and the success or failure of the facility is dependent on individual businesses, then the economic viability of those businesses must be assessed.

(a) *Exceptions.* The Agency loan approval official may exempt the lender from the requirement for an independent financial feasibility report (when requested by the borrower and the lender) provided the approval official determines that the financial feasibility analysis prepared by the borrower fairly represents the financial feasibility of the facility and the financial feasibility analysis contains an accurate projection of the usage, revenues, and expenses of the facility.

(b) *Insufficient information.* When the lender or Agency has insufficient information to determine the borrower's repayment ability, an independent feasibility analysis is required.

§ 1779.48 Collateral.

(a) *Lender responsibility.* The lender is responsible for obtaining and maintaining proper and adequate collateral to protect the interest of the lender, the holder, and the Government.

(b) *Type of collateral.* Collateral must be of such a nature that repayment of the loan is reasonably ensured when considered with the integrity and ability of project management, soundness of the project, and the borrower's prospective earnings. The collateral may include, but is not limited to, the following: General obligation bonds, revenue bonds, pledge of taxes or assessments, assignment of facility revenue, land, easements, rights-of-way, water rights, buildings, machinery, equipment, accounts receivable, contracts, cash, or other accounts or assignments of leases or leasehold interest.

(c) *Separate collateral.* All collateral must secure the entire loan. The lender will not take separate security to secure only the unguaranteed portion of the loan. The lender will not require compensating balances or certificates of deposit as a means of eliminating the lender's exposure on the unguaranteed portion of the loan.

§§ 1779.49–1779.51 [Reserved]

§ 1779.52 Processing.

(a) *Preapplications.* (1) The preapplication package may be submitted either alone or the necessary

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information may be submitted simultaneously with the application. The preapplication package will contain:

(i) An Application for Federal Assistance on a form provided by the Agency (available in any Agency office);

(ii) State intergovernmental or other type review comments and recommendations for the borrower's project (clearinghouse comments, if applicable);

(iii) Supporting documentation necessary to make an eligibility determination such as financial statements, audits, copies of organizational documents, or existing debt instruments; and

(iv) Documentation of lender eligibility in accordance with § 1779.27.

(2) If the Agency determines that the project may meet requirements and is likely to be funded, the lender must submit a complete application if it has not previously submitted one.

(b) *Applications.* Contents of application package:

(1) Application for Loan and Guarantee on a form prescribed by the Agency (available in any Agency office);

(2) Proposed loan agreement;

(3) Environmental Report. (See RUS Bulletin 1794A–602; this document is available in any Agency State Office or online at http://www.usda.gov/rus/water/ees/index.htm);

(4) Preliminary architectural or engineering report (PER);

(5) Cost estimates;

(6) Appraisal reports (as appropriate);

(7) Credit reports (as appropriate);

(8) Financial feasibility analysis and report (as appropriate) if not included in PER; and

(9) Any additional information required.

§ 1779.53 Evaluation of application.

If the Agency determines that the borrower is eligible, the proposed loan is for an eligible purpose, there is reasonable assurance of repayment ability, sufficient collateral and equity exists, the proposed loan complies with all applicable statutes and regulations, the environmental impact analyses is complete, and adequate funds are available, the Agency will provide the lender and the borrower with the Conditional Commitment for Guarantee, listing all conditions for the guarantee. Applicable requirements will include the following:

(a) Approved use of guaranteed loan funds (source and use of funds);

(b) Rates and terms of the loan;

(c) Scheduling of payments;

(d) Number of customers;

(e) Security and lien priority;

(f) Appraisals;

(g) Insurance and bonding;

(h) Financial reporting;

(i) Equal opportunity and nondiscrimination;

(j) Mitigation measures for environmental issues (if necessary);

(k) Americans with Disabilities Act;

(l) By-laws and articles of incorporation changes; and

(m) Other requirements necessary to protect the Government.

§§ 1779.54–1779.58 [Reserved]

§ 1779.59 Review of requirements.

(a) *Lender and borrower.* The lender and borrower must complete and sign the Acceptance of Conditions and return a copy to the Agency as soon as possible. Notwithstanding the preceding sentence, if certain conditions cannot be met, the lender and borrower may propose alternate conditions for Agency consideration.

(b) *Cancellation.* If the lender decides at any time after receiving a Conditional Commitment for Guarantee that it no longer wants a guarantee, the lender must immediately advise the Agency of the cancellation.

(c) *Modifications.* The lender agrees that once the Conditional Commitment for Guarantee is issued and accepted by the lender and borrower, it will not be modified as to the scope of the project, overall facility concept, project purpose, use of proceeds, or other terms and conditions.

§§ 1779.60–1779.62 [Reserved]

§ 1779.63 Conditions precedent to issuance of the Loan Note Guarantee.

The Loan Note Guarantee will not be issued until:

(a) The lender certifies that:

(1) No changes have been made in the lender's loan conditions and requirements since the issuance of the Conditional Commitment for Guarantee except those approved in the interim by the Agency in writing.

(2) All planned property acquisition has been completed and all development has been substantially completed in accordance with plans, specifications, and applicable building codes. No costs have exceeded the amounts approved by the lender and the Agency.

(3) Required insurance is in effect.

(4) The loan has been properly closed and the required security instruments have been obtained on any after-acquired property that cannot be covered initially under State statutory provisions.

(5) The borrower has marketable title to the collateral then owned by the borrower, subject to the instrument securing the loan to be guaranteed and subject to any other exceptions approved, in writing, by the Agency.

(6) When required, the entire amount of the loan for working capital has been disbursed except in cases where the Agency has approved disbursement over an extended time.

(7) All other requirements of the Conditional Commitment for Guarantee have been met.

(8) Lien priorities are consistent with requirements of the Conditional Commitment for Guarantee.

(9) The loan proceeds have been disbursed for purposes and in amounts consistent with the Conditional Commitment for Guarantee and as specified on the application for the guaranteed loan. A copy of a detailed statement by the lender detailing the use of loan funds will be attached to support this certification.

(10) There has been no substantive adverse change in the borrower's financial condition nor any other adverse change in the borrower during the period of time from the Agency's issuance of the Conditional Commitment for Guarantee to issuance of the Loan Note Guarantee. The lender's certification must address all adverse changes of the borrower and the guarantors. For purposes of this paragraph (a)(10), the term borrower includes any parent, affiliate, or subsidiary of the borrower.

(11) All Federal, State, and local design and construction requirements have been met.

(12) The lender understands and will meet the requirements of the Debt Collection Act (31 U.S.C. Chapter 37).

(13) The lender would not make the loan without an Agency guarantee.

(b) The lender has executed and delivered the Lender's Agreement and closing report for the guaranteed loan along with the appropriate guarantee fee.

(c) The lender has advised the Agency of plans to sell or assign any part of the loan as provided in the Lender's Agreement.

(d) Where applicable, the lender must certify that the borrower has obtained:

(1) A legal opinion relative to the title to rights-of-way and easements. Lenders are responsible for ensuring that borrowers have obtained valid, continuous, and adequate rights-of-way and easements needed for the construction, operation, and maintenance of a facility.

(2) A title opinion or title insurance showing ownership of the land and all mortgages or other lien defects, restrictions, or encumbrances, if any. It is the responsibility of the lender to ensure that the borrower has obtained and recorded such releases, consents, or subordinations to such property rights from holders of outstanding liens or other instruments as may be necessary for the construction, operation, and maintenance of the facility and to provide the required security. For example, when a site is for major structures and the lender and borrower are able to obtain only a right-of-way or easement on such a site rather than a fee simple title, such a title opinion must be requested.

(e) If the Loan Note Guarantee cannot be issued before the Conditional Commitment expires, the lender must submit a written request for an extension of the expiration date. The lender must document and certify to paragraph (a)(1) and (a)(11) of this section specifically identifying any modifications.

(f) Coincident with, or immediately after, loan closing, the lender will contact the Agency and provide those documents and certifications required in this section. For loans to public bodies, lenders may require an opinion from recognized bond counsel regarding the adequacy of the preparation and issuance of the debt instruments. Only when the Agency is satisfied that all conditions for the guarantee have been met will the Loan Note Guarantee be executed.

§ 1779.64 Issuance of Lender's Agreement, Loan Note Guarantee, and Assignment Guarantee Agreement.

(a) *Lender's Agreement.* If the Agency finds that all requirements have been met, the lender and the Agency will execute the Lender's Agreement. The original will be retained by the Agency and a signed duplicate original will be retained by the lender. A separate Lender's Agreement must be executed for each loan to be guaranteed by the Agency.

(b) *Loan Note Guarantee.* (1) Upon receipt of the executed Lender's Agreement and after all requirements have been met, the Agency will execute the Loan Note Guarantee. All originals of the Loan Note Guarantee will be provided to the lender and attached to the note.

(2) If the lender has selected the multi-note system, a Loan Note Guarantee will be prepared and attached to each note the borrower issues. All the notes will be listed on the Loan Note Guarantee. Not more than ten notes will be issued for the guaranteed portion (unless the Agency and borrower agree otherwise) and one note issued for the unguaranteed portion.

(c) *Assignment of Guarantee.* In the event the lender assigns the guaranteed portion of the loan to a holder, the lender, holder, and Agency will execute an Agency prescribed Assignment Guarantee Agreement.

(d) *Failure to meet conditions.* If the Agency determines that it cannot execute the Loan Note Guarantee because all requirements have not been met, the lender will have a reasonable period within which to satisfy the objections. If the lender satisfies the objections within the time allowed, the guarantee will be issued.

(e) *Loan closing report.* The lender will prepare and deliver a guaranteed loan closing report for each loan to be guaranteed and a guarantee fee to the Agency in return for the Loan Note Guarantee.

§ 1779.65 Lender's sale or assignment of the guaranteed portion of loan.

The lender may retain all of the guaranteed loan. The lender must not sell or participate any amount of the guaranteed or non-guaranteed portion of the loan to the borrower or to members of the borrower's immediate families, the borrower's officers, directors, stockholders, other owners, or a subsidiary or affiliate. Disposition of the guaranteed portion of a loan may not be made prior to full disbursement, completion of construction, and acquisition of real estate and equipment without the prior written approval of the Agency. If the lender desires to market all or part of the guaranteed portion of the loan at, or subsequent to, loan closing, the loan must not be in default.

(a) *Assignment.* Any sale or assignment by the lender of the guaranteed portion of the loan must be accomplished in accordance with the conditions in the Lender's Agreement.

(b) *Participation.* The lender may obtain participation in the loan under its normal operating procedures.

(c) *Minimum retention.* The lender is required to hold in its own portfolio or retain a minimum of 5 percent of the total loan amount. This amount must be of the non-guaranteed portion of the loan and cannot be participated to another. The lender may sell the remaining amount of the non-guaranteed portion of the loan only through participation.

§§ 1779.66–1779.68 [Reserved]

§ 1779.69 Loan servicing.

(a) *Lender responsibilities.* The lender is responsible for servicing the entire loan in accordance with the lender's loan agreement. The unguaranteed portion of the loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan. The lender is responsible for taking all servicing actions that a prudent lender would perform in servicing a portfolio of loans that are not guaranteed. This responsibility includes, but is not limited to, the collection of payments; obtaining compliance with the covenants and provisions in the note, loan agreement, security instrument, or any supplemental agreements; obtaining and analyzing financial statements; verifying the payment of taxes and insurance premiums; and maintaining liens on collateral. The lender must notify the Agency of any violation of the loan agreement with the borrower within 30 days of such violation.

(b) *Financial reports.* The lender must obtain the financial statements required by the Loan Agreement. The lender must submit the borrower's annual financial statements to the Agency within 120 days of the end of the borrower's fiscal year. The lender must analyze the financial statements and provide the Agency with a written summary of the lender's analysis and conclusions, including trends, strengths, weaknesses, extraordinary transactions, and other indications of the financial condition of the borrower. Additionally, when applicable, the lender will require an audit in accordance with Office of Management and Budget (OMB) circulars (available in any Agency office).

(c) *Delinquent loans.* The lender will service delinquent loans in accordance with the Lender's Agreement and reasonable and prudent lending standards.

(d) *Loan balances.* The lender must report to the Agency the outstanding principal and interest balance on each guaranteed loan semiannually.

(e) *Collateral inspections.* The lender will inspect the collateral as often as necessary to properly service the loan.

§§ 1779.70–1779.72 [Reserved]

§ 1779.73 Replacement of loss, theft, destruction, mutilation, or defacement of Loan Note Guarantee or Assignment Guarantee Agreement.

(a) *Replacement.* The Agency may issue a replacement Loan Note Guarantee or Assignment Guarantee Agreement which may have been lost, stolen, destroyed, mutilated, or defaced to the lender or holder upon receipt of a certificate of loss and an indemnity bond in accordance with this section.

(b) *Lender responsibilities.* When a Loan Note Guarantee or Assignment Guarantee Agreement is lost, stolen, destroyed, mutilated, or defaced while in the custody of the lender or holder,

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the lender will coordinate the activities of the party who seeks the replacement documents and will submit the required documents to the Agency for processing. The requirements for replacement are as follows:

(1) A certificate of loss properly notarized which includes:

(i) Legal name and present address of either the lender or the holder who is requesting the replacement forms;

(ii) Legal name and address of the lender of record;

(iii) Capacity of person certifying;

(iv) Full identification of the Loan Note Guarantee or Assignment Guarantee Agreement, including the name of the borrower, Agency case number, date of the Loan Note Guarantee, Assignment Guarantee Agreement, face amount of the evidence of debt purchased, date of evidence of debt, present balance of the loan, percentages of guarantee and, if Assignment Guarantee Agreement, the original named holder and the percentage of the guaranteed portion of the loan assigned to that holder. Any existing parts of the document to be replaced must be attached to the certificate;

(v) A full statement of circumstances of the loss, theft, or destruction of the Loan Note Guarantee or Assignment Guarantee Agreement; and

(vi) The holder shall present evidence demonstrating current ownership of the Loan Note Guarantee and Note or Assignment Guarantee Agreement. If the present holder is not the same as the original holder, a copy of the endorsement of each successive holder in the chain of transfer from the initial holder to present holder must be included. If copies of the endorsement cannot be obtained, best available records of transfer must be presented to the Agency (e.g., order confirmation, canceled checks).

(2) An indemnity bond acceptable to the Agency shall accompany the request for replacement except when the holder is the United States, a Federal Reserve Bank, a Federal Government corporation, a State or Territory, or the District of Columbia.

(3) All indemnity bonds must be issued and payable to the United States of America. The bond shall be in an amount not less than the unpaid principal and interest. The bond shall hold the Government harmless against any claim or demand which might arise or against any damage, loss, costs, or expenses which might be sustained or incurred by reasons of the loss or replacement of the instruments.

§ 1779.74 [Reserved]

§ 1779.75 Defaults by borrower.

(a) *Lender notification to Agency.* The lender must notify the Agency when a borrower is 30 days past due on a payment, has not met its responsibilities of providing the required financial statements, or is otherwise in default. The lender will continue to keep the Agency informed on a bimonthly basis until such time as the loan is no longer in default. If a monetary default exceeds 60 days, the lender will arrange a meeting with the borrower to resolve the default. The lender will provide a summary of the meeting and any decisions or actions agreed upon.

(b) *Servicing options.* In considering servicing options, the prospects for providing a permanent cure without adversely affecting the risks to the Agency and the lender must be the paramount objective. Temporary curative actions (such as payment deferments or collateral subordination) must strengthen the loan and be in the best financial interest of the lender and the Agency. Some of these actions may require concurrence of the holder.

(c) *Multi-note.* If the loan was closed with the multi-note option, the lender may need to possess all notes to take some servicing actions. In those situations when the Agency is holder of some of the notes, the Agency may endorse the notes back to the lender, provided a proper receipt is received from the lender which defines the reason for the transfer. Under no circumstances will the Agency endorse the original Loan Note Guarantee to the lender.

§§ 1779.76–1779.77 [Reserved]

§ 1779.78 Repurchase of loan.

(a) *Repurchase by lender.* The lender has the option to repurchase the loan from a holder within 30 days of written demand from the holder when the borrower is in default not less than 60 days on payment. The repurchase will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest less the lender's servicing fee. The guarantee does not cover the note interest to the holder on the guaranteed loan accruing after 90 days from the date of the demand letter to the lender. The holder will concurrently send a copy of the demand to the Agency. The lender will accept an assignment without recourse from the holder upon repurchase. The lender is encouraged to repurchase the loan to facilitate the accounting of funds, resolve the problem, and permit the borrower to cure the default, where reasonable. The lender will notify the holder and the Agency of its decision within 30 days of receipt of demand from the holder.

(b) *Agency repurchase.* (1) If the lender does not repurchase as provided in paragraph (a) of this section, the Agency will purchase from the holder the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase (less the lender's servicing fee) within 30 days after a specific written demand directed to the Agency. The copy of the demand on the lender is not sufficient. The guarantee will not cover the note interest to the holder on the guaranteed loan accruing after 90 days from the date of the original demand letter. The lender shall not charge the Agency any servicing fees nor are any such fees collectible from the Agency.

(2) The holder's demand to the Agency must include a copy of the written demand made upon the lender. The holder or duly authorized agent must also include evidence of the right to require payment from the Agency. Such evidence will consist of either the original of the Loan Note Guarantee properly endorsed to the Agency or the original of the Assignment Guarantee Agreement properly assigned to the Agency without recourse including all rights, title, and interest in the loan. The Agency will be subrogated to all rights of the holder. The holder must include in the demand the amount due including unpaid principal, unpaid interest to date of demand, and interest subsequently accruing from the date of demand to the proposed payment date. Unless otherwise agreed to by the Agency, such proposed payment will not be later than 30 days from the date of demand.

(3) The lender must promptly provide the Agency with the information necessary for the Agency's determination of the appropriate amount due the holder upon the Agency's notification to the lender of the holder's demand for payment. This information must be certified by an authorized officer of the lender. Any discrepancy between the amount claimed by the holder and the information submitted by the lender must be resolved before payment will be approved. The Agency will notify both parties and such conflict will suspend the running of the 30-day payment requirement.

(4) Any purchase by the Agency does not change, alter, or modify any of the lender's obligations to the Agency arising from the loan or guarantee nor does it waive any of the Agency's rights against the lender. The Agency may set off against the lender all rights inuring to the Agency as the holder of the instrument against the Agency's obligation to the lender under the Loan Note Guarantee.

(c) *Repurchase for servicing.* When the lender determines that repurchase of the guaranteed portion of the loan is necessary to service the loan, the holder must sell the guaranteed portion to the lender for the unpaid principal and interest balance (less the lender's servicing fee). The guarantee does not cover interest accruing after 90 days from the date the lender's or Agency's letter requesting the holder to tender its guaranteed portion. The lender must not repurchase from the holder for arbitrage purposes to further its own financial gain. Any repurchase must be made only after the lender obtains the Agency written approval. If the lender does not repurchase the portion from the holder, the Agency may, at its option, purchase such guaranteed portion for servicing purposes.

§ 1779.79 [Reserved]

§ 1779.80 Interest rate changes after loan closing.

(a) *General.* Subject to the restrictions below, the borrower, lender, and holder (if any) may collectively effect a permanent reduction in the interest rate on the guaranteed loan at any time during the life of the loan on written agreement by all of the applicable parties. After such a permanent reduction, the Loan Note Guarantee will only cover losses of interest at the reduced interest rate. The Agency must be notified by the lender, in writing, within 10 calendar days of the change. When the Agency is a holder, it will concur only when it is demonstrated that the change is more viable than liquidation and that the Government's financial interests are not adversely affected. Factors which will be considered in making such determination are the Government's cost of borrowing money and the project's enhancement of rural development. The monetary recovery must be greater than the liquidation recovery, and a financial feasibility analysis must show the project's continued viability.

(1) Fixed rates cannot be changed to variable rates to reduce the interest rate to the borrower unless the variable rate has a ceiling which is less than the original fixed rate.

(2) Variable rates can be changed to a lower fixed rate. In a final loss settlement when qualifying rate changes are made with the required written agreements and notification, the interest will be calculated for the periods the given rates were in effect. The lender must maintain records which adequately document the accrued interest claimed.

(3) The lender is responsible for the legal documentation of interest rate changes. However, the lender may not issue a new note.

(b) *Increases.* No increases in interest rates will be permitted under the loan guarantee except the normal fluctuations in approved variable interest rate loans.

§ 1779.81 Liquidation.

Liquidation will occur when the lender concludes that liquidation of the guaranteed loan is necessary because of default or third party actions that the borrower cannot, or will not, cure or eliminate within a reasonable period of time and the Agency concurs with the lender; or the Agency, at any time, independently concludes that liquidation is necessary. The lender will proceed as expeditiously as possible, including giving any notices or taking any legal actions required by the security instruments.

(a) *General.* If a lender has made a loan guaranteed by the Agency under previous regulations, the lender has the option to liquidate the loan under the provisions of this part or under the provisions of previous regulations. The lender will notify the Agency in writing within 10 days after its decision to liquidate, which regulatory provisions it chooses to use. The lender may not choose some provisions of one regulation and other provisions of the other regulation.

(b) *Acquiring property titles.* If a lender acquires title to property, the Agency may elect to permit the lender the option of calculating the final loss settlement using the net proceeds received at the time of the ultimate disposition of the property. The lender must submit to the Agency a written request to use this option within 15 days of acquiring title and the Agency must agree, in writing, prior to the lender submitting any request for estimated loss payment.

(c) *Liquidation plan.* The lender will (within 30 days after a decision to liquidate) submit to the Agency, in writing, a proposed, detailed liquidation plan. Upon approval by the Agency of the liquidation plan, the lender will commence liquidation. The lender's liquidation plan must include, but is not limited to, the following:

(1) Such proof as the Agency requires to establish the lender's ownership of the guaranteed loan notes and related security instruments, a copy of the payment ledger or other documentation which reflects the outstanding loan balance and accrued interest to date, and the method of computing the interest;

(2) A complete list of collateral;

(3) The recommended liquidation methods for making the maximum collection possible on the indebtedness and the justification for such methods, including the recommended action for acquiring and disposing of all collateral;

(4) Necessary steps for preservation of the collateral;

(5) Copies of the borrower's latest available financial statements;

(6) An itemized list of estimated liquidation expenses expected to be incurred and justification for each expense;

(7) A schedule to periodically report to the Agency on the progress of the liquidation;

(8) Estimated protective advance amounts with justification;

(9) Proposed protective bid amounts on collateral to be sold at auction and a discussion of how the amounts were determined;

(10) If a voluntary conveyance is considered, the proposed amount to be credited to the guaranteed debt;

(11) Legal opinions, as needed; and

(12) If the outstanding balance of principal and interest is less than $250,000, the lender will obtain an estimate of fair market and potential liquidation value of the collateral. If the outstanding balance of principal and interest is $250,000 or more, the lender will obtain an independent appraisal report on all collateral securing the loan which will reflect the fair market value and potential liquidation value. The independent appraiser's fee will be shared equally by the Agency and the lender.

(d) *Partial liquidation plan.* If actions are necessary to immediately preserve and protect the collateral, a partial liquidation plan may be submitted and, when approved, must be followed by a complete liquidation plan prepared by the lender.

(e) *Disposition of collateral.* Disposition of collateral acquired by the lender must be approved, in writing, by the Agency when:

(1) The lender's cost to acquire the collateral of a borrower exceeds the potential recovery value of the security and the lender proposes abandoning the collateral in lieu of liquidation; or

(2) The acquired collateral is to be sold to the borrower, borrower's stockholders or officers, or the lender or lender's stockholders or officers.

(f) *Agency liquidation.* The Agency will liquidate at its option only when it is a holder and there is reason to believe the lender is not likely to initiate

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liquidation efforts that will result in maximum recovery. When the Agency liquidates, proceeds derived from the sale of the collateral will be applied first to reasonable liquidation expenses and second to the guaranteed portion of the loan.

(g) *Final loss payment.* Final loss payments will be made only after all collateral has been properly accounted for and liquidation expenses are determined to be reasonable and within approved limits. Any estimated loss payments made to the lender will be credited against the final loss on the guaranteed loan. The amount of an estimated loss payment must be credited as a deduction from the principal balance of the loan.

§ 1779.82 [Reserved]

§ 1779.83 Protective advances.

Protective advances can only be added to the loan account for purposes of requirements to preserve the value of the security. Protective advances constitute an indebtedness of the borrower to the lender and must be secured by collateral to the same extent as principal and interest. Protective advances include, but are not limited to, advances made for taxes, annual assessments, ground rent, hazard and flood insurance premiums affecting the collateral (including any other expenses necessary to protect the collateral). Attorney fees are not a protective advance.

(a) *Agency approval.* The Agency must approve, in writing, all protective advances on loans within its loan approval authority which exceed a total cumulative advance amount of $5,000 to the same borrower. Protective advances must be reasonable when associated with the value of the collateral being preserved.

(b) *Preserving collateral.* When considering protective advances, sound judgment must be exercised in determining that the additional funds advanced will actually preserve collateral and recovery is actually enhanced by making the advance.

§ 1779.84 Additional loans or advances.

The lender will not make additional expenditures or new loans to the borrower without first obtaining the written approval of the Agency even though such expenditures or loans will not be guaranteed.

§ 1779.85 Bankruptcy.

(a) *Calculating losses.* Report of Loss form (available in any Agency office) will be used for calculating estimated and final loss determinations.

(b) *Lender responsibility.* The lender is responsible for protecting the guaranteed loan debt and all the collateral securing it in bankruptcy proceedings. These responsibilities include, but are not limited to, the following:

(1) Filing a proof of claim, where necessary, and all necessary papers and pleadings;

(2) Attending and, where necessary, participating in meetings of the creditors and all court proceedings;

(3) Immediately seeking adequate protection of the collateral if it is subject to being used by the trustee in bankruptcy or the debtor in possession;

(4) Where appropriate, seeking involuntary conversion of a pending chapter 11 case to a liquidation proceeding or seeking dismissal of the proceedings; and

(5) Keeping the Agency adequately and regularly informed, in writing, of all aspects of the proceedings.

(c) *Appraisals.* In a chapter 9 or chapter 11 reorganization, the lender must obtain an independent appraisal of the collateral if the Agency believes an independent appraisal is necessary. The Agency and the lender will share the appraisal fee equally.

(d) *Liquidation expenses.* Only expenses authorized by the court of chapter 9 plans or chapter 11 reorganizations, or chapters 11 or 7 liquidation (unless the liquidation is by the lender), may be deducted from the collateral proceeds.

(e) *Repurchase from the holder.* The Agency or the lender, with the approval of the Agency, may initiate the repurchase of the unpaid guaranteed portion of the loan from the holder. If the lender is the holder, an estimated loss payment may be filed at the initiation of a chapter 7 proceeding or after a chapter 9 or chapter 11 proceeding becomes a liquidation proceeding. Any loss payment on loans in bankruptcy must be approved by the Agency.

(f) *Chapter 11 bankruptcy.* If a borrower has filed for protection under chapters 9 or 11 of the United States Code for a reorganization (but not chapter 13) and all or a portion of the debt has been discharged, the lender may request an estimated loss payment of the guaranteed portion of the accrued interest and principal discharged by the court. If the court approves revisions to the chapter 9 plan or chapter 11 reorganization plan, subsequent estimated loss payments may be requested in accordance with the court approved changes. Once the reorganization plan has been satisfactorily completed, the lender is responsible for submitting the documentation necessary for the Agency to review and adjust the estimated loss claim to reflect any actual discharge of principal and interest and to reimburse the lender for any court ordered interest-rate reduction under the terms of the reorganization plan.

(g) *Agency approval of estimated liquidation expenses.* The Agency must approve, in advance and in writing, the lender's estimated liquidation expenses of collateral in a liquidation if the liquidation is performed by the lender. These expenses must be reasonable and customary and not include in-house expenses of the lender.

(h) *Reconciliation.* In the event that the estimated loss payment exceeds the actual loss, the lender will reimburse the Agency the amount in excess of the actual loss plus interest at the note rate from the date of the estimated loss payment.

§§ 1779.86–1779.87 [Reserved]

§ 1779.88 Transfers and assumptions.

(a) *General.* For all transfers and assumptions, the lender must concur in the plans for disposition of funds in the transferor's debt service, reserve, and operation and maintenance account. The Agency will approve, in writing, transfers and assumptions of loans to transferees who will continue the original purpose of the guaranteed loan subject to the following applicable provisions:

(1) When the transaction is to a member of the borrower's organization, it will be at an amount which will not result in a loss to the lender.

(2) Transfers to eligible borrowers will receive preference if recovery to the lender from the sale price is not less than it would be if the transfer was to an ineligible borrower.

(3) The present borrower is unable or unwilling to accomplish the objectives of the guaranteed loan, and the transfer will be to the lender's and Agency's advantage.

(4) The transferee will assume an amount at least equal to either the present market value or the debt, whichever is less.

(b) *Transfers to an eligible borrower.* (1) The total indebtedness may be transferred to an eligible borrower on the same terms.

(2) The total indebtedness may be transferred to another eligible borrower on different terms not to exceed those terms for which an initial guaranteed loan can be made.

(3) Less than the total indebtedness may be transferred to another eligible borrower on the same or different terms and the pro rata share of any eligible loss paid to the lender.

(4) A guaranteed loan for which the transferee is eligible may be made in connection with a transfer subject to the policies and procedures governing the type of loan being made.

(5) If the transferor is to receive a payment for the equity, the total debt must be assumed.

(c) *Ineligible borrower.* Transfers to ineligible borrowers are considered only when needed as a method for servicing problem cases when an eligible transferee is not available. Transfers should not be considered as a means by which members can obtain equity or as a method of providing a source of easy credit for purchasers. Transfers must meet the following requirements:

(1) All transfers to ineligible borrowers will include a one-time nonrefundable transfer fee to the Agency of no more than 1 percent. Transfer fees will be collected, and payments applied, in accordance with paragraph (d) of this section.

(2) For all loans covered by this part, the Agency may approve a transfer of indebtedness to, and assumption of, a loan by a transferee who does not meet the eligibility requirements for the kind of loan being assumed when the ineligible borrower will:

(i) Make a significant down payment, and

(ii) Agree to pay the remaining balance within not more than 15 years. Installments will be at least equal to the amount amortized over a period not greater than the remaining life of the debt being transferred, and the balance will be due the fifteenth year.

(3) Interest rates to ineligible transferees will be the rate specified in the note of the transferor or the rates customarily charged borrowers in similar circumstances in the ordinary course of business and are subject to Agency review and approval. The rates may be either fixed or variable.

(i) Transferees must have the ability to repay as determined by the lender the debt according to the Assumption Agreement and must have the legal authority to enter into the contract. The transferee will submit a current balance sheet to the lender. The lender will obtain and analyze the credit history of the transferee.

(ii) The transferor may receive equity payments only when the full amount of the debt is assumed. However, equity payments will not be made on more favorable terms than those on which the balance of the debt will be paid.

(d) *Transfer fees.* Transfer fees are a one-time nonrefundable cost to be collected by the lender at the time of application or proposal.

(1) The transfer fees will be a standard fee plus the cost of the appraisal.

(2) The lender will collect and submit the fee to the Agency.

(3) The Agency may waive the transfer fee if it determines that such waiver is in the best interest of the Agency.

(e) *Processing transfers and assumptions.* (1) In any transfer and assumption case, the transferor (including any guarantor) may be released from liability by the lender only with prior Agency written concurrence and only when the value of the collateral being transferred is at least equal to the amount of the loan, or part of the loan, being assumed. If the transfer is for less than the entire debt:

(i) The Agency must determine that the transferor and any guarantor have no reasonable debt-paying ability considering their assets and income at the time of transfer, and

(ii) The lender must certify that the transferor has cooperated in good faith, used due diligence to maintain the collateral against loss, and has otherwise fulfilled all of the regulations of this part to the best of the borrower's ability.

(2) The lender will make, in all cases, a complete credit analysis to determine viability of the project (subject to the Agency review and approval) including any requirement for deposit in an escrow account as security to meet the determined equity requirements for the project.

(3) The lender will confirm that the transaction can be properly transferred and the conveyance instruments will be filed, registered, or recorded as appropriate and legally permissible.

(4) The assumption will be made on the lender's form of Assumption Agreement and will contain the Agency case number of the transferor and transferee.

(5) Loan terms cannot be changed by the Assumption Agreement unless previously approved in writing by the Agency with the concurrence of holder and the transferor (including guarantor if it has not been released from personal liability). Any new loan terms cannot exceed those authorized in this part. The lender's request will be supported by:

(i) An explanation of the reasons for the proposed change in the loan terms, and

(ii) Certification that the lien position securing the guaranteed loan will be maintained or improved, and proper hazard insurance will be continued in effect.

(6) In the case of a transfer and assumption, it is the lender's responsibility to see that all such transfers and assumptions will be noted on all originals of the Loan Note Guarantee. The lender will provide the Agency a copy of the Transfer and Assumption Agreement.

(7) If a loss should occur upon a complete transfer of assets and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantor) is released from personal liability (as provided in paragraph (e)(1)(i) of this section), the lender (if holding the guaranteed portion) may file an estimated Report of Loss to recover their pro rata share of the actual loss at that time. Approved protective advances and accrued interest made during the arrangement of a transfer and assumption, if not assumed by the transferee, will be entered on the estimated Report of Loss.

§ 1779.89 Mergers.

(a) *General.* The Agency may approve mergers or consolidations (herein referred to as "mergers") when the resulting organization will be eligible for an Agency guaranteed loan and assumes all the liabilities and acquires all the assets of the merged borrower. Mergers may be approved when:

(1) The merger is in the best interest of the Government and the merging borrower;

(2) The resulting borrower can meet all required conditions as contained in specific loan note agreements; and

(3) All property can be legally transferred to the resulting borrower.

(b) *Distinguishing mergers from transfers and assumptions.* Mergers occur when one entity combines with another entity in such a way that the first entity ceases to exist as a separate entity while the other continues. In a consolidation, two or more entities combine to form a new, consolidated entity with the original entity ceasing to exist. Such transactions must be distinguished from transfers and assumptions in which a transferor will not necessarily go out of existence, and the transferee will not always take all the transferor's assets nor assume all the transferor's liabilities.

§ 1779.90 Disposition of acquired property.

(a) *General.* When the lender acquires title to the collateral and the final loss claim is not paid until final disposition, the lender must proceed as quickly as possible to develop a plan to fully protect the collateral, and the lender

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must dispose of the collateral without delay.

(b) *Re-title collateral.* Any collateral accepted by the lender must not be titled in the Agency's name in whole or in part. The Agency's position is that of a guarantor relating to losses, not a lender.

(c) *Collateral preservation.* After acquiring the collateral, the lender must protect the collateral from deterioration (weather, vandalism, etc.). Hazard insurance in an amount necessary to cover the fair market value of the collateral must be maintained.

(d) *Collateral sale.* (1) The lender will prepare and submit to the Agency a plan on the best method of sale, keeping in mind any prospective purchasers. The Agency must approve the plan in writing. If an existing approved liquidation plan addresses the disposition of acquired property, no further review is required unless modification of the plan is needed.

(2) Anytime there is a case when the conversion of collateral to cash can reasonably be expected to result in a negative net recovery amount, abandonment of the collateral should be considered. The Agency must approve abandonment in writing.

§§ 1779.91–1779.93 [Reserved]

§ 1779.94 Determination and payment of loss.

In all liquidation cases, final settlement will be made with the lender after the collateral is liquidated. The Agency will have the right to recover losses paid under the guarantee from any liable party.

(a) *General.* If the lender takes title to collateral, any loss will be based on the collateral value at the time the lender obtains title.

(b) *Loss calculations.* The Report of Loss form (available in any Agency office) will be used for calculations of all estimated and final loss determinations. Estimated loss payments may only be approved after the lender has submitted a liquidation plan approved by the Agency.

(c) *Estimated loss payments.* When the lender is conducting the liquidation and owns any of the guaranteed portion of the loan, it may request an estimated loss payment by submitting an estimate of loss that will occur in connection with liquidation of the loan. An estimated loss payment may be approved after the Agency has approved the liquidation plan.

(1) The lender will prepare and submit a Report of Loss using the appraised value in lieu of amount received from sale of collateral.

(2) The estimated loss payment shall be calculated as of the date of such payment. The total amount of the loss payment remitted by the Agency will be applied by the lender on the guaranteed portion of the loan debt. Such application does not release the borrower from liability. At the time of final loss settlement, the lender may notify the borrower that the loss payment has been so applied.

(3) After liquidation has been completed, a final Report of Loss will be submitted by the lender to the Agency.

(d) *Final report of loss.* In all cases, a final Report of Loss must be submitted to the Agency. Before Agency approval of any final loss report, the lender must account for all funds obtained, disposition of the collateral, all costs incurred, and any other information necessary for the successful completion of liquidation. Upon receipt of the final accounting and Report of Loss, the Agency may conduct an audit and will determine the final loss. The lender will make its records available to, and otherwise assist, the Agency in making any audit it requires of the Report of Loss. The documentation accompanying the Report of Loss must support the loss claimed.

(1) The lender must document and show that all of the collateral has been accounted for and properly liquidated and that liquidation proceeds have been properly accounted for and applied correctly on the loan. The Agency must be satisfied that the lender has accomplished this in the manner contained herein and that the lender has maximized the collections in conducting the liquidation.

(2) The lender must show a breakdown on any protective advance amount as to the payee, purpose of the expenditure, date paid, evidence that the amount expended was proper, and that the amount was actually paid.

(3) The lender must show a breakdown of liquidation expenses as to the payee, purpose of the expenditure, date paid, evidence that the amount expended was proper, and that the amount was actually paid.

(4) Accrued interest should be supported by attachments showing how the amount was accrued by the lender. A copy of the promissory note and ledger will be attached. If the interest rate was a variable rate, the lender must include documentation of changes in the selected base rate and when the changes in the loan rate became effective.

(e) *Liquidation income.* Any net rental or other income that has been received by the lender from the collateral will be applied on the guaranteed loan debt.

(f) *Liquidation costs.* Certain reasonable liquidation costs will be allowed during the liquidation process. The liquidation costs must be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds received from the disposition of collateral unless the costs have been previously determined by the lender (with Agency concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the lender will obtain the Agency's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the lender will be allowed.

(g) *Protective advance losses.* In those instances where the lender made authorized protective advances, the lender may claim recovery for the guaranteed portion of any loss of monies advanced as well as interest resulting from such protective advances. These claims shall be included in the final Report of Loss.

(h) *Final loss approval.* After the final Report of Loss has been tentatively approved:

(1) If the actual loss is greater than any estimated loss payment, such loss will be paid by the Agency;

(2) If the actual loss is less than any estimated loss payment, the lender will reimburse the Agency;

(3) If the Agency conducted the liquidation, it will provide an accounting to the lender and will pay the lender in accordance with the Loan Note Guarantee.

(i) *Loss limits.* The amount payable by the Agency to the lender cannot exceed the limits contained in the Loan Note Guarantee. If the Agency conducts the liquidation, loss occasioned by accruing interest will be covered by the guarantee only to the date the Agency accepts this responsibility. When the liquidation is conducted by the lender, loss occasioned by accruing interest will be covered to the extent of the guarantee to the date of final settlement provided the lender proceeds expeditiously with the liquidation plan approved by the Agency.

§ 1779.95 Future recovery.

After a loan has been liquidated and a final loss has been paid by the Agency, any future funds which may be recovered by the lender will be pro-rated between the Agency and the lender in accordance with the guaranteed percentage even if the Loan Note Guarantee has been terminated.

§ 1779.96 Termination of Loan Note Guarantee.

The Loan Note Guarantee under this part will terminate automatically:

(a) Upon full payment of the guaranteed loan; or

(b) Upon full payment of any loss obligation or negotiated loss settlement except for future recovery provisions; or

(c) Upon written request from the lender to the Agency, provided that the lender holds all of the guaranteed portion and the original Loan Note Guarantee is returned to the Agency.

§§ 1779.97–1779.99 [Reserved]

§ 1779.100 OMB control number.

The reporting and recordkeeping requirements contained in this part have been approved by the Office of Management and Budget and have been assigned OMB control number 0572–0122.

PART 1780—WATER AND WASTE LOANS AND GRANTS

2. The authority citation for part 1780 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

Subpart A—General Policies and Requirements

3. Amend § 1780.10(b)(4) by removing the reference "subpart I of part 1980 of this title" and adding in its place "7 CFR part 1779."

Chapter XVIII—Rural Housing Service, Rural Business—Cooperative Services, Rural Utilities Service, and Farm Service Agency, Department of Agriculture

PART 1980—GENERAL

4. The authority citation for part 1980 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—[Removed and Reserved]

5. Remove and reserve subpart A, consisting of §§ 1980.1 through 1980.100 and Appendices A through C.

Subpart I—[Removed and Reserved]

6. Remove and reserve Subpart I, consisting of §§ 1980.801 through 1980.900.

Dated: April 23, 2001.

Dawn Riley,

Acting Deputy Under Secretary, Food, Nutrition and Consumer Services.

[FR Doc. 01–11366 Filed 5–7–01; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 8

[Docket No. 01–08]

RIN 1557–AB90

Assessment of Fees

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its assessment regulation to clarify that the OCC has authority to charge a national bank when the OCC conducts a special examination of a third party that provides services to the bank. The rule applies in the same way to Federal branches and agencies and District of Columbia banks.

EFFECTIVE DATE: June 7, 2001.

FOR FURTHER INFORMATION CONTACT: Mitchell E. Plave, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874–5090.

SUPPLEMENTARY INFORMATION:

Background

The OCC charters, regulates, and supervises more than 2,200 national banks, accounting for nearly 60 percent of the nation's banking assets, as well as 58 Federal branches and agencies of foreign banks in the United States. Its mission is to ensure a safe, sound, and competitive national banking system that supports the citizens, communities, and economy of the United States.

The OCC funds the activities it undertakes to carry out this mission through assessments and fees charged to the banks it supervises. The National Bank Act authorizes the OCC to collect "assessments, fees, or other charges as necessary or appropriate to carry out the responsibilities of the office of the Comptroller." 12 U.S.C. 482 (Supp. 1999). The statute requires that our charges "be set to meet the Comptroller's expenses in carrying out authorized activities." *Id.* Under part 8 of our regulations, the OCC currently assesses national banks and Federal branches and agencies according to a formula based on factors that include a bank's asset size, its condition, and whether it is the "lead" bank or "non-lead" bank [1] among national banks in a holding company.[2] The OCC also has the authority to assess a fee for special examinations and investigations of these banks. 12 CFR 8.6(a).

In its current form, section 8.6(a) refers only to fees for a special examination of a national bank or its affiliate.[3] It does not reflect the OCC's authority to assess a national bank in connection with special examinations of any of the bank's service providers. The Bank Service Company Act provides that performance of services for national banks (or for other entities supervised by the OCC, including subsidiaries subject to examination by the OCC) "shall be subject to regulation and examination by [the OCC] to the same extent as if such services were being performed by the bank itself on its own premises."[4]

Banks historically have used third parties to perform certain activities—payment processing, for example. Some banks, however, have recently entered new lines of business or introduced novel, and potentially high-risk, products, relying substantially on third party service providers to enable the bank to participate in or to conduct those activities. These include, for instance, certain types of credit card programs, sub-prime lending, check cashing, and other specialized types of lending. In many instances, the service provider's interest in, and connection with, these transactions are significantly greater than that of the bank. The bank may nonetheless be exposed to higher than normal levels of risk. This increased reliance on service providers will result in an increased need for the OCC to examine or investigate third party service providers in order to evaluate the effect that third-party activities and relationships have on the safety and soundness of the bank.[5]

On December 1, 2000,[6] we proposed to amend 12 CFR 8.6 to make clear our authority to assess banks for our

[1] A "lead bank" is the largest national bank controlled by a company, based on a comparison of the total assets held by each national bank controlled by that company as reported in each bank's Call Report. 12 CFR 8.2(a)(6)(ii)(A).

[2] Independent trust banks are also assessed based on the amount of trust assets those banks manage. *See* 65 FR 75859 (December 5, 2000).

[3] 12 CFR 8.6(a) also permits the OCC to assess a fee for fiduciary examinations and examinations made pursuant to 12 CFR part 5.

[4] 12 U.S.C. 1867(c). Thus, as would be the case if the activity were performed by the bank itself, the OCC's authority to examine the activity does not lapse if the activity is not being conducted at the same time the OCC undertakes an examination.

[5] The OCC has recently noted the risks that may be associated with using service providers in a recent Advisory Letter and urged national banks to focus on conducting proper due diligence before entering into third party arrangements and on maintaining effective oversight and controls during the third party relationship. *See* OCC Advisory Letter No. 2000–9, "Third Party Risk," August 29, 2000.

[6] 65 FR 75196 (December 1, 2000).

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supervision of third party servicers. We also proposed to clarify our authority to charge Federal branches and agencies a fee for conducting special examinations. For the reasons described in the following discussion, we adopt the rule substantially as proposed, with a clarification suggested by one commenter.

Proposed Rule and Comments Received

The proposal stated that the OCC may charge a special examination or investigation fee to national banks when examination or investigation of the activities of a third party service provider is warranted by the high risk or unusual nature of the activities conducted by the service provider for the bank, or when the OCC believes that the bank has insufficient systems, controls, or personnel to adequately monitor, measure, and control the risks associated with the activity. The proposed rule also applied to Federal branches and agencies. In addition, the proposal permitted the OCC to impose the assessment if we examine or investigate third party providers of services to subsidiaries subject to examination by the OCC.

The OCC received two comments on this proposal. The first, from a trade association for community banks, suggested that the OCC identify in advance, in the final rule, those instances in which OCC would conduct special examinations and investigations. The commenter suggested that this approach would provide more predictability as to when the OCC would charge the fee that was proposed.

The circumstances under which the OCC will conduct special examinations or investigations of third parties may differ. Accordingly, the OCC is unable to identify in advance every situation that may warrant use of this authority or imposition of a fee on the bank. The final rule addresses this issue highlighted by the commenter, however, by describing the factors the OCC will consider in determining whether to impose fees for examination of a bank's third party service providers. In addition, the OCC will provide banks with notice before we begin a special examination of a service provider for which the fee will be imposed.[7]

The second commenter, a trade association for check cashing centers, suggested that the proposal might discourage relationships between their members and national banks. The commenter noted that check cashing organizations serve local communities by making funds available to consumers quickly. This rulemaking does not address the merits of the check cashing business. We note that the Bank Service Company Act provides pre-existing authority for the OCC to examine check cashers that have entered into particular relationships with national banks. The final rule does not alter the nature or extent of that oversight. Rather, it clarifies the OCC's authority to assess banks for OCC's examination of third parties so that the cost associated with examining them is borne principally by the banks with whom they have relationships, rather than by the national banking system as a whole.

Final Rule

The final rule amends section 8.6(a) to state that the OCC may assess a national bank or a Federal branch or agency a fee for the examination or investigation of an entity that performs services for the institution or its subsidiary and that is subject to OCC examination and regulation pursuant to the Bank Service Company Act (12 U.S.C. 1867(c)). The fees for special exams and investigations will be based on an hourly rate, with the hourly rate provided each year by the OCC in its Notice of Comptroller of the Currency Fees (Notice of Fees).[8] The final rule also states that the factors the OCC will consider in determining whether imposition of a fee for examination of a bank's third party service providers is warranted are (1) the high risk or unusual nature of the activities conducted by the service provider for the banks; (2) the significance to the bank's operations and income of the activities conducted by the service provider for the banks; and (3) the extent to which the bank has sufficient systems, controls, and personnel to adequately monitor, measure, and control risks arising from activities conducted by the service provider for the bank.

The final rule also amends section 8.6(a) to clarify that the OCC may charge a fee for conducting special examinations and investigations of Federal branches and agencies of foreign banks or their affiliates. Federal branches and agencies are subject to the same "duties, restrictions, penalties, liabilities, conditions, and limitations" that apply national banks, except as otherwise specifically provided by statute.[9] Current section 8.6 does not address the assessment of a fee for the special examination or investigation of Federal branches and agencies or their affiliates. The final rule amends section 8.6 to make our authority to assess such a fee explicit. The OCC will state the amount of these fees in the Notice of Fees.

The final rule amends the title of part 8 to more accurately reflect the scope of the regulation. While part 8 includes Federal branches and agencies within the scope of the rule, only national banks and District of Columbia banks are listed in the title. The final rule removes from the title references to the types of regulated entities covered by the regulation.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires federal agencies to certify that a final rule will not have a significant impact on a substantial number of small entities. *See* 5 U.S.C. 603, 605. On the basis of the information currently available, the OCC is of the opinion that this final rule is unlikely to have a significant impact on a substantial number of small entities, within the meaning of those terms as used in the RFA. As previously noted, a national bank would be assessed a fee for the examination or investigation of its service provider when the examination or investigation is warranted by the level of risk or unusual or novel nature of the activities conducted by the service provider for the bank, or when the OCC believes that the bank has insufficient systems, controls, or personnel to adequately monitor, measure, and control the risks associated with the activity. As a result, the OCC believes that the fees will not be imposed on a substantial number of small entities.

Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that the final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

[7] Banks may indemnify themselves against this cost by including in their contractual arrangements with service providers terms that obligate the service provider to reimburse the bank in the event the OCC conducts an examination or investigation of the service provider and charges the bank the fee described here.

[8] *See* 12 CFR 8.8.

[9] 12 U.S.C. 3102(b).

List of Subjects in 12 CFR Part 8

National banks.

Authority and Issuance

For reasons set forth in the preamble, the OCC amends part 8 of Chapter I of title 12 of the Code of Federal Regulations as follows:

PART 8—ASSESSMENT OF FEES

1. The authority citation for part 8 is revised to read as follows:

Authority: 12 U.S.C. 93a, 481, 482, 1867, 3102, and 3108; 15 U.S.C. 78c and 78l; and 26 D.C. Code 102.

2. The heading of part 8 is revised to read as set forth above.

3. Section 8.6 is amended by revising the section heading and paragraph (a) to read as follows:

§ 8.6 Fees for special examinations and investigations.

(a) *Fees.* Pursuant to the authority contained in 12 U.S.C. 481 and 482, the Office of the Comptroller of the Currency assesses a fee for:

(1) Examining the fiduciary activities of national and District of Columbia banks and related entities;

(2) Conducting special examinations and investigations of national banks, District of Columbia banks, and Federal branches or Federal agencies of foreign banks;

(3) Conducting special examinations and investigations of an entity with respect to its performance of activities described in section 7(c) of the Bank Service Company Act (12 U.S.C. 1867(c)), if the OCC determines that assessment of the fee is warranted with regard to a particular bank because of the high risk or unusual nature of the activities performed; the significance to the bank's operations and income of the activities performed; or the extent to which the bank has sufficient systems, controls, and personnel to adequately monitor, measure, and control risks arising from such activities;

(4) Conducting special examinations and investigations of affiliates of national banks, District of Columbia banks, and Federal branches or Federal agencies of foreign banks; and

(5) Conducting examinations and investigations made pursuant to 12 CFR part 5, Rules, Policies, and Procedures for Corporate Activities.

* * * * *

Dated: April 26, 2001.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 01–11572 Filed 5–7–01; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 552

[No. 2001–34]

RIN 1550–AB46

Conversion From Stock Form Depository Institution to Federal Stock Association

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Direct final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its regulation on conversions from stock from depository institutions to federal stock savings associations. This direct final rule clarifies that the resulting federal stock savings association in such transactions succeeds to all the rights, property, and obligations of the converting institution. This amendment merely codifies OTS's interpretation of its existing regulation.

DATES: The direct final rule is effective July 9, 2001, without further notice, unless OTS receives significant adverse comments by June 7, 2001. If OTS receives such comments, it will publish a timely withdrawal informing the public that this rule will not take effect.

ADDRESSES: *Mail:* Send comments to Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 2001–34.

Delivery: Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9:00 a.m. to 4:00 p.m. on business days, Attention Regulation Comments, Chief Counsel's Office, Docket No. 2001–34.

Facsimiles: Send facsimile transmissions to FAX Number (202) 906–6518, Attention Docket No. 2001–34.

E-Mail: Send e-mails to *regs.comments@ots.treas.gov*, Attention Docket No. 2001–34, and include your name and telephone number.

Public Inspection: Comments and the related index will be posted on the OTS Internet Site at *www.ots.treas.gov*. In addition, you may inspect comments at the Public Reading Room, 1700 G St. NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) Appointments will be scheduled on business days between 10:00 a.m. and 4:00 p.m. In most cases, appointments will be available the next business day following the date a request is received.

FOR FURTHER INFORMATION CONTACT: Aaron B. Kahn, (202) 906–6263, Special Counsel, or Kevin A. Corcoran, (202) 906–6962, Assistant Chief Counsel, Business Transactions Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington DC 20552.

SUPPLEMENTARY INFORMATION:

Background

OTS's regulations at 12 CFR 552.2–6 provides that, with OTS approval, any stock depository institution that is, or is eligible to become, a member of a Federal Home Loan Bank may convert to a federal stock savings association if the converting institution has deposits insured by the Federal Deposit Insurance Corporation (FDIC) at the time of conversion, and complies with all applicable statutes and regulations, including section 5(d) of the Federal Deposit Insurance Act.[1] This regulation does not explicitly address the succession of the federal association resulting from such a conversion to the rights, obligations and property of the converting institution. However, as a matter of practice OTS treats federal stock associations that have resulted from direct conversions pursuant to 12 CFR 552.2–6 as the corporate successors of the converting institutions.

OTS regulations addressing similar transactions explicitly provide that the resulting federal association succeeds to the rights, obligations, and property of a converted or disappearing entity. This is true, for example, for conversions of mutual depository institutions to federal mutual savings associations[2] and the merger or consolidation of stock institutions that result in a federal stock association.[3]

To clarify the legal consequences of direct conversions under 12 CFR 552.2–6, OTS is amending that regulation to provide explicitly that a converted

[1] 12 U.S.C. 1815(d).

[2] 12 CFR 543.14 (2000).

[3] *See* 12 CFR 552.13(l) (2000).

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federal stock association succeeds to all the rights, obligations and property of its corporate predecessor.

This action will not change the existing treatment of federal stock associations that have converted from a stock depository institution. Rather, the amendment merely codifies the agency's existing interpretation of its regulation. The text of the amendment has been derived from a comparable provision pertaining to the merger and consolidation of federal stock associations that appears at 12 CFR 552.13(l).

Rulemaking Procedures

Direct final rulemaking is a technique for expediting the issuance of non-controversial rules. Under this procedure, an agency may publish a rule in the **Federal Register** with a statement that, unless a significant adverse comment is received within a specified time period, the rule will become effective as a final rule on a particular date. If a significant adverse comment is filed, however, the agency must withdraw the direct final rule and complete standard notice and comment procedures. This procedure permits an agency to issue final rules expeditiously, while at the same time offering the public the opportunity to challenge the agency's view that the rule is non-controversial.

The Administrative Conference of the United States adopted Recommendation 95–4 encouraging the use of direct final rulemaking,[4] and recommending that agencies develop a direct final rulemaking process for issuing rules that are unlikely to result in significant adverse comments. OTS recently used the direct final rule procedure to remove a regulation on the transfer and repurchase of government securities. *See* 65 FR 16302 and 16350 (March 28, 2000) and 65 FR 30527 (May 12, 2000).

OTS has concluded that this rule is non-controversial and should elicit no significant adverse comment. Accordingly, the agency has determined that it is appropriate to apply direct final rulemaking procedures. Therefore, consistent with the Administrative Conference's recommendations, OTS is applying the following procedures in this rulemaking:

OTS is publishing this notice of direct final rule in the final rule section of the **Federal Register** and is including an opportunity for public comment on the substance of the change (*i.e.*, a 30-day public comment period). OTS has also included a statement of basis and purpose for the rule and has discussed relevant substantive issues in the discussion above.

The direct final rule will automatically become effective in 60 days, unless OTS receives a significant adverse comment within the 30-day comment period. If a timely, significant adverse comment is received, OTS will withdraw the direct final rule before the stated effective date. To be a significant adverse comment, the comment must explain why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or why the rule would be ineffective or unacceptable without a change.

To ensure that the promulgation of a final rule will not be delayed if significant adverse comments are submitted, OTS has published a related notice of proposed rulemaking (NPRM) elsewhere in today's **Federal Register**. This related notice cross-references the direct final rule. The related notice indicates that if a timely, significant adverse comment on the matter is received, OTS will address all public comments in subsequent final rule based on the NPRM. If no significant adverse comments are timely received, OTS will take no further action on the NPRM.

Effective Date

This direct final rule imposes no additional requirements on insured depository institutions. This rule is therefore exempt from the requirement found in section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994[5] that regulations must not take effect before the first day of the quarter following publication.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act,[6] the Director certifies that this direct final rule will not have a significant economic impact on a substantial number of small entities. The rule merely codifies an existing OTS interpretation.

Executive Order 12866

OTS has determined that this direct final rule is not a "significant regulatory action" for purposes of Executive Order 12866.

Unfunded Mandates Reform Act of 1995

OTS has determined that the requirements of this direct final rule will not result in expenditures by State, local, and tribal governments or by the private sector of $100 million or more in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995.

Federalism

Executive Order 13132 imposes certain requirements on an agency when formulating and implementing polices that have federalism implications or taking actions that preempt state law. OTS has determined that this direct final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, and will not preempt State law.

List of Subjects in 12 CFR Part 552

Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby amends title 12, chapter V of the Code of Federal Regulations as set forth below.

PART 552—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL STOCK ASSOCIATIONS

1. The authority citation for Part 552 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

2. Section 552.2–6 is amended by designating the existing section as paragraph (a) and adding paragraph (b) to read as follows:

§ 552.2–6 Conversion from stock form depository institution to Federal stock association.

(a) * * *

(b) Any and all of the assets and other property (whether real, personal, mixed, tangible or intangible, including choses in action, rights, and credits) of the former stock form depository institution become assets and property of the Federal stock association when the conversion occurs. Similarly, any and all of the obligations and debts of or claims against the former stock form depository institution become obligations and debts of and claims against the Federal stock association when the conversion occurs. In effect, the Federal stock association is the same as the former stock form depository institution with respect to any and all assets, property, claims and debts of or claims against the former stock form depository institution.

Dated: May 2, 2001.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 01–11573 Filed 5–7–01; 8:45 am]

BILLING CODE 6720–01–P

[4] 60 FR 43108 (Aug. 18, 1995).

[5] Pub. L. No. 103–325, 12 U.S.C. 4802.

[6] Pub. L. No. 96–354, 5 U.S.C. 601.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–12–AD; Amendment 39–12218; AD 2001–08–14]

RIN 2120–AA64

Airworthiness Directives: Turbomeca S.A. Arrius Models 2B, 2B1, and 2F Turboshaft Engines; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2001–08–14 applicable to Turbomeca S.A. Arrius models 2B, 2B1, and 2F turboshaft engines, that was published in the **Federal Register** on April 26, 2001 (66 FR 20910). The amendment number of 39–12191 used in this AD is incorrect. This document corrects that amendment number. In all other respects, the original document remains the same.

EFFECTIVE DATE: May 31, 2001.

FOR FURTHER INFORMATION CONTACT: James Rosa, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7152, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive (FR Doc. 01–10021) applicable to Turbomeca S.A. Arrius models 2B, 2B1, and 2F turboshaft engines was published in the **Federal Register** on April 26, 2001 (66 FR 20912). The following correction is needed:

1. On page 20910, in the first column, in the Heading of the document, the docket line is corrected to read "[Docket No. 2000–NE–12–AD; Amendment 39–12218; AD 2001–08–14]".

PART 39—[CORRECTED]

§ 39.13 [Corrected]

2. On page 20911, in the first column, under amendatory instruction 2, the heading of AD 2001–08–14 is corrected to read as follows:

2001–08–14 Turbomeca S.A. Arrius Models 2B, 2B1, and 2F Turboshaft Engines: Amendment 39–12218. Docket No. 2000–NE–12–AD.

* * * * *

Issued in Burlington, MA, on April 30, 2001.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–11456 Filed 5–7–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 803

[Docket No. 98N–0170]

Medical Devices; Medical Device Reporting Regulations; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations governing Medical Device Reporting (MDR) requirements. When the final regulation was last amended, the regulation published with some errors and omissions that, if uncorrected, may prove to be misleading. This document corrects those errors.

DATES: This rule is effective May 8, 2001.

FOR FURTHER INFORMATION CONTACT: Susan E. Bounds, Center for Devices and Radiological Health (HFZ–500), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–2735.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 26, 2000 (65 FR 4112), FDA published a final rule (the January 2000 rule) that amended its MDR regulations governing reporting by manufacturers, importers, distributors, and user facilities of adverse events related to medical devices. These amendments were made to implement revisions to the Federal Food, Drug, and Cosmetic Act (the act) under the Food and Drug Administration Modernization Act of 1997 (FDAMA). These regulations became effective March 27, 2000. Under certain provisions of FDAMA, reporting requirements for distributors were eliminated, but reporting requirements for importers, and requirements for distributors to keep records concerning adverse device events and make them available to FDA upon request continue to apply. To accommodate these changes, part 804 (21 CFR part 804) was removed and language was integrated into part 803 (21 CFR part 803) that reflected the retention of importer reporting requirements and recordkeeping requirements for distributors. Another change made by the January 2000 rule revised procedures to require annual, rather than semiannual, summary reporting by user facilities, and eliminated reporting certification requirements. As a result of these substantive amendments, many nonsubstantive changes were made to the organization of provisions in part 803. During preparation of the final rule for publication, however, a number of typographical and editorial errors occurred. In the subsequent months, FDA discovered other errors. The purpose of these amendments is to correct the errors identified in part 803. This document is published as a final rule with the effective date shown above. FDA has determined that this final rule has no substantive impact on the public. FDA, therefore, for good cause, finds under 5 U.S.C.553(b)(3)(B) and (d)(3) that notice and public comment are unnecessary and that this rule may take effect upon publication.

II. Need for Amendments

A. Incorporation of Importer Reporting Requirements Into Part 803

Section 213 of FDAMA eliminated reporting requirements for distributors previously found at part 804. At the same time, reporting requirements for importers were retained and those previously referenced in part 804 were incorporated in part 803. Accordingly, the word "distributor" was removed from applicable paragraphs and the word "importer" was integrated into the text. During preparation of the final rule amending the regulations to incorporate importer requirements, however, the word "importer" was not properly integrated into §§ 803.10, 803.20, 803.50, and 803.52. FDA is amending the regulations to correct this error.

B. Elimination of Reporting Certification and Modification of Semi-Annual Reporting

Section 213(a)(2) of FDAMA revoked section 519(d) of the act (21 U.S.C. 360i(d)) resulting in the elimination of certification requirements. Section 213(c)(1)(A) revised section 519(b)(1)(C) of the act to require annual, rather than

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semiannual, summary reporting by user facilities. During preparation of the final rule, however, an editorial error led to the omission in certain paragraphs of amended text that was written to remove references to certification requirements and change the word "semiannual" to "annual." Sections 803.10, 803.17, and 803.58 contained these errors. FDA is amending the regulations to correct these errors.

C. Organization of Paragraphs

The integration of importer reporting requirements and the removal of certification references required substantial reorganization of part 803. This reorganization included the need to redesignate certain paragraphs and correct references to those paragraphs throughout the text.

1. Definition of Device User Facility, MDR Reportable Event (or reportable event), and Work Day (§ 803.3(f), (r)(2)(ii), and (ee))

Modifications to § 803.3 require that paragraphs (m) through (ee) be redesignated as paragraphs (n) through (ff) to address the following:

- At paragraph (f), the definition of a "device user facility" states that a "physician's office" is later defined in paragraph "(w)" of this section. In fact, the definition of "physician's office" is found later at paragraph "(x)" of this section.
- A further error occurred when redesignating the definition of an "MDR reportable event (or reportable event)" as paragraph (r)(2)(ii). In this instance, the words "or contribute" were inadvertently omitted after the words "would be likely to cause," in the definition text.
- Finally, § 803.3 contains two paragraphs "(ee)" because the definition of "work day" was not redesignated as paragraph "(ff)."

FDA is amending the regulations to correct these errors.

2. General Description of Reports Required From User Facilities, Importers, and Manufacturers (§ 803.10(b))

Previously, § 803.10(b) was reserved. As amended by the January 2000 rule, § 803.10(b) was revised to include reporting requirements for importers. During preparation of the January 2000 rule, the amended text incorporated in this section was not organized in the same manner as § 803.10(a) and (c). FDA is amending the regulations to correct this error.

3. Foreign Manufacturers (§ 803.58(b)(4), (b)(5), and (b)(6))

The elimination of certification requirements by manufacturers resulted in the removal of § 803.58(b)(3); therefore, paragraphs (b)(4), (b)(5), and (b)(6) were to be redesignated accordingly. FDA is amending the regulations to correct this error.

4. Exemptions, Variances, and Alternative Reporting Requirements (§ 803.19)

Independent of the errors in part 803 that resulted from the January 2000 rule, FDA discovered an obsolete reference in § 803.19(a)(2). In this instance, the text of § 803.19(a)(2) references part 813, which was removed by a final rule published in the **Federal Register** on January 29, 1997 (62 FR 4164). FDA is amending the regulations to correct this error.

III. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The agency certifies that this final rule will not have a significant negative economic impact on a substantial number of small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any 1 year (adjusted annually for inflation). The Unfunded Mandates Reform Act of 1995 does not require FDA to prepare a statement of costs and benefits for the final rule, because the final rule is not expected to result in any 1-year expenditure that would exceed $100 million.

V. Paperwork Reduction Act of 1995

FDA has determined that this final rule contains no additional collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects in 21 CFR Part 803

Imports, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 803 is amended as follows:

PART 803—MEDICAL DEVICE REPORTING

1. The authority citation for 21 CFR part 803 continues to read as follows:

Authority: 21 U.S.C. 352, 360, 360i, 360j, 371, 374.

2. Section 803.3 is amended by revising paragraphs (f) and (r)(2)(ii) and by redesignating the second paragraph (ee) as paragraph (ff) to read as follows:

§ 803.3 Definitions.

* * * * *

(f) *Device user facility* means a hospital, ambulatory surgical facility, nursing home, outpatient diagnostic facility, or outpatient treatment facility as defined in paragraphs (b), (l), (t), (u), and (v), respectively, of this section, which is not a "physician's office," as defined in paragraph (x) of this section. School nurse offices and employee health units are not device user facilities.

* * * * *

(r) * * *

(2) * * *

(ii) Has malfunctioned and that the device or a similar device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur.

* * * * *

3. Section 803.10 is amended by revising paragraph (b) and by removing paragraph (c)(5) to read as follows:

§ 803.10 General description of reports required from user facilities, importers, and manufacturers.

* * * * *

(b) *Device importers.* Importers must submit the following reports, which are described more fully in subpart D of this part.

(1) Importers must submit MDR reports of individual adverse events within 30 days after the importer becomes aware of an MDR reportable event as described in §§ 803.40 and 803.42.

(i) Importers must submit reports of device-related deaths or serious injuries to FDA and to the manufacturer.

(ii) Importers must submit reports of malfunctions to the manufacturer.

(2) [Reserved]

* * * * *

4. Section 803.17 is amended by revising paragraph (b)(3) to read as follows:

§ 803.17 Written MDR procedures.

* * * * *

(b) * * *

(3) Any information that was evaluated for the purpose of preparing the submission of annual reports; and

* * * * *

5. Section 803.19 is amended by revising paragraph (a)(2) to read as follows:

§ 803.19 Exemptions, variances, and alternative reporting requirements.

(a) * * *

(2) An individual who manufactures devices intended for use in humans solely for such person's use in research or teaching and not for sale, including any person who is subject to alternative reporting requirements under the investigational device exemption regulations, part 812 of this chapter, which require reporting of all adverse device effects.

* * * * *

6. Section 803.20 is amended by revising the introductory text of paragraph (a), and paragraphs (a)(2) and (c)(1) to read as follows:

§ 803.20 How to report.

(a) *Description of form.* There are two versions of the MEDWATCH form for individual reports of adverse events. FDA Form 3500 is available for use by health professionals and consumers for the submission of voluntary reports regarding FDA-regulated products. FDA Form 3500A is the mandatory reporting form to be used for submitting reports by user facilities, importers, and manufacturers of FDA-regulated products. The form has some sections that must be completed by all reporters and other sections that must be completed only by the user facility, importer, or manufacturer.

* * * * *

(2) The back part of the form contains sections to be completed by user facilities, importers, and manufacturers. User facilities and importers must complete section F; device manufacturers must complete sections G and H. Manufacturers are not required to recopy information submitted to them on a Form 3500A unless the information is being copied onto an electronic medium. If the manufacturer corrects or supplies information missing from the other reporter's 3500A form, it should attach a copy of that form to the manufacturer's report form. If the information from the other reporter's 3500A form is complete and correct, the manufacturer can fill in the remaining information on the same form.

* * * * *

(c) *Information that reasonably suggests a reportable event occurred.* (1) Information that reasonably suggests that a device has or may have caused or contributed to an MDR reportable event (i.e., death, serious injury, and, for manufacturers and importers, a malfunction that would be likely to cause or contribute to a death or serious injury if the malfunction were to recur) includes any information, such as professional, scientific or medical facts and observations or opinions, that would reasonably suggest that a device has caused or may have caused or contributed to a reportable event.

* * * * *

7. Section 803.50 is amended by revising paragraphs (b)(1)(i) and (b)(2) to read as follows:

§ 803.50 Individual adverse event reports; manufacturers.

* * * * *

(b) * * *

(1) * * *

(i) Any information that can be obtained by contacting a user facility, importer, or other initial reporter;

* * * * *

(2) Manufacturers are responsible for obtaining and providing FDA with information that is incomplete or missing from reports submitted by user facilities, importers, and other initial reporters. Manufacturers are also responsible for conducting an investigation of each event and evaluating the cause of the event. If a manufacturer cannot provide complete information on an MDR report, it must provide a statement explaining why such information was incomplete and the steps taken to obtain the information. Any required information not available at the time of the report, which is obtained after the initial filing, must be provided by the manufacturer in a supplemental report under § 803.56.

8. Section 803.52 is amended by revising paragraphs (d)(1), (f)(11)(i), and (f)(11)(ii) to read as follows:

§ 803.52 Individual adverse event report data elements.

* * * * *

(d) * * *

(1) Name, address, and phone number of the reporter who initially provided information to the user facility, manufacturer, or importer;

* * * * *

(f) * * *

(11) * * *

(i) Any information missing on the user facility report or importer report, including missing event codes, or information corrected on such forms after manufacturer verification;

(ii) For each event code provided by the user facility under § 803.32(e)(10) or the importer under § 803.42(e)(10), a statement of whether the type of event represented by the code is addressed in the device labeling; and

* * * * *

§ 803.58 [Amended]

9. Section 803.58 *Foreign manufacturers* is amended by removing paragraph (b)(3) and by redesignating paragraphs (b)(4), (b)(5), and (b)(6) as paragraphs (b)(3), (b)(4), and (b)(5), respectively.

Dated: April 18, 2001.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 01–11449 Filed 5–7–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–01–054]

RIN 2115–AE47

Drawbridge Operation Regulations: Harlem River, Newtown Creek, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary final rule

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governing the operation of the Third Avenue Bridge, mile 1.9, across the Harlem River between Manhattan and the Bronx; the Madison Avenue Bridge, mile 2.3, across the Harlem River between Manhattan and the Bronx; and the Pulaski Bridge, mile 0.6, across Newtown Creek between Brooklyn and Queens. This temporary final rule authorizes the bridge owner to close the above bridges on May 6, 2001, at different times of short duration to facilitate the running of the Five Borough Bike Tour. Vessels that can pass under the bridges without a bridge opening may do so at any time.

DATES: This temporary final rule is effective only on Sunday, May 6, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–01–054) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, 6:30 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Arca, Project Officer, First Coast Guard District, (212) 668–7165.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard has determined that good cause exists under the Administrative Procedure Act (5 U.S.C. 553) to forego notice and comment for this rulemaking because notice and comment are unnecessary. The Coast Guard believes notice and comment are unnecessary because the requested closures are of such short duration on a Sunday when there have been few requests to open these bridges. The Harlem River and Newtown Creek is used mostly by commercial vessels and those vessels normally pass under the draws without openings. The commercial vessels that do require openings are work barges that do not operate on Sundays. The Coast Guard, for the reasons just stated, has also determined that good cause exists for this rule to be effective less than 30 days after it is published in the **Federal Register**.

Background

Third Avenue Bridge

The Third Avenue Bridge, mile 1.9, across the Harlem River between Manhattan and the Bronx, has a vertical clearance of 25 feet at mean high water and 30 feet at mean low water in the closed position. The existing operating regulations listed at § 117.789(c) require the draw to open on signal from 10 a.m. to 5 p.m., if at least a four-hour notice is given. From 5 p.m. to 10 a.m., the draw need not be opened for vessel traffic.

Madison Avenue Bridge

The Madison Avenue Bridge, mile 2.3, across the Harlem River between Manhattan and the Bronx, has a vertical clearance of 25 feet at mean high water and 29 feet at mean low water in the closed position. The existing operating regulations listed at § 117.789(c) require the draw to open on signal from 10 a.m. to 5 p.m., if at least a four-hour notice is given. From 5 p.m. to 10 a.m., the draw need not be opened for vessel traffic.

Pulaski Bridge

The Pulaski Bridge, mile 0.6, across the Newtown Creek between Brooklyn and Queens, has a vertical clearance of 39 feet at mean high water and 43 feet at mean low water in the closed position. The existing operating regulations listed at 117.801(g) require the draw to open on signal, if at least a two-hour advance notice is given. The Coast Guard published a temporary final rule on March 23, 2001, entitled Drawbridge operation regulations, New York, (66 FR 16128) which allows the Pulaski Bridge, to need open only one bascule span for the passage of vessel traffic, from April 23, 2001 through August 31, 2001.

The New York City Department of Transportation (NYCDOT) requested a change to the operating regulations for the Third Avenue Bridge, the Madison Avenue Bridge, and the Pulaski Bridge on May 6, 2001, to allow the bridges to remain in the closed position to facilitate the running of the Five Borough Bike Tour.

The Third Avenue Bridge, mile 1.9, across the Harlem River between Manhattan and the Bronx and the Madison Avenue Bridge, mile 2.3, across the Harlem River between Manhattan and the Bronx, shall remain in the closed position from 8 a.m. to 12 p.m. on May 6, 2001. The Pulaski Bridge, mile 0.6, across the Newtown Creek between Brooklyn and Queens, shall remain in the closed position from 9:30 a.m. to 1:30 p.m. on May 6, 2001. Vessels that can pass under the bridges without bridge openings may do so at all times.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). This conclusion is based on the fact that the requested closures are of short duration and on Sunday morning when there have been few requests to open these bridges.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612) we considered whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" comprises small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This conclusion is based on the fact that the requested closures are of short duration and on Sunday when there have been few requests to open these bridges.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A written "Categorical Exclusion Determination" is not required for the temporary final rule.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.789, from 8 a.m. through 12 p.m. on May 6, 2001, paragraph (c) is temporarily suspended and a new paragraph (g) is added to read as follows:

§ 117.789 Harlem River

* * * * *

(g) The draws of the Third Avenue Bridge, mile 1.9, and the Madison Avenue Bridge, mile 2.3, across the Harlem River between Manhattan and the Bronx, need not open for vessel traffic on May 6, 2001, from 8 a.m. to 12 p.m.

3. In section 117.801, from 9:30 a.m. through 1:30 p.m. on May 6, 2001, paragraph (g) and (h) are suspended and a new paragraph (i) is added to read as follows:

§ 117.801 Newtown Creek, Dutch Kills, English Kills, and their tributaries.

* * * * *

(i) The draw of the Pulaski Bridge, mile 0.6, across the Newtown Creek between Brooklyn and Queens, need not open for vessel traffic, on May 6, 2001, from 9:30 a.m. to 1:30 p.m.

Dated: April 19, 2001.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 01–11493 Filed 5–7–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR PART 117

[CGD08–01–007]

RIN 2115–AE47

Drawbridge Operating Regulation; Ouachita River, LA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the regulation governing the operation of the Kansas City Southern Railroad swing span bridge across the Ouachita River, mile 167.1, at Monroe, Ouachita Parish, Louisiana. This rule allows for the passage of vessels from June 4, 2001, through November 15, 2001 during the morning hours with proper advance notice. This rule is issued to facilitate the repairs to the turn span of the bridge. Normally, the draw opens on signal at all times.

DATES: This rule is effective from June 4, 2001, through November 15, 2001.

ADDRESSES: Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, will be available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, Room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, Commander (ob), Eighth Coast Guard District, telephone number 504–589–2965.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 30, 2001, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operating Regulation; Ouachita River, Louisiana, in the **Federal Register** (66 FR 17376). We received one letter commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The Kansas City Southern Railroad has submitted plans to repair the turn span of the swing span bridge across the Ouachita River, mile 167.1, at Monroe. To facilitate the continued movement of trains across the bridge during the repairs, the railroad plans to remove the swing span and temporarily replace it with a removable span bridge with 70 feet of horizontal clearance. The railroad has requested limited openings during the repair period of May 7, 2001 through November 30, 2001. Frequent need to remove and replace the span will severely limit the railroad's ability to complete the repairs in a timely manner.

Discussions were held between the railroad, its contractor, waterway users, and facility operators to determine the best method of allowing vessels to transit the waterway during the repair period. The discussions centered on the mariner's ability to transit the bridge site on any day if proper notification was given. The railroad only wanted to

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open the bridge on certain days during the morning hours. Mariners explained that their schedule was not such that they would need to go through the bridge on set days and that the proposed schedule by the railroad may require vessels to wait almost 48 hours for the passage. It was determined that due to the limited number of transits, openings would not be required daily but set days would not be acceptable.

Following the meetings, the group recommended to the Coast Guard that

—The draw need not open for the passage of vessels from 2 a.m. on June 4, 2001 through 2 a.m. on June 6, 2001, and from 2 a.m. on November 12, 2001 until 2 a.m. on November 14, 2001.

—At all other times between June 4, 2001 and November 15, 2001, the draw of the bridge need not open for the passage of vessels, except from 8 a.m. to 11 a.m. daily for those vessels that have provided at least 20-hours notice.

The two 48-hour closures will allow for the removal and replacement of the swing span and placement of the removable span sections of the bridge. Upon establishment of the removable span bridge, mariners will be able to transit the bridge site between the hours of 8 a.m. and 11 a.m. daily provided that at least 20-hours notice is given.

Discussion of Comments and Changes

Only one letter was received for the NPRM. The Louisiana Department of Agriculture and Forestry offered no comments on the proposed rule. No changes have been incorporated into the Final Rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

This rule maintains the movement of vessels while allowing the bridge owner to repair his bridge as expeditiously as possible.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under the 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, we want to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule would not have implications for federalism under that Order. No comments were received with regards to federalism during NPRM comment period.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that impose unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate. No comments were received with regards to unfunded mandates during NPRM comment period.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. No comments were received with regards to the taking of private property during NPRM comment period.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. No comments were received with regards to the taking of private property during NPRM comment period.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. Bridge Administration Program actions that can be categorically excluded include promulgation of operating regulations or procedures for drawbridges. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From 2 a.m. on June 4, 2001 until 6 p.m. on November 15, 2001, in § 117.483, the existing text is redesignated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 117.483 Ouachita River.

* * * * *

(b) The draw of the Kansas City Southern Railroad swing span bridge, mile 167.1, at Monroe, shall operate as follows:

(1) The draw need not open for the passage of vessels from 2 a.m. on June 4, 2001, through 2 a.m. on June 6, 2001, and from 2 a.m. on November 12, 2001, through 2 a.m. on November 14, 2001.

(2) At all other times between June 4, 2001, and November 15, 2001 inclusive, the draw need not open for the passage of vessels, except from 8 a.m. until 11 a.m. daily, the draw shall open for vessels that have provided at least 20-hours notice.

Dated: April 19, 2001.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 01–11494 Filed 5–7–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–01–034]

RIN 2115–AE47

Drawbridge Operation Regulations: Atlantic Intracoastal Waterway, Fort Lauderdale, Broward County, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily modifying the regulations governing the operation of the East Sunrise Boulevard and East Las Olas Drawbridges across the Atlantic Intracoastal Waterway, mile 1062.6 and 1064, in Fort Lauderdale, Florida. This temporary rule allows the East Sunrise Boulevard and East Las Olas Drawbridges to remain closed for periods of time on May 5 and May 6, 2001 to facilitate the vehicle traffic flow from the 2001 Air & Sea Show.

DATES: This rule is effective from 4 p.m. on May 5, 2001 until 6 p.m. on May 6, 2001.

ADDRESSES: Material received from the public as well as documents indicated in this preamble as being available in the docket are part of docket [CGD07–01–034] and are available for inspection or copying at Commander (oan), Seventh Coast Guard District, 909 S.E. 1st Avenue, Miami, Florida 33131 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lieberum, Project Officer, Seventh Coast Guard District, Bridge Section, at (305) 536–7331.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM was impracticable and contrary to the public interest. There was insufficient time remaining to publish an NPRM after we were notified of the required closure, and further delaying the event to follow normal rulemaking procedures before incorporating this important safety measure would have a significant negative affect on the outcome of this annual, highly-attended event.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.**

Background and Purpose

The East Las Olas Boulevard Drawbridge, mile 1064.0, across the Atlantic Intracoastal Waterway, has a vertical clearance of 31 feet above mean high water and a horizontal clearance of 91 feet between fenders. The existing operating regulations in 33 CFR 117.5 require the bridge to open promptly and fully for the passage of vessels when a request to open is given.

The East Sunrise Boulevard Drawbridge, mile 1062.6, across the Atlantic Intracoastal Waterway, has a vertical clearance of 25 feet at mean high water and a horizontal clearance of 90 feet between fenders. The existing operating regulations in 33 CFR 117.261(gg) require the bridge to open on signal; except that from November 15 to May 15, from 10 a.m. to 6 p.m., the draw need open only on the hour, quarter-hour, half-hour and three-quarter hour.

The City of Fort Lauderdale Police Department recently requested that the Coast Guard temporarily change the operating regulations for both drawbridges during parts of the 2001 Air and Sea Show to allow the considerable amounts of vehicular and pedestrian traffic be moved away from the beach as safely and quickly as possible. These temporary changes to the drawbridges operating regulations will allow the draws of the East Sunrise Boulevard and East Las Olas Boulevard drawbridges in Fort Lauderdale, Florida, to remain closed from 4 p.m. to 6 p.m. and 9:45 p.m. to 10:45 p.m. on May 5, 2001, and from 4 p.m. to 6 p.m. on May 6, 2001. Except that, the East Sunrise Boulevard drawbridge may open at 4:45 p.m. and 5:30 p.m. each day, and the East Las Olas Boulevard drawbridge may open at 4:30 p.m. and 5:15 p.m. each day on May 5 and 6, 2001.

Regulatory Evaluation

This proposal is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040;February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The changes to the bridge's operating schedules will only be in effect for five total hours over a two-day period. Further, the temporary schedules still allow for some scheduled openings, albeit at reduced intervals.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard must consider whether this rule will have a significant economic effect upon a substantial number of small entities. "Small entities" include small business, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities as the regulations will only be in effect for five total hours over a two day period and the event will be highly publicized.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–221), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by

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employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this action and has determined under figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1C, that this rule is categorically excluded from further environmental documentation.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, The Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From 4 p.m. on May 5, 2001, through 6 p.m. on May 6, 2001, in § 117.261, temporarily suspend paragraph (gg) and add temporary paragraphs (ww) and (xx) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(ww) *East Las Olas Bridge, mile 1064 at Fort Lauderdale.* The draw shall open on signal except that on May 5 and 6, 2001, from 4 p.m. to 6 p.m. each day, the draw need only open at 4:30 p.m. and 5:15 p.m., and from 9:45 to 10:45 p.m. on May 5, 2001, the draw need not open.

(xx) *East Sunrise Boulevard Bridge (SR 838), mile 1062.6 at Fort Lauderdale.* The draw shall open on signal except that from 4 p.m. to 6 p.m. each day on May 5 and 6, 2001, the draw need only open at 4:45 p.m. and 5:30 p.m., and from 9:45 p.m. to 10:45 p.m. on May 5, 2001, the draw need not open.

Dated: April 27, 2001.

G.W. Sutton,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 01–11495 Filed 5–7–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–01–035]

Drawbridge Operation Regulations; Brooks Memorial (S.E. 17th Street) Bridge Atlantic Intracoastal Waterway, Ft. Lauderdale, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Brooks Memorial (S.E. 17th Street) bridge across the Atlantic Intracoastal Waterway, mile 1065.9, Ft. Lauderdale, Broward County, Florida. This deviation allows the drawbridge owner or operator to not open the bridge from April 30 to May 9, 2001 with scheduled single leaf openings on May 5 and 6, 2001. This temporary deviation is required to allow the bridge owner to safely conduct repairs to the drawbridge.

DATES: This deviation is effective from April 30 to May 9, 2001.

FOR FURTHER INFORMATION CONTACT: Project Officer, Seventh Coast Guard District, Bridge Branch at (305) 415–6743.

SUPPLEMENTARY INFORMATION: The Brooks Memorial (S.E. 17th Street) bridge across the Atlantic Intracoastal Waterway at Ft. Lauderdale, Florida, has a horizontal clearance of 48 feet between the fender and the bridge span. On April 5, 2001, the Florida Department of Transportation, requested a deviation from the current operating regulation in 33 CFR 117.261(hh) which requires the drawbridge to open on signal; except that from 7 a.m. to 7 p.m. the draw need open only on the hour and half-hour. This temporary deviation was requested to allow emergency repairs to the drawbridge.

The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR 117.261 (hh) for the purpose of conducting repairs to the drawbridge. Under this deviation, the Brooks Memorial (Southeast 17th Street) drawbridge need not open for navigation from 6 a.m. on April 30, to 6 a.m. on May 9, 2001, except that the drawbridge will open on the hour from 7 a.m. to 8 p.m. on May 5 and 6, 2001. The deviation is effective until May 9, 2001.

Dated: April 27, 2001.

Greg E. Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 01–11496 Filed 5–7–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–01–058]

Drawbridge Operation Regulations: Harlem River, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations governing the operation of the Triborough (125 Street) Bridge, at mile 1.3, across the Harlem River in New York. This deviation allows the bridge owner to keep the bridge in the closed position from June 4, 2001 through June 24, 2001. This action is necessary to facilitate necessary maintenance at the bridge.

DATES: This deviation is effective from June 4, 2001 through June 24, 2001.

FOR FURTHER INFORMATION CONTACT: Joseph Arca, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The Triborough (125 Street) Bridge, at mile 1.3, across the Harlem River, has a vertical clearance of 54 feet at mean high water, and 59 feet at mean low water in the closed position. The existing drawbridge operating regulations are listed at 33 CFR 117.789(d).

The bridge owner, the Triborough Bridge and Tunnel Authority, requested a temporary deviation from the drawbridge operating regulations to facilitate maintenance and repairs at the bridge.

This deviation from the operating regulations allows the bridge owner to keep the bridge in the closed position from June 4, 2001 through June 24, 2001.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: April 27, 2001.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 01–11558 Filed 5–7–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–01–060]

Drawbridge Operation Regulations: Connecticut River, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Route 82 Bridge, mile 16.8, across the Connecticut River at East Haddam, Connecticut. This deviation from the regulations authorizes the bridge owner to keep the bridge in the closed position from 6 p.m. on May 21, 2001 through 6 a.m. on May 22, 2001. This deviation is necessary in order to facilitate necessary repairs at the bridge.

DATE: This deviation is effective from May 21, 2001, through May 22, 2001.

FOR FURTHER INFORMATION CONTACT: Joseph Schmied, Project Officer, First Coast Guard District, at (212) 668–7195.

SUPPLEMENTARY INFORMATION: The Route 82 Bridge, at mile 16.8, across the Connecticut River has a vertical clearance in the closed position of 22 feet at mean high water and 25 feet at mean low water. The existing drawbridge operating regulations are listed at 33 CFR 117.205(c).

The owner of the bridge, Connecticut Department of Transportation, requested a temporary deviation from the drawbridge operating regulations to facilitate the replacement of the pulley system for the submarine cables at the bridge. The bridge can not open for vessel traffic during this repair work.

This deviation to the operating regulations authorizes the owner of the Route 82 Bridge to keep the bridge in the closed position from 6 p.m. on May 21, 2001 through 6 a.m. on May 22, 2001.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: April 27, 2001.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 01–11561 Filed 5–7–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD07–01–036]

RIN 2115—AA97

Security Zone; Vicinity of Atlantic Fleet Weapons Training Facility, Vieques, PR and Adjacent Territorial Sea

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: At the request of the U.S. Navy, the Coast Guard is establishing an additional temporary security zone covering the area of territorial sea and land adjacent to the bombing and gunnery range (Impact Area) at the naval installation on the eastern end of Vieques Island, Puerto Rico. The security zone is needed to protect the bombing and gunnery range, and adjacent land and waters at the Navy's Atlantic Fleet Weapons Training Facility on Vieques Island, PR, to ensure against destruction, injury, or loss of uninterrupted use. This rule effectively extends the duration of the rule published on May 3, 2001. Only authorized vessels are permitted to enter or remain within the security zone.

DATES: This rule is effective from 11:59 p.m., April 30, 2001 until 11:59 p.m. May 1, 2001.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [CGD07–01–036] and are available for inspection or copying at the Seventh Coast Guard District office, 909 S.E. First Avenue, Room 918, Miami, FL, 33131, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Brian DeVries at (305) 415–6950.

SUPPLEMENTARY INFORMATION:

Regulatory Information

In order to protect the interests of national security, and in accordance with the Presidential Directive of January 31, 2000, the President has directed the conduct of Navy Training at the Atlantic Fleet Weapons Training Facility on Vieques Island, PR. Immediate action is needed to ensure the uninterrupted use by the U.S. Navy

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of the Training Facility on Vieques, including the adjacent land and waters, and to protect that facility from destruction or injury. The Coast Guard is promulgating the security zone regulations to prevent interference with the conduct of the Navy's exercises for the duration of the security zone. As a result, the enforcement of the security zone is a function directly involved in, and necessary to, the Navy training exercise. Accordingly, based on the military function exception set forth in the Administrative Procedure Act, 5 U.S.C. 553(a)(1), notice and comment rule-making and advance publication, pursuant to 5 U.S.C. 553(b) and (d), are not required for this regulation.

Even if the requirements of 5 U.S.C. 553 would otherwise be applicable, the Coast Guard for good cause finds that, under 5 U.S.C. 553(b)(B) and (d)(3), notice and public comment on the rule before the effective date of the rule and advance publication are impracticable and contrary to the public interest. There is an imminent need to use the naval installation bombing and gunnery range and the adjacent waters for ongoing scheduled exercises by the Navy which further the national security interests of the United States. Opportunity for notice and public comment or advance publication of the zone was impracticable since the Navy did not request the establishment of the zone until 30 April 2001. This regulation is geographically and temporally tailored to meet the needs of national security with a minimal burden on the public.

Background and Purpose

The Atlantic Fleet Weapons Training Facility is located on the eastern end of Vieques Island, PR. Use of this naval installation is important to achieving acceptable levels of military readiness in accordance with established training standards and requires training exercises conducted with inert ordnance. Such training exercises cannot be safely or effectively conducted if there are unauthorized persons inside the training areas or if the installation is damaged or personnel are injured. The U.S. Army Corps of Engineers has established a danger zone in the vicinity of the bombing and gunnery target area, 33 CFR 334.1470, that is in effect during these training exercises. The Army Corps has also established a restricted area off the coast of the naval facility, 33 CFR 334.1480.

In order to further the interests of national security, and in accordance with the Presidential directive of January 31, 2000, the President has directed the conduct of Navy Training at the Atlantic Fleet Weapons Training Facility on Vieques Island, Puerto Rico. During the current exercises, the restricted area and danger zone have not provided the degree of security required for the naval facility. These operations cannot be conducted if unauthorized personnel or vessels are present inside the security zone. Therefore, to ensure against the destruction, injury or loss of uninterrupted use of the naval installation at Vieques, including the adjacent land and waters, the Coast Guard is establishing this security zone, which effectively extends the duration of the rule published on May 3, 2001 (66 FR 22121).

The Coast Guard previously established a similar security zone (65 FR 25489) around the Atlantic Fleet Weapons Training Facility, Vieques, PR. Based on the Coast Guard's experience implementing that security zone and discussions with the U.S. Navy, the coordinates of the security zone being implemented by this regulation have been slightly modified. The coordinates of the security zone being implemented by this regulation have been altered so that the zone no longer encompasses commonly used transit paths between Vieques, PR and traditional fishing areas.

This security zone is established pursuant to the authority of subpart D of Part 165 of Title 33 of the Code of Federal Regulations and the Magnuson Act regulations promulgated by the President under 50 U.S.C. 191, including subparts 6.01 and 6.04 of part 6 of Title 33 of the Code of Federal Regulations. See Executive Order 10173, as amended. The security zone is needed to protect the bombing and gunnery range, and the adjacent facilities and water, at Vieques Island, PR against destruction, injury, or loss of uninterrupted use. Pursuant to this regulation, no vessel or person will be allowed to enter or remain in the security zone unless specifically authorized to do so by the District Commander or his designated representatives. The District Commander or his designated representatives may grant permission for a vessel to enter or remain within the security zone when operations permit and may condition that permission as appropriate. As operations permit, all efforts will be made to honor any requests to enter.

Vessels or persons violating this section are subject to the penalties set forth in 50 U.S.C. 192 and 18 U.S.C. 3571: seizure and forfeiture of the vessel, a monetary penalty of not more than $250,000, and imprisonment for not more than 10 years.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

Although the security zone covers an area out to three miles from shore, the zone will be in effect for a limited amount of time. The vessel traffic in the area normally consists of a small number of commercial fishing vessels and other vessels transiting the area. These vessels are not allowed to enter or transit the zone during these training exercises under existing Army Corps of Engineer regulations (33 CFR 334.1470 and 33 CFR 334.1480). These vessels can redirect their transit around the zone with only minor delays in time and distance.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the vicinity of the Naval installation at Vieques, PR and fishing vessels which normally fish the area. These vessels are not allowed to enter or transit the zone during these training exercises under existing Army Corps of Engineer regulations (33 CFR 334.1470 and 334.1480). This security zone will not have a significant economic impact on a substantial number of these small entities. Although the security zone will cover an area out to three miles from shore, the zone will be in effect only for a limited amount of time.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we will assist small entities in understanding this rule and how it affects them. Small entities may call the person identified in **FOR FURTHER INFORMATION CONTACT.**

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard anticipates this temporary rule will be categorically excluded from further environmental documentation under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.lC. This temporary rule only ensures the protection of Naval assets and the uninterrupted use of the area for scheduled Naval operations. Standard Coast Guard manatee and turtle watch measures will be in effect during Coast Guard patrols of the security zone. Deep-water routes will be used where practical. Lookouts will be posted to avoid collision with turtles and manatees. If a collision occurs, notification will be made to the U.S. Fish & Wildlife Service at Boqueron, Puerto Rico (787–851–7297).

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Temporary regulation: For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[Amended]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A new temporary § 165.T07–036 is added to read as follows:

§ 165.T07–036 Security Zone; Vieques Island, PR.

(a) *Location.* The following area is established as a Security Zone: An area of water and land measured from the mean high water line off the naval reservation, along the east end of Vieques Island extending from Cabellos Colorados (18°–09.82′ N, 065°–23.45′ W) due northeast 4 nautical miles to position 18°–12.0′ N, 065°–20.0′ W, then easterly around Vieques Island, remaining 3 nautical miles from the coast, to a point 3 nautical miles south of Cayo Jalovita (18°–06.83′ N, 065°–21.25′ W) at 18°–03.6′ N, 065° 20.33′ W then northwest to a baseline position of 18°–05.42′ N, 065°–26.0′ W at Puerto Mosquito, including the rocks, cays, and small islands within.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part:

(i) No person or vessel may enter or remain in this zone without the permission of the District Commander or designated representatives.

(ii) All persons within this zone shall obey any direction or order of the District Commander or designated representatives,

(iii) The District Commander or designated representatives may take possession and control of any vessel in this zone,

(iv) The District Commander or designated representatives may remove any person, vessel, article or thing from this zone,

(v) No person may board, or take or place any article or thing on board, any vessel in this zone without the permission of the District Commander or designated representatives; and,

(vi) No person may take or place any article or thing upon any waterfront facility in this security zone without the permission of the District Commander or designated representatives.

(2) The District Commander or designated representatives may grant permission for individual vessels to enter or remain within this security zone when permitted by operational conditions and may place conditions upon that permission. Vessels permitted to enter or remain in this zone must radio the patrol commander upon entering and departing the zone.

(c) *Enforcement.* Vessels or persons violating this section are subject to the penalties set out in 50 U.S.C. 192 and 18 U.S.C. 3571:

(1) Seizure and forfeiture of the vessel;

(2) A monetary penalty of not more than $250,000; and

(3) Imprisonment for not more than 10 years.

(d) *Dates.* This section is effective from 11:59 p.m. April 30, 2001 until 11:59 p.m. May 1, 2001.

(e) *Authority.* In addition to the authority in part 165, this section is also authorized under authority of Executive Order 10173, as amended.

Dated: April 30, 2001.

Thad. W. Allen.

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Gurad District.

[FR Doc. 01–11559 Filed 5–7–01; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AK63

Disease Associated With Exposure to Certain Herbicide Agents: Type 2 Diabetes

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its adjudication regulations concerning presumptive service connection for certain diseases for which there is no record during service. This amendment is necessary to implement a decision of the Secretary of Veterans Affairs under the authority granted by 38 U.S.C. 1116 that there is a positive association between exposure to herbicides used in the Republic of Vietnam during the Vietnam era and the subsequent development of Type 2 diabetes. The intended effect of this amendment is to establish presumptive service connection for that condition based on herbicide exposure.

DATES: *Effective Date:* July 9, 2001.

FOR FURTHER INFORMATION CONTACT: Bill Russo, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–7211.

SUPPLEMENTARY INFORMATION: VA published a proposal to amend 38 CFR 3.309(e) to establish presumptive service connection for Type 2 diabetes based on exposure to herbicides in the **Federal Register** of January 11, 2001 (66 FR 2376–80). Interested persons were invited to submit written comments concerning the proposal on or before March 12, 2001. We received 14 comments: one from the New York State Council of the Vietnam Veterans of America, one from the Wisconsin State Council of the Vietnam Veterans of America, and 12 from concerned individuals.

I. Comments on the Proposed Rule

Comments Supporting the Proposed Regulation

Three commenters stated that they supported the proposed regulation. One e-mail comment signed by 86 individuals also stated that they supported the proposed regulation. One commenter stated that he supported the proposed regulation and asked for swift implementation of the regulation.

Minimum 10% Rating

One commenter urged that all Vietnam veterans with Type 2 diabetes be awarded a minimum 10% disability rating.

This rule implements 38 U.S.C. 1116(c), which requires VA to establish a presumption of service connection when a positive association is found between exposure to certain herbicide agents and the subsequent development of a disease. The statute does not require VA to presume that such diseases result in any particular degree of disability. Further, under 38 CFR 3.307(a)(6)(ii), any disease must be manifest to a degree of disability of 10 percent or more before it may be presumed service connected based on herbicide exposure. In establishing presumptions of service connection for specific diseases based on herbicide exposure or other circumstances of service, Congress has consistently required that the disease be manifest to a degree of disability of 10 percent or more before the presumption applies. (See 38 U.S.C. 1116(a)(2)). We are aware of no justification for treating type 2 diabetes differently than other presumptive conditions in this regard. We therefore make no change based on this comment. We note that VA's rating schedule in 38 CFR 4.119, Diagnostic Code 7913, provides that a 10-percent rating will be assigned for diabetes which is "[m]anageable by restricted diet only."

Herbicide Exposure Outside Republic of Vietnam

One commenter urged that VA amend the proposed regulation to include veterans who did not serve in the Republic of Vietnam, but were exposed to herbicides during their military service.

Section 1116(a)(3) of title 38 of the United States Code establishes a presumption of exposure to certain herbicides for any veteran who served in the Republic of Vietnam between January 9, 1962 and May 7, 1975, and has one of the diseases on the list of diseases subject to presumptive service connection. However, if a veteran who did not serve in the Republic of Vietnam, but was exposed to an herbicide agent defined in 38 CFR 3.307(a)(6) during active military service, has a disease on the list of diseases subject to presumptive service connection, VA will presume that the disease is due to the exposure to herbicides. (See 38 CFR 3.309(e)). We therefore believe that there is no need to revise the regulation based on this comment.

Another commenter urged VA to use this rulemaking to define service in the Republic of Vietnam to include service in Vietnam's inland waterways or its territorial waters. The commenter asserted that U.S. military personnel were exposed to herbicides while serving in those locations.

Title 38 U.S.C. 1116 requires that a veteran have served "in the Republic of Vietnam" to be eligible for the presumption of exposure to herbicides. We believe that it is commonly recognized that this term includes the inland waterways.

With respect to offshore service, 38 CFR 3.307(a)(6)(iii) provides that "Service in the Republic of Vietnam " includes service in offshore waters or other locations only if the conditions of service involved duty or visitation within the Republic of Vietnam. In interpreting similar language in 38 U.S.C. 101(29)(A), VA's General Counsel has concluded that service in a deep-water vessel in waters offshore the Republic of Vietnam does not constitute service "in the Republic of Vietnam." (See VAOPGCPREC 27–97). VA's regulatory definition of "Service in the Republic of Vietnam" predates the enactment of section 1116(a)(3) (see former 38 CFR 3.311a(a)(1) (1990)), and we find no basis to conclude that Congress intended to broaden that definition. The commenter cited no authority for concluding that individuals who served in the waters offshore of the Republic of Vietnam were subject to the same risk of herbicide exposure as those who served within the geographic boundaries of the Republic of Vietnam, or for concluding that offshore service is within the meaning of the statutory phrase "Service in the Republic of Vietnam." We therefore make no change based on this comment.

Type 1 Diabetes

We received two comments urging VA to broaden the scope of this regulation to include Type 1 diabetes (also known as juvenile diabetes).

One commenter noted that VA's rating schedule (38 CFR 4.119, DC 7913) refers only to "diabetes mellitus" and does not distinguish between Type 1 and Type 2. He also noted that DC 7913 refers to ketoacidosis, and asserted that this condition only occurs with Type 1 diabetes.

VA's Schedule for Rating Disabilities (38 CFR part 4) is used to assess the level of disability caused by a disease or injury. It is not used to determine whether disabilities are service connected, nor is it considered when the Secretary determines whether there is an association between herbicide exposure and a specific disease. Under 38 U.S.C. 1116, that decision is based on reports of the National Academy of Sciences (NAS) and all other sound medical and scientific information and analyses available to the Secretary.

Another commenter, an endocrinologist, stated that environmental toxins are well known triggers for the onset of Type 1 diabetes. However, this commenter cited no medical or scientific literature in support of this statement, nor did the commenter specify which environmental toxins (e.g., herbicides) are well known triggers for Type 1 diabetes.

The intent of the proposed regulation was to add only Type 2 diabetes to the list of diseases subject to presumptive service connection based on herbicide exposure in the Republic of Vietnam. Type 1 diabetes is a clinically distinct disease from Type 2 diabetes. As discussed extensively in "Veterans and Agent Orange: Herbicide/Dioxin Exposure and Type 2 Diabetes" (VAO: Diabetes), Appendix B, Type 1 is generally considered to be disease of insulin deficiency due to an immune disorder, while Type 2 diabetes is considered to be primarily a disease of insulin resistance. In its report, "Veterans and Agent Orange: Update 1998" (Update 1998), NAS concluded that there was "inadequate or insufficient evidence" to determine whether an association existed between exposure to herbicides and immune disorders. The Secretary determined "that the credible evidence against an association between immune system disorders and herbicide exposure outweighs the credible evidence for such an association, and [ ] determined that a positive association does not exist." Diseases Not Associated With Exposure to Certain Herbicide Agents, 64 FR 59232, 59241 (November 2, 1999).

The conclusion reached by NAS in VAO Diabetes was that "there is limited/suggestive evidence of an association between exposure to the herbicides used in Vietnam or the contaminant dioxin and Type 2 diabetes." This conclusion was based on NAS' thorough review of the published scientific literature on herbicide exposure and diabetes. The Secretary subsequently determined that there is a positive association between exposure to herbicides used in the Republic of Vietnam during the Vietnam era and the development of Type 2 diabetes.

Based on the reasons discussed above, VA finds no basis on which to expand the proposed regulation to include Type 1 diabetes, and we therefore make no change based on these comments.

Obesity and Type 2 Diabetes

One commenter asserted that several recent medical studies reported a significant increase in the incidence of diabetes, apparently resulting from an increase in obesity in the general population. The commenter stated that assuming these studies are valid, it is improper for VA to find a "statistically significant relationship" between diabetes and Agent Orange.

NAS was well aware that obesity is a significant risk factor in causing Type 2 diabetes. (VAO: Diabetes at 3). Nevertheless, after a thorough review of the scientific literature available on the subject, NAS concluded "there is limited/suggestive evidence of an association between exposure to the herbicides used in Vietnam or the contaminant dioxin and Type 2 diabetes."

The Secretary has not found a "statistically significant relationship" between herbicide exposure and diabetes, but rather a "positive association." Title 38 U.S.C. 1116(b)(3) provides that an association is "positive" if the credible evidence for the association is equal to or outweighs the credible evidence against the association. Once he has determined that a positive association exists between herbicide exposure and a particular disease, the Secretary must publish regulations establishing presumptive service connection for that disease.

The same commenter suggested that VA either reconsider whether to add Type 2 diabetes to the list of diseases subject to presumptive service connection based on herbicide exposure in the Republic of Vietnam or that it wait to publish the final rule until it reviewed these studies.

Title 38 U.S.C. 1116(c)(1) requires that the Secretary, not later than 60 days after the date on which he receives a report from NAS, determine whether a presumption of service connection is warranted for each disease covered by the report and, if the Secretary determines that a presumption is warranted, issue proposed regulations within 60 days thereafter. 38 U.S.C. 1116(c)(2) requires the Secretary to issue final regulations establishing presumptive service connection for any condition for which he determines there is a positive association with exposure of humans to an herbicide agent not later than 90 days after he has issued proposed regulations.

We believe that the NAS adequately took into consideration the recognized relationship between obesity and type 2 diabetes, and the existence of additional studies concerning this risk factor does not warrant ignoring the time requirements of section 1116(c)(2). For reasons more fully explained in the proposal, the Secretary has concluded that presumptive service connection is warranted for Type 2 diabetes, and VA is, therefore, proceeding with publication of a final rule notwithstanding these comments.

Effective Dates

One commenter urged that the proposed rule be amended to state that awards granted under the rule will be retroactive to the date the claimant first submitted evidence of a diagnosis of Type 2 diabetes. Title 38 U.S.C. 1116(c)(2) clearly and unambiguously requires that regulations promulgated as a result of a decision of the Secretary of Veterans Affairs that a positive association exists between exposure to herbicides and a specified condition or disease "shall be effective on the date of issuance." The effective date established by this rule is in accordance with 38 U.S.C. 1116(c)(2) and 5 U.S.C. 801 et. seq. Under 38 U.S.C. 5110(g), when benefits are awarded based on a new regulation, the effective date of the award may not be earlier than the effective date of the regulation. In view of 38 U.S.C. 1116(c)(2) and 5110(g), VA does not have authority to provide in this rule for assignment of effective dates earlier than the date on which this rule is issued.

Another commenter asked how the court case *Nehmer* v. *U.S. Veterans' Admin.*, C.A. No. C–86–6160 (TEH) (N.D. Cal.), will apply to Type 2 diabetes claims under the proposed rule. The commenter asserted that it is unfair for a Vietnam veteran to not be compensated retroactively by VA.

Pursuant to a stipulation and order of the Federal district court in *Nehmer*, awards of disability compensation or dependency and indemnity compensation (DIC) made under VA's regulations issued pursuant to 38 U.S.C. 1116 may, in some circumstances, be made effective retroactive to the date of an earlier claim that was filed or denied before such regulations were issued. Thus, the *Nehmer* stipulation and order, when it applies, permits awards of retroactive benefits that would otherwise be prohibited by 38 U.S.C. 1116(c)(2) and 5110(g). The scope and application of the *Nehmer* stipulation and order is the subject of pending litigation and, until that litigation is resolved, we cannot say how the *Nehmer* stipulation and order will affect claims under this rule.

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Nothing in this rule is intended to modify the *Nehmer* stipulation and order or to detract from rights existing under that document. The *Nehmer* stipulation and order applies to a specific class of claimants whose claims were previously filed or denied during a particular time period. This rule will apply to a broader class of claimants, including those whose claims were denied during periods not covered by the *Nehmer* stipulation and order, as well as those who file claims in the future. Individuals will continue to have specific rights under the terms of the *Nehmer* stipulation and order when it applies.

The final rule does not incorporate the effective-date provisions of the *Nehmer* stipulation and order because the scope and application of those provisions is the subject of current litigation and because VA lacks the authority to issue regulatory provisions that would be inconsistent with 38 U.S.C. 1116(c)(2) and 5110(g). (See 38 U.S.C. 501(a).)

VA appreciates the comments submitted in response to the proposed rule that is now adopted without change.

II. Compliance With the Congressional Review Act, the Regulatory Flexibility Act, and Executive Order 12866

We estimate that the five-year cost of this rule from appropriated funds would be $3.3 billion in benefits costs and $62 million in government operating expenses. Since it is likely that the adoption of the proposed rule may have an annual effect on the economy of $100 million or more, the Office of Management and Budget has designated this rule as a major rule under the Congressional Review Act, 5 U.S.C. 802, and a significant regulatory action under Executive Order 12866, Regulatory Planning and Review. The following information is provided pursuant to E.O. 12866.

This rule is necessary to comply with 38 U.S.C. 1116, which requires VA to establish a presumption of service connection if the Secretary finds that there is a positive association between exposure to herbicides used in the Republic of Vietnam during the Vietnam era and the subsequent development of any particular disease. As explained above, the Secretary found that there is such an association regarding Type 2 diabetes. There are no feasible alternatives to this rule, since section 1116 requires the Secretary to promulgate it once he finds the positive association described above. This rule would not interfere with state, local or tribal governments in the exercise of their governmental functions.

Benefits Costs

Historical statistics indicate that the total number of veterans who served in the Republic of Vietnam or its surrounding waters was about 2.6 million. We estimate that about 2.3 million of these veterans are alive today. Using information gained from VAO: Diabetes and VA's Office of Planning and Analysis, VA applied a prevalence rate of 9% to the current population to determine the number of veterans who might have Type 2 diabetes today. VA assumes that over five years, about 90% of these same veterans would file a diabetes-related claim. We expect that 8 out of 10 claims will be made by first time applicants (original) and that 2 out of 10 will come from veterans already service connected for some other issue (reopened). The average monthly award made on account of diabetes or its ancillary conditions for original and reopened claims is estimated to be $462 and $786, respectively. These figures are based on average benefits to current beneficiaries for all conditions and include dependents' benefits and unemployability benefits where applicable. A moderate number of DIC and burial claims have also been factored into this estimate.

VA estimates the cumulative totals of benefits awards to claimants for years 2001–2005 as follows: 10,199, 80,526, 129,988, 159,198 and 178,356. Benefits costs (in $ million) for years 2001–2005 are as follows: $16.6, $303, $720.1, $1,010.7, and $1,205.3, for a total cost of $3.3 billion over five years. This cost estimate also provides for a nominal number of DIC payments and burial awards. Anticipated cost-of-living allowances (COLA's), per current economic assumptions, were factored into this estimate; however, no retroactive payments were considered.

Administrotive Costs

The administrative workload caused by this proposed rule is expected to be 13,361 claims filed in 2001 and more than 220,000 over five years. Full time employee resources devoted to processing claims in years one through five would be 128, 378, 311, 185, and 123, respectively. Administrative workloads assume that not all claims would be granted; it is probable that diabetes related claims will be received from veterans who never served in the Republic of Vietnam. GOE costs (in $ million) for years 2001–2005 are as follows: $6.4, $18.6, $16.5, $11.9, and $8.2, for a total GOE cost of $62 million over five years.

The Unfunded Mandates Reform Act requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

(The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109, and 64.110).

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: April 19, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.309, paragraph (e), the listing of diseases is amended by adding "Type 2 diabetes (also known as Type II diabetes mellitus or adult-onset diabetes)" between "Chloracne or other acneform disease consistent with chloracne" and "Hodgkin's disease" to read as follows:

§ 3.309 Diseases subject to presumptive service connection.

* * * * *

(e) * * *

Type 2 diabetes (also known as Type II diabetes mellitus or adult-onset diabetes)

* * * * *

[FR Doc. 01–11569 Filed 5–7–01; 8:45 am]

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GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–20, 101–21, and 102–85

RIN 3090–AG33

Pricing Policy for Occupancy in GSA Space

AGENCY: Office of Business Performance, Public Buildings Service.

ACTION: Interim rule.

SUMMARY: The General Services Administration (GSA) is revising the Federal Property Management Regulations (FPMR) by moving coverage of GSA's Rent program into the Federal Management Regulation (FMR). A cross-reference is added to the FPMR to direct readers to the coverage in the FMR. The FMR is written in plain language to provide agencies with updated regulatory material that is easy to read and understand. This interim rule establishes the pricing policy guidance for Occupancy Agreements between GSA and customer agencies. It also governs intra-governmental pricing of space and services.

DATES: *Effective Date:* May 8, 2001.

Comment Date: Comments should be submitted on or before July 9, 2001 to be considered in the formulation of a final rule.

ADDRESSES: Written comments should be submitted on to: Mr. Michael Hopkins, Regulatory Secretariat (MVRS), Office of Governmentwide Policy, General Services Administration, 1800 F Street, NW., Washington, DC 20405.

E-mail comments submitted over the Internet should be addressed to *RIN.3090–AG33@gsa.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Kendall, Office of Portfolio Management, General Services Administration, at 202–501–0638, or Internet e-mail at *ron.kendall@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule changes the methods by which GSA-controlled space is identified and measured, eliminates the specific physical description of the components of standard level alterations, and substitutes budget guidance for alterations, providing customer agencies flexibility in designing space to meet their mission needs.

The recommendations are being implemented to improve GSA's overall management of real property assets and the level of service and choices provided to its customer agencies.

As a result of the principles outlined in this rule:

(1) Federal agencies will have greater choice in using GSA to meet space needs;

(2) GSA will remain available to provide the benefits of centralized services desired by its customers; and

(3) GSA's relationship with its customers will more closely approximate landlord/customer relationships typical in the private sector, providing incentives to economize and speed program delivery.

The FMR, which replaces the FPMR, contains a refined and streamlined set of policies and regulatory requirements related to managing property and administrative services. Non-regulatory materials, such as guidance, procedures, and standards currently found in the FPMR, and new non-regulatory materials may become available in separate documents, such as customer guides.

B. Executive Order 12866

GSA has determined that this interim rule is a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this interim rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This interim rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

F. Administrative Procedures Act

GSA finds good cause to make this rule effective upon publication of this document in the **Federal Register** under the Administrative Procedure Act (APA) (5 U.S.C. 553(d). This interim final rule does not impose any additional responsibilities on entities in the private sector. Instead, its purpose is to improve asset management practices that affect only Federal agencies that occupy real property owned or controlled by GSA.

List of Subjects in 41 CFR Parts 101–20, 101–21, and 102–85

Federal buildings and facilities, Government property and management.

For the reasons set forth in the preamble, 41 CFR parts 101–20, 101–21, and 102–85 are amended to read as follows:

CHAPTER 101—[AMENDED]

PART 101–20—MANAGEMENT OF BUILDINGS AND GROUNDS

1. The authority citation for part 101–20 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

§ 101–20.102 [Amended]

2. Amend § 101–20.102 by removing and reserving paragraph (e).

3. Part 101–21 is revised to read as follows:

PART 101–21—FEDERAL BUILDINGS FUND

Authority: 40 U.S.C. 486(c); 40 U.S.C. 490(j) (The Federal Property and Administrative Services Act of 1949, as amended, Sec. 205(c) and 210(j), 63 Stat. 390 and 86 Stat. 219; (40 U.S.C. 486(c) and 40 U.S.C. 490(j), respectively).

§ 101–21.000 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 102–1 through 102–220.)

For information previously contained in this part, see FMR part 85 (41 CFR part 102–85).

CHAPTER 102—[AMENDED]

4. Part 102–85 is added to subchapter C to read as follows:

PART 102–85—PRICING POLICY FOR OCCUPANCY IN GSA SPACE

Subpart A—Pricing Policy—General

Sec.

102–85.5 By what authority is the pricing policy in this part prescribed?
102–85.10 What is the scope of this part?
102–85.15 What are the basic policies for charging Rent for space and services?
102–85.20 What does an Occupancy Agreement (OA) do?
102–85.25 What is the basic principle governing OAs?,

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102–85.30 Are there special rules for certain Federal customers?
102–85.35 What definitions apply to this part?
102–85.40 What are the major components of the pricing policy?

Subpart B—Occupancy Agreement

102–85.45 When is an Occupancy Agreement required?
102–85.50 When does availability of funding have to be certified?
102–85.55 What are the terms and conditions included in an OA?
102–85.60 Who can execute an OA?
102–85.65 How does an OA obligate the customer agency?
102–85.70 Are the standard OA terms appropriate for non-cancelable space?
102–85.75 When can space assignments be terminated?
102–85.80 Who is financially responsible for expenses resulting from tenant non-performance?
102–85.85 What if a customer agency participates in a consolidation?

Subpart C—Tenant Improvement Allowance

102–85.90 What is a tenant improvement allowance?
102–85.95 Who pays for the TI allowance?
102–85.100 How does a customer agency pay for tenant improvements?
102–85.105 How does an agency pay for customer alterations that exceed the TI allowance?
102–85.110 Can the allowance amount be changed?

Subpart D—Rent Charges

102–85.115 How is the Rent determined?
102–85.120 What is "shell Rent"?
102–85.125 What alternate methods may be used to establish Rent in Federally owned space?
102–85.130 How are exemptions from Rent granted?
102–85.135 What if space and services are provided by other executive agencies?
102–85.140 How are changes in Rent reflected in OAs?
102–85.145 When are customer agencies responsible for Rent charges?
102–85.150 How will Rent charges be reflected on the customer agency's Rent bill?
102–85.155 What does a customer agency do if it does not agree with a Rent bill?
102–85.160 How does a customer agency know how much to budget for Rent?

Subpart E—Standard Levels of Service

102–85.165 What are standard levels of service?
102–85.170 Can flexitime and other alternative work schedules cost the customer agency more?
102–85.175 Are the standard level services for cleaning, mechanical operation, and maintenance identified in an OA?
102–85.180 Can there be other standard services?
102–85.185 Can space be exempted from the standard levels of service?
102–85.190 Can GSA Rent be adjusted when standard levels of service are performed by other customer agencies?

Subpart F—Special Services

102–85.195 Does GSA provide special services?

Subpart G—Continued Occupancy, Relocation and Forced Moves

102–85.200 Can customer agencies continue occupancy of space or must they relocate at the end of an OA?
102–85.205 What happens if a customer agency continues occupancy after the expiration of an OA?
102–85.210 What if a customer agency has to relocate?
102–85.215 What if another customer agency forces a GSA customer to move?
102–85.220 Can a customer agency forced to relocate waive the reimbursements?
102–85.225 What are the funding responsibilities for relocations resulting from emergencies?

Authority: 40 U.S.C. 486(c).

Subpart A—Pricing Policy—General

§ 102–85.5 By what authority is the pricing policy in this part prescribed?

(a) General authority is granted in the Federal Property and Administrative Services Act of 1949, as amended, Sec. 205(c) and 210(j), 63 Stat. 390 and 86 Stat. 219; (40 U.S.C. 486(c) and 40 U.S.C. 490(j), respectively).

(b) This part implements the applicable provisions of Federal law, including, but not limited to, the:

(1) Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended;

(2) Act of July 1, 1898 (40 U.S.C. 285);

(3) Act of April 28, 1902 (40 U.S.C. 19);

(4) Act of August 27, 1935 (40 U.S.C. 304c);

(5) Public Buildings Act of 1959, as amended (40 U.S.C. 601–619);

(6) Public Buildings Amendments of 1972, Pub. L. 92–313, (86 Stat. 219);

(7) Rural Development Act of 1972, Pub. L. 92–419, (86 Stat. 674);

(8) Reorganization Plan No. 18 of 1950 (40 U.S.C. 490 note);

(9) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*);

(10) National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*);

(11) Intergovernmental Cooperation Act of 1968 and the Federal Urban Land Use Act (42 U.S.C. 4201–4244; 40 U.S.C. 531–535);

(12) Public Buildings Cooperative Use Act of 1976, as amended (40 U.S.C. 490(a)(16)–(19), 601a and 612a);

(13) Public Buildings Amendments of 1988, Pub. L. 100–678, (102 Stat. 4049);

(14) National Historic Preservation Act of 1966 as amended (16 U.S.C. 461 *et seq.*);

(15) Executive Order 12072 of August 16, 1978 (43 FR 36869);

(16) Executive Order 12411 of March 29, 1983 (48 FR 13391);

(17) Executive Order 12512 of April 29, 1985 (50 FR 18453);

(18) Executive Order 13005 of May 21, 1996 (61 FR 26069); and

(19) Executive Order 13006 of May 21, 1996 (61 FR 26071).

§ 102–85.10 What is the scope of this part?

(a) This part describes GSA policy and principles for the assignment and occupancy of space under its control and the rights and obligations of GSA and the customer agencies that request or occupy such space pursuant to GSA Occupancy Agreements (OA).

(b) Space managed by agencies under delegation of authority from GSA is subject to the provisions of this part.

(c) This part is not applicable to:

(1) Licenses, permits or leases with non-Federal entities under the Public Buildings Cooperative Use Act (40 U.S.C. 490(a)(16–19)); or

(2) The disposal of surplus lease space under section 210(h)(2) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 490(h)(2)).

§ 102–85.15 What are the basic policies for charging Rent for space and services?

(a) GSA will charge for space and services furnished by GSA (unless otherwise exempted by the Administrator of General Services) a Rent charge which will approximate commercial charges for comparable space and services. Rent for all assignments for GSA-controlled space will be priced according to the principles of the pricing policy in this part. These principles are reflected in the following elements of GSA Rent charges:

(1) "Shell" Rent based on approximate commercial charges for comparable space and services for Federally owned space (accomplished using appraisal procedures);

(2) Rent based on actual cost of the lease, including the costs (if any) of services not provided by the lessor, plus a GSA fee;

(3) Amortization of any tenant improvement allowance used;

(4) Any applicable real estate taxes, operating costs, parking, security and joint use fees; and

(5) For certain projects involving new construction or major renovation of Federally-owned buildings, a return on investment pricing approach if an appraisal-determined rental value does not provide a minimum return (OMB discount rate for calculating the present value of yearly costs plus 2%) on the cost of the prospective capital investment. Each specific use of Return on Investment (ROI) pricing must be approved by OMB and duly recorded in an Occupancy Agreement (OA) with the customer agency. Once the ROI methodology is employed to establish Rent for a capital investment, the ROI method must be retained for the duration of the OA term.

(b) Special services not included in the standard levels of service may be provided by GSA on a reimbursable basis. GSA may also furnish alterations on a reimbursable basis in buildings where GSA is responsible for alterations only.

(c) The financial terms and conditions under which GSA assigns, and a customer agency occupies, each block of GSA-controlled space, shall be documented in a written OA.

§ 102–85.20 What does an Occupancy Agreement (OA) do?

An OA defines GSA's relationship with each customer agency and:

(a) Establishes specific financial terms, provisions, rights, and obligations of GSA and its customer for each space assignment;

(b) Minimizes exposure to future unknown costs for both GSA and customer agencies;

(c) Stabilizes Rent payments to the extent reasonable and desired by customers; and

(d) Allows tailoring of space and related services to meet customer agency needs.

§ 102–85.25 What is the basic principle governing OAs?

The basic principle governing OAs is to adopt the private sector practice of capturing in a written document the business terms to which GSA and a customer agency agree concerning individual space assignments.

§ 102–85.30 Are there special rules for certain Federal customers?

Yes, in lieu of OAs, GSA is able to enter into agreements with customer agencies that reflect the parties particular needs. For example, the space and services provided to the U.S. House of Representatives and the U.S. Senate are governed by existing memoranda of agreement (MOA). When there are conflicts between the provisions of this part and MOAs, the MOAs prevail.

§ 102–85.35 What definitions apply to this part?

The following definitions apply to this part:

Accept space or *acceptance of space* means a commitment from an agency to occupy specified GSA-controlled space.

Agency-controlled and/or operated space means:

(1) Space that is owned, leased, or otherwise controlled or operated by Federal agencies under any authority other than the Federal Property and Administrative Services Act of 1949, as amended; and

(2) it also includes agency-acquired space for which acquisition authority has been delegated or otherwise granted to the agency by GSA. It does not include space covered by an OA.

Assign or *assignment* is defined in the definition for space assignment.

Building shell means the complete enveloping structure, the base-building systems, and the finished common areas (building common and floor common) of a building that bound the tenant areas.

Customer agency means any department, agency, or independent establishment in the Federal Government, including any wholly-owned corporation; any executive agency or any establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol, and any activities under his direction).

Emergency relocation is a customer move that results from an extraordinary event such as a fire, natural disaster, or immediate threat to the health and safety of occupants that renders a current space assignment unusable and requires that it be vacated, permanently or temporarily.

Federal Buildings Fund means the fund into which Rent charges and other revenues are deposited, and collections cited in section 210(j) of the Federal Property and Administrative Services Act of 1949, as amended (U.S.C. 490(j)), and from which monies are available for expenditures for real property management and related activities in such amounts as are specified in annual appropriations acts without regard to fiscal year limitations.

Federally controlled space means workspace for which the United States Government has a right of occupancy by ownership, by lease, or by any other means, such as by contract, barter, license, easement, permit, requisition, or condemnation. Such workspace excludes space owned or leased by private sector entities performing work on Government contracts.

Federally owned space means space, the title to which is vested in the United States Government or which will vest automatically according to an existing agreement.

Forced move means the involuntary physical relocation, from one space assignment to another, of a customer agency housed in GSA-controlled space initiated by another customer agency or by GSA, before the expiration of a lease or an OA term. (See also the definition of GSA-initiated move.)

General use space means all types of space other than "warehouse," "parking," or "unique" space, as defined elsewhere in this part. Examples of general use space are:

(1) Office and office-related space such as file areas, libraries, meeting rooms, computer rooms, mail rooms, training and conference, automated data processing operations, courtrooms, and judicial chambers; and

(2) Storage space that contains different quality and finishes from general use space, but that is within a building where predominantly general use space is located.

GSA-controlled space means Federally controlled space under the custody or control of GSA. It includes space for which GSA has delegated operational, maintenance, or protection authority to the customer agency.

GSA-delegated space (or GSA delegated building) means GSA-controlled space for which GSA has delegated operational, maintenance or protection authority to the customer agency.

GSA-initiated move means any relocation action in GSA-controlled space that:

(1) Is involuntary to the customer agency and required to be effective prior to the expiration of an effective OA, or in the case of leased space, prior to the expiration of the lease; or

(2) Is an emergency relocation initiated by GSA.

Initial space alteration (ISA). See definition of "tenant improvement."

Initial space layout means the specific placement of workstations, furniture and equipment within new space assignments.

Inventory means a summary or itemized list of the real property, and associated descriptive information, that is under the control of a Federal agency.

Joint-use space means common space within a Federally controlled facility, not specifically assigned to any one agency, and available for use by multiple agencies, such as cafeterias, auditoriums, conference rooms, credit unions, visitor parking spaces, snack bars, certain wellness/physical fitness facilities, and child care centers.

Leased space means space for which the United States Government has a right of use and occupancy by virtue of having acquired a leasehold interest.

Non-cancelable space means space that, due to its layout, design, location,

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or other characteristics, is unlikely to be needed by another GSA customer agency. Typical conditions that might cause space to be defined as non-cancelable are:

(1) Special space construction features;

(2) Lack of any realistic Federal need for the space other than by the requesting agency; and

(3) Remote location or unusual term (short or long) desired by the agency.

Occupancy Agreement (OA) means a written agreement descriptive of the financial terms and conditions under which GSA assigns, and a customer agency occupies, the GSA-controlled space identified therein.

Parking or *parking space* means surface land, structures, or areas within structures designed and designated for the purpose of parking vehicles.

Personnel means the peak number of persons to be housed during a single shift, regardless of how many workstations are provided for them. In addition to permanent employees of the agency, personnel includes temporaries, part-time, seasonal, and contractual employees, budgeted vacancies, and employees of other agencies and organizations who are housed in a space assignment.

Portfolio leases mean long term or "master" leases, usually negotiated to house several agencies whose individual term requirements differ from the terms of the underlying GSA lease with the lessor, and from each other. These may also be leases housing single agencies, but which entail for GSA responsibilities (burdens and benefits) which mimic an ownership position, or equity rights, even though no equity interest or ownership liability exists. An example of the latter would be long term renewal options on a lease which, in order to enjoy, involve substantial capital outlays by GSA to improve the building infrastructure. In both these cases, GSA is assuming risks or capital expenditures outside of the conventions of single transactions or occupancies. Accordingly, for a portfolio lease, it is not appropriate merely to pass through to the customer agency(ies) the rental rate of the underlying GSA lease. Portfolio leases are treated for pricing purposes as owned space, with Rent set by appraisal.

Predominant use means the use to which the greatest portion of a location is put. Predominant use is determined by the Public Buildings Service (PBS), GSA, and will typically result in the designation of a location as one of four types of space—General Use, Warehouse, Unique, or Parking—even though some smaller portions of the space may be used for one or more of the other types of uses.

Rent means the amounts charged by GSA for space and related services to the customer agencies with tenancy in GSA-controlled space. The word "Rent" is capitalized to differentiate it from the contract "rent" that GSA pays lessors.

Rentable square footage means the amount of space as defined in "Building Owners and Managers Association (BOMA)/American National Standards Institute (ANSI) Standard Z65.1–1996." The BOMA/ANSI standard also defines "gross," "office area," "floor common," and "building common" areas. Any references to these terms in this part refer to the BOMA/ANSI standard definitions. This standard has been adopted in accordance with GSA's interest in conforming its practices to nationally recognized industry standards to the extent possible.

Note to the Definition of Rentable Square Footage: Rentable square footage generally includes square footage of areas occupied by customers plus a prorated share of floor common areas such as elevator lobbies, building corridors, public restrooms, utility closets, and machine rooms. Rentable square footage also includes a prorated share of building common areas located throughout the building. Examples of building common space include ground floor entrance lobby, enclosed atrium, loading dock, and mail room.

Request for space or *space request* means a written or electronically submitted document or an oral request, within which an agency's space needs are summarized. A request for space is requisite for development of an OA. Thus, it must be submitted to GSA by a duly authorized official of the customer agency, and it must be accompanied by documentation of the customer agency's ability to fund payment of required Rent charges.

Return on Investment (ROI) pricing is one possible methodology used to establish a Rent rate for certain owned space. Typically, ROI pricing is a Rent rate that ensures GSA a reasonable return on its cost to acquire and improve the asset. ROI pricing may be used where no other comparable commercial space is available or no other appraisal method would be appropriate. It may also be used in cases in which an appraisal-based rental rate will not meet GSA's minimum return requirements for the planned level of investment.

Security fees mean Rent charges for building services provided by GSA's Federal Protective Service. Security fees are comprised of basic and building specific charges.

(a) A basic security fee is assessed in all PBS-controlled properties where the Federal Protective Service (FPS) provides security services. The rate is set annually on a per-square-foot basis. The charge includes the following services:

(1) General law enforcement on PBS-controlled property;

(2) Physical security assessments;

(3) Crime prevention and awareness training;

(4) Advice and assistance to building security committees;

(5) Intelligence sharing program;

(6) Criminal investigation;

(7) Assistance and coordination in Occupancy Emergency Plan development;

(8) Coordination of mobilization and response to terrorist threat or civil disturbance;

(9) Program administration for security guard contracts; and

(10) Megacenter operations for monitoring building perimeter alarms and dispatching appropriate law enforcement response.

(b) The building specific security charge is comprised of two elements: Operating expenses and amortized capital costs. Building specific charges, whether operating expenses or capital costs, are distributed overall federal users by building or facility in direct proportion to each customer agency's percentage of federal occupancy. As with joint use charges, the distribution of building-specific charges among customer agencies is not re-adjusted for vacancy.

Space means a defined area within a building and/or parcel of land. (Personal property and furniture are not included.)

Space allocation standard (SAS) means a standard agreed upon by GSA and a customer agency, written in terms that permit nationwide or regional application, that is used as a basis for establishing that agency's space requirements. An SAS may describe special GSA and customer agency funding responsibilities, although such responsibilities will be covered in OAs for space assignments. An SAS may also be developed between GSA and customer agencies on a regional level to standardize or simplify transactions, provided that the terms of a regional SAS are consistent with the terms of that agency's national SAS and the terms of this part.

Space assignment or *assignments* means a transaction between GSA and a customer agency that results in a customer agency's right to occupy certain GSA-controlled space, usually in return for customer agency payment(s) to GSA for use of the space. Space assignment rights, obligations, and responsibilities not covered in this part, or in the customer guides, are formalized in an OA.

Space planning means the process of using recognized professional techniques of planning, layout and interior design to determine the best internal location and the most efficient configuration for satisfying agency space needs.

Space program of requirements means a summary statement of an agency's space needs. These requirements will generally include information about location, square footage, construction requirements, and duration of the agency's space need. They may be identified in any format mutually agreeable to GSA and the agency.

Special space means space which has unusual architectural/construction features, requires the installation of special equipment, or requires disproportionately high or low costs to construct, maintain and/or operate as compared to office or storage space. Special space generally refers to space which has construction features, finishes, services, utilities, or other additional costs beyond those specified in the customer general allowance (*e.g.*, courtrooms, laboratories).

Standard level of service. See § 102–85.165 for the definition of standard level of service.

Telecommunications means electronic processing of information, either voice or data or both, over a wide variety of media, (*e.g.*, copper wire, microwave, fiber optics, radio frequencies), between individuals or offices within a building (*e.g.*, local area networks), between buildings, and between cities.

Tenant improvement (TI) means a finished component of an interior block of space. Tenant improvements represent additions to or alterations of the building shell that adapt the workspace to the specific uses of the customer. If made at initial occupancy, the TIs are known as initial space alterations or ISAs.

Tenant improvement (TI) allowance means the dollar amount, including design, labor, materials, contractor costs (if contractors are used), management, and inspection, that GSA will spend to construct, alter, and finish space for customer occupancy (excluding personal property and furniture, which are customer agency responsibilities) at initial occupancy. The dollar amounts for the allowances are different for each agency and bureau to accommodate agencies' different mission needs. The dollar amounts also may vary by locations reflecting different costs in different markets. The PBS bill will only reflect the actual amount the customers spend, not the allowance. The amount of the TI allowance is determined by GSA. Agencies can request that GSA revise the TI allowance amount by project or categorically for an entire bureau. The cost of replacement of tenant improvements is borne by the customer agency.

Unique space means space for which there is no commercial market comparable (*e.g.*, border stations).

Warehouse or *warehouse space* means space contained in a structure primarily intended for the housing of files, records, equipment, or other personal property, and is not primarily intended for housing personnel and office operations. Warehouse space generally is designed and constructed to lower specifications than office buildings, with features such as exposed ceilings, unfinished perimeter and few dividing partitions. Warehouse space also is usually heated to a lesser degree but not air-conditioned, and is cleaned to lesser standards than office space.

Workspace means Federally controlled space in buildings and structures (permanent, semi-permanent, or temporary) that provides an acceptable environment for the performance of agency mission requirements by employees or by other persons occupying it.

§ 102–85.40 What are the major components of the pricing policy?

The major components of the pricing policy are:

(a) An OA between a customer agency and GSA;

(b) Tenant improvement allowance; and

(c) The establishment of Rent the agency pays to GSA based on the OA for:

(1) Leased space, a pass-through to the customer agency of the underlying GSA lease contract costs, and a PBS fee; or

(2) GSA-owned space, Rent determined by appraisal.

Subpart B—Occupancy Agreement

§ 102–85.45 When is an Occupancy Agreement required?

An Occupancy Agreement (OA) is required for each customer agency's space assignment. The OA must be agreed to by GSA and the customer agency prior to GSA's commitment of funds for occupancy and formal assignment of space.

§ 102–85.50 When does availability of funding have to be certified?

The customer agency must sign an OA prior to GSA's making any major contractual commitments associated with the space request. Typically, this should occur at the earliest possible opportunity-*i.e.*, when funds become available. However, in no event shall certification occur later than just prior to the award of the contract to a design architect in the case of Federal construction or renovation in Federally owned space or prior to the award of a lease. This serves as a customer agency's funding commitment unless certification is provided on another document.

§ 102–85.55 What are the terms and conditions included in an OA?

The terms and conditions are modeled after commercial practice. They are intended to reflect a full mutual understanding of the financial terms and agreement of the parties. The OA describes the actual space and services to be provided and all associated actual costs to the customer during the term of occupancy. The OA does not include any general provisions or terms contained in this part. OAs typically describe the following, depending on whether the space is leased or Federally owned:

(a) Assigned square footage;

(b) Shell Rent and term of occupancy;

(c) Amortized amount of customer allowance used;

(d) Operating costs and escalations;

(e) One time charges; *e.g.*, lump sum payments by the customer;

(f) Real estate tax and escalations;

(g) Parking and escalations;

(h) Additional/reduced services;

(i) Security services and associated Rent;

(j) Joint use space and associated Rent;

(k) PBS fee;

(l) Customer rights and provisions for occupancy after OA expiration;

(m) Cancellation provisions if different from this part or the customer service guides;

(n) Any special circumstances associated with the occupancy, such as environmental responsibilities, unusual use restrictions, or agreements with local authorities;

(o) Emergency relocations;

(p) Clauses specific to the agreement;

(q) Other Rent, *e.g.*, charges for antenna sites, land;

(r) Agency standard clauses; and

(s) General clauses defining the obligations of both parties.

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§ 102–85.60 Who can execute an OA?

Authorized GSA and customer agency officials who can commit or obligate the funds of their respective agencies can execute an OA. Higher level signatories may be appropriate from both agencies for space assignments in owned or leased space, that are unusual in size, location, duration, public interest, or other factors. Each agency decides its appropriate signatory level.

§ 102–85.65 How does an OA obligate the customer agency?

An OA obligates the executing customer agency to fund the current-year Rent obligation owed GSA, as well as to reimburse GSA for any other *bona fide* obligations that GSA may have incurred on behalf of the customer agency. Although the OA is an interagency agreement, memorializing the understanding of GSA and its customer agency, the OA may not be construed as obligating future year customer agency funds until they are legally available. A multi-year OA commitment assumes the customer agency will seek the necessary funding through budget and appropriations processes.

§ 102–85.70 Are the standard OA terms appropriate for non-cancelable space?

Yes, most of the standard terms apply; however, the right to cancel upon a 4-month (120 day) notice is not available. See § 102–85.35 for the definition of non-cancelable space.

§ 102–85.75 When can space assignments be terminated?

(a) Customer agencies can terminate any space assignments, except those designated as non-cancelable, with the following stipulations:

(1) The agency must give GSA written notice at least four months prior to termination.

(2) The agency is responsible for reimbursing GSA for the unpaid balance of the cost of tenant improvements, generally prior to GSA releasing the agency from the space assignment. In the event the customer agency received a rent concession (e.g., free rent) at the inception of the assignment as part of the consideration for the entire lease term, then the amount of the concession applicable to the remaining term must be repaid to GSA.

(3) If the space to be vacated is ready for occupancy by another customer and marketable, GSA accepts the termination of assignment.

(4) If the agency has vacated all of the space and removed all personal property and equipment from the space by the cancellation date in the written notice, the agency will be released effective that date from further Rent payments.

(5) An agency may terminate a GSA space assignment with less than a four-month advance written notice to GSA, if:

(i) Either GSA or the terminating agency has identified another agency customer for the assigned space and that substitute agency wants and is able to fully assume the Rent payments due from the terminating agency; and

(ii) The terminating agency continues to pay Rent until the new agency starts paying Rent.

(b) GSA can terminate space assignments according to GSA regulations for emergency or forced moves.

(c) OAs terminate automatically at expiration.

§ 102–85.80 Who is financially responsible for expenses resulting from tenant non-performance?

The customer agencies are financially responsible for expenses incurred by the Government as a result of any failure on their part to fulfill a commitment outlined in an OA or other written agreements in advance of, or in addition to, the OA. Customer agencies are also financially responsible for revised design costs and any additional costs resulting from changes to space requirements or space layouts made by the agency after a lease, alteration, design, or construction contract has been awarded by GSA.

§ 102–85.85 What if a customer agency participates in a consolidation?

If an agency agrees to participate in a consolidation upon expiration of an OA, the relocation expenses will be addressed in the new OA negotiated by GSA and the customer agency. The customer agency generally pays such costs.

Subpart C—Tenant Improvement Allowance

§ 102–85.90 What is a tenant improvement allowance?

A tenant improvement (TI) allowance enables the customer agency to design, configure and build out space to support its program operations. It is based on local market construction costs and the specific bureau's historical use of space. (See also the definition at § 102–85.35.)

§ 102–85.95 Who pays for the TI allowance?

The customer agency pays for the amount of the tenant improvement allowance actually used.

§ 102–85.100 How does a customer agency pay for tenant improvements?

To pay for the installation of tenant improvements, the customer agency may spend an amount not to exceed the tenant allowance. The amount spent by the customer agency for TIs is amortized over a period of time specified in the OA, not to exceed the useful life of the improvements. This amortization payment is in addition to the shell rent and services.

§ 102–85.105 How does an agency pay for customer alterations that exceed the TI allowance?

Amounts exceeding the TI allowance are paid in a one-time lump sum and are not amortized over the term of the occupancy. The agency certifies lump sum funds are available prior to GSA proceeding with the work.

§ 102–85.110 Can the allowance amount be changed?

The GSA schedule of allowances for new assignments is adjusted annually for design and construction cost changes. As the need arises, GSA may adjust an agency or bureau's TI allowance. GSA may also adjust a TI allowance for a specific project, if conditions warrant. This decision is solely GSA's. In addition, the customer agency may waive any part or all of its customization allowance in the case of a new space assignment. In the case of backfill space (also known as relet space), the customer agency can also waive any part or all of the tenant general allowance, if the customer agency will use the existing tenant improvements, with or without modifications.

Subpart D—Rent Charges

§ 102–85.115 How is the Rent determined?

Unless an exemption is granted under the authority of the Administrator of General Services, the Rent charged approximates commercial charges for comparable space and space-related services as follows:

(a) Generally, Rent for Federally owned space provided by GSA is based on market appraisals of fully serviced rental values for the predominant use to which space in a building is put; *e.g.*, general use, warehouse use, and parking use. In cases where market appraisals are not practical; *e.g.*, in cases involving unique space or when market comparables are not available, GSA may establish Rent on the basis of alternate commercial practices. See the discussion of alternate valuation methods in § 102–85.125. Amortization of tenant improvements, parking fees, and security charges are calculated separately and added to the appraised shell Rent to establish the Rent charge. Customer agencies also pay for a pro rata share of joint use space.

(b) Generally, Rent for space leased by GSA is based on the actual cost of the lease, including the costs (if any) of services not provided by the lessor, plus a GSA fee, and security charges and parking (if not in the lease).

(1) The Rent is based on the terms and conditions of the OA, starting with the shell Rent.

(2) In addition to the shell Rent, the Rent includes amortization of TI allowances used, real estate taxes, operating costs, extra services, parking, GSA fee for its services, and charges for security, joint-use, and other applicable rental charges (*e.g.*, antenna site, land, wareyard).

§ 102–85.120 What is shell Rent?

Shell Rent is that portion of GSA Rent charged for the building envelope and land. (See § 102–85.35 for the definition of building shell.)

§ 102–85.125 What alternate methods may be used to establish Rent in Federally-owned space?

Alternate methods of establishing Rent are based on private sector models. They include, but are not limited to:

(a) Return on investment (ROI) approach or a similar cost recovery method used when market comparables are not available and/or GSA must "build to suit" to fulfill customer agency requirements; *e.g.*, border stations; and

(b) Rent schedules for the right to use rooftops and other floor areas not suitable for workspace; *e.g.*, antenna sites and signage.

§ 102–85.130 How are exemptions from Rent granted?

Exemptions from Rent are rare. However, the Administrator of General Services may exempt any GSA customer from Rent after a determination that application of Rent would not be feasible or practical. Customer agency requests for exemptions must be addressed to the Administrator of General Services and submitted in accordance with GSA Order PBS 4210.1, "Rent Exemption Procedures," dated December 20, 1991, or in accordance with any superseding GSA order. A copy of the order may be obtained from the Office of Portfolio Management, General Services Administration, 1800 F Street, NW., Washington, DC 20405.

§ 102–85.135 What if space and services are provided by other executive agencies?

Any executive agency other than GSA providing space and services is authorized to charge the occupant for the space and services at rates approved by the Administrator of General Services and the Director of the Office of Management and Budget. If space and services are of the type provided by the Administrator of General Services, the executive agency providing the space and services must credit the monies derived from any fees or charges to the appropriation or fund initially charged for providing the space or services, as prescribed by Subsection 210(k) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 490(k)).

§ 102–85.140 How are changes in Rent reflected in OAs?

(a) If Rent changes in ways that are identified in the OA, then no change to the OA is required. Typically, OAs state that certain components of Rent are subject to annual escalation; *e.g.*, operating expenses, real estate taxes, parking charges, the basic security charge, and building-specific security operating and amortized capital expenses which do not entail a change in service level. Also, in Federally-owned space, OAs state that the shell rent is re-marked to market every five years. In leased space, the OA will identify any programmed changes in the lease contract rent (such as pre-set increases or steps in the contract rent rate) that will translate into a change in the customer agency's Rent. Changes in Rent specified in OAs will serve as notice to agencies of future Rent changes for budgeting purposes. For a discussion of budgeting for Rent, see § 102–85.160.

(b) Changes to Rent other than those identified in paragraph (a) of this section typically require an amended OA. There are many events that might occasion a change in Rent, and an amended OA, such as:

(1) An agency expands or contracts at an existing location;

(2) PBS agrees to fund additional tenant improvements that are then amortized over the remaining OA term, or over an extended OA term;

(3) Upon physical re-measurement, the true square footage of the space assignment is found to be different from the square footage of record;

(4) The amount of joint use space in the building changes;

(5) The level of building-specific security services changes; or

(6) PBS undertakes new capital expenditures for new or enhanced security countermeasures.

§ 102–85.145 When are customer agencies responsible for Rent charges?

(a) When a customer agency occupies cancelable space, it is responsible for Rent charges until:

(1) The date of release specified in the OA, or until the date space is actually vacated, whichever occurs later; or

(2) Four months after having provided GSA written notice of release; or

(3) The date space is actually vacated, whenever occupancy extends beyond the date agreed upon under either paragraph (a)(1) or (2) of this section.

(b) When a customer agency releases non-cancelable space, it is responsible for all attributable Rent and other space charges until the OA expires. This responsibility is mitigated to the extent that GSA is able to assign the space to another user or dispose of it. (See § 102–85.65 How does an OA obligate the customer agency?)

(c) When a customer agency commits to occupy space in an OA or other binding document, but never occupies that space, that agency is responsible for:

(1) Non-cancelable space: Rent payments due for the space until the OA expires, unless GSA can mitigate; or

(2) All other space: Either GSA's space charges for 4 months plus the cost of tenant improvements or GSA's actual costs, whichever is less.

§ 102–85.150 How will Rent charges be reflected on the customer agency's Rent bill?

Rent charges are billed monthly, in arrears, based on an annual rate which is divided by 12. Billing commences the first month in which the agency occupies the space for more than half of the month, and ends in the last month the agency occupies the space.

§ 102–85.155 What does a customer agency do if it does not agree with a Rent bill?

(a) If a customer agency does not agree with the way GSA has determined its Rent obligation (*e.g.*, the agency does not agree with GSA's space classification, appraised Rent, or the allocation of space), the agency may appeal its Rent bill to GSA.

(b) GSA will not increase or otherwise change Rent for any assignment, except as agreed in an OA, in the case of errors, or when the OA is amended. However, customer agencies may at any time request a regional review of the measurement, classification, service levels provided, or charges assessed that pertain to the space assignment without resorting to formal procedures. Such requests do not constitute appeals and should be directed to the appropriate GSA Regional Administrator.

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(c) If a customer agency still wants to pursue a formal appeal of Rent charges, they may do so, but with the following limitations:

(1) Terms, including rates, to which the parties agree in an OA are not appealable;

(2) In leased space, the contract rent passed through from the underlying lease cannot be appealed;

(3) In GSA-owned space, when the fully-serviced shell Rent is established through appraisal, the appraised rate must exceed comparable commercial square foot rates by 20 percent. When shell Rent in owned space is established on the basis of ROI at the inception of an OA, and the customer agency executes the OA, then the ROI rate cannot later be appealed. Other components of Rent that are established on the basis of actual cost—*eg.*, amortization of TIs and building specific security charges—also cannot be appealed.

(4) Additionally, the customer agency is required to compare its assigned space with other space in the surrounding community that:

(i) Is available in similar size block of space in a comparable location;

(ii) Is comparable in quality to the space provided by GSA;

(iii) Provides similar service levels as part of the charges;

(iv) Contains similar contractual terms, conditions, and escalations clauses; and

(v) Represents a lease transaction completed at a similar point in time.

(5) Data from at least three comparable locations will be necessary to demonstrate a market trend sufficient to warrant revising an appraised Rent charge.

(d) A customer agency filing an appeal for a particular location or building must develop documentation supporting the appeal and file the appeal with the appropriate Regional Administrator. The GSA regional office will verify all pertinent information and documentation supporting the appeal. The GSA Regional Administrator will accept or deny the appeal and will notify the appealing agency of his or her ruling.

(e) A further appeal may be filed by the customer agency's headquarters level officials with the Commissioner, Public Buildings Service, if equitable resolution has not been obtained from the initial appeal. A head of a customer agency may further appeal to the Administrator of the General Services. Documentation of the procedures followed for prior resolution must accompany an appeal to the Administrator. Decisions made by the Administrator are final.

(f) Adjustments of Rent resulting from reviews and appeals will be effective in the month that the agency submitted a properly documented appeal. Adjustments in Rent made under this section remain in effect for the remainder of the 5-year period in which the charges cited in the OA were applicable.

§ 102–85.160 How does a customer agency know how much to budget for Rent?

GSA normally provides customer agencies an estimate of Rent increases approximately 2 months prior to the agencies' Office of Management and Budget (OMB) submission for the fiscal year in which GSA will charge Rent. This gives the affected customer agencies an opportunity to budget for an increase or decrease. However, GSA must obtain the concurrence of OMB for such changes prior to notifying customer agencies. In the event GSA is unable to provide timely notice of a future Rent increase, customer agencies are nonetheless obligated to pay the increased Rent amount. For existing assignments in owned buildings, GSA charges for fully serviced shell Rent, in aggregate, shall not exceed the bureau level budget estimates provided to the customer agencies annually. This provision does not apply to:

(a) New assignments;

(b) Changes in current assignments;

(c) Leased space;

(d) New tenant improvement amortization;

(e) Building specific security costs; and

(f) New amortization of capital expenditures under ROI pricing due to changes in scope of proposed projects or repair and/or replacement of building components

Subpart E—Standard Levels of Service

§ 102–85.165 What are standard levels of service?

(a) The standard levels of service covered by GSA Rent are comparable to those furnished in commercial practice. They are based on the effort required to service the customer agency's space for a 5-day week (Monday to Friday), one-shift regular work schedule. GSA will provide adequate building startup services, before the beginning of the customer's regular one-shift work schedule, and shutdown services after the end of this schedule.

(b) Without additional charge, GSA customers may use their assigned space and supporting automatic elevator systems, lights and small office and business machines including personal computers on an incidental basis, unless specified otherwise in the OA.

§ 102–85.170 Can flexitime and other alternative work schedules cost the customer agency more?

Yes, GSA customers who extend their regular work schedule by a system of flexible hours shall reimburse GSA for its approximate cost of the additional services required.

§ 102–85.175 Are the standard level services for cleaning, mechanical operation, and maintenance identified in an OA?

Unless specified otherwise in the OA, standard level services for cleaning, mechanical operation, and maintenance shall be provided in accordance with the GSA standard level of services as defined in § 102–85.165, and in the PBS Customer Guide to Real Property. A copy of the guide may be obtained from the General Services Administration, Office of Business Performance (PX), 1800 F Street, NW., Washington, DC 20405.

§ 102–85.180 Can there be other standard services?

GSA may provide additional services to its customers at the levels and times deemed by the Administrator of General Services to be necessary for efficient operations and proper servicing of space under the assignment responsibility of GSA.

§ 102–85.185 Can space be exempted from the standard levels of service

Yes, customer agencies may be excused from paying for standard service levels for space assignments when:

(a) In GSA-delegated space, the customer agency provides for these services itself and thus pays Rent minus charges for these services; or

(b) In rare instances, standard service levels may be waived by the Administrator of General Services in instances where charging for such standard services would not be feasible or practical, *e.g.*, in assignments of limited square footage or functional use.

§ 102–85.190 Can GSA Rent be adjusted when standard levels of service are performed by other customer agencies?

Customer agencies that arrange and pay separately for the costs of standard level services normally covered by GSA Rent will receive a Rent credit or other type of reimbursement by GSA for the amount GSA would have charged for such services. The type of reimbursement is at GSA's discretion. The reimbursement is limited to the amount included for the services in GSA Rent. Approval to perform or contract for such services must be obtained in advance by the customer agency from the appropriate GSA regional office.

Subpart F—Special Services

§ 102–85.195 Does GSA provide special services?

Yes, GSA provides special services on a cost-reimbursable basis:

(a) In GSA-controlled space, GSA may provide for special services that cannot be separated from the building or space costs (inseparable services, such as utilities, which are not individually metered). GSA's estimate of the special service cost is the basis for the bill amount. The bill amount for separable special services is either based on a previously agreed upon fixed price or the actual cost, including a fee for GSA's services.

(b) GSA can also provide special services to other Federal agencies in agency-controlled and operated space on a cost-reimbursable basis.

Subpart G—Continued Occupancy, Relocation and Forced Moves

§ 102–85.200 Can customer agencies continue occupancy of space or must they relocate at the end of an OA?

The answer is contingent upon whether the customer agency is in Federally owned or leased space.

(a) Unless stated otherwise in the OA, a customer agency within a GSA controlled, Federally owned building has automatic occupancy rights at the end of the OA term for occupied space. However, a new OA must be negotiated.

(b) In leased space, the OA generally reflects the provisions of the underlying lease and will specify whether or not renewal options are available. If the OA does not include a renewal option, customer agencies should assume relocation would be necessary upon OA expiration, and budget for it. Further, renewal options are not, in themselves, a guarantee of continued occupancy at that location. In some cases, the renewal rate is substantially above market or the option was not part of the initial price evaluation for the occupancy. In such cases, GSA may be required to run a competition for the replacement lease, and a relocation may ensue. Nonetheless, it is also possible that GSA may execute a succeeding lease with the incumbent lessor, in which case there is no move.

(c) GSA and customer agencies should initiate discussions at least 18–20 months in advance of OA expiration to address an action for the replacement or continued occupancy of the existing space assignment. This allows both agencies time to budget for the work and the cost.

§ 102–85.205 What happens if a customer agency continues occupancy after the expiration of an OA?

A mutual goal of GSA and its customers is to have current OAs in place for all space assignments. However, provisions are necessary to cover the GSA and customer relationship if an OA expires prior to execution of a mutually desired succeeding agreement. Because the risks, liabilities, and consequences of a customer's continued occupancy depend on whether the assigned space is leased or Federally owned, different provisions in the following table apply:

HOLDOVER TENANCY—CUSTOMER AGENCY RESPONSIBILITIES IN THE EVENT OF TENANT DELAY IN VACATING SPACE

In leased space	In federally-owned space
To pay those costs associated with lease contract, GSA fee, and damages/claims, arising from changes in GSA contract costs which are caused by the tenant's delay.	To pay Rent as determined by GSA's pricing policy, as described in this part, and those added costs to GSA (claims, damages, changes, etc.) resulting from the tenant-caused delay.

§ 102–85.210 What if a customer agency has to relocate?

If the agency or GSA determines relocation is necessary at the expiration of an OA for either Federally owned or leased space, the customer agency is responsible for all costs associated with relocation at that time.

§ 102–85.215 What if another customer agency forces a GSA customer to move?

If a GSA customer agency, or GSA, forces the relocation of another GSA customer agency prior to the expiration of the customer's OA, the "forcing" agency is responsible:

(a) For all reasonable costs associated with the relocation of the agency being "forced" to move, including architectural-engineering design, move coordination and physical relocation, telecommunications and ADP equipment relocation and installation;

(b) To GSA for all of the relocated agency's unpaid tenant improvements, if any; and

(c) To the customer agency for the undepreciated amount of any lump sum payment that was already made by the agency for alterations.

§ 102–85.220 Can a customer agency forced to relocate waive the reimbursements?

Yes, a customer agency forced to relocate can waive some or all of the reimbursements from the forcing agency that are prescribed in § 102–85.215. However, a relocated customer agency cannot waive the requirement for the forcing customer agency to reimburse GSA for unpaid tenant improvements. If GSA is the "forcing" agency, it is responsible for the same costs as any other forcing customer agency.

§ 102–85.225 What are the funding responsibilities for relocations resulting from emergencies?

(a) In emergencies, swift remedies, including the possible relocation of a customer agency to alternate space, are required. The remedies may include requests for funding authorizations from OMB and Congress. GSA may serve as the central coordinator of such remedies.

(b) Funding responsibility will vary by situation. If a customer agency is only temporarily displaced from its space, GSA typically covers the cost of temporary set-up in a provisional location. If the agency is obliged to relocate permanently, an OA will be prepared which will address all terms of the occupancy. In such cases, new tenant improvements will be constructed which can be amortized over the life of a new occupancy term, and a new Rent rate will be developed.

Dated: April 27, 2001.

Thurman M. Davis, Sr.,

Acting Administrator of General Services.

[FR Doc. 01–11390 Filed 5–7–01; 8:45 am]

BILLING CODE 6820–24–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 302–11

[FTR Amendment 96]

RIN 3090–AH40

Federal Travel Regulation; Relocation Income Tax (RIT) Allowance Tax Tables

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: The Federal, State, and Puerto Rico tax tables for calculating the relocation income tax (RIT) allowance must be updated yearly to reflect changes in Federal, State, and Puerto

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Rico income tax brackets and rates. The Federal, State, and Puerto Rico tax tables contained in this rule are for calculating the 2001 RIT allowance to be paid to relocating Federal employees.

DATES: This final rule is effective January 1, 2001, and applies for RIT allowance payments made on or after January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Calvin L. Pittman, Office of Governmentwide Policy (MTT), Washington, DC 20405, telephone (202) 501–1538.

SUPPLEMENTARY INFORMATION: This amendment provides the tax tables necessary to compute the relocation income tax (RIT) allowance for employees who are taxed in 2001 on moving expense reimbursements.

A. Background

Section 5724b of Title 5, United States Code, provides for reimbursement of substantially all Federal, State, and local income taxes incurred by a transferred Federal employee on taxable moving expense reimbursements. Policies and procedures for the calculation and payment of a RIT allowance are contained in the Federal Travel Regulation (41 CFR part 302–11). The Federal, State, and Puerto Rico tax tables for calculating RIT allowance payments are updated yearly to reflect changes in Federal, State, and Puerto Rico income tax brackets and rates.

B. Executive Order 12866

The General Services Administration (GSA) has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 302–11

Government employees, Income taxes, Relocation allowances and entitlements, Transfers, Travel and transportation expenses.

For the reasons set forth in the preamble, 41 CFR part 302–11 is amended as follows:

PART 302–11—RELOCATION INCOME TAX (RIT) ALLOWANCE

1. The authority citation for 41 CFR part 302–11 continues to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

2. Appendixes A, B, C, and D to part 302–11 are amended by adding the following tables at the end of each appendix, respectively, to read as follows:

Appendix A to Part 302–11—Federal Tax Tables for RIT Allowance

* * * * *

Federal Marginal Tax Rates by Earned Income Level and Filing Status—Tax Year 2000

The following table is to be used to determine the Federal marginal tax rate for Year 1 for computation of the RIT allowance as prescribed in § 302–11.8(e)(1). This table is to be used for employees whose Year 1 occurred during calendar year 2000.

Marginal tax rate	Single taxpayer		Heads of household		Married filing jointly/qualifying widows & widowers		Married filing separately	
Percent	Over	But not over	Over	But not over	Over	But not over	Over	But not over
15	$7,417	$34,638	$13,375	$49,734	$17,421	$63,297	$8,603	$31,342
28	34,638	75,764	49,734	113,413	63,297	131,334	31,342	63,448
31	75,764	148,990	113,413	180,742	131,334	189,826	63,448	99,219
36	148,990	306,111	180,742	326,450	189,826	315,957	99,219	170,524
39.6	306,111	.....	326,450	.....	315,957	.....	170,524	.....

Appendix B to Part 302–11—State Tax Tables for RIT Allowance

* * * * *

State Marginal Tax Rates by Earned Income Level—Tax Year 2000

The following table is to be used to determine the State marginal tax rates for calculation of the RIT allowance as prescribed in § 302–11.8(e)(2). This table is to be used for employees who received covered taxable reimbursements during calendar year 2000.

MARGINAL TAX RATES (STATED IN PERCENTS) FOR THE EARNED INCOME AMOUNTS SPECIFIED IN EACH COLUMN.[1, 2]

State (or District)	$20,000–$24,999	$25,000–$49,999	$50,000–$74,999	$75,000 & Over
Alabama	5	5	5	5
Alaska	0	0	0	0
Arizona	2.87	3.2	3.74	5.04
Arkansas	4.5	7	7	7
If single status[3]	6	7	7	7
California	2	4	8	9.3
If single status[3]	4	8	8	9.3
Colorado	4.75	4.75	4.75	4.75
Connecticut	4.5	4.5	4.5	4.5

MARGINAL TAX RATES (STATED IN PERCENTS) FOR THE EARNED INCOME AMOUNTS SPECIFIED IN EACH COLUMN.[1, 2]—Continued

State (or District)	$20,000–$24,999	$25,000–$49,999	$50,000–$74,999	$75,000 & Over
Delaware	5.2	5.95	6.4	6.4
District of Columbia	8	9.5	9.5	9.5
Florida	0	0	0	0
Georgia	6	6	6	6
Hawaii	7.2	8.2	8.75	8.75
If single status[3]	8.2	8.75	8.75	8.75
Idaho	7.8	8.2	8.2	8.2
Illinois	3	3	3	3
Indiana	3.4	3.4	3.4	3.4
Iowa	6.48	7.92	8.98	8.98
If single status[3]	6.8	7.92	8.98	8.98
Kansas	3.5	6.25	6.25	6.45
If single status[3]	6.25	6.45	6.45	6.45
Kentucky	6	6	6	6
Louisiana	2	4	4	6
If single status[3]	4	4	6	6
Maine	4.5	7	8.5	8.5
If single status[3]	7	8.5	8.5	8.5
Maryland	4.85	4.85	4.85	4.85
Massachusetts	5.95	5.95	5.95	5.95
Michigan	4.4	4.4	4.4	4.4
Minnesota	5.5	7.25	7.25	8
If single status[3]	7.25	7.25	8	8
Mississippi	5	5	5	5
Missouri	6	6	6	6
Montana	9	10	11	11
Nebraska	3.65	5.24	6.99	6.99
If single status[3]	5.24	6.99	6.99	6.99
Nevada	0	0	0	0
New Hampshire	0	0	0	0
New Jersey	1.4	1.75	2.45	6.37
If single status[3]	1.4	3.5	5.525	6.37
New Mexico	3.2	6	7.1	8.2
If single status[3]	6	7.1	7.9	8.2
New York	4	5.25	6.85	6.85
If single status[3]	5.25	6.85	6.85	6.85
North Carolina	6	7	7	7.75
North Dakota	6.67	9.33	12	12
If single status[3]	8	10.67	12	12
Ohio	3.580	4.295	5.012	7.228
Oklahoma	5	6.75	6.75	6.75
If single status[3]	6.75	6.75	6.75	6.75
Oregon	9	9	9	9
Pennsylvania	2.8	2.8	2.8	2.8
Rhode Island[4]	26.5	26.5	26.5	26.5
South Carolina	7	7	7	7
South Dakota	0	0	0	0
Tennessee	0	0	0	0
Texas	0	0	0	0
Utah	7	7	7	7
Vermont[5]	25	25	25	25
Virginia	5	5.75	5.75	5.75
Washington	0	0	0	0
West Virginia	4	4.5	6	6.5
Wisconsin	6.37	6.77	6.77	6.77
Wyoming	0	0	0	0

[1] Earned income amounts that fall between the income brackets shown in this table (e.g., $24,999.45, $49,999.75) should be rounded to the nearest dollar to determine the marginal tax rate to be used in calculating the RIT allowance.

[2] If the earned income amount is less than the lowest income bracket shown in this table, the employing agency shall establish an appropriate marginal tax rate as provided in § 302–11.8(e)(2)(ii).

[3] This rate applies only to those individuals certifying that they will file under a single status within the States where they will pay income taxes. All other taxpayers, regardless of filing status, will use the other rate shown.

[4] The income tax rate for Rhode Island is 26.5 percent of Federal income tax liability for all employees. Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in § 302–11.8(e)(2)(iii).

[5] The income tax rate for Vermont is 25 percent of Federal income tax liability for all employees. Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in § 302–11.8(e)(2)(iii).

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Appendix C to Part 302–11—Federal Tax Tables For RIT Allowance—Year 2

* * * * *

Federal Marginal Tax Rates by Earned Income Level and Filing Statu—Tax Year 2001

The following table is to be used to determine the Federal marginal tax rate for Year 2 for computation of the RIT allowance as prescribed in § 302–11.8(e)(1). This table is to be used for employees whose Year 1 occurred during calendar years 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999 or 2000.

Marginal tax rate	Single taxpayer		Heads of household		Married filing jointly/qualifying widows & widowers		Married filing separately	
Percent	Over	But not over	Over	But not over	Over	But not over	Over	But not over
15	$7,582	$35,363	$13,905	$51,016	$18,061	$65,011	$8,742	$32,028
28	$35,363	$77,472	$51,016	$116,612	$65,011	$133,818	$32,028	$65,470
31	$77,472	$154,524	$116,612	$180,660	$133,818	$193,566	$65,470	$99,363
36	$154,524	$317,548	$180,660	$324,522	$193,566	$323,455	$99,363	$169,100
39.6	$317,548	.....	$324,522	.....	$323,455	.....	$169,100	.....

Appendix D to Part 302–11—Puerto Rico Tax Tables for RIT Allowance

* * * * *

Puerto Rico Marginal Tax Rates by Earned Income Level—Tax Year 2000

The following table is to be used to determine the Puerto Rico marginal tax rate for computation of the RIT allowance as prescribed in § 302–11.8(e)(4)(i).

Marginal tax rate	Single filing status		Any other filing status	
Percent	Over	But not over	Over	But not over
11	.....	.....	.....	$25,000
16.5	.....	$25,000	.....	.....
29.5	$25,000	$50,000	$25,000	$50,000
33	$50,000	.....	$50,000	.....

Dated: April 30, 2001.

Thurman M. Davis, Sr.,

Acting Administrator of General Services.

[FR Doc. 01–11497 Filed 5–7–01; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST–1999–6189]

Organization and Delegation of Powers and Duties; Delegation to the Commandant, United States Coast Guard

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation is delegating to the Commandant, United States Coast Guard, his authority to regulate the discharge of sewage and graywater by cruise vessels into certain Alaskan waters.

DATES: This final rule is effective on May 8, 2001.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Kathryn Sinniger, Office of Regulations and Administrative Law, US Coast Guard, 202–267–0128. If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION: In December, 2000, Congress passed Title XIV—Certain Alaskan Cruise Ship Operations, Public Law 106–554, limiting the discharges of treated and untreated sewage and graywater by cruise vessels visiting Alaskan ports and operating in the waters of the Alexander Archipelago and the navigable waters of the United States within the State of Alaska and within Kachemak Bay National Estuarine Research Reserve. Title XIV directs the Secretary to promulgate regulations, including requirements for logbooks and reports, incorporating into the vessel examination and inspection regime the sampling of cruise vessel discharges sufficient to verify that those vessels comply with all applicable environmental laws and international treaty requirements.

The Secretary is delegating to the Commandant, United States Coast Guard, his authority under Title XIV—Certain Alaskan Cruise Ship Operations, Public Law 106–554, to promulgate regulations that will ensure compliance with this statute by the owners, operators, masters, or other person in charge of cruise vessels operating in waters covered by this statute.

This delegation is being published as a final rule effective on the date of publication. Since this amendment relates to the Departmental management, organization, procedure, and practice, notice and comment are unnecessary under 5 U.S.C. 553(b). Furthermore, since this amendment expedites the Coast Guard's ability to promulgate regulations to meet the environmental goals and enforcement obligations of the statute, the Secretary finds good cause, under 5 U.S.C. 553(d)(3), that this rule should be made effective on the date of publication.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended to read as follows:

PART 1—[AMENDED]

1. The authority citation for Part 1 continues to read as follows:

Authority: 49 U.S.C. 322; 46 U.S.C. 2104(a); 28 U.S.C. 2672; 31 U.S.C 3711(a)(2); Pub. L. 101–552, 104 Stat. 2736; Pub. L. 106–159, 113 Stat. 1748.

2. In § 1.46, add new paragraph (ttt) to read as follows:

§ 1.46 Delegations to Commandant of the Coast Guard.

* * * * *

(ttt) Carry out the functions and exercise the authority vested in the Secretary by Title XIV—Certain Alaskan Cruise Ship Operations, Public Law 106–554 to regulate the discharge of sewage and graywater by cruise vessels into the waters of the Alexander Archipelago, as defined in that law, and the navigable waters of the United States within the State of Alaska and within Kachemak Bay National Estuarine Research Reserve.

Issued on: April 27, 2001.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 01–11424 Filed 5–4–01; 8:45 am]

BILLING CODE 4910–62–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH73

Endangered and Threatened Wildlife and Plants; Re-opening of Comment Period on the Sacramento Splittail Final Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; re-opening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the re-opening of the comment period for the final rule on the Sacramento splittail (*Pogonichthys macrolepidotus*). Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this re-opened comment period, and will be fully considered in the final rule.

DATES: We will accept public comments until June 7, 2001.

ADDRESSES: Written comments and information should be submitted to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, California 95825. For electronic mail address and further instructions on commenting, refer to Public Comments Solicited section of this notice.

FOR FURTHER INFORMATION CONTACT: For general information, Stephanie Brady or Jason Douglas, at the above address (telephone 916/414–6600; facsimile 916/414–6713).

SUPPLEMENTARY INFORMATION:

Background

The Sacramento splittail (hereafter splittail) represents the only extant species in its genus in North America. For a detailed description of the species, see the Recovery Plan for the Sacramento/San Joaquin Delta Native Fishes (Service 1996) and references within that plan.

Splittail are endemic to certain waterways in California's Central Valley, where they were once widely distributed (Moyle 1976). Sacramento splittail occur in Suisun Bay, Suisun Marsh, the San Francisco Bay-Sacramento-San Joaquin River Estuary (Estuary), the Estuary's tributaries (primarily the Sacramento and San Joaquin rivers), the Napa River and Marsh, and the Petaluma River and Marsh. The Sacramento splittail no longer occurs throughout a significant portion of its former range.

Pursuant to the Endangered Species Act of 1973, as amended (Act), the splittail was listed as a threatened species on February 8, 1999 (64 FR 5963). In this previous listing determination, the Service found that changes in water flows and water quality resulting from export of water from the Sacramento and San Joaquin rivers, periodic prolonged drought, loss of shallow water habitat, and the effect of agricultural and industrial pollutants were significant factors in the species decline.

Subsequent to the publication of the final rule, plaintiffs in the cases *San Luis & Delta-Mendota Water Authority* v. *Anne Badgley, et al.* and *State Water Contractors, et al.* v. *Michael Spear, et al.* commenced action in Federal Eastern District Court of California, challenging the listing of the splittail as threatened, alleging various violations of the Act and of the Administrative Procedure Act (5 U.S.C 551 *et seq.*). The Service, as directed by the court, and pursuant to the Act, provided notice of the opening of a comment period regarding the threatened status for the splittail, from January 12, 2001 to February 12, 2001 (66 FR 2828). The Service is now re-opening the comment period to acquire additional information on the status, abundance and distribution of splittail in the Central Valley of California. Upon the close of this comment period, the Service will make its determination whether the splittail warrants the continued protection of the Act.

Public Comments Solicited

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information by mail to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, California 95825.

2. You may send comments by electronic mail (e-mail) to: fw1splittail@fws.gov. If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: RIN 1018–AH73" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Sacramento Fish and Wildlife Office at telephone number 919/414–6600, during normal business hours.

3. You may hand-deliver comments to our Sacramento Fish and Wildlife Office, during normal business hours, at the address given above.

Comments and materials received will be available for inspection, by appointment, during normal business hours at the address under (1) above.

Author(s)

The primary author of this notice is Stephanie Brady (see **ADDRESSES** section), U.S. Fish and Wildlife Service, Regional Office, 911 N.E. 11th Avenue, Portland, Oregon 97232.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Michael J. Spear,

Manager, California/Nevada Operations Office, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 01–11459 Filed 5–7–01; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 010413094–1094–01; I.D. 032101A]

RIN 0648–AP10

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Deep-Sea Red Crab Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule; request for comments.

SUMMARY: NMFS issues this emergency interim rule to govern fishing in the Atlantic deep-sea red crab (*Chaceon quinquedens*) (red crab) fishery. This rule implements a total allowable catch (TAC) of 2.5 million lb (1,134 mt) of red crab; a possession limit of 65,000 lb (29.5 mt) of whole red crab or its equivalent; a trap/pot limit of 600 pots; and an incidental catch of 100 lb (45.4 kg) of whole red crab per fishing trip. This rule also establishes the requirements for a letter of authorization (LOA), for vessel reporting via an interactive voice response (IVR) system, and for submission of vessel trip reports (VTR) for the red crab fishery. The intended effect of this rule is to prevent or eliminate overfishing and provide immediate protection of the red crab stock in the previously unregulated Atlantic deep-sea red crab fishery in the Northeast region until a Federal fishery management plan (FMP) is implemented.

DATES: This emergency interim rule is effective from May 18, 2001, through November 14, 2001.

Written comments must be received no later than 5 p.m. local time on June 7, 2001.

ADDRESSES: Written comments should be sent to, and copies of the Environmental Assessment/Regulatory Impact Review supporting this action may be obtained from, Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930.

Comments regarding the collection-of-information requirements contained in this emergency interim rule should be sent to the Regional Administrator and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, 978–281–9272.

SUPPLEMENTARY INFORMATION:

Background

Deep-sea red crabs are typically slow growing, and major recruitment events are believed to occur rarely, leaving this resource particularly vulnerable to overfishing. Prior to March 1, 2000 (the "control date" that may be used for establishing eligibility criteria for determining levels of access to the red crab fishery, should access be regulated in the future), the largest reported vessel in the red crab fishery was 120 ft (36.6 m) in length overall and the average hold capacity of vessels in the fleet was between 60,000 and 65,000 lb (27.2 mt and 29.5 mt) of whole crab product. As of the control date, no vessel reportedly fished more than 600 pots, and none had the ability to process completely crabs on board. ("Process completely" means that the harvested crabs are picked, cleaned, cooked, and frozen.) All but one of the five vessels in the fishery prior to the control date land their crabs whole and alive. The remaining vessel reportedly butchers the crabs on board, which means the crab is cut in half and the carapace removed (with a recovery rate of about 58 percent, by weight, of the whole crab). The principal method of fishing for these vessels is to steam to the fishing grounds, set and haul baited traps, and return to port quickly in order to ensure fresh product. Trips are limited in length primarily by the hold capacity of the vessel and by the need to keep the product fresh and, for most vessels, alive.

In late 2000, two additional vessels reportedly entered the red crab fishery. Both of these vessels are larger than the rest of the fleet, reportedly on the order of 150 ft (45.7 m) in length overall, and are catcher-processor vessels with the capability of extensive processing (picking, cleaning, cooking and freezing) of crab product on board while at sea. The hold capacity of these vessels is also larger than that of the other vessels in the fleet--one vessel reportedly has a hold capacity of up to 300,000 lb (136.1 mt) and the other up to 185,000 lb (84 mt). Each of these vessels is reported to be fishing similar numbers of traps/pots as the other vessels in the fleet. Further, in early 2001, a third new vessel reportedly entered the red crab fishery, and more vessels may be considering entering this fishery.

The most recent information available on deep-sea red crabs and the red crab fishery, which is based on a 1977 assessment, indicates that there is a maximum sustainable yield (MSY) of approximately 5.5 million lb (2,495 mt) and that four to six vessels fishing at historical levels of capacity represent the maximum amount of harvesting effort that can be sustained by the resource in order not to exceed the MSY. The addition of up to three new vessels, with a potential for more, threatens not only the resource but also the viability of the existing fishery unless restrictive measures are put into place. While the non-processor vessels fill their holds with whole and, in most cases, live crabs, the catcher-processor vessels have the capability to fill their holds with processed frozen crab meat and thus land an equivalent live weight product of 5 to 30 times higher than the non-processor vessels (depending on hold capacity and processing recovery rate).

Since there were only five vessels in the fishery at the time of the control date, and given the evidence that harvesting capacity on that date was sufficient to utilize fully the available resource, additional harvesting capacity after the control date threatens the fishery. Concerns for overharvesting are increased if vessels entering the fishery after the control date are significantly larger in hold capacity and/or are capable of processing red crab at sea.

Given an MSY for the Northeast region of 5.5 million lb (2,495 mt) and a hold capacity of approximately 65,000 lb (29.5 mt) of whole crab, each of the five vessels fishing in the red crab fishery prior to the March 1, 2000, control date could take a maximum of 1.3 percent of the MSY per trip. A catcher-processor vessel, with a hold capacity of 300,000 lb (136.1 mt) of finished product, could take approximately 16 to 30 percent of the MSY per trip (depending on processing recovery rate). Given the recent red crab landings by vessels that fished for red crab prior to the control date, incremental effort by those vessels and effort by new vessels could result in overfishing.

In fact, even without new entrants, overfishing may be occurring. Preliminary reports from the industry suggest that existing vessels harvested approximately 7 million lb (3,175.2 mt) of red crab in 2000, roughly 125 percent of the MSY estimate.

At its January 23, 2001, meeting, the New England Fishery Management Council (Council) approved a motion to request that the Secretary of Commerce (Secretary) use his authority under

section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to promulgate emergency regulations to address the potential for a rapid increase in the harvesting of red crab and to halt or prevent overfishing, while providing immediate protection to the red crab resource as the Council develops an FMP for red crab.

Section 305(c) of the Magnuson-Stevens Act authorizes the Secretary to implement emergency regulations or interim measures, if necessary, to address an emergency or overfishing, regardless of whether an FMP exists for such fishery. These emergency regulations may remain in effect for no more than 180 calendar days after the date of publication in the **Federal Register**, with a possible 180-day extension, provided the public has an opportunity to comment on the measures. In the case where emergency regulations are implemented at the request of the Council, an extension is justified only if the Council is actively preparing an FMP (or an FMP amendment or other regulations) to address the emergency or overfishing on a permanent basis.

For the reasons stated above, NMFS concurs with the Council's determination that the current exploitation of the red crab resource, combined with the likelihood of immediate, significant increases in total exploitation, constitutes an emergency situation that presents significant conservation problems. Although the precise level of harvest is unknown, recently reported landings have been at or in excess of the historical MSY. With the arrival of new harvesting capacity and the probability that total capacity could increase several-fold in the next few months, there is strong justification for the Secretary's intervention in preventing overfishing.

This emergency rule contains measures that, NMFS believes, will prevent or eliminate overfishing of the red crab stock in the short term in the EEZ from Cape Hatteras Light, NC, northward to the U.S.-Canada border. This area was chosen for regulation because it encompasses, based on available information, the portions of the red crab stock currently being harvested. The measures include a TAC of 2.5 million lb (1,134 mt) of red crab for the 180-day period of effectiveness for this emergency rule, which is based on an annual TAC of 5.0 million lb (2,268 mt); a possession limit of 65,000 lb (29.5 mt) of whole red crab or its equivalent; a trap/pot limit of 600 pots; and an incidental catch of 100 lb (45.4 kg) of whole red crab per trip. This rule also establishes the requirements for a LOA, for vessel reporting via an IVR system, and for submission of VTRs for the red crab fishery.

As mentioned previously, a region-wide MSY estimate of red crab is approximately 5.5 million lb (2,495 mt). The 1977 red crab assessment, which was based on a 1974 survey conducted prior to the establishment of the Hague Line, included portions of Georges Bank that are now in Canadian waters. Since 92.4 percent of the total exploitable biomass abundance was in U.S. waters, an appropriate annual TAC for the area chosen for regulation is approximately 5 million lb (2,268 mt).

The establishment of a 2.5-million lb (1,134-mt) TAC sets an upper limit on the amount of red crab available to be harvested during the 180-day effectiveness period of these emergency regulations. When NMFS determines that total landings of red crab are projected to have reached the TAC, the directed red crab fishery will be closed and fishing for, and landings of, red crab in amounts greater than the incidental catch limit will be prohibited. NMFS has set the TAC at a level that will ensure, to the extent possible, that overfishing does not occur.

This action establishes a 65,000-lb (29.5-mt) possession limit, which is the average hold capacity of the non-processing red crab vessels that fished historically, at least 1 year prior to and including the control date of March 1, 2000. The possession limit applies to landings of whole or processed red crabs equivalent to 65,000 lb (29.5 mt) of whole crabs. The ratio of whole crab weight to finished product weight for crab parts, other than whole crabs or meat only, is 1.72 to 1. The ratio of whole crab weight to finished product weight for crabs that have been picked, cleaned, cooked, and frozen (that is, meat only) is 4 to 1. Vessels that land whole crabs and that have hold capacities of approximately 65,000 lb (29.5 mt) should be able to continue fishing at or near their historical levels. Vessels with significantly larger hold capacities than 65,000 lb (29.5 mt) will be able to participate in the fishery but will likely be constrained in their ability to fish efficiently for red crab. Setting the trip limit at 65,000 lb (29.5 mt) is intended to help prevent a derby-type fishery and is intended to allow the greatest number of vessels with a recent history in the fishery to continue to fish in a safer, more economical manner, while not expressly precluding red crab fishing by any vessel that chooses to fish under the emergency provisions. The transferring of red crab at sea, either whole or processed, is prohibited pursuant to § 648.265(b). Purchasing, possessing or receiving for a commercial purpose, more than 100 lb (45.4 kg) of whole red crab, or its equivalent as specified at § 648.265(a), caught by a vessel in the EEZ that has not been issued a valid LOA under this subpart, is also prohibited pursuant to § 648.265(c).

This action also establishes a trap/pot limit of 600 pots. No vessel reportedly fished more than 600 pots as of the control date and this pot limit is not expected to be a restriction for vessels currently fishing for red crab, including the newly entered vessels. This pot limit could, however, serve to prevent any vessel from increasing the number of pots it fishes, in the face of trip limits. Therefore, with a vessel spreading its effort out and catching its trip limit over several days, rather than sooner, the fishery is prevented from being converted into a derby-type fishery.

For non-red crab directed trips, data from 1998 and 1999 show that the median catch was 115 lb (52.2 kg) per trip. An incidental catch limit of 100 lb (45.4 kg) of whole red crab per fishing trip, or its equivalent as discussed above, is established by this emergency action for vessels fishing without a LOA in order to allow historical incidental catches to continue. While NMFS' databases show a total incidental catch of red crab of 13,594 lb (6,166 kg) in 1998 and of 10,852 lb (4,922.5 kg) in 1999, this is very likely to be an underestimate, given the uncertainty in the data. Nevertheless, the total allowed incidental catch, which is not counted against the TAC, is expected to be insignificant and should not undermine the benefits of having a TAC.

In conjunction with the aforementioned measures, vessels intending to fish for or land more than the allowed incidental catch limit for red crab are required to obtain an LOA issued by the Administrator, Northeast Region, NMFS, by requesting one, in writing, from the Northeast Region Permit Office (see **ADDRESSES**) or by calling the Permit Office at 978–281–9370.

To allow for monitoring of the TAC, vessels that obtain an LOA are required to report their red crab catch landings via an IVR system (the IVR reporting system used to monitor harvest levels for certain species in the fisheries of the Northeast) upon returning to port for each trip until the expiration of these emergency regulations or until such time that the TAC has been reached and the fishery closed, whichever comes first.

To enable the gathering of data for the fishery that are necessary for the

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development of a Red Crab FMP, vessels that obtain an LOA are required to file a VTR, consistent with these emergency regulations, for the duration of these emergency regulations or until such time that the TAC has been reached and the fishery closed, whichever comes first.

The red crab fishery falls under the Marine Mammal Protection Act Category I Lobster Trap/Pot fishery. Therefore, vessels in this fishery are required to comply with the applicable gear restrictions for that fishery, including a required weak link at the buoy that breaks away knotless at 3,780 lb (1,714.6 kg) and a requirement for marking of gear as specified at § 229.32. Also, red crab fishing gear, fished in 200 fathoms (365.8 m) or less by a vessel issued a limited access lobster permit under § 697.4(a), must comply with the trap tagging requirements specified at § 697.19.

Classification

The AA finds that the need to provide immediate protection to the Atlantic deep-sea red crab stock to protect it from overfishing constitutes good cause to waive the requirement to provide notice and the opportunity for public comment, pursuant to authority set forth at 5 U.S.C. 553 (b)(B), as such procedures would be contrary to the public interest. Similarly, the need to implement these measures in a timely manner to protect the stock from overfishing constitutes good cause, under authority contained in 5 U.S.C. 553(d)(3), to partially waive the 30-day delay in effective date otherwise required by 5 U.S.C. 553(d). The reason for the partial waiver is to allow vessel owners 10 days to obtain the necessary vessel LOA and fishing logs.

This emergency rule has been determined to be not significant for the purposes of E.O. 12866.

This rule is exempt from the analytical requirements of the Regulatory Flexibility Act because no public comments are required under 5 U.S.C. 553 *et seq.* and no other law mandates the application of such requirements.

Notwithstanding any other provision of law, no person is required to respond to nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection-of-information displays a currently valid OMB control number.

This rule contains four collection-of-information requirements subject to the PRA. The collection of this information has been approved by OMB, and the OMB control numbers and the estimated time for a response are as follows:

Letters of authorization, OMB control number 0648–0202 (5 minutes/response).

Observer deployment, OMB control number 0648–0202 (2 minutes/response).

Vessel trip reports, OMB control number 0648–0212 (5 minutes/response).

IVR system reports, OMB control number 0648–0212 (4 minutes/response).

The aforementioned response estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates, or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fishing, Fisheries, Vessel permits, Reporting and recordkeeping requirements.

Dated: May 2, 2001.

John Oliver,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Subpart M is added to read as follows:

Subpart M—Emergency Measures for the Atlantic Deep-Sea Red Crab Fishery

Sec.

648.260 Purpose and scope.
648.261 Definitions.
648.262 Vessel letters of authorization (LOA).
648.263 Recordkeeping and reporting requirements.
648.264 Closure.
648.265 Possession and landing limits.
648.266 Trap/pot limits.
648.267 Incidental catch.
648.268 Prohibitions.

Subpart M—Emergency Measures for the Atlantic Deep-Sea Red Crab Fishery

§ 648.260 Purpose and scope.

These regulations implement emergency measures, under the authority of the Magnuson-Stevens Act, to manage the red crab fishery in the EEZ in U.S. waters of the western Atlantic Ocean from 35°15.3′ N. Lat., the latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border.

§ 648.261 Definitions.

In addition to the definitions in the Magnuson-Stevens Act, 50 CFR part 600, and in § 648.2, the terms in this subpart have the following meaning:

Red crab means *Chaceon quinquedens.*

Trap/pot means any structure or other device, other than a net, that is placed, or designed to be placed, on the ocean bottom and is designed for, or is capable of, catching red crabs.

§ 648.262 Vessel letters of authorization (LOA).

(a) Any vessel of the United States must have been issued and have on board a valid LOA from the Northeast Regional Administrator to fish for, catch, possess, transport, land, sell, trade, barter, or process at sea more than 100 lb (45.4 kg) of red crab, or its equivalent as specified at § 648.265(a), per fishing trip in or from the EEZ from 35°15.3′ N. Lat., the latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border.

(b) An LOA, once issued, shall be effective until the TAC has been reached and the fishery has been closed as specified under § 648.264.

(c) An LOA, for the purposes of this subpart, may be obtained by telephone or written request to the Northeast Region Permit Office.

§ 648.263 Recordkeeping and reporting requirements.

(a) The owner or operator of a vessel issued a valid LOA under this subpart must comply with the recordkeeping and reporting requirements prescribed in this subpart, unless the TAC has been reached and the fishery has been closed as specified in § 648.264. The owner or operator of a vessel that has been issued a valid LOA under this subpart must report red crab landings per fishing trip via an IVR system within 24 hours after returning to port and offloading. The IVR report does not exempt the owner or operator from any other applicable reporting requirements of this part and shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification, pounds of red crab landed, and pounds of red crab discarded at sea, in accordance with the conversion factor specified in § 648.265(a), if applicable.

(b) The owner or operator of a vessel issued a valid LOA under this subpart must maintain on board the vessel, and submit to the Northeast Regional Administrator, an accurate fishing log report for each fishing trip, on forms supplied by or approved by the Northeast Regional Administrator. Log reports must be filled out before landing any red crab or its equivalent. Information in log reports must be provided in accordance with § 648.7(b)(1)(i). Fishing vessel log reports, including negative fishing reports, must be postmarked or received by the Northeast Regional Administrator within 15 days after the end of the reporting month. Each vessel owner will be sent forms and instructions, including the address to which reports are to be submitted, along with the LOA issued under this subpart. This log report does not exempt the owner or operator from other applicable reporting requirements of this part.

§ 648.264 Closure.

NMFS shall prohibit any further fishing for, catching, landing, or processing at sea of red crab, in a fishing period for which NMFS has established a TAC, other than incidental catch as specified at § 648.267, as of the date NMFS determines that the total landings of red crab will reach or exceed that TAC. NMFS shall publish notification of this prohibition in the **Federal Register**, without further opportunity for public comment.

§ 648.265 Possession and landing limits.

(a) A vessel or operator of a vessel that has been issued a valid LOA under this subpart may fish for, catch, possess, transport, land, sell, trade, barter, or process at sea up to 65,000 lb (29.5 mt) of whole red crab (including culls) or its equivalent, per fishing trip. For red crab meat-only, the equivalent weight of whole red crab is the weight of red crab meat multiplied by 4. For red crab parts other than whole or meat-only, the equivalent weight of whole red crab is the weight of red crab parts multiplied by 1.72.

(b) A vessel may not transfer at sea, either directly or indirectly, or attempt to transfer at sea to any vessel, any red crab, or its equivalent, taken in or from the EEZ.

(c) No person may purchase, possess, or receive for a commercial purpose, more than 100 lb (45.4 kg) of whole red crab, or its equivalent as specified at § 648.265(a), caught in the EEZ by a vessel that has not been issued a valid LOA under this subpart.

§ 648.266 Trap/pot limits.

A vessel or operator of a vessel may possess, haul, harvest red crab from, or carry on board a vessel, up to a total of 600 traps/pots when fishing for, catching, or landing red crab.

§ 648.267 Incidental catch.

Any vessel or operator of a vessel that has not been issued a valid LOA under this subpart, or a vessel or operator of a vessel that has been issued a valid LOA under this subpart and the prohibition specified at § 648.264 takes effect, is authorized to possess and land no more than 100 lb (45.4 kg) of whole red crab, or its equivalent, per trip.

§ 648.268 Prohibitions.

(a) In addition to the general prohibitions specified in § 600.725 of this chapter and in § 648.14, it is unlawful for any person to do any of the following:

(1) Fish for, catch, possess, transport, land, sell, trade, barter or process at sea more than 100 lb (45.4 kg) of whole red crab, or its equivalent as specified at § 648.265(a), per fishing trip, in or from the EEZ from 35°15.3′ N. Lat., the latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border, unless in possession of a valid LOA issued by the Northeast Regional Administrator under this subpart.

(2) Fail to comply with the recordkeeping and reporting requirements of § 648.263.

(3) Fish for, catch, possess, transport, land, sell, trade, barter or process at sea red crab in excess of a landing limit specified in § 648.265.

(4) Possess, haul, harvest red crab from, or carry on board a vessel, more than a total of 600 traps/pots when fishing for, catching, or landing red crab as specified at § 648.266.

(5) Transfer at sea, either directly or indirectly, or attempt to transfer at sea to any vessel, any red crab, or its equivalent as specified at § 648.265(a), taken in or from the EEZ.

(6) Purchase, possess, or receive for a commercial purpose, more than the incidental catch level specified in § 648.267 of red crab caught in the EEZ from 35°15.3′ N. Lat., the latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border by a vessel that has not been issued a valid LOA under this subpart.

(b) [Reserved]

[FR Doc. 01–11460 Filed 5–2–01; 4:57 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 010502110–1110–01; I.D. 042401D]

RIN 0648–AO49

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; 2001 Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Annual management measures for the ocean salmon fishery; request for comments.

SUMMARY: NMFS establishes fishery management measures for the 2001 ocean salmon fisheries off Washington, Oregon, and California and the 2002 salmon seasons opening earlier than May 1, 2002. Specific fishery management measures vary by fishery and by area. The measures establish fishing areas, seasons, quotas, legal gear, recreational fishing days and catch limits, possession and landing restrictions, and minimum lengths for salmon taken in the U.S. exclusive economic zone (EEZ) (3-200 nm) off Washington, Oregon, and California. The management measures are intended to prevent overfishing and to apportion the ocean harvest equitably among treaty Indian and non-treaty commercial and recreational fisheries. The measures are also intended to allow a portion of the salmon runs to escape the ocean fisheries in order to provide for spawning escapement and for inside fisheries (fisheries occurring in state internal waters).

DATES: Effective from 0001 hours Pacific Daylight Time, May 2, 2001, until the effective date of the 2002 management measures, as published in the **Federal Register**. Comments must be received by May 23, 2001.

ADDRESSES: Comments on the management measures and the related environmental assessment (EA) may be sent to Donna Darm, Acting Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way N.E., Seattle, WA 98115–0070, fax: 206–526–6376; or to Rebecca Lent, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213, fax: 562–980–4018. Comments

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will not be accepted if submitted via e-mail or Internet.

Copies of the EA and other documents cited in this document are available from Dr. Donald O. McIsaac, Executive Director, Pacific Fishery Management Council, 2130 S.W. Fifth Ave., Suite 224, Portland, OR 97201.

Send comments regarding the reporting burden estimate or any other aspect of the collection-of-information requirements in these management measures, including suggestions for reducing the burden, to one of the NMFS addresses and to the Office of Management and Budget (OMB), Washigton, D.C. 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, or Svein Fougner at 562–980–4040.

SUPPLEMENTARY INFORMATION:

Background

The ocean salmon fisheries in the EEZ off Washington, Oregon, and California are managed under a "framework" fishery management plan entitled the Pacific Coast Salmon Plan (Salmon FMP). Regulations at 50 CFR part 660, subpart H, provide the mechanism for making preseason and inseason adjustments to the management measures, within limits set by the Salmon FMP, by notification in the **Federal Register.**

These management measures for the 2001 and pre-May 2002 ocean salmon fisheries were recommended by the Pacific Fishery Management Council (Council) at its April 3 to 6, 2001, meeting.

Schedule Used to Establish 2001 Management Measures

In accordance with the Salmon FMP, the Council's Salmon Technical Team (STT) and staff economist prepared a series of reports for the Council, its advisors, and the public. The first of the reports was prepared in February when the necessary scientific information first became available. The first report, "Review of 2000 Ocean Salmon Fisheries" (REVIEW), summarizes biological and socio-economic data for the 2000 ocean salmon fisheries and assesses how well the Council's 2000 management objectives were met. The second report, "Preseason Report I Stock Abundance Analysis for 2001 Ocean Salmon Fisheries" (PRE I), provides the 2001 salmon stock abundance projections and analyzes the impacts on the stocks and Council management goals if the 2000 regulations and regulatory procedures were applied to the 2001 stock abundances.

The Council met in Portland, OR from March 5 to 9, 2001, to develop 2001 management options for proposal. Three commercial and three recreational fishery management options were proposed for analysis and public comment. These options consisted of various combinations of management measures designed to protect weak stocks of coho and chinook salmon and to provide for ocean harvests of more abundant stocks. After the March Council meeting, the Council's STT and staff economist prepared a third report, "Preseason Report II Analysis of Proposed Regulatory Options for 2001 Ocean Salmon Fisheries", which analyzes the effects of the proposed 2001 management options. This report also was made available to the Council, its advisors, and the public.

Public hearings to receive public testimony on the proposed options were held on: March 26, 2001, in Westport, WA and Coos Bay, OR; March 27, 2001, in Tillamook, OR and Eureka, CA; and March 28, 2001, in Moss Landing, CA. The Council also received public testimony at both the March and April meetings, and received written comments at the Council office.

The Council met on April 3 to 6, 2001, in Sacramento, CA to adopt its final 2001 recommendations. Following the April Council meeting, the Council's STT and staff economist prepared a fourth report, "Preseason Report III Analysis of Council-Adopted Management Measures for 2001 Ocean Salmon Fisheries," which analyzes the environmental and socio-economic effects of the Council's final recommendations. This report also was made available to the Council, its advisors, and the public. After the Council took final action on the annual ocean salmon specifications in April, it published the recommended management measures in its newsletter.

Resource Status

Since 1989, NMFS has listed under the Endangered Species Act (ESA) 16 evolutionarily significant units (ESUs) of salmon on the West Coast. As the listings have occurred, NMFS has conducted formal ESA section 7 consultations and issued biological opinions (BOs) that consider the impacts to listed salmonid species resulting from proposed implementation of the salmon FMP, or in some cases, from proposed implementation of the annual management measures. Associated with the BOs are incidental take statements that specify the level of take that is exempted from the section 9 prohibitions of the ESA (consultation standards). Some of the BOs have concluded that implementation of the salmon FMP is not likely to jeopardize the continued existence of certain listed ESUs. Other BOs have found that implementation of the salmon FMP is likely to jeopardize certain listed ESUs and have identified reasonable and prudent alternatives that would avoid the likelihood of jeopardizing the continued existence of the ESU under consideration. In a March 2, 2001, letter to the Council, NMFS provided the Council with ESA standards and guidance for the management of stocks listed under the ESA in anticipation of the BOs in preparation for the 2001 management season.

Estimates of the 2000 spawning escapements for key stocks managed under the salmon FMP and preseason estimates of 2001 ocean abundance are provided in the Council's REVIEW and PRE I documents. The primary resource and management concerns are for salmon stocks listed under the ESA.

NMFS has listed three ESUs of coho under the ESA: central California coastal, southern Oregon/northern California coastal, and Oregon coastal. The three northern sub-stocks of Oregon coastal natural (OCN) coho comprise the Oregon coastal coho ESU. OCN coho are the largest naturally produced component of the natural and hatchery coho stocks originating from rivers south of Leadbetter Point, WA. OCN coho are managed as a stock aggregate with four identified sub-stocks that include coho produced from Oregon river and lake systems south of the Columbia River. NMFS' ESA consultation standards require that the three OCN northern sub-stocks be managed in accordance with Amendment 13 to the Salmon FMP, which permits an exploitation rate of up to 15 percent under the current level of ocean survival. The southern sub-stock is part of the southern Oregon/northern California coastal ESU and must be managed in accordance with the requirements for that ESU. The 2001 ocean abundance estimate for OCN is 50,100 coho, which is 90 percent of the 2000 preseason prediction of 55,900 coho, but represents a 72 percent increase above the post-season estimate of the 1998 parent brood (PRE I).

Central California coastal coho and southern Oregon/northern California coastal coho are listed as threatened species under the ESA (61 FR 56138, October 31, 1996, and 62 FR 24588, May 6, 1997). Coho populations in California have not been monitored closely in the past, and no forecasts of the ocean abundance of listed coho originating from California are available; these runs have been generally at low abundance

levels for many years. NMFS' ESA consultation standards for the southern Oregon/northern California coastal coho and Central California coastal coho ESUs require that the ocean exploitation rate on Rogue/Klamath hatchery coho be constrained to 13 percent or less, and that the retention of coho in recreational and commercial fisheries off California be prohibited.

Sacramento River winter chinook is listed as an endangered species under the ESA (59 FR 440, January 4, 1994). NMFS' ESA consultation standard requires that all harvest-related impacts to the Sacramento River winter chinook salmon population be reduced by a level that would achieve at least a 31 percent increase in the age-3 spawner-to-spawner replacement rate over a base period of 1989 through 1993. The 2000 spawning run size was estimated to be 560 adults, similar to the estimated 1997 adult escapement. Neither preseason nor postseason estimates of ocean abundance are available for winter chinook; however, the run is expected to remain depressed in 2001.

California coastal chinook is listed as a threatened species under the ESA (64 FR 50394, September 16, 1999). Coastal chinook spawning populations are not well monitored and no estimate of an ocean exploitation rate is available. NMFS' ESA consultation standard for California coastal chinook requires that the ocean harvest rate on Klamath River fall chinook not exceed 17 percent, which is the maximum observed since 1996. The standard is intended to prevent harvest impacts on California coastal chinook from increasing substantially above levels that have occurred since 1996, the year in which additional ocean harvest constraints were introduced to protect Sacramento River winter chinook.

California Central Valley spring chinook is listed as a threatened species under the ESA (64 FR 50394, September 16, 1999). Since 1994, the 3-year replacement rates of Central Valley spring chinook returning to Deer and Butte Creeks have consistently increased, with relatively strong returns to Butte Creek. NMFS' ESA consultation standard for Central Valley spring chinook requires continued implementation of ESA consultation standards to protect Sacramento River winter chinook.

Snake River wild fall chinook is listed under the ESA as a threatened species (57 FR 14653, April 22, 1992). Information on the stock's ocean distribution and on fishery impacts is not available. Fishery impacts on Snake River fall chinook are evaluated using the Lyons Ferry Hatchery stock. The Lyons Ferry stock is widely distributed and harvested by ocean fisheries from southern California to Alaska. NMFS' ESA consultation standard requires that Council fisheries must be managed to ensure that the exploitation rate on age-3 and age-4 adults for the combined Southeast Alaska, Canadian, and Council fisheries is 30 percent less than that observed during the 1988-1993 base period.

This is the second year that NMFS provided guidance to the Council related to the Puget Sound chinook ESU. NMFS' consultation standards for Puget Sound chinook stocks are expressed in terms of total or southern U.S. fishery exploitation rate ceilings, or terminal escapement objectives. Under the current management structure, Council fisheries are included as part of the suite of fisheries that comprise the fishing regime negotiated each year by the co-managers under *U.S. v. Washington* to meet management objectives for Puget Sound and Washington Coastal salmon stocks. The comprehensive nature of the management objectives and the management planning structure strongly connect Council and Puget Sound fisheries. Therefore, in adopting its regulations, the Council must determine that its fisheries in the ocean, when combined with the suite of other fisheries impacting this ESU, meet the management targets set for stocks within this ESU. NMFS estimated in its ESA BO for 2000 fisheries that the exploitation rates from Council-managed fisheries on Puget Sound spring and fall chinook stock aggregates have been zero and three percent or less, respectively, in recent years. Management actions taken to meet exploitation rate targets will, therefore, occur primarily in the Puget Sound fisheries, but the nature of the existing process is such that ocean fishery impacts will be accounted for, and are potentially liable to constraining measures to meet particular targets.

NMFS has evaluated the "Puget Sound Comprehensive Chinook Management Plan: Harvest Management Component as a Resource Management Plan" (RMP) for Puget Sound chinook under the recently adopted ESA section 4(d) rule (65 FR 42422, July 10, 2000). The RMP, jointly developed by the Washington Department of Fish and Wildlife (WDFW) and the Puget Sound Treaty Tribes, includes stock-specific harvest management objectives for Puget Sound chinook. NMFS has determined that the RMP is consistent with the ESA section 4(d) rule, and that the 2001 ocean and inside fisheries are consistent with the RMP. In addition, the 2001 and pre-May 2002 management measures are consistent with the standards set to avoid jeopardy in the above BO.

Management Measures for 2001 Fisheries

The Council recommended ocean harvest levels and management measures for 2001 are designed to apportion the burden of protecting the weak stocks identified and discussed in PRE I equitably among ocean fisheries and to allow maximum harvest of natural and hatchery run surplus to inside fishery and spawning needs. NMFS finds the Council's recommendations responsive to the goals of the salmon FMP, the requirements of the resource, and the socio-economic factors affecting resource users. The recommendations are consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable law, including the ESA and U.S. obligations to Indian tribes with federally recognized fishing rights. Accordingly, NMFS has adopted them.

The dominant issues before the Council were achieving an acceptable ocean exploitation rate on OCN and southern Oregon/northern California coho, meeting NMFS' ESA consultation standards for Sacramento River winter chinook, California coastal chinook, and Puget Sound chinook, and equitably allocating the Klamath River fall chinook harvest.

Amendment 13 establishes the allowable harvest rates for OCN coho. When the Council adopted Amendment 13 in 1997, it stipulated that the amendment should be reviewed and updated on a periodic basis beginning in 2000. In November of 1999, the Council approved the formation of an ad hoc OCN workgroup to complete the review. The subsequent report recommended several changes to the original management matrix including a lower range of harvest rates when spawner abundance and marine survival are very low. At its November, 2000, meeting the Council adopted the OCN workgroup report as "expert biological advice to help guide Council management of OCN coho." The report recommended that harvest rates be limited to the range of between 0 and 8 percent when the status of parental spawners is "critical" for any of the sub-aggregate populations regardless of marine survival. This is the circumstance the Council faced this year. Even though the marine survival will be in the medium category, the applicable parental spawner status is critical, and the OCN workgroup report

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recommended a 0 to 8 percent exploitation rate. The guidance provided by the workgroup report given the circumstances for 2001 are more specific and more conservative than under the original Amendment 13 management matrix. The Council's recommended measures are expected to produce a 7.4-percent OCN coho exploitation rate (freshwater and marine) and a 3.0 percent marine exploitation rate impact for Rogue/Klamath coho, which are the index stocks for the southern Oregon/northern California coho stocks. Retention of coho off California continues to be prohibited for the seventh consecutive year.

From the U.S.-Canada border to Cape Falcon, OR, ocean fisheries are managed to protect depressed lower Columbia River fall chinook salmon and Washington coastal and Puget Sound natural coho salmon stocks, and to meet ESA requirements for Snake River fall chinook salmon. Ocean treaty and non-treaty harvests and management measures were based in part on negotiations between Washington State fishery managers, commercial and recreational fishing groups, and the Washington coastal, Puget Sound, and Columbia River treaty Indian tribes as authorized by the U.S. District Court in *U.S.* v. *Washington*, *U.S.* v. *Oregon*,and *Hoh Indian Tribe* v. *Baldrige*.

North of Cape Falcon, OR, the 2001 management measures are more liberal than the 2000 season measures. The total allowable catch for 2001 is 60,000 chinook and 300,000 coho; these fisheries are restricted to protect depressed Washington coastal, Puget Sound, and OCN coho. Washington coastal and Puget Sound chinook generally migrate to the far north and are affected insignificantly by ocean harvests from Cape Falcon to the U.S.-Canada border.

South of Cape Falcon, OR, the retention of coho is prohibited, except for a recreational selective fishery off Oregon in July with a 55,000-fish quota of marked hatchery coho. Chinook fisheries are constrained primarily to meet the ESA standards for California coastal chinook and Sacramento River winter chinook. As a result of these constraints and the high abundance forecast for age-4 Klamath River fall chinook, an unusually large number of fall chinook are predicted to be available for in-river harvest in the Klamath-Trinity Basin. These constraints also limit impacts on threatened Snake River fall chinook and Central Valley spring chinook, and limit hook-and-release mortality on Oregon coastal coho, southern Oregon/northern California coastal coho, and central California coho. Size limit, gear, and seasonal restrictions are intended to reduce harvest impacts on ESA listed stocks.

Treaty Indian Fisheries

The treaty-Indian commercial troll fishery quota is 37,000 chinook in ocean management areas and Area 4B combined. The fisheries includes a chinook-directed fishery in May and June (under a quota of 18,500 chinook) and an all-salmon season beginning in July with a 18,500 chinook sub-quota. The expected 2001 harvest would be an increase from the observed harvest in 2000. The coho quota for the treaty-Indian troll fishery in ocean management areas, including Washington State Statistical Area 4B for the July-September period is 90,000 coho, a significant increase from 2000.

2002 Fisheries

The timing of the March and April Council meetings makes it impracticable for the Council to recommend fishing seasons that begin before May 1 of the same year. Therefore, the 2002 fishing seasons opening earlier than May 1 are also established in this action. The Council recommended, and NMFS concurs, that the recreational seasons from Horse Mountain to the U.S.-Mexico Border will open off California in 2001 as indicated in the season description section. At the November 2001 meeting, the Council will consider a recommendation to open recreational seasons for all salmon except coho prior to April 13 in areas off California between Pt. Arena and the U.S.-Mexico border. At the March 2002 meeting, the Council will consider inseason recommendations to (1) open commercial seasons for all salmon except coho prior to May 1 in areas off Oregon and off California south of Point Sur, (2) open recreational seasons for all salmon except coho prior to May 1 in areas off Oregon, and (3) identify the areas, season, quota, and special regulations for any experimental April fisheries (proposals must meet Council protocol and be received in November 2001).

Inseason Actions

The following sections set out the management regime for the salmon fishery. Open seasons and days are described in Sections 1, 2, and 3 of the 2001 management measures. Inseason closures in the commercial and recreational fisheries are announced on the NMFS hotline and through the U.S. Coast Guard Notice to Mariners as described in Section 7. Other inseason adjustments to management measures are also announced on the hotline and through the Notice to Mariners.

The following are the management measures recommended by the Council and approved and implemented by NMFS for 2001 and, as specified, for 2002.

Section 1. Commercial Management Measures for 2001 Ocean Salmon Fisheries

Note: This section contains restrictions in parts A, B, and C that must be followed for lawful participation in the fishery.

A. Season Description—North of Cape Falcon

U.S—Canada Border to Cape Falcon

May 1 through earlier of June 30 or 17,000-chinook guideline (see C.7.a). All salmon except coho. No more than 4 spreads per line beginning June 1 (see gear restrictions in C.2). Cape Flattery and Columbia Control Zones closed (C.4.a and C.4.b). The 17,000-chinook guideline includes a subarea guideline of 12,000 chinook for the area between the U.S.-Canada border and the Queets River. State regulations require that fishers fishing within the U.S.-Canada Border to Queets River subarea, and intending to land their catch outside of this subarea, notify WDFW before they leave the subarea. Vessels must land and deliver their fish within the area or in adjacent areas that are closed to all commercial non-Indian salmon fishing, and within 24 hours of any closure of this fishery. Inseason actions may modify harvest guidelines in later fisheries to achieve or prevent exceeding the overall allowable troll harvest impacts (see C.7.a).

U.S—Canada Border to Leadbetter Pt.

July 1 through earliest of July 27 or 7,000-chinook preseason guideline (see C.7.a) or 12,000 marked coho guideline. All salmon (all retained coho must have a healed adipose fin clip). The 7,000-chinook guideline includes a subarea guideline of 4,000 chinook for the area between the U.S.-Canada border and the Queets River. Gear restricted to plugs 6 inches (15.2 cm) or longer; no more than 4 spreads per line plus 1 flasher w/o hooks (see also C.2). Cape Flattery Control Zone closed (C.4.a). Trip limits, gear restrictions, and guidelines may be implemented or adjusted inseason. Fishery is continuous until 75 percent of either guideline is caught, then it reverts to 4 days open/3 days closed. Vessels must land and deliver their fish within the area or in adjacent areas that are closed to all commercial non-Indian salmon fishing, and within 24 hours of any closure of this fishery. State regulations require that fishers fishing within the U.S.-Canada Border to Queets River subarea, and intending to land their catch outside of this subarea, notify WDFW before they leave the subarea.

Leadbetter Point to Cape Falcon

July 20 through July 27. Catch in this fishery will be assessed against the 6,000 chinook and 63,000 marked coho guidelines in the Queets River to Cape Falcon fishery. All salmon (all retained coho must have a healed adipose fin clip). See gear restrictions in C.2. Trip limits, gear restrictions, and guidelines (see C.7.a) may be instituted or adjusted inseason. Vessels must land and deliver their fish within the area or in adjacent areas that are closed to all commercial non-Indian salmon fishing, and within 24 hours of any closure of this fishery. Columbia River Control Zone is closed (C.4.b).

Queets River to Cape Falcon

The earlier of the day following closure of the U.S.-Canada Border to Leadbetter Pt. July troll fishery or July 28, but not before July 20, through earliest of September 30 or the overall chinook quota (preseason 6,000-chinook guideline; see C.7.a.) or 63,000 marked coho guideline. All salmon (all retained coho must have a healed adipose fin clip). See gear restrictions in C.2. Fishery continuous until 75 percent of either guideline caught, then reverts to a cycle of 4 days open/3 days closed. Trip limits, gear restrictions, and guidelines may be instituted or adjusted inseason. Vessels must land and deliver their fish within the area or in adjacent areas that are closed to all commercial non-Indian salmon fishing, and within 24 hours of any closure of this fishery. Columbia River Control Zone is closed (C.4.b).

South of Cape Falcon

Cape Falcon to Florence South Jetty

April 1 through July 18; July 27 through August 29; and September 1 through October 31. All salmon except coho. See gear restrictions C.2 and Oregon State regulations for a description of the closed area at the mouth of Tillamook Bay. [Note: Incidental retention of halibut is not allowed until May 1.]

Florence South Jetty to Humbug Mt.

April 1 through July 9; July 18 through August 29; and September 1 through October 31. All salmon except coho. See gear restrictions in C.2.

Humbug Mt. to OR–CA Border

May 1 through May 31. All salmon except coho. See gear restriction C.2.

June 3 through earlier of June 30 or 1,500-chinook. All salmon except coho. Fishery follows a cycle of 2 days open/2 days closed (may be adjusted inseason to match management needs). Possession and landing limit of 30 fish per day. See gear restrictions C.2. All salmon must be landed and delivered to Gold Beach, Port Orford, or Brookings within 24 hours of closure.

August 1 through earlier of August 31 or 3,000-chinook quota. All salmon except coho. Possession and landing limit of 30 fish per day. See gear restrictions C.2. All salmon must be landed and delivered to Gold Beach, Port Orford, or Brookings within 24 hours of closure.

Humbug Mt., OR to Humboldt South Jetty

September 1 through earlier of September 30 or 8,000-chinook quota. All salmon except coho. Possession and landing limit of 30 fish per day. All fish caught in this area must be landed within the area. See gear restrictions in C.2. Klamath Control Zone closed (C.4.). The 8,000-chinook quota includes a harvest guideline limiting the combined landings at the ports of Gold Beach, Port Orford, and Brookings to no more than 2,000 chinook. If this guideline is reached prior to the overall quota, the fishery will close north of the Oregon-California border. When the fishery is closed north of the Oregon-California border and open to the south, Oregon State regulations provide for the following action: Vessels with fish on board caught in the open area off California may seek temporary mooring in Brookings, OR prior to landing in California only if such vessels first notify the Chetco River Coast Guard Station via VHF channel 22A between the hours of 0500 and 2200 and provide the vessel name, number of fish on board, and estimated time of arrival.

Horse Mt. to Pt. Arena (Fort Bragg)

May 1 through earlier of May 31 or 3,000-chinook quota. All salmon except coho. All fish caught in this area must be landed within the area. Minimum size 26 inches (66 cm). See gear restrictions in C.2.

September 1 through September 30. All salmon except coho. Minimum size 26 inches (66 cm). See gear restrictions in C.2.

Pt. Arena to Pt. Reyes (Bodega Bay)

June 24 through September 30. All salmon except coho. Minimum size limit 26 inches (66 cm) through June 30 and 27 inches (68.6 cm) thereafter. See gear restrictions in C.2.

Pt. Reyes to Pt. San Pedro

May 24 through September 30. All salmon except coho. Minimum size 26 inches (66 cm) through June 30 and 27 inches (68.6 cm) thereafter. See gear restrictions in C.2.

Mon. through Fri. October 1 through October 12. All salmon except coho. Minimum size 27 inches (68.6 cm). See gear restrictions in C.2.

Pt. San Pedro to Pt. Sur

May 1 through August 14. All salmon except coho. Minimum size limit 26 inches (66 cm) through June 30 and 27 inches (68.6 cm) thereafter. See gear restrictions in C.2.

Pt. Sur to U.S.-Mexico Border

May 1 through August 14 and September 11 through September 30. All salmon except coho. Minimum size 26 inches (66 cm) through June 30 and 27 inches (68.6 cm) thereafter. See gear restrictions C.2.

In 2002, Council to consider opening a fishery from April. 15-30 south of Pt. Sur (see C.7.b).

B. MINIMUM SIZE (INCHES)

Area (when open)	Chinook		Coho		
	Total Length	Head-off	Total Length	Head-off	Pink
North of Cape Falcon	28.0	21.5	16.0	12.0	None
Cape Falcon to Pt. Arena	26.0 [a]	19.5[a]			None
South of Pt. Arena prior to July 1	26.0[a]	19.5 [a]			None
South of Pt. Arena after June 30	27.0[a]	20.25[a]			None

[a] Chinook not less than 26 in (19.5 in head-off) taken in open seasons south of Cape Falcon may be landed north of Cape Falcon only when the season is closed north of Cape Falcon.

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Metric equivalents: 28.0 in=71.1 cm, 27.0 in=68.6 cm, 26.0 in=66.0 cm, 21.5 in=54.6 cm, 20.25 in=51.4 cm, 19.5 in= 49.5 cm, 16.0 in=40.6 cm, 12.0 in=30.5 cm.

C. Special Requirements, Definitions, Restrictions, or Exceptions

C.1. Compliance with Minimum Size or Other Special Restrictions:

All salmon on board a vessel must meet the minimum size or other special requirements for the area being fished and the area in which they are landed if that area is open. Salmon may be landed in an area that is closed only if they meet the minimum size or other special requirements for the area in which they were caught.

C.2. Gear Restrictions:

a. Single point, single shank, barbless hooks are required in all fisheries.

b. Off Oregon South of Cape Falcon: No more than 4 spreads are allowed per line.

Spread defined: A single leader connected to an individual lure or bait.

c. Off California: No more than 6 lines are allowed per vessel and barbless circle hooks are required when fishing with bait by any means other than trolling.

Circle hook defined: A hook with a generally circular shape and a point which turns inward, pointing directly to the shank at a 90° angle.

Trolling defined: Fishing from a boat or floating device that is making way by means of a source of power, other than drifting by means of the prevailing water current or weather conditions.

C.3. Transit Through Closed Areas with Salmon on Board: It is unlawful for a vessel to have troll or recreational gear in the water while transiting any area closed to salmon fishing while possessing salmon; however, fishing for species other than salmon is not prohibited if the area is open for such species and no salmon are in possession.

C.4. Control Zone Definitions:

a. Cape Flattery Control Zone—The area from Cape Flattery (48°23′00″ N. lat.) to the northern boundary of the U.S. EEZ; and the area from Cape Flattery south to Cape Alava, 48°10′00″ N. lat. and east of 125°05′00″ W. long.

b. Columbia Control Zone—An area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between red lighted Buoy #4 (46°13′35″ N. lat., 124°06′50″ W. long.) and green lighted Buoy #7 (46°15′09″ N. lat., 124°06′16″ W. long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14′00″ N. lat., 124°03′07″ W. long. to its intersection with the north jetty; on the north, by a line running northeast/southwest between green lighted Buoy #7 to the tip of the north jetty (46°14′48″ N. lat., 124°05′20″ W. long.) and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between red lighted Buoy #4 and the tip of the south jetty (46°14′03″ N. lat., 124°04′05″ W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

c. Klamath Control Zone—The ocean area at the Klamath River mouth bounded on the north by 41°38′48″ N. lat. (approximately 6 nm (11.1 km) north of the Klamath River mouth); on the west, by 124°23′00″ W. long. (approximately 12 nm (22.2 km) off shore); and, on the south, by 41°26′48″ N. lat. (approximately 6 nm (11.1 km) south of the Klamath River mouth).

C.5. Notification When Unsafe Conditions Prevent Compliance with Regulations: If prevented by unsafe weather conditions or mechanical problems from meeting special management area landing restrictions, vessels must notify the U.S. Coast Guard and receive acknowledgment of such notification prior to leaving the area. This notification shall include the name of the vessel, port where delivery will be made, approximate amount of salmon (by species) on board, and the estimated time of arrival.

C.6. Incidental Halibut Harvest: During authorized periods, the operator of a vessel that has been issued an incidental halibut harvest license may retain Pacific halibut caught incidentally in Area 2A while trolling for salmon. License applications for incidental harvest must be obtained from the International Pacific Halibut Commission (phone 206–634–1838). Applicants must apply prior to April 1 of each year. Incidental harvest is authorized only during May and June troll seasons and after June 30 if quota remains and if announced on the NMFS hotline (phone 800–662–9825). Oregon Department of Fish and Wildlife (ODFW) and WDFW will monitor landings. If the landings are projected to exceed the 34,046-lb (15.5-mt) preseason allocation or the total Area 2A non-Indian commercial halibut allocation, NMFS will take inseason action to close the incidental halibut fishery. License holders may land no more than 1 halibut per each 3 chinook, (except 1 halibut may be landed without meeting the ratio requirement), and no more than 35 halibut may be landed per trip. Halibut retained must be no less than 32 in (81.3 cm) in total length (with head on).

C.7. Inseason Management: In addition to standard inseason actions or modifications already noted under the season description, the following inseason adjustments may be implemented:

a. After the May/June non-Indian commercial salmon fishery north of Cape Falcon, if the entire 17,000 chinook harvest guideline has not been taken, up to 5,000 chinook may be transferred to the Queets River to Cape Falcon July-September harvest guideline at a one-to-one rate. Any chinook uncaught from the May/June fishery in excess of 5,000 may be transferred to the July-September fishery on a fishery impact equivalent basis.

b. At the March 2002 meeting, the Council will consider inseason recommendations to: (1) open commercial seasons for all salmon except coho prior to May 1 in areas off Oregon and off California south of Point Sur, and (2) identify the areas, season, quota, and special regulations for any experimental April fisheries (proposals must meet Council protocol and be received by November 2001).

C.8. Consistent with Council management objectives, the State of Oregon may establish additional late-season, chinook-only fisheries in state waters. Check state regulations for details.

C.9. For the purposes of California Department of Fish and Game (CDFG) Code, Section 8232.5, the definition of the KMZ for the ocean salmon season is that area from Humbug Mt., OR to Horse Mt., CA.

Section 2. Recreational Management Measures for 2001 Ocean Salmon Fisheries

Note: This section contains restrictions in parts A, B, and C that must be followed for lawful participation in the fishery.

A. Season Description—North of Cape Falcon

U.S.—Canada Border to Cape Alava (Neah Bay Area)

July 1 through earlier of September 30 or 23,400-coho subarea quota. All salmon (7 days per week), 2 fish per day, but only 1 chinook, and all retained coho must have a healed adipose fin clip. Chinook non-retention in Area 4B unless modified by inseason management. Inseason management (C.4) may be used to sustain season length and keep harvest within a guideline of 1,700 chinook.

Cape Alava to Queets River (La Push Area)

July 1 through earlier of September 23 or subarea sub-quota of 5,350 coho; September 24 through earlier of October 21 or overall subarea quota of 5,850 (500 set-aside) coho. All salmon (7 days per week), 2 fish per day, but only 1 chinook, and all retained coho must have a healed adipose fin clip. Inseason management (C.4) may be used to sustain season length and keep harvest within a guideline of 1,000 chinook for the general season and 100 chinook for the set-aside season.

Queets River to Leadbetter Pt. (Westport Area)

Sunday through Thursday July 1 through earlier of September 30 or 83,250 coho subarea quota; All salmon. 2 fish per day, but only 1 chinook and all retained coho must have a healed adipose fin clip. Inseason management (C.4) may be used to maintain season length and limit harvest within a guideline of 19,450 chinook.

Leadbetter Pt. to Cape Falcon (Columbia River Area)

Sunday through Thursday July 1 through earlier of September 3 or subarea sub-quota of 102,500 coho; Tillamook Head to North Head Lighthouse, 7 days per week, September 4 through earlier of September 30 or overall subarea quota of 112,500 coho (10,000 set-aside). All salmon. 2 fish per day, but only 1 chinook and all retained coho must have a healed adipose fin clip. Closed between Tillamook Head and Cape Falcon beginning August 1. Closed in Recreational Columbia Control Zone (C.3.a). Inseason management (C.4) may be used to sustain season length and limit harvest within a guideline of 7,750 chinook.

South of Cape Falcon

Cape Falcon to Humbug Mt.

Except as provided below during the selective fishery, the season is: April 1 through October 31; all salmon except coho; 2 fish per day; no more than 6 fish in 7 consecutive days. See gear restrictions in C.2.a and C.2.b. See Oregon State regulations for a description of a closure at the mouth of Tillamook Bay.

Selective fishery for marked hatchery coho: June 22 through earlier of July 31 or a landed catch of 55,000 coho. All salmon. 2 fish per day, all retained coho must have a healed adipose fin clip. No more than 6 fish in 7 consecutive days. All salmon except coho season reopens the earlier of August 1 or attainment of the coho quota.

Humbug Mt. to Horse Mt. (Klamath Management Zone)

May 17 through July 8 and July 24 through September 3. All salmon except coho. 2 fish per day. From May 17 through July 8, no more than 4 fish in 7 consecutive days. Beginning July 24, no more than 6 fish in 7 consecutive days. See gear restrictions in C.2. Klamath Control Zone (C.3.b) closed during August.

Horse Mt. to Pt. Arena (Fort Bragg)

February 17 through November 18; All salmon except coho; 2 fish per day. Minimum size 24 inches (61 cm) through May 31, and 20 inches (50.8 cm) thereafter. Gear restrictions include: one rod per angler, no more than 2 barbless hooks, and circle hooks when not trolling (C.2.a, C.2.c and C.2.d).

In 2002, the season opens February 16 (nearest Saturday to February 15) for all salmon except coho. 2 fish per day, 24-inch (61-cm) minimum size limit and the same gear restrictions as in 2001.

Pt. Arena to Pigeon Pt.

April 14 through November 13; All salmon except coho; 2 fish per day. Minimum size limit 24 inches (61 cm) through June 30, and 20 inches (50.8 cm) thereafter. One rod per angler. Gear restrictions include: one rod per angler, no more than 2 barbless hooks, and circle hooks when not trolling (C.2.a, C.2.c, and C.2.d).

In 2002, the season opens April 13 for all salmon except coho; 2 fish per day, 24-inch (61-cm) minimum size limit and the same gear restrictions as in 2001. This opening could be modified to allow an earlier opening date following Council review at its November 2001 meeting.

Pigeon Pt. to U.S.-Mexico Border

March 31 through September 30. All salmon except coho; 2 fish per day. Minimum size limit 24 inches (61 cm) through June 30, and 20 inches (50.8 cm) thereafter. Gear restrictions include: one rod per angler, no more than 2 barbless hooks, and circle hooks when not trolling (C.2.a, C.2.c, and C.2.d).

In 2002, the season opens March 30 for all salmon except coho; 2 fish per day, 24-inch (61-cm) minimum size limit and the same gear restrictions as in 2001. This opening date could be modified to an earlier opening date following Council review at its November 2001 meeting.

B. Minimum Size (Inches)

Area (when open)	Chinook	Coho	Pink
North of Cape Falcon	24.0	16.0	None
Cape Falcon to Horse Mt.	20.0	16.0	None, except 20.0 off CA
Horse Mt. to Pt. Arena	20.0[a]		20.0
South of Pt. Arena	20.0[b]		20.0

[a] Except 24.0 inches prior to June 1.
[b] Except 24.0 inches prior to July 1.
Metric equivalents: 24.0 in=61.0 cm, 20.0 in=50.8 cm, 16.0 in=40.6 cm.

C. Special Requirements, Definitions, Restrictions, or Exceptions

C.1. All salmon on board a vessel must meet the minimum size or other special requirements for the area being fished, and the area in which they are landed if that area is open. Salmon may be landed in an area that is closed only if they meet the minimum size or other special requirements for the area in which they were caught.

C.2.Gear Restrictions: All persons fishing for salmon, and all persons fishing from a boat with salmon on board must meet the gear restrictions listed below for specific areas or seasons.

a. U.S.—Canada Border to Pt. Conception, California: No more than one rod may be used per angler and

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single point, single shank, barbless hooks are required for all fishing gear. (Note: ODFW regulations in the state-water fishery off Tillamook Bay may allow the use of barbed hooks to be consistent with inside regulations.)

b. Off Oregon between Cape Falcon and Humbug Mt.:

April 1–30: Anglers are limited to artificial lures and plugs of any size, or bait no less than 6 inches (15.2 cm) long (excluding hooks and swivels). All gear must have no more than 2 single point, single shank, barbless hooks. Divers are prohibited and flashers may be used only with downriggers.

May 1 through October 31: No special gear restrictions other than anglers must use no more than 2 single point, single shank, barbless hooks.

c. Off California North of Pt. Conception: Anglers must use no more than 2 single point, single shank, barbless hooks.

d. Off California between Horse Mt. and Pt. Conception: Off California between Horse Mt. and Pt. Conception: Single point, single shank, barbless circle hooks (see circle hook definition below) must be used if angling with bait by any means other than trolling and no more than 2 such hooks shall be used. When angling with 2 hooks, the distance between the hooks must not exceed 5 inches (12.7 cm) when measured from the top of the eye of the top hook to the inner base of the curve of the lower hook, and both hooks must be permanently tied in place (hard tied). Circle hooks are not required when artificial lures are used without bait.

Circle hook defined: A hook with a generally circular shape and a point which turns inward, pointing directly to the shank at a 90° angle.

Trolling defined: Angling from a boat or floating device that is making way by means of a source of power, other than drifting by means of the prevailing water current or weather conditions.

C.3.Control Zone Definitions:

a. Columbia Control Zone—An area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between red lighted Buoy #4 (46°13′ 35″ N. Lat., 124°06′ 50″ W. long.) and green lighted Buoy #7 (46°15′ 09″ N. lat., 124°06′ 16″ W. long.); on the east, by the Buoy #10 line which bears north/south at 357 true from the south jetty at 46°14′ 00″ N. lat., 124°03′07″ West. long. to its intersection with the north jetty; on the north, by a line running northeast/southwest between green lighted Buoy #7 to the tip of the north jetty (46°14′ 48″ N. lat., 124°05′ 20″ W. long.) and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between red lighted Buoy #4 and tip of the south jetty (46°14′ 03″ N. lat., 124°04′ 05″ W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

b. Klamath Control Zone—The ocean area at the Klamath River mouth bounded on the north by 41°38′ 48″ N. lat. (approximately 6 nm (11.1 km) north of the Klamath River mouth); on the west, by 124°23′ 00″ W. long. (approximately 12 nm (22.2 km) off shore); and, on the south, by 41°26′ 48″ N. lat. (approximately 6 nautical miles (11.1 km) south of the Klamath River mouth).

C.4. Inseason Management: Regulatory modifications may be necessary inseason to meet preseason management objectives such as quotas, harvest guidelines and season duration. Actions could include modifications to bag limits or days open to fishing, and extensions or reductions in areas open to fishing. NMFS may transfer coho inseason among recreational subareas north of Cape Falcon to help meet the recreational season duration objectives (for each subarea) after conferring with representatives of the affected ports and the Salmon Advisory Subpanel recreational representatives north of Cape Falcon. At the November, 2001 meeting, the Council will consider recommendation to open seasons for all salmon except coho prior to April 13, 2002, in areas off California between Pt. Arena and the U.S.-Mexico border. At the March, 2002 meeting, the Council will consider an inseason recommendation to open seasons for all salmon except coho prior to May 1, 2002, in areas off Oregon.

C.5. Additional Seasons in Stote Territorial Waters: Consistent with Council management objectives, the States of Washington and Oregon may establish limited seasons in state waters. Oregon state-water fisheries are limited to chinook salmon. Check state regulations for details.

Section 3. Treaty Indian Management Measures for 2001 Ocean Salmon Fisheries

Note: This section contains restrictions in parts A, B, and C which must be followed for lawful participation in the fishery.

A. Season Descriptions

Tribe and Area Boundaries	Open Seasons	Salmon Species	Minimum Size (inches)		Special Restrictions by Area
			Chinook	Coho	
MAKAH—Washington State Statistical Area 4B and that portion of the FMA north of 48°02′15″ N. lat. (Norwegian Memorial) and east of 125°44′ 00″ W. long.	May 1 through earlier of June 30 or chinook quota.	All except coho	24		Barbless hooks No more than 8 fixed lines per boat or no more than 4 hand-held lines per person
	July 1 through earliest of September 15 or chinook or coho quota.	All	24	16	
QUILEUTE—That portion of the FMA between 48°07′ 36″ N. lat. (Sand Point) and 47°31′ 42″ N. lat. (Queets River) and east of 125°44′ 00″ W. long.	May 1 through earlier of June 30 or chinook quota.	All except coho	24		Barbless hooks. No more than 8 fixed lines per boat.
	July 1 through earliest of September 15 or chinook or coho quota.	All	24	16	
HOH—That portion of the FMA between 47°54′18″ N. lat. (Quillayute River) and 47°21′00″ N. lat. (Quinault River) and east of 125°44′00″ W. long.	May 1 through earlier of June 30 or chinook quota.	All except coho	24		Barbless hooks. No more than 8 fixed lines per boat.
	July 1 through earliest of September 15 or chinook or coho quota.	All	24	16	
QUINAULT—That portion of the FMA between 47°40′06″ N. lat. (Destruction Island) and 46°53′18″ N. lat. (Point Chehalis) and east of 125°44′00″ W. long	May 1 through earlier of June 30 or chinook quota.	All except coho	24		Barbless hooks No more than 8 fixed lines per boat.
	August 1 through earliest of September 15 or chinook or coho quota.	All	24	16	

* Metric equivalents: 24 in=61.0 cm, 16 in=40.6 cm.

B. Special Requirements, Restrictions, and Exceptions

B.1. All boundaries may be changed to include such other areas as may hereafter be authorized by a Federal court for that tribe's treaty fishery.

B.2. Applicable lengths for dressed, head-off salmon, are 18 in (45.7 cm) for chinook and 12 in (30.5 cm) for coho. Minimum size and retention limits for ceremonial and subsistence harvest are as follows:

Makah Tribe— None

Quileute, Hoh and Quinault tribes— Not more than 2 chinook longer than 24 in (61.0 cm) in total length may be retained per day. Chinook less than 24 in (61.0 cm) total length may be retained.

B.3. The area within a 6-mile (9.7 km) radius of the mouths of the Queets River (47°31′42″ N. lat.) and the Hoh River (47°45′12″ N. lat.) will be closed to commercial fishing. A closure within 2 miles (3.2 km) of the mouth of the Quinault River (47°21′00″ N. lat.) may be enacted by the Quinault Nation and/or the State of Washington and will not adversely affect the Secretary of Commerce's management regime.

C. Quotas

C.1. The overall treaty troll ocean quotas are 37,000 chinook and 90,000 coho. The overall chinook quota is divided into 18,500 chinook for the May/June chinook-directed fishery and 18,500 chinook for the July through September all-salmon season. If the chinook quota for the May/June fishery is not fully utilized, the excess fish cannot be transferred into the later all-salmon season. The quotas include troll catches by the S'Klallam and Makah tribes in Washington State Statistical Area 4B from May 1 through September 30.

Section 4. Halibut Retention

Under the authority of the Northern Pacific Halibut Act, NMFS promulgated regulations governing the Pacific halibut fishery which appear at 50 CFR part 300, subpart E. In addition, the 2001 Pacific halibut management measures were published in the **Federal Register** on March 21, 2001 (66 FR 15801). The regulations and management measures provide that vessels participating in the salmon troll fishery in Area 2A (all waters off the States of Washington, Oregon, and California), which have obtained the appropriate International Pacific Halibut Commission (IPHC) license, may retain halibut caught incidentally during authorized periods in conformance with provisions published with the annual salmon management measures. A salmon troller may participate in the halibut incidental catch fishery during the salmon troll season or in the directed commercial fishery targeting halibut, but not both.

The following measures have been approved by IPHC, and implemented by NMFS. The operator of a vessel who has been issued an incidental halibut harvest license by the IPHC may retain Pacific halibut caught incidentally in Area 2A, during authorized periods, while trolling for salmon. Incidental harvest is authorized only during the May and June troll seasons. It is also authorized after June 30 if halibut quota remains and if halibut retention is announced on the NMFS hotline (phone 800-622-9825). License holders may land no more than 1 halibut per each 3 chinook, except 1 halibut may be landed without meeting the ratio requirement, and no more than 35 halibut may be landed per trip. Halibut retained must meet the minimum size limit of 32 in (81.3 cm). The ODFW and WDFW will monitor landings and, if they are projected to exceed the 34,046-lb (15.5-mt) preseason allocation or the Area 2A non-Indian commercial total allowable catch of halibut, NMFS will take inseason action to close the incidental halibut fishery. License applications for incidental harvest must be obtained from the IPHC. Applicants must apply prior to April 1 of each year.

Section 5. Gear Definitions and Restrictions

In addition to the gear restrictions shown in Section 1, 2, and 3, the following gear definitions and restrictions are applicable:

Commercial Troll Fishing Gear: Troll fishing gear for the ocean salmon fisheries in the EEZ off Washington, Oregon, and California is defined as one or more lines that drag hooks behind a moving fishing vessel. In that portion of the fishery management area (FMA) off Oregon and Washington, the line or lines must be affixed to the vessel and must not be intentionally disengaged from the vessel at any time during the fishing operation.

Recreational Fishing Gear: Recreational fishing gear for the FMA is defined as angling tackle consisting of a line with no more than one artificial lure or natural bait attached. In that portion of the FMA off Oregon and Washington, the line must be attached to a rod and reel held by hand or closely attended; the rod and reel must be held

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by hand while playing a hooked fish. No person may use more than one rod and line while fishing off Oregon or Washington. In that portion of the FMA off California, the line must be attached to a rod and reel held by hand or closely attended. Weights directly attached to a line may not exceed 4 lb (1.8 kg). While fishing off California north of Point Conception, no person fishing for salmon and no person fishing from a boat with salmon on board may use more than one rod and line. Fishing includes any activity that can reasonably be expected to result in the catching, taking, or harvesting of fish.

Section 6. Geographical Landmarks

Wherever the words "nautical miles off shore" are used in this document, the distance is measured from the baseline from which the territorial sea is measured.

Geographical landmarks referenced in this document are at the following locations:

Cape Flattery	48°23'00" N. lat.
Cape Alava	48°10'00" N. lat.
Queets River	47°31'42" N. lat.
Leadbetter Point	46°38'10" N. lat.
Cape Falcon	45°46'00" N. lat.
Florence South Jetty	44°00'54" N. lat.
Humbug Mountain	42°40'30" N. lat.
Mack Arch	42°13'40" N. lat.
House Rock	42°06'32" N. lat.
Oregon-California Border	42°00'00" N. lat.
Humboldt South Jetty	40°45'53" N. lat.
Horse Mountain	40°05'00" N. lat.
Point Arena	38°57'30" N. lat.
Point Reyes	37°59'44" N. lat.
Point San Pedro	37°35'40" N. lat.
Pigeon Point	37°11'00" N. lat.
Point Sur	36°18'00" N. lat.
Point Conception	34°27'00" N. lat.

Section 7. Inseason Notice Procedures

Actual notice of inseason management actions will be provided by a telephone hotline administered by the Northwest Region, NMFS, 206–526–6667 or 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts. These broadcasts are announced on Channel 16 VHF-FM and 2182 KHz at frequent intervals. The announcements designate the channel or frequency over which the Notice to Mariners will be immediately broadcast. Inseason actions will also be filed with the **Federal Register** as soon as practicable. Since provisions of these management measures may be altered by inseason actions, fishermen should monitor either the telephone hotline or Coast Guard broadcasts for current information for the area in which they are fishing.

Classification

This notification of annual management measures is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA) finds good cause under 5 U.S.C. 553(b)(B), to waive the requirement for prior notice and opportunity for public comment. As described earlier (Schedule Used to Establish 2001 Management Measures), the Council solicited public comment on these measures and has notified the public of the measures it recommended for implementation. Providing additional opportunity for prior notice and public comments on these measures through a rulemaking process would be impracticable and contrary to the public interest. Given the extremely low returns of many ocean salmon stocks listed under the ESA, the need to prevent overfishing, and the need to facilitate a level of escapement to meet the requirements of the resource and inside fisheries, it is essential to have these measures effective at the beginning of the fishing year. Failure to implement these measures immediately could compromise the status of certain stocks and negatively impact international, state, and tribal salmon fisheries, thereby undermining the purposes of this agency action.

For the reasons discussed earlier, the AA has determined that good cause exists to waive the requirements of 50 CFR 660.411 for prior notice and opportunity for public comments. Section 660.411 of title 50, Code of Federal Regulations, requires NMFS to publish an action implementing management measures for ocean salmon fisheries each year and, if time allows, invite public comment prior to the effective date. Section 660.411 further states that if, for good cause, an action must be filed without affording a prior opportunity for public comment, the measures will become effective; however, public comments on the action will be received for a period of 15 days after filing of the action with the Office of the Federal Register. NMFS will receive public comments on this action for 15 days from the date of filing this action for public inspection with the Office of the Federal Register.

The AA also finds that good cause exists under 5 U.S.C. 553(d)(3), to waive the 30-day delay in effectiveness of this rule. The finding of good cause is based upon the public's interest in having these provisions in place as early as possible in the ocean salmon fishing year. As previously discussed, these measures are essential to conserve threatened and endangered ocean salmon stocks, and to provide for harvest of more abundant stocks. The finding of good cause to waive the 30-day delay in effectiveness is also based on the limited time available to implement these new measures after the final Council meeting in April and before the commencement of the ocean salmon fishing year on May 1.

To enhance notification of the fishing industry of these new measures, NMFS is announcing the new measures over the telephone hotline used for inseason management actions and by U.S. Coast Guard Notice to Mariners Broadcast. NMFS is also advising the States of Washington, Oregon, and California on the new management measures. These states announce the seasons for applicable state and Federal fisheries through their own public notification systems.

This action contains collection-of-information requirements subject to the PRA, and which have been approved by OMB under control number 0648–0433. The public reporting burden for providing notifications if landing area restrictions cannot be met, or to obtain temporary mooring in Brookings, OR, is estimated to average 15 minutes per response. This estimate include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB control number.

Since 1989, NMFS has listed 16 ESUs of salmon on the West Coast. As the listings have occurred, NMFS has conducted formal ESA section 7 consultations (Table 1) and issued biological opinions (BOs) that consider the impacts to listed salmonid species resulting from proposed implementation of the salmon FMP, or in some cases, from proposed implementation of the annual management measures.

TABLE 1. NMFS' BIOLOGICAL OPINIONS ON OCEAN FISHERIES IMPLEMENTED UNDER THE SALMON FMP AND DURATION OF THE PROPOSED ACTION COVERED BY EACH OPINION.

Date	ESU covered and effective period
March 8, 1996	Snake River chinook and sockeye (until reinitiated), Sacramento River winter chinook (6 years)
February 18, 1997	Sacramento River winter chinook (5 years)
April 28, 1999	Oregon coastal coho, S. Oregon/ N. California coastal coho, Central California coastal coho (until reinitiated)
April 28, 2000	Central Valley spring chinook and California coastal chinook (until reinitiated)
April 30, 2001	Upper Columbia River spring chinook, Upper Willamette River chinook, Lower Columbia River chinook, Puget Sound chinook (until reinitiated)

Based on these BOs, NMFS concludes that these management measures are not likely to jeopardize the continued existence of any ESU of salmon that is listed under the ESA. The Council's recommended management measures comply with the terms and conditions of the incidental take statements in all applicable BOs related to listed salmon species that may be affected by Council fisheries.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 2, 2001.

John Oliver,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 01–11444 Filed 5–2–01; 4:25 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010112013–1013–01; I.D. 050101A]

Fisheries of the Exclusive Economic Zone Off Alaska; Sharpchin and Northern Rockfish in the Bering Sea Subarea of the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of sharpchin and northern rockfish in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). NMFS is requiring that catch of sharpchin and northern rockfish in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the amount of the 2001 total allowable catch (TAC) of sharpchin and northern rockfish in this area has been achieved.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 4, 2001, until 2400 hrs, A.l.t., December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The amount of the 2001 TAC of sharpchin and northern rockfish in the Bering Sea subarea of the BSAI was established as 16 metric tons by the Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the amount of the 2001 TAC for sharpchin and northern rockfish in the Bering Sea subarea of the BSAI has been achieved. Therefore, NMFS is requiring that further catches of sharpchin and northern rockfish in the Bering Sea subarea of the BSAI be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds the need to immediately implement this action because the fact that the amount of the 2001 TAC for sharpchin and northern rockfish in the Bering Sea subarea of the BSAI has been achieved constitutes good cause to waive the requirement to provide prior notice opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion because the amount of the 2001 TAC for sharpchin and northern rockfish in the Bering Sea subarea of the BSAI has been achieved constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 2, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–11546 Filed 5–3–01; 2:39 pm]

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Proposed Rules

Federal Register
Vol. 66, No. 89
Tuesday, May 8, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Part 600

RIN 1991–AB57

Grants and Agreements With For-Profit Organizations

AGENCY: Department of Energy.

ACTION: Notice of inquiry and opportunity for public comment.

SUMMARY: The Department of Energy (the "Department" or "DOE") is seeking comments on whether to initiate a rulemaking that prescribes administrative requirements for financial assistance awards tailored specifically to for-profit organizations. DOE is also requesting comments on the specific changes proposed in the **SUPPLEMENTARY INFORMATION** section. Comments received in response to this document should contain no proprietary or confidential business information.

DATES: Written comments must be received by July 9, 2001.

ADDRESSES: Comments (3 copies) should be addressed to: Trudy Wood, U.S. Department of Energy, Office of Procurement and Assistance Management, MA–51, 1000 Independence Avenue, SW., Washington, DC 20585.

If possible a copy should also be E-mailed to *fanotice@pr.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Trudy Wood, Office of Procurement and Assistance Policy, Department of Energy, at (202) 586–5625.

SUPPLEMENTARY INFORMATION:

I. Background

Currently, DOE is engaged in the Government-wide effort to streamline and simplify the application, administrative, and reporting procedures for Federal financial assistance programs pursuant to Public Law 106–107, the Federal Financial Assistance Management Improvement Act of 1999 (henceforth "the Act"). As part of its initiative to consult with non-Federal entities, the Department solicited comments and suggestions from the grant community. In response, DOE received comments from for-profit organizations relating to issues that were unique to DOE and that were not being addressed in the Government-wide effort to implement the Act. Therefore, DOE is considering creating a new subpart to 10 CFR part 600 that contains administrative requirements for grants and cooperative agreements that are tailored to for-profit organizations with the goal of eliminating barriers which prevent these organizations from participating in the Department's financial assistance programs.

II. Current Regulations

The DOE assistance regulations are contained in 10 CFR part 600. As a matter of discretion, these regulations provide that the Office of Management and Budget (OMB) administrative requirements for grants and cooperative agreements with institutions of higher education, hospitals, and other non-profit organizations also apply to for-profit organizations.

III. Rulemaking Under Consideration

DOE is considering initiating a rulemaking that provides administrative requirements for grants and cooperative agreements that are specifically tailored to for-profit organizations. The changes under consideration would: (1) eliminate unnecessary requirements; and (2) maximize the effectiveness with which the Department's financial assistance programs support the accomplishment of their purposes, consistent with good stewardship of public funds and statutory requirements.

IV. Proposed Changes

DOE is considering the following major changes to 10 CFR part 600:

1. Create a new subpart that provides administrative requirements for grants and cooperative agreements that are specifically tailored to for-profit organizations, similar to the Department of Defense Grant and Agreement Regulations, 32 CFR part 34, Administrative Requirements for Grants and Agreements with For-Profit Organizations. Among other things, the new subpart would allow DOE to apply less restrictive requirements to small awards and to awards made pursuant to the Small Business Innovation Research or Small Business Technology Transfer Research programs.

2. Eliminate the requirement for incorporation of the following intellectual property clauses in awards with for-profit organizations:

a. FAR 52.227–1 Authorization and Consent

b. FAR 52.227.2 Notice and Assistance Regarding Patent and Copyright Infringement

c. FAR 52.227–3 Patent Indemnity

d. FAR 52.227–23 Rights in Proposal Data

3. Revise the Rights in Data and Patent Rights Provisions for financial assistance awards with large for-profit organizations. The new provisions would incorporate the following changes:

a. Eliminate DOE's routine use of clauses that grant to DOE the right to require recipients, under certain circumstances, to license background data and patents to third parties, to assure commercialization (see DEAR 952.227–13(k) and 952.227–14). DOE would require such third party licensing rights only when it is necessary to satisfy the needs of the program; and

b. Eliminate the requirement that the recipient obtain the Contracting Officer's approval prior to copyrighting computer software developed under the assistance award.

4. Simplify the advanced patent waiver petition process by making advanced waiver approval automatic if the awardee agrees to the conditions specified in the solicitation. This simplified process would eliminate the detailed 20 question waiver petition. The conditions specified in the solicitation would include:

a. Providing a one paragraph summary of a business plan for commercializing the technology;

b. Non-Federal cost sharing of at least 20 percent to establish a corporate commitment to commercializing the technology;

c. Agreement to statutory requirements attaching to the subject inventions, such as subject invention disclosure to DOE, Government purpose license rights, march-in rights, and a preference for United States industries; and

d. A U.S. competitiveness requirement dealing with substantial manufacturing in the U.S.

5. Simplify the financial and program management requirements by:

a. Encouraging recipients to use existing financial management systems

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established for conducting business in the commercial marketplace to the extent that the systems comply with Generally Accepted Accounting Practices (GAAP) and certain minimum standards (i.e., effective control of funds, accurate records that document the source and application of the Federal funds and the recipient's required cost share, and a system to support charges to Federal awards for salaries and wages):

b. Establishing a preference for the reimbursement method of payment; and

c. Requiring recipients that expend $300,000 or more in a year under Federal awards to have an audit for that year by an independent auditor. The audit generally would be made a part of the regularly scheduled, annual audit of the recipient's financial statements.

6. Clarify and simplify the property standards. The revised property standards would encourage recipients to use existing property management systems to the extent that the systems meet certain minimum requirements.

7. Significantly reduce requirements imposed on recipient procurement activities in favor of best commercial practices. DOE is considering establishing minimum procurement requirements, such as:

a. Requiring recipients' procurement procedures to use effective competition techniques or other means that ensure reasonable cost for procured goods and services;

b. Requiring pre-award review of procurements only when the contracting officer judges that there is a compelling need to do so and then only if a provision in the award states the requirement; and

c. Encourage the use of best commercial practices in the procurement of commercial items.

Issued in Washington, D.C. on April 30, 2001.

Richard H. Hopf,

Acting Director, Office of Management and Administration, U.S. Department of Energy.

[FR Doc. 01–11519 Filed 5–7–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 552

[No. 2001–35]

RIN 1550–AB46

Conversion From Stock Form Depository Institution to Federal Stock Association

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing to amend its regulation on conversions from stock form depository institutions to federal stock savings associations. This proposed rule would clarify that the resulting federal stock savings association in such transactions succeeds to all the rights, property, and obligations of the converting institution. This amendment merely codifies OTS's interpretation of its existing regulation.

DATES: Comments must be received on or before June 7, 2001.

ADDRESSES: *Mail:* Send comments to Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 2001–35.

Delivery: Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9:00 a.m. to 4:00 p.m. on business days, Attention Regulation Comments, Chief Counsel's Office, Docket No. 2001–35.

Facsimiles: Send facsimile transmissions to FAX Number (202) 906–6518, Attention Docket No. 2001–35.

E-Mail: Send e-mails to *regs.comments@ots.treas.gov*, Attention Docket No. 2001–35, and include your name and telephone number.

Public Inspection: Comments and the related index will be posted on the OTS Internet Site at *www.ots.treas.gov*. In addition, you may inspect comments at the Public Reading Room, 1700 G St. N.W., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) Appointments will be scheduled on business days between 10:00 a.m. and 4:00 p.m. In most cases, appointments will be available the next business day following the date a request is received.

FOR FURTHER INFORMATION CONTACT: Aaron B. Kahn, (202) 906–6263, Special Counsel, or Kevin A. Corcoran, (202) 906–6962, Assistant Chief Counsel, Business Transactions Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW, Washington DC 20552.

SUPPLEMENTARY INFORMATION:

Background

OTS regulations at 12 CFR 552.2–6 provides that, with OTS approval, any stock depository institution that is, or is eligible to become, a member of a Federal Home Loan Bank may convert to a federal stock savings association if the converting institution has deposits insured by the Federal Deposit Insurance Corporation (FDIC) at the time of conversion, and complies with all applicable statutes and regulations, including section 5(d) of the Federal Deposit Insurance Act.[1] This regulation does not explicitly address the succession of the federal association resulting from such a conversion to the rights, obligations and property of the converting institution. However, as a matter of practice OTS treats federal stock associations that have resulted from direct conversions pursuant to 12 CFR 552.2–6 as the corporate successors of the converting institutions.

OTS regulations addressing similar transactions explicitly provide that the resulting federal association succeeds to the rights, obligations, and property of a converted or disappearing entity. This is true, for example, for conversions of mutual depository institutions to federal mutual savings associations[2] and the merger or consolidation of stock institutions that result in a federal stock association.[3]

To clarify the legal consequences of direct conversions under 12 CFR 552.2–6, OTS is proposing to amend that regulation to provide explicitly that a converted federal stock association succeeds to all the rights, obligations and property of its corporate predecessor.

This action will not change the existing treatment accorded federal stock associations that have converted from a stock depository institution. Rather, the amendment merely codifies the agency's existing interpretation of its regulation. The text of the amendment has been derived from a comparable provision pertaining to the merger and consolidation of federal stock associations that appears at 12 CFR 552.13(l).

[1] 12 U.S.C. 1815(d).

[2] 12 CFR 543.14 (2000).

[3] *See* 12 CFR 552.13(l) (2000).

Comments; Accompanying Direct Final Rule

If no significant adverse comments are timely received, no further activity is contemplated relative to this proposed rule. Rather, the related direct final rule published elsewhere in this issue of the **Federal Register** will automatically go into effect on the date specified in that rule. If significant adverse comments are timely received, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule. Because OTS will not institute a second comment period for this proposed rule, any parties interested in commenting should do so during this comment period.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act,[4] the Director certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The rule would merely codifies an existing OTS interpretation.

Executive Order 12866

OTS has determined that this proposed rule is not a "significant regulatory action" for purposes of Executive Order 12866.

Unfunded Mandates Reform Act of 1995

OTS has determined that the requirements of this proposed rule will not result in expenditures by State, local, and tribal governments or by the private sector of $100 million or more in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995.

Federalism

Executive Order 13132 imposes certain requirements on an agency when formulating and implementing polices that have federalism implications or taking actions that preempt state law. OTS has determined that this proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, and will not preempt State law.

List of Subjects in 12 CFR Part 552

Reporting and recordkeeping requirements, Savings associations, Securities.

[4] Pub. L. No. 96–354, 5 U.S.C. 601.

Accordingly, the Office of Thrift Supervision hereby proposes to amend title 12, chapter V of the Code of Federal Regulations as set forth below.

PART 552—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL STOCK ASSOCIATIONS

1. The authority citation for Part 552 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

2. Section 552.2–6 is amended by designating the text of the section as paragraph (a) and adding paragraph (b) to read as follows:

§ 552.2–6 Conversion from stock form depository institution to Federal stock association.

(a) * * *

(b) Any and all of the assets and other property (whether real, personal, mixed, tangible or intangible, including choses in action, rights, and credits) of the former stock form depository institution become assets and property of the Federal stock association when the conversion occurs. Similarly, any and all of the obligations and debts of or claims against the former stock form depository institution become obligations and debts of and claims against the Federal stock association when the conversion occurs. In effect, the Federal stock association is the same as the former stock form depository institution with respect to any and all assets, property, claims and debts of or claims against the former stock form depository institution.

Dated: May 2, 2001.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 01–11544 Filed 5–7–01; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE165; Notice No. 23–01–02–SC]

Special Conditions: Ayres Corporation; Model LM 200, "Loadmaster"; Flight

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Ayres Corporation, Model LM 200 airplane. This airplane will have novel or unusual design features associated with centerline thrust. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before June 7, 2001.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket, Docket No. CE165, 901 Locust, Room 506, Kansas City, Missouri 64106, or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: CE165. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Lowell Foster, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Room 301, Kansas City, Missouri, 816–329–4125, fax 816–329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposals described in this action may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this action must include with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to CE165." The postcard will be date stamped and returned to the commenter.

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Background

On February 9, 2001, Ayres Corporation applied for a type certificate for their new Model LM 200 "Loadmaster." The Model LM 200 operates with a multiengine/single propeller propulsion system and fixed landing gear. The system consists of two turbine engines driving a single propeller through a combining gearbox. The aircraft is conventional, semi-monocoque, aluminum construction with a high cantilever wing, fixed gear, mechanical and electro-mechanical controls, and it will be unpressurized. Certification will include single pilot and IFR operations.

It is not possible for this airplane to have literal compliance with some comnuter category flight test regulations. The Model LM 200 must comply with all commuter category multiengine requirements; however, since this propulsion system will result in centerline thrust, this airplane will not have a V_{MC} or V_{MCG}. The propeller is independent of both or either engine such that, with the failure of an engine, the propeller will continue to operate normally but with less torque input. The propeller control system does have failure modes independent of both engines that need to be considered when determining airplane performance. 14 CFR part 23 does not contain adequate or appropriate requirements to address a multiengine/single propeller design that results in centerline thrust.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Ayres Corporation must show that the Model LM 200 "Loadmaster" meets the applicable provisions of part 23, as amended by Amendments 23–1 through 23–53, thereto.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 23) do not contain adequate or appropriate safety standards for the Ayres Corporation Model LM 200 "Loadmaster" because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model LM 200 must comply with the part 23 fuel vent and exhaust emission requirements of 14 CFR part 34 and the part 23 noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92–574, the "Noise Control Act of 1972."

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Model LM 200 will incorporate the following novel or unusual design features: The Model LM 200 will operate with a multiengine/single propeller propulsion system.

Applicability

As discussed above, these special conditions are applicable to the Model LM 200. Should Ayres Corporation apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety.

The authority citation for these special conditions is as follows: 49 U.S.C. 106(g); 40113, 44701, 44702, and 44704; 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.29(b).

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Ayres Corporation Model LM 200 airplanes.

Flight Test Special Conditions

1. In addition to the requirements in § 23.51(c)(1)(i), V_{EF} is also a propeller control system failure speed where the propeller primary control system fails to the configuration most critical to producing thrust, considering all single point failures. The applicant must establish V_{EF} to be related to the stall speed, and it must not be less than 1.05 V_{S1} or greater than 1.2 V_{S1}.

2. In addition to the requirements in § 23.51(c)(3), to determine a single value for V_R, the applicant must determine and use the most critical of either the one engine inoperative (OEI) configuration or the most critical failed propeller primary control system configuration, whichever is worse. The failed propeller control system configuration must consider all single point failures with both engines operating normally.

3. In addition to the requirement in § 23.51(c)(5), the applicant must determine and use the most critical of either the OEI configuration or the most critical failed propeller primary control system configuration, whichever is worse. The failed propeller control system must consider all single point failures, with both engines operating normally.

4. In § 23.63, where the OEI configuration is required, the applicant must also assume the condition where both engines are operating normally and the propeller primary control system has failed. In the failed propeller primary control system configuration, the applicant must consider all single point failures that result in a propeller configuration most critical to producing thrust.

5. In addition to the requirements in § 23.75(g), the applicant must also determine the increase in landing distance due to failure of the propeller primary control system. This configuration includes both engines operating normally and the propeller primary control system failed to the most critical thrust producing condition considering all single point failures.

Issued in Kansas City, Missouri, on April 25, 2001.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–11470 Filed 5–7–01; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 62

RIN 3067–AD17

National Flood Insurance Program (NFIP); Pilot Project—Public Entity Insurers

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: We (the Federal Insurance Administration of FEMA) are proposing to launch a three-year pilot project that would permit intergovernmental risk-sharing pools sponsored by State municipal leagues to sell flood insurance to public entities under the National Flood Insurance Program's Write Your Own (WYO) effort. We would limit the participants in this pilot effort to three such insurers that would be able to provide flood insurance only to public entities for their public buildings. The participants in this pilot effort would also have to comply with comparable eligibility criteria and performance standards for operations, reporting, and customer service that we require of private insurance companies that participate under the WYO program. This proposal includes the eligibility criteria for participation in the proposed pilot and an addendum to the WYO Arrangement that would construe the term "the company" used in the Arrangement to mean not only WYO companies but also the insurers selected for this proposed pilot.

DATES: Please submit any comments on this proposed rule by July 9, 2001.

FOR FURTHER INFORMATION CONTACT: Edward T. Pasterick, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472, 202–646–3443, (facsimile) 202–646–4335, or (email) *Edward.Pasterick@fema.gov.*

SUPPLEMENTARY INFORMATION:

The NFIP's Write Your Own Program: Successes

Since 1983, when we (FIA) established the WYO program, we have worked in close partnership with private insurance companies to serve a national goal: to protect more of the Nation's property owners against flood loss through insurance. The expertise of our private insurance industry partners, especially in marketing, underwriting, and claims adjustment, has been invaluable in helping us not only provide a high level of customer service to policyholders under the National Flood Insurance Program (NFIP) but also increase the number of property owners covered by flood insurance—a national objective. In fact, as the WYO program has grown so has the number of policyholders nationwide covered by flood insurance. Our flood insurance policy base has more than doubled since the WYO program's inception on October 1, 1983, with policies increasing from 1.9 million to more than 4.3 million policies in force today.

One of the inherent strengths of the WYO program, and one of the reasons for its success, is that private insurance companies, writing property insurance for other perils such as wind and fire, provide convenient access to flood insurance coverage for their customers in need of flood insurance protection. This model may also apply to the unique relationship that public entity insurers, especially State municipal league-sponsored or other intergovernmental risk-sharing pools, such as those sponsored by school districts and transit districts, enjoy with local governments. Such public entity insurers that already provide property insurance coverage to public entities for their public buildings may be in an ideal position to provide the same high level of customer service and easy access to local governments in need of flood insurance protection for their public buildings. This is an avenue that we would like to explore for the benefit of public entities in need of flood insurance protection.

Possible Expansion of the WYO Program

We believe that there may be considerable merit in expanding the framework of the WYO program to include not only our current participants—the property insurance companies that meet financial and operating standards—but also other insurers of public buildings, such as State municipal league-sponsored and other risk pools meeting comparable standards that can serve the specialized insurance market of public entities. By permitting State municipal league-sponsored and other intergovernmental risk-sharing pools to sell flood insurance, we would be providing public entities with the same kind of insurance channel that many use for their other property insurance needs.

This proposal then would add, on a pilot project basis, a new class of insurer to the WYO program. Specifically, we would add to § 62.23 and § 62.24 language that would authorize us to launch the pilot project and enter into an arrangement under the WYO program with up to three State municipal league-sponsored intergovernmental risk-sharing pools to sell flood insurance directly to municipalities provided these intergovernmental risk-sharing pools meet comparable eligibility, performance, and customer service standards as we have established for the private insurance companies. Our proposed revision to § 62.24 includes the criteria that the participants in the pilot project would have to meet as a condition for participation.

We would limit the three-year proposed pilot to no more than three State municipal league-sponsored intergovernmental risk-sharing pools that meet the eligibility criteria that we include in the proposal. Should the pilot succeed in increasing the number of public buildings covered by flood insurance while maintaining the program's standards for customer service, we would be willing to broaden the effort permanently to include other intergovernmental risk-sharing pools, such as those sponsored by school districts and transit districts, that provide property insurance to public entities and that meet our eligibility criteria. Such a pilot would also furnish us with data and experience that would help us improve operations should State municipal league-sponsored and other intergovernmental risk-sharing pools become permanent adjuncts to the WYO program.

It is our hope that the proposed pilot project would provide local governments with an accessible and familiar channel to meet their flood insurance needs through State municipal league sponsored intergovernmental risk-sharing pools since these organizations meet and deal with local governments daily. Such intergovernmental risk-sharing pools already provide expertise in a number of areas such as risk management, and these entities would be in a position to better serve the needs of the localities by providing and servicing flood coverage to the locality for their public buildings. Such organizations bring with them risk management expertise and a unique insight into the needs of their customers—local public entities.

Scope of the Pilot Project

We propose, therefore, to launch a pilot project beginning with the 2001–2 Arrangement Year for the WYO program that begins October 1, 2001. The pilot project would enable up to three State municipal league-sponsored intergovernmental risk-sharing pools—to be nominated by the National League of Cities—to provide flood insurance to communities to cover their public buildings. Under the pilot project, the participating State municipal league-sponsored intergovernmental risk-sharing pools would provide flood insurance only to the buildings of public entities. Private buildings and private personal property would remain the exclusive marketing domain of the private insurance companies participating in the WYO program.

The proposed pilot project would be for a period of three years, but we would begin our analysis at the end of the second year to determine whether the pilot project is meeting our goals. Specifically, we would determine whether the participating State municipal league-sponsored

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intergovernmental risk-sharing pools had positioned themselves to write flood insurance on a large number of public buildings and whether they had maintained the same level of customer service and the same level of performance that we require of participating companies under the WYO program. The analysis at the end of the proposed pilot project would help us determine whether the pilot project should continue, and if so, whether we should expand the program beyond the limited participants of the pilot effort, and whether we need to modify or adjust the program based on project experience.

National Environmental Policy Act (NEPA)

NEPA imposes requirements for considering the environmental impacts of agency decisions. It requires that an agency prepare an Environmental Impact Statement (EIS) for "major federal actions significantly affecting the quality of the human environment." If an action may or may not have a significant impact, the agency must prepare an environmental assessment (EA). If, as a result of this study, the agency makes a Finding of No Significant Impact (FONSI), no further action is necessary. If it will have a significant effect, then the agency uses the EA to develop an EIS.

Categorical Exclusions. Agencies can categorically identify actions (for example, repair of a building damaged by a disaster) that do not normally have a significant impact on the environment. The purpose of this proposed rule is to launch a three-year pilot project that would permit intergovernmental risk-sharing pools sponsored by State municipal leagues to sell flood insurance to public entities under the National Flood Insurance Program's WYO effort.

Accordingly, we have determined that this rule is excluded from the preparation of an environmental assessment or environmental impact statement under 44 CFR 10.8(d)(2)(ii), where the rule is related to actions that qualify for categorical exclusion under 44 CFR 10.8(d)(2)(i), which addresses the preparation, revision, and adoption of regulations, directives, and other guidance documents related to actions that qualify for categorical exclusions. We have not prepared an environmental assessment or environmental impact statement as defined by NEPA.

Executive Order 12866, Regulatory Planning and Review

We have prepared and reviewed this proposed rule under the provisions of E.O. 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

For the reasons that follow we have concluded that the proposed rule is neither an economically significant nor a significant regulatory action under the Executive Order.

The proposed rule would accomplish one primary purpose: to determine the merit of permanently expanding the WYO program to permit State municipal league-sponsored intergovernmental risk-sharing pools to sell flood insurance to public entities to cover their buildings against flood loss. The proposed rule would permit us to analyze the three-year pilot project to determine the merit of permitting such insurers to be eligible to sell flood insurance permanently under the WYO program. There are no major economic impacts resulting from implementation of this proposal. Rather, the proposed rule would add a new marketing avenue for writing flood insurance for public buildings.

The Office of Management and Budget has not reviewed this proposed rule under the principles of Executive Order 12866.

Paperwork Reduction Act

In accordance with the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) approved the following collections of information applicable to this proposed rule:

1. *Title:* Write Your Own (WYO) Program.

OMB Number: 3067–0169 (expires March 31, 2002).

Affected Public: Business or Other For Profit and State, Local or Tribal Government.

Number of Respondents: 120. The pilot limits the number of additional participants to 3. Therefore, we do not anticipate that there will be an overall increase in the annual number of respondents for this collection.

Estimated Hour Burden: 33 minutes per respondent.

Estimated Total Annual Burden: 792 hours. We do not anticipate that there will be an overall increase in the annual burden hours for this collection.

Frequency of Response: Respondents are required to submit the information on a monthly basis.

2. *Title:* Write Your Own (WYO) Company Participation Criteria; New Applicants.

OMB Number: 3067–0259 (expires April 30, 2002).

Affected Public: Business or Other For Profit and State, Local or Tribal Government.

Number of Respondents: 5. The pilot limits the number of additional participants to 3. Therefore, we do not anticipate that there will be an overall increase in the annual number of respondents for this collection.

Estimated Hour Burden: 7 hours per respondent.

Estimated Total Annual Burden: 35 hours. We do not anticipate that there will be an overall increase in the annual burden hours for this collection.

Frequency of Response: Respondents are required to submit the information one-time only.

The proposed rule will launch a 3-year pilot project that would add intergovernmental risk-sharing pools sponsored by State municipal leagues as a new category of insurer under the Write Your Own (WYO) program. For this pilot, the number of participants is limited to three such insurers that would be able to provide flood insurance only to public entities for their public buildings. The participants must also comply with comparable eligibility criteria and performance standards for operations, reporting, and customer service that we require of private insurance companies that participate in the WYO program. The OMB approval for these collections include the collections of information referenced in § 62.23(a), titled "Financial Assistance/Subsidy Arrangement," appendix A, and contained in § 62.24 of the proposed rule.

The requirements under the Financial Assistance/Subsidy Arrangement (appendix A to part 62) include standards for insurers participating in the Write Your Own program to complete transactions, claims, underwriting, customer service, reporting, marketing, and handling litigation to ensure adequate customer service and to safeguard the use of Federal funds drawn from the National Flood Insurance Fund. The requirements for financial control for insurers participating in the Write Your Own program (set forth in the Financial Control Plan, appendix B to part 62) include standards for: independent auditing, auditing of flood insurance financial statements, and monthly reporting, as well as requirements by FEMA's Office of Financial Management on Letter of Credit use.

Comments: We ask for your comments on our need for this information, the accuracy of our burden estimates, and any methods you can suggest for minimizing the burden on respondents, including automated collection techniques. Please send comments on the collections of information described above to the Office of Management and Budget, Office of Information and Regulatory Affairs; Attention: Desk Officer for FEMA, 725 17th Street, NW., Washington, DC 20503. Written comments should include the OMB number (3067–0259) and may be submitted up to July 9, 2001, but comments will be most useful if received by OMB within 30 days of the **Federal Register** publication date. We will also accept comments up to July 9, 2001. Written comments to us should be addressed to the Chief, Records Management Branch, Program Services Division, Operations Support Directorate, FEMA, 500 C Street, SW., Washington, DC 20472. We will respond to any OMB or public comments on the collections of information contained in the proposed rule.

For Additional Information Contact: You may obtain a copy of the approved OMB clearance packages for the collections of information by mail at FEMA, 500 C Street, SW., room 316, Washington, DC 20472, by e-mail at *muriel.anderson@fema.gov*, or by calling (202) 646–2625.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act agencies must consider the impact of their rulemakings on "small entities" (small businesses, small organizations and local governments). When 5 U.S.C. 553 requires an agency to publish a notice of proposed rulemaking, the Act requires a regulatory flexibility analysis for both the proposed rule and the final rule if the rulemaking could "have a significant economic impact on a substantial number of small entities." The Act also provides that if a regulatory flexibility analysis is not required, the agency must certify in the rulemaking document that the rulemaking will not "have a significant economic impact on a substantial number of small entities."

For the reasons that follow I certify that a regulatory flexibility analysis is not required for this rule because it would not have a significant economic impact on a substantial number of small entities. This proposed rule revises the National NFIP regulations to launch a three-year pilot project that would permit intergovernmental risk sharing pools sponsored by State municipal leagues to sell insurance to public entities under the NFIP's WYO Program. We would limit the participants to three such insurers that would be able to provide flood insurance only to public entities for public buildings. Participation in the pilot program is voluntary.

Executive Order 13132, Federalism

Executive Order 13132, Federalism, dated August 4, 1999, sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

We have reviewed this proposed rule under E.O. 13132 and have concluded that the rule does not have federalism implications as defined by the Executive Order. The rule is a proposal to add a new category of insurer under the WYO program—an insurer that would provide another marketing avenue to protect public buildings from flood loss. Inasmuch as the insurance benefits and requirements derive from a Federal statute and program exclusively administered by the Federal Government for the benefit of State, local and tribal governments, individuals, and not-for-profit organizations, the rule neither limits nor preempts any policymaking discretion of the State that the State might otherwise have. We have, nevertheless, consulted with local officials, with the National League of Cities, and with several State municipal leagues.

The Office of Management and Budget has reviewed this rule under the provisions of Executive Order 13132.

List of Subjects in 44 CFR Part 62

Flood insurance.

Accordingly, amend 44 CFR part 62 as follows:

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Revise paragraphs (a) and (b) of § 62.23 to read as follows:

§ 62.23 WYO Companies Authorized

(a) Pursuant to section 1345 of the Act, the Administrator may enter into arrangements with individual private sector property insurance companies or other insurers whereby such companies may offer flood insurance coverage under the program to eligible applicants for such insurance including policyholders insured by them under their own property business lines of insurance pursuant to their customary business practices including their usual arrangements with agents and producers, in any State in which such WYO companies are authorized to engage in the business of property insurance. Arrangements entered into by WYO Companies under this subpart must be in the form and substance of the standard arrangement, titled "Financial Assistance/Subsidy Arrangement," a copy of which is included in appendix A of this part and made a part of these regulations.

(b) Any duly authorized insurer so engaged in the Program shall be a WYO Company. (The term "WYO Company" shall include the following kinds of insurers: an association of local governments, a State municipal league-sponsored and other intergovernmental risk-sharing pool for covering public entity structures.)

* * * * *

3. Revise § 62.24 to read as follows:

§ 62.24 WYO Participation Criteria

New companies or organizations eligible for the pilot project we describe in paragraph (b) of this section that seek to participate in the WYO program, as well as former WYO companies seeking to return to the WYO program, must meet standards for financial capability and stability for statistical and financial reporting and for commitment to program objectives.

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(a) To demonstrate the ability to meet the financial requirements, a private insurance company wishing to enter or reenter the WYO program must:

(1) Be a licensed property insurance company;

(2) Have a five (5) year history of writing property insurance;

(3) Disclose any legal proceedings, suspensions, judgments, settlements, or agreements reached with any State insurance department, State attorney general, State corporation commission, or the Federal Government during the immediately prior five (5) years regarding the company's business practices;

(4) Submit its most recent National Association of Insurance Commissioners (NAIC) annual statement;

(5) Submit, as data become available, information to indicate that the company meets or exceeds NAIC standards for risk-based capital and surplus; and

(6) Submit its last State or regional audit, which should contain no material negative findings.

(b) To demonstrate the ability to meet the financial requirements, an association of local governments, or a State municipal league-sponsored intergovernmental risk-sharing pool for covering public entity structures, wishing to enter the WYO pilot program commencing on October 1, 2001, must:

(1) Have authority by a State to provide property coverage to its members;

(2) Have a five (5) year history of writing property coverage;

(3) Disclose any legal proceedings, suspensions, judgments, settlements, or agreements reached with any State insurance department, State attorney general, State corporation commission, or the Federal Government during the immediate prior five (5) years regarding the company's business practices; and

(4) Submit its most recent two annual audits from an independent accounting firm performed in compliance with generally accepted accounting principles that show no material negative findings; and submit, as data become available, information to indicate that the association or the pool meets or exceeds standards comparable to those of the NAIC for risk-based capital and surplus.

(c) An applicant for entry or reentry in the WYO program must also pass a test to determine the applicant's ability to process flood insurance and meet the Transaction Record Reporting and Processing (TRRP) Plan requirements of the WYO Financial Control Plan. Unless the test requirement is waived, *e.g.*, where the applicant's reporting requirements will be fulfilled by an already qualified performer, the applicant must prepare and submit test output monthly tape(s) and monthly financial statements and reconciliations for processing by the NFIP Bureau and Statistical Agent contractor. For test purposes, no error tolerance will be allowed. If the applicant fails the initial test, a second test will be run, which the applicant must pass to participate in the Program.

(d) To satisfy the requirement for commitment to Program goals, including marketing of flood insurance policies, the applicant shall submit information concerning the company's plans for the WYO Program including plans for the training and support of producers and staff, marketing plans and sales targets, and claims handling and disaster response plans. Applicants must also identify those aspects of their planned flood insurance operations to be performed by another organization, managing agent, another WYO Company, a WYO vendor, a service bureau or related organization. Applicants shall also name, in addition to a Principal Coordinator, a corporate officer point of contact—an individual, *e.g.*, at the level of Senior Executive Vice President, who reports directly to the Chief Executive Officer or the Chief Operating Officer. Each applicant shall furnish the latest available information regarding the number of its fire, allied lines, farmowners multiple peril, homeowners multiple peril, and commercial multiple peril policies in force, by line. A private insurance company applying for participation in the WYO program shall also furnish its Best's Financial Size Category for the purpose of setting marketing goals.

Appendix A to Part 62 [Amended]

3. Add the following ADDENDUM at the end of Appendix A to Part 62:

* * * * *

Addendum to Appendix A to Part 62—Federal Emergency Management Agency, Federal Insurance Administration, Financial Assistance/Subsidy Arrangement

Note: This Addendum to Appendix A to Part 62 applies only to public entity insurers participating in the pilot project established in § 62.24(b) that permits State municipal league-sponsored intergovernmental risk-sharing pools to provide flood insurance to public entities to cover public buildings.

"Company" in the preceding Arrangement includes "public entity insurer."

The references to "marketing guidelines" in Article II—Undertaking of the Company and to "marketing goals" in Article III—Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds shall apply only to the private insurance companies participating in the WYO program.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: May 1, 2001.

Howard Leikin,

Acting Administrator, Federal Insurance Administration.

[FR Doc. 01–11364 Filed 5–7–01; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45, FCC 01–143]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule.

SUMMARY: In this document, the Commission proposes a revised method for allocating discounts to schools and libraries under the federal universal service mechanism when there is insufficient funding to support all requests for internal connections. The Commission also seeks comment on proposed administrative modifications to our rules to provide additional time for recipients under the schools and libraries universal service support mechanism to implement contracts or agreements with service providers for non-recurring services.

DATES: Comments are due on or before May 23, 2001. Reply comments are due on or before May 30, 2001.

ADDRESSES: All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. Parties should also send three paper copies of their filings to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, S.W., Room 5–B540, Washington, D.C. 20554. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, S.W., Room 5–B540, Washington, D.C. 20554. The diskette should be clearly labeled with the commenter's name, proceeding, including the lead docket number in the proceeding (CC Docket No. 96–45), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on diskette. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

FOR FURTHER INFORMATION CONTACT: Katherine Tofigh, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM) in CC Docket No. 96–45 released on April 30, 2001. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, S.W., Washington, D.C., 20554.

I. Introduction

1. The Commission's rules require schools and libraries to implement services for which discounts have been committed by the Administrator within the funding year for which the discounts were sought. The Commission's May 8, 1997, *Universal Service Order*, 62 FR 32862 (June 17, 1997), established a calendar funding year (January 1—December 31) for schools and libraries receiving universal service support. On September 10, 1997, the Common Carrier Bureau released a *Public Notice*, 62 FR 48280, September 15, 1997, seeking comment on Universal Service Support Distribution Options for School, Libraries, and Rural Health Care Providers. The Commission subsequently issued its *Fifth Reconsideration Order*, 63 FR 38089, July 15, 1998, which changed the funding year for schools and libraries support to a fiscal year (July 1–June 30).

2. In the *Tenth Reconsideration Order*, 64 FR 22806, April 28, 1999, the Commission extended the deadline for schools and libraries to use their discounts on non-recurring services from June 30, 1999 to September 30, 1999, which allowed schools and libraries to implement non-recurring services in the summer months, when schools were in recess. On May 4, 2000, the Common Carrier Bureau (Bureau) extended the Year 2 deadline for schools and libraries to use their discounts on non-recurring services from June 30, 2000 (the end of the funding period) to September 30, 2000.

3. In this Further Notice of Proposed Rulemaking (FNPRM), we propose a revised method for allocating discounts to schools and libraries under the federal universal service mechanism when there is insufficient funding to support all requests for internal connections. Specifically, we seek comment on a proposed rule change to give funding priority to requests for internal connections made by individual schools and libraries that did not receive funding commitments for internal connections during the previous funding year. With many schools and libraries having already benefited from several years of discounts for internal connections under the existing mechanism, we conclude that it is appropriate to reconsider the rules of priority to ensure that discounts continue to go to those most in need.

4. We also seek comment on proposed administrative modifications to our rules to provide additional time for recipients under the schools and libraries universal service support mechanism to implement contracts or agreements with service providers for non-recurring services. First, we propose to extend the deadline for receipt of non-recurring services from June 30, to September 30 following the close of the funding year. Second, we propose to establish a deadline for the implementation of non-recurring services for certain qualified applicants who are unable to complete implementation by the September 30 deadline. These minor administrative modifications should provide applicants with greater flexibility without compromising program integrity. Finally, on our own motion, we waive the June 30, 2001 deadline for implementation of non-recurring services for all Funding Year 3 applicants and extend the deadline to September 30, 2001.

II. Discussion

A. Funding Priority for Internal Connections

5. The Commission did not envision demand for the schools and libraries universal service support mechanism at the level we are currently experiencing. In the *Fifth Order on Reconsideration*, and the *Eleventh Order on Reconsideration*, 64 FR 33785, June 24, 1999, the Commission anticipated that the fund would provide full support for telecommunications services and Internet access, and would provide support for internal connections for the neediest applicants. In Funding Year 4, however, the Administrator estimates that there will not be enough funding for the neediest applicants, who are eligible for a 90 percent discount. The Commission is committed to ensuring that discounts under this support mechanism are targeted to the schools and libraries with the greatest need. Therefore, we believe it is appropriate to reconsider the Commission's rules of priority to ensure that support goes to the neediest applicants. The Commission seeks comments on two options, relating to the distribution of support for internal connections. The first option would be to maintain the Commission's rules as currently written, which direct that the remaining funds be prorated by discount band. The second option would be to give funding priority to requests for internal connections made by individual schools and libraries that did not receive funding commitments for internal connections during the previous funding year.

6. Our current rules require that the Administrator allocate the available funds among applicants in the 90 percent discount level on a pro rata basis, so that each applicant would receive only a portion of the amount requested. The Commission has several concerns about the application of the current rules of priority. If applicants were to receive only a pro rata portion of the support they requested, schools and libraries might not receive sufficient funding to permit completion of a useful system of internal connections. As a result, schools and libraries would be in a position of hiring contractors to perform only a portion of an internal connection project. It is possible that some schools may be unable to complete even part of their internal connection project, because they are unable to finance the additional funding burden. The Commission is also concerned that applicants eligible for 90 percent discounts could receive funding commitments on internal connections for two years in a row, while other schools that are also economically disadvantaged, albeit not to the same degree, could receive no discounts at all. Therefore, some needy schools will get no support, while others receive support for several consecutive years. In light of these concerns, we seek comment on whether we should keep the funding priority rules without modification.

7. The Commission proposes and seeks comment on a second option. For each funding year, starting with Funding Year 4, funding priority would be given to requests for internal connections made by individual schools and libraries that did not receive funding commitments for internal connections during the previous funding year in order of discount level. Specifically, for both shared services and site-specific services, the

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Administrator would examine each application to determine which individual sites within that application had not received funding for internal connections in the prior funding year. These individual sites would be funded in order of discount level. We seek comment on this proposal.

8. By adopting the proposed rule change, we would be able to fund requests for internal connections from many needy schools and libraries that did not receive funding in the previous funding year. As a result, we would be able to better target discounts to schools and libraries that are more in need of discounts. We tentatively conclude that this approach would be more consistent with the Commission's commitment to ensuring that discounts under this support mechanism are targeted to the schools and libraries with the greatest need. While we recognize that some applicants' requests would not be funded during the current funding year, those applicants could apply for discounts for internal connections during the following funding year. We also note that the rule change could be implemented with relative ease, because little or no additional information would be necessary from the applicants. Currently, the necessary information relating to individual schools and libraries is collected as part of Item 22 of the applicant's FCC Form 471.

B. Modification of Implementation Schedule for Non-Recurring Services

9. We also propose to revise the Commission's rules relating to the implementation of non-recurring services. In doing so, we note that we have found it necessary to waive the implementation deadline for nonrecurring services for Funding Years 1 and 2. We again find it necessary to waive that rule for Funding Year 3. As noted by the Court of Appeals for the D.C. Circuit, agency rules are presumed valid. The Commission's rules, however, may be waived for good cause shown, where the particular facts make strict compliance inconsistent with the public interest. Waiver of the deadline for implementation of non-recurring services is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation would serve the public interest.

10. Currently, the Commission's rules require schools and libraries to implement services for which discounts have been committed by the Administrator within the funding year the discounts were granted. In Funding Years 1 and 2, we found it necessary to extend this service implementation deadline from June 30 to September 30, thereby allowing schools and libraries to implement non-recurring services in the summer months, when schools were in recess. We find that many schools and libraries have been unable to meet the June 30 implementation deadline in previous years due to a variety of reasons, including delays in funding commitments and events beyond the service provider's control, such as manufacturing delays and natural disasters. For these reasons, we find good cause to waive, on our own motion, the June 30, 2001 deadline for implementation of non-recurring services for all Funding Year 3 applicants and extend the deadline to September 30, 2001.

11. We conclude that the public interest is best served if all schools and libraries receiving Funding Year 3 discounts on non-recurring services have the benefit of an extension of the deadline. Similar to the Commission's actions in Funding Year 1 and Funding Year 2, we also grant Funding Year 3 applicants a limited exemption from the Commission's competitive bidding requirements. Contracts for non-recurring services approved for Funding Year 3 discounts may be voluntarily extended until September 30, 2001.

12. Based on this record that has necessitated extensions during the last three funding years, we propose to modify our rules relating to the use of funds for non-recurring services. We tentatively conclude that it is appropriate for schools and libraries to have the flexibility of additional time to implement non-recurring services. We propose a rule change that would allow schools and libraries to implement non-recurring services by September 30, following the close of the funding year. We seek comment on this proposal.

13. For certain qualified applicants who are unable to meet the September 30 deadline, we propose to extend the deadline for implementation of non-recurring services. Specifically, we propose to implement a rule to permit qualified applicants to extend the deadline for implementation of non-recurring services if they satisfy one of the following proposed criteria: applicants whose funding commitment decision letters were issued by the Administrator on or after March 1 of the funding year; applicants who received service provider change authorizations or service substitution authorizations from the Administrator on or after March 1 of the funding year; applicants whose service providers were unable to complete implementation for reasons beyond the service provider's control; or applicants who have their funding disbursements delayed while the Administrator investigates their application for program compliance. Under the proposed rule, if one of the conditions was satisfied before March 1, they would have until the subsequent September 30 to complete implementation. If one of the conditions was satisfied after March 1, applicants would have until September 30 of the following year to complete implementation. We seek comment on this proposal.

14. As noted, in each year of the program, the Commission has ordered a waiver of its rules and extended the deadline for receipt of non-recurring services. Changing the deadline would provide schools and libraries, as well as the Administrator, with the certainty of a deadline that experience has shown is more realistic, based on the needs of the various program participants. We tentatively conclude that the proposed rule change provides clarity to the Administrator and applicants by establishing a deadline for implementation of non-recurring services for schools and libraries that are unable to meet the original deadline due to circumstances beyond their control. Implementation of this policy should ensure schools and libraries are not penalized when they are not responsible for missing the installation deadline. Ultimately, these administrative modifications to the rules should allow all schools and libraries to schedule implementation of non-recurring services over the summer months.

15. In addition, we also propose to grant a limited extension of the Commission's competitive bidding rules for contracts for non-recurring services. Under this proposal, contracts for non-recurring services could be voluntarily extended to coincide with the appropriate deadline for implementation. Parties would not, however, be able to extend other contractual provisions beyond the dates established by the Commission's rules without complying with the competitive bidding process. We seek comment on this proposal.

III. Procedural Matters

A. Initial Regulatory Flexibility Analysis

16. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this FNPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM provided. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for, and Objectives of, the Proposed Rules

17. In this FNPRM, we propose a revised method for allocating discounts to schools and libraries under the federal universal service mechanism when there is insufficient funding to support all requests for internal connections. Specifically, we seek comment on a proposed rule change to give funding priority to requests for internal connections made by individual schools and libraries that did not receive funding commitments for internal connections during the previous funding year.

18. We also seek comment on proposed administrative modifications to our rules to provide additional time for recipients under the schools and libraries universal service support mechanism to implement contracts or agreements with service providers for non-recurring services. First, we propose to extend the deadline for receipt of non-recurring services from June 30, to September 30 following the close of the funding year. Second, we propose to establish a deadline for the implementation of non-recurring services for certain qualified applicants who are unable to complete implementation by the September 30 deadline.

2. Legal Basis

19. The legal basis for this FNPRM is contained in sections 1 through 4, 201 through 205, 254, 303(r), and 403 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, and § 1.411 of the Commission's rules.

3. Description and Estimate of the Number of Small Entities To Which Rules Will Apply

20. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one that: Is independently owned and operated; is not dominant in its field of operation; and satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96 percent) are small entities.

21. Under the schools and libraries universal service support mechanism, which provides support for elementary and secondary schools and libraries, an elementary school is generally "a non-profit institutional day or residential school that provides elementary education, as determined under state law." A secondary school is generally as "a non-profit institutional day or residential school that provides secondary education, as determined under state law," and not offering education beyond grade 12. For-profit schools and libraries, and schools and libraries with endowments in excess of $50,000,000, are not eligible to receive discounts under the program, nor are libraries whose budgets are not completely separate from any schools. Certain other statutory definitions apply as well. The SBA has defined as small entities elementary and secondary schools and libraries having $5 million or less in annual receipts. In funding year 2 (July 1, 1999 to June 20, 2000) approximately 83,700 schools and 9,000 libraries received funding under the schools and libraries universal service mechanism. Although we are unable to estimate with precision the number of these entities that would qualify as small entities under SBA's definition, we estimate that fewer than 83,700 schools and 9,000 libraries would be affected annually by the rules proposed in this FNPRM, under current operation of the program.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

22. The measures under consideration in this FNPRM would, if adopted, result in no additional reporting.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

23. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): The establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; the use of performance, rather than design, standards; and an exemption from coverage of the rule, or part thereof, for small entities.

24. The Commission seeks comment on two alternatives relating to the allocation of discounts to schools and libraries under the federal universal service mechanism when there is insufficient funding to support all requests for internal connections. Under the Commission's current rules, the Administrator would allocate the available funds among applicants in the 90 percent discount level on a pro rata basis, so that each applicant would receive only a portion of the amount requested. If applicants were to receive only a pro rata portion of the support they requested, we are concerned that less affluent schools and libraries would be unable to finance the additional funding burden. We seek to minimize the impact on schools and libraries with less resources and propose to give funding priority to requests for internal connections made by individual schools and libraries that did not receive funding commitments for internal connections during the previous funding year.

25. In addition, the Commission seeks comments on two proposals relating to the deadline for implementation of non-recurring services. First, the Commission proposes to extend the deadline for implementation of non-recurring services from June 30 of each funding year to September 30. Second, the Commission proposes to establish an extended deadline for certain qualified applicants who are unable to meet the September 30 deadline. Under these proposals, we aim to provide schools and libraries with additional

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time to complete installation and minimize the harm that may affect small entities due to the shorter deadline.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

26. None.

B. Comment Due Dates and Filing Procedures

27. We invite comment on the issues and questions set forth in the FNPRM of Proposed Rulemaking and Initial Regulatory Flexibility Analysis contained herein. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may comment on or before May 23, 2001, and reply comment on or before May 30, 2001. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24,121, May 1, 1998.

V. Ordering Clauses

28. Pursuant to the authority contained in sections 1–4, 201–205, 254, 303(r), and 403 of the Communications Act of 1934, as amended, and §§ 0.91, 0.291, 1.3, and 1.411 of the Commission's rules, this Further Notice of Proposed Rulemaking and Order is adopted.

29. The deadline for the implementation of non-recurring services in Funding Year 3 of the schools and libraries universal support mechanism for all applicants is extended from June 30, 2001 to September 30, 2001.

30. Applicants in Funding Year 3 may extend existing contracts for non-recurring services until September 30, 2001, without having to comply with the Commission's competitive bidding requirements.

31. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Further Notice of Proposed Rulemaking and Order, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission

Magalie Roman Salas,

Secretary.

[FR Doc. 01–11514 Filed 5–7–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 26

[Docket OST–2000–7639]

RIN 2105–AC88

Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs; Memorandum of Understanding With the Small Business Administration; Uniform Forms and Other Revisions

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Transportation (DOT or the Department) is proposing revisions to the Department's regulations for its Disadvantaged Business Enterprise (DBE) program (49 CFR part 26). In its final DBE rule the Department reserved publication of a uniform reporting form and a uniform certification application form for a later date. This document proposes those forms. In addition, this document proposes implementation procedures for a Memorandum of Understanding (MOU) between DOT and the U.S. Small Business Administration (SBA). The MOU streamlines certification procedures for participation in SBA's 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs, and DOT's DBE program for small and disadvantaged businesses. Finally, this document proposes substantive changes to several provisions, including: Personal net worth, retainage, the size standard, proof of ethnicity, confidentiality, proof of economic disadvantage, and DBE credit for trucking firms.

DATES: Comments should be received no later than June 7, 2001. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Interested persons should send comments to Docket Clerk, Docket No. OST–2000–7639, Department of Transportation, 400 7th Street, SW., Room PL–401, Washington, DC 20590. We request that, in order to minimize burdens on the docket clerk's staff, commenters send three copies of their comments to the docket. Commenters wishing to have their submissions acknowledged should include a stamped, self-addressed postcard with their comments. The docket clerk will date stamp the postcard and return it to the commenter. Comments will be available for inspection at the above address from 10:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Laura A. Aguilar, Attorney, Office of Environmental, Civil Rights, and General Law, Department of Transportation, 400 7th Street, SW., Room 10102, Washington, DC 20590, phone numbers (202) 366–0365 (voice), (202) 366–9170 (fax), (202) 755–7687 (TDD), *laura.aguilar@ost.dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Background

On February 2, 1999, the Department published a final rule revising its Disadvantaged Business Enterprise (DBE) program. The new regulations (49 CFR part 26) replaced 49 CFR part 23, except for the airport concessions regulations. In shaping the final rule, the Department responded to 600 comments on its December 1992 Notice of Proposed Rulemaking (NPRM), and 300 comments on its May 1997 Supplemental Notice of Proposed Rulemaking (SNPRM). The Department also participated in the Clinton Administration's review of affirmative action programs and listened carefully to Congressional debate during the reauthorization of the Department's DBE program in the Transportation Equity for the 21st Century (TEA–21). The final rule also incorporates requirements set forth in the Supreme Court's June 1995 decision in *Adarand* v. *Peña*. The result is a narrowly tailored program that provides a "level playing field" for small socially and economically disadvantaged businesses.

There are three different parts addressed in this document. The first part addresses uniform forms. In the final rule, the Department stated that it would develop a single reporting form and a standard DOT application form for DBE eligibility. The Department did not want to delay the issuance of the final rule, so it reserved the date on which the uniform form requirements would go into effect. This document addresses both of these forms. The second part addresses the implementation of a Memorandum of Understanding (MOU) between the DOT and the Small Business Administration (SBA). The MOU streamlines certification procedures for participation in SBA's 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs and DOT's DBE program. The final part proposes substantive changes to several provisions, including: personal net worth, retainage, proof of ethnicity, confidentiality, proof of economic disadvantage, and DBE credit for trucking firms.

A. Forms

1. Reporting Form

In the preamble to the February 2, 1999, final DBE rule, the Department adopted the suggestion of having one standard reporting form. We believe it will reduce administrative burdens for recipients, particularly those who receive funds from more than one DOT operating administration (OA). We are now addressing the format and substance of the uniform reporting form. We are also proposing that recipients report DBE program data to the concerned OA semi-annually. The concerned OA is the DOT agency from which the recipient received Federal funds. See § 26.21(a). For example, a recipient of Federal Highway funds must submit a report to the Federal Highway Administration (FHWA). If a recipient receives funds from more than one OA, it must submit a separate report to each OA. Finally, we are proposing a three-year retention requirement for basic program data. We are requesting comment on the content and format of the standard form. To assist commenters in formulating responses, we are publishing a proposed form in the NPRM that would become appendix B to 49 CFR part 26.

The proposed reporting form requires that information concerning both awards or commitments and attainments of DBE participation be reported. The rule requires recipients to have a mechanism to verify that the work committed and awarded to DBEs is actually performed by DBEs. See 49 CFR 26.37(b). The preamble to the final rule explains that recipients should keep a running tally of the extent to which, on each contract, performance matched promises. However, we recognize that in many instances the awards and commitments reported will not correspond to the attainments reported on the same form within a single fiscal year. For example, if a contract is awarded to a DBE in January 2001, the award would be reflected in the report for that period. However, the contract would likely not be completed for many years. Therefore, the actual achievement section in that report could not reflect the achievements on that contract. Instead, the report will reflect attainments on contracts completed during the reporting period. It is essentially a "snap-shot" of a recipient's progress towards the participation of DBEs in its DBE program and not a determinative factor as to whether or not DBE goals are being met and programs are successful.

In the attainments section, recipients would report the actual number and dollar amounts of payments made to DBEs during the reporting period. This section is also in keeping with the mandate of 49 CFR 26.55(a), which specifies "(w)hen a DBE participates in a contract, you count only the value of the work actually performed by the DBE toward DBE goals."

Currently, Federal Aviation Administration (FAA) recipients submit annual reports while Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) recipients submit quarterly reports. The December 1992 NPRM proposed that recipients report DBE program data quarterly to the appropriate OA. Again, the appropriate OA is the DOT agency (FAA, FHWA and/or FTA) from which the recipient receives Federal funding. The OA's believe that quarterly reporting is often too burdensome for recipients. This is especially true for smaller recipients with only one contract over a long period of time. Requiring quarterly reports in that instance would result in unnecessary repetition of information. Therefore, we are proposing semi-annual reporting. This will allow the Department to adequately monitor the extent to which recipients are meeting DBE goals while not overly burdening smaller recipients with redundant reporting requirements.

Reports would be due to a recipient's OA on June 1 and December 1 each year. The June 1 report would include information from October 1 through March 31. The December 1 report would include information from April 1 through September 30. Since the majority of recipients set goals based on a fiscal year, we believe that these dates will assist them in setting their overall goals which must be submitted to the OA by August 1 of each year.

In keeping within the parameters suggested by commentators during the SNPRM, we are proposing that recipients retain information relating to basic program data for three years.

2. Uniform Application Form

In the preamble to the final rule, the Department adopted a single, uniform, nationwide form that all recipients must use without modification for DBE eligibility. We are now addressing the substance of the uniform application form and requirements. Although recipients must use the uniform application form without modification, we recognize that some States have additional statutory and/or regulatory requirements. Therefore, recipients may supplement the uniform application form with a one to two page attachment containing the additional certification requirements. We are requesting comment on the content of the standard form. To assist commenters in formulating responses, we are publishing a proposed form in this NPRM that would become appendix F to 49 CFR part 26.

In developing the proposed form, we started with FHWA's Region 5 Certification Application. We asked a few recipients who receive financial assistance from FHWA, FAA, and FTA to comment on the content and format of the application. We are attempting to balance the need for a complete form and the desire to simplify the application. We urge commenters to think about what must be contained in the application and what may be reserved for an on-site review.

We are working closely with representatives from the SBA in developing a uniform application form to be used by both agencies. The MOU is designed to streamline the application process for SBA's 8(a) BD and SDB programs and DOT's DBE program. We believe that having a joint uniform application form will make it easier for small businesses to apply for certification for programs from both agencies. It is our hope that with the comments received on the proposed form in appendix F will be able to issue the joint DOT/SBA certification application form in the final rule.

B. Memorandum of Understanding

1. Background

The SBA's 8(a) BD and SDB programs and DOT's DBE program share many common certification requirements. Therefore, on November 23, 1999, the former Secretary of Transportation, Rodney Slater, signed a Memorandum of Understanding (MOU) with Aida Alvarez, the former Administrator of the SBA, the purpose of which is to develop common application procedures that will streamline the certification process for the respective programs. This streamlined process is designed to reduce administrative costs and to provide more opportunities for small businesses owned and controlled by socially and economically disadvantaged individuals. It also establishes procedures for the efficient transfer of information among SBA, DOT, and DOT recipients, and for the consideration of certification appeals.

We are issuing this NPRM to amend 49 CFR part 26 to establish new or revised responsibilities for DOT recipients created by the MOU. The

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MOU and these proposed changes do not alter the program requirements. For example, women are not presumed disadvantaged in SBA's programs. Therefore a woman-owned DBE will still have to show disadvantage to qualify for SBA's 8(a) BD and SDB programs. Similarly, an SBA-certified firm must still undergo an on-site review before receiving DBE certification.

The current DBE regulations allow recipients the flexibility to accept certifications for 8(a) BD or SDB-certified firms in lieu of conducting its own certification process or to require the firm to go through part or all of its own application process. See 49 CFR 26.67 (c). Under the MOU, recipients would be required to accept and recognize 8(a) BD and SDB certifications in lieu of requiring the applicant firm to fill out the recipient's own application. However, the applicant firm must still meet all the part 26 requirements. For example, a firm must meet the DOT statutory gross receipts cap, currently $17,420,000, see 65 FR 52470 (August 29, 2000). Based on the information gained from the on-site review, including documentation that the firm meets DOT eligibility criteria, a DOT recipient may deny certification to a firm that the SBA certified.

As stated in the previous section, we are working with representatives from the SBA in developing a joint certification application form. We anticipate that the joint application form will contain a main section with common requirements and have three additional parts for 8(a) BD, SDB and DBE certification. The applicant would need to complete the main section of the application only once. Then the applicant would fill out the program specific part for each program for which the applicant is applying. We believe that the joint application form will simplify the application process for new applicants.

For SBA-certified firms seeking DBE certification, we are proposing the following procedures. An SBA-certified firm may submit its certification package to the applicable DOT recipient or it may request that the SBA forward the certification package to the DOT recipient. Pursuant to the MOU, the SBA will forward the package to the DOT recipient within thirty days after receipt of the firm's request. If necessary, the recipient may request additional information from the applicant or from the SBA. If requested from the SBA, the additional information will be transferred within 45 days after receipt of the request. The recipient will then make an independent certification decision based on the SBA application package, any additional information provided and an on-site review. If the SBA conducted an on-site review, the DOT recipient may rely on SBA's report of the on-site review in lieu of conducting its own on-site review. 49 CFR 26.83(k) requires a recipient to make decisions on applications of certification within 90 days of receiving from the applicant firm all information required under part 26. If a firm applies for DBE certification pursuant to the MOU, the recipient is required to make a decision within 90 days of receiving all the required information, whether it is from the applicant or the SBA.

Recipients are not required to process an application for certification from an SBA-certified firm having its principal place of business outside the state unless there is a report of a "home state" on-site review on which the recipient may rely. This helps the problem of costly out-of-state visits.

If a recipient denies certification to a firm certified by the SBA, it must notify the SBA in writing. The notification must include the reason for denial. A recipient may simply send a copy of the denial letter to the SBA. Similarly, when a recipient decertifies a firm certified by the SBA, it must notify the SBA in writing. Again, the notification must include the reason for denial. A copy of the denial letter is sufficient notification.

An SBA-certified firm that is denied DBE certification or whose eligibility is removed by a DOT recipient is entitled to the same appeal rights as DBE firms. Such a firm may make an administrative appeal to the Department pursuant to part 26. The Department will notify the SBA, in writing, when DOT takes an action on an appeal that results in or confirms a loss of DBE eligibility to any SBA-certified firm. The notice will include the reasons for the Department's decision, including specific references to the evidence in the record that supports each reason for the decision.

If a DBE-certified firm is seeking SBA certification, it may request, in writing, that the applicable DOT recipient forward a copy of its application to the SBA. If a recipient receives such a request, it must forward the application package to the SBA within 30 days of receiving the request. Under the MOU, the recipient will be required to pay the copying and transmittal fees. We are requesting comment on the impact this will have on recipients. If the SBA requests additional information, the recipient must forward the requested information within 45 days of receiving the request.

Recipients would also be required to provide appropriate assistance to SBA-certified firms, including information pertaining to the DBE application process, filing locations, required information and status of the application.

C. Additional Changes

1. Personal Net Worth

Section 26.67 requires each individual whose ownership and control are relied upon for DBE certification to submit a signed, notarized statement of personal net worth (PNW), with appropriate supporting documentation. The Department received a number of questions about what documentation is appropriate for recipients to require in ascertaining the PNW of owners of DBE firms. In the preamble to the final rule correction (see 49 FR 34569 (June 11, 1999)), the Department recommended using the SBA's form as a model. SBA requires completion of a two-page form, supported by two years of personal and business tax returns. The Department wanted to remain flexible while encouraging recipients to use forms that are not unduly lengthy, burdensome or intrusive. The Department did not require recipients to use the SBA form verbatim but encouraged them to use a form of similar length and content, including collecting and retaining two years of an individuals' personal and business tax returns.

The final rule explicitly requires that the personal financial information be kept confidential. Nevertheless, the Department has continued to receive comments concerning the intrusiveness of collecting personal tax returns. We understand the justifiable privacy concerns associated with collecting personal income tax information. However, we must also ensure that the integrity of the program is maintained. Recipients must have a tool to ensure that non-disadvantaged persons do not participate in the program.

Therefore, we are proposing an alternative option with regard to supporting documentation. Recipients must still require an individual whose ownership and control are relied upon for DBE certification to certify that he or she has a personal net worth that does not exceed $750,000. Applicants could still submit a signed, notarized statement of PNW, with appropriate documentation. Alternatively, the applicant could submit a signed, notarized statement from a certified public accountant (CPA) attesting that the CPA has examined his or her personal net worth pursuant to § 26.67(a)(2)(iii) and determined that his or her personal net worth does not exceed $750,000. This second option would eliminate the need for the applicant to provide personal income tax information to the DOT recipient for purposes of PNW.

Under either method, the determination of an individual's PNW should follow certain requirements specified in the final rule. For example, the rule requires that an individual's ownership in the applicant firm be excluded. With the exception of one proposed change discussed below, the requirements remain the same. However, we are making the wording and format of the current language clearer and easier to read.

We are proposing a change with respect to vested pension plans, Individual Retirement Accounts, 401(k) accounts, and other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences. We are proposing that PNW would include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time. An alternative method would be to exclude such assets from the personal net worth calculation. We are requesting comment on this issue.

2. Retainage

As the Department noted in the preamble to the February 1999 final rule, delays in payment have long been one of the most significant barriers to the competitiveness, and in some cases the viability, of small subcontractors. One of the delays in payment about which subcontractors have been most concerned is payment of retainage. Often, subcontractors have told us, they finish all their work on a contract months or years before the end of the project on which the prime contractor is working, but the prime contractor does not pay them fully until after the recipient has paid retainage to them at the end of the entire project. To help surmount this barrier, the final rule requires prime contractors to pay retainage to subcontractors promptly after the subcontractors satisfactorily complete their work.

Many states and other recipients have responded very creatively to this provision, taking such steps as making incremental payments to contractors or eliminating retainage altogether. Where recipients have not taken such steps, however, prime contractors have complained that the requirement to pay subcontractors fully before the recipient pays retainage to the prime contractor is a financial hardship on prime contractors.

In order to address the prime contractors' concerns, without diminishing the benefit of the existing provision to subcontractors, the Department is proposing to require recipients to take one of three approaches. First, a recipient could eliminate retainage entirely, neither retaining funds from prime contractors nor permitting prime contractors to hold retainage from subcontractors. Second, a recipient could decide not to retain funds from prime contractors, but give prime contractors discretion to hold retainage from subcontractors. In this case, the recipient would require prime contractors to pay subcontractors in full after satisfactory completion of the subcontractor's work. Third, the recipient could hold retainage from prime contractors, but make incremental inspections and approvals of the prime contractor's work at various stages of the project (sometimes called "mini-finals"). The recipient would pay the prime contractor the portion of the retainage based on these approvals. The prime contractor, in turn, would be required to promptly pay all retainage owed to the subcontractor for satisfactory completion of the approved work. None of these three approaches is new. All are being employed successfully by DOT recipients today.

We are defining "prompt" as no later than thirty days. Based on our experience in program review thirty days was the most common length of time suggested by recipients. We think that this is a sensible amount of time. We seek comment on these approaches and on any other ideas commenters may have concerning this matter.

3. Size Standard

One of the purposes of the DBE rule is to make it possible for small firms to grow. This includes the opportunity for subcontractors to become able to compete as prime contractors. To be able to perform prime contracts, companies often need to be larger and have more resources than they had as subcontractors. Frequently, firms who are attempting to grow will perform both prime contracts and subcontracts. This may create a dilemma for DBE firms in some cases. In order to work as prime contractors, firms may need to grow beyond the limits of the SBA size standards applicable to their subcontracting field. If they do, then recipients may decertify them because they are no longer small businesses. A number of firms have expressed the concern that this situation penalizes success and impedes achievement of an important objective of the DBE program.

We emphasized in the preamble to the final rule and a recent Question and Answer that recipients should not totally decertify a firm because it exceeds the size standard for one or more of its activities. Under § 26.65(a), if a firm meets the size standard for one type of work (e.g., as a general contractor), it should continue to be certified and receive DBE credit for that type of work, even if it has exceeded the size standard for another type of work (e.g., as a specialty subcontractor). In that case, of course, the firm could not remain eligible and receive DBE credit for this type of activity.

The Department seeks comment on whether we should make any modifications of the rule to address further the situations of firms that work as both prime contractors and subcontractors.

4. Proof of Ethnicity

We are proposing minor modifications to § 26.61(c) and § 26.63(a) to address concerns raised by both DBEs and recipients regarding issues related to group membership. There have been a few documented instances of individuals attempting to fraudulently participate in the DBE program by falsely asserting to be a member of one of the groups benefiting from the rebuttable presumption of social and economic disadvantage as outlined in § 26.67(a). For this reason, many recipients seek to obtain evidence of group membership that goes beyond an oral statement or "checking off a box on a form." At the same time, recipients are concerned that if they request additional evidence from some individuals but not others, they could be accused of discrimination in the certification process. In response to both of these concerns, we are proposing that recipients obtain a signed and notarized statement of group membership from all persons who claim to own and control a firm applying for DBE certification and whose ownership and control are relied upon for DBE certification.

A signed, notarized statement should be considered sufficient proof of ethnicity. The recipient should not ask for additional evidence unless it has a well founded reason to doubt the veracity of the owner. We emphasize that great care must be taken in looking behind the individual's assertion of membership in one of the groups designated in § 26.67(a). As a recipient, if you have reason to believe that the owner of a firm seeking certification has misrepresented his/her group membership, then further information

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can and must be collected. However, you must inform that person, in writing, of your reasons for doubting his or her statement and your need for additional documentary evidence. Such instances should be the exception, not the rule. It is our expectation that requiring a written record justifying the need for additional information will help to reduce the number of unnecessary requests.

Even where additional documentation is necessary, care should be taken to ensure that particular ethnic group members are not forced to meet a higher level of proof than members of other groups. For example, many recipients accept a driver's license or a birth certificate as adequate proof of group membership. These forms of identification always indicate gender and sometimes indicate the race of the holder, however they often do not designate whether or not an individual is Hispanic or Native American. In some instances, members of these groups have been required to provide not one, but several types of additional proof of ethnicity simply because their driver's license did not indicate their race. Such actions could constitute a violation of the nondiscrimination provisions of 49 CFR parts 21 and 26 and of Title VI of the Civil Rights Act of 1964.

A driver's license or a birth certificate may be adequate types of proof of ethnicity. However, in cases where the required proof does not indicate specific races, such as Hispanic or Native American, the applicant should only be required to provide the same level of proof as members of other groups. For example, if a birth certificate is adequate for one group, then only a single piece of evidence may be required from members of other groups. Such single piece of evidence might include naturalization papers, Indian tribal roll, tribal voter registration certificate, a letter from a community group, educational institution, religious leader, or government agency stating that the individual is a member of the claimed group, or a letter from the individual setting forth specific reasons for believing himself/herself to be a member of the designated group.

5. Confidentiality

A common complaint of DBEs is that there are insufficient protections for the confidentiality of their business information. When DBEs submit significant amounts of information to recipients for certification purposes, firms are concerned that, through state Freedom of Information Act (FOIA) requests or discovery in state or Federal court proceedings, their confidential information will be released to the public. We believe that this concern is justified, and we believe that the concern that confidential documents may become public can act as a deterrent to program participation by some potential DBEs. For this reason, we are amending the confidentiality section of the regulation to parallel the existing, tighter confidentiality provision of § 26.67 concerning personal net worth information. Under the proposed provision, recipients would not be authorized to release confidential business information in any circumstance without the submitter's written consent.

6. Economic Disadvantage

In appendix E to part 26, "Individual Determinations of Social and Economic Disadvantage", we are proposing to remove paragraph (B)(2) under "Economic Disadvantage". This paragraph requires that in the case of applications by individuals to be considered socially and economically disadvantaged, the applicant submit personal financial information for his or her spouse. This is inconsistent with the way the Department's personal net worth provisions under § 26.67 work in the case of applicants who are members of a group presumed to be economically and socially disadvantaged. In order to remove this inconsistency, we are deleting the paragraph in question.

7. Credit for Trucking Firms

In the final rule, after reviewing comments and the contrasting practices of a number of recipients, the Department decided to count credit for the participation of DBE trucking companies only with respect to trucks that DBEs themselves owned and operated. This was intended to prevent a situation in which, for example, a DBE trucking company owned only one truck or a few trucks and leased the services of a larger number of non-DBE truckers, claiming credit for them as well. The Department believed that this practice was contrary to the general principle that DBE credit should be counted only for work that DBEs themselves perform.

Since we issued the rule, a number of people have said to us that this provision works an unnecessary hardship on DBE trucking companies and is difficult for recipients to administer. Some have suggested, as a middle ground, allowing credit for twice the number of trucks actually owned by the DBE (i.e., if a DBE owned one truck, and leased another from a non-DBEs, it could get credit for both). The Department seeks comment on whether this provision should be modified and, if so, how.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Provisions

This proposed rule is not a significant regulation under either Executive Order 12866 and DOT Regulatory Policies and Provisions. The proposal will not impose any new costs on recipients or contractors. It simply would make administrative adjustments concerning existing provisions and assist contractors by implementing the SBA–DOT MOU.

Regulatory Flexibility Act Analysis

The Department certifies that this proposed rule, if made final, would not have significant economic effects on a substantial number of small entities. While the proposal affects small entities, it does not have a significant economic impact on anyone.

Paperwork Reduction Act

This proposed rule also contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (the PRA, 44 U.S.C. 3507(d)), the Department will submit these requirements to the Office of Information And Regulatory Affairs of the Office of Management and Budget for review.

As noted elsewhere in this preamble, the Department adopted the suggestion of having one standard reporting form in the February 2, 1999, final DBE rule. The proposed Uniform Semi-Annual Report of DBE Awards or Commitments and Achievements form is contained in Appendix B of this NPRM. At the present time, the Department has an information collection item approved under the Paperwork Reduction Act. This is for a quarterly DBE data report from recipients to DOT (OMB No. 2105–0510). This approval expires July 31, 2001. Under the NPRM, the frequency of reporting would change from four times a year to twice a year, which would reduce the burden involved.

The February 2, 1999, final DBE rule also adopted a single, uniform, nationwide certification application form. Part 26 requires firms applying for DBE certification to provide information to recipients to allow them to make eligibility decisions. Currently, an applicant firm may be required to fill out different applications for FAA, FHWA and FTA recipients. The Department believes that requiring one uniform application will reduce the paperwork burden. The proposed Uniform Certification Application form is contained in appendix F of this NPRM.

Individuals and organizations may submit comments on the information collection elements of this NPRM by September 5, 2001 and should direct them to the DOT docket specified at the beginning of the NPRM. According to OMB's regulations implementing the PRA (5 CFR 1320.8(b)(2)(vi)), an agency may not conduct or sponsor, and a person need not respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information will be published in the **Federal Register** after it is approved by OMB.

Federalism

The Department has determined that this proposed rule, if made final, would not have Federalism impacts sufficient to warrant preparation of a Federalism assessment.

List of Subjects in 49 CFR Part 26

Administrative practice and procedure, Airports, Civil rights, Government contracts, Grant-programs—transportation, Mass transportation, Minority businesses, Reporting and record keeping requirements.

Issued this 26th day of April, 2001, at Washington, DC.

Norman Y. Mineta,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department proposes to amend 49 CFR part 26 as follows:

PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

1. The authority citation for 49 CFR part 26 continues to read as follows:

Authority: 23 U.S.C. 324; 41 U.S.C. 2000d, *et seq.*; 49 U.S.C. 1615, 47107, 47113, 47123; Pub. L. 105–178, sec. 1101(b), 112 Stat. 107, 113.

2. Amend § 26.5 by adding a definition of "DOT/SBA MOU Memorandum of Understanding or MOU" after "DOT-assisted contract" and by adding a definition of "SBA certified firm" after "Small Business Administration" to read as follows:

§ 26.5 What do the terms in this part mean?

* * * * *

DOT/SBA Memorandum of Understanding or MOU, refers to the agreement signed on November 23, 1999, between the Department of Transportation (DOT) and the Small Business Administration (SBA) streamlining certification procedures for participation in SBA's 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs, and DOT's Disadvantaged Business Enterprise (DBE) program for small and disadvantaged businesses.

* * * * *

SBA certified firm refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.

* * * * *

3. Amend § 26.11 by adding paragraph (a) to read as follows:

§ 26.11 What records to recipients keep and report?

(a) You must use the reporting form provided in Appendix B to this part without change or revision.

* * * * *

4. Revise § 26.29 to read as follows:

§ 26.29 What prompt payment mechanisms must recipients have?

(a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than thirty days from receipt of each payment you make to the prime contractor.

(b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within thirty days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:

(1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

(2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within a specific number of days after the subcontractor's work is satisfactorily completed.

(3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within a specific number of days after your payment to the prime contractor.

(c) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

(d) Your DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.

(e) You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:

(1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

(3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

5. Revise § 26.61 (c) to read as follows:

§ 26.61 How are burdens of proof allocated in the certification process?

* * * * *

(c) You must rebuttably presume that members of the designated groups identified in § 26.67(a) are socially and economically disadvantaged. This means they do not have the burden of proving to you that they are socially and economically disadvantaged. In order to obtain the benefit of the rebuttable presumption, individuals must submit a signed, notarized statement that they are a member of one of the groups in § 26.67(a). Applicants do have the obligation to provide you information concerning their economic disadvantage (see § 26.67).

* * * * *

6. Revise § 26.63(a) to read as follows:

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§ 26.63 What rules govern group membership determinations?

(a)(1) If, after reviewing the signed notarized statement of membership in a presumptively disadvantaged group (see § 26.61(c)), you have a well founded reason to question the individual's claim of membership in that group, you must require the individual to present additional evidence that he or she is a member of the group.

(2) You must provide the individual a written explanation of your reasons for questioning his or her group membership and a written request for additional evidence as outlined in paragraph (b) of this section.

(3) In implementing this section, you must take special care to ensure that you do not impose a disproportionate burden on members of any particular designated group. Imposing a disproportionate burden on members of a particular group could violate § 26.7(b) of this part and/or Title VI of the Civil Rights Act of 1964 and 49 CFR part 21.

* * * * *

7. Amend § 26.67 as follows:

a. Revise paragraph (a)(2);

b. Remove and reserve paragraph (c), the revision reads as follows:

§ 26.67 What rules determine social and economic disadvantage?

(a) * * *

(1) * * *

(2)(i) You must require each individual owner of a firm applying to participate as a DBE (except a firm applying to participate as a DBE airport concessionaire) whose ownership and control are relied upon for DBE certification to certify that he or she has a personal net worth that does not exceed $750,000.

(ii) You must require each individual who makes this certification to support it with the individual's choice of either of the following:

(A) A signed, notarized statement of personal net worth, with appropriate supporting documentation. This statement and documentation must not be unduly lengthy, burdensome, or intrusive; or

(B) A signed, notarized statement from a certified public accountant (CPA) attesting that the CPA has examined the individual's personal net worth and determined, consistent with the provisions of this section and generally accepted accounting standards, that the individual's personal net worth does not exceed $750,000.

(iii) In determining an individual's net worth, you or the individual's CPA must observe the following requirements:

(A) Exclude an individual's ownership interest in the applicant firm;

(B) Exclude the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm).

(C) For an Alaska Native, include assets and income from sources other than an Alaska Native Corporation but exclude any of the following that the individual receives from any Alaska Native Corporation: Cash (including cash dividends on stock received from an ANC) to the extent that it does not, in the aggregate, exceed $2,000 per individual per annum; stock (including stock issued or distributed by an ANC as a dividend or distribution on stock); a partnership interest; land or an interest in land (including land or an interest in land received from an ANC as a dividend or distribution on stock); and an interest in a settlement trust.

(D) Do not use a contingent liability to reduce an individual's net worth.

(E) With respect to assets held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.

(iv) Notwithstanding any provision of Federal or state law, you must not release an individual's personal net worth statement nor any documentation supporting it to any third party without the written consent of the submitter. *Provided*, that you must transmit this information to DOT in any certification appeal proceeding under § 26.89 in which the disadvantaged status of the individual is in question.

* * * * *

8. Amend § 26.83 by revising paragraph (c)(7)(i) to read as follows:

§ 26.83 What procedures do recipients follow in making certification decisions?

* * * * *

(c) * * *

(7) Require potential DBEs to complete and submit an appropriate application form, unless the potential DBE is an SBA certified firm applying pursuant to the DOT/SBA MOU.

(i) You must use the application form provided in Appendix F to this part without change or revision. However, you may provide in your DBE program, with the approval of the concerned operating administration, for supplementing the form by requesting additional information not inconsistent with this part.

* * * * *

9. Add a new § 26.84 to read as follows:

§ 26.84 How do recipients process applications submitted pursuant to the DOT/SBA MOU?

(a) When an SBA-certified firm applies for certification pursuant to the DOT/SBA MOU, you must accept the certification applications, forms and packages submitted by a firm to the SBA for either the 8(a) BD or SDB programs, in lieu of requiring the applicant firm to complete your own application forms and packages. The applicant may submit the package directly, or may request that the SBA forward the package to you. Pursuant to the MOU, the SBA will forward the package within thirty days.

(b) If necessary, you may request additional relevant information from the SBA. The SBA will provide this additional material within forty-five days of your written request.

(c) Before certifying a firm based on its 8(a) BD or SDB certification, you must conduct an on-site review of the firm (see § 26.83(c)(1)). If the SBA conducted an on-site review, you may rely on the SBA's report of the on-site review. In connection with this review, you may also request additional relevant information from the firm.

(d) Unless you determine, based on the on-site review and information obtained in connection with it, that the firm does not meet the eligibility requirements of subpart D of this part, you must certify the firm.

(e) You are not required to process an application for certification from an SBA-certified firm having its principal place of business outside the state(s) in which you operate unless there is a report of a "home state" on-site review on which you may rely.

(f) You are not required to process an application for certification from an SBA-certified firm if the firm does not provide products or services that you use in your DOT-assisted programs or airport concessions.

10. Redesignate § 26.85 as § 26.86. In newly redesignated § 26.86, redesignate paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and add a new paragraph (b) to read as follows:

§ 26.86 What rules govern recipients' denials of initial requests for certification?

* * * * *

(b) When you deny DBE certification to a firm certified by the SBA, you must notify the SBA in writing. The notification must include the reason for denial.

* * * * *

11. Add a new § 26.85 to read as follows:

§ 26.85 How do recipients respond to requests from DBE-certified firms or the SBA made pursuant to the DOT/SBA MOU?

(a) Upon receipt of a signed, written request from a DBE-certified firm, you must transfer to the SBA a copy of the firm's application package. You must transfer this information within thirty days of receipt of the request.

(b) If necessary, the SBA may make a written request to the recipient for additional materials (e.g., the report of the on-site review). You must provide a copy of this material to the SBA within forty-five days of the additional request.

(c) You must provide appropriate assistance to SBA-certified firms, including providing information pertaining to the DBE application process, filing locations, required documentation and status of applications.

12. Amend § 26.87 by redesignating paragraphs (h) through (j) as paragraphs (i) through (k) and by adding a new paragraph (h) to read as follows:

§ 26.87 What procedure does a recipient use to remove a DBE's eligibility?

* * * * *

(h) When you decertify a DBE firm certified by the SBA, you must notify the SBA in writing. The notification must include the reason for denial.

* * * * *

13. Amend § 26.89 by revising paragraphs (a)(1) and (f)(7) to read as follows:

§ 26.89 What is the process for certification appeals to the Department of Transportation?

(a)(1) If you are a firm that is denied certification or whose eligibility is removed by a recipient, including SBA-certified firms applying pursuant to the DOT/SBA MOU, you may make an administrative appeal to the Department.

* * * * *

(f) * * *

(7) The Department provides written notice of its decision to you, the firm, and the complainant in an ineligibility complaint. A copy of the notice is also sent to any other recipient whose administrative record or decision has been involved in the proceeding (see paragraph (d) of this section). The Department will also notify the SBA in writing when DOT takes an action on an appeal that results in or confirms a loss of eligibility to any SBA-certified firm. The notice includes the reasons for the Department's decision, including specific references to the evidence in the record that supports each reason for the decision.

* * * * *

14. In § 26.109, revise paragraph (a)(2) to read as follows:

§ 26.109 What are the rules governing information, confidentiality, cooperation, and intimidation or retaliation?

(a) * * *

(1) * * *

(2) Notwithstanding any provision of Federal or state law, you must not release information that may be reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting documentation. However, you must transmit this information to DOT in any certification appeal proceeding under § 26.89 in which the disadvantaged status of the individual is in question.

* * * * *

15. Add Appendix B to part 26 to read as follows:

BILLING CODE 4910–62–P

Appendix B to Part 26—Uniform Reporting Requirements Form

UNIFORM SEMI-ANNUAL REPORT OF DBE AWARDS OR COMMITMENTS AND ACHIEVEMENTS

U.S. Department of Transportation 400 7th Street SW Washington, DC 20590

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16. In Appendix E, under Economic Disadvantage, remove and reserve section (B)(2).
17. Add a new Appendix F to read as follows:

Appendix F to Part 26—Uniform Certification Application Form

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
49 C.F.R. PART 26

UNIFORM CERTIFICATION APPLICATION

Note: the instruction page will be drafted after the form is completed.

Under Sec. 26.107 of 49 CFR Part 26, dated February 2, 1999, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 49 CFR Part 29, take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice under 18 U.S.C. 1001.

ROADMAP FOR APPLICANTS

① **Should I apply?**
Your firm must meet the following requirements to qualify as a DBE under the DOT DBE program:

- ❒ Disadvantaged owners are U.S. citizens or legal permanent residents.
- ❒ Firm's annual gross income does NOT exceed $17.420 million (averaged over 3 years).
- ❒ Firm is at least 51% owned and controlled by socially and economically disadvantaged individuals.
- ❒ Firm meets SBA small business size in the primary industry group (13 CFR part 121).
- ❒ Firms owned by ANCs, Indian Tribes, and Native Hawaiian Organizations meet the small business size requirements and are controlled by socially and economically disadvantaged individuals.
- ❒ Firms and owners meet the requirements of part 26 concerning licenses and credentials.
- ❒ Firm must be for-profit.

Note: Firms must undergo an on-site review.

② **Is there an easier way to apply?**
If you are currently certified as an 8(a), or SDB firm, you may be eligible for a streamlined certification application process pursuant to a Memorandum of Understanding (MOU) between DOT and the SBA. Under the MOU, the certifying agency to which you are applying will accept your current SBA application package in lieu of requiring you to submit and entirely new application. You must still meet the requirements for the DBE program.

③ **What documents must I submit with this application?**
The following documents must be attached to your application. *Missing documents or incomplete information will delay the processing of your application.*

All Applicants
- ❒ Work experience resumes that include places of ownership/employment and corresponding dates.
- ❒ Personal Net Worth statement or statement from CPA.
- ❒ Social & economic disadvantage statement.
- ❒ Entire copy of personal tax returns for the last 3 yrs, if applicable.
- ❒ Documented proof of contributions used to acquire ownership for each owner (*e.g. both sides of cancelled checks*).
- ❒ Signed loan agreement and security agreements.
- ❒ Description of real estate and proof of ownership listed.
- ❒ List of equipment leased and signed lease agreements.
- ❒ List of construction equipment and/or vehicles owned and titles/proof of ownership.
- ❒ Signed leases for office/storage space.
- ❒ End of Year Balance Sheets and Income Statements for the past 3 years (*or life of firm if less than 3 years*). A new business must provide a current Balance Sheet.
- ❒ Copies of relevant licenses.
- ❒ DBE/MBE/WBE, SBA 8(a) or SDB certifications or denials and decertifications.
- ❒ Bank Authorization and Signatory cards.
- ❒ Schedule of salaries paid to all officers, managers, owners or directors of the firm (W-2s).

Sole Proprietorship
- ❒ Assumed name, fictitious name or other registration certificate from appropriate governmental agency.

Partnership or Joint Venture
- ❒ Original and any amended Partnership or Joint Venture Agreements.
- ❒ Assumed name, fictitious name, or other registration Certificate from appropriate governmental agency, if applicable.
- ❒ Partnership tax returns for last 3 years.

Corporation or LLC
- ❒ Official Articles of Incorporation (*signed by the state official*).
- ❒ Both sides of all Corporate Stock Certificates and Stock.
- ❒ Transfer Ledger.
- ❒ Entire copy of corporate tax returns for the last 3 yrs.
- ❒ Shareholders' Agreement.
- ❒ Minutes of all stockholders and Board of Directors meetings.
- ❒ Corporate By-laws and any amendments.

NOTE: The specific state or recipient to which you are applying may have additional requirements.

④ **Where can I find more information?**
U.S. DOT – **http://osdbuweb.dot.gov/business/dbe/index.html**

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Section 1: CERTIFICATION INFORMATION

1. **Prior/Other Certifications.**

(a) Is your firm currently certified for any of the following programs? (*If Yes, attach a copy of your certification(s)*).	❒ DBE	Name of certifying agency: Has this firm's home state conducted an on-site visit? ❒ Yes, on ___/___/___ ❒ No
	❒ 8(a) ❒ SDB	Stop! You may not have to complete this application. Ask about the streamlined application process under the SBA/DOT MOU.
(b) Has your firm applied for certification for any program listed in 1(a) in the past? ❒ Yes, on ___/___/___ ❒ No If Yes, identify: Other names your company has used: Identification and certification numbers:		
(c) Has this firm or any of its owners, Board of Directors, officers or management personnel been denied certification or decertified before by any agency in any state, local or Federal entity? ❒ Yes, on ___/___/___ ❒ No If Yes, identify State and name of agency:		

Section 2: GENERAL INFORMATION

2. **Contact Information.**

Contact person:		Legal name of firm:		
Phone #:	Cell #:		Fax #:	
E-mail:		Web site (*if firm has one*):		
Street address of firm: *(No P.O. box no.)*				
Mailing address of firm:	City:	County/Parish:	State:	Zip:

3. **Business Profile.**

Primary nature of business/NAICS code: Federal tax ID:
Federal identification number or Applicant's Social Security number:
This firm was established on ___/___/___ I(we) have owned this firm since: ___/___/___
Did the business exist under a different type of ownership prior to the date indicated above? ❒ Yes ❒ No If Yes, Explain.
Method of acquisition *(check all that apply)*: ❒ Started new business ❒ Bought existing business ❒ Inherited business ❒ Secured concession ❒ Merger or consolidation ❒ Other *(explain)* _____
Has this firm operated under a different name during the past five years? ❒ Yes ❒ No If Yes, explain.
Has this firm applied for reorganization under Chapter 11 and/or liquidation under Chapter 7, within the last 3 years? *(If Yes, provide court papers)* ❒ Yes ❒ No
Type of firm *(check all applicable)*: ❒ Sole proprietorship *(provide a copy of the assumed name certificate)* ❒ Partnership *(provide copies of all partnership agreements and the assumed name certificate)* ❒ Corporation *(provide Articles of Incorporation, copies of the stock certificates (both sides), Stock Transfer Ledger, Shareholders' Agreement, all minutes of the shareholders' meetings and Board of Directors' meetings, the Corporate Bylaws and Bylaws Amendments (if applicable), the Corporate Bank Resolution and Bank Signature Cards)* ❒ Limited Liability Partnership ❒ Joint Venture ❒ Other
Number of employees: Permanent Full-time ____ Temporary Full-time ____ Seasonal Full-time ____ Permanent Part-time ____ Temporary Part-time ____ Seasonal Part-time ____ Where do you obtain seasonal employees?
Does your firm directly pay, in its own name, all its employees? ❒ Yes ❒ No

If No, explain
Specify the gross receipts of the firm for the last 3 years: Year ending _____ Total receipts $ _____ *(Attach copies of full tax returns for each year)* Year ending _____ Total receipts $ _____ Year ending _____ Total receipts $ _____

Section 3: OWNERSHIP

4. **Identify all individuals or holding companies with any ownership interest. List their cash, equipment and/or real estate and/or other investment in the firm; and attach the documentation of the source of these investments.** *(Attach work experience resumes of each person; If more than two owners, attach a separate sheet)*

First Person

Name:	Title:	Home Phone #:	
Home Address *(street and number)*:	City:	State:	Zip:
Gender: ❒ Male ❒ Female U.S. Citizen: ❒ Yes ❒ No Legal permanent resident: ❒ Yes ❒ No	Ethnic group *(Attach proof of status)*: ❒ African American ❒ Hispanic ❒ Native American ❒ Caucasian ❒ Asian Pacific ❒ Asian Indian ❒ Other Ethnic Group *(explain)* _____		
Number of years owned: Percentage owned: Familial relationship to other owners:	Initial investment to acquire ownership interest in firm:	Type Cash Real Estate Equipment Other	Dollar Value $ $ $
Shares of Stock: Number	Percentage	Class	Date acquired	Method Acquired
Additional contributions made by anyone since the business was started/acquired:			

Second Person

Name:	Title:	Home Phone #:	
Home Address *(street and number)*:	City:	State:	Zip:
Gender: ❒ Male ❒ Female U.S. Citizen: ❒ Yes ❒ No Legal permanent resident: ❒ Yes ❒ No	Ethnic group *(Attach proof of status)*: ❒ African American ❒ Hispanic ❒ Native American ❒ Caucasian ❒ Asian Pacific ❒ Asian Indian ❒ Other Ethnic Group *(explain)* _____		
Number of years owned: Percentage owned: Familial relationship to other owners:	Initial investment to acquire ownership interest in firm:	Type Cash Real Estate Equipment Other	Dollar Value $ $ $
Shares of Stock: Number	Percentage	Class	Date acquired	Method Acquired
Additional contributions made by anyone since the business was started/acquired:			

Section 4: CONTROL

5. **Identify officers & Board of Directors.** *(Attach work experience resumes of each person; If additional space is required, attach a separate sheet)*

	Name	Title/Date Appointed	Ethnicity	Gender
Company Officers	1. 2.			

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	3. 4. 5.			
Board of Directors	1. 2. 3. 4. 5.			

6. **Identify management personnel who control the firm in the following areas.** *(Attach work experience resumes, including dates, of employment at each company, for each person; If more than two persons, attach a separate sheet)*

	Name	Title	Ethnicity	Gender
Financial Decisions *(responsibility for check signing, acquisition of lines of credit, surety bonding, supplies, etc.)*	1. 2.			
Estimating, bidding, and negotiating *(cost estimates, bid preparation and submission, negotiations or contract execution)*	1. 2.			
Hiring/firing of management personnel	1. 2.			
Field/Production Operations Supervisor *(site supervision/scheduling, project management services)*	1. 2.			
List all field supervisors	1. 2.			
Office management	1. 2.			
Marketing/Sales	1. 2.			
Purchasing of major equipment	1. 2.			

7. **Identify persons or firms who provide the following services.**

	Name of firm	Name of person	Address	Phone No.
External management or technical/ computer service				
Accountant				
Attorney				
Principal suppliers	1. Materials or equipment supplied _____ 2. Materials or equipment supplied _____			

8. **Identify those union(s), business(es), or professional associations (s) in which the owner (s) or management personnel have membership.**

Name of union, business or professional	Address	Phone No.

association		
1.		
2.		
3.		

9. **Attach a list of equipment and/or vehicles within your firm's possession or under your control** (*indicate separately*), office space (*owned or leased*) and storage space (*owned or leased*), including signed leasing agreements.

10. **Financial Information.**

(a) Banking Information
Name of bank: _____ Phone No: ( ) _____
Name of officer: _____
Address of bank: _____ City: _____ State: ____ Zip: _____

(b) Bonding Information: If you have bonding capacity, identify:
Name of agent or broker _____ Phone No: ( ) _____
Address of agent/broker: _____ City: _____ State: ____ Zip: _____
Bonding limit: Aggregate limit $ _____ Project limit $ _____

(c) Attach copies of year end balance sheet and profit and loss (income) statements for the last 3 years, or if business has been in operation for less than one year, provide a current balance sheet, a projected profit and loss statement for the next 12 month period and a projected balance sheet for the end of that period.

11. **Identify all sources, amount and purposes of money loaned to the firm, including name of person or firm securing the loan, if other than owner.** *(Attach copies of all loan agreements)*

Name of Source	Address of Source	Amount
1.		
2.		
3.		

12. **List current licenses** (*e.g. contractor, engineer, architect, ICC, etc.*). *(Attach copies of licenses)*

Name of Individual or Firm	Name of License	Expiration Date	License Number
1.			
2.			
3.			

13. **Does your firm have key personnel insurance?** ❒ Yes ❒ No
(If Yes, attach a list of the persons named and the value)

14. **List the 3 largest contracts completed by this firm in the past 3 years.**

Name of owner/contractor	Name/location of project	Type of work performed
1.		
2.		
3.		

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15. **List *all* active jobs this firm is currently working on.** *(If additional space is required, attach a separate sheet)*

Name of prime contractor and project number	Location of project	Type of work	Date project began	Anticipated completion date
1.				
2.				
3.				

Section 5: AFFILIATION

16. **Affiliation with other businesses.**

(a) Affiliate companies:

(b) Do any of the people listed in question 4, 5 or 6 perform a management or supervisory function for any other business? ❒ Yes ❒ No
If Yes, identify: Person: _____ Title: _____
Business: _____ Function: _____

(c) Do any of the people listed in questions 4, 5 or 6 own or work for other firms that have a business relationship with yours? *(E.G., ownership interest, shared office space, financial investments, equipment leases or personal sharing)* ❒ Yes ❒ No
If Yes, identify: Firm: _____ Person: _____ Business relationship: _____

(d) Whether affiliated or not, is the applicant firm co-located at any or its business locations, or does it share a telephone number, P.O. Box, office space, yard, warehouse, facilities, equipment, or office staff, with any other business, organization, or entity? ❒ Yes ❒ No
If Yes, identify: Firm's name: _____ tax ID number: _____
Explain nature of shared facilities: _____

(e) At present or in the past 5 years:	Has this firm been a subsidiary of any other firm? ❒ Yes ❒ No
If you answered Yes to any of these questions, identify on a separate piece of paper any relevant names, addresses, dates, and explanations.	Has this firm consisted of a partnership in which one or more of the partners are other firms? ❒ Yes ❒ No
	Has any other firm owned 5% or more of this firm? ❒ Yes ❒ No
	Has this firm had any subsidiaries? ❒ Yes ❒ No
	Has this firm owned 5% or more of any other firm? ❒ Yes ❒ No

Section 6: OTHER

17. **Are you a trucking firm?** ❒ Yes ❒ No
(If Yes, attach proof of ownership of a fully operational truck and trailer. Documentation should include insurance and titles)

18. **Are you a regular dealer?** ❒ Yes ❒ No
(If Yes, attach proof of warehouse, product lines carried, and distribution equipment)

AFFIDAVIT OF CERTIFICATION

A MATERIAL OR FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION IS SUFFICIENT CAUSE FOR DENIAL OF CERTIFICATION, REVOCATION OF A PRIOR APPROVAL, INITIATION OF SUSPENSION OR DEBARMENT PROCEEDINGS, AND MAY SUBJECT THE PERSON AND/OR ENTITY MAKING THE FALSE STATEMENT TO ANY AND ALL CIVIL AND CRIMINAL PEALTIES AVAILABLE PURSUANT TO APPLICABLE FEDERAL AND STATE LAW.

I _____ (full name), swear or affirm under penalty of law that I am _____ (title) of applicant firm _____ (firm name) and that I have read and understood all of the questions in this application and that all of the foregoing information and statements submitted in this application and its attachments and supporting documents are true and correct to the best of my knowledge, and that all responses to the questions in are full and complete, omitting no material information. The responses include all material information necessary to fully and accurately identify and explain the operations, capabilities and pertinent history of the named firm as well as the ownership, control, and affiliations thereof.

I recognize that the information submitted in this application is for the purpose of inducing certification approval by a government agency. I understand that a government agency may, by means it deems appropriate, determine the accuracy and truth of the statements in the application, and I authorize such agency to contact any entity named in the application, and the named firm's bonding companies, banking institutions, credit agencies, contractors, clients, and other certifying agencies for the purpose of verifying the information supplied and determining the named firm's eligibility.

I agree to submit to government audit, examination and review of books, records, documents and files, in whatever form they exist, of the named firm and its affiliates, inspection of its places(s) of business and equipment, and to permit interviews of its principals, agents, and employees. I understand that refusal to permit such inquiries shall be grounds for denial of certification.

If awarded a contract or subcontract, I agree to promptly and directly provide the prime contractor, if any, and the Department, recipient agency, or federal funding agency on an ongoing basis, current, complete and accurate information regarding (1) work performed on the project; (2) payments; and (3) proposed changes, if any, to the foregoing arrangements.

I agree to provide written notice to the recipient agency or Unified Certification Program (UCP) of any material change in the information contained in the original application within 30 calendar days of such change (e.g., ownership, address, telephone number, etc.).

I acknowledge and agree that any misrepresentations in this application or in records pertaining to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded; denial or revocation of certification; suspension and debarment; and for initiating action under federal and/or state law concerning false statement, fraud or other applicable offenses.

I declare under penalty of perjury that the foregoing is true and correct.

Signature of owner, officer or partner _____ Date*(mm/dd/yy)* _____

I declare under penalty of perjury that the information provided in this application and supporting documents relating to my disadvantaged status and me is true and correct.

Print Name: _____ Signature _____ Date _____

Print Name: _____ Signature _____ Date _____

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Print Name: _____ Signature _____ Date _____

Print Name: _____ Signature _____ Date _____

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NOTARY CERTIFICATE

STATE OF _____

} SS:

COUNTY OF _____

Subscribed and sworn to before me this _____ day of _____, 20 _____.

Signature of Notary Public _____ Printed/typed name of Notary Public

County of residence _____ Date commission expires _____

AFFIDAVIT OF SOCIAL AND ECONOMIC DISADVANTAGE

This form must be signed and notarized for each owner upon which disadvantaged status is relied.

SOCIAL DISADVANTAGE

I hereby certify under penalty of perjury that I am a member of one of the following groups:
❒ African American ❒ Hispanic ❒ Native American ❒ Caucasian ❒ Asian Pacific ❒ Asian Indian
❒ Other Ethnic Group (*explain*) _____

And that I have held myself out as a member of that group and have acted as a member of that group.

I further certify that I am an owner of the company seeking DBE certification and that I have experienced social disadvantage due to the effects of discrimination based upon my (check all that apply)
❒ race ❒ ethnicity ❒ gender ❒ other *(explain)*

Print Name: _____ Signature _____ Date _____

PERSONAL FINANCIAL STATEMENT

I hereby certify under penalty of perjury that my personal net worth does not exceed $750,000.

Print Name: _____ Signature _____ Date _____

This statement is supported by (check one)
❑ A signed, notarized statement of personal net worth, with appropriate supporting documentation.
❑ A signed, notarized statement from a certified public accountant (CPA) attesting that the he/she has examined my personal net worth and determined, consistent with the provisions of §26.67(a)(2) and generally accepted accounting standards, that my personal net worth does not exceed $750,000.

NOTARY CERTIFICATE

STATE OF _____

} SS:

COUNTY OF _____

Subscribed and sworn to before me this _____ day of _____, 20 _____.

Printed/typed name of Notary Public _____

Signature of Notary Public _____

County of residence _____ Date commission expires _____

[FR Doc. 01–11317 Filed 5–7–01; 8:45 am]
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Notices

Federal Register
Vol. 66, No. 89
Tuesday, May 8, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

Electronic Access Fees for Federal Agencies

AGENCY: Administrative Office of the United States Courts.

ACTION: Clarification.

SUMMARY: The Administrative Office of the United States Courts will begin collecting fees for electronic public access in bankruptcy courts that have installed and are using Version One of the new Case Management/Electronic Case Files (CM/ECF) system, as of July 1, 2001. Deployment is scheduled to be completed for all court types by 2005.

DATES: This policy is applicable as of July 1, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Stickney, Chief of the EPA Program Office, (202) 502–1500.

SUPPLEMENTARY INFORMATION: As the federal judiciary moves increasingly toward using electronic case files, there has been a great deal of interest in the manner and scope of the application of public access charges for electronic court data, as mandated by Congress in the Judicial Appropriations Act of 1991 and set forth in the Judicial Conference Miscellaneous Fee Schedule (28 U.S.C. 1913, 1914, 1926, 1930, 1932). The schedule imposes a charge of seven cents per page for access to data obtained electronically from the public dockets of individual case records in the court. This charge is collected by the Administrative Office through its Electronic Public Access (EPA) program and applies largely to case data from docket sheets obtained through the Public Access to Court Electronic Records (PACER) system, although an increasing number of courts have begun providing online images of official court documents as well, to which the fee equally applies.

Recently, a small number of courts have implemented a prototype version of the judiciary's new CM/ECF system, which permits electronic access to all case file documents, in addition to docket sheets. Access to CM/ECF has been available free of charge to all users in these prototype courts.

With deployment of the first full version ("Version One") of the bankruptcy software, the EPA program will begin administering the required seven cents per page fee in the bankruptcy courts, as of July 1, 2001. District courts and courts of appeals will begin billing when their respective Version One applications are implemented, which is expected in 2002 and 2003 respectively.

Although the access fee applies to all users, it should be noted that it will not apply to official recipients of electronic documents, i.e. those parties legally entitled to receive service, or to whom service is directed by the filer. This policy will entitle attorneys of record, as well as, in most instances, U.S. Trustees and bankruptcy case trustees, to one free electronic copy of all of the documents that they need from the case file in order to fulfill their legal responsibilities. As before, parties will still be responsible for maintaining their own files; should they fail to make a copy at the time of service, however, then any additional copy from the court will cost seven cents per page for an electronic version, fifty cents per page for paper.

As CM/ECF is deployed, the fee for Internet access to case data, which currently explicitly applies to federal agencies, has obvious potential impact on the everyday operations of many federal agencies, as well as on bankruptcy case trustees and United States Trustees. In order to assess that impact, and to ensure that, consistent with the policy of the Judicial Conference, usage charges are set at the lowest possible level sufficient to fund the program, the Administrative Office has begun a study of the fee's potential impact on external users, including government agencies. The study is expected to be completed in the first half of 2001, and the input of the federal agencies who practice in the federal courts should prove an important source of data in this endeavor.

Leonidas Ralph Mecham,
Director.

[FR Doc. 01–11522 Filed 5–7–01; 8:45 am]
BILLING CODE 2210–55–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection, Comment Request—Grants To Improve Food Stamp Program Access (OMB No. 0584–0506)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, this notice invites the general public, other public agencies, and grantees referred to in this Notice to comment on the proposed information collection. The proposed collection is an extension of a previously approved collection.

DATES: Comments on this notice must be received by July 9, 2001.

ADDRESSES: Send comments and request for copies of this information collection to Barbara Hallman, Chief, State Administration Branch, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate, automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, telephone number (703) 305–2383 or by email at Barbara.Hallman@FNS.USDA.GOV.

SUPPLEMENTARY INFORMATION:

Title: Food Stamp Program: Grants to Improve Food Stamp Program Access.

OMB Number: 0584–0506.
Expiration Date: July 31, 2001.
Type of Request: Extension of previously approved collection.

Abstract: In December, 2000, FNS announced a program for competitively awarding grants and cooperative agreements for research that will improve the administrative effectiveness of the Food Stamp Program (FSP) in delivering nutrition related benefits (65 FR 81819, December 27, 2000). FNS solicited proposals to that would support research on the effects of community partnerships to reach underserved populations such as working families, children, immigrants, and elderly.

This action described in this Notice is authorized under section 17(a)(1) of the Food Stamp Act of 1977, (7 U.S.C. 2026(a)(1)) with Fiscal Year (FY) 2001 funding set aside for grants projects to educate potentially eligible persons about the nutritional benefits of the FSP. As specified in the Notice, competitive grants would be awarded to non-food stamp governmental authorities such as local school districts, public health clinics, non-profit community based organizations, and institutions of higher education, foundations and other non-profit research institutes. Grantees (winning respondents) may operate their projects for up to two years.

FNS will use the information reported from the grantees to consolidate a report of success stories, and lessons learned from the projects. Moreover, this information will be used to inform FNS about useful strategies that promote access and are successful in increasing participation of eligible persons in the FSP. FNS also intends to share widely with the public so others may replicate effective strategies of public education and outreach.

OMB approval for the collection burden associated with the solicitation for grant proposals was approved on an emergency basis for 6 months. This Notice summarizes the burden estimates that were presented in the emergency approval. This Notice will also provide burden estimates that will continue to apply to the winning grantees for the remaining period in which the projects are in operation. In January, 2001, FNS announced that it was awarding grants to 14 of the responding applicants. Each grantee was awarded no more than $300,000 for their project.

Respondents: Respondents to the "Request for Applications for Research Grants to Improve FSP Access Through Partnerships and New Technology" are non-food stamp governmental authorities, nonprofit local organizations, institutions of higher learning, foundations, and other non-profit organizations.

Estimated Number of Responses per Respondent: Under the initial collection burden, FNS estimated that 250 respondents would request and submit an application for the research grants and up to 15 of these respondents would be selected to receive grant funds from FNS. The actual number of applications received by FNS was 108, of which 14 were selected to receive funding.

Estimate of Burden: Under the initial collection burden, FNS estimated that each applicant (respondent) would need 80 hours to complete the application as specified in the Request for Applications. The winning respondents (grantees) would subsequently be required to submit quarterly reports (total of 8) and a draft and final report. The burden estimates for these actions are as follows

- *Submission of Application*—250 respondents times 80 hours equals 20,000 hours.
- *Quarterly Reports*—14 grantees times 8 quarterly reports times 3 hours equals 336 hours.
- *Draft and Final Report*—14 grantees times 2 reports times 60 hours (approximate for each report) equals 1,680 hours.

Estimated Total Annual Burden on Respondents: The total reporting and recordkeeping burden for OMB No. 0584–0506 is estimated to be 22,016 hours for the entire grant period. For the remaining two year period, the total annual burden placed on the 14 grantees is estimated to be 2,016 hours (estimate for quarterly and draft and final report) divided by 2 (time in which grants may be in operation) equals 1,008.

Dated: May 2, 2001.

George A. Braley,
Acting Administrator.

[FR Doc. 01–11538 Filed 5–7–01; 8:45 am]
BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Buick Vegetation Management Environmental Assessment, Deschutes National Forest, Deschutes County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: The Environmental Assessment for the Buick Vegetation Management project is available for review and comment. This project analyzes 33,505 acres of National Forest lands within General Forest, Deer Habitat, Scenic Views and Old Growth Management Area. The objective of the project is to begin the process of creating forest conditions that are resilient and resistant to disturbances, maintain and enhance wildlife habitat, visual integrity, and historic forest characteristics. The project would also amend the boundaries of two Old Growth Areas within the Old Growth Management Area allocation of the Deschutes National Forest Land and Resource Management Plan. The Buick Vegetation Management project area is located about 35 miles south of Bend, Oregon, and 17 miles east of La Pine, Oregon.

The Environmental Assessment is available upon request from the Bend/Ft. Rock Ranger District, 1230 NE Third St., Suite 262–A, Bend, OR, 97701; at the Deschutes National Forest Supervisor's Office, 1645 Highway 20 East, Bend, Oregon; and at the Deschutes National Forest website at *www.fs.fed.us/r6/deschutes.*

Written comments should be addressed to Walter C. Schloer, District Ranger, 1230 NE Third St., Suite 262–A, Bend, OR 97701. Comments can also be sent by email to dfrantz@fs.fed.us. Written or oral comments should include your name, address, and telephone number. Please include the title of the document; specific facts or comments, and supporting reasons for your comments.

DATES: Please submit comments within 30 days of Wednesday, May 9, 2001, which is the publication date of the legal notice of availability in The Bulletin newspaper, Bend, Oregon.

FOR FURTHER INFORMATION CONTACT: For Further information, contact David Frantz, Bend/Ft. Rock Ranger District, 1230 NE Third St., Suite 262–A, Bend, OR, or phone (541) 383–4721.

Dated: April 27, 2001.

Becki Heath,
Acting Forest Supervisor.

[FR Doc. 01–11511 Filed 5–7–01; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Keenes Horse Camp, Gifford Pinchot National Forest, Skamania County, Washington

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: Pursuant to 36 CFR 219.35(b), this serves as notification that the Gifford Pinchot National Forest Land

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and Resource Management Plan (Forest Plan) is amended to authorize the Keenes Horse Camp Project, which was analyzed in the Keenes Horse Camp Environmental Assessment. This project is located in Township 11 North, Range 10 East, Section 34, Skamania County, Washington State. The project will close, rehabilitate and relocate eight of the existing 13 campsites at Keenes Horse Camp to better meet long-term Aquatic Conservation Strategy objectives regarding water quality and riparian condition. Construction of an access road for the relocated sites would be contrary to the Gifford Pinchot Forest Plan, which precludes new developments and road construction in the vicinity of the Keenes Horse Camp. The decision amends the Forest Plan to make an exception for relocation of the campsites and construction of the associated 400 feet of access road. A copy of the Environment, Decision Notice and Forest Plan Amendment #15 is available upon request from the Cowlitz Valley Ranger District, P.O. Box 670, Randle, WA 98377–0670.

FOR FURTHER INFORMATION CONTACT: For further information, contact Lynn Schinnell, Cowlitz Valley Ranger District, P.O. Box 670, Randle, WA 98377–0670, or phone (370) 497–1121.

Dated: April 30, 2001.

Claire Lavendel,

Forest Supervisor.

[FR Doc. 01–11458 Filed 5–7–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Clancy-Unionville Vegetation Manipulation and Travel Management Project; Including Timber Harvest, Prescribed Fire, and Noxious Weed Control Activities. Helena National Forest, Lewis & Clark and Jefferson Counties, MT

AGENCY: Forest Service, USDA.

ACTION: Notice: intent to prepare Supplement to Environmental Impact Statement.

SUMMARY: The NOI to prepare an Environmental Impact Statement for this project was published in the October 17, 1997 issue of the **Federal Register.** The FEIS was released to the public in February 2000. A Record of Decision was issued in November, 2000, but was subsequently reversed on appeal due to insufficient cumulative effects analysis. At this time, the Helena National Forest is soliciting comments which would help to identify past, ongoing, or reasonably foreseeable activities which could reasonably interact cumulatively with the activities considered with the Clancy-Unionville Vegetation Manipulation and Travel Management Project. The agency will use the information received in conjunction with other compiled information to develop the Draft Supplement EIS. A 45-day comment period will provide, and all comments will be used to develop a Final Supplemental EIS.

ADDRESSES: The responsible official is Thomas J. Clifford, Forest Supervisor, Helena National Forest, Supervisor's Office, 2880 Skyway Drive, Helena, MT. 59602, Phone: (406) 449–5201.

FOR FURTHER INFORMATION CONTACT: Jerry Meyer, Interdisciplinary Team, Leader, Helena National Forest, Supervisor's Office, 2880 Skyway Drive, Helena, MT. 59602, Phone: (406) 446–5201, extension 278.

Dated: April 24, 2001.

Thomas J. Clifford,

Forest Supervisor, Helena National Forest.

[FR Doc. 01–11447 Filed 5–7–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

North Belts Travel Plan/Magpie-Confederate Vegetation Restoration Project; This project Will Henceforth be Entitled the North Belts Travel Plan Project; Helena National Forest, Broadwater, Lewis & Clark and Broadwater Counties, MT

AGENCIES: Forest Service, USDA; Bureau of Land Management, USDI.

ACTION: Notice; intent to prepare Supplement to Environmental Impact Statement.

SUMMARY: The NOI to prepare an Environmental Impact Statement for this project was published in the February 25, 1998 issue of the **Federal Register**. A Draft EIS was released to the public in March 1999. In July and August of 2000, an extensive wildfire called the Cave Gulch Fire burned a high percentage of the project area being considered for vegetation treatments (The Magpie-Confederate Vegetation Restoration portion of the original project). Because of this changed condition, the Forest Service is withdrawing all vegetation management proposals from the project including treatment of noxious weeds, renaming the project, and proceeding with the travel planning portion of the project. The Forest Service feels this is the appropriate approach with this project in that it retains a considerable amount of public input received in conjunction with previous scoping efforts. The BLM has considered only travel management throughout the course of the project. The agencies expect to release a Draft Supplement EIS in June, 2001. A 45 day comment period will be provided, and all comments will be used to develop a Final EIS.

ADDRESSES: The responsible official is Thomas J. Clifford, Forest Supervisor, Helena National Forest, Supervisor's Office, 2880 Skyway Drive, Helena, MT. 59602. Phone: (406) 449–5201.

FOR FURTHER INFORMATION CONTACT: Lois Olsen, Interdisciplinary Team Leader, Helena National Forest, Supervisor's Office, 2880 Skyway Drive, Helena, MT. 59602. Phone: (406) 449–5201, extension 251.

Dated: April 24, 2001.

Thomas J. Clifford,

Forest Supervisor, Helena National Forest.

[FR Doc. 01–11446 Filed 5–7–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Pineknot Shortleaf Pine Restoration Project, Mark Twain National Forest, Carter County, MO

AGENCY: Forest Service, USDA Forest Service.

ACTION: Notice, intent to prepare an environmental impact statement.

SUMMARY: The 10,831 acre Pineknot project area is located on National Forest lands within the Current River watershed south of Fremont, Missouri and southwest of Van Buren, Missouri T26N, R1W sections 18–20, 29–32 and T26N, R2W sections 13–16 and 21–36, Fifth Principal Meridian.

The Forest Service will prepare an environmental impact statement (EIS) to analyze and disclose the effects of restoring a closed, densely stocked shortleaf pine forest to the open pine woodland conditions described by early explorers in southern Missouri.

The primary purpose of this project is restoration of a large landscape (around 10,000-acre) of native shortleaf pine community in the Ozarks of southern Missouri. A secondary purpose of this project is to showcase a federal, state, and private partnership to manage a native, biologically diverse forest ecosystem that can provide a sustainable source of revenue. Additionally, analysis will be conducted to determine an appropriate road system for this project.

DATES: Initial comments concerning the scope of this analysis should be received on or before June 7, 2001 to receive timely consideration in the preparation of the draft EIS.

ADDRESSES: Send written comments and suggestions on the proposed action or requests to be placed on the project mailing list to: Jerry Bird, District Ranger, Doniphan/Eleven Point District, Rt. 1, Box 1908, Winona, Missouri 6558. E-mail should have a subject heading that reads "NEPA Doniphan" and be sent to: *mailroom r9 mark twain@fs.fed.us*

FOR FURTHER INFORMATION CONTACT: Jody Eberly, Project Leader, Doniphan/Eleven Point District, Rt. 1, Box 1908, Winona, Missouri 65588, phone (573) 325–4233, FAX (573) 325–4325.

SUPPLEMENTARY INFORMATION: The shortleaf pine community on the Mark Twain National Forest is unique to southern Missouri and exists nowhere else in the world. Although shortleaf pine is at the northern edge of its range in the southern Missouri Ozarks, it actually achieves its optimum growth rate here. And while shortleaf pine occurs as a co-dominant in other areas of the country, it is the only native pine species in the Missouri Ozarks and the dominant member of the pine community.

Historically, shortleaf pine covered almost 6.6 million acres in the Missouri Ozark Highlands. About 10% of that remains today. The Doniphan/Eleven Point Ranger District is in the heart of the historic shortleaf pine range. About 30% of the district is composed of shortleaf pine and pine/oak forest communities.

Over a decade of past management of small areas (50–200 acres) on the district has demonstrated that biological diversity can be increased in these communities by reducing the canopy cover of overstory trees, and conducting periodic prescribed burning. Nongovernmental partners, including The Nature Conservancy and National Wild Turkey Federation were so impressed by the results on these smaller areas; they contacted the Forest Service to see if a larger landscape project was possible. Partners who have already contributed time, funding, and expertise to this project include: The Nature Conservancy, The National Wild Turkey Federation, Bat Conservation International, Missouri Department of Conservation and Ozark National Scenic Riverways (National Park Service). The project has been considered worthy of special funding by Senator Kit Bond of Missouri.

Five units on the Doniphan/Eleven Point District of the Mark Twain National Forest were evaluated during 1999–2000. The Pineknot area was selected because it was the largest of the five units, had the least amount of private land interspersed with National Forest land, is almost 50% pine and oak pine, had a high potential for restoration, offers good possibilities for natural fire control lines, is easily accessible, and is located where smoke management will be relatively easy.

An EIS is being prepared for this project because we anticipate significant environmental and social benefits as a result of the activities proposed. Because of this, an EIS is the appropriate way to meet our obligation to the public for disclosure of effects of this project. An EIS will also give the responsible official a clear basis for making this decision.

Objectives of the proposed action are to increase the proportion of shortleaf pine in the project area, increase the growth rate of both young and mature pine trees, increase the spacing between trees to open the canopy and allow sunlight to reach the ground, increase the number and types of native herbaceous ground vegetation, and enhance people's enjoyment of the pine woodlands through various recreation opportunities. Part of the analysis will focus on determining the appropriate road system for this project area to support various resource and recreation needs. Activities proposed to meet these objectives include:

(1) Prescribed burning of 6,454 acres in seven units.

(2) Control of invasive/exotic plant species where they are encountered through the most effective measure for that species (including manual, mechanical, herbicide, or prescribed fire).

(3) Clean up of illegal garbage dumps where they are encountered.

(4) Development of a 5.5-mile interpretive drive through the project area.

(5) Improving 22 dispersed hunter camps by providing fire rings and lantern posts.

(6) Development of a ½-mile walking trail with interpretive signs.

(7) Development of a "watchable wildlife" brochure highlighting species that may be seen in the project area.

(8) Precommercial thin of 377 acres of young pine and oak-pine to encourage growth and increase the proportion of pine.

(9) Selective thinning of 1171 acres of pine and oak-pine to encourage growth and increase the proportion of pine.

(10) Harvest 15 acres by shelterwood preparation to regenerate a pine stand.

(11) Maintain 15.9 miles of Forest System roads to provide safe public access to the project area.

The expected results of project activities are that approximately 10,800 acres of shortleaf pine community will be restored to the open woodland condition typical of this natural community before the logging boom of the late 1800's and early 1900's. A fire regime will be reestablished over a landscape scale at the approximate intensity and interval with which this community evolved. The extent of re-introduction of fire as a primary disturbance force will depend in part on the ability of fire managers to effectively and safely conduct prescribed burns.

With restoration of open pine woodlands, we expect at least two and possibly more species will be reestablished in their former ranges. Bachman's sparrow and brown-headed nuthatch both use the type of open pine woodland that we are trying to reestablish. In addition, there are many plant species that may reappear in treated areas. The addition of these birds and plants back to Missouri's landscape will attract serious birders and botanists who would like to add these species to their life lists.

An increase in the quantity and species diversity of ground flora will create additional food sources for both bobwhite quail, white-tailed deer, and eastern wild turkey. This type habitat will provide a different hunting experience (open woodland as opposed to farm fields and/or closed woodlands) than that typically associated with upland bird and deer hunting in Missouri.

Several eastern forest bat species forage among upper and mid-story tree canopies. The proposed action would create more open foraging conditions that may be beneficial to the federally endangered Indiana bat. This bat prefers foraging where there is about 50–70% canopy closure (which is about the objective for this project). Snags created through prescribed burning will be located where solar exposure makes them ideal for bat roost trees.

While the primary focus of the analysis is to identify activities to accomplish ecological restoration other activities that enhance recreational opportunities, result in better water quality, or move the area toward the Forest Plan's desired future condition (Forest Plan pages IV 125–131) may also

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be considered in the draft and/or final EIS.

The scope of this analysis is limited to those activiites related to the purpose and need and measures necessary to mitigate the effects these activities may have on the environment. The decision will include if, when, how,and where to schedule restoration activities, recreation opportunity enhancement, interpretive activities, water quality improvement actions, resource protection measures, monitoring, and other follow-up activities. The appropriate road system for this project area will also be determined.

Public participation will be an important part of the project, commencing with the EIS initial scoping process (40 CFR 1 501.7), which starts with publication of this notice and continues for the next 30 days. In addition, the public is encouraged to visit with the District Ranger and Project Leader at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, Indian Tribes, landowners adjacent to the project area, and other individuals or organizations that may be interested in or affected by the proposed action.

Comments from the public and other agencies will be used in preparation of the draft EIS. The scoping process will be used to: identify potential issues; identify additional alternatives to the proposed action; and, identify potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects).

While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the draft EIS, which is expected to be filed with the Environmental Protection Agency and available for public review in September 2001. A 45-day comment period will follow publication of a Notice of Availability of the draft EIS in the **Federal Register**. The comments received will be analyzed and considered in preparation of the final EIS, which we expect to file in December 2001. A Record of Decision will be issued not less than 30 days after publication of a Notice of Availability of the final EIS in the **Federal Register**.

The Forest Service believes it is important at this early stage to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the draft EIS must structure their participation in the environmental review of the proposal in such a way that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDS*, 435 U.S. 519, 513 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir, 1986), and *Wisconsin Heritages Inc.* v. *Harris*, 490 F.Supp. 1334, 1338 (E.D. Wis., 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period of the draft EIS in order that substantive comments and objections are available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The responsible official for this environmental impact statement is Randy Moore, Forest Supervisor, Mark Twain National Forest.

Dated: April 20, 2001.

Sharon Metzler,

Acting Deputy Forest Supervisor, Mark Twain National Forest, 401 Fairgrounds Road, Rolla, MO 65401.

[FR Doc. 01–11445 Filed 5–7–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Modification to Wetland Reserve Program Easements, Madison Parish, Louisiana

AGENCY: Natural Resources Conservation Service, DOA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102 (2) (c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulation (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Modification to Wetland Reserve Program Easements (WRP) Madison Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: Donald W. Gohmert, State Conservationist, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana, 71302, telephone (318) 473–7751.

SUPPLEMENTARY INFORMATION: Environmental impacts associated with the modification of the WRP Easements are minimal. A total of 20.1 acres of forested wetlands impacted by the pipeline will be restored, 1.2 acres will be subordinated, and 11.2 additional wetland acres will be mitigated by incorporation into a future WRP easement. As a result of these findings, Donald W. Gohmert, State Conservationist has determined that the preparation and review of an environmental impact statement is not needed for this project. The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Billy Moore, Assistant State Conservationist, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302, telephone (318) 473–7756.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: March 20, 2001.

Donald W. Gohmert,

State Conservotionist.

[FR Doc. 01–11468 Filed 5–7–01; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–825]

Oil Country Tubular Goods from Korea: Extension of Time Limit for Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit For Preliminary Results of Administrative Review.

EFFECTIVE DATE: May 8, 2001.

FOR FURTHER INFORMATION CONTACT: Michael Strollo, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–5255.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, codified at 19 CFR part 351 (2000).

Background

On August 31, 2000, the Department of Commerce (the Department) received a request from SeAH Steel Corporation ("SeAH") for an administrative review of the antidumping duty order on oil country tubular goods from Korea. On October 2, 2000, the Department published a notice of initiation of this administrative review, covering the period of August 1, 1999 through July 31, 2000 (65 FR 58733).

Extension of Time Limits for Preliminary Results

Because of the complexities enumerated in the Memorandum from Barbara E. Tillman to Joseph A. Spetrini, *Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review of Oil Country Tubular Goods (OCTG) from Korea*, dated April 18, 2001, it is not practical to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for the preliminary results of review until August 31, 2001. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: April 27, 2001.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 01–11532 Filed 5–7–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050201C]

Southwest Region Gear Identification Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 9, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Alvin Katekaru, F/SWRX1, Room 1110, 1601 Kapiolani Blvd., Honolulu, HI 96814–4700 (phone 808–973–2937).

SUPPLEMENTARY INFORMATION:

I. Abstract

Regulations at 50 CFR 660.24 and 660.47 require that certain fishing gear must be marked. In the Western Pacific Pelagic Fishery, the vessel operator must ensure that the official number of the vessel is affixed to every longline buoy and float. In the Western Pacific Crustacean Fishery, each trap and float must be marked with the vessel's identification number. The marking of gear aids law enforcement and is valuable in actions concerning the damage and loss of gear.

II. Method of Collection

No information is collected.

III. Data

OMB Number: 0648–0360.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations, individuals or households.
Estimated Number of Respondents: 172.
Estimated Time Per Response: 2 minutes per marking.
Estimated Total Annual Burden Hours: 647.
Estimated Total Annual Cost to Public: $17,200.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and(d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 1, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–11547 Filed 5–7–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050301A]

Northeast Region Vessel Identification Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 9, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental

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Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to George Darcy, Assistant Regional Administrator, Sustainable Fisheries Division, 1 Blackburn Circle, Gloucester, MA, 01930, (978)281–9331, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

I. Abstract

Regulations of 50 CFR 648.8 and 697.8 require that all vessels with Federal permits to fish in the Northeast display the vessel's official number. The numbers must be in a specific size at specified locations. The display of the identifying number aids in fishery law enforcement.

II. Method of Collection

No information is collected. The official number must be displayed on the port and starboard sides of the deckhouse or hull and on a weather deck.

III. Data

OMB Number: 0648–0350.
Form Number: None.
Type of Review: Regular submission
Affected Public: Business or other for-profit organizations, individuals or households.
Estimated Number of Respondents: 5,821.
Estimated Time Per Response: 45. minutes (15 minutes for each of three markings).
Estimated Total Annual Burden Hours: 4,363.
Estimated Total Annual Cost to Public: $58,000.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 1, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–11548 Filed 5–7–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.050301B]

Northeast Region Gear Identification Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 9, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to George Darcy, Assistant Regional Administrator, Sustainable Fisheries Division, 1 Blackburn Circle, Gloucester, MA, 01930, (978)281–9331, fax (978)281–9135.

SUPPLEMENTARY INFORMATION:

I. Abstract

Regulations (50 CFR 648.81(f), 648.84, 648.123(b)(3), 648.144(b), and 697.21) require that Federal fishing permit holders using specified fishing gear mark that gear with specified information (the official vessel numbers, Federal permit number, tag number, or other method identified in the regulation). The regulations also specify how the gear is to be marked (e.g. location and visibility). Marking of gear aids law enforcement and also helps identify gear involved in damage, loss, or civil proceedings.

II. Method of Collection

No information is collected.

III. Data

OMB Number: 0648–0351.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations, individuals or households.
Estimated Number of Respondents: 3,859.
Estimated Time Per Response: 1 minute per marking.
Estimated Total Annual Burden Hours: 36,417.
Estimated Total Annual Cost to Public: $65,115.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 1, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–11549 Filed 5–7–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050301C]

Southwest Region Vessel Identification Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 9, 2001].

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Alvin Katekaru, F/SWRX1, Room 1110, 1601 Kapiolani Blvd., Honolulu, HI 96814–4700 (phone 808–973–2937).

SUPPLEMENTARY INFORMATION:

I. Abstract

Regulations at 50 CFR 660.16 require that all vessels with Federal permits to fish in the Southwest display the vessel's official number. Regulations are 50 CFR 300.35 require that vessels in the South Pacific tuna purse seine fishery must display their international radio call sign on the hull, the deck, and on the sides of auxiliary equipment such as skiffs and helicopters. The numbers must be in a specific size at specified locations. The display of the identifying number aids in fishery law enforcement.

II. Method of Collection

No information is collected.

III. Data

OMB Number: 0648–0361.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations, individuals or households.
Estimated Number of Respondents: 356.
Estimated Time Per Response: 45 minutes (15 minutes for each of three markings) for non-purse seine vessels, 1 hour and 15 minutes for purse seine vessels.
Estimated Total Annual Burden Hours: 286.
Estimated Total Annual Cost to Public: $6,800.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 1, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–11550 Filed 5–7–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050301D]

Fishermen's Contingency Fund

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 9, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Charles L. Cooper, Financial Services Division, Office of Sustainable Fisheries, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910 (phone 301–713–2396).

SUPPLEMENTARY INFORMATION:

I. Abstract

U.S. commercial fishermen may file claims for compensation for losses or damage to fishing gear or vessels, plus 50 percent of resulting economic losses, attributable to oil and gas activities on the U.S. outer continental shelf. To obtain compensation applicants must comply with requirements set forth in 50 CFR part 296. The requirements include a report within 15 days of the incident to gain a presumption of causation and an application form.

II. Method of Collection

Paper forms are used.

III. Data

OMB Number: 0648–0082.
Form Number: NOAA Forms 88–164, 88–166.
Type of Review: Regular submission.
Affected Public: Individuals or households, business or other for-profit organizations.
Estimated Number of Respondents: 200.
Estimated Time Per Response: 10 hours for an application, 5 minutes for a 15–day report.
Estimated Total Annual Burden Hours: 2,017.
Estimated Total Annual Cost to Public: $750.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

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Dated: May1, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–11551 Filed 5–7–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050301E]

Individual Fishing Quotas Program for Pacific Halibut and Sablefish in the Alaska Fisheries

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 9, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Patsy A. Bearden, F/AKR2, P.O. Box 21668, Juneau, AK 99802–1668 (telephone 907–586–7008).

SUPPLEMENTARY INFORMATION:

I. Abstract

NMFS manages the Pacific halibut and sablefish fisheries in Alaska through an Individual Fishery Quota program (IFQ) that allocates annual total catch limits to individual fishermen. Fishermen are assigned Quota Shares (QS)for the fisheries, and then annually received an IFQ. As part of its management program, NMFS monitors the IFQs assigned to vessel categories B, C, or D by corporations and partnerships.

To ensure that corporations and partnerships are not erroneously issued annual IFQ resulting from the collectively-held QS, NMFS seeks to add a requirement that each corporation or partnership annually identify all current shareholders or partners and affirm the entity's continuing existence as a corporation or partnership.

NMFS' Restricted Access Management program (RAM) requires annual updates on the status of corporations, partnerships, and other collective entities holding QS for two reasons. First, the IFQ regulations require that collective entities holding QS transfer the collectively-held QS to a qualified individual upon any change in the corporation, partnership, or other collective entity, and the regulations define such a change as the addition of a shareholder, partner, or member to the collective entity. This requirement is intended to promote an owner-operated fishery and to prevent the accumulation of QS by speculative investors. To monitor collectively-held QS adequately, RAM needs the annual updates on the status of collective entities that this collection of information would provide to ensure a collective entity's continuing existence as such.

Also, the IFQ Program requires that the QS holder be aboard the vessel harvesting the QS holder's annual IFQ. Under certain conditions, however, an individual QS holder may hire a skipper to fish the QS holder's IFQ. One such condition is that the QS holder own the vessel from which the hired skipper harvests the IFQ. Since the inception of the IFQ Program in 1995, NMFS's policy has interpreted vessel ownership liberally to allow an individual QS holder who meets all other conditions to hire a skipper to fish his or her IFQ from a vessel owned by a corporation, partnership, or other collective entity in which the individual QS holder is a shareholder, partner, or member. Likewise, collective entities holding QS may hire skippers to fish the collectively-held IFQ from a vessel owned by a member of the collective. This arrangement is known informally as "indirect ownership." Hence, to ensure that individuals and collective entities claiming indirect vessel ownership for purposes of hiring skippers are in fact linked to the entity owning the vessel, RAM needs the annual updates on the status of collective entities to monitor "indirect" ownership.

II. Method of Collection

The information is submitted to respond to requirements set forth in a regulation.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Not-for-profit institutions, business and other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 25.

Estimated Total Annual Cost to Public: $50.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May1, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–11552 Filed 5–7–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050301F]

Gear-Marking Requirements for the Harbor Porpoise Take Reduction Plan

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 9, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Kimberly Thournhurst, NMFS, One Blackburn Drive, Gloucester, MA 01930–2209 (telephone 978–281–9138).

SUPPLEMENTARY INFORMATION:

I. Abstract

Federal regulations at 50 CFR 229.34 limit the number of nets that can be used in certain fisheries in the mid-Atlantic that appear to be most closely linked with accidental catch of harbor porpoises. Fishermen in these fisheries must obtain and attach numbered tags for their nets. Because the number of tags per vessel is capped, the tagging program helps to limit the number of nets in use and helps NOAA identify the number in use.

II. Method of Collection

Requests for tags are submitted to NOAA on a paper form.

III. Data

OMB Number: 0648–0357.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations, individuals or households.

Estimated Number of Respondents: 25

Estimated Time Per Response: 1 minute to attach a tag to a net, 2 minutes to request tags.

Estimated Total Annual Burden Hours: 22.

Estimated Total Annual Cost to Public: $400.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May1, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–11553 Filed 5–7–01; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Short Supply Request under the United States—Caribbean Basin Trade Partnership Act (CBTPA)

May 3, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA)

ACTION: Denial of the petition alleging that 30 and 36 singles solution dyed staple spun viscose yarn, for use in knit fabrics, cannot be supplied by the domestic industry in commercial quantities in a timely manner.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUMMARY: On March 12, 2001 the Chairman of CITA received a petition from Fabrictex alleging that 30 and 36 singles solution dyed staple spun viscose yarn, for use in knit fabrics, classified in subheading 5510.11.0000 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requested that the President proclaim that apparel articles of U.S. formed fabrics of such yarns be eligible for preferential treatment under the CBTPA. As a result, CITA published a Federal Register Notice (66 FR 154111, March 19, 2001) requesting public comments on the petition. These comments were due April 3, 2001. Based on currently available information, CITA has determined that these products can be supplied by the domestic industry in commercial quantities in a timely manner and therefore denies the petition.

SUPPLEMENTARY INFORMATION:

Authority: Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act, as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

Background:

The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns or fabrics formed in the United States or a beneficiary country. The CBTPA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabric or yarn that is not formed in the United States or a CBTPA beneficiary country, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner and the President has proclaimed such treatment. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On March 12, 2001 the Chairman of CITA received a petition from Fabrictex alleging that 30 and 36 singles solution dyed staple spun viscose yarn, for use in knit fabrics, classified in subheading 5510.11.0000 of the HTSUS, cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requested that the President proclaim that apparel articles of U.S. formed fabrics of such yarns be eligible for preferential treatment under the CBTPA.

CITA solicited public comments regarding this request (66 FR 154111, published on March 19, 2001) particularly with respect to whether 30 and 36 singles solution dyed staple spun viscose yarn, classified in HTSUS heading 5510.11.0000, can be supplied by the domestic industry in commercial quantities in a timely manner.

On the basis of currently available information, including its review of the petition and public comments received and its understanding of the industry, CITA has determined that Fabrictex has not established that these yarns cannot be supplied by the domestic industry in commercial quantities in a timely manner, and has determined that these yarns can be so supplied. Written

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statements were provided by five U.S. manufacturers stating that they can produce these yarns, and U.S. companies state that they have the equipment, capacity, and desire to produce these yarns in commercial quantities in a timely manner and, in fact, are currently producing these yarns. After submitting the petition, Fabrictex approached several of these companies about their production of these yarns. Fabrictex's request is denied.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–11602 Filed 5–4–01; 10:50 am]

BILLING CODE 3510–OR–F

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee Meeting Notice

AGENCY: U.S. Army Training and Doctrine Command (TRADOC), DoD.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following meeting:

Name of Committee: Distance Learning/Training Technology Subcommittee of the Army Education Advisory Committeee.

Date: 22–23 May, 2001.

Place: Intel Corporation, Phoenix, AZ.

Time: 0800–1630 on 22 May, 2001; 0800–1200 on 23 May 2001.

Proposed Agenda: Dr. Rod Ibieta, Training Project Manager, Intel Corporation, will conduct presentations that focus on Intel initiatives in interactive training, administration and management of courses, and discuss future programs planned for employee training and education.

Key members of the Distance Learning/Training Technology Subcommittee who have made significant contributions to the overall mission of the subcommittee and the Army's Distance Learning Program, will be recognized with service awards.

Purpose of the Meeting: The members will advise the Assistant Deputy Chief of Staff (ADCST), HQ Training and Doctrine Command (TRADOC), on matters pertaining to education and training technologies.

FOR FURTHER INFORMATION CONTACT: All communications regarding this subcommittee should be addressed to Mr. Richard Karpinski, at Commander, Headquarters TRADOC, ATTN: ATTG–CF (Mr. Karpinski), Fort Monroe, VA 23651–5000; telephone number (757) 788–5531.

SUPPLEMENTARY INFORMATION: Meeting of the advisory committee is open to the public. Because of restricted meeting space, attendance will be limited to those persons who have notified the Advisory Committee Management Office in writing at least five days prior to the meeting of their intention to attend. Contact Mr. Karpinski (757–788–5531) for meeting agenda and specific locations.

Any member of the public may file a written statement with the committee before, during or after the meeting. To the extent that time permits, the committee chairman may allow public presentations or oral statements at the meeting.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–11515 Filed 5–7–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Supplemental Environmental Impact Statement (DSEIS) for the Flood Damage Reduction in Clear Creek, Texas as Published in House Document 351, 90th Congress, Second Session

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The proposed action to be addressed in the DSEIS is the evaluation of alternatives for flood damage reduction in Clear Creek, Texas. The alternatives will be derived from a General Reevaluation Report study, which will focus on developing an array of structural (channel modification, bypass channel, bridge alteration, levee, detention basin, etc), components from which detailed alternative plans can be developed. Nonstructural alternatives will be developed where possible.

The local sponsors for the project are Galveston County, Harris County Flood Control District, and Brazoria County Drainage District No. 4.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DSEIS can be answered by: Mr. Donald R. Allen, (409) 766–3051, Project Manager, Project Management Branch, or Mr. John C. Baker, (409) 766–3037, Environmental Lead, Environment Section, Planning and Environmental Branch, P.O. Box 1229, Galveston, Texas 77553–1229.

SUPPLEMENTARY INFORMATION: 1. The study process began in June 1999.

2. A "No Action" alternative will be evaluated and presented for comparison purposes in evaluating the various construction alternatives.

3. Scoping: The scoping process will involve Federal, State, and local agencies, and other interested persons and organizations. A series of scoping workshops will be conducted to discuss various issues associated with the flood control project. Separate Scoping Notices will be issued for the various workshops. Issues to be considered in this process include riparian and wetland impacts, changes in water and sediment quality, erosion along the channel, and threatened and endangered species impacts.

Any person or organization wishing to provide information on issues or concerns should contact the Corps of Engineers at the above address.

4. Coordination: Further coordination with environmental agencies will be conducted under the Fish and Wildlife Coordination Act, Endangered Species, Act, Clean Water Act, National Historic Preservation Act, Magnuson-Stevens Fishery Conservation and Management Act (Essential Fish Habitat), and the Coastal Zone Management Act (Texas Coastal Management Program). An Interagency Coordination Team will be formed to provide guidance and counsel on matters relating to the evaluation of environmental impacts of this project.

5. DSEIS Preparation: It is estimated that the DSEIS will be available to the public for review and comment in August 2002.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–11467 Filed 5–4–01; 8:45 am]

BILLING CODE 3710–52–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Packery Channel-North Padre Island Storm Damage Reduction and Environmental Restoration Project, Corpus Christi, Texas, as Cited in the Water Resources Development Act of 1999, Section 556

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The proposed action to be addressed in the DEIS is to evaluate the environmental acceptability of the project design. The project is located along the south-central Texas Coast on the southern portion of Mustang Island. It will provide storm damage reduction and environmental restoration by creating an opening between the Gulf of Mexico and Corpus Christi Bay, and placing excavated material in front of the Padre Island Seawall. The project channel will extend from the Gulf of Mexico through a jettied entrance and a channel through Mustang Island, east and adjacent to John F. Kennedy Causeway, therein to the existing Packery Channel, joining the main channel of the Gulf Intracoastal Waterway in the vicinity of mile 553.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by: Mr. Carl Anderson, (409) 766–3914, Project Manager, Project Management Branch, or Mr. John C. Baker, (409) 766–3037, Environmental Lead, Environment Section, Planning and Environmental Branch, P.O. Box 1229, Galveston, Texas 77553–1229.

SUPPLEMENTARY INFORMATION: 1. The study process began with the Water Resources Development Act of 1999, Section 556, providing contingent authorization to construct the North Padre Island Storm Damage Reduction and Environmental Restoration Project, Texas, if the Secretary of the Army determined that the locally preferred plan (LPP) was technically sound and environmentally acceptable.

2. A "No Action" alternative will be evaluated and presented for comparison purposes in evaluating the various construction alternatives.

3. Scoping: The scoping process will involve Federal, State, and local agencies, and other interested persons and organizations. A series of scoping workshops will be conducted to discuss various issues associated with the channel improvements and placement of dredged material. Separate Scoping Notices will be issued for the various workshops. Issues to be considered in this process include beneficial uses of dredged material, changes in bay salinity and circulation, water and sediment quality, erosion along the channel, and threatened and endangered species impacts.

Any person or organization wishing to provide information on issues or concerns should contact the Corps of Engineers at the above address.

4. Coordination: Further coordination with environmental agencies will be conducted under the Fish and Wildlife Coordination Act, Endangered Species Act, Clean Water Act, National Historic Preservation Act, Magnuson-Stevens Fishery Conservation and Management Act (Essential Fish Habitat), and the Coastal Zone Management Act (Texas Coastal Management Program).

5. DEIS Preparation: It is estimated that the DEIS will be available to the public for review and comment in November 2001.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–11466 Filed 5–7–01; 8:45 am]

BILLING CODE 3710–52–M

DEPARTMENT OF ENERGY

Idaho Operations Office; Industry Materials of the Future (Industry Specific and Crosscutting Technologies)

AGENCY: Idaho Operations Office, DOE

ACTION: Notice of availability of financial assistance solicitation.

SUMMARY: The U.S. Department of Energy, Idaho Operations Office is seeking applications for cost-shared research and development of materials or materials processing methods, in accordance with the Program Plan for the Industrial Materials for the Future Program, available at www.oit.doe.gov. This will be a national effort to research, design, develop, engineer, and test new and improved materials to achieve improvements in energy efficiency, emissions and waste reduction, productivity, product quality, and global competitiveness.

DATES: The issuance date of Solicitation Number DE–PS07–01ID13985 will be on April 26, 2001. The deadline for receipt of applications will be approximately on May 31, 2001.

ADDRESSES: The solicitation in its full text will be available on the Internet at the following URL address: *http://www.id.doe.gov/doeid/PSD/proc-div.html or http://e-center.doe.gov.* Applications should be submitted to: Seb Klein, Procurement Services Division, U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, Mail Stop 1221, Idaho Falls, Idaho 83401–1563.

FOR FURTHER INFORMATION CONTACT: Seb Klein, Contract Specialist, kleinsm@id.doe gov.

SUPPLEMENTARY INFORMATION: The statutory authority for the program is the Federal Non-Nuclear Energy Research and Development Act of 1974 (P.L. 93–577). The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 81.086.

R.J. Hoyles,

Director, Procurement Services Division.

[FR Doc. 01–11520 Filed 5–7–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC01–566–000, FERC Form 566]

Proposed Information Collection and Request for Comments

May 2, 2001.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before July 9, 2001.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425, and by e-mail at *mike.miller@ferc.fed.us.*

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–566 "Annual Report of a Utility's Twenty Largest Purchasers" (OMB No. 1902–0114) is used by the Commission to implement the statutory provisions of the Federal Power Act section 305(c)(2) (FPA) as amended by Title II, Section 211 of the Public Utility Regulatory Policies Act of 1978 (PURPA) (16 U.S.C. 825d). EPA section 305—Officials Dealing in Securities—Interlocking Directorates defines the annual reporting requirements for public utility officers and directors to report officer and director positions they hold with, among other entities, a public utility's top twenty customers of electric energy. FPA section 305(c)(2) states "each

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public utility shall publish a list, pursuant to rules prescirbed by the Commission * * * This statutory requirement to publish customers list allows the public the opportunity to compare the customers listed with the interlocking directorate information filed in FERC Form 561, by public utility officers and directors, for the identification of positions where the relationship may be employed, for example, for the director's own benefit or profit, or for the benefit or profit of any other person or persons and to the detriment of the utility's, or the public interest. The required public utility filers, the necessary filing information, the requirement to publish the information and the filing deadline are all mandated by the FPA. The Commission is not empowered to amend or waive these statutory requirements. Requirements the Commission has the authority to amend, such as the format of the filing itself and the number of required copies are found at 18 CFR 46.3.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
175	1	6	1,050

The estimated total cost to respondents is $59,083 (1,050 hours divided by 2,080 hours per year per employee times $117,041 per year per average employee=$59,083). The cost per respondent is $338.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

David P. Boergers,

Secretary.

[FR Doc. 01–11489 Filed 5–7–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC01–561–000; FERC Form 561]

Proposed Information Collection and Request for Comments

May 2, 2001.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before July 9, 2001.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street NE., Washington DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425, and by e-mail at *mike.miller@ferc. fed.us.*

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC Form 561 "Annual Report of Interlocking Positions" (OMB No. 1902–0099) is used by the Commission to implement the statutory provisions of the Federal Power Act section 305 (FPA) as amended by Title II, Section 211 of the Public Utility Regulatory Policies Act of 1978 (PURPA) (16 U.S.C. 825d). Submission of FERC Form 561 satisfies the FPA section 305(b) and (c) annual reporting requirements for public utility officers and directors to report officer and director positions they hold with financial institutions, insurance companies, utility equipment providers, utility fuel providers, and a utility's top twenty customers of electric energy. FPA section 305(c)(3)(A) defines the public utilities who are required to file. FPA section 305(c)(2) requires that the filed information be made available to the public. FPA section 305(c)(1) requires an annual filing deadline of April 30th. The necessary filing information, the required filers, the requirement to make the information available to the public and the filing deadline are all mandated by the FPA. The Commission is not empowered to amend or waive these statutory requirements. Requirements the Commission has the authority to amend, such as the format of the filing itself and the number of required copies, are found at 18 CFR 46.6 and 131.31.

The Commission has used the information filed in FERC Form 561 for the identification of: (1) Possible interlocking positions where the relationship is employed for the director's own benefit or profit, or for the benefit or profit of any other person or persons and to the detriment of the utility's, or the public interest; (2) the possible existence of control over a large number and geographically widespread public utilities by a small group of individuals; (3) the lack of arm's length dealings between public utilities and organizations furnishing financial services to consumers; and (4) the evasion by means of common control of competition resulting in higher costs and poorer services to consumers.

FERC Form 561 is available in an Excel spreadsheet and requires only updating of the prior year's information. One signed original hard copy and one photocopy are the required submission to the Commission; the electronic file is an optional submission.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of information.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
1,600	1	0.25	400

The estimated total cost to respondents is $22,508. (400 hours divided by 2,088 hours per year per employee times $117,041 per year per average employee=$22,508). The cost per respondent is $14.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

David P. Boergers,

Secretary.

[FR Doc. 01–11490 Filed 5–7–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR01–1–000]

Associated Natural Gas Company; Notice of Offer of Settlement

May 2, 2001.

Take notice that on April 18, 2001, Associated Natural Gas Company (ANG) tendered for filing a Stipulation and Agreement in the above referenced proceeding. The proposed Settlement established a firm reservation charge of $1.04146 per MMBtu, a maximum usage charge of $0.00273 per MMBtu and a maximum interruptible transportation rate of $0.03697 per MMBtu., effective November 1, 2000.

The Settlement also provides that ANG shall file on or before November 1, 2003 either (1) a new petition for rate approval under Section 284.123(b)(2) or (2) a cost-and revenue study that complies with Section 154.313 of the Commission's regulations.

Initial comments on ANG's filing are due on or before May 8, 2001 and reply comments are due on or before May 18, 2001. Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11487 Filed 5–7–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–147–000]

Northern Natural Gas Company; Notice of an Application

May 2, 2001.

Take notice that on April 6, 2001 Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP01–147–000, a request pursuant to Section 7(b) of the Natural Gas Act (NGA), as amended, and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), requesting permission and approval to abandon service under an individually certificated agreement, all as more fully set forth in the application which is on file with the Commission, and open to public inspection. The application may be viewed on the web at *http://www.ferc.fed/us/online/rims/htm* (Call 202–208–2222 for assistance.)

Specifically, Northern proposes to abandon service to El Paso Natural Gas

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Company (El Paso) under Rate Schedule T–2, contained in its FERC Gas Tariff, Original Volume No. 2. Northern further states that the underlying contract has not provided service to several years and has been terminated in accordance with the contract terms.

Any questions regarding this application should be directed to Keith L. Petersen, Director, Certificates and Reporting for Northern, 1111 South 103rd Street, Omaha, Nebraska 68124, at (402) 398–7421 or Bret Fritch, Senior Regulatory Analyst, at (402) 398–7140.

Any person desiring to be heard or make any protest with reference to said application should on or before May 23, 2001, file with the Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedures (18 CFR Sections 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR Section 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the Protestants parties to the proceedings. Any person wishing to become party to a proceeding or to participate as a party in any hearing therein must file a petition in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedures, a hearing will be held without further notice before the Commission on this application if no protest or motion to intervene is filed within the time required herein. At that time, the Commission, on its own review of the matter, will determine whether granting the Abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given. Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 01–11478 Filed 5–4–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–160–000]

Northwest Alaskan Pipeline Company; Notice of Application for Permission and Approval To Abandon Sale of Natural Gas

May 2, 2001.

Take notice that Northwest Alaskan Pipeline Company (Northwest Alaskan) on April 17 2001 filed an application pursuant to section 7(b) of the Natural Gas Act, 15 U.S.C. 717f(b); section 9 of the Alaska Natural Gas Transportation Act (ANGTA), 15 U.S.C. 719g; and Part 157 of the Commission's regulations, 18 CFR part 157, seeking the Commission's permission and approval to abandon Northwest Alaskan's jurisdictional sales of up to 800,000 Mcf per day of natural gas to Pan-Alberta Gas (U.S.) Inc. (PAGUS). Northwest Alaskan states that it presently sells Canadian gas to PAGUS at the United States-Canada border under three gas purchase agreements that Northwest Alaskan executed as part of the contractual arrangements for construction of the Eastern Leg "prebuild" of the Alaska Natural Gas Transportation System (ANGTS) and which, with the Commission's approval, were assigned to PAGUS in 1989, 1992 and 1993.

Northwest Alaskan further states that Northwest Alaskan and PAGUS have entered into agreements to terminate their gas purchase agreements, subject to receipt of all necessary regulatory approvals. Northwest Alaskan also states that implementation of the overall transaction will require approval of the proposed abandonment, termination of Northwest Alaskan's tariff, certain consents from third parties and execution of certain additional documents. To accommodate these arrangements, Northwest Alaskan requests that the Commission authorize the requested abandonment to be effective on the day after the day on which the parties close their transaction. Northwest Alaskan states that the parties anticipate closing the transaction on or before May 15, 2001, and that Northwest Alaskan will notify the Commission when the closing has occurred.

Northwest Alaskan states that it is serving copies of the instant application on its affected customers. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Any questions regarding the application should be directed to Michael Thompson at (202) 393–20005, Northwest Alaskan Pipeline Company c/o Wright & Talisman, P.C. 1200 G Street, N.W. Suite 600 Washington, D.C. 20005.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before May 22, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding.

Only parties to the proceeding can ask for court review of Commission orders in the proceeding. However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Also, comments protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

David P. Boergers,

Secretary.

[FR Doc. 01–11477 Filed 5–7–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR01–11–000]

PanEnergy Louisiana Intrastate, LLC; Notice of Petition for Rate Approval

May 2, 2001.

Take notice that on March 30, 2001, LLC (PanEnergy) filed a Petition for Rate Approval (Petition) pursuant to Section 284.123(b)(2) of the Commission's regulations, 18 CFR 284.123(b)(2). In the Petition, PanEnergy requests the Commission to approve a rate for firm and interruptible transportation service under Section 311(a)(2) of the Natural Gas Policy Act of $0.2071 per MMBtu.

Pursuant to Section 284.123(b)(2)(ii) of the Commission's regulations, if the Commission does not act within 150 days of the Petition's filing date, the rates proposed therein will be deemed to be fair and equitable and not in excess of an amount that interstate pipelines would be permitted to charge for similar services. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in the rate proceeding must file a motion to intervene with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426 in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before May 17, 2001. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11486 Filed 5–7–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR01–2–001]

The Peoples Gas Light and Coke Company; Notice of Compliance Filing

May 2, 2001.

Take notice that on April 11, 2001, The Peoples Gas Light and Coke Company (Peoples Gas) tendered for filing an Amended Operating Statement to be effective December 1, 2000.

Peoples Gas states that the purpose of this filing is to revise the rates on the Statement of Currently Effective Rates, from the Operating Statement, showing the corrections required by the Commission's March 30, 2001 order in Docket No. PR01–2–000.

Peoples Gas states that a copy of this filing has been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before May 17, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

David P. Boergers,

Secretary.

[FR Doc. 01–11488 Filed 5–7–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–95–020; Docket No. EL00–98–019; Docket No. EL01–47–002; Docket No. EL01–72–000]

San Diego Gas & Electric Company, Complainant, v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents; Investigation of Practices of the California ISO and the California Exchange, Removing Obstacles to Increased Generation and Natural Gas Supply in the Western United States, Section 210(d) Proceeding Applicable to Electric Utilities in California; Notice of Opportunity for Comment on Motions for Emergency Relief and Institution of Section 210(d) Proceeding

May 2, 2001.

Take notice that Ridgewood Power LLC (Ridgewood) submitted a Request for Emergency Relief and an Updated Request for Emergency Relief in Docket Nos. EL00–95–020 and EL00–98–019 (on March 8, 2001 and April 9, 2001) requesting the Commission to take action to prevent qualifying facility (QF) capacity from going off-line in the State of California. Ridgewood asks the Commission to take actions that will permit those QFs in California that have not been paid fully for past power deliveries to enter arrangements to temporarily sell to third-party buyers within California. Ridgewood asks the Commission to declare that California electric utilities cannot deny transmission access to QFs or otherwise frustrate the ability of QFs to sell to third-party purchasers.

Also take notice that the California Cogeneration Council (Cogeneration Council) on April 9, 2001, filed a Motion for Emergency Relief in docket No EL01–47–000 requesting the Commission to take action to prevent QFs from going off-line in the State of California. Among other things, the Cogeneration Council requests the Commission to require interconnection, transmission, and related services under section 210(d) of the Federal Power Act on a temporary basis pending the resolution of accounts receivable issues. The Commission will address the Cogeneration Council's motion and the responses thereto in Docket No. EL01–47–002.

Take notice that the Commission is also instituting a proceeding under

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Section 210(d) on its own motion in Docket No. EL01–72–000. In this proceeding, the Commission will consider whether and to what extent it may need to order the provision of interconnection, transmission, and related services under Section 210(d) to alleviate generation capacity supply shortages in California.

Any person desiring to be heard or to protest such filing should file a motion to intervene, comments or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions, comments and protests should be filed on or before May 10, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of the filings are on file with the Commission and are available for public inspection. The filings may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Motions to intervene, comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(A)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Documents previously filed in Docket Nos. EL00–95–020 and EL00–98–019 and EL00–47–000, including those filed by the California Public Utilities Commission, Southern California Edison Company, and Pacific Gas and Electric Company, need not be refiled to be considered in these proceedings and serve to make those entities parties to these proceedings.

David P. Boergers,

Secretary.

[FR Doc. 01–11574 Filed 5–7–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–161–000]

Southern Natural Gas Company; Notice of Application

April 30, 2001.

Take notice that on April 20, 2001, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP01–161–000, an application, pursuant to Sections 7(b) and (c) of the Natural Gas Act and Part 157 of the Federal Energy Regulatory Commission's Regulations for abandonment authorization and a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline, compression and appurtenant facilities in Alabama and Mississippi, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes to construct and operate the facilities in order to accommodate deliveries to Calhoun Power Company (Calhoun), Alabama Gas Corporation (Alagasco), and the City of Sylacauga, Alabama (Sylacauga). It is stated that Calhoun proposes to construct an electric power generation plant in Calhoun County, Alabama, and Southern proposes to provide firm transportation service for Calhoun, delivering 85,000 Mcf of natural gas per day to Calhoun's plant for a 10-year term in the months June through September. It is stated that Alagasco and Sylacauga have contracted with Southern to provide natural gas deliveries on a firm basis for a 10-year term in the months October through May. Southern proposes to deliver 30,000 Mcf per day to Alagasco and 3,000 Mcf per day to Sylacauga.

Southern proposes to construct and operate pipeline facilities consisting of approximately 4.6 miles of pipeline loop on its 24-inch mainline in Pickens County, Alabama; approximately 11 miles of replacement line of various diameters on various Southern pipelines in Alabama and Mississippi. Southern proposes to install one 6,000 horsepower compressor at its existing Pell City Compression Station in St. Clair, County, Alabama. Southern proposes to construct and operate dual 18-inch taps on its North Main Line and North Main Line Loop in Calhoun County, Alabama, to facilitate deliveries to Calhoun. Southern estimates the total cost of the proposed facilities at $24.9 million.

Southern states that Calhoun intends to construct nonjurisdictional facilities consisting of a meter station and 2900 feet of connecting pipeline to facilitate the deliveries to its power plant. It is stated that Alabama Power Company, which has contracted to purchase the electric output produced by Calhoun's plan, will construct a nonjurisdictional connecting line to connect its facilities to Southern's Pell City Compressor Station.

Southern explains that, in conjunction with the replacement of various segments of the North Main Line and the Bessemer-Calera Line and Loop, these lines will be tested hydrostatically in order to increase their Maximum Allowable Operating Pressure (MAOP) to 750 psig and 600 psig, respectively. It is further explained that, as a result, 3 segments of 12-inch pipeline, which constitute a river crossing of the Tombigbee River, will be abandoned, because they cannot be uprated to operate at higher pressures.

Any questions regarding this application should be directed to R. David Hendrickson, Associate General Counsel, at (205) 325–714, Southern Natural Gas Company, Post Office Box 2563, Birmingham, Alabama 35202–2563.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before May 21, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding. Comments and protests may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the Commission's website at http://www.ferc.fed.us/efi/doorbell.htm.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, Commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important to file comments or to intervene as early in the process as possible.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–11476 Filed 5–4–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES01–31–000, et al.]

American Transmission Company LLC, et al.; Electric Rate and Corporate Regulation Filings

May 1, 2001.

Take notice that the following filings have been made with the Commission:

1. American Transmission Company LLC

[Docket No. ES01–31–000]

Take notice that on April 23, 2001, American Transmission Company LLC (American Transmission) submitted an application pursuant to section 204 of the Federal Power Act requests authorization to issue ownership interests totaling approximately 8.62% of its total ownership shares. American Transmission also requests authorization to issue additional ownership interests in an amount not to exceed 3% of American Transmission's total ownership per transaction over a two-year period. Alternatively, American Transmission requests authorization no more than an additional 5% of its cumulative ownership interests over a two-year period.

American Transmission also requests a waiver of the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment date: May 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Southern California Edison Company

[Docket No. ER01–1874–000]

Take notice that on April 26, 2001, Southern California Edison Company (SCE) tendered for filing a Service Agreement For Wholesale Distribution Service under SCE's Wholesale Distribution Access Tariff and an Interconnection Facilities Agreement (Agreements) between SCE and Alta Mesa Power Partners, LLC (AMPP).

These Agreements specify the terms and conditions under which SCE will interconnect AMPP's generating facility to its electrical system and provide Distribution Service for up to 40 MW of power produced by the generating facility.

Copies of this filing were served upon the Public Utilities Commission of the State of California and AMPP.

Comment date: May 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Southern Company Services, Inc.

[Docket No. ER01–1868–000]

Take notice that on April 25, 2001, Southern Company Services, Inc. (SCS) acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company (MPC), and Savannah Electric and Power Company (collectively referred to as Southern Company), tendered for filing two (2) service agreements for Network Integration Transmission Service between Southern Companies and Energy Marketing, a department of SCS, as agent for MPC, under the Open Access Transmission Tariff of Southern Companies (FERC Electric Tariff, Fourth Revised Volume No. 5). Under these two (2) agreements, power will be respectively delivered to (i) Singing River EPA's North Lucedale Delivery Point and (ii) Singing River EPA's Joe Batt Road Delivery Point. These agreements are being filed in conjunction with a power sale by SCS, as agent for MPC, to South Mississippi Electric Power Association under Southern Companies' Market-Based Rate Power Sales Tariff.

Comment date: May 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Mirant Delta, LLC, Mirant Potrero, LLC

[Docket No. ER01–1876–000]

Take notice that, on April 26, 2001, Mirant Delta, LLC (Mirant Delta) and Mirant Potrero, LLC (Mirant Potrero) tendered for filing certain revised tariff sheets to the Must-Run Service Agreements between Mirant Delta, Mirant Potrero, and the California Independent System Operator Corporation in order to (1) revise the agreements to reflect the January 19, 2001 name changes of the Mirant Parties from Southern Energy Delta, L.L.C. and Southern Energy Potrero, L.L.C. to Mirant Delta, LLC and Mirant Potrero, LLC, respectively, and (2) change the persons identified in Schedule J of the RMR Agreements to receive notices on behalf of the Mirant Parties.

Comment date: May 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. San Diego Gas & Electric Company

[Docket No. ER01–1878–000]

Take notice that on April 26, 2001, San Diego Gas & Electric Company (SDG&E) tendered for filing as service agreements to its FERC Electric Tariff, First Revised Volume No. 6, two interconnection agreements. Both agreements relate to the interconnection of a new generation plant to be owned by RAMCO, Inc. (RAMCO). The plant, with a capacity of approximately 49.5 megawatts, is being constructed on an expedited basis to meet potential shortfalls this summer in the Western states' electricity supplies. It will be located in Escondido, San Diego County, California and is expected to begin service on or about July 8, 2001.

Service Agreement No. 5 is an Expedited Interconnection Facilities Agreement dated April 26, 2001 between SDG&E and RAMCO, under which SDG&E will construct, operate, and maintain the proposed interconnection facilities. Service Agreement No. 6, the Interconnection Agreement between SDG&E and RAMCO dated April 12, 2001, establishes interconnection and

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operating responsibilities and associated communications procedures between the parties. SDG&E requests an effective date of April 26, 2001 for both agreements.

SDG&E states that copies of the filing have been served on RAMCO and on the California Public Utilities Commission.

Comment date: May 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Dominion Nuclear Connecticut, Inc.

[Docket No. ER01–1879–000]

Take notice that on April 26, 2001 Dominion Nuclear Connecticut, Inc. (DNC) tendered for filing an agreement for the sale of electric energy and capacity by DNC to Dominion Nuclear Marketing, I, Inc., Dominion Nuclear Marketing II, Inc. and Dominion Nuclear Marketing III, L.L.C., dated March 30, 2001.

Comment date: May 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

David P. Boergers,

Secretary.

[FR Doc. 01–11484 Filed 5–7–01; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1041–001, et al.]

El Dorado Energy, LLC, et al.; Electric Rate and Corporate Regulation Filings

May 2, 2001.

Take notice that the following filings have been made with the Commission:

1. El Dorado Energy, LLC

[Docket No. ER01–1041–001]

Take notice that on April 27, 2001, El Dorado Energy, LLC (El Dorado) tendered for filing, in compliance with the Commission's order of February 13, 2001, the following sheets of El Dorado's Electric Rate Schedule No. 2.

Substitute First Revised Sheet No. 2
Original Sheet No. 3

Comment date: May 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Pacific Gas and Electric Company

[Docket No. ER01–1230–001]

Take notice that on April 26, 2001, Pacific Gas and Electric Company (PG&E) tendered for filing a Generator Special Facilities Agreement (GFSA) between PG&E and the Duke Energy Moss Landing, LLC (Duke) to correct the rate schedule designation on the GSFA in compliance with the Commission's Letter Order dated April 12, 2001. The Letter Order conditionally accepted the GSFA effective on November 1, 2000, provided that PG&E file the GSFA with the revised rate schedule designation as required in FERC Order No. 614, FERC Stats. & Regs. ¶31,096.

Copies of this filing have been served upon the California Independent System Operator Corporation, Duke and the California Public Utilities Commission.

Comment date: May 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Coral Energy Management, LLC

[Docket No. ER01–1363–001]

Take notice that on April 27, 2001, Coral Energy Management, LLC (Seller) tendered for filing pursuant to the order of the Federal Energy Regulatory Commission (Commission) issued on April 17, 2001, in the above-captioned docket. The Commission's April 17 order accepted Seller's market-based rate filing, conditioned upon Seller, within 15 days of the order, changing the designation of its rate schedule to: Rate Schedule FERC No. 1. Seller's filing reflects this change.

Comment date: May 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Cabrillo Power I LLC El Segundo Power, LLC Long Beach Generation LLC

[Docket No. ER01–1718–001]

Take notice that on April 27, 2001, West Coast Power LLC tendered for filing a redacted long-term power sales agreement (Agreement) between the California Department of Water Resources and Dynegy Power Marketing, Inc., acting as agent for Cabrillo Power I LLC, El Segundo Power, LLC and Long Beach Generation LLC. This filing is an amendment to an unredacted version of the Agreement, which was submitted on April 2, 2001.

Comment date: May 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Commonwealth Edison Company

[Docket No. ER01–1875–000]

Take notice that on April 27, 2001, Commonwealth Edison Company (ComEd) tendered for filing Interconnection Agreements with Elwood Energy II LLC (Elwood II) and Elwood Energy III LLC (Elwood III). ComEd requests an effective date of April 28, 2001 and accordingly seeks waiver of the Commission's notice requirements. Copies of the filing were served on Elwood II, Elwood III and the Illinois Commerce Commission.

Comment date: May 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. American Transmission Systems, Inc.

[Docket No. ER01–1880–000]

Take notice that on April 26, 2001, American Transmission Systems, Inc. tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service for AES NewEnergy, Inc., the Transmission Customer. Services are being provided under the American Transmission Systems, Inc. Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER99–2647–000. The proposed effective date under the Service Agreement is April 25, 2001 for the above mentioned Service Agreement in this filing.

Comment date: May 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER01–1881–000]

Take notice that on April 26, 2001, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy) tendered for filing a Notice of Cancellation of the Service Agreement between GPU Energy and FirstEnergy Trading and Power Marketing Inc. (now FirstEnergy Trading Services, Inc.), FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 96. GPU Energy requests that cancellation be effective the 25th day of June 2001.

Comment date: May 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. American Transmission Systems, Inc.

[Docket No. ER01–1882–000]

Take notice that on April 26, 2001, American Transmission Systems, Inc. tendered for filing a Service Agreement to provide Firm Point-to-Point Transmission Service for AES NewEnergy, Inc., the Transmission Customer. Services are being provided under the American Transmission Systems, Inc. Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER99–2647–000.

The proposed effective date under the Service Agreement is April 25, 2001 for the above mentioned Service Agreement in this filing.

Comment date: May 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER01–1883–000]

Take notice that on April 26, 2001, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy) tendered for filing a Notice of Cancellation of the Service Agreement between GPU Energy and QST Energy Trading, FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 88. GPU Energy requests that cancellation be effective the 25th day of June 2001.

Comment date: May 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Xcel Energy Operating Companies, Northern States Power Company (Minnesota), Northern States Power Company) (Wisconsin)

[Docket No. ER01–1884–000]

Take notice that on April 26, 2001, Northern States Power Company and Northern States Power Company (Wisconsin) (jointly NSP Companies), wholly owned utility operating company subsidiaries of Xcel Energy, Inc., tendered for filing a Firm Point-to-Point Transmission Service Agreement (Agreement) between the NSP Companies and NSP Energy Marketing. The NSP Companies propose the Agreement be included in the Xcel Energy Operating Companies FERC Joint Open Access Transmission Tariff, Original Volume No. 2, as Service Agreement No. 187–NSP, pursuant to Order No. 614. The NSP Companies also submit Eighth Revised Sheet No. 1 (Table of Contents) to the Joint OATT, Original Volume 2, to reflect inclusion of the Agreement.

The NSP Companies request that the Commission accept the Agreement and Eighth Revised Sheet No. 1 effective May 1, 2001, and request waiver of the Commission's notice requirements as may be necessary for the Agreement to be accepted for filing on the date requested.

Comment date: May 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Ameren Energy Marketing Company

[Docket No. ER01–1885–000]

Take notice that on April 26, 2001, Ameren Energy Marketing Company (AEM) tendered for filing with the Commission of the partial suspension of an existing power sales agreement between AEM and the Illinois Municipal Electric Agency (IMEA) involving service to the City of Sullivan, Illinois (Sullivan).

Copies of this filing have been served on Sullivan, IMEA, and the Illinois Commerce Commission.

Comment date: May 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Virginia Electric and Power Company

[Docket No. ER01–1886–000]

Take notice that on April 26, 2001, Virginia Electric and Power Company (Dominion Virginia Power or the Company) tendered for filing the following: Service Agreement with CMS Marketing, Services and Trading for Firm Point-to-Point Transmission Service designated as Service Agreement No. 317 under the Company's FERC Electric Tariff, Second Revised Vol. No. 5.

The foregoing Service Agreement is tendered for filing under the Open Access Transmission Tariff to Eligible Purchasers effective June 7, 2000. Under the tendered Service Agreement, Dominion Virginia Power will provide point-to-point service to CMS Marketing, Services and Trading under the rates, terms and conditions of the Open Access Transmission Tariff. Dominion Virginia Power requests an effective date of April 26, 2001, the date of filing of the Service Agreements.

Copies of the filing were served upon CMS Marketing, Services and Trading, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: May 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. PJM Interconnection, L.L.C.

[Docket No. ER01–1887–000]

Take notice that on April 26, 2001 PJM Interconnection, L.L.C. (PJM), tendered for filing an executed interconnection service agreement between PJM and Hunlock Creek Energy Ventures.

PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective dates agreed to by the parties.

Copies of this filing were served upon Hunlock Creek Energy Ventures and the state regulatory commissions within the PJM control area.

Comment date: May 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. PJM Interconnection, L.L.C.

[Docket No. ER01–1888–000]

Take notice that on April 26, 2001, PJM Interconnection, L.L.C. (PJM) tendered for filing amendments to the PJM Open Access Transmission Tariff (PJM Tariff) to conform section B.2(d) of Attachment K of the PJM Tariff to PJM Tariff amendments approved by the Commission in Docket No. ER00–2927–000 that modified how PJM distributes excess accumulations of congestion charges.

PJM requests a waiver of the Commission's 60-day notice requirement to permit an effective date for the amendments of September 1, 2000 consistent with the effective date of the amendments accepted by the Commission in Docket No. ER00–2927–000.

PJM states that it served copies of this filing on all parties of record in Docket

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No. ER00–2927–000, all PJM members and the state electric regulatory commissions in the PJM control area.

Comment date: May 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Tampa Electric Company

[Docket No. ER01–1895–000]

Take notice that on April 27, 2001, Tampa Electric Company (Tampa Electric) tendered for filing cost support schedules showing an updated daily capacity charge for its scheduled/short-term firm interchange service provided under interchange contracts with each of 17 other utilities. Tampa Electric also tendered for filing updated caps on the charges for emergency and scheduled/short-term firm interchange transactions under the same contracts.

In addition, Tampa Electric tendered for filing a revised transmission loss factor, and revised open access transmission tariff sheets on which the transmission loss factor is stated.

Tampa Electric requests that the updated daily capacity charge and caps on charges, and the revised transmission loss factor and tariff sheets, be made effective as of May 1, 2001, and therefore requests waiver of the Commission's notice requirement.

Tampa Electric states that a copy of the filing has been served upon each of the parties to the affected interchange contracts with Tampa Electric and each party to a service agreement under Tampa Electric's open access tariff, as well as the Florida and Georgia Public Service Commissions.

Comment date: May 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. EOPT Power Group Nevada, Inc.

[Docket No. EG01–200–000]

Take notice that on April 26, 2001, EOPT Power Group Nevada, Inc. (Applicant), 2801 Brand Ave., Nampa, Idaho 83867, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant, a wholly owned subsidiary of Environmental Oil Processing Technology Corp, intends to own and/or operate an eligible facility in Nevada. The facilities will consist of up to three 10 MW modified G.E. LM 1500 natural gas fired gas turbines, as well as interconnecting transmission facilities necessary to effect sales of electric energy at wholesale.

Comment date: May 23, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

17. Wells Fargo Bank Northwest, National Association, not in its individual capacity, but solely as Certificate Trustee and Lessor

[Docket No. EG01–201–000]

Take notice that on April 27, 2001, Wells Fargo National Bank Northwest, National Association, not in its individual capacity but solely as Certificate Trustee and Lessor, (Trust) with its principal place of business at 79 South Main Street, Salt Lake City, UT 84111, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Trust will be owner lessor of up to five (5) natural gas-fueled, simple cycle combustion turbine generating facilities to be located in the service area of Kansas City Power & Light Company ("KCPL") with an approximate power production capacity of 385 MW. The Trust will lease the Facilities to KCPL. The Facilities are expected to commence commercial operation in June 2003.

Comment date: May 23, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

18. Mid-Continent Area Power Pool

[Docket Nos. OA97–163–013, ER97–1162–000 and OA97–658–000]

Take notice that on April 27, 2001, the Mid-Continent Area Power Pool (MAPP) notified the Commission of certain procedural changes regarding MAPP Schedule F to the Restated Agreement.

A copy of the notification was served on all parties in the above-referenced proceedings and the state public service commissions located in the MAPP region.

Comment date: May 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 01–11575 Filed 5–7–01; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 11616–000–Michigan; 2566–010–Michigan]

City of Portland, MI, Consumers Energy Company; Notice of Availability of Final Environmental Assessment

May 3, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the City of Portland's application for original license for the operating unlicensed Portland Municipal Hydroelectric Project, and Consumers Energy Company's new license for the continued operation of the Webber Hydroelectric Project, located on the Grand River, in the City of Portland, Ionia County, Michigan, and has prepared a Final Environmental Assessment (FEA) for the projects. In the FEA, the Commission's staff has analyzed the potential environmental effects of the projects and has concluded that licensing the projects, with staff's recommended measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426. The DEA may also be viewed on the web at *http://www.ferc.fed.us/online/rims.htm.* Please call (202) 208–2222 for assistance. If you have any questions regarding this notice, please contact Tom Dean at (202) 219–2778.

David P. Boergers,

Secretary.

[FR Doc. 01–11483 Filed 5–7–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

May 2, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of license.

b. *Project No.:* 176–025.

c. *Date Filed:* March 27, 2001.

d. *Applicant:* City of Escondido.

e. *Name of Project:* Escondido Hydroelectric Project.

f. *Location:* Partially along the San Luis Rey River and Escondido Creek, northeast of the City of Escondido, in northern San Diego County, California. The project area does utilize federal lands administered by the U.S. Bureau of Land Management and tribal lands (including the Rincon, San Pasqual, and La Jolla Indian Reservations).

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contact:* Mr. Jack Hoagland, City of Escondido, 201 N. Broadway, Escondido, California 92025. (760) 839–4546.

i. *FERC Contact:* Any questions on this notice should be addressed to: (a) CarLisa Linton at (202) 219–2802 or e-mail address *carlisa.lintonpeters@ferc.fed.us.;* or (b) Anum Purchiaroni at (202) 219–3297 or e-mail address *anumzziata.purchiaroni@ferc.fed.us.*

j. *Deadline for filing comments and/or motions:* May 29, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426. Please include the Project Number (P–176–025) on any comments or motions filed. Motions to intervene, protests and comments may also be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at: *http://www.ferc.fed.us/efi/doorbell.htm.*

k. Description of Proposed Project: The City of Escondido, filed a proposal to replace the Rincon and Wohlford penstocks, two structurally degraded pipelines in northern San Diego County, California. The existing Rincon penstock would be removed and disposed of then replaced within the same alignment with an approximately 1,940-foot (0.36-mile) long below-grade, welded-steel penstock. The new Wohlford penstock would be approximately 4,070 feet (0.77-mile) long and would deviate from the original alignment to avoid geologically unstable areas and impacts to biological resources. Approximately 2,600 feet of the proposed penstock would be located within rights-of-way for Oakvale and Lake Wohlford Roads. The proposed Wohlford penstock would be installed below-grade with the exception of one section. Both new penstocks would be designed to maintain, as closely as possible, the original hydraulic conditions, including flow rates, power generating capacity, and headloss.

l. Locations of the Application: A copy of the application, filed March 27, 2001, is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This application may be viewed on the internet at *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance). A copy is available for inspection and reproduction at the address listed in item "h" above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS" "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant as specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–11479 Filed 5–4–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Draft License Application and Preliminary Draft Environmental Assessment and Request for Preliminary Recommendations, Prescriptions, and Terms and Conditions

May 2, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 346.

c. *Date Filed:* April 30, 2001.

d. *Applicant:* Minnesota Power Inc.

e. *Name of Project:* Blanchard Hydroelectric Project.

f. *Location:* On the Mississippi River near the City of Royalton, in Morrison County, MN. The project does not occupy any federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.A. 791(a)–825(r).

h. *Applicant Contact:* Bob Bohm, Minnesota Power, Inc., P.O. Box 60, Little Falls, MN 56345, *rbohm@mnpower.com* 320–632–2318, ext. 5042.

i. *FERC Contact:* Tom Dean, *thomas.dean@ferc.fed.us.* 202–219–2778.

j. *Status of Project:* With this notice the Commission is soliciting: (1) Preliminary recommendations,

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prescriptions, and terms and conditions on the Preliminary Draft Environmental Assessment (PDEA); and (2) preliminary comments on the Draft License Application.

k. *Deadline for filing preliminary comments, recommendations, prescriptions, and terms and conditions:* 60 days from the issuance date of this notice.

All comments on the PDEA and Draft License Application should be sent to the addresses noted above in Item (h), with one copy filed with FERC at the following address: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. All comments must include the project name and number and bear the heading Preliminary Comments, Preliminary Recommendations, Preliminary Prescriptions, or Preliminary Terms and Conditions.

Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Room 2–A, Washington, D.C. 20426, or by calling (202) 219–1371. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at http://www.ferc.fed.us/online/rims.htm, or call (202) 208–2222 for assistance.

Minnesota Power Inc. has mailed notification to members of the collaborative team and interested parties of the filed PDEA and Draft License Application. Copies of these documents are also available by calling the applicant contact identified in Item (h) above.

m. With this notice, we are initiating consultation with the Minnesota STATE HISTORIC PRESERVATION OFFICER (SHPO), as required by Section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

David P. Boergers,

Secretary.

[FR Doc. 01–11480 Filed 5–7–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Scoping Meetings and Soliciting Scoping Comments

May 2, 2001.

Take notice the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New major license.

b. *Project No.:* P–2142–031.

c. *Date filed:* December 28, 1999.

d. *Applicant:* FPL Energy Maine Hydro, LLC.

e. *Name of Project:* Indian Pond Hydroelectric Project.

f. *Location:* On the Kennebec River, near the town of The Forks, Somerset and Piscataquis counties, Maine. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Kenneth P. Hoffman, Vice President; FPL Energy Maine Hydro, LLC; 700 Universe Boulevard Juno Beach, FL 33408; (561) 694–4000 and Robert C. Richter III; Senior Environmental Coordinator; FPL Energy Maine Hydro, LLC; 100 Middle Street; Portland, ME 04101; (207) 771–3536.

i. *FERC Contact:* Kevin Whalen (202) 219–2790; email: kevin.whalen@ferc.fed.us.

j. *Deadline for filing scoping comments:* July 9, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary; Federal Energy Regulatory Commission; 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Protests, comments on filings, comments on environmental assessments and environmental impact statements, and reply comments may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

k. *Status of environmental analysis:* This application is not ready for environmental analysis at this time.

l. *Description of the Project:* The proposed peaking project consists of the following existing facilities: (1) A 2,000-foot-long dam, consisting of (a) a 270-foot-long, 175-foot-high concrete section, (b) a 200-foot-long attached powerhouse section, and (c) an earthen section in excess of 1,500 feet in length; (2) four steel penstocks ranging from 6 feet to 24 feet in diameter; (3) a concrete powerhouse containing four generating units, having a total rated hydraulic capacity of 7,140 cubic feet per second and installed generation capacity of 76.4 megawatts (4) a 3,746-acre impoundment varying in width from 0.9 to 1.5 miles, extending about 9 miles upstream, that has a usable storage capacity of 850 million cubic feet; and (5) appurtenant facilities. The applicant estimates the total average annual generation would be approximately 202 million kilowatt hours.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20246, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

n. Scoping Process

The Commission intends to prepare an Environmental Assessment (EA) on the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Scoping Meetings

The Commission will hold scoping meetings, one in the evening and one in the daytime, to help us identify the scope of issues to be addressed in the EA.

The evening scoping meeting is primarily for public input and the daytime scoping meeting will focus on resource agency concerns. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Evening Scoping Meeting

Date: June 6, 2001

Time: 7:00 to 9:00 pm

Place: The Forks Town Hall, US Route 201, The Forks, Maine

Daytime Scoping Meeting

Date: June 7, 2001

Time: 10:00 am to 12:00 pm

Place: Best Western Senator Inn (Embassy Room), 284 Western Avenue at I–95, Augusta, Maine

Individuals needing directions to the scoping meetings should contact Mr. Robert Richter, FPL Energy Maine Hydro, LLC, at (207) 771–3536. Commission staff previously conducted a site visit of the Indian Pond Hydroelectric Project on September 28 and 29, 2000. No additional site visit is planned at this time.

To help focus discussions, we will distribute a Scoping Document (SD1) outlining the subject areas to be addressed in the EA to the parties on the Commission's mailing list. Copies of the SD1 also will be available at the scoping meeting.

Objectives

At the scoping meetings, staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including view points in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project. Individuals presenting statements at the meetings will be asked to sign in before the meeting starts and to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist staff in defining and clarifying the issues to be addressed in the EA.

David P. Boergers,

Secretary.

[FR Doc. 01–11481 Filed 5–7–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amended License Application To Include Co-Applicant and Soliciting Motions To Intervene and Protests

May 2, 2001.

Take notice that the following amended hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New major license.

b. *Project No.:* P–2318–002.

c. *Date filed:* April 12, 2000.

d. *Applicants:* Erie Boulevard Hydropower, L.P. and Hudson River-Black River Regulating District.

e. *Name of Project:* E.J. West Hydro Project.

f. *Location:* On the Sacandaga River, 6 miles upstream from its confluence with the Hudson River, in the town of Hadley, Saratoga County, New York. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r) and the Commission regulations, 18 CFR 385.215(a), 16.9(b)(3) and 16.9(c).

h. *Applicant Contacts:* Mr. Jerry L. Sabattis, Hydro Licensing Coordinator, 225 Greenfield Parkway, Suite 201, Liverpool, New York 13088, (315) 413–2787 (Erie); and Mr. Thomas E. Brewer, Chief Engineer, Hudson River-Black River Regulating District, 350 Northern Boulevard, Albany, New York 12204, (518) 465–3491 (District).

i. *FERC Contact:* Lee Emery, E-mail address at *Lee.Emery@ferc.fed.us.* or telephone (202) 219–2779.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. *Description of Amended Application:* Erie filed its relicense application for the E.J. West Project with the Commission on December 13, 1991. The Commission issued a Notice of Application Ready for Environmental Analysis (REA) for the project on July 14, 2000. The description of project facilities are described in the REA Notice. The District is a state agency that currently operates and maintains the Great Sacandaga Lake and the Conklingville Dam for flood control and low-flow augmentation purposes for the Lower Hudson River. Erie currently generates hydroelectric power using its own powerhouse and the District's facilities of the dame and reservoir (Great Sacandaga Lake).

The Applicants have requested waivers concerning any final amendment deadline to accommodate the filing of this amendment, and they have requested the Commission, in their future licensing action on this project, consider issuing (1) a separate license to Erie (existing licensee) for the project powerhouse and generating facilities; and (2) a separate license to the District (currently unlicensed) for the Conklingville Dam and Great Sacandaga Lake.

m. A copy of the amendment is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2–A, Washington, DC 20426, or by calling (202) 208–1371. The amendment may be viewed on *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a

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party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

David P. Boergers,

Secretary.

[FR Doc. 01–11482 Filed 5–7–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

May 2, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 11961–000.

c. *Date filed:* April 17, 2001.

d. *Applicant:* Symbiotics, LLC.

e. *Name and Location of Project:* The Clearwater Dam Hydroelectric Project would be located on the Black River in Wayne County, Missouri. The project would utilize the U.S. Army Corps of Engineer's existing Clearwater Dam.

f. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

g. *Applicant Contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

h. *FERC Contact:* James Hunter, (202) 219–2839.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Motions to intervene, protests, and comments may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Please include the project number (P–11961–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if any intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the existing Clearwater Dam and Reservoir, would consist of: (1) A 200-foot-long 20-foot-diameter steel penstock; (2) a powerhouse containing two generating units, each with an installed capacity of 2.4 megawatts; (3) a five-mile long, 15-kV transmission line; and (4) appurtenant facilities. The project would have an average annual generation of 22.9 GWh.

k. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE,

Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–11485 Filed 5–7–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL01–4–000]

California Natural Gas Transportation Infrastructure

May 3, 2001.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Staff Technical Conference.

SUMMARY: Staff of the Federal Regulatory Commission will convene a technical conference to address current and projected interstate natural gas pipeline capacity to California, as well as the adequacy of the natural gas infrastructure within California. This notice establishes the date for the conference and the procedures by which interested parties can seek to participate in it.

DATES: The conference will be held May 24, 2001. Those interested in making presentations or participating in discussions should indicate their interest by May 14, 2001 by a letter addressed to the Secretary, Federal Energy Regulatory Commission.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: John Katz, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

SUPPLEMENTARY INFORMATION:

Notice of Staff Technical Conference

Take notice that the staff of the Federal Energy Regulatory Commission will hold a public conference on Thursday, May 24, 2001, to address issues regarding the natural gas transportation infrastructure with respect to California. The conference will begin at 10:00 a.m., at the Commission's offices, 888 First Street, NE, Washington, D.C. 20426. All interested persons are invited to attend.

As Commission staff has dealt with various aspects of the current energy situation in California, questions have arisen regarding current and projected interstate natural gas pipeline capacity to California, as well as the adequacy of the natural gas infrastructure within California. Commission staff is interested in the views of natural gas transporters, producers, consumers, regulators, and other interested parties with respect to issues including:

(1) Current and projected interstate pipeline capacity to California;

(2) Current and projected capacity of California intrastate pipelines and other natural gas infrastructure;

(3) Physical and operational interconnection between the interstate and intrastate transportation systems;

(4) Current and projected California demand for natural gas; and

(5) How intrastate capacity in California is allocated.

The conference will not include the discussion of any ongoing proceedings before the Commission.

The conference will be organized in two stages. The first stage will consist of presentations of factual information on the topics listed above. The second stage will consist of discussion on the topics.

Persons interested in making presentations or participating in any discussion should indicate their interest no later than May 14, 2001 by a letter addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, and should refer to Docket No. PL01–4–000. Each request to participate must include a contact person, telephone number, and E-mail address.

Each request must also indicate whether the person is interested in making a presentation or participating in discussion. For those interested in making presentations, the request should indicate what topics the presentation will cover. Because of the potential need to limit the number of presentations, those with common interests are encouraged to choose a single spokesperson.

After receipt of the requests, staff may issue a subsequent notice setting forth the conference format, or may inform participants of the format at the beginning of the conference. Depending on the number of presentations, it may be necessary for staff to contact presenters prior to the conference to coordinate the presentations.

The conference will be transcribed, so those not attending can review the proceedings. Additional comments on the issues raised by the conference can be filed within 30 days of the conference.

The Capitol Connection offers all Open and special Commission meetings live over the Internet, as well as via telephone and satellite. For a fee, you can receive these meetings in your office, at home, or anywhere in the world. To find out more about The Capitol Connection's live Internet, phone bridge, or satellite coverage, contact David Reininger or Julia Morelli at (703) 993–3100, or visit the website *(www.capitolconnection.gmu.edu).* The Capitol Connection also offers FERC Open Meetings through its Washington, DC area television service.

Additionally, live and archived audio of FERC public meetings are available for a fee via National Narrowcast Network's Hearings.com(sm) and Hearing-On-Line(r) services. Live audio is available by telephone and on the WEB at *www.Hearings.com.* The Web audio will be archived and available for listening on demand after the event is completed. Billing is based on listening time. Call (202) 966–2211 for further details.

Those interested in obtaining transcripts of the conference need to contact Ace Federal Reporters, at (202) 347–3700. Anyone interested in purchasing videotapes of the meeting should call VISCOM at (703) 715–7999.

Questions about the conference should be directed to: John Katz, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–1077, john.katz@ferc.fed.us.

David P. Boergers,

Secretary.

[FR Doc. 01–11576 Filed 5–7–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–6974–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; Urban Bus Retrofit/Rebuild Requirements, Importation of Nonconforming Marine Engines, Locomotive Certification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Requests (ICRs) to the Office of Management and Budget (OMB): Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses, EPA ICR Number 1702.03, OMB Control Number 2060–0302, expiration date: 9/30/01, renewal; Information Requirements for Importation of Nonconforming Marine Engines, EPA ICR Number 1723.03, OMB Control Number 2060–0320, expiration date: 9/30/01, renewal; Application for Emission Certification for Locomotives and Locomotive Engines, EPA ICR Number 1800.02, OMB Control Number 2060–0392, expiration date: 9/30/01, renewal. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 9, 2001.

ADDRESSES: Office of Transportation and Air Quality, Certification and Compliance Division, Engine Programs Group, 1200 Pennsylvania Avenue, NW., Mail Code 6403J, Washington, DC 20460. Interested persons may request a copy of the ICRs without charge from the contact person below.

FOR FURTHER INFORMATION CONTACT: Nydia Y. Reyes-Morales, tel.: (202) 564–9264; fax: (202) 565–2057; or e-mail: reyes-morales.nydia@epa.gov.

SUPPLEMENTARY INFORMATION: *Affected entities:* Entities potentially affected by this action are: (1) Urban bus retrofit equipment manufacturers, equipment suppliers and bus engine manufacturers; (2) individuals and businesses importing marine engines; and (3) locomotive manufacturers and remanufacturers, and railroads.

Title: Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses, (OMB Control No. 2060–0302; EPA ICR No. 1702.03) expiring 9/30/01.

Abstract: Section 219 of the Clean Air Act (CAA) requires urban buses to be retrofitted to comply with an emission standard that reflects the best retrofit technology and maintenance practices reasonably achievable. EPA regulations found at 40 CFR Part 85 require that, when a bus engine is rebuilt or replaced, the particular matter (PM) emissions level of the engine be reduced to a level below the engine's original PM level by using certified retrofit/rebuild equipment. If no equipment is certified for a particular engine, the operator is required to restore the equipment to its original or updated configuration based on the currently available rebuild kits on the market.

Retrofit equipment manufacturers are required to submit an application for certification with information about their product's characteristics and cost, among other information items. Bus operators are also required to provide information about their fleet to demonstrate compliance.

Title: Information Requirements for Importation of Nonconforming Marine Engines, (OMB Control No. 2060–0320; EPA ICR No. 1723.03) expiring 9/30/01.

Abstract: Sections 208 and 213 of the CAA requires that nonroad engines imported into the US conform with applicable emission requirements. Persons or entities importing marine engines into the US are required to complete a form and provide some data about the engine they want to import to ensure that the engine can be legally imported. The requirements in this ICR affect outboard marine engines, personal watercraft and non-drive compression-ignition engines used on marine vessels.

Title: Application for Emission Certification for Locomotives and Locomotive Engines, (OMB Control No. 2060–0392; EPA ICR No. 1800.02) expiring 9/30/01.

Abstract: Section 213 of the CAA requires that new locomotives and new engines used in locomotives be certified before they can be legally introduced into US commerce. Manufacturers are required to submit information such as engine family, rebuild system type, total number of locomotives or engines manufactured or remanufactured, megawatt hours or miles at remanufacture, and emissions rates for specific pollutants in their applications for certification. Information is needed to demonstrate compliance with emissions standards when a locomotive is manufactured, during use, and at each remanufacturing or upgrading event.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

TABLE I.—BURDEN STATEMENT

	Urban bus retrofit	Maraine imports	Locomotive certification
Estimated Average Burden Hours/response	10	1	2,719
Frequency	On Occasion	On Occasion	Annually
Number of respondents	165	1,000	20
Total Cost	232,000	77,500	5,800,000
Capital and Start Up Cost	125,000	0	3,600,000
Operation/ Maintenance Costs	60,000	0	0
Purchase of Services Cost	0	0	0

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: April 27, 2001.

Robert D. Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 01–11523 Filed 5–7–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 01–1123]

Third Meeting of the Advisory Committee for the 2003 World Radiocommunication Conference (WRC–03 Advisory Committee)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the next meeting of the WRC–03 Advisory Committee will be held on May 24, 2001, at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 2003 World Radiocommunication Conference. The Advisory Committee will consider any consensus views and/or proposals introduced by the Advisory Committee's Informal Working Groups.

DATES: May 24, 2001; 10 am–12 noon.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Julie Garcia, FCC International Bureau, Planning and Negotiations Division, at (202) 418–0763.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the WRC–03 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2003 World Radiocommunication Conference (WRC–03). In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the third meeting of the WRC–03 Advisory Committee.

The WRC–03 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the third meeting is as follows:

Agenda

1. Opening Remarks
2. Approval of Agenda
3. Approval of the Minutes of the Second Meeting
4. IWG Reports and Documents relating to:
   a. Consensus Views and Issue Papers
   b. Draft Proposals
5. Future Meetings
6. Other Business

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–11545 Filed 5–7–01; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 22, 2001.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Albert Salem, Jr., Tampa, Florida; to acquire additional voting shares of FCB Financial, Inc., Tampa, Florida, and thereby indirectly acquire additional voting shares of First Commercial Bank of Tampa, Tampa, Florida.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. D.R. Harrison, L.L.P., Eldon, Missouri; to acquire additional voting shares of Citizens Bancshares of Eldon, Inc., Eldon, Missouri, and thereby indirectly acquire additional voting shares of Citizens Bank, Eldon, Missouri.

Board of Governors of the Federal Reserve System, May 2, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–11463 Filed 5–7–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 1, 2001.

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A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. BB&T Corporation, Winston-Salem, North Carolina; to merge with F&M National Corporation, Winchester, Virginia, and thereby indirectly acquire F&M Bank-Maryland, Bethesda, Maryland; F&M Bank-Central Virginia, Charlottesville, Virginia; F&M Bank-Highlands, Covington, Virginia; F&M Bank-Southern Virginia, Emporia, Virginia; F&M Bank-Northern Virginia, Fairfax, Virginia; F&M Bank-Atlantic, Gloucester, Virginia; F&M Bank-Massanutten, Harrisonburg, Virginia; F&M Bank-Richmond, Richmond, Virginia; F&M Bank-Peoples, Warrenton, Virginia; F&M Bank-Winchester, Winchester, Virginia; and F&M Bank-West Virginia, Ranson, West Virginia.

In connection with this application, Applicant also has applied to acquire F&M Trust Company, Winchester, Virginia, and thereby engage in trust company activities, pursuant to § 225.28(b)(5) of Regulation Y, and Johnson Mortgage Company, LLC, Newport News, Virginia, and thereby engage in mortgage banking activities, pursuant to § 225.28(b)(1) of Regulation Y.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. The Bank of East Asia, Limited, Hong Kong, and East Asia Holding Company, Inc., New York, New York; to become bank holding companies by acquiring 100 percent of the voting shares of Grand National Bank, Alhambra, California.

Board of Governors of the Federal Reserve System, May 2, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–11464 Filed 5–7–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 1, 2001.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Sulphur Holdings, Inc., Sulphur, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Sulphur Community Bancshares, Inc., Sulphur, Oklahoma, and thereby indirectly acquire Sulphur Community Bank, Sulphur, Oklahoma.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. GNB Bancshares, Inc., Gainesville, Texas, and Guaranty National Bancshares, Inc., Wilmington, Delaware; to acquire 100 percent of the voting shares of First Bank and Trust, Ennis, Texas (in organization).

2. First National Bancshares of Huntsville, Inc., Huntsville, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Huntsville Delaware Holdings, Inc., Wilmington, Delaware, and thereby indirectly acquire First National Bank of Huntsville, Huntsville, Texas.

In connection with this application, Huntsville Delaware Holdings, Inc., Wilmington, Delaware, also has applied to acquire 100 percent of the voting shares of First National Bank of Huntsville, Huntsville, Texas.

Board of Governors of the Federal Reserve System, May 3, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–11535 Filed 5–7–01; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0163]

Submission for OMB Review and Extension; Information Specific to a Contract or Contracting Action (Not Required By Regulation)

AGENCY: General Services Administration (GSA).

ACTION: Notice of an emergency reinstatement and request for review and extension of the reinstated collection (3090–0163).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, the General Services Administration's (GSA) Regulatory Secretariat requested in March 2001 that the Office of Management and Budget (OMB) reinstate an information collection that pertains to information specific to a contract or contracting action. OMB reinstated the collection on March 26, 2001. Information collected under this authority is not otherwise required by regulation. This notice indicates GSA's intent to request an extension by 3 years of OMB's emergency reinstatement of this collection and to request public review and comment on the collection.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of contracts, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before July 9, 2001.

FOR FURTHER INFORMATION CONTACT: Beverly Cromer, Acquisition Policy Division, GSA (202) 208–6750.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Ed Springer, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat, 1800 F Street, NW., Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration (GSA) has various mission responsibilities related to the acquisition and provision of supplies, transportation, ADP, telecommunications, real property management, and disposal of real and personal property. These mission responsibilities generate requirements that are realized through the solicitation and award of public contracts. Individual solicitations and resulting contracts may impose unique information collection/reporting requirements on contractors, not required by regulation, but necessary to evaluate particular program accomplishments and measure success in meeting special program objectives.

B. Annual Reporting Burden

Respondents: 126,870.
Responses Per Respondent: 1.36.
Total Responses: 172,500.
Hours Per Response: .4.
Total Burden Hours: 68,900.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Servuces Administration, Regulatory Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–0163, Information Specific to a Contract or Contracting Action (Not Required by Regulation), in all correspondence.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 01–11529 Filed 5–7–01; 8:45 am]

BILLING CODE 6820–34–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0040]

Submission for OMB Review; Comment Request Entitled Application for Shipping Instructions and Notice of Availability

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of request for public comments regarding extension of a currently approved OMB clearance (3090–0040).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a curently approved information collection requirement concerning Application for Shipping Instructions and Notice of Availability. A request for public comments was published at 65 FR 70356, November 22, 2000. No comments were received.

DATES: Comment Due Date: June 7, 2001.

FOR FURTHER INFORMATION CONTACT: Shirley Jacks, Acquisition Operations & Electronic Commerce Center, Supply Management Division, (703) 305–7473.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Stephanie Morris, General Services Administration (MVP), 100 F Street NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA is requesting the Offie of Management and Budget (OMB) to reinstate information collection, 3090–0040, concerning Application for Shipping Instructions and Notice of Availability. This information collection supports and justifies the markup of the six percent surcharge for the GSA export reimbursable program. It also is used to evaluate and obtain the best cube utilization of shipping vans and containers for export direct delivery shipments. The form contains data necessary to prepare Transportation Control and Movement Documents (TCMD) which are required when material enters the Defense Transportation System.

B. Annual Reporting Burden

Respondents: 360.
Annual responses: 3,000.
Average hours per response: 20 minutes.
Burden hours: 1,000.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, Acquisition Policy Division (MVP) Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 208–7312. Please cite OMB control number 3090–0040, concerning Application for Shipping Instructions and Notice of Availability, in all correspondence.

David A. Drabkin,

Deputy Associate Administrator, Office of Acqulsition Policy.

[FR Doc. 01–11530 Filed 5–7–01; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–01–35]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Assess Reporting Practices for Q fever in each State, and Collect Retrospective Information on Numbers of Q fever Cases Reported between 1978–1999—New—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC). Q fever, caused by the rickettsial agent Coxiella burnetii, is considered a potential agent of bioterrorism. Q fever in humans was

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made nationally notifiable in the United States in 1999, and data are collected passively by CDC through the National Electronic Telecommunications System for Surveillance (NETSS). At the time Q fever was made nationally notifiable, approximately half of states already considered it a reportable disease. However, current information on how many states have changed their reporting criteria since 1999 or what reporting methods are used are not available, making it difficult to interpret data reported to NETSS. Q fever reporting data is available by state for the years 1948–1977, and complete annual NETSS data is available beginning in the year 2000. However, data for the years 1978–1999 have never been collected. These data are vitally important to establish baseline rates of infection, providing immediate benefits in understanding the geographic distribution of Q fever in the United States. Without these data, it will take several years to acquire useful NETSS data to make the same assessments.

The purpose of this study is to assess reporting practices for Q fever in each state, and to collect retrospective information on numbers of Q fever cases reported between 1978–1999. Respondents include an epidemiologist and laboratorian in every state. The results will be used to evaluate Q fever reporting practices in each state, in order to better assess the usefulness of NETSS-reported data. Data will also be used to examine the epidemiology of cases reported between 1979–1999, including estimated incidence rates, geographic distribution maps, and demographic risk factors. The estimated cost to the public is between $3405–$6405. Time burden for response to Form A may vary, depending on whether there are cases of Q fever the state plans to report.

Respondents	Number of respondents	Number of responses per respondent	Avg. burden per respondent in hours	Total burden in hours
Part A: Epidemiologist	50	1	30–120/60	25–100
Part B: Laboratorians	50	1	15/60	13
Total				38–113

Dated: May 1, 2001.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 01–11498 Filed 5–7–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01073]

Fetal Alcohol Syndrome Awareness and Education Project; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program for a Fetal Alcohol Syndrome (FAS) Awareness and Education Project. This program addresses the "Healthy People 2010" focus areas of Substance Abuse, and Maternal, Infant, and Child Health. The purpose of the program is to develop, implement, and evaluate materials to educate parents and professionals working in public health service agencies, social service agencies, and school systems about FAS and how to secure access to appropriate diagnostic and treatment services for affected children and their families.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents including Puerto Rico, Virgin Islands, the Commonwealth of Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Title 2 of the United States Code, Chapter 26, Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

C. Availability of Funds

Approximately $500,000 is available in FY 2001 to fund approximately 2 to 4 awards. It is expected that the average award will be $100,000, ranging from $75,000 to $200,000. It is expected that the awards will begin on or about September 30, 2001, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. Develop, implement and evaluate an educational curricula for training parents, public health service providers, and/or teachers in primary and secondary schools that includes, but is not limited to, the following:

1. A description of FAS, including salient physical, neurodevelopmental, and behavioral characteristics of children with FAS.

2. An overview of other prenatal alcohol-related conditions and disorders.

3. Essential components of the care of children with FAS and other prenatal alcohol-related effects from the family, medical, social, and educational perspective including diagnosis and treatment services for the child and support services for the family.

4. Instructions for parents and other client-advocates in how to research local and State resource providers to gain assistance in identifying appropriate diagnostic, treatment, and educational services.

5. Descriptions of family stresses experienced, factors that increase the risks of family disintegration, and approaches to enhancing family coping and survival.

6. Instructions for organizing FAS parents' support groups at the community level.

b. Develop a quantitative and qualitative process to be used in identifying the relevant content of the training (*i.e.*, focus groups, participant surveys, etc).

c. Develop and implement evaluation of the impact of the proposed curricula and its components in a variety of settings including special targeted sessions as well as State and local conferences and/or workshops (*i.e.*, through partnerships with university-based researchers).

2. CDC Activities

a. Assist, if necessary, in the development of the training curricula through review, comment and facilitation of communications with other CDC grantees funded for similar projects.

b. Review and comment, if necessary, on the training curricula and plans for evaluation initially and on at least an annual basis until the project is completed.

E. Application Content

a. General Instructions

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 double-spaced pages, printed on one side, with one inch margins, and unreduced font. Do not include any spiral or bound materials or pamphlets.

b. Specific Instructions

Abstract: A one-page single-spaced, typed abstract must be submitted with the application. The heading should include the title of the grant program, project title, organization name and address, project director and telephone number. The abstract should briefly summarize the program for which funds are requested, the activities to be undertaken, and the applicant's organization and composition. The abstract should follow the printed forms and precede the Program Narrative. Program Narrative (not to exceed 25 pages). The Program Narrative Section should address the following:

1. Background: Briefly describe:

a. Understanding of the problem of FAS, the impact on the family and other care givers, and the challenges of accessing appropriate diagnostic and treatment services for the affected child as well as the need for support services for the families.

b. Project purpose and long-term and short-term objectives.

c. Designation and description of at least two primary target populations (i.e., parents, teachers, social workers, public health nurses) including geographic areas to be served.

2. Organization: Briefly describe:

a. How the applicant will access proposed target populations including institutions, agencies, and organizations to be contacted for participation.

b. Existing interactions with these groups and other collaborative activities in which the applicant has participated with them, including information on any statistics available for the demographics of the target population and geographic region to be covered.

c. Documentation of previous success in developing and evaluating curricula, as well as educating and training individuals in the area of FAS and other alcohol-related disorders should be included. In addition, the applicant should describe any previous instruction activities developed and conducted for parents and other client-advocates in how to research local and State resources providers to gain assistance in identifying appropriate diagnostic, treatment, and educational services.

d. Proposed organizational structure for implementing the project, including clear lines of authority and responsibility. Staff should include a project coordinator who oversees all activities including development and evaluation of the training program.

e. Existing or planned collaborations with research or academic institutions for assistance in project development, implementation, and evaluation.

f. A plan for inclusion of both sexes, racial, ethnic, and cultural considerations in selection of target populations and development of the training program.

3. Capacities: Describe the capacity and experience of the applicant and the clinical/agency site(s) in which the project activities will be conducted including:

a. Description of any previous experience in development, evaluation, and conducting training programs addressing FAS and other prenatal alcohol-related conditions.

b. Description of the setting(s) in which the training programs will occur and description of the designated office and operating space for the project.

c. Proposed time-line for conducting first year project activities, and brief overview of subsequent year's activities.

4. Approach:

a. Describe, in summary, the approach to be taken by the applicant in implementing this project including identification of appropriate staff to perform essential project activities, recruitment of participants, delivery of the training, evaluation, and follow-up activities with participants.

5. Assurances: The applicant must provide the following:

a. Assurance that project staff will be hired in a timely manner.

b. Assurance that key staff will meet with CDC in Atlanta within 3 months of the award to discuss initial study activities.

6. Budget and Line-Item Justification: This section must include a detailed first-year budget and narrative justification with future annual projections. The applicant should describe in detail the program purpose for each budget item. For contracts contained within the application budget, applicants should name the contractor, if known; describe the services to be performed; justify the use of a third party; and provide a breakdown of and justification for the estimated costs of the contracts, the kinds of organizations or parties to be solicited, the period of performance, and the method of selection.

Budget should include travel for at least 2 key study personnel to meet 3 times per year with CDC.

F. Submission and Deadline

Application

Submit an original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are available at the following Internet address: www.cdc.gov/od/pgo/forminfo.htm or in the application kit.

On or before June 29, 2001, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline:

Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date; or

(2) Sent on or before the deadline date and received in time for submission to the independent review group.

Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late Applications: Applications which do not meet the criteria in (1) or (2) above are considered late applications, will not be considered, and will be returned to the applicant.

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G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Applicant's Understanding of the Problem (25 Percent)

a. The extent to which the applicant demonstrates an understanding of the problem of FAS and other prenatal alcohol-related developmental disorders, maternal risk factors contributing to harmful alcohol use during pregnancy, and basic and unique physical, neurodevelopmental, and behavioral needs of affected children and their families.

b. A demonstrated understanding of the care and parenting issues related to rearing children with FAS and other prenatal alcohol-related disorders including the perspective of the family, medical professionals, social and educational service providers.

c. A demonstrated understanding of family stressors and risk factors for family disintegration and development of secondary conditions among affected individuals.

d. A demonstrated understanding of related, community-based family and children's services (physical and mental health, social services, and special education services) as well as needed services which may not always be addressed by community-based agencies (e.g., diagnostic/referral resources hotline and family support groups).

2. Description of the Target Populations and Outline of Approach (45 Percent)

a. The extent to which the applicant has provided a full and comprehensive description of the project they propose to undertake and a plan for how it will be accomplished.

b. The extent to which the applicant outlines the proposed content of the curricula to be developed (*e.g.*, instructing parents or other client-advocates in researching and accessing resources and/or services) as well as the quantitative and qualitative process for development of curricula (*e.g.*, focus groups, participant surveys, or other).

c. The extent to which the applicant adequately describes methods for evaluation of the effectiveness of the curricula (*e.g.*, focus groups, changes in knowledge or attitudes, or other), and dissemination of curricula materials (*e.g.*, through parent organization or public health departments, or other).

d. The extent to which the applicant describes at least two target populations (*i.e.*, parents, teachers, social workers, public health professionals) for which curricula will be developed, implemented, and evaluated. Consideration of multiple approaches for reaching targeted groups depending on their needs and constraints (i.e., time, transportation, tuition funding for conferences) must be described.

e. The degree to which the applicant has provided consideration of the needs for diverse racial, ethnic, and cultural groups in terms of inclusion in the targeted populations, and development of appropriate curriculum content.

f. Demonstration of how the project will establish partnerships with public health and social services agencies, schools, and other appropriate agencies, institutions, and organizations.

3. Capacity To Conduct Project Activities (30 Percent)

a. The extent to which the applicant demonstrates the ability to conduct the activities of the cooperative agreement.

b. Demonstrated ability to assist families and service providers in identifying needed FAS resources locally and regionally, including efforts to instruct parents in organizing support groups at the community level, or in accessing services at the community level.

c. Demonstrated ability to access targeted groups to successfully organize and evaluate workshops and conferences in the area of FAS and other prenatal alcohol-related disorders, as well as outline a dissemination plan for developed materials.

d. Demonstrated ability to identify qualified personnel to fill key positions on the project, identify adequate office space for the project as well as facilities for conducting training or educational sessions.

e. Extent to which the applicant demonstrates the ability to begin activities in a timely fashion and to present a feasible time-line for conducting first year project activities, and presenting a brief overview of activities for subsequent years.

4. Budget Justification and Adequacy of Facilities (Not Scored)

The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of the cooperative agreement funds.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. semiannual progress reports;
2. financial status report, no more than 90 days after the end of the budget period; and
3. final financial and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of application kit.

AR–7—Executive Order 12372 Review
AR–9—Paperwork Reduction Act Requirements
AR–10—Smoke-Free Workplace Requirements
AR–11—Healthy People 2010
AR–12—Lobbying Restrictions
AR–14—Accounting System Requirements
AR–15—Proof of Non-Profit Status

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301 and 317 of the Public Health Service Act, 42 U.S.C. sections 241 and 247b, as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where to Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov* Click on "Funding" then "Grants and Cooperative Agreements."

To receive additional written information and to request an application kit, call 1–888-GRANTS4 (1–888 472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Virginia Hall-Broadnax, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Suite 3000, (E–13), Atlanta, GA 30341–4146, Telephone number: (770) 488–2710, Email address: vdh2@cdc.gov

For program technical assistance, contact: Dr. Louise Floyd, (770) 488–7372; Email address: *rlf3@cdc.gov,*

or

Connie Granoff, (770) 488–7513; Email address: clg4@cdc.gov, Division of Birth Defects, Child Development, and Disability and Health, National Center for Environmental Health.

Centers for Disease Control and Prevention, 4770 Buford Highway, (F–49), Atlanta, Georgia 30341–3724.

Dated: May 2, 2001.

John L. Williams,

Director, Procurement and Grants Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–11510 Filed 5–7–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01077]

Grant for a Program to Promote A Hospital-Based Trauma Support Program; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a grant program to promote a hospital-based trauma support program at a level 1 trauma center delivered in a suburban community that is both culturally and economically diverse. This program addresses the "Healthy People 2010" focus area of Injury and Violence Prevention. The purpose of this program is to provide a continuum of support services including prevention messages to reduce morbidity and mortality to those who have suffered traumatic injuries.

B. Eligible Applicant

Assistance will be provided only to the Inova Fairfax Hospital. No other applications are solicited. Eligibility is limited to the Inova Fairfax Hospital, Falls Church, Virginia, because fiscal year (FY) 2001 Federal appropriations specifically directs CDC to award this hospital funds to promote a hospital-based trauma support program at a level 1 trauma center.

C. Availability of Funds

Approximately $87,201 is available in FY 2001 to fund one award. It is expected that the award will begin on or about September 1, 2001, and will be made for a 12-month budget period within a project period of one year. Funding estimates may change.

D. Where to Obtain Additional Information

This and other CDC announcements can be found on the CDC home page on the Internet: http://www.cdc.gov Click on "Funding" then "Grants and Cooperative Agreements."

To obtain business management technical assistance, contact: Ty Weaver, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 01077, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Suite 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2710, Email address: tmw9@cdc.gov.

For program technical assistance, contact: Paul Burlack, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, 4770 Buford Highway N.E., Mailstop F42, Atlanta, GA 30341–3724, Telephone: (770) 488–4713, Email: PBurlack@cdc.gov.

Dated: May 2, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–11508 Filed 5–7–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01070]

Urban Commensal Rodent Control and Environmental Improvement and Safety Project; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program to undertake an Urban Commensal Rodent Control and Environmental Improvement and Safety Project. This project addresses the "Healthy People 2010" focus areas of: (1) Environmental Health, (2) Public Health Infrastructure, (3) Educational and Community-Based Programs, and (4) Injury and Violence Prevention. The purpose of this project is to demonstrate that a comprehensive approach to eliminating commensal rodent infestation also will prevent, eliminate, or reduce the consequences of diseases and injuries that are associated with unhealthy home environments; and it will serve as a model to stimulate the development of similar programs at state and local levels.

B. Eligible Applicants

Applications will only be accepted from the top five Standard Metropolitan Statistical Areas (SMSA)/largest cities (i.e., New York City, Los Angeles, Chicago, Houston, and Philadelphia). Eligible applicants in these SMSA are local health departments or their bona fide agents. Competition has been limited to the nation's five largest cities where: (1) commensal rodent infestation and environmental conditions are generally regarded as the most severe (e.g., densely populated areas, poverty, old deteriorated or unsafe housing, exposed garbage and unapproved refuse storage, inadequate municipal services, etc.); and (2) a target area can be readily identified that consists of up to 50-contiguous residential blocks with high-population density, significant commensal rodent infestation, and risk factors that support infestation and promote the spread of disease and injury. Applicants must be able to substantiate that at least six percent of the premises in the selected target area have active exterior and/or interior rat/mouse infestation based on a random or comprehensive premises survey.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

Definition: For the purpose of this announcement, commensal rodents specifically refer to the Norway rat (Rattus norvegicus), roof rat (Rattus rattus), and house mouse (Mus musculus).

C. Availability of Funds

Approximately $500,000 is available in FY 2001 to fund two awards. It is expected that the award will begin on or about September 30, 2001, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress to reduce commensal rodent infestation and environmental hazards and deficiencies in the target area and the availability of funds.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities under item 2. (CDC Activities).

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1. Recipient Activities:

a. Train, where necessary, health department staff and others who are responsible for implementing and carrying out project activities;

b. Educate residents on the principles of environmental public health, including sanitation and safety;

c. Conduct and coordinate intervention activities with other community-based agencies and organizations (e.g., sanitation departments, local housing authorities, fire departments) that focus on reducing commensal rodent infestation and environmental hazards and deficiencies in the target area;

d. Conduct and analyze the results of semi-annual premises surveys of the target area to measure the effect of project activities on reducing commensal rodent infestation (including rat bites); environmental hazards and deficiencies such as the lack of smoke alarms and fall potentials that impact on the health and safety of target area residents;

e. Evaluate the impact of target area interventions to eliminate commensal rodent infestation and environmental hazards and deficiencies; and

f. Disseminate findings.

2. CDC Activities:

a. Provide technical consultation on data collection and management, and assist, as appropriate, in the analysis of data on the prevalence of commensal rodent infestation and environmental hazards and deficiencies in the target area; and

b. Assist, if requested, in identifying approaches to eliminate identified environmental hazards and deficiencies.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. The application will be evaluated on the Evaluation Criteria listed, so it is important to follow them in laying out the program plan. The narrative should be no more than 30 double-spaced pages, printed on one side, with one-inch margins, and no more than a 12 point Courier font. Number each page consecutively and provide a complete table of contents. The total number of pages should not exceed 60, including the appendix. The application must be submitted unstapled and unbound. In developing the application, the applicant must also include a one-page, double-spaced abstract that describes the project and substantiates that a comprehensive or random premises survey of the target area was conducted that documents a premises prevalence rate for rodent (rat and/or mouse) infestation of at least six percent. It should be placed before the budget and narrative sections.

The application should:

1. Describe the applicant's agency and its position within the governmental structure;

2. Describe how the project will be administered, including job descriptions for all project positions and the curriculum vitae of all key administrative staff;

3. Provide copies of codes, ordinances, and regulations pertinent to achieving the short-and long-term objectives of the demonstration project;

4. Provide data that support the reasons for selecting the target area (e.g., data on deteriorated and dilapidated housing, rat and mouse complaints, rat bites, premises prevalence rates for rodent infestation and related environmental deficiencies); and

5. The application should contain a project plan that includes short-and long-range objectives for the target area. This will require that a random or premises-by-premises survey of the target area be conducted. Survey summary sheets that document at least a six percent rodent infestation rate should be included with the application. The project plan also should describe those activities designed to improve the integration of services into a comprehensive environmental improvement program.

The project plan, should incorporate an "attack" and "maintenance" concept (see definitions in addendum), and include a plan of action that is specific in terms of:

(a) the period of time, types of activities, and resources required to achieve maintenance; and

(b) activities and resources required to preserve a maintenance level.

It should take into account:

(a) size of the population;

(b) the number of blocks; and

(c) the extent of commensal rodent infestation and environmental hazards and deficiencies.

The plan should be based on:

(1) the nature of the commensal rodent infestation (e.g., rats versus mice and interior versus exterior infestation); and

(2) premises prevalence rates for commensal rodent infestation and environmental hazards and deficiencies, and include the timetable to move blocks in the target area from a pre-attack phase, through attack and maintenance phases, to a maintenance level.

F. Submission and Deadline

Letter of Intent (LOI)

Your letter of intent should be submitted on or before June 1, 2001, to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are available at the following Internet address: http://www.cdc.gov or in the application kit. On or before July 2, 2001, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of the application.

Deadline: Applications shall be considered as meeting the deadline if they are either: (a) Received on or before the deadline date; or (b) sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background and Understanding of the Problem (15 points)

a. The extent to which the applicant understands the public health, social, and economic consequences of urban commensal rodent infestation and the environmental factors that influence infestation;

b. The extent to which the applicant describes the target area and is able to document the magnitude of the commensal rodent problem, environmental hazards and deficiencies, and their impact on target area residents;

c. The extent to which the applicant documents current commensal rodent control activities in the target area and its experience in addressing the problem and its causal conditions.

d. The extent to which the applicant provides evidence of its organizational structure and capacity to collect and analyze data that describes the current problem and measures progress in reducing commensal rodent infestation and environmental hazards and deficiencies in the target area.

2. Objectives (15 points)

The extent to which the applicant has developed sound, feasible objectives that are consistent with the activities described in the project plan, and are specific, measurable, and time-framed.

3. Project Plan (30 points)

a. The extent to which the applicant provides evidence of its: (1) Ability to collect and analyze target area data and prepare reports of findings; (2) ability to accurately assess intervention costs; and (3) provide evidence of effective and well-defined relationships within the health department structure and with other governmental components and community-based organizations (CBOs) to ensure identified environmental hazards and deficiencies in the target area are appropriately addressed.

b. The extent to which the project plan takes into account all of the elements of a comprehensive program (see addendum).

c. The extent to which the applicant describes the specific activities and methods that are proposed to achieve each of the program's objectives. The commitment of local resources to sustain progress beyond expiration of Federal funding also should be addressed.

4. Coordination and Collaboration (15 points)

a. The extent to which the applicant describes the relationship between the health department program and other health department components, other government agencies, academia, and CBOs and is supported by letters, memoranda of agreement, and other documented evidence in the appendix.

b. The extent to which the applicant provides evidence of collaboration and coordination between the health department program and other health department components, other government agencies, academia, and CBOs to achieve the objectives of the project.

5. Project Management and Staffing (15 points)

a. The extent to which the applicant documents skills and experience of key health department staff, including staff of collaborating agencies and organizations to carry out environmental public health programs, and specifically, urban commensal rodent control programs.

b. The extent to which the applicant describes the allocation and roles of staff and devotes time to the activities described in the project plan.

6. Program Evaluation (10 points)

The extent to which the applicant proposes to measure the overall impact of project. The plan should describe the methods used to evaluate the impact of project activities on commensal rodent infestation and environmental hazards and deficiencies in the target area, and on environmental public health practices and polices.

7. Budget Justification (not scored)

The extent to which the budget is clearly explained, adequately justified, and is reasonable and consistent with the stated objectives and planned activities. Note: Please include any in-kind support for the project.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two copies of:

1. Semi-annual progress reports which are due within 30 days of the end of each six-month reporting period;

2. The financial status report which is due no more than 90 days after the end of the budget period; and

3. The final financial and performance reports which are due no more than 90 days after the end of the project period. Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this project. For a complete description of each, see Attachment I in the application kit.

AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Sections 301 and 317 of the Public Health Service Act, [42 U.S.C. Sections 241 and 247b]. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address: http://www.cdc.gov by clicking on "Funding" then "Grants and Cooperative Agreements."

To obtain additional information, contact: Virginia Hall-Broadnax, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Mailstop E13—2920 Brandywine Road, Suite 3000, Atlanta, GA 30341–4146, Telephone number: (770) 488–2710, E-mail address: vdh2@cdc.gov.

For program technical assistance, contact: Jerry M. Hershovitz, Assistant to the Director for Program Development, Division of Emergency and Environmental Health Services, National Center for Environmental Health, Centers for Disease Control and Prevention, Mailstop F–30—4770 Buford Highway, NE, Atlanta, Georgia 30341–2724, Telephone: (770) 488–4542, E-mail: jmh6@cdc.gov.

Dated: May 2, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–11506 Filed 5–7–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Occupational Exposure to Putative Reproductive/Developmental Toxicants in Humans, RFA OH–01–008

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. Law 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Occupational Exposure to Putative Reproductive/Developmental Toxicants in Humans, RFA OH–01–008.

Times and Dates: 8 a.m.–8:30 a.m., May 30, 2001, (Open); 8:30 a.m.–5 p.m., May 30, 2001, (Closed); 8:30 a.m.–5 p.m., May 31, 2001, (Closed).

Place: Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, VA 22314.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Deputy Director for Program Management, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in

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response to Program Announcement: RFA OH–01–008.

Contact Person for More Information: Pervis C. Major, PhD., Scientific Review Administrator, National Institute for Occupational Safety and Health, CDC, 1095 Willowdale Road, M/S B228, Morgantown, West Virginia 26505, telephone 304–285–5979.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 20, 2001.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–11509 Filed 5–7–01; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1599]

Agency Information Collection Activities; Announcement of OMB Approval; Use of Impact-Resistant Lenses in Eyeglasses and Sunglasses

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Use of Impact-Resistant Lenses in Eyeglasses and Sunglasses" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 7, 2001 (66 FR 13769), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0182. The approval expires on April 30, 2004. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: May 2, 2001.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 01–11451 Filed 5–7–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96N–0393]

Agency Information Collection Activities; Announcement of OMB Approval; MedWatch: The FDA Medical Products Reporting Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "MedWatch: The FDA Medical Products Reporting Program" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Mark L. Pincus, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1471.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 16, 2000 (65 FR 69314), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0291. The approval expires on April 30, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: May 2, 2001.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 01–11453 Filed 5–7–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1637]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Transmittal of Advertising and Promotional Labeling for Drugs and Biologics for Human Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by June 7, 2001.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Transmittal of Advertising and Promotional Labeling for Drugs and Biologics for Human Use

Under § 314.81(b)(3)(i) (21 CFR 314.81(b)(3)(i)), sponsors of approved applications for marketed prescription drugs and antibiotic drugs for human use are required to submit specimens of promotional labeling and advertisements at the time of initial dissemination of the labeling and at the time of initial publication of the advertisements. Each submission is required to be accompanied by a completed transmittal Form FDA 2253 (Transmittal of Advertisements and Promotional Labeling for Drugs and Biologics for Human Use). Statutory authority for the collection of this information is provided by sections 505(a), (b), (j), and (k) and 701(a) of the

Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(a), (b), (j), and (k) and 371(a)). Similarly, under 21 CFR 601.12(f)(4) (62 FR 39890, July 24, 1997; effective October 7, 1997), manufacturers of licensed biological products are required to submit specimens of advertising and promotional labeling to FDA in accordance with § 314.81(b)(3)(i). Statutory authority for the collection of this information is by provided by section 351 of the Public Health Service Act (42 U.S.C. 262), which gives FDA the responsibility to prescribe standards designed to ensure the safety, purity, potency, and effectiveness of biological products. In furtherance of this responsibility, FDA regulates advertising and labeling for biological products. Currently, specimens of advertising and promotional labeling are submitted to FDA's Center for Biologics Evaluation and Research (CBER) with either Form FDA 2253 or Form FDA 2567, which is a two-part transmittal form that is also used to transmit other forms of labeling, (e.g., circulars, package labels, and container labels) for CBER review when a sponsor is requesting premarket approval of a product or proposing changes to a product carton or container labeling.

The many types of promotional materials are described on Form FDA 2253 for easy reference. For example, possible submitted promotional materials could be a consumer advertisement, a professional sales aid, or a consumer broadcast advertisement. A single submission would include two copies each of the promotional materials, Form FDA 2253, and the approved product labeling. Submissions of multiple applications are handled in a similar manner as described in the form.

In 1998, FDA revised Form FDA 2253 to enable it to be used to transmit specimens of promotional labeling and advertisements for biological products as well as for prescription drugs and antibiotics. The revised form had the following major changes:

1. The revised, harmonized form is now used by sponsors of approved applications for marketed prescription drugs and antibiotic drugs regulated by the Center for Drug Evaluation and Research (CDER) who must submit specimens of advertisements and promotional labeling to the agency, and it may be used by manufacturers of licensed biological products regulated by CBER who submit draft and/or final copies of promotional labeling and advertisements to the agency. The revised and harmonized Form FDA 2253 eliminated the need for sponsors to use two different forms to transmit similar materials for submission to the two centers. Although manufacturers of biological products had the option to continue to use Form FDA 2567 to transmit advertisements and promotional labeling if they wished, the other uses of Form FDA 2567 remained unchanged.

2. The revised, harmonized form updated the information about the types of promotional materials and the codes that are used to clarify the type of advertisement or promotional labeling (e.g., consumers, professionals, news services); and it helped ensure that the submission is complete.

3. The revised form provides for sponsors to submit specimens of multiproduct promotional labeling and advertisements to only two files; to the approved product application of the sponsor's choice (generally the most frequently promoted product), and to a company name file. This revision in the form has saved sponsors time and money by eliminating the need for making multiple submissions of the same promotional materials. In addition, because the form was revised, sponsors no longer need to maintain dual inventories of both forms, and they now have multiple processing capabilities.

From October 1, 1999, through September 30, 2000, 386 sponsors submitted 12,235 postmarketing reports via Form FDA 2253 to CDER; this included 2,343 multiple submissions. In the same time period 134 sponsors submitted 4,243 postmarketing reports via Forms FDA 2253 and 2567 to CBER.

In the **Federal Register** of December 21, 2000 (65 FR 80437), the agency requested comments on the proposed collections of information. The comments received were all unrelated to the collection of information published in the above **Federal Register** notice and may be viewed on the FDA Dockets Management Branch Web site: http://www.accessdata.fda.gov/scripts/oc/dockets/edocketheme.cfm, and by referring to the above docket number.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR section	No. of respondents	Annual frequency per response[2]	Total annual responses[3]	Hours per response	Total hours
CBER (none)	134[4]	32	4,243	2	8,486
CDER § 314.81(b)(3)(i)	386[5]	32	12,395	2	24,790
Total					33,276

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Average number (rounded to the nearest whole number) of submissions submitted annually per sponsor. We note that some sponsors submit only once per year, whereas one sponsor had 893 submissions in 1999.
[3] Total number of Form FDA 2253 submissions to CDER and Form FDA 2253 plus Form FDA 2567 to CBER in fiscal year (FY) 1999
[4] Number of sponsors that submitted establishment license applications and product license applications to CBER in FY 1999.
[5] Number of sponsors that submitted new drug applications (including applications for new antibiotics), abbreviated new drug applications, and abbreviated antibiotic applications in FY 1999.

In FY 1999, CDER received a total of 12,395 submissions and CBER received 4,353 submissions that would require the use of this form. FDA estimates that 2 hours would be required for an industry regulatory affairs specialist to fill out the form, collate the documentation, and send the submissions to CDER or CBER.

Electronic Submission of Promotional Materials Regarding Prescription Drugs and Biologics for Human Use

CDER and CBER are currently piloting with approximately 20 sponsors, different methods to submit postmarketing submissions of advertising and promotional labeling. FDA anticipates publishing in the **Federal Register** a draft guidance for industry entitled "Providing Regulatory Submissions in Electronic Format—Prescription Drug Advertising and Promotional Labeling." By using this suggested format for electronically submitting promotional materials, we anticipate that by January 2002, sponsors will submit about 20 percent

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of all materials electronically via Form FDA 2253. Further, we anticipate posting a fillable electronic Form FDA 2253 on FDA's Internet site. Applicants may then have the option to fill out the form on their computer, and with additional software, they can maintain records regarding submitted promotional materials.

Dated: May 2, 2001.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 01–11452 Filed 5–7–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0006]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; New Animal Drug Application, Form FDA 356 V

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by June 7, 2001.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

New Animal Drug Application, Form FDA 356 V— 21 CFR Part 514 (OMB Control No. 0910–0032)—Extension

FDA has the responsibility under the Federal Food, Drug, and Cosmetic Act (the act) for the approval of new animal drugs that are safe and effective. Section 512(b) of the act (21 U.S.C. 360b(b)) requires that a sponsor submit and receive approval of a new animal drug application (NADA), before interstate marketing is allowed. The regulations implementing statutory requirements for NADA approval have been codified under 21 CFR part 514. NADA applicants generally use a single form, FDA 356 V. The NADA must contain, among other things, safety and effectiveness data for the drug, labeling, a list of components, manufacturing and controls information, and complete information on any methods used to determine residues of drug chemicals in edible tissues. While the NADA is pending, an amended application may be submitted for proposed changes. After an NADA has been approved, a supplemental application must be submitted for certain proposed changes, including changes beyond the variations provided for in the NADA and other labeling changes. An amended application and a supplemental application may omit statements concerning which no change is proposed. This information is reviewed by FDA scientific personnel to ensure that the intended use of an animal drug, whether as a pharmaceutical dosage form, in drinking water, or in medicated feed, is safe and effective. The respondents are pharmaceutical firms that produce veterinary products and commercial feed mills.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
514.1 and 514.6	190	8.33	1,582	211.6	334,751
514.8	190	8.33	1,582	30	47,460
514.11	190	8.33	1,582	1	1,582
Total					383,793

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimate of the burden hours required for reporting are based on fiscal year 1999 data. The burden estimate includes original NADAs, supplemental NADAs, and amendments to unapproved applications.

Dated: May 2, 2001.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 01–11454 Filed 5–7–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0194]

Draft Guidance for Industry on the Statistical Aspects of the Design, Analysis, and Interpretation of Chronic Rodent Carcinogenicity Studies of Pharmaceuticals; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Statistical Aspects of the Design, Analysis, and Interpretation of Chronic Rodent Carcinogenicity Studies of Pharmaceuticals." The purpose of this document is to provide guidance to sponsors on the design of animal carcinogenicity experiments, methods of statistical analysis of tumor data, interpretation of study results, presentation of data and results in reports, and the submission of tumor data to FDA statistical reviewers in the Center for Drug Evaluation and Research (CDER).

DATES: Submit written comments on the draft guidance by August 6, 2001. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Karl K. Lin, Center for Drug Evaluation and Research (HFD–715), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3093.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Statistical Aspects of the Design, Analysis, and Interpretation of Chronic Rodent Carcinogenicity Studies of Pharmaceuticals." Assessment of the risk of drug exposure in humans includes an assessment of carcinogenicity in tests in rodents. In a carcinogenicity study of a new drug using a series of increasing dose levels, statistical tests are an important component of the analysis. The Division of Biometrics in the Office of Biostatistics, CDER is responsible for conducting statistical reviews of long-term animal (rodent) carcinogenicity studies of pharmaceuticals submitted by drug sponsors to FDA.

In statistical reviews of carcinogenicity studies, statisticians evaluate the validity of the designs and the appropriateness of methods of data analysis used by the sponsor. They also use raw study data in electronic form to perform additional statistical analyses.

The purpose of this document is to provide guidance to sponsors on statistical issues related to the design of animal carcinogenicity experiments, methods of analysis of tumor data, interpretation of study results, presentation of data and results in reports, and the submission of tumor data to FDA statistical reviewers.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115; 65 FR 56468, September 19, 2000). The draft guidance represents the agency's current thinking on the statistical aspects of the design, analysis, and interpretation of chronic rodent carcinogenicity studies of pharmaceuticals. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: April 30, 2001.

Ann M. Witt,

Acting Associate Commissioner for Policy.

[FR Doc. 01–11450 Filed 5–7–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Substance Abuse Prevention and Treatment (SAPT) Block Grant Application Guidance and Instructions, FY 2002–2004 (OMB No. 0930–0080, Revision)

Sections 1921 through 1935 of the Public Health Service Act (U.S.C. 300x–21 to 300x–35) provide for annual allotments to assist States to plan, carry out, and evaluate activities to prevent and treat substance abuse and for related activities. Under the provisions of the law, States may receive allotments only after an application is submitted and approved by the Secretary, DHHS. For the federal fiscal year 2002–2004 SAPT block grant application cycles, the Substance Abuse and Mental Health Services Administration (SAMHSA) will provide States with revised application guidance and instructions to implement changes made by Public Law 106–310, signed by the President on October 17. Revisions to the previously-approved application resulting from the new SAMHSA authorizing legislation reflect the following changes: (1) Section 1922(a) under which States were required to use 35% of the funds on drug related activities and 35% on alcohol related activities (42 U.S.C. 300x–22) is repealed. (2) The Section 1925 requirement for the States to maintain a revolving fund of $100,000 to assist with half way houses for persons recovering from drug or alcohol abuse is now made optional (42 U.S.C. 300x–25). (3) Section 1930, which requires the States to maintain their financial support for substance abuse services at a level equal to the average of what they had spent the previous two years, is amended to permit non-recurring expenditures for a singular purpose to be excluded from the calculation of the Maintenance of Effort (MOE) requirement (42 U.S.C. 300x–30). (4) Section 1952 is amended to allow any amount paid to a State for a fiscal year to be available for obligation and expenditure until the end of the fiscal year following the fiscal year for which the amounts were paid, in effect giving a State two years to obligate and spend (42 U.S.C. 300x–62).

In addition, changes are being made to the annual reporting requirements associated with Section 1926 (42 U.S.C. 300x–26), which requires States to have in effect a law prohibiting access and distribution of tobacco products to minors under age 18. In Section II, the following changes are being made with respect to Goal #8 and Attachment G: (1) In Goal #8, States will not be required to report on activities that were reported in previous applications (i.e., the requirement to report on prior year compliance information is eliminated). (2) In Attachment G: (a) questions are re-ordered so they are in chronological order to facilitate reporting on compliance activities; (b) seven of the nine questions are revised to define more precisely the information that SAMHSA needs in order to review and approve applications and eliminate duplication in State reporting; (c) Matrix

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7a has been renamed Form G3, and Form G3 now requires States to report specific ages of the youth inspectors rather than age ranges.

ANNUAL REPORTING BURDEN

	Number of respondents	Responses per respondent	Hours per response	Total burden
Sections I–III—Red Lake Indians	[1] 1	1	530	530
Sections I–III—States and Territories	59	1	563	33,217
Section IV–A	40	1	50	2,000
Section IV–B	20	1	42	840
Total				36,587

[1] Red Lake Indian Tribe is not subject to tobacco requirements.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Stuart Shapiro, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: May 1, 2001.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 01–11512 Filed 5–7–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Cooperative Agreements with Single State Agencies for Alcohol and Other Drug Abuse for Conducting Evaluations

AGENCY: Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Cooperative Agreements with Single State Agencies for Alcohol and Other Drug Abuse for Assistance to States for Conducting Evaluations of their Substance Abuse Treatment Services.

SUMMARY: This notice is to inform the public of planned cooperative agreements that the Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT), under its State Treatment Needs Assessment Program (STNAP), intends to award to Single State Agencies (SSAs) for Alcohol and Other Drug Abuse. In fiscal year 2001, CSAT has approximately $2.1 million available for 7 to 9 awards. Awards will be made if the applications are scored by the initial review group and concurred with by the CSAT National Advisory Council.

Eligibility for cooperative agreements is limited to SSAs for Alcohol and Other Drug Abuse because the States have statutory responsibility for developing and submitting services needs assessment estimates in order to receive a Substance Abuse Prevention and Treatment (SAPT) Block Grant. By providing assistance to the States for conducting evaluations of their substance abuse treatment services, CSAT, under its STNAP, seeks to help States to determine methods for improving the availability and quality of treatment. The STNAP objectives are to: assist States to take advantage of existing data to develop estimates of need for services and report these data on the annual SAPT Block Grant application; assist States to develop and institutionalize their capability to use data that already exist and to manage data collection and analyses, as needed, to supplement existing data sources; assist States to conduct common assessment studies needed to augment their existing data and to improve the opportunities for aggregation of data across States; and allow for aggregation of data across States for SAMHSA/CSAT to use in secondary analyses, multi-State comparisons, and for augmenting other information collected within SAMHSA.

Authority: Cooperative agreements with SSAs for Alcohol and Other Drug Abuse will be made under the authority of section 1935 (b)(1)(C) and (b)(3) of the Public Health Service Act, as amended (42 USC 300x-35), and section 1929. The Catalog of Federal Domestic Assistance number is 93.238.

FOR FURTHER INFORMATION CONTACT: Nita Fleagle, CSAT, SAMHSA, Rockwall II, Suite 840, 5600 Fishers Lane, Rockville, MD 20857; telephone (301) 443–8572; e-mail: nfleagle@samhsa.gov

Dated: May 1, 2001.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 01–11448 Filed 5–7–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–32]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request for HUD Alternative for SF 424 Forms, Application for Federal Assistance and Attendent Forms

AGENCY: Office of The Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 15, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name/or OMB approval number) and should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to alternatives to the SF 424, Application for Federal Assistance, and directly related forms intended to offer consolidated and streamlined grant application processes in accordance with the provisions of Public Law 106–107, The Federal Financial Assistance Improvement Act of 1999.

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: HUD Alternative for SF 424 forms, Application for Federal Assistance and attendent forms.

OMB Control Number: 2501–Pending.

Agency Form Numbers: HUD–424, HUD–424–B, HUD–424–C.

Members of Affected Public: State, Local or Tribal Government, Not-for-Profit Institutions.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of response: An estimation of the total number of hours needed to prepare the forms for each grant application is 1, however, the burden will assessed against each individual grant program submission under the Paperwork Reduction Act; number of respondents is 9,091; frequency of response is on the occasion of application for benefits.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 2, 2001.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 01–11528 Filed 5–7–01; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Final Environmental Impact Statement, Zion National Park, Utah

AGENCY: National Park Service, Department of the Interior.

ACTION: Availability of final environmental impact statement and general management plan for Zion National Park.

SUMMARY: Pursuant to section 102(2)(C) the National Environmental Policy Act of 1969, the National Park Service announces the availability of a Final Environmental Impact Statement and General Management Plan (FEIS/GMP) for Zion National Park, Utah.

DATES: The Draft EIS/GMP was on public review from December 6, 1999 through February 29, 2000. Responses to public comment are addressed in the FEIS/GMP. A 30-day no-action period will follow publication of the Environmental Protection Agency's Notice of Availability of the FEIS/GMP in the **Federal Register**.

ADDRESSES: Copies of the FEIS/GMP are available from the Superintendent, Zion National Park, Springdale, Utah 84767–1099; Telephone (435) 772–0142. Public reading copies of the FEIS/GMP will be available for review at the following locations: Office of the Superintendent, Zion National Park, Springdale, Utah 84767–1099; Telephone (435) 772–0142.

Planning and Environmental Quality, Intermountain Support Office—Denver, National Park Service, 12795 W. Alameda Parkway, Lakewood, CO 80228, Telephone: (303) 969–2851.

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets NW., Washington, DC 20240, Telephone: (202) 208–6843.

SUPPLEMENTARY INFORMATION: The FEIS/GMP analyzes four alternatives for managing and using Zion National Park. The plan is intended to provide a foundation to help park managers guide park programs and set priorities for the management of Zion National Park over the next 20 years. The "no-action" alternative is a continuation of the present management course regarding the management of visitor use. The National Park Service's preferred alternative would emphasize management of resources and visitors, rather than providing new developments, and establishes a zoning framework to proactively address impacts resulting from visitor use. Alternative A would provide opportunities for more widespread and increased use of Zion, while still protecting resources and providing opportunities for a range of visitor experiences. Alternative B would focus on providing increased protection for park resources while still providing opportunities for a range of visitor experiences. All of the action alternatives would limit park visitation in some backcountry areas, recommend adjustments to the park boundary, and recommend five drainages and their tributaries in the park, and six tributaries on Bureau of Land Management lands adjacent to the park, be included in the national wild and scenic rivers system.

The FEIS/GMP in particular evaluates the environmental consequences of the preferred alternative and the other alternatives on natural resources (*e.g.*, air and water quality, North Fork of the Virgin River floodplain, Virgin spinedace, Mexican spotted owl, desert bighorn sheep), natural sounds, the range of visitor experiences and activities, and the socioeconomic environment.

FOR FURTHER INFORMATION CONTACT: Superintendent, Zion National Park, at the above address and telephone number.

Dated: March 9, 2001.

R. Everhart,

Director, Intermountain Region, National Park Service.

[FR Doc. 01–11542 Filed 5–7–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2135–01; AG Order No. 2427–2001]

RIN 1115–AE26

Extension of the Designation of Honduras Under the Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The designation of Honduras under the Temporary Protected Status (TPS) program will expire on July 5, 2001. This notice extends the Attorney General's designation of Honduras

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under the TPS program for 12 months until July 5, 2002, and sets forth procedures necessary for nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) with TPS to register for the additional 12-month period. Eligible nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) may re-register for TPS and an extension of employment authorization. Re-registration is limited to persons who registered during the initial registration period, which ended on August 20, 1999, or who registered after that date under the late initial registration provisions. Persons who are eligible for late initial registration may register for TPS during this extension. Nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) who are eligible for late initial registration may register for TPS during this extension.

EFFECTIVE DATES: The extension of the TPS designation for Honduras is effective July 5, 2001, and will remain in effect until July 5, 2002. The 90-day re-registration period begins May 8, 2001, and will remain in effect until August 6, 2001.

FOR FURTHER INFORMATION CONTACT: Rebecca K. Peters, Residence and Status Services Branch, Adjudications, Immigration and Naturalization Service, Room 3214, 425 I Street, NW, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Authority Does the Attorney General Have to Extend the Designation of Honduras Under the TPS Program?

Section 244(b)(3)(A) of the Immigration and Nationality Act (Act) states that at least 60 days before the end of an extension or a designation, the Attorney General must review conditions in the foreign state for which the designation is in effect. 8 U.S.C. 1254a(b)(3)(A). If the Attorney General does not determine that the foreign state no longer meets the conditions for designation, the period of designation is automatically extended for 6 months pursuant to section 244(b)(3)(C) of the Act, although the Attorney General may exercise his discretion to extend the designation for 12 or 18 months. 8 U.S.C. 1254a(b)(3)(C). With respect to Honduras, such an extension makes TPS available only to persons who have been continuously physically present since January 5, 1999, and have continuously resided in the United States since December 30, 1998.

Why Did the Attorney General Decide to Extend the TPS Designation for Honduras?

Since the date of the last extension of Honduras' TPS designation, the Departments of Justice and State have continued to review conditions in Honduras. Prior to making a decision, the Attorney General had consultations with the Department of State to determine whether conditions warranting the TPS designation continued to exist. Despite indications of progress in recovery efforts, the Attorney General determined that sufficient damage from Hurricane Mitch persists and that Honduras remains temporarily unable to handle adequately the return of over 100,000 nationals. 8 U.S.C. 1254a(b)(1)(B)(ii). For example, a review of Honduras' current conditions revealed that 14,000 out of the approximate 50,000 victims of Hurricane Mitch remain in shelters. Further, out of 60,000 housing units needed after Hurricane Mitch, only about 18,000 have actually been constructed. Upon review of all available information, the Attorney General concluded that a 12-month extension of Honduras' TPS designation is warranted.

Why did the Attorney General Extend the TPS Designation for a Period of 12 Months?

The Attorney General determined that a 12-month extension would afford Honduras a sufficient amount of time to substantially complete its recovery efforts. At the expiration of the current extension, Honduras will have been designated for TPS for a period of 30 months. To date, Honduras has made progress in recovering from the effects of Hurricane Mitch. Balancing the need for additional time for recovery efforts with the temporal nature of the TPS benefit, the Attorney General determined that a 12-month extension would provide Honduras sufficient time to complete its recovery efforts to the point that it can handle adequately the return of its nationals.

If I Currently Have TPS, How Do I Re-Register for an Extension?

If you have already been granted TPS through the Honduras TPS Program, your TPS will expire on July 5, 2001. Persons previously granted TPS under the Honduras program may apply for an extension by filing (1) a Form I–821, Application for Temporary Protected Status, without the fee, during the re-registration period that begins May 8, 2001 and ends August 6, 2001, and (2) a Form I–765, Application for Employment Authorization, and by submitting two identification photographs (1½″ × 1½″). To determine whether or not you must submit the one hundred dollar ($100) filing fee with the Form I–765, see the chart below.

If	Then
You are applying for employment authorization through July 5, 2002	You must complete and file: (1) Form I–765, Application for Employment Authorization, with the $100 fee.
Your already have employment authorization or do not require employee authorization.	You must complete and file: (1) Form I–765, with no filing fee.
Your are applying for employment authorization and are requesting a fee waiver.	You must complete and file: (1) Fee waiver request and affidavit (and any other information) in accordance with 8 CFR 244.20, and (2) Form I–765 with no fee.

Where Should I Submit the Application for an Extension of TPS?

Nationals of Honduras (or aliens who have no nationality and who last habitually resided in Honduras) seeking to re-register for the extension of TPS must submit an application and accompanying materials to the INS service center that has jurisdiction over the applicant's place of residence.

When May I File for an Extension of TPS

The 90-day re-registration period begins May 8, 2001, and will remain in effect until August 6, 2001.

May I Apply for an Extension of My Work Authorization If I Have been Granted Employment Authorization on the Basis of My Pending I–821, but as of July 5, 2001, My Original Form I–821 Is Still Pending?

Yes, you may apply for an extension of employment authorization. Follow the instructions for reregistration above.

How Does an Application for TPS Affect My Application for Asylum or Other Immigration Benefits

An application for TPS does not affect an application for asylum or any other immigration benefit. A person who is otherwise eligible for TPS and who has applied for, or plans to apply for, asylum, but who has not yet been granted asylum or withholding of removal, may also apply for TPS. Denial of an application for asylum or any other immigration benefit does not necessarily affect disposition of a separate TPS application, though grounds for denying one form of relief may serve as the basis for denying TPS, as well. For example, a person who has been convicted of a particularly serious crime is ineligible for both asylum and TPS. 8 U.S.C. 1158(b) (2); 8 U.S.C. 1254a(c) (2) (B).

Does This Extension Allow Nationals of Honduras (or Aliens Having No Nationality Who Last Habitually Resided in Honduras) Who Entered the United States after December 30, 1998, to File for TPS?

No. This is a notice of an extension of the TPS designation for Honduras, not a notice of re-designation for Honduras for TPS. An extension of TPS does not change the required dates of continuous residence and continuous physical presence in the United States and does not expand TPS availability to include nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) who arrived in the United States after the required dates for continuous physical presence, January 5, 1999, and continuous residence, December 30, 1998.

Is Late Initial Registration Possible?

Yes. In addition to timely re-registration, late initial registration is possible for some persons from Honduras under 8 CFR 244.2(f)(2). To apply for late initial registration and applicant must:

(1) be a national of Honduras (or an alien who has no nationality and who last habitually resided in Honduras);

(2) have been continuously physically present in the United States since January 5, 1999;

(3) have continuously resided in the United States since December 30, 1998; and,

(4) be admissible as an immigrant, except as otherwise provided under section 244(c) (2) (A) of the Act, and not ineligible under section 244 (c) (2) (B) of the Act.

Additionally, the applicant must be able to demonstrate that, during the registration period from January 5, 1999, through July 5, 2000, he or she:

(1) was a nonimmigrant or had been granted voluntary departure status or any relief from removal,

(2) had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal pending or subject to further review or appeal,

(3) was a parolee or had a pending request for reparole, or

(4) was the spouse or child of an alien currently eligible to be a TPS registrant. 8 CFR 244.2(f)(2).

An applicant for late initial registration must register no later than sixty (60) days from the expiration or termination of the conditions described above. 8 CFR 244.2(g).

Notice of Extension of Designation of Honduras Under the TPS Program

By the authority vested in me as Attorney General under sections 244(b)(1), (b)(3)(A), and (b)(3)(C) of the Act, I have consulted with the appropriate government agencies concerning whether the conditions under which Honduras was designated for TPS continue to exist. As a result, I determine that the conditions for designation of TPS for Honduras continue to be met, specifically that the damage from Hurricane Mitch persists and Honduras remains temporarily unable to handle adequately the return of its nationals. 8 U.S.C. 1254a(b)(3)(A).

Accordingly, I order as follows:

(1) The designation of Honduras under section 244(b) of the Act is extended for an additional 12-month period from July 5, 2001, to July 5, 2002. 8 U.S.C. 1254a(b)(3)(C).

(2) I estimate that there are approximately 105,000 nationals of Honduras (or aliens who have no nationality and who last habitually resided in Honduras) who have been granted TPS and who are eligible for re-registration.

(3) In order to be eligible for TPS during the period from July 5, 2001, to July 5, 2002, a national of Honduras (or an alien who has no nationality and who last habitually resided in Honduras) who has already received a grant of TPS under the Honduras TPS designation or who is eligible to file under the late filing provision of 8 CFR 244.2(f)(2) must register for TPS by filing a new Application for Temporary Protected Status, Form I–821, along with an Application for Employment Authorization, Form I–765, within the 90-day period beginning on May 8, 2001 and ending on August 6, 2001. Failure to register without good cause will result in the withdrawal of TPS. 8 CFR 244.17(c).

(4) At least 60 days before this extension terminates on July 5, 2002, the Attorney General will review the designation of Honduras under the TPS program and determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination, including the basis for the determination, will be published in the **Federal Register**.

(5) Information concerning the Honduran TPS program will be available at local Service offices upon publication of this notice and on the INS website at http://www.ins.usdoj.gov.

Dated: May 1, 2001.

John Aschroft,

Attorney General.

[FR Doc. 01–11536 Filed 5–7–01; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2136–01; AG Order No. 2426–2001]

RIN 1115—AE26

Extension of the Designation of Nicaragua Under the Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The designation of Nicaragua under the Temporary Protected Status (TPS) will expire on July 5, 2001. This notice extends the Attorney General's designation of Nicaragua under the TPS program for 12 months until July 5, 2002, and sets forth procedures necessary for nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) with TPS to register for the additional 12-month period. Eligible nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) may re-register for TPS and an extension of employment authorization. Re-registration is limited to persons who registered during the initial registration period, which ended on August 20, 1999, or who registered after that date under the late initial registration provisions. Persons who are eligible for late initial registration may register for TPS during this extension. Nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) who are eligible for late initial registration may register for TPS during this extension.

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EFFECTIVE DATES: The extension of the TPS designation for Nicaragua is effective July 5, 2001, and will remain in effect until July 5, 2002. The 90-day re-registration period begins May 8, 2001, and will remain in effect until August 6, 2001.

FOR FURTHER INFORMATION CONTACT: Rebecca K. Peters, Residence and Status Services Branch, Adjudications, Immigration and Naturalization Service, Room 3214, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Authority Does the Attorney General Have To Extend the Designation of Nicaragua Under the TPS Program?

Section 244(b)(3)(A) of the Immigration and Nationality Act (Act) states that at least 60 days before the end of an extension or a designation, the Attorney General must review conditions in the foreign state for which the designation is in effect. 8 U.S.C. 1254a(b)(3)(A). If the Attorney General does not determine that the foreign state no longer meets the conditions for designation, the period of designation is automatically extended for 6 months pursuant to section 224(b)(3)(C) of the Act, although the Attorney General may exercise his discretion to extend the designation for 12 or 18 months. 8 U.S.C. 1254a(b)(3)(C). With respect to Nicaragua, such an extension makes TPS available only to persons who have been continuously physically present since January 5, 1999, and have continuously resided in the United States since December 30, 1998.

Why Did the Attorney General Decide To Extend the TPS Designation for Nicaragua?

Since the date of the last extension of Nicaragua's TPS designation, the Departments of Justice and State have continued to review conditions in Nicaragua. Prior to making a decision, the Attorney General had consultations with the Department of State to determine whether conditions warranting the TPS designation continued to exist. Despite indications of progress in recovery efforts, the Attorney General determined that sufficient damage from Hurricane Mitch persists that makes Nicaragua temporarily unable to handle adequately the return of its nationals. 8 U.S.C. 1254a(b)(1)(B)(ii). For example, the United Nations Food and Agricultural Organization designated Nicaragua as one of only four countries in the Western Hemisphere experiencing a food emergency. In addition, recovery efforts continued to be hamstrung by the delayed delivery on international aid.

Why Did the Attorney General Extend the TPS Designation for a Period of 12 Months?

The Attorney General determined that a 12-month extension would afford Nicaragua a sufficient amount of time to substantially complete its recovery efforts. At the expiration of the current extension, Nicaragua will have been designated for TPS for a period of 30 months. During this period, Nicaragua will have made progress in recovering from the effects of Hurricane Mitch. Balancing the need for additional time for recovery efforts with the temporal nature of the TPS benefit, the Attorney General determined that a 12-month extension would provide Nicaragua sufficient time to complete its recovery efforts to the point that it can handle adequately the return of its nationals.

If I Currently Have TPS, How Do I Re-Register for an Extension?

If you have already been granted TPS through the Nicaragua TPS Program, your TPS will expire on July 5, 2001. Persons previously granted TPS under the Nicaragua program may apply for an extension by filing (1) a Form I–821, Application for Temporary Protected Status, without the fee, during the re-registration period that begins May 8, 2001 and ends August 6, 2001, and (2) a Form I–765, Application for Employment Authorization, and by submitting two identification photographs (1½" × 1½"). To determine whether or not you must submit the one hundred dollar ($100) filing fee with the Form I–765, see the chart below.

If	Then
You are applying for employment authorization through July 5, 2002	You must complete and file: (1) Form I–765, Application for Employment Authorization, with the fee ($100).
You already have employment authorization or do not require employment authorization.	You must complete and file: (1) Form I–765, with no filing fee.
You are applying for employment authorization and are requesting a fee waiver.	You must complete and file: (1) Fee waiver request and affidavit (and any other information) in accordance with 8 CFR 244.20, and (2) Form I–765 with no fee.

Where Should I Submit the Application for an Extension of TPS?

Nationals of Nicaragua (or aliens who have no nationality and who last habitually resided in Nicaragua) seeking to re-register for the extension of TPS must submit an application and accompanying materials to the INS service center that has jurisdiction over the applicant's place of residence.

When May I File for an Extension of TPS?

The 90-day re-registration period begins May 8, 2001, and will remain in effect until August 6, 2001.

May I Apply for an Extension of My Work Authorization if I Have Been Granted Employment Authorization on the Basis of My Pending I–821, and as of July 5, 2001, My Original Form I–821 Is Still Pending?

Yes, you may apply for an extension of your employment authorization. Follow the instructions for re-registration above.

How Does an Application for TPS Affect My Application for Asylum or Other Immigration Benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit. A person who is otherwise eligible for TPS and has applied for, or plans to apply for, asylum, but who has not yet been granted asylum or withholding of removal, may also apply for TPS. Denial of an application for asylum or any other immigration benefit does not necessarily affect disposition of a separate TPS application, though grounds for denying one form of relief may serve as the basis for denying TPS, as well. For example, a person who has been convicted of a particularly serious crime is not eligible for asylum or TPS. 8 U.S.C. 1158(b)(2); 8 U.S.C. 1254a(c)(2)(B).

Does This Extension Allow Nationals of Nicaragua (or Aliens Having No Nationality Who Last Habitually Resided in Nicaragua) Who Entered the United States after December 30, 1998, to File for TPS?

No. This is a notice of an extension of the TPS designation for Nicaragua, not a notice of re-designation for Nicaragua for TPS. An extension of TPS does not change the required dates of continuous residence and continuous physical presence in the United States and does not expand TPS availability to include nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) who arrived in the United States after the required dates for continuous physical presence, January 5, 1999, and continuous residence, December 30, 1998.

Is Late Initial Registration Possible?

Yes. In addition to timely re-registration, late initial registration is possible for some persons from Nicaragua under 8 CFR 244.2(f)(2). To apply for late initial registration an applicant must:

(1) be a national of Nicaragua (or an alien who has no nationality and who last habitually resided in Nicaragua);

(2) have been continuously physically present in the United States since January 5, 1999;

(3) have continuously resided in the United States since December 30, 1998; and,

(4) be admissible as an immigrant, except as otherwise provided under section 244(c)(2)(A) of the Act, and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, the applicant must be able to demonstrate that, during the registration period from January 5, 1999, through July 5, 2000, he or she:

(1) was a nonimmigrant or had been granted voluntary departure status or any relief from removal,

(2) had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal pending or subject to further review or appeal,

(3) was a parolee or had a pending request for reparole, or

(4) was the spouse or child of an alien currently eligible to be a TPS registrant. 8 CFR 244.2(f)(2).

An applicant for late initial registration must register no later than sixty (60) days from the expiration or termination of the conditions described above. 8 CFR 244.2(g).

Notice of Extension of Designation of Nicaragua Under the TPS Program

By the authority vested in me as Attorney General under sections 244(b)(1), (b)(3)(A), and (b)(3)(C) of the Act, I have consulted with the appropriate Government agencies concerning whether the conditions under which Nicaragua was designated for TPS continue to exist. As a result, I determine that the conditions for designation of TPS for Nicaragua continue to be met, specifically that the damage from Hurricane Mitch persists and Nicaragua remains temporarily unable to handle adequately the return of its nationals. 8 U.S.C. 1254a(b)(3)(A).

Accordingly, I order as follows:

(1) The designation of Nicaragua under section 244(b) of the Act is extended for an additional 12-month period from July 5, 2001, to July 5, 2002. 8 U.S.C. 1254a(b)(3)(C).

(2) I estimate that there are approximately 5,300 nationals of Nicaragua (or aliens who have no nationality and who last habitually resided in Nicaragua) who have been granted TPS and who are eligible for re-registration.

(3) In order to be eligible for TPS during the period from July 5, 2001, to July 5, 2002, a national of Nicaragua (or an alien who has no nationality and who last habitually resided in Nicaragua) who has already received a grant of TPS under the Nicaragua TPS designation or who is eligible to file under the late filing provision of 8 CFR 244.2(f)(2) must register for TPS by filing a new Application for Temporary Protected Status, Form I–821, along with an Application for Employment Authorization, Form I–765, within the 90-day period beginning on May 8, 2001 and ending on August 6, 2001. Failure to register without good cause will result in the withdrawal of TPS. 8 CFR 244.17(c).

(4) At least 60 days before this extension terminates on July 5, 2002, the Attorney General will review the designation of Nicaragua under the TPS program and determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination, including the basis for the determination, will be published in the **Federal Register**. 8 U.S.C. 1254a(b)(3)(A).

(5) Information concerning the Nicaraguan TPS program will be available at local Service offices upon publication of this notice and on the INS website at http://www.ins.usdoj.gov.

Dated: May 1, 2001.

John Aschroft,

Attorney General.

[FR Doc. 01–11537 Filed 5–7–01; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

Wagner-Peyser Act Final Planning Allotments for Program Year (PY) 2001

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces the final planning allotments for Program Year (PY) 2001 (July 1, 2001 through June 30, 2002) for basic labor exchange activities provided under the Wagner-Peyser Act.

FOR FURTHER INFORMATION CONTACT: Timothy S. Felegie, Office of Workforce Security, 200 Constitution Avenue NW., Room S–4231, Washington, DC 20210. Telephone: (202) 693–2934 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: In accordance with section 6(b)(5) of the Wagner-Peyser Act, 29 U.S.C. 49e(b)(5), the Employment and Training Administration is publishing final planning allotments for each State for program Year (PY) 2001 (July 1, 2001, through June 30, 2002). Preliminary planning estimates were provided to each State on March 6, 2001. Funds are distributed in accordance with formula criteria established in section 6(a) and (b) of the Wagner-Peyser Act. Civilian labor force (CLF) and unemployment data for Calendar Year 2000 are used in making the formula calculations.

The total amount of funds currently available for distribution is $761,735,000. The Secretary of Labor shall set aside up to 3 percent of the total available funds to assure that each State will have sufficient resources to maintain statewide employment services, as required by section 6(b)(4) of the Act, 29 U.S.C. 49e(b)(4). In accordance with this provision, $22,372,050 is set aside for administrative formula allocation. These funds are included in the total planning allotment. The funds that are set aside are distributed in two steps to States which have lost in relative share of resources from the prior year. In Step 1, States which have a CLF below one million and are below the median CLF density are maintained at 100 percent of their relative share of prior year resources. The remainder is distributed

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in Step 2 to all other States losing in relative share from the prior year, but which do not meet the size and density criteria for Step 1.

Postage costs incurred by States during the conduct of employment service (ES) activities are billed directly to the Department of Labor by the U.S. Postal Service. The total final planning allotment reflects $16,000,000, or 2.1 percent of the total amount available, withheld from distribution to finance postage costs associated with the conduct of ES business. Pursuant to Section 7(b) of the Act, 29 U.S.C. 49f(b), ten percent of the total sums allotted to each State shall be reserved for use by the Governor to provide performance incentives for public ES offices and programs; services for groups with special needs; and for the extra costs of exemplary models for delivering job services.

Differences between preliminary planning estimates and final planning allotmens are caused by the use of Calendar Year 2000 data as opposed to the earlier data (12 months ending September 2000) used for preliminary planning estimates.

Signed at Washington, DC, this 25th day of April, 2001.

Grace Kilbane,

Administrotor, Office of Workforce Security.

BILLING CODE 4510–30–M

Appendix 1-1

U. S. Department of Labor
Employment and Training Administration
Employment Service (Wagner-Peyser
Final PY 2001 Allotments to States

Alabama	$10,959,154
Alaska	8,106,495
Arizona	11,647,788
Arkansas	6,349,907
California	89,216,633
Colorado	10,324,433
Connecticut	8,314,954
Delaware	2,082,968
District of Columbia	3,391,931
Florida	35,254,594
Georgia	19,718,441
Hawaii	3,220,552
Idaho	6,754,153
Illinois	31,998,185
Indiana	14,316,804
Iowa	6,980,905
Kansas	6,671,747
Kentucky	9,820,530
Louisiana	11,075,973
Maine	4,016,631
Maryland	13,703,736
Massachusetts	15,324,703
Michigan	24,357,510
Minnesota	12,471,659
Mississippi	7,309,108
Missouri	13,680,091
Montana	5,519,529
Nebraska	6,633,389
Nevada	5,365,563
New Hampshire	2,993,664
New Jersey	21,130,170
New Mexico	6,193,882
New York	47,277,511
North Carolina	18,608,828
North Dakota	5,620,532
Ohio	28,306,057
Oklahoma	8,125,646
Oregon	9,557,836
Pennylvania	30,125,489
Puerto Rico	10,329,110
Rhode Island	2,594,102
South Carolina	9,751,496
South Dakota	5,194,663
Tennessee	13,719,435
Texas	51,499,427
Utah	10,215,650
Vermont	2,433,477
Virginia	15,820,479
Washington	16,179,605
West Virginia	5,945,805
Wisconsin	13,675,955
Wyoming	4,030,272
State Total	743,917,157
Guam	348,947
Virgin Islands	1,468,896
Postage	16,000,000

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Appendix 1.2

U. S. Department of Labor
Employment and Training Administration
Employment Service (Wagner-Peyser)
Final PY 2001 Allotments to States

State	Basic Formula	3% Distribution Step 1*	3% Distribution Step 2**	3% Distribution Total	Total Allotment
Alabama	$10,949,709	$0	$9,445	$9,445	$10,959,154
Alaska	7,076,435	1,030,060	0	1,030,060	8,106,495
Arizona	11,263,996	0	383,792	383,792	11,647,788
Arkansas	6,212,856	0	137,051	137,051	6,349,907
California	89,216,633	0	0	0	89,216,633
Colorado	9,889,590	0	434,843	434,843	10,324,433
Connecticut	7,471,113	0	843,841	843,841	8,314,954
Delaware	2,020,326	0	62,642	62,642	2,082,968
District of Columbia	3,047,702	0	344,229	344,229	3,391,931
Florida	35,060,829	0	193,765	193,765	35,254,594
Georgia	19,718,441	0	0	0	19,718,441
Hawaii	2,952,044	0	268,508	268,508	3,220,552
Idaho	5,895,930	858,223	0	858,223	6,754,153
Illinois	31,998,185	0	0	0	31,998,185
Indiana	14,019,699	0	297,105	297,105	14,316,804
Iowa	6,713,222	0	267,683	267,683	6,980,905
Kansas	6,671,747	0	0	0	6,671,747
Kentucky	9,699,310	0	121,220	121,220	9,820,530
Louisiana	11,075,973	0	0	0	11,075,973
Maine	3,506,254	510,377	0	510,377	4,016,631
Maryland	13,432,092	0	271,644	271,644	13,703,736
Massachusetts	13,935,646	0	1,389,057	1,389,057	15,324,703
Michigan	24,294,824	0	62,686	62,686	24,357,510
Minnesota	12,471,659	0	0	0	12,471,659
Mississippi	7,309,108	0	0	0	7,309,108
Missouri	13,567,030	0	113,061	113,061	13,680,091
Montana	4,818,185	701,344	0	701,344	5,519,529
Nebraska	5,790,511	842,878	0	842,878	6,633,389
Nevada	4,798,067	567,496	0	567,496	5,365,563
New Hampshire	2,993,664	0	0	0	2,993,664
New Jersey	19,885,779	0	1,244,391	1,244,391	21,130,170
New Mexico	5,406,851	787,031	0	787,031	6,193,882
New York	45,306,387	0	1,971,124	1,971,124	47,277,511
North Carolina	18,608,828	0	0	0	18,608,828
North Dakota	4,906,353	714,179	0	714,179	5,620,532
Ohio	28,220,985	0	85,072	85,072	28,306,057
Oklahoma	7,352,488	0	773,158	773,158	8,125,646
Oregon	9,344,869	0	212,967	212,967	9,557,836
Pennsylvania	29,369,046	0	756,443	756,443	30,125,489
Puerto Rico	9,513,554	0	815,556	815,556	10,329,110
Rhode Island	2,461,082	0	133,020	133,020	2,594,102
South Carolina	9,501,667	0	249,829	249,829	9,751,496
South Dakota	4,534,598	660,065	0	660,065	5,194,663
Tennessee	13,486,110	0	233,325	233,325	13,719,435
Texas	50,989,725	0	509,702	509,702	51,499,427
Utah	9,178,918	0	1,036,732	1,036,732	10,215,650
Vermont	2,124,265	309,212	0	309,212	2,433,477
Virginia	14,918,805	0	901,674	901,674	15,820,479
Washington	16,179,605	0	0	0	16,179,605
West Virginia	5,190,296	755,509	0	755,509	5,945,805
Wisconsin	13,675,955	0	0	0	13,675,955
Wyoming	3,518,161	512,111	0	512,111	4,030,272
FORMULA TOTAL	721,545,107	8,248,485	14,123,565	22,372,050	743,917,157
Guam	348,947	0	0	0	348,947
Virgin Islands	1,468,896	0	0	0	1,468,896
Indicia Postage	16,000,000	0	0	0	16,000,000
NATIONAL TOTAL	$739,362,950	$8,248,485	$14,123,565	$22,372,050	$761,735,000

* Funds are allocated to the 12 States whose relative share decreased from PY 2000 to the PY 2001 basic formula amount and which have a Civilian Labor Force (CLF) below one million and are below the median CLF density. These States are held harmless at 100% of their PY 2000 relative share.

** The balance of the 3% funds are distributed to the remaining 29 States losing in relative share from PY 2000 to their PY 2001 total allotment amount.

[FR Doc. 01–11543 Filed 5–7–01; 8:45 am]
BILLING CODE 4510–30–C

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (01–059)]

NASA Advisory Committees; Renewal of NASA's Advisory Committee Charters

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Renewal of the Charters of NASA's Advisory Committees.

SUMMARY: Pursuant to sections 14(b)(1) and 9(c) of the Federal Advisory Committee Act (Pub. L. 92–463), and after consultation with the Committee Management Secretariat, General Services Administration, the Administrator of the National Aeronautics and Space Administration has determined that a renewal of seven Agency-established advisory committees is in the public interest in connection with the performance of duties imposed upon NASA by law. The structure and duties of these committees are unchanged. However, the Life and Microgravity Sciences and Applications Advisory Committee has been renamed to the Biological and Physical Research Advisory Committee. This change is consistent with the renaming of the Office of Life and Microgravity Sciences and Applications to the Office of Biological and Physical Research. The Aero-space Technology Advisory Committee has been renamed the Aerospace Technology Advisory Committee.

The seven advisory committees are:

- NASA Advisory Council
- Aerospace Technology Advisory Council
- Biological and Physical Research Advisory Committee
- Earth System Science and Applications Advisory Committee
- Minority Business Resources Advisory Committee
- Space Science Advisory Committee
- Technology and Commercialization Advisory Committee

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Dakon, Assistant Advisory Committee Management Officer, Mail Code Z, National Aeronautics and Space Administration, Washington DC 20546, (202) 358–0732.

SUPPLEMENTARY INFORMATION: Information regarding the NASA Advisory Council and its committees is available on the world wide web at: *http://www.hq.nasa.gov/office/codez/nac.htm.*

Dated: May 3, 2001.

Beth M. McCormick,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 01–11555 Filed 5–7–01; 8:45 am]
BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (01–058)]

NASA Advisory Committees; Renewal of the Aerospace Safety Advisory Panel

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Renewal of the Charter of NASA's Aerospace Safety Advisory Panel.

SUMMARY: Pursuant to sections 14(b)(1) and 9(c) of the Federal Advisory Committee Act (Pub. L. 92–463), and after consultation with the Committee Management Secretariat, General Services Administration, the Administrator of the National Aeronautics and Space Administration has determined that a renewal of the Aerospace Safety Advisory Panel (ASAP) is in the public interest in connection with the performance of duties imposed upon NASA by law. The structure and duties of the ASAP remain unchanged. The charter for the ASAP now includes additional details on the aspects of safety that the Panel should include in their studies and advice to the NASA Administrator. These aspects of safety are fully consistent with the Agency Safety Initiative, a major commitment to safety as NASA's number one priority. The charter also addresses membership terms. In the case of panel members, the Administrator can extend members' service by no more than six years beyond their original 6 year term, thereby limiting service to a total of 12 years. Also, consultants will be appointed for a specific task and will serve no longer than the time required to complete that specific task, but not longer than 1 year. These provisions will ensure that the Panel has balanced representation of membership.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Dakon, Assistant Advisory Committee Management Officer, Mail Code Z, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–0732.

SUPPLEMENTARY INFORMATION: Information regarding the Aerospace Safety Advisory Panel is available on the world wide web at *http://www.hq.nasa.gov/office/codeq/codeq-1.htm*

Dated: May 3, 2001.

Beth M. McCormick,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 01–11556 Filed 5–7–01; 8:45 am]
BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (01–057)]

NASA Advisory Council, Biological and Physical Research Advisory Committee, Commercial Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Biological and Physical Research Advisory Committee, Commercial Advisory Subcommittee.

DATES: Wednesday, June 13, 2001, 8:00 a.m. to 5:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room MIC–7, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Candace Livingston, Code UM, National Aeronautics and Space Administration, Washington, DC 20546, 202–358–0697.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public to the seating capacity of the room. Advance notice of attendance to the Executive Secretary is requested.

The agenda for the meeting will include the following topics:

- Maximize Commercial Research within current International Space Station (ISS) accommodations
- Reducing the cost of accessing the ISS
- Commercial Hardware Development for use on the ISS
- Sharing of Commercial Hardware
- Restructure of the ISS Research Program and Priorities

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

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Dated: May 3, 2001.

Beth M. McCormick,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 01–11557 Filed 5–7–01; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–338 and 50–339]

Virginia Electric and Power Company, North Anna Power Station Units 1 and 2; Exemption

1.0 Background

The Virginia Electric and Power Company (the licensee) is the holder of Facility Operating Licenses NPF–4 and NPF–7, which authorize operation of the North Anna Power Station, Units 1 and 2. The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two pressurized-water reactors located in Louisa County in the Commonwealth of Virginia.

2.0 Purpose

Title 10 of the Code of Federal Regulations (10 CFR) part 50, Appendix G requires that pressure-temperature (P–T) limits be established for reactor pressure vessels (RPVs) during normal operating, and hydrostatic pressure or leak testing conditions. Specifically, 10 CFR part 50, Appendix G states that "[t]he appropriate requirements on * * * the pressure-temperature limits and minimum permissible temperature must be met for all conditions." Appendix G of 10 CFR part 50 specifies that the requirements for these limits are the American Society of Mechanical Engineers (ASME) Code, Section XI, Appendix G Limits. RG 1.99, Rev. 2, provides guidance for implementing 10 CFR Part 50, Appendix G. In GL 88–11, the NRC staff advised licensees that the staff would use RG 1.99, Rev. 2, to review P–T limit curves. RG 1.99, Rev. 2, contains conservative methodologies for determining the increase in transition temperature and the decrease in upper-shelf energy resulting from neutron radiation.

To address provisions of amendments to the technical specifications (TS) regarding the P–T limits, low temperature overpressure protection (LTOP) system setpoints, and LTOP system effective temperature (T_{enable}), the licensee requested in its submittal dated June 22, 2000, as supplemented by letters dated September 19, 2000, and January 4, February 14, March 13, March 22, and April 11, 2001, that the staff exempt North Anna Units 1 and 2 from application of specific requirements of 10 CFR part 50, appendix G, and substitute use of ASME Code Case N–641. Code Case N–641 permits the use of an alternate reference fracture toughness (K_{IC} fracture toughness curve instead of K_{Ia} fracture toughness curve) for reactor vessel materials in determining the P–T limits, LTOP system setpoints and T_{enable}, and provides for plant-specific evaluation of T_{enable}. Since the K_{IC} fracture toughness curve shown in ASME Section XI, Appendix A, Figure A–2200–1 (the K_{IC} fracture toughness curve) provides greater allowable fracture toughness than the corresponding K_{Ia} fracture toughness curve of ASME Section XI, Appendix G, Figure G–2210–1 (the K_{Ia} fracture toughness curve) and a plant-specific evaluation of T_{enable} would give lower values of T_{enable} than use of a generic bounding evaluation for T_{enable}, use of Code Case N–641 for establishing the P–T limits, LTOP system setpoints and T_{enable} would be less conservative than the methodology currently endorsed by 10 CFR Part 50, Appendix G and, therefore, an exemption to apply the Code Case would be required by 10 CFR 50.60. Although the use of the K_{IC} fracture toughness curve in ASME Code Case N–641 was recently incorporated into appendix G to Section XI of the ASME Code, an exemption is still needed because 10 CFR part 50, appendix G requires the licensee's analysis to use an edition and addenda of Section XI of the ASME Code incorporated by reference into 10 CFR 50.55a, i.e., the editions through 1995 and addenda through the 1996 addenda (which do not include the provisions of Code Case N–641).

The proposed amendments submitted by the licensee will revise the P–T limits of TS 3/4.4.9 related to the heatup and cooldown of the reactor coolant system (RCS), the LTOP system setpoints and T_{enable} for the LTOP system, for operation to 32.3 effective full power years (EFPY) for Unit 1 and 34.3 EFPY for Unit 2.

ASME Code Case N–641

The licensee has proposed an exemption to allow use of ASME Code Case N–641 in conjunction with ASME Section XI, 10 CFR 50.60(a) and 10 CFR part 50, appendix G, to determine the P–T limits, LTOP system setpoints and T_{enable}.

The proposed amendments to revise the P–T limits, LTOP system setpoints and T_{enable} for North Anna Units 1 and 2 rely in part on the requested exemption. The revised P–T limits, LTOP system setpoints and T_{enable} have been developed using the K_{Ic} fracture toughness curve, in lieu of the K_{Ia} fracture toughness curve, as the lower bound for fracture toughness of the RPV materials.

Use of the K_{Ic} curve in determining the lower bound fracture toughness of RPV steels is more technically correct than use of the K_{Ia} curve since the rate of loading during a heatup or cooldown is slow and is more representative of a static condition than a dynamic condition. The K_{Ic} curve appropriately implements the use of static initiation fracture toughness behavior to evaluate the controlled heatup and cooldown process of a reactor vessel. The staff has required use of the conservatism of the K_{Ia} curve since 1974, when the curve was adopted by the ASME Code. This conservatism was initially necessary due to the limited knowledge of the fracture toughness of RPV materials at that time. Since 1974, additional knowledge has been gained about RPV materials, which demonstrates that the lower bound on fracture toughness provided by the K_{Ia} curve greatly exceeds the margin of safety required to protect the public health and safety from potential RPV failure. In addition, P–T curves, LTOP setpoints, and T_{enable} based on the K_{Ic} curve will enhance overall plant safety by opening the P–T operating window, with the greatest safety benefit in the region of low temperature operations.

Since an unnecessarily reduced P–T operating window can reduce operator flexibility without just basis, implementation of the proposed P–T curves, LTOP setpoints, and T_{enable} as allowed by ASME Code Case N–641 may result in enhanced safety during critical plant operational periods, specifically heatup and cooldown conditions. Thus, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of 10 CFR 50.60 and appendix G to 10 CFR part 50 will continue to be served.

In summary, the ASME Section XI, Appendix G, procedure was conservatively developed based on the level of knowledge existing in 1974 concerning RPV materials and the estimated effects of operation. Since 1974, the level of knowledge about these topics has been greatly expanded. The staff concurs that this increased knowledge permits relaxation of the ASME Section XI, Appendix G requirements by application of ASME Code Case N–641, while maintaining, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the NRC regulations to ensure an acceptable margin of safety.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. The staff accepts the licensee's determination that an exemption would be required to approve the use of Code Case N–641. The staff examined the licensee's rationale to support the exemption request and concurs that the use of the Code case would meet the underlying intent of these regulations. Based upon a consideration of the conservatism that is explicitly incorporated into the methodologies of 10 CFR part 50, appendix G; Appendix G of the Code; and Regulatory Guide 1.99, Revision 2, as discussed above, the staff concludes that application of the Code case as described would provide an adequate margin of safety against brittle failure of the RPV. This conclusion is also consistent with the determinations that the staff has reached for other licensees under similar conditions based on the same considerations.

Therefore, the staff concludes that granting an exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) is appropriate and that the methodologies of Code Case N–641 may be used to revise the P–T limits, LTOP setpoints, and T_{enable} for North Anna Power Station, Units 1 and 2.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Therefore, the Commission hereby grants the licensee an exemption from the requirements of 10 CFR part 50, appendix G, for North Anna Power Station, Units 1 and 2.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (66 FR 22018).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 2nd day of May 2001.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–11567 Filed 5–7–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289]

Amergen Energy Company, LLC; Three Mile Island Nuclear Station, Unit 1 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from certain provisions of Sections 50.44 and 50.46 and Appendix K of Title 10 of the Code of Federal Regulations (10 CFR) Part 50 for Facility Operating License No. DPR–50, issued to AmerGen Energy Company, LLC (the licensee), for operation of the Three Mile Island Nuclear Station, Unit 1 (TMI–1), located in Dauphin County, Pennsylvania.

Environmental Assessment

Identification of the Proposed Action

The licensee requests an exemption from the provisions of: (1) 10 CFR 50.44, "Standards for combustible gas control system in light-water-cooled power reactors," which provide requirements to control hydrogen generated by Zircaloy or ZIRLO fuel cladding after a postulated loss-of-coolant accident (LOCA); (2) 10 CFR 50.46, "Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors," which requires the calculated emergency core cooling system (ECCS) performance for reactors with Zircaloy or ZIRLO fuel cladding to meet certain criteria; and (3) Appendix K, "ECCS Evaluation Models," which presumes the use of Zircaloy or ZIRLO fuel cladding when doing calculations for energy release, cladding oxidation, and hydrogen generation after a postulated LOCA.

The proposed action would allow the licensee to generally use the M5 advanced alloy for fuel rod cladding in fuel assemblies at TMI–1. Limited use of M5 alloy in demonstration assemblies at TMI–1 had previously been approved. M5 alloy would also be used in fuel assembly spacer grids and fuel rod end plugs and fuel assembly guide and instrument tubes. M5 alloy material would be used in lieu of Zircaloy or ZIRLO, the materials assumed to be used in the cited regulations. The fuel assemblies would be loaded into the TMI–1 reactor core during the refueling outage in the fall of 2001, and in use during Cycle 14 and beyond operation.

The proposed action is in accordance with the licensee's application for exemption dated December 20, 2000, as supplemented by letter dated March 14, 2001.

The Need for the Proposed Action

Appendix K of 10 GFR part 50 and 10 CFR 50.46(a)(1)(i) require the demonstration of adequate ECCS performance for light-water reactors that contain fuel consisting of uranium oxide pellets enclosed in Zircaloy or ZIRLO tubes. In addition, 10 CFR 50.44(a) addresses requirements to control hydrogen generated by Zircaloy or ZIRLO fuel after a postulated LOCA. Each of these three regulations, either implicitly or explicitly assume that either Zircaloy or ZIRLO is used as the fuel rod cladding material. In order to accommodate the high fuel rod burnups that are required for modern fuel management and core designs, Framatome Cogema Fuels (FCF), developed the M5 advanced fuel rod cladding and fuel assembly structural material. M5 is an alloy comprised primarily of zirconium (~99 percent) and niobium (~ 1 percent) that has demonstrated superior corrosion resistance and reduced irradiation induced growth relative to both standard and low-tin Zircaloy. However, since the chemical composition of the M5 advanced alloy differs from the specifications of either Zircaloy or ZIRLO, use of the M5 advanced alloy falls outside of the strict interpretation of these regulations. Therefore, approval of this exemption request is needed to permit the use of the M5 advanced alloy as a fuel rod cladding material at TMI–1. Limited use of the M5 alloy in demonstration assemblies at TMI–1 had previously been approved.

Pursuant to 10 CFR 50.12, the NRC may grant exemptions which are authorized by law, will not present an undue risk to the health and safety of the public, and are consistent with the common defense and security, provided that special circumstances are present. Pursuant to 10 CFR 50.12(a)(2)(ii), the Commission believes that special circumstances are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR 50.46 is to ensure that facilities have adequate acceptance criteria for ECCS. FCF demonstrates in its topical report BAW–10227P–A, "Evaluation of Advanced Cladding and

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Structural Material (M5) in PWR [pressurized-water reactor] Reactor Fuel," submitted to the NRC for review and approval on September 30, 1997, and approved by the NRC in a letter dated February 4, 2000, that the effectiveness of the ECCS will not be affected by a change from Zircaloy fuel rod cladding to M5 fuel rod cladding. The analysis described in BAW–10227P–A also demonstrates that the ECCS acceptance criteria applied to reactors fueled with Zircaloy clad fuel are also applicable to reactors fueled with M5 fuel rod cladding. Therefore, since the underlying purpose of 10 CFR 50.46 is achieved through the use of the M5 advanced alloy as a fuel rod cladding material, the special circumstances required by 10 CFR 50.12(a)(2)(ii) for granting an exemption from 10 CFR 50.46 exist. The underlying purposes of 10 CFR 50.44 and appendix K of 10 CFR 50 are to ensure that cladding oxidation and hydrogen generation are appropriately limited during a postulated LOCA and conservatively accounted for in the ECCS evaluation model. The NRC staff has evaluated the impact of using M5 advanced alloy as fuel cladding material and determined that the impact is within that considered in the design basis for TMI–1. Therefore, the underlying purposes of 10 CFR 50.44 and appendix K of 10 CFR Part 50 are met. Since the underlying purposes of 10 CFR 50.44, 50.46, and appendix K of 10 CFR Part 50 are achieved with the use of M5 advanced alloy as fuel rod cladding material, the special circumstances required by 10 CFR 50.12(a)(2)(ii) for granting the exemption are met.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the use of M5 advanced alloy as fuel rod cladding will not have a detrimental effect during a postulated LOCA. The NRC staff has further determined that since the geometry differences between the M5 alloy and Zircaloy are slight and would have virtually no thermal-hydraulic effect while fuel rods utilizing the two alloys as cladding material are co-resident in the same core, there is no need for a mixed-core penalty in LOCA ECCS model evaluations to compensate for material differences.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Three Mile Island Nuclear Station, Unit 1, dated December 1972.

Agencies and Persons Consulted

In accordance with its stated policy, on April 4, 2001, the staff consulted with the Pennsylvania State official, Mr. Michael Murphy of the Bureau of Radiation Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 20, 2000, as supplemented by letter dated March 14, 2001. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http:www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 2nd day of May 2001.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Senior Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–11568 Filed 5–7–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Notice of Joint Meeting of the ACRS Subcommittees on Materials and Metallurgy, Thermal-Hydraulic Phenomena and Reliability and Probabilistic Risk Assessment

The ACRS Subcommittees on Materials and Metallurgy, Thermal-Hydraulic Phenomena and Reliability and Probabilistic Risk Assessment will hold a joint meeting on May 25, 2001, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, May 25, 2001–8:30 a.m. Until the Conclusion of Business

The Subcommittees will discuss proposed risk-informed revisions to 10 CFR 50.46 for emergency core cooling systems. The Subcommittees will also discuss proposed revisions to the framework for risk-informing the technical requirements of 10 CFR Part 50. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting the cognizant ACRS staff engineer, Mr. Michael T. Markley (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: May 2, 2001.

Howard J. Larson,

Special Assistant, ACRS/ACNW.

[FR Doc. 01–11554 Filed 5–7–01; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 17f–1(g), SEC File No. 270–30, OMB Control No. 3235–0290

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

• Rule 17f–1(g) Requirements for reporting and inquiry with respect to missing, lost, counterfeit or stolen securities.

Paragraph (g) of Rule 17f–1 requires that all reporting institutions (i.e., every national securities exchange, member thereof, registered securities association, broker, dealer, municipal securities dealer, registered transfer agent, registered clearing agency, participant therein, member of the Federal Reserve System and bank insured by the FDIC) maintain and preserve a number of documents related to their participation in the Lost and Stolen Securities Program ("Program") under Rule 17f–1. The following documents must be kept in an easily accessible place for three years, according to paragraph (g): (1) Copies of all reports of theft or loss (Form X–17F–1A) filed with the Commission's designee: (2) all agreements between reporting institutions regarding registration in the Program or other aspects of Rule 17f–1; and (3) all confirmations or other information received from the Commission or its designee as a result of inquiry.

Reports institutions utilize these records and reports (a) to report missing, lost, stolen or counterfeit securities to the database, (b) to confirm inquiry of the database, and (c) to demonstrate compliance with Rule 17f–1. The Commission and the reporting institutions' examining authorities utilize these records to monitor the incidence of thefts and losses incurred by reporting institutions and to determine compliance with Rule 17f–1. If such records were not retained by reporting institutions, compliance with Rule 17f–1 could not be monitored effectively.

The Commission estimates that there are 25,824 reporting institutions (respondents) and, on average, each respondent would need to retain 33 records annually, with each retention requiring approximately 1 minute (33 minutes or .55 hours). The total estimated annual burden is 14,203.2 hours (25,824 × .55 hours = 14,203.2). Assuming an average hourly cost for clerical work of $18.75, the average total yearly record retention cost for each respondent would be $10.30. Based on these estimates, the total annual cost for the estimated 25,824 reporting institution would be approximately $265,987.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions to the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comment and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549.

Dated: May 1, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–11517 Filed 5–7–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24966; 812–12332]

BT Investment Funds, et al.; Notice of Application

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

Summary of the Application: Applicants request an order to permit a series of a registered open-end management investment company to acquire all of the assets and stated liabilities of a series of another registered open-end management investment company. Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

Applicants: BT Investment Funds, on behalf of its underlying series Small Cap Fund ("Acquiring Fund"), and Morgan Grenfell Investment Trust, on behalf of its underlying series Smaller Companies Fund ("Acquiring Fund") (the Acquiring Fund and the Acquired Fund collectively, the "Funds"), Deutsche Asset Management, Inc. ("DeAm, Inc."), and Bankers Trust Company ("Bankers Trust").

Filing Dates: The application was filed on November 27, 2000. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 24, 2001, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be

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notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Daniel O. Hirsch, Secretary, BT Investment Funds, One South Street, Baltimore, MD 21202.

FOR FURTHER INFORMATION CONTACT: Keith A. Gregory, Attorney-Adviser, at (202) 942–0611, or Mary Kay Frech, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Acquiring Fund is a series of BT Investment Funds, a Massachusetts business trust, which is registered as an open-end management investment company under the Act. The Acquiring Fund is a feeder fund in a master/feeder structure and as such invests all of its assets in a master portfolio, the Small Cap Portfolio ("Portfolio").[1] The Portfolio is also registered as an open-end management investment company under the Act. The Acquired Fund is a series fund of Morgan Grenfell Investment Trust ("MGIT"), a Delaware business trust, which is registered as an open-end management investment company under the Act.

2. DeAm, Inc., a Delaware corporation, is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). DeAm, Inc. serves as investment adviser to the Acquired Fund and as its administrator. Bankers Trust is incorporated in New York as a bank holding company and is currently exempt from registration as an investment adviser under the Advisers Act. Bankers Trust serves as investment adviser to the Portfolio and as administrator for the Acquiring Fund.[2] Both Bankers Trust and DeAm, Inc. are indirect wholly owned subsidiaries of Deutsche Bank AG, an international commercial and investment-banking group that is incorporated in Germany.

3. DeAm, Inc. owns, for its own account, more than 60% of the outstanding voting shares of the Acquired Fund. Deutsche Bank Securities Inc., an affiliate of DeAm, Inc., owns approximately 14% of the outstanding voting shares of the Acquired Fund.

4. On August 19, 1999 and August 17, 2000, the board of trustees of MGIT, on behalf of the Acquired Fund (the "Acquired Fund Board"), including all of the trustees who are not interested persons of the Acquired Fund, as defined in section 2(a)(19) of the Act (the "Independent Trustees") approved an Agreement and Plan of Reorganization (the "Agreement"). The Agreement provides that the Acquiring Fund will acquire all of the assets and assume the stated liabilities of the Acquired Fund in exchange for shares of the Acquiring Fund (the "Reorganization"). Pursuant to the Agreement, each shareholder of the Acquired Fund will receive shares of the Acquiring Fund having an aggregate net asset value equal to the aggregate net asset value of the Acquired Fund shares held by that shareholder, determined as of the close of regular trading on the New York Stock Exchange on the day of the closing of the Reorganization, which is expected to be on or about May 31, 2001 ("Closing Date"). The valuation will be made in accordance with the procedures set forth in the then-current prospectuses and statements of additional information for the Funds. On or as soon as practicable after the Closing Date, the shares of the Acquiring Fund received by the Acquired Fund will be distributed pro rata to the shareholders of the Acquired Fund and the Acquired Fund will be liquidated.

5. Applicants state that the Funds have substantially similar investment objectives and policies. The Acquired Fund has two classes of shares, Institutional Class and Investment Class, each of which are sold without a sales charge and are not subject to distribution related fees or contingent deferred sales charges. The Acquiring Fund has one class of shares that are sold without a sales charge and are not subject to distribution related fees or contingent deferred sales charges. Applicants represent that the respective shareholders of the Acquiring Fund and the Acquired Fund have similar rights and obligations. No sales charges will be imposed upon shareholders of the Acquired Fund in connection with the Reorganization. The Boards determined that each Fund will bear its own expenses in connection with the Reorganization, except that DeAm, Inc. will be responsible for certain expenses, including expenses incurred in connection with the filing of the application.

6. The Boards, including a majority of the Independent Trustees of each Fund, determined that the Reorganization is in the best interests of each Fund, and that the interests of the existing shareholders of each Fund would not be diluted as a result of the Reorganization. In assessing the Reorganization, the Boards considered various factors, including: (a) The terms and conditions of the Reorganization; (b) the tax-free nature of the Reorganization; (c) the substantially similar investment objectives, policies and restrictions of the Acquired Fund and the Acquiring Fund; and (d) the expense ratios for the Funds.

7. The Reorganization is subject to a number of conditions precedent, including that: (a) The shareholders of the Acquired Fund will have approved the Agreement; (b) the Funds will have received an opinion of tax counsel that the Reorganization will be tax-free for the Funds and their shareholders; (c) applicants will have received exemptive relief from the Commission for the Reorganization; and (d) a registration statement on Form N–14 will have been filed with the Commission and declared effective for the Acquired Fund. The Agreement and the transactions contemplated by it may be terminated and abandoned by resolutions of either Board at any time prior to the Closing Date. The Agreement may be terminated in the event that a material condition is not fulfilled, a material covenant is not fulfilled, or there is a material breach of the Agreement. Applicants agree not to make any material changes to the Agreement without prior Commission approval.

8. A registration statement on Form N–14 containing a combined prospectus/proxy statement was filed with the Commission on February 2, 2000. An amendment to the registration statement was filed with the Commission on March 30, 2001. A registration statement containing a combined prospectus/proxy statement will be mailed to Acquired Fund shareholders on or about April 30, 2001. A meeting of shareholders of the Acquired Fund will take place on or about May 24, 2001.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) any person directly or indirectly owning, controlling, or holding the power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if such other person is an investment company, any investment adviser of that company. Applicants state that the Funds may be deemed affiliated persons and thus the Reorganization may be prohibited by section 17(a).

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants state that they may not rely on rule 17a–8 because the Funds may be deemed to be affiliated for reasons other than those set forth in the rule. Applicants state that DeAm, Inc. owns more than 60% of the outstanding shares of the Acquired Fund. DeAm, Inc. is an affiliate of the Acquiring Fund because DeAm, Inc. and Bankers Trust, the adviser to the Acquiring Fund, are under the "common control" of Deutsche Bank AG. The Funds, therefore, might be deemed to be affiliated with each other for reasons other than those set forth in the rule.

4. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) of the Act if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered company concerned and with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to complete the Reorganization. Applicants submit that the Reorganization satisfies the standards of section 17(b) of the Act. Applicants state that the terms of the proposed Reorganization are fair and reasonable and do not involve overreaching and that the Funds have substantially similar investment objectives and policies. Applicants also state that the Boards, including a majority of the Independent Trustees, have found that participation in the Reorganization is in the best interests of each Fund, and that the interests of the existing shareholders will not be diluted as a result of the Reorganization. In addition, applicants state that the Reorganization will be based on the Funds' relative net asset values.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–11251 Filed 5–7–01; 8:45 am]

BILLING CODE 8010–01–M

[1] On March 8, 2001, the board of trustees of BT Investment Funds, on behalf of the Acquiring Fund (the "Acquiring Fund Board"), approved a conversion of the Acquiring Fund from a feeder fund in a master-feeder structure to a stand-alone, direct investment fund (the "Conversion"). If the Conversion occurs before the Reorganization (as defined below), the two stand-alone funds will merge. If the Reorganization occurs prior to the Conversion, the Acquired Fund will merge into the Acquiring Fund, and the Acquiring Fund will transfer the Acquired Fund's assets to the Portfolio.

[2] Bankers Trust will continue to serve as the investment adviser for the Portfolio until on or about April 30, 2001, at which time DeAm, Inc. will become investment adviser for the Portfolio. Under the new advisory agreement with DeAm, Inc., the services provided by DeAm, Inc. would be the same as under the current advisory agreement with Bankers Trust.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44244; File No. SR–CBOE–2001–12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Amend Its Rules Governing Split-Price Executions on Its Retail Automatic Execution System

May 1, 2001.

Pursuant to Section 19(b)(1) of the Securities and Exchange Act of 1934 ("Act"),[1] and the Rule 19b–4 thereunder,[2] notice is hereby given that March 16, 2001, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules to provide that the applicability of the split-price execution functionality for RAES orders may be determined by the appropriate Floor Procedure Committee on a class-by-class basis. Below is the text of the proposed rule change. New text is in *italics*. Proposed deletions are in [brackets].

* * * * *

Chicago Board Options Exchange, Incorporated Rules

* * * * *

Rule 6.8. RAES Operations

This Rule governs RAES operations in all classes of options, except to the extent otherwise expressly provided in this or other Rules in respect of specified classes of options.

(a) (i) Firms on the Exchange's Order Routing System ("ORS") will automatically be on the Exchange's Retail Automatic Execution System ("RAES") for purposes of routing small public customer market or marketable limit orders into the RAES system. Those orders which are eligible for routing to RAES may be subject to such contingencies as the appropriate Floor Procedure Committee ("FPC") shall approve. Public customer orders are orders for accounts other than accounts in which a member, non-member participant in a joint-venture with a member, or any non-member broker-dealer (including a foreign broker-dealer as defined in Rule 1.1(xx)) has an interest. The appropriate Floor Procedure Committee ("FPC") shall determine the size of orders eligible for entry into RAES in accordance with paragraph (e) of this Rule. For purposes of determining what a small customer order is, a customer's order cannot be split up such that its parts are eligible for entry into RAES. Firms on ORS have the ability to go on and off ORS at will. Firms not on ORS that wish to participate will be given access to RAES from terminals at their booths on the floor.

(ii) When RAES receives an order, the system automatically will attach to the order its execution price, determined by the prevailing market quote at the time of the order's entry to the system, except as otherwise provided in paragraph (b) of this Rule in instances where the best bid or offer on the Exchange's book constitutes the prevailing market best bid or offer, and as otherwise provided in Interpretation and Policy .02 under this Rule 6.8 in respect of multiply-

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traded options. A buy order will pay the offer, a sell order will sell at the bid. A Market-Maker logged on to participate in RAES (a "Participating Market-Maker") will be designated as contra-broker on the trade. A trade executed on RAES at an erroneous quote should be treated as a trade reported at an erroneous price and adjusted to reflect the accurate market after receiving a Floor Official's approval.

(iii) This rule shall apply to RAES in classes handled by DPM's except that the MTS Appointments Committee may make available additional series or raise the size of eligible orders in a DPM's classes pursuant to Rule 8.80.

(b) *When the best bid or offer on the Exchange's book constitutes the best bid or offer on the Exchange, contra-side incoming RAES orders shall be executed in accordance with either (i) or (ii) below, as determined by the appropriate Floor Procedure Committee on a class-by-class basis.*

(i) When the best bid or offer on the Exchange's book constitutes the best bid or offer on the Exchange and is for a size less than the RAES order eligibility size for that class, such fact shall be denoted in the Exchange's disseminated quote by a "Book Indicator." [It is possible that the best bid or offer on the Exchange's book constitutes the prevailing market bid or offer. In those instances, a] *An incoming* RAES order will be executed against the order in the book. In the event, the order in the book is for a smaller number of contracts than the RAES order, the balance of RAES order will be assigned to participating market-makers at the same price at which the initial portion of the order was executed up to an amount prescribed by the appropriate Floor Procedure Committee on a class-by-class basis (the "Book Price Commitment Quantity"). Any remaining balance thereafter shall be (i) routed to the crowd PAR terminal if Autoquote is not in effect for that series; (ii) assigned to participating market-makers at the Autoquote price if Autoquote constitutes the new prevailing market bid or offer; or (iii) executed against any order in the book that constitutes the new prevailing market bid or offer with the balance of the RAES order being assigned to participating market-makers at that price up to the Book Price Commitment Quality. Any additional remaining balance of a RAES order shall be handled in accordance with (ii) or (iii) of this paragraph.

(ii) An incoming RAES order will be executed against the order in the book. In the event the order in the book is for a smaller number of contracts than the RAES order, the balance of the RAES order will be assigned to participating market-makers at the same price at which the initial portion of the RAES order was executed.

(c)–(g) Unchanged.

* * * Interpretations and Policies:

.01–.08 Unchanged.

* * * * *

II. Self-Regulatory Organization's Statement of the Purposed of, and Statutory Basis for, the Propose Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 1, 1998, the Commission approved a CBOE rule change establishing the Exchange's Automated Book Priority System ("ABP").[3] ABP allows an order entered into RAES to trade directly with an order on the Exchange's customer limit order book in those cases where the best bid or offer on the Exchange's book is equal to the prevailing market bid or offer. As originally approved, ABP provided that in the event the order in the book was for a smaller number of contracts than the RAES order, the entire balance of the RAES order would be assigned to participating market-makers at the same price at which the initial portion of the order was executed against the book, regardless of the next prevailing best bid or offer on the Exchange. Thus, if the book contained an order for one contract that represented the best bid, an incoming market order to sell 50 contracts would execute against the book for one contract and then against the trading crown for 49 contracts at the book price, regardless of the trading crowd's best bid.

On February 6, 2001, the Commission approved a CBOE rule change filing to enhance ABP to provide that RAES orders subject to ABP be executed against the book price up to the applicable book size or a larger amount as pre-determined by the appropriate Floor Procedure Committee ("FPC") for the subject option class.[4] The rule change allows for split-price executions on RAES when the CBOE's best bid (offer) is established by an order in CBOE's book that is for a smaller size than the RAES contract execution guarantee. However, as approved, the revised rule does not allow for a controlled class by class implementation of the split-price functionality.

Accordingly, CBOE now seeks to modify that rule to merely provide that the applicability of the split-price execution functionality to a particular option class be determined by the FPC. Thus, the FPC would pre-determine, on a class by class basis, if incoming RAES orders will be subject to split-price executions when the CBOE's best bid (offer) is established by a booked order, or if incoming RAES orders will be executed in their entirety at the booked order's price as has been the case since the inception of ABP. The CBOE believes the change will provide the Exchange with the needed flexibility to roll out the split-price functionality in a controlled manner.

2. Statutory Basis

The proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,[5] in that it is designed to remove impediments to a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes a change in an existing CBOE trading system that does not significantly affect the protection of investors or the public interest, that does not impose any significant burden on competition, and that does not have the effect of limiting the access to or availability of the system, it has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and subparagraph (f)(5) of the Rule 19b–4 thereunder.[7] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[3] Securities Exchange Release No. 41995 (October 8, 1999), 64 FR 56547 (October 20, 1999).

[4] Securities Exchange Act Release No. 43932 (February 6, 2001), 66 FR 10332 (February 14, 2001).

[5] 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are fled with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. CBOE–2001–12 and should be submitted by May 29, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–11474 Filed 5–7–01; 8:45 am]

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[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(5).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44243; File No. SR–NASD–2001–14]

Self-Regulatory Organizations; Notice of Filing and Order Accelerating Partial Approval of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. To Modify Certain Initial and Continued Listing Standards on Nasdaq

May 1, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder, notice is hereby given that on March 8, 2001, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On April 26, 2001, Nasdaq submitted Amendment No. 1 to the proposal.[3] The proposal would modify certain initial and continued listing standards on Nasdaq. Nasdaq has also proposed a pilot program that would give immediate effectiveness to certain of the new listing standards. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to that portion of the proposal relating to the pilot program.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq has filed with the Commission a proposal to amend NASD Rules 4200, 4310, 4320, 4420, and 4450 and thereby modify certain quantitative initial and continued listing standards on Nasdaq. Nasdaq proposes to implement a pilot program that would allow issuers, with respect to certain of the new standards, to comply with either the existing standards or the proposed new standards. The pilot program is designed to ensure that issuers that meet the new standards but not the existing standards are not delisted before the Commission takes final action on the proposed rule change. The standards that would be included in the pilot are: (1) The new bid price requirement found in NASD Rule 4450(b)(4); and (2) the new equity standard, which replaces the old net tangible assets standard, found in NASD Rules 4310(c)(2)(A)(i), 4310(c)(2)(B)(i), 4320(e)(2)(A)(i), 4320(e)(2)(B)(i), 4420(a)(5), 4420(b)(1), and 4450(a)(3). Nasdaq has proposed that the pilot program would expire on July 1, 2001, or such earlier time as the Commission takes action on the overall proposal.

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

4200. Definitions

(a) For purposes of the Rule 4000 Series, unless the context requires otherwise:

(1)–(27) No change.

(28) *Reserved* ["Net Tangible Assets" shall mean total assets (including the value of patents, copyrights and trade marks but excluding the value of goodwill) less total liabilities.]

(29)–(36) No change.

4310. Qualification Requirements for Domestic and Canadian Securities

To qualify for inclusion in Nasdaq, a security of a domestic or Canadian issuer shall satisfy all applicable requirements contained in paragraphs (a) or (b), and (c) hereof.

(a)–(b) No change.

(c) In addition to the requirements contained in paragraph (a) or (b) above, and unless otherwise indicated, a security shall satisfy the following criteria for inclusion in Nasdaq:

(1) For initial inclusion, the issue shall have three registered and active market makers, and for continued inclusion, the issue shall have two registered and active market makers, one of which may be a market maker entering a stabilizing bid.

(2) (A) For initial inclusion, the issuer shall have:

(i) [net tangible assets of $4 million] *stockholders' equity of $5 million;*

(ii) market capitalization of $50 million (*currently traded issuers must meet this requirement and the bid price requirement under Rule 4310(c)(4) for 90 consecutive trading days prior to applying for listing);* or

(iii) net income of $750,000 (*excluding extraordinary or non-recurring items*) in the most recently completed fiscal year or in two of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Sara Nelson Bloom, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (April 25, 2001). In Amendment No. 1, Nasdaq provided a chart that clarifies the proposed schedule for implementing the new listing standards and made certain technical corrections to the proposal.

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last three most recently completed fiscal years.

(B) For continued inclusion, the issuer shall maintain:

(i) [net tangible assets of $2 million] *stockholders' equity of $2.5 million;*

(ii) market capitalization of $35 million; or

(iii) net income of $500,000 (*excluding extraordinary or non-recurring items*) in the most recently completed fiscal year or in two of the last three most recently completed fiscal years.

(3)–(29) No change.

(d) No change.

4320. Qualification Requirements for Non-Canadian Foreign Securities and American Depositary Receipts

To qualify for inclusion in Nasdaq, a security of a non-Canadian foreign issuer, an American Depositary Receipt (ADR) or similar security issued in respect of a security of a foreign issuer shall satisfy the requirements of paragraphs (a), (b) or (c), and (d) and (e) of this Rule.

(a)–(d) No change.

(e) In addition to the requirements contained in paragraphs (a), (b) or (c), and (d), the security shall satisfy the following criteria for inclusion in Nasdaq:

(1) No change.

(2) (A) For initial inclusion, the issuer shall have:

(i) [net tangible assets of U.S. $4 million] *stockholders' equity of $5 million;*

(ii) market capitalization of U.S. $50 million (*currently traded issuers must meet this requirement for 90 consecutive trading days prior to applying for listing;*) or

(iii) net income of U.S. $750,000 (*excluding extraordinary or non-recurring items*) in the most recently completed fiscal year or in two of the last three most recently completed fiscal years.

(B) For continued inclusion, the issuer shall maintain:

(i) [net tangible assets of U.S. $2 million] *stockholders' equity of $2.5 million;*

(ii) market capitalization of U.S. $35 million; or

(iii) net income of U.S. $500,000 (*excluding extraordinary or non-recurring items*) in the most recently completed fiscal year or in two of the last three most recently completed fiscal years.

(C) An issuer's [net tangible assets] *qualifications* will be determined on the basis of [a balance sheet] *financial statements* prepared in accordance with U.S. generally accepted accounting principles or those accompanied by detailed schedules quantifying the differences between U.S. generally accepted accounting principles and those of the issuer's country of domicile.

(D)–(E) No change.

(3)–(25) No change.

(f) No change.

4420. Quantitative Designation Criteria

In order to be designated for The Nasdaq National Market, an issuer shall be required to substantially meet the criteria set forth in paragraphs (a), (b), (c), (d), (e), (f), or (g) below. Initial Public Offerings substantially meeting such criteria are eligible for immediate inclusion in The Nasdaq National Market upon prior application and with the written consent of the managing underwriter that immediate inclusion is desired. All other qualifying issues, excepting special situations, are included on the next inclusion date established by Nasdaq.

(a) Entry Standard 1

(1) The issuer of the security had annual pre-tax income of at least $1,000,000 (*excluding extraordinary or non-recurring items*) in the most recently completed fiscal year or in two of the last three most recently completed fiscal years.

(2) There are at least 1,100,000 publicly held shares.

(3) The market value of publicly held shares is at least $8 million.

(4) The bid price per share is $5 or more.

(5) The issuer of the security has [net tangible assets of at least $6 million] *stockholders' equity of $15 million.*

(6) The issuer has a minimum of 400 round lot stockholders.

(7) There are at least three registered and active market makers with respect to the security.

(b) Entry Standard 2

(1) The issuer of the security has [net tangible assets of at least $18 million] *stockholders' equity of at least $30 million.*

(2) There are at least 1,100,000 publicly held shares.

(3) The market value of publicly held shares is at least $18 million.

(4) The bid price per share is $5 or more.

(5) There are at least three registered and active market makers with respect to the security.

(6) The issuer has a two-year operating history.

(7) The issuer has a minimum of 400 round lot stockholders.

(c) Entry Standard 3

An issuer designated under this paragraph does not also need to be in compliance with the quantitative criteria for initial inclusion in the Rule 4300 series.

(1) There are at least 1,100,000 publicly held shares.

(2) The market value of publicly held shares is at least $20 million.

(3) The bid price per share is $5 or more.

(4) There are at least four registered and active market makers with respect to the security.

(5) The issuer has a minimum of 400 round lot stockholders.

(6) The issuer has:

(A) a market capitalization of $75 million *(currently traded issuers must meet this requirement and the bid price requirement under Rule 4420(c)(3) for 90 consecutive trading days prior to applying for listing);* or

(B) total assets and total revenue of $75 million each for the most recently completed fiscal year or two of the last three most recently completed fiscal years.

(d)–(h) No change.

4450. Quantitative Maintenance Criteria

After designation as a Nasdaq National Market security, a security must substantially meet the criteria set forth in paragraphs (a) or (b), and (c), (d), (e), and (f) below to continue to be designated as a national market system security. A security maintaining its designation under paragraph (b) need not also be in compliance with the quantitative maintenance criteria in the Rule 4300 series.

(a) Maintenance Standard 1—Common Stock, Preferred Stock, Shares or Certificates of Beneficial Interest of Trusts and Limited Partnership Interests in Foreign or Domestic Issues

(1) 750,000 shares publicly held;

(2) Market value of publicly held shares of $5 million;

(3) The issuer has [net tangible assets of at least $4 million] *stockholders' equity of at least $10 million;*

(4) 400 stockholders of round lots; and

(5) Minimum bid price per share of $1.

(b) Maintenance Standard 2—Common Stock, Preferred Stock, Shares or Certificates of Beneficial Interest of Trusts and Limited Partnership Interests in Foreign or Domestic Issues

(1) The issuer has:

(A) a market capitalization of $50 million; or

(B) total assets and total revenue of $50 million each for the most recently completed fiscal year or two of the last three most recently completed fiscal years.

(2) 1,100,000 shares publicly held;

(3) Market value of publicly held shares of $15 million;

(4) Minimum bid price per share of [$5] *$3;*

(5) 400 stockholders of round lots; and

(6) At least four registered and active market makers.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would: (1) Replace the net tangible assets standard with an equity standard; (2) require that currently trading issuers applying for initial listing under the market capitalization alternative demonstrate 90 days of sustained compliance with the bid price and market capitalization requirements before they are eligible to apply to become listed; (3) clarify the Nasdaq will exclude extraordinary or non-recurring items for purposes of determining compliance with the income standard; and (4) adjust the bid price requirement associated with continued listing on the Nasdaq National Market under the market capitalization standard from $5 or $3. Nasdaq states that these changes were designed to have minimal impact on issuers in the marketplace while providing greater transparency and consistency.

In addition, Nasdaq has proposed a pilot program that will allow issuers that meet the new original listing and maintenance standards but not the old standards to remain listed on Nasdaq for a short period while the Commission considers the overall proposal.[4]

[4] *See infra* Section V.

The Equity Standard

Companies may qualify for initial or continued inclusion on the Nasdaq National Market or the Nasdaq SmallCap Market based, in part, on their net tangible assets. Net tangible assets are defined as total assets less total liabilities less goodwill. Nasdaq proposes to change from this net tangible assets standard to an equity standard for several reasons. First, the equity standard is more transparent to investors, as it is reflected in issuer financial statements, as opposed to the net tangible assets standard which must be manually calculated. For this reason, the equity standard will also provide a better framework for complimentary standards in Nasdaq's developing international markets. Second, the change would respond to recent accounting developments which may tend to require an increase in the booking of goodwill. Finally, the use of an equity standard is consistent with listing standards on the New York Stock Exchange ("NYSE") and the American Stock Exchange.[5]

With respect to the Nasdaq National Market, the $6 million net tangible assets requirement for initial listing under Entry Standard 1 (for companies with pre-tax income of at least $1 million in the latest fiscal year or two of the last three years) would be changed to a $15 million stockholders' equity requirement, and the $18 million net tangible assets requirement under Entry Standard 2 (for companies without the above-referenced pre-tax income) would be changed to $30 million in stockholders' equity. In addition, the $4 million net tangible assets continued listing requirement would be changed to $10 million in stockholder's equity. With respect to the Small Cap Market, the $4 million net tangible assets initial inclusion requirement would be changed to $5 million in stockholders' equity, and the $2 million net tangible assets continued inclusion requirement would be changed to $2.5 million in stockholders' equity.

Seasoning Period for Applicants Relying on the Market Capitalization Standard

Companies may qualify for listing on Nasdaq based, in part, on their market capitalization. The market capitalization listing standards were originally adopted in 1997 to permit the inclusion of certain financially sound issuers that could not qualify under the net tangible assets requirement as a result of accounting conventions such as the booking of goodwill associated with various merger and acquisition activities or significant depreciation charges.[6] These standards permit an issuer to list with a bid price of $5 and a market capitalization of $75 million (in the case of the Nasdaq National Market) or a bid price of $4 and a market capitalization of $50 million (in the case of the Nasdaq SmallCap Market).

Since the adoption of the rule, Nasdaq has noted certain instances where publicly traded companies (including companies quoted on the OTC Bulletin Board) have applied to list on Nasdaq based on the market capitalization listing standards. In these circumstances, companies may be able to evidence compliance based on short-term price reaction to favorable news, which price increase may not be sustainable over the long term. Accordingly, Nasdaq proposes a "seasoning" period of 90 days of currently traded issuers, such that an issuer must maintain the required bid price and market capitalization for that period prior to applying for listing. Nasdaq believes that this seasoning period, especially when coupled with the time necessary to review and process any such application, would provide assurance that a company would be unable to secure a Nasdaq listing based on an unsustainable, short-term run-up in its stock price.[7]

Extraordinary and Non-Recurring Income Items

The income standards for the Nasdaq Stock Market currently make no provision for the exclusion of extraordinary or non-recurring items when assessing an issuer's compliance with the income requirements for listing on Nasdaq. However, Nasdaq believes that it is appropriate to exclude extraordinary and non-recurring income items because they do not provide a continuing benchmark of the issuer's financial performance. Accordingly, Nasdaq proposes that the National Market and SmallCap Market rules relating to the income standards be amended to indicate that the income determination will exclude extraordinary and non-recurring items.

[5] *See* NYSE Rules 102 and 103 (initial listing standards), 802 (continued listing standards); Amex Listing Rules 102 (initial listing standards) and 1003 (continued listing standards.)

[6] *See* Securities Exchange Act Release No. 38961 (August 22, 1997), 62 FR 45895 (August 29, 1997) (approving SR–NASD–97–16).

[7] Nasdaq has stated that this requirement would not apply to an issuer listing as part of its initial public offering, because the same concerns do not exist.

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Bid Price Standard for Issuers Qualifying Under the Market Capitalization Standard

Issuers that seek to qualify for the Nasdaq National Market pursuant to the market capitalization alternative[8] must demonstrate a $5 bid price for both initial and continued inclusion. Nasdaq proposes to adjust the continued inclusion standard, applicable to Nasdaq National Market companies qualifying under the market capitalization standard, from $5 to $3. This would harmonize this standard with other standards by providing a differential between the initial inclusion and continued inclusion requirements.

Implementation

To minimize disruption to existing issuers and to allow adequate time for necessary corporate action to comply with the stockholders' equity standard, Nasdaq proposes to provide its issuers with 18 months following Commission approval of the proposed pilot to come into compliance with the new standard. During this time, issuers that do not meet the new stockholders' equity standard could qualify for continued listing under the net tangible assets standard.

Similarly, for issuers that applied for listing prior to the effective date of the rule, Nasdaq proposes that they continue to be able to qualify for listing under the listing standards in force at the time of their application for a period of 90 days from the effective date of the proposed rule change, and thereafter receive the same grace periods provided to current issuers to come into compliance with the new equity test. Alternatively, such issuers may qualify for listing under the new stockholders' equity test for initial inclusion.

The graph below illustrates the proposed schedule for implementation of the new listing standards.[9] The pilot program is effective as of the date of this release and will terminate upon the earlier of July 1, 2001, or such time that the Commission takes action on the overall proposal. Implementation will be complete 18 months following the date of the Commission's approval of the pilot program.

PROPOSED IMPLEMENTATION SCHEDULE FOR SR–NASD–2001–14

Qualification standards	Pilot program	90 Days following SEC approval order of permanent rule	During 18 months following SEC approval order of the pilot program	At expiration of 18 months following SEC approval order of the pilot program
Initial Listing Criteria:				
Original Standards	Available (for net tangible assets requirement only).	Available (for net tangible assets requirement only).	Not available	Not available.
New Standards	Available	Available	Available	Available.
Continued Listing Criteria:				
Original Standards	Available (for net tangible assets requirement only).	Available (for net tangible assets requirement only).	Not available..	
New Standards	Available	Available	Available	Available.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[10] in that it is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. As noted above, Nasdaq states that the proposed rule change is designed to have minimal impact on issuers in the marketplace while providing greater transparency and consistency in its listing standards.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding, or (ii) as to which the Nasdaq consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change and Amendment No. 1 thereto are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2001–14 and should be submitted by May 29, 2001.

V. Accelerated Approval for Pilot Program

Nasdaq has proposed a pilot program that will operate for a short period while the Commission considers the overall proposal. During the pilot period, currently listed issuers on Nasdaq that might have difficulty meeting the old maintenance standards would have the option instead of meeting the new maintenance standards. Similarly, issuers that are applying for listing could, during the pilot period, choose to meet the proposed original listing standards rather than the existing original listing standards. The standards that would be included in the pilot are: (1) The new bid price requirement found in NASD Rule 4450(b)(4); and (2) the new stockholders' equity standard, which replaces the old net tangible assets standard, found in NASD Rules 4310(c)(2)(A)(i), 4310(c)(2)(B)(i), 4320(e)(2)(A)(i), 4320(e)(2)(B)(i), 4420(a)(5), 4420(b)(1), and 4450(a)(3). Nasdaq has proposed that the pilot program would operate until July 1, 2001, or such earlier time as the Commission acts on Nasdaq's request for permanent approval of the proposal.[11]

The Commission finds that the proposed pilot program is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD.[12] In particular, the Commission believes that the proposal is consistent with Section 15A(b)(6) of the Act.[13] Section 15A(b)(6) requires, among other things, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

With respect to the pilot proposal to lower the bid price requirement in Maintenance Standard 2 of NASD rule 4450 from $5 to $3, the Commission notes that the bid price requirement for initial listing will remain $5.[14] Nasdaq's listing rules generally establish a higher initial requirement and a somewhat lower continued requirement to allow for market fluctuations.[15] Establishing a new bid price requirement of $3 for continued listing would make this standard similar to other existing standards that require issuers to comply with maintenance requirements that are more flexible than the original listing requirements. Accordingly, the Commission believes it is reasonable and consistent with the Act to approve this aspect of the pilot program while the Commission continues to study the overall proposal by, among other things, considering any public comments that may be submitted.

With respect to the pilot proposal to replace the net tangible assets standard with a stockers' equity standard, the Commission notes that it has previously approved a similar proposal to institute market capitalization and stockholders' equity requirements on the NYSE.[16] In that case, the Commission stated that the amount of stockholders' equity is not an inappropriate measure of a company's suitability for listing on an exchange.[17] Accordingly, the Commission believes it is reasonable and consistent with the Act to approve this aspect of the pilot program while the Commission continues to study the overall proposal by, among other things, considering any public comments that may be submitted.

Pursuant to Section 19(b)(2) of the Act,[18] the Commission finds good cause for approving the pilot program prior to the thirtieth day after publication of the filing of this proposal in the **Federal Register**. The Commission believes that accelerated approval of the pilot will enable the Commission and Nasdaq to gain experience with the new standards before the Commission considers granting them permanent approval. Furthermore, the Commission notes that accelerated approval of the pilot program will allow certain issuers that meet the proposed standards to remain listed even if they might fail to meet the existing standards. These companies, in the absence of the pilot, would immediately be subject to delisting as required by the existing maintenance criteria. If the Commission were subsequently to approve the proposal on a permanent basis, these companies would be eligible to relist under the new standards but only after delisting had disrupted trading in their securities. However, if the Commission were to approve the pilot but not permanently approve the proposal, these companies would still have to be delisted, but the timing of their delisting would have far less potential for market disruption. In the interests of reducing market disruption, the Commission believes that the better course of action would be to approve the pilot program on an accelerated basis. The Commission also notes that it has approved similar pilot programs on the NYSE relating to the implementation of new listing standards.[19] Finally, the Commission notes that the pilot will be of only short duration, and the public will have an opportunity to offer comments on all aspects of the overall proposal.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–NASD–2001–14) is partially approved with respect to the pilot program which will bend on the earlier of July 1, 2001, or when the Commission takes final action on the overall proposal.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–11473 Filed 5–7–01; 8:45am]

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[8] *See* NASD Rules 4420(c) and 4450(j).

[9] This table sets forth an implementation schedule *proposed by Nasdaq*. It should not be interpreted as suggesting that the Commission is predisposed to approving the new standards on a permanent basis.

[10] 15 U.S.C. 78o–3(b)(6).

[11] By approving the pilot, the Commission permits Nasdaq, for the duration of the pilot period, to replace the existing bid price and net tangible assets standards with the new proposed standards. However, if the pilot expires before the Commission takes action on the proposed rule change, the old standards would have to be reinstated because Nasdaq would no longer have authority for the new standards.

[12] For purposes of approving the pilot program on an accelerated basis, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78o–3(b)(6).

[14] *See* NASD Rules 4420(a)(5), 4420(b)(4), and 4420(c)(3).

[15] *Compare* NASD Rule 4420 (giving issuers of Nasdaq National Market securities the option of meeting one of three entry standards which include requirements that the market value of publicly held shares be at least $8 million, $18 million, or $20 million, respectively) with NASD Rule 4450 (giving issuers of Nasdaq national Market securities the option of meeting one of two maintenance standards which include requirements that the market value of publicly held shares be at least $5 million or $15 million, respectively).

[16] *See* Securities Exchange Act Release No. 42194 (December 1, 1999), 64 FR 69311 (December 10, 1999] approving SR–NYSE–99–29).

[17] *See id.*, 64 FR at 69314.

[18] 15 U.S.C. 78s(b)(2).

[19] *See* Securities Exchange Act Release No. 41648 (July 26, 1999), 64 FR 41986 (August 2, 1999) (publishing notice of SR–NYSE–99–29 and approving on an accelerated basis a pilot program relating to continued listing criteria); Securities Exchange Act Release No. 41459 (May 27, 1999), 64 FR 30088 (June 4, 1999) (publishing notice of SR–NYSE–99–17 and approving on an accelerated basis a pilot program relating to original listing criteria).

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44246; File No. SR–NASD–2001–29]

Self Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Establish the Nasdaq ReSource SM Service

May 2, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 24, 2001, the National Association of

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Act, and Rule 19b–4 thereunder, Nasdaq is herewith filing a proposed rule change of the NASD to establish Nasdaq's new ReSource℠ Service. The ReSource℠ Service is voluntary and is designed to assist NASD members in complying with Rule 11Ac1–5 under the Act.[3] Nasdaq will file a separate proposed rule change outlining the fee schedule for the ReSource℠ Service.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On November 17, 2000, the Commission adopted Rules 11Ac1–5[4] and 11Ac1–6[5] under the Act.[6] Generally, the Rules seek to improve the ability of public investors to evaluate how their orders are handled after being submitted to a broker-dealer for execution. Rule 11Ac1–5 (the "Rule") requires "market centers" that trade national market system securities to prepare and make publicly available standardized, monthly reports containing statistical information concerning the handling and execution of their "covered orders."[7] A "market center" under the Rule is defined as "any exchange market maker, OTC market maker, alternative trading system, national securities exchange, or national securities association."[8] To facilitate cross-market comparisons, the Rule establishes and defines uniform measures of execution quality, including effective spread, rate of price improvement and disimprovement, fill rate, and execution speed.

Nasdaq proposes to offer a new voluntary service—Nasdaq ReSource℠—to assist NASD member market centers in meeting their reporting obligations under Rule 11Ac1–5. Nasdaq plans to collect, compile, and web-host the reports required by the Rule. These reports will be referred to as Execution Quality Reports (or "XQ Reports℠") and will be made available on a free, publicly accessible web site. Through certain existing systems, members already provide Nasdaq with a portion of the data required to complete XQ Reports℠. In order to ensure complete XQ Reports℠, however, firms will be required to submit additional data to Nasdaq for certain categories of orders. Member firms will be required to provide an electronic file containing execution and cancellation information for orders routed to Nasdaq execution systems, orders routed to ECNs, orders routed to non-NASD members, and certain orders executed as riskless principal, depending on which method the subscriber chooses to report riskless principal transactions.[9]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 11A(a)(1)(C) of the Act, which provides, in relevant part, that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure: (1) Economically efficient execution of securities transactions; (2) fair competition among brokers and dealers; (3) the availability to brokers, dealers and investors of information with respect to quotations and transactions in securities; (4) the practicability of brokers executing investors' orders in the best market; and (5) an opportunity for investors orders to be executed without the participation of a dealer.[10] In adopting Rule 11Ac1–5, the Commission stated that the Rules would help further these important national market system objectives. Nasdaq represents that many market centers, however, do not have the necessary systems in place to collect and disseminate the required statistical information. Moreover, developing such systems and allocating firm personnel necessary to produce internally the reports required by the Rule may be a significant burden on some firms and may not be completed by the applicable compliance dates. Nasdaq believes that the ReSource℠ Service will enable NASD member market centers to comply with Rule 11Ac1–5 in a more cost-effective and timely manner. By facilitating compliance with Rule 11Ac1–5 by NASD members that are market centers, the ReSource℠ Service would serve to advance the purposes of Section 11A(a)(1)(C).

In addition, Nasdaq believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act.[11] Section 15A(b)(6) requires the NASD's rules, among other things, to protect investors and the public interest. As described above, the Nasdaq ReSource℠ Service is designed to assist NASD members in complying with SEC Rule 11Ac1–5, and the rule is designed to improve the ability of public investors to evaluate how broker-dealers are handling their orders. Nasdaq believes that by providing the service to members, it will both facilitate the Commission's goals and fulfill its own obligations to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[3] 17 CFR 240.11Ac1–5.

[4] 17 CFR 240.11Ac1–5.

[5] 17 CFR 240.11Ac1–6.

[6] *See* Securities Exchange Act Release No. 43590 (November 17, 2000), 65 FR 75414 ("Adopting Release").

[7] The Rule defines "covered order" as any market order or any limit order (including immediate-or-cancel orders) received by a market center during regular trading hours at a time when a consolidated best bid and offer is being disseminated, and, if executed, is executed during regular trading hours. Excluded from the definition of "covered order" is any order for which the customer requests special handling for execution, including, but not limited to, orders to be executed at a market opening or closing price, orders submitted with stop prices, orders to be executed only at their full size, orders to be executed on a particular type of tick or bid, orders submitted on a "not held" basis, orders for other than regular settlement, and orders to be executed at prices unrelated to the market price at the time of execution. 17 CFR 240.11Ac1–5(a)(8).

[8] 17 CFR 240.11Ac1–5(a)(14).

[9] *See* NASD Rule 4632(d)(B) and NASD Notice to Members 00–79.

[10] 15 U.S.C. 78k–1(a)(1)(C).

[11] 15 U.S.C. 78*o*–3(b)(6).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq did not solicit or receive written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2001–29 and should be submitted by May 29, 2001.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[12] In particular, the proposed rule change is consistent with the requirements of Section 15A(b)(6)[13] of the Act in that it is designed to foster cooperation and coordination with persons engaged in processing information with respect to securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In addition, the proposed rule change is consistent with Section 11A(a)(1)(C) of the Act,[14] which provides that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations and transactions in securities. In adopting Rule 11Ac1–5, the Commission stated that the Rules would help further this and other national market system objectives.[15] Many market centers may not have the necessary systems in place to collect and disseminate the statistical information required by the Rule. Moreover, developing such systems and allocating firm personnel necessary to produce internally the reports required by the rule may be a significant burden on some firms and may not be completed by the applicable compliance dates.[16] The Commission anticipated that self-regulatory organizations might choose to provide services to assist their members in complying with the Rule.[17] The ReSource℠ Service could enable many NASD member market centers to comply with Rule 11Acl–5 in a more cost-effect and timely manner.

Pursuant to Seciton 19(b)(2),[18] the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Accelerated approval of the ReSource℠ Service will give subscribing firms an alternative means to comply with Rule 11Ac1–5 and allow sufficient time for market centers to develop and test their systems. Members must begin this process as soon as possible to ensure that they are prepared to comply with the Rule on August 1, 2001. Nasdaq states that many NASD members have inquired as to whether Nasdaq will offer such a service. Nasdaq believes that members may be hesitant to subscribe to the Service due to concern the ReSource℠ Service may not be approved or approved too late to enable members to comply with Rule 11Ac1–5. Moreover, a prospective subscriber of Nasdaq's ReSource℠ Service may be hesitant to commit resources to programming and testing systems for ReSource℠ if there is a possibility that approval will be delayed. Accelerated approval will eliminate uncertainty regarding the ReSource℠ Service.

Accelerated approval of the ReSource℠ Service also will facilitate Nasdaq's ability to develop and test systems. Nasdaq represents that based on conversations with members, it has developed an estimate of the number of firms that are likely to subscribe and the resources required to provide the ReSource℠ Service. However, Nasdaq cannot confirm its estimates until it confirms the number of subscribers, which practically can be accomplished only when a subscriber pays for the ReSource℠ service. In addition, the cost of the ReSource℠ Service will be an important factor that potential subscribers will consider in determining whether to subscribe. Accelerated approval of the ReSource℠ service will enable Nasdaq to finalize their fee schedule sooner.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change, SR–NASD–2001–29 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–11518 Filed 5–7–01; 8:45 am]

BILLING CODE 8010–01–M

[12] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78*o*–3(b)(6).

[14] 15 U.S.C. 78k–1(a)(1)(C).

[15] *See supra* note 6.

[16] The initial compliance date for the reporting of listed securities under Rule 11Acl–5 was May 1, 2001. The Commission has temporarily exempted (until July 31, 2001) all orders in Nasdaq securities. Letter from Annette L. Nazareth, Director, Division of Market Regulation, SEC, to Stuart J. Kaswell, Senior Vice President and General Counsel, Securities Industry Association, dated April 12, 2001.

[17] *See supra* note 6.

[18] 15 U.S.C. 78s(b)(2).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34–44233; File No. SR–PCX–00–25)

Self-Regulatory Organizations; Notice of Filing of Amendment No. 3 to Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Archipelago Exchange

April 30, 2001.

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 ("Exchange Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 19, 2001, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its subsidiary PCX Equities, Inc. ("PCXE" or "Corporation"), filed with the Securities and Exchange Commission ("Commission" or "SEC") Amendment No. 3 to the proposed rule change as described in Items I, II and III below, which Items have been prepared by the PCXE. On December 15, 2000, the proposed rule change and Amendment No. 1 was published for comment in the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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Federal Register.[3] On February 27, 2001, the PCXE filed Amendment No. 2 to the proposal.[4] The Commission is publishing this notice to solicit comments on Amendment No. 3 to the proposed rule change from interested persons. The Commission is also publishing the PCX's Supplemental Response to Comment Letters as Appendix A, B, and C.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX, through its wholly owned subsidiary PCXE, is proposing to create a new electronic trading facility of the PCXE, called the Archipelago Exchange ("ArcaEx" or "Arca"). The proposed changes to the proposed rules, as published in the Arca Proposing Release, are below.

Additions are in *italics;* Deletions are in [brackets].

Rules of PCX Equities, Inc.

* * * * *

Rule 1

Definitions

Rule 1.1—No change.
(a)–(p)—No change.

Imbalance

(q) For the purposes of the Opening Auction, [and] the Market Order Auction *and the Trading Halt Auction*, as the case may be, the term "Imbalance" shall mean the number of buy or sell *shares* [orders] that can not be matched with other *shares* [orders] at the Indicative Match Price at any given time.

Indicative Match Price

(r) For the purposes of the Opening Auction, [or] the Market Order Auction *and the Trading Halt Auction*, as the case may be, the term "Indicative Match Price" shall mean for each security (1) the price at which the maximum volume of *shares* [orders] are executable; or (2) if there are two or more prices at which the maximum volume of *shares* [orders] are executable, the price that is closest to the closing price of the previous trading day's normal market hours, as determined by the Consolidated Tape.

(s)–(w)—No change.

NASD

(x) The term "NASD" shall mean the National Association of Securities Dealers, Inc.

Nasdaq

(y) The term "Nasdaq" shall mean The Nasdaq Stock Market, Inc.

Nasdaq Market Maker

(z) The term "Nasdaq Market Maker" shall mean (1) a Nasdaq market maker as defined in NASD Rule 4200(a)(22), as amended from time to time, or (2) an electronic communications network ("ECN").

Nasdaq/NM Security

(aa) The term "Nasdaq/NM Security" shall mean any security (i) designated as a national market system security pursuant to the NASD's "National Market System Securities Designation Plan with respect to Nasdaq Securities," filed with and approved by the Commission pursuant to SEC Rule 11Aa2–1 under the Exchange Act and (ii) that is either listed on the Corporation pursuant to Rule 5 or as to which unlisted trading privileges have been granted pursuant to Section 12(f) of the Exchange Act.

Nasdaq System

(bb) The term "Nasdaq System" shall mean the system operated by Nasdaq.

Nasdaq System BBO

(cc) The term "Nasdaq System BBO" shall mean the best bid or offer that is disseminated pursuant to SEC Rule 11Ac1–1 among the Nasdaq System participants in those issues that are traded on the Nasdaq System.

(dd)–(gg) [(x)–(aa)]—No change.

OTC/UTP Participant

(hh) The term "OTC/UTP Participant" shall mean any registered national securities exchange or national securities association that is a signatory to the OTC/UTP Plan.

OTC/UTP Plan

(ii) The term "OTC/UTP Plan" shall mean the Nasdaq National Market/ Unlisted Trading System/ Unlisted Trading Privileges Plan, as from time to time amended according to its provisions.

OTC/UTP Primary Market

(jj) The term "OTC/UTP Primary Market" for a Nasdaq/NM Security means Nasdaq; provided, however, that if for any 12-month period the number of reported transactions and the reported share volume in a Nasdaq/NM Security in any other OTC/UTP Participant's market exceeds 50% of the aggregate reported transactions and reported share volume of all OTC/UTP Participants in such security, then that OTC/UTP Participant's market shall be the OTC/UTP Primary Market.

OTC/UTP Regulatory Halt

(kk) The term "OTC/UTP Regulatory Halt" means a trade suspension or halt called by the OTC/UTP Primary Market for the purpose of dissemination of material news.

(ll)–(uu) [(bb)–(kk)]—No change.

Sponsorship Provisions

(vv) [(ll)] The term "Sponsorship Provisions" shall mean the provisions *set* [sent] forth in Rule 7.29(b)(2). For a Sponsored Participant to obtain authorized access to the Archipelago Exchange, the Sponsored Participant and its Sponsoring ETP Holder must enter into an agreement which incorporates the Sponsorship Provisions.

(ww)–(aaa) [(mm)–(qq)]—No change.

* * * * *

Rule 2

Equity Trading Permits

Rules 2.1–2.4—No change.

[Publication of Approved ETP Applications]

Rule 2.5. *Reserved.* [With respect to each ETP that is issued, the Corporation shall promptly distribute a notice thereof to all ETP Holders by publishing the name of each new ETP Holder in the Corporation's Weekly Bulletin.]

Rules 2.6–2.100—No change.

* * * * *

Rule 7

Equities Trading

Rules 7.1–7.5—No change.

Trading Differentials

Rule 7.6(a)—No change.
Commentary:
.01–.04—No change.
.05 The minimum price variation ("MPV") for equity securities traded on the Archipelago Exchange shall be [1/64 of $1.00 for those securities that are quoted in fractions and] $0.01 [for those equity securities that are quoted in decimals]; provided, however, at all times the MPV shall be consistent with the Decimalization Implementation Plan.
.06 The minimum price improvement increment ("MPII") on the Archipelago Exchange shall be equal to $0.01 or 10% of the *NBBO* spread, whichever is more.
(b)—No change.
Rules 7.7 –7.17—No change.

Trading in Nasdaq/NM Securities

Rule 7.18[. Reserved.] *(a) Access.*

(1) The Corporation shall permit each Nasdaq Market Maker, acting in its capacity as a market maker, telephone access, or such other access as may be established between the Corporation and the Nasdaq System (collectively, "approved access"), to the Corporation for each Nasdaq/NM Security in which such market maker is registered as a market maker. Such approved access shall include appropriate procedures to assure the timely response to communications received through telephone or other approved access.

(2) Nasdaq Market Makers may use such approved access to transmit orders for execution on the Corporation. Market Makers, via the facilities of the Corporation, may send orders via approved access to any Nasdaq Market Maker in each Nasdaq/NM security in which it displays quotations.

(3) Any order received via approved access from a Nasdaq Market Maker shall be effected in accordance with the Rules of the Corporation applicable to transactions on the Archipelago Exchange.

(4) No Market Maker shall permit the imposition of any access or execution fee, or any other fee or charge, with respect to transactions in Nasdaq/NM Securities effected with Nasdaq Market Makers that are communicated to the Corporation through telephone access.

(b) Display. The Corporation will display on the Archipelago Exchange, at a minimum, the Nasdaq System BBO.

(c) OTC/UTP Regulatory Halts. Whenever, in the exercise of its regulatory function, the OTC/UTP Primary Market for a Nasdaq/NM Security determines that an OTC/UTP Regulatory Halt is appropriate, the Corporation shall halt or suspend trading in that security until the notification by the OTC/UTP Primary Market that the halt or suspension is no longer in effect. The Corporation will assume that adequate publication or dissemination has occurred upon the expiration of one hour after initial publication in a national news dissemination service of the information that gave rise to an OTC/UTP Regulatory Halt and may, at its discretion, re-open trading at that time, notwithstanding notification from the OTC/UTP Primary Market that the halt or suspension is no longer in effect.

(d) Applicability. The following Rules of the Corporation will not be applicable to transactions on the Corporation in Nasdaq/NM Securities: Rules 7.16, 7.55–7.57.

Rules 7.19–7.22—No change.

Obligations of Market Makers

Rule 7.23(a). General. ETP Holders who are registered as Market Makers in one or more securities traded on the Corporation must engage in a course of dealings for their own account to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets on the Corporation in accordance with this Rule. The responsibilities and duties of a Market Maker specifically include, but are not limited to, the following:

(1)–(5)—No change.
(6) [Enter and maintain a] *Maintain one* Cleanup Order in each security in which the Market Maker is registered as such for each Market Order Auction.
(b)–(d)—No change.
Rules 7.24–7.30—No change.

Orders and Modifiers

Rule 7.31.
(a)–(e)—No change.
(f) Tracking Order.
(1)–(6)—No change.

(7) The Corporation shall suspend the Tracking Order Process for a security when a locked or crossed market exists in that security. The Tracking Order Process for that security shall resume when the locked or crossed market in that security no longer exists.

(8)[(7)]—No change.
(g)–(h)—No change.
(i) Directed Order.

(1) Any market or limit order to buy or sell which has been directed to a particular Market Maker by the User.

(2) The Corporation shall suspend the Directed Order Process for a security when a locked or crossed market exists in that security. The Directed Order Process for that security shall resume when the locked or crossed market in that security no longer exists.

(j)–(r)—No change.
(s) Cross Order. A two-sided order with instructions to match the identified buy-side with the identified sell-side at a specified price (the "cross price"). For the purposes of this Rule 7.31(s), an order of block size shall have the same meaning as set forth in Rule 7.57. A Cross Order will be executed as follows; provided, however, no Cross Orders shall be matched at the cross price without interacting with any orders in the Arca Book unless the cross price improves the BBO by the MPII:

(1)—No change.
(2) If the cross price is outside the NBBO,
(A) and the cross price is between the BBO,
(i) first, the portion of the Cross Order that may be executed in another market shall be routed away for execution [pursuant to Section 5 of Rule 7]; and
(ii) then, the remainder of the Cross Order shall be matched at the cross price without interacting with any orders in the Arca Book.
(B) and the cross price is at the BBO,
(i) first, the portion of the Cross Order that may be executed in another market shall be routed away for execution [pursuant to Section 5 of Rule 7];
(ii)–(iii)—No change.
(C) and the cross price is outside the BBO,
(i) and the NBBO is better than the BBO,
(1) first, the portion of the Cross Order that may be executed in another market shall be routed away for execution [pursuant to Section 5 of Rule 7];
(2)–(3)—No change.
(ii) and the NBBO equals the BBO,
(1)—No change.
(2) then, the portion of the Cross Order that may be executed in another market shall be routed away for execution [pursuant to Section 5 of Rule 7];
(3)—No change.
(t) Auction-Only Limit Order. A limit order that is to be executed only during the Market Order Auction *or the Trading Halt Auction, as the case may be.*
(u) Cleanup Order.
(1)*(A)* [Only Market Makers may submit] Cleanup Orders *may be submitted on behalf of Market Makers only* [to the Archipelago Exchange]. *Cleanup Orders may not be submitted on behalf of any Users other than Market Makers.*

(B) Archipelago Exchange, on behalf of each Market Maker, will submit each Cleanup Order.

(C) Only one Cleanup Order per security may be submitted on behalf of each Market Maker.

(2) Cleanup Orders must be submitted [to the Archipelago Exchange] before 6:15 am (Pacific Time) and remain in effect until the conclusion of the Market Order Auction.
(3)–(5)—No change.
(6) Cleanup Orders will only be executed if:
(A) There is an Imbalance [of Market Orders] at the conclusion of the Market Order Auction, as provided in Rule 7.35; and
(B) The Imbalance is less than or equal to the aggregate size of all Cleanup Orders in the relevant security.
(7)–(8)—No change.
(v)–(w)—No change.
(x) Primary Only Order (PO Order). For exchange-listed securities only, a

[3] *See* Securities Exchange Act Release No. 43608 (Nov. 21, 2000), 65 FR 78822 (Dec. 15, 2000) ("Arca Proposing Release").

[4] *See* letter from Cherie Macauley, Wilmer, Cutler & Pickering, Counsel for the Exchange to John Polise, Senior Special Counsel, Division of Market Regulation, Commission, dated February 26, 2001 ("Amendment No. 2"). The Commission does not believe that notice of Amendment No. 2 is necessary. Amendment No. 2 is similar to Amendment No. 3, but there are some substantive differences in Amendment No. 3 that supersede Amendment No. 2. Amendment No. 2 is publicly available in the Commission's Public Reference Room and the PCX's principal place of business.

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market order that is to be routed as a market-on-open order to the primary market for participation in the primary market opening *or re-opening* process.

(1) A PO Order *entered for participation in the primary market opening* must be entered before 6:28 am (Pacific Time) and it will not be included in the Market Order Auction.

(2) A PO Order entered for participation in the primary market re-opening after a trading halt must be entered after trading was halted on the Corporation and before the Re-Opening Time. The PO Order will not be included in the Trading Halt Auction.

Rules 7.32–7.33—No change.

Trading Sessions

Rule 7.34(a)—No change.

(b) Market Maker Obligations.

(1) [During the Core Trading Session,] Market Makers will be obligated to enter Q Orders in securities in which they are registered in accordance with Rule 7.23, *beginning at the start of the Core Trading Session or at such earlier time during the Opening Session as determined from time to time by the Corporation, and continuing until the end of the Core Trading Session.* [by the time Core Trading Hours begin. During the Opening Session and the Late Trading Session,] Market Makers are not obligated to enter Q Orders in securities in which they are registered *at any times other than those established pursuant to the previous sentence.*

(2) Market Makers [are required to enter at least] *must maintain* one Cleanup Order for all securities in which they are registered for each Market Order Auction.

(c)—No change.

(d) Orders Permitted in Each Session.

(1) During the Opening Session:

(A) Orders eligible for the Display Order Process [(other than Q Orders)] and for the Working Order Process that have been designated as available for the Opening Session are eligible for entry into and execution on the Archipelago Exchange.

(B)–(F)—No change.

(G) Notwithstanding that the Market Order Auction occurs during the Opening Session, as set forth in Rule 7.34(a)(1), the following orders not designated for the Opening Session shall participate in the Market Order Auction:

(i) Market orders designated for the Core Trading Session and entered prior to the conclusion of the Market Order Auction; and

(ii) Limited Price Orders designated for the Core Trading Session and entered prior to 6:28 am (Pacific Time).

(2)–(3)—No change.

(e)–(f)—No change.

Opening Session Auctions

Rule 7.35. (a) Order Entry and Cancellation Before Opening Auction

(1)—No change.

(2) Only Limited Priced Orders designated for the Opening Session will be eligible for the Opening Auction. Market orders entered before the Opening Auction *or during the Opening Session* will participate in the Market Order Auction. Limited Price Orders *designated for the Core Trading Session and* not designated for the Opening Session will become eligible for execution *at the commencement of the Market Order Auction* pursuant to Rule *7.35(c)* [7.37 at the commencement of the Core Trading Session].

(3)–(4)—No change.

(b)—No change.

(c) Market Order Auction.

(1)—No change.

(2) Reduction of Imbalances

(A) Any Imbalance in the Market Order Auction may be reduced by new orders, entered on the side of the market opposite the Imbalance, pursuant to the following priority:

(i) Market orders;

(ii) Limited Price Orders eligible for the Opening Session;

(iii) Limited Price Orders *designated for the Core Trading Session and* entered before 6:28 am (Pacific Time);

(iv) Auction-Only Limit Orders; and

(v) Cleanup Orders.

(B) Between 6:28 am (Pacific Time) and the conclusion of the Market Order Auction, Limited Price Orders eligible for the Opening Session or the Core Trading Session may be cancelled, but *Limited Price Orders not eligible for the Opening Session,* market orders, Auction-Only Limit Orders and Cleanup Orders may not be cancelled.

(C)—No change.

(3) Determination of Market Order Auction Price

(A) If there is no Imbalance, orders will be executed in the Market Order Auction at the Indicative Match Price as of 6:30 am (Pacific Time).

(B) If an Imbalance exists, or if an equilibrium exists between buy market orders and sell market orders, as many buy market orders and sell market orders as possible shall be matched, on a time priority basis, *once an NBBO is available,*

(i) at the midpoint of the NBBO at 6:30 am (Pacific Time), in the case of exchange-listed securities for which the Corporation is not the primary market; or

(ii) at the midpoint of the NBBO at 6:30 am (Pacific Time), in the case of Nasdaq-listed securities, provided that the NBBO is not crossed; or

(iii) at the midpoint of the first uncrossed NBBO after 6:30 am (Pacific Time), in the case of Nasdaq securities in which the NBBO is crossed but *one side of* the BBO is not crossed by the NBBO; or

(iv) at the midpoint of the first uncrossed NBBO after 6:30 a.m. (Pacific Time), in the case of Nasdaq securities in which the NBBO is crossed and where both sides of the BBO are crossed by the NBBO; or

([i]v) at the bid (offer) of the BBO that was crossed prior to 6:30 am (Pacific Time), in the case of Nasdaq securities in which the BBO is crossed by a market participant; or

(vi) at the Indicative Match Price as of 6:30 am (Pacific Time) in the case of those issues for which the Corporation is the primary market. If equilibrium exists between buy and sell market orders, the match price shall be at the last Corporation sale price in the security regardless of the trading session[,provided, that,]; *however,* if the last Corporation sale price is *lower than* [inferior to] the BBO, the match price shall be the *displayed bid in the security, or if the last Corporation sale price is higher than the BBO, the match price will be the displayed offer in the security* [Corporation bid (offer)].

Such executions shall be designated with a modifier to identify them as Market Order Auction trades. The market orders that are eligible for, but not executed in the Market Order Auction, shall become eligible for execution in the Core Trading Session immediately upon conclusion of the Market Order Auction.

(d) [Reserved.] *Re-Opening After Trading Halts. To re-open trading in a security following a trading halt in that security, the Archipelago Exchange shall conduct a Trading Halt Auction, as described below:*

(1) Re-Opening Time. After trading in a security has been halted, the Corporation shall disseminate the estimated time at which trading in that security will re-open (the "Re-Opening Time").

(2) Publication of Indicative Match Price and Imbalances

(A) Immediately after trading is halted in a security, and various times thereafter as determined from time to time by the Corporation, the Indicative Match Price of the Trading Halt Auction and the volume available to trade at such price, shall be published via electronic means as determined from time to time by the Corporation. If such a price does not exist (i.e., there is an Imbalance of market orders), the Archipelago Exchange shall indicate via electronic means that an Indicative Match Price does not exist.

(B) Immediately after trading is halted in a security, and various times thereafter as determined from time to time by the Corporation, the market order Imbalance associated with the Trading Halt Auction, if any, shall be published via electronic means as determined from time to time by the Corporation.

(C) If the difference between the Indicative Match Price and the last price prior to the trading halt, as determined by the Consolidated Tape, is equal to or greater than a pre-determined amount, as determined from time to time by the Corporation, the Archipelago Exchange will assign a "SIG" designator to such Indicative Match Price and publish such designator via electronic means as determined from time to time by the Corporation.

(3) Reduction of Imbalances

(A) Any Imbalance in the Trading Halt Auction may be reduced by new orders, entered on the side of the market opposite the Imbalance, pursuant to the following priority:

(i) Market orders;

(ii) Limited Price Orders; and

(iii) Auction-Only Limit Orders.

(B) Primary Only Orders may be submitted to the Archipelago Exchange during a trading halt. Cleanup Orders are not eligible for execution in the Trading Halt Auction.

(C) The Corporation, if it deems such action necessary, will disseminate the time, prior to the time that orders are matched pursuant to the Trading Halt Auction, at which orders may no longer be cancelled.

(D) Interaction with ITS

(i) If a pre-opening indication is required pursuant to the ITS Plan, the Corporation will disseminate three minutes prior to the Re-Opening Time the applicable price range, consisting of the Indicative Match Price as one end of the price range and the Indicative Match Price plus an amount determined by the Corporation for the higher end of the price range.

(ii) The Archipelago Exchange will treat any responses to a pre-opening indication as an Auction-Only Limit Order.

(E) Other market centers may use private communication connections to enter Auction-Only Limit Orders for a Trading Halt Auction.

(4) Determination of Trading Halt Auction Price

(A) For exchange-listed stocks:

(i) If there is no Imbalance and no other market center has re-opened trading in the security, orders will be executed in the Trading Halt Auction at the Indicative Match Price as of the Re-Opening Time.

(ii) If an Imbalance exists, or if an equilibrium exists between buy market orders and sell market order, or if another market center has re-opened trading in the security, as many buy market orders and sell market orders as possible shall be matched, on a time priority basis, at the midpoint of the first uncrossed, unlocked NBBO, once an NBBO is available.

(B) For Nasdaq stocks:

(i) If there is no Imbalance, orders will be executed in the Trading Halt Auction at the Indicative Match Price as of the Re-Opening Time.

(ii) If an Imbalance exists, or if an equilibrium exists between buy market orders and sell market orders, as many buy market orders and sell market orders as possible shall be matched, on a time priority basis, once an NBBO is available,

(a) at the midpoint of the NBBO at the Re-Opening Time, provided that the NBBO is not crossed; or

(b) at the midpoint of the first uncrossed NBBO after the Re-Opening Time, in the case in which the NBBO is crossed, but one side of the BBO is not crossed by the NBBO; or

(c) at the midpoint of the first uncrossed NBBO after the Re-Opening Time, in the case in which the NBBO is crossed and where both sides of the BBO are crossed by the NBBO; or

(d) at the bid (offer) of the BBO that was crossed prior to the Re-Opening Time, in the case in which the BBO is crossed by a market participant; or

(C) For those issues for which the Corporation is the primary market: Orders will be executed at the Indicative Match Price at the Re-Opening Time. If equilibrium exists between buy and sell market orders, the match price shall be at the last Corporation sale price in the security regardless of the trading session; however, if the last Corporation sale price is lower than the BBO, the match price shall be the displayed bid in the security, or if the last Corporation sale price is higher than the BBO, the match price will be the displayed offer in the security.

(5) If any orders are not executed in their entirety during the Trading Halt Auction, then such orders shall be executed in accordance with Rule 7.37 after the completion of the Trading Halt Auction.

(6) After the completion of the Trading Halt Auction, the Archipelago Exchange will re-open for trading the previously halted security in accordance with Rule 7.

(e)—No change.

(f) Whenever in the judgment of the Corporation the interests of a fair and orderly market so require, the Corporation may adjust the timing of the auctions set forth in this Rule.

Order Ranking and Display

Rule 7.36. The Archipelago Exchange shall display to Users and other market participants all non-marketable limit orders in the Display Order Process. The Archipelago Exchange will also disseminate current consolidated quotations/last sale information, and such other market information as may be made available from time to time pursuant to agreement between the Corporation and other market centers.

(a) Ranking. Orders of Users shall be ranked and maintained in the Display Order Process and/or Working Order Process of the Arca Book according to price-time priority, such that within each price level, all orders shall be organized by the time of entry in the following manner.

(1) Display Order Process. Within the Display Order Process:

(A)—No change.

(B) The displayed portion of Reserve Orders (not the reserve size) shall be ranked at the specified limit price and the time of order entry. If the displayed portion of the Reserve Order is decremented *such that 99 shares or fewer are displayed* [in its entirety], the displayed portion of the Reserve Order shall be refreshed for

(i) the displayed amount; *or*

(ii) the entire reserve amount, if the remaining reserve amount is smaller than the displayed amount,

from the reserve portion and shall be submitted and ranked at the specified limit price and the new time that the displayed portion of the order was refreshed.

(C)—No change.

(2)—No change.

(b)–(c)—No change.

Order Execution

Rule 7.37. Subject to the restrictions on short sales under Rule 10a–1 under the Exchange Act, like-priced orders, bids and offers shall be matched for execution by following Steps 1 through 5 in this Rule; provided, however, for an execution to occur in any Order Process, the price must be equal to or better than the NBBO, unless the Archipelago Exchange has routed orders to all away markets at the NBBO.

(a)–No change.

(b) If an incoming marketable order has not been executed in its entirety pursuant to paragraph (a) of this Rule, any remaining part of the order shall be routed to the Display Order Process.

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(1) Step 2: Display Order Process.

(A) An incoming marketable order shall first attempt to be matched for execution against orders *in* the Display Order Process at the display price of the resident order for the total amount of stock available at that price or for the size of the incoming order, whichever is smaller. For the purposes of this subsection, the size of an incoming Reserve Order includes the displayed and reserve size and the size of the portion of the Reserve Order resident in the Display Order Process is equal to its displayed size. If the incoming marketable order has not been executed in its entirety, the remaining part of the order shall be routed to the Working Order Process.

(B)—No change.

(2) Step 3: Working Order Process.

(A)–(B)—No change.

(C) If any change in the NBBO or other available away trading interest would cause a potential match between the away order and an order in the Working Order Process, a commitment to trade shall be sent to that market center or market participant pursuant to Step 5 below *after having proceeded through Step 4.*

(c)—No change.

(d) Step 5: Routing Away.

(1)—No change.

(2) If an order has not been executed in its entirety pursuant to paragraphs (a) through (c) of this Rule and it has not been designated as a Fill-or-Return, Fill-or-Return Plus Order or PNP Order, the order shall be routed for execution as follows:

(A)*(i)* The order shall be routed, either in its entirety or as component orders, to another market center or market participant as a limit order priced at the quote published by the market center or market participant.

(ii) Based upon a User's instruction, a marketable reserve order may be routed (1) serially as component orders, such that each component corresponds to the displayed size, or (2) only once in its entirety, including both the displayed and reserve portions.

(B)–(E)—No change.

(e)—No change.

Rules 7.38–7.42—No change.

Use of Directed Order Process

Rule 7.43[.Reserved.] *It shall be considered conduct inconsistent with just and equitable principles of trade for a User to use the Directed Order Process for the purpose of bypassing otherwise applicable fees.*

Rules 7.44–7.64—No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCXE included statements concerning the purpose of, and basis for, the proposed rule change and discusses any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCXE has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As discussed in detail in the Arca Proposing Release, the PCX proposes to establish rules for Arca, a new exchange facility, as that term is defined in Section 3(a) of the Exchange Act.[5] Arca, which is operated by Archipelago Exchange, L.L.C., is an electronic securities communications and trading facility intended for the use of ETP Holders and their customers. Arca would provide automatic order execution capabilities in the equity securities listed or traded on the PCXE. Arca would operate in place of PCXE's traditional floor trading facilities. In addition to certain minor changes, like renumbering rules,[6] the PCXE proposes the following substantive changes to the proposed rule changes set forth in the Arca Proposing Release.[7]

a. Implementation of OTC/UTP Plan

To implement the OTC/UTP Plan, the PCX proposes the addition of Proposed Rule 7.18—"Trading in Nasdaq/NM Securities"—as well as a number of new definitions in Proposed Rule 1. These rule revisions are described below.

i. Definitions

The PCX introduces the following new terms in Proposed Rule 1:

(1) *Proposed Rule 1.1(x)*—PCXE has inserted as Proposed Rule 1.1(x) the following definition of the term "NASD" shall mean "the National Association of Securities Dealers, Inc."

(2) *Proposed Rule 1.1(y)*—PCXE has added the definition of the term "Nasdaq" as Proposed Rule 1.1(y). "Nasdaq" means "The Nasdaq Stock Market, Inc."

(3) *Proposed Rule 1.1(z)*—PCXE has added the definition of the term "Nasdaq Market Maker" as Proposed Rule 1.1(z). A "Nasdaq Market Maker" shall mean (1) a Nasdaq market maker as defined in NASD Rule 4200(a)(22), as amended from time to time, or (2) an electronic communications network ("ECN").

(4) *Proposed Rule 1.1(aa)*—PCXE has added as Proposed Rule 1.1(aa) the definition of the term "Nasdaq/NM Security," which means "any security (i) designated as a national market system security pursuant to the NASD's 'National Market System Securities Designation Plan with respect to Nasdaq Securities,' filed with and approved by the Commission pursuant to SEC Rule 11Aa2–1 under the Exchange Act and (ii) that is either listed on the Corporation pursuant to Rule 5 or as to which unlisted trading privileges have been granted pursuant to Section 12(f) of the Exchange Act."

(5) *Proposed Rule 1.1(bb)*—PCXE has inserted the definition of the term "Nasdaq System" as Proposed Rule 1.1(bb). "Nasdaq System" means "the system operated by Nasdaq."

(6) *Proposed Rule 1.1(cc)*—PCXE has added the definition of the term "Nasdaq System BBO" as Proposed Rule 1.1(cc). "Nasdaq System BBO" means "the best bid or offer that is disseminated pursuant to SEC Rule 11Ac1–1 among the Nasdaq System participants in those issues that are traded on the Nasdaq System."

(7) *Proposed Rule 1.1(hh)*—PCXE has added the definition of the term "OTC/UTP Participant" as Rule 1.1(hh). "OTC/UTP Participant" is defined as "any registered national securities exchange or national securities association that is a signatory to the OTC/UTP Plan."

(8) *Proposed Rule 1.1(ii)*—PCXE has inserted the definition of the term "OTC/UTP Plan as Proposed Rule 1.1(ii). "OTC/UTP Plan" shall mean "the Nasdaq National Market/Unlisted Trading System/Unlisted Trading Privileges Plan, as from time to time amended according to its provisions."

[5] 15 U.S.C. 78c(a).

[6] In addition to the proposed rule changes, the PCX proposes several corrections to the text of the Arca Proposing Release:

(1) *Section 2(c)(iv) (Order Execution), footnote 82*—Footnote 82 should read "'Marketable' means, for a Limited Price Order, *the price crosses or matches* the NBBO on the other side of the market. Market orders are always considered marketable." *See* Arca Proposing Release at 78827.

(2) *Section 2(c)(vii) (Opening Session Auctions)*—In the second paragraph under "Opening Auctions," the references to "the last .T sale" should be replaced with the phrase "the prior day's closing price." *See* Arca Proposing Release at 78832.

(3) *Section 2(c)(vii) (Opening Session Auctions)*—Example 3 of the Market Order Auction should be deleted. *See* Arca Proposing Release at 78833.

[7] See Arca Proposing Release, note 3, *supra.*

(9) *Proposed Rule 1.1(jj)*—PCXE has inserted the definition of the term "OTC/UTP Primary Market" as Proposed Rule 1.1(jj). "OTC/UTP Primary Market" for a Nasdaq/NM Security "means Nasdaq; provided, however, that if for any 12-month period the number of reported transactions and the reported share volume in a Nasdaq/NM Security in any other OTC/UTP Participant's market exceeds 50% of the aggregate reported transactions and reported share volume of all OTC/UTP Participants in such security, then that OTC/UTP Participant's market shall be the OTC/UTP Primary Market."

(10) *Proposed Rule 1.1(kk)*—PCXE has inserted the definition of "OTC/UTP Regulatory Halt" as Proposed Rule 1.1(kk). An "OTC/UTP Regulatory Halt" is "a trade suspension or halt called by the OTC/UTP Primary Market for the purpose of dissemination of material news."

ii. Trading in Nasdaq/NM Securities

To implement the OTC/UTP Plan for the PCXE, PCXE has added Proposed Rule 7.18, "Trading in Nasdaq/NM Securities," which is described in more detail below.

Paragraph (a) of Proposed Rule 7.18 describes access for trading Nasdaq/NM Securities. Paragraph (a)(1) reads: "The Corporation shall permit each Nasdaq Market Maker, acting in its capacity as a market maker, telephone access, or such other access as may be established between the Corporation and the Nasdaq System (collectively, "approved access"), to the Corporation for each Nasdaq/NM Security in which such market maker is registered as a market maker. Such approved access shall include appropriate procedures to assure the timely response to communications received through telephone or other approved access." Paragraph (a)(2) states that "Nasdaq Market Makers may use such approved access to transmit orders for execution on the Corporation. Market Makers, via the facilities of the Corporation, may send orders via approved access to any Nasdaq Market Maker in each Nasdaq/NM security in which it displays quotations." Paragraph (a)(3) provides that "[a]ny order received via approved access from a Nasdaq Market Maker shall be effected in accordance with the Rules of the Corporation applicable to transactions on the Archipelago Exchange." Paragraph (a)(4) reads: "No Market Maker shall permit the imposition of any access or execution fee, or any other fee or charge, with respect to transactions in Nasdaq/NM Securities effected with Nasdaq Market Makers that are communicated to the Corporation through telephone access."

Paragraph (b) of Proposed Rule 7.18 states that "[t]he Corporation will display on the Archipelago Exchange, at a minimum, the Nasdaq System BBO."

Paragraph (c), which describes OTC/UTP Regulatory Halts states: "Whenever, in the exercise of its regulatory function, the OTC/UTP Primary Market for a Nasdaq/NM Security determines that an OTC/UTP Regulatory Halt is appropriate, the Corporation shall halt or suspend trading in that security until the notification by the OTC/UTP Primary Market that the halt or suspension is no longer in effect. The Corporation will assume that adequate publication or dissemination has occurred upon the expiration of one hour after initial publication in a national news dissemination service of the information that gave rise to an OTC/UTP Regulatory Halt and may, at its discretion, re-open trading at that time, notwithstanding notification from the OTC/UTP Primary Market that the halt or suspension is no longer in effect."

Finally, paragraph (d) states that "[t]he following Rules of the Corporation will not be applicable to transactions on the Corporation in Nasdaq/NM Securities: Rules 7.16, 7.55–7.57."

b. Re-Opening After Trading Halts

The PCX has introduced a procedure, called the Trading Halt Auction, for re-opening a security after a trading halt. The Trading Halt Auction is described in detail in Proposed Rule 7.35(d). Moreover, the definitions of certain auction-related terms have been revised to reflect this new procedure.

i. Definitions

The following definitions have been revised to accommodate the Trading Halt Auction:

(1) *Proposed Rules 1.1(q) and (r)*—The definitions of "Imbalance" and "Indicative Match Price" have been revised to indicate that these terms are applicable to the Trading Halt Auction as well as the Opening and Market Order Auctions.

(2) *Proposed Rule 7.31(t)*—The definition of an Auction-Only Limit Order has been revised to state that it is a limit order that is to be executed during the Trading Halt Auction or the Market Order Auction.

(3) *Proposed Rule 7.31(x)*—The definition of a Primary Only Order ("PO Order") has been revised to clarify that a User may submit a PO Order for participation in the primary market re-opening process as well as the primary market opening process. Proposed Rule 7.31(x)(2) states that "[a] PO Order entered for participation in the primary market re-opening after a trading halt must be entered after trading was halted on the Corporation and before the Re-Opening Time. The PO Order will not be included in the Trading Halt Auction."

ii. Trading Halt Auction

Subject to certain minor variations, the Trading Halt Auction, as described in Proposed Rule 7.35, operates in much the same fashion as the Market Order Auction. Specifically, to re-open trading in a security following a trading halt in that security, Arca will conduct a Trading Halt Auction, as described below.

After trading in a security has been halted, the PCXE will disseminate the estimated time at which trading in that security will re-open. This estimated time will be designated the "Re-Opening Time." Similarly, immediately after trading is halted in a security, and various times thereafter as determined from time to time by the PCXE, the Indicative Match Price of the Trading Halt Auction and the volume available to trade at such price, shall be published via electronic means as determined from time to time by the PCXE. If such a price does not exist (*i.e.*, there is an Imbalance of market orders), Arca shall indicate via electronic means that an Indicative Match Price does not exist. In addition, immediately after trading is halted in a security, and various times thereafter as determined from time to time by the PCXE, the market order Imbalance associated with the Trading Halt Auction, if any, will be published via electronic means as determined from time to time by the PCXE. If the difference between the Indicative Match Price and the last price prior to the trading halt, as determined by the Consolidated Tape, is equal to or greater than a pre-determined amount, as determined from time to time by the PCXE, Arca will assign a "SIG" designator to such Indicative Match Price and publish such designator via electronic means as determined from time to time by the PCXE.

Any Imbalance in the Trading Halt Auction may be reduced by new orders entered on the side of the market opposite the Imbalance, pursuant to the following priority: (1) market orders; (2) Limited Price Orders; and (3) Auction-Only Limit Orders. Cleanup Orders are not eligible for execution in the Trading Halt Auction. Primary Only Orders may be submitted to Arca during a trading halt for execution in the primary market. The PCXE, if it deems such

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action necessary, will disseminate the time, prior to the time that orders are matched pursuant to the Trading Halt Auction, at which orders may no longer be cancelled.

During the Trading Halt Auction, Arca will interact with ITS as follows: If a pre-opening indication is required pursuant to the ITS Plan, the PCXE will disseminate three minutes prior to the Re-Opening Time the applicable price range, consisting of the Indicative Match Price as one end of the price range and the Indicative Match Price plus an amount determined by the PCXE for the higher end of the price range. Arca will treat any responses to a pre-opening indication as an Auction-Only Limit Order. In addition to ITS, other market centers may use private communication connections to enter Auction-Only Limit Orders for a Trading Halt Auction.

Arca will determine the price of the Trading Halt Auction as follows: For exchange-listed stocks, if there is no Imbalance and no other market center has re-opened trading in the security, orders will be executed in the Trading Halt Auction at the Indicative Match Price as of the Re-Opening Time. However, if an Imbalance exists, or if an equilibrium exists between buy market orders and sell market order, or if another market center has re-opened trading in the security, as many buy market orders and sell market orders as possible shall be matched, on a time priority basis, at the midpoint of the first uncrossed, unlocked NBBO, once an NBBO is available.

For Nasdaq stocks, if there is no Imbalance, orders will be executed in the Trading Halt Auction at the Indicative Match Price as of the Re-Opening Time. However, if an Imbalance exists, or if an equilibrium exists between buy market orders and sell market orders, as many buy market orders and sell market orders as possible shall be matched, on a time priority basis, once an NBBO is available: (1) at the midpoint of the NBBO at the Re-Opening Time, provided that the NBBO is not crossed; (2) at the midpoint of the first uncrossed NBBO after the Re-Opening Time, in the case in which the NBBO is crossed, but one side of the BBO is not crossed by the NBBO; (3) at the midpoint of the first uncrossed NBBO after the Re-Opening Time, in the case in which the NBBO is crossed and where both sides of the BBO are crossed by the NBBO; or (4) at the bid (offer) of the BBO that was crossed prior to the Re-Opening Time, in the case in which the BBO is crossed by a market participant.

For those issues for which the Corporation is the primary market, orders will be executed at the Indicative Match Price at the Re-Opening Time. If equilibrium exists between buy and sell market orders, the match price shall be at the last Corporation sale price in the security regardless of the trading session. However, if the last Corporation sale price is lower than the BBO, the match price shall be the displayed bid in the security, or if the last Corporation sale price is higher than the BBO, the match price will be the displayed offer in the security.

Finally, if any orders are not executed in their entirety during the Trading Halt Auction, then such orders shall be executed in accordance with Rule 7.37 after the completion of the Trading Halt Auction. In addition, after the completion of the Trading Halt Auction, Arca will re-open for trading the previously halted security in accordance with Rule 7.

c. Miscellaneous

In addition to rule revisions related to trading in Nasdaq securities and the Trading Halt Auctions, the PCX proposes the following miscellaneous changes:

i. Rule 1—Definitions

(1) *Proposed Rules 1.1(q) and (r)*—PCXE has changed the term "orders" to "shares" in the definitions of "Imbalance" and "Indicative Match Price."

ii. Rule 2—Equity Trading Permits

(1) *Proposed Rule 2.5*—PCXE has deleted Rule 2.5, "Publication of Approved ETP Applications."

iii. Rule 7—Equities Trading

(1) *Proposed Rule 7.6(a), Comm. 05*—In Commentary .05 of Proposed Rule 7.6(a), PCXE has deleted the reference to a minimum price variation ("MPV") of 1/64th of $1.00 for those securities quoted in fractions, thereby limiting the MPV for equity securities traded on Arca to $0.01.

(2) *Proposed Rule 7.6(a), Comm. 06*—PCXE has revised Commentary .06 to Proposed Rule 7.6(a). To clarify the applicable spread, PCXE has inserted "NBBO" into the statement that the "minimum price improvement increment ("MPII") on the Archipelago Exchange shall be equal to $0.01 or 10% of the NBBO spread, whichever is more."

(3) *Proposed Rules 7.23(a)(6), 7.31(u)(1)–(2) and 7.34(b)(2)*—These proposed rules have been revised to clarify that (1) each Market Maker must maintain only one Cleanup Order and (2) Arca will submit each Cleanup Order on behalf of each Market Maker.

(4) *Proposed Rules 7.31(f)(7) and 7.31(i)(2)*—Pursuant to these two proposed rules, the Corporation shall suspend the Directed and Tracking Order Processes for a security when a locked or crossed market exists in that security. The Directed and Tracking Order Processes for that security will resume when the locked or crossed market in that security no longer exists.

(5) *Proposed Rule 7.31(s)*—PCXE has deleted the references to "Section 5 of Rule 7" from the definition of a Cross Order.

(6) *Proposed Rule 7.31(u)(6)(A)*—PCXE has deleted the phrase "of Market Orders" from paragraph (u)(6)(A) of the definition of a Cleanup Order.

(7) *Proposed Rule 7.34(b)(1)*—Proposed Rule 7.34(b)(1) has been revised to clarify that Market Makers are obligated to enter Q Orders in securities in which they are registered beginning at the start of the Core Trading Session or at such earlier time during the Opening Session as determined from time to time by the PCXE, and continuing until the end of the Core Trading Session. Market Makers are not obligated to enter Q Orders at any other times that the PCXE is open for business.

(8) *Proposed Rules 7.34(d)(1)(G), 7.35(a)(2) and 7.35(c)(2)(A)(iii)*—These proposed rules have been revised to clarify that, although the Market Order Auction occurs during the Opening Session, the following orders, which have not been designated for the Opening Session will participate in the Market Order Auction: (1) Market orders designated for the Core Trading Session and entered prior to the conclusion of the Market Order Auction and (2) Limited Price Orders designated for the Core Trading Session and entered prior to 6:28 am (Pacific Time).

(9) *Proposed Rule 7.35(c)(2)(B)*—PCXE has added "Limited Price Orders not eligible for the Opening Session" to the list of order types that may not be cancelled between 6:28 am (Pacific Time) and the conclusion of the Market Order Auction.

(10) *Proposed Rule 7.35(c)(3)(B)*—This section has been modified to indicate that, if the Market Order Auction price is based upon the NBBO under Proposed Rule 7.35(c), then the price will not be determined until an NBBO is available.

(11) *Proposed Rule 7.35(c)(3)(B)(iii)*—This subparagraph has been revised to state "at the midpoint of the first uncrossed NBBO after 6:30 am (Pacific Time), in the case of Nasdaq securities in which the NBBO is crossed but one side of the BBO is not crossed by the NBBO."

(12) *Proposed Rule 7.35(c)(3)(B)(iv)*—Another pricing scenario has been added to the Market Order Auction. In this scenario, if an Imbalance exists, or if an equilibrium exists between buy market orders and sell market orders, as many buy market orders and sell market orders as possible shall be matched, on a time priority basis, once an NBBO is available, "at the midpoint of the first uncrossed NBBO after 6:30 a.m. (Pacific Time), in the case of Nasdaq securities in which the NBBO is crossed and where both sides of the BBO are crossed by the NBBO."

(13) *Proposed Rule 7.35(c)(3)(B)(vi)*—PCXE has clarified the wording of Proposed Rule 7.35(c)(3)(B)(vi) to state the following: "[I]f equilibrium exists between buy and sell market orders, the match price shall be at the last Corporation sale price in the security regardless of the trading session; however, if the last Corporation sale price is lower than the BBO, the match price shall be the displayed bid in the security, or if the last Corporation sale price is higher than the BBO, the match price will be the displayed offer in the security."

(14) *Proposed Rule 7.35(f)*—PCXE has added paragraph (f) to Proposed Rule 7.35, which reads "[w]henever in the judgment of the Corporation the interests of a fair and orderly market so require, the Corporation may adjust the timing of the auctions set forth in this Rule."

(15) *Proposed Rule 7.36(a)(1)(B)*—PCXE has revised this paragraph to read: "The displayed portion of Reserve Orders (not the reserve size) shall be ranked at the specified limit price and the time of order entry. If the displayed portion of the Reserve Order is decremented such that 99 shares or fewer are displayed, the displayed portion of the Reserve Order shall be refreshed for (1) the displayed amount; or (2) the entire reserve amount, if the remaining reserve amount is smaller than the displayed amount, from the reserve portion and shall be submitted and ranked at the specified limit price and the new time that the displayed portion of the order was refreshed."

(16) *Proposed Rule 7.37(b)(2)(C)*—PCXE has added the phrase "after having proceeded through Step 4" to the end of Proposed Rule 7.37(b)(2)(C).

(17) *Proposed Rule 7.37(d)(2)(A)(ii)*—In this Proposed Rule, PCXE has clarified that a marketable reserve order may be routed either (1) serially as component orders, such that each component corresponds to the displayed size or (2) only once in its entirety, including both the displayed and reserve portions.

(18) *Proposed Rule 7.43*—PCXE has added Proposed Rule 7.43, "Use of the Directed Order Process." Proposed Rule 7.43 states that "[i]t shall be considered conduct inconsistent with just and equitable principles of trade for a User to use the Directed Order Process for the purpose of bypassing otherwise applicable fees."

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5),[9] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will—

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3, including whether Amendment No. 3 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to Amendment No. 3 of File No. SR–PCX–00–25 and should be submitted by May 29, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret McFarland,

Deputy Secretary.

Appendix A

April 19, 2001.

VIA MESSENGER

John Polise, Division of Market Regulation, Securities and Exchange Commission, Mail Stop 1001, 450 Fifth Street, N.W., Washington, DC 20549.

Re: *Archipelago Exchange: Supplemental Response to Comment Letters SR–PCX–00–25, Amendment No. 3*

Dear Mr. Polise: On behalf of the Pacific Exchange, Inc., via its wholly owned subsidiary PCX Equities, Inc., (collectively, "PCX"), we appreciate the opportunity to respond to the comment letters submitted to the Securities and Exchange Commission ("SEC" or "Commission") regarding the Archipelago Exchange ("ArcaEx") rule filing.[11]

To date, nine commenters have submitted ten comment letters concerning ArcaEx.[12]

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

[11] *See* Arca Proposing Release, note 3, *supra*.

[12] Letter from Michael T. Dorsey, Senior Vice President, General Counsel and Secretary, Knight Trading Group, Inc., to Jonathan G. Katz, Secretary, SEC, dated Feb. 9, 2001 ("Knight Letter"); Letter from Steve Wunsch, President, Arizona Stock Exchange ("AZX"), to Jonathan G. Katz, Secretary, SEC, dated Feb. 1, 2001 ("AZX Letter"); Letter from Robert R. Glauber, Chief Executive Officer and President, NASD Regulation, Inc. ("NASDR"), to Jonathan G. Katz, Secretary, SEC, dated Jan. 26, 2001 ("NASDR Letter"); Letter from Richard G. Ketchum, President, Nasdaq, to Jonathan G. Katz, Secretary, SEC, dated Jan. 22, 2001 ("Nasdaq II Letter"); Letter from Jeffrey T. Brown, Cincinnati Stock Exchange ("CSE"), to Jonathan G. Katz, Secretary, SEC, dated Jan. 8, 2000 ("CSE Letter"); Letter from David Hultman, D.A. Davidson & Co., to Jonathan G. Katz, Secretary, SEC, dated Jan. 5, 2000 ("D.A. Davidson Letter"); Letter from Los Angeles Specialists Association ("LASA"), to

Continued

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Five commenters fully supported the proposal.[13] Of these five favorable letters, three represented PCX members. For example, the Los Angeles and San Francisco Specialists Associations stated that they "strongly support the PCX's proposal and urge the [Commission] to approve this proposal as soon as possible."[14] Similarly, D.A. Davidson wrote that it "applauds the effort to create a New Marketplace which will level the playing field for all participants."[15] In addition to member support, the ArcaEx proposal was received favorably by two established electronic marketplaces—the Cincinnati Stock Exchange ("CSE") and the Arizona Stock Exchange ("AZX"). The CSE "believes that the PCX proposal is an innovative approach that seeks to challenge the floor-based exchange models for the benefit of public investors."[16] The AZX urged the Commission "to expedite the PCX proposed rule change" because it believes that it will help to resolve pressing market structure issues.[17]

In contrast, three commenters, including two traditional markets—Nasdaq and the Philadelphia Stock Exchange ("Phlx")—and a wholesale market maker, Knight Trading Group, Inc. ("Knight") opposed the ArcaEx rule change.[18] In addition, NASD Regulation, Inc., ("NASDR") submitted a comment letter, but did not express a view in favor of or in opposition to the filing.[19] In this letter, the PCX addresses the various concerns expressed by the commenters, particularly Nasdaq, Phlx and Knight, about the ArcaEx proposal. As discussed in detail below, the PCX does not believe any of the concerns raised in the comment letters should serve as an impediment to approval of the rule filing.

I. ArcaEx is Properly Regulated as a Facility of an Exchange

The PCX believes that, contrary to Nasdaq's assertions,[20] ArcaEx is properly regulated as a facility of an exchange and not as an exchange itself. Section 3(a)(2) of the Securities Exchange Act of 1934 ("Exchange Act") provides that:

the term "facility" when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticket or otherwise maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.

ArcaEx will use PCX equipment and personnel[21] and involve the participation of PCX market makers. Furthermore, executions performed on ArcaEx will be regulated and reported as PCX trades. In addition, by supplying an electronic trading system for the use of the PCX members and their customers, ArcaEx will provide a "service * * * for the purpose of effecting * * * a transaction on an exchange," thus providing the PCX the "right of the exchange to the use of * * * [such] service." Because effecting and reporting ArcaEx matches involves the PCX's premises, property and services, ArcaEx will meet the definition of a "facility" of an exchange as defined in Section 3(a)(2) of the Exchange Act.

Regulating ArcaEx as a "facility" of the PCX is consistent with the approach the Commission has followed in other cases similar to the PCX and ArcaEx situation. For example, the Commission approved the PCX's proposal to establish an exchange facility called the PCX Application of the OptiMark System, which was a trading system owned and operated by an entity other than an exchange.[22] Likewise, the Phlx, itself, has contracted with third parties to establish the VWAP Trading System as a facility of the Phlx.[23] In neither of these circumstances did the Commission require the entities which contracted with the exchanges to create a facility to register as national securities exchanges themselves.

Because ArcaEx is a facility of the PCX, a rule filing conforming to the requirements of Section 19 of the Exchange Act and Rule 19b–4 thereunder is the appropriate regulatory format for soliciting comments and seeking Commission approval of the arrangement.[24] Despite Nasdaq's statements to the contrary,[25] there is no need to file a Form 1 for ArcaEx because the PCX is already registered as a national securities exchange. Again, the use of a Rule 19b–4 filing for the creation of a new exchange facility follows the procedure used, and accepted by the Commission, with regard to other exchange facilities.[26] Correspondingly, PCX, as the registered national securities exchange for the facility, will amend its Form 1 to the extent revision is required by Rule 6a–2 under the Exchange Act for the creation of the ArcaEx facility.[27]

II. The Relationship Between PCX and the ArcaEx Facility Satisfies the Regulatory Requirements of the Exchange Act

The PCX believes that ArcaEx, as a facility of the PCX, is designed to operate in a manner that is consistent with the regulatory purposes of the Exchange Act. Nasdaq's concerns about ArcaEx's compliance with the securities laws as well as the SEC's ability to oversee the ArcaEx facility are unfounded.[28] The relationship between PCX and the ArcaEx facility—in both a rules-related context and a contractual context—ensures ArcaEx's compliance with the securities laws.

First and foremost, the PCX will be fully responsible for all activity that takes place through ArcaEx, including its regulation and oversight, because ArcaEx is a part of the exchange.[29] The PCX will comply with its obligations under the Exchange Act with regard to ArcaEx, just as it does with its current trading facilities.[30]

Second, ArcaEx, as a party that has agreed to operate a facility of a self-regulatory organization, is required to cooperate with the PCX in meeting its regulatory responsibilities and to submit to Commission oversight and examination. Such cooperation and oversight will be assured through the application of proposed PCXE Rule 14.3 of the PCX Plan of Delegation.[31] Proposed PCXE Rule 14.3(a), which applies to Archipelago Exchange, L.L.C., ("Archipelago Exchange"), the operator and owner of the ArcaEx trading system, states:

The books, records, premises, officers, directors, agents and employees of Archipelago Exchange, L.L.C., shall be deemed to be the books, records, premises, officers, directors, agents and employees of PCX and PCX Equities for purposes of and subject to oversight pursuant to the Securities Exchange Act. The books and records of Archipelago Exchange, L.L.C., shall be subject at all times to inspection and copying by the PCX, PCX Equities and the SEC.

By legally equating the premises, personnel and records of Archipelago Exchange with those of the PCX, both the PCX and the SEC have jurisdiction over Archipelago Exchange's premises, personnel and records to the same extent that the PCX and the SEC have jurisdiction over the PCX's premises, personnel and records.

In addition, proposed PCXE Rule 14.3(b) further enhances the SEC and PCX's ability to oversee all relevant aspects of the ArcaEx facility. Under this rule, the SEC and the PCX are granted access, not only to the operator of ArcaEx, but also to the parent company of the operator, Archipelago Holdings, L.L.C. ("Holdings"). Specifically, proposed PCXE Rule 14.3(b) states that "[a]ll officers and directors of Archipelago Holdings, L.L.C., shall be deemed to be officers and directors of PCX and PCX Equities for purposes of and subject to oversight pursuant to the Securities Exchange Act."

Finally, the SEC and PCX's access to and oversight of ArcaEx's operating company and its parent is further solidified in the private contracts related to ArcaEx. Each of the clauses in Rule 14.3 is included in the agreements between PCX and Archipelago Exchange and Holdings. Therefore, Archipelago Exchange and Holdings have a private contractual obligation as well as a regulatory obligation to abide by Rule 14.3.

The relationship between the PCX and ArcaEx is structured in the same fashion as other facility arrangements between an exchange and third parties.[32] Such facility arrangements have proven effective in the past and there is no reason to believe that the oversight quality will be hampered in any way in the present case.

III. PCX Will Conduct All Necessary Surveillance of ArcaEx

As part of its obligations under the Exchange Act and pursuant to its own rules,[33] the PCX will conduct all necessary surveillance of the operation of and trading through ArcaEx, including a full audit trail capability. In doing so, ArcaEx, like all facilities of an exchange, will be subject to full oversight of the SEC. Pursuant to this oversight, the SEC will ensure that the PCX's surveillance program is adequate based on all relevant circumstances. Nevertheless, such an evaluation of a surveillance program is not accomplished via the public comment process of a Rule 19b–4 filing. Notwithstanding this fact, PCX emphasizes that it has, not only the technological capability to establish and maintain an audit trail, but also the staff expertise and capital resources to satisfactorily oversee a new electronic market trading an increased number of securities. Therefore, the commenters' expressed fears that PCX is unprepared to regulate ArcaEx are unfounded.[34]

PCX, as a well-established exchange, has the requisite staff experience to support and to supplement the technological surveillance necessary for the all-electronic ArcaEx. Throughout its long trading history, PCX has succeeded in attracting qualified management and regulatory staff, who have repeatedly demonstrated their familiarity with the federal securities laws and the self-regulatory role of a registered exchange. Furthermore, the PCX personnel have had the opportunity to hone their regulatory skills in both floor and electronic trading environments, like the PCX Application of OptiMark, making them particularly well-suited to the task at hand.

Furthermore, consistent with the requirements of the Exchange Act, PCX will demonstrate to the SEC, as necessary, that it has adequate financial resources to fund a surveillance program for a fully electronic trading facility. Finally, PCX intends to implement a state-of-the-art electronic system for producing detailed audit trails of all orders submitted to ArcaEx. In accordance with its regulatory responsibilities, PCX will demonstrate to the Commission that the technology of the system will be more than adequate for the surveillance of, and trading on, ArcaEx.[35]

IV. The Exchange Act Does Not Require a Market Maker in Every Security

Contrary to Nasdaq's assertion that a failure to require a market maker in every security is a "clear statutory deficiency,"[36] the Exchange Act neither explicitly nor implicitly makes such a demand on an exchange.[37] First, no specific provision of the Exchange Act, including Sections 6 or 11A, or any rules and regulations promulgated thereunder, compel an exchange to employ market makers as a source of liquidity.

Second, current established trading practices also support the notion that a market maker need not be registered in every security traded on an exchange. The Commission permits exchanges to trade securities via cabinet trading programs.[38] With cabinet trading, buy and sell limit orders are booked for execution on the exchange and executed outside the regular specialist or market maker system. ArcaEx should not be held to a different standard than that applied to traditional exchanges.

Third, no market maker requirement can be implied from the basic definition of what constitutes an exchange. Nasdaq claims that because "provid[ing] a ready source of liquidity" is "the most fundamental requirement of a securities exchange," every exchange must require a market maker or specialist to be assigned to each security listed on that market.[39] The Commission, however, specifically has rejected this argument in its discussion of the basic characteristics of an "exchange" in the ATS Release.[40]

Nasdaq's argument is merely a reiteration of the now-discarded definition of an "exchange" promulgated in the Delta Release.[41] In 1990, the Commission interpreted the statutory definition of an exchange narrowly to include only those organizations that were "designed * * * to centralize trading and provide buy and sell quotations on a regular and continuous basis so that purchasers and sellers have a reasonable expectation that they can regularly execute their orders at those price

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Jonathan G. Katz, Secretary, SEC, dated Jan. 4, 2000 ("LASA Letter"); Letter from San Francisco Specialists Association ("SFSA"), to Jonathan G. Katz, Secretary, SEC, dated Jan. 3, 2000 ("SFSA Letter"); Letter from John F. Malitzis, Associate General Counsel, Nasdaq, to Jonathan G. Katz, Secretary, SEC, dated Dec. 28, 2000 ("Nasdaq I Letter"); and Letter from Lanny A. Schwartz, Executive Vice President and General Counsel, Philadelphia Stock Exchange ("Phlx"), to Jonathan G. Katz, Secretary, SEC, dated Dec. 21, 2000 ("Phlx Letter").

[13] *See* AZX Letter; CSE Letter; D.A. Davidson Letter; SFSA Letter; and LASA Letter.

[14] SFSA Letter at 1 and LASA Letter at 1.

[15] 15 D.A. Davidson Letter at 1.

[16] CSE Letter at 1.

[17] AZX Letter at 1.

[18] *See* Knight Letter; Nasdaq II Letter; Phlx Letter; and Nasdaq I Letter.

[19] *See* NASDR Letter.

[20] Nasdaq II Letter at 1–3.

[21] As the Commission noted previously in other contexts, the PCX's use of Archipelago Exchange, L.L.C., personnel and equipment does not alter the determination that ArcaEx should be regulated as a facility. *See* Securities Exchange Act Release No. 41210 (Mar. 24, 1999), 64 FR 15857 (Apr. 1, 1999) (approval order of Phlx's VWAP Trading System) ("VWAP Release") ("The Commission notes that the Exchange's use of [Universal Trading Technologies Corporation's] personnel and equipment in operating the [VWAP] System does not alter the Commission's determination that the System is properly regulated as a facility of the Exchange.").

[22] *See* Securities Exchange Act Release No. 39086 (Sept. 17, 1997), 62 FR 50036 (Sept. 24, 1997) ("PCX OptiMark Release"). *See also* Securities Exchange Act Release No. 41967 (Sept. 30, 1999), 64 FR 54704 (Oct. 7, 1999) (approval order for Nasdaq Application of OptiMark System) ("Nasdaq OptiMark Release"); Securities Exchange Act Release No. 35030 (Nov. 30, 1994), 59 FR 63141 (Dec. 7, 1999) (approval order for Chicago Match System) ("Chicago Match Release").

[23] 23 VWAP Release.

[24] Similarly, pursuant to the requirements of Section 19 of the Exchange Act, the PCX intends to set forth in a separate rule filing the fees that will be charged for the use of ArcaEx services. *See* Knight Letter at 2–3.

[25] Nasdaq II Letter at 1–3.

[26] *See, e.g.*, PCX OptiMark Release and VWAP Release. *See also* Nasdaq OptiMark Release and Chicago Match Release.

[27] Knight's argument that PCX's reliance on unlisted trading privileges is in some way inappropriate is incorrect. Knight Letter at 4. Under the Exchange Act, the PCX, as a registered national securities exchange, may trade securities listed on the PCX and/or securities admitted to unlisted trading privileges. *See generally* Section 12 of the Exchange Act.

[28] Nasdaq II Letter at 3–6.

[29] In response to Nasdaq's conflict of interest concerns regarding ArcaEx (*see* Nasdaq II Letter at 5), we note that the PCX will rely solely on its own regulatory staff to perform any regulatory functions concerning ArcaEx. In that vein, no employees of Archipelago Exchange, L.L.C., or Archipelago Holdings, L.L.C., nor any dual employees of PCX and the ArcaEx companies will be involved in regulatory oversight. Furthermore, all PCX regulatory staff must act in accordance with strict standards of confidentiality with regard to ArcaEx, just as they must in all their oversight dealings.

[30] *See* Section 6(b)(1) of the Exchange Act (the PCX will "comply * * * with the provisions of this title, the rules and regulations thereunder, and the rules of the exchange").

[31] Proposed PCXE Rule 14.3 is based on the NASD's Plan of Allocation and Delegation of Functions by NASD to Subsidiaries.

[32] *See, e.g.*, PCX OptiMark Release.

[33] *See, e.g.*, Section 6(b)(5) of the Exchange Act (the exchange must have rules designed to prevent, among other things, "fraudulent and manipulative acts and practices [and] to promote just and equitable principles of trade").

[34] Knight Letter at 4 and Nasdaq II Letter at 7–9. *See also* NASDR Letter.

[35] In addition, PCX will cooperate with the Commission's Automation Review Policy with regard to ArcaEx. *See* Securities Exchange Act Release No. 27445, 54 FR 48703 (Nov. 24, 1989) ("ARP I Release") and Securities Exchange Act Release No. 29185, 56 FR 22490 (May 15, 1991) ("ARP II Release"). Specifically, in accordance with the details of ARP I and ARP II, PCX will ensure that ArcaEx has "the capacity to accommodate current and reasonably anticipated future trading volume levels adequately and to respond to localized emergency conditions." ARP I Release at 48705–06.

[36] Nasdaq II Letter at 10.

[37] Similarly, we note that, in the ArcaEx Proposing Release, the Commission requested comment on the minimum price improvement provided by ArcaEx in cross and directed orders. ArcaEx Proposing Release at 78836–37. We believe that the proposed crossing and directed order procedures were well designed in that they provide the customer with the best displayed quote within ArcaEx plus a minimum increment. We believe this is consistent with the Exchange Act and encourage the Commission to approve the proposal.

[38] For example, PCXE Rule 7.20 states that [t]he Corporation may designate to be traded in the CABINET System those securities which in the judgment of the Corporation do not trade with sufficient frequency to warrant their retention in the specialist system * * *. Bids and offers in securities dealt in by use of cabinets shall be written on floor tickets which shall be filed in the cabinets in the following sequence: 1. According to price, and 2. According to the time received at the CABINET. Orders, including all bids and offers, in such securities shall be filled in the sequence indicated above.

PCX Rule 7.20. For other examples of cabinet trading rules, *see, e.g.*, CHX Art. XX, Rule 11 and CSE Rule 11.7.

[39] Nasdaq II Letter at 10.

[40] *See generally* Securities Exchange Act Release No. 40760 (Dec. 8, 1998), 63 FR 70844 (Dec. 22, 1998) ("ATS Release"). In redefining the term "exchange" in the ATS Release, the Commission concluded that the fundamental characteristics of an exchange are: (1) bringing together the orders for securities of multiple buyers and sellers; and (2) using established, non-discretionary methods (whether by providing a trading facility or by setting rules) under which such orders interact with each other, and the buyers and sellers entering such orders agree to the terms of a trade. *See* Rule 3b–16 under the Exchange Act. Indeed, despite critical comments by several commenters, the Commission rejected the "liquidity" standard Nasdaq now seeks to resurrect.

[41] Securities Exchange Act Release No. 27611 (Jan. 12, 1990), 55 FR 1980, 1900 (Jan. 19, 1990) ("Delta Release"). *See also* Board of Trade of the City of Chicago v. SEC, 923 F.2d 1270 (7th Cir. 1991).

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quotations."[42] In 1998, in light of the rapid technological changes taking place in the securities industry, the Commission rescinded the Delta definition and expressly rejected liquidity provided by markets makers as a defining characteristic of a securities exchange. In reaching this conclusion, the Commission explained that "while the Delta interpretation was appropriate at the time, its emphasis on the 'expectation' of regular execution of orders at quoted prices no longer reflects today's markets where alternative trading systems compete directly with registered exchanges and Nasdaq."[43] The Commission further clarified that:

More fundamentally, although traditional exchanges still provide liquidity through two-sided quotations and, hence, raise an expectation of execution at the quoted price, this is no longer the essential characteristic of a securities market where stock and other securities exchange hands. Today's technology enables market participants and investors to tap simultaneous and multiple sources of liquidity from remote locations. Market makers and specialists may be important liquidity providers on a particular exchange, but liquidity now comes from many sources.[44]

Furthermore, when the Commission broadened the definition of an exchange to include a greater variety of business models, it did so with the intent of "encouraging innovative new markets"[45] and fostering the development of new technology-driven trading designs. ArcaEx is such an "innovative" market and, therefore, there is no basis for commanding ArcaEx to alter its computer-based architecture to require market makers in every security.

V. The Alternative Order Routing Methods of ArcaEx Expand Investor Choice in a Manner Consistent with the Exchange Act

Nasdaq and Knight questioned the status and function of the Archipelago electronic communications network[46] ("ECN") after the creation of ArcaEx.[47] The broker-dealer commonly referred to as the Archipelago ECN will continue to exist as a registered broker-dealer renamed WAVE. The functions and activities of WAVE, however, will differ from the current activities of the Archipelago ECN. In particular, WAVE will perform three primary functions, including acting as (1) for a limited period of time, a residual ECN, (2) an introducing broker and (3) a routing broker. In order to perform these limited functions, WAVE will exist as an entity separate and distinct from ArcaEx. In addition, NASDR, rather than PCX, will be the Designated Examining Authority ("DEA") for WAVE, just as it has been for the Archipelago ECN. We discuss the proposed business and regulation of WAVE in more detail below.

A. WAVE Will Perform Three Primary Functions

1. WAVE Will Continue to Perform as an ECN for a Limited Period of Time

First, as a temporary matter, WAVE will continue to act as an ECN, to the extent necessary, for a limited period of time. Specifically, PCX and Archipelago have agreed that all securities eligible to be traded on ArcaEx (*i.e.*, listed securities or securities with unlisted trading privileges ("UTP")) will be traded only on ArcaEx; they will not be traded on PCX and the ECN. Therefore, no security will be traded concurrently on both ArcaEx and the ECN. As of this date, however, the plan for trading over-the-counter ("OTC") pursuant to UTP (the so-called "OTC/UTP Plan") only permits PCX, as an exchange participating in the Plan, to trade 1000 of the Nasdaq/NM securities.[48] Until the OTC/UTP Plan has been expanded to incorporate all Nasdaq securities,[49] WAVE will continue to act as an ECN for those securities excluded from the Plan. Once the OTC/UTP Plan has been expanded—which is expected to occur later this year—the remaining Nasdaq securities will be transferred for trading from the Archipelago ECN to ArcaEx pursuant to a roll-out plan. The ECN will cease to operate as such once all the Nasdaq securities have been transferred to ArcaEx.

2. WAVE Will Act as an Introducing Broker

Second, WAVE plans to register as an ETP Holder and act as an introducing broker for institutions or other entities who are not ETP Holders themselves. WAVE's position as the routing broker will not bestow any special status on WAVE in its capacity as an ETP Holder. WAVE, acting as an ETP Holder, and its customers will have the exact same access to ArcaEx as any other ETP Holder and its customers. In this regard, PCX and Archipelago will establish appropriate information barriers to address any concerns regarding WAVE's status relative to other ETP Holders.

3. WAVE Will Supply ArcaEx With a Routing Service

Finally, the ongoing WAVE function most relevant for ArcaEx is a routing service. WAVE will route orders, as necessary, from ArcaEx to other market centers.[50] Given various technical issues associated with market center-to-market center routing within the strictures of today's intermarket structure, PCX and Archipelago have opted to employ the services of a routing broker, rather than rely on routing orders to other markets directly from PCX itself.

Despite the decision to employ WAVE in this intermarket capacity, no User is required to utilize the WAVE routing services. Furthermore, those Users who opt out of the WAVE routing services are not precluded from entering any order types, except a very limited subset of orders that specifically incorporates a WAVE routing requirement within the definition of the order. This limited subset includes Primary Only Orders as well as NOW Orders, if routing of the NOW Order is required.[51] The only trading condition for those Users who do not use the WAVE routing services is that each order, if it has not been fully executed after it has progressed through each step of the ArcaEx trading algorithm,[52] must be returned to the User or the User's designated agent prior to reaching the routing step of the algorithm.[53] After the order is returned to the User, the User may then route the order to another market center as the User sees fit. In other words, the trading mechanism is the same for orders that do not rely on WAVE and orders that do rely on WAVE, except orders that do not rely on WAVE, of course, must, by definition, be routed outside of ArcaEx through another mechanism. The specifics of the routing function and its impact on ArcaEx Users are discussed in more detail below.

i. ArcaEx Provides Its Users With a Choice as to How Their Orders Will Be Routed to Away Markets

ArcaEx has been designed to provide its Users with a choice as to how they wish to route orders to away markets. In this regard, Nasdaq and Knight misinterpret the various options available to Users in ArcaEx's routing structure.[54] These two commenters correctly identify one ArcaEx routing option: a User may choose to utilize the routing services provided by WAVE, the broker-dealer affiliate of Archipelago Exchange, L.L.C. To do so, the User must enter into a routing agreement with WAVE under which WAVE "agrees to act as agent for routing orders of the ETP Holder[55] and the ETP Holder's Sponsored Participants[56] entered into the Archipelago Exchange to other market centers or broker-dealers for execution, whenever such routing is required."[57]

Nasdaq and Knight, however, fail to recognize that a User is not required to use WAVE's routing services. Instead of signing a routing agreement with WAVE, a User may bypass WAVE entirely and opt to rely on its

[42] Delta Release at 1900.

[43] ATS Release at 70899.

[44] ATS Release at 70899 (emphasis added).

[45] ATS Release at 70845.

[46] *See, e.g.*, Letter from Robert L. D. Colby, Division of Market Regulation, SEC, to Gerald Putnam, Archipelago, L.L.C., dated Jan. 12, 2001.

[47] Knight Letter at 5, n. 13, and Nasdaq II Letter at 9.

[48] *See, e.g.*, Securities Exchange Act Release No. 43545 (Nov. 9, 2000), 65 FR 69581 (Nov. 17, 2000).

[49] *Id.* (the PCX request to expand the number of eligible Nasdaq/NM securities).

[50] *See, e.g.*, Proposed PCXE Rules 1.1(gg), 7.32 and 7.37(d).

[51] *See* Proposed PCXE Rule 7.31(x).

[52] *See generally* Proposed PCXE Rule 7.37.

[53] *See* Proposed PCXE Rule 7.37(d) (describing "Routing Away," Step 5 of the trading algorithm, after the Directed Order, Display Order, Working Order and Tracking Order Processes).

[54] Knight Letter at 4–5 and Nasdaq II Letter at 6–7.

[55] An "ETP" is an Equity Trading Permit issued by the PCXE for effecting approved securities transactions on the PCXE's Trading Facilities. Proposed PCXE Rule 1.1(m). An "ETP Holder" is "a sole proprietorship, partnership, corporation, limited liability company or other organization in good standing that has been issued an ETP. An ETP Holder must be a registered broker or dealer pursuant to Section 15 of the Exchange Act." *See* Proposed PCXE Rule 1.1(n).

[56] A "Sponsored Participant" means "a person which has entered into a sponsorship arrangement with a Sponsoring ETP Holder pursuant to [Proposed PCXE] Rule 7.29." Proposed PCXE Rule 1.1(jj).

[57] Proposed PCXE Rule 1.1(gg).

own routing abilities or those of another broker-dealer by utilizing the Fill-or-Return, Fill-or-Return Plus or Post No Preference ("PNP") order types[58] supplied by ArcaEx.[59] A Fill-or-Return order is "[a]n order to buy or sell that is to be executed in whole or in part on the Corporation, and the portion not so executed is to be cancelled, without routing the order to another market center."[60] A Fill-or-Return order, therefore, allows the order originator to re-route the order to another market in a manner of its own choosing, once it is informed that the order has not been executed in its entirety on the ArcaEx. This alternative allows the User to implement its own customized means for accomplishing the order routing.

Similarly, a User may wish to rely upon the routing capabilities of another entity, rather than its own routing resources or WAVE. ArcaEx facilitates such relationships by providing a User with the opportunity to enter Fill-or-Return Plus orders into ArcaEx. A Fill-or-Return Plus order is:

[a]n order to buy or sell that is to be executed in whole or in part on the Corporation, and the portion not so executed is to be cancelled, without routing the order to another market center or market participant. In the event any portion of the order is not executed on the Corporation and must be cancelled, the Archipelago Exchange, after canceling the unexecuted portion of the order, shall send an administrative message to an ETP Holder designated by the order entry ETP Holder informing the designated ETP Holder that a portion of the order was cancelled.[61]

The administrative message informs the designated ETP Holder that an order has not been executed. The designated ETP Holder may then use this information to send an order via its own routing mechanisms to another market in accordance with the original User's instructions.

Finally, a User may prefer to send PNP Orders to ArcaEx. A PNP Order is "a limit order to buy or sell that is to be executed in whole or in part on the Corporation, and the portion not so executed is to be ranked in the Arca Book, without routing any portion of the order to another market center; provided, however, the Corporation shall cancel a PNP that would lock or cross the NBBO."[62] This order type provides the User with the ability to use ArcaEx as a final order destination when it suits the User's investment needs.

As Nasdaq and Knight note in their comment letters,[63] certain order types which involve a routing element unique to ArcaEx, like the Primary Only Order,[64] require the User to utilize WAVE's routing services. As discussed above, however, the rules for trading on ArcaEx in no way preclude a User from pursuing trading opportunities similar to those provided by ArcaEx orders through the routing services supplied by broker-dealers other than WAVE. Users easily may do so by entering Fill-or-Return or Fill-or-Return Plus orders. Furthermore, no denial of access issues arise with any order type, regardless of their routing mechanism.[65] Every User must satisfy identical, objective requirements for submitting each order type; the requirements do not vary based on the identity of the User or otherwise unfairly discriminate against any particular class of Users.[66]

ii. WAVE Will Not Enjoy a Competitive Advantage as a Result of its Routing Services

Contrary to the concerns expressed by Nasdaq and Knight,[67] WAVE will not enjoy a competitive advantage over other broker-dealers as a result of the routing services it provides to ArcaEx. In addition to providing only one of the methods by which Users may route orders to away markets, as discussed above, WAVE will be limited in what trading activities it may perform. WAVE will not, for example, conduct proprietary transactions on ArcaEx or in securities traded on ArcaEx. Furthermore, information barriers will be maintained, as necessary, to ensure that WAVE may not unfairly take advantage of knowledge gained as the ArcaEx routing broker.

B. WAVE Will Be Separate and Distinct From ArcaEx

WAVE and ArcaEx will be separate and distinct corporate entities (WAVE, L.L.C., and Archipelago Exchange, L.L.C., respectively). As mentioned above, both are wholly-owned subsidiaries of the same holding company, Archipelago Holdings, L.L.C., whose officers and directors are deemed to be officers and directors of PCX and PCXE for purposes of the Exchange Act. As such WAVE and ArcaEx each have their own trading systems as well as their own compliance, finance and sales functions.

C. WAVE Will Be Assigned to a Designated Examining Authority Other Than the PCX

Nasdaq expressed concerns about the heightened potential for conflicts of interest if the PCX were to regulate WAVE.[68] To avoid even the perception of a conflict of interest, PCX agrees that an SRO other than PCX should be WAVE's DEA. In particular, PCX and Archipelago believe that NASDR is the most appropriate SRO to act as WAVE's DEA. Based on discussions with NASDR, PCX understands that NASDR has agreed to undertake the DEA responsibilities with respect to WAVE.

VI. ArcaEx Operates in Compliance With Section 11(a) of the Securities Exchange Act

The Phlx believes that PCX should not abandon priority for public customer agency orders over proprietary orders of broker-dealers in implementing ArcaEx.[69] The Phlx argues that the requirement that broker-dealer orders yield priority, parity and precedence to customer orders is a statutory requirement under Section 11(a) of the Exchange Act.[70] The PCX disagrees. As discussed in detail in *Appendix A*, the order execution algorithm of ArcaEx complies with the requirements of, and satisfies the policy concerns underlying, Section 11(a) without requiring public customer priority.

Section 11(a) of the Exchange Act prohibits a member of a national securities exchange from effecting transactions on the exchange for its own account, the account of an associated person, or an account in which it or an associated person exercises investment discretion (collectively, "covered accounts"), unless an exception applies. In enacting this provision, Congress was concerned about members benefiting in their principal transactions from special "time and place" advantages associated with floor trading—such as the ability to "execute decisions faster than public investors."[71] The Commission, however, has adopted a number of exceptions to the general statutory prohibition for situations in which the principal transactions contribute to the fairness and orderliness of exchange markets or do not reflect any time and place trading advantages.

The Phlx apparently assumes that the PCX is relying upon the Section 11(a) exception set forth in Rule 11a1–1(T) ("the proprietary trading rule"), which has, as one of its requirements, public customer priority. PCX, however, believes that ArcaEx satisfies the requirements of another exception to Section 11(a), which does not require public

[58] For a definition of the Fill-or-Return, Fill-or-Return Plus or PNP order types, see, respectively, Proposed PCXE Rules 7.31(p), 7.31(r) and 7.31(w).

[59] *See* Proposed PCXE Rule 7.32. ArcaEx's provision of alternative routing services other than WAVE is akin to Nasdaq's efforts regarding SuperMontage to allow Nasdaq members to establish order routing arrangements with other market participants, such as telephone access or direct links, in addition to, or in place of, SuperMontage's routing arrangements. See Securities Exchange Act Release No. 43863 (Jan. 19, 2001), 66 FR 8020, 8049 (Jan. 26, 2001) ("SuperMontage Release").

[60] Proposed PCXE Rule 7.31(p).

[61] Proposed PCXE Rule 7.31(r).

[62] *See* Proposed PCXE Rule 7.31(w).

[63] Knight Letter at 4–5 and Nasdaq II Letter at 11–12.

[64] *See* Proposed PCXE Rule 7.31(x) ("For exchange listed securities, [a Primary Only Order] is a market order that is to be routed as a market-on-open order to the primary market for participation in the primary market opening process").

[65] *See* Nasdaq II Letter at 11–12.

[66] *E.g.*, Section 6(b)(5) of the Exchange Act (the rules of an exchange may not be designed to permit "unfair discrimination"); ATS Release at 70874 (standards for access "should act to prohibit *unreasonably* discriminatory denials of access. A denial of access is reasonable if it is based on objective standards."). *See* Section 19(f) of the Exchange Act.

[67] *See* Knight Letter at 5 and Nasdaq II Letter at 9.

[68] Nasdaq II Letter at 6–7.

[69] *See* Phlx Letter.

[70] *Id.* The Phlx also asserts that customer priority is a Congressional directive. The PCX has found no securities law requirement that would force ArcaEx to incorporate customer priority into its trading algorithm.

[71] *See* Securities Exchange Act Release No. 14563 (Mar. 14, 1978), 43 FR 11542, 11543 (Mar. 17, 1978) ("1978 Release I"); Securities Exchange Act Release No. 14713 (Apr. 27, 1978), 43 FR 18557, 18588 (May 1, 1978) ("1978 Release II"); Securities Exchange Act Release No. 15533 (Jan. 29, 1979), 44 FR 6084, 6092 (Jan. 31, 1979) ("1979 Release"). The 1978 and 1979 Releases cite the House Report at 54–57.

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customer priority. This alternative exception is Rule 11a2–2(T), commonly referred to as the "effect versus execute" rule.[72]

The effect versus execute rule imposes four requirements "designed to put members and non-members on the same footing, to the extent practicable, in light of the purposes of Section 11(a)."[73] ArcaEx will place all of its Users—both ETP Holders and non-ETP Holders—on the "same footing," as intended by Rule 11a2–2(T). Given ArcaEx's automated matching and execution services, no User will enjoy any special control over the timing of execution or special order handling advantages, as all orders will be centrally processed for execution by computer, rather than being handled by a member through bids or offers made on the trading floor. Because ArcaEx's open, electronic structure is designed to prevent any ETP Holders from gaining any time and place advantages, the PCX believes that ArcaEx satisfies the four requirements of the "effect versus execute" rule as well as the general policy objectives of Section 11(a).[74]

This result is consistent with the Commission's application of the effect versus execute rule in similar situations. In the past, the Commission and its staff have allowed exchanges to sponsor innovative trading systems in reliance on Rule 11a2–2(T), finding that such facilities, by design, do not provide any special time and place advantage to members.[75] In particular, where the execution is performed by the facility itself through an automated service, it has been determined that "the member would not retain any ability to control the timing of the execution or otherwise enjoy the kind of special order-handling advantages inherent in being on an exchange floor."[76] Like these trading systems, ArcaEx ensures that ETP Holders do not have any special or unique trading advantages and, therefore, complies with Section 11(a).

VII. The Treatment of Discretionary Orders in ArcaEx Complies With the Firm Quote Rule

In its comment letter, Nasdaq questioned whether ArcaEx's discretionary orders comply with Rule 11Ac1–1 under the Securities Exchange Act, the so-called Quote Rule.[77] Under the proposed PCXE Rules, a discretionary order is defined as "an order to buy or sell a stated amount of a security at a specified, undisplayed price (the 'discretionary price'), in addition to, at a specified, displayed ('displayed price')."[78] For all non-marketable discretionary orders, the discretionary order will be displayed to all Users at the displayed price. No Users will see the discretionary price of the orders. An undisplayed, discretionary price order will be afforded price priority in the Arca Book, but not time priority relative to displayed orders.[79] As discussed in more detail in *Appendix B*,[80] the PCX believes that its discretionary orders, not only comply with the requirements of the Quote Rule, but also provide significant benefits to the markets.

The Quote Rule mandates national securities exchanges, subject to certain exceptions, to collect and disseminate "best bids" and "best offers" from a "responsible broker or dealer."[81] ArcaEx's treatment of discretionary orders complies with the requirements of this Rule for a number of reasons. First, an important attribute of a bid or offer subject to the Quote Rule is that it represents the "bid price and the offer price *communicated by* an exchange member or OTC market maker *to* any broker or dealer, or *to* any customer."[82] Accordingly, "[i]n order to constitute a bid or offer, the underlying trading interest must have been communicated to at least one potential counterparty."[83] On ArcaEx, the discretionary price of a discretionary order is not communicated to any Users of the system; only ArcaEx is aware of the full potential trading interest of these orders until trades occur. Accordingly, because ArcaEx does not publish the discretionary aspect of these discretionary orders, they should not be deemed to be a "bid or offer" within the meaning of the Quote Rule.

Second, discretionary orders allow the investor to express a more complex—and more accurate—trading interest than the single price and size of a conventional order.[84] Unlike "bids" and "offers," discretionary orders reflect the fact that there is usually more than one price at which an investor is willing to buy or sell. Because these discretionary orders represent a qualitatively different set of information from the traditional price and size information, they are more analogous to indications of interest, than bids and offers. Therefore, like indications of interest, discretionary orders should be excluded from the requirements of the Quote Rule.[85] The Commission reached a similar conclusion in its analysis of OptiMark Profiles, finding that "Profiles are analogous to indications of interest or CAP orders,[86] neither of which are displayed in exchanges or on Nasdaq."[87] Therefore, the inchoate trading interest of discretionary orders should not be treated as a bid or offer under the Quote Rule.[88]

VIII. PCX Will Continue To Participate in the National Market System

Nasdaq also voiced concern over ArcaEx's integration into the Intermarket Trading System ("ITS") because aspects of the ArcaEx trading algorithm appeared to conflict with two basic components of the ITS Plan—the pre-opening application[89] and continuous, two-sided quotations.[90] The PCX remains supportive of the national market system and intends to continue to comply with the national market system plans once ArcaEx becomes operational. Discussions are ongoing with the relevant operating committees, among others, regarding the integration of ArcaEx into the national market system.

IX. PCX Will Maintain All Required Books and Records in the United States

The PCX represents that it will keep all books and records that it is required to maintain under the Exchange Act, including those related to ArcaEx, in the United States.

* * * * *

The PCX believes that the proposed rule change is consistent with the requirements of the Exchange Act, including Sections 6 and 11A, and the rule and regulations thereunder applicable to a national securities exchange. In particular, the PCX believes that the ArcaEx rules are designed to promote just and equitable principles of trade, remove

[72] Rule 11a2–2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute the transactions directly on the exchange floor. To comply with the rule's conditions, a member (1) must transmit the order from off the exchange floor; (2) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution; (3) may not be affiliated with the executing member; and (4) with respect to an account over which the member or an associated person has investment discretion, neither the member nor the associated person may retain any compensation in connection with effecting the transaction without express written consent from the person authorized to transact business for the account in accordance with the rule.

[73] *See* 1978 Release II at 18560.

[74] For a detailed analysis of how ArcaEx satisfies the requirements of the effect versus execute rule, *see* Appendix B.

[75] *See, e.g.*, Letter from Larry E. Bergmann, Senior Associate Director, Division of Market Regulation, SEC, to Edith Hallahan, Associate General Counsel, Phlx, dated Mar. 24, 1999 ("VWAP Letter") (approving Phlx's VWAP Trading System); Letter from Catherine McGuire, Chief Counsel, Division of Market Regulation, SEC, to David E. Rosedahl, PCX, dated Nov. 30, 1998 ("OptiMark Letter") (approving the PCX Application of OptiMark); Letter regarding Chicago Match, from Brandon Becker, Director, Division of Market Regulation, SEC, to George T. Simon, Partner, Foley & Lardner, dated Nov. 30, 1994 ("Chicago Match Letter"); and Securities Exchange Act Release No. 29237 (May 31, 1991), 56 FR 24853 (May 31, 1991) (approving the New York Stock Exchange's Off-Hours Trading Facility).

[76] *See* 1979 Release at 6087, n. 35.

[77] Nasdaq II Letter at 11.

[78] Proposed PCXE Rule 7.31(h)(2).

[79] Proposed PCXE Rule 7.36.

[80] For a detailed analysis of the benefits of discretionary orders in addition to how they comply with the Quote Rule, *see Appendix B*.

[81] *See* Rule 11Ac1–1 under the Securities Exchange Act.

[82] *See* Rule 11Ac1–1(a)(4) under the Securities Exchange Act.

[83] PCX OptiMark Release at 50046.

[84] As the Commission has stated repeatedly, the Quote Rule is premised on the notion of a bid or offer at one specified price and one specified size. *See, e.g.*, Exchange Act Release No. 35030 (Nov. 30, 1994), 59 FR 63141, 63145 (1994).

[85] Rule 11Ac1–1(a)(4) under the Exchange Act.

[86] For a description of CAP orders, *see, e.g.*, NYSE Rules 13 and 123A.

[87] *See, e.g.*, OptiMark Release, 62 FR at 50046.

[88] This may be especially true for indications of interest expressed by those who do not constitute "members" or "responsible broker-dealers" within the meaning of the Quote Rule. *See* Order Handling Release, 61 FR at 48311, n. 248.

[89] As described in the proposed PCXE Rules (*see* Proposed PCXE Rule 7.35), ArcaEx has developed an automated opening for its order-driven market, which is designed to provide efficient price discovery, while ensuring investor protection. PCX, based on its business judgment, believes the ArcaEx opening mechanism will prove effective for its Users. In addition, PCX believes that the opening is consistent with, and fosters the goals of, the Exchange Act. In that vein, PCX also believes that ArcaEx complies with the pre-opening application of the ITS Plan.

[90] Nasdaq II Letter at 12.

impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest, as required by Section 6(b)(5) of the Securities Exchange Act. For the foregoing reasons, the PCX requests that the Commission approve the proposed rule changes regarding ArcaEx.

If you have any questions or concerns, please feel free to call Kathryn Beck of the PCX at 415.393.7936, Brandon Becker at 202.663.6979 or the undersigned at 202.663.6855.

Sincerely,
Cherie Macauley
cc: Annette Nazareth,
Robert L.D. Colby,
Belinda Blaine,
Larry Bergman,
Caite McGuire,
Steve Williams,
Patrick Joyce,
John Roeser,
Marc McKayle,
Kathryn Beck,
Dave Rosedahl.

Appendix B—ArcaEx Operates in Compliance With Section 11(a) of the Securities Exchange Act

A. Background

Section 11(a) of the Securities Exchange Act ("Exchange Act") prohibits a member of a national securities exchange from effecting transactions on the exchange for its own account, the account of an associated person, or an account in which it or an associated person exercises investment discretion (collectively, "covered accounts"), unless an exception applies. First enacted as part of the Securities Acts Amendments of 1975,[91] Section 11(a) was intended by Congress to address trading advantages enjoyed by exchange members and conflicts of interest in money management.[92] In particular, as noted by the Securities and Exchange Commission ("SEC" or "Commission"), Congress was concerned about members benefiting in their principal transactions from special "time and place" advantages associated with floor trading—such as the ability to "execute decisions faster than public investors."[93]

Where principal transactions contribute to the fairness and orderliness of exchange markets or do not reflect any time and place trading advantages, they are excepted from the prohibition. Among the transactions excepted under Section 11(a)(1) are those by a dealer acting in the capacity of a market maker,[94] bona fide arbitrage or hedge transactions,[95] and transactions made to offset errors.[96] Rule 11a2–2(T) under the Exchange Act provides an exception in addition to those delineated in the statute.

Commonly referred to as the "effect versus execute" rule, Rule 11a2–2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute the transactions directly on the exchange floor. To comply with the rule's conditions, a member (1) must transmit the order from off the exchange floor; (2) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution;[97] (3) may not be affiliated with the executing member; and (4) with respect to an account over which the member or an associated person has investment discretion, neither the member nor the associated person may retain any compensation in connection with effecting the transaction without express written consent from the person authorized to transact business for the account in accordance with the rule.

As described by the Commission, these four requirements—off-floor transmission, non-participation in order execution, execution through an unaffiliated member and non-retention of compensation for discretionary accounts—were "designed to put members and non-members on the same footing, to the extent practicable, in light of the purposes of Section 11(a)."[98] If a transaction meets the requirements of the "effect versus execute" rule, it will be deemed to be "consistent with the purpose of Section 11(a)(1) of the Act, the protection of investors, and the maintenance of fair and orderly markets."[99]

In the past, the Commission and its staff have allowed exchanges to sponsor innovative trading systems in reliance on Rule 11a2–2(T), finding that such facilities, by design, do not provide any special time and place advantage to members.[100] In particular, where the execution is performed by the facility itself through an automated service, it has been determined that "the member would not retain any ability to control the timing of the execution or otherwise enjoy the kind of special order-handling advantages inherent in being on an exchange floor."[101] Rule 11a2–2(T) thus has been applied in a functional manner, taking into account the structural characteristics that distinguish the operation of an automated trading system from traditional floor activities. This approach represents the sensible conclusion by the Commission and its staff that implementation of Section 11(a) should reflect the "continuing rapid pace of economic, technological and regulatory changes in the markets."[102]

B. Discussion

ArcaEx represents a new electronic trading facility of the PCXE that may be utilized by ETP Holders and their customers to effect the purchase and sale of securities.[103] As discussed in more detail below, ArcaEx will place all of its Users—both ETP Holders and non-ETP Holders—on the "same footing," as intended by Rule 11a2–2(T). Given the automated matching and execution services, no ETP Holder will enjoy any special control over the timing of execution or special order handling advantages, as all orders will be centrally processed for execution by computer, rather than being handled by a member through bids or offers made on the trading floor. Because ArcaEx's open, electronic structure is designed to prevent any ETP Holders from gaining any time and place advantages, ArcaEx satisfies the four requirements of the "effect versus execute" rule as well as the general policy objectives of Section 11(a).

1. Off-Floor Transmission

Rule 11a2–2(T) requires the orders for a covered account transaction to be transmitted from off the exchange floor. In considering the application of this requirement to a number of automated trading and electronic order-handling facilities operated by national securities exchanges, the Commission has deemed the off-floor requirement to be met if the order is transmitted from off the floor directly to the exchange floor by electronic means.[104] Like these other automated

[91] *See* Pub. L. No. 94–29, 89 Stat. 110 (June 4, 1975).

[92] *See* Securities Reform Act of 1975, Report of the House Comm. on Interstate and Foreign Commerce, H.R. Rep. No. 94–123, 94th Cong., 1st Sess. (1975) ("House Report"); Securities Acts Amendments of 1975, Report of the Senate Comm. on Banking, Housing and Urban Affairs, S. Rep. No. 94–75, 94th Cong., 1st Sess. (1975).

[93] *See* Securities Exchange Act Release No. 14563 (Mar. 14, 1978), 43 FR 11542, 11543 (Mar. 17, 1978) ("1978 Release I"); Securities Exchange Act Release No. 14713 (Apr. 27, 1978), 43 FR 18557, 18588 (May 1, 1978) ("1978 Release II"); Securities Exchange Act Release No. 15533 (Jan. 29, 1979), 44 FR 6084, 6092 (Jan. 31, 1979) ("1979 Release"). The 1978 and 1979 Releases cite the House Report at 54–57.

[94] *See* Section 11(a)(1)(A), 15 U.S.C. § 78k(a)(1)(A). In addition to the application of Rule 11a2–2(T), as discussed below, ETP Holders who are registered as market makers on the Archipelago Exchange ("ArcaEx") may also take advantage of this market maker exemption from Section 11(a), at least for securities in which they make a market.

[95] *See* Section 11(a)(1)(D) of the Securities Exchange Act.

[96] *See* Section 11(a)(1)(F) of the Securities Exchange Act.

[97] The member may participate, however, in clearing and settling the transaction.

[98] *See* 1978 Release II at 18560.

[99] *See* Rule 11a2–2(T)(e) under the Securities Exchange Act.

[100] *See, e.g.*, Letter from Larry E. Bergmann, Senior Associate Director, Division of Market Regulation, SEC, to Edith Hallahan, Associate General Counsel, Phlx, dated Mar. 24, 1999 ("VWAP Letter") (approving Phlx's VWAP Trading System); Letter from Catherine McGuire, Chief Counsel, Division of Market Regulation, SEC, to David E. Rosedahl, PCX, dated Nov. 30, 1998 ("OptiMark Letter") (approving the PCX Application of OptiMark); Letter regarding Chicago Match, from Brandon Becker, Director, Division of Market Regulation, SEC, to George T. Simon, Partner, Foley & Lardner, dated Nov. 30, 1994 ("Chicago Match Letter"); and Securities Exchange Act Release No. 29237 (May 31, 1991), 56 FR 24853 (May 31, 1991) (approving the New York Stock Exchange's Off-Hours Trading Facility).

[101] *See* 1979 Release at 6087, n. 35.

[102] *See id.* at 6987.

[103] For a detailed description of how ArcaEx will operate, *see* Securities Exchange Act Release No. 43608 (Nov. 21, 2000). Capitalized terms not defined herein will have the meanings given them in that release.

[104] Among the systems considered by the Commission are (1) the Phlx's VWAP Trading System (*see* VWAP Letter); (2) the PCX Application of OptiMark (*see* OptiMark Letter); (3) Chicago Match (*see* Chicago Match Letter); (4) the Amex's Post Execution Reporting System and the Amex Switching System (*see* 1979 Release at n. 25); (5) ITS; (6) the Multiple Dealer Trading Facility of the

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systems, orders sent to ArcaEx will be transmitted from remote terminals directly to the system by electronic means. Therefore, Users' orders electronically received by ArcaEx satisfy the off-floor transmission requirement for the purposes of the "effect versus execute" rule.[105]

2. Non-Participation in Order Execution

The "effect versus execute" rule further provides that the exchange member and its associated person may not participate in the execution of the transaction once the order has been transmitted. This requirement originally was intended to prevent members with their own brokers on the exchange floor from using those persons to influence or guide their orders' execution.[106] It does not preclude members from canceling or modifying orders, or from modifying instructions for executing orders, after they have been transmitted; provided, however, that such cancellations or modifications are also transmitted from off the exchange floor.[107]

In analyzing the application of the non-participation requirement to automated exchange facilities, the Commission specifically noted in regard to the COMEX and PACE systems that (1) the "initiating member relinquishes any ability to influence or guide the execution of its order at the time that order is transmitted into the system" and (2) "[while] the execution of the order is thereafter automatic and does not involve any independent executing member, the design of those systems insures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the floors of the Phlx or the PSE."[108] As a result, orders transmitted to the COMEX and PACE systems were deemed to comply with this requirement. More recently, the Commission reached the same conclusion concerning the VWAP Trading System, OptiMark and the Chicago Match, stating that a member does not retain the ability to influence or guide the execution of an order after the member submits the order to each of these systems.[109]

As with these other trading systems, the orders submitted to ArcaEx similarly meet the non-participation requirement. Upon submission to ArcaEx, an order will enter the queue and be executed against another order in the Arca Book based on an established matching algorithm. The execution depends, not on the ETP Holder, but rather, upon what other orders are entered into ArcaEx at or around the same time as the subject order, what orders are resident in the Arca Book and where the order is ranked based on the price-time priority ranking algorithm. Therefore, at no time following the submission of an order is an ETP Holder able to acquire control or influence over the result or timing of orders generated. That is, unlike a floor broker who currently enjoys a trading advantage inherent to being present on an exchange floor for transactions being executed on that floor, no ETP Holder may take advantage of any non-member User through use of ArcaEx. As a result, the non-participation requirement is met where ETP Holder orders are matched and executed automatically in the ArcaEx.

3. Execution Through Unaffiliated Member

Although Rule 11a2-2(T) contemplates having an order executed by an exchange member who is unaffiliated with the member initiating the order, the Commission has recognized in the past that this requirement is not applicable where automated exchange facilities are used. For example, in considering the operation of COMEX and PACE, among other systems, the Commission noted that, while there is no independent executing exchange member, the execution of an order is automatic once it has been transmitted into the systems.[110] Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange floors, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2-2(T).[111] This principle is directly applicable to ArcaEx; the design of ArcaEx ensures that ETP Holders do not have any special or unique trading advantages in handling their orders after transmission. Accordingly, an ETP Holder effecting a transaction by utilizing ArcaEx satisfies the requirement for execution through an unaffiliated member.

4. Non-Retention of Compensation for Discretionary Accounts

Finally, the exemption in Rule 11a2-2(T) states that, in the case of a transaction effected for an account for which the initiating member exercises investment discretion, in general, the member may not retain compensation for effecting the transaction. As a prerequisite to use of ArcaEx, if an ETP Holder is to rely on Rule 11a2-2(T) for a managed account transaction, the ETP Holder must comply with the limitations on compensation as set forth in paragraph (a)(2)(iv) of the "effect versus execute" rule.

C. Conclusion

In sum, ArcaEx is designed to, and does, comply with the letter and spirit of Section 11(a) of the Exchange Act.

Appendix C—ArcaEx Discretionary Orders Comply With Rule 11Ac1-1 and Foster the Goals of the Exchange Act

A. Background

In its rule filing, the PCX has proposed the use of discretionary orders on ArcaEx. A discretionary order is defined as "an order to buy or sell a stated amount of a security at a specified, undisplayed price (the 'discretionary price'), in addition to, at a specified, displayed price ('displayed price')."[112] For all non-marketable discretionary orders, the discretionary order will be displayed to all Users at the displayed price. No Users will see the discretionary price of the orders. An undisplayed, discretionary price order will be afforded price priority in the Arca Book, but not time priority relative to displayed orders.[113]

B. Discussion

1. Discretionary Orders Comply With the Firm Quote Rule

Rule 11Ac1-1 under the Securities Exchange Act ("Exchange Act"), the so-called "Quote Rule," mandates national securities exchanges, subject to certain exceptions, to collect and disseminate "best bids" and "best offers" from a "responsible broker or dealer."[114] ArcaEx's treatment of discretionary orders complies with the requirements of the Rule.

a. The Discretionary Price of a Discretionary Order is Not Communicated to Other Market Participants

An important attribute of a bid or offer subject to the Quote Rule is that it represents the "bid price and the offer price *communicated by* an exchange member or OTC market maker *to* any broker or dealer, or *to* any customer."[115] Accordingly, "[i]n order to constitute a bid or offer, the underlying trading interest must have been communicated to at least one potential counterparty. Bids and offers are intended to attract other parties to deal with the person publishing the bid or offer."[116] For example, in the Order Handling Release, the Commission deemed the entry of priced orders into an electronic communications network ("ECN") to be bids and offers where these orders were *widely disseminated*.[117] Such priced orders are subject to the Quote Rule because, just like market maker or specialist quotations, they are "entered to elicit other buying and selling interest."[118] Applying this logic, the Commission concluded that OptiMark Profiles were not bids or offers because only OptiMark was

CSE: (7) the PCX's Communications and Execution System ("COMEX"); and (8) the Phlx's Automated Communications and Execution System ("PACE") (see 1979 Release at nn. 19–35 and accompanying text).

[105] The Commission has not considered the lack of a traditional physical floor to be an impediment to the satisfaction of the off-floor requirement. *See, e.g.*, 1979 Release (discussing the CSE's NSTS satisfaction of this requirement).

[106] *See generally* 1978 Release I.

[107] *See id.*

[108] *See* 1979 Release at n. 25.

[109] *See* VWAP Letter; OptiMark Letter and Chicago Match Letter.

[110] *See* 1979 Release. *See also* VWAP Letter, OptiMark Letter and Chicago Match Letter.

[111] *Id.*

[112] Proposed PCXE Rule 7.31(h)(2)

[113] Proposed PCXE Rule 7.36.

[114] *See* Rule 11Ac1-1 under the Securities Exchange Act.

[115] *See* Rule 11Ac1-1(a)(4) under the Securities Exchange Act.

[116] Securities Exchange Act Release No. 39086 (Sept. 17, 1997), 62 FR 50036, 50046 (1997) ("PCX OptiMark Release").

[117] *See* Securities Exchange Act Release No. 37619A (Sept. 12, 1996), 61 FR 48290, 48313 (1996) ("Order Handling Release"). *See also* PCX OptiMark Release at 50046.

[118] Order Handling Release at 48313.

"aware of the potential trading interest until the trade occurs."[119]

With discretionary orders on ArcaEx, the discretionary price of a discretionary order is not communicated to any Users of the system. Only ArcaEx is aware of the full potential trading interest of these discretionary orders until trades occur. Accordingly, because ArcaEx does not publish the discretionary aspect of these discretionary orders, they should not be deemed to be a "bid or offer" within the meaning of the Quote Rule.

b. Discretionary Orders Represent a More Complex Trading Interest Than Traditional "Bids" or "Offers"

Discretionary orders allow the investor to express a more complex—and more accurate—trading interest than the single price and size of a conventional order.[120] Unlike "bids" and "offers," discretionary orders reflect the fact that there is usually more than one price at which an investor is willing to buy or sell. Because these discretionary orders represent a qualitatively different set of information from the traditional price and size information, they are more analogous to indications of interest, than bids and offers. Therefore, like indications of interest, discretionary orders should be excluded from the requirements of the Quote Rule.[121] The Commission reached a similar conclusion in its analysis of OptiMark Profiles, finding that "Profiles are analogous to indications of interest or CAP orders,[122] neither of which are displayed in exchanges or on Nasdaq."[123] Therefore, the inchoate trading interest of discretionary orders should not be treated as a bid or offer under the Quote Rule.[124]

c. Inclusion of Discretionary Orders Would Impair the Existing Quote Information

Because the discretionary orders represent a more complex expression of trading preferences than traditional orders, any attempt to include them in the public quotation stream would undermine the Commission's efforts to improve the "quality of published quotations, competition and price efficiency."[125] The Commission has long recognized that "quotation information is of significant value to the marketplace as a whole insofar as a quotation reflects the considered judgment of a market professional as to various factors affecting the market, including the current price levels and size of buying and selling interest."[126] Because the discretionary orders do not represent any "current" market judgment as to a particular transaction price or size, the investing public at large would be misled and confused by its inclusion in public quotations.[127] Furthermore, the Commission has previously stated that the dissemination of contingent trading interest, like discretionary orders, "would likely be very difficult" and "could create confusion for investors."[128]

2. The Commission Has Approved the Use of Similar Orders in Other Contexts

a. Exchanges Must Be Allowed To Compete on Equal Footing With Alternative Trading Systems

In adopting Regulation ATS, the Commission expressly recognized the value of conditional orders and specifically allowed ATSs to continue using reserve size orders, negotiation features and other similar conditional orders.[129] Specifically, under, Rule 301(b)(3), if a portion of a subscriber's order is not displayed to others, that undisplayed portion is not subject to the public display requirements in Rule 301(b)(3).[130]

Because a fundamental goal of the national market system is to "achieve a market characterized by * * * fair competition,"[131] the Commission previously has recognized the importance of facilitating "opportunit[ies] for registered exchanges to better compete with alternative trading systems."[132] Therefore, the Commission should not prohibit a registered exchange's use of these order types when it allows an ATS to use them.[133] Such an unnecessary prohibition creates an unlevel playing field between exchanges and ATSs—two trading venues which are considered true competitors in today's markets[134]—in opposition to the national market system goals.[135]

b. ArcaEx's Discretionary Orders Electronically Perform the Same Function as Provided Manually in Today's Trading Environment

In a traditional floor trading environment, broker-dealers enjoy the discretion to "work" an order to ensure that the customer receives the best price for the trade. This special handling permits the broker-dealer to respond to the ever-changing state of the market. For example, a broker may represent a customer's trading interest at one price, given the state of the current market, but be prepared to offer the trade at a different price if the market moves. To provide an effective trading platform, ArcaEx must be permitted to provide an electronic mechanism which replicates some of these value-added activities of market intermediaries. Therefore, ArcaEx has designed the discretionary orders. This order type allows an aspect of the order to respond to the dynamic trading environment without the need for manual order handling.[136]

3. Discretionary Orders Benefit Investors in an Electronic Environment

a. Discretionary Orders Enhance Liquidity

The Commission has emphasized that one of its goals as a regulator is to provide "the deepest, most liquid markets possible" and to "minimize short-term price volatility."[137] Discretionary orders can help the Commission reach this goal. By providing investors with greater flexibility in the handling of their orders, the discretionary orders will encourage greater investor participation on the PCX, which, in turn, will increase the depth and liquidity of the securities markets.[138] For example, the discretionary orders allow a certain amount of anonymity for a trade—something which may be very attractive to various segments of the market which would otherwise be disinclined to trade on ArcaEx. Therefore, the introduction of the discretionary order is likely to attract new market participants, both retail and institutional, thereby enhancing liquidity through increased order flow to ArcaEx.

b. Discretionary Orders Facilitate Investor Protection

In the past, the Commission has rejected claims that the use of conditional order types in electronic trading environments create a hidden market to the detriment of investors.[139] The Commission has concluded that "when orders are not displayed to

[119] PCX OpitMark Release at 50046.

[120] As the Commission has stated repeatedly, the Quote Rule is premised on the notion of a bid or offer at one specified price and one specified size. *See, e.g.*, Securities Exchange Act Release No. 35030 (Nov. 30, 1994), 59 FR 63141, 63145 (1994).

[121] Rule 11Ac1-1(a)(4) under the Securities Exchange Act.

[122] For a description of CAP orders, *see, e.g.*, NYSE Rules 13 and 123A.

[123] *See, e.g.*, OptiMark Release at 50046.

[124] This may be especially true for indications of interest expressed by those who do not constitute "members" or "responsible broker-dealers" within the meaning of the Quote Rule. *See* Order Handling Release at 48311, n. 248.

[125] *See* Order Handling Release at 48290.

[126] *See* Announcement of Written Requests Sent to Registered National Securities Exchanges concerning Availability of Quotation Information, Securities Exchange Act Release No. 11288, 40 FR 15015 (1975).

[127] *See* OptiMark Release at 50046.

[128] *Id.*

[129] *See* Securities Exchange Act Release No. 40760 (Dec. 8, 1998), 63 FR 70844, 70886 (Dec. 22, 1998) ("ATS Release").

[130] *See* Rule 301(b)(3) under the Exchange Act ("An [ATS] shall comply with the requirements set forth in paragraph (b)(3)(ii) of this section, with respect to any covered security in which the [ATS]: (A) displays subscriber orders to any person (other than [ATS] employees").

[131] S. Rep. No. 75, 94th Cong., 1st Sess. 8 (1975) at 101.

[132] *See* ATS Release at 70844.

[133] *See* NNMS Release at 3995 (reserve orders "allow market makers quoting in Nasdaq to compete more effectively with alternative trading systems that provide a reserve size feature").

[134] In fact, ATS meets the definition of an exchange, but need not register as such, provided it complies with Regulation ATS. *See* Rule 3a1-1(a)(2) under the Exchange Act.

[135] *See generally* ATS Release.

[136] The use of discretionary orders will help to further the national market system goal of fostering "an opportunity for investors' orders to be executed without the participation of a dealer." *See* Section 11A(a)(1)(C)(v) of the Securities Exchange Act. *See also* PCX OptiMark Release at 50046 (approving OptiMark, in part, because it "would increase the ability of investors' orders to interact directly with other investor orders on the PCX").

[137] Securities Exchange Act Release No. 43084 (July 28, 2000), 65 FR 48406, 48407 (Aug. 8, 2000) ("Disclosure of Order Routing and Execution Practices Release").

[138] *See, e.g.*, Securities Exchange Act Release No. 42344 (Jan 14, 2000), 65 FR 3987, 3995 (Jan. 25, 2000) ("Increased participation in NNMSS [as a result of the attractiveness of reserve orders for large investors] should enhance the depth and liquidity of the market for NNM securities, to the benefit of all market participants").

[139] *See, e.g.*, ATS Release at 70867; PCXx OptiMark Release at 50046 ("contrary to the NYSE's assertion, the [PCX] is not operating a hidden market in violation of the Firm Quote Rule").

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anyone, the Commission's concerns about a two-tiered market—where some market participants have information others do not—are absent."[140]

ArcaEx's discretionary orders will not provide any market participant with an unfair trading advantage.[141] All Users will see the same orders ranked in the Arca Book, i.e., ArcaEx will display to all User those orders which are displayed in the Limit Order Process of the Arca Book, but not the working orders in the Working Order Process.[142] No Users will have special access to trading interest that is not available to others on ArcaEx. All Users have the equivalent opportunity to receive fills based on both displayed and undisplayed orders. Furthermore, no Users will be able to control or influence the trades resulting from conditional trading interest; the trades will only be executed pursuant to an established algorithm.[143] Therefore, discretionary orders fail to hurt investors in any way; they only provide benefits to the marketplace, as discussed in detail above.

C. Conclusion

Discretionary orders comply with Rule 11Ac1–1. Moreover, not only do such orders not present any potential for investor harm, they affirmatively will benefit both investor and market liquidity.

[FR Doc. 01–11472 Filed 5–7–01; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44237; File No. SR–PHLX–2001–43]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Adding QQQ Options to the Exchange's List of the Top 120 Equity Options

April 30, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b-4 thereunder,[2] notice is hereby given that on March 30, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items the Phlx has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to revise its list of the Top 120 Options[3] by adding options on Units of Beneficial Interest in the Nasdaq-100 Trust, Series 1, which are widely known as and traded under the symbol "QQQ". Options on the QQQ index will be added to the Phlx's list of the Top 120 Options effective April 2, 2001, and will include trades that settle on that date.

All of the options on the Phlx's list of Top 120 Options are included in the Phlx's payment for order flow program, in which a marketing fee (currently $1.00) is imposed on the transactions of specialists and ROTs, which the specialists may use to attract order flow to Phlx. QQQ options will be included in the marketing fee program once they are added to the list of Top 120 Options. The inclusion of QQQ options on the list means that there will be 121 Options on the Phlx's list of the Top 120 options through June 30, 2001, when the current measuring period ends.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, or the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is add QQQ options to the Phlx's list of the Top 120 Options. The list of the Top 120 Options identifies the 120 most actively traded equity options as measured by their trading volume on all U.S. options markets. The list of Top 120 Options is recalculated every six months, with the measuring periods running from January 1 through June 30 and from June 1 through November 30. The Phlx assembled its current list of Top 120 Options using data that the Options Clearing Corporation gathered during the period from June 1, 2000 through November 30, 2000.

The Phlx currently imposes a $1.00 per contract fee on transactions of Phlx specialists and Registered Options Traders ("ROTs") in the Top 120 Options, with some exceptions.[4] Under the program, Phlx specialists may use the proceeds raised from the marketing fee to attract order flow to the Phlx. Because options on the QQQ index are now traded on the Phlx,[5] the Phlx is proposing to add QQQ options to its list of the Top 120 Options during the current measuring period. Accordingly, from April 2, 2001, the effective date of this proposal, through June 30, 2001, the end of the current measuring period, there will be a total of 121 options on the Phlx's list of the Top 120 Options.

2. Statutory Basis

The inclusion of QQQ options on the Phlx's list of the Top 120 Options would bring QQQ options into the Phlx's payment for order flow program. The Phlx believes that the QQQ specialist unit and the ROTs who pay the $1.00 marketing fee should receive the benefits of increase order flow, and that the proposed rule change would equitably allocate reasonable fees among the Phlx's members. Accordingly, the Phlx—believes that the proposal is consistent with Section 6(b) of the Act,[6] and in particular furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act.[7] Moreover, the Phlx believes that the inclusion of QQQ options in its list of Top 120 Options, and the corresponding imposition of the $1.00 fee on various transactions in QQQ options, should promote just and equitable principles to trade, remove impediments to and perfect the mechanism of a free and open market, and protect investors and public interest by attracting more order flow to the Phlx, which should result in increased liquidity, tighter markets, and more competition among exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Phlx neither solicited nor received any written comments on this proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the Phlx has designated the proposed rule change as a fee change pursuant to Section 19(b)(3)(A)[8] of the Act and Rule 19b–4(f)(2),[9] the proposal has become effective upon filing with the Commission.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2001–43 and should be submitted by May 29, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–11475 Filed 5–7–01; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Applicant No. 99000444]

First Capital Group of Texas III, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that First Capital Group of Texas III, L.P., 750 E. Mulberry, Suite 305, San Antonio, Texas 78212, an applicant for a Federal License under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (2000)). First Capital Group of Texas III, L.P. proposes to provide equity/debt security financing to BEI Group, Inc.,1051 East Nakoma, San Antonio, Texas 78216. The financing is contemplated for the purpose of providing working capital.

The financing is brought within the purview of Sec. 107.730(a)(1) of the Regulations because First Capital Group of Texas II, L.P., an Associate of First Capital Group of Texas III, L.P., currently owns greater than 10 percent of BEI Group, Inc. and therefore BEI Group, Inc. is considered an Associate of First Capital Group of Texas III, L.P. as defined in Sec. 107.50 of the SBA Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

Dated: April 27, 2001.

Harry Haskins,

Acting Associate Administrator for Investment.

[FR Doc. 01–11540 Filed 5–7–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9L55]

State of Ohio

Hamilton County and the contiguous counties of Butler, Clermont and Warren in the State of Ohio; Dearborn and Franklin Counties in the State of Indiana; and Boone, Campbell and Kenton Counties in the Commonwealth of Kentucky constitute a disaster area due to a civil disturbance beginning on April 9, 2001. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on February 1, 2002 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rate for eligible small businesses and small agricultural cooperatives in 4 percent.

The number assigned for economic injury is 9L5500 for the State of Ohio; 9L5600 for the State of Indiana; 9L5700 for the Commonwealth of Kentucky.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: May 1, 2001.

John Whitmore,

Acting Administrator.

[FR Doc. 01–11541 Filed 5–7–01; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 3653]

Culturally Significant Objects Imported for ExhibitionDeterminations: "Spirit of an Age: Nineteenth Century Paintings From the Nationalgalerie, Berlin"

DEPARTMENT: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C.

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[140] *See* ATS Release at 70867.

[141] *See, e.g.*, PCX OptiMark Release at 50046 ("The failure to disseminate Profile does not provide any other market participant with an unfair market advantage as a result of seeing the trading interest that is not shown to others. Any User only knows its own Profile; it has no special access to other Users' Profiles. Moreover, Users have no control or influence in determining the outcome of a match, other than through the construction of their own Profiles.")

[142] *See* Proposed PCXE Rule 7.36.

[143] *See* Proposed PCXE Rule 7.37.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Phlx defines a Top 120 Option as one of the 120 most actively traded equity options nationwide during a six-month measuring period. The Phlx revises its list of the Top 120 Options every six months using data that the Options Clearing Corporations provides.

[4] The transactions in Top 120 Options that are currently excepted from the $1.00 fee are transactions between: (1) A specialist and an ROT; (2) an ROT and an ROT; (3) a specialist and a firm; (4) an ROT and a firm; (5) a specialist and a broker-dealer; and (6) and ROT and and a broker-dealer. *See* Securities Exchange Act Release Nos. 43177 (Aug. 18, 2000), 65 FR 51889 (Aug. 25, 2000) (SR–Phlx–00–77); 43480 (Oct. 25, 2000), 65 FR 66275 (Nov. 3, 2000) (SR–Phlx–00–86 and SR–Phlx–00–87); and 43481 (Oct. 25, 2000), 65 FR 66277 (Nov. 3, 2000) (SR–Phlx–00–88 and SR–Phlx–00–89).

[5] *See* Securities Exchange Act Release Nos. 43921 (February 2, 20001), 66 FR 9739 (Feb. 9, 2001) (SR–Phlx–00–107) (amending Phlx rules to create listing criteria and trading rules to allow the Phlx to list QQQ options); 44054 (Mar. 8, 2001), 66 FR 15314 (Mar. 16, 2001) (SR–Phlx–01–31) (increasing the automatic execution guarantee for QQQ options to 100 contracts); and 44055 (March 8, 2001), 66 FR 15310 (Mar. 16, 2001) (SR–Phlx–01–32) (amending Phlx rules to create a one-point strike price interval for QQQ options and establishing the hours of trading for QQQ options).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

[10] The Phlx has stated that any change to the category of options to which the payment for order flow fee applies will be subject of a separate filing with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act. *See* Securities Exchange Act Release No. 43177 (Aug. 18, 2000), 65 FR 51889 (Aug. 25, 2000) (SR–Phlx–00–77).

[11] 17 CFR 200.30–3(a)(12).

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2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Spirit of an Age: Nineteenth Century Paintings from the Nationalgalerie, Berlin," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC, from on or about June 10, 2001 to on or about September 3, 2001, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, S.W., Room 700, Washington, D.C. 20547-0001.

Dated: April 20, 2001.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 01–11534 Filed 5–7–01; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3658]

Notice of Proposal To Extend Memorandum of Understanding With Peru

ACTION: Notice.

Pursuant to the authority vested in me under Department of State Delegation of Authority No. 236–2, as amended, and pursuant to 19 U.S.C. 2602(f)(1), I hereby propose extension of the Memorandum of Understanding between the Government of the United States of America and the Government of Peru Concerning the Imposition of Import Restrictions on Archaeological Material from the Prehispanic Cultures and Certain Ethnological Material from the Colonial Period of Peru, signed June 9, 1997. Pursuant to 19 U.S.C. 2602(f)(2), the views and recommendations of the Cultural Property Advisory Committee regarding this proposal will be requested.

A copy of this Memorandum of Understanding, the designated list of restricted categories of material, and related information can be found at the following web site: http://exchanges.state.gov/education/culprop.

Dated: May 2, 2001.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 01–11686 Filed 5–7–01; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice 3657]

Bureau of Political-Military Affairs; Denial Policy of Munitions Export Licenses to Afghanistan

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that all licenses and other approvals to export or otherwise transfer defense articles or defense services to the territory of Afghanistan under Taliban control will continue to be denied pursuant to section 38 of the Arms Export Control Act (AECA) and in accordance with section 5 of the UN Participation Act (UNPA) and E.O. 12918 and the long standing policy of the United States to deny exports of all defense articles and defense services to Afghanistan.

EFFECTIVE DATE: May 8, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Sweeney, Munitions Control Analyst, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 633–2700.

SUPPLEMENTARY INFORMATION: The U.S. has had a policy of denial in place for licenses and other approvals for exports/transfers of defense articles and services to Afghanistan, which is listed in Section 126.1 (see 61 FR 33313). However, a new U.N. Security Council Resolution (UNSCR) mandates an arms embargo against the territory of Afghanistan under Taliban control. This notice hereby informs the public of the U.S. implementation of these prohibitions through this notice, including the continuation of the policy of denial for this territory.

Areas of Afghanistan under control of the Taliban are being used for sheltering and training of terrorists and planning terrorist acts. Also, the Taliban provides a safehaven for Usama bin Laden. Because of these activities, the United Nations Security Council adopted Resolution 1333 (December 19, 2000). This resolution requires that all States prevent the direct or indirect supply, sale and transfer to the territory of Afghanistan under Taliban control, by their nationals or from their territories, or using flag vessels or aircraft, of arms and related material of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts of the aforementioned. Also, the resolution requires States to prevent the direct or indirect sale, supply and transfer to the territory of Afghanistan under Taliban control by their nationals or from their territories of technical advice, assistance, or training related to the military activities of the armed personnel under control of the Taliban. The UN arms embargo has limited exceptions for non-lethal military equipment intended solely for humanitarian or protective use if approved in advance by an established Committee of the Security Council.

In accordance with 22 CFR 126.1, the U.S. Government will continue its policy to deny all applications for licenses and other approvals to export or otherwise transfer defense articles and services to Afghanistan, including the territory of Afghanistan under Taliban control. This action also continues to preclude the use in connection with this territory of any exemptions from licensing or other approval (e.g. brokering) requirements available under the International Traffic in Arms Regulations.

Under the terms of UNSCR 1333, the U.N. arms embargo of the territory of Afghanistan under Taliban control will expire on December 19, 2001 unless it is extended by the U.S. Security Council. However, the measures specified in this notice and the policy of denial for Afghanistan will remain in effect until a subsequent notice is published in the **Federal Register**.

This action has been taken pursuant to Section 38 of the AECA (22 U.S.C. 2778) and § 126.7 of the International Traffic in Arms Regulations in furtherance of the foreign policy of the United States, and in accordance with Section 5 of the UNPA (22 U.S.C. 287(c)) and E.O. 12918.

Dated: April 30, 2001.

Gregory M. Suchan,

Acting Assistant Secretary, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 01–11533 Filed 5–7–01; 8:45 am]

BILLING CODE 4710–25–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice with respect to List of Countries Denying Fair Market Opportunities for Government-Funded Airport Construction Projects

AGENCY: Office of the United States Trade Representative.

ACTION: Notice with respect to a list of countries denying fair market opportunities for products and suppliers of the United States in airport construction procurements.

SUMMARY: Pursuant to section 533 of the Airport and Airway Improvement Act of 1982, as amended (49 U.S.C. 50104), the United States Trade Representative ("USTR") has determined not to include any countries on the list of countries that deny fair market opportunities for U.S. products, supplies, or bidders in foreign government-funded airport construction projects.

DATES: Effective May 1, 2001.

ADDRESSES: Office of United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: John Ellis, Director of Government Procurement Issues, (202) 395–3063; or Mélida Hodgson, Associate General Counsel, (202) 395–3582.

SUPPLEMENTARY INFORMATION: Section 533 of the Airport and Airway Improvement Act of 1982, as amended by section 115 of the Airport and Airway Safety and Capacity Expansion Act of 1987, Public Law 100–223 (codified at 49 U.S.C. 50104) ("the Act"), requires USTR to decide by May 1, 2001, whether any foreign countries have denied fair market opportunities to U.S. products, suppliers, or bidders in connection with airport construction projects of $500,000 or more that are funded in whole or in part by the governments of such countries. This first of such countries must be published in the **Federal Register.** For the purposes of the Act, USTR has decided not to include any countries on the list of countries that deny fair market opportunities for U.S. products, suppliers, or bidders in foreign government-funded airport construction projects.

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 01–11462 Filed 5–7–01; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Identification of Countries That Deny Adequate Protection, or Market Access, for Intellectual Property Rights Under Section 182 of the Trade Act of 1974

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Notice is hereby given that the United States Trade Representative (USTR) has submitted its annual report on the identification of those foreign countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to United States persons that rely upon intellectual property protection, and those foreign countries determined to be priority foreign countries, to the Committee on Finance of the United States Senate and the Committee on Ways and Means of the United States House of Representatives, pursuant to section 182 of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2242).

DATES: This report was submitted on April 30, 2001.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, N.W., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Kira Alvarez, Director for Intellectual Property, (202) 395–6864, or Stephen Kho, Assistant General Counsel, (202) 395–3581.

SUPPLEMENTARY INFORMATION: Section 182 of the Trade Act requires USTR to identify within 30 days of the publication of the National Trade Estimates Report all trading partners that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to United States persons that rely upon intellectual property protection. Those countries that have the most onerous or egregious acts, policies, or practices that have the greatest adverse impact (actual or potential) on the relevant United States products must be identified as "priority foreign countries," unless they are entering into good faith negotiations or are making significant progress in bilateral or multilateral negotiations to provide adequate and effective protection for intellectual property rights. In identifying countries in this manner, the USTR is directed to take into account the history of intellectual property laws and practices of the foreign country, including any previous identifications as a priority foreign country, and the history of efforts of the United States, and the response of the foreign country, to achieve adequate and effective protection and enforcement of intellectual property rights. In making these determinations, the USTR must consult with the Register of Copyrights, the Commissioner of Patents and Trademarks, other appropriate officials of the Federal Government and take into account information from other sources such as information submitted by interested persons.

On April 30, 2001, USTR identified 51 trading partners that deny adequate and effective protection of intellectual property or deny fair and equitable market access to United States artists and industries that rely upon intellectual property protection. USTR also reaffirmed Ukraine's designation as a Priority Foreign Country, which occurred on March 12, 2001. In addition, USTR again designed Paraguay and China for "Section 306 monitoring" to ensure both countries comply with the commitments made to the United States under bilateral intellectual property agreements.

USTR also announced placement of 16 trading partners on the "Priority Watch List": Argentina, Costa Rica, the Dominican Republic, Egypt, the European Union, Hungary, India, Israel, Korea, Lebanon, Malaysia, the Philippines, Russia, Taiwan, and Uruguay. USTR placed 32 trading partners on the "Watch List." Countries that were not mentioned in the report last year but are on the Watch List this year include: New Zealand, the Slovak Republic, and the United Arab Emirates. In addition, out-of-cycle reviews will be conducted of Costa Rica, Malaysia, Lithuania. While Georgia, the Kyrgyz Republic, Japan and the Bahamas are not listed. USTR will also conduct out-of-cycle reviews of each later in the year, and of Japan and the Bahamas as warrated.

Kira M. Alvarez,

Director of Intellectual Property.

[FR Doc. 01–11461 Filed 5–7–01; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2001–8629]

Information Collections Under Review by the Office of Management and Budget (OMB): 2115–0557, 2115–0100, and 2115–0618

AGENCY: Coast Guard, DOT.

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ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded the three Information Collection Reports (ICRs) abstracted below to OMB for review and comment. Our ICRs describe the information we seek to collect from the public. Review and comment by OMB ensure that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before June 7, 2001.

ADDRESSES: Please send comments to (1) the Docket Management System (DMS), U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001; and (2) the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), 725 17th Street NW., Washington, DC 20503, to the attention of the Desk Officer for the USCG.

Copies of the complete ICRs are available for inspection and copying in public docket USCG 2001–8629 of the Docket Management Facility between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays; for inspection and printing on the internet at *http://dms.dot.gov;* and for inspection from the Commandant (G–CIM–2), U.S. Coast Guard, room 6106, 2100 Second Street SW., Washington, DC, between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

SUPPLEMENTARY INFORMATION

Regulatory History

This request constitutes the 30-day notice required by OMB. The Coast Guard has already published (66 FR 10768 (February 16, 2001)) the 60-day notice required by OMB. That notice elicited no comments.

Request for Comments

The Coast Guard invites comments on the proposed collections of information to determine whether the collections are necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the Department's estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments, to DMS or OIRA, must contain the OMB Control Numbers of all ICRs addressed. Comments to DMS must contain the docket number of this request, USCG 2001–8629. Comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

Information Collection Requests

1. *Title:* Advance Notice of Vessels' Arrival and Departure.
OMB Control Number: 2115–0557.
Type of Request: Extension of a currently approved collection.
Affected Public: Owners and operators of vessels.
Forms: This collection of information does not require the public to fill out Coast Guard forms, but does require certain vessels bound for ports or places in the United States to provide advance notice of arrival to the Coast Guard's Captains of the Ports.
Abstract: The Ports and Waterways Safety Act authorizes the Coast Guard to require pre-arrival message or messages from any vessel entering a port or place in the United States.
Annual Estimated Burden Hours: The estimated burden is 21,288 hours a year.

2. *Title:* Carriage of Bulk Solids Requiring Special Handling—46 CFR part 148.
OMB Control Number: 2115–0100.
Type of Request: Extension of a currently approved collection.
Affected Public: Owners and operators of vessels that carry certain bulk solids.
Form: This collection of information does not require the public to fill out Coast Guard forms, but does require the shipping industry to apply for special permits to ship hazardous materials in bulk solid form.
Abstract: The information in the application for a special permit allows the Coast Guard to: (1) Determine the severity of the hazard posed by the material; (2) set specific guidelines for safe carriage; or, (3) if the material presents too great a hazard, deny permission for shipping the material.
Annual Estimated Burden Hours: The estimated burden is 830 hours a year.

3. *Title:* Questionnaire on Boating Statistics.
OMB Control Number: 2115–0618.
Type of Request: Extension of a currently approved collection.
Affected Public: Recreational boaters.
Form: CG–5599.
Abstract: The Office of Boating Safety of the Coast Guard may collect, analyze, and annually publish statistical information on recreational-boating accidents (46 U.S.C. 6102 (b)). Accordingly, the Coast Guard publishes an annual report, *Boating Statistics* (COMDTPUBP16754). This report contains statistics and other information on recreational-boating accidents. The statistics are derived from data on Recreational Boating Accident Reports submitted by the States, the District of Columbia, and the five U.S. Territories.
Annual Estimated Burden Hours: The estimated burden is 320 hours a year.

Dated: May 2, 2001.

V.S. Crea,

Director of Information and Technology.

[FR Doc. 01–11491 Filed 5–7–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGDB–01–010]

Houston/Galveston Navigation Safety Advisory Committee Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC) and its working committee will meet to discuss waterway improvements, aids to navigation, Houston/Galveston-area projects impacting safety on the Houston Ship Channel, and various other navigation safety matters in the Houston/Galveston area. All meetings will be open to the public.

DATES: The next meeting of HOGANSAC will be held on Thursday, May 24, 2001 from 9:00 a.m. to approximately 12:00 p.m. The meeting of the Committee's working groups will be held on Thursday, May 10, 2001 at 9:00 a.m. The meetings may adjourn early if all business is finished. Members of the public may present written or oral statements at either meeting.

ADDRESSES: The full Committee meeting will be held at the offices of the Houston Pilots. The pilot office is located at 8150 South Loop East, Houston, Texas. The working group meeting will be held at the Houston Yacht Club, 3620 Miramar Drive, Shoreacres, Texas.

FOR FURTHER INFORMATION CONTACT: Captain Wayne Gusman, Executive Director of HOGANSAC, telephone (713) 671–5164.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agendas of the Meetings

Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC)

The tentative agenda includes the following:

(1) Opening remarks by the Committee Sponsor (RADM Castro) (or the Committee Sponsor's representative), Executive Director (CAPT Gusman) and Chairman (Tim Leitzell).
(2) Approval of the January 25, 2001 minutes.
(3) Old Business
  (a) Dredging projects.
  (b) Electronic navigation.
  (c) AtonN Knockdown Working Group.
  (d) Facility Information Guide.
  (e) Recreational boater education initiative.
  (f) TNRCC Clean Air Rules and Plans for Houston/Galveston.
  (g) FPSO update.
  (h) Mooring subcommittee report.
  (i) Frequency Congestion workgroup report.
(4) New Business.
  (a) Membership solicitation.

Working Committee Meeting

The tentative agenda for the working committee meeting includes the following:

(1) Presentation by each work group of its accomplishments and plans for the future.

(2) Review and discuss the work completed by each work group. Work groups have been formed to examine the following issues: dredging and related issues, electronic navigation systems, AtoN knockdowns, VTS radio frequency congestion, impact of passing vessels on moored ships, recreational boater education issues. All work groups may not necessarily report out at this session. Further, work group reports may not necessarily include discussions on all issues within the particular work group's area of responsibility. All meetings are open to the public. Please note that the meetings may adjourn early if all business is finished. Members of the public may make presentations, oral or written, at either meeting.

Information on Service for the Handicapped

For information on facilities or services for the handicapped or to request special assistance at the meetings, contact the Executive Director or Executive Secretary.

Dated: April 26, 2001.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Commander, Eight Coast Guard District.

[FR Doc. 01–11492 Filed 5–7–01; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on 2/15/01, pages 10558–10559.

DATES: Comments must be submitted on or before June 7, 2001. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Certificate: Mechanics, Repairmen, Parachute Riggers, and Inspection Authorizations—FAR Part 65.
Type of Request: Extension of a currently approved collection.
OMB Control Number: 2120–0022.
Forms(s): FAA Forms 8610–1 and 8610–2.
Affected Public: An estimated 34,970 applicants.
Abstract: 14 CFR part 65 prescribes rules governing the issuance of certificates and associated rating for mechanics, repairmen, parachute riggers, and the issuance of inspection authorizations.
Estimated Annual Burden Hours: 34,432 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collections; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on May 1, 2001.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 01–11469 Filed 5–7–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Air Carrier Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advice the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss air carrier operations issues.

DATES: The meeting will be held on May 22, 2001, at 10 a.m.

ADDRESSES: The meeting will be held in Conference Room 827, Federal office Building 10A (the "FAA Building"), 800 Independence Ave., SW., Washington, DC, 20591.

FOR FURTHER INFORMATION CONTACT: Linda Williams, Office of Rulemaking, 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 267–9658.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App II) notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee on Air Carrier Operations to be held on May 22, 2001.

The agenda will include:

- Airplane Performance Working Group final report.
- Extended Range Operations with Two-Engine Aircraft (ETOPS) Working (ETOPS) Working Group status report.

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• All Weather Operations Harmonization Working Group status report.

Attendance is open to the interested public but may be limited by the space available. Members of the public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

If you are in need of assistance or require a reasonable accommodation for this event, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC. on May 2, 2001.

Gregory L. Michael,

Assistant Executive Director for Air Carrier Operations, Aviation Rulemaking Advisory Committee.

[FR Doc. 01–11718 Filed 5–7–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Board of Directors on Thursday, June 7, 2001. The meeting begins at 1:00 p.m. The letter designations that follow each item mean the following: (I) is an information item; (A) is an action item; (D) is a discussion item. The General Session includes the following items: (1) Welcome & ITS America Antitrust Policy and Conflict of Interest Statements (I); (2) Review & Acceptance of Election Results: Installation of New Board Members (A); (3) Presentation of Nominees for Officers of the Board (I); (4) Acceptance of Other Nominations for Officers and Directors of the 2000—2001 Board of Directors (A); * * * Transfer of Gavel from outgoing chairman to new chairman * * * (5) Introductions & Recognition of Outgoing Board Members & Officers (I); (6) Review & Approval of Previous Board Meeting Unconfirmed Minutes (A); (7) New Appointments (I/A); (8) Federal ITS Initiatives Report (I/D); (9) Coordinating Council Report (I); (10) State Chapters Council Report (I/A); (11) International Affairs Council Report (I); (12) Business Group Report (I/D); (13) President's Report (I); (14) Report of the Audit Committee (I); (15) Board & Executive Committee Meeting Schedules; (16) Other business; (17) Adjournment.

ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities.

The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA) 5 USC app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Board of Directors of ITS AMERICA will meet on Thursday, June 7, 2001 from 1 p.m.–5 p.m. Room TBA.

ADDRESSES: The Fountainebleau Hilton Resort, 4441 Collins Ave., Miami Beach, Florida, 33140. Phone: (305) 538–2000; Fax (305) 673–5351.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue SW, Suite 800, Washington, D.C. 20024. Persons needing further information or who request to speak at this meeting should contact Debbie M. Busch at ITS AMERICA by telephone at (202) 484–2904 or by FAX at (202) 484–3483. The DOT contact is Kristy Frizzell, FHWA, HOIT, Washington, D.C. 20590, (202) 366–9536. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except for legal holidays. (23 U.S.C. 315; 49 CFR 1.48)

Issued on: May 3, 2001.

Jeffrey Paniati,

Program Manager, ITS Joint Program Office.

[FR Doc. 01–11571 Filed 5–7–01; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD–2001–9612]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ANNIE–B.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before June 7, 2001.

ADDRESSES: Comments should refer to docket number MARAD–2001–9612. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: ANNIE–B. Owner: John Hangen.

(2) Size, capacity and tonnage of vessel. According to the applicant: "* * * 42.0 feet long with a breadth of 13.0 feet and a depth of 6.0 feet. Her gross tonnage is 21 tons & net tonnage is 17 tons."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "I intend to use this vessel to conduct local six-pack fishing charters. I may also provide local cruising by visiting and exploring local harbors. * * * I would * * * ask that the geographic boundaries be from Portsmouth NH to Miami Florida."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1988. Place of construction: Prince Edward Island, Canada.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "* * * I am confident that if this waiver is granted it will have no adverse affects upon commercial passenger vessel operators. The vessels operating in my area are; large whale watch vessels, commercial fishing vessels, and large fishing charter vessels."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "The granting of this waiver will not affect the business of U.S. shipbuilders adversely * * *. It is my intention to start my operation using the ANNIE–B and use the profits to help fund the eventual purchase of a U.S. built vessel to conduct my business * * *."

Dated: May 2, 2001.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 01–11577 Filed 5–7–01; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket Number NHTSA–2001–9429]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collections of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections. This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before July 9, 2001.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance Number. It is requested, but not required, that 2 copies of the comment be provided.

The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: For further information, contact Mr. Joseph Scott, Office of Crash Avoidance Standards, 400 Seventh Street, SW., DC 20590. Mr. Scott's telephone number is (202) 366–8525. His FAX number is (202) 493–2739. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) how to enhance the quality, utility, and clarity of the information to be collected;

(iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Brake Hose Manufacturing Identification, Federal Motor Vehicle Safety Standard (FMVSS) No. 106.

OMB Control Number: 2127–0052.

Affected Public: Business or other for profit.

Abstract: Under the authority of the National Traffic and Motor Vehicle Safety Act of 1966, as amended, Title 15 United States Code 1932, Section 103, authorizes the issuance of Federal Motor Vehicle Safety Standards (FMVSS). The Act mandates that in issuing any Federal motor vehicle safety standards, the agency is to consider whether the standard is reasonable and appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed. Using this authority, Standard 106, Brake Hoses, was issued. This standard specifies labeling and performance requirements for all motor vehicle brake hose assemblers, brake hose and brake hose end fittings manufacturers for automotive vehicles. These entities must register their identification marks with NHTSA to comply with this standard.

Estimated Annual Burden: 30 hours.

Estimated Number of Respondents: 20.

Issued on: May 3, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–11565 Filed 5–7–01; 8:45 am]

BILLING CODE 4910–59–P

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–9548; Notice 1]

Bridgestone/Firestone, Inc., Receipt of Application for Decision of Inconsequential Noncompliance

Bridgestone/Firestone, Inc. (Bridgestone) has determined that approximately 442,479 tires of various sizes and types, do not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 109, "New Pneumatic Tires."

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Bridgestone has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports."

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

The petition affects multiple size and type tires produced in Bridgestone's Wilson, North Carolina plant during DOT week 53 Year 2000 and DOT week 01 Year 2001. The 442,479 affected tires were mis-marked with the incorrect DOT week/year in the DOT serial, the numbering scheme designated for tire manufacture date.

Bridgestone states that the noncompliance is inconsequential to motor vehicle safety because all affected tires meet all requirements of 49 CFR 571.109, except paragraph S54.3. Also, according to Bridgestone, the date marked on the tires is incorrect but it can be used to identify the tires in the event of a recall, which is the primary purpose for the requirement of the date marking.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC. 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: June 7, 2001.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: May 3, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–11566 Filed 5–7–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–98–4957; Notice 29]

Pipeline Safety: Natural Gas Transmission and Distribution Pipeline Incident and Annual Report Forms

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Request for OMB Approval and Public Comment.

SUMMARY: As required by the Paperwork Reduction Act of 1995, the Research and Special Programs Administration (RSPA) published its intention to revise forms RSPA F 7100.2—Incident Report For Gas Transmission and Gathering Systems and RSPA F 7100.2–1—Annual Report For Gas Transmission and Gathering Systems (65 FR 47585–86 August 2, 2000). The purpose of this notice is to give the public an additional 30 days from the date of this notice to comment on the proposed changes in the natural gas transmission forms, and the information collection burden for both the revised natural gas transmission forms and the existing natural gas distribution forms. The natural gas distribution incident and annual report forms are not being revised at this time. Comments to the initial public comment request have been summarized in this notice.

DATES: Comments on this notice must be received on or before June 7, 2001.

FOR FURTHER INFORMATION CONTACT: Roger Little by telephone at 202–366–4569, by fax at 202–366–4566, by mail at U.S. Department of Transportation, RSPA, 400 Seventh Street, SW, Room 7128, Washington, DC, 20590, or by e-mail to roger.little@rspa.dot.gov.

ADDRESSES: Copies of this proposed information collection and the revised forms, RSPA F 7100.2—Incident Report for Gas Transmission and Gathering Systems and RSPA F 7100.2–1—annual Report for Gas Transmission and Gathering Systems, can be reviewed in this docket at *http://dms.dot.gov.* Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–0001. Comments should be sent directly to the Office of Regulatory Affairs, Office of Management Budget, ATTN: RSPA Desk Officer, 726 Jackson Place, NW, Washington, DC 20503. See the Supplementary Information Section for additional filing information.

SUPPLEMENTARY INFORMATION:

Filing Information

The Dockets facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except federal holidays. All comments should identify the docket number of this notice, Docket No. RSPA–98–4957; Notice 29. You should submit the original and one copy. If you wish to receive confirmation of receipt of your comments, you must include a stamped, self-addressed postcard. To file written comments electronically, after logging onto *http://dms.dot.gov,* click on "Electronic Submission." You can read comments and other material in the docket at this Web address: *http://dms.dot.gov.* General information about our pipeline safety program is available at this address: *http://ops.dot.gov.*

Background

RSPA posted a notice on August 2, 2000 in the Federal Register (Docket No. RSPA–98–4957) inviting comments on RSPA's proposed revisions to the Natural Gas Transmission and Gathering Pipeline Incident and Annual Report forms. This notice summarizes comments received during the comment period and updates the cost burden estimate for the revised natural gas transmission forms. Additionally, this notice updates the cost burden estimates for the existing Natural Gas Distribution Incident and Annual Report forms, which RSPA will consider revising at a later time.

To ensure adequate public protection from exposure to potential natural gas transmission pipeline failures, RSPA collects information on reportable transmission pipeline incidents. Additional information is also obtained concerning the characteristics of an operator's pipeline system, needed for normalizing the incident information in order to provide for adequate safety trending. The requirements for reporting incidents are found in 49 CFR part 191. Reports on transmission incidents must be submitted to RSPA in writing within 30 days of occurrence. The regulations require submission of the natural gas transmission annual report form by March 15 of each year for the preceding year's operations.

The information collected pertaining to reportable natural gas transmission incidents provide an important tool for identifying safety trends in the gas pipeline industry, but there are recognized problems with the current data collection. The National Transportation Safety Board (NTSB), the Department of Transportation's Office of Inspector General, and the General Accounting Office have urged RSPA to revise the information collected on the natural gas transmission pipeline incident report form and annual report form to improve its usefulness. NTSB Safety Recommendation P–96–1 urges RSPA to:

> develop within 1 year and implement within 2 years a comprehensive plan for the collection and use of gas and hazardous liquid pipeline accident data that details the type and extent of data to be collected, to provide the Research and Special Programs Administration with the capability to perform methodologiclly sound accident trend analyses and evaluations of pipeline operator performance using normalized accident data.

RSPA worked with representatives of the Interstate Natural Gas Association of America (INGAA) and the American Gas Association (AGA) to review the natural gas transmission incident and annual report forms to make the information collected more useful to industry, government, and the public.

The reports that RSPA is currently revising covered by this Federal Register Notice are two of the four gas pipeline reporting forms authorized by Information Collection OMB 2137–0522, "Incident and Annual Reports for Gas Operators." The proposed revisions are part of an ongoing process to revise all incident and annual reports. RSPA's calculations for natural gas distribution incident and operator annual reports reflect burden hours of unrevised formed. RSPA will look to revise natural gas distribution forms in the near future. At such a time when RSPA acts to revise the natural gas distribution forms, RSPA will publish a new notice with an updated burden hour estimate.

Previous Comments on Revision of Gas Transmission Forms

Several comments were received in response to the 60-day notice. The following is a discussion of the major comments. Many comments were of an editorial nature including improving the presentation of the form itself and the clarity of the instructions, and are not discussed here, however, these editorial changes were made on the forms. A few gas pipeline companies states that 30 days is not sufficient time to provide the necessary information. RSPA has always provided the opportunity for operators to provide more extensive information in the form of supplementary reporting. Some operators claimed that they do not keep information by class location in electronic format. This they states would cause them considerable expense. RSPA does not agree that this is a costly endeavor. Companies are already required to keep information on miles by class location. Large companies have generally implemented computer databases to track such information. Smaller companies that may have the information in hard copy should not have a difficult task in tallying mileage by class location using adding machines or computer spreadsheets. To tally such information for example for a company of 800 or fewer system miles where such information is kept in hard copy would require examining hard copies for 800 data points, adding them to the appropriate class category, and summing the totals. Such calculations are hardly complex and time consuming. Some operators objected to reporting information by class location at all. RSPA believes that this information is important because some requirements are based on the class location. It is important for RSPA to know whether added protections that are required in more heavily populated areas are in fact having the appropriate impact on public safety. Some operators objected to the idea of providing information on the age of the pipe because they did not have age information on all of their pipeline. RSPA allows operators who do not have age information to check off unknown on the age category. RSPA believes that age information is important to understanding it defects in pipe are age related. One operator suggested that each form should be on the OPS website as electronic filing will make reporting less burdensome. OPS agrees with this suggestion and will do so in the near future. One operator objected to having to provide pipeline information by state as being costly. OPS believes that it is important for state pipeline safety offices that pipeline information to provided by state. One state pipeline program asked for separate information on cast iron and wrought iron. RSPA believes that this is unnecessary as the amount of pipeline made of these products is rapidly being replaced by other products. This state program also requested more information by diameter of pipeline and more detail on third party damage and near misses. While this information may be useful, RSPA did not wish to add an undue burden on pipeline operators.

Information Collection Burden for Incident and Annual Reports for Natural Gas Pipeline Operators

Title: Incident Report for Gas Transmission and Gathering and Gas Distribution Systems (RSPA F 7100.2–1).

OMB Number: 2137–0522

Estimate of Burden: The average burden hours per response is approximately 6 hours for the revised transmission incident report; 3 hours for the revised transmission annual report; 4 hours for the distribution incident report; and 2 hours for the distribution annual report.

Respondents: Gas transmission pipeline operators and gas distribution pipeline operators. Estimated Number of Respondents: 900 gas transmission pipeline operators and 1,200 gas distribution pipeline operators.

Estimated Number of Responses per Respondent per Year: Natural Gas Transmission Incident Reports—0.1; Natural Gas Transmission Annual Reports—1.0. Natural Gas Distribution Incident Reports—0.167; Natural Gas Distribution Annual Reports—1.0.

Estimated Total Annual Burden on Respondents: The burden for each gas transmission pipeline operator is an average of 6 hours per incident report form and 3 hours per annual report form. For all 900 gas transmission pipeline operators, the burden estimate is 540 hours (6 hours × 900 operators × 0.1 incidents) for incidents and 2,700 hours (3 hours × 900 operators) for annual reports, for a total burden for natural gas transmission pipeline operators of 3,240 hours per annum.

The burden for each gas distribution pipeline operator is an average of 4 hours per incident report form and 2 hours per annual report form. For all 1,200 gas distribution pipeline operators, the burden estimate is 801.6 hours for incident reports (4 hours × 1,200 operators × 0.167 = approximately 800 hours for incidents) and 2,400 hours (2 hours × 1,200 operators) for annual reports.

An estimated 570 telephonic notification reports are prepared and received telephonically at 0.5 hours per report. The approximate total time required for processing telephonic reports is 285 hours.

The total burden for both natural gas distribution and natural gas transmission operators is (540 + 2,700 + 2,400 + 800 + 285) = 6,725 hours per annum.

Comments are invited on: (a) The need for the proposed collection of

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information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC on May 2, 2001.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 01–11570 Filed 5–7–01; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Depositor's Application for Payment of Postal Savings Certificates

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the form "Depositor's Application for Payment of Postal Savings Certificates."

DATES: Written comments should be received on or before July 9, 2001.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Programs Branch, Room 144, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Rose Brewer, Judgment Fund Branch, 3700 East West Highway, Room 630F, Hyattsville, MD 20782, (202) 874–6664.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: Depositor's Application for Payment of Postal Savings Certificates.

OMB Number: 1510–0029.

Form Number: TFS 5118.

Abstract: This form is used when depositors have lost, destroyed or misplaced their Postal Savings Certificates. This form replaces the certificates to support the application for payment.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 200.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 50.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: May 1, 2001.

Judith R. Tillman,

Assistant Commissioner, Financial Operations.

[FR Doc. 01–11465 Filed 5–7–01; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4952

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4952, Investment Interest Expense Deduction.

DATES: Written comments should be received on or before July 9, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Investment Interest Expense Deduction.

OMB Number: 1545–0191.

Form Number: Form 4952.

Abstract: Interest expense paid by an individual, estate, or trust on a loan allocable to property held for investment may not be fully deductible in the current year. Form 4952 is used to compute the amount of investment interest expense deductible for the current year and the amount, if any, to carry forward to future years.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 800,000.

Estimated Time Per Respondent: 1 hr., 1 min.

Estimated Total Annual Burden Hours: 808,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will

be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 27, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–11442 Filed 5–7–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209020–86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking and temporary regulation, REG–209020–86 (TD 8210), Foreign Tax Credit; Notification and Adjustment Due to Foreign Tax Redeterminations (§§ 1.905–3T, 1.905–4T, 1.905–5T and 301.6689–IT).

DATES: Written comments should be received on or before July 9, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Foreign Tax Credit; Notification and Adjustment Due to Foreign Tax Redeterminations.

OMB Number: 1545–1056.

Regulation Project Number: REG–209020–86 (formerly INTL–61–86).

Abstract: This regulation relates to a taxpayer's obligation under section 905(c) of the Internal Revenue Code to file notification of a foreign tax redetermination, to make adjustments to a taxpayer's pools of foreign taxes and earnings and profits, and the imposition of the civil penalty for failure to file such notice or report such adjustments.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and business or other for-profit organizations.

Estimated Number of Respondents: 10,000.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 10,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 26, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–11443 Filed 5–7–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Subscription for purchase of Treasury Securities-State and Local Government Series One-Day Certificates of Indebtedness.

DATES: Written comments should be received on or before July 11, 2001, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Subscription for Purchase of U.S. Treasury Securities State and Local Government Series One-Day Certificates of Indebtedness.

OMB Number: 1535–0082.

Form Number: PD F 5237.

Abstract: The information is requested to establish an account for State and Local Government entities wishing to purchase Treasury Securities.

Current Actions: None.

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Type of Review: Extension.
Affected Public: State or Local Government.
Estimated Number of Respondents: 300.
Estimated Time Per Respondent: 8 minutes.
Estimated Total Annual Burden Hours: 39.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 2, 2001.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 01–11499 Filed 5–7–01; 8:45 am]

BILLING CODE 4810–39–U

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Request for Redemption of U.S. Treasury Securities-State and Local Government Series One-Day Certificates of Indebtedness.

DATES: Written comments should be received on or before July 11, 2001, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Request for Redemption of U.S. Treasury Securities State and Local Government Series One-Day Certificates of Indebtedness.
OMB Number: 1535–0083.
Form Number: PD F 5238.
Abstract: The information is requested to process redemption for State and Local Government entities.
Current Actions: None.
Type of Review: Extension.
Affected Public: State or Local Government.
Estimated Number of Respondents: 300.
Estimated Time Per Respondent: 3 minutes.
Estimated Total Annual Burden Hours: 15.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 2, 2001.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 01–11500 Filed 5–7–01; 8:45 am]

BILLING CODE 4810–39–U

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the bond of indemnity and waiver request.

DATES: Written comments should be received on or before July 11, 2001, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Bond of Indemnity and Detached Coupon Statement.
OMB Number: 1535–0097.
Form Numbers: PD F 4087, 4087–1, 4087–3, and 5380.
Abstract: The information is requested to support claims for relief on account of lost, stolen, or destroyed securities or coupons.
Current Actions: None.
Type of Review: Extension.
Affected Public: Individuals, business or other for-profit, or not-for-profit institutions.
Estimated Number of Respondents: 5,500.
Estimated Time Per Respondent: PD F 4087, 4087–1, and 4087–3, 60 minutes; PD F 5380, 10 minutes.
Estimated Total Annual Burden Hours: 1,333.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 2, 2001.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 01–11501 Filed 5–7–01; 8:45 am]

BILLING CODE 4810–39–U

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Treasury Security Commercial Tender form.

DATES: Written comments should be received on or before July 11, 2001, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Treasury Security Commercial Tender Form.
OMB Number: 1535–0112.
Form Number: PD F 5395.
Abstract: The information is requested to process the tenders and to ensure compliance with regulations.
Current Actions: None.
Type of Review: Extension.
Affected Public: Individuals, business or other for profit, or not-for-profit institutions.
Estimated Number of Respondents: 1,500.
Estimated Time Per Respondent: 15 minutes.
Estimated Total Annual Burden Hours: 375.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 2, 2001.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 01–11502 Filed 5–7–01; 8:45 am]

BILLING CODE 4810–39–U

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the resolution by governing body of an organization authorizing assignment and disposition of securities.

DATES: Written comments should be received on or before July 11, 2001, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Resolution by Governing Body of an Organization Authorizing Assignment and Disposition of Specified Securities Owned in Its Own Right or in a Fiduciary Capacity.
OMB Number: 1535–0117.
Form Number: PD F 1010
Abstract: The information is requested to establish the official's authority to act on behalf of the organization.
Current Actions: None.
Type of Review: Extension.
Affected Public: Business or other for profit.
Estimated Number of Respondents: 25
Estimated Time Per Respondent: 10 minutes.
Estimated Total Annual Burden Hours: 4.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

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Dated: May 2, 2001.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 01–11503 Filed 5–7–01; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Direct Deposit Sign Up Form.

DATES: Written comments should be received on or before July 11, 2001, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Direct Deposit Sign Up Form.

OMB Number: 1535–0128.

Form Number: PD F 5396.

Abstract: The information is requested to process payment data to a financial institution.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 20,000.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 3,400.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 2, 2001.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 01–11504 Filed 5–7–01; 8:45 am]

BILLING CODE 4810–39–P

Corrections

Federal Register
Vol. 66, No. 89
Tuesday, May 8, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions and Delegations of Authority

Correction

In notice document 01–10445, appearing on page 20996, in the issue of Thursday, April 26, 2001, make the following correction:

On page 20996, in the third column, in the first full paragraph, in the seventh line, "421(b)(3)" should read "412(b)(3)".

[FR Doc. C1–10445 Filed 5–7–01; 8:45 am]

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Federal Register

Tuesday,
May 8, 2001

Part II

Department of Veterans Affairs

38 CFR Part 17
Reasonable Charges for Medical Care or Services; Interim Final Rule and Notice

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AK73

Reasonable Charges for Medical Care or Services

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) medical regulations concerning "reasonable charges" for medical care or services provided or furnished by VA to a veteran:

—For a nonservice-connected disability for which the veteran is entitled to care (or the payment of expenses of care) under a health plan contract;

—For a nonservice-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or

—For a nonservice-connected disability incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations insurance.

This document amends the regulations to update databases and other provisions for the purpose of providing more precise charges.

DATES: *Effective Date:* These amendments are effective May 8, 2001. Comments must be submitted by July 9, 2001.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov.*. Comments should indicate that they are submitted in response to "RIN 2900–AK73". All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: David Cleaver, VHA Revenue Office (174), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8210. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: This document amends VA's medical regulations that are set forth at 38 CFR part 17. More specifically, we are amending the regulations that establish a methodology for determining "reasonable charges" for medical care or services provided or furnished by VA to a veteran:

(i) For a nonservice-connected disability for which the veteran is entitled to care (or the payment of expenses of care) under a health plan contract;

(ii) For a nonservice-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or

(iii) For a nonservice-connected disability incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations insurance.

The methodology for establishing such "reasonable charges" covers inpatient facility charges, skilled nursing facility/sub-acute inpatient facility charges, outpatient facility charges, physician charges, and other provider charges.

Under the provisions of 38 U.S.C. 1729, VA has the right to recover or collect reasonable charges for such medical care and services from a third party to the extent that the veteran or a provider of the care or services would be eligible to receive payment therefor from that third party if the care or services had not been furnished by a department or agency of the United States. However, consistent with that statutory authority, a third-party payer liable for such medical care and services under a health plan contract would have the option of paying, to the extent of its coverage, either the billed charges or the amount the third-party payer demonstrates it would pay for care or services furnished by providers other than entities of the United States for the same care or services in the same geographic area.

This document changes the previous regulations to provide charges for updated 2001 Current Procedural Terminology (CPT) codes, and to update some of the databases to more recent versions. These changes are described in greater detail in the following paragraphs. These changes will not have a significant impact on any affected party, but will make VA's charge system more current and more accurate.

The formulas for skilled nursing/sub-acute inpatient charges, outpatient facility charges and physician charges were designed to replicate, insofar as possible, the 80th percentile charge for a particular service in a specific location. We have made changes to ensure that the information used in the methodology is as current and precise as possible. As an example, the formula for physician charges included factors based on the 1999 Medicode database. We now are able to use the 2000 Medicode database.

The formula for skilled nursing facility/sub-acute inpatient facility charges includes per diem charges that are based on nationwide data concerning skilled nursing facility charges contained in the 2000 Milliman & Robertson, Inc., Health Cost Guidelines. We are amending the formula to use the data, which has been updated by Milliman & Robertson through July 1, 2001. With this change, the formula will use the latest available data for calculating per diem charges.

The formula for outpatient facility charges included 45 CPT code groups from which the median charge was used for calculating the charge factors. We are amending the formula to use 50 CPT code groups instead of the previous 45 to better group together those CPT codes with similar characteristics. This will help ensure more accurate results for the charge factors.

For physician charges other than anesthesia charges, in general, we have established several methods for determining charges depending on the availability of information. Under the existing regulations, we employ methodology to provide the most precise charges. If Relative Value Units (RVUs) are established under Medicare, we employ methodology utilizing these factors. This enables us to use three geographic area adjustment factors (GAAFs) in calculating charges for each of these CPT procedure codes: One for the work expense RVUs, one for the practice expense RVUs, and one for the conversion factor. When work expense and practice expense RVUs are not available from Medicare, we use methodology based on total RVUs derived from Medicare's Clinical Diagnostic Laboratory Fee Schedule. For each of these CPT procedure codes, we are able to use two GAAFs in calculating the charges: One for the total RVUs and one for the conversion factor. If neither of these sources for relative values is available, we use methodology based directly on billed charge data. We have made changes to the relative order in which each data source is used in order to ensure that the most recent charge data are utilized. Specifically, the regulation utilizes 2000 Medicode data first. If charges are lacking in Medicode, 1998 Medicare charge data are used. Finally, for codes not included in these two sources, we use 1997 Health Insurance Association of America (HIAA) charge data. For each of these CPT procedure codes, we develop total RVUs and a conversion factor, using one GAAF for RVUs and one GAAF for the conversion factor. As a last resort, if none of the above are available, we use methodology based on work expense and practice expense RVUs obtained from St. Anthony's RBRVS (Resource Based Relative Value Scale). For each of these CPT procedure codes, we develop total RVUs and a conversion factor, using one GAAF for RVUs and one GAAF for the conversion factor. Consistent with these principles, we have made changes to reflect that the American Medical Association (AMA) has established new CPT codes, and the Health Care Financing Administration (HCFA) has defined new work expense and practice expense RVUs for these codes.

Previously, the regulations establishing reasonable charges used information from the 2000 Medicare Geographic Practice Cost Index, 2000 Medicare RBRVS Unit Values, and 2000 St. Anthony's Complete RBRVS. We are amending the regulations to use the 2001 Medicare Geographic Practice Cost Index, 2001 Medicare RBRVS Unit Values, and the 2001 St. Anthony's RBRVS. With these changes the regulations will use the latest available data for calculating physician charges.

In accordance with the methodology in the regulations, inpatient facility charges, skilled nursing facility/sub-acute inpatient facility charges, outpatient facility charges, and physician charges are updated based on changes to the consumer price index. Under this methodology, charges are trended to the midpoint of the calendar year in which the charges will be effective.

All of the above changes made by this document are for the purpose of adding precision to charges.

In addition to the above changes, dates have been added to various data sources for purposes of clarification.

The charges methodology in the regulations covers outpatient facility charges for services not customarily performed in a physician's office. We have added language to the introductory paragraph (d) to clarify that these services include many procedures and tests, as well as evaluation and management services rendered to hospital outpatients.

The regulations contain provisions for the calculation of RVUs for pathology. In an Interim Final Rule published in the **Federal Register** on November 2, 2000, we intended to move these provisions from paragraph (e)(4)(ii) to paragraph (e)(2)(ii). These provisions were placed in paragraph (e)(2)(ii) as intended, but we inadvertently failed to delete paragraph (e)(4)(ii). Accordingly, we are deleting paragraph (e)(4)(ii).

Administrative Procedure Act

This document amends the regulations to update databases and other provisions for the purpose of providing more precise charges. Although some charges might be slightly different, overall these changes would at most result in a very minor change in VA charges. Under these circumstances, we have concluded under 5 U.S.C. 553 that there is good cause for dispensing with prior notice and comment and a delayed effective date based on the conclusion that such procedure is impracticable, unnecessary, and contrary to the public interest.

Unfunded Mandates

The Unfunded Mandates Reform Act requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

OMB Review

The Office of Management and Budget has reviewed this proposed rule under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule would affect mainly large insurance companies, and where small entities are involved, they would not be impacted significantly since most of their business is not with VA. Accordingly, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal domestic assistance numbers for the programs affected by this rule are 64.005, 64.007, 64.008, 64.009, 64.010, 64.011, 64.012, 64.013, 64.014, 64.015, 64.016, 64.018, 64.019, 64.022, and 64.025.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: April 3, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 17 is amended as set forth below:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

2. Section 17.101 is revised to read as follows:

§ 17.101 Collection or recovery by VA for medical care or services provided or furnished to a veteran for a nonservice-connected disability.

(a)(1) *General.* This section covers collection or recovery by VA, under 38 U.S.C. 1729, for medical care or services provided or furnished to a veteran:

(i) For a nonservice-connected disability for which the veteran is entitled to care (or the payment of expenses of care) under a health plan contract;

(ii) For a nonservice-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or

(iii) For a nonservice-connected disability incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations insurance.

(2) *Methodology.* Based on the methodology set forth in this section, the charges billed will include, as appropriate, inpatient facility charges, skilled nursing facility/sub-acute inpatient facility charges, outpatient

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facility charges, physician charges, and non-physician provider charges. In addition, the charges billed for prosthetic devices and durable medical equipment provided on an outpatient basis will be VA's actual cost, and the charges billed for prescription drugs not administered during treatment will be a single nationwide average. Data for calculating actual amounts for inpatient facility charges, skilled nursing facility/sub-acute inpatient facility charges, outpatient facility charges, and physician charges will be published annually in the "Notices" section of the **Federal Register**. In those cases in which the effective period for published charges has expired and new charges have not yet become effective, VA will continue to bill using the most recently published charges until new charges are published and become effective (for example, if the most recently published charges state that they are effective through December and new charges are not published and effective until February 1, then the charges set forth for the period through December will continue to be used through January 31).

(3) *Amount of recovery or collection—third party liability.* A third-party payer liable under a health plan contract has the option of paying either the billed charges described in this section or the amount the health plan demonstrates is the amount it would pay for care or services furnished by providers other than entities of the United States for the same care or services in the same geographic area. If the amount submitted by the health plan for payment is less than the amount billed, VA will accept the submission as payment, subject to verification at VA's discretion in accordance with this section. A VA employee having responsibility for collection of such charges may request that the third party health plan submit evidence or information to substantiate the appropriateness of the payment amount (e.g., health plan or insurance policies, provider agreements, medical evidence, proof of payment to other providers in the same geographic area for the same care and services VA provided).

(4) *Definitions.* For purposes of this section:

Consolidated MSA means a consolidated Metropolitan Statistical Area.

CPI means Consumer Price Index.

CPI–U means Consumer Price Index—All Urban Consumers.

CPI–W means Consumer Price Index—Urban Wage Earners and Clerical Workers.

CPT procedure code means a 5 digit-identifier for a specified physician service or procedure.

DRG means diagnosis related group.

Geographic area, for purposes of inpatient facility and skilled nursing facility/sub-acute inpatient facility charges, means Metropolitan Statistical Area (MSA) or the local market, if the VA facility is not located in an MSA; and for outpatient facility charges and physician charges, means a three-digit ZIP Code locality.

RVU means relative value unit.

(b) *Inpatient facility charges.* When VA provides or furnishes inpatient services within the scope of care referred to in paragraph (a)(1) of this section, inpatient facility charges billed for such services will be determined in accordance with the provisions of this paragraph. Inpatient facility charges consist of per diem charges for room and board and for ancillary services that vary by VA facility and by DRG. These charges are calculated as follows:

(1) *Formula.* For each inpatient stay, or portion thereof, for which a particular DRG assignment applies, multiply the nationwide room and board per diem charge as set forth in paragraph (b)(2) of this section by the appropriate geographic area adjustment factor as set forth in paragraph (b)(3) of this section. The result constitutes the facility-specific room and board per diem charge. Also, for each inpatient stay, multiply the nationwide ancillary per diem charge as set forth in paragraph (b)(2) of this section by the appropriate geographic area adjustment factor as set forth in paragraph (b)(3) of this section. The result constitutes the facility-specific ancillary per diem charge. Then add the facility-specific room and board per diem charge to the facility-specific ancillary per diem charge. This constitutes the facility-specific combined per diem facility charge. Finally, multiply the facility-specific combined per diem facility charge by the number of days of inpatient care to obtain the total inpatient facility charge.

Note to paragraph (b)(1): If there is a change in a patient's condition and/or treatment during a single inpatient stay such that the DRG assignment changes (for example, a psychiatric patient who develops a medical or surgical problem), then the calculations will be made separately for each DRG, according to the number of days of care applicable for each DRG, and the total inpatient facility charge will be the sum of the total inpatient facility charges for the different DRGs.

(2) *Per diem charges.* To establish a baseline, two nationwide average per diem charges for each DRG are calculated for fiscal year 1998, one from the 1998 Medicare MedPAR file and one from the MedStat claim database, a database of nationwide commercial insurance claims. Because the MedStat data is based on calendar year 1997, the MedStat charges were trended forward at an annual trend rate of 2.7%, based on the Inpatient Hospital component of the CPI–U. Results obtained from these two databases are then combined into a single weighted average per diem charge for each DRG. The resulting weighted average per diem charge for each DRG is then separated into its two components, a room and board component and an ancillary component, with the amount for each component calculated to reflect the corresponding percentage set forth in paragraph (b)(2)(i) of this section. The resulting amounts for room and board and ancillary services for each DRG are then each multiplied by the final ratio set forth in paragraph (b)(2)(ii) of this section to reflect the 80th percentile charges. Finally, the resulting charges are each trended forward from 1998 to the effective time period for the charges, as set forth in paragraph (b)(2)(iii) of this section. The results constitute the room and board per diem charge and the ancillary per diem charge.

(i) *Charge component percentages.* Using only those cases from the MedPAR file for which a distinction between room and board charges and ancillary charges can be determined, the percentage of the total charges for room and board compared to the combined total charges for room and board and ancillary services, and the percentage of the total charges for ancillary services compared to the combined total charges for room and board and ancillary services, are calculated by DRG.

(ii) *80th percentile.* Using the medical and surgical admissions in the 1995 Medicare Standard Analytical File 5% Sample, obtain for each consolidated MSA the ratio of the day-weighted 80th percentile semi-private room and board per diem charge to the average semi-private room and board per diem charge. The consolidated MSA ratios are averaged to obtain a final 80th percentile ratio.

(iii) *Trending forward.* 80th percentile charges for each DRG, representing charge levels described in paragraph (b)(2) of this section, are trended forward based on changes to the hospital inpatient component of the CPI–U. Actual CPI–U changes are used through the latest available month for room/board and ancillary charges. Trends from the latest available month to the midpoint of the calendar year in which charges become effective are based on the latest three-month average annual trend rate from the Inpatient Hospital component of the CPI–U. The projected total CPI trend is then applied to the 1998 80th percentile charges.

(3) *Geographic area adjustment factors.* For each VA facility location, the average per diem room and board charges and ancillary charges from the 1995 Medicare Standard Analytical File 5% Sample are calculated for each DRG. The DRGs are separated into two groups, surgical and non-surgical. For each of these groups of DRGs, for each geographic area, average room and board per diem charges and ancillary per diem charges are calculated for 1995, weighted by FY 1997 nationwide VA discharges and by average lengths of stay from the combined Medicare Standard Analytical File 5% Sample and the MedStat claim database. This results in four average per diem charges for each geographic area: room and board for surgical DRGs, ancillary for surgical DRGs, room and board for non-surgical DRGs, and ancillary for non-surgical DRGs. Four corresponding national average per diem charges are obtained from the 1995 Medicare Standard Analytical File 5% Sample, weighted by FY 1997 nationwide VA discharges and by average lengths of stay from the combined Medicare Standard Analytical File 5% Sample and the MedStat claim database. Four geographic area adjustment factors are then calculated for each geographic area by dividing each geographic area average per diem charge by the corresponding national average per diem charge.

(c) *Skilled nursing facility/sub-acute inpatient facility charges.* When VA provides or furnishes skilled nursing/sub-acute inpatient services within the scope of care referred to in paragraph (a)(1) of this section, skilled nursing facility/sub-acute inpatient facility charges billed for such services will be determined in accordance with the provisions of this paragraph. The skilled nursing facility/sub-acute inpatient facility charges are per diem charges that vary by VA facility. The facility charges cover care, including skilled rehabilitation services (e.g., physical therapy, occupational therapy, and speech therapy), that is provided in a nursing home or hospital inpatient setting, is provided under a physician's orders, and is performed by or under the general supervision of professional personnel such as registered nurses, licensed practical nurses, physical therapists, occupational therapists, speech therapists, and audiologists. The skilled nursing facility/sub-acute inpatient facility charges also incorporate charges for ancillary services associated with care provided in these settings. The charges are calculated as follows:

(1) *Formula.* For each stay, multiply the nationwide per diem charge as set forth in paragraph (c)(2) of this section by the appropriate geographic area adjustment factor as set forth in paragraph (c)(3) of this section. The result constitutes the facility-specific per diem charge. Finally, multiply the facility-specific per diem charge by the number of days of care to obtain the total skilled nursing facility/sub-acute inpatient facility charge.

(2) *Per diem charge.* To establish a baseline, a nationwide average per diem billed charge for July 1, 2001, was obtained from the 2001 Milliman & Robertson, Inc., Health Cost Guidelines, a publication that includes nationwide skilled nursing facility charges (Milliman & Robertson, Inc., 1301 5th Ave., Suite 3800, Seattle, WA 98101–2605). That average per diem billed charge is then multiplied by the 80th percentile adjustment factor set forth in paragraph (c)(2)(i) of this section to obtain a nationwide 80th percentile charge level. Finally, the resulting charge is trended forward to the effective time period for the charges, as set forth in paragraph (c)(2)(ii) of this section.

(i) *80th percentile.* Using the 1995 Medicare Standard Analytical File 5% Sample, the median per diem accommodation charge is calculated for each provider. For each State, the ratio of the 80th percentile of provider median charges to the average statewide charges for accommodations is calculated. The State ratios are averaged to produce a nationwide 80th percentile adjustment factor.

(ii) *Trending forward.* The 80th percentile charge is trended forward to the midpoint of the calendar year in which the charges will be effective, based on the projected change in Medicare reimbursement from the Annual Report of the Board of Trustees of the Federal Hospital Insurance Trust Fund (this report can be found on the Health Care Financing Administration Internet site at http://www.hcfa.gov/ under the headings "Publications and Forms" and "Professional/Technical Publications").

(3) *Geographic area adjustment factors.* A ratio of the average per diem charge for each State to the nationwide average per diem charge is obtained (these ratios are set forth in the 1998 Milliman & Robertson, Inc., Health Cost Guidelines, a database of nationwide commercial insurance charges and relative costs) (Milliman & Robertson, Inc., 1301 5th Ave., Suite 3800, Seattle, WA 98101–2605). The geographic area adjustment factor for charges for each VA facility is the ratio for the State in which the facility is located.

(d) *Outpatient facility charges.* When VA provides or furnishes outpatient services that are within the scope of care referred to in paragraph (a)(1) of this section and are not customarily performed in an independent clinician's office, the outpatient facility charges billed for such services will be determined in accordance with the provisions of this paragraph. This consists of outpatient facility charges for procedures, tests, and evaluation and management services, including the subset of evaluation and management codes which are designated as "Office or Other Outpatient Services" when those evaluation and management services are provided in the outpatient department of a hospital. Except for prosthetic devices and durable medical equipment, whose charges will be made separately at actual cost to VA, charges for outpatient facility services will vary by VA facility and by CPT procedure code. These charges will be calculated as follows:

(1) *Formula.* For each outpatient facility charge CPT procedure code, multiply the nationwide charge as set forth in paragraph (d)(2) of this section by the appropriate geographic area adjustment factor as set forth in paragraph (d)(4) of this section. The result constitutes the facility-specific outpatient facility charge. When multiple surgical procedures are performed during the same outpatient encounter by a provider or provider team, the outpatient facility charges for such procedures will be reduced as set forth in paragraph (d)(5) of this section.

(2) *Nationwide 80th percentile charges by CPT procedure code.* For each CPT procedure code for which outpatient facility charges apply, the 1998 practice expense RVUs (these RVU's can be found in the 1998 St. Anthony's Complete RBRVS, Relative Value Studies, Inc., St. Anthony Publishing, 11410 Isaac Newton Square, Reston, VA 20190) are used as the outpatient facility RVUs. For each CPT procedure code, the outpatient facility RVU is multiplied by the charge amount for each incremental RVU as set forth in paragraph (d)(3) of this section. The resulting charge is adjusted by a fixed charge amount as also set forth in paragraph (d)(3) of this section to obtain the nationwide 80th percentile charge.

(3) *Charge factors.* Using the 1998 MedStat claims database of nationwide commercial insurance, the median billed facility charge is calculated for each applicable CPT procedure code.

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All outpatient facility CPT procedure codes are then separated into one of the 45 outpatient facility CPT procedure code groups as set forth in paragraph (d)(3)(i) of this section. Then, for each CPT procedure code in each such group, the median charge is adjusted to the 80th percentile as set forth in paragraph (d)(3)(ii) of this section. The resulting 80th percentile charge for each CPT procedure code is trended forward to the effective time period for the charges as set forth in paragraph (d)(3)(iii) of this section. Using the resulting charges and the RVUs, mathematical approximation methodology based on least squares techniques are applied to the data for each CPT procedure code group to derive outpatient facility charges. For each CPT procedure code, the charge amount is calculated as an amount per incremental RVU and a fixed charge amount adjustment.

(i) *Outpatient facility CPT procedure code groups.* (A) Surgery—Integumentary System—Skin, Subcutaneous and Accessory Structures—Incision and Drainage, Excision-Debridement, Paring or Cutting, Biopsy, Removal of Skin Tags, Shaving of Epidermal or Dermal Lesions, and Surgery—Integumentary System—Nails;

(B) Surgery—Integumentary System—Skin, Subcutaneous & Accessory Structures—Excision-Benign Lesions, Excision-Malignant Lesions; and Surgery—Integumentary System—Nails—Introduction;

(C) Surgery—Integumentary System—Repair—Simple, Intermediate, Complex, Adjacent Tissue Transfer or Rearrangement;

(D) Surgery—Integumentary System—Repair—Free Skin Grafts, Flaps, Other Flaps and Grafts, Other Procedures, Pressure Ulcers;

(E) Surgery—Integumentary System—Repair—Burns, Local Treatment;

(F) Surgery—Integumentary System—Destruction;

(G) Surgery—Integumentary System—Breast;

(H) Surgery—Musculoskeletal System—All Body Regions—Incision, Excision, Introduction or Removal;

(I) Surgery—Musculoskeletal System—All Body Regions—Repair, Revision and/or Reconstruction, Arthrodesis, Manipulation, Amputation, Wound Exploration, Replantation, Grafts, Spinal Instrumentation;

(J) Surgery—Musculoskeletal System—All Body Regions—Fracture and/or Dislocation—Closed Treatments (Except for Head, Neck [Soft Tissues] and Thorax);

(K) Surgery—Musculoskeletal System—All Body Regions—Fracture and/or Dislocation—Open Treatments, and Surgery—Musculoskeletal System—Head, Neck (Soft Tissues) and Thorax—Fracture and/or Dislocation—Closed Treatments;

(L) Surgery—Musculoskeletal System—Application of Casts and Strapping;

(M) Surgery—Musculoskeletal System—Endoscopy/Arthroscopy;

(N) Surgery—Respiratory System;

(O) Surgery—Cardiovascular System;

(P) Surgery—Digestive System—All Body Regions—All procedures except Endoscopy;

(Q) Surgery—Digestive System—All Body Regions—Endoscopy;

(R) Surgery—Urinary System;

(S) Surgery—Male Genital System;

(T) Surgery—Female Genital System;

(U) Surgery—Maternity Care and Delivery—Antepartum Services;

(V) Surgery—Maternity Care and Delivery—Excision, Introduction, Repair, Vaginal Delivery, Antepartum and Postpartum Care, Cesarean Delivery, Delivery After Previous Cesarean Delivery, Abortion, Other Procedures;

(W) Surgery—Endocrine System, Nervous System;

(X) Surgery—Eye and Ocular Adnexa;

(Y) Surgery—Auditory System;

(Z) Radiology—Diagnostic—Head and Neck, Chest, Spine and Pelvis—All Except CAT Scans and Magnetic Resonance Imaging (MRI);

(AA) Radiology—Diagnostic—Upper Extremities, Lower Extremities, Abdomen, Gastrointestinal Tract, Urinary Tract, Gynecological and Obstetrical, Heart—All Except CAT Scans and Magnetic Resonance Imaging (MRI);

(BB) Radiology—Diagnostic—Aorta and Arteries, Veins and Lymphatics—All Except CAT Scans and Magnetic Resonance Imaging (MRI);

(CC) Radiology—Diagnostic Ultrasound;

(DD) Radiology—Radiation Oncology, Nuclear Medicine, Therapeutic;

(EE) Radiology—Diagnostic—CAT Scans in All Categories;

(FF) Radiology—Diagnostic—Magnetic Resonance Imaging (MRI) in All Categories;

(GG) Medicine—Vaccines, Toxoids;

(HH) Medicine—Therapeutic or Diagnostic Infusions (Excluding Chemotherapy), Therapeutic, Prophylactic, or Diagnostic Injections;

(II) Medicine—Psychiatry, Biofeedback;

(JJ) Medicine—Dialysis;

(KK) Medicine—Gastroenterology;

(LL) Medicine—Ophthalmology—Special Ophthalmological Services, and Medicine—Special Otorhinolaryngologic Services;

(MM) Medicine—Cardiovascular—Other Vascular Studies;

(NN) Medicine—Cardiovascular—Therapeutic Services, Echocardiography, Cardiac Catheterization, Intracardiac Electrophysiological Procedures, and Medicine—Non-Invasive Vascular Diagnostic Studies;

(OO) Medicine—Pulmonary;

(PP) Medicine—Neurology and Neuromuscular Procedures, Central Nervous System Assessments and Tests;

(QQ) Medicine—Chemotherapy Administration;

(RR) Medicine—Special Dermatological Procedures;

(SS) Medicine—Physical Medicine and Rehabilitation—Evaluation, Modalities; and Medicine—Photodynamic Therapy;

(TT) Medicine—Physical Medicine and Rehabilitation—Therapeutic Procedures, Tests and Measurements, Other Procedures, Medicine—Osteopathic Manipulative Treatment, Medicine Chiropractic Manipulative Treatment, Medicine—Special Services, Procedures, and Reports, and Medicine—Other Services and Procedures;

(UU) Medicine—Evaluation & Management—Consultations;

(VV) Medicine—Evaluation & Management—Hospital Observation Services;

(WW) Medicine—Evaluation & Management—Emergency Department Services, Critical Care Services; and

(XX) Medicine—Evaluation & Management—Office or Other Outpatient Services, Prolonged Services, and Medicine—Ophthalmology—General Ophthalmological Services.

(ii) *80th percentile.* For each of the 45 outpatient facility CPT procedure code groups set forth in paragraph (d)(3)((i) of this section, the median charge is increased by the ratio of the 80th percentile charge to median charge obtained from the 1998 MedStat database of nationwide charges. To mitigate the impact of the variation in the intensity of services by CPT procedure code, the percent increase from the median to the 80th percentile in outpatient charges is compared to the percent increase from the median to the 80th percentile in inpatient semi-private room and board charges. Any percent increase in outpatient charges in excess of the inpatient semi-private room and board percent increase is multiplied by a factor of 0.50. The 80th percentile outpatient facility charge is reduced accordingly.

(iii) Trending forward. The charges for each CPT procedure code, representing charge levels described in paragraph (d)(3) of this section, are trended forward to the midpoint of the calendar year in which the charges will be effective. The trend factors are based on changes to the Outpatient Hospital component of the CPI–U. Actual CPI–U changes are used through the latest available month. The three-month average annual trend rate as of the latest available month is held constant to the midpoint of the effective charge period. The projected total CPI–U change from the source data period to the effective period is then applied to the 80th percentile charges, as described in paragraph (d)(3) of this section.

(4) *Geographic area adjustment factors.* For each VA outpatient facility location, a single geographic area adjustment factor is calculated as the arithmetic average of the outpatient geographic area adjustment factor (this factor constitutes the ratio of the level of charges for each geographic area to the nationwide level of charges) published in the 2001 Milliman & Robertson, Inc., Health Cost Guidelines (Milliman & Robertson, Inc., 1301 5th Ave., Suite 3800, Seattle, WA 98101–2605), and a geographic area adjustment factor developed from the 2000 MediCode data. The MediCode-based geographic area adjustment factors are calculated as the ratio of the CPT-weighted average charge level for each VA outpatient facility location to the nationwide CPT-weighted average charge level.

(5) *Multiple surgical procedures.* When multiple surgical procedures are performed during the same outpatient encounter by a provider or provider team as indicated by multiple surgical CPT procedure codes, then the CPT procedure code with the highest facility charge will be billed at 100% of the charges established under this section; the CPT procedure code with the second highest facility charge will be billed at 25% of the charges established under this section; the CPT procedure code with the third highest facility charge will be billed at 15% of the charges established under this section; and no outpatient facility charges will be billed for any additional surgical procedures.

(e) *Physician charges.* When VA provides or furnishes physician services within the scope of care referred to in paragraph (a)(1) of this section, physician charges billed for such services will be determined in accordance with the provisions of this paragraph. Physician charges consist of charges for professional services that vary by VA facility and by CPT procedure code. These charges are calculated as follows:

(1) *Formula.* For each CPT procedure code except those for anesthesia, multiply the total facility-adjusted RVU as set forth in paragraph (e)(2) of this section by the applicable facility-adjusted conversion factor (facility-adjusted conversion factors are expressed in monetary amounts) set forth in paragraph (e)(3) of this section to obtain the physician charge for each CPT procedure code at a particular VA facility. For each anesthesia CPT procedure code, multiply the nationwide physician charge as set forth in paragraph (e)(4) of this section by the geographic area adjustment factor as set forth in paragraph (e)(3)(iii) of this section to obtain the physician charge for each anesthesia CPT procedure code at a particular VA facility.

(2)(i) *Total facility-adjusted RVUs for physician services other than anesthesia and specified CPT procedure codes.* The work expense and practice expense components of the RVUs for CPT procedure codes (other than anesthesia and those CPT procedure codes set forth at paragraphs (e)(2)(ii) through (e)(2)(iv) of this section) are compiled (information concerning the RVUs and their components can be obtained from Veterans Health Administration, Office of Finance, Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420). For radiology CPT procedure codes, these compilations do not include separately identified technical component RVUs. For CPT procedure codes that generate an outpatient facility charge, the facility practice expense RVU is substituted for the non-facility practice expense RVU (information concerning facility practice expense RVUs can be obtained from Veterans Health Administration, Office of Finance, Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420). For medicine and surgery CPT procedure codes with separate professional and technical components that also generate an outpatient facility charge, only the professional component is compiled. The sum of the facility-adjusted work expense RVU as set forth in paragraph (e)(2)(i)(A) of this section and the facility-adjusted practice expense RVU as set forth in paragraph (e)(2)(i)(B) of this section equals the total facility-adjusted RVUs.

(A) *Facility-adjusted work expense RVUs.* For each CPT procedure code for each geographic area, the 2001 work expense RVU is multiplied by the work expense 2001 Medicare Geographic Practice Cost Index. The result constitutes the facility-adjusted work expense RVU.

(B) *Facility-adjusted practice expense RVUs.* For each CPT procedure code for each geographic area, the 2001 practice expense RVU is multiplied by the practice expense 2001 Medicare Geographic Practice Cost Index. . The result constitutes the facility-adjusted practice expense RVU.

(ii) *RVUs based on laboratory and pathology CPT codes based on Medicare's Clinical Diagnostic Laboratory Fee Schedule.* For CPT procedure codes without modifiers that are not assigned separately identified work and practice units (in (e)(2)(i) of this section), total RVUs are developed based on the 2001 edition of Medicare's Clinical Diagnostic Laboratory Fee Schedule (found on the Health Care Financing Administration public use files Internet site at http://www.hcfa.gov/stats/pufiles.htm under the heading "Payment Rates/Non-Institutional Providers" and the title "Clinical Diagnostic Laboratory Fee Schedule"). Such Medicare payment amounts are upwardly adjusted such that the payment level is, on average, equivalent to standard RBRVS payment levels, using statistical comparisons to the 80th percentile derived from the 2000 MediCode charge database. These adjusted payment amounts are then divided by the 2001 Medicare conversion factor to derive RVUs corresponding to each CPT code. The total RVUs are added to the 2001 RBRVS work and practice expense RVUs for the corresponding professional component (if any) of a given CPT procedure code to derive nationwide total RVUs. The resulting nationwide total RVUs are multiplied by the geographic adjustment factors as set forth in paragraph (e)(2)(v) of this section to obtain the facility-specific total RVUs.

(iii) *RVUs for specified CPT procedure codes.* For CPT procedure codes without modifiers that are not assigned RVUs in (e)(2)(i) or (e)(2)(ii) of this section, total RVUs are developed based on various charge databases. For the following CPT procedure codes, the nationwide 80th percentile billed charges are obtained from the 2000 MediCode data: 15824, 15825, 15826, 15828, 15829, 17380, 20930, 20936, 22841, 24940, 36415, 41820, 41821, 41850, 41870, 48160, 50300, 54440, 58974, 65760, 65765, 65767, 65771, 69090, 76092, 76350, 80050, 80055, 80103, 86485, 86586, 86850, 86860, 86870, 86890, 86891, 86901, 86910, 86911, 86915, 86920, 86921, 86922, 86927, 86930, 86931, 86932, 86945, 86950, 86965, 86970, 86971, 86972, 86975, 86976, 86977, 86978, 86985, 88000, 88005, 88007, 88012, 88014, 88016, 88020, 88025,

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(iv) *RVUs for specified CPT procedure codes.* For CPT procedure codes without modifiers that are not assigned RVUs in paragraphs (e)(2)(i), (e)(2)(ii), or (e)(2)(iii) of this section, the nationwide total RVU is calculated by summing the work expense and practice expense RVUs found in the 2001 St. Anthony's Complete RBRVS (available from Relative Value Studies, Inc., St. Anthony Publishing, 11410 Isaac Newton Square, Reston, VA 20190): 36540, 43752, 63043, 63044, 86294, 90940, 91132, 91133, 93318, and 99172. The resulting nationwide total RVUs are multiplied by the geographic adjustment factors as set forth in paragraph (e)(2)(v) of this section to obtain the facility-specific total RVUs.

(v) *RVU geographic area adjustment factors for specified CPT procedure codes.* The geographic area adjustment factor for each facility location consists of the weighted average of the 2001 work expense and practice expense Medicare Geographic Practice Cost Indices for each facility location using charge data for representative CPT procedure codes statistically selected and weighted for work expense and practice expense.

(3) *Facility-adjusted 80th percentile conversion factors.* CPT procedure codes are separated into the following 24 physician CPT procedure code groups: allergy immunotherapy, allergy testing, anesthesia, cardiovascular, chiropractor, consults, emergency room visits and observation care, hearing/speech exams, immunizations, inpatient visits, maternity/cesarean deliveries, maternity/non-deliveries, maternity/normal deliveries, miscellaneous medical, office/home urgent care visits, outpatient psychiatry/alcohol and drug abuse, pathology, physical exams, physical medicine, radiology, surgery, therapeutic injections, vision exams, and well baby exams. For each of the 24 physician CPT procedure code groups, representative CPT procedure codes were statistically selected and weighted so as to give a weighted average RVU comparable to the weighted average RVU of the entire physician CPT procedure code group (the selected CPT procedure codes are set forth in the 2001 Milliman & Robertson, Inc., Health Cost Guidelines fee survey) (Milliman & Robertson, Inc., 1301 5th Ave., Suite 3800, Seattle, WA 98101–2605). The 80th percentile charge for each selected CPT procedure code is obtained (this is contained in the nationwide commercial charge database compiled by 2000 MediCode, Inc., 5225 Wiley Post Way, Suite 500, Salt Lake City, Utah 84116). A nationwide conversion factor (a monetary amount) is calculated for each physician CPT procedure code group as set forth in paragraph (e)(3)(i) of this section. The nationwide conversion factors for each of the 24 physician CPT procedure code groups are trended forward as set forth in paragraph (e)(3)(ii) of this section. The resulting amounts for each of the 24 groups are multiplied by geographic area adjustment factors as set forth in paragraph (e)(3)(iii) of this section, resulting in facility-adjusted 80th percentile conversion factors for each VA facility geographic area for the 24 physician CPT procedure code groups for the effective charge period.

(i) *Nationwide conversion factors.* Using the nationwide 80th percentile charges for the selected CPT procedure codes from paragraph (e)(3) of this section, a nationwide conversion factor is calculated for each of the 24 physician CPT procedure code groups by dividing the weighted average charge by the weighted average RVU. To correspond with the charge data, for medicine and surgery CPT procedure codes, the total RVUs are used even when separate professional and technical components are specified.

(ii) *Trending forward.* The nationwide conversion factor for each of the 24 physician CPT procedure code groups, representing charge levels described in paragraph (e)(3) of this section, are trended forward based on changes to the Physician component of the CPI–U. Actual CPI–U changes are used through the latest available month. The three-month average annual trend rate as of the latest available month is held constant to the midpoint of the calendar year in which charges will be effective. The projected total CPI–U change from the midpoint of the source data collection period to the midpoint of the effective charge period is then applied to the 24 conversion factors.

(iii) *Geographic area adjustment factors.* Using the 80th percentile charges for the selected CPT procedure codes from paragraph (e)(3) of this section for each VA facility geographic area, a geographic area-specific conversion factor is calculated for each of the 24 physician CPT procedure code groups by dividing the weighted average charge by the weighted average facility-adjusted RVU. The resulting geographic area conversion factor for each facility geographic area for each physician CPT procedure code group is divided by the corresponding nationwide conversion factor as set forth in paragraph (e)(3)(i). The resulting ratios are the geographic area adjustment factors for each of the 24 physician CPT procedure code groups for each facility geographic area.

(4) *Nationwide 80th percentile charges for anesthesia CPT procedure codes.* The nationwide charges are calculated by multiplying the RVUs as set forth in paragraph (e)(4)(i) of this section by the appropriate nationwide trended 80th percentile conversion factors as set forth in paragraph (e)(3) of this section.

(i) *RVUs for anesthesia.* The 2000 base unit value for each anesthesia CPT procedure code is compiled (the base unit values can be found in the 2000 St. Anthony's Complete RBRVS, Relative Value Studies, Inc., St. Anthony Publishing, 11410 Isaac Newton Square, Reston, VA 20190). The average time unit value for each anesthesia CPT procedure code is compiled from a Health Care Financing Administration study concerning average time unit values for anesthesia CPT procedure codes (these values can be obtained from Veterans Health Administration, Office of Finance, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420). For each anesthesia CPT procedure code introduced since the Health Care Financing Administration study, the time unit value is calculated as the average time unit value for all other anesthesia CPT procedure codes with the same base unit value. The sum of the anesthesia base unit value and the anesthesia average time unit value equals the total anesthesia RVUs.

(ii) [Reserved]

(f) *Other provider charges.* When the following providers provide or furnish VA care within the scope of care referred to in paragraph (a)(1) of this section, charges for that care covered by a CPT procedure code will be determined based on the following indicated percentages of the amount that would be charged if the care had been provided by a physician under paragraph (e) of this section:

(1) Nurse practitioner: 85%.
(2) Clinical nurse specialist: 85%.
(3) Physician Assistant: 85%.
(4) Certified registered nurse anesthetist: 50% when physician supervised; 100% when not physician supervised.
(5) Clinical psychologist: 80%.
(6) Clinical social worker: 75%.
(7) Podiatrist: 100%.
(8) Chiropractor: 100%.
(9) Dietitian: 75%.
(10) Clinical pharmacist: 80%.
(11) Optometrist: 100%.

(g) *Outpatient dental care and prescription drugs not administered during treatment.* Notwithstanding other provisions of this section, when VA provides or furnishes outpatient dental care or prescription drugs not administered during treatment, within the scope of care referred to in paragraph (a)(1) of this section, charges billed separately for such care will be based on VA costs in accordance with the methodology set forth in § 17.102 of this part.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0606.)

(Authority: 38 U.S.C. 101, 501, 1701, 1705, 1710, 1721, 1722, 1729)

[FR Doc. 01–11026 Filed 5–7–01; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

Reasonable Charges for Medical Care or Services

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: This document provides "reasonable charges" for medical care or services provided or furnished by VA to a veteran:

—For a nonservice-connected disability for which the veteran is entitled to care (or the payment of expenses of care) under a health plan contract;

—For a nonservice-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or

—For a nonservice-connected disability incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations insurance.

FOR FURTHER INFORMATION CONTACT: David Cleaver, VHA Revenue Office (174), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8210. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The "reasonable charges" regulations for medical care and services (38 CFR 17.101), as amended by a companion document published in this issue of the **Federal Register**, have established the methodology for inpatient facility charges at § 17.101(b), the methodology for skilled nursing facility/sub-acute inpatient facility charges at § 17.101(c), the methodology for outpatient facility charges at § 17.101(d), and the methodology for physician charges at § 17.101(e). Using these methodologies, information for calculating actual charge amounts at individual VA facilities is set forth below and is effective until changes by a **Federal Register** notice.

Approved: April 3, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

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TABLE A. — INPATIENT FACILITY NATIONWIDE PER DIEM CHARGES; BY DRG (DIAGNOSIS RELATED GROUP)

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DRG	Description	Surgical/ Non-Surgical Indicator	Per Diem Charge	
			Room & Board	Ancillary
001	Craniotomy Age >17 Except For Trauma	S	$1,371.42	$3,670.41
002	Craniotomy For Trauma Age >17	S	$1,423.11	$3,208.70
003	Craniotomy Age 0-17	S	$1,668.55	$4,339.89
004	Spinal Procedures	S	$1,073.47	$3,360.70
005	Extracranial Vascular Procedures	S	$1,091.54	$4,486.56
006	Carpal Tunnel Release	S	$836.41	$2,516.97
007	Periph & Cranial Nerve & Other Nerv Syst Proc W Cc	S	$906.14	$2,152.92
008	Periph & Cranial Nerve & Other Nerv Syst Proc W/O Cc	S	$940.70	$4,864.68
009	Spinal Disorders & Injuries	N	$786.31	$1,084.43
010	Nervous System Neoplasms W Cc	N	$793.77	$1,312.17
011	Nervous System Neoplasms W/O Cc	N	$796.11	$1,240.92
012	Degenerative Nervous System Disorders	N	$814.78	$725.33
013	Multiple Sclerosis & Cerebellar Ataxia	N	$656.64	$841.20
014	Specific Cerebrovascular Disorders Except Tia	N	$802.91	$1,419.45
015	Transient Ischemic Attack & Precerebral Occlusions	N	$915.62	$1,770.17
016	Nonspecific Cerebrovascular Disorders W Cc	N	$773.21	$1,457.74
017	Nonspecific Cerebrovascular Disorders W/O Cc	N	$937.06	$1,418.66
018	Cranial & Peripheral Nerve Disorders W Cc	N	$829.00	$1,475.52
019	Cranial & Peripheral Nerve Disorders W/O Cc	N	$759.87	$1,243.10
020	Nervous System Infection Except Viral Meningitis	N	$939.24	$2,120.46
021	Viral Meningitis	N	$897.07	$1,909.29
022	Hypertensive Encephalopathy	N	$983.05	$1,690.29
023	Nontraumatic Stupor & Coma	N	$923.44	$1,483.78
024	Seizure & Headache Age >17 W Cc	N	$936.74	$1,642.62
025	Seizure & Headache Age >17 W/O Cc	N	$868.26	$1,366.16
026	Seizure & Headache Age 0-17	N	$1,101.92	$1,886.49
027	Traumatic Stupor & Coma, Coma >1 Hr	N	$1,044.58	$1,808.89
028	Traumatic Stupor & Coma, Coma <1 Hr Age >17 W Cc	N	$941.52	$1,508.04
029	Traumatic Stupor & Coma, Coma <1 Hr Age >17 W/O Cc	N	$767.15	$1,080.60
030	Traumatic Stupor & Coma, Coma <1 Hr Age 0-17	N	$1,122.89	$1,748.86
031	Concussion Age >17 W Cc	N	$1,096.72	$1,921.33
032	Concussion Age >17 W/O Cc	N	$1,246.72	$2,138.09
033	Concussion Age 0-17	N	$1,270.38	$2,211.84
034	Other Disorders Of Nervous System W Cc	N	$909.23	$1,453.05
035	Other Disorders Of Nervous System W/O Cc	N	$810.09	$1,013.43
036	Retinal Procedures	S	$693.29	$4,278.84
037	Orbital Procedures	S	$915.56	$2,852.27
038	Primary Iris Procedures	S	$955.29	$1,711.69
039	Lens Procedures With Or Without Vitrectomy	S	$906.47	$2,881.58
040	Extraocular Procedures Except Orbit Age >17	S	$857.44	$2,479.75
041	Extraocular Procedures Except Orbit Age 0-17	S	$857.44	$2,479.75
042	Intraocular Procedures Except Retina, Iris & Lens	S	$852.51	$3,186.00
043	Hyphema	N	$729.59	$705.42
044	Acute Major Eye Infections	N	$817.82	$909.97
045	Neurological Eye Disorders	N	$901.89	$1,805.09
046	Other Disorders Of The Eye Age >17 W Cc	N	$1,022.06	$1,621.08
047	Other Disorders Of The Eye Age >17 W/O Cc	N	$789.82	$916.34
048	Other Disorders Of The Eye Age 0-17	N	$413.23	$609.99
049	Major Head & Neck Procedures	S	$1,107.66	$4,202.85
050	Sialoadenectomy	S	$1,057.35	$5,362.91
051	Salivary Gland Procedures Except Sialoadenectomy	S	$904.82	$3,093.55
052	Cleft Lip & Palate Repair	S	$1,076.45	$4,794.25
053	Sinus & Mastoid Procedures Age >17	S	$919.80	$3,646.63
054	Sinus & Mastoid Procedures Age 0-17	S	$919.80	$3,646.63
055	Miscellaneous Ear, Nose, Mouth & Throat Procedures	S	$1,076.29	$3,537.18
056	Rhinoplasty	S	$1,123.14	$4,438.61
057	T&A Proc, Except Tonsillectomy &/Or Adenoidectomy Only, Age >17	S	$892.37	$2,292.94
058	T&A Proc, Except Tonsillectomy &/Or Adenoidectomy Only, Age 0-17	S	$892.37	$2,292.94
059	Tonsillectomy &/Or Adenoidectomy Only, Age >17	S	$831.84	$2,282.14
060	Tonsillectomy &/Or Adenoidectomy Only, Age 0-17	S	$831.84	$2,282.14

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TABLE A. — INPATIENT FACILITY NATIONWIDE PER DIEM CHARGES; BY DRG (DIAGNOSIS RELATED GROUP) — Continued

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DRG	Description	Surgical/ Non-Surgical Indicator	Per Diem Charge	
			Room & Board	Ancillary
061	Myringotomy W Tube Insertion Age >17	S	$994.79	$2,845.45
062	Myringotomy W Tube Insertion Age 0-17	S	$1,015.07	$2,903.43
063	Other Ear, Nose, Mouth & Throat O.R. Procedures	S	$1,373.76	$4,259.57
064	Ear, Nose, Mouth & Throat Malignancy	N	$790.35	$1,348.93
065	Dysequilibrium	N	$895.19	$1,578.24
066	Epistaxis	N	$931.13	$1,439.18
067	Epiglottitis	N	$1,139.17	$1,827.55
068	Otitis Media & Uri Age >17 W Cc	N	$678.72	$1,276.22
069	Otitis Media & Uri Age >17 W/O Cc	N	$674.67	$1,215.79
070	Otitis Media & Uri Age 0-17	N	$987.92	$1,842.54
071	Laryngotracheitis	N	$748.81	$1,284.41
072	Nasal Trauma & Deformity	N	$1,531.51	$2,438.61
073	Other Ear, Nose, Mouth & Throat Diagnoses Age >17	N	$864.00	$1,544.51
074	Other Ear, Nose, Mouth & Throat Diagnoses Age 0-17	N	$892.96	$1,596.28
075	Major Chest Procedures	S	$1,104.32	$3,092.12
076	Other Resp System O.R. Procedures W Cc	S	$1,064.95	$2,493.70
077	Other Resp System O.R. Procedures W/O Cc	S	$1,042.07	$2,697.30
078	Pulmonary Embolism	N	$901.96	$1,668.85
079	Respiratory Infections & Inflammations Age >17 W Cc	N	$844.07	$1,790.07
080	Respiratory Infections & Inflammations Age >17 W/O Cc	N	$756.30	$1,288.97
081	Respiratory Infections & Inflammations Age 0-17	N	$826.93	$1,744.20
082	Respiratory Neoplasms	N	$816.27	$1,611.79
083	Major Chest Trauma W Cc	N	$835.92	$1,433.62
084	Major Chest Trauma W/O Cc	N	$1,011.89	$1,483.77
085	Pleural Effusion W Cc	N	$837.39	$1,618.78
086	Pleural Effusion W/O Cc	N	$813.32	$1,438.75
087	Pulmonary Edema & Respiratory Failure	N	$812.03	$2,049.93
088	Chronic Obstructive Pulmonary Disease	N	$749.89	$1,450.46
089	Simple Pneumonia & Pleurisy Age >17 W Cc	N	$798.62	$1,501.03
090	Simple Pneumonia & Pleurisy Age >17 W/O Cc	N	$741.79	$1,227.84
091	Simple Pneumonia & Pleurisy Age 0-17	N	$926.72	$1,729.34
092	Interstitial Lung Disease W Cc	N	$859.48	$1,671.27
093	Interstitial Lung Disease W/O Cc	N	$773.42	$1,366.07
094	Pneumothorax W Cc	N	$810.72	$1,516.65
095	Pneumothorax W/O Cc	N	$749.20	$1,274.54
096	Bronchitis & Asthma Age >17 W Cc	N	$787.88	$1,447.78
097	Bronchitis & Asthma Age >17 W/O Cc	N	$760.91	$1,296.57
098	Bronchitis & Asthma Age 0-17	N	$771.73	$1,390.98
099	Respiratory Signs & Symptoms W Cc	N	$827.13	$1,882.01
100	Respiratory Signs & Symptoms W/O Cc	N	$815.79	$1,920.19
101	Other Respiratory System Diagnoses W Cc	N	$891.64	$1,763.90
102	Other Respiratory System Diagnoses W/O Cc	N	$842.46	$1,530.85
103	Heart Transplant	S	$1,679.56	$4,750.79
104	Cardiac Valve & Other Major Cardiothoracic Proc W Cardiac Cath	S	$1,422.91	$7,321.99
105	Cardiac Valve & Other Major Cardiothoracic Proc W/O Cardiac Cath	S	$1,509.50	$7,238.05
106	Coronary Bypass W Ptca	S	$1,339.45	$7,769.43
107	Coronary Bypass W Cardiac Cath	S	$1,279.22	$5,760.42
108	Other Cardiothoracic Procedures	S	$1,525.31	$6,457.55
109	Coronary Bypass W/O Ptca Or Cardiac Cath	S	$1,384.17	$5,907.20
110	Major Cardiovascular Procedures W Cc	S	$1,262.59	$4,509.78
111	Major Cardiovascular Procedures W/O Cc	S	$1,160.57	$4,147.52
112	Percutaneous Cardiovascular Procedures	S	$1,154.84	$5,374.93
113	Amputation For Circ System Disorders Except Upper Limb & Toe	S	$902.25	$2,053.64
114	Upper Limb & Toe Amputation For Circ System Disorders	S	$831.89	$1,745.84
115	Prm Card Pacem Impl W Ami,Hrt Fail Or Shk,Or Aicd Lead Or Gnrtr Pr	S	$1,174.16	$4,492.99
116	Oth Perm Card Pacemak Impl Or Ptca W Coronary Artery Stent Implnt	S	$1,109.64	$6,817.05
117	Cardiac Pacemaker Revision Except Device Replacement	S	$1,245.27	$3,804.23
118	Cardiac Pacemaker Device Replacement	S	$1,134.54	$6,249.28
119	Vein Ligation & Stripping	S	$1,011.95	$2,822.50

TABLE A. — INPATIENT FACILITY NATIONWIDE PER DIEM CHARGES; BY DRG (DIAGNOSIS RELATED GROUP) — Continued

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DRG	Description	Surgical/ Non-Surgical Indicator	Per Diem Charge	
			Room & Board	Ancillary
120	Other Circulatory System O.R. Procedures	S	$988.09	$2,397.89
121	Circulatory Disorders W Ami & Major Comp, Discharged Alive	N	$1,433.87	$2,536.37
122	Circulatory Disorders W Ami W/O Major Comp, Discharged Alive	N	$1,428.81	$2,800.32
123	Circulatory Disorders W Ami, Expired	N	$1,413.76	$3,360.06
124	Circulatory Disorders Except Ami, W Card Cath & Complex Diag	N	$1,249.74	$3,534.66
125	Circulatory Disorders Except Ami, W Card Cath W/O Complex Diag	N	$1,091.43	$4,157.95
126	Acute & Subacute Endocarditis	N	$989.51	$1,693.25
127	Heart Failure & Shock	N	$948.08	$1,529.83
128	Deep Vein Thrombophlebitis	N	$718.92	$931.49
129	Cardiac Arrest, Unexplained	N	$1,107.47	$2,878.75
130	Peripheral Vascular Disorders W Cc	N	$788.51	$1,270.33
131	Peripheral Vascular Disorders W/O Cc	N	$740.76	$962.87
132	Atherosclerosis W Cc	N	$1,410.01	$2,361.88
133	Atherosclerosis W/O Cc	N	$1,278.65	$2,030.83
134	Hypertension	N	$849.97	$1,321.65
135	Cardiac Congenital & Valvular Disorders Age >17 W Cc	N	$1,126.46	$1,747.24
136	Cardiac Congenital & Valvular Disorders Age >17 W/O Cc	N	$1,453.07	$2,092.97
137	Cardiac Congenital & Valvular Disorders Age 0-17	N	$2,137.26	$3,285.62
138	Cardiac Arrhythmia & Conduction Disorders W Cc	N	$983.14	$1,616.26
139	Cardiac Arrhythmia & Conduction Disorders W/O Cc	N	$1,052.20	$1,661.65
140	Angina Pectoris	N	$1,094.79	$1,837.18
141	Syncope & Collapse W Cc	N	$998.85	$1,626.27
142	Syncope & Collapse W/O Cc	N	$1,054.21	$1,722.21
143	Chest Pain	N	$1,057.70	$2,318.27
144	Other Circulatory System Diagnoses W Cc	N	$973.06	$2,034.29
145	Other Circulatory System Diagnoses W/O Cc	N	$973.21	$1,865.51
146	Rectal Resection W Cc	S	$936.37	$2,527.56
147	Rectal Resection W/O Cc	S	$1,048.79	$2,665.23
148	Major Small & Large Bowel Procedures W Cc	S	$938.61	$2,653.87
149	Major Small & Large Bowel Procedures W/O Cc	S	$850.07	$2,293.10
150	Peritoneal Adhesiolysis W Cc	S	$883.39	$2,347.53
151	Peritoneal Adhesiolysis W/O Cc	S	$812.00	$2,105.20
152	Minor Small & Large Bowel Procedures W Cc	S	$883.54	$2,249.82
153	Minor Small & Large Bowel Procedures W/O Cc	S	$819.41	$1,975.98
154	Stomach, Esophageal & Duodenal Procedures Age >17 W Cc	S	$1,120.39	$3,195.98
155	Stomach, Esophageal & Duodenal Procedures Age >17 W/O Cc	S	$1,023.05	$3,766.82
156	Stomach, Esophageal & Duodenal Procedures Age 0-17	S	$1,077.48	$3,113.77
157	Anal & Stomal Procedures W Cc	S	$887.08	$2,225.71
158	Anal & Stomal Procedures W/O Cc	S	$753.39	$2,403.72
159	Hernia Procedures Except Inguinal & Femoral Age >17 W Cc	S	$833.95	$2,585.17
160	Hernia Procedures Except Inguinal & Femoral Age >17 W/O Cc	S	$851.49	$3,010.29
161	Inguinal & Femoral Hernia Procedures Age >17 W Cc	S	$862.49	$2,540.03
162	Inguinal & Femoral Hernia Procedures Age >17 W/O Cc	S	$935.27	$3,710.61
163	Hernia Procedures Age 0-17	S	$842.17	$2,645.80
164	Appendectomy W Complicated Principal Diag W Cc	S	$911.36	$2,700.35
165	Appendectomy W Complicated Principal Diag W/O Cc	S	$933.76	$2,640.46
166	Appendectomy W/O Complicated Principal Diag W Cc	S	$829.67	$2,839.34
167	Appendectomy W/O Complicated Principal Diag W/O Cc	S	$813.71	$3,311.21
168	Mouth Procedures W Cc	S	$1,025.64	$2,835.52
169	Mouth Procedures W/O Cc	S	$1,001.86	$3,616.68
170	Other Digestive System O.R. Procedures W Cc	S	$989.93	$2,438.94
171	Other Digestive System O.R. Procedures W/O Cc	S	$1,023.43	$2,795.40
172	Digestive Malignancy W Cc	N	$879.52	$1,598.41
173	Digestive Malignancy W/O Cc	N	$804.61	$1,197.78
174	G.I. Hemorrhage W Cc	N	$912.31	$1,772.10
175	G.I. Hemorrhage W/O Cc	N	$912.20	$1,615.77
176	Complicated Peptic Ulcer	N	$839.79	$1,813.26
177	Uncomplicated Peptic Ulcer W Cc	N	$843.20	$1,880.35
178	Uncomplicated Peptic Ulcer W/O Cc	N	$727.99	$1,668.70

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TABLE A. — INPATIENT FACILITY NATIONWIDE PER DIEM CHARGES; BY DRG (DIAGNOSIS RELATED GROUP) — Continued

DRG	Description	Surgical/ Non-Surgical Indicator	Per Diem Charge	
			Room & Board	Ancillary
179	Inflammatory Bowel Disease	N	$823.67	$1,446.06
180	G.I. Obstruction W Cc	N	$808.76	$1,497.49
181	G.I. Obstruction W/O Cc	N	$794.42	$1,205.00
182	Esophagitis, Gastroent & Misc Digest Disorders Age >17 W Cc	N	$769.29	$1,534.62
183	Esophagitis, Gastroent & Misc Digest Disorders Age >17 W/O Cc	N	$763.33	$1,604.21
184	Esophagitis, Gastroent & Misc Digest Disorders Age 0-17	N	$922.28	$1,858.12
185	Dental & Oral Dis Except Extractions & Restorations, Age >17	N	$1,042.48	$1,995.66
186	Dental & Oral Dis Except Extractions & Restorations, Age 0-17	N	$1,076.70	$2,061.15
187	Dental Extractions & Restorations	N	$947.24	$1,963.46
188	Other Digestive System Diagnoses Age >17 W Cc	N	$924.56	$1,819.96
189	Other Digestive System Diagnoses Age >17 W/O Cc	N	$1,070.76	$1,895.47
190	Other Digestive System Diagnoses Age 0-17	N	$1,047.16	$2,046.72
191	Pancreas, Liver & Shunt Procedures W Cc	S	$1,139.29	$3,362.90
192	Pancreas, Liver & Shunt Procedures W/O Cc	S	$1,046.98	$2,758.28
193	Biliary Tract Proc Except Only Cholecyst W Or W/O C.D.E. W Cc	S	$920.13	$2,577.43
194	Biliary Tract Proc Except Only Cholecyst W Or W/O C.D.E. W/O Cc	S	$854.85	$2,556.73
195	Cholecystectomy W C.D.E. W Cc	S	$924.13	$3,034.52
196	Cholecystectomy W C.D.E. W/O Cc	S	$795.90	$3,096.14
197	Cholecystectomy Except By Laparoscope W/O C.D.E. W Cc	S	$928.77	$2,801.70
198	Cholecystectomy Except By Laperoscope W/O C.D.E. W/O Cc	S	$833.88	$2,791.34
199	Hepatobiliary Diagnostic Procedure For Malignancy	S	$948.21	$2,431.29
200	Hepatobiliary Diagnostic Procedure For Non-Malignancy	S	$1,179.22	$3,486.23
201	Other Hepatobiliary Or Pancreas O.R. Procedures	S	$1,021.04	$2,390.31
202	Cirrhosis & Alcoholic Hepatitis	N	$1,015.68	$1,899.94
203	Malignancy Of Hepatobiliary System Or Pancreas	N	$902.67	$1,735.79
204	Disorders Of Pancreas Except Malignancy	N	$791.59	$1,740.05
205	Disorders Of Liver Except Malig,Cirr,Alc Hepa W Cc	N	$929.40	$1,724.36
206	Disorders Of Liver Except Malig,Cirr,Alc Hepa W/O Cc	N	$761.83	$1,353.34
207	Disorders Of The Biliary Tract W Cc	N	$873.93	$2,019.33
208	Disorders Of The Biliary Tract W/O Cc	N	$903.10	$2,188.77
209	Major Joint & Limb Reattachment Procedures Of Lower Extremity	S	$835.73	$4,632.67
210	Hip & Femur Procedures Except Major Joint Age >17 W Cc	S	$830.38	$2,602.95
211	Hip & Femur Procedures Except Major Joint Age >17 W/O Cc	S	$854.03	$2,686.11
212	Hip & Femur Procedures Except Major Joint Age 0-17	S	$838.53	$2,829.64
213	Amputation For Musculoskeletal System & Conn Tissue Disorders	S	$836.24	$2,004.07
214	No Longer Valid	S	$0.00	$0.00
215	No Longer Valid	S	$0.00	$0.00
216	Biopsies Of Musculoskeletal System & Connective Tissue	S	$955.19	$2,349.74
217	Wnd Debrid & Skn Grft Except Hand,For Muscskelet & Conn Tiss Dis	S	$1,009.21	$2,350.66
218	Lower Extrem & Humer Proc Except Hip,Foot,Femur Age >17 W Cc	S	$902.60	$3,143.74
219	Lower Extrem & Humer Proc Except Hip,Foot,Femur Age >17 W/O Cc	S	$879.80	$3,655.96
220	Lower Extrem & Humer Proc Except Hip,Foot,Femur Age 0-17	S	$918.68	$3,406.07
221	No Longer Valid	S	$0.00	$0.00
222	No Longer Valid	S	$0.00	$0.00
223	Major Shoulder/Elbow Proc, Or Other Upper Extremity Proc W Cc	S	$874.41	$4,209.19
224	Shoulder,Elbow Or Forearm Proc,Exc Major Joint Proc, W/O Cc	S	$884.46	$4,643.72
225	Foot Procedures	S	$958.24	$2,758.16
226	Soft Tissue Procedures W Cc	S	$927.64	$2,496.86
227	Soft Tissue Procedures W/O Cc	S	$888.95	$3,236.28
228	Major Thumb Or Joint Proc,Or Oth Hand Or Wrist Proc W Cc	S	$839.29	$2,806.78
229	Hand Or Wrist Proc, Except Major Joint Proc, W/O Cc	S	$889.75	$3,237.65
230	Local Excision & Removal Of Int Fix Devices Of Hip & Femur	S	$1,099.69	$3,039.47
231	Local Excision & Removal Of Int Fix Devices Except Hip & Femur	S	$896.41	$3,171.61
232	Arthroscopy	S	$960.60	$3,063.80
233	Other Musculoskelet Sys & Conn Tiss O.R. Proc W Cc	S	$900.76	$2,790.83
234	Other Musculoskelet Sys & Conn Tiss O.R. Proc W/O Cc	S	$900.30	$4,228.45
235	Fractures Of Femur	N	$614.12	$803.59
236	Fractures Of Hip & Pelvis	N	$622.18	$775.52
237	Sprains, Strains, & Dislocations Of Hip, Pelvis & Thigh	N	$781.18	$1,099.53

TABLE A. — INPATIENT FACILITY NATIONWIDE PER DIEM CHARGES; BY DRG (DIAGNOSIS RELATED GROUP) — Continued

DRG	Description	Surgical/ Non-Surgical Indicator	Per Diem Charge	
			Room & Board	Ancillary
238	Osteomyelitis	N	$676.04	$1,003.74
239	Pathological Fractures & Musculoskeletal & Conn Tiss Malignancy	N	$916.12	$1,371.81
240	Connective Tissue Disorders W Cc	N	$868.52	$1,646.33
241	Connective Tissue Disorders W/O Cc	N	$858.03	$996.55
242	Septic Arthritis	N	$898.99	$1,246.94
243	Medical Back Problems	N	$794.36	$1,186.03
244	Bone Diseases & Specific Arthropathies W Cc	N	$582.67	$901.45
245	Bone Diseases & Specific Arthropathies W/O Cc	N	$775.97	$895.89
246	Non-Specific Arthropathies	N	$862.63	$1,160.28
247	Signs & Symptoms Of Musculoskeletal System & Conn Tissue	N	$752.02	$1,003.65
248	Tendonitis, Myositis & Bursitis	N	$776.04	$1,055.65
249	Aftercare, Musculoskeletal System & Connective Tissue	N	$896.28	$1,490.37
250	Fx, Sprn, Strn & Disl Of Forearm, Hand, Foot Age >17 W Cc	N	$945.17	$1,434.05
251	Fx, Sprn, Strn & Disl Of Forearm, Hand, Foot Age >17 W/O Cc	N	$841.35	$1,091.59
252	Fx, Sprn, Strn & Disl Of Forearm, Hand, Foot Age 0-17	N	$1,558.97	$2,236.35
253	Fx, Sprn, Strn & Disl Of Uparm,Lowleg Ex Foot Age >17 W Cc	N	$841.30	$1,191.82
254	Fx, Sprn, Strn & Disl Of Uparm,Lowleg Ex Foot Age >17 W/O Cc	N	$873.30	$1,002.37
255	Fx, Sprn, Strn & Disl Of Uparm,Lowleg Ex Foot Age 0-17	N	$841.36	$1,117.67
256	Other Musculoskeletal System & Connective Tissue Diagnoses	N	$916.64	$1,245.21
257	Total Mastectomy For Malignancy W Cc	S	$883.11	$3,636.71
258	Total Mastectomy For Malignancy W/O Cc	S	$835.98	$4,143.53
259	Subtotal Mastectomy For Malignancy W Cc	S	$1,045.40	$3,703.25
260	Subtotal Mastectomy For Malignancy W/O Cc	S	$978.39	$5,405.64
261	Breast Proc For Non-Malignancy Except Biopsy & Local Excision	S	$937.79	$5,237.06
262	Breast Biopsy & Local Excision For Non-Malignancy	S	$908.28	$2,233.01
263	Skin Graft &/Or Debrid For Skn Ulcer Or Cellulitis W Cc	S	$746.13	$1,421.79
264	Skin Graft &/Or Debrid For Skn Ulcer Or Cellulitis W/O Cc	S	$714.01	$1,320.64
265	Skin Graft &/Or Debrid Except For Skin Ulcer Or Cellulitis W Cc	S	$1,055.50	$2,566.16
266	Skin Graft &/Or Debrid Except For Skin Ulcer Or Cellulitis W/O Cc	S	$996.37	$3,189.41
267	Perianal & Pilonidal Procedures	S	$720.06	$2,543.41
268	Skin, Subcutaneous Tissue & Breast Plastic Procedures	S	$1,168.11	$4,175.43
269	Other Skin, Subcut Tiss & Breast Proc W Cc	S	$885.31	$2,004.82
270	Other Skin, Subcut Tiss & Breast Proc W/O Cc	S	$863.46	$2,408.65
271	Skin Ulcers	N	$612.49	$938.25
272	Major Skin Disorders W Cc	N	$921.81	$1,412.33
273	Major Skin Disorders W/O Cc	N	$797.37	$1,124.83
274	Malignant Breast Disorders W Cc	N	$987.55	$1,316.15
275	Malignant Breast Disorders W/O Cc	N	$1,115.60	$946.98
276	Non-Maligant Breast Disorders	N	$1,026.40	$1,433.80
277	Cellulitis Age >17 W Cc	N	$788.65	$1,099.14
278	Cellulitis Age >17 W/O Cc	N	$759.93	$865.34
279	Cellulitis Age 0-17	N	$769.88	$1,033.44
280	Trauma To The Skin, Subcut Tiss & Breast Age >17 W Cc	N	$959.79	$1,482.88
281	Trauma To The Skin, Subcut Tiss & Breast Age >17 W/O Cc	N	$969.52	$1,306.06
282	Trauma To The Skin, Subcut Tiss & Breast Age 0-17	N	$954.47	$1,425.96
283	Minor Skin Disorders W Cc	N	$798.28	$1,146.68
284	Minor Skin Disorders W/O Cc	N	$772.56	$888.90
285	Amputat Of Lower Limb For Endocrine,Nutrit,& Metabol Disorders	S	$960.58	$1,895.77
286	Adrenal & Pituitary Procedures	S	$1,259.66	$3,816.28
287	Skin Grafts & Wound Debrid For Endoc, Nutrit & Metab Disorders	S	$1,183.08	$1,812.61
288	O.R. Procedures For Obesity	S	$1,125.32	$4,419.78
289	Parathyroid Procedures	S	$978.05	$3,877.26
290	Thyroid Procedures	S	$931.89	$4,190.07
291	Thyroglossal Procedures	S	$891.89	$3,798.94
292	Other Endocrine, Nutrit & Metab O.R. Proc W Cc	S	$905.66	$2,181.71
293	Other Endocrine, Nutrit & Metab O.R. Proc W/O Cc	S	$947.10	$2,757.92
294	Diabetes Age >35	N	$813.70	$1,164.04
295	Diabetes Age 0-35	N	$895.64	$1,639.17
296	Nutritional & Misc Metabolic Disorders Age >17 W Cc	N	$805.93	$1,306.33

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TABLE A. — INPATIENT FACILITY NATIONWIDE PER DIEM CHARGES; BY DRG (DIAGNOSIS RELATED GROUP) — Continued

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DRG	Description	Surgical/ Non-Surgical Indicator	Per Diem Charge	
			Room & Board	Ancillary
297	Nutritional & Misc Metabolic Disorders Age >17 W/O Cc	N	$819.79	$1,147.94
298	Nutritional & Misc Metabolic Disorders Age 0-17	N	$1,085.00	$1,735.36
299	Inborn Errors Of Metabolism	N	$793.02	$1,568.09
300	Endocrine Disorders W Cc	N	$953.30	$1,549.34
301	Endocrine Disorders W/O Cc	N	$940.12	$1,326.30
302	Kidney Transplant	S	$1,144.94	$7,856.09
303	Kidney,Ureter & Major Bladder Procedures For Neoplasm	S	$1,044.92	$3,045.94
304	Kidney,Ureter & Major Bladder Proc For Non-Neopl W Cc	S	$1,029.14	$2,938.15
305	Kidney,Ureter & Major Bladder Proc For Non-Neopl W/O Cc	S	$868.64	$3,242.05
306	Prostatectomy W Cc	S	$859.58	$2,302.14
307	Prostatectomy W/O Cc	S	$851.05	$3,064.09
308	Minor Bladder Procedures W Cc	S	$919.39	$2,613.04
309	Minor Bladder Procedures W/O Cc	S	$805.12	$4,130.26
310	Transurethral Procedures W Cc	S	$933.15	$2,685.45
311	Transurethral Procedures W/O Cc	S	$902.76	$3,481.83
312	Urethral Procedures, Age >17 W Cc	S	$927.09	$2,475.60
313	Urethral Procedures, Age >17 W/O Cc	S	$683.75	$2,522.54
314	Urethral Procedures, Age 0-17	S	$859.05	$2,442.83
315	Other Kidney & Urinary Tract O.R. Procedures	S	$976.21	$2,733.70
316	Renal Failure	N	$737.86	$1,391.91
317	Admit For Renal Dialysis	N	$914.93	$2,100.93
318	Kidney & Urinary Tract Neoplasms W Cc	N	$824.19	$1,485.91
319	Kidney & Urinary Tract Neoplasms W/O Cc	N	$1,106.27	$1,662.12
320	Kidney & Urinary Tract Infections Age >17 W Cc	N	$746.14	$1,258.71
321	Kidney & Urinary Tract Infections Age >17 W/O Cc	N	$777.26	$1,158.62
322	Kidney & Urinary Tract Infections Age 0-17	N	$991.35	$1,653.41
323	Urinary Stones W Cc, &/Or Esw Lithotripsy	N	$824.28	$2,452.25
324	Urinary Stones W/O Cc	N	$710.29	$2,177.04
325	Kidney & Urinary Tract Signs & Symptoms Age >17 W Cc	N	$833.68	$1,355.71
326	Kidney & Urinary Tract Signs & Symptoms Age >17 W/O Cc	N	$792.87	$1,117.44
327	Kidney & Urinary Tract Signs & Symptoms Age 0-17	N	$814.74	$1,291.97
328	Urethral Stricture Age >17 W Cc	N	$821.99	$1,828.23
329	Urethral Stricture Age >17 W/O Cc	N	$1,083.15	$2,206.71
330	Urethral Stricture Age 0-17	N	$897.06	$1,975.56
331	Other Kidney & Urinary Tract Diagnoses Age >17 W Cc	N	$892.03	$1,740.83
332	Other Kidney & Urinary Tract Diagnoses Age >17 W/O Cc	N	$812.23	$1,520.06
333	Other Kidney & Urinary Tract Diagnoses Age 0-17	N	$1,068.02	$2,078.56
334	Major Male Pelvic Procedures W Cc	S	$903.43	$3,390.55
335	Major Male Pelvic Procedures W/O Cc	S	$872.90	$3,682.87
336	Transurethral Prostatectomy W Cc	S	$820.34	$2,508.42
337	Transurethral Prostatectomy W/O Cc	S	$784.45	$2,919.09
338	Testes Procedures, For Malignancy	S	$1,007.81	$2,867.81
339	Testes Procedures, Non-Malignancy Age >17	S	$787.89	$2,282.52
340	Testes Procedures, Non-Malignancy Age 0-17	S	$787.89	$2,282.52
341	Penis Procedures	S	$1,159.23	$5,273.50
342	Circumcision Age >17	S	$737.70	$2,367.89
343	Circumcision Age 0-17	S	$737.70	$2,367.89
344	Other Male Reproductive System O.R. Procedures For Malignancy	S	$889.07	$5,278.03
345	Other Male Reproductive System O.R. Proc Except For Malignancy	S	$852.34	$2,219.12
346	Malignancy, Male Reproductive System, W Cc	N	$893.80	$1,236.86
347	Malignancy, Male Reproductive System, W/O Cc	N	$872.55	$965.87
348	Benign Prostatic Hypertrophy W Cc	N	$1,044.33	$1,693.49
349	Benign Prostatic Hypertrophy W/O Cc	N	$1,157.50	$1,855.80
350	Inflammation Of The Male Reproductive System	N	$706.43	$1,261.39
351	Sterilization, Male	N	$0.00	$0.00
352	Other Male Reproductive System Diagnoses	N	$1,216.19	$1,858.48
353	Pelvic Evisceration, Radical Hysterectomy & Radical Vulvectomy	S	$1,308.22	$3,884.54
354	Uterine,Adnexa Proc For Non-Ovarian/Adnexal Malig W Cc	S	$949.44	$2,799.83
355	Uterine,Adnexa Proc For Non-Ovarian/Adnexal Malig W/O Cc	S	$863.31	$2,892.18

TABLE A. — INPATIENT FACILITY NATIONWIDE PER DIEM CHARGES; BY DRG (DIAGNOSIS RELATED GROUP) — Continued

PAGE 7 OF 9

DRG	Description	Surgical/ Non-Surgical Indicator	Per Diem Charge	
			Room & Board	Ancillary
356	Female Reproductive System Reconstructive Procedures	S	$702.75	$3,111.01
357	Uterine & Adnexa Proc For Ovarian Or Adnexal Malignancy	S	$985.13	$2,797.83
358	Uterine & Adnexa Proc For Non-Malignancy W Cc	S	$814.31	$2,930.03
359	Uterine & Adnexa Proc For Non-Malignancy W/O Cc	S	$760.96	$3,143.06
360	Vagina, Cervix & Vulva Procedures	S	$773.36	$3,099.28
361	Laparoscopy & Incisional Tubal Interruption	S	$813.46	$3,661.13
362	Endoscopic Tubal Interruption	S	$1,000.54	$3,474.05
363	D&C, Conization & Radio-Implant, For Malignancy	S	$923.83	$2,759.39
364	D&C, Conization Except For Malignancy	S	$1,035.38	$2,518.71
365	Other Female Reproductive System O.R. Procedures	S	$947.18	$2,881.62
366	Malignancy, Female Reproductive System W Cc	N	$925.73	$1,556.76
367	Malignancy, Female Reproductive System W/O Cc	N	$1,003.65	$1,230.36
368	Infections, Female Reproductive System	N	$876.11	$1,500.41
369	Menstrual & Other Female Reproductive System Disorders	N	$1,067.83	$1,889.85
370	Cesarean Section W Cc	S	$866.35	$1,896.44
371	Cesarean Section W/O Cc	S	$805.37	$1,948.33
372	Vaginal Delivery W Complicating Diagnoses	N	$890.04	$1,850.26
373	Vaginal Delivery W/O Complicating Diagnoses	N	$817.44	$1,829.19
374	Vaginal Delivery W Sterilization &/Or D&C	S	$734.54	$2,608.10
375	Vaginal Delivery W O.R. Proc Except Steril &/Or D&C	S	$747.43	$2,595.21
376	Postpartum & Post Abortion Diagnoses W/O O.R. Procedure	N	$942.50	$1,131.13
377	Postpartum & Post Abortion Diagnoses W O.R. Procedure	S	$946.36	$2,687.70
378	Ectopic Pregnancy	N	$849.62	$3,890.26
379	Threatened Abortion	N	$870.11	$1,134.12
380	Abortion W/O D&C	N	$1,237.53	$1,869.08
381	Abortion W D&C, Aspiration Curettage Or Hysterotomy	S	$1,103.38	$2,987.02
382	False Labor	N	$784.16	$1,520.46
383	Other Antepartum Diagnoses W Medical Complications	N	$885.88	$986.38
384	Other Antepartum Diagnoses W/O Medical Complications	N	$878.72	$1,172.53
385	Neonates, Died Or Transferred To Another Acute Care Facility	N	$909.63	$3,158.39
386	Extreme Immaturity Or Respiratory Distress Syndrome, Neonate	N	$772.07	$2,580.83
387	Prematurity W Major Problems	N	$596.30	$2,070.45
388	Prematurity W/O Major Problems	N	$504.73	$1,752.51
389	Full Term Neonate W Major Problems	N	$500.38	$1,737.44
390	Neonate W Other Significant Problems	N	$329.52	$1,144.13
391	Normal Newborn	N	$155.80	$540.99
392	Splenectomy Age >17	S	$940.48	$3,199.88
393	Splenectomy Age 0-17	S	$940.48	$3,199.88
394	Other O.R. Procedures Of The Blood And Blood Forming Organs	S	$1,006.31	$2,809.36
395	Red Blood Cell Disorders Age >17	N	$863.91	$1,619.27
396	Red Blood Cell Disorders Age 0-17	N	$863.91	$1,619.27
397	Coagulation Disorders	N	$911.76	$2,335.73
398	Reticuloendothelial & Immunity Disorders W Cc	N	$898.11	$2,098.87
399	Reticuloendothelial & Immunity Disorders W/O Cc	N	$897.86	$1,634.62
400	Lymphoma & Leukemia W Major O.R. Procedure	S	$1,022.99	$3,050.04
401	Lymphoma & Non-Acute Leukemia W Other O.R. Proc W Cc	S	$1,098.93	$2,622.17
402	Lymphoma & Non-Acute Leukemia W Other O.R. Proc W/O Cc	S	$929.28	$2,699.88
403	Lymphoma & Non-Acute Leukemia W Cc	N	$1,040.06	$2,228.58
404	Lymphoma & Non-Acute Leukemia W/O Cc	N	$1,215.60	$2,259.53
405	Acute Leukemia W/O Major O.R. Procedure Age 0-17	N	$1,716.41	$3,748.52
406	Myeloprolif Disord Or Poorly Diff Neopl W Maj O.R.Proc W Cc	S	$1,015.72	$2,843.77
407	Myeloprolif Disord Or Poorly Diff Neopl W Maj O.R.Proc W/O Cc	S	$1,017.09	$3,296.02
408	Myeloprolif Disord Or Poorly Diff Neopl W Other O.R.Proc	S	$999.30	$2,708.91
409	Radiotherapy	N	$940.26	$1,643.95
410	Chemotherapy W/O Acute Leukemia As Secondary Diagnosis	N	$918.71	$2,709.20
411	History Of Malignancy W/O Endoscopy	N	$678.46	$2,355.75
412	History Of Malignancy W Endoscopy	N	$805.64	$2,797.35
413	Other Myeloprolif Dis Or Poorly Diff Neopl Diag W Cc	N	$999.95	$1,932.19
414	Other Myeloprolif Dis Or Poorly Diff Neopl Diag W/O Cc	N	$749.42	$1,251.43

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TABLE A. — INPATIENT FACILITY NATIONWIDE PER DIEM CHARGES; BY DRG (DIAGNOSIS RELATED GROUP) — Continued

PAGE 8 OF 9

DRG	Description	Surgical/ Non-Surgical Indicator	Per Diem Charge	
			Room & Board	Ancillary
415	O.R. Procedure For Infectious & Parasitic Diseases	S	$1,030.10	$2,435.61
416	Septicemia Age >17	N	$915.02	$1,815.67
417	Septicemia Age 0-17	N	$1,113.42	$2,209.36
418	Postoperative & Post-Traumatic Infections	N	$852.61	$1,350.60
419	Fever Of Unknown Origin Age >17 W Cc	N	$845.86	$1,651.22
420	Fever Of Unknown Origin Age >17 W/O Cc	N	$793.81	$1,329.76
421	Viral Illness Age >17	N	$750.88	$1,355.08
422	Viral Illness & Fever Of Unknown Origin Age 0-17	N	$984.65	$1,776.96
423	Other Infectious & Parasitic Diseases Diagnoses	N	$838.51	$1,868.22
424	O.R. Procedure W Principal Diagnoses Of Mental Illness	S	$1,003.01	$995.02
425	Acute Adjustment Reaction & Psychological Dysfunction	N	$794.05	$806.86
426	Depressive Neuroses	N	$867.64	$312.18
427	Neuroses Except Depressive	N	$873.92	$287.17
428	Disorders Of Personality & Impulse Control	N	$863.18	$248.77
429	Organic Disturbances & Mental Retardation	N	$835.21	$368.24
430	Psychoses	N	$899.07	$262.89
431	Childhood Mental Disorders	N	$725.57	$204.51
432	Other Mental Disorder Diagnoses	N	$741.91	$292.68
433	Alcohol/Drug Abuse Or Dependence, Left Ama	N	$806.36	$433.95
434	Alc/Drug Abuse Or Depend, Detox Or Oth Sympt Treat W Cc	N	$846.86	$725.81
435	Alc/Drug Abuse Or Depend, Detox Or Oth Sympt Treat W/O Cc	N	$803.41	$205.29
436	Alc/Drug Dependence W Rehabilitation Therapy	N	$582.26	$126.28
437	Alc/Drug Dependence, Combined Rehab & Detox Therapy	N	$628.66	$259.08
438	No Longer Valid	N	$0.00	$0.00
439	Skin Grafts For Injuries	S	$1,030.06	$2,426.12
440	Wound Debridements For Injuries	S	$880.02	$2,024.55
441	Hand Procedures For Injuries	S	$875.95	$3,517.69
442	Other O.R. Procedures For Injuries W Cc	S	$986.14	$2,871.14
443	Other O.R. Procedures For Injuries W/O Cc	S	$866.42	$3,185.76
444	Traumatic Injury Age >17 W Cc	N	$730.17	$1,191.78
445	Traumatic Injury Age >17 W/O Cc	N	$759.35	$983.05
446	Traumatic Injury Age 0-17	N	$732.15	$1,106.33
447	Allergic Reactions Age >17	N	$951.71	$1,609.13
448	Allergic Reactions Age 0-17	N	$951.71	$1,609.13
449	Poisoning & Toxic Effects Of Drugs Age >17 W Cc	N	$1,165.73	$1,999.13
450	Poisoning & Toxic Effects Of Drugs Age >17 W/O Cc	N	$1,097.95	$1,703.63
451	Poisoning & Toxic Effects Of Drugs Age 0-17	N	$1,029.41	$1,744.95
452	Complications Of Treatment W Cc	N	$908.43	$1,818.72
453	Complications Of Treatment W/O Cc	N	$892.08	$1,497.48
454	Other Injury, Poisoning & Toxic Effect Diag W Cc	N	$1,065.93	$1,894.56
455	Other Injury, Poisoning & Toxic Effect Diag W/O Cc	N	$1,008.62	$1,540.82
456	No Longer Valid	N	$0.00	$0.00
457	No Longer Valid	N	$0.00	$0.00
458	No Longer Valid	S	$0.00	$0.00
459	No Longer Valid	S	$0.00	$0.00
460	No Longer Valid	N	$0.00	$0.00
461	O.R. Proc W Diagnoses Of Other Contact W Health Services	S	$964.90	$1,769.13
462	Rehabilitation	N	$796.23	$898.93
463	Signs & Symptoms W Cc	N	$707.21	$1,048.12
464	Signs & Symptoms W/O Cc	N	$645.14	$820.15
465	Aftercare W History Of Malignancy As Secondary Diagnosis	N	$1,002.43	$1,468.68
466	Aftercare W/O History Of Malignancy As Secondary Diagnosis	N	$893.42	$1,234.80
467	Other Factors Influencing Health Status	N	$606.38	$719.15
468	Extensive O.R. Procedure Unrelated To Principal Diagnosis	S	$1,015.46	$2,684.89
469	Principal Diagnosis Invalid As Discharge Diagnosis	N	$795.64	$1,765.72
470	Ungroupable	N	$946.65	$953.91
471	Bilateral Or Multiple Major Joint Procs Of Lower Extremity	S	$731.23	$5,732.40
472	No Longer Valid	S	$0.00	$0.00
473	Acute Leukemia W/O Major O.R. Procedure Age >17	S	$1,069.31	$3,049.99

TABLE A. — INPATIENT FACILITY NATIONWIDE PER DIEM CHARGES; BY DRG (DIAGNOSIS RELATED GROUP) — Continued

PAGE 9 OF 9

DRG	Description	Surgical/ Non-Surgical Indicator	Per Diem Charge	
			Room & Board	Ancillary
474	No Longer Valid	S	$0.00	$0.00
475	Respiratory System Diagnosis With Ventilator Support	N	$1,280.39	$2,905.19
476	Prostatic O.R. Procedure Unrelated To Principal Diagnosis	S	$951.76	$1,760.35
477	Non-Extensive O.R. Procedure Unrelated To Principal Diagnosis	S	$934.15	$2,071.17
478	Other Vascular Procedures W Cc	S	$1,078.85	$3,515.10
479	Other Vascular Procedures W/O Cc	S	$974.59	$4,369.34
480	Liver Transplant	S	$1,414.25	$6,924.17
481	Bone Marrow Transplant	S	$1,680.50	$3,978.10
482	Tracheostomy For Face,Mouth & Neck Diagnoses	S	$1,215.34	$2,970.30
483	Tracheostomy Except For Face,Mouth & Neck Diagnoses	S	$1,656.08	$3,858.93
484	Craniotomy For Multiple Significant Trauma	S	$1,528.26	$4,655.33
485	Limb Reattachment, Hip And Femur Proc For Multiple Significant Tra	S	$1,120.11	$3,943.63
486	Other O.R. Procedures For Multiple Significant Trauma	S	$1,275.39	$4,227.96
487	Other Multiple Significant Trauma	N	$958.25	$2,024.98
488	Hiv W Extensive O R. Procedure	S	$1,404.64	$3,210.65
489	Hiv W Major Related Condition	N	$1,291.05	$2,201.26
490	Hiv W Or W/O Other Related Condition	N	$1,107.93	$1,676.36
491	Major Joint & Limb Reattachment Procedures Of Upper Extremity	S	$877.03	$5,804.68
492	Chemotherapy W Acute Leukemia As Secondary Diagnosis	N	$1,029.78	$2,940.80
493	Laparoscopic Cholecystectomy W/O C.D.E. W Cc	S	$865.86	$3,457.86
494	Laparoscopic Cholecystectomy W/O C.D.E. W/O Cc	S	$790.28	$4,525.53
495	Lung Transplant	S	$1,685.02	$9,864.41
496	Combined Anterior/Posterior Spinal Fusion	S	$1,447.85	$7,608.41
497	Spinal Fusion W Cc	S	$1,070.22	$5,847.90
498	Spinal Fusion W/O Cc	S	$890.53	$6,773.32
499	Back & Neck Procedures Except Spinal Fusion W Cc	S	$940.39	$3,538.80
500	Back & Neck Procedures Except Spinal Fusion W/O Cc	S	$874.12	$4,320.56
501	Knee Procedures W Pdx Of Infection W Cc	S	$866.93	$2,630.49
502	Knee Procedures W Pdx Of Infection W/O Cc	S	$1,193.40	$3,506.67
503	Knee Procedures W/O Pdx Of Infection	S	$1,049.43	$4,010.69
504	Extensive 3Rd Degree Burns W Skin Graft	S	$2,345.89	$4,771.37
505	Extensive 3Rd Degree Burns W/O Skin Graft	N	$1,969.28	$5,328.24
506	Full Thickness Burn W Skin Graft Or Inhal Inj W Cc Or Sig Trauma	S	$1,545.99	$2,355.35
507	Full Thickness Burn W Skin Grft Or Inhal Inj W/O Cc Or Sig Trauma	S	$1,371.92	$1,767.69
508	Full Thickness Burn W/O Skin Grft Or Inhal Inj W Cc Or Sig Trauma	N	$1,194.23	$1,763.34
509	Full Thickness Burn W/O Skin Grft Or Inh Inj W/O Cc Or Sig Trauma	N	$864.75	$1,237.76
510	Non-Extensive Burns W Cc Or Significant Trauma	N	$1,213.89	$1,579.58
511	Non-Extensive Burns W/O Cc Or Significant Trauma	N	$1,183.81	$1,198.80

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TABLE B. — INPATIENT FACILITY AND SKILLED NURSING FACILITY/SUB-ACUTE INPATIENT FACILITY GEOGRAPHIC AREA ADJUSTMENT FACTORS; BY VA FACILITY LOCATION

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VA Facility Location	For Surgical DRGs		For Non-Surgical DRGs		Skilled Nursing Facility/Sub-acute Inpatient Facility
	Room & Board	Ancillary	Room & Board	Ancillary	
NATIONWIDE AVERAGE	1.00	1.00	1.00	1.00	1.00
ANCHORAGE, AK	1.52	1.80	1.73	1.67	1.16
BIRMINGHAM, AL	0.97	1.60	0.91	1.66	0.89
MONTGOMERY, AL	0.81	1.29	0.76	1.55	0.89
TUSCALOOSA, AL	0.83	1.20	0.71	1.18	0.89
TUSKEGEE, AL	0.81	1.29	0.76	1.55	0.89
FAYETTEVILLE, AR	0.42	0.77	0.63	0.85	0.94
LITTLE ROCK, AR	0.53	0.91	0.72	1.01	0.94
NORTH LITTLE ROCK, AR	0.53	0.91	0.72	1.01	0.94
PHOENIX, AZ	1.03	1.82	1.20	1.61	1.32
PRESCOTT, AZ	0.83	1.33	0.79	1.30	1.32
TUCSON, AZ	1.31	1.32	1.07	1.20	1.32
FRESNO, CA	1.09	1.50	1.26	1.45	1.55
LIVERMORE, CA	1.92	2.20	1.74	1.80	1.55
LOMA LINDA, CA	1.60	1.65	1.41	1.82	1.55
LONG BEACH, CA	1.63	1.80	1.57	1.78	1.55
MARTINEZ, CA	1.92	2.20	1.74	1.80	1.55
MENLO PARK, CA	2.14	1.69	1.87	1.49	1.55
PALO ALTO, CA	2.22	1.71	1.78	1.59	1.55
SACRAMENTO, CA	2.62	2.78	2.05	2.14	1.55
SAN DIEGO, CA	1.35	1.84	1.38	1.63	1.55
SAN FRANCISCO, CA	2.14	1.69	1.87	1.49	1.55
SEPULVEDA, CA	1.63	1.80	1.57	1.78	1.55
WEST LOS ANGELES, CA	1.63	1.80	1.57	1.78	1.55
DENVER, CO	0.96	1.47	0.94	1.49	1.37
FORT LYON, CO	0.85	1.21	0.82	1.08	1.37
GRAND JUNCTION, CO	0.77	0.93	0.71	0.84	1.37
NEWINGTON, CT	0.81	0.84	0.94	1.03	0.77
WEST HAVEN, CT	1.20	1.03	1.14	1.12	0.77
WASHINGTON, DC	0.93	1.07	0.94	1.00	0.97
WILMINGTON, DE	1.01	0.89	0.96	0.98	0.81
BAY PINES, FL	0.81	1.43	0.97	1.51	1.18
GAINESVILLE, FL	0.82	1.21	0.77	1.27	1.18
LAKE CITY, FL	0.82	1.21	0.77	1.27	1.18
MIAMI, FL	1.10	1.47	1.07	1.60	1.18
TAMPA, FL	0.81	1.43	0.97	1.51	1.18
WEST PALM BEACH, FL	0.69	1.47	0.80	1.57	1.18
ATLANTA/DECATUR, GA	0.76	1.04	0.95	1.06	0.86
AUGUSTA, GA	0.63	1.00	0.67	1.36	0.86
DUBLIN, GA	0.49	1.04	0.82	0.99	0.86
HONOLULU, HI	1.51	1.40	2.11	1.39	1.16
DES MOINES, IA	0.87	0.91	0.86	0.91	1.04
IOWA CITY, IA	0.67	1.03	0.67	0.93	1.04
KNOXVILLE, IA	0.87	0.91	0.86	0.91	1.04
BOISE, ID	0.88	1.19	0.87	0.95	0.92
CHICAGO, IL	1.22	1.37	1.31	1.35	1.03
DANVILLE, IL	0.69	1.23	0.88	1.14	1.03
HINES, IL	1.22	1.37	1.31	1.35	1.03
MARION, IL	0.68	0.84	0.65	0.98	1.03
NORTH CHICAGO, IL	1.22	1.37	1.31	1.35	1.03
FORT WAYNE, IN	0.89	0.98	1.00	0.91	0.99
INDIANAPOLIS, IN	0.82	0.88	0.74	0.95	0.99
MARION, IN	0.75	0.90	0.74	1.65	0.99
LEAVENWORTH, KS	0.98	1.28	1.05	1.41	1.16
TOPEKA, KS	0.61	1.22	0.87	1.01	1.15
WICHITA, KS	1.08	1.42	1.06	1.38	1.15
LEXINGTON, KY	0.75	0.86	0.93	0.95	0.84
LOUISVILLE, KY	0.71	1.14	0.89	0.99	0.84
ALEXANDRIA, LA	0.44	1.23	0.63	1.13	1.77
NEW ORLEANS, LA	0.76	1.52	1.05	1.44	1.77
SHREVEPORT, LA	0.70	1.28	0.87	1.29	1.77

TABLE B. — INPATIENT FACILITY AND SKILLED NURSING FACILITY/SUB-ACUTE INPATIENT FACILITY GEOGRAPHIC AREA ADJUSTMENT FACTORS; BY VA FACILITY LOCATION — Continued

PAGE 2 OF 3

VA Facility Location	For Surgical DRGs		For Non-Surgical DRGs		Skilled Nursing Facility/Sub-acute Inpatient Facility
	Room & Board	Ancillary	Room & Board	Ancillary	
BEDFORD, MA	1.15	0.92	1.16	0.79	0.92
BOSTON, MA	1.15	0.92	1.16	0.79	0.92
BROCKTON, MA	1.15	0.92	1.16	0.79	0.92
NORTHAMPTON, MA	1.05	1.05	1.10	0.76	0.92
WEST ROXBURY, MA	1.15	0.92	1.16	0.79	0.92
BALTIMORE, MD	1.01	0.58	0.96	0.62	0.85
FORT HOWARD, MD	1.01	0.58	0.96	0.62	0.85
PERRY POINT, MD	1.01	0.89	0.96	0.98	0.81
TOGUS, ME	1.22	1.01	1.17	1.00	0.79
ANN ARBOR, MI	1.18	1.18	1.11	1.10	0.65
BATTLE CREEK, MI	0.49	1.21	0.55	1.23	0.65
DETROIT, MI	1.22	0.97	1.10	1.08	0.65
IRON MOUNTAIN, MI	0.88	0.95	0.75	1.00	0.65
SAGINAW, MI	0.87	0.94	0.86	1.11	0.65
MINNEAPOLIS, MN	1.15	1.25	1.14	1.40	0.61
SAINT CLOUD, MN	0.68	0.98	0.84	0.93	0.61
COLUMBIA, MO	0.98	1.14	0.77	1.23	1.16
KANSAS CITY, MO	0.96	1.28	1.05	1.41	1.16
POPLAR BLUFF, MO	0.66	1.00	0.66	0.99	1.16
ST LOUIS, MO	0.83	1.13	0.78	1.33	1.16
BILOXI, MS	0.60	1.26	0.62	1.49	0.89
GULFPORT, MS	0.60	1.26	0.62	1.49	0.89
JACKSON, MS	0.52	0.86	0.92	0.85	0.89
FORT HARRISON, MT	0.76	1.02	0.77	0.96	0.70
ASHEVILLE, NC	0.57	0.90	0.91	0.77	0.68
DURHAM, NC	0.73	1.04	0.79	1.03	0.68
FAYETTEVILLE, NC	1.00	1.86	0.85	1.23	0.68
SALISBURY, NC	0.76	0.94	0.85	0.99	0.68
FARGO, ND	0.72	0.96	0.73	0.83	0.53
GRAND ISLAND, NE	0.61	0.89	0.62	0.85	0.83
LINCOLN, NE	0.75	1.21	0.82	1.15	0.83
OMAHA, NE	0.67	1.18	0.72	1.38	0.83
MANCHESTER, NH	1.15	0.92	1.16	0.79	0.92
EAST ORANGE, NJ	1.58	0.59	1.60	0.64	0.84
LYONS, NJ	2.08	0.80	1.78	0.72	0.84
ALBUQUERQUE, NM	0.95	1.05	0.94	1.04	1.20
LAS VEGAS, NV	0.68	1.98	0.97	2.07	1.35
RENO, NV	0.96	1.76	1.21	1.48	1.35
ALBANY, NY	0.85	0.58	0.72	0.67	0.81
BATAVIA, NY	0.94	0.44	0.90	0.43	0.61
BATH, NY	0.64	0.55	0.70	0.63	0.61
BRONX, NY	1.64	0.52	1.51	0.50	0.61
BROOKLYN, NY	1.64	0.52	1.51	0.50	0.61
BUFFALO, NY	0.90	0.43	0.98	0.45	0.61
CANANDAIGUA, NY	0.94	0.44	0.90	0.43	0.61
CASTLE POINT, NY	0.85	0.51	1.15	0.54	0.61
MONTROSE, NY	1.64	0.52	1.51	0.50	0.61
NEW YORK, NY	1.64	0.52	1.51	0.50	0.61
NORTHPORT/LONG ISLAND, NY	1.32	0.54	1.38	0.54	0.61
SAINT ALBANS, NY	1.64	0.52	1.51	0.50	0.61
SYRACUSE, NY	0.93	0.54	0.90	0.49	0.61
CHILLICOTHE, OH	0.64	0.91	0.65	1.14	0.92
CINCINNATI, OH	0.61	1.02	0.70	0.92	0.92
CLEVELAND, OH	1.21	0.89	1.15	0.93	0.92
COLUMBUS, OH	0.60	1.00	0.68	0.96	0.92
DAYTON, OH	0.69	0.94	0.72	1.11	0.92
MUSKOGEE, OK	0.63	1.07	0.73	1.05	1.40
OKLAHOMA CITY, OK	0.63	1.09	0.60	1.23	1.40
PORTLAND, OR	1.06	1.10	0.96	1.10	1.04
ROSEBURG, OR	0.83	1.01	0.85	1.04	1.04
WHITE CITY, OR	1.11	0.78	1.21	1.01	1.04

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TABLE B. — INPATIENT FACILITY AND SKILLED NURSING FACILITY/SUB-ACUTE INPATIENT FACILITY GEOGRAPHIC AREA ADJUSTMENT FACTORS; BY VA FACILITY LOCATION — Continued

VA Facility Location	For Surgical DRGs		For Non-Surgical DRGs		Skilled Nursing Facility/Sub-acute Inpatient Facility
	Room & Board	Ancillary	Room & Board	Ancillary	
ALTOONA, PA	0.84	0.97	0.79	0.79	0.90
BUTLER, PA	1.24	1.23	1.03	1.20	0.90
COATESVILLE, PA	1.93	1.36	1.72	1.33	0.90
ERIE, PA	1.27	1.22	1.07	1.05	0.90
LEBANON, PA	1.02	0.87	0.93	0.91	0.90
PHILADELPHIA, PA	1.93	1.36	1.72	1.33	0.90
PITTSBURGH, PA	1.24	1.23	1.03	1.20	0.90
WILKES-BARRE, PA	0.80	0.91	0.84	0.97	0.90
SAN JUAN, PR	0.46	0.41	0.53	0.46	0.50
PROVIDENCE, RI	1.17	0.71	1.10	0.72	0.66
CHARLESTON, SC	0.79	1.11	0.91	1.32	0.83
COLUMBIA, SC	0.89	1.09	1.09	0.98	0.83
FORT MEADE, SD	0.70	1.12	0.71	0.85	0.68
HOT SPRINGS, SD	0.54	0.88	0.55	0.87	0.68
SIOUX FALLS, SD	0.35	1.02	0.64	1.09	0.68
MEMPHIS, TN	0.55	0.95	0.71	1.16	0.86
MOUNTAIN HOME, TN	0.62	1.11	0.63	0.97	0.86
MURFREESBORO, TN	0.64	1.18	0.68	1.10	0.86
NASHVILLE, TN	0.64	1.18	0.68	1.10	0.86
AMARILLO, TX	0.58	1.01	0.82	1.56	1.32
BIG SPRING, TX	0.68	1.05	0.71	1.38	1.32
BONHAM, TX	0.60	1.79	0.58	1.63	1.32
DALLAS, TX	0.90	1.33	0.95	1.46	1.32
EL PASO, TX	0.84	1.77	0.73	1.78	1.32
HOUSTON, TX	0.91	1.28	0.99	1.53	1.32
KERRVILLE, TX	0.61	1.11	0.63	1.00	1.32
MARLIN, TX	0.72	0.81	0.80	1.20	1.32
SAN ANTONIO, TX	0.76	1.07	1.03	1.22	1.32
TEMPLE, TX	0.71	1.03	0.70	1.19	1.32
WACO, TX	0.72	0.81	0.80	1.20	1.32
SALT LAKE CITY, UT	1.16	1.02	1.18	1.07	1.18
HAMPTON , VA	0.67	0.96	0.93	0.87	0.81
RICHMOND, VA	0.85	1.30	0.87	1.11	0.81
SALEM, VA	0.77	0.99	0.79	1.12	0.81
WHITE RIVER JCT, VT	1.07	0.97	1.19	0.71	0.68
AMERICAN LAKE/TACOMA, WA	0.82	1.50	0.78	0.90	1.02
SEATTLE, WA	1.13	1.00	0.96	0.94	1.02
SPOKANE, WA	0.99	1.00	0.95	1.13	1.02
VANCOUVER, WA	1.06	1.10	0.96	1.10	1.04
WALLA WALLA, WA	0.99	0.97	1.04	1.25	1.02
MADISON, WI	0.46	1.02	0.48	1.15	0.77
MILWAUKEE, WI	0.68	1.13	0.83	1.04	0.77
TOMAH, WI	0.24	1.81	0.34	1.36	0.77
BECKLEY, WV	0.56	0.80	0.54	0.89	0.90
CLARKSBURG, WV	0.56	0.80	0.54	0.89	0.90
HUNTINGTON, WV	0.62	0.70	0.77	0.81	0.90
MARTINSBURG, WV	0.93	1.07	0.94	1.00	0.97
CHEYENNE, WY	0.99	1.40	0.87	1.00	0.96
SHERIDAN, WY	0.77	1.13	0.65	1.04	0.96

TABLE C. — OUTPATIENT FACILITY NATIONWIDE CHARGES; BY CPT (CURRENT PROCEDURAL TERMINOLOGY) CODE

CPT Code	Charge	CPT Code	Charge	CPT Code	Charge	CPT Code	Charge
10081	$683.67	12053	$491.93	15756	$3,415.49	19103	$3,415.49
10121	$675.06	12054	$664.54	15757	$3,415.49	19110	$2,671.46
10180	$678.97	12055	$796.04	15758	$3,415.49	19112	$2,544.19
11010	$906.73	12056	$1,104.28	15760	$3,465.47	19120	$3,138.08
11011	$966.21	12057	$1,274.84	15770	$3,445.24	19125	$3,138.08
11012	$1,110.22	13100	$369.53	15780	$1,399.08	19126	$1,600.34
11040	$255.88	13101	$557.68	15783	$741.59	19140	$4,049.05
11041	$640.62	13102	$233.89	15810	$894.21	19160	$3,995.64
11042	$647.67	13120	$407.67	15811	$3,042.55	19162	$5,748.52
11043	$738.46	13121	$674.82	15819	$3,415.49	19180	$4,489.76
11044	$817.51	13122	$273.42	15820	$3,658.26	19182	$4,643.36
11404	$1,393.08	13131	$537.13	15821	$3,584.48	19200	$5,768.55
11406	$1,728.10	13132	$1,069.35	15822	$3,749.90	19220	$5,768.55
11423	$1,346.17	13133	$350.15	15823	$3,415.49	19240	$5,768.55
11424	$1,399.78	13150	$491.93	15824	$3,615.42	19260	$4,302.81
11426	$1,694.60	13151	$633.72	15825	$3,713.01	19271	$5,768.55
11444	$1,453.39	13152	$1,184.42	15826	$3,496.17	19290	$529.21
11446	$1,661.10	13153	$352.86	15828	$3,415.49	19291	$327.72
11450	$2,264.13	13160	$814.54	15829	$3,415.49	19295	$1,765.83
11451	$2,411.53	14001	$1,106.33	15831	$3,415.49	19316	$5,768.55
11462	$2,083.21	14020	$1,137.16	15832	$3,415.49	19318	$5,768.55
11463	$1,808.50	14021	$1,406.34	15833	$3,592.81	19324	$3,551.68
11470	$2,331.13	14040	$1,521.43	15834	$3,478.56	19325	$4,576.59
11471	$2,116.71	14041	$1,749.51	15835	$3,499.99	19328	$3,872.10
11604	$2,203.82	14060	$1,722.80	15836	$3,642.79	19330	$3,912.17
11606	$2,552.24	14061	$2,285.85	15837	$3,622.56	19340	$4,940.53
11624	$2,619.24	14300	$2,454.34	15838	$3,633.27	19342	$5,768.55
11626	$2,753.25	14350	$1,377.58	15839	$2,075.80	19350	$4,980.59
11643	$2,485.23	15000	$1,860.15	15840	$3,415.49	19355	$4,262.75
11644	$2,820.25	15001	$574.48	15841	$3,415.49	19357	$5,768.55
11646	$3,362.99	15050	$1,592.44	15842	$3,415.49	19361	$5,768.55
11752	$2,357.93	15100	$3,637.47	15845	$3,415.49	19364	$5,768.55
11762	$2,190.41	15101	$1,443.71	15876	$2,923.56	19366	$5,768.55
11770	$2,257.43	15120	$3,613.04	15877	$3,572.57	19367	$5,768.55
11771	$3,496.98	15121	$2,425.32	15878	$2,923.56	19368	$5,768.55
11772	$3,697.99	15200	$3,332.58	15879	$3,572.57	19369	$5,768.55
11952	$1,265.77	15201	$1,510.63	15920	$2,455.07	19370	$4,676.75
11954	$1,265.77	15220	$3,757.05	15922	$3,621.38	19371	$5,257.71
11960	$5,647.79	15221	$1,443.71	15931	$2,440.19	19380	$5,324.49
11970	$5,674.60	15240	$3,607.09	15933	$3,509.50	19396	$1,727.59
11971	$2,009.51	15241	$2,031.19	15934	$3,445.24	20005	$1,841.76
12004	$369.53	15260	$3,445.24	15935	$3,415.49	20100	$4,342.30
12005	$432.34	15261	$2,380.71	15936	$3,415.49	20101	$1,576.17
12006	$496.03	15342	$1,529.48	15937	$3,415.49	20102	$1,933.70
12007	$500.15	15343	$419.20	15940	$2,901.25	20103	$2,618.12
12013	$365.29	15350	$1,860.15	15941	$3,494.03	20150	$5,824.88
12014	$374.79	15351	$529.75	15944	$3,415.49	20200	$1,116.49
12015	$463.15	15400	$1,049.57	15945	$3,415.49	20205	$1,892.83
12016	$594.67	15401	$529.75	15946	$3,415.49	20206	$953.05
12017	$820.71	15570	$3,678.49	15950	$2,499.69	20220	$1,310.57
12018	$1,188.53	15572	$3,692.77	15951	$3,422.62	20225	$2,413.81
12020	$374.79	15574	$3,690.40	15952	$3,484.52	20240	$1,892.83
12021	$349.48	15576	$2,581.49	15953	$3,415.49	20245	$3,351.54
12032	$366.06	15600	$2,127.86	15956	$3,415.49	20250	$4,413.58
12034	$432.34	15610	$2,358.39	15958	$3,415.49	20251	$4,962.42
12035	$524.80	15620	$2,819.46	16015	$1,313.78	20525	$2,250.37
12036	$606.99	15630	$2,938.44	16030	$336.68	20650	$1,075.63
12037	$765.23	15650	$3,511.05	16035	$1,210.92	20660	$1,565.95
12042	$370.69	15732	$3,415.49	16036	$630.23	20661	$3,522.61
12044	$463.15	15734	$3,415.49	17108	$1,326.24	20662	$5,461.37
12045	$567.96	15736	$3,415.49	19020	$1,547.31	20663	$4,107.09
12046	$709.75	15738	$3,415.49	19100	$741.32	20664	$3,522.61
12047	$956.33	15740	$3,415.49	19101	$2,544.19	20665	$483.15
12052	$432.34	15750	$3,415.49	19102	$2,901.43	20670	$728.31

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TABLE C. — OUTPATIENT FACILITY NATIONWIDE CHARGES; BY CPT (CURRENT PROCEDURAL TERMINOLOGY) CODE — Continued

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CPT Code	Charge	CPT Code	Charge	CPT Code	Charge	CPT Code	Charge
20680	$3,173.35	21180	$7,541.31	21385	$6,194.93	22315	$1,144.14
20690	$3,408.57	21181	$4,734.64	21386	$6,194.93	22318	$6,194.93
20692	$4,727.20	21182	$7,541.31	21387	$6,194.93	22319	$6,194.93
20693	$2,515.96	21183	$7,541.31	21390	$6,194.93	22325	$6,194.93
20694	$2,628.33	21184	$7,541.31	21395	$6,194.93	22326	$6,194.93
20816	$7,541.31	21188	$7,541.31	21400	$1,751.17	22327	$6,194.93
20822	$7,541.31	21193	$6,445.62	21401	$2,791.14	22328	$4,871.07
20824	$7,541.31	21194	$7,087.24	21406	$5,388.12	22505	$1,952.29
20827	$7,541.31	21195	$6,455.49	21407	$6,087.11	22520	$3,114.06
20900	$3,025.56	21196	$6,873.37	21408	$6,194.93	22521	$3,039.13
20902	$3,945.74	21198	$7,271.50	21421	$5,733.90	22522	$1,361.33
20910	$1,177.33	21199	$5,032.60	21422	$6,194.93	22850	$5,412.45
20912	$3,804.50	21206	$5,731.62	21423	$6,194.93	22900	$2,959.52
20920	$3,509.18	21208	$6,096.84	21431	$5,689.29	23000	$3,109.21
20922	$3,706.06	21209	$3,791.66	21432	$5,964.42	23020	$5,824.88
20924	$4,159.74	21210	$6,096.84	21433	$6,194.93	23030	$2,178.86
20926	$2,935.68	21215	$6,294.27	21435	$6,194.93	23035	$5,233.28
20955	$7,541.31	21230	$5,807.29	21436	$6,194.93	23040	$5,824.88
20956	$7,541.31	21235	$4,826.76	21440	$3,351.13	23044	$5,725.09
20957	$7,541.31	21240	$7,482.09	21445	$5,722.75	23065	$646.59
20962	$7,541.31	21242	$7,083.95	21450	$3,088.27	23066	$1,177.78
20969	$7,541.31	21243	$7,133.31	21451	$5,618.64	23075	$1,688.53
20970	$7,541.31	21244	$6,689.11	21452	$1,431.19	23076	$3,323.04
20972	$7,541.31	21245	$6,169.24	21453	$5,919.80	23077	$5,824.88
20973	$7,541.31	21246	$5,300.58	21454	$6,094.55	23100	$5,525.51
20975	$3,051.24	21247	$7,541.31	21461	$6,194.93	23101	$5,176.25
21010	$5,824.88	21248	$6,550.92	21462	$6,194.93	23105	$5,824.88
21015	$4,948.17	21249	$7,541.31	21465	$6,194.93	23106	$4,185.50
21025	$3,750.70	21255	$7,541.31	21470	$6,194.93	23107	$5,824.88
21026	$3,037.92	21256	$7,541.31	21485	$2,345.45	23120	$4,085.71
21029	$5,824.88	21260	$7,541.31	21490	$5,797.11	23125	$5,824.88
21034	$5,774.99	21261	$7,541.31	21493	$1,579.75	23130	$5,824.88
21040	$2,767.06	21263	$7,541.31	21494	$6,194.93	23140	$3,764.95
21041	$4,905.39	21267	$7,202.41	21495	$5,243.11	23145	$5,824.88
21044	$5,824.88	21268	$7,445.89	21497	$4,379.66	23146	$4,527.62
21045	$5,824.88	21270	$5,553.93	21501	$1,831.55	23150	$5,532.65
21050	$5,824.88	21275	$5,340.06	21502	$3,807.73	23155	$5,824.88
21060	$5,824.88	21280	$4,576.70	21510	$3,522.61	23156	$5,824.88
21070	$5,653.81	21282	$3,470.67	21550	$840.68	23170	$4,228.26
21100	$1,055.20	21295	$1,430.70	21555	$1,606.81	23172	$4,477.73
21120	$3,363.67	21296	$3,376.50	21556	$3,508.36	23174	$5,824.88
21121	$4,245.34	21300	$944.17	21557	$5,824.88	23180	$3,864.74
21122	$4,445.08	21310	$769.70	21600	$4,007.31	23182	$5,482.75
21123	$5,073.54	21315	$1,911.17	21610	$4,484.86	23184	$5,824.88
21125	$3,847.30	21320	$2,505.44	21620	$5,682.32	23190	$5,126.36
21127	$4,997.86	21325	$4,516.80	21627	$4,385.07	23195	$5,824.88
21137	$4,734.64	21330	$5,652.10	21700	$3,607.63	23200	$5,824.88
21138	$5,310.45	21335	$6,194.93	21705	$3,902.94	23210	$5,824.88
21139	$5,896.14	21336	$4,516.80	21720	$3,470.67	23330	$634.23
21141	$7,113.57	21337	$3,065.42	21725	$3,898.66	23331	$2,281.02
21142	$7,278.09	21338	$5,313.76	21800	$790.23	23332	$5,824.88
21143	$7,462.35	21339	$6,087.11	21805	$1,385.48	23395	$6,057.36
21145	$7,113.57	21340	$6,194.93	21810	$6,176.35	23397	$6,991.83
21146	$7,278.09	21343	$6,194.93	21820	$1,396.91	23400	$5,632.90
21147	$7,462.35	21344	$6,194.93	21825	$6,016.46	23405	$4,859.67
21150	$7,541.31	21345	$6,194.93	21925	$1,964.34	23406	$5,491.42
21151	$7,541.31	21346	$6,194.93	21930	$2,738.56	23410	$5,994.85
21154	$7,541.31	21347	$6,194.93	21935	$5,497.01	23412	$6,794.40
21155	$7,541.31	21348	$6,194.93	22100	$5,824.88	23415	$4,044.18
21159	$7,541.31	21355	$1,625.46	22101	$5,824.88	23420	$7,208.99
21160	$7,541.31	21356	$5,065.35	22102	$4,007.31	23430	$4,810.32
21172	$7,541.31	21360	$6,094.55	22103	$2,250.37	23440	$4,754.38
21175	$7,541.31	21365	$6,194.93	22305	$517.39	23450	$6,590.40
21179	$7,541.31	21366	$6,194.93	22310	$567.54	23455	$7,515.00

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TABLE C. — OUTPATIENT FACILITY NATIONWIDE CHARGES; BY CPT (CURRENT PROCEDURAL TERMINOLOGY) CODE — Continued

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CPT Code	Charge	CPT Code	Charge	CPT Code	Charge	CPT Code	Charge
23460	$7,024.73	24136	$5,824.88	24620	$810.51	25310	$4,744.51
23462	$7,373.51	24138	$5,354.44	24635	$6,194.93	25312	$4,905.74
23465	$7,051.06	24140	$5,824.88	24640	$244.90	25315	$5,047.22
23466	$7,541.31	24145	$5,347.32	24650	$515.47	25316	$5,876.40
23470	$7,541.31	24147	$5,511.26	24655	$662.03	25320	$5,224.89
23472	$7,541.31	24149	$5,824.88	24665	$6,101.99	25332	$5,578.97
23480	$4,563.53	24150	$5,824.88	24666	$6,194.93	25335	$6,149.49
23485	$6,129.75	24151	$5,824.88	24670	$457.62	25337	$5,224.89
23490	$5,678.97	24152	$5,646.69	24675	$758.45	25350	$4,899.15
23491	$6,573.94	24153	$5,824.88	24685	$6,194.93	25355	$5,396.00
23500	$393.80	24155	$5,824.88	24800	$5,879.68	25360	$4,504.31
23505	$577.18	24160	$4,249.64	24802	$6,402.85	25365	$5,787.55
23515	$6,027.63	24164	$4,741.46	24925	$4,458.24	25370	$6,264.66
23520	$330.98	24201	$2,980.90	25000	$3,451.33	25375	$6,797.70
23525	$463.41	24301	$4,994.58	25020	$3,900.38	25390	$5,297.29
23530	$5,897.49	24305	$3,145.39	25023	$4,677.31	25391	$6,096.84
23532	$6,139.16	24310	$3,089.76	25028	$2,076.71	25392	$6,488.40
23540	$370.52	24320	$5,422.32	25031	$646.59	25393	$7,070.80
23545	$463.41	24330	$5,270.96	25035	$5,290.30	25400	$5,942.20
23550	$6,194.93	24331	$5,560.52	25040	$4,855.50	25405	$6,481.82
23552	$6,161.47	24340	$4,698.44	25066	$1,545.52	25415	$6,152.78
23570	$405.43	24341	$4,695.15	25075	$2,209.51	25420	$7,232.02
23575	$611.88	24342	$5,810.59	25076	$3,486.97	25425	$6,350.20
23585	$6,194.93	24350	$3,637.58	25077	$5,824.88	25426	$6,251.49
23600	$640.81	24351	$3,783.10	25085	$4,092.83	25440	$6,372.97
23605	$999.50	24352	$4,262.45	25100	$3,857.62	25441	$6,133.04
23615	$6,194.93	24354	$4,228.22	25101	$4,477.73	25442	$4,718.18
23616	$6,194.93	24356	$4,790.57	25105	$5,390.08	25443	$5,481.55
23620	$636.96	24360	$6,860.21	25107	$4,563.27	25444	$5,731.62
23625	$818.23	24361	$6,715.43	25110	$2,795.58	25445	$5,804.00
23630	$6,194.93	24362	$6,718.72	25111	$3,094.95	25446	$7,541.31
23650	$486.54	24363	$7,541.31	25112	$3,451.33	25447	$5,570.39
23655	$646.60	24365	$4,869.54	25115	$5,824.88	25449	$4,974.84
23660	$6,194.93	24366	$5,698.71	25116	$5,824.88	25450	$4,800.45
23665	$727.60	24400	$5,168.97	25118	$4,228.26	25455	$5,261.09
23670	$6,194.93	24410	$7,014.86	25119	$5,532.65	25490	$5,254.52
23675	$839.44	24420	$6,442.34	25120	$5,454.23	25491	$5,389.41
23680	$6,194.93	24430	$7,031.31	25125	$5,675.20	25492	$6,080.40
23700	$2,721.68	24435	$7,162.92	25126	$5,646.69	25505	$770.02
23800	$7,521.57	24470	$5,001.15	25130	$3,800.59	25515	$6,194.93
23802	$7,024.73	24495	$4,287.15	25135	$4,691.56	25520	$1,188.48
23921	$3,654.70	24498	$5,807.29	25136	$4,178.36	25525	$6,194.93
23930	$1,617.03	24500	$571.39	25145	$5,040.82	25526	$6,194.93
23931	$738.53	24505	$949.36	25150	$5,554.02	25530	$552.11
23935	$4,142.72	24515	$6,194.93	25151	$4,898.27	25535	$770.02
24000	$5,361.58	24516	$6,194.93	25170	$5,824.88	25545	$6,194.93
24006	$5,824.88	24530	$608.03	25210	$4,278.15	25560	$519.33
24065	$779.40	24535	$1,016.86	25215	$5,824.88	25565	$980.21
24066	$2,731.42	24538	$1,620.45	25230	$4,769.98	25574	$6,194.93
24075	$1,994.99	24545	$6,194.93	25240	$4,577.52	25575	$6,194.93
24076	$3,422.83	24546	$6,194.93	25248	$2,199.30	25605	$843.30
24077	$5,824.88	24560	$498.11	25250	$4,812.74	25611	$1,240.56
24100	$3,814.85	24565	$746.88	25251	$5,824.88	25620	$6,101.99
24101	$5,603.92	24566	$1,250.20	25260	$3,800.23	25628	$6,101.99
24102	$5,824.88	24575	$6,194.93	25263	$4,293.72	25645	$5,934.68
24105	$3,486.97	24576	$498.11	25265	$5,004.45	25660	$432.54
24110	$5,824.88	24577	$852.94	25270	$3,265.24	25670	$6,083.40
24115	$5,824.88	24579	$6,194.93	25272	$3,299.47	25675	$521.26
24116	$5,824.88	24582	$1,358.19	25274	$4,573.40	25676	$6,172.63
24120	$5,090.72	24586	$6,194.93	25280	$3,633.30	25680	$552.11
24125	$4,926.78	24587	$6,194.93	25290	$2,884.31	25685	$6,194.93
24126	$5,824.88	24600	$457.62	25295	$3,132.56	25690	$1,024.57
24130	$5,589.66	24605	$523.18	25300	$4,816.89	25695	$6,068.52
24134	$5,824.88	24615	$6,194.93	25301	$4,622.76	25800	$5,929.04

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TABLE C. — OUTPATIENT FACILITY NATIONWIDE CHARGES; BY CPT (CURRENT PROCEDURAL TERMINOLOGY) CODE — Continued

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CPT Code	Charge	CPT Code	Charge	CPT Code	Charge	CPT Code	Charge
25805	$6,478.53	26415	$4,616.18	26567	$3,658.98	27040	$707.89
25810	$6,221.88	26416	$5,238.06	26568	$5,175.54	27041	$2,699.84
25820	$5,093.29	26418	$3,359.39	26580	$7,541.31	27047	$1,903.05
25825	$5,751.36	26420	$4,258.17	26585	$6,656.21	27048	$3,886.13
25830	$5,224.89	26426	$4,471.41	26587	$3,693.23	27049	$5,824.88
25907	$4,283.85	26428	$4,181.14	26590	$7,541.31	27050	$4,206.87
25922	$4,202.54	26432	$3,175.36	26591	$2,807.28	27052	$5,682.32
25929	$3,855.86	26433	$3,513.47	26593	$3,590.50	27060	$3,601.02
26011	$1,545.52	26434	$3,945.74	26596	$5,106.44	27062	$3,814.85
26020	$3,451.33	26437	$3,560.55	26597	$5,034.06	27065	$4,784.23
26025	$4,014.43	26440	$3,355.10	26600	$368.20	27066	$5,824.88
26030	$4,884.02	26442	$3,269.51	26605	$523.18	27067	$5,824.88
26034	$3,814.85	26445	$3,218.15	26607	$766.17	27070	$5,824.88
26035	$4,484.86	26449	$4,211.09	26608	$766.17	27071	$5,824.88
26037	$5,340.19	26450	$2,803.00	26615	$5,261.71	27080	$4,206.87
26040	$2,838.35	26455	$2,636.08	26641	$268.16	27087	$3,380.05
26045	$4,242.51	26460	$2,563.32	26645	$505.82	27097	$4,932.05
26055	$3,137.71	26471	$3,603.35	26650	$854.87	27098	$4,932.05
26060	$1,126.71	26474	$3,800.23	26665	$5,826.84	27100	$4,922.18
26070	$2,767.06	26476	$3,064.07	26675	$918.51	27105	$4,333.22
26075	$3,494.09	26477	$3,534.87	26676	$1,018.78	27110	$5,886.27
26080	$3,037.92	26478	$3,667.55	26685	$5,592.61	27111	$6,221.88
26100	$2,931.00	26479	$4,091.26	26686	$5,797.11	27170	$7,541.31
26105	$3,772.09	26480	$4,543.79	26705	$424.04	27178	$5,836.90
26110	$2,888.24	26483	$5,192.00	26706	$984.08	27193	$546.32
26115	$2,025.63	26485	$4,533.92	26715	$4,562.52	27194	$833.66
26116	$3,444.20	26489	$3,282.35	26720	$265.83	27202	$5,737.62
26117	$4,413.58	26490	$4,961.67	26725	$368.20	27215	$6,194.93
26121	$5,824.88	26492	$5,274.25	26727	$554.03	27220	$903.08
26123	$5,824.88	26494	$4,790.57	26735	$4,105.38	27222	$1,309.98
26125	$2,648.75	26496	$5,267.68	26742	$463.41	27230	$717.96
26130	$4,370.82	26497	$5,034.06	26746	$5,217.09	27232	$1,813.31
26135	$4,263.90	26498	$6,271.23	26755	$261.18	27238	$1,028.42
26140	$3,936.02	26499	$4,945.22	26756	$447.97	27240	$1,952.14
26145	$4,156.98	26500	$3,320.87	26765	$2,882.56	27246	$827.87
26160	$2,342.30	26502	$4,082.69	26775	$272.81	27250	$696.74
26170	$2,816.96	26504	$4,606.31	26776	$482.69	27252	$918.51
26180	$3,658.04	26508	$3,603.35	26785	$3,236.84	27256	$444.12
26185	$3,821.98	26510	$3,603.35	26820	$4,583.28	27257	$972.51
26200	$3,993.04	26516	$3,607.63	26841	$4,425.34	27265	$748.81
26205	$5,361.58	26517	$4,721.48	26842	$5,218.32	27266	$939.72
26210	$3,579.63	26518	$4,537.22	26843	$4,491.15	27275	$2,631.80
26215	$4,755.71	26520	$3,744.58	26844	$4,813.60	27301	$2,485.31
26230	$3,836.24	26525	$3,385.07	26850	$3,808.78	27303	$4,976.67
26235	$3,772.09	26530	$4,035.62	26852	$4,275.29	27305	$3,508.36
26236	$3,551.12	26531	$4,583.28	26860	$3,667.55	27306	$2,005.20
26250	$5,076.46	26535	$3,898.86	26861	$2,644.63	27307	$2,945.27
26255	$5,824.88	26536	$4,701.74	26862	$4,035.62	27310	$5,824.88
26260	$4,884.02	26540	$4,579.99	26863	$3,269.51	27315	$4,634.55
26261	$5,824.88	26541	$5,336.77	26910	$4,035.62	27320	$4,491.98
26262	$4,185.50	26542	$4,253.89	26951	$3,055.51	27323	$901.98
26320	$3,323.04	26545	$4,082.69	26952	$3,539.15	27324	$2,658.98
26350	$4,283.85	26546	$5,063.67	26990	$3,009.42	27327	$2,311.65
26352	$4,566.83	26548	$4,300.31	26991	$1,821.34	27328	$3,700.81
26356	$4,767.54	26550	$7,541.31	26992	$5,347.32	27329	$5,824.88
26357	$4,560.25	26551	$7,541.31	27000	$1,862.19	27330	$4,698.69
26358	$4,830.06	26553	$7,541.31	27001	$2,362.73	27331	$5,411.47
26370	$4,603.02	26554	$7,541.31	27003	$5,625.30	27332	$5,824.88
26372	$4,497.72	26555	$7,465.63	27006	$4,107.09	27333	$5,824.88
26373	$4,649.08	26556	$7,541.31	27025	$5,162.00	27334	$5,824.88
26390	$5,011.02	26560	$3,817.34	27030	$5,824.88	27335	$5,824.88
26392	$5,228.19	26561	$5,320.32	27033	$5,824.88	27340	$3,543.99
26410	$3,235.27	26562	$5,899.42	27035	$5,824.88	27345	$4,812.74
26412	$4,372.70	26565	$4,310.18	27036	$5,824.88	27347	$1,620.84

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TABLE C. — OUTPATIENT FACILITY NATIONWIDE CHARGES; BY CPT (CURRENT PROCEDURAL TERMINOLOGY) CODE — Continued

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CPT Code	Charge	CPT Code	Charge	CPT Code	Charge	CPT Code	Charge
27350	$5,824.88	27536	$6,194.93	27720	$6,662.79	28088	$3,380.05
27355	$5,824.88	27538	$731.45	27730	$3,363.67	28090	$2,952.39
27356	$5,824.88	27540	$6,194.93	27732	$3,898.66	28092	$2,046.07
27360	$5,824.88	27550	$577.18	27734	$4,876.13	28100	$4,064.32
27365	$5,824.88	27552	$743.02	27740	$5,145.93	28102	$5,675.20
27372	$3,237.50	27556	$6,194.93	27742	$5,451.94	28103	$4,798.48
27380	$4,987.99	27557	$6,194.93	27745	$5,346.64	28104	$3,886.13
27381	$6,103.43	27560	$342.61	27750	$746.88	28106	$5,375.83
27385	$5,205.15	27562	$1,080.50	27752	$1,063.14	28107	$4,263.90
27386	$6,218.59	27566	$6,194.93	27756	$1,520.18	28108	$3,793.46
27390	$3,693.23	27570	$2,563.32	27758	$6,194.93	28110	$3,280.26
27391	$4,146.89	27580	$7,541.31	27759	$6,194.93	28111	$4,392.19
27392	$4,918.90	27594	$3,389.35	27762	$729.53	28112	$3,622.40
27393	$4,253.89	27601	$3,208.99	27766	$6,194.93	28113	$3,964.53
27394	$4,279.57	27603	$2,403.59	27781	$716.02	28114	$5,824.88
27395	$5,843.49	27604	$1,014.33	27784	$5,529.40	28116	$4,705.82
27396	$4,718.18	27605	$1,177.78	27792	$6,194.93	28118	$4,869.75
27397	$5,317.03	27606	$2,138.00	27808	$619.60	28119	$4,677.31
27400	$4,991.26	27607	$5,083.60	27810	$1,055.42	28120	$4,392.19
27403	$5,287.42	27610	$5,824.88	27814	$6,194.93	28122	$3,993.04
27405	$5,527.62	27612	$5,824.88	27816	$750.74	28124	$3,729.31
27407	$5,313.73	27614	$2,281.02	27818	$1,248.27	28126	$3,636.66
27409	$7,064.21	27615	$5,824.88	27822	$6,194.93	28130	$5,810.63
27418	$6,323.88	27618	$2,117.58	27823	$6,194.93	28140	$4,313.79
27420	$5,952.07	27619	$3,743.57	27824	$750.74	28150	$3,144.85
27422	$5,935.62	27620	$5,097.85	27825	$1,336.98	28153	$3,643.78
27424	$5,945.49	27625	$5,824.88	27826	$6,194.93	28160	$3,736.45
27425	$4,283.85	27626	$5,824.88	27827	$6,194.93	28171	$5,824.88
27427	$5,784.26	27630	$3,009.42	27828	$6,194.93	28173	$4,891.14
27428	$6,893.11	27635	$5,824.88	27829	$5,696.72	28175	$4,634.55
27429	$6,103.43	27637	$5,824.88	27830	$708.32	28192	$1,964.34
27430	$5,474.96	27638	$5,824.88	27831	$849.08	28193	$2,403.59
27435	$4,708.31	27640	$5,824.88	27832	$5,570.30	28200	$3,992.82
27437	$5,458.51	27641	$5,824.88	27840	$442.18	28202	$4,310.18
27438	$6,458.79	27646	$5,824.88	27842	$509.68	28208	$3,029.64
27440	$6,169.24	27647	$5,824.88	27846	$6,194.93	28210	$4,223.94
27441	$5,402.58	27650	$5,349.93	27848	$6,194.93	28220	$3,483.50
27442	$6,698.98	27652	$5,820.46	27860	$2,071.52	28222	$4,501.02
27443	$6,350.20	27654	$5,991.55	27870	$5,784.53	28225	$2,841.51
27445	$7,541.31	27656	$3,188.19	27871	$4,958.38	28226	$3,273.79
27446	$7,541.31	27658	$3,547.70	27884	$3,269.51	28230	$2,867.20
27447	$7,541.31	27659	$4,326.83	28002	$2,270.79	28232	$2,384.48
27454	$7,541.31	27664	$3,286.64	28003	$3,294.53	28234	$2,280.17
27455	$6,346.91	27665	$3,945.74	28005	$3,707.94	28238	$4,774.12
27457	$6,771.37	27675	$4,501.02	28008	$2,710.05	28240	$2,738.80
27500	$1,124.86	27676	$4,882.70	28010	$3,380.05	28250	$3,736.03
27501	$1,124.86	27680	$3,590.50	28011	$1,780.48	28260	$3,723.18
27502	$1,560.68	27681	$4,359.53	28020	$3,936.02	28261	$4,339.79
27503	$1,560.68	27685	$3,466.39	28022	$2,752.81	28262	$5,314.01
27506	$6,194.93	27686	$4,553.66	28024	$2,413.81	28264	$5,540.77
27507	$6,194.93	27687	$4,159.74	28030	$3,601.02	28270	$2,952.79
27508	$895.36	27690	$4,612.89	28035	$5,204.76	28272	$2,700.28
27509	$895.36	27691	$4,991.28	28043	$1,739.62	28280	$2,777.31
27510	$1,396.77	27692	$2,696.00	28045	$3,643.78	28285	$3,697.50
27511	$6,194.93	27695	$4,751.09	28046	$4,813.16	28288	$3,359.39
27513	$6,194.93	27698	$4,718.18	28050	$3,536.87	28288	$3,432.15
27514	$6,194.93	27698	$5,784.26	28052	$3,522.61	28289	$2,853.50
27516	$1,011.08	27700	$5,757.93	28054	$2,260.58	28290	$4,121.22
27517	$1,589.60	27704	$4,316.76	28060	$3,807.73	28292	$4,714.89
27520	$667.81	27705	$5,929.04	28062	$5,824.88	28293	$5,537.49
27524	$6,194.93	27707	$3,860.14	28070	$3,993.04	28294	$5,409.17
27530	$737.24	27709	$5,998.13	28072	$3,087.82	28296	$5,293.99
27532	$1,176.92	27712	$6,011.29	28080	$3,700.81	28297	$5,363.10
27535	$6,194.93	27715	$6,544.33	28086	$3,023.67	28298	$5,267.86

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TABLE C. — OUTPATIENT FACILITY NATIONWIDE CHARGES; BY CPT (CURRENT PROCEDURAL TERMINOLOGY) CODE — Continued

CPT Code	Charge	CPT Code	Charge	CPT Code	Charge	CPT Code	Charge
28299	$5,609.87	28740	$4,027.06	29871	$4,813.88	31070	$3,285.47
28300	$4,540.50	28750	$4,104.09	29874	$4,949.31	31075	$4,976.69
28302	$5,320.32	28755	$3,406.47	29875	$4,837.13	31080	$4,976.69
28304	$4,514.18	28760	$4,138.34	29876	$5,176.02	31081	$4,976.69
28305	$5,636.20	28810	$3,500.63	29877	$4,994.46	31084	$4,976.69
28306	$3,783.10	28820	$2,931.39	29879	$5,267.79	31085	$4,976.69
28307	$4,326.63	28825	$2,854.36	29880	$5,627.81	31086	$4,976.69
28308	$4,271.02	29065	$314.33	29881	$5,056.03	31087	$4,976.69
28309	$4,655.67	29075	$293.75	29882	$5,747.82	31090	$4,976.69
28310	$3,611.90	29085	$287.19	29883	$6,376.09	31200	$3,255.04
28312	$3,778.83	29105	$287.19	29884	$4,990.36	31201	$4,294.12
28313	$2,927.11	29125	$279.42	29885	$5,013.61	31205	$4,737.57
28315	$3,641.86	29126	$281.21	29886	$4,817.98	31225	$4,976.69
28320	$5,254.52	29130	$267.48	29887	$6,044.30	31230	$4,976.69
28322	$3,825.90	29131	$280.62	29888	$7,851.45	31233	$2,197.40
28340	$4,481.28	29200	$273.46	29889	$6,270.19	31235	$1,809.58
28341	$4,915.61	29220	$280.02	29891	$5,281.92	31237	$2,672.46
28344	$3,410.75	29240	$273.46	29892	$5,281.92	31238	$2,807.24
28345	$4,112.66	29260	$271.06	29893	$4,599.10	31239	$4,976.69
28360	$6,314.01	29280	$269.87	29894	$4,972.57	31240	$2,274.95
28400	$577.18	29345	$338.15	29895	$4,939.74	31254	$3,472.42
28405	$833.66	29365	$320.83	29897	$4,968.46	31255	$4,576.71
28406	$1,255.99	29405	$313.25	29898	$5,486.63	31256	$2,820.28
28415	$6,194.93	29445	$411.79	30115	$2,216.78	31287	$3,520.25
28420	$6,194.93	29505	$291.37	30117	$2,245.87	31276	$4,168.04
28435	$729.53	29515	$285.39	30118	$4,728.87	31287	$3,120.27
28436	$889.59	29520	$278.83	30120	$3,768.06	31288	$3,437.64
28445	$6,194.93	29530	$278.23	30124	$791.57	31290	$4,976.69
28455	$571.39	29540	$275.24	30125	$3,659.36	31291	$4,976.69
28456	$519.33	29550	$274.05	30130	$1,111.51	31292	$4,976.69
28465	$5,510.82	29580	$313.25	30140	$2,439.77	31293	$4,976.69
28470	$428.69	29590	$274.05	30150	$4,689.75	31294	$4,976.69
28475	$532.82	29800	$4,436.29	30160	$4,976.69	31300	$4,976.69
28476	$731.45	29804	$5,345.45	30220	$956.39	31320	$2,928.97
28485	$5,191.06	29815	$4,549.84	30310	$1,063.04	31360	$4,976.69
28495	$270.48	29819	$5,034.13	30320	$3,111.57	31365	$4,976.69
28496	$480.75	29820	$4,952.04	30400	$4,976.69	31367	$4,976.69
28505	$3,259.70	29821	$5,049.19	30410	$4,976.69	31368	$4,976.69
28515	$270.48	29822	$5,005.40	30420	$4,976.69	31370	$4,976.69
28525	$2,196.88	29823	$5,373.89	30430	$3,894.14	31375	$4,976.69
28531	$2,025.45	29825	$5,034.13	30435	$4,976.69	31380	$4,976.69
28545	$314.68	29826	$6,009.01	30450	$4,976.69	31382	$4,976.69
28546	$609.96	29830	$4,615.50	30460	$4,976.69	31390	$4,976.69
28555	$5,525.69	29834	$4,688.65	30462	$4,976.69	31395	$4,976.69
28570	$379.83	29835	$4,712.64	30465	$4,976.69	31400	$4,641.92
28575	$615.75	29836	$4,849.44	30520	$3,972.40	31420	$4,759.31
28576	$615.75	29837	$4,763.26	30540	$4,128.91	31500	$597.66
28585	$5,295.17	29838	$4,852.18	30545	$4,976.69	31510	$128.63
28605	$517.39	29840	$4,337.79	30580	$3,959.35	31511	$423.15
28606	$754.59	29843	$4,653.82	30600	$2,885.49	31512	$1,227.86
28615	$5,295.17	29844	$4,652.45	30620	$4,102.82	31513	$1,732.01
28630	$249.55	29845	$4,845.34	30630	$3,959.35	31515	$587.96
28635	$347.26	29846	$4,904.16	30802	$403.75	31520	$1,082.42
28636	$575.24	29847	$4,815.25	30903	$316.50	31525	$1,625.37
28645	$3,545.41	29848	$4,414.41	30905	$1,227.86	31526	$2,236.17
28665	$237.92	29850	$5,387.80	30906	$539.49	31527	$2,391.30
28666	$552.11	29851	$6,757.28	30915	$3,398.51	31528	$2,022.88
28675	$3,271.13	29855	$7,272.59	30920	$4,976.69	31529	$1,877.44
28705	$7,366.92	29856	$7,279.65	31020	$2,071.35	31530	$2,824.62
28715	$6,452.21	29860	$4,549.84	31030	$4,076.74	31531	$2,963.75
28725	$5,501.29	29861	$5,649.00	31032	$4,389.76	31535	$2,759.41
28730	$5,356.51	29862	$6,136.07	31040	$4,715.84	31536	$2,950.70
28735	$5,606.58	29863	$5,183.08	31050	$3,772.40	31540	$3,220.26
28737	$5,313.73	29870	$4,437.65	31051	$4,646.27	31541	$3,228.95

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TABLE C. — OUTPATIENT FACILITY NATIONWIDE CHARGES; BY CPT (CURRENT PROCEDURAL TERMINOLOGY) CODE — Continued

CPT Code	Charge	CPT Code	Charge	CPT Code	Charge	CPT Code	Charge
31560	$3,415.90	33010	$2,359.08	35905	$6,617.55	37565	$4,303.42
31561	$3,972.40	33011	$1,805.37	35907	$6,617.55	37600	$5,115.75
31570	$3,098.52	33212	$5,388.80	36010	$3,093.05	37605	$5,511.68
31571	$3,207.22	33213	$5,388.80	36011	$2,822.64	37607	$3,805.09
31576	$1,596.28	33214	$5,402.46	36012	$3,538.86	37609	$3,231.67
31577	$2,129.52	33216	$5,143.06	36013	$3,093.05	37615	$5,552.64
31578	$2,517.34	33217	$5,143.06	36014	$3,272.64	37618	$5,115.75
31580	$4,976.69	33218	$4,849.52	36015	$3,538.86	37620	$7,225.09
31582	$4,976.69	33220	$4,849.52	36100	$3,484.25	37650	$4,460.42
31584	$4,976.69	33222	$5,443.41	36120	$3,221.82	37700	$4,201.02
31585	$2,885.49	33223	$5,607.25	36140	$2,191.68	37720	$5,204.49
31586	$4,094.13	33233	$3,518.38	36145	$3,221.82	37730	$6,460.55
31587	$4,381.07	33234	$3,654.90	36160	$3,299.94	37735	$7,225.09
31588	$4,976.69	33235	$3,859.70	36200	$3,579.82	37760	$6,822.34
31590	$3,750.66	33240	$5,388.80	36215	$3,613.95	37780	$2,809.76
31595	$4,220.21	33241	$3,157.44	36216	$3,962.10	37785	$1,637.98
31600	$2,976.79	33930	$7,225.09	36217	$4,392.16	37790	$5,607.25
31601	$3,376.77	34101	$7,225.09	36245	$3,866.53	38120	$7,225.09
31603	$3,085.49	34111	$6,897.43	36246	$3,962.10	38230	$3,613.95
31610	$4,146.30	34401	$7,225.09	36247	$4,392.16	38231	$2,140.17
31611	$4,050.65	34421	$6,801.86	36260	$5,317.19	38305	$2,899.90
31612	$626.75	34451	$7,225.09	36261	$3,238.50	38308	$4,016.71
31613	$1,635.06	34471	$4,112.28	36262	$2,861.27	38500	$2,423.45
31614	$4,176.73	34490	$6,678.99	36450	$2,796.89	38505	$1,818.25
31615	$1,382.98	34520	$7,225.09	36455	$3,265.81	38510	$3,450.12
31622	$2,478.56	35011	$7,225.09	36460	$4,931.44	38520	$3,757.30
31623	$2,695.97	35013	$7,225.09	36481	$5,334.20	38525	$3,484.25
31624	$2,530.17	35045	$7,225.09	36489	$1,818.25	38530	$3,880.17
31625	$2,859.40	35161	$7,225.09	36490	$2,153.05	38542	$4,624.25
31628	$3,068.09	35184	$7,225.09	36491	$2,397.71	38550	$3,921.14
31629	$2,859.40	35188	$7,225.09	36520	$2,835.52	38555	$6,678.99
31630	$2,863.76	35189	$7,225.09	36522	$3,409.15	38562	$8,412.76
31631	$2,959.41	35190	$7,225.09	36530	$5,006.53	38570	$5,235.50
31635	$3,007.22	35201	$7,225.09	36531	$4,699.34	38571	$6,210.34
31640	$3,428.95	35206	$7,225.09	36532	$2,655.24	38572	$6,921.56
31641	$3,650.67	35207	$7,225.09	36533	$4,644.73	38700	$7,225.09
31643	$2,014.14	35216	$7,225.09	36534	$3,818.74	38720	$7,225.09
31645	$2,759.41	35236	$7,225.09	36535	$2,706.74	38724	$7,225.09
31646	$2,391.30	35266	$7,225.09	36640	$3,293.11	38740	$4,938.26
31656	$1,809.58	35281	$7,225.09	36680	$1,972.77	38745	$7,225.09
31700	$830.35	35321	$7,225.09	36800	$3,231.67	38760	$6,242.10
31710	$364.97	35450	$7,225.09	36810	$4,699.34	38765	$7,225.09
31715	$112.26	35458	$7,225.09	36815	$3,682.22	38770	$7,225.09
31717	$200.15	35460	$3,873.35	36821	$6,658.50	38780	$7,225.09
31720	$209.85	35470	$7,225.09	36825	$7,225.09	38794	$3,654.90
31730	$1,887.15	35471	$7,225.09	36830	$7,225.09	39400	$5,211.32
31750	$4,976.69	35472	$4,180.54	36832	$6,562.93	39530	$7,225.09
31755	$4,976.69	35473	$6,248.92	36835	$4,050.84	40500	$4,243.59
31780	$4,976.69	35474	$7,225.09	36860	$3,470.59	40510	$4,402.96
31781	$4,976.69	35475	$7,225.09	36861	$3,607.12	40520	$4,170.82
31785	$4,976.69	35476	$3,873.35	36870	$7,225.09	40525	$5,490.87
31786	$4,976.69	35483	$7,225.09	37140	$7,225.09	40527	$6,090.27
31800	$3,376.77	35490	$7,225.09	37145	$7,225.09	40530	$4,378.70
31820	$2,802.90	35492	$6,713.12	37160	$7,225.09	40650	$3,997.59
31825	$3,420.25	35493	$7,225.09	37200	$2,423.45	40652	$4,236.66
31830	$2,837.67	35494	$7,225.09	37201	$5,470.72	40654	$4,635.09
32000	$364.97	35495	$4,801.74	37202	$4,851.56	40700	$5,542.85
32002	$791.57	35761	$5,682.34	37203	$4,323.89	40701	$7,004.94
32005	$549.18	35860	$5,682.34	37204	$7,225.09	40702	$5,858.13
32020	$2,042.26	35870	$7,225.09	37205	$5,238.63	40720	$5,934.35
32095	$4,833.22	35875	$7,225.09	37206	$3,477.42	40761	$6,367.44
32400	$927.30	35876	$7,225.09	37207	$5,238.63	40801	$1,932.62
32405	$1,547.81	35901	$6,617.55	37208	$2,191.68	40805	$2,909.44
32420	$946.69	35903	$6,617.55	37250	$1,844.00	40806	$296.45

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TABLE C. — OUTPATIENT FACILITY NATIONWIDE CHARGES; BY CPT (CURRENT PROCEDURAL TERMINOLOGY) CODE — Continued

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CPT Code	Charge	CPT Code	Charge	CPT Code	Charge	CPT Code	Charge
40814	$3,730.81	42305	$2,518.71	43219	$1,292.02	43850	$6,644.62
40816	$3,727.35	42320	$2,091.35	43220	$998.36	43870	$4,610.84
40818	$2,604.18	42325	$2,445.45	43226	$1,097.53	43880	$5,470.08
40831	$2,225.66	42326	$4,053.03	43227	$1,537.78	44005	$5,480.47
40840	$4,787.54	42335	$2,872.80	43228	$1,565.32	44015	$3,373.41
40842	$4,787.54	42340	$4,084.21	43231	$651.72	44100	$1,541.89
40843	$5,660.64	42408	$3,734.28	43232	$750.46	44110	$5,269.14
40844	$6,641.15	42409	$3,287.95	43234	$1,097.53	44201	$5,061.08
40845	$7,004.94	42410	$4,669.74	43235	$1,288.21	44312	$3,617.63
41005	$613.92	42415	$7,004.94	43239	$1,429.33	44314	$4,926.12
41006	$1,090.11	42420	$7,004.94	43240	$1,003.12	44340	$1,908.20
41007	$3,397.84	42425	$6,457.52	43241	$1,204.31	44345	$4,288.63
41008	$1,151.17	42440	$5,269.14	43242	$692.38	44346	$4,915.73
41009	$3,758.53	42450	$3,796.64	43243	$1,692.84	44360	$1,341.61
41010	$308.67	42500	$4,208.94	43244	$1,440.77	44361	$1,471.28
41015	$919.17	42505	$4,967.70	43245	$1,504.46	44363	$1,257.70
41016	$3,890.18	42507	$4,222.80	43246	$1,653.71	44364	$1,636.33
41017	$1,566.32	42508	$5,248.34	43247	$1,504.46	44365	$1,558.08
41018	$3,973.34	42509	$5,144.40	43248	$1,440.77	44366	$1,756.61
41105	$1,114.54	42510	$5,262.21	43249	$1,333.99	44369	$1,775.45
41110	$1,444.22	42600	$3,959.48	43250	$1,459.84	44370	$570.40
41112	$2,775.12	42665	$2,347.76	43251	$1,553.72	44372	$1,756.61
41113	$3,793.17	42720	$2,164.61	43255	$1,665.31	44373	$1,591.40
41114	$4,825.65	42725	$4,153.50	43256	$570.40	44376	$1,550.83
41115	$2,030.30	42802	$1,102.33	43258	$1,689.95	44377	$1,581.27
41116	$2,897.22	42804	$1,187.80	43259	$1,546.49	44378	$1,727.62
41120	$5,134.01	42806	$1,566.32	43260	$1,830.51	44379	$849.19
41130	$5,750.72	42808	$2,933.85	43261	$1,830.51	44380	$750.46
41135	$7,004.94	42810	$3,690.89	43262	$2,142.07	44382	$880.13
41140	$7,004.94	42815	$5,366.14	43263	$1,808.77	44383	$370.01
41145	$7,004.94	42820	$3,703.10	43264	$2,256.54	44385	$1,005.99
41150	$7,004.94	42821	$3,973.34	43265	$1,952.23	44386	$704.69
41153	$7,004.94	42825	$3,080.37	43267	$2,037.73	44388	$1,487.07
41155	$7,004.94	42826	$3,900.59	43268	$2,142.07	44389	$1,543.59
41250	$1,163.37	42830	$2,127.98	43269	$1,926.14	44390	$1,120.41
41251	$2,384.39	42831	$2,738.49	43271	$2,069.61	44391	$1,726.17
41252	$2,726.28	42835	$2,127.98	43272	$1,775.45	44392	$1,711.68
41500	$3,751.60	42836	$3,263.53	43280	$5,975.43	44393	$1,747.90
41510	$2,946.07	42842	$4,929.59	43300	$6,093.73	44394	$1,711.68
41520	$3,373.41	42844	$6,370.91	43305	$7,004.94	44397	$669.14
41805	$882.54	42845	$7,004.94	43320	$6,658.47	44640	$4,877.62
41806	$1,859.36	42860	$2,164.61	43324	$6,727.77	45000	$1,798.30
41822	$3,556.57	42870	$2,689.65	43325	$6,634.21	45005	$1,432.00
41827	$3,914.43	42890	$5,726.47	43330	$6,547.60	45020	$3,043.74
41874	$3,789.71	42892	$6,395.16	43400	$6,360.50	45100	$2,152.40
42104	$1,834.93	42900	$4,087.67	43410	$5,695.29	45108	$3,104.80
42106	$2,567.55	42950	$5,698.75	43420	$4,648.95	45111	$6,689.66
42107	$4,302.48	42953	$4,808.33	43450	$687.18	45116	$6,343.18
42120	$4,964.23	42955	$3,761.99	43453	$1,700.63	45130	$5,702.22
42140	$1,505.26	42960	$1,175.59	43456	$2,872.80	45150	$3,782.78
42145	$5,681.43	42962	$4,683.60	43458	$1,712.83	45160	$5,196.37
42180	$2,591.97	42970	$1,114.54	43460	$1,895.99	45170	$4,212.41
42182	$3,813.96	42972	$4,188.14	43600	$467.40	45190	$4,375.24
42200	$5,102.83	43020	$4,891.48	43750	$4,118.85	45305	$437.72
42205	$6,266.96	43030	$5,542.85	43752	$386.12	45307	$601.71
42210	$6,946.04	43100	$4,756.36	43760	$699.40	45308	$548.32
42215	$5,272.60	43130	$6,253.10	43761	$1,151.17	45309	$548.32
42220	$4,482.65	43200	$895.39	43810	$5,258.73	45315	$571.20
42225	$5,002.34	43202	$1,036.49	43830	$4,756.36	45317	$597.90
42226	$5,345.36	43204	$1,565.32	43831	$4,413.35	45320	$830.54
42227	$5,179.05	43205	$1,147.10	43832	$5,366.14	45321	$678.00
42235	$4,534.62	43215	$1,208.12	43846	$7,004.94	45327	$358.40
42260	$3,990.66	43216	$1,124.22	43847	$7,004.94	45331	$731.39
42281	$1,651.79	43217	$1,333.99	43848	$7,004.94	45332	$788.59

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TABLE C. — OUTPATIENT FACILITY NATIONWIDE CHARGES; BY CPT (CURRENT PROCEDURAL TERMINOLOGY) CODE — Continued

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CPT Code	Charge	CPT Code	Charge	CPT Code	Charge	CPT Code	Charge
45333	$971.66	47000	$1,566.32	49496	$4,357.92	50575	$5,421.48
45334	$1,150.92	47001	$1,566.32	49500	$4,337.13	50576	$5,421.48
45337	$1,108.97	47010	$4,950.38	49501	$4,357.92	50578	$3,804.47
45338	$971.66	47011	$3,275.74	49505	$4,174.30	50580	$3,620.92
45339	$1,353.05	47015	$4,950.38	49507	$4,357.92	50590	$5,421.48
45341	$599.44	47100	$3,751.60	49520	$4,420.28	50605	$5,421.45
45342	$643.00	47300	$5,269.14	49521	$4,357.92	50610	$5,421.48
45345	$494.89	47425	$6,668.87	49525	$4,534.62	50620	$5,421.48
45355	$563.57	47460	$7,004.94	49540	$4,413.35	50630	$5,421.48
45378	$1,562.43	47490	$3,848.61	49550	$4,208.94	50684	$565.41
45379	$1,736.31	47500	$1,700.63	49553	$4,208.94	50688	$462.49
45380	$1,658.06	47510	$3,361.21	49555	$4,714.79	50690	$390.44
45382	$1,814.57	47511	$3,361.21	49557	$4,714.79	50700	$5,421.48
45383	$1,821.81	47525	$1,798.30	49560	$4,569.27	50727	$5,185.49
45384	$1,713.14	47530	$1,700.63	49561	$4,569.27	50728	$5,421.48
45385	$1,927.60	47552	$1,517.47	49565	$4,832.58	50920	$5,421.48
45387	$817.25	47553	$3,928.30	49566	$4,832.58	50945	$4,825.77
45500	$4,673.20	47554	$3,973.34	49568	$2,982.70	50947	$5,421.48
45505	$4,791.01	47555	$3,068.17	49570	$4,129.25	50948	$5,421.48
45541	$6,135.31	47556	$3,068.17	49572	$4,551.94	50951	$1,779.96
45560	$4,271.30	47560	$2,554.02	49580	$3,949.09	50953	$1,769.67
45562	$5,414.65	47561	$3,293.55	49582	$4,208.94	50955	$2,685.72
45563	$7,004.94	47562	$4,722.53	49585	$4,139.64	50957	$2,634.26
45900	$565.08	47563	$4,879.90	49587	$4,139.64	50959	$3,446.11
45905	$723.81	47564	$5,293.42	49590	$4,562.34	50961	$2,757.76
45910	$919.17	47570	$5,080.49	49600	$4,434.15	50970	$5,010.68
45915	$809.28	47600	$5,220.62	49605	$5,580.96	50972	$1,646.15
46030	$345.30	47605	$5,431.97	49610	$4,510.37	50974	$5,421.48
46040	$1,920.40	47630	$3,910.98	49611	$5,729.93	50976	$5,421.48
46045	$2,115.76	47700	$5,255.28	49650	$3,883.14	50978	$4,031.73
46060	$4,465.33	47801	$4,510.37	49651	$4,173.22	50980	$3,227.59
46070	$1,529.69	48102	$2,799.54	49900	$3,879.79	51005	$534.53
46080	$2,457.65	48510	$5,224.09	50020	$5,421.48	51010	$1,059.47
46200	$3,751.60	48511	$3,556.57	50021	$2,696.01	51020	$5,421.48
46210	$797.07	49000	$4,964.23	50040	$5,421.48	51030	$4,451.28
46211	$2,176.82	49010	$5,019.68	50060	$5,421.48	51040	$4,722.24
46220	$626.13	49020	$4,281.70	50080	$5,421.48	51045	$4,827.13
46250	$3,324.58	49021	$3,900.59	50081	$5,421.48	51050	$5,421.48
46255	$4,247.05	49040	$4,877.62	50120	$5,421.48	51060	$5,421.48
46257	$4,423.74	49041	$3,556.57	50125	$5,421.48	51065	$5,421.48
46258	$4,645.49	49060	$4,531.15	50200	$2,747.48	51080	$5,019.42
46260	$4,714.79	49061	$3,275.74	50205	$5,421.48	51500	$5,421.48
46261	$4,905.34	49062	$5,407.72	50390	$1,800.55	51520	$5,421.48
46262	$4,939.98	49080	$919.17	50392	$2,490.16	51530	$5,421.48
46270	$2,140.19	49081	$772.65	50393	$3,122.71	51535	$5,421.48
46275	$4,350.99	49085	$3,810.50	50395	$3,402.40	51600	$349.27
46280	$4,718.24	49180	$2,079.15	50396	$575.71	51605	$369.85
46285	$2,640.81	49200	$5,515.12	50398	$606.59	51610	$338.97
46288	$3,848.61	49215	$5,556.69	50520	$5,421.48	51710	$647.75
46608	$525.44	49250	$4,177.76	50541	$4,629.35	51715	$2,788.64
46610	$441.54	49255	$4,399.49	50544	$5,421.48	51725	$1,100.64
46611	$441.54	49320	$3,805.99	50545	$5,421.48	51726	$1,388.83
46612	$647.49	49321	$3,898.57	50546	$5,421.48	51736	$483.07
46615	$708.51	49322	$3,926.34	50547	$5,421.48	51741	$637.47
46700	$4,739.04	49323	$4,401.58	50548	$5,421.48	51772	$1,028.59
46750	$4,690.52	49400	$1,224.43	50551	$2,315.18	51784	$1,131.52
46751	$4,021.84	49420	$1,786.10	50553	$1,769.67	51785	$1,131.52
46753	$4,305.95	49421	$4,046.10	50555	$4,599.87	51792	$2,047.57
46754	$1,863.99	49422	$4,046.10	50557	$4,608.61	51795	$1,543.22
46760	$4,967.70	49425	$5,549.78	50559	$1,440.30	51797	$1,049.18
46922	$1,419.79	49426	$4,479.19	50561	$4,996.97	51800	$5,421.48
46924	$2,982.70	49428	$1,126.74	50570	$1,553.52	51820	$5,421.48
46937	$2,726.28	49429	$3,761.99	50572	$5,421.48	51840	$5,421.48
46938	$2,909.44	49495	$4,337.13	50574	$5,421.48	51841	$5,421.48

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TABLE C. — OUTPATIENT FACILITY NATIONWIDE CHARGES; BY CPT (CURRENT PROCEDURAL TERMINOLOGY) CODE — Continued

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CPT Code	Charge	CPT Code	Charge	CPT Code	Charge	CPT Code	Charge
51845	$5,421.48	52540	$5,421.48	54304	$4,478.97	55200	$1,240.77
51860	$5,421.48	52647	$5,421.48	54308	$4,159.33	55250	$1,885.88
51865	$5,421.48	52648	$5,421.48	54312	$4,559.45	55300	$1,964.07
51880	$4,827.13	52700	$3,376.19	54318	$4,350.89	55400	$4,240.94
51900	$5,421.48	53000	$1,872.59	54322	$4,359.96	55450	$1,866.33
51920	$5,421.48	53010	$3,568.48	54324	$4,741.94	55500	$3,537.73
51980	$5,421.48	53020	$905.08	54326	$4,688.66	55520	$2,364.82
51990	$4,255.51	53040	$1,965.23	54328	$4,712.47	55530	$4,086.80
51992	$4,388.57	53080	$3,970.55	54332	$4,916.48	55535	$3,615.93
52000	$1,430.00	53200	$1,193.27	54336	$5,331.33	55540	$3,752.77
52005	$2,325.48	53210	$5,421.48	54340	$4,185.41	55680	$3,645.25
52007	$2,956.63	53215	$5,421.48	54344	$5,331.33	55700	$781.38
52010	$2,016.68	53220	$4,661.05	54348	$4,814.47	55705	$2,609.17
52204	$2,510.74	53230	$5,421.48	54352	$5,331.33	55720	$2,746.01
52214	$2,939.16	53235	$4,879.57	54360	$4,293.09	55725	$4,134.40
52224	$3,026.56	53240	$4,276.47	54380	$4,565.12	55801	$4,943.69
52234	$4,608.61	53250	$4,031.73	54385	$4,683.00	55810	$5,331.33
52235	$5,421.48	53260	$1,213.86	54390	$5,035.50	55812	$5,331.33
52240	$5,421.48	53265	$1,996.11	54400	$4,618.39	55815	$6,331.33
52250	$2,991.60	53275	$2,500.45	54401	$4,779.34	55821	$5,037.77
52260	$2,232.83	53400	$5,421.48	54402	$4,177.48	55831	$5,147.71
52270	$3,524.78	53405	$5,421.48	54405	$5,171.51	55859	$4,165.01
52275	$3,481.07	53410	$5,421.48	54407	$4,769.14	55860	$4,305.56
52276	$4,494.99	53415	$5,421.48	54409	$4,514.11	55870	$1,103.92
52277	$4,704.75	53420	$5,421.48	54420	$4,374.70	55873	$4,328.83
52281	$2,438.70	53425	$5,421.48	54430	$4,289.68	56440	$3,584.29
52282	$4,494.99	53430	$5,421.48	54435	$3,371.56	56441	$2,683.89
52283	$1,615.27	53440	$5,421.48	54450	$354.23	56515	$3,584.29
52285	$3,061.53	53442	$5,421.48	54505	$1,133.26	56620	$3,584.29
52290	$2,469.57	53445	$5,421.48	54510	$2,276.85	56625	$3,584.29
52300	$3,524.78	53447	$5,421.48	54512	$2,744.88	56700	$3,031.77
52301	$3,524.78	53449	$5,421.48	54520	$4,099.26	56720	$398.99
52305	$3,551.00	53450	$2,881.28	54522	$3,401.16	56740	$3,584.29
52310	$3,105.23	53460	$2,572.49	54530	$4,327.08	56800	$3,584.29
52315	$4,049.22	53502	$4,835.86	54535	$4,465.36	56805	$3,584.29
52317	$5,421.48	53505	$5,019.42	54550	$4,092.46	56810	$3,584.29
52318	$5,421.48	53510	$5,421.48	54560	$4,316.88	57000	$3,461.51
52320	$4,739.72	53515	$5,421.48	54600	$3,830.95	57010	$3,584.29
52325	$5,421.48	53520	$5,421.48	54620	$2,560.30	57020	$637.50
52327	$3,717.07	53605	$534.53	54640	$4,357.69	57022	$864.58
52330	$3,524.78	53665	$431.62	54650	$4,383.76	57023	$864.58
52332	$3,297.52	53850	$5,421.48	54660	$2,638.49	57065	$3,584.29
52334	$3,402.40	53852	$5,421.48	54670	$3,516.18	57105	$2,520.18
52341	$1,592.18	54001	$437.57	54680	$4,425.69	57106	$2,420.13
52342	$1,719.78	54015	$432.36	54690	$4,147.35	57107	$3,584.29
52343	$1,898.40	54057	$800.92	54692	$3,698.14	57120	$3,584.29
52344	$2,026.00	54060	$609.48	54700	$468.83	57130	$3,584.29
52345	$2,153.58	54065	$1,729.48	54800	$1,240.77	57135	$3,256.86
52346	$2,415.16	54100	$338.59	54820	$1,876.10	57200	$3,584.29
52351	$1,809.09	54105	$526.12	54830	$2,746.01	57210	$3,584.29
52352	$2,472.56	54110	$4,180.87	54840	$4,045.99	57220	$3,584.29
52353	$2,855.35	54111	$4,537.91	54860	$4,083.40	57230	$3,584.29
52354	$2,255.67	54112	$4,726.06	54861	$4,324.82	57240	$3,584.29
52355	$2,498.08	54115	$3,400.89	54900	$4,511.84	57250	$3,584.29
52400	$3,428.11	54120	$4,230.74	54901	$4,890.42	57260	$3,584.29
52450	$4,853.34	54125	$4,807.67	55040	$4,050.52	57265	$3,584.29
52500	$5,421.48	54152	$1,094.16	55041	$4,344.09	57268	$3,584.29
52510	$5,421.48	54160	$937.77	55060	$3,352.01	57270	$3,584.29
52601	$5,421.48	54161	$1,436.26	55100	$328.18	57280	$3,584.29
52606	$3,393.67	54205	$4,076.60	55110	$2,716.69	57282	$3,584.29
52612	$5,421.48	54220	$859.57	55120	$1,064.84	57284	$3,584.29
52614	$5,421.48	54240	$515.71	55150	$4,115.13	57287	$3,584.29
52620	$5,150.53	54250	$416.73	55175	$3,703.90	57288	$3,584.29
52630	$5,421.48	54300	$4,277.21	55180	$4,271.55	57289	$3,584.29

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TABLE C. — OUTPATIENT FACILITY NATIONWIDE CHARGES; BY CPT (CURRENT PROCEDURAL TERMINOLOGY) CODE — Continued

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CPT Code	Charge	CPT Code	Charge	CPT Code	Charge	CPT Code	Charge
57291	$3,584.29	59015	$680.18	61619	$6,429.77	64577	$1,994.88
57300	$3,584.29	59020	$695.06	61624	$6,429.77	64580	$2,084.77
57310	$3,584.29	59025	$356.46	61626	$6,429.77	64590	$1,443.52
57311	$3,584.29	59160	$2,743.25	61708	$6,429.77	64595	$1,012.02
57320	$3,584.29	59320	$1,784.75	61710	$6,429.77	64600	$1,353.62
57335	$3,584.29	59325	$2,709.90	61751	$6,429.77	64605	$1,275.70
57400	$274.31	59350	$3,117.61	61770	$6,429.77	64610	$4,691.76
57410	$299.24	59409	$3,204.66	61790	$6,429.77	64620	$940.10
57460	$3,441.05	59412	$1,318.01	61791	$6,196.05	64622	$1,431.53
57513	$3,584.29	59812	$3,146.62	61793	$6,429.77	64623	$850.20
57520	$3,584.29	59820	$3,204.66	61795	$3,001.73	64626	$2,095.21
57522	$3,584.29	59821	$2,568.21	61885	$1,515.43	64627	$1,801.99
57530	$3,584.29	59830	$3,204.66	61888	$1,689.23	64630	$1,383.59
57550	$3,584.29	59841	$3,204.66	62000	$3,774.84	64680	$1,269.71
57555	$3,584.29	59850	$3,204.66	62194	$1,467.49	64702	$2,869.87
57556	$3,584.29	59851	$3,204.66	62225	$3,217.47	64704	$3,355.32
57700	$3,584.29	59852	$3,204.66	62230	$6,232.01	64708	$4,374.14
57720	$3,584.29	59855	$3,204.66	62252	$930.67	64712	$5,452.90
57820	$3,563.82	59856	$3,204.66	62256	$4,164.39	64713	$5,974.30
58120	$3,584.29	59857	$3,204.66	62268	$2,126.74	64714	$4,014.55
58140	$3,584.29	59866	$2,684.90	62269	$1,389.58	64716	$3,235.45
58145	$3,584.29	59870	$2,726.57	62270	$763.23	64718	$4,290.24
58345	$3,584.29	59871	$1,784.75	62272	$946.09	64719	$3,307.38
58353	$1,409.60	60000	$663.52	62273	$1,012.02	64721	$3,169.53
58400	$3,584.29	60100	$970.07	62280	$763.23	64722	$3,439.22
58410	$3,584.29	60200	$3,948.63	62282	$1,359.62	64726	$772.29
58550	$3,584.29	60210	$5,542.80	62284	$1,527.42	64727	$2,282.55
58551	$3,584.29	60212	$5,758.55	62287	$4,511.99	64732	$2,923.82
58555	$2,304.84	60220	$5,458.89	62290	$1,455.50	64734	$3,103.61
58558	$2,663.51	60225	$6,429.77	62291	$1,407.56	64736	$3,013.71
58559	$3,470.53	60240	$6,429.77	62292	$5,524.82	64738	$3,379.29
58560	$3,584.29	60252	$6,429.77	62294	$3,840.76	64740	$3,445.21
58561	$3,584.29	60254	$6,429.77	62350	$2,432.37	64742	$3,337.34
58562	$1,984.60	60260	$2,222.62	62351	$3,433.23	64744	$3,792.82
58563	$3,584.29	60270	$6,429.77	62360	$1,012.02	64746	$2,600.19
58600	$3,584.29	60271	$6,429.77	62361	$1,946.94	64771	$4,188.36
58615	$3,584.29	60280	$4,350.17	62362	$2,444.36	64772	$4,398.11
58660	$3,584.29	60281	$3,361.31	62365	$2,420.39	64774	$1,982.89
58661	$3,584.29	60500	$6,429.77	62367	$346.13	64776	$2,006.86
58662	$3,584.29	60502	$6,429.77	62368	$530.00	64778	$1,976.90
58670	$3,584.29	60505	$6,429.77	63055	$6,429.77	64782	$3,157.54
58671	$3,584.29	60545	$6,429.77	63057	$2,642.14	64783	$2,294.54
58672	$3,584.29	60600	$6,429.77	63185	$6,429.77	64784	$3,720.90
58673	$3,584.29	60605	$6,429.77	63600	$6,429.77	64786	$6,429.77
58700	$3,584.29	60650	$6,429.77	63610	$4,374.14	64787	$2,420.39
58720	$3,584.29	61000	$982.05	63650	$4,781.67	64788	$2,516.29
58740	$3,584.29	61020	$1,095.92	63655	$6,429.77	64790	$4,601.88
58750	$3,584.29	61026	$1,455.50	63660	$4,404.10	64792	$5,728.59
58752	$3,584.29	61050	$1,077.94	63685	$4,775.68	64795	$1,767.15
58760	$3,584.29	61055	$1,467.49	63688	$3,894.69	64802	$3,577.06
58770	$3,584.29	61215	$3,565.07	63744	$5,225.16	64809	$6,429.77
58800	$3,584.29	61500	$6,429.77	63746	$3,648.97	64820	$4,697.77
58805	$3,584.29	61501	$6,429.77	64410	$763.23	64831	$2,366.45
58820	$3,584.29	61563	$6,429.77	64415	$355.30	64832	$1,179.82
58823	$3,584.29	61575	$6,429.77	64417	$690.71	64834	$2,438.37
58825	$3,584.29	61576	$6,429.77	64420	$699.76	64835	$3,912.67
58900	$3,584.29	61580	$6,429.77	64421	$838.21	64836	$4,356.16
58920	$3,584.29	61581	$6,429.77	64430	$754.16	64837	$3,007.72
58925	$3,584.29	61590	$6,429.77	64510	$763.23	64840	$6,429.77
58940	$3,584.29	61591	$6,429.77	64520	$772.29	64856	$5,261.12
58970	$3,584.29	61595	$6,429.77	64530	$1,041.98	64857	$6,052.21
58974	$3,584.29	61605	$6,429.77	64550	$516.47	64858	$6,429.77
58976	$3,584.29	61615	$6,429.77	64573	$2,234.61	64859	$2,438.37
59012	$1,384.70	61618	$6,429.77	64575	$2,180.67	64861	$6,429.77

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TABLE C. — OUTPATIENT FACILITY NATIONWIDE CHARGES; BY CPT (CURRENT PROCEDURAL TERMINOLOGY) CODE — Continued

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CPT Code	Charge	CPT Code	Charge	CPT Code	Charge	CPT Code	Charge
64862	$6,429.77	65805	$765.94	67030	$1,736.02	67909	$1,907.37
64864	$5,051.36	65810	$1,747.07	67031	$1,382.26	67911	$1,868.67
64865	$6,429.77	65815	$1,506.63	67036	$4,616.56	67914	$1,385.02
64866	$6,429.77	65820	$3,148.08	67038	$5,960.60	67916	$1,879.73
64868	$6,429.77	65850	$3,990.18	67039	$5,815.42	67917	$2,095.30
64870	$6,429.77	65855	$1,926.71	67040	$5,960.60	67921	$1,299.35
64872	$1,203.79	65860	$1,346.33	67101	$2,625.39	67923	$2,053.85
64874	$1,641.28	65865	$1,968.17	67105	$2,982.14	67924	$2,026.21
64876	$1,815.09	65870	$1,885.26	67107	$5,960.60	67935	$1,313.17
64885	$6,429.77	65875	$2,001.34	67108	$5,960.60	67950	$2,034.50
64886	$6,429.77	65880	$2,158.87	67110	$3,210.30	67961	$1,995.80
64890	$6,429.77	65900	$2,471.90	67112	$5,960.60	67966	$2,263.89
64891	$6,429.77	65920	$2,658.57	67115	$1,783.00	67971	$3,620.97
64892	$6,429.77	65930	$2,388.26	67120	$2,084.25	67973	$4,807.38
64893	$6,429.77	66020	$749.37	67121	$3,098.30	67974	$5,027.24
64895	$6,429.77	66130	$1,724.96	67141	$1,846.56	67975	$1,412.65
64896	$6,429.77	66150	$2,977.99	67208	$2,302.58	68115	$799.11
64897	$6,429.77	66155	$2,973.84	67218	$4,711.97	68130	$1,396.08
64898	$6,429.77	66160	$3,658.31	67220	$2,264.01	68320	$1,899.08
64901	$6,429.77	66165	$2,845.25	67221	$1,656.82	68325	$2,550.72
64902	$6,429.77	66170	$4,230.77	67227	$2,266.65	68326	$2,455.31
64905	$5,974.30	66172	$4,230.77	67250	$2,197.56	68328	$2,924.06
64907	$6,429.77	66180	$5,832.00	67255	$3,251.78	68330	$1,733.26
65091	$2,230.73	66185	$2,903.32	67311	$2,288.76	68335	$2,471.90
65093	$2,355.10	66220	$1,910.13	67312	$3,085.84	68340	$1,133.52
65101	$2,402.08	66225	$4,234.92	67314	$2,621.25	68360	$1,595.06
65103	$2,646.13	66250	$2,084.25	67316	$3,450.89	68362	$2,513.39
65105	$3,065.10	66500	$1,393.31	67318	$1,981.99	68500	$2,368.91
65110	$5,558.21	66505	$1,169.45	67320	$3,143.92	68505	$2,795.47
65112	$4,234.92	66600	$3,073.40	67331	$2,895.03	68510	$1,285.52
65114	$4,612.41	66605	$4,114.62	67332	$3,293.26	68520	$2,617.09
65125	$948.35	66625	$1,824.45	67334	$2,006.86	68525	$1,282.76
65130	$2,455.31	66630	$2,139.52	67335	$1,022.98	68540	$2,637.83
65135	$1,763.65	66635	$2,167.17	67340	$2,459.46	68550	$3,894.76
65140	$1,984.76	66680	$1,918.43	67343	$1,876.97	68700	$1,009.15
65150	$2,169.93	66682	$2,153.34	67350	$926.24	68720	$3,272.52
65155	$3,143.92	66700	$1,719.43	67400	$3,645.87	68745	$2,078.72
65175	$2,175.45	66710	$1,719.43	67405	$2,807.91	68750	$3,143.92
65235	$1,816.17	66720	$1,719.43	67412	$3,525.57	68770	$1,437.54
65260	$2,770.57	66740	$1,719.43	67413	$2,546.57	68811	$677.50
65265	$3,355.48	66761	$1,503.87	67414	$2,671.01	69005	$1,899.68
65270	$589.07	66762	$1,658.63	67415	$801.87	69110	$2,359.43
65272	$718.96	66770	$1,841.04	67420	$5,960.60	69120	$1,260.07
65273	$1,155.63	66820	$1,448.59	67430	$3,608.53	69140	$4,038.97
65280	$2,587.61	66821	$981.52	67440	$5,164.13	69145	$2,321.90
65285	$4,276.40	66825	$2,291.53	67445	$3,807.65	69150	$4,808.37
65286	$1,589.54	66830	$2,385.49	67450	$5,354.95	69155	$6,006.25
65290	$1,910.13	66840	$2,799.61	67550	$3,181.26	69205	$1,770.27
65400	$2,051.08	66850	$3,347.19	67560	$2,633.69	69300	$3,194.51
65410	$705.14	66852	$3,741.27	67570	$2,355.10	69310	$4,614.45
65420	$1,448.59	66920	$3,235.18	67715	$636.05	69320	$6,006.25
65426	$1,863.15	66930	$3,542.15	67808	$854.39	69421	$1,893.42
65450	$1,172.22	66940	$3,264.22	67830	$851.61	69436	$2,203.05
65710	$4,351.07	66982	$3,504.24	67835	$1,957.12	69440	$4,142.19
65730	$5,471.11	66983	$3,293.26	67875	$741.07	69450	$3,454.11
65750	$5,869.34	66984	$3,882.32	67880	$1,354.63	69501	$4,658.24
65755	$5,869.34	66985	$3,019.48	67882	$1,807.87	69502	$5,715.39
65760	$5,960.60	66986	$4,251.51	67900	$1,310.41	69505	$6,006.25
65765	$5,960.60	67005	$1,998.58	67901	$2,385.49	69511	$6,006.25
65767	$5,960.60	67010	$2,355.10	67902	$2,402.08	69530	$6,006.25
65770	$4,919.38	67015	$2,048.32	67903	$2,203.08	69535	$6,006.25
65772	$1,570.19	67025	$2,131.23	67904	$2,169.93	69550	$5,318.18
65775	$2,026.21	67027	$2,940.66	67906	$1,774.71	69552	$6,006.25
65800	$741.07	67028	$1,155.63	67908	$1,824.45	69554	$6,006.25

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TABLE C. — OUTPATIENT FACILITY NATIONWIDE CHARGES; BY CPT (CURRENT PROCEDURAL TERMINOLOGY) CODE — Continued

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CPT Code	Charge	CPT Code	Charge	CPT Code	Charge	CPT Code	Charge
69601	$5,921.81	70200	$208.42	71130	$199.68	73010	$153.48
69602	$6,006.25	70210	$165.24	71250	$1,184.40	73020	$127.61
69603	$6,006.25	70220	$207.64	71260	$1,292.33	73030	$170.73
69604	$6,006.25	70240	$103.25	71270	$1,456.57	73040	$468.30
69605	$6,006.25	70250	$175.57	71275	$1,445.22	73050	$218.16
69620	$3,563.58	70260	$218.76	71550	$1,623.60	73060	$170.73
69631	$4,930.35	70300	$37.81	71551	$1,664.99	73070	$149.18
69632	$5,924.94	70310	$96.36	71552	$1,996.69	73080	$170.73
69633	$5,699.75	70320	$206.04	71555	$1,623.60	73085	$468.30
69635	$6,006.25	70328	$127.36	72010	$232.27	73090	$149.18
69636	$6,006.25	70330	$210.80	72020	$96.36	73092	$136.24
69637	$6,006.25	70332	$317.31	72040	$165.24	73100	$136.24
69641	$5,909.30	70336	$1,448.12	72050	$217.16	73110	$157.79
69642	$6,006.25	70350	$86.02	72052	$237.83	73115	$388.70
69643	$6,006.25	70355	$151.46	72069	$130.79	73120	$136.24
69644	$6,006.25	70360	$99.80	72070	$182.46	73130	$157.79
69645	$6,006.25	70370	$248.97	72072	$202.06	73140	$101.74
69646	$6,006.25	70371	$327.65	72074	$215.58	73200	$938.90
69650	$4,861.54	70373	$289.50	72080	$189.35	73201	$1,184.40
69660	$5,630.94	70380	$182.46	72090	$199.68	73202	$1,322.36
69661	$6,006.25	70390	$287.11	72100	$189.35	73206	$1,317.76
69662	$6,006.25	70450	$851.78	72110	$218.76	73218	$1,379.71
69666	$4,892.81	70460	$1,118.41	72114	$241.81	73219	$1,663.84
69667	$4,895.94	70470	$1,293.26	72120	$213.98	73220	$1,587.30
69670	$4,720.80	70480	$901.94	72125	$1,184.40	73221	$1,448.12
69676	$4,204.74	70481	$1,147.45	72126	$1,290.45	73222	$1,663.84
69700	$3,995.18	70482	$1,300.78	72127	$1,451.87	73223	$1,995.54
69710	$3,529.17	70486	$883.45	72128	$1,184.40	73225	$1,587.30
69711	$4,178.59	70487	$1,136.89	72129	$1,290.45	73500	$131.93
69714	$4,377.54	70488	$1,299.84	72130	$1,451.87	73510	$179.36
69715	$4,958.06	70490	$901.94	72131	$1,184.40	73520	$231.10
69717	$4,268.65	70491	$1,147.45	72132	$1,290.45	73525	$468.30
69718	$4,987.42	70492	$1,300.78	72133	$1,451.87	73530	$175.05
69720	$6,006.25	70496	$1,305.10	72141	$1,623.60	73540	$179.36
69725	$6,006.25	70498	$1,305.10	72142	$1,694.55	73542	$456.13
69740	$5,236.85	70540	$1,587.30	72146	$1,660.48	73550	$170.73
69745	$8,006.25	70542	$1,663.84	72147	$1,694.55	73560	$149.18
69801	$4,483.10	70543	$1,995.54	72148	$1,658.60	73562	$175.05
69802	$5,052.33	70544	$1,389.33	72149	$1,692.67	73564	$200.91
69805	$5,646.58	70545	$1,389.33	72156	$2,044.60	73565	$136.24
69806	$5,787.33	70546	$1,926.94	72157	$2,044.60	73580	$547.90
69820	$4,304.82	70547	$1,389.33	72158	$2,042.09	73590	$149.18
69840	$4,192.22	70548	$1,389.33	72159	$1,658.60	73592	$136.24
69905	$5,355.71	70549	$1,926.94	72170	$130.79	73600	$136.24
69910	$6,006.25	70551	$1,587.30	72190	$189.35	73610	$157.79
69915	$6,006.25	70552	$1,692.67	72191	$1,413.58	73615	$468.30
69930	$6,006.25	70553	$2,042.09	72192	$1,176.49	73620	$136.24
69955	$6,006.25	71010	$117.02	72193	$1,267.92	73630	$157.79
69960	$6,006.25	71015	$141.13	72194	$1,417.15	73650	$127.61
69970	$6,006.25	71020	$172.13	72195	$1,384.53	73660	$101.74
69990	$2,138.75	71021	$203.66	72196	$1,623.60	73700	$938.90
70010	$508.05	71022	$205.24	72197	$1,996.69	73701	$1,184.40
70015	$282.34	71023	$211.60	72198	$1,623.60	73702	$1,322.36
70030	$99.80	71030	$209.22	72200	$134.24	73706	$1,317.76
70100	$137.68	71034	$264.06	72202	$168.69	73718	$1,379.71
70110	$179.01	71035	$134.24	72220	$148.02	73719	$1,663.84
70120	$168.69	71040	$270.42	72240	$530.32	73720	$1,587.30
70130	$210.80	71060	$332.41	72255	$499.31	73721	$1,448.12
70134	$206.84	71090	$285.52	72265	$477.06	73722	$1,663.84
70140	$168.69	71100	$154.90	72270	$647.15	73723	$1,995.54
70150	$207.64	71101	$199.68	72275	$309.88	73725	$1,587.30
70160	$134.24	71110	$208.42	72285	$803.72	74000	$153.48
70170	$221.14	71111	$217.96	72295	$763.98	74010	$183.66
70190	$172.13	71120	$179.01	73000	$149.18	74020	$213.84

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TABLE C. — OUTPATIENT FACILITY NATIONWIDE CHARGES; BY CPT (CURRENT PROCEDURAL TERMINOLOGY) CODE — Continued

CPT Code	Charge	CPT Code	Charge	CPT Code	Charge	CPT Code	Charge
74022	$245.42	75600	$1,150.25	75964	$785.67	76645	$219.88
74150	$1,123.69	75605	$1,175.33	75966	$1,450.33	76700	$432.60
74160	$1,272.63	75625	$1,175.33	75968	$785.67	76705	$360.16
74170	$1,425.59	75630	$1,227.28	75970	$1,074.11	76770	$431.12
74175	$1,413.58	75635	$1,438.88	75978	$1,441.38	76775	$360.16
74181	$1,623.60	75650	$1,189.66	75980	$574.27	76778	$431.12
74182	$1,664.99	75658	$1,182.49	75982	$632.49	76800	$412.76
74183	$1,996.69	75660	$1,182.49	75984	$250.89	76805	$442.53
74185	$1,623.60	75662	$1,196.83	75989	$492.75	76810	$563.11
74190	$328.20	75665	$1,182.49	75992	$1,420.78	76815	$371.54
74210	$315.47	75671	$1,196.83	75993	$785.67	76816	$246.42
74220	$323.43	75676	$1,182.49	75994	$1,450.33	76818	$414.74
74230	$347.31	75680	$1,196.83	75995	$1,450.33	76819	$410.32
74235	$590.88	75685	$1,182.49	75996	$785.67	76825	$431.62
74240	$382.33	75705	$1,218.32	76000	$150.10	76826	$257.80
74241	$387.11	75710	$1,175.33	76001	$306.44	76827	$434.10
74245	$536.75	75716	$1,182.49	76003	$173.16	76828	$254.00
74246	$410.99	75722	$1,175.33	76005	$277.49	76830	$408.80
74247	$415.77	75724	$1,189.66	76010	$65.12	76831	$408.80
74249	$565.41	75726	$1,175.33	76020	$86.25	76856	$408.80
74250	$340.94	75731	$1,175.33	76040	$98.81	76857	$189.54
74251	$340.94	75733	$1,182.49	76061	$129.60	76870	$405.66
74260	$372.78	75736	$1,175.33	76062	$189.82	76872	$408.80
74270	$418.95	75741	$1,182.49	76065	$93.20	76873	$442.92
74280	$520.84	75743	$1,196.83	76066	$136.01	76880	$360.16
74283	$641.82	75746	$1,175.33	76070	$337.00	76885	$408.80
74290	$245.42	75756	$1,175.33	76075	$329.72	76886	$360.16
74291	$114.68	75774	$1,144.87	76076	$92.07	76930	$408.29
74300	$131.93	75790	$244.62	76078	$92.07	76932	$408.29
74301	$55.29	75801	$550.08	76080	$142.41	76936	$680.20
74305	$259.75	75803	$562.62	76086	$293.89	76941	$423.67
74320	$627.49	75805	$608.31	76088	$385.26	76942	$408.29
74327	$428.50	75807	$620.84	76090	$125.76	76945	$423.67
74328	$638.64	75809	$105.55	76091	$164.19	76946	$360.16
74329	$638.64	75810	$1,175.33	76092	$125.76	76948	$360.16
74330	$638.64	75820	$138.57	76093	$1,814.88	76950	$318.45
74340	$547.90	75822	$223.12	76094	$2,002.09	76965	$657.37
74350	$643.42	75825	$1,175.33	76095	$730.13	76970	$193.34
74355	$563.82	75827	$1,175.33	76096	$174.44	76975	$409.79
74360	$627.49	75831	$1,175.33	76098	$52.77	76977	$133.25
74363	$1,098.72	75833	$1,189.66	76100	$189.32	76986	$471.31
74400	$399.84	75840	$1,175.33	76101	$189.82	77280	$826.72
74410	$441.23	75842	$1,189.66	76102	$226.70	77285	$1,085.11
74415	$466.71	75860	$1,175.33	76120	$132.17	77290	$1,221.55
74420	$533.57	75870	$1,175.33	76125	$97.89	77295	$3,248.41
74425	$332.98	75872	$1,175.33	76150	$44.92	77300	$520.88
74430	$293.18	75880	$138.57	76350	$59.52	77305	$601.19
74440	$309.10	75885	$1,187.88	76355	$1,396.50	77310	$690.60
74445	$361.64	75887	$1,187.88	76360	$1,393.69	77315	$773.96
74450	$355.27	75889	$1,175.33	76370	$405.63	77321	$905.20
74455	$372.78	75891	$1,175.33	76375	$471.63	77326	$689.08
74470	$339.35	75893	$1,152.93	76380	$561.38	77327	$862.94
74475	$767.59	75894	$2,166.95	76390	$1,070.53	77328	$1,071.83
74480	$767.59	75896	$1,898.22	76393	$1,401.35	77331	$416.31
74485	$627.49	75898	$205.19	76400	$1,623.60	77332	$516.33
74710	$294.77	75900	$1,865.97	76506	$367.75	77333	$616.34
74740	$334.58	75940	$1,152.93	76511	$291.92	77334	$827.92
74742	$627.49	75945	$464.09	76512	$407.80	77336	$714.85
74775	$377.55	75946	$269.71	76513	$407.80	77370	$789.11
75552	$1,623.60	75952	$294.59	76516	$291.92	77401	$540.58
75553	$1,623.60	75953	$101.47	76519	$291.92	77402	$540.58
75554	$1,623.60	75960	$1,359.86	76529	$337.41	77403	$540.58
75555	$1,623.60	75961	$1,121.59	76536	$356.37	77404	$540.58
75556	$1,040.14	75962	$1,420.78	76604	$314.66	77406	$540.58

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TABLE C. — OUTPATIENT FACILITY NATIONWIDE CHARGES; BY CPT (CURRENT PROCEDURAL TERMINOLOGY) CODE — Continued

CPT Code	Charge	CPT Code	Charge	CPT Code	Charge	CPT Code	Charge
77407	$586.04	78215	$742.13	78605	$809.82	90719	$18.35
77408	$586.04	78216	$820.69	78606	$868.98	90720	$42.76
77409	$586.04	78220	$843.62	78607	$1,208.26	90721	$45.65
77411	$586.04	78223	$855.69	78608	$3,246.41	90723	$37.75
77412	$620.89	78230	$629.99	78609	$3,246.41	90725	$18.35
77413	$620.89	78231	$778.50	78610	$533.00	90727	$20.70
77414	$620.89	78232	$821.89	78615	$854.49	90732	$42.37
77416	$620.89	78258	$752.74	78630	$1,005.42	90733	$44.10
77417	$369.33	78261	$899.16	78635	$693.63	90735	$32.79
77470	$1,783.00	78262	$914.86	78645	$814.64	90740	$57.97
77600	$823.09	78264	$906.41	78647	$1,117.71	90743	$43.14
77605	$967.99	78267	$327.44	78650	$955.91	90744	$47.96
77610	$823.09	78268	$648.41	78660	$628.47	90746	$54.70
77615	$967.99	78270	$522.38	78700	$754.26	90747	$57.97
77620	$823.09	78271	$537.55	78701	$824.30	90748	$56.71
77750	$787.59	78272	$639.07	78704	$884.67	90870	$151.61
77761	$868.98	78278	$1,003.01	78707	$953.49	90871	$247.13
77762	$1,092.36	78282	$486.02	78708	$953.49	90901	$294.88
77763	$1,337.46	78290	$770.92	78709	$953.49	90911	$349.45
77776	$890.71	78291	$786.08	78710	$1,104.43	90918	$717.05
77777	$1,254.15	78300	$687.58	78715	$533.00	90919	$717.05
77778	$1,545.14	78305	$855.69	78725	$567.86	90920	$717.05
77781	$2,808.12	78306	$926.94	78730	$519.36	90921	$717.05
77782	$2,851.57	78315	$992.14	78740	$629.99	90922	$17.27
77783	$2,911.95	78320	$1,123.74	78760	$716.36	90923	$17.27
77784	$3,007.34	78350	$408.73	78761	$796.54	90924	$17.27
77789	$419.34	78351	$313.25	78800	$815.85	90925	$17.27
77790	$426.92	78414	$924.52	78801	$918.49	90935	$470.04
78000	$437.52	78428	$664.85	78802	$1,071.83	90937	$746.25
78001	$490.57	78445	$589.07	78803	$1,201.03	90940	$476.86
78003	$446.62	78455	$887.09	78805	$819.47	90945	$445.08
78006	$661.82	78456	$879.32	78806	$1,174.46	90947	$694.58
78007	$690.60	78457	$720.91	78807	$1,201.03	90989	$696.82
78010	$572.41	78458	$899.16	78810	$873.03	90993	$174.14
78011	$663.33	78459	$861.84	78890	$475.42	90997	$678.86
78015	$702.73	78460	$684.55	78891	$670.90	90999	$163.69
78016	$835.17	78461	$996.96	78990	$392.06	91000	$354.20
78018	$1,064.58	78464	$1,260.18	79000	$786.08	91010	$835.64
78020	$338.91	78465	$1,824.06	79001	$542.09	91011	$963.26
78070	$581.49	78466	$711.83	79020	$786.08	91012	$984.98
78075	$1,053.71	78468	$853.29	79030	$803.77	91020	$876.36
78102	$616.34	78469	$1,039.23	79035	$826.72	91030	$320.12
78103	$793.66	78472	$1,075.45	79100	$751.22	91032	$781.32
78104	$901.58	78473	$1,417.15	79200	$797.74	91033	$984.98
78110	$434.49	78478	$551.18	79300	$1,085.11	91052	$408.73
78111	$670.90	78480	$551.18	79400	$795.17	91055	$401.92
78120	$551.18	78481	$1,042.84	79420	$795.17	91060	$371.24
78121	$726.98	78483	$1,372.48	79440	$797.74	91065	$320.12
78122	$942.64	78491	$1,076.72	90700	$41.81	91100	$320.12
78130	$739.10	78492	$1,093.51	90701	$37.30	91105	$269.00
78135	$983.69	78494	$1,241.23	90702	$33.36	91122	$718.87
78140	$875.02	78496	$535.22	90703	$28.85	91132	$195.23
78160	$827.92	78580	$824.30	90704	$31.10	91133	$195.23
78162	$776.99	78584	$811.02	90705	$31.10	92018	$317.45
78170	$1,021.11	78585	$1,094.76	90706	$31.10	92019	$317.45
78172	$489.05	78586	$586.06	90707	$42.37	92060	$274.33
78185	$652.72	78587	$722.43	90708	$35.05	92065	$258.16
78190	$1,104.43	78588	$1,069.98	90709	$35.05	92081	$236.61
78191	$1,266.23	78591	$723.95	90710	$47.18	92082	$328.22
78195	$895.54	78593	$812.24	90712	$27.16	92083	$365.59
78201	$654.23	78594	$992.14	90713	$26.04	92135	$376.64
78202	$736.06	78596	$1,269.85	90716	$55.08	92235	$427.93
78205	$1,108.05	78600	$731.53	90717	$18.35	92240	$427.93
78206	$1,097.39	78601	$808.61	90718	$26.04	92250	$290.50

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TABLE C. — OUTPATIENT FACILITY NATIONWIDE CHARGES; BY CPT (CURRENT PROCEDURAL TERMINOLOGY) CODE — Continued

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CPT Code	Charge	CPT Code	Charge	CPT Code	Charge	CPT Code	Charge
92265	$220.45	93226	$675.23	93651	$2,200.47	94680	$179.84
92270	$352.29	93231	$460.63	93652	$2,200.47	94681	$377.92
92275	$371.41	93232	$671.83	93660	$757.83	94690	$128.32
92283	$220.45	93236	$818.32	93721	$92.35	94720	$245.00
92284	$306.66	93270	$368.65	93724	$1,251.14	94725	$456.12
92285	$220.45	93271	$733.15	93731	$128.42	94750	$185.05
92286	$398.00	93278	$436.77	93732	$185.64	94770	$95.94
92502	$389.69	93303	$1,023.48	93733	$172.26	94772	$604.37
92506	$339.82	93304	$828.53	93734	$88.22	95805	$1,259.89
92507	$242.01	93307	$1,023.48	93735	$158.89	95806	$1,626.26
92508	$161.18	93308	$794.47	93736	$117.86	95807	$1,834.68
92510	$409.63	93312	$1,047.64	93737	$102.01	95808	$1,970.69
92541	$352.29	93314	$986.78	93738	$172.26	95810	$1,970.69
92542	$347.31	93315	$1,047.64	93740	$62.03	95811	$2,067.22
92543	$177.34	93317	$986.78	93741	$368.49	95812	$456.94
92544	$317.45	93318	$1,108.08	93742	$558.02	95813	$456.94
92545	$279.73	93320	$665.02	93743	$403.41	95816	$388.93
92546	$340.66	93321	$385.67	93744	$602.91	95819	$445.97
92547	$340.66	93325	$855.21	93760	$149.56	95822	$551.27
92548	$450.37	93350	$831.94	93762	$243.59	95824	$217.47
92551	$166.56	93501	$2,343.68	93770	$27.57	95827	$722.39
92552	$290.50	93503	$774.02	93786	$52.38	95829	$97.12
92553	$348.97	93505	$1,044.96	93788	$48.25	95858	$229.81
92555	$258.16	93508	$1,928.39	93875	$406.12	95860	$251.41
92556	$341.49	93510	$4,030.87	93880	$957.24	95861	$483.27
92557	$390.53	93511	$3,908.25	93882	$839.10	95863	$555.67
92559	$166.56	93514	$4,030.87	93886	$1,001.99	95864	$807.95
92560	$123.46	93524	$4,030.87	93888	$869.53	95867	$263.75
92561	$353.13	93526	$4,030.87	93922	$436.77	95868	$472.30
92562	$274.33	93527	$4,030.87	93923	$835.52	95869	$81.68
92563	$258.16	93528	$4,030.87	93924	$856.10	95870	$81.68
92564	$306.66	93529	$4,030.87	93925	$959.03	95872	$300.79
92565	$268.95	93530	$2,369.64	93926	$840.88	95875	$100.19
92567	$333.61	93531	$4,030.87	93930	$978.73	95900	$106.36
92568	$258.16	93532	$4,030.87	93931	$853.43	95903	$97.12
92569	$274.33	93533	$4,030.87	93965	$453.81	95904	$84.77
92571	$263.56	93536	$1,082.55	93970	$992.15	95920	$636.83
92572	$107.29	93555	$1,164.01	93971	$863.27	95921	$124.89
92573	$242.01	93556	$1,488.92	93975	$1,043.17	95922	$131.06
92575	$220.45	93561	$324.36	93976	$897.28	95923	$124.89
92576	$290.50	93562	$130.18	93978	$967.99	95925	$381.01
92577	$353.13	93571	$1,063.60	93979	$846.25	95926	$381.01
92579	$353.96	93572	$1,051.45	93980	$976.05	95927	$381.01
92582	$353.96	93600	$979.62	93981	$915.18	95930	$171.17
92583	$367.25	93602	$857.90	93990	$834.62	95933	$300.79
92584	$492.75	93603	$943.83	94010	$153.76	95934	$83.23
92585	$566.72	93607	$929.50	94015	$109.13	95936	$83.23
92586	$367.59	93609	$1,180.11	94060	$297.12	95937	$152.66
92587	$408.81	93610	$926.81	94070	$437.88	95950	$1,641.61
92588	$437.90	93612	$951.87	94150	$47.37	95951	$1,988.25
92589	$339.00	93615	$188.10	94200	$87.84	95953	$1,641.61
92596	$343.15	93616	$532.17	94240	$205.90	95954	$560.05
92950	$739.97	93618	$1,362.71	94250	$65.59	95955	$687.30
92953	$65.78	93619	$1,982.08	94260	$148.56	95956	$1,705.24
92960	$607.11	93620	$2,510.17	94350	$166.80	95957	$544.70
92961	$475.24	93621	$2,541.93	94360	$265.84	95958	$1,123.87
92978	$1,088.82	93622	$2,549.51	94370	$95.94	95961	$636.83
92979	$875.80	93623	$995.94	94375	$151.17	95962	$636.83
93005	$113.15	93624	$1,041.39	94400	$177.23	96400	$592.73
93012	$733.15	93631	$1,644.65	94450	$138.43	96405	$725.37
93017	$511.73	93640	$1,563.20	94620	$510.85	96406	$820.86
93024	$770.61	93641	$1,800.39	94621	$510.85	96408	$1,011.88
93041	$36.84	93642	$1,698.35	94660	$161.58	96410	$1,428.85
93225	$368.65	93650	$1,639.28	94662	$75.70	96412	$1,131.84

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TABLE C. — OUTPATIENT FACILITY NATIONWIDE CHARGES; BY CPT (CURRENT PROCEDURAL TERMINOLOGY) CODE — Continued

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CPT Code	Charge	CPT Code	Charge	CPT Code	Charge	CPT Code	Charge
96414	$1,268.31	97002	$71.05	97113	$100.73	99186	$1,346.23
96420	$1,204.11	97003	$63.84	97116	$86.50	99201	$156.98
96422	$1,188.03	97004	$71.05	97124	$88.50	99202	$182.87
96423	$767.83	97010	$52.97	97140	$108.20	99203	$209.88
96425	$1,340.54	97012	$53.38	97150	$100.73	99204	$311.12
96440	$953.50	97014	$52.20	97504	$92.57	99205	$339.06
96445	$1,043.69	97016	$56.09	97520	$93.94	99211	$96.58
96450	$985.35	97018	$55.30	97530	$96.65	99212	$128.22
96520	$974.73	97020	$52.20	97532	$94.66	99213	$159.86
96530	$1,059.61	97022	$53.38	97533	$100.16	99214	$202.88
96542	$1,123.84	97024	$52.97	97535	$96.65	99215	$304.14
96545	$688.22	97026	$53.38	97537	$96.65	99218	$996.75
96570	$86.61	97028	$53.38	97542	$96.65	99219	$1,483.25
96571	$58.47	97032	$59.27	97545	$823.11	99220	$1,895.37
96900	$41.18	97033	$59.27	97546	$383.04	99281	$143.26
96902	$31.42	97034	$63.98	97601	$209.41	99282	$194.42
96910	$73.49	97035	$62.81	97602	$114.09	99283	$335.31
96912	$88.69	97036	$52.97	97703	$98.00	99284	$610.57
96913	$167.24	97110	$91.21	97750	$133.93	99285	$1,167.13
97001	$63.84	97112	$91.21	99185	$441.16		

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TABLE D. — OUTPATIENT FACILITY GAAFs (GEOGRAPHIC AREA ADJUSTMENT FACTORS); BY VA FACILITY LOCATION

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VA Facility Location	GAAF	VA Facility Location	GAAF	VA Facility Location	GAAF
NATIONWIDE AVERAGE	1.00	MENLO PARK, CA	1.31	FORT PIERCE, FL	1.32
ANNISTON, AL	1.14	MODESTO, CA	1.71	GAINESVILLE, FL	1.04
BIRMINGHAM, AL	1.19	MONTEREY/FORT ORD, CA	1.43	HOMESTEAD, FL	1.32
DECATUR, AL	1.13	OAKLAND, CA	1.52	INVERNESS, FL	1.05
DOTHAN, AL	0.92	PALM DESERT, CA	1.27	JACKSONVILLE, FL	1.15
FLORENCE, AL	1.13	PALO ALTO, CA	1.31	KEY LARGO, FL	1.32
GADSDEN, AL	1.16	PORT HUENEME/OXNARD, CA	1.27	KEY WEST, FL	1.32
HUNTSVILLE, AL	1.15	REDDING, CA	1.35	KISSIMMEE, FL	1.18
JASPER, AL	1.14	SACRAMENTO, CA	1.68	LAKE CITY, FL	1.10
MOBILE, AL	0.91	SAN DIEGO, CA	1.28	LAKELAND, FL	1.13
MONTGOMERY, AL	1.01	SAN FRANCISCO, CA	1.32	MIAMI, FL	1.23
TUSCALOOSA, AL	1.10	SAN JOSE, CA	1.31	NAPLES, FL	1.18
TUSKEGEE, AL	0.98	SAN LUIS OBISPO, CA	1.40	OAKLAND PARK, FL	1.46
ANCHORAGE, AK	1.19	SANTA ANA, CA	1.39	OCALA, FL	1.05
FAIRBANKS, AK	1.01	SANTA BARBARA, CA	1.41	PANAMA CITY, FL	1.15
FORT WAINWRIGHT, AK	1.01	SANTA ROSA, CA	1.20	PEMBROKE PINES, FL	1.32
CASA GRANDE, AZ	1.25	SEPULVEDA, CA	1.43	PENSACOLA, FL	1.18
FLAGSTAFF/BELLEMONT, AZ	1.25	STOCKTON, CA	1.67	PORT CHARLOTTE, FL	1.18
GREEN VALLEY, AZ	1.15	SUN CITY, CA	1.27	PORT RICHEY, FL	1.21
KINGMAN, AZ	1.40	TRAVIS AFB, CA	1.54	SAINT PETERSBURG, FL	1.21
LAKE HAVASU CITY, AZ	1.40	TULARE, CA	1.14	SANFORD, FL	1.16
MESA/WILLIAMS AFB, AZ	1.25	UKIAH, CA	1.20	SARASOTA, FL	1.13
PHOENIX, AZ	1.26	VALLEJO, CA	1.54	ST. AUGUSTINE, FL	1.10
PRESCOTT, AZ	1.25	VICTORVILLE, CA	1.27	STUART, FL	1.32
SAFFORD, AZ	1.25	VISTA, CA	1.28	TALLAHASSEE, FL	1.17
SHOW LOW, AZ	1.25	WEST HOLLYWOOD, CA	1.54	TAMPA, FL	1.22
SIERRA VISTA, AZ	1.15	WEST LOS ANGELES, CA	1.54	VIERA/MELBOURNE, FL	1.16
SUN CITY, AZ	1.23	YOUNTVILLE, CA	1.54	WEST PALM BEACH, FL	1.30
TUCSON, AZ	1.12	ALAMOSA, CO	0.86	ZEPHYRHILLS, FL	1.21
YUMA, AZ	1.23	AURORA, CO	1.01	ALBANY, GA	0.90
EL DORADO, AR	0.80	COLORADO SPRINGS, CO	1.10	ATLANTA/DECATUR, GA	0.85
FAYETTEVILLE, AR	0.77	DENVER, CO	1.12	ATLANTA/MIDTOWN, GA	0.92
FORT SMITH, AR	0.79	FORT COLLINS, CO	0.84	AUGUSTA, GA	0.87
HARRISON, AR	0.78	FORT LYON, CO	0.98	COLUMBUS, GA	0.86
HOT SPRINGS, AR	0.80	GRAND JUNCTION, CO	0.77	DUBLIN, GA	0.90
JONESBORO, AR	0.78	GREELEY, CO	0.91	GAINESVILLE, GA	0.86
LITTLE ROCK, AR	0.85	LA JUNTA, CO	0.98	MACON, GA	0.89
MOUNTAIN HOME, AR	0.78	LAKEWOOD, CO	1.12	MARIETTA, GA	0.85
NORTH LITTLE ROCK, AR	0.84	MONTROSE, CO	0.86	OAKWOOD, GA	0.86
PARAGOULD, AR	0.78	PUEBLO, CO	0.98	SAVANNAH, GA	0.92
ANAHEIM, CA	1.39	NEW LONDON, CT	1.00	VALDOSTA, GA	0.91
ATWATER, CA	1.71	NEWINGTON, CT	0.97	GUAM, GU	0.91
AUBURN, CA	1.65	NORWICH, CT	1.00	HILO, HI	0.91
BAKERSFIELD, CA	1.12	STAMFORD, CT	0.93	HONOLULU, HI	0.93
BERKELEY, CA	1.52	WATERBURY, CT	1.01	KAILUA KONA, HI	0.91
CAPITOLA, CA	1.32	WEST HAVEN, CT	0.98	LIHUE, HI	0.91
CHICO, CA	1.25	WILLIMANTIC, CT	0.99	WAILUKU, HI	0.91
CHULA VISTA, CA	1.28	WINDHAM, CT	0.99	BOISE, ID	0.78
CORONA, CA	1.39	WINSTED, CT	0.97	LEWISTON, ID	0.82
CULVER CITY, CA	1.48	DOVER AFB, DE	0.88	POCATELLO, ID	0.82
EAST LOS ANGELES, CA	1.54	GEORGETOWN, DE	0.88	TWIN FALLS, ID	0.82
EL CENTRO, CA	1.27	NEW CASTLE, DE	0.87	AURORA, IL	1.11
EUREKA, CA	1.26	OCEAN VIEW, DE	0.88	BELLEVILLE, IL	1.02
FAIRFIELD, CA	1.54	REHOBOTH, DE	0.88	CHICAGO HEIGHTS, IL	1.17
FRESNO, CA	1.16	SMYRNA, DE	0.88	CHICAGO WOODLAWN, IL	1.17
GARDENA, CA	1.48	WILMINGTON, DE	0.87	CHICAGO, IL	1.17
LANCASTER/ANTELOPE VALLEY, CA	1.23	WASHINGTON, DC (ZIP CODE 200)	0.93	DANVILLE, IL	0.84
LIVERMORE, CA	1.54	WASHINGTON, DC (ZIP CODE 204)	0.93	DECATUR, IL	0.82
LOMA LINDA, CA	1.27	BAY PINES, FL	1.21	EFFINGHAM, IL	0.84
LOMPOC, CA	1.40	BOCA RATON, FL	1.30	ELGIN, IL	1.09
LONG BEACH, CA	1.41	BROOKSVILLE, FL	1.21	EVANSTON, IL	1.09
LOS ANGELES, CA	1.54	CLEARWATER, FL	1.21	GALESBURG, IL	0.88
MARE ISLAND, CA	1.54	DAYTONA BEACH, FL	1.14	GURNEE, IL	1.08
MARTINEZ, CA	1.54	DELRAY BEACH, FL	1.30	HINES, IL	1.09
McCLELLAN AFB, CA	1.65	ELLENTON, FL	1.13	JOLIET, IL	1.17
		FORT MYERS, FL	1.18	LA SALLE, IL	0.88

TABLE D. — OUTPATIENT FACILITY GAAFs (GEOGRAPHIC AREA ADJUSTMENT FACTORS); BY VA FACILITY LOCATION — Continued

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VA Facility Location	GAAF	VA Facility Location	GAAF	VA Facility Location	GAAF
MANTENO, IL	1.00	NEW ORLEANS, LA	1.09	MINNEAPOLIS, MN	0.96
MARION, IL	0.84	SHREVEPORT, LA	0.99	SAINT CLOUD, MN	0.77
MCHENRY, IL	1.08	BANGOR, ME	0.86	SAINT PAUL, MN	1.08
MOUNT VERNON, IL	0.84	CALAIS, ME	0.89	VIRGINIA, MN	0.79
NORTH CHICAGO, IL	1.08	CARIBOU, ME	0.89	BILOXI, MS	0.96
OAK PARK, IL	1.09	MACHIAS, ME	0.89	GREENVILLE, MS	0.70
PEORIA, IL	0.99	PORTLAND, ME	0.75	GULFPORT, MS	0.96
QUINCY, IL	0.84	RUMFORD, ME	0.85	HATTIESBURG, MS	0.78
ROCKFORD, IL	0.86	SACO, ME	0.79	JACKSON, MS	0.70
SPRINGFIELD, IL	0.75	TOGUS, ME	0.89	KOSCIUSKO, MS	0.73
BLOOMINGTON, IN	0.93	BALTIMORE, MD	0.71	MERIDIAN, MS	0.70
CROWN POINT, IN	1.00	CAMBRIDGE, MD	0.62	NATCHEZ, MS	0.75
EVANSVILLE, IN	0.85	CHARLOTTE HALL, MD	0.74	SMITHVILLE, MS	0.70
FORT WAYNE, IN	0.83	CUMBERLAND, MD	0.61	BELTON, MO	1.05
INDIANAPOLIS, IN	0.83	FORT HOWARD, MD	0.63	CAPE GIRARDEAU, MO	0.78
LAFAYETTE, IN	0.86	GLEN BURNIE, MD	0.63	COLUMBIA, MO	0.86
MARION, IN	0.87	HAGERSTOWN, MD	0.70	FARMINGTON, MO	0.78
MUNCIE/ANDERSON, IN	0.89	LANDOVER, MD	0.77	FORT LEONARD WOOD, MO	0.79
NEW ALBANY, IN	0.95	MILLINGTON, MD	0.62	KANSAS CITY, MO	1.06
RICHMOND, IN	0.89	PERRY POINT, MD	0.73	KIRKSVILLE, MO	0.87
SOUTH BEND, IN	0.94	BEDFORD, MA	0.97	LAKE OZARK, MO	0.83
TERRE HAUTE, IN	0.93	BOSTON, MA	1.03	MOUNT VERNON, MO	0.76
BETTENDORF, IA	0.75	BROCKTON, MA	1.03	NEVADA, MO	0.82
DES MOINES, IA	0.75	FITCHBURG, MA	0.97	POPLAR BLUFF, MO	0.79
DUBUQUE, IA	0.78	FRAMINGHAM, MA	0.97	SAINT CHARLES, MO	0.95
FORT DODGE, IA	0.75	GLOUCESTER, MA	1.01	SAINT JOSEPH, MO	0.90
IOWA CITY, IA	0.73	GREENFIELD, MA	0.98	SAINT LOUIS, MO	0.97
KNOXVILLE, IA	0.75	HAVERHILL, MA	0.97	WEST PLAINS, MO	0.76
MARSHALLTOWN, IA	0.75	HYANNIS, MA	0.98	WHITEMAN AFB, MO	0.79
MASON CITY, IA	0.78	LOWELL, MA	0.97	ANACONDA, MT	0.76
OTTUMWA, IA	0.78	LYNN, MA	1.01	BILLINGS, MT	0.74
SIOUX CITY, IA	0.72	NANTUCKET, MA	0.97	BOZEMAN, MT	0.76
WATERLOO, IA	0.78	NEW BEDFORD, MA	0.93	BROWNING, MT	0.73
ABELINE, KS	0.76	NORTHAMPTON, MA	0.95	COLUMBIA FALLS, MT	0.76
CHANUTE, KS	0.76	OAK BLUFFS, MA	0.97	FORT HARRISON, MT	0.76
DODGE CITY, KS	0.76	PITTSFIELD, MA	0.90	GLASGOW, MT	0.76
EMPORIA, KS	0.76	QUINCY, MA	1.03	GREAT FALLS, MT	0.73
FORT RILEY, KS	0.80	SPRINGFIELD, MA	0.95	LAME DEER, MT	0.75
GARNETT, KS	0.95	WEST ROXBURY, MA	1.03	MILES CITY, MT	0.76
HAYS, KS	0.76	WINCHINDON, MA	0.97	MISSOULA, MT	0.76
HOLTON, KS	0.80	WORCESTER, MA	0.89	SIDNEY, MT	0.76
JUNCTION CITY, KS	0.80	ANN ARBOR, MI	1.01	WHITEFISH, MT	0.76
KANSAS CITY, KS	0.98	BATTLE CREEK, MI	0.85	ALLIANCE, NE	0.70
LAWRENCE, KS	0.95	BENTON HARBOR, MI	0.85	GERING, NE	0.70
LEAVENWORTH, KS	0.95	DETROIT, MI	1.01	GRAND ISLAND, NE	0.70
LIBERAL, KS	0.76	FLINT, MI	0.98	LINCOLN, NE	0.80
PAOLA, KS	0.95	GAYLORD, MI	0.83	NORFOLK, NE	0.70
PARSONS, KS	0.76	GRAND RAPIDS, MI	0.74	NORTH PLATTE, NE	0.70
RUSSELL, KS	0.76	HANCOCK/PORTAGE, MI	0.83	OMAHA, NE	0.92
SENECA, KS	0.80	IRON MOUNTAIN, MI	0.83	RUSHVILLE, NE	0.70
TOPEKA, KS	0.81	IRONWOOD, MI	0.83	SIDNEY, NE	0.70
WICHITA, KS	1.10	JACKSON, MI	0.86	ELY, NV	1.22
BELLEVUE, KY	0.80	LANSING, MI	0.90	HENDERSON, NV	1.39
BOWLING GREEN, KY	0.74	MARQUETTE, MI	0.83	LAS VEGAS, NV	1.39
FORT KNOX, KY	0.96	MENOMINEE, MI	0.83	PAHRUMP, NV	1.39
HOPKINSVILLE, KY	0.76	MUSKEGON, MI	0.74	RENO, NV	1.24
LEXINGTON, KY	0.72	OSCODA, MI	0.94	KEENE, NH	0.83
LOUISVILLE, KY	1.01	PONTIAC, MI	0.98	MANCHESTER, NH	0.92
PADUCAH, KY	0.74	SAGINAW, MI	0.94	PORTSMOUTH, NH	0.94
PRESTONSBURG, KY	0.85	SAULT SAINTE MARIE, MI	0.83	TILTON, NH	0.83
SOMERSET, KY	0.85	TRAVERSE CITY, MI	0.77	BLACKWOOD, NJ	1.21
WHITESBURG, KY	0.85	YALE, MI	0.95	BRICK, NJ	1.13
ALEXANDRIA, LA	0.96	BRAINERD, MN	0.79	CAPE MAY, NJ	1.04
BATON ROUGE, LA	0.97	FERGUS FALLS, MN	0.77	EAST ORANGE, NJ	0.98
JENNINGS, LA	0.99	HIBBING, MN	0.79	ELIZABETH, NJ	0.99
MONROE, LA	0.96	MANKATO, MN	0.74	FORT DIX, NJ	1.11

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TABLE D. — OUTPATIENT FACILITY GAAFs (GEOGRAPHIC AREA ADJUSTMENT FACTORS); BY VA FACILITY LOCATION — Continued

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VA Facility Location	GAAF	VA Facility Location	GAAF	VA Facility Location	GAAF
HACKENSACK, NJ	0.94	NORTHPORT/LONG ISLAND, NY	0.86	YOUNGSTOWN, OH	0.88
JAMESBURG, NJ	1.03	OLEAN, NY	0.67	ZANESVILLE, OH	0.77
JERSEY CITY, NJ	0.99	OSWEGO, NY	0.66	ARDMORE, OK	0.76
LYONS, NJ	0.83	PATCHOGUE, NY	0.86	CLINTON, OK	0.84
MORRISTOWN, NJ	0.83	PENN YAN, NY	0.60	LAWTON/FORT SILL, OK	0.86
NEW BRUNSWICK, NJ	1.04	PLAINVIEW, NY	0.86	MCALESTER, OK	0.76
NEWARK, NJ	0.99	PLATTSBURGH, NY	0.71	MUSKOGEE, OK	0.76
TRENTON, NJ	1.11	PORT JERVIS, NY	0.72	OKLAHOMA CITY, OK	0.86
VENTNOR CITY, NJ	1.04	POUGHKEEPSIE, NY	0.73	PONCA CITY, OK	0.84
VINELAND, NJ	1.09	QUEENS, NY	1.04	TALIHINA, OK	0.76
ALAMOGORDO, NM	0.92	RIVERHEAD, NY	0.86	TULSA, OK	0.80
ALBUQUERQUE, NM	0.86	ROCHESTER, NY	0.60	BANDON, OR	0.78
ARTESIA, NM	0.92	ROME, NY	0.71	BEND, OR	0.82
CLAYTON, NM	0.92	SAINT ALBANS, NY	1.04	EUGENE, OR	0.78
CLOVIS, NM	0.92	SAYVILLE, NY	0.86	KLAMATH FALLS, OR	0.81
ESPANOLA, NM	0.92	SCHENECTADY, NY	0.69	NORTH COAST, OR	0.90
FARMINGTON, NM	0.92	SIDNEY, NY	0.66	ONTARIO, OR	0.81
GALLUP, NM	0.92	SOUTH BRONX, NY	1.04	PORTLAND, OR	0.85
HOBBS, NM	0.92	STATEN ISLAND, NY	1.04	ROSEBURG, OR	0.78
LAS CRUCES, NM	0.94	SYRACUSE, NY	0.66	SALEM, OR	0.83
LAS VEGAS, NM	0.90	TROY, NY	0.69	WHITE CITY, OR	0.77
RATON, NM	0.92	WALLKILL, NY	0.74	ALIQUIPPA, PA	1.11
SANTA ROSA, NM	0.92	WATERTOWN, NY	0.69	ALLENTOWN, PA	0.85
SILVER CITY, NM	0.94	WELLSVILLE, NY	0.61	ALTOONA, PA	0.90
TRUTH OR CONSEQUENCES, NM	0.93	WHITE PLAINS/BRONX, NY	0.91	BUTLER, PA	1.01
ALBANY, NY	0.69	YONKERS, NY	0.91	CAMP HILL, PA	0.81
AUBURN, NY	0.66	ASHEVILLE, NC	0.72	COATESVILLE, PA	1.35
BATAVIA, NY	0.64	CHARLOTTE, NC	0.81	DU BOIS, PA	0.90
BATH, NY	0.61	DURHAM, NC	0.78	ERIE, PA	0.95
BINGHAMTON, NY	0.66	FAYETTEVILLE, NC	0.84	GREENSBURG, PA	1.10
BRONX, NY	1.04	GREENVILLE, NC	0.81	JOHNSTOWN, PA	0.96
BROOKLYN, NY	1.04	JACKSONVILLE, NC	0.81	KITTANING, PA	0.88
BUFFALO, NY	0.64	RALEIGH, NC	0.78	LANCASTER, PA	0.68
CANANDAIGUA, NY	0.60	SALISBURY, NC	0.79	LEBANON, PA	0.81
CARMEL, NY	0.91	WILMINGTON, NC	0.85	MEADVILLE, PA	0.88
CASTLE POINT, NY	0.74	WINSTON-SALEM, NC	0.68	MERCER, PA	0.87
CATSKILL, NY	0.71	BISMARCK, ND	0.74	NEW CASTLE, PA	0.87
CLIFTON PARK, NY	0.70	FARGO, ND	0.79	PHILADELPHIA, PA	1.51
CORTLAND, NY	0.66	GRAFTON, ND	0.77	PITTSBURGH, PA	1.11
DUNKIRK, NY	0.64	MINOT, ND	0.75	POTTSVILLE, PA	0.76
ELIZABETHTOWN, NY	0.71	AKRON, OH	0.90	READING, PA	0.73
ELMIRA, NY	0.60	ASHTABULA, OH	0.86	SAYRE, PA	0.84
FAR ROCKAWAY, NY	0.86	ATHENS, OH	0.76	SCRANTON, PA	0.85
FONDA, NY	0.70	CANTON, OH	0.59	SMETHPORT, PA	0.88
GENEVA, NY	0.60	CHILLICOTHE, OH	0.88	SPRING CITY, PA	1.35
GLENS FALLS, NY	0.70	CINCINNATI, OH	0.77	SPRINGFIELD, PA	1.40
HARLEM, NY	0.93	CLEVELAND, OH	0.95	STATE COLLEGE, PA	0.91
HARRIS, NY	0.72	COLUMBUS, OH	0.86	TOBYHANNA, PA	0.85
HICKSVILLE, NY	0.86	DAYTON, OH	0.89	WILKES-BARRE, PA	0.85
ISLIP, NY	0.86	EAST LIVERPOOL, OH	0.88	WILLIAMSPORT, PA	0.81
ITHACA, NY	0.61	GROVE CITY, OH	0.80	WYOMISSING, PA	0.73
JAMESTOWN, NY	0.67	LANCASTER, OH	0.80	MAYAGUEZ, PR	0.55
KINGSTON, NY	0.71	LIMA, OH	0.84	PONCE, PR	0.55
LACKAWANNA, NY	0.64	LORAIN, OH	0.86	SAN JUAN, PR	0.55
LINDENHURST, NY	0.86	MANSFIELD, OH	0.82	MIDDLETOWN, RI	1.01
LOCKPORT, NY	0.64	MARIETTA, OH	0.76	PROVIDENCE, RI	1.01
LYNBROOK, NY	0.86	MIDDLETOWN, OH	0.87	ANDERSON, SC	0.79
LYONS, NY	0.60	PAINESVILLE, OH	0.86	CHARLESTON, SC	0.91
MALONE, NY	0.71	PORTSMOUTH, OH	0.88	COLUMBIA, SC	0.87
MASSENA, NY	0.69	SAINT CLAIRSVILLE, OH	0.88	FLORENCE, SC	0.92
MONTROSE, NY	0.91	SANDUSKY, OH	0.82	GREENVILLE, SC	0.79
MOUNT MORRIS, NY	0.60	SPRINGFIELD, OH	0.91	MYRTLE BEACH, SC	0.92
MOUNT SINAI, NY	0.86	TOLEDO, OH	0.97	ORANGEBURG, SC	0.88
NEW CITY, NY	0.82	WARREN, OH	0.88	ROCK HILL, SC	0.80
NEW YORK, NY	0.93	WASHINGTON COURT HOUSE, OH	0.80	SUMTER, SC	0.88
NIAGARA FALLS, NY	0.64	WELLSTON, OH	0.88	EAGLE BUTTE, SD	0.70

TABLE D. — OUTPATIENT FACILITY GAAFs (GEOGRAPHIC AREA ADJUSTMENT FACTORS); BY VA FACILITY LOCATION — Continued

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VA Facility Location	GAAF	VA Facility Location	GAAF	VA Facility Location	GAAF
ELLSWORTH AFB, SD	0.72	SEGUIN, TX	0.93	BARABOO, WI	0.83
FORT MEADE, SD	0.72	SOUTH BEXAR CO., TX	0.93	BEAVER DAM, WI	0.83
HOT SPRINGS, SD	0.72	STAMFORD, TX	1.09	CHIPPEWA FALLS, WI	0.80
KYLE, SD	0.72	STRATFORD, TX	1.08	CLEVELAND, WI	0.91
MCLAUGHLIN, SD	0.70	TEMPLE, TX	0.85	EDGERTON, WI	0.83
PIERRE, SD	0.70	TEXARKANA, TX	0.99	LA CROSSE, WI	0.76
PINE RIDGE, SD	0.72	TYLER, TX	1.02	LOYAL, WI	0.73
RAPID CITY, SD	0.72	UVALDE, TX	0.92	MADISON, WI	0.73
ROSEBUD, SD	0.70	VICTORIA, TX	0.90	MILWAUKEE, WI	1.01
SIOUX FALLS, SD	0.69	WACO, TX	0.87	RHINELANDER, WI	0.74
WINNER, SD	0.70	WICHITA FALLS, TX	0.94	SUPERIOR, WI	0.74
WORTHING, SD	0.69	OGDEN, UT	0.84	TOMAH, WI	0.76
CHATTANOOGA, TN	0.93	OREM, UT	0.87	UNION GROVE, WI	1.09
CLARKSVILLE, TN	0.86	ROOSEVELT, UT	0.87	WAUSAU, WI	0.73
COOKEVILLE, TN	0.90	SAINT GEORGE, UT	0.85	WAUTOMA, WI	0.74
DOVER, TN	0.86	SALT LAKE CITY, UT	0.88	CASPER, WY	0.90
KNOXVILLE, TN	0.91	BENNINGTON, VT	0.82	CHEYENNE, WY	0.85
MEMPHIS, TN	0.83	BURLINGTON, VT	0.79	GREEN RIVER, WY	0.83
MOUNTAIN CITY, TN	0.92	MONTPELIER, VT	0.82	NEWCASTLE, WY	0.83
MOUNTAIN HOME, TN	0.92	NEWPORT, VT	0.82	POWELL, WY	0.83
MURFREESBORO, TN	0.86	RUTLAND, VT	0.82	RIVERTON, WY	0.83
NASHVILLE, TN	0.83	SAINT JOHNSBURY, VT	0.82	SHERIDAN, WY	0.83
ROGERSVILLE, TN	0.91	WHITE RIVER JCT, VT	0.82	ZIP CODE 002	0.94
TULLAHOMA/ARNOLD AFB, TN	0.91	WILDER, VT	0.82	ZIP CODE 003	0.92
ABILENE, TX	1.20	SAINT CROIX, VI	0.55	ZIP CODE 005	0.86
ALICE, TX	1.12	SAINT THOMAS, VI	0.55	ZIP CODE 015	0.89
AMARILLO, TX	1.07	ALEXANDRIA, VA	0.92	ZIP CODE 020	0.93
AUSTIN, TX	0.87	COVINGTON, VA	0.77	ZIP CODE 022	1.03
BEAUMONT, TX	1.14	DANVILLE, VA	0.77	ZIP CODE 023	0.93
BEEVILLE, TX	0.93	ELKTON, VA	0.77	ZIP CODE 030	0.93
BIG SPRING, TX	0.93	FREDERICKSBURG, VA	0.94	ZIP CODE 033	0.82
BONHAM, TX	1.03	HAMPTON , VA	0.90	ZIP CODE 035	0.82
BROWNSVILLE, TX	1.15	HILLSVILLE, VA	0.81	ZIP CODE 036	0.82
BROWNWOOD, TX	0.92	LYNCHBURG, VA	0.77	ZIP CODE 037	0.82
BRYAN/COLLEGE STATION, TX	0.95	MARION, VA	0.81	ZIP CODE 039	0.89
CEDAR PARK, TX	0.88	MARTINSVILLE, VA	0.81	ZIP CODE 045	0.89
CHILDRESS, TX	1.08	NORFOLK, VA	0.90	ZIP CODE 048	0.89
CLEBURNE, TX	1.04	NORTON, VA	0.81	ZIP CODE 049	0.88
CORPUS CHRISTI, TX	1.15	PULASKI, VA	0.81	ZIP CODE 051	0.82
DALLAS, TX	1.02	RICHMOND, VA	1.00	ZIP CODE 053	0.82
DECATUR, TX	1.03	SALEM, VA	0.81	ZIP CODE 055	0.97
DEL RIO, TX	0.92	ST. CHARLES, VA	0.81	ZIP CODE 059	0.82
DENTON, TX	1.03	STEPHENS CITY, VA	0.77	ZIP CODE 064	1.00
EAGLE PASS, TX	0.92	STUARTS DRAFT, VA	0.77	ZIP CODE 066	0.98
EASTLAND, TX	0.99	TAZEWELL, VA	0.81	ZIP CODE 068	0.93
EL PASO, TX	1.28	AMERICAN LAKE/TACOMA, WA	0.95	ZIP CODE 074	0.94
FORT STOCKTON, TX	0.93	LONGVIEW, WA	0.79	ZIP CODE 075	0.94
FORT WORTH, TX	1.04	LYNNWOOD/NORTHGATE, WA	0.76	ZIP CODE 077	1.13
GREENVILLE, TX	1.03	RICHLAND, WA	0.89	ZIP CODE 078	0.82
HOUSTON, TX	1.10	SEATTLE, WA	0.79	ZIP CODE 081	1.23
KERRVILLE, TX	0.89	SPOKANE, WA	0.86	ZIP CODE 085	1.11
KINGSVILLE, TX	1.12	VANCOUVER, WA	0.79	ZIP CODE 090	1.04
LAREDO, TX	0.89	WALLA WALLA, WA	0.89	ZIP CODE 091	1.04
LONGVIEW, TX	1.01	YAKIMA, WA	0.82	ZIP CODE 092	1.04
LUBBOCK, TX	1.17	BECKLEY, WV	0.80	ZIP CODE 093	1.04
LUFKIN, TX	1.01	CHARLESTON, WV	0.78	ZIP CODE 094	1.04
MARLIN, TX	0.90	CLARKSBURG, WV	0.77	ZIP CODE 095	1.04
MCALLEN, TX	1.15	FRANKLIN, WV	0.77	ZIP CODE 096	1.04
MCKINNEY, TX	1.08	GASSAWAY, WV	0.80	ZIP CODE 097	1.04
MONAHANS, TX	0.93	HUNTINGTON, WV	0.81	ZIP CODE 098	1.04
NEW BRAUNFELS, TX	0.93	MARTINSBURG, WV	0.83	ZIP CODE 101	0.93
ODESSA, TX	0.93	PARKERSBURG, WV	0.78	ZIP CODE 102	0.93
PALESTINE, TX	1.01	PARSONS, WV	0.77	ZIP CODE 108	0.91
SAN ANGELO, TX	0.85	PETERSBURG, WV	0.77	ZIP CODE 110	1.03
SAN ANTONIO, TX	0.93	WILLIAMSON, WV	0.80	ZIP CODE 113	1.04
SAN MARCOS, TX	0.88	APPLETON, WI	0.74	ZIP CODE 133	0.71

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TABLE D. — OUTPATIENT FACILITY GAAFS (GEOGRAPHIC AREA ADJUSTMENT FACTORS); BY VA FACILITY LOCATION — Continued

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VA Facility Location	GAAF	VA Facility Location	GAAF	VA Facility Location	GAAF
ZIP CODE 135	0.72	ZIP CODE 287	0.76	ZIP CODE 464	1.00
ZIP CODE 137	0.66	ZIP CODE 289	0.78	ZIP CODE 465	0.92
ZIP CODE 141	0.64	ZIP CODE 290	0.88	ZIP CODE 467	0.84
ZIP CODE 151	1.11	ZIP CODE 293	0.79	ZIP CODE 470	0.92
ZIP CODE 153	1.08	ZIP CODE 298	0.88	ZIP CODE 472	0.93
ZIP CODE 154	1.11	ZIP CODE 299	0.90	ZIP CODE 475	0.89
ZIP CODE 155	0.94	ZIP CODE 301	0.95	ZIP CODE 476	0.86
ZIP CODE 157	0.90	ZIP CODE 302	0.95	ZIP CODE 484	0.99
ZIP CODE 164	0.93	ZIP CODE 304	0.88	ZIP CODE 488	0.89
ZIP CODE 169	0.80	ZIP CODE 306	0.86	ZIP CODE 491	0.88
ZIP CODE 171	0.82	ZIP CODE 307	0.86	ZIP CODE 493	0.75
ZIP CODE 172	0.81	ZIP CODE 308	0.87	ZIP CODE 500	0.75
ZIP CODE 173	0.80	ZIP CODE 311	0.92	ZIP CODE 502	0.75
ZIP CODE 174	0.79	ZIP CODE 313	0.90	ZIP CODE 506	0.78
ZIP CODE 175	0.68	ZIP CODE 315	0.88	ZIP CODE 508	0.75
ZIP CODE 178	0.80	ZIP CODE 318	0.89	ZIP CODE 509	0.75
ZIP CODE 180	0.87	ZIP CODE 332	1.30	ZIP CODE 510	0.75
ZIP CODE 182	0.85	ZIP CODE 340	1.30	ZIP CODE 512	0.75
ZIP CODE 183	0.84	ZIP CODE 350	1.16	ZIP CODE 513	0.75
ZIP CODE 186	0.85	ZIP CODE 351	1.16	ZIP CODE 514	0.75
ZIP CODE 189	1.35	ZIP CODE 357	1.15	ZIP CODE 515	0.79
ZIP CODE 192	1.51	ZIP CODE 364	0.95	ZIP CODE 518	0.75
ZIP CODE 195	0.75	ZIP CODE 365	0.91	ZIP CODE 521	0.78
ZIP CODE 201	0.92	ZIP CODE 367	0.95	ZIP CODE 523	0.74
ZIP CODE 202	0.93	ZIP CODE 368	0.93	ZIP CODE 524	0.73
ZIP CODE 203	0.93	ZIP CODE 369	0.95	ZIP CODE 526	0.78
ZIP CODE 205	0.93	ZIP CODE 375	0.83	ZIP CODE 528	0.74
ZIP CODE 208	0.78	ZIP CODE 377	0.91	ZIP CODE 534	0.78
ZIP CODE 209	0.78	ZIP CODE 380	0.84	ZIP CODE 538	0.84
ZIP CODE 211	0.63	ZIP CODE 382	0.85	ZIP CODE 540	0.87
ZIP CODE 214	0.63	ZIP CODE 383	0.83	ZIP CODE 541	0.69
ZIP CODE 218	0.62	ZIP CODE 384	0.86	ZIP CODE 542	0.71
ZIP CODE 220	0.92	ZIP CODE 386	0.72	ZIP CODE 543	0.67
ZIP CODE 221	0.92	ZIP CODE 389	0.70	ZIP CODE 550	0.93
ZIP CODE 222	0.92	ZIP CODE 396	0.76	ZIP CODE 553	0.88
ZIP CODE 225	0.93	ZIP CODE 397	0.70	ZIP CODE 555	0.89
ZIP CODE 227	0.78	ZIP CODE 399	0.92	ZIP CODE 556	0.79
ZIP CODE 229	0.73	ZIP CODE 400	0.97	ZIP CODE 558	0.79
ZIP CODE 230	0.95	ZIP CODE 403	0.78	ZIP CODE 559	0.76
ZIP CODE 231	0.97	ZIP CODE 404	0.79	ZIP CODE 561	0.74
ZIP CODE 233	0.90	ZIP CODE 406	0.79	ZIP CODE 562	0.77
ZIP CODE 234	0.90	ZIP CODE 407	0.85	ZIP CODE 566	0.79
ZIP CODE 237	0.90	ZIP CODE 408	0.85	ZIP CODE 567	0.77
ZIP CODE 238	0.97	ZIP CODE 409	0.85	ZIP CODE 572	0.70
ZIP CODE 239	0.81	ZIP CODE 411	0.86	ZIP CODE 573	0.70
ZIP CODE 240	0.81	ZIP CODE 412	0.85	ZIP CODE 574	0.70
ZIP CODE 247	0.80	ZIP CODE 413	0.85	ZIP CODE 580	0.77
ZIP CODE 248	0.80	ZIP CODE 414	0.85	ZIP CODE 583	0.75
ZIP CODE 249	0.80	ZIP CODE 415	0.85	ZIP CODE 584	0.75
ZIP CODE 250	0.79	ZIP CODE 417	0.85	ZIP CODE 586	0.75
ZIP CODE 251	0.79	ZIP CODE 423	0.76	ZIP CODE 588	0.75
ZIP CODE 252	0.80	ZIP CODE 424	0.74	ZIP CODE 595	0.76
ZIP CODE 255	0.80	ZIP CODE 426	0.85	ZIP CODE 607	1.17
ZIP CODE 259	0.80	ZIP CODE 427	0.85	ZIP CODE 608	1.17
ZIP CODE 260	0.82	ZIP CODE 430	0.80	ZIP CODE 610	0.89
ZIP CODE 264	0.77	ZIP CODE 433	0.82	ZIP CODE 612	0.83
ZIP CODE 265	0.77	ZIP CODE 434	0.95	ZIP CODE 615	0.98
ZIP CODE 267	0.73	ZIP CODE 435	0.96	ZIP CODE 617	1.02
ZIP CODE 270	0.66	ZIP CODE 438	0.77	ZIP CODE 619	0.80
ZIP CODE 272	0.64	ZIP CODE 442	0.88	ZIP CODE 620	1.02
ZIP CODE 273	0.67	ZIP CODE 446	0.72	ZIP CODE 626	0.82
ZIP CODE 274	0.63	ZIP CODE 451	0.87	ZIP CODE 630	0.95
ZIP CODE 275	0.79	ZIP CODE 453	0.91	ZIP CODE 634	0.90
ZIP CODE 279	0.82	ZIP CODE 459	0.77	ZIP CODE 638	0.78
ZIP CODE 280	0.79	ZIP CODE 460	0.87	ZIP CODE 644	0.89
ZIP CODE 286	0.79	ZIP CODE 461	0.87	ZIP CODE 646	0.87

TABLE D. — OUTPATIENT FACILITY GAAFS (GEOGRAPHIC AREA ADJUSTMENT FACTORS); BY VA FACILITY LOCATION — Continued

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VA Facility Location	GAAF	VA Facility Location	GAAF	VA Facility Location	GAAF
ZIP CODE 648	0.78	ZIP CODE 751	1.08	ZIP CODE 905	1.41
ZIP CODE 649	1.06	ZIP CODE 753	1.02	ZIP CODE 906	1.43
ZIP CODE 651	0.83	ZIP CODE 772	1.10	ZIP CODE 907	1.42
ZIP CODE 655	0.79	ZIP CODE 773	1.14	ZIP CODE 910	1.44
ZIP CODE 656	0.78	ZIP CODE 774	1.14	ZIP CODE 911	1.44
ZIP CODE 658	0.61	ZIP CODE 775	1.15	ZIP CODE 912	1.44
ZIP CODE 662	1.06	ZIP CODE 776	1.06	ZIP CODE 914	1.44
ZIP CODE 669	0.76	ZIP CODE 789	0.91	ZIP CODE 915	1.44
ZIP CODE 670	0.78	ZIP CODE 793	1.09	ZIP CODE 916	1.44
ZIP CODE 671	0.77	ZIP CODE 798	1.03	ZIP CODE 917	1.49
ZIP CODE 675	0.76	ZIP CODE 801	1.02	ZIP CODE 918	1.50
ZIP CODE 677	0.76	ZIP CODE 803	0.95	ZIP CODE 924	1.27
ZIP CODE 680	0.74	ZIP CODE 804	0.99	ZIP CODE 925	1.27
ZIP CODE 683	0.71	ZIP CODE 807	0.84	ZIP CODE 926	1.39
ZIP CODE 684	0.71	ZIP CODE 808	1.05	ZIP CODE 936	1.18
ZIP CODE 685	0.70	ZIP CODE 812	0.86	ZIP CODE 938	1.16
ZIP CODE 689	0.70	ZIP CODE 813	0.86	ZIP CODE 942	1.68
ZIP CODE 690	0.70	ZIP CODE 816	0.86	ZIP CODE 944	1.31
ZIP CODE 692	0.70	ZIP CODE 821	0.83	ZIP CODE 948	1.52
ZIP CODE 700	1.09	ZIP CODE 822	0.83	ZIP CODE 949	1.39
ZIP CODE 703	0.99	ZIP CODE 823	0.83	ZIP CODE 957	1.67
ZIP CODE 704	1.06	ZIP CODE 830	0.83	ZIP CODE 961	1.38
ZIP CODE 706	1.02	ZIP CODE 831	0.83	ZIP CODE 962	1.32
ZIP CODE 707	0.98	ZIP CODE 834	0.82	ZIP CODE 963	1.32
ZIP CODE 710	0.98	ZIP CODE 836	0.83	ZIP CODE 964	1.32
ZIP CODE 714	0.97	ZIP CODE 838	0.82	ZIP CODE 965	1.10
ZIP CODE 716	0.79	ZIP CODE 842	0.84	ZIP CODE 966	1.32
ZIP CODE 718	0.82	ZIP CODE 843	0.84	ZIP CODE 970	0.90
ZIP CODE 720	0.85	ZIP CODE 845	0.85	ZIP CODE 978	0.81
ZIP CODE 723	0.79	ZIP CODE 846	0.85	ZIP CODE 982	0.92
ZIP CODE 725	0.78	ZIP CODE 865	1.25	ZIP CODE 983	0.93
ZIP CODE 728	0.80	ZIP CODE 870	0.88	ZIP CODE 985	0.84
ZIP CODE 730	0.85	ZIP CODE 872	0.86	ZIP CODE 988	0.86
ZIP CODE 733	0.87	ZIP CODE 878	0.92	ZIP CODE 990	0.86
ZIP CODE 737	0.87	ZIP CODE 885	1.09	ZIP CODE 991	0.86
ZIP CODE 738	0.84	ZIP CODE 889	1.39	ZIP CODE 994	0.86
ZIP CODE 739	0.84	ZIP CODE 894	1.23	ZIP CODE 996	1.01
ZIP CODE 740	0.79	ZIP CODE 897	1.22	ZIP CODE 998	1.01
ZIP CODE 743	0.76	ZIP CODE 898	1.22	ZIP CODE 999	1.01
ZIP CODE 747	0.76	ZIP CODE 901	1.54		
ZIP CODE 748	0.77	ZIP CODE 903	1.48		
ZIP CODE 749	0.73	ZIP CODE 904	1.48		

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
10040	0	ACNE SURGERY OF SKIN ABSCESS	Surgery	1.18	1.27	$125.00
10060	0	DRAINAGE OF SKIN ABSCESS	Surgery	1.17	1.09	$125.00
10061	0	DRAINAGE OF SKIN ABSCESS	Surgery	2.40	1.67	$125.00
10080	0	DRAINAGE OF PILONIDAL CYST	Surgery	1.17	1.64	$125.00
10081	0	DRAINAGE OF PILONIDAL CYST	Surgery	2.45	1.35	$125.00
10120	0	REMOVE FOREIGN BODY	Surgery	1.22	1.44	$125.00
10121	0	REMOVE FOREIGN BODY	Surgery	2.69	1.49	$125.00
10140	0	DRAINAGE OF HEMATOMA/FLUID	Surgery	1.53	1.16	$125.00
10160	0	PUNCTURE DRAINAGE OF LESION	Surgery	1.20	1.21	$125.00
10180	0	COMPLEX DRAINAGE, WOUND	Surgery	2.25	1.23	$125.00
11000	0	DEBRIDE INFECTED SKIN	Surgery	0.60	0.52	$125.00
11001	0	DEBRIDE INFECTED SKIN ADD-ON	Surgery	0.30	0.30	$125.00
11010	0	DEBRIDE SKIN, FX	Surgery	4.20	2.58	$125.00
11011	0	DEBRIDE SKIN/MUSCLE, FX	Surgery	4.95	3.28	$125.00
11012	0	DEBRIDE SKIN/MUSCLE/BONE, FX	Surgery	6.88	4.95	$125.00
11040	0	DEBRIDE SKIN, PARTIAL	Surgery	0.50	0.21	$125.00
11041	0	DEBRIDE SKIN, FULL	Surgery	0.82	0.33	$125.00
11042	0	DEBRIDE SKIN/TISSUE	Surgery	1.12	0.44	$125.00
11043	0	DEBRIDE TISSUE/MUSCLE	Surgery	2.38	1.55	$125.00
11044	0	DEBRIDE TISSUE/MUSCLE/BONE	Surgery	3.06	2.14	$125.00
11055	0	TRIM SKIN LESION	Surgery	0.27	0.33	$125.00
11056	0	TRIM SKIN LESIONS, 2 TO 4	Surgery	0.39	0.39	$125.00
11057	0	TRIM SKIN LESIONS, OVER 4	Surgery	0.50	0.41	$125.00
11100	0	BIOPSY OF SKIN LESION	Surgery	0.81	1.29	$125.00
11101	0	BIOPSY, SKIN ADD-ON	Surgery	0.41	0.63	$125.00
11200	0	REMOVAL OF SKIN TAGS	Surgery	0.77	0.94	$125.00
11201	0	REMOVE SKIN TAGS ADD-ON	Surgery	0.29	0.40	$125.00
11300	0	SHAVE SKIN LESION	Surgery	0.51	0.93	$125.00
11301	0	SHAVE SKIN LESION	Surgery	0.85	1.03	$125.00
11302	0	SHAVE SKIN LESION	Surgery	1.05	1.17	$125.00
11303	0	SHAVE SKIN LESION	Surgery	1.24	1.39	$125.00
11305	0	SHAVE SKIN LESION	Surgery	0.67	0.75	$125.00
11306	0	SHAVE SKIN LESION	Surgery	0.99	1.00	$125.00
11307	0	SHAVE SKIN LESION	Surgery	1.14	1.16	$125.00
11308	0	SHAVE SKIN LESION	Surgery	1.41	1.34	$125.00
11310	0	SHAVE SKIN LESION	Surgery	0.73	1.04	$125.00
11311	0	SHAVE SKIN LESION	Surgery	1.05	1.17	$125.00
11312	0	SHAVE SKIN LESION	Surgery	1.20	1.30	$125.00
11313	0	SHAVE SKIN LESION	Surgery	1.62	1.61	$125.00
11400	0	REMOVAL OF SKIN LESION	Surgery	0.91	1.95	$125.00
11401	0	REMOVAL OF SKIN LESION	Surgery	1.32	2.01	$125.00
11402	0	REMOVAL OF SKIN LESION	Surgery	1.61	2.13	$125.00
11403	0	REMOVAL OF SKIN LESION	Surgery	1.92	2.39	$125.00
11404	0	REMOVAL OF SKIN LESION	Surgery	2.20	1.09	$125.00
11406	0	REMOVAL OF SKIN LESION	Surgery	2.76	1.58	$125.00
11420	0	REMOVAL OF SKIN LESION	Surgery	1.06	1.66	$125.00
11421	0	REMOVAL OF SKIN LESION	Surgery	1.53	1.96	$125.00
11422	0	REMOVAL OF SKIN LESION	Surgery	1.76	2.13	$125.00
11423	0	REMOVAL OF SKIN LESION	Surgery	2.17	1.11	$125.00
11424	0	REMOVAL OF SKIN LESION	Surgery	2.62	1.27	$125.00
11426	0	REMOVAL OF SKIN LESION	Surgery	3.78	1.92	$125.00
11440	0	REMOVAL OF SKIN LESION	Surgery	1.15	2.12	$125.00
11441	0	REMOVAL OF SKIN LESION	Surgery	1.61	2.27	$125.00
11442	0	REMOVAL OF SKIN LESION	Surgery	1.87	2.40	$125.00
11443	0	REMOVAL OF SKIN LESION	Surgery	2.49	2.90	$125.00
11444	0	REMOVAL OF SKIN LESION	Surgery	3.42	1.72	$125.00
11446	0	REMOVAL OF SKIN LESION	Surgery	4.49	2.14	$125.00
11450	0	REMOVAL, SWEAT GLAND LESION	Surgery	2.73	1.55	$125.00
11451	0	REMOVAL, SWEAT GLAND LESION	Surgery	3.95	2.03	$125.00
11462	0	REMOVAL, SWEAT GLAND LESION	Surgery	2.51	1.42	$125.00
11463	0	REMOVAL, SWEAT GLAND LESION	Surgery	3.95	1.81	$125.00
11470	0	REMOVAL, SWEAT GLAND LESION	Surgery	3.25	1.75	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
11471	0	REMOVAL, SWEAT GLAND LESION	Surgery	4.41	2.05	$125.00
11600	0	REMOVAL OF SKIN LESION	Surgery	1.41	2.24	$125.00
11601	0	REMOVAL OF SKIN LESION	Surgery	1.93	2.37	$125.00
11602	0	REMOVAL OF SKIN LESION	Surgery	2.09	2.54	$125.00
11603	0	REMOVAL OF SKIN LESION	Surgery	2.35	2.79	$125.00
11604	0	REMOVAL OF SKIN LESION	Surgery	2.58	1.47	$125.00
11606	0	REMOVAL OF SKIN LESION	Surgery	3.43	2.20	$125.00
11620	0	REMOVAL OF SKIN LESION	Surgery	1.34	2.26	$125.00
11621	0	REMOVAL OF SKIN LESION	Surgery	1.97	2.50	$125.00
11622	0	REMOVAL OF SKIN LESION	Surgery	2.34	2.75	$125.00
11623	0	REMOVAL OF SKIN LESION	Surgery	2.93	2.82	$125.00
11624	0	REMOVAL OF SKIN LESION	Surgery	3.43	1.90	$125.00
11626	0	REMOVAL OF SKIN LESION	Surgery	4.30	2.71	$125.00
11640	0	REMOVAL OF SKIN LESION	Surgery	1.53	2.43	$125.00
11641	0	REMOVAL OF SKIN LESION	Surgery	2.44	2.82	$125.00
11642	0	REMOVAL OF SKIN LESION	Surgery	2.93	2.89	$125.00
11643	0	REMOVAL OF SKIN LESION	Surgery	3.50	2.05	$125.00
11644	0	REMOVAL OF SKIN LESION	Surgery	4.55	2.52	$125.00
11646	0	REMOVAL OF SKIN LESION	Surgery	5.95	3.75	$125.00
11719	0	TRIM NAIL(S)	Surgery	0.11	0.43	$125.00
11720	0	DEBRIDE NAIL, 1-5	Surgery	0.32	0.40	$125.00
11721	0	DEBRIDE NAIL, 6 OR MORE	Surgery	0.54	0.55	$125.00
11730	0	REMOVAL OF NAIL PLATE	Surgery	1.13	0.68	$125.00
11732	0	REMOVE NAIL PLATE, ADD-ON	Surgery	0.57	0.29	$125.00
11740	0	DRAIN BLOOD FROM UNDER NAIL	Surgery	0.37	0.59	$125.00
11750	0	REMOVAL OF NAIL BED	Surgery	1.86	1.72	$125.00
11752	0	REMOVE NAIL BED/FINGER TIP	Surgery	2.67	1.68	$125.00
11755	0	BIOPSY, NAIL UNIT	Surgery	1.31	1.05	$125.00
11760	0	REPAIR OF NAIL BED	Surgery	1.58	1.51	$125.00
11762	0	RECONSTRUCTION OF NAIL BED	Surgery	2.89	1.73	$125.00
11765	0	EXCISION OF NAIL FOLD, TOE	Surgery	0.69	0.85	$125.00
11770	0	REMOVAL OF PILONIDAL LESION	Surgery	2.61	1.70	$125.00
11771	0	REMOVAL OF PILONIDAL LESION	Surgery	5.74	4.22	$125.00
11772	0	REMOVAL OF PILONIDAL LESION	Surgery	6.98	4.63	$125.00
11900	0	INJECTION INTO SKIN LESIONS	Surgery	0.52	0.62	$125.00
11901	0	ADDED SKIN LESIONS INJECTION	Surgery	0.80	0.75	$125.00
11920	0	CORRECT SKIN COLOR DEFECTS	Surgery	1.61	1.94	$125.00
11921	0	CORRECT SKIN COLOR DEFECTS	Surgery	1.93	2.28	$125.00
11922	0	CORRECT SKIN COLOR DEFECTS	Surgery	0.49	0.38	$125.00
11950	0	THERAPY FOR CONTOUR DEFECTS	Surgery	0.84	1.28	$125.00
11951	0	THERAPY FOR CONTOUR DEFECTS	Surgery	1.19	1.59	$125.00
11952	0	THERAPY FOR CONTOUR DEFECTS	Surgery	1.69	1.00	$125.00
11954	0	THERAPY FOR CONTOUR DEFECTS	Surgery	1.85	1.04	$125.00
11960	0	INSERT TISSUE EXPANDER(S)	Surgery	9.08	9.97	$125.00
11970	0	REPLACE TISSUE EXPANDER	Surgery	7.06	5.90	$125.00
11971	0	REMOVE TISSUE EXPANDER(S)	Surgery	2.13	3.48	$125.00
11975	0	INSERT CONTRACEPTIVE CAP	Surgery	1.48	1.46	$125.00
11976	0	REMOVAL OF CONTRACEPTIVE CAP	Surgery	1.78	1.51	$125.00
11977	0	REMOVAL/REINSERT CONTRA CAP	Surgery	3.30	2.35	$125.00
11980	0	IMPLANT HORMONE PELLET(S)	Surgery	1.48	1.14	$125.00
12001	0	REPAIR SUPERFICIAL WOUND(S)	Surgery	1.70	1.89	$125.00
12002	0	REPAIR SUPERFICIAL WOUND(S)	Surgery	1.86	2.02	$125.00
12004	0	REPAIR SUPERFICIAL WOUND(S)	Surgery	2.24	1.05	$125.00
12005	0	REPAIR SUPERFICIAL WOUND(S)	Surgery	2.86	1.34	$125.00
12006	0	REPAIR SUPERFICIAL WOUND(S)	Surgery	3.67	1.95	$125.00
12007	0	REPAIR SUPERFICIAL WOUND(S)	Surgery	4.12	2.20	$125.00
12011	0	REPAIR SUPERFICIAL WOUND(S)	Surgery	1.76	1.99	$125.00
12013	0	REPAIR SUPERFICIAL WOUND(S)	Surgery	1.99	0.96	$125.00
12014	0	REPAIR SUPERFICIAL WOUND(S)	Surgery	2.46	1.13	$125.00
12015	0	REPAIR SUPERFICIAL WOUND(S)	Surgery	3.19	1.40	$125.00
12016	0	REPAIR SUPERFICIAL WOUND(S)	Surgery	3.93	1.75	$125.00
12017	0	REPAIR SUPERFICIAL WOUND(S)	Surgery	4.71	2.76	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
12018	0	REPAIR SUPERFICIAL WOUND(S)	Surgery	5.53	3.46	$125.00
12020	0	CLOSURE OF SPLIT WOUND	Surgery	2.62	1.44	$125.00
12021	0	CLOSURE OF SPLIT WOUND	Surgery	1.84	0.95	$125.00
12031	0	LAYER CLOSURE OF WOUND(S)	Surgery	2.15	2.27	$125.00
12032	0	LAYER CLOSURE OF WOUND(S)	Surgery	2.47	1.11	$125.00
12034	0	LAYER CLOSURE OF WOUND(S)	Surgery	2.92	1.50	$125.00
12035	0	LAYER CLOSURE OF WOUND(S)	Surgery	3.43	1.78	$125.00
12036	0	LAYER CLOSURE OF WOUND(S)	Surgery	4.05	2.52	$125.00
12037	0	LAYER CLOSURE OF WOUND(S)	Surgery	4.67	3.00	$125.00
12041	0	LAYER CLOSURE OF WOUND(S)	Surgery	2.37	2.52	$125.00
12042	0	LAYER CLOSURE OF WOUND(S)	Surgery	2.74	1.23	$125.00
12044	0	LAYER CLOSURE OF WOUND(S)	Surgery	3.14	1.66	$125.00
12045	0	LAYER CLOSURE OF WOUND(S)	Surgery	3.64	1.97	$125.00
12046	0	LAYER CLOSURE OF WOUND(S)	Surgery	4.25	2.71	$125.00
12047	0	LAYER CLOSURE OF WOUND(S)	Surgery	4.65	3.28	$125.00
12051	0	LAYER CLOSURE OF WOUND(S)	Surgery	2.47	2.55	$125.00
12052	0	LAYER CLOSURE OF WOUND(S)	Surgery	2.77	1.24	$125.00
12053	0	LAYER CLOSURE OF WOUND(S)	Surgery	3.12	1.62	$125.00
12054	0	LAYER CLOSURE OF WOUND(S)	Surgery	3.46	1.94	$125.00
12055	0	LAYER CLOSURE OF WOUND(S)	Surgery	4.43	2.50	$125.00
12056	0	LAYER CLOSURE OF WOUND(S)	Surgery	5.24	3.45	$125.00
12057	0	LAYER CLOSURE OF WOUND(S)	Surgery	5.96	4.41	$125.00
13100	0	REPAIR OF WOUND OR LESION	Surgery	3.12	1.57	$125.00
13101	0	REPAIR OF WOUND OR LESION	Surgery	3.92	2.05	$125.00
13102	0	REPAIR WOUND/LESION ADD-ON	Surgery	1.24	0.59	$125.00
13120	0	REPAIR OF WOUND OR LESION	Surgery	3.30	1.64	$125.00
13121	0	REPAIR OF WOUND OR LESION	Surgery	4.33	2.18	$125.00
13122	0	REPAIR WOUND/LESION ADD-ON	Surgery	1.44	0.69	$125.00
13131	0	REPAIR OF WOUND OR LESION	Surgery	3.79	1.95	$125.00
13132	0	REPAIR OF WOUND OR LESION	Surgery	5.95	3.10	$125.00
13133	0	REPAIR WOUND/LESION ADD-ON	Surgery	2.19	1.04	$125.00
13150	0	REPAIR OF WOUND OR LESION	Surgery	3.81	2.49	$125.00
13151	0	REPAIR OF WOUND OR LESION	Surgery	4.45	2.68	$125.00
13152	0	REPAIR OF WOUND OR LESION	Surgery	6.33	3.73	$125.00
13153	0	REPAIR WOUND/LESION ADD-ON	Surgery	2.38	1.13	$125.00
13160	0	LATE CLOSURE OF WOUND	Surgery	10.48	5.71	$125.00
14000	0	SKIN TISSUE REARRANGEMENT	Surgery	5.89	6.54	$125.00
14001	0	SKIN TISSUE REARRANGEMENT	Surgery	8.47	5.80	$125.00
14020	0	SKIN TISSUE REARRANGEMENT	Surgery	6.59	5.32	$125.00
14021	0	SKIN TISSUE REARRANGEMENT	Surgery	10.06	7.06	$125.00
14040	0	SKIN TISSUE REARRANGEMENT	Surgery	7.87	5.48	$125.00
14041	0	SKIN TISSUE REARRANGEMENT	Surgery	11.49	7.05	$125.00
14060	0	SKIN TISSUE REARRANGEMENT	Surgery	8.50	7.32	$125.00
14061	0	SKIN TISSUE REARRANGEMENT	Surgery	12.29	8.11	$125.00
14300	0	SKIN TISSUE REARRANGEMENT	Surgery	11.76	9.43	$125.00
14350	0	SKIN TISSUE REARRANGEMENT	Surgery	9.61	6.43	$125.00
15000	0	SKIN GRAFT	Surgery	4.00	2.06	$125.00
15001	0	SKIN GRAFT ADD-ON	Surgery	1.00	0.44	$125.00
15050	0	SKIN PINCH GRAFT	Surgery	4.30	3.45	$125.00
15100	0	SKIN SPLIT GRAFT	Surgery	9.05	5.88	$125.00
15101	0	SKIN SPLIT GRAFT ADD-ON	Surgery	1.72	1.02	$125.00
15120	0	SKIN SPLIT GRAFT	Surgery	9.83	6.65	$125.00
15121	0	SKIN SPLIT GRAFT ADD-ON	Surgery	2.67	1.75	$125.00
15200	0	SKIN FULL GRAFT	Surgery	8.03	5.37	$125.00
15201	0	SKIN FULL GRAFT ADD-ON	Surgery	1.32	0.90	$125.00
15220	0	SKIN FULL GRAFT	Surgery	7.87	5.97	$125.00
15221	0	SKIN FULL GRAFT ADD-ON	Surgery	1.19	0.80	$125.00
15240	0	SKIN FULL GRAFT	Surgery	9.04	6.97	$125.00
15241	0	SKIN FULL GRAFT ADD-ON	Surgery	1.86	1.28	$125.00
15260	0	SKIN FULL GRAFT	Surgery	10.06	7.72	$125.00
15261	0	SKIN FULL GRAFT ADD-ON	Surgery	2.23	1.55	$125.00
15342	0	CULTURED SKIN GRAFT, 25 CM	Surgery	1.00	0.78	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
15343	0	CULTURE SKN GRAFT ADDL 25 CM	Surgery	0.25	0.10	$125.00
15350	0	SKIN HOMOGRAFT	Surgery	4.00	3.85	$125.00
15351	0	SKIN HOMOGRAFT ADD-ON	Surgery	1.00	0.43	$125.00
15400	0	SKIN HETEROGRAFT	Surgery	4.00	4.14	$125.00
15401	0	SKIN HETEROGRAFT ADD-ON	Surgery	1.00	0.48	$125.00
15570	0	FORM SKIN PEDICLE FLAP	Surgery	9.21	6.30	$125.00
15572	0	FORM SKIN PEDICLE FLAP	Surgery	9.27	6.12	$125.00
15574	0	FORM SKIN PEDICLE FLAP	Surgery	9.88	6.66	$125.00
15576	0	FORM SKIN PEDICLE FLAP	Surgery	8.69	5.63	$125.00
15600	0	SKIN GRAFT	Surgery	1.91	2.30	$125.00
15610	0	SKIN GRAFT	Surgery	2.42	2.70	$125.00
15620	0	SKIN GRAFT	Surgery	2.94	3.31	$125.00
15630	0	SKIN GRAFT	Surgery	3.27	3.73	$125.00
15650	0	TRANSFER SKIN PEDICLE FLAP	Surgery	3.97	4.04	$125.00
15732	0	MUSCLE-SKIN GRAFT, HEAD/NECK	Surgery	17.84	12.85	$125.00
15734	0	MUSCLE-SKIN GRAFT, TRUNK	Surgery	17.79	13.75	$125.00
15736	0	MUSCLE-SKIN GRAFT, ARM	Surgery	16.27	12.50	$125.00
15738	0	MUSCLE-SKIN GRAFT, LEG	Surgery	17.92	12.01	$125.00
15740	0	ISLAND PEDICLE FLAP GRAFT	Surgery	10.25	8.18	$125.00
15750	0	NEUROVASCULAR PEDICLE GRAFT	Surgery	11.41	9.35	$125.00
15756	0	FREE MUSCLE FLAP, MICROVASC	Surgery	35.23	22.29	$125.00
15757	0	FREE SKIN FLAP, MICROVASC	Surgery	35.23	24.80	$125.00
15758	0	FREE FASCIAL FLAP, MICROVASC	Surgery	35.10	25.04	$125.00
15760	0	COMPOSITE SKIN GRAFT	Surgery	8.74	7.08	$125.00
15770	0	DERMA-FAT-FASCIA GRAFT	Surgery	7.52	6.59	$125.00
15775	0	HAIR TRANSPLANT PUNCH GRAFTS	Surgery	3.96	3.09	$125.00
15776	0	HAIR TRANSPLANT PUNCH GRAFTS	Surgery	5.54	4.04	$125.00
15780	0	ABRASION TREATMENT OF SKIN	Surgery	7.29	4.98	$125.00
15781	0	ABRASION TREATMENT OF SKIN	Surgery	4.85	4.65	$125.00
15782	0	ABRASION TREATMENT OF SKIN	Surgery	4.32	3.43	$125.00
15783	0	ABRASION TREATMENT OF SKIN	Surgery	4.29	2.86	$125.00
15786	0	ABRASION, LESION, SINGLE	Surgery	2.03	1.45	$125.00
15787	0	ABRASION, LESIONS, ADD-ON	Surgery	0.33	0.35	$125.00
15788	0	CHEMICAL PEEL, FACE, EPIDERM	Surgery	2.09	2.71	$125.00
15789	0	CHEMICAL PEEL, FACE, DERMAL	Surgery	4.92	4.66	$125.00
15792	0	CHEMICAL PEEL, NONFACIAL	Surgery	1.86	2.27	$125.00
15793	0	CHEMICAL PEEL, NONFACIAL	Surgery	3.74	2.67	$125.00
15810	0	SALABRASION	Surgery	4.74	3.88	$125.00
15811	0	SALABRASION	Surgery	5.39	4.07	$125.00
15819	0	PLASTIC SURGERY, NECK	Surgery	9.38	7.33	$125.00
15820	0	REVISION OF LOWER EYELID	Surgery	5.15	6.49	$125.00
15821	0	REVISION OF LOWER EYELID	Surgery	5.72	6.79	$125.00
15822	0	REVISION OF UPPER EYELID	Surgery	4.45	5.82	$125.00
15823	0	REVISION OF UPPER EYELID	Surgery	7.05	7.47	$125.00
15831	0	EXCISE EXCESSIVE SKIN TISSUE	Surgery	12.40	8.81	$125.00
15832	0	EXCISE EXCESSIVE SKIN TISSUE	Surgery	11.59	8.12	$125.00
15833	0	EXCISE EXCESSIVE SKIN TISSUE	Surgery	10.64	7.31	$125.00
15834	0	EXCISE EXCESSIVE SKIN TISSUE	Surgery	10.85	6.55	$125.00
15835	0	EXCISE EXCESSIVE SKIN TISSUE	Surgery	11.67	6.20	$125.00
15836	0	EXCISE EXCESSIVE SKIN TISSUE	Surgery	9.34	6.21	$125.00
15837	0	EXCISE EXCESSIVE SKIN TISSUE	Surgery	8.43	6.20	$125.00
15838	0	EXCISE EXCESSIVE SKIN TISSUE	Surgery	7.13	5.87	$125.00
15839	0	EXCISE EXCESSIVE SKIN TISSUE	Surgery	9.38	5.21	$125.00
15840	0	GRAFT FOR FACE NERVE PALSY	Surgery	13.26	11.35	$125.00
15841	0	GRAFT FOR FACE NERVE PALSY	Surgery	23.26	16.05	$125.00
15842	0	FLAP FOR FACE NERVE PALSY	Surgery	37.96	24.32	$125.00
15845	0	SKIN AND MUSCLE REPAIR, FACE	Surgery	12.57	10.48	$125.00
15850	0	REMOVAL OF SUTURES	Surgery	0.78	1.13	$125.00
15851	0	REMOVAL OF SUTURES	Surgery	0.86	1.25	$125.00
15852	0	DRESSING CHANGE,NOT FOR BURN	Surgery	0.86	1.43	$125.00
15860	0	TEST FOR BLOOD FLOW IN GRAFT	Surgery	1.95	1.39	$125.00
15920	0	REMOVAL OF TAIL BONE ULCER	Surgery	7.95	4.95	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
15922	0	REMOVAL OF TAIL BONE ULCER	Surgery	9.90	7.08	$125.00
15931	0	REMOVE SACRUM PRESSURE SORE	Surgery	9.24	5.08	$125.00
15933	0	REMOVE SACRUM PRESSURE SORE	Surgery	10.85	7.71	$125.00
15934	0	REMOVE SACRUM PRESSURE SORE	Surgery	12.69	8.36	$125.00
15935	0	REMOVE SACRUM PRESSURE SORE	Surgery	14.57	10.81	$125.00
15936	0	REMOVE SACRUM PRESSURE SORE	Surgery	12.38	9.55	$125.00
15937	0	REMOVE SACRUM PRESSURE SORE	Surgery	14.21	11.48	$125.00
15940	0	REMOVE HIP PRESSURE SORE	Surgery	9.34	5.48	$125.00
15941	0	REMOVE HIP PRESSURE SORE	Surgery	11.43	9.23	$125.00
15944	0	REMOVE HIP PRESSURE SORE	Surgery	11.46	9.01	$125.00
15945	0	REMOVE HIP PRESSURE SORE	Surgery	12.69	10.35	$125.00
15946	0	REMOVE HIP PRESSURE SORE	Surgery	21.57	15.46	$125.00
15950	0	REMOVE THIGH PRESSURE SORE	Surgery	7.54	4.75	$125.00
15951	0	REMOVE THIGH PRESSURE SORE	Surgery	10.72	7.87	$125.00
15952	0	REMOVE THIGH PRESSURE SORE	Surgery	11.39	7.52	$125.00
15953	0	REMOVE THIGH PRESSURE SORE	Surgery	12.63	9.17	$125.00
15956	0	REMOVE THIGH PRESSURE SORE	Surgery	15.52	12.63	$125.00
15958	0	REMOVE THIGH PRESSURE SORE	Surgery	15.48	12.85	$125.00
16000	0	INITIAL TREATMENT OF BURN(S)	Surgery	0.89	0.84	$125.00
16010	0	TREATMENT OF BURN(S)	Surgery	0.87	0.90	$125.00
16015	0	TREATMENT OF BURN(S)	Surgery	2.35	1.30	$125.00
16020	0	TREATMENT OF BURN(S)	Surgery	0.80	0.91	$125.00
16025	0	TREATMENT OF BURN(S)	Surgery	1.85	1.43	$125.00
16030	0	TREATMENT OF BURN(S)	Surgery	2.08	0.85	$125.00
16035	0	INCISION OF BURN SCAB, INITI	Surgery	3.75	1.70	$125.00
16036	0	INCISE BURN SCAB, ADDL INCIS	Surgery	1.50	0.64	$125.00
17000	0	DESTROY BENIGN/PREMAL LESION	Surgery	0.60	0.90	$125.00
17003	0	DESTROY LESIONS, 2-14	Surgery	0.15	0.21	$125.00
17004	0	DESTROY LESIONS, 15 OR MORE	Surgery	2.79	2.46	$125.00
17106	0	DESTRUCTION OF SKIN LESIONS	Surgery	4.59	3.86	$125.00
17107	0	DESTRUCTION OF SKIN LESIONS	Surgery	9.16	5.91	$125.00
17108	0	DESTRUCTION OF SKIN LESIONS	Surgery	13.20	7.97	$125.00
17110	0	DESTRUCT LESION, 1-14	Surgery	0.65	0.86	$125.00
17111	0	DESTRUCT LESION, 15 OR MORE	Surgery	0.92	1.03	$125.00
17250	0	CHEMICAL CAUTERY, TISSUE	Surgery	0.50	0.59	$125.00
17260	0	DESTRUCTION OF SKIN LESIONS	Surgery	0.91	1.28	$125.00
17261	0	DESTRUCTION OF SKIN LESIONS	Surgery	1.17	1.44	$125.00
17262	0	DESTRUCTION OF SKIN LESIONS	Surgery	1.58	1.70	$125.00
17263	0	DESTRUCTION OF SKIN LESIONS	Surgery	1.79	1.90	$125.00
17264	0	DESTRUCTION OF SKIN LESIONS	Surgery	1.94	2.05	$125.00
17266	0	DESTRUCTION OF SKIN LESIONS	Surgery	2.34	2.35	$125.00
17270	0	DESTRUCTION OF SKIN LESIONS	Surgery	1.32	1.48	$125.00
17271	0	DESTRUCTION OF SKIN LESIONS	Surgery	1.49	1.65	$125.00
17272	0	DESTRUCTION OF SKIN LESIONS	Surgery	1.77	1.88	$125.00
17273	0	DESTRUCTION OF SKIN LESIONS	Surgery	2.05	2.10	$125.00
17274	0	DESTRUCTION OF SKIN LESIONS	Surgery	2.59	2.46	$125.00
17276	0	DESTRUCTION OF SKIN LESIONS	Surgery	3.20	2.74	$125.00
17280	0	DESTRUCTION OF SKIN LESIONS	Surgery	1.17	1.45	$125.00
17281	0	DESTRUCTION OF SKIN LESIONS	Surgery	1.72	1.84	$125.00
17282	0	DESTRUCTION OF SKIN LESIONS	Surgery	2.04	2.09	$125.00
17283	0	DESTRUCTION OF SKIN LESIONS	Surgery	2.64	2.43	$125.00
17284	0	DESTRUCTION OF SKIN LESIONS	Surgery	3.21	2.78	$125.00
17286	0	DESTRUCTION OF SKIN LESIONS	Surgery	4.44	3.47	$125.00
17304	0	CHEMOSURGERY OF SKIN LESION	Surgery	7.60	6.87	$125.00
17305	0	2ND STAGE CHEMOSURGERY	Surgery	2.85	3.30	$125.00
17306	0	3RD STAGE CHEMOSURGERY	Surgery	2.85	3.10	$125.00
17307	0	FOLLOWUP SKIN LESION THERAPY	Surgery	2.85	2.78	$125.00
17310	0	EXTENSIVE SKIN CHEMOSURGERY	Surgery	0.95	1.15	$125.00
17340	0	CRYOTHERAPY OF SKIN	Surgery	0.76	1.09	$125.00
17360	0	SKIN PEEL THERAPY	Surgery	1.43	1.21	$125.00
19000	0	DRAINAGE OF BREAST LESION	Surgery	0.84	0.99	$125.00
19001	0	DRAIN BREAST LESION ADD-ON	Surgery	0.42	0.66	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
19020	0	INCISION OF BREAST LESION	Surgery	3.57	2.92	$125.00
19030	0	INJECTION FOR BREAST X-RAY	Surgery	1.53	8.08	$125.00
19100	0	BX BREAST PERCUT W/O IMAGE	Surgery	1.27	0.43	$125.00
19101	0	BIOPSY OF BREAST, OPEN	Surgery	3.18	2.86	$125.00
19102	0	BX BREAST PERCUT W/IMAGE	Surgery	2.00	0.73	$125.00
19103	0	BX BREAST PERCUT W/DEVICE	Surgery	2.37	0.86	$125.00
19110	0	NIPPLE EXPLORATION	Surgery	4.30	3.98	$125.00
19112	0	EXCISE BREAST DUCT FISTULA	Surgery	3.67	2.95	$125.00
19120	0	REMOVAL OF BREAST LESION	Surgery	5.56	3.50	$125.00
19125	0	EXCISION, BREAST LESION	Surgery	6.06	3.62	$125.00
19126	0	EXCISION, ADDL BREAST LESION	Surgery	2.93	1.23	$125.00
19140	0	REMOVAL OF BREAST TISSUE	Surgery	5.14	3.99	$125.00
19160	0	REMOVAL OF BREAST TISSUE	Surgery	5.99	4.54	$125.00
19162	0	REMOVE BREAST TISSUE, NODES	Surgery	13.53	8.61	$125.00
19180	0	REMOVAL OF BREAST	Surgery	8.80	6.03	$125.00
19182	0	REMOVAL OF BREAST	Surgery	7.73	5.44	$125.00
19200	0	REMOVAL OF BREAST	Surgery	15.49	9.88	$125.00
19220	0	REMOVAL OF BREAST	Surgery	15.72	9.96	$125.00
19240	0	REMOVAL OF BREAST	Surgery	16.00	9.31	$125.00
19260	0	REMOVAL OF CHEST WALL LESION	Surgery	15.44	9.28	$125.00
19271	0	REVISION OF CHEST WALL	Surgery	18.90	14.27	$125.00
19272	0	EXTENSIVE CHEST WALL SURGERY	Surgery	21.55	15.08	$125.00
19290	0	PLACE NEEDLE WIRE, BREAST	Surgery	1.27	0.46	$125.00
19291	0	PLACE NEEDLE WIRE, BREAST	Surgery	0.63	0.23	$125.00
19295	0	PLACE BREAST CLIP, PERCUT	Surgery	0.00	0.94	$125.00
19316	0	SUSPENSION OF BREAST	Surgery	10.69	8.91	$125.00
19318	0	REDUCTION OF LARGE BREAST	Surgery	15.62	11.71	$125.00
19324	0	ENLARGE BREAST	Surgery	5.85	4.36	$125.00
19325	0	ENLARGE BREAST WITH IMPLANT	Surgery	8.45	6.66	$125.00
19328	0	REMOVAL OF BREAST IMPLANT	Surgery	5.68	4.47	$125.00
19330	0	REMOVAL OF IMPLANT MATERIAL	Surgery	7.59	5.05	$125.00
19340	0	IMMEDIATE BREAST PROSTHESIS	Surgery	6.33	4.38	$125.00
19342	0	DELAYED BREAST PROSTHESIS	Surgery	11.20	8.90	$125.00
19350	0	BREAST RECONSTRUCTION	Surgery	8.92	7.07	$125.00
19355	0	CORRECT INVERTED NIPPLE(S)	Surgery	7.57	5.79	$125.00
19357	0	BREAST RECONSTRUCTION	Surgery	18.16	13.74	$125.00
19361	0	BREAST RECONSTRUCTION	Surgery	19.26	14.68	$125.00
19364	0	BREAST RECONSTRUCTION	Surgery	41.00	21.69	$125.00
19366	0	BREAST RECONSTRUCTION	Surgery	21.28	13.74	$125.00
19367	0	BREAST RECONSTRUCTION	Surgery	25.73	17.20	$125.00
19368	0	BREAST RECONSTRUCTION	Surgery	32.42	20.05	$125.00
19369	0	BREAST RECONSTRUCTION	Surgery	29.82	19.41	$125.00
19370	0	SURGERY OF BREAST CAPSULE	Surgery	8.05	6.30	$125.00
19371	0	REMOVAL OF BREAST CAPSULE	Surgery	9.35	7.59	$125.00
19380	0	REVISE BREAST RECONSTRUCTION	Surgery	9.14	7.56	$125.00
19396	0	DESIGN CUSTOM BREAST IMPLANT	Surgery	2.17	1.03	$125.00
20000	0	INCISION OF ABSCESS	Surgery	2.12	1.69	$125.00
20005	0	INCISION OF DEEP ABSCESS	Surgery	3.42	2.16	$125.00
20100	0	EXPLORE WOUND, NECK	Surgery	10.08	4.84	$125.00
20101	0	EXPLORE WOUND, CHEST	Surgery	3.22	1.45	$125.00
20102	0	EXPLORE WOUND, ABDOMEN	Surgery	3.94	1.80	$125.00
20103	0	EXPLORE WOUND, EXTREMITY	Surgery	5.30	2.97	$125.00
20150	0	EXCISE EPIPHYSEAL BAR	Surgery	13.69	9.11	$125.00
20200	0	MUSCLE BIOPSY	Surgery	1.46	0.79	$125.00
20205	0	DEEP MUSCLE BIOPSY	Surgery	2.35	1.26	$125.00
20206	0	NEEDLE BIOPSY, MUSCLE	Surgery	0.99	0.53	$125.00
20220	0	BONE BIOPSY, TROCAR/NEEDLE	Surgery	1.27	2.51	$125.00
20225	0	BONE BIOPSY, TROCAR/NEEDLE	Surgery	1.87	2.70	$125.00
20240	0	BONE BIOPSY, EXCISIONAL	Surgery	3.23	3.59	$125.00
20245	0	BONE BIOPSY, EXCISIONAL	Surgery	3.95	4.49	$125.00
20250	0	OPEN BONE BIOPSY	Surgery	5.03	4.59	$125.00
20251	0	OPEN BONE BIOPSY	Surgery	5.56	5.13	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
20500	0	INJECTION OF SINUS TRACT	Surgery	1.23	3.99	$125.00
20501	0	INJECT SINUS TRACT FOR X-RAY	Surgery	0.76	9.62	$125.00
20520	0	REMOVAL OF FOREIGN BODY	Surgery	1.85	4.11	$125.00
20525	0	REMOVAL OF FOREIGN BODY	Surgery	3.50	3.71	$125.00
20550	0	INJECT TENDON/LIGAMENT/CYST	Surgery	0.86	1.57	$125.00
20600	0	DRAIN/INJECT, JOINT/BURSA	Surgery	0.66	1.14	$125.00
20605	0	DRAIN/INJECT, JOINT/BURSA	Surgery	0.68	1.38	$125.00
20610	0	DRAIN/INJECT, JOINT/BURSA	Surgery	0.79	1.68	$125.00
20615	0	TREATMENT OF BONE CYST	Surgery	2.28	3.47	$125.00
20650	0	INSERT AND REMOVE BONE PIN	Surgery	2.23	2.45	$125.00
20660	0	APPLY,REMOVE FIXATION DEVICE	Surgery	2.51	1.53	$125.00
20661	0	APPLICATION OF HEAD BRACE	Surgery	4.89	5.93	$125.00
20662	0	APPLICATION OF PELVIS BRACE	Surgery	6.07	5.61	$125.00
20663	0	APPLICATION OF THIGH BRACE	Surgery	5.43	4.82	$125.00
20664	0	HALO BRACE APPLICATION	Surgery	8.06	7.23	$125.00
20665	0	REMOVAL OF FIXATION DEVICE	Surgery	1.31	1.06	$125.00
20670	0	REMOVAL OF SUPPORT IMPLANT	Surgery	1.74	2.67	$125.00
20680	0	REMOVAL OF SUPPORT IMPLANT	Surgery	3.35	4.67	$125.00
20690	0	APPLY BONE FIXATION DEVICE	Surgery	3.52	2.40	$125.00
20692	0	APPLY BONE FIXATION DEVICE	Surgery	6.41	3.36	$125.00
20693	0	ADJUST BONE FIXATION DEVICE	Surgery	5.86	9.38	$125.00
20694	0	REMOVE BONE FIXATION DEVICE	Surgery	4.16	5.03	$125.00
20802	0	REPLANTATION, ARM, COMPLETE	Surgery	41.15	31.19	$125.00
20805	0	REPLANT, FOREARM, COMPLETE	Surgery	50.00	50.22	$125.00
20808	0	REPLANTATION HAND, COMPLETE	Surgery	61.65	48.17	$125.00
20816	0	REPLANTATION DIGIT, COMPLETE	Surgery	30.94	39.69	$125.00
20822	0	REPLANTATION DIGIT, COMPLETE	Surgery	25.59	35.71	$125.00
20824	0	REPLANTATION THUMB, COMPLETE	Surgery	30.94	35.05	$125.00
20827	0	REPLANTATION THUMB, COMPLETE	Surgery	26.41	40.75	$125.00
20838	0	REPLANTATION FOOT, COMPLETE	Surgery	41.41	31.51	$125.00
20900	0	REMOVAL OF BONE FOR GRAFT	Surgery	5.58	5.12	$125.00
20902	0	REMOVAL OF BONE FOR GRAFT	Surgery	7.55	7.55	$125.00
20910	0	REMOVE CARTILAGE FOR GRAFT	Surgery	5.34	5.10	$125.00
20912	0	REMOVE CARTILAGE FOR GRAFT	Surgery	6.35	6.70	$125.00
20920	0	REMOVAL OF FASCIA FOR GRAFT	Surgery	5.31	5.13	$125.00
20922	0	REMOVAL OF FASCIA FOR GRAFT	Surgery	6.61	5.80	$125.00
20924	0	REMOVAL OF TENDON FOR GRAFT	Surgery	6.48	6.44	$125.00
20926	0	REMOVAL OF TISSUE FOR GRAFT	Surgery	5.53	5.32	$125.00
20931	0	SPINAL BONE ALLOGRAFT	Surgery	1.81	1.19	$125.00
20937	0	SPINAL BONE AUTOGRAFT	Surgery	2.79	1.86	$125.00
20938	0	SPINAL BONE AUTOGRAFT	Surgery	3.02	2.00	$125.00
20950	0	FLUID PRESSURE, MUSCLE	Surgery	1.26	1.86	$125.00
20955	0	FIBULA BONE GRAFT, MICROVASC	Surgery	39.21	31.80	$125.00
20956	0	ILIAC BONE GRAFT, MICROVASC	Surgery	39.27	28.57	$125.00
20957	0	MT BONE GRAFT, MICROVASC	Surgery	40.65	25.69	$125.00
20962	0	OTHER BONE GRAFT, MICROVASC	Surgery	39.27	28.81	$125.00
20969	0	BONE/SKIN GRAFT, MICROVASC	Surgery	43.92	35.04	$125.00
20970	0	BONE/SKIN GRAFT, ILIAC CREST	Surgery	43.06	33.14	$125.00
20972	0	BONE/SKIN GRAFT, METATARSAL	Surgery	42.99	24.79	$125.00
20973	0	BONE/SKIN GRAFT, GREAT TOE	Surgery	45.76	28.07	$125.00
20974	0	ELECTRICAL BONE STIMULATION	Surgery	0.62	1.21	$125.00
20975	0	ELECTRICAL BONE STIMULATION	Surgery	2.60	1.83	$125.00
20979	0	US BONE STIMULATION	Surgery	0.62	0.57	$125.00
21010	0	INCISION OF JAW JOINT	Surgery	10.14	8.00	$125.00
21015	0	RESECTION OF FACIAL TUMOR	Surgery	5.29	6.79	$125.00
21025	0	EXCISION OF BONE, LOWER JAW	Surgery	10.06	5.71	$125.00
21026	0	EXCISION OF FACIAL BONE(S)	Surgery	4.85	4.02	$125.00
21029	0	CONTOUR OF FACE BONE LESION	Surgery	7.71	5.68	$125.00
21030	0	REMOVAL OF FACE BONE LESION	Surgery	6.46	4.94	$125.00
21031	0	REMOVE EXOSTOSIS, MANDIBLE	Surgery	3.24	3.50	$125.00
21032	0	REMOVE EXOSTOSIS, MAXILLA	Surgery	3.24	3.52	$125.00
21034	0	REMOVAL OF FACE BONE LESION	Surgery	16.17	9.85	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
21040	0	REMOVAL OF JAW BONE LESION	Surgery	2.11	1.77	$125.00
21041	0	REMOVAL OF JAW BONE LESION	Surgery	6.71	4.05	$125.00
21044	0	REMOVAL OF JAW BONE LESION	Surgery	11.86	8.52	$125.00
21045	0	EXTENSIVE JAW SURGERY	Surgery	16.17	11.45	$125.00
21050	0	REMOVAL OF JAW JOINT	Surgery	10.77	11.63	$125.00
21060	0	REMOVE JAW JOINT CARTILAGE	Surgery	10.23	10.60	$125.00
21070	0	REMOVE CORONOID PROCESS	Surgery	8.20	6.40	$125.00
21076	0	PREPARE FACE/ORAL PROSTHESIS	Surgery	13.42	11.32	$125.00
21077	0	PREPARE FACE/ORAL PROSTHESIS	Surgery	33.75	28.47	$125.00
21079	0	PREPARE FACE/ORAL PROSTHESIS	Surgery	22.34	20.57	$125.00
21080	0	PREPARE FACE/ORAL PROSTHESIS	Surgery	25.10	23.12	$125.00
21081	0	PREPARE FACE/ORAL PROSTHESIS	Surgery	22.88	21.06	$125.00
21082	0	PREPARE FACE/ORAL PROSTHESIS	Surgery	20.87	17.61	$125.00
21083	0	PREPARE FACE/ORAL PROSTHESIS	Surgery	19.30	17.78	$125.00
21084	0	PREPARE FACE/ORAL PROSTHESIS	Surgery	22.51	20.72	$125.00
21085	0	PREPARE FACE/ORAL PROSTHESIS	Surgery	9.00	7.58	$125.00
21086	0	PREPARE FACE/ORAL PROSTHESIS	Surgery	24.92	22.95	$125.00
21087	0	PREPARE FACE/ORAL PROSTHESIS	Surgery	24.92	21.01	$125.00
21100	0	MAXILLOFACIAL FIXATION	Surgery	4.22	3.29	$125.00
21110	0	INTERDENTAL FIXATION	Surgery	5.21	5.41	$125.00
21116	0	INJECTION, JAW JOINT X-RAY	Surgery	0.81	6.10	$125.00
21120	0	RECONSTRUCTION OF CHIN	Surgery	4.93	5.65	$125.00
21121	0	RECONSTRUCTION OF CHIN	Surgery	7.64	5.89	$125.00
21122	0	RECONSTRUCTION OF CHIN	Surgery	8.52	7.22	$125.00
21123	0	RECONSTRUCTION OF CHIN	Surgery	11.16	8.55	$125.00
21125	0	AUGMENTATION, LOWER JAW BONE	Surgery	10.62	7.76	$125.00
21127	0	AUGMENTATION, LOWER JAW BONE	Surgery	11.12	7.19	$125.00
21137	0	REDUCTION OF FOREHEAD	Surgery	9.82	7.26	$125.00
21138	0	REDUCTION OF FOREHEAD	Surgery	12.19	9.76	$125.00
21139	0	REDUCTION OF FOREHEAD	Surgery	14.61	9.92	$125.00
21141	0	RECONSTRUCT MIDFACE, LEFORT	Surgery	18.10	12.22	$125.00
21142	0	RECONSTRUCT MIDFACE, LEFORT	Surgery	18.81	12.47	$125.00
21143	0	RECONSTRUCT MIDFACE, LEFORT	Surgery	19.58	12.62	$125.00
21145	0	RECONSTRUCT MIDFACE, LEFORT	Surgery	19.94	12.49	$125.00
21146	0	RECONSTRUCT MIDFACE, LEFORT	Surgery	20.71	13.11	$125.00
21147	0	RECONSTRUCT MIDFACE, LEFORT	Surgery	21.77	14.15	$125.00
21150	0	RECONSTRUCT MIDFACE, LEFORT	Surgery	25.24	16.10	$125.00
21151	0	RECONSTRUCT MIDFACE, LEFORT	Surgery	28.30	19.36	$125.00
21154	0	RECONSTRUCT MIDFACE, LEFORT	Surgery	30.52	19.78	$125.00
21155	0	RECONSTRUCT MIDFACE, LEFORT	Surgery	34.45	20.58	$125.00
21159	0	RECONSTRUCT MIDFACE, LEFORT	Surgery	42.38	24.56	$125.00
21160	0	RECONSTRUCT MIDFACE, LEFORT	Surgery	46.44	27.66	$125.00
21172	0	RECONSTRUCT ORBIT/FOREHEAD	Surgery	27.80	19.40	$125.00
21175	0	RECONSTRUCT ORBIT/FOREHEAD	Surgery	33.17	20.78	$125.00
21179	0	RECONSTRUCT ENTIRE FOREHEAD	Surgery	22.25	18.33	$125.00
21180	0	RECONSTRUCT ENTIRE FOREHEAD	Surgery	25.19	19.17	$125.00
21181	0	CONTOUR CRANIAL BONE LESION	Surgery	9.90	8.48	$125.00
21182	0	RECONSTRUCT CRANIAL BONE	Surgery	32.19	23.26	$125.00
21183	0	RECONSTRUCT CRANIAL BONE	Surgery	35.31	24.80	$125.00
21184	0	RECONSTRUCT CRANIAL BONE	Surgery	38.24	23.78	$125.00
21188	0	RECONSTRUCTION OF MIDFACE	Surgery	22.46	16.11	$125.00
21193	0	RECONST LWR JAW W/O GRAFT	Surgery	17.15	11.58	$125.00
21194	0	RECONST LWR JAW W/GRAFT	Surgery	19.84	12.92	$125.00
21195	0	RECONST LWR JAW W/O FIXATION	Surgery	17.24	13.05	$125.00
21196	0	RECONST LWR JAW W/FIXATION	Surgery	18.91	13.32	$125.00
21198	0	RECONSTR LWR JAW SEGMENT	Surgery	14.16	12.88	$125.00
21199	0	RECONSTR LWR JAW W/ADVANCE	Surgery	16.00	10.53	$125.00
21206	0	RECONSTRUCT UPPER JAW BONE	Surgery	14.10	10.31	$125.00
21208	0	AUGMENTATION OF FACIAL BONES	Surgery	10.23	9.33	$125.00
21209	0	REDUCTION OF FACIAL BONES	Surgery	6.72	5.51	$125.00
21210	0	FACE BONE GRAFT	Surgery	10.23	7.49	$125.00
21215	0	LOWER JAW BONE GRAFT	Surgery	10.77	6.77	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUs (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUs — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
21230	0	RIB CARTILAGE GRAFT	Surgery	10.77	10.38	$125.00
21235	0	EAR CARTILAGE GRAFT	Surgery	6.72	7.95	$125.00
21240	0	RECONSTRUCTION OF JAW JOINT	Surgery	14.05	12.78	$125.00
21242	0	RECONSTRUCTION OF JAW JOINT	Surgery	12.95	12.47	$125.00
21243	0	RECONSTRUCTION OF JAW JOINT	Surgery	20.79	14.92	$125.00
21244	0	RECONSTRUCTION OF LOWER JAW	Surgery	11.86	10.29	$125.00
21245	0	RECONSTRUCTION OF JAW	Surgery	11.86	10.69	$125.00
21246	0	RECONSTRUCTION OF JAW	Surgery	12.47	10.46	$125.00
21247	0	RECONSTRUCT LOWER JAW BONE	Surgery	22.63	20.80	$125.00
21248	0	RECONSTRUCTION OF JAW	Surgery	11.48	7.69	$125.00
21249	0	RECONSTRUCTION OF JAW	Surgery	17.52	10.23	$125.00
21255	0	RECONSTRUCT LOWER JAW BONE	Surgery	16.72	13.18	$125.00
21256	0	RECONSTRUCTION OF ORBIT	Surgery	16.19	14.84	$125.00
21260	0	REVISE EYE SOCKETS	Surgery	16.52	13.52	$125.00
21261	0	REVISE EYE SOCKETS	Surgery	31.49	19.14	$125.00
21263	0	REVISE EYE SOCKETS	Surgery	28.42	19.70	$125.00
21267	0	REVISE EYE SOCKETS	Surgery	18.90	14.86	$125.00
21268	0	REVISE EYE SOCKETS	Surgery	24.48	13.62	$125.00
21270	0	AUGMENTATION, CHEEK BONE	Surgery	10.23	9.48	$125.00
21275	0	REVISION, ORBITOFACIAL BONES	Surgery	11.24	10.75	$125.00
21280	0	REVISION OF EYELID	Surgery	6.03	6.47	$125.00
21282	0	REVISION OF EYELID	Surgery	3.49	4.94	$125.00
21295	0	REVISION OF JAW MUSCLE/BONE	Surgery	1.53	2.98	$125.00
21296	0	REVISION OF JAW MUSCLE/BONE	Surgery	4.25	4.88	$125.00
21300	0	TREATMENT OF SKULL FRACTURE	Surgery	0.72	0.42	$125.00
21310	0	TREATMENT OF NOSE FRACTURE	Surgery	0.58	0.29	$125.00
21315	0	TREATMENT OF NOSE FRACTURE	Surgery	1.51	1.38	$125.00
21320	0	TREATMENT OF NOSE FRACTURE	Surgery	1.85	2.04	$125.00
21325	0	TREATMENT OF NOSE FRACTURE	Surgery	3.77	3.86	$125.00
21330	0	TREATMENT OF NOSE FRACTURE	Surgery	5.38	5.66	$125.00
21335	0	TREATMENT OF NOSE FRACTURE	Surgery	8.61	7.85	$125.00
21336	0	TREAT NASAL SEPTAL FRACTURE	Surgery	5.72	5.19	$125.00
21337	0	TREAT NASAL SEPTAL FRACTURE	Surgery	2.70	3.11	$125.00
21338	0	TREAT NASOETHMOID FRACTURE	Surgery	6.46	5.77	$125.00
21339	0	TREAT NASOETHMOID FRACTURE	Surgery	8.09	7.06	$125.00
21340	0	TREATMENT OF NOSE FRACTURE	Surgery	10.77	9.36	$125.00
21343	0	TREATMENT OF SINUS FRACTURE	Surgery	12.95	9.94	$125.00
21344	0	TREATMENT OF SINUS FRACTURE	Surgery	19.72	12.49	$125.00
21345	0	TREAT NOSE/JAW FRACTURE	Surgery	8.16	7.70	$125.00
21346	0	TREAT NOSE/JAW FRACTURE	Surgery	10.61	10.25	$125.00
21347	0	TREAT NOSE/JAW FRACTURE	Surgery	12.69	9.79	$125.00
21348	0	TREAT NOSE/JAW FRACTURE	Surgery	16.69	10.77	$125.00
21355	0	TREAT CHEEK BONE FRACTURE	Surgery	3.77	2.22	$125.00
21356	0	TREAT CHEEK BONE FRACTURE	Surgery	4.15	3.66	$125.00
21360	0	TREAT CHEEK BONE FRACTURE	Surgery	6.46	6.22	$125.00
21365	0	TREAT CHEEK BONE FRACTURE	Surgery	14.95	11.81	$125.00
21366	0	TREAT CHEEK BONE FRACTURE	Surgery	17.77	12.35	$125.00
21385	0	TREAT EYE SOCKET FRACTURE	Surgery	9.16	8.36	$125.00
21386	0	TREAT EYE SOCKET FRACTURE	Surgery	9.16	8.45	$125.00
21387	0	TREAT EYE SOCKET FRACTURE	Surgery	9.70	8.13	$125.00
21390	0	TREAT EYE SOCKET FRACTURE	Surgery	10.13	9.39	$125.00
21395	0	TREAT EYE SOCKET FRACTURE	Surgery	12.68	10.11	$125.00
21400	0	TREAT EYE SOCKET FRACTURE	Surgery	1.40	1.23	$125.00
21401	0	TREAT EYE SOCKET FRACTURE	Surgery	3.26	3.09	$125.00
21406	0	TREAT EYE SOCKET FRACTURE	Surgery	7.01	6.30	$125.00
21407	0	TREAT EYE SOCKET FRACTURE	Surgery	8.61	7.73	$125.00
21408	0	TREAT EYE SOCKET FRACTURE	Surgery	12.38	9.53	$125.00
21421	0	TREAT MOUTH ROOF FRACTURE	Surgery	5.14	6.25	$125.00
21422	0	TREAT MOUTH ROOF FRACTURE	Surgery	8.32	7.83	$125.00
21423	0	TREAT MOUTH ROOF FRACTURE	Surgery	10.40	8.74	$125.00
21431	0	TREAT CRANIOFACIAL FRACTURE	Surgery	7.05	5.59	$125.00
21432	0	TREAT CRANIOFACIAL FRACTURE	Surgery	8.61	7.30	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUs (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUs — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
21433	0	TREAT CRANIOFACIAL FRACTURE	Surgery	25.35	18.15	$125.00
21435	0	TREAT CRANIOFACIAL FRACTURE	Surgery	17.25	12.35	$125.00
21436	0	TREAT CRANIOFACIAL FRACTURE	Surgery	28.04	18.11	$125.00
21440	0	TREAT DENTAL RIDGE FRACTURE	Surgery	2.70	3.33	$125.00
21445	0	TREAT DENTAL RIDGE FRACTURE	Surgery	5.38	5.56	$125.00
21450	0	TREAT LOWER JAW FRACTURE	Surgery	2.97	2.77	$125.00
21451	0	TREAT LOWER JAW FRACTURE	Surgery	4.87	5.57	$125.00
21452	0	TREAT LOWER JAW FRACTURE	Surgery	1.98	3.23	$125.00
21453	0	TREAT LOWER JAW FRACTURE	Surgery	5.54	6.30	$125.00
21454	0	TREAT LOWER JAW FRACTURE	Surgery	6.46	6.38	$125.00
21461	0	TREAT LOWER JAW FRACTURE	Surgery	8.09	8.21	$125.00
21462	0	TREAT LOWER JAW FRACTURE	Surgery	9.79	8.83	$125.00
21465	0	TREAT LOWER JAW FRACTURE	Surgery	11.91	7.83	$125.00
21470	0	TREAT LOWER JAW FRACTURE	Surgery	15.34	11.91	$125.00
21480	0	RESET DISLOCATED JAW	Surgery	0.61	1.40	$125.00
21485	0	RESET DISLOCATED JAW	Surgery	3.99	2.92	$125.00
21490	0	REPAIR DISLOCATED JAW	Surgery	11.86	7.30	$125.00
21493	0	TREAT HYOID BONE FRACTURE	Surgery	1.27	2.67	$125.00
21494	0	TREAT HYOID BONE FRACTURE	Surgery	6.28	5.97	$125.00
21495	0	TREAT HYOID BONE FRACTURE	Surgery	5.69	4.91	$125.00
21497	0	INTERDENTAL WIRING	Surgery	3.86	3.91	$125.00
21501	0	DRAIN NECK/CHEST LESION	Surgery	3.81	3.23	$125.00
21502	0	DRAIN CHEST LESION	Surgery	7.12	7.58	$125.00
21510	0	DRAINAGE OF BONE LESION	Surgery	5.74	7.11	$125.00
21550	0	BIOPSY OF NECK/CHEST	Surgery	2.06	1.05	$125.00
21555	0	REMOVE LESION, NECK/CHEST	Surgery	4.35	2.34	$125.00
21556	0	REMOVE LESION, NECK/CHEST	Surgery	5.57	3.51	$125.00
21557	0	REMOVE TUMOR, NECK/CHEST	Surgery	8.88	8.33	$125.00
21600	0	PARTIAL REMOVAL OF RIB	Surgery	6.89	7.80	$125.00
21610	0	PARTIAL REMOVAL OF RIB	Surgery	14.61	9.50	$125.00
21615	0	REMOVAL OF RIB	Surgery	9.87	9.99	$125.00
21616	0	REMOVAL OF RIB AND NERVES	Surgery	12.04	8.74	$125.00
21620	0	PARTIAL REMOVAL OF STERNUM	Surgery	6.79	8.53	$125.00
21627	0	STERNAL DEBRIDEMENT	Surgery	6.81	13.04	$125.00
21630	0	EXTENSIVE STERNUM SURGERY	Surgery	17.38	14.31	$125.00
21632	0	EXTENSIVE STERNUM SURGERY	Surgery	18.14	14.85	$125.00
21700	0	REVISION OF NECK MUSCLE	Surgery	6.19	6.66	$125.00
21705	0	REVISION OF NECK MUSCLE/RIB	Surgery	9.60	7.09	$125.00
21720	0	REVISION OF NECK MUSCLE	Surgery	5.68	6.50	$125.00
21725	0	REVISION OF NECK MUSCLE	Surgery	6.99	6.45	$125.00
21740	0	RECONSTRUCTION OF STERNUM	Surgery	16.80	14.22	$125.00
21750	0	REPAIR OF STERNUM SEPARATION	Surgery	10.77	11.81	$125.00
21800	0	TREATMENT OF RIB FRACTURE	Surgery	0.96	0.96	$125.00
21805	0	TREATMENT OF RIB FRACTURE	Surgery	2.75	3.47	$125.00
21810	0	TREATMENT OF RIB FRACTURE(S)	Surgery	6.86	7.28	$125.00
21820	0	TREAT STERNUM FRACTURE	Surgery	1.28	1.47	$125.00
21825	0	TREAT STERNUM FRACTURE	Surgery	7.41	10.74	$125.00
21920	0	BIOPSY SOFT TISSUE OF BACK	Surgery	2.06	1.98	$125.00
21925	0	BIOPSY SOFT TISSUE OF BACK	Surgery	4.49	3.83	$125.00
21930	0	REMOVE LESION, BACK OR FLANK	Surgery	5.00	2.78	$125.00
21935	0	REMOVE TUMOR, BACK	Surgery	17.96	11.59	$125.00
22100	0	REMOVE PART OF NECK VERTEBRA	Surgery	9.73	8.52	$125.00
22101	0	REMOVE PART, THORAX VERTEBRA	Surgery	9.81	8.53	$125.00
22102	0	REMOVE PART, LUMBAR VERTEBRA	Surgery	9.81	7.73	$125.00
22103	0	REMOVE EXTRA SPINE SEGMENT	Surgery	2.34	1.57	$125.00
22110	0	REMOVE PART OF NECK VERTEBRA	Surgery	12.74	10.51	$125.00
22112	0	REMOVE PART, THORAX VERTEBRA	Surgery	12.81	10.87	$125.00
22114	0	REMOVE PART, LUMBAR VERTEBRA	Surgery	12.81	9.74	$125.00
22116	0	REMOVE EXTRA SPINE SEGMENT	Surgery	2.32	1.49	$125.00
22210	0	REVISION OF NECK SPINE	Surgery	23.82	16.40	$125.00
22212	0	REVISION OF THORAX SPINE	Surgery	19.42	15.44	$125.00
22214	0	REVISION OF LUMBAR SPINE	Surgery	19.45	15.25	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
22216	0	REVISE, EXTRA SPINE SEGMENT	Surgery	6.04	3.83	$125.00
22220	0	REVISION OF NECK SPINE	Surgery	21.37	16.12	$125.00
22222	0	REVISION OF THORAX SPINE	Surgery	21.52	13.89	$125.00
22224	0	REVISION OF LUMBAR SPINE	Surgery	21.52	15.84	$125.00
22226	0	REVISE, EXTRA SPINE SEGMENT	Surgery	6.04	3.83	$125.00
22305	0	TREAT SPINE PROCESS FRACTURE	Surgery	2.05	2.01	$125.00
22310	0	TREAT SPINE FRACTURE	Surgery	2.61	3.14	$125.00
22315	0	TREAT SPINE FRACTURE	Surgery	8.84	8.16	$125.00
22318	0	TREAT ODONTOID FX W/O GRAFT	Surgery	21.50	14.53	$125.00
22319	0	TREAT ODONTOID FX W/GRAFT	Surgery	24.00	16.80	$125.00
22325	0	TREAT SPINE FRACTURE	Surgery	18.30	12.90	$125.00
22326	0	TREAT NECK SPINE FRACTURE	Surgery	19.59	15.75	$125.00
22327	0	TREAT THORAX SPINE FRACTURE	Surgery	19.20	15.20	$125.00
22328	0	TREAT EACH ADD SPINE FX	Surgery	4.61	2.91	$125.00
22505	0	MANIPULATION OF SPINE	Surgery	1.87	2.58	$125.00
22520	0	PERCUT VERTEBROPLASTY THOR	Surgery	8.91	3.95	$125.00
22521	0	PERCUT VERTEBROPLASTY LUMB	Surgery	8.34	3.72	$125.00
22522	0	PERCUT VERTEBROPLASTY ADDL	Surgery	3.00	1.20	$125.00
22548	0	NECK SPINE FUSION	Surgery	25.82	19.42	$125.00
22554	0	NECK SPINE FUSION	Surgery	18.62	15.58	$125.00
22556	0	THORAX SPINE FUSION	Surgery	23.46	18.43	$125.00
22558	0	LUMBAR SPINE FUSION	Surgery	22.28	16.34	$125.00
22585	0	ADDITIONAL SPINAL FUSION	Surgery	5.53	3.64	$125.00
22590	0	SPINE & SKULL SPINAL FUSION	Surgery	20.51	17.31	$125.00
22595	0	NECK SPINAL FUSION	Surgery	19.39	16.48	$125.00
22600	0	NECK SPINE FUSION	Surgery	16.14	14.23	$125.00
22610	0	THORAX SPINE FUSION	Surgery	16.02	14.17	$125.00
22612	0	LUMBAR SPINE FUSION	Surgery	21.00	17.07	$125.00
22614	0	SPINE FUSION, EXTRA SEGMENT	Surgery	6.44	4.15	$125.00
22630	0	LUMBAR SPINE FUSION	Surgery	20.84	16.65	$125.00
22632	0	SPINE FUSION, EXTRA SEGMENT	Surgery	5.23	3.46	$125.00
22800	0	FUSION OF SPINE	Surgery	18.25	15.64	$125.00
22802	0	FUSION OF SPINE	Surgery	30.88	23.60	$125.00
22804	0	FUSION OF SPINE	Surgery	36.27	25.61	$125.00
22808	0	FUSION OF SPINE	Surgery	26.27	18.70	$125.00
22810	0	FUSION OF SPINE	Surgery	30.27	19.91	$125.00
22812	0	FUSION OF SPINE	Surgery	32.70	23.49	$125.00
22818	0	KYPHECTOMY, 1-2 SEGMENTS	Surgery	31.83	23.41	$125.00
22819	0	KYPHECTOMY, 3 OR MORE	Surgery	36.44	23.21	$125.00
22830	0	EXPLORATION OF SPINAL FUSION	Surgery	10.85	10.43	$125.00
22840	0	INSERT SPINE FIXATION DEVICE	Surgery	12.54	7.86	$125.00
22842	0	INSERT SPINE FIXATION DEVICE	Surgery	12.58	6.95	$125.00
22843	0	INSERT SPINE FIXATION DEVICE	Surgery	13.46	8.92	$125.00
22844	0	INSERT SPINE FIXATION DEVICE	Surgery	16.44	10.68	$125.00
22845	0	INSERT SPINE FIXATION DEVICE	Surgery	11.96	7.47	$125.00
22846	0	INSERT SPINE FIXATION DEVICE	Surgery	12.42	8.27	$125.00
22847	0	INSERT SPINE FIXATION DEVICE	Surgery	13.80	9.06	$125.00
22848	0	INSERT PELV FIXATION DEVICE	Surgery	6.00	5.11	$125.00
22849	0	REINSERT SPINAL FIXATION	Surgery	18.51	13.46	$125.00
22850	0	REMOVE SPINE FIXATION DEVICE	Surgery	9.52	8.80	$125.00
22851	0	APPLY SPINE PROSTH DEVICE	Surgery	6.71	5.54	$125.00
22852	0	REMOVE SPINE FIXATION DEVICE	Surgery	9.01	8.80	$125.00
22855	0	REMOVE SPINE FIXATION DEVICE	Surgery	15.13	10.47	$125.00
22900	0	REMOVE ABDOMINAL WALL LESION	Surgery	5.80	4.10	$125.00
23000	0	REMOVAL OF CALCIUM DEPOSITS	Surgery	4.36	5.85	$125.00
23020	0	RELEASE SHOULDER JOINT	Surgery	8.93	9.46	$125.00
23030	0	DRAIN SHOULDER LESION	Surgery	3.43	3.74	$125.00
23031	0	DRAIN SHOULDER BURSA	Surgery	2.74	4.38	$125.00
23035	0	DRAIN SHOULDER BONE LESION	Surgery	8.61	12.66	$125.00
23040	0	EXPLORATORY SHOULDER SURGERY	Surgery	9.20	10.68	$125.00
23044	0	EXPLORATORY SHOULDER SURGERY	Surgery	7.12	9.34	$125.00
23065	0	BIOPSY SHOULDER TISSUES	Surgery	2.27	1.16	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
23066	0	BIOPSY SHOULDER TISSUES	Surgery	4.16	4.89	$125.00
23075	0	REMOVAL OF SHOULDER LESION	Surgery	2.39	2.74	$125.00
23076	0	REMOVAL OF SHOULDER LESION	Surgery	7.63	6.95	$125.00
23077	0	REMOVE TUMOR OF SHOULDER	Surgery	16.09	12.50	$125.00
23100	0	BIOPSY OF SHOULDER JOINT	Surgery	6.03	7.80	$125.00
23101	0	SHOULDER JOINT SURGERY	Surgery	5.58	7.76	$125.00
23105	0	REMOVE SHOULDER JOINT LINING	Surgery	8.23	9.65	$125.00
23106	0	INCISION OF COLLARBONE JOINT	Surgery	5.96	7.69	$125.00
23107	0	EXPLORE TREAT SHOULDER JOINT	Surgery	8.62	9.77	$125.00
23120	0	PARTIAL REMOVAL, COLLAR BONE	Surgery	7.11	7.90	$125.00
23125	0	REMOVAL OF COLLAR BONE	Surgery	9.39	10.02	$125.00
23130	0	REMOVE SHOULDER BONE, PART	Surgery	7.55	8.75	$125.00
23140	0	REMOVAL OF BONE LESION	Surgery	6.89	7.37	$125.00
23145	0	REMOVAL OF BONE LESION	Surgery	9.09	10.70	$125.00
23146	0	REMOVAL OF BONE LESION	Surgery	7.83	8.90	$125.00
23150	0	REMOVAL OF HUMERUS LESION	Surgery	8.48	8.88	$125.00
23155	0	REMOVAL OF HUMERUS LESION	Surgery	10.35	10.48	$125.00
23156	0	REMOVAL OF HUMERUS LESION	Surgery	8.68	9.34	$125.00
23170	0	REMOVE COLLAR BONE LESION	Surgery	6.86	9.37	$125.00
23172	0	REMOVE SHOULDER BLADE LESION	Surgery	6.90	9.64	$125.00
23174	0	REMOVE HUMERUS LESION	Surgery	9.51	10.50	$125.00
23180	0	REMOVE COLLAR BONE LESION	Surgery	8.53	12.28	$125.00
23182	0	REMOVE SHOULDER BLADE LESION	Surgery	8.15	13.42	$125.00
23184	0	REMOVE HUMERUS LESION	Surgery	9.38	13.55	$125.00
23190	0	PARTIAL REMOVAL OF SCAPULA	Surgery	7.24	7.65	$125.00
23195	0	REMOVAL OF HEAD OF HUMERUS	Surgery	9.81	10.24	$125.00
23200	0	REMOVAL OF COLLAR BONE	Surgery	12.08	12.89	$125.00
23210	0	REMOVAL OF SHOULDER BLADE	Surgery	12.49	12.66	$125.00
23220	0	PARTIAL REMOVAL OF HUMERUS	Surgery	14.58	14.07	$125.00
23221	0	PARTIAL REMOVAL OF HUMERUS	Surgery	17.74	16.98	$125.00
23222	0	PARTIAL REMOVAL OF HUMERUS	Surgery	23.92	18.87	$125.00
23330	0	REMOVE SHOULDER FOREIGN BODY	Surgery	1.85	3.55	$125.00
23331	0	REMOVE SHOULDER FOREIGN BODY	Surgery	7.38	7.34	$125.00
23332	0	REMOVE SHOULDER FOREIGN BODY	Surgery	11.62	11.14	$125.00
23350	0	INJECTION FOR SHOULDER X-RAY	Surgery	1.00	7.16	$125.00
23395	0	MUSCLE TRANSFER,SHOULDER/ARM	Surgery	16.85	13.10	$125.00
23397	0	MUSCLE TRANSFERS	Surgery	16.13	14.28	$125.00
23400	0	FIXATION OF SHOULDER BLADE	Surgery	13.54	12.38	$125.00
23405	0	INCISION OF TENDON & MUSCLE	Surgery	8.37	8.73	$125.00
23406	0	INCISE TENDON(S) & MUSCLE(S)	Surgery	10.79	10.67	$125.00
23410	0	REPAIR OF TENDON(S)	Surgery	12.45	11.74	$125.00
23412	0	REPAIR OF TENDON(S)	Surgery	13.31	12.83	$125.00
23415	0	RELEASE OF SHOULDER LIGAMENT	Surgery	9.97	8.61	$125.00
23420	0	REPAIR OF SHOULDER	Surgery	13.30	13.79	$125.00
23430	0	REPAIR BICEPS TENDON	Surgery	9.98	9.82	$125.00
23440	0	REMOVE/TRANSPLANT TENDON	Surgery	10.48	9.95	$125.00
23450	0	REPAIR SHOULDER CAPSULE	Surgery	13.40	12.78	$125.00
23455	0	REPAIR SHOULDER CAPSULE	Surgery	14.37	13.88	$125.00
23460	0	REPAIR SHOULDER CAPSULE	Surgery	15.37	13.97	$125.00
23462	0	REPAIR SHOULDER CAPSULE	Surgery	15.30	14.13	$125.00
23465	0	REPAIR SHOULDER CAPSULE	Surgery	15.85	13.07	$125.00
23466	0	REPAIR SHOULDER CAPSULE	Surgery	14.22	13.84	$125.00
23470	0	RECONSTRUCT SHOULDER JOINT	Surgery	17.15	15.33	$125.00
23472	0	RECONSTRUCT SHOULDER JOINT	Surgery	16.92	15.77	$125.00
23480	0	REVISION OF COLLAR BONE	Surgery	11.18	10.14	$125.00
23485	0	REVISION OF COLLAR BONE	Surgery	13.43	12.39	$125.00
23490	0	REINFORCE CLAVICLE	Surgery	11.86	10.61	$125.00
23491	0	REINFORCE SHOULDER BONES	Surgery	14.21	12.88	$125.00
23500	0	TREAT CLAVICLE FRACTURE	Surgery	2.08	2.23	$125.00
23505	0	TREAT CLAVICLE FRACTURE	Surgery	3.69	3.53	$125.00
23515	0	TREAT CLAVICLE FRACTURE	Surgery	7.41	7.64	$125.00
23520	0	TREAT CLAVICLE DISLOCATION	Surgery	2.16	2.18	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUs (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUs — Continued

CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
23525	0	TREAT CLAVICLE DISLOCATION	Surgery	3.60	3.26	$125.00
23530	0	TREAT CLAVICLE DISLOCATION	Surgery	7.31	8.36	$125.00
23532	0	TREAT CLAVICLE DISLOCATION	Surgery	8.01	8.02	$125.00
23540	0	TREAT CLAVICLE DISLOCATION	Surgery	2.23	2.21	$125.00
23545	0	TREAT CLAVICLE DISLOCATION	Surgery	3.25	3.12	$125.00
23550	0	TREAT CLAVICLE DISLOCATION	Surgery	7.24	7.92	$125.00
23552	0	TREAT CLAVICLE DISLOCATION	Surgery	8.45	8.20	$125.00
23570	0	TREAT SHOULDER BLADE FX	Surgery	2.23	2.33	$125.00
23575	0	TREAT SHOULDER BLADE FX	Surgery	4.06	3.73	$125.00
23585	0	TREAT SCAPULA FRACTURE	Surgery	8.96	8.71	$125.00
23600	0	TREAT HUMERUS FRACTURE	Surgery	2.93	3.43	$125.00
23605	0	TREAT HUMERUS FRACTURE	Surgery	4.87	6.09	$125.00
23615	0	TREAT HUMERUS FRACTURE	Surgery	9.35	9.93	$125.00
23616	0	TREAT HUMERUS FRACTURE	Surgery	21.27	17.72	$125.00
23620	0	TREAT HUMERUS FRACTURE	Surgery	2.40	2.81	$125.00
23625	0	TREAT HUMERUS FRACTURE	Surgery	3.93	5.03	$125.00
23630	10	TREAT HUMERUS FRACTURE	Surgery	7.35	7.95	$125.00
23650	0	TREAT SHOULDER DISLOCATION	Surgery	3.39	3.07	$125.00
23655	0	TREAT SHOULDER DISLOCATION	Surgery	4.57	3.82	$125.00
23660	0	TREAT SHOULDER DISLOCATION	Surgery	7.49	7.97	$125.00
23665	0	TREAT DISLOCATION/FRACTURE	Surgery	4.47	5.10	$125.00
23670	0	TREAT DISLOCATION/FRACTURE	Surgery	7.90	8.44	$125.00
23675	0	TREAT DISLOCATION/FRACTURE	Surgery	6.05	5.94	$125.00
23680	0	TREAT DISLOCATION/FRACTURE	Surgery	10.06	9.99	$125.00
23700	0	FIXATION OF SHOULDER	Surgery	2.52	2.98	$125.00
23800	0	FUSION OF SHOULDER JOINT	Surgery	14.16	14.38	$125.00
23802	0	FUSION OF SHOULDER JOINT	Surgery	16.60	15.08	$125.00
23900	0	AMPUTATION OF ARM & GIRDLE	Surgery	19.72	14.46	$125.00
23920	0	AMPUTATION AT SHOULDER JOINT	Surgery	14.61	14.06	$125.00
23921	0	AMPUTATION FOLLOW-UP SURGERY	Surgery	5.49	6.07	$125.00
23930	0	DRAINAGE OF ARM LESION	Surgery	2.94	3.37	$125.00
23931	0	DRAINAGE OF ARM BURSA	Surgery	1.79	2.63	$125.00
23935	0	DRAIN ARM/ELBOW BONE LESION	Surgery	6.09	10.28	$125.00
24000	0	EXPLORATORY ELBOW SURGERY	Surgery	5.82	6.00	$125.00
24006	0	RELEASE ELBOW JOINT	Surgery	9.31	8.03	$125.00
24065	0	BIOPSY ARM/ELBOW SOFT TISSUE	Surgery	2.08	2.51	$125.00
24066	0	BIOPSY ARM/ELBOW SOFT TISSUE	Surgery	5.21	5.51	$125.00
24075	0	REMOVE ARM/ELBOW LESION	Surgery	3.92	4.82	$125.00
24076	0	REMOVE ARM/ELBOW LESION	Surgery	6.30	6.10	$125.00
24077	0	REMOVE TUMOR OF ARM/ELBOW	Surgery	11.76	12.53	$125.00
24100	0	BIOPSY ELBOW JOINT LINING	Surgery	4.93	5.26	$125.00
24101	0	EXPLORE/TREAT ELBOW JOINT	Surgery	6.13	6.57	$125.00
24102	0	REMOVE ELBOW JOINT LINING	Surgery	8.03	7.95	$125.00
24105	0	REMOVAL OF ELBOW BURSA	Surgery	3.61	4.65	$125.00
24110	0	REMOVE HUMERUS LESION	Surgery	7.39	8.88	$125.00
24115	0	REMOVE/GRAFT BONE LESION	Surgery	9.63	9.09	$125.00
24116	0	REMOVE/GRAFT BONE LESION	Surgery	11.81	11.03	$125.00
24120	0	REMOVE ELBOW LESION	Surgery	6.65	6.35	$125.00
24125	0	REMOVE/GRAFT BONE LESION	Surgery	7.89	6.48	$125.00
24126	0	REMOVE/GRAFT BONE LESION	Surgery	8.31	7.31	$125.00
24130	0	REMOVAL OF HEAD OF RADIUS	Surgery	6.25	6.63	$125.00
24134	0	REMOVAL OF ARM BONE LESION	Surgery	9.73	13.89	$125.00
24136	0	REMOVE RADIUS BONE LESION	Surgery	7.99	7.27	$125.00
24138	0	REMOVE ELBOW BONE LESION	Surgery	8.05	7.23	$125.00
24140	0	PARTIAL REMOVAL OF ARM BONE	Surgery	9.18	14.15	$125.00
24145	0	PARTIAL REMOVAL OF RADIUS	Surgery	7.58	9.42	$125.00
24147	0	PARTIAL REMOVAL OF ELBOW	Surgery	7.54	9.52	$125.00
24149	0	RADICAL RESECTION OF ELBOW	Surgery	14.20	11.51	$125.00
24150	0	EXTENSIVE HUMERUS SURGERY	Surgery	13.27	14.16	$125.00
24151	0	EXTENSIVE HUMERUS SURGERY	Surgery	15.58	15.26	$125.00
24152	0	EXTENSIVE RADIUS SURGERY	Surgery	10.08	8.54	$125.00
24153	0	EXTENSIVE RADIUS SURGERY	Surgery	11.54	8.26	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUs (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUs — Continued

CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
24155	0	REMOVAL OF ELBOW JOINT	Surgery	11.73	9.48	$125.00
24160	0	REMOVE ELBOW JOINT IMPLANT	Surgery	7.83	6.78	$125.00
24164	0	REMOVE RADIUS HEAD IMPLANT	Surgery	6.23	6.25	$125.00
24200	0	REMOVAL OF ARM FOREIGN BODY	Surgery	1.76	4.40	$125.00
24201	0	REMOVAL OF ARM FOREIGN BODY	Surgery	4.56	6.19	$125.00
24220	0	INJECTION FOR ELBOW X-RAY	Surgery	1.31	7.82	$125.00
24301	0	MUSCLE/TENDON TRANSFER	Surgery	10.20	8.76	$125.00
24305	0	ARM TENDON LENGTHENING	Surgery	7.45	6.17	$125.00
24310	0	REVISION OF ARM TENDON	Surgery	5.98	6.52	$125.00
24320	0	REPAIR OF ARM TENDON	Surgery	10.56	9.89	$125.00
24330	0	REVISION OF ARM MUSCLES	Surgery	9.60	8.61	$125.00
24331	0	REVISION OF ARM MUSCLES	Surgery	10.65	9.17	$125.00
24340	0	REPAIR OF BICEPS TENDON	Surgery	7.89	7.29	$125.00
24341	0	REPAIR ARM TENDON/MUSCLE	Surgery	7.90	7.34	$125.00
24342	0	REPAIR OF RUPTURED TENDON	Surgery	10.62	9.46	$125.00
24350	0	REPAIR OF TENNIS ELBOW	Surgery	5.25	5.56	$125.00
24351	10	REPAIR OF TENNIS ELBOW	Surgery	5.91	5.97	$125.00
24352	0	REPAIR OF TENNIS ELBOW	Surgery	6.43	6.48	$125.00
24354	0	REPAIR OF TENNIS ELBOW	Surgery	6.48	6.42	$125.00
24356	0	REVISION OF TENNIS ELBOW	Surgery	6.68	7.00	$125.00
24360	0	RECONSTRUCT ELBOW JOINT	Surgery	12.34	10.88	$125.00
24361	0	RECONSTRUCT ELBOW JOINT	Surgery	14.08	11.30	$125.00
24362	0	RECONSTRUCT ELBOW JOINT	Surgery	14.99	9.92	$125.00
24363	0	REPLACE ELBOW JOINT	Surgery	18.49	15.40	$125.00
24365	0	RECONSTRUCT HEAD OF RADIUS	Surgery	8.39	7.73	$125.00
24366	0	RECONSTRUCT HEAD OF RADIUS	Surgery	9.13	8.73	$125.00
24400	0	REVISION OF HUMERUS	Surgery	11.06	11.19	$125.00
24410	0	REVISION OF HUMERUS	Surgery	14.82	14.17	$125.00
24420	0	REVISION OF HUMERUS	Surgery	13.44	14.87	$125.00
24430	0	REPAIR OF HUMERUS	Surgery	12.81	12.91	$125.00
24435	0	REPAIR HUMERUS WITH GRAFT	Surgery	13.17	13.75	$125.00
24470	0	REVISION OF ELBOW JOINT	Surgery	8.74	7.50	$125.00
24495	0	DECOMPRESSION OF FOREARM	Surgery	8.12	8.74	$125.00
24498	0	REINFORCE HUMERUS	Surgery	11.92	11.49	$125.00
24500	0	TREAT HUMERUS FRACTURE	Surgery	3.21	3.13	$125.00
24505	0	TREAT HUMERUS FRACTURE	Surgery	5.17	6.22	$125.00
24515	0	TREAT HUMERUS FRACTURE	Surgery	11.65	10.68	$125.00
24516	0	TREAT HUMERUS FRACTURE	Surgery	11.65	10.97	$125.00
24530	0	TREAT HUMERUS FRACTURE	Surgery	3.50	4.27	$125.00
24535	0	TREAT HUMERUS FRACTURE	Surgery	6.87	6.27	$125.00
24538	0	TREAT HUMERUS FRACTURE	Surgery	9.43	9.46	$125.00
24545	0	TREAT HUMERUS FRACTURE	Surgery	10.46	9.88	$125.00
24546	0	TREAT HUMERUS FRACTURE	Surgery	15.69	12.44	$125.00
24560	0	TREAT HUMERUS FRACTURE	Surgery	2.80	2.87	$125.00
24565	0	TREAT HUMERUS FRACTURE	Surgery	5.56	5.32	$125.00
24566	0	TREAT HUMERUS FRACTURE	Surgery	7.79	8.57	$125.00
24575	0	TREAT HUMERUS FRACTURE	Surgery	10.66	8.10	$125.00
24576	0	TREAT HUMERUS FRACTURE	Surgery	2.86	2.95	$125.00
24577	0	TREAT HUMERUS FRACTURE	Surgery	5.79	5.58	$125.00
24579	0	TREAT HUMERUS FRACTURE	Surgery	11.60	10.27	$125.00
24582	0	TREAT HUMERUS FRACTURE	Surgery	8.55	9.08	$125.00
24586	0	TREAT ELBOW FRACTURE	Surgery	15.21	12.02	$125.00
24587	0	TREAT ELBOW FRACTURE	Surgery	15.16	11.58	$125.00
24600	0	TREAT ELBOW DISLOCATION	Surgery	4.23	4.27	$125.00
24605	0	TREAT ELBOW DISLOCATION	Surgery	5.42	4.17	$125.00
24615	0	TREAT ELBOW DISLOCATION	Surgery	9.42	8.17	$125.00
24620	0	TREAT ELBOW FRACTURE	Surgery	6.98	5.84	$125.00
24635	0	TREAT ELBOW FRACTURE	Surgery	13.19	14.29	$125.00
24640	0	TREAT ELBOW DISLOCATION	Surgery	1.20	1.60	$125.00
24650	0	TREAT RADIUS FRACTURE	Surgery	2.16	2.41	$125.00
24655	0	TREAT RADIUS FRACTURE	Surgery	4.40	4.68	$125.00
24665	0	TREAT RADIUS FRACTURE	Surgery	8.14	8.52	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
24666	0	TREAT RADIUS FRACTURE	Surgery	9.49	9.92	$125.00
24670	0	TREAT ULNAR FRACTURE	Surgery	2.54	2.78	$125.00
24675	0	TREAT ULNAR FRACTURE	Surgery	4.72	4.97	$125.00
24685	0	TREAT ULNAR FRACTURE	Surgery	8.80	9.13	$125.00
24800	0	FUSION OF ELBOW JOINT	Surgery	11.20	9.93	$125.00
24802	0	FUSION/GRAFT OF ELBOW JOINT	Surgery	13.69	11.63	$125.00
24900	0	AMPUTATION OF UPPER ARM	Surgery	9.60	10.04	$125.00
24920	0	AMPUTATION OF UPPER ARM	Surgery	9.54	10.73	$125.00
24925	0	AMPUTATION FOLLOW-UP SURGERY	Surgery	7.07	8.36	$125.00
24930	0	AMPUTATION FOLLOW-UP SURGERY	Surgery	10.25	10.47	$125.00
24931	0	AMPUTATE UPPER ARM & IMPLANT	Surgery	12.72	11.48	$125.00
24935	0	REVISION OF AMPUTATION	Surgery	15.56	12.63	$125.00
25000	0	INCISION OF TENDON SHEATH	Surgery	3.38	5.95	$125.00
25020	0	DECOMPRESSION OF FOREARM	Surgery	5.92	8.90	$125.00
25023	0	DECOMPRESSION OF FOREARM	Surgery	12.96	13.40	$125.00
25028	0	DRAINAGE OF FOREARM LESION	Surgery	5.25	7.60	$125.00
25031	0	DRAINAGE OF FOREARM BURSA	Surgery	4.14	6.95	$125.00
25035	0	TREAT FOREARM BONE LESION	Surgery	7.36	13.08	$125.00
25040	0	EXPLORE/TREAT WRIST JOINT	Surgery	7.18	7.97	$125.00
25065	0	BIOPSY FOREARM SOFT TISSUES	Surgery	1.99	2.04	$125.00
25066	0	BIOPSY FOREARM SOFT TISSUES	Surgery	4.13	5.94	$125.00
25075	0	REMOVAL OF FOREARM LESION	Surgery	3.74	5.70	$125.00
25076	0	REMOVAL OF FOREARM LESION	Surgery	4.92	9.66	$125.00
25077	0	REMOVE TUMOR, FOREARM/WRIST	Surgery	9.76	13.65	$125.00
25085	0	INCISION OF WRIST CAPSULE	Surgery	5.50	8.66	$125.00
25100	0	BIOPSY OF WRIST JOINT	Surgery	3.90	6.15	$125.00
25101	0	EXPLORE/TREAT WRIST JOINT	Surgery	4.69	6.82	$125.00
25105	0	REMOVE WRIST JOINT LINING	Surgery	5.85	9.29	$125.00
25107	0	REMOVE WRIST JOINT CARTILAGE	Surgery	6.43	9.11	$125.00
25110	0	REMOVE WRIST TENDON LESION	Surgery	3.92	6.55	$125.00
25111	0	REMOVE WRIST TENDON LESION	Surgery	3.39	5.38	$125.00
25112	0	REREMOVE WRIST TENDON LESION	Surgery	4.53	6.17	$125.00
25115	0	REMOVE WRIST/FOREARM LESION	Surgery	8.82	13.53	$125.00
25116	0	REMOVE WRIST/FOREARM LESION	Surgery	7.11	12.95	$125.00
25118	0	EXCISE WRIST TENDON SHEATH	Surgery	4.37	6.68	$125.00
25119	0	PARTIAL REMOVAL OF ULNA	Surgery	6.04	9.30	$125.00
25120	0	REMOVAL OF FOREARM LESION	Surgery	6.10	11.72	$125.00
25125	0	REMOVE/GRAFT FOREARM LESION	Surgery	7.48	12.75	$125.00
25126	0	REMOVE/GRAFT FOREARM LESION	Surgery	7.55	12.31	$125.00
25130	0	REMOVAL OF WRIST LESION	Surgery	5.26	6.77	$125.00
25135	0	REMOVE & GRAFT WRIST LESION	Surgery	6.89	7.70	$125.00
25136	0	REMOVE & GRAFT WRIST LESION	Surgery	5.97	6.07	$125.00
25145	0	REMOVE FOREARM BONE LESION	Surgery	6.37	12.12	$125.00
25150	0	PARTIAL REMOVAL OF ULNA	Surgery	7.09	10.05	$125.00
25151	0	PARTIAL REMOVAL OF RADIUS	Surgery	7.39	11.89	$125.00
25170	0	EXTENSIVE FOREARM SURGERY	Surgery	11.09	14.70	$125.00
25210	0	REMOVAL OF WRIST BONE	Surgery	5.95	7.34	$125.00
25215	0	REMOVAL OF WRIST BONES	Surgery	7.89	10.72	$125.00
25230	0	PARTIAL REMOVAL OF RADIUS	Surgery	5.23	7.09	$125.00
25240	0	PARTIAL REMOVAL OF ULNA	Surgery	5.17	8.65	$125.00
25246	0	INJECTION FOR WRIST X-RAY	Surgery	1.45	7.49	$125.00
25248	0	REMOVE FOREARM FOREIGN BODY	Surgery	5.14	7.37	$125.00
25250	0	REMOVAL OF WRIST PROSTHESIS	Surgery	6.60	7.64	$125.00
25251	0	REMOVAL OF WRIST PROSTHESIS	Surgery	9.57	10.90	$125.00
25260	0	REPAIR FOREARM TENDON/MUSCLE	Surgery	7.80	12.95	$125.00
25263	0	REPAIR FOREARM TENDON/MUSCLE	Surgery	7.82	12.78	$125.00
25265	0	REPAIR FOREARM TENDON/MUSCLE	Surgery	9.88	13.97	$125.00
25270	0	REPAIR FOREARM TENDON/MUSCLE	Surgery	6.00	11.80	$125.00
25272	0	REPAIR FOREARM TENDON/MUSCLE	Surgery	7.04	12.31	$125.00
25274	0	REPAIR FOREARM TENDON/MUSCLE	Surgery	8.75	13.02	$125.00
25280	0	REVISE WRIST/FOREARM TENDON	Surgery	7.22	11.88	$125.00
25290	0	INCISE WRIST/FOREARM TENDON	Surgery	5.29	12.81	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
25295	0	RELEASE WRIST/FOREARM TENDON	Surgery	6.55	11.34	$125.00
25300	0	FUSION OF TENDONS AT WRIST	Surgery	8.80	9.13	$125.00
25301	0	FUSION OF TENDONS AT WRIST	Surgery	8.40	8.81	$125.00
25310	0	TRANSPLANT FOREARM TENDON	Surgery	8.14	12.87	$125.00
25312	0	TRANSPLANT FOREARM TENDON	Surgery	9.57	13.72	$125.00
25315	0	REVISE PALSY HAND TENDON(S)	Surgery	10.20	14.41	$125.00
25316	0	REVISE PALSY HAND TENDON(S)	Surgery	12.33	15.72	$125.00
25320	0	REPAIR/REVISE WRIST JOINT	Surgery	10.77	10.34	$125.00
25332	0	REVISE WRIST JOINT	Surgery	11.41	11.09	$125.00
25335	0	REALIGNMENT OF HAND	Surgery	12.88	13.10	$125.00
25337	0	RECONSTRUCT ULNA/RADIOULNAR	Surgery	10.17	11.61	$125.00
25350	0	REVISION OF RADIUS	Surgery	8.78	13.16	$125.00
25355	0	REVISION OF RADIUS	Surgery	10.17	14.40	$125.00
25360	0	REVISION OF ULNA	Surgery	8.43	12.97	$125.00
25365	0	REVISE RADIUS & ULNA	Surgery	12.40	15.02	$125.00
25370	0	REVISE RADIUS OR ULNA	Surgery	13.36	16.54	$125.00
25375	0	REVISE RADIUS & ULNA	Surgery	13.04	16.85	$125.00
25390	0	SHORTEN RADIUS OR ULNA	Surgery	10.40	14.30	$125.00
25391	0	LENGTHEN RADIUS OR ULNA	Surgery	13.65	15.95	$125.00
25392	0	SHORTEN RADIUS & ULNA	Surgery	13.95	15.83	$125.00
25393	0	LENGTHEN RADIUS & ULNA	Surgery	15.87	16.43	$125.00
25400	0	REPAIR RADIUS OR ULNA	Surgery	10.92	14.98	$125.00
25405	0	REPAIR/GRAFT RADIUS OR ULNA	Surgery	14.38	17.13	$125.00
25415	0	REPAIR RADIUS & ULNA	Surgery	13.35	16.19	$125.00
25420	0	REPAIR/GRAFT RADIUS & ULNA	Surgery	16.33	18.41	$125.00
25425	0	REPAIR/GRAFT RADIUS OR ULNA	Surgery	13.21	21.47	$125.00
25426	0	REPAIR/GRAFT RADIUS & ULNA	Surgery	15.82	17.81	$125.00
25440	0	REPAIR/GRAFT WRIST BONE	Surgery	10.44	10.27	$125.00
25441	0	RECONSTRUCT WRIST JOINT	Surgery	12.90	11.72	$125.00
25442	0	RECONSTRUCT WRIST JOINT	Surgery	10.85	9.84	$125.00
25443	0	RECONSTRUCT WRIST JOINT	Surgery	10.39	13.26	$125.00
25444	0	RECONSTRUCT WRIST JOINT	Surgery	11.15	11.99	$125.00
25445	0	RECONSTRUCT WRIST JOINT	Surgery	9.69	12.06	$125.00
25446	0	WRIST REPLACEMENT	Surgery	16.55	15.33	$125.00
25447	0	REPAIR WRIST JOINT(S)	Surgery	10.37	10.43	$125.00
25449	0	REMOVE WRIST JOINT IMPLANT	Surgery	14.49	13.08	$125.00
25450	0	REVISION OF WRIST JOINT	Surgery	7.87	10.70	$125.00
25455	0	REVISION OF WRIST JOINT	Surgery	9.49	10.73	$125.00
25490	0	REINFORCE RADIUS	Surgery	9.54	13.55	$125.00
25491	0	REINFORCE ULNA	Surgery	9.96	14.01	$125.00
25492	0	REINFORCE RADIUS AND ULNA	Surgery	12.33	13.62	$125.00
25500	0	TREAT FRACTURE OF RADIUS	Surgery	2.45	3.77	$125.00
25505	0	TREAT FRACTURE OF RADIUS	Surgery	5.21	5.14	$125.00
25515	0	TREAT FRACTURE OF RADIUS	Surgery	9.18	8.99	$125.00
25520	0	TREAT FRACTURE OF RADIUS	Surgery	6.25	6.24	$125.00
25525	0	TREAT FRACTURE OF RADIUS	Surgery	12.24	11.25	$125.00
25526	0	TREAT FRACTURE OF RADIUS	Surgery	12.98	13.83	$125.00
25530	0	TREAT FRACTURE OF ULNA	Surgery	2.09	2.40	$125.00
25535	0	TREAT FRACTURE OF ULNA	Surgery	5.14	5.10	$125.00
25545	0	TREAT FRACTURE OF ULNA	Surgery	8.90	8.96	$125.00
25560	0	TREAT FRACTURE RADIUS & ULNA	Surgery	2.44	2.75	$125.00
25565	0	TREAT FRACTURE RADIUS & ULNA	Surgery	5.63	5.59	$125.00
25574	0	TREAT FRACTURE RADIUS & ULNA	Surgery	7.01	8.17	$125.00
25575	0	TREAT FRACTURE RADIUS/ULNA	Surgery	10.45	10.45	$125.00
25600	0	TREAT FRACTURE RADIUS/ULNA	Surgery	2.63	4.08	$125.00
25605	0	TREAT FRACTURE RADIUS/ULNA	Surgery	5.81	5.54	$125.00
25611	0	TREAT FRACTURE RADIUS/ULNA	Surgery	7.77	8.58	$125.00
25620	0	TREAT FRACTURE RADIUS/ULNA	Surgery	8.55	8.69	$125.00
25622	0	TREAT WRIST BONE FRACTURE	Surgery	2.61	3.90	$125.00
25624	0	TREAT WRIST BONE FRACTURE	Surgery	4.53	6.35	$125.00
25628	0	TREAT WRIST BONE FRACTURE	Surgery	8.43	8.73	$125.00
25630	0	TREAT WRIST BONE FRACTURE	Surgery	2.88	3.99	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
25635	0	TREAT WRIST BONE FRACTURE	Surgery	4.39	6.30	$125.00
25645	0	TREAT WRIST BONE FRACTURE	Surgery	7.25	8.54	$125.00
25650	0	TREAT WRIST BONE FRACTURE	Surgery	3.05	4.19	$125.00
25660	0	TREAT WRIST DISLOCATION	Surgery	4.76	4.52	$125.00
25670	0	TREAT WRIST DISLOCATION	Surgery	7.92	8.56	$125.00
25675	0	TREAT WRIST DISLOCATION	Surgery	4.67	4.48	$125.00
25676	0	TREAT WRIST DISLOCATION	Surgery	8.04	8.67	$125.00
25680	0	TREAT WRIST FRACTURE	Surgery	5.99	5.46	$125.00
25685	0	TREAT WRIST FRACTURE	Surgery	9.78	9.54	$125.00
25690	0	TREAT WRIST DISLOCATION	Surgery	5.50	6.47	$125.00
25695	0	TREAT WRIST DISLOCATION	Surgery	8.34	8.54	$125.00
25800	0	FUSION OF WRIST JOINT	Surgery	9.76	10.42	$125.00
25805	0	FUSION/GRAFT OF WRIST JOINT	Surgery	11.28	11.58	$125.00
25810	0	FUSION/GRAFT OF WRIST JOINT	Surgery	10.57	11.01	$125.00
25820	0	FUSION OF HAND BONES	Surgery	7.45	8.83	$125.00
25825	0	FUSE HAND BONES WITH GRAFT	Surgery	9.27	10.13	$125.00
25830	0	FUSION, RADIOULNAR JNT/ULNA	Surgery	10.06	13.52	$125.00
25900	0	AMPUTATION OF FOREARM	Surgery	9.01	11.87	$125.00
25905	0	AMPUTATION OF FOREARM	Surgery	9.12	13.26	$125.00
25907	0	AMPUTATION FOLLOW-UP SURGERY	Surgery	7.80	11.46	$125.00
25909	0	AMPUTATION FOLLOW-UP SURGERY	Surgery	8.96	12.87	$125.00
25915	0	AMPUTATION OF FOREARM	Surgery	17.08	19.45	$125.00
25920	0	AMPUTATE HAND AT WRIST	Surgery	8.68	8.86	$125.00
25922	0	AMPUTATE HAND AT WRIST	Surgery	7.42	8.36	$125.00
25924	0	AMPUTATION FOLLOW-UP SURGERY	Surgery	8.46	8.95	$125.00
25927	0	AMPUTATION OF HAND	Surgery	8.80	11.80	$125.00
25929	0	AMPUTATION FOLLOW-UP SURGERY	Surgery	7.59	6.57	$125.00
25931	0	AMPUTATION FOLLOW-UP SURGERY	Surgery	7.81	11.69	$125.00
26010	0	DRAINAGE OF FINGER ABSCESS	Surgery	1.54	3.78	$125.00
26011	0	DRAINAGE OF FINGER ABSCESS	Surgery	2.19	4.69	$125.00
26020	0	DRAIN HAND TENDON SHEATH	Surgery	4.67	9.67	$125.00
26025	0	DRAINAGE OF PALM BURSA	Surgery	4.82	10.01	$125.00
26030	0	DRAINAGE OF PALM BURSA(S)	Surgery	5.93	10.66	$125.00
26034	0	TREAT HAND BONE LESION	Surgery	6.23	11.16	$125.00
26035	0	DECOMPRESS FINGERS/HAND	Surgery	9.51	12.88	$125.00
26037	0	DECOMPRESS FINGERS/HAND	Surgery	7.25	10.55	$125.00
26040	0	RELEASE PALM CONTRACTURE	Surgery	3.33	9.17	$125.00
26045	0	RELEASE PALM CONTRACTURE	Surgery	5.56	10.59	$125.00
26055	0	INCISE FINGER TENDON SHEATH	Surgery	2.69	5.96	$125.00
26060	0	INCISION OF FINGER TENDON	Surgery	2.81	5.30	$125.00
26070	0	EXPLORE/TREAT HAND JOINT	Surgery	3.69	8.04	$125.00
26075	0	EXPLORE/TREAT FINGER JOINT	Surgery	3.79	9.14	$125.00
26080	0	EXPLORE/TREAT FINGER JOINT	Surgery	4.24	9.55	$125.00
26100	0	BIOPSY HAND JOINT LINING	Surgery	3.67	6.35	$125.00
26105	0	BIOPSY FINGER JOINT LINING	Surgery	3.71	9.14	$125.00
26110	0	BIOPSY FINGER JOINT LINING	Surgery	3.53	8.81	$125.00
26115	0	REMOVAL OF HAND LESION	Surgery	3.86	5.95	$125.00
26116	0	REMOVAL OF HAND LESION	Surgery	5.53	10.20	$125.00
26117	0	REMOVE TUMOR, HAND/FINGER	Surgery	8.55	12.18	$125.00
26121	0	RELEASE PALM CONTRACTURE	Surgery	7.54	12.92	$125.00
26123	0	RELEASE PALM CONTRACTURE	Surgery	9.29	13.89	$125.00
26125	0	RELEASE PALM CONTRACTURE	Surgery	4.61	2.64	$125.00
26130	0	REMOVE WRIST JOINT LINING	Surgery	5.42	12.44	$125.00
26135	0	REVISE FINGER JOINT, EACH	Surgery	6.96	12.93	$125.00
26140	0	REVISE FINGER JOINT, EACH	Surgery	6.17	12.00	$125.00
26145	0	TENDON EXCISION, PALM/FINGER	Surgery	6.32	12.03	$125.00
26160	0	REMOVE TENDON SHEATH LESION	Surgery	3.15	5.85	$125.00
26170	0	REMOVAL OF PALM TENDON, EACH	Surgery	4.77	6.75	$125.00
26180	0	REMOVAL OF FINGER TENDON	Surgery	5.18	6.96	$125.00
26185	0	REMOVE FINGER BONE	Surgery	5.25	7.41	$125.00
26200	0	REMOVE HAND BONE LESION	Surgery	5.51	10.51	$125.00
26205	0	REMOVE/GRAFT BONE LESION	Surgery	7.70	12.26	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
26210	0	REMOVAL OF FINGER LESION	Surgery	5.15	10.76	$125.00
26215	0	REMOVE/GRAFT FINGER LESION	Surgery	7.10	11.52	$125.00
26230	0	PARTIAL REMOVAL OF HAND BONE	Surgery	6.33	10.01	$125.00
26235	0	PARTIAL REMOVAL, FINGER BONE	Surgery	6.19	9.72	$125.00
26236	0	PARTIAL REMOVAL, FINGER BONE	Surgery	5.32	9.52	$125.00
26250	0	EXTENSIVE HAND SURGERY	Surgery	7.55	13.58	$125.00
26255	0	EXTENSIVE HAND SURGERY	Surgery	12.43	15.07	$125.00
26260	0	EXTENSIVE FINGER SURGERY	Surgery	7.03	13.38	$125.00
26261	0	EXTENSIVE FINGER SURGERY	Surgery	9.09	14.77	$125.00
26262	0	PARTIAL REMOVAL OF FINGER	Surgery	5.67	10.89	$125.00
26320	0	REMOVAL OF IMPLANT FROM HAND	Surgery	3.98	9.77	$125.00
26350	0	REPAIR FINGER/HAND TENDON	Surgery	5.99	15.07	$125.00
26352	0	REPAIR/GRAFT HAND TENDON	Surgery	7.68	14.90	$125.00
26356	0	REPAIR FINGER/HAND TENDON	Surgery	8.07	16.48	$125.00
26357	0	REPAIR FINGER/HAND TENDON	Surgery	8.58	15.90	$125.00
26358	0	REPAIR/GRAFT HAND TENDON	Surgery	9.14	15.93	$125.00
26370	0	REPAIR FINGER/HAND TENDON	Surgery	7.11	15.81	$125.00
26372	0	REPAIR/GRAFT HAND TENDON	Surgery	8.76	15.81	$125.00
26373	0	REPAIR FINGER/HAND TENDON	Surgery	8.16	17.77	$125.00
26390	0	REVISE HAND/FINGER TENDON	Surgery	9.19	13.03	$125.00
26392	0	REPAIR/GRAFT HAND TENDON	Surgery	10.26	17.19	$125.00
26410	0	REPAIR HAND TENDON	Surgery	4.63	11.77	$125.00
26412	0	REPAIR/GRAFT HAND TENDON	Surgery	6.31	12.85	$125.00
26415	0	EXCISION, HAND/FINGER TENDON	Surgery	8.34	12.72	$125.00
26416	0	GRAFT HAND OR FINGER TENDON	Surgery	9.37	14.25	$125.00
26418	0	REPAIR FINGER TENDON	Surgery	4.25	11.59	$125.00
26420	0	REPAIR/GRAFT FINGER TENDON	Surgery	6.77	13.30	$125.00
26426	0	REPAIR FINGER/HAND TENDON	Surgery	6.15	13.00	$125.00
26428	0	REPAIR/GRAFT FINGER TENDON	Surgery	7.21	13.19	$125.00
26432	0	REPAIR FINGER TENDON	Surgery	4.02	8.69	$125.00
26433	0	REPAIR FINGER TENDON	Surgery	4.56	10.57	$125.00
26434	0	REPAIR/GRAFT FINGER TENDON	Surgery	6.09	10.41	$125.00
26437	0	REALIGNMENT OF TENDONS	Surgery	5.82	10.49	$125.00
26440	0	RELEASE PALM/FINGER TENDON	Surgery	5.02	13.04	$125.00
26442	0	RELEASE PALM & FINGER TENDON	Surgery	8.16	14.63	$125.00
26445	0	RELEASE HAND/FINGER TENDON	Surgery	4.31	12.85	$125.00
26449	0	RELEASE FOREARM/HAND TENDON	Surgery	7.00	14.05	$125.00
26450	0	INCISION OF PALM TENDON	Surgery	3.67	6.06	$125.00
26455	0	INCISION OF FINGER TENDON	Surgery	3.64	6.15	$125.00
26460	0	INCISE HAND/FINGER TENDON	Surgery	3.46	5.79	$125.00
26471	0	FUSION OF FINGER TENDONS	Surgery	5.73	10.49	$125.00
26474	0	FUSION OF FINGER TENDONS	Surgery	5.32	10.87	$125.00
26476	0	TENDON LENGTHENING	Surgery	5.18	10.37	$125.00
26477	0	TENDON SHORTENING	Surgery	5.15	10.26	$125.00
26478	0	LENGTHENING OF HAND TENDON	Surgery	5.80	10.61	$125.00
26479	0	SHORTENING OF HAND TENDON	Surgery	5.74	11.05	$125.00
26480	0	TRANSPLANT HAND TENDON	Surgery	8.69	14.88	$125.00
26483	0	TRANSPLANT/GRAFT HAND TENDON	Surgery	8.29	15.84	$125.00
26485	0	TRANSPLANT PALM TENDON	Surgery	7.70	14.60	$125.00
26489	0	TRANSPLANT/GRAFT PALM TENDON	Surgery	9.55	13.35	$125.00
26490	0	REVISE THUMB TENDON	Surgery	8.41	12.45	$125.00
26492	0	TENDON TRANSFER WITH GRAFT	Surgery	9.62	13.54	$125.00
26494	0	HAND TENDON/MUSCLE TRANSFER	Surgery	8.47	12.63	$125.00
26496	0	REVISE THUMB TENDON	Surgery	9.59	13.00	$125.00
26497	0	FINGER TENDON TRANSFER	Surgery	9.57	13.00	$125.00
26498	0	FINGER TENDON TRANSFER	Surgery	14.00	15.74	$125.00
26499	0	REVISION OF FINGER	Surgery	8.98	13.90	$125.00
26500	0	HAND TENDON RECONSTRUCTION	Surgery	5.96	10.86	$125.00
26502	0	HAND TENDON RECONSTRUCTION	Surgery	7.14	12.19	$125.00
26504	0	HAND TENDON RECONSTRUCTION	Surgery	7.47	9.26	$125.00
26508	0	RELEASE THUMB CONTRACTURE	Surgery	6.01	10.97	$125.00
26510	0	THUMB TENDON TRANSFER	Surgery	5.43	10.52	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
26516	0	FUSION OF KNUCKLE JOINT	Surgery	7.15	11.07	$125.00
26517	0	FUSION OF KNUCKLE JOINTS	Surgery	8.83	12.14	$125.00
26518	0	FUSION OF KNUCKLE JOINTS	Surgery	9.02	11.77	$125.00
26520	0	RELEASE KNUCKLE CONTRACTURE	Surgery	5.30	13.49	$125.00
26525	0	RELEASE FINGER CONTRACTURE	Surgery	5.33	13.56	$125.00
26530	0	REVISE KNUCKLE JOINT	Surgery	6.69	14.09	$125.00
26531	0	REVISE KNUCKLE WITH IMPLANT	Surgery	7.91	14.81	$125.00
26535	0	REVISE FINGER JOINT	Surgery	5.24	8.19	$125.00
26536	0	REVISE/IMPLANT FINGER JOINT	Surgery	6.37	13.91	$125.00
26540	0	REPAIR HAND JOINT	Surgery	6.43	11.86	$125.00
26541	0	REPAIR HAND JOINT WITH GRAFT	Surgery	8.62	13.51	$125.00
26542	0	REPAIR HAND JOINT WITH GRAFT	Surgery	6.78	11.15	$125.00
26545	0	RECONSTRUCT FINGER JOINT	Surgery	6.92	11.97	$125.00
26546	0	REPAIR NONUNION HAND	Surgery	8.92	12.75	$125.00
26548	0	RECONSTRUCT FINGER JOINT	Surgery	8.03	12.24	$125.00
26550	0	CONSTRUCT THUMB REPLACEMENT	Surgery	21.24	20.09	$125.00
26551	0	GREAT TOE-HAND TRANSFER	Surgery	46.58	32.92	$125.00
26553	0	SINGLE TRANSFER, TOE-HAND	Surgery	46.27	32.63	$125.00
26554	0	DOUBLE TRANSFER, TOE-HAND	Surgery	54.95	39.01	$125.00
26555	0	POSITIONAL CHANGE OF FINGER	Surgery	16.63	20.99	$125.00
26556	0	TOE JOINT TRANSFER	Surgery	47.26	33.24	$125.00
26560	0	REPAIR OF WEB FINGER	Surgery	5.38	11.02	$125.00
26561	0	REPAIR OF WEB FINGER	Surgery	10.92	12.54	$125.00
26562	0	REPAIR OF WEB FINGER	Surgery	9.68	10.09	$125.00
26565	0	CORRECT METACARPAL FLAW	Surgery	6.74	11.45	$125.00
26567	0	CORRECT FINGER DEFORMITY	Surgery	6.82	10.95	$125.00
26568	0	LENGTHEN METACARPAL/FINGER	Surgery	9.08	15.48	$125.00
26580	0	REPAIR HAND DEFORMITY	Surgery	18.18	17.07	$125.00
26585	0	REPAIR FINGER DEFORMITY	Surgery	14.05	14.38	$125.00
26590	0	REPAIR FINGER DEFORMITY	Surgery	17.96	14.98	$125.00
26591	0	REPAIR MUSCLES OF HAND	Surgery	3.25	10.06	$125.00
26593	0	RELEASE MUSCLES OF HAND	Surgery	5.31	9.94	$125.00
26596	0	EXCISION CONSTRICTING TISSUE	Surgery	8.95	9.01	$125.00
26597	0	RELEASE OF SCAR CONTRACTURE	Surgery	9.82	13.64	$125.00
26600	0	TREAT METACARPAL FRACTURE	Surgery	1.96	2.25	$125.00
26605	0	TREAT METACARPAL FRACTURE	Surgery	2.85	3.46	$125.00
26607	0	TREAT METACARPAL FRACTURE	Surgery	5.36	6.88	$125.00
26608	0	TREAT METACARPAL FRACTURE	Surgery	5.36	6.99	$125.00
26615	0	TREAT METACARPAL FRACTURE	Surgery	5.33	7.07	$125.00
26641	0	TREAT THUMB DISLOCATION	Surgery	3.94	3.89	$125.00
26645	0	TREAT THUMB FRACTURE	Surgery	4.41	4.43	$125.00
26650	0	TREAT THUMB FRACTURE	Surgery	5.72	7.24	$125.00
26665	0	TREAT THUMB FRACTURE	Surgery	7.60	8.20	$125.00
26670	0	TREAT HAND DISLOCATION	Surgery	3.69	4.89	$125.00
26675	0	TREAT HAND DISLOCATION	Surgery	4.64	4.49	$125.00
26676	0	PIN HAND DISLOCATION	Surgery	5.52	7.39	$125.00
26685	0	TREAT HAND DISLOCATION	Surgery	6.98	7.74	$125.00
26686	0	TREAT HAND DISLOCATION	Surgery	7.94	8.52	$125.00
26700	0	TREAT KNUCKLE DISLOCATION	Surgery	3.69	3.79	$125.00
26705	0	TREAT KNUCKLE DISLOCATION	Surgery	4.19	3.53	$125.00
26706	0	PIN KNUCKLE DISLOCATION	Surgery	5.12	5.37	$125.00
26715	0	TREAT KNUCKLE DISLOCATION	Surgery	5.74	6.96	$125.00
26720	0	TREAT FINGER FRACTURE, EACH	Surgery	1.66	1.33	$125.00
26725	0	TREAT FINGER FRACTURE, EACH	Surgery	3.33	2.48	$125.00
26727	0	TREAT FINGER FRACTURE, EACH	Surgery	5.23	6.82	$125.00
26735	0	TREAT FINGER FRACTURE, EACH	Surgery	5.98	7.10	$125.00
26740	0	TREAT FINGER FRACTURE, EACH	Surgery	1.94	2.95	$125.00
26742	0	TREAT FINGER FRACTURE, EACH	Surgery	3.85	4.35	$125.00
26746	0	TREAT FINGER FRACTURE, EACH	Surgery	5.81	7.44	$125.00
26750	0	TREAT FINGER FRACTURE, EACH	Surgery	1.70	2.74	$125.00
26755	0	TREAT FINGER FRACTURE, EACH	Surgery	3.10	2.45	$125.00
26756	0	PIN FINGER FRACTURE, EACH	Surgery	4.39	6.53	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
26765	0	TREAT FINGER FRACTURE, EACH	Surgery	4.17	6.10	$125.00
26770	0	TREAT FINGER DISLOCATION	Surgery	3.02	3.56	$125.00
26775	0	TREAT FINGER DISLOCATION	Surgery	3.71	3.11	$125.00
26776	0	PIN FINGER DISLOCATION	Surgery	4.80	6.69	$125.00
26785	0	TREAT FINGER DISLOCATION	Surgery	4.21	6.16	$125.00
26820	0	THUMB FUSION WITH GRAFT	Surgery	8.26	12.77	$125.00
26841	0	FUSION OF THUMB	Surgery	7.13	11.84	$125.00
26842	0	THUMB FUSION WITH GRAFT	Surgery	8.24	13.05	$125.00
26843	0	FUSION OF HAND JOINT	Surgery	7.61	11.83	$125.00
26844	0	FUSION/GRAFT OF HAND JOINT	Surgery	8.73	12.44	$125.00
26850	0	FUSION OF KNUCKLE	Surgery	6.97	10.97	$125.00
26852	0	FUSION OF KNUCKLE WITH GRAFT	Surgery	8.46	11.94	$125.00
26860	0	FUSION OF FINGER JOINT	Surgery	4.89	10.10	$125.00
26861	0	FUSION OF FINGER JNT, ADD-ON	Surgery	1.74	1.25	$125.00
26862	0	FUSION/GRAFT OF FINGER JOINT	Surgery	7.37	11.50	$125.00
26863	0	FUSE/GRAFT ADDED JOINT	Surgery	3.90	2.57	$125.00
26910	0	AMPUTATE METACARPAL BONE	Surgery	7.60	11.22	$125.00
26951	0	AMPUTATION OF FINGER/THUMB	Surgery	4.59	9.55	$125.00
26952	0	AMPUTATION OF FINGER/THUMB	Surgery	6.31	10.84	$125.00
26990	0	DRAINAGE OF PELVIS LESION	Surgery	7.48	11.82	$125.00
26991	0	DRAINAGE OF PELVIS BURSA	Surgery	6.68	7.33	$125.00
26992	0	DRAINAGE OF BONE LESION	Surgery	13.02	15.55	$125.00
27000	0	INCISION OF HIP TENDON	Surgery	5.62	5.71	$125.00
27001	0	INCISION OF HIP TENDON	Surgery	6.94	6.47	$125.00
27003	0	INCISION OF HIP TENDON	Surgery	7.34	8.19	$125.00
27005	0	INCISION OF HIP TENDON	Surgery	9.66	8.33	$125.00
27006	0	INCISION OF HIP TENDONS	Surgery	9.88	8.63	$125.00
27025	0	INCISION OF HIP/THIGH FASCIA	Surgery	11.16	8.94	$125.00
27030	0	DRAINAGE OF HIP JOINT	Surgery	13.01	11.90	$125.00
27033	0	EXPLORATION OF HIP JOINT	Surgery	13.39	12.06	$125.00
27035	0	DENERVATION OF HIP JOINT	Surgery	16.69	14.90	$125.00
27036	0	EXCISION OF HIP JOINT/MUSCLE	Surgery	12.88	12.94	$125.00
27040	0	BIOPSY OF SOFT TISSUES	Surgery	2.87	2.95	$125.00
27041	0	BIOPSY OF SOFT TISSUES	Surgery	9.89	6.90	$125.00
27047	0	REMOVE HIP/PELVIS LESION	Surgery	7.45	5.69	$125.00
27048	0	REMOVE HIP/PELVIS LESION	Surgery	6.25	6.88	$125.00
27049	0	REMOVE TUMOR, HIP/PELVIS	Surgery	13.66	12.37	$125.00
27050	0	BIOPSY OF SACROILIAC JOINT	Surgery	4.36	6.15	$125.00
27052	0	BIOPSY OF HIP JOINT	Surgery	6.23	7.63	$125.00
27054	0	REMOVAL OF HIP JOINT LINING	Surgery	8.54	10.05	$125.00
27060	0	REMOVAL OF ISCHIAL BURSA	Surgery	5.43	6.70	$125.00
27062	0	REMOVE FEMUR LESION/BURSA	Surgery	5.37	6.22	$125.00
27065	0	REMOVAL OF HIP BONE LESION	Surgery	5.90	7.52	$125.00
27066	0	REMOVAL OF HIP BONE LESION	Surgery	10.33	10.84	$125.00
27067	0	REMOVE/GRAFT HIP BONE LESION	Surgery	13.83	13.33	$125.00
27070	0	PARTIAL REMOVAL OF HIP BONE	Surgery	10.72	14.00	$125.00
27071	0	PARTIAL REMOVAL OF HIP BONE	Surgery	11.46	15.06	$125.00
27075	0	EXTENSIVE HIP SURGERY	Surgery	17.23	15.94	$125.00
27076	0	EXTENSIVE HIP SURGERY	Surgery	22.12	19.03	$125.00
27077	0	EXTENSIVE HIP SURGERY	Surgery	23.13	19.15	$125.00
27078	0	EXTENSIVE HIP SURGERY	Surgery	13.44	13.23	$125.00
27079	0	EXTENSIVE HIP SURGERY	Surgery	13.75	13.00	$125.00
27080	0	REMOVAL OF TAIL BONE	Surgery	6.39	6.98	$125.00
27086	0	REMOVE HIP FOREIGN BODY	Surgery	1.87	3.95	$125.00
27087	0	REMOVE HIP FOREIGN BODY	Surgery	8.54	7.28	$125.00
27090	0	REMOVAL OF HIP PROSTHESIS	Surgery	11.15	10.45	$125.00
27091	0	REMOVAL OF HIP PROSTHESIS	Surgery	22.14	17.93	$125.00
27093	0	INJECTION FOR HIP X-RAY	Surgery	1.30	8.86	$125.00
27095	0	INJECTION FOR HIP X-RAY	Surgery	1.50	7.56	$125.00
27096	0	INJECT SACROILIAC JOINT	Surgery	1.40	11.08	$125.00
27097	0	REVISION OF HIP TENDON	Surgery	8.80	9.06	$125.00
27098	0	TRANSFER TENDON TO PELVIS	Surgery	8.83	9.19	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
27100	0	TRANSFER OF ABDOMINAL MUSCLE	Surgery	11.08	10.87	$125.00
27105	0	TRANSFER OF SPINAL MUSCLE	Surgery	11.77	10.40	$125.00
27110	0	TRANSFER OF ILIOPSOAS MUSCLE	Surgery	13.26	11.23	$125.00
27111	0	TRANSFER OF ILIOPSOAS MUSCLE	Surgery	12.15	11.17	$125.00
27120	0	RECONSTRUCTION OF HIP SOCKET	Surgery	18.01	15.37	$125.00
27122	0	RECONSTRUCTION OF HIP SOCKET	Surgery	14.98	14.60	$125.00
27125	0	PARTIAL HIP REPLACEMENT	Surgery	14.69	14.24	$125.00
27130	0	TOTAL HIP REPLACEMENT	Surgery	20.12	18.20	$125.00
27132	0	TOTAL HIP REPLACEMENT	Surgery	23.30	20.51	$125.00
27134	0	REVISE HIP JOINT REPLACEMENT	Surgery	28.52	24.10	$125.00
27137	0	REVISE HIP JOINT REPLACEMENT	Surgery	21.17	19.01	$125.00
27138	0	REVISE HIP JOINT REPLACEMENT	Surgery	22.17	19.69	$125.00
27140	0	TRANSPLANT FEMUR RIDGE	Surgery	12.24	11.49	$125.00
27146	0	INCISION OF HIP BONE	Surgery	17.43	14.24	$125.00
27147	0	REVISION OF HIP BONE	Surgery	20.58	17.34	$125.00
27151	0	INCISION OF HIP BONES	Surgery	22.51	18.84	$125.00
27156	0	REVISION OF HIP BONES	Surgery	24.63	19.69	$125.00
27158	0	REVISION OF PELVIS	Surgery	19.74	16.75	$125.00
27161	0	INCISION OF NECK OF FEMUR	Surgery	16.71	14.17	$125.00
27165	0	INCISION/FIXATION OF FEMUR	Surgery	17.91	15.25	$125.00
27170	0	REPAIR/GRAFT FEMUR HEAD/NECK	Surgery	16.07	14.47	$125.00
27175	0	TREAT SLIPPED EPIPHYSIS	Surgery	8.46	5.52	$125.00
27176	0	TREAT SLIPPED EPIPHYSIS	Surgery	12.05	10.13	$125.00
27177	0	TREAT SLIPPED EPIPHYSIS	Surgery	15.08	11.82	$125.00
27178	0	TREAT SLIPPED EPIPHYSIS	Surgery	11.99	9.80	$125.00
27179	0	REVISE HEAD/NECK OF FEMUR	Surgery	12.98	10.24	$125.00
27181	0	TREAT SLIPPED EPIPHYSIS	Surgery	14.68	11.40	$125.00
27185	0	REVISION OF FEMUR EPIPHYSIS	Surgery	9.18	8.00	$125.00
27187	0	REINFORCE HIP BONES	Surgery	13.54	13.60	$125.00
27193	0	TREAT PELVIC RING FRACTURE	Surgery	5.56	4.57	$125.00
27194	0	TREAT PELVIC RING FRACTURE	Surgery	9.65	6.66	$125.00
27200	0	TREAT TAIL BONE FRACTURE	Surgery	1.84	2.55	$125.00
27202	0	TREAT TAIL BONE FRACTURE	Surgery	7.04	15.67	$125.00
27215	0	TREAT PELVIC FRACTURE(S)	Surgery	10.05	10.40	$125.00
27216	0	TREAT PELVIC RING FRACTURE	Surgery	15.19	12.20	$125.00
27217	0	TREAT PELVIC RING FRACTURE	Surgery	14.11	13.10	$125.00
27218	0	TREAT PELVIC RING FRACTURE	Surgery	20.15	15.75	$125.00
27220	0	TREAT HIP SOCKET FRACTURE	Surgery	6.18	5.33	$125.00
27222	0	TREAT HIP SOCKET FRACTURE	Surgery	12.70	9.12	$125.00
27226	0	TREAT HIP WALL FRACTURE	Surgery	14.91	13.82	$125.00
27227	0	TREAT HIP FRACTURE(S)	Surgery	23.45	17.98	$125.00
27228	0	TREAT HIP FRACTURE(S)	Surgery	27.16	19.70	$125.00
27230	0	TREAT THIGH FRACTURE	Surgery	5.50	5.27	$125.00
27232	0	TREAT THIGH FRACTURE	Surgery	10.68	9.05	$125.00
27235	0	TREAT THIGH FRACTURE	Surgery	12.16	11.57	$125.00
27236	0	TREAT THIGH FRACTURE	Surgery	15.60	13.81	$125.00
27238	0	TREAT THIGH FRACTURE	Surgery	5.52	5.77	$125.00
27240	0	TREAT THIGH FRACTURE	Surgery	12.50	10.01	$125.00
27244	0	TREAT THIGH FRACTURE	Surgery	15.94	13.83	$125.00
27245	0	TREAT THIGH FRACTURE	Surgery	20.31	15.67	$125.00
27246	0	TREAT THIGH FRACTURE	Surgery	4.71	5.18	$125.00
27248	0	TREAT THIGH FRACTURE	Surgery	10.45	10.25	$125.00
27250	0	TREAT HIP DISLOCATION	Surgery	6.95	5.38	$125.00
27252	0	TREAT HIP DISLOCATION	Surgery	10.39	7.09	$125.00
27253	0	TREAT HIP DISLOCATION	Surgery	12.92	11.44	$125.00
27254	0	TREAT HIP DISLOCATION	Surgery	18.26	13.92	$125.00
27256	0	TREAT HIP DISLOCATION	Surgery	4.12	3.62	$125.00
27257	0	TREAT HIP DISLOCATION	Surgery	5.22	4.64	$125.00
27258	0	TREAT HIP DISLOCATION	Surgery	15.43	13.47	$125.00
27259	0	TREAT HIP DISLOCATION	Surgery	21.55	17.36	$125.00
27265	0	TREAT HIP DISLOCATION	Surgery	5.05	5.15	$125.00
27266	0	TREAT HIP DISLOCATION	Surgery	7.49	6.49	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
27275	0	MANIPULATION OF HIP JOINT	Surgery	2.27	2.99	$125.00
27280	0	FUSION OF SACROILIAC JOINT	Surgery	13.39	12.83	$125.00
27282	0	FUSION OF PUBIC BONES	Surgery	11.34	11.58	$125.00
27284	0	FUSION OF HIP JOINT	Surgery	16.76	14.82	$125.00
27286	0	FUSION OF HIP JOINT	Surgery	16.79	15.02	$125.00
27290	0	AMPUTATION OF LEG AT HIP	Surgery	23.28	19.44	$125.00
27295	0	AMPUTATION OF LEG AT HIP	Surgery	18.65	14.89	$125.00
27301	0	DRAIN THIGH/KNEE LESION	Surgery	6.49	10.91	$125.00
27303	0	DRAINAGE OF BONE LESION	Surgery	8.28	11.81	$125.00
27305	0	INCISE THIGH TENDON & FASCIA	Surgery	5.92	7.59	$125.00
27306	0	INCISION OF THIGH TENDON	Surgery	4.62	5.81	$125.00
27307	0	INCISION OF THIGH TENDONS	Surgery	5.80	6.56	$125.00
27310	0	EXPLORATION OF KNEE JOINT	Surgery	9.27	9.71	$125.00
27315	0	PARTIAL REMOVAL, THIGH NERVE	Surgery	6.97	4.90	$125.00
27320	0	PARTIAL REMOVAL, THIGH NERVE	Surgery	6.30	4.65	$125.00
27323	0	BIOPSY, THIGH SOFT TISSUES	Surgery	2.28	2.59	$125.00
27324	0	BIOPSY, THIGH SOFT TISSUES	Surgery	4.90	5.57	$125.00
27327	0	REMOVAL OF THIGH LESION	Surgery	4.47	5.24	$125.00
27328	0	REMOVAL OF THIGH LESION	Surgery	5.57	6.16	$125.00
27329	0	REMOVE TUMOR, THIGH/KNEE	Surgery	14.14	13.49	$125.00
27330	0	BIOPSY, KNEE JOINT LINING	Surgery	4.97	5.94	$125.00
27331	0	EXPLORE/TREAT KNEE JOINT	Surgery	5.88	7.01	$125.00
27332	0	REMOVAL OF KNEE CARTILAGE	Surgery	8.27	8.73	$125.00
27333	0	REMOVAL OF KNEE CARTILAGE	Surgery	7.30	8.10	$125.00
27334	0	REMOVE KNEE JOINT LINING	Surgery	8.70	9.46	$125.00
27335	0	REMOVE KNEE JOINT LINING	Surgery	10.00	10.42	$125.00
27340	0	REMOVAL OF KNEECAP BURSA	Surgery	4.18	5.23	$125.00
27345	0	REMOVAL OF KNEE CYST	Surgery	5.92	6.71	$125.00
27347	0	REMOVE KNEE CYST	Surgery	5.78	2.83	$125.00
27350	0	REMOVAL OF KNEECAP	Surgery	8.17	8.70	$125.00
27355	0	REMOVE FEMUR LESION	Surgery	7.65	9.24	$125.00
27356	0	REMOVE FEMUR LESION/GRAFT	Surgery	9.48	10.15	$125.00
27357	0	REMOVE FEMUR LESION/GRAFT	Surgery	10.53	10.74	$125.00
27358	0	REMOVE FEMUR LESION/FIXATION	Surgery	4.74	3.22	$125.00
27360	0	PARTIAL REMOVAL, LEG BONE(S)	Surgery	10.50	15.10	$125.00
27365	0	EXTENSIVE LEG SURGERY	Surgery	16.27	14.06	$125.00
27370	0	INJECTION FOR KNEE X-RAY	Surgery	0.96	8.98	$125.00
27372	0	REMOVAL OF FOREIGN BODY	Surgery	5.07	5.51	$125.00
27380	0	REPAIR OF KNEECAP TENDON	Surgery	7.16	8.02	$125.00
27381	0	REPAIR/GRAFT KNEECAP TENDON	Surgery	10.34	10.27	$125.00
27385	0	REPAIR OF THIGH MUSCLE	Surgery	7.76	8.46	$125.00
27386	0	REPAIR/GRAFT OF THIGH MUSCLE	Surgery	10.56	10.88	$125.00
27390	0	INCISION OF THIGH TENDON	Surgery	5.33	6.54	$125.00
27391	0	INCISION OF THIGH TENDONS	Surgery	7.20	7.71	$125.00
27392	0	INCISION OF THIGH TENDONS	Surgery	9.20	9.78	$125.00
27393	0	LENGTHENING OF THIGH TENDON	Surgery	6.39	7.37	$125.00
27394	0	LENGTHENING OF THIGH TENDONS	Surgery	8.50	9.06	$125.00
27395	0	LENGTHENING OF THIGH TENDONS	Surgery	11.73	12.40	$125.00
27396	0	TRANSPLANT OF THIGH TENDON	Surgery	7.86	9.20	$125.00
27397	0	TRANSPLANTS OF THIGH TENDONS	Surgery	11.28	10.75	$125.00
27400	0	REVISE THIGH MUSCLES/TENDONS	Surgery	9.02	10.09	$125.00
27403	0	REPAIR OF KNEE CARTILAGE	Surgery	8.33	8.69	$125.00
27405	0	REPAIR OF KNEE LIGAMENT	Surgery	8.65	9.40	$125.00
27407	0	REPAIR OF KNEE LIGAMENT	Surgery	10.28	9.79	$125.00
27409	0	REPAIR OF KNEE LIGAMENTS	Surgery	12.90	12.30	$125.00
27418	0	REPAIR DEGENERATED KNEECAP	Surgery	10.85	11.03	$125.00
27420	0	REVISION OF UNSTABLE KNEECAP	Surgery	9.83	9.89	$125.00
27422	0	REVISION OF UNSTABLE KNEECAP	Surgery	9.78	9.88	$125.00
27424	0	REVISION/REMOVAL OF KNEECAP	Surgery	9.81	9.87	$125.00
27425	0	LATERAL RETINACULAR RELEASE	Surgery	5.22	6.61	$125.00
27427	0	RECONSTRUCTION, KNEE	Surgery	9.36	9.49	$125.00
27428	0	RECONSTRUCTION, KNEE	Surgery	14.00	12.64	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
27429	0	RECONSTRUCTION, KNEE	Surgery	15.52	12.73	$125.00
27430	0	REVISION OF THIGH MUSCLES	Surgery	9.67	9.50	$125.00
27435	0	INCISION OF KNEE JOINT	Surgery	9.49	8.79	$125.00
27437	0	REVISE KNEECAP	Surgery	8.46	9.54	$125.00
27438	0	REVISE KNEECAP WITH IMPLANT	Surgery	11.23	11.25	$125.00
27440	0	REVISION OF KNEE JOINT	Surgery	10.43	10.73	$125.00
27441	0	REVISION OF KNEE JOINT	Surgery	10.82	10.45	$125.00
27442	0	REVISION OF KNEE JOINT	Surgery	11.89	11.91	$125.00
27443	0	REVISION OF KNEE JOINT	Surgery	10.93	11.35	$125.00
27445	0	REVISION OF KNEE JOINT	Surgery	17.68	16.08	$125.00
27446	0	REVISION OF KNEE JOINT	Surgery	15.84	14.83	$125.00
27447	0	TOTAL KNEE REPLACEMENT	Surgery	21.48	18.78	$125.00
27448	0	INCISION OF THIGH	Surgery	11.06	11.88	$125.00
27450	0	INCISION OF THIGH	Surgery	13.98	13.84	$125.00
27454	0	REALIGNMENT OF THIGH BONE	Surgery	17.56	15.58	$125.00
27455	0	REALIGNMENT OF KNEE	Surgery	12.82	12.15	$125.00
27457	10	REALIGNMENT OF KNEE	Surgery	13.45	11.95	$125.00
27465	0	SHORTENING OF THIGH BONE	Surgery	13.87	13.42	$125.00
27466	0	LENGTHENING OF THIGH BONE	Surgery	16.33	14.69	$125.00
27468	0	SHORTEN/LENGTHEN THIGHS	Surgery	18.97	17.04	$125.00
27470	0	REPAIR OF THIGH	Surgery	16.07	15.82	$125.00
27472	0	REPAIR/GRAFT OF THIGH	Surgery	17.72	17.28	$125.00
27475	0	SURGERY TO STOP LEG GROWTH	Surgery	8.64	8.91	$125.00
27477	0	SURGERY TO STOP LEG GROWTH	Surgery	9.85	9.83	$125.00
27479	0	SURGERY TO STOP LEG GROWTH	Surgery	12.80	10.84	$125.00
27485	0	SURGERY TO STOP LEG GROWTH	Surgery	8.84	8.69	$125.00
27486	0	REVISE/REPLACE KNEE JOINT	Surgery	19.27	17.27	$125.00
27487	0	REVISE/REPLACE KNEE JOINT	Surgery	25.27	21.53	$125.00
27488	0	REMOVAL OF KNEE PROSTHESIS	Surgery	15.74	14.50	$125.00
27495	0	REINFORCE THIGH	Surgery	15.55	15.77	$125.00
27496	0	DECOMPRESSION OF THIGH/KNEE	Surgery	6.11	6.62	$125.00
27497	0	DECOMPRESSION OF THIGH/KNEE	Surgery	7.17	6.97	$125.00
27498	0	DECOMPRESSION OF THIGH/KNEE	Surgery	7.99	8.59	$125.00
27499	0	DECOMPRESSION OF THIGH/KNEE	Surgery	9.00	8.76	$125.00
27500	0	TREATMENT OF THIGH FRACTURE	Surgery	5.92	6.73	$125.00
27501	0	TREATMENT OF THIGH FRACTURE	Surgery	5.92	7.45	$125.00
27502	0	TREATMENT OF THIGH FRACTURE	Surgery	10.58	10.02	$125.00
27503	0	TREATMENT OF THIGH FRACTURE	Surgery	10.58	10.01	$125.00
27506	0	TREATMENT OF THIGH FRACTURE	Surgery	17.45	14.45	$125.00
27507	0	TREATMENT OF THIGH FRACTURE	Surgery	13.99	13.09	$125.00
27508	0	TREATMENT OF THIGH FRACTURE	Surgery	5.83	5.12	$125.00
27509	0	TREATMENT OF THIGH FRACTURE	Surgery	7.71	7.59	$125.00
27510	0	TREATMENT OF THIGH FRACTURE	Surgery	9.13	7.22	$125.00
27511	0	TREATMENT OF THIGH FRACTURE	Surgery	13.64	13.36	$125.00
27513	0	TREATMENT OF THIGH FRACTURE	Surgery	17.92	15.43	$125.00
27514	0	TREATMENT OF THIGH FRACTURE	Surgery	17.30	14.96	$125.00
27516	0	TREAT THIGH FX GROWTH PLATE	Surgery	5.37	5.64	$125.00
27517	0	TREAT THIGH FX GROWTH PLATE	Surgery	8.78	7.90	$125.00
27519	0	TREAT THIGH FX GROWTH PLATE	Surgery	15.02	12.91	$125.00
27520	0	TREAT KNEECAP FRACTURE	Surgery	2.88	3.20	$125.00
27524	0	TREAT KNEECAP FRACTURE	Surgery	10.00	9.14	$125.00
27530	0	TREAT KNEE FRACTURE	Surgery	3.78	4.09	$125.00
27532	0	TREAT KNEE FRACTURE	Surgery	7.30	5.79	$125.00
27535	0	TREAT KNEE FRACTURE	Surgery	11.50	11.61	$125.00
27536	0	TREAT KNEE FRACTURE	Surgery	15.65	11.84	$125.00
27538	0	TREAT KNEE FRACTURE(S)	Surgery	4.87	4.95	$125.00
27540	0	TREAT KNEE FRACTURE	Surgery	13.10	10.45	$125.00
27550	0	TREAT KNEE DISLOCATION	Surgery	5.76	4.92	$125.00
27552	0	TREAT KNEE DISLOCATION	Surgery	7.90	6.59	$125.00
27556	0	TREAT KNEE DISLOCATION	Surgery	14.41	13.62	$125.00
27557	0	TREAT KNEE DISLOCATION	Surgery	16.77	15.10	$125.00
27558	0	TREAT KNEE DISLOCATION	Surgery	17.72	15.27	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
27560	0	TREAT KNEECAP DISLOCATION	Surgery	3.82	3.34	$125.00
27562	0	TREAT KNEECAP DISLOCATION	Surgery	5.79	5.43	$125.00
27566	0	TREAT KNEECAP DISLOCATION	Surgery	12.23	10.22	$125.00
27570	0	FIXATION OF KNEE JOINT	Surgery	1.74	2.70	$125.00
27580	0	FUSION OF KNEE	Surgery	19.37	16.05	$125.00
27590	0	AMPUTATE LEG AT THIGH	Surgery	12.03	11.87	$125.00
27591	0	AMPUTATE LEG AT THIGH	Surgery	12.68	13.30	$125.00
27592	0	AMPUTATE LEG AT THIGH	Surgery	10.02	11.19	$125.00
27594	0	AMPUTATION FOLLOW-UP SURGERY	Surgery	6.92	7.69	$125.00
27596	0	AMPUTATION FOLLOW-UP SURGERY	Surgery	10.60	11.17	$125.00
27598	0	AMPUTATE LOWER LEG AT KNEE	Surgery	10.53	11.00	$125.00
27600	0	DECOMPRESSION OF LOWER LEG	Surgery	5.65	7.15	$125.00
27601	0	DECOMPRESSION OF LOWER LEG	Surgery	5.64	6.36	$125.00
27602	0	DECOMPRESSION OF LOWER LEG	Surgery	7.35	7.38	$125.00
27603	0	DRAIN LOWER LEG LESION	Surgery	4.94	8.25	$125.00
27604	0	DRAIN LOWER LEG BURSA	Surgery	4.47	5.93	$125.00
27605	10	INCISION OF ACHILLES TENDON	Surgery	2.87	3.04	$125.00
27606	0	INCISION OF ACHILLES TENDON	Surgery	4.14	4.12	$125.00
27607	0	TREAT LOWER LEG BONE LESION	Surgery	7.97	11.20	$125.00
27610	0	EXPLORE/TREAT ANKLE JOINT	Surgery	8.34	9.38	$125.00
27612	0	EXPLORATION OF ANKLE JOINT	Surgery	7.33	7.83	$125.00
27613	0	BIOPSY LOWER LEG SOFT TISSUE	Surgery	2.17	4.35	$125.00
27614	0	BIOPSY LOWER LEG SOFT TISSUE	Surgery	5.66	5.71	$125.00
27615	0	REMOVE TUMOR, LOWER LEG	Surgery	12.56	14.39	$125.00
27618	0	REMOVE LOWER LEG LESION	Surgery	5.09	5.33	$125.00
27619	0	REMOVE LOWER LEG LESION	Surgery	8.40	7.76	$125.00
27620	0	EXPLORE/TREAT ANKLE JOINT	Surgery	5.98	7.11	$125.00
27625	0	REMOVE ANKLE JOINT LINING	Surgery	8.30	9.20	$125.00
27626	0	REMOVE ANKLE JOINT LINING	Surgery	8.91	10.00	$125.00
27630	0	REMOVAL OF TENDON LESION	Surgery	4.80	5.76	$125.00
27635	0	REMOVE LOWER LEG BONE LESION	Surgery	7.78	9.91	$125.00
27637	0	REMOVE/GRAFT LEG BONE LESION	Surgery	9.85	10.98	$125.00
27638	0	REMOVE/GRAFT LEG BONE LESION	Surgery	10.57	11.53	$125.00
27640	0	PARTIAL REMOVAL OF TIBIA	Surgery	11.37	15.33	$125.00
27641	0	PARTIAL REMOVAL OF FIBULA	Surgery	9.24	13.09	$125.00
27645	0	EXTENSIVE LOWER LEG SURGERY	Surgery	14.17	15.80	$125.00
27646	0	EXTENSIVE LOWER LEG SURGERY	Surgery	12.66	14.50	$125.00
27647	0	EXTENSIVE ANKLE/HEEL SURGERY	Surgery	12.24	10.75	$125.00
27648	0	INJECTION FOR ANKLE X-RAY	Surgery	0.96	6.88	$125.00
27650	0	REPAIR ACHILLES TENDON	Surgery	9.69	9.14	$125.00
27652	0	REPAIR/GRAFT ACHILLES TENDON	Surgery	10.33	9.78	$125.00
27654	0	REPAIR OF ACHILLES TENDON	Surgery	10.02	10.13	$125.00
27656	0	REPAIR LEG FASCIA DEFECT	Surgery	4.57	5.36	$125.00
27658	0	REPAIR OF LEG TENDON, EACH	Surgery	4.98	7.26	$125.00
27659	0	REPAIR OF LEG TENDON, EACH	Surgery	6.81	8.49	$125.00
27664	0	REPAIR OF LEG TENDON, EACH	Surgery	4.59	7.03	$125.00
27665	0	REPAIR OF LEG TENDON, EACH	Surgery	5.40	7.52	$125.00
27675	0	REPAIR LOWER LEG TENDONS	Surgery	7.18	7.31	$125.00
27676	0	REPAIR LOWER LEG TENDONS	Surgery	8.42	8.59	$125.00
27680	0	RELEASE OF LOWER LEG TENDON	Surgery	5.74	6.71	$125.00
27681	0	RELEASE OF LOWER LEG TENDONS	Surgery	6.82	7.24	$125.00
27685	0	REVISION OF LOWER LEG TENDON	Surgery	6.50	6.78	$125.00
27686	0	REVISE LOWER LEG TENDONS	Surgery	7.46	8.71	$125.00
27687	0	REVISION OF CALF TENDON	Surgery	6.24	7.28	$125.00
27690	0	REVISE LOWER LEG TENDON	Surgery	8.71	8.35	$125.00
27691	0	REVISE LOWER LEG TENDON	Surgery	9.96	9.84	$125.00
27692	0	REVISE ADDITIONAL LEG TENDON	Surgery	1.87	1.29	$125.00
27695	0	REPAIR OF ANKLE LIGAMENT	Surgery	6.51	8.30	$125.00
27696	0	REPAIR OF ANKLE LIGAMENTS	Surgery	8.27	8.62	$125.00
27698	0	REPAIR OF ANKLE LIGAMENT	Surgery	9.36	9.28	$125.00
27700	0	REVISION OF ANKLE JOINT	Surgery	9.29	8.27	$125.00
27702	0	RECONSTRUCT ANKLE JOINT	Surgery	13.67	13.30	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
27703	0	RECONSTRUCTION, ANKLE JOINT	Surgery	15.87	13.97	$125.00
27704	0	REMOVAL OF ANKLE IMPLANT	Surgery	7.62	7.05	$125.00
27705	0	INCISION OF TIBIA	Surgery	10.38	11.07	$125.00
27707	0	INCISION OF FIBULA	Surgery	4.37	7.07	$125.00
27709	0	INCISION OF TIBIA & FIBULA	Surgery	9.95	11.06	$125.00
27712	0	REALIGNMENT OF LOWER LEG	Surgery	14.25	12.67	$125.00
27715	0	REVISION OF LOWER LEG	Surgery	14.39	14.02	$125.00
27720	0	REPAIR OF TIBIA	Surgery	11.79	13.07	$125.00
27722	0	REPAIR/GRAFT OF TIBIA	Surgery	11.82	12.09	$125.00
27724	0	REPAIR/GRAFT OF TIBIA	Surgery	14.99	15.09	$125.00
27725	0	REPAIR OF LOWER LEG	Surgery	15.59	14.01	$125.00
27727	0	REPAIR OF LOWER LEG	Surgery	14.01	11.87	$125.00
27730	0	REPAIR OF TIBIA EPIPHYSIS	Surgery	7.41	8.19	$125.00
27732	0	REPAIR OF FIBULA EPIPHYSIS	Surgery	5.32	7.51	$125.00
27734	0	REPAIR LOWER LEG EPIPHYSES	Surgery	8.48	8.83	$125.00
27740	0	REPAIR OF LEG EPIPHYSES	Surgery	9.30	10.15	$125.00
27742	0	REPAIR OF LEG EPIPHYSES	Surgery	10.30	10.84	$125.00
27745	0	REINFORCE TIBIA	Surgery	10.07	10.56	$125.00
27750	0	TREATMENT OF TIBIA FRACTURE	Surgery	3.19	3.85	$125.00
27752	0	TREATMENT OF TIBIA FRACTURE	Surgery	5.84	5.87	$125.00
27756	0	TREATMENT OF TIBIA FRACTURE	Surgery	6.78	9.52	$125.00
27758	0	TREATMENT OF TIBIA FRACTURE	Surgery	11.67	11.80	$125.00
27759	0	TREATMENT OF TIBIA FRACTURE	Surgery	13.76	13.22	$125.00
27760	0	TREATMENT OF ANKLE FRACTURE	Surgery	3.01	4.67	$125.00
27762	0	TREATMENT OF ANKLE FRACTURE	Surgery	5.25	5.09	$125.00
27766	0	TREATMENT OF ANKLE FRACTURE	Surgery	8.36	8.17	$125.00
27780	0	TREATMENT OF FIBULA FRACTURE	Surgery	2.65	4.46	$125.00
27781	0	TREATMENT OF FIBULA FRACTURE	Surgery	4.40	4.25	$125.00
27784	0	TREATMENT OF FIBULA FRACTURE	Surgery	7.11	7.51	$125.00
27786	0	TREATMENT OF ANKLE FRACTURE	Surgery	2.84	4.63	$125.00
27788	0	TREATMENT OF ANKLE FRACTURE	Surgery	4.45	5.70	$125.00
27792	0	TREATMENT OF ANKLE FRACTURE	Surgery	7.66	7.73	$125.00
27808	0	TREATMENT OF ANKLE FRACTURE	Surgery	2.83	4.02	$125.00
27810	0	TREATMENT OF ANKLE FRACTURE	Surgery	5.13	5.53	$125.00
27814	0	TREATMENT OF ANKLE FRACTURE	Surgery	10.68	10.39	$125.00
27816	0	TREATMENT OF ANKLE FRACTURE	Surgery	2.89	4.15	$125.00
27818	0	TREATMENT OF ANKLE FRACTURE	Surgery	5.50	5.93	$125.00
27822	0	TREATMENT OF ANKLE FRACTURE	Surgery	9.20	11.17	$125.00
27823	0	TREATMENT OF ANKLE FRACTURE	Surgery	11.80	12.94	$125.00
27824	0	TREAT LOWER LEG FRACTURE	Surgery	2.89	4.13	$125.00
27825	0	TREAT LOWER LEG FRACTURE	Surgery	6.19	6.39	$125.00
27826	0	TREAT LOWER LEG FRACTURE	Surgery	8.54	10.70	$125.00
27827	0	TREAT LOWER LEG FRACTURE	Surgery	14.06	13.64	$125.00
27828	0	TREAT LOWER LEG FRACTURE	Surgery	16.23	14.80	$125.00
27829	0	TREAT LOWER LEG JOINT	Surgery	5.49	7.54	$125.00
27830	0	TREAT LOWER LEG DISLOCATION	Surgery	3.79	4.07	$125.00
27831	0	TREAT LOWER LEG DISLOCATION	Surgery	4.56	4.80	$125.00
27832	0	TREAT LOWER LEG DISLOCATION	Surgery	6.49	7.36	$125.00
27840	0	TREAT ANKLE DISLOCATION	Surgery	4.58	4.67	$125.00
27842	0	TREAT ANKLE DISLOCATION	Surgery	6.21	4.27	$125.00
27846	0	TREAT ANKLE DISLOCATION	Surgery	9.79	9.65	$125.00
27848	0	TREAT ANKLE DISLOCATION	Surgery	11.20	10.44	$125.00
27860	0	FIXATION OF ANKLE JOINT	Surgery	2.34	2.99	$125.00
27870	0	FUSION OF ANKLE JOINT	Surgery	13.91	13.30	$125.00
27871	0	FUSION OF TIBIOFIBULAR JOINT	Surgery	9.17	9.79	$125.00
27880	0	AMPUTATION OF LOWER LEG	Surgery	11.85	11.08	$125.00
27881	0	AMPUTATION OF LOWER LEG	Surgery	12.34	12.54	$125.00
27882	0	AMPUTATION OF LOWER LEG	Surgery	8.94	11.69	$125.00
27884	0	AMPUTATION FOLLOW-UP SURGERY	Surgery	8.21	8.69	$125.00
27886	0	AMPUTATION FOLLOW-UP SURGERY	Surgery	9.32	10.19	$125.00
27888	0	AMPUTATION OF FOOT AT ANKLE	Surgery	9.67	10.32	$125.00
27889	0	AMPUTATION OF FOOT AT ANKLE	Surgery	9.98	10.28	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
27892	0	DECOMPRESSION OF LEG	Surgery	7.39	6.98	$125.00
27893	0	DECOMPRESSION OF LEG	Surgery	7.35	7.20	$125.00
27894	0	DECOMPRESSION OF LEG	Surgery	10.49	8.17	$125.00
28001	0	DRAINAGE OF BURSA OF FOOT	Surgery	2.73	3.58	$125.00
28002	0	TREATMENT OF FOOT INFECTION	Surgery	4.62	3.68	$125.00
28003	0	TREATMENT OF FOOT INFECTION	Surgery	8.41	7.87	$125.00
28005	0	TREAT FOOT BONE LESION	Surgery	8.68	8.23	$125.00
28008	0	INCISION OF FOOT FASCIA	Surgery	4.45	5.02	$125.00
28010	0	INCISION OF TOE TENDON	Surgery	2.84	3.87	$125.00
28011	0	INCISION OF TOE TENDONS	Surgery	4.14	4.76	$125.00
28020	0	EXPLORATION OF FOOT JOINT	Surgery	5.01	5.49	$125.00
28022	0	EXPLORATION OF FOOT JOINT	Surgery	4.67	4.55	$125.00
28024	0	EXPLORATION OF TOE JOINT	Surgery	4.38	4.73	$125.00
28030	0	REMOVAL OF FOOT NERVE	Surgery	6.15	3.63	$125.00
28035	0	DECOMPRESSION OF TIBIA NERVE	Surgery	5.09	5.22	$125.00
28043	0	EXCISION OF FOOT LESION	Surgery	3.54	3.92	$125.00
28045	0	EXCISION OF FOOT LESION	Surgery	4.72	4.96	$125.00
28046	0	RESECTION OF TUMOR, FOOT	Surgery	10.18	9.13	$125.00
28050	0	BIOPSY OF FOOT JOINT LINING	Surgery	4.25	4.93	$125.00
28052	0	BIOPSY OF FOOT JOINT LINING	Surgery	3.94	4.46	$125.00
28054	0	BIOPSY OF TOE JOINT LINING	Surgery	3.45	4.35	$125.00
28060	0	PARTIAL REMOVAL, FOOT FASCIA	Surgery	5.23	5.51	$125.00
28062	0	REMOVAL OF FOOT FASCIA	Surgery	6.52	6.31	$125.00
28070	0	REMOVAL OF FOOT JOINT LINING	Surgery	5.10	5.25	$125.00
28072	0	REMOVAL OF FOOT JOINT LINING	Surgery	4.58	5.43	$125.00
28080	0	REMOVAL OF FOOT LESION	Surgery	3.58	4.71	$125.00
28086	0	EXCISE FOOT TENDON SHEATH	Surgery	4.78	5.85	$125.00
28088	0	EXCISE FOOT TENDON SHEATH	Surgery	3.86	5.33	$125.00
28090	0	REMOVAL OF FOOT LESION	Surgery	4.41	4.59	$125.00
28092	0	REMOVAL OF TOE LESIONS	Surgery	3.64	4.54	$125.00
28100	0	REMOVAL OF ANKLE/HEEL LESION	Surgery	5.66	6.49	$125.00
28102	0	REMOVE/GRAFT FOOT LESION	Surgery	7.73	7.78	$125.00
28103	0	REMOVE/GRAFT FOOT LESION	Surgery	6.50	6.76	$125.00
28104	0	REMOVAL OF FOOT LESION	Surgery	5.12	5.80	$125.00
28106	0	REMOVE/GRAFT FOOT LESION	Surgery	7.16	6.12	$125.00
28107	0	REMOVE/GRAFT FOOT LESION	Surgery	5.56	5.99	$125.00
28108	0	REMOVAL OF TOE LESIONS	Surgery	4.16	4.13	$125.00
28110	0	PART REMOVAL OF METATARSAL	Surgery	4.08	5.44	$125.00
28111	0	PART REMOVAL OF METATARSAL	Surgery	5.01	6.59	$125.00
28112	0	PART REMOVAL OF METATARSAL	Surgery	4.49	6.03	$125.00
28113	0	PART REMOVAL OF METATARSAL	Surgery	4.79	5.97	$125.00
28114	0	REMOVAL OF METATARSAL HEADS	Surgery	9.79	9.94	$125.00
28116	0	REVISION OF FOOT	Surgery	7.75	6.25	$125.00
28118	0	REMOVAL OF HEEL BONE	Surgery	5.96	6.28	$125.00
28119	0	REMOVAL OF HEEL SPUR	Surgery	5.39	5.51	$125.00
28120	0	PART REMOVAL OF ANKLE/HEEL	Surgery	5.40	7.89	$125.00
28122	0	PARTIAL REMOVAL OF FOOT BONE	Surgery	7.29	7.52	$125.00
28124	0	PARTIAL REMOVAL OF TOE	Surgery	4.81	5.53	$125.00
28126	0	PARTIAL REMOVAL OF TOE	Surgery	3.52	5.13	$125.00
28130	0	REMOVAL OF ANKLE BONE	Surgery	8.11	7.79	$125.00
28140	0	REMOVAL OF METATARSAL	Surgery	6.91	6.94	$125.00
28150	0	REMOVAL OF TOE	Surgery	4.09	5.63	$125.00
28153	0	PARTIAL REMOVAL OF TOE	Surgery	3.66	4.46	$125.00
28160	0	PARTIAL REMOVAL OF TOE	Surgery	3.74	5.28	$125.00
28171	0	EXTENSIVE FOOT SURGERY	Surgery	9.60	8.58	$125.00
28173	0	EXTENSIVE FOOT SURGERY	Surgery	8.80	7.51	$125.00
28175	0	EXTENSIVE FOOT SURGERY	Surgery	6.05	6.10	$125.00
28190	0	REMOVAL OF FOOT FOREIGN BODY	Surgery	1.96	4.17	$125.00
28192	0	REMOVAL OF FOOT FOREIGN BODY	Surgery	4.64	4.33	$125.00
28193	0	REMOVAL OF FOOT FOREIGN BODY	Surgery	5.73	5.05	$125.00
28200	0	REPAIR OF FOOT TENDON	Surgery	4.60	5.46	$125.00
28202	0	REPAIR/GRAFT OF FOOT TENDON	Surgery	6.84	6.34	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
28208	0	REPAIR OF FOOT TENDON	Surgery	4.37	4.92	$125.00
28210	0	REPAIR/GRAFT OF FOOT TENDON	Surgery	6.35	5.80	$125.00
28220	0	RELEASE OF FOOT TENDON	Surgery	4.53	4.67	$125.00
28222	0	RELEASE OF FOOT TENDONS	Surgery	5.62	5.73	$125.00
28225	0	RELEASE OF FOOT TENDON	Surgery	3.66	4.43	$125.00
28226	0	RELEASE OF FOOT TENDONS	Surgery	4.53	5.73	$125.00
28230	0	INCISION OF FOOT TENDON(S)	Surgery	4.24	4.96	$125.00
28232	0	INCISION OF TOE TENDON	Surgery	3.39	4.55	$125.00
28234	0	INCISION OF FOOT TENDON	Surgery	3.37	4.17	$125.00
28238	0	REVISION OF FOOT TENDON	Surgery	7.73	7.12	$125.00
28240	0	RELEASE OF BIG TOE	Surgery	4.36	4.83	$125.00
28250	0	REVISION OF FOOT FASCIA	Surgery	5.92	6.13	$125.00
28260	0	RELEASE OF MIDFOOT JOINT	Surgery	7.96	6.28	$125.00
28261	0	REVISION OF FOOT TENDON	Surgery	11.73	8.17	$125.00
28262	0	REVISION OF FOOT AND ANKLE	Surgery	15.83	14.09	$125.00
28264	0	RELEASE OF MIDFOOT JOINT	Surgery	10.35	10.82	$125.00
28270	0	RELEASE OF FOOT CONTRACTURE	Surgery	4.76	5.09	$125.00
28272	0	RELEASE OF TOE JOINT, EACH	Surgery	3.80	3.81	$125.00
28280	0	FUSION OF TOES	Surgery	5.19	5.28	$125.00
28285	0	REPAIR OF HAMMERTOE	Surgery	4.59	5.52	$125.00
28286	0	REPAIR OF HAMMERTOE	Surgery	4.56	5.35	$125.00
28288	0	PARTIAL REMOVAL OF FOOT BONE	Surgery	4.74	6.43	$125.00
28289	0	REPAIR HALLUX RIGIDUS	Surgery	7.04	7.90	$125.00
28290	0	CORRECTION OF BUNION	Surgery	5.66	7.44	$125.00
28292	0	CORRECTION OF BUNION	Surgery	7.04	7.00	$125.00
28293	0	CORRECTION OF BUNION	Surgery	9.15	7.89	$125.00
28294	0	CORRECTION OF BUNION	Surgery	8.56	7.78	$125.00
28296	0	CORRECTION OF BUNION	Surgery	9.18	8.17	$125.00
28297	0	CORRECTION OF BUNION	Surgery	9.18	9.48	$125.00
28298	0	CORRECTION OF BUNION	Surgery	7.94	7.93	$125.00
28299	0	CORRECTION OF BUNION	Surgery	8.88	8.32	$125.00
28300	0	INCISION OF HEEL BONE	Surgery	9.54	8.44	$125.00
28302	0	INCISION OF ANKLE BONE	Surgery	9.55	8.89	$125.00
28304	0	INCISION OF MIDFOOT BONES	Surgery	9.16	7.04	$125.00
28305	0	INCISE/GRAFT MIDFOOT BONES	Surgery	10.50	9.32	$125.00
28306	0	INCISION OF METATARSAL	Surgery	5.86	5.55	$125.00
28307	0	INCISION OF METATARSAL	Surgery	6.33	7.30	$125.00
28308	0	INCISION OF METATARSAL	Surgery	5.29	5.19	$125.00
28309	0	INCISION OF METATARSALS	Surgery	12.78	9.63	$125.00
28310	0	REVISION OF BIG TOE	Surgery	5.43	5.66	$125.00
28312	0	REVISION OF TOE	Surgery	4.55	6.23	$125.00
28313	0	REPAIR DEFORMITY OF TOE	Surgery	5.01	6.32	$125.00
28315	0	REMOVAL OF SESAMOID BONE	Surgery	4.86	4.89	$125.00
28320	0	REPAIR OF FOOT BONES	Surgery	9.18	8.40	$125.00
28322	0	REPAIR OF METATARSALS	Surgery	8.34	7.37	$125.00
28340	0	RESECT ENLARGED TOE TISSUE	Surgery	6.98	5.94	$125.00
28341	0	RESECT ENLARGED TOE	Surgery	8.41	6.93	$125.00
28344	0	REPAIR EXTRA TOE(S)	Surgery	4.26	4.74	$125.00
28345	0	REPAIR WEBBED TOE(S)	Surgery	5.92	6.22	$125.00
28360	0	RECONSTRUCT CLEFT FOOT	Surgery	13.34	12.35	$125.00
28400	0	TREATMENT OF HEEL FRACTURE	Surgery	2.16	3.81	$125.00
28405	0	TREATMENT OF HEEL FRACTURE	Surgery	4.57	5.34	$125.00
28406	0	TREATMENT OF HEEL FRACTURE	Surgery	6.31	7.70	$125.00
28415	0	TREAT HEEL FRACTURE	Surgery	15.97	13.30	$125.00
28420	0	TREAT/GRAFT HEEL FRACTURE	Surgery	16.64	13.86	$125.00
28430	0	TREATMENT OF ANKLE FRACTURE	Surgery	2.09	4.56	$125.00
28435	0	TREATMENT OF ANKLE FRACTURE	Surgery	3.40	4.36	$125.00
28436	0	TREATMENT OF ANKLE FRACTURE	Surgery	4.71	6.61	$125.00
28445	0	TREAT ANKLE FRACTURE	Surgery	9.33	9.60	$125.00
28450	0	TREAT MIDFOOT FRACTURE, EACH	Surgery	1.90	4.30	$125.00
28455	0	TREAT MIDFOOT FRACTURE, EACH	Surgery	3.09	3.99	$125.00
28456	0	TREAT MIDFOOT FRACTURE	Surgery	2.68	4.82	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
28465	0	TREAT MIDFOOT FRACTURE, EACH	Surgery	7.01	6.96	$125.00
28470	0	TREAT METATARSAL FRACTURE	Surgery	1.99	2.71	$125.00
28475	0	TREAT METATARSAL FRACTURE	Surgery	2.97	3.51	$125.00
28476	0	TREAT METATARSAL FRACTURE	Surgery	3.36	5.34	$125.00
28485	0	TREAT METATARSAL FRACTURE	Surgery	5.71	6.57	$125.00
28490	0	TREAT BIG TOE FRACTURE	Surgery	1.09	2.08	$125.00
28495	0	TREAT BIG TOE FRACTURE	Surgery	1.58	1.68	$125.00
28496	0	TREAT BIG TOE FRACTURE	Surgery	2.33	3.71	$125.00
28505	0	TREAT BIG TOE FRACTURE	Surgery	3.81	5.26	$125.00
28510	0	TREATMENT OF TOE FRACTURE	Surgery	1.09	1.86	$125.00
28515	0	TREATMENT OF TOE FRACTURE	Surgery	1.46	1.65	$125.00
28525	0	TREAT TOE FRACTURE	Surgery	3.32	4.87	$125.00
28530	0	TREAT SESAMOID BONE FRACTURE	Surgery	1.06	2.29	$125.00
28531	0	TREAT SESAMOID BONE FRACTURE	Surgery	2.35	3.02	$125.00
28540	0	TREAT FOOT DISLOCATION	Surgery	2.04	2.65	$125.00
28545	0	TREAT FOOT DISLOCATION	Surgery	2.45	3.04	$125.00
28546	0	TREAT FOOT DISLOCATION	Surgery	3.20	4.61	$125.00
28555	0	REPAIR FOOT DISLOCATION	Surgery	6.30	7.39	$125.00
28570	0	TREAT FOOT DISLOCATION	Surgery	1.66	2.92	$125.00
28575	0	TREAT FOOT DISLOCATION	Surgery	3.31	4.44	$125.00
28576	0	TREAT FOOT DISLOCATION	Surgery	4.17	5.28	$125.00
28585	0	REPAIR FOOT DISLOCATION	Surgery	7.99	7.02	$125.00
28600	0	TREAT FOOT DISLOCATION	Surgery	1.89	3.27	$125.00
28605	0	TREAT FOOT DISLOCATION	Surgery	2.71	3.97	$125.00
28606	0	TREAT FOOT DISLOCATION	Surgery	4.90	5.89	$125.00
28615	0	REPAIR FOOT DISLOCATION	Surgery	7.77	7.94	$125.00
28630	0	TREAT TOE DISLOCATION	Surgery	1.70	1.67	$125.00
28635	0	TREAT TOE DISLOCATION	Surgery	1.91	2.00	$125.00
28636	0	TREAT TOE DISLOCATION	Surgery	2.77	3.03	$125.00
28645	0	REPAIR TOE DISLOCATION	Surgery	4.22	3.85	$125.00
28660	0	TREAT TOE DISLOCATION	Surgery	1.23	2.32	$125.00
28665	0	TREAT TOE DISLOCATION	Surgery	1.92	2.03	$125.00
28666	0	TREAT TOE DISLOCATION	Surgery	2.86	2.38	$125.00
28675	0	REPAIR OF TOE DISLOCATION	Surgery	2.92	4.16	$125.00
28705	0	FUSION OF FOOT BONES	Surgery	15.21	13.56	$125.00
28715	0	FUSION OF FOOT BONES	Surgery	13.10	12.18	$125.00
28725	0	FUSION OF FOOT BONES	Surgery	11.61	10.54	$125.00
28730	0	FUSION OF FOOT BONES	Surgery	10.76	9.88	$125.00
28735	0	FUSION OF FOOT BONES	Surgery	10.85	10.31	$125.00
28737	0	REVISION OF FOOT BONES	Surgery	9.84	8.48	$125.00
28740	0	FUSION OF FOOT BONES	Surgery	8.02	7.59	$125.00
28750	0	FUSION OF BIG TOE JOINT	Surgery	7.30	7.81	$125.00
28755	0	FUSION OF BIG TOE JOINT	Surgery	4.74	5.44	$125.00
28760	0	FUSION OF BIG TOE JOINT	Surgery	7.75	6.72	$125.00
28800	0	AMPUTATION OF MIDFOOT	Surgery	8.21	8.29	$125.00
28805	0	AMPUTATION THRU METATARSAL	Surgery	8.39	8.38	$125.00
28810	0	AMPUTATION TOE & METATARSAL	Surgery	6.21	6.83	$125.00
28820	0	AMPUTATION OF TOE	Surgery	4.41	5.79	$125.00
28825	0	PARTIAL AMPUTATION OF TOE	Surgery	3.59	5.58	$125.00
29000	0	APPLICATION OF BODY CAST	Surgery	2.25	2.52	$125.00
29010	0	APPLICATION OF BODY CAST	Surgery	2.06	2.54	$125.00
29015	0	APPLICATION OF BODY CAST	Surgery	2.41	2.54	$125.00
29020	0	APPLICATION OF BODY CAST	Surgery	2.11	2.35	$125.00
29025	0	APPLICATION OF BODY CAST	Surgery	2.40	2.33	$125.00
29035	0	APPLICATION OF BODY CAST	Surgery	1.77	2.41	$125.00
29040	0	APPLICATION OF BODY CAST	Surgery	2.22	1.73	$125.00
29044	0	APPLICATION OF BODY CAST	Surgery	2.12	2.60	$125.00
29046	0	APPLICATION OF BODY CAST	Surgery	2.41	2.75	$125.00
29049	0	APPLICATION OF FIGURE EIGHT	Surgery	0.89	1.27	$125.00
29055	0	APPLICATION OF SHOULDER CAST	Surgery	1.78	1.95	$125.00
29058	0	APPLICATION OF SHOULDER CAST	Surgery	1.31	1.54	$125.00
29065	0	APPLICATION OF LONG ARM CAST	Surgery	0.87	0.52	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
29075	0	APPLICATION OF FOREARM CAST	Surgery	0.77	0.44	$125.00
29085	0	APPLY HAND/WRIST CAST	Surgery	0.87	0.42	$125.00
29105	0	APPLY LONG ARM SPLINT	Surgery	0.87	0.37	$125.00
29125	0	APPLY FOREARM SPLINT	Surgery	0.59	0.27	$125.00
29126	0	APPLY FOREARM SPLINT	Surgery	0.77	0.39	$125.00
29130	0	APPLICATION OF FINGER SPLINT	Surgery	0.50	0.23	$125.00
29131	0	APPLICATION OF FINGER SPLINT	Surgery	0.55	0.34	$125.00
29200	0	STRAPPING OF CHEST	Surgery	0.65	0.26	$125.00
29220	0	STRAPPING OF LOW BACK	Surgery	0.64	0.30	$125.00
29240	0	STRAPPING OF SHOULDER	Surgery	0.71	0.31	$125.00
29260	0	STRAPPING OF ELBOW OR WRIST	Surgery	0.55	0.24	$125.00
29280	0	STRAPPING OF HAND OR FINGER	Surgery	0.51	0.23	$125.00
29305	0	APPLICATION OF HIP CAST	Surgery	2.03	2.34	$125.00
29325	0	APPLICATION OF HIP CASTS	Surgery	2.32	2.47	$125.00
29345	0	APPLICATION OF LONG LEG CAST	Surgery	1.40	0.77	$125.00
29355	0	APPLICATION OF LONG LEG CAST	Surgery	1.53	1.57	$125.00
29358	0	APPLY LONG LEG CAST BRACE	Surgery	1.43	1.82	$125.00
29365	0	APPLICATION OF LONG LEG CAST	Surgery	1.18	0.65	$125.00
29405	0	APPLY SHORT LEG CAST	Surgery	0.86	0.50	$125.00
29425	0	APPLY SHORT LEG CAST	Surgery	1.01	1.12	$125.00
29435	0	APPLY SHORT LEG CAST	Surgery	1.18	1.66	$125.00
29440	0	ADDITION OF WALKER TO CAST	Surgery	0.57	0.75	$125.00
29445	0	APPLY RIGID LEG CAST	Surgery	1.78	1.11	$125.00
29450	0	APPLICATION OF LEG CAST	Surgery	1.02	1.01	$125.00
29505	0	APPLICATION, LONG LEG SPLINT	Surgery	0.69	0.47	$125.00
29515	0	APPLICATION LOWER LEG SPLINT	Surgery	0.73	0.38	$125.00
29520	0	STRAPPING OF HIP	Surgery	0.54	0.34	$125.00
29530	0	STRAPPING OF KNEE	Surgery	0.57	0.30	$125.00
29540	0	STRAPPING OF ANKLE	Surgery	0.51	0.24	$125.00
29550	0	STRAPPING OF TOES	Surgery	0.47	0.21	$125.00
29580	0	APPLICATION OF PASTE BOOT	Surgery	0.57	0.28	$125.00
29590	0	APPLICATION OF FOOT SPLINT	Surgery	0.76	0.35	$125.00
29700	0	REMOVAL/REVISION OF CAST	Surgery	0.57	0.70	$125.00
29705	0	REMOVAL/REVISION OF CAST	Surgery	0.76	0.83	$125.00
29710	0	REMOVAL/REVISION OF CAST	Surgery	1.34	1.41	$125.00
29715	0	REMOVAL/REVISION OF CAST	Surgery	0.94	2.96	$125.00
29720	0	REPAIR OF BODY CAST	Surgery	0.68	1.16	$125.00
29730	0	WINDOWING OF CAST	Surgery	0.75	0.77	$125.00
29740	0	WEDGING OF CAST	Surgery	1.12	1.12	$125.00
29750	0	WEDGING OF CLUBFOOT CAST	Surgery	1.26	1.31	$125.00
29800	0	JAW ARTHROSCOPY/SURGERY	Surgery	6.43	7.42	$125.00
29804	0	JAW ARTHROSCOPY/SURGERY	Surgery	8.14	9.01	$125.00
29815	0	SHOULDER ARTHROSCOPY	Surgery	5.89	6.80	$125.00
29819	0	SHOULDER ARTHROSCOPY/SURGERY	Surgery	7.62	9.16	$125.00
29820	0	SHOULDER ARTHROSCOPY/SURGERY	Surgery	7.07	8.72	$125.00
29821	0	SHOULDER ARTHROSCOPY/SURGERY	Surgery	7.72	9.19	$125.00
29822	0	SHOULDER ARTHROSCOPY/SURGERY	Surgery	7.43	9.03	$125.00
29823	0	SHOULDER ARTHROSCOPY/SURGERY	Surgery	8.17	9.51	$125.00
29825	0	SHOULDER ARTHROSCOPY/SURGERY	Surgery	7.62	9.17	$125.00
29826	0	SHOULDER ARTHROSCOPY/SURGERY	Surgery	8.99	10.12	$125.00
29830	0	ELBOW ARTHROSCOPY	Surgery	5.76	5.72	$125.00
29834	0	ELBOW ARTHROSCOPY/SURGERY	Surgery	6.28	6.45	$125.00
29835	0	ELBOW ARTHROSCOPY/SURGERY	Surgery	6.48	6.49	$125.00
29836	0	ELBOW ARTHROSCOPY/SURGERY	Surgery	7.55	7.31	$125.00
29837	0	ELBOW ARTHROSCOPY/SURGERY	Surgery	6.87	6.82	$125.00
29838	0	ELBOW ARTHROSCOPY/SURGERY	Surgery	7.71	7.37	$125.00
29840	0	WRIST ARTHROSCOPY	Surgery	5.54	7.03	$125.00
29843	0	WRIST ARTHROSCOPY/SURGERY	Surgery	6.01	7.47	$125.00
29844	0	WRIST ARTHROSCOPY/SURGERY	Surgery	6.37	7.58	$125.00
29845	0	WRIST ARTHROSCOPY/SURGERY	Surgery	7.52	8.29	$125.00
29846	0	WRIST ARTHROSCOPY/SURGERY	Surgery	6.75	9.94	$125.00
29847	0	WRIST ARTHROSCOPY/SURGERY	Surgery	7.08	9.72	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
29848	0	WRIST ENDOSCOPY/SURGERY	Surgery	5.44	6.84	$125.00
29850	0	KNEE ARTHROSCOPY/SURGERY	Surgery	8.19	6.41	$125.00
29851	0	KNEE ARTHROSCOPY/SURGERY	Surgery	13.10	11.47	$125.00
29855	0	TIBIAL ARTHROSCOPY/SURGERY	Surgery	10.62	10.66	$125.00
29856	0	TIBIAL ARTHROSCOPY/SURGERY	Surgery	14.14	12.13	$125.00
29860	0	HIP ARTHROSCOPY, DX	Surgery	8.05	7.01	$125.00
29861	0	HIP ARTHROSCOPY/SURGERY	Surgery	9.15	9.10	$125.00
29862	0	HIP ARTHROSCOPY/SURGERY	Surgery	9.90	9.54	$125.00
29863	0	HIP ARTHROSCOPY/SURGERY	Surgery	9.90	9.65	$125.00
29870	0	KNEE ARTHROSCOPY, DX	Surgery	5.07	5.43	$125.00
29871	0	KNEE ARTHROSCOPY/DRAINAGE	Surgery	6.55	7.65	$125.00
29874	0	KNEE ARTHROSCOPY/SURGERY	Surgery	7.05	7.67	$125.00
29875	0	KNEE ARTHROSCOPY/SURGERY	Surgery	6.31	7.25	$125.00
29876	0	KNEE ARTHROSCOPY/SURGERY	Surgery	7.92	8.79	$125.00
29877	0	KNEE ARTHROSCOPY/SURGERY	Surgery	7.35	8.00	$125.00
29879	0	KNEE ARTHROSCOPY/SURGERY	Surgery	8.04	8.49	$125.00
29880	0	KNEE ARTHROSCOPY/SURGERY	Surgery	8.50	8.82	$125.00
29881	0	KNEE ARTHROSCOPY/SURGERY	Surgery	7.76	8.29	$125.00
29882	0	KNEE ARTHROSCOPY/SURGERY	Surgery	8.65	8.55	$125.00
29883	0	KNEE ARTHROSCOPY/SURGERY	Surgery	9.46	9.51	$125.00
29884	0	KNEE ARTHROSCOPY/SURGERY	Surgery	7.33	8.38	$125.00
29885	0	KNEE ARTHROSCOPY/SURGERY	Surgery	9.09	9.13	$125.00
29886	0	KNEE ARTHROSCOPY/SURGERY	Surgery	7.54	8.12	$125.00
29887	0	KNEE ARTHROSCOPY/SURGERY	Surgery	9.04	9.59	$125.00
29888	0	KNEE ARTHROSCOPY/SURGERY	Surgery	13.90	13.04	$125.00
29889	0	KNEE ARTHROSCOPY/SURGERY	Surgery	15.13	12.12	$125.00
29891	0	ANKLE ARTHROSCOPY/SURGERY	Surgery	8.40	8.95	$125.00
29892	0	ANKLE ARTHROSCOPY/SURGERY	Surgery	9.00	6.83	$125.00
29893	0	SCOPE, PLANTAR FASCIOTOMY	Surgery	5.22	4.94	$125.00
29894	0	ANKLE ARTHROSCOPY/SURGERY	Surgery	7.21	7.67	$125.00
29895	0	ANKLE ARTHROSCOPY/SURGERY	Surgery	6.99	7.83	$125.00
29897	0	ANKLE ARTHROSCOPY/SURGERY	Surgery	7.18	8.36	$125.00
29898	0	ANKLE ARTHROSCOPY/SURGERY	Surgery	8.32	8.57	$125.00
30000	0	DRAINAGE OF NOSE LESION	Surgery	1.43	1.97	$125.00
30020	0	DRAINAGE OF NOSE LESION	Surgery	1.43	2.16	$125.00
30100	0	INTRANASAL BIOPSY	Surgery	0.94	1.16	$125.00
30110	0	REMOVAL OF NOSE POLYP(S)	Surgery	1.63	2.36	$125.00
30115	0	REMOVAL OF NOSE POLYP(S)	Surgery	4.35	4.05	$125.00
30117	0	REMOVAL OF INTRANASAL LESION	Surgery	3.16	3.09	$125.00
30118	0	REMOVAL OF INTRANASAL LESION	Surgery	9.69	7.75	$125.00
30120	0	REVISION OF NOSE	Surgery	5.27	5.98	$125.00
30124	0	REMOVAL OF NOSE LESION	Surgery	3.10	2.66	$125.00
30125	0	REMOVAL OF NOSE LESION	Surgery	7.16	6.24	$125.00
30130	0	REMOVAL OF TURBINATE BONES	Surgery	3.38	3.36	$125.00
30140	0	REMOVAL OF TURBINATE BONES	Surgery	3.43	4.14	$125.00
30150	0	PARTIAL REMOVAL OF NOSE	Surgery	9.14	8.49	$125.00
30160	0	REMOVAL OF NOSE	Surgery	9.58	9.09	$125.00
30200	0	INJECTION TREATMENT OF NOSE	Surgery	0.76	0.98	$125.00
30210	0	NASAL SINUS THERAPY	Surgery	1.08	1.62	$125.00
30220	0	INSERT NASAL SEPTAL BUTTON	Surgery	1.54	0.85	$125.00
30300	0	REMOVE NASAL FOREIGN BODY	Surgery	1.04	2.01	$125.00
30310	0	REMOVE NASAL FOREIGN BODY	Surgery	1.96	1.83	$125.00
30320	0	REMOVE NASAL FOREIGN BODY	Surgery	4.52	5.16	$125.00
30400	0	RECONSTRUCTION OF NOSE	Surgery	9.83	9.15	$125.00
30410	0	RECONSTRUCTION OF NOSE	Surgery	12.98	11.70	$125.00
30420	0	RECONSTRUCTION OF NOSE	Surgery	15.88	13.85	$125.00
30430	0	REVISION OF NOSE	Surgery	7.21	6.93	$125.00
30435	0	REVISION OF NOSE	Surgery	11.71	10.46	$125.00
30450	0	REVISION OF NOSE	Surgery	18.65	13.48	$125.00
30460	0	REVISION OF NOSE	Surgery	9.96	9.30	$125.00
30462	0	REVISION OF NOSE	Surgery	19.57	15.73	$125.00
30465	0	REPAIR NASAL STENOSIS	Surgery	11.64	9.12	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUs (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUs — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
30520	0	REPAIR OF NASAL SEPTUM	Surgery	5.70	5.98	$125.00
30540	0	REPAIR NASAL DEFECT	Surgery	7.75	6.59	$125.00
30545	0	REPAIR NASAL DEFECT	Surgery	11.38	9.10	$125.00
30560	0	RELEASE OF NASAL ADHESIONS	Surgery	1.26	1.85	$125.00
30580	0	REPAIR UPPER JAW FISTULA	Surgery	6.69	4.56	$125.00
30600	0	REPAIR MOUTH/NOSE FISTULA	Surgery	6.02	4.88	$125.00
30620	0	INTRANASAL RECONSTRUCTION	Surgery	5.97	6.58	$125.00
30630	0	REPAIR NASAL SEPTUM DEFECT	Surgery	7.12	6.84	$125.00
30801	0	CAUTERIZATION, INNER NOSE	Surgery	1.09	1.97	$125.00
30802	0	CAUTERIZATION, INNER NOSE	Surgery	2.03	2.31	$125.00
30901	0	CONTROL OF NOSEBLEED	Surgery	1.21	1.69	$125.00
30903	0	CONTROL OF NOSEBLEED	Surgery	1.54	0.70	$125.00
30905	0	CONTROL OF NOSEBLEED	Surgery	1.97	1.15	$125.00
30906	0	REPEAT CONTROL OF NOSEBLEED	Surgery	2.45	1.30	$125.00
30915	0	LIGATION, NASAL SINUS ARTERY	Surgery	7.20	8.49	$125.00
30920	0	LIGATION, UPPER JAW ARTERY	Surgery	9.83	8.83	$125.00
30930	0	THERAPY, FRACTURE OF NOSE	Surgery	1.26	1.76	$125.00
31000	0	IRRIGATION, MAXILLARY SINUS	Surgery	1.15	1.88	$125.00
31002	0	IRRIGATION, SPHENOID SINUS	Surgery	1.91	1.60	$125.00
31020	0	EXPLORATION, MAXILLARY SINUS	Surgery	2.94	3.38	$125.00
31030	0	EXPLORATION, MAXILLARY SINUS	Surgery	5.92	5.17	$125.00
31032	0	EXPLORE SINUS,REMOVE POLYPS	Surgery	6.57	6.39	$125.00
31040	0	EXPLORATION BEHIND UPPER JAW	Surgery	9.42	7.22	$125.00
31050	0	EXPLORATION, SPHENOID SINUS	Surgery	5.28	5.28	$125.00
31051	0	SPHENOID SINUS SURGERY	Surgery	7.11	6.88	$125.00
31070	0	EXPLORATION OF FRONTAL SINUS	Surgery	4.28	4.92	$125.00
31075	0	EXPLORATION OF FRONTAL SINUS	Surgery	9.16	8.75	$125.00
31080	0	REMOVAL OF FRONTAL SINUS	Surgery	11.42	9.05	$125.00
31081	0	REMOVAL OF FRONTAL SINUS	Surgery	12.75	9.79	$125.00
31084	0	REMOVAL OF FRONTAL SINUS	Surgery	13.51	11.80	$125.00
31085	0	REMOVAL OF FRONTAL SINUS	Surgery	14.20	12.20	$125.00
31086	0	REMOVAL OF FRONTAL SINUS	Surgery	12.86	10.41	$125.00
31087	0	REMOVAL OF FRONTAL SINUS	Surgery	13.10	10.64	$125.00
31090	0	EXPLORATION OF SINUSES	Surgery	9.53	9.34	$125.00
31200	0	REMOVAL OF ETHMOID SINUS	Surgery	4.97	5.64	$125.00
31201	0	REMOVAL OF ETHMOID SINUS	Surgery	8.37	7.60	$125.00
31205	0	REMOVAL OF ETHMOID SINUS	Surgery	10.24	8.54	$125.00
31225	0	REMOVAL OF UPPER JAW	Surgery	19.23	16.42	$125.00
31230	0	REMOVAL OF UPPER JAW	Surgery	21.94	18.03	$125.00
31231	0	NASAL ENDOSCOPY, DX	Surgery	1.10	1.80	$125.00
31233	0	NASAL/SINUS ENDOSCOPY, DX	Surgery	2.18	1.27	$125.00
31235	0	NASAL/SINUS ENDOSCOPY, DX	Surgery	2.64	1.43	$125.00
31237	0	NASAL/SINUS ENDOSCOPY, SURG	Surgery	2.98	1.66	$125.00
31238	0	NASAL/SINUS ENDOSCOPY, SURG	Surgery	3.26	1.86	$125.00
31239	0	NASAL/SINUS ENDOSCOPY, SURG	Surgery	8.70	7.50	$125.00
31240	0	NASAL/SINUS ENDOSCOPY, SURG	Surgery	2.61	1.96	$125.00
31254	0	REVISION OF ETHMOID SINUS	Surgery	4.65	3.43	$125.00
31255	0	REMOVAL OF ETHMOID SINUS	Surgery	6.96	5.09	$125.00
31256	0	EXPLORATION MAXILLARY SINUS	Surgery	3.29	2.45	$125.00
31267	0	ENDOSCOPY, MAXILLARY SINUS	Surgery	5.46	3.81	$125.00
31276	0	SINUS ENDOSCOPY, SURGICAL	Surgery	8.85	5.64	$125.00
31287	0	NASAL/SINUS ENDOSCOPY, SURG	Surgery	3.92	2.90	$125.00
31288	0	NASAL/SINUS ENDOSCOPY, SURG	Surgery	4.58	3.38	$125.00
31290	0	NASAL/SINUS ENDOSCOPY, SURG	Surgery	17.24	13.15	$125.00
31291	0	NASAL/SINUS ENDOSCOPY, SURG	Surgery	18.19	13.53	$125.00
31292	0	NASAL/SINUS ENDOSCOPY, SURG	Surgery	14.76	11.12	$125.00
31293	0	NASAL/SINUS ENDOSCOPY, SURG	Surgery	16.21	12.05	$125.00
31294	0	NASAL/SINUS ENDOSCOPY, SURG	Surgery	19.06	13.27	$125.00
31300	0	REMOVAL OF LARYNX LESION	Surgery	14.29	15.60	$125.00
31320	0	DIAGNOSTIC INCISION, LARYNX	Surgery	5.26	10.74	$125.00
31360	0	REMOVAL OF LARYNX	Surgery	17.08	18.93	$125.00
31365	0	REMOVAL OF LARYNX	Surgery	24.16	23.75	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUs (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUs — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
31367	0	PARTIAL REMOVAL OF LARYNX	Surgery	21.86	21.71	$125.00
31368	0	PARTIAL REMOVAL OF LARYNX	Surgery	27.09	27.88	$125.00
31370	0	PARTIAL REMOVAL OF LARYNX	Surgery	21.38	21.64	$125.00
31375	0	PARTIAL REMOVAL OF LARYNX	Surgery	20.21	19.39	$125.00
31380	0	PARTIAL REMOVAL OF LARYNX	Surgery	20.21	19.73	$125.00
31382	0	PARTIAL REMOVAL OF LARYNX	Surgery	20.52	21.02	$125.00
31390	0	REMOVAL OF LARYNX & PHARYNX	Surgery	27.53	28.28	$125.00
31395	0	RECONSTRUCT LARYNX & PHARYNX	Surgery	31.09	33.83	$125.00
31400	0	REVISION OF LARYNX	Surgery	10.31	13.40	$125.00
31420	0	REMOVAL OF EPIGLOTTIS	Surgery	10.22	13.41	$125.00
31500	0	INSERT EMERGENCY AIRWAY	Surgery	2.33	0.81	$125.00
31502	0	CHANGE OF WINDPIPE AIRWAY	Surgery	0.65	1.52	$125.00
31505	0	DIAGNOSTIC LARYNGOSCOPY	Surgery	0.61	1.41	$125.00
31510	0	LARYNGOSCOPY WITH BIOPSY	Surgery	1.92	0.91	$125.00
31511	0	REMOVE FOREIGN BODY, LARYNX	Surgery	2.16	0.83	$125.00
31512	0	REMOVAL OF LARYNX LESION	Surgery	2.07	1.33	$125.00
31513	0	INJECTION INTO VOCAL CORD	Surgery	2.10	1.59	$125.00
31515	0	LARYNGOSCOPY FOR ASPIRATION	Surgery	1.80	0.94	$125.00
31520	0	DIAGNOSTIC LARYNGOSCOPY	Surgery	2.56	1.50	$125.00
31525	0	DIAGNOSTIC LARYNGOSCOPY	Surgery	2.63	1.42	$125.00
31526	0	DIAGNOSTIC LARYNGOSCOPY	Surgery	2.57	1.92	$125.00
31527	0	LARYNGOSCOPY FOR TREATMENT	Surgery	3.27	2.08	$125.00
31528	0	LARYNGOSCOPY AND DILATATION	Surgery	2.37	1.68	$125.00
31529	0	LARYNGOSCOPY AND DILATATION	Surgery	2.68	1.85	$125.00
31530	0	OPERATIVE LARYNGOSCOPY	Surgery	3.39	2.34	$125.00
31531	0	OPERATIVE LARYNGOSCOPY	Surgery	3.59	2.67	$125.00
31535	0	OPERATIVE LARYNGOSCOPY	Surgery	3.16	2.33	$125.00
31536	0	OPERATIVE LARYNGOSCOPY	Surgery	3.56	2.64	$125.00
31540	0	OPERATIVE LARYNGOSCOPY	Surgery	4.13	3.04	$125.00
31541	0	OPERATIVE LARYNGOSCOPY	Surgery	4.53	3.23	$125.00
31560	0	OPERATIVE LARYNGOSCOPY	Surgery	5.46	3.62	$125.00
31561	0	OPERATIVE LARYNGOSCOPY	Surgery	6.00	4.31	$125.00
31570	0	LARYNGOSCOPY WITH INJECTION	Surgery	3.87	2.27	$125.00
31571	0	LARYNGOSCOPY WITH INJECTION	Surgery	4.27	3.10	$125.00
31575	0	DIAGNOSTIC LARYNGOSCOPY	Surgery	1.10	1.99	$125.00
31576	0	LARYNGOSCOPY WITH BIOPSY	Surgery	1.97	1.32	$125.00
31577	0	REMOVE FOREIGN BODY, LARYNX	Surgery	2.47	1.73	$125.00
31578	0	REMOVAL OF LARYNX LESION	Surgery	2.84	2.03	$125.00
31579	0	DIAGNOSTIC LARYNGOSCOPY	Surgery	2.26	2.76	$125.00
31580	0	REVISION OF LARYNX	Surgery	12.38	15.54	$125.00
31582	0	REVISION OF LARYNX	Surgery	21.62	20.62	$125.00
31584	0	TREAT LARYNX FRACTURE	Surgery	19.54	17.21	$125.00
31585	0	TREAT LARYNX FRACTURE	Surgery	4.64	7.29	$125.00
31586	0	TREAT LARYNX FRACTURE	Surgery	8.03	10.75	$125.00
31587	0	REVISION OF LARYNX	Surgery	11.99	11.95	$125.00
31588	0	REVISION OF LARYNX	Surgery	13.11	15.26	$125.00
31590	0	REINNERVATE LARYNX	Surgery	6.97	10.34	$125.00
31595	0	LARYNX NERVE SURGERY	Surgery	8.34	9.72	$125.00
31600	0	INCISION OF WINDPIPE	Surgery	3.62	2.30	$125.00
31601	0	INCISION OF WINDPIPE	Surgery	4.45	2.94	$125.00
31603	0	INCISION OF WINDPIPE	Surgery	4.15	2.44	$125.00
31605	0	INCISION OF WINDPIPE	Surgery	3.58	2.05	$125.00
31610	0	INCISION OF WINDPIPE	Surgery	8.76	9.72	$125.00
31611	0	SURGERY/SPEECH PROSTHESIS	Surgery	5.64	9.09	$125.00
31612	0	PUNCTURE/CLEAR WINDPIPE	Surgery	0.91	0.60	$125.00
31613	0	REPAIR WINDPIPE OPENING	Surgery	4.59	7.16	$125.00
31614	0	REPAIR WINDPIPE OPENING	Surgery	7.12	10.65	$125.00
31615	0	VISUALIZATION OF WINDPIPE	Surgery	2.09	1.42	$125.00
31622	0	DX BRONCHOSCOPE/WASH	Surgery	2.78	1.71	$125.00
31623	0	DX BRONCHOSCOPE/BRUSH	Surgery	2.88	1.71	$125.00
31624	0	DX BRONCHOSCOPE/LAVAGE	Surgery	2.88	1.71	$125.00
31625	0	BRONCHOSCOPY WITH BIOPSY	Surgery	3.37	1.99	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
31628	0	BRONCHOSCOPY WITH BIOPSY	Surgery	3.81	2.17	$125.00
31629	0	BRONCHOSCOPY WITH BIOPSY	Surgery	3.37	1.94	$125.00
31630	0	BRONCHOSCOPY WITH REPAIR	Surgery	3.82	2.61	$125.00
31631	0	BRONCHOSCOPY WITH DILATION	Surgery	4.37	2.68	$125.00
31635	0	REMOVE FOREIGN BODY, AIRWAY	Surgery	3.68	2.41	$125.00
31640	0	BRONCHOSCOPY & REMOVE LESION	Surgery	4.94	3.23	$125.00
31641	0	BRONCHOSCOPY, TREAT BLOCKAGE	Surgery	5.03	3.17	$125.00
31643	0	DIAG BRONCHOSCOPE/CATHETER	Surgery	3.50	1.71	$125.00
31645	0	BRONCHOSCOPY, CLEAR AIRWAYS	Surgery	3.16	1.85	$125.00
31646	0	BRONCHOSCOPY, RECLEAR AIRWAY	Surgery	2.72	1.62	$125.00
31656	0	BRONCHOSCOPY, INJ FOR XRAY	Surgery	2.17	1.34	$125.00
31700	0	INSERTION OF AIRWAY CATHETER	Surgery	1.34	0.92	$125.00
31708	0	INSTILL AIRWAY CONTRAST DYE	Surgery	1.41	0.68	$125.00
31710	0	INSERTION OF AIRWAY CATHETER	Surgery	1.30	0.78	$125.00
31715	0	INJECTION FOR BRONCHUS X-RAY	Surgery	1.11	0.60	$125.00
31717	0	BRONCHIAL BRUSH BIOPSY	Surgery	2.12	0.85	$125.00
31720	0	CLEARANCE OF AIRWAYS	Surgery	1.06	0.45	$125.00
31725	0	CLEARANCE OF AIRWAYS	Surgery	1.96	0.84	$125.00
31730	0	INTRO, WINDPIPE WIRE/TUBE	Surgery	2.85	1.50	$125.00
31750	0	REPAIR OF WINDPIPE	Surgery	13.02	14.27	$125.00
31755	0	REPAIR OF WINDPIPE	Surgery	15.93	17.42	$125.00
31760	0	REPAIR OF WINDPIPE	Surgery	22.35	12.47	$125.00
31766	0	RECONSTRUCTION OF WINDPIPE	Surgery	30.43	20.20	$125.00
31770	0	REPAIR/GRAFT OF BRONCHUS	Surgery	22.51	17.53	$125.00
31775	0	RECONSTRUCT BRONCHUS	Surgery	23.54	16.99	$125.00
31780	0	RECONSTRUCT WINDPIPE	Surgery	17.72	15.30	$125.00
31781	0	RECONSTRUCT WINDPIPE	Surgery	23.53	16.16	$125.00
31785	0	REMOVE WINDPIPE LESION	Surgery	17.23	12.38	$125.00
31786	0	REMOVE WINDPIPE LESION	Surgery	23.98	15.80	$125.00
31800	0	REPAIR OF WINDPIPE INJURY	Surgery	7.43	7.20	$125.00
31805	0	REPAIR OF WINDPIPE INJURY	Surgery	13.13	11.66	$125.00
31820	0	CLOSURE OF WINDPIPE LESION	Surgery	4.49	6.71	$125.00
31825	0	REPAIR OF WINDPIPE DEFECT	Surgery	6.81	9.52	$125.00
31830	0	REVISE WINDPIPE SCAR	Surgery	4.50	6.86	$125.00
32000	0	DRAINAGE OF CHEST	Surgery	1.54	0.62	$125.00
32002	0	TREATMENT OF COLLAPSED LUNG	Surgery	2.19	1.01	$125.00
32005	0	TREAT LUNG LINING CHEMICALLY	Surgery	2.19	1.00	$125.00
32020	0	INSERTION OF CHEST TUBE	Surgery	3.98	1.91	$125.00
32035	0	EXPLORATION OF CHEST	Surgery	8.67	9.10	$125.00
32036	0	EXPLORATION OF CHEST	Surgery	9.68	10.46	$125.00
32095	0	BIOPSY THROUGH CHEST WALL	Surgery	8.36	10.10	$125.00
32100	0	EXPLORATION/BIOPSY OF CHEST	Surgery	11.84	11.84	$125.00
32110	0	EXPLORE/REPAIR CHEST	Surgery	13.62	12.65	$125.00
32120	0	RE-EXPLORATION OF CHEST	Surgery	11.54	11.81	$125.00
32124	0	EXPLORE CHEST FREE ADHESIONS	Surgery	12.72	11.74	$125.00
32140	0	REMOVAL OF LUNG LESION(S)	Surgery	13.93	12.77	$125.00
32141	0	REMOVE/TREAT LUNG LESIONS	Surgery	14.00	13.33	$125.00
32150	0	REMOVAL OF LUNG LESION(S)	Surgery	14.15	11.72	$125.00
32151	0	REMOVE LUNG FOREIGN BODY	Surgery	14.21	12.17	$125.00
32160	0	OPEN CHEST HEART MASSAGE	Surgery	9.30	8.04	$125.00
32200	0	DRAIN, OPEN, LUNG LESION	Surgery	15.29	10.97	$125.00
32201	0	DRAIN, PERCUT, LUNG LESION	Surgery	4.00	5.74	$125.00
32215	0	TREAT CHEST LINING	Surgery	11.33	11.45	$125.00
32220	0	RELEASE OF LUNG	Surgery	19.27	15.83	$125.00
32225	0	PARTIAL RELEASE OF LUNG	Surgery	13.96	12.84	$125.00
32310	0	REMOVAL OF CHEST LINING	Surgery	13.44	12.42	$125.00
32320	0	FREE/REMOVE CHEST LINING	Surgery	20.54	16.12	$125.00
32400	0	NEEDLE BIOPSY CHEST LINING	Surgery	1.76	0.84	$125.00
32402	0	OPEN BIOPSY CHEST LINING	Surgery	7.56	10.00	$125.00
32405	0	BIOPSY, LUNG OR MEDIASTINUM	Surgery	1.93	1.09	$125.00
32420	0	PUNCTURE/CLEAR LUNG	Surgery	2.18	1.05	$125.00
32440	0	REMOVAL OF LUNG	Surgery	21.02	16.71	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
32442	0	SLEEVE PNEUMONECTOMY	Surgery	26.24	19.12	$125.00
32445	0	REMOVAL OF LUNG	Surgery	25.09	18.10	$125.00
32480	0	PARTIAL REMOVAL OF LUNG	Surgery	18.32	14.79	$125.00
32482	0	BILOBECTOMY	Surgery	19.71	15.63	$125.00
32484	0	SEGMENTECTOMY	Surgery	20.69	15.81	$125.00
32486	0	SLEEVE LOBECTOMY	Surgery	23.92	16.96	$125.00
32488	0	COMPLETION PNEUMONECTOMY	Surgery	25.71	18.13	$125.00
32491	0	LUNG VOLUME REDUCTION	Surgery	21.25	17.12	$125.00
32500	0	PARTIAL REMOVAL OF LUNG	Surgery	14.30	13.52	$125.00
32501	0	REPAIR BRONCHUS ADD-ON	Surgery	4.69	2.59	$125.00
32520	0	REMOVE LUNG & REVISE CHEST	Surgery	21.68	17.75	$125.00
32522	0	REMOVE LUNG & REVISE CHEST	Surgery	24.20	18.30	$125.00
32525	0	REMOVE LUNG & REVISE CHEST	Surgery	26.50	19.46	$125.00
32540	0	REMOVAL OF LUNG LESION	Surgery	14.64	13.19	$125.00
32601	0	THORACOSCOPY, DIAGNOSTIC	Surgery	5.46	4.37	$125.00
32602	0	THORACOSCOPY, DIAGNOSTIC	Surgery	5.96	4.66	$125.00
32603	0	THORACOSCOPY, DIAGNOSTIC	Surgery	7.81	4.75	$125.00
32604	0	THORACOSCOPY, DIAGNOSTIC	Surgery	8.78	5.54	$125.00
32605	0	THORACOSCOPY, DIAGNOSTIC	Surgery	6.93	5.11	$125.00
32606	0	THORACOSCOPY, DIAGNOSTIC	Surgery	8.40	5.29	$125.00
32650	0	THORACOSCOPY, SURGICAL	Surgery	10.75	10.23	$125.00
32651	0	THORACOSCOPY, SURGICAL	Surgery	12.91	11.31	$125.00
32652	0	THORACOSCOPY, SURGICAL	Surgery	18.66	15.17	$125.00
32653	0	THORACOSCOPY, SURGICAL	Surgery	12.87	11.50	$125.00
32654	0	THORACOSCOPY, SURGICAL	Surgery	12.44	9.98	$125.00
32655	0	THORACOSCOPY, SURGICAL	Surgery	13.10	11.88	$125.00
32656	0	THORACOSCOPY, SURGICAL	Surgery	12.91	12.95	$125.00
32657	0	THORACOSCOPY, SURGICAL	Surgery	13.65	12.51	$125.00
32658	0	THORACOSCOPY, SURGICAL	Surgery	11.63	13.35	$125.00
32659	0	THORACOSCOPY, SURGICAL	Surgery	11.59	11.69	$125.00
32660	0	THORACOSCOPY, SURGICAL	Surgery	17.43	15.21	$125.00
32661	0	THORACOSCOPY, SURGICAL	Surgery	13.25	11.96	$125.00
32662	0	THORACOSCOPY, SURGICAL	Surgery	16.44	14.09	$125.00
32663	0	THORACOSCOPY, SURGICAL	Surgery	18.47	15.45	$125.00
32664	0	THORACOSCOPY, SURGICAL	Surgery	14.20	11.09	$125.00
32665	0	THORACOSCOPY, SURGICAL	Surgery	15.54	12.25	$125.00
32800	0	REPAIR LUNG HERNIA	Surgery	13.69	11.08	$125.00
32810	0	CLOSE CHEST AFTER DRAINAGE	Surgery	13.05	10.74	$125.00
32815	0	CLOSE BRONCHIAL FISTULA	Surgery	23.15	16.90	$125.00
32820	0	RECONSTRUCT INJURED CHEST	Surgery	21.48	16.69	$125.00
32851	0	LUNG TRANSPLANT, SINGLE	Surgery	38.63	25.52	$125.00
32852	0	LUNG TRANSPLANT WITH BYPASS	Surgery	41.80	28.38	$125.00
32853	0	LUNG TRANSPLANT, DOUBLE	Surgery	47.81	30.69	$125.00
32854	0	LUNG TRANSPLANT WITH BYPASS	Surgery	50.98	31.17	$125.00
32900	0	REMOVAL OF RIB(S)	Surgery	20.27	13.19	$125.00
32905	0	REVISE & REPAIR CHEST WALL	Surgery	20.75	14.84	$125.00
32906	0	REVISE & REPAIR CHEST WALL	Surgery	26.77	18.42	$125.00
32940	0	REVISION OF LUNG	Surgery	19.43	14.55	$125.00
32960	0	THERAPEUTIC PNEUMOTHORAX	Surgery	1.84	1.36	$125.00
32997	0	TOTAL LUNG LAVAGE	Surgery	6.00	2.32	$125.00
33010	0	DRAINAGE OF HEART SAC	Surgery	2.24	1.19	$125.00
33011	0	REPEAT DRAINAGE OF HEART SAC	Surgery	2.24	0.97	$125.00
33015	0	INCISION OF HEART SAC	Surgery	6.80	5.09	$125.00
33020	0	INCISION OF HEART SAC	Surgery	12.51	11.02	$125.00
33025	0	INCISION OF HEART SAC	Surgery	12.09	11.24	$125.00
33030	0	PARTIAL REMOVAL OF HEART SAC	Surgery	18.71	17.82	$125.00
33031	0	PARTIAL REMOVAL OF HEART SAC	Surgery	21.79	16.89	$125.00
33050	0	REMOVAL OF HEART SAC LESION	Surgery	14.36	12.16	$125.00
33120	0	REMOVAL OF HEART LESION	Surgery	24.56	23.01	$125.00
33130	0	REMOVAL OF HEART LESION	Surgery	21.39	16.06	$125.00
33140	0	HEART REVASCULARIZE (TMR)	Surgery	20.00	12.79	$125.00
33141	0	HEART TMR W/OTHER PROCEDURE	Surgery	4.84	1.97	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
33200	0	INSERTION OF HEART PACEMAKER	Surgery	12.48	12.13	$125.00
33201	0	INSERTION OF HEART PACEMAKER	Surgery	10.18	12.43	$125.00
33206	0	INSERTION OF HEART PACEMAKER	Surgery	6.67	6.62	$125.00
33207	0	INSERTION OF HEART PACEMAKER	Surgery	8.04	7.36	$125.00
33208	0	INSERTION OF HEART PACEMAKER	Surgery	8.13	7.48	$125.00
33210	0	INSERTION OF HEART ELECTRODE	Surgery	3.30	1.93	$125.00
33211	0	INSERTION OF HEART ELECTRODE	Surgery	3.40	2.01	$125.00
33212	0	INSERTION OF PULSE GENERATOR	Surgery	5.52	5.21	$125.00
33213	0	INSERTION OF PULSE GENERATOR	Surgery	6.37	5.47	$125.00
33214	0	UPGRADE OF PACEMAKER SYSTEM	Surgery	7.75	6.34	$125.00
33216	0	REVISE ELTRD PACING-DEFIB	Surgery	5.39	5.41	$125.00
33217	0	REVISE ELTRD PACING-DEFIB	Surgery	5.75	5.66	$125.00
33218	0	REVISE ELTRD PACING-DEFIB	Surgery	5.44	5.02	$125.00
33220	0	REVISE ELTRD PACING-DEFIB	Surgery	5.52	5.06	$125.00
33222	0	REVISE POCKET, PACEMAKER	Surgery	4.96	4.83	$125.00
33223	0	REVISE POCKET, PACING-DEFIB	Surgery	6.46	5.87	$125.00
33233	0	REMOVAL OF PACEMAKER SYSTEM	Surgery	3.29	3.97	$125.00
33234	0	REMOVAL OF PACEMAKER SYSTEM	Surgery	7.82	5.54	$125.00
33235	0	REMOVAL PACEMAKER ELECTRODE	Surgery	9.40	6.22	$125.00
33236	0	REMOVE ELECTRODE/THORACOTOMY	Surgery	12.60	9.82	$125.00
33237	0	REMOVE ELECTRODE/THORACOTOMY	Surgery	13.71	12.04	$125.00
33238	0	REMOVE ELECTRODE/THORACOTOMY	Surgery	15.22	12.03	$125.00
33240	0	INSERT PULSE GENERATOR	Surgery	7.60	6.16	$125.00
33241	0	REMOVE PULSE GENERATOR	Surgery	3.24	3.53	$125.00
33243	0	REMOVE ELTRD/THORACOTOMY	Surgery	22.64	12.42	$125.00
33244	0	REMOVE ELTRD, TRANSVEN	Surgery	13.76	9.51	$125.00
33245	0	INSERT EPIC ELTRD PACE-DEFIB	Surgery	14.30	14.05	$125.00
33246	0	INSERT EPIC ELTRD/GENERATOR	Surgery	20.71	19.08	$125.00
33249	0	ELTRD/INSERT PACE-DEFIB	Surgery	14.23	11.32	$125.00
33250	0	ABLATE HEART DYSRHYTHM FOCUS	Surgery	21.85	14.16	$125.00
33251	0	ABLATE HEART DYSRHYTHM FOCUS	Surgery	24.88	18.01	$125.00
33253	0	RECONSTRUCT ATRIA	Surgery	31.06	22.37	$125.00
33261	0	ABLATE HEART DYSRHYTHM FOCUS	Surgery	24.88	17.93	$125.00
33282	0	IMPLANT PAT-ACTIVE HT RECORD	Surgery	4.17	5.53	$125.00
33284	0	REMOVE PAT-ACTIVE HT RECORD	Surgery	2.50	5.06	$125.00
33300	0	REPAIR OF HEART WOUND	Surgery	17.92	15.22	$125.00
33305	0	REPAIR OF HEART WOUND	Surgery	21.44	17.92	$125.00
33310	0	EXPLORATORY HEART SURGERY	Surgery	18.51	15.16	$125.00
33315	0	EXPLORATORY HEART SURGERY	Surgery	22.37	17.48	$125.00
33320	0	REPAIR MAJOR BLOOD VESSEL(S)	Surgery	16.79	14.20	$125.00
33321	0	REPAIR MAJOR VESSEL	Surgery	20.20	19.17	$125.00
33322	0	REPAIR MAJOR BLOOD VESSEL(S)	Surgery	20.62	18.73	$125.00
33330	0	INSERT MAJOR VESSEL GRAFT	Surgery	21.43	15.88	$125.00
33332	0	INSERT MAJOR VESSEL GRAFT	Surgery	23.96	16.56	$125.00
33335	0	INSERT MAJOR VESSEL GRAFT	Surgery	30.01	19.76	$125.00
33400	0	REPAIR OF AORTIC VALVE	Surgery	25.34	23.99	$125.00
33401	0	VALVULOPLASTY, OPEN	Surgery	23.91	22.60	$125.00
33403	0	VALVULOPLASTY, W/CP BYPASS	Surgery	24.89	23.00	$125.00
33404	0	PREPARE HEART-AORTA CONDUIT	Surgery	28.54	26.04	$125.00
33405	0	REPLACEMENT OF AORTIC VALVE	Surgery	30.61	24.39	$125.00
33406	0	REPLACEMENT OF AORTIC VALVE	Surgery	32.30	26.07	$125.00
33410	0	REPLACEMENT OF AORTIC VALVE	Surgery	32.46	22.25	$125.00
33411	0	REPLACEMENT OF AORTIC VALVE	Surgery	32.47	26.63	$125.00
33412	0	REPLACEMENT OF AORTIC VALVE	Surgery	34.79	31.87	$125.00
33413	0	REPLACEMENT OF AORTIC VALVE	Surgery	35.24	30.25	$125.00
33414	0	REPAIR OF AORTIC VALVE	Surgery	30.35	28.21	$125.00
33415	0	REVISION, SUBVALVULAR TISSUE	Surgery	27.15	26.00	$125.00
33416	0	REVISE VENTRICLE MUSCLE	Surgery	30.35	23.95	$125.00
33417	0	REPAIR OF AORTIC VALVE	Surgery	28.53	27.47	$125.00
33420	0	REVISION OF MITRAL VALVE	Surgery	22.70	14.51	$125.00
33422	0	REVISION OF MITRAL VALVE	Surgery	25.94	22.36	$125.00
33425	0	REPAIR OF MITRAL VALVE	Surgery	27.00	21.93	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
33426	0	REPAIR OF MITRAL VALVE	Surgery	31.03	24.92	$125.00
33427	0	REPAIR OF MITRAL VALVE	Surgery	33.72	26.14	$125.00
33430	0	REPLACEMENT OF MITRAL VALVE	Surgery	31.43	25.78	$125.00
33460	0	REVISION OF TRICUSPID VALVE	Surgery	23.60	21.11	$125.00
33463	0	VALVULOPLASTY, TRICUSPID	Surgery	25.62	22.23	$125.00
33464	0	VALVULOPLASTY, TRICUSPID	Surgery	27.33	23.40	$125.00
33465	0	REPLACE TRICUSPID VALVE	Surgery	28.79	23.98	$125.00
33468	0	REVISION OF TRICUSPID VALVE	Surgery	30.12	31.43	$125.00
33470	0	REVISION OF PULMONARY VALVE	Surgery	20.81	18.45	$125.00
33471	0	VALVOTOMY, PULMONARY VALVE	Surgery	22.25	21.19	$125.00
33472	0	REVISION OF PULMONARY VALVE	Surgery	22.25	21.62	$125.00
33474	0	REVISION OF PULMONARY VALVE	Surgery	23.04	19.66	$125.00
33475	0	REPLACEMENT, PULMONARY VALVE	Surgery	28.41	26.42	$125.00
33476	0	REVISION OF HEART CHAMBER	Surgery	25.77	21.94	$125.00
33478	0	REVISION OF HEART CHAMBER	Surgery	26.74	23.39	$125.00
33496	0	REPAIR, PROSTH VALVE CLOT	Surgery	27.25	26.32	$125.00
33500	0	REPAIR HEART VESSEL FISTULA	Surgery	25.55	21.68	$125.00
33501	0	REPAIR HEART VESSEL FISTULA	Surgery	17.78	14.50	$125.00
33502	0	CORONARY ARTERY CORRECTION	Surgery	21.04	21.64	$125.00
33503	0	CORONARY ARTERY GRAFT	Surgery	21.78	17.58	$125.00
33504	0	CORONARY ARTERY GRAFT	Surgery	24.66	25.17	$125.00
33505	0	REPAIR ARTERY W/TUNNEL	Surgery	26.84	24.17	$125.00
33506	0	REPAIR ARTERY, TRANSLOCATION	Surgery	26.71	20.62	$125.00
33510	0	CABG, VEIN, SINGLE	Surgery	25.12	21.85	$125.00
33511	0	CABG, VEIN, TWO	Surgery	27.40	23.01	$125.00
33512	0	CABG, VEIN, THREE	Surgery	29.67	24.57	$125.00
33513	0	CABG, VEIN, FOUR	Surgery	31.95	26.02	$125.00
33514	0	CABG, VEIN, FIVE	Surgery	35.00	27.95	$125.00
33516	0	CABG, VEIN, SIX OR MORE	Surgery	37.40	29.40	$125.00
33517	0	CABG, ARTERY-VEIN, SINGLE	Surgery	2.57	1.56	$125.00
33518	0	CABG, ARTERY-VEIN, TWO	Surgery	4.85	2.94	$125.00
33519	0	CABG, ARTERY-VEIN, THREE	Surgery	7.12	4.32	$125.00
33521	0	CABG, ARTERY-VEIN, FOUR	Surgery	9.40	5.72	$125.00
33522	0	CABG, ARTERY-VEIN, FIVE	Surgery	11.67	7.11	$125.00
33523	0	CABG, ART-VEIN, SIX OR MORE	Surgery	13.95	8.49	$125.00
33530	0	CORONARY ARTERY, BYPASS/REOP	Surgery	5.86	3.54	$125.00
33533	0	CABG, ARTERIAL, SINGLE	Surgery	25.83	22.29	$125.00
33534	0	CABG, ARTERIAL, TWO	Surgery	28.82	23.69	$125.00
33535	0	CABG, ARTERIAL, THREE	Surgery	31.81	25.28	$125.00
33536	0	CABG, ARTERIAL, FOUR OR MORE	Surgery	34.79	24.00	$125.00
33542	0	REMOVAL OF HEART LESION	Surgery	28.85	25.49	$125.00
33545	0	REPAIR OF HEART DAMAGE	Surgery	36.78	28.71	$125.00
33572	0	OPEN CORONARY ENDARTERECTOMY	Surgery	4.45	2.25	$125.00
33600	0	CLOSURE OF VALVE	Surgery	29.51	23.97	$125.00
33602	0	CLOSURE OF VALVE	Surgery	28.54	20.40	$125.00
33606	0	ANASTOMOSIS/ARTERY-AORTA	Surgery	30.74	23.23	$125.00
33608	0	REPAIR ANOMALY W/CONDUIT	Surgery	31.09	29.37	$125.00
33610	0	REPAIR BY ENLARGEMENT	Surgery	30.61	28.66	$125.00
33611	0	REPAIR DOUBLE VENTRICLE	Surgery	32.30	27.98	$125.00
33612	0	REPAIR DOUBLE VENTRICLE	Surgery	33.26	30.48	$125.00
33615	0	REPAIR, MODIFIED FONTAN	Surgery	32.06	30.71	$125.00
33617	0	REPAIR SINGLE VENTRICLE	Surgery	34.03	29.98	$125.00
33619	0	REPAIR SINGLE VENTRICLE	Surgery	37.57	35.70	$125.00
33641	0	REPAIR HEART SEPTUM DEFECT	Surgery	21.39	18.08	$125.00
33645	0	REVISION OF HEART VEINS	Surgery	24.82	22.28	$125.00
33647	0	REPAIR HEART SEPTUM DEFECTS	Surgery	28.73	26.65	$125.00
33660	0	REPAIR OF HEART DEFECTS	Surgery	25.54	24.22	$125.00
33665	0	REPAIR OF HEART DEFECTS	Surgery	28.60	26.99	$125.00
33670	0	REPAIR OF HEART CHAMBERS	Surgery	32.73	22.69	$125.00
33681	0	REPAIR HEART SEPTUM DEFECT	Surgery	27.67	26.45	$125.00
33684	0	REPAIR HEART SEPTUM DEFECT	Surgery	29.65	25.94	$125.00
33688	0	REPAIR HEART SEPTUM DEFECT	Surgery	30.62	22.06	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
33690	0	REINFORCE PULMONARY ARTERY	Surgery	19.55	20.36	$125.00
33692	0	REPAIR OF HEART DEFECTS	Surgery	30.75	22.63	$125.00
33694	0	REPAIR OF HEART DEFECTS	Surgery	31.73	25.87	$125.00
33697	0	REPAIR OF HEART DEFECTS	Surgery	33.71	29.16	$125.00
33702	0	REPAIR OF HEART DEFECTS	Surgery	26.54	24.64	$125.00
33710	0	REPAIR OF HEART DEFECTS	Surgery	29.71	21.52	$125.00
33720	0	REPAIR OF HEART DEFECT	Surgery	26.56	23.66	$125.00
33722	0	REPAIR OF HEART DEFECT	Surgery	28.41	25.69	$125.00
33730	0	REPAIR HEART-VEIN DEFECT(S)	Surgery	31.67	24.42	$125.00
33732	0	REPAIR HEART-VEIN DEFECT	Surgery	28.16	24.03	$125.00
33735	0	REVISION OF HEART CHAMBER	Surgery	21.39	17.62	$125.00
33736	0	REVISION OF HEART CHAMBER	Surgery	23.52	23.54	$125.00
33737	0	REVISION OF HEART CHAMBER	Surgery	21.76	19.86	$125.00
33750	0	MAJOR VESSEL SHUNT	Surgery	21.41	19.28	$125.00
33755	0	MAJOR VESSEL SHUNT	Surgery	21.79	19.37	$125.00
33762	0	MAJOR VESSEL SHUNT	Surgery	21.79	15.54	$125.00
33764	0	MAJOR VESSEL SHUNT & GRAFT	Surgery	21.79	17.20	$125.00
33766	0	MAJOR VESSEL SHUNT	Surgery	22.76	22.44	$125.00
33767	0	MAJOR VESSEL SHUNT	Surgery	24.50	22.41	$125.00
33770	0	REPAIR GREAT VESSELS DEFECT	Surgery	33.29	26.81	$125.00
33771	0	REPAIR GREAT VESSELS DEFECT	Surgery	34.65	24.47	$125.00
33774	0	REPAIR GREAT VESSELS DEFECT	Surgery	30.98	21.51	$125.00
33775	0	REPAIR GREAT VESSELS DEFECT	Surgery	32.20	21.88	$125.00
33776	0	REPAIR GREAT VESSELS DEFECT	Surgery	34.04	23.43	$125.00
33777	0	REPAIR GREAT VESSELS DEFECT	Surgery	33.46	22.26	$125.00
33778	0	REPAIR GREAT VESSELS DEFECT	Surgery	35.82	25.17	$125.00
33779	0	REPAIR GREAT VESSELS DEFECT	Surgery	36.21	25.79	$125.00
33780	0	REPAIR GREAT VESSELS DEFECT	Surgery	36.94	28.03	$125.00
33781	0	REPAIR GREAT VESSELS DEFECT	Surgery	36.45	25.55	$125.00
33786	0	REPAIR ARTERIAL TRUNK	Surgery	34.84	27.74	$125.00
33788	0	REVISION OF PULMONARY ARTERY	Surgery	26.62	22.27	$125.00
33800	0	AORTIC SUSPENSION	Surgery	16.24	13.56	$125.00
33802	0	REPAIR VESSEL DEFECT	Surgery	17.66	13.38	$125.00
33803	0	REPAIR VESSEL DEFECT	Surgery	19.60	19.89	$125.00
33813	0	REPAIR SEPTAL DEFECT	Surgery	20.65	19.02	$125.00
33814	0	REPAIR SEPTAL DEFECT	Surgery	25.77	26.22	$125.00
33820	0	REVISE MAJOR VESSEL	Surgery	16.29	17.46	$125.00
33822	0	REVISE MAJOR VESSEL	Surgery	17.32	17.18	$125.00
33824	0	REVISE MAJOR VESSEL	Surgery	19.52	17.92	$125.00
33840	0	REMOVE AORTA CONSTRICTION	Surgery	20.63	19.25	$125.00
33845	0	REMOVE AORTA CONSTRICTION	Surgery	22.12	22.16	$125.00
33851	0	REMOVE AORTA CONSTRICTION	Surgery	21.27	19.57	$125.00
33852	0	REPAIR SEPTAL DEFECT	Surgery	23.71	22.07	$125.00
33853	0	REPAIR SEPTAL DEFECT	Surgery	31.72	28.19	$125.00
33860	0	ASCENDING AORTIC GRAFT	Surgery	33.96	26.47	$125.00
33861	0	ASCENDING AORTIC GRAFT	Surgery	34.52	26.50	$125.00
33863	0	ASCENDING AORTIC GRAFT	Surgery	36.47	27.19	$125.00
33870	0	TRANSVERSE AORTIC ARCH GRAFT	Surgery	40.31	30.76	$125.00
33875	0	THORACIC AORTIC GRAFT	Surgery	33.06	24.78	$125.00
33877	0	THORACOABDOMINAL GRAFT	Surgery	42.60	31.87	$125.00
33910	0	REMOVE LUNG ARTERY EMBOLI	Surgery	24.59	17.86	$125.00
33915	0	REMOVE LUNG ARTERY EMBOLI	Surgery	21.02	13.25	$125.00
33916	0	SURGERY OF GREAT VESSEL	Surgery	25.83	17.25	$125.00
33917	0	REPAIR PULMONARY ARTERY	Surgery	24.50	24.14	$125.00
33918	0	REPAIR PULMONARY ATRESIA	Surgery	26.45	19.57	$125.00
33919	0	REPAIR PULMONARY ATRESIA	Surgery	32.67	27.64	$125.00
33920	0	REPAIR PULMONARY ATRESIA	Surgery	31.95	23.74	$125.00
33922	0	TRANSECT PULMONARY ARTERY	Surgery	23.52	20.42	$125.00
33924	0	REMOVE PULMONARY SHUNT	Surgery	5.50	2.75	$125.00
33935	0	TRANSPLANTATION, HEART/LUNG	Surgery	60.96	44.25	$125.00
33945	0	TRANSPLANTATION OF HEART	Surgery	42.10	32.98	$125.00
33960	0	EXTERNAL CIRCULATION ASSIST	Surgery	19.36	7.51	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
33961	0	EXTERNAL CIRCULATION ASSIST	Surgery	10.93	5.28	$125.00
33968	0	REMOVE AORTIC ASSIST DEVICE	Surgery	0.64	0.26	$125.00
33970	0	AORTIC CIRCULATION ASSIST	Surgery	6.75	4.12	$125.00
33971	0	AORTIC CIRCULATION ASSIST	Surgery	9.69	8.81	$125.00
33973	0	INSERT BALLOON DEVICE	Surgery	9.76	5.05	$125.00
33974	0	REMOVE INTRA-AORTIC BALLOON	Surgery	14.41	11.51	$125.00
33975	0	IMPLANT VENTRICULAR DEVICE	Surgery	21.00	8.66	$125.00
33976	0	IMPLANT VENTRICULAR DEVICE	Surgery	23.00	12.27	$125.00
33977	0	REMOVE VENTRICULAR DEVICE	Surgery	19.29	13.43	$125.00
33978	0	REMOVE VENTRICULAR DEVICE	Surgery	21.73	15.02	$125.00
34001	0	REMOVAL OF ARTERY CLOT	Surgery	12.91	7.31	$125.00
34051	0	REMOVAL OF ARTERY CLOT	Surgery	15.21	8.54	$125.00
34101	0	REMOVAL OF ARTERY CLOT	Surgery	9.97	6.14	$125.00
34111	0	REMOVAL OF ARM ARTERY CLOT	Surgery	8.07	5.32	$125.00
34151	0	REMOVAL OF ARTERY CLOT	Surgery	16.86	9.16	$125.00
34201	0	REMOVAL OF ARTERY CLOT	Surgery	9.13	6.29	$125.00
34203	0	REMOVAL OF LEG ARTERY CLOT	Surgery	12.21	7.18	$125.00
34401	0	REMOVAL OF VEIN CLOT	Surgery	12.86	7.04	$125.00
34421	0	REMOVAL OF VEIN CLOT	Surgery	9.93	6.17	$125.00
34451	0	REMOVAL OF VEIN CLOT	Surgery	14.44	8.44	$125.00
34471	0	REMOVAL OF VEIN CLOT	Surgery	10.18	4.88	$125.00
34490	0	REMOVAL OF VEIN CLOT	Surgery	7.60	6.23	$125.00
34501	0	REPAIR VALVE, FEMORAL VEIN	Surgery	10.93	8.63	$125.00
34502	0	RECONSTRUCT VENA CAVA	Surgery	26.95	14.35	$125.00
34510	0	TRANSPOSITION OF VEIN VALVE	Surgery	13.25	9.50	$125.00
34520	0	CROSS-OVER VEIN GRAFT	Surgery	13.74	8.59	$125.00
34530	0	LEG VEIN FUSION	Surgery	17.61	10.84	$125.00
34800	0	ENDOVASC ABDO REPAIR W/TUBE	Surgery	20.75	9.72	$125.00
34802	0	ENDOVASC ABDO REPR W/DEVICE	Surgery	23.00	10.62	$125.00
34804	0	ENDOVASC ABDO REPR W/DEVICE	Surgery	23.00	10.62	$125.00
34808	0	ENDOVASC ABDO OCCLUD DEVICE	Surgery	4.13	1.65	$125.00
34812	0	XPOSE FOR ENDOPROSTH, AORTIC	Surgery	6.75	2.70	$125.00
34813	0	XPOSE FOR ENDOPROSTH, FEMORL	Surgery	4.80	1.92	$125.00
34820	0	XPOSE FOR ENDOPROSTH, ILIAC	Surgery	9.75	3.90	$125.00
34825	0	ENDOVASC EXTEND PROSTH, INIT	Surgery	12.00	6.23	$125.00
34826	0	ENDOVASC EXTEN PROSTH, ADDL	Surgery	4.13	1.65	$125.00
34830	0	OPEN AORTIC TUBE PROSTH REPR	Surgery	32.59	14.81	$125.00
34831	0	OPEN AORTOILIAC PROSTH REPR	Surgery	35.34	15.90	$125.00
34832	0	OPEN AORTOFEMOR PROSTH REPR	Surgery	35.34	15.90	$125.00
35001	0	REPAIR DEFECT OF ARTERY	Surgery	19.64	11.28	$125.00
35002	0	REPAIR ARTERY RUPTURE, NECK	Surgery	21.00	10.89	$125.00
35005	0	REPAIR DEFECT OF ARTERY	Surgery	18.12	9.32	$125.00
35011	0	REPAIR DEFECT OF ARTERY	Surgery	11.65	7.74	$125.00
35013	0	REPAIR ARTERY RUPTURE, ARM	Surgery	17.40	9.91	$125.00
35021	0	REPAIR DEFECT OF ARTERY	Surgery	19.65	12.59	$125.00
35022	0	REPAIR ARTERY RUPTURE, CHEST	Surgery	23.18	11.43	$125.00
35045	0	REPAIR DEFECT OF ARM ARTERY	Surgery	11.26	8.62	$125.00
35081	0	REPAIR DEFECT OF ARTERY	Surgery	28.01	15.38	$125.00
35082	0	REPAIR ARTERY RUPTURE, AORTA	Surgery	35.35	17.78	$125.00
35091	0	REPAIR DEFECT OF ARTERY	Surgery	35.40	17.76	$125.00
35092	0	REPAIR ARTERY RUPTURE, AORTA	Surgery	38.39	19.28	$125.00
35102	0	REPAIR DEFECT OF ARTERY	Surgery	30.76	16.17	$125.00
35103	0	REPAIR ARTERY RUPTURE, GROIN	Surgery	33.57	17.79	$125.00
35111	0	REPAIR DEFECT OF ARTERY	Surgery	16.43	10.63	$125.00
35112	0	REPAIR ARTERY RUPTURE,SPLEEN	Surgery	18.69	9.15	$125.00
35121	0	REPAIR DEFECT OF ARTERY	Surgery	25.99	13.90	$125.00
35122	0	REPAIR ARTERY RUPTURE, BELLY	Surgery	33.45	15.40	$125.00
35131	0	REPAIR DEFECT OF ARTERY	Surgery	18.55	11.10	$125.00
35132	0	REPAIR ARTERY RUPTURE, GROIN	Surgery	21.95	12.41	$125.00
35141	0	REPAIR DEFECT OF ARTERY	Surgery	14.46	9.50	$125.00
35142	0	REPAIR ARTERY RUPTURE, THIGH	Surgery	15.86	10.08	$125.00
35151	0	REPAIR DEFECT OF ARTERY	Surgery	17.00	10.37	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
35152	0	REPAIR ARTERY RUPTURE, KNEE	Surgery	16.70	8.70	$125.00
35161	0	REPAIR DEFECT OF ARTERY	Surgery	18.76	11.72	$125.00
35162	0	REPAIR ARTERY RUPTURE	Surgery	19.78	12.62	$125.00
35180	0	REPAIR BLOOD VESSEL LESION	Surgery	13.62	6.67	$125.00
35182	0	REPAIR BLOOD VESSEL LESION	Surgery	17.74	9.65	$125.00
35184	0	REPAIR BLOOD VESSEL LESION	Surgery	12.25	7.33	$125.00
35188	0	REPAIR BLOOD VESSEL LESION	Surgery	14.28	7.48	$125.00
35189	0	REPAIR BLOOD VESSEL LESION	Surgery	18.43	9.98	$125.00
35190	0	REPAIR BLOOD VESSEL LESION	Surgery	12.75	7.43	$125.00
35201	0	REPAIR BLOOD VESSEL LESION	Surgery	9.99	6.72	$125.00
35206	0	REPAIR BLOOD VESSEL LESION	Surgery	9.25	7.67	$125.00
35207	0	REPAIR BLOOD VESSEL LESION	Surgery	10.15	9.89	$125.00
35211	0	REPAIR BLOOD VESSEL LESION	Surgery	22.12	17.31	$125.00
35216	0	REPAIR BLOOD VESSEL LESION	Surgery	18.75	13.65	$125.00
35221	0	REPAIR BLOOD VESSEL LESION	Surgery	16.42	8.88	$125.00
35226	0	REPAIR BLOOD VESSEL LESION	Surgery	9.06	8.10	$125.00
35231	0	REPAIR BLOOD VESSEL LESION	Surgery	12.00	8.47	$125.00
35236	0	REPAIR BLOOD VESSEL LESION	Surgery	10.54	8.42	$125.00
35241	0	REPAIR BLOOD VESSEL LESION	Surgery	23.12	18.11	$125.00
35246	0	REPAIR BLOOD VESSEL LESION	Surgery	19.84	15.72	$125.00
35251	0	REPAIR BLOOD VESSEL LESION	Surgery	17.49	8.85	$125.00
35258	0	REPAIR BLOOD VESSEL LESION	Surgery	11.38	9.07	$125.00
35261	0	REPAIR BLOOD VESSEL LESION	Surgery	11.63	7.83	$125.00
35266	0	REPAIR BLOOD VESSEL LESION	Surgery	10.30	8.39	$125.00
35271	0	REPAIR BLOOD VESSEL LESION	Surgery	22.12	16.33	$125.00
35276	0	REPAIR BLOOD VESSEL LESION	Surgery	18.75	14.55	$125.00
35281	0	REPAIR BLOOD VESSEL LESION	Surgery	16.48	10.61	$125.00
35286	0	REPAIR BLOOD VESSEL LESION	Surgery	11.87	9.04	$125.00
35301	0	RECHANNELING OF ARTERY	Surgery	18.70	11.17	$125.00
35311	0	RECHANNELING OF ARTERY	Surgery	23.85	15.05	$125.00
35321	0	RECHANNELING OF ARTERY	Surgery	11.97	7.97	$125.00
35331	0	RECHANNELING OF ARTERY	Surgery	23.52	11.82	$125.00
35341	0	RECHANNELING OF ARTERY	Surgery	25.11	13.15	$125.00
35351	0	RECHANNELING OF ARTERY	Surgery	20.11	11.12	$125.00
35355	0	RECHANNELING OF ARTERY	Surgery	16.09	10.09	$125.00
35361	0	RECHANNELING OF ARTERY	Surgery	23.59	13.26	$125.00
35363	0	RECHANNELING OF ARTERY	Surgery	24.86	14.56	$125.00
35371	0	RECHANNELING OF ARTERY	Surgery	11.64	7.90	$125.00
35372	0	RECHANNELING OF ARTERY	Surgery	13.56	8.09	$125.00
35381	0	RECHANNELING OF ARTERY	Surgery	15.81	9.62	$125.00
35390	0	REOPERATION, CAROTID ADD-ON	Surgery	3.19	1.37	$125.00
35400	0	ANGIOSCOPY	Surgery	3.00	1.44	$125.00
35450	0	REPAIR ARTERIAL BLOCKAGE	Surgery	10.07	5.94	$125.00
35452	0	REPAIR ARTERIAL BLOCKAGE	Surgery	6.91	3.81	$125.00
35454	0	REPAIR ARTERIAL BLOCKAGE	Surgery	6.04	4.09	$125.00
35456	0	REPAIR ARTERIAL BLOCKAGE	Surgery	7.35	4.87	$125.00
35458	0	REPAIR ARTERIAL BLOCKAGE	Surgery	9.49	6.04	$125.00
35459	0	REPAIR ARTERIAL BLOCKAGE	Surgery	8.63	5.52	$125.00
35460	0	REPAIR VENOUS BLOCKAGE	Surgery	6.04	3.03	$125.00
35470	0	REPAIR ARTERIAL BLOCKAGE	Surgery	8.63	5.64	$125.00
35471	0	REPAIR ARTERIAL BLOCKAGE	Surgery	10.07	6.59	$125.00
35472	0	REPAIR ARTERIAL BLOCKAGE	Surgery	6.91	3.58	$125.00
35473	0	REPAIR ARTERIAL BLOCKAGE	Surgery	6.04	4.11	$125.00
35474	0	REPAIR ARTERIAL BLOCKAGE	Surgery	7.36	4.90	$125.00
35475	0	REPAIR ARTERIAL BLOCKAGE	Surgery	9.49	5.94	$125.00
35476	0	REPAIR VENOUS BLOCKAGE	Surgery	6.04	3.06	$125.00
35480	0	ATHERECTOMY, OPEN	Surgery	11.08	7.03	$125.00
35481	0	ATHERECTOMY, OPEN	Surgery	7.61	4.03	$125.00
35482	0	ATHERECTOMY, OPEN	Surgery	6.65	4.45	$125.00
35483	0	ATHERECTOMY, OPEN	Surgery	8.10	5.34	$125.00
35484	0	ATHERECTOMY, OPEN	Surgery	10.44	6.25	$125.00
35485	0	ATHERECTOMY, OPEN	Surgery	9.49	4.53	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
35490	0	ATHERECTOMY, PERCUTANEOUS	Surgery	11.08	7.09	$125.00
35491	0	ATHERECTOMY, PERCUTANEOUS	Surgery	7.61	3.96	$125.00
35492	0	ATHERECTOMY, PERCUTANEOUS	Surgery	6.65	4.51	$125.00
35493	0	ATHERECTOMY, PERCUTANEOUS	Surgery	8.10	5.46	$125.00
35494	0	ATHERECTOMY, PERCUTANEOUS	Surgery	10.44	6.26	$125.00
35495	0	ATHERECTOMY, PERCUTANEOUS	Surgery	9.49	4.82	$125.00
35500	0	HARVEST VEIN FOR BYPASS	Surgery	6.45	2.12	$125.00
35501	0	ARTERY BYPASS GRAFT	Surgery	19.19	12.11	$125.00
35506	0	ARTERY BYPASS GRAFT	Surgery	19.67	12.08	$125.00
35507	0	ARTERY BYPASS GRAFT	Surgery	19.67	11.67	$125.00
35508	0	ARTERY BYPASS GRAFT	Surgery	18.65	11.60	$125.00
35509	0	ARTERY BYPASS GRAFT	Surgery	18.07	11.40	$125.00
35511	0	ARTERY BYPASS GRAFT	Surgery	16.83	8.59	$125.00
35515	0	ARTERY BYPASS GRAFT	Surgery	18.65	9.77	$125.00
35516	0	ARTERY BYPASS GRAFT	Surgery	16.32	10.36	$125.00
35518	0	ARTERY BYPASS GRAFT	Surgery	15.42	9.92	$125.00
35521	0	ARTERY BYPASS GRAFT	Surgery	16.17	10.75	$125.00
35526	0	ARTERY BYPASS GRAFT	Surgery	20.00	10.98	$125.00
35531	0	ARTERY BYPASS GRAFT	Surgery	25.61	14.08	$125.00
35533	0	ARTERY BYPASS GRAFT	Surgery	20.52	13.02	$125.00
35536	0	ARTERY BYPASS GRAFT	Surgery	23.11	13.55	$125.00
35541	0	ARTERY BYPASS GRAFT	Surgery	25.80	14.25	$125.00
35546	0	ARTERY BYPASS GRAFT	Surgery	25.54	14.44	$125.00
35548	0	ARTERY BYPASS GRAFT	Surgery	21.57	12.64	$125.00
35549	0	ARTERY BYPASS GRAFT	Surgery	23.35	14.26	$125.00
35551	0	ARTERY BYPASS GRAFT	Surgery	26.67	14.79	$125.00
35556	0	ARTERY BYPASS GRAFT	Surgery	21.76	12.69	$125.00
35558	0	ARTERY BYPASS GRAFT	Surgery	14.04	9.58	$125.00
35560	0	ARTERY BYPASS GRAFT	Surgery	23.56	13.69	$125.00
35563	0	ARTERY BYPASS GRAFT	Surgery	15.14	7.74	$125.00
35565	0	ARTERY BYPASS GRAFT	Surgery	15.14	10.14	$125.00
35566	0	ARTERY BYPASS GRAFT	Surgery	26.92	16.56	$125.00
35571	0	ARTERY BYPASS GRAFT	Surgery	18.58	13.31	$125.00
35582	0	VEIN BYPASS GRAFT	Surgery	27.13	15.75	$125.00
35583	0	VEIN BYPASS GRAFT	Surgery	22.37	13.89	$125.00
35585	0	VEIN BYPASS GRAFT	Surgery	28.39	17.66	$125.00
35587	0	VEIN BYPASS GRAFT	Surgery	19.05	14.21	$125.00
35600	0	HARVEST ARTERY FOR CABG	Surgery	4.95	1.98	$125.00
35601	0	ARTERY BYPASS GRAFT	Surgery	17.50	11.19	$125.00
35606	0	ARTERY BYPASS GRAFT	Surgery	18.71	11.25	$125.00
35612	0	ARTERY BYPASS GRAFT	Surgery	15.76	10.13	$125.00
35616	0	ARTERY BYPASS GRAFT	Surgery	15.70	10.36	$125.00
35621	0	ARTERY BYPASS GRAFT	Surgery	14.54	9.96	$125.00
35623	0	BYPASS GRAFT, NOT VEIN	Surgery	16.62	8.37	$125.00
35626	0	ARTERY BYPASS GRAFT	Surgery	23.63	14.17	$125.00
35631	0	ARTERY BYPASS GRAFT	Surgery	24.60	13.21	$125.00
35636	0	ARTERY BYPASS GRAFT	Surgery	22.46	11.36	$125.00
35641	0	ARTERY BYPASS GRAFT	Surgery	24.57	14.22	$125.00
35642	0	ARTERY BYPASS GRAFT	Surgery	17.98	9.67	$125.00
35645	0	ARTERY BYPASS GRAFT	Surgery	17.47	9.37	$125.00
35646	0	ARTERY BYPASS GRAFT	Surgery	25.81	15.36	$125.00
35650	0	ARTERY BYPASS GRAFT	Surgery	14.36	9.31	$125.00
35651	0	ARTERY BYPASS GRAFT	Surgery	25.04	15.10	$125.00
35654	0	ARTERY BYPASS GRAFT	Surgery	18.61	12.19	$125.00
35656	0	ARTERY BYPASS GRAFT	Surgery	19.53	11.67	$125.00
35661	0	ARTERY BYPASS GRAFT	Surgery	13.18	8.95	$125.00
35663	0	ARTERY BYPASS GRAFT	Surgery	14.17	9.73	$125.00
35665	0	ARTERY BYPASS GRAFT	Surgery	15.40	10.32	$125.00
35666	0	ARTERY BYPASS GRAFT	Surgery	19.19	14.12	$125.00
35671	0	ARTERY BYPASS GRAFT	Surgery	14.80	11.34	$125.00
35681	0	COMPOSITE BYPASS GRAFT	Surgery	1.80	4.24	$125.00
35682	0	COMPOSITE BYPASS GRAFT	Surgery	7.20	4.41	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
35683	0	COMPOSITE BYPASS GRAFT	Surgery	8.50	4.79	$125.00
35691	0	ARTERIAL TRANSPOSITION	Surgery	18.05	11.34	$125.00
35693	0	ARTERIAL TRANSPOSITION	Surgery	15.36	8.30	$125.00
35694	0	ARTERIAL TRANSPOSITION	Surgery	19.16	8.89	$125.00
35695	0	ARTERIAL TRANSPOSITION	Surgery	19.16	8.87	$125.00
35700	0	REOPERATION, BYPASS GRAFT	Surgery	3.08	2.79	$125.00
35701	0	EXPLORATION, CAROTID ARTERY	Surgery	5.55	4.32	$125.00
35721	0	EXPLORATION, FEMORAL ARTERY	Surgery	5.28	5.17	$125.00
35741	0	EXPLORATION POPLITEAL ARTERY	Surgery	5.37	5.10	$125.00
35761	0	EXPLORATION OF ARTERY/VEIN	Surgery	5.37	5.07	$125.00
35800	0	EXPLORE NECK VESSELS	Surgery	7.02	4.62	$125.00
35820	0	EXPLORE CHEST VESSELS	Surgery	12.88	6.13	$125.00
35840	0	EXPLORE ABDOMINAL VESSELS	Surgery	9.77	6.07	$125.00
35860	0	EXPLORE LIMB VESSELS	Surgery	5.55	4.43	$125.00
35870	0	REPAIR VESSEL GRAFT DEFECT	Surgery	22.17	10.99	$125.00
35875	0	REMOVAL OF CLOT IN GRAFT	Surgery	10.13	7.37	$125.00
35876	+0	REMOVAL OF CLOT IN GRAFT	Surgery	17.00	9.36	$125.00
35879	0	REVISE GRAFT W/VEIN	Surgery	16.00	8.58	$125.00
35881	0	REVISE GRAFT W/VEIN	Surgery	18.00	9.47	$125.00
35901	0	EXCISION, GRAFT, NECK	Surgery	8.19	6.31	$125.00
35903	0	EXCISION, GRAFT, EXTREMITY	Surgery	9.39	8.27	$125.00
35905	0	EXCISION, GRAFT, THORAX	Surgery	18.19	11.61	$125.00
35907	0	EXCISION, GRAFT, ABDOMEN	Surgery	19.24	9.37	$125.00
36000	0	PLACE NEEDLE IN VEIN	Surgery	0.18	0.53	$125.00
36005	0	INJECTION, VENOGRAPHY	Surgery	0.95	11.66	$125.00
36010	0	PLACE CATHETER IN VEIN	Surgery	2.43	1.23	$125.00
36011	0	PLACE CATHETER IN VEIN	Surgery	3.14	1.39	$125.00
36012	0	PLACE CATHETER IN VEIN	Surgery	3.52	1.69	$125.00
36013	0	PLACE CATHETER IN ARTERY	Surgery	2.52	1.18	$125.00
36014	0	PLACE CATHETER IN ARTERY	Surgery	3.02	1.45	$125.00
36015	0	PLACE CATHETER IN ARTERY	Surgery	3.52	1.69	$125.00
36100	0	ESTABLISH ACCESS TO ARTERY	Surgery	3.02	1.65	$125.00
36120	0	ESTABLISH ACCESS TO ARTERY	Surgery	2.01	1.15	$125.00
36140	0	ESTABLISH ACCESS TO ARTERY	Surgery	2.01	0.92	$125.00
36145	0	ARTERY TO VEIN SHUNT	Surgery	2.01	1.16	$125.00
36160	0	ESTABLISH ACCESS TO AORTA	Surgery	2.52	1.37	$125.00
36200	0	PLACE CATHETER IN AORTA	Surgery	3.02	1.57	$125.00
36215	0	PLACE CATHETER IN ARTERY	Surgery	4.68	2.05	$125.00
36216	0	PLACE CATHETER IN ARTERY	Surgery	5.28	2.36	$125.00
36217	0	PLACE CATHETER IN ARTERY	Surgery	6.30	2.83	$125.00
36218	0	PLACE CATHETER IN ARTERY	Surgery	1.01	0.48	$125.00
36245	0	PLACE CATHETER IN ARTERY	Surgery	4.68	2.25	$125.00
36246	0	PLACE CATHETER IN ARTERY	Surgery	5.28	2.38	$125.00
36247	0	PLACE CATHETER IN ARTERY	Surgery	6.30	2.81	$125.00
36248	0	PLACE CATHETER IN ARTERY	Surgery	1.01	0.48	$125.00
36260	0	INSERTION OF INFUSION PUMP	Surgery	9.71	6.11	$125.00
36261	0	REVISION OF INFUSION PUMP	Surgery	5.45	3.31	$125.00
36262	0	REMOVAL OF INFUSION PUMP	Surgery	4.02	2.46	$125.00
36400	0	DRAWING BLOOD	Surgery	0.18	0.49	$125.00
36405	0	DRAWING BLOOD	Surgery	0.18	0.54	$125.00
36406	0	DRAWING BLOOD	Surgery	0.18	0.61	$125.00
36410	0	DRAWING BLOOD	Surgery	0.18	0.42	$125.00
36420	0	ESTABLISH ACCESS TO VEIN	Surgery	1.01	0.38	$125.00
36425	0	ESTABLISH ACCESS TO VEIN	Surgery	0.76	2.44	$125.00
36430	0	BLOOD TRANSFUSION SERVICE	Surgery	0.00	1.01	$125.00
36440	0	BLOOD TRANSFUSION SERVICE	Surgery	1.03	0.47	$125.00
36450	0	EXCHANGE TRANSFUSION SERVICE	Surgery	2.23	0.80	$125.00
36455	0	EXCHANGE TRANSFUSION SERVICE	Surgery	2.43	1.34	$125.00
36460	0	TRANSFUSION SERVICE, FETAL	Surgery	6.59	3.10	$125.00
36470	0	INJECTION THERAPY OF VEIN	Surgery	1.09	2.02	$125.00
36471	0	INJECTION THERAPY OF VEINS	Surgery	1.57	2.53	$125.00
36481	0	INSERTION OF CATHETER, VEIN	Surgery	6.99	3.60	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
36488	0	INSERTION OF CATHETER, VEIN	Surgery	1.35	0.83	$125.00
36489	0	INSERTION OF CATHETER, VEIN	Surgery	1.22	0.82	$125.00
36490	0	INSERTION OF CATHETER, VEIN	Surgery	1.67	1.04	$125.00
36491	0	INSERTION OF CATHETER, VEIN	Surgery	1.43	1.01	$125.00
36493	0	REPOSITIONING OF CVC	Surgery	1.21	0.81	$125.00
36500	0	INSERTION OF CATHETER, VEIN	Surgery	3.52	1.01	$125.00
36510	0	INSERTION OF CATHETER, VEIN	Surgery	1.09	0.55	$125.00
36520	0	PLASMA AND/OR CELL EXCHANGE	Surgery	1.74	1.25	$125.00
36521	0	APHERESIS W/ ADSORP/REINFUSE	Surgery	1.74	0.98	$125.00
36522	0	PHOTOPHERESIS	Surgery	1.67	1.34	$125.00
36530	0	INSERTION OF INFUSION PUMP	Surgery	6.20	4.12	$125.00
36531	0	REVISION OF INFUSION PUMP	Surgery	4.87	3.65	$125.00
36532	0	REMOVAL OF INFUSION PUMP	Surgery	3.30	1.72	$125.00
36533	0	INSERTION OF ACCESS DEVICE	Surgery	5.32	3.80	$125.00
36534	0	REVISION OF ACCESS DEVICE	Surgery	2.80	1.97	$125.00
36535	0	REMOVAL OF ACCESS DEVICE	Surgery	2.27	1.98	$125.00
36550	0	DECLOT VASCULAR DEVICE	Surgery	0.00	0.37	$125.00
36600	0	WITHDRAWAL OF ARTERIAL BLOOD	Surgery	0.32	0.38	$125.00
36620	0	INSERTION CATHETER, ARTERY	Surgery	1.15	0.37	$125.00
36625	0	INSERTION CATHETER, ARTERY	Surgery	2.11	0.59	$125.00
36640	0	INSERTION CATHETER, ARTERY	Surgery	2.10	1.21	$125.00
36660	0	INSERTION CATHETER, ARTERY	Surgery	1.40	0.48	$125.00
36680	0	INSERT NEEDLE, BONE CAVITY	Surgery	1.20	0.79	$125.00
36800	0	INSERTION OF CANNULA	Surgery	2.43	1.86	$125.00
36810	0	INSERTION OF CANNULA	Surgery	3.97	3.05	$125.00
36815	0	INSERTION OF CANNULA	Surgery	2.62	2.14	$125.00
36819	0	AV FUSION BY BASILIC VEIN	Surgery	14.00	6.90	$125.00
36821	0	AV FUSION DIRECT ANY SITE	Surgery	8.93	5.89	$125.00
36822	0	INSERTION OF CANNULA(S)	Surgery	5.42	9.04	$125.00
36823	0	INSERTION OF CANNULA(S)	Surgery	21.00	11.80	$125.00
36825	0	ARTERY-VEIN GRAFT	Surgery	9.84	7.37	$125.00
36830	0	ARTERY-VEIN GRAFT	Surgery	12.00	7.59	$125.00
36831	0	AV FISTULA EXCISION, OPEN	Surgery	8.00	2.95	$125.00
36832	0	AV FISTULA REVISION, OPEN	Surgery	10.50	6.35	$125.00
36833	0	AV FISTULA REVISION	Surgery	11.95	4.49	$125.00
36834	0	REPAIR A-V ANEURYSM	Surgery	9.93	5.19	$125.00
36835	0	ARTERY TO VEIN SHUNT	Surgery	7.15	4.60	$125.00
36860	0	EXTERNAL CANNULA DECLOTTING	Surgery	2.01	1.83	$125.00
36861	0	CANNULA DECLOTTING	Surgery	2.52	2.10	$125.00
36870	0	AV FISTULA REVISION, OPEN	Surgery	5.16	2.51	$125.00
37140	0	REVISION OF CIRCULATION	Surgery	23.60	12.36	$125.00
37145	0	REVISION OF CIRCULATION	Surgery	24.61	12.90	$125.00
37160	0	REVISION OF CIRCULATION	Surgery	21.60	11.95	$125.00
37180	0	REVISION OF CIRCULATION	Surgery	24.61	12.08	$125.00
37181	0	SPLICE SPLEEN/KIDNEY VEINS	Surgery	26.68	13.26	$125.00
37195	0	THROMBOLYTIC THERAPY, STROKE	Surgery	0.00	8.08	$125.00
37200	0	TRANSCATHETER BIOPSY	Surgery	4.56	1.67	$125.00
37201	0	TRANSCATHETER THERAPY INFUSE	Surgery	5.00	3.44	$125.00
37202	0	TRANSCATHETER THERAPY INFUSE	Surgery	5.68	3.62	$125.00
37203	0	TRANSCATHETER RETRIEVAL	Surgery	5.03	3.00	$125.00
37204	0	TRANSCATHETER OCCLUSION	Surgery	18.14	8.48	$125.00
37205	0	TRANSCATHETER STENT	Surgery	8.28	4.39	$125.00
37206	0	TRANSCATHETER STENT ADD-ON	Surgery	4.13	1.92	$125.00
37207	0	TRANSCATHETER STENT	Surgery	8.28	4.30	$125.00
37208	0	TRANSCATHETER STENT ADD-ON	Surgery	4.13	1.87	$125.00
37209	0	EXCHANGE ARTERIAL CATHETER	Surgery	2.27	1.02	$125.00
37250	0	IV US FIRST VESSEL ADD-ON	Surgery	2.10	0.96	$125.00
37251	0	IV US EACH ADD VESSEL ADD-ON	Surgery	1.60	0.71	$125.00
37565	0	LIGATION OF NECK VEIN	Surgery	4.44	2.99	$125.00
37600	0	LIGATION OF NECK ARTERY	Surgery	4.57	3.86	$125.00
37605	0	LIGATION OF NECK ARTERY	Surgery	6.19	4.43	$125.00
37606	0	LIGATION OF NECK ARTERY	Surgery	6.28	4.55	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
37607	0	LIGATION OF A-V FISTULA	Surgery	6.16	3.71	$125.00
37609	0	TEMPORAL ARTERY PROCEDURE	Surgery	2.30	2.33	$125.00
37615	0	LIGATION OF NECK ARTERY	Surgery	5.73	4.31	$125.00
37616	0	LIGATION OF CHEST ARTERY	Surgery	16.49	11.14	$125.00
37617	0	LIGATION OF ABDOMEN ARTERY	Surgery	15.95	7.86	$125.00
37618	0	LIGATION OF EXTREMITY ARTERY	Surgery	4.84	4.08	$125.00
37620	0	REVISION OF MAJOR VEIN	Surgery	10.56	6.59	$125.00
37650	0	REVISION OF MAJOR VEIN	Surgery	5.13	4.06	$125.00
37660	0	REVISION OF MAJOR VEIN	Surgery	10.61	6.17	$125.00
37700	0	REVISE LEG VEIN	Surgery	3.73	3.41	$125.00
37720	0	REMOVAL OF LEG VEIN	Surgery	5.66	4.25	$125.00
37730	0	REMOVAL OF LEG VEINS	Surgery	7.33	5.44	$125.00
37735	0	REMOVAL OF LEG VEINS/LESION	Surgery	10.53	6.76	$125.00
37760	0	REVISION OF LEG VEINS	Surgery	10.47	6.58	$125.00
37780	0	REVISION OF LEG VEIN	Surgery	3.84	2.74	$125.00
37785	0	REVISE SECONDARY VARICOSITY	Surgery	3.88	2.48	$125.00
37788	0	REVASCULARIZATION, PENIS	Surgery	22.01	13.57	$125.00
37790	0	PENILE VENOUS OCCLUSION	Surgery	8.34	6.97	$125.00
38100	0	REMOVAL OF SPLEEN, TOTAL	Surgery	13.01	7.09	$125.00
38101	0	REMOVAL OF SPLEEN, PARTIAL	Surgery	13.74	6.92	$125.00
38102	0	REMOVAL OF SPLEEN, TOTAL	Surgery	4.80	2.05	$125.00
38115	0	REPAIR OF RUPTURED SPLEEN	Surgery	14.19	7.18	$125.00
38120	0	LAPAROSCOPY, SPLENECTOMY	Surgery	17.00	7.79	$125.00
38200	0	INJECTION FOR SPLEEN X-RAY	Surgery	2.64	1.20	$125.00
38230	0	BONE MARROW COLLECTION	Surgery	4.54	2.51	$125.00
38231	0	STEM CELL COLLECTION	Surgery	1.50	0.82	$125.00
38240	0	BONE MARROW/STEM TRANSPLANT	Surgery	2.24	1.20	$125.00
38241	0	BONE MARROW/STEM TRANSPLANT	Surgery	2.24	1.18	$125.00
38300	0	DRAINAGE, LYMPH NODE LESION	Surgery	1.53	3.39	$125.00
38305	0	DRAINAGE, LYMPH NODE LESION	Surgery	4.61	4.84	$125.00
38308	0	INCISION OF LYMPH CHANNELS	Surgery	4.95	4.74	$125.00
38380	0	THORACIC DUCT PROCEDURE	Surgery	7.46	6.79	$125.00
38381	0	THORACIC DUCT PROCEDURE	Surgery	12.88	11.22	$125.00
38382	0	THORACIC DUCT PROCEDURE	Surgery	10.08	9.54	$125.00
38500	0	BIOPSY/REMOVAL, LYMPH NODES	Surgery	2.88	2.16	$125.00
38505	0	NEEDLE BIOPSY, LYMPH NODES	Surgery	1.14	0.99	$125.00
38510	0	BIOPSY/REMOVAL, LYMPH NODES	Surgery	4.14	3.99	$125.00
38520	0	BIOPSY/REMOVAL, LYMPH NODES	Surgery	5.12	4.75	$125.00
38525	0	BIOPSY/REMOVAL, LYMPH NODES	Surgery	4.66	3.65	$125.00
38530	0	BIOPSY/REMOVAL, LYMPH NODES	Surgery	6.13	4.88	$125.00
38542	0	EXPLORE DEEP NODE(S), NECK	Surgery	5.91	5.65	$125.00
38550	0	REMOVAL, NECK/ARMPIT LESION	Surgery	6.92	4.58	$125.00
38555	0	REMOVAL, NECK/ARMPIT LESION	Surgery	14.14	10.82	$125.00
38562	0	REMOVAL, PELVIC LYMPH NODES	Surgery	10.49	6.75	$125.00
38564	0	REMOVAL, ABDOMEN LYMPH NODES	Surgery	10.83	6.89	$125.00
38570	0	LAPAROSCOPY, LYMPH NODE BIOP	Surgery	9.25	5.19	$125.00
38571	0	LAPAROSCOPY, LYMPHADENECTOMY	Surgery	12.38	6.43	$125.00
38572	0	LAPAROSCOPY, LYMPHADENECTOMY	Surgery	14.32	7.54	$125.00
38700	0	REMOVAL OF LYMPH NODES, NECK	Surgery	8.24	12.38	$125.00
38720	0	REMOVAL OF LYMPH NODES, NECK	Surgery	13.61	15.82	$125.00
38724	0	REMOVAL OF LYMPH NODES, NECK	Surgery	14.54	16.01	$125.00
38740	0	REMOVE ARMPIT LYMPH NODES	Surgery	6.77	4.83	$125.00
38745	0	REMOVE ARMPIT LYMPH NODES	Surgery	8.84	7.31	$125.00
38746	0	REMOVE THORACIC LYMPH NODES	Surgery	4.39	1.96	$125.00
38747	0	REMOVE ABDOMINAL LYMPH NODES	Surgery	4.89	2.09	$125.00
38760	0	REMOVE GROIN LYMPH NODES	Surgery	8.74	6.08	$125.00
38765	0	REMOVE GROIN LYMPH NODES	Surgery	16.06	11.00	$125.00
38770	0	REMOVE PELVIS LYMPH NODES	Surgery	13.23	9.10	$125.00
38780	0	REMOVE ABDOMEN LYMPH NODES	Surgery	16.59	11.28	$125.00
38790	0	INJECT FOR LYMPHATIC X-RAY	Surgery	1.29	26.49	$125.00
38792	0	IDENTIFY SENTINEL NODE	Surgery	0.52	0.20	$125.00
38794	0	ACCESS THORACIC LYMPH DUCT	Surgery	4.45	2.04	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
39000	0	EXPLORATION OF CHEST	Surgery	6.10	8.90	$125.00
39010	0	EXPLORATION OF CHEST	Surgery	11.79	12.61	$125.00
39200	0	REMOVAL CHEST LESION	Surgery	13.62	12.87	$125.00
39220	0	REMOVAL CHEST LESION	Surgery	17.42	14.91	$125.00
39400	0	VISUALIZATION OF CHEST	Surgery	5.61	8.46	$125.00
39501	0	REPAIR DIAPHRAGM LACERATION	Surgery	13.19	9.22	$125.00
39502	0	REPAIR PARAESOPHAGEAL HERNIA	Surgery	16.33	9.89	$125.00
39503	0	REPAIR OF DIAPHRAGM HERNIA	Surgery	37.54	19.43	$125.00
39520	0	REPAIR OF DIAPHRAGM HERNIA	Surgery	16.10	11.93	$125.00
39530	0	REPAIR OF DIAPHRAGM HERNIA	Surgery	15.41	10.99	$125.00
39531	0	REPAIR OF DIAPHRAGM HERNIA	Surgery	16.42	10.72	$125.00
39540	0	REPAIR OF DIAPHRAGM HERNIA	Surgery	13.32	9.66	$125.00
39541	0	REPAIR OF DIAPHRAGM HERNIA	Surgery	14.41	9.89	$125.00
39545	0	REVISION OF DIAPHRAGM	Surgery	13.37	10.93	$125.00
39560	0	RESECT DIAPHRAGM, SIMPLE	Surgery	12.00	8.97	$125.00
39561	0	RESECT DIAPHRAGM, COMPLEX	Surgery	17.50	11.08	$125.00
40490	0	BIOPSY OF LIP	Surgery	1.22	1.42	$125.00
40500	0	PARTIAL EXCISION OF LIP	Surgery	4.28	5.40	$125.00
40510	0	PARTIAL EXCISION OF LIP	Surgery	4.70	6.15	$125.00
40520	0	PARTIAL EXCISION OF LIP	Surgery	4.67	6.25	$125.00
40525	0	RECONSTRUCT LIP WITH FLAP	Surgery	7.55	8.41	$125.00
40527	0	RECONSTRUCT LIP WITH FLAP	Surgery	9.13	9.52	$125.00
40530	0	PARTIAL REMOVAL OF LIP	Surgery	5.40	6.02	$125.00
40650	0	REPAIR LIP	Surgery	3.64	4.48	$125.00
40652	0	REPAIR LIP	Surgery	4.26	6.03	$125.00
40654	0	REPAIR LIP	Surgery	5.31	7.11	$125.00
40700	0	REPAIR CLEFT LIP/NASAL	Surgery	12.79	10.07	$125.00
40701	0	REPAIR CLEFT LIP/NASAL	Surgery	15.85	12.81	$125.00
40702	0	REPAIR CLEFT LIP/NASAL	Surgery	13.04	9.52	$125.00
40720	0	REPAIR CLEFT LIP/NASAL	Surgery	13.55	11.90	$125.00
40761	0	REPAIR CLEFT LIP/NASAL	Surgery	14.72	11.63	$125.00
40800	0	DRAINAGE OF MOUTH LESION	Surgery	1.17	1.63	$125.00
40801	0	DRAINAGE OF MOUTH LESION	Surgery	2.53	1.66	$125.00
40804	0	REMOVAL, FOREIGN BODY, MOUTH	Surgery	1.24	2.08	$125.00
40805	0	REMOVAL, FOREIGN BODY, MOUTH	Surgery	2.69	2.70	$125.00
40806	0	INCISION OF LIP FOLD	Surgery	0.31	0.74	$125.00
40808	0	BIOPSY OF MOUTH LESION	Surgery	0.96	1.74	$125.00
40810	0	EXCISION OF MOUTH LESION	Surgery	1.31	2.32	$125.00
40812	0	EXCISE/REPAIR MOUTH LESION	Surgery	2.31	2.56	$125.00
40814	0	EXCISE/REPAIR MOUTH LESION	Surgery	3.42	3.47	$125.00
40816	0	EXCISION OF MOUTH LESION	Surgery	3.67	3.70	$125.00
40818	0	EXCISE ORAL MUCOSA FOR GRAFT	Surgery	2.41	3.63	$125.00
40819	0	EXCISE LIP OR CHEEK FOLD	Surgery	2.41	2.96	$125.00
40820	0	TREATMENT OF MOUTH LESION	Surgery	1.28	1.89	$125.00
40830	0	REPAIR MOUTH LACERATION	Surgery	1.76	2.03	$125.00
40831	0	REPAIR MOUTH LACERATION	Surgery	2.46	2.61	$125.00
40840	0	RECONSTRUCTION OF MOUTH	Surgery	8.73	6.33	$125.00
40842	0	RECONSTRUCTION OF MOUTH	Surgery	8.73	6.19	$125.00
40843	0	RECONSTRUCTION OF MOUTH	Surgery	12.10	8.74	$125.00
40844	0	RECONSTRUCTION OF MOUTH	Surgery	16.01	9.46	$125.00
40845	0	RECONSTRUCTION OF MOUTH	Surgery	18.58	13.44	$125.00
41000	0	DRAINAGE OF MOUTH LESION	Surgery	1.30	1.97	$125.00
41005	0	DRAINAGE OF MOUTH LESION	Surgery	1.26	1.10	$125.00
41006	0	DRAINAGE OF MOUTH LESION	Surgery	3.24	2.83	$125.00
41007	0	DRAINAGE OF MOUTH LESION	Surgery	3.10	3.07	$125.00
41008	0	DRAINAGE OF MOUTH LESION	Surgery	3.37	2.53	$125.00
41009	0	DRAINAGE OF MOUTH LESION	Surgery	3.59	3.29	$125.00
41010	0	INCISION OF TONGUE FOLD	Surgery	1.06	2.28	$125.00
41015	0	DRAINAGE OF MOUTH LESION	Surgery	3.96	2.64	$125.00
41016	0	DRAINAGE OF MOUTH LESION	Surgery	4.07	3.54	$125.00
41017	0	DRAINAGE OF MOUTH LESION	Surgery	4.07	2.86	$125.00
41018	0	DRAINAGE OF MOUTH LESION	Surgery	5.10	3.99	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
41100	0	BIOPSY OF TONGUE	Surgery	1.63	2.16	$125.00
41105	0	BIOPSY OF TONGUE	Surgery	1.42	1.96	$125.00
41108	0	BIOPSY OF FLOOR OF MOUTH	Surgery	1.05	1.95	$125.00
41110	0	EXCISION OF TONGUE LESION	Surgery	1.51	2.05	$125.00
41112	0	EXCISION OF TONGUE LESION	Surgery	2.73	2.94	$125.00
41113	0	EXCISION OF TONGUE LESION	Surgery	3.19	3.06	$125.00
41114	0	EXCISION OF TONGUE LESION	Surgery	8.47	6.50	$125.00
41115	0	EXCISION OF TONGUE FOLD	Surgery	1.74	2.22	$125.00
41116	0	EXCISION OF MOUTH LESION	Surgery	2.44	3.20	$125.00
41120	0	PARTIAL REMOVAL OF TONGUE	Surgery	9.77	8.49	$125.00
41130	0	PARTIAL REMOVAL OF TONGUE	Surgery	11.15	9.60	$125.00
41135	0	TONGUE AND NECK SURGERY	Surgery	23.09	16.85	$125.00
41140	0	REMOVAL OF TONGUE	Surgery	25.50	18.65	$125.00
41145	0	TONGUE REMOVAL, NECK SURGERY	Surgery	30.06	22.26	$125.00
41150	0	TONGUE, MOUTH, JAW SURGERY	Surgery	23.04	17.93	$125.00
41153	0	TONGUE, MOUTH, NECK SURGERY	Surgery	23.77	20.12	$125.00
41155	0	TONGUE, JAW, & NECK SURGERY	Surgery	27.72	22.98	$125.00
41250	0	REPAIR TONGUE LACERATION	Surgery	1.91	1.53	$125.00
41251	0	REPAIR TONGUE LACERATION	Surgery	2.27	2.24	$125.00
41252	0	REPAIR TONGUE LACERATION	Surgery	2.97	2.38	$125.00
41500	0	FIXATION OF TONGUE	Surgery	3.71	4.10	$125.00
41510	0	TONGUE TO LIP SURGERY	Surgery	3.42	4.04	$125.00
41520	0	RECONSTRUCTION, TONGUE FOLD	Surgery	2.73	3.15	$125.00
41800	0	DRAINAGE OF GUM LESION	Surgery	1.17	1.60	$125.00
41805	0	REMOVAL FOREIGN BODY, GUM	Surgery	1.24	1.65	$125.00
41806	0	REMOVAL FOREIGN BODY,JAWBONE	Surgery	2.69	2.01	$125.00
41822	0	EXCISION OF GUM LESION	Surgery	2.31	1.51	$125.00
41823	0	EXCISION OF GUM LESION	Surgery	3.30	3.77	$125.00
41825	0	EXCISION OF GUM LESION	Surgery	1.31	2.16	$125.00
41826	0	EXCISION OF GUM LESION	Surgery	2.31	2.51	$125.00
41827	0	EXCISION OF GUM LESION	Surgery	3.42	3.17	$125.00
41828	0	EXCISION OF GUM LESION	Surgery	3.09	3.36	$125.00
41830	0	REMOVAL OF GUM TISSUE	Surgery	3.35	3.36	$125.00
41872	0	REPAIR GUM	Surgery	2.59	2.78	$125.00
41874	0	REPAIR TOOTH SOCKET	Surgery	3.09	2.68	$125.00
42000	0	DRAINAGE MOUTH ROOF LESION	Surgery	1.23	1.96	$125.00
42100	0	BIOPSY ROOF OF MOUTH	Surgery	1.31	1.99	$125.00
42104	0	EXCISION LESION, MOUTH ROOF	Surgery	1.64	2.04	$125.00
42106	0	EXCISION LESION, MOUTH ROOF	Surgery	2.10	2.25	$125.00
42107	0	EXCISION LESION, MOUTH ROOF	Surgery	4.44	3.68	$125.00
42120	0	REMOVE PALATE/LESION	Surgery	6.17	6.35	$125.00
42140	0	EXCISION OF UVULA	Surgery	1.62	2.78	$125.00
42145	0	REPAIR PALATE, PHARYNX/UVULA	Surgery	8.05	7.88	$125.00
42160	0	TREATMENT MOUTH ROOF LESION	Surgery	1.80	2.79	$125.00
42180	0	REPAIR PALATE	Surgery	2.50	2.18	$125.00
42182	0	REPAIR PALATE	Surgery	3.83	3.18	$125.00
42200	0	RECONSTRUCT CLEFT PALATE	Surgery	12.00	9.39	$125.00
42205	0	RECONSTRUCT CLEFT PALATE	Surgery	9.59	8.60	$125.00
42210	0	RECONSTRUCT CLEFT PALATE	Surgery	14.50	9.35	$125.00
42215	0	RECONSTRUCT CLEFT PALATE	Surgery	8.82	7.60	$125.00
42220	0	RECONSTRUCT CLEFT PALATE	Surgery	7.02	5.73	$125.00
42225	0	RECONSTRUCT CLEFT PALATE	Surgery	9.54	8.53	$125.00
42226	0	LENGTHENING OF PALATE	Surgery	10.01	9.00	$125.00
42227	0	LENGTHENING OF PALATE	Surgery	9.52	7.03	$125.00
42235	0	REPAIR PALATE	Surgery	7.87	5.82	$125.00
42260	0	REPAIR NOSE TO LIP FISTULA	Surgery	9.80	6.58	$125.00
42280	0	PREPARATION, PALATE MOLD	Surgery	1.54	1.60	$125.00
42281	0	INSERTION, PALATE PROSTHESIS	Surgery	1.93	1.17	$125.00
42300	0	DRAINAGE OF SALIVARY GLAND	Surgery	1.93	2.18	$125.00
42305	0	DRAINAGE OF SALIVARY GLAND	Surgery	6.07	4.46	$125.00
42310	0	DRAINAGE OF SALIVARY GLAND	Surgery	1.56	1.96	$125.00
42320	0	DRAINAGE OF SALIVARY GLAND	Surgery	2.35	2.09	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
42325	0	CREATE SALIVARY CYST DRAIN	Surgery	2.75	1.48	$125.00
42326	0	CREATE SALIVARY CYST DRAIN	Surgery	3.78	2.70	$125.00
42330	0	REMOVAL OF SALIVARY STONE	Surgery	2.21	2.32	$125.00
42335	0	REMOVAL OF SALIVARY STONE	Surgery	3.31	3.01	$125.00
42340	0	REMOVAL OF SALIVARY STONE	Surgery	4.60	4.01	$125.00
42400	0	BIOPSY OF SALIVARY GLAND	Surgery	0.78	1.97	$125.00
42405	0	BIOPSY OF SALIVARY GLAND	Surgery	3.29	2.93	$125.00
42408	0	EXCISION OF SALIVARY CYST	Surgery	4.54	4.34	$125.00
42409	0	DRAINAGE OF SALIVARY CYST	Surgery	2.81	3.34	$125.00
42410	0	EXCISE PAROTID GLAND/LESION	Surgery	9.34	7.45	$125.00
42415	0	EXCISE PAROTID GLAND/LESION	Surgery	16.89	12.74	$125.00
42420	0	EXCISE PAROTID GLAND/LESION	Surgery	19.59	14.50	$125.00
42425	0	EXCISE PAROTID GLAND/LESION	Surgery	13.02	10.71	$125.00
42426	0	EXCISE PAROTID GLAND/LESION	Surgery	21.26	17.44	$125.00
42440	0	EXCISE SUBMAXILLARY GLAND	Surgery	6.97	6.49	$125.00
42450	0	EXCISE SUBLINGUAL GLAND	Surgery	4.62	4.61	$125.00
42500	0	REPAIR SALIVARY DUCT	Surgery	4.30	4.75	$125.00
42505	0	REPAIR SALIVARY DUCT	Surgery	6.18	5.84	$125.00
42507	0	PAROTID DUCT DIVERSION	Surgery	6.11	5.65	$125.00
42508	0	PAROTID DUCT DIVERSION	Surgery	9.10	8.04	$125.00
42509	0	PAROTID DUCT DIVERSION	Surgery	11.54	7.73	$125.00
42510	0	PAROTID DUCT DIVERSION	Surgery	8.15	7.66	$125.00
42550	0	INJECTION FOR SALIVARY X-RAY	Surgery	1.25	9.28	$125.00
42600	0	CLOSURE OF SALIVARY FISTULA	Surgery	4.82	5.21	$125.00
42650	0	DILATION OF SALIVARY DUCT	Surgery	0.77	0.90	$125.00
42660	0	DILATION OF SALIVARY DUCT	Surgery	1.13	1.00	$125.00
42665	0	LIGATION OF SALIVARY DUCT	Surgery	2.53	3.32	$125.00
42700	0	DRAINAGE OF TONSIL ABSCESS	Surgery	1.62	2.55	$125.00
42720	0	DRAINAGE OF THROAT ABSCESS	Surgery	5.42	4.02	$125.00
42725	0	DRAINAGE OF THROAT ABSCESS	Surgery	10.72	7.49	$125.00
42800	0	BIOPSY OF THROAT	Surgery	1.39	2.38	$125.00
42802	0	BIOPSY OF THROAT	Surgery	1.54	2.23	$125.00
42804	0	BIOPSY OF UPPER NOSE/THROAT	Surgery	1.24	2.13	$125.00
42806	0	BIOPSY OF UPPER NOSE/THROAT	Surgery	1.58	2.35	$125.00
42808	0	EXCISE PHARYNX LESION	Surgery	2.30	2.96	$125.00
42809	0	REMOVE PHARYNX FOREIGN BODY	Surgery	1.81	2.73	$125.00
42810	0	EXCISION OF NECK CYST	Surgery	3.25	4.19	$125.00
42815	0	EXCISION OF NECK CYST	Surgery	7.07	7.03	$125.00
42820	0	REMOVE TONSILS AND ADENOIDS	Surgery	3.91	3.77	$125.00
42821	0	REMOVE TONSILS AND ADENOIDS	Surgery	4.29	4.17	$125.00
42825	0	REMOVAL OF TONSILS	Surgery	3.42	3.40	$125.00
42826	0	REMOVAL OF TONSILS	Surgery	3.38	3.72	$125.00
42830	0	REMOVAL OF ADENOIDS	Surgery	2.57	2.20	$125.00
42831	0	REMOVAL OF ADENOIDS	Surgery	2.71	2.51	$125.00
42835	0	REMOVAL OF ADENOIDS	Surgery	2.30	2.35	$125.00
42836	0	REMOVAL OF ADENOIDS	Surgery	3.18	3.44	$125.00
42842	0	EXTENSIVE SURGERY OF THROAT	Surgery	8.76	7.60	$125.00
42844	0	EXTENSIVE SURGERY OF THROAT	Surgery	14.31	11.43	$125.00
42845	0	EXTENSIVE SURGERY OF THROAT	Surgery	24.29	18.16	$125.00
42860	0	EXCISION OF TONSIL TAGS	Surgery	2.22	2.77	$125.00
42870	0	EXCISION OF LINGUAL TONSIL	Surgery	5.40	5.00	$125.00
42890	0	PARTIAL REMOVAL OF PHARYNX	Surgery	12.94	10.41	$125.00
42892	0	REVISION OF PHARYNGEAL WALLS	Surgery	15.83	12.08	$125.00
42894	0	REVISION OF PHARYNGEAL WALLS	Surgery	22.88	16.98	$125.00
42900	0	REPAIR THROAT WOUND	Surgery	5.25	3.95	$125.00
42950	0	RECONSTRUCTION OF THROAT	Surgery	8.10	7.97	$125.00
42953	0	REPAIR THROAT, ESOPHAGUS	Surgery	8.96	8.44	$125.00
42955	0	SURGICAL OPENING OF THROAT	Surgery	7.39	5.76	$125.00
42960	0	CONTROL THROAT BLEEDING	Surgery	2.33	1.85	$125.00
42961	0	CONTROL THROAT BLEEDING	Surgery	5.59	4.39	$125.00
42962	0	CONTROL THROAT BLEEDING	Surgery	7.14	6.31	$125.00
42970	0	CONTROL NOSE/THROAT BLEEDING	Surgery	5.43	3.11	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
42971	0	CONTROL NOSE/THROAT BLEEDING	Surgery	6.21	5.06	$125.00
42972	0	CONTROL NOSE/THROAT BLEEDING	Surgery	7.20	5.20	$125.00
43020	0	INCISION OF ESOPHAGUS	Surgery	8.09	6.85	$125.00
43030	0	THROAT MUSCLE SURGERY	Surgery	7.69	7.50	$125.00
43045	0	INCISION OF ESOPHAGUS	Surgery	20.12	12.87	$125.00
43100	0	EXCISION OF ESOPHAGUS LESION	Surgery	9.19	7.34	$125.00
43101	0	EXCISION OF ESOPHAGUS LESION	Surgery	16.24	9.94	$125.00
43107	0	REMOVAL OF ESOPHAGUS	Surgery	28.79	18.80	$125.00
43108	0	REMOVAL OF ESOPHAGUS	Surgery	34.19	20.10	$125.00
43112	0	REMOVAL OF ESOPHAGUS	Surgery	31.22	19.51	$125.00
43113	0	REMOVAL OF ESOPHAGUS	Surgery	35.27	21.43	$125.00
43116	0	PARTIAL REMOVAL OF ESOPHAGUS	Surgery	31.22	22.41	$125.00
43117	0	PARTIAL REMOVAL OF ESOPHAGUS	Surgery	30.02	19.97	$125.00
43118	0	PARTIAL REMOVAL OF ESOPHAGUS	Surgery	33.20	20.56	$125.00
43121	0	PARTIAL REMOVAL OF ESOPHAGUS	Surgery	29.19	18.88	$125.00
43122	0	PARITAL REMOVAL OF ESOPHAGUS	Surgery	29.11	17.93	$125.00
43123	0	PARTIAL REMOVAL OF ESOPHAGUS	Surgery	33.20	21.59	$125.00
43124	0	REMOVAL OF ESOPHAGUS	Surgery	27.32	19.25	$125.00
43130	0	REMOVAL OF ESOPHAGUS POUCH	Surgery	11.75	9.94	$125.00
43135	0	REMOVAL OF ESOPHAGUS POUCH	Surgery	16.10	11.96	$125.00
43200	0	ESOPHAGUS ENDOSCOPY	Surgery	1.59	1.36	$125.00
43202	0	ESOPHAGUS ENDOSCOPY, BIOPSY	Surgery	1.89	1.41	$125.00
43204	0	ESOPHAGUS ENDOSCOPY & INJECT	Surgery	3.77	2.36	$125.00
43205	0	ESOPHAGUS ENDOSCOPY/LIGATION	Surgery	3.79	1.97	$125.00
43215	0	ESOPHAGUS ENDOSCOPY	Surgery	2.60	1.71	$125.00
43216	0	ESOPHAGUS ENDOSCOPY/LESION	Surgery	2.40	1.60	$125.00
43217	0	ESOPHAGUS ENDOSCOPY	Surgery	2.90	1.86	$125.00
43219	0	ESOPHAGUS ENDOSCOPY	Surgery	2.80	1.89	$125.00
43220	0	ESOPH ENDOSCOPY, DILATION	Surgery	2.10	1.45	$125.00
43226	0	ESOPH ENDOSCOPY, DILATION	Surgery	2.34	1.57	$125.00
43227	0	ESOPH ENDOSCOPY, REPAIR	Surgery	3.60	2.27	$125.00
43228	0	ESOPH ENDOSCOPY, ABLATION	Surgery	3.77	2.45	$125.00
43231	0	ESOPH ENDOSCOPY W/US EXAM	Surgery	4.09	1.84	$125.00
43232	0	ESOPH ENDOSCOPY W/US FN BX	Surgery	4.71	2.18	$125.00
43234	0	UPPER GI ENDOSCOPY, EXAM	Surgery	2.01	1.38	$125.00
43235	0	UPPR GI ENDOSCOPY, DIAGNOSIS	Surgery	2.39	1.59	$125.00
43239	0	UPPER GI ENDOSCOPY, BIOPSY	Surgery	2.69	1.76	$125.00
43240	0	ESOPH ENDOSCOPE W/DRAIN CYST	Surgery	7.39	3.05	$125.00
43241	0	UPPER GI ENDOSCOPY WITH TUBE	Surgery	2.59	1.69	$125.00
43242	0	UPPR GI ENDOSCOPY W/US FN BX	Surgery	5.51	1.98	$125.00
43243	0	UPPER GI ENDOSCOPY & INJECT	Surgery	4.57	2.81	$125.00
43244	0	UPPER GI ENDOSCOPY/LIGATION	Surgery	4.59	2.39	$125.00
43245	0	OPERATIVE UPPER GI ENDOSCOPY	Surgery	3.39	2.14	$125.00
43246	0	PLACE GASTROSTOMY TUBE	Surgery	4.33	2.64	$125.00
43247	0	OPERATIVE UPPER GI ENDOSCOPY	Surgery	3.39	2.14	$125.00
43248	0	UPPR GI ENDOSCOPY/GUIDE WIRE	Surgery	3.15	2.01	$125.00
43249	0	ESOPH ENDOSCOPY, DILATION	Surgery	2.90	1.86	$125.00
43250	0	UPPER GI ENDOSCOPY/TUMOR	Surgery	3.20	2.03	$125.00
43251	0	OPERATIVE UPPER GI ENDOSCOPY	Surgery	3.70	2.31	$125.00
43255	0	OPERATIVE UPPER GI ENDOSCOPY	Surgery	4.40	2.63	$125.00
43256	0	UPPR GI ENDOSCOPY W STENT	Surgery	4.35	1.56	$125.00
43258	0	OPERATIVE UPPER GI ENDOSCOPY	Surgery	4.55	2.80	$125.00
43259	0	ENDOSCOPIC ULTRASOUND EXAM	Surgery	4.89	2.68	$125.00
43260	0	ENDO CHOLANGIOPANCREATOGRAPH	Surgery	5.96	3.44	$125.00
43261	0	ENDO CHOLANGIOPANCREATOGRAPH	Surgery	6.27	3.52	$125.00
43262	0	ENDO CHOLANGIOPANCREATOGRAPH	Surgery	7.39	4.41	$125.00
43263	0	ENDO CHOLANGIOPANCREATOGRAPH	Surgery	6.19	3.47	$125.00
43264	0	ENDO CHOLANGIOPANCREATOGRAPH	Surgery	8.90	5.03	$125.00
43265	0	ENDO CHOLANGIOPANCREATOGRAPH	Surgery	8.90	4.46	$125.00
43267	0	ENDO CHOLANGIOPANCREATOGRAPH	Surgery	7.39	4.22	$125.00
43268	0	ENDO CHOLANGIOPANCREATOGRAPH	Surgery	7.39	4.41	$125.00
43269	0	ENDO CHOLANGIOPANCREATOGRAPH	Surgery	6.04	3.64	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
43271	0	ENDO CHOLANGIOPANCREATOGRAPH	Surgery	7.39	4.27	$125.00
43272	0	ENDO CHOLANGIOPANCREATOGRAPH	Surgery	7.39	3.73	$125.00
43280	0	LAPAROSCOPY, FUNDOPLASTY	Surgery	17.25	9.80	$125.00
43300	0	REPAIR OF ESOPHAGUS	Surgery	9.14	8.45	$125.00
43305	0	REPAIR ESOPHAGUS AND FISTULA	Surgery	17.39	13.58	$125.00
43310	0	REPAIR OF ESOPHAGUS	Surgery	27.47	18.40	$125.00
43312	0	REPAIR ESOPHAGUS AND FISTULA	Surgery	30.50	21.21	$125.00
43320	0	FUSE ESOPHAGUS & STOMACH	Surgery	16.07	10.86	$125.00
43324	0	REVISE ESOPHAGUS & STOMACH	Surgery	16.58	9.82	$125.00
43325	0	REVISE ESOPHAGUS & STOMACH	Surgery	16.17	10.06	$125.00
43326	0	REVISE ESOPHAGUS & STOMACH	Surgery	15.91	10.25	$125.00
43330	0	REPAIR OF ESOPHAGUS	Surgery	15.94	9.65	$125.00
43331	0	REPAIR OF ESOPHAGUS	Surgery	16.23	13.06	$125.00
43340	0	FUSE ESOPHAGUS & INTESTINE	Surgery	15.81	10.93	$125.00
43341	0	FUSE ESOPHAGUS & INTESTINE	Surgery	16.81	14.25	$125.00
43350	0	SURGICAL OPENING, ESOPHAGUS	Surgery	12.72	10.13	$125.00
43351	0	SURGICAL OPENING, ESOPHAGUS	Surgery	14.79	9.63	$125.00
43352	0	SURGICAL OPENING, ESOPHAGUS	Surgery	12.30	9.55	$125.00
43360	0	GASTROINTESTINAL REPAIR	Surgery	28.78	18.21	$125.00
43361	0	GASTROINTESTINAL REPAIR	Surgery	32.65	20.74	$125.00
43400	0	LIGATE ESOPHAGUS VEINS	Surgery	17.09	9.43	$125.00
43401	0	ESOPHAGUS SURGERY FOR VEINS	Surgery	17.81	9.30	$125.00
43405	0	LIGATE/STAPLE ESOPHAGUS	Surgery	16.13	10.93	$125.00
43410	0	REPAIR ESOPHAGUS WOUND	Surgery	10.86	9.25	$125.00
43415	0	REPAIR ESOPHAGUS WOUND	Surgery	17.06	11.88	$125.00
43420	0	REPAIR ESOPHAGUS OPENING	Surgery	11.57	8.25	$125.00
43425	0	REPAIR ESOPHAGUS OPENING	Surgery	16.95	11.68	$125.00
43450	0	DILATE ESOPHAGUS	Surgery	1.38	0.64	$125.00
43453	0	DILATE ESOPHAGUS	Surgery	1.51	0.90	$125.00
43456	0	DILATE ESOPHAGUS	Surgery	2.57	1.46	$125.00
43458	0	DILATE ESOPHAGUS	Surgery	3.06	1.34	$125.00
43460	0	PRESSURE TREATMENT ESOPHAGUS	Surgery	3.80	1.59	$125.00
43500	0	SURGICAL OPENING OF STOMACH	Surgery	8.44	4.95	$125.00
43501	0	SURGICAL REPAIR OF STOMACH	Surgery	15.31	7.82	$125.00
43502	0	SURGICAL REPAIR OF STOMACH	Surgery	17.67	8.60	$125.00
43510	0	SURGICAL OPENING OF STOMACH	Surgery	9.99	7.17	$125.00
43520	0	INCISION OF PYLORIC MUSCLE	Surgery	7.63	5.51	$125.00
43600	0	BIOPSY OF STOMACH	Surgery	1.91	0.89	$125.00
43605	0	BIOPSY OF STOMACH	Surgery	9.15	5.05	$125.00
43610	0	EXCISION OF STOMACH LESION	Surgery	11.15	6.52	$125.00
43611	0	EXCISION OF STOMACH LESION	Surgery	13.63	7.30	$125.00
43620	0	REMOVAL OF STOMACH	Surgery	22.54	12.30	$125.00
43621	0	REMOVAL OF STOMACH	Surgery	23.06	12.34	$125.00
43622	0	REMOVAL OF STOMACH	Surgery	24.41	12.70	$125.00
43631	0	REMOVAL OF STOMACH, PARTIAL	Surgery	19.66	10.10	$125.00
43632	0	REMOVAL OF STOMACH, PARTIAL	Surgery	19.66	10.10	$125.00
43633	0	REMOVAL OF STOMACH, PARTIAL	Surgery	20.10	10.23	$125.00
43634	0	REMOVAL OF STOMACH, PARTIAL	Surgery	21.86	13.03	$125.00
43635	0	REMOVAL OF STOMACH, PARTIAL	Surgery	2.06	0.88	$125.00
43638	0	REMOVAL OF STOMACH, PARTIAL	Surgery	21.76	10.93	$125.00
43639	0	REMOVAL OF STOMACH, PARTIAL	Surgery	22.25	11.19	$125.00
43640	0	VAGOTOMY & PYLORUS REPAIR	Surgery	14.81	8.16	$125.00
43641	0	VAGOTOMY & PYLORUS REPAIR	Surgery	15.03	8.24	$125.00
43651	0	LAPAROSCOPY, VAGUS NERVE	Surgery	10.15	5.04	$125.00
43652	0	LAPAROSCOPY, VAGUS NERVE	Surgery	12.15	5.89	$125.00
43653	0	LAPAROSCOPY, GASTROSTOMY	Surgery	7.73	4.96	$125.00
43750	0	PLACE GASTROSTOMY TUBE	Surgery	4.49	3.14	$125.00
43760	0	CHANGE GASTROSTOMY TUBE	Surgery	1.10	0.53	$125.00
43761	0	REPOSITION GASTROSTOMY TUBE	Surgery	2.01	0.91	$125.00
43800	0	RECONSTRUCTION OF PYLORUS	Surgery	10.46	6.09	$125.00
43810	0	FUSION OF STOMACH AND BOWEL	Surgery	11.19	6.42	$125.00
43820	0	FUSION OF STOMACH AND BOWEL	Surgery	11.74	6.74	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
43825	0	FUSION OF STOMACH AND BOWEL	Surgery	14.68	8.27	$125.00
43830	0	PLACE GASTROSTOMY TUBE	Surgery	7.28	4.87	$125.00
43831	0	PLACE GASTROSTOMY TUBE	Surgery	7.84	4.72	$125.00
43832	0	PLACE GASTROSTOMY TUBE	Surgery	11.92	6.94	$125.00
43840	0	REPAIR OF STOMACH LESION	Surgery	11.89	6.64	$125.00
43842	0	GASTROPLASTY FOR OBESITY	Surgery	14.71	11.28	$125.00
43843	0	GASTROPLASTY FOR OBESITY	Surgery	14.85	11.04	$125.00
43846	0	GASTRIC BYPASS FOR OBESITY	Surgery	19.15	12.79	$125.00
43847	0	GASTRIC BYPASS FOR OBESITY	Surgery	21.44	13.93	$125.00
43848	0	REVISION GASTROPLASTY	Surgery	23.41	14.57	$125.00
43850	0	REVISE STOMACH-BOWEL FUSION	Surgery	19.69	9.86	$125.00
43855	0	REVISE STOMACH-BOWEL FUSION	Surgery	20.83	10.03	$125.00
43860	0	REVISE STOMACH-BOWEL FUSION	Surgery	19.91	9.93	$125.00
43865	0	REVISE STOMACH-BOWEL FUSION	Surgery	21.12	10.81	$125.00
43870	0	REPAIR STOMACH OPENING	Surgery	7.40	4.84	$125.00
43880	0	REPAIR STOMACH-BOWEL FISTULA	Surgery	19.63	9.30	$125.00
44005	0	FREEING OF BOWEL ADHESION	Surgery	13.84	7.28	$125.00
44010	0	INCISION OF SMALL BOWEL	Surgery	10.68	6.32	$125.00
44015	0	INSERT NEEDLE CATH BOWEL	Surgery	2.62	1.53	$125.00
44020	0	EXPLORATION OF SMALL BOWEL	Surgery	11.93	6.60	$125.00
44021	0	DECOMPRESS SMALL BOWEL	Surgery	12.01	6.68	$125.00
44025	0	INCISION OF LARGE BOWEL	Surgery	12.18	6.66	$125.00
44050	0	REDUCE BOWEL OBSTRUCTION	Surgery	11.40	6.44	$125.00
44055	0	CORRECT MALROTATION OF BOWEL	Surgery	13.14	6.90	$125.00
44100	0	BIOPSY OF BOWEL	Surgery	2.01	1.16	$125.00
44110	0	EXCISION OF BOWEL LESION(S)	Surgery	10.07	6.05	$125.00
44111	0	EXCISION OF BOWEL LESION(S)	Surgery	12.19	7.59	$125.00
44120	0	REMOVAL OF SMALL INTESTINE	Surgery	14.50	7.77	$125.00
44121	0	REMOVAL OF SMALL INTESTINE	Surgery	4.45	1.90	$125.00
44125	0	REMOVAL OF SMALL INTESTINE	Surgery	14.96	8.24	$125.00
44130	0	BOWEL TO BOWEL FUSION	Surgery	12.36	6.95	$125.00
44139	0	MOBILIZATION OF COLON	Surgery	2.23	0.96	$125.00
44140	0	PARTIAL REMOVAL OF COLON	Surgery	18.35	9.70	$125.00
44141	0	PARTIAL REMOVAL OF COLON	Surgery	19.51	12.09	$125.00
44143	0	PARTIAL REMOVAL OF COLON	Surgery	20.17	12.36	$125.00
44144	0	PARTIAL REMOVAL OF COLON	Surgery	18.89	11.37	$125.00
44145	0	PARTIAL REMOVAL OF COLON	Surgery	23.18	11.87	$125.00
44146	0	PARTIAL REMOVAL OF COLON	Surgery	24.16	14.41	$125.00
44147	0	PARTIAL REMOVAL OF COLON	Surgery	18.17	11.30	$125.00
44150	0	REMOVAL OF COLON	Surgery	21.01	13.72	$125.00
44151	0	REMOVAL OF COLON/ILEOSTOMY	Surgery	20.04	12.03	$125.00
44152	0	REMOVAL OF COLON/ILEOSTOMY	Surgery	24.41	15.85	$125.00
44153	0	REMOVAL OF COLON/ILEOSTOMY	Surgery	26.83	16.73	$125.00
44155	0	REMOVAL OF COLON/ILEOSTOMY	Surgery	24.44	15.08	$125.00
44156	0	REMOVAL OF COLON/ILEOSTOMY	Surgery	23.01	13.49	$125.00
44160	0	REMOVAL OF COLON	Surgery	15.88	9.26	$125.00
44200	0	LAPAROSCOPY, ENTEROLYSIS	Surgery	14.44	7.48	$125.00
44201	0	LAPAROSCOPY, JEJUNOSTOMY	Surgery	9.78	5.28	$125.00
44202	0	LAPARO, RESECT INTESTINE	Surgery	22.04	11.22	$125.00
44300	0	OPEN BOWEL TO SKIN	Surgery	8.88	5.82	$125.00
44310	0	ILEOSTOMY/JEJUNOSTOMY	Surgery	11.70	8.73	$125.00
44312	0	REVISION OF ILEOSTOMY	Surgery	5.88	4.03	$125.00
44314	0	REVISION OF ILEOSTOMY	Surgery	11.04	8.37	$125.00
44318	0	DEVISE BOWEL POUCH	Surgery	15.47	11.79	$125.00
44320	0	COLOSTOMY	Surgery	12.94	9.61	$125.00
44322	0	COLOSTOMY WITH BIOPSIES	Surgery	11.98	9.84	$125.00
44340	0	REVISION OF COLOSTOMY	Surgery	5.66	3.45	$125.00
44345	0	REVISION OF COLOSTOMY	Surgery	11.32	6.42	$125.00
44346	0	REVISION OF COLOSTOMY	Surgery	12.46	7.24	$125.00
44360	0	SMALL BOWEL ENDOSCOPY	Surgery	2.59	1.85	$125.00
44361	0	SMALL BOWEL ENDOSCOPY/BIOPSY	Surgery	2.87	2.02	$125.00
44363	0	SMALL BOWEL ENDOSCOPY	Surgery	3.50	2.01	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
44364	0	SMALL BOWEL ENDOSCOPY	Surgery	3.74	2.56	$125.00
44365	0	SMALL BOWEL ENDOSCOPY	Surgery	3.31	2.30	$125.00
44366	0	SMALL BOWEL ENDOSCOPY	Surgery	4.41	2.96	$125.00
44369	0	SMALL BOWEL ENDOSCOPY	Surgery	4.52	2.98	$125.00
44370	0	SMALL BOWEL ENDOSCOPY/STENT	Surgery	4.33	1.56	$125.00
44372	0	SMALL BOWEL ENDOSCOPY	Surgery	4.41	2.98	$125.00
44373	0	SMALL BOWEL ENDOSCOPY	Surgery	3.50	2.45	$125.00
44376	0	SMALL BOWEL ENDOSCOPY	Surgery	5.26	2.81	$125.00
44377	0	SMALL BOWEL ENDOSCOPY/BIOPSY	Surgery	5.53	2.94	$125.00
44378	0	SMALL BOWEL ENDOSCOPY	Surgery	7.13	3.64	$125.00
44379	0	S BOWEL ENDOSCOPE W/STENT	Surgery	7.07	2.52	$125.00
44380	0	SMALL BOWEL ENDOSCOPY	Surgery	1.06	1.01	$125.00
44382	0	SMALL BOWEL ENDOSCOPY	Surgery	1.27	1.16	$125.00
44383	0	ILEOSCOPY W/STENT	Surgery	2.41	0.87	$125.00
44385	0	ENDOSCOPY OF BOWEL POUCH	Surgery	1.82	1.25	$125.00
44386	0	ENDOSCOPY, BOWEL POUCH/BIOP	Surgery	2.12	1.24	$125.00
44388	0	COLON ENDOSCOPY	Surgery	2.50	1.79	$125.00
44389	0	COLONOSCOPY WITH BIOPSY	Surgery	2.77	1.96	$125.00
44390	0	COLONOSCOPY FOR FOREIGN BODY	Surgery	3.39	1.91	$125.00
44391	0	COLONOSCOPY FOR BLEEDING	Surgery	3.82	2.45	$125.00
44392	0	COLONOSCOPY & POLYPECTOMY	Surgery	3.38	2.33	$125.00
44393	0	COLONOSCOPY, LESION REMOVAL	Surgery	4.26	2.88	$125.00
44394	0	COLONOSCOPY W/SNARE	Surgery	3.92	2.67	$125.00
44397	0	COLONOSCOPY W STENT	Surgery	4.23	1.90	$125.00
44500	0	INTRO, GASTROINTESTINAL TUBE	Surgery	0.49	0.36	$125.00
44602	0	SUTURE, SMALL INTESTINE	Surgery	10.61	6.19	$125.00
44603	0	SUTURE, SMALL INTESTINE	Surgery	14.00	7.52	$125.00
44604	0	SUTURE, LARGE INTESTINE	Surgery	14.28	7.29	$125.00
44605	0	REPAIR OF BOWEL LESION	Surgery	15.37	8.30	$125.00
44615	0	INTESTINAL STRICTUROPLASTY	Surgery	14.19	6.93	$125.00
44620	0	REPAIR BOWEL OPENING	Surgery	10.87	5.75	$125.00
44625	0	REPAIR BOWEL OPENING	Surgery	13.41	7.47	$125.00
44626	0	REPAIR BOWEL OPENING	Surgery	22.59	10.53	$125.00
44640	0	REPAIR BOWEL-SKIN FISTULA	Surgery	14.83	7.32	$125.00
44650	0	REPAIR BOWEL FISTULA	Surgery	15.25	7.65	$125.00
44660	0	REPAIR BOWEL-BLADDER FISTULA	Surgery	14.63	7.65	$125.00
44661	0	REPAIR BOWEL-BLADDER FISTULA	Surgery	16.99	9.81	$125.00
44680	0	SURGICAL REVISION, INTESTINE	Surgery	13.72	7.88	$125.00
44700	0	SUSPEND BOWEL W/PROSTHESIS	Surgery	14.35	8.34	$125.00
44800	0	EXCISION OF BOWEL POUCH	Surgery	11.23	5.70	$125.00
44820	0	EXCISION OF MESENTERY LESION	Surgery	10.31	5.63	$125.00
44850	0	REPAIR OF MESENTERY	Surgery	9.57	5.64	$125.00
44900	0	DRAIN APP ABSCESS, OPEN	Surgery	8.82	5.24	$125.00
44901	0	DRAIN APP ABSCESS, PERCUT	Surgery	3.38	4.44	$125.00
44950	0	APPENDECTOMY	Surgery	8.70	5.03	$125.00
44955	0	APPENDECTOMY ADD-ON	Surgery	1.53	0.89	$125.00
44960	0	APPENDECTOMY	Surgery	10.74	6.11	$125.00
44970	0	LAPAROSCOPY, APPENDECTOMY	Surgery	8.70	4.56	$125.00
45000	0	DRAINAGE OF PELVIC ABSCESS	Surgery	4.52	3.27	$125.00
45005	0	DRAINAGE OF RECTAL ABSCESS	Surgery	1.99	1.54	$125.00
45020	0	DRAINAGE OF RECTAL ABSCESS	Surgery	4.72	3.58	$125.00
45100	0	BIOPSY OF RECTUM	Surgery	3.68	2.09	$125.00
45108	0	REMOVAL OF ANORECTAL LESION	Surgery	4.76	3.03	$125.00
45110	0	REMOVAL OF RECTUM	Surgery	23.80	13.44	$125.00
45111	0	PARTIAL REMOVAL OF RECTUM	Surgery	16.48	9.85	$125.00
45112	0	REMOVAL OF RECTUM	Surgery	25.96	13.66	$125.00
45113	0	PARTIAL PROCTECTOMY	Surgery	25.99	13.13	$125.00
45114	0	PARTIAL REMOVAL OF RECTUM	Surgery	23.22	12.71	$125.00
45116	0	PARTIAL REMOVAL OF RECTUM	Surgery	20.89	10.57	$125.00
45119	0	REMOVE RECTUM W/RESERVOIR	Surgery	26.21	13.52	$125.00
45120	0	REMOVAL OF RECTUM	Surgery	25.00	13.42	$125.00
45121	0	REMOVAL OF RECTUM AND COLON	Surgery	27.51	12.66	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUs (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUs — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
45123	0	PARTIAL PROCTECTOMY	Surgery	14.20	8.36	$125.00
45126	0	PELVIC EXENTERATION	Surgery	38.39	17.29	$125.00
45130	0	EXCISION OF RECTAL PROLAPSE	Surgery	13.97	7.72	$125.00
45135	0	EXCISION OF RECTAL PROLAPSE	Surgery	16.39	10.70	$125.00
45150	0	EXCISION OF RECTAL STRICTURE	Surgery	5.67	3.29	$125.00
45160	0	EXCISION OF RECTAL LESION	Surgery	13.02	6.83	$125.00
45170	0	EXCISION OF RECTAL LESION	Surgery	9.77	5.24	$125.00
45190	0	DESTRUCTION, RECTAL TUMOR	Surgery	8.28	4.94	$125.00
45300	0	PROCTOSIGMOIDOSCOPY DX	Surgery	0.38	1.08	$125.00
45303	0	PROCTOSIGMOIDOSCOPY DILATE	Surgery	0.44	1.23	$125.00
45305	0	PROTOSIGMOIDOSCOPY W/BX	Surgery	0.56	0.34	$125.00
45307	0	PROTOSIGMOIDOSCOPY FB	Surgery	0.94	0.68	$125.00
45308	0	PROTOSIGMOIDOSCOPY REMOVAL	Surgery	0.83	0.46	$125.00
45309	0	PROTOSIGMOIDOSCOPY REMOVAL	Surgery	1.11	0.53	$125.00
45315	0	PROTOSIGMOIDOSCOPY REMOVAL	Surgery	1.40	0.79	$125.00
45317	0	PROTOSIGMOIDOSCOPY BLEED	Surgery	1.50	0.83	$125.00
45320	0	PROTOSIGMOIDOSCOPY ABLATE	Surgery	1.58	1.02	$125.00
45321	0	PROTOSIGMOIDOSCOPY VOLVUL	Surgery	1.17	0.80	$125.00
45327	0	PROCTOSIGMOIDOSCOPY W/STENT	Surgery	1.46	0.83	$125.00
45330	0	DIAGNOSTIC SIGMOIDOSCOPY	Surgery	0.88	1.65	$125.00
45331	0	SIGMOIDOSCOPY AND BIOPSY	Surgery	1.15	0.77	$125.00
45332	0	SIGMOIDOSCOPY W/FB REMOVAL	Surgery	1.79	1.04	$125.00
45333	0	SIGMOIDOSCOPY & POLYPECTOMY	Surgery	1.79	1.15	$125.00
45334	0	SIGMOIDOSCOPY FOR BLEEDING	Surgery	2.73	1.55	$125.00
45337	0	SIGMOIDOSCOPY & DECOMPRESS	Surgery	2.15	1.37	$125.00
45338	0	SIGMOIDOSCPY W/TUMR REMOVE	Surgery	2.34	1.32	$125.00
45339	0	SIGMOIDOSCOPY W/ABLATE TUMR	Surgery	2.86	1.74	$125.00
45341	0	SIGMOIDOSCOPY W/ULTRASOUND	Surgery	3.46	1.66	$125.00
45342	0	SIGMOIDOSCOPY W/US GUIDE BX	Surgery	4.08	1.81	$125.00
45345	0	SIGMODOSCOPY W/STENT	Surgery	2.66	1.30	$125.00
45355	0	SURGICAL COLONOSCOPY	Surgery	3.52	1.29	$125.00
45378	0	DIAGNOSTIC COLONOSCOPY	Surgery	3.68	2.38	$125.00
45379	0	COLONOSCOPY W/FB REMOVAL	Surgery	4.69	2.95	$125.00
45380	0	COLONOSCOPY AND BIOPSY	Surgery	3.98	2.56	$125.00
45382	0	COLONOSCOPY/CONTROL BLEEDING	Surgery	5.69	3.27	$125.00
45383	0	LESION REMOVAL COLONOSCOPY	Surgery	5.83	3.47	$125.00
45384	0	LESION REMOVE COLONOSCOPY	Surgery	4.67	2.95	$125.00
45385	0	LESION REMOVAL COLONOSCOPY	Surgery	5.27	3.30	$125.00
45387	0	COLONOSCOPY W/STENT	Surgery	5.62	2.41	$125.00
45500	0	REPAIR OF RECTUM	Surgery	7.29	4.80	$125.00
45505	0	REPAIR OF RECTUM	Surgery	6.02	4.16	$125.00
45520	0	TREATMENT OF RECTAL PROLAPSE	Surgery	0.55	0.71	$125.00
45540	0	CORRECT RECTAL PROLAPSE	Surgery	12.92	7.95	$125.00
45541	0	CORRECT RECTAL PROLAPSE	Surgery	10.64	7.29	$125.00
45550	0	REPAIR RECTUM/REMOVE SIGMOID	Surgery	18.26	9.80	$125.00
45560	0	REPAIR OF RECTOCELE	Surgery	8.40	5.08	$125.00
45562	0	EXPLORATION/REPAIR OF RECTUM	Surgery	12.21	6.94	$125.00
45563	0	EXPLORATION/REPAIR OF RECTUM	Surgery	18.63	10.64	$125.00
45800	0	REPAIR RECT/BLADDER FISTULA	Surgery	14.11	7.85	$125.00
45805	0	REPAIR FISTULA W/COLOSTOMY	Surgery	16.50	9.79	$125.00
45820	0	REPAIR RECTOURETHRAL FISTULA	Surgery	14.67	7.87	$125.00
45825	0	REPAIR FISTULA W/COLOSTOMY	Surgery	16.87	9.18	$125.00
45900	0	REDUCTION OF RECTAL PROLAPSE	Surgery	1.83	0.74	$125.00
45905	0	DILATION OF ANAL SPHINCTER	Surgery	1.61	0.73	$125.00
45910	0	DILATION OF RECTAL NARROWING	Surgery	1.96	0.87	$125.00
45915	0	REMOVE RECTAL OBSTRUCTION	Surgery	2.20	0.84	$125.00
46030	0	REMOVAL OF RECTAL MARKER	Surgery	1.23	1.02	$125.00
46040	0	INCISION OF RECTAL ABSCESS	Surgery	4.96	2.78	$125.00
46045	0	INCISION OF RECTAL ABSCESS	Surgery	4.32	2.60	$125.00
46050	0	INCISION OF ANAL ABSCESS	Surgery	1.19	2.70	$125.00
46060	0	INCISION OF RECTAL ABSCESS	Surgery	5.69	4.30	$125.00
46070	0	INCISION OF ANAL SEPTUM	Surgery	2.71	2.21	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUs (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUs — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
46080	0	INCISION OF ANAL SPHINCTER	Surgery	2.49	1.79	$125.00
46083	0	INCISE EXTERNAL HEMORRHOID	Surgery	1.40	3.49	$125.00
46200	0	REMOVAL OF ANAL FISSURE	Surgery	3.42	2.68	$125.00
46210	0	REMOVAL OF ANAL CRYPT	Surgery	2.67	1.82	$125.00
46211	0	REMOVAL OF ANAL CRYPTS	Surgery	4.25	2.71	$125.00
46220	0	REMOVAL OF ANAL TAB	Surgery	1.56	0.61	$125.00
46221	0	LIGATION OF HEMORRHOID(S)	Surgery	1.43	2.45	$125.00
46230	0	REMOVAL OF ANAL TABS	Surgery	2.57	3.25	$125.00
46250	0	HEMORRHOIDECTOMY	Surgery	4.53	2.96	$125.00
46255	0	HEMORRHOIDECTOMY	Surgery	5.36	3.69	$125.00
46257	0	REMOVE HEMORRHOIDS & FISSURE	Surgery	6.28	4.02	$125.00
46258	0	REMOVE HEMORRHOIDS & FISTULA	Surgery	6.67	4.35	$125.00
46260	0	HEMORRHOIDECTOMY	Surgery	7.42	4.96	$125.00
46261	0	REMOVE HEMORRHOIDS & FISSURE	Surgery	8.24	5.23	$125.00
46262	0	REMOVE HEMORRHOIDS & FISTULA	Surgery	8.73	5.46	$125.00
46270	0	REMOVAL OF ANAL FISTULA	Surgery	3.72	2.43	$125.00
46275	0	REMOVAL OF ANAL FISTULA	Surgery	4.56	3.49	$125.00
46280	0	REMOVAL OF ANAL FISTULA	Surgery	5.98	4.47	$125.00
46285	0	REMOVAL OF ANAL FISTULA	Surgery	4.09	2.60	$125.00
46288	0	REPAIR ANAL FISTULA	Surgery	7.13	4.14	$125.00
46320	0	REMOVAL OF HEMORRHOID CLOT	Surgery	1.61	2.91	$125.00
46500	0	INJECTION INTO HEMORRHOIDS	Surgery	1.61	2.00	$125.00
46600	0	DIAGNOSTIC ANOSCOPY	Surgery	0.50	0.65	$125.00
46604	0	ANOSCOPY AND DILATION	Surgery	1.31	0.82	$125.00
46606	0	ANOSCOPY AND BIOPSY	Surgery	0.81	0.76	$125.00
46608	0	ANOSCOPY/ REMOVE FOR BODY	Surgery	1.51	0.64	$125.00
46610	0	ANOSCOPY/REMOVE LESION	Surgery	1.32	0.61	$125.00
46611	0	ANOSCOPY	Surgery	1.81	0.63	$125.00
46612	0	ANOSCOPY/ REMOVE LESIONS	Surgery	2.34	1.04	$125.00
46614	0	ANOSCOPY/CONTROL BLEEDING	Surgery	2.01	1.64	$125.00
46615	0	ANOSCOPY	Surgery	2.68	0.97	$125.00
46700	0	REPAIR OF ANAL STRICTURE	Surgery	7.25	4.76	$125.00
46705	0	REPAIR OF ANAL STRICTURE	Surgery	7.17	4.60	$125.00
46715	0	REPAIR OF ANOVAGINAL FISTULA	Surgery	7.46	4.43	$125.00
46716	0	REPAIR OF ANOVAGINAL FISTULA	Surgery	12.85	6.92	$125.00
46730	0	CONSTRUCTION OF ABSENT ANUS	Surgery	22.39	11.11	$125.00
46735	0	CONSTRUCTION OF ABSENT ANUS	Surgery	27.02	13.43	$125.00
46740	0	CONSTRUCTION OF ABSENT ANUS	Surgery	24.19	11.39	$125.00
46742	0	REPAIR OF IMPERFORATED ANUS	Surgery	28.67	17.10	$125.00
46744	0	REPAIR OF CLOACAL ANOMALY	Surgery	33.21	16.93	$125.00
46746	0	REPAIR OF CLOACAL ANOMALY	Surgery	36.74	20.44	$125.00
46748	0	REPAIR OF CLOACAL ANOMALY	Surgery	40.52	22.33	$125.00
46750	0	REPAIR OF ANAL SPHINCTER	Surgery	8.14	5.26	$125.00
46751	0	REPAIR OF ANAL SPHINCTER	Surgery	8.77	5.77	$125.00
46753	0	RECONSTRUCTION OF ANUS	Surgery	6.58	3.98	$125.00
46754	0	REMOVAL OF SUTURE FROM ANUS	Surgery	1.54	1.22	$125.00
46760	0	REPAIR OF ANAL SPHINCTER	Surgery	11.46	6.17	$125.00
46761	0	REPAIR OF ANAL SPHINCTER	Surgery	10.99	6.11	$125.00
46762	0	IMPLANT ARTIFICIAL SPHINCTER	Surgery	10.09	5.26	$125.00
46900	0	DESTRUCTION, ANAL LESION(S)	Surgery	1.91	2.50	$125.00
46910	0	DESTRUCTION, ANAL LESION(S)	Surgery	1.86	2.75	$125.00
46916	0	CRYOSURGERY, ANAL LESION(S)	Surgery	1.86	2.75	$125.00
46917	0	LASER SURGERY, ANAL LESIONS	Surgery	1.86	3.71	$125.00
46922	0	EXCISION OF ANAL LESION(S)	Surgery	1.86	1.42	$125.00
46924	0	DESTRUCTION, ANAL LESION(S)	Surgery	2.76	1.99	$125.00
46934	0	DESTRUCTION OF HEMORRHOIDS	Surgery	4.08	4.63	$125.00
46935	0	DESTRUCTION OF HEMORRHOIDS	Surgery	2.43	3.37	$125.00
46936	0	DESTRUCTION OF HEMORRHOIDS	Surgery	4.30	4.81	$125.00
46937	0	CRYOTHERAPY OF RECTAL LESION	Surgery	2.69	2.44	$125.00
46938	0	CRYOTHERAPY OF RECTAL LESION	Surgery	4.66	3.29	$125.00
46940	0	TREATMENT OF ANAL FISSURE	Surgery	2.32	2.38	$125.00
46942	0	TREATMENT OF ANAL FISSURE	Surgery	2.04	2.43	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
46945	0	LIGATION OF HEMORRHOIDS	Surgery	2.14	2.99	$125.00
46946	0	LIGATION OF HEMORRHOIDS	Surgery	3.00	4.00	$125.00
47000	0	NEEDLE BIOPSY OF LIVER	Surgery	1.90	0.89	$125.00
47001	0	NEEDLE BIOPSY, LIVER ADD-ON	Surgery	1.90	0.92	$125.00
47010	0	OPEN DRAINAGE, LIVER LESION	Surgery	10.28	7.45	$125.00
47011	0	PERCUT DRAIN, LIVER LESION	Surgery	3.70	5.26	$125.00
47015	0	INJECT/ASPIRATE LIVER CYST	Surgery	9.70	6.42	$125.00
47100	0	WEDGE BIOPSY OF LIVER	Surgery	7.49	4.61	$125.00
47120	0	PARTIAL REMOVAL OF LIVER	Surgery	22.79	12.68	$125.00
47122	0	EXTENSIVE REMOVAL OF LIVER	Surgery	35.39	17.71	$125.00
47125	0	PARTIAL REMOVAL OF LIVER	Surgery	31.58	16.63	$125.00
47130	0	PARTIAL REMOVAL OF LIVER	Surgery	34.25	17.98	$125.00
47134	0	PARTIAL REMOVAL, DONOR LIVER	Surgery	39.15	16.81	$125.00
47135	0	TRANSPLANTATION OF LIVER	Surgery	81.52	47.35	$125.00
47136	0	TRANSPLANTATION OF LIVER	Surgery	68.80	43.44	$125.00
47300	0	SURGERY FOR LIVER LESION	Surgery	9.68	6.42	$125.00
47350	0	REPAIR LIVER WOUND	Surgery	12.56	7.28	$125.00
47360	0	REPAIR LIVER WOUND	Surgery	17.28	10.05	$125.00
47361	0	REPAIR LIVER WOUND	Surgery	30.25	14.83	$125.00
47362	0	REPAIR LIVER WOUND	Surgery	11.88	7.28	$125.00
47400	0	INCISION OF LIVER DUCT	Surgery	20.88	10.49	$125.00
47420	0	INCISION OF BILE DUCT	Surgery	16.72	8.89	$125.00
47425	0	INCISION OF BILE DUCT	Surgery	16.68	9.64	$125.00
47460	0	INCISE BILE DUCT SPHINCTER	Surgery	15.17	10.16	$125.00
47480	0	INCISION OF GALLBLADDER	Surgery	9.10	6.55	$125.00
47490	0	INCISION OF GALLBLADDER	Surgery	7.23	6.53	$125.00
47500	0	INJECTION FOR LIVER X-RAYS	Surgery	1.98	0.93	$125.00
47505	0	INJECTION FOR LIVER X-RAYS	Surgery	0.76	11.49	$125.00
47510	0	INSERT CATHETER, BILE DUCT	Surgery	7.83	7.39	$125.00
47511	0	INSERT BILE DUCT DRAIN	Surgery	10.50	8.34	$125.00
47525	0	CHANGE BILE DUCT CATHETER	Surgery	5.55	2.91	$125.00
47530	0	REVISE/REINSERT BILE TUBE	Surgery	5.85	4.10	$125.00
47550	0	BILE DUCT ENDOSCOPY ADD-ON	Surgery	3.02	1.29	$125.00
47552	0	BILIARY ENDOSCOPY THRU SKIN	Surgery	6.04	2.29	$125.00
47553	0	BILIARY ENDOSCOPY THRU SKIN	Surgery	6.35	3.08	$125.00
47554	0	BILIARY ENDOSCOPY THRU SKIN	Surgery	9.06	3.81	$125.00
47555	0	BILIARY ENDOSCOPY THRU SKIN	Surgery	7.56	3.09	$125.00
47556	0	BILIARY ENDOSCOPY THRU SKIN	Surgery	8.56	3.35	$125.00
47560	0	LAPAROSCOPY W/CHOLANGIO	Surgery	4.89	2.24	$125.00
47561	0	LAPARO W/CHOLANGIO/BIOPSY	Surgery	5.18	2.76	$125.00
47562	0	LAPAROSCOPIC CHOLECYSTECTOMY	Surgery	11.09	5.96	$125.00
47563	0	LAPARO CHOLECYSTECTOMY/GRAPH	Surgery	11.94	6.44	$125.00
47564	0	LAPARO CHOLECYSTECTOMY/EXPLR	Surgery	14.23	7.92	$125.00
47570	0	LAPARO CHOLECYSTOENTEROSTOMY	Surgery	12.58	7.08	$125.00
47600	0	REMOVAL OF GALLBLADDER	Surgery	11.42	6.86	$125.00
47605	0	REMOVAL OF GALLBLADDER	Surgery	12.36	7.08	$125.00
47610	0	REMOVAL OF GALLBLADDER	Surgery	15.83	8.50	$125.00
47612	0	REMOVAL OF GALLBLADDER	Surgery	15.80	9.68	$125.00
47620	0	REMOVAL OF GALLBLADDER	Surgery	17.36	9.34	$125.00
47630	0	REMOVE BILE DUCT STONE	Surgery	9.11	3.46	$125.00
47700	0	EXPLORATION OF BILE DUCTS	Surgery	15.62	8.76	$125.00
47701	0	BILE DUCT REVISION	Surgery	29.55	13.10	$125.00
47711	0	EXCISION OF BILE DUCT TUMOR	Surgery	19.37	10.92	$125.00
47712	0	EXCISION OF BILE DUCT TUMOR	Surgery	25.44	12.94	$125.00
47715	0	EXCISION OF BILE DUCT CYST	Surgery	15.81	8.21	$125.00
47716	0	FUSION OF BILE DUCT CYST	Surgery	13.83	8.20	$125.00
47720	0	FUSE GALLBLADDER & BOWEL	Surgery	13.38	8.45	$125.00
47721	0	FUSE UPPER GI STRUCTURES	Surgery	16.08	9.77	$125.00
47740	0	FUSE GALLBLADDER & BOWEL	Surgery	15.54	9.36	$125.00
47741	0	FUSE GALLBLADDER & BOWEL	Surgery	17.95	11.06	$125.00
47760	0	FUSE BILE DUCTS AND BOWEL	Surgery	21.74	11.39	$125.00
47765	0	FUSE LIVER DUCTS & BOWEL	Surgery	20.93	12.69	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
47780	0	FUSE BILE DUCTS AND BOWEL	Surgery	22.29	11.98	$125.00
47785	0	FUSE BILE DUCTS AND BOWEL	Surgery	26.23	13.57	$125.00
47800	0	RECONSTRUCTION OF BILE DUCTS	Surgery	19.60	11.22	$125.00
47801	0	PLACEMENT, BILE DUCT SUPPORT	Surgery	12.76	8.49	$125.00
47802	0	FUSE LIVER DUCT & INTESTINE	Surgery	18.13	10.65	$125.00
47900	0	SUTURE BILE DUCT INJURY	Surgery	16.74	10.46	$125.00
48000	0	DRAINAGE OF ABDOMEN	Surgery	14.91	8.12	$125.00
48001	0	PLACEMENT OF DRAIN, PANCREAS	Surgery	18.83	9.23	$125.00
48005	0	RESECT/DEBRIDE PANCREAS	Surgery	22.40	10.48	$125.00
48020	0	REMOVAL OF PANCREATIC STONE	Surgery	14.22	7.28	$125.00
48100	0	BIOPSY OF PANCREAS	Surgery	11.08	6.11	$125.00
48102	0	NEEDLE BIOPSY, PANCREAS	Surgery	4.68	2.46	$125.00
48120	0	REMOVAL OF PANCREAS LESION	Surgery	14.36	7.99	$125.00
48140	0	PARTIAL REMOVAL OF PANCREAS	Surgery	20.78	11.32	$125.00
48145	0	PARTIAL REMOVAL OF PANCREAS	Surgery	21.76	12.72	$125.00
48146	0	PANCREATECTOMY	Surgery	23.91	14.26	$125.00
48148	0	REMOVAL OF PANCREATIC DUCT	Surgery	15.71	8.95	$125.00
48150	0	PARTIAL REMOVAL OF PANCREAS	Surgery	43.48	21.92	$125.00
48152	0	PANCREATECTOMY	Surgery	39.63	20.86	$125.00
48153	0	PANCREATECTOMY	Surgery	43.38	21.85	$125.00
48154	0	PANCREATECTOMY	Surgery	39.95	21.07	$125.00
48155	0	REMOVAL OF PANCREAS	Surgery	22.32	15.47	$125.00
48180	0	FUSE PANCREAS AND BOWEL	Surgery	22.39	11.44	$125.00
48400	0	INJECTION, INTRAOP ADD-ON	Surgery	1.95	0.81	$125.00
48500	0	SURGERY OF PANCREAS CYST	Surgery	13.84	7.78	$125.00
48510	0	DRAIN PANCREATIC PSEUDOCYST	Surgery	12.96	7.39	$125.00
48511	0	DRAIN PANCREATIC PSEUDOCYST	Surgery	4.00	4.25	$125.00
48520	0	FUSE PANCREAS CYST AND BOWEL	Surgery	14.12	8.30	$125.00
48540	0	FUSE PANCREAS CYST AND BOWEL	Surgery	17.86	9.77	$125.00
48545	0	PANCREATORRHAPHY	Surgery	16.47	8.33	$125.00
48547	0	DUODENAL EXCLUSION	Surgery	23.40	10.88	$125.00
48554	0	TRANSPL ALLOGRAFT PANCREAS	Surgery	34.17	14.48	$125.00
48556	0	REMOVAL, ALLOGRAFT PANCREAS	Surgery	15.71	8.53	$125.00
49000	0	EXPLORATION OF ABDOMEN	Surgery	11.68	6.58	$125.00
49002	0	REOPENING OF ABDOMEN	Surgery	10.49	6.30	$125.00
49010	0	EXPLORATION BEHIND ABDOMEN	Surgery	12.28	7.27	$125.00
49020	0	DRAIN ABDOMINAL ABSCESS	Surgery	16.79	8.45	$125.00
49021	0	DRAIN ABDOMINAL ABSCESS	Surgery	3.38	5.53	$125.00
49040	0	DRAIN, OPEN, ABDOM ABSCESS	Surgery	9.94	6.88	$125.00
49041	0	DRAIN, PERCUT, ABDOM ABSCESS	Surgery	4.00	5.50	$125.00
49060	0	DRAIN, OPEN, RETROP ABSCESS	Surgery	11.66	7.54	$125.00
49061	0	DRAIN, PERCUT, RETROPER ABSC	Surgery	3.70	5.37	$125.00
49062	0	DRAIN TO PERITONEAL CAVITY	Surgery	11.36	7.74	$125.00
49080	0	PUNCTURE, PERITONEAL CAVITY	Surgery	1.35	0.69	$125.00
49081	0	REMOVAL OF ABDOMINAL FLUID	Surgery	1.26	0.64	$125.00
49085	0	REMOVE ABDOMEN FOREIGN BODY	Surgery	8.93	5.14	$125.00
49180	0	BIOPSY, ABDOMINAL MASS	Surgery	1.73	0.95	$125.00
49200	0	REMOVAL OF ABDOMINAL LESION	Surgery	10.25	7.11	$125.00
49201	0	REMOVAL OF ABDOMINAL LESION	Surgery	14.84	9.81	$125.00
49215	0	EXCISE SACRAL SPINE TUMOR	Surgery	23.20	10.71	$125.00
49220	0	MULTIPLE SURGERY, ABDOMEN	Surgery	14.88	9.26	$125.00
49250	0	EXCISION OF UMBILICUS	Surgery	8.35	5.09	$125.00
49255	0	REMOVAL OF OMENTUM	Surgery	11.14	6.40	$125.00
49320	0	DIAG LAPARO SEPARATE PROC	Surgery	5.10	3.49	$125.00
49321	0	LAPAROSCOPY, BIOPSY	Surgery	5.40	3.67	$125.00
49322	0	LAPAROSCOPY, ASPIRATION	Surgery	5.70	3.87	$125.00
49323	0	LAPARO DRAIN LYMPHOCELE	Surgery	9.48	4.93	$125.00
49400	0	AIR INJECTION INTO ABDOMEN	Surgery	1.88	0.93	$125.00
49420	0	INSERT ABDOMINAL DRAIN	Surgery	2.22	1.16	$125.00
49421	0	INSERT ABDOMINAL DRAIN	Surgery	5.54	4.23	$125.00
49422	0	REMOVE PERM CANNULA/CATHETER	Surgery	6.25	3.42	$125.00
49423	0	EXCHANGE DRAINAGE CATHETER	Surgery	1.46	0.82	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUs (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUs — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
49424	0	ASSESS CYST, CONTRAST INJECT	Surgery	0.76	0.49	$125.00
49425	0	INSERT ABDOMEN-VENOUS DRAIN	Surgery	11.37	7.66	$125.00
49426	0	REVISE ABDOMEN-VENOUS SHUNT	Surgery	9.63	6.10	$125.00
49427	0	INJECTION, ABDOMINAL SHUNT	Surgery	0.89	0.49	$125.00
49428	0	LIGATION OF SHUNT	Surgery	2.38	1.62	$125.00
49429	0	REMOVAL OF SHUNT	Surgery	7.40	3.68	$125.00
49495	0	REPAIR INGUINAL HERNIA, INIT	Surgery	5.84	4.02	$125.00
49496	0	REPAIR INGUINAL HERNIA, INIT	Surgery	8.79	6.28	$125.00
49500	0	REPAIR INGUINAL HERNIA	Surgery	4.68	3.70	$125.00
49501	0	REPAIR INGUINAL HERNIA, INIT	Surgery	7.58	4.50	$125.00
49505	0	REPAIR INGUINAL HERNIA	Surgery	6.49	4.02	$125.00
49507	0	REPAIR INGUINAL HERNIA	Surgery	8.17	5.56	$125.00
49520	0	REREPAIR INGUINAL HERNIA	Surgery	8.22	5.15	$125.00
49521	0	REPAIR INGUINAL HERNIA, REC	Surgery	10.22	5.33	$125.00
49525	0	REPAIR INGUINAL HERNIA	Surgery	7.32	4.90	$125.00
49540	0	REPAIR LUMBAR HERNIA	Surgery	8.87	5.29	$125.00
49550	0	REPAIR FEMORAL HERNIA	Surgery	7.37	4.34	$125.00
49553	0	REPAIR FEMORAL HERNIA, INIT	Surgery	8.06	4.63	$125.00
49555	0	REPAIR FEMORAL HERNIA	Surgery	7.71	5.28	$125.00
49557	0	REPAIR FEMORAL HERNIA, RECUR	Surgery	9.52	5.43	$125.00
49560	0	REPAIR ABDOMINAL HERNIA	Surgery	9.88	5.69	$125.00
49561	0	REPAIR INCISIONAL HERNIA	Surgery	12.17	6.09	$125.00
49565	0	REREPAIR ABDOMINAL HERNIA	Surgery	9.88	6.02	$125.00
49566	0	REPAIR INCISIONAL HERNIA	Surgery	12.30	8.32	$125.00
49568	0	HERNIA REPAIR W/MESH	Surgery	4.89	2.09	$125.00
49570	0	REPAIR EPIGASTRIC HERNIA	Surgery	4.86	3.60	$125.00
49572	0	REPAIR EPIGASTRIC HERNIA	Surgery	5.75	4.26	$125.00
49580	0	REPAIR UMBILICAL HERNIA	Surgery	3.34	3.04	$125.00
49582	0	REPAIR UMBILICAL HERNIA	Surgery	5.68	4.59	$125.00
49585	0	REPAIR UMBILICAL HERNIA	Surgery	5.32	4.02	$125.00
49587	0	REPAIR UMBILICAL HERNIA	Surgery	6.46	4.11	$125.00
49590	0	REPAIR ABDOMINAL HERNIA	Surgery	7.29	4.90	$125.00
49600	0	REPAIR UMBILICAL LESION	Surgery	10.96	6.29	$125.00
49605	0	REPAIR UMBILICAL LESION	Surgery	24.94	11.60	$125.00
49606	0	REPAIR UMBILICAL LESION	Surgery	21.31	10.18	$125.00
49610	0	REPAIR UMBILICAL LESION	Surgery	10.50	6.44	$125.00
49611	0	REPAIR UMBILICAL LESION	Surgery	8.92	7.29	$125.00
49650	0	LAPARO HERNIA REPAIR INITIAL	Surgery	6.27	3.77	$125.00
49651	0	LAPARO HERNIA REPAIR RECUR	Surgery	8.24	4.78	$125.00
49900	0	REPAIR OF ABDOMINAL WALL	Surgery	12.28	6.18	$125.00
49905	0	OMENTAL FLAP	Surgery	6.55	2.75	$125.00
50010	0	EXPLORATION OF KIDNEY	Surgery	10.98	7.57	$125.00
50020	0	RENAL ABSCESS, OPEN DRAIN	Surgery	14.66	11.71	$125.00
50021	0	RENAL ABSCESS, PERCUT DRAIN	Surgery	3.38	9.43	$125.00
50040	0	DRAINAGE OF KIDNEY	Surgery	14.94	10.27	$125.00
50045	0	EXPLORATION OF KIDNEY	Surgery	15.46	8.77	$125.00
50060	0	REMOVAL OF KIDNEY STONE	Surgery	19.30	10.43	$125.00
50065	0	INCISION OF KIDNEY	Surgery	20.79	9.40	$125.00
50070	0	INCISION OF KIDNEY	Surgery	20.32	11.29	$125.00
50075	0	REMOVAL OF KIDNEY STONE	Surgery	25.34	13.73	$125.00
50080	0	REMOVAL OF KIDNEY STONE	Surgery	14.71	11.08	$125.00
50081	0	REMOVAL OF KIDNEY STONE	Surgery	21.80	13.40	$125.00
50100	0	REVISE KIDNEY BLOOD VESSELS	Surgery	16.09	10.11	$125.00
50120	0	EXPLORATION OF KIDNEY	Surgery	15.91	9.34	$125.00
50125	0	EXPLORE AND DRAIN KIDNEY	Surgery	16.52	9.45	$125.00
50130	0	REMOVAL OF KIDNEY STONE	Surgery	17.29	10.08	$125.00
50135	0	EXPLORATION OF KIDNEY	Surgery	19.18	11.68	$125.00
50200	0	BIOPSY OF KIDNEY	Surgery	2.63	1.41	$125.00
50205	0	BIOPSY OF KIDNEY	Surgery	11.31	6.34	$125.00
50220	0	REMOVAL OF KIDNEY	Surgery	17.15	10.34	$125.00
50225	0	REMOVAL OF KIDNEY	Surgery	20.23	11.90	$125.00
50230	0	REMOVAL OF KIDNEY	Surgery	22.07	12.85	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUs (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUs — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
50234	0	REMOVAL OF KIDNEY & URETER	Surgery	22.40	12.42	$125.00
50236	0	REMOVAL OF KIDNEY & URETER	Surgery	24.86	14.95	$125.00
50240	0	PARTIAL REMOVAL OF KIDNEY	Surgery	22.00	13.76	$125.00
50280	0	REMOVAL OF KIDNEY LESION	Surgery	15.67	9.19	$125.00
50290	0	REMOVAL OF KIDNEY LESION	Surgery	14.73	8.55	$125.00
50320	0	REMOVAL OF DONOR KIDNEY	Surgery	22.21	12.34	$125.00
50340	0	REMOVAL OF KIDNEY	Surgery	12.15	9.97	$125.00
50360	0	TRANSPLANTATION OF KIDNEY	Surgery	31.53	19.94	$125.00
50365	0	TRANSPLANTATION OF KIDNEY	Surgery	36.81	24.34	$125.00
50370	0	REMOVE TRANSPLANTED KIDNEY	Surgery	13.72	10.25	$125.00
50380	0	REIMPLANTATION OF KIDNEY	Surgery	20.76	13.16	$125.00
50390	0	DRAINAGE OF KIDNEY LESION	Surgery	1.96	0.98	$125.00
50392	0	INSERT KIDNEY DRAIN	Surgery	3.38	1.53	$125.00
50393	0	INSERT URETERAL TUBE	Surgery	4.16	1.91	$125.00
50394	0	INJECTION FOR KIDNEY X-RAY	Surgery	0.76	10.12	$125.00
50395	0	CREATE PASSAGE TO KIDNEY	Surgery	3.38	1.79	$125.00
50396	0	MEASURE KIDNEY PRESSURE	Surgery	2.09	0.80	$125.00
50398	0	CHANGE KIDNEY TUBE	Surgery	1.46	0.53	$125.00
50400	0	REVISION OF KIDNEY/URETER	Surgery	19.50	10.90	$125.00
50405	0	REVISION OF KIDNEY/URETER	Surgery	23.93	14.19	$125.00
50500	0	REPAIR OF KIDNEY WOUND	Surgery	19.57	11.72	$125.00
50520	0	CLOSE KIDNEY-SKIN FISTULA	Surgery	17.23	10.64	$125.00
50525	0	REPAIR RENAL-ABDOMEN FISTULA	Surgery	22.27	12.82	$125.00
50526	0	REPAIR RENAL-ABDOMEN FISTULA	Surgery	24.02	13.56	$125.00
50540	0	REVISION OF HORSESHOE KIDNEY	Surgery	19.93	12.50	$125.00
50541	0	LAPARO ABLATE RENAL CYST	Surgery	16.00	6.61	$125.00
50544	0	LAPAROSCOPY, PYELOPLASTY	Surgery	22.40	8.78	$125.00
50545	0	LAPARO RADICAL NEPHRECTOMY	Surgery	24.00	9.41	$125.00
50546	0	LAPAROSCOPIC NEPHRECTOMY	Surgery	20.48	8.31	$125.00
50547	0	LAPARO REMOVAL DONOR KIDNEY	Surgery	25.50	10.99	$125.00
50548	0	LAPARO REMOVE K/URETER	Surgery	24.40	9.44	$125.00
50551	0	KIDNEY ENDOSCOPY	Surgery	5.60	1.99	$125.00
50553	0	KIDNEY ENDOSCOPY	Surgery	5.99	2.00	$125.00
50555	0	KIDNEY ENDOSCOPY & BIOPSY	Surgery	6.53	2.93	$125.00
50557	0	KIDNEY ENDOSCOPY & TREATMENT	Surgery	6.62	2.94	$125.00
50559	0	RENAL ENDOSCOPY/RADIOTRACER	Surgery	6.78	2.14	$125.00
50561	0	KIDNEY ENDOSCOPY & TREATMENT	Surgery	7.59	3.30	$125.00
50570	0	KIDNEY ENDOSCOPY	Surgery	9.54	2.79	$125.00
50572	0	KIDNEY ENDOSCOPY	Surgery	10.35	4.55	$125.00
50574	0	KIDNEY ENDOSCOPY & BIOPSY	Surgery	11.02	4.67	$125.00
50575	0	KIDNEY ENDOSCOPY	Surgery	13.98	6.20	$125.00
50576	0	KIDNEY ENDOSCOPY & TREATMENT	Surgery	10.99	5.09	$125.00
50578	0	RENAL ENDOSCOPY/RADIOTRACER	Surgery	11.35	3.86	$125.00
50580	0	KIDNEY ENDOSCOPY & TREATMENT	Surgery	11.86	3.95	$125.00
50590	0	FRAGMENTING OF KIDNEY STONE	Surgery	9.09	6.47	$125.00
50600	0	EXPLORATION OF URETER	Surgery	15.84	8.92	$125.00
50605	0	INSERT URETERAL SUPPORT	Surgery	15.46	8.14	$125.00
50610	0	REMOVAL OF URETER STONE	Surgery	15.92	9.85	$125.00
50620	0	REMOVAL OF URETER STONE	Surgery	15.16	9.12	$125.00
50630	0	REMOVAL OF URETER STONE	Surgery	14.94	9.52	$125.00
50650	0	REMOVAL OF URETER	Surgery	17.41	10.14	$125.00
50660	0	REMOVAL OF URETER	Surgery	19.55	10.84	$125.00
50684	0	INJECTION FOR URETER X-RAY	Surgery	0.76	0.33	$125.00
50686	0	MEASURE URETER PRESSURE	Surgery	1.51	3.58	$125.00
50688	0	CHANGE OF URETER TUBE	Surgery	1.17	1.39	$125.00
50690	0	INJECTION FOR URETER X-RAY	Surgery	1.16	0.39	$125.00
50700	0	REVISION OF URETER	Surgery	15.21	10.04	$125.00
50715	0	RELEASE OF URETER	Surgery	18.90	11.78	$125.00
50722	0	RELEASE OF URETER	Surgery	16.35	9.67	$125.00
50725	0	RELEASE/REVISE URETER	Surgery	18.49	10.79	$125.00
50727	0	REVISE URETER	Surgery	8.18	6.05	$125.00
50728	0	REVISE URETER	Surgery	12.02	7.93	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
50740	0	FUSION OF URETER & KIDNEY	Surgery	18.42	10.60	$125.00
50750	0	FUSION OF URETER & KIDNEY	Surgery	19.51	11.39	$125.00
50760	0	FUSION OF URETERS	Surgery	18.42	10.89	$125.00
50770	0	SPLICING OF URETERS	Surgery	19.51	11.53	$125.00
50780	0	REIMPLANT URETER IN BLADDER	Surgery	18.36	10.91	$125.00
50782	0	REIMPLANT URETER IN BLADDER	Surgery	19.54	12.00	$125.00
50783	0	REIMPLANT URETER IN BLADDER	Surgery	20.55	11.65	$125.00
50785	0	REIMPLANT URETER IN BLADDER	Surgery	20.52	11.89	$125.00
50800	0	IMPLANT URETER IN BOWEL	Surgery	14.52	10.93	$125.00
50810	0	FUSION OF URETER & BOWEL	Surgery	20.05	12.97	$125.00
50815	0	URINE SHUNT TO BOWEL	Surgery	19.93	13.84	$125.00
50820	0	CONSTRUCT BOWEL BLADDER	Surgery	21.89	13.50	$125.00
50825	0	CONSTRUCT BOWEL BLADDER	Surgery	28.18	19.18	$125.00
50830	0	REVISE URINE FLOW	Surgery	31.28	17.13	$125.00
50840	0	REPLACE URETER BY BOWEL	Surgery	20.00	12.23	$125.00
50845	0	APPENDICO-VESICOSTOMY	Surgery	20.89	10.99	$125.00
50860	0	TRANSPLANT URETER TO SKIN	Surgery	15.36	9.38	$125.00
50900	0	REPAIR OF URETER	Surgery	13.62	8.57	$125.00
50920	0	CLOSURE URETER/SKIN FISTULA	Surgery	14.33	9.11	$125.00
50930	0	CLOSURE URETER/BOWEL FISTULA	Surgery	18.72	10.69	$125.00
50940	0	RELEASE OF URETER	Surgery	14.51	8.75	$125.00
50945	0	LAPAROSCOPY URETEROLITHOTOMY	Surgery	17.00	7.36	$125.00
50947	0	LAPARO NEW URETER/BLADDER	Surgery	24.50	11.62	$125.00
50948	0	LAPARO NEW URETER/BLADDER	Surgery	22.50	10.51	$125.00
50951	0	ENDOSCOPY OF URETER	Surgery	5.84	1.92	$125.00
50953	0	ENDOSCOPY OF URETER	Surgery	6.24	2.01	$125.00
50955	0	URETER ENDOSCOPY & BIOPSY	Surgery	6.75	2.41	$125.00
50957	0	URETER ENDOSCOPY & TREATMENT	Surgery	6.79	2.39	$125.00
50959	0	URETER ENDOSCOPY & TRACER	Surgery	4.40	2.08	$125.00
50961	0	URETER ENDOSCOPY & TREATMENT	Surgery	6.05	2.25	$125.00
50970	0	URETER ENDOSCOPY	Surgery	7.14	3.20	$125.00
50972	0	URETER ENDOSCOPY & CATHETER	Surgery	6.89	2.18	$125.00
50974	0	URETER ENDOSCOPY & BIOPSY	Surgery	9.17	4.16	$125.00
50976	0	URETER ENDOSCOPY & TREATMENT	Surgery	9.04	4.00	$125.00
50978	0	URETER ENDOSCOPY & TRACER	Surgery	5.10	2.41	$125.00
50980	0	URETER ENDOSCOPY & TREATMENT	Surgery	6.85	2.58	$125.00
51000	0	DRAINAGE OF BLADDER	Surgery	0.78	1.54	$125.00
51005	0	DRAINAGE OF BLADDER	Surgery	1.02	0.39	$125.00
51010	0	DRAINAGE OF BLADDER	Surgery	3.53	1.63	$125.00
51020	0	INCISE & TREAT BLADDER	Surgery	6.71	5.83	$125.00
51030	0	INCISE & TREAT BLADDER	Surgery	6.77	5.24	$125.00
51040	0	INCISE & DRAIN BLADDER	Surgery	4.40	4.40	$125.00
51045	0	INCISE BLADDER/DRAIN URETER	Surgery	6.77	5.54	$125.00
51050	0	REMOVAL OF BLADDER STONE	Surgery	6.92	5.61	$125.00
51060	0	REMOVAL OF URETER STONE	Surgery	8.85	7.17	$125.00
51065	0	REMOVAL OF URETER STONE	Surgery	8.85	6.34	$125.00
51080	0	DRAINAGE OF BLADDER ABSCESS	Surgery	5.96	5.40	$125.00
51500	0	REMOVAL OF BLADDER CYST	Surgery	10.14	6.32	$125.00
51520	0	REMOVAL OF BLADDER LESION	Surgery	9.29	6.88	$125.00
51525	0	REMOVAL OF BLADDER LESION	Surgery	13.97	8.66	$125.00
51530	0	REMOVAL OF BLADDER LESION	Surgery	12.38	7.96	$125.00
51535	0	REPAIR OF URETER LESION	Surgery	12.57	7.76	$125.00
51550	0	PARTIAL REMOVAL OF BLADDER	Surgery	15.66	9.15	$125.00
51555	0	PARTIAL REMOVAL OF BLADDER	Surgery	21.23	11.26	$125.00
51565	0	REVISE BLADDER & URETER(S)	Surgery	21.62	12.59	$125.00
51570	0	REMOVAL OF BLADDER	Surgery	24.24	13.42	$125.00
51575	0	REMOVAL OF BLADDER & NODES	Surgery	30.45	17.23	$125.00
51580	0	REMOVE BLADDER/REVISE TRACT	Surgery	31.08	16.84	$125.00
51585	0	REMOVAL OF BLADDER & NODES	Surgery	35.23	19.18	$125.00
51590	0	REMOVE BLADDER/REVISE TRACT	Surgery	32.66	18.19	$125.00
51595	0	REMOVE BLADDER/REVISE TRACT	Surgery	37.14	21.77	$125.00
51596	0	REMOVE BLADDER/CREATE POUCH	Surgery	39.52	23.00	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
51597	0	REMOVAL OF PELVIC STRUCTURES	Surgery	38.35	21.69	$125.00
51600	0	INJECTION FOR BLADDER X-RAY	Surgery	0.88	0.31	$125.00
51605	0	PREPARATION FOR BLADDER XRAY	Surgery	0.64	0.25	$125.00
51610	0	INJECTION FOR BLADDER X-RAY	Surgery	1.05	0.34	$125.00
51700	0	IRRIGATION OF BLADDER	Surgery	0.88	2.78	$125.00
51705	0	CHANGE OF BLADDER TUBE	Surgery	1.02	1.94	$125.00
51710	0	CHANGE OF BLADDER TUBE	Surgery	1.49	1.11	$125.00
51715	0	ENDOSCOPIC INJECTION/IMPLANT	Surgery	3.74	1.67	$125.00
51720	0	TREATMENT OF BLADDER LESION	Surgery	1.96	3.07	$125.00
51725	26	SIMPLE CYSTOMETROGRAM	Surgery	1.51	0.55	$125.00
51726	26	COMPLEX CYSTOMETROGRAM	Surgery	1.71	0.66	$125.00
51736	26	URINE FLOW MEASUREMENT	Surgery	0.61	0.23	$125.00
51741	26	ELECTRO-UROFLOWMETRY, FIRST	Surgery	1.14	0.39	$125.00
51772	26	URETHRA PRESSURE PROFILE	Surgery	1.61	0.57	$125.00
51784	26	ANAL/URINARY MUSCLE STUDY	Surgery	1.53	0.57	$125.00
51785	26	ANAL/URINARY MUSCLE STUDY	Surgery	1.53	0.57	$125.00
51792	26	URINARY REFLEX STUDY	Surgery	1.10	0.49	$125.00
51795	26	URINE VOIDING PRESSURE STUDY	Surgery	1.53	0.55	$125.00
51797	26	INTRAABDOMINAL PRESSURE TEST	Surgery	1.60	0.55	$125.00
51800	0	REVISION OF BLADDER/URETHRA	Surgery	17.42	10.10	$125.00
51820	0	REVISION OF URINARY TRACT	Surgery	17.89	9.84	$125.00
51840	0	ATTACH BLADDER/URETHRA	Surgery	10.71	7.31	$125.00
51841	0	ATTACH BLADDER/URETHRA	Surgery	13.03	9.01	$125.00
51845	0	REPAIR BLADDER NECK	Surgery	9.73	7.70	$125.00
51860	0	REPAIR OF BLADDER WOUND	Surgery	12.02	7.75	$125.00
51865	0	REPAIR OF BLADDER WOUND	Surgery	15.04	9.32	$125.00
51880	0	REPAIR OF BLADDER OPENING	Surgery	7.66	5.42	$125.00
51900	0	REPAIR BLADDER/VAGINA LESION	Surgery	12.97	9.02	$125.00
51920	0	CLOSE BLADDER-UTERUS FISTULA	Surgery	11.81	7.65	$125.00
51925	0	HYSTERECTOMY/BLADDER REPAIR	Surgery	15.58	9.41	$125.00
51940	0	CORRECTION OF BLADDER DEFECT	Surgery	28.43	15.82	$125.00
51960	0	REVISION OF BLADDER & BOWEL	Surgery	23.01	15.14	$125.00
51980	0	CONSTRUCT BLADDER OPENING	Surgery	11.36	7.24	$125.00
51990	0	LAPARO URETHRAL SUSPENSION	Surgery	12.50	6.28	$125.00
51992	0	LAPARO SLING OPERATION	Surgery	14.01	6.39	$125.00
52000	0	CYSTOSCOPY	Surgery	2.01	0.68	$125.00
52005	0	CYSTOSCOPY & URETER CATHETER	Surgery	2.37	1.19	$125.00
52007	0	CYSTOSCOPY AND BIOPSY	Surgery	3.02	1.52	$125.00
52010	0	CYSTOSCOPY & DUCT CATHETER	Surgery	3.02	1.02	$125.00
52204	0	CYSTOSCOPY	Surgery	2.37	1.24	$125.00
52214	0	CYSTOSCOPY AND TREATMENT	Surgery	3.71	1.69	$125.00
52224	0	CYSTOSCOPY AND TREATMENT	Surgery	3.14	1.58	$125.00
52234	0	CYSTOSCOPY AND TREATMENT	Surgery	4.63	2.44	$125.00
52235	0	CYSTOSCOPY AND TREATMENT	Surgery	5.45	2.99	$125.00
52240	0	CYSTOSCOPY AND TREATMENT	Surgery	9.72	5.32	$125.00
52250	0	CYSTOSCOPY AND RADIOTRACER	Surgery	4.50	1.90	$125.00
52260	0	CYSTOSCOPY AND TREATMENT	Surgery	3.92	1.56	$125.00
52265	0	CYSTOSCOPY AND TREATMENT	Surgery	2.94	3.03	$125.00
52270	0	CYSTOSCOPY & REVISE URETHRA	Surgery	3.37	1.79	$125.00
52275	0	CYSTOSCOPY & REVISE URETHRA	Surgery	4.70	2.10	$125.00
52276	0	CYSTOSCOPY AND TREATMENT	Surgery	5.00	2.49	$125.00
52277	0	CYSTOSCOPY AND TREATMENT	Surgery	6.17	2.88	$125.00
52281	0	CYSTOSCOPY AND TREATMENT	Surgery	2.80	1.01	$125.00
52282	0	CYSTOSCOPY, IMPLANT STENT	Surgery	6.40	2.85	$125.00
52283	0	CYSTOSCOPY AND TREATMENT	Surgery	3.74	1.35	$125.00
52285	0	CYSTOSCOPY AND TREATMENT	Surgery	3.61	1.31	$125.00
52290	0	CYSTOSCOPY AND TREATMENT	Surgery	4.59	1.79	$125.00
52300	0	CYSTOSCOPY AND TREATMENT	Surgery	5.31	2.27	$125.00
52301	0	CYSTOSCOPY AND TREATMENT	Surgery	5.51	2.28	$125.00
52305	0	CYSTOSCOPY AND TREATMENT	Surgery	5.31	2.28	$125.00
52310	0	CYSTOSCOPY AND TREATMENT	Surgery	2.81	1.52	$125.00
52315	0	CYSTOSCOPY AND TREATMENT	Surgery	5.21	2.41	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
52317	0	REMOVE BLADDER STONE	Surgery	6.72	3.36	$125.00
52318	0	REMOVE BLADDER STONE	Surgery	9.19	4.44	$125.00
52320	0	CYSTOSCOPY AND TREATMENT	Surgery	4.70	2.50	$125.00
52325	0	CYSTOSCOPY, STONE REMOVAL	Surgery	6.16	3.38	$125.00
52327	0	CYSTOSCOPY, INJECT MATERIAL	Surgery	5.19	2.31	$125.00
52330	0	CYSTOSCOPY AND TREATMENT	Surgery	5.04	2.20	$125.00
52332	0	CYSTOSCOPY AND TREATMENT	Surgery	2.83	1.56	$125.00
52334	0	CREATE PASSAGE TO KIDNEY	Surgery	4.83	2.12	$125.00
52341	0	CYSTO W/URETER STRICTURE TX	Surgery	6.00	2.40	$125.00
52342	0	CYSTO W/UP STRICTURE TX	Surgery	6.50	2.60	$125.00
52343	0	CYSTO W/RENAL STRICTURE TX	Surgery	7.20	2.88	$125.00
52344	0	CYSTO/URETERO, STONE REMOVE	Surgery	7.70	3.08	$125.00
52345	0	CYSTO/URETERO W/UP STRICTURE	Surgery	8.20	3.28	$125.00
52346	0	CYSTOURETERO W/RENAL STRICT	Surgery	9.23	3.69	$125.00
52351	0	CYSTOURETRO & OR PYELOSCOPE	Surgery	5.86	2.74	$125.00
52352	0	CYSTOURETRO W/STONE REMOVE	Surgery	6.88	3.78	$125.00
52353	0	CYSTOURETERO W/LITHOTRIPSY	Surgery	7.97	4.38	$125.00
52354	0	CYSTOURETERO W/BIOPSY	Surgery	7.34	3.44	$125.00
52355	0	CYSTOURETERO W/EXCISE TUMOR	Surgery	8.82	3.82	$125.00
52400	0	CYSTOURETERO W/CONGEN REPR	Surgery	9.68	5.42	$125.00
52450	0	INCISION OF PROSTATE	Surgery	7.64	5.89	$125.00
52500	0	REVISION OF BLADDER NECK	Surgery	8.47	6.75	$125.00
52510	0	DILATION PROSTATIC URETHRA	Surgery	6.72	6.05	$125.00
52601	0	PROSTATECTOMY (TURP)	Surgery	12.37	8.94	$125.00
52606	0	CONTROL POSTOP BLEEDING	Surgery	8.13	5.27	$125.00
52612	0	PROSTATECTOMY, FIRST STAGE	Surgery	7.98	7.01	$125.00
52614	0	PROSTATECTOMY, SECOND STAGE	Surgery	6.84	6.25	$125.00
52620	0	REMOVE RESIDUAL PROSTATE	Surgery	6.61	5.73	$125.00
52630	0	REMOVE PROSTATE REGROWTH	Surgery	7.26	6.62	$125.00
52640	0	RELIEVE BLADDER CONTRACTURE	Surgery	6.62	5.71	$125.00
52647	0	LASER SURGERY OF PROSTATE	Surgery	10.36	7.04	$125.00
52648	0	LASER SURGERY OF PROSTATE	Surgery	11.21	8.67	$125.00
52700	0	DRAINAGE OF PROSTATE ABSCESS	Surgery	6.80	5.28	$125.00
53000	0	INCISION OF URETHRA	Surgery	2.28	2.29	$125.00
53010	0	INCISION OF URETHRA	Surgery	3.64	3.87	$125.00
53020	0	INCISION OF URETHRA	Surgery	1.77	0.71	$125.00
53025	0	INCISION OF URETHRA	Surgery	1.13	3.46	$125.00
53040	0	DRAINAGE OF URETHRA ABSCESS	Surgery	6.40	6.32	$125.00
53060	0	DRAINAGE OF URETHRA ABSCESS	Surgery	2.63	4.62	$125.00
53080	0	DRAINAGE OF URINARY LEAKAGE	Surgery	6.29	6.80	$125.00
53085	0	DRAINAGE OF URINARY LEAKAGE	Surgery	10.27	8.68	$125.00
53200	0	BIOPSY OF URETHRA	Surgery	2.59	1.01	$125.00
53210	0	REMOVAL OF URETHRA	Surgery	12.57	7.49	$125.00
53215	0	REMOVAL OF URETHRA	Surgery	15.58	8.95	$125.00
53220	0	TREATMENT OF URETHRA LESION	Surgery	7.00	5.20	$125.00
53230	0	REMOVAL OF URETHRA LESION	Surgery	9.58	6.64	$125.00
53235	0	REMOVAL OF URETHRA LESION	Surgery	10.14	5.99	$125.00
53240	0	SURGERY FOR URETHRA POUCH	Surgery	6.45	4.80	$125.00
53250	0	REMOVAL OF URETHRA GLAND	Surgery	5.89	4.21	$125.00
53260	0	TREATMENT OF URETHRA LESION	Surgery	2.98	2.01	$125.00
53265	0	TREATMENT OF URETHRA LESION	Surgery	3.12	2.19	$125.00
53270	0	REMOVAL OF URETHRA GLAND	Surgery	3.09	4.28	$125.00
53275	0	REPAIR OF URETHRA DEFECT	Surgery	4.53	3.02	$125.00
53400	0	REVISE URETHRA, STAGE 1	Surgery	12.77	7.74	$125.00
53405	0	REVISE URETHRA, STAGE 2	Surgery	14.48	8.84	$125.00
53410	0	RECONSTRUCTION OF URETHRA	Surgery	16.44	8.78	$125.00
53415	0	RECONSTRUCTION OF URETHRA	Surgery	19.41	10.35	$125.00
53420	0	RECONSTRUCT URETHRA, STAGE 1	Surgery	14.08	9.13	$125.00
53425	0	RECONSTRUCT URETHRA, STAGE 2	Surgery	15.98	9.04	$125.00
53430	0	RECONSTRUCTION OF URETHRA	Surgery	16.34	8.48	$125.00
53440	0	CORRECT BLADDER FUNCTION	Surgery	12.34	9.23	$125.00
53442	0	REMOVE PERINEAL PROSTHESIS	Surgery	8.27	5.85	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
53443	0	RECONSTRUCTION OF URETHRA	Surgery	19.89	9.72	$125.00
53445	0	CORRECT URINE FLOW CONTROL	Surgery	14.06	10.30	$125.00
53447	0	REMOVE ARTIFICIAL SPHINCTER	Surgery	13.17	8.07	$125.00
53449	0	CORRECT ARTIFICIAL SPHINCTER	Surgery	9.70	6.99	$125.00
53450	0	REVISION OF URETHRA	Surgery	6.14	4.31	$125.00
53460	0	REVISION OF URETHRA	Surgery	7.12	4.51	$125.00
53502	0	REPAIR OF URETHRA INJURY	Surgery	7.63	5.33	$125.00
53505	0	REPAIR OF URETHRA INJURY	Surgery	7.63	5.35	$125.00
53510	0	REPAIR OF URETHRA INJURY	Surgery	10.11	6.64	$125.00
53515	0	REPAIR OF URETHRA INJURY	Surgery	13.31	7.88	$125.00
53520	0	REPAIR OF URETHRA DEFECT	Surgery	8.68	5.89	$125.00
53600	0	DILATE URETHRA STRICTURE	Surgery	1.21	2.96	$125.00
53601	0	DILATE URETHRA STRICTURE	Surgery	0.96	2.90	$125.00
53605	0	DILATE URETHRA STRICTURE	Surgery	1.28	0.45	$125.00
53620	0	DILATE URETHRA STRICTURE	Surgery	1.62	4.38	$125.00
53621	0	DILATE URETHRA STRICTURE	Surgery	1.35	4.37	$125.00
53660	0	DILATION OF URETHRA	Surgery	0.71	2.78	$125.00
53661	0	DILATION OF URETHRA	Surgery	0.72	2.81	$125.00
53665	0	DILATION OF URETHRA	Surgery	0.76	0.29	$125.00
53670	0	INSERT URINARY CATHETER	Surgery	0.50	2.59	$125.00
53675	0	INSERT URINARY CATHETER	Surgery	1.47	3.56	$125.00
53850	0	PROSTATIC MICROWAVE THERMOTX	Surgery	9.45	5.51	$125.00
53852	0	PROSTATIC RF THERMOTX	Surgery	9.88	5.78	$125.00
54000	0	SLITTING OF PREPUCE	Surgery	1.54	4.11	$125.00
54001	0	SLITTING OF PREPUCE	Surgery	2.19	1.71	$125.00
54015	0	DRAIN PENIS LESION	Surgery	5.32	2.51	$125.00
54050	0	DESTRUCTION, PENIS LESION(S)	Surgery	1.24	2.07	$125.00
54055	0	DESTRUCTION, PENIS LESION(S)	Surgery	1.22	4.91	$125.00
54056	0	CRYOSURGERY, PENIS LESION(S)	Surgery	1.24	2.36	$125.00
54057	0	LASER SURG, PENIS LESION(S)	Surgery	1.24	1.33	$125.00
54060	0	EXCISION OF PENIS LESION(S)	Surgery	1.93	1.47	$125.00
54065	0	DESTRUCTION, PENIS LESION(S)	Surgery	2.42	1.87	$125.00
54100	0	BIOPSY OF PENIS	Surgery	1.90	0.73	$125.00
54105	0	BIOPSY OF PENIS	Surgery	3.50	1.82	$125.00
54110	0	TREATMENT OF PENIS LESION	Surgery	10.13	7.34	$125.00
54111	0	TREAT PENIS LESION, GRAFT	Surgery	13.57	8.99	$125.00
54112	0	TREAT PENIS LESION, GRAFT	Surgery	15.86	10.07	$125.00
54115	0	TREATMENT OF PENIS LESION	Surgery	6.15	5.90	$125.00
54120	0	PARTIAL REMOVAL OF PENIS	Surgery	9.97	7.42	$125.00
54125	0	REMOVAL OF PENIS	Surgery	13.53	9.67	$125.00
54130	0	REMOVE PENIS & NODES	Surgery	20.14	12.37	$125.00
54135	0	REMOVE PENIS & NODES	Surgery	26.36	14.82	$125.00
54150	0	CIRCUMCISION	Surgery	1.81	5.84	$125.00
54152	0	CIRCUMCISION	Surgery	2.31	1.76	$125.00
54160	0	CIRCUMCISION	Surgery	2.48	1.71	$125.00
54161	0	CIRCUMCISION	Surgery	3.27	2.07	$125.00
54200	0	TREATMENT OF PENIS LESION	Surgery	1.06	2.01	$125.00
54205	0	TREATMENT OF PENIS LESION	Surgery	7.93	6.66	$125.00
54220	0	TREATMENT OF PENIS LESION	Surgery	2.42	1.17	$125.00
54230	0	PREPARE PENIS STUDY	Surgery	1.34	0.70	$125.00
54231	0	DYNAMIC CAVERNOSOMETRY	Surgery	2.04	1.99	$125.00
54235	0	PENILE INJECTION	Surgery	1.19	0.94	$125.00
54240	26	PENIS STUDY	Surgery	1.31	0.48	$125.00
54250	26	PENIS STUDY	Surgery	2.22	0.70	$125.00
54300	0	REVISION OF PENIS	Surgery	10.41	8.06	$125.00
54304	0	REVISION OF PENIS	Surgery	12.49	9.30	$125.00
54308	0	RECONSTRUCTION OF URETHRA	Surgery	11.83	8.33	$125.00
54312	0	RECONSTRUCTION OF URETHRA	Surgery	13.57	10.10	$125.00
54316	0	RECONSTRUCTION OF URETHRA	Surgery	16.82	11.73	$125.00
54318	0	RECONSTRUCTION OF URETHRA	Surgery	11.25	8.86	$125.00
54322	0	RECONSTRUCTION OF URETHRA	Surgery	13.01	8.52	$125.00
54324	0	RECONSTRUCTION OF URETHRA	Surgery	16.31	11.46	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUs (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUs — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
54326	0	RECONSTRUCTION OF URETHRA	Surgery	15.72	10.30	$125.00
54328	0	REVISE PENIS/URETHRA	Surgery	15.65	10.60	$125.00
54332	0	REVISE PENIS/URETHRA	Surgery	17.08	12.11	$125.00
54336	0	REVISE PENIS/URETHRA	Surgery	20.04	17.13	$125.00
54340	0	SECONDARY URETHRAL SURGERY	Surgery	8.91	7.39	$125.00
54344	0	SECONDARY URETHRAL SURGERY	Surgery	15.94	13.08	$125.00
54348	0	SECONDARY URETHRAL SURGERY	Surgery	17.15	12.52	$125.00
54352	0	RECONSTRUCT URETHRA/PENIS	Surgery	24.74	15.70	$125.00
54360	0	PENIS PLASTIC SURGERY	Surgery	11.93	8.00	$125.00
54380	0	REPAIR PENIS	Surgery	13.18	9.38	$125.00
54385	0	REPAIR PENIS	Surgery	15.39	11.15	$125.00
54390	0	REPAIR PENIS AND BLADDER	Surgery	21.61	13.64	$125.00
54400	0	INSERT SEMI-RIGID PROSTHESIS	Surgery	8.99	7.19	$125.00
54401	0	INSERT SELF-CONTD PROSTHESIS	Surgery	10.28	8.18	$125.00
54402	0	REMOVE PENIS PROSTHESIS	Surgery	9.21	6.23	$125.00
54405	0	INSERT MULTI-COMP PROSTHESIS	Surgery	13.43	9.95	$125.00
54407	0	REMOVE MULTI-COMP PROSTHESIS	Surgery	13.34	8.68	$125.00
54409	0	REVISE PENIS PROSTHESIS	Surgery	12.20	7.88	$125.00
54420	0	REVISION OF PENIS	Surgery	11.42	8.13	$125.00
54430	0	REVISION OF PENIS	Surgery	10.15	7.58	$125.00
54435	0	REVISION OF PENIS	Surgery	8.12	5.38	$125.00
54450	0	PREPUTIAL STRETCHING	Surgery	1.12	0.53	$125.00
54500	0	BIOPSY OF TESTIS	Surgery	1.31	4.56	$125.00
54505	0	BIOPSY OF TESTIS	Surgery	3.46	2.40	$125.00
54510	0	REMOVAL OF TESTIS LESION	Surgery	5.45	3.36	$125.00
54512	0	EXCISE LESION TESTIS	Surgery	8.58	4.86	$125.00
54520	0	REMOVAL OF TESTIS	Surgery	5.23	4.07	$125.00
54522	0	ORCHIECTOMY, PARTIAL	Surgery	9.50	5.79	$125.00
54530	0	REMOVAL OF TESTIS	Surgery	8.58	5.83	$125.00
54535	0	EXTENSIVE TESTIS SURGERY	Surgery	12.16	7.57	$125.00
54550	0	EXPLORATION FOR TESTIS	Surgery	7.78	4.91	$125.00
54560	0	EXPLORATION FOR TESTIS	Surgery	11.13	7.03	$125.00
54600	0	REDUCE TESTIS TORSION	Surgery	7.01	4.37	$125.00
54620	0	SUSPENSION OF TESTIS	Surgery	4.90	3.16	$125.00
54640	0	SUSPENSION OF TESTIS	Surgery	6.90	5.20	$125.00
54650	0	ORCHIOPEXY (FOWLER-STEPHENS)	Surgery	11.45	7.40	$125.00
54660	0	REVISION OF TESTIS	Surgery	5.11	3.34	$125.00
54670	0	REPAIR TESTIS INJURY	Surgery	6.41	4.24	$125.00
54680	0	RELOCATION OF TESTIS(ES)	Surgery	12.65	7.75	$125.00
54690	0	LAPAROSCOPY, ORCHIECTOMY	Surgery	10.96	6.79	$125.00
54692	0	LAPAROSCOPY, ORCHIOPEXY	Surgery	12.88	5.68	$125.00
54700	0	DRAINAGE OF SCROTUM	Surgery	3.43	2.69	$125.00
54800	0	BIOPSY OF EPIDIDYMIS	Surgery	2.33	1.16	$125.00
54820	0	EXPLORATION OF EPIDIDYMIS	Surgery	5.14	3.34	$125.00
54830	0	REMOVE EPIDIDYMIS LESION	Surgery	5.38	3.65	$125.00
54840	0	REMOVE EPIDIDYMIS LESION	Surgery	5.20	3.95	$125.00
54860	0	REMOVAL OF EPIDIDYMIS	Surgery	6.32	4.46	$125.00
54861	0	REMOVAL OF EPIDIDYMIS	Surgery	8.90	5.89	$125.00
54900	0	FUSION OF SPERMATIC DUCTS	Surgery	13.20	7.78	$125.00
54901	0	FUSION OF SPERMATIC DUCTS	Surgery	17.94	10.68	$125.00
55000	0	DRAINAGE OF HYDROCELE	Surgery	1.43	1.65	$125.00
55040	0	REMOVAL OF HYDROCELE	Surgery	5.36	3.85	$125.00
55041	0	REMOVAL OF HYDROCELES	Surgery	7.74	5.32	$125.00
55060	0	REPAIR OF HYDROCELE	Surgery	5.52	3.68	$125.00
55100	0	DRAINAGE OF SCROTUM ABSCESS	Surgery	2.13	2.78	$125.00
55110	0	EXPLORE SCROTUM	Surgery	5.70	3.58	$125.00
55120	0	REMOVAL OF SCROTUM LESION	Surgery	5.09	2.95	$125.00
55150	0	REMOVAL OF SCROTUM	Surgery	7.22	4.82	$125.00
55175	0	REVISION OF SCROTUM	Surgery	5.24	3.92	$125.00
55180	0	REVISION OF SCROTUM	Surgery	10.72	6.56	$125.00
55200	0	INCISION OF SPERM DUCT	Surgery	4.24	2.79	$125.00
55250	0	REMOVAL OF SPERM DUCT(S)	Surgery	3.29	2.57	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUs (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUs — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
55300	0	PREPARE, SPERM DUCT X-RAY	Surgery	3.51	1.81	$125.00
55400	0	REPAIR OF SPERM DUCT	Surgery	8.49	5.61	$125.00
55450	0	LIGATION OF SPERM DUCT	Surgery	4.12	2.50	$125.00
55500	0	REMOVAL OF HYDROCELE	Surgery	5.59	3.87	$125.00
55520	0	REMOVAL OF SPERM CORD LESION	Surgery	6.03	3.66	$125.00
55530	0	REVISE SPERMATIC CORD VEINS	Surgery	5.66	4.18	$125.00
55535	0	REVISE SPERMATIC CORD VEINS	Surgery	6.56	4.20	$125.00
55540	0	REVISE HERNIA & SPERM VEINS	Surgery	7.67	4.50	$125.00
55550	0	LAPARO LIGATE SPERMATIC VEIN	Surgery	6.57	3.72	$125.00
55600	0	INCISE SPERM DUCT POUCH	Surgery	6.38	4.26	$125.00
55605	0	INCISE SPERM DUCT POUCH	Surgery	7.96	5.27	$125.00
55650	0	REMOVE SPERM DUCT POUCH	Surgery	11.80	6.54	$125.00
55680	0	REMOVE SPERM POUCH LESION	Surgery	5.19	4.05	$125.00
55700	0	BIOPSY OF PROSTATE	Surgery	1.57	0.80	$125.00
55705	0	BIOPSY OF PROSTATE	Surgery	4.57	3.63	$125.00
55720	0	DRAINAGE OF PROSTATE ABSCESS	Surgery	7.64	5.27	$125.00
55725	0	DRAINAGE OF PROSTATE ABSCESS	Surgery	8.68	6.31	$125.00
55801	0	REMOVAL OF PROSTATE	Surgery	17.80	10.39	$125.00
55810	0	EXTENSIVE PROSTATE SURGERY	Surgery	22.58	13.28	$125.00
55812	0	EXTENSIVE PROSTATE SURGERY	Surgery	27.51	15.11	$125.00
55815	0	EXTENSIVE PROSTATE SURGERY	Surgery	30.46	17.54	$125.00
55821	0	REMOVAL OF PROSTATE	Surgery	14.25	9.49	$125.00
55831	0	REMOVAL OF PROSTATE	Surgery	15.62	10.12	$125.00
55840	0	EXTENSIVE PROSTATE SURGERY	Surgery	22.69	13.23	$125.00
55842	0	EXTENSIVE PROSTATE SURGERY	Surgery	24.38	14.39	$125.00
55845	0	EXTENSIVE PROSTATE SURGERY	Surgery	28.55	16.99	$125.00
55859	0	PERCUT/NEEDLE INSERT, PROS	Surgery	12.52	7.05	$125.00
55860	0	SURGICAL EXPOSURE, PROSTATE	Surgery	14.45	8.06	$125.00
55862	0	EXTENSIVE PROSTATE SURGERY	Surgery	18.39	10.22	$125.00
55865	0	EXTENSIVE PROSTATE SURGERY	Surgery	22.87	14.87	$125.00
55870	0	ELECTROEJACULATION	Surgery	2.58	1.36	$125.00
55873	0	CRYOABLATE PROSTATE	Surgery	17.80	10.16	$125.00
56405	0	I & D OF VULVA/PERINEUM	Surgery	1.44	1.92	$125.00
56420	0	DRAINAGE OF GLAND ABSCESS	Surgery	1.39	1.91	$125.00
56440	0	SURGERY FOR VULVA LESION	Surgery	2.84	2.38	$125.00
56441	0	LYSIS OF LABIAL LESION(S)	Surgery	1.97	1.91	$125.00
56501	0	DESTRUCTION, VULVA LESION(S)	Surgery	1.53	1.82	$125.00
56515	0	DESTRUCTION, VULVA LESION(S)	Surgery	1.88	1.99	$125.00
56605	0	BIOPSY OF VULVA/PERINEUM	Surgery	1.10	1.48	$125.00
56606	0	BIOPSY OF VULVA/PERINEUM	Surgery	0.55	1.22	$125.00
56620	0	PARTIAL REMOVAL OF VULVA	Surgery	7.47	5.36	$125.00
56625	0	COMPLETE REMOVAL OF VULVA	Surgery	8.40	6.78	$125.00
56630	0	EXTENSIVE VULVA SURGERY	Surgery	12.36	9.32	$125.00
56631	0	EXTENSIVE VULVA SURGERY	Surgery	16.20	12.45	$125.00
56632	0	EXTENSIVE VULVA SURGERY	Surgery	20.29	14.65	$125.00
56633	0	EXTENSIVE VULVA SURGERY	Surgery	16.47	11.23	$125.00
56634	0	EXTENSIVE VULVA SURGERY	Surgery	17.88	13.45	$125.00
56637	0	EXTENSIVE VULVA SURGERY	Surgery	21.97	15.20	$125.00
56640	0	EXTENSIVE VULVA SURGERY	Surgery	22.17	14.65	$125.00
56700	0	PARTIAL REMOVAL OF HYMEN	Surgery	2.52	1.98	$125.00
56720	0	INCISION OF HYMEN	Surgery	0.68	0.64	$125.00
56740	0	REMOVE VAGINA GLAND LESION	Surgery	3.78	2.71	$125.00
56800	0	REPAIR OF VAGINA	Surgery	3.89	2.77	$125.00
56805	0	REPAIR CLITORIS	Surgery	18.88	10.16	$125.00
56810	0	REPAIR OF PERINEUM	Surgery	4.13	2.76	$125.00
57000	0	EXPLORATION OF VAGINA	Surgery	2.97	2.25	$125.00
57010	0	DRAINAGE OF PELVIC ABSCESS	Surgery	8.03	3.56	$125.00
57020	0	DRAINAGE OF PELVIC FLUID	Surgery	1.50	0.65	$125.00
57022	0	I &D VAGINAL HEMATOMA, OB	Surgery	2.56	1.60	$125.00
57023	0	I &D VAG HEMATOMA, TRAUMA	Surgery	2.56	1.60	$125.00
57061	0	DESTRUCTION VAGINA LESION(S)	Surgery	1.25	1.86	$125.00
57065	0	DESTRUCTION VAGINA LESION(S)	Surgery	2.61	2.45	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUs (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUs — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
57100	0	BIOPSY OF VAGINA	Surgery	0.97	1.23	$125.00
57105	0	BIOPSY OF VAGINA	Surgery	1.69	2.05	$125.00
57106	0	REMOVE VAGINA WALL, PARTIAL	Surgery	6.36	2.48	$125.00
57107	0	REMOVE VAGINA TISSUE, PART	Surgery	23.00	10.32	$125.00
57109	0	VAGINECTOMY PARTIAL W/NODES	Surgery	27.00	11.90	$125.00
57110	0	REMOVE VAGINA WALL, COMPLETE	Surgery	14.29	7.54	$125.00
57111	0	REMOVE VAGINA TISSUE, COMPL	Surgery	27.00	12.17	$125.00
57112	0	VAGINECTOMY W/NODES, COMPL	Surgery	29.00	12.77	$125.00
57120	0	CLOSURE OF VAGINA	Surgery	7.41	5.30	$125.00
57130	0	REMOVE VAGINA LESION	Surgery	2.43	2.26	$125.00
57135	0	REMOVE VAGINA LESION	Surgery	2.67	2.15	$125.00
57150	0	TREAT VAGINA INFECTION	Surgery	0.55	0.79	$125.00
57160	0	INSERT PESSARY/OTHER DEVICE	Surgery	0.89	1.07	$125.00
57170	0	FITTING OF DIAPHRAGM/CAP	Surgery	0.91	1.12	$125.00
57180	0	TREAT VAGINAL BLEEDING	Surgery	1.58	1.81	$125.00
57200	0	REPAIR OF VAGINA	Surgery	3.94	2.93	$125.00
57210	0	REPAIR VAGINA/PERINEUM	Surgery	5.17	3.45	$125.00
57220	0	REVISION OF URETHRA	Surgery	4.31	3.69	$125.00
57230	0	REPAIR OF URETHRAL LESION	Surgery	5.84	4.16	$125.00
57240	0	REPAIR BLADDER & VAGINA	Surgery	6.07	5.04	$125.00
57250	0	REPAIR RECTUM & VAGINA	Surgery	5.53	4.46	$125.00
57260	0	REPAIR OF VAGINA	Surgery	8.27	5.99	$125.00
57265	0	EXTENSIVE REPAIR OF VAGINA	Surgery	11.34	7.62	$125.00
57268	0	REPAIR OF BOWEL BULGE	Surgery	6.76	5.09	$125.00
57270	0	REPAIR OF BOWEL POUCH	Surgery	12.11	6.49	$125.00
57280	0	SUSPENSION OF VAGINA	Surgery	15.84	7.80	$125.00
57282	0	REPAIR OF VAGINAL PROLAPSE	Surgery	8.86	6.18	$125.00
57284	0	REPAIR PARAVAGINAL DEFECT	Surgery	12.70	7.54	$125.00
57287	0	REVISE/REMOVE SLING REPAIR	Surgery	10.71	7.02	$125.00
57288	0	REPAIR BLADDER DEFECT	Surgery	13.02	8.01	$125.00
57289	0	REPAIR BLADDER & VAGINA	Surgery	11.58	7.19	$125.00
57291	0	CONSTRUCTION OF VAGINA	Surgery	7.95	6.01	$125.00
57292	0	CONSTRUCT VAGINA WITH GRAFT	Surgery	13.69	7.22	$125.00
57300	0	REPAIR RECTUM-VAGINA FISTULA	Surgery	7.61	5.67	$125.00
57305	0	REPAIR RECTUM-VAGINA FISTULA	Surgery	13.77	7.37	$125.00
57307	0	FISTULA REPAIR & COLOSTOMY	Surgery	15.93	7.49	$125.00
57308	0	FISTULA REPAIR, TRANSPERINE	Surgery	9.84	6.26	$125.00
57310	0	REPAIR URETHROVAGINAL LESION	Surgery	6.78	4.65	$125.00
57311	0	REPAIR URETHROVAGINAL LESION	Surgery	7.98	5.41	$125.00
57320	0	REPAIR BLADDER-VAGINA LESION	Surgery	8.61	6.34	$125.00
57330	0	REPAIR BLADDER-VAGINA LESION	Surgery	12.35	7.20	$125.00
57335	0	REPAIR VAGINA	Surgery	18.73	8.74	$125.00
57400	0	DILATION OF VAGINA	Surgery	2.27	1.06	$125.00
57410	0	PELVIC EXAMINATION	Surgery	1.75	0.90	$125.00
57415	0	REMOVE VAGINAL FOREIGN BODY	Surgery	2.17	2.63	$125.00
57452	0	EXAMINATION OF VAGINA	Surgery	0.99	1.33	$125.00
57454	0	VAGINA EXAMINATION & BIOPSY	Surgery	1.27	1.61	$125.00
57460	0	CERVIX EXCISION	Surgery	2.83	1.12	$125.00
57500	0	BIOPSY OF CERVIX	Surgery	0.97	1.87	$125.00
57505	0	ENDOCERVICAL CURETTAGE	Surgery	1.14	1.59	$125.00
57510	0	CAUTERIZATION OF CERVIX	Surgery	1.90	2.44	$125.00
57511	0	CRYOCAUTERY OF CERVIX	Surgery	1.90	1.99	$125.00
57513	0	LASER SURGERY OF CERVIX	Surgery	1.90	1.69	$125.00
57520	0	CONIZATION OF CERVIX	Surgery	4.04	2.99	$125.00
57522	0	CONIZATION OF CERVIX	Surgery	3.36	2.79	$125.00
57530	0	REMOVAL OF CERVIX	Surgery	4.79	3.62	$125.00
57531	0	REMOVAL OF CERVIX, RADICAL	Surgery	28.00	14.69	$125.00
57540	0	REMOVAL OF RESIDUAL CERVIX	Surgery	12.22	6.43	$125.00
57545	0	REMOVE CERVIX/REPAIR PELVIS	Surgery	13.03	6.18	$125.00
57550	0	REMOVAL OF RESIDUAL CERVIX	Surgery	5.53	4.46	$125.00
57555	0	REMOVE CERVIX/REPAIR VAGINA	Surgery	8.95	6.78	$125.00
57556	0	REMOVE CERVIX, REPAIR BOWEL	Surgery	8.37	6.14	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUs (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUs — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
57700	0	REVISION OF CERVIX	Surgery	3.55	2.48	$125.00
57720	0	REVISION OF CERVIX	Surgery	4.13	3.17	$125.00
57800	0	DILATION OF CERVICAL CANAL	Surgery	0.77	0.99	$125.00
57820	0	D & C OF RESIDUAL CERVIX	Surgery	1.67	2.19	$125.00
58100	0	BIOPSY OF UTERUS LINING	Surgery	0.71	1.67	$125.00
58120	0	DILATION AND CURETTAGE	Surgery	3.27	2.50	$125.00
58140	0	REMOVAL OF UTERUS LESION	Surgery	14.60	7.56	$125.00
58145	0	REMOVAL OF UTERUS LESION	Surgery	8.04	5.82	$125.00
58150	0	TOTAL HYSTERECTOMY	Surgery	15.24	8.19	$125.00
58152	0	TOTAL HYSTERECTOMY	Surgery	15.09	8.80	$125.00
58180	0	PARTIAL HYSTERECTOMY	Surgery	15.29	8.23	$125.00
58200	0	EXTENSIVE HYSTERECTOMY	Surgery	21.59	11.80	$125.00
58210	0	EXTENSIVE HYSTERECTOMY	Surgery	28.85	15.24	$125.00
58240	0	REMOVAL OF PELVIS CONTENTS	Surgery	38.39	22.00	$125.00
58260	0	VAGINAL HYSTERECTOMY	Surgery	12.20	6.99	$125.00
58262	0	VAGINAL HYSTERECTOMY	Surgery	13.99	7.54	$125.00
58263	0	VAGINAL HYSTERECTOMY	Surgery	15.28	8.17	$125.00
58267	0	HYSTERECTOMY & VAGINA REPAIR	Surgery	15.00	8.41	$125.00
58270	0	HYSTERECTOMY & VAGINA REPAIR	Surgery	13.48	7.64	$125.00
58275	0	HYSTERECTOMY/REVISE VAGINA	Surgery	14.98	8.25	$125.00
58280	0	HYSTERECTOMY/REVISE VAGINA	Surgery	15.41	8.20	$125.00
58285	0	EXTENSIVE HYSTERECTOMY	Surgery	18.57	10.50	$125.00
58300	0	INSERT INTRAUTERINE DEVICE	Surgery	1.01	1.25	$125.00
58301	0	REMOVE INTRAUTERINE DEVICE	Surgery	1.27	1.27	$125.00
58321	0	ARTIFICIAL INSEMINATION	Surgery	0.92	0.85	$125.00
58322	0	ARTIFICIAL INSEMINATION	Surgery	1.10	0.95	$125.00
58323	0	SPERM WASHING	Surgery	0.23	0.43	$125.00
58340	0	CATHETER FOR HYSTEROGRAPHY	Surgery	0.88	8.71	$125.00
58345	0	REOPEN FALLOPIAN TUBE	Surgery	4.66	2.30	$125.00
58350	0	REOPEN FALLOPIAN TUBE	Surgery	1.01	1.67	$125.00
58353	0	ENDOMETR ABLATE, THERMAL	Surgery	3.56	2.16	$125.00
58400	0	SUSPENSION OF UTERUS	Surgery	6.36	4.49	$125.00
58410	0	SUSPENSION OF UTERUS	Surgery	12.73	6.36	$125.00
58520	0	REPAIR OF RUPTURED UTERUS	Surgery	11.92	5.55	$125.00
58540	0	REVISION OF UTERUS	Surgery	14.64	6.94	$125.00
58550	0	LAPARO-ASST VAG HYSTERECTOMY	Surgery	14.19	7.58	$125.00
58551	0	LAPAROSCOPY, REMOVE MYOMA	Surgery	14.21	6.28	$125.00
58555	0	HYSTEROSCOPY, DX, SEP PROC	Surgery	3.33	1.62	$125.00
58558	0	HYSTEROSCOPY, BIOPSY	Surgery	4.75	2.06	$125.00
58559	0	HYSTEROSCOPY, LYSIS	Surgery	6.17	2.86	$125.00
58560	0	HYSTEROSCOPY, RESECT SEPTUM	Surgery	7.00	3.15	$125.00
58561	0	HYSTEROSCOPY, REMOVE MYOMA	Surgery	10.00	4.36	$125.00
58562	0	HYSTEROSCOPY, REMOVE FB	Surgery	5.21	2.19	$125.00
58563	0	HYSTEROSCOPY, ABLATION	Surgery	6.17	3.04	$125.00
58600	0	DIVISION OF FALLOPIAN TUBE	Surgery	3.84	3.08	$125.00
58605	0	DIVISION OF FALLOPIAN TUBE	Surgery	3.34	2.80	$125.00
58611	0	LIGATE OVIDUCT(S) ADD-ON	Surgery	0.63	0.32	$125.00
58615	0	OCCLUDE FALLOPIAN TUBE(S)	Surgery	3.90	2.77	$125.00
58660	0	LAPAROSCOPY, LYSIS	Surgery	11.29	5.62	$125.00
58661	0	LAPAROSCOPY, REMOVE ADNEXA	Surgery	11.05	5.84	$125.00
58662	0	LAPAROSCOPY, EXCISE LESIONS	Surgery	11.79	5.59	$125.00
58670	0	LAPAROSCOPY, TUBAL CAUTERY	Surgery	5.60	3.90	$125.00
58671	0	LAPAROSCOPY, TUBAL BLOCK	Surgery	5.60	4.09	$125.00
58672	0	LAPAROSCOPY, FIMBRIOPLASTY	Surgery	12.88	5.99	$125.00
58673	0	LAPAROSCOPY, SALPINGOSTOMY	Surgery	13.74	6.55	$125.00
58700	0	REMOVAL OF FALLOPIAN TUBE	Surgery	6.49	4.58	$125.00
58720	0	REMOVAL OF OVARY/TUBE(S)	Surgery	11.36	6.35	$125.00
58740	0	REVISE FALLOPIAN TUBE(S)	Surgery	5.83	4.52	$125.00
58750	0	REPAIR OVIDUCT	Surgery	14.84	7.14	$125.00
58752	0	REVISE OVARIAN TUBE(S)	Surgery	14.84	7.54	$125.00
58760	0	REMOVE TUBAL OBSTRUCTION	Surgery	13.13	6.21	$125.00
58770	0	CREATE NEW TUBAL OPENING	Surgery	13.97	6.65	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUs (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUs — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
58800	0	DRAINAGE OF OVARIAN CYST(S)	Surgery	4.14	3.85	$125.00
58805	0	DRAINAGE OF OVARIAN CYST(S)	Surgery	5.88	4.37	$125.00
58820	0	DRAIN OVARY ABSCESS, OPEN	Surgery	4.22	3.20	$125.00
58822	0	DRAIN OVARY ABSCESS, PERCUT	Surgery	10.13	4.83	$125.00
58823	0	DRAIN PELVIC ABSCESS, PERCUT	Surgery	3.38	3.05	$125.00
58825	0	TRANSPOSITION, OVARY(S)	Surgery	6.13	4.00	$125.00
58900	0	BIOPSY OF OVARY(S)	Surgery	5.99	4.10	$125.00
58920	0	PARTIAL REMOVAL OF OVARY(S)	Surgery	6.78	4.73	$125.00
58925	0	REMOVAL OF OVARIAN CYST(S)	Surgery	11.36	6.03	$125.00
58940	0	REMOVAL OF OVARY(S)	Surgery	7.29	4.80	$125.00
58943	0	REMOVAL OF OVARY(S)	Surgery	18.43	10.43	$125.00
58950	0	RESECT OVARIAN MALIGNANCY	Surgery	15.27	9.32	$125.00
58951	0	RESECT OVARIAN MALIGNANCY	Surgery	21.81	13.23	$125.00
58952	0	RESECT OVARIAN MALIGNANCY	Surgery	25.01	14.15	$125.00
58960	0	EXPLORATION OF ABDOMEN	Surgery	14.65	9.64	$125.00
58970	0	RETRIEVAL OF OOCYTE	Surgery	3.53	2.03	$125.00
58976	10	TRANSFER OF EMBRYO	Surgery	3.83	1.89	$125.00
59000	0	AMNIOCENTESIS	Maternity — Non-Deliveries	1.30	1.66	$125.93
59012	0	FETAL CORD PUNCTURE,PRENATAL	Maternity — Non-Deliveries	3.45	1.95	$125.93
59015	0	CHORION BIOPSY	Maternity — Non-Deliveries	2.20	0.99	$125.93
59020	26	FETAL CONTRACT STRESS TEST	Maternity — Non-Deliveries	0.66	0.39	$125.93
59025	26	FETAL NON-STRESS TEST	Maternity — Non-Deliveries	0.53	0.26	$125.93
59030	0	FETAL SCALP BLOOD SAMPLE	Maternity — Non-Deliveries	1.99	1.13	$125.93
59050	0	FETAL MONITOR W/REPORT	Maternity — Non-Deliveries	0.89	0.48	$125.93
59051	0	FETAL MONITOR/INTERPRET ONLY	Maternity — Non-Deliveries	0.74	0.43	$125.93
59100	0	REMOVE UTERUS LESION	Maternity — Non-Deliveries	12.35	5.65	$125.93
59120	0	TREAT ECTOPIC PREGNANCY	Maternity — Non-Deliveries	11.49	6.64	$125.93
59121	0	TREAT ECTOPIC PREGNANCY	Maternity — Non-Deliveries	11.67	5.99	$125.93
59130	0	TREAT ECTOPIC PREGNANCY	Maternity — Non-Deliveries	14.22	6.94	$125.93
59135	0	TREAT ECTOPIC PREGNANCY	Maternity — Non-Deliveries	13.88	7.90	$125.93
59136	0	TREAT ECTOPIC PREGNANCY	Maternity — Non-Deliveries	13.18	6.72	$125.93
59140	0	TREAT ECTOPIC PREGNANCY	Maternity — Non-Deliveries	5.46	3.64	$125.93
59150	0	TREAT ECTOPIC PREGNANCY	Maternity — Non-Deliveries	11.20	5.79	$125.93
59151	0	TREAT ECTOPIC PREGNANCY	Maternity — Non-Deliveries	11.10	8.53	$125.93
59160	0	D & C AFTER DELIVERY	Maternity — Non-Deliveries	2.71	2.42	$125.93
59200	0	INSERT CERVICAL DILATOR	Maternity — Non-Deliveries	0.79	1.13	$125.93
59300	0	EPISIOTOMY OR VAGINAL REPAIR	Maternity — Non-Deliveries	2.41	1.87	$125.93
59320	0	REVISION OF CERVIX	Maternity — Non-Deliveries	2.48	1.53	$125.93
59325	0	REVISION OF CERVIX	Maternity — Non-Deliveries	4.07	2.32	$125.93
59350	0	REPAIR OF UTERUS	Maternity — Non-Deliveries	4.95	2.42	$125.93
59400	0	OBSTETRICAL CARE	Maternity — Normal Deliveries	23.06	15.03	$71.02
59409	0	OBSTETRICAL CARE	Maternity — Normal Deliveries	13.50	6.54	$71.02
59410	0	OBSTETRICAL CARE	Maternity — Normal Deliveries	14.78	7.55	$71.02
59412	0	ANTEPARTUM MANIPULATION	Maternity — Normal Deliveries	1.71	0.85	$71.02
59414	0	DELIVER PLACENTA	Maternity — Normal Deliveries	1.61	1.27	$71.02
59425	0	ANTEPARTUM CARE ONLY	Maternity — Normal Deliveries	4.81	4.61	$71.02
59426	0	ANTEPARTUM CARE ONLY	Maternity — Normal Deliveries	8.28	7.88	$71.02
59430	0	CARE AFTER DELIVERY	Maternity — Normal Deliveries	2.13	1.02	$71.02
59510	0	CESAREAN DELIVERY	Maternity — Cesarean Deliveries	26.22	17.04	$76.93
59514	0	CESAREAN DELIVERY ONLY	Maternity — Cesarean Deliveries	15.97	7.65	$76.93
59515	0	CESAREAN DELIVERY	Maternity — Cesarean Deliveries	17.37	9.20	$76.93
59525	0	REMOVE UTERUS AFTER CESAREAN	Surgery	8.54	3.53	$125.00
59610	0	VBAC DELIVERY	Maternity — Normal Deliveries	24.62	15.38	$71.02
59612	0	VBAC DELIVERY ONLY	Maternity — Normal Deliveries	15.06	7.10	$71.02
59614	0	VBAC CARE AFTER DELIVERY	Maternity — Normal Deliveries	16.34	8.26	$71.02
59618	0	ATTEMPTED VBAC DELIVERY	Maternity — Cesarean Deliveries	27.78	17.98	$76.93
59620	0	ATTEMPTED VBAC DELIVERY ONLY	Maternity — Cesarean Deliveries	17.53	7.99	$76.93
59622	0	ATTEMPTED VBAC AFTER CARE	Maternity — Cesarean Deliveries	18.93	9.65	$76.93
59812	0	TREATMENT OF MISCARRIAGE	Maternity — Non-Deliveries	3.25	2.56	$125.93
59820	0	CARE OF MISCARRIAGE	Maternity — Non-Deliveries	4.01	2.99	$125.93
59821	0	TREATMENT OF MISCARRIAGE	Maternity — Non-Deliveries	4.47	2.85	$125.93
59830	0	TREAT UTERUS INFECTION	Maternity — Non-Deliveries	6.11	4.08	$125.93

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TABLE E. — PHYSICIAN NATIONWIDE RVUs (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUs — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
59840	0	ABORTION	Maternity — Non-Deliveries	3.01	3.78	$125.93
59841	0	ABORTION	Maternity — Non-Deliveries	5.24	3.64	$125.93
59850	0	ABORTION	Maternity — Non-Deliveries	5.91	3.16	$125.93
59851	0	ABORTION	Maternity — Non-Deliveries	5.93	3.46	$125.93
59852	0	ABORTION	Maternity — Non-Deliveries	8.24	4.76	$125.93
59855	0	ABORTION	Maternity — Non-Deliveries	6.12	3.54	$125.93
59856	0	ABORTION	Maternity — Non-Deliveries	7.48	4.19	$125.93
59857	0	ABORTION	Maternity — Non-Deliveries	9.29	5.03	$125.93
59866	0	ABORTION (MPR)	Maternity — Non-Deliveries	4.00	1.96	$125.93
59870	0	EVACUATE MOLE OF UTERUS	Maternity — Non-Deliveries	4.28	3.09	$125.93
59871	0	REMOVE CERCLAGE SUTURE	Maternity — Non-Deliveries	2.13	1.14	$125.93
60000	0	DRAIN THYROID/TONGUE CYST	Surgery	1.76	1.82	$125.00
60001	0	ASPIRATE/INJECT THYROID CYST	Surgery	0.97	1.44	$125.00
60100	0	BIOPSY OF THYROID	Surgery	0.97	0.41	$125.00
60200	0	REMOVE THYROID LESION	Surgery	9.55	6.73	$125.00
60210	0	PARTIAL THYROID EXCISION	Surgery	10.86	7.37	$125.00
60212	10	PARITAL THYROID EXCISION	Surgery	16.03	9.08	$125.00
60220	0	PARTIAL REMOVAL OF THYROID	Surgery	10.53	7.27	$125.00
60225	0	PARTIAL REMOVAL OF THYROID	Surgery	14.19	8.96	$125.00
60240	0	REMOVAL OF THYROID	Surgery	16.06	9.87	$125.00
60252	0	REMOVAL OF THYROID	Surgery	18.20	11.79	$125.00
60254	0	EXTENSIVE THYROID SURGERY	Surgery	23.88	16.10	$125.00
60260	0	REPEAT THYROID SURGERY	Surgery	15.46	8.11	$125.00
60270	0	REMOVAL OF THYROID	Surgery	17.94	12.82	$125.00
60271	0	REMOVAL OF THYROID	Surgery	14.89	10.25	$125.00
60280	0	REMOVE THYROID DUCT LESION	Surgery	5.87	5.65	$125.00
60281	0	REMOVE THYROID DUCT LESION	Surgery	8.53	6.20	$125.00
60500	0	EXPLORE PARATHYROID GLANDS	Surgery	16.23	9.17	$125.00
60502	0	RE-EXPLORE PARATHYROIDS	Surgery	20.35	10.55	$125.00
60505	0	EXPLORE PARATHYROID GLANDS	Surgery	21.49	12.39	$125.00
60512	0	AUTOTRANSPLANT PARATHYROID	Surgery	4.45	1.97	$125.00
60520	0	REMOVAL OF THYMUS GLAND	Surgery	16.81	12.03	$125.00
60521	0	REMOVAL OF THYMUS GLAND	Surgery	18.87	14.52	$125.00
60522	0	REMOVAL OF THYMUS GLAND	Surgery	23.09	15.59	$125.00
60540	0	EXPLORE ADRENAL GLAND	Surgery	17.03	9.29	$125.00
60545	0	EXPLORE ADRENAL GLAND	Surgery	19.88	11.25	$125.00
60600	0	REMOVE CAROTID BODY LESION	Surgery	17.93	13.63	$125.00
60605	0	REMOVE CAROTID BODY LESION	Surgery	20.24	17.82	$125.00
60650	0	LAPAROSCOPY ADRENALECTOMY	Surgery	20.00	8.60	$125.00
61000	0	REMOVE CRANIAL CAVITY FLUID	Surgery	1.58	1.48	$125.00
61001	0	REMOVE CRANIAL CAVITY FLUID	Surgery	1.49	1.85	$125.00
61020	0	REMOVE BRAIN CAVITY FLUID	Surgery	1.51	1.46	$125.00
61026	0	INJECTION INTO BRAIN CANAL	Surgery	1.69	1.77	$125.00
61050	0	REMOVE BRAIN CANAL FLUID	Surgery	1.51	1.49	$125.00
61055	0	INJECTION INTO BRAIN CANAL	Surgery	2.10	1.79	$125.00
61070	0	BRAIN CANAL SHUNT PROCEDURE	Surgery	0.89	5.09	$125.00
61105	0	TWIST DRILL HOLE	Surgery	5.14	4.25	$125.00
61107	0	DRILL SKULL FOR IMPLANTATION	Surgery	5.00	3.84	$125.00
61108	0	DRILL SKULL FOR DRAINAGE	Surgery	10.19	8.24	$125.00
61120	0	BURR HOLE FOR PUNCTURE	Surgery	8.76	5.96	$125.00
61140	0	PIERCE SKULL FOR BIOPSY	Surgery	15.90	11.22	$125.00
61150	0	PIERCE SKULL FOR DRAINAGE	Surgery	17.57	11.90	$125.00
61151	0	PIERCE SKULL FOR DRAINAGE	Surgery	12.42	6.73	$125.00
61154	0	PIERCE SKULL & REMOVE CLOT	Surgery	14.99	11.54	$125.00
61156	0	PIERCE SKULL FOR DRAINAGE	Surgery	16.32	12.09	$125.00
61210	0	PIERCE SKULL, IMPLANT DEVICE	Surgery	5.84	4.26	$125.00
61215	0	INSERT BRAIN-FLUID DEVICE	Surgery	4.89	4.60	$125.00
61250	0	PIERCE SKULL & EXPLORE	Surgery	10.42	7.19	$125.00
61253	0	PIERCE SKULL & EXPLORE	Surgery	12.36	8.09	$125.00
61304	0	OPEN SKULL FOR EXPLORATION	Surgery	21.96	15.98	$125.00
61305	0	OPEN SKULL FOR EXPLORATION	Surgery	26.61	19.07	$125.00
61312	0	OPEN SKULL FOR DRAINAGE	Surgery	24.57	17.29	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
61313	0	OPEN SKULL FOR DRAINAGE	Surgery	24.93	17.43	$125.00
61314	0	OPEN SKULL FOR DRAINAGE	Surgery	24.23	16.24	$125.00
61315	0	OPEN SKULL FOR DRAINAGE	Surgery	27.68	18.61	$125.00
61320	0	OPEN SKULL FOR DRAINAGE	Surgery	25.62	16.26	$125.00
61321	0	OPEN SKULL FOR DRAINAGE	Surgery	28.50	17.37	$125.00
61330	0	DECOMPRESS EYE SOCKET	Surgery	23.32	16.34	$125.00
61332	0	EXPLORE/BIOPSY EYE SOCKET	Surgery	27.28	20.23	$125.00
61333	0	EXPLORE ORBIT/REMOVE LESION	Surgery	27.95	17.90	$125.00
61334	0	EXPLORE ORBIT/REMOVE OBJECT	Surgery	18.27	12.83	$125.00
61340	0	RELIEVE CRANIAL PRESSURE	Surgery	18.66	12.63	$125.00
61343	0	INCISE SKULL (PRESS RELIEF)	Surgery	29.77	21.42	$125.00
61345	0	RELIEVE CRANIAL PRESSURE	Surgery	27.20	17.43	$125.00
61440	0	INCISE SKULL FOR SURGERY	Surgery	26.63	17.69	$125.00
61450	0	INCISE SKULL FOR SURGERY	Surgery	25.95	16.51	$125.00
61458	0	INCISE SKULL FOR BRAIN WOUND	Surgery	27.29	19.15	$125.00
61460	0	INCISE SKULL FOR SURGERY	Surgery	28.39	19.30	$125.00
61470	0	INCISE SKULL FOR SURGERY	Surgery	26.06	14.33	$125.00
61480	0	INCISE SKULL FOR SURGERY	Surgery	26.49	14.57	$125.00
61490	0	INCISE SKULL FOR SURGERY	Surgery	25.66	14.38	$125.00
61500	0	REMOVAL OF SKULL LESION	Surgery	17.92	13.55	$125.00
61501	0	REMOVE INFECTED SKULL BONE	Surgery	14.84	11.28	$125.00
61510	0	REMOVAL OF BRAIN LESION	Surgery	28.45	19.58	$125.00
61512	0	REMOVE BRAIN LINING LESION	Surgery	35.09	22.75	$125.00
61514	0	REMOVAL OF BRAIN ABSCESS	Surgery	25.26	17.82	$125.00
61516	0	REMOVAL OF BRAIN LESION	Surgery	24.61	18.21	$125.00
61518	0	REMOVAL OF BRAIN LESION	Surgery	37.32	24.62	$125.00
61519	0	REMOVE BRAIN LINING LESION	Surgery	41.39	26.34	$125.00
61520	0	REMOVAL OF BRAIN LESION	Surgery	54.84	32.80	$125.00
61521	0	REMOVAL OF BRAIN LESION	Surgery	44.48	28.30	$125.00
61522	0	REMOVAL OF BRAIN ABSCESS	Surgery	29.45	18.13	$125.00
61524	0	REMOVAL OF BRAIN LESION	Surgery	27.86	19.77	$125.00
61526	0	REMOVAL OF BRAIN LESION	Surgery	52.17	31.77	$125.00
61530	0	REMOVAL OF BRAIN LESION	Surgery	43.86	29.44	$125.00
61531	0	IMPLANT BRAIN ELECTRODES	Surgery	14.63	10.94	$125.00
61533	0	IMPLANT BRAIN ELECTRODES	Surgery	19.71	13.60	$125.00
61534	0	REMOVAL OF BRAIN LESION	Surgery	20.97	11.46	$125.00
61535	0	REMOVE BRAIN ELECTRODES	Surgery	11.63	7.89	$125.00
61536	0	REMOVAL OF BRAIN LESION	Surgery	35.52	21.22	$125.00
61538	0	REMOVAL OF BRAIN TISSUE	Surgery	26.81	19.89	$125.00
61539	0	REMOVAL OF BRAIN TISSUE	Surgery	32.08	20.40	$125.00
61541	0	INCISION OF BRAIN TISSUE	Surgery	28.85	17.63	$125.00
61542	0	REMOVAL OF BRAIN TISSUE	Surgery	31.02	19.47	$125.00
61543	0	REMOVAL OF BRAIN TISSUE	Surgery	29.22	18.03	$125.00
61544	0	REMOVE & TREAT BRAIN LESION	Surgery	25.50	16.74	$125.00
61545	0	EXCISION OF BRAIN TUMOR	Surgery	43.80	25.35	$125.00
61546	0	REMOVAL OF PITUITARY GLAND	Surgery	31.30	20.93	$125.00
61548	0	REMOVAL OF PITUITARY GLAND	Surgery	21.53	16.53	$125.00
61550	0	RELEASE OF SKULL SEAMS	Surgery	14.65	8.85	$125.00
61552	0	RELEASE OF SKULL SEAMS	Surgery	19.56	11.78	$125.00
61556	0	INCISE SKULL/SUTURES	Surgery	22.26	13.54	$125.00
61557	0	INCISE SKULL/SUTURES	Surgery	22.38	13.87	$125.00
61558	0	EXCISION OF SKULL/SUTURES	Surgery	25.58	14.26	$125.00
61559	0	EXCISION OF SKULL/SUTURES	Surgery	32.79	20.48	$125.00
61563	0	EXCISION OF SKULL TUMOR	Surgery	26.83	17.04	$125.00
61564	0	EXCISION OF SKULL TUMOR	Surgery	33.83	20.86	$125.00
61570	0	REMOVE FOREIGN BODY, BRAIN	Surgery	24.60	14.51	$125.00
61571	0	INCISE SKULL FOR BRAIN WOUND	Surgery	26.39	16.20	$125.00
61575	0	SKULL BASE/BRAINSTEM SURGERY	Surgery	34.36	24.63	$125.00
61576	0	SKULL BASE/BRAINSTEM SURGERY	Surgery	52.43	29.94	$125.00
61580	0	CRANIOFACIAL APPROACH, SKULL	Surgery	30.35	20.21	$125.00
61581	0	CRANIOFACIAL APPROACH, SKULL	Surgery	34.60	22.65	$125.00
61582	0	CRANIOFACIAL APPROACH, SKULL	Surgery	31.66	20.33	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
61583	0	CRANIOFACIAL APPROACH, SKULL	Surgery	36.21	23.37	$125.00
61584	0	ORBITOCRANIAL APPROACH/SKULL	Surgery	34.65	22.08	$125.00
61585	0	ORBITOCRANIAL APPROACH/SKULL	Surgery	38.61	24.28	$125.00
61586	0	RESECT NASOPHARYNX, SKULL	Surgery	25.10	17.77	$125.00
61590	0	INFRATEMPORAL APPROACH/SKULL	Surgery	41.78	27.04	$125.00
61591	0	INFRATEMPORAL APPROACH/SKULL	Surgery	43.68	28.22	$125.00
61592	0	ORBITOCRANIAL APPROACH/SKULL	Surgery	39.64	24.98	$125.00
61595	0	TRANSTEMPORAL APPROACH/SKULL	Surgery	29.57	19.97	$125.00
61596	0	TRANSCOCHLEAR APPROACH/SKULL	Surgery	35.63	23.26	$125.00
61597	0	TRANSCONDYLAR APPROACH/SKULL	Surgery	37.96	23.54	$125.00
61598	0	TRANSPETROSAL APPROACH/SKULL	Surgery	33.41	21.75	$125.00
61600	0	RESECT/EXCISE CRANIAL LESION	Surgery	25.85	17.23	$125.00
61601	0	RESECT/EXCISE CRANIAL LESION	Surgery	27.89	17.97	$125.00
61605	0	RESECT/EXCISE CRANIAL LESION	Surgery	29.33	19.29	$125.00
61606	0	RESECT/EXCISE CRANIAL LESION	Surgery	38.83	24.62	$125.00
61607	0	RESECT/EXCISE CRANIAL LESION	Surgery	36.27	23.14	$125.00
61608	0	RESECT/EXCISE CRANIAL LESION	Surgery	42.10	26.24	$125.00
61609	0	TRANSECT ARTERY, SINUS	Surgery	9.89	5.40	$125.00
61610	0	TRANSECT ARTERY, SINUS	Surgery	29.67	15.18	$125.00
61611	0	TRANSECT ARTERY, SINUS	Surgery	7.42	3.69	$125.00
61612	0	TRANSECT ARTERY, SINUS	Surgery	27.88	16.30	$125.00
61613	0	REMOVE ANEURYSM, SINUS	Surgery	40.86	25.67	$125.00
61615	0	RESECT/EXCISE LESION, SKULL	Surgery	32.07	21.24	$125.00
61616	0	RESECT/EXCISE LESION, SKULL	Surgery	43.33	28.28	$125.00
61618	0	REPAIR DURA	Surgery	16.99	11.47	$125.00
61619	0	REPAIR DURA	Surgery	20.71	13.76	$125.00
61624	0	OCCLUSION/EMBOLIZATION CATH	Surgery	20.15	9.67	$125.00
61626	0	OCCLUSION/EMBOLIZATION CATH	Surgery	16.62	7.90	$125.00
61680	0	INTRACRANIAL VESSEL SURGERY	Surgery	30.71	22.21	$125.00
61682	0	INTRACRANIAL VESSEL SURGERY	Surgery	61.57	34.92	$125.00
61684	0	INTRACRANIAL VESSEL SURGERY	Surgery	39.81	24.46	$125.00
61686	0	INTRACRANIAL VESSEL SURGERY	Surgery	64.49	36.70	$125.00
61690	0	INTRACRANIAL VESSEL SURGERY	Surgery	29.31	20.60	$125.00
61692	0	INTRACRANIAL VESSEL SURGERY	Surgery	51.87	29.62	$125.00
61697	0	BRAIN ANEURYSM REPR, COMPLX	Surgery	50.52	27.76	$125.00
61698	0	BRAIN ANEURYSM REPR, COMPLX	Surgery	48.41	26.87	$125.00
61700	0	BRAIN ANEURYSM REPR , SIMPLE	Surgery	50.52	29.42	$125.00
61702	0	INNER SKULL VESSEL SURGERY	Surgery	48.41	30.01	$125.00
61703	0	CLAMP NECK ARTERY	Surgery	17.47	11.56	$125.00
61705	0	REVISE CIRCULATION TO HEAD	Surgery	36.20	23.40	$125.00
61708	0	REVISE CIRCULATION TO HEAD	Surgery	35.30	18.90	$125.00
61710	0	REVISE CIRCULATION TO HEAD	Surgery	29.67	15.31	$125.00
61711	0	FUSION OF SKULL ARTERIES	Surgery	36.33	23.97	$125.00
61720	0	INCISE SKULL/BRAIN SURGERY	Surgery	16.77	13.05	$125.00
61735	0	INCISE SKULL/BRAIN SURGERY	Surgery	20.43	12.97	$125.00
61750	0	INCISE SKULL/BRAIN BIOPSY	Surgery	18.20	11.94	$125.00
61751	0	BRAIN BIOPSY W/ CT/MR GUIDE	Surgery	17.62	13.32	$125.00
61760	0	IMPLANT BRAIN ELECTRODES	Surgery	22.27	13.94	$125.00
61770	0	INCISE SKULL FOR TREATMENT	Surgery	21.44	14.85	$125.00
61790	0	TREAT TRIGEMINAL NERVE	Surgery	10.86	7.83	$125.00
61791	0	TREAT TRIGEMINAL TRACT	Surgery	14.61	9.61	$125.00
61793	0	FOCUS RADIATION BEAM	Surgery	17.24	13.30	$125.00
61795	0	BRAIN SURGERY USING COMPUTER	Surgery	4.04	2.77	$125.00
61850	0	IMPLANT NEUROELECTRODES	Surgery	12.39	9.11	$125.00
61860	0	IMPLANT NEUROELECTRODES	Surgery	20.87	11.76	$125.00
61862	0	IMPLANT NEUROSTIMUL, SUBCORT	Surgery	19.34	11.99	$125.00
61870	0	IMPLANT NEUROELECTRODES	Surgery	14.94	9.66	$125.00
61875	0	IMPLANT NEUROELECTRODES	Surgery	15.06	9.32	$125.00
61880	0	REVISE/REMOVE NEUROELECTRODE	Surgery	6.29	5.23	$125.00
61885	0	IMPLANT NEUROSTIM ONE ARRAY	Surgery	5.85	3.75	$125.00
61886	0	IMPLANT NEUROSTIM ARRAYS	Surgery	8.00	6.09	$125.00
61888	0	REVISE/REMOVE NEURORECEIVER	Surgery	5.07	3.52	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
62000	0	TREAT SKULL FRACTURE	Surgery	12.53	5.61	$125.00
62005	0	TREAT SKULL FRACTURE	Surgery	16.17	9.70	$125.00
62010	0	TREATMENT OF HEAD INJURY	Surgery	19.81	13.92	$125.00
62100	0	REPAIR BRAIN FLUID LEAKAGE	Surgery	22.03	16.32	$125.00
62115	0	REDUCTION OF SKULL DEFECT	Surgery	21.66	12.18	$125.00
62116	0	REDUCTION OF SKULL DEFECT	Surgery	23.59	14.94	$125.00
62117	0	REDUCTION OF SKULL DEFECT	Surgery	26.60	16.60	$125.00
62120	0	REPAIR SKULL CAVITY LESION	Surgery	23.35	15.22	$125.00
62121	0	INCISE SKULL REPAIR	Surgery	21.58	15.09	$125.00
62140	0	REPAIR OF SKULL DEFECT	Surgery	13.51	10.05	$125.00
62141	0	REPAIR OF SKULL DEFECT	Surgery	14.91	11.73	$125.00
62142	0	REMOVE SKULL PLATE/FLAP	Surgery	10.79	8.62	$125.00
62143	0	REPLACE SKULL PLATE/FLAP	Surgery	13.05	8.99	$125.00
62145	0	REPAIR OF SKULL & BRAIN	Surgery	18.82	12.04	$125.00
62146	0	REPAIR OF SKULL WITH GRAFT	Surgery	16.12	10.78	$125.00
62147	0	REPAIR OF SKULL WITH GRAFT	Surgery	19.34	12.73	$125.00
62180	0	ESTABLISH BRAIN CAVITY SHUNT	Surgery	21.06	13.50	$125.00
62190	0	ESTABLISH BRAIN CAVITY SHUNT	Surgery	11.07	9.04	$125.00
62192	0	ESTABLISH BRAIN CAVITY SHUNT	Surgery	12.25	9.82	$125.00
62194	0	REPLACE/IRRIGATE CATHETER	Surgery	5.03	2.07	$125.00
62200	0	ESTABLISH BRAIN CAVITY SHUNT	Surgery	18.32	13.16	$125.00
62201	0	ESTABLISH BRAIN CAVITY SHUNT	Surgery	14.86	9.27	$125.00
62220	0	ESTABLISH BRAIN CAVITY SHUNT	Surgery	13.00	10.35	$125.00
62223	0	ESTABLISH BRAIN CAVITY SHUNT	Surgery	12.87	10.18	$125.00
62225	0	REPLACE/IRRIGATE CATHETER	Surgery	5.41	4.35	$125.00
62230	0	REPLACE/REVISE BRAIN SHUNT	Surgery	10.54	7.61	$125.00
62252	26	CSF SHUNT REPROGRAM	Surgery	0.74	0.30	$125.00
62256	0	REMOVE BRAIN CAVITY SHUNT	Surgery	6.60	5.74	$125.00
62258	0	REPLACE BRAIN CAVITY SHUNT	Surgery	14.54	10.50	$125.00
62263	0	LYSIS EPIDURAL ADHESIONS	Surgery	6.14	5.70	$125.00
62268	0	DRAIN SPINAL CORD CYST	Surgery	4.74	2.84	$125.00
62269	0	NEEDLE BIOPSY, SPINAL CORD	Surgery	5.02	2.22	$125.00
62270	0	SPINAL FLUID TAP, DIAGNOSTIC	Surgery	1.13	0.54	$125.00
62272	0	DRAIN SPINAL FLUID	Surgery	1.35	0.73	$125.00
62273	0	TREAT EPIDURAL SPINE LESION	Surgery	2.15	1.24	$125.00
62280	0	TREAT SPINAL CORD LESION	Surgery	2.63	0.72	$125.00
62281	0	TREAT SPINAL CORD LESION	Surgery	2.66	3.06	$125.00
62282	0	TREAT SPINAL CANAL LESION	Surgery	2.33	0.92	$125.00
62284	0	INJECTION FOR MYELOGRAM	Surgery	1.54	0.98	$125.00
62287	0	PERCUTANEOUS DISKECTOMY	Surgery	8.08	5.41	$125.00
62290	0	INJECT FOR SPINE DISK X-RAY	Surgery	3.00	1.46	$125.00
62291	0	INJECT FOR SPINE DISK X-RAY	Surgery	2.91	1.35	$125.00
62292	0	INJECTION INTO DISK LESION	Surgery	7.86	5.90	$125.00
62294	0	INJECTION INTO SPINAL ARTERY	Surgery	11.83	6.15	$125.00
62310	0	INJECT SPINE C/T	Surgery	1.91	3.60	$125.00
62311	0	INJECT SPINE L/S (CD)	Surgery	1.54	3.88	$125.00
62318	0	INJECT SPINE W/CATH, C/T	Surgery	2.04	3.66	$125.00
62319	0	INJECT SPINE W/CATH L/S (CD)	Surgery	1.87	3.14	$125.00
62350	0	IMPLANT SPINAL CANAL CATH	Surgery	6.87	3.69	$125.00
62351	0	IMPLANT SPINAL CANAL CATH	Surgery	10.00	6.49	$125.00
62355	0	REMOVE SPINAL CANAL CATHETER	Surgery	5.45	3.03	$125.00
62360	0	INSERT SPINE INFUSION DEVICE	Surgery	2.62	1.95	$125.00
62361	0	IMPLANT SPINE INFUSION PUMP	Surgery	5.42	3.38	$125.00
62362	0	IMPLANT SPINE INFUSION PUMP	Surgery	7.04	4.01	$125.00
62365	0	REMOVE SPINE INFUSION DEVICE	Surgery	5.42	3.22	$125.00
62367	26	ANALYZE SPINE INFUSION PUMP	Surgery	0.48	0.20	$125.00
62368	26	ANALYZE SPINE INFUSION PUMP	Surgery	0.75	0.30	$125.00
63001	0	REMOVAL OF SPINAL LAMINA	Surgery	15.82	13.35	$125.00
63003	0	REMOVAL OF SPINAL LAMINA	Surgery	15.95	13.50	$125.00
63005	0	REMOVAL OF SPINAL LAMINA	Surgery	14.92	12.79	$125.00
63011	0	REMOVAL OF SPINAL LAMINA	Surgery	14.52	9.66	$125.00
63012	0	REMOVAL OF SPINAL LAMINA	Surgery	15.40	12.16	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
63015	0	REMOVAL OF SPINAL LAMINA	Surgery	19.35	15.78	$125.00
63016	0	REMOVAL OF SPINAL LAMINA	Surgery	19.20	15.74	$125.00
63017	0	REMOVAL OF SPINAL LAMINA	Surgery	15.94	13.49	$125.00
63020	0	NECK SPINE DISK SURGERY	Surgery	14.81	12.64	$125.00
63030	0	LOW BACK DISK SURGERY	Surgery	12.00	10.80	$125.00
63035	0	SPINAL DISK SURGERY ADD-ON	Surgery	3.15	2.17	$125.00
63040	0	LAMINOTOMY, SINGLE CERVICAL	Surgery	18.81	15.35	$125.00
63042	0	LAMINOTOMY, SINGLE LUMBAR	Surgery	17.47	14.67	$125.00
63045	0	REMOVAL OF SPINAL LAMINA	Surgery	16.50	13.89	$125.00
63046	0	REMOVAL OF SPINAL LAMINA	Surgery	15.80	13.42	$125.00
63047	0	REMOVAL OF SPINAL LAMINA	Surgery	14.61	12.65	$125.00
63048	0	REMOVE SPINAL LAMINA ADD-ON	Surgery	3.26	2.27	$125.00
63055	0	DECOMPRESS SPINAL CORD	Surgery	21.99	17.49	$125.00
63056	0	DECOMPRESS SPINAL CORD	Surgery	20.36	16.43	$125.00
63057	0	DECOMPRESS SPINE CORD ADD-ON	Surgery	5.26	3.04	$125.00
63064	0	DECOMPRESS SPINAL CORD	Surgery	24.61	18.98	$125.00
63066	0	DECOMPRESS SPINE CORD ADD-ON	Surgery	3.26	1.98	$125.00
63075	0	NECK SPINE DISK SURGERY	Surgery	19.41	14.89	$125.00
63076	0	NECK SPINE DISK SURGERY	Surgery	4.05	2.81	$125.00
63077	0	SPINE DISK SURGERY, THORAX	Surgery	21.44	16.35	$125.00
63078	0	SPINE DISK SURGERY, THORAX	Surgery	3.28	1.98	$125.00
63081	0	REMOVAL OF VERTEBRAL BODY	Surgery	23.73	19.33	$125.00
63082	0	REMOVE VERTEBRAL BODY ADD-ON	Surgery	4.37	3.04	$125.00
63085	0	REMOVAL OF VERTEBRAL BODY	Surgery	26.92	21.17	$125.00
63086	0	REMOVE VERTEBRAL BODY ADD-ON	Surgery	3.19	2.20	$125.00
63087	0	REMOVAL OF VERTEBRAL BODY	Surgery	35.57	24.32	$125.00
63088	0	REMOVE VERTEBRAL BODY ADD-ON	Surgery	4.33	3.00	$125.00
63090	0	REMOVAL OF VERTEBRAL BODY	Surgery	28.16	21.51	$125.00
63091	0	REMOVE VERTEBRAL BODY ADD-ON	Surgery	3.03	1.89	$125.00
63170	0	INCISE SPINAL CORD TRACT(S)	Surgery	19.83	15.31	$125.00
63172	0	DRAINAGE OF SPINAL CYST	Surgery	17.66	15.05	$125.00
63173	0	DRAINAGE OF SPINAL CYST	Surgery	21.99	15.28	$125.00
63180	0	REVISE SPINAL CORD LIGAMENTS	Surgery	18.27	12.47	$125.00
63182	0	REVISE SPINAL CORD LIGAMENTS	Surgery	20.50	14.11	$125.00
63185	0	INCISE SPINAL COLUMN/NERVES	Surgery	15.04	11.52	$125.00
63190	0	INCISE SPINAL COLUMN/NERVES	Surgery	17.45	14.23	$125.00
63191	0	INCISE SPINAL COLUMN/NERVES	Surgery	17.54	12.82	$125.00
63194	0	INCISE SPINAL COLUMN & CORD	Surgery	19.19	13.37	$125.00
63195	0	INCISE SPINAL COLUMN & CORD	Surgery	18.84	12.86	$125.00
63196	0	INCISE SPINAL COLUMN & CORD	Surgery	22.30	13.51	$125.00
63197	0	INCISE SPINAL COLUMN & CORD	Surgery	21.11	14.18	$125.00
63198	0	INCISE SPINAL COLUMN & CORD	Surgery	25.38	14.63	$125.00
63199	0	INCISE SPINAL COLUMN & CORD	Surgery	26.89	16.46	$125.00
63200	0	RELEASE OF SPINAL CORD	Surgery	19.18	13.21	$125.00
63250	0	REVISE SPINAL CORD VESSELS	Surgery	40.76	23.31	$125.00
63251	0	REVISE SPINAL CORD VESSELS	Surgery	41.20	23.45	$125.00
63252	0	REVISE SPINAL CORD VESSELS	Surgery	41.19	24.47	$125.00
63265	0	EXCISE INTRASPINAL LESION	Surgery	21.58	15.85	$125.00
63266	0	EXCISE INTRASPINAL LESION	Surgery	22.30	16.79	$125.00
63267	0	EXCISE INTRASPINAL LESION	Surgery	17.95	13.85	$125.00
63268	0	EXCISE INTRASPINAL LESION	Surgery	18.52	11.53	$125.00
63270	0	EXCISE INTRASPINAL LESION	Surgery	26.80	16.85	$125.00
63271	0	EXCISE INTRASPINAL LESION	Surgery	26.92	19.23	$125.00
63272	0	EXCISE INTRASPINAL LESION	Surgery	25.32	17.66	$125.00
63273	0	EXCISE INTRASPINAL LESION	Surgery	24.29	15.72	$125.00
63275	0	BIOPSY/EXCISE SPINAL TUMOR	Surgery	23.68	17.66	$125.00
63276	0	BIOPSY/EXCISE SPINAL TUMOR	Surgery	23.45	17.40	$125.00
63277	0	BIOPSY/EXCISE SPINAL TUMOR	Surgery	20.83	15.83	$125.00
63278	0	BIOPSY/EXCISE SPINAL TUMOR	Surgery	20.56	15.50	$125.00
63280	0	BIOPSY/EXCISE SPINAL TUMOR	Surgery	26.35	20.10	$125.00
63281	0	BIOPSY/EXCISE SPINAL TUMOR	Surgery	28.05	19.80	$125.00
63282	0	BIOPSY/EXCISE SPINAL TUMOR	Surgery	26.39	18.24	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
63283	0	BIOPSY/EXCISE SPINAL TUMOR	Surgery	25.00	16.22	$125.00
63285	0	BIOPSY/EXCISE SPINAL TUMOR	Surgery	36.00	21.84	$125.00
63286	0	BIOPSY/EXCISE SPINAL TUMOR	Surgery	35.63	23.07	$125.00
63287	0	BIOPSY/EXCISE SPINAL TUMOR	Surgery	36.70	22.53	$125.00
63290	0	BIOPSY/EXCISE SPINAL TUMOR	Surgery	37.38	23.39	$125.00
63300	0	REMOVAL OF VERTEBRAL BODY	Surgery	24.43	15.82	$125.00
63301	0	REMOVAL OF VERTEBRAL BODY	Surgery	27.60	17.06	$125.00
63302	0	REMOVAL OF VERTEBRAL BODY	Surgery	27.81	17.92	$125.00
63303	0	REMOVAL OF VERTEBRAL BODY	Surgery	30.50	18.15	$125.00
63304	0	REMOVAL OF VERTEBRAL BODY	Surgery	30.33	17.93	$125.00
63305	0	REMOVAL OF VERTEBRAL BODY	Surgery	32.03	20.43	$125.00
63306	0	REMOVAL OF VERTEBRAL BODY	Surgery	32.22	18.65	$125.00
63307	0	REMOVAL OF VERTEBRAL BODY	Surgery	31.63	20.44	$125.00
63308	0	REMOVE VERTEBRAL BODY ADD-ON	Surgery	5.25	3.16	$125.00
63600	0	REMOVE SPINAL CORD LESION	Surgery	14.02	7.33	$125.00
63610	0	STIMULATION OF SPINAL CORD	Surgery	8.73	5.64	$125.00
63615	0	REMOVE LESION OF SPINAL CORD	Surgery	16.28	10.95	$125.00
63650	0	IMPLANT NEUROELECTRODES	Surgery	6.74	4.25	$125.00
63655	0	IMPLANT NEUROELECTRODES	Surgery	10.29	8.41	$125.00
63660	0	REVISE/REMOVE NEUROELECTRODE	Surgery	6.16	4.56	$125.00
63685	0	IMPLANT NEURORECEIVER	Surgery	7.04	5.32	$125.00
63688	0	REVISE/REMOVE NEURORECEIVER	Surgery	5.39	4.36	$125.00
63700	0	REPAIR OF SPINAL HERNIATION	Surgery	16.53	10.87	$125.00
63702	0	REPAIR OF SPINAL HERNIATION	Surgery	18.48	11.31	$125.00
63704	0	REPAIR OF SPINAL HERNIATION	Surgery	21.18	13.02	$125.00
63706	0	REPAIR OF SPINAL HERNIATION	Surgery	24.11	14.86	$125.00
63707	0	REPAIR SPINAL FLUID LEAKAGE	Surgery	11.26	9.25	$125.00
63709	0	REPAIR SPINAL FLUID LEAKAGE	Surgery	14.32	11.48	$125.00
63710	0	GRAFT REPAIR OF SPINE DEFECT	Surgery	14.07	9.65	$125.00
63740	0	INSTALL SPINAL SHUNT	Surgery	11.38	9.05	$125.00
63741	0	INSTALL SPINAL SHUNT	Surgery	8.25	5.99	$125.00
63744	0	REVISION OF SPINAL SHUNT	Surgery	8.10	6.32	$125.00
63746	0	REMOVAL OF SPINAL SHUNT	Surgery	6.43	4.91	$125.00
64400	0	INJECTION FOR NERVE BLOCK	Surgery	1.11	2.16	$125.00
64402	0	INJECTION FOR NERVE BLOCK	Surgery	1.25	3.10	$125.00
64405	0	INJECTION FOR NERVE BLOCK	Surgery	1.32	2.08	$125.00
64408	0	INJECTION FOR NERVE BLOCK	Surgery	1.41	2.49	$125.00
64410	0	INJECTION FOR NERVE BLOCK	Surgery	1.48	0.42	$125.00
64412	0	INJECTION FOR NERVE BLOCK	Surgery	1.18	2.17	$125.00
64413	0	INJECTION FOR NERVE BLOCK	Surgery	1.49	2.34	$125.00
64415	0	INJECTION FOR NERVE BLOCK	Surgery	1.48	0.30	$125.00
64417	0	INJECTION FOR NERVE BLOCK	Surgery	1.44	0.42	$125.00
64418	0	INJECTION FOR NERVE BLOCK	Surgery	1.32	2.08	$125.00
64420	0	INJECTION FOR NERVE BLOCK	Surgery	1.18	0.38	$125.00
64421	0	INJECTION FOR NERVE BLOCK	Surgery	1.68	0.52	$125.00
64425	0	INJECTION FOR NERVE BLOCK	Surgery	1.75	1.96	$125.00
64430	0	INJECTION FOR NERVE BLOCK	Surgery	1.48	0.51	$125.00
64435	0	INJECTION FOR NERVE BLOCK	Surgery	1.45	2.33	$125.00
64445	0	INJECTION FOR NERVE BLOCK	Surgery	1.48	2.68	$125.00
64450	0	INJECTION FOR NERVE BLOCK	Surgery	1.27	1.41	$125.00
64470	0	INJ PARAVERTEBRAL C/T	Surgery	1.85	3.94	$125.00
64472	0	INJ PARAVERTEBRAL C/T ADD-ON	Surgery	1.29	3.63	$125.00
64475	0	INJ PARAVERTEBRAL L/S	Surgery	1.41	3.77	$125.00
64478	0	INJ PARAVERTEBRAL L/S ADD-ON	Surgery	0.98	4.16	$125.00
64479	0	INJ FORAMEN EPIDURAL C/T	Surgery	2.20	4.04	$125.00
64480	0	INJ FORAMEN EPIDURAL ADD-ON	Surgery	1.54	4.23	$125.00
64483	0	INJ FORAMEN EPIDURAL L/S	Surgery	1.90	3.92	$125.00
64484	0	INJ FORAMEN EPIDURAL ADD-ON	Surgery	1.33	4.15	$125.00
64505	0	INJECTION FOR NERVE BLOCK	Surgery	1.38	1.97	$125.00
64508	0	INJECTION FOR NERVE BLOCK	Surgery	1.12	2.49	$125.00
64510	0	INJECTION FOR NERVE BLOCK	Surgery	1.22	0.39	$125.00
64520	0	INJECTION FOR NERVE BLOCK	Surgery	1.35	0.41	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
64530	0	INJECTION FOR NERVE BLOCK	Surgery	1.58	0.59	$125.00
64550	0	APPLY NEUROSTIMULATOR	Surgery	0.18	0.10	$125.00
64553	0	IMPLANT NEUROELECTRODES	Surgery	2.31	3.92	$125.00
64555	0	IMPLANT NEUROELECTRODES	Surgery	2.27	1.92	$125.00
64560	0	IMPLANT NEUROELECTRODES	Surgery	2.36	2.21	$125.00
64565	0	IMPLANT NEUROELECTRODES	Surgery	1.76	2.50	$125.00
64573	0	IMPLANT NEUROELECTRODES	Surgery	7.50	4.95	$125.00
64575	0	IMPLANT NEUROELECTRODES	Surgery	4.35	3.20	$125.00
64577	0	IMPLANT NEUROELECTRODES	Surgery	4.62	3.42	$125.00
64580	0	IMPLANT NEUROELECTRODES	Surgery	4.12	3.95	$125.00
64585	0	REVISE/REMOVE NEUROELECTRODE	Surgery	2.06	2.38	$125.00
64590	0	IMPLANT NEURORECEIVER	Surgery	2.40	2.28	$125.00
64595	0	REVISE/REMOVE NEURORECEIVER	Surgery	1.73	1.85	$125.00
64600	0	INJECTION TREATMENT OF NERVE	Surgery	3.45	2.00	$125.00
64605	0	INJECTION TREATMENT OF NERVE	Surgery	5.61	2.51	$125.00
64610	0	INJECTION TREATMENT OF NERVE	Surgery	7.16	4.80	$125.00
64612	0	DESTROY NERVE, FACE MUSCLE	Surgery	1.96	2.61	$125.00
64613	0	DESTROY NERVE, SPINE MUSCLE	Surgery	1.96	1.60	$125.00
64614	0	DESTROY NERVE, EXTREM MUSC	Surgery	2.20	3.37	$125.00
64620	0	INJECTION TREATMENT OF NERVE	Surgery	2.84	0.80	$125.00
64622	0	DESTR PARAVERTEBRL NERVE L/S	Surgery	3.00	1.04	$125.00
64623	0	DESTR PARAVERTEBRAL N ADD-ON	Surgery	0.99	0.41	$125.00
64626	0	DESTR PARAVERTEBRL NERVE C/T	Surgery	3.28	0.88	$125.00
64627	0	DESTR PARAVERTEBRAL N ADD-ON	Surgery	1.16	0.31	$125.00
64630	0	INJECTION TREATMENT OF NERVE	Surgery	3.00	1.08	$125.00
64640	0	INJECTION TREATMENT OF NERVE	Surgery	2.76	4.56	$125.00
64680	0	INJECTION TREATMENT OF NERVE	Surgery	2.62	0.92	$125.00
64702	0	REVISE FINGER/TOE NERVE	Surgery	4.23	3.97	$125.00
64704	0	REVISE HAND/FOOT NERVE	Surgery	4.57	3.71	$125.00
64708	0	REVISE ARM/LEG NERVE	Surgery	6.12	5.52	$125.00
64712	0	REVISION OF SCIATIC NERVE	Surgery	7.75	6.04	$125.00
64713	0	REVISION OF ARM NERVE(S)	Surgery	11.00	6.98	$125.00
64714	0	REVISE LOW BACK NERVE(S)	Surgery	10.33	4.60	$125.00
64716	0	REVISION OF CRANIAL NERVE	Surgery	6.31	5.08	$125.00
64718	0	REVISE ULNAR NERVE AT ELBOW	Surgery	5.99	5.55	$125.00
64719	0	REVISE ULNAR NERVE AT WRIST	Surgery	4.85	4.72	$125.00
64721	0	CARPAL TUNNEL SURGERY	Surgery	4.29	5.50	$125.00
64722	0	RELIEVE PRESSURE ON NERVE(S)	Surgery	4.70	3.63	$125.00
64726	0	RELEASE FOOT/TOE NERVE	Surgery	4.18	2.47	$125.00
64727	0	INTERNAL NERVE REVISION	Surgery	3.10	2.10	$125.00
64732	0	INCISION OF BROW NERVE	Surgery	4.41	3.79	$125.00
64734	0	INCISION OF CHEEK NERVE	Surgery	4.92	3.91	$125.00
64736	0	INCISION OF CHIN NERVE	Surgery	4.60	3.45	$125.00
64738	0	INCISION OF JAW NERVE	Surgery	5.73	4.11	$125.00
64740	0	INCISION OF TONGUE NERVE	Surgery	5.59	4.47	$125.00
64742	0	INCISION OF FACIAL NERVE	Surgery	6.22	5.04	$125.00
64744	0	INCISE NERVE, BACK OF HEAD	Surgery	5.24	4.51	$125.00
64746	0	INCISE DIAPHRAGM NERVE	Surgery	5.93	5.36	$125.00
64752	0	INCISION OF VAGUS NERVE	Surgery	7.06	5.07	$125.00
64755	0	INCISION OF STOMACH NERVES	Surgery	13.52	7.60	$125.00
64760	0	INCISION OF VAGUS NERVE	Surgery	6.96	4.84	$125.00
64761	0	INCISION OF PELVIS NERVE	Surgery	6.41	3.62	$125.00
64763	0	INCISE HIP/THIGH NERVE	Surgery	6.93	5.98	$125.00
64766	0	INCISE HIP/THIGH NERVE	Surgery	8.67	6.42	$125.00
64771	0	SEVER CRANIAL NERVE	Surgery	7.35	5.91	$125.00
64772	0	INCISION OF SPINAL NERVE	Surgery	7.21	5.60	$125.00
64774	0	REMOVE SKIN NERVE LESION	Surgery	5.17	3.50	$125.00
64776	0	REMOVE DIGIT NERVE LESION	Surgery	5.12	3.59	$125.00
64778	0	DIGIT NERVE SURGERY ADD-ON	Surgery	3.11	1.87	$125.00
64782	0	REMOVE LIMB NERVE LESION	Surgery	6.23	4.00	$125.00
64783	0	LIMB NERVE SURGERY ADD-ON	Surgery	3.72	2.40	$125.00
64784	0	REMOVE NERVE LESION	Surgery	9.82	6.33	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
64786	0	REMOVE SCIATIC NERVE LESION	Surgery	15.46	11.19	$125.00
64787	0	IMPLANT NERVE END	Surgery	4.30	2.60	$125.00
64788	0	REMOVE SKIN NERVE LESION	Surgery	4.61	3.48	$125.00
64790	0	REMOVAL OF NERVE LESION	Surgery	11.31	7.31	$125.00
64792	0	REMOVAL OF NERVE LESION	Surgery	14.92	9.29	$125.00
64795	0	BIOPSY OF NERVE	Surgery	3.01	2.04	$125.00
64802	0	REMOVE SYMPATHETIC NERVES	Surgery	9.15	5.76	$125.00
64804	0	REMOVE SYMPATHETIC NERVES	Surgery	14.64	10.03	$125.00
64809	0	REMOVE SYMPATHETIC NERVES	Surgery	13.67	6.92	$125.00
64818	0	REMOVE SYMPATHETIC NERVES	Surgery	10.30	7.04	$125.00
64820	0	REMOVE SYMPATHETIC NERVES	Surgery	10.37	7.83	$125.00
64831	0	REPAIR OF DIGIT NERVE	Surgery	9.44	6.25	$125.00
64832	0	REPAIR NERVE ADD-ON	Surgery	5.66	2.73	$125.00
64834	0	REPAIR OF HAND OR FOOT NERVE	Surgery	10.19	6.32	$125.00
64835	0	REPAIR OF HAND OR FOOT NERVE	Surgery	10.94	7.45	$125.00
64836	0	REPAIR OF HAND OR FOOT NERVE	Surgery	10.94	7.57	$125.00
64837	0	REPAIR NERVE ADD-ON	Surgery	6.26	3.76	$125.00
64840	0	REPAIR OF LEG NERVE	Surgery	13.02	9.76	$125.00
64856	0	REPAIR/TRANSPOSE NERVE	Surgery	13.80	9.23	$125.00
64857	0	REPAIR ARM/LEG NERVE	Surgery	14.49	9.87	$125.00
64858	0	REPAIR SCIATIC NERVE	Surgery	16.49	10.69	$125.00
64859	0	NERVE SURGERY	Surgery	4.26	2.69	$125.00
64861	0	REPAIR OF ARM NERVES	Surgery	19.24	13.41	$125.00
64862	0	REPAIR OF LOW BACK NERVES	Surgery	19.44	13.13	$125.00
64864	0	REPAIR OF FACIAL NERVE	Surgery	12.55	8.65	$125.00
64865	0	REPAIR OF FACIAL NERVE	Surgery	15.24	10.83	$125.00
64866	0	FUSION OF FACIAL/OTHER NERVE	Surgery	15.74	10.39	$125.00
64868	0	FUSION OF FACIAL/OTHER NERVE	Surgery	14.04	10.07	$125.00
64870	0	FUSION OF FACIAL/OTHER NERVE	Surgery	15.99	9.81	$125.00
64872	0	SUBSEQUENT REPAIR OF NERVE	Surgery	1.99	1.22	$125.00
64874	0	REPAIR & REVISE NERVE ADD-ON	Surgery	2.98	1.78	$125.00
64876	0	REPAIR NERVE/SHORTEN BONE	Surgery	3.38	1.68	$125.00
64885	0	NERVE GRAFT, HEAD OR NECK	Surgery	17.53	11.83	$125.00
64886	0	NERVE GRAFT, HEAD OR NECK	Surgery	20.75	13.88	$125.00
64890	0	NERVE GRAFT, HAND OR FOOT	Surgery	15.15	10.90	$125.00
64891	0	NERVE GRAFT, HAND OR FOOT	Surgery	16.14	8.46	$125.00
64892	0	NERVE GRAFT, ARM OR LEG	Surgery	14.65	9.56	$125.00
64893	0	NERVE GRAFT, ARM OR LEG	Surgery	15.60	11.50	$125.00
64895	0	NERVE GRAFT, HAND OR FOOT	Surgery	19.25	11.97	$125.00
64896	0	NERVE GRAFT, HAND OR FOOT	Surgery	20.49	11.74	$125.00
64897	0	NERVE GRAFT, ARM OR LEG	Surgery	18.24	11.78	$125.00
64898	0	NERVE GRAFT, ARM OR LEG	Surgery	19.50	13.10	$125.00
64901	0	NERVE GRAFT ADD-ON	Surgery	10.22	6.78	$125.00
64902	0	NERVE GRAFT ADD-ON	Surgery	11.83	7.72	$125.00
64905	0	NERVE PEDICLE TRANSFER	Surgery	14.02	9.00	$125.00
64907	0	NERVE PEDICLE TRANSFER	Surgery	18.83	12.27	$125.00
65091	0	REVISE EYE	Surgery	6.46	9.09	$125.00
65093	0	REVISE EYE WITH IMPLANT	Surgery	6.87	9.37	$125.00
65101	0	REMOVAL OF EYE	Surgery	7.03	9.31	$125.00
65103	0	REMOVE EYE/INSERT IMPLANT	Surgery	7.57	9.74	$125.00
65105	0	REMOVE EYE/ATTACH IMPLANT	Surgery	8.49	10.42	$125.00
65110	0	REMOVAL OF EYE	Surgery	13.95	14.74	$125.00
65112	0	REMOVE EYE/REVISE SOCKET	Surgery	16.38	16.23	$125.00
65114	0	REMOVE EYE/REVISE SOCKET	Surgery	17.53	15.82	$125.00
65125	0	REVISE OCULAR IMPLANT	Surgery	3.12	1.82	$125.00
65130	0	INSERT OCULAR IMPLANT	Surgery	7.15	9.40	$125.00
65135	0	INSERT OCULAR IMPLANT	Surgery	7.33	8.56	$125.00
65140	0	ATTACH OCULAR IMPLANT	Surgery	8.02	9.10	$125.00
65150	0	REVISE OCULAR IMPLANT	Surgery	6.26	8.71	$125.00
65155	0	REINSERT OCULAR IMPLANT	Surgery	8.66	10.98	$125.00
65175	0	REMOVAL OF OCULAR IMPLANT	Surgery	6.28	8.72	$125.00
65205	0	REMOVE FOREIGN BODY FROM EYE	Surgery	0.71	3.90	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
65210	0	REMOVE FOREIGN BODY FROM EYE	Surgery	0.84	4.07	$125.00
65220	0	REMOVE FOREIGN BODY FROM EYE	Surgery	0.71	5.05	$125.00
65222	0	REMOVE FOREIGN BODY FROM EYE	Surgery	0.93	4.06	$125.00
65235	0	REMOVE FOREIGN BODY FROM EYE	Surgery	7.57	6.64	$125.00
65260	0	REMOVE FOREIGN BODY FROM EYE	Surgery	10.96	11.19	$125.00
65265	0	REMOVE FOREIGN BODY FROM EYE	Surgery	12.59	12.75	$125.00
65270	0	REPAIR OF EYE WOUND	Surgery	1.90	1.83	$125.00
65272	0	REPAIR OF EYE WOUND	Surgery	3.82	3.34	$125.00
65273	0	REPAIR OF EYE WOUND	Surgery	4.36	4.13	$125.00
65275	0	REPAIR OF EYE WOUND	Surgery	5.34	3.96	$125.00
65280	0	REPAIR OF EYE WOUND	Surgery	7.66	7.75	$125.00
65285	0	REPAIR OF EYE WOUND	Surgery	12.90	13.36	$125.00
65286	0	REPAIR OF EYE WOUND	Surgery	5.51	5.70	$125.00
65290	0	REPAIR OF EYE SOCKET WOUND	Surgery	5.41	6.70	$125.00
65400	0	REMOVAL OF EYE LESION	Surgery	6.06	6.64	$125.00
65410	0	BIOPSY OF CORNEA	Surgery	1.47	0.94	$125.00
65420	0	REMOVAL OF EYE LESION	Surgery	4.17	5.69	$125.00
65426	0	REMOVAL OF EYE LESION	Surgery	5.25	6.15	$125.00
65430	0	CORNEAL SMEAR	Surgery	1.47	4.49	$125.00
65435	0	CURETTE/TREAT CORNEA	Surgery	0.92	1.21	$125.00
65436	0	CURETTE/TREAT CORNEA	Surgery	4.19	4.34	$125.00
65450	0	TREATMENT OF CORNEAL LESION	Surgery	3.27	5.11	$125.00
65600	0	REVISION OF CORNEA	Surgery	3.40	4.29	$125.00
65710	0	CORNEAL TRANSPLANT	Surgery	12.35	13.01	$125.00
65730	0	CORNEAL TRANSPLANT	Surgery	14.25	13.33	$125.00
65750	0	CORNEAL TRANSPLANT	Surgery	15.00	14.97	$125.00
65755	0	CORNEAL TRANSPLANT	Surgery	14.89	14.91	$125.00
65770	0	REVISE CORNEA WITH IMPLANT	Surgery	17.56	15.07	$125.00
65772	0	CORRECTION OF ASTIGMATISM	Surgery	4.29	4.65	$125.00
65775	0	CORRECTION OF ASTIGMATISM	Surgery	5.79	7.92	$125.00
65800	0	DRAINAGE OF EYE	Surgery	1.91	1.52	$125.00
65805	0	DRAINAGE OF EYE	Surgery	1.91	1.30	$125.00
65810	0	DRAINAGE OF EYE	Surgery	4.87	7.01	$125.00
65815	0	DRAINAGE OF EYE	Surgery	5.05	6.42	$125.00
65820	0	RELIEVE INNER EYE PRESSURE	Surgery	8.13	9.56	$125.00
65850	0	INCISION OF EYE	Surgery	10.52	10.36	$125.00
65855	0	LASER SURGERY OF EYE	Surgery	4.30	3.71	$125.00
65860	0	INCISE INNER EYE ADHESIONS	Surgery	3.55	2.79	$125.00
65865	0	INCISE INNER EYE ADHESIONS	Surgery	5.80	6.37	$125.00
65870	0	INCISE INNER EYE ADHESIONS	Surgery	6.27	6.55	$125.00
65875	0	INCISE INNER EYE ADHESIONS	Surgery	6.54	6.75	$125.00
65880	0	INCISE INNER EYE ADHESIONS	Surgery	7.09	7.09	$125.00
65900	0	REMOVE EYE LESION	Surgery	10.93	11.20	$125.00
65920	0	REMOVE IMPLANT FROM EYE	Surgery	8.40	8.01	$125.00
65930	0	REMOVE BLOOD CLOT FROM EYE	Surgery	7.44	8.14	$125.00
66020	0	INJECTION TREATMENT OF EYE	Surgery	1.59	1.59	$125.00
66030	0	INJECTION TREATMENT OF EYE	Surgery	1.25	1.74	$125.00
66130	0	REMOVE EYE LESION	Surgery	7.69	5.97	$125.00
66150	0	GLAUCOMA SURGERY	Surgery	8.30	10.17	$125.00
66155	0	GLAUCOMA SURGERY	Surgery	8.29	10.13	$125.00
66160	0	GLAUCOMA SURGERY	Surgery	10.17	11.29	$125.00
66165	0	GLAUCOMA SURGERY	Surgery	8.01	10.03	$125.00
66170	0	GLAUCOMA SURGERY	Surgery	12.16	12.43	$125.00
66172	0	INCISION OF EYE	Surgery	15.04	14.62	$125.00
66180	0	IMPLANT EYE SHUNT	Surgery	14.55	13.58	$125.00
66185	0	REVISE EYE SHUNT	Surgery	8.14	8.73	$125.00
66220	0	REPAIR EYE LESION	Surgery	7.77	9.12	$125.00
66225	0	REPAIR/GRAFT EYE LESION	Surgery	11.05	10.60	$125.00
66250	0	FOLLOW-UP SURGERY OF EYE	Surgery	5.98	6.64	$125.00
66500	0	INCISION OF IRIS	Surgery	3.71	4.17	$125.00
66505	0	INCISION OF IRIS	Surgery	4.08	4.11	$125.00
66600	0	REMOVE IRIS AND LESION	Surgery	8.68	9.50	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
66605	0	REMOVAL OF IRIS	Surgery	12.79	12.68	$125.00
66625	0	REMOVAL OF IRIS	Surgery	5.13	6.77	$125.00
66630	0	REMOVAL OF IRIS	Surgery	6.16	7.87	$125.00
66635	0	REMOVAL OF IRIS	Surgery	6.25	6.81	$125.00
66680	0	REPAIR IRIS & CILIARY BODY	Surgery	5.44	6.26	$125.00
66682	0	REPAIR IRIS & CILIARY BODY	Surgery	6.21	7.91	$125.00
66700	0	DESTRUCTION, CILIARY BODY	Surgery	4.78	6.19	$125.00
66710	0	DESTRUCTION, CILIARY BODY	Surgery	4.78	6.21	$125.00
66720	0	DESTRUCTION, CILIARY BODY	Surgery	4.78	6.17	$125.00
66740	0	DESTRUCTION, CILIARY BODY	Surgery	4.78	5.83	$125.00
66761	0	REVISION OF IRIS	Surgery	4.07	3.70	$125.00
66762	0	REVISION OF IRIS	Surgery	4.58	3.91	$125.00
66770	0	REMOVAL OF INNER EYE LESION	Surgery	5.18	4.19	$125.00
66820	0	INCISION, SECONDARY CATARACT	Surgery	3.89	6.39	$125.00
66821	0	AFTER CATARACT LASER SURGERY	Surgery	2.35	3.08	$125.00
66825	0	REPOSITION INTRAOCULAR LENS	Surgery	8.23	8.77	$125.00
66830	0	REMOVAL OF LENS LESION	Surgery	8.20	7.18	$125.00
66840	0	REMOVAL OF LENS MATERIAL	Surgery	7.91	7.43	$125.00
66850	0	REMOVAL OF LENS MATERIAL	Surgery	9.11	8.19	$125.00
66852	0	REMOVAL OF LENS MATERIAL	Surgery	9.97	8.82	$125.00
66920	0	EXTRACTION OF LENS	Surgery	8.86	8.09	$125.00
66930	0	EXTRACTION OF LENS	Surgery	10.18	9.42	$125.00
66940	0	EXTRACTION OF LENS	Surgery	8.93	8.79	$125.00
66982	0	CATARACT SURGERY, COMPLEX	Surgery	13.50	9.09	$125.00
66983	0	CATARACT SURG W/IOL, 1 STAGE	Surgery	8.99	6.95	$125.00
66984	0	CATARACT SURG W/IOL, I STAGE	Surgery	10.23	8.77	$125.00
66985	0	INSERT LENS PROSTHESIS	Surgery	8.39	7.57	$125.00
66986	0	EXCHANGE LENS PROSTHESIS	Surgery	12.28	9.98	$125.00
67005	0	PARTIAL REMOVAL OF EYE FLUID	Surgery	5.70	3.80	$125.00
67010	0	PARTIAL REMOVAL OF EYE FLUID	Surgery	6.87	4.61	$125.00
67015	0	RELEASE OF EYE FLUID	Surgery	6.92	7.59	$125.00
67025	0	REPLACE EYE FLUID	Surgery	6.84	7.27	$125.00
67027	0	IMPLANT EYE DRUG SYSTEM	Surgery	10.85	8.87	$125.00
67028	0	INJECTION EYE DRUG	Surgery	2.52	1.68	$125.00
67030	0	INCISE INNER EYE STRANDS	Surgery	4.84	6.18	$125.00
67031	0	LASER SURGERY, EYE STRANDS	Surgery	3.67	2.86	$125.00
67036	0	REMOVAL OF INNER EYE FLUID	Surgery	11.89	10.34	$125.00
67038	0	STRIP RETINAL MEMBRANE	Surgery	21.24	17.99	$125.00
67039	0	LASER TREATMENT OF RETINA	Surgery	14.52	13.48	$125.00
67040	0	LASER TREATMENT OF RETINA	Surgery	17.23	15.32	$125.00
67101	0	REPAIR DETACHED RETINA	Surgery	7.53	7.63	$125.00
67105	0	REPAIR DETACHED RETINA	Surgery	7.41	5.46	$125.00
67107	0	REPAIR DETACHED RETINA	Surgery	14.84	14.25	$125.00
67108	0	REPAIR DETACHED RETINA	Surgery	20.82	19.28	$125.00
67110	0	REPAIR DETACHED RETINA	Surgery	8.81	10.19	$125.00
67112	0	REREPAIR DETACHED RETINA	Surgery	16.86	16.05	$125.00
67115	0	RELEASE ENCIRCLING MATERIAL	Surgery	4.99	6.31	$125.00
67120	0	REMOVE EYE IMPLANT MATERIAL	Surgery	5.98	6.90	$125.00
67121	0	REMOVE EYE IMPLANT MATERIAL	Surgery	10.67	11.26	$125.00
67141	0	TREATMENT OF RETINA	Surgery	5.20	5.71	$125.00
67145	0	TREATMENT OF RETINA	Surgery	5.37	5.67	$125.00
67208	0	TREATMENT OF RETINAL LESION	Surgery	6.70	6.06	$125.00
67210	0	TREATMENT OF RETINAL LESION	Surgery	8.82	7.88	$125.00
67218	0	TREATMENT OF RETINAL LESION	Surgery	13.52	13.39	$125.00
67220	0	TREATMENT OF CHOROID LESION	Surgery	13.13	10.05	$125.00
67221	0	OCULAR PHOTODYNAMIC THER	Surgery	4.01	2.00	$125.00
67227	0	TREATMENT OF RETINAL LESION	Surgery	6.58	7.12	$125.00
67228	0	TREATMENT OF RETINAL LESION	Surgery	12.74	9.97	$125.00
67250	0	REINFORCE EYE WALL	Surgery	8.66	9.56	$125.00
67255	0	REINFORCE/GRAFT EYE WALL	Surgery	8.90	10.39	$125.00
67311	0	REVISE EYE MUSCLE	Surgery	6.65	6.76	$125.00
67312	0	REVISE TWO EYE MUSCLES	Surgery	8.54	8.08	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
67314	0	REVISE EYE MUSCLE	Surgery	7.52	7.39	$125.00
67316	0	REVISE TWO EYE MUSCLES	Surgery	9.66	8.70	$125.00
67318	0	REVISE EYE MUSCLE(S)	Surgery	7.85	7.17	$125.00
67320	0	REVISE EYE MUSCLE(S) ADD-ON	Surgery	4.33	7.74	$125.00
67331	0	EYE SURGERY FOLLOW-UP ADD-ON	Surgery	4.06	6.37	$125.00
67332	0	REREVISE EYE MUSCLES ADD-ON	Surgery	4.49	7.13	$125.00
67334	0	REVISE EYE MUSCLE W/SUTURE	Surgery	3.98	5.78	$125.00
67335	0	EYE SUTURE DURING SURGERY	Surgery	2.49	1.66	$125.00
67340	0	REVISE EYE MUSCLE ADD-ON	Surgery	4.93	7.54	$125.00
67343	0	RELEASE EYE TISSUE	Surgery	7.35	7.02	$125.00
67345	0	DESTROY NERVE OF EYE MUSCLE	Surgery	2.96	3.77	$125.00
67350	0	BIOPSY EYE MUSCLE	Surgery	2.87	2.49	$125.00
67400	0	EXPLORE/BIOPSY EYE SOCKET	Surgery	9.76	11.81	$125.00
67405	0	EXPLORE/DRAIN EYE SOCKET	Surgery	7.93	10.35	$125.00
67412	0	EXPLORE/TREAT EYE SOCKET	Surgery	9.50	12.62	$125.00
67413	0	EXPLORE/TREAT EYE SOCKET	Surgery	10.00	10.80	$125.00
67414	0	EXPLR/DECOMPRESS EYE SOCKET	Surgery	11.13	12.55	$125.00
67415	0	ASPIRATION, ORBITAL CONTENTS	Surgery	1.76	1.17	$125.00
67420	0	EXPLORE/TREAT EYE SOCKET	Surgery	20.06	17.71	$125.00
67430	0	EXPLORE/TREAT EYE SOCKET	Surgery	13.39	16.85	$125.00
67440	0	EXPLORE/DRAIN EYE SOCKET	Surgery	13.09	14.68	$125.00
67445	0	EXPLR/DECOMPRESS EYE SOCKET	Surgery	14.42	14.78	$125.00
67450	0	EXPLORE/BIOPSY EYE SOCKET	Surgery	13.51	14.68	$125.00
67500	0	INJECT/TREAT EYE SOCKET	Surgery	0.79	1.92	$125.00
67505	0	INJECT/TREAT EYE SOCKET	Surgery	0.82	0.97	$125.00
67515	0	INJECT/TREAT EYE SOCKET	Surgery	0.61	0.76	$125.00
67550	0	INSERT EYE SOCKET IMPLANT	Surgery	10.19	11.54	$125.00
67560	0	REVISE EYE SOCKET IMPLANT	Surgery	10.60	10.93	$125.00
67570	0	DECOMPRESS OPTIC NERVE	Surgery	13.58	13.20	$125.00
67700	0	DRAINAGE OF EYELID ABSCESS	Surgery	1.35	4.12	$125.00
67710	0	INCISION OF EYELID	Surgery	1.02	4.39	$125.00
67715	0	INCISION OF EYELID FOLD	Surgery	1.22	0.82	$125.00
67800	0	REMOVE EYELID LESION	Surgery	1.38	1.95	$125.00
67801	0	REMOVE EYELID LESIONS	Surgery	1.88	4.65	$125.00
67805	0	REMOVE EYELID LESIONS	Surgery	2.22	4.80	$125.00
67808	0	REMOVE EYELID LESION(S)	Surgery	3.80	3.47	$125.00
67810	0	BIOPSY OF EYELID	Surgery	1.48	3.53	$125.00
67820	0	REVISE EYELASHES	Surgery	0.89	1.27	$125.00
67825	0	REVISE EYELASHES	Surgery	1.38	5.46	$125.00
67830	0	REVISE EYELASHES	Surgery	1.70	1.93	$125.00
67835	0	REVISE EYELASHES	Surgery	5.56	5.14	$125.00
67840	0	REMOVE EYELID LESION	Surgery	2.04	4.66	$125.00
67850	0	TREAT EYELID LESION	Surgery	1.69	5.48	$125.00
67875	0	CLOSURE OF EYELID BY SUTURE	Surgery	1.35	1.79	$125.00
67880	0	REVISION OF EYELID	Surgery	3.80	3.29	$125.00
67882	0	REVISION OF EYELID	Surgery	5.07	4.85	$125.00
67900	0	REPAIR BROW DEFECT	Surgery	6.14	5.76	$125.00
67901	0	REPAIR EYELID DEFECT	Surgery	6.97	6.99	$125.00
67902	0	REPAIR EYELID DEFECT	Surgery	7.03	7.08	$125.00
67903	0	REPAIR EYELID DEFECT	Surgery	6.37	7.24	$125.00
67904	0	REPAIR EYELID DEFECT	Surgery	6.26	7.46	$125.00
67906	0	REPAIR EYELID DEFECT	Surgery	6.79	6.25	$125.00
67908	0	REPAIR EYELID DEFECT	Surgery	5.13	5.98	$125.00
67909	0	REVISE EYELID DEFECT	Surgery	5.40	6.50	$125.00
67911	0	REVISE EYELID DEFECT	Surgery	5.27	6.35	$125.00
67914	0	REPAIR EYELID DEFECT	Surgery	3.68	3.62	$125.00
67915	0	REPAIR EYELID DEFECT	Surgery	3.18	6.72	$125.00
67916	0	REPAIR EYELID DEFECT	Surgery	5.31	5.39	$125.00
67917	0	REPAIR EYELID DEFECT	Surgery	6.02	6.63	$125.00
67921	0	REPAIR EYELID DEFECT	Surgery	3.40	3.36	$125.00
67922	0	REPAIR EYELID DEFECT	Surgery	3.06	6.67	$125.00
67923	0	REPAIR EYELID DEFECT	Surgery	5.88	5.69	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
67924	0	REPAIR EYELID DEFECT	Surgery	5.79	6.07	$125.00
67930	0	REPAIR EYELID WOUND	Surgery	3.61	7.28	$125.00
67935	0	REPAIR EYELID WOUND	Surgery	6.22	4.95	$125.00
67938	0	REMOVE EYELID FOREIGN BODY	Surgery	1.33	5.06	$125.00
67950	0	REVISION OF EYELID	Surgery	5.82	7.04	$125.00
67961	0	REVISION OF EYELID	Surgery	5.69	6.19	$125.00
67966	0	REVISION OF EYELID	Surgery	6.57	6.61	$125.00
67971	0	RECONSTRUCTION OF EYELID	Surgery	9.79	8.83	$125.00
67973	0	RECONSTRUCTION OF EYELID	Surgery	12.87	11.22	$125.00
67974	0	RECONSTRUCTION OF EYELID	Surgery	12.84	11.32	$125.00
67975	0	RECONSTRUCTION OF EYELID	Surgery	9.13	6.80	$125.00
68020	0	INCISE/DRAIN EYELID LINING	Surgery	1.37	4.09	$125.00
68040	0	TREATMENT OF EYELID LESIONS	Surgery	0.85	3.98	$125.00
68100	0	BIOPSY OF EYELID LINING	Surgery	1.35	4.48	$125.00
68110	0	REMOVE EYELID LINING LESION	Surgery	1.77	5.12	$125.00
68115	0	REMOVE EYELID LINING LESION	Surgery	2.36	1.39	$125.00
68130	0	REMOVE EYELID LINING LESION	Surgery	4.93	2.94	$125.00
68135	0	REMOVE EYELID LINING LESION	Surgery	1.84	4.45	$125.00
68200	0	TREAT EYELID BY INJECTION	Surgery	0.49	4.06	$125.00
68320	0	REVISE/GRAFT EYELID LINING	Surgery	5.37	5.58	$125.00
68325	0	REVISE/GRAFT EYELID LINING	Surgery	7.36	7.01	$125.00
68326	0	REVISE/GRAFT EYELID LINING	Surgery	7.15	6.88	$125.00
68328	0	REVISE/GRAFT EYELID LINING	Surgery	8.18	7.74	$125.00
68330	0	REVISE EYELID LINING	Surgery	4.83	5.27	$125.00
68335	0	REVISE/GRAFT EYELID LINING	Surgery	7.19	6.11	$125.00
68340	0	SEPARATE EYELID ADHESIONS	Surgery	4.17	3.82	$125.00
68360	0	REVISE EYELID LINING	Surgery	4.37	4.96	$125.00
68362	0	REVISE EYELID LINING	Surgery	7.34	7.86	$125.00
68400	0	INCISE/DRAIN TEAR GLAND	Surgery	1.69	6.47	$125.00
68420	0	INCISE/DRAIN TEAR SAC	Surgery	2.30	6.59	$125.00
68440	0	INCISE TEAR DUCT OPENING	Surgery	0.94	4.16	$125.00
68500	0	REMOVAL OF TEAR GLAND	Surgery	11.02	9.63	$125.00
68505	0	PARTIAL REMOVAL, TEAR GLAND	Surgery	10.94	10.12	$125.00
68510	0	BIOPSY OF TEAR GLAND	Surgery	4.61	2.68	$125.00
68520	0	REMOVAL OF TEAR SAC	Surgery	7.51	7.36	$125.00
68525	0	BIOPSY OF TEAR SAC	Surgery	4.43	2.65	$125.00
68530	0	CLEARANCE OF TEAR DUCT	Surgery	3.66	9.05	$125.00
68540	0	REMOVE TEAR GLAND LESION	Surgery	10.60	8.63	$125.00
68550	0	REMOVE TEAR GLAND LESION	Surgery	13.26	10.89	$125.00
68700	0	REPAIR TEAR DUCTS	Surgery	6.60	5.39	$125.00
68705	0	REVISE TEAR DUCT OPENING	Surgery	2.06	4.72	$125.00
68720	0	CREATE TEAR SAC DRAIN	Surgery	8.96	8.20	$125.00
68745	0	CREATE TEAR DUCT DRAIN	Surgery	8.63	7.27	$125.00
68750	0	CREATE TEAR DUCT DRAIN	Surgery	8.66	8.43	$125.00
68760	0	CLOSE TEAR DUCT OPENING	Surgery	1.73	4.41	$125.00
68761	0	CLOSE TEAR DUCT OPENING	Surgery	1.36	4.97	$125.00
68770	0	CLOSE TEAR SYSTEM FISTULA	Surgery	7.02	4.83	$125.00
68801	0	DILATE TEAR DUCT OPENING	Surgery	0.94	4.91	$125.00
68810	0	PROBE NASOLACRIMAL DUCT	Surgery	1.90	6.22	$125.00
68811	0	PROBE NASOLACRIMAL DUCT	Surgery	2.35	2.04	$125.00
68815	0	PROBE NASOLACRIMAL DUCT	Surgery	3.20	7.98	$125.00
68840	0	EXPLORE/IRRIGATE TEAR DUCTS	Surgery	1.25	5.39	$125.00
68850	0	INJECTION FOR TEAR SAC X-RAY	Surgery	0.80	9.33	$125.00
69000	0	DRAIN EXTERNAL EAR LESION	Surgery	1.45	1.63	$125.00
69005	0	DRAIN EXTERNAL EAR LESION	Surgery	2.11	1.70	$125.00
69020	0	DRAIN OUTER EAR CANAL LESION	Surgery	1.48	1.73	$125.00
69100	0	BIOPSY OF EXTERNAL EAR	Surgery	0.81	1.29	$125.00
69105	0	BIOPSY OF EXTERNAL EAR CANAL	Surgery	0.85	1.31	$125.00
69110	0	REMOVE EXTERNAL EAR, PARTIAL	Surgery	3.44	2.79	$125.00
69120	0	REMOVAL OF EXTERNAL EAR	Surgery	4.05	3.50	$125.00
69140	0	REMOVE EAR CANAL LESION(S)	Surgery	7.97	8.11	$125.00
69145	0	REMOVE EAR CANAL LESION(S)	Surgery	2.62	2.52	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
69150	0	EXTENSIVE EAR CANAL SURGERY	Surgery	13.43	11.16	$125.00
69155	0	EXTENSIVE EAR/NECK SURGERY	Surgery	20.80	15.68	$125.00
69200	0	CLEAR OUTER EAR CANAL	Surgery	0.77	1.16	$125.00
69205	0	CLEAR OUTER EAR CANAL	Surgery	1.20	1.43	$125.00
69210	0	REMOVE IMPACTED EAR WAX	Surgery	0.61	1.01	$125.00
69220	0	CLEAN OUT MASTOID CAVITY	Surgery	0.83	1.23	$125.00
69222	0	CLEAN OUT MASTOID CAVITY	Surgery	1.40	1.61	$125.00
69300	0	REVISE EXTERNAL EAR	Surgery	6.36	4.70	$125.00
69310	0	REBUILD OUTER EAR CANAL	Surgery	10.79	9.77	$125.00
69320	0	REBUILD OUTER EAR CANAL	Surgery	16.96	14.21	$125.00
69400	0	INFLATE MIDDLE EAR CANAL	Surgery	0.83	1.21	$125.00
69401	0	INFLATE MIDDLE EAR CANAL	Surgery	0.63	1.08	$125.00
69405	0	CATHETERIZE MIDDLE EAR CANAL	Surgery	2.63	2.37	$125.00
69410	0	INSET MIDDLE EAR (BAFFLE)	Surgery	0.33	1.21	$125.00
69420	0	INCISION OF EARDRUM	Surgery	1.33	1.87	$125.00
69421	0	INCISION OF EARDRUM	Surgery	1.73	1.70	$125.00
69424	0	REMOVE VENTILATING TUBE	Surgery	0.85	1.36	$125.00
69433	0	CREATE EARDRUM OPENING	Surgery	1.52	2.03	$125.00
69436	0	CREATE EARDRUM OPENING	Surgery	1.98	2.06	$125.00
69440	0	EXPLORATION OF MIDDLE EAR	Surgery	7.57	7.60	$125.00
69450	0	EARDRUM REVISION	Surgery	5.57	6.11	$125.00
69501	0	MASTOIDECTOMY	Surgery	9.07	8.63	$125.00
69502	0	MASTOIDECTOMY	Surgery	12.38	11.48	$125.00
69505	0	REMOVE MASTOID STRUCTURES	Surgery	12.99	11.86	$125.00
69511	0	EXTENSIVE MASTOID SURGERY	Surgery	13.52	12.30	$125.00
69530	0	EXTENSIVE MASTOID SURGERY	Surgery	19.19	15.48	$125.00
69535	0	REMOVE PART OF TEMPORAL BONE	Surgery	36.14	24.92	$125.00
69540	0	REMOVE EAR LESION	Surgery	1.20	1.96	$125.00
69550	0	REMOVE EAR LESION	Surgery	10.99	10.54	$125.00
69552	0	REMOVE EAR LESION	Surgery	19.48	15.22	$125.00
69554	0	REMOVE EAR LESION	Surgery	33.16	22.44	$125.00
69601	0	MASTOID SURGERY REVISION	Surgery	13.24	12.51	$125.00
69602	0	MASTOID SURGERY REVISION	Surgery	13.58	12.42	$125.00
69603	0	MASTOID SURGERY REVISION	Surgery	14.02	12.76	$125.00
69604	0	MASTOID SURGERY REVISION	Surgery	14.02	12.61	$125.00
69605	0	MASTOID SURGERY REVISION	Surgery	18.49	14.50	$125.00
69610	0	REPAIR OF EARDRUM	Surgery	4.43	3.32	$125.00
69620	0	REPAIR OF EARDRUM	Surgery	5.89	3.94	$125.00
69631	0	REPAIR EARDRUM STRUCTURES	Surgery	9.86	9.73	$125.00
69632	0	REBUILD EARDRUM STRUCTURES	Surgery	12.75	12.27	$125.00
69633	0	REBUILD EARDRUM STRUCTURES	Surgery	12.10	11.80	$125.00
69635	0	REPAIR EARDRUM STRUCTURES	Surgery	13.33	11.03	$125.00
69636	0	REBUILD EARDRUM STRUCTURES	Surgery	15.22	14.13	$125.00
69637	0	REBUILD EARDRUM STRUCTURES	Surgery	15.11	14.05	$125.00
69641	0	REVISE MIDDLE EAR & MASTOID	Surgery	12.71	11.76	$125.00
69642	0	REVISE MIDDLE EAR & MASTOID	Surgery	16.84	15.25	$125.00
69643	0	REVISE MIDDLE EAR & MASTOID	Surgery	15.32	14.15	$125.00
69644	0	REVISE MIDDLE EAR & MASTOID	Surgery	16.97	15.35	$125.00
69645	0	REVISE MIDDLE EAR & MASTOID	Surgery	16.38	14.90	$125.00
69646	0	REVISE MIDDLE EAR & MASTOID	Surgery	17.99	16.09	$125.00
69650	0	RELEASE MIDDLE EAR BONE	Surgery	9.66	9.10	$125.00
69660	0	REVISE MIDDLE EAR BONE	Surgery	11.90	10.89	$125.00
69661	0	REVISE MIDDLE EAR BONE	Surgery	15.74	13.91	$125.00
69662	0	REVISE MIDDLE EAR BONE	Surgery	15.44	13.71	$125.00
69666	0	REPAIR MIDDLE EAR STRUCTURES	Surgery	9.75	9.16	$125.00
69667	0	REPAIR MIDDLE EAR STRUCTURES	Surgery	9.76	9.13	$125.00
69670	0	REMOVE MASTOID AIR CELLS	Surgery	11.51	10.21	$125.00
69676	0	REMOVE MIDDLE EAR NERVE	Surgery	9.52	8.80	$125.00
69700	0	CLOSE MASTOID FISTULA	Surgery	8.23	6.06	$125.00
69711	0	REMOVE/REPAIR HEARING AID	Surgery	10.44	9.36	$125.00
69714	0	IMPLANT TEMPLE BONE W/STIMUL	Surgery	14.00	8.71	$125.00
69715	0	TEMPLE BNE IMPLNT W/STIMULAT	Surgery	18.25	10.49	$125.00

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
69717	0	TEMPLE BONE IMPLANT REVISION	Surgery	14.98	8.37	$125.00
69718	0	REVISE TEMPLE BONE IMPLANT	Surgery	18.50	10.58	$125.00
69720	0	RELEASE FACIAL NERVE	Surgery	14.38	13.32	$125.00
69725	0	RELEASE FACIAL NERVE	Surgery	25.38	17.53	$125.00
69740	0	REPAIR FACIAL NERVE	Surgery	15.96	11.82	$125.00
69745	0	REPAIR FACIAL NERVE	Surgery	16.69	13.41	$125.00
69801	0	INCISE INNER EAR	Surgery	8.56	8.32	$125.00
69802	0	INCISE INNER EAR	Surgery	13.10	11.26	$125.00
69805	0	EXPLORE INNER EAR	Surgery	13.82	11.58	$125.00
69806	0	EXPLORE INNER EAR	Surgery	12.35	11.56	$125.00
69820	0	ESTABLISH INNER EAR WINDOW	Surgery	10.34	9.21	$125.00
69840	0	REVISE INNER EAR WINDOW	Surgery	10.26	9.80	$125.00
69905	0	REMOVE INNER EAR	Surgery	11.10	10.31	$125.00
69910	0	REMOVE INNER EAR & MASTOID	Surgery	13.63	12.29	$125.00
69915	0	INCISE INNER EAR NERVE	Surgery	21.23	16.22	$125.00
69930	0	IMPLANT COCHLEAR DEVICE	Surgery	16.81	14.35	$125.00
69950	0	INCISE INNER EAR NERVE	Surgery	25.64	16.89	$125.00
69955	0	RELEASE FACIAL NERVE	Surgery	27.04	19.26	$125.00
69960	0	RELEASE INNER EAR CANAL	Surgery	27.04	18.23	$125.00
69970	0	REMOVE INNER EAR LESION	Surgery	30.04	19.59	$125.00
69990	0	MICROSURGERY ADD-ON	Surgery	3.47	1.86	$125.00
70010	26	CONTRAST X-RAY OF BRAIN	Radiology	1.19	0.46	$117.60
70015	26	CONTRAST X-RAY OF BRAIN	Radiology	1.19	0.47	$117.60
70030	26	X-RAY EYE FOR FOREIGN BODY	Radiology	0.17	0.07	$117.60
70100	26	X-RAY EXAM OF JAW	Radiology	0.18	0.07	$117.60
70110	26	X-RAY EXAM OF JAW	Radiology	0.25	0.10	$117.60
70120	26	X-RAY EXAM OF MASTOIDS	Radiology	0.18	0.07	$117.60
70130	26	X-RAY EXAM OF MASTOIDS	Radiology	0.34	0.13	$117.60
70134	26	X-RAY EXAM OF MIDDLE EAR	Radiology	0.34	0.13	$117.60
70140	26	X-RAY EXAM OF FACIAL BONES	Radiology	0.19	0.08	$117.60
70150	26	X-RAY EXAM OF FACIAL BONES	Radiology	0.26	0.10	$117.60
70160	26	X-RAY EXAM OF NASAL BONES	Radiology	0.17	0.07	$117.60
70170	26	X-RAY EXAM OF TEAR DUCT	Radiology	0.30	0.12	$117.60
70190	26	X-RAY EXAM OF EYE SOCKETS	Radiology	0.21	0.08	$117.60
70200	26	X-RAY EXAM OF EYE SOCKETS	Radiology	0.28	0.11	$117.60
70210	26	X-RAY EXAM OF SINUSES	Radiology	0.17	0.07	$117.60
70220	26	X-RAY EXAM OF SINUSES	Radiology	0.25	0.10	$117.60
70240	26	X-RAY EXAM, PITUITARY SADDLE	Radiology	0.19	0.08	$117.60
70250	26	X-RAY EXAM OF SKULL	Radiology	0.24	0.10	$117.60
70260	26	X-RAY EXAM OF SKULL	Radiology	0.34	0.13	$117.60
70300	26	X-RAY EXAM OF TEETH	Radiology	0.10	0.04	$117.60
70310	26	X-RAY EXAM OF TEETH	Radiology	0.16	0.07	$117.60
70320	26	FULL MOUTH X-RAY OF TEETH	Radiology	0.22	0.09	$117.60
70328	26	X-RAY EXAM OF JAW JOINT	Radiology	0.18	0.07	$117.60
70330	26	X-RAY EXAM OF JAW JOINTS	Radiology	0.24	0.10	$117.60
70332	26	X-RAY EXAM OF JAW JOINT	Radiology	0.54	0.22	$117.60
70336	26	MAGNETIC IMAGE, JAW JOINT	Radiology	1.48	0.52	$117.60
70350	26	X-RAY HEAD FOR ORTHODONTIA	Radiology	0.17	0.07	$117.60
70355	26	PANORAMIC X-RAY OF JAWS	Radiology	0.20	0.08	$117.60
70360	26	X-RAY EXAM OF NECK	Radiology	0.17	0.07	$117.60
70370	26	THROAT X-RAY & FLUOROSCOPY	Radiology	0.32	0.12	$117.60
70371	26	SPEECH EVALUATION, COMPLEX	Radiology	0.84	0.33	$117.60
70373	26	CONTRAST X-RAY OF LARYNX	Radiology	0.44	0.18	$117.60
70380	26	X-RAY EXAM OF SALIVARY GLAND	Radiology	0.17	0.07	$117.60
70390	26	X-RAY EXAM OF SALIVARY DUCT	Radiology	0.38	0.14	$117.60
70450	26	CT HEAD/BRAIN W/O DYE	Radiology	0.85	0.33	$117.60
70460	26	CT HEAD/BRAIN W/DYE	Radiology	1.13	0.44	$117.60
70470	26	CT HEAD/BRAIN W/O&W DYE	Radiology	1.27	0.49	$117.60
70480	26	CT ORBIT/EAR/FOSSA W/O DYE	Radiology	1.28	0.49	$117.60
70481	26	CT ORBIT/EAR/FOSSA W/DYE	Radiology	1.38	0.53	$117.60
70482	26	CT ORBIT/EAR/FOSSA W/O&W DYE	Radiology	1.45	0.56	$117.60
70486	26	CT MAXILLOFACIAL W/O DYE	Radiology	1.14	0.44	$117.60

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
70487	26	CT MAXILLOFACIAL W/DYE	Radiology	1.30	0.50	$117.60
70488	26	CT MAXILLOFACIAL W/O&W DYE	Radiology	1.42	0.55	$117.60
70490	26	CT SOFT TISSUE NECK W/O DYE	Radiology	1.28	0.49	$117.60
70491	26	CT SOFT TISSUE NECK W/DYE	Radiology	1.38	0.53	$117.60
70492	26	CT SFT TSUE NCK W/O & W/DYE	Radiology	1.45	0.56	$117.60
70496	26	CT ANGIOGRAPHY, HEAD	Radiology	1.75	0.70	$117.60
70498	26	CT ANGIOGRAPHY, NECK	Radiology	1.75	0.70	$117.60
70540	26	MRI ORBIT/FACE/NECK W/O DYE	Radiology	1.10	0.47	$117.60
70542	26	MRI ORBIT/FACE/NECK W/DYE	Radiology	1.33	0.47	$117.60
70543	26	MRI ORBT/FAC/NCK W/O&W DYE	Radiology	1.76	0.63	$117.60
70544	26	MR ANGIOGRAPHY HEAD W/O DYE	Radiology	1.20	0.43	$117.60
70545	26	MR ANGIOGRAPHY HEAD W/DYE	Radiology	1.20	0.43	$117.60
70546	26	MR ANGIOGRAPH HEAD W/O&W DYE	Radiology	1.80	0.64	$117.60
70547	26	MR ANGIOGRAPHY NECK W/O DYE	Radiology	1.20	0.43	$117.60
70548	26	MR ANGIOGRAPHY NECK W/DYE	Radiology	1.20	0.43	$117.60
70549	26	MR ANGIOGRAPH NECK W/O&W DYE	Radiology	1.80	0.64	$117.60
70551	26	MRI BRAIN W/O DYE	Radiology	1.48	0.58	$117.60
70552	26	MRI BRAIN W/DYE	Radiology	1.78	0.70	$117.60
70553	26	MRI BRAIN W/O&W DYE	Radiology	2.36	0.92	$117.60
71010	26	CHEST X-RAY	Radiology	0.18	0.07	$117.60
71015	26	CHEST X-RAY	Radiology	0.21	0.09	$117.60
71020	26	CHEST X-RAY	Radiology	0.22	0.09	$117.60
71021	26	CHEST X-RAY	Radiology	0.27	0.11	$117.60
71022	26	CHEST X-RAY	Radiology	0.31	0.12	$117.60
71023	26	CHEST X-RAY AND FLUOROSCOPY	Radiology	0.38	0.15	$117.60
71030	26	CHEST X-RAY	Radiology	0.31	0.12	$117.60
71034	26	CHEST X-RAY AND FLUOROSCOPY	Radiology	0.46	0.19	$117.60
71035	26	CHEST X-RAY	Radiology	0.18	0.07	$117.60
71040	26	CONTRAST X-RAY OF BRONCHI	Radiology	0.58	0.23	$117.60
71060	26	CONTRAST X-RAY OF BRONCHI	Radiology	0.74	0.29	$117.60
71090	26	X-RAY & PACEMAKER INSERTION	Radiology	0.54	0.24	$117.60
71100	26	X-RAY EXAM OF RIBS	Radiology	0.22	0.09	$117.60
71101	26	X-RAY EXAM OF RIBS/CHEST	Radiology	0.27	0.11	$117.60
71110	26	X-RAY EXAM OF RIBS	Radiology	0.27	0.11	$117.60
71111	26	X-RAY EXAM OF RIBS/ CHEST	Radiology	0.32	0.12	$117.60
71120	26	X-RAY EXAM OF BREASTBONE	Radiology	0.20	0.08	$117.60
71130	26	X-RAY EXAM OF BREASTBONE	Radiology	0.22	0.09	$117.60
71250	26	CT THORAX W/O DYE	Radiology	1.16	0.45	$117.60
71260	26	CT THORAX W/DYE	Radiology	1.24	0.48	$117.60
71270	26	CT THORAX W/O&W DYE	Radiology	1.38	0.53	$117.60
71275	26	CT ANGIOGRAPHY, CHEST	Radiology	1.20	0.48	$117.60
71550	26	MRI CHEST W/O DYE	Radiology	1.22	0.52	$117.60
71551	26	MRI CHEST W/DYE	Radiology	1.44	0.51	$117.60
71552	26	MRI CHEST W/O&W DYE	Radiology	1.89	0.67	$117.60
71555	26	MRI ANGIO CHEST W OR W/O DYE	Radiology	1.81	0.68	$117.60
72010	26	X-RAY EXAM OF SPINE	Radiology	0.45	0.18	$117.60
72020	26	X-RAY EXAM OF SPINE	Radiology	0.15	0.06	$117.60
72040	26	X-RAY EXAM OF NECK SPINE	Radiology	0.22	0.09	$117.60
72050	26	X-RAY EXAM OF NECK SPINE	Radiology	0.31	0.12	$117.60
72052	26	X-RAY EXAM OF NECK SPINE	Radiology	0.36	0.14	$117.60
72069	26	X-RAY EXAM OF TRUNK SPINE	Radiology	0.22	0.09	$117.60
72070	26	X-RAY EXAM OF THORACIC SPINE	Radiology	0.22	0.09	$117.60
72072	26	X-RAY EXAM OF THORACIC SPINE	Radiology	0.22	0.09	$117.60
72074	26	X-RAY EXAM OF THORACIC SPINE	Radiology	0.22	0.09	$117.60
72080	26	X-RAY EXAM OF TRUNK SPINE	Radiology	0.22	0.09	$117.60
72090	26	X-RAY EXAM OF TRUNK SPINE	Radiology	0.28	0.11	$117.60
72100	26	X-RAY EXAM OF LOWER SPINE	Radiology	0.22	0.09	$117.60
72110	26	X-RAY EXAM OF LOWER SPINE	Radiology	0.31	0.12	$117.60
72114	26	X-RAY EXAM OF LOWER SPINE	Radiology	0.36	0.14	$117.60
72120	26	X-RAY EXAM OF LOWER SPINE	Radiology	0.22	0.09	$117.60
72125	26	CT NECK SPINE W/O DYE	Radiology	1.16	0.45	$117.60
72126	26	CT NECK SPINE W/DYE	Radiology	1.22	0.47	$117.60

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
72127	26	CT NECK SPINE W/O&W DYE	Radiology	1.27	0.49	$117.60
72128	26	CT CHEST SPINE W/O DYE	Radiology	1.16	0.45	$117.60
72129	26	CT CHEST SPINE W/DYE	Radiology	1.22	0.47	$117.60
72130	26	CT CHEST SPINE W/O&W DYE	Radiology	1.27	0.49	$117.60
72131	26	CT LUMBAR SPINE W/O DYE	Radiology	1.16	0.45	$117.60
72132	26	CT LUMBAR SPINE W/DYE	Radiology	1.22	0.47	$117.60
72133	26	CT LUMBAR SPINE W/O&W DYE	Radiology	1.27	0.50	$117.60
72141	26	MRI NECK SPINE W/O DYE	Radiology	1.60	0.62	$117.60
72142	26	MRI NECK SPINE W/DYE	Radiology	1.92	0.76	$117.60
72146	26	MRI CHEST SPINE W/O DYE	Radiology	1.60	0.62	$117.60
72147	26	MRI CHEST SPINE W/DYE	Radiology	1.92	0.75	$117.60
72148	26	MRI LUMBAR SPINE W/O DYE	Radiology	1.48	0.58	$117.60
72149	26	MRI LUMBAR SPINE W/DYE	Radiology	1.78	0.71	$117.60
72156	26	MRI NECK SPINE W/O&W DYE	Radiology	2.57	1.00	$117.60
72157	26	MRI CHEST SPINE W/O&W DYE	Radiology	2.57	1.00	$117.60
72158	26	MRI LUMBAR SPINE W/O&W DYE	Radiology	2.36	0.92	$117.60
72159	26	MR ANGIO SPINE W/O&W DYE	Radiology	1.80	0.72	$117.60
72170	26	X-RAY EXAM OF PELVIS	Radiology	0.17	0.07	$117.60
72190	26	X-RAY EXAM OF PELVIS	Radiology	0.21	0.09	$117.60
72191	26	CT ANGIOGRAPH PELV W/O&W DYE	Radiology	1.20	0.48	$117.60
72192	26	CT PELVIS W/O DYE	Radiology	1.09	0.42	$117.60
72193	26	CT PELVIS W/DYE	Radiology	1.16	0.45	$117.60
72194	26	CT PELVIS W/O&W DYE	Radiology	1.22	0.47	$117.60
72195	26	MRI PELVIS W/O DYE	Radiology	1.22	0.43	$117.60
72196	26	MRI PELVIS W/DYE	Radiology	1.44	0.58	$117.60
72197	26	MRI PELVIS W/O & W DYE	Radiology	1.89	0.67	$117.60
72198	26	MR ANGIO PELVIS W/O&W DYE	Radiology	1.80	0.74	$117.60
72200	26	X-RAY EXAM SACROILIAC JOINTS	Radiology	0.17	0.07	$117.60
72202	26	X-RAY EXAM SACROILIAC JOINTS	Radiology	0.19	0.08	$117.60
72220	26	X-RAY EXAM OF TAILBONE	Radiology	0.17	0.07	$117.60
72240	26	CONTRAST X-RAY OF NECK SPINE	Radiology	0.91	0.34	$117.60
72255	26	CONTRAST X-RAY, THORAX SPINE	Radiology	0.91	0.33	$117.60
72265	26	CONTRAST X-RAY, LOWER SPINE	Radiology	0.83	0.31	$117.60
72270	26	CONTRAST X-RAY OF SPINE	Radiology	1.33	0.49	$117.60
72275	26	EPIDUROGRAPHY	Radiology	0.76	0.25	$117.60
72285	26	X-RAY C/T SPINE DISK	Radiology	1.16	0.40	$117.60
72295	26	X-RAY OF LOWER SPINE DISK	Radiology	0.83	0.32	$117.60
73000	26	X-RAY EXAM OF COLLAR BONE	Radiology	0.16	0.07	$117.60
73010	26	X-RAY EXAM OF SHOULDER BLADE	Radiology	0.17	0.07	$117.60
73020	26	X-RAY EXAM OF SHOULDER	Radiology	0.15	0.06	$117.60
73030	26	X-RAY EXAM OF SHOULDER	Radiology	0.18	0.07	$117.60
73040	26	CONTRAST X-RAY OF SHOULDER	Radiology	0.54	0.21	$117.60
73050	26	X-RAY EXAM OF SHOULDERS	Radiology	0.20	0.08	$117.60
73060	26	X-RAY EXAM OF HUMERUS	Radiology	0.17	0.07	$117.60
73070	26	X-RAY EXAM OF ELBOW	Radiology	0.15	0.06	$117.60
73080	26	X-RAY EXAM OF ELBOW	Radiology	0.17	0.07	$117.60
73085	26	CONTRAST X-RAY OF ELBOW	Radiology	0.54	0.22	$117.60
73090	26	X-RAY EXAM OF FOREARM	Radiology	0.16	0.07	$117.60
73092	26	X-RAY EXAM OF ARM, INFANT	Radiology	0.16	0.07	$117.60
73100	26	X-RAY EXAM OF WRIST	Radiology	0.15	0.07	$117.60
73110	26	X-RAY EXAM OF WRIST	Radiology	0.17	0.07	$117.60
73115	26	CONTRAST X-RAY OF WRIST	Radiology	0.54	0.22	$117.60
73120	26	X-RAY EXAM OF HAND	Radiology	0.16	0.07	$117.60
73130	26	X-RAY EXAM OF HAND	Radiology	0.17	0.07	$117.60
73140	26	X-RAY EXAM OF FINGER(S)	Radiology	0.13	0.06	$117.60
73200	26	CT UPPER EXTREMITY W/O DYE	Radiology	1.09	0.42	$117.60
73201	26	CT UPPER EXTREMITY W/DYE	Radiology	1.16	0.45	$117.60
73202	26	CT UPPR EXTREMITY W/O&W DYE	Radiology	1.22	0.48	$117.60
73206	26	CT ANGIO UPR EXTRM W/O&W DYE	Radiology	1.20	0.48	$117.60
73218	26	MRI UPPER EXTREMITY W/O DYE	Radiology	1.10	0.39	$117.60
73219	26	MRI UPPER EXTREMITY W/DYE	Radiology	1.33	0.48	$117.60
73220	26	MRI UPPR EXTREMITY W/O&W DYE	Radiology	1.76	0.65	$117.60

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
73221	26	MRI JOINT UPR EXTREM W/O DYE	Radiology	1.10	0.41	$117.60
73222	26	MRI JOINT UPR EXTREM W/ DYE	Radiology	1.33	0.47	$117.60
73223	26	MRI JOINT UPR EXTR W/O&W DYE	Radiology	1.76	0.63	$117.60
73225	26	MR ANGIO UPR EXTR W/O&W DYE	Radiology	1.73	0.70	$117.60
73500	26	X-RAY EXAM OF HIP	Radiology	0.17	0.07	$117.60
73510	26	X-RAY EXAM OF HIP	Radiology	0.21	0.09	$117.60
73520	26	X-RAY EXAM OF HIPS	Radiology	0.26	0.10	$117.60
73525	26	CONTRAST X-RAY OF HIP	Radiology	0.54	0.21	$117.60
73530	26	X-RAY EXAM OF HIP	Radiology	0.29	0.11	$117.60
73540	26	X-RAY EXAM OF PELVIS & HIPS	Radiology	0.20	0.08	$117.60
73542	26	X-RAY EXAM, SACROILIAC JOINT	Radiology	0.59	0.21	$117.60
73550	26	X-RAY EXAM OF THIGH	Radiology	0.17	0.07	$117.60
73560	26	X-RAY EXAM OF KNEE, 1 OR 2	Radiology	0.17	0.07	$117.60
73562	26	X-RAY EXAM OF KNEE, 3	Radiology	0.18	0.08	$117.60
73564	26	X-RAY EXAM, KNEE, 4 OR MORE	Radiology	0.22	0.09	$117.60
73565	26	X-RAY EXAM OF KNEES	Radiology	0.17	0.07	$117.60
73580	26	CONTRAST X-RAY OF KNEE JOINT	Radiology	0.54	0.21	$117.60
73590	26	X-RAY EXAM OF LOWER LEG	Radiology	0.17	0.07	$117.60
73592	26	X-RAY EXAM OF LEG, INFANT	Radiology	0.16	0.07	$117.60
73600	26	X-RAY EXAM OF ANKLE	Radiology	0.16	0.07	$117.60
73610	26	X-RAY EXAM OF ANKLE	Radiology	0.17	0.07	$117.60
73615	26	CONTRAST X-RAY OF ANKLE	Radiology	0.54	0.22	$117.60
73620	26	X-RAY EXAM OF FOOT	Radiology	0.16	0.07	$117.60
73630	26	X-RAY EXAM OF FOOT	Radiology	0.17	0.07	$117.60
73650	26	X-RAY EXAM OF HEEL	Radiology	0.16	0.07	$117.60
73660	26	X-RAY EXAM OF TOE(S)	Radiology	0.13	0.06	$117.60
73700	26	CT LOWER EXTREMITY W/O DYE	Radiology	1.09	0.42	$117.60
73701	26	CT LOWER EXTREMITY W/DYE	Radiology	1.16	0.45	$117.60
73702	26	CT LWR EXTREMITY W/O&W DYE	Radiology	1.22	0.47	$117.60
73706	26	CT ANGIO LWR EXTR W/O&W DYE	Radiology	1.20	0.48	$117.60
73718	26	MRI LOWER EXTREMITY W/O DYE	Radiology	1.10	0.39	$117.60
73719	26	MRI LOWER EXTREMITY W/DYE	Radiology	1.33	0.47	$117.60
73720	26	MRI LWR EXTREMITY W/O&W DYE	Radiology	1.76	0.65	$117.60
73721	26	MRI JOINT OF LWR EXTRE W/O D	Radiology	1.10	0.41	$117.60
73722	26	MRI JOINT OF LWR EXTR W/DYE	Radiology	1.33	0.48	$117.60
73723	26	MRI JOINT LWR EXTR W/O&W DYE	Radiology	1.76	0.63	$117.60
73725	26	MR ANG LWR EXT W OR W/O DYE	Radiology	1.82	0.67	$117.60
74000	26	X-RAY EXAM OF ABDOMEN	Radiology	0.18	0.07	$117.60
74010	26	X-RAY EXAM OF ABDOMEN	Radiology	0.23	0.09	$117.60
74020	26	X-RAY EXAM OF ABDOMEN	Radiology	0.27	0.11	$117.60
74022	26	X-RAY EXAM SERIES, ABDOMEN	Radiology	0.32	0.12	$117.60
74150	26	CT ABDOMEN W/O DYE	Radiology	1.19	0.46	$117.60
74160	26	CT ABDOMEN W/DYE	Radiology	1.27	0.49	$117.60
74170	26	CT ABDOMEN W/O&W DYE	Radiology	1.40	0.54	$117.60
74175	26	CT ANGIO ABDOM W/O&W DYE	Radiology	1.20	0.48	$117.60
74181	26	MRI ABDOMEN W/O DYE	Radiology	1.22	0.52	$117.60
74182	26	MRI ABDOMEN W/DYE	Radiology	1.44	0.51	$117.60
74183	26	MRI ABDOMEN W/O&W DYE	Radiology	1.89	0.67	$117.60
74185	26	MRI ANGIO, ABDOM W OR W/O DY	Radiology	1.80	0.68	$117.60
74190	26	X-RAY EXAM OF PERITONEUM	Radiology	0.48	0.16	$117.60
74210	26	CONTRST X-RAY EXAM OF THROAT	Radiology	0.36	0.14	$117.60
74220	26	CONTRAST X-RAY, ESOPHAGUS	Radiology	0.46	0.18	$117.60
74230	26	CINEMA X-RAY, THROAT/ESOPH	Radiology	0.53	0.21	$117.60
74235	26	REMOVE ESOPHAGUS OBSTRUCTION	Radiology	1.19	0.46	$117.60
74240	26	X-RAY EXAM, UPPER GI TRACT	Radiology	0.69	0.27	$117.60
74241	26	X-RAY EXAM, UPPER GI TRACT	Radiology	0.69	0.27	$117.60
74245	26	X-RAY EXAM, UPPER GI TRACT	Radiology	0.91	0.35	$117.60
74246	26	CONTRST X-RAY UPPR GI TRACT	Radiology	0.69	0.27	$117.60
74247	26	CONTRST X-RAY UPPR GI TRACT	Radiology	0.69	0.28	$117.60
74249	26	CONTRST X-RAY UPPR GI TRACT	Radiology	0.91	0.35	$117.60
74250	26	X-RAY EXAM OF SMALL BOWEL	Radiology	0.47	0.19	$117.60
74251	26	X-RAY EXAM OF SMALL BOWEL	Radiology	0.69	0.24	$117.60

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
74260	26	X-RAY EXAM OF SMALL BOWEL	Radiology	0.50	0.20	$117.60
74270	26	CONTRAST X-RAY EXAM OF COLON	Radiology	0.69	0.27	$117.60
74280	26	CONTRAST X-RAY EXAM OF COLON	Radiology	0.99	0.39	$117.60
74283	26	CONTRAST X-RAY EXAM OF COLON	Radiology	2.02	0.79	$117.60
74290	26	CONTRAST X-RAY, GALLBLADDER	Radiology	0.32	0.12	$117.60
74291	26	CONTRAST X-RAYS, GALLBLADDER	Radiology	0.20	0.08	$117.60
74300	26	X-RAY BILE DUCTS/PANCREAS	Radiology	0.36	0.14	$117.60
74301	26	X-RAYS AT SURGERY ADD-ON	Radiology	0.21	0.08	$117.60
74305	26	X-RAY BILE DUCTS/PANCREAS	Radiology	0.42	0.17	$117.60
74320	26	CONTRAST X-RAY OF BILE DUCTS	Radiology	0.54	0.21	$117.60
74327	26	X-RAY BILE STONE REMOVAL	Radiology	0.70	0.28	$117.60
74328	26	XRAY BILE DUCT ENDOSCOPY	Radiology	0.70	0.28	$117.60
74329	26	X-RAY FOR PANCREAS ENDOSCOPY	Radiology	0.70	0.28	$117.60
74330	26	X-RAY BILE/PANC ENDOSCOPY	Radiology	0.90	0.33	$117.60
74340	26	X-RAY GUIDE FOR GI TUBE	Radiology	0.54	0.21	$117.60
74350	26	X-RAY GUIDE, STOMACH TUBE	Radiology	0.76	0.30	$117.60
74355	26	X-RAY GUIDE, INTESTINAL TUBE	Radiology	0.76	0.30	$117.60
74360	26	X-RAY GUIDE, GI DILATION	Radiology	0.54	0.21	$117.60
74363	26	X-RAY, BILE DUCT DILATION	Radiology	0.88	0.34	$117.60
74400	26	CONTRST X-RAY, URINARY TRACT	Radiology	0.49	0.19	$117.60
74410	26	CONTRST X-RAY, URINARY TRACT	Radiology	0.49	0.19	$117.60
74415	26	CONTRST X-RAY, URINARY TRACT	Radiology	0.49	0.19	$117.60
74420	26	CONTRST X-RAY, URINARY TRACT	Radiology	0.36	0.14	$117.60
74425	26	CONTRST X-RAY, URINARY TRACT	Radiology	0.36	0.14	$117.60
74430	26	CONTRAST X-RAY, BLADDER	Radiology	0.32	0.12	$117.60
74440	26	X-RAY, MALE GENITAL TRACT	Radiology	0.38	0.14	$117.60
74445	26	X-RAY EXAM OF PENIS	Radiology	1.14	0.44	$117.60
74450	26	X-RAY, URETHRA/BLADDER	Radiology	0.33	0.13	$117.60
74455	26	X-RAY, URETHRA/BLADDER	Radiology	0.33	0.13	$117.60
74470	26	X-RAY EXAM OF KIDNEY LESION	Radiology	0.54	0.21	$117.60
74475	26	X-RAY CONTROL, CATH INSERT	Radiology	0.54	0.21	$117.60
74480	26	X-RAY CONTROL, CATH INSERT	Radiology	0.54	0.21	$117.60
74485	26	X-RAY GUIDE, GU DILATION	Radiology	0.54	0.21	$117.60
74710	26	X-RAY MEASUREMENT OF PELVIS	Radiology	0.34	0.13	$117.60
74740	26	X-RAY, FEMALE GENITAL TRACT	Radiology	0.38	0.15	$117.60
74742	26	X-RAY, FALLOPIAN TUBE	Radiology	0.61	0.24	$117.60
74775	26	X-RAY EXAM OF PERINEUM	Radiology	0.62	0.24	$117.60
75552	26	HEART MRI FOR MORPH W/O DYE	Radiology	1.60	0.62	$117.60
75553	26	HEART MRI FOR MORPH W/DYE	Radiology	2.00	0.73	$117.60
75554	26	CARDIAC MRI/FUNCTION	Radiology	1.83	0.73	$117.60
75555	26	CARDIAC MRI/LIMITED STUDY	Radiology	1.74	0.71	$117.60
75600	26	CONTRAST X-RAY EXAM OF AORTA	Radiology	0.49	0.22	$117.60
75605	26	CONTRAST X-RAY EXAM OF AORTA	Radiology	1.14	0.47	$117.60
75625	26	CONTRAST X-RAY EXAM OF AORTA	Radiology	1.14	0.44	$117.60
75630	26	X-RAY AORTA, LEG ARTERIES	Radiology	1.79	0.67	$117.60
75635	26	CT ANGIO ABDOMINAL ARTERIES	Radiology	1.89	0.76	$117.60
75650	26	ARTERY X-RAYS, HEAD & NECK	Radiology	1.49	0.58	$117.60
75658	26	ARTERY X-RAYS, ARM	Radiology	1.31	0.56	$117.60
75660	26	ARTERY X-RAYS, HEAD & NECK	Radiology	1.31	0.53	$117.60
75662	26	ARTERY X-RAYS, HEAD & NECK	Radiology	1.66	0.69	$117.60
75665	26	ARTERY X-RAYS, HEAD & NECK	Radiology	1.31	0.52	$117.60
75671	26	ARTERY X-RAYS, HEAD & NECK	Radiology	1.66	0.65	$117.60
75676	26	ARTERY X-RAYS, NECK	Radiology	1.31	0.52	$117.60
75680	26	ARTERY X-RAYS, NECK	Radiology	1.66	0.65	$117.60
75685	26	ARTERY X-RAYS, SPINE	Radiology	1.31	0.51	$117.60
75705	26	ARTERY X-RAYS, SPINE	Radiology	2.18	0.85	$117.60
75710	26	ARTERY X-RAYS, ARM/LEG	Radiology	1.14	0.45	$117.60
75716	26	ARTERY X-RAYS, ARMS/LEGS	Radiology	1.31	0.51	$117.60
75722	26	ARTERY X-RAYS, KIDNEY	Radiology	1.14	0.47	$117.60
75724	26	ARTERY X-RAYS, KIDNEYS	Radiology	1.49	0.65	$117.60
75726	26	ARTERY X-RAYS, ABDOMEN	Radiology	1.14	0.44	$117.60
75731	26	ARTERY X-RAYS, ADRENAL GLAND	Radiology	1.14	0.44	$117.60

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
75733	26	ARTERY X-RAYS, ADRENALS	Radiology	1.31	0.52	$117.60
75736	26	ARTERY X-RAYS, PELVIS	Radiology	1.14	0.44	$117.60
75741	26	ARTERY X-RAYS, LUNG	Radiology	1.31	0.51	$117.60
75743	26	ARTERY X-RAYS, LUNGS	Radiology	1.66	0.64	$117.60
75746	26	ARTERY X-RAYS, LUNG	Radiology	1.14	0.44	$117.60
75756	26	ARTERY X-RAYS, CHEST	Radiology	1.14	0.50	$117.60
75774	26	ARTERY X-RAY, EACH VESSEL	Radiology	0.36	0.15	$117.60
75790	26	VISUALIZE A-V SHUNT	Radiology	1.84	0.71	$117.60
75801	26	LYMPH VESSEL X-RAY, ARM/LEG	Radiology	0.81	0.32	$117.60
75803	26	LYMPH VESSEL X-RAY,ARMS/LEGS	Radiology	1.17	0.45	$117.60
75805	26	LYMPH VESSEL X-RAY, TRUNK	Radiology	0.81	0.32	$117.60
75807	26	LYMPH VESSEL X-RAY, TRUNK	Radiology	1.17	0.45	$117.60
75809	26	NONVASCULAR SHUNT, X-RAY	Radiology	0.47	0.18	$117.60
75810	26	VEIN X-RAY, SPLEEN/LIVER	Radiology	1.14	0.44	$117.60
75820	26	VEIN X-RAY, ARM/LEG	Radiology	0.70	0.28	$117.60
75822	26	VEIN X-RAY, ARMS/LEGS	Radiology	1.06	0.41	$117.60
75825	26	VEIN X-RAY, TRUNK	Radiology	1.14	0.44	$117.60
75827	26	VEIN X-RAY, CHEST	Radiology	1.14	0.44	$117.60
75831	26	VEIN X-RAY, KIDNEY	Radiology	1.14	0.44	$117.60
75833	26	VEIN X-RAY, KIDNEYS	Radiology	1.49	0.58	$117.60
75840	26	VEIN X-RAY, ADRENAL GLAND	Radiology	1.14	0.44	$117.60
75842	26	VEIN X-RAY, ADRENAL GLANDS	Radiology	1.49	0.57	$117.60
75860	26	VEIN X-RAY, NECK	Radiology	1.14	0.46	$117.60
75870	26	VEIN X-RAY, SKULL	Radiology	1.14	0.45	$117.60
75872	26	VEIN X-RAY, SKULL	Radiology	1.14	0.44	$117.60
75880	26	VEIN X-RAY, EYE SOCKET	Radiology	0.70	0.28	$117.60
75885	26	VEIN X-RAY, LIVER	Radiology	1.44	0.56	$117.60
75887	26	VEIN X-RAY, LIVER	Radiology	1.44	0.56	$117.60
75889	26	VEIN X-RAY, LIVER	Radiology	1.14	0.44	$117.60
75891	26	VEIN X-RAY, LIVER	Radiology	1.14	0.44	$117.60
75893	26	VENOUS SAMPLING BY CATHETER	Radiology	0.54	0.21	$117.60
75894	26	X-RAYS, TRANSCATH THERAPY	Radiology	1.31	0.51	$117.60
75896	26	X-RAYS, TRANSCATH THERAPY	Radiology	1.31	0.52	$117.60
75898	26	FOLLOW-UP ANGIOGRAM	Radiology	1.65	0.65	$117.60
75900	26	ARTERIAL CATHETER EXCHANGE	Radiology	0.49	0.20	$117.60
75940	26	X-RAY PLACEMENT, VEIN FILTER	Radiology	0.54	0.21	$117.60
75945	26	INTRAVASCULAR US	Radiology	0.40	0.17	$117.60
75946	26	INTRAVASCULAR US ADD-ON	Radiology	0.40	0.17	$117.60
75952	0	ENDOVASC REPAIR ABDOM AORTA	Radiology	4.00	1.60	$117.60
75953	0	ABDOM ANEURYSM ENDOVAS RPR	Radiology	1.36	0.54	$117.60
75960	26	TRANSCATHETER INTRO, STENT	Radiology	0.82	0.33	$117.60
75961	26	RETRIEVAL, BROKEN CATHETER	Radiology	4.25	1.66	$117.60
75962	26	REPAIR ARTERIAL BLOCKAGE	Radiology	0.54	0.22	$117.60
75964	26	REPAIR ARTERY BLOCKAGE, EACH	Radiology	0.36	0.14	$117.60
75966	26	REPAIR ARTERIAL BLOCKAGE	Radiology	1.31	0.54	$117.60
75968	26	REPAIR ARTERY BLOCKAGE, EACH	Radiology	0.36	0.15	$117.60
75970	26	VASCULAR BIOPSY	Radiology	0.83	0.33	$117.60
75978	26	REPAIR VENOUS BLOCKAGE	Radiology	0.54	0.27	$117.60
75980	26	CONTRAST XRAY EXAM BILE DUCT	Radiology	1.44	0.56	$117.60
75982	26	CONTRAST XRAY EXAM BILE DUCT	Radiology	1.44	0.56	$117.60
75984	26	XRAY CONTROL CATHETER CHANGE	Radiology	0.72	0.28	$117.60
75989	26	ABSCESS DRAINAGE UNDER X-RAY	Radiology	1.19	0.46	$117.60
75992	26	ATHERECTOMY, X-RAY EXAM	Radiology	0.54	0.23	$117.60
75993	26	ATHERECTOMY, X-RAY EXAM	Radiology	0.36	0.16	$117.60
75994	26	ATHERECTOMY, X-RAY EXAM	Radiology	1.31	0.54	$117.60
75995	26	ATHERECTOMY, X-RAY EXAM	Radiology	1.31	0.50	$117.60
75996	26	ATHERECTOMY, X-RAY EXAM	Radiology	0.36	0.15	$117.60
76000	26	FLUOROSCOPE EXAMINATION	Radiology	0.17	0.06	$117.60
76001	26	FLUOROSCOPE EXAM, EXTENSIVE	Radiology	0.67	0.27	$117.60
76003	26	NEEDLE LOCALIZATION BY X-RAY	Radiology	0.54	0.20	$117.60
76005	26	FLUOROGUIDE FOR SPINE INJECT	Radiology	0.60	0.19	$117.60
76006	0	X-RAY STRESS VIEW	Radiology	0.41	0.19	$117.60

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
76010	26	X-RAY, NOSE TO RECTUM	Radiology	0.18	0.07	$117.60
76012	0	PERCUT VERTEBROPLASTY FLUOR	Radiology	1.31	0.49	$117.60
76013	0	PERCUT VERTEBROPLASTY, CT	Radiology	1.38	0.52	$117.60
76020	26	X-RAYS FOR BONE AGE	Radiology	0.19	0.08	$117.60
76040	26	X-RAYS, BONE EVALUATION	Radiology	0.27	0.11	$117.60
76061	26	X-RAYS, BONE SURVEY	Radiology	0.45	0.18	$117.60
76062	26	X-RAYS, BONE SURVEY	Radiology	0.54	0.21	$117.60
76065	26	X-RAYS, BONE EVALUATION	Radiology	0.28	0.11	$117.60
76066	26	JOINT(S) SURVEY, SINGLE FILM	Radiology	0.31	0.12	$117.60
76070	26	CT SCAN, BONE DENSITY STUDY	Radiology	0.25	0.11	$117.60
76075	26	DUAL ENERGY X-RAY STUDY	Radiology	0.30	0.12	$117.60
76076	26	DUAL ENERGY X-RAY STUDY	Radiology	0.22	0.09	$117.60
76078	26	PHOTODENSITOMETRY	Radiology	0.20	0.09	$117.60
76080	26	X-RAY EXAM OF FISTULA	Radiology	0.54	0.21	$117.60
76086	26	X-RAY OF MAMMARY DUCT	Radiology	0.36	0.14	$117.60
76088	26	X-RAY OF MAMMARY DUCTS	Radiology	0.45	0.18	$117.60
76090	26	MAMMOGRAM, ONE BREAST	Radiology	0.58	0.19	$117.60
76091	26	MAMMOGRAM, BOTH BREASTS	Radiology	0.69	0.24	$117.60
76093	26	MAGNETIC IMAGE, BREAST	Radiology	1.63	0.63	$117.60
76094	26	MAGNETIC IMAGE, BOTH BREASTS	Radiology	1.63	0.63	$117.60
76095	26	STEREOTACTIC BREAST BIOPSY	Radiology	1.59	0.62	$117.60
76096	26	X-RAY OF NEEDLE WIRE, BREAST	Radiology	0.56	0.22	$117.60
76098	26	X-RAY EXAM, BREAST SPECIMEN	Radiology	0.16	0.07	$117.60
76100	26	X-RAY EXAM OF BODY SECTION	Radiology	0.58	0.23	$117.60
76101	26	COMPLEX BODY SECTION X-RAY	Radiology	0.58	0.23	$117.60
76102	26	COMPLEX BODY SECTION X-RAYS	Radiology	0.58	0.23	$117.60
76120	26	CINEMATIC X-RAYS	Radiology	0.38	0.15	$117.60
76125	26	CINEMATIC X-RAYS ADD-ON	Radiology	0.27	0.11	$117.60
76355	26	CAT SCAN FOR LOCALIZATION	Radiology	1.21	0.47	$117.60
76360	26	CAT SCAN FOR NEEDLE BIOPSY	Radiology	1.16	0.44	$117.60
76370	26	CAT SCAN FOR THERAPY GUIDE	Radiology	0.85	0.33	$117.60
76375	26	3D/HOLOGRAPH RECONSTR ADD-ON	Radiology	0.16	0.07	$117.60
76380	26	CAT SCAN FOLLOW-UP STUDY	Radiology	0.98	0.38	$117.60
76390	26	MR SPECTROSCOPY	Radiology	1.40	0.56	$117.60
76393	26	MR GUIDANCE FOR NEEDLE PLACE	Radiology	1.50	0.53	$117.60
76400	26	MAGNETIC IMAGE, BONE MARROW	Radiology	1.60	0.62	$117.60
76506	26	ECHO EXAM OF HEAD	Radiology	0.63	0.27	$117.60
76511	26	ECHO EXAM OF EYE	Radiology	0.94	0.40	$117.60
76512	26	ECHO EXAM OF EYE	Radiology	0.66	0.32	$117.60
76513	26	ECHO EXAM OF EYE, WATER BATH	Radiology	0.66	0.33	$117.60
76516	26	ECHO EXAM OF EYE	Radiology	0.54	0.27	$117.60
76519	26	ECHO EXAM OF EYE	Radiology	0.54	0.27	$117.60
76529	26	ECHO EXAM OF EYE	Radiology	0.57	0.27	$117.60
76536	26	ECHO EXAM OF HEAD AND NECK	Radiology	0.56	0.22	$117.60
76604	26	ECHO EXAM OF CHEST	Radiology	0.55	0.22	$117.60
76645	26	ECHO EXAM OF BREAST(S)	Radiology	0.54	0.21	$117.60
76700	26	ECHO EXAM OF ABDOMEN	Radiology	0.81	0.32	$117.60
76705	26	ECHO EXAM OF ABDOMEN	Radiology	0.59	0.23	$117.60
76770	26	ECHO EXAM ABDOMEN BACK WALL	Radiology	0.74	0.29	$117.60
76775	26	ECHO EXAM ABDOMEN BACK WALL	Radiology	0.58	0.23	$117.60
76778	26	ECHO EXAM KIDNEY TRANSPLANT	Radiology	0.74	0.29	$117.60
76800	26	ECHO EXAM SPINAL CANAL	Radiology	1.13	0.38	$117.60
76805	26	ECHO EXAM OF PREGNANT UTERUS	Radiology	0.99	0.39	$117.60
76810	26	ECHO EXAM OF PREGNANT UTERUS	Radiology	1.97	0.79	$117.60
76815	26	ECHO EXAM OF PREGNANT UTERUS	Radiology	0.65	0.26	$117.60
76816	26	ECHO EXAM FOLLOW-UP/REPEAT	Radiology	0.57	0.24	$117.60
76818	26	FETL BIOPHYS PROFIL W/STRESS	Radiology	0.86	0.34	$117.60
76819	26	FETL BIOPHYS PROFIL W/O STRS	Radiology	0.63	0.24	$117.60
76825	26	ECHO EXAM OF FETAL HEART	Radiology	1.67	0.55	$117.60
76826	26	ECHO EXAM OF FETAL HEART	Radiology	0.83	0.41	$117.60
76827	26	ECHO EXAM OF FETAL HEART	Radiology	0.58	0.34	$117.60
76828	26	ECHO EXAM OF FETAL HEART	Radiology	0.56	0.24	$117.60

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
76830	26	ECHO EXAM, TRANSVAGINAL	Radiology	0.69	0.28	$117.60
76831	26	ECHO EXAM, UTERUS	Radiology	0.72	0.29	$117.60
76856	26	ECHO EXAM OF PELVIS	Radiology	0.69	0.28	$117.60
76857	26	ECHO EXAM OF PELVIS	Radiology	0.38	0.14	$117.60
76870	26	ECHO EXAM OF SCROTUM	Radiology	0.64	0.25	$117.60
76872	26	ECHO EXAM, TRANSRECTAL	Radiology	0.69	0.27	$117.60
76873	26	ECHOGRAP TRANS R, PROS STUDY	Radiology	1.55	0.53	$117.60
76880	26	ECHO EXAM OF EXTREMITY	Radiology	0.59	0.23	$117.60
76885	26	ECHO EXAM, INFANT HIPS	Radiology	0.74	0.28	$117.60
76886	26	ECHO EXAM, INFANT HIPS	Radiology	0.62	0.24	$117.60
76930	26	ECHO GUIDE, CARDIOCENTESIS	Radiology	0.67	0.30	$117.60
76932	26	ECHO GUIDE FOR HEART BIOPSY	Radiology	0.67	0.30	$117.60
76936	26	ECHO GUIDE FOR ARTERY REPAIR	Radiology	1.99	0.88	$117.60
76941	26	ECHO GUIDE FOR TRANSFUSION	Radiology	1.34	0.54	$117.60
76942	26	ECHO GUIDE FOR BIOPSY	Radiology	0.67	0.26	$117.60
76945	26	ECHO GUIDE, VILLUS SAMPLING	Radiology	0.67	0.35	$117.60
76946	26	ECHO GUIDE FOR AMNIOCENTESIS	Radiology	0.38	0.15	$117.60
76948	26	ECHO GUIDE, OVA ASPIRATION	Radiology	0.38	0.15	$117.80
76950	26	ECHO GUIDANCE RADIOTHERAPY	Radiology	0.58	0.22	$117.60
76965	26	ECHO GUIDANCE RADIOTHERAPY	Radiology	1.34	0.74	$117.60
76970	26	ULTRASOUND EXAM FOLLOW-UP	Radiology	0.40	0.16	$117.60
76975	26	GI ENDOSCOPIC ULTRASOUND	Radiology	0.81	0.31	$117.60
76977	26	US BONE DENSITY MEASURE	Radiology	0.05	0.02	$117.60
76986	26	ULTRASOUND GUIDE INTRAOPER	Radiology	1.20	0.47	$117.60
77261	0	RADIATION THERAPY PLANNING	Radiology	1.39	0.58	$117.60
77262	0	RADIATION THERAPY PLANNING	Radiology	2.11	0.87	$117.60
77263	0	RADIATION THERAPY PLANNING	Radiology	3.14	1.29	$117.60
77280	26	SET RADIATION THERAPY FIELD	Radiology	0.70	0.28	$117.60
77285	26	SET RADIATION THERAPY FIELD	Radiology	1.05	0.40	$117.60
77290	26	SET RADIATION THERAPY FIELD	Radiology	1.56	0.60	$117.60
77295	26	SET RADIATION THERAPY FIELD	Radiology	4.57	1.77	$117.60
77300	26	RADIATION THERAPY DOSE PLAN	Radiology	0.62	0.24	$117.60
77305	26	RADIATION THERAPY DOSE PLAN	Radiology	0.70	0.28	$117.60
77310	26	RADIATION THERAPY DOSE PLAN	Radiology	1.05	0.40	$117.60
77315	26	RADIATION THERAPY DOSE PLAN	Radiology	1.56	0.60	$117.60
77321	26	RADIATION THERAPY PORT PLAN	Radiology	0.95	0.37	$117.60
77326	26	RADIATION THERAPY DOSE PLAN	Radiology	0.93	0.36	$117.60
77327	26	RADIATION THERAPY DOSE PLAN	Radiology	1.39	0.54	$117.60
77328	26	RADIATION THERAPY DOSE PLAN	Radiology	2.09	0.81	$117.60
77331	26	SPECIAL RADIATION DOSIMETRY	Radiology	0.87	0.34	$117.60
77332	26	RADIATION TREATMENT AID(S)	Radiology	0.54	0.21	$117.60
77333	26	RADIATION TREATMENT AID(S)	Radiology	0.84	0.33	$117.60
77334	26	RADIATION TREATMENT AID(S)	Radiology	1.24	0.48	$117.60
77427	0	RADIATION TX MANAGEMENT, X5	Radiology	3.31	1.17	$117.60
77431	0	RADIATION THERAPY MANAGEMENT	Radiology	1.81	0.77	$117.60
77432	0	STEREOTACTIC RADIATION TRMT	Radiology	7.93	3.75	$117.60
77470	26	SPECIAL RADIATION TREATMENT	Radiology	2.09	0.80	$117.60
77600	26	HYPERTHERMIA TREATMENT	Radiology	1.56	0.60	$117.60
77605	26	HYPERTHERMIA TREATMENT	Radiology	2.09	0.80	$117.60
77610	26	HYPERTHERMIA TREATMENT	Radiology	1.56	0.60	$117.60
77615	26	HYPERTHERMIA TREATMENT	Radiology	2.09	0.80	$117.60
77620	26	HYPERTHERMIA TREATMENT	Radiology	1.56	0.62	$117.60
77750	26	INFUSE RADIOACTIVE MATERIALS	Radiology	4.91	1.85	$117.60
77761	26	APPLY INTRCAV RADIAT SIMPLE	Radiology	3.81	1.37	$117.60
77762	26	APPLY INTRCAV RADIAT INTERM	Radiology	5.72	2.18	$117.60
77763	26	APPLY INTRCAV RADIAT COMPL	Radiology	8.57	3.25	$117.60
77776	26	APPLY INTERSTIT RADIAT SIMPL	Radiology	4.66	1.42	$117.60
77777	26	APPLY INTERSTIT RADIAT INTER	Radiology	7.48	2.84	$117.60
77778	26	APPLY ITERSTIT RADIAT COMPL	Radiology	11.19	4.21	$117.60
77781	26	HIGH INTENSITY BRACHYTHERAPY	Radiology	1.66	0.63	$117.60
77782	26	HIGH INTENSITY BRACHYTHERAPY	Radiology	2.49	0.95	$117.60
77783	26	HIGH INTENSITY BRACHYTHERAPY	Radiology	3.73	1.40	$117.60

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
77784	26	HIGH INTENSITY BRACHYTHERAPY	Radiology	5.61	2.11	$117.60
77789	26	APPLY SURFACE RADIATION	Radiology	1.12	0.43	$117.60
77790	26	RADIATION HANDLING	Radiology	1.05	0.40	$117.60
78000	26	THYROID, SINGLE UPTAKE	Radiology	0.19	0.08	$117.60
78001	26	THYROID, MULTIPLE UPTAKES	Radiology	0.26	0.11	$117.60
78003	26	THYROID SUPPRESS/STIMUL	Radiology	0.33	0.13	$117.60
78006	26	THYROID IMAGING WITH UPTAKE	Radiology	0.49	0.20	$117.60
78007	26	THYROID IMAGE, MULT UPTAKES	Radiology	0.50	0.20	$117.60
78010	26	THYROID IMAGING	Radiology	0.39	0.15	$117.60
78011	26	THYROID IMAGING WITH FLOW	Radiology	0.45	0.19	$117.60
78015	26	THYROID MET IMAGING	Radiology	0.67	0.27	$117.60
78016	26	THYROID MET IMAGING/STUDIES	Radiology	0.82	0.34	$117.60
78018	26	THYROID MET IMAGING, BODY	Radiology	0.86	0.36	$117.60
78020	26	THYROID MET UPTAKE	Radiology	0.60	0.23	$117.60
78070	26	PARATHYROID NUCLEAR IMAGING	Radiology	0.82	0.29	$117.60
78075	26	ADRENAL NUCLEAR IMAGING	Radiology	0.74	0.30	$117.60
78102	26	BONE MARROW IMAGING, LTD	Radiology	0.55	0.23	$117.60
78103	26	BONE MARROW IMAGING, MULT	Radiology	0.75	0.30	$117.60
78104	26	BONE MARROW IMAGING, BODY	Radiology	0.80	0.32	$117.60
78110	26	PLASMA VOLUME, SINGLE	Radiology	0.19	0.09	$117.60
78111	26	PLASMA VOLUME, MULTIPLE	Radiology	0.22	0.09	$117.60
78120	26	RED CELL MASS, SINGLE	Radiology	0.23	0.10	$117.60
78121	26	RED CELL MASS, MULTIPLE	Radiology	0.32	0.13	$117.60
78122	26	BLOOD VOLUME	Radiology	0.45	0.18	$117.60
78130	26	RED CELL SURVIVAL STUDY	Radiology	0.61	0.25	$117.60
78135	26	RED CELL SURVIVAL KINETICS	Radiology	0.64	0.25	$117.60
78140	26	RED CELL SEQUESTRATION	Radiology	0.61	0.24	$117.60
78160	26	PLASMA IRON TURNOVER	Radiology	0.33	0.15	$117.60
78162	26	IRON ABSORPTION EXAM	Radiology	0.45	0.19	$117.60
78170	26	RED CELL IRON UTILIZATION	Radiology	0.41	0.16	$117.60
78172	26	TOTAL BODY IRON ESTIMATION	Radiology	0.53	0.21	$117.60
78185	26	SPLEEN IMAGING	Radiology	0.40	0.16	$117.60
78190	26	PLATELET SURVIVAL, KINETICS	Radiology	1.09	0.42	$117.60
78191	26	PLATELET SURVIVAL	Radiology	0.61	0.24	$117.60
78195	26	LYMPH SYSTEM IMAGING	Radiology	1.20	0.42	$117.60
78201	26	LIVER IMAGING	Radiology	0.44	0.17	$117.60
78202	26	LIVER IMAGING WITH FLOW	Radiology	0.51	0.21	$117.60
78205	26	LIVER IMAGING (3D)	Radiology	0.71	0.29	$117.60
78206	26	LIVER IMAGE (3D) W/FLOW	Radiology	0.96	0.36	$117.60
78215	26	LIVER AND SPLEEN IMAGING	Radiology	0.49	0.20	$117.60
78216	26	LIVER & SPLEEN IMAGE/FLOW	Radiology	0.57	0.23	$117.60
78220	26	LIVER FUNCTION STUDY	Radiology	0.49	0.20	$117.60
78223	26	HEPATOBILIARY IMAGING	Radiology	0.84	0.33	$117.60
78230	26	SALIVARY GLAND IMAGING	Radiology	0.45	0.18	$117.60
78231	26	SERIAL SALIVARY IMAGING	Radiology	0.52	0.22	$117.60
78232	26	SALIVARY GLAND FUNCTION EXAM	Radiology	0.47	0.20	$117.60
78258	26	ESOPHAGEAL MOTILITY STUDY	Radiology	0.74	0.30	$117.60
78261	26	GASTRIC MUCOSA IMAGING	Radiology	0.69	0.29	$117.60
78262	26	GASTROESOPHAGEAL REFLUX EXAM	Radiology	0.68	0.28	$117.60
78264	26	GASTRIC EMPTYING STUDY	Radiology	0.78	0.31	$117.60
78270	26	VIT B-12 ABSORPTION EXAM	Radiology	0.20	0.08	$117.60
78271	26	VIT B-12 ABSORP EXAM, IF	Radiology	0.20	0.08	$117.60
78272	26	VIT B-12 ABSORP, COMBINED	Radiology	0.27	0.11	$117.60
78278	26	ACUTE GI BLOOD LOSS IMAGING	Radiology	0.99	0.39	$117.60
78282	26	GI PROTEIN LOSS EXAM	Radiology	0.38	0.15	$117.60
78290	26	MECKEL'S DIVERT EXAM	Radiology	0.68	0.27	$117.60
78291	26	LEVEEN/SHUNT PATENCY EXAM	Radiology	0.88	0.35	$117.60
78300	26	BONE IMAGING, LIMITED AREA	Radiology	0.62	0.24	$117.60
78305	26	BONE IMAGING, MULTIPLE AREAS	Radiology	0.83	0.33	$117.60
78306	26	BONE IMAGING, WHOLE BODY	Radiology	0.86	0.34	$117.60
78315	26	BONE IMAGING, 3 PHASE	Radiology	1.02	0.40	$117.60
78320	26	BONE IMAGING (3D)	Radiology	1.04	0.42	$117.60

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
78350	26	BONE MINERAL, SINGLE PHOTON	Radiology	0.22	0.09	$117.60
78351	26	BONE MINERAL, DUAL PHOTON	Radiology	0.30	0.14	$117.60
78414	26	NON-IMAGING HEART FUNCTION	Radiology	0.45	0.18	$117.60
78428	26	CARDIAC SHUNT IMAGING	Radiology	0.78	0.35	$117.60
78445	26	VASCULAR FLOW IMAGING	Radiology	0.49	0.20	$117.60
78455	26	VENOUS THROMBOSIS STUDY	Radiology	0.73	0.29	$117.60
78456	26	ACUTE VENOUS THROMBUS IMAGE	Radiology	1.00	0.37	$117.60
78457	26	VENOUS THROMBOSIS IMAGING	Radiology	0.77	0.31	$117.60
78458	26	VEN THROMBOSIS IMAGES, BILAT	Radiology	0.90	0.36	$117.60
78459	26	HEART MUSCLE IMAGING (PET)	Radiology	1.88	0.93	$117.60
78460	26	HEART MUSCLE BLOOD, SINGLE	Radiology	0.86	0.35	$117.60
78461	26	HEART MUSCLE BLOOD, MULTIPLE	Radiology	1.23	0.50	$117.60
78464	26	HEART IMAGE (3D), SINGLE	Radiology	1.09	0.44	$117.60
78465	26	HEART IMAGE (3D), MULTIPLE	Radiology	1.46	0.61	$117.60
78466	26	HEART INFARCT IMAGE	Radiology	0.69	0.29	$117.60
78468	26	HEART INFARCT IMAGE (EF)	Radiology	0.80	0.32	$117.60
78469	26	HEART INFARCT IMAGE (3D)	Radiology	0.92	0.37	$117.60
78472	26	GATED HEART, PLANAR, SINGLE	Radiology	0.98	0.40	$117.60
78473	26	GATED HEART, MULTIPLE	Radiology	1.47	0.60	$117.60
78478	26	HEART WALL MOTION ADD-ON	Radiology	0.62	0.26	$117.60
78480	26	HEART FUNCTION ADD-ON	Radiology	0.62	0.26	$117.60
78481	26	HEART FIRST PASS, SINGLE	Radiology	0.98	0.42	$117.60
78483	26	HEART FIRST PASS, MULTIPLE	Radiology	1.47	0.62	$117.60
78491	26	HEART IMAGE (PET), SINGLE	Radiology	1.50	0.61	$117.60
78492	26	HEART IMAGE (PET), MULTIPLE	Radiology	1.87	0.93	$117.60
78494	26	HEART IMAGE, SPECT	Radiology	1.19	0.45	$117.60
78496	26	HEART FIRST PASS ADD-ON	Radiology	0.50	0.20	$117.60
78580	26	LUNG PERFUSION IMAGING	Radiology	0.74	0.30	$117.60
78584	26	LUNG V/Q IMAGE SINGLE BREATH	Radiology	0.99	0.39	$117.60
78585	26	LUNG V/Q IMAGING	Radiology	1.09	0.42	$117.60
78586	26	AEROSOL LUNG IMAGE, SINGLE	Radiology	0.40	0.16	$117.60
78587	26	AEROSOL LUNG IMAGE, MULTIPLE	Radiology	0.49	0.20	$117.60
78588	26	PERFUSION LUNG IMAGE	Radiology	1.09	0.40	$117.60
78591	26	VENT IMAGE, 1 BREATH, 1 PROJ	Radiology	0.40	0.16	$117.60
78593	26	VENT IMAGE, 1 PROJ, GAS	Radiology	0.49	0.20	$117.60
78594	26	VENT IMAGE, MULT PROJ, GAS	Radiology	0.53	0.21	$117.60
78596	26	LUNG DIFFERENTIAL FUNCTION	Radiology	1.27	0.50	$117.60
78600	26	BRAIN IMAGING, LTD STATIC	Radiology	0.44	0.18	$117.60
78601	26	BRAIN IMAGING, LTD W/ FLOW	Radiology	0.51	0.21	$117.60
78605	26	BRAIN IMAGING, COMPLETE	Radiology	0.53	0.22	$117.60
78606	26	BRAIN IMAGING, COMPL W/FLOW	Radiology	0.64	0.25	$117.60
78607	26	BRAIN IMAGING (3D)	Radiology	1.23	0.49	$117.60
78610	26	BRAIN FLOW IMAGING ONLY	Radiology	0.30	0.12	$117.60
78615	26	CEREBRAL BLOOD FLOW IMAGING	Radiology	0.42	0.17	$117.60
78630	26	CEREBROSPINAL FLUID SCAN	Radiology	0.68	0.27	$117.60
78635	26	CSF VENTRICULOGRAPHY	Radiology	0.61	0.26	$117.60
78645	26	CSF SHUNT EVALUATION	Radiology	0.57	0.23	$117.60
78647	26	CEREBROSPINAL FLUID SCAN	Radiology	0.90	0.37	$117.60
78650	26	CSF LEAKAGE IMAGING	Radiology	0.61	0.25	$117.60
78660	26	NUCLEAR EXAM OF TEAR FLOW	Radiology	0.53	0.21	$117.60
78700	26	KIDNEY IMAGING, STATIC	Radiology	0.45	0.18	$117.60
78701	26	KIDNEY IMAGING WITH FLOW	Radiology	0.49	0.20	$117.60
78704	26	IMAGING RENOGRAM	Radiology	0.74	0.30	$117.60
78707	26	KIDNEY FLOW/FUNCTION IMAGE	Radiology	0.96	0.38	$117.60
78708	26	KIDNEY FLOW/FUNCTION IMAGE	Radiology	1.21	0.45	$117.60
78709	26	KIDNEY FLOW/FUNCTION IMAGE	Radiology	1.41	0.50	$117.60
78710	26	KIDNEY IMAGING (3D)	Radiology	0.66	0.26	$117.60
78715	26	RENAL VASCULAR FLOW EXAM	Radiology	0.30	0.13	$117.60
78725	26	KIDNEY FUNCTION STUDY	Radiology	0.38	0.15	$117.60
78730	26	URINARY BLADDER RETENTION	Radiology	0.36	0.14	$117.60
78740	26	URETERAL REFLUX STUDY	Radiology	0.57	0.22	$117.60
78760	26	TESTICULAR IMAGING	Radiology	0.65	0.26	$117.60

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
78761	26	TESTICULAR IMAGING/FLOW	Radiology	0.71	0.29	$117.60
78800	26	TUMOR IMAGING, LIMITED AREA	Radiology	0.66	0.26	$117.60
78801	26	TUMOR IMAGING, MULT AREAS	Radiology	0.79	0.32	$117.60
78802	26	TUMOR IMAGING, WHOLE BODY	Radiology	0.86	0.35	$117.60
78803	26	TUMOR IMAGING (3D)	Radiology	1.09	0.44	$117.60
78805	26	ABSCESS IMAGING, LTD AREA	Radiology	0.73	0.29	$117.60
78806	26	ABSCESS IMAGING, WHOLE BODY	Radiology	0.86	0.34	$117.60
78807	26	NUCLEAR LOCALIZATION/ABSCESS	Radiology	1.09	0.45	$117.60
78810	26	TUMOR IMAGING (PET)	Radiology	1.93	0.95	$117.60
78890	26	NUCLEAR MEDICINE DATA PROC	Radiology	0.05	0.02	$117.60
78891	26	NUCLEAR MED DATA PROC	Radiology	0.10	0.04	$117.60
79000	26	INIT HYPERTHYROID THERAPY	Radiology	1.80	0.71	$117.60
79001	26	REPEAT HYPERTHYROID THERAPY	Radiology	1.05	0.41	$117.60
79020	26	THYROID ABLATION	Radiology	1.81	0.70	$117.60
79030	26	THYROID ABLATION, CARCINOMA	Radiology	2.10	0.83	$117.60
79035	26	THYROID METASTATIC THERAPY	Radiology	2.52	1.01	$117.60
79100	26	HEMATOPOETIC NUCLEAR THERAPY	Radiology	1.32	0.53	$117.60
79200	26	INTRACAVITARY NUCLEAR TRMT	Radiology	1.99	0.81	$117.60
79300	26	INTERSTITIAL NUCLEAR THERAPY	Radiology	1.60	0.63	$117.60
79400	26	NONHEMATO NUCLEAR THERAPY	Radiology	1.96	0.78	$117.60
79420	26	INTRAVASCULAR NUCLEAR THER	Radiology	1.51	0.59	$117.60
79440	26	NUCLEAR JOINT THERAPY	Radiology	1.99	0.84	$117.60
90780	0	IV INFUSION THERAPY, 1 HOUR	Therapeutic Injections	0.00	1.11	$160.82
90781	0	IV INFUSION, ADDITIONAL HOUR	Therapeutic Injections	0.00	0.57	$160.82
90782	0	INJECTION, SC/IM	Therapeutic Injections	0.00	0.11	$160.82
90783	0	INJECTION, IA	Therapeutic Injections	0.00	0.41	$160.82
90784	0	INJECTION, IV	Therapeutic Injections	0.00	0.48	$160.82
90788	0	INJECTION OF ANTIBIOTIC	Therapeutic Injections	0.00	0.12	$160.82
90801	0	PSY DX INTERVIEW	Outpatient Psych/Alcohol & Drug Abuse	2.80	1.05	$52.87
90802	0	INTAC PSY DX INTERVIEW	Outpatient Psych/Alcohol & Drug Abuse	3.01	0.98	$52.87
90804	0	PSYTX, OFFICE, 20-30 MIN	Outpatient Psych/Alcohol & Drug Abuse	1.21	0.50	$52.87
90805	0	PSYTX, OFF, 20-30 MIN W/E&M	Outpatient Psych/Alcohol & Drug Abuse	1.37	0.55	$52.87
90806	0	PSYTX, OFF, 45-50 MIN	Outpatient Psych/Alcohol & Drug Abuse	1.86	0.73	$52.87
90807	0	PSYTX, OFF, 45-50 MIN W/E&M	Outpatient Psych/Alcohol & Drug Abuse	2.02	0.75	$52.87
90808	0	PSYTX, OFFICE, 75-80 MIN	Outpatient Psych/Alcohol & Drug Abuse	2.79	1.10	$52.87
90809	0	PSYTX, OFF, 75-80, W/E&M	Outpatient Psych/Alcohol & Drug Abuse	2.95	1.13	$52.87
90810	0	INTAC PSYTX, OFF, 20-30 MIN	Outpatient Psych/Alcohol & Drug Abuse	1.32	0.58	$52.87
90811	0	INTAC PSYTX, 20-30, W/E&M	Outpatient Psych/Alcohol & Drug Abuse	1.48	0.64	$52.87
90812	0	INTAC PSYTX, OFF, 45-50 MIN	Outpatient Psych/Alcohol & Drug Abuse	1.97	0.78	$52.87
90813	0	INTAC PSYTX, 45-50 MIN W/E&M	Outpatient Psych/Alcohol & Drug Abuse	2.13	0.81	$52.87
90814	0	INTAC PSYTX, OFF, 75-80 MIN	Outpatient Psych/Alcohol & Drug Abuse	2.90	1.06	$52.87
90815	0	INTAC PSYTX, 75-80 W/E&M	Outpatient Psych/Alcohol & Drug Abuse	3.06	1.07	$52.87
90816	0	PSYTX, HOSP, 20-30 MIN	Outpatient Psych/Alcohol & Drug Abuse	1.25	0.53	$52.87
90817	0	PSYTX, HOSP, 20-30 MIN W/E&M	Outpatient Psych/Alcohol & Drug Abuse	1.41	0.57	$52.87
90818	0	PSYTX, HOSP, 45-50 MIN	Outpatient Psych/Alcohol & Drug Abuse	1.89	0.76	$52.87

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
90819	0	PSYTX, HOSP, 45-50 MIN W/E&M	Outpatient Psych/Alcohol & Drug Abuse	2.05	0.77	$52.87
90821	0	PSYTX, HOSP, 75-80 MIN	Outpatient Psych/Alcohol & Drug Abuse	2.83	1.14	$52.87
90822	0	PSYTX, HOSP, 75-80 MIN W/E&M	Outpatient Psych/Alcohol & Drug Abuse	2.99	1.13	$52.87
90823	0	INTAC PSYTX, HOSP, 20-30 MIN	Outpatient Psych/Alcohol & Drug Abuse	1.36	0.67	$52.87
90824	0	INTAC PSYTX, HSP 20-30 W/E&M	Outpatient Psych/Alcohol & Drug Abuse	1.52	0.70	$52.87
90826	0	INTAC PSYTX, HOSP, 45-50 MIN	Outpatient Psych/Alcohol & Drug Abuse	2.01	0.84	$52.87
90827	0	INTAC PSYTX, HSP 45-50 W/E&M	Outpatient Psych/Alcohol & Drug Abuse	2.16	0.87	$52.87
90828	0	INTAC PSYTX, HOSP, 75-80 MIN	Outpatient Psych/Alcohol & Drug Abuse	2.94	1.08	$52.87
90829	0	INTAC PSYTX, HSP 75-80 W/E&M	Outpatient Psych/Alcohol & Drug Abuse	3.10	1.11	$52.87
90845	0	PSYCHOANALYSIS	Outpatient Psych/Alcohol & Drug Abuse	1.79	0.64	$52.87
90846	0	FAMILY PSYTX W/O PATIENT	Outpatient Psych/Alcohol & Drug Abuse	1.83	0.72	$52.87
90847	0	FAMILY PSYTX W/PATIENT	Outpatient Psych/Alcohol & Drug Abuse	2.21	0.81	$52.87
90849	0	MULTIPLE FAMILY GROUP PSYTX	Outpatient Psych/Alcohol & Drug Abuse	0.59	0.35	$52.87
90853	0	GROUP PSYCHOTHERAPY	Outpatient Psych/Alcohol & Drug Abuse	0.59	0.33	$52.87
90857	0	INTAC GROUP PSYTX	Outpatient Psych/Alcohol & Drug Abuse	0.63	0.33	$52.87
90862	0	MEDICATION MANAGEMENT	Outpatient Psych/Alcohol & Drug Abuse	0.95	0.43	$52.87
90865	0	NARCOSYNTHESIS	Outpatient Psych/Alcohol & Drug Abuse	2.84	1.36	$52.87
90870	0	ELECTROCONVULSIVE THERAPY	Outpatient Psych/Alcohol & Drug Abuse	1.88	0.71	$52.87
90871	0	ELECTROCONVULSIVE THERAPY	Outpatient Psych/Alcohol & Drug Abuse	2.72	1.00	$52.87
90875	0	PSYCHOPHYSIOLOGICAL THERAPY	Outpatient Psych/Alcohol & Drug Abuse	1.20	0.68	$52.87
90876	0	PSYCHOPHYSIOLOGICAL THERAPY	Outpatient Psych/Alcohol & Drug Abuse	1.90	1.16	$52.87
90880	0	HYPNOTHERAPY	Outpatient Psych/Alcohol & Drug Abuse	2.19	0.84	$52.87
90885	0	PSY EVALUATION OF RECORDS	Outpatient Psych/Alcohol & Drug Abuse	0.97	0.38	$52.87
90887	0	CONSULTATION WITH FAMILY	Outpatient Psych/Alcohol & Drug Abuse	1.48	0.71	$52.87
90918	0	ESRD RELATED SERVICES, MONTH	Miscellaneous Medical	11.18	4.57	$93.98
90919	0	ESRD RELATED SERVICES, MONTH	Miscellaneous Medical	8.54	3.84	$93.98
90920	0	ESRD RELATED SERVICES, MONTH	Miscellaneous Medical	7.27	3.42	$93.98
90921	0	ESRD RELATED SERVICES, MONTH	Miscellaneous Medical	4.47	2.62	$93.98
90922	0	ESRD RELATED SERVICES, DAY	Miscellaneous Medical	0.37	0.14	$93.98
90923	0	ESRD RELATED SERVICES, DAY	Miscellaneous Medical	0.28	0.13	$93.98
90924	0	ESRD RELATED SERVICES, DAY	Miscellaneous Medical	0.24	0.11	$93.98
90925	0	ESRD RELATED SERVICES, DAY	Miscellaneous Medical	0.15	0.09	$93.98
90935	0	HEMODIALYSIS, ONE EVALUATION	Miscellaneous Medical	1.22	0.95	$93.98
90937	0	HEMODIALYSIS, REPEATED EVAL	Miscellaneous Medical	2.11	1.46	$93.98
90945	0	DIALYSIS, ONE EVALUATION	Miscellaneous Medical	1.28	0.95	$93.98
90947	0	DIALYSIS, REPEATED EVAL	Miscellaneous Medical	2.16	1.41	$93.98
90997	0	HEMOPERFUSION	Miscellaneous Medical	1.84	1.31	$93.98
91000	26	ESOPHAGEAL INTUBATION	Miscellaneous Medical	0.73	0.36	$93.98

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
91010	26	ESOPHAGUS MOTILITY STUDY	Miscellaneous Medical	1.25	0.71	$93.98
91011	26	ESOPHAGUS MOTILITY STUDY	Miscellaneous Medical	1.50	0.86	$93.98
91012	26	ESOPHAGUS MOTILITY STUDY	Miscellaneous Medical	1.46	0.84	$93.98
91020	26	GASTRIC MOTILITY	Miscellaneous Medical	1.44	0.80	$93.98
91030	26	ACID PERFUSION OF ESOPHAGUS	Miscellaneous Medical	0.91	0.34	$93.98
91032	26	ESOPHAGUS, ACID REFLUX TEST	Miscellaneous Medical	1.21	0.66	$93.98
91033	26	PROLONGED ACID REFLUX TEST	Miscellaneous Medical	1.30	0.74	$93.98
91052	26	GASTRIC ANALYSIS TEST	Miscellaneous Medical	0.79	0.35	$93.98
91055	26	GASTRIC INTUBATION FOR SMEAR	Miscellaneous Medical	0.94	0.35	$93.98
91060	26	GASTRIC SALINE LOAD TEST	Miscellaneous Medical	0.45	0.23	$93.98
91065	26	BREATH HYDROGEN TEST	Miscellaneous Medical	0.20	0.11	$93.98
91100	0	PASS INTESTINE BLEEDING TUBE	Miscellaneous Medical	1.08	0.50	$93.98
91105	0	GASTRIC INTUBATION TREATMENT	Miscellaneous Medical	0.37	0.26	$93.98
91122	26	ANAL PRESSURE RECORD	Miscellaneous Medical	1.77	0.78	$93.98
92002	0	EYE EXAM, NEW PATIENT	Vision Exams	0.88	0.96	$38.89
92004	0	EYE EXAM, NEW PATIENT	Vision Exams	1.67	1.45	$38.89
92012	0	EYE EXAM ESTABLISHED PAT	Vision Exams	0.67	0.91	$38.89
92014	0	EYE EXAM & TREATMENT	Vision Exams	1.10	1.17	$38.89
92015	0	REFRACTION	Vision Exams	0.38	1.14	$38.89
92018	0	NEW EYE EXAM & TREATMENT	Miscellaneous Medical	1.51	0.67	$93.98
92019	0	EYE EXAM & TREATMENT	Miscellaneous Medical	1.31	0.53	$93.98
92020	0	SPECIAL EYE EVALUATION	Miscellaneous Medical	0.37	0.60	$93.98
92060	26	SPECIAL EYE EVALUATION	Miscellaneous Medical	0.69	0.28	$93.98
92065	26	ORTHOPTIC/PLEOPTIC TRAINING	Miscellaneous Medical	0.37	0.18	$93.98
92070	0	FITTING OF CONTACT LENS	Miscellaneous Medical	0.70	1.10	$93.98
92081	26	VISUAL FIELD EXAMINATION(S)	Miscellaneous Medical	0.36	0.17	$93.98
92082	26	VISUAL FIELD EXAMINATION(S)	Miscellaneous Medical	0.44	0.23	$93.98
92083	26	VISUAL FIELD EXAMINATION(S)	Miscellaneous Medical	0.50	0.32	$93.98
92100	0	SERIAL TONOMETRY EXAM(S)	Miscellaneous Medical	0.92	0.66	$93.98
92120	0	TONOGRAPHY & EYE EVALUATION	Miscellaneous Medical	0.81	0.66	$93.98
92130	0	WATER PROVOCATION TONOGRAPHY	Miscellaneous Medical	0.81	0.79	$93.98
92135	26	OPTHALMIC DX IMAGING	Miscellaneous Medical	0.35	0.16	$93.98
92140	0	GLAUCOMA PROVOCATIVE TESTS	Miscellaneous Medical	0.50	0.80	$93.98
92225	0	SPECIAL EYE EXAM, INITIAL	Miscellaneous Medical	0.38	1.35	$93.98
92226	0	SPECIAL EYE EXAM, SUBSEQUENT	Miscellaneous Medical	0.33	1.41	$93.98
92230	0	EYE EXAM WITH PHOTOS	Miscellaneous Medical	0.60	1.15	$93.98
92235	26	EYE EXAM WITH PHOTOS	Miscellaneous Medical	0.81	0.46	$93.98
92240	26	ICG ANGIOGRAPHY	Miscellaneous Medical	1.10	0.56	$93.98
92250	26	EYE EXAM WITH PHOTOS	Miscellaneous Medical	0.44	0.23	$93.98
92260	0	OPHTHALMOSCOPY/DYNAMOMETRY	Miscellaneous Medical	0.20	0.31	$93.98
92265	26	EYE MUSCLE EVALUATION	Miscellaneous Medical	0.81	0.27	$93.98
92270	26	ELECTRO-OCULOGRAPHY	Miscellaneous Medical	0.81	0.36	$93.98
92275	26	ELECTRORETINOGRAPHY	Miscellaneous Medical	1.01	0.48	$93.98
92283	26	COLOR VISION EXAMINATION	Miscellaneous Medical	0.17	0.10	$93.98
92284	26	DARK ADAPTATION EYE EXAM	Miscellaneous Medical	0.24	0.14	$93.98
92285	26	EYE PHOTOGRAPHY	Miscellaneous Medical	0.20	0.12	$93.98
92286	26	INTERNAL EYE PHOTOGRAPHY	Miscellaneous Medical	0.66	0.47	$93.98
92287	0	INTERNAL EYE PHOTOGRAPHY	Miscellaneous Medical	0.81	1.88	$93.98
92310	0	CONTACT LENS FITTING	Vision Exams	1.17	1.16	$38.89
92311	0	CONTACT LENS FITTING	Miscellaneous Medical	1.08	1.03	$93.98
92312	0	CONTACT LENS FITTING	Miscellaneous Medical	1.26	1.09	$93.98
92313	0	CONTACT LENS FITTING	Miscellaneous Medical	0.92	1.04	$93.98
92314	0	PRESCRIPTION OF CONTACT LENS	Vision Exams	0.69	0.87	$38.89
92315	0	PRESCRIPTION OF CONTACT LENS	Miscellaneous Medical	0.45	0.76	$93.98
92316	0	PRESCRIPTION OF CONTACT LENS	Miscellaneous Medical	0.68	0.90	$93.98
92317	0	PRESCRIPTION OF CONTACT LENS	Miscellaneous Medical	0.45	0.80	$93.98
92325	0	MODIFICATION OF CONTACT LENS	Vision Exams	0.00	0.40	$38.89
92326	0	REPLACEMENT OF CONTACT LENS	Vision Exams	0.00	1.64	$38.89
92330	0	FITTING OF ARTIFICIAL EYE	Miscellaneous Medical	1.08	1.07	$93.98
92335	0	FITTING OF ARTIFICIAL EYE	Miscellaneous Medical	0.45	1.16	$93.98
92340	0	FITTING OF SPECTACLES	Vision Exams	0.37	0.61	$38.89
92341	0	FITTING OF SPECTACLES	Vision Exams	0.47	0.66	$38.89

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
92342	0	FITTING OF SPECTACLES	Vision Exams	0.53	0.70	$38.89
92352	0	SPECIAL SPECTACLES FITTING	Miscellaneous Medical	0.37	0.58	$93.98
92353	0	SPECIAL SPECTACLES FITTING	Miscellaneous Medical	0.50	0.64	$93.98
92354	0	SPECIAL SPECTACLES FITTING	Miscellaneous Medical	0.00	8.88	$93.98
92355	0	SPECIAL SPECTACLES FITTING	Miscellaneous Medical	0.00	4.35	$93.98
92358	0	EYE PROSTHESIS SERVICE	Miscellaneous Medical	0.00	0.97	$93.98
92370	0	REPAIR & ADJUST SPECTACLES	Miscellaneous Medical	0.32	0.47	$93.98
92371	0	REPAIR & ADJUST SPECTACLES	Miscellaneous Medical	0.00	0.62	$93.98
92392	0	SUPPLY OF LOW VISION AIDS	Miscellaneous Medical	0.00	4.08	$93.98
92393	0	SUPPLY OF ARTIFICIAL EYE	Miscellaneous Medical	0.00	12.59	$93.98
92395	0	SUPPLY OF SPECTACLES	Miscellaneous Medical	0.00	1.38	$93.98
92396	0	SUPPLY OF CONTACT LENSES	Miscellaneous Medical	0.00	2.31	$93.98
92502	0	EAR AND THROAT EXAMINATION	Miscellaneous Medical	1.51	1.30	$93.98
92504	0	EAR MICROSCOPY EXAMINATION	Miscellaneous Medical	0.18	0.85	$93.98
92511	0	NASOPHARYNGOSCOPY	Miscellaneous Medical	0.84	1.19	$93.98
92512	0	NASAL FUNCTION STUDIES	Miscellaneous Medical	0.55	0.95	$93.98
92516	0	FACIAL NERVE FUNCTION TEST	Miscellaneous Medical	0.43	0.79	$93.98
92520	0	LARYNGEAL FUNCTION STUDIES	Miscellaneous Medical	0.76	0.57	$93.98
92525	0	ORAL FUNCTION EVALUATION	Miscellaneous Medical	1.50	1.44	$93.98
92526	0	ORAL FUNCTION THERAPY	Miscellaneous Medical	0.55	1.22	$93.98
92541	26	SPONTANEOUS NYSTAGMUS TEST	Miscellaneous Medical	0.40	0.27	$93.98
92542	26	POSITIONAL NYSTAGMUS TEST	Miscellaneous Medical	0.33	0.22	$93.98
92543	26	CALORIC VESTIBULAR TEST	Miscellaneous Medical	0.10	0.07	$93.98
92544	26	OPTOKINETIC NYSTAGMUS TEST	Miscellaneous Medical	0.26	0.17	$93.98
92545	26	OSCILLATING TRACKING TEST	Miscellaneous Medical	0.23	0.14	$93.98
92546	26	SINUSOIDAL ROTATIONAL TEST	Miscellaneous Medical	0.29	0.19	$93.98
92548	26	POSTUROGRAPHY	Miscellaneous Medical	0.50	0.32	$93.98
92585	26	AUDITOR EVOKE POTENT, COMPRE	Hearing/Speech Exams	0.50	0.57	$71.01
92587	26	EVOKED AUDITORY TEST	Hearing/Speech Exams	0.13	0.08	$71.01
92588	26	EVOKED AUDITORY TEST	Hearing/Speech Exams	0.36	0.21	$71.01
92597	0	ORAL SPEECH DEVICE EVAL	Hearing/Speech Exams	1.35	1.39	$71.01
92598	0	MODIFY ORAL SPEECH DEVICE	Hearing/Speech Exams	0.99	0.75	$71.01
92950	0	HEART/LUNG RESUSCITATION CPR	Cardiovascular	3.80	1.49	$104.15
92953	0	TEMPORARY EXTERNAL PACING	Cardiovascular	0.23	0.25	$104.15
92960	0	CARDIOVERSION ELECTRIC, EXT	Cardiovascular	2.25	1.21	$104.15
92961	0	CARDIOVERSION, ELECTRIC, INT	Cardiovascular	4.60	1.96	$104.15
92970	0	CARDIOASSIST, INTERNAL	Cardiovascular	3.52	1.74	$104.15
92971	0	CARDIOASSIST, EXTERNAL	Cardiovascular	1.77	0.99	$104.15
92975	0	DISSOLVE CLOT, HEART VESSEL	Cardiovascular	7.25	3.92	$104.15
92977	0	DISSOLVE CLOT, HEART VESSEL	Cardiovascular	0.00	8.08	$104.15
92978	26	INTRAVASC US, HEART ADD-ON	Cardiovascular	1.80	0.87	$104.15
92979	26	INTRAVASC US, HEART ADD-ON	Cardiovascular	1.44	0.70	$104.15
92980	0	INSERT INTRACORONARY STENT	Surgery	14.84	9.28	$125.00
92981	0	INSERT INTRACORONARY STENT	Surgery	4.17	2.60	$125.00
92982	0	CORONARY ARTERY DILATION	Surgery	10.98	6.89	$125.00
92984	0	CORONARY ARTERY DILATION	Surgery	2.97	1.86	$125.00
92986	0	REVISION OF AORTIC VALVE	Surgery	21.80	11.68	$125.00
92987	0	REVISION OF MITRAL VALVE	Surgery	22.70	12.03	$125.00
92990	0	REVISION OF PULMONARY VALVE	Surgery	17.34	9.64	$125.00
92995	0	CORONARY ATHERECTOMY	Surgery	12.09	7.56	$125.00
92996	0	CORONARY ATHERECTOMY ADD-ON	Surgery	3.26	2.06	$125.00
92997	0	PUL ART BALLOON REPR, PERCUT	Surgery	12.00	7.38	$125.00
92998	0	PUL ART BALLOON REPR, PERCUT	Surgery	6.00	2.87	$125.00
93000	0	ELECTROCARDIOGRAM, COMPLETE	Cardiovascular	0.17	0.56	$104.15
93010	0	ELECTROCARDIOGRAM REPORT	Cardiovascular	0.17	0.10	$104.15
93014	0	REPORT ON TRANSMITTED ECG	Cardiovascular	0.52	0.26	$104.15
93015	0	CARDIOVASCULAR STRESS TEST	Cardiovascular	0.75	2.12	$104.15
93016	0	CARDIOVASCULAR STRESS TEST	Cardiovascular	0.45	0.25	$104.15
93018	0	CARDIOVASCULAR STRESS TEST	Cardiovascular	0.30	0.18	$104.15
93024	26	CARDIAC DRUG STRESS TEST	Cardiovascular	1.17	0.72	$104.15
93040	0	RHYTHM ECG WITH REPORT	Cardiovascular	0.16	0.21	$104.15
93042	0	RHYTHM ECG, REPORT	Cardiovascular	0.16	0.07	$104.15

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
93224	0	ECG MONITOR/REPORT, 24 HRS	Cardiovascular	0.52	3.74	$104.15
93227	0	ECG MONITOR/REVIEW, 24 HRS	Cardiovascular	0.52	0.31	$104.15
93230	0	ECG MONITOR/REPORT, 24 HRS	Cardiovascular	0.52	4.02	$104.15
93233	0	ECG MONITOR/REVIEW, 24 HRS	Cardiovascular	0.52	0.31	$104.15
93235	0	ECG MONITOR/REPORT, 24 HRS	Cardiovascular	0.45	2.90	$104.15
93237	0	ECG MONITOR/REVIEW, 24 HRS	Cardiovascular	0.45	0.27	$104.15
93268	0	ECG RECORD/REVIEW	Cardiovascular	0.52	3.87	$104.15
93272	0	ECG/REVIEW, INTERPRET ONLY	Cardiovascular	0.52	0.26	$104.15
93278	26	ECG/SIGNAL-AVERAGED	Cardiovascular	0.25	0.16	$104.15
93303	26	ECHO TRANSTHORACIC	Cardiovascular	1.30	0.65	$104.15
93304	26	ECHO TRANSTHORACIC	Cardiovascular	0.75	0.42	$104.15
93307	26	ECHO EXAM OF HEART	Cardiovascular	0.92	0.57	$104.15
93308	26	ECHO EXAM OF HEART	Cardiovascular	0.53	0.32	$104.15
93312	26	ECHO TRANSESOPHAGEAL	Cardiovascular	2.20	1.04	$104.15
93313	0	ECHO TRANSESOPHAGEAL	Cardiovascular	0.95	3.41	$104.15
93314	26	ECHO TRANSESOPHAGEAL	Cardiovascular	1.25	0.57	$104.15
93315	26	ECHO TRANSESOPHAGEAL	Cardiovascular	2.78	1.19	$104.15
93316	0	ECHO TRANSESOPHAGEAL	Cardiovascular	0.95	2.50	$104.15
93317	26	ECHO TRANSESOPHAGEAL	Cardiovascular	1.83	0.75	$104.15
93320	26	DOPPLER ECHO EXAM, HEART	Cardiovascular	0.38	0.24	$104.15
93321	26	DOPPLER ECHO EXAM, HEART	Cardiovascular	0.15	0.09	$104.15
93325	26	DOPPLER COLOR FLOW ADD-ON	Cardiovascular	0.07	0.03	$104.15
93350	26	ECHO TRANSTHORACIC	Cardiovascular	0.78	0.48	$104.15
93501	26	RIGHT HEART CATHETERIZATION	Surgery	3.02	1.85	$125.00
93503	0	INSERT/PLACE HEART CATHETER	Surgery	2.91	1.21	$125.00
93505	26	BIOPSY OF HEART LINING	Surgery	4.38	2.23	$125.00
93508	26	CATH PLACEMENT, ANGIOGRAPHY	Surgery	4.10	2.08	$125.00
93510	26	LEFT HEART CATHETERIZATION	Surgery	4.33	2.24	$125.00
93511	26	LEFT HEART CATHETERIZATION	Surgery	5.03	2.35	$125.00
93514	26	LEFT HEART CATHETERIZATION	Surgery	7.05	3.32	$125.00
93524	26	LEFT HEART CATHETERIZATION	Surgery	6.95	3.48	$125.00
93526	26	RT & LT HEART CATHETERS	Surgery	5.99	3.42	$125.00
93527	26	RT & LT HEART CATHETERS	Surgery	7.28	4.29	$125.00
93528	26	RT & LT HEART CATHETERS	Surgery	9.00	4.17	$125.00
93529	26	RT, LT HEART CATHETERIZATION	Surgery	4.80	2.34	$125.00
93530	26	RT HEART CATH, CONGENITAL	Surgery	4.23	2.17	$125.00
93531	26	R & L HEART CATH, CONGENITAL	Surgery	8.35	4.01	$125.00
93532	26	R & L HEART CATH, CONGENITAL	Surgery	10.00	4.95	$125.00
93533	26	R & L HEART CATH, CONGENITAL	Surgery	6.70	2.70	$125.00
93536	0	INSERT CIRCULATION ASSI	Surgery	4.85	3.04	$125.00
93539	0	INJECTION, CARDIAC CATH	Cardiovascular	0.40	0.86	$104.15
93540	0	INJECTION, CARDIAC CATH	Cardiovascular	0.43	0.87	$104.15
93541	0	INJECTION FOR LUNG ANGIOGRAM	Cardiovascular	0.29	0.19	$104.15
93542	0	INJECTION FOR HEART X-RAYS	Cardiovascular	0.29	0.18	$104.15
93543	0	INJECTION FOR HEART X-RAYS	Cardiovascular	0.29	0.55	$104.15
93544	0	INJECTION FOR AORTOGRAPHY	Cardiovascular	0.25	0.55	$104.15
93545	0	INJECT FOR CORONARY X-RAYS	Cardiovascular	0.40	0.74	$104.15
93555	26	IMAGING, CARDIAC CATH	Cardiovascular	0.81	0.34	$104.15
93556	26	IMAGING, CARDIAC CATH	Cardiovascular	0.83	0.39	$104.15
93561	26	CARDIAC OUTPUT MEASUREMENT	Surgery	0.50	0.28	$125.00
93562	26	CARDIAC OUTPUT MEASUREMENT	Surgery	0.16	0.09	$125.00
93571	26	HEART FLOW RESERVE MEASURE	Surgery	1.80	0.76	$125.00
93572	26	HEART FLOW RESERVE MEASURE	Surgery	1.44	0.60	$125.00
93600	26	BUNDLE OF HIS RECORDING	Cardiovascular	2.12	1.32	$104.15
93602	26	INTRA-ATRIAL RECORDING	Cardiovascular	2.12	1.17	$104.15
93603	26	RIGHT VENTRICULAR RECORDING	Cardiovascular	2.12	1.29	$104.15
93607	26	LEFT VENTRICULAR RECORDING	Cardiovascular	3.26	1.67	$104.15
93609	26	MAPPING OF TACHYCARDIA	Cardiovascular	10.07	4.30	$104.15
93610	26	INTRA-ATRIAL PACING	Cardiovascular	3.02	1.60	$104.15
93612	26	INTRAVENTRICULAR PACING	Cardiovascular	3.02	1.61	$104.15
93615	26	ESOPHAGEAL RECORDING	Cardiovascular	0.99	0.40	$104.15
93616	26	ESOPHAGEAL RECORDING	Cardiovascular	1.49	0.75	$104.15

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
93618	26	HEART RHYTHM PACING	Cardiovascular	4.26	2.65	$104.15
93619	26	ELECTROPHYSIOLOGY EVALUATION	Cardiovascular	7.32	4.55	$104.15
93620	26	ELECTROPHYSIOLOGY EVALUATION	Cardiovascular	11.59	7.22	$104.15
93621	26	ELECTROPHYSIOLOGY EVALUATION	Cardiovascular	12.66	7.88	$104.15
93622	26	ELECTROPHYSIOLOGY EVALUATION	Cardiovascular	12.74	7.91	$104.15
93623	26	STIMULATION, PACING HEART	Cardiovascular	2.85	1.68	$104.15
93624	26	ELECTROPHYSIOLOGIC STUDY	Cardiovascular	4.81	2.36	$104.15
93631	26	HEART PACING, MAPPING	Cardiovascular	7.60	3.96	$104.15
93640	26	EVALUATION HEART DEVICE	Cardiovascular	3.52	2.15	$104.15
93641	26	ELECTROPHYSIOLOGY EVALUATION	Cardiovascular	5.93	3.69	$104.15
93642	26	ELECTROPHYSIOLOGY EVALUATION	Cardiovascular	4.89	3.00	$104.15
93650	0	ABLATE HEART DYSRHYTHM FOCUS	Cardiovascular	10.51	6.60	$104.15
93651	0	ABLATE HEART DYSRHYTHM FOCUS	Cardiovascular	16.25	10.13	$104.15
93652	0	ABLATE HEART DYSRHYTHM FOCUS	Cardiovascular	17.68	10.58	$104.15
93660	26	TILT TABLE EVALUATION	Cardiovascular	1.89	1.01	$104.15
93720	0	TOTAL BODY PLETHYSMOGRAPHY	Cardiovascular	0.17	0.81	$104.15
93722	0	PLETHYSMOGRAPHY REPORT	Cardiovascular	0.17	0.10	$104.15
93724	26	ANALYZE PACEMAKER SYSTEM	Cardiovascular	4.89	2.39	$104.15
93727	0	ANALYZE ILR SYSTEM	Cardiovascular	0.52	0.22	$104.15
93731	26	ANALYZE PACEMAKER SYSTEM	Cardiovascular	0.45	0.23	$104.15
93732	26	ANALYZE PACEMAKER SYSTEM	Cardiovascular	0.92	0.41	$104.15
93733	26	TELEPHONE ANALY, PACEMAKER	Cardiovascular	0.17	0.11	$104.15
93734	26	ANALYZE PACEMAKER SYSTEM	Cardiovascular	0.38	0.21	$104.15
93735	26	ANALYZE PACEMAKER SYSTEM	Cardiovascular	0.74	0.36	$104.15
93736	26	TELEPHONE ANALY, PACEMAKER	Cardiovascular	0.15	0.10	$104.15
93737	26	ANALYZE CARDIO/DEFIBRILLATOR	Cardiovascular	0.45	0.22	$104.15
93738	26	ANALYZE CARDIO/DEFIBRILLATOR	Cardiovascular	0.92	0.40	$104.15
93740	26	TEMPERATURE GRADIENT STUDIES	Cardiovascular	0.16	0.13	$104.15
93741	26	ANALYZE HT PACE DEVICE SNGL	Cardiovascular	0.80	0.32	$104.15
93742	26	ANALYZE HT PACE DEVICE SNGL	Cardiovascular	0.91	0.36	$104.15
93743	26	ANALYZE HT PACE DEVICE DUAL	Cardiovascular	1.03	0.41	$104.15
93744	26	ANALYZE HT PACE DEVICE DUAL	Cardiovascular	1.18	0.47	$104.15
93770	26	MEASURE VENOUS PRESSURE	Cardiovascular	0.16	0.09	$104.15
93797	0	CARDIAC REHAB	Cardiovascular	0.18	0.36	$104.15
93798	0	CARDIAC REHAB/MONITOR	Cardiovascular	0.28	0.48	$104.15
93875	26	EXTRACRANIAL STUDY	Miscellaneous Medical	0.22	0.13	$93.96
93880	26	EXTRACRANIAL STUDY	Miscellaneous Medical	0.60	0.27	$93.96
93882	26	EXTRACRANIAL STUDY	Miscellaneous Medical	0.40	0.18	$93.96
93886	26	INTRACRANIAL STUDY	Miscellaneous Medical	0.94	0.41	$93.96
93888	26	INTRACRANIAL STUDY	Miscellaneous Medical	0.62	0.26	$93.96
93922	26	EXTREMITY STUDY	Miscellaneous Medical	0.25	0.14	$93.96
93923	26	EXTREMITY STUDY	Miscellaneous Medical	0.45	0.26	$93.96
93924	26	EXTREMITY STUDY	Miscellaneous Medical	0.50	0.29	$93.96
93925	26	LOWER EXTREMITY STUDY	Miscellaneous Medical	0.58	0.26	$93.96
93926	26	LOWER EXTREMITY STUDY	Miscellaneous Medical	0.39	0.18	$93.96
93930	26	UPPER EXTREMITY STUDY	Miscellaneous Medical	0.46	0.23	$93.96
93931	26	UPPER EXTREMITY STUDY	Miscellaneous Medical	0.31	0.15	$93.96
93965	26	EXTREMITY STUDY	Miscellaneous Medical	0.35	0.20	$93.96
93970	26	EXTREMITY STUDY	Miscellaneous Medical	0.68	0.30	$93.96
93971	26	EXTREMITY STUDY	Miscellaneous Medical	0.45	0.19	$93.96
93975	26	VASCULAR STUDY	Miscellaneous Medical	1.80	0.60	$93.96
93976	26	VASCULAR STUDY	Miscellaneous Medical	1.21	0.40	$93.96
93978	26	VASCULAR STUDY	Miscellaneous Medical	0.65	0.29	$93.96
93979	26	VASCULAR STUDY	Miscellaneous Medical	0.44	0.19	$93.96
93980	26	PENILE VASCULAR STUDY	Miscellaneous Medical	1.25	0.56	$93.96
93981	26	PENILE VASCULAR STUDY	Miscellaneous Medical	0.44	0.23	$93.96
93990	26	DOPPLER FLOW TESTING	Miscellaneous Medical	0.25	0.13	$93.96
94010	26	BREATHING CAPACITY TEST	Miscellaneous Medical	0.17	0.11	$93.96
94014	0	PATIENT RECORDED SPIROMETRY	Miscellaneous Medical	0.52	0.51	$93.96
94016	0	REVIEW PATIENT SPIROMETRY	Miscellaneous Medical	0.52	0.17	$93.96
94060	26	EVALUATION OF WHEEZING	Miscellaneous Medical	0.31	0.17	$93.96
94070	26	EVALUATION OF WHEEZING	Miscellaneous Medical	0.60	0.24	$93.96

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
94150	26	VITAL CAPACITY TEST	Miscellaneous Medical	0.07	0.05	$93.98
94200	26	LUNG FUNCTION TEST (MBC/MVV)	Miscellaneous Medical	0.11	0.06	$93.98
94240	26	RESIDUAL LUNG CAPACITY	Miscellaneous Medical	0.26	0.12	$93.98
94250	26	EXPIRED GAS COLLECTION	Miscellaneous Medical	0.11	0.06	$93.98
94260	26	THORACIC GAS VOLUME	Miscellaneous Medical	0.13	0.07	$93.98
94350	26	LUNG NITROGEN WASHOUT CURVE	Miscellaneous Medical	0.26	0.12	$93.98
94360	26	MEASURE AIRFLOW RESISTANCE	Miscellaneous Medical	0.26	0.11	$93.98
94370	26	BREATH AIRWAY CLOSING VOLUME	Miscellaneous Medical	0.28	0.10	$93.98
94375	26	RESPIRATORY FLOW VOLUME LOOP	Miscellaneous Medical	0.31	0.13	$93.98
94400	26	CO2 BREATHING RESPONSE CURVE	Miscellaneous Medical	0.40	0.23	$93.98
94450	26	HYPOXIA RESPONSE CURVE	Miscellaneous Medical	0.40	0.14	$93.98
94620	26	PULMONARY STRESS TEST/SIMPLE	Miscellaneous Medical	0.64	0.34	$93.98
94621	26	PULM STRESS TEST/COMPLEX	Miscellaneous Medical	1.42	0.52	$93.98
94640	0	AIRWAY INHALATION TREATMENT	Miscellaneous Medical	0.00	0.61	$93.98
94650	0	PRESSURE BREATHING (IPPB)	Miscellaneous Medical	0.00	0.58	$93.98
94651	0	PRESSURE BREATHING (IPPB)	Miscellaneous Medical	0.00	0.54	$93.98
94652	0	PRESSURE BREATHING (IPPB)	Miscellaneous Medical	0.00	0.65	$93.98
94656	0	INITIAL VENTILATOR MGMT	Miscellaneous Medical	1.22	0.55	$93.98
94657	0	CONTINUED VENTILATOR MGMT	Miscellaneous Medical	0.83	0.36	$93.98
94660	0	POS AIRWAY PRESSURE, CPAP	Miscellaneous Medical	0.76	0.37	$93.98
94662	0	NEG PRESS VENTILATION, CNP	Miscellaneous Medical	0.76	0.26	$93.98
94664	0	AEROSOL OR VAPOR INHALATIONS	Miscellaneous Medical	0.00	0.51	$93.98
94665	0	AEROSOL OR VAPOR INHALATIONS	Miscellaneous Medical	0.00	0.51	$93.98
94667	0	CHEST WALL MANIPULATION	Miscellaneous Medical	0.00	0.76	$93.98
94668	0	CHEST WALL MANIPULATION	Miscellaneous Medical	0.00	0.61	$93.98
94680	26	EXHALED AIR ANALYSIS, O2	Miscellaneous Medical	0.26	0.15	$93.98
94681	26	EXHALED AIR ANALYSIS, O2/CO2	Miscellaneous Medical	0.20	0.11	$93.98
94690	26	EXHALED AIR ANALYSIS	Miscellaneous Medical	0.07	0.03	$93.98
94720	26	MONOXIDE DIFFUSING CAPACITY	Miscellaneous Medical	0.26	0.12	$93.98
94725	26	MEMBRANE DIFFUSION CAPACITY	Miscellaneous Medical	0.26	0.11	$93.98
94750	26	PULMONARY COMPLIANCE STUDY	Miscellaneous Medical	0.23	0.12	$93.98
94760	0	MEASURE BLOOD OXYGEN LEVEL	Miscellaneous Medical	0.00	0.14	$93.98
94761	0	MEASURE BLOOD OXYGEN LEVEL	Miscellaneous Medical	0.00	0.30	$93.98
94762	0	MEASURE BLOOD OXYGEN LEVEL	Miscellaneous Medical	0.00	0.38	$93.98
94770	26	EXHALED CARBON DIOXIDE TEST	Miscellaneous Medical	0.15	0.06	$93.98
95004	0	ALLERGY SKIN TESTS	Allergy Testing	0.00	0.10	$59.54
95010	0	SENSITIVITY SKIN TESTS	Allergy Testing	0.15	0.37	$59.54
95015	0	SENSITIVITY SKIN TESTS	Allergy Testing	0.15	0.40	$59.54
95024	0	ALLERGY SKIN TESTS	Allergy Testing	0.00	0.14	$59.54
95027	0	SKIN END POINT TITRATION	Allergy Testing	0.00	0.14	$59.54
95028	0	ALLERGY SKIN TESTS	Allergy Testing	0.00	0.23	$59.54
95044	0	ALLERGY PATCH TESTS	Allergy Testing	0.00	0.20	$59.54
95052	0	PHOTO PATCH TEST	Allergy Testing	0.00	0.25	$59.54
95056	0	PHOTOSENSITIVITY TESTS	Allergy Testing	0.00	0.17	$59.54
95060	0	EYE ALLERGY TESTS	Allergy Testing	0.00	0.35	$59.54
95065	0	NOSE ALLERGY TEST	Allergy Testing	0.00	0.20	$59.54
95070	0	BRONCHIAL ALLERGY TESTS	Allergy Testing	0.00	2.29	$59.54
95071	0	BRONCHIAL ALLERGY TESTS	Allergy Testing	0.00	2.93	$59.54
95075	0	INGESTION CHALLENGE TEST	Allergy Testing	0.95	1.20	$59.54
95078	0	PROVOCATIVE TESTING	Allergy Testing	0.00	0.25	$59.54
95115	0	IMMUNOTHERAPY, ONE INJECTION	Allergy Immunotherapy	0.00	0.39	$42.52
95117	0	IMMUNOTHERAPY INJECTIONS	Allergy Immunotherapy	0.00	0.51	$42.52
95144	0	ANTIGEN THERAPY SERVICES	Allergy Immunotherapy	0.06	0.22	$42.52
95145	0	ANTIGEN THERAPY SERVICES	Allergy Immunotherapy	0.06	0.47	$42.52
95146	0	ANTIGEN THERAPY SERVICES	Allergy Immunotherapy	0.06	0.62	$42.52
95147	0	ANTIGEN THERAPY SERVICES	Allergy Immunotherapy	0.06	0.89	$42.52
95148	0	ANTIGEN THERAPY SERVICES	Allergy Immunotherapy	0.06	0.87	$42.52
95149	0	ANTIGEN THERAPY SERVICES	Allergy Immunotherapy	0.06	1.08	$42.52
95165	0	ANTIGEN THERAPY SERVICES	Allergy Immunotherapy	0.06	0.18	$42.52
95170	0	ANTIGEN THERAPY SERVICES	Allergy Immunotherapy	0.06	0.30	$42.52
95180	0	RAPID DESENSITIZATION	Allergy Immunotherapy	2.01	1.32	$42.52
95805	26	MULTIPLE SLEEP LATENCY TEST	Miscellaneous Medical	1.88	0.66	$93.98

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
95806	26	SLEEP STUDY, UNATTENDED	Miscellaneous Medical	1.66	0.90	$93.98
95807	26	SLEEP STUDY, ATTENDED	Miscellaneous Medical	1.66	0.90	$93.98
95808	26	POLYSOMNOGRAPHY, 1-3	Miscellaneous Medical	2.65	1.36	$93.98
95810	26	POLYSOMNOGRAPHY, 4 OR MORE	Miscellaneous Medical	3.53	1.57	$93.98
95811	26	POLYSOMNOGRAPHY W/CPAP	Miscellaneous Medical	3.80	1.66	$93.98
95812	26	ELECTROENCEPHALOGRAM (EEG)	Miscellaneous Medical	1.08	0.48	$93.98
95813	26	ELECTROENCEPHALOGRAM (EEG)	Miscellaneous Medical	1.73	0.67	$93.98
95816	26	ELECTROENCEPHALOGRAM (EEG)	Miscellaneous Medical	1.08	0.43	$93.98
95819	26	ELECTROENCEPHALOGRAM (EEG)	Miscellaneous Medical	1.08	0.49	$93.98
95822	26	SLEEP ELECTROENCEPHALOGRAM	Miscellaneous Medical	1.08	0.51	$93.98
95824	26	ELECTROENCEPHALOGRAPHY	Miscellaneous Medical	0.74	0.38	$93.98
95827	26	NIGHT ELECTROENCEPHALOGRAM	Miscellaneous Medical	1.08	0.56	$93.98
95829	26	SURGERY ELECTROCORTICOGRAM	Miscellaneous Medical	6.21	1.63	$93.98
95830	0	INSERT ELECTRODES FOR EEG	Miscellaneous Medical	1.70	2.65	$93.98
95831	0	LIMB MUSCLE TESTING, MANUAL	Miscellaneous Medical	0.28	0.43	$93.98
95832	0	HAND MUSCLE TESTING, MANUAL	Miscellaneous Medical	0.29	0.39	$93.98
95833	0	BODY MUSCLE TESTING, MANUAL	Miscellaneous Medical	0.47	0.52	$93.98
95834	0	BODY MUSCLE TESTING, MANUAL	Miscellaneous Medical	0.60	0.63	$93.98
95851	0	RANGE OF MOTION MEASUREMENTS	Miscellaneous Medical	0.16	0.46	$93.98
95852	0	RANGE OF MOTION MEASUREMENTS	Miscellaneous Medical	0.11	0.36	$93.98
95857	0	TENSILON TEST	Miscellaneous Medical	0.53	0.60	$93.98
95858	26	TENSILON TEST & MYOGRAM	Miscellaneous Medical	1.56	0.71	$93.98
95860	26	MUSCLE TEST, ONE LIMB	Miscellaneous Medical	0.96	0.53	$93.98
95861	26	MUSCLE TEST, TWO LIMBS	Miscellaneous Medical	1.54	0.88	$93.98
95863	26	MUSCLE TEST, 3 LIMBS	Miscellaneous Medical	1.87	1.01	$93.98
95864	26	MUSCLE TEST, 4 LIMBS	Miscellaneous Medical	1.99	1.16	$93.98
95867	26	MUSCLE TEST, HEAD OR NECK	Miscellaneous Medical	0.79	0.43	$93.98
95868	26	MUSCLE TEST, HEAD OR NECK	Miscellaneous Medical	1.18	0.74	$93.98
95869	26	MUSCLE TEST, THOR PARASPINAL	Miscellaneous Medical	0.37	0.22	$93.98
95870	26	MUSCLE TEST, NONPARASPINAL	Miscellaneous Medical	0.37	0.21	$93.98
95872	26	MUSCLE TEST, ONE FIBER	Miscellaneous Medical	1.50	0.68	$93.98
95875	26	LIMB EXERCISE TEST	Miscellaneous Medical	1.34	0.48	$93.98
95900	26	MOTOR NERVE CONDUCTION TEST	Miscellaneous Medical	0.42	0.24	$93.98
95903	26	MOTOR NERVE CONDUCTION TEST	Miscellaneous Medical	0.60	0.30	$93.98
95904	26	SENSE/MIXED N CONDUCTION TST	Miscellaneous Medical	0.34	0.21	$93.98
95920	26	INTRAOP NERVE TEST ADD-ON	Miscellaneous Medical	2.11	1.11	$93.98
95921	26	AUTONOMIC NERV FUNCTION TEST	Miscellaneous Medical	0.90	0.34	$93.98
95922	26	AUTONOMIC NERV FUNCTION TEST	Miscellaneous Medical	0.96	0.41	$93.98
95923	26	AUTONOMIC NERV FUNCTION TEST	Miscellaneous Medical	0.90	0.38	$93.98
95925	26	SOMATOSENSORY TESTING	Miscellaneous Medical	0.54	0.35	$93.98
95926	26	SOMATOSENSORY TESTING	Miscellaneous Medical	0.54	0.35	$93.98
95927	26	SOMATOSENSORY TESTING	Miscellaneous Medical	0.54	0.37	$93.98
95930	26	VISUAL EVOKED POTENTIAL TEST	Miscellaneous Medical	0.35	0.27	$93.98
95933	26	BLINK REFLEX TEST	Miscellaneous Medical	0.59	0.32	$93.98
95934	26	H-REFLEX TEST	Miscellaneous Medical	0.51	0.27	$93.98
95936	26	H-REFLEX TEST	Miscellaneous Medical	0.55	0.28	$93.98
95937	26	NEUROMUSCULAR JUNCTION TEST	Miscellaneous Medical	0.65	0.33	$93.98
95950	26	AMBULATORY EEG MONITORING	Miscellaneous Medical	1.51	0.83	$93.98
95951	26	EEG MONITORING/VIDEORECORD	Miscellaneous Medical	6.00	2.37	$93.98
95953	26	EEG MONITORING/COMPUTER	Miscellaneous Medical	3.08	1.33	$93.98
95954	26	EEG MONITORING/GIVING DRUGS	Miscellaneous Medical	2.45	1.30	$93.98
95955	26	EEG DURING SURGERY	Miscellaneous Medical	1.01	0.54	$93.98
95956	26	EEG MONITORING, CABLE/RADIO	Miscellaneous Medical	3.08	1.41	$93.98
95957	26	EEG DIGITAL ANALYSIS	Miscellaneous Medical	1.98	0.82	$93.98
95958	26	EEG MONITORING/FUNCTION TEST	Miscellaneous Medical	4.25	2.23	$93.98
95961	26	ELECTRODE STIMULATION, BRAIN	Miscellaneous Medical	2.97	1.39	$93.98
95962	26	ELECTRODE STIM, BRAIN ADD-ON	Miscellaneous Medical	3.21	1.45	$93.98
95970	0	ANALYZE NEUROSTIM, NO PROG	Miscellaneous Medical	0.45	0.17	$93.98
95971	0	ANALYZE NEUROSTIM, SIMPLE	Miscellaneous Medical	0.78	0.29	$93.98
95972	0	ANALYZE NEUROSTIM, COMPLEX	Miscellaneous Medical	1.50	0.63	$93.98
95973	0	ANALYZE NEUROSTIM, COMPLEX	Miscellaneous Medical	0.92	0.40	$93.98
95974	0	CRANIAL NEUROSTIM, COMPLEX	Miscellaneous Medical	3.00	1.32	$93.98

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TABLE E. — PHYSICIAN NATIONWIDE RVUs (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUs — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
95975	0	CRANIAL NEUROSTIM, COMPLEX	Miscellaneous Medical	1.70	0.74	$93.98
96100	0	PSYCHOLOGICAL TESTING	Miscellaneous Medical	0.00	1.77	$93.98
96105	0	ASSESSMENT OF APHASIA	Miscellaneous Medical	0.00	1.77	$93.98
96111	0	DEVELOPMENTAL TEST, EXTEND	Miscellaneous Medical	0.00	1.77	$93.98
96115	0	NEUROBEHAVIOR STATUS EXAM	Miscellaneous Medical	0.00	1.77	$93.98
96117	0	NEUROPSYCH TEST BATTERY	Miscellaneous Medical	0.00	1.77	$93.98
96405	0	INTRALESIONAL CHEMO ADMIN	Miscellaneous Medical	0.52	0.24	$93.98
96406	0	INTRALESIONAL CHEMO ADMIN	Miscellaneous Medical	0.80	0.31	$93.98
96440	0	CHEMOTHERAPY, INTRACAVITARY	Miscellaneous Medical	2.37	1.06	$93.98
96445	0	CHEMOTHERAPY, INTRACAVITARY	Miscellaneous Medical	2.20	0.91	$93.98
96450	0	CHEMOTHERAPY, INTO CNS	Miscellaneous Medical	1.89	0.79	$93.98
96542	0	CHEMOTHERAPY INJECTION	Miscellaneous Medical	1.42	0.58	$93.98
96570	0	PHOTODYNAMIC TX, 30 MIN	Miscellaneous Medical	1.10	0.44	$93.98
96571	0	PHOTODYNAMIC TX, ADDL 15 MIN	Miscellaneous Medical	0.55	0.22	$93.98
96902	0	TRICHOGRAM	Miscellaneous Medical	0.41	0.20	$93.98
97039	0	PHYSICAL THERAPY TREATMENT	Physical Medicine	0.20	0.27	$71.34
97139	0	PHYSICAL MEDICINE PROCEDURE	Physical Medicine	0.21	0.23	$71.34
98925	0	OSTEOPATHIC MANIPULATION	Physical Medicine	0.45	0.36	$71.34
98926	0	OSTEOPATHIC MANIPULATION	Physical Medicine	0.65	0.45	$71.34
98927	0	OSTEOPATHIC MANIPULATION	Physical Medicine	0.87	0.49	$71.34
98928	0	OSTEOPATHIC MANIPULATION	Physical Medicine	1.03	0.57	$71.34
98929	0	OSTEOPATHIC MANIPULATION	Physical Medicine	1.19	0.60	$71.34
98940	0	CHIROPRACTIC MANIPULATION	Chiropractor	0.45	0.27	$57.91
98941	0	CHIROPRACTIC MANIPULATION	Chiropractor	0.65	0.31	$57.91
98942	0	CHIROPRACTIC MANIPULATION	Chiropractor	0.87	0.36	$57.91
98943	0	CHIROPRACTIC MANIPULATION	Chiropractor	0.40	0.35	$57.91
99141	0	SEDATION, IV/IM OR INHALANT	Miscellaneous Medical	0.80	1.73	$93.98
99142	0	SEDATION, ORAL/RECTAL/NASAL	Miscellaneous Medical	0.60	1.05	$93.98
99170	0	ANOGENITAL EXAM, CHILD	Miscellaneous Medical	1.75	1.87	$93.98
99175	0	INDUCTION OF VOMITING	Miscellaneous Medical	0.00	1.40	$93.98
99183	0	HYPERBARIC OXYGEN THERAPY	Miscellaneous Medical	2.34	1.02	$93.98
99195	0	PHLEBOTOMY	Miscellaneous Medical	0.00	0.45	$93.98
99201	0	OFFICE/OUTPATIENT VISIT, NEW	Office/Home/Urgent Care Visits	0.45	0.17	$52.14
99202	0	OFFICE/OUTPATIENT VISIT, NEW	Office/Home/Urgent Care Visits	0.88	0.31	$52.14
99203	0	OFFICE/OUTPATIENT VISIT, NEW	Office/Home/Urgent Care Visits	1.34	0.45	$52.14
99204	0	OFFICE/OUTPATIENT VISIT, NEW	Office/Home/Urgent Care Visits	2.00	0.66	$52.14
99205	0	OFFICE/OUTPATIENT VISIT, NEW	Office/Home/Urgent Care Visits	2.67	0.84	$52.14
99211	0	OFFICE/OUTPATIENT VISIT, EST	Office/Home/Urgent Care Visits	0.17	0.07	$52.14
99212	0	OFFICE/OUTPATIENT VISIT, EST	Office/Home/Urgent Care Visits	0.45	0.17	$52.14
99213	0	OFFICE/OUTPATIENT VISIT, EST	Office/Home/Urgent Care Visits	0.67	0.23	$52.14
99214	0	OFFICE/OUTPATIENT VISIT, EST	Office/Home/Urgent Care Visits	1.10	0.37	$52.14
99215	0	OFFICE/OUTPATIENT VISIT, EST	Office/Home/Urgent Care Visits	1.77	0.59	$52.14
99217	0	OBSERVATION CARE DISCHARGE	Emer Room Visits And Observation Care	1.28	0.48	$94.27
99218	0	OBSERVATION CARE	Emer Room Visits And Observation Care	1.28	0.52	$94.27
99219	0	OBSERVATION CARE	Emer Room Visits And Observation Care	2.14	0.84	$94.27
99220	0	OBSERVATION CARE	Emer Room Visits And Observation Care	2.99	1.10	$94.27
99221	0	INITIAL HOSPITAL CARE	Inpatient Visits	1.28	0.54	$71.49
99222	0	INITIAL HOSPITAL CARE	Inpatient Visits	2.14	0.85	$71.49
99223	0	INITIAL HOSPITAL CARE	Inpatient Visits	2.99	1.11	$71.49
99231	0	SUBSEQUENT HOSPITAL CARE	Inpatient Visits	0.64	0.28	$71.49
99232	0	SUBSEQUENT HOSPITAL CARE	Inpatient Visits	1.06	0.41	$71.49
99233	0	SUBSEQUENT HOSPITAL CARE	Inpatient Visits	1.51	0.57	$71.49
99234	0	OBSERV/HOSP SAME DATE	Inpatient Visits	2.56	0.88	$71.49
99235	0	OBSERV/HOSP SAME DATE	Inpatient Visits	3.42	1.19	$71.49
99236	0	OBSERV/HOSP SAME DATE	Inpatient Visits	4.27	1.41	$71.49
99238	0	HOSPITAL DISCHARGE DAY	Inpatient Visits	1.28	0.48	$71.49
99239	0	HOSPITAL DISCHARGE DAY	Inpatient Visits	1.75	0.60	$71.49
99241	0	OFFICE CONSULTATION	Consults	0.64	0.62	$58.91

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TABLE E. — PHYSICIAN NATIONWIDE RVUs (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUs — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
99242	0	OFFICE CONSULTATION	Consults	1.29	0.96	$58.91
99243	0	OFFICE CONSULTATION	Consults	1.72	1.27	$58.91
99244	0	OFFICE CONSULTATION	Consults	2.58	1.67	$58.91
99245	0	OFFICE CONSULTATION	Consults	3.43	2.14	$58.91
99251	0	INITIAL INPATIENT CONSULT	Consults	0.66	0.41	$58.91
99252	0	INITIAL INPATIENT CONSULT	Consults	1.32	0.63	$58.91
99253	0	INITIAL INPATIENT CONSULT	Consults	1.82	0.83	$58.91
99254	0	INITIAL INPATIENT CONSULT	Consults	2.64	1.13	$58.91
99255	0	INITIAL INPATIENT CONSULT	Consults	3.65	1.51	$58.91
99261	0	FOLLOW-UP INPATIENT CONSULT	Consults	0.42	0.25	$58.91
99262	0	FOLLOW-UP INPATIENT CONSULT	Consults	0.85	0.40	$58.91
99263	0	FOLLOW-UP INPATIENT CONSULT	Consults	1.27	0.57	$58.91
99271	0	CONFIRMATORY CONSULTATION	Consults	0.45	0.64	$58.91
99272	0	CONFIRMATORY CONSULTATION	Consults	0.84	0.85	$58.91
99273	0	CONFIRMATORY CONSULTATION	Consults	1.19	1.10	$58.91
99274	0	CONFIRMATORY CONSULTATION	Consults	1.73	1.39	$58.91
99275	0	CONFIRMATORY CONSULTATION	Consults	2.31	1.70	$58.91
99281	0	EMERGENCY DEPT VISIT	Emer Room Visits And Observation Care	0.33	0.14	$94.27
99282	0	EMERGENCY DEPT VISIT	Emer Room Visits And Observation Care	0.55	0.22	$94.27
99283	0	EMERGENCY DEPT VISIT	Emer Room Visits And Observation Care	1.24	0.37	$94.27
99284	0	EMERGENCY DEPT VISIT	Emer Room Visits And Observation Care	1.95	0.56	$94.27
99285	0	EMERGENCY DEPT VISIT	Emer Room Visits And Observation Care	3.06	0.86	$94.27
99291	0	CRITICAL CARE, FIRST HOUR	Inpatient Visits	4.00	1.57	$71.49
99292	0	CRITICAL CARE, ADDL 30 MIN	Inpatient Visits	2.00	0.81	$71.49
99295	0	NEONATAL CRITICAL CARE	Inpatient Visits	16.00	5.02	$71.49
99296	0	NEONATAL CRITICAL CARE	Inpatient Visits	8.00	2.63	$71.49
99297	0	NEONATAL CRITICAL CARE	Inpatient Visits	4.00	1.32	$71.49
99298	0	NEONATAL CRITICAL CARE	Inpatient Visits	2.75	0.96	$71.49
99301	0	NURSING FACILITY CARE	Inpatient Visits	1.20	0.44	$71.49
99302	0	NURSING FACILITY CARE	Inpatient Visits	1.61	0.56	$71.49
99303	0	NURSING FACILITY CARE	Inpatient Visits	2.01	0.78	$71.49
99311	0	NURSING FAC CARE, SUBSEQ	Inpatient Visits	0.60	0.25	$71.49
99312	0	NURSING FAC CARE, SUBSEQ	Inpatient Visits	1.00	0.37	$71.49
99313	0	NURSING FAC CARE, SUBSEQ	Inpatient Visits	1.42	0.49	$71.49
99315	0	NURSING FAC DISCHARGE DAY	Inpatient Visits	1.13	0.43	$71.49
99316	0	NURSING FAC DISCHARGE DAY	Inpatient Visits	1.50	0.53	$71.49
99321	0	REST HOME VISIT, NEW PATIENT	Office/Home/Urgent Care Visits	0.71	0.42	$52.14
99322	0	REST HOME VISIT, NEW PATIENT	Office/Home/Urgent Care Visits	1.01	0.65	$52.14
99323	0	REST HOME VISIT, NEW PATIENT	Office/Home/Urgent Care Visits	1.28	0.90	$52.14
99331	0	REST HOME VISIT, EST PAT	Office/Home/Urgent Care Visits	0.60	0.43	$52.14
99332	0	REST HOME VISIT, EST PAT	Office/Home/Urgent Care Visits	0.80	0.54	$52.14
99333	0	REST HOME VISIT, EST PAT	Office/Home/Urgent Care Visits	1.00	0.66	$52.14
99341	0	HOME VISIT, NEW PATIENT	Office/Home/Urgent Care Visits	1.01	0.55	$52.14
99342	0	HOME VISIT, NEW PATIENT	Office/Home/Urgent Care Visits	1.52	0.79	$52.14
99343	0	HOME VISIT, NEW PATIENT	Office/Home/Urgent Care Visits	2.27	1.19	$52.14
99344	0	HOME VISIT, NEW PATIENT	Office/Home/Urgent Care Visits	3.03	1.43	$52.14
99345	0	HOME VISIT, NEW PATIENT	Office/Home/Urgent Care Visits	3.79	1.62	$52.14
99347	0	HOME VISIT, EST PATIENT	Office/Home/Urgent Care Visits	0.76	0.48	$52.14
99348	0	HOME VISIT, EST PATIENT	Office/Home/Urgent Care Visits	1.26	0.69	$52.14
99349	0	HOME VISIT, EST PATIENT	Office/Home/Urgent Care Visits	2.02	0.97	$52.14
99350	0	HOME VISIT, EST PATIENT	Office/Home/Urgent Care Visits	3.03	1.32	$52.14
99354	0	PROLONGED SERVICE, OFFICE	Office/Home/Urgent Care Visits	1.77	1.28	$52.14
99355	0	PROLONGED SERVICE, OFFICE	Office/Home/Urgent Care Visits	1.77	1.13	$52.14
99356	0	PROLONGED SERVICE, INPATIENT	Inpatient Visits	1.71	0.68	$71.49
99357	0	PROLONGED SERVICE, INPATIENT	Inpatient Visits	1.71	0.70	$71.49
99374	0	HOME HEALTH CARE SUPERVISION	Office/Home/Urgent Care Visits	1.10	1.20	$52.14
99375	0	HOME HEALTH CARE SUPERVISION	Office/Home/Urgent Care Visits	1.73	1.40	$52.14

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TABLE E. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

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CPT Code	Modifier	CPT Code Description	Physician Cpt Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
99377	0	HOSPICE CARE SUPERVISION	Office/Home/Urgent Care Visits	1.10	1.20	$52.14
99378	0	HOSPICE CARE SUPERVISION	Office/Home/Urgent Care Visits	1.73	1.73	$52.14
99379	0	NURSING FAC CARE SUPERVISION	Office/Home/Urgent Care Visits	1.10	1.20	$52.14
99380	0	NURSING FAC CARE SUPERVISION	Office/Home/Urgent Care Visits	1.73	1.39	$52.14
99381	0	PREV VISIT, NEW, INFANT	Well Baby Exams	1.19	1.43	$37.24
99382	0	PREV VISIT, NEW, AGE 1-4	Physical Exams	1.36	1.51	$45.71
99383	0	PREV VISIT, NEW, AGE 5-11	Physical Exams	1.36	1.46	$45.71
99384	0	PREV VISIT, NEW, AGE 12-17	Physical Exams	1.53	1.57	$45.71
99385	0	PREV VISIT, NEW, AGE 18-39	Physical Exams	1.53	1.52	$45.71
99386	0	PREV VISIT, NEW, AGE 40-64	Physical Exams	1.88	1.75	$45.71
99387	0	PREV VISIT, NEW, 65 & OVER	Physical Exams	2.06	1.88	$45.71
99391	0	PREV VISIT, EST, INFANT	Well Baby Exams	1.02	1.03	$37.24
99392	0	PREV VISIT, EST, AGE 1-4	Physical Exams	1.19	1.13	$45.71
99393	0	PREV VISIT, EST, AGE 5-11	Physical Exams	1.19	1.11	$45.71
99394	0	PREV VISIT, EST, AGE 12-17	Physical Exams	1.36	1.22	$45.71
99395	0	PREV VISIT, EST, AGE 18-39	Physical Exams	1.36	1.20	$45.71
99396	0	PREV VISIT, EST, AGE 40-64	Physical Exams	1.53	1.30	$45.71
99397	0	PREV VISIT, EST, 65 & OVER	Physical Exams	1.71	1.43	$45.71
99401	0	PREVENTIVE COUNSELING, INDIV	Physical Exams	0.48	0.57	$45.71
99402	0	PREVENTIVE COUNSELING, INDIV	Physical Exams	0.98	0.87	$45.71
99403	0	PREVENTIVE COUNSELING, INDIV	Physical Exams	1.46	1.17	$45.71
99404	0	PREVENTIVE COUNSELING, INDIV	Physical Exams	1.95	1.47	$45.71
99411	0	PREVENTIVE COUNSELING, GROUP	Physical Exams	0.15	0.17	$45.71
99412	0	PREVENTIVE COUNSELING, GROUP	Physical Exams	0.25	0.24	$45.71
99431	0	INITIAL CARE, NORMAL NEWBORN	Inpatient Visits	1.17	0.60	$71.49
99432	0	NEWBORN CARE, NOT IN HOSP	Well Baby Exams	1.26	1.21	$37.24
99433	0	NORMAL NEWBORN CARE/HOSPITAL	Inpatient Visits	0.62	0.32	$71.49
99435	0	NEWBORN DISCHARGE DAY HOSP	Inpatient Visits	1.50	0.85	$71.49
99436	0	ATTENDANCE, BIRTH	Inpatient Visits	1.50	0.87	$71.49
99440	0	NEWBORN RESUSCITATION	Inpatient Visits	2.93	1.47	$71.49

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TABLE F. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH TOTAL RVUS ONLY

PAGE 1 OF 3

CPT Code	Modifier	CPT Code Description	Physician CPT Code Group	Total RVUs	Conversion Factor
15824	0	REMOVAL OF FOREHEAD WRINKLES	Surgery	19.41	$125.00
15825	0	REMOVAL OF NECK WRINKLES	Surgery	22.18	$125.00
15826	0	REMOVAL OF BROW WRINKLES	Surgery	19.41	$125.00
15828	0	REMOVAL OF FACE WRINKLES	Surgery	51.29	$125.00
15829	0	REMOVAL OF SKIN WRINKLES	Surgery	56.84	$125.00
15876	0	SUCTION ASSISTED LIPECTOMY	Surgery	11.01	$125.00
15877	0	SUCTION ASSISTED LIPECTOMY	Surgery	19.23	$125.00
15878	0	SUCTION ASSISTED LIPECTOMY	Surgery	13.79	$125.00
15879	0	SUCTION ASSISTED LIPECTOMY	Surgery	18.35	$125.00
17380	0	HAIR REMOVAL BY ELECTROLYSIS	Surgery	0.81	$125.00
20930	0	SPINAL BONE ALLOGRAFT	Surgery	3.18	$125.00
20936	0	SPINAL BONE AUTOGRAFT	Surgery	4.84	$125.00
21088	0	PREPARE FACE/ORAL PROSTHESIS	Surgery	12.38	$125.00
21089	0	PREPARE FACE/ORAL PROSTHESIS	Surgery	6.85	$125.00
22841	0	INSERT SPINE FIXATION DEVICE	Surgery	8.93	$125.00
23929	0	SHOULDER SURGERY PROCEDURE	Surgery	11.57	$125.00
24940	0	REVISION OF UPPER ARM	Surgery	21.72	$125.00
26587	0	RECONSTRUCT EXTRA FINGER	Surgery	13.03	$125.00
26989	0	HAND/FINGER SURGERY	Surgery	7.07	$125.00
29909	0	ARTHROSCOPY OF JOINT	Surgery	26.50	$125.00
32850	0	DONOR PNEUMONECTOMY	Surgery	43.66	$125.00
33940	0	REMOVAL OF DONOR HEART	Surgery	45.86	$125.00
36415	0	DRAWING BLOOD	Miscellaneous Medical	0.16	$93.98
36468	0	INJECTION(S), SPIDER VEINS	Surgery	1.77	$125.00
36469	0	INJECTION(S), SPIDER VEINS	Surgery	1.74	$125.00
36540	0	COLLECT BLOOD VENOUS DEVICE	Surgery	0.63	$125.00
41820	0	EXCISION, GUM, EACH QUADRANT	Surgery	5.50	$125.00
41821	0	EXCISION OF GUM FLAP	Surgery	1.24	$125.00
41850	0	TREATMENT OF GUM LESION	Surgery	2.75	$125.00
41870	0	GUM GRAFT	Surgery	6.87	$125.00
43752	0	NASAL/OROGASTRIC W/STENT	Surgery	1.10	$125.00
47133	0	REMOVAL OF DONOR LIVER	Surgery	61.46	$125.00
48160	0	PANCREAS REMOVAL/TRANSPLANT	Surgery	58.44	$125.00
48550	0	DONOR PANCREATECTOMY	Surgery	27.52	$125.00
50300	0	REMOVAL OF DONOR KIDNEY	Surgery	26.03	$125.00
54440	0	REPAIR OF PENIS	Surgery	14.85	$125.00
55970	0	SEX TRANSFORMATION, M TO F	Surgery	88.06	$125.00
58974	0	TRANSFER OF EMBRYO	Surgery	4.54	$125.00
63043	0	LAMINOTOMY, ADDL CERVICAL	Surgery	9.89	$125.00
63044	0	LAMINOTOMY, ADDL LUMBAR	Surgery	9.40	$125.00
65760	0	REVISION OF CORNEA	Surgery	33.08	$125.00
65765	0	REVISION OF CORNEA	Surgery	38.38	$125.00
65767	0	CORNEAL TISSUE TRANSPLANT	Surgery	35.73	$125.00
65771	0	RADIAL KERATOTOMY	Surgery	19.45	$125.00
69090	0	PIERCE EARLOBES	Surgery	0.64	$125.00
69710	0	IMPLANT/REPLACE HEARING AID	Surgery	22.47	$125.00
76092	26	MAMMOGRAM, SCREENING	Radiology	1.28	$117.60
76140	0	X-RAY CONSULTATION	Radiology	0.70	$117.60
76350	26	SPECIAL X-RAY CONTRAST STUDY	Radiology	1.11	$117.60
78990	0	PROVIDE DIAG RADIONUCLIDE(S)	Radiology	2.35	$117.60
79900	0	PROVIDE THER RADIOPHARM(S)	Radiology	3.88	$117.60
90375	0	RABIES IG, IM/SC	Therapeutic Injections	1.69	$160.82
90376	0	RABIES IG, HEAT TREATED	Therapeutic Injections	1.69	$160.82
90389	0	TETANUS IG, IM	Therapeutic Injections	1.13	$160.82
90371	0	HEP B IG, IM	Therapeutic Injections	5.26	$160.82
90471	0	IMMUNIZATION ADMIN	Immunizations	0.29	$118.74
90472	0	IMMUNIZATION ADMIN, EACH ADD	Immunizations	0.29	$118.74
90585	0	BCG VACCINE, PERCUT	Immunizations	2.27	$118.74
90586	0	BCG VACCINE, INTRAVESICAL	Immunizations	2.48	$118.74
90632	0	HEP A VACCINE, ADULT IM	Immunizations	0.87	$118.74
90633	0	HEP A VACC, PED/ADOL, 2 DOSE	Immunizations	0.43	$118.74
90634	0	HEP A VACC, PED/ADOL, 3 DOSE	Immunizations	0.43	$118.74
90645	0	HIB VACCINE, HBOC, IM	Immunizations	0.34	$118.74
90646	0	HIB VACCINE, PRP-D, IM	Immunizations	0.22	$118.74

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TABLE F. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH TOTAL RVUS ONLY — Continued

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CPT Code	Modifier	CPT Code Description	Physician CPT Code Group	Total RVUs	Conversion Factor
90647	0	HIB VACCINE, PRP-OMP, IM	Immunizations	0.33	$118.74
90648	0	HIB VACCINE, PRP-T, IM	Immunizations	0.31	$118.74
90657	0	FLU VACCINE, 6-35 MO, IM	Immunizations	0.06	$118.74
90658	0	FLU VACCINE, 3 YRS, IM	Immunizations	0.09	$118.74
90659	0	FLU VACCINE, WHOLE, IM	Immunizations	0.05	$118.74
90660	0	FLU VACCINE, NASAL	Immunizations	0.19	$118.74
90665	0	LYME DISEASE VACCINE, IM	Immunizations	0.87	$118.74
90669	0	PNEUMOCOCCAL VACC, PED<5	Immunizations	0.23	$118.74
90675	0	RABIES VACCINE, IM	Immunizations	2.06	$118.74
90680	0	ROTOVIRUS VACCINE, ORAL	Immunizations	0.50	$118.74
90690	0	TYPHOID VACCINE, ORAL	Immunizations	0.43	$118.74
90691	0	TYPHOID VACCINE, IM	Immunizations	0.63	$118.74
90749	0	VACCINE TOXOID	Immunizations	0.23	$118.74
90882	0	ENVIRONMENTAL MANIPULATION	Outpatient Psych/Alcohol & Drug Abuse	3.05	$52.87
90889	0	PREPARATION OF REPORT	Outpatient Psych/Alcohol & Drug Abuse	2.63	$52.87
90940	0	HEMODIALYSIS ACCESS STUDY	Miscellaneous Medical	2.00	$93.98
90989	0	DIALYSIS TRAINING, COMPLETE	Miscellaneous Medical	10.80	$93.98
90993	0	DIALYSIS TRAINING, INCOMPL	Miscellaneous Medical	1.82	$93.98
91132	26	ELECTROGASTROGRAPHY	Miscellaneous Medical	0.22	$93.98
91133	26	ELECTROGASTROGRAPHY W/TEST	Miscellaneous Medical	0.22	$93.98
92390	0	SUPPLY OF SPECTACLES	Miscellaneous Medical	1.93	$93.98
92391	0	SUPPLY OF CONTACT LENSES	Miscellaneous Medical	1.70	$93.98
92531	0	SPONTANEOUS NYSTAGMUS STUDY	Miscellaneous Medical	0.50	$93.98
92532	0	POSITIONAL NYSTAGMUS STUDY	Miscellaneous Medical	0.59	$93.98
92533	0	CALORIC VESTIBULAR TEST	Miscellaneous Medical	0.94	$93.98
92534	0	OPTOKINETIC NYSTAGMUS	Miscellaneous Medical	0.42	$93.98
92590	0	HEARING AID EXAM, ONE EAR	Hearing/Speech Exams	1.46	$71.01
92591	0	HEARING AID EXAM, BOTH EARS	Hearing/Speech Exams	2.20	$71.01
92592	0	HEARING AID CHECK, ONE EAR	Hearing/Speech Exams	0.64	$71.01
92593	0	HEARING AID CHECK, BOTH EARS	Hearing/Speech Exams	0.97	$71.01
92594	0	ELECTRO HEARNG AID TEST, ONE	Hearing/Speech Exams	0.70	$71.01
92595	0	ELECTRO HEARNG AID TST, BOTH	Hearing/Speech Exams	1.05	$71.01
92992	0	REVISION OF HEART CHAMBER	Surgery	41.04	$125.00
92993	0	REVISION OF HEART CHAMBER	Surgery	28.75	$125.00
93318	26	ECHO TRANSESOPHAGEAL INTRAOP	Cardiovascular	3.30	$104.15
93760	26	CEPHALIC THERMOGRAM	Cardiovascular	0.50	$104.15
93762	26	PERIPHERAL THERMOGRAM	Cardiovascular	0.74	$104.15
93784	0	AMBULATORY BP MONITORING	Cardiovascular	4.57	$104.15
93790	0	REVIEW/REPORT BP RECORDING	Cardiovascular	1.83	$104.15
94642	0	AEROSOL INHALATION TREATMENT	Miscellaneous Medical	2.06	$93.98
95120	0	IMMUNOTHERAPY, ONE INJECTION	Allergy Immunotherapy	0.61	$42.52
95125	0	IMMUNOTHERAPY, MANY ANTIGENS	Allergy Immunotherapy	0.75	$42.52
95130	0	IMMUNOTHERAPY, INSECT VENOM	Allergy Immunotherapy	1.05	$42.52
95131	0	IMMUNOTHERAPY, INSECT VENOMS	Allergy Immunotherapy	1.33	$42.52
95132	0	IMMUNOTHERAPY, INSECT VENOMS	Allergy Immunotherapy	1.60	$42.52
95133	0	IMMUNOTHERAPY, INSECT VENOMS	Allergy Immunotherapy	1.93	$42.52
95134	0	IMMUNOTHERAPY, INSECT VENOMS	Allergy Immunotherapy	2.32	$42.52
96110	0	DEVELOPMENTAL TEST, LIM	Miscellaneous Medical	2.02	$93.98
96549	0	CHEMOTHERAPY, UNSPECIFIED	Miscellaneous Medical	0.87	$93.98
97780	0	ACUPUNCTURE W/O STIMUL	Physical Medicine	1.16	$71.34
97781	0	ACUPUNCTURE W/STIMUL	Physical Medicine	1.55	$71.34
99000	0	SPECIMEN HANDLING	Miscellaneous Medical	0.19	$93.98
99001	0	SPECIMEN HANDLING	Miscellaneous Medical	0.21	$93.98
99002	0	DEVICE HANDLING	Miscellaneous Medical	0.30	$93.98
99024	0	POSTOP FOLLOW-UP VISIT	Miscellaneous Medical	0.53	$93.98
99025	0	INITIAL SURGICAL EVALUATION	Miscellaneous Medical	0.50	$93.98
99050	0	MEDICAL SERVICES AFTER HRS	Miscellaneous Medical	0.57	$93.98
99052	0	MEDICAL SERVICES AT NIGHT	Miscellaneous Medical	0.57	$93.98
99054	0	MEDICAL SERVCS, UNUSUAL HRS	Miscellaneous Medical	0.57	$93.98
99056	0	NON-OFFICE MEDICAL SERVICES	Miscellaneous Medical	0.74	$93.98
99058	0	OFFICE EMERGENCY CARE	Miscellaneous Medical	0.77	$93.98
99070	0	SPECIAL SUPPLIES	Miscellaneous Medical	0.42	$93.98
99071	0	PATIENT EDUCATION MATERIALS	Miscellaneous Medical	0.29	$93.98
99075	0	MEDICAL TESTIMONY	Miscellaneous Medical	3.52	$93.98

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TABLE F. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS FOR CPT CODES WITH TOTAL RVUS ONLY — Continued

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CPT Code	Modifier	CPT Code Description	Physician CPT Code Group	Total RVUs	Conversion Factor
99078	0	GROUP HEALTH EDUCATION	Miscellaneous Medical	0.64	$93.98
99080	0	SPECIAL REPORTS OR FORMS	Miscellaneous Medical	0.59	$93.98
99082	0	UNUSUAL PHYSICIAN TRAVEL	Miscellaneous Medical	0.32	$93.98
99090	0	COMPUTER DATA ANALYSIS	Miscellaneous Medical	1.05	$93.98
99100	0	SPECIAL ANESTHESIA SERVICE	Miscellaneous Medical	0.75	$93.98
99116	0	ANESTHESIA WITH HYPOTHERMIA	Miscellaneous Medical	3.52	$93.98
99135	0	SPECIAL ANESTHESIA PROCEDURE	Miscellaneous Medical	3.82	$93.98
99140	0	EMERGENCY ANESTHESIA	Miscellaneous Medical	1.50	$93.98
99172	0	OCULAR FUNCTION SCREEN	Miscellaneous Medical	0.57	$93.98
99173	0	VISUAL ACUITY SCREEN	Vision Exams	2.84	$38.89
99185	26	REGIONAL HYPOTHERMIA	Miscellaneous Medical	0.22	$93.98
99186	26	TOTAL BODY HYPOTHERMIA	Miscellaneous Medical	1.07	$93.98
99190	0	SPECIAL PUMP SERVICES	Miscellaneous Medical	13.07	$93.98
99191	0	SPECIAL PUMP SERVICES	Miscellaneous Medical	9.79	$93.98
99192	0	SPECIAL PUMP SERVICES	Miscellaneous Medical	6.53	$93.98
99288	0	DIRECT ADVANCED LIFE SUPPORT	Emer Room Visits and Observation Care	1.53	$94.27
99358	0	PROLONGED SERV, W/O CONTACT	Office/Home/Urgent Care Visits	4.36	$52.14
99359	0	PROLONGED SERV, W/O CONTACT	Office/Home/Urgent Care Visits	2.18	$52.14
99360	0	PHYSICIAN STANDBY SERVICES	Miscellaneous Medical	1.65	$93.98
99361	0	PHYSICIAN/TEAM CONFERENCE	Office/Home/Urgent Care Visits	2.50	$52.14
99362	0	PHYSICIAN/TEAM CONFERENCE	Office/Home/Urgent Care Visits	4.36	$52.14
99371	0	PHYSICIAN PHONE CONSULTATION	Office/Home/Urgent Care Visits	0.40	$52.14
99372	0	PHYSICIAN PHONE CONSULTATION	Office/Home/Urgent Care Visits	0.99	$52.14
99373	0	PHYSICIAN PHONE CONSULTATION	Office/Home/Urgent Care Visits	1.98	$52.14
99420	0	HEALTH RISK ASSESSMENT TEST	Physical Exams	2.42	$45.71
99429	0	UNLISTED PREVENTIVE SERVICE	Physical Exams	1.69	$45.71
99450	0	LIFE/DISABILITY EVALUATION	Office/Home/Urgent Care Visits	1.44	$52.14
99455	0	DISABILITY EXAMINATION	Office/Home/Urgent Care Visits	4.24	$52.14
99456	0	DISABILITY EXAMINATION	Office/Home/Urgent Care Visits	7.04	$52.14

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TABLE G. — PHYSICIAN NATIONWIDE CHARGES FOR ANESTHESIA CPT CODES

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CPT Code	Modifier	CPT Code Description	Physician CPT Code Group	Charge
00100	0	INTEG HEAD &/OR SALIV GLAND INCL BX; NOS	Anesthesia	$920.85
00102	0	INTEG HEAD/SALIV GLAND W/BX; REPR CLEFT	Anesthesia	$1,091.35
00103	0	INTEG HEAD/SALIV INCL BX; BLEPHAROPLASTY	Anesthesia	$926.86
00104	0	ELEC-CONVULS THERAP	Anesthesia	$416.86
00120	0	EXT, MID, & INNER EAR INCL BX; NOS	Anesthesia	$984.69
00124	0	EXT, MID, & INNER EAR INCL BX; OTOSCOPY	Anesthesia	$572.34
00126	0	EXT, MID, & INNER EAR INCL BX; TYMPANOTOMY	Anesthesia	$562.57
00140	0	EYE; NOS	Anesthesia	$816.45
00142	0	EYE; LENS SURG	Anesthesia	$656.46
00144	0	EYE; CORNEAL TRANSPL	Anesthesia	$1,044.78
00145	0	EYE; VITRECTOMY	Anesthesia	$1,121.39
00147	0	EYE; IRIDECTOMY	Anesthesia	$746.59
00148	0	EYE; OPHTH	Anesthesia	$715.80
00160	0	NOSE & ACCES SINUSES; NOS	Anesthesia	$905.08
00162	0	NOSE & ACCES SINUSES; RADICAL SURG	Anesthesia	$1,225.80
00164	0	NOSE & ACCES SINUSES; BX, SOFT TISS	Anesthesia	$727.06
00170	0	INTRAORAL PROC, INCL BX; NOS	Anesthesia	$834.47
00172	0	INTRAORAL PROC, INCL BX; REPR CLEFT PALATE	Anesthesia	$1,107.12
00174	0	INTRAORAL INCL BX; EXC RETROPHARYNG TUMOR	Anesthesia	$947.89
00176	0	INTRAORAL PROC, INCL BX; RADICAL SURG	Anesthesia	$2,067.03
00190	0	FACIAL BONES; NOS	Anesthesia	$1,101.86
00192	0	FACIAL BONES; RADICAL SURG	Anesthesia	$1,912.30
00210	0	INTRACRAN PROC; NOS	Anesthesia	$1,967.88
00212	0	INTRACRAN PROC; SUBDURAL TAPS	Anesthesia	$854.75
00214	0	INTRACRAN PROC; BURR HOLES	Anesthesia	$1,263.35
00215	0	INTRACRAN; ELEVAT DEPRES SKULL FX-XTRADURL	Anesthesia	$1,263.35
00216	0	INTRACRAN PROC; VASCULAR PROC	Anesthesia	$2,707.72
00218	0	INTRACRAN PROC; PROC SITTING POSIT	Anesthesia	$2,064.02
00220	0	INTRACRAN PROC; SPINAL FLUID SHUNTING PROC	Anesthesia	$1,409.06
00222	0	INTRACRAN; ELECTROCOAGULAT INTRACRAN NERV	Anesthesia	$896.06
00300	0	ALL PROC INTEG SYST NECK, INCL SUBQ TISS	Anesthesia	$866.77
00320	0	PROC ESOPHAG/THYROID/LARYNX/TRACH; NOS	Anesthesia	$938.88
00322	0	PROC ESOPHA/THYROID/TRACH; NEEDLE BX THYRO	Anesthesia	$748.85
00350	0	MAJOR VESSELS NECK; NOS	Anesthesia	$1,575.81
00352	0	MAJOR VESSELS NECK; SIMPL LIG	Anesthesia	$742.84
00400	0	ANT INTEG SYST CHEST, INCL SUBQ TISS; NOS	Anesthesia	$603.13
00402	0	ANT INTEG CHEST W/SUBQ TISS; RECON BREAST	Anesthesia	$1,192.00
00404	0	ANT INTEG CHEST W/SUBQ; RAD/MOD RAD BREAST	Anesthesia	$1,036.52
00406	0	ANT INTEG CHEST; RAD BREAST W/ NODE DISSEC	Anesthesia	$1,680.68
00410	0	INTEG CHEST W/SUBQ TISS; ELEC CONVER ARRHY	Anesthesia	$452.91
00450	0	CLAV & SCAPULA; NOS	Anesthesia	$881.79
00452	0	CLAV & SCAPULA; RADICAL SURG	Anesthesia	$1,212.28
00454	0	CLAV & SCAPULA; BX CLAV	Anesthesia	$661.72
00470	0	PART RIB RESECT; NOS	Anesthesia	$1,069.57
00472	0	PART RIB RESECT; THORACOPLASTY	Anesthesia	$1,606.60
00474	0	PART RIB RESECT; RADICAL PROC	Anesthesia	$1,934.08
00500	0	ALL PROC ESOPHAGUS	Anesthesia	$2,713.72
00520	0	CLO CHEST PROC; NOS	Anesthesia	$850.25
00522	0	CLO CHEST PROC; NEEDLE BX PLEURA	Anesthesia	$709.04
00524	0	CLO CHEST PROC; PNEUMOCENTESIS	Anesthesia	$627.92
00528	0	CLO CHEST PROC; MEDIASTINOSCOPY	Anesthesia	$1,155.94
00530	0	TRANSVENOUS PACEMAKER INSRT	Anesthesia	$820.20
00532	0	ACCES TO CENTRAL VENOUS CIRCULATION	Anesthesia	$673.74
00534	0	TRANSVENOUS INSRT/REPLC CARDIOVERTER/DEFIB	Anesthesia	$1,288.89
00537	0	CARD ELECTROPHYSIOLOGIC PROC	Anesthesia	$1,303.91
00540	0	THORACOTOMY INVOLV LUNGS; NOS	Anesthesia	$1,952.11
00542	0	THORACOTOMY INVOLV LUNGS; DECORTIC	Anesthesia	$2,127.12
00544	0	THORACOTOMY INVOLV LUNGS; PLEURECTOMY	Anesthesia	$2,178.19
00546	0	THORACOTOMY INVOLV LUNGS; W/THORACOPLASTY	Anesthesia	$2,297.61
00548	0	THORACOT INVOLV LUNGS; INTHOR TRACH/BRONCH	Anesthesia	$2,242.78
00550	0	STERNAL DEBRIDEMENT	Anesthesia	$1645.66
00560	0	HEART/GREAT VESSELS; WO PUMP OXYGENATOR	Anesthesia	$1,944.60
00562	0	HEART/GREAT VESSELS; W/ PUMP OXYGENATOR	Anesthesia	$3,174.90
00563	0	HEART/GREAT VESSELS; W/ PUMP OXYGEN W/ HYPO CIRC ARREST	Anesthesia	$4,157.34
00566	0	DIRECT CORONARY ARTERY BYPASS GRAFTING; WO PUMP OXYGENATOR	Anesthesia	$4,157.34

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TABLE G. — PHYSICIAN NATIONWIDE CHARGES FOR ANESTHESIA CPT CODES — Continued

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CPT Code	Modifier	CPT Code Description	Physician CPT Code Group	Charge
00580	0	HEART TRANSPL OR HEART/LUNG TRANSPL	Anesthesia	$3,530.92
00600	0	CERV SPINE & CORD; NOS	Anesthesia	$1,825.92
00604	0	CERV SPINE/CORD; POST CERV LAMINEC SITTING	Anesthesia	$1,985.91
00620	0	THORACIC SPINE & CORD; NOS	Anesthesia	$1,903.29
00622	0	THORACIC SPINE; THORACOLUMBAR SYMPATHECTMY	Anesthesia	$2,088.06
00630	0	PROC LUMBAR REGION; NOS	Anesthesia	$1,449.62
00632	0	PROC LUMBAR REGION; LUMBAR SYMPATHECTOMY	Anesthesia	$1,122.89
00634	0	PROC LUMBAR REGION; CHEMONUCLEOLYSIS	Anesthesia	$895.31
00635	0	PROC LUMBAR REGION; DIAG/THERAPEUTIC LUMBAR PUNCTURE	Anesthesia	$755.61
00670	0	EXTEN SPINE & SPINAL CORD PROC	Anesthesia	$2,615.33
00700	0	UPPER ANT ABD WALL; NOS	Anesthesia	$675.24
00702	0	UPPER ANT ABD WALL; PERCUT LIVER BX	Anesthesia	$876.53
00730	0	UPPER POST ABD WALL	Anesthesia	$896.81
00740	0	UPPER GI ENDO PROC	Anesthesia	$622.66
00750	0	HERNIA REPR UPPER ABD; NOS	Anesthesia	$797.57
00752	0	HERNIA REPR UP ABD; LUMBAR &/OR DEHISCENCE	Anesthesia	$1,010.23
00754	0	HERNIA REPR UPPER ABD; OMPHALOCELE	Anesthesia	$1,210.77
00756	0	HERNIA REPR UP ABD; TRANSABD DIAPHRAGMATIC	Anesthesia	$1,393.29
00770	0	ALL PROC MAJOR ABD BLD VESSELS	Anesthesia	$2,479.38
00790	0	INTRAPERITONEAL UPPER ABD W/LAP; NOS	Anesthesia	$1,267.86
00792	0	INTRAPERITONEAL, W/LAP; PART HEPATECTOMY	Anesthesia	$2,405.77
00794	0	INTRAPERITONEAL W/LAP; PANCREATECTOMY	Anesthesia	$2,392.25
00796	0	INTRAPERITONEAL W/LAP; LIVER TRANSPL	Anesthesia	$5,389.89
00800	0	LOWER ANT ABD WALL; NOS	Anesthesia	$686.98
00802	0	LOWER ANT ABD WALL; PANNICULECTOMY	Anesthesia	$1,161.95
00810	0	INTESTINAL ENDO PROC	Anesthesia	$731.57
00820	0	LOWER POST ABD WALL	Anesthesia	$868.27
00830	0	HERNIA REPR LOWER ABD; NOS	Anesthesia	$802.93
00832	0	HERNIA REPR LO ABD; VENTRAL & INCS HERNIAS	Anesthesia	$1,017.74
00840	0	INTRAPERITONEAL LOWER ABD W/LAP; NOS	Anesthesia	$1,222.04
00842	0	INTRAPERITONEAL LOWER ABD W/LAP; AMNIOCENT	Anesthesia	$860.01
00844	0	INTRAPERITONEAL LO ABD W/LAP; ABD-PERINEAL	Anesthesia	$1,647.91
00846	0	INTRAPERITONEAL LO ABD W/LAP; RAD HYST	Anesthesia	$1,581.82
00848	0	INTRAPERITONEAL ABD; PELVIC EXENTERATION	Anesthesia	$2,058.77
00850	0	INTRAPERITONEAL LO ABD W/LAP; C-SECT	Anesthesia	$1,062.81
00855	0	INTRAPERITONEAL LO ABD W/LAP; C-HYST	Anesthesia	$1,472.91
00857	0	CONT EPIDURAL ANALGESIA, LABOR & C SECT	Anesthesia	$1,301.66
00860	0	EXTRAPERITONEAL INCL URINARY TRACT; NOS	Anesthesia	$1,218.28
00862	0	EXTRAPERITONEAL; UP 1/3 URETER/DONOR NEPHR	Anesthesia	$1,502.95
00864	0	EXTRAPERITONEAL INCL URINARY; TOT CYSTECT	Anesthesia	$2,435.82
00865	0	EXTRAPERITONEAL; RAD PROSTATECTOMY	Anesthesia	$1,629.14
00866	0	EXTRAPERITONEAL INCL URINARY; ADRENALECTMY	Anesthesia	$1,867.23
00868	0	EXTRAPERITONEAL INCL URINARY; RENAL TRNSPL	Anesthesia	$2,127.12
00870	0	EXTRAPERITONEAL INCL URINARY; CYSTOLITHOTO	Anesthesia	$885.55
00872	0	LITH EXTRACORPOREAL SHOCK WAVE; W/H2O BATH	Anesthesia	$1,034.26
00873	0	LITH EXTRACORPOREAL SHOCK WAVE;WO H2O BATH	Anesthesia	$873.53
00880	0	MAJOR LOWER ABD VESSELS; NOS	Anesthesia	$2,541.72
00882	0	MAJOR ABD VESSELS; INFERIOR VENA CAVA LIG	Anesthesia	$1,187.49
00884	0	MAJOR ABD VESS; TRANSVEN UMBRELLA INSRT	Anesthesia	$794.66
00902	0	PERINEAL INTEG SYST; ANORECTAL PROC	Anesthesia	$637.68
00904	0	PERINEAL INTEG SYST; RADICAL PERINEAL PROC	Anesthesia	$1,683.22
00906	0	PERINEAL INTEG SYST; VULVECTOMY	Anesthesia	$884.80
00908	0	PERINEAL INTEG SYST; PERINEAL PROSTATECTMY	Anesthesia	$1,475.91
00910	0	TRANSURETHRAL PROC; NOS	Anesthesia	$540.04
00912	0	TRANSURETHRAL; RESECT BLADDER TUMOR	Anesthesia	$739.83
00914	0	TRANSURETHRAL; TURP	Anesthesia	$849.49
00916	0	TRANSURETHRAL; POST RESECT BLEEDING	Anesthesia	$793.91
00918	0	TRANSURETHRAL; W/ FRAGMEN/REMOV CALCU	Anesthesia	$826.96
00920	0	MALE EXT GENIT; NOS	Anesthesia	$620.41
00922	0	MALE EXT GENIT; SEMINAL VESICLES	Anesthesia	$928.36
00924	0	MALE EXT GENIT; UNDESCEND TESTIS UNI/BILAT	Anesthesia	$692.51
00926	0	MALE EXT GENIT; RADICAL ORCHIECTOMY, ING	Anesthesia	$686.51
00928	0	MALE EXT GENIT; RADICAL ORCHIECTOMY, ABD	Anesthesia	$948.64
00930	0	MALE GENIT; ORCHIOPEXY UNI/BILAT	Anesthesia	$706.79
00932	0	MALE EXT GENIT; COMPLT AMPUTA PENIS	Anesthesia	$755.61

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TABLE G. — PHYSICIAN NATIONWIDE CHARGES FOR ANESTHESIA CPT CODES — Continued

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CPT Code	Modifier	CPT Code Description	Physician CPT Code Group	Charge
00934	0	MALE; RAD AMPUT PENIS W/BIL ING LYMPHADENE	Anesthesia	$1,065.81
00936	0	MALE; RAD AMP PENIS W/BIL ING & ILIAC LYMP	Anesthesia	$1,704.25
00938	0	MALE EXT GENIT; INSRT PENILE PROSTH	Anesthesia	$1,008.73
00940	0	VAG PROC; NOS	Anesthesia	$509.25
00942	0	VAG; COLPOTOMY, COLPECTOMY, COLPORRHAPHY	Anesthesia	$896.06
00944	0	VAG PROC; VAG HYST	Anesthesia	$1,213.78
00946	0	VAG PROC; VAG DELIV	Anesthesia	$1,222.79
00948	0	VAG PROC; CERV CERCLAGE	Anesthesia	$621.91
00950	0	VAG PROC; CULDOSCOPY	Anesthesia	$738.33
00952	0	VAG PROC; HYSTEROSCOPY	Anesthesia	$597.12
00955	0	CONT EPIDURAL ANALGESIA, LABOR & VAG DELIV	Anesthesia	$1,544.26
01112	0	BONE MARROW ASPIRATION/BIOPSY	Anesthesia	$929.11
01120	0	BONY PELVIS	Anesthesia	$1,080.08
01130	0	BODY CAST APPLIC OR REVIS	Anesthesia	$661.72
01140	0	INTERPELVIABDOMINAL AMPUTA	Anesthesia	$2,359.21
01150	0	RAD PROC TUMOR PELVIS EX HINDQUARTER AMPUT	Anesthesia	$1,768.09
01160	0	CLO PROC W/SYMPHYSIS PUBIS/SACROILIAC JT	Anesthesia	$776.64
01170	0	OPEN PROC W/SYMPHYS PUBIS OR SACROILIAC JT	Anesthesia	$1,381.27
01180	0	OBTURATOR NEURECTOMY; EXTRAPELVIC	Anesthesia	$666.98
01190	0	OBTURATOR NEURECTOMY; INTRAPELVIC	Anesthesia	$755.61
01200	0	ALL CLO PROC INVOLV HIP JT	Anesthesia	$617.40
01202	0	ARTHROSCOPIC PROC HIP JT	Anesthesia	$963.66
01210	0	OPEN PROC INVOLV HIP JT; NOS	Anesthesia	$1,092.10
01212	0	OPEN PROC INVOLV HIP JT; HIP DIASART	Anesthesia	$1,592.33
01214	0	OPEN INVOLV HIP JT; TOT HIP REPLAC/REVIS	Anesthesia	$1,686.22
01215	0	OPEN INVOLV HIP JT; REVISION OF TOT HIP REPLAC/REVIS	Anesthesia	$1,645.66
01220	0	ALL CLO PROC INVOLV UPPER 2/3 FEMUR	Anesthesia	$792.41
01230	0	OPEN PROC INVOLV UPPER 2/3 FEMUR; NOS	Anesthesia	$1,089.85
01232	0	OPEN PROC INVOLV UPPER 2/3 FEMUR; AMPUTA	Anesthesia	$899.07
01234	0	OPEN INVOLV UP 2/3 FEMUR; RAD RESECT	Anesthesia	$1,704.25
01250	0	ALL NERV/MUSCL/TENDON/FASCIA/BURSAE UP LEG	Anesthesia	$777.39
01260	0	ALL INVOLV VEINS UP LEG INCL EXPLOR	Anesthesia	$885.55
01270	0	INVOLV ART UP LEG INCL BYPASS GFT; NOS	Anesthesia	$1,750.81
01272	0	INVOLV ART UP LEG INCL GFT; FEM ART LIG	Anesthesia	$755.61
01274	0	INVOLV ART UP LEG INCL GFT; FEM ART EMBOLE	Anesthesia	$1,148.43
01320	0	NERV/MUSCL/TENDON/FASCIA/BURSAE KNEE/POP	Anesthesia	$804.43
01340	0	ALL CLO PROC LOWER 1/3 FEMUR	Anesthesia	$851.00
01360	0	ALL OPEN PROC LOWER 1/3 FEMUR	Anesthesia	$1,160.45
01380	0	ALL CLO PROC KNEE JT	Anesthesia	$467.94
01382	0	ARTHROSCOPIC PROC KNEE JT	Anesthesia	$682.00
01390	0	ALL CLO UP ENDS TIBIA/FIBULA &/OR PATELLA	Anesthesia	$675.99
01392	0	ALL OPEN UPPER ENDS TIB/FIB &/OR PATELLA	Anesthesia	$963.66
01400	0	OPEN PROC KNEE JT; NOS	Anesthesia	$875.03
01402	0	OPEN PROC KNEE JT; TOT KNEE REPLAC	Anesthesia	$1,395.54
01404	0	OPEN PROC KNEE JT; DISART AT KNEE	Anesthesia	$917.84
01420	0	ALL CAST APPLIC/REMOV/REPR INVOLV KNEE JT	Anesthesia	$699.27
01430	0	VEINS KNEE & POP AREA; NOS	Anesthesia	$1,195.75
01432	0	VEINS KNEE & POP AREA; AV FISTULA	Anesthesia	$926.86
01440	0	ART KNEE & POP AREA; NOS	Anesthesia	$1,323.44
01442	0	ART KNEE; POP THROMBOENDART W/WO PATCH GFT	Anesthesia	$1,604.35
01444	0	ART KNEE; POP EXC/GFT/REPR OCCLUS/ANEURYSM	Anesthesia	$1,873.99
01462	0	ALL CLO PROC LOWER LEG, ANK, & FT	Anesthesia	$634.68
01464	0	ARTHROSCOPIC PROC ANK JT	Anesthesia	$819.45
01470	0	NERV/MUSCL/FASCIA LOW LEG/ANK/FT; NOS	Anesthesia	$662.47
01472	0	NERV/MUSCL LO LEG; REPR ACHILLES W/WO GFT	Anesthesia	$981.69
01474	0	NERV/MUSCL LO LEG; GASTROCNEMIUS RECESSION	Anesthesia	$1,028.26
01480	0	OPEN PROC BONES LOWER LEG, ANK, & FT; NOS	Anesthesia	$758.61
01482	0	OPEN BONES LO LEG/ANK/FT; RADICAL RESECT	Anesthesia	$831.47
01484	0	OPEN BONES LO LEG/ANK/FT; OSTEOTMY TIB/FIB	Anesthesia	$961.41
01486	0	OPEN BONES LO LEG/ANK/FT; TOT ANK REPLAC	Anesthesia	$1,388.03
01490	0	LOWER LEG CAST APPLIC, REMOV, OR REPR	Anesthesia	$621.91
01500	0	ART LOWER LEG, INCL BYPASS GFT; NOS	Anesthesia	$1,741.80
01502	0	ART LO LEG W/BYPASS GFT; EMBOLEC DIR/CATH	Anesthesia	$1,178.48
01520	0	VEINS LOWER LEG; NOS	Anesthesia	$892.31
01522	0	VEINS LO LEG; VENOUS THROMBEC DIRECT/CATH	Anesthesia	$994.46

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TABLE G. — PHYSICIAN NATIONWIDE CHARGES FOR ANESTHESIA CPT CODES — Continued

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CPT Code	Modifier	CPT Code Description	Physician CPT Code Group	Charge
01610	0	ALL NERV/MUSCL/FASCIA/BURSAE SHOULDER/AXIL	Anesthesia	$967.42
01620	0	ALL CLO HUMERAL/AC/SHLDR JT	Anesthesia	$603.13
01622	0	ARTHROSCOPIC PROC SHOULDER JT	Anesthesia	$983.94
01630	0	OPEN HUMERAL/AC/SHLDR JT; NOS	Anesthesia	$1,064.31
01632	0	OPEN HUMERAL/AC/SHLDR JT; RADICAL RESECT	Anesthesia	$1,065.81
01634	0	OPEN HUMERAL/AC/SHLDR JT; SHOULDER DISART	Anesthesia	$1,263.35
01638	0	OPEN HUMER/AC/SHLDR JT; INTERTHORACAP AMPU	Anesthesia	$2,359.21
01638	0	OPEN HUMERAL/AC/SHLDR JT; TOT SHLDR REPLAC	Anesthesia	$1,748.56
01650	0	ART SHOULDER AXILLA; NOS	Anesthesia	$1,084.59
01652	0	ART SHLDR/AXIL; AXIL-BRACHIAL ANEURY	Anesthesia	$1,539.00
01654	0	ART SHOULDER & AXILLA; BYPASS GFT	Anesthesia	$1,601.35
01656	0	ART SHLDR & AXIL; AXILRY-FEMORAL BYPAS GFT	Anesthesia	$2,078.29
01670	0	ALL PROC VEINS SHOULDER & AXILLA	Anesthesia	$749.60
01680	0	SHOULDER CAST APPLIC, REMOV OR REPR; NOS	Anesthesia	$603.88
01682	0	SHLDR CAST APPLIC REMOV/REPR; SHLDR SPICA	Anesthesia	$755.61
01710	0	NERV/MUSCL/FASCIA/BURSAE UP ARM/ELBOW; NOS	Anesthesia	$663.22
01712	0	NERV UP ARM/ELB; TENOTOMY ELBOW-SHLDR OPEN	Anesthesia	$861.51
01714	0	NERV UP ARM/ELBOW; TENOPLASTY ELBOW-SHLDR	Anesthesia	$1,086.09
01716	0	NERV UP ARM/ELBOW; TENODESIS RUPT BICEPS	Anesthesia	$971.17
01730	0	ALL CLO PROC HUMERUS & ELBOW	Anesthesia	$535.43
01732	0	ARTHROSCOPIC PROC ELBOW JT	Anesthesia	$825.46
01740	0	OPEN PROC HUMERUS & ELBOW; NOS	Anesthesia	$932.87
01742	0	OPEN PROC HUMERUS & ELBOW; OSTEOTOMY HUMER	Anesthesia	$1,087.59
01744	0	OPEN HUMERUS & ELB; REPR NON-MALUNION HUM	Anesthesia	$1,288.89
01756	0	OPEN PROC HUMERUS & ELBOW; RADICAL PROC	Anesthesia	$1,268.61
01758	0	OPEN HUMERUS/ELBOW; EXC CYST/TUMOR HUMERUS	Anesthesia	$895.31
01760	0	OPEN PROC HUMERUS & ELB; TOT ELBOW REPLAC	Anesthesia	$1,714.76
01770	0	ART UPPER ARM & ELBOW; NOS	Anesthesia	$1,299.40
01772	0	ART UPPER ARM & ELBOW; EMBOLECTOMY	Anesthesia	$1,015.49
01780	0	VEINS UPPER ARM & ELBOW; NOS	Anesthesia	$694.77
01782	0	VEINS UPPER ARM & ELBOW; PHLEBORRHAPHY	Anesthesia	$755.61
01810	0	ALL NERV/MUSCL/BURSAE FOREARM/WRIST/HAND	Anesthesia	$620.41
01820	0	ALL CLO RADIUS/ULNA/WRIST/HAND BONES	Anesthesia	$589.61
01830	0	OPEN RADIUS/ULNA/WRIST/HAND BONES; NOS	Anesthesia	$802.93
01832	0	OPEN RAD/ULNA/HAND BONES; TOT WRIST REPL	Anesthesia	$1,204.01
01840	0	ART FOREARM, WRIST, & HAND; NOS	Anesthesia	$1,070.32
01842	0	ART FOREARM, WRIST, & HAND; EMBOLECTOMY	Anesthesia	$976.43
01844	0	VASCULAR SHUNT, OR SHUNT REVIS, ANY TYPE	Anesthesia	$1,089.10
01850	0	VEINS FOREARM, WRIST, & HAND; NOS	Anesthesia	$670.73
01852	0	VEINS FOREARM, WRIST, & HAND; PHLEBORRHAPH	Anesthesia	$755.61
01860	0	FOREARM/WRIST/HAND CAST APPLIC/REMOV/REPR	Anesthesia	$561.07
01904	0	INJ PROC PNEUMOENCEPHALOGRAPHY	Anesthesia	$752.60
01906	0	ANES-INJ PROC MYELOGRAPHY; LUMBAR	Anesthesia	$739.83
01908	0	ANES-INJ PROC MYELOGRAPHY; CERV	Anesthesia	$772.13
01910	0	ANES-INJ PROC MYELOGRAPHY; POST FOSSA	Anesthesia	$1,263.35
01912	0	ANES-INJ PROC DISKOGRAPHY; LUMBAR	Anesthesia	$650.45
01914	0	ANES-INJ PROC DISKOGRAPHY; CERV	Anesthesia	$750.35
01916	0	ANES-ARTERIOGRAMS/NEEDLE; CAROTID/VERTERBRAL	Anesthesia	$897.56
01918	0	ANES-ARTERIOGRAMS/NEEDLE; RETROGRAD BRACH/FEM	Anesthesia	$730.07
01920	0	CARD CATH W/CORONARY ARTERIOGRAPHY & VENTR	Anesthesia	$915.59
01921	0	ANGIOPLASTY	Anesthesia	$956.15
01922	0	NON-INVASIVE IMAGING/RADIATION THERAP	Anesthesia	$980.19
01951	0	SECOND/THIRD DEGREE BURN EXCISION; LESS THAN ONE PERCENT TBSA	Anesthesia	$673.74
01952	0	SECOND/THIRD DEGREE BURN EXCISION; ONE TO NINE PERCENT TBSA	Anesthesia	$929.11
01953	0	SECOND/THIRD DEGREE BURN EXCISION; EACH ADD NINE PERCENT TBSA	Anesthesia	$224.58
01990	0	PHYSIOLOG SUPPORT HARVEST DONOR ORGAN-BRAIN DEAD	Anesthesia	$534.78
01995	0	REGIONAL IV ADMIN LOCAL ANES AGENT/OTH MED	Anesthesia	$383.06
01996	0	DAILY MGMT EPIDURAL OR SUBARACHNOID DRUG ADMIN	Anesthesia	$225.33

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TABLE H. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTOR FOR PATHOLOGY AND LABORATORY CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS

PAGE 1 OF 2

CPT Code	Modifier	CPT Code Description	Physician CPT Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
80500	0	LAB PATHOLOGY CONSULTATION	Pathology	0.37	0.19	$87.62
80502	0	LAB PATHOLOGY CONSULTATION	Pathology	1.33	0.56	$87.62
85060	0	BLOOD SMEAR INTERPRETATION	Pathology	0.45	0.20	$87.62
85095	0	BONE MARROW ASPIRATION	Pathology	1.08	3.54	$87.62
85097	0	BONE MARROW INTERPRETATION	Pathology	0.94	1.48	$87.62
85102	0	BONE MARROW BIOPSY	Pathology	1.37	3.66	$87.62
86077	0	PHYSICIAN BLOOD BANK SERVICE	Pathology	0.94	0.44	$87.62
86078	0	PHYSICIAN BLOOD BANK SERVICE	Pathology	0.94	0.47	$87.62
86079	0	PHYSICIAN BLOOD BANK SERVICE	Pathology	0.94	0.47	$87.62
86490	0	COCCIDIOIDOMYCOSIS SKIN TEST	Pathology	0.00	0.29	$87.62
86510	0	HISTOPLASMOSIS SKIN TEST	Pathology	0.00	0.32	$87.62
86580	0	TB INTRADERMAL TEST	Pathology	0.00	0.25	$87.62
86585	0	TB TINE TEST	Pathology	0.00	0.20	$87.62
88104	0	CYTOPATHOLOGY, FLUIDS	Pathology	0.56	0.71	$87.62
88106	0	CYTOPATHOLOGY, FLUIDS	Pathology	0.56	0.51	$87.62
88107	0	CYTOPATHOLOGY, FLUIDS	Pathology	0.76	0.78	$87.62
88108	0	CYTOPATH, CONCENTRATE TECH	Pathology	0.58	0.66	$87.62
88125	0	FORENSIC CYTOPATHOLOGY	Pathology	0.26	0.27	$87.62
88141	0	CYTOPATH, C/V, INTERPRET	Pathology	0.42	0.22	$87.62
88160	0	CYTOPATH SMEAR, OTHER SOURCE	Pathology	0.50	0.82	$87.62
88161	0	CYTOPATH SMEAR, OTHER SOURCE	Pathology	0.50	0.83	$87.62
88162	0	CYTOPATH SMEAR, OTHER SOURCE	Pathology	0.76	0.85	$87.62
88170	0	FINE NEEDLE ASPIRATION	Pathology	1.27	0.92	$87.62
88171	0	FINE NEEDLE ASPIRATION	Pathology	1.27	0.91	$87.62
88172	0	CYTOPATHOLOGY EVAL OF FNA	Pathology	0.60	1.01	$87.62
88173	0	CYTOPATH EVAL, FNA, REPORT	Pathology	1.39	1.22	$87.62
88180	0	CELL MARKER STUDY	Pathology	0.36	0.58	$87.62
88182	0	CELL MARKER STUDY	Pathology	0.77	1.51	$87.62
88291	0	CYTO/MOLECULAR REPORT	Pathology	0.52	0.22	$87.62
88300	0	SURGICAL PATH, GROSS	Pathology	0.08	0.37	$87.62
88302	0	TISSUE EXAM BY PATHOLOGIST	Pathology	0.13	0.94	$87.62
88304	0	TISSUE EXAM BY PATHOLOGIST	Pathology	0.22	0.82	$87.62
88305	0	TISSUE EXAM BY PATHOLOGIST	Pathology	0.75	1.51	$87.62
88307	0	TISSUE EXAM BY PATHOLOGIST	Pathology	1.59	2.25	$87.62
88309	0	TISSUE EXAM BY PATHOLOGIST	Pathology	2.28	3.12	$87.62
88311	0	DECALCIFY TISSUE	Pathology	0.24	0.20	$87.62
88312	0	SPECIAL STAINS	Pathology	0.54	1.26	$87.62
88313	0	SPECIAL STAINS	Pathology	0.24	0.89	$87.62
88314	0	HISTOCHEMICAL STAIN	Pathology	0.45	0.95	$87.62
88318	0	CHEMICAL HISTOCHEMISTRY	Pathology	0.42	1.36	$87.62
88319	0	ENZYME HISTOCHEMISTRY	Pathology	0.53	1.39	$87.62
88321	0	MICROSLIDE CONSULTATION	Pathology	1.30	0.57	$87.62
88323	0	MICROSLIDE CONSULTATION	Pathology	1.35	1.84	$87.62
88325	0	COMPREHENSIVE REVIEW OF DATA	Pathology	2.22	0.83	$87.62
88329	0	PATH CONSULT INTROP	Pathology	0.67	0.39	$87.62
88331	0	PATH CONSULT INTRAOP, 1 BLOC	Pathology	1.19	0.91	$87.62
88332	0	PATH CONSULT INTRAOP, ADDL	Pathology	0.59	0.48	$87.62
88342	0	IMMUNOCYTOCHEMISTRY	Pathology	0.85	1.16	$87.62
88346	0	IMMUNOFLUORESCENT STUDY	Pathology	0.86	1.14	$87.62
88347	0	IMMUNOFLUORESCENT STUDY	Pathology	0.86	1.48	$87.62
88348	0	ELECTRON MICROSCOPY	Pathology	1.51	5.28	$87.62
88349	0	SCANNING ELECTRON MICROSCOPY	Pathology	0.76	6.25	$87.62
88355	0	ANALYSIS, SKELETAL MUSCLE	Pathology	1.85	3.41	$87.62
88356	0	ANALYSIS, NERVE	Pathology	3.02	4.04	$87.62
88358	0	ANALYSIS, TUMOR	Pathology	2.82	1.88	$87.62
88362	0	NERVE TEASING PREPARATIONS	Pathology	2.17	2.57	$87.62
88365	0	TISSUE HYBRIDIZATION	Pathology	0.93	1.41	$87.62
89100	0	SAMPLE INTESTINAL CONTENTS	Pathology	0.60	1.53	$87.62
89105	0	SAMPLE INTESTINAL CONTENTS	Pathology	0.50	1.73	$87.62
89130	0	SAMPLE STOMACH CONTENTS	Pathology	0.45	1.40	$87.62
89132	0	SAMPLE STOMACH CONTENTS	Pathology	0.19	1.40	$87.62
89135	0	SAMPLE STOMACH CONTENTS	Pathology	0.79	1.53	$87.62

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TABLE H. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTOR FOR PATHOLOGY AND LABORATORY CPT CODES WITH WORK EXPENSE AND PRACTICE EXPENSE RVUS — Continued

PAGE 2 OF 2

CPT Code	Modifier	CPT Code Description	Physician CPT Code Group	Work Expense RVUs	Practice Expense RVUs	Conversion Factor
89136	0	SAMPLE STOMACH CONTENTS	Pathology	0.21	1.10	$87.62
89140	0	SAMPLE STOMACH CONTENTS	Pathology	0.94	1.87	$87.62
89141	0	SAMPLE STOMACH CONTENTS	Pathology	0.85	2.20	$87.62
89350	0	SPUTUM SPECIMEN COLLECTION	Pathology	0.00	0.41	$87.62
89360	0	COLLECT SWEAT FOR TEST	Pathology	0.00	0.46	$87.62

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TABLE I. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTOR FOR PATHOLOGY AND LABORATORY CPT CODES WITH TOTAL RVUS ONLY

PAGE 1 OF 17

CPT Code	Modifier	CPT Code Description	Physician CPT Code Group	Total RVUs	Conversion Factor
80048	0	BASIC METABOLIC PANEL	Pathology	0.48	$87.62
80050	0	GENERAL HEALTH PANEL	Pathology	1.25	$87.62
80051	0	ELECTROLYTE PANEL	Pathology	0.40	$87.62
80053	0	COMPREHEN METABOLIC PANEL	Pathology	0.60	$87.62
80055	0	OBSTETRIC PANEL	Pathology	1.43	$87.62
80061	0	LIPID PANEL	Pathology	0.75	$87.62
80069	0	RENAL FUNCTION PANEL	Pathology	0.49	$87.62
80072	0	ARTHRITIS PANEL	Pathology	1.45	$87.62
80074	0	ACUTE HEPATITIS PANEL	Pathology	2.68	$87.62
80076	0	HEPATIC FUNCTION PANEL	Pathology	0.46	$87.62
80090	0	TORCH ANTIBODY PANEL	Pathology	3.24	$87.62
80100	0	DRUG SCREEN, QUALITATE/MULTI	Pathology	0.82	$87.62
80101	0	DRUG SCREEN, SINGLE	Pathology	0.78	$87.62
80102	0	DRUG CONFIRMATION	Pathology	0.75	$87.62
80103	0	DRUG ANALYSIS, TISSUE PREP	Pathology	0.52	$87.62
80150	0	ASSAY OF AMIKACIN	Pathology	0.85	$87.62
80152	0	ASSAY OF AMITRIPTYLINE	Pathology	1.01	$87.62
80154	0	ASSAY OF BENZODIAZEPINES	Pathology	1.04	$87.62
80156	0	ASSAY, CARBAMAZEPINE, TOTAL	Pathology	0.82	$87.62
80157	0	ASSAY, CARBAMAZEPINE, FREE	Pathology	0.56	$87.62
80158	0	ASSAY OF CYCLOSPORINE	Pathology	1.02	$87.62
80160	0	ASSAY OF DESIPRAMINE	Pathology	0.97	$87.62
80162	0	ASSAY OF DIGOXIN	Pathology	0.75	$87.62
80164	0	ASSAY, DIPROPYLACETIC ACID	Pathology	0.76	$87.62
80166	0	ASSAY OF DOXEPIN	Pathology	0.87	$87.62
80168	0	ASSAY OF ETHOSUXIMIDE	Pathology	0.92	$87.62
80170	0	ASSAY OF GENTAMICIN	Pathology	0.92	$87.62
80172	0	ASSAY OF GOLD	Pathology	0.92	$87.62
80173	0	ASSAY OF HALOPERIDOL	Pathology	0.82	$87.62
80174	0	ASSAY OF IMIPRAMINE	Pathology	0.97	$87.62
80176	0	ASSAY OF LIDOCAINE	Pathology	0.83	$87.62
80178	0	ASSAY OF LITHIUM	Pathology	0.37	$87.62
80182	0	ASSAY OF NORTRIPTYLINE	Pathology	0.76	$87.62
80184	0	ASSAY OF PHENOBARBITAL	Pathology	0.65	$87.62
80185	0	ASSAY OF PHENYTOIN, TOTAL	Pathology	0.75	$87.62
80186	0	ASSAY OF PHENYTOIN, FREE	Pathology	0.78	$87.62
80188	0	ASSAY OF PRIMIDONE	Pathology	0.94	$87.62
80190	0	ASSAY OF PROCAINAMIDE	Pathology	0.94	$87.62
80192	0	ASSAY OF PROCAINAMIDE	Pathology	0.94	$87.62
80194	0	ASSAY OF QUINIDINE	Pathology	0.82	$87.62
80196	0	ASSAY OF SALICYLATE	Pathology	0.40	$87.62
80197	0	ASSAY OF TACROLIMUS	Pathology	0.77	$87.62
80198	0	ASSAY OF THEOPHYLLINE	Pathology	0.80	$87.62
80200	0	ASSAY OF TOBRAMYCIN	Pathology	0.91	$87.62
80201	0	ASSAY OF TOPIRAMATE	Pathology	0.67	$87.62
80202	0	ASSAY OF VANCOMYCIN	Pathology	0.76	$87.62
80299	0	QUANTITATIVE ASSAY, DRUG	Pathology	0.77	$87.62
80400	0	ACTH STIMULATION PANEL	Pathology	1.84	$87.62
80402	0	ACTH STIMULATION PANEL	Pathology	4.90	$87.62
80406	0	ACTH STIMULATION PANEL	Pathology	4.41	$87.62
80408	0	ALDOSTERONE SUPPRESSION EVAL	Pathology	7.07	$87.62
80410	0	CALCITONIN STIMUL PANEL	Pathology	4.53	$87.62
80412	0	CRH STIMULATION PANEL	Pathology	18.57	$87.62
80414	0	TESTOSTERONE RESPONSE	Pathology	2.91	$87.62
80415	0	ESTRADIOL RESPONSE PANEL	Pathology	3.15	$87.62
80416	0	RENIN STIMULATION PANEL	Pathology	7.44	$87.62
80417	0	RENIN STIMULATION PANEL	Pathology	2.48	$87.62
80418	0	PITUITARY EVALUATION PANEL	Pathology	32.66	$87.62
80420	0	DEXAMETHASONE PANEL	Pathology	4.06	$87.62
80422	0	GLUCAGON TOLERANCE PANEL	Pathology	2.60	$87.62
80424	0	GLUCAGON TOLERANCE PANEL	Pathology	2.85	$87.62
80426	0	GONADOTROPIN HORMONE PANEL	Pathology	8.37	$87.62
80428	0	GROWTH HORMONE PANEL	Pathology	3.76	$87.62
80430	0	GROWTH HORMONE PANEL	Pathology	4.42	$87.62

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TABLE I. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTOR FOR PATHOLOGY AND LABORATORY CPT CODES WITH TOTAL RVUS ONLY — Continued

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CPT Code	Modifier	CPT Code Description	Physician CPT Code Group	Total RVUs	Conversion Factor
80432	0	INSULIN SUPPRESSION PANEL	Pathology	7.61	$87.62
80434	0	INSULIN TOLERANCE PANEL	Pathology	5.70	$87.62
80435	0	INSULIN TOLERANCE PANEL	Pathology	5.80	$87.62
80436	0	METYRAPONE PANEL	Pathology	5.14	$87.62
80438	0	TRH STIMULATION PANEL	Pathology	2.84	$87.62
80439	0	TRH STIMULATION PANEL	Pathology	3.79	$87.62
80440	0	TRH STIMULATION PANEL	Pathology	3.28	$87.62
81000	0	URINALYSIS, NONAUTO W/SCOPE	Pathology	0.18	$87.62
81001	0	URINALYSIS, AUTO W/SCOPE	Pathology	0.18	$87.62
81002	0	URINALYSIS NONAUTO W/O SCOPE	Pathology	0.14	$87.62
81003	0	URINALYSIS, AUTO, W/O SCOPE	Pathology	0.13	$87.62
81005	0	URINALYSIS	Pathology	0.12	$87.62
81007	0	URINE SCREEN FOR BACTERIA	Pathology	0.14	$87.62
81015	0	MICROSCOPIC EXAM OF URINE	Pathology	0.17	$87.62
81020	0	URINALYSIS, GLASS TEST	Pathology	0.21	$87.62
81025	0	URINE PREGNANCY TEST	Pathology	0.36	$87.62
81050	0	URINALYSIS, VOLUME MEASURE	Pathology	0.17	$87.62
82000	0	ASSAY OF BLOOD ACETALDEHYDE	Pathology	0.70	$87.62
82003	0	ASSAY OF ACETAMINOPHEN	Pathology	1.14	$87.62
82009	0	TEST FOR ACETONE/KETONES	Pathology	0.25	$87.62
82010	0	ACETONE ASSAY	Pathology	0.46	$87.62
82013	0	ACETYLCHOLINESTERASE ASSAY	Pathology	0.63	$87.62
82016	0	ACYLCARNITINES, QUAL	Pathology	0.78	$87.62
82017	0	ACYLCARNITINES, QUANT	Pathology	0.95	$87.62
82024	0	ASSAY OF ACTH	Pathology	2.18	$87.62
82030	0	ASSAY OF ADP & AMP	Pathology	1.45	$87.62
82040	0	ASSAY OF SERUM ALBUMIN	Pathology	0.28	$87.62
82042	0	ASSAY OF URINE ALBUMIN	Pathology	0.29	$87.62
82043	0	MICROALBUMIN, QUANTITATIVE	Pathology	0.33	$87.62
82044	0	MICROALBUMIN, SEMIQUANT	Pathology	0.26	$87.62
82055	0	ASSAY OF ETHANOL	Pathology	0.61	$87.62
82075	0	ASSAY OF BREATH ETHANOL	Pathology	0.68	$87.62
82085	0	ASSAY OF ALDOLASE	Pathology	0.55	$87.62
82088	0	ASSAY OF ALDOSTERONE	Pathology	2.30	$87.62
82101	0	ASSAY OF URINE ALKALOIDS	Pathology	1.69	$87.62
82103	0	ALPHA-1-ANTITRYPSIN, TOTAL	Pathology	0.76	$87.62
82104	0	ALPHA-1-ANTITRYPSIN, PHENO	Pathology	0.81	$87.62
82105	0	ALPHA-FETOPROTEIN, SERUM	Pathology	0.95	$87.62
82106	0	ALPHA-FETOPROTEIN, AMNIOTIC	Pathology	0.95	$87.62
82108	0	ASSAY OF ALUMINUM	Pathology	1.44	$87.62
82120	0	AMINES, VAGINAL FLUID QUAL	Pathology	0.21	$87.62
82127	0	AMINO ACID, SINGLE QUAL	Pathology	0.78	$87.62
82128	0	AMINO ACIDS, MULT QUAL	Pathology	0.78	$87.62
82131	0	AMINO ACIDS, SINGLE QUANT	Pathology	0.95	$87.62
82135	0	ASSAY, AMINOLEVULINIC ACID	Pathology	0.93	$87.62
82136	0	AMINO ACIDS, QUANT, 2-5	Pathology	0.95	$87.62
82139	0	AMINO ACIDS, QUAN, 6 OR MORE	Pathology	0.95	$87.62
82140	0	ASSAY OF AMMONIA	Pathology	0.82	$87.62
82143	0	AMNIOTIC FLUID SCAN	Pathology	0.39	$87.62
82145	0	ASSAY OF AMPHETAMINES	Pathology	0.88	$87.62
82150	0	ASSAY OF AMYLASE	Pathology	0.37	$87.62
82154	0	ANDROSTANEDIOL GLUCURONIDE	Pathology	1.63	$87.62
82157	0	ASSAY OF ANDROSTENEDIONE	Pathology	1.65	$87.62
82160	0	ASSAY OF ANDROSTERONE	Pathology	1.41	$87.62
82163	0	ASSAY OF ANGIOTENSIN II	Pathology	1.16	$87.62
82164	0	ANGIOTENSIN I ENZYME TEST	Pathology	0.82	$87.62
82172	0	ASSAY OF APOLIPOPROTEIN	Pathology	0.87	$87.62
82175	0	ASSAY OF ARSENIC	Pathology	1.07	$87.62
82180	0	ASSAY OF ASCORBIC ACID	Pathology	0.56	$87.62
82190	0	ATOMIC ABSORPTION	Pathology	0.84	$87.62
82205	0	ASSAY OF BARBITURATES	Pathology	0.65	$87.62
82232	0	ASSAY OF BETA-2 PROTEIN	Pathology	0.91	$87.62
82239	0	BILE ACIDS, TOTAL	Pathology	0.97	$87.62
82240	0	BILE ACIDS, CHOLYLGLYCINE	Pathology	1.50	$87.62

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TABLE I. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTOR FOR PATHOLOGY AND LABORATORY CPT CODES WITH TOTAL RVUS ONLY — Continued

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CPT Code	Modifier	CPT Code Description	Physician CPT Code Group	Total RVUs	Conversion Factor
82247	0	BILIRUBIN, TOTAL	Pathology	0.28	$87.62
82248	0	BILIRUBIN, DIRECT	Pathology	0.28	$87.62
82252	0	FECAL BILIRUBIN TEST	Pathology	0.26	$87.62
82261	0	ASSAY OF BIOTINIDASE	Pathology	0.95	$87.62
82270	0	TEST FOR BLOOD, FECES	Pathology	0.18	$87.62
82273	0	TEST FOR BLOOD, OTHER SOURCE	Pathology	0.18	$87.62
82286	0	ASSAY OF BRADYKININ	Pathology	0.39	$87.62
82300	0	ASSAY OF CADMIUM	Pathology	1.30	$87.62
82306	0	ASSAY OF VITAMIN D	Pathology	1.67	$87.62
82307	0	ASSAY OF VITAMIN D	Pathology	1.82	$87.62
82308	0	ASSAY OF CALCITONIN	Pathology	1.51	$87.62
82310	0	ASSAY OF CALCIUM	Pathology	0.29	$87.62
82330	0	ASSAY OF CALCIUM	Pathology	0.77	$87.62
82331	0	CALCIUM INFUSION TEST	Pathology	0.29	$87.62
82340	0	ASSAY OF CALCIUM IN URINE	Pathology	0.34	$87.62
82355	0	CALCULUS (STONE) ANALYSIS	Pathology	0.65	$87.62
82360	0	CALCULUS (STONE) ASSAY	Pathology	0.73	$87.62
82365	0	CALCULUS (STONE) ASSAY	Pathology	0.73	$87.62
82370	0	X-RAY ASSAY, CALCULUS	Pathology	0.71	$87.62
82373	0	ASSAY, C-D TRANSFER MEASURE	Pathology	0.41	$87.62
82374	0	ASSAY, BLOOD CARBON DIOXIDE	Pathology	0.28	$87.62
82375	0	ASSAY, BLOOD CARBON MONOXIDE	Pathology	0.69	$87.62
82376	0	TEST FOR CARBON MONOXIDE	Pathology	0.34	$87.62
82378	0	CARCINOEMBRYONIC ANTIGEN	Pathology	1.07	$87.62
82379	0	ASSAY OF CARNITINE	Pathology	0.95	$87.62
82380	0	ASSAY OF CAROTENE	Pathology	0.52	$87.62
82382	0	ASSAY, URINE CATECHOLAMINES	Pathology	0.97	$87.62
82383	0	ASSAY, BLOOD CATECHOLAMINES	Pathology	1.41	$87.62
82384	0	ASSAY, THREE CATECHOLAMINES	Pathology	1.42	$87.62
82387	0	ASSAY OF CATHEPSIN-D	Pathology	1.17	$87.62
82390	0	ASSAY OF CERULOPLASMIN	Pathology	0.61	$87.62
82397	0	CHEMILUMINESCENT ASSAY	Pathology	0.80	$87.62
82415	0	ASSAY OF CHLORAMPHENICOL	Pathology	0.71	$87.62
82435	0	ASSAY OF BLOOD CHLORIDE	Pathology	0.26	$87.62
82436	0	ASSAY OF URINE CHLORIDE	Pathology	0.28	$87.62
82438	0	ASSAY, OTHER FLUID CHLORIDES	Pathology	0.28	$87.62
82441	0	TEST FOR CHLOROHYDROCARBONS	Pathology	0.34	$87.62
82465	0	ASSAY, BLD/SERUM CHOLESTEROL	Pathology	0.25	$87.62
82480	0	ASSAY, SERUM CHOLINESTERASE	Pathology	0.44	$87.62
82482	0	ASSAY, RBC CHOLINESTERASE	Pathology	0.43	$87.62
82485	0	ASSAY, CHONDROITIN SULFATE	Pathology	1.16	$87.62
82486	0	GAS/LIQUID CHROMATOGRAPHY	Pathology	1.02	$87.62
82487	0	PAPER CHROMATOGRAPHY	Pathology	0.90	$87.62
82488	0	PAPER CHROMATOGRAPHY	Pathology	1.20	$87.62
82489	0	THIN LAYER CHROMATOGRAPHY	Pathology	1.04	$87.62
82491	0	CHROMOTOGRAPHY, QUANT, SING	Pathology	1.02	$87.62
82492	0	CHROMOTOGRAPHY, QUANT, MULT	Pathology	1.02	$87.62
82495	0	ASSAY OF CHROMIUM	Pathology	1.14	$87.62
82507	0	ASSAY OF CITRATE	Pathology	1.57	$87.62
82520	0	ASSAY OF COCAINE	Pathology	0.85	$87.62
82523	0	COLLAGEN CROSSLINKS	Pathology	1.05	$87.62
82525	0	ASSAY OF COPPER	Pathology	0.70	$87.62
82528	0	ASSAY OF CORTICOSTERONE	Pathology	1.27	$87.62
82530	0	CORTISOL, FREE	Pathology	0.94	$87.62
82533	0	TOTAL CORTISOL	Pathology	0.92	$87.62
82540	0	ASSAY OF CREATINE	Pathology	0.26	$87.62
82541	0	COLUMN CHROMOTOGRAPHY, QUAL	Pathology	1.02	$87.62
82542	0	COLUMN CHROMOTOGRAPHY, QUANT	Pathology	1.02	$87.62
82543	0	COLUMN CHROMOTOGRAPH/ISOTOPE	Pathology	1.02	$87.62
82544	0	COLUMN CHROMOTOGRAPH/ISOTOPE	Pathology	1.02	$87.62
82550	0	ASSAY OF CK (CPK)	Pathology	0.37	$87.62
82552	0	ASSAY OF CPK IN BLOOD	Pathology	0.75	$87.62
82553	0	CREATINE, MB FRACTION	Pathology	0.65	$87.62
82554	0	CREATINE, ISOFORMS	Pathology	0.67	$87.62

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TABLE I. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTOR FOR PATHOLOGY AND LABORATORY CPT CODES WITH TOTAL RVUS ONLY — Continued

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CPT Code	Modifier	CPT Code Description	Physician CPT Code Group	Total RVUs	Conversion Factor
82565	0	ASSAY OF CREATININE	Pathology	0.29	$87.62
82570	0	ASSAY OF URINE CREATININE	Pathology	0.29	$87.62
82575	0	CREATININE CLEARANCE TEST	Pathology	0.53	$87.62
82585	0	ASSAY OF CRYOFIBRINOGEN	Pathology	0.48	$87.62
82595	0	ASSAY OF CRYOGLOBULIN	Pathology	0.36	$87.62
82600	0	ASSAY OF CYANIDE	Pathology	1.09	$87.62
82607	0	VITAMIN B-12	Pathology	0.85	$87.62
82608	0	B-12 BINDING CAPACITY	Pathology	0.81	$87.62
82615	0	TEST FOR URINE CYSTINES	Pathology	0.45	$87.62
82626	0	DEHYDROEPIANDROSTERONE	Pathology	1.42	$87.62
82627	0	DEHYDROEPIANDROSTERONE	Pathology	1.25	$87.62
82633	0	DESOXYCORTICOSTERONE	Pathology	1.75	$87.62
82634	0	DEOXYCORTISOL	Pathology	1.65	$87.62
82638	0	ASSAY OF DIBUCAINE NUMBER	Pathology	0.69	$87.62
82646	0	ASSAY OF DIHYDROCODEINONE	Pathology	1.16	$87.62
82649	0	ASSAY OF DIHYDROMORPHINONE	Pathology	1.45	$87.62
82651	0	ASSAY OF DIHYDROTESTOSTERONE	Pathology	1.46	$87.62
82652	0	ASSAY OF DIHYDROXYVITAMIN D	Pathology	2.17	$87.62
82654	0	ASSAY OF DIMETHADIONE	Pathology	0.78	$87.62
82657	0	ENZYME CELL ACTIVITY	Pathology	1.02	$87.62
82658	0	ENZYME CELL ACTIVITY, RA	Pathology	1.02	$87.62
82664	0	ELECTROPHORETIC TEST	Pathology	1.94	$87.62
82666	0	ASSAY OF EPIANDROSTERONE	Pathology	1.21	$87.62
82668	0	ASSAY OF ERYTHROPOIETIN	Pathology	1.06	$87.62
82670	0	ASSAY OF ESTRADIOL	Pathology	1.57	$87.62
82671	0	ASSAY OF ESTROGENS	Pathology	1.82	$87.62
82672	0	ASSAY OF ESTROGEN	Pathology	1.22	$87.62
82677	0	ASSAY OF ESTRIOL	Pathology	1.36	$87.62
82679	0	ASSAY OF ESTRONE	Pathology	1.41	$87.62
82690	0	ASSAY OF ETHCHLORVYNOL	Pathology	0.97	$87.62
82693	0	ASSAY OF ETHYLENE GLYCOL	Pathology	0.84	$87.62
82696	0	ASSAY OF ETIOCHOLANOLONE	Pathology	1.33	$87.62
82705	0	FATS/LIPIDS, FECES, QUAL	Pathology	0.29	$87.62
82710	0	FATS/LIPIDS, FECES, QUANT	Pathology	0.95	$87.62
82715	0	ASSAY OF FECAL FAT	Pathology	0.97	$87.62
82725	0	ASSAY OF BLOOD FATTY ACIDS	Pathology	0.75	$87.62
82726	0	LONG CHAIN FATTY ACIDS	Pathology	1.02	$87.62
82728	0	ASSAY OF FERRITIN	Pathology	0.77	$87.62
82731	0	ASSAY OF FETAL FIBRONECTIN	Pathology	3.63	$87.62
82735	0	ASSAY OF FLUORIDE	Pathology	1.05	$87.62
82742	0	ASSAY OF FLURAZEPAM	Pathology	1.12	$87.62
82746	0	BLOOD FOLIC ACID SERUM	Pathology	0.83	$87.62
82747	0	ASSAY OF FOLIC ACID, RBC	Pathology	0.98	$87.62
82757	0	ASSAY OF SEMEN FRUCTOSE	Pathology	0.98	$87.62
82759	0	ASSAY OF RBC GALACTOKINASE	Pathology	1.21	$87.62
82760	0	ASSAY OF GALACTOSE	Pathology	0.63	$87.62
82775	0	ASSAY GALACTOSE TRANSFERASE	Pathology	1.19	$87.62
82776	0	GALACTOSE TRANSFERASE TEST	Pathology	0.47	$87.62
82784	0	ASSAY OF GAMMAGLOBULIN IGM	Pathology	0.52	$87.62
82785	0	ASSAY OF GAMMAGLOBULIN IGE	Pathology	0.93	$87.62
82787	0	IGG 1, 2, 3 OR 4, EACH	Pathology	0.45	$87.62
82800	0	BLOOD PH	Pathology	0.48	$87.62
82803	0	BLOOD GASES: PH, PO2 & PCO2	Pathology	1.09	$87.62
82805	0	BLOOD GASES W/02 SATURATION	Pathology	1.60	$87.62
82810	0	BLOOD GASES, O2 SAT ONLY	Pathology	0.49	$87.62
82820	0	HEMOGLOBIN-OXYGEN AFFINITY	Pathology	0.56	$87.62
82926	0	ASSAY OF GASTRIC ACID	Pathology	0.31	$87.62
82928	0	ASSAY OF GASTRIC ACID	Pathology	0.37	$87.62
82938	0	GASTRIN TEST	Pathology	1.00	$87.62
82941	0	ASSAY OF GASTRIN	Pathology	0.99	$87.62
82943	0	ASSAY OF GLUCAGON	Pathology	0.81	$87.62
82945	0	GLUCOSE OTHER FLUID	Pathology	0.22	$87.62
82946	0	GLUCAGON TOLERANCE TEST	Pathology	0.85	$87.62
82947	0	ASSAY, GLUCOSE, BLOOD QUANT	Pathology	0.22	$87.62

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TABLE I. — PHYSICIAN NATIONWIDE RVUs (RELATIVE VALUE UNITS) AND CONVERSION FACTOR FOR PATHOLOGY AND LABORATORY CPT CODES WITH TOTAL RVUs ONLY — Continued

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CPT Code	Modifier	CPT Code Description	Physician CPT Code Group	Total RVUs	Conversion Factor
82948	0	REAGENT STRIP/BLOOD GLUCOSE	Pathology	0.18	$87.62
82950	0	GLUCOSE TEST	Pathology	0.27	$87.62
82951	0	GLUCOSE TOLERANCE TEST (GTT)	Pathology	0.73	$87.62
82952	0	GTT-ADDED SAMPLES	Pathology	0.22	$87.62
82953	0	GLUCOSE-TOLBUTAMIDE TEST	Pathology	0.85	$87.62
82955	0	ASSAY OF G6PD ENZYME	Pathology	0.55	$87.62
82960	0	TEST FOR G6PD ENZYME	Pathology	0.34	$87.62
82962	0	GLUCOSE BLOOD TEST	Pathology	0.21	$87.62
82963	0	ASSAY OF GLUCOSIDASE	Pathology	1.21	$87.62
82965	0	ASSAY OF GDH ENZYME	Pathology	0.44	$87.62
82975	0	ASSAY OF GLUTAMINE	Pathology	0.89	$87.62
82977	0	ASSAY OF GGT	Pathology	0.41	$87.62
82978	0	ASSAY OF GLUTATHIONE	Pathology	0.80	$87.62
82979	0	ASSAY, RBC GLUTATHIONE	Pathology	0.39	$87.62
82980	0	ASSAY OF GLUTETHIMIDE	Pathology	1.03	$87.62
82985	0	GLYCATED PROTEIN	Pathology	0.85	$87.62
83001	0	GONADOTROPIN (FSH)	Pathology	1.05	$87.62
83002	0	GONADOTROPIN (LH)	Pathology	1.04	$87.62
83003	0	ASSAY, GROWTH HORMONE (HGH)	Pathology	0.94	$87.62
83008	0	ASSAY OF GUANOSINE	Pathology	0.95	$87.62
83010	0	ASSAY OF HAPTOGLOBIN, QUANT	Pathology	0.71	$87.62
83012	0	ASSAY OF HAPTOGLOBINS	Pathology	0.97	$87.62
83013	0	H PYLORI ANALYSIS	Pathology	3.80	$87.62
83014	0	H PYLORI DRUG ADMIN/COLLECT	Pathology	0.44	$87.62
83015	0	HEAVY METAL SCREEN	Pathology	1.06	$87.62
83018	0	QUANTITATIVE SCREEN, METALS	Pathology	1.24	$87.62
83020	0	HEMOGLOBIN ELECTROPHORESIS	Pathology	1.28	$87.62
83021	0	HEMOGLOBIN CHROMOTOGRAPHY	Pathology	1.02	$87.62
83026	0	HEMOGLOBIN, COPPER SULFATE	Pathology	0.13	$87.62
83030	0	FETAL HEMOGLOBIN, CHEMICAL	Pathology	0.47	$87.62
83033	0	FETAL HEMOGLOBIN ASSAY, QUAL	Pathology	0.34	$87.62
83036	0	GLYCATED HEMOGLOBIN TEST	Pathology	0.55	$87.62
83045	0	BLOOD METHEMOGLOBIN TEST	Pathology	0.28	$87.62
83050	0	BLOOD METHEMOGLOBIN ASSAY	Pathology	0.41	$87.62
83051	0	ASSAY OF PLASMA HEMOGLOBIN	Pathology	0.41	$87.62
83055	0	BLOOD SULFHEMOGLOBIN TEST	Pathology	0.28	$87.62
83060	0	BLOOD SULFHEMOGLOBIN ASSAY	Pathology	0.47	$87.62
83065	0	ASSAY OF HEMOGLOBIN HEAT	Pathology	0.39	$87.62
83068	0	HEMOGLOBIN STABILITY SCREEN	Pathology	0.48	$87.62
83069	0	ASSAY OF URINE HEMOGLOBIN	Pathology	0.22	$87.62
83070	0	ASSAY OF HEMOSIDERIN, QUAL	Pathology	0.27	$87.62
83071	0	ASSAY OF HEMOSIDERIN, QUANT	Pathology	0.39	$87.62
83080	0	ASSAY OF B HEXOSAMINIDASE	Pathology	0.95	$87.62
83088	0	ASSAY OF HISTAMINE	Pathology	1.66	$87.62
83090	0	ASSAY OF HOMOCYSTINE	Pathology	0.95	$87.62
83150	0	ASSAY OF FOR HVA	Pathology	1.09	$87.62
83491	0	ASSAY OF CORTICOSTEROIDS	Pathology	0.99	$87.62
83497	0	ASSAY OF 5-HIAA	Pathology	0.73	$87.62
83498	0	ASSAY OF PROGESTERONE	Pathology	1.53	$87.62
83499	0	ASSAY OF PROGESTERONE	Pathology	1.42	$87.62
83500	0	ASSAY, FREE HYDROXYPROLINE	Pathology	1.28	$87.62
83505	0	ASSAY, TOTAL HYDROXYPROLINE	Pathology	1.37	$87.62
83516	0	IMMUNOASSAY, NONANTIBODY	Pathology	0.65	$87.62
83518	0	IMMUNOASSAY, DIPSTICK	Pathology	0.48	$87.62
83519	0	IMMUNOASSAY, NONANTIBODY	Pathology	0.76	$87.62
83520	0	IMMUNOASSAY, RIA	Pathology	0.73	$87.62
83525	0	ASSAY OF INSULIN	Pathology	0.64	$87.62
83527	0	ASSAY OF INSULIN	Pathology	0.73	$87.62
83528	0	ASSAY OF INTRINSIC FACTOR	Pathology	0.90	$87.62
83540	0	ASSAY OF IRON	Pathology	0.36	$87.62
83550	0	IRON BINDING TEST	Pathology	0.49	$87.62
83570	0	ASSAY OF IDH ENZYME	Pathology	0.50	$87.62
83582	0	ASSAY OF KETOGENIC STEROIDS	Pathology	0.80	$87.62
83586	0	ASSAY 17- KETOSTEROIDS	Pathology	0.72	$87.62

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TABLE I. — PHYSICIAN NATIONWIDE RVUs (RELATIVE VALUE UNITS) AND CONVERSION FACTOR FOR PATHOLOGY AND LABORATORY CPT CODES WITH TOTAL RVUs ONLY — Continued

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CPT Code	Modifier	CPT Code Description	Physician CPT Code Group	Total RVUs	Conversion Factor
83593	0	FRACTIONATION, KETOSTEROIDS	Pathology	1.48	$87.62
83605	0	ASSAY OF LACTIC ACID	Pathology	0.60	$87.62
83615	0	LACTATE (LD) (LDH) ENZYME	Pathology	0.34	$87.62
83625	0	ASSAY OF LDH ENZYMES	Pathology	0.72	$87.62
83632	0	PLACENTAL LACTOGEN	Pathology	1.14	$87.62
83633	0	TEST URINE FOR LACTOSE	Pathology	0.31	$87.62
83634	0	ASSAY OF URINE FOR LACTOSE	Pathology	0.65	$87.62
83655	0	ASSAY OF LEAD	Pathology	0.68	$87.62
83661	0	L/S RATIO, FETAL LUNG	Pathology	1.24	$87.62
83662	0	FOAM STABILITY, FETAL LUNG	Pathology	1.07	$87.62
83663	0	FLUORO POLARIZE, FETAL LUNG	Pathology	0.53	$87.62
83664	0	LAMELLAR BDY, FETAL LUNG	Pathology	0.27	$87.62
83670	0	ASSAY OF LAP ENZYME	Pathology	0.52	$87.62
83690	0	ASSAY OF LIPASE	Pathology	0.39	$87.62
83715	0	ASSAY OF BLOOD LIPOPROTEINS	Pathology	0.63	$87.62
83716	0	ASSAY OF BLOOD LIPOPROTEINS	Pathology	1.40	$87.62
83718	0	ASSAY OF LIPOPROTEIN	Pathology	0.46	$87.62
83719	0	ASSAY OF BLOOD LIPOPROTEIN	Pathology	0.66	$87.62
83721	0	ASSAY OF BLOOD LIPOPROTEIN	Pathology	0.54	$87.62
83727	0	ASSAY OF LRH HORMONE	Pathology	0.97	$87.62
83735	0	ASSAY OF MAGNESIUM	Pathology	0.38	$87.62
83775	0	ASSAY OF MD ENZYME	Pathology	0.42	$87.62
83785	0	ASSAY OF MANGANESE	Pathology	1.39	$87.62
83788	0	MASS SPECTROMETRY QUAL	Pathology	1.02	$87.62
83789	0	MASS SPECTROMETRY QUANT	Pathology	1.02	$87.62
83805	0	ASSAY OF MEPROBAMATE	Pathology	0.99	$87.62
83825	0	ASSAY OF MERCURY	Pathology	0.92	$87.62
83835	0	ASSAY OF METANEPHRINES	Pathology	0.95	$87.62
83840	0	ASSAY OF METHADONE	Pathology	0.92	$87.62
83857	0	ASSAY OF METHEMALBUMIN	Pathology	0.61	$87.62
83858	0	ASSAY OF METHSUXIMIDE	Pathology	0.84	$87.62
83864	0	MUCOPOLYSACCHARIDES	Pathology	1.12	$87.62
83866	0	MUCOPOLYSACCHARIDES SCREEN	Pathology	0.56	$87.62
83872	0	ASSAY SYNOVIAL FLUID MUCIN	Pathology	0.33	$87.62
83873	0	ASSAY OF CSF PROTEIN	Pathology	0.97	$87.62
83874	0	ASSAY OF MYOGLOBIN	Pathology	0.73	$87.62
83883	0	ASSAY, NEPHELOMETRY NOT SPEC	Pathology	0.77	$87.62
83885	0	ASSAY OF NICKEL	Pathology	1.38	$87.62
83887	0	ASSAY OF NICOTINE	Pathology	1.33	$87.62
83890	0	MOLECULE ISOLATE	Pathology	0.23	$87.62
83891	0	MOLECULE ISOLATE NUCLEIC	Pathology	0.23	$87.62
83892	0	MOLECULAR DIAGNOSTICS	Pathology	0.23	$87.62
83893	0	MOLECULE DOT/SLOT/BLOT	Pathology	0.23	$87.62
83894	0	MOLECULE GEL ELECTROPHOR	Pathology	0.23	$87.62
83896	0	MOLECULAR DIAGNOSTICS	Pathology	0.23	$87.62
83897	0	MOLECULE NUCLEIC TRANSFER	Pathology	0.23	$87.62
83898	0	MOLECULE NUCLEIC AMPLI	Pathology	0.94	$87.62
83901	0	MOLECULE NUCLEIC AMPLI	Pathology	0.94	$87.62
83902	0	MOLECULAR DIAGNOSTICS	Pathology	0.80	$87.62
83903	0	MOLECULE MUTATION SCAN	Pathology	0.94	$87.62
83904	0	MOLECULE MUTATION IDENTIFY	Pathology	0.94	$87.62
83905	0	MOLECULE MUTATION IDENTIFY	Pathology	0.94	$87.62
83906	0	MOLECULE MUTATION IDENTIFY	Pathology	0.94	$87.62
83912	0	GENETIC EXAMINATION	Pathology	0.78	$87.62
83915	0	ASSAY OF NUCLEOTIDASE	Pathology	0.63	$87.62
83916	0	OLIGOCLONAL BANDS	Pathology	1.13	$87.62
83918	0	ORGANIC ACIDS, TOTAL, QUANT	Pathology	0.93	$87.62
83919	0	ORGANIC ACIDS, QUAL, EACH	Pathology	0.93	$87.62
83921	0	ORGANIC ACID, SINGLE, QUANT	Pathology	0.93	$87.62
83925	0	ASSAY OF OPIATES	Pathology	1.10	$87.62
83930	0	ASSAY OF BLOOD OSMOLALITY	Pathology	0.37	$87.62
83935	0	ASSAY OF URINE OSMOLALITY	Pathology	0.38	$87.62
83937	0	ASSAY OF OSTEOCALCIN	Pathology	1.68	$87.62
83945	0	ASSAY OF OXALATE	Pathology	0.73	$87.62

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TABLE I. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTOR FOR PATHOLOGY AND LABORATORY CPT CODES WITH TOTAL RVUS ONLY — Continued

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CPT Code	Modifier	CPT Code Description	Physician CPT Code Group	Total RVUs	Conversion Factor
83970	0	ASSAY OF PARATHORMONE	Pathology	2.33	$87.62
83986	0	ASSAY OF BODY FLUID ACIDITY	Pathology	0.20	$87.62
83992	0	ASSAY FOR PHENCYCLIDINE	Pathology	0.83	$87.62
84022	0	ASSAY OF PHENOTHIAZINE	Pathology	0.88	$87.62
84030	0	ASSAY OF BLOOD PKU	Pathology	0.31	$87.62
84035	0	ASSAY OF PHENYLKETONES	Pathology	0.21	$87.62
84060	0	ASSAY ACID PHOSPHATASE	Pathology	0.42	$87.62
84061	0	PHOSPHATASE, FORENSIC EXAM	Pathology	0.45	$87.62
84066	0	ASSAY PROSTATE PHOSPHATASE	Pathology	0.54	$87.62
84075	0	ASSAY ALKALINE PHOSPHATASE	Pathology	0.29	$87.62
84078	0	ASSAY ALKALINE PHOSPHATASE	Pathology	0.41	$87.62
84080	0	ASSAY ALKALINE PHOSPHATASES	Pathology	0.83	$87.62
84081	0	AMNIOTIC FLUID ENZYME TEST	Pathology	0.93	$87.62
84085	0	ASSAY OF RBC PG6D ENZYME	Pathology	0.38	$87.62
84087	0	ASSAY PHOSPHOHEXOSE ENZYMES	Pathology	0.58	$87.62
84100	0	ASSAY OF PHOSPHORUS	Pathology	0.27	$87.62
84105	0	ASSAY OF URINE PHOSPHORUS	Pathology	0.29	$87.62
84106	0	TEST FOR PORPHOBILINOGEN	Pathology	0.24	$87.62
84110	0	ASSAY OF PORPHOBILINOGEN	Pathology	0.48	$87.62
84119	0	TEST URINE FOR PORPHYRINS	Pathology	0.49	$87.62
84120	0	ASSAY OF URINE PORPHYRINS	Pathology	0.83	$87.62
84126	0	ASSAY OF FECES PORPHYRINS	Pathology	1.44	$87.62
84127	0	ASSAY OF FECES PORPHYRINS	Pathology	0.66	$87.62
84132	0	ASSAY OF SERUM POTASSIUM	Pathology	0.26	$87.62
84133	0	ASSAY OF URINE POTASSIUM	Pathology	0.24	$87.62
84134	0	ASSAY OF PREALBUMIN	Pathology	0.82	$87.62
84135	0	ASSAY OF PREGNANEDIOL	Pathology	1.08	$87.62
84138	0	ASSAY OF PREGNANETRIOL	Pathology	1.07	$87.62
84140	0	ASSAY OF PREGNENOLONE	Pathology	1.17	$87.62
84143	0	ASSAY OF 17-HYDROXYPREGNENO	Pathology	1.29	$87.62
84144	0	ASSAY OF PROGESTERONE	Pathology	1.18	$87.62
84146	0	ASSAY OF PROLACTIN	Pathology	1.09	$87.62
84150	0	ASSAY OF PROSTAGLANDIN	Pathology	1.41	$87.62
84152	0	ASSAY OF PSA, COMPLEXED	Pathology	1.04	$87.62
84153	0	ASSAY OF PSA, TOTAL	Pathology	1.04	$87.62
84154	0	ASSAY OF PSA, FREE	Pathology	1.04	$87.62
84155	0	ASSAY OF PROTEIN	Pathology	0.21	$87.62
84160	0	ASSAY OF SERUM PROTEIN	Pathology	0.29	$87.62
84165	0	ASSAY OF SERUM PROTEINS	Pathology	1.16	$87.62
84181	0	WESTERN BLOT TEST	Pathology	1.49	$87.62
84182	0	PROTEIN, WESTERN BLOT TEST	Pathology	1.56	$87.62
84202	0	ASSAY RBC PROTOPORPHYRIN	Pathology	0.81	$87.62
84203	0	TEST RBC PROTOPORPHYRIN	Pathology	0.48	$87.62
84206	0	ASSAY OF PROINSULIN	Pathology	1.00	$87.62
84207	0	ASSAY OF VITAMIN B-6	Pathology	1.58	$87.62
84210	0	ASSAY OF PYRUVATE	Pathology	0.61	$87.62
84220	0	ASSAY OF PYRUVATE KINASE	Pathology	0.53	$87.62
84228	0	ASSAY OF QUININE	Pathology	0.66	$87.62
84233	0	ASSAY OF ESTROGEN	Pathology	3.63	$87.62
84234	0	ASSAY OF PROGESTERONE	Pathology	3.66	$87.62
84235	0	ASSAY OF ENDOCRINE HORMONE	Pathology	2.95	$87.62
84238	0	ASSAY, NONENDOCRINE RECEPTOR	Pathology	2.06	$87.62
84244	0	ASSAY OF RENIN	Pathology	1.24	$87.62
84252	0	ASSAY OF VITAMIN B-2	Pathology	1.14	$87.62
84255	0	ASSAY OF SELENIUM	Pathology	1.44	$87.62
84260	0	ASSAY OF SEROTONIN	Pathology	1.75	$87.62
84270	0	ASSAY OF SEX HORMONE GLOBUL	Pathology	1.22	$87.62
84275	0	ASSAY OF SIALIC ACID	Pathology	0.76	$87.62
84285	0	ASSAY OF SILICA	Pathology	1.33	$87.62
84295	0	ASSAY OF SERUM SODIUM	Pathology	0.27	$87.62
84300	0	ASSAY OF URINE SODIUM	Pathology	0.27	$87.62
84305	0	ASSAY OF SOMATOMEDIN	Pathology	1.20	$87.62
84307	0	ASSAY OF SOMATOSTATIN	Pathology	1.03	$87.62
84311	0	SPECTROPHOTOMETRY	Pathology	0.39	$87.62

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TABLE I. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTOR FOR PATHOLOGY AND LABORATORY CPT CODES WITH TOTAL RVUS ONLY — Continued

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CPT Code	Modifier	CPT Code Description	Physician CPT Code Group	Total RVUs	Conversion Factor
84315	0	BODY FLUID SPECIFIC GRAVITY	Pathology	0.14	$87.62
84375	0	CHROMATOGRAM ASSAY, SUGARS	Pathology	1.10	$87.62
84376	0	SUGARS, SINGLE, QUAL	Pathology	0.31	$87.62
84377	0	SUGARS, MULTIPLE, QUAL	Pathology	0.31	$87.62
84378	0	SUGARS SINGLE QUANT	Pathology	0.65	$87.62
84379	0	SUGARS MULTIPLE QUANT	Pathology	0.65	$87.62
84392	0	ASSAY OF URINE SULFATE	Pathology	0.27	$87.62
84402	0	ASSAY OF TESTOSTERONE	Pathology	1.44	$87.62
84403	0	ASSAY OF TOTAL TESTOSTERONE	Pathology	1.46	$87.62
84425	0	ASSAY OF VITAMIN B-1	Pathology	1.20	$87.62
84430	0	ASSAY OF THIOCYANATE	Pathology	0.66	$87.62
84432	0	ASSAY OF THYROGLOBULIN	Pathology	0.91	$87.62
84436	0	ASSAY OF TOTAL THYROXINE	Pathology	0.39	$87.62
84437	0	ASSAY OF NEONATAL THYROXINE	Pathology	0.36	$87.62
84439	0	ASSAY OF FREE THYROXINE	Pathology	0.51	$87.62
84442	0	ASSAY OF THYROID ACTIVITY	Pathology	0.83	$87.62
84443	0	ASSAY THYROID STIM HORMONE	Pathology	0.95	$87.62
84445	0	ASSAY OF TSI	Pathology	2.87	$87.62
84446	0	ASSAY OF VITAMIN E	Pathology	0.80	$87.62
84449	0	ASSAY OF TRANSCORTIN	Pathology	1.01	$87.62
84450	0	TRANSFERASE (AST) (SGOT)	Pathology	0.29	$87.62
84460	0	ALANINE AMINO (ALT) (SGPT)	Pathology	0.30	$87.62
84466	0	ASSAY OF TRANSFERRIN	Pathology	0.72	$87.62
84478	0	ASSAY OF TRIGLYCERIDES	Pathology	0.32	$87.62
84479	0	ASSAY OF THYROID (T3 OR T4)	Pathology	0.36	$87.62
84480	0	ASSAY, TRIIODOTHYRONINE (T3)	Pathology	0.80	$87.62
84481	0	FREE ASSAY (FT-3)	Pathology	0.95	$87.62
84482	0	T3 REVERSE	Pathology	0.89	$87.62
84484	0	ASSAY OF TROPONIN, QUANT	Pathology	0.55	$87.62
84485	0	ASSAY DUODENAL FLUID TRYPSIN	Pathology	0.42	$87.62
84488	0	TEST FECES FOR TRYPSIN	Pathology	0.41	$87.62
84490	0	ASSAY OF FECES FOR TRYPSIN	Pathology	0.43	$87.62
84510	0	ASSAY OF TYROSINE	Pathology	0.59	$87.62
84512	0	ASSAY OF TROPONIN, QUAL	Pathology	0.43	$87.62
84520	0	ASSAY OF UREA NITROGEN	Pathology	0.22	$87.62
84525	0	UREA NITROGEN SEMI-QUANT	Pathology	0.21	$87.62
84540	0	ASSAY OF URINE/UREA-N	Pathology	0.27	$87.62
84545	0	UREA-N CLEARANCE TEST	Pathology	0.37	$87.62
84550	0	ASSAY OF BLOOD/URIC ACID	Pathology	0.25	$87.62
84560	0	ASSAY OF URINE/URIC ACID	Pathology	0.27	$87.62
84577	0	ASSAY OF FECES/UROBILINOGEN	Pathology	0.70	$87.62
84578	0	TEST URINE UROBILINOGEN	Pathology	0.18	$87.62
84580	0	ASSAY OF URINE UROBILINOGEN	Pathology	0.40	$87.62
84583	0	ASSAY OF URINE UROBILINOGEN	Pathology	0.28	$87.62
84585	0	ASSAY OF URINE VMA	Pathology	0.87	$87.62
84586	0	ASSAY OF VIP	Pathology	1.99	$87.62
84588	0	ASSAY OF VASOPRESSIN	Pathology	1.91	$87.62
84590	0	ASSAY OF VITAMIN A	Pathology	0.65	$87.62
84591	0	ASSAY OF NOS VITAMIN	Pathology	0.65	$87.62
84597	0	ASSAY OF VITAMIN K	Pathology	0.77	$87.62
84600	0	ASSAY OF VOLATILES	Pathology	0.91	$87.62
84620	0	XYLOSE TOLERANCE TEST	Pathology	0.67	$87.62
84630	0	ASSAY OF ZINC	Pathology	0.64	$87.62
84681	0	ASSAY OF C-PEPTIDE	Pathology	1.17	$87.62
84702	0	CHORIONIC GONADOTROPIN TEST	Pathology	0.85	$87.62
84703	0	CHORIONIC GONADOTROPIN ASSAY	Pathology	0.42	$87.62
84830	0	OVULATION TESTS	Pathology	0.57	$87.62
85002	0	BLEEDING TIME TEST	Pathology	0.25	$87.62
85007	0	DIFFERENTIAL WBC COUNT	Pathology	0.19	$87.62
85008	0	NONDIFFERENTIAL WBC COUNT	Pathology	0.19	$87.62
85009	0	DIFFERENTIAL WBC COUNT	Pathology	0.21	$87.62
85013	0	HEMATOCRIT	Pathology	0.13	$87.62
85014	0	HEMATOCRIT	Pathology	0.13	$87.62
85018	0	HEMOGLOBIN	Pathology	0.13	$87.62

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TABLE I. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTOR FOR PATHOLOGY AND LABORATORY CPT CODES WITH TOTAL RVUS ONLY — Continued

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CPT Code	Modifier	CPT Code Description	Physician CPT Code Group	Total RVUs	Conversion Factor
85021	0	AUTOMATED HEMOGRAM	Pathology	0.31	$87.62
85022	0	AUTOMATED HEMOGRAM	Pathology	0.31	$87.62
85023	0	AUTOMATED HEMOGRAM	Pathology	0.48	$87.62
85024	0	AUTOMATED HEMOGRAM	Pathology	0.48	$87.62
85025	0	AUTOMATED HEMOGRAM	Pathology	0.44	$87.62
85027	0	AUTOMATED HEMOGRAM	Pathology	0.36	$87.62
85031	0	MANUAL HEMOGRAM, CBC	Pathology	0.33	$87.62
85041	0	RED BLOOD CELL (RBC) COUNT	Pathology	0.17	$87.62
85044	0	RETICULOCYTE COUNT	Pathology	0.24	$87.62
85045	0	RETICULOCYTE COUNT	Pathology	0.23	$87.62
85046	0	RETICYTE/HGB CONCENTRATE	Pathology	0.31	$87.62
85048	0	WHITE BLOOD CELL (WBC) COUNT	Pathology	0.14	$87.62
85130	0	CHROMOGENIC SUBSTRATE ASSAY	Pathology	0.67	$87.62
85170	0	BLOOD CLOT RETRACTION	Pathology	0.20	$87.62
85175	0	BLOOD CLOT LYSIS TIME	Pathology	0.26	$87.62
85210	0	BLOOD CLOT FACTOR II TEST	Pathology	0.73	$87.62
85220	0	BLOOD CLOT FACTOR V TEST	Pathology	0.99	$87.62
85230	0	BLOOD CLOT FACTOR VII TEST	Pathology	1.01	$87.62
85240	0	BLOOD CLOT FACTOR VIII TEST	Pathology	1.01	$87.62
85244	0	BLOOD CLOT FACTOR VIII TEST	Pathology	1.15	$87.62
85245	0	BLOOD CLOT FACTOR VIII TEST	Pathology	1.29	$87.62
85246	0	BLOOD CLOT FACTOR VIII TEST	Pathology	1.29	$87.62
85247	0	BLOOD CLOT FACTOR VIII TEST	Pathology	1.29	$87.62
85250	0	BLOOD CLOT FACTOR IX TEST	Pathology	1.07	$87.62
85260	0	BLOOD CLOT FACTOR X TEST	Pathology	1.01	$87.62
85270	0	BLOOD CLOT FACTOR XI TEST	Pathology	1.01	$87.62
85280	0	BLOOD CLOT FACTOR XII TEST	Pathology	1.09	$87.62
85290	0	BLOOD CLOT FACTOR XIII TEST	Pathology	0.92	$87.62
85291	0	BLOOD CLOT FACTOR XIII TEST	Pathology	0.50	$87.62
85292	0	BLOOD CLOT FACTOR ASSAY	Pathology	1.07	$87.62
85293	0	BLOOD CLOT FACTOR ASSAY	Pathology	1.07	$87.62
85300	0	ANTITHROMBIN III TEST	Pathology	0.67	$87.62
85301	0	ANTITHROMBIN III TEST	Pathology	0.61	$87.62
85302	0	BLOOD CLOT INHIBITOR ANTIGEN	Pathology	0.68	$87.62
85303	0	BLOOD CLOT INHIBITOR TEST	Pathology	0.78	$87.62
85305	0	BLOOD CLOT INHIBITOR ASSAY	Pathology	0.65	$87.62
85306	0	BLOOD CLOT INHIBITOR TEST	Pathology	0.86	$87.62
85307	0	ASSAY ACTIVATED PROTEIN C	Pathology	0.86	$87.62
85335	0	FACTOR INHIBITOR TEST	Pathology	0.73	$87.62
85337	0	THROMBOMODULIN	Pathology	0.59	$87.62
85345	0	COAGULATION TIME	Pathology	0.24	$87.62
85347	0	COAGULATION TIME	Pathology	0.24	$87.62
85348	0	COAGULATION TIME	Pathology	0.21	$87.62
85360	0	EUGLOBULIN LYSIS	Pathology	0.47	$87.62
85362	0	FIBRIN DEGRADATION PRODUCTS	Pathology	0.39	$87.62
85366	0	FIBRINOGEN TEST	Pathology	0.49	$87.62
85370	0	FIBRINOGEN TEST	Pathology	0.64	$87.62
85378	0	FIBRIN DEGRADATION	Pathology	0.40	$87.62
85379	0	FIBRIN DEGRADATION	Pathology	0.57	$87.62
85384	0	FIBRINOGEN	Pathology	0.48	$87.62
85385	0	FIBRINOGEN	Pathology	0.48	$87.62
85390	0	FIBRINOLYSINS SCREEN	Pathology	0.81	$87.62
85400	0	FIBRINOLYTIC PLASMIN	Pathology	0.50	$87.62
85410	0	FIBRINOLYTIC ANTIPLASMIN	Pathology	0.43	$87.62
85415	0	FIBRINOLYTIC PLASMINOGEN	Pathology	0.97	$87.62
85420	0	FIBRINOLYTIC PLASMINOGEN	Pathology	0.37	$87.62
85421	0	FIBRINOLYTIC PLASMINOGEN	Pathology	0.57	$87.62
85441	0	HEINZ BODIES, DIRECT	Pathology	0.24	$87.62
85445	0	HEINZ BODIES, INDUCED	Pathology	0.38	$87.62
85460	0	HEMOGLOBIN, FETAL	Pathology	0.44	$87.62
85461	0	HEMOGLOBIN, FETAL	Pathology	0.37	$87.62
85475	0	HEMOLYSIN	Pathology	0.50	$87.62
85520	0	HEPARIN ASSAY	Pathology	0.74	$87.62
85525	0	HEPARIN	Pathology	0.67	$87.62

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TABLE I. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTOR FOR PATHOLOGY AND LABORATORY CPT CODES WITH TOTAL RVUS ONLY — Continued

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CPT Code	Modifier	CPT Code Description	Physician CPT Code Group	Total RVUs	Conversion Factor
85530	0	HEPARIN-PROTAMINE TOLERANCE	Pathology	0.80	$87.62
85535	0	IRON STAIN, BLOOD CELLS	Pathology	0.36	$87.62
85536	0	IRON STAIN PERIPHERAL BLOOD	Pathology	0.36	$87.62
85540	0	WBC ALKALINE PHOSPHATASE	Pathology	0.48	$87.62
85547	0	RBC MECHANICAL FRAGILITY	Pathology	0.48	$87.62
85549	0	MURAMIDASE	Pathology	1.06	$87.62
85555	0	RBC OSMOTIC FRAGILITY	Pathology	0.38	$87.62
85557	0	RBC OSMOTIC FRAGILITY	Pathology	0.75	$87.62
85576	0	BLOOD PLATELET AGGREGATION	Pathology	1.76	$87.62
85585	0	BLOOD PLATELET ESTIMATION	Pathology	0.19	$87.62
85590	0	PLATELET COUNT, MANUAL	Pathology	0.24	$87.62
85595	0	PLATELET COUNT, AUTOMATED	Pathology	0.25	$87.62
85597	0	PLATELET NEUTRALIZATION	Pathology	1.01	$87.62
85610	0	PROTHROMBIN TIME	Pathology	0.22	$87.62
85611	0	PROTHROMBIN TEST	Pathology	0.22	$87.62
85612	0	VIPER VENOM PROTHROMBIN TIME	Pathology	0.54	$87.62
85613	0	RUSSELL VIPER VENOM, DILUTED	Pathology	0.54	$87.62
85635	0	REPTILASE TEST	Pathology	0.56	$87.62
85651	0	RBC SED RATE, NONAUTOMATED	Pathology	0.20	$87.62
85652	0	RBC SED RATE, AUTOMATED	Pathology	0.15	$87.62
85660	0	RBC SICKLE CELL TEST	Pathology	0.31	$87.62
85670	0	THROMBIN TIME, PLASMA	Pathology	0.33	$87.62
85675	0	THROMBIN TIME, TITER	Pathology	0.39	$87.62
85705	0	THROMBOPLASTIN INHIBITION	Pathology	0.54	$87.62
85730	0	THROMBOPLASTIN TIME, PARTIAL	Pathology	0.34	$87.62
85732	0	THROMBOPLASTIN TIME, PARTIAL	Pathology	0.36	$87.62
85810	0	BLOOD VISCOSITY EXAMINATION	Pathology	0.66	$87.62
86000	0	AGGLUTININS, FEBRILE	Pathology	0.39	$87.62
86001	0	ALLERGEN SPECIFIC IGG	Pathology	0.29	$87.62
86003	0	ALLERGEN SPECIFIC IGE	Pathology	0.29	$87.62
86005	0	ALLERGEN SPECIFIC IGE	Pathology	0.45	$87.62
86021	0	WBC ANTIBODY IDENTIFICATION	Pathology	0.85	$87.62
86022	0	PLATELET ANTIBODIES	Pathology	1.04	$87.62
86023	0	IMMUNOGLOBULIN ASSAY	Pathology	0.70	$87.62
86038	0	ANTINUCLEAR ANTIBODIES	Pathology	0.88	$87.62
86039	0	ANTINUCLEAR ANTIBODIES (ANA)	Pathology	0.63	$87.62
86060	0	ANTISTREPTOLYSIN O, TITER	Pathology	0.41	$87.62
86063	0	ANTISTREPTOLYSIN O, SCREEN	Pathology	0.33	$87.62
86140	0	C-REACTIVE PROTEIN	Pathology	0.29	$87.62
86146	0	GLYCOPROTEIN ANTIBODY	Pathology	1.43	$87.62
86147	0	CARDIOLIPIN ANTIBODY	Pathology	1.43	$87.62
86148	0	PHOSPHOLIPID ANTIBODY	Pathology	0.91	$87.62
86155	0	CHEMOTAXIS ASSAY	Pathology	0.90	$87.62
86156	0	COLD AGGLUTININ, SCREEN	Pathology	0.38	$87.62
86157	0	COLD AGGLUTININ, TITER	Pathology	0.45	$87.62
86160	0	COMPLEMENT, ANTIGEN	Pathology	0.68	$87.62
86161	0	COMPLEMENT/FUNCTION ACTIVITY	Pathology	0.68	$87.62
86162	0	COMPLEMENT, TOTAL (CH50)	Pathology	1.15	$87.62
86171	0	COMPLEMENT FIXATION, EACH	Pathology	0.56	$87.62
86185	0	COUNTERIMMUNOELECTROPHORESIS	Pathology	0.50	$87.62
86215	0	DEOXYRIBONUCLEASE, ANTIBODY	Pathology	0.75	$87.62
86225	0	DNA ANTIBODY	Pathology	0.77	$87.62
86226	0	DNA ANTIBODY, SINGLE STRAND	Pathology	0.68	$87.62
86235	0	NUCLEAR ANTIGEN ANTIBODY	Pathology	1.01	$87.62
86243	0	FC RECEPTOR	Pathology	1.16	$87.62
86255	0	FLUORESCENT ANTIBODY, SCREEN	Pathology	1.23	$87.62
86256	0	FLUORESCENT ANTIBODY, TITER	Pathology	1.23	$87.62
86277	0	GROWTH HORMONE ANTIBODY	Pathology	0.89	$87.62
86280	0	HEMAGGLUTINATION INHIBITION	Pathology	0.46	$87.62
86294	0	IMMUNOASSAY, TUMOR QUAL	Pathology	0.76	$87.62
86300	0	IMMUNOASSAY, TUMOR CA 15-3	Pathology	1.17	$87.62
86301	0	IMMUNOASSAY, TUMOR, CA 19-9	Pathology	1.17	$87.62
86304	0	IMMUNOASSAY, TUMOR CA 125	Pathology	1.17	$87.62
86308	0	HETEROPHILE ANTIBODIES	Pathology	0.29	$87.62

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TABLE I. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTOR FOR PATHOLOGY AND LABORATORY CPT CODES WITH TOTAL RVUS ONLY — Continued

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CPT Code	Modifier	CPT Code Description	Physician CPT Code Group	Total RVUs	Conversion Factor
86309	0	HETEROPHILE ANTIBODIES	Pathology	0.36	$87.62
86310	0	HETEROPHILE ANTIBODIES	Pathology	0.42	$87.62
86316	0	IMMUNOASSAY, TUMOR OTHER	Pathology	1.17	$87.62
86317	0	IMMUNOASSAY,INFECTIOUS AGENT	Pathology	0.84	$87.62
86318	0	IMMUNOASSAY,INFECTIOUS AGENT	Pathology	0.73	$87.62
86320	0	SERUM IMMUNOELECTROPHORESIS	Pathology	1.81	$87.62
86325	0	OTHER IMMUNOELECTROPHORESIS	Pathology	1.81	$87.62
86327	0	IMMUNOELECTROPHORESIS ASSAY	Pathology	1.89	$87.62
86329	0	IMMUNODIFFUSION	Pathology	0.79	$87.62
86331	0	IMMUNODIFFUSION OUCHTERLONY	Pathology	0.68	$87.62
86332	0	IMMUNE COMPLEX ASSAY	Pathology	1.37	$87.62
86334	0	IMMUNOFIXATION PROCEDURE	Pathology	1.81	$87.62
86337	0	INSULIN ANTIBODIES	Pathology	1.21	$87.62
86340	0	INTRINSIC FACTOR ANTIBODY	Pathology	0.85	$87.62
86341	0	ISLET CELL ANTIBODY	Pathology	1.11	$87.62
86343	0	LEUKOCYTE HISTAMINE RELEASE	Pathology	0.70	$87.62
86344	0	LEUKOCYTE PHAGOCYTOSIS	Pathology	0.45	$87.62
86353	0	LYMPHOCYTE TRANSFORMATION	Pathology	2.76	$87.62
86359	0	T CELLS, TOTAL COUNT	Pathology	2.13	$87.62
86360	0	T CELL, ABSOLUTE COUNT/RATIO	Pathology	2.65	$87.62
86361	0	T CELL, ABSOLUTE COUNT	Pathology	1.51	$87.62
86378	0	MICROSOMAL ANTIBODY	Pathology	0.62	$87.62
86378	0	MIGRATION INHIBITORY FACTOR	Pathology	1.11	$87.62
86382	0	NEUTRALIZATION TEST, VIRAL	Pathology	0.95	$87.62
86384	0	NITROBLUE TETRAZOLIUM DYE	Pathology	0.64	$87.62
86403	0	PARTICLE AGGLUTINATION TEST	Pathology	0.57	$87.62
86406	0	PARTICLE AGGLUTINATION TEST	Pathology	0.60	$87.62
86430	0	RHEUMATOID FACTOR TEST	Pathology	0.32	$87.62
86431	0	RHEUMATOID FACTOR, QUANT	Pathology	0.32	$87.62
86485	0	SKIN TEST, CANDIDA	Pathology	0.32	$87.62
86586	0	SKIN TEST, UNLISTED	Pathology	0.32	$87.62
86590	0	STREPTOKINASE, ANTIBODY	Pathology	0.62	$87.62
86592	0	BLOOD SEROLOGY, QUALITATIVE	Pathology	0.24	$87.62
86593	0	BLOOD SEROLOGY, QUANTITATIVE	Pathology	0.25	$87.62
86602	0	ANTINOMYCES ANTIBODY	Pathology	0.57	$87.62
86603	0	ADENOVIRUS ANTIBODY	Pathology	0.73	$87.62
86606	0	ASPERGILLUS ANTIBODY	Pathology	0.85	$87.62
86609	0	BACTERIUM ANTIBODY	Pathology	0.73	$87.62
86611	0	BARTONELLA ANTIBODY	Pathology	0.57	$87.62
86612	0	BLASTOMYCES ANTIBODY	Pathology	0.73	$87.62
86615	0	BORDETELLA ANTIBODY	Pathology	0.74	$87.62
86617	0	LYME DISEASE ANTIBODY	Pathology	0.87	$87.62
86618	0	LYME DISEASE ANTIBODY	Pathology	0.96	$87.62
86619	0	BORRELIA ANTIBODY	Pathology	0.75	$87.62
86622	0	BRUCELLA ANTIBODY	Pathology	0.50	$87.62
86625	0	CAMPYLOBACTER ANTIBODY	Pathology	0.74	$87.62
86628	0	CANDIDA ANTIBODY	Pathology	0.68	$87.62
86631	0	CHLAMYDIA ANTIBODY	Pathology	0.67	$87.62
86632	0	CHLAMYDIA IGM ANTIBODY	Pathology	0.72	$87.62
86635	0	COCCIDIOIDES ANTIBODY	Pathology	0.65	$87.62
86638	0	Q FEVER ANTIBODY	Pathology	0.68	$87.62
86641	0	CRYPTOCOCCUS ANTIBODY	Pathology	0.81	$87.62
86644	0	CMV ANTIBODY	Pathology	0.81	$87.62
86645	0	CMV ANTIBODY, IGM	Pathology	0.95	$87.62
86648	0	DIPHTHERIA ANTIBODY	Pathology	0.86	$87.62
86651	0	ENCEPHALITIS ANTIBODY	Pathology	0.74	$87.62
86652	0	ENCEPHALITIS ANTIBODY	Pathology	0.74	$87.62
86653	0	ENCEPHALITIS ANTIBODY	Pathology	0.74	$87.62
86654	0	ENCEPHALITIS ANTIBODY	Pathology	0.74	$87.62
86658	0	ENTEROVIRUS ANTIBODY	Pathology	0.73	$87.62
86663	0	EPSTEIN-BARR ANTIBODY	Pathology	0.74	$87.62
86664	0	EPSTEIN-BARR ANTIBODY	Pathology	0.86	$87.62
86665	0	EPSTEIN-BARR ANTIBODY	Pathology	1.02	$87.62
86666	0	EHRLICHIA ANTIBODY	Pathology	0.57	$87.62

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TABLE I. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTOR FOR PATHOLOGY AND LABORATORY CPT CODES WITH TOTAL RVUS ONLY — Continued

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CPT Code	Modifier	CPT Code Description	Physician CPT Code Group	Total RVUs	Conversion Factor
86668	0	FRANCISELLA TULARENSIS	Pathology	0.59	$87.62
86671	0	FUNGUS ANTIBODY	Pathology	0.69	$87.62
86674	0	GIARDIA LAMBLIA ANTIBODY	Pathology	0.83	$87.62
86677	0	HELICOBACTER PYLORI	Pathology	0.82	$87.62
86682	0	HELMINTH ANTIBODY	Pathology	0.73	$87.62
86683	0	HEMOGLOBIN, FECAL ANTIBODY	Pathology	0.14	$87.62
86684	0	HEMOPHILUS INFLUENZA	Pathology	0.89	$87.62
86687	0	HTLV-I ANTIBODY	Pathology	0.47	$87.62
86688	0	HTLV-II ANTIBODY	Pathology	0.79	$87.62
86689	0	HTLV/HIV CONFIRMATORY TEST	Pathology	1.09	$87.62
86692	0	HEPATITIS, DELTA AGENT	Pathology	0.97	$87.62
86694	0	HERPES SIMPLEX TEST	Pathology	0.81	$87.62
86695	0	HERPES SIMPLEX TEST	Pathology	0.74	$87.62
86696	0	HERPES SIMPLEX TYPE 2	Pathology	1.09	$87.62
86698	0	HISTOPLASMA	Pathology	0.70	$87.62
86701	0	HIV-1	Pathology	0.50	$87.62
86702	0	HIV-2	Pathology	0.76	$87.62
86703	0	HIV-1/HIV-2, SINGLE ASSAY	Pathology	0.77	$87.62
86704	0	HEP B CORE ANTIBODY, TOTAL	Pathology	0.68	$87.62
86705	0	HEP B CORE ANTIBODY, IGM	Pathology	0.66	$87.62
86706	0	HEP B SURFACE ANTIBODY	Pathology	0.61	$87.62
86707	0	HEP BE ANTIBODY	Pathology	0.65	$87.62
86708	0	HEP A ANTIBODY, TOTAL	Pathology	0.70	$87.62
86709	0	HEP A ANTIBODY, IGM	Pathology	0.63	$87.62
86710	0	INFLUENZA VIRUS ANTIBODY	Pathology	0.76	$87.62
86713	0	LEGIONELLA ANTIBODY	Pathology	0.86	$87.62
86717	0	LEISHMANIA ANTIBODY	Pathology	0.69	$87.62
86720	0	LEPTOSPIRA ANTIBODY	Pathology	0.74	$87.62
86723	0	LISTERIA MONOCYTOGENES AB	Pathology	0.74	$87.62
86727	0	LYMPH CHORIOMENINGITIS AB	Pathology	0.73	$87.62
86729	0	LYMPHO VENEREUM ANTIBODY	Pathology	0.67	$87.62
86732	0	MUCORMYCOSIS ANTIBODY	Pathology	0.74	$87.62
86735	0	MUMPS ANTIBODY	Pathology	0.74	$87.62
86738	0	MYCOPLASMA ANTIBODY	Pathology	0.75	$87.62
86741	0	NEISSERIA MENINGITIDIS	Pathology	0.74	$87.62
86744	0	NOCARDIA ANTIBODY	Pathology	0.74	$87.62
86747	0	PARVOVIRUS ANTIBODY	Pathology	0.85	$87.62
86750	0	MALARIA ANTIBODY	Pathology	0.74	$87.62
86753	0	PROTOZOA ANTIBODY NOS	Pathology	0.70	$87.62
86756	0	RESPIRATORY VIRUS ANTIBODY	Pathology	0.73	$87.62
86757	0	RICKETTSIA ANTIBODY	Pathology	1.09	$87.62
86759	0	ROTAVIRUS ANTIBODY	Pathology	0.74	$87.62
86762	0	RUBELLA ANTIBODY	Pathology	0.81	$87.62
86765	0	RUBEOLA ANTIBODY	Pathology	0.73	$87.62
86768	0	SALMONELLA ANTIBODY	Pathology	0.74	$87.62
86771	0	SHIGELLA ANTIBODY	Pathology	0.74	$87.62
86774	0	TETANUS ANTIBODY	Pathology	0.83	$87.62
86777	0	TOXOPLASMA ANTIBODY	Pathology	0.81	$87.62
86778	0	TOXOPLASMA ANTIBODY, IGM	Pathology	0.81	$87.62
86781	0	TREPONEMA PALLIDUM, CONFIRM	Pathology	0.75	$87.62
86784	0	TRICHINELLA ANTIBODY	Pathology	0.71	$87.62
86787	0	VARICELLA-ZOSTER ANTIBODY	Pathology	0.73	$87.62
86790	0	VIRUS ANTIBODY NOS	Pathology	0.73	$87.62
86793	0	YERSINIA ANTIBODY	Pathology	0.74	$87.62
86800	0	THYROGLOBULIN ANTIBODY	Pathology	0.90	$87.62
86803	0	HEPATITIS C AB TEST	Pathology	0.80	$87.62
86804	0	HEP C AB TEST, CONFIRM	Pathology	0.87	$87.62
86805	0	LYMPHOCYTOTOXICITY ASSAY	Pathology	2.95	$87.62
86806	0	LYMPHOCYTOTOXICITY ASSAY	Pathology	2.68	$87.62
86807	0	CYTOTOXIC ANTIBODY SCREENING	Pathology	2.23	$87.62
86808	0	CYTOTOXIC ANTIBODY SCREENING	Pathology	1.67	$87.62
86812	0	HLA TYPING, A, B, OR C	Pathology	1.45	$87.62
86813	0	HLA TYPING, A, B, OR C	Pathology	3.27	$87.62
86816	0	HLA TYPING, DR/DO	Pathology	1.57	$87.62

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TABLE I. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTOR FOR PATHOLOGY AND LABORATORY CPT CODES WITH TOTAL RVUS ONLY — Continued

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CPT Code	Modifier	CPT Code Description	Physician CPT Code Group	Total RVUs	Conversion Factor
86817	0	HLA TYPING, DR/DQ	Pathology	3.63	$87.62
86821	0	LYMPHOCYTE CULTURE, MIXED	Pathology	3.18	$87.62
86822	0	LYMPHOCYTE CULTURE, PRIMED	Pathology	2.06	$87.62
86849	0	IMMUNOLOGY PROCEDURE	Pathology	1.29	$87.62
86850	0	RBC ANTIBODY SCREEN	Pathology	0.45	$87.62
86860	0	RBC ANTIBODY ELUTION	Pathology	0.45	$87.62
86870	0	RBC ANTIBODY IDENTIFICATION	Pathology	0.79	$87.62
86880	0	COOMBS TEST	Pathology	0.30	$87.62
86885	0	COOMBS TEST	Pathology	0.32	$87.62
86886	0	COOMBS TEST	Pathology	0.29	$87.62
86890	0	AUTOLOGOUS BLOOD PROCESS	Pathology	1.79	$87.62
86891	0	AUTOLOGOUS BLOOD, OP SALVAGE	Pathology	2.80	$87.62
86900	0	BLOOD TYPING, ABO	Pathology	0.17	$87.62
86901	0	BLOOD TYPING, RH (D)	Pathology	0.22	$87.62
86903	0	BLOOD TYPING, ANTIGEN SCREEN	Pathology	0.53	$87.62
86904	0	BLOOD TYPING, PATIENT SERUM	Pathology	0.54	$87.62
86905	0	BLOOD TYPING, RBC ANTIGENS	Pathology	0.22	$87.62
86906	0	BLOOD TYPING, RH PHENOTYPE	Pathology	0.44	$87.62
86910	0	BLOOD TYPING, PATERNITY TEST	Pathology	0.49	$87.62
86911	0	BLOOD TYPING, ANTIGEN SYSTEM	Pathology	0.38	$87.62
86915	0	BONE MARROW/STEM CELL PREP	Pathology	2.35	$87.62
86920	0	COMPATIBILITY TEST	Pathology	0.49	$87.62
86921	0	COMPATIBILITY TEST	Pathology	0.45	$87.62
86922	0	COMPATIBILITY TEST	Pathology	0.27	$87.62
86927	0	PLASMA, FRESH FROZEN	Pathology	0.25	$87.62
86930	0	FROZEN BLOOD PREP	Pathology	2.24	$87.62
86931	0	FROZEN BLOOD THAW	Pathology	2.47	$87.62
86932	0	FROZEN BLOOD FREEZE/THAW	Pathology	2.69	$87.62
86940	0	HEMOLYSINS/AGGLUTININS, AUTO	Pathology	0.46	$87.62
86941	0	HEMOLYSINS/AGGLUTININS	Pathology	0.68	$87.62
86945	0	BLOOD PRODUCT/IRRADIATION	Pathology	0.67	$87.62
86950	0	LEUKACYTE TRANSFUSION	Pathology	1.23	$87.62
86965	0	POOLING BLOOD PLATELETS	Pathology	0.31	$87.62
86970	0	RBC PRETREATMENT	Pathology	0.36	$87.62
86971	0	RBC PRETREATMENT	Pathology	0.36	$87.62
86972	0	RBC PRETREATMENT	Pathology	0.34	$87.62
86975	0	RBC PRETREATMENT, SERUM	Pathology	0.22	$87.62
86976	0	RBC PRETREATMENT, SERUM	Pathology	0.18	$87.62
86977	0	RBC PRETREATMENT, SERUM	Pathology	0.22	$87.62
86978	0	RBC PRETREATMENT, SERUM	Pathology	0.49	$87.62
86985	0	SPLIT BLOOD OR PRODUCTS	Pathology	0.47	$87.62
87001	0	SMALL ANIMAL INOCULATION	Pathology	0.75	$87.62
87003	0	SMALL ANIMAL INOCULATION	Pathology	0.95	$87.62
87015	0	SPECIMEN CONCENTRATION	Pathology	0.38	$87.62
87040	0	BLOOD CULTURE FOR BACTERIA	Pathology	0.58	$87.62
87045	0	STOOL CULTURE, BACTERIA	Pathology	0.53	$87.62
87046	0	STOOL CULTR, BACTERIA, EACH	Pathology	0.13	$87.62
87070	0	CULTURE, BACTERIA, OTHER	Pathology	0.49	$87.62
87071	0	CULTURE BACTERI AEROBIC OTHR	Pathology	0.27	$87.62
87073	0	CULTURE BACTERIA ANAEROBIC	Pathology	0.27	$87.62
87075	0	CULTURE BACTERIA ANAEROBIC	Pathology	0.53	$87.62
87076	0	CULTURE ANAEROBE IDENT, EACH	Pathology	0.46	$87.62
87077	0	CULTURE AEROBIC IDENTIFY	Pathology	0.46	$87.62
87081	0	CULTURE SCREEN ONLY	Pathology	0.37	$87.62
87084	0	CULTURE OF SPECIMEN BY KIT	Pathology	0.49	$87.62
87086	0	URINE CULTURE/COLONY COUNT	Pathology	0.46	$87.62
87088	0	URINE BACTERIA CULTURE	Pathology	0.46	$87.52
87101	0	SKIN FUNGI CULTURE	Pathology	0.43	$87.62
87102	0	FUNGUS ISOLATION CULTURE	Pathology	0.47	$87.62
87103	0	BLOOD FUNGUS CULTURE	Pathology	0.51	$87.62
87106	0	FUNGI IDENTIFICATION, YEAST	Pathology	0.58	$87.62
87107	0	FUNGI IDENTIFICATION, MOLD	Pathology	0.58	$87.62
87109	0	MYCOPLASMA	Pathology	0.87	$87.62
87110	0	CHLAMYDIA CULTURE	Pathology	1.10	$87.62

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TABLE I. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTOR FOR PATHOLOGY AND LABORATORY CPT CODES WITH TOTAL RVUS ONLY — Continued

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CPT Code	Modifier	CPT Code Description	Physician CPT Code Group	Total RVUs	Conversion Factor
87116	0	MYCOBACTERIA CULTURE	Pathology	0.61	$87.62
87118	0	MYCOBACTERIC IDENTIFICATION	Pathology	0.62	$87.62
87140	0	CULTUR TYPE IMMUNOFLUORESC	Pathology	0.31	$87.62
87143	0	CULTURE TYPING, GLC/HPLC	Pathology	0.71	$87.62
87147	0	CULTURE TYPE, IMMUNOLOGIC	Pathology	0.29	$87.62
87149	0	CULTURE TYPE, NUCLEIC ACID	Pathology	1.13	$87.62
87152	0	CULTURE TYPE PULSE FIELD GEL	Pathology	0.29	$87.62
87158	0	CULTURE TYPING, ADDED METHOD	Pathology	0.29	$87.62
87164	0	DARK FIELD EXAMINATION	Pathology	1.16	$87.62
87166	0	DARK FIELD EXAMINATION	Pathology	0.64	$87.62
87168	0	MACROSCOPIC EXAM ARTHROPOD	Pathology	0.24	$87.62
87169	0	MACACROSCOPIC EXAM PARASITE	Pathology	0.24	$87.62
87172	0	PINWORM EXAM	Pathology	0.24	$87.62
87176	0	TISSUE HOMOGENIZATION, CULTR	Pathology	0.33	$87.62
87177	0	OVA AND PARASITES SMEARS	Pathology	0.50	$87.62
87181	0	MICROBE SUSCEPTIBLE, DIFFUSE	Pathology	0.27	$87.62
87184	0	MICROBE SUSCEPTIBLE, DISK	Pathology	0.39	$87.62
87185	0	MICROBE SUSCEPTIBLE, ENZYME	Pathology	0.27	$87.62
87186	0	MICROBE SUSCEPTIBLE, MIC	Pathology	0.49	$87.62
87187	0	MICROBE SUSCEPTIBLE, MLC	Pathology	0.58	$87.62
87188	0	MICROBE SUSCEPT, MACROBROTH	Pathology	0.37	$87.62
87190	0	MICROBE SUSCEPT, MYCOBACTERI	Pathology	0.32	$87.62
87197	0	BACTERICIDAL LEVEL, SERUM	Pathology	0.85	$87.62
87205	0	SMEAR, GRAM STAIN	Pathology	0.24	$87.62
87206	0	SMEAR, FLUORESCENT/ACID STAI	Pathology	0.30	$87.62
87207	0	SMEAR, SPECIAL STAIN	Pathology	0.89	$87.62
87210	0	SMEAR, WET MOUNT, SALINE/INK	Pathology	0.24	$87.62
87220	0	TISSUE EXAM FOR FUNGI	Pathology	0.24	$87.62
87230	0	ASSAY, TOXIN OR ANTITOXIN	Pathology	1.11	$87.62
87250	0	VIRUS INOCULATE, EGGS/ANIMAL	Pathology	1.10	$87.62
87252	0	VIRUS INOCULATION, TISSUE	Pathology	1.47	$87.62
87253	0	VIRUS INOCULATE TISSUE, ADDL	Pathology	1.14	$87.62
87254	0	VIRUS INOCULATION, SHELL VIA	Pathology	0.28	$87.62
87260	0	ADENOVIRUS AG, IF	Pathology	0.68	$87.62
87265	0	PERTUSSIS AG, IF	Pathology	0.68	$87.62
87270	0	CHLAMYDIA TRACHOMATIS AG, IF	Pathology	0.68	$87.62
87272	0	CRYPTOSPORIDUM/GARDIA AG, IF	Pathology	0.68	$87.62
87273	0	HERPES SIMPLEX 2, AG, IF	Pathology	0.68	$87.62
87274	0	HERPES SIMPLEX 1, AG, IF	Pathology	0.68	$87.62
87275	0	INFLUENZA B, AG, IF	Pathology	0.68	$87.62
87276	0	INFLUENZA A, AG, IF	Pathology	0.68	$87.62
87277	0	LEGIONELLA MICDADEI, AG, IF	Pathology	0.68	$87.62
87278	0	LEGION PNEUMOPHILIA AG, IF	Pathology	0.68	$87.62
87279	0	PARAINFLUENZA, AG, IF	Pathology	0.68	$87.62
87280	0	RESPIRATORY SYNCYTIAL AG, IF	Pathology	0.68	$87.62
87281	0	PNEUMOCYSTIS CARINII, AG, IF	Pathology	0.68	$87.62
87283	0	RUBEOLA, AG, IF	Pathology	0.68	$87.62
87285	0	TREPONEMA PALLIDUM, AG, IF	Pathology	0.68	$87.62
87290	0	VARICELLA ZOSTER, AG, IF	Pathology	0.68	$87.62
87299	0	ANTIBODY DETECTION, NOS, IF	Pathology	0.68	$87.62
87300	0	AG DETECTION, POLYVAL, IF	Pathology	0.34	$87.62
87301	0	ADENOVIRUS AG, EIA	Pathology	0.68	$87.62
87320	0	CHYLMD TRACH AG, EIA	Pathology	0.68	$87.62
87324	0	CLOSTRIDIUM AG, EIA	Pathology	0.68	$87.62
87327	0	CRYPTOCOCCUS NEOFORM AG, EIA	Pathology	0.68	$87.62
87328	0	CRYPTOSPOR AG, EIA	Pathology	0.68	$87.62
87332	0	CYTOMEGALOVIRUS AG, EIA	Pathology	0.68	$87.62
87335	0	E COLI 0157 AG, EIA	Pathology	0.68	$87.62
87336	0	ENTAMOEB HIST DISPR, AG, EIA	Pathology	0.68	$87.62
87337	0	ENTAMOEB HIST GROUP, AG, EIA	Pathology	0.68	$87.62
87339	0	HPYLORI AG, EIA	Pathology	0.68	$87.62
87340	0	HEPATITIS B SURFACE AG, EIA	Pathology	0.58	$87.62
87341	0	HEPATITIS B SURFACE, AG, EIA	Pathology	0.58	$87.62
87350	0	HEPATITIS BE AG, EIA	Pathology	0.65	$87.62

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CPT Code	Modifier	CPT Code Description	Physician CPT Code Group	Total RVUs	Conversion Factor
87380	0	HEPATITIS DELTA AG, EIA	Pathology	0.93	$87.62
87385	0	HISTOPLASMA CAPSUL AG, EIA	Pathology	0.68	$87.62
87390	0	HIV-1 AG, EIA	Pathology	0.99	$87.62
87391	0	HIV-2 AG, EIA	Pathology	0.99	$87.62
87400	0	INFLUENZA A/B, AG, EIA	Pathology	0.34	$87.62
87420	0	RESP SYNCYTIAL AG, EIA	Pathology	0.68	$87.62
87425	0	ROTAVIRUS AG, EIA	Pathology	0.68	$87.62
87427	0	SHIGA-LIKE TOXIN AG, EIA	Pathology	0.68	$87.62
87430	0	STREP A AG, EIA	Pathology	0.68	$87.62
87449	0	AG DETECT NOS, EIA, MULT	Pathology	0.68	$87.62
87450	0	AG DETECT NOS, EIA, SINGLE	Pathology	0.54	$87.62
87451	0	AG DETECT POLYVAL, EIA, MULT	Pathology	0.54	$87.62
87470	0	BARTONELLA, DNA, DIR PROBE	Pathology	1.13	$87.62
87471	0	BARTONELLA, DNA, AMP PROBE	Pathology	1.98	$87.62
87472	0	BARTONELLA, DNA, QUANT	Pathology	2.41	$87.62
87475	0	LYME DIS, DNA, DIR PROBE	Pathology	1.13	$87.62
87476	0	LYME DIS, DNA, AMP PROBE	Pathology	1.98	$87.62
87477	0	LYME DIS, DNA, QUANT	Pathology	2.41	$87.62
87480	0	CANDIDA, DNA, DIR PROBE	Pathology	1.13	$87.62
87481	0	CANDIDA, DNA, AMP PROBE	Pathology	1.98	$87.62
87482	0	CANDIDA, DNA, QUANT	Pathology	2.35	$87.62
87485	0	CHYLMD PNEUM, DNA, DIR PROBE	Pathology	1.13	$87.62
87486	0	CHYLMD PNEUM, DNA, AMP PROBE	Pathology	1.98	$87.62
87487	0	CHYLMD PNEUM, DNA, QUANT	Pathology	2.41	$87.62
87490	0	CHYLMD TRACH, DNA, DIR PROBE	Pathology	1.13	$87.62
87491	0	CHYLMD TRACH, DNA, AMP PROBE	Pathology	1.98	$87.62
87492	0	CHYLMD TRACH, DNA, QUANT	Pathology	1.97	$87.62
87495	0	CYTOMEG, DNA, DIR PROBE	Pathology	1.13	$87.62
87496	0	CYTOMEG, DNA, AMP PROBE	Pathology	1.98	$87.62
87497	0	CYTOMEG, DNA, QUANT	Pathology	2.41	$87.62
87510	0	GARDNER VAG, DNA, DIR PROBE	Pathology	1.13	$87.62
87511	0	GARDNER VAG, DNA, AMP PROBE	Pathology	1.98	$87.62
87512	0	GARDNER VAG, DNA, QUANT	Pathology	2.35	$87.62
87515	0	HEPATITIS B, DNA, DIR PROBE	Pathology	1.13	$87.62
87516	0	HEPATITIS B , DNA, AMP PROBE	Pathology	1.98	$87.62
87517	0	HEPATITIS B , DNA, QUANT	Pathology	2.41	$87.62
87520	0	HEPATITIS C , RNA, DIR PROBE	Pathology	1.13	$87.62
87521	0	HEPATITIS C , RNA, AMP PROBE	Pathology	1.98	$87.62
87522	0	HEPATITIS C, RNA, QUANT	Pathology	2.41	$87.62
87525	0	HEPATITIS G , DNA, DIR PROBE	Pathology	1.13	$87.62
87526	0	HEPATITIS G, DNA, AMP PROBE	Pathology	1.98	$87.62
87527	0	HEPATITIS G, DNA, QUANT	Pathology	2.35	$87.62
87528	0	HSV, DNA, DIR PROBE	Pathology	1.13	$87.62
87529	0	HSV, DNA, AMP PROBE	Pathology	1.98	$87.62
87530	0	HSV, DNA, QUANT	Pathology	2.41	$87.62
87531	0	HHV-6, DNA, DIR PROBE	Pathology	1.13	$87.62
87532	0	HHV-6, DNA, AMP PROBE	Pathology	1.98	$87.62
87533	0	HHV-6, DNA, QUANT	Pathology	2.35	$87.62
87534	0	HIV-1, DNA, DIR PROBE	Pathology	1.13	$87.62
87535	0	HIV-1, DNA, AMP PROBE	Pathology	1.98	$87.62
87536	0	HIV-1, DNA, QUANT	Pathology	4.80	$87.62
87537	0	HIV-2, DNA, DIR PROBE	Pathology	1.13	$87.62
87538	0	HIV-2, DNA, AMP PROBE	Pathology	1.98	$87.62
87539	0	HIV-2, DNA, QUANT	Pathology	2.41	$87.62
87540	0	LEGION PNEUMO, DNA, DIR PROB	Pathology	1.13	$87.62
87541	0	LEGION PNEUMO, DNA, AMP PROB	Pathology	1.98	$87.62
87542	0	LEGION PNEUMO, DNA, QUANT	Pathology	2.35	$87.62
87550	0	MYCOBACTERIA, DNA, DIR PROBE	Pathology	1.13	$87.62
87551	0	MYCOBACTERIA, DNA, AMP PROBE	Pathology	1.98	$87.62
87552	0	MYCOBACTERIA, DNA, QUANT	Pathology	2.41	$87.62
87555	0	M.TUBERCULO, DNA, DIR PROBE	Pathology	1.13	$87.62
87556	0	M.TUBERCULO, DNA, AMP PROBE	Pathology	1.98	$87.62
87557	0	M.TUBERCULO, DNA, QUANT	Pathology	2.41	$87.62
87560	0	M.AVIUM-INTRA, DNA, DIR PROB	Pathology	1.13	$87.62

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TABLE I. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTOR FOR PATHOLOGY AND LABORATORY CPT CODES WITH TOTAL RVUS ONLY — Continued

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CPT Code	Modifier	CPT Code Description	Physician CPT Code Group	Total RVUs	Conversion Factor
87561	0	M.AVIUM-INTRA, DNA, AMP PROB	Pathology	1.98	$87.62
87562	0	M.AVIUM-INTRA, DNA, QUANT	Pathology	2.41	$87.62
87580	0	M.PNEUMON, DNA, DIR PROBE	Pathology	1.13	$87.62
87581	0	M.PNEUMON, DNA, AMP PROBE	Pathology	1.98	$87.62
87582	0	M.PNEUMON, DNA, QUANT	Pathology	2.35	$87.62
87590	0	N.GONORRHOEAE, DNA, DIR PROB	Pathology	1.13	$87.62
87591	0	N.GONORRHOEAE, DNA, AMP PROB	Pathology	1.98	$87.62
87592	0	N.GONORRHOEAE, DNA, QUANT	Pathology	2.41	$87.62
87620	0	HPV, DNA, DIR PROBE	Pathology	1.13	$87.62
87621	0	HPV, DNA, AMP PROBE	Pathology	1.98	$87.62
87622	0	HPV, DNA, QUANT	Pathology	2.35	$87.62
87650	0	STREP A, DNA, DIR PROBE	Pathology	1.13	$87.62
87651	0	STREP A, DNA, AMP PROBE	Pathology	1.98	$87.62
87652	0	STREP A, DNA, QUANT	Pathology	2.35	$87.62
87797	0	DETECT AGENT NOS, DNA, DIR	Pathology	1.13	$87.62
87798	0	DETECT AGENT NOS, DNA, AMP	Pathology	1.98	$87.62
87799	0	DETECT AGENT NOS, DNA, QUANT	Pathology	2.41	$87.62
87800	0	DETECT AGNT MULT, DNA, DIREC	Pathology	1.13	$87.62
87801	0	DETECT AGNT MULT, DNA, AMPLI	Pathology	1.98	$87.62
87810	0	CHYLMD TRACH ASSAY W/OPTIC	Pathology	0.68	$87.62
87850	0	N. GONORRHOEAE ASSAY W/OPTIC	Pathology	0.68	$87.62
87880	0	STREP A ASSAY W/OPTIC	Pathology	0.68	$87.62
87899	0	AGENT NOS ASSAY W/OPTIC	Pathology	0.68	$87.62
87901	0	GENOTYPE, DNA, HIV REVERSE T	Pathology	14.51	$87.62
87903	0	PHENOTYPE, DNA HIV W/CULTURE	Pathology	27.54	$87.62
87904	0	PHENOTYPE, DNA HIV W/CLT ADD	Pathology	1.47	$87.62
88000	0	AUTOPSY (NECROPSY), GROSS	Pathology	6.08	$87.62
88005	0	AUTOPSY (NECROPSY), GROSS	Pathology	6.75	$87.62
88007	0	AUTOPSY (NECROPSY), GROSS	Pathology	7.43	$87.62
88012	0	AUTOPSY (NECROPSY), GROSS	Pathology	5.59	$87.62
88014	0	AUTOPSY (NECROPSY), GROSS	Pathology	5.59	$87.62
88016	0	AUTOPSY (NECROPSY), GROSS	Pathology	6.80	$87.62
88020	0	AUTOPSY (NECROPSY), COMPLETE	Pathology	8.73	$87.62
88025	0	AUTOPSY (NECROPSY), COMPLETE	Pathology	9.40	$87.62
88027	0	AUTOPSY (NECROPSY), COMPLETE	Pathology	10.08	$87.62
88028	0	AUTOPSY (NECROPSY), COMPLETE	Pathology	5.59	$87.62
88029	0	AUTOPSY (NECROPSY), COMPLETE	Pathology	5.59	$87.62
88036	0	LIMITED AUTOPSY	Pathology	3.62	$87.62
88037	0	LIMITED AUTOPSY	Pathology	2.65	$87.62
88040	0	FORENSIC AUTOPSY (NECROPSY)	Pathology	14.47	$87.62
88045	0	CORONER'S AUTOPSY (NECROPSY)	Pathology	1.21	$87.62
88130	0	SEX CHROMATIN IDENTIFICATION	Pathology	0.85	$87.62
88140	0	SEX CHROMATIN IDENTIFICATION	Pathology	0.45	$87.62
88142	0	CYTOPATH, C/V, THIN LAYER	Pathology	0.41	$87.62
88143	0	CYTOPATH C/V THIN LAYER REDO	Pathology	0.45	$87.62
88144	0	CYTOPATH, C/V THIN LYR REDO	Pathology	0.43	$87.62
88145	0	CYTOPATH, C/V THIN LYR SEL	Pathology	0.47	$87.62
88147	0	CYTOPATH, C/V, AUTOMATED	Pathology	0.43	$87.62
88148	0	CYTOPATH, C/V, AUTO RESCREEN	Pathology	0.45	$87.62
88150	0	CYTOPATH, C/V, MANUAL	Pathology	0.29	$87.62
88152	0	CYTOPATH, C/V, AUTO REDO	Pathology	0.29	$87.62
88153	0	CYTOPATH, C/V, REDO	Pathology	0.29	$87.62
88154	0	CYTOPATH, C/V, SELECT	Pathology	0.29	$87.62
88155	0	CYTOPATH, C/V, INDEX ADD-ON	Pathology	0.34	$87.62
88164	0	CYTOPATH TBS, C/V, MANUAL	Pathology	0.29	$87.62
88165	0	CYTOPATH TBS, C/V, REDO	Pathology	0.29	$87.62
88166	0	CYTOPATH TBS, C/V, AUTO REDO	Pathology	0.29	$87.62
88167	0	CYTOPATH TBS, C/V, SELECT	Pathology	0.29	$87.62
88230	0	TISSUE CULTURE, LYMPHOCYTE	Pathology	6.57	$87.62
88233	0	TISSUE CULTURE, SKIN/BIOPSY	Pathology	7.93	$87.62
88235	0	TISSUE CULTURE, PLACENTA	Pathology	8.30	$87.62
88237	0	TISSUE CULTURE, BONE MARROW	Pathology	7.12	$87.62
88239	0	TISSUE CULTURE, TUMOR	Pathology	8.31	$87.62
88240	0	CELL CRYOPRESERVE/STORAGE	Pathology	0.57	$87.62

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TABLE I. — PHYSICIAN NATIONWIDE RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTOR FOR PATHOLOGY AND LABORATORY CPT CODES WITH TOTAL RVUS ONLY — Continued

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CPT Code	Modifier	CPT Code Description	Physician CPT Code Group	Total RVUs	Conversion Factor
88241	0	FROZEN CELL PREPARATION	Pathology	0.57	$87.62
88245	0	CHROMOSOME ANALYSIS, 20-25	Pathology	8.39	$87.62
88248	0	CHROMOSOME ANALYSIS, 50-100	Pathology	9.76	$87.62
88249	0	CHROMOSOME ANALYSIS, 100	Pathology	9.76	$87.62
88261	0	CHROMOSOME ANALYSIS, 5	Pathology	9.96	$87.62
88262	0	CHROMOSOME ANALYSIS, 15-20	Pathology	7.02	$87.62
88263	0	CHROMOSOME ANALYSIS, 45	Pathology	8.47	$87.62
88264	0	CHROMOSOME ANALYSIS, 20-25	Pathology	7.02	$87.62
88267	0	CHROMOSOME ANALYS, PLACENTA	Pathology	10.13	$87.62
88269	0	CHROMOSOME ANALYS, AMNIOTIC	Pathology	9.37	$87.62
88271	0	CYTOGENETICS, DNA PROBE	Pathology	1.21	$87.62
88272	0	CYTOGENETICS, 3-5	Pathology	1.51	$87.62
88273	0	CYTOGENETICS, 10-30	Pathology	1.81	$87.62
88274	0	CYTOGENETICS, 25-99	Pathology	1.96	$87.62
88275	0	CYTOGENETICS, 100-300	Pathology	2.26	$87.62
88280	0	CHROMOSOME KARYOTYPE STUDY	Pathology	1.41	$87.62
88283	0	CHROMOSOME BANDING STUDY	Pathology	3.87	$87.62
88285	0	CHROMOSOME COUNT, ADDITIONAL	Pathology	1.07	$87.62
88289	0	CHROMOSOME STUDY, ADDITIONAL	Pathology	1.94	$87.62
88371	0	PROTEIN, WESTERN BLOT TISSUE	Pathology	1.78	$87.62
88372	0	PROTEIN ANALYSIS W/PROBE	Pathology	1.82	$87.62
88400	0	BILIRUBIN TOTAL TRANSCUT	Pathology	0.14	$87.62
89050	0	BODY FLUID CELL COUNT	Pathology	0.27	$87.62
89051	0	BODY FLUID CELL COUNT	Pathology	0.31	$87.62
89060	0	EXAM,SYNOVIAL FLUID CRYSTALS	Pathology	0.95	$87.62
89125	0	SPECIMEN FAT STAIN	Pathology	0.24	$87.62
89160	0	EXAM FECES FOR MEAT FIBERS	Pathology	0.21	$87.62
89190	0	NASAL SMEAR FOR EOSINOPHILS	Pathology	0.27	$87.62
89250	0	FERTILIZATION OF OOCYTE	Pathology	14.86	$87.62
89300	0	SEMEN ANALYSIS	Pathology	0.50	$87.62
89310	0	SEMEN ANALYSIS	Pathology	0.48	$87.62
89320	0	SEMEN ANALYSIS	Pathology	0.68	$87.62
89321	0	SEMEN ANALYSIS	Pathology	0.68	$87.62
89325	0	SPERM ANTIBODY TEST	Pathology	0.60	$87.62
89329	0	SPERM EVALUATION TEST	Pathology	1.18	$87.62
89330	0	EVALUATION, CERVICAL MUCUS	Pathology	0.56	$87.62
89355	0	EXAM FECES FOR STARCH	Pathology	0.19	$87.62
89365	0	WATER LOAD TEST	Pathology	0.31	$87.62

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TABLE J. — PHYSICIAN GAAFS (GEOGRAPHIC AREA ADJUSTMENT FACTORS) FOR RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS; BY VA FACILITY LOCATION

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| VA Facility Location | HVU GAAFs | | | Conversion Factor GAAFs By Physician CPT Code Group | | |

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TABLE J. — PHYSICIAN GAAFs (GEOGRAPHIC AREA ADJUSTMENT FACTORS) FOR RVUs AND CONVERSION FACTORS; BY VA FACILITY LOCATION — Continued

Conversion Factor GAAFs By Physician CPT Code Group

| VA Facility Location | RVU GAAFs | | |

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TABLE J. — PHYSICIAN GAAFs (GEOGRAPHIC AREA ADJUSTMENT FACTORS) FOR RVUs
(RELATIVE VALUE UNITS) AND CONVERSION FACTORS; BY VA FACILITY LOCATION — Continued

Conversion Factor GAAFs By Physician CPT Code Group

VA Facility Location	RVU GAAFs			Conversion Factor GAAFs																
	Work Expense RVUs	Practice Expense RVUs	Total RVUs Only	Inpatient Visits	Office/Home/ Urgent Care Visits	Therapeutic Injections	Allergy Testing	Allergy Immuno-therapy	Misc. Medical	ER Visits & Observation Care	Consults	Hearing/ Speech Exams	Physical Exams	Vision Exams	Well Baby Exams	Immunizations	Cardio-vascular	Physical Medicine	Pulmonary	Non-Diagnostic Radiology
KAILUA KONA, HI	0.997	1.154	1.080	1.18	1.05	0.72	0.71	0.70	0.71	1.31	1.06	0.83	0.93	0.90	0.91	0.91	0.97	0.97	0.87	0.78
LIHUE, HI	0.997	1.154	1.080	1.16	1.05	0.72	0.71	0.70	0.71	1.31	1.06	0.83	0.93	0.90	0.91	0.91	0.97	0.97	0.87	0.78
HONOLULU, HI	0.960	1.087	1.030	1.08	1.00	0.68	0.67	0.66	0.67	1.23	1.00	0.78	0.87	0.85	0.86	0.86	0.91	0.91	0.82	0.74
BOISE, ID	0.960	1.087	1.030	1.05	1.07	1.05	0.82	0.77	1.02	1.99	1.13	0.95	1.01	0.90	0.91	0.91	0.96	0.96	0.87	0.78
LEWISTON, ID	0.960	0.887	0.920	0.94	1.03	0.81	0.94	0.91	0.97	1.03	0.95	0.83	0.92	0.90	0.91	0.91	0.97	0.97	0.87	0.78
POCATELLO, ID	0.960	0.887	0.920	0.98	1.01	0.92	0.99	0.95	1.02	1.25	1.03	0.90	0.98	0.95	0.96	0.96	0.98	0.98	0.87	0.78
TWIN FALLS, ID	0.960	0.887	0.920	0.94	1.03	0.91	0.94	0.91	0.97	1.11	0.95	0.83	0.92	0.90	0.91	0.91	0.97	0.97	0.87	0.78
ALBANY, NY	0.963	0.928	0.950	0.98	1.04	0.90	0.97	0.94	1.00	1.27	1.00	0.87	0.96	0.93	0.94	0.94	1.00	1.00	0.90	0.81
BELLEVILLE, IL	0.968	0.928	0.950	0.85	0.97	0.77	0.94	0.91	0.97	1.04	0.94	0.83	0.92	0.90	0.91	0.91	0.97	0.97	0.87	0.78
CHICAGO HEIGHTS, IL	1.006	1.069	1.040	1.03	0.97	1.07	0.94	1.04	1.03	1.14	0.98	0.87	0.96	0.93	0.94	0.94	1.00	1.00	0.90	0.81
CHICAGO WOODLAWN, IL	1.027	1.090	1.060	1.14	1.08	1.32	1.23	0.94	1.13	1.18	1.06	0.94	1.03	0.99	1.00	1.00	1.06	1.06	0.94	0.84
CHICAGO, IL	1.027	1.090	1.060	1.14	1.08	1.32	1.23	0.94	1.13	1.18	1.06	0.94	1.03	0.99	1.00	1.00	1.06	1.06	0.94	0.84
DANVILLE, IL	0.964	0.888	0.920	1.20	1.19	0.90	1.27	0.94	1.18	1.49	1.09	0.90	1.00	0.96	0.97	0.97	1.03	1.03	0.91	0.82
DES PLAINES, IL	0.964	0.888	0.920	0.98	1.06	0.96	1.06	0.94	1.03	1.14	0.98	0.87	0.96	0.93	0.94	0.94	1.00	1.00	0.90	0.81
EFFINGHAM, IL	0.964	0.888	0.920	0.98	1.06	0.96	1.06	0.94	1.03	1.14	0.98	0.87	0.96	0.93	0.94	0.94	1.00	1.00	0.90	0.81
ELGIN, IL	1.027	1.090	1.060	1.06	0.99	1.06	1.07	0.90	1.00	1.06	0.99	0.92	0.98	0.95	0.95	0.95	1.00	1.00	0.90	0.81
EVANSTON, IL	1.027	1.090	1.060	1.06	0.99	1.06	1.07	0.90	1.00	1.06	0.99	0.92	0.98	0.95	0.95	0.95	1.00	1.00	0.90	0.81
GALESBURG, IL	0.964	0.888	0.920	0.98	0.98	0.82	1.06	0.94	1.05	1.13	0.95	0.83	0.92	0.90	0.91	0.91	0.97	0.97	0.87	0.78
QUINCE, IL	0.964	0.888	0.920	0.98	1.05	1.10	1.13	0.94	1.03	1.31	1.05	0.83	0.92	0.90	0.91	0.91	0.97	0.97	0.87	0.78
HOMEWOOD, IL	1.006	1.069	1.040	1.09	1.05	1.10	1.04	0.96	1.03	1.15	0.98	0.87	0.96	0.93	0.94	0.94	1.00	1.00	0.90	0.81
JOLIET, IL	1.006	1.069	1.040	1.03	0.97	1.07	0.94	1.04	1.03	1.14	0.98	0.87	0.96	0.93	0.94	0.94	1.00	1.00	0.90	0.81
LA SALLE, IL	0.964	0.888	0.920	0.98	0.98	0.82	1.08	0.94	1.05	1.13	0.95	0.83	0.92	0.90	0.91	0.91	0.97	0.97	0.87	0.78
MANTENO, IL	0.964	0.888	0.920	0.93	0.93	0.95	0.97	0.85	1.01	0.99	0.90	0.78	0.85	0.83	0.84	0.84	0.90	0.90	0.81	0.73
MARION, IL	0.964	0.888	0.920	0.98	0.98	0.86	1.00	0.88	0.95	0.89	0.94	0.83	0.92	0.90	0.91	0.91	0.97	0.97	0.87	0.78
MOUNT VERNON, IL	0.964	0.888	0.920	0.98	1.05	1.00	1.10	0.94	1.03	1.13	0.98	0.87	0.96	0.93	0.94	0.94	1.00	1.00	0.90	0.81
NORTH CHICAGO, IL	1.006	1.069	1.040	1.09	1.05	1.10	1.04	0.96	1.03	1.15	0.98	0.87	0.96	0.93	0.94	0.94	1.00	1.00	0.90	0.81
OAK PARK, IL	1.027	1.090	1.060	1.06	0.99	1.06	1.07	0.90	1.00	1.06	0.99	0.92	0.98	0.95	0.95	0.95	1.00	1.00	0.90	0.81
PEORIA, IL	0.964	0.888	0.920	0.93	0.97	0.94	1.20	0.90	1.02	1.31	1.05	0.83	0.92	0.90	0.91	0.91	0.97	0.97	0.87	0.78
QUINCY, IL	0.964	0.888	0.920	1.02	0.99	0.86	0.79	0.84	0.86	1.04	0.90	0.78	0.85	0.83	0.84	0.84	0.90	0.90	0.81	0.73
ROCK ISLAND, IL	0.964	0.888	0.920	1.09	1.11	1.07	1.43	1.25	1.14	1.02	1.10	0.90	1.00	0.96	0.97	0.97	1.03	1.03	0.91	0.82
SPRINGFIELD, IL	0.964	0.888	0.920	1.19	1.11	1.07	1.43	1.25	1.14	1.02	1.10	0.90	1.00	0.96	0.97	0.97	1.03	1.03	0.91	0.82
BLOOMINGTON, IN	0.981	0.919	0.950	0.95	0.90	0.82	1.01	0.83	0.99	0.92	0.94	0.83	0.92	0.90	0.91	0.91	0.97	0.97	0.87	0.78
CROWN POINT, IN	0.981	0.919	0.950	0.98	0.93	1.21	1.18	1.01	1.02	0.99	0.98	0.83	0.92	0.90	0.91	0.91	0.97	0.97	0.87	0.78
EVANSVILLE, IN	0.981	0.919	0.950	0.97	0.92	0.96	1.01	0.89	1.02	1.04	0.98	0.87	0.96	0.93	0.94	0.94	1.00	1.00	0.90	0.81
FORT WAYNE, IN	0.981	0.919	0.950	1.03	0.93	1.08	0.98	0.91	1.01	1.03	0.98	0.87	0.96	0.93	0.94	0.94	1.00	1.00	0.90	0.81
HIGHLAND, IN	0.981	0.919	0.950	1.05	0.89	1.02	1.28	0.94	1.11	1.04	0.98	0.87	0.96	0.93	0.94	0.94	1.00	1.00	0.90	0.81
LAFAYETTE, IN	0.981	0.919	0.950	1.05	0.89	1.02	1.28	0.94	1.11	1.04	0.98	0.87	0.96	0.93	0.94	0.94	1.00	1.00	0.90	0.81
MARION, IN	0.981	0.919	0.950	0.98	0.93	1.21	1.18	1.01	1.02	0.99	0.98	0.83	0.92	0.90	0.91	0.91	0.97	0.97	0.87	0.78
MUNCIE/ANDERSON, IN	0.981	0.919	0.950	0.98	0.93	1.21	1.18	1.01	1.02	0.99	0.98	0.83	0.92	0.90	0.91	0.91	0.97	0.97	0.87	0.78
NEW ALBANY, IN	0.981	0.919	0.950	0.95	0.90	0.82	0.81	0.83	0.99	0.92	0.94	0.83	0.92	0.90	0.91	0.91	0.97	0.97	0.87	0.78
RICHMOND, IN	0.981	0.919	0.950	0.98	0.93	1.21	1.18	1.01	1.02	0.99	0.98	0.83	0.92	0.90	0.91	0.91	0.97	0.97	0.87	0.78
SOUTH BEND, IN	0.981	0.919	0.950	1.04	0.93	1.22	1.19	1.01	1.02	0.99	0.98	0.83	0.92	0.90	0.91	0.91	0.97	0.97	0.87	0.78
TERRE HAUTE, IN	0.981	0.919	0.950	0.95	0.90	0.82	0.81	0.83	0.99	0.92	0.94	0.83	0.92	0.90	0.91	0.91	0.97	0.97	0.87	0.78
BETTENDORF, IA	0.959	0.879	0.910	1.03	1.02	0.81	1.01	0.90	0.96	0.96	0.96	0.85	0.85	0.83	0.84	0.84	0.90	0.90	0.81	0.73
DES MOINES, IA	0.959	0.879	0.910	1.03	1.02	0.81	1.01	0.90	0.96	0.96	0.96	0.85	0.85	0.83	0.84	0.84	0.90	0.90	0.81	0.73
DUBUQUE, IA	0.959	0.879	0.910	0.95	0.95	0.79	1.09	0.94	1.04	1.10	0.98	0.87	0.96	0.93	0.94	0.94	1.00	1.00	0.90	0.81
IOWA CITY, IA	0.959	0.879	0.910	1.01	0.91	0.81	0.94	0.92	0.95	0.98	0.98	0.87	0.96	0.93	0.94	0.94	1.00	1.00	0.90	0.81
KNOXVILLE, IA	0.959	0.879	0.910	1.03	1.02	0.81	1.01	0.90	0.96	0.96	0.96	0.85	0.85	0.83	0.84	0.84	0.90	0.90	0.81	0.73
MARSHALLTOWN, IA	0.959	0.879	0.910	0.95	0.95	0.79	1.09	0.94	1.04	1.10	0.98	0.87	0.96	0.93	0.94	0.94	1.00	1.00	0.90	0.81
MASON CITY, IA	0.959	0.879	0.910	0.95	0.95	0.79	1.09	0.94	1.04	1.10	0.98	0.87	0.96	0.93	0.94	0.94	1.00	1.00	0.90	0.81
OTTUMWA, IA	0.959	0.879	0.910	0.95	0.95	0.79	1.09	0.94	1.04	1.10	0.98	0.87	0.96	0.93	0.94	0.94	1.00	1.00	0.90	0.81
SIOUX CITY, IA	0.959	0.879	0.910	0.98	0.93	0.96	1.03	0.90	0.99	0.99	0.98	0.87	0.96	0.93	0.94	0.94	1.00	1.00	0.90	0.81
WATERLOO, IA	0.959	0.879	0.910	0.95	0.95	0.79	1.03	0.90	0.96	0.96	0.96	0.85	0.85	0.83	0.84	0.84	0.90	0.90	0.81	0.73
ABILENE, KS	0.963	0.897	0.930	0.97	0.88	0.85	1.00	0.84	0.93	0.93	0.94	0.83	0.92	0.90	0.91	0.91	0.97	0.97	0.87	0.78
CHANUTE, KS	0.963	0.897	0.930	0.88	0.84	0.70	0.79	0.71	0.91	0.92	0.90	0.78	0.85	0.83	0.84	0.84	0.90	0.90	0.81	0.73
DODGE CITY, KS	0.963	0.897	0.930	0.87	0.88	0.85	1.00	0.84	0.93	0.93	0.94	0.83	0.92	0.90	0.91	0.91	0.97	0.97	0.87	0.78
EMPORIA, KS	0.963	0.897	0.930	0.88	0.84	0.70	0.79	0.71	0.91	0.92	0.90	0.78	0.85	0.83	0.84	0.84	0.90	0.90	0.81	0.73
FORT RILEY, KS	0.963	0.897	0.930	0.88	0.92	0.74	1.03	0.84	0.93	0.93	0.94	0.83	0.92	0.90	0.91	0.91	0.97	0.97	0.87	0.78

TABLE J. — PHYSICIAN GAAFs (GEOGRAPHIC AREA ADJUSTMENT FACTORS) FOR RVUs
(RELATIVE VALUE UNITS) AND CONVERSION FACTORS; BY VA FACILITY LOCATION — Continued

Conversion Factor GAAFs By Physician CPT Code Group

VA Facility Location	RVU GAAFs			Conversion Factor GAAFs																
	Work Expense RVUs	Practice Expense RVUs	Total RVUs Only	Inpatient Visits	Office/Home/ Urgent Care Visits	Therapeutic Injections	Allergy Testing	Allergy Immuno-therapy	Misc. Medical	ER Visits & Observation Care	Consults	Hearing/ Speech Exams	Physical Exams	Vision Exams	Well Baby Exams	Immunizations	Cardio-vascular	Physical Medicine	Pulmonary	Non-Diagnostic Radiology
GARNETT, KS	0.963	0.897	0.930	0.91	0.91	0.96	1.15	0.95	0.97	1.06	0.95	0.92	0.94	0.90	0.91	0.91	0.97	0.97	0.87	0.84
HAYS, KS	0.963	0.897	0.930	0.87	0.88	0.85	1.00	0.84	0.93	0.93	0.94	0.83	0.92	0.90	0.91	0.91	0.97	0.97	0.87	0.78
HOLTON, KS	0.963	0.897	0.930	0.88	0.92	0.74	1.03	0.84	0.93	0.93	0.94	0.83	0.92	0.90	0.91	0.91	0.97	0.97	0.87	0.78
JUNCTION CITY, KS	0.963	0.897	0.930	0.91	0.91	0.96	1.15	0.95	0.97	1.06	0.95	0.92	0.94	0.90	0.91	0.91	0.97	0.97	0.87	0.78
KANSAS CITY, KS	0.963	0.897	0.930	0.91	0.91	0.96	1.15	0.95	0.97	1.06	0.95	0.92	0.94	0.90	0.91	0.91	0.97	0.97	0.87	0.78
LAWRENCE, KS	0.963	0.897	0.930	0.91	0.91	0.96	1.15	0.95	0.97	1.06	0.95	0.92	0.94	0.90	0.91	0.91	0.97	0.97	0.87	0.78
LEAVENWORTH, KS	0.963	0.897	0.930	0.91	0.91	0.96	1.15	0.95	0.97	1.06	0.95	0.92	0.94	0.90	0.91	0.91	0.97	0.97	0.87	0.78
LIBERAL, KS	0.963	0.897	0.930	0.87	0.88	0.85	1.00	0.84	0.93	0.93	0.94	0.83	0.92	0.90	0.91	0.91	0.97	0.97	0.87	0.78
PARSONS, KS	0.963	0.897	0.930	0.88	0.84	0.70	0.79	0.71	0.91	0.92	0.90	0.78	0.85	0.83	0.84	0.84	0.90	0.90	0.81	0.73
RUSSELL, KS	0.963	0.897	0.930	0.87	0.88	0.85	1.00	0.84	0.93	0.93	0.94	0.83	0.92	0.90	0.91	0.91	0.97	0.97	0.87	0.78
SENECA, KS	0.963	0.897	0.930	0.92	0.92	0.74	1.03	1.01	0.96	0.96	0.96	0.85	0.85	0.83	0.84	0.84	0.90	0.90	0.81	0.73
TOPEKA, KS	0.963	0.897	0.930	0.88	0.92	0.74	1.03	1.01	0.96	0.96	0.96	0.85	0.85	0.83	0.84	0.84	0.90	0.90	0.81	0.73
WICHITA, KS	0.963	0.897	0.930	0.93	0.96	0.87	1.17	0.85	1.00	0.97	0.97	0.85	0.85	0.83	0.84	0.84	0.90	0.90	0.81	0.73
BOWLING GREEN, KY	0.970	0.870	0.910	0.91	0.91	0.96	1.15	0.95	0.97	1.06	0.95	0.92	0.94	0.90	0.91	0.91	0.97	0.97	0.87	0.78
FORT KNOX, KY	0.970	0.870	0.910	1.02	0.99	1.07	0.84	0.77	1.06	0.96	0.96	0.85	0.85	0.83	0.84	0.84	0.90	0.90	0.81	0.73
HOPKINSVILLE, KY	0.970	0.870	0.910	0.92	0.94	0.83	1.01	0.74	0.96	0.96	0.96	0.85	0.85	0.83	0.84	0.84	0.90	0.90	0.81	0.73
LEXINGTON, KY	0.970	0.870	0.910	1.02	0.99	0.98	1.00	0.91	1.01	0.99	0.98	0.85	0.85	0.83	0.84	0.84	0.90	0.90	0.81	0.73
LOUISVILLE, KY	0.970	0.870	0.910	1.02	0.99	1.07	0.84	0.77	1.06	0.96	0.96	0.85	0.85	0.83	0.84	0.84	0.90	0.90	0.81	0.73
PADUCAH, KY	0.970	0.870	0.910	0.94	0.94	0.83	1.01	0.74	0.96	0.96	0.96	0.85	0.85	0.83	0.84	0.84	0.90	0.90	0.81	0.73
FRESTONSBURG, KY	0.970	0.870	0.910	1.00	1.01	0.94	1.01	0.83	1.12	0.99	0.98	0.85	0.85	0.83	0.84	0.84	0.90	0.90	0.81	0.73
SOMERSET, KY	0.970	0.870	0.910	0.95	0.92	0.81	0.95	0.71	1.05	0.94	0.97	0.85	0.85	0.83	0.84	0.84	0.90	0.90	0.81	0.73
WHITESBURG, KY	0.969	0.876	0.920	1.04	1.02	1.10	0.99	0.97	1.01	0.98	0.97	0.85	0.85	0.83	0.84	0.84	0.90	0.90	0.81	0.73
ALEXANDRIA, LA	0.969	0.876	0.920	1.04	1.02	1.10	0.99	0.97	1.01	0.98	0.97	0.85	0.85	0.83	0.84	0.84	0.90	0.90	0.81	0.73
BATON ROUGE, LA	0.969	0.876	0.920	1.00	1.02	1.05	1.17	0.83	0.94	0.94	0.97	0.85	0.85	0.83	0.84	0.84	0.90	0.90	0.81	0.73
ALEXANDRIA, LA	0.969	0.876	0.920	1.04	1.02	1.10	0.99	0.97	1.01	0.98	0.97	0.85	0.85	0.83	0.84	0.84	0.90	0.90	0.81	0.73
MONROE, LA	0.969	0.876	0.920	1.04	1.02	1.10	0.99	0.97	1.01	0.98	0.97	0.85	0.85	0.83	0.84	0.84	0.90	0.90	0.81	0.73
NEW ORLEANS, LA	0.998	0.947	0.970	1.02	1.02	1.04	1.10	1.01	1.01	1.00	1.00	0.92	0.93	0.91	0.92	0.92	0.98	0.98	0.88	0.80
SHREVEPORT, LA	0.969	0.876	0.920	1.04	1.02	1.10	0.99	0.97	1.01	0.98	0.97	0.85	0.85	0.83	0.84	0.84	0.90	0.90	0.81	0.73
BANGOR, ME	0.961	0.917	0.940	0.94	0.98	0.85	0.92	1.13	1.03	0.95	0.95	0.92	0.93	0.91	0.92	0.92	0.98	0.98	0.88	0.80
CARIBOU, ME	0.961	0.917	0.940	0.94	0.98	0.85	0.92	1.13	1.03	0.95	0.95	0.92	0.93	0.91	0.92	0.92	0.98	0.98	0.88	0.80
MACHIAS, ME	0.961	0.917	0.940	0.94	0.98	0.85	0.92	1.13	1.03	0.95	0.95	0.92	0.93	0.91	0.92	0.92	0.98	0.98	0.88	0.80
PORTLAND, ME	0.979	1.015	1.000	0.99	1.03	1.09	0.90	1.17	1.23	1.05	1.02	0.97	0.98	0.96	0.97	0.97	1.03	1.03	0.91	0.82
RUMFORD, ME	0.961	0.917	0.940	1.03	1.03	1.09	0.90	1.17	1.23	1.05	1.02	0.97	0.98	0.96	0.97	0.97	1.03	1.03	0.91	0.82
SACO, ME	0.979	1.015	1.000	0.99	1.03	1.09	0.90	1.17	1.23	1.05	1.02	0.97	0.98	0.96	0.97	0.97	1.03	1.03	0.91	0.82
TOGUS, ME	0.961	0.917	0.940	0.94	0.98	0.85	0.92	1.13	1.03	0.95	0.95	0.92	0.93	0.91	0.92	0.92	0.98	0.98	0.88	0.80
BALTIMORE, MD	1.020	1.038	1.030	1.25	1.05	0.99	0.96	1.10	1.04	1.25	1.05	0.99	1.00	0.98	0.99	0.99	1.05	1.05	0.93	0.84
CAMBRIDGE, MD	0.985	0.979	0.980	0.88	0.90	0.86	0.90	0.84	0.90	0.90	0.90	0.84	0.91	0.89	0.90	0.90	0.96	0.96	0.86	0.77
CHARLOTTE HALL, MD	0.985	0.979	0.980	1.03	1.02	1.16	0.91	1.17	1.11	1.07	0.99	0.92	0.93	0.91	0.92	0.92	0.98	0.98	0.88	0.80
CUMBERLAND, MD	0.985	0.979	0.980	0.94	0.96	0.82	1.06	0.94	1.05	1.13	0.95	0.92	0.93	0.91	0.92	0.92	0.98	0.98	0.88	0.80
FORT HOWARD, MD	1.020	1.038	1.030	1.02	1.00	0.87	0.99	0.95	1.04	0.99	0.98	0.85	0.85	0.83	0.84	0.84	0.90	0.90	0.81	0.73
FREDERICK, MD	0.985	0.979	0.980	0.94	0.96	0.82	1.06	0.94	1.05	1.13	0.95	0.92	0.93	0.91	0.92	0.92	0.98	0.98	0.88	0.80
HAGERSTOWN, MD	0.985	0.979	0.980	0.94	0.96	0.82	1.06	0.94	1.05	1.13	0.95	0.92	0.93	0.91	0.92	0.92	0.98	0.98	0.88	0.80
LANDOVER, MD	1.050	1.184	1.110	0.97	1.06	0.96	1.06	0.94	1.03	1.14	0.98	0.87	0.96	0.93	0.94	0.94	1.00	1.00	0.90	0.81
MILLINGTON, MD	0.985	0.979	0.980	0.88	0.90	0.86	0.90	0.84	0.90	0.90	0.90	0.84	0.91	0.89	0.90	0.90	0.96	0.96	0.86	0.77
PERRY POINT, MD	0.985	0.979	0.980	0.88	0.90	0.86	0.90	0.84	0.90	0.90	0.90	0.84	0.91	0.89	0.90	0.90	0.96	0.96	0.86	0.77
BEDFORD, MA	1.040	1.218	1.140	1.05	1.17	1.00	0.85	1.20	1.27	1.07	0.89	1.02	1.02	1.00	1.01	1.01	1.06	1.06	0.91	0.82
BOSTON, MA	1.040	1.218	1.140	1.05	1.17	1.00	0.85	1.20	1.27	1.07	0.89	1.02	1.02	1.00	1.01	1.01	1.06	1.06	0.91	0.82
FITCHBURG, MA	1.010	1.111	1.070	0.91	0.99	0.85	0.96	1.20	1.03	1.06	0.92	0.89	0.90	0.88	0.89	0.89	0.95	0.95	0.85	0.76
FRAMINGHAM, MA	1.040	1.218	1.140	0.93	1.00	1.04	1.26	1.20	0.98	1.22	1.06	1.02	1.02	1.00	1.01	1.01	1.06	1.06	0.91	0.82
GLOUCESTER, MA	1.010	1.111	1.070	0.94	0.96	0.84	1.14	1.38	1.30	1.06	1.06	1.03	1.03	1.01	1.02	1.02	1.08	1.08	0.93	0.84
HAVERHILL, MA	1.010	1.111	1.070	0.97	1.06	1.14	1.38	1.30	1.06	1.27	1.07	1.03	1.03	1.01	1.02	1.02	1.08	1.08	0.93	0.84
HYANNIS, MA	1.010	1.111	1.073	0.93	1.02	0.78	0.97	1.19	0.91	1.02	0.97	0.85	0.85	0.83	0.84	0.84	0.90	0.90	0.81	0.73
LOWELL, MA	1.010	1.111	1.070	0.97	1.06	1.14	1.38	1.30	1.06	1.27	1.07	1.03	1.03	1.01	1.02	1.02	1.08	1.08	0.93	0.84
LYNN, MA	1.010	1.111	1.070	0.94	1.06	1.34	0.82	1.23	1.08	1.07	0.89	1.02	1.02	1.00	1.01	1.01	1.06	1.06	0.91	0.82
NANTUCKET, MA	1.010	1.111	1.070	0

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TABLE J. — PHYSICIAN GAAFS (GEOGRAPHIC AREA ADJUSTMENT FACTORS) FOR RVUS
(RELATIVE VALUE UNITS) AND CONVERSION FACTORS; BY VA FACILITY LOCATION — Continued

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VA Facility Location	RVU GAAFs			Conversion Factor GAAFs By Physician CPT Code Group																				
	Work Expense RVUs	Practice Expense RVUs	Total RVUs Only	Consults	Physical Medicine	Vascular	Immunizations	Well Baby Exams	Vision Exams	Hearing Speech Exams	Physical Exams	Chiropractor	OP Psych/ Alcohol & Drug Abuse	Surgery	Radiology	Pathology	Anesthesia	Misc. Medical	ER Visits & Observation Care	Normal Deliveries	Cesarean Deliveries	Non-Deliveries
NEW BEDFORD, MA	1.010	1.111	1.070	0.93	1.02	0.78	0.97	1.16	0.91	1.09	0.95	1.21
NORTHAMPTON, MA	1.010	1.111	1.070	0.94	0.98	1.07	0.76	1.19	0.92	1.12	0.85	1.15
OAK BLUFFS, MA	1.010	1.111	1.070	0.93	1.02	0.78	0.97	1.19	0.93	1.13	0.92	1.15
PITTSFIELD, MA	1.010	1.111	1.070	0.94	0.98	1.07	0.78	1.12	0.93	1.13	0.85	1.15
QUINCY, MA	1.040	1.218	1.140	1.05	1.17	1.00	0.89	1.20	1.02	1.10	0.97	1.23
SPRINGFIELD, MA	1.010	1.111	1.070	0.94	0.96	1.07	0.78	1.12	0.93	1.13	0.85	1.15
WEST ROXBURY, MA	1.040	1.218	1.140	1.05	1.17	1.00	0.89	1.20	1.02	1.10	0.97	1.23
WINCHINDON, MA	1.010	1.111	1.070	0.91	0.99	0.98	1.01	1.34	1.12	0.95	0.86	1.12
WORCESTER, MA	1.010	1.111	1.070	0.93	0.99	0.98	1.01	1.34	1.12	0.95	0.86	1.12
ANN ARBOR, MI	1.042	1.030	1.040	0.87	0.88	1.33	0.88	0.92	0.90	0.90	0.84	1.23
BATTLE CREEK, MI	0.998	0.938	0.960	0.93	0.87	0.80	0.88	0.93	0.91	0.96	0.95	1.10
BATTLE CREEK, MI	0.998	0.938	0.960	0.93	0.87	0.80	0.88	0.93	0.91	0.96	0.95	1.10
BETHLEHEM, MI	0.998	0.938	0.960	0.93	0.87	0.80	0.88	0.93	0.91	0.96	0.95	1.10
DETROIT, MI	1.042	1.030	1.040	0.87	0.88	1.33	0.88	0.92	0.90	0.90	0.84	1.23
FLINT, MI	0.996	0.938	0.960	0.92	0.84	0.83	0.88	0.93	0.91	0.96	0.95	1.10
GAYLORD, MI	0.996	0.938	0.960	0.92	0.93	0.99	1.04	0.99	1.01	0.74	0.84	1.13
GRAND RAPIDS, MI	0.996	0.938	0.960	0.93	0.91	1.20	0.87	0.88	0.91	0.97	0.87	1.14
HANCOCK/PORTAGE, MI	0.996	0.938	0.960	0.92	0.93	0.99	1.04	0.99	1.01	0.97	0.87	1.14
IRON MOUNTAIN, MI	0.996	0.938	0.960	0.92	0.93	0.99	1.04	0.99	1.01	0.97	0.92	1.14
IRONWOOD, MI	0.996	0.938	0.960	0.92	0.93	0.99	1.04	0.99	1.01	0.97	0.92	1.14
JACKSON, MI	0.996	0.938	0.960	0.93	0.87	0.80	0.88	0.93	0.91	0.96	0.95	1.10
LANSING, MI	0.996	0.938	0.960	0.85	0.86	0.78	0.99	0.94	0.85	0.76	0.85	0.96
MARQUETTE, MI	0.996	0.938	0.960	0.92	0.93	0.99	1.04	0.99	1.01	0.97	0.87	1.14
MENOMINEE, MI	0.996	0.938	0.960	0.92	0.93	0.99	1.04	0.99	1.01	0.97	0.87	1.14
MUSKEGON, MI	0.996	0.938	0.960	0.92	0.93	0.99	1.04	0.99	1.01	0.97	0.87	1.14
OSCODA, MI	0.996	0.938	0.960	0.86	0.85	0.80	0.87	0.74	0.87	0.76	0.80	1.17
PONTIAC, MI	1.042	1.030	1.040	0.83	0.85	0.97	0.74	0.87	0.96	0.75	0.80	1.17
SAGINAW, MI	0.996	0.938	0.960	0.86	0.90	0.82	0.71	0.98	0.84	0.79	0.83	1.13
SAULT SAINTE MARIE, MI	0.996	0.938	0.960	0.92	0.93	0.99	1.04	0.99	0.91	0.97	0.92	1.14
TRAVERSE CITY, MI	0.996	0.938	0.960	0.93	0.91	1.20	0.87	0.88	0.91	0.87	0.84	1.13
YALE, MI	0.996	0.938	0.960	1.04	1.01	0.92	0.98	0.88	1.03	0.96	0.86	1.24
BRAINERD, MN	0.990	0.971	0.980	1.03	1.02	0.76	0.83	1.10	0.91	0.88	1.02	0.97
FERGUS FALLS, MN	0.990	0.971	0.980	1.03	1.02	0.76	0.83	1.10	0.91	0.86	1.02	0.97
HIBBING, MN	0.990	0.971	0.980	1.03	1.02	0.76	0.83	1.10	0.91	0.88	1.02	0.97
MANKATO, MN	0.990	0.971	0.980	1.02	1.05	0.84	1.12	1.19	1.09	1.00	1.14	1.10
MINNEAPOLIS, MN	0.990	0.971	0.980	1.14	1.14	1.12	1.31	1.10	1.04	1.08	1.07	1.11
SAINT PAUL, MN	0.990	0.971	0.980	1.13	1.18	1.31	1.00	0.94	1.02	0.99	1.07	1.23
VIRGINIA, MN	0.990	0.971	0.980	1.03	1.02	0.76	0.83	1.10	0.91	0.86	1.02	0.97
BILOXI, MS	0.957	0.841	0.880	0.97	0.97	1.01	1.32	0.90	1.02	0.97	0.99	1.07
GREENVILLE, MS	0.957	0.841	0.880	0.91	0.95	1.22	1.05	0.81	1.06	0.95	1.00	1.06
GREENWOOD, MS	0.957	0.841	0.880	0.97	0.97	1.01	1.32	0.90	1.02	0.97	0.99	1.07
HATTIESBURG, MS	0.957	0.841	0.880	0.97	0.97	1.01	1.32	0.90	1.02	0.97	0.99	1.07
JACKSON, MS	0.957	0.841	0.880	0.93	0.95	1.22	1.05	0.81	1.06	0.95	1.00	1.06
KOSCIUSKO, MS	0.957	0.841	0.880	0.97	0.97	1.01	1.32	0.90	1.02	0.97	0.99	1.07
MERIDIAN, MS	0.957	0.841	0.880	0.93	0.95	1.22	1.05	0.81	1.06	0.95	1.00	1.06
NATCHEZ, MS	0.957	0.841	0.880	0.97	0.97	1.01	1.32	0.90	1.02	0.97	0.99	1.07
NATCHEZ, MS	0.957	0.841	0.880	0.93	0.95	1.22	1.05	0.81	1.06	0.95	1.00	1.06
BELTON, MO	0.946	0.826	0.880	0.89	0.94	1.04	1.26	0.95	1.03	0.99	1.05	1.10
CAPE GIRARDEAU, MO	0.946	0.826	0.880	0.89	0.94	1.04	1.05	0.84	1.03	0.99	1.07	1.10
COLUMBIA, MO	0.946	0.826	0.880	0.89	0.94	1.04	1.26	0.95	1.03	0.99	1.05	1.10
FARMINGTON, MO	0.946	0.826	0.880	0.89	0.94	1.04	1.05	0.89	1.09	0.99	1.07	1.10
FORT LEONARD WOOD, MO	0.946	0.826	0.880	0.96	0.92	0.87	1.10	1.01	0.94	0.99	0.92	1.06
KANSAS CITY, MO	0.946	0.826	0.880	0.94	0.93	1.01	0.90	1.00	1.02	1.00	1.00	0.95
KIRKSVILLE, MO	0.946	0.826	0.880	0.96	0.93	0.99	1.04	0.95	1.03	0.96	0.95	1.02
LAKE OZARK, MO	0.946	0.826	0.880	0.89	0.94	1.04	1.26	0.95	1.03	0.99	1.05	1.10
MOUNT VERNON, MO	0.946	0.826	0.880	0.96	0.92	0.87	1.10	1.01	0.94	0.99	0.92	1.06
NEVADA, MO	0.946	0.826	0.880	0.96	0.92	0.87	1.10	1.01	0.94	0.99	0.92	1.06
PORTAGEVILLE, MO	0.946	0.826	0.880	0.96	0.92	0.87	1.10	1.01	0.94	0.99	0.92	1.06
SAINT JAMES, MO	0.946	0.826	0.880	0.96	0.92	0.87	1.10	1.01	0.94	0.99	0.92	1.06
SAINT JOSEPH, MO	0.946	0.826	0.880	0.96	0.93	0.99	1.04	0.91	0.92	1.08	0.99	1.01
SAINT LOUIS, MO	0.946	0.826	0.880	0.96	0.93	0.99	1.04	0.91	0.92	1.08	0.99	1.01
SAINT LOUIS, MO	0.994	0.940	0.960	1.03	0.96	1.07	0.78	0.97	1.19	0.91	0.96	1.21
WEST PLAINS, MO	0.946	0.826	0.880	0.96	0.92	0.87	1.10	1.01	0.94	0.99	0.92	1.06
WHITEMAN AFB, MO	0.946	0.826	0.880	0.96	0.92	0.87	1.10	1.01	0.94	0.99	0.92	1.06
ANACONDA, MT	0.951	0.877	0.910	1.00	1.03	0.76	1.02	0.87	0.94	0.84	1.03	0.82
BILLINGS, MT	0.951	0.877	0.910	1.00	1.03	0.76	1.02	0.87	0.94	0.84	1.03	0.82
BOZEMAN, MT	0.951	0.877	0.910	1.00	1.03	0.76	1.02	0.87	0.94	0.84	1.03	0.82
BROWNING, MT	0.951	0.877	0.910	1.00	1.03	0.76	1.02	0.87	0.94	0.84	1.03	0.82
COLUMBIA FALLS, MT	0.951	0.877	0.910	1.00	1.03	0.76	1.02	0.87	0.94	0.84	1.03	0.82
FORT HARRISON, MT	0.951	0.877	0.910	1.00	1.03	0.78	1.02	0.87	0.94	0.84	1.04	0.82
GLASGOW, MT	0.951	0.877	0.910	1.00	1.03	0.78	1.02	0.87	0.94	0.84	1.04	0.82
HAVRE, MT	0.951	0.877	0.910	1.00	1.03	0.78	1.02	0.87	0.94	0.84	1.04	0.82
LAKE DERBY, MT	0.951	0.877	0.910	1.00	1.03	0.78	1.02	0.87	0.94	0.84	1.04	0.82
MILES CITY, MT	0.951	0.877	0.910	1.00	1.03	0.78	1.02	0.87	0.94	0.84	1.04	0.82
MISSOULA, MT	0.951	0.877	0.910	1.00	1.03	0.78	1.02	0.87	0.94	0.84	1.04	0.82
SIDNEY, MT	0.951	0.877	0.910	1.00	1.03	0.76	1.02	0.87	0.94	0.84	1.04	0.82
WHITEFISH, MT	0.951	0.877	0.910	1.00	1.03	0.78	1.02	0.87	0.94	0.84	1.04	0.82
KEARNEY, NE	0.949	0.875	0.910	0.92	0.91	0.75	0.98	0.86	0.99	0.86	0.97	0.84
GERING, NE	0.949	0.875	0.910	0.92	0.91	0.75	0.98	0.86	0.99	0.86	0.97	0.84
GRAND ISLAND, NE	0.949	0.875	0.910	0.92	0.91	0.75	0.98	0.86	0.99	0.86	0.97	0.84
LINCOLN, NE	0.949	0.875	0.910	0.92	0.91	0.75	0.98	0.86	0.99	0.86	0.97	0.84
NORFOLK, NE	0.949	0.875	0.910	0.92	0.91	0.75	0.98	0.86	0.99	0.86	0.97	0.84
NORTH PLATTE, NE	0.949	0.875	0.910	0.92	0.91	0.75	0.98	0.86	0.99	0.86	0.97	0.84
OMAHA, NE	0.949	0.875	0.910	0.92	0.91	0.75	0.98	0.86	0.99	0.86	0.97	0.84
HUSHVILLE, NE	0.949	0.875	0.910	0.92	0.91	0.75	0.98	0.86	0.99	0.86	0.97	0.84
SIDNEY, NE	0.949	0.875	0.910	0.92	0.91	0.75	0.98	0.86	0.99	0.86	0.97	0.84
ELY, NV	1.005	1.035	1.020	0.96	0.97	0.98	0.98	0.98	0.92	1.07	0.99	1.02
HENDERSON, NV	1.005	1.035	1.020	1.11	1.13	0.99	1.01	1.11	1.07	0.98	1.11	0.96
LAS VEGAS, NV	1.005	1.035	1.020	1.11	1.13	0.99	1.01	1.11	1.07	0.98	1.11	0.96
PAHRUMP, NV	1.005	1.035	1.020	1.11	1.13	0.99	1.01	1.11	1.07	0.98	1.11	0.96
RENO, NV	1.005	1.035	1.020	0.96	0.97	0.98	0.98	0.85	0.92	1.07	0.99	1.02
KEENE, NH	0.987	1.032	1.010	1.12	1.00	1.25	0.85	1.12	1.00	0.88	1.06	0.92
MANCHESTER, NH	0.987	1.032	1.010	1.03	0.97	0.82	0.86	1.17	0.95	1.00	1.05	0.92
PORTSMOUTH, NH	0.987	1.032	1.010	0.99	1.00	0.72	0.70	0.89	0.83	0.90	0.84	0.92
LITTON, NH	0.987	1.032	1.010	1.12	1.00	1.25	0.85	1.12	1.00	0.88	1.06	0.92
BRICK, NJ	1.028	1.102	1.070	0.93	0.99	0.99	1.04	0.91	1.05	1.00	1.20	0.95
CAPE MAY, NJ	1.028	1.102	1.070	1.00	1.03	0.97	1.57	1.05	1.22	1.10	1.20	0.98
EAST ORANGE, NJ	1.057	1.192	1.130	0.92	1.02	1.09	1.13	1.00	0.99	1.10	1.10	0.97
ELIZABETH, NJ	1.057	1.192	1.130	1.18	1.07	1.31	1.09	1.45	1.38	1.22	1.22	1.02
HACKENSACK, NJ	1.057	1.192	1.130	1.18	1.07	1.31	1.09	1.45	1.38	1.22	1.22	1.02
JAMESBURG, NJ	1.057	1.192	1.130	1.03	1.01	0.96	1.05	1.11	1.17	0.98	1.15	0.97
JERSEY CITY, NJ	1.057	1.192	1.130	1.18	1.07	1.31	1.09	1.45	1.38	1.22	1.22	1.02
LYONS, NJ	1.057	1.192	1.130	0.99	0.98	0.86	0.98	1.15	1.00	1.19	0.97	1.16
MORRISTOWN, NJ	1.057	1.192	1.130	0.99	0.98	0.86	0.98	1.15	1.00	1.19	0.97	1.16
NEW BRUNSWICK, NJ	1.057	1.192	1.130	1.18	1.07	1.31	1.09	1.45	1.38	1.22	1.22	1.02
NEWARK, NJ	1.028	1.102	1.070	0.93	0.99	0.99	1.04	0.91	1.05	1.00	1.20	0.95
TRENTON, NJ	1.028	1.102	1.070	0.93	0.99	0.99	1.04	0.91	1.05	1.00	1.20	0.95
VENTNOR CITY, NJ	1.028	1.102	1.070	1.00	1.03	0.97	1.57	1.05	1.22	1.10	1.20	0.98
VINELAND, NJ	1.028	1.102	1.070	1.00	1.03	0.97	1.57	1.05	1.22	1.10	1.20	0.98
ALAMOGORDO, NM	0.973	0.905	0.930	1.01	0.98	0.90	0.92	0.95	1.05	0.95	0.98	0.95
ALBUQUERQUE, NM	0.973	0.905	0.930	1.01	0.98	0.90	0.92	0.95	1.05	0.95	0.98	0.95
ARTESIA, NM	0.973	0.905	0.930	1.01	0.98	0.90	0.92	0.95	1.05	0.95	0.98	0.95
CLAYTON, NM	0.973	0.905	0.930	1.01	0.98	0.90	0.92	0.95	1.05	0.95	0.98	0.95
CLOVIS, NM	0.973	0.905	0.930	1.01	0.98	0.90	0.92	0.95	1.05	0.95	0.98	0.95
ESPANOLA, NM	0.973	0.905	0.930	1.01	0.98	0.90	0.92	0.95	1.05	0.95	0.98	0.95
FARMINGTON, NM	0.973	0.905	0.930	1.01	0.98	0.90	0.92	0.95	1.05	0.95	0.98	0.95
GALLUP, NM	0.973	0.905	0.930	1.01	0.98	0.90	0.92	0.95	1.05	0.95	0.98	0.95
HOBBS, NM	0.973	0.905	0.930	1.01	0.98	0.90	0.92	0.95	1.05	0.95	0.98	0.95
LAS CRUCES, NM	0.973	0.905	0.930	1.01	0.98	0.90	0.92	0.95	1.05	0.95	0.98	0.95

TABLE J. — PHYSICIAN GAAFS (GEOGRAPHIC AREA ADJUSTMENT FACTORS) FOR RVUS
(RELATIVE VALUE UNITS) AND CONVERSION FACTORS; BY VA FACILITY LOCATION — Continued

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VA Facility Location	RVU GAAFs			Conversion Factor GAAFs By Physician CPT Code Group																				
	Work Expense RVUs	Practice Expense RVUs	Total RVUs Only	Consults	Physical Medicine	Vascular	Immunizations	Well Baby Exams	Vision Exams	Hearing Speech Exams	Physical Exams	Chiropractor	OP Psych/ Alcohol & Drug Abuse	Surgery	Radiology	Pathology	Anesthesia	Misc. Medical	ER Visits & Observation Care	Normal Deliveries	Cesarean Deliveries	Non-Deliveries
SAINT LOUIS, MO	0.994	0.940	0.960	1.03	0.96	1.07	0.78	0.97	1.19	0.91	0.96	1.21
WEST PLAINS, MO	0.946	0.826	0.880	0.96	0.92	0.87	1.10	1.01	0.94	0.99	0.92	1.06
WHITEMAN AFB, MO	0.946	0.826	0.880	0.96	0.92	0.87	1.10	1.01	0.94	0.99	0.92	1.06
ANACONDA, MT	0.951	0.877	0.910	1.00	1.03	0.76	1.02	0.87	0.94	0.84	1.03	0.82
BILLINGS, MT	0.951	0.877	0.910	1.00	1.03	0.76	1.02	0.87	0.94	0.84	1.03	0.82
BOZEMAN, MT	0.951	0.877	0.910	1.00	1.03	0.76	1.02	0.87	0.94	0.84	1.03	0.82
BROWNING, MT	0.951	0.877	0.910	1.00	1.03	0.76	1.02	0.87	0.94	0.84	1.03	0.82
COLUMBIA FALLS, MT	0.951	0.877	0.910	1.00	1.03	0.76	1.02	0.87	0.94	0.84	1.03	0.82
FORT HARRISON, MT	0.951	0.877	0.910	1.00	1.03	0.78	1.02	0.87	0.94	0.84	1.04	0.82
GLASGOW, MT	0.951	0.877	0.910	1.00	1.03	0.78	1.02	0.87	0.94	0.84	1.04	0.82
HAVRE, MT	0.951	0.877	0.910	1.00	1.03	0.78	1.02	0.87	0.94	0.84	1.04	0.82
LAKE DERBY, MT	0.951	0.877	0.910	1.00	1.03	0.78	1.02	0.87	0.94	0.84	1.04	0.82
MILES CITY, MT	0.951	0.877	0.910	1.00	1.03	0.78	1.02	0.87	0.94	0.84	1.04	0.82
MISSOULA, MT	0.951	0.877	0.910	1.00	1.03	0.78	1.02	0.87	0.94	0.84	1.04	0.82
SIDNEY, MT	0.951	0.877	0.910	1.00	1.03	0.76	1.02	0.87	0.94	0.84	1.04	0.82
WHITEFISH, MT	0.951	0.877	0.910	1.00	1.03	0.78	1.02	0.87	0.94	0.84	1.04	0.82
KEARNEY, NE	0.949	0.875	0.910	0.92	0.91	0.75	0.98	0.86	0.99	0.86	0.97	0.84
GERING, NE	0.949	0.875	0.910	0.92	0.91	0.75	0.98	0.86	0.99	0.86	0.97	0.84
GRAND ISLAND, NE	0.949	0.875	0.910	0.92	0.91	0.75	0.98	0.86	0.99	0.86	0.97	0.84
LINCOLN, NE	0.949	0.875	0.910	0.92	0.91	0.75	0.98	0.86	0.99	0.86	0.97	0.84
NORFOLK, NE	0.949	0.875	0.910	0.92	0.91	0.75	0.98	0.86	0.99	0.86	0.97	0.84
NORTH PLATTE, NE	0.949	0.875	0.910	0.92	0.91	0.75	0.98	0.86	0.99	0.86	0.97	0.84
OMAHA, NE	0.949	0.875	0.910	0.92	0.91	0.75	0.98	0.86	0.99	0.86	0.97	0.84
HUSHVILLE, NE	0.949	0.875	0.910	0.92	0.91	0.75	0.98	0.86	0.99	0.86	0.97	0.84
SIDNEY, NE	0.949	0.875	0.910	0.92	0.91	0.75	0.98	0.86	0.99	0.86	0.97	0.84
ELY, NV	1.005	1.035	1.020	0.96	0.97	0.98	0.98	0.98	0.92	1.07	0.99	1.02
HENDERSON, NV	1.005	1.035	1.020	1.11	1.13	0.99	1.01	1.11	1.07	0.98	1.11	0.96
LAS VEGAS, NV	1.005	1.035	1.020	1.11	1.13	0.99	1.01	1.11	1.07	0.98	1.11	0.96
PAHRUMP, NV	1.005	1.035	1.020	1.11	1.13	0.99	1.01	1.11	1.07	0.98	1.11	0.96
RENO, NV	1.005	1.035	1.020	0.96	0.97	0.98	0.98	0.85	0.92	1.07	0.99	1.02
KEENE, NH	0.987	1.032	1.010	1.12	1.00	1.25	0.85	1.12	1.00	0.88	1.06	0.92
MANCHESTER, NH	0.987	1.032	1.010	1.03	0.97	0.82	0.86	1.17	0.95	1.00	1.05	0.92
PORTSMOUTH, NH	0.987	1.032	1.010	0.99	1.00	0.72	0.70	0.89	0.83	0.90	0.84	0.92
LITTON, NH	0.987	1.032	1.010	1.12	1.00	1.25	0.85	1.12	1.00	0.88	1.06	0.92
BRICK, NJ	1.028	1.102	1.070	0.93	0.99	0.99	1.04	0.91	1.05	1.00	1.20	0.95
CAPE MAY, NJ	1.028	1.102	1.070	1.00	1.03	0.97	1.57	1.05	1.22	1.10	1.20	0.98
EAST ORANGE, NJ	1.057	1.192	1.130	0.92	1.02	1.09	1.13	1.00	0.99	1.10	1.10	0.97
ELIZABETH, NJ	1.057	1.192	1.130	1.18	1.07	1.31	1.09	1.45	1.38	1.22	1.22	1.02
HACKENSACK, NJ	1.057	1.192	1.130	1.18	1.07	1.31	1.09	1.45	1.38	1.22	1.22	1.02
JAMESBURG, NJ	1.028	1.102	1.070	1.03	1.01	0.96	1.05	1.11	1.17	0.98	1.15	0.97
JERSEY CITY, NJ	1.057	1.192	1.130	1.18	1.07	1.31	1.09	1.45	1.38	1.22	1.22	1.02
LYONS, NJ	1.057	1.192	1.130	0.99	0.98	0.86	0.98	1.15	1.00	1.19	0.97	1.16
MORRISTOWN, NJ	1.057	1.192	1.130	0.99	0.98	0.86	0.98	1.15	1.00	1.19	0.97	1.16
NEW BRUNSWICK, NJ	1.057	1.192	1.130	1.18	1.07	1.31	1.09	1.45	1.38	1.22	1.22	1.02
NEWARK, NJ	1.028	1.102	1.070	0.93	0.99	0.99	1.04	0.91	1.05	1.00	1.20	0.95
TRENTON, NJ	1.028	1.102	1.070	0.93	0.99	0.99	1.04	0.91	1.05	1.00	1.20	0.95
VENTNOR CITY, NJ	1.028	1.102	1.070	1.00	1.03	0.97	1.57	1.05	1.22	1.10	1.20	0.98
VINELAND, NJ	1.028	1.102	1.070	1.00	1.03	0.97	1.57	1.05	1.22	1.10	1.20	0.98
ALAMOGORDO, NM	0.973	0.905	0.930	1.01	0.98	0.90	0.92	0.95	1.05	0.95	0.98	0.95
ALBUQUERQUE, NM	0.973	0.905	0.930	1.01	0.98	0.90	0.92	0.95	1.05	0.95	0.98	0.95
ARTESIA, NM	0.973	0.905	0.930	1.01	0.98	0.90	0.92	0.95	1.05	0.95	0.98	0.95
CLAYTON, NM	0.973	0.905	0.930	1.01	0.98	0.90	0.92	0.95	1.05	0.95	0.98	0.95
CLOVIS, NM	0.973	0.905	0.930	1.01	0.98	0.90	0.92	0.95	1.05	0.95	0.98	0.95
ESPANOLA, NM	0.973	0.905	0.930	1.01	0.98	0.90	0.92	0.95	1.05	0.95	0.98	0.95
FARMINGTON, NM	0.973	0.905	0.930	1.01	0.98	0.90	0.92	0.95	1.05	0.95	0.98	0.95
GALLUP, NM	0.973	0.905	0.930	1.01	0.98	0.90	0.92	0.95	1.05	0.95	0.98	0.95
HOBBS, NM	0.973	0.905	0.930	1.01	0.98	0.90	0.92	0.95	1.05	0.95	0.98

TABLE J. — PHYSICIAN GAAFS (GEOGRAPHIC AREA ADJUSTMENT FACTORS) FOR RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS; BY VA FACILITY LOCATION — Continued

VA Facility Location	RVU GAAFs			Conversion Factor GAAFs By Physician CPT Code Group																
	Work Expense RVUs	Practice Expense RVUs	Total RVUs Only	Inpatient Visits	Office/Home/ Urgent Care Visits	Therapeutic Injections	Allergy Testing	Allergy Immuno-therapy	Misc. Medical	Consults	ER Visits & Observation Care	Cardio-vascular	Physical Medicine	Pathology	Radiology	Surgery	Anesthesia	Normal Delivery	Cesarean Delivery	Non-Delivery
LAS VEGAS, NM	0.973	0.905	0.930	1.01	0.98	0.90	0.92	0.95	1.05	0.95	0.95	0.95	0.95	0.99	0.84	0.94	0.91	0.95	1.03	0.79
LAS VEGAS, NM	0.973	0.905	0.930	1.01	0.98	0.90	0.92	0.95	1.05	0.95	0.95	0.95	0.95	0.99	0.84	0.94	0.91	0.95	1.03	0.79
SANTA ROSA, NM	0.973	0.905	0.930	1.01	0.98	0.90	0.92	0.95	1.05	0.95	0.95	0.95	0.95	0.99	0.84	0.94	0.91	0.95	1.03	0.79
SILVER CITY, NM	0.973	0.905	0.930	1.01	0.98	0.90	0.92	0.95	1.05	0.95	0.95	0.95	0.95	0.99	0.84	0.94	0.91	0.95	1.03	0.79
TRUTH OR CONSEQUENCES, NM	0.973	0.905	0.930	1.01	0.98	0.90	0.92	0.95	1.05	0.95	0.95	0.95	0.95	0.99	0.84	0.94	0.91	0.95	1.03	0.79
ALBANY, NY	0.998	0.951	0.970	0.90	0.89	0.96	0.94	1.18	0.98	0.95	0.96	0.94	0.94	1.00	0.92	1.04	0.96	0.90	1.12	0.96
ALBANY, NY	0.998	0.951	0.970	0.94	0.93	1.00	0.91	0.95	1.05	0.95	1.00	0.91	0.94	1.10	0.94	1.06	0.94	0.90	1.13	0.96
BATAVIA, NY	0.998	0.951	0.970	0.94	0.93	1.00	0.91	0.95	1.05	0.95	1.00	0.91	0.94	1.10	0.94	1.06	0.94	0.90	1.13	0.96
BATH, NY	0.998	0.951	0.970	0.85	0.88	0.91	0.94	1.28	0.96	1.10	0.90	0.85	0.94	0.88	0.74	0.88	0.77	0.90	1.03	0.79
BINGHAMTON, NY	0.998	0.951	0.970	0.82	0.87	0.79	0.75	0.86	0.85	0.82	0.85	0.82	0.85	0.91	0.77	0.85	0.74	0.85	0.96	0.73
BRONX, NY	1.067	1.242	1.170	0.92	1.02	1.06	1.03	1.24	1.06	0.94	1.00	1.01	1.01	1.29	2.06	2.06	1.44	1.73	1.58	1.49
BROOKLYN, NY	1.067	1.242	1.170	0.92	1.02	1.06	1.03	1.24	1.06	0.94	1.00	1.01	1.01	1.29	2.06	2.06	1.44	1.73	1.58	1.49
BUFFALO, NY	0.998	0.951	0.970	0.94	0.93	1.00	0.91	0.95	1.05	0.95	1.00	0.91	0.94	1.10	0.94	1.06	0.94	0.90	1.13	0.96
CANANDAIGUA, NY	0.998	0.951	0.970	0.85	0.88	0.91	0.94	1.28	0.96	1.10	0.90	0.85	0.94	0.88	0.74	0.88	0.77	0.90	1.03	0.79
CARMEL, NY	1.010	1.079	1.050	1.04	1.14	1.29	1.24	1.36	1.18	1.03	1.11	1.07	1.07	1.36	2.16	2.16	1.54	1.82	1.66	1.56
CASTLE POINT, NY	1.010	1.079	1.050	0.88	0.72	0.89	0.77	0.82	0.88	0.98	0.85	0.89	0.84	0.91	0.74	0.88	0.77	0.89	0.92	0.74
CATSKILL, NY	0.998	0.951	0.970	0.85	0.83	0.82	0.80	0.94	0.86	0.82	0.85	0.82	0.85	0.91	0.74	0.88	0.77	0.89	0.92	0.74
CLIFTON SPRINGS, NY	0.998	0.951	0.970	0.90	0.89	0.96	0.94	1.18	0.96	1.02	0.90	0.85	0.94	0.91	0.78	0.94	0.77	0.90	1.03	0.79
COLUMBIA, NY	0.998	0.951	0.970	0.78	0.79	0.86	0.94	1.06	0.96	1.03	0.85	0.82	0.85	0.91	0.74	0.88	0.77	0.90	1.03	0.79
DUNKIRK, NY	0.998	0.951	0.970	0.78	0.79	0.86	0.94	1.06	0.96	1.03	0.85	0.82	0.85	0.91	0.74	0.88	0.77	0.90	1.03	0.79
ELIZABETHTOWN, NY	0.998	0.951	0.970	0.90	0.88	0.96	0.94	1.18	0.96	1.02	0.90	0.85	0.94	0.91	0.78	0.94	0.77	0.90	1.03	0.79
ELMIRA, NY	0.998	0.951	0.970	0.85	0.88	0.91	0.94	1.28	0.96	1.10	0.90	0.85	0.94	0.88	0.74	0.88	0.77	0.90	1.03	0.79
FAR ROCKAWAY, NY	1.057	1.231	1.160	0.92	0.92	0.98	0.95	1.14	0.96	1.00	0.93	0.90	0.94	1.06	1.96	1.96	1.54	1.96	1.39	1.39
FISHKILL, NY	0.998	0.951	0.970	0.90	0.89	0.96	0.94	1.18	0.96	1.02	0.90	0.85	0.94	0.91	0.78	0.94	0.77	0.90	1.03	0.79
GENEVA, NY	0.998	0.951	0.970	0.85	0.88	0.91	0.94	1.28	0.96	1.10	0.90	0.85	0.94	0.88	0.74	0.88	0.77	0.90	1.03	0.79
GLENS FALLS, NY	0.998	0.951	0.970	0.90	0.89	0.96	0.94	1.18	0.96	1.02	0.90	0.85	0.94	0.91	0.78	0.94	0.77	0.90	1.03	0.79
HARLEM, NY	1.093	1.352	1.240	1.28	1.42	1.25	1.13	1.30	1.17	1.11	1.20	1.16	1.27	1.21	1.50	1.50	1.55	1.20	1.02	1.37
HARRIS, NY	1.010	1.079	1.050	0.88	0.72	0.89	0.77	0.82	0.88	0.98	0.85	0.89	0.84	0.91	0.74	0.88	0.77	0.89	0.92	0.74
HICKSVILLE, NY	1.067	1.242	1.170	0.91	0.91	0.97	0.94	1.13	0.95	0.99	0.98	0.94	0.94	1.00	0.91	0.97	0.94	1.03	0.95	0.96
ITHACA, NY	0.998	0.951	0.970	0.78	0.79	0.89	0.94	1.06	0.96	1.03	0.85	0.82	0.85	0.91	0.74	0.88	0.77	0.90	1.03	0.79
JAMESTOWN, NY	0.998	0.951	0.970	0.78	0.79	0.89	0.93	1.06	0.96	1.03	0.85	0.82	0.85	0.91	0.74	0.88	0.77	0.90	1.03	0.79
KINGSTON, NY	1.010	1.079	1.050	0.85	0.83	0.82	0.80	0.94	0.86	0.82	0.85	0.82	0.85	0.91	0.74	0.88	0.77	0.90	1.03	0.79
LACKAWANNA, NY	0.998	0.951	0.970	0.78	0.79	0.89	0.93	1.06	0.96	1.03	0.85	0.82	0.85	0.91	0.74	0.88	0.77	0.90	1.03	0.79
LINDENHURST, NY	1.067	1.242	1.170	0.91	0.91	0.97	0.94	1.13	0.95	0.99	0.98	0.94	0.94	1.00	0.91	0.97	0.94	1.03	0.95	0.96
LOCKPORT, NY	0.998	0.951	0.970	0.78	0.79	0.89	0.93	1.06	0.96	1.03	0.85	0.82	0.85	0.91	0.74	0.88	0.77	0.90	1.03	0.79
LYNBROOK, NY	1.067	1.242	1.170	0.91	0.91	0.97	0.94	1.13	0.95	0.99	0.98	0.94	0.94	1.00	0.91	0.97	0.94	1.03	0.95	0.96
LYONS, NY	0.998	0.951	0.970	0.85	0.88	0.91	0.94	1.18	0.96	1.02	0.90	0.85	0.94	0.91	0.78	0.94	0.77	0.90	1.03	0.79
MALONE, NY	0.998	0.951	0.970	0.90	0.89	0.96	0.94	1.18	0.96	1.02	0.90	0.85	0.94	0.91	0.78	0.94	0.77	0.90	1.03	0.79
MASSENA, NY	0.998	0.951	0.970	0.96	0.91	0.89	0.96	1.15	0.95	0.99	0.98	0.94	0.94	1.00	0.91	0.97	0.94	1.03	0.95	0.96
MONTGOMERY, NY	1.010	1.079	1.050	1.04	1.14	1.29	1.24	1.36	1.18	1.03	1.11	1.07	1.07	1.36	2.16	2.16	1.54	1.82	1.66	1.56
MOUNT KISCO, NY	1.067	1.242	1.170	0.94	0.93	1.00	0.91	0.95	1.05	0.95	1.00	0.91	0.94	1.10	0.94	1.06	0.94	0.90	1.13	0.96
MOUNT SINAI, NY	1.067	1.242	1.170	0.97	0.95	0.98	0.97	1.30	1.05	0.99	1.01	0.94	0.97	1.10	0.91	0.97	0.94	1.03	0.95	0.96
NEW CITY, NY	1.067	1.242	1.170	0.94	0.95	0.90	0.93	1.07	0.93	0.96	0.98	0.94	0.94	1.00	0.91	0.97	0.94	1.03	0.95	0.96
NEW YORK, NY	1.093	1.352	1.240	1.28	1.42	1.25	1.13	1.30	1.17	1.11	1.20	1.16	1.27	1.21	1.50	1.50	1.55	1.20	1.02	1.37
NIAGARA FALLS, NY	0.998	0.951	0.970	0.78	0.79	0.89	0.93	1.06	0.96	1.03	0.85	0.82	0.85	0.91	0.74	0.88	0.77	0.90	1.03	0.79
NORTHPORT, LONG ISLAND, NY	1.067	1.242	1.170	0.91	0.91	0.97	0.94	1.13	0.95	0.99	0.98	0.94	0.94	1.00	0.91	0.97	0.94	1.03	0.95	0.96
OLEAN, NY	0.998	0.951	0.970	0.78	0.79	0.89	0.93	1.06	0.96	1.03	0.85	0.82	0.85	0.91	0.74	0.88	0.77	0.90	1.03	0.79
OSWEGO, NY	0.998	0.951	0.970	0.94	0.93	1.00	0.91	0.95	1.05	0.95	1.00	0.91	0.94	1.10	0.94	1.06	0.94	0.90	1.13	0.96
PATCHOGUE, NY	1.067	1.242	1.170	0.91	0.91	0.97	0.94	1.13	0.95	0.99	0.98	0.94	0.94	1.00	0.91	0.97	0.94	1.03	0.95	0.96
PENN YAN, NY	0.998	0.951	0.970	0.95	0.88	0.91	0.94	1.13	0.95	0.99	0.98	0.94	0.94	1.00	0.91	0.97	0.94	1.03	0.95	0.96
PERRYSBURG, NY	0.998	0.951	0.970	0.85	0.88	0.91	0.94	1.13	0.95	0.99	0.98	0.94	0.94	1.00	0.91	0.97	0.94	1.03	0.95	0.96
PLATTSBURGH, NY	0.998	0.951	0.970	0.85	0.88	0.91	0.94	1.13	0.95	0.99	0.98	0.94	0.94	1.00	0.91	0.97	0.94	1.03	0.95	0.96
PORT JERVIS, NY	1.010	1.079	1.050	0.88	0.72	0.89	0.77	0.82	0.89	0.98	0.85	0.89	0.84	0.91	0.74	0.88	0.77	0.89	0.92	0.74
POUGHKEEPSIE, NY	1.010	1.079	1.050	0.88	0.72	0.89	0.77	0.82	0.89	0.98	0.85	0.89	0.84	0.91	0.74	0.88	0.77	0.89	0.92	0.74
QUEENS, NY	1.057	1.231	1.160	0.93	1.03	1.07	1.05	1.28	1.09	0.95	1.04	1.01	1.01	1.29	2.08	2.08	1.44	1.78	1.60	1.51
RIVERHEAD, NY	1.067	1.242	1.170	0.91	0.91	0.97	0.94	1.13	0.95	0.99	0.98	0.94	0.94	1.00	0.91	0.97	0.94	1.03	0.95	0.96
ROCHESTER, NY	0.998	0.951	0.970	0.85	0.88	0.91	0.94	1.13	0.95	0.99	0.98	0.94	0.94	1.00	0.91	0.97	0.94	1.03	0.95	0.96

TABLE J. — PHYSICIAN GAAFS (GEOGRAPHIC AREA ADJUSTMENT FACTORS) FOR RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS; BY VA FACILITY LOCATION — Continued

VA Facility Location	RVU GAAFs			Conversion Factor GAAFs By Physician CPT Code Group																
	Work Expense RVUs	Practice Expense RVUs	Total RVUs Only	Inpatient Visits	Office/Home/ Urgent Care Visits	Therapeutic Injections	Allergy Testing	Allergy Immuno-therapy	Misc. Medical	Consults	ER Visits & Observation Care	Cardio-vascular	Physical Medicine	Pathology	Radiology	Surgery	Anesthesia	Normal Delivery	Cesarean Delivery	Non-Delivery
ROME, NY	0.998	0.951	0.970	0.86	0.91	0.89	1.00	1.15	0.95	0.96	0.96	0.96	0.96	0.95	0.84	1.00	0.96	0.95	1.00	1.11
SAINT ALBANS, NY	1.067	1.242	1.170	0.92	1.02	1.06	1.03	1.24	1.06	0.94	1.00	1.01	1.01	1.29	2.06	2.06	1.44	1.73	1.58	1.49
SAYVILLE, NY	1.067	1.242	1.170	0.91	0.91	0.97	0.94	1.13	0.95	0.99	0.98	0.94	0.94	1.00	0.91	0.97	0.94	1.03	0.95	0.96
SCHENECTADY, NY	0.998	0.951	0.970	0.90	0.89	0.96	0.94	1.18	0.98	0.95	0.96	0.94	0.94	1.00	0.92	1.04	0.96	0.90	1.12	0.96
SIDNEY, NY	1.010	1.079	1.050	0.78	0.81	0.68	0.84	0.76	0.78	0.94	0.85	0.81	0.78	0.94	1.06	1.06	0.88	0.85	0.97	0.85
SOUTH BRONX, NY	1.067	1.242	1.170	0.92	1.02	1.06	1.03	1.24	1.06	0.94	1.00	1.01	1.01	1.29	2.06	2.06	1.44	1.73	1.58	1.49
STATEN ISLAND, NY	1.067	1.242	1.170	0.92	1.02	1.06	1.03	1.24	1.06	0.94	1.00	1.01	1.01	1.29	2.06	2.06	1.44	1.73	1.58	1.49
SYRACUSE, NY	0.998	0.951	0.970	0.94	0.93	1.00	0.91	0.95	1.05	0.95	1.00	0.91	0.94	1.10	0.94	1.06	0.94	0.90	1.13	0.96
TIOGA, NY	0.998	0.951	0.970	0.90	0.89	0.96	0.94	1.18	0.98	0.95	0.96	0.94	0.94	1.00	0.92	1.04	0.96	0.90	1.12	0.96
WALKILL, NY	1.010	1.079	1.050	0.88	0.72	0.89	0.77	0.82	0.89	0.98	0.85	0.89	0.84	0.91	0.74	0.88	0.77	0.89	0.92	0.74
WATERTOWN, NY	0.998	0.951	0.970	0.86	0.91	0.89	1.00	1.15	0.95	0.96	0.96	0.96	0.96	0.95	0.84	1.00	0.96	0.95	1.00	1.11
WELLSVILLE, NY	0.998	0.951	0.970	0.85	0.88	0.91	0.94	1.13	0.95	0.99	0.98	0.94	0.94	1.00	0.91	0.97	0.94	1.03	0.95	0.96
WHITE PLAINS/BRONX, NY	1.067	1.242	1.170	0.95	1.03	1.09	1.05	1.17	1.01	0.99	1.01	0.97	0.97	1.19	2.06	2.06	1.45	1.73	1.58	1.49
WILLISTON, VT	0.970	0.927	0.950	0.96	1.00	1.07	1.02	1.26	1.06	0.98	0.98	0.98	0.98	1.04	0.97	1.04	0.98	0.96	1.00	1.01
ASHEVILLE, NC	0.970	0.927	0.950	1.01	1.16	1.06	0.73	0.80	0.95	0.94	0.93	0.93	0.93	0.97	0.91	0.97	0.93	0.87	0.97	0.75
CHARLOTTE, NC	0.970	0.927	0.950	1.21	1.18	1.49	0.99	0.82	1.14	0.96	1.02	1.03	1.23	0.90	1.12	1.13	1.11	1.20	1.11	1.15
DURHAM, NC	0.970	0.927	0.950	1.06	1.05	1.40	1.19	0.93	1.23	0.96	1.09	1.06	1.09	0.96	1.16	1.16	1.09	1.06	1.00	1.01
FAYETTEVILLE, NC	0.970	0.927	0.950	1.06	1.05	0.95	0.99	0.93	0.96	0.96	0.96	0.96	0.96	0.99	0.96	0.96	0.96	0.96	1.00	1.01
GREENVILLE, NC	0.970	0.927	0.950	1.06	1.05	0.95	0.99	0.93	0.96	0.96	0.96	0.96	0.96	0.99	0.96	0.96	0.96	0.96	1.00	1.01
HENDERSONVILLE, NC	0.970	0.927	0.950	1.06	1.05	0.95	0.99	0.93	0.96	0.96	0.96	0.96	0.96	0.99	0.96	0.96	0.96	0.96	1.00	1.01
RALEIGH, NC	0.970	0.927	0.950	1.18	1.12	1.20	1.09	0.83	1.06	1.02	1.03	1.03	1.06	0.90	1.12	1.13	1.11	1.20	1.07	1.15
SALISBURY, NC	0.970	0.927	0.950	1.06	1.05	0.95	0.99	0.93	0.96	0.96	0.96	0.96	0.96	0.99	0.96	0.96	0.96	0.96	1.00	1.01
WILMINGTON, NC	0.970	0.927	0.950	1.06	1.05	0.95	0.99	0.93	0.96	0.96	0.96	0.96	0.96	0.99	0.96	0.96	0.96	0.96	1.00	1.01
WINSTON-SALEM, NC	0.970	0.927	0.950	1.06	1.05	0.95	0.99	0.93	0.96	0.96	0.96	0.96	0.96	0.99	0.96	0.96	0.96	0.96	1.00	1.01
BISMARCK, ND	0.950	0.879	0.910	1.15	1.07	0.81	1.26	1.29	1.04	0.84	0.84	0.84	0.84	1.04	0.95	1.19	1.26	0.88	1.12	1.03
FARGO, ND	0.950	0.879	0.910	1.15	1.07	0.81	1.26	1.29	1.04	0.84	0.84	0.84	0.84	1.04	0.95	1.19	1.26	0.88	1.12	1.03
MINOT, ND	0.950	0.879	0.910	1.15	1.07	0.81	1.26	1.29	1.04	0.84	0.84	0.84	0.84	1.04	0.95	1.19	1.26	0.88	1.12	1.03
AKRON, OH	0.989	0.941	0.960	0.92	0.98	0.90	0.93	1.07	1.01	0.97	0.98	0.94	0.94	1.03	0.88	1.11	0.92	0.93	0.99	1.07
ASHTABULA, OH	0.989	0.941	0.960	0.92	0.98	0.90	0.93	1.07	1.01	0.97	0.98	0.94	0.94	1.03	0.88	1.11	0.92	0.93	0.99	1.07
ATHENS, OH	0.989	0.941	0.960	0.86	0.91	0.89	1.00	1.15	0.95	0.96	0.96	0.96	0.96	0.95	0.84	1.00	0.96	0.95	1.00	1.11
CHILLICOTHE, OH	0.989	0.941	0.960	0.84	0.89	0.90	0.93	1.07	1.01	0.97	0.98	0.94	0.94	1.03	0.88	1.11	0.92	0.93	0.99	1.07
CINCINNATI, OH	0.989	0.941	0.960	0.95	1.15	1.10	1.03	0.95	1.05	0.96	0.96	0.96	0.96	0.99	0.96	0.96	0.96	0.96	1.00	1.01
CLEVELAND, OH	0.989	0.941	0.960	1.23	1.06	1.11	1.08	1.19	1.06	1.05	1.06	1.06	1.06	1.06	1.06	1.06	1.06	1.06	1.06	1.06
COLUMBUS, OH	0.989	0.941	0.960	1.01	0.95	0.94	0.79	0.86	1.05	0.96	0.96	0.96	0.96	0.99	0.96	0.96	0.96	0.96	1.00	1.01
DAYTON, OH	0.989	0.941	0.960	0.90	0.94	0.93	1.02	1.18	0.98	0.95	0.96	0.96	0.96	0.99	0.96	0.96	0.96	0.96	1.00	1.01
EAST LIVERPOOL, OH	0.989	0.941	0.960	0.90	0.94	0.93	1.02	1.18	0.98	0.95	0.96	0.96	0.96	0.99	0.96	0.96	0.96	0.96	1.00	1.01
GROVE CITY, OH	0.989	0.941	0.960	0.90	0.91	0.85	0.70	0.73	0.96	0.96	0.96	0.96	0.96	0.99	0.96	0.96	0.96	0.96	1.00	1.01
LANCASTER, OH	0.989	0.941	0.960	0.89	0.91	0.85	0.70	0.73	0.96	0.96	0.96	0.96	0.96	0.99	0.96	0.96	0.96	0.96	1.00	1.01
LIMA, OH	0.989	0.941	0.960	0.92	0.96	0.87	0.87	0.97	0.93	1.01	0.97	0.94	0.94	1.03	0.88	1.11	0.92	0.93	0.99	1.07
LORAIN, OH	0.989	0.941	0.960	0.92	0.96	0.87	0.87	0.97	0.93	1.01	0.97	0.94	0.94	1.03	0.88	1.11	0.92	0.93	0.99	1.07
MANSFIELD, OH	0.989	0.941	0.960	0.92	0.96	0.87	0.87	0.97	0.93	1.01	0.97	0.94	0.94	1.03	0.88	1.11	0.92	0.93	0.99	1.07
MARIETTA, OH	0.989	0.941	0.960	0.94	0.89	0.87	0.79	0.73	0.80	0.95	0.94	0.94	0.94	1.03	0.96	0.96	0.96	0.96	1.00	1.01
MIDDLETOWN, OH	0.989	0.941	0.960	0.84	0.89	0.90	0.94	1.06	1.01	0.99	0.98	0.94	0.94	1.03	0.84	1.11	0.92	0.93	0.99	1.07
PAINESVILLE, OH	0.989	0.941	0.960	0.92	0.98	0.90	0.93	1.07	1.01	0.97	0.98	0.94	0.94	1.03	0.88	1.11	0.92	0.93	0.99	1.07
PORTSMOUTH, OH	0.989	0.941	0.960	0.84	0.89	0.90	0.94	1.06	1.01	0.99	0.98	0.94	0.94	1.03	0.84	1.11	0.92	0.93	0.99	1.07
SAINT CLAIRSVILLE, OH	0.989	0.941	0.960	0.90	0.94	0.93	1.02	1.18	0.98	0.95	0.96	0.96	0.96	0.99	0.96	0.96	0.96	0.96	1.00	1.01
SPRINGFIELD, OH	0.989	0.941	0.960	0.88	0.91	0.85	0.70	0.73	0.96	0.96	0.96	0.96	0.96	0.99	0.96	0.96	0.96	0.96	1.00	1.01
TOLEDO, OH	0.989	0.941	0.960	0.94	0.89	0.87	0.79	0.73	0.80	0.95	0.94	0.94	0.94	1.03	0.96	0.96	0.96	0.96	1.00	1.01
WARREN, OH	0.989	0.941	0.960	0.89	0.94	0.93	1.02	1.18	1.01	1.15	0.98	0.94	0.94	1.03	0.84	1.11	0.92	0.93	0.99	1.07
WASHINGTON COURT HOUSE	0.989	0.941	0.960	0.89	0.91	0.85	0.70	0.73	0.96	0.89	0.96	0.96	0.96	0.99	0.96	0.96	0.96	0.96	1.00	1.01
WAUSEON, OH	0.989	0.941	0.960	0.84	0.89	0.90	0.94	1.06	1.01	0.99	0.98	0.94	0.94	1.03	0.84	1.11	0.92	0.93	0.99	1.07
WELLSTON, OH	0.989	0.941	0.960	0.84	0.89	0.90	0.94	1.06	1.01	0.99	0.98	0.94	0.94	1.03	0.84	1.11	0.92	0.93	0.99	1.07
YOUNGSTOWN, OH	0.989	0.941	0.960	0.89	0.93	0.92	1.02	1.18	0.98	0.95	0.96	0.96	0.96	0.99	0.96	0.96	0.96	0.96	1.00	1.01
ZANESVILLE, OH	0.989	0.941	0.960	0.86	0.90	0.79	0.73	0.80	0.95	0.94	0.94	0.94	0.94	1.03	0.84	1.11	0.92	0.93	0.99	1.07
ARDMORE, OK	0.969	0.879	0.920	1.00	0.95	0.90	0.86	0.99	1.23	0.85	0.98	0.98	0.98	1.04	0.90	1.06	0.98	0.89	1.00	1.00
CLINTON, OK	0.969	0.879	0.920	0.90	0.95	0.90	0.86	0.99	1.23	0.85	0.98	0.98	0.98	1.04	0.90

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TABLE J. — PHYSICIAN GAAFS (GEOGRAPHIC AREA ADJUSTMENT FACTORS) FOR RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS; BY VA FACILITY LOCATION — Continued

Conversion Factor GAAFs By Physician CPT Code Group

| VA Facility Location | RVU GAAFs | | |

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TABLE J. — PHYSICIAN GAAFS (GEOGRAPHIC AREA ADJUSTMENT FACTORS) FOR RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS; BY VA FACILITY LOCATION — Continued

Conversion Factor GAAFs By Physician CPT Code Group

| VA Facility Location | RVU GAAFs | | |

TABLE J. — PHYSICIAN GAAFs (GEOGRAPHIC AREA ADJUSTMENT FACTORS) FOR RVUs AND CONVERSION FACTORS; BY VA FACILITY LOCATION — Continued

Conversion Factor GAAFs By Physician CPT Code Group

VA Facility Location	RVU GAAFs				Conversion Factor GAAFs																			
	Work Expense RVUs	Practice Expense RVUs	Total RVUs Only	Inpatient Visits	Office/Home/ Urgent Care Visits	Therapeutic Injections	Allergy Immuno-therapy	Allergy Testing	Physical Medicine	Cardio-vascular	Consults	ER Visits & Observation Care	Misc. Medical	Anesthesia	Pathology	Radiology	Surgery	Chiropractor	OP Psych / Alcohol & Drug Abuse	Physical Exams	Hearing/ Speech Exams	Vision Exams	Well Baby Exams	Immunizations	Non-Delivenas	Cesarean Delivenas	Normal Delivenas	Anesthesia	Pathology	Radiology	Surgery	Chiropractor	OP Psych / Alcohol & Drug Abuse	Physical Exams	Hearing/ Speech Exams	Vision Exams	Well Baby Exams	Immunizations	Non-Delivenas	Cesarean Delivenas	Normal Delivenas
ZIP CODE 066	1.049	1.184	1.110	1.12	1.12	1.08	0.92	1.03	1.06	0.85	1.06	1.16	1.03	1.06	1.35	1.28	1.06	1.06	0.85	0.90	0.87	0.79	1.15	1.36	0.86	1.10	1.21	1.28	0.91	0.85	0.86	0.90	0.84	0.90	0.82	0.84	0.79	1.15	1.17	1.36	0.86	1.10	1.21	1.28	0.91	0.85	0.86
ZIP CODE 067	1.049	1.184	1.110	1.12	1.12	1.08	0.92	1.03	1.06	0.85	1.06	1.16	1.03	1.06	1.35	1.28	1.06	1.06	0.85	0.90	0.87	0.79	1.15	1.36	0.86	1.10	1.21	1.28	0.91	0.85	0.86	0.90	0.84	0.90	0.82	0.84	0.79	1.15	1.17	1.36	0.86	1.10	1.21	1.28	0.91	0.85	0.86
ZIP CODE 074	1.057	1.192	1.130	1.00	1.07	1.07	0.94	1.00	1.07	0.89	1.07	1.17	1.04	1.07	1.43	1.32	1.07	1.07	0.89	0.94	0.91	0.83	1.20	1.42	0.90	1.15	1.26	1.32	0.95	0.89	0.90	0.94	0.88	0.94	0.86	0.88	0.83	1.20	1.22	1.42	0.90	1.15	1.26	1.32	0.95	0.89	0.90
ZIP CODE 075	1.057	1.192	1.130	1.00	1.07	1.07	0.94	1.00	1.07	0.89	1.07	1.17	1.04	1.07	1.43	1.32	1.07	1.07	0.89	0.94	0.91	0.83	1.20	1.42	0.90	1.15	1.26	1.32	0.95	0.89	0.90	0.94	0.88	0.94	0.86	0.88	0.83	1.20	1.22	1.42	0.90	1.15	1.26	1.32	0.95	0.89	0.90
ZIP CODE 077	1.028	1.102	1.070	0.93	0.99	0.99	0.91	1.05	0.99	0.77	0.99	1.09	0.88	1.20	1.20	1.20	0.99	0.99	0.77	0.83	0.79	0.74	1.06	1.26	0.80	1.02	1.12	1.18	0.84	0.79	0.80	0.83	0.78	0.83	0.76	0.78	0.74	1.06	1.08	1.26	0.80	1.02	1.12	1.18	0.84	0.79	0.80
ZIP CODE 078	1.057	1.192	1.130	0.99	0.98	0.98	0.91	1.15	0.98	0.77	0.98	1.09	0.88	1.20	1.20	1.20	0.98	0.98	0.77	0.83	0.79	0.74	1.06	1.26	0.80	1.02	1.12	1.18	0.84	0.79	0.80	0.83	0.78	0.83	0.76	0.78	0.74	1.06	1.08	1.26	0.80	1.02	1.12	1.18	0.84	0.79	0.80
ZIP CODE 079	1.028	1.102	1.070	0.93	0.99	0.99	0.91	1.05	0.99	0.77	0.99	1.09	0.88	1.20	1.20	1.20	0.99	0.99	0.77	0.83	0.79	0.74	1.06	1.26	0.80	1.02	1.12	1.18	0.84	0.79	0.80	0.83	0.78	0.83	0.76	0.78	0.74	1.06	1.08	1.26	0.80	1.02	1.12	1.18	0.84	0.79	0.80
ZIP CODE 085	1.028	1.102	1.070	0.93	0.99	0.99	0.91	1.05	0.99	0.77	0.99	1.09	0.88	1.20	1.20	1.20	0.99	0.99	0.77	0.83	0.79	0.74	1.06	1.26	0.80	1.02	1.12	1.18	0.84	0.79	0.80	0.83	0.78	0.83	0.76	0.78	0.74	1.06	1.08	1.26	0.80	1.02	1.12	1.18	0.84	0.79	0.80
ZIP CODE 090	1.067	1.242	1.170	0.92	1.02	1.06	1.03	1.24	1.06	0.91	1.06	1.29	1.08	1.44	1.44	1.73	1.06	1.06	0.91	1.01	0.97	0.92	1.12	1.56	0.99	1.26	1.39	1.46	1.05	0.98	0.99	1.04	0.97	1.03	0.94	0.97	0.92	1.31	1.34	1.56	0.99	1.26	1.39	1.46	1.05	0.98	0.99
ZIP CODE 091	1.067	1.242	1.170	0.92	1.02	1.06	1.03	1.24	1.06	0.91	1.06	1.29	1.08	1.44	1.44	1.73	1.06	1.06	0.91	1.01	0.97	0.92	1.12	1.56	0.99	1.26	1.39	1.46	1.05	0.98	0.99	1.04	0.97	1.03	0.94	0.97	0.92	1.31	1.34	1.56	0.99	1.26	1.39	1.46	1.05	0.98	0.99
ZIP CODE 092	1.067	1.242	1.170	0.92	1.02	1.06	1.03	1.24	1.06	0.91	1.06	1.29	1.08	1.44	1.44	1.73	1.06	1.06	0.91	1.01	0.97	0.92	1.12	1.56	0.99	1.26	1.39	1.46	1.05	0.98	0.99	1.04	0.97	1.03	0.94	0.97	0.92	1.31	1.34	1.56	0.99	1.26	1.39	1.46	1.05	0.98	0.99
ZIP CODE 093	1.067	1.242	1.170	0.92	1.02	1.06	1.03	1.24	1.06	0.91	1.06	1.29	1.08	1.44	1.44	1.73	1.06	1.06	0.91	1.01	0.97	0.92	1.12	1.56	0.99	1.26	1.39	1.46	1.05	0.98	0.99	1.04	0.97	1.03	0.94	0.97	0.92	1.31	1.34	1.56	0.99	1.26	1.39	1.46	1.05	0.98	0.99
ZIP CODE 095	1.067	1.242	1.170	0.92	1.02	1.06	1.03	1.24	1.06	0.91	1.06	1.29	1.08	1.44	1.44	1.73	1.06	1.06	0.91	1.01	0.97	0.92	1.12	1.56	0.99	1.26	1.39	1.46	1.05	0.98	0.99	1.04	0.97	1.03	0.94	0.97	0.92	1.31	1.34	1.56	0.99	1.26	1.39	1.46	1.05	0.98	0.99
ZIP CODE 096	1.067	1.242	1.170	0.92	1.02	1.06	1.03	1.24	1.06	0.91	1.06	1.29	1.08	1.44	1.44	1.73	1.06	1.06	0.91	1.01	0.97	0.92	1.12	1.56	0.99	1.26	1.39	1.46	1.05	0.98	0.99	1.04	0.97	1.03	0.94	0.97	0.92	1.31	1.34	1.56	0.99	1.26	1.39	1.46	1.05	0.98	0.99
ZIP CODE 097	1.067	1.242	1.170	0.92	1.02	1.06	1.03	1.24	1.06	0.91	1.06	1.29	1.08	1.44	1.44	1.73	1.06	1.06	0.91	1.01	0.97	0.92	1.12	1.56	0.99	1.26	1.39	1.46	1.05	0.98	0.99	1.04	0.97	1.03	0.94	0.97	0.92	1.31	1.34	1.56	0.99	1.26	1.39	1.46	1.05	0.98	0.99
ZIP CODE 098	1.067	1.242	1.170	0.92	1.02	1.06	1.03	1.24	1.06	0.91	1.06	1.29	1.08	1.44	1.44	1.73	1.06	1.06	0.91	1.01	0.97	0.92	1.12	1.56	0.99	1.26	1.39	1.46	1.05	0.98	0.99	1.04	0.97	1.03	0.94	0.97	0.92	1.31	1.34	1.56	0.99	1.26	1.39	1.46	1.05	0.98	0.99
ZIP CODE 101	1.063	1.352	1.240	1.28	1.42	1.25	1.13	1.30	1.17	1.11	1.17	1.30	1.17	1.56	1.56	1.89	1.17	1.17	1.11	1.22	1.07	1.04	1.34	1.70	1.08	1.38	1.51	1.59	1.15	1.07	1.08	1.13	1.06	1.12	1.03	1.06	1.01	1.43	1.46	1.70	1.08	1.38	1.51	1.59	1.15	1.07	1.08
ZIP CODE 105	1.063	1.352	1.240	1.28	1.42	1.25	1.13	1.30	1.17	1.11	1.17	1.30	1.17	1.56	1.56	1.89	1.17	1.17	1.11	1.22	1.07	1.04	1.34	1.70	1.08	1.38	1.51	1.59	1.15	1.07	1.08	1.13	1.06	1.12	1.03	1.06	1.01	1.43	1.46	1.70	1.08	1.38	1.51	1.59	1.15	1.07	1.08
ZIP CODE 106	1.063	1.352	1.240	1.28	1.42	1.25	1.13	1.30	1.17	1.11	1.17	1.30	1.17	1.56	1.56	1.89	1.17	1.17	1.11	1.22	1.07	1.04	1.34	1.70	1.08	1.38	1.51	1.59	1.15	1.07	1.08	1.13	1.06	1.12	1.03	1.06	1.01	1.43	1.46	1.70	1.08	1.38	1.51	1.59	1.15	1.07	1.08
ZIP CODE 108	1.063	1.352	1.240	1.28	1.42	1.25	1.13	1.30	1.17	1.11	1.17	1.30	1.17	1.56	1.56	1.89	1.17	1.17	1.11	1.22	1.07	1.04	1.34	1.70	1.08	1.38	1.51	1.59	1.15	1.07	1.08	1.13	1.06	1.12	1.03	1.06	1.01	1.43	1.46	1.70	1.08	1.38	1.51	1.59	1.15	1.07	1.08
ZIP CODE 110	1.067	1.242	1.170	0.92	1.02	1.06	1.03	1.24	1.06	0.91	1.06	1.29	1.08	1.44	1.44	1.73	1.06	1.06	0.91	1.01	0.97	0.92	1.12	1.56	0.99	1.26	1.39	1.46	1.05	0.98	0.99	1.04	0.97	1.03	0.94	0.97	0.92	1.31	1.34	1.56	0.99	1.26	1.39	1.46	1.05	0.98	0.99
ZIP CODE 113	1.057	1.231	1.160	0.93	1.03	1.07	1.05	1.28	1.08	0.94	1.08	1.34	1.08	1.44	1.44	1.73	1.08	1.08	0.94	1.04	1.00	0.95	1.15	1.58	1.00	1.28	1.40	1.48	1.06	0.99	1.00	1.05	0.98	1.04	0.95	0.98	0.93	1.33	1.35	1.58	1.00	1.28	1.40	1.48	1.06	0.99	1.00
ZIP CODE 133	0.998	0.961	0.970	0.88	0.91	0.89	0.95	1.00	0.91	0.83	0.91	0.99	0.86	1.01	1.01	1.15	0.91	0.91	0.83	0.87	0.85	0.79	1.01	1.20	0.76	0.97	1.06	1.11	0.80	0.75	0.76	0.79	0.74	0.79	0.72	0.74	0.70	1.01	1.03	1.20	0.76	0.97	1.06	1.11	0.80	0.75	0.76
ZIP CODE 135	0.998	0.951	0.970	0.88	0.91	0.89	0.95	1.00	0.91	0.83	0.91	0.99	0.86	1.01	1.01	1.15	0.91	0.91	0.83	0.87	0.85	0.79	1.01	1.20	0.76	0.97	1.06	1.11	0.80	0.75	0.76	0.79	0.74	0.79	0.72	0.74	0.70	1.01	1.03	1.20	0.76	0.97	1.06	1.11	0.80	0.75	0.76
ZIP CODE 141	0.998	0.951	0.970	0.88	0.91	0.89	0.95	1.00	0.91	0.83	0.91	0.99	0.86	1.01	1.01	1.15	0.91	0.91	0.83	0.87	0.85	0.79	1.01	1.20	0.76	0.97	1.06	1.11	0.80	0.75	0.76	0.79	0.74	0.79	0.72	0.74	0.70	1.01	1.03	1.20	0.76	0.97	1.06	1.11	0.80	0.75	0.76
ZIP CODE 151	0.989	0.930	0.960	0.90	0.96	0.96	0.89	1.05	0.96	0.80	0.96	1.06	0.92	1.13	1.13	1.33	0.96	0.96	0.80	0.84	0.82	0.76	0.98	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73	0.76	0.71	0.76	0.69	0.71	0.67	0.98	1.00	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73
ZIP CODE 152	0.989	0.930	0.960	0.90	0.96	0.96	0.89	1.05	0.96	0.80	0.96	1.06	0.92	1.13	1.13	1.33	0.96	0.96	0.80	0.84	0.82	0.76	0.98	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73	0.76	0.71	0.76	0.69	0.71	0.67	0.98	1.00	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73
ZIP CODE 153	0.989	0.930	0.960	0.90	0.96	0.96	0.89	1.05	0.96	0.80	0.96	1.06	0.92	1.13	1.13	1.33	0.96	0.96	0.80	0.84	0.82	0.76	0.98	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73	0.76	0.71	0.76	0.69	0.71	0.67	0.98	1.00	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73
ZIP CODE 154	0.989	0.930	0.960	0.90	0.96	0.96	0.89	1.05	0.96	0.80	0.96	1.06	0.92	1.13	1.13	1.33	0.96	0.96	0.80	0.84	0.82	0.76	0.98	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73	0.76	0.71	0.76	0.69	0.71	0.67	0.98	1.00	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73
ZIP CODE 155	0.989	0.930	0.960	0.90	0.96	0.96	0.89	1.05	0.96	0.80	0.96	1.06	0.92	1.13	1.13	1.33	0.96	0.96	0.80	0.84	0.82	0.76	0.98	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73	0.76	0.71	0.76	0.69	0.71	0.67	0.98	1.00	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73
ZIP CODE 161	0.989	0.930	0.960	0.90	0.96	0.96	0.89	1.05	0.96	0.80	0.96	1.06	0.92	1.13	1.13	1.33	0.96	0.96	0.80	0.84	0.82	0.76	0.98	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73	0.76	0.71	0.76	0.69	0.71	0.67	0.98	1.00	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73
ZIP CODE 164	0.989	0.930	0.960	0.90	0.96	0.96	0.89	1.05	0.96	0.80	0.96	1.06	0.92	1.13	1.13	1.33	0.96	0.96	0.80	0.84	0.82	0.76	0.98	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73	0.76	0.71	0.76	0.69	0.71	0.67	0.98	1.00	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73
ZIP CODE 169	0.989	0.930	0.960	0.90	0.96	0.96	0.89	1.05	0.96	0.80	0.96	1.06	0.92	1.13	1.13	1.33	0.96	0.96	0.80	0.84	0.82	0.76	0.98	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73	0.76	0.71	0.76	0.69	0.71	0.67	0.98	1.00	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73
ZIP CODE 171	0.989	0.930	0.960	0.90	0.96	0.96	0.89	1.05	0.96	0.80	0.96	1.06	0.92	1.13	1.13	1.33	0.96	0.96	0.80	0.84	0.82	0.76	0.98	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73	0.76	0.71	0.76	0.69	0.71	0.67	0.98	1.00	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73
ZIP CODE 172	0.989	0.930	0.960	0.90	0.96	0.96	0.89	1.05	0.96	0.80	0.96	1.06	0.92	1.13	1.13	1.33	0.96	0.96	0.80	0.84	0.82	0.76	0.98	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73	0.76	0.71	0.76	0.69	0.71	0.67	0.98	1.00	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73
ZIP CODE 173	0.989	0.930	0.960	0.90	0.96	0.96	0.89	1.05	0.96	0.80	0.96	1.06	0.92	1.13	1.13	1.33	0.96	0.96	0.80	0.84	0.82	0.76	0.98	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73	0.76	0.71	0.76	0.69	0.71	0.67	0.98	1.00	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73
ZIP CODE 174	0.989	0.930	0.960	0.90	0.96	0.96	0.89	1.05	0.96	0.80	0.96	1.06	0.92	1.13	1.13	1.33	0.96	0.96	0.80	0.84	0.82	0.76	0.98	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73	0.76	0.71	0.76	0.69	0.71	0.67	0.98	1.00	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73
ZIP CODE 175	0.989	0.930	0.960	0.90	0.96	0.96	0.89	1.05	0.96	0.80	0.96	1.06	0.92	1.13	1.13	1.33	0.96	0.96	0.80	0.84	0.82	0.76	0.98	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73	0.76	0.71	0.76	0.69	0.71	0.67	0.98	1.00	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73
ZIP CODE 178	0.989	0.930	0.960	0.90	0.96	0.96	0.89	1.05	0.96	0.80	0.96	1.06	0.92	1.13	1.13	1.33	0.96	0.96	0.80	0.84	0.82	0.76	0.98	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73	0.76	0.71	0.76	0.69	0.71	0.67	0.98	1.00	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73
ZIP CODE 180	0.989	0.930	0.960	0.90	0.96	0.96	0.89	1.05	0.96	0.80	0.96	1.06	0.92	1.13	1.13	1.33	0.96	0.96	0.80	0.84	0.82	0.76	0.98	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73	0.76	0.71	0.76	0.69	0.71	0.67	0.98	1.00	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73
ZIP CODE 182	0.989	0.930	0.960	0.90	0.96	0.96	0.89	1.05	0.96	0.80	0.96	1.06	0.92	1.13	1.13	1.33	0.96	0.96	0.80	0.84	0.82	0.76	0.98	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73	0.76	0.71	0.76	0.69	0.71	0.67	0.98	1.00	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73
ZIP CODE 185	0.989	0.930	0.960	0.90	0.96	0.96	0.89	1.05	0.96	0.80	0.96	1.06	0.92	1.13	1.13	1.33	0.96	0.96	0.80	0.84	0.82	0.76	0.98	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73	0.76	0.71	0.76	0.69	0.71	0.67	0.98	1.00	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73
ZIP CODE 186	0.989	0.930	0.960	0.90	0.96	0.96	0.89	1.05	0.96	0.80	0.96	1.06	0.92	1.13	1.13	1.33	0.96	0.96	0.80	0.84	0.82	0.76	0.98	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73	0.76	0.71	0.76	0.69	0.71	0.67	0.98	1.00	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73
ZIP CODE 189	1.023	1.090	1.060	0.93	1.00	1.04	0.92	1.08	1.00	0.80	1.00	1.14	0.97	1.20	1.20	1.56	1.00	1.00	0.80	0.84	0.82	0.76	1.06	1.26	0.80	1.02	1.12	1.18	0.84	0.79	0.80	0.83	0.78	0.83	0.76	0.78	0.74	1.06	1.08	1.26	0.80	1.02	1.12	1.18	0.84	0.79	0.80
ZIP CODE 190	1.023	1.090	1.060	0.93	1.00	1.04	0.92	1.08	1.00	0.80	1.00	1.14	0.97	1.20	1.20	1.56	1.00	1.00	0.80	0.84	0.82	0.76	1.06	1.26	0.80	1.02	1.12	1.18	0.84	0.79	0.80	0.83	0.78	0.83	0.76	0.78	0.74	1.06	1.08	1.26	0.80	1.02	1.12	1.18	0.84	0.79	0.80
ZIP CODE 192	0.989	0.930	0.960	0.90	0.96	0.96	0.89	1.05	0.96	0.80	0.96	1.06	0.92	1.13	1.13	1.33	0.96	0.96	0.80	0.84	0.82	0.76	0.98	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73	0.76	0.71	0.76	0.69	0.71	0.67	0.98	1.00	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73
ZIP CODE 195	0.989	0.930	0.960	0.90	0.96	0.96	0.89	1.05	0.96	0.80	0.96	1.06	0.92	1.13	1.13	1.33	0.96	0.96	0.80	0.84	0.82	0.76	0.98	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73	0.76	0.71	0.76	0.69	0.71	0.67	0.98	1.00	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73
ZIP CODE 200	0.985	0.939	0.960	0.90	0.96	0.96	0.89	1.05	0.96	0.80	0.96	1.06	0.92	1.13	1.13	1.33	0.96	0.96	0.80	0.84	0.82	0.76	0.98	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73	0.76	0.71	0.76	0.69	0.71	0.67	0.98	1.00	1.16	0.73	0.94	1.03	1.08	0.77	0.72	0.73
ZIP CODE 201	1.050	1.164	1.110	1.00	1.07	1.07	0.94	1.00	1.07	0.89	1.07	1.17	1.04	1.07	1.43	1.32	1.07	1.07	0.89	0.94	0.91	0.83	1.20	1.42	0.90	1.15	1.26	1.32	0.95	0.89	0.90	0.94	0.88	0.94	0.86	0.88	0.83	1.20	1.22	1.42	0.90	1.15	1.26	1.32	0.95	0.89	0.90
ZIP CODE 202	1.050	1.164	1.110	1.00	1.07	1.07	0.94	1.00	1.07	0.89	1.07	1.17	1.04	1.07	1.43	1.32	1.07	1.07	0.89	0.94	0.91	0.83	1.20	1.42	0.90	1.15	1.26	1.32	0.95	0.89	0.90	0.94	0.88	0.94	0.86	0.88	0.83	1.20	1.22	1.42	0.90	1.15	1.26	1.32	0.95	0.89	0.90
ZIP CODE 203	1.050	1.164	1.110	1.00	1.07	1.07	0.94	1.00	1.07	0.89	1.07	1.17	1.04	1.07	1.43	1.32	1.07	1.07	0.89	0.94	0.91	0.83	1.20	1.42	0.90	1.15	1.26	1.32	0.95	0.89	0.90	0.94	0.88	0.94	0.86	0.88	0.83	1.20	1.22	1.42	0.90	1.15	1.26	1.32	0.95	0.89	0.90
ZIP CODE 208	1.050	1.164	1.110	1.00	1.07	1.07	0.94	1.00	1.07	0.89	1.07	1.17	1.04	1.07	1.43	1.32	1.07	1.07	0.89	0.94	0.91	0.83	1.20	1.42	0.90	1.15	1.26	1.32	0.95	0.89	0.90	0.94	0.88	0.94	0.86	0.88	0.83	1.20	1.22	1.42	0.90	1.15	1

TABLE J. — PHYSICIAN GAAFS (GEOGRAPHIC AREA ADJUSTMENT FACTORS) FOR RVUS
(RELATIVE VALUE UNITS) AND CONVERSION FACTORS; BY VA FACILITY LOCATION — Continued
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VA Facility Location	RVU GAAFs			Conversion Factor GAAFs By Physician CPT Code Group																				
	Work Expense RVUs	Practice Expense RVUs	Total RVUs Only	Consults	Physical Medicine	Cardio-vascular	Immunizations	Well Baby Exams	Vision Exams	Hearing/ Speech Exams	Surgery	Radiology	Pathology	Anesthesia	Allergy Testing	Allergy Immuno-therapy	ER Visits & Observation Care	Misc. Medical	Inpatient Visits	Office/Home/ Urgent Care Visits	Therapeutic Injections	OP Psych/ Alcohol & Drug Abuse	Chiropractor	Non-Deferrals
ZIP CODE 384	0.975	0.900	0.930	1.00	1.08	1.03	1.03	1.08	0.95	0.98	1.01	0.99	1.06	0.93	1.02	0.96	0.88	0.99	1.00	0.99	0.94	0.99	1.03	1.00
ZIP CODE 385	0.957	0.841	0.890	0.97	1.06	0.98	1.00	1.04	0.90	0.93	0.97	0.93	1.00	0.93	1.01	0.95	0.92	0.98	0.93	0.95	0.93	0.98	1.02	0.92
ZIP CODE 396	0.957	0.841	0.890	0.97	1.01	0.96	1.00	1.04	0.90	0.93	0.97	0.93	1.00	0.93	1.01	0.95	0.92	0.98	0.93	0.95	0.93	0.98	1.02	0.92
ZIP CODE 397	0.957	0.841	0.890	0.93	1.22	1.05	1.03	1.08	0.95	0.98	1.01	0.96	1.06	0.93	1.02	0.96	0.88	0.99	1.00	0.99	0.94	0.99	1.03	1.00
ZIP CODE 399	1.006	1.046	1.030	1.15	1.06	1.14	1.06	1.11	1.05	1.08	1.27	1.05	1.10	0.99	1.02	0.96	0.88	0.99	1.00	0.99	0.94	0.99	1.03	1.00
ZIP CODE 400	0.970	0.870	0.910	1.02	1.32	1.17	1.06	1.13	0.95	0.98	1.27	1.05	1.10	0.99	1.02	0.96	0.88	0.99	1.00	0.99	0.94	0.99	1.03	1.00
ZIP CODE 403	0.970	0.870	0.910	0.92	0.94	0.91	1.00	1.04	0.90	0.93	0.97	0.93	1.00	0.93	1.01	0.95	0.92	0.98	0.93	0.95	0.93	0.98	1.02	0.92
ZIP CODE 405	0.970	0.870	0.910	0.92	0.94	0.91	1.00	1.04	0.90	0.93	0.97	0.93	1.00	0.93	1.01	0.95	0.92	0.98	0.93	0.95	0.93	0.98	1.02	0.92
ZIP CODE 406	0.970	0.870	0.910	0.92	0.94	0.91	1.00	1.04	0.90	0.93	0.97	0.93	1.00	0.93	1.01	0.95	0.92	0.98	0.93	0.95	0.93	0.98	1.02	0.92
ZIP CODE 407	0.970	0.870	0.910	1.00	1.01	0.94	1.01	1.04	0.94	0.98	1.01	0.94	1.01	0.94	1.01	0.94	0.83	0.97	1.01	0.94	0.94	0.97	1.03	1.01
ZIP CODE 408	0.970	0.870	0.910	1.00	1.01	0.94	1.01	1.04	0.94	0.98	1.01	0.94	1.01	0.94	1.01	0.94	0.83	0.97	1.01	0.94	0.94	0.97	1.03	1.01
ZIP CODE 409	0.970	0.870	0.910	1.00	1.01	0.94	1.01	1.04	0.94	0.98	1.01	0.94	1.01	0.94	1.01	0.94	0.83	0.97	1.01	0.94	0.94	0.97	1.03	1.01
ZIP CODE 410	0.970	0.870	0.910	1.00	1.01	0.94	1.01	1.04	0.94	0.98	1.01	0.94	1.01	0.94	1.01	0.94	0.83	0.97	1.01	0.94	0.94	0.97	1.03	1.01
ZIP CODE 412	0.970	0.870	0.910	1.00	1.01	0.94	1.01	1.04	0.94	0.98	1.01	0.94	1.01	0.94	1.01	0.94	0.83	0.97	1.01	0.94	0.94	0.97	1.03	1.01
ZIP CODE 413	0.970	0.870	0.910	1.00	1.01	0.94	1.01	1.04	0.94	0.98	1.01	0.94	1.01	0.94	1.01	0.94	0.83	0.97	1.01	0.94	0.94	0.97	1.03	1.01
ZIP CODE 414	0.970	0.870	0.910	1.00	1.01	0.94	1.01	1.04	0.94	0.98	1.01	0.94	1.01	0.94	1.01	0.94	0.83	0.97	1.01	0.94	0.94	0.97	1.03	1.01
ZIP CODE 415	0.970	0.870	0.910	1.00	1.01	0.94	1.01	1.04	0.94	0.98	1.01	0.94	1.01	0.94	1.01	0.94	0.83	0.97	1.01	0.94	0.94	0.97	1.03	1.01
ZIP CODE 417	0.970	0.870	0.910	1.00	1.01	0.94	1.01	1.04	0.94	0.98	1.01	0.94	1.01	0.94	1.01	0.94	0.83	0.97	1.01	0.94	0.94	0.97	1.03	1.01
ZIP CODE 423	0.970	0.870	0.910	0.95	0.92	0.94	1.01	1.01	0.92	0.95	1.01	0.94	1.01	0.94	1.01	0.94	0.83	0.97	1.01	0.94	0.94	0.97	1.03	1.01
ZIP CODE 424	0.970	0.870	0.910	0.95	0.92	0.94	1.01	1.01	0.92	0.95	1.01	0.94	1.01	0.94	1.01	0.94	0.83	0.97	1.01	0.94	0.94	0.97	1.03	1.01
ZIP CODE 426	0.970	0.870	0.910	0.95	0.92	0.94	1.01	1.01	0.92	0.95	1.01	0.94	1.01	0.94	1.01	0.94	0.83	0.97	1.01	0.94	0.94	0.97	1.03	1.01
ZIP CODE 427	0.970	0.870	0.910	0.95	0.92	0.94	1.01	1.01	0.92	0.95	1.01	0.94	1.01	0.94	1.01	0.94	0.83	0.97	1.01	0.94	0.94	0.97	1.03	1.01
ZIP CODE 430	0.989	0.941	0.960	0.98	0.89	0.90	0.95	0.92	0.98	1.02	1.01	0.90	1.07	0.96	0.98	0.97	0.91	0.94	1.04	0.92	1.10	0.91	1.06	0.94
ZIP CODE 433	0.989	0.941	0.960	0.98	0.89	0.90	0.95	0.92	0.98	1.02	1.01	0.90	1.07	0.96	0.98	0.97	0.91	0.94	1.04	0.92	1.10	0.91	1.06	0.94
ZIP CODE 435	0.989	0.941	0.960	0.98	0.89	0.90	0.95	0.92	0.98	1.02	1.01	0.90	1.07	0.96	0.98	0.97	0.91	0.94	1.04	0.92	1.10	0.91	1.06	0.94
ZIP CODE 438	0.989	0.941	0.960	0.98	0.89	0.90	0.95	0.92	0.98	1.02	1.01	0.90	1.07	0.96	0.98	0.97	0.91	0.94	1.04	0.92	1.10	0.91	1.06	0.94
ZIP CODE 442	0.989	0.941	0.960	0.98	0.89	0.90	0.95	0.92	0.98	1.02	1.01	0.90	1.07	0.96	0.98	0.97	0.91	0.94	1.04	0.92	1.10	0.91	1.06	0.94
ZIP CODE 446	0.989	0.941	0.960	0.98	0.89	0.90	0.95	0.92	0.98	1.02	1.01	0.90	1.07	0.96	0.98	0.97	0.91	0.94	1.04	0.92	1.10	0.91	1.06	0.94
ZIP CODE 453	0.989	0.941	0.960	0.98	0.89	0.90	0.95	0.92	0.98	1.02	1.01	0.90	1.07	0.96	0.98	0.97	0.91	0.94	1.04	0.92	1.10	0.91	1.06	0.94
ZIP CODE 459	0.989	0.941	0.960	0.98	0.89	0.90	0.95	0.92	0.98	1.02	1.01	0.90	1.07	0.96	0.98	0.97	0.91	0.94	1.04	0.92	1.10	0.91	1.06	0.94
ZIP CODE 460	0.981	0.919	0.950	0.98	0.89	0.90	0.96	0.92	0.98	1.02	1.01	0.90	1.07	0.95	0.98	0.97	0.91	0.94	1.04	0.92	1.10	0.91	1.06	0.94
ZIP CODE 461	0.981	0.919	0.950	0.98	0.89	0.90	0.96	0.92	0.98	1.02	1.01	0.90	1.07	0.95	0.98	0.97	0.91	0.94	1.04	0.92	1.10	0.91	1.06	0.94
ZIP CODE 464	0.981	0.919	0.950	0.98	0.89	0.90	0.96	0.92	0.98	1.02	1.01	0.90	1.07	0.95	0.98	0.97	0.91	0.94	1.04	0.92	1.10	0.91	1.06	0.94
ZIP CODE 466	0.981	0.919	0.950	0.98	0.89	0.90	0.96	0.92	0.98	1.02	1.01	0.90	1.07	0.95	0.98	0.97	0.91	0.94	1.04	0.92	1.10	0.91	1.06	0.94
ZIP CODE 467	0.981	0.919	0.950	0.98	0.89	0.90	0.96	0.92	0.98	1.02	1.01	0.90	1.07	0.95	0.98	0.97	0.91	0.94	1.04	0.92	1.10	0.91	1.06	0.94
ZIP CODE 470	0.981	0.919	0.950	0.98	0.89	0.90	0.96	0.92	0.98	1.02	1.01	0.90	1.07	0.95	0.98	0.97	0.91	0.94	1.04	0.92	1.10	0.91	1.06	0.94
ZIP CODE 472	0.981	0.919	0.950	0.95	0.90	0.90	0.96	0.92	0.98	1.02	1.01	0.90	1.07	0.95	0.98	0.97	0.91	0.94	1.04	0.92	1.10	0.91	1.06	0.94
ZIP CODE 475	0.981	0.919	0.950	0.97	0.92	0.92	0.98	1.01	0.99	1.02	1.01	0.92	1.07	0.97	0.99	0.99	0.93	0.96	1.02	0.94	1.00	0.98	1.02	0.96
ZIP CODE 476	0.981	0.919	0.950	0.97	0.92	0.92	0.98	1.01	0.99	1.02	1.01	0.92	1.07	0.97	0.99	0.99	0.93	0.96	1.02	0.94	1.00	0.98	1.02	0.96
ZIP CODE 484	0.981	0.919	0.950	0.97	0.92	0.92	0.98	1.01	0.99	1.02	1.01	0.92	1.07	0.97	0.99	0.99	0.93	0.96	1.02	0.94	1.00	0.98	1.02	0.96
ZIP CODE 488	0.998	0.938	0.960	0.98	0.89	0.90	0.95	0.93	0.98	1.02	1.01	0.90	1.07	0.95	0.98	0.97	0.91	0.94	1.04	0.92	1.10	0.91	1.06	0.94
ZIP CODE 491	0.998	0.938	0.960	0.98	0.89	0.90	0.95	0.93	0.98	1.02	1.01	0.90	1.07	0.95	0.98	0.97	0.91	0.94	1.04	0.92	1.10	0.91	1.06	0.94
ZIP CODE 493	0.998	0.938	0.960	0.98	0.89	0.90	0.95	0.93	0.98	1.02	1.01	0.90	1.07	0.95	0.98	0.97	0.91	0.94	1.04	0.92	1.10	0.91	1.06	0.94
ZIP CODE 500	0.959	0.879	0.910	0.93	0.89	0.90	0.96	0.92	0.98	1.02	1.01	0.90	1.07	0.95	0.98	0.97	0.91	0.94	1.04	0.92	1.10	0.91	1.06	0.94
ZIP CODE 502	0.959	0.879	0.910	0.93	0.89	0.90	0.96	0.92	0.98	1.02	1.01	0.90	1.07	0.95	0.98	0.97	0.91	0.94	1.04	0.92	1.10	0.91	1.06	0.94
ZIP CODE 508	0.959	0.879	0.910	0.93	0.89	0.90	0.96	0.92	0.98	1.02	1.01	0.90	1.07	0.95	0.98	0.97	0.91	0.94	1.04	0.92	1.10	0.91	1.06	0.94
ZIP CODE 509	0.959	0.879	0.910	0.93	0.89	0.90	0.96	0.92	0.98	1.02	1.01	0.90	1.07	0.95	0.98	0.97	0.91	0.94	1.04	0.92	1.10	0.91	1.06	0.94
ZIP CODE 510	0.959	0.879	0.910	0.93	0.89	0.90	0.96	0.92	0.98	1.02	1.01	0.90	1.07	0.95	0.98	0.97	0.91	0.94	1.04	0.92	1.10	0.91	1.06	0.94
ZIP CODE 512	0.959	0.879	0.910	0.93	0.89	0.90	0.96	0.92	0.98	1.02	1.01	0.90	1.07	0.95	0.98	0.97	0.91	0.94	1.04	0.92	1.10	0.91	1.06	0.94
ZIP CODE 513	0.959	0.879	0.910	0.93	0.89	0.90	0.96	0.92	0.98	1.02	1.01	0.90	1.07	0.95	0.98	0.97	0.91	0.94	1.04	0.92	1.10	0.91	1.06	0.94
ZIP CODE 514	0.959	0.879	0.910	0.93	0.89	0.90	0.96	0.92	0.98	1.02	1.01	0.90	1.07	0.95	0.98	0.97	0.91	0.94	1.04	0.92	1.10	0.91	1.06	0.94
ZIP CODE 515	0.959	0.879	0.910	0.93	0.89	0.90	0.96	0.92	0.98	1.02	1.01	0.90	1.07	0.95	0.98	0.97	0.91	0.94	1.04	0.92	1.10	0.91	1.06	0.94
ZIP CODE 518	0.959	0.879	0.910	0.93	0.89	0.90	0.96	0.92	0.98	1.02	1.01	0.90	1.07	0.95	0.98	0.97	0.91	0.94	1.04	0.92	1.10	0.91	1.06	0.94
ZIP CODE 521	0.959	0.879	0.910	0.93	0.89	0.90	0.96	0.92	0.98	1.02	1.01	0.90	1.07	0.95	0.98	0.97	0.91	0.94	1.04	0.92	1.10	0.91	1.06	0.94
ZIP CODE 523	0.959	0.879	0.910	0.93	0.89	0.90	0.96	0.92	0.98	1.02	1.01	0.90	1.07	0.95	0.98	0.97	0.91	0.94	1.04	0.92	1.10	0.91	1.06	0.94
ZIP CODE 524	0.959	0.879	0.910	0.93	0.89	0.90	0.96	0.92	0.98	1.02	1.01	0.90	1.07	0.95	0.98	0.97	0.91	0.94	1.04	0.92	1.10	0.91	1.06	0.94

TABLE J. — PHYSICIAN GAAFS (GEOGRAPHIC AREA ADJUSTMENT FACTORS) FOR RVUS
(RELATIVE VALUE UNITS) AND CONVERSION FACTORS; BY VA FACILITY LOCATION — Continued
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VA Facility Location	RVU GAAFs			Conversion Factor GAAFs By Physician CPT Code Group																				
	Work Expense RVUs	Practice Expense RVUs	Total RVUs Only	Consults	Physical Medicine	Cardio-vascular	Immunizations	Well Baby Exams	Vision Exams	Hearing/ Speech Exams	Surgery	Radiology	Pathology	Anesthesia	Allergy Testing	Allergy Immuno-therapy	ER Visits & Observation Care	Misc. Medical	Inpatient Visits	Office/Home/ Urgent Care Visits	Therapeutic Injections	OP Psych/ Alcohol & Drug Abuse	Chiropractor	Non-Deferrals
ZIP CODE 526	0.959	0.879	0.910	0.95	1.04	0.95	1.00	1.04	0.95	0.98	1.01	0.99	1.06	0.93	1.02	0.96	0.88	0.99	1.00	0.99	0.94	0.99	1.03	1.00
ZIP CODE 535	0.959	0.879	0.910	0.95	1.04	0.95	1.00	1.04	0.95	0.98	1.01	0.99	1.06	0.93	1.02	0.96	0.88	0.99	1.00	0.99	0.94	0.99	1.03	1.00
ZIP CODE 534	0.981	0.931	0.950	0.97	1.01	0.96	1.00	1.04	0.90	0.93	0.97	0.93	1.00	0.93	1.01	0.95	0.92	0.98	0.93	0.95	0.93	0.98	1.02	0.92
ZIP CODE 538	0.981	0.931	0.950	0.97	1.01	0.96	1.00	1.04	0.90	0.93	0.97	0.93	1.00	0.93	1.01	0.95	0.92	0.98	0.93	0.95	0.93	0.98	1.02	0.92
ZIP CODE 540	0.981	0.931	0.950	0.97	1.01	0.96	1.00	1.04	0.90	0.93	0.97	0.93	1.00	0.93	1.01	0.95	0.92	0.98	0.93	0.95	0.93	0.98	1.02	0.92
ZIP CODE 541	0.981	0.931	0.950	0.97	1.01	0.96	1.00	1.04	0.90	0.93	0.97	0.93	1.00	0.93	1.01	0.95	0.92	0.98	0.93	0.95	0.93	0.98	1.02	0.92
ZIP CODE 542	0.981	0.931	0.950	0.97	1.01	0.96	1.00	1.04	0.90	0.93	0.97	0.93	1.00	0.93	1.01	0.95	0.92	0.98	0.93	0.95	0.93	0.98	1.02	0.92
ZIP CODE 550	0.990	0.971	0.980	1.00	1.06	1.00	1.00	1.04	0.94	0.98	1.01	0.99	1.06	0.93	1.02	0.96	0.88	0.99	1.00	0.99	0.94	0.99	1.03	1.00
ZIP CODE 553	0.990	0.971	0.980	1.00	1.06	1.00	1.00	1.04	0.94	0.98	1.01	0.99	1.06	0.93	1.02	0.96	0.88	0.99	1.00	0.99	0.94	0.99	1.03	1.00
ZIP CODE 555	0.990	0.971	0.980	1.00	1.06	1.00	1.00	1.04	0.94	0.98	1.01	0.99	1.06	0.93	1.02	0.96	0.88	0.99	1.00	0.99	0.94	0.99	1.03	1.00
ZIP CODE 556	0.990	0.971	0.980	1.00	1.06	1.00	1.00	1.04	0.94	0.98	1.01	0.99	1.06	0.93	1.02	0.96	0.88	0.99	1.00	0.99	0.94	0.99	1.03	1.00
ZIP CODE 559	0.990	0.971	0.980	1.00	1.06	1.00	1.00	1.04	0.94	0.98	1.01	0.99	1.06	0.93	1.02	0.96	0.88	0.99	1.00	0.99	0.94	0.99	1.03	1.00
ZIP CODE 560	0.990	0.971	0.980	1.00	1.06	1.00	1.00	1.04	0.94	0.98	1.01	0.99	1.06	0.93	1.02	0.96	0.88	0.99	1.00	0.99	0.94	0.99	1.03	1.00
ZIP CODE 562	0.990	0.971	0.980	1.00	1.06	1.00	1.00	1.04	0.94	0.98	1.01	0.99	1.06	0.93	1.02	0.96	0.88	0.99	1.00	0.99	0.94	0.99	1.03	1.00
ZIP CODE 567	0.990	0.971	0.980	1.00	1.06	1.00	1.00	1.04	0.94	0.98	1.01	0.99	1.06	0.93	1.02	0.96	0.88	0.99	1.00	0.99	0.94	0.99	1.03	1.00
ZIP CODE 572	0.935	0.876	0.900	1.04	1.08	1.03	1.03	1.08	0.95	0.98	1.01	0.94	1.06	0.93	1.02	0.96	0.88	0.99	1.00	0.99	0.94	0.99	1.03	1.00
ZIP CODE 573	0.935	0.876	0.900	1.04	1.08	1.03	1.03	1.08	0.95	0.98	1.01	0.94	1.06	0.93	1.02	0.96	0.88	0.99	1.00	0.99	0.94	0.99	1.03	1.00
ZIP CODE 574	0.935	0.876	0.900	1.04	1.08	1.03	1.03	1.08	0.95	0.98	1.01	0.94	1.06	0.93	1.02	0.96	0.88	0.99	1.00	0.99	0.94	0.99	1.03	1.00
ZIP CODE 580	0.950	0.879	0.910	1.00	1.06	1.00	1.00	1.04	0.94	0.98	1.01	0.99	1.06	0.93	1.02	0.96	0.88	0.99	1.00	0.99	0.94	0.99	1.03	1.00
ZIP CODE 583	0.950	0.879	0.910	1.00	1.06	1.00	1.00	1.04	0.94	0.98	1.01	0.99	1.06	0.93	1.02	0.96	0.88	0.99	1.00	0.99	0.94	0.99	1.03	1.00
ZIP CODE 584	0.950	0.879	0.910	1.00	1.06	1.00	1.00	1.04	0.94	0.98	1.01	0.99	1.06	0.93	1.02	0.96	0.88	0.99	1.00	0.99	0.94	0.99	1.03	1.00
ZIP CODE 595	0.950	0.879	0.910	1.00	1.06	1.00	1.00	1.04	0.94	0.98	1.01	0.99	1.06	0.93	1.02	0.96	0.88	0.99	1.00	0.99	0.94	0.99	1.03	1.00
ZIP CODE 598	0.950	0.879	0.910	1.00	1.06	1.00	1.00	1.04	0.94	0.98	1.01	0.99	1.06	0.93	1.02	0.96	0.88	0.99	1.00	0.99	0.94	0.99	1.03	1.00
ZIP CODE 607	1.027	1.060	1.060	1.14	1.08	1.16	1.06	1.11	1.05	1.08	1.27	1.05	1.10	0.99	1.02	0.96	0.88	0.99	1.00	0.99	0.94	0.99	1.03	1.00
ZIP CODE 608	1.027	1.060	1.060	1.14	1.08	1.16	1.06	1.11	1.05	1.08	1.27	1.05	1.10	0.99	1.02	0.96	0.88	0.99	1.00	0.99	0.94	0.99	1.03	1.00
ZIP CODE 610	0.964	0.888	0.920	0.99	1.06	1.00	1.00	1.04	0.94	0.98	1.01	0.94	1.06	0.93	1.02	0.96	0.88	0.99	1.00	0.99	0.94	0.99	1.03	1.00
ZIP CODE 611	0.964	0.888	0.920	0.99	1.06	1.00	1.00	1.04	0.94	0.98	1.01	0.94	1.06	0.93	1.02	0.96	0.88	0.99	1.00	0.99	0.94	0.99	1.03	1.00
ZIP CODE 617	0.964	0.888	0.920	0.99	1.06	1.00	1.00	1.04	0.94	0.98	1.01	0.94	1.06	0.93	1.02	0.96	0.88	0.99	1.00	0.99	0.94	0.99	1.03	1.00
ZIP CODE 619	0.964	0.888	0.920	0.99	1.06	1.00	1.00	1.04	0.94	0.98	1.01	0.94	1.06	0.93	1.02	0.96	0.88	0.99	1.00	0.99	0.94	0.99	1.03	1.00
ZIP CODE 620	0.964	0.888	0.920	0.99	1.06	1.00	1.00	1.04	0.94	0.98	1.01	0.94	1.06	0.93	1.02	0.96	0.88	0.99	1.00	0.99	0.94	0.99	1.03	1.00
ZIP CODE 625	0.964	0.888	0.920	0.99	1.06	1.00	1.00	1.04	0.94	0.98	1.01	0.94	1.06	0.93	1.02	0.96	0.88	0.99	1.00	0.99	0.94	0.99	1.03	1.00
ZIP CODE 634	0.946	0.826	0.880	1.00	1.03	1.00	1.00	1.04	0.94	0.98	1.01	0.94	1.04	0.93	1.02	0.96	0.88	0.99	1.00	0.99	0.94	0.99	1.03	1.00
ZIP CODE 638	0.946	0.826	0.880	0.98	1.00	0.98	1.00	1.04	0.94	0.98	1.01	0.94	1.04	0.93	1.02	0.96	0.88	0.99	1.00	0.99	0.94	0.99	1.03	1.00
ZIP CODE 644	0.946	0.826	0.880	0.98	1.00	0.98	1.00	1.04	0.94	0.98	1.01	0.94	1.04	0.93	1.02	0.96	0.88	0.99	1.00	0.99	0.94	0.99	1.03	1.00
ZIP CODE 645	0.946	0.826	0.880	0.98	1.00	0.98	1.00	1.04	0.94	0.98	1.01	0.94	1.04	0.93	1.02	0.96	0.88	0.99	1.00	0.99	0.94	0.99	1.03	1.00
ZIP CODE 646	0.946	0.826	0.880	0.98	1.00	0.98	1.00	1.04	0.94	0.98	1.01	0.94	1.04	0.93	1.02	0.96	0.88	0.99	1.00	0.99	0.94	0.99	1.03	1.00
ZIP CODE 649	0.946	0.826	0.880	0.98	1.00	0.98	1.00	1.04	0.94	0.98	1.01	0.94	1.04	0.93	1.02	0.96	0.88	0.99	1.00	0.99	0.94	0.99	1.03	1.00
ZIP CODE 655	0.948	0.826	0.880	0.98	1.00	0.98	1.00	1.04	0.94	0.98	1.01	0.94	1.04	0.93	1.02	0.96	0.88	0.99	1.00	0.99	0.94	0.99	1.03	1.00
ZIP CODE 656	0.948	0.826	0.880	0.98	1.00	0.98	1.00	1.04	0.94	0.98	1.01	0.94	1.04	0.93	1.02	0.96	0.88	0.99	1.00	0.99	0.94	0.99	1.03	1.00
ZIP CODE 658	0.948	0.826	0.880	0.98

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TABLE J. — PHYSICIAN GAAFS (GEOGRAPHIC AREA ADJUSTMENT FACTORS) FOR RVUS (RELATIVE VALUE UNITS) AND CONVERSION FACTORS; BY VA FACILITY LOCATION — Continued

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VA Facility Location	RVU GAAFs				Conversion Factor GAAFs By Physician CPT Code Group																				
	Work Expense RVUs	Practice Expense RVUs	Total RVUs Only	Inpatient Visits	Office/Home/ Urgent Care Visits	Allergy Immuno-therapy	Allergy Testing	Therapeutic Injections	Misc. Medical	Anesthesia	Pathology	Radiology	Surgery	OP Psych / Alcohol & Drug Abuse	Chiropractor	Vision Exams	Hearing/ Speech Exams	Physical Exams	Well Baby Exams	Immunizations	Cardio-vascular	Consults	ER Visits & Observation Care	Normal Deliveries	Casarean Deliveries	Non-Deliveries
ZIP CODE 700	0.966	0.947	0.970	1.02	1.02	1.01	1.10	1.04	0.98	1.08	1.06	1.02	0.92	1.04	0.97	1.00	1.02	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 703	0.966	0.976	0.920	1.00	1.02	1.05	1.17	0.83	0.94	0.89	0.94	0.92	0.92	1.02	0.97	1.00	1.02	0.85	0.82	1.04	1.04	0.99	0.94	0.84	0.82	0.94	0.92
ZIP CODE 704	0.969	0.978	0.920	1.07	1.06	1.13	1.19	1.09	1.05	0.94	0.94	0.93	0.92	1.04	0.97	1.00	1.02	0.85	0.82	1.04	1.04	0.99	0.94	0.84	0.82	0.94	0.92
ZIP CODE 705	0.969	0.978	0.920	1.00	1.02	1.05	1.17	0.83	0.94	0.89	0.94	0.92	0.92	1.04	0.97	1.00	1.02	0.85	0.82	1.04	1.04	0.99	0.94	0.84	0.82	0.94	0.92
ZIP CODE 707	0.969	0.978	0.920	1.00	1.02	1.05	1.17	0.83	0.94	0.89	0.94	0.92	0.92	1.04	0.97	1.00	1.02	0.85	0.82	1.04	1.04	0.99	0.94	0.84	0.82	0.94	0.92
ZIP CODE 710	0.969	0.978	0.920	1.00	1.02	1.05	1.17	0.83	0.94	0.89	0.94	0.92	0.92	1.04	0.97	1.00	1.02	0.85	0.82	1.04	1.04	0.99	0.94	0.84	0.82	0.94	0.92
ZIP CODE 714	0.953	0.851	0.900	1.04	1.02	0.99	1.10	0.99	0.94	0.91	0.96	0.92	0.92	0.98	0.92	0.95	0.97	0.90	0.85	0.98	0.98	0.93	0.97	0.81	0.78	0.93	0.91
ZIP CODE 716	0.953	0.851	0.900	0.89	0.94	0.89	1.11	0.83	1.03	0.89	0.94	0.92	0.92	0.96	0.92	0.95	0.97	0.90	0.85	0.98	0.98	0.93	0.97	0.81	0.78	0.93	0.91
ZIP CODE 718	0.953	0.851	0.900	0.89	0.94	0.89	1.11	0.83	1.03	0.89	0.94	0.92	0.92	0.96	0.92	0.95	0.97	0.90	0.85	0.98	0.98	0.93	0.97	0.81	0.78	0.93	0.91
ZIP CODE 720	0.953	0.851	0.900	0.89	0.94	0.89	1.11	0.83	1.03	0.89	0.94	0.92	0.92	0.96	0.92	0.95	0.97	0.90	0.85	0.98	0.98	0.93	0.97	0.81	0.78	0.93	0.91
ZIP CODE 723	0.953	0.851	0.900	0.89	0.91	0.84	1.15	0.86	0.92	0.89	0.91	0.92	0.92	0.96	0.92	0.95	0.97	0.90	0.85	0.98	0.98	0.93	0.97	0.81	0.78	0.93	0.91
ZIP CODE 725	0.953	0.851	0.900	0.89	0.91	0.84	1.15	0.86	0.92	0.89	0.91	0.92	0.92	0.96	0.92	0.95	0.97	0.90	0.85	0.98	0.98	0.93	0.97	0.81	0.78	0.93	0.91
ZIP CODE 726	0.953	0.851	0.900	0.89	0.91	0.84	1.15	0.86	0.92	0.89	0.91	0.92	0.92	0.96	0.92	0.95	0.97	0.90	0.85	0.98	0.98	0.93	0.97	0.81	0.78	0.93	0.91
ZIP CODE 728	0.969	0.879	0.920	1.01	1.03	1.13	1.28	1.06	0.99	1.08	1.06	1.02	0.92	1.04	0.97	1.00	1.02	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 730	0.969	0.879	0.920	1.00	1.02	1.05	1.17	0.83	0.94	0.89	0.94	0.92	0.92	1.04	0.97	1.00	1.02	0.85	0.82	1.04	1.04	0.99	0.94	0.84	0.82	0.94	0.92
ZIP CODE 740	0.969	0.879	0.920	1.01	1.03	1.13	1.28	1.06	0.99	1.08	1.06	1.02	0.92	1.04	0.97	1.00	1.02	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 743	0.969	0.879	0.920	1.01	1.03	1.13	1.28	1.06	0.99	1.08	1.06	1.02	0.92	1.04	0.97	1.00	1.02	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 747	0.969	0.879	0.920	1.00	1.02	1.05	1.17	0.83	0.94	0.89	0.94	0.92	0.92	1.04	0.97	1.00	1.02	0.85	0.82	1.04	1.04	0.99	0.94	0.84	0.82	0.94	0.92
ZIP CODE 748	0.969	0.879	0.920	1.00	1.02	1.05	1.17	0.83	0.94	0.89	0.94	0.92	0.92	1.04	0.97	1.00	1.02	0.85	0.82	1.04	1.04	0.99	0.94	0.84	0.82	0.94	0.92
ZIP CODE 749	0.969	0.879	0.920	1.00	1.02	1.05	1.17	0.83	0.94	0.89	0.94	0.92	0.92	1.04	0.97	1.00	1.02	0.85	0.82	1.04	1.04	0.99	0.94	0.84	0.82	0.94	0.92
ZIP CODE 751	0.966	0.884	0.920	1.14	1.08	1.23	1.25	1.21	1.18	1.08	1.06	1.02	0.92	1.04	0.97	1.00	1.02	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 753	1.010	1.040	1.030	1.15	1.10	1.44	1.18	0.86	1.17	1.04	1.06	1.02	0.92	1.04	0.97	1.00	1.02	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 772	1.020	1.007	1.010	1.22	1.04	1.07	1.00	0.84	0.99	1.24	1.06	1.02	0.92	1.04	0.97	1.00	1.02	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 773	0.966	0.884	0.920	1.08	1.08	1.19	1.18	1.01	1.06	1.08	1.06	1.02	0.92	1.04	0.97	1.00	1.02	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 774	0.966	0.884	0.920	1.08	1.08	1.19	1.18	1.01	1.06	1.08	1.06	1.02	0.92	1.04	0.97	1.00	1.02	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 775	0.966	0.884	0.920	1.08	1.08	1.19	1.18	1.01	1.06	1.08	1.06	1.02	0.92	1.04	0.97	1.00	1.02	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 776	0.966	0.884	0.920	1.03	1.04	1.16	1.10	0.96	1.02	1.04	1.06	1.02	0.92	1.04	0.97	1.00	1.02	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 789	0.966	0.884	0.920	1.20	1.12	1.12	1.17	0.91	1.04	1.04	1.06	1.02	0.92	1.04	0.97	1.00	1.02	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 793	0.966	0.884	0.920	1.15	1.03	1.20	0.99	0.83	1.04	0.94	1.06	1.02	0.92	1.04	0.97	1.00	1.02	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 798	0.966	0.884	0.920	1.08	1.03	1.06	1.17	0.91	1.04	1.04	1.06	1.02	0.92	1.04	0.97	1.00	1.02	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 801	0.966	0.884	0.920	1.08	1.03	1.06	1.17	0.91	1.04	1.04	1.06	1.02	0.92	1.04	0.97	1.00	1.02	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 803	0.966	0.981	0.980	1.13	1.12	1.30	1.17	0.90	1.07	1.05	1.06	1.02	0.92	1.04	0.97	1.00	1.02	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 804	0.966	0.981	0.980	1.13	1.12	1.30	1.17	0.90	1.07	1.05	1.06	1.02	0.92	1.04	0.97	1.00	1.02	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 807	0.966	0.981	0.980	0.98	0.98	1.26	1.10	0.97	1.07	0.85	0.90	0.92	0.92	0.95	0.97	0.94	0.93	0.92	0.85	0.98	0.98	0.93	0.97	0.81	0.78	0.93	0.91
ZIP CODE 810	0.966	0.981	0.980	1.05	1.06	1.26	1.10	0.97	1.07	0.85	0.90	0.92	0.92	0.95	0.97	0.94	0.93	0.92	0.85	0.98	0.98	0.93	0.97	0.81	0.78	0.93	0.91
ZIP CODE 812	0.966	0.981	0.980	1.06	1.06	1.26	1.10	0.97	1.07	0.85	0.90	0.92	0.92	0.95	0.97	0.94	0.93	0.92	0.85	0.98	0.98	0.93	0.97	0.81	0.78	0.93	0.91
ZIP CODE 813	0.966	0.981	0.980	0.98	0.98	1.26	1.10	0.97	1.07	0.85	0.90	0.92	0.92	0.95	0.97	0.94	0.93	0.92	0.85	0.98	0.98	0.93	0.97	0.81	0.78	0.93	0.91
ZIP CODE 816	0.966	0.881	0.980	1.20	1.06	1.05	1.06	0.92	1.04	0.94	1.06	1.02	0.92	1.04	0.97	1.00	1.02	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 821	0.967	0.895	0.930	0.98	0.94	1.02	1.06	0.88	0.99	0.94	0.94	0.92	0.92	0.96	0.97	0.94	0.93	0.92	0.85	0.98	0.98	0.93	0.97	0.81	0.78	0.93	0.91
ZIP CODE 822	0.967	0.895	0.930	0.98	0.94	1.02	1.06	0.88	0.99	0.94	0.94	0.92	0.92	0.96	0.97	0.94	0.93	0.92	0.85	0.98	0.98	0.93	0.97	0.81	0.78	0.93	0.91
ZIP CODE 823	0.967	0.895	0.930	0.98	0.94	1.02	1.06	0.88	0.99	0.94	0.94	0.92	0.92	0.96	0.97	0.94	0.93	0.92	0.85	0.98	0.98	0.93	0.97	0.81	0.78	0.93	0.91
ZIP CODE 830	0.967	0.895	0.930	0.98	0.94	1.02	1.06	0.88	0.99	0.94	0.94	0.92	0.92	0.96	0.97	0.94	0.93	0.92	0.85	0.98	0.98	0.93	0.97	0.81	0.78	0.93	0.91
ZIP CODE 831	0.967	0.895	0.930	0.98	0.94	1.02	1.06	0.88	0.99	0.94	0.94	0.92	0.92	0.96	0.97	0.94	0.93	0.92	0.85	0.98	0.98	0.93	0.97	0.81	0.78	0.93	0.91
ZIP CODE 834	0.980	0.887	0.920	0.99	1.01	1.02	1.06	0.92	1.04	0.94	1.06	1.02	0.92	1.04	0.97	1.00	1.02	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 836	0.980	0.887	0.920	0.94	1.03	0.81	0.94	0.78	0.82	0.94	0.93	0.92	0.92	0.95	0.97	0.94	0.93	0.92	0.85	0.98	0.98	0.93	0.97	0.81	0.78	0.93	0.91
ZIP CODE 838	0.980	0.887	0.920	0.94	1.03	0.81	0.94	0.78	0.82	0.94	0.93	0.92	0.92	0.95	0.97	0.94	0.93	0.92	0.85	0.98	0.98	0.93	0.97	0.81	0.78	0.93	0.91
ZIP CODE 842	0.977	0.925	0.950	0.94	1.03	0.81	0.94	0.78	0.82	0.94	0.93	0.92	0.92	0.95	0.97	0.94	0.93	0.92	0.85	0.98	0.98	0.93	0.97	0.81	0.78	0.93	0.91
ZIP CODE 843	0.977	0.925	0.950	0.94	1.03	0.81	0.94	0.78	0.82	0.94	0.93	0.92	0.92	0.95	0.97	0.94	0.93	0.92	0.85	0.98	0.98	0.93	0.97	0.81	0.78	0.93	0.91
ZIP CODE 845	0.977	0.925	0.950	0.94	1.03	0.81	0.94	0.78	0.82	0.94	0.93	0.92	0.92	0.95	0.97	0.94	0.93	0.92	0.85	0.98	0.98	0.93	0.97	0.81	0.78	0.93	0.91
ZIP CODE 846	0.984	0.975	0.960	0.90	0.95	0.88	0.99	0.84	0.94	0.92	0.94	0.92	0.92	0.96	0.97	0.94	0.93	0.92	0.85	0.98	0.98	0.93	0.97	0.81	0.78	0.93	0.91
ZIP CODE 847	0.973	0.905	0.930	1.01	0.98	0.90	0.92	0.75	0.82	0.95	0.95	0.95	0.95	1.05	0.95	0.95	0.95	0.95	0.92	0.95	0.95	0.92	0.92	0.83	0.82	0.92	0.90
ZIP CODE 870	0.973	0.905	0.930	1.01	0.98	0.90	0.92	0.75	0.82	0.95	0.95	0.95	0.95	1.05	0.95	0.95	0.95	0.95	0.92	0.95	0.95	0.92	0.92	0.83	0.82	0.92	0.90
ZIP CODE 878	0.973	0.905	0.930	1.01	0.98	0.90	0.92	0.75	0.82	0.95	0.95	0.95	0.95	1.05	0.95	0.95	0.95	0.95	0.92	0.95	0.95	0.92	0.92	0.83	0.82	0.92	0.90
ZIP CODE 885	0.966	0.884	0.920	1.05	1.04	1.12	1.08	0.81	1.04	1.04	1.06	1.02	0.92	1.04	0.97	1.00	1.02	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 889	1.005	1.035	1.020	1.11	1.13	0.99	1.01	0.89	1.07	1.02	1.04	1.02	0.92	1.04	0.97	1.00	1.02	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 894	1.005	1.035	1.020	0.98	0.97	0.92	1.11	0.98	0.92	1.08	1.06	1.02	0.92	1.04	0.97	1.00	1.02	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 897	1.005	1.035	1.020	0.96	0.97	0.92	1.10	0.96	0.89	1.08	1.05	1.02	0.92	1.04	0.97	1.00	1.02	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 898	1.005	1.035	1.020	0.96	0.98	0.92	1.10	0.96	0.89	1.08	1.05	1.02	0.92	1.04	0.97	1.00	1.02	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 901	1.055	1.169	1.120	1.03	1.06	0.97	1.10	0.96	0.89	1.08	1.06	1.02	0.92	1.04	0.97	1.00	1.02	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 903	1.055	1.169	1.120	1.03	1.06	0.97	1.10	0.96	0.89	1.08	1.06	1.02	0.92	1.04	0.97	1.00	1.02	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 904	1.055	1.169	1.120	1.03	1.06	0.97	1.10	0.96	0.89	1.08	1.06	1.02	0.92	1.04	0.97	1.00	1.02	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 905	1.055	1.169	1.120	1.03	1.06	0.97	1.10	0.96	0.89	1.08	1.06	1.02	0.92	1.04	0.97	1.00	1.02	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 907	1.055	1.169	1.120	0.97	1.04	0.94	1.06	0.77	0.84	1.06	1.06	1.02	0.92	1.04	0.97	1.00	1.02	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 910	1.055	1.169	1.120	0.95	1.05	0.94	1.06	0.78	0.84	1.06	1.06	1.02	0.92	1.04	0.97	1.00	1.02	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 911	1.055	1.169	1.120	0.95	1.13	1.06	1.45	1.06	0.84	1.06	1.06	1.02	0.92	1.04	0.97	1.00	1.02	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 912	1.055	1.169	1.120	0.95	1.05	0.94	1.06	0.78	0.84	1.06	1.06	1.02	0.92	1.04	0.97	1.00	1.02	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 914	1.055	1.169	1.120	0.97	1.02	1.01	1.37	1.02	0.84	1.06	1.06	1.02	0.92	1.04	0.97	1.00	1.02	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 915	1.055	1.169	1.120	0.97	1.02	1.01	1.37	1.02	0.84	1.06	1.06	1.02	0.92	1.04	0.97	1.00	1.02	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 917	1.007	1.039	1.030	1.02	1.01	1.02	1.37	1.02	0.84	1.06	1.06	1.02	0.92	1.04	0.97	1.00	1.02	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 918	1.007	1.039	1.030	0.95	0.93	1.21	0.96	0.97	0.84	1.06	1.06	1.02	0.92	1.04	0.97	1.00	1.02	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 924	1.007	1.039	1.030	1.01	0.97	1.10	0.86	0.96	0.89	1.08	1.06	1.02	0.92	1.04	0.97	1.00	1.02	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 925	1.007	1.039	1.030	1.01	1.01	1.10	0.91	1.00	0.91	1.08	1.06	1.02	0.92	1.04	0.97	1.00	1.02	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 936	1.007	1.039	1.030	0.89	0.87	0.85	0.86	1.12	0.92	0.86	0.94	0.92	0.92	0.96	0.97	0.94	0.93	0.92	0.85	0.98	0.98	0.93	0.97	0.81	0.78	0.93	0.91
ZIP CODE 938	1.007	1.039	1.030	0.89	0.87	0.85	0.86	1.12	0.92	0.86	0.94	0.92	0.92	0.96	0.97	0.94	0.93	0.92	0.85	0.98	0.98	0.93	0.97	0.81	0.78	0.93	0.91
ZIP CODE 942	1.007	1.039	1.030	0.89	0.88	0.88	1.14	0.86	0.92	0.86	0.94	0.92	0.92	0.96	0.97	0.94	0.93	0.92	0.85	0.98	0.98	0.93	0.97	0.81	0.78	0.93	0.91
ZIP CODE 944	1.047	1.253	1.140	0.94	0.91	0.94	0.73	0.75	0.82	0.94	0.93	0.92	0.92	0.96	0.97	0.94	0.93	0.92	0.85	0.98	0.98	0.93	0.97	0.81	0.78	0.93	0.91
ZIP CODE 949	1.007	1.039	1.030	1.06	1.03	0.84	0.97	1.10	1.03	1.06	1.06	1.02	0.92	1.04	0.97	1.00	1.02	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 957	1.007	1.039	1.030	0.89	0.88	0.88	1.14	0.86	0.92	0.86	0.94	0.92	0.92	0.96	0.97	0.94	0.93	0.92	0.85	0.98	0.98	0.93	0.97	0.81	0.78	0.93	0.91
ZIP CODE 961	1.007	1.039	1.030	0.89	0.88	0.88	1.14	0.86	0.92	0.86	0.94	0.92	0.92	0.96	0.97	0.94	0.93	0.92	0.85	0.98	0.98	0.93	0.97	0.81	0.78	0.93	0.91
ZIP CODE 962	1.067	1.378	1.240	1.25	1.00	0.71	0.81	0.90	0.95	1.33	1.13	1.13	0.92	1.15	1.00	1.02	1.24	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 963	1.067	1.378	1.240	1.25	1.00	0.71	0.81	0.90	0.95	1.33	1.13	1.13	0.92	1.15	1.00	1.02	1.24	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 964	1.067	1.378	1.240	1.25	1.00	0.71	0.81	0.90	0.95	1.33	1.13	1.13	0.92	1.15	1.00	1.02	1.24	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 965	1.067	1.378	1.240	1.25	1.00	0.71	0.81	0.90	0.95	1.33	1.13	1.13	0.92	1.15	1.00	1.02	1.24	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 966	1.067	1.378	1.240	1.25	1.00	0.71	0.81	0.90	0.95	1.33	1.13	1.13	0.92	1.15	1.00	1.02	1.24	0.85	0.75	1.06	1.06	0.99	0.97	0.81	0.78	0.99	0.96
ZIP CODE 970	0.961	0.935	0.960	1.02	1.00	0.88	1.15	1.24	0.95	0.99	0.96	0.92	0.92	0.95	0.95	0.95	0.95	0.92	0.85	0.96	0.96	0.92	0.92	0.83	0.82	0.92	0.90
ZIP CODE 978	0.961	0.935	0.960	1.06	1.13	0.77	1.03	1.06	0.90	0.99	0.96	0.92	0.92	0.95	0.95	0.95	0.95	0.92	0.85	0.96	0.96	0.92	0.92	0.83	0.82	0.92	0.90
ZIP CODE 979	0.961	0.935	0.960	1.06	1.13	0.77	1.03	1.06	0.90	0.99	0.96	0.92	0.92	0.95	0.95	0.95	0.95	0.92	0.85	0.96	0.96	0.92	0.92	0.83	0.82	0.92	0.90
ZIP CODE 983	0.974	0.990	1.010	1.09	1.01	0.81	1.05	1.08	0.90	1.01	1.01	0.92	0.92	0.96	0.97	0.94	0.93	0.92	0.85	0.98	0.98	0.93	0.97	0.81	0.78	0.93	0.91
ZIP CODE 985

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TABLE K. — SKILLED NURSING FACILITY/SUB-ACUTE INPATIENT FACILITY NATIONWIDE PER DIEM CHARGE

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Description	All-Inclusive Per Diem Charge
Skilled Nursing Facility/Sub-Acute Inpatient Facility	$773.67

[FR Doc. 01–11027 Filed 5–7–01; 8:45 am]
BILLING CODE 8320–01–C



Federal Register

Tuesday,
May 8, 2001

Part III

Housing and Urban Development

Notice of Regulatory Waiver Requests Granted for the Fourth Quarter of Calendar Year 2000; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4591–N–04]

Notice of Regulatory Waiver Requests Granted for the Fourth Quarter of Calendar Year 2000

AGENCY: Office of the General Counsel, HUD.

ACTION: Public Notice of the granting of regulatory waivers from October 1, 2000 through December 31, 2000.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the "HUD Reform Act"), requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice must cover the quarterly period since the most recent **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the quarter beginning on October 1, 2000 and ending on December 31, 2000.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Aaron Santa Anna, Assistant General Counsel for Regulations, Room 10282, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–3055 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

For information concerning a particular waiver action for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waiver-grant actions.

SUPPLEMENTARY INFORMATION: As part of the Housing and Urban Development Reform Act of 1989 (the "HUD Reform Act"), the Congress adopted, at HUD's request, legislation to limit and control the granting of regulatory waivers by HUD. Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (2 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary rank or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived, and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request;

e. State how additional information about a particular waiver grant action may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

Today's document follows publication of HUD's Statement of Policy on Waiver of Regulations and Directives issued by HUD on April 22, 1991 (56 FR 16337). This notice covers HUD's waiver-grant activity from October 1, 2000 through December 31, 2000. Additionally, this notice contains three reports on regulatory waivers granted during 1999, which were inadvertently omitted in the 1999 reports. These reports can be found in Section IV of this notice.

For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Housing, the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the section of title 24 being waived. For example, a waiver-grant action involving the waiver of a provision in 24 CFR part 58 would come before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement in title 24 that is being waived as part of the waiver-grant action. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver-grant actions involving the same initial regulatory citation are in time sequence beginning with the earliest-dated waiver grant action.

Should HUD receive additional reports of waiver actions taken during the period covered by this report before the next report is published, the next updated report will include these earlier actions, as well as those that occurred between January 1, 2001 through March 30, 2001.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: May 2, 2001.

George Weidenfeller,

Deputy General Counsel for Housing Finance and Operations.

Appendix

Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development, October 1, 2000 through December 30, 2000

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly before each set of waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory waivers granted by the Office of Community Planning and Development.

II. Regulatory waivers granted by the Office of Community Planning and Development and the Office of Public and Indian Housing.

III. Regulatory waivers granted by the Office of Housing.

IV. Regulatory waivers granted by the Office of Multifamily Housing Assistance Restructuring.

V. Regulatory waivers granted by the Office of Public and Indian Housing.

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following waiver actions, please see the name of the contact person which immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 91.520(a).
Project/Activity: Harris County, Texas requested a waiver of the submission deadline for the County's 1999 program year Consolidated Annual Performance and Evaluation Report (CAPER).
Nature of Requirement: 24 CFR 91.520(a) requires each grantee to submit a CAPER to HUD within 90 days after the close of the grantee's program year.
Granted By: Cardell Cooper, Assistant Secretary for Community Planning and Development.
Date Granted: October 18, 2000.
Reason Waived: The Department found good cause for granting the waiver. The County requested the extension of time to address concerns related to its financial recordkeeping.
Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7152, Washington, DC 20410, telephone (202) 708–2565.

• *Regulation:* 24 CFR 91.520(a).
Project/Activity: The City of Binghamton, NY requested a waiver of the submission deadline for the City's 1999 program year CAPER.
Nature of Requirement: 24 CFR 91.520(a) requires each grantee to submit a CAPER to HUD within 90 days after the close of the grantee's program year.
Granted By: Cardell Cooper, Assistant Secretary for Community Planning and Development.
Date Granted: November 28, 2000.
Reason Waived: The Department found good cause for granting the waiver. The City needs additional time due to public hearing requirements and recent staff changes.
Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7152, Washington, DC 20410, telephone (202) 708–2565.

• *Regulation:* 24 CFR 91.520(a).
Project/Activity: The City of Middleton, Connecticut requested a waiver of the submission deadline for the City's 1999 program year CAPER.
Nature of Requirement: 24 CFR 91.520(a) requires each grantee to submit a CAPER to HUD within 90 days after the close of the grantee's program year.
Granted By: Cardell Cooper, Assistant Secretary for Community Planning and Development.
Date Granted: November 28, 2000.
Reason Waived: The Department found good cause for granting the waiver. The City requested the extension of time because of problems resulting from the computer system upgrade and recent staff changes.
Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7152, Washington, DC 20410, telephone (202) 708–2565.

• *Regulation:* 24 CFR 91.520(a).
Project/Activity: Nassau County, New York requested a waiver of the submission deadline for the County's 1999 program year CAPER.
Nature of Requirement: 24 CFR 91.520(a) requires each grantee to submit a CAPER to HUD within 90 days after the close of the grantee's program year.
Granted By: Cardell Cooper, Assistant Secretary for Community Planning and Development.
Date Granted: December 6, 2000.
Reason Waived: The Department found good cause for granting the waiver. The County experienced severe staff reductions that limited its ability to collect and evaluate information required to prepare the CAPER.
Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7152, Washington, DC 20410, telephone (202) 708–2565.

• *Regulation:* 24 CFR 91.520(a).

Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7152, Washington, DC 20410, telephone (202) 708–2565.

• *Regulation:* 24 CFR 91.520(a).
Project/Activity: The City of Binghamton, NY requested a waiver of the submission deadline for the City's 1999 program year CAPER.
Nature of Requirement: 24 CFR 91.520(a) requires each grantee to submit a CAPER to HUD within 90 days after the close of the grantee's program year.
Granted By: Cardell Cooper, Assistant Secretary for Community Planning and Development.
Date Granted: November 28, 2000.
Reason Waived: The Department found good cause for granting the waiver. The City needs additional time due to public hearing requirements and recent staff changes.
Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7152, Washington, DC 20410, telephone (202) 708–2565.

• *Regulation:* 24 CFR 91.520(a).
Project/Activity: The City of Middleton, Connecticut requested a waiver of the submission deadline for the City's 1999 program year CAPER.
Nature of Requirement: 24 CFR 91.520(a) requires each grantee to submit a CAPER to HUD within 90 days after the close of the grantee's program year.
Granted By: Cardell Cooper, Assistant Secretary for Community Planning and Development.
Date Granted: November 28, 2000.
Reason Waived: The Department found good cause for granting the waiver. The City requested the extension of time because of problems resulting from the computer system upgrade and recent staff changes.
Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7152, Washington, DC 20410, telephone (202) 708–2565.

• *Regulation:* 24 CFR 91.520(a).
Project/Activity: Nassau County, New York requested a waiver of the submission deadline for the County's 1999 program year CAPER.
Nature of Requirement: 24 CFR 91.520(a) requires each grantee to submit a CAPER to HUD within 90 days after the close of the grantee's program year.
Granted By: Cardell Cooper, Assistant Secretary for Community Planning and Development.
Date Granted: December 6, 2000.
Reason Waived: The Department found good cause for granting the waiver. The County experienced severe staff reductions that limited its ability to collect and evaluate information required to prepare the CAPER.
Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7152, Washington, DC 20410, telephone (202) 708–2565.

• *Regulation:* 24 CFR 91.520(a).
Project/Activity: The City of Tyler, Texas requested a waiver of the submission deadline for the City's 1999 program year CAPER.
Nature of Requirement: 24 CFR 91.520(a) requires each grantee to submit a CAPER to HUD within 90 days after the close of the grantee's program year.
Granted By: Cardell Cooper, Assistant Secretary for Community Planning and Development.
Date Granted: December 15, 2000.
Reason Waived: The Department found good cause for granting the waiver. The City needs additional time due to recent staff changes.
Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7152, Washington, DC 20410, telephone (202) 708–2565.

• *Regulation:* 24 CFR 91.520(a).
Project/Activity: The Town of Cicero, Illinois requested a waiver of the submisston deadline for the Town's 1999 program year CAPER.
Nature of Requirement: 24 CFR 91.520(a) requires each grantee to submit a CAPER to HUD within 90 days after the close of the grantee's program year.
Granted By: Cardell Cooper, Assistant Secretary for Community Planning and Development.
Date Granted: December 15, 2000.
Reason Waived: The Department found good cause for granting the waiver. The Town recently experienced staff changes and needs time to ensure that the report is accurate.
Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7152, Washington, DC 20410, telephone (202) 708–2565.

• *Regulation:* 24 CFR 91.520(a).
Project/Activity: The City of Fairfield, Connecticut requested a waiver of the submission deadline for the City's 1999 program year CAPER.
Nature of Requirement: 24 CFR 91.520(a) requires each grantee to submit a CAPER to HUD within 90 days after the close of the grantee's program year.
Granted By: Cardell Cooper, Assistant Secretary for Community Planning and Development.
Date Granted: December 27, 2000.
Reason Waived: The Department found good cause for granting the waiver. The City needed additional time to reconcile its financial accounting system. Further, the City recently experienced staff changes and the CAPER is being prepared by staff with no prior experience with its preparation.
Contact: Cornelia Robertscn-Terry, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7152, Washington, DC 20410, telephone (202) 708–2565.

• *Regulation:* 24 CFR 574.320(a)(2).
Project/Activity: The City of Boston, Massachusetts requested a waiver of the Housing Opportunities for Persons with AIDS (HOPWA) regulations to increase HOPWA rent standards to 110% of the Fair Market Rent (FMR) for all HOPWA-assisted units and authorization to increase the rent standard up to 120% on unit-by-unit basis for all units, with no 20% cap on the number of units subject to exception rents.
Nature of Requirement: 24 CFR 574.320(a)(2) requires that the rent standard not exceed the published FMR or community-wide exception rent.
Granted By: Cardell Cooper, Assistant Secretary for Community Planning and Development.
Date Granted: October 18, 2000.
Reason Waived: The Department found good cause for the waiver because the City documented the high housing costs in the area and the need for consistency with other special needs programs.
Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7152, Washington, DC 20410, telephone (202) 708–2565.

• *Regulation:* 24 CFR 576.21(b)(2).
Project/Activity: The City of Binghamton, New York requested a waiver of the thirty percent limitation on essential services.
Nature of Requirement: HUD's regulation at 24 CFR 576.21(b)(2) imposes the statutory requirement that no more than thirty percent of the Emergency Shelter Grant funds be expended for essential services. This regulatory section also notes that the statute (42 U.S.C. 11374) also permits waiver of this requirement if the grantee demonstrates that other eligible activities are already being carried out in the locality with other resources.
Granted By: Cardell Cooper, Assistant Secretary for Community Planning and Development.
Date Granted: December 12, 2000.
Reason Waived: The City documented other resources to carry out eligible activities to assist the homeless.
Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7152, Washington, DC 20410, telephone (202) 708–2565.

• *Regulation:* 24 CFR 576,21(b)(2).
Project/Activity: The City of Bridgeport, Connecticut requested a waiver of the thirty percent limitation on essential services.
Nature of Requirement: HUD's regulation at 24 CFR 576.21(b)(2) imposes the statutory requirement that no more than thirty percent of the Emergency Shelter Grant funds be expended for essential services. This regulatory section also notes that the statute (42 U.S.C. 11374) also permits waiver of this requirement if the grantee demonstrates that other eligible activities are already being carried out in the locality with other resources.
Granted By: Cardell Cooper, Assistant Secretary for Community Planning and Development.
Date Granted: December 12, 2000.
Reason Waived: The City documented other resources to carry out eligible activities to assist the homeless.

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Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7152, Washington, DC 20410, telephone (202) 708–2565.

II. Regulatory Waivers Granted by the Office of Community Planning and Development and the Office of Public and Indian Housing

For further information about the following waiver actions, please see the name of the contact person which immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 58.34(b) and 24 CFR 58.38.

Project/Activity: Renovation of an existing community building with Indian Community Development Block Grant funds, Menominee Indian Tribe of Wisconsin.

Nature of Requirement: HUD's regulation at § 58.34(b) states that a recipient does not have to submit a Request for Release of Funds and Certification, and no further approval from HUD will be needed to carry out exempt activities and projects, provided the responsible entity documents its determination that each activity or project is exempt. Additionally, § 58.38 requires the responsible entity to maintain a written record of the environmental review for each project. This document will be designated the Environmental Review Record, which shall contain all environmental review documents, public notices and written determinations or environmental findings required by Part 58 as evidence of review, decision making and actions pertaining to a particular project.

Granted By: Cardell Cooper, Assistant Secretary for Community Planning and Development, and Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: October 19, 2000

Reason Waived: The Tribe made an error during the 24 CFR part 58 environmental review and clearance process for the subject project in that it obligated the expenditure of HUD funds prior to a determination by the Tribe that the project was exempt pursuant to 24 CFR 58.34(a)(12). HUD made a determination that there was no statutory or regulatory provision that would have prevented conversion of these activities to exempt. Therefore, this waiver is needed in order to permit the Tribe to complete the environmental review process by documenting that the activities are exempt under 24 CFR Part 58, after the obligation of HUD funds. HUD also determined that no environmental degradation resulted from the regulatory noncompliance and that no mitigation activities would be necessary since no environmental damage or potential problems were identified. Considering the above, HUD determined that a waiver of the regulatory requirements would maintain the integrity of HUD's environmental review process and was consistent with Executive Order 12084 that encourages flexibility in the consideration of waiver requests from tribal governments.

Contact: Bruce Knott, Director, Office of Grants Evaluation, Office of Public and Indian Housing, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Box 90, Denver, CO 80202, (303) 675–1600.

III. Regulatory Waivers Granted by the Office of Housing

For further information about the following waiver actions, please see the name of the contact person which immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 202.3(c)(2)(iii).

Project/Activity: To raise the threshold for placing a HUD/FHA approved lender on Credit Watch status when its default and claim rate exceeds the HUD Field Office default and claim rate.

Nature of Requirement: HUD's regulation at 24 CFR 202.3(c)(2)(iii) provides that the Secretary may notify a mortgagee that it is on credit watch status if the mortgagee had a rate of defaults and claims on insured mortgages originated in an area which exceeded 150 percent, but not 200 percent, of the normal rate.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 27, 2000.

Reason Waived: Waiving the regulation permits HUD/FHA to initially focus on those lenders originating the worst performing loans. The waiver will adjust the Credit Watch threshold from being between 150% and 200.9% of the HUD field office default and claim rate to being between 200% and 300.9% of that rate. This waiver is limited to Credit Watch reviews conducted in the fourth quarter of Fiscal Year 2000.

Contact: Joy Hadley, Director, Quality Assurance Division, Department of Housing and Urban Development, 451 Seventh Street SW, Room B133–P3214, Washington, DC 20410, telephone (202) 708–2830.

• *Regulation:* 24 CFR 203.21.

Project/Activity: Maryland Department of Housing and Community Development "Homeownership Opportunities for Teachers."

Nature of Requirement: HUD's regulations at 24 CFR 203.21 require that the mortgage payments due each month be substantially the same. This regulation would have precluded the ability of the applicant to offer a product designed to reward Maryland public school teachers that would remain within the system for at least three years and results in an increased mortgage interest rate should the homebuyer not remain employed by the Maryland public schools.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 2, 2000.

Reason Waived: HUD determined that there was good cause for the waiver. The proposal allows the Maryland Department of Housing and Community Development to provide more affordable payments for qualified homebuyers during the life of the mortgage provided that they remain within the Maryland public schools for at least three years from the date of the mortgage note.

Contact: Vance T. Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–3600; telephone: (202) 708–2700, ext. 2204.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: B'Nai B'rith at Chesilhurst House, Chesilhurst, NJ; Project Number: 035–EE029/NJ39–S971–006.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 16, 2000.

Reason Waived: The project was economically designed, comparable in cost to similar projects, and the Sponsor could not contribute any additional funds.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Carbondale Supportive Housing, Inc., Carbondale, Illinois, Project Number: 072–HD101/IL06–Q971–001.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 20, 2000.

Reason Waived: The contractor withdrew from the project causing the Owner to obtain a replacement contractor and seek new bids, the project was comparable in cost to similar projects, and the Sponsor could not contribute any additional funds.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: PARC Group Home, Peoria, Illinois, Project Number: 072–HD106/IL06–Q981–001.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 20, 2000.

Reason Waived: A building boom in Illinois caused the Sponsor to have difficulty locating a contractor who would work within the fund reservation allotment, the project was modest in design and consistent with other projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Geer Village, Canaan Town, CT; Project Number: 017–EE035/CT26–S971–003.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 2, 2000

Reason Waived: A typographical error was made in the original request dated August 29, 2000, which was approved September 26, 2000.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Inglis Gardens at Eastwick II, Philadelphia, Pennsylvania, Project Number: 034–HD054/PA26–Q981–001.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 2, 2000.

Reason Waived: The project was modest in design and the Sponsor/Owner had secured additional funding from outside sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Rudolphy/Mercy-Douglass Home for the Blind, Philadelphia, Pennsylvania, Project Number: 034–HD052/PA26–Q971–004.

Nature of Requirement: Prohibition Against Amendment Funds Prior to Initial Closing.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 2, 2000.

Reason Waived: The project was modest in design, and the Sponsor/Owner had secured additional funding from outside sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Shepherd Center, Inc., Decatur, Georgia, Project Number: 061–HD063/GA06–Q981–002.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 2, 2000.

Reason Waived: The project was economically designed, had to physically resemble other structures in the area which had historical significance, and all efforts to lower the cost of the project had been exhausted.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: The Palmer House, Wilkes-Barre, Pennsylvania, Project Number: 034–EE091/PA26–S981–012.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 3, 2000.

Reason Waived: The project was modest in design, and the Sponsor/Owner had secured additional funding from outside sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: West Street Commons, Wilmington, Delaware, Project Number: 032–HD018/DE26–Q961–004.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 2, 2000.

Reason Waived: The project was modest in design, and the Sponsor/Owner had secured additional funding from outside sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Bet Shalom II, Worcester, MA; Project Number: 023–EE106/MA06–S981–011.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 14, 2000.

Reason Waived: Labor costs had increased in the area due to a labor shortage, the project was modest in design and consistent with other projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Friendship Plaza, Lincoln Heights, OH; Project Number: 046–EE047/OH10–S981–003.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 14, 2000.

Reason Waived: The Davis-Bacon Wage Decision significantly increased the basic hourly rates for numerous trade descriptions in the area and the contractor had to reconfigure the construction costs which caused the project to be over budget.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Steamboat Trails, New Richmond, OH; Project Number: 046–EE045/OH10–S981–001.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 14, 2000.

Reason Waived: The Davis-Bacon Wage Decision significantly increased the basic hourly rates for numerous trade descriptions in the area and the contractor had to reconfigure the construction costs which caused the project to be over budget.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Jireh Terrace, Columbus, OH; Project Number: 043–HD036/OH16–Q981–003.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 27, 2000.

Reason Waived: The construction of small group homes were more costly due to economies of scale and costs associated with fully-handicapped facilities, and the project was modest in design and consistent with other projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project Activity: Jireh Estates, Columbus, OH; Project Number: 043–HD034/OH16–Q981–001.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

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Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 30, 2000.

Reason Waived: The construction of small group homes were more costly due to economies of scale and costs associated with fully-handicapped facilities, and the project was modest in design and consistent with other projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Bud O'Keefe Village, San Antonio, Texas, Project Number: 115–HD031/TX59–Q991–004.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 1, 2000.

Reason Waived: There was a construction boom in the area that caused an increase in demand and, therefore, had driven up the cost of labor and materials.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Behavioral Health Network, Ludlow, Massachusetts, Project Number: 023–HD158/MA06–Q991–006.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 20, 2000.

Reason Waived: Labor and material costs had escalated in Massachusetts, the project was modest in design and consistent with other projects developed in the area.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 891.165.

Project/Activity: Alma Rangel Gardens, Manhattan, New York, Project Number: 012–EE232/NY36–S971–019.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 20, 2000.

Reason Waived: Delays occurred because the Owner was seeking a general contractor who could build the project within the development cost limits and the extensive environmental and site disposition process required by the City of New York. Also, the project was economically designed, comparable to other projects developed in the jurisdiction, and the Owner exhausted all efforts in seeking funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 891.165.

Project/Activity: Highbridge Senior Housing, Bronx, New York, Project Number: 012–EE248/NY36–S981–004.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 22, 2000.

Reason Waived: Delays occurred because the project was being developed on land owned by the City of New York which had to complete the City's extensive environmental and site disposition requirements. Also, the project was economically designed, comparable to other similar projects developed in the jurisdiction, and the Owner exhausted all efforts in seeking funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 891.165.

Project/Activity: Bethany/Development Outreach Mt. Morris Plaza, Manhattan, New York, Project Number: 012–EE226/NY36–S971–013.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 14, 2000.

Reason Waived: The project was economically designed, comparable to similar projects developed in the area, and the Owner had exhausted all efforts to obtain additional funds from the Sponsor or other sources. Also, delays occurred while the City of New York completed extensive environmental and site disposition requirements.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 891.165.

Project/Activity: Hale Mahaolu Eono, Lahaina, Maui, Hawaii, Project Number: 140–EE014/HI10–S961–002.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 22, 2000.

Reason Waived: A significant portion of the delay related to the HUD review and approval of the Owner's request to combine the subject project with a project financed by Rural Housing Service. Also, the project was economically designed, comparable to other similar projects developed in the area, and the Owner had no other additional funds to cover the shortfall of funds required to close the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d) and 891.165.

Project/Activity: Genesis House, Ill, Longmeadow, Massachusetts, Project Number: 023–EE104/MA06–S981–009.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of approved capital advance funds prior to initial closing. HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 27, 2000.

Reason Waived: The project was economically designed and comparable to other similar projects developed in the area, and labor and material costs in the area were high. Also, the process of securing outside funding and in obtaining labor and materials at reasonable prices expended valuable time.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.130(b).

Project/Activity: Lincoln Park Apartments Annex, Morristown, Tennessee, Project Number: 087–EE039/TN37–S991–002.

Nature of Requirement: HUD's regulation at 24 CFR 891.130(b) prohibits identity of interest between the Sponsor or Owner or Borrower and any development team member or between development team members until two years after final closing.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 1, 2000.

Reason Waived: A board member of the Owner, Oxford Homes for the Elderly, was also a board member of the seller of the land, Volunteer Housing Development Corporation, but was not receiving a salary from either organization and locating other suitable sites within the area would be difficult.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Northwest Behavioral Health Services, Inc., Jacksonville, Florida, Project Number: 063–HD013/FL29–Q981–010.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 10, 2000.

Reason Waived: The Sponsor had been unable to secure alternative funding sources and the field office had not yet determined if a request for an increase in the capital advance was warranted.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Victoria Jennings Residences, Chicago, Illinois, Project Number: 071–HD088/IL06–Q961–003.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 13, 2000.

Reason Waived: Additional time was required to review closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: St. Peter's Place II, Phoenixville, PA, Project Number: 34–EE070/PA26–S971–002; Connections Community Support Program, Wilmington, DE, Project Number: 032–HD018/DE26–Q961–004; Freedom House, Royersford, PA, Project Number: 034–HD049/PA26–Q971–001; Rudolph Mercy Douglass, Philadelphia, PA, Project Number: 034–HD052/PA26–Q971–004.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 18, 2000.

Reason Waived: St. Peter's Place II delays were due to a working capital issue which was being worked out with the substitute general contractor; Connections Community Support Program delays were due to flaws in the architectural plans that had to be corrected; Freedom House delays were due to the Sponsor seeking outside funding sources to help cover project shortfalls; Rudolph Mercy Douglass delays were due to the Sponsor seeking outside funding sources to help cover project shortfalls.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: La Villa, Milwaukee, Wisconsin, Project Number: 075–EE063/WI39–Q971–007.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 2, 2000.

Reason Waived: The Sponsor needed additional time to work out offsite issues prior to initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 89 .165.

Project/Activity: La Casa Village II Apartments, Waukesha, Wisconsin, Project Number: 075–EE065/WI39–S971–009.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 2, 2000.

Reason Waived: There were deficiencies that the Sponsor and the Sponsor's attorney needed to correct prior to initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Red Lion Inn Elder Housing, Randolph, Vermont, Project Number: 024–EE034/VT36–S961–002.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 3, 2000.

Reason Waived: The Sponsor had to review bids from other contractors since the original contractor had raised its prices.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Ailbe II, Chicago, Illinois, Project Number: 071–EE139/IL06–S971–013.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 3, 2000.

Reason Waived: The City of Chicago had not produced the permits required for Initial Endorsement.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: West Hamlin Unity, Inc., West Hamlin, West Virginia, Project Number: 045–HD026/WV15–Q971–002.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

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Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 14, 2000.

Reason Waived: Delays were caused due to issues concerning the site's Right of Way and unacceptable costs on the Form 2328.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Cornerstone Gardens, Houston, Texas, Project Number: 114–EE070/TX24–S981–009.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 16, 2000.

Reason Waived: The Sponsor was in the process of submitting documentation on the newly selected contractor.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Jewish Federation Senior Housing, Cherry Hill Township, New Jersey, Project Number: 035–EE036/NJ39–S981–007.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 16, 2000.

Reason Waived: The project was delayed because it was found to have numerous deficiencies which had to be resolved, as well as three different sources of secondary financing had to be reviewed and approved.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Bet Shalom II, Worcester, MA; Project Number: 023–EE106/MA06–S981–011.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 21, 2000.

Reason Waived: The Firm Commitment processing was delayed pending receipt of additional information from the Sponsor/Owner and the field office had requested additional amendment funds prior to initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Elders Place II, Philadelphia, Pennsylvania, Project Number: 034–EE086/PA26–S981–007.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 24, 2000.

Reason Waived: The project was delayed due to a substitution of the General Contractor that was necessary because of an identity of interest conflict.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Transitional Learning Community Supportive Housing, Galveston, Texas, Project Number: 114–HD013/TX24–Q971–001.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 24, 2000.

Reason Waived: Additional time was needed to review the environmental assessment and complete the floodplain process.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Hazel Dell Apartments, Vancouver, Washington, Project Number: 126–EE027/OR16–S981–002.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 24, 2000.

Reason Waived: The project had been delayed due to legal partitioning required to accommodate an Assisted Living Facility being developed by the project's Sponsor and the Owner had to obtain additional funds from outside sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Inglis Gardens at Eastwick, Philadelphia, Pennsylvania, Project Number: 034–HD054/PA26–Q981–001.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 24, 2000.

Reason Waived: The project had been delayed due to the additional time needed to approve the submission of Initial Closing documents together with evidence of Flood Insurance.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Highview Unity Apartments, Inc., Charleston, West Virginia, Project Number: 045–EE010/WV15–S971–001.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 24, 2000.

Reason Waived: Additional time was needed to remove restrictive covenants and a right of reverter from the Deed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Quilceda Meadows, Marysville, Washington, Project Number: 127–HD025/WA19–Q981–001.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 24, 2000.

Reason Waived: The project had been delayed because salmon and trout located in the area were recently listed as endangered species and a Biological Assessment on the project's location and design was requested by Snohomish County.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Riley Cheeks House, Washington, DC, Project Number: 000–HD030/DC39–Q961–001.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 24, 2000.

Reason Waived: The original Firm Commitment processing was suspended by the field office while the owner resolved a cash shortfall and the project needed additional time to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Pathways, Greenwich, Connecticut, Project Number: 017–HD022/CT26–Q981–001.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 30, 2000.

Reason Waived: The project experienced delays on the local level due to neighborhood opposition and the site approval process by the Planning and Zoning Board.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Westview Commons, Roseburg, Oregon, Project Number: 126–HD026/OR16–Q981–002.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 1, 2000.

Reason Waived: The project had been delayed because the Owner had to revise plans and specifications and obtain additional funds from outside sources due to site development and construction costs.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: The Palmer House, Wilkes Barre, Pennsylvania, Project Number: 034–EE091/PA26–S981–012.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 11, 2000.

Reason Waived: The project was delayed because the Sponsor had to identify secondary financing and was working to obtain acceptable commitments.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Peach Tree Acres, Harbeson, Delaware, Project Number: 032–HD021/DE26–Q981–003.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 11, 2000

Reason Waived: The project was delayed because the Firm Application was initially rejected and had been completely re-submitted and the Secondary Financing documents were under review.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Tolland Elderly Housing, Tolland, Connecticut, Project Number: 017–EE043/CT26–S981–001.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 11, 2000.

Reason Waived: The project was delayed due to the extensive reviews the Sponsor/Owner was required by the local government to perform prior to obtaining exhibits needed to complete the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Unionville Elderly Housing, Unionville, Connecticut, Project Number: 017–EE045/CY26–S981–003.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 11, 2000.

Reason Waived: The project was delayed due to the extensive reviews the Sponsor/Owner was required by the local government to perform prior to obtaining exhibits needed to complete the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Woodbury Elderly Housing, Woodbury, Connecticut, Project Number: 017–EE044/CT26–S981–002.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 11, 2000.

Reason Waived: The project delayed due to the extensive reviews the Sponsor/Owner was required by the local government to perform prior to obtaining exhibits needed to complete the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Arc HUD IV, New Castle, Delaware, Project Number: 032–HD020/DE26–Q981–002.

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Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 12, 2000.

Reason Waived: Additional time was needed for revised surveys and surveyor reports to be prepared and reviewed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Kirkland Union Plaza, Vancouver, Washington, Project Number: 126–EE028/OR16–S981–003.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 12, 2000.

Reason Waived: The project was delayed because the Owner had to obtain additional funds to meet construction shortfalls and additional time was needed for the Owner to address local funding restrictions.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Waterloo Heights Apartments, Los Angeles, California, Project Number: 122–HD107/CA16–Q971–013.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 14, 2000.

Reason Waived: The Sponsor had difficulty in locating and securing a suitable site for the project and delays occurred in the City of Los Angeles architectural review process.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Webster Supportive Housing, Harris County, Texas, Project Number: 114–HD012/TX24–Q961–001.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 12, 2000.

Reason Waived: The Owner had to locate an alternate site and additional time was needed for the updated Previous Participation Certification form HUD–2530 to be reviewed and processed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: West Seneca Senior Apartments, West Seneca, New York, Project Number: 014–EE171/NY06–S981–005.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 12, 2000.

Reason Waived: Delays were due to a change of sites required because of an unacceptable zoning requirement imposed by the local government and additional time was needed for approval of the new site by the local Planning Board.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Berlin Housing, Berlin, Wisconsin, Project Number: 075–HD055/WI39–Q981–002.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 19, 2000.

Reason Waived: Additional time was needed by the Sponsor to continue to work with the architect and the general contractor to get the project to work within the capital advance amount.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Eau Claire Housing for the Physically Disabled, Eau Claire, Wisconsin, Project Number: 075–HD059/WI39–Q981–006.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 20, 2000.

Reason Waived: The Sponsor had to locate an alternate site and the land appraisal was rejected and had to be corrected.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Gilead III, Oshkosh, Wisconsin, Project Number: 075–HD057/WI39–Q981–004.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 20, 2000.

Reason Waived: Additional time was needed by the Sponsor to continue to work with the architect and the general contractor to get the project to work within the capital advance amount.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Scriber Pointe Apartments, Lynnwood, Washington, Project Number: 127–EE022/WA19–S981–001.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 20, 2000.

Reason Waived: Additional time was needed for the National Marine Fisheries Service to review the biological assessment of the site due to the finding that the project may affect the critical habitat of the Threatened Puget Sound Chinook Salmon.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Flury Place, Elkridge, Maryland, Project Number: 052–HD034/MD06–Q981–004.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 27, 2000.

Reason Waived: Additional time was needed for the project's architect to incorporate recommendations to mitigate high noise levels in the project's design and for the owner to submit the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: H.O.L.I.E. Apartments, West Allis, Wisconsin, Project Number: 075–EE077/WI39–S981–006.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 27, 2000.

Reason Waived: The Sponsor had to locate an alternate site and was in the process of obtaining a special use permit for the current site.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Stratford Elderly Housing, Stratford, Wisconsin, Project Number: 075–EE079/WI39–S981–008.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservations for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 27, 2000.

Reason Waived: The Sponsor was in the process of obtaining construction bids and preparing the application for Firm Commitment.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.310(b)(1).

Project/Activity: Rockland ARC Project Independence, New City, NY; Project Number: 012–HD082/NY36–Q981–003.

Nature of Requirement: HUD's regulation at 24 CFR 891.310(b)(1) requires that all entrances, common areas, units to be occupied by resident staff, and amenities must be readily accessible to and usable by persons with disabilities.

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 1, 2000.

Reason Waived: To make all units fully accessible for persons with mobility impairments would make the project, as a whole, financially infeasible. One of the three group homes will be accessible which will make the project in compliance with section 504 of the Rehabilitation Act of 1973.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone: (202) 708–3000.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Palouse Cove Apartments, Palouse, Washington, Project Number: 171–EE010. The Northwest/Alaska Multifamily Hub requested waiver of this regulation due to the project's initial rent-up starting in December 1998 achieving only 55 percent occupancy to date.

Nature of Requirement: HUD's regulation at 24 CFR 891.410(c) limits occupancy to very low-income (VLI) elderly persons, (i.e., households of one or more persons at least one of whom is 62 years of age at the time of initial occupancy).

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 24, 2000.

Reason Waived: The Assistant Secretary approved an income waiver for this project due to the remote location of the project, which has caused vacancy problems and has resulted in an accumulation of unpaid expenses. This waiver will allow elderly and near elderly families who are at or over age 55 and low income to apply for admission, thereby attempting to improve occupancy rates. This waiver is effective for one year from the date of approval.

Contact: Richard Harrington, Field Asset Management Division, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 6178, Washington, DC 20410–3600; telephone (202) 708–3730, ext. 2465.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Lincoln Unity Apartments, West Hamlin, West Virginia, Project Number: 045–EE098. The Charleston Multifamily Program Center has requested an age and income waiver in an attempt to rent up vacant units at this project.

Nature of Requirement: HUD's regulation at 24 CFR 891.410(c) limits occupancy to very low-income (VLI) elderly persons, (i.e., households of one or more persons at least one of whom is 62 years of age at the time of initial occupancy).

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 3, 2000.

Reason Waived: The Assistant Secretary for Housing granted waiver of this regulation for good cause, to allow additional flexibility in attempting to rent up vacant units. The waiver is in effect for one year from the date of the waiver granted.

Contact: Ronald Wallace, Field Asset Management Division, U.S. Department of Housing and Urban Development, 451 Seventh Street SW, Room 6176, Washington, DC 20410–3600; telephone: (202) 708–3730, ext. 2590.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: Romney Unity Apartments, Romney, West Virginia, Project Number: 045–EH095. The Charleston Multifamily Program Center has requested an income waiver for the project due to vacancy problems.

Nature of Requirement: HUD's regulation at 24 CFR 891.410(c) limits occupancy to very low-income (VLI) elderly persons, (i.e., households of one or more persons at least one of whom is 62 years of age at the time of initial occupancy).

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 3, 2000.

Reason Waived: The Assistant Secretary granted waiver of this restriction because the market in the area continues to be soft and the potential for renting to low income persons appears to be good. Therefore, waiver of this regulation will allow the leasing of units to low income households and avert future vacancy problems.

Contact: Ronald Wallace, Field Asset Management Division, U.S. Department of Housing and Urban Development, 451 Seventh Street SW, Room 6176, Washington, DC 20410–3600; telephone: (202) 708–3730, ext. 2590.

• *Regulation:* 24 CFR 891.410(c).

Project/Activity: 1490 Estates Apartments, Buffalo, New York, Project Number: 014–EE111. The Buffalo Multifamily Hub has requested an age waiver for the project due to vacancy problems.

Nature of Requirement: HUD's regulation at 24 CFR 891.410(c) limits occupancy to very low-income (VLI) elderly persons, (i.e., households of one or more persons at least one of whom is 62 years of age at the time of initial occupancy).

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner

Date Granted: November 14, 2000.

Reason Waived: The Assistant Secretary for Housing waived the subject regulation in order to allow management flexibility to rent up vacant units and attempt to sustain occupancy at the project.

Contact: Ronald Wallace, Field Asset Management Division, U.S. Department of Housing and Urban Development, 451 Seventh Street SW, Room 6176, Washington, DC 20410–3600; telephone: (202) 708–3730, ext. 2590.

• *Regulation:* 24 CFR 891.575.

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Project/Activity: Seton Kenton, Kenton, Ohio, Project Number: 043–EH075. The Columbus Multifamily Program Center has requested waiver of the age requirements for occupancy due to severe vacancy problems.

Nature of Requirement: HUD regulations in 24 CFR 891.575 limit occupancy to very low-income (VLI) elderly persons (i.e., households composed of one or more persons at least one of whom is 62 years of age at time of initial occupancy).

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 25, 2000.

Reason Waived: The Assistant Secretary has granted an age waiver for the subject project in order to alleviate the continuing vacancy problem. This would allow marketing to persons age 55 to 62 to assist in renting up vacant units.

Contact: Richard Harrington, Field Asset Management Division, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 6178, Washington, DC 20410–3600; telephone (2020 708–3730, ext. 2465.

• *Regulation:* 24 CFR 891.575.

Project/Activity: Evergreen Apartments, Shell Lake/Chetek/Rhinelander/Siren, Wisconsin, Project Number: 075–EH072–NP/WPH/L8 and Acorn Apartments, Wisconsin Rapids/Crandon/Minong, Wisconsin, Project Number: 075–EH101–NP/WAH/WDD/L8. Age waivers are requested for the subject projects due to a continuing soft housing market in the scattered site areas, despite marketing efforts of the owners.

Nature of Requirement: HUD regulations in 24 CFR 891.575 limit occupancy to very low-income (VLI) elderly persons (i.e., households composed of one or more persons at least one of whom is 62 years of age at time of initial occupancy).

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 3, 2000.

Reason Waived: The Assistant Secretary for Housing has granted age waivers for the subject projects in order to fill long standing vacancies. Project management may market vacant units to persons between the ages of 55 and 62, thereby attempting to rent up the vacant units and sustain project viability.

Contact: Marc A. Harris, Director, Field Asset Management Division, U.S. Department of Housing and Urban Development, 451 Seventh Street SW, Room 6164, Washington, DC 20410–3600; telephone: (202) 708–3730, ext. 2680.

• *Regulation:* 24 CFR 891.575.

Project/Activity: Menominee Reservation (Scattered Sites), Keshena/South Branch, Zoar, Wisconsin, Project Number: 075–EH037–NP/WAH/L8. The Minneapolis Multifamily Hub requested an age waiver for this project due to continuing vacancy problems.

Nature of Requirement: HUD regulations in 24 CFR 891.575 limit occupancy to very low-income (VLI) elderly persons (i.e., households composed of one or more persons at least one of whom is 62 years of age at time of initial occupancy).

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 3, 2000.

Reason Waived: The Assistant Secretary granted waiver of this regulation in order to allow the project to rent up vacant units. Allowing occupancy by persons between the ages of 55 and 62 will assist in alleviating the continuing vacancy problems which exist.

Contact: Marc A. Harris, Director, Field Asset Management Division, U.S. Department of Housing and Urban Development, 451 Seventh Street SW, Room 6164, Washington, DC 20410–3600; telephone: (202) 708–3730, ext. 2680.

• *Regulation:* 24 CFR 891.575.

Project/Activity: Phoenix Villa Apartments, Superior and Lake Nebagamon, Wisconsin, Project Number: 075–EH012–NP/WAH.L8. The Minneapolis Multifamily Hub has requested waiver of the age requirement for occupancy in this project due to an overbuilt market and competition with Rural Housing Services and State Agency-financed projects.

Nature of Requirement: HUD regulations in 24 CFR 891.575 limit occupancy to very low-income (VLI) elderly persons (i.e., households composed of one or more persons at least one of whom is 62 years of age at time of initial occupancy).

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner

Date Granted: December 18, 2000.

Reason Waived: The Assistant Secretary has granted a waiver of the age requirement for this project due to a severe vacancy problem. By marketing units to the near elderly, this will allow project management flexibility in renting up vacant units and perhaps start a waiting list for this project.

Contact: Marc A. Harris, Director, Field Asset Management Division, U.S. Department of Housing and Urban Development, 451 Seventh Street SW, Room 6164, Washington, DC 20410–3600; telephone: (202) 708–3730, ext. 2680.

• *Regulation:* 24 CFR 891.575 and 891.610(c).

Project/Activity: Clinton Manor Apartments, Clinton, New York, Project Number: 013-EH010/NY02–2190–201. The Buffalo Multifamily Hub has requested an age waiver for the subject project due to a soft housing market.

Nature of Requirement: HUD regulations in 24 CFR 891.575 and 891.610(c) limit occupancy to very low-income (VLI) elderly persons (i.e., households composed of one or more persons at least one of whom is 62 years of age at time of initial occupancy).

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 10, 2000.

Reason Waived: The Assistant Secretary granted this waiver based on the area's soft housing market resulting in difficulty in renting up vacant units. This waiver will allow project management to rent up vacant units by allowing additional flexibility in marketing vacant units.

Contact: Ronald Wallace, Field Asset Management Division, U.S. Department of Housing and Urban Development, 451 Seventh Street SW, Room 6176, Washington, DC 20410–3600; telephone: (202) 708–3730, ext. 2590.

• *Regulation:* 24 CFR 891.575 and 891.610(c).

Project/Activity: Alfred Lutheran Housing, Alfred, New York, Project Number: 014–EH182. The Buffalo Multifamily Hub has requested waiver of this regulation due to the soft housing market in the area.

Nature of Requirement: HUD regulations in 24 CFR 891.575 and 891.610(c) limit occupancy to very low-income (VLI) elderly persons (i.e., households composed of one or more persons at least one of whom is 62 years of age at time of initial occupancy).

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 13, 2000.

Reason Waived: The Assistant Secretary granted this waiver based on the constant vacancy problems this project is experiencing. This will allow the project additional flexibility in attempting to rent up vacant units.

Contact: Ronald Wallace, Field Asset Management Division, U.S. Department of Housing and Urban Development, 451 Seventh Street SW, Room 6176, Washington, DC 20410–3600; telephone: (202) 708–3730, ext. 2590.

• *Regulation:* 24 CFR 891.575 and 891.610(c).

Project/Activity: St. Mark's Terrace—Dundee Apartments, Dundee, New York, Project Number: 014–EE011/NY06S911011. The Buffalo Multifamily Hub has requested an income waiver for the project due to the soft housing market in the area.

Nature of Requirement: HUD regulations in 24 CFR 891.575 and 891.610(c) limit occupancy to very low-income (VLI) elderly persons (i.e., households composed of one or more persons at least one of whom is 62 years of age at time of initial occupancy).

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 13, 2000.

Reason Waived: The Assistant Secretary for Housing has found good cause to waive this regulation due to the soft market for very low income families. This waiver is granted to attempt to rent up vacant units by allowing low income families access for a period of one year.

Contact: Ronald Wallace, Field Asset Management Division, U.S. Department of Housing and Urban Development, 451 Seventh Street SW, Room 6176, Washington, DC 20410–3600; telephone: (202) 708–3730, ext. 2590.

• *Regulation:* 24 CFR 891.575 and 891.610(c).

Project/Activity: Oak Hills Senior Housing, Green Forest, Arkansas, Project Number: 082–EE73. The Little Rock Multifamily Program Center requested an income and age waiver for the subject project to alleviate vacancy problems.

Nature of Requirement: HUD regulations in 24 CFR 891.575 and 891.610(c) limit occupancy to very low-income (VLI) elderly persons (i.e., households composed of one or more persons at least one of whom is 62 years of age at time of initial occupancy).

Granted By: William C. Apgar, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 24, 2000.

Reason Waived: The Assistant Secretary granted this waiver based on management's inability to rent up its vacant units. An age waiver has been granted to allow flexibility in marketing the vacant units to low income elderly and start a waiting list for the project.

Contact: Cindy Bridges, Field Asset Management Division, U.S. Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–3600; telephone: (202) 708–3730, ext. 2603.

IV. Regulatory Waivers Granted by the Office of Multifamily Housing Assistance Restructuring (OMHAR)

For further information about the following waiver actions, please see the name of the contact person which immediately follows the description of the waiver granted.

• *Regulations:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA No.	Project name	State
12738023	1400 Market Street Apts	WA
08444156	Bainbridge Apts	MO
01744158	Barbour Kensington	CT
01435024	Cambridge Square	NY
05435003	Cherry Hill Apartments	SC
07435079	College Square Manor	IA
08444043	Elmwood Estates	MO
04335149	Frankfort Village	OH
04635442	Greenfield Meadows	OH
06344003	Harold House Apts	FL
05435412	Highland Square II Apartments	SC
03344041	Homewood North	PA
02335147	Judson House	MA
03335199	Leo Meyer Manor	PA
01744154	Lower Garden Street Apartments	CT
01744155	Main & Nelson	CT
01744156	Main & Pavillion	CT
01744157	Mansfield & Edgewood	CT
02344191	Olde English Village	MA
01335058	O'Neil Apartments	NY
02344186	Orange Apts	MA
02344016	Patton Apts	MA
01435023	Piotr Stadnitski Gardens	NY
02344131	Pond View	MA
08435152	Poplar Court	KS
08735074	Rockwood Village	TN
12635142	Royal Loto	OR
02335141	Tannery II	MA
08544022	Taven Apartments	MO
02355173	The Dorchester	MA
10292005	Valley View Apartments	KS
10235090	Walnut Towers	KS
08544012	Wynwood Apts	MO

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted By: Ira Peppercorn, Director of OMHAR.

Date Granted: September 30, 1999.

Reasons Waived: The attached list of projects were not assigned to the Participating Administrative Entities in a timely manner or for which the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Dan Sullivan, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, Washington, DC 20410; telephone (202) 708–0001.

• *Regulations:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA No.	Project name	State
05144239	Huntersville Village Apts	VA
05144024	Midlothian Village	VA
05135070	Pleasant Park I Apts	VA
05135099	Pleasant Park II Apts	VA

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted By: Ira Peppercorn, Director of OMHAR.

Date Granted: October 31, 1999.

Reasons Waived: The above list of projects were not assigned to the Participating Administrative Entities in a timely manner or for which the restructuring analysis was unavoidably delayed due to no fault of the owner.

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Contact: Dan Sullivan, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, Washington, DC 20410; telephone (202) 708–0001.

- *Regulations:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA No.	Project name	State
12244547	Agua Terrace Apartments	CA
12435019	Bannock Arms Apartments	ID
13638026	Bidwell Oaks	CA
01711049	Brewery Square	CT
02444042	Brookside Park	NH
06135199	Calhoun Garden Apts	GA
04635447	Chaucer Square	OH
08335192	Crescent Hill Manor	KY
08335215	Cross Creek Apartments	KY
01257036	Daly III	NY
03355002	East Hills Park	PA
06135203	Eastman Gardens Apts	GA
04235214	Eco Village	OH
11744036	Elmwood Manor Apts	OK
12235370	Eucalyptus Park	CA
03438021	F. B. Rooney Building	PA
03344019	Greenway Park Coop	PA
03135120	Grove House Apts	NJ
09335069	Guadelupe Gardens	MT
05235332	Kensett House	MD
08435139	Kenton Place	MO
12435022	Kirkwood Meadows	ID
06335118	Leland Apartments	FL
08435245	Manchester Heights aka Ashley Park Apts.	MO
06344054	Market Street Apartments	FL
03455004	Marshall Square Apartments	PA
07435114	McCord Manor	IA
11835054	Meadowbrook Park	OK
08238009	Mid-Town Apts	AR
06335093	Moncrief Village	FL
03344038	Mountainview Apartments	PA
04335135	Mt. Vernon Plaza I	OH
12235393	New Hampshire Arms	CA
12258505	New Venice 1C (#2)	CA
12258519	New Venice 4C	CA
06344045	Oak Street Apartments	FL
06135232	Oconee Park	GA
09235299	Park Place Apartments	MN
10235078	Pickwick Place Assoc	KS
03344099	Pin Oak Village	PA
04238017	Pinewood Place	OH
07335252	Presidential Estates II	IN
04635437	Riverview Apartments	OH
11744087	Rockwell Villa	OK
14335023	Rosswood Villa	CA
07435103	Royal Oak II	IA
05235401	Royal Oaks Apartments	MD
12244545	Royal Palms Apartments	CA
01257035	Sebco III	NY
07435097	Shamrock Heights Apts	IA
03438022	Shirley Futch Plaza	PA
06335087	Southside Apartments	FL
06535239	Springlane Apartments	MS
01255037	St. Nicholas Gardens	NY
06135196	Stateboro Summit	GA
04635485	Sunrise Apartments	OH
06244004	Talladega College Hills Apartments	AL
13635536	Tehama Village Apartments	CA
06135228	The Cliffs	GA
06744065	The Palms	FL
06335098	University Plaza	FL
12235397	Valencia Villa Apartments	CA
12938012	Valley Apartments #1	CA
12935068	Valley Apartments #2	CA
13635513	Village East Apts	CA
01257007	W 135th St.	NY
06335092	Weber 5A Apartments	FL
06335225	Weber 5B Apartments	FL
11735127	Western Village Apts	OK

FHA No.	Project name	State
03355018	Westgate Village I	PA
03344093	Westview Terrace	PA
08335188	Westwood Apartments	KY
12235367	Willowbrook Villa Apartments	CA
03455003	Zion Garden Apartments	PA

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted By: Ira Peppercorn, Director of OMHAR.

Date Granted: December 3, 1999.

Reasons Waived: The above list of projects were not assigned to the Participating Administrative Entities in a timely manner or for which the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Dan Sullivan, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, Washington, DC 20410; telephone (202) 708–0001.

- *Regulations:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA No.	Project name	State
05235042	Beaufort Crest	MD
05235029	Bentalou Court	MD
08455051	Benton Villa Apartments	MO
06535214	Bonhomie Apartments	MS
06535003	Cedarhurst Homes	MS
05244071	Clay Courts	MD
11435275	Coolwood Oaks I Apartments	TX
06535022	Deer Creek School Apartments	MS
06535219	Eastbrooke Apartments	MS
06533001	Fredella Village	MS
03335079	Galiatin Apartments	PA
05235050	Garrison Apartments	MD
17144048	Grand Coulee Apartments	WA
03344018	Greenway Park Apartments	PA
03344083	Hill Com I	PA
03344166	Hill Com II	PA
04335160	Kenton Village	OH
05244094	Lester Morton Court	MD
08444147	Linda Vista Apartments	MO
05235057	Pall Mall Apartments	MD
08144026	Parkview Manor Apartments	TN
05235061	Pimlico Road Apartments	MD
06535185	Pride Garden Apartments	MS
11744045	Rolling Meadows	OK
05212006	Stafford Towers Apartments	MD
05255036	Stuart Hills Apartments	MD
08455027	Terrace View I Apartments	MO
08444042	Terrace View II Apts	MO
04335034	Tubman Towers	OH
11435223	Villa Main Apts	TX
04644134	Village South Apartments	OH
06535221	Wood Village Apartments	MS
05235126	Woodland Apts. III	MD
08735029	Woodlawn II Apartments	TN

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted By: Ira Peppercorn, Director of OMHAR.

Date Granted: October 3, 2000.

Reasons Waived: The above list of projects were not assigned to the Participating Administrative Entities in a timely manner or for which the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Dan Sullivan, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, Washington, DC 20410; telephone (202) 708–0001.

- *Regulations:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA No.	Project name	State
17635019	Ayalpik Apartments	AK
03335067	College View Towers	PA

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FHA No.	Project name	State
04335195	Encore	OH
07535219	La Casa Evangelica Apartments	WI
04335201	Lawrence Village	OH
12235291	Monterey Arms	CA
03335066	Orange Village Apartments	PA
04335123	Rehab Unlimited 74	OH
01744107	Upper Garden Apartments	CT

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted By: Ira Peppercorn, Director of OMHAR.

Date Granted: October 18, 2000.

Reasons Waived: The above list of projects were not assigned to the Participating Administrative Entities in a timely manner or for which the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Dan Sullivan, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, Washington, DC 20410; telephone (202) 708–0001.

• *Regulations:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA No.	Project name	State
02332034	Bershiretown Associates	MA
01257030	Bryant Arms Apartments	NY
01635016	David Apartments	RI
01635018	Mercedes II	RI
01635023	Mercedes IV	RI
01335055	Monument Sq. Apts	NY
13338004	Parkview Place	TX
08635108	Pulaski Terrace Apartments II	TN
12635143	Wallowa Alpine Village	OR
12444028	West Alameda Apartments	OR
01257066	West Farms Estates	NY

Granted By: Ira Peppercorn, Director of OMHAR.

Date Granted: November 3, 2000.

Reasons Waived: The above list of projects were not assigned to the Participating Administrative Entities in a timely manner or for which the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Dan Sullivan, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, Washington, DC 20410; telephone (202) 708–0001.

• *Regulations:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA No.	Project name	State
01744158	Barbour Kensington Apartments	CT
09235321	Freeborn Manor	MN
07314001	Harborside Apartments	IN
07135284	Hyde Park Apartments	IL
08135090	Layton Meadows Apartments	TN
01744154	Lower Garden Street Apartments	CT
01744154	Main & Nelson	CT
01744156	Main & Pavillion	CT
01744157	Mansfield, Edgewood & Vine	CT
08135088	Pine Grove Apartments	TN
01735109	Pond View Apartments	CT
08635108	Pulaski Terrace Apartments II	TN
06235252	River Hill Estates	AL
04235040	South Park Apartments	OH

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted By: Ira Peppercorn, Director of OMHAR.

Date Granted: November 20, 2000.

Reasons Waived: The above list of projects were not assigned to the Participating Administrative Entities in a timely manner or for which the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Dan Sullivan, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, Washington, DC 20410; telephone (202) 708–0001.

• *Regulations:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA No.	Project name	State
11744036	Elmwood Manor Apts	OK
12735291	Heritage Apartments	WA
04635227	New Light III	OH
03335059	Quemahoning Towers	PA

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring, and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted By: Ira Peppercorn, Director of OMHAR.

Date Granted: December 13, 2000.

Reasons Waived: The above list of projects were not assigned to the Participating Administrative Entities in a timely manner or for which the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Dan Sullivan, Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development, Portals Building, Suite 400, 1280 Maryland Avenue, Washington, DC 20410; telephone (202) 708–0001.

V. Regulatory Waivers Granted by the Office of Public and Indian Housing

For further information about the following waiver actions, please see the name of the contact person which immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 761.30(B).

Project/Activity: Waiver of 24 CFR 761.30(b) was requested to extend the PHDEP 1997 grant for the San Francisco Housing Authority, CA 01 DEP 001 0198, San Francisco, California.

Nature of Requirement: HUD's regulation at 24 CFR 761.30(b) provides that terms of the grant agreement may not exceed 12 months for the Assisted Housing Program, and 24 months for the Public Housing Program, unless an extension is approved by the local HUD Office or local HUD Office of Native American Programs. This section also provides that the maximum extension that may be approved by the local offices is 6 months.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: August 4, 2000.

Reason Waived: The SFHA has indicated that their inability to execute a Service Agreement was hindered by local politics and the fact that the San Francisco Police Department (SFPD) is under contract for above base-line services through PHDEP funds. As a result the SFHA utilizes a pool of private security contractors who are governed by State Law in lieu of individual Policy Manuals, which is unique to California. The SFHA is requesting a continuation of the previous waivers for the Fiscal Years 1997 and 1998 as the existing Policy Manual is still in effect for the Fiscal Year 1999 PHDEP grant.

Contact: Sonia L. Burgos, Director, Community Safety and Conservation Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Rm. 4206, Washington, DC 20410–5000, telephone (202) 708–1197.

• *Regulation:* 24 CFR 902.5(b)(2).

Project/Activity: Princeville Housing Authority, Princeville, NC.

Nature of Requirement: The regulation requires the public housing agency to submit data for evaluation by HUD, Public Housing Assessment System (PHAS), after which a score is issued rating the agencies performance during the prior year.

Granted By: Harold Lucas, Assistant Secretary, Office of Public and Indian Housing.

Date Granted: December 20, 2000.

Reason Waived: Approval of waiver permitted the PHA not to be assessed by the Public Housing Assessment System (PHAS) score for Fiscal Year 2000. All PHA housing stock and agency records were destroyed by Hurricane Floyd. The limited financial data would not be suitable for scoring and all units were demolished and tenants relocated.

Contact: Judy Wojciechowski, Director of PHAS Operations, Office of Troubled Agency Recovery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 708–4932, x 3464.

• *Regulation:* 24 CFR 954.500(c).

Project/Activity: Partial financing to purchase 37 housing units under the Indian HOME Program, Absentee Shawnee Tribe of Oklahoma.

Nature of Requirement: HUD's regulation at § 954.500(c) directs HUD to recapture HOME funds that are not expended within 5 years after the last day of the month in which it obligated the funds.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: December 5, 2000.

Reason Waived: The Absentee Shawnee Tribe of Oklahoma believed that with the advent of the new Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) their HOME grant funds would be considered NAHASDA funds under Title II Section 210 of that act. It was not until the publication of the Transition Notice on January 27, 1998, were tribes informed that HOME grants were to continue to be administered by the statutes authorizing this program. In addition, the Tribe also experienced difficulties in constructing two modular homes on trust property in Oklahoma.

Contact: Bruce Knott, Director, Office of Grants Evaluation, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Box 90 Denver, CO 80202, (303) 675–1600.

• *Regulation:* 24 CFR 954.500(c).

Project/Activity: Construction of 11 homes with Indian HOME Program funds, Pascua Yaqui Tribe, Tucson, AZ.

Nature of Requirement: HUD's regulation at § 954.500(c) directs HUD to recapture HOME funds that are not expended within 5 years after the last day of the month in which it obligated the funds.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: November 27, 2000.

Reason Waived: The waiver was granted for the following reasons: a significant amount of key administrative staff turnover; termination of a contract with the original architectural firm; difficulty in obtaining clear title to city-surplus, non-trust properties where the homes are to be located; and a need to have the construction plans and zoning variances approved by various municipalities in which the constructed homes will be located.

Contact: Bruce Knott, Director, Office of Grants Evaluation, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Box 90 Denver, CO 80202, (303) 675–1600.

• *Regulation:* 24 CFR 982.503(a)(3), (c)(1), and (c)(4).

Project/Activity: Bridgeport Housing Authority (BHA) and the Connecticut, Department of Social Services (CDSS), CT, housing choice voucher program. A request was made for a waiver of the payment standard schedule regulations regarding the approval and use of exception payment standard amounts to allow the BHA and CDSS to establish exception payment standard amounts for 189 families displaced from Pequonnock Apartments and a separate payment standard amount for all other housing choice voucher participants. Pequonnock Apartments is a two-building high-rise public housing complex that is being transferred to the City for development.

Nature of Requirement: The regulation provides that a public housing agency (PHA) must establish a single payment standard amount for each unit size. Further, when HUD approves an exception payment standard amount, a PHA with jurisdiction in the exception area may use the HUD-approved exception payment standard amount. In addition, the regulation requires approval of 120 percent payment standard amounts for six months before the approval of higher payment standard amounts.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: November 6, 2000.

Reason Waived: Approval of the waivers will permit 189 public housing residents affected by the disposition of Pequonnock Apartments to relocate with housing choice voucher program assistance in low poverty areas both within the City of Bridgeport and

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in surrounding communities in which utilization of housing choice vouchers has historically been limited.

Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 4210, Washington, D.C. 20410, (202) 708–0477.

• *Regulation:* 24 CFR 983.151(b).

Project/Activity: City of Fulton, New York, project-based certificate program.

Nature of Requirement: The regulation provides that the initial housing assistance payments (HAP) contract term may not be less than one year.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: December 18, 2000.

Reason Waived: Approval of the waiver permitted the City of Fulton to proceed with its plans to undertake a 12-unit PBC project for the elderly and to enable the City to enter into a HAP contract with an initial term for less than one year.

Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 4210, Washington, D.C. 20410, (202) 708–0477.

• *Regulation:* 24 CFR 984.303(b)(2).

Project/Activity: Housing Authority of the City of Alameda, California; Family Self-Sufficiency (FSS) Program.

Nature of Requirement: PHAs are required to establish an interim goal for each FSS family that is receiving welfare. The required interim goal is for the family to remain independent from welfare assistance for at least one year before expiration of the term of the family's FSS program contract of participation.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: November 28, 2000.

Reason Waived: The FSS program participant had completed all other FSS program goals, and was unable to remain in the FSS program for a full year after her independence from welfare assistance because of a documented family emergency that required her to end her participation in the Section 8 program of the PHA.

Contact: Patricia Arnaudo, Senior Program Manager, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4224, Washington DC, 20410; telephone (202) 708–0744.

• *Regulation:* 24 CFR 990.107(f) and 990.109.

Project/Activity: Portsmouth Metropolitan Housing Authority, OH. A request was made to permit the Authority to benefit from energy performance contracting for developments which have tenant-paid utilities. The HA estimates that it could increase savings substantially if it were able to undertake energy performance contracting for *both* PHA-paid and tenant-paid utilities.

Nature of Requirement: Under 24 CFR 990, the Performance Funding System (PFS) energy conservation incentive, that relates to energy performance contracting, currently applies to only PHA-paid utilities. The Portsmouth Metropolitan Housing Authority has both PHA-paid and tenant-paid utilities.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: October 6, 2000.

Reason Waived: In September 1996, the Oakland Housing Authority was granted a waiver to permit the Authority to benefit from energy performance contracting for developments with tenant-paid utilities. The waiver was granted on the basis that the Authority presented a sound and reasonable methodology for doing so. The Portsmouth Metropolitan Housing Authority requested a waiver based on the same approved methodology. The waiver permits the HA to exclude from its PFS calculation of rental income, increased rental income due to the difference between updated baseline utility (before implementation of the energy conservation measures) and revised allowances (after implementation of the measures) for the project(s) involved for the duration of the contract period, which cannot exceed 12 years.

Contact: Regina McGill, Director, Funding and Financial Management Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, S.W.—Room 4216, Washington, D.C. 20410, (202) 708–1872.

• *Regulation:* 24 CFR 990.107(f) and 990.109.

Project/Activity: Cincinnati Metropolitan Housing Authority, OH. A request was made to permit the Authority to benefit from energy performance contracting for developments which have tenant-paid utilities. The HA estimates that it could increase savings substantially if it were able to undertake energy performance contracting for *both* PHA-paid and tenant-paid utilities.

Nature of Requirement: Under 24 CFR 990, the Performance Funding System (PFS) energy conservation incentive, that relates to energy performance contracting, currently applies to only PHA-paid utilities. The Cincinnati Metropolitan Housing Authority has both PHA-paid and tenant-paid utilities.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: December 7, 2000.

Reason Waived: In September 1996, the Oakland Housing Authority was granted a waiver to permit the Authority to benefit from energy performance contracting for developments with tenant-paid utilities. The waiver was granted on the basis that the Authority presented a sound and reasonable methodology for doing so. The Cincinnati Metropolitan Housing Authority requested a waiver based on the same approved methodology. The waiver permits the HA to exclude from its PFS calculation of rental income, increased rental income due to the difference between updated baseline utility (before implementation of the energy conservation measures) and revised allowances (after implementation of the measures) for the project(s) involved for the duration of the contract period, which cannot exceed 12 years.

Contact: Regina McGill, Director, Funding and Financial Management Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, S.W.—Room 4216, Washington, D.C. 20410, (202) 708–1872.

• *Regulation:* 24 CFR 990.107(f) and 990.109.

Project/Activity: Tallahassee Housing Authority, FL. A request was made to permit the Authority to benefit from energy performance contracting for developments which have tenant-paid utilities. The HA estimates that it could increase savings substantially if it were able to undertake energy performance contracting for *both* PHA-paid and tenant-paid utilities.

Nature of Requirement: Under 24 CFR 990, the Performance Funding System (PFS) energy conservation incentive, that relates to energy performance contracting, currently applies to only PHA-paid utilities. The Tallahassee Housing Authority has both PHA-paid and tenant-paid utilities.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: December 27, 2000.

Reason Waived: In September 1996, the Oakland Housing Authority was granted a waiver to permit the Authority to benefit from energy performance contracting for developments with tenant-paid utilities. The waiver was granted on the basis that the Authority presented a sound and reasonable methodology for doing so. The Tallahassee Housing Authority requested a waiver based on the same approved methodology. The waiver permits the HA to exclude from its PFS calculation of rental income, increased rental income due to the difference between updated baseline utility (before implementation of the energy conservation measures) and revised allowances (after implementation of the measures) for the project(s) involved for the duration of the contract period, which cannot exceed 12 years.

[FR Doc. 01–11531 Filed 5–7–01; 8:45 am]

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H.R. 132/P.L. 107–6
To designate the facility of the United States Postal Service located at 620 Jacaranda Street in Lanai City, Hawaii, as the "Goro Hokama Post Office Building". (Apr. 12, 2001; 115 Stat. 8)

H.R. 395/P.L. 107–7
To designate the facility of the United States Postal Service located at 2305 Minton Road in West Melbourne, Florida, as the "Ronald W. Reagan Post Office of West Melbourne, Florida". (Apr. 12, 2001; 115 Stat. 9)

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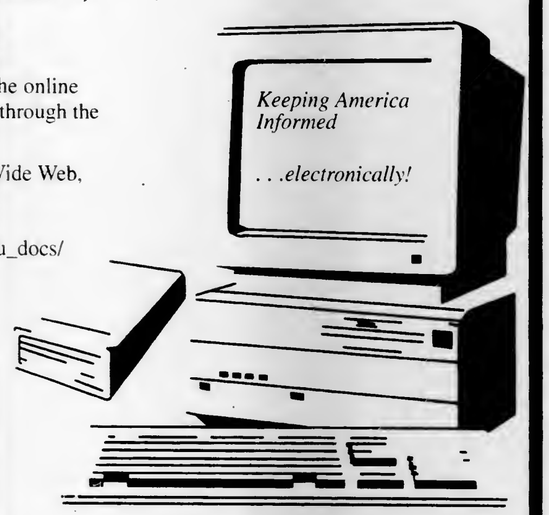
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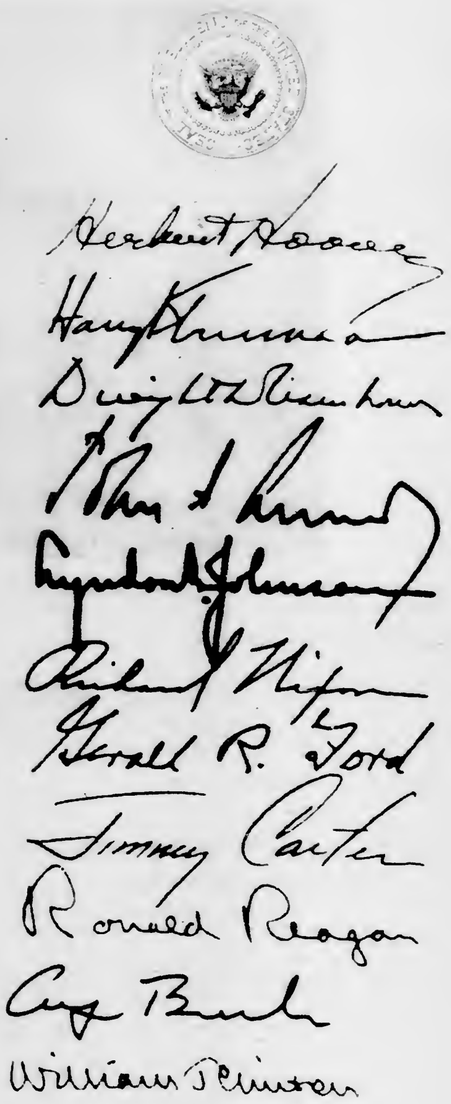
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Presidential Documents

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The President

Proclamation 7432 of May 4, 2001

Older Americans Month, 2001

By the President of the United States of America

A Proclamation

In cities, towns, and communities across the United States, older Americans make countless contributions to the life of our Nation. Each year, during the month of May, Americans acknowledge in a special way the contributions of older Americans to our society. This year's theme, "The Many Faces of Aging," calls on us to recognize the richness and the promise of our rapidly increasing older population.

Older adults have much to teach us, from persevering in the face of hardship to sustaining our family structure and caring for those in need. Generations of older Americans have done the hard work of building communities, places of worship, businesses, and schools, laying the foundation for our American way of life. Embodying the steadfast devotion, courage, and sacrifice that our ancestors brought to this country, older Americans continue to energize our national life. Many of these former teachers, leaders of industry, war heroes, and religious figures help new generations learn about our past by taking time out of their lives to share their experiences and to serve as role models. Their values of hard work, determination, compassion, and faith continue to benefit our families and all Americans. As we celebrate Older Americans Month, I encourage Americans to take advantage of the wisdom and experience of our elder citizens.

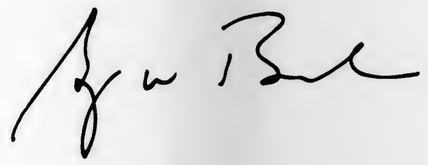
Working in partnership with States and local organizations, my Administration is proposing that the Federal Government do more to facilitate service opportunities for seniors.

My Administration is committed to improving the quality of life of our Nation's seniors, who are often burdened with concerns about health care. We will strengthen Medicare for the baby boomers and subsequent generations. We will renew the promise made to our seniors and people with disabilities by providing access to affordable prescription drugs and better options to meet their health care needs. By ensuring that our senior citizens live in comfort and security, we honor them and thank them for their service.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 2001, as Older Americans Month. I call upon Federal, State, and local government officials, businesses, communities, faith-based organizations, families, health care professionals, volunteers, and all citizens of the United States to publicly reaffirm our Nation's continuing commitment to honor older Americans.

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IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of May, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-fifth.



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Proclamation 7433 of May 4, 2001

Small Business Week, 2001

By the President of the United States of America

A Proclamation

Small business owners who work long hours, juggling family and career responsibilities and serving as community volunteers, are integral to our country's prosperity and to the vibrancy of our communities. These entrepreneurs are fundamental to our economy. Through the opportunities offered by the men and women who own and operate our Nation's 25.5 million small businesses, many of our citizens are able to pursue their dreams of a better life.

Federal, State, and local governments can help our small business owners by creating an environment in which the American spirit flourishes, an environment that promotes innovation, risk-taking, and equal opportunity. My Administration is working for lower taxes, reasonable regulations, and a reduction of tariffs and other barriers to free trade that will increase the competitive strength of our small business sector. Education reforms also will ensure that our young people are prepared to enter the global marketplace and small businesses will have the needed pool of talent.

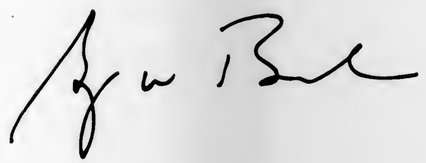
Many of America's entrepreneurs risk everything to make their businesses successful. They are leaders of innovation, and their efforts create a wellspring of new technology, new products, and improved business processes. One of my priorities as President is to encourage that entrepreneurial spirit, and to see that it encompasses all Americans. To that end, we have instituted the New Freedom Initiative, which includes a component to help small businesses better serve customers with disabilities and to hire more people with disabilities. Also, my Administration supports the Drug Free Workplace Program, to help small businesses develop employee education programs and company drug policies. These are examples of our commitment to the ideal that the role of our Government is not to create business barriers, but to help our citizens overcome them.

America's small business owners and their employees represent more than half of the private workforce. These entrepreneurs, who create more than 75 percent of the net new jobs nationwide and generate more than 50 percent of the Nation's gross domestic product, and the employees who work in small businesses, deserve our thanks. We salute them by observing Small Business Week.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 6 through 12, 2001, as Small Business Week. I urge all Americans to join in observing this week with appropriate programs, ceremonies, and activities.

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IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of May, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-fifth.



[FR Doc. 01-11850
Filed 5-8-01; 8:45 am]
Billing code 3195-01-P

Rules and Regulations

Federal Register
Vol. 66, No. 90
Wednesday, May 9, 2001

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150-AG72

List of Approved Spent Fuel Storage Casks: FuelSolutions™ Revision; Confirmation of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Nuclear Regulatory Commission (NRC) is confirming the effective date of May 14, 2001, for the direct final rule that appeared in the **Federal Register** of February 27, 2001 (66 FR 12435). This direct final rule amended the NRC's regulations by revising the BNFL Fuel Solutions FuelSolutions™ cask system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 1 to the Certificate of Compliance (CoC). Amendment No. 1 will modify the present cask system design to allow the Big Rock Point nuclear facility to store mixed-oxide fuel assemblies, partial fuel assemblies, and damaged fuel assemblies (in a can) under a general license. This document confirms the effective date.

DATES: The effective date of May 14, 2001, is confirmed for this direct final rule.

ADDRESSES: Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. These same documents may also be viewed and downloaded electronically via the rulemaking website (http://ruleforum.llnl.gov). For information about the interactive rulemaking website, contact Ms. Carol Gallagher (301) 415-5905; e-mail *CAG@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Gordon Gundersen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415-6195 (E-mail: *GEG1@nrc.gov*).

SUPPLEMENTARY INFORMATION: On February 27, 2001 (66 FR 12435), the NRC published in the **Federal Register** a direct final rule amending its regulations in 10 CFR part 72 by revising the BNFL Fuel Solutions FuelSolutions™ cask system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 1 to the Certificate of Compliance (CoC). Amendment No. 1 will modify the present cask system design to allow the Big Rock Point nuclear facility to store mixed-oxide fuel assemblies, partial fuel assemblies, and damaged fuel assemblies (in a can) under a general license. In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on the date noted above. The NRC did not receive any comments that warranted withdrawal of the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 27th day of April, 2001.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 01-11699 Filed 5-8-01; 8:45 am]

BILLING CODE 7590-01-P

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 109 and 110

[Notice 2001-5]

General Public Political Communications Coordinated With Candidates and Party Committees; Independent Expenditures

AGENCY: Federal Election Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: On December 6, 2000, the Commission published the text of revised regulations governing general public political communications coordinated with candidates and party committees, and independent expenditures. 65 FR 76138. The Commission announces that these rules are effective as of May 9, 2001.

EFFECTIVE DATE: May 9, 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary C. Smith, Assistant General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694-1650 or toll free (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Commission is announcing the effective date of revised regulations at 11 CFR Parts 100, 109 and 110, that address expenditures for coordinated communications that include clearly identified candidates, and that are paid for by persons other than candidates, candidates' authorized committees, and party committees. The rules, which largely follow the United States District Court for the District of Columbia's decision in *Federal Election Commission* v. *The Christian Coalition*, 53 F.Supp.2d 45 (D.D.C. 1999), address expenditures for communications made at the request or suggestion of a candidate, authorized committee or party committee; as well as those where any such person has exercised control or decision-making authority over the communication, or has engaged in substantial discussion or negotiation with those involved in creating, producing, distributing or paying for the communication. The rules also revise the defintion of "independent expenditure" to conform with this new definition.

Before final promulgation of any rules or regulations to carry out the provisions of Title 2 of the United States Code, the Commission transmits the rules or regulations to the Speaker of the House of Representatives and the President of the Senate for a thirty legislative day review period. 2 U.S.C. 438(d). These rules on coordinated and independent expenditures were transmitted to Congress on January 4, 2001. Thirty legislative days expired in the Senate on March 12, 2001, and the House of Representatives on March 29, 2001.

Announcement of Effective Date: Revised 11 CFR 100.16; 109.1(a), (b)(4), and (d)(1); and 110.14(f)(2) and (f)(3); and new 11 CFR 100.23, as published at 65 FR 76138 (Dec. 6, 2000), are effective as of May 9, 2001.

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Dated: May 3, 2001.
Danny L. McDonald,
Chairman, Federal Election Commission.
[FR Doc. 01–11588 Filed 5–8–01; 8:45 am]
BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 27 and 29

[Docket No. FAA–2001–9616; Amdt. Nos. 27–40 and 29–47]

Rotorcraft Airworthiness Standards

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Technical amendment.

SUMMARY: This document contains technical amendments to a final rule that was published in the **Federal Register** on December 20, 1976 (41 FR 55454). That final rule amended the airworthiness standards for normal and transport category rotorcraft under Parts 27 and 29 of title 14, Code of Federal Regulations (CFR). The particular sections being amended relate to limit pilot forces and torques.
EFFECTIVE DATE: May 9, 2001.
FOR FURTHER INFORMATION CONTACT: Jim Grigg, telephone (817) 222–5490.
SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these amendments were originally codified as:

- Civil Air Regulations (CAR) 7.225 and 7.226, recodified as 14 CFR 29.397, effective February 1, 1965, and later amended by Amendment 29–12, effective February 1, 1977; and
- CAR 6.225 and 6.226, recodified as 14 CFR 27.397, effective February 1, 1965, and later amended by Amendment 27–11, effective February 1, 1977, was intended to establish a maximum pilot force for twist controls of 80R inch-pounds.

However, as published, the final regulations contain an error that has long been recognized by the FAA and industry as being misleading and in need of clarification. When these regulations were previously published, we inadvertently omitted the word "inch" in the phrase "Twist controls, 80R inch-pounds". These technical amendments clarify that the appropriate measurement is to be in "inch-pounds" not "pounds".

List of Subjects in 14 CFR Parts 27 and 29

Aircraft, Aviation safety, Rotorcraft.

The Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR parts 27 and 29 by making the following technical amendments:

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

1. The authority citation for part 27 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

2. § 27.397(b)(2) is amended by revising "80R pounds" to state "80R inch-pounds".

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

3. The authority citation for part 29 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

4. § 29.397(b)(2) is amended by revising "80R pounds" to state "80R inch-pounds".

Issued in Washington, DC, on May 3, 2001.
Donald P. Byrne,
Assistant Chief Counsel for Regulations.
[FR Doc. 01–11717 Filed 5–8–01; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–51–AD; Amendment 39–12220; AD 2001–09–13]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200, –300, and –300F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.
ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 767–200, –300, and –300F series airplanes. This action requires inspections for fatigue cracking of the horizontal stabilizer pivot bulkhead, and repetitive inspections or other follow-on actions. This action also provides a permanent repair, which is optional for airplanes with no cracks, and, if accomplished, ends the repetitive inspections. This action is necessary to find and fix fatigue cracking of the horizontal stabilizer pivot bulkhead and adjacent structure, which could result in loss of the horizontal stabilizer. This action is intended to address the identified unsafe condition.
DATES: Effective May 24, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 24, 2001.

Comments for inclusion in the Rules Docket must be received on or before July 9, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–51–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–51–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.
FOR FURTHER INFORMATION CONTACT: John Craycraft, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2782; fax (425) 227–1181.
SUPPLEMENTARY INFORMATION: The FAA has received reports that fatigue cracking of the horizontal stabilizer pivot bulkhead has been found on several Boeing Model 767–200, –300, and –300F series airplanes. The cracks occurred in the forward and aft outer chords and the outer chord splice fitting of the Station 1809.5 bulkhead, just above the horizontal stabilizer fitting. Cracking also occurred in the intercostals that support the Station 1809.5 bulkhead. Analysis indicates that these fatigue cracks occur because the flight loads on the horizontal stabilizer in the upper corner of the Station 1809.5 bulkhead are higher than expected. Fatigue cracking in this area, if not found and fixed, could result in loss of the horizontal stabilizer.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 767–53–0078, Revision 2, dated April 19, 2001, which describes procedures for repetitive inspections for fatigue cracking of the horizontal stabilizer pivot bulkhead, and follow-on actions, if necessary. The inspections include detailed visual, surface high frequency eddy current (HFEC), and low frequency eddy current (LFEC) inspections, as applicable, of the forward and aft outer chord, aft mid chord, and upper and lower intercostals of the Station 1809.5 bulkhead above the horizontal stabilizer fitting. If cracking is found in the forward outer chord, the service bulletin describes procedures for both a permanent repair and a time-limited repair, which allows accomplishment of the permanent repair to be deferred, provided that a one-time detailed visual inspection for cracks of the chord repair straps is done. The permanent repair includes open-hole HFEC inspections for cracking of certain fastener holes of the chord and longeron fitting, detailed visual inspections for cracking of adjacent structure, and installation of new chords, splices, fairings, and brackets. Doing the permanent repair eliminates the need for the repetitive inspections described in the service bulletin. The permanent repair is provided as an optional preventative modification for airplanes on which no cracking is found. Throughout the procedures in the service bulletin, the service bulletin specifies to contact Boeing for repair instructions if cracking is found in areas other than the forward outer chord.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to find and fix fatigue cracking of the horizontal stabilizer pivot bulkhead and adjacent structure, which could result in loss of the horizontal stabilizer. This AD requires accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Interim Action

This is considered to be interim action. The FAA is currently considering requiring installation of the permanent repair described in the service bulletin, which would constitute terminating action for the repetitive inspections required by this AD action. However, the planned compliance time for the installation of the modification is sufficiently long so that notice and opportunity for prior public comment will be practicable.

Differences Between This AD and the Service Bulletin

The compliance time for the initial inspection required by this AD differs from the compliance time for that action in the service bulletin. The service bulletin recommends that the initial inspection be done before the accumulation of 10,000 total flight cycles, or, if the total number of total flight cycles is close to or more than 10,000, at the earlier of 3,000 flight cycles or 18 months after receipt of the service bulletin. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition and the average utilization of the affected fleet. In light of all of these factors, the FAA finds a compliance time of 8,000 total flight cycles, or 90 days after the effective date of this AD, whichever comes later, for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

This AD also differs from the service bulletin with regard to disposition of certain repair conditions of the forward outer chord. While the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this AD requires repair of those conditions per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings.

This AD also differs from the service bulletin in cases where cracking is found in the aft outer chord, aft mid chord, or intercostals. The logic diagram in Figure 1 of the service bulletin specifies to repair cracking in these areas per data from the airplane manufacturer, and repeat the detailed visual inspection at the earlier of 3,000 flight cycles or 18 months and the HFEC/LFEC inspections at the earlier of 6,000 flight cycles or 36 months. For airplanes on which cracking is found in the aft outer chord, aft mid chord, or intercostals, this AD does not require these repetitive inspections at these intervals. The FAA finds that, because the service bulletin does not include instructions for repair of cracking in areas other than the forward outer chord, repairs of the aft outer chord, aft mid chord, or intercostals must be accomplished per a method approved by the FAA, as required by paragraph (c)(1) of this AD. The FAA will approve any repetitive inspection requirements along with the repair method.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that

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summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–51–AD." The postcard will be date-stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–09–13 Boeing: Amendment 39–12220. Docket 2001–NM–51–AD.

Applicability: Model 767–200, –300, and –300F series airplanes; as listed in Boeing Service Bulletin 767–53–0078, Revision 2, dated April 19, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix fatigue cracking of the horizontal stabilizer pivot bulkhead and adjacent structure, which could result in loss of the horizontal stabilizer, accomplish the following:

Initial Inspections

(a) Prior to the accumulation of 8,000 total flight cycles, or within 90 days after the effective date of this AD, whichever occurs later, perform detailed visual, surface high frequency eddy current (HFEC), and low frequency eddy current (LFEC) inspections, as applicable, for cracking of the forward and aft outer chord, aft mid chord, and upper and lower intercostals of the Station 1809.5 bulkhead. Do the inspections per Boeing Service Bulletin 767–53–0078, Revision 2, dated April 19, 2001.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Repetitive Inspections

(b) For areas where no cracking is found during the inspection per paragraph (a) of this AD: Repeat the inspections in paragraph (a) thereafter at the intervals specified in paragraphs (b)(1) and (b)(2) of this AD, per Boeing Service Bulletin 767–53–0078, Revision 2, dated April 19, 2001, until paragraph (d) of this AD has been done.

(1) Repeat the detailed visual inspection every 3,000 flight cycles or 18 months, whichever comes first.

(2) Repeat the surface HFEC and LFEC inspections every 6,000 flight cycles or 36 months, whichever comes first.

Repair and Follow-On Actions

(c) If any cracking is found during any inspection required by paragraph (a) or (b) of this AD, before further flight, repair per paragraph (c)(1) or (c)(2) of this AD, as applicable.

(1) For cracking of the aft outer chord, aft mid chord, or any intercostal: Repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(2) For cracking of the forward outer chord: Repair per Boeing Service Bulletin 767–53–0078, Revision 2, dated April 19, 2001, except as provided by paragraph (e) of this AD. Procedures for repair include open-hole HFEC inspections for cracking of certain fastener holes of the chord and longeron fitting, detailed visual inspections for cracking of adjacent structure, and installation of new chords, splices, fairings, and brackets. If the time-limited repair is done per the service bulletin, do a detailed visual inspection of the repaired area within 1,500 flight cycles or 9 months after installation of the temporary repair, whichever comes first, and do paragraph (c)(2)(i) or (c)(2)(ii) of this AD, per the service bulletin.

(i) If no cracking is found during the inspection of the repaired area: Within 3,000 flight cycles or 18 months after installation of the time-limited repair, whichever comes first, do paragraph (d) of this AD.

(ii) If any cracking is found during the inspection of the repaired area: Before further flight, do paragraph (d) of this AD.

Permanent Repair

(d) Except as provided by paragraph (e) of this AD, installation of the permanent repair of the forward outer chord, including accomplishment of all actions specified in Part 4 of the Accomplishment Instructions of Boeing Service Bulletin 767–53–0078, Revision 2, dated April 19, 2001, terminates the repetitive inspections required by this AD.

Note 3: Installation of the permanent repair per Boeing Service Bulletin 767–53–0078, dated October 15, 1998, or Revision 1, dated September 9, 1999, is acceptable for compliance with paragraph (d) of this AD.

Exception to Repair Instructions

(e) For repairs of the forward outer chord: Where the service bulletin specifies to ask Boeing for repair data, repair per a method approved by the Manager, Seattle ACO, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) Except as provided by paragraphs (c)(1) and (e) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 767–53–0078, Revision 2, dated April 19, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(i) This amendment becomes effective on May 24, 2001.

Issued in Renton, Washington, on April 27, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–11196 Filed 5–8–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–08–AD; Amendment 39–12224; AD 2001–09–17]

RIN 2120–AA64

Airworthiness Directives; CFM International (CFMI) CFM56–5C Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an emergency airworthiness directive (AD) that was sent previously to all known U.S. owners and operators of CFMI CFM56–5C turbofan engines by individual letters. That action required within 10 days after receipt of that emergency AD, an initial inspection of the fuel manifold for wear or chafing; and an initial inspection of the CJ9L harness for correct installation, for clamp wear and to verify a minimum clearance between the CJ9L harness and the fuel manifold. That action also required repetitive inspections of the fuel manifold, clamps, and the CJ9L harness within every 500 hours time in service until new configuration clamps are installed on the harness. This amendment requires the same inspections, and adds inspection requirements for the manifold, clamps, and the CJ10L harness, and clamps on the other side of the engine. The actions specified in this AD are intended to prevent fuel leakage on the hot section or in the primary fire zone of the engine which may result in an engine fire and subsequent damage to the airplane.

DATES: Effective May 14, 2001. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of May 14, 2001.

Comments for inclusion in the Rules Docket must be received on or before July 9, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–08–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. The service information referenced in this AD may be obtained from CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2981, fax (513) 552–2816. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Rosa, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7152; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: On April 10, 2001, the Federal Aviation Administration (FAA) issued emergency airworthiness directive (AD) 2001–08–51, applicable to CFMI CFM56–5C turbofan engines, which requires within 10 days after the receipt of that AD, an initial inspection of the fuel manifold for wear or chafing; and an initial inspection of the CJ9L harness for wear and correct installation, for clamp wear and to verify a minimum clearance between the CJ9L harness and the fuel manifold. Repetitive inspections of the fuel manifold, clamps, and CJ9L harness are also required within every 500 hours time-in-service until the new configuration clamps are installed on the harness. That AD was prompted by a report of a significant engine fuel leak under the thrust reverser cowls at the fuel manifold level on a CFMI CFM56–5C turbofan engine that was installed on an Airbus Industrie A340 airplane. The leak was confirmed to be coming from a hole in the fuel manifold pigtail. The hole was a result of interference and chafing between the CJ9L harness high pressure turbine clearance control (HPTCC) sensor lead and fuel manifold. This was the second fuel leak event at this location. Additional engine inspections by the operator who experienced the engine fuel leak discovered two other engines exhibiting interference of the CJ9L harness with fuel manifold and chafing of the fuel manifold. In addition, since the FAA issued the emergency AD, chafing was found on the CJ10L harness, located on the other side of an engine from the CJ9L harness. The investigation has identified three causes for lack of clearance between the HPTCC harnesses and the fuel manifold:

(1) Incorrect routing of the CJ9L and CJ10L harnesses,

(2) Incorrect orientation of the CJ9L and CJ10L harness cushion clamps, and

(3) Wear of the silicone material in the clamp which allows the harnesses to move within the clamp. This clamp material is used on older configuration clamps. The later configuration uses a metallic material.

The actions specified by this AD are intended to prevent fuel leakage on the hot section or in the primary fire zone of the engine, which may result in an engine fire and subsequent damage to the airplane.

Since emergency AD 2001–08–51 was issued, it has been determined that the same unsafe condition exists at the CJ10L HPTCC harness, located on the opposite side of the engine from the CJ9L harness.

Manufacturer's Service Information

The FAA has reviewed and approved CFMI Alert Service Bulletin (ASB) No. CFM56–5C S/B 73–A0106, Revision 1, dated April 19, 2001, that specifies procedures for inspection of the fuel

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manifold for wear or chafing, and inspection of the CJ9L harness for wear and correct installation, for clamp wear and to verify a minimum clearance between the CJ9L harness and the fuel manifold.

Differences Between This AD and the Manufacturer's Service Information

CFMI ASB CFM56–5C S/B 73–A0106, Revision 1, dated April 19, 2001, requires only inspections of the CJ9L HPTCC sensor harness. The FAA has determined that the same inspections must be performed on the CJ10L HPTCC sensor harness, located on the opposite side of the engine from the CJ9L harness.

FAA's Determination of an Unsafe Condition and Proposed Actions

Although none of these affected engine models are used on any airplanes that are registered in the United States, the possibility exists that the engine models could be used on airplanes that are registered in the United States in the future. This AD is being issued to prevent fuel leakage on the hot section or in the primary fire zone of the engine, which may result in an engine fire and subsequent damage to the airplane. This AD requires within 10 days after the effective date of this AD, an initial inspection of the fuel manifold for wear or chafing; and an initial inspection of the CJ9L and CJ10L harnesses for wear and correct installation, for clamp wear and to verify a minimum clearance between the harnesses and the fuel manifold. Repetitive inspections of the fuel manifold, clamps, and the CJ9L and CJ10L harnesses will be required within every 500 hours time in service until the new configuration clamps are installed on the harness. The actions must be done in accordance with the service bulletin described previously.

Immediate Adoption of This AD

Since there are currently no domestic operators of this engine model, notice and opportunity for prior public comment are unnecessary. Therefore, a situation exists that allows the immediate adoption of this regulation.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NE–08–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive, Amendment 39–12224, to read as follows:

2001–09–17 CFM International: Amendment 39–12224. Docket 2001–NE–08–AD. Supersedes AD 2001–08–51.

Applicability: This airworthiness directive (AD) is applicable to CFM International (CFMI) CFM56–5C turbofan engines. These engines are installed on, but not limited to, Airbus Industrie A340 airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance is required as indicated unless already done.

To prevent fuel leakage on the hot section or in the primary fire zone of the engine, which may result in an engine fire and subsequent damage to the airplane, do the following:

Initial Inspection Requirements

(a) Within 10 days after the effective date of this AD, do the following:

(1) Inspect the fuel manifold on both sides of the engine for serviceability, and disposition in accordance with paragraphs 3.A. through 3.A.(3) of CFMI ASB CFM56–5C S/B 73–A0106, dated April 19, 2001.

(2) Visually inspect harnesses CJ9L and CJ10L for wear. If the wire braid is worn through (pierced), replace the harness within 3,000 hours time-in-service after the first inspection where the wire braid is found to be pierced.

(3) Visually inspect and, if necessary, correct the bracket and clamp locations for the CJ10L harness in accordance with paragraphs 3.C. through 3.C.(5) of the Accomplishment Instructions of CFMI ASB CFM56–5C S/B 73–A0106, dated April 19, 2001.

Repetitive Inspections

(b) Thereafter, repeat the actions required by paragraph (a) of this AD at intervals not to exceed 500 hours time-since-last-inspection.

Terminating Actions

(c) Replacement of existing clamps (red and brown silicon) at details R, and S of CJ9L and detail S, R, and Q of CJ10L with new clamp (metallic) part number 649–412–351–0 and at detail Q of CJ9L with new clamp 649–412–354–0 constitutes terminating action for the repetitive inspection requirements of paragraph (b) of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Documents That Have Been Incorporated By Reference

(f) The inspections shall be done in accordance with CFM International Alert Service Bulletin CFM56–5C S/B 73–A0106, Revision 1, dated April 19, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2981, fax (513) 552–2816. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in DGAC airworthiness directive N T2001–145 (B) Revision 1.

(g) This amendment becomes effective on May 14, 2001.

Issued in Burlington, Massachusetts, on May 3, 2001.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–11615 Filed 5–4–01; 4:46 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 65, 91, 105, 119

[Docket No. FAA–1999–5483; Amendment No. 65–42, 91–268, 105–12 and 119–4]

RIN 2120–AG52

Parachute Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends regulations that govern parachute operations. Amendments to these regulations reflect changes in the requirements applicable to radio communications, airspace classification, parachute packing, tandem parachute operations, and foreign parachutists. Through this rule, the FAA intends to enhance the safety of parachute operation in the National Airspace System (NAS).

EFFECTIVE DATE: July 9, 2001.

FOR FURTHER INFORMATION CONTACT: Ellen Crum, Airspace and Rules Division, ATA–400, Air Traffic Airspace Management Program, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8783; or Randy Montgomery, Flight Standards Service Division, AFS–340, General Aviation and Commercial Branch, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3155.

SUPPLEMENTARY INFORMATION:

Availability of Final Rules

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web Page (*http://dms.dot.gov/search*).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this final rule. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the final rule.

You can also get an electronic copy using the Internet through FAA's web page at *http://www.faa.gov/avr/armhome.htm* or the **Federal Register**'s web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this final rule.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBREFA on the Internet at our site, http://www.gov/avr/arm/sbrefa.htm. For more information on SBREFA, e-mail us *9-AWA-SBREFA@faa.gov.*

Background

In 1991, the FAA initiated a review of part 105, which was originally published in 1962 to determine if the regulation continued to reflect current practices and equipment used in the industry. Among other information, the FAA studied reports received from the Aviation Safety Reporting System (ASRS), the National Transportation Safety Board (NTSB), Air Traffic Unsatisfactory Condition Reports (UCR), and recommendations from the Air Traffic Procedures Advisory Committee and the National Air Traffic Controllers Association (NATCA). Upon completion of the review, the FAA determined that the regulation required revision to be consistent with the parachute equipment used today and current industry practices.

An example of changes that have taken place in the parachute industry since the time part 105 was published is the development of dual-harness, dual parachute systems designed to carry more than one person at a time. In 1983 the FAA began receiving petitions for rulemaking and exemption, requesting changes to the rule allowing use of this equipment. During the 1990's, the FAA received petitions for rulemaking to allow foreign parachutists to jump in the United States without an exemption. Additionally, petitioners

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requested removal of the requirement for static line assist devices when ram air parachutes were used.

The following is a detailed discussion of these petitions and the FAA's rationale for making the regulatory changes in this final rule.

Petitions for Exemption and Rulemaking

Tandem Parachute Operations

When part 105 was published in 1962, civilian parachute operations were limited to the use of a single-harness, dual-parachute pack. Since then, the parachute industry has developed dual harness systems that support two people under a single parachute. Because part 105 currently allows parachute operations with single-harness parachutes only, the use of parachute equipment capable of supporting two people has only been authorized by exemption. For purposes of the exemptions, the FAA and the parachuting industry have adopted the term "tandem" to describe those parachute operations that use a dual-harness, dual-parachute system.

The first exemption authorizing tandem parachute operations in the United States was granted to Strong Enterprises and Relative Workshop by the FAA in 1984. Since then more than 2.5 million experimental tandem parachute jumps have been conducted under exemption authority in the United States and abroad. Under the exemptions, various companies conducting tandem parachute operations were required to furnish the FAA with accident statistics on tandem operations, which provided the FAA with the means to evaluate the safety of tandem equipment compared to the safety of equipment and operations currently permitted under part 105.

In July 1997, the United States Parachute Association (USPA) submitted a petition for rulemaking requesting that the FAA permit tandem parachute operations. While considering the USPA petition, the FAA reviewed accident statistics from 1991 through 1996. Based on the information collected during the review, the FAA has determined that experimental tandem parachute operations conducted under an exemption from part 105 have demonstrated that tandem operations can be conducted safely.

Many of the new regulations applicable to tandem parachute operations are based on terms and conditions previously contained in exemptions. Although an exemption will no longer be required to conduct a tandem parachute operation, the FAA has written the regulations to include terms similar to those previously contained in the exemptions. The FAA believes that the continued use of the practices and procedures proven to be safe under exemption will ensure continued safety in these operations. The specific terms and conditions adopted will be discussed under the comment section.

Static-Line Assist Devices

The USPA submitted a petition in July 1997 requesting that the FAA omit the requirement for using a static-line when using direct-deployed, ram-air parachutes. As a basis for its request, the USPA cited a series of tests it performed to determine if assist devices improved the reliability of the static line direct deployment of a ram-air canopy. The tests showed that an assist device does not improve the deployment reliability when used with a static line. Moreover, there was no evidence of adverse effects when the device is removed. As a result of these tests, the FAA has concluded that safety would not be compromised by removing the static-line assist device requirements for ram-air parachutes.

Equipment and Packing Requirements for Foreign Parachutists

The USPA submitted a third petition for rulemaking in July 1997 requesting that the FAA allow foreign parachutists to make parachute jumps in the United States using their own equipment.

The current regulations require that parachute equipment used in operations conducted within the United States meet the standards set forth under part 105. The practical impact of this requirement is that foreign parachutists could not use their own equipment, usually manufactured in another country, when participating in parachute operations in the United States. The FAA has issued exemptions to organizations sponsoring parachuting events attended by foreign parachutists. This long time practice has demonstrated that operations conducted under these exemptions have been conducted safely. Additionally, the FAA recognizes that foreign manufacturers of parachute equipment often meet U.S. standards.

Notice of Proposed Rulemaking

Based on the review, petitions received, and the collection of data regarding parachute operations, the FAA published a notice of proposed rulemaking (NPRM) (64 FR 18302), on April 13, 1999. The FAA proposed numerous changes, including: (1) Changes in response to the airspace reclassification rule, (2) changes to air traffic control communication requirements, (3) changes to reflect improved parachute design, and (4) changes in industry practices. The notice provided for a 90-day comment period that closed on July 12, 1999.

In response to the NPRM, the FAA received 71 comments. Among the comments received were several comments that are outside the scope of the rule; therefore, those comments will not be addressed in this rulemaking. While the majority of comments submitted to the public docket were from parachutists, comments were also received from drop zone operators; pilots; the Illinois Department of Transportation; the U.S. Department of the Army; the United States Parachute Association (USPA); the U.S. Department of Agriculture, Forest Service; Southwest Airlines Pilots' Association the Aircraft Owners and Pilots Association (AOPA); and the Air Line Pilots Association (ALPA).

The following is a discussion of the substantive comments received in response to the NPRM. Sections that received no comments are not included in this discussion, and are incorporated in the final rule as proposed in the Notice.

Discussion of the Comments

Section 65.111 Certificate Required

Proposal: The FAA proposed to revise paragraph (b) of current § 65.111, Certificate required, which in part, requires that anyone who packs, maintains, or alters a main parachute of a dual parachute pack to have an appropriate current certificate issued under subpart F of part 65. This paragraph also allows non-certificated persons to pack a main parachute of a dual parachute pack that is to be used by that person for intentional jumping.

In the NPRM, the FAA proposed to allow persons to pack a main parachute under the supervision of a certificated parachute rigger or to allow a parachutist in command to pack a main parachute for tandem parachute operations. The FAA also proposed to add the word "next" to the provision that a person may pack a main parachute if that person intends to make the "next" parachute jump using that parachute.

Comments: One commenter supports the proposed rule language. Several commenters, including Skydive Delmarva, Inc. do not agree with proposed § 65.111. Skydive Delmarva, Inc. suggests adding a new paragraph which would allow persons authorized in writing by a certificated rigger to pack main parachutes without supervision. Further, Skydive Delmarva, Inc. requests that the FAA authorize organizations, other than the FAA, to issue parachute rigger certificates.

FAA response: Skydive Delmarva Inc.'s comment to allow a non-certificated person to receive permission in writing from a certificated rigger to pack a main parachute was not addressed in the NPRM. As a consequence, the comment goes beyond the scope of this rulemaking. This comment will not, therefore, be addressed in the final rule.

The FAA disagrees, for safety reasons, with Skydive Delmarva's request to allow persons authorized in writing by a certificated rigger to pack main parachutes without supervision. Further, in response to Skydive Delmarva's request to authorize organizations, other than the FAA, to issue parachute rigger certificates, the FAA recognizes and currently allows designated parachute rigger examiners (DPRE's), who are not FAA employees, to issue parachute rigger certificates. Therefore, § 65.111 is adopted in the final rule as proposed.

Section 105.3 Definitions

The FAA proposed to define the terms "approved parachute," "automatic activation device," "drop zone," "fatal injury," "foreign parachutist," "freefall," "main parachute," "object," "parachute drop," "parachute jump," "parachute operation," "parachutist," "parachutist in command," "passenger parachutist," "pilot chute," "ram-air parachute," "reserve parachute," "serious injury," "single-harness, dual-parachute system," "supervision," "tandem parachute operation," and "tandem parachute system."

The following is a list of proposed definitions, on which the FAA received comments, and the FAA response to those comments. Definitions that were included in the proposal, but not commented on are included in the final rule as proposed. However, definitions for "foreign parachutist," "parachute drop," "parachute operation," and "parachutist," have been changed for further clarification. The definitions for "fatal injury" and "serious injury" are deleted from the final rule.

Automatic Activation Device (AAD)

Proposal: The FAA proposed to define an "automatic activation device" as a self-contained mechanical device attached to a parachute, other than a static line, which automatically initiates parachute deployment at a preset altitude, time, percentage of terminal velocity, or combination thereof if that parachute has not been manually activated.

Comments: Several commenters object to the proposed definition for the AAD. One of these commenters states that the definition should be deleted because AAD's "are not approved, reviewed, or certificated," therefore, they should not be addressed in this rulemaking. Another commenter states that "AAD" should be defined as "a self-contained mechanical or electro-mechanical device," because this definition accurately describes the type of equipment currently used in the parachute industry.

FAA response: The FAA disagrees that the definition for AAD should be deleted, but it agrees that the term "electro-mechanical device" should be added to the definition.

The FAA concluded that a definition for AAD should be included in this final rule because parachutists frequently use this equipment today. The fact that parachutists voluntarily rely on the AAD for their safety is a testimony to its value. The FAA's required use of an AAD on tandem parachute system reserve parachutes further attests to the added protection afforded by the use of this device.

The FAA agrees with the commenter who recommended that the term "electro-mechanical device" should be added to the definition of AAD. Upon receipt of this comment, the FAA reviewed the design and construction of AAD's. Three types of AADs exist; the first type is purely mechanical, or battery activated; the second type is a microprocessor, which has a mini computer; the third type of AAD, which is most frequently used today, combines the battery and computer processor to create an electro-mechanical AAD. Given that this AAD is the most frequently used, adding the phrase "electro-mechanical" to the definition provides the most accurate description of AAD's used today. Therefore, the FAA has added this phrase to the definition.

The FAA also amends the proposed definition for the term "AAD" in two other respects. First, the definition states that the AAD is attached to the interior of the reserve parachute container, instead of the parachute itself. Second, the definition is corrected to state that the AAD initiates deployment of the reserve parachute, which is a more accurate description of the AAD's operation that what was originally proposed.

Direct Supervision

Proposal: The FAA proposed to define the term "supervision" as the act of a certificated rigger personally observing the packing of a parachute by a noncertificated person to the extent necessary to ensure that it is being done properly.

Comments: Several commenters recommend revising the proposed definition of the term "supervision" to include that the certificated rigger is readily available in person for consultation. One commenter recommends that the definition be amended to state that a certificated rigger also ". . . takes responsibility for that packing."

FAA response: The FAA agrees with the comment that a certificated rigger needs to be available during the packing process. The FAA has adopted a revised definition in the final rule to address this concern by changing "supervision" to "direct supervision." Although the term "direct supervision" was not used in the NPRM, the FAA believes that adding the word "direct" clarifies the FAA's intent that a certificated rigger must be on the premises during the parachute packing process. The certificated rigger's presence ensures that he/she is readily available in person for consultation.

In addition, the FAA agrees with the commenters that direct supervision includes taking responsibility for the packing. Therefore, the phrase "and takes responsibility for that packing" has been added to the term "direct supervision" in the final rule.

Fatal Injury

Proposal: The FAA proposed to define the term "fatal injury" as any parachuting injury that results in death within 30 days from the date of injury.

FAA Response: Many comments were received on this proposed term because it is in conjunction with the proposed addition of § 105.27, Accident reporting requirements. Since the FAA has eliminated proposed § 105.27 in the final rule, this definition has been deleted.

Foreign Parachutist

Proposal: The FAA proposed to define this term as a parachutist who is neither a U.S. citizen nor a resident alien.

FAA Response: While no comments were received on this definition, the FAA has amended the proposed definition to clarify that a foreign parachutist is a parachutist who is neither a U.S. citizen nor a resident alien and is participating in parachute operations within the United States using parachute equipment not manufactured in the United States.

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Parachute Drop

Proposal: The FAA proposed to define this term as a parachute operation that involves the descent of an object to the surface from an aircraft in flight when a parachute is used or intended to be used during all or part of that descent.

FAA Response: While no comments were received on this definition, the FAA amended the proposed definition to clarify that a parachute drop means the descent of an object from an aircraft in flight when a parachute is used or intended to be used during all or part of that descent.

Parachute Operation

Proposal: The FAA proposed to define this term as any activity that includes a parachute jump or a parachute drop. This activity involves, but is not limited to the following persons: Parachutist, tandem parachute operation, drop zone owner or operator, certificated parachute rigger, pilot, or appropriate FAA personnel.

FAA Response: While no comments were received on the proposed definition for parachute operation, the FAA determined that it should be further clarified. Therefore, the FAA has amended the proposed definition to define a parachute operation as any activity associated with, or performed in support of a parachute jump or a parachute drop. A parachute operation can involve, but is not limited to, the following persons: Parachutist, a parachutist in command and passenger in tandem parachute operations, jump master, certificated parachute rigger, or pilot.

Parachutist

Proposal: The FAA proposed to define this term as a person who boards an aircraft with the intent to exit the aircraft while in flight using a single-harness, dual parachute system to descend to the surface.

FAA Response: While no comments were received on this definition, the FAA has amended the proposed definition to clarify that a parachutist is a person who intends to exit an aircraft while in flight using a single-harness, dual parachute system to descend to the surface.

Parachutist in Command

Proposal: The FAA proposed to add the term "parachutist in command" to address the instructor of a tandem parachute operation, which the FAA defined as the person responsible for the operation and safety of a tandem parachute operation before, during, and after a tandem parachute operation.

Comments: Several commenters state that the term "parachutist in command" should be changed to "tandem instructor," which would more accurately reflect that person's function as a teacher, not simply the person in charge of the tandem parachute operation.

The USPA contents that the parachutist in the forward harness is more than a passenger because he or she could sabotage the safety of the operation by failing to follow proper procedures between exit and touch down.

FAA response: The FAA has given the commenters' recommendations serious consideration but cannot agree that "tandem instructor" would accurately reflect the role and responsibility that this person holds. Although it is true that the parachutist in command provides instruction, the amount of time spent instructing is greatly outweighed by the responsibilities held by the person in this role. The bulk of the parachutist-in-command's duties are centered on the safety of the tandem parachute operation. Safety, in this case, only begins with the passenger's instruction in proper procedures. In fact, the parachutist-in-command controls the safety of the operation from the moment the pair exit the aircraft to the time that touch down is safety accomplished.

The FAA has also given further consideration to the USPA's concern that the passenger can sabotage the tandem parachute operation. The FAA agrees with the USPA regarding the potential for a passenger to inadvertently act in a manner that would sabotage the safety of the operation, but such an event is highly unlikely. However, if such event occurred, the parachutist-in-command would be required to bring the operation back under control. The FAA believes that the term "parachutist-in-command" provides the broadest range of applicability and most accurately describes the responsibilities of the person who occupies the rear harness in a tandem parachute operation. Therefore, the term "parachutist-in-command" is adopted in the final rule.

Passenger Parachutist

Proposal: The FAA proposed to add the term "passenger parachutist" and define it as a person who boards an aircraft, acting as other than the parachutist in command of a tandem parachute operation, with the intent of exiting the aircraft while in flight using the forward harness of a dual harness tandem parachute system.

Comments: Several commenters suggest changing this term to "student tandem parachutist." One commenter suggests changing the term to "tandem student." Another commenter suggests that the term should be changed because the term "passenger" is used when referring to aircraft operations and is not appropriate when referring to tandem parachute operations since the person is a "student," not a "passenger."

FAA response: The FAA believes that the term "passenger parachutist" best describes the role of the person occupying the forward harness of a tandem parachute system. The term "passenger parachutist" is more inclusive than the terms "student tandem parachutist" or "tandem student." Therefore, this term broadens the classification of persons participating in tandem parachute operations. In addition, this term clarifies that the parachutist-in-command would be solely responsible for regaining control of the parachute and the safety of the parachute operation, in the event of an emergency. It is highly unlikely that the parachutist in the forward would have the knowledge and experience to handle an emergency situation properly. For these reasons, the term "passenger parachutist" is most appropriate to describe the parachutist using the forward harness of a tandem parachute.

Serious Injury

Proposal: The FAA proposed to define the term "serious injury" as any injury that requires hospitalization for more than 48 hours, commencing within 7 days from the date the injury was received; results in a fracture of any bone (except simple fractures of fingers, toes, or the nose); causes severe hemorrhages, or nerve, muscle, or tendon damage; or involves any internal organ.

FAA response: Many comments were received in response to this proposed term because of its relation to the proposed addition of § 105.27, Accident reporting requirements. Since the FAA has eliminated proposed § 105.27 in the final rule, this definition has been deleted.

Tandem Parachute Operation

Proposal: The FAA proposed to define the term "tandem parachute operation" as a parachute operation in which more than one person simultaneously uses the same tandem parachute system while descending from an aircraft in flight.

Comments: Several commenters suggest that this term be change to "tandem parachute jump," or that "tandem parachute jump" be used in addition to "tandem parachute operation" to more accurately describe the action taking place, and to be consistent with current terminology.

FAA response: The FAA does not agree with these commenters. The proposed definition is intended to include more than just the actual jump, it also includes all aspects of the jump, from the time the jump aircraft departs until the last parachutist(s) descend to the surface. Therefore, the FAA adopts the definition as proposed.

Section 105. General

Proposal: In the NPRM, the FAA proposed to make the following editorial changes to current § 105.13: (1) Replace the word "make" with the phrase "to conduct," (2) replace the term "parachute jump" with the term "parachute operation," (3) replace the word "made" with the word "conducted," and (4) replace the word "jump" with the word "operation."

Comments: Several comments were received on this proposal from the USPA, AOPA and others, requesting that the FAA incorporate language into the proposed § 105.5, which would hold the parachutists, not pilots, responsible for creating hazards to air traffic. These comments state that pilots of jump aircraft should be relieved from full responsibility for a parachutist exiting their aircraft. The comments' justification for their position is that parachutes used in these types of operations can be steered, therefore, the parachutist can maneuver out of the designated drop zone, possibly creating a hazard to air traffic.

FAA response: The proposed changes to this section were editorial in nature, not substantive. Comments that concern the responsibility of the pilot-in-command are beyond the scope of this rulemaking and therefore, are not addressed. This section is adopted as proposed.

Subpart B—Operating Rules

Section 105.13 Radio Equipment and Use Requirements

Proposal: Currently, part 105 requires that the pilot of an aircraft used for conducting parachute operations establish radio communications with the nearest FAA air traffic control facility or FAA Flight Service Station at least 5 minutes before the jumping activity is to begin.

The FAA proposed to amend this section to require that the jump aircraft establish radio communications with the air traffic control facility having jurisdiction over the affected airspace. A pilot of a jump aircraft will no longer be required to establish radio communications with Flight Service Stations for the purpose of receiving traffic information.

The FAA also proposed amending this section to require pilots to notify ATC when the last parachutist or object leaves the aircraft. The current rule requires the pilot of the jump aircraft to notify ATC when the last parachutist reaches the ground.

In addition, the notice proposed to amend the lost communication procedures applicable to parachute operations. Currently, if communications systems become inoperative in flight after receipt of a required ATC authorization, the jumping activity from that flight may be continued. The notice proposed that if the required radio communications system is or becomes inoperative during any parachute operation in or into controlled airspace, the parachute operation msut be aborted.

Comments: Several commenters, including USPA, AOPA, and the Southwest Airlines Pilot's Association recommended changes to this section. The USPA suggests adding the phrase, "airspace of intended exit altitude(s)" to paragraph (a)(1)(ii). The USPA requests this change because parachute operations can pass through the airspace of several ATC facilities and sectors, depending on the altitude of the aircraft. According to the USPA, the proposal did not clarify which ATC facility would be the appropriate facility to contact. The change requested by the USPA would clarify that the appropriate facility to contact would be the one that has jurisdiction over the airspace and the altitude where the aircraft is located when the parachutist exists the aircraft.

Another commenter believes that the requirement to contact the ATC facility having jurisdiction over the airspace could be interpreted to require the pilot to maintain communications with two or more facilities during the jump operation. The commenter contends that if communications must be maintained with more than one ATC facility, a second radio would be required, imposing a financial burden of at least $1200 to $1500. This commenter believes that the current requirement is sufficient and should not be changed.

The USPA objects to the FAA proposal to require the parachutists on the flight to share responsibility to establish radio communications and to receive information about air traffic activity. The commenter recommends that the pilot in command have sole responsibility for radio communications.

Several commenters object to the proposed removal of the requirement to contact FAA Flight Service Stations (FSS). These commenters are concerned that Notices to Airman (NOTAM) regarding parachute operations, normally submitted to FSS's, will not be received or disseminated. The commenters believe that this creates a safety problem for non-radio equipped aircraft operating in airspace where parachute operations are being conducted.

Several commenters object to the proposal that requires that parachute operations must be aborted if radio communications equipment becomes inoperative. Currently, parachute operations may continue if the radio failure occurs after receipt of the ATC authorization. The USPA contends that the parachute operation should continue after receipt of an ATC authorization, regardless of the operational status of the radio communications system. According to the USPA, safety would not be compromised because the ATC has identified the aircraft on radio and has been advised of the jump operation.

FAA response: The FAA agrees with some of the comments received in response to the proposed changes.

The FAA agrees with the USPA's comment to include the phrase "airspace of the first intended exit altitude" in § 105.13(a)(1)(ii). Since parachute operations can require the use of more than one altitude, the FAA agrees with USPA's comment. The FAA believes that further clarification is necessary by adding that radio communications should be established over the affected airspace of "the first" intended exit altitude. Therefore, this clarifying language has been added to the phrase proposed by the USPA and is incorporated in the final rule. The adoption of this phrase clarifies which ATC facility to contact when parachute operations are being conducted.

The FAA also agrees that the rule as proposed could be interpreted to mean that the aircraft must have more than one radio to meet the communications requirement. The FAA's intent was not to require the pilot to contact more than one ATC facility, nor is it the intent of the FAA to increase the pilot's workload during a jump activity. It is common practice for ATC facilities to coordinate information regarding parachute jump operations. Pilots, therefore, typically are not required to contact more than one facility. By inserting the phrase, "airspace of first intended exit altitude," in the rule language, the FAA believes that this confusion will be eliminated.

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The FAA concurs with the USPA that the pilot in command should be solely responsible for establishing and maintaining radio communications and information about air traffic activity. The proposal was intended to ensure that known air traffic information is communicated to both the pilot and the parachutist. However, the configuration of most aircraft avionics, make it impractical for both pilot and parachutist to share the responsibility for establishing radio communications. Traffic information can be relayed within the aircraft from the pilot to the parachutists. Therefore, the FAA has deleted the requirement, that the parachutists also be responsible for establishing radio communications, from the final rule.

The FAA believes that commenters concerned about the FAA's failure to disseminate NOTAMs on parachute operations misunderstand the communications requirements. The current rule requires that pilots conducting parachute operations contact FSS's to receive information about know air traffic in the vicinity. This is solely a communication requirement; it does not address filing or disseminating NOTAM's. In addition, § 91.103 requires all pilots to become familiar with all available information concerning the flight that includes NOTAM's. Since pilots who operate non-radio equipped aircraft are required to check NOTAM's prior to a flight, this change will not impact safety. This rule does not change the current industry practice that pilots contact FSS's to file NOTAM information.

The FAA does not agree with the USPA recommendation to retain the current rule language that permits jump activities to continue if the aircraft loss its radio communications capability. The purpose of this proposal is to increase the safety of all aircraft in the vicinity of the parachute operation by ensuring that two-way radio communications have been established and maintained between the jump aircraft and the ATC facility that has jurisdction over the airspace. If, prior to receipt of an ATC authorization or during the parachute operation, the radio communications system becomes inoperative, traffic information or the status of the parachute operation cannot be exchanged, therefore, the parachute operation must be aborted. The proposed language is adopted in the final rule.

Section 105.15 Information Required and Notice of Cancellation or Postponement of a Parachute Operation

Proposal: The current rule lists information that must be submitted to the FAA when an individual or an organization requests an authorization for a parachute jump. This information includes the radio frequencies, if any, available in the aircraft. The FAA proposed that when required to submit information regarding parachute operations, the radio frequencies appropriate to the facilities used during the parachute operation would be specified, rather than the radio frequencies avialable in the aircraft.

Comments: Several commenters, including USPA recommend that the requirement to submit the radio frequencies appropriate to the ATC facility be replaced with the name of the ATC facility that has jurisdiction over the airspace where the jump will take place. The USPA contends that the pilot or jum proponent may not know the radio frequencies that are used by ATC for the jump operation until coordination is completed with the proper ATC facility.

One commenter disagrees with the proposed requirement that a request for authorization should include the registration number for the jump aircraft. The commenter adds that this requirement is acceptable when filing a NOTAM. However, when a request is submitted to conduct a demonstration several days in advance of the jump operation, the person(s) participating in the demonstration may not know which aircraft is going to be used.

FAA response: The FAA agrees with the USPA's recommendation that the proponent of the parachute operation must submit the name of the ATC facility that has jurisdicaiton over the airspace where the jump will take place. In many cases, the pilot or jump proponent does not know which ATC radio frequencies are designated for the sector where the parachute operation will take place. By incorporating this change into the final rule, the pilot will know which ATC facility is the appropriate one to contact, and that facility may issue the appropriate frequency to the pilot.

In addition, the FAA understands that there may be some circumstances where the registration number of the jump aircraft is not known until the day of the hump. If this is the case, multiple registration numbers may be submitted along with an explanation to the ATC facility. Knowing the registration number of the aircraft identifies to the controllers the aircraft that will be involved in the jump operation. Having the aircraft identification number makes the intentions of the pilot contained in the authorization available to the controller, and therefore, reduces radio frequency congestion. The rule language remains as proposed.

The FAA has also added clarifying language to paragraph (a)(8), requiring persons requesting an authorization to conduct a parachute operation to provide the name of that air traffic control facility having jurisdiction of the airspace at the "first intended" exist altitude to be used in that parachute operation. The FAA believes this clarifying language is necessary to ensure that radio communication are established between the pilot of the hump aircraft and the appropriate air traffic control facility. Therefore, this phrase has been added to § 105.15(a)(8) in the final rule.

Section 105.19 Parachute Operations Between Sunset and Sunrise

Proposal: Proposed § 105.19 would have added a requirement for parachutist(s) and objects descending from an aircraft to display a light which is visible for 3 statute miles in all directions.

Comments: Several commenters, including the USPA and the Southwest Airlines Pilot's Association, object to the requirement to display a light that is visible "in all directions." The commenters believe it would require that a parachutist or an object be equipped with more than one light.

FAA response: The FAA has revisited this proposal and agrees with the commenters. Therefore, the FAA is rescinding the proposal and has deleted the phrase "in all directions" in the final rule. The common practice of mounting a light on the parachutist's helmet should make him or her visible to aircraft operating on the same horizontal plane. A helmet-mounted light may not be visible to aircraft flying at higher or lower altitudes than the parachutist, but the parachutist should not present a hazard to those aircraft. In addition, the requirement to have a light that is visible "in all directions" would require that a parachutist be equipped with two lights which would exceed the requirements for aircraft lights in part 91. Therefore, the phrase "in all directions" is not included in the final rule.

Section 105.21 Parachute Operations Over or Into a Congested Area or an Open Air Assembly of Persons

Proposal: In the NPRM, the FAA proposed to remove the 4-day requirement to apply for a certificate of authorization to make a parachute jump over or into congested areas or open air assemblies since that amount of time for processing certificates of authorization is no longer necessary.

Comments: Several commenters, including USPA, oppose deleting the 4-day reporting requirement, because in the commenters' opinion, it may take the FAA longer than 4 days to process a certificate of authorization. All of the commenters request that the regulation be amended to require processing of applications for certificates of authorization within 5 business days after submission, instead of leaving the processing time unspecified.

FAA response: The FAA does not agree with the commenters that removing the 4-day reporting requirement will increase the time it takes the FAA to process a certificate of authorization. The FAA and the parachute industry may use current technology (i.e., computers and fax capability) which makes it possible to process certificates of authorization in less than 4 days. Currently, the FAA uses this technology to issue certificates of authorization for other aviation events (i.e., air shows). Therefore, the FAA has determined that removing the 4-day reporting requirement will not cause additional processing delays and will actually expedite the process. The requirement is adopted in the final rule, as proposed.

Section 105.23 Parachute Operations Over or Onto Airports

Proposal: Currently, unless prior approval has been given by aircraft management, part 105 prohibits parachute operations over or onto any airport that does not have a functioning control tower operated by the United States. In the NPRM, the FAA proposed amending the regulation to require pilots of aircraft conducting parachute operations to contact the air traffic control tower having jurisdiction over the area where parachute operations are taking place, regardless of who is responsible for tower operations.

Comments: The commenters did not offer specific comments on the proposed change to this section. However, many commenters disagree with the current rule language which grants airport managers the authority to approve parachute operations over or onto the airports.

FAA response: The FAA did not propose an amendment to change the longstanding policy authorizing airport managers to grant approval for parachute operations over or onto their airport. The comments are therefore, outside the scope of the NPRM, and have not been considered.

Section 105.25 Parachute Operations in Designated Airspace

Proposal: The FAA proposed to prohibit parachute operations in restricted or prohibited areas unless authorized by the controlling agency of the area concerned. The FAA also proposed to prohibit parachute operations in Class A, B, C, or D airspace without an air traffic control authorization. Further, the FAA proposed to prohibit parachute operations within Class E or G airspace unless the air traffic control facility having jurisdiction over the affected airspace is notified of the parachute operation no earlier than 24 hours before or not later than 1 hour before the parachute operation begins.

Comments: There were no substantive comments received on this section.

FAA response: Although there were no comments received on this section, the FAA determined that in paragraph (c) of this section, "air traffic control" should be replaced with "the FAA" to indicate that other FAA organizations, besides air traffic, may revoke the acceptance of the notification for any failure of the organization conducting the parachute operations to comply with FAA requirements. With the exception of this change, this section remains as proposed.

Section 105.27 Accident Reporting Requirements

Proposal: Currently, there are no FAA requirements to report accidents involving parachutist. In the NPRM the FAA proposed a new section which would require the parachutist(s), the pilot of the aircraft, or the drop zone owner or operator to notify the FAA within 48 hours of any parachute operation resulting in a serious or fatal injury to the parachutist.

Comments: Numerous commenters, including USPA, AOPA, and Southwest Airline's Pilot's Association strongly oppose this proposed requirement, while one commenter supports it. Most of the commenter state that the pilot should not be responsible for reporting an accident because it would be very difficult for the pilot to know if a parachutist who jumped from his or her aircraft was injured from the fall. Several commenters state that only "serious" injuries, requiring a physician's attention, should be reported. In addition, several commenters also dispute the number of estimated parachute jumping accidents per year that was used as a basis for cost analysis and determining paperwork burden, versus the number of accidents that actually occur.

FAA response: Based on the comments received, the FAA has revisited its original proposal to determine whether or not current FAA policy, as well as industry practices, provide adequate information pertaining to parachute operation incidents.

The FAA believed that collection and review of information pertaining to parachute operation accidents could be used to assess the safety of parachute operations and assist in preventing future parachute accidents.

However, to be effective, this data collection requires a system, or infrastructure, to collect, store and evaluate the information, which the FAA does not have the resources to support at this time. In addition, this requirement imposes a significant paperwork burden on individuals conducting or participating in parachute operations. After considering the lack of available FAA resources and the paperwork burden that would be necessary to meet this requirement, the FAA has concluded that the infrastructure for this type of data collection is currently unavailable, and that the paperwork burden would be excessive.

Additionally, the FAA and the USPA have a close working relationship with regard to the safe conduct of parachute operations within the National Airspace System. When safety issues surface within either organization, an exchange of information is commonplace. We expect this relationship to continue, and believe that cooperation between the two organizations will provide the same, if not a better alternative than regulations at this time.

Therefore, § 105.27 and the definitions in § 105.3 associated with this section (*i.e.*, "fatal injury" and "serious injury") are not included in the final rule. Although this section is not adopted in the final rule, the FAA will continue to monitor the safety of parachute operations and the possible need for accident reporting requirements for possible consideration in a future rulemaking action.

Subpart C—Parachute Equipment and Packing

Section 105.43 Use of Single-Harness, Dual-Parachute Systems

Proposal: Currently, the rule provides that only a certificated parachute rigger, or the person making the parachute jump with that parachute, may pack a main parachute. The FAA proposed that a non-certificated person also may pack a main parachute under the direct

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supervision of a certificated parachute rigger. The FAA also proposed that if installed, the automatic activation device (AAD) must be maintained in accordance with manufacturer instructions for that AAD.

Comments: Several commenters, including USPA, believe that the responsibility for the safety of parachute equipment should rest with the certificated rigger and the parachute jumper, not the pilot of the aircraft used for the jump, as current stated in § 105.43(a).

In addition, the USPA states that the certificated rigger should be on the premises during parachute packing, and thus available for personal consultation.

Several commenters support the current 120-day repack cycle requirement, which was also included in the proposal. Numerous commenters oppose the current 120-day repack cycle, and favor either a 180-day or a 6-month repack cycle.

Several commenters, including USPA, request the deletion of § 105.43(b)(3), which requires that if AAD's are installed, they must be maintained in accordance with the manufacturer's instructions. The USPA states that if this paragraph is retained in the final rule, there is no method of documentation available for a pilot to verify that the AAD is in compliance with the manufacturer's guidelines/instructions, and thus, in compliance with the rule. In addition, other commenters note that this piece of equipment is supplemental and does not require FAA certification, therefore, it should not be included in the regulation.

FAA response: The FAA agrees with the commenters who request that the certificated rigger should be held responsible for packing the parachute properly. However, this requirement is not new to the regulations. Certificated riggers have always been responsible for the proper rigging of a parachute, which is evident from the fact that the rigger is required to obtain a certificate. Section 65.129 of the regulations further requires that the certificated rigger ensure that parachutes are packed in accordance with the Administrator's and manufacturer's requirements. The FAA has adopted the revision of "supervision" to "direct supervision," and has included the phrase "takes responsibility for that packing" in definition.

The FAA cannot agree entirely with those commenters who believe that the pilot should not be held responsible for the safety of the parachute equipment. The FAA wants to retain this longstanding requirement in the final rule for more than one reason. First and foremost, the pilot is the final checkpoint for equipment that a parachutist encounters before jumping from the aircraft. The pilot merely verifies that the jumper's equipment is properly inspected, which is not a burdensome task. The FAA believes that the pilot should bear this burden because the pilot has responsibility for the safety of the parachutist(s) while they are aboard the aircraft and the FAA believes that this responsibility should include ensuring that the parachutist(s) are using proper equipment.

The FAA agrees with the USPA's recommendation that a certificated rigger should be on the premises during parachute packing and available for personal consultation. The FAA also believes a certificated rigger should directly supervise the packing of the parachute. It is not sufficient, from a safety standpoint, to have a non-certificated person pack a parachute without a certificated rigger directly supervising the packing, and ensuring that it is done properly. Accordingly, § 105.43(a) is adopted as proposed.

With regard to the repack cycle, the 180-day and 6 month repack cycles were not part of the original proposal; therefore, they are outside the scope of this rulemaking. The requirement for a 120-day repack cycle is retained in the final rule.

The FAA disagrees with the commenters' request to delete § 105.43(b)(3), which requires that if AAD's are installed, they must be maintained in accordance with the manufacturer's instructions. Although AAD's are not subject to approval under a TSO or airworthiness certification, the FAA believes this requirement is necessary for safety considerations, even though AAD's are an optional piece of equipment, except in tandem operations. Therefore, this requirement is retained in the final rule.

The FAA also made a correction to the paragraph designation of this section. In the proposal, paragraph (b)(3) was incorrectly labeled; it has been correctly designated as paragraph (c) in the final rule.

Section 105.45 Use of Tandem Parachute Systems

Proposal: This proposed section provided for tandem parachute operations, and incorporated the conditions and limitations, with some modification, set forth in the grants of exemption issued to experimental tandem parachute operators. These conditions and limitations include instructor experience requirements, briefings for passenger parachutists, equipment inspections, and packing requirements.

In addition, the FAA proposed that a certificated parachute rigger supervise persons packing parachutes who are not certificated by the FAA, unless the person packing the parachute is a parachutist in command.

Comments: Several commenters, including USPA, recommend that manufacturer's directives for tandem parachute systems be made mandatory. The commenters also request that the number of freefall jumps to qualify as a tandem jump instructor be changed from 300 of 500 freefall jumps with a ram air parachute to 500 freefall jumps, because currently, only ram air parachutes are used. According to the commenters, this change would reflect the recommendation by USPA and the manufacturers for tandem jump instructor qualifications.

FAA response: The USPA's recommendation that the manufacturer's directives for tandem parachute systems should be mandatory is outside the scope of this rulemaking, and therefore, cannot be addressed at this time.

The FAA has decided to eliminate the requirement that 300 of the 500 freefall jumps must be made using a ram air parachute. The commenters correctly point out that round have long become obsolete. Today, almost all jumps are made with ram air parachutes. The FAA has changed this requirement to 500 jumps using a ram-air parachute in the final rule.

Section 105.47 Use of Static Lines

Proposal: The current rule requires that no person may make a parachute jump using a static line unless an assist device is used to aid the pilot chute in performing its function, or if no pilot chute is used, to aid in the direct deployment of the main parachute canopy. The Notice proposed to remove the requirement that assist devices must be used with ram-air parachutes.

Comments: Several commenters, including USPA, submitted comments on this proposed section. The commenters ask that the term "direct-deployed" be changed to "direct-bag deployed" and that the term "ram-air parachutes" be replaced with the term "ram-air canopies," because according to the commenters, these terms are used currently in the parachute industry.

FAA response: The FAA does not agree with these commenters. The use of the terms "ram-air canopies" and "ram-air parachutes" are nearly synonymous in the parachute industry, as are the terms "direct-bag deployed" and "direct deployed." Therefore, these terms are adopted as proposed.

Section 105.49 Foreign Parachutists and Equipment

Proposal: This new section will be added to address equipment and packing requirements for foreign parachutists. Only single-harness, dual-parachute systems which contain a non-technical standard order (TSO) reserve parachute or non-TSO'd harness and container would be allowed to be used in the United States by the owner or agent of that equipment. The parachute system used by the foreign parachutist must also meet the civil aviation authority requirements of the foreign parachutist's country, and must be packed by the foreign parachutist making the next parachute jump with that parachute, or a U.S. certificate parachute rigger.

Comments: Several commenters, including the USPA, believe that this section needs clarification. For example, the commenters suggest that the FAA should clarify that when a foreign jumper brings a parachute system into the United States, the foreign parachute system should be subject to the U.S. repack cycle (120 days).

FAA response: The FAA does not agree with the commenter's recommendations that the foreign parachute system should be subject to the U.S. repack cycle (120 days). The FAA has already determined that foreign parachute systems must meet the requirements of their country or its civil aviation authority. This section is incorporated into the final rule as proposed, with one exception. In the proposal, the two subparagraphs in paragraph (a)(4) were incorrectly labeled (a) and (b); they have been correctly designated as (i) and (ii), respectively, in the final rule.

Section 119.1 Applicability

Proposal: Currently, § 119.1(e)(6) provides an exception for nonstop flights conducted within a 25 statute mile radius of the airport of takeoff carrying persons for the purpose of intentional parachute jumps. The FAA proposed to amend this section to add the word "objects" in addition to "persons" when a flight is conducted for intentional parachute operations.

Comments: Several commenters, including USPA, submitted comments on this proposed section. Some commenters ask for the elimination of this section, as they claim it is unnecessary, given the nature of parachute operations today. Several other commenters, including USPA, suggest that the 25-statue mile limit be increased to a 100-statute mile limit of the departure airport.

FAA response: The FAA does not agree with the commenters' requested changes. Since the request to increase the statute mile limit from 25 to 100 statute miles from the airport of departure, is outside the scope of the Notice, it will not be considered in this action. Therefore, the language originally proposed in the Notice is retained in the final rule.

Paperwork Reduction Act

At the NPRM stage of this final rule, the FAA proposed a requirement for accident reporting. Because this requirement involved the voluntary submission of information from the public on accidents involving parachute operations, the FAA prepared an estimate of the paperwork burden that would be required of the public and submitted it to OMB for approval. However, after reviewing the comments received from the public on the accident reporting proposal in the NPRM, the FAA has decided not to include this requirement in the final rule. Therefore, in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the agency has determined that there are no longer information requirements associated with this final rule.

International Compatibility

The FAA has reviewed corresponding International Civil Aviation Organization international standards and recommended practices and Joint Aviation Authorities requirements and has identified no differences in these proposed amendments and the foreign regulations.

Economic Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal Agency to propose or adopt a regulation only if the agency makes a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards. Where appropriate, agencies are directed to use those international standards as the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules. This requirement applies only to rules that include a Federal mandate on State, local, or tribal governments, or the private sector, likely to result in a total expenditure of $100 million or more in any one year (adjusted for inflation).

In conducting these analyses, the FAA has determined this rule: (1) Has benefits which do justify its costs, is not a "significant regulatory action" as defined in the Executive Order, and is not "significant" as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant impact on a substantial number of small entities; (3) will not impose restraints on international trade; and (4) does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector. The FAA has placed these analyses in the docket and summarized them below.

This final rule will amend the regulations that govern parachute operations. Amendments to the regulations reflect changes in the requirements applicable to radio communications, parachute packing, tandem parachute operations, and foreign parachutists. Through this rule, the FAA intends to enhance the safety of parachute operations in the National Airspace System (NAS).

The benefits of the final rule are: (1) It should reduce the risk of a midair collision between aircraft and persons engaged in parachute operations, and reduce the risk of aircraft coming in close proximity to the parachutists in the vicinity of an airport or within controlled airspace; (2) it will revise some sections of the rule for better understanding; and (3) it will permit certain operations that currently are only allowed through exemptions granted by the FAA.

The amendments to part 105 will impose negligible additional cost, if any, on parachutists, pilots of aircraft used in parachute operations, certificated parachute riggers, and drop zone operators. Major aspects of this rule such as the requirements for tandem parachute operations and for parachute jumps by foreign parachutists already are being met under exemptions granted by the FAA. Therefore, this rulemaking action will not impose additional business expenses on drop zone operators, parachute clubs, or foreign parachutists. Costs imposed on the FAA

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are negligible, since the agency will not be required to provide additional oversight of parachute operations under the revision of parts 65, 91, 105, and 119.

In view of the negligible additional cost of compliance to the final rule, compared with the improvements in operating procedures that enhance the safety of parachute operations, the FAA has determined that the final rule is cost-justified.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to the regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA conducted the required review of this final rule and determined that it will not have a significant economic impact on a substantial number of small entities. The small entities affected by this final rule consist of parachutists, pilots of aircraft used in parachute operations, certificated riggers, and drop zone operators. The final rule will impose negligible additional cost, if any, on the entities. Major aspects of this rulemaking such as permitting tandem parachute operations will not impose additional business expenses for compliance on drop zone operators or parachute clubs because these entities currently adhere to the requirements of the rule through grants of exemptions issued by the FAA under part 105. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FAA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Statement

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activity that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administrator's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish, to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

The FAA has determined that the rule will promote parachuting by foreign parachutists in the United States. The final rule will permit foreign parachutists to jump in the United States using parachutes that are packed in their country of origin and thereby encourage foreign countries to grant permission for U.S. skydivers to jump in those countries using parachutes packed in the United States.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. It has determined that this action will not have a substantial direct effect on the States, or the relationship betwen the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has detemined that this final rule does not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the final rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

Distribution and Derivation Tables

The following distribution table is provided to illustrates how the current regulation would relate to the revised part 105, and the derivation table identifies how the revised part 105 would relate to the current rule.

DISTRIBUTION TABLE

Old section	New section(s)
105.1	105.1
105.11	105.1
105.13	105.5
105.14	105.13
105.15	105.21
105.17	105.23
105.19	105.25
105.23	105.25
105.25	105.15
105.33	105.19
105.35	105.7
105.37	105.9
105.41	105.41
105.43	105.43 and 105.47

DERIVATION TABLE

New section	Old section(s)
105.1	105.1 and 105.11

DERIVATION TABLE—Continued

New section	Old section(s)
105.3	New
105.5	105.13
105.7	105.35
105.9	105.37
105.13	105.14
105.15	105.25
105.17	105.29
105.19	105.33
105.21	105.15
105.23	105.17
105.25	105.19 and 105.23
105.41	105.41
105.43	105.43
105.45	New
105.47	105.43

List of Subjects

14 CFR Part 65

Air traffic controllers, Aircraft, Airmen, Airports, Alcohol abuse, Drug abuse, Reporting and recordkeeping requirements.

14 CFR Part 91

Afghanistan, Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Canada, Cuba, Freight, Mexico, Noise control, Political candidates, Reporting and recordkeeping requirements, Yugoslavia.

14 CFR Part 105

Aircraft, Aviation safety, Recreation and recreation areas, Reporting and recordkeeping requirements.

14 CFR Part 119

Administrative practice and procedure, Air carriers, Aircraft, Aviation safety, Charter flights, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends parts 65, 91, 105, and 119 of Title 14 Code of Federal Regulations as follows:

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

1. The authority citation for part 65 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

2. Section 65.111 is amended by revising paragraphs (a) and (b) to read as follows:

§ 65.111 Certificate required.

(a) No person may pack, maintain, or alter any personnel-carrying parachute intended for emergency use in connection with civil aircraft of the United States (including the reserve parachute of a dual parachute system to be used for intentional parachute jumping) unless that person holds an appropriate current certificate and type rating issued under this subpart and complies with §§ 65.127 through 65.133.

(b) No person may pack, maintain, or alter any main parachute of a dual-parachute system to be used for intentional parachute jumping in connection with civil aircraft of the United States unless that person—

(1) Has an appropriate current certificate issued under this subpart;

(2) Is under the supervision of a current certificated parachute rigger;

(3) Is the person making the next parachute jump with that parachute in accordance with § 105.43(a) of this chapter; or

(4) Is the parachutist in command making the next parachute jump with that parachute in a tandem parachute operation conducted under § 105.45(b)(1) of this chapter.

* * * * *

3. Section 65.125 is amended by revising paragraphs (a)(2) and (b)(2) to read as follows:

§ 65.125 Certificates: Privileges.

(a) * * *

(2) Supervise other persons in packing any type of parachute for which that person is rated in accordance with § 105.43(a) or § 105.45(b)(1) of this chapter.

(b) * * *

(2) Supervise other persons in packing, maintaining, or altering any type of parachute for which the certificated parachute rigger is rated in accordance with § 105.43(a) or § 105.45(b)(1) of this chapter.

* * * * *

PART 91—GENERAL OPERATING AND FLIGHT RULES

4. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

5. Section 91.307 is amended by revising paragraph (b) to read as follows:

§ 91.307 Parachutes and parachuting.

* * * * *

(b) Except in an emergency, no pilot in command may allow, and no person may conduct, a parachute operation from an aircraft within the United States except in accordance with part 105 of this chapter.

* * * * *

6. Part 105 is revised to read as follows:

PART 105—PARACHUTE OPERATIONS

Subpart A—General

105.1 Applicability.
105.3 Definitions.
105.5 General.
105.7 use of alcohol and drugs.
105.9 Inspections.

Subpart B—Operating Rules

105.13 **Federal Register**Radio equipment and use requirements.
105.15 Information required and notice of cancellation or postponement of a parachute operation.
105.17 Flight visibility and clearance from cloud requirements.
105.19 Parachute operations between sunset and sunrise.
105.21 Parachute operations over or into a congested area or an open-air assembly of persons.
105.23 Parachute operations over or onto airports.
105.25 Parachute operations in designated airspace.

Subpart C—Parachute Equipment and Packing

105.41 Applicability.
105.43 Use of single-harness, dual-parachute systems.
105.45 Use of tandem parachute systems.
105.47 Use of static lines.
105.49 Foreign parachutists and equipment.

Authority: 49 U.S.C. 106(g), 40113–40114, 44701–44702, 44721.

§ 105.1 Applicability.

(a) Except as provided in paragraphs (b) and (c) of this section, this part prescribes rules governing parachute operations conducted in the United States.

(b) This part does not apply to a parachute operation conducted—

(1) In response to an in-flight emergency, or

(2) To meet an emergency on the surface when it is conducted at the direction or with the approval of an agency of the United States, or of a State, Puerto Rico, the District of Columbia, or a possession of the United States, or an agency or political subdivision thereof.

(c) Sections 105.5, 105.9, 105.13, 105.15, 105.17, 105.19 through 105.23, 105.25(a)(1) and 105.27 of this part do not apply to a parachute operation

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conducted by a member of an Armed Force—

(1) Over or within a restricted area when that area is under the control of an Armed Force.

(2) During military operations in uncontrolled airspace.

§ 105.3 Definitions.

For the purposes of this part—

Approved parachute means a parachute manufactured under a type certificate or a Technical Standard Order (C–23 series), or a personnel-carrying U.S. military parachute (other than a high altitude, high speed, or ejection type) identified by a Navy Air Facility, an Army Air Field, and Air Force-Navy drawing number, an Army Air Field order number, or any other military designation or specification number.

Automatic Activation Device means a self-contained mechanical or electro-mechanical device that is attached to the interior of the reserve parachute container, which automatically initiates parachute deployment of the reserve parachute at a pre-set altitude, time, percentage of terminal velocity, or combination thereof.

Direct Supervision means that a certificated rigger personally observes a non-certificated person packing a main parachute to the extent necessary to ensure that it is being done properly, and takes responsibility for that packing.

Drop Zone means any pre-determined area upon which parachutists or objects land after making an intentional parachute jump or drop. The center-point target of a drop zone is expressed in nautical miles from the nearest VOR facility when 30 nautical miles or less; or from the nearest airport, town, or city depicted on the appropriate Coast and Geodetic Survey World Aeronautical Chart or Sectional Aeronautical Chart, when the nearest VOR facility is more than 30 nautical miles from the drop zone.

Foreign parachutist means a parachutist who is neither a U.S. citizen or a resident alien and is participating in parachute operations within the United States using parachute equipment not manufctured in the United States.

Freefall means the portion of a parachute jump or drop between aircraft exit and parachute deployment in which the parachute is activated manually by the parachutist at the parachutist's discretion or automatically, or, in the case of an object, is activated automatically.

Main parachute means a parachute worn as the primary parachute used or intended to be used in conjunction with a reserve parachute.

Object means any item other than a person that descends to the surface from an aircraft in flight when a parachute is used or is intended to be used during all or part of the descent.

Parachute drop means the descent of an object to the surface from an aircraft in flight when a parachute is used or intended to be used during all or part of that descent.

Parachute jump means a parachute operation that involves the descent of one or more persons to the surface from an aircraft in flight when a aircraft is used or intended to be used during all or part of that descent.

Parachute operation means the performance of all activity for the purpose of, or in support of, a parachute jump or a parachute drop. This parachute operation can involve, but is not limited to, the following persons: parachutist, parachutist in command and passenger in tandem parachute operations, drop zone or owner or operator, jump master, certificated parachute rigger, or pilot.

Parachutist means a person who intends to exit an aircraft while in flight using a single-harness, dual parachute system to descend to the surface.

Parachutist in command means the person responsible fro the operation and safety of a tandem parachute operation.

Passenger parachutist means a person who boards an aircraft, acting as other than the parachutist in command of a tandem parachute operation, with the intent of existing the aircraft while in-flight using the forward harness of a dual harness tandem parachute system to descend to the surface.

Pilot chute means a small parachute used to initiate and/or accelerate deployment of a main or reserve parachute.

Ram-air parachute means a parachute with a canopy consisting of an upper and lower surface that is inflated by ram air entering through specially designed openings in the front of the canopy to form a gliding airfoil.

Reserve parachute means an approved parachute worn for emergency use to be activated only upon failure of the main parachute or in any other emergency where use of the main parachute is impractical or use of the main parachute would increase risk.

Single-harness, dual parachute system: means the combination of a main parachute, approved reserve parachute, and approved single person harness and dual-parachute container. This parachute system may have an operational automatic activation device installed.

Tandem parachute operation: means a parachute operation in which more than one person simultaneously uses the same tandem parachute system while descending to the surface from an aircraft in flight.

Tandem parachute system: means the combination of a main parachute, approved reserve parachute, and approved harness and dual parachute container, and a separate approved forward harness for a passenger parachutist. This parachute system must have an operational automatic activation device installed.

§ 105.5 General.

No person may conduct a parachute operation, and no pilot in command of an aircraft may allow a parachute operation to be conducted from an aircraft, if that operation creates a hazard to air traffic or to persons or property on the surface.

§ 105.7 Use of alcohol and drugs.

No person may conduct a parachute operation, and no pilot in command of an aircraft may allow a person to conduct a parachute operation from that aircraft, if that person is or appears to be under the influence of—

(a) Alcohol, or

(b) Any drug that affects that person's faculties in any way contrary to safety.

§ 105.9 Inspections.

The Administrator may inspect any parachute operation to which this part applies (including inspections at the site where the parachute operation is being conducted) to determine compliance with the regulations of this part.

Subpart B—Operating Rules

§ 105.13 Radio equipment and use requirements.

(a) Except when otherwise authorized by air traffic control—

(1) No person may conduct a parachute operation, and no pilot in command of an aircraft may allow a parachute operation to be conducted from that aircraft, in or into controlled airspace unless, during that flight—

(i) The aircraft is equipped with a functioning two-way radio communication system appropriate to the air traffic control facilities being used; and

(ii) Radio communications have been established between the aircraft and the air traffic control facility having jurisdiction over the affected airspace of the first intended exit altitude at least 5 minutes before the parachute operation begins. The pilot in command must establish radio communications to receive information regarding air traffic activity in the vicinity of the parachute operation.

(2) The pilot in command of an aircraft used for any parachute operation in or into controlled airspace must, during each flight—

(i) Continuously monitor the appropriate frequency of the aircraft's radio communications system from the time radio communications are first established between the aircraft and air traffic control, until the pilot advises air traffic control that the parachute operation has ended for that flight.

(ii) Advise air traffic control when the last parachutist or object leaves the aircraft.

(b) Parachute operations must be aborted if, prior to receipt of a required air traffic control authorization, or during any parachute operation in or into controlled airspace, the required radio communications system is or becomes inoperative.

§ 105.15 Information required and notice of cancellation or postponement of a parachute operation.

(a) Each person requesting an authorization under §§ 105.21(b) and 105.25(a)(2) of this part and each person submitting a notification under § 105.25(a)(3) of this part must provide the following information (on an individual or group basis):

(1) The date and time the parachute operation will begin.

(2) The radius of the drop zone around the target expressed in nautical miles.

(3) The location of the center of the drop zone in relation to—

(i) The nearest VOR facility in terms of the VOR radial on which it is located and its distance in nautical miles from the VOR facility when that facility is 30 nautical miles or less from the drop zone target; or

(ii) the nearest airport, town, or city depicted on the appropriate Coast and Geodetic Survey World Aeronautical Chart or Sectional Aeronautical Chart, when the nearest VOR facility is more than 30 nautical miles from the drop zone target.

(4) Each altitude above mean sea level at which the aircraft will be operated when parachutists or objects exist the aircraft.

(5) The duration of the intended parachute operation.

(6) The name, address, and telephone number of the person who requests the authorization or gives notice of the parachute operation.

(7) The registration number of the aircraft to be used.

(8) The name of the air traffic control facility with jurisdiction of the airspace at the first intended exit altitude to be used for the parachute operation.

(b) Each holder of a certificate of authorization issued under §§ 105.21(b) and 105.25(b) of this part must present that certificate for inspection upon the request of the Administrator or any Federal, State, or local official.

(c) Each person requesting an authorization under §§ 105.21(b) and 105.25(a)(2) of this part and each person submitting a notice under § 105.25(a)(3) of this part must promptly notify the air traffic control facility having jurisdiction over the affected airspace if the proposed or scheduled parachute operation is canceled or postponed.

§ 105.17 Flight visibility and clearance from cloud requirements.

No person may conduct a parachute operation, and no pilot in command of an aircraft may allow a parachute operation to be conducted from that aircraft—

(a) Into or through a cloud, or

(b) When the flight visibility or the distance from any cloud is less than that prescribed in the following table:

Altitude	Flight visibility (statute miles)	Distance from clouds
1,200 feet or less above the surface regardless of the MSL altitude ..	3	500 feet below, 1,000 feet above, 2,000 feet horizontal.
More than 1,200 feet above the surface but less than 10,000 feet MSL.	3	500 feet below, 1,000 feet above, 2,000 feet horizontal.
More than 1,200 feet above the surface and at or above 10,000 feet MSL.	5	1,000 feet below, 1,000 feet above, 1 mile horizontal.

§ 105.19 Parachute operations between sunset and sunrise.

(a) No person may conduct a parachute operation, and no pilot in command of an aircraft may allow a person to conduct a parachute operation from an aircraft between sunset and sunrise, unless the person or object descending from the aircraft displays a light that is visible for at least 3 statute miles.

(b) The light required by paragraph (a) of this section must be displayed from the time that the person or object is under a properly functioning open parachute until that person or object reaches the surface.

§ 105.21 Parachute operations over or into a congested area or an open-air assembly of persons.

(a) No person may conduct a parachute operation, and no pilot in command of an aircraft may allow a parachute operation to be conducted from that aircraft, over or into a congested area of a city, town, or settlement, or an open-air assembly of persons unless a certificate of authorization for that parachute operation has been issued under this section. However, a parachutist may drift over a congested area or an open-air assembly of persons with a fully deployed and properly functioning parachute if that parachutist is at a sufficient altitude to avoid creating a hazard to persons or property on the surface.

(b) An application for a certificate of authorization issued under this section must—

(1) Be made in the form and manner prescribed by the Administrator, and

(2) Contain the information required in § 105.15(a) of this part.

(c) Each holder of, and each person named as a participant in a certificate of authorization issued under this section must comply with all requirements contained in the certificate of authorization.

(d) Each holder of a certificate of authorization issued under this section must present that certificate for inspection upon the request of the Administrator, or any Federal, State, or local official.

§ 105.23 Parachute operations over or onto airports.

No person may conduct a parachute operation, and no pilot in command of an aircraft may allow a parachute operation to be conducted from that aircraft, over or onto any airport unless—

(a) For airports with an operating control tower:

(1) Prior approval has been obtained from the management of the airport to conduct parachute operations over or on that airport.

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(2) Approval has been obtained from the control tower to conduct parachute operations over or onto that airport.

(3) Two-way radio communications are maintained between the pilot of the aircraft involved in the parachute operation and the control tower of the airport over or onto which the parachute operation is being conducted.

(b) For airports without an operating control tower, prior approval has been obtained from the management of the airport to conduct parachute operations over or on that airport.

(c) A parachutist may drift over that airport with a fully deployed and properly functioning parachute if the parachutist is at least 2,000 feet above that airport's traffic pattern, and avoids creating a hazard to air traffic or to persons and property on the ground.

§ 105.25 Parachute operations in designated airspace.

(a) No person may conduct a parachute operation, and no pilot in command of an aircraft may allow a parachute operation to be conducted from that aircraft—

(1) Over or within a restricted area or prohibited area unless the controlling agency of the area concerned has authorized that parachute operation;

(2) Within or into a Class A, B, C, D airspace area without, or in violation of the requirements of, an air traffic control authorization issued under this section;

(3) Except as provided in paragraph (c) and (d) of this section, within or into Class E or G airspace area unless the air traffic control facility having jurisdiction over the airspace at the first intended exit altitude is notified of the parachute operation no earlier than 24 hours before or no later than 1 hour before the parachute operation begins.

(b) Each request for a parachute operation authorization or notification required under this section must be submitted to the air traffic control facility having jurisdiction over the airspace at the first intended exit altitude and must include the information prescribed by § 105.15(a) of this part.

(c) For the purposes of paragraph (a)(3) of this section, air traffic control facilities may accept a written notification from an organization that conducts parachute operations and lists the scheduled series of parachute operations to be conducted over a stated period of time not longer than 12 calendar months. The notification must contain the information prescribed by § 105.15(a) of this part, identify the responsible persons associated with that parachute operation, and be submitted at least 15 days, but not more than 30 days, before the parachute operation begins. The FAA may revoke the acceptance of the notification for any failure of the organization conducting the parachute operations to comply with its requirements.

(d) Paragraph (a)(3) of this section does not apply to a parachute operation conducted by a member of an Armed Force within a restricted area that extends upward from the surface when that area is under the control of an Armed Force.

Subpart C—Parachute Equipment and Packing

§ 105.41 Applicability.

This subpart prescribed rules governing parachute equipment used in civil parachute operations.

§ 105.43 Use of single-harness, dual-parachute systems.

No person may conduct a parachute operation using a single-harness, dual-parachute system, and no pilot in command of an aircraft may allow any person to conduct a parachute operation from that aircraft using a single-harness, dual-parachute system, unless that system has at least one main parachute, one approved reserve parachute, and one approved single person harness and container that are packed as follows:

(a) The main parachute must have been packed within 120 days before the date of its use of a certificated parachute rigger, the person making the next jump with that parachute, or a non-certificated person under the direct supervision of a certification parachute rigger.

(b) The reserve parachute must have been packed by a certificated parachute rigger—

(1) Within 120 days before the date of its use, if its canopy, shroud, and harness are composed exclusively of nylon, rayon, or similar synthetic fiber or material that is substantially resistant to damage from mold, mildew, and other fungi, and other rotting agents propagated in a moist environment; or

(2) Within 60 days before the date of its use, if it is composed of any amount of silk, pongee, or other natural fiber, or material not specified in paragraph (b)(1) of this section.

(c) If installed, the automatic activation device must be maintained in accordance with manufacturer instructions for that automatic activation device.

§ 105.45 Use of tandem parachute systems.

(a) No person may conduct a parachute operation using a tandem parachute system, and no pilot in command of an aircraft may allow any person to conduct a parachute operation from that aircraft using a tandem parachute system, unless—

(1) One of the parachutists using the tandem parachute system is the parachutist in command, and meets the following requirements:

(i) Has a minimum of 3 years of experience in parachuting, and must provide documentation that the parachutist—

(ii) Has completed a minimum of 500 freefall parachute jumps using a ram-air parachute, and

(iii) Holds a master parachute license issued by an organization recognized by the FAA, and

(iv) Has successfully completed a tandem instructor course given by the manufacturer of the tandem parachute system used in the parachute operation or a course acceptable to the Administrator.

(v) Has been certified by the appropriate parachute manufacturer or tandem course provider as being properly trained on the use of the specific tandem parachute system to be used.

(2) The person acting as parachutist in command:

(i) Has briefed the passenger parachutist before boarding the aircraft. The briefing must include the procedures to be used in case of an emergency with the aircraft or after exiting the aircraft, while preparing to exit and exiting the aircraft, freefall, operating the parachute after freefall, landing approach, and landing.

(ii) Uses the harness position prescribed by the manufacturer of the tandem parachute equipment.

(b) No person may make a parachute jump with a tandem parachute system unless—

(1) The main parachute has been packed by a certificated parachute rigger, the parachutist in command making the next jump with that parachute, or a person under the direct supervision of a certificated parachute rigger.

(2) The reserve parachute has been packed by a certificated parachute rigger in accordance with § 105.43(b) of this part.

(3) The tandem parachute system contains an operational automatic activation device for the reserve parachute, approved by the manufacturer of that tandem parachute system. The device must—

(i) Have been maintained in accordance with manufacturer instructions, and

(ii) Be armed during each tandem parachute operation.

(4) The passenger parachutist is provided with a manual main parachute activation device and instructed on the use of that device, if required by the owner/operator.

(5) The main parachute is equipped with a single-point release system.

(6) The reserve parachute meets Technical Standard Order C23 specifications.

§ 105.47 Use of static lines.

(a) Except as provided in paragraph (c) of this section, no person may conduct a parachute operation using a static line attached to the aircraft and the main parachute unless an assist device, described and attached as follows, is used to aid the pilot chute in performing its function, or, if no pilot chute is used, to aid in the direct deployment of the main parachute canopy. The assist device must—

(1) Be long enough to allow the main parachute container to open before a load is placed on the device.

(2) Have a static load strength of—

(i) At least 28 pounds but not more than 160 pounds if it is used to aid the pilot chute in performing its function; or

(ii) At least 56 pounds but not more than 320 pounds if it is used to aid in the direct deployment of the main parachute canopy; and

(3) Be attached as follows:

(i) At one end, to the static line above the static-line pins or, if static-line pins are not used, above the static-line ties to the parachute cone.

(ii) At the other end, to the pilot chute apex, bridle cord, or bridle loop, or, if no pilot chute is used, to the main parachute canopy.

(b) No person may attach an assist device required by paragraph (a) of this section to any main parachute unless that person is a certificated parachute rigger or that person makes the next parachute jump with that parachute.

(c) An assist device is not required for parachute operations using direct-deployed, ram-air parachutes.

§ 105.49 Foreign parachutists and equipment.

(a) No person may conduct a parachute operation, and no pilot in command of an aircraft may allow a parachute operation to be conducted from that aircraft with an unapproved foreign parachute system unless—

(1) The parachute system is worn by a foreign parachutist who is the owner of that system.

(2) The parachute system is of a single-harness dual parachute type.

(3) The parachute system meets the civil aviation authority requirements of the foreign parachutist's country.

(4) All foreign non-approved parachutes deployed by a foreign parachutist during a parachute operation conducted under this section shall be packed as follows—

(i) The main parachute must be packed by the foreign parachutist making the next parachute jump with that parachute, a certificated parachute rigger, or any other person acceptable to the Administrator.

(ii) The reserve parachute must be packed in accordance with the foreign parachutist's civil aviation authority requirements, by a certificated parachute rigger, or any other person acceptable to the Administrator.

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

7. The authority citation for part 119 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

8. Section 119.1 is amended by revising paragraph (e)(6) to read as follows:

§ 119.1 Applicability.

* * * * *

(e) * * *

(6) Nonstop flights conducted within a 25-statute-mile radius of the airport of takeoff carrying persons or objects for the purpose of conducting intentional parachute operations.

Issued in Washington, DC on May 4, 2001.

Jane F. Garvey,

Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ACE–4]

Amendment to Class E Airspace; Chillicothe, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Chillicothe, MO. The FAA has developed an Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 32 ORIGINAL Standard Instrument Approach Procedure (SIAP) to serve Chillicothe Municipal Airport, Chillicothe, MO. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for other Instrument Flight Rules (IFR) operations at this airport.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing the SIAP and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, September 6, 2001.

Comments for inclusion in the Rules Docket must be received on or before July 13, 2001.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Operations and Airspace Branch, Air Traffic Division, ACE–530, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 01–ACE–4, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Operations & Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA has developed RNAV (GPS) RWY 32 ORIGINAL SIAP to serve Chillicothe Municipal Airport, Chillicothe, MO. The amendment to Class E airspace at Chillicothe, MO, will provide additional controlled airspace at and above 700 feet AGL, in order to contain the new SIAP within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules (IFR). The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9H, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

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The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 01–ACE–4." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9H Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Chillicothe, MO

Chillicothe Municipal Airport, MO
(Lat. 39°46'56" N., long. 93°29'44" W.)
Chillicothe NDB
(Lat. 39°46'32" N., long. 93°29'40" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Chillicothe Municipal Airport and within 2.6 miles each side of the 337° bearing from the Chillicothe NDB extending from the 6.4-mile radius to 7.9 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on April 20, 2001.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 01–11723 Filed 5–8–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ACE–3]

Amendment to Class E Airspace; Cabool, MO.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Cabool, MO. The FAA has developed an Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 21 ORIGINAL Standard Instrument Approach Procedure (SIAP) to serve Cabool Memorial Airport, Cabool, MO. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for other Instrument flight Rules (IFR) operations at this airport.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing the SIAP and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, September 6, 2001.

Comments for inclusion in the Rules Docket must be received on or before July 13, 2001.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Operations and Airspace Branch, Air Traffic Division, ACE–530, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 01–ACE–3, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Operations & Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA has developed RNAV (GPS) RWY 21 ORIGINAL SIAP to serve Cabool Memorial Airport, Cabool, MO. The amendment to Class E airspace at Cabool, MO, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAP within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules (IFR). The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9H, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 01–ACE–3." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9H Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Cabool, MO [Revised]

Cabool Memorial Airport, MO
(Lat. 37°07'57" N., long. 92°05'03" W.)
Maples VORTAC
(Lat. 37°35'27" N., long. 91°47'19" W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Cabool Memorial Airport and within 2.6 miles each side of the 207° radial of the Maples VORTAC extending from the

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6.3-mile radius to 7.4 miles northeast of the airport.

Issued in Kansas City, MO, on April 20, 2001.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 01–11722 Filed 5–8–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ACE–1]

Amendment to Class E Airspace; Monroe City, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Monroe City, MO.

EFFECTIVE DATE: 0901 UTC, May 17, 2001.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on February 28, 2001 (66 FR 12731). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on May 17, 2001. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on April 20, 2001.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 01–11721 Filed 5–8–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 01–ACE–5]

Amendment to Class E Airspace; Olathe, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment modifies the Class E airspace area at Olathe, KS to accommodate a planned change to the VHF Omni-directional Range (VOR) Runway (RWY) 36 Standard Instrument Approach Procedure (SIAP) serving Johnson County Executive Airport, Olathe, KS. Additional controlled airspace extending upward from the surface and upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for other Instrument Flight Rules (IFR) operations at this airport.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing the SIAP and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, September 6, 2001.

Comments for inclusion in the Rules Docket must be received on or before July 13, 2001.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Operations and Airspace Branch, Air Traffic Division, ACE–530, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 01–ACE–5, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Operations & Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA has modified the VOR RWY 36 SIAP serving Johnson County Executive Airport, Olathe, KS. The amendment to Class E airspace at Olathe, KS, will provide additional controlled airspace upward from the surface and at and above 700 feet AGL in order to contain the modified SIAP within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules (IFR). The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from the surface of the earth are published in paragraph 6004 of FAA Order 7400.9H dated September 1, 2000. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9H, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule.

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 01–ACT–5." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9H Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6004 Class E Airspace Areas Extending Upward From the Surface of the Earth.

* * * * *

ACE KS E4 Olathe, Johnson County Executive Airport, KS

Olathe, Johnson County Executive Airport, KS
(Lat. 38°50′51″ N., long. 94°44′15″ W.)
Johnson County VOR/DME
(Lat. 38°50′26″ N., long. 94°44′12″ W.)

That airspace extending upward from the surface within 1.2 miles each side of the Johnson County VOR/DME 180° radial, extending from the 3.9-mile radius, to 7 miles south of the Johnson County VOR/DME. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport Facility Directory.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ACE KS E5 Olathe, Johnson County Executive Airport, KS

Olathe, Johnson County Executive Airport, KS
(Lat. 38°50′51″ N., long. 94°44′15″ W.)
Johnson County VOR/DME
(Lat. 38°50′26″ N., long. 94°44′12″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Johnson County Executive Airport, and within 1.2 miles each side of the Johnson County VOR/DME 180° radial, extending from the 6.4-mile radius, to 7 miles south of the Johnson County VOR/DME.

* * * * *

Issued in Kansas City, MO, on April 20, 2001.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 01–11724 Filed 5–8–01; 8:45 am]

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FEDERAL TRADE COMMISSION

16 CFR Parts 801, 802 and 803

Premerger Notification; Antitrust Improvements Act Notification and Report Form

AGENCY: Federal Trade Commission.

ACTION: Interim rule with request for comment.

SUMMARY: The Federal Trade Commission ("Commission") is amending the Antitrust Improvements Act Notification and Report Form ("the Form") and the accompanying Instructions for Certain Mergers and Acquisitions ("the Instructions") which must be completed and submitted by persons required to report mergers or acquisitions pursuant to section 7A of the Clayton Act, as added by the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act"). The amended Form and Instructions will require filing persons to: report revenue data using the North American Industry Classification System ("NAICS") rather than the Standard Industrial Classification ("SIC"); use 1997 rather than 1992 as the base year for reporting revenue data; and report insurance activities in the body of the Form rather than in an Insurance Appendix. In addition, the references to the SIC will be replaced with references to the NAICS. Finally, the Commission will make minor revisions to the Instructions to provide further assistance to persons required to file under the HSR Act.

DATES: This interim rule is effective July 1, 2001. The Commission, however, is soliciting comments regarding the July 1, 2001 effective date of these amendments, which the Commission will change if appropriate. Comments must be received on or before June 8, 2001. In addition, it is important to note that filing persons must continue to use the SIC codes through June 30, 2001, and that all parties to a transaction must use the same classification system. However, for transactions identified as Section 801.30 transactions, where the acquiring person files before July 1, 2001 with the expectation that the acquired person will file on or after July

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1, 2001, the Premerger Notification Office recommends that the acquiring person use the NAICS industry and product codes to ensure the efficient handling of the filing.

ADDRESSES: Address all comments to: Secretary, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, or by e-mail to *hsr-rules@ftc.gov*, and the Director of Operations and Merger Enforcement, Antitrust Division, Department of Justice, Room 10103, 601 D Street, NW., Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: William L. Lanning, Acting Deputy Assistant Director, or Alice M. Villavicencio, Compliance Specialist, of the Premerger Notification Office, Bureau of Competition at (202) 326–3361 or (202) 326–3155, respectively.

SUPPLEMENTARY INFORMATION:

Background

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94–435, 90 Stat. 1390, and amended by Pub. L. 106–553, 114 Stat. 2762 ("HSR Act"), requires all persons contemplating certain mergers or acquisitions to file notification with the Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice ("Assistant Attorney General"). The HSR Act further provides that such persons wait a designated period of time before consummating such transactions.

Congress empowered the Commission, with the concurrence of the Assistant Attorney General, to require "that the notification * * * be in such form and contain such documentary material and information * * * as is necessary and appropriate" to enable the agencies "to determine whether such acquisitions may, if consummated, violate the antitrust laws." Congress similarly granted rulemaking authority to, inter alia, "prescribe such other rules as may be necessary and appropriate to carry out the purposes of this section." 15 U.S.C.18a(d). Pursuant to this section, the Commission, with the concurrence of the Assistant Attorney General, promulgated the Antitrust Improvements Act Notification and Report Form for Certain Mergers and Acquisitions on July 31, 1978, with an effective date of September 5, 1978, 43 FR 33450 (July 31, 1978), and has since amended or revised the rules and Form on fifteen occasions. The Commission, with the concurrence of the Assistant Attorney General, is promulgating these amendments to the Form and the Instructions relating to Items 3, 5, 6, 7, and 8 as well as to Sections 801.1(j), 802.2(g), and 803.2 of the Rules as indicated herein.

Completion of the Form provides the Commission and the Assistant Attorney General with information and documentary material necessary to conduct an initial review of mergers, acquisitions, and other similar transactions "to determine whether such acquisitions may, if consummated, violate the antitrust laws." 15 U.S.C. 18a(d). The Form is not designed to elicit all potentially relevant information relating to a transaction. Instead, the information requested enables the Commission and the Assistant Attorney General to determine whether the waiting period for a proposed acquisition should be allowed to expire; whether a request by one or both of the filing persons for early termination of the waiting period should be granted; or whether the Commission or the Assistant Attorney General should issue a request for additional information and documentary materials pursuant to section 7A(e) of the HSR Act and 16 CFR 803.20.

The Form and the Instructions currently require that filing persons report revenue data contained in the 1992 Economic Census and the "1992 Numerical List of Manufactured and Mineral Products." The Bureau of the Census has recently published its 1997 versions of the Economic Census and the "Numerical List of Manufactured and Mineral Products." In these reports, the data is compiled using the NAICS which has replaced the SIC as the industrial classification for the United States. As a result, the Form, the Instructions, and several rules will be amended to replace references to the SIC codes with references to the NAICS codes, and references to a 1992 base year to a 1997 base year.

Statement of Basis and Purpose for the Commission's Revision of the Form and the Instructions

In 1992, OMB established the Economic Classification Policy Committee (ECPC).[1] Among other things, OMB asked the ECPC to evaluate the SIC to determine whether it should be revised or it should be replaced with a new industry classification system for the United States. The ECPC concluded that the SIC should be replaced because it did not adequately describe the economy of the United States. Specifically, the ECPC noted that the SIC had failed to address two significant economic trends which had transformed the economy over the last 20 years: the emergence of service-producing industries and the rapid development of technology-based industries.

After conducting an extensive examination of the economy, the ECPC determined that a new industrial classification system would best describe the economy if it were based on a production-oriented, or supply-based, conceptual framework that grouped together businesses using identical or similar production processes. The ECPC also noted that a single conceptual framework would add internal consistency to the new classification system and would ensure that the system could adapt to future economic trends.

Acting in concert with similar committees in Mexico and Canada, the ECPC developed the NAICS to replace the SIC.[2] The NAICS divides the economy into 20 sectors[3] and identifies nine new service industries sectors and 358 new national industries. The NAICS employs a 6-digit coding system in which the first two digits designate the sector, the third digit designates the subsector, the fourth digit designates the industry group, the fifth digit represents the NAICS industry, and the sixth digit designates individual national industries (either Canadian, Mexican, or United States). A 6-digit NAICS industry code is comparable to a 4-digit SIC industry code. A 7-digit NAICS product class code and a 10-digit NAICS product code are comparable to a 5-digit SIC product class code and a 7-digit SIC product code, respectively.[4] A review of NAICS industry codes is slated for every five years and is expected to keep the NAICS current as economic sectors evolve.

In April, 1997, OMB issued its decision to require all Federal statistical agencies that collect or publish data by industry to adopt the NAICS as the industrial classification system for the United States, 62 FR 17287–17337 (April 9, 1997). However, OMB specifically noted that it was not requiring any non-statistical agencies, such as the Commission, to use the NAICS because the non-statistical agencies played no role in the development of the NAICS. Instead, OMB noted that non-statistical agencies should utilize the NAICS only after the "head of the agency administering that program has . . . determined that the use of such industry definitions is appropriate to the implementation of the program's objectives." *Id.*

The Commission has determined that requiring filing persons to report revenue data using the NAICS will further the policy objectives of the HSR notification program because the NAICS has several characteristics that will contribute to a more meaningful antitrust analysis. First, the NAICS was designed to describe the United States economy more accurately than the SIC. With its nine new service industry sectors and 358 new industries, the NAICS should provide more precise comparisons for product markets. The review of the NAICS every five years should also provide more accurate comparisons in a dynamic economy.

Second, the Commission has traditionally relied upon the most current economic data to analyze the potential anticompetitive effects of proposed transactions.[5] The "1997 Economic Census" and the "1997 Numerical List of Manufactured and Mineral Products" published by Bureau of the Census contain such data and use the NAICS.

Third, the NAICS is erected on a production-oriented, or supply-based, conceptual framework to ensure the internal consistency of its industry classifications. Businesses that use identical or similar production processes are grouped together. This organizational concept will be useful to the Commission and the Assistant Attorney General when they evaluate entry and industry overlap issues as part of their antitrust analysis of proposed transactions.

Incorporating the NAICS into the Form and the Instructions will ensure that filing persons provide revenues in a format that can be compared to the most recent and complete economic data published by the Bureau of the Census. The amended Form and Instructions will require the 6-digit NAICS industry code where the Form and Instructions currently require the 4-digit SIC industry code. Filing persons should be aware, however, that certain NAICS industry codes only contain 5-digits. In those instances, the filing person should add a zero (0) to the end of the five-digit code when completing the Form. Seven-digit NAICS product class codes and the 10-digit NAICS product codes should be used where the Form and Instructions currently require the 5-digit SIC class codes and the 7-digit SIC product codes.[6]

We reiterate that filing persons must continue to use the SIC codes through June 30, 2001, and that all parties to a transaction must use the same classification system. For transactions identified as Section 801.30 transactions, where the acquiring person files before July 1, 2001 with the expectation that the acquired person will file on or after July 1, 2001, the Premerger Notification Office recommends that the acquiring person use the NAICS industry and product codes to ensure the efficient handling of the filing.

Amendments to the Form and Instructions

Items 5, 7, and 8 of the Form and Instructions will require that revenue data be provided using the NAICS. References to the SIC codes in Section 801.1(j) and Section 802.2(g) will be replaced with NAICS references. References to the "1992 base year" will replaced with "1997 base year" throughout the Form and Instructions. Filing persons should refer to the "1997 Numerical List of Manufactured and Mineral Products" (EC97M31R-NL) published by the Bureau of the Census to locate product class codes and product codes.

As noted above, several other minor changes to the Form and the Instructions will be made. Most of these changes either clarify the requirements of the Form and Instructions or correct technical errors in earlier versions. In addition, the Insurance Appendix will be deleted and filing persons should report revenues from all insurance activities in Item 5 of the Form. Finally, Section 803.2 will be amended to reflect the deletion of the Insurance Appendix.

Section 801.1(j) Engaged in Manufacturing

In Section 801.1(j), the definition of "Engaged in manufacturing," will be amended by replacing "products within industries 2000–3999 as coded in the Standard Industrial Classification Manual (1972 Edition)" with "products within industries in Sectors 31–33 as coded by the North American Industrial Classification System (1997 Edition)." This amendment is needed to update the definition to refer to the applicable NAICS sector rather than the SIC industry code.

Section 802.2(g) Certain Acquisitions of Real Property Assets

In Section 802.2(g), the reference to the SIC in the parenthetical will be amended by replacing "(activities within SIC Major Groups 01 and 02)" with "(activities within NAICS sector 11)." This amendment is necessary to update the definition to refer to the applicable NAICS sector rather than the SIC industry codes. Section 802.2(g) is also the subject of a substantive proposed rule change set forth at 66 FR 8723–8729 (February 1, 2001), but that change will not affect the parenthetical referenced here. The parenthetical reference to "(activities within SIC Major Groups 01 and 02)" will be amended as of July 1, 2001, along with the other NAICS changes.

Item 3 of the Instructions

The last sentence of the Instruction to Item 3(a) will be corrected by inserting the word "involved" between the words "persons" and "in." In the Instruction to Item 3(c), the reference to "items 3(c)(i)–3(c)(viii)" will be corrected to read "items 3(c)(i)–3(c)(vi)."

Item 5 of the Form and Instructions

The last paragraph of the general instruction to Items 5(a) through 5(c) will be revised to clarify that persons filing notification should report revenues derived by all entities included within the person at the time the Notification and Report Form is prepared for each applicable subpart of Item 5. Filing persons have always been required to provide this information for all entities they controlled at the time of filing. The specific reference to the base year in the instruction was added because the Commission wanted to make clear that information for the base year should be included for those entities that were acquired after the base year. Since the instruction has been the subject of questions on several

[1] The ECPC was chaired by the Bureau of Economic Analysis, U.S. Department of Commerce, with representatives from the Bureau of the Census, U.S. Department of Commerce, and the Bureau of Labor Statistics, U.S. Department of Labor.

[2] The North American Free Trade Agreement provided an impetus to create a new industry classification system as well, since the United States, Mexico, and Canada favored the development of a uniform industrial classification system for North America. Mexico and Canada have also adopted NAICS, with variations.

[3] A NAICS "sector" is comparable to the term "division" used in the SIC.

[4] Information regarding the NAICS can be found in the "North American Industry Classification—United States, 1997" (1997 NAICS Manual) published by the Executive Office of the President, Office of Management and Budget should be used to locate NAICS industry codes. Information is also is available at *www.census.gov*, or by dialing 1–888–75NAICS.

[5] Periodically, the Commission has adjusted the base year when the Bureau of the Census published a new "Economic Census." *See* 45 FR 14205 (March 5, 1980); 51 FR 10368 (March 26, 1986); 55 FR 31371 (August 2, 1990); and 60 FR 40704 (August 9, 1995).

[6] Cross-reference tables comparing the 1997 NAICS product classes and product codes to the 1992 SIC product classes and vice versa, are found in Appendices E and F, respectively, in the "1997 Numerical List of Manufactured and Mineral Products." For an electronic version of the "Numerical List," visit the Bureau of Census web site. Click on "Publications" and search the "Numerical List." Where a product code is not listed in the specific subsector table refer to the "Current Industrial Reports" by clicking on the letter "C" located on the left grid of the web site.

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occasions, the revised language should eliminate any confusion about this requirement.

Item 5(a) will require that the filing person provide 1997 base year revenue data for each 6-digit NAICS industry code(s) in which it derived revenues. Item 5(b)(i) will require that a filing person engaged in manufacturing provide 1997 base year revenue data for each 10-digit NAICS product code(s) in which it derived any revenues. Item 5(c) will require that a filing person engaged in non-manufacturing activities provide 6-digit NAICS industry revenue data for the most recent year.

Item 5(b)(ii) will require that the filing person identify each manufactured product it has added or deleted since 1997 by 10-digit NAICS-based product code(s). The filing person must also give the year in which the product was added or deleted, and must provide the total dollar revenue attributable to each product added for the most recent year by 10-digit NAICS-based product code.

The second paragraph of the Instruction to Item 5(b)(ii) will be revised to clarify that while products added by reason of acquisition of an entity are not included in this item, products added by reason of an acquisition of assets constituting less than an entity should be reported. The paragraph will also be revised to clarify that the same is true of products deleted by disposition of assets. The reference to dispositions of voting securities will be removed in order to correct a technical error in the original instructions. (If a product has been deleted by a disposition of voting securities, then that issuer is no longer within the person filing notification, and no Item 5 information is required for that issuer.)

Item 5(b)(iii) will require that the filing person engaged in manufacturing provide revenue data for the most recent year for each 7-digit NAICS-based class code(s) in which it derived revenues.

The paragraph following the note to Item 5(c) in the Instructions references the Insurance Appendix, which was designed to elicit information relating to insurance activities, broken down by type of insurance. Over time, the Commission has determined that requiring a separate listing for insurance overlaps has not been particularly useful. Consequently, all insurance revenues, including those revenues previously classified under 2-digit SIC major group 63, will now be required to be reported in Item 5. The Insurance Appendix will be deleted and this reference in the Instructions will no longer be needed.

Item 5(d)(iv) of the Form and the Instructions will require that the filing person identify the source of dollar revenues by 6-digit NAICS industry code(s) for a joint venture or other corporation. If the joint venture or other corporation is engaged in manufacturing, the filing person will be required to specify each 7-digit NAICS-based product class code in which it will derive revenues.

In Item 5(d) of the Form, the number "(1)" will be changed to "(i)" to correct a typographical error.

Item 6 of the Form

In the heading of Item 6(b) on the Form, the word "or" will be corrected to "of," so that it reads, "Shareholders of Person Filing Notification."

Item 7 of the Form and Instructions

Item 7, which currently requires geographic market information for any 4-digit SIC code in which more than one party to the transaction derives revenues, will require this geographic market information by 6-digit NAICS industry code(s).

Items 7(c)(i–vi) of the Instructions, which require the submission of geographic market information by state and, in some instances, by county, city or town, will be amended by adding the references to the NAICS sectors and subsectors rather than the SIC major groups. The reference to the NAICS sectors and subsectors were carefully compared with the SIC to ensure that the assignment of NAICS codes to subdivisions (i–vi) of Item 7(c) will correspond to the SIC codes currently required. For example, the Instructions to Items 7(c)(v) and 7(c)(vi) will be revised to accommodate a change in classification under the NAICS of insurance agencies/brokerages and insurance carriers. Insurance agencies and brokerages have always been required to list the states in which their establishments are located, while insurance carriers are required to list the states in which they are licensed to write insurance. Under the SIC, agencies and brokerages were reported under Major Group 64, while insurance carriers were reported under Major Group 63. Both types of activities are classified under Sector 52 in the NAICS, but insurance carriers and insurance agencies/brokerages are classified under NAICS Industry Group 5241 and 5242, respectively. Thus, the Instruction to Item 7(c)(v) will apply to insurance agencies/brokers (NAICS Industry Group 5242) and the Instruction to Item 7(c)(vi) will apply to insurance carriers (NAICS Industry Group 5241).

Item 8 of the Form and Instructions

Item 8 requires that the acquiring person report certain recent acquisitions of assets and voting securities, where the assets or voting securities that were previously acquired derived revenues in the same 4-digit SIC code as reported in Item 7 in the instant acquisition. This item will ask for this information by 6-digit NAICS industry code(s).

The instruction to Item 8 will be revised to clarify that information should be provided as to any previous acquisitions where such acquisitions were of a controlling interest in an issuer with sales or assets satisfying the threshold in the instruction. The previous language, requiring the listing of acquisitions of "more than 50 percent" of the voting securities of an entity, did not technically encompass an acquisition of exactly 50 percent, which also would constitute a controlling interest. The instruction for asset acquisitions will also be revised to require the listing of any previous acquisition of assets valued at or above the statutory size-of-transaction test at the time of their acquisition, rather than any acquisition of more than 50 percent of the assets of an entity. Requiring the listing of asset acquisitions of a potentially reportable size at the time of their acquisition, and therefore deemed by Congress to warrant antitrust scrutiny, should yield more meaningful information than the listing of acquisitions of over 50 percent of the assets of an entity with assets of $10 million or more, which could be extremely small and of little antitrust significance. In addition, the requirement to provide annual net sales and total assets of the acquired entity in the year prior to the acquisition has been eliminated. Numerous informal comments have been received over the years indicating that this information is often difficult to obtain, particularly for prior acquisitions of assets. The agencies have determined that the burden placed on persons filing notification outweighs the usefulness of the information in analyzing the antitrust implications of the transaction. Accordingly, Items 8(e) and 8(f) will be deleted and Item 8(g) will be redesignated as Item 8(e).

Insurance Appendix and Section 803.2

As noted in Item 5, this appendix will be deleted in its entirety. Section 803.2 has been amended to reflect the deletion.

Administrative Procedure Act

The requirement to publish a notice of proposed rulemaking and afford an opportunity for public comment under the Administrative Procedure Act does not apply when an agency for good cause finds that such procedure would be "impracticable, unnecessary, or contrary to the public interest." *See* 5 U.S.C. 553(b)(A).

The Commission believes that a notice of proposed rulemaking with public comment is unnecessary here. The NAICS has already become the U.S. standard as an industrial classification system for statistical agencies, replacing the SIC. The NAICS is used by all federal statistical agencies, and has already been widely adopted by state agencies, trade associations, private businesses, and other organizations. Moreover, as noted earlier, the use of the NAICS will improve both the accuracy and consistency of data submitted by filing parties and the evaluation of entry and industry overlap issues as part of the Commission's premerger antitrust analysis. In addition, these revisions will not alter or otherwise affect the substantive rights of the filing parties or the standards by which the Commission is required to conduct such premerger review. Finally, the publication of this interim rule is being made to provide the public with ample opportunity to implement the change to the NAICS from the SIC.

Nonetheless, the Commission is soliciting comment regarding the July 1, 2001 effective date of these amendments to ascertain whether it provides sufficient time for filing persons to comply.

After the comment period, the Commission will publish a notice and final rule in the **Federal Register**. The notice will discuss comments received and will indicate the action taken by the Commission in light of such comments.

Regulatory Flexibility Act

The information required by the amended Form is substantially the same as the information elicited on the current Form. The only difference is that filing persons will be required to report revenue data using the NAICS instead of the SIC in Items 5, 7, and 8. The change in base year simply requires that filing persons use data from the "1997 Economic Census" rather than data from the "1992 Economic Census." The ministerial changes clarify or simplify existing practices.

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that the agency conduct an initial and final regulatory analysis of the anticipated economic impact of the proposed amendments on small businesses, except where the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605. Because of the size of the transactions necessary to invoke a Hart-Scott-Rodino filing,[7] the premerger notification rules rarely, if ever, affect small businesses. The recent amendments to section 7A of the Clayton Act and the Commission's implementing rule amendments were intended to reduce the burden of the premerger notification program by exempting all transactions valued at $50 million or less.

Furthermore, most federal statistical agencies have adopted the NAICS since 1997. Accordingly, many companies that currently file HSR notifications have submitted economic information to the Bureau of the Census using the NAICS codes since 1997. For these filing persons, reporting base year revenue data classified under the NAICS should present little difficulty. For persons that do not have base year revenue data coded under the NAICS, the delayed effective date of the amendments to the Form should provide sufficient time to convert their SIC data to the NAICS format with minimal burden. Finally, potential filers have always been required to provide base year data from the most recent Economic Census since the inception of the Form in 1978.

In light of the foregoing, the Commission certifies that the amendments to the Form will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. Thus, neither an initial nor a final regulatory flexibility analysis of this revision is required. 5 U.S.C. 605. This document serves as the required notice of this certification to the Small Business Administration.

Paperwork Reduction Act

The Commission's revisions to the Form do not "substantive[ly] or material[ly] modify" the existing terms of the currently approved collection of information (OMB Control Number 3084–0005) to necessitate OMB's further review and approval. *See* 44 U.S.C. 3507(h)(3); 5 CFR 1320.5(g).

[7] As noted in the Commission's recent publication of interim rules amending the premerger notification rules, the increase in reporting threshold from $15 million to $50 million has significantly reduced the number of entities affected by the premerger notification program. *See* 66 FR 8680, 8687 (February 2, 2001).

List of Subjects in 16 CFR Parts 801, 802, and 803

Antitrust, Business and industry, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Commission amends 16 CFR part 801, 802, and 803 as follows:

PART 801—COVERAGE RULES

1. The authority citation for part 801 continues to read as follows:

Authority: 15 U.S.C. 18a(d).

2. Amend § 801.1 by revising paragraph (j) to read as follows:

§ 801.1 Definitions

* * * * *

(j) *Engaged in manufacturing.* A person is engaged in manufacturing if it produces and derives annual sales or revenues in excess of $1 million from products within industries in Sectors 31–33 as coded by the North American Industrial Classification System (1997 Edition) published by the Executive Office of the President, Office of Management and Budget.

* * * * *

PART 802—EXEMPTION RULES

3. The authority citation for part 802 continues to read as follows:

Authority: 15 U.S.C. 18a(d).

4. Amend § 802.2 by revising paragraph (g) to read as follows:

§ 802.2 Certain acquisitions of real property assets.

* * * * *

(g) *Agricultural property.* An acquisition of agricultural property, assets incidental to the ownership of such property and associated agricultural assets shall be exempt from the requirements of the act. Agricultural property is real property and assets that primarily generate revenues from the production of crops, fruits, vegetables, livestock, poultry, milk and eggs (activities within NAICS sector 11).

* * * * *

PART 803—TRANSMITTAL RULES

5. The authority citation for part 803 continues to read as follows:

Authority: 15 U.S.C. 18a(d).

6. Amend § 803.2 by revising paragraphs (b) introductory text, (b)(1) introductory text, and (c) introductory text as set forth below.

§ 803.2 Instructions applicable to Notification and Report Form.

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(b) Except as provided in paragraph (b)(2) of this section and paragraph (c) of this section:

(1) items 5–8 of the Notification and Report Form must be completed—

* * * * *

(c) In response to items 5, 7, and 8 of the Notification and Report Form—

* * * * *

7. The Appendix to Part 803 is amended by revising pages I, II, III, IV, V, VI of the instructions to the Antitrust Improvements Act Notification and Report Form for Certain Mergers and Acquisitions, and pages 1 through 15 of the Notification and Report Form for Certain Mergers and Acquisitions to read as follows:

Appendix to Part 803

ANTITRUST IMPROVEMENTS ACT NOTIFICATION AND REPORT FORM for Certain Mergers and Acquisitions

INSTRUCTIONS

GENERAL

The Answer Sheets (pp. 1-15) constitute the Notification and Report Form ("the Form") required to be submitted pursuant to § 803.1(a) of the premerger notification rules ("the rules"). Filing persons need not, however, record their responses on the Form.

These instructions specify the information which must be provided in response to the Items on the Answer Sheets. Only the completed Answer Sheets, together with all documentary attachments, are to be filed with the Federal Trade Commission and the Department of Justice.

Persons providing responses on attachment pages rather than on answer sheets must submit a complete set of attachment pages with each copy of the Form.

The term "documentary attachments" refers to materials supplied in responses to Item 3(d), Item 4 and to submissions pursuant to §§ 803.1(b) and 803.11 of the rules.

Information-The central office for information and assistance concerning the rules, 16 CFR Parts 801-803, and the Form is Room 303, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, phone (202) 326-3100.

Definitions-The definitions and other provisions governing this Form are set forth in the rules, 16 CFR Parts 801-803. The governing statute, the rules, and the Statement of Basis and Purpose for the rules are set forth at 43 FR 33450 (July 31, 1978), 44 FR 66781 (November 22, 1979) 48 FR 34427 (July 29, 1983) and Pub. L. No. 106-533, 114 Stat. 2762.

Affidavit-Attach the affidavit required by § 803.5 to page 1 of the Form. Affidavits are not required if the person filing notification is an acquired person in a transaction covered by § 801.30. (See § 803.5(a)).

Responses-*Each answer* should identify the Item to which it is addressed. Use the reverse side of the corresponding answer sheet or attach separate additional sheets as necessary in answering each Item. Each additional sheet should identify at the top of the page the Item to which it is addressed. Voluntary submissions pursuant to § 803.1(b) should also be identified.

Enter the name of the person filing notification appearing in Item 1(a) on page 1 of the Form and the date on which the Form is completed at the top of each page of the Form, at the top of any sheets attached to complete the response to any Item, and at the top of the first or cover page of each documentary attachment.

If unable to answer any Item fully, give such information as is available and provide a statement of reasons for non-compliance as required by § 803.3. If exact answers to any Item cannot be given, enter best estimates and indicate the sources or bases of such estimates. Estimated data should be followed by the notation, "est." All information should be rounded to the nearest thousand dollars.

Year-All references to "year" refer to calendar year. If the data are not available on a calendar year basis, supply the requested data for the fiscal year reporting period which most nearly corresponds to the calendar year specified. References to "most recent year" mean the most recent calendar or fiscal year for which the requested information is available.

North American Industry Classification System (NAICS) Data-This Notification and Report Form requests information regarding dollar revenues and lines of commerce at three levels with respect to operations conducted within the United States. (See § 803.2(c)(1).) All persons must submit certain data at the 6-digit NAICS national industry code level. To the extent that dollar revenues are derived from *manufacturing operations* (NAICS Sectors 31-33), data must also be submitted at the *7-digit NAICS product class and 10-digit NAICS product code levels.* The term "dollar revenues" is defined in § 803.2(d).

References-In reporting information by 6-digit NAICS industry code refer to the *North American Industry Classification System - United States, 1997* (*1997 NAICS Manual*) published by the Executive Office of the President, Office of Management and Budget. In reporting information by 7-digit NAICS product class and 10-digit NAICS product code refer to the *1997 Numerical List of Manufactured and Mineral Products* (EC97M31R-NL) published by the Bureau of the Census. Information regarding NAICS also is available at www.census.gov, or by dialing 1-888-75NAICS.

Privacy Act Statement-Section 18a(a) of Title 15 of the U.S. Code authorizes the collection of this information. The primary use of this information is to determine whether the merger or acquisition reported in the Notification and Report Form may violate the antitrust laws.

Furnishing the information on the Form is voluntary. Consummation of an acquisition required to be reported by the statute cited above without having provided this information may, however, render a person liable to civil penalties up to $11,000 per day.

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Items 5, 7, 8-Supply information only with respect to operations conducted within the United States, including its commonwealths, territories, possessions and the District of Columbia. (See §§ 801.1(k); 803.2(c)(1).)

Information need not be supplied regarding assets or voting securities currently being acquired, when the acquisition is exempt under the statute or rules. (See § 803.2(c)(2).)

The acquired person should limit its response in the case of an acquisition of assets, to the assets being sold, and in the case of an acquisition of voting securities, to the issuer(s) whose voting securities are being acquired and all entities controlled by such issuer. Separate responses may be required where a person is both acquiring and acquired. (See § 803.2(b) and (c).)

Filing-Complete and return two copies (with one notarized original affidavit and certification and one set of documentary attachments) of this Notification and Report Form to the Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Three copies (with one set of documentary attachments) should be sent to: Director of Operations, Antitrust Division, Department of Justice, Patrick Henry Bldg., 601 D Street, N.W., Room #10013, Washington, D.C. 20530. (For FEDEX airbills to the Department of Justice, do not use the 20530 zip code; use zip code 20004.)

ITEM BY ITEM

Affidavit-Attach the affidavit required by § 803.5 to page 1 of the Answer Sheets. Acquiring persons in transactions covered by § 801.30 are required to also submit a copy of the notice served on the acquired person pursuant to § 803.5(a)(1). (See § 803.5(a)(3).)

Fee Information-The fee for filing the Notification and Report Form is based on the aggregate total amount of assets and voting securities to be held as a result of the acquisition:

Value of assets or voting securities to be held	Fee Amount
greater than $50 million but less than $100 million	$45,000
$100 million or greater but less than $500 million	$125,000
$500 million or greater	$280,000

Amount Paid-Indicate the amount of the filing fee paid. This amount should be net of any banking or financial institution charges. Where an explanatory attachment is required, include in your explanation any adjustments to the acquisition price that serve to lower the fee from that which would otherwise be due. If there is no acquisition price or if the acquisition price may fall within a range that straddles two filing fee thresholds, state the transaction value on which the fee is based and explain the valuation method used. Include in your explanation a description of any exempt assets, the value assigned to each, and the valuation method used.

A Valuation Worksheet available from the Premerger Notification Office will be helpful in determining the value of a transaction for filing and fee purposes. This Worksheet need not be submitted with the Notification and Report Form, but it or something similar should be utilized and retained by the acquiring person in the event Commission staff has questions about the valuation of the transaction.

Payer Identification- Provide the 9-digit Taxpayer Identification Number (TIN) of the acquiring person and, if different from the filing person, the TIN of the payer(s) of the filing fee. A payer or filing person who is a natural person having no TIN must provide the name and social security number (SSN) of the payer. If the payer or filing person is a foreign person, only the name of the payer and the name of the filing person need be supplied if different.

Method of Payment-Check the box indicating the method of fee payment. If paying by electronic wire transfer (EWT), provide the name of the financial institution from which the EWT is being sent and the confirmation number.

To insure filing fees paid by EWT are attributed to the appropriate payer filing notification, the payer must provide the following information to the financial institution initiating the EWT:

The Department of Treasury's ABA Number: 021030004;
and
The Federal Trade Commission's ALC Number: 29000001.

If the name used to transmit the EWT differs from the filer's name, provide the alternative name. If the confirmation number is unavailable at the time notification is filed, provide this information by letter within one business day of filing.

Corrective Filing-Put an X in the appropriate box to indicate whether the notification is a corrective filing being made for an acquisition that has already taken place in violation of the statute. Attach a detailed, written explanation signed by a company official explaining (1) how the violation occurred, (2) when and how the violation was discovered and (3) what steps will be taken to ensure compliance in the future.

Transactions Subject to Foreign Antitrust Notification-If to the knowledge or belief of the filing person at the time of filing this notification, a foreign antitrust or competition authority has been or will be notified of the proposed transaction, list the name of each such authority and the date or anticipated date of each such notification. Response to this item is voluntary.

Cash Tender Offer-Put an X in the appropriate box to indicate whether the acquisition is a cash tender offer.

Bankruptcy-Put an X in the appropriate box to indicate whether the acquired person's filing is being made by a trustee in bankruptcy or a debtor-in-possession for a transaction that is subject to section 363(b) of the Bankruptcy Code (11USC § 363).

Early Termination-Put an X in the yes box to request early termination of the waiting period. Notification of each grant of early termination will be published in the Federal Register as required by § 7A(b)(2) of the Clayton Act and on the FTC web site www.ftc.gov.

ITEM 1

Item 1(a)-Give the name and headquarters address of the person filing notification. The name of the person is the name of the ultimate parent entity included within that person.

Item 1(b)-Indicate whether the person filing notification is an acquiring person, an acquired person, or both an acquiring and acquired person. (See § 801.2.)

Item 1(c)-Put an X in the appropriate box to indicate whether the person in Item 1(a) is a corporation, partnership or other (specify).

Item 1(d)-Put an X in the appropriate box to indicate whether data furnished is by calendar year or fiscal year. If fiscal year, specify period.

Item 1(e)-Put an X in the appropriate box to indicate if this Form is being filed on behalf of the ultimate parent entity by another entity within the same person authorized by it to file notification on its behalf pursuant to § 803.2(a), or if this Form is being filed pursuant to § 803.4 on behalf of a foreign person. Then provide the name and mailing address of the entity filing notification on behalf of the reporting person named in Item 1(a) of the Form.

Item 1(f)-If an entity within the person filing notification other than the ultimate parent entity listed in Item 1(a) is the entity which is making the acquisition, or if the assets or voting securities of an entity other than the ultimate parent entity listed in Item 1(a) are being acquired, provide the name and mailing address of that entity and the percentage of its voting securities held by the person named in Item 1(a) above. (If control is effected by means other than the direct holding of the entity's voting securities, describe the intermediaries or the contract through which control is effected (see § 801.1(b)).

Item 1(g)-Print or type the name and title, firm name, address, telephone number, fax number and e-mail address of the individual to contact regarding this Notification and Report Form. (See § 803.20(b)(2)(ii).)

Item 1(h)-Foreign filing persons print or type the name and title, firm name, address, telephone number, fax number and e-mail address of an individual located in the United States designated for the limited purpose of receiving notice of the issuance of a request for additional information or documentary material. (See § 803.20(b)(2)(iii).)

ITEM 2

Item 2(a)-Give the names of all ultimate parent entities of acquiring and acquired person which are parties to the acquisition whether or not they are required to file notification.

Item 2(b)-Put an X in all the boxes that apply to this acquisition.

Item 2(c)-*Acquiring persons* put an X in the box to indicate the highest threshold for which notification is being filed (see § 801.1(h)): $50 million, $100 million, $500 million, 25% (if value of voting securities to be held is greater than $1 billion), or 50%.

Item 2(d)-*Assets and voting securities held as a result of the acquisition* (to be completed by both acquiring and acquired persons). State:

Item 2(d)(i)-the value of voting securities;

Item 2(d)(ii)-the percentage of voting securities;

Item 2(d)(iii)-the value of assets:

Item 2(d)(iv)-the aggregate total amount of voting securities and assets of the acquired person to be held by each acquiring person, as a result of the acquisition (see §§ 801.12, 801.13, and 801.14).

Item 2(e)-Acquiring persons must provide the name(s) of the person(s) who performed any fair market valuation used to determine the aggregate total value of the transaction reported in Item 2(d)(iv).

ITEM 3

Item 3(a)-*Description of acquisition.* Briefly describe the transaction. Include a list of the name and mailing address of each acquiring and acquired person, whether or not required to file notification. Indicate for each party whether assets or voting securities (or both) are to be acquired. Also indicate what consideration will be received by each party. In describing the acquisition, include the expected dates of any major events required to consummate the transaction (e.g., stockholders' meetings, filing of requests for approval, other public filings, terminations of tender offers) and the scheduled consummation date of the transaction.

If the voting securities are to be acquired from a holder other than the issuer (or an entity within the same person as the issuer) separately identify (if known) such holder and the issuer of the voting securities. Acquiring persons involved in tender offers should describe the terms of the offer.

Item 3(b)(i)-*Assets to be acquired.* This Item is to be completed only to the extent that the transaction is an acquisition of assets. Describe all general classes of assets (other than cash and securities) to be acquired by each party to the transaction, giving dollar values thereof.

Give the total value of the assets to be acquired in this transaction.

Examples of general classes of assets other than cash and securities are land, merchandising inventory, manufacturing plants (specify location and products produced), and retail stores. For each general class of assets, indicate the page or paragraph number of the contract or other document submitted with this Form in which the assets are more particularly described.

Item 3(b)(ii)-*Assets held by acquiring person.* (To be completed by acquiring persons). If assets of the acquired person (see § 801.13) are presently held by the person filing notification, furnish a description of each general class of such assets in the manner required by Item 3(b)(i), and the dollar value or estimated dollar value at the time they were acquired.

Item 3(c)-*Voting securities to be acquired.* Furnish the following information separately for each issuer whose voting securities will be acquired in the acquisition: (If, as a result of the acquisition, the acquiring person will hold 100 percent of the voting securities of the acquired issuer or if the acquisition is a merger or consolidation (see § 801.2(d)), the parties may so state and provide the total dollar value of the transaction instead of responding to Items 3(c)(i)-3(c)(vi).

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Item 3(c)(i)-List each class of voting securities (including convertible voting securities) which will be outstanding after the acquisition has been completed. If there is more than one class of voting securities, include a description of the voting rights of each class. Also list each class of non-voting securities which will be acquired in the acquisition;

Item 3(c)(ii)-Total number of shares of each class of securities listed which will be outstanding after the acquisition has been completed;

Item 3(c)(iii)-Total number of shares of each class of securities listed which will be acquired in this acquisition. If there is more than one acquiring person for any class of securities, show data separately for each acquiring person;

Item 3(c)(iv)-Identity of each person acquiring any securities of any class listed. If there is more than one acquiring person for any class of securities, show data separately for each acquiring person;

Item 3(c)(v)-Dollar value of securities of each class listed to be acquired in this transaction (see § 801.10). If there is more than one acquiring person of any class of securities, show data separately for each acquiring person (If the exact dollar value cannot be determined at the time of filing, provide an estimated value and indicate the basis on which the estimate was made);

Item 3(c)(vi)-Total number of each class of securities listed which will be held by acquiring person(s) after the acquisition has been accomplished. If there is more than one acquiring person for any class of securities, show data separately for each acquiring person;

Item 3(d)-Furnish copies of final or most recent versions of all documents which constitute the agreement among the acquiring person(s) and the person(s) whose voting securities or assets are to be acquired. (Do not attach these documents to the Answer Sheets.)

ITEM 4

Furnish one copy of each of the following documents. For each entity included within the person filing notification which has prepared its own such documents different from those prepared by the person filing notification, furnish, in addition, one copy of each document from each such other entity. Furnish copies of:

Item 4(a)-all of the following documents which have been filed with the United States Securities and Exchange Commission (or are to be filed contemporaneously in connection with this acquisition); the most recent proxy statement and Form 10-K, each dated not more than three years prior to the date of this Notification and Report Form; all Forms 10-Q and 8-K filed since the end of the period reflected by the Form 10-K being supplied; any registration statement filed in connection with the transaction for which notification is being filed; if the acquisition is a tender offer, Schedule TO. Alternatively, if the person filing notification does not have copies of responsive documents readily available, identification of such documents and citation to date and place of filing will constitute compliance;

NOTE: In response to Item 4(a), the person filing notification may incorporate by reference documents submitted with an earlier filing as explained in the staff formal interpretations dated April 10, 1979, and April 7, 1981, and in § 803.2(e).

Item 4(b)-the most recent annual reports and most recent annual audit reports (of person filing notification and of each unconsolidated United States issuer included within such person) and, if different, the most recently prepared balance sheet of the person filing notification and of each unconsolidated United States issuer included within such person;

Item 4(c)-all studies, surveys, analyses and reports which were prepared by or for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) for the purpose of evaluating or analyzing the acquisition with respect to market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets, and indicate (if not contained in the document itself) the date of preparation, and the name and title of each individual who prepared each such document.

Persons filing notification may provide an optional index of documents called for by Item 4 of the Answer Sheets.

NOTE: If the person filing notification withholds any documents called for by Item 4(c) based on a claim of privilege, the person must provide a statement of reasons for such noncompliance as specified in the staff formal interpretation dated September 13, 1979, and § 803.3(d).

ITEMS 5 through 8

NOTE: For Items 5 through 8, the acquired person should limit its response in the case of an acquisition of assets, to the assets to be sold, and in the case of an acquisition of voting securities, to the issuer(s) whose voting securities are being acquired and all entities controlled by such issuer. A person filing as both acquiring and acquired may be required to provide a separate response to these items in each capacity so that it can properly limit its response as an acquired person. (See § 803.2(b) and (c).)

Items 5(a)-5(c): These items request information regarding dollar revenues and lines of commerce at three NAICS levels with respect to operations conducted within the United States. (See § 803.2(c)(1).) All persons must submit certain data at the 6-digit NAICS industry code level. To the extent that dollar revenues are derived from manufacturing operations (NAICS Sectors 31-33), data must also be submitted at the 7-digit product class level and 10-digit product code level (NAICS-based codes). Where certain published NAICS industry codes contain only 5 digits, the filing person should add a zero (0) after the fifth (5th) digit.

NOTE: See "References" listed in the General Instructions to the Form. Refer to the *1997 NAICS Manual* for the 6-digit industry codes and the *1997 Numerical List of Manufactured and Mineral Products (1997 Numerical List)* for the 7-digit product classes and 10-digit product codes. Report revenues for the 7-digit NAICS product classes and 10-digit NAICS product codes using the codes in the columns labeled "Product code" in the *1997 Numerical List.*

Nondepository credit intermediation (NAICS Industry Group Code 5222); securities, commodity contracts, and other financial investments (NAICS Subsector 523); funds, trusts, and other financial vehicles (NAICS Subsector 525); real estate (NAICS Subsector 531); lessors of nonfinancial intangible assets, except copyright works (NAICS Subsector 533); and management of companies and enterprises (NAICS Subsector 551) should identify or explain the revenues reported (e.g. dollar sales receipts).

Persons filing notification should include the total dollar revenues for all entities included within the person filing notification at the time this Notification and Report Form is prepared (even if such entities have become included within the person since 1997). For example, if the person filing notification acquired an entity in 1998, it must include that entity's 1997 revenues in items 5(a) and 5(b)(i). It must also include that entity's most recent year's revenues in Item 5(b)(iii) and/or Item 5(c).

Item 5(a)-*Dollar revenues by industry.* Provide aggregate 6-digit NAICS industry data for 1997.

Item 5(b)(i)-*Dollar revenues by manufactured product.* Provide the following information on the aggregate operations for the person filing notification for 1997 for each 10-digit NAICS product of the person in NAICS Sectors 31-33 (manufacturing industries).

NOTE: Where the *1997 Numerical List* denotes footnote 1 at the end of a specific Subsector, refer to Appendices A, and then B for detail collected in a specified Current Industrial Report. You must provide 10-digit NAICS product codes and descriptions listed in Appendix B.

Item 5(b)(ii)-*Products added or deleted.* Within NAICS Sectors 31-33 (manufacturing industries), identify each product of the person filing notification added or deleted subsequent to 1997, indicate the year of addition or deletion, and state total dollar revenues in the most recent year for each product that has been added. Products may be identified either by 10-digit NAICS product code or in the manner ordinarily used by the person filing notification.

Do not include products added since 1997 by reason of mergers or acquisitions of entities occurring since 1997. Dollar revenues derived from such products should be included in response to Item 5(b)(i). However, if an entity acquired since 1997 by the person filing notification (and now included within the person) itself has added any products since 1997, these products and the dollar revenues derived therefrom should be listed here. Products deleted by reason of dispositions of assets constituting less than substantially all of the assets of an entity since 1997 should also be listed here.

Item 5(b)(iii)-*Dollar revenues by manufactured product class.* Provide the following information concerning the aggregate operations of the person filing notification for the most recent year for each 7-digit NAICS product class within NAICS Sectors 31-33 (manufacturing industries) in which the person engaged. If such data have not been compiled for the most recent year, estimates of dollar revenues by 7-digit NAICS product class may be provided if a statement describing the method of estimation is furnished.

Item 5(c)-*Dollar revenues by non-manufacturing industry.* Provide the following information concerning the aggregate operations of the person filing notification for the most recent year for each 6-digit NAICS industry code in NAICS Sectors other than 31-33 (manufacturing industries) in which the person engaged. If such data have not been compiled for the most recent year, estimates of dollar revenues by 6-digit NAICS industry code may be provided if a statement describing the method of estimation is furnished. Industries for which the dollar revenues totaled less than one million dollars in the most recent year may be omitted.

NOTE: *This million dollar minimum is applicable only to Item 5(c).*

JOINT VENTURE OR OTHER CORPORATIONS

Item 5(d)-Supply the following information only if the acquisition is the formation of a joint venture or other corporation. (See § 801.40.)

Item 5(d)(i)-List the name and mailing address of the joint venture or other corporation.

Item 5(d)(ii)(A)-List contributions that each person forming the joint venture or other corporation has agreed to make, specifying when each contribution is to be made and the value of the contribution as agreed by the contributors.

Item 5(d)(ii)(B)-Describe any contracts or agreements whereby the joint venture or other corporation will obtain assets or capital from sources other than the persons forming it.

Item 5(d)(ii)(C)-Specify whether and in what amount the persons forming the joint venture or other corporation have agreed to guarantee its credit or obligations.

Item 5(d)(ii)(D)-Describe fully the consideration which each person forming the joint venture or other corporation will receive in exchange for its contribution(s).

Item 5(d)(iii)-Describe generally the business in which the joint venture or other corporation will engage, including location of headquarters and principal plants, warehouses, retail establishments or other places of business, its principal types of products or activities, and the geographic areas in which it will do business.

Item 5(d)(iv)-Identify each 6-digit NAICS industry code in which the joint venture or other corporation will derive dollar revenues. If the joint venture or other corporation will be engaged in manufacturing also specify each 7-digit NAICS product class in which it will derive dollar revenues.

ITEM 6

This item need not be completed by a person filing notification only as an acquired person if only assets are to be acquired. Persons filing notification may respond to Items 6(a), 6(b), or 6(c) by referencing a "document attachment" furnished with this Form if the information so referenced is a complete response and is up-to-date and accurate. Indicate for each Item the specific page(s) of the document that are responsive to that Item.

Item 6(a)-*Entities within the person filing notification.* List the name and headquarters mailing address of each entity included within the person filing notification. Entities with total assets of less than $10 million may be omitted.

Item 6(b)-*Shareholders of person filing notification.* For each entity (including the ultimate parent entity) included within the person filing notification the voting securities of which are held (see § 801.1(c)) by one or more other persons, list the issuer and class of voting securities, the name and headquarters mailing address of each other person which holds five percent or more of the outstanding voting securities of the class and the number and percentage held by that person. Holders need not be listed for entities with total assets of less than $10 million.

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Item 6(c)-Holdings of person filing notification. If the person filing notification holds voting securities of any issuer not included within the person filing notification, list the issuer and class, the number and percentage held, and (optionally) the entity within the person filing notification which holds the securities. Holdings of less than five percent of the outstanding voting securities of any issuers, and holding of issuers with total assets of less than $10 million may be omitted.

ITEM 7

If, to the knowledge or belief of the person filing notification, the person filing notification derived dollar revenues in the most recent year from operations in industries within any 6-digit NAICS industry code in which any other person that is a party to the acquisition also derived dollar revenues in the most recent year (or in which a joint venture or other corporation will derive dollar revenues), then for each such 6-digit NAICS industry code:

Item 7(a)-supply the 6-digit NAICS industry code and description for the industry;

Item 7(b)-list the name of each person which is a party to the acquisition which also derived dollar revenues in the 6-digit industry;

Item 7(c)-*Geographic market information*:

Item 7(c)(i)-for each 6-digit NAICS industry code within NAICS Sectors 31-33 (manufacturing industries) listed in Item 7(a) above, list the states or, if desired, portions thereof in which, to the knowledge or belief of the person filing notification, the products in that 6-digit NAICS code produced by the person filing notification are sold without a significant change in their form, whether they are sold by the person filing notification or by others to whom such products have been sold or resold;

Item 7(c)(ii)- for each 6-digit NAICS industry code within NAICS Sectors or Subsectors 11 (agriculture, forestry, fishing and hunting); 21 (mining); 22 (utilities); 23 (construction); 48-49 (transportation and warehousing); 511(publishing industries); 513 (broadcasting and telecommunications); and 71 (arts, entertainment and recreation) listed in item 7(a) above, list the states or, if desired, portions thereof in which the person filing notification conducts such operations;

Item 7(c)(iii)-for each 6-digit NAICS industry code within NAICS Sector 42 (wholesale trade) listed in Item 7(a) above, list the states or, if desired, portions thereof in which the customers of the person filing notification are located;

Item 7(c)(iv)-for each 6-digit NAICS industry code within NAICS Sectors or Subsectors 44-45 (retail trade); 512 (motion picture and sound recording industries); 521 (monetary authorities-central bank); 522 (credit intermediation and related activities); 532 (rental and leasing services); 62 (health care and social assistance); 72 (accommodations and food services); 811 (repair and maintenance); and 812 (personal and laundry services) listed in Item 7(a) above, provide the address, **arranged by state, county and city or town,** of each establishment from which dollar revenues were derived in the most recent year by the person filing notification;

Item 7(c)(v)- for each 6-digit NAICS industry code within NAICS Subsectors 514 (information services and data processing services); 523 (securities, commodity contracts and other financial investments and related activities); 525 (funds, trusts and other financial vehicles); 531 (real estate); 533 (lessors of nonfinancial intangible assets, except copyright works); 54 (professional, scientific and technical services); 55 (management of companies and enterprises); 56 (administrative and support and waste management and remediation services); 61 (educational services); 813 (religious, grantmaking, civic, professional, and similar organizations); and NAICS Industry Group 5242 (insurance agencies and brokerages, third party administration of insurance and pension funds, claims adjusting, and other insurance related activities) listed in Item 7(a) above, list the states or, if desired, portions thereof in which establishments were located from which the person filing notification derived revenues in the most recent year; and

Item 7(c)(vi)-for each 6-digit NAICS industry code within NAICS Industry Group 5241 (insurance carriers) listed in Item 7(a) above, list the state(s) in which the person filing notification is licensed to write insurance.

NOTE: Except in the case of those NAICS major industries in the Sectors and Subsectors mentioned in Item 7(c)(iv) above, the person filing notification may respond with the word "national" if business is conducted in all 50 states.

ITEM 8

Item 8-*Previous acquisitions* (to be completed by acquiring persons). Determine each 6-digit NAICS industry code listed in Item 7(a) above, in which the person filing notification derived dollar revenues of $1 million or more in the most recent year and in which either the acquired issuer derived revenues of $1 million or more in the recent year (or, in which, in the case of the formation of a joint venture or other corporation, the joint venture or other corporation reasonably can be expected to derive revenues of $1 million or more), or revenues of $1 million or more in the most recent year were attributable to the acquired assets. For each such 6-digit NAICS industry code, list all acquisitions made by the person filing notification in the five years prior to the date of filing of entities deriving dollar revenues in that 6-digit NAICS industry code. List only acquisitions of 50 percent or more of the voting securities of an issuer which had annual net sales or total assets greater than $10 million in the year prior to the acquisition, and any acquisitions of assets valued at or above the statutory size-of-transaction test at the time of their acquisition.

For each such acquisition, supply:

(a) the name of the entity acquired;
(b) the headquarters address of the entity prior to the acquisition;
(c) whether securities or assets were acquired;
(d) the consummation date of the acquisition; and
(e) the 6-digit (NAICS code) industries by (number and description) identified above in which the acquired entity derived dollar revenues.

CERTIFICATION- (See § 803.6.)

TRANSACTION NUMBER ASSIGNED ☐☐☐☐☐☐☐☐

16 C.F.R. Part 803 - Appendix
NOTIFICATION AND REPORT FORM FOR CERTAIN MERGERS AND ACQUISITIONS

Approved by OMB
3084-0005
Expires 08/31/02

THE INFORMATION REQUIRED TO BE SUPPLIED ON THESE ANSWER SHEETS IS SPECIFIED IN THE INSTRUCTIONS

➢ Attach the Affidavit required by § 803.5 to this page.

FEE INFORMATION

AMOUNT PAID $_____

In cases where your filing fee would be higher if based on acquisition price or where the acquisition price is undetermined to the extent that it may straddle a filing fee threshold, attach an explanation of how you determined the appropriate fee *(acquiring persons only)*.
Attachment Number _____

TAXPAYER IDENTIFICATION NUMBER
or SOCIAL SECURITY NUMBER of payer _____
(acquiring person (and payer if different from acquiring person))
CHECK ATTACHED ☐ MONEY ORDER ATTACHED ☐
WIRE TRANSFER ☐ CONFIRMATION NO. _____
FROM: NAME OF INSTITUTION _____
NAME OF PAYER (if different from PERSON FILING) _____

IS THIS A CORRECTIVE FILING? ☐ YES ☐ NO

IS THIS ACQUISITION SUBJECT TO FOREIGN FILING REQUIREMENTS? ☐ YES ☐ NO
If YES, list jurisdictions: _____

IS THIS ACQUISITION A CASH TENDER OFFER? ☐ YES ☐ NO | BANKRUPTCY? ☐ YES ☐ NO

DO YOU REQUEST EARLY TERMINATION OF THE WAITING PERIOD? *(Grants of early termination are published in the Federal Register AND on the FTC web site www.ftc.gov)*
☐ YES ☐ NO

ITEM 1 – PERSON FILING

1(a) NAME and HEADQUARTERS ADDRESS of PERSON FILING

1(b) PERSON FILING NOTIFICATION IS
☐ an acquiring person ☐ an acquired person ☐ both

1(c) PUT AN "X" IN THE APPROPRIATE BOX TO DESCRIBE PERSON FILING NOTIFICATION
☐ Corporation ☐ Partnership ☐ Other *(Specify)*: _____

1(d) DATA FURNISHED BY
☐ calendar year ☐ fiscal year *(specify period)* _____ (month/year) to _____ (month/year)

THIS FORM IS REQUIRED BY LAW and must be filed separately by each person which, by reason of a merger, consolidation or acquisition, is subject to §7A of the Clayton Act, 15 U.S.C. §18a, as added by Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. No. 94-435, 90 Stat. 1390, and rules promulgated thereunder (hereinafter referred to as "the rules" or by section number). The statute and rules are set forth in the *Federal Register* at 43 FR 33450; the rules may also be found at 16 CFR Parts 801-03. Failure to file this **Notification and Report Form**, and to observe the required waiting period before consummating the acquisition in accordance with the applicable provisions of 15 U.S.C. §18a and the rules, subjects any "person," as defined in the rules, or any individuals responsible for noncompliance, to liability for a penalty of not more than $11,000 for each day during which such person is in violation of 15 U.S.C. §18a.

All information and documentary material filed in or with this Form is confidential. It is exempt from disclosure under the Freedom of Information Act, and may be made public only in an administrative or judicial proceeding, or disclosed to Congress or to a duly authorized committee or subcommittee of Congress.

Filing - Complete and return *two* copies (with one original affidavit and certification and one set of documentary attachments) of this Notification and Report Form to: Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. *Three* copies (with one set of documentary attachments) should be sent to: Director of Operations and Merger Enforcement, Antitrust Division, Department of Justice, Patrick Henry Building, 601 D Street, N.W., Room #10013, Washington, D.C. 20530. (For FEDEX airbills to the Department of Justice, do not use the 20530 zip code; use zip code 20004.)

DISCLOSURE NOTICE - Public reporting burden for this report is estimated to vary from 8 to 160 hours per response, with an average of 39 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this report, including suggestions for reducing this burden to:

Premerger Notification Office,
H-303
Federal Trade Commission
Washington, DC 20580

Office of Information and
Regulatory Affairs,
Office of Management and Budget
Washington, DC 20503

Under the Paperwork Reduction Act, as amended, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. That number is 3084-0005, which also appears in the upper right-hand corner of the first page of this form.

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NAME OF PERSON FILING NOTIFICATION	DATE

1(e) PUT AN X IN THE APPROPRIATE BOX AND GIVE THE NAME AND ADDRESS OF ENTITY FILING NOTIFICATION (if other than ultimate parent entity)

☐ NA ☐ This report is being filed on behalf of a foreign person pursuant to § 803.4. ☐ This report is being filed on behalf of the ultimate parent entity by another entity within the same person authorized by it to file pursuant to § 803.2(a).

NAME OF ENTITY FILING NOTIFICATION	ADDRESS

1(f) NAME AND ADDRESS OF ENTITY MAKING ACQUISITION OR WHOSE ASSETS OR VOTING SECURITIES ARE BEING ACQUIRED IF DIFFERENT FROM THE ULTIMATE PARENT ENTITY IDENTIFIED IN ITEM 1(a)

PERCENT OF VOTING SECURITIES HELD BY EACH ENTITY IDENTIFIED IN ITEM 1(a)

1(g) IDENTIFICATION OF PERSON TO CONTACT REGARDING THIS REPORT

NAME OF CONTACT PERSON TITLE FIRM NAME BUSINESS ADDRESS TELEPHONE NUMBER FAX NUMBER E-MAIL ADDRESS	

(h) IDENTIFICATION OF AN INDIVIDUAL LOCATED IN THE UNITED STATES DESIGNATED FOR THE LIMITED PURPOSE OF RECEIVING NOTICE OF ISSUANCE OF A REQUEST FOR ADDITIONAL INFORMATION OR DOCUMENTS. (See § 803.20(b)(2)(iii))

NAME OF CONTACT PERSON TITLE FIRM NAME BUSINESS ADDRESS TELEPHONE NUMBER FAX NUMBER E-MAIL ADDRESS	

ITEM 2

2(a) LIST NAMES OF ULTIMATE PARENT ENTITIES OF ALL ACQUIRING PERSONS	LIST NAMES OF ULTIMATE PARENT ENTITIES OF ALL ACQUIRED PERSONS

2(b) THIS ACQUISITION IS *(put an X in all the boxes that apply)*

- ☐ an acquisition of assets
- ☐ a merger (see § 801.2)
- ☐ an acquisition subject to § 801.2(e)
- ☐ a formation of a joint venture of other corporation (see § 801.40)
- ☐ an acquisition subject to § 801.30 (*specify type*)
- ☐ other (*specify*) _____
- ☐ a consolidation (see § 801.2)
- ☐ an acquisition of voting securities
- ☐ a secondary acquisition
- ☐ an acquisition subject to § 801.31

2(c) INDICATE THE HIGHEST NOTIFICATION THRESHOLD IN § 801.1(h) FOR WHICH THIS FORM IS BEING FILED *(acquiring person only)*

☐ $50 million ☐ $100 million ☐ $500 million ☐ 25% (see Instructions) ☐ 50%

2(d)(i) VALUE OF VOTING SECURITIES TO BE HELD AS A RESULT OF THE ACQUISITION	(ii) PERCENTAGE OF VOTING SECURITIES	(iii) VALUE OF ASSETS TO BE HELD AS A RESULT OF THE ACQUISITON	(iv) AGGREGATE TOTAL VALUE
$	%	$	$

NAME OF PERSON FILING NOTIFICATION	DATE

2(e) If aggregate total value in 2(d)(iv) is based in whole or in part on a fair market valuation pursuant to § 801.10(c)(3), identify the person or persons responsible for making the valuation *(acquiring persons only)*.

ITEM 3

3(a) DESCRIPTION OF ACQUISITION

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NAME OF PERSON FILING NOTIFICATION	DATE

3(b)(i) ASSETS TO BE ACQUIRED (to be completed only for asset acquisitions)

3(b)(ii) ASSETS HELD BY ACQUIRING PERSON

3(c) VOTING SECURITIES TO BE ACQUIRED
3(c)(i) LIST AND DESCRIPTION OF VOTING SECURITIES AND LIST OF NON-VOTING SECURITIES:

3(c)(ii) TOTAL NUMBER OF SHARES OF EACH CLASS OF SECURITY:

3(c)(iii) TOTAL NUMBER OF SHARES OF EACH CLASS OF SECURITY BEING ACQUIRED:

NAME OF PERSON FILING NOTIFICATION	DATE

3(c)(iv) IDENTITY OF PERSONS ACQUIRING SECURITIES:

3(c)(v) DOLLAR VALUE OF SECURITIES IN EACH CLASS BEING ACQUIRED:

3(c)(vi) TOTAL NUMBER OF EACH CLASS OF SECURITIES TO BE HELD AS A RESULT OF THE ACQUISITION:

3(d) SUBMIT A COPY OF THE MOST RECENT VERSION OF CONTRACT OR AGREEMENT (or letter of intent to merge or acquire)

DO NOT ATTACH THIS DOCUMENT TO THIS PAGE ATTACHMENT OR REFERENCE NUMBER OF CONTRACT OR AGREEMENT _____

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NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 4 PERSONS FILING NOTIFICATION MAY PROVIDE BELOW AN OPTIONAL INDEX OF DOCUMENTS REQUIRED TO BE SUBMITTED BY ITEM 4 (See Item by Item instructions). THESE DOCUMENTS SHOULD NOT BE ATTACHED TO THIS PAGE.

4(a) DOCUMENTS FILED WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION — ATTACHMENT OR REFERENCE NUMBER

4(b) ANNUAL REPORTS, ANNUAL AUDIT REPORTS, AND REGULARLY PREPARED BALANCE SHEETS — ATTACHMENT OR REFERENCE NUMBER

4(c) STUDIES, SURVEYS, ANALYSES, AND REPORTS — ATTACHMENT OR REFERENCE NUMBER

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 5 (See "References" listed in the General Instructions to the Form. Refer to the *North American Industry Classification System-United States, 1997* (*1997 NAICS Manual*) for the 6-digit (NAICS) industry codes. Refer to the *1997 Numerical List of Manufactured and Mineral Products* (EC97M31R-NL) for the 7-digit product class codes and the 10-digit product codes. Report revenues for the 7-digit product class codes and 10-digit product codes using the codes in the columns labeled "Product code." For further information on NAICS-based codes visit the www.census.gov web site.)

5(a) DOLLAR REVENUES BY INDUSTRY

6-DIGIT INDUSTRY CODE	DESCRIPTION	1997 TOTAL DOLLAR REVENUES

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NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 5(b)(i) DOLLAR REVENUES BY MANUFACTURED PRODUCTS

10-DIGIT PRODUCT CODE	DESCRIPTION	1997 TOTAL DOLLAR REVENUES

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 5(b)(ii) PRODUCTS ADDED OR DELETED

DESCRIPTION (10-DIGIT PRODUCT CODE)	ADD	DELETE	YEAR OF CHANGE	TOTAL DOLLAR REVENUES

ITEM 5(b)(iii) DOLLAR REVENUES BY MANUFACTURED PRODUCT CLASS

7-DIGIT PRODUCT CLASS	DESCRIPTION	YEAR _____ TOTAL DOLLAR REVENUES

(Item 5(b)(iii) continued on page 10)

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ITEM 5(b)(iii) DOLLAR REVENUES BY MANUFACTURED PRODUCT CLASS - CONTINUED

7-DIGIT PRODUCT CLASS	DESCRIPTION	YEAR _____ TOTAL DOLLAR REVENUES

ITEM 5(c) DOLLAR REVENUES BY NON-MANUFACTURING INDUSTRY

6-DIGIT INDUSTRY CODE	DESCRIPTION	YEAR _____ TOTAL DOLLAR REVENUES

NAME OF PERSON FILING NOTIFICATION	DATE

5(d) COMPLETE ONLY IF ACQUISITION IS IN THE FORMATION OF A JOINT VENTURE OR OTHER CORPORATION

5(d)(i) NAME AND ADDRESS OF THE JOINT VENTURE OR OTHER CORPORATION

5(d)(ii)

(A) CONTRIBUTIONS THAT EACH PERSON FORMING THE JOINT VENTURE OR OTHER CORPORATION HAS AGREED TO MAKE

(B) DESCRIPTION OF ANY CONTRACTS OR AGREEMENTS

(C) DESCRIPTION OF ANY CREDIT GUARANTEES OR OBLIGATIONS

(D) DESCRIPTION OF CONSIDERATION WHICH EACH PERSON FORMING THE JOINT VENTURE OR OTHER CORPORATION WILL RECEIVE

5(d)(iii) DESCRIPTION OF THE BUSINESS IN WHICH THE JOINT VENTURE OR OTHER CORPORATION WILL ENGAGE

5(d)(iv) SOURCE OF DOLLAR REVENUES BY 6-DIGIT INDUSTRY CODE (non-manufacturing) AND BY 7-DIGIT PRODUCT CLASS (manufacturing)

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NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 6
6(a) ENTITIES WITHIN PERSON FILING NOTIFICATION

6(b) SHAREHOLDERS OF PERSON FILING NOTIFICATION

NAME OF PERSON FILING NOTIFICATION	DATE

6(c) HOLDINGS OF PERSON FILING NOTIFICATION

ITEM 7 DOLLAR REVENUES
7(a) 6-DIGIT NAICS CODE AND DESCRIPTION

7(b) NAME OF EACH PERSON WHICH ALSO DERIVED DOLLAR REVENUES

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7(c) GEOGRAPHIC MARKET INFORMATION

ITEM 8 PRIOR ACQUISITIONS (to be completed by acquiring person only)

NAME OF PERSON FILING NOTIFICATION	DATE

CERTIFICATION

This **NOTIFICATION AND REPORT FORM**, together with any and all appendices and attachments thereto, was prepared and assembled under my supervision in accordance with instructions issued by the Federal Trade Commission. Subject to the recognition that, where so indicated, reasonable estimates have been made because books and records do not provide the required data, the information is, to the best of my knowledge, true, correct, and complete in accordance with the statute and rules.

NAME (Please print or type)	TITLE
SIGNATURE	DATE

Subscribed and sworn to before me at the
City of _____, State of _____

this _____ day of _____, the year _____

Signature _____

My Commission expires _____

[SEAL]

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 01–11592 Filed 5–8–01; 8:45 am]

BILLING CODE 6750–01–C

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, 522, and 558

Animal Drugs, Feeds, and Related Products; Trichlorfon, etc.; Withdrawal of Approval of NADAs

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions that reflect approval of 11 new animal drug applications (NADAs) listed below. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADAs.

DATES: This rule is effective May 21, 2001.

FOR FURTHER INFORMATION CONTACT: Pamela K. Esposito, Center for Veterinary Medicine (HFV–210), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–5593.

SUPPLEMENTARY INFORMATION: The following sponsors have requested that FDA withdraw approval of the NADAs listed below because the products are no longer manufactured or marketed:

Sponsor	NADA Number Product (Drug)	21 CFR Cite Affected (Sponsor Drug Labeler Code)
Purina Mills, Inc., P.O. Box 66812, St. Louis, MO 63166–6812.	NADA 48–915 Purina® Bot Control (trichlorfon)	520.2520a (017800)
Golden Sun Feeds, Inc., 111 South Fifth St., Estherville, IA 51334.	NADA 97–567 Tylan® 10 Premix (tylosin phosphate).	558.625(b)(17) (021780)
.....	NADA 97–615 Swine Med-A-Mix TS 8000 Premix, Tylan® 5, 10, 20, 40 Sulfa-G (tylosin phosphate and sulfamethazine).	558.630(b)(4) and (b)(10) (021780)
Quali-Tech Products, Inc., 318 Lake Hazeltine Dr., Chaska, MN 55318–1093.	NADA 110–440 Hygromix Hygrowormer Hyanthelmix (hygromycin B).	558.274(a)(2), (a)(3), (a)(4), (c)(1)(i), and (c)(1)(ii) (016968)
Steris Laboratories Inc., 620 North 51st Ave., Phoenix, AZ 85043–4705.	NADA 45–578 Lidocaine Hydrochloride With Epinephrine Injection 2%.	522.1258 (000402)
.....	NADA 44–585 Oxytocin Injection	522.1680 (000402)
.....	NADA 45–737 Sodium Pentobarbital Injection	522.1704(b) (000402)
.....	NADA 45–848 Phenylbutazone Injection	522.1720 (000402)
.....	NADA 110–349 Dexamethasone Injection	522.540(c)(2) (000402)
.....	NADA 110–350 Dexamethasone Injection	522.540(b)(2)(ii) (000402)
.....	NADA 117–973 Prednisolone Sodium Succinate for Injection.	522.1884(c) (000402)

Following the withdrawal of approval of these NADAs, Golden Sun Feeds, Inc., is no longer the sponsor of any approved applications. Therefore, 21 CFR 510.600(c) is amended to remove entries for the sponsor.

Steris Laboratories currently has another approved application for dexamethasone injection (NADA 104–606). Therefore, the regulation is not amended to reflect the withdrawal of approval of NADA 110–349 (dexamethasone injection).

Steris Laboratories NADA 44–585 oxytocin injection is not codified under 21 CFR 522.1680 oxytocin injection. Also, Steris Laboratories NADA 45–848 phenylbutazone injection is not codified under 21 CFR 522.1720 phenylbutazone injection. Therefore, amendments of the cited regulations are not required.

As provided below, the animal drug regulations are amended to reflect the withdrawal of approvals.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 520 and 522

Animal drugs.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, 522, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry "Golden Sun Feeds, Inc.", and in the table in paragraph (c)(2) by removing the entry "021780".

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.2520a [Removed]

4. Section 520.2520a *Trichlorfon oral* is removed.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

5. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.1258 [Removed]

6. Section 522.1258 *Lidocaine injection with epinephrine* is removed.

§ 522.1704 [Amended]

7. Section 522.1704 *Sodium pentobarbital injection* is amended by removing and reserving paragraph (b).

§ 522.1884 [Amended]

8. Section 522.1884 *Prednisolone sodium succinate injection* is amended by removing the second sentence of paragraph (c) and by removing paragraph (d)(2)(iv).

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

9. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.274 [Amended]

10. Section 558.274 *Hygromycin B* is amended as follows:

a. In paragraph (a)(2) by removing "016968 and";

b. By removing and reserving paragraph (a)(3);

c. In paragraph (a)(4) by removing "016968,";

d. In the table in paragraph (c)(1) in the fifth column of the first entry in items (i) and (ii) by removing "016968,".

§ 558.625 [Amended]

11. Section 558.625 *Tylosin* is amended by removing and reserving paragraph (b)(17).

§ 558.630 [Amended]

12. Section 558.630 *Tylosin and sulfamethazine* is amended by removing and reserving paragraph (b)(4), and in paragraph (b)(10) by removing "021780,".

Dated: May 2, 2001.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 01–11621 Filed 5–8–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 556

Tolerances for Residues of New Animal Drugs in Food; Narasin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Animal Health which provides for establishing a tolerance for residues of narasin in edible tissues of chickens.

DATES: This regulation is effective May 9, 2001.

FOR FURTHER INFORMATION CONTACT: Janis R. Messenheimer, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7578.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, filed a supplement to NADA 118–980 that provides for the use of Monteban® (36, 45, 54, 72, or 90 grams per pound narasin activity), a Type A medicated article. The supplement provides for establishing a tolerance for residues of narasin in the abdominal fat of chickens. The supplement is approved as of April 11, 2001, and 21 CFR 556.428 is amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, FDA is taking the opportunity to codify the acceptable daily intake for total residues of narasin which was previously established.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 556 is amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

1. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

2. Section 556.428 is revised to read as follows:

§ 556.428 Narasin.

(a) *Acceptable daily intake (ADI).* The ADI for total residues of narasin is 5 micrograms per kilogram of body weight per day.

(b) *Tolerances.*—(1) *Chickens (abdominal fat).* The tolerance for parent narasin (the marker residue) is 480 parts per billion.

(2) [Reserved]

Dated: May 1, 2001.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 01–11584 Filed 5–8–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF 452]

RIN 1512–AA07

River Junction Viticultural Area (98R–192P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule, Treasury Decision.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is establishing a viticultural area located in southern San Joaquin County, California, to be known as "River Junction." This viticultural area is the result of a petition filed by Mr. Ronald W. McManis. ATF believes that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising allow wineries to designate the specific areas where the grapes used to make the wine were grown and enable consumers to better identify the wines they purchase.

EFFECTIVE DATE: July 9, 2001.

FOR FURTHER INFORMATION CONTACT: Tim DeVanney, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226; Telephone (202) 927–8196.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definite American viticultural areas (AVAs). The regulations also allow the name of an

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approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692), which added a new part 9 to 27 CFR, providing for the listing of approved American viticultural areas. Section 4.25a(e)(1), Title 27, Code of Federal Regulations, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in subpart C of part 9. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Petition

ATF has received a petition from Mr. Ronald W. McManis, proposing to establish a new viticultural area in southern San Joaquin County, California, to be known as "River Junction." The viticultural area is located at the western edge of San Joaquin Valley (also known as the Central Valley) and the southernmost edge of the Sacramento-San Joaquin River Delta. It contains approximately 1,300 contiguous acres, of which 740 are currently planted to vineyards. Present agricultural use of the area is primarily 700 acres of Chardonnay grapes. An additional 40 acres are planted to Cabernet Sauvignon grapes.

Notice of Proposed Rulemaking

In response to this petition, ATF published a notice of proposed rulemaking, Notice No. 901, in the **Federal Register** on August 10, 2000 [65 FR 48653], proposing the establishment of the River Junction viticultural area. The notice requested comments from interested persons by October 10, 2000.

Evidence That the Name River Junction Is Locally or Nationally Known

The origin of the name, "River Junction," refers to the junction of the Stanislaus River with the San Joaquin River. Mr. McManis states, "The name is in prominent use within the AVA, undoubtedly because of the significant prehistoric, historic, and ongoing influence of the rivers' confluence on the immediate area." The petitioner owns a vineyard in the AVA. The property, purchased in the early 1990's, was previously known as "River Junction Vineyards." A vineyard block map of his ranch shows the historical ownership of the vineyards by the designation "R" for "River Junction Vineyards." These vineyards are located within the AVA.

The name "River Junction" is also used for River Junction Reclamation District No. 2064, a State of California Special District dating from at least 1925. River Junction Reclamation District includes Bret Harte Gardens subdivision, filed October 11, 1922. Since this subdivision assumes reclamation within the District, it seems likely that "River Junction," as a District name, dates at least to 1922. The name is also used for River Junction Farms subdivision no. 2 within the River Junction Reclamation District.

Evidence of Boundaries

The viticultural area is bounded on the north by an old river terrace shelf delineated by Division Road; on the northwest by a drainage boundary enhanced and delineated by Airport Way; on the west and south by the San Joaquin River; and on the south and east by the Stanislaus River.

Following the Federal Swampland Act of 1850, reclamation of wetlands was begun. A portion of the River Junction AVA was designated as a State Reclamation District, River Junction Reclamation District No. 2064. Ronald McManus indicated that this portion of the AVA ". . . occupies the southern one-third of the California State Reclamation District No. 2064 and is the same as River Junction Farms Subdivision No. 2, except that it does not include 195 acres at the northeast corner of that subdivision."

As indicated, the petitioner owns a vineyard in the viticultural area. Most of the property, purchased in the early 1990's, was previously known as River Junction Vineyards and is located within the northwest and southwest boundaries of the AVA, west of Two Rivers Road.

Geographical Features

Topography

The following topographical evidence shows that the area is distinct from surrounding areas:

(a) *South, east and west boundaries.* The River Junction viticultural area is bounded on the west by relatively steep slopes and the San Joaquin River, and is bounded on the south and east by gentle, nearly flat topography and the Stanislaus River. The area is locally unique in terms of topography: its gentle, persistent southwest slope and higher boundaries form a shallow, slightly tilted bowl about 18 to 25 feet in elevation at the center. Original natural boundaries to the west, south and east have been exaggerated by engineered, permanent levees that range from about 35 to 42 feet in elevation. Geographical analyses, provided by the petitioner, show a transect through the River Junction AVA and illustrate the elevation differences that distinguish it.

(b) *Northern boundary.* The northern boundary of the area is an abrupt, natural elevation change at about the 29 foot contour, delineated by Division Road. Physical evidence indicates that Division Road was placed on the upper side of a pre-existing natural river terrace boundary. The topographic change marked by the road exactly follows geologic and soil type boundaries extending from the east to the center of section 7 on the Ripon, CA quadrangle map T3S/R7E and westward to Airport Way. The natural extension of "Red Bridge Slough" to the northwest is further evidence that this boundary is a natural river terrace.

(c) *Northwest boundary.* The northwest boundary of the River Junction AVA is delineated by Airport Way, a subtle natural high that is exaggerated by the raised roadbed. Elevation ranges from about 29 to 35 feet. Available geologic and historic evidence strongly supports the conclusion that, like Division Road, Airport Way follows a natural topographic high. The U.S.G.S. maps submitted by the petitioner show two separate sloughs draining from the Airport Way/Division Road intersection. An unnamed slough on the U.S.G.S. Ripon, CA quadrangle map drains southeast through the River Junction AVA, while the other slough, called "Red Bridge Slough" on the U.S.G.S. Vernalis, CA quadrangle map, flows in the opposite direction. A 1925 Reclamation District Map ("southern part") provided by the petitioner also shows the two sloughs. These two sloughs coincide with occurrences of Merritt soils, which fan out to the northwest and southeast of the Airport Way/Division Road intersection. This provides further evidence that the intersection of Airport Way and Division Road has historically sat on naturally higher topography from which the soils accumulated downhill in two directions.

Soil

The following is evidence regarding the soil composition of the River Junction AVA:

(a) *Formation and distribution of local soils.* The River Junction AVA contains soils that are generally grouped as alluvial, and which formed on the geologic parent material of recent river channel deposits that are exposed in, and partly define, the area. Soils that formed on the stream channel deposits and derived from these deposits, are similar to one another in nature, and are characteristic of the parent sedimentary deposits. These soils are identified as "recent alluvial floodplains soils" and "delta and floodplains soils" in the U.S. Department of Agriculture soils reports for San Joaquin and Stanislaus counties.

Where the Stanislaus River joins the San Joaquin River, bounding topography is steeper to the west and flatter to the east, thus restricting the westward limits of soils. West of the San Joaquin River, northeast facing slopes limit alluvial soils to an area only about ½ mile or less in width. These soils, primarily Merritt—Columbia—Dello series and Dospalos—Bolfar complex, are bounded on the west by basin soils of the Willows—Pescadero series and terrace soils of the Capay series. Conversely, east of the San Joaquin River, flatter topography has allowed alluvial soils to accumulate to a width of 1 to 1½ miles.

South of the Stanislaus River there are mostly Columbia—Temple series soils, bounded by basin soils of the Waukena—Fresno association, and alluvial fan soils of the Modesto—Chualar group that extend eastward.

North of the Stanislaus River, elevation is slightly higher than to the south, and topography is nearly flat but includes subtle northwest-facing and more strongly expressed southwest-facing slopes. Here the alluvial soils reach 1½ miles in width and are composed of Merritt—Grangeville—Columbia series with lesser amounts of Dello and Egbert soils. They are bounded to the east by terrace soil groups, primarily of the Delhi—Veritas—Tinnin series.

(b) *Unique soil composition of area.* The River Junction viticultural area is a mix of soils that differs from the surrounding areas. Among the total soils, nearly one-half are sandy types, and about one-fourth of the total is fine sandy loam of the Grangeville series. Soil types include about 25 percent Grangeville fine sandy loam; about 50 percent Merritt silty clay loam; nearly 25 percent Columbia fine sandy loams; and less than 1 percent Veritas silty clay loam. None of the surrounding areas has nearly as high a ratio between sandy loam to clay loam soils. Grangeville sandy loam is unusual in this part of the southern delta. The single other local occurrence of Grangeville sandy loam soil is west of the San Joaquin River, 1½ miles northwest, and is less than 11 acres in area.

Grangeville and Columbia series are formed in alluviums derived from granitic rock sources and the Merritt series is formed in alluviums from mixed rock sources. The Grangeville, Merritt, and Columbia series of soils are characterized as "prime farmland." These soils are all very deep, less well drained, and have moderate to high water capacity. Permeability ranges from moderately slow in the Merritt series to rapid in the Columbia and Grangeville series. They occupy nearly flat areas at low elevation and are occasionally flooded. They are exceedingly fertile soils that are capable of supporting wine grapes, almonds, tomatoes, sugar beets, wheat and other crops. Grapes have been grown on Columbia soils, but apparently, in San Joaquin County at least, have not been previously grown on bottomlands with Grangeville and Merritt.

Soil samples collected on-site at the viticultural area during October 1997 include one sample from each of the dominant units. Brief low-power microscopic analysis from each of these samples indicated similar texture and composition. All samples contained abundant angular quartz grains and mica flakes, indicating granitic origin. These soils are mineralogically young and should be expected to be very high in available minerals.

(c) *Comparisons with surrounding areas.* The River Junction viticultural area is clearly distinct from all potentially comparable adjacent local tracts, including the Red Bridge Slough, Walthall Slough, and Northeast areas.

As would be expected of deposits formed along rivers, downstream alluvial soils have a wider distribution than does their parent alluvial substrate, due to stream transport, while upstream the derived soils are less widely distributed than the underlying stream channel deposits.

In the River Junction viticultural area, derived alluvial soils strictly overlap but do not extend beyond their parent recent river deposits. The strict relationship between the channel deposits and their derived soils in the area results in a strikingly distinct northern boundary.

The location of these soil changes corresponds to the location of a strongly expressed terrace (distinct change in elevation) which angles northwest from the Stanislaus River near its mouth. Its upper side is nearly exactly followed by Division Road. This terrace probably marks the highest flood stage in historically recent times and suggests that soils in the area are probably derived from Stanislaus River alluvium. This would explain the distinctively high granitic content of these soils as compared with the surrounding area.

In the Red Bridge Slough area (north of the AVA's boundary following Airport Way) overlap of alluvial soils with parent channel deposits is less exact and the soils are restricted to the west of the Slough. This tract has a slight northwest slope and, based on field observation, is wetter than the River Junction viticultural area. It has no strongly expressed northern or eastern boundaries, and thus would have less temperature extremes than the AVA due to the absence of topographic enclosure.

The Red Bridge Slough area also has soils that are different from the proposed River Junction AVA. It contains about 35 percent Columbia loam. At its center it includes 10 percent Egbert silty clay loam. No Grangeville sands are present. As indicated above, the tract is part of River Junction Reclamation District No. 2064, which was recorded as River Junction Farms subdivision no. 3 in 1925. Durham Ferry State Recreation Area occupies about 20 percent of the tract, and the remaining part is essentially flat at 20–25 feet elevation.

Southeast of Walthall Slough, located north of the Red Bridge Slough area, the relationship between channel deposits and derived soils is obscure. Here the soils occupy a larger expanse than do the underlying stream deposits. They include nearly 40 percent Columbia soils and about 20 percent Dello clay loam. No Grangeville sands are present. Topographically, this area is essentially flat to slightly northwest sloping. In terms of soils, and the microclimate that would be inferred from the flat and open topography, it is completely different from the AVA.

To the northeast, recent river alluvium still underlies the soils but soils in this area include about 20

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percent Veritas and Manteca series. No Grangeville sands are present. Otherwise, the Merritt and Columbia soils percentages are comparable to the River Junction AVA. However, this area is higher and flatter, averaging about 30–35 feet elevation, and has no distinct topographic boundaries. Therefore, it undoubtedly has less temperature extremes than the AVA. This area comprises about 195 acres of the original River Junction Farms subdivision no. 2.

Climate

The River Junction AVA is shown on a Sacramento-San Joaquin Delta map ("Base Map Source—Department Of Water Resources"). The AVA appears within the boundaries of the aforementioned delta, at the southeasternmost tip. The southernmost edge of the Sacramento-San Joaquin River Delta is more modified by inland weather patterns than other parts of the Delta. This part of the Delta experiences more extreme high and low temperatures, although still receiving maritime influence. It is subject to little rainfall (10 to 11 inches per year) and, at its southernmost part, lies within the rain shadow of the maritime influenced land to the west. This is the driest part of the Delta and can be considered as arid to semiarid with maritime influence.

The viticultural area is distinctively cooler than the immediate surrounding area (Modesto, Stockton, Tracy Carbona, Tracy Pumping Plant, and Rivercrest Vineyards). Temperature data from 1995 and 1996 were recorded by a weather station located near the center of the River Junction AVA, at Rivercrest Vineyards. The monthly-averaged data show that minimum temperatures are consistently slightly cooler than elsewhere in the region, especially in summer. Average high temperatures are similar to Antioch and Lodi, which are significantly closer to the Suisun and San Francisco Bays and would be expected to experience more cooling from the maritime influence. Average low temperatures are generally the coolest among Tracy Carbona and Tracy Pumping Plant. Significantly, minimum August temperatures are 2 to 5 degrees cooler than Tracy, Stockton, and Modesto.

Grapes grown here are also subject to seasonally later frosts as pointed out by an unpublished agricultural analysis by Cook and Lider dated 1972.

Comments on Notice of Proposed Rulemaking

ATF did not receive any comments in response to Notice No. 901. Having analyzed and evaluated the evidence contained in the petition, ATF is adopting the River Junction viticultural area as proposed.

Boundary

The boundaries of the River Junction viticultural area may be found on the following two 1:24,000 Scale U.S.G.S. topographical maps. They are titled:

(1) Ripon, CA 1969, photorevised 1980;
(2) Vernalis, CA 1969, photorevised 1980;

The boundaries are described in § 9.164.

Executive Order 12866

It has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

Regulatory Flexibility Act

It is hereby certified that this proposed regulation will not have a significant economic impact on a substantial number of small entities. Any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from a particular area. No new requirements are imposed. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(j)) and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is proposed.

Drafting Information

The principal author of this document is Tim DeVanney, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Subpart C is amended by adding § 9.164 as follows:

Subpart C—Approved American Viticultural Areas

§ 9.164 River Junction.

(a) *Name.* The name of the viticultural area described in this section is "River Junction."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the River Junction viticultural area are the following two 1:24,000 Scale U.S.G.S. topographical maps. They are titled:

(1) Ripon, CA 1969, photorevised 1980;
(2) Vernalis, CA 1969, photorevised 1980;

(c) *Boundaries.* The River Junction AVA is located in southern San Joaquin County, California. The boundaries are as follows:

(1) Beginning on the Vernalis, CA quadrangle map at the intersection of the secondary highway Airport Way and the San Joaquin River levee, near Benchmark 35 in T3S/R6E;

(2) Then in a southeasterly direction, follow the levee along the San Joaquin River onto the Ripon, CA quadrangle map;

(3) Then in a northerly direction around Sturgeon Bend in section 18 T3S/R7E;

(4) Then continuing in a generally southeasterly, then northeasterly direction along the levee adjoining the Stanislaus River through sections 19, 20 and 17 to the point where the levee intersects sections 17 and 8;

(5) Then continuing in a northerly direction along the levee in section 8 for approximately 1,000 feet;

(6) Then in a straight line in a northwesterly direction for approximately 100 feet to the intersection with Division Road;

(7) Then in a southwesterly, then northwesterly direction along Division Road through sections 8, 17, 18 and 7 to the intersection with the secondary highway Airport Way;

(8) Then in a southwesterly direction along Airport Way onto the Vernalis quadrangle map to the starting point at the intersection of Airport Way and the San Joaquin River levee T3S/R6E.

Dated: March 8, 2001.

Bradley A. Buckles,
Director.

Approved: April 4, 2001.

Timothy E. Skud,
Acting Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 01–11675 Filed 5–8–01; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

[SPATS No. MO–033–FOR]

Missouri Regulatory Program and Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving, with certain exceptions and additional requirements, an amendment to the Missouri regulatory program (Missouri program) and the Missouri Abandoned Mine Land Reclamation Plan (Missouri plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Missouri proposed revisions to its rules pertaining to surface mining performance standards, special mining activities, prohibitions and limitations on mining in certain areas and areas unsuitable for mining, permitting requirements, bond and insurance requirements, definitions and general requirements, and abandoned mine land reclamation requirements. Missouri intends to revise its program to be consistent with the corresponding Federal regulations, to provide additional safeguards, to clarify ambiguities, and to improve operational efficiency.

EFFECTIVE DATE: May 9, 2001.

FOR FURTHER INFORMATION CONTACT: John W. Coleman, Office of Surface Mining, Mid-Continent Regional Coordinating Center, Alton Federal Building, 501 Belle Street, Alton, Illinois 62002. Telephone: (618) 463–6460. Internet: jcoleman@osmre.gov.

SUPPLEMENTARY INFORMATION:

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I. Background on the Missouri Program and Plan
II. Submission of the Amendment
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I. Background on the Missouri Program and Plan

On November 21, 1980, the Secretary of Interior conditionally approved the Missouri program. You can find general background information on the Missouri program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the November 21, 1980, **Federal Register** (45 FR 77017). You can find later actions on the Missouri program at 30 CFR 925.12, 925.15, and 925.16.

On January 29, 1982, the Secretary of the Interior approved the Missouri plan. Background information on the Missouri plan, including the Secretary's findings, the disposition of comments, and the approval of the plan can be found in the January 29, 1982, **Federal Register** (47 FR 4253). Subsequent actions concerning the Missouri plan and amendments to the plan can be found at 30 CFR 925.25.

II. Submission of the Amendment

By letter dated October 5, 2000 (Administrative Record No. MO–662.1), Missouri sent us an amendment to its program and plan under SMCRA and the Federal regulations at 30 CFR 732.17(b) and 884.15, respectively. Missouri sent the amendment in response to our letter dated June 17, 1997 (Administrative Record No. MO–651), that we sent to Missouri under 30 CFR 732.17(c), and in response to required program amendments codified at 30 CFR 925.16. The amendment also includes changes made at Missouri's own initiative. Missouri proposed to amend the Missouri Code of State Regulations (CSR) at Title 10, Division 40.

We announced receipt of the amendment in the October 31, 2000, **Federal Register** (65 FR 64906). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on November 30, 2000. Because no one requested a public hearing or meeting, we did not hold one.

During our review of the amendment, we identified concerns relating to spillways, temporary impoundments, air resource protection, and the exemption for coal extraction incidental to the extraction of other minerals. We notified Missouri of these concerns by letter dated December 15, 2000 (Administrative Record No. MO–662.5).

By letter dated January 12, 2001 (Administrative Record No. MO–662.6), during a telephone conference on February 13, 2001 (Administrative Record No. MO–662.7), and by letter dated April 17, 2001 (Administrative Record No. MO–662.8), Missouri provided us additional explanatory information regarding its provisions for spillways. Because the additional information merely clarified Missouri's proposed spillway requirements, we did not reopen the public comment period. In its letters, Missouri indicated that it would submit revisions to its rules relating to temporary impoundments, air resource protection, and the exemption for coal extraction incidental to the extraction of other minerals in a future rulemaking. Therefore, we are proceeding with the publication of this final rule **Federal Register** document.

III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15, 732.17, 884.14, and 884.15, are the Director's findings concerning the amendment to the Missouri program and plan.

Any revisions that we do not discuss below are about minor wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Revisions to Missouri's Rules That Are Minor

Missouri proposed minor wording, editorial, and rule reference changes to several previously-approved rules.

1. Missouri corrected rule references at 10 CSR 40–3.040(4)(A)1, 40–3.040(13)(A)1.A, 40–3.040(13)(B)1, 40–3080(3)(D), 40–3.200(12)(A)1.A, 40–3.200(12)(B)1, 40–4.010(3)(J), 40–4.020(2)(B), 40–4.050(11), 40–4.050(12), 40–6.020(7)(A), 40–6.050(9)(C)3, 40–6.050(9)(C)4, 40–6.070(8)(C), 40–6.070(8)(D)3, 40–6.090(6)(A), 40–6.090(7), 40–8.010(1)(A)97.B, 40–8.030(6)(A)3, 40–8.030(12)(C), and 40–8.070(2)(C)1.A(II).

2. At 10 CSR 40–4.030(3)(A), (6)(A), and (7)(B)2 and 7; 40–6.040(16)(C)1 and 3; and 40–6.060(4), Missouri corrected references to the United States Natural Resources Conservation Service (NRCS) by replacing the "United States Soil Conservation Service" and "SCS" with the current agency name and acronym, the "United States Natural Resources Conservation Service" and "NRCS," respectively. At 10 CSR 40–8.010(1)(A) 52.C, Missouri revised the secondary definition of "prime farmland" in its definition of "land use" by adding the information "(now known as the Natural Resources Conservation Service)" after the term "Soil Conservation Service."

3. Missouri corrected typographical errors at 10 CSR 40–3.080(8)(A), 40–6.070(5) (B)4, and 40–6.070(10)(D).

4. At 10 CSR 40–3.050, 40–4.010, 40–4.030, 40–6.020, and 40–8.050, Missouri revised the purpose statements to identify the topic and statutory authority of the rules.

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Because the above revisions are minor and do not change the meaning of these previously approved rules, we find that they will not make Missouri's rules less effective than the counterpart Federal regulations.

B. Revisions to Missouri's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

The State rules listed in the table contain language that is the same as or similar to the corresponding sections of the Federal regulations. Differences between the State rules and the Federal regulations are minor.

Topic	State rule	Federal regulation
Impoundments: Examination	10 CSR 40–3.040(6)(T)/40–3.200(6)(T)	30 CFR 816.49(a)(12)/817.49(a)(12).
Impoundments: Stability	10 CSR 40–040(10)(L)1/40–3.200(10)(L)1	30 CFR 816.49(a)(4)(i) 817.49(a)(4)(i).
Inpoundments: Freeboard	10 CSR 40–3.04(10)(M)/40–3.200(10)(N)	30 CFR 816.49(a)(5)/817.49(a)(5).
Impoundments: Foundation	10 CSR 40–3.040(10)(N)/40–3.200(10(N)	30 CFR 816.49(a)(6)/817.49(a)(6).
Impoundments: Spillways	10 CSR 40–3.040(10)(O), (O)1, (O)2.A/40–3.200.	30 CFR 816.49(a)(9), (9)(i), (9)(ii)(A)/817.49(A)(9), (9)(i), (9)(ii)(A).
Temporary Impoundments	10 CSR 40–3.040(10)(O)3, 3.A/40–3.200(10)(O)3, 3.A.	30 CFR 816.49(c)(2), (2)(i)/817.49(c)(2), (2)(i).
Blasting Schedule Contents	10 CSR 40–3.050(3)(C)1	30 CFR 816.64(c)(1).
Disposal of Coal Processing Waste	10 CSR 40–3.080(1)(A)	30 CFR 816.81(a).
Backfilling and Grading: Thin Overburden	10 CSR 40–3.110(4)(A), (A)(1) and (2)	30 CFR 816.104(a), (a)(1) and (2).
Backfilling and Grading: Thick Overburden	10 CSR 40–3.110(5)(A), (A)(1) and 2	30 CFR 816.105(a), (a)(1) and (2).
Operations on Prime Farmland: Applicability	10 CSR 40–4.030(4)(B)	30 CFR 823.11(a) and (b).
Prohibitions and Limitations on Mining in Certain Areas: Definition of Significant Recreational, Timber, Economic or Other Values Incompatible With Surface Coal Mining Operations.	10 CSR 40–5.010(1)(B)	30 CFR 761.5.
Prohibitions and Limitations on Mining in Certain Areas: Areas Where Mining is Prohibited or Limited.	10 CSR 40–5.010(2)(E)	30 CFR 761.11(e)(1).
Coal Exploration Permits: Commercial Use or Sale.	10 CSR 40–6.020(5)	30 CFR 772.14(a) and (b).
Geology Description	10 CSR 40–6.040(5)(B) 1.E	30 CFR 780.22(b)(2)(iii).
Probable Hydrologic Consequences Determination.	10 CSR 40–6.050(9)(D)3	30 CFR 780.21(f)(4).
Cumulative Hydrologic Impact Assessment	10 CSR 40–6.050(9)(E)/40–6.120(5)(E)	30 CFR 780.21(g)/784.14(f).
Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments.	10 CSR 40–6.050(11)(A), (A)2, (A)3, (B), (C), (F)/40–6.120(7)(A), (A)2, (A)3, (B)1, (C), (F)..	30 CFR 780.25(a), (a)(2), (a)(3), (b), (c), (f)/784.16(a), (a)(2), (a)(3), (b), (c), (f).
Prime Farmlamds: Issuance of Permit	10 CSR 40–6.060(4)(E)5	30 CFR 785.17(e)(5).
Self-Bonding	10 CSR 40–7.011(6)(D)2 C(II), (D)5.A and C	30 CFR 800.23(b)(3)(ii), (e)(1) and (4).
Bond Release Application: Notarized Statement of Accomplished Reclamation.	10 CSR 40–7.021(3)(D)	30 CFR 800.40(a)(3).
Definition of Approximate Original Contour	10 CSR 40–8.010(1)(A)9	30 CFR 701.5.
Definition of Other Treatment Facilities	10 CSR 40–8.010(1)(A)59	30 CFR 701.5.
Definition of Prime Farmland	10 CSR 40–8.010(1)(A)73	30 CFR 701.5.
Definition of Regulatory Authority	10 CSR 40–8.10(1)(A)82	30 CFR 700.5.
Small Operator's Assistance: Definition of Qualified Laboratory.	10 CSR 40–8.050(1)	30 CFR 795.3.
Small Operator Assistance: Eligibility for Assistance.	10 CSR 40–8.050(2)(B), (B)1 and 2	30 CFR 795.6(a)(2), (a)(2)(i) and (ii).
Small Operator Assistance: Program Services and Data Requirements.	10 CSR 40–8.050(5)(A), (B)1 through 6	30 CFR 795.9(a), (b)(1) through (6).
Small Operator Assistance: Applicant Liability	10 CSR 40–8.050(9)(A) (A)2 and 3	30 CFR 795.12(a), (a)(2) and (3).
Termination of Jurisdiction	10 CSR 40–8.070(2)(F) and (G)	30 CFR 700.11(d)(1) and (2).

Because the above State rules have the same meaning as the corresponding Federal regulations, we find that they are no less effective than the Federal regulations.

C. 10 CSR 40–3 Performance Requirements for Surface and Underground Mining Operations

1. *10 CSR 40–3.010(6) Buffer Zone Markers.* Missouri added a reference to 10 CSR 40–8.010(1)(A)13 in its rule for buffer zone markers. Missouri's rule at 10 CSR 40–8.010(1)(A)13 defines the term "buffer zone." Although the Federal regulation at 30 CFR 816.11(e) for buffer zone markers does not contain a counterpart reference, we find that Missouri's reference to its approved definition of "buffer zone" will not make its rule at 10 CSR 40–3.010(6) less effective than the Federal regulation.

2. *10 CSR 40–3.020 Requirements for Casing and Sealing of Drilled Holes.* In its rules at 10 CSR 40–3.020(1) and (3), Missouri corrected a citation reference by changing 10 CSR 40.3.040(13) to 10 CSR 40–3.040(14). Missouri also added a reference to the rules of the Wellhead Protection Section, Division of Geology and Land Survey, at 10 CSR 23, Chapter 6. Coal mine operators in Missouri must meet both the requirements of 10 CSR 40–3.040(14) and the Division of Geology and Land Survey's rules at 10 CSR 23, Chapter 6, in order to convert a drilled hole, borehole, or monitoring well into a water well. Missouri's rule at 10 CSR 40–3.040(14) contains provisions for transferring exploratory or monitoring wells for use as water wells. We find that changing the existing citation reference to 10 CSR 40–3.040(14) is appropriate because it is consistent with the reference to 30 CFR 816.41 in the counterpart Federal regulations at 30 CFR 816.13 and 816.15. The Federal regulation at 30 CFR 816.41 allows wells to be transferred to another party for further use if approved by the regulatory authority and if the transfer complies with State and local law. Therefore, we find that requiring coal mine operators to meet other State regulations relating to water wells, as well as the State counterpart to 30 CFR 816.41, will not make Missouri's rules at 10 CSR 40–3.010(1) and (3) less effective than the counterpart Federal regulations at 30 CFR 816.13 and 816.15.

3. *10 CSR 40–3.040 and 10 CSR 40–3.200 Requirements for Protection of the Hydrologic Balance.* Missouri proposed several changes to its rules at 10 CSR 40–3.040 for surface mining operations and 10 CSR 40–3.200 for underground mining operations.

a. Missouri replaced all instances of the term "sedimentation ponds" with the term "siltation structures" in its rules at 10 CSR 40–3.040(2)(A), 40–3.040(6), 40–3.040(8), 40–3.040(17), 40–3.200(2)(A), 40–3.200(6), 40–3.200(8), and 40–3.200(16). On October 20, 1994, OSM replaced the term "sedimentation ponds" with the term "siltation structures" in many of its counterpart regulations (59 FR 53022). OSM did this because the term "siltation structures" provides a broader classification of structures for the control of sediment than the term "sedimentation ponds." For this reason and because sedimentation ponds are included in the Missouri and the Federal definitions of "siltation structure" at 10 CSR 40–8.010(1)(A)89 and 30 CFR 701.5, respectively, we find that Missouri's changes will not make its rules less effective than the counterpart Federal regulations.

b. *10 CSR 40–3.040(4) and 10 CSR 3.200(4) Stream Channel Diversions.* On September 29, 1992, we required Missouri to amend its rules at 10 CSR 3.040(4) and 40–3.200(4) to require the certification of any design criteria set by the regulatory authority as required at 30 CFR 816.43(b)(4) and 817.43(b)(4). We codified this requirement at 30 CFR 925.16(f)(1). In response to this requirement, Missouri added the language "and any design criteria set by the director" at the end of 10 CSR 40–3.040(4)(B)3 and 40–3.200 (4)(B)3. The revised rules require the design and construction of all stream channel diversions of perennial and intermittent streams to be certified by a qualified registered professional engineer as meeting the performance standards of the rules and any design criteria set by the director. We find that Missouri's revised rules at 10 CSR 40–3.040(4)(B)3 and 40–3.200(4)(B)3 are substantively identical to the counterpart Federal regulations at 30 CFR 816.43(b)(4) and 817.43(b)(4), respectively. The revisions also satisfy the required amendment that was codified at 30 CFR 925.16(f)(1), which we are removing.

c. At 10 CSR 40–3.040(10)(A) and 40–3.200(10)(A), Missouri added the following new provision:

> Furthermore, impoundments meeting the Class B or C criteria for dams in TR–60 shall comply with the "Minimum Emergency Spillway Hydrologic Criteria" table in TR–60 and the requirements of this section.

We find that Missouri's new provision contains requirements that are substantively the same as the counterpart Federal regulation requirements at 30 CFR 816.49(a)(1) and 817.49(a)(1). Therefore, we are approving Missouri's revised rules at 10 CSR 40–3.040 (10)(A) and 40–3.200(10)(A).

d. At 10 CSR 40–3.040(10)(B)5 and 40–3.200(10)(B)5, Missouri updated its reference to the requirements for impoundments that do not meet the size or other criteria contained in 30 CFR 77.216(a) by changing the "United States Soil Conservation Service Practice Standards 378, Ponds, January 1991" to the "United States Natural Resources Conservation Service, Conservation Practice Standard, POND, CODE, No. 378, December 1998." We are approving this reference change because the December 1998 version of Practice Standard No. 378 is the current version issued by the Natural Resources Conservation Service for the State of Missouri.

e. Missouri added a new subsection at 10 CSR 40–3.040(10)(L) and 40–3.200(10)(L) entitled "Stability." As shown above in finding B, paragraphs (10)(L)1 are substantively the same as the counterpart Federal regulations. Paragraphs (10)(L)2 require an impoundment not meeting the Class B or C criteria for dams in TR–60 or the size or other criteria of 30 CFR 77.216(a), except for a coal mine waste impounding structure, to have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions or meet the requirements of the Natural Resources Conservation Service, Conservation Practice Standard 378, "Ponds," December 1998, and be less than 20 feet in height.

Missouri's rules provide for two alternatives to determine the stability of an embankment for impoundments that do not meet the Class B or C criteria for dams in TR–60 or the size or other criteria of 30 CFR 77.216(a). The first alternative requires that the slope stability of the earth embankment meet the same 1.3 minimum static safety factor requirements for steady state seepage as found in 30 CFR 816.49(a)(4)(ii) and 817.49(a)(4)(ii). The second alternative refers to the NRCS Practice Standard No. 378 design standards developed for Missouri in December 1998. On November 17, 2000, we conducted a technical review of these standards (Administrative Record No. MO–662.4). The NRCS Practice Standard No. 378 requires that slopes be 2.5H:1V or flatter with combined slopes being 6H:1V or flatter for an embankment. This is a conservative standard when compared to other approved design standards, usually 5H:1V. It further requires that the slopes be stable, even if flatter slopes are required. The slope stability evaluation must be based on soil mechanics analysis or past experience in the surrounding area. The Federal regulations at 30 CFR 816.49(a)(4)(ii) and 817.49(a)(4)(ii) allow a regulatory authority to establish engineering design standards comparable to the 1.3 static safety factor for impoundments not meeting the Class B or C criteria for dams in TR–60 or the size or other criteria of 30 CFR 77.216(a). Our technical review of Conservation Practice Standard No. 378 found that its design standards are comparable to the 1.3 static safety factor required for these types of impoundments. Therefore, we find the proposed rules at 10 CSR 40–3.040(10)(L)2 and 40–3.200(10)(L)2 are no less effective than the counterpart Federal regulations at 30 CFR 816.49(a)(4)(ii) and 817.49(a)(4)(ii), respectively.

f. Missouri added a new subsection at 10 CSR 40–3.040(10)(O) and 10 CSR 40–3.200(10)(O) entitled "Spillways."

(1) Missouri rules at 10 CSR 40–3.040(10)(O)2 and 40–3.200(10)(O)2 provide the spillway requirements for permanent and temporary impoundments. They specify the design precipitation events that the various types of impoundments must be designed and constructed to safely pass or contain. With the following differences, Missouri's rules at 10 CSR 40–3.040(10)(O)2 and 40–3.200(10)(O)2 are substantively the same as the counterpart Federal regulations at 30 CFR 816.49(a)(9) and 817.49(a)(9) for permanent and temporary impoundments with spillways.

(a) Missouri's rules at 10 CSR 40–3.040(10)(O)2.B and 40–3.200(10)(O)2.B contain the spillway design precipitation event requirements for permanent and temporary impoundments meeting or exceeding the size or other criteria of 30 CFR 77.216(a). Missouri's rules provide that

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the required design precipitation event for this type of impoundment is a 100-year, 24-hour event or greater as specified by the director or commission.

The Federal regulations at 30 CFR 816.49(a)(9)(ii) and 817.49(a)(9)(ii) specify a 100-year, 6-hour or greater design precipitation event for this type of impoundment. We conducted a technical review and found that overall the two are generally accepted as comparable events (Administrative Record No. MO–662.4). The 100-year, 24-hour precipitation event will have a higher peak discharge than the 100-year, 6-hour precipitation event. This means that in Missouri, the spillways for this type of impoundment will be designed and constructed to safely pass the design precipitation event required by the Federal regulations. Therefore, we find Missouri's rules at 10 CSR 40–3.040(10)(O)2.B and 40–3.200(10)(O)2.B are no less effective than the counterpart Federal regulations at 30 CFR 816.49(a)(9)(ii) and 817.49(a)(9)(ii), respectively.

(b) Missouri's rules at 10 CSR 40–3.040(10)(O)2.C and 40–3.200(10)(O)2.C contain the spillway design precipitation event requirements for impoundments not meeting the Class B or C criteria for dams in TR–60 or the size or other criteria of 30 CFR 77.216(a). Missouri's rules provide that the required design precipitation event for this type of impoundment is as specified in Table 3 of the United States Natural Resources Conservation Service, Conservation Practice Standard 378, "Ponds," December 1998.

We conducted a technical review and found that Table 3 in Conservation Practice Standard 378 contains design criteria for principal and auxiliary spillways for small impoundments (Administrative Record No. MO–662.4). Table 3 includes requirements for sizing principal and auxiliary spillways for 10-year, 24-hour; 25-year, 24-hour; and 50-year, 24-hour design storm events. The requirements for impoundments with watersheds of 20 acres or less includes spillways designed for either a 10-year, 24-hour or 25-year, 24-hour design precipitation event. The Federal regulation standard at 30 CFR 816.49(a)(9)(ii)(C) and 817.49(a)(9)(ii)(C) for small impoundments is a 25-year, 6-hour or greater precipitation event. The peak flow resulting from a 10-year, 24-hour event will be slightly lower than the peak flow resulting from the 25-year, 6-hour event. A spillway for this type of impoundment must be designed to at least discharge the peak flow produced by the minimum design precipitation event specified in the Federal regulations. This issue was discussed with Missouri during the February 13, 2001, telephone conference (Administrative Record No. MO–662.7). Missouri explained that its policy is to require operators to construct spillways for small impoundments that will meet a 25-year, 24-hour or greater precipitation event design standard. Missouri stated in its letter of April 17, 2001, that its rule at 10 CSR 40–3.040(6)(I) requires a minimum 25-year, 24-hour design event. Missouri indicated that it will add a provision to its rules at 10 CSR 40–3.040(10)(0) and 40–3.200(10)(0) that will require a minimum 25-year, 24-hour design storm event for any emergency or auxiliary spillway. Missouri further stated that until the future rule change becomes effective, it will not approve any temporary or permanent impoundments with an emergency spillway design event less that the 25-year, 24-hour event. Missouri's rule at 10 CSR 40–3.040(6)(I) for sedimentation ponds requires that an appropriate combination of principal and emergency spillways be provided to safely discharge the runoff from a 25-year, 24-hour precipitation event or larger event required in the permit and plan. Our technical review found that a 25-year, 24-hour precipitation event will have a higher peak discharge than a 25-year, 6-hour precipitation event. This means that in Missouri, the spillways for small impoundments that control sediment will be designed and constructed to safely pass the minimum design precipitation event required by the Federal regulations at 30 CFR 816.49(a)(9)(ii)(2)(C) and 817.49(a)(9)(ii)(2)(C). We are approving Missouri's rules at 10 CSR 40–3.040(10)(O)2.C and 40–3.200(10)(O)2.C in combination with its policy letter dated April 17, 2001, and its rule at 10 CSR 40–40–3.040(6)(I) that requires operators to design and construct spillways for impoundments that will safely pass a 25-year, 24-hour or greater precipitation event.

(2) Missouri's rules at 10 CSR 40–3.040(10)(O)3 and 40–3.200(10)(O)3 provide the requirements for temporary impoundments that rely solely on storage capacity to control runoff from a design precipitation event. They specify the design precipitation events that the impoundments must be designed and constructed to contain. With the following differences, Missouri's rules at 10 CSR 40–3.040(10)(O)3 and 40–3.200(10)(O)3 are substantively the same as the counterpart Federal regulations at 30 CFR 816.49(c) and 817.49(c) for temporary impoundments that rely primarily on storage to control the runoff from a design precipitation event.

(a) Missouri's rules at 10 CSR 40–3.040(10)(O)3.B and 40–3.200(10)(O)3.B contain the design precipitation event requirements for temporary impoundments, with no spillways, that do not meet the Class B or C criteria for dams in TR–60 or the size or other criteria of 30 CFR 77.216(a). These impoundments rely primarily on storage to control the runoff from a design precipitation event. Missouri's rules specify that this type of temporary impoundment shall be designed to control the precipitation of a 100-year, 24-hour event.

The Federal regulations at 30 CFR 816.49(c)(2)(ii) and 817.49(c)(2)(ii) specify a 100-year, 6-hour or greater event for this type of temporary impoundment. As discussed above under finding 3(f)(1)(a), we determined that 100-year, 6-hour and 100-year, 24-hour events are generally accepted as comparable design precipitation events. However, the total runoff from the 100-year, 24-hour precipitation event will be larger than from a 100-year, 6-hour event with a similar return period. This means that in Missouri, temporary impoundments without spillways that do not meet the Class B or C criteria for dams in TR–60 or the size or other criteria of 30 CFR 77.216(a) will be designed and constructed to safely control the runoff from the minimum design precipitation event required by the Federal regulations. Therefore, we find that Missouri's rules at 10 CSR 40–3.040(10)(O)3.B and 40–3.200(10)(O)3.B are no less effective than the counterpart Federal regulations at 30 CFR 816.49(c)(2)(ii) and 817.49(c)(2)(ii).

(b) Missouri's rules at 10 CSR 40–3.040(10)(O)3.C and 40–3.200(10)(O)3.C provide spillway design, precipitation event requirements for permanent and temporary impoundments. These paragraphs do not contain any requirements for temporary impoundments that rely solely on storage capacity to control the runoff from a design precipitation event, which is the intended purpose of the provisions in 10 CSR 40–3.040(10)(O)3 and 40–3.200(10)(O)3. Instead, they contain the same requirements as Missouri's proposed rules at 10 CSR 40–3.040(10)(O)2.C and 40–3.200(10)(O)2.C for impoundments that rely on spillways to safely pass the applicable design precipitation event.

We find that Missouri's rules at 10 CSR 40–3.040(10)(O)3.C and 40–3.200(10)(O)3.C are not consistent with the other requirements of Missouri's rules at 10 CSR 40–3.040(10)(O)3 and 40–3.200(10)(O)3 or with the Federal regulation requirements at 30 CFR 816.49(c) and 817.49(c) for temporary impoundments that rely primarily on storage to control the runoff from a design precipitation event. Further, we are requiring Missouri to remove these provisions from its program. In its January 12, 2001, letter, Missouri indicated that the two paragraphs (10 CSR 40–3.040(10)(O)3.C and 10 CSR 40–3.200(10)(O)3.C) were inappropriate in this part of its program and will be deleted in a future rulemaking.

g. *10 CSR 40–3.040(14) and 10 CSR 40–3.200(13)(B) Transfer of Wells.* Missouri revised 10 CSR 40–3.040(14)(B)3 and 40–3.200(13)(B)3 to require that upon transfer of a well, the transferee must assume primary responsibility for compliance with 10 CSR 40–3.020 and 40–3.180, respectively, and those rules of the Wellhead Protection Section, Division of Geology and Land Survey, at 10 CSR 23, Chapter 3, applicable to the well. The current rules just require compliance with 10 CSR 40–3.020 and 40–3.180, which are counterparts to the Federal regulations at 30 CFR 816.13 through 15 and 817.13 through 15, respectively. The Wellhead Protection Section, Division of Geology and Land Survey rules provide requirements that owners must meet for protection of groundwater quality and resources and maintenance of wells. The Federal regulations at 30 CFR 816.41(g) and 817.41(g) allow wells to be transferred to another party for further use if approved by the regulatory authority and if the transfer complies with State and local law. Therefore, we find that requiring coal mine operators to meet other State regulations relating to water wells will not make Missouri's rules at 10 CSR 40–3.040(14)(B)3 and 40–3.200(13)(B)3 less effective than the counterpart Federal regulations.

4. *10 CSR 40–3.050 Requirements for the Use of Explosives.* At 10 CSR 40–3.050(1)(D)1.A, Missouri proposes to clarify that an operator must submit a blast design if blasting operations will be conducted within 1000 feet of a dam that is outside the permit area. At 10 CSR 40–3.050(2)(A), Missouri proposes to clarify that the operator must notify owners of dams that are located within one-half mile of the permit area at least forty days before initiation of blasting and tell them how to request a preblast survey.

Missouri's currently approved rules require a blast design for dams and an opportunity for a preblasting survey for owners of dams because of each rule's reference to structures listed in 10 CSR 40–3.050(5)(D)1. The structures listed in 10 CSR 40–3.050(5)(D)1 include dams. We find that Missouri's clarification of its rules at 10 CSR 40–3.050(1)(D)1.A and 10 CSR 40–3.050(2)(A) will not make them less effective than the counterpart Federal regulations at 30 CFR 816.61(d)(i) and 816.62(a), respectively.

5. *10 CSR 40–3.090, Surface Mining Operations, and 10 CSR 40–3.240, Underground Mining Operations: Air Resource Protection.* On September 29, 1992, we required Missouri to amend its rules at 10 CSR 40–3.090 and 40–3.240 by providing performance standards that address air quality in a manner no less effective than the Federal regulations at 30 CFR 816.95(a) and 817.95(a). We codified this requirement at 30 CFR 925.16(p)(4). The Federal regulations require that all exposed surface areas be protected and stabilized to effectively control erosion and air pollution attendant to erosion.

a. Missouri revised 10 CSR 40–3.090 by adding the following new provision at the end of the previously approved rule language:

> All exposed surface areas shall be protected and stabilized to effectively control erosion and air pollution attendant to erosion according to 10 CSR 40–3.040(5)(A).

We find that Missouri's new provision at 10 CSR 40–3.090 is substantively identical to the Federal regulation requirement for protection of air resources at 30 CFR 816.95(a), and we are approving it. Missouri's new provision also satisfies a portion of the required amendment that we codified at 30 CFR 925.16(p)(4), and it will be modified accordingly.

b. Missouri removed the existing requirements at 10 CSR 40–3.240 and added the following new requirement:

> All exposed surface areas shall be protected attendant to erosion according to 10 CSR 40–3.200(5)(A).

The counterpart Federal regulation at 30 CFR 817.95(a) requires all exposed surface areas to be protected "and stabilized to effectively control erosion and air pollution" attendant to erosion. We find that Missouri's revised rule at 10 CSR 40–3.240 is less effective than the Federal regulation because it is missing pertinent requirements relating to control of erosion and air pollution. Therefore, we are not approving Missouri's revised rule to the extent that it is missing these requirements, and we are modifying 30 CFR 925.16(p)(4) to require further revision to 10 CSR 40–3.240.

6. *10 CSR 40–3.110(6) Regrading or Stabilizing Rills and Gullies.* On July 13, 1995 (60 FR 36046), we required Missouri to revise 10 CSR 40–3.110(6)(B) to clearly require, for areas that have been previously mined, either topsoil or a topsoil substitute, in accordance with its rules at 10 CSR 40–3.030. We codified this requirement at 30 CFR 925.16(q)(2). In response to this requirement, Missouri revised 10 CSR 40–3.110(6)(B) to read as follows:

> On areas that have been previously mined, the requirements for regrading or stabilizing rills and gullies pursuant to subsection (6)(A) apply after final grading and placement of topsoil or the best available topsoil substitute.

We find that Missouri's revised rule at 10 CSR 40–3.110(6)(B) meets the requirements of the Federal regulations at 30 CFR 816.106(a) and 816.102(d)(2) concerning redistribution of topsoil on previously mined areas, and we are approving it. We also find that Missouri's revision satisfies the required amendment at 30 CFR 925.16(q)(2), which we are removing.

7. *10 CSR 40–3.120 and 10 CSR 40–3.270 Revegetation Requirements.* Missouri proposed several changes to its rules at 10 CSR 40–3.120 for surface mining operations and 10 CSR 40–3.270 for underground mining operations.

a. *10 CSR 40–3.120(5) and 10 CSR 40–3.270(5) Grazing.* On September 29, 1992 (60 FR 44666), we required Missouri to revise 10 CSR 40–3.120(5) and 40–3.270(5) by removing or defining the term "range land." We codified this requirement at 30 CFR 925.16(p)(5). In response to this requirement, Missouri removed the term "range land" from its provisions for grazing at 10 CSR 40–3.120(5) and 40–3.270(5).

Based on the discussion in finding 19 of the September 29, 1992, **Federal Register** (57 FR 44665), we find that, with the removal of the term "range land," Missouri's requirements at 10 CSR 40–3.120(5) and 40–3.270(5) for grazing and pasture land are no less effective than the Federal regulation requirements at 30 CFR 816.116(b)(1) and 817.116(b)(1), respectively. We also find that Missouri has satisfied the required amendment at 30 CFR 925.16(p)(5), which we are removing.

b. *10 CSR 40–3.120(8) and 10 CSR 40–3.270(8) Reclamation Schedule.* Missouri replaced all instances of the term "sedimentation ponds" with the term "siltation structures" in its rules at 10 CSR 40–3.120(8)(A)4, (B), and (D) and 10 CSR 40–3.270(8) (A)4 and (B). Because sedimentation ponds are included in the Missouri and the Federal definitions of "siltation structure" at 10 CSR 40–8.010(1)(A)89 and 30 CFR 701.5, respectively, we find that Missouri's changes will not make its rules less effective than the

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counterpart Federal regulations. Also, because the term "siltation structures," as defined, includes a broader range of sediment control structures than the term "sedimentation ponds," we find that Missouri's revisions clarify that all sediment control structures, not just sedimentation ponds, are included in the reclamation schedule requirements.

8. *10 CSR 40–3.140 Road and Other Transportation Requirements.* On September 29, 1992 (60 FR 44669), we required Missouri to revise 10 CSR 40–3.140(1)(A) by requiring that all exposed surfaces be stabilized in accordance with current prudent engineering practices. We codified this requirement at 30 CFR 925.16(p)(9). In response to this requirement, Missouri removed the word "road" from the phrase "as well as dust occurring on other exposed road surfaces." Missouri's revised rule at 10 CSR 40–3.140(1) (A) now requires that Class 1 roads be maintained to control or prevent erosion; siltation; and the air pollution attendant to erosion, including road dust as well as dust occurring on other exposed surfaces.

Because the Federal regulation at 30 CFR 816.150(b)(1) provides the same requirements for roads, we find that Missouri's revised rule is no less effective than the Federal regulation. We also find that Missouri has satisfied the required amendment at 30 CFR 925.16(p)(9), which we are removing.

D. 10 CSR 40–6 Permitting Requirements for Permits, Permit Applications, and Coal Exploration

1. *10 CSR 40–6.010(4)(B)2 Renewal of Valid Permits.* Missouri corrected a citation reference in its existing provision at 10 CSR 40–6.010(4)(B)2 by changing "10 CSR 40–6.080(5) and (6)" to "10 CSR 40–6.090(5) and (6)." Missouri also added the following new provision to the end of 10 CSR 40–6.010(4)(B)2:

> A permittee need not renew the permit if no surface coal mining operations will be conducted under the permit and solely reclamation activities remain to be done. Obligations established under a permit continue until completion of surface coal mining and reclamation operations, regardless of whether the authorization to conduct surface coal mining operations has expired or has been terminated, revoked, or suspended.

As revised, the existing provision in 10 CSR 40–6.010(4)(B)2 requires a permittee to file an application for renewal of a permit under 10 CSR 40–6.090(5) and (6) at least 120 days before the expiration of the permit. The corrected citation reference is appropriate because 10 CSR 40–6.090(5) and (6) contain Missouri's requirements for permit renewals. This provision is substantively the same as the Federal regulation at 30 CFR 774.15(b)(1). Missouri's new provision in 10 CSR 40–6.010(4)(B)2 is substantively the same as the counterpart Federal provision in 30 CFR 773.11(a). Based on the above discussion, we find that Missouri's provisions at 10 CSR 40–6.010(4)(B)2 are no less effective than the counterpart Federal regulation provisions at 30 CFR 774.15(b)(1) and 773.11(a), respectively.

2. *10 CSR 40–6.010(6)(A) Permit Fees.* Missouri removed the existing third sentence that specified that "[a]ll permits shall be on a yearly basis and shall require the entire initial fee and the acreage fee for that year." Missouri also revised the existing fifth sentence to read as follows:

> Afterwards and until the operator obtains the final liability release on all lands covered by the permit, the annual fee and acreage fee shall be paid as a condition to and prior to operating for that permit year.

Missouri's removal of the existing third sentence eliminates an apparent conflict with other provisions in the rule that allow multiple year permits. Missouri revised the existing fifth sentence to clarify that the annual fee and acreage fee must be paid until the operator obtains the final liability release on all permitted acres. The Federal regulation at 30 CFR 777.17 requires the regulatory authority to determine the amount of the permit application fee and allows the regulatory authority to develop procedures for the fee to be paid over the term of the permit. Based on the above discussion, we find that Missouri's revisions will not make its previously approved rule less effective than the counterpart Federal regulation.

3. *10 CSR 40–6.030 and 10 CSR 40–6.100 Minimum Requirements for Legal, Financial, Compliance and Related Information.* We are approving Missouri's proposed revisions to its rules at 10 CSR 40–6.030 for surface mining operations and 10 CSR 40–6.100 for underground mining operations. Missouri proposed the revisions to clarify previously approved provisions or to meet the required amendments codified at 30 CFR 925.16(p)(10) and (11) on September 29, 1992.

On December 19, 2000 (65 FR 79582), we revised the Federal counterparts to the rules that Missouri is proposing to amend. Because Missouri submitted its amendment before the date that we published our new regulations, we are using previous versions of the Federal regulations as our standards of comparison. In accordance with the requirements and procedures in 30 CFR 732.17(d) through (f), we will notify Missouri at a later time if we determine that our revised regulations will require additional revisions to the Missouri program.

a. Missouri clarified the introductory paragraph of 10 CSR 40–6.030(1)(C) by adding the phrase "each application shall contain" after the words "as applicable." The revised paragraph reads as follows:

> For each person who owns or controls the applicant under the definition of owned or controlled and owns or controls in 10 CSR 40–6.010(2)(E), as applicable each application shall contain—

We find that Missouri's clarification did not change the meaning of this previously approved rule. We also find that the introductory paragraph of 10 CSR 40–6.030(1)(C) is substantively the same as the introductory paragraph of the former Federal regulation at 30 CFR 778.13(c) that was promulgated on April 21, 1997.

b. Missouri revised the introductory paragraph of 10 CSR 40–6.030(1)(D) to read as follows:

> For any surface coal mining operation owned or controlled by the applicant under the definition of owned or controlled and owns or controls in 10 CSR 40–6.010(2)(E), each application shall contain—

We find that Missouri's revised introductory paragraph is substantively the same as the introductory paragraph of the former Federal regulation at 30 CFR 778.13(f) that was promulgated on April 21, 1997.

c. *10 CSR 40–6.030(1)(I) and 10 CSR 40–6.100(1)(I) Identification of Interests and Violation Information Format.* On September 29, 1992 (57 FR 44671), we required Missouri to revise its rules to require that a permit applicant submit ownership and control and violation information in a format prescribed by OSM. We codified this requirement at 30 CFR 925.16(p)(10). In response to this requirement, Missouri revised its rules at 10 CSR 40–6.030(1)(I) and 40–6.100(1)(I) to require the applicant to submit the information required by 10 CSR 40–6.010(1) and (2) and 40–6.100(1) and (2) in any prescribed format issued by the "Office of Surface Mining Reclamation and Enforcement (OSMRE)."

We find that Missouri's revised rules at 10 CSR 40–6.030(1)(I) and 40–6.100(1)(I) are substantively the same as the former Federal regulation at 30 CFR 778.13(l) that was promulgated on April 21, 1997, and they satisfy the required amendment at 30 CFR 925.16(p)(10), which we are removing.

d. *10 CSR 40–6.030(2)(C) Surface Mining Permit Applications—Compliance Information.* On September 29, 1992 (57 FR 44671), we required Missouri to revise 10 CSR 40–6.030(2)(C) to require any violation of SMCRA to be listed by the operator to make this regulation no less effective than the Federal regulation at 30 CFR 778.14(c). We codified this requirement at 30 CFR 925.16(p)(11). In response to this requirement, Missouri revised 10 CSR 40–6.030(2)(C) to read as follows:

> A list of all violation notices received by the applicant during the three year period preceding the application date, and a list of all unabated cessation orders and unabated violation notices received prior to the date of the application by any surface coal mining and reclamation operation that is deemed or presumed to be owned or controlled by the applicant under the definition of "owned or controlled" and "owns or controls" in 10 CSR 40–6.010(2)(E) of this chapter. For each notice of violation issued pursuant to 10 CSR 40–8.030(7) or under the Federal or State program for which the abatement period has not expired, the applicant must certify that such notice of violation is in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:
>
> A. Any identifying numbers for the operation, including the Federal or State permit number and MSHA number, the dates of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department or agency;
>
> B. A brief description of the violation alleged in the notice;
>
> C. The date, location and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in subsection (C) of this section to obtain administrative or judicial review of the violation;
>
> D. The current status of the proceedings and of the violation notice; and
>
> E. The actions, if any, taken by any person identified in subsection (C) of this section to abate the violation.

We find that Missouri's revised rule at 10 CSR 40–6.030(2)(C) is substantively the same as the former counterpart Federal regulation at 30 CFR 778.14(c) that was promulgated on April 21, 1997. Missouri's revised rule also satisfies a portion of the required amendment at 30 CFR 925.16(p)(11), which we are removing.

e. *10 CSR 40–6.100(2)(C) Underground Mining Permit Applications—Compliance Information.* On September 29, 1992 (57 FR 44671), we required Missouri to revise 10 CSR 40–6.100(2)(C) to require any violation of SMCRA to be listed by the operator to make this regulation no less effective than the Federal regulation at 30 CFR 778.14(c). We codified this requirement at 30 CFR 925.16(p)(11). In response to this requirement, Missouri revised 10 CSR 40–6.100(2)(C) to read as follows:

> For any violation of a provision of the Act, or of any law, rule or regulation of the United States, or of any State law, rule or regulation enacted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violations notices received by the applicant during the three (3) year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:
>
> 1. Any identifying numbers for the operation, including the Federal or State permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department or agency;
>
> 2. A brief description of the violation alleged in the notice;
>
> 3. The date, location and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in subsection (C) of this section to obtain administrative or judicial review of the violation;
>
> 4. The current status of the proceedings and of the violation notice; and
>
> 5. The actions, if any, taken by any person identified in subsection (C) of this section to abate the violation.

We find that Missouri's revised rule at 10 CSR 40–6.100(2)(C) is substantively the same as the former counterpart Federal regulation at 30 CFR 778.14(c) that existed on September 29, 1992, the date that we required Missouri to revise its rule. Missouri's revision also satisfies the remaining portion of the required amendment at 30 CFR 925.16(p)(11) by requiring that "any violation of a provision of the Act" be listed by the operator. Missouri's rule at 10 CSR 40–8.010(1)(A)3 defines "Act" to mean SMCRA.

4. *10 CSR 40–6.050 and 10 CSR 40–6.120 Minimum Requirements for Reclamation and Operations Plan.* Missouri proposed changes to its rules at 10 CSR 40–6.050 for surface mining operations and 10 CSR 40–6.120 for underground mining operations.

a. Missouri changed the term "sedimentation pond" to the term "siltation structure" in its rules at 10 CSR 40–6.050(5)(B)11, 40–6.050(5)(C)1, 40–6.120(14)(B)10, and 40–6.120(14)(C)1. Because sedimentation ponds are included in the Missouri and the Federal definitions of "siltation structure" at 10 CSR 40–8.010(1)(A)89 and 30 CFR 701.5, respectively, we find that Missouri's changes will not make its rules less effective than the counterpart Federal regulations. Also, because the term "siltation structures," as defined, includes a broader range of sediment control structures than the term "sedimentation ponds," we find that Missouri's revisions clarify that all sediment control structures must be shown on the maps and plans of the proposed mine operation.

b. *10 CSR 40–6.050(5) Operations Plan—Maps and Plans.* At 10 CSR 40–6.050(5) (C), Missouri removed the provision that would allow, with certain exceptions, a professional geologist experienced in the design and construction of impoundments to prepare and certify maps, plans, and cross-sections required under 10 CSR 40–6.050(5) (B)4, 5, 6, 10, and 11. As revised, Missouri's rule requires all maps, plans, and cross-sections to be prepared and certified by a qualified registered professional engineer, with assistance from experts in related fields such as land surveying and landscape architecture.

With identified exceptions, the counterpart Federal regulation at 30 CFR 780.14(c) requires a qualified registered professional engineer, a professional geologist, or a qualified registered professional land surveyor to prepare and certify the specified cross sections, maps, and plans. A qualified registered professional engineer must certify maps, plans, and cross-sections for the identified exceptions, which include impoundments, siltation structures, excess spoil disposal sites, and coal mine waste disposal sites. Because only a qualified registered professional engineer can prepare and certify the specified cross sections, maps, and plans under the Missouri rule, we find that Missouri's revised rule at 10 CSR 40–6.050(5)(C) is no less effective than the counterpart Federal regulation.

c. *10 CSR 40–6.050(7) and 40–6.120(12) Fish and Wildlife Plan.* On July 13, 1995 (60 FR 36047), we required Missouri to revise 10 CSR 40–6.050(7)(D)1 and 40–6.120 (12)(D)1 to require that the description in the fish and wildlife plan be consistent with, respectively, its performance standards for protection of fish, wildlife, and related environmental values at 10 CSR 40–3.100 and 40–3.250. We codified this requirement at 30 CFR 925.16(u). At 10 CSR 40–6.050(7)(D)1, Missouri proposed to require that each fish and

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wildlife plan description be consistent with the requirements of 10 CSR 40–6.050 and 40–3.100. At 10 CSR 40–6.120(12)(D)1. Missouri proposed to require that each fish and wildlife plan description be consistent with the requirements of 10 CSR 40–6.120 and 40–3.250. Missouri's rules at 10 CSR 40–3.100 for surface coal mining and 40–3.250 for underground coal mining contain performance requirements for the protection of fish, wildlife, and related environmental values.

We find that Missouri's revised rules at 10 CSR 40–6.050(7)(D)1 and 40–6.120(12)(D)1 are substantively the same as the counterpart Federal regulations at 30 CFR 780.16(b)(1) and 784.21(b)(1), respectively, and we are approving them. We also find that Missouri's revisions satisfy the required amendment at 30 CFR 925.16(u), which we are removing.

d. *10 CSR 40–6.050(11) Reclamation Plan—Ponds, Impoundments, Banks, Dams and Embankments.* At 10 CSR 40–6.050(11)(A)1.A, Missouri removed the provision that would allow a professional geologist to prepare and certify a general plan for each siltation structure, water impoundment, and coal processing waste bank, dam, or embankment within the mine plan area. As revised, Missouri's rule requires general plans for these structures to be prepared and certified by a qualified registered professional engineer, with assistance from experts in related fields such as land surveying and landscape architecture.

The counterpart Federal regulation at 30 CFR 780.25(a)(1)(i) requires a qualified registered professional engineer, a professional geologist, or a qualified registered professional land surveyor, with assistance from experts in related fields such as landscape architecture, to prepare and certify general plans for these structures. Because use of the word "or" in the Federal regulation would allow any one of the listed professionals to prepare and certify general plans, we find that Missouri's revised rule at 10 CSR 40–6.050(11)(A)1.A is no less effective than the counterpart Federal regulation at 30 CFR 780.25(a)(1)(i).

e. *10 CSR 40–6.050(17) and 40–6.120(15) Transportation Facilities.* On September 29, 1992 (57 FR 44671), we required Missouri to provide proof that land surveyors are authorized in the State to prepare and certify plans and drawings for road design or delete the provision from 10 CSR 40–6.050(17)(B) and 40–6.120(15)(B). We codified this requirement at 30 CFR 925.16(p)(12). In response to this requirement, Missouri removed the language "or a qualified registered professional land surveyor" from its provisions at 10 CSR 40–6.050(17)(B) and 40–6.120(15)(B). Missouri's revised rules require the plans and drawings for each class I and II road to be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

In those States that do not authorize land surveyors to certify the design of roads, the Federal regulations at 30 CFR 780.37(b) and 784.24(b) require the plans and drawings for roads to be prepared by, or under the direction of, and certified by a qualified registered professional engineer. Therefore, we find that Missouri's revised rules at 10 CSR 40–6.050(17)(B) and 40–6.120(15)(B) are no less effective than the counterpart Federal regulations at 30 CFR 780.37(b) and 784.24(b), respectively. We also find that Missouri's revisions satisfy the requirements of 30 CFR 925.16(p)(12), which we are removing.

5. *10 CSR 40–6.070 Review, Public Participation and Approval of Permit Applications and Permit Terms and Conditions.*

a. *10 CSR 40–6.070(3) Opportunity for Submission of Written Comments on Permit Applications.* At 10 CSR 40–6.070(3)(B), Missouri proposed to require that written comments on permit applications by public entities notified under subsections (2)(B) and (C) be submitted to the commission and director within 30 days after the last publication of the newspaper advertisement required by subsection (2)(A). Missouri previously required that written comments be submitted within 60 days after the application is filed.

The counterpart Federal regulation at 30 CFR 773.13(b)(1) requires that written comments on permit applications by these public entities be submitted within a reasonable time established by the regulatory authority. We find that Missouri's proposed time frame is reasonable, and we are approving the revisions to 10 CSR 40–6.070(3)(B).

b. *10 CSR 40–6.070(4) Right to File Written Objections.* At 10 CSR 40–6.070(4) (A), Missouri is proposing to require that written objections to an initial, renewed, or revised application for a permit be filed within 30 days after the last publication of the newspaper advertisement required by subsection (2)(A). Missouri previously required that written objections be filed within 60 days after the application is filed.

Missouri's revised rule contains substantively the same requirements for filing written objections as the counterpart Federal regulation at 30 CFR 773.13(b)(2), including the 30-day time frame. Therefore, we find that Missouri's rule at 10 CSR 40–6.070(4)(A) is no less effective than the Federal regulation.

6. *10 CSR 40–6.090(4) Permit Revisions.* Missouri is revising 10 CSR 40–6.090 (4)(B)2 to read as follows:

> The scale or extent of permit application information requirements and procedures, including notice and hearings, applicable to revision requests shall be sufficient to demonstrate compliance with all applicable rules. Any application for a revision which proposes significant alterations in the operations described in the materials submitted in the application for the original permit under 10 CSR 40–6.030, 10 CSR 40–6.040, 10 CSR 40–6.050, 10 CSR 40–6.060, 10 CSR 40–6.100, 10 CSR 40–6.110 or 10 CSR 40–6.120 or in the conditions of the original permit, at a minimum, shall be subject to the requirements of 10 CSR 40–6.070 and 10 CSR 40–6.080.

Missouri's rule at 10 CSR 40–6.070 contains requirements for review, public participation, and approval of permit applications. It includes Missouri's provisions for permit terms and conditions. Missouri's rule at 10 CSR 40–6.080 contains requirements for administrative and judicial review of decisions on permit applications.

The Federal regulation at 30 CFR 774.13(b)(2) requires the regulatory authority to establish guidelines for the scale or extent of revisions for which all the permit application information requirements and procedures, including notice, public participation, and notice of decision requirements shall apply. We find that Missouri's revised rule at 10 CSR 40–6.090(4)(B)(2) is consistent with this Federal requirement, and we are approving it.

E. 10 CSR 40–7 Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations

1. *10 CSR 40–7.011(6) Bond Requirements—Type of Bonds.* On September 29, 1992 (57 FR 44673), we required Missouri to revise its rule at 10 CSR 40–7.011(6)(D)8 to provide that, upon issuance of a cessation order, mining operations shall not resume until the regulatory authority has determined that an acceptable bond has been posted as required by the Federal regulations at 30 CFR 800.16(e)(2). We codified this requirement at 30 CFR 925.16(p)(14). In response to this requirement, Missouri revised its rule provisions at 10 CSR 40–7.011(6)(A)8 for surety bonds and 10 CSR 40–7.011(6)(D)8 for self-bonds to require that when a cessation order is issued for failure to replace bond coverage, mining operations shall not resume until the director has determined that an acceptable bond has been posted.

Missouri's revised provisions at 10 CSR 40–7.011(6)(A)8 and 40–7.011(6)(D)8 have substantively the same requirements for replacing bond coverage as the counterpart Federal regulations at 30 CFR 800.16(e) for surety bonds and 800.23(g) for self-bonds. Therefore, Missouri's revised rules are no less effective than the counterpart Federal regulations. Missouri's revision to 10 CSR 40–7.011(6)(D)(8) satisfies the required amendment at 30 CFR 925.16(p)(14), which we are removing.

2. *10 CSR 40–7.021 Duration and Release of Reclamation Liability.*

a. *10 CSR 40–7.021(1)(C) and (D)/40–7.021(2)(B)5 and 6 Termination of Jurisdiction.* On September 29, 1992 (57 FR 44674), we required Missouri to relocate its provisions at 10 CSR 40–7.021(2)(B)5 and 6 that addressed termination of jurisdiction to an appropriate location in its regulations. Missouri had placed these provisions under its phase II bond release requirements. We were concerned that this location could lead to possible misinterpretation of the requirements for phase II bond release and termination of jurisdiction. We codified this requirement at 30 CFR 925.16(p)(16). In response to the required amendment, Missouri removed its provisions from 10 CSR 40–7.021(2)(B)5 and 6 and added them to 10 CSR 40–7.021(1)(C) and (D) under its period of liability requirements.

As discussed in finding 51 of the September 29, 1992, **Federal Register**, Missouri's rules for termination of jurisdiction are substantively the same as the counterpart Federal regulations at 30 CFR 700.11(d). Both the Federal regulations and Missouri's rules clarify the circumstances under which a regulatory authority may terminate or reassert jurisdiction for the reclaimed sites of completed surface coal mining and reclamation operations. Because regulatory jurisdiction may only be terminated upon the final release of a performance bond or, where no bond was required, upon a finding that all reclamation had been successfully completed, we find locating these provisions under its requirements concerning the period of reclamation liability at 10 CSR 40–7.021(1) is appropriate. Therefore, we are approving Missouri's deletion of 10 CSR 40–7.021(2)(B)5 and 6 and addition of 10 CSR 40–7.021(1)(C) and (D). We are also removing the required amendment at 30 CFR 925.16(p)(16).

b. *10 CSR 40–7.021(2) Criteria for Release of Reclamation Liability.* Missouri replaced the term "sediment ponds" with the term "siltation structures" in its rule at 10 CSR 40–7.021(2)(A). The revised provision provides that phase I bond must be retained on unreclaimed temporary structures, such as roads, siltation structures, diversions and stockpiles.

Because the term "siltation structures," as defined in Missouri's rules at 10 CSR 40–8.010(1)(A)89 and the Federal regulations at 30 CFR 701.5, includes a broader range of sediment control structures than the term "sedimentation ponds," we find that Missouri's revision will provide additional guidance for retention of phase I bond for unreclaimed temporary structures.

c. *10 CSR 40–7.021(3) Bond Release Application Procedures.* Missouri added the following new procedure at 10 CSR 40–7.021(3)(C):

> (C) At the time of final or phase III bond release submittal, the operator shall include evidence that an affidavit has been recorded with the recorder of deeds in the county where the mined land is located generally describing the parcel or parcels of land where operations such as underground mining, auger mining, covering of slurry ponds, or other underground activities occurred which could impact or limit future use of that land. This requirement shall be applicable to mined land where phase I reclamation was completed on or after September 1, 1992.

There is no counterpart Federal regulation. However, we find that this new requirement does not conflict with any existing Federal or State requirements concerning performance bond release. Therefore, 10 CSR 40–7.021(3)(C) will not make Missouri's rules concerning performance bond release at 10 CSR 40–7.021 less effective than the counterpart Federal regulations at 30 CFR 800.40.

F. 10 CSR 40–8 Definitions and General Requirements

1. *10 CSR 40–8.010(1)(A)12 Definition of Best Technology Currently Available.* Missouri replaced the term "sedimentation ponds" with the term "siltation structures," in its definition of "best technology currently available."

Because the term "siltation structures" provides a broader classification of sediment control structures than the term "sedimentation ponds" and because sedimentation ponds are included in the Missouri and the Federal definitions of "siltation structure" at 10 CSR 40–8.010(1)(A)89 and 30 CFR 701.5, respectively, we find that Missouri's revision will not make its definition of "best technology currently available" less effective than the counterpart Federal definition at 30 CFR 701.5.

2. *10 CSR 40–8.010(1)(A)87 and 40–8.010(1)(A)89 Definitions of Sedimentation Pond and Siltation Structure, respectively.* Missouri removed its definition of "sedimentation pond" at 10 CSR 40–8.010(1)(A)87 and added its substantive provisions to the following new definition of "siltation structure" at 10 CSR 40–8.010(1)(A)89:

> Siltation structure means a sedimentation pond, a series of sedimentation ponds, or other treatment facility. it also means a primary sediment control structure designed, constructed and maintained in accordance with 10 CSR 40–3.040(6) and including, but not limited to, barrier, dam or excavated depression which slows down water runoff to allow sediment to settle out. A siltation structure shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts and other measures that reduce overland flow velocity, reduce runoff volume or trap sediment, to the extent that those secondary sedimentation structures drain to the siltation structure.

The counterpart Federal regulation at 30 CFR 701.5 defines "siltation structure" to mean a sedimentation pond, a series of sedimentation ponds, or other treatment facility. As shown above, Missouri's proposed definition of "siltation structure" at 10 CSR 40–8.010(1)(A)89 contains the language from the Federal definition and the previously approved language from its definition of "sedimentation pond" at 10 CSR 40–8.010(1)(A)87. As discussed throughout this document, Missouri replaced all instances of the term "sedimentation pond" with the term "siltation structure" in its rules at 10 CSR 40. Because Missouri no longer uses the term "sedimentation pond" in its rules and because Missouri added the substantive language from its currently approved definition of "sedimentation ponds" to its definition of "siltation structure," we find that Missouri's removal of its definition of "sedimentation pond" will not make its rules less effective than the Federal regulations. Also, because Missouri's definition of "siltation structure" at 10 CSR 40–8.010(1)(A)89 includes the language from the Federal definition of "siltation structure" at 30 CFR 701.5, we find that Missouri's definition is no less effective than the Federal definition.

3. *10 CSR 40–8.030(1) Inspections.* On September 29, 1992 (57 FR 44675), we required Missouri to revise 10 CSR 40–8.030(1)(F) and (G) to remove limitations regarding the required number of inspections of abandoned mine sites. We codified this requirement at 30 CFR 925.16(p)(18). In response to this requirement, Missouri proposed revisions to its regulations at 10 CSR 40–8.030(1)(F)4.A and 40–8.030(1)(G).

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Missouri revised 10 CSR 40–8.030(1)(F)4.A by requiring a site to be classified as abandoned only in cases where a permit has either expired or been revoked. Missouri's revised rule is substantively identical to the counterpart Federal regulation at 30 CFR 840.11(g)(4)(i). Missouri revised 10 CSR 40–8.030(1)(G) by removing its existing provisions and adding new provisions that require Missouri to inspect abandoned sites on a frequency commensurate with the public health and safety and environmental conditions present. Missouri must always perform at least one complete inspection per calendar year for each abandoned site. Missouri's revised rule incorporates criteria that must be taken into consideration and documented before it can reduce inspection frequencies at an abandoned site. We find that Missouri's new provisions are substantively identical to the Federal regulation provisions at 30 CFR 840.11(h). We also find that Missouri's revisions at 10 CSR 40–8.030(1)(F)4.A and 40–8.030(1)(G) removed the previous limitations regarding the required number of inspections of abandoned mine sites and satisfied the required amendment at 30 CFR 925.16(p)(18). Therefore, we are approving 10 CSR 40–8.030(1)(F)4.A and 40–8.030(1)(G), and we are removing the required amendment at 30 CFR 925.16(p)(18).

4. *10 CSR 40–8.070(2)(C) Exemption for Coal Extraction Incidental to the Extraction of Other Minerals.*

a. *10 CSR 40–8.070(2)(C)1.A Definition of Cumulative Measurement Period.* Missouri's current rule at 10 CSR 40–8.070(2)(C)1.A(II)(a) requires that, for coal or other minerals extracted prior to November 1, 1990, a person with an approved exemption for coal extraction incidental to the extraction of other minerals submit a written report of cumulative production and revenue every October after that. On September 29, 1992, we required Missouri to amend 10 CSR 40–8.070(2)(C)1.A(II) to provide appropriate dates for reporting of cumulative production that are no earlier than the date Missouri's October 10, 1990, amendment is published in the **Federal Register** as a final rule. We codified this requirement at 30 CFR 925.16(p)(20). In response to this requirement, Missouri amended 10 CSR 40–8.070(2)(C)1.A(II)(a) to require that, for coal or other minerals extracted prior to October 1, 1990, a person with an approved exemption for coal extraction incidental to the extraction of other minerals submit an annual written report of cumulative production and revenue on September 30, 1992, and every September 30 after that.

Missouri's October 10, 1990, amendment was published in the **Federal Register** on September 29, 1992. Therefore, the initial annual reporting date proposed at 10 CSR 40–8.070(2)(C)1.A(II)(a) of September 30, 1992, and subsequent annual reporting date of September 30 satisfy a portion of the required amendment at 30 CFR 925.16(p)(20). However, Missouri's proposed rule still specifies the end of the period for which cumulative production and revenue is calculated is where the coal or other minerals were extracted prior to October 1, 1990, which is a date earlier than September 29, 1992. This date needs to be revised to be no earlier than September 29, 1992. Therefore, we find that Missouri's proposed rule at 10 CSR 40–8.070(2)(C)1.A(II) is less effective than the counterpart Federal regulation at 30 CFR 702.5(a)(2), and we are not approving the October 1, 1990, date proposed at 10 CSR 40–8.070(2)(C)1.A(II)(a). Also, Missouri did not revise its rule at 10 CSR 40–8.070(2)(C)1.A(II)(b). This rule still refers to extraction of coal or other minerals commenced on or after November 1, 1990, which is earlier than the required date. Based on this finding, we are modifying the required amendment at 30 CFR 925.16(p)(20).

b. *10 CSR 40–8.070(2)(C)10.F Revocation and Enforcement—Direct Enforcement.* Missouri's current rules at paragraph (2)(C)10.F provide direct enforcement requirements for operators who did or did not conduct activities in accordance with the terms of an approved exemption before revocation of the exemption. Subparagraph (C)10.F(I) specifies that an operator mining in accordance with the terms of an approved exemption shall not be cited for violations of the commission which occurred prior to the revocation of the exemption. Subparagraph (C)10.F(II) specifies that an operator who does not conduct activities in accordance with the terms of an approved exemption shall be subject to direct enforcement action for violations of the commission. Subparagraph (C)10.F(III) specifies that upon revocation of an exemption or denial of an exemption application, an operator shall comply with the reclamation standards of the commission. On September 29, 1992, we required Missouri to amend its rules at 10 CSR 40–8.070(2)(C)10.F(I), (II), and (III). We codified these requirements at 30 CFR 925.16(p)(21). The counterpart Federal regulations at 30 CFR 702.17(d)(1), (2), and (3) have similar requirements with the exception that the Federal regulations either specify violations of the regulatory program or reclamation standards of the regulatory program. Missouri's current rules limit its direct enforcement requirements to violations or reclamation standards of its commission rather than its regulatory program. In response to the required amendment at 30 CFR 925.16(p)(21), Missouri replaced the term "commission" with the term "regulatory program" in each of its rules at 10 CSR 40–8.070(2)(C)10.F(I), (II), and (III).

We find that Missouri's revised rules at 10 CSR 40–8.070(2)(C)10.F(I), (II), and (II) are substantively identical to the counterpart Federal regulations at 30 CFR 702.17(d)(1), (2), and (3), respectively, and we are approving them. We also find that Missouri's revisions satisfy the required amendment at 30 CFR 925.16(p)(21), which we are removing.

G. 10 CSR 40–9.020 Abandoned Mine Reclamation and Restoration; Reclamation

1. Missouri revised its rule at 10 CSR 40–9.020(1)(D)4 to require the commission to find in writing whether coal lands and waters damaged and abandoned after August 3, 1977, meet the specified eligibility requirements and priority objectives. Missouri also added the requirement that the commission find in writing that the reclamation priority of the site is the same or more urgent than the reclamation priority for other lands and waters. Missouri's revised rule reads as follows:

> The commission finds in writing that the site meets the eligibility requirements of this section and the priority objectives stated in subsections (4)(A) and (B) of this rule and that the reclamation priority of the site is the same or more urgent than the reclamation priority for other lands and waters eligible pursuant to this section. Priority will be given to those sites which are in the immediate vicinity of a residential area or which have an adverse economic impact upon a community.

The counterpart Federal regulation at 30 CFR 874.12(d) also requires a written determination of eligibility for these sites. Therefore, we find that Missouri's revised rule at 10 CSR 40–9.020(1)(D)4 is consistent with the requirements of the counterpart Federal regulation at 30 CFR 874.12(d)(3), and we are approving it.

2. Missouri added the following new provision at 10 CSR 40–9.020(1)(F):

> If reclamation of a site covered by an interim or permanent program permit is carried out under the State reclamation program, the permittee of the site shall reimburse the abandoned mine land reclamation fund for the cost of the reclamation that is in excess of any bond forfeited to ensure reclamation. In performing reclamation under subsection (1)(D) of this rule, the commission shall not be held liable for any violations of any performance standards or reclamation requirements specified in Chapter 444 RSMo (1994) nor shall a reclamation activity undertaken on such lands or waters be held to any standards set forth in Chapter 444 RSMo (1994).

We find that Missouri's rule at 10 CSR 40–9.020(1)(F) is substantively identical to the counterpart Federal regulation at 30 CFR 874.12(g), and we are approving it.

IV. Summary and Disposition of Comments

Federal Agency Comments

On October 18, 2000, under section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i) of the Federal regulations, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Missouri program (Administrative Record No. MO–662.2). We did not receive any comments.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), we are required to obtain the written concurrence of the EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Missouri proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA for its concurrence.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. MO–662.2). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On October 18, 2000, we requested comments on Missouri's amendment (Administrative Record No. MO–662.2), but neither responded to our request.

Public Comments

We asked for public comments on the amendment, but did not receive any.

V. Director's Decision

Based on the above findings, we approve, with certain exceptions and additional requirements, the amendment as sent to us by Missouri on October 5, 2000.

With the requirement that Missouri further revise its rules, we do not approve, as discussed in: finding No. C.3.f(2)(b), 10 CSR 40–3.040(10)(O)3.C and 40–3.200(10)(O)3.C, design precipitation event requirements for permanent and temporary impoundments; finding No. C.5.b, 10 CSR 40–3.240, air resource protection, to the extent that it is missing pertinent requirements relating to control of erosion and air pollution; finding No. F.4.a, 10 CSR 40–8.070(2)(C)1.A(II)(a), definition of cumulative measurement period, to the extent that it uses October 1, 1990, for determining the end of the period for which cumulative production and revenue is reported.

To implement this decision, we are amending the Federal regulations at 30 CFR part 925, which codify decisions concerning the Missouri program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage Missouri to bring its program into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to State programs that are not approved by OSM. In the oversight of the Missouri program, we will recognize only the statutes, rules and other materials approved by the Secretary or by us, together with any consistent implementing policies, directives and other materials. We will require the enforcement by Missouri of only such provisions.

VI. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary under SMCRA. Section 405(d) of SMCRA requires State abandoned mine reclamation programs to be in compliance with the procedures, guidelines, and requirements of SMCRA.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met. Decisions on proposed abandoned mine land reclamation plans and revisions submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and 30 CFR part 884 of the Federal regulations.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program

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provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A). Agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions are also categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 25, 2001.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 925 is amended as set forth below:

PART 925—MISSOURI

1. The authority citation for Part 925 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 925.12 is amended by removing the introductory paragraph; by revising paragraphs (a), (b), and (c) and adding paragraphs (d), (e), and (f) to read as follows:

§ 925.12 State program provisions and amendments disapproved.

(a) The amendment at 10 CSR 40–4.030(4)(A), submitted on December 14 and 18, 1987, is disapproved insofar as it would exempt from prime farmland performance standards coal preparation plants, support facilities, and roads associated with surface coal mining activities.

(b) The amendment at 10 CSR 40–4.030(4)(B), submitted on December 14 and 18, 1987, is disapproved insofar as it would exempt from prime farmland performance standards water bodies as a postmining land use.

(c) The definitions of "coal processing plant" and "coal preparation plant" at 10 CSR 40–8.010(1)(A)18, submitted on December 14 and 18, 1987, are disapproved insofar as they exempt from regulation certain facilities where coal is subjected to chemical or physical processing or cleaning, concentrating, or other processing or preparation, if they do not separate coal from its impurities.

(d) The amendments at 10 CSR 40–3.040(10)(O)3.C and 40–3.200(10)(O)3.C, submitted on October 5, 2000, concerning temporary impoundment design are disapproved effective May 9, 2001.

(e) The amendment at 10 CSR 40–3.240, submitted on October 5, 2000, concerning air resource protection is disapproved effective May 9, 2001, to the extent that it is missing pertinent requirements relating to control of erosion and air pollution.

(f) The amendment at 10 CSR 40–8.070(2)(C)1.A(II)(a), submitted on October 5, 2000, concerning the definition of cumulative measurement period is disapproved effective May 9, 2001, to the extent that it uses October 1, 1990, for determining the end of the period for which cumulative production and revenue is reported.

3. Section 925.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 925.15 Approval of Missouri regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
October 5, 2000	May 9, 2001	10 CSR 40–3.010(6); 3.020(1); 3.020(3); 3.040(2)(A)1, 2, 3.B, 4, 5, 6; 3.040(4)(A)1 and (B)3; 3.040(6)(A), (B), (C), (E), (F), (G), (H), (Q), (T), (U); 3.040(8); 3.040(10)(A), (B)5, (L), (M), (N), (O), (O)1, (O)2.A and B, (O)2.C, (O)3, (O)3.A and B; 3.040(10)(O)3.C [not approved]; 3.040(13)(A)1.A and (B)1; 3.040(14)(B)3; 3.040(17); 3.050 Purpose; 3.050(1)(D)1.A; 3.050(2)(A); 3.050(3)(C)1; 3.080(1)(A); 3.080(3)(D); 3.080(8)(A); 3.090; 3.110(4)(A); 3.110(5)(A); 3.110(6)(B); 3.120(5); 3.120(8)(A)4. (B), (D)2 and 8; 3.140(1)(A); 3.200(2)(A)1, 2, 3.A, 4, 5, 6; 3.200(4)(B)3; 3.200(6)(A), (B), (C), (E), (F), (G), (Q), (T), (U); 3.200(8), 3.200(10)(A), (B)5, (K), (L), (M), (N), (O), (O)1, (O)2.A, B, and C, (O)3, (O)3.A and B; 3.200(10)(O)3.C [not approved]; 3.200(12) (A)1.A and (B)1; 3.200(13)(B)3; 3.200(16); 3.240 [partial approval]; 3.270(5); 3.270(8)(A)4 and (B); 4.010 Purpose; 4.010 (3)(J); 4.020(2)(B); 4.030 Purpose; 4.030 (3)(A); 4.030(4)(A), (B), (C); 4.030(6)(A), 4.030(7)(B)2 and 7; 4.050(11), (12); 5.010(1)(B); 5.010(2)(E); 6.010(4)(B)2; 6.010(6)(A); 6.020 Purpose; 6.020(5); 6.020(7)(A); 6.030(1)(C), (D), (I); 6.030(2)(C); 6.040(5)(B)1.E; 6.040(16)(C)1 and 3; 6.050(1); 6.050(5)(B)11, (C), and (C)1; 6.050(7)(D)1; 6.050(9)(C)3 and 4, (D)3, (E); 6.050(11)(A), (A)1.A, 2 and 3, (B), (C), (F); 6.050(17)(B); 6.060(4)(C)1 and 5, (D)1, (E)5; 6.070(3) and (3)(B); 6.070(4)(A); 6.070(5)(B)4; 6.070(8)(C), (D)3; 6.070(10) (D); 6.090(4)(B)2; 6.090(6)(A); 6.090(7); 6.100(1)(I); 6.100(2)(C); 6.120(5)(E); 6.120(7)(A), (A)2 and 3, (B)1, (C), (F); 6.120(12)(D)1; 6.120(14)(B)10, (C)1; 6.120(15)(B); 7.011(6)(A)8, (D)2.C(II), 5.A and C, 8; 7.021(1)(C) and (D); 7.021(2)(A), (B)5 and 6; 7.021(3)(C) and (D); 8.010(1) (A)9, 12, 52.C, 59, 73, 82, 87, 89, and 97B; 8.030(1)(F)4.A and (G); 8.030(6)(A)3 and (B)1; 8.030(10)(A); 8.030(12)(C); 8.050 Purpose; 8.050(1); 8.050(2)(B); 8.050(5)(A) and (B); 8.050(9)(A); 8.070(2)(C)1.A(II)(a) [partial approval] and 10.F, (F), (G).

4. Section 925.16 is amended by removing and reserving paragraphs (b), (f)(1), (g), (p)(5), (p)(9), (p)(10), (p)(11), (p)(12), (p)(14), (p)(16), (p)(18), (p)(21), (q), (q)(2), and (u); by revising paragraphs (p), (p)(4), and (p)(20) and adding paragraph (v) to read as follows:

§ 925.16 Required program amendments.

* * * * *

(p) By May 10, 2002, Missouri shall amend its program as follows:

* * * * *

(4) At 10 CSR 40–3.240 by providing performance standards that address air quality in a manner no less effective than the Federal regulations at 30 CFR 817.95(a).

* * * * *

(20) At 10 CSR 40–8.070(2)(C)1.A(II)(a) and (b) to revise the definition of cumulative measurement period to provide appropriate dates for the end of the period for which cumulative production and revenue is reported that are no earlier than September 29, 1992, in accordance with the Federal regulation requirements at 30 CFR 702.5(a)(2)(i) and (ii).

* * * * *

(v) By May 10, 2002, Missouri must submit either an amendment or a description of an amendment to be proposed, together with a timetable for adoption of proposed revisions to remove its provisions at 10 CSR 40–3.040(10)(O)3.C and 40–3.200(10)(O)3.C.

5. Section 925.25 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 925.25 Approval of Missouri abandoned mine land reclamation plan amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
October 5, 2000	May 9, 2001	10 CSR 40–9.020(1)(D)4 and (F).

[FR Doc. 01–11635 Filed 5–8–01; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

[SPATS No. OK–025–FOR]

Oklahoma Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule, approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving an amendment to the Oklahoma regulatory program (Oklahoma program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Oklahoma proposed revisions to it rules concerning permit revisions. Oklahoma intends to revise its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: May 9, 2001.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6548. Telephone: (918) 581–6430. Internet: mwolfrom@osmre.gov.

SUPPLEMENTARY INFORMATION:

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I. Background on the Oklahoma Program
II. Submission of the Amendment
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V. Director's Decision
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I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the

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Oklahoma program. You can find background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the January 19, 1981, **Federal Register** (46 FR 4902). You can find later actions concerning the Oklahoma program at 30 CFR 936.15 and 936.16.

II. Submission of the Amendment

By letter dated January 25, 2001 (Administrative Record No. OK–990), the Oklahoma Department of Mines (Department) sent us an amendment to the Oklahoma program under SMCRA and the Federal regulations at 30 CFR 732.17(b). Oklahoma sent the amendment at its own initiative. Oklahoma is amending its rules at OAC 460:20–17–3 concerning permit revisions by providing guidelines for determining when a permit revision is major/significant or minor and by specifying a time period for approval or disapproval of a permit revision application.

We announced receipt of the amendment in the February 15, 2001, **Federal Register** (66 FR 10403). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on March 19, 2001. Because no one requested a public hearing or meeting, we did not hold one.

III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the amendment to the Oklahoma program.

The Federal regulations at 30 CFR 774.13(b)(1) and (2) require regulatory authorities to establish—

(1) A time period within which the regulatory authority will approve or disapprove an application for a permit revision; and

(2) Guidelines establishing the scale or extent of revisions for which all the permit application information requirements and procedures of Subchapter G, including notice, public participation, and notice of decision requirements of 30 CFR 773.13, 773.19(b)(1) and (3), and 778.21 apply. All permit application information requirements and procedures must apply at a minimum to significant permit revisions.

As shown below, we found that Oklahoma's guidelines meet the requirements of the Federal regulations at 30 CFR 774.13(b)(1) and (2). Any revisions that we do not discuss below are about minor wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. *OAC 460:20–17–3(a) General.* At Section 460:20–17–3(a) Oklahoma is adding the following provision:

(a) Any revision application to the approved mining or reclamation plan will be subject to review and approval by the Department. During the revision review, the revision will be classified as either: (1) Major or Significant; or (2) Minor.

The Federal regulation at 30 CFR 774.13(b)(2) requires the regulatory authority to establish guidelines for the scale or extent of revisions for which all the permit application requirements will apply. It allows flexibility to the regulatory authority to establish both significant and insignificant permit revision guidelines suitable to the operation of the State program. We find that Oklahoma's rule at OAC 460:20–17–3(a) meets the requirements of this Federal regulation, and we are approving it.

B. *OAC 460:20–17–3(b) Application requirements and procedures.* Oklahoma is removing the existing provisions in Section 460:20–17–3(b), and adding the following new provisions:

(b) Application requirements and procedures. A permittee is required to submit any permit revision applications to the Chief of Technical Services for review. The Technical Service review shall determine:

(1) Whether the permittee has provided all technical and public notice requirement information the Department deems necessary to adequately evaluate and find that the revision meets the requirements of the statutes and of this Chapter; and

(2) Whether the revision application contains any deficiencies. The Department is required to send written notification to the permittee of any deficiencies along with a response date deadline for answering the deficiencies noted. Any deadline extension requests shall be in writing and are subject to the approval of the Chief of Technical Services. Failure of the permittee to file written responses within the required time frames, will result in the denial of the revision application.

The Federal regulation at 30 CFR 774.13(b)(2) requires the regulatory authority to establish guidelines for the scale or extent of revisions for which all the permit application requirements will apply. The Federal regulations provide flexibility to the regulatory authority to establish guidelines suitable to the operation of the State program. We find that Oklahoma's rule at OAC 460:20–17–3(b) meets the requirement of the Federal regulation, and we are approving it.

C. *OAC 460:20–17–3(c) Significant revisions.* Oklahoma is moving the existing provision in Section 460:20–17–3(c) to new Section 460:20–17–3(f), and is adding the following provision to Section OAC 460:20–17–3(c):

(c) A significant revision to the mining or reclamation plan will be subject to the permit application information requirements and procedures of this Subchapter, including notice, public participation, and notice of decision requirements of Sections 460:20–15–5, 460:20–15–8(b)(1) and (3), and 460:20–23–9 prior to approval by the Department and implementation by the permittee.

The Federal regulation at 30 CFR 774.13(b)(2) requires all permit application information requirements and procedures of Subchapter G, including notice, public participation, and notice of decision requirements of 30 CFR 773.13, 773.19(b)(1) and (3), and 778.21 to apply at a minimum to significant permit revisions. We find that Oklahoma's rule at OAC 460:20–17–3(c) contains the same requirements for significant permit revisions, and therefore, is no less effective than the Federal regulation.

D. *OAC 460:20–17–3(d) Departmental consideration.* Oklahoma is moving the existing provision in Section 460:20–17–3(d) to new Section 460:20–17–3(g), and is adding the following new provisions to Section OAC 460:20–17–3(d):

(d) Departmental consideration. The Department will consider any proposed revision to be significant if its implementation could reasonably be expected, in the opinion of the Director, to result in any adverse impact to persons, property, or the environment outside the permit area. Revisions with impacts confined to the permit area will be evaluated on a case by case basis to determine if significant. While consideration will be given to the size, location, type and extent of impact in classifying a revision, the following will typically be considered significant:

(1) Incidental boundary changes;

(2) Hydrology plan changes which could have adverse impacts outside the permit acres, such as:

(A) The addition or relocation of permanent impoundments;

(B) The addition, deletion, or relocation of stream diversions; and

(C) The addition or deletion of acid mine drainage treatment facilities;

(3) The addition of a coal wash plant;

(4) The addition of or changes to a non coal waste storage plan;

(5) Construction or relocation of county roads;

(6) Addition of blasting plans;

(7) Postmining land use changes to residential, industrial or commercial (except for changes involving oil and gas wells and private roads), recreation, or developed water resources as discussed 460:20–27–14(a)(2);

(8) Changes impacting historical or cultural areas, high value wildlife habitat, and parks and public places;

(9) Permanent changes which could have a limiting or adverse effect on the long term future of the land; and

(10) Other changes deemed significant by the Director which affect the landowner and or the public.

The Federal regulation at 30 CFR 774.13(b)(2) requires the regulatory authority to establish guidelines for the scale or extent of revisions for which all the permit application requirements will apply. The Federal regulations provide flexibility to the regulatory authority to establish permit revision guidelines suitable to the operation of the State program. We find that Oklahoma's rule at OAC 460:20–17–3(d) meets the requirement of this Federal regulation, and we are approving it.

E. *OAC 460:20–17–3(e) Minor revisions.* Oklahoma is adding the following new provisions at OAC 460:20–17–3(e):

(e) Minor revisions. The following revisions are typically considered minor revisions:

(1) Changes to pond designs;

(2) Addition or deletion of dewatering pipes on ponds;

(3) Addition, deletion or changes to office facilities, explosive storage areas, temporary haul roads, and coal pads;

(4) Changes to surface and groundwater monitoring plans;

(5) Vegetation changes;

(6) Change of operator without a change of permittee; and

(7) Conversion to incremental bonding or change to bond increments, pursuant to the requirements of Subchapter 37 of this Chapter.

The Federal regulation at 30 CFR 774.13(b)(2) requires the regulatory authority to establish guidelines for the scale or extent of revisions for which all the permit application requirements will apply. It allows flexibility to the regulatory authority to establish both significant and insignificant permit revision guidelines suitable to the operation of the State program. We find that Oklahoma's rule at OAC 460:20–17–3(e) meets the requirements of this Federal regulation, and we are approving it.

F. *OAC 460:20–17–3(h) Application decisions.* Oklahoma is adding the following new provision at Section 460:20–17–3(h):

(h) The Department will make a decision of approval or denial of a revision application within six months of receipt of the application unless the application, or some aspect of the application, is under technical, administrative or judicial review.

The Federal regulation at 30 CFR 774.13(b)(1) requires a regulatory authority to establish a time period within which he or she will approve or disapprove an application for a permit revision. The Federal regulation provides flexibility to the regulatory authority in establishing time periods suitable to operation of the State program. We find that Oklahoma's rule at OAC 460:20–17–3(h) meets the requirements of the Federal regulation, and we are approving it.

IV. Summary and Disposition of Comments

Federal Agency Comments

On February 5, 2001, under section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i) of the Federal regulations, we requested comments from various Federal agencies with an actual or potential interest in the Oklahoma amendment (Administrative Record No. OK–990.01). The U. S. Army Corps of Engineers responded on March 2, 2001 (Administrative Record No. OK–990.02), that the proposed amendment was satisfactory to the agency.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), we are required to obtain the written concurrence of the EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Oklahoma proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA for its concurrence.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. OK–990.01). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On February 5, 2001, we requested comments on Oklahoma's amendment (Administrative Record No. OK–990.01), but neither responded to our request.

Public Comments

We requested public comments on the amendment, but did not receive any.

V. Director's Decision

Based on the above findings, we approve the amendment as sent to us by Oklahoma on January 25, 2001.

We approve the rules that Oklahoma proposed with the provision that they be promulgated in identical form to the rules sent to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 936, which codify decisions concerning the Oklahoma program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage Oklahoma to bring its program into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary under SMCRA.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory

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programs and program amendments since each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides a decision on a proposed State regulatory program provision does not constitute major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 25, 2001.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 936 is amended as set forth below:

PART 936—OKLAHOMA

1. The authority citation for Part 936 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 936.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 936.15 Approval of Oklahoma regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
.	.	.
January 25, 2001	May 9, 2001	OCA 460:20–17–3.

[FR Doc. 01–11634 Filed 5–8–01; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–01–062]

RIN 2115–AE47

Drawbridge Operation Regulations: Hackensack River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary final rule governing the operation of the Lincoln Highway Bridge, at mile 1.8, across the Hackensack River at Jersey City, New Jersey. This temporary final rule requires vessels to provide a one-hour daytime advance notice and a four-hour nighttime advance notice for bridge openings from May 8, 2001 through July 31, 2001. This action is necessary to facilitate completion of maintenance at the bridge.

DATES: This temporary final rule is effective from May 8, 2001 through July 31, 2001.

ADDRESSES: The public docket and all documents referred to in this notice are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Yee, Project Officer, First Coast Guard District, (212) 668–7165.

SUPPLEMENTARY INFORMATION:

Regulatory Information

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a NPRM and for making this regulation effective in less than 30 days after publication in the **Federal Register.** This temporary rule will extend the time period the bridge will operate on an advance notice basis in order to complete maintenance repairs that were scheduled to be completed by May 7, 2001. The Coast Guard published a temporary rule on March 13, 2001, (66 FR 14487) effective from March 13, 2001 through May 7, 2001, to facilitate necessary maintenance at the bridge. The scheduled repairs could not be performed as planned due to inclement weather conditions; therefore, additional time will be required to complete this work.

The Coast Guard did not receive notification from the bridge owner, regarding the need to extend the maintenance period in time to provide 30 days notice prior to this rule's effective date. This temporary rule will not close the bridge to marine traffic at any time. It will simply require mariners to provide advance notification for bridge openings.

The Coast Guard discussed the advance notification periods with all known waterway users likely to be impacted by this change to the drawbridge operation regulations and no objections were received.

Any delay encountered in this regulation's effective date would be unnecessary and contrary to the public interest since immediate action is needed in order to complete this necessary maintenance at the bridge.

Background

The Lincoln Highway Bridge, at mile 1.8, across the Hackensack River has a vertical clearance of 35 feet at mean high water and 40 feet at mean low water. The existing operating regulations require the bridge to open on signal at all times.

The owner of the bridge, the New Jersey Department of Transportation (NJDOT), initially requested a temporary change to the operating regulations requiring advance notice for bridge openings from February 12, 2001 through May 7, 2001. The bridge owner was initially granted the above temporary final rule (66 FR 14487) effective from March 13, 2001 through May 7, 2001, in order to perform necessary maintenance at the bridge. Due to inclement weather the scheduled repairs will not be completed within the time period covered by the first temporary rule. The bridge owner has requested a second temporary regulation to be effective from May 8, 2001 through July 31, 2001; whereby, the bridge will operate as follows: from May 8, 2001 through July 31, 2001 the Lincoln Highway Bridge shall open on signal; except that, Monday through Thursday, 9 a.m. to 4 p.m., at least a one-hour advance notice for bridge openings is required and from 9 p.m. on Friday through 5 a.m. on Monday, at least a four-hour advance notice for bridge openings is required. Vessels that can pass under the bridges without openings may do so at all times. This temporary rule is necessary in order to complete the remaining maintenance repairs at the bridge.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). This conclusion is based on the fact that the bridge will continue to open at all times provided the advance notice is given.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612) we considered whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" comprises small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This conclusion is based on the fact that the bridge will continue to open on signal at all times provided the advance notice is given.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A written "Categorical Exclusion Determination" is not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From May 8, 2001 through July 31, 2001, § 117.723 is temporarily amended by adding an new paragraph (i) to read as follows:

§ 117.723 Hackensack River

* * * * *

(i) The Lincoln Highway Bridge, mile 1.8, shall open on signal; except that,

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Monday through Thursday, 9 a.m. to 4 p.m., at least a one-hour advance notice for bridge openings is required and from 9 p.m. on Friday through 5 a.m. on Monday, at least a four-hour advance notice for bridge openings is required.

Dated: April 30, 2001.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 01–11713 Filed 5–8–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–01–059]

Drawbridge Operation Regulations: Kennebec River, ME

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Carlton Bridge, at mile 14.0, across the Kennebec River between Bath and Woolwich, Maine. This deviation from the regulations authorizes the bridge owner to keep the bridge in the closed position from 7 a.m. on May 24, 2001 through 7 p.m. on June 7, 2001. This deviation is necessary in order to facilitate necessary repairs at the bridge.

DATES: This deviation is effective from May 24, 2001, through June 7, 2001.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The Carlton Bridge, at mile 14.0, across the Kennebec River has a vertical clearance in the closed position of 10 feet at mean high water and 16 feet at mean low water. The existing drawbridge operating regulations are listed at 33 CFR 117.525.

The owner of the bridge, the Maine Department of Transportation, requested a temporary deviation from the drawbridge operation regulations to facilitate the installation of an alternate diesel powered operating system at the bridge. The bridge will be out of service during the construction necessary to install the back-up diesel operating system.

This deviation to the operating regulations authorizes the owner of the Carlton Bridge to keep the bridge in the closed position from 7 a.m. on May 24, 2001 through 7 p.m. on June 7, 2001.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: April 30, 2001.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 01–11712 Filed 5–8–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–01–055]

RIN 2115–AE47

Drawbridge Operation Regulations: Chelsea River, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary final rule governing the operation of the P.J. McArdle Bridge, at mile 0.3, across the Chelsea River between East Boston and Chelsea, Massachusetts. This rule allows the bridge owner to keep the bridge in the partial open position of 49 degrees for eight, three and a half day, closures. This action is necessary to facilitate structural maintenance at the bridge.

DATES: This temporary final rule is effective from June 11, 2001 through September 21, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–01–055) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, 6:30 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard has determined that good cause exists under the Administrative Procedure Act (5 U.S.C. 553) to forego notice and comment for this rulemaking because notice and comment are unnecessary. The Coast Guard believes notice and comment are unnecessary because all the facilities that operate on the Chelsea River agreed to the requested closure dates at a meeting on March 1, 2001. The recreational vessels that use the Chelsea River will not be effected by the bridge not fully opening because there will still be 135 feet of navigable channel with unlimited airspace available when the bridge is opened to a 49 degree angle. Deep draft vessels will be prohibited from transiting the waterway during the specified dates closures as a result of a safety zone that is pending publication in the **Federal Register**.

Background

The P.J. McArdle Bridge, at mile 0.3, across the Chelsea River, has a vertical clearance of 21 feet at mean high water, and 30 feet at mean low water in the closed position. The existing drawbridge operating regulations are listed at 33 CFR 117.593.

The bridge owner, the City of Boston, requested a temporary deviation from the drawbridge operating regulations at a meeting on March 1, 2001, between the Coast Guard and the upstream facilities that operate on the Chelsea River. All the facilities agreed to the proposed closure schedule. The recreational vessels that transit the Chelsea River will not be effected by the bridge being in the partial open position of 49 degrees because they will still have 135 feet of navigable channel with unlimited airspace to pass through the bridge.

During the closure periods the bridge bascule spans will be at approximately a 49 degree angle of opening. This will reduce the navigable channel with unlimited airspace from 175 feet to 135 feet. This partial open position is necessary in order to perform structural repairs at the bridge.

This temporary final rule allows the bridge owner to keep the bridge in the partial open position for eight, three and a half day, closure periods, from sunset on Monday through sunrise on Friday. This closure schedule will allow 10 days between each closed period for full operation of the bridge.

The bridge will be in the partial open position from sunset on Monday through sunrise on Friday on the following dates:

June 11, 2001 through June 15, 2001;
June 25, 2001 through June 29, 2001;
July 9, 2001 through July 13, 2001;
July 23, 2001 through July 27, 2001;
August 6, 2001 through August 10, 2001;
August 20, 2001 through August 24, 2001;
September 3, 2001 through September 7, 2001; and
September 17, 2001 through September 21, 2001.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). This conclusion is based on the fact that the requested closures were agreed upon in advance by the upstream facilities that use this waterway.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612) we considered whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" comprise small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This conclusion is based on the fact that the requested closures were agreed upon in advance by the upstream facilities that use this waterway.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A written "Categorical Exclusion Determination" is not required for the temporary final rule.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From June 11, 2001 through September 21, 2001, § 117.593 is suspended and a new section 117.T594 is added to read as follows:

§ 117.T594 Chelsea River.

(a) All drawbridges across the Chelsea River shall open on signal; except that, the P.J. McArdle Bridge, mile 0.3, need not fully open for the passage of vessel traffic from, sunset on Monday through sunrise on Friday, June 11, 2001 through June 15, 2001; June 25, 2001 through June 29, 2001; July 9, 2001 through July 13, 2001; July 23, 2001 through July 27, 2001; August 6, 2001 through August 10, 2001; August 20, 2001 through August 24, 2001; September 3, 2001 through September 7, 2001; and September 17, 2001 through September 21, 2001.

(b) The opening signal for each drawbridge is two prolonged blasts followed by two short blasts and one prolonged blast. The acknowledging signal is three prolonged blasts when the draw can be opened immediately and two prolonged blasts when the draw cannot be opened or is open and must be closed.

Dated: April 30, 2001.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 01–11711 Filed 5–8–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC049–2026a; FRL–6973–7]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Oxygenated Gasoline Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the District of Columbia State Implementation Plan (SIP). The revision makes the oxygenated gasoline program a contingency measure for the District of Columbia (the District), which means that the oxygenated gasoline program would only be required to be implemented in the District if there is a violation of the carbon monoxide (CO) national ambient air quality standard (NAAQS). The District's revision also makes technical amendments to its oxygenated gasoline regulations which correct the deficiencies previously identified by EPA in a January 26, 1995 final rule granting limited approval/limited disapproval of those regulations. Therefore, the limited approval/limited disapproval is being converted to a full approval. EPA is approving this revision in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on July 9, 2001 without further notice, unless EPA receives adverse written comment by June 8, 2001. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Kelly L. Bunker, (215) 814–2177, or by e-mail at bunker.kelly@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Motor vehicles are significant contributors of carbon monoxide (CO) emissions. An important control measure to reduce these emissions is the use of oxygenates in motor vehicles' gasoline. Extra oxygen enhances fuel combustion, which tends to be less efficient in cold weather. The oxygen also helps to offset fuel-rich operating conditions, particularly during vehicle starting, which are more prevalent in the winter. By adding oxygenates to gasoline, exhaust emissions of carbon monoxide are reduced. A gasoline blend containing 2.7 percent (%) oxygen by weight will result in a 15% to 20% reduction in CO emissions.

Section 211(m) of the Clean Air Act, 42 U.S.C. § 7401 *et seq.* (the Act) requires that states with carbon monoxide nonattainment areas with design values of 9.5 parts per million (ppm) or more, based on data for the two year period of 1988 and 1989 or any two year period after 1989, submit revisions to their State Implementation Plan (SIP) which establish oxygenated gasoline programs. These programs were to begin no later than November 1, 1992.

The oxygenated gasoline programs must require gasoline in the specified control areas to contain not less than 2.7% oxygen by weight (known as a per-gallon program), except that states may adopt an averaging program employing marketable oxygen credits. Where an averaging program is adopted, gasoline containing oxygen above 2.7% by weight may offset the sale of gasoline with a oxygen content below 2.7% by weight.

The minimum 2.7% standard shall apply during that portion of the year in which the areas are prone to high ambient concentrations of CO. The Act requires that the oxygenated gasoline program apply to all gasoline sold or dispensed in the larger of the Consolidated Metropolitan Statistical Area (CMSA) or the Metropolitan Statistical Area (MSA) in which the nonattainment area is located.

II. Background

EPA determined that the 1988 and 1989 monitoring data for the Metropolitan Washington area was invalid because of poor data quality and, therefore, inadequate to properly characterize the ambient concentrations of CO. Therefore, data from 1987 and 1988 was used and the Metropolitan Washington area was designated as a CO nonattainment area with a design value of 11.4 ppm. The District of Columbia (the District) is part of the Metropolitan Washington area CO nonattainment area. Consequently, as per the requirements of section 211(m) of the Act, an oxygenated gasoline program was required to be implemented in the District's portion of the Washington, DC. MSA.

On October 27, 1993, the District officially submitted to EPA a revision to its SIP for an oxygenated gasoline program. The District's oxygenated gasoline regulations, located at 20 District of Columbia Municipal Regulations (DCMR) Chapter 1, Section 199; Chapter 5, Section 500 and 502 and Chapter 9, Section 904, required the implementation of a program to be implemented on a per gallon basis. EPA granted limited approval/limited disapproval of these regulations as a SIP revision on January 26, 1995 (60 FR 5134).

On October 12, 1995, the District submitted a redesignation request and maintenance plan for its portion of the Metropolitan Washington area CO nonattainment area. In its demonstration of maintenance, the District showed that its oxygenated gasoline program was not necessary for attainment and continued maintenance of the CO national ambient air quality standards (NAAQS). The oxygenated gasoline program was relegated to a contingency measure in the maintenance plan. If the redesignated area violates the CO standard then the oxygenated gasoline program would be reinstated at the beginning of the next oxygenated gasoline control period. EPA approved the redesignation request and maintenance plan on January 30, 1996 (61 FR 2931).

The District was required to adopt and submit to EPA a revision to their oxygenated gasoline regulation which: (1) required the use of the oxygenated gasoline program as a contingency measure if the redesignated area violates the CO standard and (2) corrected the deficiencies in the regulations previously identified by EPA in the January 26, 1995 rulemaking (60 FR 5134).

On July 3, 1997, the District amended its oxygenated gasoline regulations to reflect the requirements of the federally approved CO maintenance plan. The regulation revision requires the implementation of the oxygenated gasoline program in the District if there are two or more exceedances of the of NAAQS for CO in a calendar year. The regulation states that the oxygenated gasoline program will not commence until at least 180 days after the Mayor determines that the contingency measure has been triggered.

On October 17, 1997, the District submitted the July 3, 1997 amended oxygenated gasoline regulations as a formal revision to its SIP. The revisions to the oxygenated gasoline regulation are found at 20 DCMR, Chapter 9 (Motor Vehicle Pollutants, Lead, Odors, and Nuisance Pollutants), Section 904, new subsection 904.3. These regulatory revisions became effective on July 25, 1997. On October 26, 2000 and December 8, 2000, the District of Columbia supplemented the October 17, 1997 SIP submittal. The supplements contain revisions to 20 DCMR at subsections 199.1 and 502.18. These revisions correct the deficiencies identified in EPA's January 26, 1995 limited approval/limited disapproval rulemaking (60 FR 5134). These regulatory revisions were adopted by the District of Columbia on October 26, 2000 and became effective on December 8, 2000.

The October 17, 1997 SIP submittal and its October 26 and December 8, 2000 SIP supplements are the subject of this action. A more detailed analysis of the District's submittal is contained in a Technical Support Document (TSD) which is available from the Region III office listed in the **ADDRESSES** section of this notice.

III. EPA's Analysis of the District of Columbia's Amendment to Its Oxygenated Gasoline Regulation

As previously stated, on January 26, 1995 (60 FR 5134), EPA published a final rule granting limited approval/limited disapproval of the District's oxygenated gasoline regulation found in 20 DCMR Sections 199, 500.4, 500.5, 502.18, 904.1, 904.2. EPA identified three things lacking in the District's regulation, namely, a definition for the term "carrier", a sampling procedure, and a procedure for the calculation of oxygen content in the gasoline sampled. The October 26, 2000 and December 8, 2000 SIP supplements correct the three deficiencies. The three deficiencies and EPA's evaluation of the corrections is provided below.

1. The regulation lacks a definition for the term "carrier'.

EPA Evaluation—A definition for the term "carrier" had been added to Subsection 199.1 of 20 DCMR. This definition is acceptable and corrects the deficiency.

2. The regulation lacks a sampling procedure.

EPA Evaluation—EPA's sampling procedures are detailed in Appendix D of 40 CFR Part 80. EPA has recommended that states adopt these sampling procedures. The District has revised 20 DCMR Subsection 502.18 to require the use of the sampling methodologies set forth at 40 CFR Part 80, Appendix D or other methods approved by EPA. This deficiency has been corrected.

3. The regulation lacks a procedure for the calculation of oxygen content in the gasoline sampled.

EPA Evaluation—The District has revised 20 DCMR Subsection 502.18 to require the use of procedures for the calculation of oxygenated content in the gasoline found in the EPA guidance document entitled "Guidelines for Oxygenated Gasoline Credit Programs under Section 211(m) of the Clean Air Act as Amended," which was made available in the **Federal Register** on October 20, 1992 (57 FR 47853), or other methods developed or approved by EPA. This corrects the deficiency.

This SIP revision also relegates the oxygenated gasoline program to a contingency measure, only to be implemented if there are two or more exceedances of the NAAQS for CO in a calendar year at any monitor located in the Metropolitan Washington, DC MSA. This regulation change, found at Subsection 904.3 of 20 DCMR, conforms with the District of Columbia's CO maintenance plan which was approved by the EPA as a SIP revision on January 30, 1996 (61 FR 2931). The regulation states that the oxygenated gasoline program will not commence until at least 180 days after the Mayor determines that the contingency measure has been triggered.

IV. Final Action

EPA is approving the revisions to 20 DCMR which relegate the oxygenated gasoline program to a contingency measure, only to be implemented if there are two or more exceedances of the NAAQS for CO in a calendar year at any monitor located in the Metropolitan Washington, DC MSA. The District's revision also makes technical amendments to the oxygenated gasoline regulations which correct the deficiencies previously identified in EPA's January 26, 1995 limited approval/limited disapproval rulemaking. Therefore, the January 26, 1995 limited approval/limited disapproval is hereby being converted to a full approval. EPA is approving this revision in accordance with the requirements of the Clean Air Act.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on July 9, 2001 without further notice unless EPA receives adverse comment by June 8, 2001. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not

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subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 9, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action granting full approval of the District of Columbia's oxygenated gasoline regulation and relegating it to be a contingency measure of its CO maintenance plan may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 24, 2001.

William C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart J—District of Columbia

2. In § 52.470 the table in paragraph (c) is amended:

a. Under Chapter 1 by adding a new Section 199 after the existing entry for Section 199;

b. Under Chapter 5 by revising the entry for Section 502.18; and

c. Under Chapter 9 by revising the entry for Section 904.

The revisions and addition read as follows:

§ 52.470 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA-APPROVED DISTRICT OF COLUMBIA REGULATIONS

State citation	Title/Subject	State effective date	EPA approval date	Comments
		Chapter 1—General		
Section 199	Definitions and Abbreviations	12/8/00	May 9, 2001 66 FR 23614	Addition of the definition of the word "carrier" to subsection 199.1.
		Chapter 5—Source Monitoring and Testing		
Section 502.18	Sampling Tests and Measurements.	12/8/00	May 9, 2001 66 FR 23614	Provision is amended by adding an oxygenated gasoline sampling procedure and oxygen content calculation.
		Chapter 9—Motor Vehicle Pollutants, Lead, Odors, and Nuisance Pollutants		
Section 904	Oxygenated Fuels	7/25/97	May 9, 2001 66 FR 23614	Addition of subsection 904.3 to make the oxygenated gasoline program a CO contingency measure.

[FR Doc. 01–10986 Filed 5–8–01; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–112–9933(a); FRL–6975–5]

Approval and Promulgation of Air Quality Implementation Plans; Kentucky: Approval of American Greetings Corporation; Source-Specific State Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On March 30, 1999, the Commonwealth of Kentucky submitted, through the Natural Resources and Environmental Protection Cabinet, a source-specific revision to the Kentucky State Implementation Plan (SIP). This source-specific SIP revision allows American Greetings Corporation to have an alternative averaging period of 30 days for compliance determination. EPA is approving this revision because the 30 day alternate averaging period does not jeopardize maintenance of the National Ambient Air Quality Standards (NAAQS).

DATES: This direct final rule is effective July 9, 2001 without further notice, unless EPA receives adverse comment by June 8, 2001. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to Randy Terry, at the EPA Regional Office listed below. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Copies of SIP materials which are incorporated by reference into 40 CFR Part 52 (the documents relative to this action) are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency; Region 4 Air Planning Branch; 61 Forsyth Street, SW; Atlanta, Georgia 30303–8960

Commonwealth of Kentucky; Division for Air Quality; 803 Schenkel Lane; Frankfort, KY 40601–1403

FOR FURTHER INFORMATION CONTACT: Randy Terry at 404/562–9032.

SUPPLEMENTARY INFORMATION:

I. Background

On March 30, 1999, the Commonwealth of Kentucky submitted, through the Natural Resources and Environmental Protection Cabinet, a source-specific revision to the Kentucky SIP. This source-specific SIP revision allows American Greetings Corporation to have an alternative averaging period of 30 days for compliance determination.

To meet the requirements of this SIP revision, American Greetings Corporation must provide all record keeping in accordance with regulation 401 KAR 59:212, *New Graphic Arts Facilities Using Rotogravure and Flexography*, Section 4(6). These records shall include, but are not limited to, the following:

(a) Applicable regulation number;

(b) Application method and substrate type;

(c) Amount and type of graphic arts material or solvent used at each point of application, including exempt compounds;

(d) The volatile organic compound (VOC) content as applied in each graphic arts materials or solvent;

(e) The date for each application for graphic arts material or solvent; and

(f) The amount of surface preparation, clean-up, or wash-up solvent (including exempt compounds) used and the VOC content of each;

In addition, the permittee must keep monthly records of the pounds of each ink and topcoat lacquer used and the corresponding VOC contents and hours of operation. These emissions shall be calculated and recorded in tons per month and tons per 12 months. Tons per 12 months shall represent a rolling average. These records shall be made available for inspection to any authorized representative of the Division for Air Quality upon request.

Agency policy regarding SIP revisions for averaging times for compliance with VOC emission limits is stated in a January 20, 1984, memo from John R. O'Conner, Acting Director, Office of Air Quality Planning and Standards: "Current Agency guidance specifies the use of a daily weighted average for VOC regulations as the preferred alternative where continuous compliance is not feasible."

The aforementioned memo also approves the utilization of averaging period for VOC emissions for as long as thirty days, providing that certain conditions are met.

These requirements consist of the following elements.

1. The VOC limits must be specified in an enforceable form with appropriate compliance dates.

2. A description of the affected processes and associated historical production and operating rates.

3. A description of the control techniques to be applied to the affected processes such as low solvent and waterborne coating; technology and/or add-on controls.

4. The nature of the emission control program whether a bubble, a regulation change, a compliance schedule, or some other form of alternative control program.

5. The method of record keeping and reporting to be employed to demonstrate compliance with the new emission limit requirement and to support the showing that the emission limit is consistent with Reasonable Further Progress (RFP) and the demonstration of attainment.

II. Analysis of State's Submittal

In response to meeting the aforementioned requirements, Kentucky submitted the results of a detailed statistical analysis verifying that the actual emissions emitted are consistently below the allowable emissions. Based on this analysis, Kentucky utilizing a monthly averaging recording system has a very minimal chance that the emissions will exceed ten percent of the permitted emission rate.

Kentucky's submittal addressed the NAAQS for ozone in the Appalachian Air Quality Control Region where the facility is located. Kentucky found that there were no violations of the ozone NAAQS during 1992–1995, based on an evaluation of the 1996–1997 Kentucky Environmental Quality Commission's Environmental Annual Status Report on Air Quality. EPA's review of additional ozone data in the Aerometric Information Retrieval System (AIRS) for the surrounding counties of Bell, Perry, and Pulaski for the years 1992–2000 found no ozone violations. Based on the air quality analysis by Kentucky and EPA's review of additional ozone air quality data, EPA concludes there will be no adverse environmental impact on the surrounding ozone attainment area from the adoption of 30-day monthly VOC record keeping for the American Greetings Corporation.

The use of thirty day averaging period as a maximum averaging time for VOC emissions is consistent with current agency policy, as detailed in the January 20, 1984, John O'Conner memo. Because of the simplicity of this action, no technical support document was prepared.

III. Final Action

EPA is approving the aforementioned changes to the SIP because they are

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consistent with the Clean Air Act and EPA requirements. The requirements for averaging time frames for sources of ozone precursors can be found in the January 20, 1984, memo by John R. O'Conner. EPA believes that approving this source-specific SIP revision will create no adverse effects in the surrounding attainment area based on the ozone air quality data from the surrounding monitoring sites.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective July 9, 2001 without further notice unless the Agency receives relevant adverse comments by June 8, 2001.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on July 9 2001 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Orders and Congressional Acts

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

B. Disclaimer Language Approving SIP Revisions in Audit Law States

Nothing in this action should be construed as making any determination or expressing any position regarding Kentucky's, audit privilege and penalty immunity law, "KRS 224.01–040" or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of Kentucky's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 9, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 20, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart S—Kentucky

2. In § 52.920 the table in paragraph (d) is amended by adding a new entry for "Alternate Averaging Period for American Greetings Corporation" to the end of the table as follows:

§ 52.920 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED KENTUCKY SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Federal Register notice
Alternate Averaging Period for American Greetings Corporation.	KDEPDAQ Permit V–98–049		July 9, 2001	66 FR 23617.

* * * * *

[FR Doc. 01–11524 Filed 5–8–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–6976–8]

RIN 2090–AA19

Project XL Site-Specific Rulemaking for the Autoliv ASP Inc. Facility in Promontory, Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is implementing a project under the Project XL program that will provide site-specific regulatory flexibility under the Resource Conservation and Recovery Act (RCRA), for the Autoliv ASP Inc. (Autoliv) facility in Promontory, Utah. The terms of the XL project are defined in a Final Project Agreement ("FPA") which has been available for public review and comment. (See 65 FR 49571, August 14, 2000). Following a review of the public comments, the FPA was signed by Autoliv, Box Elder County, the state of Utah, and EPA on September 20, 2000. EPA is today publishing a final rule, applicable only to the Promontory Facility, to facilitate implementation of the XL project. The principal objective of this XL Project is to explore the benefits of a more streamlined and flexible RCRA regulation of pyrotechnic hazardous wastes from the automobile airbag industry that are treated in industrial furnaces. Today's final rule is an outgrowth of the proposed rule published on February 13, 2001 See 66 FR 9992. Today's action provides regulatory flexibility to Autoliv in the form of a conditional exemption from the definition of hazardous waste. It is conditioned on Autoliv's compliance with air emission and waste management requirements that have been developed under this XL project. The air emission and waste management requirements are set forth in today's final rule. Today's action is intended to provide site-specific regulatory changes to implement this XL project. The EPA the state of Utah and Autoliv expect this XL project to result in superior environmental performance while providing cost savings and paperwork reduction for both Autoliv and the state of Utah.

DATES: This final rule is effective on May 9, 2001.

ADDRESSES: Docket: Three dockets contain supporting information used in developing this final rule, and are available for public inspection and copying at the EPA's docket office located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The public is encouraged to phone in advance to review docket materials. Appointments can be scheduled by phoning the Docket Office at (703) 603–9230. Refer to RCRA docket number F–2001–AUFP–FFFFF. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost 15 cents per page. Project materials are also available for review for today's action on the world wide web at *http://www.epa.gov/projectxl/*. A duplicate copy of the docket is available for inspection and copying at U.S. EPA, Region 8 Library, First Floor, 999 18th Street, CO 80202–2466 during normal business hours. Persons wishing to view the duplicate docket at the Denver location are encouraged to contact Ms. Mary Byrne in advance, by telephoning (303) 312–6491 or by email at or byrne.mary@epa.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Byrne, U.S. Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, CO 80202–2466 or Mr. Ted Cochin, Office of Environmental Policy Innovation, U.S. EPA, 1200 Pennsylvania Avenue NW (1802), Washington, DC 20460. Further information on today's action may also be obtained on the world wide web at *http://www.epa.gov/projectxl/*. Questions to EPA regarding Today's action can be directed to Ms. Byrne at (303) 312–6491 or Mr. Cochin at (202) 260–0880.

SUPPLEMENTARY INFORMATION: The development and implementation of on-site treatment would be piloted at Autoliv's Promontory, Utah facility using the existing metals recovery furnace with air pollution controls instead of sending the materials off-site to be open burned. This pilot is intended to test the effectiveness of on-site treatment of automobile airbag waste pyrotechnics in Autoliv's Metals Recovery Furnace (MRF). These automobile airbag waste pyrotechnics generated on-site at the Autoliv facility, are currently regulated as reactive hazardous wastes (waste code D003).

The pilot will determine whether this approach promotes better treatment of the waste pyrotechnics than the current method of open burning. Autoliv will comply with many of the general facility standards of RCRA, and is not seeking relief from all RCRA management protections. Through this project, Autoliv intends to be able to treat waste

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pyrotechnics, generated on-site, without obtaining a RCRA permit from the state of Utah. A RCRA permit is normally required for thermal destruction of hazardous waste in an industrial furnace. The waste as referenced in Autoliv's Project Proposal is reactive only and does not contain significant amounts of hazardous constituents listed in 40 CFR Part 261, for more detailed information on waste composition please see *http://www.epa.gov/projectxl/Autoliv/page2.htm.*

Today's action provides a "conditional exemption" from the definition of hazardous waste, for the specific waste that is subject to this site-specific rule. The effect of EPA granting the conditional exemption is that a RCRA permit is not required in this specific instance. The waste pyrotechnics, generated on-site at the Autoliv facility, are now conditionally exempted from regulation as hazardous wastes and thus, 40 CFR Parts 262 through 270 when treated in the MRF in accordance with the provisions in this site-specific rule. The facility will continue to comply with certain general RCRA conditions on facility operations, as described in this site-specific rule for the Autoliv Facility and any state of Utah regulations that grant the conditional exemption. The project signatories believe that processing pyrotechnic materials in the MRF can be both cost-effective and achieve superior environmental results as compared to open burning and this project meets the intent of Project XL. This rule will not in any way impact the provisions or applicability of any other existing or future regulations.

The deferral of specified RCRA requirements is in effect only for the five-year term of this XL project. Following review of its MRF, Autoliv would notify the state of Utah and EPA in writing of the date on which it intends to begin treating its pyrotechnic waste in the MRF. This rule would become effective in Autoliv's facility only after such written notification. Section III.C.2. and IV.F.1. discuss the aspects of state implementation of this rule.

The deferral of the specified RCRA requirements is conditional upon Autoliv's implementation and compliance with the conditions set forth in 40 CFR 261.4 of this rule. The agreement includes specific requirements for the management of Autoliv's waste that ensure protection of human health and the environment while providing some flexibility to encourage chemical reuse and waste minimization.

The conditions set forth in this rule are expected to function as an outline of the procedures that must be in place to manage waste. The deferral of the hazardous waste determination is conditional on compliance with all of the requirements of the XL Project. These criteria ensure that the handling and disposal of Autoliv's waste would be protective of human health and the environment by establishing how Autoliv's waste would be treated within its Promontory facility, and in transit to the on-site waste accumulation area for Autoliv.

EPA has agreed to allow Autoliv to undertake this XL project with the requested regulatory flexibility to determine if the performance-based approach would result in superior environmental performance and significant cost savings to Autoliv.

This rule, and the state actions described in Section IV.F.1. of this preamble that parallel this action, will not in any way affect the provisions or applicability of any other existing or future regulations. The XL Project will enter the implementation phase after the initial stack test results have been submitted by Autoliv and reviewed by both EPA and the state of Utah to ensure adherence to the XL Project.

Outline of Today's Document

The information presented in this preamble is organized as follows:

I. Authority
II. Overview of Project XL
III. Overview of the Autoliv XL Project
A. What Autoliv Facility Does the Rule Apply?
B. What Are The Environmental Benefits of This Project?
C. What Regulatory Changes will be Necessary to Implement this Project?
1. Federal Regulatory Changes
2. State Regulatory Changes
D. Why is EPA Supporting this New Approach to Autoliv's Waste Management?
E. How Have Various Stakeholders Been Involved in this Project?
F. How Will this Project Result in Cost Savings and Paperwork Reduction?
G. How Will the Terms of This XL Project and site Specific Rule Be Enforced?
IV. Additional Information
A. How to Request a Public Hearing
B. How Does this Rule Comply With Executive Order 12866?
C. Is a Regulatory Flexibility Analysis Required?
D. Is an Information Collection Request Required for this Project Under the Paperwork Reduction Act?
E. Does This Project Trigger the Requirements of the Unfunded Mandates Reform Act?
F. RCRA & Hazardous and Solid Waste Amendments of 1984
1. Applicability of Rules in Authorized States
2. Effect on Utah Authorization
G. How Does this Rule Comply with Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks?
H. How Does this Rule Comply with Executive Order 13132: Federalism?
I. How Does this Rule Comply with Executive Order 13084: Consultation and Coordination with Indian Tribal Governments?
J. Does this Rule Comply with the National Technology Transfer and Advancement Act of 1995 (NTTAA)?
K. Is EPA required to Submit a Rule Report Under the Congressional Review Act?

I. Authority

EPA is publishing this site specific rule under the authority of sections of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act (RCRA).

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.)

II. Overview of Project XL

Project XL—"eXcellence and Leadership"—was announced on March 16, 1995, as a central part of the National Performance Review and the EPA's effort to reinvent environmental protection. See 60 FR 27282 (May 23, 1995). Project XL provides a limited number of private and public regulated entities an opportunity to develop their own pilot projects to provide regulatory flexibility that will result in environmental protection that is superior to what would be achieved through compliance with current and reasonably anticipated future regulations. These efforts are crucial to EPA's ability to test new strategies that reduce regulatory burden and promote economic growth while achieving better environmental and public health protection. EPA intends to evaluate the results of this and other Project XL projects to determine which specific elements of the project(s), if any, should be more broadly applied to other regulated entities for the benefit of both the economy and the environment.

Under Project XL, participants in four categories; facilities, industry sectors, governmental agencies and communities are offered the flexibility to develop common sense, cost-effective strategies that will replace or modify specific regulatory requirements, on the condition that they produce and demonstrate superior environmental performance.

The XL program is intended to allow EPA to experiment with potentially promising regulatory approaches, both to assess whether they provide benefits

at the specific facility affected, and whether they should be considered for wider application. Such pilot projects allow EPA to proceed more quickly than would be possible when undertaking changes on a nationwide basis. As part of this experimentation, the EPA may try out approaches or legal interpretations that depart from or are even inconsistent with longstanding Agency practice, so long as those interpretations are within the broad range of discretion enjoyed by the Agency in interpreting statutes that it implements. The EPA may also modify rules, on a site-specific basis, that represent one of several possible policy approaches within a more general statutory directive, so long as the alternative being used is permissible under the statute.

Adoption of such alternative approaches or interpretations in the context of a given XL project does not, however, signal EPA's willingness to adopt that interpretation as a general matter, or even in the context of other XL projects. It would be inconsistent with the forward-looking nature of these pilot projects to adopt such innovative approaches prematurely on a widespread basis without first determining whether or not they are viable in practice and successful in the particular projects that embody them. In announcing the XL program, EPA expects to adopt only a limited number of carefully selected projects. These pilot projects are not intended to be a means for piecemeal revision of entire programs. Depending on the results in these projects, EPA may or may not be willing to consider adopting the alternative interpretation again, either generally or for other specific facilities.

EPA believes that adopting alternative policy approaches and interpretations, on a limited, site-specific basis and in connection with a carefully selected pilot project, is consistent with the expectations of Congress about EPA's role in implementing the environmental statutes (provided that the Agency acts within the discretion allowed by the statute). Congress' recognition that there is a need for experimentation and research, as well as ongoing reevaluation of environmental programs, is reflected in a variety of statutory provisions, such as section 8001 of RCRA.

To participate in Project XL, applicants must develop alternative pollution reduction strategies pursuant to eight criteria: Superior environmental performance; cost savings and paperwork reduction; local stakeholder involvement and support; test of an innovative strategy; transferability; feasibility; identification of monitoring, reporting and evaluation methods; and avoidance of shifting risk burden. They must have full support of affected federal, state and tribal agencies to be selected.

For more information about the XL criteria, readers should refer to the two descriptive documents published in the **Federal Register** (60 FR 27282, May 23, 1995 and 62 FR 19872, April 23, 1997), and the December 1, 1995 Principles for Development of Project XL Final Project Agreements document. For further discussion as to how Autoliv XL project addresses the XL criteria, readers should refer to the Final Project Agreement available from the EPA RCRA docket or Region 8 library for this action (see **ADDRESSES** section of today's preamble).

The Project XL program is compartmentalized into four basic phases: the initial pre-proposal phase where the project sponsor comes up with an innovative concept that they would like to consider as an XL pilot, the second phase where the project sponsor works with EPA and interested stakeholders in developing an XL proposal, the third phase where EPA, local regulatory agencies, and other interested stakeholders review the XL proposal, the fourth phase where the project sponsor works with EPA, local regulatory agencies, and interested stakeholders in developing a Final Project Agreement (FPA) and legal mechanism. After the FPA has been signed by all designated parties, the XL pilot proceeds into the implementation phase and evaluation phase.

The FPA is a written agreement between the project sponsor and regulatory agencies. The FPA contains a detailed description of the pilot project. It addresses the eight Project XL criteria, and the expectation of the Agency that this XL project will meet those criteria. The FPA identifies performance goals and indicators (monitoring schedule) which will enable Autoliv to clearly illustrate the baseline quantities. The FPA specifically addresses the manner in which the project is expected to produce superior environmental benefits. The FPA also discusses the administration of the agreement, including dispute resolution and termination. The FPA is available for review in the docket for today's action, and also is available on the world wide web at http://www.epa.gov/projectxl/.

III. Overview of the Autoliv XL Project

Autoliv is proposing to develop, evaluate and implement, an alternative to open burning of certain wastes generated at its Promontory, Utah facility.

This waste is reactive only, and contains no significant levels of hazardous constituents. These reactive hazardous wastes are presently treated through open burning at a RCRA interim status facility.

Autoliv currently operates a $3 million Metals Recovery Facility (MRF) designed to recover aluminum and steel from inflator units containing live pyrotechnic material as well as previously fired units. The MRF is capable of recovering 2000 pounds per hour of recyclable aluminum and steel from off-spec and fired commercial inflator units and their components while minimizing the waste to the environment. Autoliv's XL Project proposes to process small volumes of its waste pyrotechnic materials within the MRF rather than sending the materials to a RCRA regulated treatment, storage or disposal facility (TSDF) for open burning. The company is seeking a conditional exemption from the definition of hazardous waste for pyrotechnic materials to be processed through the MRF.

The MRF has an extensive air pollution train which is capable of capturing the particulate emissions produced by the waste pyrotechnic materials. This project will demonstrate that it is feasible to utilize existing equipment to process certain hazardous wastes in a more efficient and environmentally sound manner, under a more flexible regulatory framework. With minimal modifications to the operation, Autoliv believes that it can achieve a safer, cleaner, and more effective method of treatment than the current method of open burning.

EPA anticipates that this project will provide information on how to develop alternative approaches to handling pyrotechnic waste. This information will be useful to EPA in learning more about alternative treatment approaches for airbag manufacturing wastestreams. This XL Project would include conditions for the treatment of Autoliv's wastes within Autoliv's Promontory Facility. These criteria will operate at Autoliv's Promontory facility in lieu of the requirements found at 40 CFR 261.4. The conditions are a set of measurable requirements that are similar to the current RCRA requirements. Each of the elements of the conditions is described in full in today's rule and is briefly explained below.

The requirements for Autoliv's XL Project include a requirement that the project include procedures to assure compliance with conditions specified in the rule. The conditions set forth for the treatment of Autoliv's waste have been designed to ensure that Autoliv's waste

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will be treated in a manner protective of human health and the environment. The requirements in the conditions include provisions which are consistent with current RCRA requirements. Autoliv is proposing that EPA explore the benefits of more streamlined and flexible RCRA regulation of pyrotechnic hazardous wastes from the automobile airbag industry that are treated in industrial furnaces. The project signatories agree that this rule can be characterized as a conditional exemption from the definition of hazardous waste.

Autoliv will comply with many of the general facility standards of RCRA, and is not seeking relief from all RCRA management protections. Through this project Autoliv intends to be able to treat its waste pyrotechnic materials on-site without obtaining a RCRA Part B permit from the State of Utah that is normally required for thermal treatment. The waste as referenced in Autoliv's Project Proposal is reactive only and does not contain significant amounts of hazardous constituents (See the Environmental Performance Summary Calculations section of the Autoliv Proposal at http://www.epa.gov/projectxl/Autoliv/page2.htm. for more detailed information on waste composition).

A. To What Autoliv Facility Would the Site Specific Rule Apply?

This site specific rule would apply only to the Autoliv ASP Inc. (Autoliv) facility in Promontory, Utah.

B. What Are the Environmental Benefits of This Project?

This project is designed to achieve environmental results that are superior to what is currently achieved by the current RCRA regulatory system.

This project is expected to achieve superior environmental results as compared to open burning for several reasons. The major benefit to the environment will be from reduced air emissions due to the minimization of open burning of hazardous waste. The company has arranged for open burning of 183,557 lbs. of pyrotechnic material that were not able to be recovered or recycled during 1998 and 1999. The uncontrolled particulate emissions are a point of concern for all parties involved. Although open burning is an approved method for treatment of pyrotechnic wastes it does not utilize any air pollution controls. The same pyrotechnic materials, if processed at the MRF, would pass through an extensive air pollution control system rather than being emitted, thus achieving a significant reduction of air pollutants released to the environment, accomplishing superior environmental performance compared to open burning. The company projects that it can eliminate open burning of 158,000 lbs. of pyrotechnic waste material in the first year of project participation. It also estimates that a net reduction of 22,876 lbs./yr. of particulate emissions would be accomplished.

Additional environmental benefits are achievable due to the fact that certain pyrotechnic formulations contain materials (e.g., copper) that could be potentially recovered in the slag as well as in the baghouse. These materials could then be recycled back to Autoliv's raw material suppliers. The distinctive properties of the pyrotechnic materials enable these materials to be treated more efficiently and in a manner that creates few air emissions than open burning which precludes recycling or recovery of any kind.

The specifications governing the air bag industry are very stringent and do not allow the use of toxic materials. The major gases produced by gas generants are water, carbon dioxide, and nitrogen. The percentage of each of these gases can vary depending on the formulation but a typical analysis would be approximately 40% nitrogen, 40% water, and 20% carbon dioxide. Other gaseous and particulate (metal) compounds are present at ppm levels. These include gaseous carbon dioxide (CO), nitrogen dioxide (NO2), nitric oxide (NO), and ammonia (NH3), and particulate matter containing the metals copper, cobalt, boron, and aluminum. The MRF is presently permitted by Utah (DAQE–549–97) to operate 24 hours/day, 365 days/year. Actual operation is estimated to be 50 percent of the permitted production capacity. A portion of the processing capacity will be absorbed by pyrotechnic waste material. Minimal changes to the emission streams are expected because the pyrotechnic materials are also present within the recycled inflator units themselves.

C. What Regulatory Changes Will Be Necessary To Implement This Project?

1. Federal Regulatory Changes

This site specific rule provides Autoliv with a temporary conditional exemption from 40 CFR 261.4. In order to implement this project, EPA will grant a conditional exemption from the definition of hazardous waste, for the specific waste that is subject to this rule.

The effect of EPA granting the conditional exemption is that a RCRA Part B permit is not required. The waste pyrotechnics, generated on-site at the Autoliv facility, are now exempted from regulation as a hazardous waste exempt from 40 CFR Parts 262 through 270 when treated in the MRF in accordance with the provisions in the site-specific rule. The facility will continue to comply with certain general RCRA conditions on facility operations, as described in this Project XL site-specific rule for the Autoliv facility and any State of Utah regulations that grant the conditional exemption. The project signatories believe that processing pyrotechnic materials in the MRF can be both cost-effective and achieve superior environmental results as compared to open burning.

This site-specific rule is necessary to allow for the temporary conditional exemption/deferral, and would add exclusion (b)(18) to 40 CFR 261.4 to clarify that the on-site treatment of Autoliv's wastes would be covered by a new section to 40 CFR.

2. State Regulatory Changes

The State of Utah is authorized under Section 3003 of RCRA (Sec. 6926. Authorized State Hazardous Waste Programs), to implement the federal RCRA Program. The state program operates in lieu of the federal program. The Utah hazardous waste management regulations, codified in Utah Code of Regulations contain equivalent or more stringent requirements as compared to the federal regulations. Autoliv is subject to the federal and the Utah regulations, which would include requirements that the pyrotechnic waste be handled according to the waste management provisions of RCRA. Conforming state regulatory changes or legal mechanisms need to be implemented in addition to the federal changes in order for this XL Project to proceed.

D. Why Is EPA Supporting This New Approach to Autoliv's Waste Treatment?

EPA is supporting this regulatory model contained in this rule because it provides for a degree of environmental protection that is at least as protective as that which existing RCRA regulations would provide for the Autoliv's Promontory facility. The approach to be tested under this project would be to explore the efficacy of treating waste on-site in cases where there is a clear benefit to the environment for doing so. This would entail the substitution of current RCRA permitting requirements outlined in 40 CFR Parts 264 and 266 with those for interim status facilities. EPA is interested in testing and evaluating alternative approaches to regulating RCRA facilities that can achieve superior environmental performance while reducing costs and paperwork burden. Autoliv has a history of implementing waste minimization techniques and practices with control over manufacturing with emphasis on quality and waste minimization. Providing Autoliv the flexibility to dispose of waste on a regular schedule means professional resources can be redirected from reactive waste management to proactive waste management. EPA anticipates that this rule will result in a successful innovative pilot of a new on-site treatment system for Autoliv. EPA recognizes that the new systems may not be appropriate or necessary for some institutions but may, at some point, depending on the results of this XL project, consider the possibility of offering it as a regulatory option. For this pilot, Autoliv will be implementing an Environmental Reinvestment Project (ERP) that will be finalized one year from the project start date.

E. How Have Various Stakeholders Been Involved in This Project?

Stakeholder involvement during the project development stage was encouraged in several ways. The methods included communicating through the media, directly contacting interested parties and offering an educational program regarding the regulatory requirements impacted by the XL project. Stakeholders have been kept informed on the project status via mailing lists, newspaper articles, public meetings and the establishment of a website. Both local and regional stakeholders have expressed support for this project. They see this as a unique opportunity to improve the air quality in Box Elder County and surrounding communities. Participation in Project XL provides Autoliv, the Box Elder County, the Utah Division of Environmental Quality and the EPA the opportunity to explore new ways to improve the environment. The neighboring community of Howell and the surrounding area would benefit by reducing emissions associated with open burning. The highly visible nature of open burning tends to heighten awareness of the associated environmental impacts. A kickoff meeting and site tour held on June 8th, 1999 garnered stakeholder support and input for the project plan. Additional stakeholder meetings will be held as appropriate. Stakeholders that have been active in the project and have given oral or written support are: Utah Division of Environmental Quality, Bear River Health Department, Howell City, and Box Elder County. Stakeholders have been made aware of Autoliv's intentions and the environmental benefits associated with Project XL. Autoliv will continue to provide the stakeholder group with any information regarding the project including semi-annual project updates and will encourage them to meet on a regular basis. Copies of all comment letters, as well as EPA's response to comment letters, will be located in the rulemaking Docket (see the **ADDRESSES** section of today's preamble). As this XL project continues to be implemented, the stakeholder involvement program would shift its focus to ensure that: (1) Stakeholders are informed of the status of project implementation and (2) stakeholders have access to information sufficient to judge the success of this Project XL initiative. Anticipated stakeholder involvement during the term of the project will likely include other general public meetings to present periodic status reports, availability of data and other information generated. In addition to the state and federal reporting requirements of today's rulemaking, the FPA includes provisions whereby Autoliv will make copies of interim project reports available to all interested parties. A public file on this XL project has been maintained at the website http://www.epa.gov/projectxl/ throughout project development, and Autoliv has committed to continue to update it as the project is implemented. A detailed description of this program and the stakeholder support for this project is included in the FPA, which is available through the docket or through EPA's Project XL site on the Internet (see **ADDRESSES** section of this preamble).

F. How Will This Project Result in Cost Savings and Paperwork Reduction?

The waste treatment currently accounts for the most substantial expense for environmental, health and safety programs at Autoliv. This XL Project would result in cost savings and paperwork reduction in several key areas. These include a decrease in paperwork through a streamlined process for approval of hazardous waste treatment, elimination of paperwork related to transporting the waste off-site to a permitted facility, and a reduction in the disposal costs that the company would pay to a RCRA treatment or disposal facility. Autoliv disposed of 82,361 lbs. of pyrotechnic waste in 1998 at an incurred cost of $164,722. The pyrotechnic waste could easily have been processed in the MRF with minimal additional operating cost. Autoliv estimates that 158,000 lbs. of waste material were generated in the year 2000. The contracted disposal fee at present time is $2.00 per pound. Through Project XL, Autoliv will save an estimated $316,000 in disposal costs in the first year. It has been estimated that issuance of a RCRA permit may take three to five years and may cost the facility $500,000. Part of Autoliv's cost savings from the XL project will be used to fund an ERP. In addition, the following changes would be anticipated: waste pyrotechnics would no longer be transported across public roads, reducing potential liability and associated costs, and increasing public safety. The paperwork burden would be reduced because hazardous waste manifests and shipping papers would not be required or needed. Operational flexibility would allow materials to be processed more regularly, which further reduces paperwork as well as the amount of pyrotechnics stored at any given time. It is expected with this project a certain amount of paperwork associated with RCRA compliance is likely to be reduced.

G. How Will the Terms of This XL Project and Site Specific Rule Be Enforced?

EPA retains its full range of enforcement options under this Site Specific rule. The conditional exemption of certain RCRA requirements are conditional upon Autoliv's implementation and compliance with the conditions set forth in 40 CFR 261.4 of this rule (b)(18). If the conditions for the exemption are not met, the XL project may be terminated pursuant to the terms of the Final Project Agreement setting out the agreement of the parties to this project. The final project agreement further provides for a return to compliance with any regulations deferred under the project, and may include an agreed-upon interim compliance period. As with all XL projects, testing alternative environmental protection strategies, the term of the Autoliv XL project is one of limited duration. This Site Specific rule would set the term of the XL Project at five years after the effective date of this rule. Because Project XL is a voluntary and experimental program, the FPA contains provisions that allow the project to conclude prior to the end of the five years in the event that it is desirable or necessary to do so.

During the five year project term, Autoliv will comply with the following:

(1) Autoliv will comply with the Project XL site-specific rule for the Promontory facility and the requirements specified in 40 CFR Part 262, Part 265, Subparts B, C, D, E, G, H, I, and O, and Part 268. Waste material will still be managed and stored as

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hazardous waste prior to treatment. Autoliv will comply with the RCRA 90-day storage requirements.

(2) All waste materials processed will be characterized and an initial stack test described in the site-specific rule will be conducted by Autoliv to evaluate the safety and the efficiency of the MRF system.

(3) The amounts of pyrotechnic wastes will be reported to EPA and the State of Utah at each periodic performance review conference conducted every six months.

(4) Due to the dynamic and ever changing nature of the air bag industry, it will be pertinent to allow for new development and provide flexibility for future materials. Emission product limitations will comply with air bag industry emissions standards listed in the Superior Environmental Performance section.

(5) The Utah Division of Air Quality under authority delegated by EPA has agreed that a separate Approval Order will be issued for the pyrotechnic waste disposal process which will serve as an amendment to the existing Approval Order which covers the current operation of processing airbag inflators and their components. No regulatory flexibility or modification of federal regulations is required for the new approval order to be issued by the Division of Air Quality.

(6) No off-site pyrotechnic wastes will be received or processed at this location and in the MRF.

(7) An MRF Operating Record, including waste feed composition, feed rates, temperatures, pressures, upset conditions, spills and releases, etc., will be maintained at the facility and made available for the State of Utah and EPA to review and copy for enforcement purposes if necessary.

(8) The State of Utah and EPA will be notified of any upset conditions, such as, spills and releases of hazardous or toxic substances at the MRF. The information will be reported orally within 24 hours from the time Autoliv becomes aware of the circumstances. A written submission to the State of Utah and EPA will be provided within five days of the time Autoliv becomes aware of the circumstances of the noncompliance. The severity and type of upset condition that would trigger the reporting threshold is described in the site-specific rule.

IV. Additional Information

A. How To Request a Public Hearing

A public hearing will be held, if requested, to provide opportunity for interested persons to make oral presentations regarding this regulation in accordance with 40 CFR Part 25. Persons wishing to make an oral presentation on the site specific rule to implement the Autoliv XL Project should contact Ms. Mary Byrne of the EPA Region 8 office, at the address given in the **ADDRESSES** section of this document. Any member of the public may file a written statement before the hearing, or after the hearing, to be received by EPA no later than February 27, 2001.

Written statements should be sent to EPA at the addresses given in the **ADDRESSES** section of this document. If a public hearing is held, a verbatim transcript of the hearing, and written statements provided at the hearing will be available for inspection and copying during normal business hours at the EPA addresses for docket inspection given in the **ADDRESSES** section of this preamble.

B. How Does This Rule Comply With Executive Order 12866?

This is a rule of particular applicability and therefore not within the scope of EO 12866.

C. Is a Regulatory Flexibility Analysis Required?

The Regulatory Flexibility Act (RFA), 5 U.S.C. section 601 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This rule will not have a significant impact on a substantial number of small entities because it only affects Autoliv. Therefore, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities.

D. Is an Information Collection Request Required for This Project Under the Paperwork Reduction Act?

This action applies only to Autoliv, and therefore requires no information collection activities subject to the Paperwork Reduction Act, and therefore no information collection request (ICR) will be submitted to OMB for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

E. Does This Project Trigger the Requirements of the Unfunded Mandates Reform Act?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As noted above, this rule is applicable only to the Autoliv facility in Promontory, Utah. The EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA has also determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

F. RCRA & Hazardous and Solid Waste Amendments of 1984

1. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer and enforce the RCRA program for hazardous waste within the state. (See 40 CFR Part 271 for the standards and requirements for authorization.) States with final authorization administer their own hazardous waste programs in lieu of the federal program. Following authorization, EPA retains enforcement authority under sections 3008, 3013 and 7003 of RCRA.

After authorization, federal rules written under RCRA (non-HSWA), no longer apply in the authorized state except for those issued pursuant to the Hazardous and Solid Waste Act Amendments of 1984 (HSWA). New federal requirements imposed by those rules do not take effect in an authorized state until the state adopts the requirements as state law.

In contrast, under section 3006(g) of RCRA, new requirements and prohibitions imposed by HSWA take effect in authorized states at the same time they take effect in non authorized states. EPA is directed to carry out HSWA requirements and prohibitions in authorized states until the state is granted authorization to do so.

2. Effect on Utah Authorization

This rule is being promulgated pursuant to non-HSWA authority, rather than HSWA. Utah has received authority to administer most of the RCRA program; thus, authorized provisions of each state's hazardous waste program are administered in lieu of the federal program. Utah has received authority to administer hazardous waste standards for generators. As a result, this rule, would not be effective in Utah until the state adopts equivalent legal mechanisms or requirements as state law. EPA may not enforce these requirements until it approves the state requirements as a revision to the authorized state program.

G. How Does This Rule Comply With Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks?

The Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant," as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

H. How Does This Rule Comply With Executive Order 13132: Federalism?

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial and direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The rule does not have federalism implications. It does not have substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of powers and responsibilities among various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this proposed rule.

I. How Does This Rule Comply With Executive Order 13175: Consultation and Coordination With Indian Tribal Governments ?

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It does not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. There are no communities of Indian tribal governments located in the vicinity of Autoliv. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

J. Does This Rule Comply With the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standard. This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

K. Is EPA Required to Submit a Rule Report Under the Congressional Review Act?

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. Section 804, however, exempts from Section 801 the following types of rules: rules of particular applicability, rules relating to agency management or personnel, and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under Section

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801 because this is a rule of particular applicability.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Waste determination.

Dated: May 3, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, part 261 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

2. Section 261.4 is amended by adding paragraph (b)(18) to read as follows:

§. 261.4 Exclusions.

* * * * *

(b) * * *

(18) By-products resulting from the production of automobile air bag gas generants at the Autoliv ASP Inc. facility in Promontory Utah, (Autoliv) are exempt from the D003 listing, for a period of five years from May 9, 2001, provided that:

(i) The by-product gas generants are processed on-site in Autoliv's Metal Recovery Furnace (MRF).

(A) By-product gas generants must only be fed to the MRF when it is operating in conformance with the State of Utah, Division of Air Quality's Approval Order DAQE–549–97.

(B) Combustion gas temperature must be maintained below 400 degrees Fahrenheit at the baghouse inlet.

(ii) Prior to processing in the MRF, the by-product gas generants are managed in accordance with the requirements specified in 40 CFR 262.34.

(iii) The Autoliv facility and the MRF are operated and managed in accordance with the requirements of 40 CFR Part 265, Subparts B, C, D, E, G, H, I, and O.

(iv) Residues derived from the processing of by-product gas generants in the MRF are managed in accordance with the requirements specified in 40 CFR Parts 262 and 268.

(v) The following testing of the MRF's stack gas emissions is conducted:

(A) An initial test shall be conducted within 30 operating days of starting feed of by-product gas generants to the MRF. EPA may extend this deadline, at the request of Autoliv, when good cause is shown. The initial test shall consist of three duplicate runs sampling for:

(*1*) Particulate matter using Method 5 as specified in 40 CFR Part 60, Appendix A.

(*2*) The metals Aluminum, Arsenic, Barium, Beryllium, Boron, Cadmium, Chromium, Cobalt, Copper, Lead, and Nickel using Method 29 as specified in 40 CFR Part 60, Appendix A.

(*3*) Polychlorinated di-benzo dioxins and furans using Method 23 0023A as specified in 40 CFR Part 60, Appendix A.

(*4*) Carbon monoxide using Method 10 as specified in 40 CFR Part 60, Appendix A.

(B) After the initial test is completed, an annual stack test (12 months from the previous initial stack test) of the MRF shall be conducted. The annual tests shall consist of three duplicate runs using Method 29 and Method 5 as specified in 40 CFR Part 60, Appendix A.

(C) Testing shall be conducted while by-product gas generants are fed to the MRF at no less than 90% of the planned maximum feed rate, and with the MRF operating parameters within normal ranges.

(D) Initial stack testing results and additional project performance data and information, including the quantity of by-product gas generants processed and the operating parameter values during the test runs, will be submitted by Autoliv to the State of Utah and EPA within 60 days of the completion of the initial stack test.

(E) Annual stack test results and additional project performance data and information, including the quantity of by-product gas generants processed and the operating parameter values during the test runs, will be submitted by Autoliv to EPA and the State of Utah within 60 days of the completion of the annual test.

(vi) Combustion gas discharged to the atmosphere from the MRF meets the following limits:

(A) Dioxin emissions do not exceed 0.4 ng per dry standard cubic meter on a toxicity equivalent quotient (TEQ) basis corrected to 7% Oxygen.

(B) Combined lead and cadmium emissions do not exceed 240 ug per dry standard cubic meter corrected to 7% Oxygen.

(C) Combined arsenic, beryllium, and chromium emissions do not exceed 97 ug per dry standard cubic meter corrected to 7% Oxygen.

(D) Particulate matter emissions do not exceed 34 mg per dry standard cubic meter corrected to 7% Oxygen.

(E) If the limits specified in paragraphs (b)(18)(vi)(A) through (D) of this section are exceeded, Autoliv shall discontinue feeding gas generants to the MRF until such time as Autoliv can demonstrate to EPA and the state of Utah satisfaction that the MRF combustion gas emissions can meet the limits specified in paragraphs (b)(18)(vi)(A) through (D) of this section

(vii) No by-product gas generants or other pyrotechnic wastes generated off-site will be received at the Autoliv facility in Promontory, Utah or processed in the MRF unless otherwise allowed by law (permit or regulation).

(viii) Autoliv will provide EPA and the state of Utah with semi-annual reports (by January 30 and July 30 of each year).

(A) The semi-annual reports will document the amounts of by-product gas generants processed during the reporting period.

(B) The semi-annual reports will provide a summary of the MRF Operating Record during the reporting period, including information on by-product gas generant composition, average feed rates, upset conditions, and spills or releases.

(ix) No significant changes are made to the operating parameter production values of Autoliv's production of air bag gas generants such that any of the constituents listed in appendix VIII of this part are introduced into the process.

(x) Autoliv reports to the EPA any noncompliance which may endanger health or the environment orally within 24 hours from the time Autoliv becomes aware of the circumstances, including:

(A) Any information of a release, discharge, fire, or explosion from the MRF, which could threaten the environment or human health.

(B) The description of the occurrence and its cause shall include:

(*1*) Name, address, and telephone number of the facility;

(*2*) Date, time, and type of incident;

(*3*) Name and quantity of material(s) involved;

(*4*) The extent of injuries, if any;

(*5*) An assessment of actual or potential hazards to the environment and human health, and

(*6*) Estimated quantity and disposition of recovered material that resulted from the incident.

(C) A written notice shall also be provided within five days of the time Autoliv becomes aware of the circumstances. The written notice shall contain a description of the non-compliance and its cause; the period of noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The EPA may waive the five day written notice requirement in favor of a written report within fifteen days.

(xi) Notifications and submissions made under paragraph (b)(18) of this section shall be sent to the Regional Assistant Administrator for the Office of Partnerships and Regulatory Assistance, U.S. EPA, Region 8 and the Executive Secretary of the Utah Solid and Hazardous Waste Control Board.

[FR Doc. 01–11670 Filed 5–8–01; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 68

[CC Docket No. 99–216, FCC 00–400]

2000 Biennial Regulatory Review of Adopting Technical Criteria and Approving Terminal Equipment

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The Federal Communications Commission (Commission) amended its rules governing the connection of terminal equipment to the public switched telephone network to streamline the standards development and approval processes. These rules contained information collection requirements that became effective on May 9, 2001.

DATES: Effective May 9, 2001.

FOR FURTHER INFORMATION CONTACT: Susan Magnotti, (202) 418–2320 (voice), smagnotti@fcc.gov, or Dennis Johnson, (202) 418–2320 (voice), dcjohnso@fcc.gov, of the Network Services Division, Common Carrier Bureau. The TTY number is (202) 418–0484.

SUPPLEMENTARY INFORMATION: On December 21, 2000, the Commission adopted the *Part 68 Streamlining Order* which amended the Commission's rules governing the connection of terminal equipment to the public switched telephone network in an effort to privatize and streamline the standards development and approval processes; a summary of the order was published in the **Federal Register**. 66 FR 7579 (January 24, 2001). Some of the regulations adopted in that order included information collection that required approval from the Office of Management and Budget. The order explained that "[t]he collections of information contained within are contingent upon approval by the OMB. The Commission will publish a document at a later date establishing the effective date." OMB approved the amendments to 47 CFR 68.106–68.610 that establish those reporting requirements. See OMB No. 3060–0056. Accordingly, these regulations will become effective upon publication of this document in the **Federal Register**. This document constitutes publication of the effective date of the regulations. We note that the information collection requirements in § 68.105, as adopted in the *Part 68 Streamlining Order*, were originally established in a separate proceeding as part of the definition of the term "demarcation point" in 47 CFR 68.3 (1999). 15 FCC Rcd 22983 (2000). Therefore, that rule will become effective upon OMB approval in the *Competitive Networks* proceeding.

List of Subjects in 47 CFR Part 68

Communications common carriers, Terminal equipment, Part 68, Technical criteria.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–11589 Filed 5–8–01; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 010208032–1109–02; I.D.121200L]

RIN 0648–AM47

Fisheries of the Northeastern United States; Final 2001 Specifications for the Atlantic Bluefish Fishery; Regulatory Amendment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final 2001 specifications for the Atlantic bluefish fishery; regulatory amendment.

SUMMARY: NMFS issues 2001 specifications for the Atlantic bluefish fishery, including total allowable harvest levels (TAL), state-by-state commercial quotas, and recreational harvest limits and possession limits for Atlantic bluefish off the east coast of the United States. NMFS also amends the regulations implementing the Fishery Management Plan for Atlantic Bluefish (FMP) to insert an inadvertently omitted paragraph in the procedure for annually setting TAL. This action is necessary to conserve and manage the bluefish resource and is intended to provide for sustainable fisheries.

DATES: The 2001 TAL, commercial quotas, and recreational harvest limits are effective May 9, 2001 through December 31, 2001.

The amendment to § 648.160 is effective June 8, 2001.

The amendment to § 648.164 is effective May 9, 2001.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment, Regulatory Impact Review, Pre Regulatory Economic Evaluation (EA/RIR/PREE), and the Essential Fish Habitat Assessment are available from: Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. The EA/RIR/PREE are accessible via the Internet at *http://www.nero.gov/ro/doc/nr.htm*.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, (978) 281-9104, e-mail at Myles.A.Raizin@noaa.gov, fax at (978) 281–9135.

SUPPLEMENTARY INFORMATION: NMFS implemented the FMP through regulations at 50 CFR part 648, subparts A and J. Section 648.160 requires annual specifications. The FMP, as adopted by the Mid-Atlantic Fishery Management Council (Council) requires that the Council recommend, on an annual basis, TAL, which is composed of a commercial quota and a recreational harvest limit. NMFS published a proposed rule to establish the 2001 bluefish specifications and insert an inadvertently omitted paragraph into § 648.160 at 66 FR 10983, February 21, 2001, with a comment period ending March 23, 2001.

Final Specifications

2001 TAL

The FMP requires that the TAL for any given year be set based on the fishing mortality rate (F) resulting from the stock rebuilding schedule contained in Amendment 1 to the FMP (F=0.41 for 2001) or on the estimated F for the fishing year preceding the Council submission of the recommended specifications, whichever F is lower. The 1999 bluefish fishery data were the most recent data that were complete when the specification process began for the 2001 bluefish fishery. Because the 1999 fishery produced an F of only 0.295 (equals a 33 percent exploitation rate for the bluefish fishery), the TAL is set to maintain this F in 2001.

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Therefore, the TAL for 2001 is 37.84 million lb (17.17 million kg), which equals 33 percent of the estimated biomass for 2001 (114.62 million lb (52.0 million kg). By basing the bluefish TAL for 2001 on an F value of 0.295, this action prevents overfishing of the Atlantic bluefish stock. According to the current overfishing definition fo this fish stock, F values less than 0.4 prevent overfishing.

2001 Commercial Quotas and Recreational Harvest Limits

The FMP requires that a total of 17 percent of the TAL be allocated to the commercial fishery, as a quota, with the remaining 83 percent allocated as a recreational harvest limit. This would result in a commercial allocation of 6.43 million lb (2.92 million kg) and a recreational harvest limit of 31.41 million lb (14.25 million kg). However, the FMP also specifies that if 17 percent of the TAL is less than 10.50 million lb (4.8 million kg) and the recreational fishery is not projected to land its harvest limit for the upcoming year, the commercial fishery may be allocated up to 10.50 million lb (4.8 million kg) as its quota, provided that the combination of the projected recreational landings and the commercial quota does not exceed TAL.

Since recreational landings from 1995 through 1999 ranged between 8.3 and 14.7 million lb (3.76 and 6.67 million kg), well below the recreational harvest limit for 2001, the Council relied on the foregoing provision. This action establishes a commercial quota of 9.58 million lb (4.35 million kg) for 2001, which maintains the 2001 quota at the level specified in 2000 by the Atlantic States Marine Fisheries Commission. Under the FMP, this required transferring 3.15 million lb (1.43 million kg) from the initial 2001 recreational allocation of 31.41 million lb (14.25 million kg), leaving 28.26 million lb (12.82 million kg) for the 2001 recommended harvest limit. The 2001 commercial quotas are unchanged from the 2000 quotas implemented by the states under the Interstate Fishery Management Plan for Atlantic Bluefish, so no significant economic impacts are expected. The 2001 state commercial quotas are listed in the table below.

State	Percent of quota	2001 commercial quota (lb)	2001 commercial quota (kg)
ME	0.6685	64,062	29,066
NH	0.4145	39,701	18,023
MA	6.7167	643,661	292,042
RI	6.8081	652,420	296,016
CT	1.2663	121,350	55,059
NY	10.3851	995,204	451,544
NJ	14.8162	1,419,836	644,209
DE	1.8782	179,988	81,664
MD	3.0018	287,662	130,518
VA	11.8795	1,138,412	516,521
NC	32.0608	3,072,386	1,394,005
SC	0.0352	3,373	1,530
GA	0.0095	910	413
FL	10.0597	964,021	437,396
Total	100.000	9,583,010	4,348,008

Recreational Possession Limit for 2001

The Council made a 2-year projection of the bluefish stock biomass using an assumed F of 0.295. Results indicate that the bluefish stock will increase from an estimated biomass of 78,919,680 lb (35,840 mt) in 2000 to 114,481,980 lb (51,990 mt) in 2001, and 153,523,440 lb (69,720 mt) in the year 2002. The projection predicts the stock will increase substantially in the next 2 years, with commensurate increases in the recreational harvest limit. However, recreational landings have decreased from 14,302 mt (31,521,608 lb) in 1997 to 12,334 mt (27,184,136 lb) in 1998 and 8,253 mt (18,189,612 lb) in 1999. Therefore, NMFS is increasing the possession limit from 10 to 15 fish in 2001. NMFS expects this increase to benefit some recreational anglers without exceeding the recreational harvest limit of 28.26 million lb (12.82 million kg).

Regulatory Amendment

During rulemaking to implement Amendment 1 to the FMP, NMFS inadvertently omitted a portion of the regulatory text in § 648.160(a) necessary to specify the procedures for setting annual TAL. The regulatory text needs to reflect the FMP requirement, found in section 3.1.1.2 of Amendment 1, that the Council use the estimated F for the fishing year preceding the Council submission of the recommended specifications for setting TAL if the estimated F is less than the target F identified in the rebuilding schedule. NMFS approved the portion of Amendment 1 containing this requirement on July 29, 1999.

Changes from Proposed Rule

When publishing the proposed rule, NMFS mistakenly omitted the regulatory text in § 648.164 that specifies the bluefish possession limit. This final rule revises the regulatory text consistent with the increase in the possession limit from 10 fish per person to 15 fish per person.

Comments and Responses

No comments were received during the public comment period for the proposed rule.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant impact on a substantial number of small entities. The factual basis for that determination was provided in the proposed rule for this action. No comments were received regarding the economic effects of this action; accordingly, the factual basis for this certification has not changed. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act was not required and none was prepared.

The Assistant Administrator for Fisheries, NOAA, under 5 U.S.C. 553(d)(5), finds good cause not to delay the effective date of the 2001 fishery specifications contained in this final rule. This rule establishes only a commercial quota and recreational possession limits, which are used to control the harvest in this fishery, but establishes any requirements for which a regulatory entity must come into compliance. This fishery commenced on January 1, 2001. In addition, the increase in the recreational harvest limit from 10 to 15 fish relieves a restriction.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 3, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648, chapter VI, is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.160, paragraph (a) is revised to read as follows:

§ 648.160 Catch quotas and other restrictions.

* * * * *

(a) *Annual review.* On or before August 15 of each year, the Bluefish Monitoring Committee will meet to determine the total allowable level of landings (TAL) and other restrictions necessary to achieve the target fishing mortality rate (F) specified in the Fishery Management Plan for Atlantic Bluefish for the upcoming fishing year or the estimated F for the fishing year preceding the Council submission of the recommended specifications, whichever F is lower. In determining the TAL and other restrictions necessary to achieve the specified F, the Bluefish Monitoring Committee will review the following data, subject to availability: Commercial and recreational catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling data; impact of gear other than otter trawls and gill nets on the mortality of bluefish; and any other relevant information.

* * * * * *

3. In § 648.164, the first sentence of paragraph (a) is revised to read as follows:

§ 648.164 Possession restrictions.

(a) No person shall possess more than 15 bluefish in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a bluefish commercial permit or is issued a bluefish dealer permit. * * *

* * * * *

[FR Doc. 01–11701 Filed 5–8–01; 8:45 am]

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Proposed Rules

Federal Register
Vol. 66, No. 90
Wednesday, May 9, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 104, and 109

[Notice 2001–6]

Independent Expenditure Reporting

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission is seeking comment on proposed rules to implement statutory changes to the procedures for filing certain reports of independent expenditures. The proposed rules would require that reports of last minute independent expenditures ("24-hour reports") be received by the Commission or the Secretary of the Senate's office within 24 hours of the time the expenditure was made. To assist filers in meeting this new filing deadline, the proposed rules would allow reports of last minute independent expenditures to be filed by facsimile machine or electronic mail, unless the filer participates in the Commission's electronic filing program. In addition to faxing or e-mailing 24-hour reports, persons other than political committees (who are not part of the electronic filing program) would be allowed to fax or e-mail any reports of independent expenditures filed under the regular reporting schedules. However, electronic filers must continue to file all reports of independent expenditures (24-hour reports as well as regularly scheduled reports) using the Commission's electronic filing system. Please note that the draft rules that follow do not represent a final decision by the Commission on the issues presented by this rulemaking. Further information is provided in the supplementary information that follows.

DATES: Comments must be received on or before June 8, 2001.

ADDRESSES: All comments should be addressed to Ms. Rosemary C. Smith, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up to insure legibility. Electronic mail comments should be sent to *IndyExpRep@fec.gov* Commenters sending comments by electronic mail must include their full name, electronic mail address and postal service address within the text of their comments. Comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered. The Commission will make every effort to have public comments posted on its Web site within ten business days of the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary Smith, Assistant General Counsel, or Ms. Cheryl Fowle, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On October 23, 2000, Public Law 106–346 (Department of Transportation and Related Agencies Appropriations Act, 2001,114 Stat. 1356 (2000)) amended the Federal Election Campaign Act of 1971, 2 U.S.C. 431 *et seq.*, ("the Act" or "FECA") regarding the filing of independent expenditure reports under 2 U.S.C. 434(b) and (c). Paragraphs (b) and (c) of 2 U.S.C. 434 require political committees and other persons making independent expenditures to file reports or statements if their independent expenditures exceed a certain amount of money. In addition, if independent expenditures of $1,000 or more are made less than twenty (20) days but more than twenty-four (24) hours before the day of an election, an additional statement must be filed within 24 hours. Public Law 106–346 requires, *inter alia*, that the Commission issue rules requiring that reports of independent expenditures made less than twenty (20) days but more than twenty-four (24) hours before an election ("24-hour reports") must be received by the Commission or the Secretary of the Senate, as appropriate,[1] within 24 hours of the time the independent expenditure was made. The statutory change permits all 24-hour reports to be filed using facsimile machines or electronic mail, unless the filer is part of the Commission's electronic filing program (*see* 11 CFR 104.18). In addition to their 24-hour reports, persons other than political committees may file by fax or e-mail other reports of independent expenditures in accordance with the regular filing schedule (*see* 11 CFR 104.5). The statutory amendment also requires the Commission to provide methods of verification of documents (other than requiring a signature on the document) for all purposes, including penalties of perjury. The new law requires this system to be in place for elections occurring after January 1, 2001, subject to regulations to be promulgated by the Commission.

These new filing methods are intended to speed up disclosure and to provide political committees and other filers with more flexibility in choosing methods of compliance.

In addition to the amendments regarding independent expenditures, the new law also requires the Commission to amend its regulations to exclude from the definition of "contribution" loans that candidates receive from brokerage accounts, lines of credit, or other credit instruments as long as the loans were made under commercially reasonable terms and were from a source that provides such loans in the normal course of business. That topic is being addressed in a separate rulemaking.

A. Reports of Independent Expenditures Filed by Facsimile Machine or Electronic Mail (11 CFR 104.4 and 109.2)

Currently, 24-hour reports are filed by political committees using Schedule E and by persons other than political committees using either FEC Form 5, or a signed statement containing the information specified in 11 CFR 109.2(a)(1). Currently, most reports of independent expenditures are filed on paper. Note that those participating in the Commission's electronic filing program are required to send a paper copy or to submit a digitized file in addition to their electronic filing because the reports must be notarized. Under the new law and the proposed revisions to the regulations at 11 CFR 100.19(d), 104.4(b) and 109.2(a), all filers who are not part of the Commission's electronic filing program would be able to fax or electronically mail their 24-hour reports. Note that the new law and proposed revisions to section 109.2(a) also allow persons other than political committees (unless they submit reports under the Commission's electronic filing program—see *infra*) to file any other reports of independent expenditures (in accordance with the reporting schedule in 11 CFR 104.5) using a fax machine or e-mail.

Under current sections 104.4(b) and 109.2(a)(1)(v), Schedule E, Form 5, and the signed statement must contain a notarized certification under penalty of perjury as to whether the expenditures were "coordinated" with any candidate, authorized committee or agent thereof, and, if the independent expenditures were made by a corporation, that the maker is a qualified nonprofit corporation (*see* 11 CFR 114.10). The Commission is considering adding new paragraph (a)(1)(vi) to section 109.2 to require those who file a statement instead of FEC Form 5 to certify that the expenditure was not made to finance, disseminate, distribute or republish campaign materials prepared by a candidate or a candidate's agent or authorized committee. Current paragraph (a)(1)(vi) would be renumbered (a)(1)(vii). New paragraph (a)(1)(vi) is consistent with the certification signed by those who file FEC Form 5 or Schedule E. The certification stems from the legislative history of the 1976 FECA. The Conference Report to the 1976 FECA explained that "any expenditure to finance publication of any campaign broadcast or any other campaign materials prepared by a candidate shall be considered to be a contribution to that candidate." H.R. Rep. No. 94–1057 at 55 (1976). Thus, the Commission's forms have required makers of independent expenditures to affirmatively state that the expenditure was not made to disseminate the campaign's own materials. On the other hand, however, the statutory certifications required by 2 U.S.C. 434(b)(6)(B)(iii) and (c)(2)(A) do not address distribution of candidate-prepared materials. Consequently, the Commission requests comments on not adding the certification statement to paragraph (a)(1)(vi) and removing that part of the certification from FEC Form 5 and Schedule E.

The Department of Transportation and Related Agencies Appropriations Act, 2001 requires the Commission to create methods of verifying the independent expenditure statement filed, other than by requiring a signature on the document, for all purposes (including penalties of perjury). The Commission is proposing to allow self-certification by the filer to verify the filed report. This means that notarization would no longer be required for Schedule E, Form 5, or signed statements. Instead, the filer would be required to simply self-certify the document using either a handwritten signature on a paper document or by typing his or her name on electronic documents. Note that no other campaign finance reports filed with the Commission or the Secretary of the Senate need to be notarized.

To implement the self-certification verification, the proposed amendments to 11 CFR 109.2(a)(1)(v) would require that a prescribed statement of certification as to the independence of the expenditure continue to be included in any statement filed by persons other than political committees. Conforming amendments to FEC Form 5 and Schedule E would be made at a later point, which would include self-certification and would remove notarization.

Proposed new paragraph (c) of 11 CFR 109.2 and proposed paragraphs (b)(1) and (2) of 11 CFR 104.4 set forth two methods for verifying reports of independent expenditures. Reports filed in paper form (*e.g.*, by hand delivery or fax machine), would be verified by the filer's signature under the certification language. For reports filed by electronic mail, the Commission proposes certification by requiring the filer to type his or her name under the certification language.

As an alternative to self-certification, the Commission seeks comments on retaining the current notarization requirement for faxed reports and requiring electronic notarizations for e-mailed reports. Given that only a handful of states have electronic notary statutes, is this feasible for filers from other states and territories? The Commission is concerned that differing standards for electronic notarizations among the many states may require the Commission to accept dozens of different electronic notaries, a process which could be cumbersome and expensive.

The Commission is also considering whether to require standard paper notarization for faxed reports and digital signatures that are verified by a "Trusted Third Party" for e-mailed reports. Such digital signatures are the basis for transactions in electronic commerce. Digital signatures utilize a Public Key Infrastructure. That structure uses Public and Private Keys to encode a message and to provide a method of positively identifying the sender.

The Commission requests comments on the proposed self-certification method of verification of the filed documents and also on any other methods of verification, whether mentioned above or not.

B. Reports of Independent Expenditures Filed by Registered or Certified Mail (11 CFR 100.19)

Current Commission regulations at 11 CFR 100.19(b) state that a document is timely filed when it is received by the close of the prescribed filing date or, in the case of documents filed by certified or registered mail, when it is deposited in an established U.S. Post Office and is postmarked no later than the prescribed filing date (with the exception of pre-election reports). Hence, 24-hour reports are currently considered timely filed if they are deposited at a Post Office and are postmarked for certified or registered mail within 24 hours of the time the independent expenditure was made.

Under Pub. L. 106–346 and proposed regulations at paragraph (b) and new paragraph (d) of 11 CFR 100.19, 24-hour reports would be considered timely filed only upon their receipt by the Commission or Secretary of the Senate within 24 hours of making the independent expenditure. Thus, while a filer could use registered or certified mail for their 24-hour report, the report would no longer be timely filed when postmarked. Moreover, it is unlikely that reports filed by certified or registered mail would be received by the Commission within 24 hours of the making of the expenditure. Since it appears that some of the current filing methods will not satisfy the new filing deadlines, proposed revisions to paragraph (b) of section 100.19 would make it clear that 24-hour reports are not included in those reports that are considered timely filed when postmarked for registered or certified mail. Proposed paragraph (d) of 11 CFR 100.19 would state that 24-hour reports of independent expenditures are considered timely filed upon receipt by the Commission or the Secretary, as appropriate, in accordance with 11 CFR 104.4(c).

A conforming amendment would be added to 11 CFR 100.19(a) to note that documents filed using the Commission's electronic filing program would be timely filed in accordance with paragraph (c) of that section. Additionally, the Commission proposes revising paragraph (a) to say "close of business on the prescribed filing date" to conform with paragraph (b) as to

[1] The Secretary of the United States Senate Office of Public Records is the proper recipient of reports of independent expenditures that either support or oppose only candidates for the Unites States Senate. 11 CFR 104.4(c)(2).

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when, on the filing date, the documents are due. Currently, paragraph (a) states that documents are timely filed by the "close of the prescribed filing date," while paragraph (b) states that documents mailed by first class mail shall be timely filed at the "close of business of the prescribed filing date."

In addition, conforming amendments to 11 CFR 104.4(b), 104.5(g) and 109.2(b) would also clarify that 24-hour reports must be received by the appropriate filing authority within 24 hours after the independent expenditure is made. Further, the Commission is proposing conforming amendments to 11 CFR 104.14(a) regarding the new verification requirements for faxed or e-mailed reports of independent expenditures and to reference the signature requirements for the electronic filing program in 11 CFR 114.18(g).

C. When Is an Independent Expenditure "Made"? (11 CFR 109.1)

The statutory amendment and the proposed regulations require 24-hour reports to be received by the Commission or the Secretary of the Senate within 24 hours of the time the independent expenditure is made. The Commission is proposing that new paragraph (f) be added to 11 CFR 109.1 to clarify when an independent expenditure is "made". This new definition would state that an independent expenditure is made at the earliest of three possible events: The first would be when a written contract, promise or agreement to make an independent expenditure is executed; for example, when a contract to run a newspaper ad is signed. The second possible occurrence would be the first date on which the communication is disseminated to the public; for example, the first time a radio ad is broadcast. The third event triggering the making of an independent expenditure would be when the person making the expenditure pays for it; for example, when a check is delivered to a media firm for production costs or to a television station for an ad to be run later. The Commission seeks comments on this new definition. Is it necessary? Does it accurately reflect the possible times when an independent expenditure would be deemed "made"? Should the Commission attempt to further explain which types of written contracts, promises, or agreements would or would not constitute the making of the independent expenditure? For example, should only those covering the dissemination of a communication be included (e.g., airtime TV buys or newspaper space purchases)?

D. Proposed Changes to the Commission's Electronic Filing Program (11 CFR 104.18)

Under current regulations at 11 CFR 104.18(h), those participating in the Commission's electronic filing program (either mandatory or voluntary) must file FEC Form 5 or Schedule E electronically accompanied by a paper copy in order to file a notarized document. The new law exempts such electronic filers from filing their reports of independent expenditures by fax or electronic mail. In order to afford all electronic filers the ability to comply with the new requirement that 24-hour reports be received by the Commission within 24 hours, the Commission proposes revising 11 CFR 104.18(h) to drop Schedule E and FEC Form 5 from the list of reports for which a paper copy follow-up is required. The Commission proposes requiring those in the electronic filing program to verify all reports of independent expenditures using the same process as they would in filing any other report.

The Commission's electronic filing software, FECFile, currently creates Schedule E for electronic filing by political committees. The Commission's electronic filing system accepts FEC Form 5 if created by another entity using the Commission's specifications (available on the FEC Web site, www.fec.gov), but FECFile does not currently create Form 5. The Commission intends to make FEC Form 5 available in the FECFile software package. Note that this software is available for free from the Commission.

The Commission is proposing to reorganize paragraph (h) of section 104.18 to clarify what paper documents must accompany electronically filed reports, and when those paper copies must be filed. The Commission also proposes removing FEC Form 5 and Schedule E from the list of documents with special signature requirements. Additionally, the Commission proposes adding FEC Schedule C–P–1 to the list of documents requiring special signatures. Schedule C–P–1 is used by Presidential candidates to report loans and lines of credit from lending institutions, and, like Schedule C–1 (used by non-Presidential committees) requires the lending institution agent's signature.

E. Reports Available on the Internet Within 24 Hours

Section 502(a) of Public Law 106–346 requires that "the Commission shall make a document which is filed electronically with the Commission pursuant to this paragraph accessible to the public on the Internet not later than 24 hours after the document is received by the Commission."

While the Commission believes that "electronically" means filed by electronic mail only, the Commission nevertheless proposes making available on the Commission's Web site (www.fec.gov) within 24 hours of receipt all reports of independent expenditures filed with the FEC using facsimile machine, electronic mail, or the FEC's electronic filing system. Note that reports of independent expenditures that support or oppose only Senate candidates must be filed with the Secretary of the Senate. Therefore, because they are not filed with the Commission, reports faxed or e-mailed to the Secretary may not be available on the Commission's Web site within 24 hours of receipt by the Secretary of the Senate. The Commission will, however, make every effort to get reports of independent expenditures filed with the Secretary on the FEC's Web site as soon as possible after the Commission receives the report from the Secretary.

F. Reports of Last Minute Contributions (11 CFR 100.19 and 104.5)

The Commission also proposes revising its regulations at 11 CFR 104.5(f) and adding paragraph (e) to 11 CFR 100.19 regarding reports by authorized committees receiving contributions of $1,000 or more made less than 20 days but more than 48 hours before the day of an election. These proposed changes do not stem from P.L. 106–346. The Commission has for some time allowed authorized committees to file these reports by facsimile machine in addition to other permissible filing methods. *See* Advisory Opinion 1988–32. In the fall of 2000, the Commission began allowing 48-hour reports filed with the Commission to be filed on-line through its Web site as an additional means of filing those reports. Note that 48-hour reports filed with the Secretary of the Senate cannot be filed using the on-line program at the Commission's Web site. They can, however, be filed by fax to the Secretary of the Senate. The proposed revisions to 11 CFR 100.19 and 104.5(f) would recognize those filing methods in the regulations.

Finally, the Commission welcomes comments on any other issues raised by the new statutory requirements regarding independent expenditure reporting.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

These proposed rules if promulgated, would not have a significant economic impact on a substantial number of small entities. The basis of this certification is that the Commission is providing most filers with less than $50,000 of activity with additional means of complying with the law, thereby increasing the filers' flexibility by allowing them to choose the most convenient and cost effective filing method. These additional filing methods will likely result in a decrease in costs from present.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 109

Elections, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, it is proposed to amend subchapter A of chapter I of title 11 of the *Code of Federal Regulations* as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for part 100 would be revised to read as follows:

Authority: 2 U.S.C. 431, 434(a)(11), 434(c) and 438(a)(8).

2. Section 100.19 would be revised to read as follows:

§ 100.19 File, filed or filing (2 U.S.C. 434(a)).

(a) Except for documents electronically filed under paragraph (c) of this section, a document is timely filed upon delivery to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463; or the Secretary of the United States Senate, Office of Public Records, 119 D Street NE., Washington, DC 20510 as required by 11 CFR part 105, by the close of business of the prescribed filing date.

(b) A document other than a 24-hour report of an independent expenditure under 11 CFR 104.4(b) or 109.2(c) is timely filed upon deposit as registered or certified mail in an established U.S. Post Office and postmarked no later than midnight of the day of the filing date, except that pre-election reports so mailed must be postmarked no later than midnight of the fifteenth day before the date of the election. Documents sent by first class mail must be received by the close of business of the prescribed filing date to be timely filed.

(c) For electronic filing purposes, a document is timely filed when it is received and validated by the Federal Election Commission at or before 11:59 p.m., Eastern Standard/Daylight Time, on the filing date.

(d) A 24-hour report of independent expenditures under 11 CFR 104.4(b) or 109.2(c) is timely filed when it is received by the appropriate filing officer as listed in 11 CFR 104.4(c) within 24 hours of the time the independent expenditure was made. In addition to other permissible means of filing, a 24-hour report may be filed using a facsimile machine or by electronic mail if the filer is not required to file electronically in accordance with 11 CFR 104.18.

(e) In addition to other permissible means of filing, authorized committees may file 48-hour notifications of contributions using facsimile machines or, if the notifications are being filed with the Commission, using the Commission Web site's on line program.

PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

3. The authority citation for part 104 would continue to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8) and (b) and 439a.

4. Section 104.4 would be amended by revising paragraph (b) to read as follows:

§ 104.4 Independent expenditures by political committees (2 U.S.C. 434(c)).

* * * * *

(b) *24-hour reports.* Reports of any independent expenditures aggregating $1,000 or more made after the 20th day, but more than 24 hours, before 12:01 a.m. of the day of the election, must be received by the appropriate officers listed in paragraph (c) of this section within 24 hours after such independent expenditure is made. Such report shall contain the information required by 11 CFR 104.3(b)(3)(vii) indicating whether the independent expenditure is made in support of, or in opposition to, the candidate involved. In addition to other permissible means of filing, a 24 hour report may be filed using a facsimile machine or electronic mail if the filer is not required to file electronically in accordance with 11 CFR 104.18. Such report must be verified by one of the methods stated in paragraph (b)(1) or (b)(2) of this section. Any report verified under either of these methods shall be treated for all purposes (including penalties for perjury) in the same manner as a document verified by signature.

(1) For reports filed on paper (e.g., by hand delivery, U.S. Mail or facsimile machine), the certification required by 11 CFR 104.3(b)(3)(vii) must be immediately followed by the handwritten signature of the treasurer of the political committee that made the independent expenditure and who certifies, under penalty of perjury, its independence.

(2) For reports filed by electronic mail, the certification required by 11 CFR 104.3(b)(3)(vii) must be immediately followed by the typewritten name of the treasurer of the political committee that made the independent expenditure and who certifies, under penalty of perjury, its independence.

* * * * *

5. Section 104.5 would be amended by revising paragraphs (f) and (g) to read as follows:

§ 104.5 Filing dates (2 U.S.C. 434(a)(2)).

* * * * *

(f) *48 hour notification of contributions.* If any contribution of $1,000 or more is received by any authorized committee of a candidate after the 20th day, but more than 48 hours, before 12:01 a.m. of the day of the election, the principal campaign committee of that candidate shall notify the Commission, the Secretary of the Senate and the Secretary of State, as appropriate, within 48 hours of receipt of the contribution. The notification shall be in writing and shall include the name of the candidate and office sought by the candidate, the identification of the contributor, and the date of receipt and amount of the contribution. The notification shall be filed in accordance with 11 CFR 100.19. The notification shall be in addition to the reporting of these contributions on the post-election report.

(g) *24-hour report of independent expenditures.* Statements disclosing any independent expenditures aggregating $1,000 or more made after the 20th day, but more than 24 hours, before 12:01 a.m. of the day of the election, must be received by the appropriate officers listed in 11 CFR 104.4(c) within 24 hours after such independent expenditure is made. Such statement shall contain the information required by 11 CFR 104.3(b)(3)(vii) indicating whether the independent expenditure is made in support of, or in opposition to, the candidate involved.

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6. Section 104.14 would be amended by revising paragraph (a) to read as follows:

§ 104.14 Formal requirements regarding reports and statements.

(a) Each individual having the responsibility to file a designation, report or statement required under this subchapter shall sign the original designation, report or statement except that:

(1) Reports or statements of independent expenditures filed by facsimile machine or electronic mail under 11 CFR 104.4(b) or 11 CFR 109.2 must be verified in accordance with those sections; and

(2) Reports, designations, or statements filed electronically under 11 CFR 104.18 must follow the signature requirements of 11 CFR 104.18(g).

* * * * *

7. Section 104.18 would be amended by revising paragraph (h) to read as follows:

§ 104.18 Electronic filing of reports (2 U.S.C. 432(d) and 434(a)(11)).

* * * * *

(h) *Schedules and forms with special requirements.* (1) The following are schedules and forms that require the filing of additional documents and that have special signature requirements:

(i) Schedules C–1 and C–P–1, Loans and Lines of Credit From Lending Institutions (see 11 CFR 104.3(d)); and

(ii) Form 8, Debt Settlement Plan (see 11 CFR 116.7(e)).

(2) If a person files a report electronically by submitting a diskette to the Commission and is required to file any of the schedules or forms listed in paragraph (h)(1) of this section, the person shall file a paper copy of the required schedule or form with the electronic submission, or a digitized version as a separate file in the electronic submission, by the close of business on the prescribed filing date.

(3) If a person files a report electronically by uploading the data to the Commission's electronic filing system and is required to file any schedules or forms listed in paragraph (h)(1) of this section, the person shall file a paper copy or a digitized version of the required schedule or form by the close of business on the prescribed filing date.

* * * * *

PART 109—INDEPENDENT EXPENDITURES (2 U.S.C. 431(17), 434(c))

8. The authority citation for part 109 would continue to read as follows:

Authority: 2 U.S.C. 431(17), 434(a)(11) and (c), 438(a)(8), and 441d.

9. Section 109.1 would be amended by adding new paragraph (f) to read as follows:

§ 109.1 Definitions (2 U.S.C. 431(17)).

* * * * *

(f) An independent expenditure is made on the earliest of—

(1) The date on which a written contract, including a media contract, promise or agreement to make an independent expenditure is executed;

(2) The first date on which the communication is printed, broadcast or otherwise publicly disseminated; or

(3) The date on which the person making the independent expenditure pays for it.

10. Section 109.2 would be amended by revising the introductory text in paragraphs (a) and (a)(1) by revising paragraphs (a)(1)(v), (a)(2), and (b) by redesignating paragraph (a)(1)(vi) as paragraph (a)(1)(vii) and adding new paragraphs (a)(1)(vi) and (c) to read as follows:

§ 109.2 Reporting of independent expenditures by persons other than a political committee (2 U.S.C. 434(c)).

(a) Every person other than a political committee, who makes independent expenditures aggregating in excess of $250 in a calendar year shall file a verified statement or report on FEC Form 5 with the Commission or Secretary of the Senate in accordance with 11 CFR 104.4(c).

(1) If a verified statement is submitted, the statement shall include:

* * * * *

(v) A verified certification under penalty of perjury as to whether such expenditure was made in cooperation, consultation or concert with, or at the request or suggestion of any candidate or any authorized committee or agent thereof;

(vi) A verified certification under penalty of perjury as to whether the expenditure involved the financing, dissemination, distribution or republication of any campaign materials prepared by a candidate or a candidate's agent or authorized committee; and

* * * * *

(2) Reports or statements filed under this section shall be filed at the end of the reporting period (quarterly, pre-election, post-election, semi-annual or annual) (See 11 CFR 104.5)) during which any independent expenditure which aggregates in excess of $250 is made and in any reporting period thereafter in which additional independent expenditures are made.

(b) Reports of independent expenditures aggregating $1,000 or more made by any person after the twentieth day, but more than 24 hours before 12:01 a.m of the day of an election must be received by the appropriate officers as listed in paragraph (c) of this section within 24 hours after such independent expenditure is made. Such report or statement shall contain the information required by paragraph (a) of this section indicating whether the independent expenditure is made in support of, or in opposition to, a particular candidate.

(c) Verification of independent expenditure statements and reports: For reports filed on paper (e.g., by hand delivery, U.S. Mail or facsimile machine), the certification required by paragraphs (a)(1)(v) and (a)(1)(vi) of this section must be immediately followed by the handwritten signature of the person who made the independent expenditure and who certifies, under penalty of perjury, its independence. For reports filed by electronic mail, the certification required by paragraphs (a)(1)(v) and (a)(1)(vi) of this section must be immediately followed by the typewritten name of the person who made the independent expenditure and who certifies, under penalty of perjury, its independence.

Dated: May 3, 2001.

Danny L. McDonald,

Chairman, Federal Election Commission.

[FR Doc. 01–11587 Filed 5–8–01; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–03–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS–365N3 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for Eurocopter France Model AS–365N3 helicopters. This proposal would require modifying the Full Authority Digital Engine Control (FADEC) software within 90 days after the effective date of this AD. This proposal is prompted by a design problem in the FADEC "power loss printed circuit board" software found during laboratory testing. The actions specified by the proposed AD are intended to prevent loss of the FADEC one-engine-inoperative (OEI) power and subsequent loss of control of the helicopter.

DATES: The FAA must receive any comments on this proposal by July 9, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–03–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Carroll Wright, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5120, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2001–SW–03–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–03–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified us that an unsafe condition may exist on Eurocopter France Model AS–365N3 helicopters. The DGAC advises that the engine FADEC software and the associated existing wiring for the engine indicating system for the FADEC should be modified. The main purpose of these modifications is to transfer the "OEI torque limit setting" and the "NG difference indicating" function from the "power loss" card to the main computer. This modification should eliminate hung starts and loss of access to the maximum allowable emergency OEI power from the remaining engine after one engine has failed.

Eurocopter France has issued Eurocopter France Service Bulletin (SB) 71.00.13, Revision 1, dated October 17, 2000. This SB specifies modifying the engine FADEC computer software and the associated existing wiring. The DGAC classified this SB as mandatory and issued AD No. 2000–517–051(A), dated December 13, 2000, to ensure the continued airworthiness of these helicopters in France. Incorporation of the SB provides terminating action for DGAC AD Nos. 1998–517–048(A) R2, dated December 13, 2000; 1998–517–048(A) R1, dated April 5, 2000; and 1998–517–048(A), dated January 13, 1999.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions 14 CFR 21.29 and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

We have identified an unsafe condition that is likely to exist or develop on other Eurocopter France Model AS–365N helicopters of this same type design registered in the United States. The proposed AD would require modifying the FADEC software and wiring within 90 days after the effective date of this AD. The actions would be required to be accomplished in accordance with the SB's described previously.

Regulatory Impact

We estimate that 1 helicopter of U.S. registry would be affected by this proposed AD and that it would take approximately 17 work hours per helicopter to modify the wiring. The average labor rate is $60 per work hour. The FADEC software modification will have an estimated turbomeca labor charge of $1200. The manufacturer has stated that the wiring kits will be furnished at no cost. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2220.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. You can get a copy of the draft regulatory evaluation prepared for this action from the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the mailing address listed under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

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§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Eurocopter France: Docket No. 2001–SW–03–AD.

Applicability: Model AS–365N3 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Within 90 days after the effective date of this AD, unless previously accomplished.

To prevent loss of the Full Authority Digital Engine Control (FADEC) one-engine-inoperative power and subsequent loss of control of the helicopter, accomplish the following:

(a) Modify the FADEC software in accordance with the Accomplishment Instructions of Eurocopter France Service Bulletin 71.00.13, Revision 1, dated October 17, 2000 (except this AD does not require contact with the manufacturer as specified in the caution statement in paragraph 2.B. and the Note I in paragraph 2.B.2.).

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD Nos. 2000–517–051(A) and 1998–517–048(A) R2, both dated December 13, 2000; 1998–517–048(A) R1, dated April 5, 2000; and 1998–517–048(A), dated January 13, 1999.

Issued in Fort Worth, Texas, on April 26, 2001.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 01–11585 Filed 5–8–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 864

[Docket No. 95P–0351]

Hematology and Pathology Devices; Reclassification of Automated Differential Cell Counters

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to reclassify from class III (premarket approval) to class II (special controls) the automated differential cell counter (ADCC). The ADCC is a device intended to identify and classify one or more of the formed elements of the blood, or to flag, count, or classify immature or abnormal hematopoietic cells of the blood, bone marrow, or other body fluids. FDA is basing this reclassification on new information submitted in a reclassification petition from the International Society for Laboratory Hematology (ISLH). The agency is taking this action under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Devices Act of 1990 (the SMDA), and the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: Submit written comments by August 7, 2001.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Larry J. Brindza, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1293.

SUPPLEMENTARY INFORMATION:

I. Background (Regulatory Authorities)

The act, as amended by the 1976 amendments (Public Law 94–295), the SMDA (Public Law 101–629), and FDAMA (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until: (1) The device is reclassified into class I or II; (2) FDA issues an order classifying the device into class I or II in accordance with section 513(f)(2) of the act, as amended by FDAMA; or (3) FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 of the regulations (21 CFR part 807).

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

Reclassification of classified preamendments devices is governed by section 513(e) of the act. This section provides that FDA may, by rulemaking, reclassify a device (in a proceeding that parallels the initial classification proceeding) based upon "new information." The reclassification can be initiated by FDA or by the petition of an interested person. The term "new information," as used in section 513(e) of the act, includes information developed as a result of a reevaluation of the data before the agency when the device was originally classified, as well as information not presented, not

available, or not developed at that time. (See, e.g., *Holland Rantos* v. *United States Department of Health, Education, and Welfare*, 587 F.2d 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch*, 422 F.2d 944 (6th Cir. 1970); and *Bell* v. *Goddard*, 366 F.2d 177 (7th Cir. 1966).)

Reevaluation of the data previously before the agency is an appropriate basis for subsequent regulatory action where the reevaluation is made in light of newly available regulatory authority (see *Bell* v. *Goddard*, supra, 366 F.2d at 181; *Ethicon, Inc.* v. *FDA*, 762 F.Supp. 382, 389–91 (D.D.C. 1991)), or in light of changes in "medical science." (See *Upjohn* v. *Finch*, supra, 422 F.2d at 951.) Regardless of whether data before the agency are past or new data, "new information" to support reclassification under section 513(e) of the act must be "valid scientific evidence," as defined in section 513(a)(3) of the act and 21 CFR 860.7(c)(2). (See, e.g., *General Medical Co.* v. *FDA*, 770 F.2d 214 (D.C. Cir. 1985); *Contact Lens Assoc.* v. *FDA*, 766 F.2d 592 (D.C. Cir.), cert. denied, 474 U.S. 1062 (1985).) FDA relies upon "valid scientific evidence" in the classification process to determine the level of regulation for devices. For the purpose of reclassification, the valid scientific evidence upon which the agency relies must be publicly available. Publicly available information excludes trade secret and/or confidential commercial information, e.g., nonpublic information in a pending PMA. (See section 520(c) of the act (21 U.S.C. 360j(c).)

II. Regulatory History of the Device

In the **Federal Register** of June 8, 1990 (55 FR 23510), FDA issued a final rule that amended 21 CFR 864.5220 to reclassify the ADCC intended to flag or identify specimens containing abnormal blood cells from class III into class II. The rule continued to classify the ADCC intended for all other uses into class III. FDA based the rule on new information in a petition from the Health Industry Manufacturers Association.

On September 22, 1995, Abbott Laboratories, Santa Clara, CA 95054, submitted a petition under sections 513(e) and 515(b) of the act to reclassify the ADCC from class III to class II for its general uses in identifying and counting blood elements and cells. On September 4, 1997, FDA received a letter from ISLH announcing that ISLH was replacing Abbott Laboratories as the petitioner. Consistent with the act and the regulations, FDA referred the petition to the Hematology and Pathology Device Panel (the Panel) for its recommendation on the change in classification requested by the petitioner. The Panel based its recommendation to reclassify the ADCC from class III to class II on the belief that special controls, including voluntary standards and guidance documents, as well as published references, and the clinical experience of the Panel, are sufficient to provide reasonable assurance of the safety and effectiveness of the ADCC. Accordingly, FDA is now proposing to reclassify the ADCC from class III (premarket approval) to class II (special controls) when the device is intended to be used to identify and classify one or more of the formed elements of the blood, or to flag, count, or classify immature or abnormal hematopoietic cells of the blood, bone marrow, or other body fluids.

III. Proposed Dates

FDA proposes that any final regulation based on this proposal become effective 30 days after its date of publication in the **Federal Register**.

IV. Device Description

An ADCC is a device used to identify one or more of the formed elements of the blood. These devices may also have the capability to flag, count, or classify immature or abnormal hematopoietic cells of the blood, bone marrow, or other body fluids. These devices may combine an electronic particle counting method, optical method, or a flow cytometric method utilizing monoclonal CD (cluster designation) markers. The device may include accessory CD markers.

V. Recommendation of the Panel

On January 20, 1999, the Panel recommended that the ADCC be reclassified from class III to class II. The Panel believed that classification in class II with the special control "Guidance for Premarket Notification for Automated Differential Cell Counters for Immature or Abnormal Blood Cells" would provide reasonable assurance of the safety and effectiveness of the device.

VI. Risks to Health

Failure of the device to perform satisfactorily may lead to an error in the diagnosis of a blood cell disorder. Inappropriate therapy based on inaccurate diagnostic data may place the patient at risk.

VII. Summary of Reasons for Recommendation

The Panel believes that the ADCC should be reclassified into class II because special controls, in addition to general controls, provide reasonable assurance of the safety and effectiveness of the device, and there is sufficient information to establish special controls to provide such assurance. Adherence to "Guidance for Premarket Notification for Automated Differential Cell Counters for Immature or Abnormal Blood Cells" can control the risk of misdiagnosis and inappropriate therapy by having the manufacturer provide appropriate data to support all claims for substantial equivalence and performance of ADCC.

VIII. Summary of Data Upon Which the Recommendation Is Based

The performance characteristics of the technology used in ADCCs over many years of experience plus the proven safety and effectiveness of the device are well documented in the medical literature (Ref. 1). FDA can evaluate performance characteristics for abnormal cell types such as nucleated red blood cells and immature reticulocyte fraction in 510(k) submissions (Refs. 2, 3, and 4). Based on the available information, FDA believes that the special control discussed below is capable of providing reasonable assurance of the safety and effectiveness of the automated differential cell counter for the identified risks to health of this device.

IX. Special Controls

In addition to general controls, FDA believes that the "Guidance for Premarket Notification for Automated Differential Cell Counters for Immature or Abnormal Blood Cells" is an adequate special control to address the risks to health described above.

In order to receive "Guidance for Premarket Notification for Automated Differential Cell Counters for Immature or Abnormal Blood Cells" via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At second voice prompt press 1 to order a document. Enter the document number (1184) followed by the pound sign (#). Follow the remaining voice prompts to complete your request. Persons interested in obtaining a copy of the guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes "Guidance for Premarket Notification for Automated Differential Cell Counters for Immature or Abnormal Blood Cells," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved

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applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh.

X. FDA's Tentative Findings

FDA agrees with the recommendation of the Panel and believes ADCCs should be classified into class II because special controls, in addition to general controls, provide reasonable assurance of the safety and effectiveness of the device, and there is sufficient information to establish special controls to provide such assurance.

XI. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

XII. Analysis of Impacts

FDA has examined the impacts of this proposed rule under Executive Order 12866, and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this reclassification action is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the reclassification action is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of this device from class III to class II will relieve all manufacturers of the device of the cost of complying with the premarket approval requirements in section 515 of the act. Because reclassification will reduce regulatory costs with respect to this device, it will impose no significant economic impact on any small entities, and it may permit small potential competitors to enter the marketplace by lowering their costs. The agency therefore certifies that this reclassification action, if finalized, will not have a significant economic impact on a substantial number of small entities. In addition, this reclassification action will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

XIII. Paperwork Reduction Act of 1995

The proposed rule does not contain information collection provisions that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C 3501–3520).

XIV. Request for Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this proposal by August 7, 2001. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

XV. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 am. and 4 p.m., Monday through Friday:

1. Various authors, "The White Blood Cell Differential," Parts I & II, *Blood Cells* 11:1–314, 1985.

2. Dutcher, T. F., "Leukocyte Differentials, Are They Worth The Effort?" *Clinics in Laboratory Medicine* 4 (1): 71–87, 1984.

3. Rumke, C. L., "The Statistically Expected Variability in Differential Leukocyte Counting," In: *Differential Leukocyte Counting*," edited by J. A. Koepke, College of American Pathologists, Skokie, IL, pp. 39–45, 1977.

4. Rumke, C. L., "Statistical Reflections in Finding Atypical Cells," *Blood Cells* 11: 141–144, 1985.

List of Subjects in 21 CFR Part 864

Biologics, Blood, Laboratories, Medical devices, Packaging and containers.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, FDA proposes that 21 CFR part 864 be amended as follows:

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

1. The authority citation for 21 CFR part 864 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 864.5220 is revised to read as follows:

§ 864.5220 Automated differential cell counter.

(a) *Identification.* An automated differential cell counter is a device used to identify one or more of the formed elements of the blood. The device may also have the capability to flag, count, or classify immature or abnormal hematopoietic cells of the blood, bone marrow, or other body fluids. These devices may combine an electronic particle counting method, optical method, or a flow cytometric method utilizing monoclonal CD (cluster designation) markers. The device includes accessory CD markers.

(b) *Classification.* Class II (special controls). The special control for this device is the FDA guidance document entitled "Guidance for Premarket Notification for Automated Differential Cell Counters for Immature or Abnormal Blood Cells."

Dated: April 28, 2001.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 01–11580 Filed 5–8–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 710

[FHWA Docket No. FHWA 2001–8624]

RIN 2125–AE82

Right-of-Way and Real Estate; Program Administration

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA is proposing to amend its right-of-way regulations for federally assisted transportation projects to provide a clarification. The proposed amendment would make it clear that Federal financial assistance, provided by the FHWA pursuant to title 23, U.S. Code, may be applied to relocation assistance benefits, provided by State and local agencies pursuant to State law, that are in addition to the relocation benefits prescribed by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act).

DATES: Comments in response to this notice must be received on or before July 9, 2001.

ADDRESSES: Mail or hand deliver comments to the docket number that appears in the heading of this document to the U.S. Department of Transportation, Dockets Management Facility, Room PL–4301, 400 Seventh Street, SW., Washington, D.C. 20590, or submit electronically at *http/ddmeses.dot.gov/submit*. All comments received will be available for examination and copying at the above address 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal Holidays. Those desiring notification of receipt of comments must include a pre-addressed, stamped envelope or post card or you may print the acknowledgement page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Satorius, Office of Real Estate Services, HEPR–10, (303) 969–5772, extension 333; FHWA, 555 Zang Street, Lakewood, CO 80228, office hours are from 8 a.m. to 5 p.m., m.t., Monday through Friday, except Federal holidays; or Mr. Reid Alsop, Office of Chief Counsel, HCC–30, (202) 366–1371; FHWA, 400 Seventh Street, SW., Washington, DC 20590, office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dms.dot.gov/submit*. Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

An electronic copy of this document may also be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users my also reach the Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara*.

Background

The FHWA published a final rule on Right-of-Way Program Administration on December 21, 1999 (64 FR 71284). The final rule in 23 CFR 710.203 revised the FHWA's policy on participation in costs incurred by States in the acquisition of real property for federally assisted projects, funded pursuant to title 23 U.S. Code. The reasons for this change are described in the preamble to both the final rule and the NPRM that preceded it (63 FR 71238). The final rule provides that the FHWA can participate in those acquisition costs that are required by State law, as well as in relocation assistance and payments provided pursuant to the Uniform Act to assist persons required to move by such projects.

Basically the change was based on a desire to increase State flexibility and to reduce administrative burdens. Additionally, because Federal-aid highway funds are allocated to States on the basis of a statutory formula, the FHWA participation in costs required by State law will not result in any changes in the amount of funds available to a State.

Since publication of the final rule, questions have arisen concerning the FHWA participation in relocation payments made by some States, pursuant to State law, that are beyond and in addition to those required by the Uniform Act.

The Uniform Act prescribes benefits that the State must provide as a condition of the receipt of Federal financial assistance. It provides a floor not a ceiling, and does not prevent a State, if it so chooses, from providing relocation benefits in addition to those provided by the Uniform Act. It also does not prevent a Federal agency from participating in such additional benefits if it has the programmatic authority to do so.

The FHWA believes that its participation in such relocation payments is permissible based on the broad language in § 710.203(b)(1), as well as the FHWA's general authority to participate in costs of "construction," which term is defined in 23 U.S.C. 101(a)(3) to include both costs of right-of-way acquisition and relocation assistance.

Further, since acquisition and relocation are closely linked, it would be more equitable and consistent for the FHWA to participate in both the real property acquisition costs and the relocation assistance costs required by State law. It is also less administratively burdensome.

However, we recognize that the final rule may lack clarity as to this matter, and accordingly are proposing to amend § 710.203 (b)(2) to clearly state that financial assistance provided by the FHWA may participate in relocation assistance payments that are made by a State or local agency pursuant to State law. Such payments may include relocation payments that are in addition to those prescribed by the Uniform Act.

This proposal would also correct an inaccurate citation in § 710.409(a).

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket room at the above address. The FHWA will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. The FHWA may, however, issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file, in the docket, relevant information becoming available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866, nor is it a significant regulatory policy and procedure. It is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required. The FHWA does not consider this action to be a significant regulatory action because this proposal would clarify existing requirements relating to FHWA reimbursement for certain expenditures that are required by State law. Rather, this action would make certain State expenditures eligible for reimbursement by the Federal government under title 23.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency has evaluated the effects of this rule on small entities and determined that this action will not have a significant economic impact on a

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substantial number of small entities. This action proposes to increase the flexibility provided to States on how they choose to spend their Federal-aid highway funds. For this reason, the FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities.

Environmental Impact

The FHWA has also analyzed this action for the purpose of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and has determined that this action would not have any effect on the quality of the human environment.

Executive Order 13132 (Federalism)

The FHWA has analyzed this action in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and determined that this action does not have sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Unfunded Mandates Reform Act of 1995

This rule does not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, or $100 million or more in any one year. (2 U.S.C. 1531 *et seq.*).

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has reviewed this proposal and determined that it does not contain additional collection of information requirements for the purposes of the PRA. The requirements to collect information relating to the current provisions of the right-of-way regulation are covered by a currently approved information collection entitled "State Right-of-Way Operations Manuals." OMB Approval No. 2125–0586, Expires August 31, 2003. This information collection covers the burden for the States to prepare and update their right-of-way operations manuals.

Changes in this proposal would clarify the right-of-way regulations for federally assisted transportation projects and would, therefore, not affect the current information collection burden estimates.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

The FHWA has analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not affect a taking of private or otherwise have taking implications under Executive Order 12630. Governmental Actions and Interference with Constitutionally Protected Property Rights.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 710

Grant programs-transportation, Highways and roads, Real property acquisition, Rights-of-way.

In consideration of the foregoing, the FHWA proposes to amend title 23, Code of Federal Regulations, Chapter 1, by amending Part 710 as set forth below.

Issued on: May 2, 2001.

Vincent F. Schimmoller,

Deputy Executive Director, Federal Highway Administration.

PART 710—[AMENDED]

1. The authority citation for part 710 continues to read as follows:

Authority: 23 U.S.C. 101(a), 107, 108, 111, 114, 133, 142(f), 145, 156, 204, 210, 308, 315, 317, and 323; 42 U.S.C. 2000d et seq., 4633, 4651–4655; 49 CFR 1.48(b) and (cc), 18.31, and parts 21 and 24; 23 CFR 1.32.

2. Revise § 710.203(b)(2) to read as follows:

§ 710.203 Funding and reimbursement.

* * * * *

(b) * * *

(2) *Relocation assistance and payments.* Usual cost and disbursements associated with relocation assistance and payments required under 49 CFR part 24 and under the laws of the State, including payments under State law that may exceed the requirements of 49 CFR part 24.

* * * * *

§ 710.409 [Amended]

3. Amend § 710.409(a) by revising the reference "§ 710.403(c)" to read "§ 710.403(d)."

[FR Doc. 01–11710 Filed 5–8–01; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–01–038]

RIN 2115–AE47

Drawbridge Operation Regulations; West Bay, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the drawbridge operating regulations for the West Bay Bridge, at mile 1.2, across West Bay in Osterville, Massachusetts. This proposed rule would allow the bridge owner to increase the advance notice requirement for April and extend the evening operating hours at the bridge during the boating season. This action is expected to better meet the present needs of navigation.

DATES: Comments must reach the Coast Guard on or before July 9, 2001.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, Bridge Branch, at 408 Atlantic Avenue, Boston, MA. 02110–3350, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District, Bridge Branch, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except, Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–01–038), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the First Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The West Bay Bridge has a vertical clearance of 15 feet at mean high water and 17 feet at mean low water.

The existing regulations for the bridge listed at 33 CFR 117.622, require the bridge to open on signal, April 1 through October 31, as follows:

(1) April 1 through June 14 and October 12 through October 31; 8 a.m. to 4 p.m.

(2) June 15 through June 30; 8 a.m. to 6 p.m.

(3) July 1 through Labor Day; 8 a.m. to 8 p.m.

(4) Labor Day through October 11; 8 a.m. to 5 p.m.

At all other times from April 1 through October 31, the draw opens on signal if at least four hours advance notice is given. From November 1 through March 31, the draw opens on signal if at least twenty-four hours advance notice is given.

The bridge owner, the Town of Barnstable, asked the Coast Guard to change the drawbridge operation regulations to allow the bridge to open on signal, from April 1 through April 30 if at least a twenty-four hours advance notice is given by calling the number posted at the bridge.

The bridge was authorized to remain closed for repairs in April for the last two years. The number of bridge openings in April for the last five years are as follows:

1995	1996	1997	1998	1999	2000
54	46	45	70	0	0

In return for the advance notice requirement at all times in April, the bridge owner would crew the bridge two to three hours later at night during the boating season.

The bridge owner voluntarily expanded on signal service during the summer of 1999 and 2000, by extending the operating hours at the bridge at night. This was possible as a result of the cost savings derived from not crewing the bridge, 8 a.m. to 4 p.m., during the month of April while it was closed for repairs.

The bridge owner held a town meeting on January 25, 2001, in Osterville, Massachusetts, to receive verbal and written comment regarding this proposed change to the drawbridge operation regulations. The bridge has essentially operated for the past two years in accordance with the operating hours included in this proposed rule. The proposed changes were fully supported by the local attendees at the special town meeting. Attendees at the meeting included the local marina operators, mariners and citizens of Osterville. Mariners can reach open water when the West Bay Bridge is not crewed by navigating through Cotuit.

Discussion of Proposal

This proposed rule would require the West Bay Bridge, mile 1.2, across West Bay in Osterville, Massachusetts, to operate as follows:

(1) From November 1 through April 30, the draw would open on signal if at least a twenty-four hours advance notice is given.

(2) From May 1 through June 15, the draw would open on signal from 8 a.m. to 6 p.m.

(3) From June 16 through September 30, the draw would open on signal from 7 a.m. to 9 p.m.

(4) From October 1 through October 31, the draw would open on signal from 8 a.m. to 6 p.m.

(5) At all other times from May 1 through October 31, the draw would open on signal if at least a four-hour advance notice is given by calling the number posted at the bridge.

The increase in the advance notice requirement from four-hours to twenty-four hours during April should assist the bridge owner in cost savings while the additional hours the bridge is crewed May through September should benefit the mariners and better meet the needs of navigation. The Coast Guard believes this proposed rule is reasonable and will meet the present needs of navigation.

Paragraph (c) in the existing regulations would be removed by this proposed rule because it is now listed at 33 CFR 117.31.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, Feb. 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the fact that the bridge will open at all times for the passage of vessel traffic.

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Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under section 5 U.S.C. 605(b), that this proposed rule would not have a significant economic impact on a substantial number of small entities. This conclusion is based upon the fact that the bridge will open at all times for the passage of vessel traffic.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation because promulgation of drawbridge regulations have been found not to have a significant effect on the environment. A written "Categorical Exclusion Determination" is not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.622 is revised to read as follows:

§ 117.622 West Bay.

The draw of the West Bay Bridge, mile 1.2, at Osterville, shall operate as follows:

(a) From November 1 through April 30, the draw shall open on signal if at least a twenty-four hours advance notice is given.

(b)(1) From May 1 through June 15, the draw shall open on signal from 8 a.m. to 6 p.m.

(2) From June 16 through September 30, the draw shall open on signal from 7 a.m. to 9 p.m.

(3) From October 1 through October 31, the draw shall open on signal from 8 a.m. to 6 p.m.

(4) At all other times from May 1 through October 31, the draw shall open on signal if at least a four-hours advance notice is given by calling the number posted at the bridge.

Dated: April 26, 2001.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 01–11716 Filed 5–8–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–01–009]

RIN 2115–AE47

Drawbridge Operation Regulation; Massalina Bayou, Florida

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing a change to the regulation governing the operation of the Tarpon Dock bascule span drawbridge across Massalina Bayou, mile 0.0, at Panama City, Bay County, Florida. The proposed rule would allow the draw of the bridge to remain closed to navigation from 9 p.m. until 11 p.m. on July 4 of each year. This rule will facilitate movement of vehicular traffic associated with a fireworks display which is conducted annually on July 4. Presently the draw opens on signal at all times.

DATES: Comments and related material must reach the Coast Guard on or before May 22, 2001.

ADDRESSES: You may mail comments to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130–3396, or deliver them to room 1313 at the same address between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The Commander, Eighth Coast Guard District, Bridge Administration Branch maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Bridge Administration Branch, Eighth Coast Guard District between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, 504–589–2965.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD08–01–009), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Commander, Eighth Coast Guard District, Bridge Administration Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The City of Panama City, Florida requested a change in the drawbridge operating regulation, governing the operation of the Tarpon Dock bascule span drawbridge. The rule is needed to accommodate the additional volume of vehicular traffic that the fireworks display normally generates. This bridge closure has become an annual event in conjunction with the 4th of July fireworks celebration. The closure is for two hours and does not significantly affect marine traffic. The Tarpon Dock bascule span drawbridge across Massalina Bayou has a vertical clearance of 7 feet above mean high water in the closed-to-navigation position and unlimited in the open-to-navigation position. Navigation on the waterway consists primarily of commercial fishing vessels, sailing vessels and other recreational craft.

Discussion of Proposed Rule

This proposed rule would allow the bridge to remain closed to navigation from 9 p.m. until 11 p.m. on July 4 of each year. The closure of the bridge would affect vessel traffic for a two-hour period on one evening per year. This closure is necessary to accommodate an increase in volume of vehicular traffic, crossing the bridge resulting from the annual fireworks display, an event of public interest. The rule would allow the bridge to open during this period for a vessel in distress.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. The small entities concerned with this proposed rule are the local commercial fishermen who transit the bridge. This proposed rule will only delay transiting the bridge for two hours on one evening per year.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the Bridge Administration Branch, Eighth Coast Guard District at the address above.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

We have analyzed this proposed rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Eexecutive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.lC, this proposed rule is categorically excluded from

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further environmental documentation. This proposal will change an existing special drawbridge operating regulation promulgated by a Coast Guard Bridge Administration Program action. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.301 is added to read as follows:

§ 117.301 Massalina Bayou.

The draw of the Tarpon Dock bascule span bridge, Massalina Bayou, mile 0.0 at Panama City, shall open on signal; except that from 9 p.m. until 11 p.m. on July 4, each year, the draw need not open for the passage of vessels. The draw will open at any time for a vessel in distress.

Dated: April 13, 2001.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 01–11714 Filed 5–8–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 991105297–1085–02]

RIN 0651–AB01

Revision of Patent and Trademark Fees for Fiscal Year 2002

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (referred to as "we", "us", or "our" in this document) is proposing to adjust certain patent fee amounts and a trademark fee amount to reflect fluctuations in the Consumer Price Index (CPI). Also, we are proposing to adjust, by a corresponding amount, a few patent fees that track the affected fees. Our Director is authorized to adjust these fees annually by the CPI to recover the higher costs associated with doing business. In addition, we are proposing to change the maintenance fee correspondence address to better serve our customers, and amend a fee to reflect current business practice. These proposed amendments would keep our fees aligned with the CPI and streamline administrative matters.

DATES: Comments must be submitted on or before June 12, 2001.

ADDRESSES: Comments may be submitted by e-mail addressed to matthew.lee@uspto.gov. Comments may also be submitted by mail addressed to: Office of Finance, Crystal Park One, Suite 802, Washington, DC, 20231, or by fax to (703) 305–8007, marked to the attention of Matthew Lee.

FOR FURTHER INFORMATION CONTACT: Matthew Lee by e-mail at matthew.lee@uspto.gov, by telephone at (703) 305–8051, or by fax at (703) 305–8007.

SUPPLEMENTARY INFORMATION: This proposed rule would adjust our fees in accordance with the applicable provisions of title 35, United States Code, as amended by the Consolidated Appropriations Act, Fiscal Year 2000 (which incorporated the Intellectual Property and Communications Omnibus Reform Act of 1999) (Public Law 106–113); and section 1113 of title 15, United States Code. This proposed rule would also adjust, by a corresponding amount, a few patent fees (37 CFR 1.17(e), (r), (s), and (t)) that track statutory fees (either 37 CFR 1.16(a) or 1.17(m)).

In addition, this proposed rule would change the maintenance fee correspondence address. The address change for maintenance fee payments would benefit our customers by allowing the payments to be processed within 24 hours of receipt, rather than the current time frame of three to five days. Likewise, the funds would be deposited more quickly with the United States Treasury. The address change for other communications related to maintenance fees would permit us to respond in a timelier manner. Maintenance fee correspondence received at the Box M Fee" address would be forwarded to the appropriate address in § 1.1(d) for an indefinite period of time.

Background

Statutory Provisions

Patent fees are authorized by 35 U.S.C. 41 and 35 U.S.C. 376. For fees paid under 35 U.S.C. 41 (a) and (b), independent inventors, small business concerns, and nonprofit organizations who meet the requirements of 35 U.S.C. 41(h)(1) are entitled to a fifty-percent reduction.

Subsection 41(f) of title 35, United States Code, provides that fees established under 35 U.S.C. 41 (a) and (b) may be adjusted on October 1, 1992, and every year thereafter, to reflect fluctuations in the CPI over the previous twelve months.

Subsection 41(d) of title 35, United States Code, authorizes the Director to establish fees for all other processing, services, or materials related to patents to recover the average cost of providing these services or materials, except for the fees for recording a document affecting title, for each photocopy, for each black and white copy of a patent, and for library services.

Section 376 of title 35, United States Code, authorizes the Director to set fees for patent applications filed under the Patent Cooperation Treaty (PCT).

Subsection 41(g) of title 35, United States Code, provides that new fee amounts established by the Director under section 41 may take effect thirty days after notice in the **Federal Register** and the *Official Gazette of the United States Patent and Trademark Office.*

Section 1113 of title 15, United States Code, authorizes the Director to establish fees for the filing and processing of an application for the registration of a trademark or other mark, and for all other services and materials relating to trademarks and other marks.

Subsection 1113(a) of title 15, United States Code, allows trademark fees to be adjusted once each year to reflect, in the aggregate, any fluctuations during the preceding twelve months in the CPI.

Subsection 1113(a) also allows new trademark fee amounts to take effect thirty days after notice in the **Federal Register** and the *Official Gazette of the United States Patent and Trademark Office.*

Fee Adjustment Level

The patent statutory fees established by 35 U.S.C. 41 (a) and (b) are proposed to be adjusted on October 1, 2001, to reflect any fluctuations occurring during the previous twelve months in the Consumer Price Index for all urban consumers (CPI–U). In calculating these fluctuations, the Office of Management and Budget (OMB) has determined that we should use CPI–U data as determined by the Secretary of Labor. In accordance with previous fee-setting methodology, we use the Administration's projected CPI–U for the twelve-month period ending September 30, 2001, which is 3.6 percent. Based on this projection, patent statutory fees are proposed to be adjusted by 3.6 percent. Before the final fee amounts are published, the fees may be adjusted slightly based on updated data available from the Secretary of Labor.

Certain patent processing fees established under 35 U.S.C. 41(d), 119, 120, 132(b), 376, and Public Law 103–465 (the Uruguay Round Agreements Act) are proposed to be adjusted to reflect fluctuations in the CPI.

A trademark processing fee established under 15 U.S.C. 1113 is proposed to be adjusted to reflect fluctuations in the CPI.

The fee amounts were rounded by applying standard arithmetic rules so that the amounts rounded would be convenient to the user. Fees for other than a small entity of $100 or more were rounded to the nearest $10. Fees of less than $100 were rounded to an even number so that any comparable small entity fee would be a whole number.

General Procedures

Any fee amount that is paid on or after the effective date of the proposed fee increase would be subject to the new fees then in effect. The amount of the fee to be paid will be determined by the time of filing. The time of filing will be determined either according to the date of receipt in our office or the date reflected on a proper Certificate of Mailing or Transmission, where such a certificate is authorized under 37 CFR 1.8. Use of a Certificate of Mailing or Transmission is not authorized for items that are specifically excluded from the provisions of § 1.8. Items for which a Certificate of Mailing or Transmission under § 1.8 are not authorized include, for example, for filing of Continued Prosecution Applications (CPAs) under § 1.53(d) and other national and international applications for patents. See 37 CFR 1.8(a)(2).

Under 37 CFR 1.10(a), any correspondence delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) is considered filed or received in our office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation.

To ensure clarity in the implementation of the new fees, a discussion of specific sections is set forth below.

Discussion of Specific Rules

37 CFR 1.1 Addresses for Correspondence With the United States Patent and Trademark Office

Section 1.1, paragraphs (a) and (d), if revised as proposed, would change the maintenance fee correspondence address.

37 CFR 1.16 National Application Filing Fees

Section 1.16, paragraphs (a), (b), (d), (f) through (i), and (k), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.17 Patent Application and Reexamination Processing Fees

Section 1.17, paragraphs (a)(2) through (a)(5), (b) through (e), (m), and (r) through (t), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.18 Patent Post Allowance (Including Issue) Fees

Section 1.18, paragraphs (a) through (c), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.20 Post Issuance Fees

Section 1.20, paragraphs (e) through (g), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.21 Miscellaneous Fees and Charges

Section 1.21, paragraph (o), if revised as proposed, would be removed and reserved to reflect current business practice. We no longer use or provide access to the Automated Patent System.

37 CFR 1.492 National Stage Fees

Section 1.492, paragraphs (a)(1) through (a)(3), (a)(5), (b), and (d), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 2.6 Trademark Fees

Section 2.6, paragraph (a)(1), if revised as proposed, would adjust the fee established therein to reflect fluctuations in the CPI.

Other Considerations

This proposed rule contains no information collection requirements within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* This proposed rule has been determined to be not significant for purposes of Executive Order 12866. This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the proposed rule change would not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The proposed rule change increases fees to reflect the change in the CPI as authorized by 35 U.S.C. 41(f). Further, the principal impact of the major patent fees has already been taken into account in 35 U.S.C. 41(h)(1), which provides small entities with a fifty-percent reduction in the major patent fees. The USPTO received approximately 92,000 patent applications last year from small entities. Since the average small entity fee would increase by less than $14.00, with a minimum increase of $2.00 and a maximum increase of $55.00, there will not be a significant economic impact on a substantial number of small entities due to this proposed rule change.

A comparison of existing and proposed fee amounts is included as an appendix to this notice of proposed rulemaking.

Lists of Subjects

37 CFR Part 1

Administrative practice and procedure, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

For the reasons set forth in the preamble, we are proposing to amend title 37 of the Code of Federal Regulations, Parts 1 and 2, as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 would continue to read as follows:

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

2. Section 1.1 is proposed to be amended by revising paragraphs (a) introductory text and (d) to read as follows:

§ 1.1 Addresses for correspondence with the Patent and Trademark Office.

(a) Except for paragraph (a)(3)(i) and (ii), and (d)(1) of this section, all

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correspondence intended for the United States Patent and Trademark Office must be addressed to either "Commissioner of Patents and Trademarks, Washington, DC 20231" or to specific areas within the Office as set out in paragraphs (a)(1), (2) and (3)(iii) of this section. When appropriate, correspondence should also be marked for the attention of a particular office or individual.

* * * * *

(d) *Maintenance fee correspondence.* (1) Payments of maintenance fees in patents shall be mailed to: United States Patent and Trademark Office, P.O. Box 371611, Pittsburgh, PA 15250–1611.

(2) Other communications related to maintenance fees should be additionally marked "Box M Correspondence."

* * * * *

3. Section 1.16 is proposed to be amended by revising paragraphs (a), (b), (d), (f) through (i), and (k) to read as follows:

§ 1.16 National application filing fees.

(a) Basic fee for filing each application for an original patent, except provisional, design, or plant applications:

By a small entity (§ 1.27(a)): $370.00
By other than a small entity: $740.00

(b) In addition to the basic filing fee in an original application, except provisional applications, for filing or later presentation of each independent claim in excess of 3:

By a small entity (§ 1.27(a)): $42.00
By other than a small entity: $84.00

* * * * *

(d) In addition to the basic filing fee in an original application, except provisional applications, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:

By a small entity (§ 1.27(a)): $140.00
By other than a small entity: $280.00

* * * * *

(f) Basic fee for filing each design application:

By a small entity (§ 1.27(a)): $165.00
By other than a small entity: $330.00

(g) Basic fee for filing each plant application, except provisional applications:

By a small entity (§ 1.27(a)): $255.00
By other than a small entity: $510.00

(h) Basic fee for filing each reissue application:

By a small entity (§ 1.27(a)): $370.00
By other than a small entity: $740.00

(i) In addition to the basic filing fee in a reissue application, for filing or later presentation of each independent claim which is in excess of the number of independent claims in the original patent:

By a small entity (§ 1.27(a)): $42.00
By other than a small entity: $84.00

* * * * *

(k) Basic fee for filing each provisional application:

By a small entity (§ 1.27(a)): $80.00
By other than a small entity: $160.00

* * * * *

4. Section 1.17 is proposed to be amended by revising paragraphs (a)(2) through (a)(5), (b) through (e), (m), and (r) through (t) to read as follows:

§ 1.17 Patent application and reexamination processing fees.

(a) * * *

(1) * * *

(2) For reply within second month:

By a small entity (§ 1.27(a)): $200.00
By other than a small entity: $400.00

(3) For reply within third month:

By a small entity (§ 1.27(a)): $460.00
By other than a small entity: $920.00

(4) For reply within fourth month:

By a small entity (§ 1.27(a)): $720.00
By other than a small entity: $1,440.00

(5) For reply within fifth month:

By a small entity (§ 1.27(a)): $980.00
By other than a small entity: $1,960.00

(b) For filing a notice of appeal from the examiner to the Board of Patent Appeals and Interferences:

By a small entity (§ 1.27(a)): $160.00
By other than a small entity: $320.00

(c) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal:

By a small entity (§ 1.27(a)): $160.00
By other than a small entity: $320.00

(d) For filing a request for an oral hearing before the Board of Patent Appeals and Interferences in an appeal under 35 U.S.C. 134:

By a small entity (§ 1.27(a)): $140.00
By other than a small entity: $280.00

(e) To request continued examination pursuant to § 1.114:

By a small entity (§ 1.27(a)): $370.00
By other than a small entity: $740.00

* * * * *

(m) For filing a petition for revival of an unintentionally abandoned application, for the unintentionally delayed payment of the fee for issuing a patent, or for the revival of an unintentionally terminated reexamination proceeding under 35 U.S.C. 41(a)(7) (§ 1.137(b)):

By a small entity (§ 1.27(a)): $640.00
By other than a small entity: $1,280.00

* * * * *

(r) For entry of a submission after final rejection under § 1.129(a):

By a small entity (§ 1.27(a)): $370.00
By other than a small entity: $740.00

(s) For each additional invention requested to be examined under § 1.129(b):

By a small entity (§ 1.27(a)): $370.00
By other than a small entity: $740.00

(t) For the acceptance of an unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365(a) or (c) (§§ 1.55 and 1.78): $1,280.00

5. Section 1.18 is proposed to be amended by revising paragraphs (a) through (c) to read as follows:

§ 1.18 Patent post allowance (including issue) fees.

(a) Issue fee for issuing each original or reissue patent, except a design or plant patent:

By a small entity (§ 1.27(a)): $640.00
By other than a small entity: $1,280.00

(b) Issue fee for issuing a design patent:

By a small entity (§ 1.27(a)): $230.00
By other than a small entity: $460.00

(c) Issue fee for issuing a plant patent:

By a small entity (§ 1.27(a)): $310.00
By other than a small entity: $620.00

* * * * *

6. Section 1.20 is proposed to be amended by revising paragraphs (e) through (g) to read as follows:

§ 1.20 Post issuance fees.

* * * * *

(e) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond four years; the fee is due by three years and six months after the original grant:

By a small entity (§ 1.27(a)): $440.00
By other than a small entity: $880.00

(f) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond eight years; the fee is due by seven years and six months after the original grant:

By a small entity (§ 1.27(a)): $1,010.00
By other than a small entity: $2,020.00

(g) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond twelve years; the fee is due by eleven years and six months after the original grant:

By a small entity (§ 1.27(a)): $1,550.00
By other than a small entity: $3,100.00

* * * * *

§ 1.21 [Amended]

7. Section 1.21 is proposed to be amended by removing and reserving paragraph (o).

8. Section 1.492 is proposed to be amended by revising paragraphs (a)(1) through (a)(3), (a)(5), (b), and (d) to read as follows:

§ 1.492 National stage fees.

* * * * *

(a) The basic national fee:

(1) Where an international preliminary examination fee as set forth in § 1.482 has been paid on the international application to the United States Patent and Trademark Office:

By a small entity (§ 1.27(a)): $355.00
By other than a small entity: $710.00

(2) Where no international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office, but an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority:

By a small entity (§ 1.27(a)): $370.00
By other than a small entity: $740.00

(3)Where no international preliminary examination fee as set forth in § 1.482 has been paid and no international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office:

By a small entity (§ 1.27(a)): $520.00
By other than a small entity: $1,040.00

(4) * * *

(5) Where a search report on the international application has been prepared by the European Patent Office or the Japanese Patent Office:

By a small entity (§ 1.27(a)): $445.00
By other than a small entity: $890.00

(b) In addition to the basic national fee, for filing or later presentation of each independent claim in excess of 3:

By a small entity (§ 1.27(a)): $42.00
By other than a small entity: $84.00

* * * * *

(d) In addition to the basic national fee, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:

By a small entity (§ 1.27(a)): $140.00
By other than a small entity: $280.00

* * * * *

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

1. The authority citation for 37 CFR Part 2 would continue to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

2. Section 2.6 is proposed to be amended by revising paragraph (a)(1) to read as follows:

§ 2.6 Trademark fees.

* * * * *

(a) * * *

(1) For filing an application, per class: $340.00

* * * * *

Dated: April 27, 2001.

Nicholas P. Godici.

Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.

[FR Doc. 01–11591 Filed 5–8–01; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–112–9933(b); FRL–6975–6]

Approval and Promulgation of Air Quality Implementation Plans; Kentucky: Approval of American Greetings Corporation Source-Specific State Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On March 30, 1999, the Commonwealth of Kentucky submitted, through the Natural Resources and Environmental Protection Cabinet, a source specific revision to the Kentucky State Implementation Plan (SIP). This source specific SIP revision allows American Greetings Corporation to have an alternative averaging period of 30 days for compliance determination. In the final rules section of this **Federal Register**, the EPA is approving the revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting should do so at this time.

DATES: To be considered, comments must be received by June 8, 2001.

ADDRESSES: Written comments on this action should be addressed to Randy Terry at the Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day and reference file KY 112–01–9933. The Region 4 office may have additional background documents not available at the other locations.

U.S. Environmental Protection Agency; Region 4 Air Planning Branch; 61 Forsyth Street, SW; Atlanta, Georgia 30303–8960

Commonwealth of Kentucky; Division for Air Quality; 803 Schenkel Lane; Frankfort, KY 40601–1403.

FOR FURTHER INFORMATION CONTACT: Randy Terry, Regulatory Planning Section, Air Planning Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9032.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: April 20, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 01–11525 Filed 5–8–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC049–2026b; FRL–6973–6]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Oxygenated Gasoline Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

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SUMMARY: EPA proposes to approve a State Implementation Plan (SIP) revision submitted by the District of Columbia. The revision makes the oxygenated gasoline program a contingency measure for the District of Columbia (the District), which means that the oxygenated gasoline program would only be required to be implemented in the District if there is a violation of the carbon monoxide (CO) national ambient air quality standard (NAAQS). The District's revision also makes technical amendments to its oxygenated gasoline regulations which correct the deficiencies previously identified by EPA in a January 26, 1995 final rule granting limited approval/limited disapproval of those regulations. Therefore, the limited approval/limited disapproval is being converted to a full approval. In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If EPA receives no adverse comments, EPA will not take further action. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by June 8, 2001.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch , Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Kelly L. Bunker, (215) 814–2177, at the EPA Region III address above, or by e-mail at bunker.kelly@epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: April 24, 2001.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 01–10987 Filed 5–8–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL–6975–9]

Clean Air Act Reclassification and Notice of Potential Eligibility for Extension of Attainment Date, Louisiana; Baton Rouge Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to find that the Baton Rouge serious ozone nonattainment area (hereinafter referred to as the Baton Rouge area) has failed to attain the one-hour ozone National Ambient Air Quality Standard (NAAQS) by November 15, 1999, the date set forth in the Clean Air Act (CAA or Act) for serious nonattainment areas. If EPA takes final action on this proposed finding, the area would be reclassified as a severe ozone nonattainment area.

Alternatively, EPA is also issuing a notice of the Baton Rouge area's potential eligibility for an attainment date extension, pursuant to EPA's "Guidance on Extension of Attainment Dates for Downwind Transport Areas" (hereinafter referred to as the extension policy) (Richard D. Wilson, Acting Assistant Administrator for Air and Radiation) issued July 16, 1998. The extension policy provides that a nonattainment area, such as the Baton Rouge area, may be eligible for an attainment date extension if it meets certain conditions. The extension policy applies where pollution from upwind areas interferes with the ability of a downwind area to demonstrate attainment with the one-hour ozone standard by the dates prescribed in the Act. Louisiana is working to comply with the conditions for receiving an extension. If Louisiana makes a submittal in response to the extension policy, we will address the adequacy of the submittal in a subsequent supplemental proposal. If the submittal meets the criteria for an extension, the attainment date for the Baton Rouge area will be extended, and the area will not be reclassified. We do not intend to take final action on reclassification of the Baton Rouge area prior to allowing Louisiana an opportunity to qualify for an attainment date extension under the extension policy.

DATES: Comments must be received on or before June 8, 2001.

ADDRESSES: All comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Copies of the Baton Rouge area monitored air quality data analyses, guidance on extension of attainment dates in downwind transport areas, State submittal requesting consideration for an attainment date extension, and other relevant documents used in support of this proposal are contained in the docket file, which is available at the following addresses for inspection during normal business hours: U.S. Environmental Protection Agency Region 6, Air Planning Section, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202; Louisiana Department of Environmental Quality, 7920 Bluebonnet Boulevard, Baton Rouge, Louisiana 70884. Please contact the appropriate office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanne Schulze, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7254.

SUPPLEMENTARY INFORMATION: The use of "we," "us," or "our" in this document refers to EPA.

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I. What Action Are We Taking Today?

We are proposing to find that the Baton Rouge area has failed to attain the one-hour ozone NAAQS by the November 15, 1999, attainment deadline prescribed under the CAA for serious ozone nonattainment areas. EPA's authority to make this finding is discussed under section 181(b)(2) of the CAA. Section 181(b)(2) explains the process for determining whether an area has attained the one-hour ozone standard and reclassification of the area if necessary. If we finalize this finding, the Baton Rouge area will be reclassified by operation of law from serious nonattainment to severe nonattainment.

Alternatively, we are considering an extension of the Baton Rouge area's attainment date, provided that Louisiana submits, by August 31, 2001, a State Implementation Plan (SIP) that qualifies for an extension pursuant to EPA's extension policy. If the State meets the extension policy criteria and we propose to approve the State's submittal, then a specific extended attainment date will be proposed in the same notice. We will take final action on the new attainment date at the time we take final action on the submittal. However, if Louisiana's SIP submittal fails to meet the criteria of the extension policy, we will finalize this proposed finding of failure to attain, and the Baton Rouge area will be reclassified to a severe ozone nonattainment area.[1]

II. What Are the National Ambient Air Quality Standards?

Since the CAA's inception in 1970, EPA has set NAAQS for six common pollutants: carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. For most of these common air pollutants, there are two types of pollution limits referred to as the primary and secondary standards.[2] The primary standard is based on health effects; the secondary standard is based on environmental effects such as damage to property, plants, and visibility. The CAA requires these standards to be set at levels that protect public health and welfare with an adequate margin of safety. These standards present state and local governments with the air quality levels they must meet to achieve clean air. Also, these standards allow the American people to assess whether the air quality in their communities is healthful.

III. What Is the NAAQS for Ozone?

The NAAQS for ozone is expressed in two forms which are referred to as the one-hour and eight-hour standards. Table 1 summarizes the ozone standards.

TABLE 1.—SUMMARY OF OZONE STANDARDS

Standard	Value (parts per million)	Type	Method of compliance
1-hour	0.12	Primary and secondary	Must not be exceeded, on average, more than one day per year over any 3-year period.
8-hour	0.08	Primary and secondary	The 3-year average of the annual fourth-highest maxima 8-hour average ozone concentrations measured at secondary each monitor within an area.

The 1-hour ozone standard of 0.12 ppm has existed since 1979. On July 18, 1997, EPA adopted the 8-hour ozone standard, which was intended to replace the one-hour standard in areas that were attaining the one-hour standard, (62 FR 38856).[3] The one-hour ozone standard continues to apply to all areas, notwithstanding promulgation of the 8-hour standard (40 CFR § 50.9(b)). This document addresses the classification of the Baton Rouge area relative to the one-hour ozone standard.

IV. What Is the Baton Rouge Ozone Nonattainment Area?

The Baton Rouge serious ozone nonattainment area, located in southern Louisiana, consists of East Baton Rouge, West Baton Rouge, Ascension, Iberville, and Livingston Parishes.

V. Why Is the Baton Rouge Area Currently Classified as a Serious Nonattainment Area?

Under section 107(d)(1)(C) of the CAA, each ozone area designated nonattainment for the one-hour standard prior to enactment of the 1990 CAA amendments, such as the Baton Rouge area, was designated nonattainment by operation of law upon enactment of the amendments. Under section 181(a) of the Act, each ozone area designated nonattainment under section 107(d) was also classified by operation of law as "marginal," "moderate," "serious," "severe," or "extreme," depending on the severity of the area's air quality problem. The design value for an area, which characterizes the severity of the air quality problem, is represented by the highest design value at any individual

[1] On November 22, 2000, the Louisiana Environmental Action Network (LEAN) filed a complaint in the United States District Court for the Middle District of Louisiana regarding the attainment status and classification of the Baton Rouge area. If EPA needs to take any action as a result of this litigation, we will publish further notice in the **Federal Register**.

[2] EPA has established only a primary standard for carbon monoxide.

[3] EPA revoked the one-hour standard in areas that were attaining the standard on June 5, 1998 (63 FR 31051). However, on May 14, 1999, the U.S. Court of Appeals for the District of Columbia Circuit ruled that the 8-hour ozone standard could not be enforced by EPA. Although the Court of Appeals determined that the 8-hour standard could not be enforced, it did not vacate the standard. Hence, the 8-hour standard remained in effect. While appealing this decision to the United States Supreme Court, EPA reinstated the one-hour standard in areas where it had been revoked. (65 FR 45181, dated July 20, 2000). On February 27, 2001, the Supreme Court upheld the 8-hour standard and instructed EPA to develop an implementation plan for the 8 hour standard that is consistent with the Supreme Court's opinion. *Whitman v. American Trucking Assoc., Inc.*, 531 U.S. (2001), Nos. 99–1257 and 99–1426.

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ozone monitoring site (i.e., the highest of the fourth highest one-hour daily maximum monitored ozone levels in a given three-year period with complete monitoring data). Table 2 provides the design value ranges for each nonattainment classification. Ozone nonattainment areas with design values between 0.160 and 0.180 ppm, such as the Baton Rouge area (which had a design value of 0.164 ppm in 1989), were classified as serious. These nonattainment designations and classifications were codified in 40 CFR Part 81 (see 56 FR 56694, November 6, 1991).

TABLE 2.—OZONE NONATTAINMENT CLASSIFICATIONS

Area class	Design value (ppm)	Attainment date
Marginal	0.121 up to 0.138	November 15, 1993.
Moderate	0.138 up to 0.160	November 15, 1996.
Serious	0.160 up to 0.180	November 15, 1999.
Severe	0.180 up to 0.280	November 15, 2005.
Extreme	0.280 and above	November 15, 2010.

In addition, states containing areas that were classified as serious nonattainment were required to submit SIPs to provide for certain controls, to show progress toward attainment, and to provide for attainment as expeditiously as practicable, but not later than November 15, 1999. Serious area SIP requirements are found primarily in section 182(c) of the CAA.

VI. Why Are We Proposing To Reclassify the Baton Rouge Area?

Regarding reclassification for failure to attain, section 181(b)(2)(A) of the Act provides that:

Within 6 months following the applicable attainment date (including any extension thereof) for an ozone nonattainment area, the Administrator shall determine, based on the area's design value (as of the attainment date) whether the area attained the standard by that date. Except for any Severe or Extreme area, any area that the Administrator finds has not attained the standard by that date shall be reclassified by operation of law in accordance with table 1 of subsection (a) to the higher of—

(i) The next higher classification for the area, or

(ii) The classification applicable to the area's design value as determined at the time of the notice required under subparagraph (B).

No area shall be reclassified as Extreme under clause (ii).

Furthermore, section 181(b)(2)(B) of the Act provides that:

The Administrator shall publish a notice in the **Federal Register** no later than 6 months following the attainment date, identifying each area that the Administrator has determined under subparagraph (A) as having failed to attain and identifying the reclassification, if any, described under subparagraph (A).

Table 3 lists the average number of days when ambient ozone concentrations exceeded the one-hour ozone standard at each monitoring site in the Baton Rouge area for the period 1997–1999. The ozone design value for each monitor is also listed for the same period. A complete listing of the ozone exceedances for each monitoring site, as well as EPA's calculations of the design values, can be found in the docket file. The data in Table 3 show that, for 1997–1999, two monitoring sites in the Baton Rouge area averaged more than one exceedance day per year. Therefore, pursuant to section 181(b)(2)(B) of the CAA, we propose to find that the Baton Rouge area did not attain the one-hour standard by the November 15, 1999, deadline.

TABLE 3.—AIR QUALITY DATA FOR THE BATON ROUGE AREA (1997–1999)

Site	Number of days over standard (1997–1999)	Number of expected days over standard (1997–1999)	Average number of expected exceedance days per year	Site design value (ppm)
Site (Parish):				
Pride (East Baton Rouge)	1	1.1	0.4	0.116
Baker (East Baton Rouge)	3	3.0	1.0	0.123
Capitol (East Baton Rouge)	3	3.1	1.0	0.122
LSU (East Baton Rouge)	4	[a]4.1	[a]1.4	[b]0.126
Carville (Iberville)	2	2.0	0.7	0.120
Plaquemine (Iberville)	2	2.0	0.7	0.120
Grosse Tete (Iberville)	5	[a]5.3	[a]1.8	[b]0.126
Port Allen (West Baton Rouge)	3	3.0	1.0	0.119
Dutchtown (Ascension)	3	3.0	1.0	0.123
French Settlement (Livingston)	3	3.0	1.0	0.123

[a] A violation occurs when the number of expected exceedances is greater than 3.1 over a 3-year (rolling) period (or a 3-year (rolling) average greater than 1.04). The statistical term "expected exceedances" is an arithmetic average explained at 40 CFR Part 50, Appendix H.
[b] Represents the 1997–1999 design value for the Baton Rouge area.
Raw data source: U.S. EPA Aerometric Information Retrieval System (AIRS) database.

As discussed later in this document, because the EPA interprets the CAA to allow for an extension of the attainment date based on EPA's findings on the effects of ozone transport, we believe it is fair to allow Louisiana an opportunity to apply and qualify for an attainment date extension before we finalize our finding and the area is reclassified.

This proposal details the following reasons which support our decision to proceed in this manner:

1. EPA has concluded that this is the best way to reconcile the Act's requirements under section 110(a)(2)(D)(i)(I) as applied to ozone transport with the attainment dates and graduated control scheme in sections 181 and 182 of the Act. EPA's extension policy represents a reasonable effort to avoid thwarting Congressional intent that upwind areas be responsible for preventing interference with timely downwind attainment and that downwind areas not be unfairly burdened. The Act shows Congressional intent that transport be considered when EPA acts to reclassify an area and a reluctance to subject an area to more burdensome controls than necessary to bring local sources into compliance.

2. Louisiana has submitted analyses indicating that Baton Rouge may be affected by ozone transport from an upwind area.

3. Based on current monitored air quality, if the Baton Rouge area was newly designated ozone nonattainment today, it would be classified as a marginal nonattainment area. However, if the area were to be reclassified, it would be required to impose the controls which are normally demanded only for an area with severe levels of air pollution.

4. By a letter from the Governor, dated May 10, 2000, Louisiana has committed to submit by August 31, 2001, a SIP that meets the criteria of the extension policy.

Furthermore, in this proposal, our recognition that the area should be given an opportunity to qualify for an extension is balanced by our action in moving forward with the process of reclassification in the event that the state is unsuccessful in demonstrating that it can satisfy the criteria for an extension.

VII. Has Air Quality Improved in the Baton Rouge Area in Recent Years?

The air quality in the Baton Rouge area has improved significantly since the area was designated nonattainment following enactment of the 1990 CAA amendments, when the area's (1987–1989) ozone design value was 0.164 ppm. The most recent (i.e. 1997–1999) areawide ozone design values had shown a continued downward trend measuring 0.139, 0.127, and 0.126 ppm, respectively [4]—very closely approaching the one-hour NAAQS design value of 0.124 ppm. However, based on exceedances registered in the Baton Rouge area in 2000, the area's preliminary (1998–2000) ozone design value has now risen to 0.135 ppm.[5]

VIII. What Would a Reclassification Mean for the Baton Rouge Area?

If reclassified, the Baton Rouge area would need to attain the one-hour ozone NAAQS as expeditiously as practicable, but no later than November 15, 2005. Louisiana would also need to submit SIP revisions addressing the severe area requirements for the one-hour standard in section 182(d) of the Act. The requirements for severe ozone nonattainment areas include, but are not limited to, the following:

1. Attainment and reasonable further progress demonstrations.

2. A 25 ton-per-year major source threshold for volatile organic compounds.

3. More stringent new source review requirements.

4. Enforceable transportation control strategies and measures to offset projected growth in vehicle miles traveled or number of vehicle trips.

5. Contingency provisions.

6. A plan for assessing fees to major stationary sources in the event the Baton Rouge area fails to meet the severe attainment date.

7. On-road mobile emissions budget for transportation conformity purposes.

IX. Can an Extension of the Serious Area Attainment Date Be Granted for the Baton Rouge Area?

The attainment date specified in the Act for serious nonattainment areas, such as Baton Rouge, is November 15, 1999. Two separate mechanisms exist for an area to obtain an extension of this date. First, pursuant to section 181(a)(5) of the CAA, the state may request, and EPA may grant, up to two one-year attainment date extensions. EPA may grant an extension if: (1) The state has complied with the requirements and commitments pertaining to the applicable implementation plan for the area, and (2) the area has measured no more than one exceedance of the ozone standard at any monitoring site in the nonattainment area in the year in which attainment is required.

As indicated in Table 4, one or fewer actual exceedances occurred at any given monitoring site in the area in 1999. However, because a significant amount of air quality data was invalidated due to malfunctioning equipment at the Grosse Tete site in 1999,[6] the number of expected exceedances for that monitor in 1999 was greater than 1.04 (i.e., 1.3). Louisiana did not submit a request for a one-year extension of the attainment date under section 181(a)(5) of the CAA based on these 1999 monitoring results.

TABLE 4.—OZONE EXCEEDANCES IN THE BATON ROUGE AREA (1999)

Site	Number of days over standard (1999)	Number of expected days over standard (1999)
Site (Parish):		
Pride (East Baton Rouge)	0	0.0
Baker (East Baton Rouge)	1	1.0
Capitol (East Baton Rouge)	0	0.0
LSU (East Baton Rouge)	0	0.0
Carville (Iberville)	0	0.0
Plaquemine (Iberville)	1	1.0
Grosse Tete (Iberville)	1	1.3
Port Allen (West Baton Rouge)	1	1.0
Dutchtown (Ascension)	0	0.0
French Settlement (Livingston)	0	0.0

Raw data source: U.S. EPA Aerometric Information Retrieval System (AIRS) database.

[4] A listing of the ozone exceedances (1995–1999) and 3-year design values (95–97, 96–98, 98–00) by monitoring site can be found in the docket file for this proposed rulemaking.

[5] A listing of the preliminary ozone exceedances and design values can be found in the docket file for this proposed rulemaking.

[6] "Review of the Grosse Tete Ozone Monitor and Data in Iberville Parish: May 12, 1999—August 6, 1999," U.S. EPA Region 6, Multimedia Planning and Permitting Division, final report dated June 29, 2000.

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Instead, Louisiana is seeking an extension of its attainment date under the second mechanism for obtaining an extension of the attainment date: EPA's extension policy for areas which are affected by downwind transport of ozone and ozone precursors. This extension policy reconciles section 181(b)(2) with other provisions of the CAA to authorize attainment date extensions for downwind transport areas that can make appropriate showings. The section that follows discusses the extension policy in detail.

X. What Is EPA's Policy Regarding Extension of Attainment Dates for Downwind Transport Areas?

A number of areas in the country that have been classified as "moderate" or "serious" are affected by pollutants that have traveled downwind from other areas. For these downwind areas, transport of pollutants from upwind areas has interfered with their ability to meet the ozone standard by the dates prescribed by the Act. As a result, many of these areas, such as Baton Rouge, find themselves facing the prospect of being reclassified, or "bumped up" to a higher classification for failing to meet the ozone standard by the specified date.

In consideration of these factors and the realization that many areas are unable to meet the mandated attainment dates due to transport[7], on July 16, 1998, EPA issued a policy memorandum entitled, "Guidance on Extension of Air Quality Attainment Dates for Downwind Transport Areas." This policy outlines the criteria by which the attainment date for an area may be extended.

The extension policy offers an opportunity for Louisiana to request an extension of the attainment date for the Baton Rouge area. This policy draws on other provisions of the Act (beyond CAA section 181(a)(5)) to authorize attainment date extensions for downwind transport areas.

Under the policy, EPA may extend the attainment date for an area that: (1) Has been identified as a downwind area affected by transport from either an upwind area in the same state with a later attainment date or an upwind area in another state that significantly contributes to downwind nonattainment (by "affected by transport," EPA means an area whose air quality is affected by transport from an upwind area to a degree that affects the area's ability to attain); (2) has submitted an approvable attainment demonstration with any necessary, adopted local measures and with an attainment date that shows that it will attain the one-hour standard no later than the date that the reductions are expected from upwind areas under the final NO_X SIP call and/or the statutory attainment date for upwind nonattainment areas, i.e., assuming the boundary conditions reflecting those upwind reductions; (3) has adopted all applicable local measures required under the area's current classification and any additional measures necessary to demonstrate attainment, assuming the reductions occur as required in the upwind areas; and (4) has provided that it will implement all adopted measures as expeditiously as practicable, but not later than the date by which the upwind reductions needed for attainment will be achieved.

XI. Is the Baton Rouge Area Eligible for an Attainment Date Extension Under the Extension Policy?

It is premature to say whether or not the Baton Rouge area will qualify for an attainment date extension under the extension policy. We believe that the area may be affected by upwind transport. However, before the Baton Rouge area can qualify for an attainment date extension under the extension policy, all the criteria specified in the policy must be met.

On May 10, 2000, the Governor of Louisiana submitted a letter to EPA committing to meet the requirements of the extension policy by August 31, 2001.[8] (The Governor's commitment letter and EPA's response to the letter are included in the docket for this proposed rulemaking.) The steps we believe Louisiana will need to take in order for us to consider extending the Baton Rouge area attainment date under the extension policy include:

1. Demonstrate that the Baton Rouge area's air quality is affected by transport from (a) an upwind area in Louisiana with a later attainment date, or (b) an upwind area in another State, which significantly contributes to Baton Rouge's continued ozone nonattainment.

2. Submit to EPA an approvable attainment demonstration by August 31, 2001. This demonstration must show that the Baton Rouge area will attain as expeditiously as practicable, but no later than the attainment date of the upwind area.

3. Submit any additional local control measures needed for expeditious attainment. Any additional measures must be adopted prior to August 31, 2001.

4. Submit proof that all applicable local control measures required under the serious classification have been adopted. As part of this demonstration, Louisiana's August 31, 2001 SIP submittal must include at least the following:

(a) Any changes to Louisiana's Nonattainment New Source Review program necessary to ensure that the State's rules meet EPA's nonattainment new source review requirements.

(b) Contingency measures that meet the requirements of section 182(c)(9) of the Act.[9]

(c) Any revisions to the vehicle inspection and maintenance (I/M) program necessary to meet the applicable federal I/M program requirements. Any such changes must be adopted prior to August 31, 2001.

5. Provide that all newly adopted control measures will be implemented as expeditiously as practicable. All measures must be implemented no later than the date that the upwind reductions needed for attainment will be achieved.

We contemplate that, when we act to approve such an area's attainment demonstration, we will, as necessary, extend that area's attainment date to the date appropriate for that area in light of the schedule for achieving the necessary upwind reductions. The area would no longer be subject to reclassification or "bump-up" for failure to attain by its original attainment date under section 181(b)(2).

XII. What Progress Has Louisiana Made To Meet the Extension Policy So That an Attainment Date Extension Can Be Granted?

A local task force comprised of stakeholders has been formed and is working closely with the LDEQ to develop a submittal that meets the requirements of the extension policy. Modeling efforts are well underway, and the State has solicited public input on numerous potential control measures.

XIII. What Actions Has Louisiana Taken To Improve Air Quality in the Baton Rouge Area?

EPA has approved, and Louisiana has implemented, VOC emission reductions as part of the State's 15 Percent Rate-of-Progress Plan (see 61 FR 54737, dated October 22, 1996), and Post-1996 Rate-of-Progress Plan (see 64 FR 35390, dated July 2, 1999). In addition, Louisiana is in the process of implementing a low enhanced vehicle inspection and maintenance program in the Baton Rouge area, which should further reduce VOC emissions. EPA has proposed to conditionally approve the I/M program (see 63 FR 71807, dated December 30, 1998).

XIV. If We Finalize Our Proposed Rulemaking Reclassifying the Baton Rouge Area, What Would Be the Area's New Classification?

As stated previously, section 181(b)(2)(A) of the Act requires that, when an area is reclassified for failure to attain, its reclassification must be the higher of the next higher classification or the classification applicable to the area's ozone design value at the time the notice of reclassification is published in the **Federal Register**. The official design value of the Baton Rouge area at the time of the proposed finding of failure to attain is based on quality-assured ozone monitoring data from 1997–1999. This design value is 0.126 ppm, and the classification of "marginal" nonattainment would be applicable to it. By contrast, the next higher classification for the Baton Rouge area is "severe" nonattainment. Since "severe" is a higher nonattainment classification than "marginal," under the statutory scheme, the area would be reclassified to severe nonattainment. Refer to Table 3 above.

XV. If the Baton Rouge Area Is Reclassified to Severe, What Would Its New Schedule Be?

If the Baton Rouge area is reclassified, Louisiana would be required to submit a SIP that adopts the severe area requirements. Under section 181(a)(1) of the Act, the new attainment deadline for serious areas reclassified to severe under section 181(b)(2) would be as expeditious as practicable, but no later than the date applicable to the new classification, i.e., November 15, 2005.

If we reclassify the Baton Rouge area, we must also address the schedule by which Louisiana will be required to submit a SIP revision meeting the severe area requirements. We propose to have Louisiana submit this SIP within one year after a final action on the reclassification is taken. If the submission shows that the area can attain the one-hour ozone NAAQS sooner than the attainment date established in the final reclassification notice, we would adjust the attainment date to reflect the earlier date, consistent with the requirement in section 181(a)(1) that the NAAQS be attained as expeditiously as practicable. We solicit comments on this proposed schedule.

XVI. When Will We Make a Final Decision Whether To Reclassify or Grant an Extension to the Baton Rouge Area?

We will review Louisiana's proposed SIP submittal during the State's public comment period. We expect to receive the SIP submittal by August 31, 2001 and will publish thereafter a document in the **Federal Register** to address the approvability of the SIP submittal and the Baton Rouge area's eligibility for a extension of its attainment date pursuant to the extension policy. If we propose approval, we would also propose to extend the attainment date for the Baton Rouge area to an appropriate expeditious date. However, if Louisiana fails to meet the requirements of the extension policy by August 31, 2001, we will finalize the finding of failure to attain, and the Baton Rouge area will be reclassified to severe ozone nonattainment.

XVII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This proposed action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and

[7] Through a two-year effort known as the Ozone Transport Assessment Group (OTAG), the EPA worked in partnership with the 37 easternmost states and the District of Columbia, industry representatives, academia, and environmental groups to develop recommended strategies to address transport of ozone-forming pollutants across state boundaries.

On November 7, 1997, the EPA acted on OTAG's recommendations and issued a proposal (the proposed NO_X SIP call, 62 FR 60318) requiring 22 states and the District of Columbia to submit SIPs addressing the regional transport of ozone. These SIPs will decrease the transport of ozone across state boundaries in the eastern half of the United States by reducing emissions of nitrogen oxides (a precursor to ozone formation known as NO_X). The EPA took final action on the NO_X SIP call on October 27, 1998 (63 FR 57356). The EPA expects the final NO_X SIP call will assist many areas in attaining the one-hour ozone standard. Louisiana was a member of the OTAG, but was not included in the NO_X SIP call.

[8] To support the Governor's request that EPA consider an attainment date extension for the Baton Rouge area based on transported air pollution, the Louisiana Department of Environmental Quality (LDEQ) submitted to EPA a report entitled, "Assessment of the Contribution of Emissions from the Houston Area to Ozone Concentrations in the Five-Parish Baton Rouge Nonattainment Area," dated May 3, 2000, indicating that pollution transported from Texas may have impeded attainment of the 1-hour ozone standard in Baton Rouge. A copy of this report can be found in the docket for this proposed rulemaking.

[9] On July 2, 1999, EPA issued final approval of Louisiana's revised SIP for the Baton Rouge area, which contained a contingency measures plan using Emission Reductions Credits ("ERCs") held in escrow in Louisiana's ERC "bank" (64 FR 35930). On August 30, 1999, LEAN, the North Baton Rouge Environmental Association, Save Our Lakes and Ducks, and the Southern University Environmental Law Society filed a petition for review in the United States Court of Appeals for the Fifth Circuit challenging EPA's July 2, 1999 SIP approval. In response to the litigation, EPA performed a preliminary investigation and became concerned that Louisiana's application of its ERC banking rule might not be consistent with EPA regulations and guidance. As a result, EPA requested a partial voluntary remand to reconsider its July 2, 1999 final approval of Louisiana's contingency measures plan for the Baton Rouge area. On October 19, 2000, the Fifth Circuit Court of Appeals granted a Joint Motion for a Partial Voluntary Remand in *Louisiana Environmental Action Network, et al.* v. *United States Environmental Protection Agency*, No. 99–60570 (5th Cir.). EPA expects to propose further action and/or rulemaking to address Louisiana's contingency measures plan before taking further action on this notice.

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Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The proposed rule does not include environmental justice related issues that require consideration under Executive Order 12898 (59 FR 7629, February 16, 1994). As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 19, 2001.

Jerry Clifford,

Acting Regional Administrator, Region 6.

[FR Doc. 01–11563 Filed 5–8–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[FRL–6976–7]

RIN 2090–AA18

Project XL Site-specific Rulemaking for Yolo County Landfill, Davis, Yolo County, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for comment on proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing a site-specific rule to implement a project under the Project XL program, an EPA initiative to allow regulated entities to achieve better environmental results at decreased costs. Today's proposal would provide regulatory flexibility under the Resource Conservation and Recovery Act (RCRA), as amended, for the Yolo County Landfill, Davis, Yolo County, California.

Yolo County has proposed a project under EPA's Project XL to use certain bioreactor techniques at its municipal solid waste landfill (MSWLF), specifically the addition of bulk or non-containerized liquid wastes into the landfill to accelerate the biodegradation of landfill waste and decrease the time it takes for the waste to stabilize in the landfill. The principal objective of this bioreactor XL project is to evaluate waste decomposition rates when leachate is supplemented with other liquid additions. In order to carry out this project, Yolo County would need relief from certain requirements in EPA regulations which set forth operating criteria for MSWLFs and preclude the addition of bulk or non-containerized liquid wastes. To achieve the objectives of the project, today's proposed rule would provide regulatory flexibility from Liquid Restrictions, which precludes the addition of bulk or non-containerized liquid wastes. The Yolo County bioreactor project is one of several bioreactor XL projects currently being considered by EPA.

DATES: *Public Comments:* Comments on the proposed rule must be received on or before June 8, 2001.

Public Hearing: Commentors may request a public hearing by May 23, 2001 during the public comment period. Commentors must state the basis for requesting the public hearing. If EPA determines there is sufficient reason to hold a public hearing, it will do so no later than May 30, 2001, during the last week of the public comment period. Requests for a public hearing should be submitted to the address listed below. If a public hearing is scheduled, the date, time, and location will be made available through a **Federal Register** notice or by contacting Sherri Walker at the EPA Headquarters office (see **ADDRESSES** section).

ADDRESSES: *Request to Speak at Hearing:* Requests to speak at a hearing should be mailed to the RCRA Information Center Docket Clerk (5303G), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Please send an original and two copies of all comments and refer to Docket Number F–2000–YCLP–FFFFF. A copy should also be sent to Ms. Sherri Walker at the U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. N.W. (1802), Washington DC 20460.

Comments: Written comments should be mailed to the RCRA Information Center Docket Clerk (5305W), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Please submit an original and 3 copies of written comments as well as an original and 3 copies of any attachments, enclosures, or other documents referenced in the comments and refer to Docket Number F–2000–YCLP–FFFFF. A copy should also be sent to Ms. Sherri Walker at the U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., (1802) Washington DC 20460.

EPA will also accept comments electronically. Comments should be addressed to the following Internet address: *walker.sherri@epa.gov.* Electronic comments must be submitted as an ASCII, WordPerfect 5.1/6.1/8 format file and avoid the use of special characters or any form of encryption. Electronic comments will be transferred into a paper version for the official record. EPA will attempt to clarify electronic comments if there is an apparent error in transmission.

Viewing Project Materials: A docket containing the proposed rule, supporting materials, and public comments is available for public inspection and copying at the RCRA Information Center (RIC) located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The RIC is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding federal holidays. The public is encouraged to phone in advance to review docket materials. Appointments can be scheduled by phoning the Docket Office at (703) 603–9230. Refer to RCRA Docket Number F–2000–YCLP–FFFFF. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies are $0.15 per page. Project materials are also available for review for today's action on the world wide web at http://www.epa.gov/projectxl/.

A duplicate copy of the docket is available for inspection and copying at the regional office in which the landfill project is located.

FOR FURTHER INFORMATION, CONTACT: Ms. Sherri Walker at the U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. N.W. (1802), Washington DC 20460, (202) 260–4295, walker.sherri@epa.gov.

SUPPLEMENTARY INFORMATION: The proposed rulemaking would amend 40 CFR 258.28(a) by adding a new 40 CFR 258.28(a)(3) and will create a new section, 40 CFR 258.41. Section 258.28(a) currently prohibits application of bulk or noncontainerized liquid waste into a municipal solid waste landfill unit unless: (1) The waste is household waste other than septic waste; or (2) leachate or gas condensate derived from the landfill unit and the unit is designed with a specific composite liner meeting the requirements of 40 CFR 258.40(b), as incorporated by 40 CFR 258.40(a)(2). The proposed rulemaking would create a third exception to the prohibition pertaining to the application of bulk or noncontainerized liquid waste by referring to the new section 40 CFR 258.41, pertaining to Project XL Bioreactor Landfills.

This proposed rule will add new section 40 CFR 258.41. Section 258.41(b) will apply only to Module D of the Yolo County Landfill in Davis, California. Currently, Module D of the Yolo County Landfill, which otherwise conforms to the requirements of 40 CFR 258.40(a)(2), has a composite liner which not only meets, but exceeds the requirements set forth at 40 CFR 258.40(b). Thus, Module D of this Landfill can, under federal law, not only currently add household liquid waste, other than septic waste, but can also recirculate leachate or condensate gas derived from the landfill unit. Today's proposed rule would allow the owner/operator of the Yolo County Landfill to also add other types of liquid waste to Module D of the Landfill. The proposed rule will become effective only after promulgation of the final rule in the **Federal Register**.

This proposed rulemaking allowing for addition of other types of liquid waste into Module D of the Yolo County Landfill requires compliance with each of the design, monitoring, recordkeeping, reporting, and operational requirements proposed under this rulemaking. It is also "conditional" on the issuance of a permit executed by the local air quality management district under the Clean Air Act, 42 U.S.C. 7401 *et seq.*, as set forth in the proposed rule. Upon completion of the rulemaking, these requirements and conditions are enforceable in the same way that current RCRA standards for solid waste landfills are enforceable to ensure that management of nonhazardous solid waste is performed in a manner that is protective of human health and the environment.

EPA is proposing to allow Yolo County to undertake this XL Project with the requested regulatory flexibility to determine if the addition of other types of liquid wastes will result in superior environmental performance and significant costs savings while remaining protective of human health and the environment.

Today's proposed rulemaking will not affect the provisions or applicability of any other existing or future regulations.

EPA is soliciting comment on this rulemaking. EPA will publish responses to comments in a subsequent final rule. The individual XL projects considered under future rulemakings will enter the implementation phase only when each of the rules addressing these other landfills have been promulgated. No addition or recirculation of other types of liquid waste beyond those currently allowed in accordance with 40 CFR 258.28(a) will occur at any proposed Project XL landfill until such time as a final rule relating to such landfill has been duly promulgated and all other appropriate federal, state and/or local permits and other applicable conditions have been fully satisfied.

Outline of Today's Document

The information presented in this preamble is arranged as follows:

I. What is EPA's Legal Authority for today's proposed rule?
II. Background
A. What is Project XL?
B. What are Bioreactor Landfills?
III. Overview of the Yolo County XL Project Pilot
A. What kind of liner is required by current federal regulations?
B. What Solutions are Proposed by the Yolo County XL Project?
C. What Regulatory Changes will be Necessary to Implement this Project?
1. Liquid Restrictions for MSWLFs (40 CFR 258.28)
2. Proposed Site-Specific Rule
D. How Have Various Stakeholders Been Involved in this Project?
E. How Will this Project Result in Cost Savings and Paperwork Reduction?
F. How Long Will this Project Last and When Will it be Complete?
IV. Additional Information
A. How to Request a Public Hearing
B. How Does this Rule Comply With Executive Order 12866: Regulatory Planning and Review?
C. Is a Regulatory Flexibility Analysis Required?
D. Is an Information Collection Request Required for this Project Under the Paperwork Reduction Act?
E. Does This Project Trigger the Requirements of the Unfunded Mandates Reform Act?
F. How Does this Rule Comply with Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks?
G. Execute Order 13132: Federalism
H. How Does this Rule Comply with Executive Order 13175: Consultation and Coordination with Indian Tribal Governments ?
I. Does this Rule Comply with the National Technology Transfer and Advancement Act?

I. What Is EPA's Authority For Today's Proposed Rule?

This rule is proposed under the authority of sections 1008, 2002, 4004, and 4010 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6907, 6912, 6945, and 6949).

II. Background

A. What is Project XL?

Project XL is an EPA initiative to allow regulated entities to achieve better environmental results at less cost. Project XL—"eXcellence and Leadership"—was announced on March 16, 1995 as a central part of the National Performance Review and EPA's efforts to reinvent environmental protection. See 60 FR 27282 (May 23, 1995). Specifically, Project XL gives a limited number of regulated entities the opportunity to develop their own pilot projects and alternative strategies to achieve environmental performance that is superior to what would be achieved through compliance with current and reasonably anticipated future regulations. These efforts are crucial to the Agency's ability to test new regulatory strategies that reduce regulatory burden and promote economic growth while achieving better environmental and public health protection. The Agency intends to evaluate the results of this and other XL projects to determine which specific elements of the projects, if any, should be more broadly applied to other regulated entities for the benefit of both the economy and the environment.

Project XL is intended to allow EPA to experiment with untried, potentially promising regulatory approaches, both to assess whether they provide benefits at the specific facility affected, and whether they should be considered for wider application. Such pilot projects allow EPA to proceed more quickly than would be possible when undertaking changes on a nationwide basis. EPA may modify rules, on a site- or state-specific basis, that represent one of several possible policy approaches within a more general statutory directive, so long as the alternative being used is permissible under the statute.

Adoption of such alternative approaches or interpretations in the context of a given XL project is not an indication that EPA plans to adopt that interpretation as a general matter or even in the context of other XL projects. It would be inconsistent with the forward-looking nature of these pilot projects to adopt such innovative

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approaches prematurely on a widespread basis without first determining whether or not they are viable in practice and successful for the particular projects that embody them. These pilot projects are not intended to be a means for piecemeal revision of entire programs.

EPA believes that adopting alternative policy approaches and/or interpretations, on a limited, site- or state-specific basis and in connection with a carefully selected pilot project, is consistent with the expectations of Congress about EPA's role in implementing the environmental statutes (so long as EPA acts within the discretion allowed by the statute). Congress' recognition that there is a need for experimentation and research, as well as ongoing reevaluation of environmental programs, is reflected in a variety of statutory provisions, *e.g.*, Section 8001 of RCRA, (42 U.S.C. 6981).

Under Project XL, participants in four categories (facilities, industry sectors, governmental agencies, and communities) are offered the opportunity to develop common sense, cost-effective strategies that will replace or modify specific regulatory requirements on the condition that they produce and demonstrate superior environmental performance. To participate in Project XL, applicants must develop alternative pollution reduction strategies pursuant to eight criteria: (1) Superior environmental performance; (2) cost savings and paperwork reduction; (3) stakeholder involvement and support; (4) test of an innovative strategy; (5) transferability; (6) feasibility; (7) identification of monitoring, reporting, and evaluation methods; and (8) avoidance of shifting risk burden. The project must have full support of affected federal, state, and tribal agencies to be selected. For more information about the XL criteria, readers should refer to two descriptive documents published in the **Federal Register** (60 FR 27282, published May 23, 1995 and 62 FR 19872, published April 23, 1997) and the document entitled "Principles for Development of Project XL Final Project Agreements," dated December 1, 1995.

Development of a Project has four basic phases: the initial pre-proposal phase where the project sponsor comes up with an innovative concept that it would like EPA to consider as an XL pilot; the second phase where the project sponsor works with EPA and interested stakeholders in developing its XL proposal; the third phase where EPA, local regulatory agencies, and other interested stakeholders review the XL proposal; and the fourth phase where the project sponsor works with EPA, local regulatory agencies, and interested stakeholders in developing the Final Project Agreement and legal mechanisms. The XL pilot proceeds into the implementation phase and evaluation phase after promulgation of the required federal, state and local legal mechanisms and after the designated participants sign the FPA.

The FPA is a non-binding written agreement between the project sponsor and regulatory agencies. The FPA contains a detailed description of the proposed pilot project. It addresses the eight Project XL criteria and discusses how EPA expects the project to meet that criteria. The FPA identifies performance goals and indicators which will enable the project sponsor to demonstrate superior environmental benefits. The FPA also discusses administration of the agreement, including dispute resolution and conditions for termination of the agreement. On August 29, 2000, EPA published a notice in the **Federal Register** requesting comments on the FPA for the Yolo County bioreactor landfill XL Project. EPA received no comments on the FPA during the 14 day public comment period. In the event that Yolo County, EPA Region 9's Regional Administrator and the state of California agree to extend this proposed rule beyond Phase I of Module D, another Final Project Agreement will be entered into.

B. What are Bioreactor Landfills?

A bioreactor landfill is generally defined as a landfill operated to transform and stabilize the readily and moderately decomposable organic constituents of the waste stream by purposeful control to enhance microbiological processes. Bioreactor landfills often employ liquid addition including leachate recirculation. A byproduct of the decomposition process is landfill gas, which includes methane, carbon dioxide, and volatile organic compounds (VOC's). Landfill gases are produced sooner in a bioreactor than in a conventional landfill. Therefore, bioreactors often incorporate state-of-the-art landfill gas collection systems.

On April 6, 2000, EPA published a notice in the **Federal Register** requesting information on bioreactor landfills, because the Agency is considering whether and to what extent the Criteria for Municipal Solid Waste Landfills, 40 CFR Part 258, should be revised to allow for leachate recirculation over alternative liners in MSWLFs. (65 FR 18015). EPA is seeking information about liquid additions and leachate recirculation in MSWLFs to the extent currently allowed, i.e., in MSWLFs designed and constructed with a composite liner as specified in 40 CFR 258.40(a)(2).

Proponents of bioreactor technology note that operation of MSWLFs as bioreactors provide a number of environmental benefits, including (1) Increasing the rate of waste decomposition, which in turn would extend the operating life of the landfill and lessen the need for additional landfill space or other disposal options, (2) decreasing, or even eliminating, the quantity, and increasing the quality, of leachate requiring treatment and offsite disposal, leading to decreased risks and costs associated with leachate management, treatment and disposal, (3) reduced post-closure care costs and risks, due to the accelerated, controlled settlement of the solid waste during landfill operation, (4) lower long term potential for leachate migration into the subsurface environment, and (5) opportunity for recovery of methane gas for energy production.

EPA is also considering several XL pilot projects involving operation of landfills as bioreactors throughout the country. These landfill projects will enable EPA to evaluate benefits of different alternative liners and leachate recirculation systems under various terrains and operating conditions. As expressed in the above-referenced April 2000 **Federal Register** notice, EPA is interested in assessing the performance of landfills operated as bioreactors, and these XL projects could contribute valuable data.

The Yolo Country XL project and other XL projects would provide additional information on the performance of MSWLFs when liquids are added to the landfill. The Agency is also interested in determining whether and which types of alternative liners are capable of meeting the design performance standard including maintaining a hydraulic head at acceptable levels.

The terms of the Yolo County bioreactor project are contained in a Final Project Agreement (FPA). EPA sought public comment on the draft FPA on August 29, 2000. The Final Project Agreement is available to the public at the EPA Docket in Washington, DC., in the EPA Region 9 library, and on the world wide web at http://www.epa.gov/projectxl/.

III. Overview of the Yolo County Landfill XL Project

The Yolo County Central Landfill (YCCL) is an existing non-hazardous municipal waste landfill with two surface impoundments for disposal of selected non-hazardous liquid wastes. This site encompasses 722 acres and is owned and operated by Yolo County. It is located at the intersection of Road 104 and Road 28H, 2 miles northeast of the City of Davis, California. The YCCL was opened in 1975 for the disposal of non-hazardous solid waste, construction debris, and non-hazardous liquid waste. Existing on-site operations include an eleven-year old landfill methane gas recovery and energy generation facility, a drop-off area for recyclables, a metal recovery facility, wood and yard waste recovery and processing area, and a concrete recycling area.

Adjacent land uses include the City of Davis Wastewater Treatment Plant lagoons located immediately east and south of the landfill and the Willow Slough By-pass which runs parallel to the southern boundary of the site. The remainder of land uses adjacent to the site are agricultural (row crops).

Groundwater levels at the facility fluctuate 8 to 10 feet during the year, rising from the lowest in September to the highest around March. Water level data indicate that the water level table is typically 4 to 10 feet below ground surface during the winter and spring months. During the summer and fall months, the water table is typically 5 to 15 feet below ground surface. In January 1989, the County of Yolo constructed a soil/bentonite slurry cutoff wall to retard groundwater flow to the landfill site from the north. The cutoff wall was constructed along portions of the northern and western boundaries of the site to a maximum depth of 44 feet and has a total length of 3,680 feet, 2,880 feet along the north side and 800 feet along the west. In the fall of 1990, irrigation practices to the north of the landfill site were altered to minimize the infiltration of water. Additionally, sixteen groundwater extraction wells were installed south of the cutoff wall in order to lower the water table south and east of the wall. The purpose was to depress the water table to provide vertical separation between the base of the landfill and the groundwater.

Yolo County proposes to operate the next phase of its landfill module (Module D) as both an anaerobic and aerobic bioreactor. Twelve acres of the 20-acre module have been constructed (Phase I). Ten acres would be operated as a full scale anaerobic bioreactor, while the remaining two acres would be operated as an aerobic pilot demonstration cell.

A. What Kind of Liner is Required by Current Federal Regulations?

Currently, the federal regulations outline two methods for complying with liner requirements for municipal solid waste landfills. The first method is a performance standard set out under 40 CFR 258.40(a)(1). This standard allows installation of any liner configuration provided the liner design is approved by an EPA approved state and the design ensures that certain constituent concentrations are not exceeded in the uppermost aquifer underlying the landfill facility at the point of compliance.

The second method is set out in 40 CFR 258.40(a)(2) and (b). Section 258.40(b) specifies a specific liner design which consists of two components: (1) An upper component comprising a minimum of 30 mil flexible membrane liner (60 mil if High Density Polyethylene (HDPE) is used); and (2) a lower component comprising at least two feet of compacted soil with a hydraulic conductivity no greater than 1×10^{-7} cm/sec.

B. What Solutions are Proposed by the Yolo County XL Project?

The bottom liner system of Module D was designed to exceed the requirements of Subtitle D of the Federal guidelines and was upgraded from other liner systems used previously at the site. The County believes that, given the constructed configuration and the stringent monitoring and operational requirements proposed for Module D, the proposed liner system will be suitable for use in the bioreactor operations.

The Module D liner and leachate collection system consists, from top to bottom, of a 2 foot thick chipped tire operations/drainage layer (k> 1 cm/sec), a blanket geocomposite drainage layer, a 60-milliliter (mil) High Density Polyethylene (HDPE) liner, 2 feet of compacted clay ($k<6 \times 10^{-9}$ cm/sec), 3 feet of compacted earth fill ($k< 1 \times 10^{-8}$ cm/sec), and a 40 mil HDPE vapor barrier layer.[1]

The permeability (k) of the clay liner, as constructed, is on the average about 6×10^{-9} cm/sec and the earth fill averaged about 1×10^{-8} cm/sec. These two layers in effect provide a 5 foot thick composite liner. It is anticipated that this liner system, coupled with the lower permeability, will result in a significantly more effective barrier to leachate migration than the prescriptive liner system.

The liner system within the collection trenches and sump areas was upgraded further to a double composite liner to account for infringement on the 5 foot groundwater offset and to minimize potential leakage in these critical collection areas where head on the primary liner will be at its greatest. Specifically, the liner and leachate collection system in the collection trenches and sumps consists, from top to bottom, of a minimum of 2 feet of gravel drainage material, a protective geotextile layer, a blanket geocomposite drainage layer, a primary 60-mil HDPE liner, a geosynthetic clay liner (GCL) ($k< 5 \times 10^{-9}$ cm/sec), a secondary 60-mil HDPE liner, 2 feet of compacted clay ($k< 6 \times 10^{-9}$ cm/sec), a minimum of 0.5 feet of compacted earth fill ($k< 1 \times 10^{-8}$ cm/sec), and a 40-mil HDPE vapor barrier layer. The thickness of the compacted earth fill actually varies from a minimum at the south end of the trench of 0.5 feet to a maximum of about 2.5 feet at the upper, north end of the leachate collection trench. Leachate collection pipes were also placed in the collection trench and at other locations on top of the primary liner to transport leachate immediately to the sumps for recovery, removal, and recirculation, as needed.

As described above, the more rigorous Module D leachate collection and recovery system (LCRS) and liner system is expected to outperform the Subtitle D liner design requirements. The LCRS has been designed and constructed to be free-draining throughout the life of the module and will maintain less head over the primary liner system than the type of liner prescribed by Subtitle D.

For the anaerobic operation, it is estimated that during peak liquid additions, up to 10 gallons per minute (gpm) of liquid per 10,000 square feet (.1 gpm per 100 square feet) of disposal area will typically be delivered to the waste once the module has reached its design height. Based on a previous smaller scale demonstration cell, the amount of liquid added would be in the range of 30 to 50 gallons per ton of waste. According to results of the bioreactor demonstration project by Moore et al.,[2] the average leachate generated during liquid introduction peaked at about 47% of the liquid delivery rate, which would equate to approximately 20 gpm per acre for the proposed program. Given a 10 acre drainage area, the total anticipated flow into any given sump would be

[1] Golder Associates, "Final Report, Construction Quality Assurance, Yolo County Central Landfill, WMU 6, Module D, Phase 1 Expansion", December 1999.

[2] Moore et al., "Hydraulic Characteristics of Municipal Solid Waste Findings of the Yolo County Bioreactor Landfill Project", Thirteenth International Conference on Solid Waste Technology and Management, Philadelphia, PA, November 1997.

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approximately 200 gpm (288,000 gallons per day) assuming there will be no preferred pathways within the waste mass.

For the aerobic operation, liquid will be added to waste at a faster rate since the aerobic reaction causes much of the water to evaporate. It is estimated that the range of water used will be 200 to 400 gallons of water per ton of waste.

Liquid will be applied during strategic periods to temporarily raise the moisture content of the waste to provide optimum conditions for rapid degradation and improved gas production. This liquid will initially consist of a mixture of leachate and condensate from other Waste Management Units and ground water (from the extraction wells) delivered through a series of pipes, drip irrigation, or other application systems either after the landfill reaches its design height or after an interim cover and gas collection system has been constructed to control the landfill gases generated. The water will continually be introduced (as needed) to raise the moisture content within the waste to near its field capacity. The liquid application system will be constructed such that the solution can be applied or discontinued at designated locations to raise and lower the moisture within the waste.

Yolo County will monitor moisture content throughout the life of the module through the use of a network of moisture sensors to be installed during waste placement. A moisture sensor system used during a bioreactor demonstration project in Module B proved to be very effective and will be the basis for the layout in Module D. Specifically, the moisture sensors will be installed at 20-foot increments of depth at a spacing of about 100 feet on center. Using these sensors, the County can determine where liquid application can be increased or decreased to optimize the effectiveness of the system and to prevent build-up of head over the liner.

The County will measure the quantity of leachate and applied liquid throughout the life of the module. Once leachate is produced, it will supplement the system and be re-circulated, thereby reducing the amount of clean water used. Liquid will be quantified using flow sensors installed on the leachate discharge line, re-circulation line, and liquid application line. These sensors will provide direct flow readout for determining flow rates in the pipelines and the total flow of all the liquid used and leachate produced.

The County will also monitor the head over the liner after waste placement using a network of pressure transducers and sensors. These devices will be installed on the primary liner, immediately before waste placement, to provide measurements of the leachate depth. Several of these transducers were installed in the LCRS during the Module D construction.

In the event that the transducers indicate that the head is going to exceed the allowable value, the system will automatically start pumps to reduce the liquid level and shut-off valves to reduce the liquid application rate. These measures would be used to reduce the liquid application rate across the entire module or specifically, in the area of head build-up. Generally, the County will only continue to apply the liquid until the gas generation phase of the unit is complete, at which time leachate production is anticipated to continually decrease until conclusion of the post-closure period. The County will also closely monitor the quality of the leachate to evaluate the system, determine the methods for future leachate treatment, and provide a basis for future use of similar bioreactors at the site or elsewhere.

Finally, the degradation and gas production of the waste is also related to the temperature within the decomposing waste. The effectiveness of both aerobic and anaerobic bioreactors is dependent on keeping within an optimum temperature range; therefore, the County will install temperature gauges to aid in the operation of the system. The temperature gauge network will be placed in a similar pattern to the moisture sensors at designated intervals throughout the waste mass.

For the Yolo County bioreactor landfill proposal, the superior environmental benefits include: (a) Maximizing landfill gas control and minimizing fugitive methane and VOC emissions; (b) greater recovery of landfill methane; (c) landfill life extension and/or reduced landfill use; and (d) minimizing leachate-associated concerns.

a. *Maximizing landfill gas control and minimizing fugitive methane and VOC emissions.* Landfill gas contains roughly 50% methane, a potent greenhouse gas. In terms of climate effects, methane is second in importance only to carbon dioxide. Landfill gas also contains volatile organic compounds (VOC's) that are air pollutants of local concern. Yolo County will immediately begin collecting landfill gas by installing a gas collection system consisting of a surface permeable gas collection layer overlain by a cover of soil with an embedded membrane. Gas will be withdrawn such that this permeable layer beneath surface containment will be at a slight vacuum. This system will minimize the amount of landfill gas emitted to the environment.

b. *Expedited methane generation/recovery.* In the Yolo bioreactor, the majority of the methane will be generated over a much earlier and shorter time period than a conventional landfill. This is expected to minimize the long-term low-rate methane generation often lost in conventional landfill practices.

c. *Landfill life extension and/or reduced landfill use.* The more rapid conversion of greater quantities of solid waste to gas reduces the volume of the waste. Settlement in the Yolo test cell is already over 18% in three years. Volume reduction translates into either landfill life extension and/or less landfill use. Thus, this bioreactor landfill will be able to accept more waste over its working lifetime. Additionally, fewer landfills may be needed to accommodate the same inflows of waste from a given population.

d. *Minimizing leachate-associated concerns.* The bioreactor processes, both anaerobic and aerobic, have been shown in studies at many scales to reduce the concentration of many leachate pollutants. These include organic acids and other soluble organic pollutants. Since a bioreactor operation brings pH to near-neutral conditions, metals of concern are largely precipitated and immobilized in the waste.

C. What Regulatory Changes will be Necessary to Implement this Project?

1. Liquids Restriction for MSWLFs (40 CFR 258.28)

EPA is proposing a site-specific rule to grant regulatory flexibility from 40 CFR 258.28 Liquid Restrictions, which precludes the addition of bulk or noncontainerized liquid waste. In its XL project, the County is proposing to add ground water from its extraction wells as a liquid amendment, as well as other liquids such as gray-water from the local waste water treatment plant, septic waste, and food-processing waste that is currently being land applied. Liquid wastes such as these, which normally have no beneficial use, may beneficially enhance the biodegradation of solid waste in the landfill which is the subject of this project.

2. Proposed Site-Specific Rule

Today's proposal would amend 258.28(a) by adding a new paragraph 258.28(a)(3) to refer to a new section of the rules, section 258.41. The new section 258.41(b) would specifically apply to the Yolo County Landfill in Davis, California only and would allow Module D of that landfill to receive bulk or non-containerized liquid wastes as long as that module met the design criteria set forth in Section 258.41(b). Additionally, the proposed rule would impose certain minimum monitoring and reporting requirements on Yolo County, which, among other things, will facilitate EPA's evaluation of the project.

The reason that the existing regulation requires a leachate collection system and a composite liner design as specified section 258.40(a)(2) is to ensure that contaminant migration to the aquifer is controlled. (56 FR 50978, 51056 (Oct. 9, 1991)). The proposed rule would not change the requirement in section 258.28(a)(2) that a leachate collection system as described in U.S.C. 258.40(a)(2) be in place in order for leachate to be recirculated in the landfill unit. These requirements would be requirements of new section 258.41(b) and Yolo County's proposed Module D would still be required to have leachate collection systems designed to maintain leachate over the liner at a depth of less than 30 cm. In addition, since Yolo County's design of its liner goes beyond the requirements of Subtitle D of the Federal Regulations, EPA believes that adding additional liquid wastes into Module D would not result in any increased leakage to groundwater from the bioreactor cells.

D. How Have Various Stakeholders Been Involved in this Project?

Stakeholder involvement and support for this concept has already been demonstrated by previous federal, state, and local support of this bioreactor concept. For example, in 1994, the Yolo County Planning and Public Works Department, initiated a demonstration project (Module B) to evaluate the Bioreactor Landfill concept for its Central Landfill near Davis, California. The construction phase of the project was funded by Yolo and Sacramento Counties ($125,000 each), the California Energy Commission ($250,000), and the California Integrated Waste Management Board ($63,000). More recent grant funding for the monitoring phase of the project has been received from the U. S. Department of Energy through the Urban Consortium Energy Task Force ($110,000), and the Western Regional Biomass Energy Program ($50,000). Greenhouse gas and emission abatement cost-effectiveness studies have recently been completed with $48,000 in support from the Federal Energy Technology Center/National Energy Technology Laboratory (hereafter, NETL). Further support, $462,000 recently committed by NETL, is enabling operation of the test cells for approximately 2 more years as well as helping prepare for the larger module operation. Furthermore, on January 26, 2000, the California Integrated Waste Management Board granted Yolo County $400,000 for the construction and testing of this full-scale bioreactor demonstration project.

Concerning local involvement for this XL project, Yolo County held a stakeholder meeting on June 5th, 2000 for the full-scale demonstration project. Other informational meetings have been held during the regular Waste Advisory Committee meetings to keep the community informed on the project. The County will also convene periodic meetings of the stakeholder group to provide updates on the project's progress during the duration of the XL agreement. A public file on this XL project has been maintained at the website throughout project development, and the EPA will continue to update it as the project is implemented. Additional information is available at EPA's website at *http://www.epa.gov/projectxl.*

A detailed description of this program and the stakeholder support for this project is included in the Final Project Agreement, which is available through the docket or through EPA's Project XL site on the Internet (see **ADDRESSES** section of this preamble).

Yolo County has preliminarily identified the following stakeholders:

Direct Participants

- U. S. Environmental Protection Agency
- Solid Waste Association of North America (SWANA)
- Institute for Environmental Management (IEM)
- California State Regional Water Quality Control Board, Central Valley Region 5
- Yolo County Department of Environmental Health
- Yolo-Solano Air Quality Management District

Commentors

- California Integrated Waste Management Board
- California State Water Resources Control Board
- California Air Resources Board
- National Energy Technology Laboratory (NETL, previously FETC), U.S. Department of Energy
- SWANA—California Gold Rush Chapter and Southern California Chapter
- Yolo County Waste Advisory Committee
- University of California at Davis
- Geosynthetic Institute, Drexel University

Members of the General Public

- Yolo County Citizens
- Natural Resources Commission
- Sacramento County Public Works Department, Solid Waste Management Division
- California Energy Commission

E. How Will this Project Result in Cost Savings and Paperwork Reduction?

As stated earlier, this project is expected to result in cost savings by virtue of assisting in an increased rate of decomposition of the waste placed in Module D of the landfill. The increased decomposition rate is, in turn, expected to extend the life of the landfill, and, potentially, result in direct cost savings to Yolo County. In addition, the methane generation and recovery operations are expected to yield increased methane recovery over a shorter time period, thereby resulting in increased energy generation for Yolo County beyond what would otherwise occur in a conventional landfill. Finally, no appreciable reduction in paperwork is anticipated.

F. How Long Will this Project Last and When Will it be Complete?

As with all XL projects testing alternative environmental protection strategies, the term of this XL Project is one of limited duration. Today's proposed rule would be in effect for five years. In the event that EPA determines that this project should be terminated before the end of the five year period and that the site-specific rule should be rescinded, the Agency would withdraw this rule through a subsequent rulemaking. This will afford all interested persons and entities the opportunity to comment on the proposed early termination and withdrawal of regulatory authority, and the proposed termination would also include any proposal for an interim compliance period while Yolo County returned to full compliance with the existing requirements of 40 CFR part 258.

The FPA allows any party to the agreement to withdraw from the agreement at any time before the end of the five year period. It also sets forth several conditions that could trigger an early termination of the project, as well as procedures to follow in the event that EPA, the State or local agency seeks to terminate the project.

For example, an early conclusion would be warranted if the project's environmental benefits do not meet the Project XL requirement for the

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achievement of superior environmental results. In addition, new laws or regulations may become applicable during the project term which might render the project impractical, or might contain regulatory requirements that supersede the superior environmental benefits that are being achieved under this XL Project. Or, during the project duration, EPA may decide to change the federal rule allowing recirculation over alternative liners and the addition of outside bulk liquids for all Subtitle D landfills. In that event, the FPA and site-specific rule for this project would no longer be needed.

IV. Additional Information

A. How to Request a Public Hearing

A public hearing will be held, if requested, to provide opportunity for interested persons to make oral presentations regarding this proposed rulemaking, in accordance with 40 CFR Part 25. Persons wishing to make an oral presentation on the proposed site specific rule at the Yolo County Landfill should contact Sherri Walker at the address given in the **ADDRESSES** section of this document. Any member of the public may file a written statement before the hearing or after the hearing to be received by EPA no later than fourteen days after publication of this proposed rulemaking. Written statements should be sent to EPA at the addresses given in the **ADDRESSES** section of this document. If a public hearing is held, a verbatim transcript of the hearing and written statements provided at the hearing will be available for inspection and copying during normal business hours at the EPA addresses for docket inspection given in the **ADDRESSES** section of this preamble.

B. How Does this Rule Comply With Executive Order 12866: Regulatory Planning and Review?

Because this rule affects only one facility, it is not a rule of general applicability and therefore not subject to OMB review and Executive Order 12866. In addition, OMB has agreed that review of site specific rules under Project XL is not necessary.

C. Is a Regulatory Flexibility Analysis Required?

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and public comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. Only the definition of "small governmental jurisdiction" is relevant here. 5 U.S.C. 601(5) defines "small governmental jurisdiction" to mean governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand. According to Yolo County officials, the county population in 1990 exceeded 150,000; thus, Yolo County does not qualify as "small governmental jurisdiction" within the meaning of 5 U.S.C. 601(5). Therefore, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities.

D. Is an Information Collection Request Required for this Project Under the Paperwork Reduction Act?

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* It is exempt from OMB review under the Paperwork Reduction Act because it is a site specific rule, directed to fewer than ten persons. 44 U.S.C. 3502(3), (10); 5 CFR 1320.3(c), 1320.4 and 1320.5.

E. Does This Project Trigger the Requirements of the Unfunded Mandates Reform Act?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments in the aggregate or to the private sector of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of the EPA regulatory proposal with significant Federal mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. As used here, "small government" has the same meaning as that contained under 5 U.S.C. 601(5), that is, governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.

As discussed above, this proposed rule would have limited application. It applies only to the Yolo County landfill. If adopted, this proposed rule would result in a cost savings for Yolo County when compared with the costs it would have had to incur if required to adhere to the requirements contained in the current rule. EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for state, local, or tribal governments, in the aggregate, or the private sector in any one year. Thus, today's, proposal is not subject to the requirements of section 202 and 205 of the UMRA. EPA has also determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments.

F. How Does this Rule Comply with Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks?

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant," as defined in Executive Order 12886; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to potentially effective and feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This proposed rule would allow for the addition of bulk or non-containerized liquid amendments over a liner that not only meets but exceeds the design requirements in 40 CFR 258.40(b). Modeling results predict that this liner is more protective than the prescribed composite liner. Therefore, no additional risk to public health, including children's health, is expected to result from this proposed rule.

G. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." The phrase, "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposal would only affect one local governmental entity and state, and would provide regulatory flexibility for the state and local governmental entity concerned. Thus, Executive Order 13132 does not apply to this rule.

H. How does this Proposed Rule Comply with Executive Order 13175: Consultation and Coordination with Indian Tribal Governments?

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications within the meaning of Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The proposed rule would impose no new requirements or costs on tribal governments, nor does it alter the relationship or distribution of power or responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

However, EPA identified two Native American communities in the vicinity of the Yolo County Landfill, the Rumsey and Cortina Rancherias. EPA notified the governments of both tribes of this project and proposed site-specific rule, and both tribes expressed interest in being kept informed of the project as it progresses.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

I. Does this Rule Comply with the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless such practice is inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (for example, material specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking however, does not involve any voluntary consensus standards.

List of Subjects in 40 CFR Part 258

Environmental protection, Landfill, Solid waste.

Dated: May 3, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set forth, part 258 of title 40 Chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 258—[AMENDED]

1. The authority citation for Part 258 continues to read as follows:

Authority: 33U.S.C. 1345(d) and (e); 42 U.S.C. 6902(a), 6907, 6912(a), 6944, 6945(c) and 6949a(c).

Subpart C—Operating Criteria

2. Amend § 258.28 to remove the period and add "; or" in its place at the end of paragraph (a)(2) and to add paragraph (a)(3) to read as follows:

§ 258.28 Liquid restrictions.

* * * * *

(a) * * *

(3) The MSWLF unit is a Project XL MSWLF and meets the applicable requirements of § 258.41. The owner or operator must place documentation of the landfill design in the operating record and notify the State Director that it has been placed in the operating record.

* * * * *

Subpart D—Design Criteria

3. Subpart D is amended by adding a new § 258.41 to read as follows:

§ 258.41 Project XL Bioreactor Landfill Projects.

(a) [Reserved]

(b) This section applies solely to Module D of the Yolo County Central Landfill owned and operated by the County of Yolo, California, or its successors. It allows the Yolo County Central Landfill to add bulk or noncontainerized liquid wastes to Module D under the following conditions:

(1) Module D shall be designed and constructed with a composite liner as defined in § 258.40(b) and a leachate collection system that functions and continuously monitors to ensure that less than 30 centimeters depth of leachate is maintained over the liner.

(2) The owner or operator of the Yolo County Central Landfill must ensure that the concentration values listed in Table 1 of § 258.40 are not exceeded in the uppermost aquifer at the relevant point of compliance for the landfill as

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specified by the State Director under § 258.40(d).

(3) The owner or operator of the Yolo County Central Landfill shall demonstrate that the addition of any liquids to Module D does not result in an increased leakage rate, and does not result in liner slippage, or otherwise compromise the integrity of the landfill and its liner system, as determined by the State Director.

(4) The owner or operator of the Yolo County Central Landfill must ensure that Module D is operated in such a manner so as to prevent any landfill fires from occurring.

(5) The owner or operator of the Yolo County Central Landfill shall submit an annual report to the EPA Regional Administrator and the State Director. The first report is due within 18 months after the effective date of this rule. The report shall state what progress the Project XL is making towards the superior environmental performance as stated in the Final Project Agreement. The data in paragraphs (b)(5)(i) through (xvi) of this section may be summarized, but, at a minimum, shall contain the minimum, maximum, median, and average data points as well as the frequency of monitoring, as applicable. These reporting provisions shall remain in effect for as long as the owner or operator of the Yolo County Central Landfill continues to add liquid waste to Module D. Additional monitoring, recordkeeping and reporting requirements related to landfill gas will be contained in a permit executed by the local air quality management district pursuant to the Clean Air Act, 42 U.S.C. 7401 *et seq.* Application of this site-specific rule to the Yolo County Central Landfill is conditioned upon the issuance of such permit. The annual report will include, at a minimum, the following data:

(i) Amount of landfill gas generated;
(ii) Percent capture of landfill gas;
(iii) Quality of the landfill gas;
(iv) Amount and type of liquids applied to the landfill;
(v) Method of liquids application to the landfill;
(vi) Quantity of waste placed in the landfill;
(vii) Quantity and quality of leachate collected, including at least the following parameters, monitored, at a minimum, on an annual basis:
(A) pH;
(B) Conductivity;
(C) Dissolved oxygen;
(D) Dissolved solids;
(E) Biochemical oxygen demand;
(F) Chemical oxygen demand;
(G) Organic carbon;
(H) Nutrients, (including ammonia ["NH_3"], total kjeldahl nitrogen ["TKN"], and total phosphorus ["TP"]);
(I) Common ions;
(J) Heavy metals;
(K) Organic priority pollutants; and
(L) Flow rate;
(viii) Quantity of leachate recirculated back into the landfill;
(ix) Information on the pretreatment of solid and liquid waste applied to the landfill;
(x) Landfill temperature;
(xi) Landfill moisture content;
(xii) Data on the leachate pressure (head) on the liner;
(xiii) The amount of aeration of the waste;
(xiv) Data on landfill settlement;
(xv) Any information on the performance of the landfill cover; and
(xvi) Observations, information, or studies made on the physical stability of the landfill.

(6) This section will remain in effect until [five years after the effective date of the final rule]. By [insert 5 years from the date of publication of the final rule], Yolo County Central Landfill shall return to compliance with the regulatory requirements which would have been in effect absent the flexibility provided through this Project XL site-specific rule. This section applies to Phase I of Module D. This Section also will apply to any phase of Module D beyond Phase I only if a second Final Project Agreement that describes the additional phase has been signed by representatives of EPA Region 9, Yolo County, and the State of California. Phase 1 of Module D is defined as the operation of twelve acres of the twenty acre Module D.

[FR Doc. 01–11672 Filed 5–8–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 050101D]

RIN 0648–AI50

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Amendment 14

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the Pacific Fishery Management Council (Council) has submitted Amendment 14 to the Pacific Coast Groundfish Fishery Management Plan (FMP) for Secretarial review. Amendment 14 would implement a permit stacking program for limited entry permits with sablefish endorsements. This permit stacking program would lengthen the limited entry, fixed gear primary sablefish fishery. It is intended to increase safety in that fishery and provide flexibility to participants. The permit stacking program would also associate sablefish cumulative limits with permits, rather than with vessels, so that a single vessel could carry multiple permits and harvest multiple sablefish cumulative limits during the primary sablefish fishery.

DATES: Comments on Amendment 14 must be received on or before July 9, 2001.

ADDRESSES: Comments on Amendment 14 or supporting documents should be sent to Donna Darm, Acting Administrator, Northwest Region, NMFS, Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070; or to Rebecca Lent, Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.

Copies of Amendment 14 and the environmental assessment/ regulatory impact review (EA/RIR) are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Ave., Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier or Becky Renko (Northwest Region, NMFS), phone: 206–526–6140; fax: 206–526–6736 and; e-mail: *yvonne.dereynier@noaa.gov, becky.renko@noaa.gov* or Svein Fougner (Southwest Region, NMFS) phone: 562–980–4000; fax: 562–980–4047 and; e-mail: *svein.fougner@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also accessible via the Internet at the website of the Office of the Federal Register: <<http://www.access.gpo.gov/su-docs/aces/aces140.html.≤≤

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any FMP or plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, immediately publish a notification in the **Federal Register** that the FMP or amendment is available for public review and comment. NMFS will consider the public comments received during the comment period described here in determining whether to approve the FMP or amendment. Amendment 14 would expand on Amendment 9 to the FMP, which restricted participation in the limited entry, regular fixed gear fishery to permits that met historical landings qualifications. Permit holders who met the landings qualifications were issued sablefish endorsements. The regulations that implemented Amendment 9 require that vessels hold permits with sablefish endorsements to participate in the regular sablefish fishery. Under a 1998 rulemaking following Amendment 9, permits with sablefish endorsements were assigned to one of three tiers based on their landings histories. During the regular fishery, a vessel is allowed to fish up to the cumulative limit associated with its particular tier. Cumulative limits are graduated so that permits associated with higher historic landings are in tiers that receive higher cumulative landings limits for current fisheries.

Under the current FMP, cumulative limits are associated with vessels, which means that a vessel may land no more of a particular species than its cumulative limit for a given period. Amendment 14 would allow sablefish cumulative limits in the regular fishery to be associated with permits rather than vessels, and would allow a single vessel to carry multiple permits. As a result, a single vessel could land multiple cumulative limits of sablefish during the period of the regular fishery. Allowing vessels to "stack" permits to harvest multiple cumulative limits of sablefish is expected to improve fleet efficiency by reducing the number of vessels participating in the fishery. Pub. L. 106–554 has also granted this fishery exemption from the ongoing Magnuson-Stevens Act moratorium on implementing new individual quota programs to allow the Council to set a season of several months duration. For the past several years, the regular fishery has been brief, 5–10 days duration. Amendment 14 is intended to take advantage of this new exemption from Congress to improve the safety of this derby fishery by giving participants sufficient time to fully harvest their cumulative limits.

Public comments on Amendment 14 must be received by July 9, 2001, to be considered by NMFS in the decision whether to approve Amendment 14. A proposed rule to implement Amendment 14 has been submitted for Secretarial review and approval. NMFS expects to publish and request public comment on the proposed regulations to implement Amendment 14 in the near future.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 3, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–11700 Filed 5–8–01; 8:45 am]

BILLING CODE 3510–22–S

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Notices

Federal Register
Vol. 66, No. 90
Wednesday, May 9, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[FV–01–331]

United States Standards for Grades of Dried Figs

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is soliciting comments on its proposal to revise the United States Standards for Grades of Dried Figs. USDA has received a petition from a trade association to revise the current grade standards for dried figs by eliminating the present Grade "A" quality level and changing the present Grade "B" quality level to the new Grade "A". This proposal also would elevate the present Grade "C" quality level to a new Grade "B" level thus eliminating the Grade "C" designation from the United States Standards for Grades of Dried Figs. The existing grade level Substandard would remain the same. These changes have been requested by the industry in order to bring the standards for dried figs in line with the present quality levels being marketed today and provide guidance in the effective utilization of dried figs.

DATES: Comments may be submitted on or before July 9, 2001.

ADDRESSES: Written comments may be submitted to: Lydia E. Berry, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0247,1400 Independence Avenue SW., Washington, DC 20250–0247; fax (202) 690–1087; or e-mail *lydia.berry@usda.gov*.

Comments should reference the date and page of this issue of the **Federal Register**. All comments received will be made available for public inspection at the address listed above during regular business hours and on the Internet.

The current United States Standards for Grades of Dried Figs, along with the proposed changes, are available either through the address cited above or by accessing AMS's Home Page on the Internet at: www.ams.usda.gov/standards/. Any comments received, regarding this proposed standard will also be posted on that site.

FOR FURTHER INFORMATION CONTACT: Lydia E. Berry at (202) 720–5021 or e-mail at *lydia.berry@usda.gov*.

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946, as amended, directs and authorizes the Secretary of Agriculture "to develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices * * *" AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables no longer appear in the Code of Federal Regulations but are maintained by USDA/AMS/Fruit and Vegetable Programs.

AMS is proposing to revise the U.S. Standards for Grades of Dried Figs using the procedures that appear in part 36 of Title 7 of the Code of Federal Regulations (7 CFR part 36).

The California Fig Advisory Board requested that USDA should revise the United States Standards for Grades of Dried Figs. The Board provided information on style, sample size and descriptions to AMS to revise the standard. A series of meetings were held between representatives of the fig industry and AMS staff. The industry representatives arrived at a consensus and submitted a letter to AMS with the revisions they desired to be incorporated into the standard.

Based on the submitted information, AMS is proposing to revise the standard for dried figs following the standard format for U.S. grade Standards. AMS is proposing to eliminate the present Grade "A" quality level and to change the present Grade "B" to the new Grade "A". This proposal also will elevate the present Grade "C" quality level to a new Grade "B" quality level and thereby eliminate the present Grade "C" quality level. The existing grade level "Substandard" will remain the same. This proposal would establish grade levels "A", "B" and "Substandard" and with corresponding score points assigned for each level. A proposed tolerance for each quality factor for each grade level would be established. These changes are proposed to bring the standard for dried figs in line with present quality levels being marketed today and provide guidance in the effective utilization of dried figs. The grade of a sample unit of dried figs is ascertained by considering the factors of varietal characteristics, size, moisture, and flavor and odor which are not scored; the ratings for the factors of color, uniformity of size, defects, and maturity and development, which are scored; the total score; and the limiting rules which apply. The grade of a lot of dried figs covered by these standards is determined by the procedures set forth in the Regulations Governing Inspection and Certification of Processed Products Thereof, and Certain Other Processed Foods Products (§ 52.1 to § 52.83).

This notice provides for a 60 day comment period for interested parties to comment on changes to the standards.

Authority: 7 U.S.C. 1621–1627.

Dated: May 3, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–11688 Filed 5–8–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Notice of Request for Approval of a New Information Collection

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Farm Service Agency (FSA) to request approval to collect information for use in the Land Use Pilot Project. The purpose of this pilot project is to determine the feasibility of offering an alternative method of reporting commodity data. Producers will make required commodity reports by using the Land Use pilot project.

DATES: Comments on this notice must be received on or before June 8, 2001.

FOR FURTHER INFORMATION CONTACT: Contact Rebecca Davis, Production, Emergencies, and Compliance Division, USDA, FSA, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517, telephone number (202) 720–9882.

SUPPLEMENTARY INFORMATION:

Title: Land Use Pilot Project.

OMB Control Number: 0560–NEW

Type of Request: Approval of a new information collection.

Abstract: This pilot was developed in response to OMB requests to lessen commodity reporting burden on producers. The Land Use Pilot Project modernizes and streamlines the commodity reporting function by lessening customer/producer and Service Center reporting burden while improving efficiency. The reporting method is customer/producer-based and focuses on collecting and maintaining information needed for Service Center program determinations, to serve as a customer/producer resource, and facilitate data sharing partnerships with other governmental and non-governmental entities. The collection process will be accomplished through the use of personal computers at the Service Center, customer/producer's home or at other remote sites. Currently the land use information that is used as a basis for many USDA programs is acquired independently by the various agencies. Data sharing between agencies is often informal and there is little, if any, use of alternative acquisition sources outside of the partner agencies, with the exception of the Risk Management Agency (RMA) obtaining production totals from reinsurance companies. This leads to duplicative measures to obtain and manage information, use of out-dated information and unawareness of existing determination and appeal status. The Land Use Pilot Project provides a national commodity reporting database that can be queried by the Service Center agencies and other USDA agencies and their partners. In addition, this allows greater land use information sharing with agencies such as RMA and Animal and Plant Health Inspection Service (APHIS), that are not part of the USDA Service Centers. The information can also be shared with State and local Governments that need farm or customer/producer-level information.

Additionally, the current system was designed primarily for the original program crops of wheat, corn, grain sorghum, barley and oats. The growth of alternative crops and aquaculture have produced reporting needs that are not met by the attributes associated with these acreage-based crops. The Land Use Project will provide a reliable source of shared land use data that will be flexible enough to capture a wide range of commodity and farming practice variations. Some farming practices performed on the land will be identified but may not be collected without a specific partnership or program requirement necessitating them. Standardizing information will facilitate its use by USDA programs and will provide the capability for the information to be acquired from and used by partners. The user chooses program(s) for which a report is intended. The program selection determines the required commodity attributes to be reported, thus resulting in time savings for both the Service Center and the customer/producer. The process allows commodity reporting through the selection of customer/producer with their associated link(s) to land. Land (farm, tract and common land units (CLUs), formerly known as "fields") is displayed allowing users to designate, by a "point and click" method, reported commodity locations directly onto a digital map's CLUs. Digital maps may be printed for the producer which will show commodity(ies) reported with associated commodity location. When a commodity is selected which applies to all fields, a "select all" CLU function may be used to eliminate designating individual CLU selection(s). Historical commodity reports (previous year's reports) may be selected to populate CLUs when minimal change is needed (i.e., different commodity report date). In addition to historical commodity selection options, when accessing the current commodity reporting function and selecting a commodity that had been reported during the most recent report, that commodity will automatically populate the previously reported CLUs. Built into this package is an acreage reduction calculator which automatically calculates any deductions as designated by the user which eliminates the need to hand calculate acreage deductions such as sod waterways. Revised and updated commodity tables have been incorporated as an integrated part of the Land Use Pilot Project which has simplified the commodity selection options.

Land Use Project objectives are to:

(1) Provide a reliable source of land use data usable by multiple entities to:

(a) eliminate redundancy capturing and storing data and

(b) develop data standards for Land Use information that allows input and verification of data from multiple sources.

(2) Minimize public and Service Center burden by;

(a) eliminating redundant reporting requirements,

(b) reducing processing time for program applications by automatically populating application fields with previously reported land use data and

(c) selecting the program for which a report is being made. The program selection allows only required commodities to be reported.

(3) Maximize use of geo-spatial and partnership data to reduce producer's acreage and production reporting requirements by;

(a) enabling customers/producers to report land use data for all of their farming interests at any Service Center or alternative reporting site and

(b) re-engineering reporting procedures.

(4) Enhance the reporting process of customer/producer and Service Center personnel by developing alternative customer/producer reporting methods such as web-based and mail-in reporting.

The Land Use Pilot Project requires the customer/producer only to report commodity, acres or units, owner, operator and shares, and planting date and is a drastic departure from the Farm Service Agency's (FSA) historical collection of commodity and land use data.

FSA's approach to collecting this information is to collect only the information needed to support program eligibility and compliance requirements. Three pilot sites chosen for the Land Use Pilot Project are: Okeechobee, Florida; Miami, Kansas; and, The Dalles, Oregon.

Estimate of Burden: Public reporting burden for the Land Use Pilot Project is estimated to average 3.75 minutes per response reflecting a 75 percent decrease in reporting time.

Respondents: Individual customers/producers.

Estimated Number of Respondents: 2340 × 3.75 minutes per response time.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 146.25 burden hours times $12.00 per hour = $1755.

Proposed topics for comment include: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the

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information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information collected; or (d) ways to minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or techniques or other forms of information technology.

Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Rebecca Davis, Production, Emergencies, and Compliance Division, USDA, FSA, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517, (202) 720–9882. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Signed at Washington, DC, on May 2, 2001.

James R. Little,

Acting Administrator, Farm Service Agency.

[FR Doc. 01–11687 Filed 5–8–01; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed collection; comment request -The Integrity Profile (TIP)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Food and Nutrition Service's intention to request OMB review of The Integrity Profile data collection and reporting system.

DATES: Comments on this notice must be received or postmarked by July 9, 2001.

ADDRESSES: Send comments and requests for copies of this information collection to: Patricia Daniels, Director, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Patricia Daniels, (703) 305–2746.

SUPPLEMENTARY INFORMATION:

Title: The Integrity Profile (TIP).

OMB Number: 0584–0401.

Expiration Date: 6–30–01.

Type of Request: Extention of a Currently Approved Collection .

Abstract: State agencies administering the Special Supplemental Nutrition Program for Women, Infants and Children (WIC Program) are required by 7 CFR 246.12(i)(3) to submit to the Food and Nutrition Service (FNS) an annual summary of the results of their vendor monitoring efforts in order to provide Congress, senior FNS officials, as well as the general public, assurance that every reasonable effort is being made to ensure integrity in the WIC Program.

Since 1989, integrity data has been required to be submitted annually for analysis and the The Integrity Profile (TIP) report has been traditionally produced by FNS which shows the level of monitoring and investigation conducted by WIC State agencies to detect and eliminate, or substantially reduce, vendor fraud and abuse. Most State agencies downloaded the data from State systems and transmit it electronically to FNS.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20.8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: The Program Director of each WIC State agency, which is generally a State Health Department or an Indian Tribal Organization.

Estimated Number of Respondents: 88 respondents.

Estimated Number of Responses Per Respondent: One.

Estimated Total Annual Burden on Respondents: 1,830.4 hours.

Dated: April 27, 2001.

George A. Braley,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 01–11622 Filed 5–8–01; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Agricultural Policy Advisory Committee for Trade and the Agricultural Technical Advisory Committees for Trade; Reestablishment and Nominations.

AGENCY: Foreign Agricultural Service, USDA.

SUMMARY: Notice is hereby given that the Secretary of Agriculture, after consultation with the United States Trade Representative, has reestablished the Agricultural Policy Advisory Committee for Trade (APAC) and the Agricultural Technical Advisory Committees for Trade (ATACs). FAS also announces that nominations are being sought for persons to serve on the APAC and the ATACs.

DATES: Written nominations must be received by the Foreign Agricultural Service before or close of business June 8, 2001.

ADDRESSES: Send all nominating materials to Ms Sharon McClure, Foreign Agricultural Service, USDA, Room 5065–S, STOP 1001, 1400 Independence Avenue, SW., Washington, DC 20250–1001. The forms may also be submitted by fax to (202) 720–8097.

FOR FURTHER INFORMATION CONTACT: Comments regarding the reestablishment of these committees should be addressed to Ms. Sharon McClure, Acting Executive Secretary, Foreign Agricultural Service, USDA, 1400 Independence Avenue, SW., Room 5065–S, Stop 1001, Washington, DC 20250–1001, or Ms. Denise Bell at the same address. Persons interested in serving on the APAC or an ATAC, or in nominating individuals to serve, should contact FAS by telephone (202)–720–6829), fax (202–720–8097), by mail (Ms. Sharon McClure, Foreign Agricultural Service, USDA, 1400 Independence Avenue, SW., Room 5065–S, Stop 1001, Washington, DC 20250–1001) or electronic mail (*belld@fas.usda.gov*) and request Form AD–755 and Form SF–181. These forms are also available on the Internet at the FAS homepage. For Form AD–755, go to *http://www.fas.usda.gov/ad755.pdf.* For Form SF–181, go to *http://www.fas.usda.gov/admin/ad 1086.*

SUPPLEMENTARY INFORMATION: The Agricultural Policy Advisory Committee for Trade (APAC) and the Agricultural Technical Advisory Committees for Trade (ATACs) are authorized by sections 135(c)(1) and (2) of the Trade Act of 1974, as amended (Pub. L. No. 93–618, 19 U.S.C. 2155). The purpose of the committees is to provide advice to the Secretary and the U.S. Trade Representative concerning agricultural trade policy and are intended to ensure that representative elements of the private sector have an opportunity to make known their views to the U.S. Government.

Rechartering

Pursuant to the Federal Advisory Committee Act (5 U.S.C. Appendix), the Foreign Agricultural Service gives notice that the Secretary of Agriculture and the U.S. Trade Representative have reestablished the Agricultural Policy Advisory Committee for Trade (APAC) and the Agricultural Technical Advisory Committees for Trade (ATACs). In 1974, Congress established a private sector advisory committee system to ensure that U.S. trade policy and negotiation objectives adequately reflect U.S. commercial and economic interests. The private sector advisory system now consists of almost 40 committees, arranged in three tiers:

- The President's Advisory Committee on Trade and Policy Negotiations (ACTPN);
- Seven advisory committees, including the APAC, and;
- Over 30 technical advisory committees, including the ATACs. The renewal of such committees is in the public interest in connection with the duties of the U.S. Department of Agriculture (USDA) imposed by the Trade Act of 1974, as amended.

General Committee Information

All APAC and ATAC committee members are appointed by the Secretary of Agriculture and the U.S. Trade Representative (USTR), and serve at the directions of the Secretary and the USTR. To serve and attend committee meetings, members must be U.S. citizens, and have successfully completed a confidential security clearance. Committee members serve without compensation; they are not reimburbsed for their travel expense.

Committee meetings will be open to the public, unless the U.S. Trade Representative determines that the committees will be discussing issues the disclosure of which justify closing a meeting or portions of the meeting, in accordance with 5 U.S.C. 552(c).

All committee appointments expire on May 1, 2003; by the Secretary and USTR may renew an appointment for one or more additional terms.

Each committee has a chairperson, who is elected from the membership of that committee. In addition to their individual responsibilities, all communities are required to meet at the conclusion of negotiations for each trade agreement, and to provide a report on each agreement to the President, Congress, and to the u.S. Trade Representative.

[All meetings will be held in Washington, D.C.]

Agricultural Policy Advisory Committee for Trade (APAC)

The APAC has approximately 50 members, and is composed of a broad spectrum of agricultural interests. It provides advice concerning:

- Negotiating objectives and bargaining positions before the United States enters into a trade agreement;
- The operation of various U.S. trade agreements; and
- Other matters arising from the administration of U.S. trade policy.

Agricultural Technical Advisory Committees for Trade (ATACs)

The ATACs provide advice and information regarding trade issues which affect both domestic and foreign production in the commodities, drawing upon the technical competence and experience of its members. There are five ATACs, one for each of the following sectors:

- Grains, Feed, and Oilseeds;
- Animals and Animal Products;
- Fruits and Vegetables;
- Sweetners and Sweetner Products; and
- Tobacco, Cotton, and Peanuts.

Each ATAC has approximately 25 members, for a total of approximately 125 members.

Nominations and Selection of Members

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, marital status or sexual orientation. To ensure that the recommendations of the committees take into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Members are slected primarily for their expertise and knowledge of agriculture trade as it relates to policy and commodity specific products. No person, company, producer, farm organization, trade association, or other entity has a right to representation on a committee. All members serve at the discretion of the Secretary of Agriculture and the U.S. Trade Representative. In making selections, every effort will be made tomaintain balanced representation on the committees: representation from producers, farm and commodity organizations, processors, traders, consumers, as well as geographical balance.

Issued at Washington, D.C. this 1st day of May, 2001.

Dated: May 1, 2001.

Paul W. Fiddick,

Assistant Secretary for Administration.

[FR Doc. 01–11593 Filed 5–8–01; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers to be Used for Publication of Legal Notice of Appealable Decisions and Publication of Notice of Proposed Actions for Southern Region; Alabama, Kentucky, Georgia, Tennessee, Florida, Louisiana, Mississippi, Virginia, West Virginia, Arkansas, Oklahoma, North Carolina, South Carolina, Texas, Puerto Rico

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: Deciding Officers in the Southern Region will publish notice of decisions subject to administrative appeal under 36 CFR parts 215 and 217 in the legal notice section of the newspapers listed in the **SUPPLEMENTARY INFORMATION** section of this notice. As provided in 36 CFR part 215.5(a) and 36 CFR part 217.5(d), the public shall be advised through **Federal Register** notice, of the principal newspaper to be utilized for publishing legal notices of decisions. Newspaper publication of notice of decisions is in addition to direct notice of decisions to those who have requested notice in writing and to those known to be interested in or affected by a specific decision. Responsible Officials in the Southern Region will also publish notice of proposed actions under 36 CFR 215 in the newspapers that are listed in the **SUPPLEMENTARY INFORMATION** section of this notice. As provided in 36 CFR part 215.5(a), the public shall be advised, through **Federal Register** notice, of the principal newspapers to be utilized for publishing notices on proposed actions.

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DATES: Use of these newspapers for purposes of publishing legal notice of decisions subject to appeal under 36 CFR parts 215 and 217, and notices of proposed actions under 36 CFR part 215 shall begin on or after the date of this publication.

FOR FURTHER INFORMATION CONTACT: Norm Heintz, Acting Regional Appeals Coordinator, Southern Region, Planning, 1720 Peachtree Road, NW., Atlanta, Georgia 30309, Phone: 404–347–5235.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Southern Region will give legal notice of decisions subject to appeal under 36 CFR part 217 and the Responsible Officials in the Southern Region will give notice of decisions subject to appeal under 36 CFR 215 in the following newspapers which are listed by Forest Service administrative unit. Responsible Officials in the Southern Region will also give notice of proposed actions under 36 CFR part 215 in the following principal newspapers which are listed by Forest Service administrative unit. The timeframe for comment on a proposed action shall be based on the date of publication of the notice of the proposed action in the principal newspaper. The timeframe for appeal shall be based on the date of publication of the legal notice of the decision in the principal newspaper for both 36 CFR parts 215 and 217.

Where more than one newspaper is listed for any unit, the first newspaper listed is the principal newspaper that will be utilized for publishing the legal notices of decisions. Additional newspapers listed for a particular unit are those newspapers the Deciding Officer expects to use for purposes of providing additional notice. The timeframe for appeal shall be based on the date of publication of the legal notice of the decision in the principal newspaper.

The following newspapers will be used to provide notice.

Southern Region

Regional Forester Decisions

Affecting National Forest System lands in more than one state of the 13 states of the Southern Region and the Commonwealth of Puerto Rico *Atlanta Journal*, published daily in Atlanta, GA.

Affecting National Forest System lands in only one state of the 13 states of the Southern Region and the Commonwealth of Puerto Rico or only one Ranger District will appear in the principal newspaper elected by the National Forest of that state or Ranger District.

National Forests in Alabama, Alabama

Forest Supervisor Decisions

Montgomery Advertiser, published daily in Montgomery, AL

District Ranger Decisions

Bankhead Ranger District: Northwest Alabamian, published weekly (Monday & Thursday) in Haleyville, AL

Conecuh Ranger District: The Andalusia Star News, published daily (Tuesday through Saturday) in Andalusia, AL

Oakmulgee Ranger District: The Tuscaloosa News, published daily in Tuscaloosa, AL

Shal Creek Ranger District: The Anniston Star, published daily in Anniston, AL

Talladega Ranger District: The Daily Home, published daily in Talladega, AL

Tuskegee Ranger District: Tuskegee News, published weekly (Thursday) in Tuskegee, AL

Caribbean National Forest, Puerto Rico

Forest Supervisor Decisions

El Nuevo Dia, published daily in Spanish in San Juan, PR

San Juan Star, published daily in English in San Juan, PR

Chattahoochee-Oconee National Forest, Georgia

Forest Supervisor Decisions

The Times, published daily in Gainesville, GA

District Ranger Decisions

Armuchee Ranger District: Walker County Messenger, published bi-weekly (Wednesday & Friday) in LaFayette, GA

Toccoa Ranger District: The News Observer published weekly bi-weekly (Tuesday & Friday) in Blue Ridge, GA

Brasstown Ranger District: North Georgia News, published weekly (Wednesday) in Blairsville, GA

Tallulah Ranger District: Clayton Tribune, published weekly (Thursday) in Clayton, GA

Chattooga Ranger District: Northeast Georgian, published twice weekly (Tuesday & Friday) in Cornelia, GA

Chieftain & Toccoa Record, published twice weekly (Tuesday & Friday) in Toccoa, GA

White County News Telegraph, published weekly (Thursday) in Cleveland, GA

The Dahlonega Nuggett, published weekly (Thursday) in Dahlonega, GA

Cohutta Ranger District: Chatsworth Times, published weekly (Wednesday) in Chatsworth, GA

Oconee Ranger District: Eatonton Messenger, published weekly (Thursday) in Eatonton, GA

Cherokee National Forest, Tennessee

Forest Supervisor Decisions

Knoxville News Sentinel, published daily in Knoxville, TN (covering McMinn, Monroe, and Polk Counties)

Johnson City Press, published daily in Johnson City, TN (covering Carter, Cocke, Greene, Johnson, Sullivan, Unicoi and Washington Counties)

District Ranger Decisions

Ocoee-Hiwassee Ranger District: Polk County News, published weekly (Wednesday) in Benton, TN

Tellico-Hiwassee Ranger District: Monroe County Advocate, published weekly (Thursday) in Sweetwater, TN

Nolichucky-Unaka Ranger District: Johnson City Press, published daily in Johnson City, TN

Watauga Ranger District: Johnson City Press, published daily in Johnson City, TN

Daniel Boone National Forest, Kentucky

Forest Supervisor Decisions

Lexington Herald-Leader, published daily in Lexington, KY

District Ranger Decisions

Morehead Ranger District: Morehead News, published bi-weekly (Tuesday and Friday) in Morehead, KY

Stanton Ranger District: The Clay City Times, published weekly (Thursday) in Stanton, KY

London Ranger District: The Sentinel-Echo, published tri-weekly (Monday, Wednesday, and Friday) in London, KY

Somerset Ranger District: Commonwealth-Journal, published daily (Sunday through Friday) in Somerset, KY

Stearns Ranger District: McCreary County Record, published weekly (Tuesday) in Whitley City, KY

Redbird Ranger District: Manchester Enterprise, published weekly (Thursday) in Manchester, KY

National Forests in Florida, Florida

Forest Supervisor Decisions

The Tallahassee Democrat, published daily in Tallahassee, FL

District Ranger Decisions

Apalachicola Ranger District: The Liberty Journal, published weekly (Wednesday) in Bristol, FL

Lake George Ranger District: The Ocala Star Banner, published daily in Ocala, FL

Osceola Ranger District: The Lake City Reporter, published daily (Monday–Saturday) in Lake City, FL

Seminole Ranger District: The Daily Commercial, published daily in Leesburg, FL

Wakulla Ranger District: The Tallahassee Democrat, published daily in Tallahassee, FL

Francis Marion & Sumter National Forest, South Carolina

Forest Supervisor Decisions

The State, published daily in Columbia, SC

District Ranger Decisions

Enoree Ranger District: Newberry Observer, published tri-weekly (Monday, Wednesday, and Friday) Newberry, SC

Andrew Pickens Ranger District: The Daily Journal, published daily in Seneca, SC

Long Cane Ranger District: The Augusta Chronicle, published daily in Augusta, GA

Wambaw Ranger District: Post and Courier, published daily in Charleston, SC

Witherbee Ranger District: Post and Courier, published daily in Charleston, SC

George Washington and Jefferson National Forests, Virginia

Forest Supervisor Decisions

Roanoke Times, published daily in Roanoke, VA

District Ranger Decisions

Lee Ranger District: Shenandoah Valley Herald, published weekly (Wednesday) in Woodstock, VA

Warm Springs Ranger District: The Recorder, published weekly (Thursday) in Monterey, VA

James River Ranger District: Virginian Review, published daily (except Sunday) in Covington, VA

Deerfield Ranger District: Daily News Leader, published daily in Staunton, VA

Dry River Ranger District: Daily News Record, published daily (except Sunday) in Harrisonburg, VA

New River Ranger District: Roanoke Times, published daily in Roanoke, VA

Glenwood/Pedlar Ranger District: Roanoke Times, published daily in Roanoke, VA

New Castle Ranger District: Roanoke Times, published daily in Roanoke, VA

Mount Rogers National Recreation Area: Bristol Herald Courier, published daily in Bristol, VA

Clinch Ranger District: Kingsport-Times News, published daily in Kingsport, TN

Kisatchie National Forest, Louisiana

Forest Supervisor Decisions

The Town Talk, pupblished daily in Alexandria, LA

District Ranger Decisions

Caney Ranger District: Minden Press Herald, published daily in Minden, LA Homer Guardian Journal, published weekly (Wednesday) in Homer, LA

Catahoula Ranger District: The Town Talk, published daily in Alexandria, LA

Calcasieu Ranger District: The Town Talk, published daily in Alexandria, LA

Kisatchie Ranger District: Natchitoches Times, published daily (Tuesday–Friday and on Sunday) in Natchitoches, LA

Winn Ranger District: Winn Parish Enterprise, published weekly (Wednesday) in Winnfield, LA

Land Between the Lakes National Recreation Area, Kentucky and Tennessee: The Paducah Sun, published daily in Paducah, KY

National Forests in Mississippi, Mississippi

Forest Supervisor Decisions

Clarion-Ledger, published daily in Jackson, MS

District Ranger Decisions

Bienville Ranger District: Clarion-Ledger, published daily in Jackson, MS

Chickasawhay Ranger District: Clarion-Ledger, published daily in Jackson, MS

Delta Ranger District: Clarion-Ledger, published daily in Jackson, MS

De Soto Ranger District: Clarion-Ledger, published daily in Jackson, MS

Holly Springs Ranger District: Clarion-Ledger, published daily in Jackson, MS

Homochitto Ranger District: Clarion-Ledger, published daily in Jackson, MS

Tombigbee Ranger District: Clarion-Ledger, published daily in Jackson, MS

National Forests in North Carolina, North Carolina

Forest Supervisor Decisions

The Asheville Citizen-Times, published daily in Asheville, NC

District Ranger Decisions

Appalachian Ranger District: The Asheville Citizen-Times, published daily in Asheville, NC

Cheoah Ranger District: Graham Star, published weekly (Thursday) in Robbinsville, NC

Croatan Ranger District: The Sun Journal, published weekly (Sunday through Friday) in New Bern, NC

Grandfather Ranger District: McDowell News, published daily in Marion, NC

Highlands Ranger District: The Highlander, published weekly (mid May-mid Nov Tues & Fri; mid Nov-mid May Tues only) in Highlands, NC

Pisgah Ranger District: The Asheville Citizen-Times, published daily in Asheville, NC

Tusquitee Ranger District: Cherokee Scout, published weekly (Wednesday) in Murphy, NC

Uwharrie Ranger District: Montgomery Herald, published weekly (Wednesday) in Troy, NC

Wayah Ranger District: The Franklin Press, published bi-weekly (Wednesday and Friday) in Franklin, NC

Ouachita National Forest, Arkansas, Oklahoma

Forest Supervisor Decisions

Arkansas Democrat-Gazette, published daily in Little Rock, AR

District Ranger Decisions

Caddo Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR

Fourche Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR

Jessieville/Winona Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR

Mena/Oden Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR

Poteau/Cold Springs Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR

Womble Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR

Choctaw Ranger District: Tulsa World, published daily in Tulsa, OK

Kiamichi Ranger District: Tulsa World, published daily in Tulsa, OK

Tiak Ranger District: Tulsa World, published daily in Tulsa, OK

Ozark-St. Francis National Forest: Arkansas

Forest Supervisor Decisions

The Courier, published daily (Tuesday through Sunday) in Russellville, AR

District Ranger Decisions

Sylamore Ranger District: Stone County Leader, published weekly (Tuesday) in Mountain View, AR

Buffalo Ranger District: Newton County Times, published weekly in Jasper, AR

Bayou Ranger District: The Courier, published daily (Tuesday through Sunday) in Russellville, AR

Pleasant Hill Ranger District: Johnson County Graphic, published weekly (Wednesday) in Clarksville, AR

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Boston Mountain Ranger District: Southwest Times Record, published daily in Fort Smith, AR

Magazine Ranger District: Southwest Times Record, published daily in Fort Smith, AR

St. Francis Ranger District: The Daily World, published daily (Sunday through Friday) in Helena, AR

National Forests and Grasslands in Texas, Texas

Forest Supervisor Decisions

The Lufkin Daily News, published daily in Lufkin, TX

District Ranger Decisions

Angelina National Forest: The Lufkin Daily News, published daily in Lufkin, TX

Davy Crockett National Forest: The Lufkin Daily News, published daily in Lufkin, TX

Sabine National Forest: The Lufkin Daily News, published daily in Lufkin, TX

Sam Houston National Forest: The Courier, published daily in Conroe, TX

Caddo & LBJ National Grasslands: Denton Record-Chronicle, published daily in Denton, TX

Dated: May 1, 2001.

David G. Holland,

Deputy Regional Forester.

[FR Doc. 01–11612 Filed 5–8–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Revised Land and Resource Management Plan, Wasatch-Cache National Forest, Utah

AGENCY: Forest Service, USDA.

ACTION: Notice of preliminary availability to release a draft environmental impact statement in conjunction with revision of the Land and Resource Management Plan for the Wasatch-Cache National Forest located in Box Elder, Cache, Davis, Duchesne, Morgan, Rich, Salt Lake, Summit, Tooele, Wasatch, and Weber counties, Utah; and Uinta County, Wyoming.

SUMMARY: The Department of Agriculture, Forest Service will release a Draft Environmental Impact Statement in conjunction with a revision of the Land and Resource Management Plan (hereinafter referred to as Proposed Forest Plan) for the Wasatch-Cache National Forest. Documents will be transmitted to the public on or before May 9, 2001. With publication of this notice, the Forest will meet the requirements of the NFMA planning regulations issued in November, 2000 to allow completion of the Proposed Forest Plan under the 1982 Planning Regulations (36 CFR part 219). An electronic version of the documents is being posted on the forest website, www.fs.fed.us/wcnf/, and will be available on or before May 4, 2001.

DATES: Comments concerning the Draft Environmental Impact Statement and Proposed Forest Plan should be received in writing 120 days from the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register** (estimated to be May 18, 2001).

ADDRESSES: Send written comments to: Tom Tidwell, Forest Supervisor, Wasatch-Cache National Forest, 8236 Federal Building, 125 South State Street, Salt Lake City, Utah, 84138.

FOR FURTHER INFORMATION CONTACT: Melissa Blackwell, Planning Team Leader, Wasatch-Cache National Forest (801) 524–3908.

Responsible official: Jack Blackwell, Intermountain Regional Forester, at 324 25th Street, Ogden, UT 84401.

Dated: May 3, 2001.

Jack G. Troyer,

Deputy Regional Forester.

[FR Doc. 01–11613 Filed 5–8–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2002 Economic Census Covering The Wholesale Trade Sector.

Form Number(s): Too numerous to list here.

Agency Approval Number: none.

Type of Request: New collection.

Burden: 720,000 hours in FY 2003.

Number of Respondents: 480,000.

Avg Hours Per Response: 1.5 hours.

Needs and Uses: The U.S. Census Bureau requests Office of Management and Budget approval of the information collection forms it will use in conducting the 2002 Economic Census covering the Wholesale Trade Sector. The wholesale trade sector comprises establishments primarily engaged in the selling or arranging the purchase or sale of durable nonconsumer goods, selling goods for resale, and the sale of other goods from establishments that operate from a warehouse or office and do not normally advertise directly to the general public. The census will use a mail canvass, supplemented by data from Federal administrative records, to measure the economic activity of more than 480,000 wholesale establishments classified in the North American Industry Classification System (NAICS).

The economic census will produce basic statistics by kind of business on number of establishments, sales, payroll, employment, inventories, and operating expenses. It also will yield a variety of subject statistics, including sales by commodity line; e-commerce sales; sales by class of customer; employment by principal activity; measures of gross margin and gross profit; and other industry-specific measures, such as bulk storage capacity by type of facility for petroleum bulk stations and terminals. Basic statistics will be summarized for the United States, states, and metropolitan areas, and counties and places having 2,500 inhabitants or more. Tabulations of subject statistics also will present data for the United States and, in some cases, for states and metropolitan areas.

The economic census is the primary source of facts about the structure and functioning of the Nation's economy and features unique industry and geographic detail. Economic census statistics serve as part of the framework for the national accounts and provide essential information for government, business, and the general public. The Federal Government uses information from the economic census as an important part of the framework for the national income and product accounts, input-output tables, economic indexes, and other composite measures that serve as the factual basis for economic policy-making, planning, and program administration. Further, the census provides sampling frames and benchmarks for current surveys of business which track short-term economic trends, serve as economic indicators, and contribute critical source data for current estimates of gross domestic product. State and local governments rely on the economic census as a unique source of comprehensive economic statistics for small geographic areas for use in policy-making, planning, and program administration. Finally, industry, business, academe, and the general public use information from the economic census for evaluating markets, preparing business plans, making business decisions, developing economic models and forecasts, conducting economic research, and establishing benchmarks for their own sample surveys.

Affected Public: Businesses or other for-profit organizations; individuals or households; not-for-profit institutions; state, local, or tribal government.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 USC, Sections 131 and 224.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: May 3, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–11605 Filed 5–8–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2002 Economic Census Covering Retail Trade and Accommodation and Food Services Sectors.

Form Number(s): Too numerous to list here.

Agency Approval Number: none.

Type of Request: new collection.

Burden: 1,282,100 hours in FY 2003.

Number of Respondents: 1,615,029.

Avg Hours Per Response: 48 minutes.

Needs and Uses: The U.S. Census Bureau requests Office of Management and Budget approval of the information collection forms it will use in conducting the 2002 Economic Census covering the Retail Trade and Accommodation and Food Services Sectors. The retail trade sector comprises establishments primarily engaged in selling merchandise, generally without transformation, and rendering services incidental to the sale of merchandise. The accommodation and food services sector comprises establishments providing customers with lodging and/or preparing meals, snacks, and beverages for immediate consumption. The census will use a mail canvass, supplemented by data from Federal administrative records, to measure the economic activity of more than 1.8 million establishments classified in the North American Industry Classification System (NAICS).

The economic census will produce basic statistics by kind of business on number of establishments, sales, payroll, and employment. It also will yield a variety of subject statistics, including sales by merchandise line; sales by class of customer; and other industry-specific measures, such as gallon sales of automotive fuels by gasoline service stations, number of prescriptions filled by drug stores, and number of guestrooms provided by hotels. Basic statistics will be summarized for the United States, states, metropolitan areas, counties, places having 2,500 inhabitants or more, and for zip code areas. Tabulations of subject statistics also will present data for the United States and, in some cases, for states and metropolitan areas.

The economic census is the primary source of facts about the structure and functioning of the Nation's economy and features unique industry and geographic detail. Economic census statistics serve as part of the framework for the national accounts and provide essential information for government, business, and the general public. The Federal Government uses information from the economic census as an important part of the framework for the national income and product accounts, input-output tables, economic indexes, and other composite measures that serve as the factual basis for economic policy-making, planning, and program administration. Further, the census provides sampling frames and benchmarks for current surveys of business which track short-term economic trends, serve as economic indicators, and contribute critical source data for current estimates of gross domestic product. State and local governments rely on the economic census as a unique source of comprehensive economic statistics for small geographic areas for use in policy-making, planning, and program administration. Finally, industry, business, academe, and the general public use information from the economic census for evaluating markets, preparing business plans, making business decisions, developing economic models and forecasts, conducting economic research, and establishing benchmarks for their own sample surveys.

Affected Public: Businesses or other for-profit organizations; individuals or households; not-for-profit institutions; state, local, or tribal governments.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 USC, Sections 131 & 224.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: May 3, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–11606 Filed 5–8–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–815]

Pure Magnesium and Alloy Magnesium from Canada: Preliminary Results of Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative reviews.

SUMMARY: The Department of Commerce is conducting administrative reviews of the countervailing duty orders on pure magnesium and alloy magnesium from Canada for the period January 1 through December 31, 1999. We have preliminarily determined that certain producers/exporters have received net subsidies during the period of review. If the final results remain the same as these preliminary results, we will instruct the Customs Service to assess countervailing duties as detailed in the Preliminary Results of Reviews section

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of this notice. Interested Parties are invited to comment on these preliminary results (see the Public Comment section of this notice).

EFFECTIVE DATE: May 9, 2001.

FOR FURTHER INFORMATION CONTACT: Sally Hastings or Craig Matney, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3464 or (202) 482–1778, respectively.

Case History

On August 31, 1992, the Department of Commerce ("the Department") published in the **Federal Register** the countervailing duty orders on pure magnesium and alloy magnesium from Canada (57 FR 39392). On August 16, 2000, the Department published a notice of "Opportunity to Request Administrative Review" of these countervailing duty orders (65 FR 49962). We received a timely request for review from Norsk Hydro Canada Inc. ("NHCI"). We initiated these reviews, covering calendar year 1999, on October 2, 2000 (65 FR 58733). In accordance with 19 CFR 351.213(b), these reviews cover NHCI, the only producer or exporter of the subject merchandise for which a review was specifically requested. These reviews cover 16 subsidy programs.

On December 5, 2000, we issued countervailing duty questionnaires to NHCI, the Government of Quebec ("GOQ"), and the Government of Canada ("GOC"). We received questionnaire responses from the GOC on January 10, 2001, and from NHCI and the GOQ on January 11, 2001.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of section 751(a) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("URAA"), effective January 1, 1995 ("the Act"). Unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (2001).

Scope of the Reviews

The products covered by these reviews are shipments of pure and alloy magnesium from Canada. Pure magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Magnesium alloys contain less than 99.8 percent magnesium by weight with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes.

The pure and alloy magnesium subject to review is currently classifiable under items 8104.11.0000 and 8104.19.0000, respectively, of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written descriptions of the merchandise subject to the orders are dispositive.

Secondary and granular magnesium are not included in the scope of these orders. Our reasons for excluding granular magnesium are summarized in *Preliminary Determination of Sales at Less Than Fair Value: Pure and Alloy Magnesium From Canada*, 57 FR 6094 (February 20, 1992).

Period of Review

The period of review ("POR") for which we are measuring subsidies is from January 1 through December 31, 1999.

Subsidies Valuation Information

Discount rate: As noted below, the Department preliminarily finds that NHCI benefitted from one countervailable subsidy program during the POR: Article 7 grants from the Québec Industrial Development Corporation. As in the investigations and previous administrative reviews of this case, we have used the company's cost of long-term, fixed-rate debt in the year in which this grant was approved as the discount rate for purposes of calculating the benefit pertaining to the POR.

Allocation period: In the investigations and previous administrative reviews of this case, the Department used, as the allocation period for non-recurring subsidies, the average useful life ("AUL") of renewable physical assets in the magnesium industry as recorded in the Internal Revenue Service's 1977 Class Life Asset Depreciation Range System ("the IRS tables"), *i.e.*, 14 years. Pursuant to section 351.524(d)(2) of the countervailing duty regulations, the Department will use the AUL in the IRS tables as the allocation period unless a party can show that the IRS tables do not reasonably reflect the company-specific AUL or the country-wide AUL for the industry. If a party can show that either of these time periods differs from the AUL in the IRS tables by one year or more, the Department will use the company-specific AUL or the country-wide AUL for the industry as the allocation period.

Neither NHCI nor the petitioner has contested using the AUL reported for the magnesium industry in the IRS tables. We are, therefore, continuing to allocate non-recurring benefits over 14 years.

Analysis of Programs

I. Program Preliminarily Determined to Confer Countervailable Subsidies

A. Article 7 Grant from the Québec Industrial Development Corporation ("SDI")

SDI (Société de Développement Industriel du Québec) administers development programs on behalf of the GOQ. SDI provides assistance under Article 7 of the SDI Act in the form of loans, loan guarantees, grants, assumptions of costs associated with loans, and equity investments. This assistance involves projects capable of having a major impact upon the economy of Québec. Article 7 assistance greater than 2.5 million dollars must be approved by the Council of Ministers and assistance over 5 million dollars becomes a separate budget item under Article 7. Assistance provided in such amounts must be of "special economic importance and value to the province." (*See Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada*, 57 FR 30946, 30948 (July 13, 1992) ("*Magnesium Investigation*").)

In 1988, NHCI was awarded a grant under Article 7 to cover a large percentage of the cost of certain environmental protection equipment. In the *Magnesium Investigation*, the Department determined that NHCI received a disproportionately large share of assistance under Article 7. On this basis, we determined that the Article 7 grant was limited to a specific enterprise or industry, or group of enterprises or industries, and, therefore, countervailable. In these reviews, neither the GOQ nor NHCI has provided new information which would warrant reconsideration of this determination.

In the *Magnesium Investigation*, the Department found that the Article 7 assistance received by NHCI constituted a non-recurring grant because it represented a one-time provision of funds. In the *Preliminary Results of First Countervailing Duty Administrative Reviews: Pure Magnesium and Alloy Magnesium From Canada*, 61 FR 11186, 11187 (March 19, 1996), we found this determination to be consistent with the principles enunciated in the Allocation section of the *General Issues Appendix* ("*GIA*") appended to the *Final Countervailing Duty Determination; Certain Steel Products from Austria*, 58 FR 37225, 37226 (July 9, 1993). In the current review, no new information has been placed on the record that would cause us to depart from this treatment. Therefore, in accordance with section 351.524(b)(2) of our regulations, we have continued to allocate the benefit of this grant over time. We used our standard grant methodology as described in section 351.524(d) of the regulations to calculate the countervailable subsidy. We divided the benefit attributable to the POR by NHCI's total sales of Canadian-manufactured products in the POR. On this basis, we preliminarily determine the countervailable subsidy from the Article 7 SDI grant to be 1.21 percent ad valorem for NHCI.

II. Programs Preliminarily Determined To Be Not Used

We examined the following programs and preliminarily determine that NHCI did not apply for or receive benefits under these programs during the POR:

- St. Lawrence River Environment Technology Development Program
- Program for Export Market Development
- The Export Development Corporation
- Canada-Québec Subsidiary Agreement on the Economic Development of the Regions of Québec
- Opportunities to Stimulate Technology Programs
- Development Assistance Program
- Industrial Feasibility Study Assistance Program
- Export Promotion Assistance Program
- Creation of Scientific Jobs in Industries
- Business Investment Assistance Program
- Business Financing Program
- Research and Innovation Activities Program
- Export Assistance Program
- Energy Technologies Development Program
- Transportation Research and Development Assistance Program

III. Program From Which NHCI No Longer Receives a Countervailable Benefit

- Exemption from Payment of Water Bills

In the administrative reviews covering calendar year 1997 the Department found that NHCI's benefits from this program had been exhausted and NHCI's participation in this program had ended. We also found that no residual benefits were being provided or received and no substitute program had been implemented. In our final results, we stated that we, therefore, did not intend to continue to examine this program in the future (*see Pure Magnesium and Alloy Magnesium from Canada: Final Results of Countervailing Duty Administrative Reviews*, 64 FR 48805, 48806 (September 8, 1999)). Consistent with this determination and in the absence of any new allegation, we did not examine this program in these reviews.

Preliminary Results of Reviews

In accordance with 19 CFR 351.221(b)(4)(i), we calculated a subsidy rate for NHCI, the sole producer/exporter subject to these administrative reviews. For the period January 1 through December 31, 1999, we preliminarily determine the net subsidy rate for NHCI to be 1.21 percent *ad valorem*. We will disclose our calculations to the interested parties upon request pursuant to section 351.224(b) of the regulations.

If the final results of these reviews remain the same as these preliminary results, the Department intends to instruct the Customs Service ("Customs") to assess countervailing duties at the net subsidy rate. The Department also intends to instruct Customs to collect cash deposits of estimated countervailing duties at the rate of 1.21 percent on the f.o.b. value of all shipments of the subject merchandise from NHCI entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these administrative reviews.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested reviews will normally cover only those companies specifically named. *See* 19 CFR 351.213(b)(2). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company v. United States*, 822 F. Supp. 782 (CIT 1993) and *Floral Trade Council v. United States*, 822 F. Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR 355.22(g), the predecessor to 19 CFR 351.212(c)). Therefore, the cash deposit rates for all companies except the company covered by these reviews, will be unchanged by the results of these reviews.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies, (except Timminco Limited which was excluded from the orders during the investigations) at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rate that will be applied to non-reviewed companies covered by these orders is that established in *Pure and Alloy Magnesium From Canada; Final Results of the Second (1993) Countervailing Duty Administrative Reviews*, 62 FR 48607 (September 16, 1997) or the company-specific rate published in the most recent final results of an administrative review in which a company participated. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1 through December 31, 1999, the assessment rates applicable to all non-reviewed companies covered by these orders are the cash deposit rates in effect at the time of entry, except for Timminco Limited which was excluded from the orders in the original investigations.

Public Comment

Interested parties may request a hearing within 30 days of the date of publication of this notice. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs (*see* below). Interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the date of filing the case briefs. Parties who submit briefs in these proceedings should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(1)(ii), are due.

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The Department will publish a notice of the final results of these administrative reviews within 120 days from the publication of these preliminary results.

These preliminary results are published pursuant to sections 703(f) and 777(i) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: May 2, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary Import Administration.

[FR Doc. 01–11729 Filed 5–8–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 010412090–1090–01; I.D. 022301C]

RIN 0648–ZB06

Financial Assistance for Cooperative Research Projects to Strengthen and Develop the Northeast U.S. Groundfish Fishing Industry

AGENCY: National Marine Fisheries Service (NMFS), Northeast Region (NER) Northeast Cooperative Research Programs Initiative (NECRPI), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: This notice is to advise the public that the National Marine Fisheries Service (NMFS) Northeast Region (NER) is requesting proposals in support of cooperative research and management activities by encouraging the development of partnerships among the commercial fishing industry, scientists, fishery managers and the academic community. By this notice, NMFS describes the conditions under which applications will be accepted and selected for funding. The goals of such research are to improve data upon which fishery management decisions are based and to improve communication, collaboration, and mutual understanding among all concerned with the Northeast groundfish fishery.

DATES: Preliminary proposals (cooperative research concept papers) will be accepted between May 9, 2001 and 5 p.m. eastern Daylight time June 25, 2001.

Comments on those preliminary proposals that will be invited to submit full proposals will be made available by July 23, 2001. Full proposals must be postmarked no later than August 22, 2001. No facsimile applications will be accepted.

ADDRESSES: Send preliminary proposals to Northeast Regional Office, NMFS, Northeast Cooperative Research Programs Initiative (NECRPI) Attn: Nick Anderson, One Blackburn Drive, Gloucester, MA 01930–2298.

You can obtain application forms from *www.rdc.noaa.gov/grants/index.html*and *www.whitehouse.gov/omb/grants/*and Code of Federal Regulations (CFR) citations from *www.access.gpo.gov/nara/cfr/* . Forms can also be obtained by contacting Nick Anderson or Earl Meredith at the previous address.

The 1998 updated Executive Summary of the NOAA Strategic Plan is available at: *www.strategic.noaa.gov/* and the Magnuson-Stevens Act is available at: *www.nmfs.gov/sfa/magact/* .

FOR FURTHER INFORMATION CONTACT: Earl Meredith (978–281–9276) or Nick Anderson (978–281–9383); or FAX (978–281-9161); or E-mail *earl.meredith@noaa.gov or nick.anderson@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Congressional funding for the Cooperative Research Initiative was appropriated pursuant to Pub. L. 106-78 to provide emergency disaster assistance for the commercial fishery failure under section 308(b)(1) of the Interjurisdictional Fisheries Act of 1986 with respect to Northeast multispecies fisheries. Approximately $15 million is available to support cooperative research and management activities administered by the National Marine Fisheries Service and based on recommendations by the New England Fishery Management Council. These funds will be available beginning FY2001 until expended. Several cooperative research programs (industry-based surveys/study fleets, groundfish tagging studies, and bycatch/discard conservation engineering) as well as short-term research projects (1–2 years) are currently under development. In support of the short-term research projects, NMFS anticipates that between 5 and 10 projects, will be issued grants ranging in size from $10,000 to $500,000, through this request for proposals. There are no matching/cost sharing requirements. This solicitation is limited to applications for short-term cooperative research projects only (1–2 years) and not for long-term programs. Grants issued under the Cooperative Research Initiative will be included among the programs funded by NOAA under Catalog of Federal Domestic Assistance No. 11.472 (Unallied Science Program).

II. Program Priorities and Objectives

In order to encourage research ideas and to prevent the expenditure of effort that may not be successful, NMFS is requesting preliminary proposals to determine the appropriateness of the ideas according to the list of research priorities for further development in a full proposal.

Each tier below contains priorities that fall within the areas of resource dynamics, fisheries management, habitat and socio-economics. Tier I addresses the most pressing fisheries management information needs. Tier II and Tier III list other areas of investigation that are also valued highly. Habitat issues in particular have been identified as extremely important and are listed in all three tiers, either directly or indirectly. During the consideration of preliminary proposals a greater regard may be given to applications that are specific to higher priority levels, but, foremost, each application will be judged primarily on the strength of the idea presented and the means it will employ to address the research topic.

A. Tier I

Obtain better fine-scale information on resource status in inshore and offshore areas.

Provide enhanced port and sea sampling information using the fishing industry (including documenting the quantity and composition of discards).

Monitor and evaluate effectiveness of area closures as a management tool to protect and build stocks.

Evaluate discard, bycatch, and non-catch mortality rates; initiate special studies under experimental design protocols to calculate gear interaction or discard rates. Bycatch encompasses all species, including marine mammals such as the harbor porpoise.Develop methods of enhanced collection of biological data through fishery participants.

B. Tier II

Obtain life history and spawning information: identify time and areas of spawning and other life history information as determined from fishing activities and information collected from the fishing industry.

Obtain detailed information on "fishing power" (related to capacity and catchability issues).

Investigate the conditions and benthos (sea floor characteristics) that contribute to post-settlement groundfish survivability. Identify the major groundfish nursery areas and their characteristics.

Conduct fishing industry-supported, high-resolution sediment mapping in specific areas of the Gulf of Maine and/or Georges Bank. Identify biological communities associated with mapped areas and determine relationships among sediment types and these communities. Identify and compare or contrast impacts to a variety of habitat types (mud, sand, gravel, cobble, rock, boulder) associated with roller and rockhopper trawl gear of the various sizes used in New England fisheries.

Identify issues associated with the social and economic components of fishing households and communities, such as family dependence on fishing; community dependence on fishing; changes in dependence across time and space; fishing crew issues, such as working conditions, safety, and views of the future; and spatial considerations, such as where people fish and why. Elucidate fishing communities and social relations associated with the fishing way of life, paying particular attention to area and/or sector-based management and community impacts.

Determine methods to integrate fishermen's knowledge into the management of fisheries. This includes articulating fishing business practices, examining the number of fisheries in which they participate, seasonality of participation, training needs or other business practices that impact efficiency.

Investigate possible fishery institutions of the future, with particular attention given to such issues as capacity management, fishing permit flexibility, alternative organizations for management and for ITQ design and implementation. This research should concentrate on issues and structures surrounding possible organizations oriented on ecosystem, co-management, cooperatives, communities or zones.

C. Tier III

Conduct research designed to improve our understanding of predatory/prey interactions and examine food habits through stomach content analysis, stable isotopes, otolith analysis or other reliable methods.

Evaluate the use of Marine Protected Areas.

Develop methods to collect and integrate ecosystem information into fisheries management decisions.

Examine and compare the critical life history processes of commercially important species in a variety of habitats (which have been identified through fine-scale mapping) in both heavily and lightly fished reference areas.

Develop and demonstrate the practical use of otter trawl, scallop dredge, and other fishing gear designs that have significantly less contact or impact on the sea bottom (benthos) than gear in current use by New England fishermen.

Identify areas in the Gulf of Maine and Georges Bank that have not been subject to fishing activity, focusing primarily on areas with high relief geologic structure or on areas in close proximity to wrecks or other areas that have been left undisturbed. Identify flora and fauna assemblages associated with these areas.

Conduct surveys that investigate the expenditure impacts of the fishing industry in New England, with a particular focus on locations of expenditures and localized input/output analysis.

Conduct studies that focus on management and enforcement, such as compliance, at-sea and at-shore enforcement, and improvements to the effectiveness of regulations.

Develop methods to collect and/or integrate ecosystems information into fisheries management decision making.

Primary consideration for funding will be given to preliminary proposals that address the topics listed below. The three programs, industry-based surveys (and related projects such as study fleets), groundfish tagging, and bycatch/discard/conservation engineering, have also been identified as priority research areas because of their relationship to immediate fisheries management needs, their high level of interest to New England fishermen and their collaborative research value. Scoping and planning related to the development of these program areas are currently underway. Applicants should be aware that these programs are not the subject of this solicitation, but are discussed because of their relationship to the funding priorities listed below. Decisions concerning the development of full projects, however, could be made with these programs in mind, although final selection of the projects will be funded based on the merits of the proposals.

III. Eligibility

Eligible applicants are institutions of higher education, other non-profits, commercial organizations, state, local or Indian tribal governments, and individuals. Employees of any Federal agency or of a Regional Fishery Management Council are not eligible to submit an application under this program. However, Council members who are not Federal employees can submit an application to the program.

NMFS supports cultural and gender diversity in our programs and encourages women and minority individuals and groups to submit applications. NMFS is strongly committed to broadening the participation of Minority Serving Institutions (MSIs), which include Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges and Universities, in our programs. The DOC/NOAA/NMFS vision, mission, and goals are to increase the opportunities for MSIs to participate in and benefit from Federal financial assistance programs, to advance the development of human potential, and to strengthen the Nation's capacity to provide high-quality education. Therefore, all applicants are encouraged to include meaningful participation of MSIs.

NMFS encourages applications from members of the fishing community and applications that involve fishing community cooperation and participation. Note that NMFS expects the primary operations center of anyone receiving a grant under the Cooperative Research Initiative to be in the New England region since the objective of the NECRPI program is to benefit and optimize cooperative research and management activities specifically for the Northeast multispecies fisheries.

IV. Preliminary Proposal Guidelines

A. Preliminary Proposal

A preliminary proposal is required and must be postmarked no later than June 25, 2001. A preliminary proposal is a brief document (no more than four pages) that explains clearly the general concept of the project; how it would be carried out; and, how it will improve the conservation or management of groundfish stocks in Northeast fisheries. Preliminary proposals should include the following information:

1. Project Summary and statement of research question

2. Importance of research to groundfish conservation and management

3. Study design and duration

4. Expected products

5. Estimated cost (non-binding)

6. Principal investigators and their contact information

7. Existing expertise, equipment, facilities, and infrastructure

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B. Screening, Evaluation, and Selection Procedures of Preliminary Proposals

1. Initial Screening of Preliminary Proposals

Preliminary proposals will be screened to ensure that they are postmarked by June 25, 2001 and submitted by an eligible applicant, address one of the research priorities (see Section II of this document), and identify the principal investigator. If your application does not meet the above criteria, it will be returned without further consideration.

2. Evaluation of Preliminary Proposals

After the initial screening, each preliminary proposal will be evaluated by members of the New England Fishery Management Council's Research Steering Committee (RSC), fishing industry representatives, scientists, and by other interested parties. These reviewers will be required to certify that they do not have a conflict of interest concerning the application(s) they are reviewing. Each preliminary proposal will receive a score from the reviewer up to a maximum of 100 points according to the following criteria (maximum points per category shown in parentheses): degree of fishing industry involvement in design and conduct of research (20 points), technical appropriateness(10 points), study design(10 points), degree that priority issues are addressed(10 points), innovation(20 points), and use of existing resources, i.e., scientific and technical expertise(10 points), facilities and equipment(10 points), and other infrastructure(10 points). Preliminary proposals will be ranked based on weighted scores. Based on the number of submissions, full research proposals will be requested from approximately the top 25 percent of evaluated submissions. NMFS will notify the applicants in writing of the review results and of the need to submit a full proposal by July 23, 2001.

Please note that preliminary proposals and full proposals are subject to public review. If an application contains information which the applicant does not want disclosed, the applicant should follow instructions below under Section V. A. 6: "Privileged Information—Limited Use." This information may be eliminated from public review.

If possible, preliminary proposals and full proposals (if requested) shall identify potential conflicts with any fishery management or protected species regulation. Projects that are inconsistent with regulations will not proceed until they have received an exempted fishery permit. Participation in this program does not automatically guarantee an exempted fishery permit. NMFS may provide advice and assistance in completing the application for such a permit, if requested, but the primary responsibility for obtaining exemptions belongs to the potential grant recipient.

V. Full Proposal Guidelines

A full research proposal will be requested from applicants whose preliminary proposals successfully meet the criteria for further development and evaluation. The research proposal application must follow the instructions and format described below. The application must not be bound and must be printed on one side only. Submit one signed original and two signed copies of your proposal. Full proposals must be postmarked no later than August 22, 2001.

A. Full Proposal Format

1. Cover Sheet

Submit OMB Standard Form 424 "Application for Federal Assistance" (available at *http://www.whitehouse.gov/omb/grants/sf424.pdf*) as the cover sheet for each project.

2. Project Summary

Provide a summary for each project under a heading "Project Summary." This section should itemize the specific priority(ies) to which the proposal responds (see Section III - A & B of this document).

3. Project Budget

Provide detailed cost estimates showing total project costs. Specify estimates of the direct costs in the categories listed on OMB Standard Form 424A (Budget Information - Nonconstruction Programs)—available at *http://www.whitehouse.gov/omb/grants/sf424a.pdf*). The NMFS will not consider fees or profits as allowable costs in your proposal. The total costs of a project consist of all allowable costs you incur, including the value of in-kind contributions, in accomplishing project objectives during the life of the project. A project begins on the effective date of an award agreement between you and an authorized representative of the U.S. Government and ends on the date specified in the award. Accordingly, you cannot be reimbursed for time that you spend or costs that you incur in developing a project or preparing the proposal or in discussing or negotiating with us prior to the award.

4. Narrative Project Description

Provide a no longer than 8–page narrative description of your project. The narrative should demonstrate your knowledge of the need for the project and show how your proposal builds on any past or current work in the subject area or in a related field. Do not assume that the evaluation panel will know the relative merits of the project you describe. Describe your project as follows:

a. Project goals and objectives. Identify the specific priority(ies) listed under the heading Project Summary. Identify the problem/opportunity you intend to address and describe its significance to the fishing community. State what the project is expected to accomplish. If applying to continue a project previously funded, describe in detail progress to date and explain the need for additional funding.

b. Project impacts. Describe the anticipated impacts of the project on the fishing community in terms of reduced bycatch, increased product yield, or of any other measurable benefits. Describe how you will make the results of the project available for publication. Specify the research priority that your project will address from those listed in this notice.

c. Evaluation of project. Specify the criteria and procedures that will be used to evaluate the relative success or failure of a project in achieving its objectives.

d. Need for government financial assistance. Explain why government financial assistance is needed for the proposed work. List all other sources of funding you have or are seeking for the project.

e. Federal, state, and local government activities and permits. List any existing Federal, state, or local government programs or activities that this project would affect, including activities requiring certification under state Coastal Zone Management Plans, section 404 or section 10 permits issued by the Corps of Engineers, experimental fishing or other permits under FMPs, environmental impact statements to meet the requirements of the National Environmental Policy Act, or scientific permits under ESA and/or the Marine Mammal Protection Act. Describe the relationship between the project and these FMPs or activities and list names and addresses of persons providing this information. If your project is selected for funding, you are responsible for complying with all applicable laws.

f. Project statement of work. The statement of work is an action plan of activities you will conduct during the period of the project. Prepare a detailed narrative, fully describing the work that will be performed to achieve the project goals and objectives. The narrative should respond to the following questions:

(1) What is the project design? What specific work, activities, procedures, statistical design, or analytical methods will be undertaken?

(2) Who will be responsible for carrying out the various activities? (Highlight work that will be subcontracted and provisions for competitive subcontracting.)

(3) What are the major products and how will project results be disseminated? Describe products of the project, such as a manual, video, technique, or piece of equipment. Indicate how project results will be disseminated to potential users.

(4) What are the project milestones? List milestones, describing the specific activities and associated time lines to conduct the scope of work. Describe the time lines in monthly increments (e.g., month 1, month 2), rather than by specific dates. Identify the individual(s) responsible for the various specific activities. This information is critical in the reviewing process of your proposal, so you are encouraged to provide sufficient detail.

g. Participation by persons or groups other than the applicant. Describe whether government and non-government entities, particularly members of fishing communities, will participate in the project and how they will participate. The degree of participation by members of the fishing community will be considered in determining which proposals to fund.

h. Project management. Describe how the project will be organized and managed. Identify the principal participants in the project. If you do not identify the principal investigator, your proposal will be returned without further consideration. Include copies of any agreements between you and the participants describing the specific tasks to be performed. Provide a separate statement (e.g., resume or curriculum vitae) not to exceed two pages, stating the qualifications and experience of the principal investigator(s) and of any consultants and/or subcontractors and indicating their level of involvement in the project. If any portion of the project will be conducted through consultants and/or subcontracts, you must follow procurement guidance in 15 CFR part 24, "Grants and Cooperative Agreements to State and Local Governments" and in 15 CFR part 14, A Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations. The text of CFR citations can be reviewed at: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html*.If you select a consultant and/or a subcontractor prior to submitting a proposal, indicate the process that you used for selection.

5. Supporting Documentation

You should include any relevant documents and additional information (e.g. maps, background documents) that will help us to understand the project and the problem/opportunity you seek to address.

6. Privileged Information–Limited Use

In the event that a proposal contains information or data which the applicant does not want disclosed prior to award for purposes other than the evaluation of the proposal, the applicant should mark the cover page of the proposal with the following notice:

Notice

The information contained in pages [insert page numbers here] of this proposal has been submitted in confidence and contains trade secrets and/or privileged or confidential commercial, financial or other information, and such information shall be used or disclosed only for evaluation purposes, provided that, if this applicant receives an award as a result of or in connection with the submission of this proposal, NMFS shall have the right to use or disclose all the information in this proposal to the extent provided in the award.

The proposal must include or be accompanied by an explanation of why the applicant considers or believes the information to be privileged or confidential, whether such information is customarily treated as confidential by other similar organizations and entities, and what harm would result to the applicant if the information were disclosed.

If NMFS determines that such information is exempt from mandatory public disclosure, NMFS shall ensure that each copy of the proposal carries the "Notice" and that information in the proposal is not disclosed to any member of the public except as required for the purpose of scientific, technical, or business evaluation. NMFS is not authorized to withhold information requested by the Congress, by any committee of Congress, or by the General Accounting Office.

NMFS shall not limit the disclosure of any data or commercial or financial information contained in a proposal if such information is already generally available to the public, is already the property of the Government, or is or becomes available to NMFS from any source, including the applicant, without limitation.

B. Duration and Terms of Funding

If your proposal is selected for funding, NMFS incurs no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is totally at the agency's discretion. The period of funding is generally considered to be for a duration of one year but may be adjusted for variations in schedules, seasonal considerations, or elsewhere. There are no matching or cost-sharing requirements placed upon the grant recipient.

The publishing of this announcement does not require the award of any specific grant or cooperative agreement, nor require the obligation of any part or the entire amount of funds available.

C. Full Research Proposal Screening, Evaluation, and Selection

1. Screening and Evaluation of Research Proposals

Prior to proposal evaluation, NMFS will conduct an initial screening to determine that proposals are postmarked by August 22, 2001, include Office of Management and Budget (OMB) Standard Form 424 (available at *http://www.whitehouse.gov/omb/grants/sf424.pdf*), and are signed and dated by an authorized representative of the organization. Following the initial screening, NMFS will convene a panel to determine the technical merit of each proposal. The panel will be composed of fishing industry representatives, scientists, and others. The panel members will be required to certify that they do not have a conflict of interest concerning the proposal(s) they are reviewing. For proposals that continue a previously funded project, information on progress of the funded work must also be provided for evaluation. These proposals will be considered along with the new unfunded proposals. Proposals will be assigned scores based on the following criteria, with weights shown in parentheses:

a. Soundness of project design/conceptual approach. Proposals will be evaluated on the conceptual approach; the likelihood of gaining project results in the time frame specified in the proposal; whether there is sufficient information to evaluate the project technically; and, if so, the strengths and/or weaknesses of the technical design relative to securing productive results. (50 percent)

b. Project management and experience and qualifications of

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personnel. The organization and management of the project will be evaluated. The project's principal investigator and other personnel, including consultants and subcontractors participating in the project, will be evaluated in terms of related experience and qualifications. Proposals that include consultants and subcontractors will also be reviewed to preclude excess overhead and to ensure that the primary applicant is necessary to the conduct of the project and to the accomplishment of its objectives. (25 percent)

c. Project evaluation. The effectiveness of proposed methods to monitor and evaluate the success or failure of the project in terms of meeting its original objectives will be examined. (10 percent)

d. Project costs. The justification and allocation of the budget in terms of the work to be performed will be evaluated. Unreasonably high or low project costs will be taken into account. (15 percent)

The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct cost dollar amount in the application, whichever is less.

Proposals will be ranked in descending order by their final technical scores.

2. Selection Procedures and Project Funding

Panel recommendations will be sent to the Northeast Regional Administrator (RA) of NMFS for review. Panel members will provide individual evaluations on each proposal they evaluate; thus there will be no consensus advice. In making the final grant award selection, the RA may consider fishing community involvement, geographical distribution, costs, and duplication with other federally funded projects. Thus, awards may not necessarily be made to the highest ranked proposals.

You will be notified in writing whether your proposal is selected. Successful proposals will be incorporated into the award document. The exact amount of funds, the scope of work, and terms and conditions of a successful award will be determined in pre-award negotiations between you and NOAA/NMFS representatives. You should not initiate your project in expectation of Federal funding until you receive a grant award document signed by an authorized NOAA official.

VI. Administrative Requirements

A. Your Obligations as an Applicant

You must:

1. Meet all application requirements and provide all information necessary for the evaluation of the proposal, including one signed original and two signed copies of the application.

2. Be available to respond to questions during the review and evaluation of the proposal(s).

3. Primary applicant certification. Applicants whose proposals are recommended for funding will be required to submit a completed Form CD–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying." (Available at *http://www.rdc.noaa.gov/grants/pdf/cd511.pdf*). The following explanations are provided:

a. Non-procurement debarment and suspension. Prospective participants (as defined at 15 CFR 26.105) are subject to 15 CFR part 26, "Non-procurement Debarment and Suspension" and to the related section of the certification form prescribed here;

b. Drug-free workplace. Grantees (as defined at 15 CFR 26.605) are subject to 15 CFR part 26, subpart F, "Government-wide Requirements for Drug-Free Workplace (Grants)" and to the related section of the certification form prescribed here;

c. Anti-lobbying. Persons (as defined at 15 CFR 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions" and to the lobbying section of the certification form applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000; and

d. Anti-lobbying disclosures. Any applicant who has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

4. If applicable, require applicants/bidders for sub-grants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" (available at Office of Management and Budget *http://www.rdc.noaa.gov/grants/pdf/cd512.pdf*) and disclosure form SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for your use and should not be sent to the Department of Commerce (Commerce). You should send an SF-LLL submitted by any tier recipient or sub-recipient to Commerce only if your proposal is recommended for funding.

5. Complete Standard Form 424B (4–92), Assurances, Non-construction Programs.

B. Your Obligations as a Successful Applicant (Recipient)

If you are selected to receive a grant award for a project, you must:

1. Manage the day-to-day operations of the project, be responsible for the performance of all activities for which funds are granted, and be responsible for the satisfaction of all administrative and managerial conditions imposed by the award.

2. Keep records sufficient to document any costs incurred under the award, and allow access to these records for audit and examination by the Secretary of Commerce, the Comptroller General of the United States, or their authorized representatives; and, submit financial status reports (SF 269) to GMD in accordance with the award conditions.

3. Submit semiannual project status reports on the use of funds and progress of the project to us within 30 days after the end of each 6-month period. You will submit these reports to the individual identified as the NMFS Program Officer in the funding agreement.

4. Submit a final report within 90 days after completion of each project to the NMFS Program Officer. The final report must describe the project and include an evaluation of the work you performed and the results and benefits in sufficient detail to enable us to assess the success of the completed project. NMFS is committed to using available technology to achieve the timely and wide distribution of final reports to those who would benefit from this information. Therefore, you are required to submit final reports in electronic format, in accordance with the award terms and conditions, for possible publication by NMFS. You may charge the costs associated with preparing and transmitting your final reports in electronic format to the grant award. Requests for exemption from the electronic submission requirement will be considered on a case-by-case basis.

5. In addition to the final report in section VI.B.4. of this document, you are requested to submit any publications printed with grant funds (such as manuals, surveys, etc.) to the NMFS Program Officer for dissemination to the public. Submit either three hard copies or an electronic version of any such publications.

C. Other Requirements of Recipients

1. Federal Policies and Procedures

If you receive Federal funding, you are subject to all Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to financial assistance awards. You must comply with general provisions that apply to all recipients under Department of Commerce grant and cooperative agreement programs.

2. Name Check Review

You may be subject to a name check review process. Name checks are used to determine whether any of the key individuals named in the application has been convicted of, or are presently facing, criminal charges, such as fraud, theft, perjury, or other matters, that significantly reflect on his or her management skills, honesty, or financial integrity.

3. Financial Management Certification/ Preaward Accounting Survey

You may, at the discretion of the NOAA Grants Officer, be required to have your financial management systems certified by an independent public accountant as being in compliance with Federal standards specified in the applicable OMB Circulars prior to execution of the award. If you are a first-time applicant for Federal grant funds, you may be subject to a pre-award accounting survey by Commerce prior to execution of the award.

4. Past Performance

An applicant's unsatisfactory performance under prior Federal awards may result in the applicant's proposal not being considered for funding.

5. Delinquent Federal Debts

Federal funds will not be awarded to you or to any sub-recipients who have an outstanding delinquent Federal debt or fine until:

a. The delinquent account is paid in full,

b. A negotiated repayment schedule is established and at least one payment is received, or

c. Other arrangements satisfactory to Commerce are made.

6. Buy American

You are encouraged to the extent feasible to purchase American-made equipment and products with the funding provided under this program.

7. Pre-award Activities

If you incur any costs prior to receiving an award agreement signed by an authorized NOAA official, you do so solely at your own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that you may have received, the Department of Commerce has no obligation to cover pre-award costs.

8. False Statements

A false statement on the application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment (18 U.S.C. 1001).

Classification

Pursuant to Section 553(a)(2) of the Administrative Procedure Act (APA), prior notice and an opportunity for public comments are not required by the APA or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This action has been determined to be not significant for purposes of Executive Order 12866.

This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, and SF–LLL has been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, and 0348–0046. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

VII. Catalog of Federal Domestic Assistance (CFDA)

This program falls under the CFDA number 11.472, Unallied Science projects.

A solicitation for proposals will also appear in the "Commerce Business Daily."

Dated: May 3, 2001.

John Oliver,

Acting Deputy Assistant Administrator for Management and Administration, National Marine Fisheries Service.

[FR Doc. 01–11702 Filed 5–8–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 01–07]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency; Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 01–07 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: May 3, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

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DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

26 APR 2001
In reply refer to:
I-01/003907

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 01-07, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to the United Arab Emirates for defense articles and services estimated to cost $40 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Tome H Walters

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 01-07

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: United Arab Emirates

(ii) Total Estimated Value:

Major Defense Equipment*	$ 35 million
Other	$ 5 million
TOTAL	$ 40 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: In support of a commercial sale of 80 F-16 Block 60 aircraft, the Government of the United Arab Emirates has requested a possible sale of 500 Joint Direct Attack Munition and 800 Wind Corrected Munitions Dispenser tail kits, maintenance and pilot training, software support, publications and technical documentation, U.S. Government and contractor technical assistance and other related elements of logistics and program support.

(iv) Military Department: Air Force (YAA, Amendment 1)

(v) Prior Related Cases, if any: none

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See attached Annex

(viii) Date Report Delivered to Congress: 26 APR 2001

* as defined in Section 47(6) of the Arms Export Control Act.

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POLICY JUSTIFICATION

United Arab Emirates - Joint Direct Attack Munition and Wind Corrected Munitions Dispenser Tail Kits

In support of a commercial sale of 80 F-16 Block 60 aircraft, the Government of the United Arab Emirates (UAE) has requested a possible sale of 500 Joint Direct Attack Munition (JDAM) and 800 Wind Corrected Munitions Dispenser (WCMD) tail kits, maintenance and pilot training, software support, publications and technical documentation, U.S. Government and contractor technical assistance and other related elements of logistics and program support. The estimated cost is $40 million.

This proposed sale, in support of a commercial purchase of 80 F-16 Block 60 aircraft, will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

The proposed sale of the weapons will strengthen the effectiveness and interoperability of a potential coalition partner, reducing the dependence on U.S. forces in the region while enhancing any coalition operations the U.S. undertake. UAE will have no difficulty absorbing these tail kits into its armed forces.

The proposed sale of these weapons support will not affect the basic military balance in the region.

The principal contractors are the Boeing Company in St. Louis, Missouri for JDAM and Lockheed Martin in Orlando, Florida for WCMD. Offset arrangements were negotiated between Lockheed Martin and the UAE in conjunction with the 36(c) commercial sale.

The number of U.S. Government and contractor representatives required in UAE to support the program will be determined in joint negotiations as the program proceeds through the development, production and equipment installation phases.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 01-07

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The Joint Direct Attack Munitions is actually a guidance kit that converts existing unguided free-fall bombs into precision-guided "smart" munitions. By adding a new tail section containing an Inertial Navigation System (INS) guidance/Global Positioning System (GPS) guidance to existing inventories of MK-84 bombs, the cost effective JDAM provides highly accurate weapon delivery in any "flyable" weather. The INS, using updates from the GPS, helps guide the bomb to the target via the use of movable tail fins.

2. The Wind Corrected Munitions Dispenser (WCMD) is a guidance kit that converts unguided free-fall CBU-87 dispensers into a more accurate guided munition which provides highly accurate weapon delivery from many different altitudes and wind conditions.

3. Weapon accuracy is dependent on target coordinates and present position as entered into the guidance control unit. After weapon release, movable tail fins guide the weapon to the target coordinates. In addition to the tail kit, other elements in the overall system that are essential for successful employment include:

Access to accurate target coordinates.
INS/GPS capability
Operational Test and Evaluation Plan.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

5. A determination has been made that United Arab Emirates can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 01–11645 Filed 5–8–01; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Group of Advisors to the National Security Education Board Meeting

AGENCY: National Defense University, Defense.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the Group of Advisors to the National Security Education Board. The purpose of the meeting is to review and make recommendations to the Board concerning requirements established by the David L. Boren National Security Education Act, Title VIII of Public Law 102–183, as amended.

DATES: May 13–14, 2001.

ADDRESSES: New Otani Kaimana Beach Hotel, 2863 Kalakaua Avenue, Honolulu, Hawaii 96815.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond J. Collier, Deputy Director, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Rosslyn P.O. Box 20010, Arlington, Virginia 22209–2248; (703) 696–1991. electronic mail address: colliere@ndu.edu.

SUPPLEMENTARY INFORMATION: The Group of Advisors meeting is open to the public.

Dated: May 3, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 01–11641 Filed 5–8–01; 8:45 am]
BILLING CODE 5001–08–M

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DEPARTMENT OF DEFENSE

Department of the Army

Draft Environmental Impact Statement (DEIS) for the Design, Construction, and Operation of One or More Pilot Test Facilities for Assembled Chemical Weapon Destruction Technologies at One or More Sites

AGENCY: Program Manager (PM), Assembled Chemical Weapons Assessment (ACWA), DoD.

ACTION: Notice of Availability (NOA).

SUMMARY: This announces the availability of the PM ACWA DEIS which assesses the potential impacts of the design, construction, operation, and closure of one or more pilot-scale test facilities for an assembled chemical weapon destruction system at one or more chemical weapons stockpile sites. The DEIS examines the potential environmental impacts of the following alternatives, to include technologies that could be incorporated into a pilot-scale facility: (a) No action (continued storage until destruction of the stockpile); (b) chemical neutralization followed by biological treatment (c) chemical neutralization followed by supercritical water oxidation; (d) chemical neutralization followed by transpiring wall supercritical water oxidation and gas phase chemical reduction; and (e) electrochemical oxidation.

The chemical stockpile sites are Anniston Army Depot, Alabama; Pine Bluff Arsenal, Arkansas; Pueblo Chemical Depot, Colorado (neutralization followed by transpiring wall supercritical water oxidation, and electrochemical oxidation are not alternatives at Pueblo); and Blue Grass Army Depot, Kentucky. The PM ACWA pilot tests will not halt or delay the operation or construction of any baseline incineration facility currently in progress.

DATES: The public comment period for the DEIS will end 45 days after publication of the NOA in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: Written comments may be forwarded to Mr. Jon Ware, Assembled Chemical Weapons Assessment EIS, 9700 S. Cass Ave./Post Office Box 8369, Argonne, Illinois 60439–4871, through the ACWA website at http://www.pmacwa.org, by email to acwacomment@anl.gov or by fax to 630–252–4611.

FOR FURTHER INFORMATION CONTACT: Kimberly Collins at 888–482–4312 or via email at kimberly.collins@horne.com, or via mail at Horne Engineering, 2014 Tollgate Road, Suite 208, Bel Air, Maryland 21015.

SUPPLEMENTARY INFORMATION: This proposed action continues the process that began when Congress established the Assembled Chemical Weapons Assessment Program through passage of Public Law 104–208. With the National Defense Appropriations Act for Fiscal Year 1999, Congress directed the PM ACWA to plan for the pilot-scale testing of alternatives to baseline incineration for the destruction of assembled chemical weapons. The Department of Army published a Notice of Intent in the **Federal Register** (65 FR 20139–20140, April 14, 2000) which provides notice (pursuant to the National Environmental Policy Act and implementing regulations) it was preparing a DEIS for follow-on tests including design, construction and operation of one or more pilot test facilities for assembled chemical destruction technologies at one or more sites.

Assembled chemical weapons (munitions containing both chemical agents and explosives) are stored in the United States unitary chemical weapons stockpile. These weapons include cartridges, land mines, mortar rounds, projectiles, and rockets. Unitary agents include chemical blister agents (*e.g.*, the mustard agents H, HD, and HT) and nerve agents (*e.g.*, G (Sarin) and VX).

The PM ACWA demonstrated the technologies considered to be viable. However, Public Law 106–398 limited the technologies to be considered at Pueblo Chemical Depot to those demonstrated prior to May 1, 2000, by the PM ACWA. The sites considered were selected based on the availability of assembled chemical weapons at the time actual testing would begin.

Public meetings will be held in Alabama, Arkansas, Colorado, and Kentucky. The dates, times, and locations of these meetings will be provided at least 15 days in advance by public notices in the news media serving the regions where the meeting will be located. All public comments received will be considered and addressed in the final EIS.

Dated: May 4, 2001.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health) OASA (I&E).

[FR Doc. 01–11704 Filed 5–8–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of the Draft Environmental Impact Statement for the Disposal of chemical Munitions at the Pueblo Chemical Depot, Colorado

AGENCY: Department of the Army, DoD.

ACTION: Notice of Availability (NOA).

SUMMARY: This announces the availability of the Draft Environmental Impact Statement (DEIS) which assesses the potential environmental impacts of the design, construction, operation and closure of a facility to destroy the mustard chemical agent and munitions stored at the Pueblo Chemical Depot. The proposed facility will be used to demilitarize the chemical agent and munitions currently stored at the Depot. The DEIS examines the potential environmental impacts of the following destruction facility alternatives: (a) A baseline incineration facility; (b) a modified baseline incineration facility; (c) neutralization followed by supercritical water oxidation; (d) neutralization followed by biodegradation; and (e) no action (i.e., continued storage of chemical munitions at Pueblo Chemical Depot). Although the no action alternative is not viable under Public Law 99–145 (Department of Defense Authorization Act of 1986), it was analyzed to provide comparison with the proposed action.

DATES: The public comment period for the DEIS will end 45 days after publication of the NOA in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: Written comments may be forwarded to the Program Manager for Chemical Demilitarization, Public Outreach and Information Office (ATTN: Mr. Gregory Mahall), Building E–4585, Aberdeen Proving Ground, Maryland, 21010–4005.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Mahall at (410) 436–1093, by fax at (410) 436–5122 or by email at gregory.mahall@pmcd.apgea.army.mil or by mail at the above listed address.

SUPPLEMENTARY INFORMATION: In its Record of Decision on February 26, 1988 (53 FR 5816, February 26, 1988) for the Final Programmatic Environmental Impact Statement on the Chemical Stockpile Disposal Program (CSDP), the Department of the Army selected on-site disposal by incineration at all eight chemical munition storage sites within the continental United States as the method by which it will destroy its lethal chemical stockpile. The Department of the Army published a Notice of Intent in the **Federal Register** (65 FR 20140–20141, April 14, 2000) which provides notice that, pursuant to the National Environmental Policy Act and implementing regulations, it was preparing a draft site-specific EIS for the Pueblo Chemical Agent Disposal Facility. The Department of the Army prepared a DEIS to assess the site-specific health and environmental impacts of on-site disposal of the chemical agents and munitions stored at the Pueblo Chemical Depot.

A public meeting will be held in the vicinity of the Pueblo Chemical Depot with the announcement of the date, time and location appearing in the local news media at least 15 days prior to the selected date. Public comments received on the DEIS will be considered and addressed in the Final EIS and considered by the Army in its Record of Decision.

Dated: May 4, 2001.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (I&E).

[FR Doc. 01–11705 Filed 5–8–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, and deleting one system of records.

DATES: This proposed action will be effective without further notice on June 8, 2001, unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 3, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

AAFES 0602.04a

SYSTEM NAME:

Litigation Initiated by AAFES (August 9, 1996, 61 FR 41581).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Legal Office Management System'.

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 8013, Secretary of the Air Force; Army Regulation 215–1, The Administration of Morale, Welfare, and Recreation Activities and Non-appropriate Fund Instrumentalities; Army Regulation 60–21, Personnel Policies; and E.O. 9397 (SSN).'

* * * * *

RETRIEVABILITY:

Add to entry 'Social Security Number'.

* * * * *

RETENTION AND DISPOSAL:

Delete second sentence.

* * * * *

AAFES 0602.04a

SYSTEM NAME:

Legal Office Management System.

SYSTEM LOCATION:

Office of the General Counsel at Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598; and

Headquarters Army and Air Force Exchange Service-Europe, In der Witz 14–18, 55252 Mainz-Kastel, APO AP 96378–5163.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals against whom Army and Air Force Exchange Service (AAFES) has filed a complaint or similar pleading in a court or administrative body.

CATEGORIES OF RECORDS IN THE SYSTEM:

Pleadings and documents filed by parties to the action and documentation, correspondence, and memoranda pertaining thereto.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 8013, Secretary of the Air Force; Army Regulation 215–1, The Administration of Morale, Welfare, and Recreation Activities and Non-appropriate Fund Instrumentalities; Army Regulation 60–21, Personnel Policies;and E.O. 9397 (SSN).

PURPOSE(S):

To process complaints against individuals; to initiate litigation as necessary.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD "Blanke Routine Uses" set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(A)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government; typically to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records.

Disclosure of records is limited to the individual's name, address, Social Security Number, and other information necessary to establish the individual's identity; the amount, status, and history of the claim; and the agency program under which the claim arose. This disclosure will be made only after the procedural requirement of 31 U.S.C. 3711(f) has been followed.

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Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Paper records in file folders and on electronic storage media.

RETRIEVABILITY:

By surname and Social Security Number of defendant in the proceeding.

SAFEGUARDS

Records are maintained in buildings have security guards and are restricted to authorized personnel who are properly screened, cleared. Access to computer databases is limited to users with passwords. AAFES management monitors use of the system.

RETENTION AND DISPOSAL:

Records are permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: General Counsel, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide their full name, current address and telephone number, copy of latest correspondence from AAFES, if available, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: General Counsel, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

[FR Doc. 01–11643 Filed 5–8–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The Department of the Army is proposing to delete a system of records notice from its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on June 8, 2001 unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 3, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0570–4 ARPC

SYSTEM NAME:

Human Resources Information System (HRIS) (February 2, 1996, 61 FR 3921).

REASON:

The records are no longer maintained and have been destroyed.

[FR Doc. 01–11644 Filed 5–8–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 9, 2001.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 3, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Student Financial Assistance Programs

Type of Review: Existing.

Title: Federal Perkins Loan/National Direct Student Loan (NDSL) Promissory Notes.

Frequency: On Occasion.

Affected Public: Individuals or household; Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses: 690,000.

Burden Hours: 345,000.

Abstract: The promissory note is the means by which a borrower applies for a Federal Perkins Loan or National Direct Student Loan and promises to repay the loan. This notice was first published on April 20, 2001. Due to technical difficulties some of the public was not able to electronically obtain this collection. Hence, we are extending the comment period until July 9, 2001.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe.Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–11604 Filed 5–8–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.258]

Even Start Family Literacy Program Grants for Indian Tribes and Tribal Organizations

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2001 funds for Even Start Family Literacy Program grants for Indian tribes and tribal organizations.

SUMMARY: *Purpose of Competition:* The Secretary of Education announces the availability of applications and an application deadline for federally recognized Indian tribes and tribal organizations to apply for FY 2001 new awards under the Even Start Family Literacy Program grant authority for Indian tribes and tribal organizations.

Even Start Family Literacy Program grants for Indian tribes and tribal organizations are awarded under Section 1202(a)(1)(C) of the Elementary and Secondary Education Act of 1965 (ESEA). The purpose of these grants is to help break the cycle of poverty and illiteracy by improving the educational opportunities of low-income families by integrating early childhood education, adult literacy or adult basic education, and parenting education into a unified family literacy program for federally recognized Indian tribes and tribal organizations.

Eligible Applicants: Federally recognized Indian tribes and tribal organizations. (The term "Indian tribe" and "tribal organization" have the meanings given those terms in section 4 of the Indian Self-Determination and Education Assistance Act.)

Applications Available: May 9, 2001.

Deadline for Transmittal of Applications: July 9, 2001.

Available Funds: The Secretary estimates that there will be sufficient FY 2001 funds for 6–10 new grants.

Matching and Use of Funds Requirements

Federal and local funding: An Even Start Family Literacy project's funding is comprised of both a Federal portion of funds (Federal share) and a portion contributed by the eligible applicant (local project share). The local share of the project may be provided in cash or in kind and may be obtained from any source, including other Federal programs funded by the ESEA. The Federal share of the project may not exceed—

- 90 percent of the total cost of the project in the first year;
- 80 percent in the second year;
- 70 percent in the third year;
- 60 percent in the fourth year;
- 50 percent in the fifth through eighth years; and
- 35 percent in any subsequent year.

Any grantee that wishes to reapply at the end of a project period (up to 48 months) must recompete for funding with new applicants.

Indirect costs: Recipients of an Even Start Indian tribe and tribal organization grant may not use funds awarded under this competition for the indirect costs of a project, or claim indirect costs as part of the local project share. Grant recipients may request the Secretary to waive this requirement. To obtain a waiver, however, the recipient must demonstrate to the Secretary's satisfaction that the recipient otherwise would not be able to participate in the Even Start Family Literacy Program. (Section 1204(b)(2), ESEA.)

Estimated Range of Awards: $100,000–$200,000 per year.

Estimated Average Size of Awards: $175,000 per year.

Estimated Number of Awards: 6–10.

Note: This Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 80, 81, 82, 85, 86, 97, 98, and 99.

SUPPLEMENTARY INFORMATION:

Background: As required by Section 1202(a)(1)(C) of the ESEA, the Assistant Secretary of Elementary and Secondary Education (Assistant Secretary) awards grants to eligible Indian tribe and tribal organization applicants for projects that—

- Improve the educational opportunities of low-income families by integrating early childhood education, adult literacy or adult basic education, and parenting education into a unified family literacy program;
- Are implemented through cooperative activities that build on high-quality existing community resources to create a new range of services for federally recognized Indian tribe and tribal organization projects;
- Promote the academic achievement of children and adults;
- Assist children and adults from low-income families to achieve to challenging State content standards and challenging State student performance standards; and
- Use instructional programs based on scientifically based reading research (as defined in section 2252 of the ESEA) and the prevention of reading difficulties for children and adults, to the extent such research is available.

Each project must use the grant funds to provide intensive *family literacy services* that involve parents and children, from birth through age seven, in a cooperative effort to help parents become full partners in the education of their children and to assist children in reaching their full potential as learners. (Section 1204(a), ESEA.)

"Family literacy services" means services provided to participants on a voluntary basis that are of sufficient intensity in terms of hours, and of sufficient duration, to make sustainable changes in a family, and that integrate all of the following activities:

(A) Interactive literacy activities between parents and their children.

(B) Training for parents regarding how to be the primary teacher for their children and full partners in the education of their children.

(C) Parent literacy training that leads to economic self-sufficiency.

(D) An age-appropriate education to prepare children for success in school and life experiences. (Section 14401(15), ESEA.)

Each Even Start family literacy project must include fifteen specific program elements (listed in the application package). (Section 1205, ESEA.) Those elements include *in part* the following:

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• identifying, recruiting, and providing services to families that are the most in need of family literacy services, as indicated by a low level of income, a low level of adult literacy or English language proficiency of the eligible parent or parents, and other need-related indicators;

• providing high-quality, intensive instructional programs that promote adult literacy (adult basic or secondary education or English language training) and empower parents to support the educational growth of their children (parenting education and interactive literacy-based activities between parents and their children), developmentally appropriate early childhood educational services, and preparation of children for success in regular school programs;

• providing home-based instructional services to participating parents and children;

• operating on a year-round basis, including providing both instructional and enrichment services during the summer months;

• using instructional programs based on scientifically based reading research for children and adults to the extent that research is available;

• encouraging participating families to attend regularly and to remain in the program a sufficient time to meet their program goals; and

• providing for an independent evaluation of the project to be used for program improvement.

Note: Applicants should refer to the application package for a specific description of all of the required program elements.

Staff qualifications: All instructional staff in new Even Start projects (and all *new* staff in existing Even Start projects) whose salaries are paid in whole or part with Federal Even Start funds must have obtained an associate's, bachelor's, or graduate degree in a field related to early childhood education, elementary or secondary school education, or adult education, *and*, if applicable, meet State qualifications for that respective field. For continuing Even Start projects that are applying for a second or third project period, the majority of instructional staff must meet these qualifications by December 2004 (in addition to new instructional staff meeting the qualifications immediately). Instructional staff include any staff who are hired to provide instructional services in any of the four core instructional components (early childhood education, adult basic or secondary education, parenting education, and interactive activities between parents and their children).

In addition, by December 2004, all individuals who are responsible for administering Even Start family literacy projects and who are paid in whole or part with Federal Even Start funds must have received training in the operation of family literacy programs, and all paraprofessionals who provide support for the instructional components of an Even Start program and who are paid in whole or part with Federal Even Start funds must have a high school diploma or its recognized equivalent. (Section 1205(5), ESEA.)

Eligible participants: In general, eligible participants are families with children and their parents who meet the following qualifications specified in section 1206(a) of the ESEA:

(1) The parent or parents must be eligible for participation in adult education and literacy activities under the Adult Education and Family Literacy Act, be within the State's compulsory school attendance age range (in which case a local educational agency must provide or ensure the availability of the basic education component), or be attending secondary school; and

(2) The child or children must be younger than eight years of age.

National and Local Evaluations: The Department conducts a national evaluation of Even Start family literacy projects as required by section 1209 of the ESEA. Although the current national evaluation is ending in summer of 2001, a new national evaluation is scheduled to begin in fall 2002. The new national evaluation is planned to be based upon data collected from a sample of Even Start family literacy projects.

Every Even Start project must conduct an independent local evaluation for program improvement. (Section 1205(15), ESEA.) The application package includes additional information about this local evaluation, and about performance objectives and indicators that the Department encourages applicants to use when developing their proposed programs.

FOR APPLICATIONS AND FURTHER INFORMATION CONTACT: Doris Sligh, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202–6132. Telephone: (202) 260–0999, or via Internet: Doris.Sligh@ed.gov

The application package also is available on the Department's Web site at: *www.ed.gov/GrantApps/#84.258.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to this Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/fedregister.*

To use PDF, you must have Adobe Acrobat Reader, which is available free at the previous site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo/gov/nara/index.html.*

Program Authority: 20 U.S.C. 6362(a)(1)(C).

Dated: May 3, 2001.

Thomas M. Corwin,

Acting Deputy Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 01–11703 Filed 5–8–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, June 7, 2001, 9 a.m.–5 p.m., Friday, June 8, 2001, 8:30 a.m.–4 p.m.

ADDRESSES: West Coast hotel (formerly Cavanaugh's) 1101 North Columbia Center Boulevard Kennewick, WA (509–783–0611)

FOR FURTHER INFORMATION CONTACT: Gail McClure, Public Involvement Program Manager, Department of Energy Richland Operations Office, P.O. Box 550 (A7–75), Richland, WA, 99352; Phone: (509) 373–5647; Fax: (509) 376–1563.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Thursday, June 7, 2001

• Update on current baselines and budgets (FY2002, FY2003)—Draft advise may be introduced

• Status of the Richland Operations Office

• Status of the Office of River Protection

• Introduction of Draft Advice on Principles for Existing Hanford Clean-up Contracts

• Adoption of Hanford Advisory Board Guidance on Roles Responsibilities and Expectations

• Tri-Party Agreement Community Relations Plan—Process and timeline for revising the document (Advice may be proposed.)

• Environmental Assessment on Low-Level Burial Ground Trench Expansion

• Explore opportunities for ways the Board could assist DOE in examining the framework on how clean-up is done.

Friday, June 8, 2001

• Refinement and adoption of draft advice

• Issue Manager Updates

• Spent Fuel

• Hanford Draft Stewardship Plan

• B-Reactor

• Tank Draft Supplemental Environmental Impact Statement

• Groundwater Roadmap Roundtable

• Site-Specific Advisory Board Letter to the Secretary

• Offsite-Waste

• Identification of Agenda Topics for September Board Meeting

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gail McClure's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided equal time to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Gail McClure, Department of Energy Richland Operation Office, P.O. Box 550, Richland, WA 99352, or by calling her at (509) 373–5647.

Issued at Washington, DC on May 4, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–11648 Filed 5–8–01; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1302–000]

American Ref-Fuel Company of Niagara, L.P.; Notice of Issuance of Order

May 3, 2001.

American Ref-Fuel Company of Niagara, L.P. (American Reg-Fuel) submitted for filing a rate schedule under which American Ref-Fuel will engage in wholesale electric power and energy transactions at market-based rates. American Ref-Fuel also requested waiver of various Commission regulations. In particular, American Ref-Fuel also requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by American Ref-Fuel.

On April 12, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by American Ref-Fuel should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, American Ref-Fuel is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of American Ref-Fuel's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 14, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11659 Filed 5–8–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1071–000 and ER01–1071–001]

Badger Windpower, LLC; Notice of Issuance of Order

May 3, 2001.

Badger Windpower, LLC (Badger) submitted for filing a rate schedule under which Badger will engage in wholesale electric power and energy transactions at market-based rates. Badger also requested waiver of various Commission regulations. In particular, Badger requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Badger.

On April 12, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates,

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granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Badger should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Badger is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Badger's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 14, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11658 Filed 5–8–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–022]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

May 3, 2001.

Take notice that on April 27, 2001, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing to the Commission the following contract for disclosure of a recently negotiated rate transaction:

FTS–1 Service Agreement No. 70403 between Columbia Gulf Transmission Company and Cinergy Marketing & Trading, L.L.C. dated April 18, 2001

Transportation service which is scheduled to commence May 1, 2001.

Columbia Gulf states that copies of the filing have been served on all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11660 Filed 5–8–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–023]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

May 3, 2001.

Take notice that on April 30, 2001, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing to the Commission the following contract for disclosure of a recently negotiated rate transaction:

FTS–1 Service Agreement No. 70440 between Columbia Gulf Transmission Company and Pogo Producing Company dated April 27, 2001

Transportation service which is scheduled to commence May 1, 2001.

Columbia Gulf states that copies of the filing have been served on all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11669 Filed 5–8–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT01–18–000]

Distrigas of Massachusetts LLC; Notice of Proposed Changes in FERC Gas Tariff

May 3, 2001.

Take notice that on April 30, 2001, Distrigas of Massachusetts LLC (DOMAC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet, to become effective June 1, 2001:

Eleventh Revised Sheet No. 94

DOMAC states that the purposes of this filing is to record semiannual changes in DOMAC's index of customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for pubic inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11655 Filed 5–8–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT01–16–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Tariff Filing

May 3, 2001.

Take notice that on April 27, 2001, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, proposed to become effective January 1, 2001:

Sixth Revised Sheet No. 3
Fifth Revised Sheet No. 3B

Great Lakes states that the tariff sheets listed above are being filed to revise the system and zone maps included in Great Lakes' tariff pursuant to § 154.106(c) of the Commission's regulations. The revisions to the maps reflect the addition of the Marenisco meter station to Great Lakes System and 14.1 miles of looping on the Sault Mainline Extension.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11652 Filed 5–8–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–390–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

May 3, 2001.

Take notice that on April 30, 2001, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume NO. 1, the following tariff sheet to become effective May 1, 2001:

Thirty Fifth Revised Sheet No. 9

National states that under Article II, Section 2, of the settlement, it is required to recalculate the maximum Interruptible Gathering (IG) rate monthly and to charge that rate on the first day of the following month if the result is an IG rate more than 2 cents above or below the IG rate as calculated under Section 1 of Article II. The recalculation produced an IG rate of $1.34 per dth. In addition, Article III, Section 1 states that any overruns of the Firm Gathering service provided by National shall be priced at the maximum IG rate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11650 Filed 5–8–01; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–035]

Natural Gas Pipeline Company of America; Notice of Negotiated Rate

May 3, 2001.

Take notice that on May 1, 2001, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets, to be effective May 1, 2001.

Natural states that the purpose of this filing is to implement a negotiated rate transaction with Tenaska Gas Storage, LLC under Natural's Rate Schedule NSS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff.

Natural states that copies of the filing are being mailed to its customers, interested state commissions and all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11653 Filed 5–8–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–389–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

May 3, 2001.

Take notice that on April 30, 2001, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Seventeenth Revised Sheet No. 22, to be effective June 1, 2001.

Natural states that the filing is submitted pursuant to Section 21 of the General Terms and Conditions (GT&C) of its Tariff as the sixteenth semiannual limited rate filing under Section 4 of the Natural Gas Act and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission) promulgated thereunder. The rate adjustments filed for are designed to recover Account No. 858 stranded costs incurred by Natural under contracts for transportation capacity on other pipelines. Costs for any Account No. 858 contracts specifically excluded under Section 21 are not reflected in this filing.

Natural requested waivers of Section 21 of the GT&C of its Tariff and the Commission's Regulations to the extent necessary to permit Seventeenth Revised Sheet No. 22 to become effective June 1, 2001.

Natural states that copies of the filing are being mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11668 Filed 5–8–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–388–000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

May 3, 2001.

Take notice that on April 30, 2001, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective June 1, 2001:

Third Revised Sheet Number 1
Second Revised Sheet Number 98
Original Sheet Number 182
Second Revised Sheet Number 216
Original Sheet Number 185
Original Sheet Number 186
First Revised Sheet Number 259A
Original Sheet Number 189
Original Sheet Number 190
Original Sheet Number 260A
Original Sheet Number 260B
Original Sheet Number 260C
Third Revised Sheet Number 203
Original Sheet Number 462
Original Sheet Number 463
Original Sheet Number 205A
First Revised Sheet Number 211A
Original Sheet Number 467
Original Sheet Number 468
Eighth Revised Sheet Number 213A
First Revised Sheet Number 213B
Third Revised Sheet Number 214A
Original Sheet Number 183
Original Sheet Number 184
First Revised Sheet Number 233
Original Sheet Number 187
Original Sheet Number 188
Third Revised Sheet Number 260
Original Sheet Number 191
Sheet Numbers 192–199
Fourth Revised Sheet Number 200
Original Sheet Number 260D
Original Sheet Number 260E
Third Revised Sheet Number 205
Original Sheet Number 464
Original Sheet Number 465
Original Sheet Number 466
Fourth Revised Sheet Number 212
Sheet Numbers 469–499

Northern Border states that the purpose of this filing is to implement a new Rate Schedule PAL for park and loan services and to reflect changes in Northern Border's General Terms and Conditions and form of Agreement for services related to implementing Rate Schedule PAL, and to add provisions for Operation Flow Orders.

Northern Border states that copies of this filing have been sent to all Northern Border's contracted shippers and interested state regulatory commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11665 Filed 5–8–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–272–030]

Northern Natural Gas Company; Notice of Negotiated Rate

May 3, 2001.

Take notice that on April 30, 2001, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to become effective on May 1, 2001:

Eighteenth Revised Sheet No. 66
Ninth Revised Sheet No. 66A

Northern states that the above sheets are being filed to implement negotiated rate transactions with Great River Energy and WPS Energy Services, Inc. in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-service Ratemaking for Natural Gas Pipelines. In addition, the transaction that has expired has been deleted.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11666 Filed 5–8–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–223–004]

Northern Natural Gas Company; Notice of Compliance Filing

May 3, 2001.

Take notice that on April 30, 2001 Northern Natural Gas Company (Northern) tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective May 1, 2001:

Sixth Revised Sheet No. 1
Seventh Revised Sheet No. 2
1 Revised 55 Revised Sheet No. 51
53 Revised Sheet No. 53
Fourth Revised Sheet No. 115
Second Revised Sheet No. 125A
First Revised Sheet No. 125B
First Revised Sheet No. 125C
First Revised Sheet No. 125D
First Revised Sheet No. 125E
First Revised Sheet No. 125F
Fifth Revised Sheet No. 143
Eleventh Revised Sheet No. 144
Fourth Revised Sheet No. 145
Seventh Revised Sheet No. 206
Seventh Revised Sheet No. 220
Third Revised Sheet No. 251
Fifth Revised Sheet No. 252
Fifth Revised Sheet No. 255
Fourth Revised Sheet No. 261
1 Rev Sub Sixth Revised Sheet No. 263A
Fourth Revised Sheet No. 264
Seventh Revised Sheet No. 265
Third Revised Sheet No. 271
Fourth Revised Sheet No. 290
Fifth Revised Sheet No. 300
Fifth Revised Sheet No. 302
Fourth Revised Sheet No. 414
Third Revised Sheet No. 415
Third Revised Sheet No. 416

Northern states that the reason for this filing is to comply with the Commission's Order dated April 16, 2001 in Docket No. RP00–223–003. Pursuant to the April 16 Order, Northern has revised Tariff Sheet No. 125A to reflect the offering of Limited Firm Throughput Service (LFT) in the Field Area year-round and in the Market Area during the summer (April through October). Tariff Sheet No. 125D has been revised to incorporate Northern's intent to credit Shippers when a Limited Day is called pursuant to Northern's Supplemental Filing dated May 9, 2000. In addition, Northern has revised Tariff Sheet Nos. 125A and 125C to delete the reference to Northern's EBB and reflect the use of Northern's Internet web site.

In addition, Northern hereby submits for filing as part of its F.E.R.C. Gas Tariff, Fifth Revised Volume No. 1, an original and five copies of Substitute 56 Revised Sheet No. 51 and Substitute Seventh Revised Sheet No. 263A proposed to be effective May 19, 2001 to incorporate LFT references on these substitute pages.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's

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Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests and interventions may be field electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11667 Filed 5–8–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Docket No. GT01–21–000

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

May 3, 2001.

Take notice that on April 30, 2001, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet to be effective June 1, 2001:

Fourth Revised Sheet No. 3B

Panhandle states that the purpose of this filing, made in accordance with the provisions of Section 154.106 of the Commission's Regulations, is to service the system map to reflect changes in the pipeline facilities and the points at which service is provided.

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)((iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/foorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11661 Filed 5–8–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1496–000]

Sundance Energy; Notice of Issuance of Order

May 3, 2001.

Sundance Energy (Sundance) submitted for filing a rate schedule under which Sundance will engage in wholesale electric power and energy transactions at market-based rates. Sundance also requested waiver of various Commission regulations. In particular, Sundance requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Sundance.

On April 13, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Sundance should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Sundance is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Sundance's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 14, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11656 Filed 5–8–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–239–002]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

May 3, 2001.

Take notice that on April 27, 2001, Tennessee Gas Pipeline (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Tenth Revised Tariff Sheet No. 316. Tennessee requests that the foregoing tariff sheet be made effective April 1, 2001, in compliance with the Commission's previous order.

Tennessee states that this sheet is being filed to comply with the Commission's Letter Order issued on March 28, 2001 in Docket No. RP01–239–000, requiring Tennessee to further clarify the priority of Extended Delivery Service/Extended Receipt Service for the NET–284 Rate Schedule.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11649 Filed 5–8–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. GT01–17–000 and CP97–561–002]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

May 3, 2001.

Take notice that on April 27, 2001, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Eighth Revised Sheet No. 301 and Fourth Revised Sheet No. 401A, with an effective date of June 1, 2001.

Tennessee states that the referenced sheet is being filed to comply with the Commission's "Order Granting Abandonment Authority" issued in the captioned proceeding on December 19, 1997. In compliance with the Order, Tennessee has revised Article XXXI of the General Terms and Conditions of its Tariff to reflect the Commission-approved language regarding gathering affiliate abuse and to reflect a revision to the General Terms and Conditions Index of Provisions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11651 Filed 5–8–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–024]

TransColorado Gas Transmission Company; Notice of Negotiated Rate

May 3, 2001.

Take notice that on May 1, 2001, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Twenty-Fourth Revised Sheet No. 21 and Twentieth Revised Sheet No. 22, to be effective May 1, 2001.

TransColorado states that the filing is being made in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000.

TransColorado states that the tendered tariff sheets revised TransColorado's Tariff to reflect two new negotiated-rate tariff contracts.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–202–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11664 Filed 5–8–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT01–20–000]

Trunkline Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 3, 2001.

Take notice that on April 30, 2001, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to be effective June 1, 2001:

Third Revised Sheet No. 5A
Second Revised Sheet No. 5B
Second Revised Sheet No. 5C

Trunkline states that the purpose of this filing, made in accordance with the provisions of Section 154.106 of the Commission's Regulations, is to revise the system map to reflect changes in the pipeline facilities and the points at which service is provided.

Trunkline states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's

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Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11662 Filed 5–8–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1300–000]

Whiting Clean Energy, Inc.; Notice of Issuance of Order

May 3, 2001.

Whiting Clean Energy, Inc. (Whiting) submitted for filing a rate schedule under which Whiting will engage in wholesale electric power and energy transactions at market-based rates. Whiting also requested waiver of various Commission regulations. In particular, Whiting requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Whiting.

On April 12, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Whiting should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Whiting is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Whiting's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 14, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11657 Filed 5–8–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT01–19–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

May 3, 2001.

Take notice that on April 30, 2001, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective April 30, 2001:

Eighth Revised Sheet No. 5
Sixth Revised Sheet No. 6
Sixth Revised Sheet No. 6A
Third Revised Sheet No. 7
Sixth Revised Sheet No. 8
Seventh Revised Sheet No. 9
Fifth Revised Sheet No. 10

Williston Basin states that the revised tariff sheets are being filed simply to update its Systems Maps with the recent information available.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11663 Filed 5–8–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11616–000–Michigan, Project No. 2566–010–Michigan

City of Portland, Michigan, Consumers Energy Company; Notice of Availability of Final Environmental Assessment

May 3, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Energy Projects has reviewed the City of Portland's application for original license for operating unlicensed Portland Municipal Hydroelectric Project, and Consumers Energy Company's new license for the continued operation of the Webber Hydroelectric Project, located on the Grand River, in the City of Portland, Ionia County, Michigan, and has prepared a Final Environmental Assessment (FEA) for the projects. In the FEA, the Commission's staff has analyzed the potential environmental effects of the projects and has concluded that licensing the projects, with staff's recommended measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426. The DEA may also be viewed on the web at *http://www.ferc.fed.us/online/rims.htm*. Please call (202) 208–2222 for assistance. If you have any questions regarding this notice, please contact Tom Dean at (202) 219–2778.

David P. Boergers,

Secretary.

[FR Doc. 01–11654 Filed 5–8–01; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[PF–1021; FRL–6780–8]

Notice of Filing Pesticide Petitions to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–1021, must be received on or before June 8, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1021 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Treva C. Alston, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8373; e-mail address: alston.treva@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" "Regulation and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–1021. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1021 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–1021. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be

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disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 26,2001.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioner and represent the views of the petitioner. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Stockhausen, Inc.

PP 1E6281

EPA has received a pesticide petition (1E6281) from Stockhausen, Inc., 2401 Doyle Street, Greensboro, NC 27406 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for 2-propenoic acid, sodium salt, polymer with 2-propenamide (acrylamide-sodium acrylate copolymer) when used as an inert ingredient as a carrier in pesticide formulations that are applied to growing crops or to raw agricultural commodities before or after harvest. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Toxicological Profile

Acute toxicity. The Agency has established a set of criteria which identifies categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compounds compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. 2-Propenoic acid, sodium salt, polymer with 2-propenamide (acrylamide-sodium acrylate copolymer) conforms to the definition of polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low risk polymers.

1. 2-Propenoic acid, sodium salt, polymer with 2-propenamide (acrylamide-sodium acrylate copolymer) is not a cationic polymer, nor is it reasonably anticipated to become a cationic polymer in the natural aquatic environment.

2. 2-Propenoic acid, sodium salt, polymer with 2-propenamide (acrylamide-sodium acrylate copolymer) contains as an integral part of its composition the atomic elements carbon, hydrogen and oxygen.

3. 2-Propenoic acid, sodium salt, polymer with 2-propenamide (acrylamide-sodium acrylate copolymer) does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. 2-Propenoic acid, sodium salt, polymer with 2-propenamide(acrylamide-sodium acrylate copolymer) is not reasonably anticipated to substantially degrade, decompose or depolymerize.

5. 2-Propenoic acid, sodium salt, polymer with 2-propenamide (acrylamide-sodium acrylate copolymer) is not manufactured or imported from monomers and/or other reactants that are not already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. 2-Propenoic acid, sodium salt, polymer with 2-propenamide (acrylamide-sodium acrylate copolymer) is not a water absorbing polymer with a number average molecular weight greater than or equal to 10,0000 daltons.

7. 2-Propenoic acid, sodium salt, polymer with 2-propenamide (acrylamide-sodium acrylate copolymer) has an average molecular weight of 18,000 daltons. 2-Propenoic acid, sodium salt, polymer with 2-propenamide (acrylamide-sodium acrylate copolymer) meets the requirements for molecular weight distribution of oligomer contents of less than 5% with molecular weights less than 1,000 and less than 2% with molecular weights less than 500.

B. Aggregate Exposure

Dietary exposure. For the purposes of assessing potential exposure under this exemption, it is considered that 2-propenoic acid, sodium salt, polymer with 2-propenamide (acrylamide-sodium acrylate copolymer) could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average molecular weight of 2-propenoic acid, sodium salt, polymer with 2-propenamide (acrylamide-sodium acrylate copolymer) is 18,000 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since 2-propenoic acid, sodium salt, polymer with 2-propenamide (acrylamide-sodium acrylate copolymer) conforms to the criteria that identify a low risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. Since there is a reasonable certainty that no harm will result from aggregate exposure to 2-propenoic acid, sodium salt, polymer with 2-propenamide (acrylamide-sodium acrylate copolymer), a tolerance is not necessary.

C. Cumulative Effects

There are no data to support cumulative risk from 2-propenoic acid, sodium salt, polymer with 2-propenamide (acrylamide-sodium acrylate copolymer) since polymers with molecular weights greater than 400 generally are not absorbed through the intact skin and substances with molecular weights greater than 1,000 generally are not absorbed through the gastrointestinal tract (GI). Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response. Therefore, there is no reasonable expectation of risk due to cumulative exposure.

D. Safety Determination

1. *U.S. population.* 2-Propenoic acid, sodium salt, polymer with 2-propenamide (acrylamide-sodium acrylate copolymer) causes no safety concerns because it conforms to the definition of a low risk polymer given in 40 CFR 723.250(b) and as such is considered incapable of eliciting a toxic response. Also, there are no additional pathways of exposure (non-occupational, drinking water, etc.) where there could be additional risk.

2. *Infants and children.* 2-Propenoic acid, sodium salt, polymer with 2-propenamide (acrylamide-sodium acrylate copolymer) causes no additional concern to infants and children because it conforms to the definition of a low risk polymer given in 40 CFR 723.250(b), and as such, is considered incapable of eliciting a toxic response. Also, there are no additional pathways of exposure (non-occupational, drinking water, etc.) where infants and children would be at additional risk.

E. International Tolerances

There are no CODEX Maximum Residue Limits established for 2-propenoic acid, sodium salt, polymer with 2-propenamide (acrylamide-sodium acrylate copolymer) in/on any crop commodities at this time.

PP 1E6282

EPA has received a pesticide petition (1E6282) from Stockhausen, Inc., 2401 Doyle Street, Greensboro, NC 27406 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for 2-propenoic acid, polymer with 2-propenamide, sodium salt (acrylamide-sodium acrylate copolymer) when used as an inert ingredient as a carrier in pesticide formulations that are applied to growing crops or to raw agricultural commodities before or after harvest EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Toxicological Profile

Acute toxicity. The Agency has established a set of criteria which identifies categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compounds compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. 2-Propenoic acid, polymer with 2-propenamide, sodium salt (acrylamide-sodium acrylate copolymer) conforms to the definition of polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low risk polymers.

1. 2-Propenoic acid, polymer with 2-propenamide, sodium salt (acrylamide-sodium acrylate copolymer) is not a cationic polymer, nor is it reasonably anticipated to become a cationic polymer in the natural aquatic environment.

2. 2-Propenoic acid, polymer with 2-propenamide, sodium salt (acrylamide-sodium acrylate copolymer) contains as an integral part of its composition the atomic elements carbon, hydrogen and oxygen.

3. 2-Propenoic acid, polymer with 2-propenamide, sodium salt (acrylamide-sodium acrylate copolymer) does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. 2-Propenoic acid, polymer with 2-propenamide, sodium salt (acrylamide-sodium acrylate copolymer) is not reasonably anticipated to substantially degrade, decompose or depolymerize.

5. 2-Propenoic acid, polymer with 2-propenamide, sodium salt (acrylamide-sodium acrylate copolymer) is not manufactured or imported from monomers and/or other reactants that are not already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. 2-Propenoic acid, polymer with 2-propenamide, sodium salt (acrylamide-sodium acrylate copolymer) is not a water absorbing polymer with a number average molecular weight greater than or equal to 10,0000 daltons.

7. 2-Propenoic acid, polymer with 2-propenamide, sodium salt (acrylamide-sodium acrylate copolymer) has an average molecular weight of 18,000 daltons. 2-Propenoic acid, polymer with 2-propenamide, sodium salt (acrylamide-sodium acrylate copolymer) meets the requirements for molecular weight distribution of oligomer contents of less than 5% with molecular weights less than 1,000 and less than 2% with molecular weights less than 500.

B. Aggregate Exposure

1. *Dietary exposure.* For the purposes of assessing potential exposure under this exemption, it is considered that 2-propenoic acid, polymer with 2-propenamide, sodium salt (acrylamide-sodium acrylate copolymer) could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average molecular weight of 2-propenoic acid, polymer with 2-propenamide, sodium salt (acrylamide-sodium acrylate copolymer) is 18,000 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since 2-propenoic acid, polymer with 2-propenamide, sodium salt (acrylamide-sodium acrylate copolymer) conforms to the criteria that identify a low risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably

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foreseeable. Since there is a reasonable certainty that no harm will result from aggregate exposure to 2-propenoic acid, polymer with 2-propenamide, sodium salt (acrylamide-sodium acrylate copolymer), a tolerance is not necessary.

C. Cumulative Effects

There are no data to support cumulative risk from 2-propenoic acid, polymer with 2-propenamide, sodium salt (acrylamide-sodium acrylate copolymer) since polymers with molecular weights greater than 400 generally are not absorbed through the intact skin and substances with molecular weights greater than 1,000 generally are not absorbed through the gastrointestinal tract (GI). Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response. Therefore, there is no reasonable expectation of risk due to cumulative exposure.

D. Safety Determination

1. *U.S. population.* 2-Propenoic acid, polymer with 2-propenamide, sodium salt (acrylamide-sodium acrylate copolymer) causes no safety concerns because it conforms to the definition of a low risk polymer given in 40 CFR 723.250(b) and as such is considered incapable of eliciting a toxic response. Also, there are no additional pathways of exposure (non-occupational, drinking water, etc.) where there could be additional risk.

2. *Infants and children.* 2-Propenoic acid, polymer with 2-propenamide, sodium salt (acrylamide-sodium acrylate copolymer) causes no additional concern to infants and children because it conforms to the definition of a low risk polymer given in 40 CFR 723.250(b), and as such, is considered incapable of eliciting a toxic response. Also, there are no additional pathways of exposure (non-occupational, drinking water, etc.) where infants and children would be at additional risk.

E. International Tolerances

There are no CODEX Maximum Residue Limits established for 2-propenoic acid, polymer with 2-propenamide, sodium salt (acrylamide-sodium acrylate copolymer) in/on any crop commodities at this time.

[FR Doc. 01–11521 Filed 5–8–01; 8:45 am]

BILLING CODE CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

May 3, 2001.

Open Commission Meeting, Thursday, May 10, 2001

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, May 10, 2001, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No., Bureau, and Subject

1—Common Carrier—Title: Federal-State Joint Board on Universal Service (CC Docket No. 96–45); and Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers (CC Docket No. 00–256). Summary: The Commission will consider a Fourteenth Report and Order and Twenty-First Order on Reconsideration in CC Docket No. 96–45 and a Report and Order in CC Docket No. 00–256 concerning a proposal to reform federal high-cost universal service support mechanisms for rural carriers.

2—Mass Media—Title: Cross-Ownership of Broadcast Stations and Newspapers; and Newspaper/Radio Cross-Ownership Waiver Policy (MM Docket No. 96–197). Summary: The Commission will consider a Notice of Proposed Rule Making proposing to modify, eliminate, or retain its rule that prohibits common ownership of broadcast stations and newspapers within the same geographic area.

3—Office of Engineering and Technology—Title: Amendment of Part 15 of the Commission's Rules Regarding Spread Spectrum Devices (ET Docket No. 99–231); and Wi–LAN, Inc., Application for Certification of an Intentional Radiator Under Part 15 of the Commission's Rules (DA 00–2317). Summary: The Commission will consider a Further Notice of Proposed Rule Making and Order proposing changes to remove unnecessary regulatory barriers to the introduction of new wireless devices using spread spectrum and other digital technologies. The Commission will also review the staff's denial of an application for equipment certification filed by Wi-LAN, Inc.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 857–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its_inc@ix.netcom.com. Their Internet address is *http://www.itsdocs.com/*.

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at *http://www.fcc.gov/realaudio/*. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–11750 Filed 5–7–01; 11:03 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011305–009
Title: United Alliance Agreement
Parties: Cho Yang Shipping Company, Ltd., Hanjin Shipping Co., Ltd., Senator Lines GmbH, United Arab Shipping Company
Synopsis: The proposed amendment removes Cho Yang Shipping Company, Ltd. as a party and adjusts the vessel contributions and space allocations of the remaining parties.

Agreement No.: 011762
Title: United Alliance Agreement
Parties: Cho Yang Shipping Company, Ltd., Hanjin Shipping Co., Ltd.
Synopsis: The proposed agreement would allow Hanjin Shipping Co., Ltd. to sell vessel space to Cho Yang Shipping Company, Ltd. in the trades between U.S. East and West Coast ports and ports in Asia, Europe, and the Middle East.

Agreement No.: 011763
Title: Crowley/Dole Space Charter and Sailing Agreement
Parties: Crowley Liner Services, Dole Ocean Cargo Express, Inc.
Synopsis: The proposed agreement permits the parties to charter space to each other and coordinate sailings in the trade between Port Everglades, Florida and Puerto Limon, Costa Rica.

Dated: May 4, 2001.
By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–11685 Filed 5–8–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding dates shown below:

License Number: 14687N.
Name: BWT WHSE & DIST., Inc.
Address: 2451 United Lane, Elk Grove Village, IL 60007.
Date Revoked: March 29, 2001.
Reason: Failed to maintain a valid bond.

License Number: 4359F.
Name: Chadwick, Vernon Paul.
Address: 5915 Hoover Avenue, Indian Trail, NC 28079.
Date Revoked: October 18, 2000.
Reason: Surrendered license voluntarily.

License Number: 4207F.
Name: Cortina & Roth, Inc.
Address: 8770 SW 72nd Street, #183, Miami, FL 33173.
Date Revoked: April 4, 2001.
Reason: Surrendered license voluntarily.

License Number: 3240F.
Name: Freight Connections International, Ltd.
Address: 935 175th Street, Homewood, IL 60430.
Date Revoked: March 24, 2001.
Reason: Failed to maintain a valid bond.

License Number: 16978F.
Name: International Transportation Services, Inc. d/b/a Itrans.
Address: 18610 S.E. 24th Street, Vancouver, WA 98683.
Date Revoked: April 4, 2001.
Reason: Failed to maintain a valid bond.

License Number: 14011F.
Name: Inverfreight, Inc.
Address: 5901 NW 151st Street, Suite 102, Miami Lakes, FL 33014.
Date Revoked: March 23, 2001.
Reason: Failed to maintain a valid bond.

License Number: 3903N.
Name: Jagro California Inc.
Address: 5777 W. Century Blvd., Suite 800, Los Angeles, CA 90045.
Date Revoked: March 30, 2001.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 01–11683 Filed 5–8–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, D.C. 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

Diplomat Global Logistics, Inc., 6315 Fly Road, E. Syracuse, NY 13057.
Officers: Richard J. Roche, President, (Qualifying Individual); John Rodenhouse, Secretary

Dynamic World Trade Corp. d/b/a LHS Global Logistics, 747 Glasgow Avenue, Inglewood, CA 90301.
Officers: Carl Steiner, CEO (Qualifying Individual); Robert Harrah, Vice President Sales.

Daystar Line, Inc., 535 Secaucus Road, Secaucus, NJ 07094.
Officers: Taek S. Hwang (aka Timmy Hwang), President, (Qualifying Individual); Yoon M. Hwang, Treasurer.

G&S Shipping, Inc., 2252 Beverly Boulevard, Suite 204, Los Angeles, CA 90057.
Officer: Olegario M. Gaerlan, President, (Qualifying Individual).

Amfak Global Services, Inc., 205 Meadow Road, Edison, NJ 08817.
Officers: Stephen F. Trimboli, Vice President, (Qualifying Individual); Michael F. Molfetta, President.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Conex International, 20435 South Western Avenue, Torrance, CA 90501.
Yung Hoon Kim, Sole Proprietor.

E.N.W. Freight Forwarding Corporation, 8601 NW 72 Street, Miami, FL 33166
Officers: Eduardo Gutierrez, President, (Qualifying Individual); William Alvarez, Vice President.

Northern Business Logistics Corporation, 398 West Bagley Road, Suite 216, Berea, OH 44017.
Officers: Sherri Ann Price, Export Manager, (Qualifying Individual); Don Unansky, President.

Maharlika Cargo International, Inc., 16093 Mills Avenue, San Lorenzo, CA 94580.
Officers: Conrado Lim, Secretary, (Qualifying Individual); Carmen L. Daniels, CEO.

Latek USA, Inc., 662 Dell Road, Carlstadt, NJ 07072.
Officers: Metin Nerkis, Vice President, (Qualifying Individual); Gamza Ayberk, President.

HPK Logistics (USA) Inc., 5959 W. Century Blvd., Suite 705, Los Angeles, CA 90045.
Officers: Richard Cai, President, (Qualifying Individual); Jian Sun, Treasurer.

New Horizons International Group, Incorporated, 6509 New Hampshire Avenue, Takoma Park, MD 20912.
Officer: Chuck Lawrence Omerennah, President, (Qualifying Individual).

Caribtrans Cargo, Inc., 8012 NW 29th Street, Miami, FL 33122.
Officer: Armando Peralta, President, (Qualifying Individual).

S & B International Freight Forwarders, Inc., 4955 SW, 75th Avenue, P.O. Box 55 7066, Miami, FL 33155.
Officers: Crystal Tina Saenz, Manager, (Qualifying Individual); Tammy Gonzalez, President.

Cargo Transport Fla., Inc., 7122 NW 74th Avenue, Miami, FL 33166.
Officers: Milton Amengual, Vice President, (Qualifying Individual); Roger Jarman, President.

Delex Inc., 1326 McDonald Avenue, Brooklyn, NY 11230.
Officers: Robert Taylor, Secretary/Corporate Dir., (Qualifying Individual); Oleg Ardashev, President.

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Total Cargo Logistics Inc. d/b/a Trans Container, Line 405 Blair Road, Avenel, NJ 07001,
Officer: Brian Ventura, President, (Qualifying Individual).
Antilles Wholesale Co Inc., 1759 Bay Road, Miami Beach, FL 33139.
Officer: Joseph Burke, President, (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary, Applicants

Pacific Terminals Limited 3480 West Marginal Way SW, Seattle, WA 98106.
Officers: Ilya Pankov, Import Export Manager, (Qualifying Individual); Kyle Washington, President.
Freight Brokers Global Forwarding, Inc., 205 Meadow Road, Edison, NJ 08817.
Officer: Michael Francis Molfetta, Director, (Qualifying Individual).
Tower Global Logistics, Inc., 7220 NW 36 Street, Suite 646, Miami, FL 33166.
Officers: Eduardo del Pozo, Director of Operations, (Qualifying Individual); Angela Mesa, President.
Falcon Worldwide Corp., 2800 SW 4th Avenue, Bay 20, Fort Lauderdale, FL 33315.
Officers: James R. Brown, (Qualifying Individual); Robert Mion, President.
ACI Cargo, Inc., 2716 NW 72nd Avenue, Miami, FL 33122.
Officers: Raul R. Gonzalez, President, (Qualifying Individual); Gilda Gonzalez, Vice President.

Dated: May 4, 2001.

Bryant L. VanBrakle,

Secretary,

[FR Doc. 01–11684 Filed 5–8–01; 8:45 am],

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

License No.	Name/Address	Date reissued
16587N	Fescargo Corporation, 1145 W. Walnut Street, Compton, CA 90220.	March 15, 2001
4607F	Jolaco Maritime Services Inc., 3620 Willow Bend, Suite 1102, Houston, TX 77054.	January 7, 2001
11365F	Seawinds Freight Services, Inc., 601 Airport Blvd., Unit B, South San Francisco, CA 94080.	February 28, 2001

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 01–11682 Filed 5–8–01; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12 noon, Monday, May 14, 2001.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Proposals regarding a Federal Reserve Bank's building program.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Michelle A. Smith, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: May 4, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–11747 Filed 5–4–01; 4:44 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATIONS, 04/03/2001–04/13/2001

Transaction no.	Acquiring	Acquired	Entities
Transactions Granted Early Termination—04/03/2001			
20011472	LG Electronics Inc.	Joint Venture Corporation	Joint Venture Corporation.
20011473	Koninklijke Philips Electronics N.V	Joint Venture Corporation	Joint Venture Corporation.
20011599	United Parcel Service, Inc	U.S. Office Products Company	Mail Boxes Etc.
20011625	Verizon Communications Inc	Bravo Cellular Holding, L.L.C	Bravo Cellular Holding, L.L.C.
Transactions Granted Early Termination—04/05/2001			
20011502	Rogers Corporation	James Russell	Tonoga Limited.
20011586	Flextronics International Ltd	Telefonaktiebolaget LM Ericsson	Ericsson Inc.
Transactions Granted Early Termination—04/06/2001			
20011640	MDU Resources Group, Inc	Bauerly Brothers, Inc	Bauerly Brothers, Inc.
20011645	Dimension Data Holdings plc	Premier Systems Integrators, LLC	Premier Systems Integrators, LLC.
20011654	Reebok International, Ltd	National Football League Properties, Inc.	National Football League Properties, Inc.
20011655	ChoicePoint Inc	James N. Alvarez	Direct Mail Credit Data Trust. Marketing Information and Technology Trust.
20011656	Palm, Inc	Extended Systems Incorporated	Extended Systems Incorporated.
20011657	Steven M. Scott, M.D	Health Net, Inc	Foundation Health, A Florida Health Plan, Inc.
20011668	Three Cities Fund III, L.P	Einstein/Noah Bagel Corp	Einstein/Noah Bagel Corp.
Transactions Granted Early Termination—04/09/2001			
20010430	AT&T Corp	Michael Malone	AEI Music Network Inc.
20010431	Michael Malone	AT&T Corp	Newco.
Transactions Granted Early Termination—04/10/2001			
20011624	Satish K. Sanan	CGI Group Inc	CGI Group Inc.
20011633	Frontenac VIII Limited Partnership	John Jack McEntee	Nth Degree Inc.
20011642	TransCanada Pipelines Limited	International Paper Company	Curtis/Palmer Hydroelectric Company, L.P.
20011676	WD–40 Company, a Delaware Corporation.	HPD Holdings Corp	HPD Holdings Corp.
20011685	divine, inc	marchFirst, Inc	marchFirst, Inc.
Transactions Granted Early Termination—04/11/2001			
20011670	Commonwealth Credit Union	State Capitol Credit Union	State Capitol Credit Union.
20011683	Intel Corporation	LightLogic, Inc	LightLogic, Inc.
Transactions Granted Early Termination—04/13/2001			
20011124	Phillips Petroleum Company	The Coastal Corporation	Coastal Mart of Oklahoma, Inc. Coastal Mart, Inc. Coastal Refining & Market, Inc.
20011630	General Electric Company	Dover Corporation	A–C Canada Corporation, A–C Compressor UK Limited. Commec, Inc., Millwrights Incorporated. Delaware Capital Formation, Inc. Preco Turbine & Compressor Services, Inc.
20011666	Community Foundation, Inc	Ancilla Systems Incorporated	St. Catherine Hospital, Inc., St. Mary Medical Center, Inc.
20011669	AT&T Corp	NorthPoint Communications Group, Inc.	NorthPoint Communications Group, Inc
20011671	Amerada Hess Corporation	Gibbs Oil Company Limited Partnership.	Gibbs Oil Company Limited Partnership
20011677	Myriad Genetics, Inc	Myriad Proteomics, Inc	Myriad Proteomics, Inc.
20011678	ITC Holding Company, Inc	ITC^DeltaCom, Inc	ITC^DeltaCom, Inc.
20011684	The Cirrus Trust	Gencor Industries, Inc	Consolidated Process Machinery, Inc.
20011686	SAP Aktiengesellschaft Systeme, Anwendungen Produkte in der.	Stichting Administratiekantoor Vanenburg Capitol Management.	Top Tier Software, Inc.
20011688	DLJ Merchant Banking Partners III, L.P.	PMD Group Holdings, Inc	PMD Group Holdings, Inc.
20011689	Deutsche Lufthansa AG	Gerald Schwartz	Onex Food Services, Inc.
20011691	Goodman Distributing Company	Goodman Manulacturing Company, L.P.	Goodman Manufacturing Company, L.P.
20011699	UbiquiTel Inc	VIA Wireless, LLC	VIA Wireless, LLC.
20011717	General Electric Company	Franchise Finance Corporation of America.	Franchise Finance Corporation of America.

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FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 01–11590 Filed 5–8–01; 8:45 am]

BILLING CODE 6750–01–M

GENERAL ACCOUNTING OFFICE

Advisory Council on Government Auditing Standards; Notice of Meeting

The Advisory Council on Government Auditing Standards will meet Wednesday, May 16, 2001, from 12:30 to 4:30 p.m., and Thursday, May 17, 2001, from 8:30 a.m. to 4 p.m. in room 7C13 of the General Accounting Office Building, 441 G Sreet, NW., Washington, DC.

The Advisory Council on Government Auditing Standards will hold a meeting to discuss issues that may impact government auditing standards. The meeting is open to the public. Any interested person who plans to attend the meeting as an observer should present a copy of this meeting notice and a form of picture identification to the GAO Security Desk on the day of the meeting to obtain access to the GAO Building. Council discussions and reviews are open to the public. Members of the public will be provided an opportunity to address the Council with a brief (five minute) presentation on the afternoon of Thursday, May 17.

For further information or to notify the Council of your intention to address the Council, please contact Marcia Buchanan, Assistant Director, Government Auditing Standards, 202–512–9321.

Please check the Government Auditing Standards web page *(www.gao.gov/govaud/ybk01.htm)* one week prior to the meeting for a final agenda.

Marcia B. Buchanan,

Assistant Director.

[FR Doc. 01–11679 Filed 5–8–01; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement No. AoA–01–04]

Fiscal Year 2001 Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging, HHS.

ACTION: Request for applications for a *National Center for Family Friends/ Volunteer Senior Aides* to provide training and technical assistance to current projects, fund and assist new projects, and develop and implement new models to demonstrate alternative funding strategies.

SUMMARY: The Administration on Aging announces that under this program announcement it will hold a competition for a grant award for *one* (1) project at a federal share of approximately $485,000 per year for a project period of two years. The purpose of the project is to support a national center to further build and support a national system of Family Friends/ Volunteer Senior Aides projects, and to develop and implement new models to demonstrate alternative funding strategies for local program replication/ expansion.

The deadline date for the submission of applications is June 15, 2001. Public and/or nonprofit agencies, organizations, or institutions are eligible to apply. To be considered for funding, however, the applicant must be experienced in providing services to the designated populations inherent to the Family Friends/VSA programs.

Application kits are available by writing to the U.S. Department of Health and Human Services, Administration on Aging, Office of Program Development, 330 Independence Avenue, SW., Room 4264, Washington, DC 20201, by calling 202/619–2987 or on the web at http://www.aoa.gov/t4/fy2001.

Dated: May 4, 2001.

Norman L. Thompson,

Acting Principal Deputy Assistant Secretary for Aging.

[FR Doc. 01–11730 Filed 5–8–01; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01075]

Grant for the Study of the Genetic and Environmental Causes of Birth Defects; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a grant program to study the genetic and environmental causes of birth defects. This program addresses the "Healthy People 2010" focus areas of Environmental Health, and Maternal, Infant, and Child Health. The purpose of the program is to support research into the genetic and environmental causes of birth defects.

B. Eligible Applicant

Assistance will be provided only to the University of Louisville Birth Defects Center consistent with the Conference Report (H. Report 106–1033) to the CDC 2001 Appropriations Law (Public Law 106–554). The University of Louisville Birth Defects Center is also known as the University of Louisville Craniofacial Birth Defects Research Center. No other applications are solicited.

Note: Title 2 of the United States Code, chapter 26, section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

C. Availability of Funds

Approximately $438,789 is available in FY 2001 to fund this award. It is expected that the award will begin on or about September 1, 2001, and will be made for a 12-month budget period within a project period of one year. The funding estimate may change.

Use of Funds

This award may be used for personnel services, equipment, travel, and other costs related to project activities. Project funds may not be used for health care services, patient care, construction, nor lease/purchase of facilities or space.

D. Where to Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address: *http://www.cdc.gov.*

Click on "Funding" then "Grants and Cooperative Agreements."

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Virginia Hall-Broadnax, Grants Management Specialist Grants Management Branch, Procurement and Grants Office Centers for Disease Control and Prevention 2920 Brandywine Road, Suite 3000, Mailstop E–13 Atlanta, GA 30341–4146 Telephone number: (770) 488–2700 E-mail address: *vdh2@cdc.gov.*

Technical assistance may be obtained from: William A. Paradies, Birth Defects and Pediatric Genetics Branch, National Center for Environmental Health, Centers for Disease Control and Prevention, 4770 Buford Highway, N.E. Atlanta, GA 30341–3724, Telephone number: (770) 488–4704, E-mail address: *wep2@cdc.gov.*

Dated: May 02, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–11616 Filed 5–8–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01069]

Cooperative Agreement for Suicide Prevention Research Center; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program for a Suicide Prevention Research Center (SPRC). This program addresses the "Healthy People 2010" focus area of Violent and Abusive Behavior and Unintentional Injuries. The purpose of this cooperative agreement is to support existing activities of an SPRC that target at-risk populations including American Indian/ Alaskan Natives, African-American males, young adolescents and the elderly. SPRC activities include both research-related projects and efforts to facilitate and/or coordinate suicide prevention efforts for a geographically defined area. Examples of these activities include, but are not limited to: (1) Behavioral research of populations at-risk for suicide, and the (2) development and evaluation of a suicide surveillance system that includes information collected from multiple data sources.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

To be eligible, applicants must provide the following:

1. Acceptable documentation, at a minimum, includes a letter from the director of the agency authorizing access to the records delineating what records/ data are available for use and by whom, the time of availability of records and the specific calendar years, the availability of unique identifiers, how the records/data can be used, etc.;

2. How the records/data are to be linked, the existence of a unified database, and existing infrastructure to conduct the suicide prevention research;

3. Evidence of existing staff and resources to carry out the activities; and 4) evidence of existing partnerships with national, state, and local suicide prevention agencies that includes letters from all agencies from the director of the agency, documenting the nature of the partnership, the length of the relationship, what role and/or resources provided, etc.

The documentation to fulfill the eligibility requirement must appear immediately following the face sheet of the application. All documentation must appear on agency letterhead. Applications that fail to submit evidence of the above will be considered non-responsive and will be returned without review.

Note: Title 2 of the United States Code, chapter 26, section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $400,000 is available in fiscal year (FY) 2001 to fund one award. It is expected that the award will begin on or about September 1, 2001, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Programmatic Interest

Specific research activities of particular interest to CDC are:

1. Evaluation of the benefits resulting from the development of a unified suicide surveillance system as described above and an assessment of the barriers encountered during the development phase;

2. Identification of existing state and regional suicide prevention efforts;

3. Determination of existing death investigation protocols used by medical examiners and coroners regarding suicide; and the

4. Development of recommendations for a standard protocol to aid in the investigative process improvement of these protocols.

E. Program Requirements

The following are applicant requirements:

1. Demonstrate expertise in some form of suicide behavior prevention research as a core component of the SPRC (as defined in the Section Background and Definitions of the program announcement included in the application kit).

2. Provide a director (Principal Investigator) who has specific authority and responsibility to carry out the project.

3. Provide a Program Coordinator/ Manager, with suicidal behavior research expertise, who will be responsible for day to day programmatic and fiscal management, establishment and maintenance of communication between and among members of the expert panel, national advisory committee(s), community advisory committee, and other organizations and agencies, including CDC.

F. Cooperative Agreement Activities

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

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1. Recipients Activities

a. Conduct epidemiologic research regarding suicide and suicidal behavior. Such research should provide information about potentially modifiable risk and protective factors that can be used as a basis to develop prevention programs or identify avenues for intervention.

b. Collaborate with outside agencies and other entities which will allow for implementation of any proposed intervention activities. At least one of the agencies must be a national organization that has suicide prevention as its major objective and whose members are actively engaged in suicide prevention activities. Provide evidence of established relationships, demonstrated by letters of commitment, with suicide prevention programs being carried out in the State or region in which the SPRC is located. Cooperation with private-sector programs is encouraged.

c. Collaborate with specialists or experts in medicine, epidemiology, behavioral and social sciences, and/or public health as needed to complete the plans of the SPRC. These are considered the disciplines and fields for the SPRC.

d. Establish a community advisory board composed of representatives from public health, mental health, social services, community-based organizations and suicide survivors (family members, friends, etc., who have experienced the loss of a loved one due to suicide) who have an interest in suicide prevention.

e. Coordinate geographic efforts within the state and region to be served by the SPRC.

f. Facilitate and/or coordinate suicide prevention efforts to address the elimination of health disparities among minority populations with disproportionate burdens of adverse health outcomes.

g. Publicize and disseminate the findings.

2. CDC Activities

a. Assist in the development of a research protocol for Institutional Review Board (IRB) review. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research is completed.

b. Provide technical assistance, as needed, to the SPRC.

c. Assist in the publicizing and dissemination of the findings.

G. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

H. Submission and Deadline

Submit the original and five copies of PHS–398 (OMB Number 0925–0001) [(adhere to the instructions on the Errata Instruction Sheet for PHS 398)]. Forms are available at the following Internet address: www.cdc.gov./od/pgo/forminfo.htm or in the application kit.

On or before July 9, 2001, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

I. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

Applicants will be evaluated according to the following criteria (Maximum of 100 total points):

1. Core Faculty, Staff, and Organizational Capacity (30 points)

a. Core faculty: Qualifications, experience, and/or ability of core faculty in conducting research relevant to suicide prevention. Faculty history and experience in receiving research support from competitive sources of funding.

b. Staffing plan: Qualifications, adequacy, appropriateness of personnel, level of effort devoted to the SPRC, and ability to accomplish the proposed activities. The director must report to an appropriate institutional official, e.g., dean of a school, vice president of a university, or commissioner of health and devote not less than 30 percent effort solely to this project. The Project Coordinator or Manager must be a full-time equivalent (1FTE) who is responsible for managing the day to day activities of the SPRC and responsible for providing coordination among and between the national, state, and local organizations, the expert panel, and the community advisory board.

c. Organizational capacity: Existence and availability of organizational resources and support for achieving research and prevention goals.

2. Organizational Collaboration (30 points)

a. The extent to which the applicant describes the nature of the collaborative relationships (joint activities and access to the collaborative organization's membership for promoting prevention activities).

b. The extent to which one of the collaborating organizations is a national organization that has suicide prevention as its major objective and whose members are actively engaged in suicide prevention activities.

c. The extent to which the applicant documents geographic coordination of all suicide prevention efforts within the state and region to be served by the SPRC to include but not limited to surveillance efforts, involvement of experts and national organization and others referenced in the program requirements, inventory of evaluated diverse suicide prevention programs targeting a representative mixture of target groups, the inclusion of and linkage of disparate data sources, etc.

3. Research and Prevention Plan (40 points)

a. The extent to which the applicant documents a high incidence of suicide in the state and region to be served. The extent to which the applicant documents the public health impact of suicide within the state and region to be served by the SPRC.

b. The extent to which the applicant has the capacity to develop a research plan that identifies and is responsive to needed research in the area of suicide prevention.

c. The extent to which the applicant documents plans to develop a model self-directed violence surveillance system that has the capacity to link records between disparate data bases either within a specific geographic area (*e.g.*, including the state and region). At a minimum, the applicant should document access to uniform hospital discharge data bases, trauma registries, and vital statistics.

d. The extent to which the applicant documents the ability of the surveillance system to identify geographic areas with a high incidence of attempted or completed suicides.

e. The extent to which the system have the capability to identify demographic groups at high risk, e.g., racial/ethnic groups, age, economic class, etc.

f. The extent to which the applicant documents utility of a standard protocol for follow-back studies to aid in the investigative process to validate or invalidate undetermined causes of death. Specifically, can the data collection and analysis enhance the follow-back study process to address the following issues: determine the manner of death in equivocal or undetermined deaths, establish the decedent's intent to die, and establish motivations for suicide and pathways toward suicidal death.

g. The extent to which the applicant describes the distribution of suicidal behavior/correlates in a state and region, and plans to develop and pilot test suicide questions for future use in state level surveys.

h. The extent to which the applicant can identify existing instate and inter-region suicide prevention programs, in existence for a minimum of five years and have been evaluated, that target a representative mixture of target groups, specifically African-American males and Native American/Alaska Natives, and young adolescents and the elderly. The inventory of existing prevention programs, referenced above, should represent a diversity of intervention strategies and settings.

i. The extent to which the applicant documents how specific activities address minority populations with disproportionate burdens of adverse health outcomes.

j. The degree to which the applicant will meet the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

1. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations appropriate representation.

2. The proposed justification when representation is limited or absent.

3. A statement as to whether the design of the study is adequate to measure differences when warranted.

4. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

4. Budget (not scored)

The extent to which the budget is reasonable, clearly justified, and consistent with stated objectives and proposed activities. Soundness of the proposed budget in terms of adequacy of resources and their allocation.

5. Human Subjects (Not scored; however an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.) Does the application adequately address the requirements of Title 45 CFR 46 for the protection of human subjects?

Yes __ No __

J. Other Requirements

1. Technical Reporting Requirements

Provide CDC with original plus two copies of

a. progress reports (semiannual);

b. financial status report, no more than 90 days after the end of the budget period;

c. final financial report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

2. Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each see Attachment I of the announcement.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition of Use of CDC Funds for Certain Gun Control Activities
AR–21 Small Minority
AR–22 Research Integrity

K. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act 301, 317, and 391–394A (42 U.S.C. section 241, 247b and 280b–280b–3), as amended. The Catalog of Federal Domestic Assistance number is 93.136.

L. Where to Obtain Additional Information

This and other CDC announcements can be found on the CDC homepage Internet address—*http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements."

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Angie Nation, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Suite 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2719, E-mail address: *aen4@cdc.gov*.

For program technical assistance, contact: M. Joyce McCurdy, Deputy, Etiology and Surveillance Branch, National Center for Injury Prevention and Control, Division of Violence Prevention, Mailstop K60, 4770 Buford Highway, Atlanta, GA 30341–3717, Telephone number: (770) 488–4410, Email address: *jmm6@cdc.gov*.

Dated: May 2, 2001.

John L. Williams,

Director, Procurement and Grants Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–11614 Filed 5–8–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. CFDA 93.576]

ORR Standing Announcement for Services to Recently Arrived Refugees [1]

AGENCY: Office of Refugee Resettlement (ORR), ACF, DHHS.

ACTION: Request for Applications for projects to support services for recently arrived refugees. This notice supersedes the notice published in the **Federal Register** on December 9, 1997 (62 FR 64856).

SUMMARY: This ORR standing announcement invites submission of

[1] Eligibility for refugee social services is limited to persons who meet all requirements of 45 CFR 400.43 (as amended by 65 FR 1540, March 22, 2000) including: (1) Cuban and Haitian entrants under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422); (2) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, as included in the FY 1988 Continuing Resolution (Pub. L. 100–202); and (3) certain Amerasians from Vietnam, including

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grant applications for funding, on a competitive basis, in four categories: Category 1—Preferred Communities, to promote the increase of newly arrived refugees in preferred communities where they have ample opportunities for early employment and sustained economic independence; Category 2—Unanticipated Arrivals, to provide services to unanticipated arrivals, i.e., refugees who have been resettled in unexpected numbers in communities where linguistically or culturally appropriate services for these refugees do not exist; Category 3—Services for Arriving Refugees with Special Conditions or Victims of a Severe Form of Trafficking[2]; and Category 4—Ethnic Community Self-Help to connect newcomer refugees and their communities with community resources.

DATES: This is a Standing Announcement applicable from the date of publication until canceled or modified by the Director of ORR. The Director will observe June 30, 2001, as the first closing date for all categories. Thereafter the Director will observe February 28, of each year as the closing date for applications. The Director may invite applications outside of the proposed closing dates, if necessary, to respond to the needs of an imminently arriving refugee population.

Announcement Availability: The program announcement and the application materials are available from Sue Benjamin and AnnaMary Portz, Office of Refugee Resettlement (ORR), 370 L'Enfant Promenade SW., Washington, DC 20447 and from the ORR website at *www.acf.dhhs.gov/programs/orr.*

FOR FURTHER INFORMATION CONTACT: Categories 1, 2 & 3—Sue Benjamin at (202) 401–4851, *Sbenjamin@commat:ACF.DHHS.GOV* and Category 4 Ethnic Community Self-Help—AnnaMary Portz 202/401–1196 *Aportz@ACF.DHHS.GOV*

SUPPLEMENTARY INFORMATION: This program announcement consists of four parts:

Part I: Background, legislative authority, funding availability, CFDA Number, eligible applicants, project and budget periods, and for each of the four categories—program purpose and objectives, allowable activities, and review criteria.

Part II: The Review Process—intergovernmental review, initial ACF screening, and competitive review.

Part III: The Application—application forms, application submission and deadlines, certifications, general instructions for preparing a full project description, and length of application.

Part IV: Post-award—applicable regulations, treatment of program income, and reporting requirements.

Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average 16 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. The following information collections are included in the program announcement for categories 1–4: OMB Approval No. 0970–0139, ACF UNIFORM PROJECT DESCRIPTION (UPD) attached as Appendix A, which expires 12/30/03 and OMB Approval No. 0970–0036, ORR Quarterly Performance Report (QPR) and Schedule C which expire 7/31/02. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Part I: Background

Since 1994, ORR has provided assistance for social services to meet the needs of newly arriving refugees through a standing announcement. This revision makes slight modifications to Category 1—Preferred Communities, Category 2—Unanticipated Arrivals, and Category 6—Ethnic Community Organizations grant programs (now Category 4), from the prior Standing Grant Announcement published in the **Federal Register** on December 9, 1997 (62 FR 64856). This revised Announcement establishes a new Category 3—Services for Arriving Refugees with Special Conditions or Victims of a Severe Form of Trafficking, which responds to the specific needs of arriving refugee populations and victims of trafficking.

Note that former Category 3—Orientation, former Category 4—Technical Assistance to Orientation Grantees, and Category 5—Mental Health from the 1997 announcement have been discontinued. The notice of cancellation for these categories was published in the **Federal Register** on April 18, 2000 (65 FR 20826). Orientation and Mental Health have been incorporated into ORR's periodic discretionary announcements.

This announcement supersedes ORR's previous Standing Announcement published in the **Federal Register**, December 9, 1997 (62 FR 64856).

Legislative Authority

This program is authorized by section 412(c)(1)(A) of the Immigration and Nationality Act (INA) (8 U.S.C. 1522(b)(5)), as amended, which authorizes the Director "to make grants to, and enter into contracts with, public or private nonprofit agencies for projects specifically designed—(i) to assist refugees in obtaining the skills which are necessary for economic self-sufficiency, including projects for job training, employment services, day care, professional refresher training, and other recertification services; (ii) to provide training in English where necessary (regardless of whether the refugees are employed or receiving cash or other assistance); and (iii) to provide where specific needs have been shown and recognized by the Director, health (including mental health) services, social services, educational and other services."

Funding Availability

In FY 2001, ORR expects to award a total of $7.2 million in discretionary social service funds through approximately 7 projects under Category 1—Preferred Communities ranging from $125,000 to $400,000 for a total of $1,200,000; 3 to 5 projects under Category 2—Unanticipated Arrivals ranging from $100,000 to $200,000 for a total of $500,000; 10 to15 projects under Category 3—Services for Arriving Refugees with Special Conditions or Victims of a Severe Form of Trafficking ranging from $50,000 to $200,000 for a total of $3,000,000; and 3 to 6 projects under Category 4—Ethnic Community Self-Help ranging from $100,000 to $300,000 for a total of $500,000.

The Director reserves the right to award less, or more than the funds described in this announcement. In the absence of worthy applications, the Director may decide not to make an award if deemed in the best interest of the government. Funding availability for future years is at the Director's discretion.

CFDA Number—93.576.

Eligible Applicants

In Category 1, eligible applicants are agencies that currently resettle refugees under a Reception and Placement Cooperative Agreement with the Department of State or with the Department of Justice. This announcement is restricted to these agencies because placements of new arrivals occur under the terms of the cooperative agreements, and no other agencies place new arrivals or participate in determining their resettlement sites.

In Categories 2, 3, and 4 public and private nonprofit organizations are eligible to apply. ORR expects that applicants in these Categories will coordinate with other local organizations in considering projects and proposing services.

Any private nonprofit organization submitting an application must submit proof of its nonprofit status at the time of submission. A nonprofit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate.

An applicant may submit more than one application under this announcement, but must apply separately for each category. Further in applying for Category 3, applicants are encouraged to submit separate applications for each specific population proposed.

Project and Budget Periods

Under this announcement, ORR invites applications in Category 1 for project periods of up to three years. Awards, on a competitive basis, will be for a one-year budget period although project periods may be up to three years. Applications for continuation grants funded under these awards, beyond the one-year budget period but within the three-year project period, will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

ORR invites applications under Category 2 for a single 17-month budget period. Applicants should view these resources as a temporary solution to an immediate need created by unanticipated arrivals.

ORR invites applications under Category 3 for a single 17-month budget period. Applicants should view these resources as a temporary solution to the immediate needs of arriving refugees with special conditions or of victims of trafficking.

ORR invites applications under Category 4 for project periods of up to three years. Awards, on a competitive basis, will be for one-year budget periods. Applications for continuation grants, to extend activities beyond the one-year budget period, will be entertained on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

Category 1—Preferred Communities for Newly Arriving Refugees

Purpose and Objectives

The objective of Category 1, Preferred Communities, is to support resettlement of newly arriving refugees with the best opportunities for their assimilation into new communities.

Preferred community sites are those localities where refugees have *excellent* opportunities to achieve early employment and sustained economic independence without public assistance. Preferred communities should have a history of low welfare utilization by refugees. In addition, refugees should have the potential for earned income at a favorable level relative to the cost of living and to public assistance benefits in such communities. Characteristics of these communities should include: (1) a moderate cost of living; (2) good employment opportunities in a strong, entry-level labor market; (3) appropriate housing and transportation accessible for employment; (4) low secondary out-migration rates for refugees; (5) appropriate religious communities; (6) local community support; (7) receptive school environments; and (8) other related community features that contribute to a favorable quality of life for arriving refugees.

A preferred community should expect to receive a minimum of 100 new refugees annually. ORR will consider exceptions to this standard where the applicant provides substantial justification for the request and documents the community's history of arrivals, the period of time needed to reach a level of 100 new refugees, and the record of outcomes for achieving self-sufficiency soon after arrival.

Communities should be selected where there have not been large numbers of recent arrivals, but the prospects for resettlement appear to be favorable for additional refugees. With these funds, successful applicants will consider which services need to be enhanced or increased in light of increased numbers to maintain each proposed community as a preferred resettlement site. The selected sites may be those with a history of successful refugee placement or those where refugees have not previously been placed, but which have all the elements of a successful refugee resettlement community.

ORR is interested in providing resources for national voluntary agencies to cover the costs of changing community placements so that refugees are placed where they have the best chance for integration. As a result, communities designated as "preferred" may experience an increase in refugees.

ORR formula social service funds are awarded to States to provide services proportionate to the number of refugee arrivals during the previous three years. It can take a year after refugees have arrived before they are included in the count. Planning for the application and implementation of Preferred Community Programs should be done in concert with the State Refugee Coordinator to assure an orderly transition and complement of services until the proportion of new arrivals is accounted for in the ORR formula. Applicants should view the Preferred Community Program as a temporary solution to cover the costs of increased refugee placements. Applicants should describe their coordination and planning under the Approach review criteria.

If funding is requested in sites with alternative "Fish/Wilson" projects, applicants must demonstrate a strong rationale as to why additional funds are needed in this community.

Applicants may wish to consider the following "arrival" categories of refugees for preferred community sites:

Free cases: Those refugees who are determined in the allocation process to be "free cases," that is, unrelated or without family ties to persons already living in the communities.

New refugee populations: Refugees who resettle in areas in the United States that have no or few existing ethnic communities with similar refugees from their country.

Other refugees: The applicant may identify refugees in the reception process who would accept the

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U.S. citizens, under Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1989 (Pub. L. 100–461), 1990 (Pub. L. 101–167), and 1991 (Pub. L. 101–513). For convenience, the term "refugee" is used in this notice to encompass all such eligible persons.

[2] The Victims of Trafficking and Violence Protection Act of 2000 (P.L. 106–386) was enacted in October 2000. Section 107(b)(1) of the Act allows victims, after they have been determined to be "victims of a severe form of trafficking", to become eligible for any Federal and state assistance and services funded or administered by a Federal agency to the same extent as refugees. HHS, in consultation with the Attorney General (AG), is responsible for the "certification" of adult victims before their receipt of benefits. To be eligible to receive benefits and services, adults must be certified by HHS as (1) willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons; and (2) having made a bona fide application for a visa under section 101(a)(15)(T) of the Immigration and Nationality Act that has not been denied; or (3) being a person whose continued presence in the United States the Attorney General is ensuring in order to effectuate prosecution of traffickers in persons. Once determined to be victims of a severe form of trafficking, individuals under the age of 18 are eligible for services and benefits without the "certification" requirement.

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opportunity for resettlement in a preferred community: e.g., refugees who would otherwise be resettled under the rubric of "family reunification," but who in fact are distant relatives and friends. These refugees may elect placement in a preferred community where there are opportunities described above.

The application must, for the first budget year, specify one or more sites with a description of each site and the rationale for its selection. Applicants are encouraged to include activities that assess and plan services for the target populations to be resettled in the communities. Such activities would also assess each specified community's appropriateness for other arriving refugees and, if needed, continue to search for additional communities for future preferred placement. Additional sites may be added by submitting the revised plan and the site descriptions in the continuation application.

As part of the application preparation, it will be incumbent upon the applicant to: (1) Consult with ORR about prospective preferred sites and the appropriateness of those sites for the refugees; (2) coordinate with their affiliates and other voluntary agencies whose local affiliates place refugees in the same sites; (3) inform and coordinate with State governments for site selection, adequate services, and program strategies to be developed; and (4) plan and coordinate locally with community resources, such as schools and public health agencies. In all instances, activities must be designed to supplement, rather than to supplant, the existing array of refugee services available in the community.

Allowable Activities

Allowable activities for local affiliates include social services needed to achieve increased placements in the preferred communities. Allowable activities for the national voluntary agencies are those that assess the appropriateness of resettlement communities for targeted refugees. The result of the assessment should assure that the designated preferred communities provide services that create excellent opportunities to assimilate the targeted refugee groups.

Applications under this section should indicate how the grantee will ensure that services are appropriate and accessible in language and culture.

Review Criteria

1. Objectives and Need for Assistance—The conditions in proposed resettlement communities are clearly described. The need for additional services leading to enhanced resettlement for arriving populations is documented. The applicant provides a national placement plan that documents understanding of the arriving refugee groups and their characteristics as well as local opportunities for their resettlement. (25 points)

2. Results or Benefits Expected—The applicant clearly describes the results and benefits to be achieved. The applicant proposes an increase in the actual number of free cases placed in the specified community. Results or benefits are described also in terms of the opportunities provided for refugees. Proposed outcomes are measurable and achievable within the grant project period, and the proposed monitoring and information collection is adequately planned. (25 points)

3. Approach—The strategy and plan, including a description of each proposed preferred community and an assessment of appropriateness for placement, are likely to achieve increased placement in preferred communities and excellent opportunities for assimilation. The proposed activities and timeframes are reasonable and feasible. The plan describes in detail how the proposed activities will be accomplished as well as the potential for the project to achieve economic independence for arriving refugees. The application includes a clear and comprehensive description of the preferred sites proposed. The application includes a clear and comprehensive description of the national voluntary agency placement planning activities and how they will be impacted by this project. Assurance is provided that proposed services will be delivered in a manner that is linguistically and culturally appropriate to the target population. (25 points)

4. Organizational Profiles—The administrative and management features of the project, including a plan for fiscal and programmatic management of each activity and planning activities, is described in detail with proposed start-up times, ongoing timelines, major milestones or benchmarks, a component/project organization chart, management of affiliates, and a staffing chart of affiliate network. The qualifications of project staff, both national applicant and affiliate agencies, as well as any volunteers, are documented. The applicant has provided a copy of its most recent audit report. (10 points)

5. Budget and Budget Justification—The budget and narrative justification are reasonable, clearly presented, and cost-effective in relation to the proposed activities and anticipated results. The applicant clearly indicates how awarded funds will complement Reception and Placement and other social services to achieve the objectives. (15 points)

Category 2—Unanticipated Arrivals

Purpose and Objectives

The purpose ORR seeks to achieve through Category 2, Unanticipated Arrivals, is to provide additional resources to communities where the arrival of refugees is not anticipated and the refugee services are insufficient. Under these circumstances, resources are needed to provide additional service capacity to accommodate the additional refugees. Through Category 2—Unanticipated Arrivals—ORR intends to offer to communities the resources to respond to the unanticipated arrivals with adequate and culturally and linguistically appropriate social services.

Under Category 2, ORR invites applications that propose seventeen-month projects for a minimum of 100 refugees annually. Examples of situations for which applicants may request funds for grants under Category 2 are as follows: (1) the existing service system does not have culturally and linguistically compatible staff; (2) refugee services do not presently exist; or (3) the service capacity is not sufficient to accommodate significant increases in arrivals.

This grant program is intended to provide for services that respond to the needs of new refugee populations shortly after arrival into the community. Grantees should view these resources, therefore, as a *temporary* solution to insufficient services necessitating program adjustment because of the unanticipated arrival of a refugee population in a specific community. Therefore, planning for the application and implementation of the program must be done in concert with the State Refugee Coordinator to assure an orderly transition and complement of services. ORR's expectation by the end of the grant project period is that the State government will have incorporated services for these new populations into its refugee services network funded by ORR formula social service dollars. The transition of the services should be described in the last two quarterly performance reports.

Allowable Activities

Allowable activities in the unanticipated arrivals program are social services for refugees that are appropriate and accessible in language and culture. Services provided by all grantees, whether private or public, must comply with the regulations at 45 CFR sections 400.147, 400.150(a), and 400.154–156 regarding priorities for services, eligibility for services, scope of services, and service requirements.

Applications under this section should indicate how the grantee will ensure that services are appropriate and accessible in language and culture.

Review Criteria

1. Objectives and Need—The application establishes that the unanticipated number of at least 100 refugees or more is significant relative to the resident population. The applicant documents the most recent 12-month period of refugee arrivals, both anticipated and unanticipated. The application includes a description of the need for services and how funding through the Unanticipated Arrivals program would meet those needs. The application, supported by a letter from the relevant voluntary agency headquarters, documents the planned projections of refugees for the next 12 months. (25 points)

2. Results or Benefits Expected—The application clearly describes the project goals; appropriateness of the performance measures to the project activities; appropriateness of the performance outcomes and the results and benefits to be achieved. The application describes how the impact of the funds will be measured on key indicators associated with the purpose of the project. Proposed outcomes are measurable and achievable within the grant project period, and the proposed monitoring and information collection is adequately planned. (20 points)

3. Approach—The strategy and plan are likely to achieve the proposed results; the proposed activities and timeframes are reasonable and feasible. The plan describes in detail how the proposed activities will be accomplished as well as the potential for the project to increase the available services for unanticipated arriving refugees. Assurance is provided that proposed services will be delivered in a manner that is linguistically and culturally appropriate to the target population. Where coalition partners are proposed, the applicant has described each partner agency's respective role and financial responsibilities, and how the coalition will enhance the accomplishment of the project goals. The applicant has described the planning consultation efforts undertaken. The State Refugee Coordinator indicated an interest in continuing these services to the Unanticipated Arrivals through their State formula social service funds. (20 points)

4. Organizational Profiles—Individual organization staff, including volunteers, are well qualified. The administrative and management features of the project, including a plan for fiscal and programmatic management of each activity, is described in detail with proposed start-up times, ongoing timelines, major milestones or benchmarks, a component/project organization chart, and a staffing chart. The applicant has provided a copy of its most recent audit report. Evidence of commitment of any coalition partners in implementing the activities is demonstrated, e.g., by Memorandum of Understandings (MOUs) among participants. (20 points)

5. Budget and Budget Justification—The budget and narrative justification are reasonable, clearly presented, and cost-effective in relation to the proposed activities and anticipated results. (15 points)

Category 3—Services for Arriving Refugees With Special Conditions or Victims of Trafficking

Purpose and Objectives

The purpose ORR seeks to fulfill through Category 3, Services for Arriving Refugees with Special Conditions or Victims of a Severe Form of Trafficking, is to provide resources that will address the needs of targeted groups of refugees or victims of trafficking. We believe that enhanced case management, education, culturally and linguistically appropriate linkages and coordination with other services providers contributes to the overall improved well being of refugees with special needs. Trafficking victims need similar services and initial assistance accessing the refugee and or mainstream services for which they are eligible. The services funded through Category 3 should enhance the likelihood of refugees assimilating into their new communities or trafficking victims receiving needed support as they work with the criminal justice system to assist in the investigation and prosecution of trafficking crimes.

A community should expect to receive a minimum of 20 refugees with special conditions or be the likely home of a minimum of 10 victims of trafficking each year. Situations for which applicants may compete for grants under Category 3 might include refugees arriving with: (1) Medical conditions requiring specialized health care; (2) youth and young adults who have undergone significant trauma or spent an unusually long period under refugee camp conditions, *e.g.*, the Kakuma youth; (3) refugees disabled by the atrocities of warfare, such as those from Sierra Leone; and (4) grave social or emotional conditions including emotional trauma resulting from war, torture, or coercion into sex trafficking, involuntary servitude, or debt bondage. Communities proposing to serve victims of trafficking will encounter similar service needs although victims are mostly women and teen-age children who may more closely resemble victims of domestic violence and sexual abuse.

This grant program is intended to support services that address special conditions. ORR's expectation is that refugees with special conditions or victims of trafficking will most likely, after a period of time, access mainstream services. Therefore, grantees should view these resources as a temporary solution.

In the last two Program Performance Reports, grantees will discuss the transition of services indicating whether the services are now supported by the State, other public or private resources, or are no longer needed. These reports must provide supporting information on the impact of the services provided on the target population.

Allowable Activities

ORR will accept applications under this announcement for projects that propose services appropriate to refugees with special conditions or victims of trafficking eligible for benefits and services. Separate applications should be submitted for each special condition and for victims of trafficking.

The services needed for refugees with special conditions might include:

- special medical care;
- prostheses and related physical therapies for disabled refugees;
- assistance with transportation;
- temporary housing for young adults with limited experience living in families;
- independent living skills, both U.S. legal standards and social customs, including social skills for the unaccompanied youth;
- mental health services, such as coping with the traumatic experiences of war; and
- access to appropriate educational programs and educational advancement.

The services needed for victims of trafficking might include:

- case management, to include information and referral to needed services in the community, either funded refugee services or mainstream services as appropriate;
- temporary housing;
- special mental health services, such as trauma counseling, and

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• other services needed to bridge the time between the date of the Department's letter of certification establishing eligibility and the receipt of public benefits and support services (*e.g.*, orientation).

Applications under this section should indicate how the grantee will ensure that services are appropriate and accessible in language and culture.

Review Criteria

1. Objectives and Need—The applicant demonstrates a clear understanding of the population to be served. If refugees, then a letter from the national voluntary agency that documents the number of refugees with special conditions and the services needed. The number of refugees or victims of trafficking projected to be served (minimum of 10 each) is reasonable in light of the resettlement capacity. The application proposes to address the special condition of one refugee population or a program of services for victims of trafficking. (25 points)

2. Results or Benefits Expected—The application clearly describes how the specific target population will benefit from proposed services, *e.g.*, enhanced case management, special medical care, referrals and follow-up with culturally and linguistically appropriate mainstream providers. The application describes how the impact of the funds will be measured on key indicators associated with the purpose of the project. Proposed outcomes are tangible and achievable within the grant project period and the proposed monitoring and information collection are adequately planned. (25 points)

3. Approach—The strategy and plan is likely to achieve the proposed results; the proposed activities and timeframes are reasonable and feasible. The plan describes in detail how the proposed activities will be accomplished as well as the coordination with other services. Assurance is provided that proposed services will be delivered in a manner that is linguistically and culturally appropriate to the target population. Where coalition partners are proposed, the applicant describes each partner agency's respective role and financial responsibilities; and describes how the coalition will enhance the accomplishment of the project goals. The applicant has described the planning consultation efforts undertaken. Evidence of commitment of coalition partners in implementing the activities is demonstrated, *i.e.*, by Memorandum of Understandings (MOUs) among participants. (25 points)

4. Organizational Profiles—Individual organization staff including volunteers are well qualified. The administrative and management features of the project, including a plan for fiscal and programmatic management of each activity, are described in detail with proposed start-up times, ongoing timelines, major milestones or benchmarks, a component/project organization chart, and a staffing chart. The applicant has provided a copy of its most recent audit report. (15 points)

5. Budget and Budget Justification—The budget and narrative justification are reasonable, clearly presented, and cost-effective in relation to the proposed activities and anticipated results. Planning for continuation of services beyond the project period is realistic. (10 points)

Category 4—Ethnic Community Self-Help

Purpose and Objectives

This program is to provide assistance to organized ethnic communities comprised of and representative of newly arrived refugee populations. ORR's intended purpose is to build bridges among newcomer refugee communities and community resources. ORR is interested in applications from a national, regional (multi-state), or local level that address community building, cultural adjustment orientation, and mutually supportive functions such as information exchange, civic participation, and resource enhancement.

Respondents to this program category will be of two general types:

(1) Multi-site or national ethnic organizations which propose to develop or strengthen local ethnic groups and/or a national network of ethnic community entities for purposes of linking refugees to community resources; or,

(2) Emerging local ethnic communities which seek to function as bridges between newly arrived refugees and mainstream local resources and organizations.

A community is self-sufficient when it has the capacity to generate and control its own resources, determine its own goals, set priorities, plan and mobilize community members, including the elderly, women and youth, to work together to achieve these goals, and to create collaborations with others from within and outside the community to further these goals.

ORR recognizes that one key to strengthening communities is the development of strong community based organizations (CBOs). A strong ethnic organization can tap into the community's desire for self-help, improve services, support leaders, attract various resources, explore housing and economic opportunities, collaborate with mainstream agencies and groups, and at the same time, remain accountable to the community.

Strong CBOs can also facilitate positive interaction between refugees and established residents in mainstream communities. The ability to organize and to voice their concerns collectively gives refugees a better sense of identity and hope for their own and their community's future. Refugee self-help groups can be important building blocks for effective resettlement and can function as bridges between the refugee community and local resources.

Many refugees who arrived in this country during the past century organized themselves around self-help in order to assist their own members, to foster long term community growth, to preserve their cultural heritage, and to assist community members in securing employment and other social services. Many newly arrived refugees, who have come to the United States in recent years, have not yet organized; consequently, they may be experiencing barriers to accessing mainstream resources and full participation in the economic, social, and civic activities of the larger community. They are distinguished in part by a lack of information about the process of community organizing for self-help.

ORR has found that effective refugee self-help groups result in:

• A shared, dynamic vision of the community's future which inspires members to work together to secure that future;

• A perception of refugees not as needy recipients but as active partners in their integration into their communities;

• A link between individual self-sufficiency and community self-reliance;

• Local communities which apply their own cultural, civic and socio-economic values to long term strategies and programs;

• A role for refugees as decision-makers on community needs, program responses, and service delivery systems;

• Local resources (generated through service delivery or economic development) that stay within the community;

• Collaboration among refugee and mainstream service providers, policy makers, and public and private institutions.

In recognition of the special vulnerability of newly arrived populations, ORR intends to provide

support to refugee ethnic communities who have achieved significant populations in the United States within the last three years. Target populations will range from a minimum of 1000 to a maximum of 50,000 arrivals to the United States of a single nationality or ethnicity by FY 1999[3] (the most recent year for which ORR has documentation at the time of this publication), and must have experienced significant new arrivals since that time.

According to ORR's data, this includes the following refugee nationalities or ethnicities: Afghans, Kosovar-Albanians, Bosnians, Burmese, Ethiopians, Haitians, Irani, Iraqi, Liberians, Nigerians, Sierra Leoneans, Somali, Sudanese, and any from the former Yugoslavia. Awards will not be based solely on population numbers, but will be based on the applicant's justification and documentation, including such factors as community service needs and available resources.

ORR expects applicants to match federal funds and to consider how they might document proposed receipt of funds from other (non-ORR) sources toward cost sharing of the project.[4] The requirement will be not less than 10% of the requested funding for the first year award, 15% for the second year award, and 25% for the third year award.

Allowable Activities

Successful *national organization applicants* to this notice may propose activities that may include, but are not limited to, the following:

• Organizing for self-help and civic participation;

• Inspiring self-determination;

• Linking technical assistance and resources to local ethnic communities;

• Supporting public education and agency linkage through an Internet site;

• Facilitating information dissemination on ethnic-specific issues; or

• Convening of national or regional meetings.

Successful *local ethnic self-help applicants* to this notice may propose any of the following activities:

• Public education activities designed to inform the refugee community about issues essential to functioning effectively in the new society;

• Orientation and assistance to parents in connecting with school systems and other local public or private institutions;

• Dissemination of information on access to community health and mental health services, including health care for the uninsured, health insurance, health maintenance organizations, the importance of preventive health, required immunizations, and available universal coverage;

• Pairing refugee individuals or families with community volunteers;

• Information and training on the roles of men and women in the U.S. culture; such as:

Information on laws regarding child welfare, child abuse and neglect;
Information on sexual harassment and coercion, and domestic violence;
Bilingual staff assistance for women's shelters, and
Techniques for self-protection;

• Activities designed to improve relations between refugees and the law enforcement communities;

• Community training for such activities as civic organizing, resource strategies, and non-profit management.

The above are examples of services. Applicants may propose other relevant services and may request funds to cover core or general operating expenses. In all instances, however, activities must be designed to supplement, rather than to supplant, the existing array of refugee services available in the community.

Applicants must give assurance that their governing bodies, boards of directors, or advisory bodies are knowledgeable and responsive to refugee concerns. This can be demonstrated through majority refugee representation on these bodies or through some other way. Women should be included on these representative bodies, as well.

Planning and coalition-building should be guided by the overarching goal of improving the economic condition of refugee families and of giving them the information needed to achieve social and civic integration into their new country and their new communities.

Non-Allowable Activities

Funds will not be awarded to applicants for the purpose of engaging in activities of a distinctly political nature, activities designed exclusively to promote the preservation of a specific cultural heritage, or activities with an international objective (i.e., activities related to events in the refugees' country of origin).

Review Criteria

1. Objectives and Need for Assistance—The applicant clearly describes the need for ethnic organizing in the community proposed and documents an understanding of the distinguishing characteristics of the relevant ethnic group. The principal and subordinate objectives are clearly stated; supporting documentation, such as letters of support from concerned interests are included. The applicant describes in detail how the ethnic community has been involved in the project planning, how project participants are identified, and provides evidence of their support for the plan of action. Planning studies incorporating demographic data and participant information are referenced or included as needed. (15 points)

2. Results or Benefits Expected—The applicant describes outcomes which are likely to be reached through community organizing. Two or more key indicators associated with ethnic community self-help are provided as measures of the impact of the proposed project. Proposed outcomes are measurable and achievable within the grant project period, and the proposed monitoring, information collection, and documentation are adequately planned. (20 points)

3. Approach—The Strategy and plan is likely to achieve the proposed results; the proposed activities and timeframes are reasonable and feasible. The reason for taking the proposed approach to community organizing is adequately described. Proposed activities are likely to lead to desired outcomes, and the project is likely to lead to increased ethnic community self-help. (25 points)

4. Organizational Profiles—Individual organization staff, including volunteers, proposed partners and consultants, if any, are well qualified. The administrative and management features of the project, including a plan for fiscal and programmatic management of each activity, is described in detail with proposed start-up times, ongoing timeliness, major milestones or benchmarks, a component/project organization chart, and a staffing chart. The applicant has provided a copy of its most recent audit report or fiscal management plan. If appropriate, written agreements between grantees and sub-grantees or other cooperating entities, detailing work to be performed,

[3] ORR has dedicated earlier resources toward ethnic populations experiencing 50,000 or more arrivals through 1999.

[4] "Cost-sharing" is used here to refer to any situation in which the grantee shares in the costs of a project. The term "recipient contributions" refers to costs borne by the grantee, either through cash outlay or the provision of services. "In-kind contributions" means the value of goods and/or services donated by third parties. Grantees are not considered as providing in-kind contributions. The cost-sharing or in-kind contribution costs are subject to the rules governing allowability in 45 CFR 74.23 or 92.24, including allowability under the applicable cost principles and conformance with other terms and conditions of the award that govern the expenditure of Federal funds.

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remuneration, and other terms and conditions that structure or define the relationship to this project, are provided. (25 points)

5. Budget and Budget Justification—The budget and narrative justification are reasonable, clearly presented, and cost-effective in relation to the proposed activities and anticipated results. The cost-sharing plan is likely to be achieved and is appropriate to the overall funding request, and the level of activity—national or local. (15 points)

Part II: The Review Process

Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

Note: All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, Wyoming, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-eight jurisdictions need take no action regarding Executive Order 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of Executive Order 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or indicate "not applicable" if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: ORR Grants Officer, U.S. Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, 370 L'Enfant Promenade SW., 6th floor, Washington DC, 20447.

A list of the Single Points of Contact for each participating State and Territory can be found on the web at: *http://www.whitehouse.gov/omb/index.html.*

Note: Please note that as States and Territories elect not to participate in Executive Order 12372, notification is given to OMB and changes are made in the listing. It would be beneficial to call a policy specialist in the Division of Financial and Grants Policy to obtain the most current information before submitting a program announcement through the clearance process).

Also Note: A program announcement may provide a longer comment period than 60 days, but a shorter comment period is not permitted unless a waiver has been granted by the Director, Division of Grants Policy and Oversight, ASMB before final publication.

Initial ACF Screening

Each application submitted under this program announcement will undergo a pre-review to determine that (1) the application was received by the closing date and submitted in accordance with the instructions in this announcement and (2) the applicant is eligible for funding.

Competitive Review and Evaluation Criteria

Applications which pass the initial ACF screening will be evaluated and rated by an independent review panel on the basis of evaluation criteria specified in Part I. The evaluation criteria were designed to assess the quality of a proposed project, and to determine the likelihood of its success. The evaluation criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to the evaluation criteria within the context of this program announcement.

Applications received for each Category will be scored and ranked only within the Category designated on the SF 424, e.g. in one of the four program areas.

Part III: The Application

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ACF. Selected elements of the ACF Uniform Project Description (UPD) relevant to this program announcement are attached as Appendix A.

Application Forms

Applicants for financial assistance under this announcement must file the Standard Form (SF) 424, Application for Federal Assistance; SF 424A, Budget Information—Non-construction Programs; SF 424B, Assurances—Non-Construction Programs. The forms may be reproduced for use in submitting applications. Application materials including forms and instructions are also available from the Contact named in the preamble of this announcement.

Application Submission And Deadlines

An application with an original signature and two clearly identified copies is required. Applicants must clearly indicate on the SF 424 the Category under which the application is submitted.

The closing date for submission of applications is June 30, 2001. Thereafter the Director will observe February 28, of each year as the closing date for applications. Mailed applications postmarked after the closing date will be classified as late.

Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, Attention: Grants Officer, 370 L'Enfant Promenade SW, 6th Floor, Washington, DC 20447.

Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private Metered postmarks shall not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Applications hand-carried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, the Office of Refugee Resettlement, 6th Floor, Aerospace Building, 901 D Street, SW, Washington, DC 20447 between Monday and Friday (excluding Federal holidays). The address must appear on the envelope/package containing the application with the note "Attention: Grants Officer." (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

For Further Information on Application Deadlines Contact: ORR Grants Officer, Administration for Children and Families, Office of Refugee Resettlement, 370 L'Enfant Promenade SW, 6th Floor, Washington, DC 20447, Telephone: (202) 401–4577.

Certifications, Assurances, And Disclosure Required For Non Construction Programs

Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, "Assurances: Non-Construction Programs." Applicants must sign and return the Standard Form 424B with their applications.

Applicants must provide a signed certification regarding lobbying with their applications, when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form to report lobbying.

Applicants must make the appropriate certification of their compliance with the Drug Free Workplace Act of 1988. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the applications.

Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for an award. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the applications.

General Instructions for Preparing a Full Project Description

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. Applicants are encouraged to provide information on their organizational structure, staff, related experience, and other information considered relevant. Awarding offices use this and other information to determine whether the applicant has the capability and resources necessary to carry out the proposed project. It is important, therefore, that this information be included in the application. However, in the narrative the applicant must distinguish between resources directly related to the proposed project from those that will not be used in support of the specific project for which funds are requested. Please refer to the UPD sections in the appendix.

Length of Applications

Each application narrative should not exceed 20 pages in a 12-pitch font. Attachments and appendices should not exceed 25 pages and should be used only to provide supporting documentation such as administration charts, position descriptions, resumes, and letters of intent or partnership agreements. A table of contents and an executive summary should be included but will not count in the page limitations. Each page should be numbered sequentially, including the attachments or appendices. This limitation of 20 pages per program area should be considered as a maximum, and not necessarily a goal. Application forms are not to be counted in the page limit.

Please do not include books or videotapes as they are not easily reproduced and are, therefore, inaccessible to the reviewers.

Part IV: Post-Award

Applicable Regulations

Applicable DHHS regulations can be found in 45 CFR Part 74 or 92.

Treatment of Program Income

Program income from activities funded under this program may be retained by the recipient and added to the funds committed to the project, and used to further program objectives.

Reporting Requirements

Grantees are required to file the Financial Status Report (SF–269) semi-annually and the Program Performance Reports submitted quarterly, along with the Schedule C of the ORR Quarterly Performance Report. Category Three grantees should note the additional requirements for the final two Program Performance Reports noted under Category Three Purpose and Objectives above.

Funds issued under these awards must be accounted for and reported under the distinct grant number ascribed. Although ORR does not expect the proposed projects to include evaluation activities, it does expect grantees to maintain adequate records to track and report on project outcomes and expenditures. The official receipt point for all reports and correspondence is the ORR Grants Officer, Administration for Children and Families/Office of Refugee Resettlement, 370 L'Enfant Promenade SW., 6th Floor, Washington, DC 20447, Telephone: (202) 401–4577. An original and one copy of each report shall be submitted within 30 days of the end of each reporting period directly to the Grants Officer.

A Final Financial and Program Report shall be due 90 days after the project expiration date or termination of Federal budget support.

Dated: May 4, 2001.

Carmel Clay-Thompson,

Acting Director, Office of Refugee Resettlement.

Appendix A—Uniform Project Description OMB No. 0970–0139

The project description is approved under OMB control number 0970–0139 which expires 12/31/03.

Part I: The Project Description Overview

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested.

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Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criteria should be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

General Instructions

ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. Cross referencing should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix.

Pages should be numbered and a table of contents should be included for easy reference.

Part II: General Instructions for Preparing a Full Project Description

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expands and clarifies more program-specific information that is needed.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or Benefits Expected

Identify the results and benefits to be derived.

Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information that is conducted or sponsored by ACF."

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Staff and Position Data

Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission.

The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, *or* by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Third-Party Agreements

Include written agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

Letters of Support

Provide statements from community, public and commercial leaders that support the project proposed for funding. All submissions should be included in the application *OR* by application deadline.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

General

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, "Federal resources" refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment

Description: "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (Note: Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

Justificotion: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justificotion: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category.

Justificotion: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 USC 403(11) currently set at $100,000. Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgment that the applicant is accepting a lower rate than allowed.

Program Income

Description: The estimated amount of income, if any, expected to be generated from this project.

Justification: Describe the nature, source and anticipated use of program income in the budget or refer to the pages in the application which contain this information.

Nonfederal Resources

Description: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

Justification: The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each funding source.

Total Direct Charges, Total Indirect Charges, Total Project Costs.

[Self-explanatory]

[FR Doc. 01–11680 Filed 5–8–01; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0208]

Agency Information Collection Activities; Proposed Collection; Comment Request; Voluntary National Retail Food Regulatory Program Standards

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on FDA's collection of information from local, State, and tribal agencies concerning their use of or planned use of all or part of the Voluntary National Retail Food Regulatory Program Standards.

DATES: Submit written or electronic comments on the collection of information by July 9, 2001.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–26, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. Collection of information is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide

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information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Voluntary National Retail Food Regulatory Program Standards

FDA has developed the Voluntary National Retail Food Regulatory Program Standards (the National Standards) to assist and promote the uniform application of provisions of the model FDA Food Code by several thousand local, State, and tribal jurisdictions that have primary responsibility for the regulation or oversight of retail level food operations. The National Standards are intended to serve as a guide to regulatory retail food program managers in the design and management of a retail food program that is focused on the reduction of risk factors know to cause foodborne illness. The National Standards also promote active management control by industry of all risk factors that may cause foodborne illness. Authority for providing such assistance is derived from section 311 of the Public Health Service Act (42 U.S.C. 243), and delegation of authority from the Public Health Service to the Commissioner of Food and Drugs related to food protection is contained in 21 CFR 5.10(a)(2) and (a)(4). Under 31 U.S.C. 1535, FDA provides financial assistance to other Federal agencies such as the Indian Health Service. FDA has established a section on the Internet at http://vm.cfsan.fda.gov/dms/ret-toc.html under "Federal/State Food Programs—Retail Food Safety References" to list jurisdictions that have voluntarily elected to use the National Standards.

Utilization of the National Standards by local, State, and tribal regulatory agencies is an important step to further the goals of the President's Council on Food Safety and FDA program goals. All regulatory agencies are encouraged to voluntarily utilize the National Standards as a guide for the design and management of a retail food safety program. There is no reporting or recordkeeping requirement for those jurisdictions that wish to utilize part or all of the National Standards to enhance or measure program performance. Reporting is only a requirement for those jurisdictions that request to be listed in the FDA National Registry.

Jurisdictions that request listing in the FDA National Registry of participating regulatory agencies will be expected to perform certain management tasks and periodically report the results to FDA. Voluntary listing in the FDA National Registry requires that the following tasks be performed by State, local, and tribal program managers: (1) Conduct a program self assessment, (2) conduct a baseline survey of the regulated industry, and (3) obtain an independent outside audit. All three tasks must be completed within a 3-year time span. The tasks must be performed in accordance with the guidance provided in the National Standards and the results reported to FDA.

FDA based its estimate on the number of State agencies (100) involved in Food Code related regulatory programs, 300 local agencies with local ordinance authority that may consider Food Code adoption in any one year and 100 tribal agencies. The presumption being that those agencies most likely to utilize the National Standards are also those agencies with authority to adopt and enforce the model FDA Food Code. There is only one required report, the FDA National Registry Report (Appendix I), which is used to report program self assessment, baseline surveys of industry, and outside audits. The time required to complete the actual reporting document is minimal, however, additional time is required to analyze and review existing records, conduct baseline inspections, and secure an outside audit. The hour burden estimate includes the time required to review the instructions in the National Standards, search existing data sources, gather and maintain the data needed, complete worksheets, and review the collected information. The estimate of 92 hours to complete a program self assessment is based on the average time reported by the four State and three local jurisdictions that participated in the National Standards Pilot. The amount of time expended by individual jurisdictions ranged from 40 to 215 hours. This range is reflective of the difference in size between jurisdictions. The baseline survey of industry and the outside audit are expected to require a similar amount of time to complete. Because only one of the three tasks is required per year, the average annual reporting burden is estimated to be 92 hours per year for each participating jurisdiction.

Because the records of establishment inspections, investigations, and enforcement activities are routinely maintained and accepted management practices already necessitate the collection of some required information and maintenance of records, the recordkeeping burden is minimal.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Standard No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
9[2]	500	1	500	92	46,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Includes the use of Forms FDA 3519 and 3520.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

Standard No.	No. of Record-keepers	Annual Frequency per Record-keeping	Total Annual Records	Hours per Record-keeper	Total Hours
3, 4, and 6[2]	500	1	500	5	2,500

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] The standards incorporate the best program management practices currently in use in the regulatory community. The recommended policies, procedures, and standard operating procedures contained in the various national standards are considered usual and customary management practices for State, local, and tribal agencies that regulate the retail segment of the food industry.

Dated: May 4, 2001.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 01–11618 Filed 5–8–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–0239]

Agency Information Collection Activities; Announcement of OMB Approval; Request for Resolution of Scientific Disputes Concerning the Regulation of Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Request for Resolution of Scientific Disputes Concerning the Regulation of Medical Devices" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 8, 2001 (66 FR 9585), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0467. The approval expires on April 30, 2004. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: May 3, 2001.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 01–11583 Filed 5–8–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0179]

Purina Mills, Inc., et al.; Withdrawal of Approval of New Animal Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 11 new animal drug applications (NADAs) listed below. In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations to remove the portions reflecting approval of the NADAs because the products are no longer manufactured or marketed.

DATES: Withdrawal of approval is effective May 21, 2001.

FOR FURTHER INFORMATION CONTACT: Pamela K. Esposito, Center for Veterinary Medicine (HFV–210), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–5593.

SUPPLEMENTARY INFORMATION: The following sponsors have requested that FDA withdraw approval of the NADAs listed below because the products are no longer manufactured or marketed:

Sponsor	NADA No. Product (Drug)	21 CFR Cite Affected (Sponsor Drug Labeler Code)
Purina Mills, Inc., P.O. Box 66812, St. Louis, MO 63166–6812.	NADA 48–915 Purina® Bot Control (trichlorfon)	520.2520a (017800)
Golden Sun Feeds, Inc., 111 South Fifth St., Estherville, IA 51334.	NADA 97–567 Tylan® 10 Premix (tylosin phosphate).	558.625(b)(17) (021780)
.....	NADA 97–615 Swine Med-A-Mix TS 8000 Premix, Tylan® 5, 10, 20, 40 Sulfa-G (tylosin phosphate and sulfamethazine).	558.630(b)(4) and (b)(10) (021780)
Quali-Tech Products, Inc., 318 Lake Hazeltine Dr., Chaska, MN 55318–1093.	NADA 110–440 Hygromix Hygrowormer Hyanthelmix (hygromycin B).	558.274(a)(2), (a)(3), (a)(4), (c)(1)(i), and (c)(1)(ii) (016968)
Steris Laboratories, Inc., 620 North 51st Ave., Phoenix, AZ 85043–4705.	NADA 44–585 Oxytocin Injection	522.1680 (000402)
.....	NADA 45–578 Lidocaine Hydrochloride with Epi-nephrine Injection 2%.	522.1258 (000402)
.....	NADA 45–737 Sodium Pentobarbital Injection	522.1704(b) (000402)
.....	NADA 45–848 Phenylbutazone Injection	522.1720 (000402)
.....	NADA 110–349 Dexamethasone Injection	522.540(c)(2) (000402)

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Sponsor	NADA No. Product (Drug)	21 CFR Cite Affected (Sponsor Drug Labeler Code)
.....	NADA 110–350 Dexamethasone Injection	522.540(b)(2)(ii) (000402)
.....	NADA 117–973 Prednisolone Sodium Succinate for Injection.	522.1884(c) (000402)

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADAs 44–585, 45–578, 45–737, 45–848, 48–915, 97–567, 97–615, 110–349, 110–350, 110–440, and 117–973, and all supplements and amendments thereto, is hereby withdrawn, effective May 21, 2001.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations to reflect the withdrawal of approval of these NADAs.

Dated: May 2, 2001.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 01–11620 Filed 5–8–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Members on Public Advisory Committees in the Center for Drug Evaluation and Research

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for members to serve on the public advisory committees in the Center for Drug Evaluation and Research. Nominations will be accepted for current vacancies and vacancies that will or may occur on the committees during the next 16 months.

FDA has a special interest in ensuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, and physically handicapped candidates. Final selection from among qualified candidates for each vacancy will be determined by the expertise required to meet specific agency needs and in a manner to ensure appropriate balance of membership.

DATES: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for receipt of nominations.

ADDRESSES: All nominations and curricula vitae should be sent to the addresses below.

FOR FURTHER INFORMATION CONTACT:

Regarding nominations, except for consumer representatives: John Treacy, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, e-mail: treacy@cder.fda.gov.

Regarding nominations for consumer representatives: Maureen Hess, Office of Consumer Affairs (HFE–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5006, e-mail: mhess@oc.fda.gov.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations of members for the following 16 advisory committees for vacancies listed below. Individuals should have expertise in the activity of the committee.

1. *Advisory Committee for Pharmaceutical Science*: Two vacancies occurring immediately, two vacancies occurring October 31, 2001, and six vacancies occurring October 31, 2002, including that of the consumer-nominated member.
2. *Advisory Committee for Reproductive Health Drugs*: Four vacancies occurring immediately, four vacancies occurring June 30, 2001, and three vacancies occurring June 30, 2002.
3. *Anesthetic and Life Support Drugs Advisory Committee*: Five vacancies occurring immediately, and four vacancies occurring March 31, 2002, including that of the consumer-nominated member.
4. *Anti-Infective Drugs Advisory Committee*: Five vacancies occurring November 30, 2001, and three vacancies occurring November 30, 2002.
5. *Antiviral Drugs Advisory Committee*: Three vacancies occurring immediately, three vacancies occurring October 31, 2001, and two vacancies occurring October 31, 2002.
6. *Arthritis Advisory Committee*: Two vacancies occurring September 30, 2001, and four vacancies occurring September 30, 2002.
7. *Cardiovascular and Renal Drugs Advisory Committee*: Three vacancies occurring June 30, 2001, including that of the consumer-nominated member, and four vacancies occurring June 30, 2003.
8. *Dermatologic Drugs Advisory Committee*: Seven vacancies occurring immediately, four vacancies occurring August 31, 2001, and four vacancies occurring August 31, 2002, including that of the consumer-nominated member.
9. *Endocrinologic and Metabolic Drugs Advisory Committee*: One vacancy occurring immediately, one vacancy occurring June 30, 2001, and four vacancies occurring June 30, 2002.
10. *Gastrointestinal Drugs Advisory Committee*: Three vacancies occurring June 30, 2001, and two vacancies occurring June 30, 2002.
11. *Medical Imaging Drugs Advisory Committee*: Ten vacancies occurring immediately, three vacancies occurring June 30, 2001, and two vacancies occurring June 30, 2002, including that of the consumer-nominated member.
12. *Nonprescription Drugs Advisory Committee*: Four vacancies occurring immediately, including that of the consumer-nominated member, one vacancy occurring on May 30, 2001, and four vacancies occurring May 31, 2002.
13. *Oncologic Drugs Advisory Committee*: Two vacancies occurring June 30, 2001, and three vacancies occurring June 30, 2002.
14. *Peripheral and Central Nervous Systems Drugs Advisory Committee*: Seven vacancies occurring immediately.
15. *Psychopharmacologic Drugs Advisory Committee*: Two vacancies occurring June 30, 2001, and four vacancies occurring June 30, 2002, including that of the consumer-nominated member.
16. *Pulmonary-Allergy Drugs Advisory Committee*: Two vacancies occurring immediately, two vacancies occurring May 31, 2001, including that of the consumer-nominated member, and five vacancies occurring May 31, 2002.

Function

The functions of the 16 committees listed above are to review and evaluate available scientific, technical, and medical data concerning the safety and effectiveness of marketed and investigational human drugs for use in the area of medical specialties, indicated by the title of the committee, and to make appropriate recommendations to the Commissioner of Food and Drugs.

Criteria for Members

Persons nominated for membership on the committees described above must have adequately diversified research and/or clinical experience appropriate to the work of the committee in such fields as anesthesiology, surgery, internal medicine, infectious disease, asthma, rheumatology, microbiology, pediatrics, ophthalmology, cardiology, clinical/medical oncology, hematology, radiology, nuclear medicine, biostatistics, epidemiology, dermatopathology/immunodermatology, dermatology, psychopharmacology, neurochemistry, neuropharmacology, endocrinology, obstetrics and gynecology, reproductive endocrinology, gastroenterology, pharmacology, clinical pharmacology, hepatology, virology, pharmaceutical manufacturing, bioavailability and bioequivalence research, pharmacokinetics, neurology, psychiatry, psychology, neuropharmacology, neuropathology, pulmonary disease, allergy, immunology, clinical immunology, or other appropriate areas of expertise.

The specialized training and experience necessary to qualify the nominee as an expert suitable for appointment is subject to review, but may include experience in medical practice, teaching, research, and/or public service relevant to the field of activity of the committee. The term of office is up to 4 years.

Criteria for Consumer-Nominated Members

FDA currently attempts to place on each of the committees described above one voting member who is nominated by consumer organizations. These members are recommended by a consortium of 12 consumer organizations which has the responsibility for screening, interviewing, and recommending consumer-nominated candidates with appropriate scientific credentials. Candidates are sought who are aware of the consumer impact of committee issues, but who also possess enough technical background to understand and contribute to the committee's work. This would involve, for example, an understanding of research design, benefit/risk and the legal requirements for safety and efficacy of the products under review, and considerations regarding individual products. The agency notes, however, that for some advisory committees, it may require such nominees to meet the same technical qualifications and specialized training required of other expert members of the committee. The term of office for these members is up to 4 years. Nominations for all committees listed above are invited for consideration for membership as openings become available.

Nomination Procedure

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory committees. Nominations shall specify the committee for which the nominee is recommended. Nominations shall state that the nominee is aware of the nomination, is willing to serve as a member of the advisory committee, and appears to have no conflict of interest that would preclude committee membership. Potential candidates will be asked by FDA to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts in order to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: May 2, 2001.

Bonnie H. Malkin,

Special Assistant to the Senior Associate Commissioner.

[FR Doc. 01–11619 Filed 5–8–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of the Committee: Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 21, 2001, 1 p.m. to 5 p.m., and May 22, 2001, 8 a.m. to 5 p.m.

Location: Holiday Inn, Walker/Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Joyce M. Whang, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12524. Please call the Information Line for up-to-date information on this meeting.

Agenda: On May 21, 2001, the committee will discuss a supplement to a premarket approval application (PMA) for an intrapartum fetal pulse oximeter. The committee will also hear a presentation on the clinical trial of an intrapartum fundal pressure belt intended to reduce the incidence of operative deliveries. On May 22, 2001, in the morning session, the committee will discuss air and gas emboli associated with operative hysteroscopy. In the afternoon session, the committee will discuss uterine artery embolization. Background information and questions to the committee will be available to the public on May 18, 2001, on the Internet at http://www.fda.gov/cdrh/panelmtg.html.

Procedure: On May 21, 2001, from 1 p.m. to 5 p.m. and May 22, 2001, from 10 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 11, 2001. On May 21, 2001, oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2 p.m., and on May 22, 2001, oral presentations from the public will be scheduled between approximately 11:30 a.m. and 11:45 a.m., and between approximately 2:45 p.m. and 3 p.m. Time allotted for each presentation may be limited. Those desiring to make formal presentations should notify the contact person before May 11, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and address of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On May 22, 2001, from 8 a.m. to 10 a.m., the meeting will be closed to the public to permit FDA to present to the

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committee trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)) regarding pending and future device issues. In addition, the committee will discuss and review trade secret and/or confidential commercial information presented by a sponsor.

FDA regrets that it was unable to publish this notice 15 days prior to the May 21 and 22, 2001, Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 4, 2001.

Bonnie Malkin,

Special Assistant to the Senior Associate Commissioner.

[FR Doc. 01–11732 Filed 5–4–01; 4:54 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Advisory Committee to the Director, National Cancer Institute, May 10, 2001, 12 pm to May 10, 2001, 1 pm, National Cancer Institute, National Institutes of Health, 9000 Rockville Pike, Building 31, Room 11A03, Bethesda, MD 20892 which was published in the **Federal Register** on April 19, 2001, 66 FR 20152.

The meeting will be held on Thursday, May 24, 2001. The meeting is open to the public.

Dated: May 1, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–11595 Filed 5–8–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute, Special Emphasis Panel, Molecular Pathways of Bladder Cancer Progression.

Date: May 23, 2001.

Time: 12 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Cancer Institute, Grants Review Branch, Division of Extramural Activities, 6116 Executive Boulevard, Room 8127, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael B. Small, Ph.D, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8127, Bethesda, MD 20892, 301/402–0996.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 1, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–11599 Filed 5–8–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4), and 552b(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory.

Date: May 22, 2001.

Open: 8:45 a.m. to 12 p.m..

Agenda: Program reports and presentations; Business of the board.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Open: 12 p.m. to 2 p.m.

Agenda: Joint meeting of the Subcommittee on Planning and Budget and the Ad Hoc Subcommittee on Communications followed by a meeting of the Subcommittee on Clinical Investigations.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person:

Ms. Cherie Nichols, Executive Secretary, Subcommittee on Planning and Budget, (301) 496–5515.

Dr. Susan Sieber, Executive Secretary, Ad Hoc Subcommittee on Communications (301) 496–5946.

Dr. Ellen Feigal, Executive Secretary, Subcommittee On Clinical Investigations, (301) 496–6711.

Name of Committee: National Cancer Advisory Board.

Open: May 22, 2001, 2 p.m. to 4 p.m.

Agenda: Program reports and presentations; Business of the board.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Name of Committee: National Cancer Advisory Board.

Closed: May 22, 2001, 4 p.m. to Adjournment.

Agenda: Review of grant applications; Discussion of confidential personnel issues.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 29892–8327, (301) 496–5147.

This meeting is being published less than 15 days prior to the meeting due to scheduling conflicts. Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/ncab.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 1, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–11601 Filed 5–8–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Council on Drug Abuse, May 16, 2001, 1 p.m. to May 17, 2001, 4:30 p.m., Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Rockville, MD, 20852 which was published in the **Federal Register** on April 5, 2001, Volume 66 FR 18103.

The time of the meeting for the open session has been changed to 9 a.m. to 11 a.m. on May 17, 2001. The time of the closed session will remain the same, from 1 p.m. to 4:30 p.m. on May 16, 2001. The meeting is partially closed to the public.

Dated: May 1, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–11596 Filed 5–8–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: May 14, 2001.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gloria B. Levin, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, (301) 435–1017, leving@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.305, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 1, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–11597 Filed 5–8–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: May 2, 2001.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7818, Bethesda, MD 20892, (301) 435–1169, dowellr@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

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Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: May 4, 2001.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael A. Lang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 1, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–11598 Filed 5–8–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–33]

Notice of Submission of Proposed Information Collection to OMB; Home Equity Conversion Mortgage (HECM) Program; Insurance for Mortgages to Refinance Existing HECMs (FR–4667)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 8, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins_HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained form Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department. This Notice also lists the following information:

Title of Proposal: Home Equity Conversion Mortgage (HECM) Program; Insurance for Mortgages to Refinance Existing HECMs (FR–4667).

OMB Approval Number: 2502–XXXX.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: HUD provides mortgages insurance for the refinancing of an existing HECM, and establishes several requirements concerning such refinancing. Regulatory provision requires that the mortgagee provide the mortgagors, a good faith estimate of the total cost of the refinancing and the increase in the mortgagor's principal limit as measured by the estimated initial principal limit on the mortgage to be insured less the current principal limit on the HECM that is being refinanced.

Respondents: Individual or households.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Application	4,000		1		2		2,000

Total Estimated Burden Hours: 2,000.

Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 3, 2001.

Donna L. Eden,

Director, Office of Investments Strategies, Policy and Management.

[FR Doc. 01–11696 Filed 5–8–01; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) which requires the publication of a notice of each permit application received by the Fish and Wildlife Service. This notification requirement may be waived in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant. However, notice of any such waiver must be published within ten days following the issuance of the permit.

Emergency Exemption Issuance

On April 27, 2001, the U.S. Fish and Wildlife Service (Service) issued a permit (PRT–40800) to the National Aviary in Pittsburgh, Pittsburgh, Pennsylvania to export viable, fertilized eggs of captive bred Manchurian crane (*Grus japonensis*) and White-naped crane (*Grus vipio*) to the Khiganski Nature Reserve, Arkhara, Russia. The fertilized eggs are used in establishing

reintroduced populations of these two crane species in Russia and the timely export of viable eggs is vital to the success of this conservation program. The Service determined that an emergency effecting the survival of the embryos existed and that no alternative was available to the applicant. Therefore, the 30-day public comment period required by section 10(c) of the Endangered Species Act was waived.

Written data or comments should be submitted to the director, U.S. Fish and Wildlife Service, division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the director within 30 days of the date of this publication.

The U.S. Fish and Wildlife has information collection approval from OMB through February 28, 2001. OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX (703/358–2281).

Dated: April 30, 2001.

Tim Van Norman,

Chief, Branch of Permits, Division of Management Authority.

[FR Doc. 01–11647 Filed 5–8–01; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–960–1060–PF–01–24 1A]

OMB Approval Number 1004–0042; Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reductions Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On December 11, 2000, the BLM published a notice in the **Federal Register** (65 FR 77387) requesting comments on this proposed collection. The comment period ended on February 9, 2001. The BLM received no comments from the public in response to that notice. You may obtain copies of the proposed collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer, (1004–0042), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a copy of your comments to the Bureau Information Clearance Officer (WO–630), 1849 C St., NW., Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Application for Adoption of Wild Horse(s) or Burro(s) (43 CFR 4700).

OMB Approval Number: 1004–0042.

Bureau Form Number: 4710–10.

Abstract: BLM requires specific information must be furnished by individuals who wish to adopt a wild horse or burro. BLM uses this information to determine if the individuals qualify and are eligible to provide humane care and proper treatment of these animals.

Frequency: Once, on occasion.

Description of Respondents: Respondents are individuals who wish to adopt a wild horse or burro from the BLM.

Estimated Completion Time: 10 minutes.

Annual Responses: 30,000.

Filing Fee Per Response: $125 (this fee is not considered a filing fee, but we use the money for room, board, and veterinary care of the animal while under BLM management).

Annual Burden Hours: 5,000.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: March 7, 2001.

Michael H. Schwartz,

BLM Information Collection Clearance Officer.

[FR Doc. 01–11694 Filed 5–8–01; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM091–2941–EK–HE931]

OMB Approval Number 1004–0180; Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On January 5, 2001, the BLM published a notice in the **Federal Register** (66 FR 1152) requesting comments on this proposed collection. The comment period ended on March 6, 2001. The BLM received no comments from the public in response to that notice. You may obtain copies of the proposed collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer, (1004–0180), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a copy of your comments to the Bureau Information Clearance Officer (WO–630), 1849 C St., NW., Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

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3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Gas Well Data Survey of Helium-Bearing Natural Gas (PL 104–273).

OMB Approval Number: 1004–0180.

Bureau Form Number: 3100–12.

Abstract: Respondents are owners and operators of the helium-bearing natural gas wells and transmission lines. BLM uses this information to evaluate the helium recourses of the United States.

Frequency: Annually.

Description of Respondents: Owners and operators of the helium-bearing gas wells and transmission lines.

Estimated Completion Time: 15 minutes.

Annual Responses: 200.

Filing Fee Per Response: 0.

Annual Burden Hours: 50.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: March 1, 2001.

Michael H. Schwartz,

BLM Information Collection Clearance Officer.

[FR Doc. 01–11695 Filed 5–8–01; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–056–1430–ES; N–66293]

Notice of Realty Action: Segregation Terminated, Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Segregation terminated, recreation and public purpose lease/conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada was segregated for exchange purposes on July 23, 1997 under serial number N–61855. The exchange segregation on the subject land will be terminated upon publication of this notice in the **Federal Register**. The land has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Clark County proposes to use the land for a regional park.

Mount Diablo Meridian, Nevada

T. 21 S., R. 62 E., M.D.M.

sec. 2, lot 7, excepting that portion both north of the centerline of American Beauty Road and west of the centerline of Hollywood Boulevard, W½ of lot 8,lots 13,14,16.

Containing 167.96 acres, more or less, located between Charleston Boulevard and Sahara Avenue, east and west of Hollywood Boulevard.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patents, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

1. Easements in accordance with the Clark County Transportation Plan.

2. Those rights for gas line purposes which have been granted to South West Gas Corporation by Permit No. Nev-061333 under the Act of February 25, 1920(30 USC 185, sec. 28).

3. Those rights for water pipeline purposes which have been granted to the Bureau of Reclamation by Permit No. N–1521 under the Act of December 5, 1924. (43 Stat. 0672).

4. Those rights for road purposes which have been granted to Clark County by Permit No. N–56936 under the Act of October 21, 1976(43 USC 1761).

5. Those rights for drainage channel purposes which have been granted to Clark County by Permit No. N–59788 under the Act of October 21, 1976(43 USC 1761).

6. Those rights for road purposes which have been granted to Clark County by Permit No. N–61109 under the Act of October 21, 1976(43 USC 1761).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada or by calling (702) 647–5088. Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws, and disposal under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Las Vegas Field Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a regional park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor directly related to the suitability of the land for a regional park. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: April 27, 2001.

Rex Wells,

Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 01–11690 Filed 5–8–01; 8:45 am]

BILLING CODE 4510–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–056–1430–ES; N–66361]

Notice of Realty Action: Segregation Terminated, Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Segregation Terminated, Recreation and Public Purpose Lease/Conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada was segregated for exchange purposes on July 23, 1997 under serial number N–61855 and on July 23, 1997 under serial number N–66364. The exchange segregations on the subject land will be terminated upon publication of this notice in the **Federal Register**. The land has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Clark County School District proposes to use the land for a middle school.

Mount Diablo Meridian, Nevada

T. 21 S., R. 62 E., M.D.M.

sec. 2, E½ of lot 8.

Containing 20.0 acres, more or less, located between Charleston Boulevard and Sahara Avenue, east of Hollywood Boulevard.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patents, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

1. Easements in accordance with the Clark County Transportation Plan.

2. Those rights for drainage channel purposes which have been granted to Clark County by Permit No. N–59788 under the Act of October 21, 1976(43 USC 1761).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada or by calling (702) 647–5088. Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws, and disposal under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Las Vegas Field Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a middle school. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor directly related to the suitability of the land for a middle school. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: April 27, 2001.

Rex Wells,

Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 01–11691 Filed 5–8–01; 8:45 am]

BILLING CODE 4510–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–056–1430–ES; N–74287]

Notice of Realty Action: Segregation Terminated, Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Segregation Terminated, Recreation and Public Purpose Lease/Conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada was segregated for exchange purposes on July 23, 1997 under serial numbers N–61855 and N–66364. The exchange segregations on the subject land will be terminated upon publication of this notice in the **Federal Register**. The land has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Clark County School District proposes to use the land for an elementary school.

Mount Diablo Meridian, Nevada

T. 21 S., R. 62 E., M.D.M.

sec. 2, Lot 7, north of the centerline of American Beauty Road and west of the centerline of Hollywood Boulevard.

Approximately 20.0 acres, located between Charleston Boulevard and Sahara Avenue, west of Hollywood Boulevard.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patents, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

1. Easements in accordance with the Clark County Transportation Plan.

2. Those rights for water pipeline purposes which have been granted to the Bureau of Reclamation by Permit No. N–1521 under the Act of December 5, 1924 (43 Stat. 0672).

3. Those rights for road purposes which have been granted to Clark County by Permit No. N–56936 under the Act of October 21, 1976(43 USC 1761).

4. Those rights for drainage channel purposes which have been granted to Clark County by Permit No. N–59788 under the Act of October 21, 1976(43 USC 1761).

5. Those rights for road purposes which have been granted to Clark County by Permit No. N–61109 under the Act of October 21, 1976(43 USC 1761).

6. Those rights for road purposes which have been granted to Clark County by Permit No. N–61199 under the Act of October 21, 1976(43 USC 1761).

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7. Those rights for gas line purposes which have been granted to Southwest Gas Corporation by Permit No. Nev-061333 under the Act of February 25, 1920 (30 USC 185 sec. 28).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada or by calling (702) 647–5088. Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws, and disposal under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Las Vegas Field Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108.

Classification Comments: Interested parties may submit comments involving the suitability of the land for an elementary school. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor directly related to the suitability of the land for an elementary school. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: April 27, 2001.

Rex Wells,

Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 01–11692 Filed 5–8–01; 8:45 am]

BILLING CODE 4510–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Docket No. OR–957–00–1420–BJ: GP01–0171]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands were officially filed in the Oregon State Office, Portland, Oregon, on March 12, 2001.

Willamette Meridian

Oregon

T. 30 S., R. 5 W., accepted March 30, 2001
T. 27 S., R. 3 W., accepted March 30, 2001
T. 27 S., R. 4 W., accepted March 30, 2001
T. 13 S., R. 8 W., accepted April 4, 2001
T. 23 S., R. 7 W., accepted April 6, 2001

Washington

T. 11 N., R. 19 E., accepted February 12, 2001
T. 15 N., R. 4 W., accepted March 15, 2001

Copies of the plat(s) may be obtained from the Oregon State Office, Bureau of Land Management, 1515 SW. 5th Avenue, Portland, Oregon 97201, upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest.

The above-listed plats represent dependent resurveys, a survey, and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515 SW. 5th Avenue) P.O. Box 2965, Portland, Oregon 97208.

Dated: April 19, 2001.

Robert D. DeViney, Jr.,

Branch of Realty and Records Services.

[FR Doc. 01–11693 Filed 5–8–01; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Preparation of an Environmental Assessment for Kerr-McGee's Proposed Deepwater Development Plan Offshore Texas (Boomvang Project)

AGENCY: Minerals Management Service, Interior.

ACTION: Preparation of an environmental assessment.

SUMMARY: The Minerals Management Service (MMS) is preparing an environmental assessment (EA) for a proposed deepwater development plan to develop and produce hydrocarbon reserves about 114 miles offshore Texas in East Breaks, Blocks 642, 643, and 688.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Mr. Alvin Jones, telephone (504) 736–1713.

SUPPLEMENTARY INFORMATION: This EA implements the tiering process outlined in 40 CFR 1502.20, which encourages agencies to tier environmental documents, eliminating repetitive discussions of the same issue. By use of reference to the most recent Final Environmental Impact Statement (EIS) for the Gulf of Mexico Western Planning Area for Lease Sales 171, 174,.177, and 180 and by tiering to related environmental documents, this EA concentrates on environmental issues specific to the proposed action.

The MMS Gulf of Mexico Region received an Initial Development Operations Coordination Document (DOCD) from Kerr-McGee Oil and Gas Corporation (Kerr-McGee) that proposes to develop and produce hydrocarbon reserves located in East Breaks, Blocks 642, 643, and 688. The DOCD was assigned a plan control number of N–7077, and the project is referred to as the Boomvang Project. Kerr-McGee will complete and produce a total of 10 wells that were drilled under previously-approved Exploration Plans for the subject blocks. No new drilling operations are proposed as a part of this DOCD. All of the wells will share a common surface location (a truss spar floating production system) in East Breaks, Block 643.

The Boomvang truss spar is a manned floating production facility that will be permanently anchored on location by a 9-leg, taut catenary system composed of conventional wire, chain, and anchor piles. The hull portion of the spar measures approximately 90 feet in diameter and has an overall length of 543 feet. No hydrocarbons will be stored in the hull of the spar. The spar is not drilling rig capable; however, a 1,000-hp completion/workover platform rig will be installed and used for the initial completion operations. If any additional drilling would be necessary, a mobile offshore drilling unit (MODU) would be utilized. The spar will have a 20-person permanent accommodation unit installed. Temporary, portable quarters for up to 48 people may be provided.

The water depth at the truss spar location is approximately 3,457 feet. The project will use an existing onshore support base in Sabine Pass, Texas, to support the production activities. During completion or workover operations, either the onshore base in Sabine Pass, Texas, or an existing onshore base in Galveston, Texas, will be used to support these activities.

Oil and gas produced at the Boomvang project will be transported off lease by third-party owned and operated right-of-way pipelines.

The proposed action analyzed in the EA will be the development plan as proposed by Kerr-McGee. Alternatives will include the proposed action with additional mitigations and no action (i.e., disapproval of the plan). The analyses in the EA will examine the potential environmental effects of the proposal and alternatives.

Public Comments

MMS requests interested parties to submit comments regarding issues that should be addressed in the EA to Minerals Management Service, Gulf of Mexico OCS Region, Office of Leasing and Environment, Attention: Regional Supervisor (MS 5410), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Comments must be submitted no later than 30 days from the publication of this Notice.

Dated: April 26, 2001.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 01–11582 Filed 5–8–01; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Preparation of an Environmental Assessment for Kerr-McGee's Proposed Deepwater Development Plan Offshore Texas (Nansen Project)

AGENCY: Minerals Management Service, Interior.

ACTION: Preparation of an environmental assessment.

SUMMARY: The Minerals Management Service (MMS) is preparing an environmental assessment (EA) for a proposed deepwater development plan to develop and produce hydrocarbon reserves about 117 miles offshore Texas in East Breaks, Blocks 602 and 646. This EA is being prepared in accordance with MMS's comprehensive deepwater strategy approach, which includes the preparation of comprehensive EA's, referred to as Grid EA's, in each of 17 grids in deepwater areas of the Central and Western Gulf of Mexico. This comprehensive deepwater strategy is described in detail at *http://www.gomr.mms.gov/homepg/regulate/environ/ea_grid/NEPADWSTRATEGY.PDF*.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Mr. Ed Richardson, telephone (504) 736–2605.

SUPPLEMENTAL INFORMATION: This EA implements the tiering process outlined in 40 CFR 1502.20, which encourages agencies to tier environmental documents, eliminating repetitive discussions of the same issue. By use of reference to the most recent Final Environmental Impact Statement (EIS) for the Gulf of Mexico Western Planning Area for Lease Sales 171, 174, 177, and 180 and by tiering to related environmental documents, this EA concentrates on environmental issues specific to the proposed action.

The MMS Gulf of Mexico Region received an Initial Development Operations Coordination Document (DOCD) from Kerr-McGee Oil and Gas Corporation (Kerr-McGee) that proposes to develop and produce hydrocarbon reserves located in East Breaks, Blocks 602 and 646. The DOCD was assigned a plan control number of N–7045 and the project is referred to as the Nansen Project. Kerr-McGee will complete and produce a total of 12 wells that were drilled under previously-approved Exploration Plans for the subject blocks. No new drilling operations are proposed as a part of this DOCD. All of the wells, except the three subsea wells, will share a common surface location (a truss spar floating production system) in East Breaks, Block 602.

The Nansen truss spar is a manned floating production facility that will be permanently anchored on location by a 9-leg, taut catenary system composed of conventional wire, chain, and anchor piles. The hull portion of the spar measures approximately 90 feet in diameter and has an overall length of 543 feet. No hydrocarbons will be stored in the hull of the spar. The spar is not drilling rig capable; however, a 1,000-hp completion/workover platform rig will be installed and used for the initial completion operations. If any additional drilling would be necessary, a mobile offshore drilling unit (MODU) would be utilized. The spar will have a 20-person permanent accommodation unit installed. Temporary, portable quarters for up to 48 people may be provided.

The water depth at the truss spar location is approximately 3,675 feet. The project will use an existing onshore support base in Sabine Pass, Texas, to support the production activities. During completion or workover operations, either the onshore base in Sabine Pass, Texas, or an existing onshore base in Galveston, Texas, will be used to support these activities.

Oil and gas produced at the Nansen project will be transported off lease by third-party owned and operated right-of-way pipelines.

The proposed action analyzed in the EA will be the development plan as proposed by Kerr-McGee. Alternatives will include the proposed action with additional mitigation measures and no action (*i.e.*, disapproval of the plan). The analyses in the EA will examine the potential environmental effects of the proposal and alternatives.

Public Comment

MMS requests interested parties to submit comments regarding issues that should be addressed in the EA to Minerals Management Service, Gulf of Mexico OCS Region, Office of Leasing and Environment, Attention: Regional Supervisor (MS 5410), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Comments must be submitted no later than 30 days from the publication of this Notice.

Dated: April 26, 2001.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 01–11579 Filed 5–8–01; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–891 (Final)]

Foundry Coke From China

AGENCY: International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

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SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–891 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China of foundry coke, provided for in subheading 2701.00.00 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: March 8, 2001.

FOR FURTHER INFORMATION CONTACT: D.J. Na (202–708–4727), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at http://dockets.usitc.gov/eol/public.

SUPPLEMENTARY INFORMATION:

Background

The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of foundry coke from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on September 20, 2001, by ABC Coke, Birmingham, AL; Citizens Gas and Coke Utility, Indianapolis, IN; Erie Coke Corp., Erie, PA; Tonawanda Coke Corp., Tonawanda, NY; and the United Steelworkers of America, AFL–CIO.

[1] For purposes of this investigation, Commerce has defined the subject merchandise as "coke larger than 100 mm (4 inches) in maximum diameter and at least 50 percent of which is retained on a 100-mm (4-inch) sieve, of a kind used in foundries."

Participation in the Investigation and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on June 29, 2001, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on July 26, 2001, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before July 12, 2001. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on July 16, 2001, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is July 20, 2001. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is August 2, 2001; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before July 20, 2001. On August 22, 2001, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before August 24, 2001, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.
Issued: May 3, 2001.

Donna R. Koehnke,
Secretary.

[FR Doc. 01–11677 Filed 5–8–01; 8:45 am]
BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–431]

Certain Circular Welded Carbon Quality Line Pipe: Effects of Import Relief Action on the Domestic Industry and Principal Users in the United States

AGENCY: International Trade Commission.

ACTION: Institution of investigation.

EFFECTIVE DATE: April 26, 2001.

SUMMARY: Following receipt, on April 26, 2001, of a request from the United States Trade Representative (USTR), the U.S. International Trade Commission (Commission) instituted investigation No. 332–431, Certain Circular Welded Carbon Quality Line Pipe: Effects of Import Relief Action on the Domestic Industry and Principal Users in the United States, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202–205–3184), Office of Investigations, U.S. International Trade Commission, 500 E St., SW., Washington, DC 20436. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at http://dockets.usitc.gov/eol/public.

SUPPLEMENTARY INFORMATION:

Background

Following receipt of a report from the Commission in December 1999 under section 202 of the Trade Act of 1974 (19 U.S.C. § 2252),[1] the President, on February 18, 2000, issued Proclamation 7274, imposing import relief in the form of a tariff on imports of circular welded carbon quality line pipe (65 FR 9193, February 23, 2000). In his memorandum to the Secretary of the Treasury and the USTR that accompanied the proclamation for the line pipe relief action, the President instructed that the USTR request that the Commission, pursuant to section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), examine the effects of the relief action on the domestic line pipe industry and the principal users of line pipe in the United States. As requested by the USTR, the Commission's report on the investigation will focus on the effects of action on the domestic welded line pipe industry and on principal users of line pipe in the United States since March 1, 2000, when the President increased tariffs on imports of certain circular welded carbon quality line pipe [2] pursuant to section 203 of the Trade Act of 1974. As requested by the USTR, the Commission will transmit its report to the USTR no later than August 30, 2001, the date that the Commission is scheduled to submit its report to the President under section 204(a)(2) of the Trade Act of 1974 (Certain Circular Welded Carbon Quality Line Pipe: Monitoring Developments in the Domestic Industry, Investigation No. TA–204–5).

Written Submissions

Interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than July 6, 2001. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436.

The Commission may wish to use the confidential business information you provide in this investigation in other investigations conducted under other statutory authority arising out of the relief action taken by the President as a result of the Commission's determination in investigation No. TA–201–70 concerning welded carbon quality line pipe, but will do so only with your consent. Any confidential business information so used will be afforded the protection provided under the appropriate statutory authority. In your request for confidential treatment, please state whether you consent to such use.

Issued: May 3, 2001.
By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 01–11678 Filed 5–8–01; 8:45 am]
BILLING CODE 7020–02–P

[1] Circular Welded Carbon Quality Line Pipe, USITC Pub. 3261, Dec. 1999.

[2] Includes welded carbon quality line pipe of circular cross section, of a kind used for oil and gas pipelines, whether or not stenciled, and not more than 16 inches (406.4 mm) in outside diameter. This investigation excludes goods commonly described in commercial usage as arctic grade line pipe. The products are classified in subheadings 7306.10.10 and 7306.10.50 of the Harmonized Tariff Schedule of the United States. For a detailed description of the subject merchandise, see the annex to Presidential Proclamation 7274 (65 FR 9195, February 23, 2000).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–432]

Certain Steel Wire Rod: Effects of Import Relief Action on the Domestic Industry and Principal Users in the United States

AGENCY: International Trade Commission.

ACTION: Institution of investigation.

EFFECTIVE DATE: April 26, 2001.

SUMMARY: Following receipt, on April 26, 2001, of a request from the United States Trade Representative (USTR), the U.S. International Trade Commission (Commission) instituted investigation No. 332–432, Certain Steel Wire Rod: Effects of Import Relief Action on the Domestic Industry and Principal Users in the United States, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E St., SW., Washington, DC 20436. Hearing

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impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background

Following receipt of a report from the Commission in July 1999 under section 202 of the Trade Act of 1974 (19 U.S.C. 2252),[1] the President, on February 16, 2000, issued Proclamation 7273, imposing import relief in the form of a tariff-rate quota on imports of certain steel wire rod (65 FR 8621, February 18, 2000). In his memorandum to the Secretary of the Treasury and the USTR that accompanied the proclamation for the wire rod relief action, the President instructed that the USTR request that the Commission, pursuant to section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), examine the effects of the relief action on the domestic wire rod industry and the principal users of wire rod in the United States. As requested by the USTR, the Commission's report on the investigation will focus on the effects of the action on the domestic wire rod industry and on principal users of wire rod in the United States since March 1, 2000, when the President imposed a tariff-rate quota on imports of certain steel wire rod[2] pursuant to section 203 of the Trade Act of 1974. As requested by the USTR, the Commission will transmit its report to the USTR no later than August 23, 2001, the date that the Commission is scheduled to submit its report to the President under section 204(a)(2) of the Trade Act of 1974 (Certain Steel Wire Rod: Monitoring Developments in the Domestic Industry, Investigation No. TA–204–6).

Written Submissions

Interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than July 18, 2001. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436.

The Commission may wish to use the confidential business information you provide in this investigation in other investigations conducted under other statutory authority arising out of the relief action taken by the President as a result of the Commission's determination in investigation No. TA–201–69 concerning steel wire rod, but will do so only with your consent. Any confidential business information so used will be afforded the protection provided under the appropriate statutory authority. In your request for confidential treatment, please state whether you consent to such use.

By order of the Commission.

Issued: May 3, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–11676 Filed 5–8–01; 8:45 am]

BILLING CODE 7020–02–P

[1] Circular Steel Wire Rod, USITC Pub. 3207, July 1999.

[2] The imported article covered by this investigation is defined as hot-rolled bars and rods, in irregularly wound coils, of circular or approximately circular solid cross section, having a diameter of 5 mm or more but less than 19 mm, of non-alloy or alloy steel, except such bars and rods of free-machining steel or of alloy steel containing by weight 24 percent or more of nickel. Free-machining steel is any steel product containing by weight one or more of the following elements, in the specified proportions: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorous, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium. Certain steel wire rod is provided for in subheadings 7213.91, 7213.99, 7227.20, and 7227.90.60 of the Harmonized Schedule of the United States (HTS). The scope of this investigation does not cover concrete reinforcing bars and rods, or bars and rods of stainless steel or tool steel, which are provided for in other HTS subheadings. Also excluded from the scope of the investigation are wire rod of tire cord quality, valve spring quality, class III pipe wrap quality, aircraft cold heading quality, aluminum cable steel reinforced ("ACSR") quality, piano wire string quality, grade 1085 annealed bearing quality, and grade 1080 tire bead wire quality. These products are described in detail in the annex to Presidential Proclamation 7273 (65 FR 8624, February 18, 2000).

INTERNATIONAL TRADE COMMISSION

[USITC SE–01–018]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: May 15, 2001 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

Matters To Be Considered

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–875, 879, 880, and 882 (Final) (Certain Steel Concrete Reinforcing Bars from Indonesia, Moldova, Poland, and Ukraine)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on May 25, 2001.)
5. Outstanding action jackets:

1. Document No. GC–01–042: Regarding Inv. No. 337–TA–429 (Certain Bar Clamps, Bar Clamp Pads, and Related Packaging, Display, and Other Materials).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: May 4, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–11826 Filed 5–7–01; 2:16 pm]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–01–019]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: May 16, 2001 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

Matters To Be Considered:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–414 and 731–TA–928 (Preliminary) (Softwood Lumber from Canada)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on May 17, 2001; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on May 24, 2001.)
5. Outstanding action jackets:

1. Document No. GC–01–042: Regarding Inv. No. 337–TA–429 (Certain Bar Clamps, Bar Clamp Pads, and Related Packaging, Display, and Other Materials).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: May 4, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–11827 Filed 5–7–01; 2:16 pm]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–01–020]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: May 18, 2001 at 2 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

Matters To Be Considered:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–929–931 (Preliminary) (Silicomanganese from India, Kazakhstan, and Venezuela)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on May 21, 2001; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on May 29, 2001.)
5. Outstanding action jackets:

1. Document No. GC–01–042: Regarding Inv. No. 337–TA–429 (Certain Bar Clamps, Bar Clamp Pads, and Related Packaging, Display, and Other Materials).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: May 4, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–11828 Filed 5–7–01; 2:16 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,439 and NAFTA–4365]

Eastern Fine Paper; Brewer, Maine; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of March 16, 2001, the company requested administrative reconsideration of the Department of Labor's Notices of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance (TA–W–38,439) and NAFTA-Transitional Adjustment Assistance (NAFTA–4365) for workers of the subject firm. The denial notices applicable to workers of Eastern Fine Paper, Inc., Brewer, Maine, were signed on February 7, 2001, and published in the **Federal Register** on March 2, 2001, TA–W–48,439 (66 FR 13086) and NAFTA–4319 (66 FR 13087).

The company presents new information regaridng production at the plant that warrants further petition investigation.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Depratment of Labor's prior decision. The application is, threfore, granted.

Dated: Signed at Washington, D.C., this 27th day of April, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–11629 Filed 5?–8–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,360 and NAFTA–4319]

Georgia Pacific Corp. Structural Panel Division—OSB, Baileyville, Maine; Notice of Negative Determination Regarding Application for Reconsideration

By application of February 20, 2001, the Paper, Allied-Industrial, Chemical & Energy Workers International Union (PACE) request administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA) and North American Free Trade Agreement—Transitional Adjustment Assistance (NAFTA–TAA). The denial notices applicable to workers of Georgia Pacific Corporation, Structural Panel Division—OSB, Baileyville, Maine, were signed on January 5, 2001, and published in the **Federal Register** on February 8, 2001, TA–W–38,360 (66 FR 9599) and NAFTA–4319 (66 FR 9600).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers producing oriented strand board at Georgia Pacific, OSB Operations in Baileyville, Maine, was denied because the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The "contributed importantly" test is generally demonstrated through a survey of customers of the workers' firm's. None of the customers reported increasing import purchases of OSB while decreasing purchases from Georgia Pacific, OSB Operations in Baileyville, Maine.

The NAFTA–TAA petition for the same worker group was denied because criteria (3) and (4) of the group eligibility requirements in paragraph (a)(1) of section 250 of the Trade Act, as amended, were not met. A survey of the major declining customers of Georgia

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Pacific, Structural Panel Division, showed that none of the respondents increased import purchases of oriented strand board from Mexico or Canada, while reducing purchases from the subject firm. The subject firm did not import oriented strand board, nor was production of oriented strand board shifted from the workers' firm to Mexico or Canada.

The petitioner supplemented the application for reconsideration with information on U.S. imports of OSB-Waferboard and suggested that increased imports of these articles from Canada negatively impacted the OSB producers in the northeastern part of the United States. The Department, when determining import impact for a worker group, does not break out import statistics by port of entry but instead use aggregate import data. For NAFTA–TAA petition investigations the Department examines aggregate U.S. imports from Mexico and Canada. While U.S. import data are helpful in identifying trends in imports of specific products, in most cases, the Department relies a survey of the major declining customers of the subject firm.

The petitioner adds that the Department's survey results regarding customer purchases of oriented strand board are erroneous, citing that a federal official informed PACE that only three customers were surveyed, two of which were other Georgia Pacific divisions, and that Georgia Pacific imports oriented strand board.

The information collected by the Department during the petition investigation is business confidential and cannot be released to the public without express written consent of the individual and/or company official providing the information. The Department cannot release how many customers of the subject firm were surveyed or who responded. The respondents of the survey group for Georgia Pacific represented the majority of the subject firm sales of OSB during the time period when the Baileyville plant had sales and production declines.

The petitioner believes that the subject firm imports OSB. The Department stands corrected in that Georgia Pacific Corporation does import oriented strand board, including purchases from Canada. The investigation, however, showed that company imports of OSB declined.

The petitioner also states that the Department totally disregarded the Maine Department of Labor preliminary affirmative finding that all eligibility criteria for NAFTA–TAA have been met. The petitioner's statement is true, but all preliminary findings for NAFTA–TAA petitions are forwarded to the Department of Labor for a final determination.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC, this 30th day of April 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–11627 Filed 5–8–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,461 and NAFTA–4357]

Oxford Automotive, Argos, Indiana; Notice of Negative Determination Regarding Application for Reconsideration

By application of February 1, 2001, the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW), Local 2088, request administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA) and North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA). The denial notices applicable to workers of Oxford Automotive, Argos, Indiana, were signed on January 24, 2001. The TAA decision will soon be published in the **Federal Register**. The notice for the NAFTA–TAA decision was published in the **Federal Register** on February 20, 2001 (66 FR 10917).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers producing side panels for vehicles in Argos, Indiana, was denied because the "contributed importantly" criterion of the group eligibility requirements of Section 222 of the Trade Act of 1974, as amended, was not met. The primary customer of the subject firm is going to produce the side panels at their own U.S. plants and ceased doing business with Oxford Automotive.

The NAFTA–TAA petition for the same worker group was defined because criteria (3) and (4) of the group eligibility requirements in paragraph (a)(1) of section 250 of the Trade Act, as amended, were not met. There were no company or customer imports from Mexico or Canada of side panels for vehicles. The subject firm did not shift the production of side panels for vehicles from Argos, Indiana to Mexico or Canada.

The petitioner provided a copy of a memorandum dated August 1, 2000, addressed to Local 2988 from an individual (title not provided), notifying the Union of equipment that will be moving to another Oxford Automotive location, or a request for equipment from another Oxford Automotive location. In that listing, it is noted that authorization was being sought to move the 180" press line and two single post spot welders to Mexico.

During the investigation that information was available and the Department found that some of the machinery was sent to Mexico but it was not being used. The shift of production of equipment to Mexico or Canada, or any other foreign country, does not in of itself provide a basis for worker group certification under TAA or NAFTA–TAA. With respect to the TAA petition, the Department could issue a certification only if the equipment shifted is being used to produce the articles and replace the production at the workers' firm and that there are increases in imports of articles like or directly competitive with side panels for vehicles produced on that machinery. With respect to the NAFTA–TAA petition, the Department could issue a certification only if the equipment shifted is being used to produce the articles and replace the production at the workers' firm. This is not the case for the petitioning workers, as was described in the initial findings.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC, this 30th day of April, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–11628 Filed 5–8–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of April, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–38, 557; Southern Webbing Mills, Inc., Floyd, VA
TA–W–38, 791; Sierra Pacific Industries, Loyalton, CA
TA–W–38, 784; Joseph L. Schlessinger, T/A Schlessinger Industries Ridgefield Machine, Inc., P & G Machinery Repair Corp., Ridgefield, NJ
TA–W–38, 470; Plum Creek Timber Co., Pablo, MT
TA–W–38, 599; Sherwood Harso Corp., Lockport, NY
TA–W–38, 615; Koppel Steel Corp., Koppel, PA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–38, 965; Ingersoll Milling Machine Co., High Velocity Machine Div., Rockford, IL
TA–W–38, 493 & A; Creative Products, Inc., Potomac, IL and Rossville, IL
TA–W–38, 983; Zapata Technologies, Inc., Hazelton, PA
TA–W–39, 059; Ludlow Building Products, Inc., Adrian, MI
TA–W–38, 873; Kodak Polychrome Graphics, Holyoke, MA
TA–W–38, 885; Grote Industries, LLC, Harness Div., Madison, IN
TA–W–39, 001; Accuride International, Inc., Charlotte, NC

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–38, 818; STS Systems, Inc., d/b/a 3DFX Interactive of Texas, Inc., El Paso, TX
TA–W–38, 808; Hit or Miss Stoughton, MA
TA–W–38, 461; Oxford Automotive, Argos, IN

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–38, 758; PerkinElmer Optoelectronics, St. Louis, MO
TA–W–39, 028; M&G Polymer USA, LLC, Apple Grove, WV

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–38, 987; GIGI of Carolina, Inc., Cherryville, NC: March 22, 2000.
TA–W–38, 718; Weyerhauser Co., Mt. Pine Wood Products, Mt Pine, AR: February 8, 2000.
TA–W–38, 472; Mid-American Electro Cords, Decatur, AL: December 12, 1999.
TA–W–38, 530; The Fletcher Corp., Fletcher Paper Co and Fletcher Coated Products, Alpena, MI: December 21, 1999.
TA–W–38, 903; United Design Corp., Noble, OK: March 5, 2000.
TA–W–38, 841; Pathfinders U.S.A., LLC, Sedro Woolley, WA: February 7, 2000.
TA–W–38, 552; North Star Steel-Kentucky, Calvert City, KY: December 29, 1999.
TA–W–38, 857; Erie Coke Corp., Erie, PA: February 22, 2000.
TA–W–38, 867; Kerr-McGee Chemical LLC, Electrolytic Div., Hamilton, MS: March 2, 2000.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of April, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

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NAFTA–TAA–04376 & A, B; Armtex, Inc., Pilot Mountain, NC, Gastonia, NC and Surry Industries, LLC, Pilot Mountain, NC
NAFTA–TAA–04530; Sterling Last LLC, Henderson, TN
NAFTA–TAA–04616; Standard Forged Products, Inc., Johnsontown, PA
NAFTA–TAA–04727; Ludlow Building Products, Inc., Adrian, MI
NAFTA–TAA–04521; Prodica LLC, Kennewick, WA
NAFTA–TAA–04728; Crawford Furniture Manufacturing Corp., New Bethlehem, PA

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.
NAFTA–TAA–04650; Avecia, Inc., Research and Development Group, Mount Pleasant, TN
NAFTA–TAA–04692; Textile Sales and Repair, Inc., Gastonia, NC
NAFTA–TAA–04622; STB Systems, Inc., d/b/a 3DFX Interactive of Texas, Inc., El Paso, TX

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–04592; Corning Cable Systems, Kernersville, NC: February 27, 2000.
NAFTA–TAA–04427; The Fletch Corp., Fletcher Paper Co and Fletcher Coated Products, Alpena, MI: January 4, 2000.
NAFTA–TAA–04682; ISP Minerals, Kremlin Plant, Pembine, WI: March 14, 2000.
NAFTA–TAA–04427; The Fletch Corp., Fletcher Paper Co and Fletcher Coated Products, Alpena, MI: January 4, 2000.
NAFTA–TAA–04682; ISP Minerals, Kremlin Plant, Pembine, WI: March 14, 2000.
NAFTA–TAA–04593; The William Carter Co., Griffin, GA: January 29, 2000.
NAFTA–TAA–04571; PerkinElmer Optoelectronics, St. Louis, MO Facility, St. Louis, MO: February 22, 2000.
NAFTA–TAA–04591; Pathfinders U.S.A. LLC, Sedro Wooley, AS: February 10, 2000.
NAFTA–TAA–04603; IEC Electronics Corp., Edinburg, TX: February 21, 2000.
NAFTA–TAA–04652; Grote Industries, LLC, Harness Div., Madison, IN: March 6, 2000.
NAFTA–TAA–047378; C–Cor.Net, Tipton, PA: April 3, 2000.
NAFTA–TAA–04677; Accuride International, Inc., Charlotte, NC: March 23, 2000.

I hereby certify that the aforementioned determinations were issued during the month of April, 2001. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: April 30, 2001.

Edward A. Tomchick,
Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–11630 Filed 5–8–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than May 21, 2001.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than May 21, 2001.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 9th day of April, 2001.

Edward A. Tomchick,
Director, Division of Trade Adjustment Assistance.

Appendix—Petitions Instituted on 04/09/2001

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
38,967	Conexant (Wkrs)	El Paso, TX	03/22/2001	Modems.
38,968	Lincoln Brass Works (Co.)	Waynesboro, TN	03/01/2001	Gas valves.
38,969	Textron Golf, Turf Care (UAW)	Racine, WI	03/14/2001	Turf care equipment.
38,970	Superior Lumber (Wkrs)	Glendale, OR	03/13/2001	Plywood.
38,971	William Carter Co. (The) (Wkrs)	Harlingen, TX	03/23/2001	Children's clothing.
38,972	KoSa (Co.)	Shelby, NC	03/22/2001	Polyester textile filament yarn.
38,973	Robinson Fiddler's Green (CWAUIE)	Springville, NY	03/12/2001	Kitchen ware.
38,974	Randy Industries, Inc. (Co.)	New York, NY	03/26/2001	Children's sportswear.
38,975	Fox River Paper Co. (USWA)	Vicksbury, MI	03/22/2001	Text and cover paper, writing paper.
38,976	Cummins Power Generation (Co.)	St. Peter, MN	03/20/2001	Transfer switches for generators.
38,977	Doe Run Company (The) (Co.)	Herculaneum, MO	03/16/2001	Lead.
38,978	AmeriCo (Co.)	New York, NY	01/02/2001	Sports Clothing.
38,979	SKF USA (Wkrs)	Bethlehem, PA	03/21/2001	Bearing seals.
38,980	Orion Bus Industries (UAW)	Oriskany, NY	03/22/2001	Transit buses.
38,981	Equatorial Tonopah, Inc. (Co.)	Tonopah, NV	03/21/2001	Copper cathode.

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
38,982	Lyons Falls Pulp & Paper (PACE)	Lyons Falls, NY	02/28/2001	Paper and pulp.
38,983	Zapata Technologies (Wkrs)	Hazelton, PA	02/14/2001	Bottle cap manufacturing machinery.
38,984	AVX Tantalum Corp. (Wkrs)	Biddeford, ME	03/27/2001	Tantalum capacitors.
38,985	Dunbrooke Industries (Co.)	Orange City, IA	03/23/2001	Shirts and jackets.
38,986	Gilda Activewear (Wkrs)	Miami, FL	03/29/2001	Activewear.
38,987	Gigi of Carolina (Wkrs)	Cherryville, NC	03/22/2001	Knitted ladies' sweaters.
38,988	Delta Dental Plan of MN (Wkrs)	Eagan, MN	03/27/2001	Dental insurance.
38,989	Trico Steel (Wkrs)	Decatur, AL	03/23/2001	Hot rolled steel coils.
38,990	Ami Candle, Inc. (Wkrs)	Fall River, MA	03/24/2001	Taper, pillar and votive candles.
38,991	VF Imagewear (West) (Co.)	Nashville, TN	03/09/2001	Men's & ladies' work clothing.
38,992	Coastal Machnery (IAMAW)	Portland, OR	03/23/2001	Lumber planer machines.
38,993	Jake Shook Logging (Co.)	Newcastle, WY	03/13/2001	Logs.
38,994	Irwin Manufacturing Corp. (Co.)	Ocilla, GA	03/26/2001	Crib bedding.
38,995	Penn Metal Stamping (Wkrs)	St. Marys, PA	03/27/2001	Automotive parts.
38,996	Kellwood New England (Co.)	Brockton, MA	03/27/2001	Ladies' woven and knit apparel.
38,997	Emsig Corporation (UNITE)	Villas, NJ	03/26/2001	Buttons.
38,998	Dye Works, Inc. (Co.)	Trenton, NJ	03/21/2001	Wet processing of garments.
38,999	Detroit Tool (Wkrs)	Lebanon, MO	03/26/2001	Tooling, die work, special machines.
39,000	American Nickeloid Co. (USWA)	Walnutport, PA	03/26/2001	Crome, Nickel, copper plated steel.
39,001	Accuride International (Co.)	Charlotte, NC	03/23/2001	Metal drawer slides.
39,002	Ohio Moulding Corp. (UAW)	Wickliffe, OH	03/20/2001	Moulding.
39,003	Cajun Bag and Supply (Co.)	Rayne, LA	03/23/2001	Flexible bulk containers.
39,004	AgriFrozen (IBT)	Grandview, WA	03/23/2001	Frozen vegetabales.
39,005	Rayovac Corp. (Wkrs)	Fennimore, WI	02/21/2001	Alkaline batteries.
39,006	ASF Keystone (USWA)	East Chicago, IN	03/22/2001	Railroad cars.
39,007	Fruit of the Loom (Co.)	Jacksonville, AL	03/26/2001	Spinning of yarn.
39,008	Camrose Technologies (Wkrs)	Ada, OK	04/02/2001	Door handles.
39,009	Astaris, LLC (IAM)	Pocatello, ID	04/02/2001	Elemental phosphorus.

[FR Doc. 01–11624 Filed 5–8–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,848]

Genicom Corporation Currently Known as IER, Inc., Temple, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 18, 2000, applicable to workers of Genicom Corporation, Temple, Texas. The notice was published in the **Federal Register** on September 12, 2000 (65 FR 55050).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that the Department inadvertently failed to identify the subject firm title name in its entirety. The Department is amending the certification determination to correctly identify the subject firm title name to read "Genicom Corporation, currently known as IER, Inc.".

The amended notice applicable to TA–W–37,848 is hereby issued as follows:

All workers of Genicom Corporation, currently known as IER, Inc., Temple, Texas who became totally or partially separated from employment on or after June 16, 1999 through August 18, 2002 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 18th day of April, 2001.

Linda G. Poole,
Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 01–11626 Filed 5–8–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Correction

SUMMARY: In notice document 01–11011 (66 FR 22009) beginning on page 22009 in the issue of Wednesday, May 2, 2001, make the following correction:

On page 22009 in the second column, the **BACKGROUND** should be changed to read: "**BACKGROUND:** Form ETA–9042, Petition for NAFTA Transitional Adjustment Assistance, establishes the format which has been used by the Governor to facilitate such filings."

On page 22009 in the third column, under **CURRENT ACTIONS,** the Title should be changed to read: "Petition for NAFTA-Transitional Adjustment Assistance."

On page 22009 in the third column the *OMB Number* should be changed to read: "1205–0342."

On page 22009 in the third column the *Agency Number* should be changed to read: "ETA 9042 and ETA 9042–1."

On page 22009 in the third column the *Affected Public* should read: "Individuals or Households."

Dated: May 4, 2001.

Linda G. Poole,
Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–11632 Filed 5–8–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called

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(NAFTA–TAA), have been filed with State Governors under section 250(b)(1) of subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Division of Trade Adjustment Assistance (DTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of DTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request if filed in writing with the Director of DTAA not later than May 21, 2001.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of DTAA at the address shown below not later than May 21, 2001.

Petitions filed with the Governors are available for inspection at the Office of the Director, DTAA, ETA, DOL, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 1st day of May, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

Appendix

Subject Firm	Location	Date received at Governor's Office	Petition number	Articles produced
Flextab (Wkrs)	Hastings, MI	04/18/2001	NAFTA–4,769	silicone hoses.
Alken Ziegler Novi (Co.)	Novi, MI	04/18/2001	NAFTA–4,770	coldformed automotive parts.
Ansell Protective Products (Co.)	Tarboro, NC	04/18/2001	NAFTA–4,771	industrial work gloves.
ECM Motor (IUNAW)	Elkhorn, WI	04/16/2001	NAFTA–4,772	horse power motors.
PSC Scanning (Wkrs)	Eugene, OR	04/11/2001	NAFTA–4,773	bar code scanners.
Commtouch (Co.)	Mountain View, GA	04/16/2001	NAFTA–4,774	software technology & services.
Jonathan Engineered Solutions (UAW).	Fullerton, CA	04/15/2001	NAFTA–4,775	aluminium.
Southern Tee's (Wkrs)	Rockingham, NC	04/18/2001	NAFTA–4,776	t-shirts.
Monona Wire (Wkrs)	Edgewood, IA	04/19/2001	NAFTA–4,777	wiring harness.
Shasta View (Co.)	Malin, OR	04/09/2001	NAFTA–4,778	potatoes.
Mar-Bax Shirt (Co.)	Gassville, AR	04/16/2001	NAFTA–4,779	men's woven dress shirts.
WSW of Sharon of Tennessee (Wkrs).	Sharon, TN	04/23/2001	NAFTA–4,780	children sleepware and playware.
Globe Building Materials (Co.)	Cornell, WI	04/20/2001	NAFTA–4,781	roofing felt.
Tyco Electronics (Co.)	Harrisonburg, VA	04/23/2001	NAFTA–4,782	electronics.
Prairie Wood Products (Wkrs)	Prairie City, OR	04/23/2001	NAFTA–4,783	logs lumber products.
Williamson Dickie (Wkrs)	Eagle Pass, TX	04/23/2001	NAFTA–4,784	work pants and shorts.
Challenge Machinery (The) (PACE)	Grand Haven, MI	04/20/2001	NAFTA–4,785	paper cutters & paper drills.
Rubber Urethanes (Co.)	Grainesville, TX	04/02/2001	NAFTA–4,786	rubber rollers.
BBA Nonwovens (PACE)	Lewisburg, PA	04/19/2001	NAFTA–4,787	thermobond and chembond nonwoven.
J and L Specialty Steel (USWA)	Midland, PA	04/18/2001	NAFTA–4,788	stainless steel strip.
Horace Small Apparel (Co.)	Brownsville, TX	04/20/2001	NAFTA–4,789	garments.
J.C. Viramontes (Co.)	El Paso, TX	04/20/2001	NAFTA–4,790	denim garments.
Southwire (Co.)	Osceola, AR	04/20/2001	NAFTA–4,791	wire and cable products.
Novo Knitting (Co.)	Mansfield, OH	04/19/2001	NAFTA–4,792	knitted outerwear.
Johnstown America (USWA)	Johnstown, PA	04/24/2001	NAFTA–4,793	railroad cars.
Wright's (Co.)	Allentown, PA	04/24/2001	NAFTA–4,794	men's and boy's knitted outerwear.
Prime Cast (USWA)	South Beloit, IL	04/17/2001	NAFTA–4,795	gary iron casting.
Erie Coke Corporation (Wkrs)	Erie, PA	04/23/2001	NAFTA–4,796	steel.
Epic Components (Co.)	New Boston, MI	04/24/2001	NAFTA–4,797	plastic injection molded.
Tyco Electronics (Co.)	Shrewsburg, PA	04/24/2001	NAFTA–4,798	injection molded components.
BF Goodrich Performance Materials (Co.).	Taylors, SC	04/13/2001	NAFTA–4,799	specialty chemicals.
Magnetek (Co.)	Madison, AL	04/25/2001	NAFTA–4,800	electronic ballasts.
Southern Glove—Mountain City Glove (Co.).	Newton, NC	04/24/2001	NAFTA–4,801	gloves.
Pro Manufacturing (Wkrs)	Killeen, TX	04/29/2001	NAFTA–4,802	men's jackets and vests.
Northwest Fourslide (Co.)	Sherwood, OR	04/24/2001	NAFTA–4,803	wire forms and metal stampings.
Dirmingham Steel (USWA)	Joliet, IL	04/24/2001	NAFTA–4,804	steel merchant bar.
Access Electronics (Wkrs)	Gurnee, IL	04/25/2001	NAFTA–4,805	electronics.
Nypro Alabama (Co.)	Dothan, AL	04/26/2001	NAFTA–4,806	lead acid battery.
Eagle Electric (Wkrs)	Long Island, NY	04/02/2001	NAFTA–4,807	electric switches, plugs, sockets etc.
Texas Instruments (Wkrs)	San Jose, CA	04/10/2001	NAFTA–4,808	map products.
TechnoTrim (Co.)	Stockton, CA	04/17/2001	NAFTA–4,809	automobile seat covers.
Lobelson and McCabe (Wkrs)	Chapel Hill, TN	04/26/2001	NAFTA–4,810	dance wear, ballet shoes, tap shoes.

Subject Firm	Location	Date received at Governor's Office	Petition number	Articles produced
Emerson Power Transmission (Wkrs).	Valparaiso, IN	04/26/2001	NAFTA–4,811	bearing.
Cemex Kosmos Cement (IBM)	Pittsburgh, PA	04/26/2001	NAFTA–4,812	cement.
Tycom (Co.)	Owego, NY	04/27/2001	NAFTA–4,813	precision cutting tools.
Maurice Silvera (Co.)	Lumberton, NC	04/26/2001	NAFTA–4,814	men's golf shirts, kid's sportswear.
Penridge Manufacturing (Co.)	Freeland, PA	04/27/2001	NAFTA–4,815	men's and ladies outerwear.
Lady Hope Dress (UNITE)	Kulpment, PA	04/27/2001	NAFTA–4,816	dresses.
Square D (Co.)	Ashville, NC	04/30/2001	NAFTA–4,817	molds.
McGinley Mills (UNITE)	Easton, PA	04/26/2001	NAFTA–4,818	ribbon goods.
Woodstock Lamp and Shade (UFCW).	Oldforge, PA	04/30/2001	NAFTA–4,819	lamp shades and lampshade frames.
Tridelta Industries (Co.)	Mentor, OH	04/13/2001	NAFTA–4,820	pressure controls.
Nokia Mobile Phones (Wkrs)	Fort Worth, TX	04/30/2001	NAFTA–4,821	cellular phones.
MEI International (USWA)	Duluth, MN	04/30/2001	NAFTA–4,822	consumable wear parts.
Brillcast (Co.)	Grand Rapids, MI	04/30/2001	NAFTA–4,823	functional and decorative parts.
Mother Parker's Tea and Coffee (Wkrs).	Amherst, NY	04/30/2001	NAFTA–4,824	microwave coffee singles.

[FR Doc. 01–11625 Filed 5–8–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act; Lower Living Standard Income Level

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of determination of lower living standard income level.

SUMMARY: Under Title I of the Workforce Investment Act of 1998 (Public Law 105–220), the Secretary of Labor annually determines the Lower Living Standard Income Level (LLSIL) for uses described in the Law. WIA defines the term "Low Income Individual" as one who qualifies under various criteria, including an individual who received income for a six-month period that does not exceed the higher of the poverty line or 70 percent of the lower living standard income level. This issuance provides the Secretary's annual LLSIL for 2001 and references the current 2001 Health and Human Services "Poverty Guidelines."

EFFECTIVE DATE: This notice is effective on May 9, 2001.

ADDRESSES: Send written comments to: Mr. Ron Putz, Office of Adult Services, Employment and Training Administration, Department of Labor, Room C–5325, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Putz, Telephone 202–693–3575; Fax (202) 693–3589 (these are not toll free numbers).

SUPPLEMENTARY INFORMATION: It is the purpose of the Workforce Investment Act of 1998 (WIA) "to provide workforce investment activities, through statewide and local workforce investment systems, that increase the employment, retention, and earnings of participants, and increase occupational skill attainment by participants, and, as a result, improve the quality of the workforce, reduce welfare dependency, and enhance the productivity and competitiveness of the Nation."

The LLSIL is used for several purposes under WIA: specifically, WIA Section 101(25) defines the term "low income individual" for eligibility purposes, Sections 127(b)(2)(C) and 132(b)(1)(IV) define the terms "disadvantaged adult," and "disadvantaged youth" in terms of the poverty line of LLSIL for purpose of State allotments. The Governor and State/Local Workforce Investment Boards need the LLSIL for determining eligibility for youth, eligibility for employed adult workers for certain services, and for the Work Opportunity Tax Credit (WOTC). We encourage the Governors and State/Local Workforce Investment Boards to consult WIA and its Regulations and Preamble at 29 CFR Part 652 et al., for more specific guidance in applying the LLSIL to program requirements. The Department of Health and Human Services published the annual update of the poverty-level guidelines in the **Federal Register** at 65 Fed. Reg. 7555, (Feb. 16, 2001). The HHS 2001 Poverty guidelines may also be found on the Internet at: *http://www.aspe.os.dhhs.gov/poverty/01poverty.htm.*

ETA plans to have the 1001 LLSIL available on its web site at: *http://www.wdsc.org/llsil/llsi101.htm*

WIA Section 101(24) defines the LLSIL as "that income level (adjusted for regional, metropolitan, urban, and rural differences and family size) determined annually by the Secretary [of Labor] based on the most recent lower living family budget issued by the Secretary." The most recent lower living family budget was issued by the Secretary of labor in the fall of 1981. The four-person urban family budget estimates, previously published by the Bureau of Labor Statistics (BLS), provided the basis for the Secretary to determine the LLSIL. BLS terminated the four-person family budget series in 1982, after publication of the fall 1981 estimates. Currently BLS provides data to ETA, from which it develops the LLSIL tables.

The Employment and Training Administration (ETA) published the 2000 updates to the LLSIL in the **Federal Register** of May 12, 2000, at 65 FR 30630. This notice again updates the LLSIL to reflect cost of living increases for 2000 by applying the percentage change in the December 2000 Consumer Price Index for All Urban Consumers (CPI–U), compared with the December 1999 CPI–U, to each of the May 12, 2000, LLSIL figures. Those updated figures for a family of four are listed in Table 1 below by region for both metropolitan and nonmetropolitan areas. Figures in all of the accompanying tables are rounded up to the nearest ten. Since "low income individual," "disadvantaged adult," and "disadvantaged youth" may be determined by family income at 70 percent of the LLSIL, pursuant to WIA Sections, 101(25), 127(b)(2)(C) and 132(b)(1)(B)(v)(IV), respectively, those figures are listed below as well.

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Jurisdictions included in the various regions, based generally on Census Divisions of the U.S. Department of Commerce, are as follows:

Northeast

Connecticut
Maine
Massachusetts
New Hampshire
New Jersey
New York
Pennsylvania
Rhode Island
Vermont
Virgin Islands

Midwest

Illinois
Indiana
Iowa
Kansas
Michigan
Minnesota
Missouri
Nebraska
North Dakota
Ohio
South Dakota
Wisconsin

South

Alabama
American Samoa
Arkansas
Delaware
District of Columbia
Florida
Georgia
Northern Marianas
Oklahoma
Palau
Puerto Rico
South Carolina
Kentucky
Louisiana
Marshall Islands
Maryland
Mississippi
Micronesia
North Carolina
Tennessee
Texas
Virginia
West Virginia

West

Arizona
California
Colorado
Idaho
Montana
Nevada
New Mexico
Oregon
Utah
Washington
Wyoming

Additionally, separate figures have been provided for Alaska, Hawaii, and Guam as indicated in Table 2 below.

For Alaska, Hawaii, and Guam, the year 2001 figures were updated from the May 12, 2000, "State Index" based on the ratio of the urban change in the State (using Anchorage for Alaska and Honolulu for Hawaii and Guam) compared to the West regional metropolitan change, and then applying that index to the West regional metropolitan change.

Data on 23 selected Metropolitan Statistical Areas (MSAs) are also available. These are based on semiannual CPI–U changes for a 12 month period ending in December 2000. The updated LLSIL figures for these MSAs and 70 percent of the LLSIL are reported in Table 3 below.

Table 4 below lists each of the various figures at 70 percent of the updated 2000 LLSIL for family sizes of one to six persons. For families larger than six persons, an amount equal to the difference between the six-person and the five-person family income levels should be added to the six-person family income level for each additional person in the family. Where the poverty level for a particular family size is greater than the corresponding LLSIL figure, the figure is indicated in parentheses. Table 5, 100 percent of LLSIL, is used to determine self-sufficiency as noted at 20 CFR § 663.230 of WIA Regulations and WIA section 134(d)(3)(A)(ii).

Use of These Date

Governors should designate the appropriate LLSILs for use within the State from Tables 1 through 3. Tables 4 and 5 may be used with any of the levels designated. The Governor's designation may be provided by disseminating information on Metropolitan Statistical Areas (MSAs) and metropolitan and nonmetropolitan areas within the State, or it may involve further calculations. For example, the State of New Jersey may have four or more LLSIL figures: metropolitan, nonmetropolitan, for portions of the State in the New York City MSA, and for those in the Philadelphia MSA. If a workforce investment area includes areas that would be covered by more than one figure, the Governor may determine which is to be used. Under 20 CFR 661.220, a State's policies and measures for the workforce investment system shall be accepted by the Secretary to the extent that they are consistent with the WIA and the WIA regulations.

Disclaimer on Statistical Uses

It should be noted that the publication of these figures is only for the purpose of meeting the requirements specified by WIA as defined in the law and regulations. BLS has not revised the lower living family budget since 1981, and has no plans to do so. The four-person urban family budget estimates series has been terminated. The CPI–U adjustments used to update the LLSIL for this publication are not precisely comparable, most notably because certain tax items were included in the 1981 LLSIL, but are not in the CPI–U. Thus, these figures should not be used for any statistical purposes, and are valid only for those purposes under the WIA as defined in the law and regulations.

Signed at Washington, DC, this 3rd day of May, 2001.

Shirley M. Smith,

Administrator, Office of Adult Service.

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Table 1: Lower Living Standard Income Level (for a family of four persons) by Region[1]

Region[2]	2001 Adjusted LLSIL	70 percent LLSIL
Northeast		
Metro	$30,360	$21,260
Non-Metro[3]	$29,870	$20,910
Midwest		
Metro	$28,320	$19,830
Non-Metro	$26,760	$18,740
South		
Metro	$26,580	$18,610
Non-Metro	$25,300	$17,710
West		
Metro	$30,230	$21,160
Non-Metro[4]	$29,300	$20,510

[1]For ease of use, these figures have been rounded to the next highest ten dollars.

[2]Metropolitan area measures were calculated from the weighted average CPI-Us for city size classes A and B/C. Non-metropolitan area measures were calculated from the CPI-Us for city size class D.

[3]Nonmetropolitan area percent changes for the Northeast region are no longer available The Non-metropolitan percent change was calculated using the U.S. average CPI-U for city size Class D

[4]Non-metropolitan area percent changes for the West region are unpublished data

Table 2: Lower Living Standard Income Level (for a family of four persons) -- Alaska, Hawaii and Guam[1]

Region	2001 Adjusted LLSIL	70 percent LLSIL
Alaska		
Metro	$37,020	$25,920
Non-Metro[2]	$36,780	$25,750
Hawaii, Guam		
Metro	$38,540	$26,980
NonMetro[2]	$39,270	$27,490

[1]Rounded to next highest ten dollars

[2]Non-Metropolitan percent changes for Alaska, Hawaii and Guam were calculated from the CPI-Us for city size Class D in the Western Region.

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Table 3: Lower Living Standard Income Level (for a family of four persons) 23 MSAs[1]

Metropolitan Statistical Areas (MSAs)	2001 Adjusted LLSIL	70 percent LLSIL
Anchorage, AK	$37,020	$25,920
Atlanta, GA	$26,800	$18,760
Boston--Brockton--Nashua, MA/NH/ME/CT	$32,720	$22,910
Chicago--Gary--Kenosha, IL/IN/WI	$29,580	$20,710
Cincinnati--Hamilton, OH/KY/IN	$28,470	$19,930
Cleveland--Akron, OH	$29,260	$20,480
Dallas--Ft. Worth, TX	$25,830	$18,080
Denver--Boulder--Greeley, CO	$29,930	$20,960
Detroit--Ann Arbor--Flint, MI	$27,510	$19,260
Honolulu, HI	$38,540	$26,980
Houston--Galveston--Brazoria, TX	$24,680	$17,280
Kansas City, MO/KS	$27,460	$19,220
Los Angeles--Riverside--Orange County, CA	$30,410	$21,290
Milwaukee--Racine, WI	$28,340	$19,840
Minneapolis--St. Paul, MN/WI	$28,220	$19,760
New York--Northern NJ--Long Island, NY/NJ/CT/PA	$31,630	$22,140
Philadelphia--Wilmington--Atlantic City, PA/NJ/DE/MD	$29,310	$20,520
Pittsburgh, PA	$28,340	$19,840
St. Louis, MO/IL	$26,640	$18,650
San Diego, CA	$32,370	$22,660
San Francisco--Oakland--San Jose, CA	$32,490	$22,750
Seattle--Tacoma--Bremerton, WA	$33,230	$23,260
Washington--Baltimore, DC/MD/VA/WV[2]	$32,050	$22,440

[1]Rounded to next highest ten dollars.

[2] Baltimore and Washington are now calculated as a single metropolitan statistical area.

Table 4 - Seventy Percent of Updated 2001 Lower Living Standard Income Level (LLSIL), by Family Size

To use the seventy percent LLSIL value, where it is stipulated for WIA programs, individuals must begin by locating the region or metropolitan area where they reside. These are listed in Tables 1, 2 and 3. Individuals must locate their region or metropolitan statistical area and then find the seventy percent LLSIL amount for that location. The seventy percent LLSIL figures are listed in the last column to the right on each of the three tables. These figures apply to a family of four Larger and smaller family eligibility is based on a percentage of the family of four. To determine eligibility for other size families consult the table below.

To use Table 4, locate the seventy percent LLSIL value that applies to the individual's region or metropolitan area from Tables 1, 2 or 3. Find the same number in the "family of four" column of Table 4. Move left or right across that row to the size that corresponds to the individual's family unit. That figure is the maximum household income the individual is permitted in order to qualify as economically disadvantaged under WIA.

Where the HHS poverty level for a particular family size is greater than the corresponding LLSIL figure, the LLSIL figure is indicated in parentheses. Individuals from these size families may consult the 2001 HHS poverty guidelines found in the Federal Register, Vol. 66, No. 33, February 16, 2001, pp. 10695-10697 (on the Internet at http://aspe.hhs.gov/poverty/01poverty.htm) to find the higher eligibility standard. Individuals from Alaska and Hawaii should consult the HHS guidelines for the generally higher poverty levels that apply in their states

Family of One	Family of Two	Family of Three	Family of Four	Family of Five	Family of Six
($6,230)	($10,200)	($14,000)	($17,280)	$20,390	$23,840
($6,380)	($10,450)	($14,350)	$17,710	$20,900	$24,440
($6,510)	($10,670)	$14,650	$18,080	$21,340	$24,960
($6,700)	($10,980)	$15,080	$18,610	$21,960	$25,690
($6,720)	($11,010)	$15,110	$18,650	$22,010	$25,740
($6,750)	($11,060)	$15,180	$18,740	$22,120	$25,870
($6,760)	($11,070)	$15,200	$18,760	$22,140	$25,890
($6,920)	($11,340)	$15,570	$19,220	$22,680	$26,530
($6,940)	($11,370)	$15,610	$19,260	$22,730	$26,580
($7,120)	$11,660	$16,010	$19,760	$23,320	$27,270
($7,140)	$11,700	$16,070	$19,830	$23,400	$27,370
($7,150)	$11,710	$16,080	$19,840	$23,420	$27,380
($7,180)	$11,760	$16,150	$19,930	$23,520	$27,510
($7,380)	$12,090	$16,590	$20,480	$24,170	$28,270
($7,390)	$12,110	$16,620	$20,510	$24,210	$28,310
($7,390)	$12,110	$16,630	$20,520	$24,220	$28,320
($7,460)	$12,220	$16,780	$20,710	$24,440	$28,580
($7,530)	$12,340	$16,940	$20,910	$24,680	$28,860
($7,550)	$12,370	$16,980	$20,960	$24,740	$28,930
($7,620)	$12,490	$17,140	$21,160	$24,970	$29,210
($7,660)	$12,550	$17,230	$21,260	$25,090	$29,340
($7,670)	$12,570	$17,250	$21,290	$25,130	$29,390
($7,980)	$13,070	$17,940	$22,140	$26,130	$30,560
($8,080)	$13,240	$18,180	$22,440	$26,480	$30,970
($8,160)	$13,370	$18,360	$22,660	$26,740	$31,280
($8,190)	$13,430	$18,430	$22,750	$26,850	$31,400
($8,250)	$13,520	$18,560	$22,910	$27,040	$31,620
($8,380)	$13,730	$18,850	$23,260	$27,450	$32,100
$9,270	$15,200	$20,860	$25,750	$30,390	$35,540
$9,340	$15,300	$21,000	$25,920	$30,590	$35,770
$9,720	$15,920	$21,860	$26,980	$31,840	$37,240
$9,900	$16,220	$22,270	$27,490	$32,440	$37,940

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Table 5 - Updated 2001 LLSIL (100%), By Family Size

To use the LLSIL to determine the minimum level for establishing self-sufficiency criteria at the state or local level, begin by locating the metropolitan area or region from Table 1, 2 or 3. The individual must locate their region or metropolitan statistical area and then find the 2001 Adjusted LLSIL amount for that location. These figures apply to a family of four. Locate the corresponding number in the family of four column below. Move left or right across that row to the size that corresponds to the individual's family unit. That figure is the minimum figure States must set for determining whether employment leads to self-sufficiency under WIA programs.

Family of One	Family of Two	Family of Three	Family of Four	Family of Five	Family of Six
$8,890	$14,570	$20,000	$24,680	$29,130	$34,060
$9,110	$14,930	$20,500	$25,300	$29,860	$34,920
$9,300	$15,240	$20,930	$25,830	$30,480	$35,650
$9,570	$15,690	$21,530	$26,580	$31,370	$36,690
$9,600	$15,720	$21,580	$26,640	$31,440	$36,770
$9,640	$15,790	$21,680	$26,760	$31,580	$36,930
$9,650	$15,820	$21,710	$26,800	$31,630	$36,990
$9,890	$16,210	$22,250	$27,460	$32,410	$37,900
$9,910	$16,240	$22,290	$27,510	$32,470	$37,970
$10,160	$16,650	$22,860	$28,220	$33,300	$38,950
$10,200	$16,710	$22,940	$28,320	$33,420	$39,090
$10,210	$16,730	$22,960	$28,340	$33,450	$39,110
$10,250	$16,800	$23,070	$28,470	$33,600	$39,290
$10,540	$17,270	$23,710	$29,260	$34,530	$40,380
$10,550	$17,290	$23,740	$29,300	$34,580	$40,440
$10,560	$17,300	$23,750	$29,310	$34,590	$40,450
$10,650	$17,460	$23,960	$29,580	$34,910	$40,830
$10,760	$17,630	$24,200	$29,870	$35,250	$41,230
$10,780	$17,660	$24,250	$29,930	$35,320	$41,310
$10,890	$17,840	$24,490	$30,230	$35,680	$41,720
$10,930	$17,920	$24,600	$30,360	$35,830	$41,900
$10,950	$17,950	$24,640	$30,410	$35,890	$41,970
$11,390	$18,670	$25,630	$31,630	$37,330	$43,650
$11,540	$18,910	$25,970	$32,050	$37,820	$44,230
$11,660	$19,100	$26,220	$32,370	$38,200	$44,680
$11,700	$19,170	$26,320	$32,490	$38,340	$44,840
$11,780	$19,310	$26,510	$32,720	$38,610	$45,160
$11,970	$19,610	$26,920	$33,230	$39,220	$45,860
$13,250	$21,710	$29,800	$36,780	$43,410	$50,760
$13,330	$21,850	$29,990	$37,020	$43,690	$51,090
$13,880	$22,740	$31,220	$38,540	$45,480	$53,190
$14,140	$23,170	$31,810	$39,270	$46,340	$54,200

[FR Doc. 01–11631 Filed 5–8–01; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Representative of Miners

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before July 9, 2001.

ADDRESSES: Send comments to Brenda C. Teaster, Acting Chief, Records Management Division, 4015 Wilson Boulevard, Room 709A, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to bteaster@msha.gov, along with an original printed copy. Ms. Teaster can be reached at (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

FOR FURTHER INFORMATION CONTACT: Brenda C. Teaster, Acting Chief, Records Management Division, U.S. Department of Labor, Mine Safety and Health Administration, Room 709A, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Ms. Teaster can be reached at bteaster@msha.gov (Internet E-mail), (703) 235–1470 (voice), or (703) 235–1563 (facsimile)

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801, *et. seq.*, (Mine Act) requires the Secretary of Labor to exercise many of his/her duties under the Act in cooperation with miners' representatives. The Act also establishes miners' rights which may be exercised through a representative. Title 30, CFR Part 40 contains procedures which a person or organization must follow in order to be designated as a representative of miners.

II. Desired Focus of Comments

The Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Representative of Miners. MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request may be viewed on the Internet by accessing the MSHA Home Page (http://www.msha.gov) and selecting "Statutory and Regulatory Information" then "Paperwork Reduction Act submission (http://www.msha.gov/regspwork.htm)", or by contacting the employee listed above in the **FOR FURTHER INFORMATION CONTACT** section of this notice for a hard copy.

III. Current Actions

The information is used to identify the designated representative of miners at a specific mine. The Mine Act gives the miner or the representative of miners the right to accompany an MSHA inspector without any loss of pay.

Type of Review: Extension.
Agency: Mine Safety and Health Administration.
Title: 30 C.F.R. § 40.3, 40.4, and 40.5, Representative of Miners.
OMB Number: 1219–0042.
Affected Public: Business or other for-profit institutions.
Cite/Reference/Form/etc.: 30 CFR § 40.3, 40.4, 40.5.
Total Respondents: 15,837.
Frequency: On occasion.
Total Responses: 108.
Average Time Per Response: .75 hours.
Estimated Total Burden Hours: 63 hours.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintaining: $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 1, 2001.

Brenda C. Teaster,

Acting Chief, Records Management Division.

[FR Doc. 01–11623 Filed 5–8–01; 8:45 am]
BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Slope and Shaft Sinking Plans

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before July 9, 2001.

ADDRESSES: Send comments to Brenda C. Teaster, Acting Chief, Records Management Division, 4015 Wilson Boulevard, Room 709A, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to bteaster@msha.gov, along with an original printed copy. Ms. Teaster can be reached at (703) 235–1470 (voice), or (703) 235–1563 (facsmile).

FOR FURTHER INFORMATION CONTACT: Brenda C. Teaster, Acting Chief, Records Management Division, U.S. Department of Labor, Mine Safety and Health Administration, Room 709A, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Ms. Teaster can be reached at *bteaster@msha.gov* (Internet E-mail),

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(703) 235–1470 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

The standard 30 CFR section 77.1900 was enacted in 1971 and was amended in 1982 and again in 1995. The standard requires underground coal mine operators to develop a prudent engineered design plan to develop a slope or shaft whenever an operator decides to open such a coal mine. The plan is required by the standard and is to be reviewed and approved by MSHA before the actual hazardous work begins.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to Slope and Shaft Sinking Plans. MSHA is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request may be viewed on the Internet by accessing the MSHA Home Page (*http://www.msha.gov*) and selecting "Statutory and Regulatory Information" then "Paperwork Reduction Act submission (*http://www.msha.gov/regspwork.htm*)", or by contacting the employee listed above in the **FOR FURTHER INFORMATION CONTACT** section of this notice for a hard copy.

III. Current Actions

The average 25 slope or shaft development plans that MSHA receives on an annual basis, are reviewed to ensure that the required work is performed in a safe manner, and it protects those miners performing the work. Prudent engineering design does evolve along with improved machinery to perform the work, but there has not been any revision to the requirements for such a plan.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Slope and Shaft Sinking Plans.

OMB Number: 1219–0019.

Recordkeeping: records are normally required to be kept for 3 years.

Affected Public: Business or other for-profit.

Cite/Reference/Form/etc: 30 CFR 77.1900.

Total Respondents: 887.

Frequency: whenever an operator decides to develop a slope or shaft.

Total Responses: 48.

Average Time Per Response: 20 hours.

Estimated Total Burden Hours: 960.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $720.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 1, 2001.

Brenda C. Teaster,

Acting Chief, Records Management Division.

[FR Doc. 01–11636 Filed 5–8–01; 8:45 am]

BILLING CODE 4510–43–M

NATIONAL INSTITUTE FOR LITERACY

Submission for OMB Review; Comment Request

AGENCY: National Institute for Literacy (NIFL).

ACTION: Notice of information collection.

SUMMARY: The NIFL Director invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 8, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503, or should be electronically mailed to the internet address lwittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION:

Title: Application for Literacy Leader Fellowship Program.

Abstract: The National Institute for Literacy (NIFL) was created by the National Literacy Act of 1991 and amended by the Workforce Investment Act of 1998 and authorized the NIFL to award fellowships to outstanding individuals pursuing careers in adult education or literacy in the areas of instruction, management, research, or innovation. Evaluations to determine successful applications will be made by a panel of literacy experts and information specialists using the published criteria. The NIFL will use this information to issue a minimum of 2–3 fellowships for a period of up to one year.

Burden Statement: The burden for this collection of information is estimated at 52 hours per response for the first year. This estimate includes the time needed to review instructions, complete the form, and review the collection of information. No more than 2–3 applicants will be awarded a fellowship grant. Each awardee will have an annual update of the application requiring an average of 40 hours per response for each continuation year.

Respondents: Public and private nonprofit organizations.

Estimated Number of Respondents: 50.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 40 hours.

Frequency of Collection: One time.

Send comments regarding the burden estimate or any other aspect of the information collection, including suggestions for reducing the burden to Jennifer Cromley at the above address.

Request for Comments

Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The NIFL Director publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection contains a burden statement that includes the estimated burden hours and other relevant information.

Requests for copies of the proposed information collection request may be accessed from *http://www.nifl.gov/activities/fllwhome.htm* or comments regarding burden and/or the collection activity requirements should be addressed to Jennifer Cromley, National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006. Requests also may be electronically mailed to the internet *jcromley@nifl.gov* or faxed to 202–233–2050. Please specify the complete title of the information collection when making your request.

Dated: May 4, 2001.

Carolyn Y. Staley,

Acting Director, NIFL.

[FR Doc. 01–11646 Filed 5–8–01; 8:45 am]

BILLING CODE 6055–01–M

NATIONAL TRANSPORTAITON SAFETY BOARD

Sunshine Act Meeting

TIME AND PLACE: 9:30 a.m., Tuesday, May 15, 2001.

PLACES: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The one item is Open to the Public.

MATTER TO BE CONSIDERED: 5299G Most wanted Safety Recommendations Program—2001 Update.

News Media Contact: Telephone: (202) 314–6100

Individuals requesting specific accommodation should contact Ms. Carolyn Dargan at (202) 314–6305 by Friday, May 11, 2001.

FOR MORE INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6065.

Dated: May 4, 2001.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 01–11751 Filed 5–7–01; 11:03 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Notice of Public Meeting to Solicit Stakeholder Input on the Use of Risk Information in the Nuclear Materials Regulatory Process: Case Study on Uranium Recovery facilities

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Meeting.

SUMMARY: The Nuclear Regulatory Commission's (NRC's) Office of Nuclear Materials Safety and Safeguards is developing criteria for determining when risk information should be used in the regulation of nuclear waste and materials. As part of this effort, the NRC staff is conducting case studies on a spectrum of activities in the nuclear materials and waste arenas, including uranium recovery facilities. The purpose of the case studies is (1) to illustrate what has been done and what could be done in the materials and waste arenas to alter the regulatory approach in a risk-informed manner and (2) to establish a framework for using a risk-informed approach in the materials and waste arenas by testing a set of draft screening criteria, and determining the feasibility of safety goals.

NRC staff is in the initial phase of its case study on uranium recovery facilities. The purpose of this meeting is to (1) communicate to stakeholders the status of this case study, and (2) to solicit recommendations and comments on how NRC should proceed with the case study, apply the draft screening criteria, develop safety goals, and incorporate risk information into its regulatory program. The tentative agenda for the meeting is as follows:

1. Opening remarks.
2. Provide background information on the case study effort.
3. Present status of case study.
4. Receive comments, feedback, and recommendations.
5. Closing remarks.

The meeting is open to the public; all interested parties may attend and provide comments. Persons who wish to attend the meeting should contact Marissa Bailey no later than June 7, 2001.

DATES: The meeting will be held on June 13, 2001, from 7 p.m. to 9 p.m., at the Executive Tower Hotel, 1405 Curtis Street, Denver, Colorado 80202.

FOR FURTHER INFORMATION, CONTACT: Marissa Bailey, Mail Stop T–8–A–23, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–7648; Internet: MGB@NRC.GOV.

SUPPLEMENTARY INFORMATION: The NRC staff's case study approach, the draft screening criteria, and the case study areas under consideration are described in the "Plan for Using Risk-Information in the Materials and Waste Arenas: Case Studies" which has been published in the **Federal Register** (65 FR 66782, November 7, 2000). Copies of this plan are also available on the Internet at http://www.nrc.gov/NMSS/IMNS/riskassessment.html. Written requests for single copies of this plan may also be submitted to the U. S. Nuclear Regulatory Commission, Office of Nuclear Materials Safety and Safeguards, Risk Task Group, Mail Stop T–8–A–23, Washington, DC 20555–0001.

Dated at Rockville, MD, this 2nd day of May 2001.

For the Nuclear Regulatory Commission.

Lawrence E. Kokajko,

Section Chief, Risk Task Group, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01–11698 Filed 5–8–01; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27390]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

May 2, 2001.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 29, 2001, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issue in the matter. After May 29, 2001, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Allegheny Energy, Inc., et al. (70–9833)

Allegheny Energy, Inc. ("Allegheny"), 10435 Downsville Pike, Hagerstown, Maryland 21740, a registered holding company, and Allegheny Energy Supply

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Company, LLC ("AE Supply"), R.R. 12, P.O. Box 1000, Roseytown Road, Greensburg, Pennsylvania 15601, a utility subsidiary of Allegheny, (collectively, "Applicants") have filed a declaration under sections 6(a), 7, and 12(d) of the Act and rules 44 and 54 under the Act.

In accordance with an Asset Contribution and Purchase Agreement dated January 8, 2001 ("Agreement"), AE Supply and Allegheny Energy Global Markets, LLC, AE Supply's newly formed rule 58 company, acquired Global Energy Markets ("GEM"), the energy commodity marketing and trading unit of Merrill Lynch & Co., Inc. ("Merrill Lynch"), on March 16, 2001 ("Closing Date").[1] The purchase price for GEM was $490 million, paid on the Closing Date, and 2% of the membership interests in AE Supply ("Membership Interests"). The sale of the Membership Interests is contingent upon the approval of the Commission. The Agreement further provides that if the Commission does not approve the sale of the Membership Interests, Allegheny, AE Supply, and Allegheny Energy Global Markets, LLC, are obligated to make an additional cash payment to Merrill Lynch. Accordingly, Applicants request authorization to sell the Membership Interests to Merrill Lynch.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 01–11594 Filed 5–8–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27392]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

May 3, 2001.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 28, 2001, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After May 28, 2001, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Northeast Utilities, et al. (70–9883)

Notice of Proposal To Issue Securities; Order Authorizing Solicitation of Proxies

Northeast Utilities ("NU"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01090–0010, a registered holding company, has filed a declaration under sections 6(a), 7, and 12(e) of the Act and Rules 54, 62, and 65 under the Act.

NU seeks the Commission's approval for: (1) The solicitation of proxies from NU's common shareholders seeking adoption of the Northeast Utilities Employee Share Purchase Plan ("Plan"), which contemplates the issuance of NU's common shares, $5.00 par value ("Common Shares") and (2) the issuance each year, during the ten year term of the Plan, of NU Common Shares (either authorized, but previously unissued shares or reacquired shares) not to exceed one-half percent (0.5%) of the number of shares outstanding as of the end of the preceding year[1] and derivatives of such shares.

On April 9, 2001, NU's Board of Trustees ("Board") adopted an Employee Share Purchase Plan ("Plan"). This Plan replaces an earlier Employee Share Purchase Plan adopted in 1 998 by order of the Commission dated April 29, 1998 (HCAR No. 26865) ("Prior 1998 Plan"), which NU discontinued in December of 2000 in anticipation of the merger with Consolidated Edison, Inc. The Prior 1998 Plan allowed officers to participate, but only as optional participants, which in effect required that the officers purchase the share at 100% rather than 85% of the market value as of a designated date determined by the Plan's committee. Under the current Plan officers may participate under the same terms as other eligible participants. NU proposes to submit the Plan to its shareholders for approval at NU's Annual Meeting of Shareholders to be held on June 28, 2001. If approved by NU's shareholders, the Plan will be effective as of August 1, 2001. The Plan will terminate ten years from its effective date, unless terminated earlier by the Board.

The Plan will be administered by the Compensation Committee of NU's Board of Trustees or by a delegate ("Committee"). The Plan is intended to be an employee stock purchase plan under Section 423 of the Internal Revenue Code of 1986, as amended. Through programs established by the Committee from time to time eligible employees may purchase newly issued Common Shares through payroll deduction. The purchase price will be determined by the Committee and will be between 85 percent and 100 percent of the lower of closing market value on the first and last days of the purchase period. Shares purchased under the Employee Share Purchase Plan may not be transferred for six months following the purchase date.

Additionally, NU requests authority to solicit proxies approving the Plan from the holders of NU Common Shares, for use at the Annual Meeting of Shareholders to be held June 28, 2001. It is anticipated that solicitation materials will be mailed to shareholders commencing on or about May 11, 2001.

NU proposes to mail the notice of meeting, statement relating to the Plan, proxy statement and proxy to its shareholders for the annual meeting, and has filed its proxy solicitation material relating to the Plan. NU requests that an order authorizing the solicitation of proxies be issued as soon as practicable under rule 62(d). It appears to the Commission that NU's declaration as it pertains to the proposed solicitation of proxies should be permitted to become effective immediately under rule 62(d).

Rule 54 states that the Commission will not consider the effect of the capitalization or earnings of any subsidiary which is an exempt wholesale generator ("EWG") or foreign utility company ("FUCO") upon the registered holding company system if rule 53(a), (b), and (c) are met. NU states, for purposes of rule 54, that it meets all of the conditions of rule 53 under the Act, except for rule 53(a)(1). By order dated March 7, 2000 (HCAR No. 27148)("EWG Investment Order"), the Commission determined that NU's financing of its investment in Northeast Generation Company ("NGC"), NU's only current EWG or FUCO investment, in an amount not to exceed 83% of its "average consolidated retained earnings," would not have the adverse effects set forth in rule 53(c) based on the representations NU set forth at that time. As of December 31, 2000, NU's "aggregate investment," as defined in rule 53(a)(1) ("Aggregate Investment"), in EWGs and FUCOs was approximately $469.5 million, or about 76.1% of NU's consolidated retained earnings ("CRE"). For the four quarters ending December 31, 2000, NU's CRE was $617.3 million.

The proposed transactions are subject to rule 54. Under rule 54, because NU does not meet rule 53(a)(1), the Commission must consider the effect of the capitalization and earnings of EWGs and FUCOs. Applicants state the proposed transactions, considered in conjunction with the effect of the capitalization and earnings of NU's EWGs and FUCOs, would not have a material adverse effect on the financial integrity of the NU system, or an adverse impact on NU's public-utility subsidiaries, their customers, or the ability of state commissions to protect such public-utility customers. NU's consolidated capitalization ratio and its retained earnings, both have improved since the date of the EWG Investment Order. NU's consolidated capitalization consists of 36.1% common equity and 63.9% debt (including long- and short-term debt, preferred stock, capital leases and guarantees). NU's consolidated retained earnings have decreased from $581.8 million as of the December 31, 1999 to 495.9 million as of December 31, 2000. NU's interest in NGC has made a positive contribution to earnings in that time by contributing $26.4 million to NU's retained earnings with revenues of $108.5 million and net income of $26.4 million. The capitalization and earnings attributable to NU's investments in EWGs and FUCOs has not had an adverse impact on NU's financial integrity.

Fees, commissions, and expenses to be incurred in connection with the solicitation of proxies are estimated not to exceed $70,000. NU states that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

It Is Ordered, under rule 62 under the Act, that the declaration to the extent that it relates to the proposed solicitation of proxies is permitted to become effective immediately, subject to the terms and conditions contained in rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–11639 Filed 5–8–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27394]

Filings Under the Public Utility Holding Company Act of 1935, as amended ("Act"

May 4, 2001.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 24, 2001, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After May 24, 2001, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Northeast Utilities (70–9853

Northeast Utilities ("NU"), 174 Brush Hill Road, West Springfield, Massachusetts 01089, a registered holding company, has filed a declaration under sections 6(a), 7, and 12(b) and rules 45 and 54 under the Act.

By prior Commission orders dated November 9, 1988, December 20, 1990, December 3, 1992, and December 29, 1994 (HCAR Nos. 24742, 25219, 25692, and 26208, respectively) (collectively, "Prior Orders"), Holyoke Water Power Company ("HWP"), a utility subsidiary of NU, was authorized, among other things, to issue and sell notes, in an aggregate outstanding amount not exceeding $38.3 million, in connection with the issuance and sale of pollution control revenue bonds ("Bonds") and to enter into a series of related reimbursement agreements ("Reimbursement Agreements") with various banking institutions ("Banks") in exchange for the issuance of irrevocable letters of credit ("LOCs"). In addition, in connection with each of the Reimbursement Agreements, NU entered into equity support agreements on behalf of HWP. These agreements were in the nature of contractual undertakings on the part of NU to maintain specified ownership levels in HWP and to cause HWP to maintain a minimum common equity to capitalization ratio.

In accordance with provisions in each of the Reimbursement Agreements, HWP agreed, among other things, that, so long as the LOCs were outstanding, HWP would not allow the ratio of its common equity to total capitalization to fall below 30%. As of December 31, 2000, HWP recognized a reduction in the carrying value of certain of its assets. Accordingly, its common equity ratio failed to meet certain consolidated common equity maintenance covenants contained in each of the Reimbursement Agreements. The Banks have consented to the decline in HWP's common equity ratio provided that NU provide further assurances that HWP will meet its obligations under the Reimbursement Agreements.

Consequently, NU now proposes, through June 30, 2004 ("Authorization Period") to issue guarantees and other forms of credit support (collectively, "Guarantees"), in an aggregate amount not to exceed $45 million, in order to guarantee HWP's obligations under the Reimbursement Agreements. NU states that the Guarantees may take the form of NU agreeing to undertake reimbursement obligations or to assume liabilities or other obligations with respect to the LOCs. NU also states that the Guarantees will be without recourse to any other operating company in the NU system.

[1] Applicants state that the acquisition of GEM was exempt from section 9(a) of the Act because GEM is an energy-related company under rule 58 of the Act.

[1] Based on the number of issued and outstanding Common Shares on December 31, 2000 this restriction will permit 719,181 Common Shares to be issued to fund purchases by Plan participants in 2001 and 7,191,818 Common Shares over the ten year life of the Plan. The issuance each year is subject to appropriate adjustment in the event of recapitalizations, mergers, splits or similar corporate transactions.

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For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–11707 Filed 5–8–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44249; File No. SR–NASD–2001–22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers Regulation, Inc. Revising the Investment Company Products/Variable Contracts Limited Principal (Series 26) Examination

May 3, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 27, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation.[3] NASD Regulation has designated this proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization under section 19(b)(3)(A)(i) of the Act[4] and Rule 19b–4(f)(1),[5] which renders the rule effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing revisons to the Investment Company Products/Variable Contracts Limited Principal (Series 26) examination.[6] The proposed revisions consist of general revisions to update the examination to reflect changes in the rules, regulations, and practices covered by the examination. The text of the Study Outline for the Series 26 examination is available at NASD Regulation and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to section 15A(g)(3) of the Act,[7] which requires the NASD to prescribe standards of training, experience, and competence for persons associated with NASD members, the NASD has developed examinations, and administers examinations developed by other self-regulatory organizations, that are designed to establish that persons associated with NASD members have attained specified levels of competence and knowledge. NASD Regulation periodically reviews the contents of the examinations to determine whether revisions are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

The NASD's Series 26 Limited Principal examination qualifies individuals to function as a principal in a member's securities business limited to investment company products and variable contracts. This examination tests a candidate's knowledge of securities industry rules and regulations pertinent to such products.

A committee of industry representatives, in conjunction with NASD Regulation staff, recently undertook a review of the Series 26 examination. As a result of this review, NASD Regulation is proposing revisions to the Series 26 test selection specifications, study outline, and question bank to reflect changes in relevant laws, rules, and regulations and the development of new products, and to more accurately reflect the duties and responsibilities of a Series 26 principal. The examination also has been revised to focus more closely on the supervision of sales activities. In addition, the material has been reorganized into five substantive categories of critical functions that a Series 26 principal may be required to perform. These categories are: hiring and qualification; training of representatives; supervision; sales practices; and business processing and record-keeping. In order to adequately test the material on the revised Series 26 examination, the number of questions will be increased to 110 questions from 100 questions. The allowed testing time will change to 2½ hours from 2 hours. The passing score for the examination will continue to be 70 percent.[8]

2. Statutory Basis

NASD Regulation believes that the proposed revisions are consistent with the provisions of sections 15A(b)(6)[9] and 15A(g)(3) of the Act,[10] which authorize the NASD to prescribe standards of training, experience, and competence for persons associated with NASD members.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(i) of the Act[11] and subparagraph (f)(1) of Rule 19b–4 thereunder,[12] in that the foregoing proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization. NASD Regulation proposes to implement the revised Series 26 examination program on July 2, 2001.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2001–22 and should be submitted by May 30, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–11637 Filed 5–8–01; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter to Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation from Belinda Blaine, Associate Director, Division of Market Regulation, SEC, dated July 24, 2000. Revisions to the Series 26 Examination were originally filed with the Commission in SR–NASD–99–51. NASD Regulation has withdrawn SR–NASD–99–51 and refiled the revisions in the instant proposed rule change.

[4] 15 U.S.C. 78s(b)(3)(A)(i).

[5] 17 CFR 240.19b–4(f)(1).

[6] The revised examination specifications were filed with the Commission under separate cover pursuant to a request by NASD Regulation for confidential treatment. *See* 17 CFR 240.24b–2.

[7] 15 U.S.C. 78o–3(g)(3).

[8] *See* telephone conversation between Rebekah Liu, Special Counsel, SEC, Cyndi Nguyen, Attorney, SEC and Eric Moss, Office of General Counsel, NASD Regulation on May 3, 2001.

[9] 15 U.S.C. 78o–3(b)(6).

[10] 15 U.S.C. 78o–3(g)(3).

[11] 15 U.S.C. 78s(b)(3)(A)(i).

[12] 17 CFR 240.19b–4(f)(1).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44248; File No. SR–NASD–2001–23]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers Regulation, Inc. Revising the General Securities Principal (Series 24) and Corporate Securities Limited Representative (Series 62) Examinations

May 3, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 27, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation.[3] NASD Regulation has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization under section 19(b)(3)(A)(i) of the Act[4] and Rule 19b–4(f)(1),[5] which renders the rule effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing revisions to the General Securities Principal (Series 24) and Corporate Securities Limited Representative (Series 62) examinations.[6] The proposed revisions consists of general revisions to update the examination programs to reflect changes in the rules, regulations, and practices covered by the examinations. The proposed revisions are reflected in the question bank for the Series 24 and 62 examinations and are available for Commission review. The text of the Study Outlines for the Series 24 and Series 62 examinations are available at NASD Regulation and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to section 15A(g)(3) of the Act,[7] which requires the NASD to prescribe standards of training, experience, and competence for persons associated with NASD members, the NASD has developed examinations, and administers examinations developed by other self-regulatory organizations, that are designed to establish that persons associated with NASD members have attained specified levels of competence and knowledge. NASD Regulation periodically reviews the content of the examinations to determine whether revisions are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

The NASD's Series 24 General Securities Principal examination qualifies individuals to manage or supervise the member's investment banking or securities business for corporate securities, direct participation programs, and investment company products/variable contracts. The Series 62 Corporate Securities Limited Representative examination is an NASD examination that qualifies an individual as a representative for the sale of corporate stocks, corporate bonds, rights, warrants, real estate investment

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter to Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, from Belinda Blaine, Associate Director, Division of Market Regulation, SEC, dated July 24, 2000. Revisions to the Series 24 and Series 62 Examinations were originally filed with the Commission in SR–NASD–99–55. NASD Regulation has withdrawn SR–NASD–99–55 and refiled the revisions in the instant proposed rule change.

[4] 15 U.S.C. 78s(b)(3)(A)(i).

[5] 17 CFR 240.19b–4(f)(1).

[6] The revised examination specifications were filed with the Commission under separate cover pursuant to a request by NASD Regulation for confidential treatment. *See* 17 CFR 240.24b–2.

[7] 15 U.S.C. 78o–3(g)(3).

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trusts, collateralized mortgage obligations, and securities of closed-end companies registered pursuant to the Investment Company Act of 1940. These exams test candidates' knowledge of securities industry rules and regulations pertinent to the respective products listed above.

The staff of the Qualifications Department of NASD Regulation, in conjunction with an industry committee, recently undertook a review of the General Securities Principal and Corporate Securities Limited Representative examination programs. As a result of this review, NASD Regulation is proposing revisions to the examination specifications, study outlines, and question banks for the Series 24 and Series 62 examination programs to reflect changes to the rules and regulations covered by the examinations, including Commission rules relating to Regulation M, the Investment Advisers Act of 1940, and section 11A of the Act [8] and the rules thereunder. The proposed revisions also reflect changes to NASD rules and regulations, as well as to the Municipal Securities Rulemaking Board Rules G–37 and G–38.

To adequately test the material covered in the revised programs, the number of questions on the Series 24 examination has increased from 125 to 150 questions, and the number of questions on the Series 62 examination has increased from 100 to 115 questions. The allowed testing time will change to 3½ hours for the Series 24 examination and 2½ hours for the Series 62 examination. The passing score for the examinations will continue to be 70 percent .[9]

2. Statutory Basis

NASD Regulation believes that the proposed revisions are consistent with the provisions of sections 15A(b)(6) [10] and 15A(g)(3) of the Act,[11] which authorize the NASD to prescribe standards of training, experience, and competence for persons associated with NASD members.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[8] 15 U.S.C. 78k–1.

[9] *See* telephone conversation between Rebekah Liu, Special Counsel, SEC, Cyndi Nguyen, Attorney, SEC and Eric Moss, Office of General Counsel, NASD Regulation on May 3, 2001.

[10] 15 U.S.C. 78o–3(b)(6).

[11] 15 U.S.C. 78o–3(g)(3).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(i) of the Act [12] and subparagraph (f)(1) of Rule 19b–4 thereunder,[13] in that the foregoing proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization. NASD Regulation proposes to implement the revised Series 24 and 62 examination programs on July 2, 2001.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2001–23 and should be submitted by May 30, 2001.

[12] 15 U.S.C. 78s(b)(3)(A)(i).

[13] 17 CFR 240.19b–4(f)(1).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–11638 Filed 5–8–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44251; File No. SR–NASD–2001–19]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Reporting Requirements for Clearing Members

May 3, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 21, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to adopt Rule 3150 to require all members that are clearing firms to report certain data to the NASD Regulation Department of Member Regulation ("Member Regulation") on a daily basis.

Proposed new language is in italics.

* * * * *

3100. BOOKS AND RECORDS, AND FINANCIAL CONDITION

* * * * *

3150. Reporting Requirements for Clearing Firms

Each member that is a clearing firm shall be required to report to the Association on a daily basis and in such format as the Assaciation may require, prescribed data pertaining to the member and any broker-dealer for which it clears. A clearing firm may enter into an agreement with a third party pursuant to which the third party agrees to fulfill the clearing firm's obligations under this Rule. Notwithstanding the existence of such an agreement, each clearing firm remains responsible for complying with the requirements of this Rule.

* * * * *

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Member Regulation is developing a new business model regarding the surveillance and examination of NASD members. The new program's official title is Integrated National Surveillance and Information Technology Enhancements (commonly referred to as "INSITE"). INSITE will allow NASD Regulation to concentrate its examinations on higher-risk segments of the industry; focus the content of each examination on higher-risk topics; streamline the examination process for the examiners and members; better coordinate regulatory findings with other NASD Regulation departments; and provide specialized training to enhance and maintain examiners' competency levels.

The surveillance component of the INSITE program will produce reports that identify member "exceptions" based on historical and current comparisons of member data. The exceptions will trigger follow-up reviews and possible member examinations. In order for the surveillance component of INSITE to work, it is essential that members that are clearing firms (both those that are self-clearing and those that clear for other firms) provide certain data to NASD Regulation on a daily basis. Proposed Rule 3150 would establish the INSITE reporting requirements and would require members that are clearing firms to provide the necessary data directly to NASD Regulation.[3] A clearing firm member may enter into an agreement with a third party pursuant to which the third party agrees to fulfill the clearing firm's obligations under proposed Rule 3150. Notwithstanding the existence of such an agreement, each member that is a clearing firm will be responsible for complying with the requirements of the proposed rule change.

The text proposed Rule 3150 does not specify the data that must be reported to NASD Regulation. The data elements that NASD Regulation currently expects to require its members that are clearing firms to submit to the Association pursuant to proposed Rule 3150 include items such as trade cancellations (T+1 forward) and as-of-trades, aggregate net liquidating equity in each firms's proprietary accounts, and unsecured customer debits. The Association will continue to work with its clearing firm members and the SEC staff in identifying the data that is needed in order to operate the surveillance component of INSITE. The Association will also provide its clearing firms members with advance notice through the NASD Notice to Members process (or similar guidance) of any changes to the required data elements. Moreover, NASD Regulation will advise its clearing firm members of the format to be used in transmitting information pursuant to proposed rule 3150, and the methodology by which NASD Regulation will require its clearing firm members to submit the following to the Association.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[4] which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[3] The Association anticipates requesting members that are clearing firms to submit data electronically. Telephone conversations between Shirley H. Weiss, Office of General Counsel, NASD Regulation, and Heidi Pilpel, Special Counsel, and Lisa Jones, Attorney, Division of Market Regulation, Commission (May 2, 2001).

[4] 15 U.S.C. 78o–3(b)(6).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NASD Regulation has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing and Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD.

All submissions should refer to File No. SR–NASD–2001–19 and should be submitted by May 30, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–11640 Filed 5–8–01; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 200.30–2(a)(12).

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SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3337]

State of Iowa

As a result of the President's major disaster declaration on May 2, 2001, I find that the following Counties in the State of Iowa constitute a disaster area due to damages caused by flooding, severe storms and tornadoes beginning on April 8, 2001 and continuing: Allamakee, Buchanan, Clayton, Clinton, Des Moines, Dubuque, Jackson, Lee, Louisa, Muscatine, Ringgold, Scott and Wapello Counties. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 1, 2001, and for loans for economic injury until the close of business on February 1, 2002 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Adams, Appanoose, Benton, Black Hawk, Bremer, Cedar, Clarke, Davis, Decatur, Delaware, Fayette, Henry, Jefferson, Johnson, Jones, Keokuk, Linn, Mahaska, Monroe, Taylor, Union, Van Buren, Washington and Winneshiek Counties in Iowa; Carroll, Hancock, Henderson, Jo Daviess, Mercer, Rock Island, and Whiteside Counties in Illinois; Houston County in Minnesota; Clark, Harrison and Worth Counties in Missouri; and Crawford, Grant and Vernon Counties in Wisconsin.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.625
Homeowners Without Credit Available Elsewhere	3.312
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-profit Organizations) With Credit Available Elsewhere	7.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 333706. For economic injury the numbers are 9L6100 for Iowa, 9L6200 for Illinois, 9L6300 for Minnesota, 9L6400 for Missouri, and 9L6500 for Wisconsin.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

May 3, 2001.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 01–11603 Filed 5–8–01; 8:45 am]

BILLING CODE 8025–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD01–01–020]

Environmental Assessment and Finding of No Significant Impact for Installation of Temporary Radio Direction Finding Equipment and Associated Property Use Acquisition At Five Non-Coast Guard Owned Facilities Within the First Coast Guard District

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability.

SUMMARY: The U.S. Coast Guard (USCG) announces the availability of the Final Environmental Assessment (FEA) and Finding of No Significant Impact (FONSI) that address the environmental impacts expected to result from the use of five facilities, not owned by the Coast Guard, for temporary installation of radio direction finding equipment. Use of this temporary equipment is an interim measure designed to improve the Coast Guard's ability to locate the source of emergency distress radio signals until the long term improvements to the National Distress System (NDS) are implemented. The five facilities are located within the First Coast Guard District in coastal areas of the States of Massachusetts, Rhode Island and New York. This FEA evaluates the environmental and socioeconomic impacts of utilizing the five facilities for installation of the radio direction finding equipment. Due to the minimal environmental impacts anticipated, a draft of this Environmental Assessment was not circulated for comment. The FEA evaluates the Preferred Alternative to install the temporary radio direction finding equipment; the No Action Alternative in which the equipment would never be deployed; and what could be considered the "delayed action" alternative in which no interim measures would be taken until the permanent improvements to the NDS are in place. The FONSI determined that the Preferred Alternative action will have no significant effects on the human environment.

ADDRESSES: Written requests for copies of the Final Environmental Assessment and FONSI, or requests for information, should be directed to: Mr. Luke Dlhopolsky, U.S. Coast Guard Civil Engineering Unit Providence, 300 Metro Center Boulevard, Warwick, Rhode Island 02886 or by calling (401) 736–1743.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, the FEA or FONSI, or for general information on the U.S. Coast Guard's National Environmental Policy Act (NEPA) process, please contact Mr. Luke Dlhopolsky, U.S. Coast Guard Civil Engineering Unit Providence, 300 Metro Center Boulevard, Warwick, Rhode Island 02886 or by calling (401) 736–1743.

SUPPLEMENTARY INFORMATION:

Temporary RDF equipment will be installed on a number of waterfront sites throughout the First Coast Guard District Area of Responsibility (AOR). This AOR includes all six New England States, eastern New York State, and northern New Jersey (north of the Shrewsbury River). Most of the RDF equipment will be installed on facilities that are Coast Guard owned. However, to ensure effective coverage of the coastal areas, the Coast Guard determined that some equipment must be installed at locations where there is no Coast Guard owned facility. The Coast Guard identified suitable sites where the RDF equipment could be installed and will enter into lease agreements with the property owners. These sites, owned by other government agencies or private parties, are located in Buzzards Bay (Bourne) and New Bedford, Massachusetts; Newport, Rhode Island; and Mamaroneck and Great River, New York.

Under the Coast Guard's Procedures for Implementing the National Environmental Policy Act (NEPA), the actions to install the RDF equipment at Coast Guard owned facilities are Categorically Excluded from further environmental analysis and documentation due to minimal expected environmental impact. However, there is no established Categorical Exclusion that addresses acquisition of property for such uses. As a result, these NEPA implementing procedures require that an environmental assessment be prepared. The FEA and FONSI are available for public inspection at the following locations: USCG Civil Engineering Unit Providence, 300 Metro Center Boulevard, Warwick, Rhode Island 02886 (401) 736–1743

First Coast Guard District Operations Division, 408 Atlantic Avenue, Boston Massachusetts 02110 (617) 223–8458 Commandant (G-SEC), U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593

Dated: March 9, 2001.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 01–11715 Filed 5–8–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular (AC) 25.981–1B, Fuel Tank Ignition Source Prevention Guidelines; and AC 25.981–2, Fuel Tank Flammability Minimization

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of advisory circulars.

SUMMARY: The FAA announces the issuance of Advisory Circular (AC) 25.981–1B, "Fuel Tank Ignition Source Prevention Guidelines," and AC 25.981–2, "Fuel Tank Flammability Minimization." These advisory circulars provide information and guidance for compliance with recently issued amendments concerning a review of transport airplane fuel tank system designs, the development and implementation of maintenance and inspection to assure the safety of the fuel tank system, and the minimization of the formation or mitigation of hazards from flammable fuel air mixtures within fuel tanks.

DATES: The subject advisory circulars were issued in the FAA Transport Airplane Directorate in Renton, Washington, on April 18, 2001.

HOW TO OBTAIN COPIES: Copies of both AC's can be found and downloaded from the Internet at *http://www.faa.gov/avr/air/acs/achome.htm*. Paper copies of the AC's will be available in approximately 6–8 weeks from U.S. Department of Transportation, Subsequent Distribution Office, SVC–121.23, Ardmore East Business Center, 3341, Q 75th Avenue, Landover, MD 20785.

FOR FURTHER INFORMATION CONTACT: Pat Siegrist, FAA Standardization Branch, ANM–113, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2126.

Issued in Renton, Washington, on April 26, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–11725 Filed 5–8–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–36]

Petitions for Exemption; Summary of Disposition of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2000–8571.

Petitioner: Ryan International Airlines, Inc.

Section of 14 CFR Affected: 14 CFR 25.857(c), 25.858, and 121.314(c).

Description of Relief Sought/Disposition: To permit six Model A320–200 airplanes to operate from March 20, 2001, until April 30, 2001, without being fitted with fire suppression equipment. *Denial, 03/02/2001, Exemption No. 7451.*

Docket No.: FAA–2001–9233.

Petitioner: Air Charter.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/Disposition: To permit Air Charter to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 04/25/2001, Exemption No. 7516.*

Docket No.: FAA–2001–9227.

Petitioner: TDM, Inc. dba Colgan Air Services.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/Disposition: To permit CAS to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 04/25/2001, Exemption No. 7515.*

Docket No.: FAA–2001–9229.

Petitioner: Trail Ridge Air, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/Disposition: To permit TRA to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 04/24/2001, Exemption No. 7514.*

Docket No.: FAA–2001–9339.

Petitioner: MOAT, LLC dba Eastern Aviation.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/Disposition: To permit Eastern Aviation to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 04/25/2001, Exemption No. 7513.*

Docket No.: FAA–2000–8419 (previously Docket No. 26478).

Petitioner: U.S. Air Force.

Section of 14 CFR Affected: 14 CFR 91.209(a)(1) and (b).

Description of Relief Sought/Disposition: To permit USAF to conduct counternarcotics aircrew flight training operations in support of drug law enforcement and drug traffic interdiction, without lighted aircraft position or anticollision lights. *Grant, 04/19/2001, Exemption No. 5305D.*

Docket No.: 30172.

Petitioner: Raytheon Aerospace Support Services.

Section of 14 CFR Affected: 14 CFR 145.61.

Description of Relief Sought/Disposition: To permit Raytheon to perform work on U.S. Customs aircraft without retaining a copy of the records of the work performed. *Denial, 04/19/2001, Exemption No. 7511.*

[FR Doc. 01–11727 Filed 5–8–01; 8:45 am]

BILLING CODE 4910–13–M

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 195; Flight Information Services Communications (FISC)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)–195 meeting to be held May 31–June 1, 2001, starting at 8:30 a.m. each day. The meeting will be held at RTCA, Inc., 1140 Connecticut Ave., NW., Suite 1020, Washington, DC 20036.

The agenda will include: May 31: Plenary convenes: (1) Welcome and Introductory Remarks; (2) Review Meeting Agenda; (3) Working Group (WG)–1, Aircraft Cockpit Weather Display; Plenary reconvenes: (4) Review of Previous Meeting Minutes; (5) Report from WG–1 on Activities; (6) Review of Product Registry Guidance Draft Document; June 1: (7) Review of NOTAMS and D–ATIS Draft Specification; (8) Work on Change 1, RTCA Minimum Aviation System Performance Standards (MASPS) for FIS/B; (9) Other Business; (10) Date and place of Next Meeting; (11) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 2, 2001.

Janice L. Peters,

Designated Official.

[FR Doc. 01–11719 Filed 5–8–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 172; Future Air-Ground Communications in the VHF Aeronautical Data Band (118–137 MHz)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 172 meeting to be held May 22–24, 2001, starting at 9 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will include: May 22: Plenary Session Convenes; (1) Introductory Remarks; (2) Review Meeting Agenda; (3) Review Previous Meeting Minutes; (4) Disposition the Final Review and Comment (FRAC) Form comments for DO–224A, Change 1 (VHF Data Link MASPS); (5) Disposition the FRAC Form comments for VHF Data Link MOPS Mode 3. May 23 and 24: (6) Disposition of the FRAC Form comments continues; (7) Review ICAO Aeronautical Mobile Communications Panel (AMCP) and EUROCAE WG–47 Activities; (a) Aeronautical Operational Control Over Aircraft Communications Addressing and Reporting Systems (AOA) in MOPS; (b) Ground Reference Station requirements; (c) ARINC 631 Specification vs. SARPs vs. MOPS/MASPS maintenance issues; (8) Report on Next Generation Communications (NEXCOM) Advisory Rulemaking Committee (NARC) and other FAA digital activities; (9) Report on Airline Electronic Engineering Committee Systems Architecture Interfaces Sub-committee (AEEC SAI) work on NEXCOM; (10) Other Business; (11) Date and Location of Next Meeting; (13) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 2, 2001.

Janice L. Peters,

Designated Official.

[FR Doc. 01–11720 Filed 5–8–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Bolivar, Sunflower, Coahoma, and Tunica Counties, Mississippi

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Highway Administration is issuing this notice to advise the public that an environmental impact statement will be prepared for the I–69 Corridor Study in the above referenced counties in Mississippi.

FOR FURTHER INFORMATION CONTACT: Mr. Cecil Vick, Realty Officer/Environmental Coordinator, Federal Highway Administration, 666 North Street, Suite 105, Jackson, MS 39202–3199, Telephone: (601) 965–4217. Contacts at the State and local level, respectively are: Mr. Claiborne Barnwell, Environmental/Location Division Engineer, Mississippi Department of Transportation, P.O. Box 1850, Jackson, MS 39215–1850, telephone: (601) 359–7920; Mr. James Dickerson III, District 2 Engineer, Mississippi Department of Transportation, P.O. Box 660, Batesville, MS 38606, telephone (662) 563–4541; and Mr. Walter Lyons, District 3 Engineer, Mississippi Department of Transportation, P.O. Box 630, Yazoo City, MS, 39194, telephone (662) 746–2513.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Mississippi Department of Transportation (MDOT) will prepare an Environmental Impact Statement (EIS) for a segment of the proposed Interstate 69 corridor in Mississippi.

This segment of the proposed interstate would be located in one of at least three identified corridor areas. It has logical termini at the Great River Bridge crossing of the Mississippi River near Benoit, Mississippi, and at Mississippi Highway 304 east of Robinsonville in Tunica County, Mississippi.

This approximately 100-mile section of I–69 in Mississippi is a part of the much larger transcontinental highway 69 project extending from Canada to Mexico. The purpose of the I–69 project in Mississippi is very similar to the national purpose of improving international and interstate trade and facilitating economic development. I–69 is also a transportation recommendation of the Delta Initiative. The Delta Initiative is aimed at the revitalization and economic development of the Lower Mississippi Delta. The I–69 corridor, after crossing the Mississippi River, will enter Mississippi at its western termini in Bolivar County and extend in a generally northerly direction through several Mississippi Delta counties exiting Desoto County to Memphis, Tennessee. The highway is a proposed full control of access facility, and interchanges will be studied at various locations.

Alternatives under consideration include (1) taking no action and (2) build alternatives.

The FHWA and MDOT are seeking input as a part of the scoping process to assist in determining and clarifying issues relative to this project. Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A formal scoping meeting with federal, state, and local agencies, and other interested parties will be held in the near future.

Coordination will be continued with appropriate federal, state, and local agencies, tribes, and private organizations and citizens who have previously expressed or are known to have an interest in this proposal. Of paramount importance to this effort is the public participation process. Several public involvement meetings will be held, a newsletter will be developed, and a website will be created to keep the public informed. The draft EIS will be available for public and agency review and comment prior to the official public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Andrew H. Hughes,

Division Administrator, Jackson, Mississippi.

[FR Doc. 01–11586 Filed 5–8–01; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD–2001–9615]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ISABELLA.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before June 8, 2001.

ADDRESSES: Comments should refer to docket number MARAD–2001–9615. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW, Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: *Isabella.* Owner: A B Creel, LLC.

(2) Size, capacity and tonnage of vessel. According to the applicant: "Length 58 feet, Breadth 16.1 feet, Depth 11.7 feet, Gross Tons 54, Net Tons 49, Measurement pursuant to 46 U.S.C. 14502"

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "Vessel will be used for six to twelve passenger charters. Vessels' intended market is corporate charters for full day sails and meetings and overnight or weekend charters for one or two couples. Areas will be out of Fajardo, Puerto Rico and local islands, Culebra and Vieques November through June and the mid-Chesapeake Bay and local waters July through October."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1997. Place of construction: Kaohsiung Hsien Taiwan, Republic of China."

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "Fajardo, Puerto Rico. The industry in Puerto Rico is limited to sports fishing vessels, large multi-hulls, bare boats, and a single mono-hull vessel of which I am aware. There will be no impact on the sports fishing vessels. There will be no impact on the large multi-hulls as these are big catamarans, which * * * take out large groups * * * for hotel guests. There is no impact on the bare boat charter fleet as they are all foreign manufactured vessels and are strictly for rent with the renter being the captain. The single mono-hull in the same area is overbooked most of the time and turns down enough charters that the overflow to my vessel alone would keep me in business with out competing for customers. * * * There are no other vessels like the one I operate in Puerto Rico and there is a high demand, since most vessels of my size and quality charter out of the U.S. or British Virgin islands * * * If my analysis of this market is as accurate * * * I alone will not be able to fill the demand and my presence will not unduly adversely affect existing operations * * *

Chesapeake Bay: I intend my primary base to be in the Solomon Island area of the Chesapeake Bay. There are some very large day sail vessels in the Norfolk area and the Baltimore and Annapolis area of the bay however these are mostly to take out large groups 20 to 100 on

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harbor tours. Other area interests are powerboat harbor tours, ferry boats, or bare boats none of which will be competing for the same customer base. In my inquiries I have found no other crewed vessels in the area, which will compete, for the same clientele * * * My presence in this market area will not unduly adversely affect other commercial passenger vessels."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "For over five years I searched intently for the vessel I would choose to charter. * * * I found that less than one percent of the yachts in the 50 ton category are U.S. manufactured, and of those which are supposedly U.S. manufactured many have the subcomponents including hulls manufactured in foreign countries and only the final assemble is done in the U.S. * * * The fact that no U.S. shipyard is manufacturing this vessel or a similar design with a deck salon would indicate that the presence of this vessel does not unduly adversely affect U.S. shipyards. * * * As a practicable matter this vessel, which was not available in the U.S., was delivered into the U.S. and commissioned entirely by U.S. labor in U.S. yards with U.S. purchased components, which amounted to about 1/6 the cost of the vessel. Every year thousands of dollars in yard work and slip fees are paid by this vessel to U.S. shipyards. This will continue for the life of the vessel as long as it is U.S. flagged. I can only view this as a positive impact to U.S. shipyards that otherwise would not have enjoyed any revenue from this vessel."

Dated: May 3, 2001.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 01–11709 Filed 5–8–01; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meetings

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA will conduct a public meeting in preparation for the nineteenth session of the United Nation's Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE) to be held July 2–6, 2000 in Geneva, Switzerland and the first session of the United Nation's Sub-Committee on the Globally Harmonized System of Classification and Labeling of Chemicals (Geneva, Switzerland—July 9–11, 2001).

DATES: June 19, 2001, 9:30 am–12:30 pm, Room 6332–6336.

ADDRESSES: The meeting will be held at DOT Headquarters, Nassif Building, Room 6332–6336, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Bob Richard, Acting International Standards Coordinator, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: The primary purpose of the meeting will be to prepare and discuss positions for the nineteenth session of the UNSCOE and the first session of the United Nation's Sub-Committee on the Globally Harmonized System of Classification and Labeling of Chemicals. Topics to be covered during the public meeting will include (1) Global harmonization of classification criteria, (2) Criteria for Environmentally Hazardous Substances, (3) Intermodal requirements for the transport of solids in bulk containers, (4) Harmonized requirements for compressed gas cylinders, (5) Classification of individual substances, (6) Requirements for packagings used to transport hazardous materials, (7) Requirements for infectious substances, and (8) Hazard communication requirements. The meeting will be held in conjunction with the Coast Guard's public meeting in preparation for the sixth session of the Dangerous Goods, Solid Cargoes and Containers Sub-Committee. This public meeting will be held from 1:00–3:30 pm on June 19, 2001 in Nassif Bldg. Room 6332–6336.

The public is invited to attend without prior notification.

Documents

Copies of documents for the UNSCOE meeting may be obtained by downloading them from the United Nations Transport Division's web site at http://www.unece.org/trans/main/dgdb/dgsubc/c3doc.html. Information concerning UN dangerous goods meetings include agendas can be downloaded at http://www.unece.org/trans/main/dgdb/dgsubc/c3.html. These sites may also be accessed through RSPA's Hazardous Materials Safety Homepage at http://hazmat.dot.gov/intstandards.htm. RSPA's site provides information regarding the UNSCOE and the Globally Harmonized System of Classification and Labeling for Chemicals, a summary of decisions taken at the 21st session of the UN Committee of Experts, meeting dates and a summary of the primary topics which are to be addressed in the 2001–2002 biennium.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 01–11708 Filed 5–8–01; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20981]

Laidlaw Inc.—Continuance in Control—Victoria Tours Limited

AGENCY: Surface Transportation Board, Transportation.

ACTION: Notice Tentatively Approving Finance Transaction.

SUMMARY: Laidlaw Inc. (Laidlaw), a noncarrier, filed an application under 49 U.S.C. 14303 for Laidlaw to continue in indirect control of Victoria Tours Limited (Victoria), upon Victoria's becoming a regulated motor passenger carrier. Persons wishing to oppose the application must follow the rules at 49 CFR 1182.5 and 1182.8. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by June 25, 2001. Applicant may file a reply by July 9, 2001. If no comments are filed by June 25, 2001, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC-F–20981 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of comments to applicant's representative: Fritz R. Kahn, 1920 N Street, NW. (8th floor), Washington, DC 20036–1601.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. (TDD for the hearing impaired: 1–800–877–8339.)

SUPPLEMENTARY INFORMATION: Laidlaw controls, either directly or indirectly, a family of motor passenger carriers, including Greyhound Lines, Inc. (Greyhound) (MC–1515). With the exception of Greyhound, which conducts mainly nationwide, scheduled, regular-route operations, the controlled carriers are engaged primarily in charter and special operations.

Laidlaw indirectly controls Victoria through Laidlaw Transit Ltd. (Laidlaw Ltd.), which is authorized to transport passengers, in charter and special operations, pursuant to authority in MC–102189. Victoria conducts charter and special passenger carrier operations within Canada, and it has filed an application with the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, for authority to conduct similar operations within the United States. Laidlaw seeks authority from the Board to continue in indirect control of Victoria, through Laidlaw Ltd., upon Victoria's becoming a regulated U.S. carrier.

Laidlaw asserts that Victoria will be able to offer its passengers tour and sightseeing services over an expanded area. The affiliation of Victoria with the Laidlaw family of regulated carriers will ensure that Victoria will have an adequate number of buses to meet the travel needs of its passengers. Conversely, whenever its buses are underutilized, Victoria will be able to make them available to its Laidlaw affiliates. Laidlaw maintains that such arrangements will improve the performance of Victoria, which will inure to the benefit of the public.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

Applicant has submitted the information required by 49 CFR 1182.2, including information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b). Specifically, applicant has stated that the proposed transaction will have a positive effect on the adequacy of transportation to the public and will result in no increase in fixed charges and no changes in employment. *See* 49 CFR 1182.2(a)(7). Additional information, including a copy of the application, may be obtained from applicant's representative.

On the basis of the application, we find that the proposed transaction is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available on our website at *www.stb.dot.gov*.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed continuance in control is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed vacated.

3. This decision will be effective on June 25, 2001, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) The U.S. Department of Transportation, Federal Motor Carrier Safety Administration—MC–RI, 400 Virginia Avenue, SW., Suite 600, Washington, DC 20024; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, SW., Washington, DC 20590.

Decided: May 2, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 01–11526 Filed 5–8–01; 8:45 am]

BILLING CODE 4915–00–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34000]

Canadian National Railway Company, Grand Trunk Corporation, and WC Merger Sub, Inc.—Control—Wisconsin Central Transportation Corporation, Wisconsin Central Ltd., Fox Valley & Western Ltd., Sault Ste. Marie Bridge Company, and Wisconsin Chicago Link Ltd.

AGENCY: Surface Transportation Board, DOT.

ACTION: Decision No. 2 in STB Finance Docket No. 34000; Notice of Acceptance of Application; Issuance of Procedural Schedule.

SUMMARY: The Surface Transportation Board (Board) is accepting for consideration the application filed April 9, 2001, by Canadian National Railway Company (CNR), Grand Trunk Corporation (GTC), and WC Merger Sub, Inc. (Merger Sub),[1] and by Wisconsin Central Transportation Corporation (WCTC), Wisconsin Central Ltd. (WCL), Fox Valley & Western Ltd. (FVW), Sault Ste. Marie Bridge Company (SSMB), and Wisconsin Chicago Link Ltd. (WCLL).[2] The application seeks Board approval and authorization under 49 U.S.C. 11321–26 for the acquisition of control by CNR and GTC of WCTC and through it of WCTC's rail carrier subsidiaries WCL, FVW, SSMB, and WCLL.[3] As a result of the transaction, WCTC and its rail carrier subsidiaries would become indirect wholly owned subsidiaries of CN. The Board further finds that this is a "minor transaction" under 49 CFR 1180.2(c).

The Board has considered applicants' petition for scheduling order, filed April 9, 2001. With a modification to provide additional time for public comments, the Board is adopting the procedural schedule applicants have proposed (which, as modified, would result in a decision being issued some 28 days prior to the statutory deadline, assuming as explained later on that no oral argument is held and no unanticipated environmental review is required). The Board's schedule provides for the issuance of a final decision no later than 45 days after the close of the record.

DATES: The effective date of this decision is May 9, 2001. Applicants must submit their Safety Integration Plan (SIP) to the Board by May 9, 2001. Applicants also must distribute their Environmental Appendix and SIP to the public and initiate publication of newspaper notices by May 14, 2001. Any person who wishes to participate in this proceeding as a party of record must file, no later than May 25, 2001, a notice of intent to participate. All comments on applicants Environmental Appendix and SIP must be filed no later than June 13, 2001. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the application, including filings by the U.S. Department of Justice (DOJ) and U.S. Department of Transportation (DOT) must be filed by June 25, 2001. Response to comments, protests, requested conditions, and other opposition, response to comments

[1] CNR, GTC, and Merger Sub are referred to collectively as CN.

[2] WCTC, WCL, FVW, SSMB, and WCLL are referred to collectively as WC. CN and WC are referred to collectively as applicants.

[3] Merger Sub, an indirect wholly owned subsidiary of CNR, will be merged into WCTC, whereupon the separate existence of Merger Sub will cease.

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of DOJ and DOT, and rebuttal in support of the application must be filed by July 25, 2001. For further information respecting dates, see Appendix A (Procedural Schedule).

ADDRESSES: Send an original and 25 copies of all pleadings referring to STB Finance Docket No. 34000 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001.[4] In addition, one copy of all documents in this proceeding must be sent to: (1) Secretary of the United States Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3645, Department of Justice, Washington, DC 20530; (3) Paul A. Cunningham, Esq., Harkins Cunningham, 801 Pennsylvania Avenue, NW., Suite 600, Washington, DC 20004–2664; and (4) William C. Sippel, Esq., Fletcher & Sippel LLC, Two Prudential Plaza, 180 North Stetson Avenue, Chicago, IL 60601–6721.

In addition to submitting an original and 25 copies of all paper documents filed with the Board, parties also must submit, on 3.5-inch IBM-compatible floppy diskettes (disks) or on compact discs (CDs),[5] copies of all textual materials, electronic workpapers, data bases and spreadsheets used to develop quantitative evidence. Textual materials must be in WordPerfect 9.0 or compatible with this version of WordPerfect.[6] Electronic spreadsheets must be in Lotus 1–2–3 Release 9 or Microsoft Excel 97 or compatible with these versions of the software. In the past, the Board has encountered problems with the "links" in spreadsheets functioning properly when the spreadsheets are installed on desktop computers or network servers. To avoid such problems, naming and linking conventions should be used that will permit the spreadsheets to operate on the Board's computers.[7] Electronic data bases should be compatible with the Microsoft Open Database Connectivity (ODBC) standard.[8] The Board currently uses Microsoft Access 97, and data bases submitted should be either in this format or another ODBC compatible format. Otherwise, submitters should explain why it is not possible to submit the data base in this format and seek a determination as to whether it is feasible for us to accept the data base in another format. A copy of each disk or CD submitted to the Board should be provided to any other party upon request. Further details are discussed below.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565–1613. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION:

Applicants are seeking approval of a proposed transaction set forth in their application (CN/WC–2) filed on April 9, 2001.[9] The proposed transaction involves the acquisition of control by CNR and GTC of WCTC and through it of WCTC's rail carrier subsidiaries WCL, FVW, SSMB, and WCLL. As a result of the transaction, WCTC and its rail carrier subsidiaries would become indirect wholly owned subsidiaries of CN.

Applicants state that, because the proposed transaction does not involve the merger or control of two or more Class I railroads, their application is subject to 49 U.S.C. 11324(d). Applicants also assert that this is a "minor transaction" as defined in 49 CFR part 1180.[10]

Applicants argue that the proposed transaction would have no anticompetitive effects, noting that it would result in the end-to-end connection of two railroad systems that do not overlap. Applicants also state that there would be no 2-to-1 or 3-to-2 shippers on the CN/WC system,[11] no reduction in geographic or product competition and no increase in market power. According to applicants, the transaction will enhance competition and provide significant benefits to the shipping public.

On April 9, 2001, applicants also filed a petition for a scheduling order, as discussed below, that would provide for a more expedited processing of the application than the maximum time allotted for consideration of minor transaction applications. On May 1, 2001, Great Lakes Transportation, LLC (Great Lakes), late-filed a reply in opposition to the applicants' expedited scheduling petition, requesting also that the Board find that the proposed transaction is significant and dismiss the application as incomplete or require supplemental information.[12] Great Lakes also sought leave to file its reply one day late. Given our statutory deadline for publishing notice of acceptance of the application in the **Federal Register**, it is difficult to understand why Great Lakes waited so long to make this filing in connection with the much-publicized transaction. Nevertheless, the filing will be accepted.

Great Lakes indirectly controls: (1) USS Great Lakes Fleet, Inc. (USS Fleet), a water carrier that operates on the Great Lakes; (2) The Duluth, Missabe & Iron Range Railway Company (DM&IR), a Class II railroad; (3) The Bessemer & Lake Erie Railroad Company (B&LE), also a Class II railroad; and (4) The Pittsburgh & Conneaut Dock Company (P&C Dock), a dock company that is also a Class III rail carrier. Great Lakes, entirely owned by the Blackstone Group and the management team at Great Lakes, is primarily concerned about the

[4] In order for a document to be considered a formal filing, the Board must receive an original and 25 copies of the document, which must show that it has been properly served. Documents transmitted by facsimile (FAX) will not be considered formal filings and are not encouraged because they will result in unnecessarily burdensome, duplicative processing. In addition, each formal filing must be accompanied by an electronic submission per our requirements as discussed in detail in this decision. As an exception to these requirements, parties filing comments to environmental documents should follow procedures as provided with such documents.

[5] Parties must clearly label each formal filing with an identification acronym and number. *See* 49 CFR 1180.4(a)(2). Each disk or CD should be clearly labeled with the identification acronym and number of the corresponding paper document, and labeled as containing confidential or redacted materials. These electronic filing requirements do not apply to filings addressing environmental documents.

[6] Absent a waiver for good cause, we require submissions to be in WordPerfect format so that they can be quickly and accurately disseminated electronically to Board staff.

[7] We will not specify a particular naming and linking convention. It is incumbent upon the submitter to use generic naming and linking conventions that will permit the spreadsheets to operate on desktop computers or from a network server. Questions concerning naming and linking matters and/or compatibility with our computers can be addressed to William Washburn, Office of Economics, Environmental Analysis, and Administration, at (202) 565–1550.

[8] ODBC is a Windows technology that allows a data base software package, such as Microsoft Access, to import data from a data base creatad using a different software package. All data bases must be supported with adequate documentation on data attributes, SQL queries, programmed reports, etc.

[9] On April 27, 2001, applicants filed a list of errata (CN/WC–4) to their CN/WC–2 application.

[10] In proceedings not involving the merger or control of at least two Class I railroads, a transaction is minor if a determination can be made either (1) that the transaction clearly will not have any anticompetitive effects, or (2) that any anticompetitive effects of the transaction will clearly be outweighed by the transaction's anticipated contribution to the public interest in meeting significant transportation needs. 49 CFR 1180.2(b).

[11] A 2-to-1 shipper would be a shipper served by both CN and WC, but by no other railroad, and a 3-to-2 shipper would be a shipper served by CN, WC, and a third railroad. As a result of a merger between applicants into one railroad entity, a 2-to-1 shipper would have only one serving railroad and a 3-to-2 shipper would have two serving railroads. While applicants state there are no such shippers on the CN/WC system, applicants note that Oba, Ontario, is technically a 2-to-1 location, but that there are no industries served by either of the two railroads at that point and therefore no adverse effect on competition for rail service there.

[12] We also have received correspondence asking us to find that the proposed transaction is significant, and not minor.

effects of the CN/WC transaction on the transportation of taconite pellets from Northeastern Minnesota to steel plants in the Midwest. According to Great Lakes, DM&IR moves taconite from taconite plants in Minnesota to dock facilities at Duluth and Two Harbors, MN, where it is loaded onto USS Fleet boats for movement on the Great Lakes. Great Lakes indicates that some of the taconite is then unloaded at P&C Dock and loaded onto B&LE trains for movement to U.S. Steel's Edgar Thomson steel mill in Pittsburgh, PA. Great Lakes maintains that the CN/WC's possible diversion of this taconite traffic to all-rail movements threatens to undermine the economics of water transportation service on the lakes and to eliminate essential rail and water services now provided by Great Lakes' affiliated carriers, as well as employment on those carriers. Great Lakes also asserts that all-rail movements would be less efficient and less safe than transportation that includes water movements across the Great Lakes. Because of the expressed concerns about the possible effects of the transaction on its companies, and potentially on users of their services, Great Lakes asserts that the applicants have not demonstrated that the proposed transaction is minor, and thus that the Board should find it to be significant and the application incomplete. Great Lakes also argues that we should require applicants to submit more detailed environmental information.

The applicants filed a reply to Great Lakes' filing on May 2, 2001. The applicants oppose Great Lakes' request for a finding that the transaction should be deemed "significant" and its request that the application be dismissed.

On April 27, 2001, The National Industrial Transportation League (NITL) filed a statement in support of approval of the application and in support of finding that it involves a minor transaction. NITL states that it has entered into an agreement with CN, by which CN has agreed to provide certain protections for rail shippers.

The Applicants

CN is a major Canadian railroad[13] that operates a rail network consisting of 3,912 route miles in 14 states in the United States, and 11,620 route miles in eight Canadian provinces. CN has principal routes (1) to every major metropolitan area in Canada; (2) to the major U.S. cities of Buffalo, NY; Detroit, MI; Duluth, MN/Superior, WI; and Chicago, IL; (3) north-south between Chicago and the Gulf of Mexico, reaching every major metropolitan area on the Mississippi River, including Chicago, IL, East St. Louis, IL/St. Louis, MO, Memphis, TN, and New Orleans, LA; and (4) east-west between Chicago and Nebraska and Iowa, extending from Sioux City, IA, and Omaha, NE/Council Bluffs, IA, in the West to Chicago in the East. The eastern terminus of CN's network is Halifax, Nova Scotia; the western termini are Vancouver and Prince Rupert, British Columbia; and the southern terminus is New Orleans. CN's traffic, between Duluth/Superior and Chicago, is carried under haulage agreements over the lines of WC.

WC[14] operates over 2,464 route miles in Wisconsin, Minnesota, Northeastern Illinois, and the Upper Peninsula of Michigan, and over 296 route miles in the Province of Ontario. WC's main route extends from outside Chicago north through the Fox River Valley region of Wisconsin through Fond du Lac to Neenah and then northwestward through Stevens Point to Superior, WI. Another main route diverges from this line and extends to Withrow, MN, via trackage rights over CP to Minneapolis/St. Paul, MN. Other WC lines extend to Green Bay, Milwaukee, Wausau, Wisconsin Rapids, Ashland, and East Winona, WI; to Sault Ste. Marie, MI; and between the iron ore ranges around Ishpeming, MI, and the lake docks at Escanaba, MI. WC, through its ACRI subsidiary, also operates 296 miles of rail line in Canada between Sault Ste. Marie and Hearst, ON. WC's principal yard terminals and shop facilities are located at Fond du Lac and Stevens Point, WI, and Sault Ste. Marie, ON. Major interchange locations on WC's routes are Chicago, Superior, Minneapolis/St. Paul, and Sault Ste. Marie, ON.

The principal routes of the combined CN/WC rail system would be identical to those of the individual railroads, with the addition of through routes where interchange or haulage is now required. Applicants state that no track redundancies would be created by the transaction, and no abandonments would result from the combination of the two systems.

CN/WC Agreement

According to the applicants, on January 29, 2001, CNR, Merger Sub, and WCTC entered into an Agreement and Plan of Merger (Agreement). Subject to the Board's authorization and other conditions, Merger Sub (a Delaware corporation and an indirect wholly owned subsidiary of CN) will be merged into WCTC in accordance with Delaware law, whereupon the separate existence of Merger Sub will cease, and WCTC will be an indirect wholly owned subsidiary of CNR. The Agreement provides that, upon the merger of Merger Sub into WCTC, each share of WCTC that was outstanding immediately before the merger will be converted into the right to receive $17.15 in cash.[15] On April 4, 2001, approximately 79% of WCTC's outstanding shares were voted on the proposal, and 99% of those shares voted were in favor of the Agreement.

Public Interest

Applicants assert that the transaction will further the public interest by improving the quality of rail transportation service to the public with an extended unified network, offering more efficient single-line routings linking markets in the United States and Canada, improving or eliminating interchanges, and improving equipment utilization, which will reduce operating costs and reduce terminal dwell time and overall cycle times for both cars and locomotives. Applicants claim that quantified public benefits arising from efficiencies of the transaction would be approximately $52 million per year.

Labor Impact

Applicants have submitted one Labor Impact Statement which shows the projected effects of the CN/WC merger on all categories of employment, including both agreement and nonagreement personnel of the combined CN/WC system. The Labor Impact Statement is organized by location and, for each location, reflects job classification(s) that will be created, eliminated, or transferred. Also indicated are the number of positions affected at each location by classification and the year in which positions will be moved to another location, abolished, or added. If a position is to be relocated, the Labor Impact Statement identifies the new location.

As explained in the Operating Plan,[16] the transaction will have a relatively small impact on CN/WC's employment levels. The applicants foresee that

[13] CN indirectly controls two Class I railroads—Grand Trunk Western Railroad Incorporated and Illinois Central Railroad Company—and several non-Class I railroads operating in the United States.

[14] WC consists of three Class II railroads (WCL, FVW, and SSMB), one Class III railroad (WCLL), and a Canadian carrier (Algoma Central Railway Inc. (ACRI)). WCTC is a noncarrier holding company.

[15] Applicants stated that all monetary amounts listed in the application are stated in U.S. dollars, unless otherwise noted.

[16] *See* CN/WC–2, Vol. 1, at 410–13.

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throughout the implementation period the major mechanical shops in Stevens Point and Fond du Lac will remain in place, as will the Stevens Point customer service, train dispatching, crew management and clearance bureau operations.[17] As new systems are implemented, applicants will focus significantly on training to ensure that all present employees acquire the necessary skills to continue operating safely and efficiently in their new environments.

Applicants anticipate that the merger will likely affect employment levels in three primary areas. First, duplicative administrative activities will be streamlined, which primarily will affect executive and senior management personnel in WC's Rosemont corporate headquarters. Second, the transaction will give rise to significant improvements in equipment utilization and maintenance activities, which will reduce the need for mechanical shop employees. Third, the greater maintenance-of-way resources of the larger system can support meaningful maintenance-of-way efficiencies, thereby reducing that work force, which mostly will affect temporary and seasonal employees across the WC service territory. Applicants believe that some of these expected employment reductions will be accomplished through normal attrition.

Applicants acknowledge that, if we approve the transaction proposed in the application, the transaction would be subject to the employee protective conditions and other procedures adopted in *New York Dock—Control—Brooklyn Eastern District Terminal*, 360 I.C.C. 60, *aff'd sub nom. New York Dock Ry.* v. *United States*, 609 F.2d 83 (2d Cir. 1979).

Acceptance of Application

Under 49 CFR part 1180, the Board must determine whether a proposed transaction is major, significant, or minor. Great Lakes opposes the designation of the transaction as minor, based on the alleged impact on taconite traffic that it handles in combined rail-water service. Great Lakes' own submission appears to show that this taconite traffic can already move in all-rail service, whether or not the application is approved. Great Lakes' filing does not make enough of a showing that the proposed transaction, as described, has regional or national transportation significance as referenced in 49 U.S.C. 11325 or that there would be anticompetitive effects that would outweigh the transaction's anticipated contribution to the public interest in meeting significant transportation needs pursuant to 49 CFR 1180.2(b)(2). But Great Lakes' concerns (including environmental concerns) can be fully addressed in the submissions of all interested parties and considered by the Board within the schedule we are establishing for this proceeding. Accordingly, we will treat the proposal as a minor transaction under 49 CFR 1180.2(c) subject to the procedural provisions of 49 U.S.C. 11325(a)(3) and 11325(d). Because the application complies with the applicable regulations governing minor transactions, we accept the application for consideration.

[17] Applicants expect that improved productivity of the locomotive and car fleets will allow CN/WC to eliminate most locomotive repair work at Stevens Point, relying instead on Fond du Lac, and to reduce the need for car repair work at Stevens Point and Fond du Lac. Applicants state that they do not currently plan any major changes in the day-to-day maintenance of way and signal maintenance operations as a result of the transaction. CN/WC–2, Vol. 1, at 403–04.

Public Inspection

The application, including various accompanying exhibits, are available for inspection in the Docket File Reading Room (Room 755) at the offices of the Surface Transportation Board, 1925 K Street, NW., in Washington, DC. In addition, they may be obtained from applicants' representatives named above.

Procedural Schedule

In their petition for a scheduling order, applicants request that we issue a final decision in this proceeding within 180 days from the filing of the application. Applicants propose that all comments, protests, and requests for conditions, and any other evidence or argument in opposition to the application by all parties be due June 8, 2001 (30 days after publication of the **Federal Register** notice accepting the application), and that applicants' rebuttal or other responses to those filings be due July 9, 2001 (30 days later). According to applicants, this schedule leaves ample time for the Board to schedule an oral argument if warranted and to render a decision within the statutory deadline. As noted above, Great Lakes opposes the applicants' proposed schedule.

We will adopt a procedural schedule that provides some additional time to that proposed by applicants for comments on their application, but still provides for less total time than that provided by the deadlines set forth at 49 U.S.C. 11325(d), to ensure proper review of the transaction, including consideration of the position of Great Lakes. The statute allows for 6 months for the processing of minor consolidation proceedings. Under 49 U.S.C. 11325(d)(2), the Board must conclude the evidentiary stage of the proceeding by the 105th day after publication of the **Federal Register** notice accepting the application, and must issue the final decision by the 45th day after the conclusion of the evidentiary stage.

Accordingly, all comments, protests, and requests for conditions, and any other evidence or argument in opposition to the application by all parties will be due 45 days after publication of the **Federal Register** notice accepting the application, which will be on June 25, 2001. As suggested by applicants, applicants' rebuttal and other responses to those filings will be due 30 days later, on July 25, 2001. The final written decision addressing the application will be issued within 45 days thereafter. If we determine that an Environmental Assessment or Environmental Impact Statement is required, we will adjust the procedural schedule as necessary. Also, if oral argument is held, then the final decision will be issued within 45 days after the argument. Other relevant due dates are discussed in detail under our discussion of filing due dates.

Notice of Intent to Participate

Any person who wishes to participate in this proceeding as a party of record (POR) must file with the Secretary of the Board, no later than May 25, 2001, an original and 25 copies of a notice of intent to participate, accompanied by a certificate of service indicating that the notice has been properly served on the Secretary of the United States Department of Transportation, Attorney General of the United States, and on applicants' representatives. In addition, as previously noted, parties must submit one electronic copy of each document filed with the Board. Further details respecting such electronic submissions are provided below.

We will serve, as soon as practicable, a notice containing the official service list (the service list notice). Each party of record will be required to serve upon all other parties of record, within 10 days of the service date of the service list notice, copies of all filings previously submitted by that party (to the extent such filings have not previously been served upon such other parties). Each party of record also will be required to file with the Secretary of the Board, within 10 days of the service date of the service list notice, an original plus 10 copies of a certificate of service, along with an electronic copy, indicating that the service required by the preceding sentence has been accomplished. Every filing made by a party of record after the service date of the service list notice must have its own certificate of service indicating that all PORs on the service list have been served with a copy of the filing. Members of the United States Congress (MOCs) and Governors (GOVs) are not parties of record (PORs), and therefore, need not be served with copies of filings, unless any such Member or Governor has requested to be, and is designated as, a POR.

We will serve copies of our decisions, orders, and notices only on those persons who are designated on the official service list as either POR, MOC, or GOV. All other interested persons are encouraged to make advance arrangements with the Board's copy contractor, Dā-to-Dā Office Solutions, to receive copies of Board decisions, orders, and notices served in this proceeding. Dā-to-Dā Office Solutions will handle the collection of charges and the mailing and/or faxing of decisions, orders, and notices to persons who request this service. The telephone number for Dā-to-Dā Office Solutions is: (202) 756–1649.[18]

Comments, Protests, Requests for Conditions, and Other Opposition Evidence and Argument, Including Filings by DOJ and DOT

Any interested persons, including the U.S. Attorney General and the U.S. Secretary of Transportation, may file written comments, protests, requests for conditions, and any other opposition evidence and argument no later than June 25, 2001. This deadline applies to comments, etc., addressing the application.

Parties addressing the application, filing comments, protests, requests for conditions, and any other opposition evidence and argument (including filings by DOJ and DOT) must submit an original and 25 copies of such documents, referring to STB Finance Docket No. 34000 (lead docket). All submissions must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, as previously noted, parties must submit one electronic copy of each document filed with the Board. Further details respecting such electronic submissions are provided below.

Written comments, etc., must be concurrently served by first class mail on the U.S. Attorney General and the U.S. Secretary of Transportation, applicants' representatives, and all other parties of record.

Consistent with 49 CFR 1180.4(d)(1)(iii), written comments, etc., must include:

(A) The docket number and title of the proceeding;

(B) The name, address, and telephone number of the commenting party and its representative upon whom service shall be made;

(C) The commenting party's position, *i.e.*, whether it supports or opposes the proposed transaction;

(D) A statement whether the commenting party intends to participate formally in the proceeding, or merely to comment on the proposal;

(E) If desired, a request for an oral hearing with reasons supporting this request; the request must indicate the disputed material facts that can be resolved only at a hearing; and

(F) a list of all information sought to be discovered from applicant carriers.

Because we have determined that this proposal is a minor transaction, no responsive applications will be permitted. See 49 CFR 1180.4(d)(4)(i).

Protesting parties are advised that, if they seek either the denial of the application or the imposition of conditions upon any approval thereof, on the theory that approval without imposition of conditions will harm either their ability to provide essential services and/or competition, they must present substantial evidence in support of their positions. *See Lamoille Valley R.R. Co.* v. *ICC*, 711 F.2d 295 (D.C. Cir 1983).

Response to Comments, Protests, Requested Conditions, and Other Opposition, Including DOJ and DOT; Rebuttal in Support of Application

Parties submitting responses to comments, protests, requested conditions, and other opposition, including DOJ and DOT, and rebuttal in support of the application must be filed with the Board by July 25, 2001.

[18] An interested person does not need to be on the service list to obtain a copy of the application or any other filing made in this proceeding. Our Railroad Consolidation Procedures provide: "Any document filed with the Board (including applications, pleadings, etc.) shall be promptly furnished to interested persons on request, unless subject to a protective order." *See* 49 CFR 1180.4(a)(3), as recently amended in *Railroad Consolidation Procedures-Modification of Fee Policy*, STB Ex Parte No. 556, 62 FR 9714, 9717 (Mar. 4, 1997) (interim rules), 62 FR 28375 (May 23, 1997) (final rules). The application and other filings in this proceeding also will be available on the Board's website at "www.stb.dot.gov" under "Filings." Furthermore, Dā-to-Dā Office Solutions will provide, for a charge, copies of the application or any other filing made in this proceeding, except to the extent any such filing is subject to the protective order entered heretofore in this proceeding.

Other Dates

The procedural schedule adopted in this decision further provides: (1) That applicants must file a SIP on May 9, 2001, as they have proposed; (2) that applicants must distribute copies of their Environmental Appendix and SIP to the public and initiate publication of newspaper notices by May 14, 2001 (within 5 days of service of this decision); (3) that all comments on applicants' Environmental Appendix and SIP are due on June 13, 2001; and (4) that the final written decision, addressing the application will be served on September 7, 2001, if we determine that no Environmental Assessment or Environmental Impact Statement is required and that there will be no oral argument. If oral argument is held, the decision will be served 45 days thereafter.

Discovery

Discovery may begin immediately. We encourage the parties to resolve all discovery matters expeditiously and amicably.

Environmental Matters

Applicants assert in their application that the proposed transaction will have insignificant environmental effects and therefore does not require a formal environmental review under the National Environmental Policy Act of 1969 (NEPA). Applicants state that the transaction will cause only modest changes in carrier operations, none of which would exceed the thresholds triggering environmental review established in our environmental rules at 49 CFR 1105.7(e)(4) or (5). Applicants further state that the transaction is exempt under 49 CFR 1105.6(c)(2)(i) from environmental reporting requirements and exempt under 49 CFR 1105.8(b)(1) and (3) from historic preservation reporting requirements.

To assist the Board's Section of Environmental Analysis (SEA) in determining whether there is a need for environmental review of this transaction, SEA directed applicants to prepare an Environmental Appendix providing additional details and explanation, including maps, supporting applicants' conclusion that this transaction does not warrant environmental documentation. SEA has reviewed the Environmental Appendix.

Applicants also have been working with the Federal Railroad Administration (FRA) to develop a Safety Integration Plan (SIP), under FRA guidelines, specifically addressing the process of safely combining applicants' two separate systems, if the proposed

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transaction is approved. Applicants indicate that they will submit the SIP to SEA by May 9, 2001.

To facilitate public review and comment on all aspects of the Environmental Appendix and the SIP, we are directing applicants, within 5 days of the service date of this decision (*i.e.*, May 14, 2001), to mail copies of these materials to appropriate federal, state, and local agencies and other interested parties and to announce that we are providing a 30-day period for interested parties to submit comments by June 13, 2001, to SEA. In addition, we direct applicants to publish a notice in newspapers of general circulation in each county in the United States through which affected rail line segments pass alerting the public that the Environmental Appendix and SIP are available, and how to obtain copies and submit comments. We will further ensure broad access to the Environmental Appendix and SIP by making them available on the Board's web site at *www.stb.dot.gov*. Applicants shall certify that they have met these mailing and newspaper notice requirements.

Based on its consideration of all timely comments and its own independent review of all available environmental information, including the SIP, SEA will recommend to the Board whether there is a need for formal environmental review in this case. We will then determine whether to issue a finding of no significant environmental impact, or, alternatively, whether an Environmental Assessment (EA) or Environmental Impact Statement (EIS) should be prepared. If it appears that an EA or EIS is required to meet the Board's NEPA obligations, the procedural schedule set forth here will be adjusted accordingly. Even if no EA or EIS is warranted, consistent with our recent practice, we intend to impose a condition on any decision approving the transaction requiring applicants to comply with the SIP.

Electronic Submissions [19]

As already mentioned, in addition to submitting an original and 25 paper copies of each document filed with the Board, parties must submit, on disks or CDs, copies of all textual materials, electronic work papers, data bases and spreadsheets used to develop quantitative evidence. Data must be submitted on 3.5 inch IBM-compatible floppy disks or CDs. Textual materials must be in, or compatible with, WordPerfect 9.0. Electronic spreadsheets must be in, or compatible with, Lotus 1–2–3 Release 9, or Microsoft Excel 97. Each disk or CD should be clearly labeled with the identification acronym and number of the corresponding paper document, *see* 49 CFR 1180.4(a)(2), and a copy of such disk or CD should be provided to any other party upon request. Also, each disk or CD should be clearly labeled as containing confidential or redacted materials. The data contained on the disks and CDs submitted to the Board will be subject to the protective order granted in Decision No. 1, served February 5, 2001, and will be for the exclusive use of Board employees reviewing substantive and/or procedural matters in this proceeding. The flexibility provided by such computer data will facilitate timely review by the Board and its staff.[20]

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The application is accepted for consideration under 49 U.S.C. 11321–26 as a minor transaction under 49 CFR 1180.2(c).
2. Great Lakes' filing of May 1, 2001, is accepted.
3. Great Lakes' request for dismissal of the CN/WC application is denied.
4. Parties must comply with the Procedural Schedule adopted by the Board in this proceeding as shown in Appendix A.
5. Parties must comply with the procedural requirements described in this decision.
6. This decision is effective on May 9, 2001.

Decided: May 3, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

Appendix A: Procedural Schedule

April 9, 2001 Application and Petition for Scheduling Order filed.

May 9, 2001 Board notice of acceptance of application published in the **Federal Register**.

May 9, 2001 Safety Integration Plan (SIP) due.

May 14, 2001 Applicants distribute Environmental Appendix and SIP to public and initiate publication of newspaper notices.

May 25, 2001 Notice of intent to participate due.

June 13, 2001 All comments on Environmental Appendix and SIP due.

June 25, 2001 All comments, protests, requests for conditions, and any other evidence and argument in opposition to the application due, including filings of the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT).

July 25, 2001 Response to comments, protests, requested conditions, and other opposition due. Response to comments of DOJ and DOT due. Rebuttal in support of application due (close of record).

September 7, 2001 Date of service of final decision (if no Environmental Assessment or Environmental Impact Statement is required and there is no oral argument).

[FR Doc. 01–11689 Filed 5–8–01; 8:45 am]

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[19] As noted previously, these requirements do not apply to filings addressing environmental documents. Parties submitting comments to applicants' Environmental Appendix and SIP should follow procedures as provided with such documents.

[20] The electronic submission requirements set forth in this decision supersede, for the purposes of this proceeding, the otherwise applicable electronic submission requirements set forth in our regulations. *See* 49 CFR 1104.3(a), as amended in *Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings*, STB Ex Parte No. 527, 61 FR 52710, 52711 (Oct. 8, 1996), 61 FR 58490, 58491 (Nov. 15, 1996).

Corrections

Federal Register
Vol. 66, No. 90
Wednesday, May 9, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection; Comment Request–Testing and Recordkeeping Requirements Under the Standard for the Flammability of Mattresses and Mattress Pads

Correction

In notice document 01–10695 beginning on page 21375, in the issue of Monday, April 30, 2001, make the following correction:

On page 21375, in the third column, under the **DATES** heading, in the third line, "June 29, 2000" should read "June 29, 2001".

[FR Doc. C1–10695 Filed 5–8–01; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AJ99

Review of Benefit Claims Decisions

Correction

In rule document 01–11028 beginning on page 21871, in the issue of Wednesday, May 2, 2001, make the following correction:

§ 3.104 [Corrected]

On page 21874, in the second column, §3.104, in amendatory instruction 2., remove the third line which reads " "§3.105" and adding in its place,".

[FR Doc. C1–11028 Filed 5–8–01; 8:45 am]

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Federal Register

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Part II

Department of Education

Office of Educational Research and Improvement, International Education Exchange Program; Notice

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.304A]

Office of Educational Research and Improvement, International Education Exchange Program; Notice

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2001.

Purpose of Program

To support international education exchange activities between the United States and eligible countries in civics and government education and economic education.

For FY 2001 the competition for new awards focuses on projects designed to meet the priorities referenced in the Priorities section of this notice.

Eligible Applicants

Independent nonprofit educational organizations that—

(a) Have expertise in international achievement comparisons, and are experienced in—

(1) The development and national implementation of curricular programs in civics and government education and economic education for students from grades kindergarten through 12 in local, intermediate, and State educational agencies, in schools funded by the Bureau of Indian Affairs, and in private schools throughout the Nation with the cooperation and assistance of national professional educational organizations, colleges and universities and private sector organizations;

(2) The development and implementation of cooperative university and school-based inservice training programs for teachers of grades kindergarten through 12 using scholars from such relevant disciplines as political science, political philosophy, history, law, and economics;

(3) The development of model curricular frameworks in civics and government education and economic education;

(4) The administration of international seminars on the goals and objectives of civics and government education or economic education in constitutional democracies (including the sharing of curricular materials) for educational leaders, teacher trainers, scholars in related disciplines, and educational policymakers; and

(5) The evaluation of civics and government education or economic education programs; and

(b) Have authority to subcontract with other organizations to carry out these provisions.

Applications Available: May 7, 2001.

Deadline for Transmittal of Applications: July 9, 2001.

Deadline for Intergovernmental Review: September 10, 2001.

Estimated Available Funds: $8,780,000.

Estimated Range of Awards: $4,190,600 to $4,590,000.

Estimated Average Size of Awards: $4,390,000.

Maximum Award: We will reject any application that proposes a budget exceeding $4,590,000 for a single budget period of 12 months.

Estimated Number of Awards: 2.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 85, 86, 97, 98, and 99. (b) The regulations in 34 CFR part 700.

Priorities

This competition focuses on projects designed to carry out the authorized activities listed in Title VI of the Goals 2000: Educate America Act, 20 U.S.C. 5951. Title VI is the International Education Program.

Absolute Priority 1—International Education Exchange Program in Civics and Government Education.

Absolute Priority 2—International Education Exchange Program in Economic Education.

Under 34 CFR 75.105(c)(3) we consider only applications that meet one of these two priorities.

Authorized Activities

To meet one of these two priorities, each applicant must propose to carry out the following activities, in either civics and government education or economic education:

(A) Provide eligible countries with—

(1) Seminars on the basic principles of the United States constitutional democracy and economics, including seminars on the major governmental and economic institutions and systems in the United States, and visits to such institutions;

(2) Visits to school systems, institutions of higher learning, and nonprofit organizations conducting exemplary programs in civics and government education and economic education in the United States;

(3) Home stays in United States communities;

(4) Translation and adaptations regarding the United States civics and government education and economic education curricular programs for students and teachers, and in the case of training programs for teachers translations and adaptations into forms useful in schools in eligible countries, and joint research projects in such areas;

(5) Translation of basic documents of United States constitutional government for use in eligible countries, such as The Federalist Papers, selected writings of Presidents Adams and Jefferson, and the Anti-Federalists, and more recent works on political theory, constitutional law and economics; and

(6) Research and evaluation assistance to determine—

(i) The effects of educational programs on students' development of the knowledge, skills and traits of character essential for the preservation and improvement of constitutional democracy; and

(ii) Effective participation in and the preservation and improvement of an efficient market economy;

(B) Provide United States participants with—

(1) Seminars on the histories, economics, and governments of eligible countries;

(2) Visits to school systems, institutions of higher learning, and organizations conducting exemplary programs in civics and government education and economic education located in eligible countries;

(3) Home stays in eligible countries;

(4) Assistance from educators and scholars in eligible countries in the development of curricular materials on the history, government, and economics of such countries that are useful in United States classrooms;

(5) Opportunities to provide on-site demonstrations of United States curricula and pedagogy for educational leaders in eligible countries; and

(6) Research and evaluation assistance to determine—

(i) The effects of educational programs on students' development of the knowledge, skills and traits of character essential for the preservation and improvement of constitutional democracy; and

(ii) Effective participation in and improvement of an efficient market economy; and

(C) Assist participants from eligible countries and the United States in participating in international conferences on civics and government education and economic education for educational leaders, teacher trainers, scholars in related disciplines and educational policymakers.

The primary participants in the international education program shall be leading educators in the areas of civics and government education and economic education, including curriculum and teacher training specialists, scholars in relevant disciplines, and educational policymakers, from the United States and eligible countries.

Note: For this program, the term "eligible country" means a Central European country, an Eastern European country, Lithuania, Latvia, Estonia, Georgia, the Commonwealth of Independent States, and any country that formerly was a republic of the Soviet Union whose political independence is recognized in the United States.

Selection Criteria

The Secretary selects from the criteria in 34 CFR 700.30(e) to evaluate applications for new grants under this competition. Under 34 CFR 700.30(a), the Secretary will announce in the application package the evaluation criteria selected for this competition and the maximum weight assigned to each criterion.

FOR APPLICATIONS AND FURTHER INFORMATION CONTACT: Dr. Ram N. Singh (email: ram.singh@ed.gov) or Ms. Rita Foy (email: rita.foy@ed.gov), U.S. Department of Education, 555 New Jersey Avenue, NW., room 510, Washington, DC 20208–5573. Telephone: (202) 219–2079.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to either of the program contact persons listed under **FOR APPLICATIONS AND FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting either of those persons. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*

Program Authority: 20 U.S.C. 5951.

Dated: May 3, 2001.

Sue Betka,

Deputy Assistant Secretary for Educational Research and Improvement.

[FR Doc. 01–11617 Filed 5–8–01; 8:45 am]

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Federal Register

Wednesday,
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Part III

Department of Housing and Urban Development

24 CFR Part 888

Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program: Fiscal Year 2002; Proposed Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 888

[Docket No. FR–4680–N–01]

Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program: Fiscal Year 2002

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of proposed fiscal year (FY) 2002 fair market rents (FMRs).

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to publish FMRs annually to be effective on October 1 of each year. FMRs are used to determine payment standard amounts for the Housing Choice Voucher program, to determine initial renewal rents for some expiring project-based Section 8 contracts, and to determine initial rents for HAP contracts in the Moderate Rehabilitation Single Room Occupancy program. Other programs may require use of FMRs for other purposes. Today's notice proposes revised FMRs that reflect estimated 40th and 50th percentile rent levels trended to April 1, 2002.

DATES: *Comments Due Date:* July 9, 2001.

Electronic Data Availability

This **Federal Register** Notice is available electronically from the HUD news page: http://www.hudclips.org/cgi/index.cgi. **Federal Register** Notices also are available electronically from the U.S. Government Printing Office web site: http://www.access.gpo.gov/su_docs/aces/aces140.html.

ADDRESSES: Interested persons are invited to submit comments regarding HUD's estimates of the FMRs as published in this Notice to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title and should contain the information specified in the "Request for Comments" section. To ensure that the information is fully considered by all of the reviewers, each commenter is requested to submit two copies of its comments, one to the Rules Docket Clerk and the other to the Economic and Market Analysis Staff in the appropriate HUD Field Office. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.—5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, telephone (202) 708–0477, is responsible for decisions on how fair market rents are used. For technical information on the methodology used to develop fair market rents or a listing of all fair market rents, please call HUD USER at 1–800–245–2691 or access the information on the HUD Web site, http:\\www.huduser.org/datasets/fmr.html. Further questions on the methodology may be addressed to Marie Lihn, Economic and Market Analysis Division, Office of Economic Affairs, telephone (202) 708–0590, (e-mail: marie_l._lihn@hud.gov). Hearing-or speech-impaired persons may use the Telecommunications Devices for the Deaf (TTY) by contacting the Federal Information Relay Service at 1–800–877–8339. (Other than the "800" TTY number, telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION: Section 8 of the United States Housing Act of 1937 (the Act) (42 U.S.C. 1437f) authorizes housing assistance to aid lower income families in renting decent, safe, and sanitary housing. Housing assistance payments are limited by FMRs established by HUD for different areas. In the voucher program, the FMR is used to determine the "payment standard amount" used to calculate the maximum monthly subsidy for an assisted family (see Section 982.503.) In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately owned, decent, safe, and sanitary rental housing of a modest (non-luxury) nature with suitable amenities.

Publication of FMRs

Section 8(c) of the Act requires the Secretary of HUD to publish FMRs periodically, but not less frequently than annually. HUD's regulations provide that HUD will develop FMRs by publishing proposed FMRs for public comment and, publish final FMRs after evaluating public comments (see 24 CFR 888.115).

Schedule B of the proposed FY 2002 FMR schedules at the end of this document lists the fair market rents for existing housing, including housing assisted under the housing choice voucher program. Schedule D lists FMRs for the rental of manufactured home spaces in the housing choice voucher program for areas where HUD has approved FMRs greater than 40 percent of the 2-bedroom FMR, based on public comments.

For the purpose of determining the maximum initial gross rent (at the beginning of the HAP contract term) for a unit assisted in the Section 8 moderate rehabilitation Single Room Occupancy (SRO) program, the fair market rent is 120 percent of the applicable existing housing fair market rent in Schedule B (see 24 CFR 882.408(a)). For the purpose of determining renewal gross rents for a HAP contract under the moderate rehabilitation program (other than a contract under the Section 8 moderate rehabilitation SRO program), the FMR is the applicable existing housing fair market rent in Schedule B.

Method Used to Develop FMRs

FMR Standard

FMRs are gross rent estimates; they include shelter rent and the cost of utilities, except telephone. HUD sets FMRs to assure that a sufficient supply of rental housing is available to program participants. To accomplish this objective, FMRs must be both high enough to permit a selection of units and neighborhoods and low enough to serve as many families as possible.

The level at which FMRs are set is expressed as a percentile point within the rent distribution of standard quality rental housing units. The current definition used is the 40th percentile rent for most areas, the dollar amount below which 40 percent of the standard quality rental housing units rent. The 40th percentile rent is drawn from the distribution of rents of units which are occupied by recent movers (renter households who moved into their unit within the past 15 months). Newly built units less than two years old are excluded, and adjustments have been made to correct for the below market rents of public housing units included in the data base.

The interim rule establishing 50th percentile FMRs was published on October 2, 2000 (65 FR 58870) and became effective on December 1, 2000. HUD set fair market rents for 39 areas at the 50th percentile rent (i.e., the median rent) effective January 2, 2001 (66 FR 162). HUD set the 50th percentile FMRs to give lower-income families who participate in the voucher program access to a broader range of housing opportunities throughout a metropolitan area. FMRs have been increased to the 50th percentile rent in those 39 areas metropolitan areas based on the criteria established in the interim rule, which seeks to promote residential choice, help families mover closer to job growth areas, and deconcentrate poverty.

Paragraph 888.113(c) provides:

(c) Setting FMRs at the 50th percentile rent to provide a broad range of housing opportunities throughout a metropolitan area.

(1) HUD will set the FMRs at the 50th percentile rent for all unit sizes in each metropolitan FMR area that meets all of the following criteria at the time of annual publication of the FMRs:

(i) 70 percent or fewer of the census tracts with at least 10 two bedroom rental units are census tracts in which at least 30 percent of the two bedroom rental units have gross rents at or below the two bedroom FMR set at the 40th percentile rent;

(ii) The FMR area contains at least 100 census tracts; and

(iii) 25 percent or more of the tenant-based rental program participants in the FMR area reside in the 5 percent of the census tracts within the FMR area that have the largest number of program participants.

(2) If the FMRs are set at the 50th percentile rent in accordance with paragraph (c)(1) of this section, HUD will set the FMRs at the 50th percentile rent for a total of three years.

(i) At the end of the three-year period, HUD will continue to set the FMRs at the 50th percentile rent only so long as the concentration measure for the current year is less than the concentration measure at the time the FMR area first received an FMR set at the 50th percentile rent. HUD will publish FMRs based on the 40th percentile rent for FMR areas that do not qualify for continued use of the 50th percentile rent.

(ii) For purposes of this section, the term "concentration measure" means the participants in the FMR area who reside in the 5 percent of the census tracts within the FMR area that have the largest number of program participants.

(iii) FMR areas that do not meet the test for continued use of FMRs set at the 50th percentile will be ineligible to use FMR set at the 50th percentile for a period of three years.

(iv) A PHA whose jurisdiction includes one or more FMR areas that are no longer eligible to use FMRs set at the 50th percentile may be eligible for a higher payment standard under Section 982.503(f).

Schedule B of this document lists the proposed 2002 FMRs for all areas, including FMRs for the 39 FMR areas where the FMR is set at the 50th percentile rent level (as specified in Section 888.113(c)), and other areas, where the FMR is set at the 40th percentile rent. An asterisk in Schedule B identifies the 39 FMR areas for which HUD has set 50th percentile FMRs.

HUD has set 50th percentile FMRs for the following metropolitan FMR areas:

Albuquerque, NM
Atlanta, GA
Austin-San Marcos, TX
Baton Rouge, LA
Bergen-Passaic, NJ
Buffalo-Niagara Falls, NY
Chicago, IL
Cleveland-Lorain-Elyria, OH
Dallas, TX
Denver, CO
Detroit, MI
Fort Lauderdale, FL
Fort Worth-Arlington, TX
Grand Rapids-Muskegon-Holland, MI
Houston, TX
Kansas City, MO–KS
Las Vegas, NV–AZ
Miami, FL
Minneapolis-St. Paul, MN–WI
Newark, NJ
Norfolk-Virginia Beach-Newport News, VA–NC
Oakland, CA
Oklahoma City, OK
Orange County, CA
Philadelphia, PA–NJ
Phoenix-Mesa, AZ
Richmond-Petersburg, VA
Sacramento, CA
Salt Lake City-Ogden, UT
San Antonio, TX
San Diego, CA
San Jose, CA
St. Louis, MO–IL
Tampa-St. Petersburg-Clearwater, FL
Tulsa, OK
Ventura, CA
Washington, DC–MD–VA
West Palm Beach-Boca Raton, FL
Wichita, KS

Data Sources

HUD used the most accurate and current data available to develop the FMR estimates. The sources of survey data used for the base-year estimates are:

(1) the 1990 Census, which provides statistically reliable rent data for all FMR areas;

(2) the Bureau of the Census' American Housing Survey (AHS), which is used to develop between-Census revisions for the largest metropolitan areas and which have accuracy comparable to the decennial Census; and

(3) Random Digit Dialing (RDD) telephone surveys of individual FMR areas, which are based on a sampling procedure that uses computers to select statistically random samples of rental housing.

The base-year FMRs are updated using trending factors based on Consumer Price Index (CPI) data for rents and utilities or HUD regional rent change factors developed from RDD surveys. Annual average CPI contract rent and residential utility cost data are available individually for 96 metropolitan FMR areas and for the four Census Regions. RDD regional rent change factors are developed annually for the metropolitan and nonmetropolitan parts of each of the 10 HUD regions. The utility component of RDD surveys is updated using CPI regional utility cost change factors. The RDD factors are used to update the base year estimates for all FMR areas that do not have their own local CPI survey.

Utility Costs

HUD's standard methodology for incorporating changes in utility costs into FMRs relies on the most current CPI data on annual changes in residential utility costs. Annual rather than point-to-point monthly comparisons (e.g., July 1999 to July 2000) are used because monthly utility price indices are volatile and often not reflective of the annualized cost of utilities. The annual cost indices take into account changes in prices and consumption patterns over the course of a year.

In developing the proposed FMRs for FY 2002, HUD has determined that the standard methodology does not adequately capture the unusual increases in natural gas prices that occurred at the end of calendar year 2000. (The standard methodology does capture increases in fuel oil prices, however.) The standard FMR methodology captures a 17 percent increase in natural gas prices from 1999 to 2000, but December 1999 to December 2000 prices increased by an average of 37 percent and Department of Energy projections for 2002 are very similar to the December 2000 prices. For purposes of estimating FY 2002 FMRs, the Department has therefore modified the natural gas inflation component to use December-to-December costs when available, and to use second half to second half of the year figures for CPI areas where December 2000 data were not available. This is a one-time change made to respond to unusual circumstances; HUD expects to return to the standard methodology next year.

The impact of this change is modest for most areas for three reasons. First, the change accounts for increases in the price of natural gas per unit of consumption, but not for increases in consumption associated with the unusually cold winter of 2000–2001. Second, on a national level, natural gas comprises only 27 percent of utility costs, and utility costs typically average 8–15 percent of total rent costs in metropolitan areas. This means, for instance, that a 50 percent increase in natural gas prices only increases FMRs by a little over 1 percent in the typical metropolitan area. Finally, since FMRs reflect monthly housing costs, the increase in FMRs due to this methodological change is spread across the course of an entire year rather than

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just the December-February heating season. The impact of this change would appear to be more substantial if it were aggregated over a three or four month heating season, rather than the entire year.

State Minimum FMRs

FMRs are established at the higher of the local 40th percentile rent level or the Statewide average of nonmetropolitan counties, subject to a ceiling rent cap. These State minimums have the effect of increasing FMRs for a number of nonmetropolitan areas plus a small number of metropolitan areas.

Bedroom Size Adjustments

FMRs have been calculated separately for each bedroom size category. For areas whose FMRs are based on the State minimums, the rents for each bedroom size are the higher of the rent for the area or the Statewide average of nonmetropolitan counties for that bedroom size. For all other FMR areas, the bedroom intervals are based on 1990 Census rent relationships for the specific area.

Exceptions have been made for some areas with local bedroom size rent intervals below an acceptable range. For those areas the intervals selected were the minimums determined after outliers had been excluded from the distribution of bedroom intervals for all metropolitan areas. Higher ratios continue to be used for three-bedroom and larger size units than would result from using the actual market relationships. This is done to assist the largest, most difficult to house families in finding program-eligible units.

The FMRs for unit sizes larger than 4 bedroom are calculated by adding 15 percent to the 4 bedroom FMR for each extra bedroom. For example, the FMR for a 5 bedroom unit is 1.15 times the 4 bedroom FMR, and the FMR for a 6 bedroom unit is 1.30 times the 4 bedroom FMR. FMRs for single room occupancy (SRO) units are 0.75 times the 0 bedroom FMR.

Random Digit Dialing (RDD) Rent Surveys

RDD surveys are used to obtain statistically-reliable FMR estimates for selected FMR areas. This telephone survey technique involves drawing random samples of renter units occupied by recent movers. RDD surveys exclude public housing units, other assisted units for which the market rent cannot be determined, units built in the past two years, seasonal units, non-cash rental units, and those owned by relatives. A HUD analysis has shown that the slight downward RDD survey bias caused by including some rental units that are in substandard condition is almost exactly offset by the slight upward bias that results from surveying only units with telephones.

Approximately 12,000–15,000 telephone numbers need to be contacted to achieve the target survey sample level of 200 eligible recent mover responses. RDD surveys have a high degree of statistical accuracy; there is a 95 percent likelihood that the recent mover rent estimates developed using this approach are within 3 to 4 percent of the actual rent value. Virtually all of the estimates are within 5 percent of the actual value.

Today's notice includes proposed FMR revisions based on RDD surveys conducted in early 2001 for the following areas:

Proposed FMR increases above normal update factor:
- Cleveland County, NC
- Jackson County, NC
- Knox County, IN
- Louisville, KY
- Minneapolis-St. Paul, MN
- Muncie, IN
- Payne County, OK
- Phoenix, AZ
- Polk County, NC
- Rutherford County, NC
- San Diego, CA
- San Francisco, CA
- San Luis Obispo-Atascadero-Paso Robles, CA
- St. Louis, MO–IL
- St. Mary's County, MD
- Stockton-Lodi, CA
- Vallejo-Fairfield-Napa, CA

Proposed FMR decreases:
- Dallas, TX
- Detroit, MI
- Hartford, CT
- Newark, NJ

Survey Supports Increasing FMRs by normal update factor:
- Chicago, IL
- Greensboro-Winston-Salem-High Point, NC
- McDowell County, NC
- Milwaukee, WI
- Philadelphia, PA–NJ
- Riverside-San Bernadino, CA
- San Jose, CA

Manufactured Home Space FMRs

In the tenant-based voucher program, a family that owns a manufactured home may receive assistance for the rental of a manufactured home space. The FMRs used to calculate the housing assistance payment for rental of a manufactured home space are generally 40 percent of the applicable Section 8 existing housing FMRs for two-bedroom units. Cost of utilities is now included in the manufactured home space rent (see 24 CFR 888.113(e)).

HUD will consider modifications of manufactured home space FMRs where public comment demonstrates that the 40 percent FMRs are not adequate. In order to be accepted as a basis for revising the manufactured home space FMRs, comments must contain statistically valid survey data that show the 40th percentile space rent for the entire FMR area.

The published manufactured home space FMRs are updated annually using the same data used to update the other FMRs.

Request for Comments

HUD seeks public comments on FMR levels for specific areas. Comments on FMR levels must include sufficient information (including local data and a full description of the rental housing survey methodology used) to justify any proposed changes. Changes may be proposed in all or any one or more of the bedroom-size categories on the schedule. Recommendations and supporting data must reflect the rent levels that exist within the entire FMR area.

HUD recommends the use of professionally-conducted Random Digit Dialing (RDD) telephone surveys to test the accuracy of FMRs for areas where there is a sufficient number of Section 8 units to justify the survey cost of $12,000–$15,000. Areas with 500 or more program units usually meet this cost criterion, and areas with fewer units may meet it if actual two-bedroom rents are significantly different from the FMRs proposed by HUD. In addition, HUD has developed a version of the RDD survey methodology for smaller, nonmetropolitan PHAs. This methodology is designed to be simple enough to be done by the PHA itself, rather than by professional survey organizations, at a cost of $5,000 or less.

PHAs in nonmetropolitan areas may, in certain circumstances, do surveys of groups of counties. All grouped county surveys must be approved in advance by HUD. PHAs are cautioned that the resulting FMRs will not be identical for the counties surveyed; each individual FMR area will have a separate FMR based on the relationship of rents in that area to the combined rents in the cluster of FMR areas. In addition, PHAs are advised that counties whose FMRs are based on the State minimum will not have their FMRs revised unless the grouped survey results show a revised FMR above the State minimum level.

PHAs that plan to use the RDD survey technique should obtain a copy of the appropriate survey guide. Larger PHAs should request HUD's survey guide entitled "Random Digit Dialing Surveys; A Guide to Assist Larger Public Housing Agencies in Preparing Fair Market Rent Comments." Smaller PHAs should obtain a guide entitled "Rental Housing Surveys; A Guide to Assist Smaller Public Housing Agencies in Preparing Fair Market Rent Comments." These guides are available from HUD USER on 1–800–245–2691, or from HUD's Worldwide Web site, in Microsoft Word or Adobe Acrobat format, at the following address: http://www.huduser.org/datasets/fmr.html.

HUD prefers, but does not mandate, the use of RDD telephone surveys, or the more traditional method described in the survey guide intended for small PHAs along with the simplified RDD methodology. Other survey methodologies are acceptable as long as the surveys submitted provide statistically reliable, unbiased estimates of the gross rent. Survey samples should preferably be randomly drawn from a complete list of rental units for the FMR area. If this is not feasible, the selected sample must be drawn so as to be statistically representative of the entire rental housing stock of the FMR area. In particular, surveys must include units of all rent levels and be representative by structure type (including single-family, duplex and other small rental properties), age of housing unit, and geographic location. The decennial Census should be used as a starting point and means to verify whether the sample is representative of the FMR area's rental housing stock.

Local rental housing surveys conducted with alternative methods must include the following documentation:

—Identification of the 40th percentile or 50th gross rent (gross rent is rent including the cost of utilities) and the actual distribution (or distributions, if more than one bedroom size is surveyed) of the surveyed units, rank-ordered by gross rent.

—An explanation of how the rental housing sample was drawn and a copy of the survey questionnaire, transmittal letter, and any publicity materials.

—An explanation of how the contract rents of the individual units surveyed were converted to gross rents. (For RDD-type surveys, HUD requires use of the Section 8 utility allowance schedule.)

—An explanation of how the survey excluded units built within two years prior to the survey date.

—The date the rent data were collected so that HUD can apply a trending factor to update the estimate to the midpoint of the applicable fiscal year. If the survey has already been trended to this date, the date the survey was conducted and a description of the trending factor used.

—Copies of all survey sheets.

Since FMRs are based on standard quality units and units occupied by recent movers, both of which are difficult to identify and survey, HUD will accept surveys of all rental units and apply appropriate adjustments.

Most surveys cover only one- and two-bedroom units, in which case HUD will make the adjustments for other size units consistent with the differentials established on the basis of the 1990 Census data for the FMR area. When three- and four-bedroom units are surveyed separately to determine FMRs for these unit size categories, the commenter should multiply the 40th percentile survey rents by 1.087 and 1.077, respectively, to determine the FMRs. The use of these factors will produce the same upward adjustments in the rent differentials as those used in the HUD methodology.

Accordingly, the Fair Market Rent Schedules, which will be codified in 24 CFR part 888, are proposed to be amended as follows:

Dated: May 2, 2001.

Mel Martinez,

Secretary.

Fair Market Rents for the Housing Choice Voucher Program

Schedules B and D—General Explanatory Notes

1. Geographic Coverage

a. *Metropolitan Areas.*—FMRs are housing market-wide rent estimates that are intended to provide housing opportunities throughout the geographic area in which rental housing units are in direct competition. The FMRs shown in Schedule B are determined for the same areas as the Office of Management and Budget's (OMB) most current definitions of metropolitan areas, with the exceptions discussed in paragraph b. HUD uses the OMB Metropolitan Statistical Area (MSA) and Primary Metropolitan Statistical Area (PMSA) definitions for FMR areas because they closely correspond to housing market area definitions.

b. *Exceptions to OMB Definitions.*—The exceptions are counties deleted from several large metropolitan areas whose revised OMB metropolitan area definitions were determined by HUD to be larger than the housing market areas. The FMRs for the following counties (shown by the metropolitan area) are calculated separately and are shown in Schedule B within their respective States under the "Metropolitan FMR Areas" listing:

Metropolitan Area and Counties Deleted
- Chicago, IL: DeKalb, Grundy and Kendall Counties
- Cincinnati-Hamilton, OH–KY–IN: Brown County, Ohio; Gallatin, Grant and Pendleton Counties in Kentucky; and Ohio County, Indiana
- Dallas, TX: Henderson County
- Flagstaff, AZ–UT: Kane County, UT
- New Orleans, LA: St. James Parish
- Washington, DC–MD–VA–WV: Berkeley and Jefferson Counties in West Virginia; and Clarke, Culpeper, King George and Warren counties in Virginia

c. *Nonmetropolitan Area FMRs.*—FMRs also are established for nonmetropolitan counties and for county equivalents in the United States, for nonmetropolitan parts of counties in the New England states, and for FMR areas in Puerto Rico, the Virgin Islands, and the Pacific Islands.

Nonmetropolitan area FMRs are set at the higher of the local 40th percentile rent level or the Statewide average of nonmetropolitan counties. (The State minimum also affects a small number of metropolitan areas whose rents would otherwise fall below the State minimum.)

d. *Virginia Independent Cities.*—FMRs for the areas in Virginia shown in the table below were established by combining the Census data for the nonmetropolitan counties with the data for the independent cities that are located within the county borders. Because of space limitations, the FMR listing in Schedule B includes only the name of the nonmetropolitan county. The complete definitions of these areas including the independent cities are as follows:

Virginia Nonmetropolitan County FMR Area and Independent Cities Included

County/Cities
- Alleghany: Clifton Forge and Covington
- Augusta: Staunton and Waynesboro
- Carroll: Galax
- Frederick: Winchester
- Greensville: Emporia
- Henry: Martinsville
- Montgomery: Radford
- Rockbridge: Buena Vista and Lexington
- Rockingham: Harrisonburg
- Southhampton: Franklin
- Wise: Norton

2. Bedroom Size Adjustments

Schedule B shows the FMRs for 0-bedroom through 4-bedroom units. The FMRs for unit sizes larger than 4

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bedrooms are calculated by adding 15 percent to the 4-bedroom FMR for each extra bedroom. For example, the FMR for a 5-bedroom unit is 1.15 times the 4-bedroom FMR, and the FMR for a 6-bedroom unit is 1.30 times the 4 bedroom FMR. FMRs for single-room-occupancy (SRO) units are 0.75 times the 0 bedroom FMR.

3. FMRs for Manufactured Home Spaces

FMRs for manufactured home spaces in the housing choice voucher program are 40 percent of the two-bedroom existing housing program FMRs, with the exception of the areas listed in Schedule D whose manufactured home space FMRs have been modified on the basis of public comments. Once approved, the revised manufactured home space FMRs establish new base-year estimates that are updated annually using the same data used to estimate the existing housing FMRs. The FMR area definitions used for the rental of manufactured home spaces in the housing choice voucher program are the same as the area definitions used for other FMRs.

4. Arrangement of FMR Areas and Identification of Constituent Parts

a. The FMR areas in Schedule B are listed alphabetically by metropolitan FMR area and by nonmetropolitan county within each State. The exception FMRs for manufactured home spaces in Schedule D are listed alphabetically by State.

b. The constituent counties (and New England towns and cities) included in each metropolitan FMR area are listed immediately following the listings of the FMR dollar amounts. All constituent parts of a metropolitan FMR area that are in more than one State can be identified by consulting the listings for each applicable State.

c. Two nonmetropolitan counties are listed alphabetically on each line of the nonmetropolitan county listings.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

A L A B A M A

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anniston, AL MSA	271	321	401	560	634	Calhoun
Auburn-Opelika, Al MSA	270	378	485	630	796	Lee
Birmingham, AL MSA	414	467	543	738	817	Blount, Jefferson, St. Clair, Shelby
Columbus, GA-AL MSA	366	407	469	638	693	Russell
Decatur, AL MSA	360	364	458	594	710	Lawrence, Morgan
Dothan, AL MSA	326	333	415	570	578	Dale, Houston
Florence, AL MSA	306	351	451	563	631	Colbert, Lauderdale
Gadsden, AL MSA	271	331	383	497	611	Etowah
Huntsville, AL MSA	378	442	545	726	865	Limestone, Madison
Mobile, AL MSA	396	442	507	683	802	Baldwin, Mobile
Montgomery, AL MSA	414	441	522	711	856	Autauga, Elmore, Montgomery
Tuscaloosa, AL MSA	357	382	507	698	738	Tuscaloosa

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Barbour	253	302	359	466	535
Bullock	253	302	359	466	535
Chambers	253	302	359	466	536
Chilton	263	302	359	466	535
Clarke	253	302	359	466	535
Cleburne	253	302	359	466	535
Conecuh	253	302	359	466	535
Covington	253	302	359	466	535
Cullman	253	302	359	478	581
Dekalb	253	302	359	466	535
Fayette	253	302	359	466	535
Geneva	253	302	359	466	535
Hale	253	302	359	466	535
Jackson	274	302	359	466	572
Lowndes	253	302	359	466	535
Marengo	253	302	359	466	535
Marshall	291	302	367	508	601
Perry	253	302	359	466	535
Pike	304	353	422	547	637
Sumter	253	302	359	466	535
Tallapoosa	254	302	359	466	535
Washington	253	302	359	466	535
Winston	253	302	359	466	535

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bibb	253	302	359	485	582
Butler	253	302	359	466	535
Cherokee	253	302	359	466	535
Choctaw	253	302	359	466	535
Clay	253	302	359	466	535
Coffee	253	356	463	644	723
Coosa	253	302	359	466	535
Crenshaw	253	302	359	466	535
Dallas	253	302	359	466	535
Escambia	253	302	359	466	535
Franklin	253	302	359	466	535
Greene	253	302	359	466	535
Henry	253	302	359	466	535
Lamar	253	302	359	466	535
Macon	277	311	415	519	582
Marion	253	302	359	466	535
Monroe	253	302	359	466	535
Pickens	253	302	359	466	535
Randolph	253	302	359	466	535
Talladega	253	302	359	466	535
Walker	253	313	369	477	606
Wilcox	253	302	359	466	535

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING — PAGE 2

A L A S K A

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anchorage, AK MSA	519	613	812	1130	1334	Anchorage

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aleutian East	538	606	685	854	1118
Bethel	695	869	1101	1379	1543
Dillingham	671	683	908	1136	1272
Haines	501	620	706	960	989
Kenai Peninsula	455	580	699	971	1147
Kodiak Island	715	786	1022	1277	1656
Matanuska-Susitna	481	651	732	994	1175
North Slope	804	823	1018	1414	1648
Pr.Wales-Outer Ketchikan	375	597	687	952	1007
Skagway-Yakutat-Angoon	459	467	605	758	851
Valdez-Cordova	562	689	765	976	1163
Wrangell-Petersburg	409	603	733	934	1026

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aleutian West	461	522	584	733	821
Bristol Bay	558	644	723	1006	1094
Fairbanks North Star	423	576	756	1040	1226
Juneau	748	864	1100	1464	1521
Ketchikan Gateway	549	672	900	1253	1318
Lake & Peninsula	429	696	782	976	1096
Nome	707	875	983	1368	1544
Northwest Arctic	851	957	1074	1495	1764
Sitka	591	703	788	1098	1296
Southeast Fairbanks	471	495	597	747	838
Wade Hampton	402	605	683	853	955
Yukon-Koyukuk	536	604	682	852	986

A R I Z O N A

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Flagstaff, AZ	453	490	636	853	1025	Coconino
*Las Vegas, NV-AZ MSA	554	658	783	1090	1288	Mohave
*Phoenix-Mesa, AZ MSA	500	605	760	1057	1245	Maricopa, Pinal
Tucson, AZ MSA	406	486	647	859	1060	Pima
Yuma, AZ MSA	391	453	603	838	844	Yuma

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Apache	376	396	503	656	780
Gila	376	396	503	656	780
Greenlee	376	396	503	656	780
Navajo	376	396	503	656	780
Yavapai	400	416	557	776	854
Cochise	376	396	503	656	780
Graham	376	396	503	656	780
La Paz	376	396	503	656	780
Santa Cruz	376	416	517	656	780

A R K A N S A S

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Fayetteville-Springdale-Rogers, AR MSA	321	403	531	717	742	Benton, Washington
Fort Smith, AR-OK MSA	349	353	464	621	652	Crawford, Sebastian
Jonesboro, AR MSA	378	411	483	666	703	Craighead
Little Rock-North Little Rock, AR MSA	395	439	521	721	842	Faulkner, Lonoke, Pulaski, Saline
Memphis, TN-AR-MS MSA	407	475	558	775	814	Crittenden

* -50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING — PAGE 3

A R K A N S A S continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Pine Bluff, AR MSA	302	359	472	595	772	Jefferson
Texarkana, TX-Texarkana, AR MSA	322	393	480	633	671	Miller

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Arkansas	273	296	380	518	562
Baxter	249	317	421	542	660
Bradley	249	296	380	503	562
Carroll	293	320	380	503	601
Clark	273	296	385	503	607
Cleburne	283	296	380	503	569
Columbia	249	296	380	503	562
Cross	259	327	380	510	602
Desha	249	296	380	503	562
Franklin	261	296	380	503	562
Garland	249	317	424	592	700
Greene	267	296	380	503	562
Hot Spring	249	296	380	503	562
Independence	262	303	380	503	562
Jackson	258	296	380	503	562
Lafayette	261	296	380	503	562
Lee	274	296	380	503	562
Little River	249	296	386	535	631
Madison	285	296	386	503	562
Mississippi	284	308	412	543	609
Montgomery	249	296	380	503	562
Newton	249	296	380	503	562
Perry	249	296	380	503	562
Pike	249	296	380	503	562
Polk	249	296	380	503	562
Prairie	249	296	380	503	562
St. Francis	249	302	380	513	604
Searcy	249	296	380	503	562
Sharp	249	296	380	503	562
Union	312	329	396	532	651
White	249	296	380	519	562
Yell	259	296	380	503	562

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ashley	249	296	380	503	594
Boone	295	300	398	555	655
Calhoun	249	296	380	503	562
Chicot	249	296	380	503	562
Clay	249	296	380	503	562
Cleveland	249	296	380	503	562
Conway	249	308	412	514	577
Dallas	249	296	380	503	562
Drew	249	322	431	595	606
Fulton	258	296	380	503	562
Grant	259	308	380	503	567
Hempstead	249	296	380	503	562
Howard	249	296	380	503	562
Izard	249	296	380	503	562
Johnson	249	296	380	503	562
Lawrence	249	296	380	503	562
Lincoln	269	296	386	515	562
Logan	261	296	380	503	562
Marion	249	296	380	503	562
Monroe	253	296	380	503	562
Nevada	249	296	380	519	562
Ouachita	291	296	380	523	617
Phillips	249	296	380	503	562
Poinsett	249	296	380	503	562
Pope	249	325	412	571	659
Randolph	249	296	380	503	562
Scott	249	296	380	503	562
Sevier	272	296	380	503	562
Stone	249	296	380	503	562
Van Buren	249	296	380	503	620
Woodruff	249	296	380	503	562

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

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C A L I F O R N I A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bakersfield, CA MSA	386	433	544	756	837	Kern
Chico-Paradise, CA MSA	353	454	604	828	990	Butte
Fresno, CA MSA	400	448	535	745	859	Fresno, Madera
Los Angeles-Long Beach, CA PMSA	543	650	823	1110	1325	Los Angeles
Merced, CA MSA	421	475	576	797	940	Merced
Modesto, CA MSA	467	502	612	853	1006	Stanislaus
*Oakland, CA PMSA	819	991	1243	1704	2035	Alameda, Contra Costa
*Orange County, CA PMSA	812	887	1097	1527	1699	Orange
Redding, CA MSA	400	444	557	773	910	Shasta
Riverside-San Bernardino, CA PMSA	482	537	656	910	1076	Riverside, San Bernardino
*Sacramento, CA PMSA	503	566	709	983	1159	El Dorado, Placer, Sacramento
Salinas, CA MSA	567	663	800	1111	1166	Monterey
*San Diego, CA MSA	708	809	1012	1408	1660	San Diego
San Francisco, CA PMSA	1067	1382	1747	2396	2536	Marin, San Francisco, San Mateo
*San Jose, CA PMSA	1131	1289	1592	2182	2451	Santa Clara
San Luis Obispo-Atascadero-Paso Robles, CA MSA	584	659	836	1162	1372	San Luis Obispo
Santa Barbara-Santa Maria-Lompoc, CA MSA	660	732	928	1293	1460	Santa Barbara
Santa Cruz-Watsonville, CA PMSA	739	880	1175	1634	1914	Santa Cruz
Santa Rosa, CA PMSA	694	787	1020	1418	1673	Sonoma
Stockton-Lodi, CA MSA	475	537	690	960	1132	San Joaquin
Vallejo-Fairfield-Napa, CA PMSA	704	800	975	1354	1598	Napa, Solano
*Ventura, CA PMSA	706	812	1027	1366	1592	Ventura
Visalia-Tulare-Porterville, CA MSA	391	416	542	756	863	Tulare
Yolo, CA PMSA	504	575	712	986	1165	Yolo
Yuba City, CA MSA	348	407	522	728	842	Sutter, Yuba

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alpine	319	479	542	753	811	Amador	441	485	648	903	1006
Calaveras	385	447	595	829	976	Colusa	349	391	503	701	811
Del Norte	327	448	595	830	978	Glenn	319	391	503	701	811
Humboldt	330	457	598	835	987	Imperial	361	451	555	774	811
Inyo	331	447	573	752	811	Kings	370	431	538	748	880
Lake	360	458	611	770	1002	Lassen	391	396	514	701	811
Mariposa	345	439	564	739	871	Mendocino	442	533	653	910	916
Modoc	349	391	503	701	811	Mono	487	584	777	1081	1278
Nevada	400	547	729	1013	1173	Plumas	352	391	503	701	811
San Benito	550	647	810	1129	1320	Sierra	319	429	528	733	865
Siskiyou	335	391	503	701	811	Tehama	334	391	503	701	811
Trinity	359	391	503	701	811	Tuolumne	353	482	643	896	1055

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 5

C O L O R A D O

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boulder-Longmont, CO PMSA	592	708	909	1266	1492	Boulder
Colorado Springs, CO MSA	467	502	668	931	1100	El Paso
*Denver, CO PMSA	561	671	893	1238	1462	Adams, Arapahoe, Denver, Douglas, Jefferson
Fort Collins-Loveland, CO MSA	462	570	703	978	1154	Larimer
Grand Junction, CO MSA	424	441	551	743	885	Mesa
Greeley, CO PMSA	496	548	690	957	1132	Weld
Pueblo, CO MSA	447	464	579	780	930	Pueblo

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alamosa	401	417	520	702	837	Archuleta	480	525	621	839	997
Baca	401	417	520	702	837	Bent	401	417	520	702	837
Chaffee	401	417	520	702	837	Cheyenne	401	417	520	702	837
Clear Creek	401	468	529	737	869	Conejos	401	417	520	702	837
Costilla	401	417	520	702	837	Crowley	401	417	520	702	837
Custer	401	417	520	702	837	Delta	401	417	520	702	837
Dolores	401	417	520	702	837	Eagle	540	588	785	1092	1287
Elbert	444	491	562	702	921	Fremont	401	417	520	702	837
Garfield	466	499	631	789	1033	Gilpin	401	534	678	895	990
Grand	477	481	609	762	923	Gunnison	401	417	520	702	837
Hinsdale	401	425	520	702	837	Huerfano	401	417	520	702	837
Jackson	401	417	520	702	837	Kiowa	401	417	520	702	837
Kit Carson	401	417	520	702	837	Lake	401	417	520	702	837
La Plata	524	580	764	1065	1256	Las Animas	401	429	520	702	837
Lincoln	401	417	520	702	837	Logan	401	417	520	702	837
Mineral	401	417	520	702	837	Moffat	401	417	520	702	837
Montezuma	401	417	520	702	837	Montrose	401	417	526	730	860
Morgan	401	417	520	702	837	Otero	401	417	520	702	837
Ouray	401	417	526	702	852	Park	401	445	579	803	914
Phillips	401	417	520	702	837	Pitkin	602	824	1098	1448	1646
Prowers	401	417	520	702	837	Rio Blanco	401	417	520	702	837
Rio Grande	401	417	520	702	837	Routt	401	485	641	891	1051
Saguache	401	417	520	702	837	San Juan	401	417	520	702	837
San Miguel	738	1067	1173	1464	1890	Sedgwick	401	417	520	702	837
Summit	517	619	794	1104	1359	Teller	401	476	634	881	889
Washington	401	417	520	702	837	Yuma	401	417	520	702	837

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

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CONNECTICUT

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Bridgeport, CT PMSA	499	649	782	978	1219	Fairfield county towns of Bridgeport town, Easton town Fairfield town, Monroe town, Shelton town Stratford town, Trumbull town New Haven county towns of Ansonia town, Beacon Falls town Derby town, Milford town, Oxford town, Seymour town
Danbury, CT PMSA	674	806	1007	1329	1533	Fairfield county towns of Bethel town, Brookfield town Danbury town, New Fairfield town, Newtown town Redding town, Ridgefield town, Sherman town Litchfield county towns of Bridgewater town New Milford town, Roxbury town, Washington town
Hartford, CT MSA	465	579	741	930	1128	Hartford county towns of Avon town, Berlin town Bloomfield town, Bristol town, Burlington town Canton town, East Granby town, East Hartford town East Windsor town, Enfield town, Farmington town Glastonbury town, Granby town, Hartford town Manchester town, Marlborough town, New Britain town Newington town, Plainville town, Rocky Hill town Simsbury town, Southington town, South Windsor town Suffield town, West Hartford town, Wethersfield town Windsor town, Windsor Locks town Litchfield county towns of Barkhamsted town Harwinton town, New Hartford town, Plymouth town Winchester town Middlesex county towns of Cromwell town, Durham town East Haddam town, East Hampton town, Haddam town Middlefield town, Middletown town, Portland town New London county towns of Colchester town, Lebanon town Tolland county towns of Andover town, Bolton town Columbia town, Coventry town, Ellington town Hebron town, Mansfield town, Somers town, Stafford town Tolland town, Vernon town, Willington town Windham county towns of Ashford town, Chaplin town Windham town
New Haven-Meriden, CT PMSA	575	706	873	1118	1296	Middlesex county towns of Clinton town, Killingworth town New Haven county towns of Bethany town, Branford town Cheshire town, East Haven town, Guilford town Hamden town, Madison town, Meriden town, New Haven town North Branford tow, North Haven town, Orange town Wallingford town, West Haven town, Woodbridge town
New London-Norwich, CT-RI MSA	518	627	764	955	1092	Middlesex county towns of Old Saybrook town New London county towns of Bozrah town, East Lyme town Franklin town, Griswold town, Groton town, Ledyard town Lisbon town, Montville town, New London town North Stonington t, Norwich town, Old Lyme town Preston town, Salem town, Sprague town, Stonington town Waterford town Windham county towns of Canterbury town, Plainfield town

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

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CONNECTICUT continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Stamford-Norwalk, CT PMSA	970	1135	1384	1855	2049	Fairfield county towns of Darien town, Greenwich town New Canaan town, Norwalk town, Stamford town Weston town, Westport town, Wilton town
Waterbury, CT PMSA	490	660	819	1020	1144	Litchfield county towns of Bethlehem town, Thomaston town Watertown town, Woodbury town New Haven county towns of Middlebury town, Naugatuck town Prospect town, Southbury town, Waterbury town Wolcott town
Worcester, MA-CT PMSA	485	587	732	914	1024	Windham county towns of Thompson town
NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Hartford	381	617	697	968	1141	Hartland town
Litchfield	444	605	806	1006	1145	Canaan town, Colebrook town, Cornwall town, Goshen town Kent town, Litchfield town, Morris town, Norfolk town North Canaan town, Salisbury town, Sharon town Torrington town, Warren town
Middlesex	657	745	994	1384	1632	Chester town, Deep River town, Essex town Westbrook town
New London	557	682	775	1000	1268	Lyme town, Voluntown town
Tolland	381	617	697	968	975	Union town
Windham	439	537	697	873	1094	Brooklyn town, Eastford town, Hampton town Killingly town, Pomfret town, Putnam town, Scotland town Sterling town, Woodstock town

DELAWARE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Dover, DE MSA	511	565	644	835	950	Kent
Wilmington-Newark, DE-MD PMSA	472	623	727	986	1192	New Castle

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Sussex	449	477	609	800	854

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR

DIST. OF COLUMBIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Washington, DC-MD-VA	707	804	943	1285	1550	District of Columbia

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

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F L O R I D A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Daytona Beach, FL MSA	407	477	610	810	860	Flagler, Volusia
*Fort Lauderdale, FL PMSA	526	619	767	1067	1254	Broward
Fort Myers-Cape Coral, FL MSA	437	504	608	850	886	Lee
Fort Pierce-Port Lucie, FL MSA	487	534	691	899	969	Martin, St. Lucie
Fort Walton Beach, FL MSA	425	464	527	714	842	Okaloosa
Gainesville, FL MSA	425	464	564	773	913	Alachua
Jacksonville, FL MSA	487	545	657	867	965	Clay, Duval, Nassau, St. Johns
Lakeland-Winter Haven, FL MSA	407	446	504	625	682	Polk
Melbourne-Titusville-Palm Bay, FL MSA	407	476	596	797	929	Brevard
*Miami, FL PMSA	498	626	781	1072	1243	Dade
Naples, FL MSA	454	640	771	1071	1194	Collier
Ocala, FL MSA	425	464	527	691	811	Marion
Orlando, FL MSA	528	599	714	937	1144	Lake, Orange, Osceola, Seminole
Panama City, FL MSA	425	464	527	672	720	Bay
Pensacola, FL MSA	425	464	527	704	829	Escambia, Santa Rosa
Punta Gorda, FL MSA	425	488	649	900	1062	Charlotte
Sarasota-Bradenton, FL MSA	426	541	688	885	963	Manatee, Sarasota
Tallahassee, FL MSA	434	482	634	828	998	Gadsden, Leon
*Tampa-St. Petersburg-Clearwater, FL MSA	484	576	713	948	1148	Hernando, Hillsborough, Pasco, Pinellas
*West Palm Beach-Boca Raton, FL MSA	554	646	800	1062	1315	Palm Beach

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Baker	399	436	494	613	665
Calhoun	399	436	494	613	665
Columbia	399	436	494	613	665
Dixie	399	436	494	613	665
Gilchrist	399	436	494	613	665
Gulf	399	436	494	613	665
Hardee	399	436	494	613	665
Highlands	399	436	494	615	687
Indian River	399	499	641	802	898
Jefferson	399	436	494	613	665
Levy	399	436	494	613	665
Madison	399	436	494	613	665
Okeechobee	399	436	494	613	671
Sumter	399	436	494	613	665
Taylor	399	436	494	613	666
Wakulla	399	436	494	613	665
Washington	399	436	494	613	665

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Bradford	399	436	494	613	665
Citrus	399	436	494	613	665
Desoto	399	436	494	613	665
Franklin	399	436	494	613	665
Glades	399	436	494	613	665
Hamilton	399	436	494	613	665
Hendry	399	436	508	637	714
Holmes	399	436	494	613	665
Jackson	399	436	494	613	665
Lafayette	399	436	494	613	665
Liberty	399	436	494	613	665
Monroe	571	644	828	1141	1358
Putnam	399	436	494	613	665
Suwannee	399	436	494	613	665
Union	399	436	494	613	665
Walton	399	436	494	635	794

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

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G E O R G I A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albany, GA MSA	317	371	453	618	670	Dougherty, Lee
Athens, GA MSA	390	421	544	743	895	Clarke, Madison, Oconee
*Atlanta, GA MSA	677	753	878	1171	1416	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta Dekalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett Henry, Newton, Paulding, Pickens, Rockdale, Spalding Walton
Augusta-Aiken, GA-SC MSA	400	478	564	766	906	Columbia, Mcduffie, Richmond
Chattanooga, TN-GA MSA	383	447	537	694	790	Catoosa, Dade, Walker
Columbus, GA-AL MSA	366	407	489	638	693	Chattahoochee, Harris, Muscogee
Macon, GA MSA	410	456	531	732	752	Bibb, Houston, Jones, Peach, Twiggs
Savannah, GA MSA	382	474	552	744	774	Bryan, Chatham, Effingham

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Appling	290	349	427	553	629
Bacon	290	349	427	553	629
Baldwin	290	371	453	580	633
Ben Hill	290	349	427	553	637
Bleckley	290	349	427	553	629
Brooks	290	349	427	553	629
Burke	290	349	427	553	629
Calhoun	290	349	427	553	629
Candler	290	349	427	553	629
Chattooga	290	349	427	553	629
Clinch	290	349	427	553	629
Colquitt	290	349	427	553	629
Crawford	290	349	427	553	629
Dawson	290	378	502	628	774
Dodge	290	349	427	553	629
Early	290	349	427	553	629
Elbert	290	349	427	553	629
Evans	290	349	427	553	629
Floyd	290	349	428	564	629
Gilmer	290	349	427	553	629
Glynn	404	453	512	688	843
Grady	296	349	427	553	629
Habersham	311	349	427	553	634
Hancock	290	349	427	553	629
Hart	290	349	427	553	629
Irwin	290	349	427	553	629
Jasper	290	349	432	587	629
Jefferson	290	349	427	553	637

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Atkinson	290	349	427	553	629
Baker	290	349	427	553	629
Banks	290	349	427	553	629
Berrien	290	349	427	553	629
Brantley	290	349	427	553	629
Bulloch	349	354	456	587	745
Butts	290	384	509	681	714
Camden	405	459	513	714	844
Charlton	290	349	427	553	629
Clay	290	349	427	553	629
Coffee	290	349	427	553	637
Cook	290	349	427	553	629
Crisp	293	349	427	553	629
Decatur	290	349	427	553	629
Dooly	290	349	427	553	629
Echols	290	349	427	553	629
Emanuel	290	349	427	553	629
Fannin	290	349	427	553	629
Franklin	290	349	427	553	629
Glascock	290	349	427	553	629
Gordon	344	349	435	561	717
Greene	290	349	427	553	629
Hall	307	466	548	687	766
Haralson	290	349	427	553	629
Heard	290	349	427	553	629
Jackson	322	349	438	553	721
Jeff Davis	290	349	427	553	629
Jenkins	290	349	427	553	629

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

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GEORGIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Johnson	290	349	427	553	629
Lanier	290	349	427	553	629
Liberty	360	402	458	636	641
Long	290	378	427	553	629
Lumpkin	290	391	439	588	721
Macon	290	349	427	553	629
Meriwether	290	349	427	553	629
Mitchell	290	349	427	553	629
Montgomery	290	349	427	553	629
Murray	290	349	427	553	629
Pierce	290	349	427	553	629
Polk	290	349	427	578	629
Putnam	290	349	427	553	637
Rabun	290	349	427	553	629
Schley	290	349	427	553	629
Seminole	290	349	427	553	629
Stewart	290	349	427	553	629
Talbot	290	349	427	553	629
Tattnall	290	349	427	553	629
Telfair	290	349	427	553	629
Thomas	290	359	427	553	629
Toombs	290	349	427	553	629
Treutlen	290	349	427	553	629
Turner	290	349	427	553	629
Upson	300	349	427	553	629
Warren	290	349	427	553	629
Wayne	300	349	427	553	629
Wheeler	290	349	427	553	629
Whitfield	290	381	458	585	690
Wilkes	290	349	427	553	629
Worth	290	349	427	553	629

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Lamar	290	358	427	553	676
Laurens	297	349	427	553	629
Lincoln	290	349	427	553	629
Lowndes	324	393	475	666	737
Mcintosh	290	349	427	553	629
Marion	290	349	427	553	629
Miller	290	349	427	553	629
Monroe	290	349	427	562	629
Morgan	290	349	442	553	629
Oglethorpe	290	349	427	553	629
Pike	337	364	462	643	648
Pulaski	290	349	427	553	629
Quitman	290	349	427	553	629
Randolph	290	349	427	553	629
Screven	290	349	427	553	629
Stephens	290	349	427	553	629
Sumter	290	354	427	553	629
Taliaferro	290	349	427	553	629
Taylor	290	349	427	553	629
Terrell	290	349	427	553	629
Tift	290	349	427	553	629
Towns	290	349	427	553	629
Troup	290	395	444	555	629
Union	290	349	445	558	629
Ware	320	359	427	553	664
Washington	290	349	427	553	629
Webster	290	349	427	553	629
White	290	349	427	553	643
Wilcox	290	349	427	553	629
Wilkinson	290	349	427	553	629

HAWAII

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Honolulu, HI MSA	596	714	840	1135	1227	Honolulu

• 50th percentile FMRs are indicated by an • before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

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HAWAII continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Hawaii	464	605	696	924	1138
Maui	749	929	1133	1464	1658
Kauai	592	885	1077	1426	1542

IDAHO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boise City, ID MSA	405	461	561	779	921	Ada, Canyon
Pocatello, ID MSA	291	337	433	589	697	Bannock

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	289	335	432	572	678
Benewah	289	335	432	572	678
Blaine	447	492	655	913	1075
Bonner	332	411	509	705	812
Boundary	289	335	432	572	678
Camas	289	335	432	572	678
Cassia	289	335	432	572	678
Clearwater	289	335	432	572	678
Elmore	289	335	432	572	678
Fremont	289	335	432	572	678
Gooding	289	335	432	572	678
Jefferson	297	335	432	572	678
Kootenai	367	432	565	786	930
Lemhi	289	335	432	572	678
Lincoln	289	335	432	572	678
Minidoka	289	335	432	572	678
Oneida	290	335	432	572	678
Payette	289	335	432	572	678
Shoshone	289	335	432	572	678
Twin Falls	289	335	437	576	678
Washington	289	335	432	572	678

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bear Lake	289	335	432	572	678
Bingham	307	335	432	572	678
Boise	289	372	432	572	678
Bonneville	294	370	509	685	835
Butte	289	335	432	572	678
Caribou	289	335	432	572	678
Clark	289	335	432	572	678
Custer	289	335	432	572	678
Franklin	289	335	432	572	678
Gem	289	335	432	572	678
Idaho	289	335	432	572	678
Jerome	289	335	432	572	678
Latah	289	335	432	572	687
Lewis	289	335	432	572	678
Madison	289	335	432	572	678
Nez Perce	294	335	432	572	678
Owyhee	289	335	432	572	678
Power	289	335	432	572	678
Teton	315	335	432	584	692
Valley	300	335	432	572	678

ILLINOIS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bloomington-Normal, IL MSA	358	436	584	812	857	Mclean
Champaign-Urbana, IL MSA	394	483	626	858	1028	Champaign
•Chicago, IL	623	747	891	1114	1247	Cook, Dupage, Kane, Lake, Mchenry, Will
Davenport-Moline-Rock Island, IA-IL MSA	293	405	502	648	703	Henry, Rock Island

• 50th percentile FMRs are indicated by an • before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

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I L L I N O I S continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Decatur, IL MSA	285	369	475	641	664	Macon
De Kalb County, IL	480	559	708	984	1139	Dekalb
Grundy County, IL	420	486	645	851	906	Grundy
Kankakee, IL PMSA	383	463	616	788	865	Kankakee
Kendall County, Il	579	660	795	1107	1113	Kendall
Peoria-Pekin, IL MSA	397	437	586	781	959	Peoria, Tazewell, Woodford
Rockford, IL MSA	381	487	594	746	870	Boone, Ogle, Winnebago
*St. Louis, MO-IL MSA	396	482	625	814	899	Clinton, Jersey, Madison, Monroe, St. Clair
Springfield, IL MSA	328	406	542	721	820	Menard, Sangamon

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	274	307	395	519	630	Alexander	274	307	395	519	582
Bond	274	307	395	519	582	Brown	274	307	395	519	582
Bureau	274	345	405	519	582	Calhoun	274	307	395	519	582
Carroll	274	307	395	519	582	Cass	275	307	395	519	582
Christian	294	307	397	521	582	Clark	274	307	395	519	582
Clay	274	307	395	519	582	Coles	289	344	458	608	719
Crawford	274	307	395	519	582	Cumberland	274	307	395	519	582
De Witt	278	307	395	523	582	Douglas	292	307	395	519	582
Edgar	274	307	395	519	582	Edwards	274	307	395	519	582
Effingham	274	316	395	519	582	Fayette	274	307	395	519	582
Ford	260	366	475	611	667	Franklin	274	307	395	519	582
Fulton	282	315	407	534	600	Gallatin	274	307	395	519	582
Greene	274	307	395	519	582	Hamilton	274	308	395	519	582
Hancock	274	307	395	519	582	Hardin	274	307	395	519	582
Henderson	274	307	395	519	582	Iroquois	274	307	395	519	582
Jackson	332	333	421	597	668	Jasper	274	309	395	519	582
Jefferson	275	322	403	549	582	Jo Daviess	303	328	395	519	582
Johnson	274	307	395	519	582	Knox	274	307	395	519	602
La Salle	332	389	519	701	786	Lawrence	274	307	395	519	582
Lee	305	313	420	524	589	Livingston	274	337	450	580	633
Logan	306	326	434	543	680	Mcdonough	274	312	395	519	624
Macoupin	274	307	395	519	582	Marion	279	307	395	519	582
Marshall	274	307	395	519	582	Mason	274	307	395	519	590
Massac	275	307	395	519	582	Mercer	274	307	395	519	582
Montgomery	274	307	395	519	582	Morgan	274	347	461	615	647
Moultrie	274	307	395	533	582	Perry	275	307	395	519	582
Piatt	274	333	433	590	606	Pike	274	307	395	519	582
Pope	274	307	395	519	582	Pulaski	274	307	395	519	582
Putnam	274	307	395	519	582	Randolph	274	307	395	519	582

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

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I L L I N O I S continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Richland	274	307	395	519	582	Saline	274	307	395	519	582
Schuyler	274	307	395	519	582	Scott	274	307	395	519	582
Shelby	274	307	395	519	582	Stark	274	307	395	519	582
Stephenson	289	331	419	523	587	Union	274	307	395	519	582
Vermilion	274	349	436	545	611	Wabash	274	307	395	519	616
Warren	289	307	395	519	582	Washington	274	328	437	547	710
Wayne	274	307	395	519	582	White	274	307	395	519	582
Whiteside	289	329	438	548	618	Williamson	274	307	397	552	582

I N D I A N A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bloomington, IN MSA	389	503	669	931	1099	Monroe
Cincinnati, OH-KY-IN	335	430	576	772	834	Dearborn
Elkhart-Goshen, IN MSA	393	448	566	724	831	Elkhart
Evansville-Henderson, IN-KY MSA	336	400	520	649	727	Posey, Vanderburgh, Warrick
Fort Wayne, IN MSA	336	428	533	687	745	Adams, Allen, De Kalb, Huntington, Wells, Whitley
Gary, IN PMSA	427	561	700	879	982	Lake, Porter
Indianapolis, IN MSA	384	481	578	724	812	Boone, Hamilton, Hancock, Hendricks, Johnson, Madison Marion, Morgan, Shelby
Kokomo, IN MSA	362	427	557	717	781	Howard, Tipton
Lafayette, IN MSA	366	465	619	861	1018	Clinton, Tippecanoe
Louisville, KY-IN MSA	358	460	565	779	821	Clark, Floyd, Harrison, Scott
Muncie, IN MSA	374	466	553	749	884	Delaware
Ohio County, IN	312	351	449	579	637	Ohio
South Bend, IN MSA	337	449	589	736	826	St. Joseph
Terre Haute, IN MSA	304	356	454	566	632	Clay, Vermillion, Vigo

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Bartholomew	420	451	545	680	896	Benton	295	333	426	548	603
Blackford	295	333	439	549	616	Brown	295	392	517	718	743
Carroll	295	333	426	548	603	Cass	295	333	426	548	603
Crawford	295	333	426	548	603	Daviess	295	333	426	548	603
Decatur	295	361	461	597	649	Dubois	295	333	426	548	622
Fayette	312	353	450	579	681	Fountain	295	333	426	548	603
Franklin	295	333	426	548	674	Fulton	326	341	426	573	603
Gibson	295	333	426	548	603	Grant	311	333	426	550	603
Greene	295	333	426	548	603	Henry	325	365	467	602	660
Jackson	363	380	469	621	667	Jasper	295	359	426	548	603
Jay	295	333	426	548	603	Jefferson	295	333	426	548	603

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

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I N D I A N A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Jennings	308	333	426	548	603
Kosciusko	295	391	472	613	662
La Porte	301	364	487	624	681
Marshall	351	356	472	594	662
Miami	295	333	426	548	603
Newton	308	333	426	548	603
Orange	295	333	426	548	603
Parke	295	333	426	548	630
Pike	295	333	426	548	603
Putnam	321	374	460	618	623
Ripley	295	333	426	556	631
Spencer	295	333	426	548	603
Steuben	362	408	488	611	681
Switzerland	295	333	426	548	603
Wabash	295	333	426	548	603
Washington	295	333	426	548	603
White	295	333	426	548	666
Knox	322	356	462	587	647
Lagrange	301	347	442	575	669
Lawrence	295	333	426	552	603
Martin	295	333	426	548	603
Montgomery	425	447	557	708	783
Noble	341	348	433	557	618
Owen	295	333	426	548	631
Perry	295	333	426	548	603
Pulaski	295	333	426	548	603
Randolph	295	333	426	548	603
Rush	304	333	426	548	631
Starke	295	333	426	548	603
Sullivan	295	333	426	548	603
Union	295	333	426	548	603
Warren	295	333	426	548	603
Wayne	357	400	514	660	726

I O W A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Cedar Rapids, IA MSA	286	404	520	723	777	Linn
Davenport-Moline-Rock Island, IA-IL MSA	293	405	502	648	703	Scott
Des Moines, IA MSA	372	470	580	752	790	Dallas, Polk, Warren
Dubuque, IA MSA	305	372	478	612	746	Dubuque
Iowa City, IA MSA	360	464	597	828	979	Johnson
Omaha, NE-IA MSA	352	481	608	797	895	Pottawattamie
Sioux City, IA-NE MSA	358	430	536	668	763	Woodbury
Waterloo-Cedar Falls, IA MSA	335	429	536	713	838	Black Hawk

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adair	278	343	430	547	603
Allamakee	278	343	430	553	633
Audubon	278	343	430	547	603
Boone	278	365	430	553	655
Buchanan	292	343	430	547	603
Butler	295	343	430	547	603
Carroll	278	343	430	547	603
Cedar	278	348	430	547	603
Cherokee	278	343	430	547	603
Adams	278	343	430	547	603
Appanoose	278	343	430	547	607
Benton	285	343	430	547	603
Bremer	278	343	430	547	641
Buena Vista	293	343	430	547	603
Calhoun	278	343	430	547	603
Cass	278	343	430	547	603
Cerro Gordo	278	364	450	600	630
Chickasaw	278	343	430	547	603

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

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I O W A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Clarke	285	343	430	547	603
Clayton	278	343	430	547	603
Crawford	278	343	430	547	603
Decatur	278	343	430	547	603
Des Moines	278	355	455	571	637
Emmet	278	343	430	547	637
Floyd	302	343	430	547	603
Fremont	305	343	430	547	635
Grundy	278	343	430	547	620
Hamilton	317	360	436	547	610
Hardin	278	343	430	547	603
Henry	278	352	447	559	633
Humboldt	278	343	430	547	603
Iowa	278	343	430	547	603
Jasper	278	352	446	557	625
Jones	287	343	430	547	603
Kossuth	278	343	430	547	603
Louisa	278	343	430	547	603
Lyon	278	343	430	547	603
Mahaska	278	343	430	547	603
Marshall	306	378	474	602	665
Mitchell	278	343	430	547	603
Monroe	278	362	430	547	635
Muscatine	317	393	521	693	728
Osceola	278	343	430	547	603
Palo Alto	278	343	430	547	603
Pocahontas	278	343	430	547	603
Ringgold	278	343	430	547	603
Shelby	278	343	430	547	603
Story	362	439	519	716	821
Taylor	278	343	430	547	604
Van Buren	278	343	430	547	603
Washington	278	343	430	547	635
Webster	278	343	437	550	612
Winneshiek	278	343	430	547	603
Wright	278	343	430	547	603
Clay	278	343	430	547	603
Clinton	278	343	437	547	611
Davis	278	343	430	547	603
Delaware	278	343	430	547	603
Dickinson	278	343	430	547	603
Fayette	278	343	430	547	603
Franklin	285	343	430	547	603
Greene	278	343	430	547	603
Guthrie	278	343	430	547	634
Hancock	278	343	430	547	603
Harrison	278	343	430	547	603
Howard	278	343	430	547	630
Ida	285	343	430	547	603
Jackson	278	343	434	547	607
Jefferson	278	351	467	608	768
Keokuk	278	343	430	547	603
Lee	278	343	444	556	624
Lucas	278	343	430	547	603
Madison	278	343	448	574	629
Marion	278	382	467	584	655
Mills	278	371	438	550	613
Monona	278	343	430	547	603
Montgomery	305	345	430	547	603
O'Brien	278	343	430	547	603
Page	278	343	430	547	603
Plymouth	278	343	450	562	630
Poweshiek	293	365	467	584	655
Sac	278	343	430	547	603
Sioux	278	343	430	547	603
Tama	278	343	430	547	603
Union	278	343	430	547	635
Wapello	278	343	435	547	608
Wayne	278	343	430	547	603
Winnebago	278	349	430	547	603
Worth	278	343	430	547	612

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

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K A N S A S

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Kansas City, MO-KS MSA	443	557	671	927	1028	Johnson, Leavenworth, Miami, Wyandotte
Lawrence, KS MSA	370	443	568	791	911	Douglas
Topeka, KS MSA	347	399	520	703	792	Shawnee
*Wichita, KS MSA	362	435	582	787	851	Butler, Harvey, Sedgwick

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Allen	283	321	412	531	591
Atchison	283	321	412	531	633
Barton	283	321	412	531	591
Brown	283	321	412	531	591
Chautauqua	283	321	412	531	591
Cheyenne	283	321	412	531	591
Clay	283	321	412	531	591
Coffey	292	321	412	531	617
Cowley	302	321	412	544	591
Decatur	283	321	412	531	591
Doniphan	283	321	412	531	591
Elk	283	321	412	531	591
Ellsworth	283	321	412	531	591
Ford	325	385	478	603	679
Geary	348	366	457	591	640
Graham	283	321	412	531	591
Gray	283	321	412	531	591
Greenwood	283	321	412	531	591
Harper	283	321	412	531	591
Hodgeman	283	321	412	531	591
Jefferson	283	321	419	556	591
Kearny	315	321	423	570	626
Kiowa	283	321	412	531	591
Lane	283	321	412	531	591
Linn	283	321	412	531	591
Lyon	283	321	412	531	630
Marion	283	321	412	531	591
Meade	283	321	412	531	591
Montgomery	283	321	412	531	591
Morton	283	345	412	531	591
Neosho	283	321	412	531	591
Norton	283	321	412	531	591
Osborne	283	321	412	531	592
Pawnee	283	321	412	531	591

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Anderson	283	321	412	531	591
Barber	283	321	412	531	591
Bourbon	283	321	412	531	591
Chase	283	321	412	531	591
Cherokee	283	321	412	531	591
Clark	283	321	412	531	591
Cloud	283	321	412	531	591
Comanche	283	321	412	531	591
Crawford	283	321	419	531	591
Dickinson	283	321	412	531	591
Edwards	283	321	412	531	591
Ellis	283	321	412	531	591
Finney	371	396	507	661	836
Franklin	318	334	430	551	672
Gove	283	321	412	531	591
Grant	293	372	426	583	636
Greeley	283	321	412	531	591
Hamilton	283	321	412	531	591
Haskell	283	329	412	531	591
Jackson	283	321	412	531	591
Jewell	283	321	412	531	591
Kingman	283	321	412	531	591
Labette	283	321	412	531	591
Lincoln	283	321	412	531	591
Logan	283	321	412	531	591
Mcpherson	285	321	412	531	591
Marshall	283	321	412	531	591
Mitchell	283	321	412	531	591
Morris	283	321	412	531	591
Nemaha	283	321	412	531	591
Ness	283	321	412	531	591
Osage	283	321	412	531	591
Ottawa	283	321	412	531	591
Phillips	283	321	412	531	591

* 50th-percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

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K A N S A S continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Pottawatomie	283	321	412	531	604
Rawlins	283	321	412	531	591
Republic	283	321	412	531	591
Riley	351	387	515	643	781
Rush	283	321	412	531	591
Saline	370	383	504	697	705
Seward	341	372	495	620	691
Sherman	283	321	412	531	591
Stafford	283	321	412	531	591
Stevens	283	322	412	531	607
Thomas	283	321	412	531	591
Wabaunsee	283	321	412	531	591
Washington	283	321	412	531	591
Wilson	283	321	412	531	591

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Pratt	283	321	412	542	591
Reno	283	321	412	531	641
Rice	283	321	412	531	591
Rooks	283	321	412	531	591
Russell	283	321	412	531	591
Scott	283	321	412	542	623
Sheridan	283	321	412	531	591
Smith	283	321	412	531	591
Stanton	283	321	412	531	591
Sumner	283	321	412	556	591
Trego	283	321	412	531	591
Wallace	283	321	412	531	531
Wichita	283	321	423	531	659
Woodson	283	321	412	531	591

K E N T U C K Y

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Cincinnati, OH-KY-IN	335	430	576	772	834	Boone, Campbell, Kenton
Clarksville-Hopkinsville, TN-KY MSA	355	397	467	636	654	Christian
Evansville-Henderson, IN-KY MSA	336	400	520	649	727	Henderson
Gallatin County, KY	282	383	470	589	769	Gallatin
Grant County, KY	280	333	441	616	729	Grant
Huntington-Ashland, WV-KY-OH MSA	317	372	458	584	644	Boyd, Carter, Greenup
Lexington, KY MSA	360	448	548	748	845	Bourbon, Clark, Fayette, Jessamine, Madison, Scott Woodford
Louisville, KY-IN MSA	358	460	565	779	821	Bullitt, Jefferson, Oldham
Owensboro, KY MSA	314	325	427	573	600	Daviess
Pendleton County, KY	282	327	435	547	611	Pendleton

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adair	258	315	373	493	541
Anderson	284	301	390	486	546
Barren	258	312	373	481	541
Bell	258	301	376	481	541
Bracken	258	301	373	481	541
Breckinridge	258	301	373	481	541
Caldwell	258	301	373	481	541
Carlisle	258	301	373	481	541
Casey	258	301	373	481	541
Clinton	258	301	373	481	541

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Allen	258	301	373	481	541
Ballard	258	301	373	481	541
Bath	258	301	373	481	541
Boyle	307	311	415	519	582
Breathitt	258	301	373	481	541
Butler	258	301	373	481	541
Calloway	258	301	373	481	541
Carroll	258	301	373	481	541
Clay	258	301	373	481	541
Crittenden	258	301	373	481	541

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

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K E N T U C K Y continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Cumberland	258	301	373	481	541
Elliott	258	301	373	481	541
Fleming	258	301	373	481	541
Franklin	258	380	465	600	758
Garrard	258	301	373	481	541
Grayson	258	301	373	481	541
Hancock	258	301	373	485	575
Harlan	258	392	446	583	688
Hart	258	301	373	481	541
Hickman	258	301	373	481	541
Jackson	258	301	373	481	541
Knott	258	301	373	481	541
Larue	258	301	373	481	541
Lawrence	258	301	373	481	541
Leslie	258	301	373	481	541
Lewis	258	301	373	481	541
Livingston	298	301	401	557	561
Lyon	258	301	373	481	541
Mccreary	258	301	373	481	541
Magoffin	258	301	373	481	541
Marshall	258	307	373	481	579
Mason	258	301	373	481	541
Menifee	258	301	373	481	541
Metcalfe	258	301	373	481	541
Montgomery	258	301	373	481	541
Muhlenberg	258	301	373	481	541
Nicholas	258	301	373	481	541
Owen	258	301	373	481	554
Perry	289	301	388	484	543
Powell	258	301	373	481	541
Robertson	258	301	373	481	541
Rowan	258	301	373	481	561
Shelby	259	341	382	533	541
Spencer	258	307	373	481	541
Todd	258	301	373	481	541
Trimble	258	301	373	481	541
Warren	258	334	445	556	643
Wayne	258	301	373	481	541
Whitley	258	301	373	481	541

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Edmonson	258	301	373	481	541
Estill	258	301	373	481	541
Floyd	272	330	373	516	593
Fulton	258	301	373	481	541
Graves	258	301	373	481	541
Green	258	301	373	481	541
Hardin	320	329	412	554	657
Harrison	258	302	382	481	589
Henry	258	301	373	481	541
Hopkins	258	301	373	481	546
Johnson	258	301	373	481	541
Knox	258	356	457	572	703
Laurel	337	381	452	609	631
Lee	258	301	373	481	541
Letcher	258	301	373	481	541
Lincoln	258	301	373	481	541
Logan	258	301	373	491	541
Mccracken	292	314	393	503	645
Mclean	258	301	373	481	541
Marion	258	301	373	481	541
Martin	258	301	373	481	541
Meade	267	331	382	504	628
Mercer	258	301	373	491	541
Monroe	258	301	373	481	541
Morgan	258	301	373	481	541
Nelson	283	301	384	481	541
Ohio	258	301	373	481	541
Owsley	258	301	373	481	541
Pike	277	316	384	481	567
Pulaski	283	301	382	482	541
Rockcastle	258	301	373	481	541
Russell	258	301	373	481	541
Simpson	258	322	378	482	541
Taylor	311	368	412	551	623
Trigg	258	301	373	481	541
Union	258	301	373	481	541
Washington	258	305	373	481	541
Webster	258	301	373	481	541
Wolfe	258	301	373	481	541

* 50th percentile FMRs are indicated by an * before the MSA name.
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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

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L O U I S I A N A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Alexandria, LA MSA	293	366	459	636	646	Rapides
*Baton Rouge, LA MSA	337	418	519	720	850	Ascension, East Baton Rouge, Livingston, West Baton Rouge
Houma, LA MSA	289	338	433	601	712	Lafourche, Terrebonne
Lafayette, LA MSA	306	353	419	577	683	Lafayette, Acadia, St. Landry, St. Martin
Lake Charles, LA MSA	337	392	496	651	815	Calcasieu
Monroe, LA MSA	316	355	473	637	662	Ouachita
New Orleans, LA	382	438	545	742	898	Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, St. Tammany
St. James Parish, LA	288	326	434	541	606	St. James
Shreveport-Bossier City, LA MSA	357	405	509	681	836	Bossier, Caddo, Webster

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Allen	282	305	376	493	549
Avoyelles	282	305	376	493	552
Bienville	282	305	376	499	590
Cameron	282	305	376	493	549
Claiborne	282	305	376	493	549
De Soto	282	305	376	493	554
East Feliciana	282	305	376	493	549
Franklin	282	305	376	493	554
Iberia	297	310	385	493	549
Jackson	282	305	376	493	549
La Salle	282	305	376	493	554
Madison	282	305	376	493	549
Natchitoches	300	308	397	550	554
Red River	282	305	376	493	554
Sabine	282	313	376	493	580
St. Mary	308	329	414	564	588
Tensas	282	305	376	493	549
Vermilion	282	305	376	493	549
Washington	282	305	376	493	549
West Feliciana	282	366	490	612	687

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Assumption	308	331	392	493	549
Beauregard	342	373	442	578	636
Caldwell	282	305	376	493	549
Catahoula	282	305	376	493	549
Concordia	282	305	376	493	549
East Carroll	282	305	376	493	549
Evangeline	282	305	376	493	549
Grant	282	305	376	493	549
Iberville	282	305	376	493	566
Jefferson Davis	282	305	376	493	558
Lincoln	331	333	415	569	683
Morehouse	282	305	376	493	549
Pointe Coupee	282	305	376	493	596
Richland	282	305	376	493	554
St. Helena	282	305	376	493	549
Tangipahoa	301	313	402	528	562
Union	282	305	376	493	554
Vernon	322	360	410	531	627
West Carroll	282	305	376	493	549
Winn	282	305	376	493	549

M A I N E

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Bangor, ME MSA	366	447	573	749	804	Penobscot county towns of Bangor city, Brewer city Eddington town, Glenburn town, Hampden town, Hermon town Holden town, Kenduskeag town, Milford town Old Town city, Orono town, Orrington town Penobscot Indian I, Veazie town

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

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M A I N E continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Lewiston-Auburn, ME MSA	337	407	523	655	743	Androscoggin county towns of Auburn city, Greene town Lewiston city, Lisbon town, Mechanic Falls tow Poland town, Sabattus town, Turner town, Wales town
Portland, ME MSA	457	589	775	970	1086	Cumberland county towns of Cape Elizabeth tow, Casco town Cumberland town, Falmouth town, Freeport town Gorham town, Gray town, North Yarmouth tow Portland city, Raymond town, Scarborough town South Portland cit, Standish town, Westbrook city Windham town, Yarmouth town
Portsmouth-Rochester, NH-ME PMSA	534	640	822	1055	1293	York county towns of Buxton town, Hollis town Limington town, Old Orchard Beach York county towns of Berwick town, Eliot town Kittery town, South Berwick town, York town

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Androscoggin	338	419	555	694	777	Durham town, Leeds town, Livermore town Livermore Falls to, Minot town
Aroostook	338	398	509	648	746	
Cumberland	496	505	673	914	1050	Baldwin town, Bridgton town, Brunswick town Harpswell town, Harrison town, Naples town New Gloucester tow, Pownal town, Sebago town
Franklin	346	398	509	648	746	
Hancock	364	447	553	697	774	
Kennebec	352	439	528	663	746	
Knox	338	436	565	755	795	
Lincoln	440	490	557	775	914	
Oxford	338	398	509	648	746	
Penobscot	338	398	509	648	746	Alton town, Argyle unorg., Bradford town, Bradley town Burlington town, Carmel town, Carroll plantation Charleston town, Chester town, Clifton town Corinna town, Corinth town, Dexter town, Dixmont town Drew plantation, East Central Penob, East Millinocket t Edinburg town, Enfield town, Etna town, Exeter town Garland town, Greenbush town, Greenfield town Howland town, Hudson town, Kingman unorg., Lagrange town Lakeville town, Lee town, Levant town, Lincoln town Lowell town, Mattawamkeag town, Maxfield town Medway town, Millinocket town, Mount Chase town Newburgh town, Newport town, North Penobscot un Passadumkeag town, Patten town, Plymouth town Prentiss plantatio, Seboeis plantation, Springfield town Stacyville town, Stetson town, Twombly unorg. Webster plantation, Whitney unorg., Winn town Woodville town

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING — PAGE 21

M A I N E continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Piscataquis	338	398	509	648	746	
Sagadahoc	476	545	673	894	1105	
Somerset	354	405	509	648	765	
Waldo	338	398	509	648	746	Belfast city, Belmont town, Brooks town, Burnham town Frankfort town, Freedom town, Islesboro town Jackson town, Knox town, Liberty town, Lincolnville town Monroe town, Montville town, Morrill town Northport town, Palermo town, Prospect town Searsmont town, Searsport town, Stockton Springs t Swanville town, Thorndike town, Troy town, Unity town Waldo town
Washington	338	398	509	648	746	
York	419	478	640	802	897	Acton town, Alfred town, Arundel town, Biddeford city Cornish town, Dayton town, Kennebunk town Kennebunkport town, Lebanon town, Limerick town Lyman town, Newfield town, North Berwick town Ogunquit town, Parsonsfield town, Saco city Sanford town, Shapleigh town, Waterboro town, Wells town

M A R Y L A N D

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Baltimore, MD	461	564	688	911	1042	Anne Arundel, Baltimore, Carroll, Harford, Howard Queen Anne's, Baltimore city
Columbia, MD	594	798	930	1229	1535	Columbia
Cumberland, MD-WV MSA	351	422	522	690	788	Allegany
Hagerstown, MD PMSA	363	436	544	712	813	Washington
*Washington, DC-MD-VA	707	804	943	1285	1550	Calvert, Charles, Frederick, Montgomery, Prince George's
Wilmington-Newark, DE-MD PMSA	472	623	727	986	1192	Cecil

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Caroline	387	417	521	683	775
Garrett	345	462	521	679	855
St. Mary's	557	661	762	1063	1214
Talbot	456	483	644	807	1058
Worcester	345	417	522	724	775

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Dorchester	345	446	521	679	775
Kent	349	430	575	717	865
Somerset	411	461	521	722	854
Wicomico	389	449	580	736	812

M A S S A C H U S E T T S

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Barnstable-Yarmouth, MA MSA	518	694	927	1161	1300	Barnstable county towns of Barnstable town, Brewster town Chatham town, Dennis town, Eastham town, Harwich town Mashpee town, Orleans town, Sandwich town, Yarmouth town

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

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M A S S A C H U S E T T S continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Boston, MA-NH PMSA	746	840	1051	1314	1543	Bristol county towns of Berkley town, Dighton town, Mansfield town, Norton town, Taunton city Essex county towns of Amesbury town, Beverly city, Danvers town, Essex town, Gloucester city, Hamilton town, Ipswich town, Lynn city, Lynnfield town, Manchester town, Marblehead town, Middleton town, Nahant town, Newbury town, Newburyport city, Peabody city, Rockport town, Rowley town, Salem city, Salisbury town, Saugus town, Swampscott town, Topsfield town, Wenham town Middlesex county towns of Acton town, Arlington town, Ashland town, Ayer town, Bedford town, Belmont town, Boxborough town, Burlington town, Cambridge city, Carlisle town, Concord town, Everett city, Framingham town, Holliston town, Hopkinton town, Hudson town, Lexington town, Lincoln town, Littleton town, Malden city, Marlborough city, Maynard town, Medford city, Melrose city, Natick town, Newton city, North Reading town, Reading town, Sherborn town, Shirley town, Somerville city, Stoneham town, Stow town, Sudbury town, Townsend town, Wakefield town, Waltham city, Watertown town, Wayland town, Weston town, Wilmington town, Winchester town, Woburn city Norfolk county towns of Bellingham town, Braintree town, Brookline town, Canton town, Cohasset town, Dedham town, Dover town, Foxborough town, Franklin town, Holbrook town, Medfield town, Medway town, Millis town, Milton town, Needham town, Norfolk town, Norwood town, Plainville town, Quincy city, Randolph town, Sharon town, Stoughton town, Walpole town, Wellesley town, Westwood town, Weymouth town, Wrentham town Plymouth county towns of Carver town, Duxbury town, Hanover town, Hingham town, Hull town, Kingston town, Marshfield town, Norwell town, Pembroke town, Plymouth town, Rockland town, Scituate town, Wareham town Suffolk county towns of Boston city, Chelsea city, Revere city, Winthrop town Worcester county towns of Berlin town, Blackstone town, Bolton town, Harvard town, Hopedale town, Lancaster town, Mendon town, Milford town, Millville town, Southborough town, Upton town
Brockton, MA PMSA	499	657	806	1002	1143	Bristol county towns of Easton town, Raynham town Norfolk county towns of Avon town Plymouth county towns of Abington town, Bridgewater town, Brockton city, East Bridgewater t, Halifax town

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

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M A S S A C H U S E T T S continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Hanson town, Lakeville town, Middleborough town, Plympton town, West Bridgewater t, Whitman town
Fitchburg-Leominster, MA MSA	390	548	712	915	994	Middlesex county towns of Ashby town Worcester county towns of Ashburnham town, Fitchburg city, Gardner city, Leominster city, Lunenburg town, Templeton town, Westminster town, Winchendon town
Lawrence, MA-NH PMSA	540	652	821	1025	1261	Essex county towns of Andover town, Boxford town, Georgetown town, Groveland town, Haverhill city, Lawrence city, Merrimac town, Methuen town, North Andover town, West Newbury town
Lowell, MA-NH PMSA	548	708	855	1071	1198	Middlesex county towns of Billerica town, Chelmsford town, Dracut town, Dunstable town, Groton town, Lowell city, Pepperell town, Tewksbury town, Tyngsborough town, Westford town
New Bedford, MA PMSA	524	640	728	909	1021	Bristol county towns of Acushnet town, Dartmouth town, Fairhaven town, Freetown town, New Bedford city Plymouth county towns of Marion town, Mattapoisett town, Rochester town
Pittsfield, MA MSA	338	480	591	742	919	Berkshire county towns of Adams town, Cheshire town, Dalton town, Hinsdale town, Lanesborough town, Lee town, Lenox town, Pittsfield city, Richmond town, Stockbridge town
Providence-Fall River-Warwick, RI-MA MSA	397	541	650	816	1006	Bristol county towns of Attleboro city, Fall River city, North Attleborough, Rehoboth town, Seekonk town, Somerset town, Swansea town, Westport town
Springfield, MA MSA	421	520	657	821	1010	Franklin county towns of Sunderland town Hampden county towns of Agawam town, Chicopee city, East Longmeadow to, Hampden town, Holyoke city, Longmeadow town, Ludlow town, Monson town, Montgomery town, Palmer town, Russell town, Southwick town, Springfield city, Westfield city, West Springfield t, Wilbraham town Hampshire county towns of Amherst town, Belchertown town, Easthampton town, Granby town, Hadley town, Hatfield town, Huntington town, Northampton city, Southampton town, South Hadley town, Ware town, Williamsburg town
Worcester, MA-CT PMSA	485	587	732	914	1024	Hampden county towns of Holland town Worcester county towns of Auburn town, Barre town, Boylston town, Brookfield town, Charlton town, Clinton town, Douglas town, Dudley town, East Brookfield to, Grafton town, Holden town, Leicester town, Millbury town, Northborough town, Northbridge town, North Brookfield t, Oakham town, Oxford town, Paxton town, Princeton town, Rutland town, Shrewsbury town, Southbridge town, Spencer town, Sterling town, Sturbridge town, Sutton town

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

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M A S S A C H U S E T T S continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Uxbridge town, Webster town, Westborough town
						West Boylston town, West Brookfield to, Worcester city
NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Barnstable	504	691	921	1152	1290	Bourne town, Falmouth town, Provincetown town
						Truro town, Wellfleet town
Berkshire	402	488	576	789	946	Alford town, Becket town, Clarksburg town, Egremont town
						Florida town, Great Barrington t, Hancock town
						Monterey town, Mount Washington t, New Ashford town
						New Marlborough to, North Adams city, Otis town
						Peru town, Sandisfield town, Savoy town, Sheffield town
						Tyringham town, Washington town, West Stockbridge t
						Williamstown town, Windsor town
Dukes	681	692	922	1153	1293	
Franklin	433	536	686	860	1038	Ashfield town, Bernardston town, Buckland town
						Charlemont town, Colrain town, Conway town
						Deerfield town, Erving town, Gill town, Greenfield town
						Hawley town, Heath town, Leverett town, Leyden town
						Monroe town, Montague town, New Salem town
						Northfield town, Orange town, Rowe town, Shelburne town
						Shutesbury town, Warwick town, Wendell town
						Whately town
Hampden	437	596	795	1057	1304	Blandford town, Brimfield town, Chester town
Hampshire	612	620	827	1037	1160	Granville town, Tolland town, Wales town
						Chesterfield town, Cummington town, Goshen town
						Middlefield town, Pelham town, Plainfield town
						Westhampton town, Worthington town
Nantucket	774	1037	1383	1729	1935	
Worcester	487	508	677	848	948	Athol town, Hardwick town, Hubbardston town
						New Braintree town, Petersham town, Phillipston town
						Royalston town, Warren town

M I C H I G A N

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Ann Arbor, MI PMSA	512	619	765	1003	1125	Lenawee, Livingston, Washtenaw
Benton Harbor, MI MSA	398	402	528	660	740	Berrien
*Detroit, MI PMSA	437	592	716	895	1003	Lapeer, Macomb, Monroe, Oakland, St. Clair, Wayne
Flint, MI PMSA	398	452	568	724	794	Genesee
*Grand Rapids-Muskegon-Holland, MI MSA	435	509	622	778	871	Allegan, Kent, Muskegon, Ottawa
Jackson, MI MSA	313	421	534	666	747	Jackson
Kalamazoo-Battle Creek, MI MSA	370	447	563	705	787	Calhoun, Kalamazoo, Van Buren
Lansing-East Lansing, MI MSA	417	490	634	828	957	Clinton, Eaton, Ingham

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

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M I C H I G A N continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Saginaw-Bay City-Midland, MI MSA	364	401	534	666	747	Bay, Midland, Saginaw

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alcona	305	348	441	573	653
Alpena	305	348	441	573	657
Arenac	305	348	441	573	653
Barry	305	377	500	628	703
Branch	354	362	444	607	653
Charlevoix	371	375	475	646	669
Chippewa	305	348	441	573	653
Crawford	334	348	450	616	653
Dickinson	305	375	463	578	653
Gladwin	305	348	441	573	653
Grand Traverse	404	433	577	722	810
Hillsdale	305	348	441	573	653
Huron	305	348	441	573	653
Iosco	305	348	441	573	692
Isabella	341	364	487	657	799
Keweenaw	305	348	441	573	653
Leelanau	414	447	523	683	858
Mackinac	305	348	441	573	653
Marquette	305	348	441	573	653
Mecosta	305	348	441	597	708
Missaukee	321	348	441	573	653
Montmorency	305	348	441	573	653
Oceana	326	348	441	573	653
Ontonagon	305	348	441	573	653
Oscoda	305	348	441	573	653
Presque Isle	305	348	441	573	653
St. Joseph	305	356	441	575	653
Schoolcraft	305	348	441	573	653
Tuscola	332	362	483	603	674

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alger	305	348	441	573	653
Antrim	305	366	441	573	653
Baraga	305	348	441	573	653
Benzie	318	348	441	592	653
Cass	305	348	443	605	653
Cheboygan	321	348	441	573	670
Clare	316	348	441	573	653
Delta	305	348	441	573	653
Emmet	341	408	483	633	674
Gogebic	305	348	441	573	653
Gratiot	318	348	441	573	653
Houghton	305	348	441	573	653
Ionia	374	379	474	591	665
Iron	305	348	441	573	653
Kalkaska	305	348	442	575	727
Lake	308	348	441	573	653
Luce	305	348	441	573	653
Manistee	305	348	441	573	653
Mason	305	348	441	573	653
Menominee	305	348	441	573	653
Montcalm	365	412	521	677	772
Newaygo	352	377	442	573	653
Ogemaw	317	349	441	573	653
Osceola	305	348	441	573	653
Otsego	312	379	477	664	769
Roscommon	337	348	441	573	653
Sanilac	305	359	441	575	653
Shiawassee	305	383	461	642	688
Wexford	305	353	457	599	708

M I N N E S O T A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Duluth-Superior, MN-WI MSA	295	380	487	651	758	St. Louis
Fargo-Moorhead, ND-MN MSA	355	488	590	819	877	Clay
Grand Forks, ND-MN MSA	367	437	575	793	885	Polk

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

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M I N N E S O T A continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
La Crosse, WI-MN MSA	299	385	489	655	793	Houston
*Minneapolis-St. Paul, MN-WI MSA	524	674	862	1166	1321	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey Scott, Sherburne, Washington, Wright
Rochester, MN MSA	343	482	631	872	979	Olmsted
St. Cloud, MN MSA	341	442	522	659	841	Benton, Stearns

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Aitkin	284	368	490	615	685
Beltrami	280	359	479	628	671
Blue Earth	382	461	574	735	933
Carlton	280	341	433	542	620
Chippewa	280	341	433	542	620
Cook	332	341	446	608	633
Crow Wing	280	341	455	569	715
Douglas	280	341	433	542	620
Fillmore	280	341	433	542	620
Goodhue	323	416	554	707	776
Hubbard	286	341	433	542	620
Jackson	280	341	433	542	620
Kandiyohi	345	436	530	665	801
Koochiching	339	345	459	573	751
Lake	280	341	433	542	620
Le Sueur	280	341	433	542	668
Lyon	280	341	433	542	642
Mahnomen	280	341	433	542	620
Martin	280	341	433	542	620
Mille Lacs	297	341	434	604	711
Mower	280	341	433	542	620
Nicollet	352	375	499	663	701
Norman	280	341	433	542	620
Pennington	280	341	433	578	620
Pipestone	280	341	433	542	620
Red Lake	280	354	433	542	620
Renville	280	341	433	542	620
Rock	280	341	433	542	620
Sibley	280	341	433	542	620
Stevens	318	403	455	569	638
Todd	280	341	433	542	620
Wabasha	303	369	467	586	669
Waseca	365	400	509	638	729

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Becker	280	401	451	565	633
Big Stone	280	341	433	542	620
Brown	280	362	433	542	620
Cass	280	341	433	542	620
Clearwater	280	341	433	542	620
Cottonwood	280	341	433	542	620
Dodge	280	341	433	542	620
Faribault	280	341	433	542	620
Freeborn	280	341	441	580	622
Grant	280	341	433	542	620
Itasca	359	363	473	591	663
Kanabec	280	353	457	571	640
Kittson	280	341	433	542	620
Lac qui Parle	280	341	433	542	620
Lake of the Woods	280	341	433	542	620
Lincoln	280	341	433	542	620
Mcleod	333	429	571	709	797
Marshall	280	341	433	542	620
Meeker	334	392	497	625	714
Morrison	310	341	433	542	620
Murray	280	341	433	542	620
Nobles	280	341	433	542	620
Otter Tail	280	341	433	542	620
Pine	309	341	433	545	620
Pope	280	341	433	542	620
Redwood	280	341	433	542	620
Rice	332	453	605	754	845
Roseau	339	345	452	583	636
Steele	332	385	513	641	718
Swift	280	341	433	542	620
Traverse	280	341	433	542	620
Wadena	280	341	433	542	620
Watonwan	280	341	433	542	620

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

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M I N N E S O T A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Wilkin	280	341	433	542	620
Yellow Medicine	280	341	433	542	620

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Winona	327	425	539	673	754

M I S S I S S I P P I

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Biloxi-Gulfport-Pascagpula, MS MSA	413	484	557	776	915	Hancock, Harrison, Jackson
Hattiesburg, MS MSA	300	368	451	605	721	Forrest, Lamar
Jackson, MS MSA	411	468	573	761	804	Hinds, Madison, Rankin
Memphis, TN-AR-MS MSA	407	475	558	775	814	Desoto

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	257	305	380	485	619
Amite	257	305	378	485	546
Benton	257	305	378	485	546
Calhoun	257	305	378	485	546
Chickasaw	257	305	378	485	546
Claiborne	257	305	378	485	546
Clay	257	305	378	485	551
Copiah	257	305	378	485	546
Franklin	260	305	378	485	546
Greene	257	305	378	485	546
Holmes	257	305	378	485	546
Issaquena	270	371	493	617	691
Jasper	257	305	378	485	546
Jefferson Davis	257	305	378	485	546
Kemper	259	305	378	485	546
Lauderdale	257	331	417	541	585
Leake	257	305	378	485	546
Leflore	257	305	378	486	584
Lowndes	317	342	405	508	573
Marshall	257	305	378	485	554
Montgomery	257	305	378	485	546
Newton	257	305	378	485	546
Oktibbeha	315	328	401	557	658
Pearl River	270	305	378	487	546
Pike	261	305	378	485	546
Prentiss	260	305	378	485	546
Scott	257	305	378	485	546
Simpson	260	305	378	485	546

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alcorn	257	305	378	485	546
Attala	257	305	378	485	546
Bolivar	292	305	393	491	560
Carroll	257	305	378	485	546
Choctaw	257	305	378	485	546
Clarke	257	305	378	485	546
Coahoma	299	305	402	505	564
Covington	257	305	378	485	546
George	257	305	378	485	546
Grenada	257	306	378	515	546
Humphreys	257	305	378	485	546
Itawamba	257	305	378	485	546
Jefferson	257	305	378	485	546
Jones	257	305	378	485	546
Lafayette	260	356	475	595	665
Lawrence	257	305	378	485	546
Lee	321	346	417	521	585
Lincoln	257	305	378	485	546
Marion	257	305	378	485	546
Monroe	257	305	378	485	546
Neshoba	257	305	378	485	546
Noxubee	261	305	378	485	546
Panola	266	305	378	485	546
Perry	257	305	378	485	546
Pontotoc	257	305	378	485	546
Quitman	257	305	378	485	546
Sharkey	261	305	378	485	546
Smith	257	305	378	485	546

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

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M I S S I S S I P P I continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Stone	257	305	378	485	546
Tallahatchie	257	305	378	485	546
Tippah	257	305	378	485	546
Tunica	257	305	378	485	546
Walthall	257	305	378	485	546
Washington	278	330	441	570	628
Webster	259	305	378	485	546
Winston	257	305	378	485	546
Yazoo	261	305	378	485	546
Sunflower	284	309	378	485	580
Tate	257	347	401	503	660
Tishomingo	257	305	378	485	546
Union	257	305	378	485	546
Warren	257	336	419	579	694
Wayne	257	305	378	485	546
Wilkinson	257	305	378	485	546
Yalobusha	259	305	378	485	546

M I S S O U R I

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Columbia, MO MSA	273	384	500	695	819	Boone
Joplin, MO MSA	266	308	408	538	578	Jasper, Newton
*Kansas City, MO-KS MSA	443	557	671	927	1028	Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
St. Joseph, MO MSA	255	310	414	522	580	Andrew, Buchanan
*St. Louis, MO-IL MSA	396	482	625	814	899	Crawford-Sullivan (part), Franklin, Jefferson, Lincoln St. Charles, St. Louis, Warren, St. Louis city
Springfield, MO MSA	279	354	458	632	658	Christian, Greene, Webster

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adair	251	313	415	523	627
Audrain	267	288	371	501	579
Barton	251	288	371	481	553
Benton	282	288	384	481	553
Butler	251	288	371	481	553
Callaway	295	299	399	506	656
Cape Girardeau	258	317	421	561	688
Carter	251	288	371	481	553
Chariton	251	288	371	481	553
Cole	251	331	440	587	616
Crawford	274	331	372	491	553
Dallas	251	288	371	481	553
Dekalb	259	288	371	488	553
Douglas	251	288	371	481	553
Gasconade	251	288	371	481	553
Grundy	251	288	371	481	553
Henry	285	290	388	486	637
Holt	251	288	371	481	553
Howell	251	288	371	481	553
Atchison	251	288	371	481	553
Barry	251	297	371	481	553
Bates	251	288	371	481	564
Bollinger	251	288	371	481	553
Caldwell	251	290	391	489	553
Camden	330	333	444	617	726
Carroll	251	288	371	481	553
Cedar	251	288	371	481	553
Clark	251	288	371	481	553
Cooper	251	288	371	481	553
Dade	251	288	371	481	553
Daviess	251	288	371	481	553
Dent	251	288	371	481	553
Dunklin	251	288	371	481	553
Gentry	251	288	371	481	553
Harrison	251	288	371	481	553
Hickory	251	288	371	481	553
Howard	251	288	371	481	555
Iron	251	288	371	481	553

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

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M I S S O U R I continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Johnson	300	336	438	580	686
Laclede	251	288	371	486	553
Lewis	251	288	371	481	553
Livingston	251	288	372	481	553
Macon	269	310	398	518	594
Maries	251	288	371	481	553
Mercer	251	288	371	481	553
Mississippi	251	288	371	481	553
Monroe	251	288	371	481	553
Morgan	251	288	371	481	553
Nodaway	264	320	394	500	603
Osage	251	288	371	481	553
Pemiscot	251	288	371	481	553
Pettis	268	315	421	530	634
Pike	251	288	371	481	581
Pulaski	251	351	394	522	581
Ralls	251	288	371	481	553
Reynolds	251	288	371	481	553
St. Clair	251	288	371	481	553
St. Francois	274	345	437	548	718
Schuyler	251	288	371	481	553
Scott	300	303	405	547	630
Shelby	251	288	371	481	553
Stone	290	309	385	491	553
Taney	283	313	410	553	650
Vernon	251	288	371	494	553
Wayne	251	288	371	481	553
Wright	251	288	371	481	553
Knox	251	288	371	481	553
Lawrence	265	295	371	481	553
Linn	251	288	371	481	553
Mcdonald	251	288	371	481	553
Madison	251	288	371	481	553
Marion	251	288	371	481	553
Miller	274	331	371	486	574
Moniteau	251	288	371	481	553
Montgomery	265	305	392	509	584
New Madrid	251	288	371	481	553
Oregon	251	288	371	481	553
Ozark	251	288	371	481	553
Perry	303	308	412	548	576
Phelps	259	311	398	541	586
Polk	251	289	371	481	579
Putnam	251	288	371	481	553
Randolph	251	288	371	481	553
Ripley	251	288	371	481	553
Ste. Genevieve	251	297	384	491	622
Saline	251	288	382	481	553
Scotland	251	288	371	481	553
Shannon	251	288	371	481	553
Stoddard	251	288	371	481	553
Sullivan	251	288	371	481	553
Texas	251	288	371	481	553
Washington	292	355	397	496	556
Worth	251	288	371	481	553

M O N T A N A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Billings, MT MSA	346	402	537	722	876	Yellowstone
Great Falls, MT MSA	346	400	527	686	816	Cascade
Missoula, MT MSA	346	406	540	696	885	Missoula

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

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M O N T A N A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Beaverhead	311	359	474	615	719
Blaine	311	359	474	615	719
Carbon	354	415	539	701	818
Chouteau	311	359	474	615	719
Daniels	311	381	474	615	719
Deer Lodge	311	359	474	615	719
Fergus	311	359	474	615	719
Gallatin	383	447	599	769	983
Glacier	311	359	474	615	719
Granite	311	359	474	615	719
Jefferson	328	359	474	615	719
Lake	338	359	474	615	719
Liberty	311	359	474	615	719
Mccone	311	378	474	615	719
Meagher	311	381	474	615	719
Musselshell	316	359	474	615	719
Petroleum	311	359	474	615	719
Pondera	311	379	474	615	719
Powell	316	359	474	615	719
Ravalli	311	359	474	615	719
Roosevelt	325	359	474	615	719
Sanders	311	359	474	615	719
Silver Bow	311	359	474	615	719
Sweet Grass	335	359	474	615	719
Toole	317	359	474	615	719
Valley	311	359	474	615	719
Wibaux	311	381	474	615	719

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Big Horn	311	359	474	615	719
Broadwater	311	359	474	615	766
Carter	311	381	474	615	719
Custer	311	359	474	615	719
Dawson	311	359	474	615	719
Fallon	311	359	474	615	719
Flathead	311	360	481	671	790
Garfield	311	359	474	615	719
Golden Valley	311	379	474	615	719
Hill	321	359	474	615	719
Judith Basin	311	381	474	615	719
Lewis and Clark	345	404	538	748	885
Lincoln	338	359	474	615	719
Madison	317	359	474	615	719
Mineral	311	359	474	615	734
Park	311	359	474	615	727
Phillips	311	359	474	615	719
Powder River	311	364	474	615	719
Prairie	311	359	474	615	719
Richland	311	388	474	615	719
Rosebud	311	359	474	615	719
Sheridan	320	359	474	615	719
Stillwater	317	359	474	615	719
Teton	311	359	474	615	719
Treasure	311	359	474	615	719
Wheatland	311	359	474	615	719

N E B R A S K A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Lincoln, NE MSA	326	419	552	733	856	Lancaster
Omaha, NE-IA MSA	352	481	608	797	895	Cass, Douglas, Sarpy, Washington
Sioux City, IA-NE MSA	358	430	536	668	763	Dakota

* 50th percentile FMRs are indicated by an * before the MSA name.
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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

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N E B R A S K A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	260	348	460	576	690
Arthur	250	321	410	524	596
Blaine	250	321	410	524	596
Box Butte	270	321	410	525	619
Brown	250	321	410	524	608
Burt	250	321	410	524	596
Cedar	250	321	410	524	596
Cherry	250	337	410	527	620
Clay	250	321	410	524	596
Cuming	250	338	410	524	596
Dawes	266	321	410	528	623
Deuel	250	321	410	524	596
Dodge	250	321	422	556	596
Fillmore	250	321	410	524	596
Frontier	280	321	410	524	596
Gage	250	322	417	531	596
Garfield	250	321	410	524	596
Grant	250	321	410	524	596
Hall	298	394	525	690	774
Harlan	250	321	410	525	596
Hitchcock	250	321	410	524	596
Hooker	250	336	410	525	596
Jefferson	250	321	410	524	596
Kearney	250	321	410	524	623
Keya Paha	250	321	410	524	596
Knox	250	333	410	524	596
Logan	250	321	410	524	624
Mcpherson	250	321	410	525	596
Merrick	250	321	410	524	596
Nance	250	321	410	524	596
Nuckolls	250	321	410	524	596
Pawnee	250	321	410	528	596
Phelps	279	321	410	525	623
Platte	250	321	410	572	596
Red Willow	250	321	410	524	606
Rock	250	329	410	524	596
Saunders	250	321	410	524	596
Seward	309	321	418	524	596
Sherman	250	323	410	524	624
Stanton	250	321	410	524	596

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Antelope	250	337	410	527	596
Banner	250	321	410	525	596
Boone	250	321	410	524	620
Boyd	250	335	410	524	596
Buffalo	268	389	488	608	735
Butler	250	321	410	524	596
Chase	250	338	410	524	625
Cheyenne	279	321	410	524	596
Colfax	271	334	410	524	596
Custer	279	323	410	524	619
Dawson	273	334	410	528	596
Dixon	278	321	410	524	596
Dundy	250	321	410	524	596
Franklin	250	321	410	529	596
Furnas	250	321	410	524	620
Garden	250	334	410	527	623
Gosper	250	321	410	524	603
Greeley	250	321	410	524	606
Hamilton	250	321	410	528	596
Hayes	250	336	410	524	620
Holt	250	321	410	524	596
Howard	250	321	410	524	596
Johnson	250	325	410	524	596
Keith	250	321	410	524	596
Kimball	250	321	410	525	623
Lincoln	258	334	410	524	596
Loup	250	321	410	524	622
Madison	256	336	444	575	701
Morrill	250	323	410	524	620
Nemaha	250	321	410	524	596
Otoe	250	321	410	524	624
Perkins	250	321	410	524	596
Pierce	250	321	410	524	596
Polk	250	321	410	524	596
Richardson	250	321	410	524	596
Saline	250	335	410	524	596
Scotts Bluff	254	333	422	524	620
Sheridan	250	321	410	524	597
Sioux	250	321	410	524	623
Thayer	250	337	410	524	596

* 50th percentile FMRs are indicated by an * before the MSA name.
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N E B R A S K A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Thomas	250	321	410	524	596
Valley	250	321	410	524	596
Webster	250	321	410	524	596
York	250	321	415	524	596
Thurston	250	321	410	524	596
Wayne	285	321	410	524	620
Wheeler	250	321	410	525	596

N E V A D A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Las Vegas, NV-AZ MSA	554	658	783	1090	1288	Clark, Nye
Reno, NV MSA	509	590	758	1056	1248	Washoe

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Churchill	459	466	622	857	1018
Elko	416	476	635	838	1043
Eureka	338	551	621	773	865
Lander	341	529	621	776	1017
Lyon	404	483	621	864	1018
Pershing	470	476	635	794	908
White Pine	339	467	621	838	880
Douglas	411	600	753	1045	1163
Esmeralda	442	551	621	774	868
Humboldt	497	521	629	824	881
Lincoln	339	509	621	777	869
Mineral	343	469	625	818	1023
Storey	476	482	635	883	1043
Carson City	357	487	651	906	1069

N E W H A M P S H I R E

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Boston, MA-NH PMSA	746	840	1051	1314	1543	Rockingham county towns of Seabrook town South Hampton town
Lawrence, MA-NH PMSA	540	652	821	1025	1261	Rockingham county towns of Atkinson town, Chester town Danville town, Derry town, Fremont town, Hampstead town Kingston town, Newton town, Plaistow town, Raymond town Salem town, Sandown town, Windham town
Lowell, MA-NH PMSA	548	708	855	1071	1198	Hillsborough county towns of Pelham town
Manchester, NH PMSA	441	629	785	981	1100	Hillsborough county towns of Bedford town, Goffstown town Manchester city, Weare town Merrimack county towns of Allenstown town, Hooksett town Rockingham county towns of Auburn town, Candia town Londonderry town
Nashua, NH PMSA	519	723	897	1221	1453	Hillsborough county towns of Amherst town, Brookline town Greenville town, Hollis town, Hudson town Litchfield town, Mason town, Merrimack town Milford town, Mont Vernon town, Nashua city New Ipswich town, Wilton town
Portsmouth-Rochester, NH-ME PMSA	534	640	822	1055	1293	Rockingham county towns of Brentwood town East Kingston town, Epping town, Exeter town Greenland town, Hampton town, Hampton Falls town

* 50th percentile FMRs are indicated by an * before the MSA name.
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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

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N E W H A M P S H I R E continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Kensington town, New Castle town, Newfields town Newington town, Newmarket town, North Hampton town Portsmouth city, Rye town, Stratham town Strafford county towns of Barrington town, Dover city Durham town, Farmington town, Lee town, Madbury town Milton town, Rochester city, Rollinsford town Somersworth city

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Belknap	454	525	690	933	1134	
Carroll	379	521	694	869	1084	
Cheshire	471	559	715	932	1105	
Coos	325	398	509	664	786	
Grafton	419	505	673	869	1099	
Hillsborough	446	557	742	982	1182	Antrim town, Bennington town, Deering town Francestown town, Greenfield town, Hancock town Hillsborough town, Lyndeborough town, New Boston town Peterborough town, Sharon town, Temple town Windsor town
Merrimack	469	560	699	896	1000	Andover town, Boscawen town, Bow town, Bradford town Canterbury town, Chichester town, Concord city Danbury town, Dunbarton town, Epsom town, Franklin city Henniker town, Hill town, Hopkinton town, Loudon town Newbury town, New London town, Northfield town Pembroke town, Pittsfield town, Salisbury town Sutton town, Warner town, Webster town, Wilmot town
Rockingham	487	570	763	1058	1221	Deerfield town, Northwood town, Nottingham town
Strafford	431	585	780	978	1095	Middleton town, New Durham town, Strafford town
Sullivan	453	460	598	785	837	

N E W J E R S E Y

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Atlantic-Cape May, NJ PMSA	528	602	800	1003	1145	Atlantic, Cape May
*Bergen-Passaic, NJ PMSA	735	896	1050	1399	1726	Bergen, Passaic
Jersey City, NJ PMSA	629	742	865	1099	1209	Hudson
Middlesex-Somerset-Hunterdon, NJ PMSA	732	802	1001	1359	1570	Hunterdon, Middlesex, Somerset
Monmouth-Ocean, NJ PMSA	644	771	978	1300	1525	Monmouth, Ocean
*Newark, NJ PMSA	593	758	913	1150	1452	Essex, Morris, Sussex, Union, Warren
*Philadelphia, PA-NJ PMSA	553	679	839	1050	1317	Burlington, Camden, Gloucester, Salem
Trenton, NJ PMSA	531	741	903	1222	1476	Mercer
Vineland-Millville-Bridgeton, NJ PMSA	510	621	748	933	1049	Cumberland

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NEW MEXICO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Albuquerque, NM MSA	439	522	654	901	1063	Bernalillo, Sandoval, Valencia
Las Cruces, NM MSA	306	385	457	627	738	Dona Ana
Santa Fe, NM MSA	443	628	775	1041	1178	Los Alamos, Santa Fe

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Catron	285	333	413	555	627
Cibola	296	323	413	555	627
Curry	285	331	433	555	627
Eddy	292	322	413	555	645
Guadalupe	285	322	413	555	631
Hidalgo	285	322	413	555	627
Lincoln	322	331	436	574	718
Mckinley	285	358	455	566	635
Otero	285	322	413	576	627
Rio Arriba	333	340	418	555	627
San Juan	321	344	430	596	707
Sierra	285	322	413	555	627
Taos	489	495	660	825	1086
Union	285	347	413	555	627

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Chaves	285	323	426	587	627
Colfax	285	331	413	555	627
Debaca	285	323	413	555	627
Grant	337	385	492	660	744
Harding	285	322	413	555	627
Lea	285	322	413	555	627
Luna	313	344	441	591	667
Mora	285	322	413	555	627
Quay	285	412	464	581	650
Roosevelt	285	322	413	555	627
San Miguel	315	322	425	555	627
Socorro	285	322	413	555	643
Torrance	312	337	413	555	627

NEW YORK

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albany-Schenectady-Troy, NY MSA	410	505	621	779	870	Albany, Montgomery, Rensselaer, Saratoga, Schenectady Schoharie
Binghamton, NY MSA	368	413	515	654	734	Broome, Tioga
*Buffalo-Niagara Falls, NY PMSA	392	463	559	697	782	Erie, Niagara
Dutchess County, NY PMSA	623	790	977	1269	1483	Dutchess
Elmira, NY MSA	368	413	507	641	765	Chemung
Glens Falls, NY MSA	368	479	584	731	817	Warren, Washington
Jamestown, NY MSA	368	413	497	641	734	Chautauqua
Nassau-Suffolk, NY PMSA	837	1008	1230	1712	1833	Nassau, Suffolk
New York, NY PMSA	785	874	993	1242	1391	Bronx, Kings, New York, Putnam, Queens, Richmond Rockland
Westchester County, NY	753	982	1196	1554	1855	Westchester
Newburgh, NY-PA PMSA	499	647	793	1006	1147	Orange
Rochester, NY MSA	396	515	626	803	877	Genesee, Livingston, Monroe, Ontario, Orleans, Wayne
Syracuse, NY MSA	394	474	588	751	832	Cayuga, Madison, Onondaga, Oswego
Utica-Rome, NY MSA	368	413	496	641	733	Herkimer, Oneida

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

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NEW YORK continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Allegany	368	413	496	641	733
Chenango	391	413	496	641	733
Columbia	459	483	619	810	867
Delaware	368	413	496	641	788
Franklin	368	413	496	641	733
Greene	368	476	571	737	900
Jefferson	395	466	548	686	768
Otsego	368	434	500	645	820
Schuyler	398	423	503	700	825
Steuben	380	432	496	649	733
Tompkins	480	516	663	925	1090
Wyoming	368	413	496	641	733

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Cattaraugus	368	413	496	641	733
Clinton	368	413	534	667	748
Cortland	368	439	549	686	813
Essex	368	418	525	657	733
Fulton	368	413	496	641	733
Hamilton	368	442	508	641	733
Lewis	368	413	496	641	733
St. Lawrence	368	413	496	641	733
Seneca	392	421	509	658	733
Sullivan	476	534	651	900	912
Ulster	451	627	754	982	1236
Yates	368	413	496	641	733

NORTH CAROLINA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Asheville, NC MSA	359	434	566	738	795	Buncombe, Madison
Charlotte-Gastonia-Rock Hill, NC-SC MSA	534	602	678	894	1070	Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union
Fayetteville, NC MSA	393	447	501	694	824	Cumberland
Goldsboro, NC MSA	357	412	499	643	751	Wayne
Greensboro--Winston-Salem--High Point, NC MSA	426	486	578	797	811	Alamance, Davidson, Davie, Forsyth, Guilford, Randolph Stokes, Yadkin
Greenville, NC MSA	441	448	580	783	957	Pitt
Hickory-Morganton, NC MSA	406	442	513	648	768	Alexander, Burke, Caldwell, Catawba
Jacksonville, NC MSA	367	428	485	672	794	Onslow
*Norfolk-Virginia Beach-Newport News, VA-NC MSA	490	552	652	911	1070	Currituck
Raleigh-Durham-Chapel Hill, NC MSA	545	662	777	1042	1230	Chatham, Durham, Franklin, Johnston, Orange, Wake
Rocky Mount, NC MSA	344	371	451	598	660	Edgecombe, Nash
Wilmington, NC MSA	471	517	633	866	1033	Brunswick, New Hanover

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alleghany	303	354	424	546	647
Ashe	303	349	424	546	620
Beaufort	303	349	424	546	620
Bladen	303	349	424	546	620
Carteret	343	376	458	636	708
Cherokee	303	349	424	546	620
Clay	303	349	424	546	620
Columbus	303	349	424	546	620
Dare	314	498	573	786	804
Gates	303	349	424	546	620

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Anson	303	349	424	546	620
Avery	338	381	463	581	649
Bertie	303	349	424	546	620
Camden	303	387	515	644	723
Caswell	303	349	424	546	620
Chowan	303	349	424	546	620
Cleveland	383	449	536	710	784
Craven	303	379	456	596	638
Duplin	303	349	424	546	620
Graham	303	349	424	546	620

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

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NORTH CAROLINA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Granville	319	349	424	561	635
Halifax	303	349	424	546	620
Haywood	315	358	436	586	637
Hertford	303	349	424	546	620
Hyde	303	349	424	546	620
Jackson	370	426	518	725	947
Lee	303	387	458	593	642
Mcdowell	303	369	442	604	716
Martin	303	349	424	546	620
Montgomery	303	349	424	546	620
Northampton	303	349	424	546	620
Pasquotank	349	374	465	647	653
Perquimans	303	349	424	546	620
Polk	390	495	554	703	799
Robeson	303	356	424	546	620
Rutherford	372	425	516	665	755
Scotland	303	349	424	546	620
Surry	303	349	424	546	620
Transylvania	350	375	474	628	671
Vance	320	362	424	546	620
Washington	303	349	424	546	620
Wilkes	344	388	436	603	677
Yancey	303	355	424	546	639

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Greene	303	349	424	546	620
Harnett	342	395	479	620	700
Henderson	392	403	499	663	763
Hoke	303	349	424	546	620
Iredell	408	419	552	691	772
Jones	303	349	424	546	620
Lenoir	303	349	424	546	620
Macon	303	361	424	546	620
Mitchell	303	396	455	621	649
Moore	348	420	502	686	822
Pamlico	303	349	424	546	620
Pender	365	442	511	659	805
Person	303	349	455	593	695
Richmond	303	349	424	546	620
Rockingham	303	349	424	546	620
Sampson	303	349	424	546	620
Stanly	303	349	430	581	620
Swain	303	349	424	546	620
Tyrrell	303	349	424	546	620
Warren	303	349	424	546	620
Watauga	395	474	599	816	983
Wilson	316	349	429	546	620

NORTH DAKOTA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bismarck, ND MSA	361	405	539	751	888	Burleigh, Morton
Fargo-Moorhead, ND-MN MSA	355	488	590	819	877	Cass
Grand Forks, ND-MN MSA	367	437	575	793	885	Grand Forks

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	239	300	387	503	587
Benson	271	300	387	503	587
Bottineau	239	300	387	503	587
Burke	260	300	387	503	587
Dickey	260	300	387	503	587
Dunn	239	300	387	503	587
Emmons	239	300	387	503	587
Golden Valley	239	308	408	511	587

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Barnes	239	302	399	522	587
Billings	260	300	387	503	587
Bowman	239	300	387	503	587
Cavalier	239	309	410	512	632
Divide	239	300	387	503	587
Eddy	239	300	387	503	587
Foster	239	300	389	503	587
Grant	239	300	387	503	587

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING — PAGE 37

NORTH DAKOTA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Griggs	239	300	387	503	587
Kidder	239	300	387	503	587
Logan	239	300	387	503	587
Mcintosh	239	300	387	503	587
Mclean	253	300	387	503	587
Mountrail	264	300	387	503	587
Oliver	239	300	387	503	587
Pierce	239	300	387	518	587
Ransom	244	300	387	503	587
Richland	251	300	394	503	587
Sargent	239	300	387	503	587
Sioux	239	300	387	503	587
Stark	239	300	387	503	587
Stutsman	285	300	391	545	642
Traill	251	320	387	503	587
Ward	239	329	438	592	706
Williams	239	300	387	503	587

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Hettinger	239	300	387	503	587
Lamoure	260	300	387	503	587
Mchenry	239	300	387	503	587
Mckenzie	239	300	387	503	587
Mercer	239	300	387	503	587
Nelson	239	300	387	503	587
Pembina	239	300	387	510	606
Ramsey	246	329	438	549	717
Renville	276	300	387	506	598
Rolette	258	330	397	503	587
Sheridan	239	300	387	503	587
Slope	239	300	387	503	587
Steele	239	300	387	503	587
Towner	273	308	408	511	673
Walsh	318	340	422	528	591
Wells	254	300	387	503	587

OHIO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Akron, OH PMSA	410	497	638	798	895	Portage, Summit
Brown County, OH	312	367	458	593	654	Brown
Canton-Massillon, OH MSA	302	393	501	627	704	Carroll, Stark
Cincinnati, OH-KY-IN	335	430	576	772	834	Clermont, Hamilton, Warren
*Cleveland-Lorain-Elyria, OH PMSA	467	587	726	924	1040	Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina
Columbus, OH MSA	412	487	626	794	913	Delaware, Fairfield, Franklin, Licking, Madison, Pickaway
Dayton-Springfield, OH MSA	402	451	575	743	834	Clark, Greene, Miami, Montgomery
Hamilton-Middletown, OH PMSA	337	480	615	769	861	Butler
Huntington-Ashland, WV-KY-OH MSA	317	372	458	584	644	Lawrence
Lima, OH MSA	302	362	476	607	665	Allen, Auglaize
Mansfield, OH MSA	302	362	460	574	643	Crawford, Richland
Parkersburg-Marietta, WV-OH MSA	319	383	438	568	620	Washington
Steubenville-Weirton, OH-WV MSA	302	356	446	568	634	Jefferson
Toledo, OH MSA	377	459	561	722	784	Fulton, Lucas, Wood
Wheeling, WV-OH MSA	329	361	446	568	634	Belmont
Youngstown-Warren, OH MSA	354	417	522	656	747	Columbiana, Mahoning, Trumbull

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

OHIO continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	293	348	434	553	620
Athens	406	458	538	705	865
Clinton	335	430	516	719	725
Darke	322	348	437	553	620
Erie	293	391	488	658	799
Gallia	293	348	434	553	620
Hancock	372	377	476	608	666
Harrison	293	348	434	553	620
Highland	293	348	434	553	620
Holmes	293	348	434	553	620
Jackson	293	348	434	553	620
Logan	344	349	450	606	631
Meigs	293	348	434	553	620
Monroe	293	348	434	553	620
Morrow	293	348	434	553	620
Noble	293	348	434	553	628
Paulding	293	348	434	553	620
Pike	308	367	456	583	651
Putnam	304	348	434	553	620
Sandusky	293	381	488	616	680
Seneca	294	348	434	557	620
Tuscarawas	293	348	455	569	638
Van Wert	293	353	434	553	620
Wayne	293	388	477	606	668
Wyandot	293	348	434	553	620

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Ashland	293	348	458	572	641
Champaign	293	358	465	580	650
Coshocton	293	348	434	553	620
Defiance	348	396	522	658	731
Fayette	318	348	434	553	620
Guernsey	293	348	434	553	620
Hardin	293	348	434	553	620
Henry	338	374	467	603	685
Hocking	293	348	434	553	620
Huron	340	370	461	608	647
Knox	345	380	487	629	696
Marion	293	348	434	553	620
Mercer	293	348	434	553	638
Morgan	293	354	434	553	620
Muskingum	293	348	434	553	620
Ottawa	293	434	498	678	725
Perry	293	348	434	553	620
Preble	301	357	444	569	636
Ross	340	355	434	553	620
Scioto	293	348	434	553	620
Shelby	293	358	477	596	668
Union	293	406	536	670	775
Vinton	293	348	434	553	620
Williams	326	364	453	579	648

OKLAHOMA

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Enid, OK MSA	310	314	417	580	664	Garfield
Fort Smith, AR-OK MSA	349	353	464	621	652	Sequoyah
Lawton, OK MSA	384	386	491	682	747	Comanche
*Oklahoma City, OK MSA	401	436	566	786	879	Canadian, Cleveland, Logan, Mcclain, Oklahoma Pottawatomie
*Tulsa, OK MSA	370	442	578	805	949	Creek, Osage, Rogers, Tulsa, Wagoner

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

OKLAHOMA continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adair	260	298	372	495	567
Atoka	260	298	372	495	567
Beckham	264	298	372	495	567
Bryan	260	298	372	495	567
Carter	260	300	375	522	567
Choctaw	260	298	372	495	567
Coal	260	298	372	495	567
Craig	260	298	372	508	601
Delaware	260	298	372	495	578
Ellis	260	298	372	495	567
Grady	285	298	386	524	638
Greer	260	298	372	495	567
Harper	260	298	372	495	567
Hughes	260	298	372	495	567
Jefferson	260	298	372	495	567
Kay	288	304	400	558	654
Kiowa	260	298	372	495	567
Le Flore	260	298	372	495	567
Love	260	298	376	495	567
Mcintosh	260	298	372	495	567
Marshall	260	298	372	495	567
Murray	260	298	372	495	567
Noble	260	298	372	495	567
Okfuskee	260	298	372	495	567
Ottawa	279	298	372	495	567
Payne	346	409	523	723	810
Pontotoc	260	298	372	495	567
Roger Mills	260	298	372	495	567
Stephens	264	298	372	495	590
Tillman	260	298	372	495	567
Washita	260	298	372	495	567
Woodward	260	298	372	495	567

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alfalfa	260	298	372	495	567
Beaver	260	302	372	495	567
Blaine	260	298	372	495	567
Caddo	260	298	372	495	567
Cherokee	272	308	372	495	576
Cimarron	260	298	372	495	567
Cotton	260	298	372	495	567
Custer	260	298	382	531	612
Dewey	260	298	372	495	567
Garvin	260	298	372	495	571
Grant	260	298	372	495	567
Harmon	260	298	372	495	567
Haskell	260	298	372	495	567
Jackson	260	337	411	540	609
Johnston	260	298	372	495	567
Kingfisher	260	307	381	498	567
Latimer	260	298	372	495	567
Lincoln	278	298	372	495	567
Mccurtain	260	298	372	495	567
Major	260	312	372	516	567
Mayes	260	302	402	508	567
Muskogee	282	316	372	514	567
Nowata	260	298	372	495	567
Okmulgee	264	298	372	495	567
Pawnee	293	298	386	496	567
Pittsburg	260	298	372	495	567
Pushmataha	260	298	372	495	567
Seminole	260	298	372	495	567
Texas	260	309	372	496	567
Washington	260	357	434	576	672
Woods	260	298	372	495	567

OREGON

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Corvallis, OR MSA	401	520	660	992	1053	Benton
Eugene-Springfield, OR MSA	347	476	620	866	1000	Lane
Medford-Ashland, OR MSA	356	467	624	868	967	Jackson

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

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O R E G O N continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Portland-Vancouver, OR-WA PMSA	492	606	747	1038	1127	Clackamas, Columbia, Multnomah, Washington, Yamhill
Salem, OR PMSA	417	492	630	867	908	Marion, Polk

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Baker	323	382	496	683	761
Coos	323	394	523	728	761
Curry	323	439	582	746	917
Douglas	323	382	496	683	813
Grant	323	382	496	683	761
Hood River	379	426	579	754	892
Josephine	323	392	504	683	795
Lake	323	382	496	683	761
Linn	387	460	597	821	915
Morrow	323	382	496	683	761
Tillamook	323	382	496	683	761
Union	323	382	496	683	761
Wasco	393	487	544	741	833

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Clatsop	372	441	577	787	885
Crook	323	382	496	683	761
Deschutes	399	458	613	854	988
Gilliam	323	407	496	683	761
Harney	323	382	496	683	761
Jefferson	323	382	496	683	761
Klamath	323	382	496	683	808
Lincoln	392	398	530	737	802
Malheur	323	382	496	683	761
Sherman	323	382	496	683	761
Umatilla	323	382	496	683	761
Wallowa	323	382	496	683	761
Wheeler	323	382	496	683	761

P E N N S Y L V A N I A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Allentown-Bethlehem-Easton, PA MSA	389	528	628	818	918	Carbon, Lehigh, Northampton
Altoona, PA MSA	297	377	452	590	660	Blair
Erie, PA MSA	301	393	463	598	668	Erie
Harrisburg-Lebanon-Carlisle, PA MSA	357	457	586	739	824	Cumberland, Dauphin, Lebanon, Perry
Johnstown, PA MSA	301	383	460	598	668	Cambria, Somerset
Lancaster, PA MSA	396	485	605	790	850	Lancaster
Newburgh, NY-PA PMSA	499	647	793	1006	1147	Pike
*Philadelphia, PA-NJ PMSA	553	679	839	1050	1317	Bucks, Chester, Delaware, Montgomery, Philadelphia
Pittsburgh, PA PMSA	398	487	588	736	822	Allegheny, Beaver, Butler, Fayette, Washington Westmoreland
Reading, PA MSA	313	463	571	713	804	Berks
Scranton--Wilkes-Barre--Hazleton, PA MSA	301	421	505	630	761	Columbia, Lackawanna, Luzerne, Wyoming
Sharon, PA MSA	330	383	460	598	668	Mercer
State College, PA MSA	433	530	656	859	919	Centre
Williamsport, PA MSA	301	385	463	598	668	Lycoming
York, PA MSA	336	460	571	712	797	York

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

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P E N N S Y L V A N I A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	296	399	529	686	868
Bedford	296	377	451	589	658
Cameron	296	377	451	589	658
Clearfield	296	377	451	589	658
Crawford	296	377	451	589	658
Forest	296	377	451	589	658
Fulton	296	377	451	589	658
Huntingdon	296	377	451	589	658
Jefferson	296	377	451	589	658
Lawrence	296	377	451	589	658
Mifflin	329	377	451	589	658
Montour	350	377	474	658	777
Potter	296	377	451	589	658
Snyder	356	377	452	589	658
Susquehanna	354	377	451	589	699
Union	357	475	593	742	829
Warren	296	377	451	589	658

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Armstrong	300	398	451	589	740
Bradford	300	381	464	608	666
Clarion	296	377	451	589	658
Clinton	296	377	451	589	658
Elk	296	377	451	589	658
Franklin	296	377	457	630	658
Greene	296	377	451	589	658
Indiana	340	379	451	589	658
Juniata	296	377	451	589	658
Mc Kean	296	379	451	589	658
Monroe	474	565	698	953	1065
Northumberland	313	396	483	642	715
Schuylkill	296	377	470	589	658
Sullivan	296	377	451	589	658
Tioga	296	377	451	589	658
Venango	296	377	451	589	658
Wayne	297	459	541	690	886

R H O D E I S L A N D

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
New London-Norwich, CT-RI MSA	518	627	764	955	1092	Washington county towns of Hopkinton town, Westerly town
Providence-Fall River-Warwick, RI-MA MSA	397	541	650	816	1006	Bristol county towns of Barrington town, Bristol town Warren town Kent county towns of Coventry town, East Greenwich tow Warwick city, West Greenwich tow, West Warwick town Newport county towns of Jamestown town Little Compton tow, Tiverton town Providence county towns of Burrillville town Central Falls city, Cranston city, Cumberland town East Providence ci, Foster town, Glocester town Johnston town, Lincoln town, North Providence t North Smithfield t, Pawtucket city, Providence city Scituate town, Smithfield town, Woonsocket city Washington county towns of Charlestown town, Exeter town Narragansett town, North Kingstown to, Richmond town South Kingstown to

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

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RHODE ISLAND continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Newport	588	685	880	1102	1232	Middletown town, Newport city, Portsmouth town
Washington	695	782	879	1134	1249	New Shoreham town

SOUTH CAROLINA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Augusta-Aiken, GA-SC MSA	400	478	564	766	906	Aiken, Edgefield
Charleston-North Charleston, SC MSA	422	490	562	747	871	Berkeley, Charleston, Dorchester
Charlotte-Gastonia-Rock Hill, NC-SC MSA	534	602	678	894	1070	York
Columbia, SC MSA	452	498	572	756	871	Lexington, Richland
Florence, SC MSA	343	381	495	617	693	Florence
Greenville-Spartanburg-Anderson, SC MSA	406	492	555	699	822	Anderson, Cherokee, Greenville, Pickens, Spartanburg
Myrtle Beach, SC MSA	443	451	577	722	809	Horry
Sumter, SC MSA	362	401	455	623	740	Sumter

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Abbeville	298	347	422	542	620
Bamberg	298	347	422	542	620
Beaufort	425	521	600	749	839
Chester	298	347	422	542	620
Clarendon	298	347	422	542	620
Darlington	298	347	422	542	620
Fairfield	298	399	455	566	635
Greenwood	299	347	422	542	620
Jasper	298	347	422	542	620
Lancaster	312	348	422	542	620
Lee	298	347	422	542	620
Marion	298	347	422	542	620
Newberry	298	347	422	542	620
Orangeburg	298	347	422	542	620
Union	298	347	422	542	620

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Allendale	298	347	422	542	620
Barnwell	313	347	424	542	620
Calhoun	298	347	422	542	620
Chesterfield	298	347	422	542	620
Colleton	298	347	422	542	620
Dillon	298	347	422	542	620
Georgetown	298	379	425	542	645
Hampton	298	347	422	542	620
Kershaw	298	347	422	542	620
Laurens	298	347	422	542	620
Mccormick	298	347	422	542	660
Marlboro	298	347	422	542	620
Oconee	298	347	422	542	620
Saluda	298	347	422	542	620
Williamsburg	298	347	422	542	620

SOUTH DAKOTA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Rapid City, SD MSA	374	445	593	806	976	Pennington
Sioux Falls, SD MSA	361	500	634	802	921	Lincoln, Minnehaha

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

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SOUTH DAKOTA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aurora	265	355	442	584	676
Bennett	265	352	442	584	676
Brookings	283	450	498	674	795
Brule	265	352	442	584	676
Butte	306	417	554	724	853
Charles Mix	265	352	442	584	676
Clay	295	391	491	650	807
Corson	265	352	442	584	676
Davison	296	374	470	630	721
Deuel	265	352	442	584	676
Douglas	294	352	442	584	676
Fall River	302	352	442	584	676
Grant	265	352	442	584	676
Haakon	265	360	442	584	676
Hand	265	352	442	584	676
Harding	265	360	442	584	676
Hutchinson	265	352	442	584	676
Jackson	265	357	442	584	676
Jones	265	352	442	584	676
Lake	265	357	442	584	676
Lyman	265	352	442	584	676
Mcpherson	265	352	442	584	676
Meade	372	420	560	733	865
Miner	265	357	442	584	676
Perkins	265	352	442	584	676
Roberts	265	352	442	584	676
Shannon	265	357	442	584	676
Stanley	265	360	442	584	676
Todd	292	352	442	584	676
Turner	265	352	442	584	676
Walworth	265	360	442	584	676
Ziebach	265	352	442	584	676

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Beadle	265	352	442	584	676
Bon Homme	294	352	442	584	676
Brown	292	387	486	643	744
Buffalo	265	352	442	584	682
Campbell	265	352	442	584	676
Clark	265	352	442	584	676
Codington	305	404	509	673	779
Custer	265	352	442	584	676
Day	296	352	442	584	676
Dewey	265	352	442	584	676
Edmunds	265	352	442	584	676
Faulk	265	352	465	584	676
Gregory	266	352	442	584	676
Hamlin	265	352	442	584	676
Hanson	269	368	490	616	690
Hughes	301	364	482	634	751
Hyde	265	358	442	584	676
Jerauld	265	355	442	584	676
Kingsbury	288	352	442	584	676
Lawrence	304	437	550	753	852
Mccook	265	352	442	584	676
Marshall	313	352	442	584	676
Mellette	316	357	442	584	676
Moody	265	352	442	584	676
Potter	265	352	442	584	676
Sanborn	265	352	442	584	676
Spink	287	352	449	584	676
Sully	265	352	442	584	676
Tripp	265	352	442	584	676
Union	278	352	442	584	676
Yankton	265	352	442	584	676

TENNESSEE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Chattanooga, TN-GA MSA	383	447	537	694	790	Hamilton, Marion
Clarksville-Hopkinsville, TN-KY MSA	355	397	467	636	654	Montgomery
Jackson, TN MSA	275	363	487	673	677	Madison, Chester

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

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T E N N E S S E E continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Johnson City-Kingsport-Bristol, TN-VA MSA	319	381	471	611	724	Carter, Hawkins, Sullivan, Unicoi, Washington
Knoxville, TN MSA	319	392	493	658	789	Anderson, Blount, Knox, Loudon, Sevier, Union
Memphis, TN-AR-MS MSA	407	475	558	775	814	Fayette, Shelby, Tipton
Nashville, TN MSA	447	535	660	898	1007	Cheatham, Davidson, Dickson, Robertson, Rutherford Sumner, Williamson, Wilson

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bedford	246	317	388	488	543
Bledsoe	246	289	364	480	538
Campbell	248	289	364	480	538
Carroll	246	300	364	480	538
Clay	250	289	364	480	538
Coffee	246	344	387	538	613
Cumberland	260	289	379	527	538
Dekalb	246	289	364	480	538
Fentress	246	289	364	480	538
Gibson	246	289	364	480	538
Grainger	250	289	364	480	538
Grundy	246	289	364	480	538
Hancock	246	289	364	480	538
Hardin	246	289	364	480	538
Henderson	246	289	364	480	538
Hickman	291	296	392	516	548
Humphreys	246	301	364	480	538
Jefferson	269	289	375	480	595
Lake	246	289	364	480	538
Lawrence	246	289	364	480	538
Lincoln	246	289	369	480	538
Mcnairy	246	289	364	480	538
Marshall	290	316	412	520	579
Meigs	246	289	364	480	538
Moore	246	289	364	480	538
Obion	286	290	371	492	538
Perry	246	291	364	480	538
Polk	246	289	364	480	538
Rhea	246	308	364	485	538
Scott	246	289	364	480	538
Smith	246	289	364	480	538
Trousdale	246	303	402	505	661
Warren	274	289	374	480	538

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Benton	266	303	364	480	538
Bradley	246	311	415	561	682
Cannon	246	289	364	480	538
Claiborne	246	289	364	480	538
Cocke	246	289	364	480	538
Crockett	246	289	364	480	538
Decatur	246	289	364	480	538
Dyer	308	312	416	520	649
Franklin	258	289	364	502	590
Giles	246	314	389	486	544
Greene	246	289	364	480	538
Hamblen	246	290	381	506	538
Hardeman	246	289	364	480	538
Haywood	259	301	401	502	561
Henry	246	289	364	480	538
Houston	246	289	364	480	538
Jackson	246	289	364	480	538
Johnson	246	289	364	480	538
Lauderdale	246	289	368	480	538
Lewis	246	289	364	480	538
Mcminn	246	289	364	482	538
Macon	246	289	364	480	538
Maury	353	360	480	601	670
Monroe	246	289	364	480	538
Morgan	246	289	364	480	538
Overton	246	289	364	480	538
Pickett	246	289	364	480	538
Putnam	300	303	389	535	575
Roane	266	289	364	491	590
Sequatchie	246	289	364	480	538
Stewart	246	289	364	480	538
Van Buren	246	289	364	480	538
Wayne	246	289	364	480	538

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

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T E N N E S S E E continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Weakley	267	289	364	480	538
White	250	289	364	480	538

T E X A S

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Abilene, TX MSA	350	389	502	676	822	Taylor
Amarillo, TX MSA	296	373	464	647	763	Potter, Randall
*Austin-San Marcos, TX MSA	551	667	887	1233	1457	Bastrop, Caldwell, Hays, Travis, Williamson
Beaumont-Port Arthur, TX MSA	337	408	496	658	696	Hardin, Jefferson, Orange
Brazoria, TX PMSA	491	547	683	952	1120	Brazoria
Brownsville-Harlingen-San Benito, TX MSA	310	391	488	611	763	Cameron
Bryan-College Station, TX MSA	394	458	579	808	953	Brazos
Corpus Christi, TX MSA	369	453	578	787	931	Nueces, San Patricio
*Dallas, TX	530	610	783	1083	1281	Collin, Dallas, Denton, Ellis, Hunt, Kaufman, Rockwall
El Paso, TX MSA	416	466	552	764	907	El Paso
*Fort Worth-Arlington, TX PMSA	502	546	707	988	1164	Hood, Johnson, Parker, Tarrant
Galveston-Texas City, TX PMSA	482	495	620	861	1017	Galveston
Henderson County, TX	306	364	445	606	728	Henderson
*Houston, TX PMSA	487	548	709	988	1165	Chambers, Fort Bend, Harris, Liberty, Montgomery, Waller
Killeen-Temple, TX MSA	415	432	547	760	836	Bell, Coryell
Laredo, TX MSA	336	387	508	635	715	Webb
Longview-Marshall, TX MSA	333	375	460	628	685	Gregg, Harrison, Upshur
Lubbock, TX MSA	319	403	523	728	807	Lubbock
Mc Allen-Edinburg-Mission, TX MSA	289	383	439	547	616	Hidalgo
Odessa-Midland, TX MSA	319	368	491	683	791	Ector, Midland
San Angelo, TX MSA	296	378	458	629	742	Tom Green
*San Antonio, TX MSA	413	477	616	857	1014	Bexar, Comal, Guadalupe, Wilson
Sherman-Denison, TX MSA	296	404	488	624	746	Grayson
Texarkana, TX-Texarkana, AR MSA	322	393	480	633	671	Bowie
Tyler, TX MSA	370	409	499	691	731	Smith
Victoria, TX MSA	366	370	468	649	731	Victoria
Waco, TX MSA	322	394	519	690	727	Mclennan
Wichita Falls, TX MSA	355	396	478	636	750	Archer, Wichita

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

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T E X A S continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Anderson	347	391	438	610	616
Angelina	315	366	412	571	674
Armstrong	289	334	436	547	616
Austin	289	334	402	552	616
Bandera	310	334	402	547	616
Bee	289	334	402	540	616
Borden	289	334	402	540	616
Brewster	289	334	402	544	652
Brooks	289	334	402	540	616
Burleson	289	334	422	571	696
Calhoun	309	334	402	557	659
Camp	391	396	495	619	692
Cass	289	334	402	540	616
Cherokee	322	335	410	540	616
Clay	289	340	402	540	629
Coke	289	334	402	540	616
Collingsworth	289	334	402	540	616
Comanche	289	334	402	540	616
Cooke	313	334	423	576	639
Crane	289	334	402	540	616
Crosby	289	334	402	540	616
Dallam	289	334	402	540	616
Deaf Smith	289	334	402	540	627
Dewitt	289	334	402	540	616
Dimmit	289	334	402	540	616
Duval	289	334	402	540	616
Edwards	289	334	402	540	616
Falls	289	334	402	540	616
Fayette	289	334	402	540	616
Floyd	289	334	402	540	616
Franklin	289	334	402	557	616
Frio	289	334	402	540	616
Garza	289	334	402	540	616
Glasscock	289	334	402	540	616
Gonzales	289	334	402	540	616
Grimes	289	334	402	544	642
Hall	289	334	402	540	616
Hansford	289	334	402	540	633
Hartley	289	334	402	540	616
Hemphill	289	372	416	581	616

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Andrews	289	334	402	540	616
Aransas	289	356	473	659	663
Atascosa	289	334	402	540	616
Bailey	289	334	402	540	616
Baylor	289	334	402	540	616
Blanco	289	334	425	593	626
Bosque	289	334	402	540	616
Briscoe	289	334	402	540	616
Brown	289	334	403	542	662
Burnet	367	424	522	726	849
Callahan	289	334	402	540	616
Carson	289	334	402	540	616
Castro	291	334	402	540	616
Childress	289	334	402	540	616
Cochran	289	334	402	540	616
Coleman	289	334	402	540	616
Colorado	289	334	402	540	616
Concho	289	334	402	540	616
Cottle	289	334	402	540	616
Crockett	289	334	402	540	616
Culberson	289	334	402	540	616
Dawson	289	334	402	540	616
Delta	289	346	402	540	616
Dickens	289	334	402	540	616
Donley	289	334	402	540	616
Eastland	289	334	402	540	616
Erath	299	339	438	567	616
Fannin	293	334	402	542	616
Fisher	289	334	402	540	616
Foard	289	334	402	540	616
Freestone	289	334	402	540	616
Gaines	295	334	402	540	616
Gillespie	289	364	471	648	661
Goliad	289	334	402	540	616
Gray	316	334	429	540	637
Hale	289	334	402	540	616
Hamilton	289	334	402	540	616
Hardeman	289	334	402	540	616
Haskell	289	334	402	540	616
Hill	289	334	402	540	616

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

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T E X A S continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Hockley	295	344	402	545	616
Houston	289	334	402	540	616
Hudspeth	348	393	438	550	723
Irion	289	334	402	540	616
Jackson	289	335	402	540	616
Jeff Davis	289	334	402	540	616
Jim Wells	289	334	402	540	625
Karnes	289	334	402	540	616
Kenedy	289	334	402	540	616
Kerr	289	374	467	651	767
King	289	334	402	540	616
Kleberg	351	364	443	619	729
Lamar	289	359	421	589	696
Lampasas	289	334	402	547	646
Lavaca	289	334	402	540	616
Leon	289	371	415	540	684
Lipscomb	289	334	402	540	616
Llano	289	372	495	620	813
Lynn	289	334	402	540	616
Mcmullen	289	334	402	540	616
Marion	289	334	402	540	639
Mason	289	334	402	540	616
Maverick	289	334	402	540	615
Menard	289	334	402	540	616
Mills	289	334	402	540	616
Montague	289	334	402	540	616
Morris	289	334	402	540	616
Nacogdoches	304	368	476	595	704
Newton	289	334	402	540	616
Ochiltree	289	334	402	540	616
Palo Pinto	289	334	402	540	641
Parmer	289	334	402	540	616
Polk	322	352	410	552	669
Rains	289	374	452	628	633
Real	289	334	402	540	616
Reeves	289	334	402	540	616
Roberts	289	337	402	540	616
Runnels	289	334	402	540	616
Sabine	289	334	402	540	616
San Jacinto	302	341	402	540	631

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Hopkins	337	363	425	593	639
Howard	308	334	402	544	616
Hutchinson	289	334	416	581	686
Jack	289	334	402	540	616
Jasper	289	334	411	547	671
Jim Hogg	289	334	402	540	616
Jones	289	334	402	540	616
Kendall	289	421	473	659	779
Kent	289	334	402	540	616
Kimble	289	334	438	549	616
Kinney	289	334	402	540	616
Knox	289	334	402	540	616
Lamb	289	334	402	540	616
La Salle	289	334	402	540	616
Lee	327	368	413	577	647
Limestone	289	334	402	540	616
Live Oak	289	334	402	540	616
Loving	289	334	402	540	616
Mcculloch	297	334	402	540	616
Madison	289	343	402	540	635
Martin	289	334	402	540	616
Matagorda	334	365	452	628	633
Medina	289	334	402	540	616
Milam	289	334	402	540	616
Mitchell	289	334	402	540	616
Moore	289	339	402	540	627
Motley	289	334	402	540	616
Navarro	346	364	437	555	616
Nolan	297	334	402	540	616
Oldham	289	334	436	547	640
Panola	289	340	402	540	616
Pecos	289	334	402	544	642
Presidio	289	334	402	540	616
Reagan	368	374	497	625	816
Red River	289	372	416	540	616
Refugio	289	334	402	540	616
Robertson	289	383	426	540	616
Rusk	301	334	402	540	616
San Augustine	289	334	402	540	616
San Saba	289	334	402	540	616

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

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T E X A S continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Schleicher	289	334	402	540	616
Shackelford	289	334	402	540	616
Sherman	289	334	402	540	616
Starr	289	334	402	540	616
Sterling	289	334	402	540	616
Sutton	289	334	402	540	616
Terrell	289	334	402	540	616
Throckmorton	289	334	402	540	616
Trinity	300	339	402	540	616
Upton	289	334	402	540	616
Val Verde	289	384	451	563	664
Walker	390	414	507	672	710
Washington	359	366	489	610	802
Wheeler	289	334	402	540	616
Willacy	289	334	402	540	616
Wise	289	337	405	564	616
Yoakum	289	381	467	584	767
Zapata	289	334	402	540	616

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Scurry	289	334	417	583	688
Shelby	289	334	402	540	616
Somervell	331	372	416	571	616
Stephens	289	334	402	540	616
Stonewall	289	334	402	540	616
Swisher	289	334	402	540	616
Terry	289	334	402	540	616
Titus	307	382	432	596	616
Tyler	289	334	430	540	708
Uvalde	289	334	402	540	616
Van Zandt	309	334	417	569	688
Ward	289	334	402	540	616
Wharton	289	334	402	540	616
Wilbarger	289	334	402	540	636
Winkler	289	334	402	540	616
Wood	289	334	416	581	686
Young	289	334	402	540	625
Zavala	289	334	402	540	616

U T A H

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Kane County, UT	328	404	505	676	814	Kane
Provo-Orem, UT MSA	454	479	593	822	972	Utah
*Salt Lake City-Ogden, UT MSA	490	568	721	1003	1175	Davis, Salt Lake, Weber

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Beaver	311	381	477	638	767
Cache	346	426	534	713	858
Daggett	338	462	613	769	861
Emery	311	381	477	638	767
Grand	311	381	477	638	767
Juab	311	381	477	638	767
Morgan	311	381	477	638	767
Rich	311	381	477	638	767
Sanpete	311	381	477	638	767
Summit	460	568	708	955	1162
Uintah	311	381	477	638	767
Washington	383	472	626	837	1024

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Box Elder	346	384	481	643	775
Carbon	334	381	477	638	767
Duchesne	311	381	477	638	767
Garfield	311	381	477	638	767
Iron	317	432	538	673	791
Millard	311	381	477	638	767
Piute	311	381	477	638	767
San Juan	311	381	477	638	767
Sevier	315	381	477	638	767
Tooele	311	395	477	638	767
Wasatch	311	395	477	638	767
Wayne	311	381	477	638	767

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

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V E R M O N T

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Burlington, VT MSA	499	610	815	1111	1341	Chittenden county towns of Burlington city Charlotte town, Colchester town, Essex town Hinesburg town, Jericho town, Milton town, Richmond town St. George town, Shelburne town, South Burlington c Williston town, Winooski city Franklin county towns of Fairfax town, Georgia town St. Albans city, St. Albans town, Swanton town Grand Isle county towns of Grand Isle town South Hero town

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Addison	444	535	623	868	974	
Bennington	401	506	651	827	964	
Caledonia	386	462	563	710	814	
Chittenden	408	658	742	1032	1216	Bolton town, Buels gore, Huntington town, Underhill town Westford town
Essex	369	445	550	692	795	
Franklin	444	503	616	782	899	Bakersfield town, Berkshire town, Enosburg town Fairfield town, Fletcher town, Franklin town Highgate town, Montgomery town, Richford town Sheldon town
Grand Isle	382	460	570	717	824	Alburg town, Isle La Motte town, North Hero town
Lamoille	354	493	587	804	922	
Orange	368	482	595	785	880	
Orleans	342	411	509	641	736	
Rutland	406	526	642	806	902	
Washington	381	473	638	799	896	
Windham	439	508	675	856	942	
Windsor	473	535	669	859	1017	

V I R G I N I A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Charlottesville, VA MSA	448	530	677	900	1009	Albemarle, Fluvanna, Greene, Charlottesville city
Clarke County, VA	335	472	611	839	856	Clarke
Culpeper County, VA	401	584	679	898	1076	Culpeper
Danville, VA MSA	306	385	452	607	732	Pittsylvania, Danville city
Johnson City-Kingsport-Bristol, TN-VA MSA	319	381	471	611	724	Scott, Washington, Bristol city
King George County, VA	406	539	606	842	848	King George
Lynchburg, VA MSA	363	401	461	607	732	Amherst, Bedford, Campbell, Bedford city, Lynchburg city
*Norfolk-Virginia Beach-Newport News, VA-NC MSA	490	552	652	911	1070	Gloucester, Isle of Wight, James City, Mathews, York Chesapeake city, Hampton city, Newport News city Norfolk city, Poquoson city, Portsmouth city

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING — PAGE 50

V I R G I N I A continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Richmond-Petersburg, VA MSA	525	595	693	963	1137	Suffolk city, Virginia Beach city, Williamsburg city Charles City, Chesterfield, Dinwiddie, Goochland, Hanover Henrico, New Kent, Powhatan, Prince George Colonial Heights city, Hopewell city, Petersburg city Richmond city
Roanoke, VA MSA	308	385	500	641	798	Botetourt, Roanoke, Roanoke city, Salem city
Warren County, VA	327	448	597	783	977	Warren
*Washington, DC-MD-VA	707	804	943	1285	1550	Arlington, Fairfax, Loudoun, Prince William, Spotsylvania Stafford, Alexandria city, Fairfax city Falls Church city, Fauquier, Fredericksburg city Manassas city, Manassas Park city

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Accomack	356	386	450	597	720	Alleghany	313	379	445	597	720
Amelia	300	379	445	597	720	Appomattox	300	379	445	597	720
Augusta	300	390	473	622	758	Bath	300	379	445	597	720
Bland	300	379	445	597	720	Brunswick	300	379	445	597	720
Buchanan	300	379	445	597	720	Buckingham	300	379	445	597	720
Caroline	426	431	577	765	806	Carroll	300	379	445	597	720
Charlotte	300	379	445	597	720	Craig	300	379	445	597	720
Cumberland	300	413	478	597	720	Dickenson	300	379	445	597	720
Essex	300	423	499	695	820	Floyd	300	379	445	597	720
Franklin	300	379	445	597	720	Frederick	408	471	566	775	928
Giles	300	379	445	597	720	Grayson	300	379	445	597	720
Greensville	300	390	445	597	720	Halifax	300	379	445	597	720
Henry	300	379	445	597	720	Highland	300	379	445	597	720
King and Queen	300	431	485	607	720	King William	300	413	461	597	720
Lancaster	376	422	476	634	772	Lee	300	379	445	597	720
Louisa	300	392	482	670	720	Lunenburg	300	379	445	597	720
Madison	301	448	504	632	827	Mecklenburg	300	379	445	597	720
Middlesex	300	381	445	597	720	Montgomery	309	406	477	662	783
Nelson	300	379	445	597	720	Northampton	300	379	445	597	720
Northumberland	300	379	445	597	720	Nottoway	300	379	445	597	720
Orange	334	453	607	845	991	Page	349	394	445	597	720
Patrick	300	379	445	597	720	Prince Edward	337	381	445	597	720
Pulaski	300	379	445	597	720	Rappahannock	304	494	556	771	909
Richmond	300	401	449	597	738	Rockbridge	300	379	445	597	720
Rockingham	300	417	527	722	847	Russell	300	379	445	597	720
Shenandoah	396	406	500	693	787	Smyth	300	379	445	597	720
Southampton	300	379	445	597	720	Surry	312	379	445	597	720
Sussex	300	379	445	597	720	Tazewell	300	379	445	597	720

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING — PAGE 51

V I R G I N I A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Westmoreland	300	406	539	679	878	Wise	300	379	445	597	720
Wythe	314	379	445	597	720						

W A S H I N G T O N

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bellingham, WA MSA	410	532	708	978	1159	Whatcom
Bremerton, WA PMSA	476	549	711	961	1168	Kitsap
Olympia, WA PMSA	489	600	750	1032	1218	Thurston
Portland-Vancouver, OR-WA PMSA	492	606	747	1038	1127	Clark
Richland-Kennewick-Pasco, WA MSA	512	585	701	976	1145	Benton, Franklin
Seattle-Bellevue-Everett, WA PMSA	548	667	845	1173	1386	Island, King, Snohomish
Spokane, WA MSA	328	446	539	733	820	Spokane
Tacoma, WA PMSA	423	504	672	934	1056	Pierce
Yakima, WA MSA	369	454	564	756	789	Yakima

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	327	392	509	672	746	Asotin	327	392	509	672	746
Chelan	327	392	509	672	746	Clallam	381	471	600	772	844
Columbia	327	392	509	672	746	Cowlitz	367	410	529	734	746
Douglas	382	404	509	672	746	Ferry	327	392	509	672	746
Garfield	327	392	509	672	746	Grant	352	392	509	672	746
Grays Harbor	334	392	515	694	801	Jefferson	327	422	520	704	746
Kittitas	327	392	509	672	746	Klickitat	327	392	509	672	746
Lewis	327	392	509	672	746	Lincoln	327	392	509	672	746
Mason	371	460	566	744	801	Okanogan	327	392	509	672	746
Pacific	327	392	509	672	746	Pend Oreille	327	392	509	672	895
San Juan	404	551	735	969	1153	Skagit	446	544	643	803	897
Skamania	327	392	509	672	746	Stevens	327	392	509	672	746
Wahkiakum	327	392	509	672	746	Walla Walla	327	392	509	682	806
Whitman	353	401	534	741	878						

W E S T V I R G I N I A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Berkeley County, WV	440	470	554	692	777	Berkeley
Charleston, WV MSA	299	406	515	707	773	Kanawha, Putnam
Cumberland, MD-WV MSA	351	422	522	690	788	Mineral
Huntington-Ashland, WV-KY-OH MSA	317	372	458	584	644	Cabell, Wayne
Jefferson County, WV	446	494	611	795	901	Jefferson

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

W E S T V I R G I N I A continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Parkersburg-Marietta, WV-OH MSA	319	383	438	568	620	Wood
Steubenville-Weirton, OH-WV MSA	302	356	446	568	634	Brooke, Hancock
Wheeling, WV-OH MSA	329	361	446	568	634	Marshall, Ohio

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Barbour	267	339	379	487	567
Braxton	267	325	379	487	567
Clay	267	325	379	487	567
Fayette	267	325	379	487	567
Grant	267	325	379	487	567
Hampshire	267	325	381	501	567
Harrison	293	361	417	520	623
Lewis	267	356	379	487	567
Logan	273	325	379	490	581
Marion	267	337	416	532	614
Mercer	267	325	379	487	567
Monongalia	336	372	452	623	737
Morgan	363	409	458	576	641
Pendleton	267	325	379	487	567
Pocahontas	267	325	379	487	567
Raleigh	308	363	423	544	637
Ritchie	267	325	379	487	567
Summers	267	325	379	487	567
Tucker	267	325	379	487	567
Upshur	267	325	381	487	567
Wetzel	301	325	409	510	644
Wyoming	267	325	379	487	567

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Boone	267	325	379	487	567
Calhoun	267	325	379	487	567
Doddridge	276	325	379	487	567
Gilmer	293	325	379	487	567
Greenbrier	267	368	393	489	567
Hardy	267	325	379	487	567
Jackson	267	334	379	519	567
Lincoln	267	325	379	487	567
Mcdowell	267	325	379	487	567
Mason	267	325	379	487	583
Mingo	267	325	379	487	575
Monroe	267	325	379	487	567
Nicholas	267	325	379	487	567
Pleasants	275	325	379	487	582
Preston	267	342	379	487	567
Randolph	267	325	379	487	567
Roane	267	325	379	487	567
Taylor	326	352	386	487	567
Tyler	267	325	399	499	567
Webster	267	325	379	487	567
Wirt	267	325	379	487	567

W I S C O N S I N

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Appleton-Oshkosh-Neenah, WI MSA	336	414	526	663	765	Calumet, Outagamie, Winnebago
Duluth-Superior, MN-WI MSA	295	380	487	651	758	Douglas
Eau Claire, WI MSA	363	395	518	664	748	Chippewa, Eau Claire
Green Bay, WI MSA	398	439	563	782	786	Brown
Janesville-Beloit, WI MSA	370	467	578	724	812	Rock
Kenosha, WI PMSA	427	530	650	894	1006	Kenosha
La Crosse, WI-MN MSA	299	385	489	655	793	La Crosse
Madison, WI MSA	460	578	699	970	1145	Dane

* 50th percentile FMRs are indicated by an * before the MSA name.
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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

W I S C O N S I N continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Milwaukee-Waukesha, WI PMSA	401	524	658	826	923	Milwaukee, Ozaukee, Washington, Waukesha
*Minneapolis-St. Paul, MN-WI MSA	524	674	862	1166	1321	Pierce, St. Croix
Racine, WI PMSA	358	443	585	755	826	Racine
Sheboygan, WI MSA	321	413	504	630	782	Sheboygan
Wausau, WI MSA	394	407	509	695	770	Marathon

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	290	339	432	550	621
Barron	290	339	432	550	621
Buffalo	290	339	432	550	621
Clark	290	339	432	550	621
Crawford	290	339	432	550	621
Door	290	360	446	574	697
Florence	290	339	432	550	621
Forest	290	339	432	550	621
Green	295	339	432	580	621
Iowa	301	339	432	567	621
Jackson	290	339	432	550	621
Juneau	296	339	432	550	621
Lafayette	295	339	432	550	621
Lincoln	290	339	432	550	621
Marinette	290	339	432	550	621
Menominee	290	339	432	550	621
Oconto	290	339	432	550	621
Pepin	290	339	432	550	621
Portage	354	373	484	604	747
Richland	290	339	432	550	621
Sauk	340	352	468	583	654
Shawano	295	339	432	550	621
Trempealeau	290	339	432	550	621
Vilas	290	339	432	550	621
Washburn	290	339	432	550	621
Waushara	290	339	432	550	621

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Ashland	316	352	432	550	621
Bayfield	290	339	432	550	621
Burnett	290	339	432	550	621
Columbia	290	345	453	594	667
Dodge	368	373	490	615	685
Dunn	290	339	443	592	731
Fond du Lac	337	457	541	735	758
Grant	294	339	432	550	621
Green Lake	290	339	432	550	621
Iron	290	339	432	550	621
Jefferson	290	385	499	646	706
Kewaunee	290	339	432	550	621
Langlade	290	339	432	550	621
Manitowoc	293	339	432	550	621
Marquette	290	339	432	550	621
Monroe	290	339	432	575	621
Oneida	290	340	432	554	665
Polk	290	339	439	550	621
Price	290	339	432	550	621
Rusk	290	339	432	550	621
Sawyer	290	339	432	550	621
Taylor	290	339	432	550	621
Vernon	290	339	432	550	621
Walworth	303	426	553	721	810
Waupaca	290	339	432	550	652
Wood	314	361	447	561	630

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

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W Y O M I N G

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Casper, WY MSA	339	393	503	689	814	Natrona
Cheyenne, WY MSA	383	480	641	820	995	Laramie

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Albany	322	402	537	746	881
Campbell	331	352	451	600	708
Converse	306	352	451	598	688
Fremont	306	352	451	598	688
Hot Springs	306	352	451	598	688
Lincoln	306	352	451	598	688
Park	306	352	451	598	695
Sheridan	306	352	451	598	695
Sweetwater	318	352	451	600	708
Uinta	321	352	451	599	724
Weston	306	352	451	598	688

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Big Horn	306	352	451	598	688
Carbon	306	352	451	598	688
Crook	306	352	451	598	688
Goshen	306	352	451	598	688
Johnson	306	352	451	598	688
Niobrara	306	352	451	598	688
Platte	306	352	451	598	688
Sublette	340	383	451	598	688
Teton	407	519	690	927	1011
Washakie	306	352	451	598	688

P A C I F I C I S L A N D S

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Pacific Islands	712	855	1013	1270	1428

P U E R T O R I C O

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Aguadilla, PR MSA	221	269	320	397	448	Aguada Municipio, Aguadilla Municipio, Moca Municipio
Arecibo, PR PMSA	239	290	341	427	481	Arecibo Municipio, Camuy Municipio, Hatillo Municipio
Caguas, PR PMSA	280	335	396	499	555	Caguas Municipio, Cayey Municipio, Cidra Municipio Gurabo Municipio, San Lorenzo Municipio
Mayaguez, PR MSA	262	320	380	472	532	Anasco Municipio, Cabo Rojo Municipio Hormigueros Municipio, Mayaguez Municipio Sabana Grande Municipio, San German Municipio
Ponce, PR MSA	260	319	376	470	528	Guayanilla Municipio, Juana Diaz Municipio Penuelas Municipio, Ponce Municipio, Villalba Municipio Yauco Municipio
San Juan-Bayamon, PR PMSA	351	428	505	632	710	Aguas Buenas Municipio, Barceloneta Municipio Bayamon Municipio, Canovanas Municipio Carolina Municipio, Catano Municipio, Ceiba Municipio Comerio Municipio, Corozal Municipio, Dorado Municipio Fajardo Municipio, Florida Municipio, Guaynabo Municipio Humacao Municipio, Juncos Municipio Las Piedras Municipio, Loiza Municipio Luquillo Municipio, Manati Municipio, Morovis Municipio

* 50th percentile FMRs are indicated by an * before the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

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P U E R T O R I C O continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
						Naguabo Municipio, Naranjito Municipio Rio Grande Municipio, San Juan Municipio Toa Alta Municipio, Toa Baja Municipio Trujillo Alto Municipio, Vega Alta Municipio Vega Baja Municipio, Yabucoa Municipio

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adjuntas Municipio	207	256	300	379	419
Arroyo Municipio	207	256	300	379	419
Ciales Municipio	207	256	300	379	419
Culebra Municipio	207	256	300	379	419
Guayama Municipio	207	256	300	379	419
Jayuya Municipio	207	256	300	379	419
Lares Municipio	207	256	300	379	419
Maricao Municipio	207	256	300	379	419
Orocovis Municipio	207	256	300	379	419
Quebradillas Municipio	207	256	300	379	419
Salinas Municipio	207	256	300	379	419
Santa Isabel Municipio	207	256	300	379	419
Vieques Municipio	207	256	300	379	419

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Albonito Municipio	207	256	300	379	419
Barranquitas Municipio	207	256	300	379	419
Coamo Municipio	207	256	300	379	419
Guanica Municipio	207	256	300	379	419
Isabela Municipio	207	256	300	379	419
Lajas Municipio	207	256	300	379	419
Las Marias Municipio	207	256	300	379	419
Maunabo Municipio	207	256	300	379	419
Patillas Municipio	207	256	300	379	419
Rincon Municipio	207	256	300	379	419
San Sebastian Municipio	207	256	300	379	419
Utuado Municipio	207	256	300	379	419

V I R G I N I S L A N D S

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
St. Croix	495	600	708	884	990

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
St. Johns/St. Thomas	635	770	907	1134	1269

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Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 041801

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Schedule D: FY 2002 Fair Market Rents For Manufactured Home Spaces in the Section 8 Housing Choice Voucher Program

Area Name	Space Rent
Callifornia	
Los Angeles, CA	$392
Orange County, CA	$479
Riverside-San Bernardino, Ca	$310
San Diego, CA	$441
Colorado	
Boulder-Longmont, CO	$362
Maryland	
Hagerstown, MD	$222
Nevada	
Reno, NV	$392
New York	
Newburgh, NY-PA	$350
Utica-Rome, NY	$221
Oregon	
Deschutes County, OR	$261

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.R. 132/P.L. 107–6

To designate the facility of the United States Postal Service located at 620 Jacaranda Street in Lanai City, Hawaii, as the "Goro Hokama Post Office Building". (Apr. 12, 2001; 115 Stat. 8)

H.R. 395/P.L. 107–7

To designate the facility of the United States Postal Service located at 2305 Minton Road in West Melbourne, Florida, as the "Ronald W. Reagan Post Office of West Melbourne, Florida". (Apr. 12, 2001; 115 Stat. 9)

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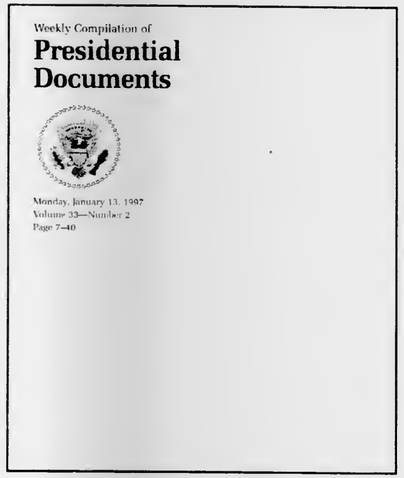
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Federal Register
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Thursday, May 10, 2001

Presidential Documents

Title 3—

The President

Proclamation 7434 of May 7, 2001

Asian/Pacific American Heritage Month, 2001

By the President of the United States of America

A Proclamation

As we move into the 21st century, the United States continues to greatly benefit from the contributions of its diverse citizenry. Among those who have influenced our country, Asian/Pacific Americans merit special recognition. Their achievements have greatly enriched our quality of life and have helped to determine the course of our Nation's future.

Many immigrants of Asian heritage came to the United States in the nineteenth century to work in the agricultural and transportation industries. Laboring under very difficult conditions, they helped construct the western half of the first transcontinental railroad. Their hard work was invaluable in linking together the East and West coasts, thus vastly expanding economic growth and development across the country. Over time, other immigrants journeyed to America from East Asia, Southeast Asia, and the Asian Subcontinent. Today, Asian/Pacific Americans are one of the fastest growing segments of our population, having increased in number from fewer than 1.5 million in 1970 to approximately 10.5 million in 2000.

Asian/Pacific Americans bring to our society a rich cultural heritage representing many languages, ethnicities, and religious traditions. Whether in government, business, science, technology, or the arts, Asian/Pacific Americans have added immeasurably to the prosperity and vitality of our society. As family members, citizens, and involved members of the community, they reinforce the values and ideals that are essential to the continued well-being of our Nation.

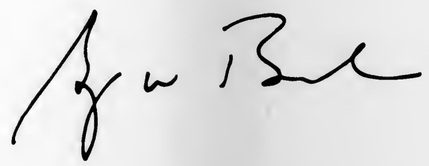
Diversity represents one of our greatest strengths, and we must strive to ensure that all Americans have the opportunity to reach their full potential. By recognizing the accomplishments and contributions of Asian/Pacific Americans, our Nation celebrates the importance of inclusion in building a brighter future for all our citizens.

To honor the achievements of Asian/Pacific Americans, the Congress, by Public Law 102-450, has designated the month of May each year as "Asian/Pacific American Heritage Month."

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 2001, as Asian/Pacific American Heritage Month. I call upon the people of the United States to learn more about the contributions and history of Asian/Pacific Americans and to celebrate the role they have played in our national story.

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IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of May, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-fifth.



[FR Doc. 01–11913
Filed 5–9–01; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 66, No. 91
Thursday, May 10, 2001

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Part 1309

Over-Order Price Regulation; Supply Management Refund Program; Correction

AGENCY: Northeast Dairy Compact Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations (7 CFR Part 1309) published in the **Federal Register** of Wednesday, May 31, 2000, (65 FR 34580). The regulations related to establishing a Supply Management Refund Program for the regulated area pursuant to Article IV, section 9(f) of the Northeast Interstate Dairy Compact.

DATES: *Effective date:* June 1, 2001.

FOR FURTHER INFORMATION CONTACT: Daniel Smith, Executive Director, Northeast Dairy Compact Commission at the above address or by telephone at (802) 229–1941, or by facsimile at (802) 229–2028.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections established the Northeast Dairy Compact Commission's Supply Management Refund Program effective July 1, 2000. Section 1309.4 provides the qualifications and methodology for payments to producers of the supply management fund 45 days after the close of the refund year on June 30.

Need for Correction

As published the final rule contains errors which may prove to be misleading and need to be clarified. Because of a clerical error, § 1309.4(a) at line 5 of the first column of page 34581 refers to "production of the preceding calendar year" when the Commission intended to refer to "production of the preceding 12 month period." Also, and again due to a clerical error, § 1309.4(b) at line 21 of the first column of page 34581 refers to "§ 1309.2(e)" which was intended to read "§ 1309.2(c)."

List of Subjects in 7 CFR Part 1309

Milk.

Accordingly, 7 CFR part 1309 is corrected by making the following correcting amendments:

PART 1309—SUPPLY MANAGEMENT REFUND PROGRAM

1. The authority citation for part 1309 continues to read as follows:

Authority: 7 U.S.C. 7256.

2. Revise § 1309.4 to read as follows:

§ 1309.4 Payment to producers of supply management refund.

(a) All producers who are qualified pursuant to § 1309.1 shall become eligible to receive payment of the supply management refund computed pursuant to § 1309.2 by submitting to the compact commission documentation that the producer milk production during the refund year is less than or the increase is not more than 1% of the milk production of the preceding 12 month period. Such documentation shall be filed with the commission not later than 45 days after the end of the refund year.

(b) The commission will make payment to all producers qualified pursuant to § 1309.1 and eligible pursuant to paragraph (a) of this section in the following manner:

(1) A per farm payment computed by dividing the amount subtracted pursuant to § 1309.2(b) by the total eligible producers; and

(2) The value determined by multiplying the supply management refund price computed pursuant to § 1309.2(c) by the producer's milk pounds, not to exceed $12,000.

Dated: May 1, 2001.

Daniel Smith,

Executive Director.

[FR Doc. 01–11792 Filed 5–9–01; 8:45 am]

BILLING CODE 1650–01–P

DEPARTMENT OF ENERGY

10 CFR Part 1044

RIN 1992–AA26

Office of Security and Emergency Operations; Security Requirements for Protected Disclosures Under Section 3164 of the National Defense Authorization Act for Fiscal Year 2000

AGENCY: Department of Energy (DOE).

ACTION: Interim final rule; completion of regulatory review.

SUMMARY: In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled "Regulatory Review Plan," published in the **Federal Register** on January 24, 2001 (66 FR 7702), DOE temporarily delayed for 60 days (66 FR 8747, February 2, 2001) the effective date of the interim final rule entitled "Security Requirements for Protected Disclosures Under Section 3164 of the National Defense Authorization Act for Fiscal Year 2000" published in the **Federal Register** on January 18, 2001 (66 FR 4639). DOE has now completed its review of that regulation, and does not intend to initiate any further rulemaking action to modify its provisions. However, based on a written comment received on the interim final rule, DOE may make minor, non-substantive changes to the rule. DOE will announce any such changes in the notice of final rulemaking that will be published in the **Federal Register**.

DATES: The effective date of the interim final rule amending 10 CFR part 1044 published at 66 FR 4639, January 18, 2001, and delayed at 66 FR 8747, February 2, 2001, is confirmed as April 23, 2001.

FOR FURTHER INFORMATION CONTACT: Geralyn Praskievcz, Office of Security and Emergency Operations, (202) 586–4451, *geralyn.praskievcz@hq.doe.gov*.

Issued in Washington, DC on May 3, 2001.

Spencer Abraham,

Secretary of Energy.

[FR Doc. 01–11809 Filed 5–9–01; 8:45 am]

BILLING CODE 6450–01–P

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–22–AD; Amendment 39–12223; AD 2001–09–16]

RIN 2120–AA64

Airworthiness Directives; Eagle Aircraft Pty. Ltd. Model 150B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Eagle Aircraft Pty. Ltd. (Eagle) Model 150B airplanes. This AD requires you to inspect the rudder cables for fraying, broken strands, etc. (referred to as damage), and replace any damaged cables. This AD also requires you to replace the rudder cable pulleys with larger diameter pulleys to eliminate the possibility of further damage. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Australia. The actions specified by this AD are intended to detect and correct damaged rudder cables caused by chafing of the cable against the pulleys. Continued airplane operation with damaged cables could result in rudder cable system failure with possible loss of airplane control.

DATES: This AD becomes effective on June 29, 2001.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of June 29, 2001.

ADDRESSES: You may get the service information referenced in this AD from Eagle Aircraft Pty. Ltd., Lot 700 Cockburn Road, Henderson WA 6166 Australia; telephone: (08) 9410 1077; facsimile: (08) 9410 2430. You may examine this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–22–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Fredrick A. Guerin, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone: (562) 627–5232; facsimile: (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Civil Aviation Safety Authority (CASA), which is the airworthiness authority for Australia, notified FAA that an unsafe condition may exist on certain Eagle Model 150B airplanes. The CASA reports an occurrence where frayed rudder cables were found on an Eagle Model 150B airplane. Further investigation reveals that the diameter of the rudder cable pulleys is too small and cables rub against these pulleys.

What Are the Consequences If the Condition Is Not Corrected?

Continued airplane operation with damaged cables could result in rudder cable system failure with possible loss of airplane control.

Has FAA Taken Any Action To This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Eagle Model 150B airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on January 2, 2001 (66 FR 59). The NPRM proposed to require you to:

—Inspect the rudder cables for fraying, broken strands, etc. (referred to as damage), and replace any damaged cables; and

—Replace the rudder cable pulleys with larger diameter pulleys to eliminate the possibility of further damage.

Was the Public Invited To Comment?

Interested persons were afforded an opportunity to participate in the making of this amendment. We have given due consideration to the comment received.

Comment Disposition

What Is the Commenter's Concern?

Eagle Aircraft Pty. Ltd requests that FAA withdraw the AD because pulley replacement kits to correct the unsafe condition have been shipped to the United States and all affected airplanes models may already be in compliance with this AD.

What Is FAA's Response To the Concern?

We do not concur. Although there may be airplanes on the U.S. Register that have already incorporated the kit installation, the AD is still justified. Issuing an AD is the only way to assure that:

—The installation of the pulley replacement kit is incorporated on any U.S.-registered airplane;

—The actions are accomplished on any airplane that is imported from another country and placed on the U.S. Register; and

—The installation continues to be incorporated on all U.S. registered airplanes.

We have not changed the AD as a result of this comment.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We determined that these minor corrections:

—Will not change the meaning of the AD; and

—Will not add any additional burden upon the public than was already proposed.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 5 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the inspection of the rudder cable and replacement of the rudder cable pulley:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
5 workhours × $60	$286	$586	$2,930

Replacement cables, if necessary, will cost $305 perairplane. We have no way of determining the number of rudder cables that will be found damaged during the inspection.

Compliance Time of this AD

What Is the Compliance Time of This AD?

The compliance time of this AD will be to accomplish the inspection and rudder cable pulley replacement "within the next 100 hours time-in-service (TIS) after the effective date of this AD" and to accomplish any necessary cable replacement "prior to further flight after the inspection."

Why Are the Compliance Times of the Australian AD Different From the Compliance Times in This AD?

The Australian AD requires (on Eagle Model 150B airplanes registered in Australia) the inspection within the next 5 hours of service and requires the pulley replacement within 100 hours of operation. These are the compliance times specified in the service information.

We do not have justification to require the inspection within 5 hours of service. We use compliance times such as this when we have identified an urgent safety of flight situation. We believe that 100 hours TIS will give the owners/operators of the affected airplanes enough time to have the inspection and replacement accomplished without compromising the safety of the airplanes.

By accomplishing both the inspection and replacement at the same time, the owners/operators of the affected airplanes only have their airplanes out of service once instead of twice.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2001–09–16 Eagle Aircraft Pty. Ltd.: Amendment 39–12223; Docket No. 2000–CE–22–AD.

(a) *What airplanes are affected by this AD?* This AD affects Model 150B airplanes, serial numbers 001 through 030, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct damaged rudder cables caused by chafing of the cable against the pulleys. Continued airplane operation with damaged cables could result in rudder cable system failure with possible loss of airplane control.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the rudder cables for fraying, broken strands, etc. (referred to as damage).	Within the next 100 hours time-in-service (TIS) after June 29, 2001 (the effective date of this AD).	In accordance with Eagle Service Bulletin No. 1059, dated January 21, 1999.
(2) Replace any rudder cables found damaged during the inspection.	Prior to further flight after the inspection	In accordance with the instructions in the maintenance manual, as specified in Eagle Service Bulletin No. 1059, dated January 21, 1999.
(3) Replace the rudder cable pulleys with new rudder cable pulleys, part numbers MS20220–1 and MS20220–2, change pulley attachment, and reduce cable tension.	Prior to further flight after the inspection	In accordance with Eagle Service Bulletin No. 1076, Revision 2, dated December 14, 1999.
(4) Do not install any rudder cable pulleys that are not part numbers MS20220–1 and MS20220–2 (with all associated hardware).	As of June 29, 2001 (the effective date of this AD).	Not applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Los Angeles Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

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(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Fredrick A. Guerin, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone: (562) 627–5232; facsimile: (562) 627–5210.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Eagle Service Bulletin No. 1059, dated January 21, 1999, and Eagle Service Bulletin No. 1076, Rev. 2, dated December 14, 1999. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Eagle Aircraft Pty. Ltd., Lot 700 Cockburn Road, Henderson WA 6166 Australia. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on June 29, 2001.

Note 2: The subject of this AD is addressed in Australian AD Number X–TS/2, effective December 24, 2000.

Issued in Kansas City, Missouri, on May 1, 2001.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–11457 Filed 5–9–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–85–AD; Amendment 39–12222; AD 2001–09–15]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200 and –300 Series Airplanes Equipped with Cargo Doors Installed in Accordance With Supplemental Type Certificate (STC) SA2969SO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 737–200 and –300 series airplanes, that currently requires repetitive inspections to detect cracking in the radii on the support angles on the lower jamb (latch lug fittings) of the main deck cargo door, and replacement of cracked parts. This amendment adds a requirement for installation of redesigned lower jamb latch support angles in the main cargo door surround structure, which would terminate the repetitive inspections. This amendment is prompted by the development of a modification that will provide better protection of the subject area against effects of structural fatigue. The actions specified by this AD are intended to prevent in-flight separation of the main deck cargo door from the airplane due to fatigue cracking on the support angles on the lower door jamb.

DATES: Effective June 14, 2001.

The incorporation by reference of Pemco Service Bulletin 737–53–0003, Revision 4, dated February 22, 1995; and Pemco Service Bulletin 737–53–0003, Revision 5, dated March 25, 1999; as listed in the regulations, is approved by the Director of the Federal Register as of June 14, 2001.

The incorporation by reference of Pemco Alert Service Letter 737–53–0003, Revision 3, dated December 22, 1994, as listed in the regulations, was approved previously by the Director of the Federal Register as of January 24, 1995 (60 FR 2323, January 9, 1995).

ADDRESSES: The service information referenced in this AD may be obtained from Pemco Aeroplex, Inc., P.O. Box 2287, Birmingham, Alabama 35201–2287. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Culler, Airframe and Propulsion Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30337–2748; telephone (770) 703–6084; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 95–01–06 R1, amendment 39–9449 (60 FR 62192, December 5, 1995), which is applicable to certain Boeing Model 737–200 and –300 series airplanes, was published in the **Federal Register** on November 22, 1999 (64 FR 63757). The action proposed to continue to require repetitive inspections to detect cracking in the radii on the support angles on the lower jamb (latch lug fittings) of the main deck cargo door, and replacement of cracked parts. That action also adds a requirement for installation of redesigned lower jamb latch support angles in the main cargo door surround structure, which would terminate the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received. Two commenters state that the airplanes they operate would not be affected by the proposed rule.

Include Additional Service Information

One commenter asks that Pemco Service Bulletin 737–53–0005, dated November 18, 1997, which specifies alignment of the door latch base and frames, be included as an alternative method of compliance in paragraph (c)(1) of the proposed rule. The commenter also asks that the actions specified in that service bulletin be added to the proposed rule as terminating action for the requirements of AD 95–01–06 R1 (above). The commenter states that its fleet was modified per the service bulletin referenced in the proposed rule, but one airplane was misaligned between the door latch base and fuselage framing at FS 490.8. The commenter accomplished the alignment specified in service bulletin 737–53–0005.

The FAA does not concur with the commenter's requests. The FAA does not find it necessary to revise this AD to include special instructions for airplanes modified with another service bulletin. Operators should note that most AD actions address modifications affecting the subject area of the AD using the note that appears as Note 1 of this AD, which states, "For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance (AMOC) in accordance with paragraph (c)(1) of this AD." The AMOC letter would be issued to the operator by the appropriate office, as stated in paragraph (c)(1).

Additionally, the service bulletin referenced in the final rule specifies installation of redesigned lower jamb latch support angles in the main cargo door surround structure, which would terminate the repetitive inspections.

Modification of the door latch base for better alignment is a separate issue that was not addressed in the proposed rule, and would not meet the requirements for the terminating action. No change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 32 airplanes of the affected design in the worldwide fleet. The FAA estimates that 2 airplanes of U.S. registry will be affected by this AD.

The inspection that is currently required by AD 95–01–06 R1, and retained in this AD, takes approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $480 per airplane, per inspection cycle.

The new installation that is required by this AD takes approximately 500 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $9,700 per airplane. Based on these figures, the cost impact of the requirements of this AD on U.S. operators is estimated to be $79,400, or $39,700 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9449 (60 FR 62192, December 5, 1995), and by adding a new airworthiness directive (AD), amendment 39–12222, to read as follows:

2001–09–15 Boeing: Amendment 39–12222. Docket 99-NM–85-AD. Supersedes AD 95–01–06 R1, Amendment 39–9449.

Applicability: Model 737–200 and -300 series airplanes equipped with main deck cargo doors installed in accordance with supplemental type certificate (STC) SA2969SO, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent in-flight separation of the main deck cargo door from the airplane, accomplish the following:

Note 2: This AD references Pemco Alert Service Letter 737–53–0003, Revision 3, dated December 22, 1994; Pemco Service Bulletin 737–53–0003, Revision 4, dated February 22, 1995; and Pemco Service Bulletin 737–53–0003, Revision 5, dated March 25, 1999; for information concerning inspection and replacement procedures. In addition, this AD specifies replacement requirements different from those included in the service letter or service bulletin. Where there are differences between the AD and the service letter or service bulletin, the AD prevails.

Restatement of Requirements AD 95–01–06 R1

Repetitive Inspections

(a) Within 50 flight cycles after January 24, 1995 (the effective date of AD 95–01–06, amendment 39–9117), or within 50 flight cycles after installation of STC SA2969SO, whichever occurs later, perform a detailed visual inspection to detect cracking in the radii on the support angles on the lower jamb of the main deck cargo door, in accordance with Pemco Alert Service Letter 737–53–0003, Revision 3, dated December 22, 1994.

(1) If no cracking is detected, repeat the detailed visual inspection thereafter at intervals not to exceed 450 flight cycles.

(2) If any cracking is detected, prior to further flight, replace the cracked part with a new part in accordance with the alert service letter. Repeat the detailed visual inspection thereafter at intervals not to exceed 450 flight cycles.

Note 3: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

New Requirements of This AD

Terminating Action

(b) Within 1,500 flight cycles after the effective date of this AD, install redesigned lower jamb latch lug support angles in the main cargo door surround structure in accordance with Pemco Service Bulletin 737–53–0003, Revision 4, dated February 22, 1995, or Revision 5, dated March 25, 1999. This action constitutes terminating action for the requirements of this AD.

Alternative Methods of Compliance

(c)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance

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Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 95–01–06 R1, amendment 39–9449 are approved as alternative methods of compliance with paragraphs (a) and (b) of this AD.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Pemco Alert Service Letter 737–53–0003, Revision 3, dated December 22, 1994; Pemco Service Bulletin 737–53–0003, Revision 4, dated February 22, 1995, or Pemco Service Bulletin 737–53–0003, Revision 5, dated March 25, 1999; as applicable.

(1) The incorporation by reference of Pemco Service Bulletin 737–53–0003, Revision 4, dated February 22, 1995; and Pemco Service Bulletin 737–53–0003, Revision 5, dated March 25, 1999; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Pemco Alert Service Letter 737–53–0003, Revision 3, dated December 22, 1994, was approved previously by the Director of the Federal Register as of January 24, 1995 (60 FR 2323, January 9, 1995).

(3) Copies may be obtained from Pemco Aeroplex, Inc., P.O. Box 2287, Birmingham, Alabama 35201–2287. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta ACO, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on June 14, 2001.

Issued in Renton, Washington, on May 1, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certificotion Service.

[FR Doc. 01–11455 Filed 5–9–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–389–AD; Amendment 39–12221; AD 2001–09–14]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–243, –341, –342, and –343 Series Airplanes Equipped With Rolls Royce Trent 700 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Airbus Model A330–243, –341, –342, and –343 series airplanes equipped with Rolls Royce Trent 700 series engines. This action requires repetitive inspections of certain components, and corrective action, if necessary. This action is necessary to detect and correct fatigue cracking of the hinge assemblies and the 12 o'clock beam structure of the thrust reverser C-duct, which could cause failure of the thrust reverser hinge, resulting in separation of the thrust reverser from the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective May 25, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 25, 2001.

Comments for inclusion in the Rules Docket must be received on or before June 11, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–389–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–389–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Airbus Model A330–243, –341, –342, and –343 series airplanes equipped with Rolls Royce Trent 700 series engines. The DGAC advises that, during flight tests, unexpectedly high fatigue loads were measured on the hinges integrated on the 12 o'clock beam which forms the upper edge of the thrust reverser C-duct. The hinges are unable to withstand these high fatigue loads for the design life of the airplane. Resulting fatigue cracks, if not detected and corrected, could cause failure of the thrust reverser hinge, which could result in separation of the thrust reverser from the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A330–78–3006, Revision 05, dated March 6, 2001, which describes procedures for a general visual inspection of the hinge assemblies and the beam structure of the upper extreme edge of the thrust reverser unit C-duct for cracks, and corrective action, if necessary; a detailed visual inspection, if applicable, of hinges 2, 3, 4, and 5 in the same area for cracks, and corrective action, if necessary; and repetitions of these inspections, as applicable, at applicable intervals. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 1997–118–047(B) R2, dated September 20, 2000, in order to assure the continued airworthiness of these airplanes in France.

Airbus Service Bulletin A330–78–3006, Revision 05, dated March 6, 2001, references Rolls Royce Service Bulletin RB.211–78–B115, Revision 2, dated October 29, 1999, as an additional source of service information for

accomplishment of the inspections and corrective actions.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design that may be registered in the United States at some time in the future, this AD is being issued to detect and correct fatigue cracking of the hinge assemblies and the 12 o'clock beam structure of the thrust reverser C-duct, which could cause failure of the thrust reverser hinge, resulting in separation of the thrust reverser from the airplane. This AD requires accomplishment of the actions specified in the Airbus service bulletin described previously.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 5 work hours to accomplish the required inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $300 per airplane, per inspection cycle.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–389–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–09–14 Airbus Industrie: Amendment 39–12221. Docket 2000–NM–389–AD.

Applicability: Model A330–243, –341, –342 and –343 series airplanes; certificated in any category; that are equipped with Rolls Royce Trent 700 series engines.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

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Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the hinge assemblies and the 12 o'clock beam structure of the thrust reverser C-duct, which could cause failure of the thrust reverser hinge, resulting in separation of the thrust reverser from the airplane, accomplish the following:

Initial and Repetitive Inspections

(a) Perform a general visual inspection of the hinge assemblies and the 12 o'clock beam structure of the right and left thrust reversers for cracks, in accordance with Airbus Service Bulletin A330–78–3006, Revision 05, dated March 6, 2001, according to the criteria in Table 1 of this AD, below:

TABLE 1—INITIAL INSPECTION

If—	Then inspect—
Neither Airbus Modification 46879 nor 47358 has been embodied on the airplane.	Before the accumulation of 1,200 total flight cycles, or within 6 months after the effective date of this AD, whichever occurs first.
Either Airbus Modification 46879 or 47358 have been embodied on the airplane.	Before the accumulation of 2,000 total flight cycles, or 6 months after the effective date of this AD, whichever occurs first.

(1) If no crack is found during the general visual inspection required by paragraph (a) of this AD, before further flight, perform a detailed visual inspection of the lugs of hinges 2, 3, 4, and 5 of the right and left thrust reversers for cracks in accordance with Airbus Service Bulletin A330–78–3006, Revision 05, dated March 6, 2001.

(i) If no crack is found as a result of the detailed visual inspection mandated by paragraph (a)(1) of this AD, repeat the general visual inspection mandated by paragraph (a) of this AD according to the schedule in Table 2 of this AD.

(ii) If a crack is found as a result of the detailed visual inspection mandated by paragraph (a)(1) of this AD:

(A) Before further flight, replace the affected thrust reverser with a new or serviceable thrust reverser in accordance with Airbus Service Bulletin A330–78–3006, Revision 05, dated March 6, 2001.

(B) Repeat the general visual inspection mandated in paragraph (a) of this AD according to the schedule in Table 2 of this AD.

(2) If a crack is found during the general visual inspection required by paragraph (a) of this AD, accomplish the actions required by paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Before further flight, replace the affected thrust reverser with a new or serviceable thrust reverser in accordance with Airbus Service Bulletin A330–78–3006, Revision 05, dated March 6, 2001.

(ii) Repeat the general visual inspection mandated in paragraph (a) of this AD according to the schedule in Table 2 of this AD, below:

TABLE 2.—REPETITIVE INSPECTIONS

If—	Then repeat the inspection at intervals not to exceed—
Neither Airbus Modification 46879 nor 47358 has been embodied on the airplane.	1,200 flight cycles.
Either Airbus Modification 46879 or 47358 has been embodied on the airplane.	2,000 flight cycles.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Note 3: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as a mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Airbus Service Bulletin A330–78–3006, Revision 05, dated March 6, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in French airworthiness directive 1997–118–047(B) R2, dated September 20, 2000.

Effective Date

(e) This amendment becomes effective on May 25, 2001.

Issued in Renton, Washington, on April 30, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–11223 Filed 5–9–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–164–AD; Amendment 39–12225; AD 2001–09–18]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–80 Series Airplanes and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes, that currently requires a one-time inspection to detect cracking of the main landing gear (MLG) pistons, and repair or replacement of the pistons with new or serviceable parts, if necessary. This amendment requires, among other actions, repetitive dye penetrant and magnetic particle inspections to detect cracks of the MLG pistons; repair and replacement of discrepant parts; and installation of a preventative modification; as applicable. This amendment also provides for an optional terminating action for certain MLG pistons. This amendment is prompted by additional reports of failure of the MLG pistons during towing of the airplanes. The actions specified by this AD are intended to prevent fatigue cracking of the MLG pistons, which could result in failure of the pistons and subsequent damage to the airplane structure or injury to airplane occupants.

DATES: Effective June 14, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 14, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brent Bandley, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5237; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 96–19–09, amendment 39–9756 (61 FR 48617, September 16, 1996), which is applicable to certain McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes series airplanes, was published in the **Federal Register** on October 4, 2000 (65 FR 59146). The action proposed to require, among other actions, repetitive dye penetrant and magnetic particle inspections to detect cracks of the main landing gear (MLG) pistons; repair and replacement of discrepant parts; and installation of a preventative modification; as applicable. The action also proposed an optional terminating action for certain MLG pistons.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Revise Note 1 of the Proposed AD

One commenter request that the following sentence be added to Note 1 of the proposed AD: "Modification per previous revisions of the referenced service bulletin or dispositions from the manufacturer that occurred prior to the effective date of the AD comply with the AD."

The FAA partially agrees. We do not agree to include the sentence suggested by the commenter. However, as discussed below, we have included new notes in the final rule to give operators credit for accomplishing the preventative modification before the effective date of this AD.

Request To Give Credit for Preventative Modifications Accomplished Previously

One commenter requests that operators be given credit for accomplishing the preventative modification per the original version, or Revisions 01 through 03 of McDonnell Douglas Service Bulletin MD80–32–277, or procedures developed and analyzed by Boeing and approved by the FAA before the effective date of the AD. The commenter notes that Revision 04 of Service Bulletin MD80–32–277 (referenced as the appropriate source of service information for the requirements of this AD) contains procedures for wet grinding and flap shot peening, which were not recommended in the previous revisions of the service bulletin.

Two other commenters request that the applicability of paragraph (e)(2)(i) of the proposed AD include any MLG piston modified before the effective date of the AD per the original version, or Revisions 01 through 03 of McDonnell Douglas Service Bulletin MD80–32–277, or Service Rework Drawing SR08320081.

One of the commenters notes that one of the paragraphs in the Discussion section of the proposed AD states "Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished per a method approved by the FAA. The commenter requests that it be revised to "* * * certain repair conditions, for all repairs performed after the effective date of this AD, this proposed AD * * * ."

The FAA partially agrees. We find that modification of any MLG piston or replacement with a modified MLG per the original version, and Revisions 1 through 4 of the referenced service bulletin, Service Rework Drawing SR08320081, or any FAA-approved preventative modification to MLG pistons, before the effective date of this AD, is considered acceptable for compliance with the preventative modification requirements of paragraphs (a)(3), (b)(1)(iii), (b)(2), and (c)(1) of this AD, and with the replacement requirements of paragraphs (c)(2) and (d)(1) of this AD. Therefore, we have included new notes in the final rule to clarify this point. With the inclusion of these new notes, we find that the applicability of paragraph (e)(2)(i) of the final rule does not need to be changed. We also find that a revision to the Discussion section, as suggested by the commenter, is not necessary because that section does not reappear in the final rule.

Request To Include Reidentified Part Number

Two commenters request that paragraph (e) of the proposed AD also reference the part number (P/N) for MLG pistons that were modified and reidentified as P/N SR09320081–3 through SR09320081–13 inclusive, depending on its corresponding original identity. One of the commenters states that it tracks the MLG pistons by the applicable "SR" part number, which are listed in McDonnell Douglas Service Bulletin MD80–32–277, Revisions 01 through 04.

The FAA agrees that the affected MLG piston, P/N 5935347–1 through 5935347–509 inclusive, identified in paragraph (e) of the AD, have been modified and reidentified as P/N SR09320081–3 through SR09320081–13 inclusive. We have revised paragraph (e) of the final rule to clarify this point.

Request For Clarification of Applicability of Paragraph (e)(2)(ii) of the Proposed AD

The applicability of paragraph (e)(2)(ii) of the proposed AD reads "For any MLG piston that has been modified prior to the effective date of this AD." One commenter interprets this to mean pistons modified prior to December 7, 1999 (the issuance date of Revision 04 of McDonnell Douglas Service Bulletin MD80–32–277). The commenter states that it is reasonable to assume that some pistons may have been modified by Revision 04 of the referenced service bulletin since its issuance in December 1999.

From this comment, the FAA infers that the commenter is requesting that the applicability of paragraph (e)(2)(ii) of the proposed AD be clarified. We agree that clarification is necessary. The commenter is incorrect in its interpretation that the applicability of paragraph (e)(2)(ii) of the AD refers to MLG pistons modified per Revision 04 of McDonnell Douglas Service Bulletin MD80–32–277 prior to December 7, 1999. Our intent was that paragraph (e)(2)(ii) of the AD be applicable to "For any MLG piston that has been modified

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per service information other than Revision 04 of McDonnell Douglas Service Bulletin MD80–32–277 and not inspected per Revision 04 of the service bulletin prior to the effective date of this AD." We have revised paragraph (e)(2)(ii) of the final rule accordingly to clarify this point.

Requests To Give Credit for Repetitive Inspections Since Modification

Several commenters request that the FAA give credit to operators that are doing repetitive inspections every 2,500 landings since modification of the MLG pistons per McDonnell Douglas Service Bulletin MD80–32–277, Revision 04, dated December 7, 1999, for the initial inspections required by paragraph (e)(2)(ii) of the proposed AD and the repetitive inspections required by paragraph (f) of the proposed AD. Two commenters also state that paragraph (h)(2) of the proposed AD has a similar requirement and request that paragraph (h)(2) of the proposed AD also be revised.

Another commenter states that, based on its service history, any MLG piston that has been inspected every 2,500 landings provides an equivalent level of safety. The commenter has no objection to the proposed initial compliance time of within 1,500 landings or 12 months after the effective date of this AD for MLG pistons that have not been inspected.

The FAA does not consider that a change, as requested by the commenters, to the final rule is necessary. Operators are given credit for work previously performed by means of the phrase in the "Compliance" section of the AD that states, "Required as indicated, unless accomplished previously." Therefore, in the case of paragraphs (f) and (h)(2) of this AD, if the required inspection has been accomplished prior to the effective date of this AD, this AD does not require that it be repeated. However, this AD does require that repetitive inspections be conducted thereafter at intervals not to exceed 2,500 landings (if no cracking is detected, as specified in paragraphs (f) and (i) of the final rule), and that other follow-on actions be accomplished when indicated.

Request To Revise A Certain Compliance Time in Paragraph (f) of the Proposed AD

Several commenters request that the compliance time of "prior to the accumulation of 30,000 or more total landings on the MLG piston" specified in paragraph (f) of the proposed AD be changed to "within 30,000 landings since modification of the MLG." One of the commenters states that the subject compliance time of paragraph (f) of the proposed AD conflicts with paragraph (a)(3) of the proposed AD, which requires the preventative modification of certain MLG pistons (non-modified) that have accumulated 30,000 or more total landings to be done "within 2 years or 5,000 landings on the MLG piston after the effective date of this AD." In this scenario, the commenter contends that a non-modified piston has an extended service allowance and modified pistons have been penalized.

Another commenter states that the proposed compliance time conflicts with the requirements of paragraphs (b)(1)(iii) and (e)(2) of the proposed AD. Paragraph (b)(1)(iii) of the proposed AD requires the preventative modification "prior to the accumulation of 30,000 or more total landings on the MLG piston." Paragraph (e)(2) of the proposed AD requires dye penetrant and magnetic particle inspections for any MLG piston that has accumulated less than 30,000 landings since accomplishment of the modification.

It was the FAA's intent that the replacement required by paragraph (f) of the proposed AD be accomplished within 30,000 landing since modification of the MLG. Therefore, we agree with the commenters to revise the compliance time of paragraph (f) of the final rule from "prior to the accumulation of 30,000 or more total landings on the MLG piston" to "within 30,000 landings since modification of the MLG" and have revised the final rule accordingly.

Request To Revise Phrase "Since Date of Manufacture"

One commenter requests that the phrase "since date of manufacture" be revised to "since date of installation" in paragraphs (h)(1), (h)(2), and (h)(3) of the proposed AD. The commenter states that industry's standard for tracking safe-life landing gear components is total landings accumulated from the date of installation, not the date of manufacture.

The FAA does not agree. Because MLG pistons can be taken off airplanes and sold to other operators, there potentially could be multiple installations. Operators may misinterpret "date of installation" to mean that every time a MLG piston is installed, the number of landings returns to zero. Therefore, we find "date of manufacture" (i.e., since new) to be the correct phrase.

Request To Reference Correct Service Bulletin for Optional Terminating Action

Several commenters request that paragraph (l) of the proposed AD be revised to reference McDonnell Douglas Service Bulletin MD80–32–309, which was issued by Boeing on January 31, 2000, instead of McDonnell Douglas Service Bulletin MD80–32–277, Revision 04, dated December 7, 1999. One commenter states that Service Bulletin MD80–32–277 does not reference any configuration beyond part number (P/N) 5935347–511 for replacement of prior configurations. The commenter also states that Service Bulletin MD80–32–309 specifies that MLG piston, P/N 5935347–517, is an approved configuration for closing action, and that it is an FAA-approved alternative method of compliance for both AD's 96–19–09 and 99–13–07.

The FAA agrees. We have reviewed McDonnell Douglas Service Bulletin MD80–32–277, Revision 04, dated December 7, 1999, and acknowledge that it does not describe procedures for replacement of any MLG piston with a MLG piston, P/N 5935347–517. The correct service information for accomplishing the replacement specified in paragraph (l) of this AD is McDonnell Douglas Service Bulletin MD80–32–309, dated January 31, 2000. We have revised paragraph (l) of the final rule accordingly.

Operators should note that Service Bulletin MD80–32–309 also describes procedures for replacement of the MLG piston due to cracking near the radius of the jackball fitting. However, this proposed AD does not address the actions associated with the jackball fitting. We may consider issuing a separate rulemaking action to supersede AD 99–13–07.

Request To Include Inspection of Jackball Fitting

One commenter requests that the proposed AD require an inspection/rework of the aft torque link lug and inspection of the jackball fitting. The commenter provided no explanation for its request. The FAA does not agree. As discussed above, the FAA may issue a separate rulemaking action to address any identified unsafe condition associated with the jackball fitting.

Question About How To Determine the Inspection Interval and Imposed Life Limit

One commenter asks how to determine the inspection interval and the imposed life limit for MLG pistons that were previously modified per McDonnell Douglas Service Bulletin MD80–32–277, when it cannot determine the times and cycles accumulated at the time of modification.

The FAA finds that, if the cycle count of the MLG piston cannot be determined at the time of modification, operators should work with an appropriate FAA Principal Maintenance Inspector (PMI), the Manager of the Los Angeles Aircraft Certification Office (ACO), and the airplane manufacturer to resolve the issue.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,200 Model DC–9–80 series airplanes and Model MD–88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 700 airplanes of U.S. registry will be affected by this AD.

Should an operator be required to do the dye penetrant and magnetic particle inspections, it will take approximately 2 work hours per MLG piston to accomplish the inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these inspections required by this AD on U.S. operators is estimated to be $120 per MLG piston.

Should an operator be required to do the preventative modification, it will take approximately 6 work hours per MLG piston to accomplish the inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these inspections required by this AD on U.S. operators is estimated to be $360 per MLG piston.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Should an operator elect to accomplish the optional terminating action that is provided by this AD action, it would take approximately 31 work hours per MLG piston to accomplish it, at an average labor rate of $60 per work hour. The cost of required parts would be approximately $107,070 per MLG piston. Based on these figures, the cost impact of the optional terminating action would be $108,930 per MLG piston.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9756 (61 FR 48617, September 16, 1996), and by adding a new airworthiness directive (AD), amendment 39–12225, to read as follows:

2001–09–18 McDonnell Douglas: Amendment 39–12225. Docket 99–NM–164–AD. Supersedes AD 96–19–09, Amendment 39–9756.

Applicability: Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes; and Model MD–88 airplanes; as listed in McDonnell Douglas Service Bulletin MD80–32–277, Revision 04, dated December 7, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (m)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the main landing gear (MLG) pistons, which could result in failure of the pistons and subsequent damage to the airplane structure or injury to airplane occupants, accomplish the following:

For Airplanes on Which Certain Pistons Have Not Been Modified: Inspections

(a) For airplanes on which any MLG piston, part number (P/N) 5935347–1 through 5935347–509 inclusive, has NOT been modified: Do the actions specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable, per the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD80–32–277, Revision 04, dated December 7, 1999.

(1) For any MLG piston that has accumulated less than 5,000 total landings since date of manufacture: Prior to the accumulation of 5,000 total landings on the MLG piston, or within 12 months after the effective date of this AD, whichever occurs later, do dye penetrant and magnetic particle inspections to detect cracks of the MLG pistons.

(2) For any MLG piston that has accumulated 5,000 or more total landings since date of manufacture, but less than 30,000 total landings since date of manufacture: Within 1,500 landings on the MLG piston or 12 months after the effective date of this AD, whichever occurs later, do dye penetrant and magnetic particle inspections to detect cracks of the MLG pistons.

(3) For any MLG piston that has accumulated 30,000 or more total landings since date of manufacture: Within 2 years or 5,000 landings on the MLG piston after the effective date of this AD, whichever occurs first, do the preventative modification (including inspections; corrective actions, if necessary; wet grind rework area; flap shot peen rework area; and reidentify the MLG

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pistons); except as required by paragraph (k) of this AD. Following accomplishment of the preventative modification, do the actions specified in paragraph (e) at the time indicated in that paragraph.

Note 2: Modification of the MLG piston per the original version, and Revisions 01 through 04 of McDonnell Douglas Service Bulletin MD80–32–277, Service Rework Drawing SR08320081, or any FAA-approved preventative modification to MLG pistons before the effective date of this AD, is considered acceptable for compliance with the preventative modification requirements of paragraphs (a)(3), (b)(1)(iii), (b)(2), and (c)(1) of this AD.

For Airplanes on Which Certain Pistons Have Not Been Modified: Condition 1 (No Crack)

(b) If no crack is found during any inspection required by either paragraph (a)(1) or (a)(2) of this AD, do the actions specified in either paragraph (b)(1) or (b)(2) of this AD.

(1) Condition 1, Option 1. Do the actions specified in either paragraph (b)(1)(i) or (b)(1)(ii) of this AD, and in paragraph (b)(1)(iii) of this AD.

(i) Repeat the inspections required by either paragraph (a)(1) or (a)(2) of this AD thereafter at intervals not to exceed 1,500 landings until the permanent modification required by paragraph (b)(1)(iii) of this AD has been done.

(ii) Before further flight, do the flap shot peening per McDonnell Douglas Service Bulletin MD80–32–277, Revision 04, dated December 7, 1999. Repeat the inspections required by either paragraph (a)(1) or (a)(2) of this AD thereafter at intervals not to exceed 2,500 landings until the permanent modification required by paragraph (b)(1)(iii) of this AD has been done.

(iii) Prior to the accumulation of 30,000 or more total landings on the MLG piston, do the preventative modification (including inspections; corrective actions, if necessary; wet grind rework area; flap shot peen rework area; and reidentify the MLG pistons), per the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD80–32–277, Revision 04, dated December 7, 1999; except as required by paragraph (k) of this AD. Accomplishment of the permanent modification stops the repetitive inspection requirements of paragraphs (b)(1)(i) and (b)(1)(ii) of this AD. Following accomplishment of the preventative modification, do the actions specified in paragraph (e) at the time indicated in that paragraph.

(2) Condition 1, Option 2. Before further flight, do the preventative modification (including inspections; corrective actions, if necessary; wet grind rework area; flap shot peen rework area; and reidentify the MLG pistons) per Condition 1, Option 2, of the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD80–32–277, Revision 04, dated December 7, 1999; except as required by paragraph (k) of this AD. Following accomplishment of the preventative modification, do the actions specified in paragraph (e) at the time indicated in that paragraph.

For Airplanes on Which Certain Pistons Have Not Been Modified: Condition 2 (Any Crack Within Limits)

(c) If any crack is found during any inspection required by either paragraph (a)(1) or (a)(2) of this AD, and that crack is within the limits specified in McDonnell Douglas Service Bulletin MD80–32–277, Revision 04, dated December 7, 1999, before further flight, do the action(s) specified in either paragraph (c)(1) or (c)(2) of this AD.

(1) Do the preventative modification (including inspections; corrective actions, if necessary; wet grind rework area; flap shot peen rework area; and reidentify the MLG pistons) per the Accomplishment Instructions of the service bulletin; except as required by paragraph (k) of this AD. Following accomplishment of the preventative modification, do the actions specified in paragraph (e) or (h) of this AD, as applicable, at the time indicated in that paragraph.

(2) Replace the MLG piston with a new or serviceable MLG piston per the service bulletin. Following accomplishment of the replacement, do the actions specified in paragraph (a), (e), or (h) of this AD, as applicable, at the time indicated in that paragraph.

Note 3: Replacement of the MLG piston with a modified MLG per the original version, and Revisions 01 through 04 of McDonnell Douglas Service Bulletin MD80–32–277, Service Rework Drawing SR08320081, or any FAA-approved preventative modification to MLG pistons before the effective date of this AD, is considered acceptable for compliance with the replacement requirements of paragraphs (c)(2) and (d)(1) of this AD.

For Airplanes on Which Certain Pistons Have Not Been Modified: Condition 3 (Any Crack Outside Limits)

(d) If any crack is found during any inspection required by either paragraph (a)(1) or (a)(2) of this AD that is outside the limits specified in McDonnell Douglas Service Bulletin MD80–32–277, Revision 04, dated December 7, 1999, before further flight, do the action(s) specified in paragraph (d)(1) or (d)(2) of this AD.

(1) Condition 3, Option 1. Replace the MLG piston with a new or serviceable MLG piston per the service bulletin. Following accomplishment of the replacement, do the actions specified in paragraph (a), (e), or (h) of this AD, as applicable, at the time indicated in that paragraph.

(2) Condition 3, Option 2. Repair per a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

For Airplanes on Which Certain Pistons Have Been Modified: Replacement or Inspections and Corrective Actions, If Necessary

(e) For airplanes on which any MLG piston, part number (P/N) 5935347–1 through 5935347–509 inclusive, has been modified and reidentified as P/N SR09320081–3 through SR09320081–13 inclusive:

(1) For any MLG piston that has accumulated 30,000 or more landings since accomplishment of the modification: Within 6 months after the effective date of this AD, replace the MLG piston with a new or serviceable MLG piston per the service bulletin. Following accomplishment of the replacement, do the actions specified in paragraph (a), (e), or (h) of this AD, as applicable, at the time indicated in that paragraph.

(2) For any MLG piston that has accumulated less than 30,000 landings since accomplishment of the modification: Do dye penetrant and magnetic particle inspections to detect cracks of the MLG pistons, per the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD80–32–277, Revision 04, dated December 7, 1999; at the applicable time(s) specified in paragraph (e)(2)(i) or (e)(2)(ii) of this AD.

(i) For any MLG piston that has been modified per paragraph (a)(3), (b)(1)(iii), (b)(2), or (c)(1) of this AD, or that has been replaced with a modified MLG piston per paragraph (c)(2) or (d)(1) of this AD: Inspect within 2,500 landings following accomplishment of the modification or replacement with a modified MLG piston.

(ii) For any MLG piston that has been modified per service information other than Revision 04 of McDonnell Douglas Service Bulletin MD80–32–277 and not inspected per Revision 04 of the service bulletin prior to the effective date of this AD: Inspect within 1,500 landings or 12 months after the effective date of this AD, whichever occurs later.

(f) If no crack is found during any inspection required by paragraph (e)(2) of this AD, repeat the dye penetrant and magnetic particle inspections required by paragraph (e)(2) of this AD thereafter at intervals not to exceed 2,500 landings. Within 30,000 landings since modification of the MLG piston, replace the MLG piston with a new or serviceable MLG piston per the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD80–32–277, Revision 04, dated December 7, 1999. Following accomplishment of the replacement, do the actions specified in paragraph (a), (e), or (h) of this AD, as applicable, at the time indicated in that paragraph.

(g) If any crack is found during any inspection required by paragraph (e)(2) of this AD, before further flight, do the action(s) specified in either paragraph (d)(1) or (d)(2) of this AD.

For Airplanes on Which A Certain Piston Has Been Installed:

(h) For airplanes on which any MLG piston, P/N 5935347–511, has been installed: Do the actions specified in paragraph (h)(1), (h)(2), or (h)(3) of this AD, as applicable, per the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD80–32–277, Revision 04, dated December 7, 1999.

(1) For any MLG piston that has accumulated less than 5,000 total landings since date of manufacture: Prior to the accumulation of 5,000 total landings on the MLG piston, or within 12 months after the effective date of this AD, whichever occurs later, do dye penetrant and magnetic particle inspections to detect cracks of the MLG pistons.

(2) For any MLG piston that has accumulated 5,000 or more total landings since date of manufacture, but less than 30,000 total landings since date of manufacture: Within 1,500 landings on the MLG piston or 12 months after the effective date of this AD, whichever occurs later, do dye penetrant and magnetic particle inspections to detect cracks of the MLG pistons.

(3) For any MLG piston that has accumulated 30,000 or more total landings since date of manufacture: Within 6 months after the effective date of this AD, replace the MLG piston with a new or serviceable MLG piston per the service bulletin. Following accomplishment of the replacement, do the actions specified in paragraph (a), (e), or (h) of this AD, as applicable, at the time indicated in that paragraph.

(i) If no crack is found during any inspection required by either paragraph (h)(1) or (h)(2) of this AD, repeat the dye penetrant and magnetic particle inspections required by either paragraph (h)(1) or (h)(2) of this AD thereafter at intervals not to exceed 2,500 landings. Prior to the accumulation of 30,000 or more total landings on the MLG piston, do the actions specified in paragraph (d)(1) of this AD.

(j) If any crack is found during any inspection required by either paragraph (h)(1) or (h)(2) of this AD, before further flight, do the action(s) specified in either paragraph (d)(1) or (d)(2) of this AD.

Exception to Actions Referenced in Service Bulletin

(k) If any discrepancy is found during any inspection while accomplishing the preventative modification required by this AD, prior to further flight, do applicable corrective action(s) per McDonnell Douglas Service Bulletin MD80–32–277, Revision 04, dated December 7, 1999. If the service bulletin specifies to contact the manufacturer for appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles ACO. For a repair method to be approved by the Manager, Los Angeles ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Optional Terminating Action

(l) Replacement of any MLG piston with a new MLG piston, P/N 5935347–517, per McDonnell Douglas Service Bulletin MD80–32–309, dated January 31, 2000, constitutes terminating action for the requirements of this AD for that MLG piston.

Alternative Methods of Compliance

(m)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 96–19–09, amendment 39–9756, are approved as alternative methods of compliance with this AD.

Special Flight Permits

(n) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(o) Except as provided by paragraphs (d)(2), (k), and (l) of this AD, the actions shall be done in accordance with McDonnell Douglas Service Bulletin MD80–32–277, Revision 04, dated December 7, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(p) This amendment becomes effective on June 14, 2001.

Issued in Renton, Washington, on May 3, 2001.

Lirio Liu Nelson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–11674 Filed 5–9–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 630

[FHWA Docket No. 2000–7426]

RIN 2125–AE77

Federal-Aid Project Agreement

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending its regulation on project agreements. Section 1305 of the Transportation Equity Act for the 21st Century (TEA–21) amended 23 U.S.C. 106(a) and combined authorization of work and execution of the project agreement for a Federal-aid project into a single action. Changes to the agreement provisions reflect these adjustments. Additionally, section 1304 of the TEA–21 amended 23 U.S.C. 102(b) to include a provision to allow the granting of time extensions for engineering cost reimbursement. Changes to the agreement procedures are added to provide this new flexibility.

DATES: This final rule is effective June 11, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Wasley, Office of Program Administration (HIPA), 202–366–4658, or Harold Aikens, Office of the Chief Counsel, 202–366–0791, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday except Federal holidays.

SUPPLEMENTARY INFORMATION: The amendments in this final rule are based primarily on the notice of proposed rulemaking (NPRM) published on August 31, 2000, at 65 FR 52962 (FHWA Docket No. 2000–7426). All comments received in response to this NPRM have been considered in adopting these amendments.

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401 by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov.*

Background

Under the provisions of 23 U.S.C. 106, a formal agreement between the State transportation department (STD) and the FHWA is required for Federal-aid highway projects. This agreement, referred to as the "project agreement," is in essence a written contract between the State and the Federal Government defining the extent of the work to be undertaken, the State and the Federal shares of a project's cost, and commitments concerning maintenance of the project.

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The present regulation at 23 CFR 630, subpart C, provides requirements concerning the project agreement. It includes detailed instructions on preparation of the project agreement, and an assemblage of agreement provisions that are part of the project agreement.

The present regulation at 23 CFR 630, subpart A, provides requirements concerning the project authorization. The FHWA project authorization commits the Federal Government to participate in the funding of a project, except in those instances where the State requests FHWA authorization without the commitment of Federal funds. In addition, FHWA authorization also establishes a point in time after which costs incurred on a project are eligible for Federal participation.

Requirements covering project agreements are contained in this final rule. This final rule updates and modifies the existing regulation to incorporate needed changes made by sections 1304 and 1305 of the TEA–21, Public Law 105–178, 112 Stat.107, it combines the project agreement and the project authorization of work. The final rule amends these regulations in the manner and for the reasons indicated below.

Discussion of Comments

The FHWA published a notice of proposed rulemaking (NPRM) concerning proposed revisions to Part 630 on August 31, 2000, at 65 FR 52962. Interested persons were invited to participate in the development of this final rule by submitting written comments to the FHWA. Only one State transportation agency submitted comments. The State agency provided two comments on proposed § 630.106(f), and four comments concerning clarification of the NPRM's section-by-section analysis of § 630.106(f).

Section 630.106(f)(2) discusses the manner for establishing the Federal share of eligible project costs. The comment was: Could an agreement with a lump sum Federal share be changed to a pro rata Federal share? Yes, when the Federal share in the project agreement is changed, the manner in which the Federal share is established can also be changed. The Federal share established as either lump sum or pro rata in the project agreement at the time of authorization does not have to be the same, but the Federal share can only be adjusted to reflect the actual bid amount received. The final rule is not changed as a result of this comment.

Concerning the section-by-section analysis for § 630.106(f), the commenter requested explanation of the following: (1) whether the Federal share agreed to would continue through the life of the project; and (2) whether manipulation of the funding levels of individual projects to accommodate program funding changes or needs would not be allowed. The FHWA believes that once a project is under agreement the amount of Federal funds and appropriation type cannot be changed except to reflect a change in the bids received or any one of the four general categories for exceptions contained in § 630.106(c)(1) through (c)(4).

A follow up comment stated that the agency would not support any regulation that would require additional funds to cover project cost overruns. Establishing the contractual obligation of the Federal Government for the payment of the Federal share of the cost of the project is a legislative requirement of 23 U.S.C. 106(a)(3). The Federal Government cannot commit future funds that might not be available. Funds must be available at the time the project agreement is executed. The State is still required to prepare a modification to a project agreement as changes occur. In the same paragraph, it was suggested that the term "significantly" be removed from the analysis section to avoid any vagueness. The term "significant" rather than "substantive" is used in the discussion to account for different interpretations of what is substantial. The word "significantly" might suggest considerable in amount, which might not recognize that flexibility may be applied for project implementation. The rule does not attempt to apply hard and fast rules or percentages as project needs and circumstances vary. Current § 630.106(f)(2), that allows a change in the project agreement to reflect the actual bid received, uses the term "substantive" when compared to the STD's estimated cost to trigger an adjustment to the Federal share. The cost difference should have real meaning when compared to the total cost before an adjustment is made to the Federal share. For example, a thousand dollar cost difference, when compared to a million dollar estimate doesn't have much meaning. Therefore, substantial may be viewed differently among local, regional, and State projects.

The State agency asked if the manner established for the Federal-aid share of eligible project costs under proposed § 630.106(f)(1) could be changed at the time an adjustment is made to reflect the actual bids received. The long standing regulatory provision, retained in § 630.106(f)(2), that allows a one time change in the project agreement to reflect the actual bid received, also permits the manner established for the Federal-aid share to be changed. Adjustments to the Federal share, or the manner in which established under § 630.106(f)(1) will only be permitted for projects in situations where bid prices are significantly different from the estimates at the time of FHWA authorization. A change in the Federal commitment from the agreed to amount of Federal funds obligated from a specific Federal appropriation type or category of funds, to take advantage of new appropriations or to switch appropriations of individual projects to accommodate program funding changes or needs, is not allowed except for authorization to proceed under § 630.106(c). The four general categories for exceptions to this rule contained in § 630.106(c)(1) through (4) allow a change to any category of funds eligible at the time funds are available for conversion to a contractual obligation of the Federal government under 23 U.S.C. 106.

The State agency proposed changing the wording in § 630.106(f)(2) from "shortly after" to "based on." The State agency felt that the term "shortly" was too vague. It is our intent to make any funding changes, made as a result of actual bids, as soon as it is practical after the bids are received within the same Federal fiscal year. Our intent is not to have Federal commitments outstanding. Funding changes in the amount of Federal funds committed as a result of actual bids received should be as soon as practicable within the same Federal fiscal year that the bids are received. For these reasons, we are not changing the wording in § 630.106(f)(2).

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of U. S. Department of Transportation regulatory policies and procedures. The final rule updates the Federal-aid project agreement regulation to conform to recent laws, regulations, or guidance and clarifies existing policies. The economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities. This rule clarifies and simplifies procedures used by State highway agencies in accordance with existing laws, regulations, or guidance.

Unfunded Mandates Reform Act of 1995

This rule would not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1531 *et seq.*).

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not economically significant and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that it does not have a substantial direct affect or significant federalism implications on States or local governments that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this proposal under Executive Order 13175, dated November 6, 2000, and believes that the final rule will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. A formal project agreement between the FHWA and a State is required for all Federal-aid projects. The project agreement process under this final rule has not changed for Indian tribal governments. Federal-aid funds for projects involving Indian tribal governments will continue indirectly through the State. Authorization, project agreement, and obligation of funds are by statute a combined action. To avoid confusion and misinterpretations, the final regulation (23 CFR 630) is being revised to reflect current procedures. Therefore, a tribal summary impact statement is not required.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has reviewed this rule and determined that the information collection requirements associated with this rulemaking are covered by a currently approved information collection, OMB Approval No. 2125–0529, entitled, "Preparation and Execution of the Project Agreement and Modifications," which is due to expire on May 31, 2001. There are no changes to the current information collection burden estimates as a result of this final rule. Interested persons were invited to provide comments regarding this information collection as a part of the development of this final rule by submitting written comments on the NPRM. No comments were received regarding these information collection requirements. This final rule updates and modifies the existing requirements to reflect statutory changes to the project agreement process enacted by section 1305 of the Transportation Equity Act for the 21st Century (TEA–21, Pub. L. 105–178) amended 23 U.S.C. 106(a) and combined authorization of work and execution of the project agreement for a Federal-aid project into a single action.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 630

Government contracts, Grant programs—Transportation, Highways and roads, Project agreement procedures.

Issued on: May 3, 2001.

Vincent F. Schimmoller,

Deputy Executive Director, Federal Highway Administration.

In consideration of the foregoing, the FHWA amends title 23, chapter I, Code of Federal Regulations, by amending part 630, as set forth below.

PART 630—PRECONSTRUCTION PROCEDURES

1. Revise the authority citation for part 630 to read as follows:

Authority: 23 U.S.C. 106, 109, 115, 315, 320, and 402(a); 23 CFR 1.32; and 49 CFR 1.48(b).

2. Revise subpart A of part 630 to read as follows:

Subpart A—Project Authorization and Agreements

Sec.

630.102 Purpose.
630.104 Applicability.
630.106 Authorization to proceed.
630.108 Preparation of agreement.
630.110 Modification of original agreement.
630.112 Agreement provisions.

§ 630.102 Purpose.

The purpose of this subpart is to prescribe policies for authorizing Federal-aid projects through execution of the project agreement required by 23 U.S.C. 106(a)(2).

§ 630.104 Applicability.

(a) This subpart is applicable to all Federal-aid projects unless specifically exempted.

(b) Other projects which involve special procedures are to be approved, or authorized as set out in the implementing instructions or regulations for those projects.

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§ 630.106 Authorization to proceed.

(a)(1) The State transportation department (STD) must obtain an authorization to proceed from the FHWA before beginning work on any Federal-aid project. The STD may request an authorization to proceed in writing or by electronic mail for a project or a group of projects.

(2) The FHWA will issue the authorization to proceed either through or after the execution of a formal project agreement with the State. The agreement can be executed only after applicable prerequisite requirements of Federal laws and implementing regulations and directives are satisfied. Except as provided in paragraphs (c)(1) through (c)(4) of this section, the FHWA will obligate Federal funds in the project or group of projects upon execution of the project agreement.

(b) Federal funds shall not participate in costs incurred prior to the date of a project agreement except as provided by 23 CFR 1.9(b).

(c) The execution of the project agreement shall be deemed a contractual obligation of the Federal government under 23 U.S.C. 106 and shall require that appropriate funds be available at the time of authorization for the agreed Federal share, either pro rata or lump sum, of the cost of eligible work to be incurred by the State except as follows:

(1) Advance construction projects authorized under 23 U.S.C. 115.

(2) Projects for preliminary studies for the portion of the preliminary engineering and right-of-way (ROW) phase(s) through the selection of a location.

(3) Projects for ROW acquisition in hardship and protective buying situations through the selection of a particular location. This includes ROW acquisition within a potential highway corridor under consideration where necessary to preserve the corridor for future highway purposes. Authorization of work under this paragraph shall be in accord with the provisions of 23 CFR part 710.

(4) In special cases where the Federal Highway Administrator determines it to be in the best interest of the Federal-aid highway program.

(d) For projects authorized to proceed under paragraphs (c)(1) through (c)(4) of this section, the executed project agreement shall contain the following statement: "Authorization to proceed is not a commitment or obligation to provide Federal funds for that portion of the undertaking not fully funded herein."

(e) For projects authorized under paragraphs (c)(2) and (c)(3) of this section, subsequent authorizations beyond the location stage shall not be given until appropriate available funds have been obligated to cover eligible costs of the work covered by the previous authorization.

(f)(1) The Federal-aid share of eligible project costs shall be established at the time the project agreement is executed in one of the following manners:

(i) Pro rata, with the agreement stating the Federal share as a specified percentage; or

(ii) Lump sum, with the agreement stating that Federal funds are limited to a specified dollar amount not to exceed the legal pro rata.

(2) The pro-rata or lump sum share may be adjusted before or shortly after contract award to reflect any substantive change in the bids received as compared to the STD's estimated cost of the project at the time of FHWA authorization, provided that Federal funds are available.

(3) Federal participation is limited to the agreed Federal share of eligible costs actually incurred by the State, not to exceed the maximum permitted by enabling legislation.

(g) The State may contribute more than the normal non-Federal share of title 23, U.S.C. projects. In general, financing proposals that result in only minimal amounts of Federal funds in projects should be avoided unless they are based on sound project management decisions.

(h)(1) Donations of cash, land, material or services may be credited to the State's non-Federal share of the participating project work in accordance with title 23, U.S.C., and implementing regulations.

(2) Contributions may not exceed the total costs incurred by the State on the project. Cash contributions from all sources plus the Federal funds may not exceed the total cost of the project.

§ 630.108 Preparation of agreement.

(a) The STD shall prepare a project agreement for each Federal-aid project.

(b) The STD may develop the project agreement in a format acceptable to both the STD and the FHWA provided the following are included:

(1) A description of each project location including State and project termini;

(2) The Federal-aid project number;

(3) The work covered by the agreement;

(4) The total project cost and amount of Federal funds under agreement;

(5) The Federal-aid share of eligible project costs expressed as either a pro rata percentage or a lump sum as set forth in § 630.106(f)(1);

(6) A statement that the State accepts and will comply with the agreement provisions set forth in § 630.112;

(7) A statement that the State stipulates that its signature on the project agreement constitutes the making of the certifications set for in § 630.112; and

(8) Signatures of officials from both the State and the FHWA, and the date executed.

(c) The project agreement should also document, by comment, instances where:

(1) The State is applying amounts of credits from special accounts (such as the 23 U.S.C. 120(j) toll credits, 23 U.S.C. 144(n) off-system bridge credits and 23 U.S.C. 323 land value credits) to cover all or a portion of the normal percent non-Federal share of the project;

(2) The project involves other arrangements affecting Federal funding or non-Federal matching provisions, including tapered match, donations, or use of other Federal agency funds, if known at the time the project agreement is executed; and

(3) The State is claiming finance related costs for bond and other debt instrument financing (such as payments to States under 23 U.S.C. 122).

(d) The STD may use an electronic version of the agreement as provided by the FHWA.

(Approved by the Office of Management and Budget under control number 2125–0529)

§ 630.110 Modification of original agreement.

(a) When changes are needed to the original project agreement, a modification of agreement shall be prepared. Agreements should not be modified to replace one Federal fund category with another unless specifically authorized by statute.

(b) The STD may develop the modification of project agreement in a format acceptable to both the STD and the FHWA provided the following are included:

(1) The Federal-aid project number and State;

(2) A sequential number identifying the modification;

(3) A reference to the date of the original project agreement to be modified;

(4) The original total project cost and the original amount of Federal funds under agreement;

(5) The revised total project cost and the revised amount of Federal funds under agreement;

(6) The reason for the modifications; and,

(7) Signatures of officials from both the State and the FHWA and date executed.

(c) The STD may use an electronic version of the modification of project agreement as provided by the FHWA.

§ 630.112 Agreement provisions.

(a) The State, through its transportation department, accepts and agrees to comply with the applicable terms and conditions set forth in title 23, U.S.C., the regulations issued pursuant thereto, the policies and procedures promulgated by the FHWA relative to the designated project covered by the agreement, and all other applicable Federal laws and regulations.

(b) Federal funds obligated for the project must not exceed the amount agreed to on the project agreement, the balance of the estimated total cost being an obligation of the State. Such obligation of Federal funds extends only to project costs incurred by the State after the execution of a formal project agreement with the FHWA.

(c) The State must stipulate that as a condition to payment of the Federal funds obligated, it accepts and will comply with the following applicable provisions:

(1) *Project for acquisition of rights-of-way.* In the event that actual construction of a road on this right-of-way is not undertaken by the close of the twentieth fiscal year following the fiscal year in which the project is authorized, the STD will repay to the FHWA the sum or sums of Federal funds paid to the transportation department under the terms of the agreement. The State may request a time extension beyond the 20-year limit with no repayment of Federal funds, and the FHWA may approve this request if it is considered reasonable.

(2) *Preliminary engineering project.* In the event that right-of-way acquisition for, or actual construction of, the road for which this preliminary engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which the project is authorized, the STD will repay to the FHWA the sum or sums of Federal funds paid to the transportation department under the terms of the agreement. The State may request a time extension for any preliminary engineering project beyond the 10-year limit with no repayment of Federal funds, and the FHWA may approve this request if it is considered reasonable.

(3) *Drug-free workplace certification.* By signing the project agreement, the STD agrees to provide a drug-free workplace as required by 49 CFR part 29, subpart F. In signing the project agreement, the State is providing the certification required in appendix C to 49 CFR part 29, unless the State provides an annual certification.

(4) *Suspension and debarment certification.* By signing the project agreement, the STD agrees to fulfill the responsibility imposed by 49 CFR 29.510 regarding debarment, suspension, and other responsibility matters. In signing the project agreement, the State is providing the certification for its principals required in appendix A to 49 CFR part 29.

(5) *Lobbying certification.* By signing the project agreement, the STD agrees to abide by the lobbying restrictions set forth in 49 CFR part 20. In signing the project agreement, the State is providing the certification required in appendix A to 49 CFR part 20.

Subpart C—[Removed and Reserved]

3. In part 630, remove and reserve subpart C.

[FR Doc. 01–11810 Filed 5–9–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 13–01–008]

RIN 2115–AE46

Date Change for Special Local Regulation (SLR), Seattle National Maritime Week Tugboat Race

AGENCY: Coast Guard, DOT.

ACTION: Notice of change in implementation.

SUMMARY: The Coast Guard announces a change to the effective date for the Seattle National Maritime Week Tugboat Race Special Local Regulation (SLR) as per 33 CFR 100.1306(c). This year's event will be held on Saturday, May 12th, 2001, necessitating this effective date change.

DATES: 33 CFR 100.1306 is effective May 12, 2001, from 12 p.m. to 4:30 p.m.

Dated: May 3, 2001.

M.D. Dawe,

Commander, U.S. Coast Guard, Commander, Group Seattle.

[FR Doc. 01–11847 Filed 5–9–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NY47–218, FRL–6940–1]

Approval and Promulgation of Implementation Plans; New York 15 and 9 Percent Rate of Progress Plans, Phase I Ozone Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan revision submitted by New York which is intended to meet several Clean Air Act requirements. Specifically, EPA is approving the 1990 base year ozone emission inventory (for all ozone nonattainment areas in New York); the 1996 and 1999 ozone projection emission inventories; the demonstration that emissions from growth in vehicle miles traveled will not increase total motor vehicle emissions and, therefore, offsetting measures are not necessary; the photochemical assessment monitoring stations network; and enforceable commitments. EPA is also approving New York's 15 Percent Rate of Progress Plan and the 9 Percent Reasonable Further Progress Plan. The intended effect of this action is to approve programs required by the Clean Air Act which will result in emission reductions that will help achieve attainment of the one-hour national ambient air quality standard for ozone.

EFFECTIVE DATE: This rule will be effective June 11, 2001.

ADDRESSES: Copies of the State's submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, NY 10007–1866.

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, NY 10007–1866, (212) 637–3381.

SUPPLEMENTARY INFORMATION:

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I. Background

On November 3, 1999 (64 FR 59706), EPA proposed approval of New York's State Implementation Plan (SIP) submittal of November 15, 1993, September 4, 1997, and February 2, 1999. These SIP submittals address the requirements for the one severe ozone nonattainment area in New York, the New York-Northern New Jersey-Long Island Nonattainment Area. The New York portion of the New York-Northern New Jersey-Long Island Area is composed of New York City and the counties of Nassau, Suffolk, Westchester, Rockland, and seven towns in Orange County—Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick and Woodbury. The primary focus of this **Federal Register** action is the New York portion of the New York-Northern New Jersey-Long Island Area (referred to as the New York Metro Area).

The following Clean Air Act (CAA) requirements were included in the November 3, 1999 proposal: the 1990 base year emission inventory as revised on February 2, 1999 (Volatile organic compounds (VOC), Nitrogen oxides (NO_X) and Carbon monoxide (CO) for areas designated nonattainment for ozone since 1991 in New York); the 1996 and 1999 ozone projection emission inventories; 15 Percent Rate-Of-Progress (ROP) and 9 Percent Reasonable Further Progress (RFP) Plans; contingency measures (EPA will be acting on the contingency measures in a separate **Federal Register** notice); demonstration that emissions from growth in vehicle miles traveled will not increase motor vehicle emissions and, therefore, offsetting measures are not necessary; preliminary modeling efforts completed before the submittal of the 1-hour ozone attainment demonstration; enforceable commitments for Phase II of the 1-hour ozone SIP development and approval process as defined in EPA's November 3, 1999 proposed approval; photochemical assessment monitoring stations network; and transportation conformity budgets for 1996 and 1999. EPA is approving these transportation conformity budgets since they were submitted as SIP revisions. However, it should be noted that these budgets are no longer used in conformity determinations because New York has since submitted budgets for 2002, 2005, and 2007. On June 9, 2000 (65 FR 36690), EPA found these budgets to be adequate for conformity purposes.

EPA has determined that New York has satisfied EPA's Phase I requirement for the clean fuel fleet program and Ozone Transport Commission NO_X Memoranda of Understanding.

A detailed discussion of the SIP revisions and EPA's rationale for approving them is contained in the November 3, 1999 proposal and will not be restated here. The reader is referred to the proposal for more details.

II. Public Comments

No comments were received in response to EPA's proposed action on this New York SIP revision.

III. Enhanced Inspection and Maintenance (I/M) Program

In EPA's November 3, 1999 proposal, EPA proposed to approve emission credits for the 15 Percent ROP and 9 Percent RFP Plans, pending EPA's verification of New York's enhanced motor vehicle inspection and maintenance (I/M) program's effectiveness.

On May 24, 1999 New York submitted to EPA an enhanced I/M program evaluation report/program effectiveness demonstration. Following EPA's evaluation of the enhanced I/M program effectiveness demonstration, the Agency has determined that New York's enhanced I/M program will provide adequate emission reductions compared to the emission reductions credited in the 15 Percent ROP and 9 Percent RFP Plans. On May 7, 2001 at (66 FR 22922) EPA approved New York's enhanced I/M program effectiveness demonstration. Accordingly, the emission reduction credits associated with New York's enhanced I/M program have been taken into consideration in today's approval of New York's 15 Percent ROP and 9 Percent RFP Plans.

IV. Conclusion

EPA has evaluated New York's submittals for consistency with the CAA and Agency regulations and policy. EPA is approving New York's: 1990 base year emission inventory as revised on February 2, 1999 (VOC, NO_X and CO for areas designated nonattainment for ozone since 1991 in New York); 1996 and 1999 ozone projection emission inventories; photochemical assessment monitoring station network; demonstration that emissions from growth in vehicle miles traveled will not increase total motor vehicle emissions; preliminary modeling efforts completed before the submittal of the 1-hour ozone attainment demonstration; transportation conformity budgets for 1996 and 1999; and enforceable commitments for Phase II of the 1-hour ozone SIP development and approval process. EPA is also approving the 15 Percent ROP and 9 Percent RFP Plans.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this final action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This final action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this final rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This final rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This final rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this final rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. section 804(2). This rule will be effective June 11, 2001.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 9, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 19, 2001.

William J. Muszynski,

Acting Regional Administrator, Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart HH—New York

2. Section 52.1683 is amended by adding new paragraph (h) to read as follows:

§ 52.1683 Control strategy: Ozone.

* * * * *

(h)(1) The 1990 base year emission inventory as revised on February 2, 1999 (Volatile organic compounds (VOC), Nitrogen oxides (NO_X) and Carbon monoxide (CO) for areas designated nonattainment for ozone since 1991 in New York) is approved.

(2) The 1996 and 1999 ozone projection year emission inventories included in New York's February 2, 1999 State Implementation Plan revision for the New York portion of the New York-Northern New Jersey-Long Island nonattainment area are approved.

(3) The 1996 and 1999 conformity emission budgets for the New York portion of the New York-Northern New Jersey-Long Island nonattainment area included in New York's February 2, 1999 State Implementation Plan revision are approved.

(4) The photochemical assessment monitoring stations network included in New York's February 2, 1999 State Implementation Plan revision is approved.

(5) The demonstration that emissions from growth in vehicle miles traveled will not increase total motor vehicle emissions and, therefore, offsetting measures are not necessary, which was included in New York's February 2, 1999 State Implementation Plan revision for the New York portion of the New York-Northern New Jersey-Long Island nonattainment area is approved.

(6) The enforceable commitments to: participate in the consultative process to address regional transport; adopt additional control measures as necessary to attain the ozone standard, meeting rate of progress requirements, and eliminating significant contribution to nonattainment downwind; identify any reductions that are needed from upwind areas for the area to meet the ozone standard, included in New York's February 2, 1999 State Implementation Plan revision for the New York portion of the New York-Northern New Jersey-Long Island nonattainment area are approved.

(7) The 15 Percent Rate of Progress Plan and the 9 Percent Reasonable Further Progress Plan included in the New York's February 2, 1999 State Implementation Plan revision for the New York portion of the New York-Northern New Jersey-Long Island nonattainment area are approved.

[FR Doc. 01–11835 Filed 5–9–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region 2 Docket No. NY46–217a, FRL–6977–2]

Approval and Promulgation of State Plans For Designated Facilities; NY

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the New York supplementary submittal for meeting EPA's conditional approval of the New York State Plan for regulating existing MSW Landfills. The State Plan establishes performance standards for existing Municipal Solid Waste landfills located in New York State and provides for the implementation and enforcement of those standards, which will reduce the designated pollutants.

DATES: This direct final rule is effective on July 9, 2001 without further notice, unless EPA receives adverse comment by June 11, 2001. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: All comments should be addressed to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, New York, New York 10007–1866.

Copies of the state submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Craig Flamm, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New

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York 10007–1866, (212) 637–4021, email: *flamm.craig@epa.gov*.

SUPPLEMENTARY INFORMATION:

Background

On July 19, 1999 (64 FR 38582), EPA conditionally approved the New York State Plan for regulating existing Municipal Solid Waste (MSW) Landfills. The reader is referred to the July 19, 1999 rulemaking action for a more detailed description and the rationale of EPA's conditional approval of the New York MSW Landfills State Plan. The conditional approval was contingent on New York providing EPA with modified Title V or State Operating Permits containing compliance schedules with all five increments of progress outlined in Subpart Cc of 40 CFR part 60, the Emission Guidelines for existing Municipal Solid Waste Landfills. The permits were due within one year of the effective date of the conditional approval, September 17, 1999.

On September 18, 2000, the New York State Department of Environmental Conservation (NYSDEC) submitted a statement that NYSDEC inspected all previously identified landfills in New York that meet the criteria for a major source. The NYSDEC identified one landfill out of compliance and one newly identified landfill which is currently under review by the NSDEC and which might require controls. The NYSDEC stated that during the inspections it was confirmed that the rest of the landfills in question were in compliance with New York's State Plan thereby making increments of progress unnecessary for these landfills.

The two landfills that are not in compliance currently are the Ontario Landfill and the Babylon Landfill. EPA received a timely Title V operating permit with appropriate increments of progress and compliance deadlines for the Ontario Landfill. The Babylon Landfill was discovered only recently by NYSDEC, and EPA is confident that the landfill was discovered in good faith and that an appropriate applicability determination will be completed in a timely manner and a compliance schedule with increments of progress will be submitted to the EPA if they are needed. All remaining landfills in New York have met the requirements for all five increments of progress. Should New York identify any new Municipal Solid Waste Landfills that meet the existing landfill criteria and require controls, New York shall submit increments of progress for those facilities as well to the EPA.

Conclusion

EPA has evaluated the Municipal Solid Waste Landfill State Plan submitted by New York for consistency with the Act, EPA guidelines and policy. EPA has determined that New York's State Plan contains all approvable elements and critical compliance dates. Therefore, EPA is approving New York's Plan to implement and enforce 40 CFR Subpart Cc, as it applies to existing MSW Landfills.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the State Plan revision should adverse comments be filed. This rule will be effective July 9, 2001 without further notice unless the Agency receives adverse comments by June 11, 2001.

If the EPA receives adverse comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this final action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This final action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this final rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This final rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing State Plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State Plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a State Plan submission, to use VCS in place of a State Plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this final rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2). This rule will be effective July 9, 2001.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 9, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Intergovernmental relations, Methane, Municipal solid waste landfills, Nonmethane organic compounds, Reporting and recordkeeping requirements.

Dated: April 19, 2001.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 01–11829 Filed 5–9–01; 8:45 am]

BILLING CODE 6560–50–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

40 CFR Part 1611

Testimony by Employees in Legal Proceedings

AGENCY: Chemical Safety and Hazard Investigation Board.

ACTION: Final rule.

SUMMARY: This rule amends 40 CFR part 1611 (Testimony by Employees in Legal Proceedings), published at 66 FR 17364 (March 30, 2001). Part 1611 provides the Chemical Safety and Hazard Investigation Board's (CSB) policy concerning testimony of CSB employees in legal proceedings. This rule amends § 1611.2 (Definitions) to add a definition of "employee" and amends § 1611.6 (Testimony of former CSB employees) to add a requirement that former employees notify the CSB General Counsel when they are served with a subpoena relating to work performed for the CSB.

DATES: This rule is effective May 10, 2001.

FOR FURTHER INFORMATION CONTACT: Raymond C. Porfiri, (202) 261–7600.

SUPPLEMENTARY INFORMATION: (1) Amendment to section 1611.2. The current CSB rule on testimony by employees in legal proceedings, 40 CFR part 1611, published at 66 FR 17364 (March 30, 2001) does not define "employee." The CSB has determined that for the purpose of part 1611 (as well as part 1612, "Production of Records in Legal Proceedings") "employee" should be defined to include all those who undertake work for the CSB and who may come into contact with protected information. Thus "employee" is defined to include: current or former CSB Board Members or employees, including student interns, and contractors, contract employees, or consultants (and their employees). But it is made clear that this definition does not include persons who are no longer employed by or under contract to the CSB, and who are retained or hired as expert witnesses or agree to testify about matters that do not involve their work for the CSB.

Other agencies have included a similarly broad definition of employee for this purpose. *See, e.g.*, Federal Energy Regulatory Commission, 18 CFR 388.111; Department of State, 22 CFR 172.1; USAID, 22 CFR 206.1; Overseas Private Investment Corporation, 22 CFR 713.10; Department of the Navy, 32 CFR 725.4; and U.S. Postal Service, 39 CFR 265.13. Moreover, CSB contractors are already required to sign non-disclosure agreements, prohibiting them from disclosing in any forum (except to CSB employees) trade secret or confidential business information obtained in their work for the CSB.

The need for this broad definition of employee is even more necessary at the CSB because, pursuant to 42 U.S.C. 7412(r)(6)(G), no part of the conclusions, findings or recommendations of the CSB relating to an accidental release or the investigation thereof, may be admitted as evidence or used in any suit or action for damages growing out of any matter mentioned in such report.

(2) Amendment to section 1611.6. The current rule pertaining to former employees is clarified to include a requirement that any former employee who is served with a subpoena to appear and testify in connection with civil litigation that relates to his or her work with the CSB, shall immediately notify the CSB General Counsel and provide all information requested by the General Counsel. This clarification is necessary to give notice to former employees of their obligation in this regard, and to provide the agency with advance notice of a potential problem.

Public Comment Procedures: Because this rule amends an internal policy for CSB employees, the Administrative Procedure Act does not require that it be published as a proposed regulation for notice and public comment. *See* 5 U.S.C. 553(a)(2). This rule provides immediate clarifying guidance pertaining to CSB employee testimony. As such, the CSB finds that good cause exists for making the regulation effective immediately upon publication. *See* 5 U.S.C. 553(b)(3)(B).

Compliance With Other Laws

Regulatory Planning and Review (E.O. 12866)

This regulation is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This regulation will not have an effect of $100 million or more on the economy. This regulation regulates how and when CSB employee testimony may be provided in certain situations. As such, it will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities.

(2) This regulation will not create a serious inconsistency or interfere with an action taken or planned by another agency.

(3) This regulation does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This regulation is consistent with well-established constitutional and statutory principles and does not raise novel legal or policy issues.

Regulatory Flexibility Act

The CSB certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This regulation merely regulates how and when CSB employees may testify in certain situations.

Small Business Regulatory Enforcement Fairness Act

This regulation is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. Because this regulation only regulates how and when CSB employees may testify in certain situations, this regulation:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions.

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c. Does not have a significant adverse effect on competition, employment, investment, productivity, innovation or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This regulation does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. This regulation does not have a significant or unique effect on State, local or tribal governments or the private sector because this regulation only regulates how and when CSB employees may testify in certain situations. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630, this regulation does not have significant takings implications. A takings implication assessment is not required.

Federalism (E.O. 13132)

The CSB has determined this regulation conforms to the Federalism principals of Executive Order 13132. It also certifies that to the extent a regulatory preemption occurs, it is because the exercise of State and Tribal authority conflicts with the exercise of Federal authority under the U.S. Constitution's Supremacy Clause and Federal statute. This regulation is, however, restricted to the minimum level necessary to achieve the objectives of 5 U.S.C. 301 pursuant to which this regulation is promulgated.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the CSB has determined that this regulation does not unduly burden the judicial system, and does meet the requirements of section 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation contains no reporting or recordkeeping requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3510 *et seq.*

National Environmental Policy Act (NEPA)

This regulation does not constitute a major Federal action significantly affecting the quality of the human environment under NEPA, 42 U.S.C. 4321 *et seq.* A detailed statement under the NEPA is not required.

List of Subjects

Administrative practice and procedure, Freedom of information, Government employees, Investigations, Testimony of employees.

For the reasons stated in the preamble, the Chemical Safety and Hazard Investigation Board amends 40 CFR part 1611 as follows:

PART 1611—TESTIMONY BY EMPLOYEES IN LEGAL PROCEEDINGS

1. The authority citation for part 1611 continues to read as follows:

Authority: 5 U.S.C. 301, 42 U.S.C. 7412(r)(6)(G).

2. Amend § 1611.2 to add a new definition paragraph as follows:

§ 1611.2 Definitions.

* * * * *

Employee, for the purpose of this part and part 1612 of this chapter, refers to current or former CSB Board Members or employees, including student interns, and contractors, contract employees, or consultants (and their employees). This definition does not include persons who are no longer employed by or under contract to the CSB, and who are retained or hired as expert witnesses or agree to testify about matters that do not involve their work for the CSB.

3. Amend § 1611.6 to redesignate the existing text as paragraph (a) and to add a new paragraph (b) as follows:

§ 1611.6 Testimony of former CSB employees.

(a) * * *

(b) Any former employee who is served with a subpoena to appear and testify in connection with civil litigation that relates to his or her work with the CSB, shall immediately notify the CSB General Counsel and provide all information requested by the General Counsel.

Dated: May 1, 2001.

Christopher W. Warner,

General Counsel.

[FR Doc. 01–11791 Filed 5–9–01; 8:45 am]

BILLING CODE 6350–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 270

RIN 0970–AC06

High Performance Bonus Awards Under the TANF Program

AGENCY: Administration for Children and Families, HHS.

ACTION: Interim final rule; request for comments.

SUMMARY: The final rule covering the Temporary Assistance for Needy Families (TANF) high performance bonuses to States in FY 2002 and beyond was published August 30, 2000 (65 FR 52814). This interim final regulation further implements the child care measure, one of the measures on which we will award bonuses to States in FY 2002 and FY 2003.

Specifically, we explain how we will compute scores and rank States on the affordability component using four income ranges and a comparison of the number of children eligible under the State's income limits compared to the federal eligibility limits. We also specify how we will compute scores and rank States for the child care quality component based on new reporting requirements for market rate surveys for child care.

DATES: Effective date: This interim final rule is effective on May 10, 2001, except for § 270.4(e)(2)(ii) which requires an information collection that is not yet approved by the Office of Management and Budget (OMB). We will publish a document in the **Federal Register** announcing the effecitve date of § 270.4(e)(2)(ii) when the additional data collection requirement is approved by OMB.

Comment period: You may submit comments through July 9, 2001. We will not consider comments received after this date.

ADDRESSES: You may mail comments to the Administration for Children and Families, Child Care Bureau, 330 C Street SW., Room 2046, Washington, DC 20447. Attention: Gail Collins.

Commenters may also provide comments on the ACF website. Electronic comments must include the full name, address and organizational affiliation (if any) of the commenter. This interim rule is accessible electronically via the Internet from the ACF Welfare Reform Home Page at http:www.acf.dhhs.gov/news/welfare.

FOR FURTHER INFORMATION CONTACT: Gail Collins, Acting Deputy Commissioner, Administration for Children, Youth and Families at (202) 205–8347. Ms. Collins's e-mail address is: gcollins@acf.dhhs.gov.

SUPPLEMENTARY INFORMATION:

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I. Background

A. The Temporary Assistance for Needy Families Program

Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, established the Temporary Assistance for Needy Families (TANF) program under title IV–A of the Social Security Act (the Act), 42 U.S.C. 401 *et seq.* TANF is a block grant program designed to make dramatic reforms in the nation's welfare system. Its focus is on moving recipients into work and turning welfare into a program of temporary assistance, preventing and reducing the incidence of out-of-wedlock births, and promoting stable two-parent families. Other key features of TANF include provisions that emphasize program accountability through financial penalties and rewards for high performance.

B. Summary of the Statutory Provisions Related to the High Performance Bonus

Section 403(a)(4) of the Act requires the Secretary to award bonuses to "high performing States." (Indian tribes are not eligible for these bonuses.) The term "high performing State" is defined in section 403(a)(4) of the Act to mean a State that is most successful in achieving the purposes of the TANF program as specified in section 401(a) of the Act. These purposes are to—

(1) Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

(2) End the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;

(3) Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and

(4) Encourage the formation and maintenance of two-parent families.

Section 403(a)(4)(B) of the Act specifies that the bonus award for a fiscal year will be based on a State's performance in the previous fiscal year and may not exceed five percent of the State's family assistance grant.

Section 403(a)(4)(C) of the Act requires the Department to develop a formula for measuring State performance in consultation with the National Governors' Association and the American Public Welfare Association, now known as the American Public Human Services Association.

Section 403(a)(4)(D) of the Act requires the Secretary to use the formula developed to assign a score to each eligible State for the fiscal year preceding the bonus year and prescribe a performance threshold as the basis for awarding the bonus. Section 403(a)(4)(D) of the Act also specifies that $1 billion (or an average total of $200 million each year) will be awarded over five years, beginning in FY 1999.

C. High Performance Bonus Regulations

On December 6, 1999, we published a Notice of Proposed Rulemaking (NPRM) covering the bonus awards in FY 2002 and beyond. The NPRM proposed the measures, the formula for allocating funds, and the data sources, methodologies, and specifications for each measure. The final rule, published on August 30, 2000 (65 FR 52814), provided that we would base the bonuses in FY 2002 and beyond on four work measures; a measure on family formation and stability; and three measures that support work and self-sufficiency, i.e., participation by low-income working families in the Food Stamp Program, participation in the Medicaid and State Children's Health Insurance Program (SCHIP), and a child care measure. The methodologies and specification for all of the measures, except for the child care measure, were completely specified in the final rule.

Although it had not been proposed in the NPRM, we added the child care measure in the final rule since we strongly agreed with commenters that child care subsidies or assistance represent an essential support for low-income families and are a critical part of a successful welfare reform program. We stated in the preamble to the final rule that we planned to engage States and others, particularly data experts, in discussions regarding the technicalities of implementing key elements of the child care measure. While there were many comments in support of a child care measure, there was no opportunity for detailed consultation or public comment on the technical aspects of the new measure, as it had not been included in the NPRM.

We particularly wanted to obtain the States' views on, and information about, issues for which we lacked specific knowledge, such as State data systems. We stated that we planned to hold these consultations and issue details regarding the components of this measure by the end of the calendar year.

II. The Child Care Measure

A. Summary of the Child Care Measure in the Final Rule

The final rule provided that $10 million would be allocated annually for bonus awards under the child care measure. The specific provisions of the measure appear at § 270.4(e) of the final rule. *See* regulatory text at the end of this document.

Briefly, the measure includes three components:

- Child care accessibility, as measured by the percent of children, eligible under the Child Care and Development Fund (CCDF) requirements, who are receiving services, including eligible children served with additional funds;
- Child care affordability, based on a comparison of reported assessed family co-payment to reported family income; and
- Child care quality, as indicated by a comparison of the actual amounts paid for children receiving CCDF subsidies to local market rates in the State.

We will base the bonus awards for FY 2002 on a composite ranking of State scores on accessibility and affordability. We will base the bonus awards for FY 2003 on a composite ranking of accessibility, affordability, and quality. The weights of the various components in computing the composite score are specified in § 270.4(e).

No new data collection is required in order to compete on the two components of the child care measure in FY 2002. We will use existing CCDF data and Census Bureau data as the data source for family incomes at 85 percent of the State's median income, i.e., the Federal eligibility limit in the CCDF program. We will also calculate the

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percentage of potentially-eligible children served by dividing the number of children served with "pooled" funds, that is, CCDF funds (including transfers from TANF) and any other funds States use to serve eligible children, by the number of children eligible under the Federal criteria.

For bonus awards FY 2003 and beyond, we will base the quality component on the actual rates States pay for children receiving CCDF subsidies, as reported on the ACF–801, as compared to State data on actual market rates.

B. Consultations With States and Other Organizations

In determining the specifications for the affordability component, we were aware that States have tremendous flexibility in setting sliding fee scales under the regulations governing the CCDF program which they use to balance different needs and make child care affordable for families at a range of incomes. How to fairly score and rank States in light of the diversity in State practice was one of the major issues on which we sought further advice.

The market rate survey and the data collected as a part of the survey were also issues on which we sought advice. The CCDF statute requires States to conduct a market rate survey periodically as a way of monitoring their program, but there is no consistency in how States conduct these surveys, and we have not required States to submit their surveys or the survey results to ACF. In the preamble to the final rule, we stated that we would consult with States and other experts on the market rate data States would need to submit in order to compete on this measure, the process for submitting the data, and the methodology we would use for ranking States on this component.

Beginning in October, 2000, we contacted all States and approximately 30 advocacy organizations, including agencies and organizations that had commented on this issue in the NPRM, inviting them to consult with us on issues related to the child care measure.

At the first consultation meeting, we asked for individuals to participate in intensive discussions over the next two months.

We established two child care workgroups—one for State agency staff and the other for representatives of advocacy and other agencies and organizations.

The State workgroups, made up of approximately 20 State representatives, met on five occasions by conference call. We faxed information to the workgroup members for review prior to each conference call and had extensive follow-up discussions. The advocate workgroup, made up of representatives of approximately 10 organizations, met twice in two months by similar conference calls. In addition, the Child Care Bureau in ACF requested input from all States through the regional offices of ACF and in public presentations to State representatives.

The consultations focused on the following major issues:

Accessibility

- Were the data readily available?
- What did States need to know to "pool" data properly?

Affordability

- What was the effect of using the State's Median Income as a standard for this component?
- Did it matter how States define "income"?
- What income levels, if any, should be used in this component?
- How should we address family size in the calculations?

Quality

- How reliable are the data collected by the States in their market rate surveys?
- What types of child care should be compared?
- How could this component account for States with large rural populations as compared to States with large urban centers?

C. Changes Made in this Interim Final Rule

As a result of our consultations, we are amending the child care measure to add the following clarifications and specifications.

The Accessibility Component

In the final rule, we referenced the ACF–696 financial reporting form as the source of the information on the counting of children served by "pooled" funds. We are taking this opportunity to update § 270.4(e)(1)(i) to delete the reference to the ACF–696 and replace it with a reference to the recently revised ACF–800 and ACF–801. These two reporting forms are now better sources of the data on the number of children served with all sources of funds used by the State. We believe this change is not only an update for accuracy, but also will avoid confusion in the future. We are deleting the phrase "including any such eligible children served with additional funds reported on the ACF–696 financial reporting form" and replacing it with the words "and who are included in the data reported on the ACF–800 and the ACF–801."

No additional guidance or specifications are needed to implement this component. We will use data from the ACF–800 and ACF–801 to compute scores and rank States.

The Affordability Component

There is considerable variation among States in the amount of co-payments, expressed as a percent of income, that parents are asked to pay at different income levels, particularly above the poverty level. In our consultations with both States and advocate groups, we were encouraged to look at affordability for families at several different increments of income.

Therefore, we specify in § 270.4(e)(3) that we will compare family income to the assessed State co-payment for child care, based on four income ranges. These income ranges refer to percentages of the Federal Poverty Guidelines for a family of three persons. The income ranges are as follows:

- Income below the poverty level;
- Income at least 100 percent and below 125 percent of poverty;
- Income at least 125 percent and below 150 percent of poverty; and
- Income at least 150 percent and below 175 percent of poverty.

For a family of three in FY 2001,
100 percent of the Federal Poverty Guidelines is $14,150;
125 percent of the Federal Poverty Guidelines is $17,687;
150 percent of the Federal Poverty Guidelines is $21,225; and
175 percent of the Federal Poverty Guidelines is $24,762.

Although the maximum allowable income eligibility limit for child care is based on State Median Income (e.g., 85 percent of the SMI), we were encouraged in our consultations to use percent of the poverty level for this comparison between family income and assessed family co-payments. The poverty level remains constant across States, while the SMI varies from State to State.

We were also encouraged to consider family size in the measure of affordability. However, family size is not currently included in the data reported by States on the ACF 800 or 801. Therefore, we have chosen not to require this information at this time because it would result in additional data collection and reporting burden.

We have selected these income ranges that refer to percentages of poverty for a family of three for comparison of assessed co-payments across States because existing State data indicate that the majority of families are receiving care for only one or two children. While some States establish their income eligibility limits below 175 percent of the Federal Poverty Guidelines, all States are serving some larger households with incomes up to $25,000, which equals approximately 175 percent of the Federal Poverty Guidelines for a family of three. However, we are limited in our ability to measure and compare co-payments across States for families with income levels beyond $25,000 because some States are serving few families beyond this point.

Limiting our measure of average co-payments to families earning up to $25,000 could potentially disadvantage States that choose to serve families with higher incomes. We know that some States make use of modest co-payments across a broad range of income in order to extend eligibility higher up the income scale. Families above the State's income guidelines would not be eligible to be served at all and would, therefore, pay 100 percent of the cost of care.

States serving households above $25,000 could have lower than average co-payments across the range of incomes that they serve, but this would not be captured in the measure that examines co-payments only up to $25,000. For example, State A has established an income eligibility limit of $24,000 for a family of three. State B has established an income limit of $28,000 for a family of the same size, and a co-payment rate of 11 percent of family income. Although a family with an annual income below $24,000 might face higher co-payments in State B than in State A, a family with income above $24,000 would be ineligible in State A. A family in State A with an annual income of $26,000 would pay 100 percent of the cost of care, which would likely be 20 percent or more of annual income. A family with the same income in State B would have an assessed co-payment rate of only 11 percent.

In order to address this diversity, our methodology also addresses State effort to provide access to affordable co-payments to a broader range of families. As a part of the affordability component, we will also rank States based on the ratio of the number of children eligible under the State-defined income limits, as specified in the State CCDF Plan, compared to the number of children eligible under the Federal eligibility limit for the CCDF (85% of State's median income (SMI)).

In § 270.4(e)(4), we clarify how we will compute the scores and rank the States on this component. We specify that, for each State competing on this measure, we will calculate, for each of the four income ranges, the average of the ratios of family co-payment to family income for each individual family. Next, we will calculate a fifth ratio of the number of children eligible under the State's defined income limits compared to the number of children eligible under the Federal eligibility limits in the CCDF, i.e., 85 percent of the State's median income. Finally, we will rank each State based on each of the five ratios and will combine the five rankings for each State to obtain the State's score on this component.

The Quality Component

We specify in § 270.4(e)(5) that we will compare the actual rates paid by the State as reported on the ACF–801 (not the published maximum rates) to the market rates applicable to the performance year. In order to have the data to make this comparison, we are requiring that, if a State wishes to compete on this measure, it must submit two specific items of information from its market rate survey. The two items are:

- Age-specific rates for children 0–13 years of age as reported by the child care centers and family day care homes responding to the State's market rate survey; and
- the provider's county or, if the State uses multi-county regions to measure market rates or set maximum payment rates, the administrative region.

We have selected the parameters of age of child, type of provider, and location of provider, because the rates charged by providers (that is market rates) vary substantially based on these factors. States must take these factors into account when setting payment rates that assure equal access to the full range of provider types for children from 0–13 years of age.

In § 270.4(e)(6), we specify how we will compute the scores and rank States on this component. We will compute the percentile of the market represented by the amount paid for each child as reported on the ACF–801 by comparing the actual payment for each child to the array of reported market rates for children of the same age in the relevant county or administrative region. (Payments for children in center-based care will be compared to reported center care rates; payments for children in non-center-based care, i.e., family day care and unlicensed child care, will be compared to reported family child care provider rates.)

Finally, we will take the percentile that results from the per-child comparison of the actual payment to the reported market rates and compute separate State-wide averages for center-based and non-center-based care. Each State will be ranked on each of the two averages. The two rankings will be combined to obtain the State's final score on this component.

III. Justification for This Interim Final Rule

The time frames for implementing and operationalizing the high performance bonus award system are extremely short. It became clear, even as we published the final high performance bonus rule in August, 2000, that States would need immediate and additional guidance, clarification, and specificity about our expectations in order to make program decisions, collect data, and prepare themselves to compete successfully for child care bonuses in FY 2002 and FY 2003. However, it was equally clear that in order to arrive at a reliable and workable measurement system, it was necessary to consult extensively with the National Governors' Association (NGA), the American Public Human Services Association (APHSA), States, and others, which we did through early December. The provisions of this interim final rule reflect the information and recommendations we received in these consultations.

We have determined that publication of an NPRM is unnecessary, impractical, and not in the public interest. We believe it is in the public interest to have the maximum possible number of States compete for bonuses under the TANF program and that they be able to structure their programs to successfully compete on each of the bonus measures. Without the additional information contained in this interim final rule, States will not know how they will be ranked on the child care affordability measure in FY 2002. The performance year for FY 2002 is FY 2001, the current fiscal year. Unless States are given this information in a timely way, they will be unable to have an opportunity to make program changes or take other actions in this fiscal year to prepare themselves to compete on this measure. There is insufficient time to issue both an NPRM and a final rule and still provide States with enough advance notice to be able to make changes in time to have them be operational during the performance year.

Moreover, unless this information is issued as a final rule, States will not know what information they must collect as a part of their child care market rate surveys in order to compete successfully in FY 2003. States are only required to conduct these surveys every two years. Since some States are conducting their market rate surveys in

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FY 2001, it is crucial to advise them quickly about what types of data they would need to collect in order that they can design and conduct their FY 2001 surveys in a way that will enable them to compete for the child care bonus in FY 2003.

Finally, we believe issuance of an NPRM is unnecessary because we have consulted with the States and others who commented on the earlier NPRM about the issues covered by this interim final rule and received their input. We have incorporated their concerns in this interim final rule.

In spite of the need to advise States immediately, we are sensitive to the issue of public notice and comment. For that reason we invite comment on these proposals for the next 60 days.

IV. Regulatory Impact Analyses

A. Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this interim final rule is consistent with these priorities and principles.

The Executive Order encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. As described earlier, ACF consulted with States, their representative organizations, and a broad range of advocacy groups, researchers, and others to obtain their views. This rule reflects the discussions with, and the concerns of, the groups with whom we consulted.

This interim final rule will not have an effect on the economy of $100 million or more in any one year, according to section 3(F)(1) of the Executive Order. We believe the cost of competing for a high performance bonus award in FY 2002 should be minimal since competition for these awards will be based, to the extent possible, on existing data sources. This interim final rule was determined to be significant and has been reviewed by the Office of Management and Budget.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. Small entities are defined in the Act to include small businesses, small non-profit organizations, and small governmental entities. This rule will affect only the 50 States, the District of Columbia, and certain Territories. Therefore, the Secretary certifies that this rule will not have a significant impact on small entities.

C. Assessment of the Impact on Family Well-Being

We certify that we have made an assessment of this rule's impact on the well-being of families, as required under section 654 of The Treasury and General Appropriations Act of 1999. The high performance bonus awards are a statutory part of the TANF program and are designed to reward State efforts in strengthening the economic and social stability of families and carrying out other purposes in the statute. This interim final rule does not limit State flexibility to design programs to serve these purposes.

D. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), no persons are required to respond to a collection of information unless it displays a valid OMB control number. As required by the PRA, we will submit the data collection requirements to OMB for review and approval.

In FY 2002, no additional reporting burden will be required of the States in competing on the child care measure since we will rank States based on data they currently report under the CCDF program (ACF Forms 800 and 801).

However, there will be a reporting burden for the information States must submit if they wish to compete on the child care measure in FY 2003. States must provide the following information based on the child care market rate surveys that they currently conduct every two years:

- All age-specific rates for children 0–13 years of age reported by the child day care centers and family day care homes responding to the State's market rate survey; and
- The provider's county or, if the State uses multi-county regions to measure market rates or set maximum payment rates, the administrative region.

We estimate the reporting burden for reporting these data once every two years to be 40 hours per respondent times 54 respondents, or 2,160 hours. Annualized, this equals a total burden of 1,080 hours as shown below:

Instrument or requirement	Number of respondents	Annual number of responses per respondent	Average burden hours per response	Total annual burden hours
Abstract of Market Rate Survey	54	0.5	40	1,080
Estimated Total Annual Burden Hours				1,080

We will submit this information to OMB for approval. These requirements will not become effective until approved by OMB.

E. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small governmental entity that may be significantly or uniquely impacted by the proposed rule.

We have determined that this interim final rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Competition for a high performance bonus is entirely at State option. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted State or small government.

F. Congressional Review

This interim final rule is not a major rule as defined in 5 U.S.C., Chapter 8.

G. Executive Order 13132

On August 4, 1999, the President issued Executive Order 13132, "federalism." The purposes of the Order are: "to guarantee the division of governmental responsibilities between the national government and the States that was intended by the Framers of the Constitution, to ensure that the principles of federalism established by the Framers guide the executive departments and agencies in the formulation and implementation of policies, and to further the policies of the Unfunded Mandates Reform Act.* * *"

We certify that this final rule does not have a substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The final rule does not pre-empt State law and does not impose unfunded mandates.

This rule does not contain regulatory policies with federalism implications that would require specific consultations with State or local elected officials. The statute, however, requires consultations with the National Governors' Association and the American Public Human Services Association in the development of a high performance bonus system. Prior to the development of the NPRM and this interim final rule, we consulted with representatives of these organizations, State representatives and a broad range of nonprofit, advocacy, and community organizations; foundations; and others.

List of Subjects in 45 CFR Part 270

Grant programs—social programs; Poverty; Public assistance programs; Reporting and recordkeeping requirements.

Catalogue of Federal Domestic Assistance Programs: No. 93.558 Temporary Assistance for Needy Families (TANF) Program; State Family Assistance Grants; Tribal Family Assistance Grants; Assistance Grants to Territories; Matching Grants to Territories; Supplemental Grants for Population Increases; Contingency Fund; High Performance Bonus; Decrease in Illegitimacy Bonus)

Dated: March 14, 2001.

Diann Dawson,

Acting Principal Deputy Assistant Secretary, Administration for Children and Families.

Approved: April 10, 2001.

Tommy G. Thompson,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, we are amending 45 CFR Chapter II as follows:

PART 270—HIGH PERFORMANCE BONUS AWARDS

1. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 603(a)(4).

2. In § 270.4, paragraph (e) is revised to read as follows:

§ 270.4 On what measures will we base the bonus awards?

* * * * *

(e) *Child care subsidy measure.* (1) Beginning in FY 2002, we will measure State performance based upon a composite ranking of:

(i) The accessibility of services based on the percentage of children in the State who meet the maximum allowable Federal eligibility requirements for the Child Care and Development Fund (CCDF) who are served by the State during the performance year, and who are included in the data reported on the ACF–800 and ACF–801 for the same fiscal year; and

(ii) The affordability of CCDF services based on a comparison of the reported assessed family co-payment to reported family income and a comparison of the number of eligible children under the State's defined income limits to the number of eligible children under the federal eligibility limits.

(2) Beginning in FY 2003, we will measure State performance based upon a composite ranking of:

(i) The two components described in paragraph (e)(1) of this section; and

(ii) The quality of CCDF services based on a comparison of reimbursement rates during the performance year to the market rates, determined in accordance with 45 CFR 98.43(b)(2), applicable to that year.

(3) For the affordability component in paragraph (e)(1)(ii) of this section, we will compare family income to the assessed State family co-payment as reported on the ACF–801 across four income ranges. These income ranges refer to percentages of the Federal Poverty Guidelines for a family of three persons. The income ranges are as follows:

(i) Income below the poverty level;

(ii) Income at least 100 percent and below 125 percent of poverty;

(iii) Income at least 125 percent and below 150 percent of poverty; and

(iv) Income at least 150 percent and below 175 percent of poverty.

(4)(i) For the affordability component, we will calculate, for each income range, the average of the ratios of family co-payment to family income for each family served; and

(ii) We will calculate a ratio of the number of children eligible under the State's defined income limits compared to the number of children eligible under the Federal eligibility limits in the CCDF, i.e., 85 percent of the State's median income.

(iii) We will rank each State based on each of the four averages calculated in paragraph (e)(4)(i) of this section and the ratio calculated in paragraph (e)(4)(ii) of this section and combine the ranks to obtain the State's score on this component.

(5) For the quality component specified in paragraph (e)(2)(ii) of this section, in FY 2003 and beyond, we will compare the actual rates paid by the State as reported on the ACF–801 (not the published maximum rates) to the market rates applicable to the performance year, i.e., FY 2002. Each State competing on this measure must submit the following data as a part of its market rate survey:

(i) Age-specific rates for children 0–13 years of age reported by the child care centers and family day care homes responding to the State's market rate survey; and

(ii) The provider's county or, if the State uses multi-county regions to measure market rates or set maximum payment rates, the administrative region.

(6) For the quality component, we will compute the percentile of the market represented by the amount paid for each child as reported on the ACF–801 by comparing the actual payment for each child to the array of reported market rates for children of the same age in the relevant county or administrative region. (We will compare payments for children in center-based care to reported center care provider rates. We will compare payments for children in non-center-based care, i.e., family day care and unlicensed child care, to reported family child care provider rates.)

(i) We will take the percentile that results from the per-child comparison of the actual payment to the reported market rates and compute separate State-wide averages for center-based and non-center-based care; and

(ii) We will rank the State according to the two State-wide averages and

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combine the ranks to obtain the State's score on this component.

(7) For any given year, we will rank the States that choose to compete on the child care measure on each component of the overall measure and award bonuses to the ten States with the highest composite rankings.

(8) We will calculate each component score for this measure to two decimal points. If two or more States have the same score for a component, we will calculate the scores for these States to as many decimal points as necessary to eliminate the tie.

(9)(i) The rank of the measure for the FY 2002 bonus year will be a composite weighted score of the two components at paragraph (e)(1) of this section, with the component at paragraph (e)(1)(i) of this section having a weight of 6 and the component at paragraph (e)(1)(ii) of this section having a weight of 4.

(ii) The rank of the measure for the bonus beginning in FY 2003 will be a composite weighted score of the three components at paragraph (e)(2) of this section, with the component at paragraph (e)(1)(i) of this section having a weight of 5, the component at paragraph (e)(1)(ii) of this section having a weight of 3, and the component at paragraph (e)(2)(ii) of this section having a weight of 2.

(10) We will award bonuses only to the top ten qualifying States that have fully obligated their CCDF Matching Funds for the fiscal year corresponding to the performance year and fully expended their CCDF Matching Funds for the fiscal year preceding the performance year.

[FR Doc. 01–11767 Filed 5–9–01; 8:45 am]
BILLING CODE 4184–01–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 205

[Docket No. MARAD–2000–8284]
RIN 2133–AB42

Audit Appeals; Policy and Procedure

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD, we, our, or us) is updating our regulations on Audit Appeals; Policy and Procedure. The regulations establish audit appeal procedures for parties who contract with the Maritime Subsidy Board or MARAD. This final rule uses plain language to update the audit procedures to reflect our current practices. The intended effect of this rulemaking is to improve our audit appeals process by updating and clarifying the regulations.

DATES: The effective date of this final rule is June 11, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Lennis G. Fludd, Office of Financial and Rate Approvals, (202) 366–2324. You may send mail to Mr. Fludd at Maritime Administration, Office of Financial and Rate Approvals, Room 8117, 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

Part 205 establishes the policy and procedure for parties to use when seeking redress and appeals of audit decisions involving contracts with the Maritime Subsidy Board or MARAD. Part 205 applies to contracts of the Maritime Subsidy Board and MARAD which have included, for example, the Operating-Differential Subsidy, Construction-Differential Subsidy, Capital Construction Fund, Construction Reserve Fund, and Maritime Security Program.

We published a notice of proposed rulemaking (NPRM) on November 16, 2000 at 65 FR 69279. The NPRM proposed revisions to part 205 to reflect our current practices of making audit appeals decisions. This final rule essentially mirrors the NPRM to which we received no public comments. Accordingly, parties no longer appeal to the appropriate Coast Director's office. In the past, auditors were assigned to regional offices. However, we no longer have these auditors. MARAD headquarters is responsible for overseeing audits as deemed appropriate. Such audits may be performed by the Office of Inspector General. Also, as proposed, we are eliminating the discretionary hearing afforded appellants (under § 205.2 (b)) when appealing to the Maritime Administrator. This final rule includes provisions that give the appellant 90 days from the date of receipt of the initial audit findings to file an appeal with the appropriate Associate Administrator and 30 days following the Associate Administrator's final audit appeals decision to submit an appeal in writing to the Administrator. However, the Administrator may, at his or her discretion, extend the 30 days in the case of extenuating circumstances.

Plain Language

Executive Order 12866 and a Presidential memorandum on plain language in government writing of June 1, 1998, require each agency to write all rules in plain language. The Department of Transportation and MARAD are committed to plain language in government writing; therefore, we revised part 205 using plain language to provide easier understanding. Our goal is to improve the clarity of our regulations.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

We have reviewed this final rule under Executive Order 12866 and have determined that this is not a significant regulatory action. Additionally, this final rule is not likely to result in an annual effect on the economy of $100 million or more. The purpose of this final rule is to update MARAD's audit appeals procedures to reflect current MARAD practices and to rewrite the regulations in plain language.

This final rule is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979). The costs and benefits associated with this rulemaking are considered to be so minimal that no further analysis is necessary. Because the economic impact, if any, should be minimal, further regulatory evaluation is not necessary.

Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities. This final rule only updates procedures for appealing audit findings and decisions to the Maritime Administrator. Although a number of small entities may appeal audit findings, the cost of filing an audit appeal with MARAD is minimal, if any. Therefore, MARAD certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Federalism

We have analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism") and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. These regulations have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Therefore, consultation with State and local officials was not necessary.

Environmental Impact Statement

We have analyzed this final rule for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have concluded that under the categorical exclusions provision in section 4.05 of Maritime Administrative Order ("MAO") 600–1, "Procedures for Considering Environmental Impacts," 50 FR 11606 (March 22, 1985), the preparation of an Environmental Assessment, and an Environmental Impact Statement, or a Finding of No Significant Impact for this final rule is not required. This final rule involves administrative and procedural regulations that have no environmental impact.

Executive Order 13175

MARAD does not believe that this final rule will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Therefore, the funding and consultation requirements of this Executive Order would not apply.

Unfunded Mandates Reform Act of 1995

This final rule does not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This final rule is the least burdensome alternative that achieves the objective of the rule.

Paperwork Reduction Act

This final rule does not contain information collection requirements covered by 5 CFR Part 1320 (specifically 5 CFR 1320.3(c)) in that appellants choose the information to be provided in their appeal and may choose to interpret the collection of information differently.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number is contained in the heading of this document to cross-reference this action with the Unified Agenda.

List of Subjects in 46 CFR Part 205

Administrative practice and procedure, Government contracts.

Accordingly, 46 CFR part 205 is revised to read as follows:

PART 205—AUDIT APPEALS; POLICY AND PROCEDURE

Sec.
205.1 Purpose.
205.2 Policy.
205.3 Procedure.
205.4 Finality of decisions.
205.5 Contracts containing disputes article.

Authority: Sec. 204, 49 Stat. 1987, 1998, 2004, 2011; 46 U.S.C. 1114, 1155, 1176, 1212.

§ 205.1 Purpose.

This part establishes the policy and procedure for parties to use when seeking redress and appeals of audit decisions involving contracts with the Maritime Subsidy Board or the Maritime Administration (MARAD, we, our, or us). A party to a contract (you or your) may appeal MARAD's findings, interpretations, or decisions of annual or special audits.

§ 205.2 Policy

If you disagree with audit findings and fail to settle any differences with the appropriate Office Director, you may ask the appropriate office Associate Administrator to review the audit findings. If you disagree with the Associate Administrator, you may appeal to the Maritime Administrator (Administrator).

§ 205.3 Procedure.

(a) You have 90 days from the date you receive the initial audit findings to file a written request for review of the audit findings with the appropriate Associate Administrator. Your written request must state the legal or factual bases for your disagreement. The appropriate Associate Administrator will issue a written determination.

(b) You have 30 days following the Associate Administrator's final audit determination to submit your appeal in writing to the Administrator. Your written appeal must set forth the legal and factual bases for your appeal. The Administrator may, at his or her discretion, extend the time limitation in the case of extenuating circumstances.

(c) We will notify you, in writing, if you must submit additional facts for our consideration of the appeal. We will notify you, in writing, once the Administrator has made a decision regarding your appeal.

§ 205.4 Finality of decisions.

The Administrator's decision will be the final administrative action on all audit appeals.

§ 205.5 Contracts containing disputes article.

When a contract contains a disputes article, the disputes article will govern the bases for negotiating disputes regarding audit findings, interpretations, or decisions made by MARAD and any appeals.

Dated: May 2, 2001.

By Order of the Acting Deputy Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 01–11578 Filed 5–9–01; 8:45 am]
BILLING CODE 4910–81–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR PART 73

[MM Docket No. 99–25; FCC 01–100]

Creation of a Low Power Radio Service

AGENCY: Federal Communications Commission

ACTION: Final rule.

SUMMARY: This document amends our Low Power Radio Service ("LPFM") regulations to implement section 632(a) of the "Making Appropriations for the Government of the District of Columbia for FY 2001" Act (the "Act"). Specifically, the Second Report and Order codifies the Act's requirements that the Commission prescribe LPFM station third adjacent channel interference protection standards and prohibit the grant of an LPFM station license if the applicant has engaged in the unlicensed operation of a station in violation of section 301 of the Communications Act of 1934, as amended. This document also defines the scope of permissible minor amendments that may be filed by LPFM applicants outside window filing periods.

DATES: Effective June 11, 2001.

FOR FURTHER INFORMATION CONTACT: Peter Doyle, Federal Communications Commission, Mass Media Bureau, Audio Services Division, 445 12 Street, SW., Washington, DC 20554 (202) 418–2700, Internet address: pdoyle@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Second Report and Order, adopted March 22, 2001, and released April 2, 2001. The complete text of the Second Report and

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Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12 Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036. The Commission believes that these actions are exempt from the notice and comment requirements of section 553 of the Administrative Procedure Act, and that the minor amendment rule is a rule of procedure to which notice and comment requirements are inapplicable.

Synopsis of Order

1. With this Second Report and Order, the Commission implements the Act's requirement that the Commission prescribe LPFM station third adjacent channel interference protection standards. We accomplish this requirement by including in our rules minimum distance separations which LPFM applicants must meet with respect to full power FM and FM translator stations on third adjacent channels. We also, in accordance with the Act, prohibit any applicant from obtaining an LPFM station license if the applicant has engaged in the unlicensed operation of a station in violation of section 301 of the Communications Act of 1934, as amended.

2. The third adjacent channel protection standards affect 652 otherwise technically acceptable LPFM applications that were filed in the first two LPFM filing windows, rendering them short-spaced to existing full power FM and/or FM translator stations operating on third adjacent channels. Under well-established processing policies, only minor amendments may be filed outside the window period. Although the LPFM rules define the permissible scope of minor changes in authorized facilities, they do not define the scope of minor amendments to pending applications, an issue now critical to the large group of newly short-spaced applicants. The Second Report and Order adds new rule § 73.871 to permit LP100 applicants to file minor change technical amendments for site relocations of less than two kilometers and to permit LP10 applicants to file minor change technical amendments for site relocations of less than one kilometer. Section 73.871 will permit the filing after the close of the pertinent filing window of non-technical minor amendments that do not improve an applicant's comparative position. Amendments adversely affecting an applicant's comparative position will be accepted and considered as part of the mutually exclusive application selection procedures. Ownership amendments will be limited to changes where the original parties to an application retain more than a fifty percent ownership interest in the application as originally filed.

3. Applications impacted by the new third adjacent channel spacing requirements are listed in Appendices A and B of the Second Report and Order. Appendix A lists those applications which involve short spacings of less than two kilometers. These applicants may be able to file minor amendments to eliminate the prohibited short spacings. The staff is prepared to assist, if requested, each of these applicants to determine whether a feasible site exists which would meet both the Commission's distance separation requirements and the applicant's service needs. Curative minor amendments (site relocations of less than two kilometers) must be filed within thirty days of the publication of this Summary in the **Federal Register**. Appendix B lists those applications that have third adjacent short spacings of two or more kilometers. These cannot be cured by permissible minor amendments filed outside an LPFM window. The Commission therefore directs the staff to open an additional remedial filing window following the completion of the currently scheduled window process for those applicants listed in Appendices A and B. We will retain these applications in pending status. The remedial filing window will provide these applications with the opportunity to submit major amendments specifying technical facilities that meet the new spacing requirements.

4. Appendix C of the Second Report and Order lists those LPFM applications that stated that either the applicant and/or any party to the application engaged in the unlicensed operation of any station in violation of section 301 of the Communications Act of 1934, as amended. Prior to the Second Report and Order, the Commission's rules permitted the grant of an LPFM station application if the party engaged in illegal broadcast operations but certified that it ceased such unlicensed operations within 24 hours of a Commission directive to do so or, in the alternative, that it voluntarily ceased engaging in such operations if no directive was issued no later than February 26, 1999. The Second Report and Order modifies § 73.854 of the LPFM rules and instructs the staff to modify FCC Form 318 to conform the statutory language prohibiting any applicant from obtaining an LPFM license if the applicant engaged in any manner in the unlicensed operation of any station in violation of section 301 of the Communications Act of 1934, as amended. All applications responding "No" to FCC Form 318, Section III, Question 8(a) will be dismissed.

5. The Commission does not believe that the notice and comment requirements of section 553 of the Administrative Procedure Act ("APA") apply to the rule revisions adopted herein. We find that the amendments of the interference protection and unlicensed operations rules are exempt from notice and comment under the APA's "good cause" exemption. The third adjacent channel protection requirements adopted were proposed in the LPFM NPRM, are consistent with current full power FM station third adjacent channel protection levels, and implement a Congressional requirement. Amendment of the unlicensed operation rule is a non-discretionary action codifying a Congressional requirement. The minor amendment rule is one of procedure to which notice and comment requirements are inapplicable.

Supplemental Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act ("RFA")[1] requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings. In the Notice of Proposed Rulemaking, Report and Order, and Memorandum Opinion and Order, the Commission included, respectively, an Initial Regulatory Flexibility Analysis, Final Regulatory Flexibility Analysis, and Supplemental Final Regulatory Flexibility Analysis. *Creation of Low Power Radio Service,* MM Docket No. 99–25, *Notice of Proposed Rule Making,* 64 FR 7577 (February 16, 1999), 14 FCC Rcd 2471 (1999); *Report and Order,* 65 FR 7616 (February 15, 2000), 15 FCC Rcd 2205 (2000); *Memorandum Opinion and Order,* 65 FR 67289 (November 9, 2000), __ FCC Rcd __ (2000). In this Order, however, the rule changes adopted on our own motion in response to the Act's mandate do not require a regulatory flexibility analysis.

Minimizing Impact on Small Business LPFM Applicants

LP100 and LP10 stations will be noncommercial, educational stations, and so will not compete with small business commercial broadcasters for advertising revenue.

Need For and Objectives of the Memorandum Opinion and Order

In the Report and Order, the Commission established technical standards based on minimum distance requirements to co-channel, first and second-adjacent channel, and IF channel spacings to full power FM and FM translator stations, and co-channel and first adjacent channel spacings to other LPFM stations. The Report and Order also provided to a limited extent that applicants previously engaging in unlicensed operations in violation of section 301 of the Communications Act of 1934, as amended, would be able to receive grant of their applications. The Act modifies the Commission's prior approach, requiring that the LPFM rules be expanded to provide protection to third adjacent channel full power FM and FM translator stations and that the rules be modified to reject any relief to applicants previously in violation of the unlicensed station provisions of section 301 of the Communications Act.

Significant Alternative Considered

The Commission considered an alternative to its rule governing the amendment of pending LPFM applications that such applicants be permitted to amend their technical proposals to specify a different channel that might resolve conflicts with co and first adjacent channel LPFM new station applications filed in the same filing window. This alternative was rejected in the interest of administrative orderliness. The expeditious processing of the hundreds of applications filed in the initial LPFM windows requires a relatively fixed database of technical proposals. Providing the opportunity to amend to different channels after the close of a window makes staff determinations of mutual exclusivity and the administration of the selection procedure for these applications inherently subject to duplicative reevaluations.

Report to Congress

The Commission will send a copy of the Second Report and Order to Congress pursuant to the Congressional Review Act. See 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of this Second Report and Order, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Second Order and Order (or summary thereof) will also be published in the **Federal Register** pursuant to 5 U.S.C. 604(b).

List of Subjects in 47 CFR Parts 73

Radio broadcasting.

Federal Communications Commission

Magalie Roman Salas,

Secretary.

Regulatory Text

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

2. Section 73.807 is amended by revising the last sentence in the introductory text as set forth and by revising the fourth column headings of the tables in paragraphs (a), (b), (c), and (d) which previously read "Second-adjacent channel minimum separation (km) required" to read "Second- and third-adjacent channel minimum separation (km) required."

§ 73.807 Minimum distance separation between stations.

* * * For second- and third-adjacent channels and IF channels, the required minimum distance separation is sufficient to avoid interference received from other stations.

* * * * *

3. Section 73.854 is revised to read as follows:

§ 73.854 Unlicensed operations.

No application for an LPFM station may be granted unless the applicant certifies, under penalty of perjury, that neither the applicant, nor any party to the application, has engaged in any manner including individually or with persons, groups, organizations or other entities, in the unlicensed operation of any station in violation of Section 301 of the Communications Act of 1934, as amended, 47 U.S.C. 301.

4. Add § 73.871 to subpart G to read as follows:

§ 73.871 Amendment of LPFM broadcast station applications.

(a) New and major change applications may be amended without limitation during the pertinent filing window.

(b) Amendments that would improve the comparative position of new and major change applications will not be accepted after the close of the pertinent filing window.

(c) Only minor amendments to new and major change applications will be accepted after the close of the pertinent filing window. Subject to the provisions of this section, such amendments may be filed as a matter of right by the date specified in the FCC's Public Notice announcing the acceptance of such applications. For the purposes of this section, minor amendments are limited to:

(1) Site relocations of less than one kilometer for LP10 stations;

(2) Site relocations of less than two kilometers for LP100 stations;

(3) Changes in ownership where the original party or parties to an application retain more than a 50 percent ownership interest in the application as originally filed; and

(4) Other changes in general and/or legal information.

(d) Unauthorized or untimely amendments are subject to return by the FCC's staff without consideration.

[FR Doc. 01–11763 Filed 5–9–01; 8:45 am]

BILLING CODE 6712–01–P

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601, has been amended by the Contract with America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").

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Proposed Rules

Federal Register
Vol. 66, No. 91
Thursday, May 10, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 951

[No. 2001–08]

RIN 3069–AB04

Affordable Housing Program Amendments

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing to amend its regulation governing the operation of the Affordable Housing Program (AHP) to improve the operation and effectiveness of the AHP. The proposed changes include: increasing the maximum amount of money that may be set aside annually, in the aggregate, under a Federal Home Loan Bank's (Bank) homeownership set-aside programs to the greater of $3.0 million or 25 percent of the Bank's annual required AHP contribution; removing one of the criteria for use of homeownership set-aside funds to pay for counseling costs in order to equalize the criteria with that of the competitive AHP application program; permitting members drawn from community and not-for-profit organizations actively involved in providing or promoting community lending in a Bank's District to serve on the Bank's Advisory Council; making the reconciliation of AHP fund requirements applicable to any reduction or increase in the amount of AHP subsidy approved for a project, regardless of whether a direct subsidy writedown is involved; removing the requirement for annual project sponsor certifications on household income eligibility for owner-occupied projects; and removing the requirement for member certifications on habitability and tenant income and rent targeting commitments within the first year of completion of a rental project.

DATES: The Finance Board will accept written comments on the proposed rule that are received on or before June 11, 2001.

ADDRESSES: Send written comments to: Elaine L. Baker, Secretary to the Board, at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. Comments will be available for inspection at this address.

FOR FURTHER INFORMATION CONTACT: Charles E. McLean, Deputy Director, (202) 408–2537, Melissa L. Allen, Program Analyst, (202) 408–2524, Office of Policy, Research and Analysis; or Sharon B. Like, Senior Attorney-Advisor, (202) 408–2930, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Section 10(j)(1) of the Federal Home Loan Bank Act (Bank Act) requires each Bank to establish a program to subsidize the interest rate on advances to members of the Bank System engaged in lending for long-term, low- and moderate-income, owner-occupied and affordable rental housing at subsidized interest rates. *See* 12 U.S.C. 1430(j)(1). The Finance Board is required to promulgate regulations governing the AHP. *See id.* The Finance Board's existing regulation governing the operation of the AHP, which made comprehensive revisions to the AHP, was adopted in August 1997 and became effective January 1, 1998. *See* 62 FR 41812 (Aug. 4, 1997) (*now codified at* 12 CFR part 951).

Various amendments have been made to the AHP regulation since 1998 in order to clarify AHP requirements and improve the operation and effectiveness of the AHP. The Banks and Finance Board staff have, over the course of implementation of the AHP, identified additional amendments that it is believed would improve the operation and effectiveness of the AHP. The proposed amendments are discussed further below. The Finance Board welcomes written comments on all aspects of the proposed rule.

II. Analysis of Proposed Rule

A. Homeownership Set-Aside Programs—§§ 951.3(a), 951.5(a)(7)(iii)

1. Increase in Maximum Allowable Annual Homeownership Set-Aside Amount—§ 951.3(a)

Section 951.3(a)(1) of the existing AHP regulation provides that each Bank, after consultation with its Advisory Council, may set aside annually, in the aggregate, up to the greater of $1.5 million or 15 percent of its annual required AHP contribution to provide funds to members participating in the Bank's homeownership set-aside programs. 12 CFR 951.3(a)(1). In cases where the amount of homeownership set-aside funds applied for by members in a given year exceeds the amount available for that year, a Bank may allocate up to the greater of $1.5 million or 15 percent of its annual required AHP contribution for the subsequent year to the current year's homeownership set-aside programs. *Id.*

The AHP homeownership set-aside programs have proven to be an efficient and effective means for the Banks and their members to provide homeownership opportunities for low- and moderate-income households, consistent with the goals of the Bank System and the AHP. Ten Banks currently offer homeownership set-aside programs, eight of which set aside the maximum amount allowable under the current AHP regulation.

Experience with the homeownership set-aside programs over the past two years has shown that the demand for homeownership set-aside funds for low- and moderate-income families is such that an increase in the maximum allowable annual homeownership set-aside amount is warranted. The Banks have demonstrated that there is market demand and member demand for financing for low- and moderate-income homeownership, with most homeownership set-aside programs being oversubscribed within the first three to seven months of the year. In 2000, the Finance Board approved a waiver request from one Bank to increase its maximum allowable homeownership set-aside amount to 25 percent of its total annual AHP contribution, a similar waiver request for 2001 is pending, and additional waiver requests of a similar nature from other Banks are anticipated.

The homeownership set-aside programs also are consistent with the cooperative structure of the Bank System, by involving members in financing the mortgages of low- and moderate-income households receiving downpayment assistance with homeownership set-aside funds. The homeownership set-aside programs can provide an important Bank service for members by enabling a greater number of members to become involved in the AHP, by helping members to establish banking relationships with new customers, and by exposing more members to opportunities to help meet low- and moderate-income housing needs in their markets.

The homeownership set-aside programs also are consistent with the goals of the Bank System and the AHP to help finance affordable housing in underserved areas and for underserved households. Homeownership set-aside funds often are the only way to effectively meet scattered-site, affordable housing needs in rural areas or tribal areas, which have difficulty scoring well under the competitive AHP application program and where rental projects are not feasible. In addition, homeownership set-aside funds often are the only way to meet the need for homeownership opportunities for very low-income families, which require larger per-unit subsidies and, therefore, may not score well under the competitive AHP application program. Homeownership set-aside programs also allow a member to use AHP funds to finance housing for individual eligible households on an as-needed basis, even if it is only for one household in the member's market area. These are households that the competitive AHP application program might not otherwise reach.

The decision whether or not to establish homeownership set-aside programs is within the discretion of each Bank. Thus, a Bank, in consultation with its Advisory Council, may decide not to establish homeownership set-aside programs if it determines that such programs are inappropriate for its district, or, if a Bank decides to establish such programs, it need not allocate to the programs the maximum amount allowable under the regulation.

Accordingly, for the reasons discussed above, the proposed rule would revise § 951.3(a)(1) to allow a Bank, after consultation with its Advisory Council, to set aside annually, in the aggregate, up to the greater of $3.0 million or 25 percent of its annual required AHP contribution for its homeownership set-aside programs. In addition, in cases where the amount of homeownership set-aside funds applied for by members in a given year exceeds the amount available for that year, the proposed rule would allow a Bank to allocate up to the greater of $3.0 million or 25 percent of its annual required AHP contribution for the subsequent year to the current year's homeownership set-aside programs.

A higher allowable annual homeownership set-aside amount increases the possibility that demand for such funds may not exhaust the available funds by the end of the year. Under section 10(j)(7) of the Bank Act, 90 percent of such uncommitted or unused AHP funds generally would be required to be deposited by the Bank in an Affordable Housing Reserve Fund established and administered by the Finance Board. *See* 12 U.S.C. 1430(j)(7); 12 CFR 951.15(a). No such Reserve Fund has been established to date. In order to minimize the possibility of having to create such a Reserve Fund, the proposed rule would provide in § 951.3(a) that any homeownership set-aside funds that are not committed or used by the end of the year in which they were set aside shall be committed or used by the end of such year to fund project modifications or the next highest scoring AHP applications in the Bank's final funding period of the year for its competitive AHP application program.

The proposed rule also would provide that, beginning in 2002 and for subsequent years, the maximum homeownership set-aside dollar limits shall be adjusted annually by the Finance Board to reflect any percentage increase in the preceding year's Consumer Price Index (CPI) for all urban consumers, as published by the Department of Labor. Each year, as soon as practicable after the publication of the previous year's CPI, the Finance Board would be required to publish notice by **Federal Register**, distribution of a memorandum, or otherwise, of the CPI-adjusted limits on the maximum set-aside dollar amount.

2. Removal of Criterion For Funding of Counseling Costs—§ 951.5(a)(7)(iii)

Section 951.5(a)(7) of the existing AHP regulation provides that homeownership set-aside funds may be used to pay for counseling costs only where:

(i) Such costs are incurred in connection with counseling of homebuyers who actually purchase an AHP-assisted unit;

(ii) The cost of the counseling has not been covered by another funding source, including the member; and

(iii) The homeownership set-aside funds are used to pay only for the amount of such reasonable and customary costs that exceeds the highest amount the member has spent annually on homebuyer counseling costs within the preceding three years. 12 CFR 951.5(a)(7).

By contrast, § 951.5(b)(5) of the existing AHP regulation requires satisfaction of only the first two of the above three criteria in authorizing the use of AHP subsidies to pay for counseling costs under the competitive AHP application program. 12 CFR 951.5(b)(5). The Banks maintain that the criterion in paragraph (a)(7)(iii) above should be removed so that the criteria applicable to the use of AHP funds for counseling costs are the same under both the homeownership set-aside and competitive AHP application programs.

The criterion in paragraph (a)(7)(iii) was intended to prevent homeownership set-aside funds from being used to pay for counseling costs that, in the absence of such funds, customarily would be funded by members participating in a homeownership set-aside program. In this way, AHP funds would be used to expand the pool of resources available to pay for counseling costs, rather than simply replace existing sources of funding for counseling costs.

The Banks maintain that this requirement is difficult and costly to enforce. Moreover, the requirement may actually reduce potential participation by members in homeownership set-aside programs because of members' concerns about liability if the accounting for costs is not accurate. In addition, since the competitive AHP application program does not have a comparable requirement, it is possible that AHP subsidies are already being used under that program to pay for counseling costs that the member, sponsor or another funding source would otherwise have funded.

The Finance Board recognizes that homebuyer counseling is vital to ensuring that AHP subsidies are used successfully to provide homeownership opportunities for low- and moderate-income households. The Finance Board is persuaded that assurance that homebuyers will get such counseling, regardless of how it is funded, outweighs concerns that AHP subsidies may be funding counseling costs that would otherwise be paid for by another funding source. Accordingly, for the reasons discussed above, the proposed rule would remove the additional homeownership set-aside counseling criterion contained in § 951.5(a)(7)(iii).

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B. Advisory Council Membership—§ 951.4

Section 951.4(f) of the existing AHP regulation uses two terms—"community investment" and "community development"—in describing the role of the Advisory Councils in this area. Specifically, § 951.4(f)(1) provides that representatives of the board of directors of each Bank shall meet with the Advisory Council at least quarterly to obtain the Advisory Council's advice on ways in which the Bank can better carry out its housing finance and community investment mission, including advice on the low- and moderate-income housing and community investment programs and needs in the Bank's District. Section 951.4(f)(3) provides that each Advisory Council shall submit to the Finance Board annually by March 1 its analysis of the low- and moderate-income housing and community development activity of the Bank by which it is appointed.

The proposed rule would replace the terms community investment and community development, wherever they appear, with the term community lending, which encompasses both terms and is the term used in the Finance Board's recently adopted mission statement for the Banks. *See* 12 CFR 940.2.[1] Community lending is defined in part 900 of the Finance Board's existing regulations as "providing financing for economic development projects for targeted beneficiaries, and, for community financial institutions, purchasing or funding small business loans, small farm loans or small agri-business loans, as defined in § 950.1 of this chapter." 12 CFR 900.1.

In addition, since the Advisory Councils are required to give advice on community lending, as well as housing finance, matters, the proposed rule would revise § 951.4(a) to provide that members may be drawn from community and not-for-profit organizations actively involved in providing or promoting community lending in the Bank's District, and would revise § 951.4(b) to provide that, in appointing Advisory Council members, a Bank may give consideration to the diversity of community lending needs and activities within the Bank's District.

[1] Section 940.2 states that "[t]he mission of the Banks is to provide to their members and associates financial products and services, including but not limited to advances, that assist and enhance such members' and associates' financing of:

(a) Housing, including single-family and multi-family housing serving consumers at all income levels; and

(b) *Community lending.*"

12 CFR 940.2 (emphasis added).

C. Reconciliation of AHP Fund—§ 951.8(c)(3)(ii)

Section 951.8(c)(3)(ii) of the existing AHP regulation provides that if a Bank reduces the amount of AHP subsidy approved for a project, the amount of such reduction shall be returned to the Bank's AHP fund. 12 CFR 951.8(c)(3)(ii). Section 951.8(c)(3)(ii) further provides that if a Bank increases the amount of AHP subsidy approved for a project, the amount of such increase shall be drawn first from any currently uncommitted or repaid AHP subsidies and then from the Bank's required AHP contribution for the next year. *Id.* This section is included under the overall heading for paragraph (c)(3), which addresses changes in the approved AHP subsidy amount where a direct subsidy is used to write down prior to closing the principal amount or interest rate on a loan. Therefore, the requirements in paragraph (c)(3)(ii) would appear to apply only in cases where a direct subsidy is used to write down prior to closing the principal amount or interest rate on a loan.

In practice, the Banks have returned to the AHP fund the amount of any reduction in AHP subsidy approved for a project under the competitive AHP application program, regardless of the reason for the reduction, such as a project modification or a change in a project's sources and uses of funds. The question has arisen whether the provision in paragraph (c)(3)(ii) regarding the funding of a subsidy increase should apply to an increase in approved AHP subsidy for a project modification that does not involve a direct subsidy writedown. A Bank has indicated that, in its district, demand for increases in approved AHP subsidies for project modifications not involving direct subsidy writedowns is now exceeding the amount of repaid or de-committed AHP subsidies available to fund such modifications. Therefore, the Bank would like to be able to fund such subsidy increases from the Bank's required AHP contribution for the next year.

If a Bank is permitted to use uncommitted AHP funds from the following year, before such funds are made available under the competitive AHP application program for that year, there will be fewer AHP funds available for new projects to be approved under the competitive AHP application program for that year. However, the overall effect on the amount of AHP funds available for the following year is not likely to be significant. Moreover, funding a new project in the next year, as opposed to funding a modification of an existing project from a prior year, would not necessarily result in producing more affordable housing, as there is no assurance that the new project ultimately will go forward. It is important that AHP funding be made available for modifications of existing projects that are meeting the goals of the AHP. The ability of an approved project to continue arguably should not be jeopardized simply because uncommitted AHP funds are not available for modifications in the current year. Since the existing AHP regulation already allows the Banks to commit funds from the following year's homeownership set-aside allocation to fund current year needs under the Banks' homeownership set-aside programs, the Banks arguably should have similar flexibility in funding subsidy increases for project modifications approved under the competitive AHP application program. Finally, the decision whether to approve an increase in AHP subsidy for a project modification is within the discretion of each Bank. *See* 12 CFR 951.7. If a Bank does not want to fund project modifications with subsidies from the next year's AHP allocation, it does not have to approve the project modifications.

Accordingly, for the reasons discussed above, the proposed rule would make § 951.8(c)(3)(ii) applicable to any reduction or increase in the amount of AHP subsidy approved for a project, regardless of whether a direct subsidy writedown is involved, by redesignating this paragraph as § 951.8(c)(4). The Banks, therefore, would be able to fund subsidy increases for project modifications using subsidies drawn first from any currently uncommitted or repaid AHP subsidies, and then from the Bank's required AHP contribution for the next year.

D. Initial Monitoring Requirements—§ 951.10

1. Owner-Occupied Project Sponsor Annual Certifications—§ 951.10(a)(1)(ii)

Section 951.10(a)(1)(ii) of the existing AHP regulation provides that where AHP subsidies are used to finance the purchase of owner-occupied units, the project sponsor must certify annually to the member and the Bank, until all approved AHP subsidies are provided to eligible households in the project, that those households receiving AHP subsidies during the year were eligible households, and such certifications shall be supported by household income verification documentation maintained by the project sponsor and available for review by the member or the Bank. 12 CFR 951.10(a)(1)(ii).

The Banks maintain that this project sponsor certification requirement is not necessary because the certification merely reiterates more extensive documentation of income eligibility previously provided by the project sponsor to the Bank and member at the time of each request for disbursement of AHP funds from the Bank. Under the existing AHP regulation, a Bank is required to verify prior to each disbursement of AHP subsidies for an approved project that the project meets the eligibility requirements of § 951.5(b) and all obligations committed to in the approved AHP application. *See* 12 CFR 951.5(b), 951.8(c)(2). Because the project sponsor's annual certification is based on the information provided to the Bank at the time of disbursement requests, the certification requirement in § 951.10(a)(1)(ii) does not add any new information or independent verification to the monitoring process.

Accordingly, for the reasons discussed above, the proposed rule would remove the project sponsor certification requirement from § 951.10(a)(1)(ii).

Section 951.10(b)(1)(ii) of the existing AHP regulation also requires the member, within one year after disbursement to a project of all approved AHP subsidies, to review the project documentation and make certifications to the Bank on the use of the AHP subsidies and the existence of deed restrictions or other legally enforceable retention agreements and mechanisms. *See* 12 CFR 951.10(b)(1)(ii). Section 951.10(c)(1) of the existing AHP regulation requires each Bank to review the documentation for a sample of projects and units to determine income-eligibility, eligible uses, reasonable and customary costs, financial feasibility and the existence of deed restrictions or other legally enforceable retention agreements or mechanisms. *See* 12 CFR 951.10(c)(1).

Therefore, in order for the member and Bank to be able to continue reviewing project documentation pursuant to these sections, the proposed rule would retain the requirement in § 951.10(a)(1)(ii) that the project sponsor maintain household income verification documentation available for review by the member or the Bank.

2. Member Certification Within the First Year of Rental Project Completion—§ 951.10(b)(2)(ii)

Section 951.10(b)(2)(ii) of the existing AHP regulation provides that within the first year after completion of an AHP-assisted rental project, the member must review the project documentation and make a certification to the Bank on project habitability, and tenant rents and income targeting commitments. *See* 12 CFR 951.10(b)(2)(ii). The Banks maintain that this member certification requirement is essentially redundant with the requirement in § 951.10(a)(2)(ii) that the owners of rental projects make a certification to the member on the same items. *See* 12 CFR 951.10(a)(2)(ii).

Since the member is essentially duplicating the certification already made by the project owner, and the project owner is also certifying to the Bank, it seems reasonable to eliminate the member certification requirement and simply retain the project owner certification to the Bank. Accordingly, the proposed rule would remove the member certification requirement of § 951.10(b)(2)(ii), as well as the references to the member contained in § 951.10(a)(2)(ii).

III. Paperwork Reduction Act

The current information collection contained in the existing AHP regulation has been approved by the Office of Management and Budget (OMB) and assigned OMB control number 3069–0006, with an expiration date of January 31, 2003. The Finance Board has submitted to OMB for its approval an analysis of the proposed revisions to the collection of information contained in §§ 951.3(a)(1), 951.10(a)(1)(ii), and 951.10(b)(2)(ii) of the proposed rule, described more fully in part II of the **SUPPLEMENTARY INFORMATION.** The proposed increase in the maximum allowable annual homeownership set-aside amount under § 951.3(a)(1) of the proposed rule is expected to result in an increase in applications for such funds. The proposed elimination of the project sponsor and member certification requirements in §§ 951.10(a)(1)(ii) and 951.10(b)(2)(ii) of the proposed rule would reduce the information collection requirement for such parties. The Banks use the information collection in the AHP regulation to determine whether respondents satisfy statutory and regulatory requirements under the AHP. Responses are mandatory and are required to obtain or retain a benefit. See 12 U.S.C. 1426.

Likely respondents and/or record keepers are Banks, Bank members, project sponsors, and project owners. Potential respondents are not required to respond to the collection of information unless the regulation collecting the information displays a currently valid control number assigned by OMB. *See* 44 U.S.C. 3512(a).

The estimated annual reporting and recordkeeping hour burden for the AHP regulation with the proposed changes is:

a. Number of respondents—7,720
b. Total annual responses—10,749
Percentage of these responses collected electronically—0
c. Total annual hours requested—65,461
d. Current OMB inventory—64,274
e. Difference—1,187

The estimated annual reporting and recordkeeping cost burden for the AHP regulation with the proposed changes is:

a. Total annualized capital/startup costs—0
b. Total annual costs (O&M)—0
c. Total annualized cost requested—$2,169,795
d. Current OMB inventory—$2,118,170
e. Difference—$51,625

The Finance Board will accept written comments concerning the accuracy of the burden estimates and suggestions for reducing the burden at the address listed above.

Comments regarding the proposed collection of information may be submitted in writing to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Federal Housing Finance Board, Washington, DC 20503 by July 9, 2001.

IV. Regulatory Flexibility Act

The proposed rule would apply only to the Banks, which do not come within the meaning of "small entities," as defined in the Regulatory Flexibility Act (RFA). See 5 U.S.C. 601(6). Thus, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that the proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 951

Community development, Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

Accordingly, the Finance Board hereby proposes to amend part 951, title 12, chapter IX, Code of Federal Regulations, as follows:

PART 951—AFFORDABLE HOUSING PROGRAM

1. The authority citation for part 951 continues to read as follows:

Authority: 12 U.S.C. 1430(j).

2. Amend § 951.3(a)(1) to read as follows:

§ 951.3 Operation of Program and adoption of AHP implementation plan.

(a) *Allocation of AHP contributions—*(1) *Homeownership set-aside programs.*

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Each Bank, after consultation with its Advisory Council, may set aside annually, in the aggregate, up to the greater of $3.0 million or 25 percent of its annual required AHP contribution to provide funds to members participating in the Bank's homeownership set-aside programs, pursuant to the requirements of this part. Any homeownership set-aside funds that are not committed or used by the end of the year in which they were set aside shall be committed or used by the end of such year to fund project modifications or the next highest scoring AHP applications in the Bank's final funding period of the year for its competitive application program. In cases where the amount of homeownership set-aside funds applied for by members in a given year exceeds the amount available for that year, a Bank may allocate up to the greater of $3.0 million or 25 percent of its annual required AHP contribution for the subsequent year to the current year's homeownership set-aside programs pursuant to written policies adopted by the Bank's board of directors. Beginning in 2002 and for subsequent years, the maximum dollar limits set forth in this paragraph shall be adjusted annually by the Finance Board to reflect any percentage increase in the preceding year's Consumer Price Index (CPI) for all urban consumers, as published by the Department of Labor. Each year, as soon as practicable after the publication of the previous year's CPI, the Finance Board shall publish notice by **Federal Register**, distribution of a memorandum, or otherwise, of the CPI-adjusted limits on the maximum set-aside dollar amount. A Bank may establish one or more homeownership set-aside programs pursuant to written policies adopted by the Bank's board of directors. A Bank's board of directors shall not delegate to Bank officers or other Bank employees the responsibility for adopting such policies.

* * * * *

§ 951.4 [Amended]

3. Amend § 951.4 by:

a. In paragraph (a), adding "and/or community lending" after "housing";

b. In paragraph (b), adding "and/or community lending" after "housing";

c. In paragraph (f)(1), removing "community investment" wherever it appears and adding, in its place, "community lending"; and

d. In paragraph (f)(3), removing "community development" and adding, in its place, "community lending".

§ 951.5 [Amended]

4. Amend § 951.5 by removing paragraph (a)(7)(iii).

§ 951.8 [Amended]

5. Amend § 951.8(c)(3) by:

a. Removing the heading for paragraph (c)(3)(i);

b. Removing paragraph designation (c)(3)(i); and

c. Redesignating paragraph (c)(3)(ii) as paragraph (c)(4).

6. Amend § 951.10 by:

a. Revising paragraph (a)(1)(ii);

b. In paragraph (a)(2)(ii), removing "the member and" and "the member or" wherever they appear; and

c. In paragraph (b)(2), removing paragraph (b)(2)(ii), and removing paragraph designation (b)(2)(i).

The revision reads as follows:

§ 951.10 Initial monitoring requirements.

(a) * * *

(1) * * *

(ii) Where AHP subsidies are used to finance the purchase of owner-occupied units, the project sponsor must maintain household income verification documentation available for review by the member or the Bank.

* * * * *

Dated: May 2, 2001.

By the Board of Directors of the Federal Housing Finance Board.

Allan I. Mendelowitz,

Chairman.

[FR Doc. 01–11706 Filed 5–9–01; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–101739–00]

RIN–1545–AX75

Clarification of Entity Classification Rules; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to section 7701 that address the Federal tax classification of a business entity wholly owned by a foreign government and provide that a nonbank entity that is wholly owned by a foreign bank cannot be disregarded as an entity separate from its owner for purposes of applying the special rules of the Internal Revenue Code applicable to banks.

DATES: The public hearing originally scheduled for May 16, 2001, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Sonya M. Cruse of the Regulations Unit at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Friday, January 12, 2001, (66 FR 2854), announced that a public hearing was scheduled for May 16, 2001, at 10 a.m., in room 6718. The subject of the public hearing is proposed regulations under section 7701 of the Internal Revenue Code. The public comment period for these regulations expired on April 25, 2001.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Friday, May 4, 2001, no one has requested to speak. Therefore, the public hearing scheduled for May 16, 2001, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Office of Special Counsel (Modernization & Strategic Planning).

[FR Doc. 01–11842 Filed 5–9–01; 8;45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

[SPATS No. AR–038–FOR]

Arkansas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of revisions to a previously proposed amendment to the Arkansas regulatory program (Arkansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions concern submission and processing of requests for valid existing rights determinations; interpretative rule related to subsidence due to underground coal mining in areas designated by Act of Congress; road systems; public notices of filing of permit applications; and legislative public hearings. Arkansas intends to revise its program to be consistent with the corresponding Federal regulations.

DATES: We will accept written comments until 4 p.m., c.d.t., May 25, 2001.

ADDRESSES: You should mail or hand deliver written comments to Michael C. Wolfrom, Director, Tulsa Field Office at the address listed below.

You may review copies of the Arkansas program, the amendment, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430.

Arkansas Department of Environmental Quality, Surface Mining and Reclamation Division, 8001 National Drive, Little Rock, Arkansas 72219–8913, Telephone (501) 682–0744.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581–6430. Internet: mwolfrom@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Arkansas Program

On November 21, 1980, the Secretary of the Interior conditionally approved the Arkansas program. You can find background information on the Arkansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the November 21, 1980, **Federal Register** (45 FR 77003). You can find later actions on the Arkansas program at 30 CFR 904.10, 904.12, 904.15, and 904.16.

II. Discussion of the Proposed Amendment

By letter dated March 1, 2001 (Administrative Record No. AR–567.04), Arkansas sent us an amendment to its program under SMCRA and the Federal regulations at 30 CFR 732.17(b). Arkansas sent the amendment in response to a letter dated August 23, 2000 (Administrative Record No. AR–567), that we sent to Arkansas under 30 CFR 732.17(c). We announced receipt of the amendment in the April 6, 2001, **Federal Register** (66 FR 18216) and invited public comment on its adequacy. The public comment period closed May 7, 2001.

During our review of the amendment, we identified concerns relating to submission and processing of requests for valid existing rights determinations; interpretative rule related to subsidence due to underground coal mining in areas designated by Act of Congress; road systems; public notices of filing of permit applications; and legislative public hearings. We notified Arkansas of these concerns by letter dated April 11, 2001 (Administrative Record No. AR–567.06). By letter dated April 19, 2001 (Administrative Record No. AR–567.08), Arkansas sent us revisions for the following provisions of the amendment:

A. Section 761.16 Submission and Processing of Requests for Valid Existing Rights Determinations

1. Arkansas proposes to make an editorial correction in the last sentence in paragraph (b). The revised last sentence will read as follows:

* * * This request may be submitted before preparing and submitting an application for a permit or boundary revision for the land unless the applicable regulatory program provides otherwise.

2. Arkansas proposes to revise paragraph (d)(1) so that it states that the Office of Surface Mining Reclamation and Enforcement (OSM) instead of "the agency" will publish a notice in the **Federal Register** if the applicant's request for valid existing rights determination involves Federal lands within an area listed in Section 761.11(a) or (b).

3. Arkansas proposes to revise the last sentence in paragraph (e)(5)(ii) so that it states that the Office of Surface Mining Reclamation and Enforcement (OSM) instead of "the agency" will publish the determination, together with an explanation of appeal rights and procedures, in the **Federal Register** if the applicant's request for valid existing rights determination involves Federal lands within an area listed in Section 761.11(a) or (b).

B. Section 761.200 Interpretative Rule Related to Subsidence Due to Underground Coal Mining in Areas Designated by Act of Congress

Arkansas proposes to revise this section by replacing obsolete "legislative version" citations of the State Act with current "annotated version" citations of the State Act. The revised section will read as follows:

(a) Interpretation of Section 761.11—AREAS WHERE MINING IS PROHIBITED OR LIMITED. Subsidence due to underground coal mining is not included in the definition of surface coal mining operations under Section 15–58–104(16) of the Act and Section 700.5 of this chapter and therefore is not prohibited in areas protected under Section 15–58–501(a)(1) of the Act.

C. Section 780.37 Road Systems

Arkansas proposes to revise paragraph (a)(4) by replacing the words "regulatory authority" with the word "Director" for consistency with the other regulations in this section. The revised paragraph will read as follows:

(4) Contain a description of measures to be taken to obtain approval of the Director for alteration or relocation of a natural stream channel under Section 816.151(c)(5) of this chapter;

D. Section 786.11 Public Notices of Filing of Permit Applications

Arkansas proposes to revise paragraph (a)(5) to require applicants to include information on the approximate timing of any proposed relocation or closure of a public road. The revised paragraph will read as follows:

(5) If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road, except where public notice and hearing have previously been provided for this particular part of the road in accordance with Section 761.14 of this Chapter, a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing.

E. Section 786.14 Legislative Public Hearings

Arkansas proposes to revise paragraph (c) to reflect that the public hearings, if requested under Section 761.14(c), are required if the applicant proposes to relocate or close a public road or conduct surface coal mining operations within 100 feet, measured horizontally, of the outside right-of-way line of a public road. The revised paragraph will read as follows:

(c) Legislative Public Hearings held in accordance with this Section may be used by the Director as the public hearing required under Section 761.14(c) where the applicant proposes to relocate or close a public road or conduct surface coal mining operations within 100 feet, measured horizontally, of the outside right-of-way line of a public road.

III. Public Comment Procedures

We are reopening the comment period on the proposed Arkansas program amendment to provide you an opportunity to reconsider the adequacy of the amendment in light of the additional materials sent to us. Under the provisions of 30 CFR 732.17(h), we are requesting comments on whether the amendment satisfies the program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Arkansas program.

Written Comments: If you submit written or electronic comments on the proposed rule during the 15-day

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comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able to consider or include in the Administrative Record comments delivered to an address other than the one listed above (see **ADDRESSES**).

Electronic Comments: Please submit Internet comments as an ASCII, WordPerfect, or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS NO. AR–038–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Tulsa Field Office at (918) 581–6430.

Availability of Comments: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours at OSM's Tulsa Field Office (see **ADDRESSES**). Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary under SMCRA.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of this section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5. U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 904

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 2, 2001.

John W. Coleman,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 01–11728 Filed 5–9–01; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 140

[USCG–2001–9045]

RIN 2115–AG14

Inspections Under, and Enforcement of, Coast Guard Regulations for Fixed Facilities on the Outer Continental Shelf by the Minerals Management Service

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to authorize the Minerals Management Service (MMS) to perform inspections, on behalf of the Coast Guard, on fixed facilities engaged in Outer Continental Shelf activities and to enforce Coast Guard regulations applicable to those facilities. MMS already performs inspections on these facilities to determine whether they comply with MMS regulations. By authorizing MMS to also check for compliance with Coast Guard regulations, we avoid duplicating functions, reduce Federal costs, and increase the frequency of inspections.

DATES: Comments and related material must reach the Docket Management Facility on or before July 9, 2001.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2001–9045), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, contact James M. Magill, Vessel and Facility Operating Standards Division (GMMSO–2), telephone 202–267–1082 or fax 202–267–4570. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–2001–9045), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments or material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The purpose of this rulemaking is to authorize the Minerals Management Service (MMS) to perform inspections on fixed Outer Continental Shelf (OCS) facilities engaged in OCS activities and to enforce Coast Guard regulations applicable to those facilities for compliance with Coast Guard regulations in 33 CFR chapter I, subchapter N. The Coast Guard and MMS regulate safety on fixed OCS facilities. MMS regulates the structural integrity of the facility, in addition to enforcing all regulations pertaining to production and well-work activities, such as drilling and workover operations. The Coast Guard regulates marine systems, such as lifesaving and navigation equipment, and workplace safety and health. Annually, MMS visits all of the fixed OCS facilities to inspect for violations in the area of its responsibility. The Coast Guard, because of the much fewer number of inspectors available, visits less than 10 percent. On December 18, 1998, MMS and the Coast Guard agreed to review the regulations of both agencies to ensure consistency and to eliminate duplication. As part of this review, MMS and the Coast Guard decided that, because MMS was already visiting all of the fixed OCS facilities at least once a year, it would be beneficial to both agencies if MMS was authorized, on behalf of the Coast Guard, to inspect and enforce the Coast Guard's regulations for fixed OCS facilities. Such an authorization is allowed under the Outer Continental Shelf Lands Act, which, in 43 U.S.C. 1348(a), allows the Coast Guard to use the services and personnel of other Federal agencies for the enforcement of its OCS regulations.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The proposed rule would not impose significant additional costs to MMS's inspection program or to the owners of facilities being inspected. Owners or operators of each facility would be required to incur a slight burden associated with keeping a copy of the annual self-inspection form CG–5432 on the facility. This burden is explained in detail in the "Collection of Information" section. We expect the annual cost of this burden to be about $8.25 per facility or $28,776 for the 3,489 facilities engaged in Outer Continental Shelf activities. Using 7 percent as the

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discount rate, the 10-year present value of this cost is $202,110.

Authorizing MMS to check for compliance with Coast Guard regulations would avoid duplicating functions and enhance the enforcement of regulations.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

We do not expect this proposed rulemaking to create significant additional costs to the MMS or the inspected facilities. This proposed rulemaking would authorize MMS to inspect and enforce Coast Guard regulations on fixed OCS facilities. Coast Guard personnel currently perform these inspections, and authorizing MMS to do so does not reduce the number of inspections nor significantly increase the burden placed on the affected entities. Though it affects all small entities involved, we estimate the additional burden to be $8.25 per facility as shown in the "Regulatory Evaluation" section of this preamble. We further explain this burden and the affected entities in the "Collection of Information" section of this preamble.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult James M. Magill, Vessel and Facility Operating Standards Division (GMMSO–2), telephone 202–267–1082 or fax 202–267–4570.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Inspection Under, and Enforcement of, Coast Guard Regulations for Fixed Facilities on the Outer Continental Shelf by the Minerals Management Service.

Summary of the Collection of Information: This proposed rule would require that a copy of form CG–5432, the annual self-inspection report, be kept on the facility. This form is already required to be completed annually and submitted to the Coast Guard, but a copy is not required to be kept on the facility. This proposed rule would require that a copy be kept on the facility for use by MMS inspectors. The proposed requirement would be added to the already approved collection of information OMB 2115–0569.

Need for Information: A copy of the report is needed on the facility to show MMS inspectors that the annual self-inspection has been conducted.

Proposed Use of Information: The copy of form CG–5432 would be used to confirm that the self-inspection had been conducted.

Description of the Respondents: Owners or operators of fixed OCS facilities.

Number of Respondents: We estimate there are 3,489 facilities engaged in Outer Continental Shelf activities.

Frequency of Response: Each year's form CG–5432 would be required to be kept on the facility for 2 years.

Burden of Response: The burden associated with meeting the proposed requirement would involve duplicating form CG–5432 so that the original can be sent to the Coast Guard, as already required, and a copy kept on the facility. We expect this burden to be 15 minutes annually per facility.

Estimate of Total Annual Burden: We estimate that the proposed requirement would impose a total annual burden on each facility of 15 minutes or 872 hours for all fixed OCS facilities. This amount would be added to the already approved annual burden associated with OMB collection 2115–0569.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES.**

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

Federalism

We have analyzed this proposed rule under Executive Order 13132, Federalism, and have determined that it does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(b), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. The proposed rule is excluded under paragraph (34)(b) because it is administrative in nature and has no environmental effect. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 140

Continental shelf, Incorporation by reference, Investigations, Marine safety, Occupational safety and health, Penalties, Reporting and recordkeeping requirements.

For reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 140 as follows:

PART 140—GENERAL

1. The authority citation for part 140 continues to read as follows:

Authority: 43 U.S.C. 1333, 1348, 1350, 1356; 49 CFR 1.46.

2. In § 140.10, add, in alphabetical order, the definition of "Minerals Management Service inspector" to read as follows.

§ 140.10 Definitions.

* * * * *

Minerals Management Service inspector or *MMS inspector* means an individual employed by the Minerals Management Service who inspects fixed OCS facilities on behalf of the Coast Guard to determine whether the requirements of this subchapter are met.

* * * * *

3. In § 140.101—

a. Revise the section heading to read as set forth below;

b. Redesignate paragraphs (b) through (e) as paragraphs (c) through (f);

c. Add a new paragraph (b) to read as set forth below;

d. In redesignated paragraph (c), before the words "marine inspectors", add the words "Coast Guard"; following the words "OCS activities", add the words ", and MMS inspectors may inspect fixed OCS facilities,"; and, at the end of the last sentence, add the words "or MMS"; and

e. In redesignated paragraph (d), remove the words "a marine inspector" and add, in their place, the words "a Coast Guard marine inspector or an MMS inspector"; and remove the words "The marine inspector" and add, in their place, the words "The Coast Guard marine inspector or the MMS inspector".

§ 140.101 Inspection by Coast Guard marine inspectors or Minerals Management Service inspectors.

* * * * *

(b) On behalf of the Coast Guard, each fixed OCS facility engaged in OCS activities is subject to inspection by the Minerals Management Service (MMS).

* * * * *

4. In § 140.103—

a. In paragraph (b), remove "140.101(e)" and add, in its place, "140.101(f)"; and remove the words "Marine inspectors" and add, in their place, the words "marine inspectors and Minerals Management Service (MMS) inspectors"; and

b. In paragraph (c), remove "140.101(e)" and add, in its place, "140.101(f)"; and at the end of the paragraph, add a sentence to read as follows:

§ 140.103 Annual inspection of fixed OCS facilities.

* * * * *

(c) * * * A copy of the completed form must be retained on the facility for 2 years after the inspection and made available to MMS on request.

* * * * *

§ 140.105 [Amended]

5. In § 140.105—

a. In paragraph (a), after the words "during an inspection", add the words "by a Coast Guard marine inspector or a Minerals Management Service (MMS) inspector";

b. In paragraph (b), before the words "is reported to", add the words "or an MMS inspector"; and, after the words "time specified by the", remove the words "Coast Guard";

c. In paragraph (c), after the words "fire fighting equipment deficiencies", add the words "on fixed OCS facilities"; and remove the words "the OCMI" wherever they appear and add, in their place, "MMS"; and

d. In paragraph (d), after the words "Marine Inspection," add the words "or MMS (for deficiencies or hazards discovered by MMS during an inspection of a fixed OCS facility)".

Dated: March 16, 2001.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 01–11848 Filed 5–9–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AE20; 2900–AE60

Loan Guaranty: Title Evidence Requirements and Occupancy Requirements for Conveyance of Properties to VA by Holders; Acceptance of Partial Payments; Indemnification of Default

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rules; withdrawal.

SUMMARY: This document withdraws the proposal to amend the loan guaranty regulations that was published in the **Federal Register** on August 6, 1990 (55 FR 31847). We proposed to authorize the Secretary of Veterans Affairs to specify the title documentation required from the holder when VA acquires a property which was financed with a VA-guaranteed loan that has been terminated and to authorize the Secretary of Veterans Affairs to establish a date by which VA must receive such title documentation from the holder. Further, we proposed to require that a property acquired by VA be vacant

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when conveyed to VA unless someone properly in possession by virtue of a redemption period occupies it or VA otherwise directs the holder. This document also withdraws the proposal to amend the loan guaranty regulations that was published in the **Federal Register** on March 2, 1994 (59 FR 9944). In the March 2, 1994 document, we proposed to change the regulations by requiring that the mortgage holder provide notice to VA when refusing to accept partial payment on a loan in default and to clarify when a veteran is liable to VA for a loss due to a loan default. We are reconsidering the issues raised in both proposed rules in light of changes that have occurred in the industry since the proposals were promulgated. These issues may be the subject of a future rulemaking proceeding.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Fyne, Assistant Director for Loan Management (261), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, phone (202) 273–7380. (This is not a toll-free number.)

Approved: February 15, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 01–11745 Filed 5–9–01; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region 2 Docket No. NY46–217b, FRL–6977–3]

Approval and Promulgation of State Plans For Designated Facilities; New York

AGENCY: Environmental Protection Agency (EPA)

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the New York supplementary submittal for meeting EPA's conditional approval of the New York State Plan for regulating existing Municipal Solid Waste Landfills. The supplemental submittal documents that, except for two landfills, all are in compliance. A Title V permit containing a compliance schedule with all five federally enforceable increments of progress has been provided for one landfill and the other landfill is undergoing an applicability determination. In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's State Plan submittal, as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before June 11, 2001.

ADDRESSES: All comments should be addressed to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, New York, New York 10007–1866.

Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Craig Flamm, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10278, (212) 637–4021.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: April 19, 2001.

William J. Muszynski,

Acting Regional Administrator Region 2.

[FR Doc. 01–11830 Filed 5–9–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 62

RIN 3067–AD23

National Flood Insurance Program; Assistance to Private Sector Property Insurers

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Based on recent cost information, we (FEMA) propose to adjust the expense allowance under the Financial Assistance/Subsidy Arrangement between the Federal Insurance Administrator and the private sector insurers that sell and service flood insurance.

DATES: Comments on this proposed rule should be received on or before June 11, 2001.

ADDRESSES: Please submit any written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, (facsimile) 202–646–4536, or (email) *rules@fema.gov*.

FOR FURTHER INFORMATION CONTACT: Edward L. Connor, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472, 202–646–3443, (facsimile) 202–646–3445, (email) *Edward.Connor@fema.gov*.

SUPPLEMENTARY INFORMATION: Under the Financial Assistance/Subsidy Arrangement between the Federal Insurance Administrator and the private sector insurers that sell and service flood insurance under the Write Your Own (WYO) program, participating insurers are entitled to an expense allowance—a portion of the flood premiums from the policies that the insurers sell. The expense allowance is based on data for the property/casualty industry published, as of March 15 of the prior Arrangement year, in Part III of the Insurance Expense Exhibit in A.M. Best Company's Aggregates and Averages for five property coverages.

Based on our analysis of recent expense information from the companies, we conclude that we should increase the current expense allowance under the Arrangement. We are therefore proposing a change in the expense allowance to reflect this new cost information.

National Environmental Policy Act (NEPA)

NEPA imposes requirements for considering the environmental impacts of agency decisions. It requires that an agency prepare an Environmental Impact Statement (EIS) for "major federal actions significantly affecting the quality of the human environment." If an action may or may not have a significant impact, the agency must prepare an environmental assessment (EA). If, as a result of this study, the agency makes a Finding of No Significant Impact (FONSI), no further action is necessary. If it will have a significant effect, then the agency uses the EA to develop an EIS.

Categorical Exclusions. Agencies can categorically identify actions (for example, repair of a building damaged by a disaster) that do not normally have a significant impact on the environment. The purpose of this proposed rule is to adjust the expense allowance under the Financial Assistance/Subsidy Arrangement between the Federal Insurance Administrator and the private sector insurers that sell and service flood insurance.

Accordingly, we have determined that this rule is excluded from the preparation of an environmental assessment or environmental impact statement under 44 CFR 10.8(d)(2)(ii), where the rule is related to actions that qualify for categorical exclusion under 44 CFR 10.8(d)(2)(i), which addresses the preparation, revision, and adoption of regulations, directives, and other guidance documents related to actions that qualify for categorical exclusions. We have not prepared an environmental assessment or environmental impact statement as defined by NEPA.

Executive Order 12866, Regulatory Planning and Review

We have prepared and reviewed this proposed rule under the provisions of E.O. 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

For the reasons that follow we have concluded that the proposed rule is neither an economically significant nor a significant regulatory action under the Executive Order. The rule would adjust the expense allowance under the Financial Assistance/Subsidy Arrangement between the Federal Insurance Administrator and the private sector insurers that sell and service flood insurance. The adjustment would increase by approximately $14 million the expense allowance paid to the WYO private sector insurers. It would not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, the insurance sector, competition, or other sectors of the economy. It would create no serious inconsistency or otherwise interfere with an action taken or planned by another agency. It would not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Nor does it raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Office of Management and Budget has not reviewed this proposed rule under the principles of Executive Order 12866.

Paperwork Reduction Act

This rule does not contain a collection of information and is therefore not subject to the provisions of the Paperwork Reduction Act.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act agencies must consider the impact of their rulemakings on "small entities" (small businesses, small organizations and local governments). When 5 U.S.C. 553 requires an agency to publish a notice of proposed rulemaking, the Act requires a regulatory flexibility analysis for both the proposed rule and the final rule if the rulemaking could "have a significant economic impact on a substantial number of small entities." The Act also provides that if a regulatory flexibility analysis is not required, the agency must certify in the rulemaking document that the rulemaking will not "have a significant economic impact on a substantial number of small entities."

This proposed rule revises the NFIP regulations to adjust the expense allowance under the Financial Assistance/Subsidy Arrangement between the Federal Insurance Administrator and the private sector insurers that sell and service flood insurance. Therefore, I certify that a regulatory flexibility analysis is not required for this rule because it would not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

We have reviewed this proposed rule under E.O.13132 and have determined that the rule does not have federalism implications as defined by the Executive Order. The rule would adjust the expense allowance under the Financial Assistance/Subsidy Arrangement between the Federal Insurance Administrator and the private sector insurers that sell and service flood insurance. The rule in no way that we foresee affects the distribution of power and responsibilities among the various levels of government or limits the policymaking discretion of the States.

List of Subjects in 44 CFR Part 62

Flood insurance.

Accordingly, amend 44 CFR Part 62 as follows:

PART 62—INSURANCE COVERAGE AND RATES

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Revise Article III.B of appendix A to part 62 to read as follows:

Appendix A to Part 62—Federal Emergency Management Agency, Federal Insurance Administration, Financial Assistance/Subsidy Arrangement

* * * * *

Article III—Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds

* * * * *

B. The Company may withhold as operating and administrative expenses, other than agents' or brokers' commissions, an amount from the Company's written premium on the policies covered by this Arrangement in reimbursement of all of the Company's marketing, operating, and administrative expenses, except for allocated

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and unallocated loss adjustment expenses described in C. of this article. This amount will equal the sum of the average of industry expense ratios for "Other Acq.", "Gen. Exp.", and "Taxes" calculated by aggregating premiums and expense amounts for each of five property coverages using direct premium and expense information to derive weighted average expense ratios. For this purpose, we (the Federal Insurance Administration) will use data for the property/casualty industry published, as of March 15 of the prior Arrangement year, in Part III of the Insurance Expense Exhibit in A.M. Best Company's *Aggregates and Averages* for the following five property coverages: Fire, Allied Lines, Farmowners Multiple Peril, Homeowners Multiple Peril, and Commercial Multiple Peril (non-liability portion). In addition, this amount will be increased by one percentage point to reimburse expenses beyond regular property/casualty expenses.

The Company may retain fifteen percent (15%) of the Company's written premium on the policies covered by this Arrangement as the commission allowence to meet commissions or salaries of their insurance agents, brokers, or other entities producing qualified flood insurance applications and other related expenses.

The amount of expense allowance retained by the Company may increase a maximum of two percentage points, depending on the extent to which the Company meets the marketing goals for the Arrangement year contained in marketing guidelines established pursuant to Article II.G. We will pay the company the amount of any increase after the end of the Arrangement year.

The Company, with the consent of the Administrator as to terms and costs, may use the services of a national rating organization, licensed under state law, to help us undertake and carry out such studies and investigations on a community or individual risk basis, and to determine equitable and accurate estimates of flood insurance risk premium rates as authorized under the National Flood Insurance Act of 1968, as amended. We will reimburse the Company for the charges or fees for such services under the provisions of the WYO Accounting Procedures Manual.

* * * * *

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: May 1, 2001.

Howard Leikin,

Acting Administrator, Federal Insurance Administration.

[FR Doc. 01–11365 Filed 5–9–01; 8:45 am]

BILLING CODE 6718–03–P

Notices

Federal Register
Vol. 66, No. 91
Thursday, May 10, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–085–5]

Aquaculture; Public Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: We are issuing this notice to inform the aquaculture industries, interested parties, and the general public that a public meeting will be held to discuss how and to what extent the Animal and Plant Health Inspection Service should regulate aquatic species and to discuss any other issues concerning possible regulation of aquaculture by the Agency.

DATES: The public meeting will be held on Friday, June 8, 2001, from 2 p.m. to 5 p.m.

ADDRESSES: The public meeting will be held in the Community Meeting Room of the Twin Falls County Office Building, 246 Third Avenue East, Twin Falls, ID, in conjunction with the annual meeting of the Idaho Aquaculture Association.

FOR FURTHER INFORMATION CONTACT: For information about the APHIS public meeting, contact Dr. Otis Miller, Jr., National Aquaculture Coordinator, Center for Planning, Certification, and Monitoring, VS, APHIS, 4700 River Road Unit 46, Riverdale, MD 20737–1231, (301) 734–6188.

For information regarding the annual meeting of the Idaho Aquaculture Association, call Mr. Dave Bruhn, Executive Secretary, Idaho Aquaculture Association, (208) 543–4898.

SUPPLEMENTARY INFORMATION: On May 4, 1999, the Animal and Plant Health Inspection Service (APHIS) published an advance notice of proposed rulemaking (ANPR) titled "Aquaculture: Farm-Raised Fin Fish" in the **Federal Register** (64 FR 23795–23796, Docket No. 98–085–1). We published this ANPR after receiving petitions [1] asking us to regulate aquaculture in various ways. Many petitioners asked us to define farmed aquatic animals as livestock. In general, the petitioners seemed to be interested in receiving the same services that domestic producers of livestock receive for animals moving in interstate and foreign commerce. However, based on the petitions alone, it was difficult for us to determine what segments of the industry want services and exactly what services they want. It was also difficult to determine the objectives sought by the petitioners who were requesting Federal regulation. We published the ANPR in an attempt to clarify the industry's needs, the nature of the services sought, and the concerns the petitioners had with regard to such regulations.

We received 55 comments [2] in response to the ANPR. A majority of the commenters supported the idea of APHIS regulation of cultured fin fish. Unfortunately, the commenters generally did not clearly distinguish between fin fish raised for food and ornamental fin fish. Commenters who wanted regulation were, however, very clear that they want programs to prevent and control disease and to support increased commerce, both domestic and export.

The commenters also suggested that any rulemaking initiated by APHIS be a negotiated rulemaking. In negotiated rulemaking, industry representatives and other interested persons meet with APHIS officials and draft proposed regulations together. The proposed regulations are then published for public comment. Negotiated rulemaking is designed to ensure that all interested persons are involved together from the start in the development of regulations.

Unfortunately, negotiated rulemaking is not suitable for all situations. It works well when there is a small number of interested parties and the parties are easy to identify. This is not the case with aquaculture. Because the aquaculture industry is large and diverse, we would have difficulty identifying everyone who should be represented in a negotiated rulemaking. In addition, many parties outside of aquaculture would have a substantial interest in such a rulemaking. In our view, the number of people who would need to participate in a negotiated rulemaking would be too large and would suggest that negotiated rulemaking is not appropriate. Furthermore, a negotiated rulemaking would be expensive, and APHIS does not have adequate funds. Therefore, we have concluded that it would not be appropriate to pursue an aquaculture negotiated rulemaking.

However, we have not decided whether to pursue aquaculture rulemaking by other means. Before we make that decision, we want to have as much information as possible from all interested persons, and we want to provide you with as much opportunity as possible to discuss with us and inform us regarding the relevant issues.

Therefore, we are holding a series of public meetings. Public meetings allow all interested parties—industry representatives, producers, consumers, and others—to present their views and to exchange information among themselves and with APHIS.

There are no set agendas for the meetings. Any issues and concerns related to aquaculture and possible APHIS regulatory action can be discussed. However, we would like more information on three specific issues. These are issues that the people and organizations who commented on our ANPR either did not address or were unclear about. Specifically, if APHIS does propose regulations: (1) Should our program be mandatory or voluntary; (2) should we cover shell fish; and (3) should we cover ornamental fin fish?

Information elicited at the meetings could result in a new APHIS regulatory program or in changes to aquaculture-

[1] All the petitions and comments we received are a part of the rulemaking record for Docket No. 98–085–1. You may read the petitions and comments in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

[2] All the petitions and comments we received are a part of the rulemaking record for Docket No. 98–085–1. You may read the petitions and comments in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

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related services currently provided by APHIS.

We have scheduled this public meeting, the fourth meeting in our series, for Friday, June 8, 2001, in the Community Meeting Room of the Twin Falls County Office Building, Twin Falls, ID. If you wish to speak at the meeting, please register in advance by calling the Regulatory Analysis and Development voice mail at (301) 734–4339. Leave a message with your name, telephone number, organization, if any, and an estimate of the time you need to speak. You may also register at the meeting by following the instructions provided by an APHIS representative at the beginning of the meeting. Starting with the advance registrants, we will call speakers in the order in which they registered.

The meeting will begin at 2 p.m. and is scheduled to end at 5 p.m. We may end the meeting early if all the registered speakers have had a chance to speak and if no one else wants to speak. We may also extend the meeting or limit the time allowed for each speaker, if necessary, so all interested persons have an opportunity to participate.

An APHIS representative will preside at the meeting. The meeting will be recorded. We encourage speakers to present written statements, though it is not required. If you choose to present a written statement, please provide the chairperson with a copy. The complete record, including the transcript and all written comments, will be available to the public.

This meeting is the fourth in our series of public meetings. The first public meeting was held on January 25, 2001, in Lake Buena Vista, FL. The second public meeting was held on February 16, 2001, in Hebron, KY, and the third public meeting was held on April 5, 2001, in Machias, ME. We plan to hold additional meetings in Washington (September 2001, in conjunction with the Pacific Coast Shellfish Growers Association Annual Conference), Pennsylvania (October 2001, in conjunction with the Pennsylvania Aquaculture Advisory Committee and Pennsylvania Aquaculture Association Annual Meeting), Mississippi (October 2001, in conjunction with a meeting of the Catfish Farmers of America), and Arkansas (October 2001, in conjunction with a meeting of the Catfish Farmers of Arkansas). We will publish a notice or notices in the **Federal Register** announcing the dates, times, and locations of the meetings.

Done in Washington, DC, this 4th day of May 2001.

Chester A. Gipson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–11816 Filed 5–9–01; 8:45 am]

BILLING CODE 3410–34–D

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Notice of Intent To Revise and Request an Extension of a Currently Approved Information Collection

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) implementing regulations, this notice announces the Cooperative State Research, Education, and Extension Service's (CSREES) intention to revise and extend a currently approved information collection, Form CSREES–667 "Proposal Cover Sheet," and Form CSREES–668, "Project Summary."

DATES: Comments on this notice must be received on or before July 16, 2001 to be assured of consideration.

ADDRESSES: Address all comments regarding this notice to Sally J. Rockey, Deputy Administrator, Competitive Research Grants and Awards Management, CSREES, USDA, STOP 2240, 1400 Independence Avenue, SW., Washington, DC 20250–2240. E-mail: OEP@reeusda.gov.

FOR FURTHER INFORMATION CONTACT: Sally J. Rockey, (202) 401–1761.

SUPPLEMENTARY INFORMATION:

Title: Grant Application Forms for the Small Business Innovation Research Grants Program.

OMB Number: 0524–0025.

Expiration Date of Approval: July 31, 2001.

Type of Request: Intent to revise and extend a currently approved information collection for three years.

Abstract: In 1982, the Small Business Innovation Research (SBIR) Program was authorized by Pub. L. 97–219, and in 1992 reauthorized through October 1, 2000, by Pub. L. 102–564. In 2000, the SBIR program was reauthorized through September 30, 2008, by Pub. L. 106–554. This legislation requires each Federal agency with a research and research and development budget in excess of $100 million to establish an SBIR program. The objectives of the SBIR Program are to stimulate technological innovation in the private sector, strengthen the role of small businesses in meeting Federal research and development needs, increase private sector commercialization of innovations derived from USDA-supported research and development efforts, and foster and encourage participation by women-owned and socially and economically disadvantaged small business firms in technological innovation. The Program is carried out in three separate phases. The purpose of Phase I is to determine the scientific or technical feasibility of ideas; Phase II is the principal research or research and development effort; and Phase III is to stimulate technological innovation and the national return on investment from research through the pursuit of commercial objectives resulting from work carried out in Phases I and II.

USDA conducts its SBIR program through the use of grants awards and these grants are administered by the Agreements and Special Projects Branch and the Grants Management Branch, Office of Extramural Programs, Competitive Research Grants and Awards Management, CSREES. Each year, USDA issues an SBIR program solicitation requesting Phase I proposals. These proposals are evaluated by peer review panels and awarded on a competitive basis. The SBIR Program Solicitation requests that applicants submit proposals following the format outlined in the Small Business Administration (SBA) Policy Directive. This simplified and standardized proposal format is used by all of the Federal agencies participating in the SBIR Program in order to reduce the application burden of the small business firms that wish to apply to more than one agency.

Before awards can be made, certain information is required from applicants as part of an overall proposal package. In addition to project summaries, descriptions of the research or teaching efforts, literature reviews, curricula vitae of principal investigators, and other, relevant technical aspects of the proposed project, supporting documentation of an administrative and budgetary nature also must be provided. Because of the nature of the competitive, peer-reviewed process, it is important that information from applicants be available in a standardized format to ensure equitable treatment.

This program also uses forms approved in the OMB-approved collection of information package 0524–0039. These forms include Form CSREES–2004, "Budget;" Form CSREES–2006, "National Environmental Policy Act Exclusions Form;" and Form CSREES–2008, "Assurance Statement(s)—For Research Projects."

Forms CSREES–667, "Phase I and Phase II Proposal Cover Sheet;" and CSREES–668, "Phase I and Phase II Project Summary" are used to obtain USDA recordkeeping data, required certifications, and information used to respond to inquiries from Congress, other Government agencies, and the grantee community concerning grant projects supported by the USDA SBIR Program.

The following information has been collected and will continue to be collected:

Forms CSREES–667— Identification: designates the research topic area under which a proposal is submitted for consideration; *USDA recordkeeping data:* provides names and addresses of principal investigators and authorized agents of small business firms; and *Certifications:* Provides required certifications; for example, the applicant qualifies as a small business for purposes of the SBIR Program; the applicant qualifies as a minority and disadvantaged and/or women-owned small business.

Form CSREES–668—*Project summary:* Provides a Technical Abstract used when releasing information about grant projects supported and keywords to identify the technology/research thrust/commercial application of the projects.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5.15 hours per response.

Respondents: Businesses or other for-profits.

Estimated Number of Responses Per Form: 480 for Form CSREES–667 and 480 for Form CSREES–668.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2,472 hours, broken down by: 672 hours for Form CSREES–667 (1.4 hours per 480 respondents) and 1,800 hours for Form CSREES–668 (3.75 hours per 480 respondents).

Copies of this information collection can be obtained from Duane Alphs, Policy and Program Liaison Staff, CSREES, (202) 401–3319. E-mail: OEP@reeusda.gov.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the address stated in the preamble.

Comments also may be submitted directly to OMB and should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20502.

All responses to this notice will be summarized and included in the request for OMB approval. All comments also will become a matter of public record.

Done at Washington, DC, this 2d day of May, 2001.

Colien Hefferan,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 01–11817 Filed 5–9–01; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Forest Service

Fox and Crescent Reservoir Maintenance, High Uintas Wilderness, Ashley National Forest, Duchesne County, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Dry Gulch Irrigation Company (DGIC), holder of special use permits to operate Fox and Crescent reservoir dams in the High Uintas Wilderness on the Ashley National Forest, has requested permission to maintain the dam structures to correct deficiencies that may result in failure of the dams in the near future. This maintenance work will require an assessment of environmental consequences, including those associated with proposals to use motorized and mechanical tools and equipment within the boundaries of the High Uintas Wilderness.

DATES: To be most useful for early identification of issues, comments concerning the scope of the analysis should be received in writing by May 29, 2001.

ADDRESSES: Written comments and questions should be send to: Dave Frew, Interdisciplinary Team Leader, Attn: Fox Lake Project, Roosevelt/Duchesne Ranger Districts, Ashley National Forest, 244 West Highway 40, Roosevelt, Utah 84066.

FOR FURTHER INFORMATION CONTACT: Specific questions about the proposed project and analysis should be directed to Dave Frew, Interdisciplinary Team Leader, 244 West Highway 40, Roosevelt, Utah 84066.

Responsible Official: Jack Blackwell, Regional Forester, Intermountain Region, is the responsible official for this EIS and the Record of Decision.

SUPPLEMENTARY INFORMATION: This proposal arose due to concerns found in various state and federal inspections of these dams over the past couple of years. Both of these dams are over 70 years old, and like all human made structures require periodic maintenance to insure their safe continued operation. These reservoirs are accessible only by primitive trail—there are not roads accessing these facilities. In the past, these reservoirs have been accessed from time to time by helicopter. The reservoirs must be maintained if storage is to continue to be allowed.

In 1984, Congress designated the area encompassing these reservoir sites at the High Uintas Wilderness, further complicating access by the wilderness provision against motorized or mechanical access or the use of motorized or mechanical tools and equipment. The 1964 Wilderness Act provides that motorized transport, tools and equipment and/or mechanical access may be authorized in specific circumstances, that being when it is determined they are the minimum requirement necessary for the proper administration of the area, and when authorized by the proper authority.

Proposed Action

DGIC proposes the following activities to insure the proper maintenance of the dams. Both the State of Utah Department of Natural Resources, Division of Water Rights, and the Forest Service agree that the maintenance activities proposed meet the technical requirements, and are necessary to accomplish if the dams are to continue to be used for their intended purpose. The proposed action involves helicopter transport to the reservoir sites for materials and equipment, and also proposes on-site motorized equipment to complete the work.

Fox Lake

Repairs to the outlet pipe with consist of slip lining the existing 36 inch

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corrugated pipe with 30" ID and a 32½" OD 40 pound pressure HEPE pipe with two joints totaling 96 ft. 6 inches, with a stainless steel band to join the pipes. A new structure will be formed and a new concrete structure will be poured. The outlet structure may also need to be replaced, or if not replaced, then some grout work will be necessary. Existing head gate controls will be removed and the wet well will be filed with native material. A new 30-inch Waterman head gate and frame assembly will be installed on the inlet end of the outlet pipe. The southwest levee will be raised approximately 3 inches in elevation to match the elevation of the dam. The north levee will be raised approximately 9 inches to match the elevation of the dam. Native material from existing borrow pits are proposed to be used to complete this portion of the project. There may also be some work on the main dike to insure proper freeboard.

The leak at the toe of the southwest levee will be excavated into the downstream toe and a sand filter installed to stop any fine material movement through the dike. This sand will be over laid with native material.

Any leaks on the upstream apron of the spillway will be repaired. An 8 inch thick retaining wall, three feet high, and 22 feet long will be poured on the downstream apron and will be doweled into the existing concrete spillway and the cracks will also be repaired. Riprap will be placed on the downstream to protect the spillway. All woody vegetation will be removed from the existing dam, levees, and dike (this action could take place annually or as needed for long term maintenance.)

Crescent Lake

A new head gate frame assembly will be installed and any repairs to the head gate or outlet pipe will be performed to ensure proper operation. The cracks in the masonry dam will be repaired using a grout facing material and glue mixture.

The proposed action requires the following materials at the reservoir sites: An oxygen and acetylene torch, 24 pieces of ½ inch rebar, one generator, one generator welder, two portable electric cement mixers, one grout pump, 100 gallons of fuel, one containment trough, six feet of 36 inch culvert and band, two wheel barrows, two 2 inch water pumps, sealable containers for transportation of human waste materials from the job site, 96.5 feet of HDPE pipe, a 30 inch Waterman head gate, miscellaneous lumber and forms, miscellaneous tools and supplies, and camp equipment and supplies for the work crews.

Transporting these tools and equipment will require an estimated minimum of 16 to 22 helicopter flights. The project is estimated to take 40–45 days with work crews varying from six to fourteen personnel. The helicopter operation will require a staging area be established at a site outside the wilderness at the Reader Creek meadows. The staging area is accessed via the Chepeta Lake road, and the helicopter refueling operations will take place at the staging area. Helicopter drop zones will be located either on the dam itself or within close proximity, to the work areas. If possible, drop zones will be within the reservoir area.

It is proposed that four saddle horses be at the worksite for the duration of the project for safety reasons, and four to six draft horses be available for 21 days to assist with the project work. There will be other horses used as needed for transportation to and from the worksite. The livestock will be using forage areas to the north and west of Fox reservoir. Supplemental feed may be required for the livestock. Campsites will be established t6o support up to 14 persons at one time per campsite. Campsites will be at least one mile apart.

Alternatives

At least two and possibly three action alternatives will be considered in the analysis.

Alternative 1—Proposed Action (As Described Above)

Alternative 2—Complete Repairs Using Primitive Means

This alternative will basically require that the needed work be done with wilderness friendly tools and equipment—minimizing or eliminating the proposed means of access by helicopter and the one-site motorized and mechanical equipment to perform the needed work. This alternative must be analyzed with the understanding that changing the proposal to the extent that repairs cannot effectively be made to meet safety and other pertinent standards will not meet the purpose and need of the project.

Alternative 3—Modification of the Proposed Action

There may be other ways to accomplish the needed work through some variation or modification of the proposed action that will further address important issues or minimize impacts and costs of the project. These modifications often become apparent as the analysis of the project goes forward and our publics become involved in the process.

Alternative 4—No Action

Under this alternative, the proposed repairs will not be completed. This will require that a storage restriction be put on the Fox reservoir immediately and shortly on the Crescent reservoir. Future work under this alternative will require activity to permanently stabilize these reservoirs so as not to function as draw down reservoirs. This alternative effectively eliminates the reservoirs as storage for late season irrigation water to the farms and ranches in the Uinta Basin.

Issues

The following is a preliminary list of issues identified by the ID Team. Other issues raised during public involvement will also be discussed in this EIS. The preliminary issues include:

1. Impacts of the project on wilderness values.
2. Ability to use legally held water rights.
3. Access to the sites—impacts on existing trails.
4. Water Quality.
5. Riparian Areas/Stream Conditions.
6. Borrow areas and sites—material sources.
7. Rehabilitation of disturbed areas.
8. Impact to wilderness visitors including noise, dust, and opportunities for solitude.
9. Impacts to wildlife resources including Threatened, Endangered and Sensitive species.
10. Impacts to outfitter—guide operations.
11. Historical integrity of the dams.

Decision To Be Made

The decision to be made is: Should the DGIC be allowed to effect the repairs, as proposed, on Fox and Crescent dams to allow further use of the reservoirs as storage for late season irrigation water as presently authorized under special use permit, and, if so, what motorized and mechanical tools and equipment will be allowed in the designated High Uintas Wilderness to complete the project. A decision will also be made on the location of the helicopter-staging site outside the wilderness.

Public Involvement

Public participation is especially important at several points during the analysis, particularly during initial scoping and review of the draft EIS. Individuals, organizations, federal, state, and local agencies who are interested in or affected by the decision are invited to participate in the scoping process. This information will be used in the preparation of the draft EIS.

The second major opportunity for public input is during the review of the draft EIS. The draft EIS is expected to be filed with the EPA (Environmental Protection Agency) and to be available for public review in September, 2001. At that time the EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points). The Forest Service believes, at this early stage, it is important to give reviewers notice of several federal court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978). Also environmental objections that could be raised at the draft EIS stage, but that are not raised until after completion of the final EIS, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis, 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 30-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternates formulated and discussed in the statement. Reviewers may wish to refer to the Council on environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period ends on the draft EIS, the comments will be analyzed and considered in preparing the final EIS. The final EIS is scheduled for completion in March, 2002.

Dated: April 16, 2001.

Jack G. Troyer,

Deputy Regional Forester.

[FR Doc. 01–11740 Filed 5–9–01; 8:45 am]

BILLING CODE 3401–11–M

DEPARTMENT OF COMMERCE

Census Bureau

School Enrollment Report

ACTION: Proposed collection; comment request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 9, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *mclayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Josie Baker, U.S. Census Bureau, Room 2331, Washington, DC 20233–0001, 301–457–2441, josephine.d.baker@census.gov

SUPPLEMENTARY INFORMATION:

I. Abstract

Each year the U.S. Census Bureau sends the School Enrollment Report, P–4 form to the 30 state departments of education that do not publish enrollment data early enough in the year for us to use their published reports. Information requested includes fall public and nonpublic enrollment by grade for the state and counties. In six states we collect year-end enrollment. The U.S. Census Bureau uses school enrollment data in preparing estimates of state population. State population estimates are used by dozens of Federal agencies for allocating Federal program funds, as bases for rates of occurrences, and as input for Federal surveys. State and local governments, businesses, and the general public use state population estimates for planning and other information uses.

II. Method of Collection

The School Enrollment Report, P–4 form, is mailed each spring to approximately 30 state education agencies. We request fall public and nonpublic school enrollment by grade for the state and counties. Responses are returned and reviewed on a flow basis during the summer and early fall. Data collected will be used as input for the development of population estimates. The estimates are made in November, December, and January.

III. Data

OMB Number: 0607–0459.
Form Number: P–4.
Type of Review: Regular Review.
Affected Public: State education agencies.
Estimated Number of Respondents: 30.
Estimated Time Per Response: 30 minutes.
Estimated Total Annual Burden Hours: 15 hours.
Estimated Total Annual Cost: @$27.25 per hour, $409.
Respondent's Obligation: Voluntary.

Legal Authority: Title 13 USC, Sections 181 and 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection;

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they also will become a matter of public record.

Dated: May 7, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–11812 Filed 5–9–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–835]

Notice of Extension of Time Limit for Preliminary Results of Administrative Antidumping Review: Oil Country Tubular Goods from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 10, 2001.

FOR FURTHER INFORMATION CONTACT: Doug Campau, Holly Hawkins or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–1395, (202) 482–0414 or (202) 482–3020, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, codified at 19 CFR part 351 (2000).

Background

In accordance with 19 CFR § 351.213(b)(2), the Department received a timely request from petitioner U.S. Steel Group that we conduct an administrative review of the sales of Sumitomo Metal Industries. On September 29, 2000, the Department initiated an administrative review of the antidumping duty order on oil country tubular goods (OCTG) for the period of review (POR) of August 1, 1999 to July 31, 2000, in order to determine whether merchandise imported into the United States is being sold at dumped prices.

Extension of Time Limits for Preliminary Results

Because of the complexity and timing of certain issues in this case, it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act and section 351.213(h) of the Department's regulations. *See Memorandum from Barbara E. Tillman to Joseph A. Spetrini*, dated April 27, 2001 (on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce).

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limits for the preliminary results to no later than August 31, 2001.

Dated: May 2, 2001.

Joseph A. Spetrini,

Deputy Assistant Secretary for AD/CVD Enforcement III.

[FR Doc. 01–11843 Filed 5–9–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050301G]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of an application for a scientific research permit (1303); Receipt of request to modify research permit 1245; NMFS has issued permit 1297; NMFS has issued an amendment of enhancement permit 1237.

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement under the Endangered Species Act (ESA): NMFS has received an application for a scientific research permit from Dr. R. Michael Laurs, of Southwest Fisheries Science Center (SWFSC); NMFS has received a request to modify permit 1245 from Mr. Bruce Stender of the South Carolina Department of Natural Resources; NMFS has issued permit 1297 to Dr. Peter Dutton of the NMFS - Southwest Fisheries Science Center and an amendment of permit 1237 to the Walla Walla District of the U.S. Army Corps of Engineers at Walla Walla, WA.

DATES: Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number no later than 5 p.m. eastern standard time on June 11, 2001.

ADDRESSES: Written comments on any of the new applications or modification requests should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application or modification request. Comments will not be accepted if submitted via e-mail or the Internet. The applications and related documents are available for review in the indicated office, by appointment:

For permits 1245, 1297, 1303: Endangered Species Division, F/PR3, 1315 East West Highway, Silver Spring, MD 20910 (phone:301–713–1401, fax: 301–713–0376).

For permits 1237: Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737 (phone: 503–230–5400, fax: 503--230–5435).

Documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (phone:301–713–1401).

FOR FURTHER INFORMATION CONTACT: For permits 1245, 1297, 1303: Terri Jordan, Silver Spring, MD (phone: 301–713–1401, fax: 301–713–0376, e-mail: Terri.Jordan@noaa.gov)

For permits 1237: Robert Koch, Portland, OR (ph: 503–230–5424, fax: 503–230–5435, e-mail: Robert.Koch@noaa.gov).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Scientific research and/or enhancement permits are issued under Section 10(a)(1)(A) of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries,

NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in this Notice

The following species and evolutionary significant units (ESUs) are covered in this notice:

Sea turtles

Threatened and endangered Green turtle (*Chelonia mydas*)

Endangered Hawksbill turtle (*Eretmochelys imbricata*)

Endangered Kemp's ridley turtle (*Lepidochelys kempii*)

Endangered Leatherback turtle (*Dermochelys coriacea*)

Threatened Loggerhead turtle (*Caretta caretta*)

Threatened and endangered Olive ridley turtle (*Lepidochelys olivacea*)

Fish

Sockeye salmon (*Oncorhynchus nerka*): endangered Snake River (SnR).

Chinook salmon (*O. tshawytscha*): endangered, naturally produced and artificially propagated, upper Columbia River (UCR) spring; threatened, naturally produced and artificially propagated, SnR spring/summer.

Steelhead (*O. mykiss*): endangered, naturally produced and artificially propagated, UCR; threatened SnR; threatened middle Columbia River.

New Applications Received

Application 1303

The applicant requests authorization to allow take of listed sea turtles while conducting experiments on methods for reducing sea turtle take by longline fisheries in the Pacific Ocean and to allow import of living, deeply hooked sea turtles for treatment and rehabilitation. The applicant proposes to take a total of 15 green, 43 leatherback, 221 loggerhead and 24 olive ridley turtles over the three-year life of the permit. This application is available for download and review from the Office of Protected Resources permitting web site: http://www.nmfs.noaa.gov/prot—res/PR3/Permits/ESAPermit.html.

Modification Requests Received

Permit #1245

The applicant requests a modification to Permit 1245. Permit 1245 authorizes the take of listed sea turtles for scientific research purposes. Permit #1245 authorizes the take of 250 loggerhead, 10 green, 50 Kemp's ridley, five hawksbill and one leatherback turtles annually. Modification #2 would authorize researchers to intubate and ventilate a turtle verified to be unconscious, allow researchers to collect skin biopsies from each turtle, collect an additional biopsy of any abnormal growth and to collect a keratin sample from the carapace of each turtle for mercury content analysis.

Permits and Modified Permits Issued

Permit #1297

Notice was published on March 5, 2001 (66 FR 13305) that Donna McDonald, of Ocean Planet Research, Incorporated applied for a scientific research permit (1297).

The purpose of this project is to continue long-term monitoring of the status of sea turtles in San Diego Bay. Numbers present, species, size, sex, health status, and presence or absence of tag will be recorded. Permit 1297 was issued on April 27, 2001, authorizing take of listed species. Permit 1297 expires May 31, 2006.

Permit #1237

Notice was published on February 16, 2000 (65 FR 7855) that the Corps applied for an enhancement permit (1237). Permit 1237 was issued to the Corps on March 22, 2001 (see 66 FR 18447, April 9, 2001). Permit 1237 authorizes the Corps annual takes of ESA-listed Snake River salmon and steelhead associated with transporting juvenile anadromous fish around the dams and past the reservoirs on the mainstem lower Snake and Columbia Rivers in the Pacific Northwest. The purpose of the Corps' Juvenile Fish Transportation Program is to increase juvenile fish survival over the alternative of in-river passage, given existing in-river migratory conditions. On April 26, 2001, NMFS issued an amendment of enhancement permit 1237. For the permit amendment, the Corps is authorized takes of ESA-listed fish species associated with juvenile fish transport at McNary Dam on the lower Columbia River during the spring 2001 juvenile salmonid outmigration season. The Corps requested the additional ESA-listed fish takes (associated with spring transport at McNary Dam) in its original permit application (see 65 FR 7855, February 16, 2000). Since the beginning of 2001, forecasted river conditions and anticipated estimates of the project passage survival of juvenile fish migrating in the lower Columbia River during 2001 have progressively deteriorated. It now appears that the survival rate of spring-migrating juvenile salmonids between McNary Dam and Bonneville Dam may be lower than previously expected for the 2001 juvenile salmonid outmigration season. Therefore, NMFS has determined that spring transport at McNary Dam by the Corps will not operate to the disadvantage of the ESA-listed fish in 2001. The Corps will load the juvenile fish into aerated trucks and barges for transportation to below Bonneville Dam on the Columbia River. Further handling of the fish does not occur, except for loading via raceways or when the fish are handled for monitoring purposes by Corps personnel or for scientific research purposes by individuals holding separate take authorizations. The amendment is valid for the duration of Permit 1237. However, the conduct of spring transport at McNary Dam in future years will be subject to annual approval by NMFS. Additional annual takes of ESA-listed adult fish associated with handling fallbacks at the juvenile fish transportation facility at McNary Dam are also authorized by the permit amendment. Permit 1237 expires on December 31, 2005.

Dated: May 4, 2001.

Chris Mobley,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–11839 Filed 5–9–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.050101E]

Endangered Species; Permit 1067

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application to modify permit 1067.

SUMMARY: Notice is hereby given of the following action regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement. NMFS has received an application from California Department of Fish and Game, Sacramento, CA to modify permit 1067.

DATES: Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific daylight time on June 11, 2001.

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ADDRESSES: Written comments on any of the new applications or modification requests should be sent to Protected Resources Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404–6528. Comments may also be sent via fax to (707) 578–3435. Comments will not be accepted if submitted via e-mail or the Internet.

The application and related documents are available for review in the following office, by appointment: Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: Permits Coordinator, Protected Resources Division, (707–575–6053).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) (ESA), is based on a finding that such permits/modifications are (1) applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222-226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

The following species and evolutionarily significant units (ESU's) are covered in this notice: Threatened Central California Coast (CCC) steelhead trout (*Oncorhynchus mykiss*), threatened (CCC) coho salmon (*Oncorhynchus kisutch*), threatened, California Coastal (CC) chinook salmon (*Oncorhynchus tshawytscha*).

Modification Requests Received

The California Department of Fish and Game (CDFG) requests a modification to permit 1067 for takes of adult and juvenile threatened CCC coho salmon (*Oncorhynchus kisutch*) associated with a proposal to develop a conservation hatchery program for coho salmon at the Congressman Don Clausen Fish Hatchery at Warm Springs Dam in Sonoma County, CA. The purpose of this program is to prevent extirpation of portions of the CCC coho salmon ESU by restoring lost or declining stocks and to provide a mechanism to conserve potential broodstock of CCC coho salmon. The overall goal of the program is to restore self-sustaining and self-regulating stocks of coho salmon to the CCC coho salmon ESU. Presently, permit 1067 authorizes intentional takes of adult and juvenile CCC coho salmon for research projects throughout the CCC coho salmon ESU. This requested modification would add additional intentional takes of adult and juvenile CCC coho salmon to the CDFG permit and include authorization to implement an enhancement program. These activities may also result in incidental takes of threatened CCC steelhead (*O. mykiss*) and threatened, California Coastal (CC) chinook salmon, (*O. tshawytscha*). This requested modification to permit 1067 would authorize intentional take of adult and juvenile CCC coho salmon and incidental take of CCC steelhead and CC chinook salmon. Permit 1067 expires on June 30, 2002.

Dated: May 4, 2001.

Chris Mobley,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–11841 Filed 5–9–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042501C]

Marine Mammals; File No. 995-1608

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Mr. Thomas F. Norris, Science Applications International Corp., 3990 Old Town Avenue, Suite 105A, San Diego, California 92110, has been issued a permit to take gray (*Eschrichtius robustus*), minke (*Balaenoptera acutorostrata*), and Bryde's (*Balaenoptera edeni*) whales for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301) 713–0376;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018; and

Protected Species Coordinator, Pacific Area Office, NMFS, 1601 Kapiolani Blvd., Rm, 1110, Honolulu, HI 96814–4700; phone (808) 973–2935; fax (808) 973–2941.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: On December 21, 2000, notice was published in the **Federal Register** (65 FR 80420) that a request for a scientific research permit to take gray (*Eschrichtius robustus*), minke (*Balaenoptera acutorostrata*), Bryde's (*Balaenoptera edeni*), blue (*Balaenoptera musculus*), fin (*Balaenoptera physalus*), and humpback (*Megaptera novaengliae*) whales had been submitted by the above-named individual. The requested permit has been issued for the three non-endangered species of whale (gray, minke, and Bryde's) only, under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216). The request for a permit related to the three endangered species of whale (blue, fin, and humpback) is deferred pending receipt of a report of the effects of the tags on the non-endangered species.

Dated: May 4, 2001.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–11840 Filed 5–9–01; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Short Supply Request under the African Growth and Opportunity Act (AGOA) and United States–Caribbean Basin Trade Partnership Act (CBTPA)

May 8, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for public comments concerning a request for a determination that certain yarns of 55 percent polyester staple fibers and 45 percent worsted wool cannot be supplied by the domestic industry in commercial quantities in a timely manner.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUMMARY: On May 4, 2001 the Chairman of CITA received a petition from Stillwater Sales, Inc./Metcalf Bros. and Company alleging that yarns of 55 percent polyester staple fibers and 45 percent worsted wool, 1, 2, and 3 ply yarns, in their natural (undyed) state or in their stock dyed state (fiber dyed), with 12 to 20 twists per inch, and in sizes of 1/15 to 1/30, 2/30 to 2/60, and 3/48 to 3/60 worsted count (1/17 to 1/34, 2/34 to 2/68 and 3/54 to 3/68 metric count), classified in subheading 5107.20.6000 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting that the President proclaim that apparel articles of woven U.S. formed-fabric of such yarns be eligible for preferential treatment under the AGOA and the CBTPA. CITA hereby solicits public comments on this request, in particular with regard to whether these yarns can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by May 25, 2001 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Authority: Section 112(b)(5)(B) of the AGOA; Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act, as added by Section 211(a) of the CBTPA; Sections 1 and 6 of Executive Order No. 13191 of January 17, 2001.

Background

The AGOA and the CBTPA provide for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns or fabrics formed in the United States or a beneficiary country. The AGOA and the CBTPA also provide for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more AGOA or CBTPA beneficiary countries from fabric or yarn that is not formed in the United States or a beneficiary country, if it has been determined that such fabric or yarns cannot be supplied by the domestic industry in commercial quantities in a timely manner and the President has proclaimed such treatment. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA and the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests. 66 FR 13502.

On May 4, 2001 the Chairman of CITA received a petition from Stillwater Sales, Inc./Metcalf Bros. and Company alleging that yarns of 55 percent polyester staple fibers and 45 percent worsted wool, 1, 2, and 3 ply yarns, in their natural (undyed) state or in their stock dyed state (fiber dyed), with 12 to 20 twists per inch, and in sizes of 1/15 to 1/30, 2/30 to 2/60, and 3/48 to 3/60 worsted count (1/17 to 1/34, 2/34 to 2/68 and 3/54 to 3/68 metric count) classified in subheading 5107.20.6000 of the HTSUS, cannot be supplied by the domestic industry in commercial quantities in a timely manner, and requesting that the President proclaim quota–and duty–free treatment under the AGOA and the CBTPA for apparel articles that are cut and sewn in one or more AGOA or CBTPA beneficiary countries from woven U.S.–formed fabric of such yarns.

CITA is soliciting public comments regarding this request, particularly with respect to whether these yarns can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other yarns that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for these yarns for purposes of the intended use. Comments must be received no later than May 25, 2001. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that these yarns can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the yarn stating that it produces the yarn that is in the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked business confidential from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non–confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.01–11905 Filed 5–8–01; 1:31 pm]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in the Republic of Korea

May 7, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing a limit.

EFFECTIVE DATE: May 10, 2001.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs

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website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 345 in Group II is being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 69740, published on November 20, 2000.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 7, 2001.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 14, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products produced or manufactured in the Republic of Korea and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on May 10, 2001, you are directed to reduce the current limit for Category 345 in Group II to 133,919 dozen [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01-11806 Filed 5-9-01; 8:45 am]

BILLING CODE 3510-DR-S

[1] The limit has not been adjusted to account for any imports exported after December 31, 2000.

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 01-05]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, DOD.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104-164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604-6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 01-05 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: May 4, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001-08-M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

24 APR 2001
In reply refer to:
I-01/004161

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 01-05, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Switzerland for defense articles and services estimated to cost $225 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Tome H Walters

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

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Transmittal No. 01-05

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Switzerland

(ii) Total Estimated Value:

Major Defense Equipment*	$ 68 million
Other	$ 157 million
TOTAL	$ 225 million

(iii) Description of Articles or Services Offered: F/A-18 "Upgrade 21 Program" consisting of Fleet Retrofit Kits of the following systems: 34 AN/APX-111 Combined Interrogator Transponder, 34 Tactical Aircraft Moving Map Capability, 50 Multi-functional Information Distribution System/Low Volume Terminal (Airborne Link-16). Also, Validation and Verification Kits of the following systems: three Joint Helmet Mounted Cueing System, three Enhanced Interface Blanker Unit and three Digital Communications to Wingtips. The proposed program support includes spare and repair parts, support and test equipment, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and other related elements of logistics and program management support.

(iv) Military Department: Navy (LAC, Amendment 2)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(vii) Date Report Delivered to Congress: 24 APR 2001

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Switzerland - F/A-18 Upgrade 21 Program

The Government of Switzerland has requested a possible upgrade of their Swiss Air Force (SAF) F/A-18 aircraft. The F/A-18 "Upgrade 21 Program" consists of Fleet Retrofit Kits of the following systems: 34 AN/APX-111 Combined Interrogator Transponder, 34 Tactical Aircraft Moving Map Capability, 50 Multi-functional Information Distribution System/Low Volume Terminal (Airborne Link-16). Also, Validation and Verification Kits of the following systems: three Joint Helmet Mounted Cueing System, three Enhanced Interface Blanker Unit and three Digital Communications to Wingtips. The proposed program support includes spare and repair parts, support and test equipment, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and other related elements of logistics and program management support. The estimated cost is $225 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in Europe.

The SAF intends to purchase the Upgrade 21 Program equipment to enhance survivability, communications connectivity, and extend the useful life of its F-18 fighter aircraft. It has extensive experience operating the F/A-18 aircraft and should have no difficulties incorporating the upgraded capabilities into its forces. The SAF needs this upgrade to keep pace with high tech advances in sensors, weaponry, and communications.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Boeing Military Aircraft and Missile Systems of St. Louis, Missouri. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any contractor representatives in-country; however, it is estimated that U.S. Government representatives will be required in Switzerland for approximately four months during the preparation, equipment installation, and equipment test and checkout of the equipment.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

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(vi) Sensitivity of Technology:

1. The Combined Interrogator Transponder (CIT) AN/APX-111(V) IFF system was specifically designed for the F/A-18. The Interrogator function provides the pilot with capability to identify cooperative or friendly aircraft. The transponder function self-identifies the aircraft to other off-board interrogators in the same way as the APX-100 transponder. CIT combines most of the interrogator, transponder, and crypto computer functions into one unit outline. The electronically scanned interrogator antenna function is performed by a five-blade array and Beam Forming Network (BFN).

2. The configuration requested is compatible for use in F-18 aircraft. The configuration consists of the following equipment: RT-1763A/APX-111(V) interrogator-transponder, KIV-6/TSEC cryptographic computer, C-12481/APX-111(V) beam forming network, (5X) AS-4440/APX-111(V) antenna blade elements, IT-to-BFN cable group, BFN-to-FMA cable group, receiver-transmitter radio, antenna position control, antenna set (upper), battery charge panel, external power monitor, ID light transformer/mount, mounting tray assembly BFN, 3L landing gear control unit bay, LGCU mounting tray assembly and relay panel no. 3. AN/APX-111 CIT is classified as Confidential.

3. The Tactical Aircraft Moving Map Capability (TAMMAC) System includes Digital Map Computer with extension, Advanced Memory Unit and High Speed Interface Cable. The TAMMAC system is being developed to alleviate problems, including parts obsolescence issues, associated with the Digital Video Map Set (DVMS) and the Data Storage Set (DSS) currently installed on the F/A-18. The DVMS does not possess sufficient throughput or database storage capability to support future F/A-18 operational requirements. Additionally, the DVMS cannot use Compressed AC Digitized Raster Graphic the digital map database provided by the National Imagery and Mapping Agency (NIMA), without costing preprocessing. The DSS does not provide enough memory capacity to store the desired amount of data recorded by the aircraft during flight.

4. The configuration requested is compatible for use in F-18 aircraft. The configuration consists of the following equipment: advanced memory unit, MU-1129A/A memory unit, digital map set, and CP-2414A/A digital map computer. TAMMAC system is classified as Confidential.

5. The Multifunctional Information Distribution System (MIDS) Low Volume Terminal (LVT) is a secure data and voice communication network using the Link-16 architecture. The system provides enhanced situational awareness, positive identification of participants within the network, secure fighter-to-fighter connectivity, secure voice capability, and ARN-118 TACAN functionality. It provides three major functions: Air Control, Wide Area Surveillance, and Fighter-to-Fighter. The MIDS LVT can be used to transfer data in Air-to-Air, Air-to-Surface, and Air-to-Ground scenarios.

6. The configuration requested is compatible for use in F-18 aircraft. The configuration consists of the following equipment: RT-1765 C/USQ-140(V)C MIDS/LVT and MIDS notch filter set. MIDS/LVT is classified as Confidential.

7. The Joint Helmet Mounted Cueing System (JHMCS) provides an off-boresight visual targeting of sensors and weapons with a head-out display where the pilot is looking. The system improves situational awareness in visual combat while providing off-boresight visual cueing and threat identification. Also, when combined with a high off-boresight missile, aircraft weapon system lethality is improved for short-range air-to-air engagements.

8. The configuration requested is compatible for use in F-18 aircraft. The configuration consists of the following equipment: electronics unit, cockpit unit, magnetic transition unit, seat position sensor, mounting bracket, lower helmet vehicle interface, helmet display unit, visor day, visor night, visor high contrast, oxygen mask, helmet upper interface, JHMCS/ANVIS-9 Night Vision Goggles adapters, and JHMCS helmet bag. The JHMCS is classified as Confidential.

9. The MIDS Enhanced Interference Blanking Units (EIBU) provides validation and verification of equipment and concept. EIBU enhances input/output signal capacity of the MIDS LVT and addresses parts obsolescence.

10. The configuration requested is compatible for use in F-18 aircraft. The configuration consists of the following equipment: MX-11741/A interference blanker.

11. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

12. A determination has been made that Switzerland can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 01–11757 Filed 5–9–01; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 01–06]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, DOD.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 01–06 with attached transmittal and policy justification.

Dated: May 4, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

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DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

23 APR 2001
In reply refer to:
I-01/003905

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 01-06, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to the Republic of Korea for defense articles and services estimated to cost $500 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 01-06

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Republic of Korea

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$ 500 million
TOTAL	$ 500 million

(iii) Description of Articles or Services Offered: A Cooperative Logistics Supply Support Agreement (CLSSA) requisition case (FMSO II) for the support of F-4D/E, RF-4C, F-5A/B/E/F, RF-5A, A/T-37, T-38, F-16C/D, and C-130H aircraft; AN/FPS-117 and AN/FRN-45 radar systems; and AIM-7, AIM-9 and AIM-120 missile components. These items are of U.S. origin and are being operated by the Republic of Korea.

(iv) Military Department: Air Force (KCL)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none

(vii) Date Report Delivered to Congress: 23 APR 2001

* as defined in Section 47(6) of the Arms Export Control Act.

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POLICY JUSTIFICATION

Republic of Korea - Cooperative Logistics Supply Support Agreement

The Republic of Korea has requested a possible sale of spare parts under a Cooperative Logistics Supply Support Agreement (CLSSA) requisition case (FMSO II) for the support of F-4D/E, RF-4C, F-5A/B/E/F, RF-5A, A/T-37, T-38, F-16C/D, and C-130H aircraft; AN/FPS-117 and AN/FRN-45 radar systems; and AIM-7, AIM-9 and AIM-120 missile components. These items are of U.S. origin and are being operated by the Republic of Korea. The estimated cost is $500 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Northeast Asia.

The Republic of Korea needs these additional spare parts to maintain the aircraft, radar, and missile systems previously procured from the United States in a mission capable status.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

Procurement of these items of support will be from the many contractors providing similar items to the U.S. armed forces. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to the Republic of Korea.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 01–11758 Filed 5–9–01; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 01–08]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, DOD.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 01–08 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: May 4, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

23 APR 2001
In reply refer to:
I-01/002571

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 01-08 and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to the Republic of Korea for defense articles and services estimated to cost $98 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(b)(1)(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale are described in the enclosed confidential attachment.

Sincerely,

Tome H Walters

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Separate Cover:
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

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Transmittal No. 01-08

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Republic of Korea

(ii) Total Estimated Value:

Major Defense Equipment*	$ 59 million
Other	$ 39 million
TOTAL	$ 98 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: Three MK 41 Vertical Launch Systems, U.S. Government and contractor engineering and logistics personnel services, personnel training and training equipment, support and test equipment, spare and repair parts, publications and technical documentation, launch system software development and maintenance and other related elements of logistics support.

(iv) Military Department: Navy (LPJ)

(v) Prior Related Cases, if any: FMS case LOW - $70 million - 14Dec98

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 23 APR 2001

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Republic of Korea - MK 41 Vertical Launch Systems

The Republic of Korea Government has requested the possible sale of three MK 41 Vertical Launch Systems, U.S. Government and contractor engineering and logistics personnel services, personnel training and training equipment, support and test equipment, spare and repair parts, publications and technical documentation, launch system software development and maintenance and other related elements of logistics support. The estimated cost is $98 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in Northeast Asia.

The missile launchers will be installed on new construction destroyers and are intended for use with STANDARD missiles as the principal air defense armament of these new vessels. Korea will have no difficulty absorbing these additional missile launch systems into its armed forces.

The proposed sale of this shipboard missile launch systems and support will not affect the basic military balance in the region.

The principal contractors will be Lockheed Martin Marine Systems of Middle River, Maryland and United Defense Limited Partnership of Minneapolis, Minnesota. One or more proposed offset agreements might be related to this proposed sale.

Implementation of this proposed sale will require the assignment of three U.S. Government and six contractor representatives in Korea for approximately 39 months during the preparation, equipment installations, and equipment test and checkout of the MK 41 Vertical Launch Systems on the ships.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

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Transmittal No. 01-08

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex Item No. vi

(vi) Sensitivity of Technology:

1. The MK-41 Vertical Launch Systems (VLS) contains sensitive technology and is Unclassified. The Launch Control Computer Program (LCCP), which also contains missile launch rates, is classified Confidential. The LCCP provides the control and processing to interface the Weapon Control System with the VLS. Sections of the MK-41 technical documentation, which disclose launcher vulnerabilities, are classified Confidential.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Korea can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 01–11759 Filed 5–9–01; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board (DSB) Task Force on Chemical Warfare Defense will meet in closed session on May 31, 2001, and June 1, 2001, at SAIC, Inc., 4001 N. Fairfax Drive, Arlington, VA 22201. The Task Force will assess the possibility of controlling the risk and consequences of a chemical warfare (CW) attack to acceptable national security levels within the next five years.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Task Force will assess current national security and military objectives with respect to CW attacks; CW threats that significantly challenge these objectives today and in the future; the basis elements (R&D, materiel, acquisition, personnel, training, leadership) required to control risk and consequences to acceptable levels, including counter-proliferation; intelligence, warning, disruption; tactical detection and protection (active and passive); consequence management; attribution and deterrence; and policy. The Task Force will also assess the testing and evaluation necessary to demonstrate and maintain the required capability and any significant impediments to accomplishing this goal.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly this meeting will be closed to the public.

Dated: May 4, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–11760 Filed 5–9–01; 8:45 am]
BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Public Meeting With the Community College of the Air Force (CCAF) Board of Visitors To Review and Discuss Academic Policies and Issues Relative to the Operation of the College

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: The CCAF Board of Visitors will hold a meeting to review and discuss academic policies and issues relative to the operation of the college. Agenda items include a review of the operations of the CCAF and an update on the activities of the CCAF Policy Council.

Members of the public who wish to make oral or written statements at the meeting should contact First Lieutenant Matthew M. Groleau, Designated Federal Officer for the Board, at the address below no later than 4:00 p.m. on August 1, 2001. Please mail or electronically mail all requests. Telephone requests will not be honored. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. A minimum of 35 copies of the presentation materials must be given to First Lieutenant Matt Groleau no later than 3 days prior to the time of the board meeting for distribution. Visual aids must be submitted to First Lieutenant Matt Groleau on a 3½-inch computer disk in Microsoft PowerPoint format no later than 4:00 p.m. on August 1, 2001 to allow sufficient time for virus scanning and formatting of the slides.

DATES: The meeting will be held on Tuesday, August 21, 2001 at 8:00 a.m. in the First Floor Conference Room, Community College of the Air Force, Building 836, 130 West Maxwell Boulevard, Maxwell Air Force Base, Alabama 36112.

FOR FURTHER INFORMATION CONTACT: First Lieutenant Matt Groleau, (334) 953–7322, Community College of the Air Force, 130 West Maxwell Boulevard, Maxwell Air Force Base, Alabama, 36112–6613, or through electronic mail at *matthew.groleau@maxwell.af.mil.*

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 01–11819 Filed 5–9–01; 8:45 am]
BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of the Fort Sam Houston and Camp Bullis Master Plan Draft Programmatic Environmental Impact Statement

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: This announces the availability of the Fort Sam Houston and Camp Bullis Master Plan Draft Programmatic Environmental Impact Statement (DPEIS), which assesses the potential environmental impacts of implementing three master planning alternatives. Alternative 1 (No Action Alternative) includes the continuation of: The currently identified stationed population reductions, as reflected in the Army Stationing and Installation Plan; the projected reductions in the Real Property Maintenance Activity budget program for facility maintenance and repair; the "zero investment" maintenance expenditures for vacant historical facilities, and the projected reductions in the Base Operations budget program for utilities and other engineering services. Alternative 2 (Reuse of Facilities and Property by Federal Users) would result in an adaptive reuse of currently vacant historical facilities using the existing appropriated funds process. This maybe accomplished by bringing to Fort Sam Houston: Additional military missions through individual stationing decisions that take advantage of the capabilities of Fort Sam Houston; and/or additional federal missions through individual stationing decisions that take advantage of the capabilities of Fort Sam Houston. Alternative 3 (Reduction of Underutilized/Unutilized Property through Lease, Sale, or Removal) would result in the reduction of underutilized/unutilized facilities and property on Fort Sam Houston and Camp Bullis, in addition to changes in the Land Use Plan. The reduction in underutilized/unutilized property may be accomplished through: Outgrant leases to the city, county, state, private citizens, businesses, or investors; sale to the city, county, state, private citizens, businesses, or investors; removal from the site; or demolition. The Army may select any one alternative or a combination of alternatives for future activities and planning at Fort Sam Houston.

DATES: The comment period for the DPEIS will end 45 days after publication of the notice of availability in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: To obtain copies of the DPEIS, contact Ms. Jackie Schlatter, PEIS Project Manager, ATTN: MCCS-BPW-E, 2202 15th Street (Bldg. 4196), Fort Sam Houston, Texas 78234–5007.

FOR FURTHER INFORMATION CONTACT: Ms. Jackie Schlatter at (210) 221–5093, by email at jackie.schlatter@cen.amedd.army.mil, or by fax at (210) 221–5419.

SUPPLEMENTARY INFORMATION: This document includes analyses of the potential environmental consequences that the alternative actions may have on land use and visual resources, transportation, utilities, earth resources, air quality, water resources, biological resources, cultural resources, socio-economics, noise, and hazardous materials and items of special concern. The findings indicate that potential environmental impacts from the alternatives may result in some impacts to cultural resources.

A public meeting will be conducted by the Army to receive comments on the DPEIS. Additional information regarding the public meeting will be provided in local and regional newspapers.

The DPEIS has been provided to the following libraries for public access to the document: Fort Sam Houston Library, Bldg. 1222, 2601 Harney, Fort Sam Houston, TX 78234 and the San Antonio Public Library, 600 Soledad Plaza, San Antonio, TX 78205.

Dated: May 4, 2001.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA(I&E).

[FR Doc. 01–11805 Filed 5–9–01; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DOD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Army is proposing to consolidate three systems of records under one notice. As a result of the consolidation, two routine uses are being added to the system of records. The routine uses will permit the disclosure of information to the Federal Aviation Administration to obtain flight certification/ licensing; and to the Department of Veterans Affairs.

DATES: This proposed action will be effective without further notice on June 11, 2001 unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on April 3, 2001, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. 1–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

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Dated: May 3, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETIONS:

A0145–1a TRADOC–ROTC

SYSTEM NAME:

ROTC Applicant/Member Records (July 15, 1997, 62 FR 37894).

REASON:

Records are now covered under A0145–1 TRADOC, Army Reserve Officer's Training Corps (ROTC) and Financial Assistance Programs.

A0145–1b TRADOC–ROTC

SYSTEM NAME:

ROTC Financial Assistance (Scholarship) Application File (July 15, 1997, 62 FR 37895).

REASON:

Records are now covered under A0145–1 TRADOC, Army Reserve Officer's Training Corps (ROTC) and Financial Assistance Programs.

ALTERATION:

A0145–1 TRADOC

SYSTEM NAME:

Army Reserve Officer's Training Corps Gold QUEST Referral System (July 15, 1997, 62 FR 37893).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Army Reserve Officer's Training Corps (ROTC) and Financial Assistance Programs'.

SYSTEM LOCATION:

Delete entry and replace with 'MCS, Incorporated, 10041 Polinski Road, Ivyland, PA 18974–9872; Headquarters, U.S. Army Reserve Officer's Training Corps Cadet Command, 56 Patch Road, Fort Monroe, VA 23651–5000; U.S. Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400; offices of the Professor of Military Science at civilian institutions in ROTC regional offices; ROTC Cadet Battalions and Reserve Officers Training Corps Brigade Recruiting Teams Officer's Training Corps Goldminer Teams. Official mailing addresses are published as an appendix to the Army's compilation of system of records notices.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Individuals who apply and are accepted into the Army ROTC program; potential enrollees in the Senior ROTC program; and individuals who desire to participate in the Army ROTC Financial Assistance (Scholarship Program).'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Records include individual applications and/or prospect referrals for appointment which include such personal data as name, Social Security Number; sex, date and place of birth, citizenship; home address, telephone number; marital status, dependents, name of high school, high school graduation date, grade point average; Scholastic Assessment Test, American College Testing, Preliminary Scholastic Assessment Testing scores; college admission status; college(s) expected to attend, desired academic major(s); academic transcripts and certificates of education to prior military service information, training, college board scores and test results; medical examination, acceptance/declination, interview board results; financial assistance document awards, ROTC contract and evaluation from Professor of Military Science commanding officer; photographs, references; correspondence between the member and the Army or other Federal agencies, letters of recommendation, inquiries regarding applicant's selection or nonselection, letter of appointment in Active Army on completion of ROTC status; Security clearance documents, reports of Reserve Officer Training Corps Advanced, Ranger, or Basic Camp performance of applicant.'

AUTHORITIES FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 2101–2111, Reserve Officer Training Corps, and 10 U.S.C. 3013, Secretary of the Army, Army Regulation 145–1, Senior Reserve Officer's Training Corps Program: Organization, Administration, and Training; Army Regulation 145–2, Junior Reserve Officer's Training Corps Program: Organization, Administration and Training, and E.O. 9397 (SSN).'

PURPOSE(S):

Delete entry and replace with 'To provide a central database of potential prospects for enrollment in the ROTC and the Senior Army ROTC program, provide training and commissioning of eligible cadets in active Army and to assist prospects by providing information concerning educational institutions having ROTC programs; scholarship information and applications, information on specialized programs such as Nursing, Green to Gold and historically Black Colleges and Universities information regarding other Army enlistment, reserve or National Guard programs. System renders personnel management, recruitment management, information reports, and refers qualified prospects to a Professor of Military Science at or near their college(s) of choice, strength and manpower management accounting. Also administers the financial assistance program; renders the selection of recipients for 2, 3, and 4 year scholarships; monitor selectees performance (academic and ROTC) and also develop policies and procedures, compile statistics and renders reports.'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add two new paragraphs 'To the Federal Aviation Administration to obtain flight certification and/or licensing.

To the Department of Veterans Affairs for member Group Life Insurance and/or other benefits.'

Add a new category 'Disclosure to consumer reporting agencies: Disclosures pursuant to 5 U.S.C. 522a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (14 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government; typically to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records.

This disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

STORAGE:

Delete entry and replace with 'electronic storage media and paper records in file folders in secured cabinets.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Cadet Command Form 139 is retained in the ROTC unit for 5 years after cadet leaves the institution or is disenrolled from the ROTC program. Following successful completion of ROTC and academic programs and appointment as a commissioned officer with initial assignment to active duty for training, copy of pages 1 and 2 are reproduced and sent to the commandant of individual's basic branch course school. Records of rejected ROTC applicants are destroyed. Other records mentioned in preceding paragraphs are immediately destroyed unless the records are for financial assistance which are retained for 1 year then destroyed or if they are not required to become part of individual's Military Personnel Records jacket. ROTC QUEST records are retained for 3 years then destroyed. ROTC Scholarship application records are destroyed 1 year after graduation or disenrollment.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Source categories can be used for all areas covered in this system, however, the retrieval of this information is limited only to specific areas of interest and specialty: Prospects include the Army ROTC toll-free telephone number, magazines, newspapers, poster advertising coupons, mail-back reply cards, letters, walk-ins, referrals from parents, relatives, civilian educational institutions and staff, friends, associates, college registrars, dormitory directors, national testing organizations, honor societies, boys' clubs, boy scout organizations, Future Farmers of America, minority and civil rights organizations, fraternity and church organizations; neighborhood youth centers, YMCA, YWCA, social clubs, athletic clubs, boys state/girls state/scholarship organizations, U.S. Army Recruiting Command, Military Academy Liaison officers, West Point non-select listing, previous employers, trade organizations, military service, and other organizations and commands comprising the Department of Defense, Army records, addressing entitlement status, medical examination and treatment, security determination and attendance and training information while ROTC cadet.'

* * * * *

A0145–1 TRADOC

SYSTEM NAME:

Army Reserve Officer's Training Corps (ROTC) and Financial Assistance Programs.

SYSTEM LOCATION:

MCS, Incorporated, 10041 Polinski Road, Ivyland, PA 18974–9872; Headquarters, U.S. Army Reserve Officer's Training Corps Cadet Command, 56 Patch Road, Fort Monroe, VA 23651–5000; U.S. Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400; offices of the Professor of Military Science at civilian institutions in ROTC regional offices; ROTC Cadet Battalions and Reserve Officers Training Corps Brigade Recruiting Teams and Reserve Officer's Training Corps Goldminer Teams. Official mailing addresses are published as an appendix to the Army's compilation of system of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who apply and are accepted into the Army ROTC program; potential enrollees in the Senior ROTC program; and individuals who desire to participate in the Army ROTC Financial Assistance (Scholarship Program).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include individual applications and/or prospect referrals for appointment which include such personal data as name, Social Security Number; sex, date and place of birth, citizenship; home address, telephone number; marital status, dependents, name of high school, high school graduation date, grade point average; Scholastic Assessment Test, American College Testing, preliminary Scholastic Assessment Testing scores; college admission status,; college(s) expected to attend, desired academic major(s); academic transcripts and certificates of education to prior military service information, training, college board scores and test results; medical examination, acceptance/declination, interview board results; financial assistance document awards, ROTC contract and evaluation from Professor of Military Science commanding officer; photographs, references; correspondence between the member and the Army of other Federal agencies, letters of recommendation, inquiries regarding applicant's selection or nonselection, letter of appointment in Active Army on completion of ROTC status; Security clearance documents, reports of Reserve Officer Training Corps Advanced, Ranger, or Basic Camp performance of applicant.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2101–2111, Reserve Officer Training Corps, and 10 U.S.C. 3013, Secretary of the Army; Army Regulation 145–1, Senior Reserve Officer's Training Corps Program: Organization, Administration, and Training; Army Regulation 145–2, Junior Reserve Officer's Training Corps Program: Organization, Administration and Training, and E.O. 9397 (SSN).

PURPOSE(S):

To provide a central database of potential prospects for enrollment in the ROTC and the Senior Army ROTC program, provide training and commissioning of eligible cadets in active Army and to assist prospects by providing information concerning educational institutions having ROTC programs; scholarship information and applications, information on specialized programs such as Nursing, Green to Gold and historically Black Colleges and Universities and information regarding other Army enlistment, reserve or National Guard programs. System renders personnel management, recruitment management, information reports, and refers qualified prospects to a Professor of Military Science at or near their college(s) of choice, strength and manpower management accounting. Also administers the financial assistance program; renders the selection of recipients for 2, 3, and 4 year scholarships; monitor selectees performance (academic and ROTC) and also develop policies and procedures, compile statistics and render reports.'

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Federal Aviation Administration to obtain a flight certification and/or licensing.

To the Department of Veterans Affairs for member Group Life Insurance and/or other benefits.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems or records notices also apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government; typically to provide an incentive for debtors to repay delinquent Federal government debts by

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making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media and paper records in file folders in secured cabinets.

RETRIEVABILITY:

By name, Social Security Number, address peculiar identification assigned or other characteristics of qualification or identity.

SAFEGUARDS:

Records maintained in secure area accessible only to authorized personnel in the performance of their duties. Automated records accessible only to authorized personnel with password capability.

RETENTION AND DISPOSAL:

Cadet Command Form 139 is retained in the ROTC unit for 5 years after cadet leaves the institution or is disenrolled from the ROTC program. Following successful completion of ROTC and academic programs and appointment as a commissioned officer with initial assignment to active duty for training, copy of pages 1 and 2 are reproduced and sent to the commandant of individual's basic branch course school. Records of rejected ROTC applicants are destroyed. Other records mentioned in preceding paragraphs are immediately destroyed unless the records are for financial assistance which are retained for 1 year then destroyed or if they are not required to become part of individual's Military Personnel Records Jacket. ROTC QUEST records are retained for 3 years then destroyed. ROTC Scholarship application records are destroyed 1 year after graduation or disenrollment.

SYSTEM MANAGER(S) AND ADDRESS:

ROTC applicants and members: Commander, Fort Monroe, Information Management Officer, Building 256, Fort Monroe, VA 23651–5000.

ROTC QUEST referral applicants: Commander, Fort Monroe, Marketing Directorate, Building 57, Fort Monroe, VA 23651–5000.

ROTC financial assistance application files: Commander, Fort Monroe, Resource Management Officer, Building 256, Fort Monroe, VA 23651–6000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Reserve Officers Training Corps Cadet Command, Building 56, Port Monroe, VA 23651–5000 for records on the ROTC Financial Assistance (Scholarship) Application File and ROTC Applicant/Member Records; or to the Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400 for ROTC Applicant/Member Records; or to the Commander, U.S. Army ROTC Cadet Command, Marketing Directorate, Building 57, Fort Monroe, VA 23651–5000 for ROTC QUEST Referral System records.

Individuals should provide their full name, current address, telephone number and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Reserve Officers Training Corps Cadet Command, Building 56, Fort Monroe, VA 23651–5000; or to the Commander, U.S. Total Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400 for ROTC Applicant/Member Records; or to the Commander, U.S. Army ROTC Cadet Command, Marketing Directorate, Building 57, Fort Monroe, VA 23651–5000 for ROTC QUEST Referral System records.

Individuals should provide their full name, current address telephone number and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR Part 505; or may be obtained from the system manager or the Commander, U.S. Army ROTC Cadet Command, Marketing Directorate, Building 57, Fort Monroe, VA 23651–5000.

RECORD SOURCE CATEGORIES:

Source categories can be used for all areas covered in this system, however, the retrieval of this information is limited only to specific areas of interest and specialty: prospects include the Army ROTC toll-free telephone number, magazines, newspapers, poster advertising coupons, mail-back reply cards, letters, walk-ins, referrals from parents, relatives, civilian educational institutions and staff, friends, associates, college registrars, dormitory directors, national testing organizations, honor societies, boys' clubs, boy scout organizations, Future Farmers of America minority and civil rights organizations, fraternity and church organizations; neighborhood youth centers, YMCA, YWCA, social clubs, athletic clubs, boys state/girls state/ scholarship organizations, U.S. Army Recruiting Command, Military Academy Liaison officers, West point non-select listing, previous employers, trade organizations, military service, and other organizations and commands comprising the Department of Defense, Army records addressing entitlement status, medical examination and treatment, security determination and attendance and training information while ROTC cadet.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 01–11761 Filed 5–9–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive License; Wickford Technologies, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy gives notice of its intent to grant to Wickford Technologies, Inc., a revocable, nonassignable, partially exclusive license, with exclusive fields of use in recreational marine electronics, petroleum distribution, process pipe, and aviation electronics in the United States to practice the Government-owned invention, U.S. Patent Application Serial Number 09/ 391,605 entitled "Differential Pressure Flow Sensor."

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than May 20, 2001.

ADDRESSES: Written objections are to be filed with Indian Head Division, Naval Surface Warfare Center, Code OC4, 101 Strauss Avenue, Indian Head, MD 20640–5035.

FOR FURTHER INFORMATION CONTACT: Dr. J. Scott Deiter, Head, Technology Transfer Office, Naval Surface Warfare Center Indian Head Division, Code 05T, 101 Strauss Avenue, Indian Head, MD 20640–5035, telephone (301) 744–6111.

Dated: May 1, 2001.

C.G. Carlson,

Major, U.S. Marine Corps, Alternate Federal Register Liaison Officer.

[FR Doc. 01–11820 Filed 5–9–01; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.330]

Notice To Correct Deadline for Intergovernmental Review

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Advanced Placement Incentive Program; Notice inviting applications for new awards for Fiscal Year (FY 2001; Notice to correct deadline for intergovernmental review).

SUMMARY: On April 23, 2001 (66 FR 20440–20442), the Department published a notice inviting applications for new awards for FY 2001. The notice established June 22, 2001 as the deadline for intergovernmental review. The Secretary corrects the deadline the intergovernmental review for the Advanced Placement Incentive Program grant competition.

DATES: The new deadline for intergovernmental review is August 6, 2001. The deadline for transmittal of applications remains June 7, 2001.

FOR FURTHER INFORMATION CONTACT: Frank B. Robinson, U.S. Department of Education, School of Improvement Programs, 400 Maryland Avenue, SW., Room 3C153, Washington, DC 20202–6140; Telephone (202) 260–2669. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–888–877–8339.

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To use PDF, you must have Adobe Acrobat Reader, which is available free at the previous site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/ index.html.*

Authority: 20 U.S.C. 7131.

Dated: May 4, 2001.

Thomas M. Corwin,

Acting Deputy Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 01–11823 Filed 5–9–01; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–392–000]

ANR Pipeline Company; Notice of Proposed Change in FERC Gas Tariff

May 4, 2001.

Take notice that on May 1, 2001, ANR Pipeline Company (ANR) tendered for filing as part of FERC GAS Tariff, Second Revised Volume No. 1, the following revised tariff sheet to be effective June 1, 2001.

Thirtieth Revised Sheet No. 17

ANR states that this filing represents ANR's annual report of the net revenues attributable to the operation of its cashout program. ANR proposes to decrease its currently effective cashout surcharge, from $0.3344 per Dth to $0.1508, pursuant to Section 15.5 of the General Terms and Conditions of its tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/ rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/ doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 01–11785 Filed 5–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–12–000]

Arkansas Western Gas Company; Notice of Application for Rate Approval

May 4, 2001.

Take notice that on April 4, 2001, Arkansas Western Gas Company (AWGC) filed an application for rate approval, pursuant to Sections 284.224, and 284.123(b)(2) of the Commission's regulations, for rates to be charged for interruptible transportation services under its Order No. 63 blanket certificate. AWGC proposes a maximum interruptible rate for transportation on its northwest Arkansas system south of the Drake Compressor Station of $0.1278 per MMBtu, plus 3.57 percent reimbursement for compressor fuel, and lost and unaccounted for gas.

Pursuant to Section 284.1213(b)(2)(ii) of the Commission's regulations, if the Commission does not act within 150 days of the Application's filing date, the rates proposed therein will be deemed to be fair and equitable and not in excess of an amount that interstate pipelines would be permitted to charge for similar services. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All motions must be filed with the Secretary of the Commission on or before May 21, 2001. This petition for rate approval is on file with the commission and is available for public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/ online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically

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via the internet in lieu of paper. See, 18 CFR 385.200(a)(1)(iii) and the instruction on the Commission's web site at *http://www.ferc.fed.us.efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 01–11780 Filed 5–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–350–000]

Colorado Interstate Gas Company; Notice of Technical Conference

May 4, 2001.

In the Commission's order issued on April 25, 2001,[1] the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference will be held on Tuesday, May 22, 2001, at 10 a.m., in a room to be designated, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested parties and Staff are permitted to attend. If a second technical conference meeting is required, that meeting will take place on June 5, 2001, at 10 a.m., at the Commission, and a separate notice of that meeting will be issued.

David P. Boergers,

Secretary.

[FR Doc. 01–11783 Filed 5–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–391–000]

Discovery Gas Transmission, LLC; Notice of Cash-Out Report

May 4, 2001.

Take notice that on April 30, 3001, Discovery Gas Transmission LLC (Discovery) filed with the Commission its annual cash-out report for the calendar year ended December 31, 2000.

Discovery states that the cash-out report reflects a net gain for this period of $464,639.46. The cumulative gain from cash-out transactions is $165,959.11. This net gain, which is less than $400,000.00, will be carried forward to the subsequent reporting period.

Discovery states that copies of this filing are being mailed to its customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before May 14, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 2020–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 01–11784 Filed 5–9–01; 8:45 am]

BILLING CODE 6717–01–M

[1] Colorado Interstate Gas Co., 95 FERC ¶ 61,099 (2001).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–398–000]

Eastern Shore Natural Gas Company; Notice of Interruptible Revenue Sharing Report

May 4, 2001.

Take notice that on May 1, 2001, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing its Interruptible Revenue Sharing Report pursuant to Section 37 of the General Terms and Conditions of its FERC Tariff.

Eastern Shore states that it intends to credit a total of $623,814, including interest of $44,270 to its firm transportation customers on July 1, 2001. The credit amount represents 90 percent of the net revenues received by Eastern Shore under Rate Schedule IT (in excess of the cost of service allocated to such rate schedule) for the period April 2000 through March 2001.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before May 14, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11770 Filed 5–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP01–399–000, CP99–94–004 and RP96–366–014]

Florida Gas Transmission Company; Notice of Compliance Filing

May 4, 2001.

Take notice that on May 1, 2001, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of May 1, 2001:

Third Revised Sheet No. 56
Second Revised Sheet No. 67
Third Revised Sheet No. 541
Third Revised Sheet No. 542

FGT states that on June 2, 1999, FGT filed a Stipulation and Agreement of Settlement (Settlement) in Docket Nos. CP99–94–000 and RP96–366–000, et al. resolving all non-environmental issues in its Phase IV Expansion proceeding. The Commission issued an order approving the Settlement on July 30, 1999.

FGT states that in the Settlement, among other provisions, that it would file revised tariff sheets prior to the in-service date of the proposed Phase IV Expansion to provide that firm transportation service under FT's Rate Schedule FTS–2 will reflect seasonal entitlements for four seasons. Currently, FTS–2 service includes defined levels of seasonal Maximum Daily Transportation Quantities (MDTQ) for only two seasonal periods: (1) November through April and (2) May through October. In the Settlement, the parties agreed to change the two seasons to four seasons: (1) October, (2) November through March, (3) April, and (4) May through September. Increasing the seasons to four allows FTS–2 service agreements to have the same seasonal periods as service agreements for firm transportation service under FGT's Rate Schedule FTS–1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11771 Filed 5–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP01–176–000, CP01–177–000, CP01–178–000, CP01–179–000]

Georgia Straits Crossing Pipeline LP.; Notice of Applications

May 4, 2001.

Take notice that on April 24, 2001, Georgia Straits Crossing Pipeline LP (GSX), P.O. 58900, Salt Lake City, Utah, 84158–0900, filed in Docket No. CP01–176–000 an application pursuant to Section 7(c) of the Natural Gas Act for authorization to construct and operate a new interstate natural gas transmission system consisting of approximately 47 miles of related pipeline and related facilities in the state of Washington; in Docket No. CP01–177–000 an application for a blanket certificate authorizing Part 284 transportation; in Docket No. CP01–178–000 an application for a blanket certificate authorizing certain routine activities under Subpart F of Part 157; and in Docket No. CP01–179–000 an application for Section 3 siting authorization for export/import facilities and a Presidential Permit authorizing the construction, operation and maintenance of interconnect facilities for imports and exports at two locations on the US/Canadian international border, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

GSX proposes the construct: (1) a 10,302 horsepower (ISO rated) compressor station at Cherry Point, Whatcom County, Washington, located adjacent to an existing industrial area approximately a mile from the Strait of Georgia shoreline; (2) approximately 32 miles of 20-inch pipeline generally paralleling existing pipeline corridors from Sumas to the proposed Cherry Point compressor station; (3) approximately 15 miles of 16-inch pipeline from the Cherry Point compressor station to an offshore interconnect with a Canadian pipeline proposed to be built by GSX Canada Limited Partnership (GSX-Canada) from that interconnect to a delivery point into the distribution system of Central Gas British Columbia Inc. on Vancouver Island; (4) receipt point meter station facilities interconnecting with Westcoast Energy Inc. at the Canadian border and with Northwest Pipeline Corporation, both near Sumas; and (5) appurtenant facilities. GSX estimates the total cost of the proposed facilities at approximately $90.7-million.

GSX states that the initial firm design capacity of its system will be approximately 94,000 Dth per day. It is indicated that as a result of an open season, Powerex Corporation (Powerex), an affiliate of British Columbia Hydro and Power Authority (BC hydro), executed a binding precedent agreement for all of the initial certificated design capacity for a 30-year term, at negotiated rates. GSX avers that Powerex requires the capacity to meet the obligations of BC Hydro to supply natural gas fuel to two new generating plants on Vancouver Island. Further, GSX states that its system is designed to facilitate relatively inexpensive expansions, by compression upgrades, to accommodate future market growth on Vancouver Island and in northwestern Washington state.

GSX states that its proposal and that of GSX-Canada comprise the international Georgia Strait Crossing Project. GSX indicates that pursuant to the GSC Project Agreement between GSX and its sponsor, Williams Gas Pipeline Company (Williams), and GSX-Canada and its sponsor, British Columbia Hydro and Power Authority (BC Hydro), the owners have agreed to coordinate certain decisions regarding the construction and operation of GSX and GSX-Canada through a GSX Committee. GSX also states that subject to the owners and through the GSX Committee on matters within the committee's purview, GSX Operating Company, L.L.C., an wholly owned subsidiary of Williams, will design and engineer, manage the procurement and construction, operate and maintain and manage the day-to-day business affairs of both GSX and GSX-Canada pipeline, as a contractor for the owners.

GSX proposes a pro forma Tariff which includes its proposed Rate Schedules FT–1 for firm service and IT–1 for interruptible service. GSX proposes traditional cost-of-service based rates for its initial recourse rates. GSX states that its proposed rates reflect a 70% debt, 30% equity capital structure, 8% interest on debt, 14% return on equity and a 30 year depreciation life. GSX avers that its proposed rates are designed under the straight fixed variable methodology using a quantity/distance cost allocation to establish rates for two zones, one for mainland U.S. delivers and one for deliveries to GSX-Canada. GSX also states that the proposed initial recourse maximum daily reservation rates are $0.36546 per Dth of contract demand for service to mainland U.S. points and

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$0.51233 per Dth of contract demand for service to the GSX-Canada interconnect.

GSX requests that the Commission issue a preliminary determination on the non-environmental aspects of the application by January 31, 2002 and a final order granting the requested certificate authorization by May 31, 2002 so that the project may be completed by the late October 2003 in-service date required to ensure Powerex's ability to meet the long-tern gas supply commitments of BC Hydro to the new electricity generation facilities on Vancouver Island.

Any questions regarding the application should be directed to Gary K. Kotter, Manger, Certificates, GSX Pipeline, L.L.C., P.O. Box 58900, Salt Lake City, Utah 84158–0900, (801) 584–7117.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before May 25, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be place on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding.

Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding.The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. The preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts form this proposal, it is important either to file comments or to intervene as early in the process as possible.

Also, comments protests, and interventions may be filed electronically via the internet in lieu of paper. See, CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

David P. Boergers,

Secretary.

[FR Doc. 01–11773 Filed 5–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–397–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff and Request for Waiver

May 4, 2001.

Take notice that on May 1, 2001, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets with an effective date of June 1, 2001:

Third Revised Sheet No. 8A
Tenth Revised Sheet No. 9
Second Revised Sheet No. 50A

Great Lakes states that these tariff sheets are being filed to add a provision to its tariff stating that any gas transported for others utilizing off-system capacity will be pursuant to its Part 284 open access tariff and will be subject to its Commission-approved rates. The provision also states that Great Lakes may pass through to the benefiting shipper(s) any amounts Great Lakes must pay to a third party to acquire this off-system capacity.

Great Lakes is requesting a generic waiver of the Commission's "shipper must hold title" policy to permit it to provide transportation for others on such acquired off-system capacity.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11790 Filed 5–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–395–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 4, 2001.

Take notice that on May 1, 2001, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1 the following tariff sheets to be effective June 1, 2001:

Fourteenth Revised Sheet No. 54
First Revised Sheet No. 54A
Twelfth Revised Sheet No. 61
Twelfth Revised Sheet No. 62
Twelfth Revised Sheet No. 63
Twelfth Revised Sheet No. 64
First Revised Sheet No. 300A
Fourth Revised Sheet No. 301
Second Revised Sheet No. 301A

Northern states that the revised tariff sheets are being filed in accordance with Section 53 of Northern's General Terms and Conditions, which requires Northern to adjust its fuel and Unaccounted for (UAF) gas percentages each June 1.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11788 Filed 5–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

[Docket No. RP01–396–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 4, 2001.

Take notice that on May 1 2001 Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, the following tariff sheets to be effective June 1, 2001:

Fifth Revised Volume No. 1

56 Revised Sheet No. 50
57 Revised Sheet No. 51
24 Revised Sheet No. 52
54 Revised Sheet No. 53
Sixth Revised Sheet No. 56
16 Revised Sheet No. 59
Second Revised Sheet No. 59A
21 Revised Sheet No. 60
Second Revised Sheet No. 60A

Original Volume No. 2

164 Revised Sheet No. 1C
40 Revised Sheet No. 1C.a

Northern states that this filing is to revise Northern's rates, effective June 1, 2001, to reflect an adjustment for the return and tax components associated with the System Levelized Account (SLA) balance as of March 31, 2001.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11789 Filed 5–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–021]

PG&E Gas Transmission, Northwest Corporation; Notice of Negotiated Rate

May 4, 2001.

Take notice that on May 1, 2001, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A., Fifteenth Revised Sheet No. 7 and Seventh Revised Sheet No. 7A GTN requests that these tariff sheets become effective May 1, 2001.

GTN states that these sheets are being filed to reflect the implementation of one negotiated rate agreement.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and

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interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 01–11782 Filed 5–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–070]

Reliant Energy Gas Transmission Company; Notice of Negotiated Rate

May 4, 2001.

Take notice that on May 1, 2001, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective May 1, 2001.

Third Revised Sheet No. 8C
Original Sheet No. 8AI
Original Sheet No. 8AJ
Original Sheet No. 8AK
Original Sheet No. 8AL

REGT states that the purpose of this filing is to reflect the addition of four new negotiated rate contracts and the revision of an existing negotiated rate contract.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 01–11781 Filed 5–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT01–15–001]

Texas Eastern Transmission, LP; Notice of Errata Filing

May 4, 2001.

Take notice that on May 1, 2001, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1 and First Revised Volume No. 2, substitute tariff sheets to be effective April 16, 2001 as listed on Appendix A to the filing.

Texas Eastern states that the purpose of this filing is to reflect the correction of certain typographical and ministerial errors in some of the Original Tariff Sheets filed in Docket No. GT01–15–000 on April 12, 2001 and Texas Eastern requests the Commission to permit the substitution of these substitute tariff sheets for those corresponding sheets filed on April 12.

Texas Eastern states that copies of its filing have been mailed to all affected customers and interested state commissions and that the filing will be posted in a downloadable format on Texas Eastern's Informational Postings Web site located at www.link.duke-energy.com.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (Call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)9ii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 01–11779 Filed 5–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–394–000]

Texas Eastern Transmission, LP; Notice of Tariff Filing

May 4, 2001.

Take notice that on May 1, 2001, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheet proposed to be effective June 1, 2001:

First Revised Sheet No. 543

Texas Eastern states that the purpose of this filing is to amend its tariff, as suggested by the Commission in its April 12, 2001, Order Denying Clarification and Rehearing in Docket No. CP95–218–004, to include a generic waiver of the "shipper must have title" rule and a general statement that it will only transport for others on offsystem capacity pursuant to its existing tariff and rates.

Texas Eastern states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11787 Filed 5–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–393–000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

May 4, 2001.

Take notice that on May 1, 2001, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheet which sheets are enumerated in Appendix A attached to the filing.

Transco states that the purpose of the instant filing is track rate changes attributable to transportation service purchased from Dominion Transmission, Inc. (Dominion) under its Rate Schedule GSS the costs of which are included in the rates and charges payable under Transco's Rate Schedules GSS and LSS, and to track the transportation service purchased from Texas Gas Transmission Corporation (Texas Gas) under its Rates Schedule FT the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT–NT. The filing is being made pursuant to the tracking provisions under Section 3 of Transco's Rate Schedule GSS, Section 4 of the Transco's Rate Schedule LSS and Section 4 of Transco's Rate Schedule FT–NT.

Transco states that included in Appendix B and C attached to the filing are the explanations and details regarding the computation of the Rate Schedule GSS, LSS and FT–NT rate changes.

Transco states that copies of the filing are being mailed to each of its GSS, LSS and FT–NT customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11786 Filed 5–9–01; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG01–163–000, et al.]

Pinnacle West Energy Corporation, et al. Electric Rate and Corporate Regulation Filings

May 4, 2001.

Take notice that the following filings have been made with the Commission:

1. Pinnacle West Energy Corporation

[Docket No. EG01–163–000]

Take notice that on May 2, 2001, Pinnacle West Energy Corporation (PWE) tendered for filing with the Federal Energy Regulatory Commission (Commission), a Notice of Withdrawal of its Application for Determination of Exempt Wholesale Generator (EWG) Status. PWE states that no parties have intervened or protested the PWE EWG Application, so no party will be prejudiced or otherwise affected by PWE's withdrawal.

Comment date: May 25, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. City of Vernon, California

[Docket No. EL00–105–004]

Take notice that on April 27, 2001, the City of Vernon, California (Vernon) tendered for filing, in compliance with the Commission's March 28, 2001 "Order Accepting In Part And Rejecting In Part Compliance Filing", 94 FERC ¶ 61,344, a revised Transmission Owner Tariff applicable to its activities as a Participating Transmission Owner.

Vernon states that copies of this filing have been served on each person designated on the official service list compiled by the Secretary in these proceedings.

Comment date: May 29, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Norton Energy Storage, L.L.C.

[Docket No. EL01–70–000]

Take notice that on April 26, 2001, Norton Energy Storage, L.L.C. (NES) filed with the Federal Energy Regulatory Commission a Petition for Declaratory Order pursuant to Section 385.207 of the Commission's Regulations, 18 CFR 385.207.

NES requests that the Commission declare that transactions involving the delivery of electric energy to NES' Compressed Air Energy Storage (CAES) generating facility (the NES Facility) for storage through the compression of air into a cavern for subsequent release through turbine generators to produce electric energy or ancillary services for sale or exchange at wholesale in interstate commerce are exclusively subject to the Commission's jurisdiction under Section 201 of the Federal Power Act, 16 U.S.C. §§ 824–825r (the FPA).

NES states that it is developing its CAES generating facility at the site of an abandoned limestone mine in the City of Norton, Summit County, Ohio, near Akron. NES represents that the NES Facility will eventually include 2,700 MW of capacity, to be constructed in individual increments of 300 MW. According to NES, the NES Facility will be the first compressed air energy storage project to be developed in North America as a merchant facility, and only the third CAES facility in the world. NES states that the NES Facility will employ an innovative technology that will allow NES to "store" electric energy produced in one period for delivery, resale and use during a later period, much as a pumped storage hydroelectric facility does.

NES states that the NES Facility's customers (including traditional public utilities, merchant generators and power marketers) will deliver electric energy to the NES Facility from time to time. This electric energy will be "stored" by compressing air into a sealed underground storage area. NES will maintain the injected air at high pressure until its controlled release through gas-fired turbine generators during peak electric demand periods. In this manner, according to NES, the NES

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Facility will reclaim the "compression power" used to compress and store air, for purposes of generating electric energy for sale or exchange into wholesale markets. NES asserts that participants in electric energy markets will be able to use the NES Facility as a mechanism by which they can store electric energy obtained in wholesale markets during off-peak periods and exchange it for electric energy or ancillary services made available to wholesale markets during peak periods.

NES asks in its Petition that the Commission confirm that the various ways in which electric energy may be stored and exchanged through the medium of the NES Facility qualify as transactions involving the sale of electric energy and ancillary services for resale in interstate commerce, i.e., as "electric service," as that term is defined at 18 CFR 35.2(a), subject exclusively to the Commission's FPA jurisdiction.

NES states that it is currently in the process of securing additional equity investors and arranging for the financing of the initial phase of its project. NES asserts that the financial markets, potential equity investors and would-be counter parties all require certainty as to how electric energy transactions involving the NES Facility will be treated for regulatory purposes. NES therefore asks that the requested declaratory order be issued by June 30, 2001.

NES states that it has served copies of its Petition upon representatives of FirstEnergy Corp. and American Electric Power, the public utilities with which it will be interconnected, and upon representatives of the Public Utilities Commission of Ohio and the Attorney General of Ohio. Questions concerning this filing may be directed to counsel for NES, James F. Bowe, Jr., Dewey Ballantine LLP, at (202) 429–1444, fax (202) 429–1579, or jbowe@deweyballantine.com.

Comment date: May 29, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Western Resources, Inc.

[Docket No. ER98–2157–002]

Take notice that on May 1, 2001, Western Resources, Inc. (Western) and its wholly-owned subsidiary, Kansas Gas and Electric Company (the Companies), tendered for filing the Affidavit of Dr. David B. Patton demonstrating that the Companies continue to satisfy the Commission requirements for market-based rate authority.

Comment date: May 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Boston Edison Company

[Docket No. ER99–35–004]

Take notice that on May 1, 2001, Boston Edison Company tendered for filing certain substitute rate schedule sheets to correct typographical errors in its First Revised Rate Schedule FERC No. 169 filed on April 26, 2001 in compliance with the Commission's order issued March 27, 2001 in this proceeding.

Comment date: May 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. ISO New England Inc.

[Docket No. ER01–316–002]

Take notice that on May 1, 2001, ISO New England Inc. tendered for filing its quarterly Index of Customers for its Tariff for Transmission Dispatch and Power Administration Services in accordance with the procedure specified in its filing letter in Docket No. ER01–316–000 dated November 1, 2000, and approved by Commission order issued December 29, 2000.

Comment date: May 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Consumers Energy Company

[Docket No. ER01–1910–000]

Take notice that on April 30, 2001 Consumers Energy Company (Consumers) tendered for filing a Service Agreement with The Detroit Edison Company; Tenaska Power Services Co.; and Aquila Energy Marketing Corporation (Customers) under Consumers—FERC Electric Tariff No. 9 for Market Based Sales.

Consumers requested that the Agreements be allowed to become effective April 1, 2001.

Copies of the filing were served upon the Customers and the Michigan Public Service Commission.

Comment date: May 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Consumers Energy Company

[Docket No. ER01–1911–000]

Take notice that on April 30, 2001 Consumers Energy Company (Consumers) tendered for filing a Service Agreement with Engage Energy America LLC, (Customer) under Consumers—FERC Electric Tariff No. 9 for Market Based Sales.

Consumers requested that the Agreement be allowed to become effective April 1, 2001.

Copies of the filing were served upon the Customer and the Michigan Public Service Commission.

Comment date: May 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Pacific Gas and Electric Company

[Docket No. ER01–1912–000]

Take notice that on April 30, 2001, Pacific Gas and Electric Company (PG&E) tendered for filing an executed Generator Interconnection Agreement (GIA) to replace the unexecuted placeholder GIA that is part of the Generator Special Facilities Agreement (GSFA) between PG&E and Sunrise Cogeneration and Power Company (Sunrise) providing for Special Facilities and the parallel operation of Sunrise's generating facility and the PG&E-owned electric system that is on file with the Commission as Service Agreement No. 2 to PG&E Electric Tariff, Fourth Revised Volume No. 5.

Copies of this filing have been served upon Sunrise, the California Independent System Operator Corporation, and the CPUC.

Comment date: May 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Idaho Power Company

[Docket No. ER01–1913–000]

Take notice that on April 30, 2001, Idaho Power Company tendered for filing a revised long-term service agreement under its open access transmission tariff in the above-captioned proceeding.

Comment date: May 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Nevada Power Company

[Docket No. ER01–1914–000]

Take notice that on April 30, 2001, Nevada Power Company (Nevada Power) tendered for filing an executed Service Agreement (Agreement) with the following Overton Power District No. 5 (Overton). The Agreement is an umbrella agreement which allows Overton to take service Under Nevada Power's FERC Electric Tariff, First Revised Volume No. 4, Electric Service Coordination Tariff (Tariff).

Nevada Power respectfully requests that the Service Agreement become effective April 1, 2001.

Copies of this filing were served upon the Public Utilities Commission of Nevada, and all interested parties.

Comment date: May 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Ameren Services Company

[Docket No. ER01–1915–000]

Take notice that on April 30, 2001, Ameren Services Company (ASC) tendered for filing a Service Agreement for Firm Point-to-Point Transmission Services between ASC and Ameren Energy, Inc. (customer). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to customer pursuant to Ameren's Open Access Tariff.

Comment date: May 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. RAMCO, Inc.

[Docket No. ER01–1916–000]

Take notice that on April 30, 2001, RAMCO, Inc. (Applicant), tendered for filing pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's regulations, an application for authorization to make sales of capacity, energy, and certain Ancillary Services at market-based rates; to reassign transmission capacity; and to resell firm transmission rights (FTRs).

Applicant proposes to own or lease and operate two approximately 44 MW simple-cycle, natural gas-fired combustion turbine peaking facilities located in San Diego County, Cities of Chula Vista and Escondido, California. Applicant is requesting waiver of the Commission's prior notice regulations as necessary to make its FERC Electric Tariff No. 1 effective as of May 1, 2001.

Comment date: May 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Ohio Valley Electric Corporation, Indiana-Kentucky Electric Corporation

[Docket No. ER01–1917–000]

Take notice that on April 27, 2001, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation) (OVEC) tendered for filing a Service Agreement for Non-Firm Point-To-Point Transmission Service, dated March 23, 2001 (the Service Agreement) between Allegheny Energy Supply Company, L.L.C. (Allegheny Energy) and OVEC. OVEC proposes an effective date of March 30, 2001 and requests waiver of the Commission's notice requirement to allow the requested effective date.

The Service Agreement provides for non-firm transmission service by OVEC to Allegheny Energy. In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Open Access Transmission Tariff.

A copy of this filing was served upon Allegheny Energy.

Comment date: May 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Calpine Corporation

[Docket No. EL01–71–000]

Take notice that on April 27, 2001, Calpine Corporation (Calpine) submitted for filing a Petition for an Enforcement Action and/or Declaratory Order and Request for Expedited Treatment pursuant to Section 210(h)(2)(B) of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C.A.§ 824a–3(h)(2)(B) (2000), and Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207.

Calpine alleges that Decision 01–03–067, issued by the California Public Utilities Commission (CPUC) on March 28, 2001 (Avoided Cost Decision), violates PURPA Section 210, 16 U.S.C. § 824a–3 which requires, inter alia, that rates for purchases from QFs shall not exceed incremental cost to the utility, nor shall those rates discriminate against qualifying cogenerators or small power producers. The Avoided Cost Decision changes the formula by which avoided cost rates are calculated.

This change violates PURPA, Calpine alleges, for three reasons: (i) The Avoided Cost Decision sets avoided costs in an arbitrary and unlawful manner, without any relationship whatsoever to the purchasing utility's "full avoided costs," thus violating the PURPA avoided cost mandate; (ii) the Avoided Cost Decision subjects QFs to improper CPUC rate regulation, in contravention of PURPA and; (iii) the Avoided Cost Decision sets payments to QFs at price levels at which QFs cannot economically generate, contrary to the PURPA objective of encouraging generation. Calpine asks this Commission to institute an enforcement action and/or to issue a declaratory order, and requests that it do so using expedited treatment, to grant relief to the QFs from the Avoided Cost Decision.

Comment date: May 25, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Black Hills Corporation, n/k/a, Black Hills Power, Inc.

[Docket No. ER01–1918–000]

Take notice that on May 1, 2001, Black Hills Corporation, d/b/a Black Hills Power, Inc., a wholly-owned subsidiary of Black Hills Corporation, Inc. (a South Dakota holding corporation), tendered for filing the following long-term service agreements: (1) Surplus Energy Marketing Agreement Between Black Hills Power, Inc. and PacifiCorp Power Marketing, Inc., and (2) Exchange Agreement Between Black Hills Power, Inc., and PacifiCorp Power Marketing, Inc.

Copies of these filings were supplied to PacifiCorp Power Marketing, Inc.

Comment date: May 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Exelon Energy Company

[Docket No. ER01–1919–000]

Take notice that on May 1, 2001, Exelon Energy Company (Exelon Energy) tendered for filing to the Federal Energy Regulatory Commission (FERC or the Commission) a Notice of Succession notifying the Commission that it has succeeded to Unicom Energy, Inc. FERC Rate Schedule No. 1, which was approved by Commission order at Docket No. ER00–2429, as amended and supplemented, in conformance with Order No. 614. Exelon Energy also refiled the Unicom Energy rate schedule as an Exelon Energy rate schedule.

Unicom Energy, Inc. has changed its name to Exelon Energy Company as part of an internal restructuring in which its operations were combined with PECO Energy Company d/b/a Exelon Energy, a successor to Horizon Energy Company. Accordingly, Exelon Energy Company hereby cancels the power sales tariff of Horizon Energy Company and has filed a Notice of Cancellation of the Horizon Energy rate schedule as part of this filing.

Comment date: May 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Idaho Power Company

[Docket No. ER01–1920–000]

Take notice that on May 1, 2001, Idaho Power Company tendered for filing a revised long-term service agreement under its open access transmission tariff in the above-captioned proceeding.

Comment date: May 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. PacifiCorp Power Marketing, Inc.

[Docket No. ER01–1921–000]

Take notice that on May 1, 2001, PacifiCorp Power Marketing, Inc. tendered for filing with the Federal Energy Regulatory Commission an Exchange Agreement between Black Hills Power, Inc. and PacifiCorp Power Marketing, Inc., dated as of April 3, 2001.

Comment date: May 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

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20. Tucson Electric Power Company

[Docket No. ER01–1922–000]

Take notice that on May 1, 2001, Tucson Electric Power Company tendered for filing one (1) umbrella service agreement (for short-term firm service) and one (1) service agreement (for non-firm service) pursuant to Part II of Tucson's Open Access Transmission Tariff, which was filed in Docket No. ER01–208–000.

The details of the service agreements are as follows:

1. Umbrella Agreement for Short-Term Firm Point-to-Point Transmission Service dated as of January 30, 2001 by and between Tucson Electric Power Company and Colorado River Commission—FERC Electric Tariff Vol. No. 2, Service Agreement No. 155. No service has commenced at this time.

2. Form of Service Agreement for Non-Firm Point-to-Point Transmission Service dated as of January 30, 2001 by and between Tucson Electric Power Company and Colorado River Commission—FERC Electric Tariff Vol. No. 2, Service Agreement No. 156. No service has commenced at this time.

Comment date: May 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. American Electric Power Service Corporation

[Docket No. ER01–1923–000]

Take notice that on May 1, 2001, American Electric Power Service Corporation tendered for filing a letter agreement between Appalachian Power Company and Panda Culloden Power, L.P.

AEP requests an effective date of June 29, 2001.

Copies of Appalachian Power Company's filing have been served upon the West Virginia Public Service Commission.

Comment date: May 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

22. UNITIL Power Corp.

[Docket No. ER01–1925–000]

Take notice that on May 1, 2001, UNITIL Power Corp. tendered for filing pursuant to Schedule II Section H of Supplement No. 1 to Rate Schedule FERC Number 1, the UNITIL System Agreement, the following material:

1. Statement of all sales and billing transactions for the period January 1, 2000 through December 31, 2000 along with the actual costs incurred by UNITIL Power Corp. by FERC account.

2. UNITIL Power Corp. rates billed from January 1, 2000 to December 31, 2000 and supporting rate development.

Comment date: May 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

23. New England Power Pool

[Docket No. ER01–1926–000]

Take notice that on May 1, 2001, the New England Power Pool (NEPOOL) Participants Committee tendered for filing for acceptance materials to permit NEPOOL to expand its membership to include Axia Energy, L.P. (Axia) and to terminate the memberships of Entergy Power Marketing Corporation (EPMC) and Koch Energy Trading, Inc. NEPOOL requests a February 1, 2001 effective date for the commencement of Axia's participation in and the termination of EPMC and KETI from NEPOOL.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment date: May 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

24. Southern California Edison Company

[Docket No. ER01–1927–000]

Take notice that on May 1, 2001, Southern California Edison Company (SCE) tendered for filing the Interconnection Facilities Agreement (Interconnection Agreement) between SCE and the City of Riverside (Riverside).

This agreement specifies the terms and conditions pursuant to which SCE will construct certain interconnection facilities to facilitate the wholesale Distribution Service SCE provides to Riverside pursuant to SCE's Wholesale Distribution Access Tariff, FERC Electric Tariff Original Volume No. 5.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Riverside.

Comment date: May 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

25. Central Maine Power Company

[Docket No. ER01–1928–000]

Take notice that on May 1, 2001, Central Maine Power Company (CMP), tendered for filing as an initial rate schedule pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (the Commission) regulations, 18 C.F.R. § 35.12, (i) an unexecuted Form of Service Agreement for Non-Firm Local Point-to-Point Transmission Service between CMP and S.D. Warren Company (S.D. Warren), and (ii) an unexecuted Form of Service Agreement for Non-Firm Local Point-to-Point Transmission Service between CMP and Engage Energy America LLC (Engage), designated as Original Service Agreements 123 and 124, respectively, to CMP's FERC Electric Tariff, Fifth Revised Volume No. 3.

CMP is requesting that these unexecuted transmission service agreements become effective March 30, 2001.

Copies of this filing have been served upon the Commission, the Maine Public Utilities Commission, S.D. Warren, and Engage.

Comment date: May 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

26. Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company

[Docket No. ER01–1929–000]

Take notice that on May 1, 2001, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), submitted for filing a Notice of Cancellation of the Service Agreement between GPU Service Corporation and National Electric Associates, LP, FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 21.

GPU Energy requests that cancellation be effective June 27, 2001.

Comment date: May 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

27. Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company

[Docket No. ER01–1930–000]

Take notice that on May 1, 2001, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as "GPU Energy") submitted for filing a Notice of Cancellation of the Service Agreement between GPU Service Corporation and Federal Energy Sales, Inc., FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 41.

GPU Energy requests that cancellation be effective the June 27, 2001.

Comment date: May 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

28. Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company

[Docket No. ER01–1931–000]

Take notice that on May 1, 2001, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as "GPU Energy") submitted for filing a Notice of Cancellation of the Service Agreement between GPU Service, Inc. and The Power Company of America, LP, FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 64.

GPU Energy requests that cancellation be effective June 27, 2001.

Comment date: May 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

29. Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company

[Docket No. ER01–1932–000]

Take notice that on May 1, 2001, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy) submitted for filing a Notice of Cancellation of the Service Agreement between GPU Energy and Wheeled Electric Power Company, FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 90.

GPU Energy requests that cancellation be effective June 27, 2001.

Comment date: May 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

30. Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company

[Docket No. ER01–1933–000]

Take notice that on May 1, 2001, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy) submitted for filing a Notice of Cancellation of the Service Agreement between GPU Service Corporation and MidCon Power Services Corporation (now Kinder Morgan, Inc.), FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 19.

GPU Energy requests that cancellation be effective June 27, 2001.

Comment date: May 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

31. Ameren Services Company

[Docket No. ER01–1934–000]

Take notice that on April 30, 2001, Ameren Services Company (ASC) tendered for filing a Service Agreement for Firm Point-to-Point Transmission Services between ASC and Axia Energy, Inc. (customer). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to customer pursuant to Ameren's Open Access Tariff.

ASC respectfully requests that the Service Agreement become effective April 1, 2001.

Comment date: May 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

32. New England Power Pool

[Docket No. ER01–1935–000]

Take notice that on May 1, 2001, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to permit NEPOOL to expand its membership to include Dominion Retail, Inc. (DRI), Exelon Generation Company, LLC (Exelon); Indeck Energy-Alexandria, LLC (IEA), and Massachusetts Public Interest Research Group, Inc. (MASSPIRG).

The Participants Committee requests an effective date of May 1, 2001 for commencement of participation in NEPOOL by DRI, Exelon, and MASSPIRG, and July 1, 2001 for the commencement of participation in NEPOOL by IEA.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment date: May 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

33. Florida Power Corporation

[Docket No. ER01–1924–000]

Take notice that on May 1, 2001, Florida Power Corporation (Florida Power), tendered for filing revisions to the capacity charges, reservation fees and energy adders for various interchange services provided by Florida Power pursuant to interchange contracts as follows:

Rate schedule	Customer
65	Southeastern Power Administration.
80	Tampa Electric Company.
81	Florida Power & Light Company.
82	City of Homestead.
86	Orlando Utilities Commission.
88	Gainesville Regional Utility.
91	Jacksonville Electric Authority.
92	City of Lakeland.
94	Kissimmee Utility Authority.
95	City of St. Cloud.
101	City of Lake Worth.
102	Florida Power & Light Company.
103	City of Starke.
104	City of New Smyrna Beach.
105	Florida Municipal Power Agency.
108	City of Key West.
119	Reedy Creek Improvement District.
122	City of Tallahassee.
128	Seminole Electric Cooperative, Inc.
139	Oglethorpe Power Corporation.
141	City of Vero Beach.
142	Big Rivers Electric Corporation.
148	Alabama Electric Cooperative, Inc.
153	Enron Power Marketing, Inc.
154	Catex Vitol Electric, L.L.C.
155	Louis Dreyfus Electric Power, Inc.
156	Electric Clearing House, Inc.
157	LG&E Power Marketing, Inc.
158	MidCon Power Service Corp.
159	Koch Power Services Company.
161	Citizens Lehman Power Sales.
162	AES Power, Inc.
163	Intercoast Power Marketing Company.
164	Valero Power Service Company.
167	NorAm Energy Services, Inc.
168	Western Power Services.
169	CNG Power Services Corporation.
170	Calpine Power Services Company.
171	SCANA Energy Marketing, Inc.
172	PanEnergy Trading & Market Services.
173	Coral Power, L.L.C.
174	Aquila Power Corporation.
175	The Energy Authority, Inc.
176	NP Energy Inc.
177	Morgan Stanley Capital Group, Inc.

The interchange services which are affected by these revisions are (1) Service Schedule A—Emergency Service; (2) Service Schedule B—Short Term Firm Service; (3) Service Schedule D—Firm Service; (4) Service Schedule F—Assured Capacity and Energy Service; (5) Service Schedule G—Backup Service; (6) Service Schedule H—Reserve Service; (7) Service Schedule I—Regulation Service; (8) Service Schedule OS—Opportunity Sales; (9) Service Schedule RE—Replacement Energy Service; (10) Contract for Assured Capacity and Energy With Florida Power & Light Company; (11) Contract for Scheduled Power and Energy with Florida Power & Light Company.

Florida Power also is tendering changes to the real power loss factors under its Open Access Transmission Tariff (OATT) and the OATT of Carolina Power & Light Company.

Florida Power requests that the amended revised capacity charges,

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reservation fees and energy adder be made effective on May 1, 2001. Florida Power requests waiver of the Commission's sixty-day notice requirement. If waiver is denied, Florida Power requests that the filing be made effective 60 days after the filing date.

Copies of the filing were served on each of the customer affected by this filing.

Comment date: May 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11769 Filed 5–9–01; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC01–92–000, et al.]

TransAlta USA Inc., et al.; Electric Rate and Corporate Regulation Filings

May 3, 2001.

Take notice that the following filings have been made with the Commission:

1. TransAlta USA Inc. and Gener S.A.

[Docket No. EC01–92–000]

Take notice that on April 26, 2001, TransAlta USA Inc. (TAUSA) and Gener S.A. (Gener) (collectively Applicants) tendered for filing, pursuant to Section 203 of the Federal Power Act, 16 U.S.C. 824b (1994), and Part 33 of the Commission's Regulations (18 CFR 33.1, *et seq.*), an Application for Commission approval for the sale by Gener, and the purchase by TAUSA, of fifty percent of the capital stock in Merchant Energy Group of the Americas, Inc. (MEGA), which owns certain jurisdictional rate schedules. Upon consummation of the proposed transaction, MEGA will be a wholly-owned subsidiary of TAUSA.

Comment date: May 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Arizona Public Service Company

Docket Nos. ER01–770–002 and ER01–917–002 (not consolidated)

Take notice that on April 30, 2001, Arizona Public Service Company (APS) tendered for filing an Amendment to the ANPP Valley Transmission System Participation Agreement between APS, Salt River Project Agricultural Improvement and Power District, Public Service Company of New Mexico, and El Paso Electric Company.

APS states that the Amendment to the ANPP Participation Agreement is being submitted in compliance with the Commission's separate Letter Orders, issued on February 28, 2001, in the above-captioned dockets.

Comment date: May 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. PacifiCorp

[Docket No. ER01–1152–001]

Take notice that on April 30, 2001, PacifiCorp tendered for filing an amendment to its January 30, 2001 filing of a revised Exhibit C to the contract for Interconnections and Transmission Service between PacifiCorp and Western Area Power Administration (Western), Contract No. 14–06–400–2436, Supplement No. 2 (PacifiCorp's Rate Schedule FERC No. 262). The revisions modify the rates charged to Western for Block 2 transmission service.

PacifiCorp has requested an effective date of April 1, 2001.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: May 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. PJM Interconnection, L.L.C.

[Docket No. ER01–1889–000]

Take notice that on April 30, 2001, PJM Interconnection, L.L.C. (PJM), tendered for filing (i) an agreement for network integration transmission service with Allegheny Electric Cooperative (Allegheny); and (ii) an agreement for network integration transmission service for Easton Utilities Commission (Easton).

Copies of this filing were served upon Allegheny, Easton, and the state commissions within the PJM control area.

Comment date: May 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Dominion Nuclear Marketing II, Inc.

[Docket Nos. ER01–1890–000]

Take notice that on April 30, 2001, Dominion Nuclear Marketing II, Inc. (DNM II) tendered for filing service agreements providing for sales of power to Duke Energy Trading and Marketing, L.L.C. (DETM) and Constellation Power Source, Inc. (Constellation) (collectively, the Customers) under DNM II's market-based rate sales tariff, FERC Electric Tariff, Original Volume No. 1 (the Tariff). DNM II requests that the Commission make the service agreements for DETM and Constellation effective on April 1, 2001.

Copies of the filing were served upon the Customers, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: May 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. New England Power Pool

[Docket No. ER01–1891–000]

Take notice that on April 30, 2001, the New England Power Pool (NEPOOL) tendered for filing changes to the New England Power Pool Restated Open Access Transmission Tariff, a related Implementation Rule and a Market Rule to make conforming changes for the implementation of three-part bidding and Net Commitment Period Compensation. A July 1, 2001 effective date is requested.

NEPOOL states that copies of these materials were sent to the NEPOOL Participants and the six New England state governors and regulatory commissions.

Comment date: May 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Michigan Electric Transmission Company and Consumers Energy Company

[Docket No. ER01–1892–000]

Take notice that on April 30, 2001, Consumers Energy Company (Consumers) tendered for filing a Notice of Cancellation regarding former OATT customers whose transmission service agreements terminated by their own terms, effective December 31, 2000; and Michigan Electric Transmission Company (Michigan Transco) tendered for filing five revised tariff sheets for its Open Access Transmission Tariff, Michigan Transco Electric Tariff FERC No. 1, with a proposed effective date of April 1, 2001. The tariff sheets are to reflect changes in the Indices of Customers related to Consumers' Notice of Cancellation and to correct certain typographical errors. The revised sheets that were filed are First Revised Sheet Nos. 69, 106, 116, 170 and 171.

The filing was served upon the Michigan Public Service Commission, those listed in the Notice of Cancellation, and customers under Michigan Transco's OATT.

Comment date: May 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company

[Docket No. ER01–1893–000]

Take notice that on April 27, 2001, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy) tendered for filing a Notice of Cancellation of the Service Agreement between GPU Service Corporation and Global Petroleum Corporation (now Global Companies LLC), FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 36. GPU Energy requests that cancellation be effective the 27th day of June 2001.

Comment date: May 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Niagara Mohawk Power Corporation

[Docket No. ER01–1894–000]

Take notice that on April 30, 2001, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing an Interconnection Agreement between Niagara Mohawk Power Corporation and Athens Generating Company, L.P. for a 1230 MW (winter rating) natural gas-fired combined cycle combustion turbine generating facility that is to be constructed in the Town of Athens, Greene County, New York, dated as of April 27, 2001. The filing is designated as FERC Electric Rate Schedule No. 307.

An Interconnection Agreement effective date of May 15, 2001 is requested and to the extent necessary, Niagara Mohawk requests waiver of any Commission requirement that a rate schedule be filed not less than 60 days or more than 120 days from its effective date.

Comment date: May 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Tampa Electric Company

[Docket No. ER01–1896–000]

Take notice that on April 27, 2001, Tampa Electric Company (Tampa Electric) tendered for filing updated transmission service rates under its agreements to provide qualifying facility transmission service for Mulberry Phosphates, Inc. (Mulberry), Cargill Fertilizer, Inc. (Cargill), and Auburndale Power Partners, Limited Partnership (Auburndale).

Tampa Electric proposes that the updated transmission service rates be made effective as of May 1, 2001, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on Mulberry, Cargill, Auburndale, and the Florida Public Service Commission.

Comment date: May 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. EOPT Power Group Nevada, Inc.

[Docket No. ER01–1897–000]

Take notice that on April 26, 2001, EOPT Power Group Nevada, Inc. tendered for filing for acceptance of its Rate Schedule FERC No. 1, the granting of certain blanket approvals, including the authority to sell electricity at market-based rates, and the waiver of certain of the Commission's Regulations.

Comment date: May 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Tampa Electric Company

[Docket No. ER01–1898–000]

Take notice that on April 27, 2001, Tampa Electric Company (Tampa Electric) tendered for filing updated caps on energy charges for emergency assistance service provided under its interchange service contract with Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively, Southern Companies).

Tampa Electric requests that the updated caps on charges be made effective as of May 1, 2001, and therefore requests waiver of the Commission's notice requirement.

Tampa Electric states that a copy of the filing has been served upon Southern Companies and the Florida Public Service Commission.

Comment date: May 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Zapco Power Marketers, Inc.

[Docket No. ER01–1899–000]

Take notice that on April 26, 2001, Zapco Power Marketers, Inc. tendered for filing a Notice of Termination.

Notice is hereby given that effective April 12, 2001 Rate Schedule FERC No. ER98–689–000 effective date December 29, 1997 and filed with the Commission is to be canceled because Zapco has been inactive since it filed with the Commission and has been dissolved as of April 12, 2001.

Notice of the proposed cancellation has not been served upon any public utilities since there are no affected purchasers.

Comment date: May 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. American Electric Power Service Corporation

[Docket No. ER01–1900–000]

Take notice that on April 30, 2001, the American Electric Power Service Corporation (AEPSC) tendered for filing executed Interconnection and Operation Agreement between Columbus Southern Power Company and Duke Energy Franklin LLC. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Revised Volume No. 6, effective June 15, 2000.

AEP requests an effective date of June 25, 2001.

A copy of the filing was served upon the Ohio Public Utilities Commission.

Comment date: May 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Deseret Generation & Transmission Co-operative, Inc.

[Docket No. ER01–1901–000]

Take notice that on April 30, 2001, Deseret Generation & Transmission Co-operative, Inc. (Deseret) tendered for filing an amendment to Rate Schedule No. 13, a Contract for Interconnections and Transmission Service Between Deseret and the United States Department of Energy, Western Area Power Administration, Contract No. 2–07–40–P0716, dated November 10, 1982.

Deseret requests an effective date of April 1, 2001. Copies of this filing have been served on the Western Area Power Administration.

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Comment date: May 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Southern Company Services, Inc.

[Docket No. ER01–1902–000]

Take notice that on April 27, 2001, Southern Company Services, Inc., as agent for Georgia Power Company (Georgia Power), tendered for filing the Interconnection Agreement between Georgia Power and Augusta Energy LLC (Augusta Energy) (the Agreement), as a service agreement under Southern Operating Companies' Open Access Transmission Tariff (FERC Electric Tariff, Fourth Revised Volume No. 5) and is designated as Service Agreement No. 376.

The Agreement provides the general terms and conditions for the interconnection and parallel operation of Augusta Energy's electric generating facility located near Augusta, Richmond County, Georgia. The Agreement terminates forty (40) years from the effective date unless terminated earlier by mutual written agreement.

Comment date: May 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. American Electric Power Service Corporation

[Docket No. ER01–1903–000]

Take notice that on April 30, 2001, the American Electric Power Service Corporation (AEPSC) tendered for filing executed Interconnection Agreements between (1) West Texas Utilities Company and Indian Mesa Power Partners I LP and (2) West Texas Utilities Company and Indian Mesa Power Partners II LP. The agreements are pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Revised Volume No. 6, effective June 15, 2000.

AEPSC requests an effective date of June 26, 2001 for each of the Interconnection Agreements. A copy of the filing was served upon the Public Utility Commission of Texas (PUCT).

Comment date: May 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Virginia Electric and Power Company

[Docket No. ER01–1904–000]

Take notice that on April 27, 2001, Virginia Electric and Power Company (Dominion Virginia Power or the Company) tendered for filing the following:

1. Service Agreement for Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to Axia Energy, LP designated as Service Agreement No. 318 under the Company's FERC Electric Tariff, Second Revised Volume No. 5;

2. Service Agreement for Non-Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to Axia Energy, LP designated as Service Agreement No. 319 under the Company's FERC Electric Tariff, Second Revised Volume No. 5.

The foregoing Service Agreements are tendered for filing under the Open Access Transmission Tariff to Eligible Purchasers effective June 7, 2000. Under the tendered Service Agreements, Dominion Virginia Power will provide point-to-point service to Axia Energy, LP under the rates, terms and conditions of the Open Access Transmission Tariff. Dominion Virginia Power requests an effective date of April 27, 2001, the date of filing of the Service Agreements.

Copies of the filing were served upon Axia Energy, LP, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: May 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. Pacific Gas and Electric Company

[Docket No. ER01–1905–000]

Take notice that on April 27, 2001, Pacific Gas and Electric Company (PG&E) tendered for filing a Notice of Termination of the Power Plant Operations Agreement between Pacific Gas and Electric Company and Central California Power Agency No. 1 for the Coldwater Creek Geothermal Power Plant, PG&E Rate Schedule FERC No. 119.

Copies of this filing have been served upon Central California Power Agency No. 1, the California System Operator Corporation (ISO) and the California Public Utilities Commission.

PG&E has requested certain waivers.

Comment date: May 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. UtiliCorp United Inc.

[Docket No. ER01–1906–000]

Take notice that on April 27, 2001, UtiliCorp United Inc. (UtiliCorp) tendered for filing Service Agreement No. 103 under UtiliCorp's FERC Electric Tariff, Third Revised Volume No. 25, a short-term firm point-to-point transmission service agreement between UtiliCorp's WestPlains Energy-Kansas division and Service Agreement No. 108 under UtiliCorp's FERC Electric Tariff, Third Revised Volume No. 24 and Axia Energy, L.P.

UtiliCorp requests an effective date for the service agreement of April 12, 2001.

Comment date: May 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. Ameren Services

[Docket No. ER01–1907–000]

Take notice that on April 27, 2001, Ameren Services Company (ASC) tendered for filing an Illinois Retail Network Integration Transmission Service Agreement and Illinois Retail Network Operating Agreement between ASC and Edgar Electric Cooperative Association d/b/a EnerStar Power Corp. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to unbundled Illinois retail customers of EnerStar Power Corp. pursuant to Ameren's Open Access Tariff.

Comment date: May 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

22. Upper Peninsula Power Company

[Docket No. ER01–1908–000]

Take notice that on April 27, 2001, Upper Peninsula Power Company (UPPCO) tendered for filing a Supplement to Agreement for Wholesale Electric Power Service between UPPCO and the City of Escanaba, Michigan (Escanaba) (UPPCO Rate Schedule FERC No. 26). UPPCO states that the Supplement reduces the amount of firm power that it is obligated to provide to Escanaba during the Summer of 2001.

Comment date: May 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

23. Tucson Electric Power Company

[Docket No. ER01–1909–000]

Take notice that on April 27, 2001, Tucson Electric Power Company tendered for filing one (1) Umbrella Service Agreement (for Short-Term Firm Service) and one (1) Service Agreement (for Non-Firm Service) pursuant to Part II of Tucson's Open Access Transmission Tariff, which was filed in Docket No. ER01–208–000.

The details of the service agreements are as follows:

1. Umbrella Agreement for Short-Term Firm Point-to-Point Transmission Service dated as of April 9, 2001 by and between Tucson Electric Power Company and Salt River Project, Transmission & Generation Dispatching—FERC Electric Tariff Vol. No. 2, Service Agreement No. 166–A. No service has commenced at this time.

2. Form of Service Agreement for Non-Firm Point-to Point Transmission Service dated as of April 9, 2001 by and between Tucson Electric Power Company and Salt River Project, Transmission & Generation Dispatching—FERC Electric Tariff Vol. No. 2, Service Agreement No. 167. No service has commenced at this time.

Comment date: May 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 01–11768 Filed 5–9–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

May 4, 2001.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. Application Type: Transfer of License.

b. Project No: 2609–021.

c. Date Filed: March 28, 2001.

d. Applicants: Curtis/Palmer Hydroelectric Company, LP International Paper Company (Transferors), an Curtis/Palmer Hydroelectric Company, LP (Transferee).

e. Name and Location of Project: The Curtis/Palmer Hydroelectric Project is located on the Hudson River in Saratoga and Waren Counties, New York.

f. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r)

g. Applicant Contact: Mr. William J. Madden, Jr. and John A. Whittaker, IV, attorneys for the transferors, Winston and Strawn, 1400 L Street NW., Washington, DC 20005–3502, (202) 371–5700.

h. FERC Contact: Any questions on this notice should be addressed to Mr. Lynn R. Miles at (202) 219–2671.

i. Deadline for filing comments and or motions: June 11, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Please include the project number (P–2609–021) on any comments or motions filed.

j. Description of Proposal: Curtis/Palmer Hydroelectric Company, LP (CPHC) and International Paper Company (IPC), co-licensees, request Commission approval for a partial transfer of the license for the project from CPHC and IPC CPHC as sole licensee. CPHC is a New York limited partnership and all of the interests in the partnership are currently held by subsidiaries of IPC.

k. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Services of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. An additional copy must be sent to the Direct, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–11772 Filed 5–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions to Intervene

May 4, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: 11895–000.

c. Date filed: February 20, 2001.

d. Applicant: Malad High Drop Hydropower, Inc.

e. Name and Location of Project: The Malad High Drop Hydropower Project would be located on the Malad River in Gooding County, Idaho.

f. Filed Pursuant to: Federal Power Act, 16 USC §§ 791(a)–825(r).

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g. Applicant contacts: Mr. Rodney Smith or Mr. Silvio Coletti, Malad High Drop Hydropower, Inc., 2727 Merrimac Place, Boise, ID 83709, (208) 562–1527, fax (208) 562–8664.

h. FERC Contact: Tom Papsidero, (202) 219–2715.

i. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Motions to intervene, protests, and comments may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://wwww.ferc.fed.us/efi/doorbell.htm.

Please include the project number (P–11895–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of the document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. Description of Project: The proposed project, using the existing Thorpe and Justice Ditch dams, would consist of: (1) A 600-foot-long, 47-inch-diameter steel penstock; (2) a concrete powerhouse containing two generating units with a total installed capacity of 4.5 megawatts: (3) a one-mile-long, 138–kV transmission line; and (4) appurtenant facilities. The project would have an average annual generation of 22.2 GWh.

k. A copy of the publication is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself; or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filing must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–11775 Filed 5–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application and Applicant Prepared Environmental Assessment Accepted for Filing and Soliciting Motions To Intervene and Protests

May 4, 2001.

Take notice that the following hydroelectric application and Applicant Prepared Environmental Assessment (APEA) has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Major New License (Non-power).

b. *Project No.:* 2852–015.

c. *Date filed:* February 27, 2001.

d. *Applicant:* New York State Electric & Gas Corporation.

e. *Name of Project:* Keuka Project.

f. *Location:* The project is located on the Waneta and Lamoka Lakes, Keuka Lake, and Mud Creek, in Steuben and Schuyler Counties, New York. The project would not utilize any federal lands or facilities.

g. *Filed Pursuant to:* Federal Power Act 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert L. Malecki; Manager, Licensing & Environmental Operations; New York State Electric & Gas Corporation; Corporate Drive, Kirkwood Industrial Park; Binghamton, NY 13902, (607) 762–7763; and Ms. Carol Howland, Project Environmental Specialist; New York State Electric & Gas Corporation; Corporate Drive, Kirkwood Industrial Park; Binghamton, NY 13902, (607) 762–8881.

i. *FERC Contact:* Any questions on this notice should be addressed to William Guey-Lee, E-mail address william. guylee@ferc.fed.us, or telephone (202) 219–2808.

j. *Deadline for filing motions to intervene and protests:* July 9, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426. Comments, protests, and motions to intervene may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, the intervenor must also serve a copy of the document on that resource agency.

k. *Status of Environmental Analysis:* The application is not ready for environmental analysis at this time. A subsequent notice will be issued stating that the application is ready for environmental analysis and will request comments, reply comments, recommendations, terms and conditions, and prescriptions at that time.

l. *Description of Project:* The project consists of the following: (1) The Bradford Dam with an overall length of about 580 feet and crest elevation of 1,099 feet msl, consisting of a concrete section, earthen embankments, outlet works, and spillway; (2) Waneta and Lamoka Lakes with surface areas of 781 acres and 826 acres at elevation 1,099 feet msl, and total storage of 27,200 acre-feet; (3) a 9,30-foot-long power canal having an average width of 48 feet and an average depth of 3 feet; (4) a twin gated concrete box culvert, know as Wayne Gates, measuring 8 feet high by 6 feet wide; and (5) a 70-foot-long by 16-foot-high headgate structure. Under the non-power license, the 3,450-foot-long, 4-foot-diameter concrete penstock, the 835-foot-long, 42-inch-diameter steel penstock, and the 2.0-MW generating unit would be removed.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

n. *Protests or Motions to Intervene:* Anyone may submit a protest or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedures, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application and APEA.

o. *All filings must:* (1) Bear in all capital letters the title "PROTEST," or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application and APEA to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application and APEA directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to: Director, Division of Environmental and Engineering Review, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 01–11776 Filed 5–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of Licenses and Substitution of Relicense Applicant, and Soliciting Comments, Protests, and Motions To Intervene

May 4, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Types:* (1) Transfer of Licenses and (2) Request for Substitution of Applicant for New License (in Project No. 2694–002).

b. *Project Nos:* 2601–004, 2602–002, 2603–009, 2619–006, 2686–024, 2692–025, 2694–002, 2694–005, and 2698–025.

c. *Date Filed:* April 17, 2001.

d. *Applicant:* Duke Power, a division of Duke Energy Corporation, Nantahala Area (transferee).

e. *Name and Location of Projects (all in North Carolina):* The Bryson Project No. 2601 is located on the Oconaluftee River in Swain County. The Dillsboro Project No. 2602 is located on the Tuckasegee River in Jackson County. The Franklin Project No. 2603 is located on the Little Tennessee River in Macon County. The Mission Project No. 2619 is located on the Hiwassee River in Clay County. The West Fork Project No. 2686 is located on the West Fork of the Tuckasegee River in Jackson County. The Nantahala Project No. 2692 is located on the Nantahala River, Dicks Creek, and White Oak Creek in Clay and Macon Counties. The Queens Creek Project No. 2694 is located on Queens Creek in Macon County. The East Fork Project No. 2698 is located on the East Fork of the Tuckasegee River in Jackson County. These projects do not occupy federal or tribal lands.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contacts:* Mr. Paul Kinney, Law Department, Duke Power, P.O. Box 1244, Charlotte, NC 28201–1244, (704) 373–6609, and Mr. John A. Whittaker, IV, Winston & Strawn, 1400 L Street NW, Washington, DC 20005, (202) 371–5766.

h. *FERC Contact:* James Hunter, (202) 219–2839.

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i. *Deadline for filing comments and or motions:* June 11, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and motions to intervene may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Please include the noted project numbers on any comments or motions filed.

j. *Description of Proposal:* Nantahala Power and Light Company (Nantahala), the original licensee of these projects, has merged into Duke Energy Corporation (Duke) and no longer exists. Duke now seeks after-the-fact approval of the transfer of the licenses from Nanatahala to Duke, as well as a name change to Duke Power, a division of Duke Energy Corporation, Nantahala Area. (In response to a notice filed by Duke on May 12, 2000, the Commission inadvertently issued, on June 28, 2000, an order changing the name of the licensee to Nantahala Power and Light, a division of Duke Energy Corporation. *See* 91 FERC ¶ 62,235, which of course lacked the prerequisite step of Commission approval for transfer of the project licenses to Duke.)

The transfer application was filed within five years of the expiration of the licenses all of these projects. In Hydroelectric Relicensing Regulations Under the Federal Power Act (54 Fed. Reg. 23,756; FERC Stats. and Regs., Regs. Preambles 1986–1990 30,854 at p. 31,437), the Commission declined to forbid all license transfers during the last five years of an existing license, and instead indicated that it would scrutinize all such transfer requests to determine if the transfer's primary purpose was to give the transferee an advantage in relicensing (id. at p. 31438 n. 318).

The transfer application also contains a separate request for the substitution of Duke Power, a division of Duke Energy Corporation, Nantahala Area for Nantahala Power and Light, a division of Duke Energy Corporation as the applicant in the pending relicensing application, filed on September 27, 1999, in Project No. 2694–002.

k. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item g above.

1. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other commenters filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. An additional copy must be sent to the Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–11777 Filed 5–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

May 4, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 8315–005.

c. *Date Filed:* April 2, 2001.

d. *Applicant:* International Paper Company (Transferee).

e. *Name of project:* Sartell.

f. *Location:* On the Mississippi River near Sartell, Stearns and Benton Counties, Minnesota. The project does not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* William J. Madden, Jr., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005–3502, (202) 371–5700; Michael Chapman, Esq., International Paper Company, 6400 Poplar Ave., Memphis, TN 38197, (901) 763–5888.

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Deadline for filing comments or motions:* June 22, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, motions to intervene, and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Please include the Project Number (8315–005) on any comments or motions filed.

k. *Description of Transfer:* Champion International Corporation (Champion/Transferor), formerly a wholly-owned subsidiary of International Paper Company (IPC/Transferee), has merged into IPC and no longer exists. IPC seeks Commission approval to transfer the license for the Sartell Project from Champion to IPC.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–11778 Filed 5–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

May 4, 2001.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. The documents may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Exempt

1. CP04–49–000, 04–23–01, Bobbye Biller
2. Project Nos. 10865 and 11495, 04–23–01, Steven W. Reneaud
3. Project No. 18, 04–23–01, Scott Larrando
4. Project No. 2899–000, 04–23–01, Scott Lorrando
5. CP01–49–000, 04–24–01, Douglas Sipe
6. Project No. 1494, 04–25–01, Joanne Mallet-Eakin
7. CP00–6–000, 04–25–01, James J. Slack
8. Project No. 2042, 04–25–01, Frank Winchell
9. Project No. 2042, 04–24–01, Tim Bachelder

David P. Boergers,

Secretary.

[FR Doc. 01–11774 Filed 5–9–01; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6977–1]

Notice of Agency Information Collection Activities for Superfund Cooperative Agreements and State Contracts

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that U.S. Environmental Protection Agency is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Cooperative Agreements and State Contracts for Superfund Response Actions (OMB Control No. 2010–0020; EPA ICR No. 1487.06) expiring September 30, 2001. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 9, 2001.

ADDRESSES: Send comments to Kirby Biggs, Office of Emergency and Remedial Response, U.S. Environmental Protection Agency, Mail Code 5204G, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (703) 308–8506, e-mail: Biggs.Kirby@epa.gov

FOR FURTHER INFORMATION CONTACT: Kirby Biggs, at the address and telephone number listed above.

SUPPLEMENTARY INFORMATION: Affected entities: Entities potentially affected are those States, Federally recognized Indian tribes, and political subdivisions that apply to EPA for financial assistance under a Superfund cooperative agreement or a Superfund State Contract.

Title: Cooperative Agreements and Superfund Contracts for Superfund Response Actions (OMB Control No.

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2010–0020; EPA ICR No. 1487.06) expiring 09/30/01.

Abstract: This ICR authorizes the collection of information under 40 CFR part 35, subpart O, which establishes the administrative requirements for cooperative agreements funded under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for State, political subdivisions, and Federally recognized Indian tribal government response actions. This regulation also codifies the administrative requirements for Superfund State Contracts for non-State lead remedial responses. This regulation includes only those provisions mandated by CERCLA, required by OMB Circulars, or added by EPA to ensure sound and effective financial assistance management. The information is collected from applicants and/or recipients of EPA assistance and is used to make awards, pay recipients, and collect information on how Federal funds are being spent. EPA requires this information to meet its Federal stewardship responsibilities. Recipient responses are required to obtain a benefit (federal funds) under 40 CFR part 31, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments' and under 40 CFR part 35, "State and Local Assistance." An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses).

Burden Statement: The current annual reporting and record keeping burden for this collection is estimated to average 11.58 hours per response. The current estimated number of annual respondents is 361 and the estimated total annual hour burden is 4,182 hours. The frequency of response is as required. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Send comments regarding these matters, or any other aspect of this information collection, including suggestions for reducing the burden to the address listed above.

Dated: May 4, 2001.

Steve Caldwell,

Acting Director, State, Tribal and Site Identification Center, Office of Emergency and Remedial Response, Office of Solid Waste and Remedial Response.

[FR Doc. 01–11833 Filed 5–9–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[IL–202; FRL–6976–9]

Adequacy Status of the Metro East St. Louis, IL, Submitted Ozone Attainment State Implementation Plan for Transportation Conformity Purposes; Notice of Withdrawal of Adequacy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of withdrawal of adequacy.

SUMMARY: EPA has decided to withdraw our finding of adequacy and find inadequate the motor vehicle emissions budgets in the Metro East St. Louis, Illinois, ozone attainment demonstration State Implementation Plan (SIP) submitted on November 15, 1999, and supplemented on February 10, 2000. We are withdrawing our adequacy finding due to a recent court decision. The United States Court of Appeals for the District of Columbia Circuit decided on August 30, 2000, that the implementation of the Nitrogen Oxides (NO_X) SIP Call rule could not be required before May 31, 2004. The emission levels in the St. Louis attainment demonstration SIP were based on the assumption that transport of ozone precursors into St. Louis from upwind states would be addressed by May 2003 pursuant to EPA's NO_X SIP Call. Without these regional NO_X SIP Call controls in place in 2003, the Metro East St. Louis area will not be able to demonstrate attainment as described in the submitted SIP. For this reason, the motor vehicle emissions budgets for 2003 can no longer be considered adequate and are inadequate. The notice of the adequacy determination that is being withdrawn was made on June 12, 2000, in a letter to the State and was published in the **Federal Register** on July 3, 2000.

DATES: The notice of adequacy is withdrawn as of May 10, 2001.

FOR FURTHER INFORMATION CONTACT: Patricia Morris (312–353–8656)

SUPPLEMENTARY INFORMATION:

Background

On June 12, 2000, EPA Region 5 sent a letter to the Illinois Environmental Protection Agency stating that the motor vehicle emissions budgets for NO_X and volatile organic compounds (VOCs) in the November 15, 1999, and supplemented on February 10, 2000, Metro East St. Louis ozone attainment demonstration SIP for 2003 were adequate for the purpose of transportation conformity. EPA published a notice in the **Federal Register** on July 3, 2000, [65 FR 41068] announcing that we had made an adequacy determination for the motor vehicle emissions budgets in the Metro East St. Louis attainment demonstration SIP. This finding was also announced on EPA's conformity website, http://www.epa.gov/oms/traq.

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do conform. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

EPA described the process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999, memo titled "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision"). This guidance was used in making the adequacy determination on the motor vehicle emissions budgets contained in the ozone attainment demonstration for St. Louis. The criteria by which EPA determines whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). An adequacy review is separate from EPA's SIP completeness review, and it also should not be used to prejudge EPA's ultimate action to approve or disapprove the SIP. The SIP could later be disapproved for reasons unrelated to transportation conformity even though the budgets had been deemed adequate.

EPA believes that a consequence of the D.C. Circuit's order delaying the implementation date of the NO_X SIP Call rule is that the budgets submitted by Illinois can no longer be considered adequate for purposes of transportation conformity and that these budgets are now inadequate. This belief is based on the fact that the attainment demonstration relied on the expected reductions from the NO_X SIP call in 2003, whereas those reductions can not now be assumed prior to 2004.

On November 8, 2000, EPA sent a letter to Illinois advising Illinois of the need to revise the Metro East St. Louis ozone attainment demonstration and to submit revised budgets. The revised budgets are expected to be based on controls that will be in place by the year 2004.

Consequently, EPA has decided to withdraw the June 12, 2000, adequacy determination and is instead finding that the budgets are inadequate. EPA is taking this action without prior notice and comment because adequacy determinations are not considered rulemaking subject to the procedural requirements of the Administrative Procedures Act. In addition, EPA does not believe further notice through EPA's conformity website is necessary in advance because of the delay in the NO_X SIP Call implementation date, it is clear that the budgets can no longer be considered adequate. Consequently, further public comment would be unnecessary and not in the public interest. In this action, EPA is also withdrawing all statements and comments previously made in relation to its earlier determination of the adequacy of the budgets for transportation conformity purposes. The substance of the budgets and any revisions to them will be further reviewed by EPA as part of its final decision to on the 1-hour ozone attainment demonstration SIP for the St. Louis nonattainment area. This SIP was initially submitted to EPA on November 15, 1999 and supplemented on February 10, 2000.

EPA will announce the withdrawal of the adequacy determination and inadequacy finding on its conformity website, (go to *http://www.epa.gov/otaq/traq* and then click on "conformity").

Dated: April 30, 2001.

Jerri-Anne Garl,

Acting Regional Administrator, Region 5.

[FR Doc. 01–11836 Filed 5–9–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6976–2]

Meeting of the Local Government Advisory Committee and the Small Community Advisory Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Local Government Advisory Committee (LGAC) and its Small Community Advisory Subcommittee (SCAS) will meet jointly on June 7–8, 2001, in Washington, D.C. The Committee will hear remarks from the EPA Administrator, Governor Christine Todd Whitman, and the Associate Administrator for the Office of Congressional and Intergovernmental Relations, Edward D. Krenik, on Thursday, June 7th. The LGAC Subcommittees will provide updates on activities since the last Committee meeting. Other agenda topics will include Federalism and Environmental Management Systems. The Committee also will discuss proposed operating principles and revisions to its bylaws resulting from the merger of the SCAS with the LGAC.

The Issues Subcommittee will discuss water infrastructure funding, land use credits under State Implementation plans, and sustainability. The Process Subcommittee will discuss the Agency's draft Public Involvement Policy and accountability measures for Federalism implementation.

The Small Community Advisory Subcommittee will meet in a separate session on Wednesday, June 6th from 9 a.m.–5 p.m. The Subcommittee will update activities since its meeting in Seattle, Washington, on March 1–2, 2001. Topics will include Small Community Funding, a recommendation for Small Community Advocate, Federalism, TMDL Implementation, Sustainability, and Enforcement Flexibility.

The SCAS will hear comments from the public from 1:30–1:45 p.m. at its separate meeting June 6th. The LGAC and SCAS will hear comments from the public between 12:30–12:45 p.m. at their joint session on June 7. Each individual or organization wishing to address the combined Committee or Subcommittee meetings will be allowed a minimum of three minutes. Please contact the Designated Federal Officers (DFO) at the numbers listed below to schedule agenda time. Time will be allotted on a first come, first served basis.

These are open meetings and all interested persons are invited to attend. Meeting minutes will be available after the meeting and can be obtained by written request from the DFO. Members of the public are requested to call the DFO at the number listed below if planning to attend so that arrangements can be made to comfortably accommodate attendees as much as possible. Seating will be on a first come, first served basis.

DATES: The Small Community Advisory Subcommittee meeting is scheduled from 9:00 a.m. to 5:00 p.m. on Wednesday, June 6th. The Local Government Advisory Committee and Small Community Advisory Subcommittee joint meeting will begin at 9:00 a.m. on Thursday, June 7th and conclude at 4:00 p.m. on June 8th.

ADDRESSES: The meetings will be held in Washington, D.C. at the EPA's Headquarters, located at 1200 Pennsylvania Avenue, NW—the Ariel Rios North Building. The SCAS meeting on Wednesday will be held in conference room 3530. The joint LGAC/SCAS meeting on Thursday and Friday will be held in the Green Room on the 3rd floor.

Additional information can be obtained by writing the DFOs at 1200 Pennsylvania Avenue, NW (1306A), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The DFO for the Local Government Advisory Committee (LGAC) is Denise Zabinski Ney (202) 564–3684 and the DFO for the Small Community Advisory Subcommittee (SCAS) is Anne Randolph (202) 564–3679.

Dated: May 1, 2001.

Denise Zabinski Ney,

Designated Federal Officer, Local Government Advisory Committee.

Dated: May 1, 2001.

Anne Randolph,

Designated Federal Officer, Small Community Advisory Subcommittee.

[FR Doc. 01–11832 Filed 5–9–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00315; FRL–6780–5]

Forum on State and Tribal Toxics Action (FOSTTA); Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: One component (The Pollution Prevention Project) of the Forum on State and Tribal Toxics Action (FOSTTA) will meet May 17–18, 2001. This notice announces the location, times, and the focus of the meeting. The National Conference of State Legislatures (NCSL) and the Environmental Protection Agency's (EPA) Office of Pollution Prevention and Toxics (OPPT) are co-sponsoring the meeting. As part of a cooperative agreement, NCSL facilitates ongoing efforts of the States and Tribes to identify, discuss, and address toxics-related issues, and to continue the dialogue on how Federal environmental programs can best be implemented.

DATES: The Pollution Prevention Project will meet May 17, 2001, from 8 a.m. to 5 p.m. and May 18, 2001, from 8 a.m. to noon.

ADDRESSES: The meeting will be held at the Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, VA, 22314. The hotel is across from the King Street Metro Station.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–1761.

For technical information contact: George Hagevik, National Conference of State Legislatures, 1560 Broadway, Suite 700, Denver, CO 80202; telephone number: (303) 839–0273 and Fax: (303) 863–8003; e-mail: george.hagevik@ncsl.org or

Darlene Harrod, Environmental Assistance Division (7408), OPPT, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–6904 and Fax: (202) 260–2219; e-mail: harrod.darlene@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to all parties interested in FOSTTA and hearing more about the perspectives of the States on EPA programs and the information exchange regarding important issues related to human health and environmental exposure to toxics. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. However, in the interest of time and efficiency, the meetings are structured to provide maximum opportunity for State and EPA participants to discuss items on the predetermined agenda. At the discretion of the chair, an effort will be made to accommodate participation by observers attending the proceedings. If you have any questions regarding the applicability of this action to a particular entity, consult the technical people listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the NCSL Web site at http://www.ncsl.org/programs/esnr/fostta/fostta.htm. To access this document on the EPA Internet Home Page go to http://www.epa.gov and select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents". You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/FOSTTA.

2. *Facsimile.* Notify the contacts listed above if you would like any of the documents sent to you via fax.

III. Purpose of Meeting

The focus of the meeting is to discuss strategic directions for pollution prevention for the Federal EPA program and the State P2 programs.

IV. How Can I Request To Participate in this Meeting?

You may submit a request to participate in this meeting by mail or electronically to the names under the **FOR FURTHER INFORMATION CONTACT** section. Do not submit any information in your request that is considered Confidential Business Information. Your request must be received by EPA on or before May 15, 2001.

List of Subjects

Environmental protection.

Dated: April 18, 2001.

Barbara Cunningham,

Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics.

[FR Doc. 01–11838 Filed 5–9–01; 8:45am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6976–3]

Proposed Agreement Pursuant to Sections 122(g) and (h) of the Comprehensive Environmental Response, Compensation, and Liability Act for the Marina Cliffs/Northwestern Barrel Superfund Site

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice; request for public comment on proposed de minimis settlement.

SUMMARY: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and liability Act of 1984, as amended ("CERCLA"), notification is hereby given of a proposed administrative agreement concerning the Marina Cliffs/Northwestern Barrel hazardous waste site located between 5th Avenue and Lake Michigan in South Milwaukee, Wisconsin (the "Site"). EPA proposes to enter into this agreement under the authority of sections 122(g) and (h) and 107 of CERCLA. The proposed agreement has been executed by the following de minimis parties: AF Gallun & Sons, LLC; Albert Trostel & Sons Company; Aldrich Chemical Co. Inc.; Allen-Bradley Co. LLC; Ampco Metals, Inc.; A.O. Smith Corporation; Appleton Papers Inc., a.k.a. Appleton Papers, Inc., NCR Corporation, Appleton Papers, Inc. division of National Cash Register Company, Appleton Coated Paper Co.; Appleton Coated Paper Company; Appleton Papers Division of NCR Corporation, The National Cash Register Company, NCR Delaware, Inc., Combined Paper Company, Combined Locks Paper Company, Combined Paper Mills, Inc.; AR Accessories Liquidating Trust as successor to Amity Leather, Ato Findley, Inc.; Atofina Chemicals Inc. (Elf Atochem North America, Inc.) on behalf of Beazer East, Inc., on behalf of its former subsidiary Thiem Corporation; Blackhawk Leather, Ltd. and its successor, Blackhawk Leather LLC; Briggs & Stratton Corporation; Bucyrus International, Inc. (f/k/a Bucyrus-Erie Company); Carbolineum Wood Preserving Co.; Case Corporation; Caterpillar Inc.; City of Green Bay, Wisconsin; City of Manitowoc, Wisconsin; City of Milwaukee, Wisconsin; City of Sheboygan, Wisconsin; City of West Allis, Wisconsin; City of West Bend, Wisconsin; CMC Heartland Partners; Colonial Heights Packaging Inc. f/k/a Milprint, Inc.; Cooper Industries, Inc.; Crucible Materials Corporation by and through its Trent Tube Division; Cudahy Tanning Co.; Deere & Company; Dresser Industries, Inc. (Waukesha Engine); E.I. du Pont de Nemours and Company; Eaton Corporation f/k/a Cutler-Hammer, Inc.); Eggers Industries; Essential Industries Inc.; FMC Corporation on behalf of Bolens Corporation and Bolens Products Divisions; Hamilton Sundstrand Corporation and The Falk Corporation; Fort James Corporation, successor to Fort Howard Corporation; Georgia Gulf Corporation, on behalf of itself, Cook Composites & Polymers, and the former Freemen Chemical Co.; Golden Books Publishing Company, Inc. (formerly known as Western Publishing Company, Inc.); Grede Foundries, Inc.; Harley-Daivdson Motor Company; Harnischfeger Corporation; The Heil Co.; Hein-Werner; Henkel Corporation, as successor to Kepec Chemical; Hentzen/Wisconsin Paint; Hercules Incorporated; Heresite Protective Coatings, Inc.; Honeywell International Inc.; Hydrite Chemical Co.; Hydrite Chemical Co. for Benlo Chemical/Hydrite share; Ingersoll-Rand Co. for Clark Equipment Co.; International Paper Co. (and Champion International, a wholly owned subsidiary of International Paper); Invincible Metal Furniture Co.; Johnson Controls Battery Group, Inc. as successor to and on behalf of Johnson Controls, Inc.; Kearney & Trecker; Kickhaefer Manufacturing Company; Kimberly-Clark Corporation and Scott Paper Company; Ladish Co., Inc.; Law Tanning Co. LLC; Litton Industries, Inc., on behalf of itself and the Louis Allis company and MagneTek, Inc.; Maysteel Corporation (and its successor, Maysteel LLC); Midwest Tanning Co.; Miller Brewing Company; Milport Chemical Company; Milwaukee County; MRC Holding, Inc. (Northern Paper, Marathon Corp.); Navistar International Transportation Corporation; Nekoosa Papers Inc. and Georgia-Pacific Corporation; The Nelson Paint Co. of MI, Inc.; Niles Chemical Paint Company, Inc.; Nordberg Inc.; Pabst Brewing Co.; Pharmacia & Upjohn Company (formerly The Upjohn Company); The Procter & Gamble Paper Products Company; Rapco Leather, Inc.; Reichhold Chemicals, Inc./J.G. Milligan & Company; Research Products Corporation; RHS Holdings, Inc. as successor to Rexnord, Inc./Chainbelt; RHL Inc. fka Lindsay Finishes, Inc. (Lindsay Paint); Roper Corp.; SBC Holdings, Inc. (f/k/a the Stroh Brewery Company); Seidel Tanning Corp.; The Sherwin-Williams Company; Square D Company; Soo Line Railroad Company; Stolper Industries (Stolper Steel); Stora Enso North America Corp., successor by merger to Consolidated Papers, Inc.; Textron Inc.; Thiele Tanning Company; Union Pacific Railroad Company as successor to Chicago & North Western; Viad Corp (for Armour and Co.); The Vollrath Co., L.L.C.; Wenthe-Davidson Engineering Co.; West Bend Company; W.H. Brady Corporation; Wisconsin Electric Power Company; and the U.S. Department of the Army.

Under the proposed agreement, certain of the *de minimis* Settling Parties will pay a total of approximately $468,227.30 which will be placed into an escrow account to be used for response costs incurred and to be incurred at the Site. Other *de minimis* Settling Parties have already paid approximately $5.2 million toward cleanup costs at the Site and will be provided with *de minimis* protections without making further payments. A group of six non-*de minimis* settlors under this agreement will perform the remaining removal actions to be conducted at the Site, and pay EPA's costs of overseeing these removal actions. EPA incurred response costs overseeing response activities conducted to mitigate an imminent and substantial endangerment to human health or the environment present or threatened by hazardous substances present at the Site. The Settling Parties have spent more than $9.7 million to perform cleanup activities at the Site to date. The non-*de minimis* settlors under this proposed agreement are: BASF Corporation, on behalf of itself and its predecessors in interest, International Printing Ink, Inmont Corp., and Cook Paint & Varnish; DaimlerChrysler Corp.; General Motors Corporation; S.C. Johnson & Son, Inc.; Minnesota Mining and Manufacturing Company; and PPG Industries, Inc.

For thirty days following the date of publication of this notice, the EPA will receive written comments relating to this proposed agreement. EPA will consider all comments received and may decide not to enter this proposed agreement if comments disclose facts or considerations which indicate that the proposed agreement is inappropriate, improper or inadequate.

DATES: Comments on the proposed agreement must be received by EPA on or before June 11, 2001.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590, and should refer to: In the Matter of Marina Cliffs/Northwestsern Barrel, South Milwaukee, Wisconsin, U.S. EPA Docket No. V–W–01C–630.

FOR FURTHER INFORMATION CONTACT: Thomas J. Krueger, U.S. Environmental Protection Agency, Office of Regional Counsel, C–14J, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590, (312) 886–0562.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region 5 Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590. Additional background information relating to the settlement is available for review at the EPA's Region 5 Office of Regional Counsel.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601–9675.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 01–11831 Filed 5–9–01; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6975–8]

Petroleum Products Superfund Site Notice of Proposed De Minimis Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed de minimis settlement.

SUMMARY: Under Section 122(g)(4) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has offered a de minimis settlement at the Petroleum Products Superfund Site (Site) under an Administrative Order on Consent (AOC) to settle claims for past and future response costs at the Site. Approximately 77 parties have returned signature pages accepting EPA's settlement offer. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments

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disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate.

Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, CERCLA Program Services Branch, Waste Management Division, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, (404) 562–8887.

Written comment may be submitted to Mr. Greg Armstrong at the above address within 30 days of the date of publication.

Dated: May 1, 2001.

James T. Miller,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 01–11834 Filed 5–9–01; 8:45 am]

BILLING CODE 6560–50–U

OFFICE OF NATIONAL DRUG CONTROL POLICY

Paperwork Reduction Act; Notice of Proposed Information Collection; Comment Request

AGENCY: Office of National Drug Control Policy (ONDCP).

ACTION: Notice.

SUMMARY: The ONDCP proposes to collect information to test the awareness, attitudes and willingness of adults 18 years and older to participate in community anti-drug coalitions, and seeks public comment on the proposed collection methods.

ADDRESSES: Written comments should be received within sixty days of this notice addressed to Terry Zobeck, Chief of the Programs and Research Branch, Executive Office of the President, Office of National Drug Control Policy, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Terry Zobeck, (202) 395–5503.

SUPPLEMENTARY INFORMATION:

I. Background

The National Youth Anti-Drug Media Campaign is a component within the ONDCP that is partnering with the Advertising Council to create a public service campaign that will generate awareness and involvement in local community anti-drug coalitions that mobilize communities to engage in drug prevention measures. To assist the development of the public service campaign, ONDCP proposes to obtain information to sample the awareness, attitudes and willingness of adults 18 years of age and older in order to participate in community anti-drug coalitions. The information will be used to establish a baseline for measuring changes in attitudes and awareness as a result of the public service campaign, and provide data for formative and qualitative evaluation activities. It will assess the public's exposure to and recall of advertising (within a donated media model), and measure change in attitudes about drug prevention and community anti-drug coalitions.

II. Special Issues for Comment

The agency has particular interest in comments on the following issues:

Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of the burden of the proposed collection of information; methods to enhance quality, utility and clarity of the information to be collected; and means to minimize the burden of the collection of information on respondents, including the use of automated collection techniques.

III. Authority and Signature

Alan Levitt, Director for the National Youth Anti-Drug Media Campaign, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506).

Signed at Washington, DC on April 30, 2001.

Alan Levitt,

Director, National Youth Anti-Drug Media Campaign.

[FR Doc. 01–11793 Filed 5–9–01; 8:45 am]

BILLING CODE 3180–02–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on May 10, 2001, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Kelly Mikel Williams, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

1. Approval of Minutes
—April 12, 2001 (Open)
2. Report
—Report on Corporate Approvals
3. Regulation
—Eligibility—Direct Final Rule

***Closed Session**

4. Reports
—OSMO Report
—Audit of the FCS Building Association

Dated: May 7, 2001.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

[FR Doc. 01–11851 Filed 5–7–01; 4:21 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

May 1, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 9, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW., Room 1–A804, Washington, DC 20554 or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0824.

Title: Service Provider Information Form.

Form No.: N/A.

Type of Review: Extension.

Respondents: Business or Other for Profit.

Number of Respondents: 10,000.

Estimated Time Per Response: 1 hour per response (avg).

Total Annual Burden: 10,000 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Needs and Uses: Pursuant to 47 CFR sections 54.515 and 54.611, the Administrator must obtain information relating to: service provider name and address, telephone number, Federal employee identification number, contact names and telephone numbers, and billing and collection information. FCC Form 498 has been designed to collect this information from carriers and service providers participating in the universal service program. The information will be used in the reimbursement of universal service support payments.

OMB Control No.: 3060–0804.

Title: Universal Service—Health Care Providers Universal Service Program.

Form No.: FCC Forms 465, 466, 466-A, 467 and 468.

Type of Review: Extension.

Respondents: Not for profit institutions; Business or Other for Profit.

Number of Respondents: 5255.

Estimated Time Per Response: 1.85 hours per response (avg).

Total Annual Burden: 9755 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion;.

Needs and Uses: The Commission adopted rules providing support for all telecommunications services, Internet access, and internal connections for all eligible health care providers. Health care providers who want to participate in the universal service program must file several forms, including FCC Forms 465, 466, 466-A, 467, and 468. FCC Form 465, Description of Service Requested and Certification is filed by rural health care providers to certify their eligibility to receive discounted telecommunications services. FCC Form 466, Funding Request and Certification Form is used to ensure that health care providers have selected the most cost-effective method of providing the requested services. FCC Form 466-A is filed by rural health care providers seeking support only for toll changes to access the Internet. FCC Form 467, Connection Certification is filed by rural health care providers to inform the Administrator that they have begun to receive, or have stopped receiving, the telecommunications services for which universal service support has been allocated. FCC Form 468, Telecommunications Carrier Form, is submitted by rural health care providers to ensure that the telecommunications carrier receives the appropriate amount of credit for providing telecommunications services to eligible health care providers.

OMB Control No.: 3060–0855.

Title: Telecommunications Reporting Worksheet and Associated Requirements, CC Docket No. 96–45.

Form No.: FCC Forms 499, 499–A and 499–Q.

Type of Review: Extension.

Respondents: Business or Other for Profit.

Number of Respondents: 5000.

Estimated Time Per Response: 16.49 hours per response (avg).

Total Annual Burden: 82,487 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Monthly; Annually; Third Party Disclosure; Recordkeeping.

Needs and Uses: Pursuant to the Communications Act of 1934, as amended, telecommunications carriers (and certain other providers of telecommunications services) must contribute to the support and cost recovery mechanisms for telecommunications relay services, numbering administration, number portability, and universal service. The Commission recently modified the existing methodology used to assess contributions that carriers make to the federal universal service support mechanisms. The modifications adopted entail altering the current revenue reporting requirements to which interstate telecommunications carriers are subject under 47 U.S.C. Sections 54.709 and 54.711. Carriers continue to file FCC Form 499–A annually as they are required to do under the existing methodology. Carriers must now report their revenues for each quarter on FCC Form 499–Q. Carriers will file one annual filing and four quarterly filings, for a total of five revenue filings per year.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–11765 Filed 5–9–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

May 1, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 9, 2001. If you anticipate that you will be submitting comments, but find it

* Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

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difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESS: Direct all comments to Les Smith, Federal Communications Commissions, Room 1A–804, 445 Twelfth Street, SW., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0166.

Title: Part 42—Preservation of Records of Communication Common Carriers.

Form No.: N/A.

Type of Review: Extension.

Respondents: Business or Other for Profit.

Number of Respondents: 68.

Estimated Time Per Response: 2 hours per response (avg).

Total Annual Burden: 136 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Recordkeeping.

Needs and Uses: Section 220 of the Communications Act of 1934, as amended, makes it unlawful for carriers to willfully destroy information retained for the Commission. 47 U.S.C. part 42 prescribes guidelines to ensure that carriers maintain the necessary records needed by the FCC for its regulatory obligations. The requirements are necessary to ensure the availability of carrier records needed by Commission staff for regulatory purposes.

OMB Control No.: 3060–0149.

Title: Application and Supplemental Information Requirements—Part 63, Section 214, and Sections 63.01–63.601.

Form No.: N/A.

Type of Review: Extension.

Respondents: Business or Other for Profit.

Number of Respondents: 255.

Estimated Time Per Response: 10 hours per response (avg).

Total Annual Burden: 2550 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Third Party Disclosure.

Needs and Uses: Section 214 of the Communications Act of 1934, as amended, requires that the FCC review the establishment, lease, operations, and extension of channels of communications by interstate common carriers. 47 CFR part 63 implements section 214. Part 63 also implements provisions of the Cable Communications Policy Act of 1984 pertaining to video programming by telephone common carriers. The information received in applications from dominant carriers is used to determine if the facilities are needed. The information received from non-dominant carriers is used to monitor the growth of the networks and the availability of common carrier services.

OMB Control No.: 3060–0814.

Title: Section 54.301, Local Switching Support and Local Switching Support Data Collection Form and Instructions.

Form No.: N/A.

Type of Review: Extension.

Respondents: Business or Other for Profit.

Number of Respondents: 192.

Estimated Time Per Response: 21.55 hours per response (avg).

Total Annual Burden: 4138 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Annually.

Needs and Uses: Pursuant to 47 CFR Section 54.301, each incumbent local exchange carrier that is not a member of the NECA common line tariff, that has been designated an eligible telecommunications carriers, and that serves a study area with 50,000 or fewer access lines shall, for each study area, provide the Administrator with the projected total unseparated dollar amount assigned to each account in section 54.301(b). Average schedule companies are required to file information pursuant to 47 CFR Section 54.301(f). Both respondents must provide true-up data. The data is necessary to calculate certain revenue requirement.

OMB Control No.: 3060–0736.

Title: Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96–149.

Form No.: N/A.

Type of Review: Extension.

Respondents: Business or Other for Profit.

Number of Respondents: 5.

Estimated Time Per Response: 60.6 hours per response (avg).

Total Annual Burden: 303 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Monthly; Annually; Third Party Disclosure.

Needs and Uses: Section 272 of the Telecommunications Act of 1996 requires that Bell Operating Companies (BOCs) make information available to third parties if it makes that information available to its section 272(a) affiliates. In CC Docket No. 96–149, the Commission adopted safeguards to govern BOCs entry into certain new markets. BOCs are required to provide, among other things, unaffiliated entities with all listing information, including unlisted and unpublished numbers as well as the numbers of other local exchange carriers' customers, that the BOC uses to provide E911 services. In a Further Notice of Proposed Rulemaking issued in CC Docket No. 96–149, the Commission proposed that BOCs make certain information disclosures available to unaffiliated entities and that the BOCs submit an annual affidavit.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–11766 Filed 5–9–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

May 1, 2001.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0807.

Expiration Date: April 30, 2004.

Title: 47 CFR 51.803 and Supplemental Procedures for Petitions to Section 252(e)(5) of the Communications Act of 1934, as amended.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 52 respondents; 39.2 hours per response (avg.); 2040 total annual burden hours (for all collections approved under this control number).

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Third Party Disclosure.

Description: Pursuant to 47 U.S.C. section 252 and 47 CFR 51.803 any interested party seeking preemption of a state commission's jurisdiction based on the state commission's failure to act shall notify the Commission as follows: (1) file with the Secretary of the Commission a detailed petition, supported by an affidavit, that states with specificity the basis for any claim that it has failed to act; and (2) serve the state commission and other parties to the proceeding on the same day that the party serves the petition on the Commission. Within 15 days of the filing of the petition, the state commission and parties to the proceeding may file a response to the petition. In a Public Notice (DA 97–2256), the Commission set out procedures for filing petitions for preemption pursuant to 47 U.S.C. section 252(e)(5). All of the requirements are used to ensure that petitions have complied with their obligations under the Communications Act of 1934, as amended. Obligation to respond: Required to obtain or retain benefits. Public reporting burden for the collection of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–11764 Filed 5–9–01; 8:45 am]

BILLING CODE 6712–01–P

Number of Petitions Filed: 1.

Subject:

Carriage of Digital Television Broadcast Stations (CS Docket No. 98–120) Amendments to Part 76 of the Commission's Rules

Implementation of the Satellite Home Viewer Improvement Act of 1999: Local Broadcast Signal Carriage Issues (CS Docket No. 00–96)

Application of Network Non-Duplication, Syndicated Exclusively and Sports Blackout Rules to Satellite Retransmission of Broadcast Signals (CS Docket No. 00–2)

Number of Petitions Filed: 10.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–11844 Filed 5–9–01; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE & TIME: Tuesday, May 15, 2001 at 10:00 a.m.

PLACE: 999 Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration

Internal personnel rules and procedures or matters affecting a particular employee

* * * * *

DATE & TIME: Thursday, May 17, 2001 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, DC. (Ninth Floor)

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes

Final Audit Report on the California State Republican Party

Administration Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 01–11878 Filed 5–8–01; 11:01 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System, Federal Reserve System.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposal

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2481]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

May 3, 2001.

Petitions for Reconsideration and Clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR section 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, S.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by May 25, 2001. See section 1.4(b)(1) of the Commission's rules (r7 CFR 1.4(b)(1)). Replies to an opposition must be filed within10 days after the time for filing oppositions have expired.

Subject: Federal-State Joint Board on Universal Service (CC Docket No. 96–45).

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proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before July 9, 2001.

ADDRESSES: Comments, which should refer to the OMB control number or agency form number, should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson may be delivered to the Board's mailroom between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mailroom and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M–P–500 between 9 a.m. and 5 p.m., except as provided in section 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.14(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Mary M. West, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Capria Mitchell (202) 872–4984, Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal To Approve Under OMB Delegated Authority the Implementation of the Following Report

Report title: the Consolidated Bank Holding Company Report of Equity Investments in Nonfinancial Companies.

Agency form number: FR Y–12.

Frequency: Quarterly and semi-annually.

Reporters: Bank holding companies.

Annual reporting hours: 14,112 hours.

Estimated average hours per response: 16 hours.

Number of respondents: 232.

Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 1844(c)) and data may be exempt from disclosure pursuant to sections (b)(4) and (b)(8) of the Freedom of Information Act (5 U.S.C. 552(b)(4) and (8)).

Current Actions: The Federal Reserve proposes to implement the mandatory FR Y–12. The FR Y–12 would collect information from certain domestic bank holding companies on their investments in nonfinancial companies on three schedules: Type of Investments, Type of Security, and Type of Entity within the Banking Organization. Large bank holding companies would report on a quarterly basis, and small bank holding companies would report semi-annually.

BHC investments in nonfinancial companies have increased significantly over the past several years. These investments have contributed significantly to earnings and capital at institutions actively involved in this business line. Equity investments also have contributed to the volatility of earnings and capital in recent periods and have increased some institutions' risk profiles. The GLB Act permits financial holding companies to make investments in any amount in any type of nonfinancial company as part of a securities underwriting or merchant or investment banking activity. The investments permissible under the GLB Act's merchant banking authority are substantially broader in scope than the investment activities otherwise permissible for BHCs. Thus, these investments present the potential for additional volatility and risk in banking organizations' portfolios.

The FR Y–12 would provide valuable supervisory information that would permit examiners and other supervisory staff to monitor the on-going growth and contribution to profitability of this increasingly active business line. For institutions active in this business line, annual reviews generally are conducted. The FR Y–12 would serve as an important risk-monitoring device for institutions active in this business line by allowing supervisory staff to monitor an institution's activity between review dates. It also could serve as an "early warning" mechanism to identify institutions whose activities in this area are growing rapidly and that, therefore, may warrant special supervisory attention.

On January 31, 2001, the Board and the Treasury Department published a final rule in the **Federal Register** on merchant banking investments made by financial holding companies (66.FR 8466). In Section 225.175 of this final rule, the two agencies stated that reporting forms to fulfill the quarterly and annual reporting requirements associated with this rule would be published separately. Institutions will not be held responsible for these reporting requirements until the reporting forms are finalized. This proposal covers the quarterly reporting requirements; the reporting forms for the annual reporting requirements will be addressed in a separate proposal later this year. The annual report would obtain information on merchant banking investments that have been held for an extended period of time.

The Federal Reserve would also like to solicit public comment on the burden of collecting a memorandum item on consolidated recognized gains or losses on equity investments in nonfinancial companies. This item is being considered for purposes of determining what portion of a BHC's consolidated net income is derived from equity investment activities.

Board of Governors of the Federal Reserve System, May 4, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–11749 Filed 5–9–01; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities; Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain

a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 690–6207.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Projects 1. National Study of Child Protective Services Systems and Reform Efforts—NEW—The Office of the Assistant Secretary for Planning and Evaluation is proposing to conduct a study which will document the evolving practices underway in the field of Child Protective Services (CPS). Specifically, State officials will be interviewed to obtain an updated picture of current policy; local CPS agencies serving a stratified random sample of 150 counties will be surveyed and; on-site visits will be conducted at 9–12 local CPS agencies that are implementing innovative practices in their delivery of services. For burden estimates see table.

Instrument	Number of respondents	Responses	Hours per response	Total hours
State—CPS Directors	51	1	2	102
State—Hotline	25	1	1	25
Local Survey—Administration	150	1	.5	75
Local Survey—Intake	150	1	1	150
Local Survey—Investigation	225	1	1	225
Local Survey—Other CPS Resp	100	1	1	100
Local Survey—New Directions	150	1	1	150
Local Survey—Additional	40	1	1	40
Site Visit—Director Interview	12	1	1	12
Site Visit—Reform Managers	16	1	2	32
Site Visit—Worker Focus Group	60	1	2	120
Site Visit—External Managers	40	1	2	80
Site Visit—Manager Focus Group	96	1	2	192
Total	1,115			1,303

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Written comments should be received within 60 days of this notice.

Dated: May 3, 2001.

Kerry Weems,

Acting Deputy Assistont Secretary, Budget.

[FR Doc. 01–11731 Filed 5–9–01; 8:45 am]

BILLING CODE 4154–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency For Healthcare Research and Quality

Contract Review Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), announcement is made of an Agency for Healthcare Research and Quality (AHRQ) Technical Review Committee (TRC) meeting. This TRC's charge is to provide review of contract proposals and recommendations to the Director, AHRQ, with respect to the technical merit of proposals submitted in response to a Request for Proposals (RFPs) regarding "Developing Tools to Enhance Quality and Patient Safety Through Medical Informatics", issued on January 31, 2001. The contract will constitute AHRQ's participation in the Small Business Innovation Research program.

The upcoming TRC meeting will be closed to the public in accordance with the Federal Advisory Committee Act (FACA), section 10(d) of 5 U.S.C., Appendix 2, implementing regulations, and procurement regulations, 41 CFR 101–6.1023 and 48 CFR section 315.604(d). This discussions at this meeting of contract proposals submitted in response to the above-referenced RFP are likely to reveal proprietary information and personal information concerning individuals associated with the proposals. Such information is exempt from disclosure under the above-cited FACA provision that protects the free exchange of candid views, and under the procurement rules that prevent undue interference with Committee and Department operations.

Name of TRC: The Agency for Healthcare Research and Quality—"Developing Tools to Enhance Quality and Patient Safety Through Medical Informatics".

Date: May 21 & 22, 2001 (Closed to the public).

Place: Sheraton Four Points Hotel, 8400 Wisconsin Avenue, Ambassador I Room, Bethesda, MD 20814.

Contact Person: Anyone wishing to obtain information regarding this meeting should contact Eduardo Ortiz, Center for Primary Care Research, Agency for Healthcare Research and Quality, 6010 Executive Blvd., Suite 201, Rockville, Maryland 20852, 301–594–6236.

Dated: May 1, 2001.

John M. Eisenberg,

Director.

[FR Doc. 01–11741 Filed 5–9–01; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–01–37]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of

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the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

The National Health and Nutrition Examination Survey (NHANES)—Revision—OMB No. 0920–0237 National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC). The National Health and Nutrition Examination Survey (NHANES) has been conducted periodically since 1970 by the National Center for Health Statistics, CDC. The current cycle of NHANES began in February 1999 and will now be conducted on a continuous, rather than periodic, basis. About 5,000 persons will be examined annually. They will receive an interview and a physical examination. Participation in the survey is completely voluntary and confidential.

NHANES programs produce descriptive statistics which measure the health and nutrition status of the general population. Through the use of questionnaires, physical examinations, and laboratory tests, NHANES studies the relationship between diet, nutrition and health in a representative sample of the United States. NHANES monitors the prevalence of chronic conditions and risk factors related to health such as coronary heart disease, arthritis, osteoporosis, pulmonary and infectious diseases, diabetes, high blood pressure, high cholesterol, obesity, smoking, drug and alcohol use, environmental exposures, and diet. NHANES data are used to establish the norms for the general population against which health care providers can compare such patient characteristics as height, weight, and nutrient levels in the blood. Data from NHANES can be compared to those from previous surveys to monitor changes in the health of the U.S. population. NHANES will also establish a national probability sample of genetic material for future genetic research for susceptibility to disease.

Users of NHANES data include Congress; the World Health Organization; Federal agencies such as NIH, EPA, and USDA; private groups such as the American Heart Association; schools of public health; private businesses; individual practitioners; and administrators. NHANES data are used to establish, monitor, and evaluate recommended dietary allowances, food fortification policies, programs to limit environmental exposures, immunization guidelines and health education and disease prevention programs. The current submission requests approval through November 2004.

The survey description, contents, and uses are the same as those in the previous **Federal Register** notice for this survey which was published on March 27, 2000 (Volume 65, Number 59). There is no net cost to respondents other than their time. Respondents are reimbursed for any out-of-pocket costs such as transportation to and from the examination center.

Burden category	Number of respondents per year	Number of responses/ respondent	Avg. burden per response (in hours)	Total burden (in hours)
1. Screening interview only	13,333	1	0.167	2,227
2. Screener and family interviews only	500	1	0.434	217
3. Screener, family, and SP interviews only	882	1	1.101	971
4. Screener, family, and SP interviews and primary MEC exam only	4,951	1	6.669	33,018
5. Screener, household, and SP interviews, primary MEC exam and full MEC replicate exam	248	1	11.669	2,894
6. Screener, household, and SP interviews, and home exam	50	1	1.851	93
7. Quality control verification	1,333	1	0.030	40
8. Special studies	2,067	1	0.500	1,034
Total				40,494

Dated: May 4, 2001.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation Centers for Disease Control and Prevention.

[FR Doc. 01–11814 Filed 5–9–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–01–36]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information

on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

The State and Local Area Integrated Telephone Survey (SLAITS)—Revision—OMB No. 0920–0406 National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC). This is a request to continue for three years the integrated and coordinated survey system designed to collect needed health and welfare related data at the state and local levels. Using the random-digit-dial sampling frame from the ongoing National Immunization Survey (NIS) and Computer Assisted Telephone Interviewing (CATI), the State and Local Area Integrated Telephone Survey (SLAITS) has quickly collected and produced data to monitor health status, child and family well-being, health care utilization, access to care, program participation, chronic conditions, and changes in health care coverage at the state and local levels. These efforts are conducted in cooperation with federal, state, and local officials. SLAITS offers a centrally administered data collection mechanism with standardized questionnaires and quality control measures which allow comparability of estimates between states, over time, and with national data. SLAITS is designed to allow oversampling of population subdomains and to meet federal, state and local needs for subnational estimates which are compatible with national data.

For some SLAITS modules, questionnaire content was drawn from existing surveys including the National Health Interview Survey (NHIS), the National Health and Nutrition Examination Survey (NHANES), the Current Population Survey (CPS), the Survey of Income and Program Participation (SIPP), the National Household Education Survey, and the National Survey of America's Families. Other questionnaire modules were developed specifically for SLAITS during the pilot study phase and during the past three years. The existing modules include General Health, Child Well-Being and Welfare, Children with Special Health Care Needs, Asthma Prevalence and Treatment, Knowledge of Medicaid and the State Children's Health Insurance Program (SCHIP), Survey of Early Childhood Health, and HIV/STD Related Risk Behavior.

Over the past three years, SLAITS has provided policy analysts, program planners, and researchers with high quality data for decision making and program assessment. The module on Medicaid and SCHIP will be featured prominently in a report to Congress on insuring children. The module on children with special health care needs (CSHCN) will be used by federal and state Maternal and Child Health Bureau Directors in evaluating programs and service needs. The American Academy of Pediatrics is using the module on early childhood health to advise pediatricians on patient care standards and informing parents about the health and well-being of young children.

Funding for SLAITS is obtained through a variety of mechanisms including Foundation grants, State collaborations, and federal appropriation and evaluation monies. The level of implementation depends on the amount of funding received and can be expanded as funding permits. Questionnaire modules will be compiled to address the data needs of interest to the federal, state or local funding agency or organization. Possible topics include but are not limited to disability, children's health, violence against women, health behaviors, unintentional injuries, program participation, health care coverage, or any of the topics previously studied. The burden table below is annualized. There is no cost to respondents other than their time.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/ response in hours	Total burden in hours
Noninstitutionalized household population in 50 States and D.C.	204,000	1	0.30	61,200
Pretest modules	1,800	1	0.30	600
Total Burden	205,800			61,800

Dated: May 4, 2001.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation Centers for Disease Control and Prevention.

[FR Doc. 01–11815 Filed 5–9–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93631–01–02]

Developmental Disabilities: Final Notice of Availability of Financial Assistance and Request for Applications To Support Demonstration Projects Under the Projects of National Significance Program

AGENCY: Administration on Developmental Disabilities (ADD), ACF, DHHS.

ACTION: Invitation to apply for financial assistance.

SUMMARY: The Administration on Developmental Disabilities, Administration for Children and Families, announces that applications are being accepted for funding of Fiscal Year 2001 Projects of National Significance.

This program announcement consists of five parts. Part I, the Introduction, discusses the goals and objectives of ACF and ADD. Part II provides the necessary background information on ADD for applicants. Part III describes the review process. Part IV describes the priority under which ADD requests applications for Fiscal Year 2001 funding of projects. Part V describes in detail how to prepare and submit an application.

Grants will be awarded under this program announcement subject to the

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availability of funds for support of these activities.

DATES: The closing date for submittal of applications under this announcement is July 9, 2001. Mailed or hand-carried applications received after 4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the U.S. Department of Health and Human Services, ACF/Administration on Developmental Disabilities, 370 L'Enfant Promenade SW., Mail Stop 326–HHH, Washington, DC 20447, Attention: Lois Hodge.

Acceptable proof of timely mailing is required. A postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private Metered postmarks shall not be acceptable as proof of timely mailing.

Applications hand-carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, ACF/Office of Grants Management, 370 L'Enfant Promenade SW, ACF Mail Center, 2nd Floor (near loading dock), Aerospace Center, 901 D Street, SW, Washington, DC 20024, between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note "Attention: Lois Hodge". Applicants using express/overnight services should allow two working days prior to the deadline date for receipt of applications. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.) Any applications received after 4:30 p.m. on the deadline date will not be considered for competition.

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

Late Applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of Deadlines: ACF may extend the deadline for all applicants because of acts of God such as floods and hurricanes, etc., widespread disruption of the mails or when it is anticipated that many of the applications will come from rural or remote areas. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

ADDRESSES: Application materials are available from Debbie Powell, 370 L'Enfant Promenade, SW., Rm. 300F, Washington, DC 20447, 202/690–5911, http://www.acf.dhhs.gov/programs/add; or add@acf.dhhs.gov.

FOR FURTHER INFORMATION CONTACT: Administration for Children and Families (ACF), Debbie Powell, 370 L'Enfant Promenade, SW., Rm. 300F, Washington, DC 20447, 202/690–5911; or add@acf.dhhs.gov.

Notice of Intent to Submit Application: If you intend to submit an application, please send a post card with the number and title of this announcement, the Area of Emphasis you wish to apply under, your organization's name and address, and your contact person's name, phone and fax numbers, and e-mail address to: Administration on Developmental Disabilities, 370 L'Enfant Promenade SW, Washington, DC 20447, Attn: Projects of National Significance.

This information will be used to determine the number of expert reviewers needed and to update the mailing list to whom program announcements are sent,

SUPPLEMENTARY INFORMATION:

Part I. General Information

A. Goals of the Administration on Developmental Disabilities

The Administration on Developmental Disabilities (ADD) is located within the Administration for Children and Families (ACF), Department of Health and Human Services (DHHS). Although different from the other ACF program administrations in the specific populations it serves, ADD shares a common set of goals that promote the economic and social well being of families, children, individuals and communities. Through national leadership, ACF and ADD envision:

- Families and individuals empowered to increase their own economic independence and productivity;
- Strong, healthy, supportive communities having a positive impact on the quality of life and the development of children;
- Partnerships with individuals, front-line service providers, communities, States and Congress that enable solutions which transcend traditional agency boundaries;
- Services planned and integrated to improve client access;
- A strong commitment to working with Native Americans, persons with developmental disabilities, refugees and migrants to address their needs, strengths and abilities; and
- A community-based approach that recognizes and expands on the resources and benefits of diversity.

Emphasis on these goals and progress toward them will help more individuals, including people with developmental disabilities, to live productive and independent lives integrated into their communities. The Projects of National Significance Program is one means through which ADD promotes the achievement of these goals.

B. Purpose of the Administration on Developmental Disabilities

The Administration on Developmental Disabilities (ADD) is the lead agency within ACF and DHHS responsible for planning and administering programs which promote the self-sufficiency and protect the rights of persons with developmental disabilities.

The Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 6000, *et seq.*) (The Act) supports and provides assistance to States and public and private nonprofit agencies and organizations to assure that individuals with developmental disabilities and their families participate in the design of and have access to culturally competent services, supports, and other assistance and opportunities that promote independence, productivity, integration and inclusion into the community.

In the Act, Congress expressly found that:

- Disability is a natural part of the human experience that does not diminish the right of individuals with developmental disabilities to enjoy the opportunity for independence, productivity, integration and inclusion into the community;
- Individuals whose disabilities occur during their developmental period frequently have severe disabilities that are likely to continue indefinitely;
- Individuals with developmental disabilities often require lifelong specialized services and assistance, provided in a coordinated and culturally competent manner by many agencies, professionals, advocates, community representatives, and others to eliminate barriers and to meet the needs of such individuals and their families;

The Act further established as the policy of the United States:

- Individuals with developmental disabilities, including those with the most severe developmental disabilities, are capable of achieving independence, productivity, integration and inclusion into the community, and often require the provision of services, supports and other assistance to achieve such;
- Individuals with developmental disabilities have competencies, capabilities and personal goals that should be recognized, supported, and encouraged, and any assistance to such individuals should be provided in an individualized manner, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of the individual;
- Individuals with developmental disabilities and their families are the primary decision makers regarding the services and supports such individuals and their families receive; and play decision making roles in policies and programs that affect the lives of such individuals and their families; and
- It is in the nation's interest for people with developmental disabilities to be employed, and to live conventional and independent lives as a part of families and communities.

Toward these ends, ADD seeks: to enhance the capabilities of families in assisting people with developmental disabilities to achieve their maximum potential; to support the increasing ability of people with developmental disabilities to exercise greater choice and self-determination; to engage in leadership activities in their communities; as well as to ensure the protection of their legal and human rights.

The four programs funded under the Act are:

- Federal assistance to State Developmental Disabilities Councils;
- State system for the protection and advocacy of individuals rights;
- Grants to the National Network of University Centers for Excellence in Developmental Disabilities Education, Research, and Service for interdisciplinary training, exemplary services, technical assistance, research and information dissemination; and
- Grants for Projects of National Significance.

C. Statutory Authorities Covered Under This Announcement

The Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. 15000, *et seq.* The Projects of National Significance is Part E of the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. 15081, *et seq.*

Part II. Background Information for Applicants

A. Description of Projects of National Significance

Under Part E of the Act, grants and contracts are awarded for projects of national significance that support the development of national and State policy to enhance the independence, productivity, and integration and inclusion of individuals with developmental disabilities through:

- Data collection and analysis;
- Technical assistance to enhance the quality of State developmental disabilities councils, protection and advocacy systems, and university affiliated programs; and
- Other projects of sufficient size and scope that hold promise to expand or improve opportunities for people with developmental disabilities, including:

—Technical assistance for the development of information and referral systems;
—Educating policy makers;
—Federal interagency initiatives;
—The enhancement of participation of minority and ethnic groups in public and private sector initiatives in developmental disabilities; and
—Transition of youth with developmental disabilities from school to adult life.

The purpose of the Projects of National Significance program is not only to provide technical assistance to the Developmental Disabilities Councils, the Protection and Advocacy Systems, and the University Centers for Excellence, but also to support projects "that hold promise to expand or improve opportunities for people with developmental disabilities." Representing only 4% of ADD's federal dollars, PNS funds have initiated cutting edge projects, such as the "Reinventing Quality: Promising Practices in Person-Centered Community Services and quality Assurance for People with Development Disabilities" that are at the forefront of the developmental disabilities field challenging traditional thinking and practices. The Area of Emphasis which are directly related to ADD's outcomes contained in its "Roadmap to the Future," our plan for implementing GPRA, is intended to increase community support and promote self-determination, and encourage interaction, and collaboration among all sectors of the Developmental Disabilities field to attain and share information.

Part III. The Review Process

A. Eligible Applicants

Before applications under this Announcement are reviewed, each will be screened to determine that the applicant is eligible for funding as specified under the selected Area of Emphasis. Applications from organizations which do not meet the eligibility requirements for the Priority Area will not be considered or reviewed in the competition, and the applicant will be so informed.

Only public or non-profit private entities, not individuals, are eligible to apply under any of the Areas of Emphasis. All applications developed jointly by more than one agency or organization must identify only one organization as the lead organization and official applicant. The other participating agencies and organizations can be included as co-participants, subgrantees or subcontractors.

Nonprofit organizations must submit proof of nonprofit status in their applications at the time of submission. One means of accomplishing this is by providing a copy of the applicant's listing in the Internal Revenue Service's most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

ADD cannot fund a nonprofit applicant without acceptable proof of its nonprofit status.

B. Review Process and Funding Decisions

Timely applications under this Announcement from eligible applicants received by the deadline date will be reviewed and scored competitively. Experts in the field, generally persons from outside of the Federal government, will use the appropriate evaluation criteria listed later in this Part to review and score the applications. The results of this review are a primary factor in making funding decisions.

ADD reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal government or the applicant. It may also solicit comments from ADD Regional Office staff, other Federal agencies,

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interested foundations, national organizations, specialists, experts, States and the general public. These comments, along with those of the expert reviewers, will be considered by ADD in making funding decisions.

In making decisions on awards, ADD will consider whether applications focus on or feature: Services to culturally diverse or ethnic populations among others; a substantially innovative strategy with the potential to improve theory or practice in the field of human services; a model practice or set of procedures that holds the potential for replication by organizations administering or delivering of human services; substantial involvement of volunteers; substantial involvement (either financial or programmatic) of the private sector; a favorable balance between Federal and non-Federal funds available for the proposed project; the potential for high benefit for low Federal investment; a programmatic focus on those most in need; and/or substantial involvement in the proposed project by national or community foundations.

This year, 5 points will be awarded in scoring for any project that includes partnership and collaboration with the 140 Empowerment Zones/Enterprise Communities. A discussion of how the involvement of the EZ/EC is related to the objectives and/or the activities of the project must be clearly outlined for the award of the 5 points. Also, a letter from the appropriate representatives of the EZ/EC must accompany the application indicating its agreement to participate and describing its role in the project.

To the greatest extent possible, efforts will be made to ensure that funding decisions reflect an equitable distribution of assistance among the States and geographical regions of the country, rural and urban areas, and ethnic populations. In making these decisions, ADD may also take into account the need to avoid unnecessary duplication of effort.

C. Evaluation Process

Using the evaluation criteria below, a panel of at least three reviewers (primarily experts from outside the Federal government) will review the applications. To facilitate this review, applicants should ensure that they address each minimum requirement in the Priority Area description under the appropriate section of the Program Narrative Statement.

Reviewers will determine the strengths and weaknesses of each application in terms of the evaluation criteria listed below, provide comments, and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight that each section may be given in the review process.

D. Structure of Areas of Emphasis Descriptions

The Area of Emphasis description is composed of the following sections:

- *Eligible Applicants:* This section specifies the type of organization eligible to apply under the particular area of emphasis. Specific restrictions are also noted, where applicable.
- *Purpose:* This section presents the basic focus and/or broad goal(s) of the area of emphasis.
- *Background Information:* This section briefly discusses the legislative background as well as the current state-of-the-art and/or current state-of-practice that supports the need for the particular area of emphasis activity. Relevant information on projects previously funded by ACF and/or other State models are noted, where applicable.
- *Evaluation Criteria:* This section presents the basic set of issues that must be addressed in the application. Typically, they relate to need for assistance, results expected, project design, and organizational and staff capabilities. Inclusion and discussion of these items is important since the information provided will be used by the reviewers in evaluating the application against the evaluation criteria. Applicants should review the section on the Uniform Project Description and the evaluation section under the priority area.
- *Minimum Requirements for Project Design:* This section presents the basic set of issues that must be addressed in the application. Typically, they relate to project design, evaluation, and community involvement. This section also asks for specific information on the proposed project. Inclusion and discussion of these items is important since they will be used by the reviewers to evaluate the applications against the evaluation criteria. Project products, continuation of the project after Federal support ceases, and dissemination/utilization activities, if appropriate, are also addressed.
- *Project Duration:* This section specifies the maximum allowable length of the project period; it refers to the amount of time for which Federal funding is available.
- *Federal Share of Project Costs:* This section specifies the maximum amount of Federal support for the project.
- *Matching Requirement:* This section specifies the minimum non-Federal contribution, either cash or in-kind match, required.
- *Anticipated Number of Projects To Be Funded:* This section specifies the number of projects ADD anticipates funding under the Priority Area.
- *CFDA:* This section identifies the Catalog of Federal Domestic Assistance (CFDA) number and title of the program under which applications in this Priority Area will be funded. This information is needed to complete item 10 on the SF 424.

Please note that applications under this Announcement that do not comply with the specific Priority Area requirements in the section on "Eligible Applicants" will not be reviewed.

Applicants under this Announcement must clearly identify the specific area of emphasis under which they wish to have their applications considered, and tailor their applications accordingly. Experience has shown that an application which is broader and more general in concept than outlined in the area of emphasis description is less likely to score as well as an application more clearly focused on, and directly responsive to, the concerns of that specific area of emphasis.

E. Available Funds

ADD intends to award new grants resulting from this announcement during the fourth quarter of fiscal year 2001, subject to the availability of funding. The Priority Area description includes information on the maximum Federal share of the project costs and the anticipated number of projects to be funded.

The term "budget period" refers to the interval of time (usually 12 months) into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes. The term "project period" refers to the total time a project is approved for support, including any extensions.

Where appropriate, applicants may propose shorter project periods than the maximums specified in the various areas of emphasis. Non-Federal share contributions may exceed the minimums specified in the various areas of emphasis.

For multi-year projects, continued Federal funding beyond the first budget period, but within the approved project period, is subject to the availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

F. Grantee Share of Project Costs

Grantees must match $1 for every $3 requested in Federal funding to reach 25% of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $100,000 in Federal funds (based on an award of $100,000 per budget period) must include a match of at least $33,333 (total project cost is $133,333, of which $33,333 is 25%).

An exception to the grantee cost-sharing requirement relates to applications originating from American Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands. Applications from these areas are covered under section 501(d) of Pub. L. 95–134, which requires that the Department waive "any requirement for local matching funds for grants under $200,000."

The applicant contribution must generally be secured from non-Federal sources. Except as provided by Federal statute, a cost-sharing or matching requirement may not be met by costs borne by another Federal grant. However, funds from some Federal programs benefiting Tribes and Native American organizations have been used to provide valid sources of matching funds. If this is the case for a Tribe or Native American organization submitting an application to ADD, that organization should identify the programs which will be providing the funds for the match in its application. If the application successfully competes for PNS grant funds, ADD will determine whether there is statutory authority for this use of the funds. The Administration for Native Americans and the DHHS Office of General Counsel will assist ADD in making this determination.

G. General Instructions for the Uniform Project Description

The following ACF Uniform Project Description (UPD) has been approved under OMB Control Number 0970–0139. Applicants are required to submit a full project description and must prepare the project description statement in accordance with the following instructions.

1. *Project summary/abstract:* Provide a summary of the project description (a page or less) with reference to the funding request.

2. *Objectives and Need for Assistance:* Clearly identify the physical, economic, social, financial, institutional and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonies from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated) some of which may be outside the scope of the program announcement.

3. *Results or Benefits Expected:* Identify the results and benefits to be derived. For example, when applying for a grant to establish a neighborhood child care center, describe who will occupy the facility, who will use the facility, how the facility will be used, and how the facility will benefit the community which it will serve.

4. *Approach:* Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cites factors which might accelerate or decelerate the work, and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement. Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of microloans made. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

Identify the kinds of data to be collected, maintained, and/or disseminated. Note that clearance from the U.S.Office of Management and Budget might be needed prior to a "collection of information" that is "conducted or sponsored" by ACF. List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

5. *Organization Profile:* Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code, *or* by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Part IV. Fiscal Year 2001 Areas of Emphasis for Projects of National Significance—Description and Requirements

The following section presents the Priority Areas for Fiscal Year 2001 Projects of National Significance (PNS) and solicits the appropriate applications.

Fiscal Year 2001 Priority Area 1: Rapid Deployment of Good Ideas

- *Eligible Applicants:* State agencies, public or private nonprofit organizations, institutions or agencies, including a consortia of some or all of the above.
- *Purpose:* ADD is interested in awarding grant funds for new projects models in the field of developmental disabilities in the following Areas of Emphasis:

1. Quality assurance activities,
2. Education and early intervention activities,
3. Child care-related activities,
4. Health-related activities,
5. Employment-related activities,
6. Housing-related activities,
7. Transportation-related activities and
8. Recreation-related activities.

These eight Areas of Emphasis were identified by ADD together with the programs it funds, as the framework for implementing diverse strategies and activities, and achieving outcomes necessary to move closer to the principles of independence, productivity, integration, and inclusion for people with developmental

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disabilities. ADD is interested in projects which will transfer information and knowledge through the utilization of creative and innovative methods of implementation, replication and dissemination. These projects must demonstrate proven success by increasing the independence, productivity, integration and inclusion of people with developmental disabilities and their families in communities in which they live.

• *Background Information:*

The ADD's "Roadmap to the Future," which was developed together with the programs it funds, establishes a course of action for ADD and for its programs. The Roadmap defines the mission and vision of ADD, of the State Developmental Disabilities Councils (DDCs), of the Protection and Advocacy Systems (P&As), of the National Network of University Centers for Excellence in Developmental Disabilities in Education, Research and Service (UCEs), and of the Projects of National Significance (PNS). It identifies goals created to increase the independence, productivity, and integration and inclusion of people with developmental disabilities and their families. Program activities will be directed toward achieving the Roadmap goals through advocacy, capacity building, and systemic change activities in the eight Areas of Emphasis.

The Projects of National Significance (PNS) Program is one of the activities of ADD. Every year since 1975 there have been model demonstration projects funded to increase the independence, productivity, and integration and inclusion of people with developmental disabilities. These projects have generated inventive approaches, strategies, and methodologies designed to address pervasive problems or needs of individuals with developmental disabilities and their families. Over the years, PNS projects have contributed to the knowledge base of the developmental disabilities field and the larger disability field as well. In the past decade, the leadership capacity of individuals with developmental disabilities, especially self-advocates, has been nourished and strengthened by the funding of PNS projects.

New design models of transferring knowledge and fostering utilization must be explored if we are to meet the needs of Americans with disabilities and their families. ADD is extremely interested in supporting this transfer of knowledge and information from new models under this Priority Area.

These models must surpass our standard methods of communicating best practices and practical solutions to those we serve and those who serve them. Projects must be outcome driven—demonstrating effectiveness and behavioral changes of the targeted population. They must:

• Be culturally competent.

• Demonstrate strong collaborations through partnerships and coalitions.

• Be community-based and include consumers and their families as key participants where appropriate.

The content area must focus on a single Area of Emphasis. ADD is interested in applications to promote projects with proven, positive results-based practices, methodologies or processes in the field of developmental disabilities or a directly related field such as universal design. The model to be promoted can be as expansive as systems change or a new paradigm, or as targeted as a new training curriculum. These new models should consider creative partnering in implementing the project.

In the last century we were the beneficiaries of extraordinary human developments that would have been considered inconceivable by many; this progress has raised our expectations for this new century. This is no less true for people with developmental disabilities and their families who, in this age of the Internet, the PC, and satellite downlinks, expect there will be new models available to everyone who needs them. ADD views this Priority Area as an unprecedented opportunity to take what we have learned through federally funded projects and find enterprising, inventive, and imaginative ways promoting the use of the knowledge so that all will benefit—people with developmental disabilities and other disabilities, professionals who serve them, their families, and the communities in which they live, in all segments of our American society.

• *Minimum Requirements for Project Design:* ADD is particularly interested in supporting projects which include the following:

• Partnerships between consumers/advocacy organizations, research foundations, public/private entities and others to coordinate, implement and disseminate information and transfer of knowledge to a broad audience to include consumers and their families and entities that serve them.

• Project design must address barriers and issues of access to the mechanism(s) used to transfer knowledge and information, for persons using various assistive devices and equipment.

• All projects shall provide for the widespread distribution of their products (reports, summary documents, audio-visual materials, etc.) in accessible format and in languages other than English.

• Describe and develop methods/plans to be used to continue the transfer of knowledge and information once the project period ends.

• Develop and implement an evaluation process to ensure that systematic and objective information is available about the utilization and effectiveness of the products from this project.

• Specific outcomes tied to the ADD "Roadmap to the Future" to increase the independence, productivity, integration and inclusion of individuals with developmental disabilities must be built into the project for dissemination to a board audience.

• Describe measurable outcomes.

As a general guide, ADD will expect to fund only those proposals for projects that incorporate the following elements:

• Consumer/self-advocate orientation and participation.

• Key project personnel who have direct life experience with living with a disability.

• Strong advisory components that consist of a majority of individuals with disabilities and a structure where individuals with disabilities make real decisions that determine the outcome of the grant.

• Research reflecting the principles of participatory action.

• Cultural competency.

• A description of how individuals with disabilities and their families will be involved in all aspects of the design, implementation, and evaluation of the project.

• Attention to unserved and inadequately served individuals, from multicultural backgrounds, rural and inner-city areas, migrant, homeless, and refugee families, with disabilities.

• Compliance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 as amended by the Rehabilitation Act amendments of 1992 (Pub.L. 102–569).

• Collaboration through partnerships and coalitions.

• Development of the capacity to communicate and disseminate information and technical assistance through e-mail and other effective, affordable, and accessible forms of electronic communication.

• Development and establishment of practices and programs beyond project period.

• Dissemination of models, products, best practices, and strategies for distribution between the networks and beyond. A plan describing initial activities is needed between funded projects as well as at the end of the project period. These activities should maintain and share ongoing information, existing resources of consultants/experts, and curriculum/materials with funded projects and within the network.

Evaluation Criteria: The four criteria that follow will be used to review and evaluate each application under the specific area of emphasis. Each criterion should be addressed in the project description section of the application. The point values indicate the maximum numerical weight each criterion will be accorded in the review process. The specific information to be included under each of these headings is described in Section G of Part III, General Instructions for the Uniform Project Description. Additional information that must be addressed is described below.

Criterion 1: Objectives and Need for Assistance (20 points)

The application must identify the precise location of the project and area to be served by the proposed project. Maps and other graphic aids must be attached.

Criterion 2: Results or Benefits Expected (20 points)

The extent to which they are consistent with the objectives of the application, and the extent to which the application indicates the anticipated contributions to policy, practice, theory and/or research. The extent to which the proposed project costs is reasonable in view of the expected results.

Criterion 3: Approach (35 points)

Discuss the criteria to be used to evaluate the results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved.

Criterion 4: Organization Profile (25 points)

The application identifies the background of the project director/principal investigator and key project staff (including name, address, training, educational background and other qualifying experience) and the experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer this project. The application describes the relationship between this project and the other work planned, anticipated or under way by the applicant which is being supported by Federal assistance.

This section should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is organized, the types and quantity of services it provides, and/or the research and management capabilities it possesses. It may include description of any current or previous relevant experience, or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. An organization chart showing the relationship of the project to the current organization must be included.

• *Project Duration:* This announcement is soliciting applications for project periods up to three years under this Priority Area. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under this Priority Area beyond the one-year budget period, but within the three-year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee, and determination that continued funding would be in the best interest of the Government.

• *Federal Share of Project Costs:* The maximum Federal share is not to exceed $100,000 for the first 12-month budget period or a maximum of $300,000 for a three-year project period.

• *Matching Requirement:* Grantees must match $1 for every $3 requested in Federal funding to reach 25% of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $100,000 in Federal funds (based on an award of $100,000 per budget period) must include a match of at least $33,333 (the total project cost is $133,333, of which $33,333 is 25%).

• *Anticipated Number of Projects to be Funded:* It is anticipated that up to thirteen (13) projects will be funded.

• *CFDA:* ADD's CFDA (Code of Federal Domestic Assistance) number is 93.631— Developmental Disabilities—Projects of National Significance. This information is needed to complete item 10 on the SF424.

Part V. Instructions for the Development and Submission of Applications

This Part contains information and instructions for submitting applications in response to this announcement. An application package containing forms can be obtained by any of the following methods: Debbie Powell, ADD, 370 L'Enfant Promenade SW., Washington, DC 20447, 202/690–5911; http://www.acf.dhhs.gov/programs/add; or add@acf.dhhs.gov.

Potential applicants should read this section carefully in conjunction with the information contained within the specific area of emphasis under which the application is to be submitted. The Area's of Emphasis descriptions are in Part IV.

A. Required Notification of the State Single Point of Contact (SPOC)

All applications under the ADD Priority Area are required to follow the Executive Order (E.O.) 12372 process, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Program and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

Note: State/Territory participation in the intergovernmental review process does not signify applicant eligibility for financial assistance under a program. A potential applicant must meet the eligibility requirements of the program for which it is applying prior to submitting an application to its SPOC, if applicable, or to ACF.

As of November 20, 1998, all States and territories, except Alabama, Alaska, American Somoa, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, and Washington have elected to participate in the Executive Order process and have established a State Single Point of Contact (SPOC). Applicants from these jurisdictions or for projects administered by Federally-recognized Indian Tribes need take no action regarding E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions.

Applicants must submit all required materials to the SPOC as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is

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imperative that the applicant submit all required materials and indicate the date of this submittal (or date SPOC was contacted, if no submittal is required) on the SF 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application due date to comment on proposed new or competing continuation awards. However, there is insufficient time to allow for a complete SPOC comment period. Therefore, we have reduced the comment period to 30 days from the closing date for applications. These comments are reviewed as part of the award process. Failure to notify the SPOC can result in delays in awarding grants.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration on Children Youth and Families, Office of Grants Management, 370 L'Enfant Promenade, SW., Mail Stop 326F–HHH, Washington, DC 20447, Attn: Lois Hodge ADD—Projects of National Significance.

Contact information for each State's SPOC is found at the ADD website (*http://www.acf.dhhs.gov/programs/add*) or by contacting Debbie Powell, ADD, 370 L'Enfant Promenade SW, Mailstop 300F, Washington, DC, 20447, 202/690–5911.

B. Notification of State Developmental Disabilities Councils

A copy of the application must also be submitted for review and comment to the State Developmental Disabilities Council in each State in which the applicant's project will be conducted. A list of the State Developmental Disabilities Councils can be found at ADD's website: *http://www.acf.dhhs.gov/programs/add* under Programs, or by contacting Debbie Powell, ADD, 370 L'Enfant Promenade SW., Mailstop 300F, Washington, DC 20447, 202/690–5911.

C. Instructions for Preparing the Application and Completing Application Forms

The SF 424, SF 424A, SF 424A—Page 2 and Certifications/ Assurances are contained in the application package. Please prepare your application in accordance with the following instructions:

1. SF 424 Page 1, Application Cover Sheet

Please read the following instructions before completing the application cover sheet. An explanation of each item is included. Complete only the items specified.

Top of Page: Enter the selected Area of Emphasis under which the application is being submitted.

Item 1. "Type of Submission"—Preprinted on the form.

Item 2. "Date Submitted" and "Applicant Identifier"—Date application is submitted to ACYF and applicant's own internal control number, if applicable.

Item 3. "Date Received By State"—State use only (if applicable).

Item 4. "Date Received by Federal Agency"—Leave blank.

Item 5. "Applicant Information".

"Legal Name"—Enter the legal name of applicant organization. For applications developed jointly, enter the name of the lead organization only. There must be a single applicant for each application.

"Organizational Unit"—Enter the name of the primary unit within the applicant organization which will actually carry out the project activity. Do not use the name of an individual as the applicant. If this is the same as the applicant organization, leave the organizational unit blank.

"Address"—Enter the complete address that the organization actually uses to receive mail, since this is the address to which all correspondence will be sent. Do not include both street address and P.O. box number unless both must be used in mailing.

"Name and telephone number of the person to be contacted on matters involving this application (give area code)"—Enter the full name (including academic degree, if applicable) and telephone number of a person who can respond to questions about the application. This person should be accessible at the address given here and will receive all correspondence regarding the application.

Item 6. "Employer Identification Number (EIN)"—Enter the employer identification number of the applicant organization, as assigned by the Internal Revenue Service, including, if known, the Central Registry System suffix.

Item 7. "Type of Applicant"—Self-explanatory.

Item 8. "Type of Application"—Preprinted on the form.

Item 9. "Name of Federal Agency"—Preprinted on the form.

Item 10. "Catalog of Federal Domestic Assistance Number and Title"—Enter the Catalog of Federal Domestic Assistance (CFDA) number assigned to the program under which assistance is requested and its title. For the ADD Area of Emphasis, the following should be entered, "93.631—Developmental Disabilities: Projects of National Significance."

Item 11. "Descriptive Title of Applicant's Project"—Enter the project title. The title is generally short and is descriptive of the project, not the Area of Emphasis title.

Item 12. "Areas Affected by Project"—Enter the governmental unit where significant and meaningful impact could be observed. List only the largest unit or units affected, such as State, county, or city. If an entire unit is affected, list it rather than subunits.

Item 13. "Proposed Project"—Enter the desired start date for the project and projected completion date.

Item 14. "Congressional District of Applicant/Project"—Enter the number of the Congressional district where the applicant's principal office is located and the number of the Congressional district(s) where the project will be located. If Statewide, a multi-State effort, or nationwide, enter "00."

Items 15. Estimated Funding Levels—In completing 15a through 15f, the dollar amounts entered should reflect, for a 17-month project period, the total amount requested. If the proposed project period exceeds 17 months, enter only those dollar amounts needed for the first 12 months of the proposed project.

Item 15a. Enter the amount of Federal funds requested in accordance with the preceding paragraph. This amount should be no greater than the maximum amount specified in the Area of Emphasis description.

Items 15b-e. Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. Items b-e are considered cost-sharing or "matching funds." The value of third party in-kind contributions should be included on appropriate lines as applicable. For more information regarding funding as well as exceptions to these rules, see Part III, Sections E and F, and the specific area of emphasis description.

Item 15f. Enter the estimated amount of program income, if any, expected to be generated from the proposed project. Do not add or subtract this amount from the total project amount entered under item 15g. Describe the nature, source and anticipated use of this program income in the Project Narrative Statement.

Item 15g. Enter the sum of items 15a–15e.

Item 16a. "Is Application Subject to Review by State Executive Order 12372 Process? Yes."—Enter the date the applicant contacted the SPOC regarding this application. Select the appropriate SPOC from the listing provided at the end of Part IV. The review of the application is at the discretion of the SPOC. The SPOC will verify the date noted on the application.

Item 16b. "Is Application Subject to Review by State Executive Order 12372 Process? No."—Check the appropriate box if the application is not covered by E.O. 12372 or if the program has not been selected by the State for review.

Item 17. "Is the Applicant Delinquent on any Federal Debt?"—Check the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include audit disallowances, loans and taxes.

Item 18. "To the best of my knowledge and belief, all data in this application/pre-application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded."—To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for signature of this application by this individual as the official representative must be on file in the applicant's office, and may be requested from the applicant.

Item 18a–c. "Typed Name of Authorized Representative, Title, Telephone Number"—Enter the name, title and telephone number of the authorized representative of the applicant organization.

Item 18d. "Signature of Authorized Representative"—Signature of the authorized representative named in Item 18a. At least one copy of the application must have an original signature. Use colored ink (not black) so that the original signature is easily identified.

Item 18e. "Date Signed"—Enter the date the application was signed by the authorized representative.

2. SF 424A—Budget Information—Non-Construction Programs

This is a form used by many Federal agencies. For this application, Sections A, B, C, E and F are to be completed. Section D does not need to be completed.

Sections A and B should include the Federal as well as the non-Federal funding for the proposed project covering; (1) the total project period of 17 months or less or (2) the first year budget period, if the proposed project period exceeds 15 months.

Section A—Budget Summary. This section includes a summary of the budget. On line 5, enter total Federal costs in column (e) and total non-Federal costs, including third party in-kind contributions, but not program income, in column (f). Enter the total of (e) and (f) in column (g).

Section B—Budget Categories. This budget, which includes the Federal as well as non-Federal funding for the proposed project, covers (1) the total project period of 17 months or less or (2) the first-year budget period if the proposed project period exceeds 17 months. It should relate to item 15g, total funding, on the SF 424. Under column (5), enter the total requirements for funds (Federal and non-Federal) by object class category.

A separate budget justification should be included to explain fully and justify major items, as indicated below. The types of information to be included in the justification are indicated under each category. For multiple year projects, it is desirable to provide this information for each year of the project. The budget justification should immediately follow the second page of the SF 424A.

Personnel—Line 6a. Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included on line 6h, "Other."

Justification: Identify the principal investigator or project director, if known. Specify by title or name the percentage of time allocated to the project, the individual annual salaries, and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Fringe Benefits—Line 6b. Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate.

Justification: Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

Travel—6c. Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation, which should be included on Line 6h, "Other."

Justification: Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Equipment—Line 6d. Enter the total costs of all equipment to be acquired by the project. For State and local governments, including Federally recognized Indian Tribes, "equipment" is tangible, non-expendable personal property having a useful life of more than one year and acquisition cost of $5,000 or more per unit.

Justification: Equipment to be purchased with Federal funds must be justified. The equipment must be required to conduct the project, and the applicant organization or its subgrantees must not have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Supplies—Line 6e. Enter the total costs of all tangible expendable personal property (supplies) other than those included on Line 6d.

Justification: Specify general categories of supplies and their costs.

Contractual—Line 6f. Enter the total costs of all contracts, including; (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations, including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line. If the name of the contractor, scope of work, and estimated total costs are not available or have not been negotiated, include on Line 6h, "Other."

Justification: Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, and the estimated dollar amounts of the awards as part of the budget justification. Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must complete this section (Section B, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide backup documentation identifying the name of contractor, purpose of contract, and major cost elements.

Construction—Line 6g. Not applicable. New construction is not allowable.

Other—Line 6h. Enter the total of all other costs. Where applicable, such costs may include, but are not limited to: insurance; medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use;

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training costs, including tuition and stipends; training service costs, including wage payments to individuals and supportive service payments; and staff development costs. Note that costs identified as "miscellaneous" and "honoraria" are not allowable.

Justification: Specify the costs included.

Total Direct Charges—Line 6i. Enter the total of Lines 6a through 6h.

Indirect Charges—6j. Enter the total amount of indirect charges (costs). If no indirect costs are requested, enter "none." Generally, this line should be used when the applicant (except local governments) has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency.

Local and State governments should enter the amount of indirect costs determined in accordance with HHS requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be charged again as direct costs to the grant.

In the case of training grants to other than State or local governments (as defined in title 45, Code of Federal Regulations, part 74), the Federal reimbursement of indirect costs will be limited to the lesser of the negotiated (or actual) indirect cost rate or 8 percent of the amount allowed for direct costs, exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

For training grant applications, the entry under line 6j should be the total indirect costs being charged to the project. The Federal share of indirect costs is calculated as shown above. The applicant's share is calculated as follows:

(a) Calculate total project indirect costs (a*) by applying the applicant's approved indirect cost rate to the total project (Federal and non-Federal) direct costs.

(b) Calculate the Federal share of indirect costs (b*) at 8 percent of the amount allowed for total project (Federal and non-Federal) direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

(c) Subtract (b*) from (a*). The remainder is what the applicant can claim as part of its matching cost contribution.

Justification: Enclose a copy of the indirect cost rate agreement. Applicants subject to the limitation on the Federal reimbursement of indirect costs for training grants should specify this.

Total—Line 6k. Enter the total amounts of lines 6i and 6j.

Program Income—Line 7. Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount.

Justification: Describe the nature, source, and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources. This section summarizes the amounts of non-Federal resources that will be applied to the grant. Enter this information on line 12 entitled "Totals." In-kind contributions are defined in title 45 of the Code of Federal Regulations, §§ 74.51 and 92.24, as "property or services which benefit a grant-supported project or program and which are contributed by non-Federal third parties without charge to the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant."

Justification: Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs. Not applicable.

Section E—Budget Estimate of Federal Funds Needed For Balance of the Project. This section should only be completed if the total project period exceeds 17 months.

Totals—Line 20. For projects that will have more than one budget period, enter the estimated required Federal funds for the second budget period (months 13 through 24) under column "(b) First." If a third budget period will be necessary, enter the Federal funds needed for months 25 through 36 under "(c) Second." Columns (d) and (e) are not applicable in most instances, since ACF funding is almost always limited to a three-year maximum project period. They should remain blank.

Section F—Other Budget Information.

Direct Charges—Line 21. Not applicable.

Indirect Charges—Line 22. Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Remarks—Line 23. If the total project period exceeds 17 months, you must enter your proposed non-Federal share of the project budget for each of the remaining years of the project.

3. Project Description

The Project Description is a very important part of an application. It should be clear, concise, and address the specific requirements mentioned under the Area of Emphasis description in Part IV. The narrative should also provide information concerning how the application meets the evaluation criteria, using the following headings:

(a) Objectives and Need for Assistance;

(b) Results and Benefits Expected;

(c) Approach; and

(d) Organization Profile.

The specific information to be included under each of these headings is described in Section G of Part III, General Instructions for the Uniform Project Description.

The narrative should be typed double-spaced on a single-side of an 8½" x 11" plain white paper, with 1" margins on all sides, using black print no smaller than 12 pitch or 12 point size. All pages of the narrative (including charts, references/footnotes, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with "Objectives and Need for Assistance" as page number one. Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement.

The length of the application, including the application forms and all attachments, should not exceed 60 pages. This will be strictly enforced. A page is a single side of an 8½" x 11" sheet of paper. Applicants are requested not to send pamphlets, brochures or other printed material along with their application as these pose xeroxing difficulties. These materials, if submitted, will not be included in the review process if they exceed the 60-page limit. Each page of the application will be counted to determine the total length.

4. Part V—Assurances/Certifications

Applicants are required to file an SF 424B, Assurances—Non-Construction Programs and the Certification Regarding Lobbying. Both must be signed and returned with the application. Applicants must also provide certifications regarding: (1) Drug-Free Workplace Requirements; and (2) Debarment and Other Responsibilities. These two certifications are self-explanatory. Copies of these assurances/certifications are reprinted at the end of this announcement and should be reproduced, as necessary. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances/certifications. A signature on the SF 424 indicates compliance with the Drug Free Workplace Requirements, and Debarment and Other Responsibilities certifications, and need not be mailed back with the application.

In addition, applicants are required under section 162(c)(3) of the Act to provide assurances that the human rights of all individuals with developmental disabilities (especially those individuals without familial protection) who will receive services under projects assisted under Part E will be protected consistent with section 110 (relating to the rights of individuals with developmental disabilities). Each application must include a statement providing this assurance.

For research projects in which human subjects may be at risk, a Protection of Human Subjects Assurance may be required. If there is a question regarding the applicability of this assurance, contact the Office for Research Risks of the National Institutes of Health at (301) 496–7041.

E. Checklist for a Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

—One original, signed and dated application, plus two copies. Applications for different Area of Emphasis are packaged separately;

—Application is from an organization which is eligible under the eligibility requirements defined in the Priority Area description (screening requirement);

—Application length does not exceed 60 pages, unless otherwise specified in the Priority Area description.

A complete application consists of the following items in this order:

—Application for Federal Assistance (SF 424, REV 4–88);

—A completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424 if applicable.

—Budget Information—Non-Construction Programs (SF 424A, REV 4–88);

—Budget justification for Section B—Budget Categories;

—Table of Contents;

—Letter from the Internal Revenue Service, etc. to prove non-profit status, if necessary;

—Copy of the applicant's approved indirect cost rate agreement, if appropriate;

—Project Description (See Part III, Section C);

—Any appendices/attachments;

—Assurances—Non-Construction Programs (Standard Form 424B, REV 4–88);

—Certification Regarding Lobbying; and

—Certification of Protection of Human Subjects, if necessary.

—Certification of the Pro-Children Act of 1994; signature on the application represents certification.

F. The Application Package

Each application package must include an original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left-hand corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with page one. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials as attachments, such as agency promotion brochures, slides, tapes, film clips, minutes of meetings, survey instruments or articles of incorporation.

G. Paper Reduction Act of 1995 (Pub. L. 104–13)

The Uniform Project Description information collection within this announcement is approved under the Uniform Project Description (0970–0139), Expiration Date 12/31/2003.

Public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(Federal Catalog of Domestic Assistance Number 93.631 Developmental Disabilities—Projects of National Significance)

Dated: May 4, 2001.

Sue Swenson,

Commissioner, Administration on Developmental Disabilities.

[FR Doc. 01–11762 Filed 5–9–01; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–5522]

Food Irradiation Coalition c/o National Food Processors Association; Filing of Food Additive Petition; Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending the filing notice for a food additive petition filed by the National Food Processors Association (NFPA) on behalf of The Food Irradiation Coalition, to provide for the safe use of ionizing radiation for control of food-borne pathogens, and extension of shelf-life, in a variety of human foods up to a maximum irradiation dosage of 4.5 kilograys (kGy) for non-frozen and non-dry

FOR FURTHER INFORMATION CONTACT: Lane A. Highbarger, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3032.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 5, 2000 (65 FR 493), FDA announced that a food additive petition (FAP 9M4697) had been filed by the NFPA on behalf of The Food Irradiation Coalition, 1350 I St. NW., suite 300, Washington, DC 20005, proposing that the food additive regulations in part 179 Irradiation in the Production, Processing and Handling of Food (21 CFR part 179) be amended to provide for the safe use of ionizing radiation for control of food-borne pathogens, and extension of shelf-life, in a variety of human foods up to a maximum irradiation dosage of 4.5 kGy for non-frozen and non-dry products, and 10.0 kGy for frozen or dry products, including: (1) Pre-processed meat and poultry; (2) both raw and pre-processed vegetables, fruits, and other agricultural products of plant origin; (3) certain multi-ingredient food products. The notice stated that the petition does not cover products composed in whole or in part of raw meat, poultry, or fish nor does it cover "ready-to-eat" fish products or ingredients made from fish.

Subsequent to the publication of the filing notice, FDA learned from discussions with NFPA that the petitioner intended to include in the scope of the petition certain multi-ingredient products that contain uncooked meat or poultry. In particular, the petitioner noted a clarifying letter, dated October 18, 1999, that it had submitted prior to FDA's filing the petition, that mentioned certain foods, such as country hams and dry and semi-dry sausages, as examples of foods intended to be within the scope of the petition. In preparing the filing notice, FDA did not recognize that these products are uncooked and, thus, mistakenly excluded such products by virtue of the exclusion for food containing raw meat or poultry. The petitioner recently informed FDA that the January, 2000, filing notice would

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appear to restrict the scope of the petition and that it was (and is) the petitioner's intent that multi-ingredient meat products (whether containing cooked or uncooked meat or poultry) be included in the scope of the pending petition.

Therefore, FDA is amending the filing notice of January 5, 2000, to indicate that the petitioner has requested that the food additive regulations be amended to permit the irradiation of multi-ingredient foods containing uncooked meat or poultry.

The agency has determined under 21 CFR 25.32(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: April 20, 2001.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 01–11733 Filed 5–9–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–379]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* The Financial Statement of Debtor and Supporting Regulations in 42 CFR, Section 405.376;

Form No.: HCFA–379 (OMB# 0938–0270);

Use: This form is used to collect financial information which is needed to evaluate requests from physicians/suppliers to pay indebtedness under an extended repayment schedule, or to compromise a debt less than the full amount.;

Frequency: Other: As needed;

Affected Public: Business or other for-profit, and Individuals or Households;

Number of Respondents: 500;

Total Annual Responses: 500;

Total Annual Hours: 1,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm*, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, HCFA–379, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 2, 2001.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–11735 Filed 5–9–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–142]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Information Collection Requirements Contained in BPD–393, Examination and Treatment for Emergency Medical Conditions and Women in Labor and HCFA–1005–IFC, PPS for Hospital Outpatient Services and Supporting Regulations Contained in 42 CFR 488.18, 489.20 and 489.24; *Document No.:* HCFA–R–142 (OMB# 0938–0667); *Use:* The Information Collection Requirements contained in BPD–393, Examination and Treatment for Emergency Medical Conditions and Women in Labor and HCFA–1005–IFC, contains requirements for hospitals to prevent them from inappropriately transferring individuals with emergency medical conditions, as mandated by Congress. HCFA will use this information to help assure compliance with this mandate and protect the public. This information is not contained elsewhere in regulations. *Frequency:* On occasion; *Affected Public:* Individuals or Households, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government; *Number of Respondents:* 5,600; *Total Annual Responses:* 5,600; *Total Annual Hours Requested:* 1.

It should be noted, that based on industry input and HCFA analysis, the applicability and burden associated with the information collection requirements (ICR) captured in this submission have been adjusted to properly reflect the degree of burden associated with this collection. In particular, the ICRs captured in this submission have been determined to be either exempt or the burden has been deemed usual and customary in accordance with the 1995 PRA. In order to comply and properly reflect the Act, HCFA assigned a token one-hour of burden for this submission.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm*, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, HCFA–R–142, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 1, 2001.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–11737 Filed 5–9–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0299]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* A Project to Develop an Outcome-Based Continuous Quality Improvement System for PACE; *Form No.:* HCFA–R–0299 (OMB# 0938–0791); *Use:* The purpose of this project is to develop an outcome-based continuous quality improvement (OBCQI) system and core comprehensive assessment data set for the PACE program by (a) developing and testing a set of data items for core outcome and comprehensive assessment (COCOA), (b) testing risk adjustment methods so each site's outcomes can be appropriately evaluated, (c) designing an OBCQI approach to improve quality in a systematic, evolutionary manner, and (d) testing the usefulness of the data items for assessment and care planning. A three-phase, 20-month field test will result in the refinement of the draft COCOA data items and protocols as needed. Findings from the project are intended to guide the possible implementation of a national approach for OBCQI and core comprehensive assessment for PACE; *Frequency:* On occasion; *Affected Public:* Not-for-profit institutions, Individuals or households; *Number of Respondents:* 8,298; *Total Annual Responses:* 93,970; *Total Annual Hours:* 21,692.04.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Date: April 23, 2001.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–11736 Filed 5–9–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–10029]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New collection; *Title of Information Collection:* Medicare Program Integrity Customer Service Project; *Form No.:* HCFA–10029 (OMB# 0938–NEW); *Use:* Medicare's Integrity Program seeks to improve customer service provided to beneficiaries and providers. The study's purpose is to identify baseline satisfaction with Program Integrity efforts, to prioritize improvement areas, and to identify potential service delivery changes that can be implemented by HCFA or its contractors. Respondents include beneficiaries whose billing questions were transferred to Fraud, and providers who have been through enrollment, medical review, or cost report audit; *Frequency:* Annually; *Affected Public:* Individuals or households, Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 5,250; *Total Annual Responses:* 5,250; *Total Annual Hours:* 782. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to

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Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: April 23, 2001.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–11738 Filed 5–9–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–10037]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collections referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. This is necessary to ensure compliance with the Supreme Court's decision in *Olmstead* v. *L.C.*, (119 S.Ct. 2176 (1999) required States to provide community-based services for persons with disabilities who would otherwise receive services in an institutional setting under certain circumstances. We cannot reasonably comply with the normal clearance procedures because of the potential for public harm: the funds set aside for the grants would revert to the general fund and States, together with their disability and aging communities that have already undertaken extensive planning efforts for these grant opportunities, would be significantly harmed.

HCFA is requesting OMB review and approval of this collection by May 22, 2001, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by May 21, 2001. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Collection Request: New collection; *Title of Information Collection:* Real Choice Systems Change Grants; Nursing Facility Transition/Access Housing Grants; Community Personal Assistance Service and Supports Grants, National Technical Assistance and Learning Collaborative Grants to Support Systems Change for Community Living; *Form No.:* HCFA–10037 (OMB# 0938–XXXX); *Use:* Information sought by CMSO/DEHPG is needed to award competitive grants to States and other eligible entities for the purposes of designing and implementing effective and enduring improvements in consumer-directed long term service and support systems; *Frequency:* Annually; *Affected Public:* State, local or tribal gov.; *Number of Respondents:* 76; *Total Annual Responses:* 76; *Total Annual Hours:* 7600.

We have submitted a copy of this notice to OMB for its review of these information collections. A notice will be published in the **Federal Register** when approval is obtained.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by May 21, 2001:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850. Fax Number: (410) 786–0262, Attn: Julie Brown HCFA–10037

and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Brenda Aguilar, HCFA Desk Officer.

Dated: May 7, 2001.

Julie Brown,

Acting HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–11906 Filed 5–8–01; 1:31 pm]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Program Support Center

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Program Support Center (PSC), publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following information collection was recently submitted to OMB:

1. Application Packets for Real Property for Public Health Purposes (Form Number: HHS 696)—Revision.

The Department of Health and Human Services administers a program to convey or lease surplus real property to States and their political subdivisions and instrumentalities, to tax-supported institutions, and to nonprofit institutions to be used for health purposes. State and local governments and nonprofit organizations use these applications to apply for excess/surplus, underutilized/unutilized and off-site Government real property. Information in the applications is used to determine eligibility to purchase, lease, or use property under the provisions of the surplus property program. The application instructions for the homeless or public health purposes are being revised to clarify some of the questions which will assist reviewers in making more informed determinations. No changes are being proposed for the environmental information form used to evaluate potential environmental effects of a proposal as required by the National Environmental Policy Act of 1969. *Respondents:* State, local or tribal governments; not-for-profit institutions; *Total Number of Respondents:* 32 per calendar year; *Number of Responses per Respondent:* one response per request; *Average Burden per Response:* 200 hours; *Estimated Annual Burden:* 6,400 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection package listed above can be obtained by calling the PSC Reports Clearance Officer on (301) 443–1494. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Comments may also be sent to Irene S. West, PSC Reports Clearance Officer, Room 17A18, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 30 days of this notice.

Dated: May 1, 2001.

Curtis L. Coy,

Director, Program Support Center.

[FR Doc. 01–11734 Filed 5–9–01; 8:45 am]

BILLING CODE 4168–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4572–D–18]

Order of Succession

AGENCY: Office of the Chief Officer, HUD

ACTION: Notice of Order of Succession.

SUMMARY: In this notice, the Chief of Staff for the Department of Housing and Urban Development designates the Order of Succession for the office of Chief Financial Officer.

EFFECTIVE DATES: May 3, 2001.

FOR FURTHER INFORMATION CONTACT: Maureen Harris, Administrative Officer, Office of the Chief Financial Officer, Department of Housing and Urban Development, Room 2104, 451 7th Street, SW, Washington, DC 20410, (202) 708–0313. (This is not a toll-free number.) This number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–8339 (toll-free).

SUPPLEMENTARY INFORMATION: The Chief of Staff for the Department of Housing and Urban Development is issuing this Order of Succession of officials authorized to perform the functions and duties of the Office of the Chief Financial Officer when, by reason of absence, disability, or vacancy in office, the Chief Financial Officer is not available to exercise the powers or perform the duties of the office. This Order of Succession is subject to the provisions of the Vacancy Reform Act of 1998, 5 USC 3345–3349d.

Accordingly, the Chief of Staff designates the following Order of Succession:

Section A. Order of Succession

Subject to the provisions of the Vacancy Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the Chief Financial Officer is not available to exercise the powers or perform the duties of the Chief Financial Officer, the following officials within the Office of the Chief Financial Officer are hereby designated to exercise the powers and perform the duties of the Office:

(1) Senior Advisor to the Chief Financial Officer;

(2) Assistant Chief Financial Officer for Budget.

These officials shall perform the functions and duties of the Office in the order specified herein, and no official shall serve unless all the other officials, whose position titles precede his/hers in this order, are unable to act by reason of absence, disability, or vacancy in office.

Section B. Authority Superseded

This Order of Succession supersedes the Order of Succession for the Office of the Chief Financial Officer, published at 65 FR 51016 (August 22, 2000).

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. Sec. 3535(d)

Dated: May 3, 2001.

Daniel R. Murphy,

Chief of Staff, Department of Housing and Urban Development.

[FR Doc. 01–11743 Filed 5–9–01; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Permit Application and Safe Harbor Agreement Between the Fish and Wildlife Service and Caroline H. Paterson and Thomas W. Paterson

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and 30-day public comment period.

SUMMARY: Caroline H. and Thomas W. Paterson (Applicants) have applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a)(1)(A) of the Endangered Species Act (Act). The Applicants have been assigned permit number TE–035920–0. The requested permit, which is for a period of 30 years, would authorize the take of the following species: endangered southwestern willow flycatcher and Mexican gray wolf; threatened bald eagle, Mexican spotted owl, and loach minnow. The proposed take could occur as a result of conservation measures implemented on Spur Ranch, consisting of riparian restoration activities along Centerfire Creek, including planting native vegetation; grade control structures in Centerfire Creek to control erosion and downcutting; and upland management activities designed to improve overall habitat health, including prescribed burning, selective timber harvesting, and controlled grazing. Currently, none of the species mentioned above are known to occur on the property. The Applicants in cooperation with the Service have prepared the Safe Harbor Agreement (SHA) to provide a conservation benefit to the species and allow for the take of these species. Based upon guidance in the Service's June 17, 1999, Final Safe Harbor Policy, if a SHA and associated permit are not expected to individually or cumulatively have a significant impact on the quality of the human environment or other natural resources, the Agreement/permit may be categorically excluded from undergoing National Environmental Policy Act review. The Spur Ranch SHA qualifies as a "Low Effect" SHA, thus, this action is a categorical exclusion. The "Low Effect" determination for the Spur

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Ranch SHA is also available for public comment. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before June 11, 2001.

ADDRESSES: Persons wishing to review the application, SHA, and "Low Effect" determination may obtain copies by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103, or by contacting Denise Smith, New Mexico Ecological Services Field Office, 2105 Osuna Road, Albuquerque, New Mexico 87113 (505/346–2525). Documents relating to the application will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, Albuquerque, New Mexico.

Written data or comments concerning the application and SHA should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, Albuquerque, New Mexico, at the above address. Please refer to permit number TE–035920–0 (Paterson) when submitting comments.

FOR FURTHER INFORMATION CONTACT: Denise Smith at the above U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, Albuquerque, New Mexico (505) 346–2525.

SUPPLEMENTARY INFORMATION:

Background

Caroline H. and Thomas W. Paterson (Applicants) plan to implement conservation measures on Spur Ranch, a 309 acre parcel of land northeast of Luna, Catron County, New Mexico. The conservation measures will improve riverine, riparian, and upland habitat through improving water quality, reducing sedimentation, and establishment of native riparian vegetation. The SHA as currently written is expected to provide a net conservation benefit to the five species for which it is written. The SHA will provide protection to the Applicants against further regulation under the Endangered Species Act in the event that any of the covered species should occupy the Patersons' land as a result of implementation of the proposed conservation measures.

Section 9 of the Act prohibits the "taking" of threatened or endangered species. However, the Service, under limited circumstances, may issue permits to take threatened and endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22 and 50 CFR 17.22 for threatened species.

Thomas L. Bauer,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 01–11756 Filed 5–9–01; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Information Collection Request for the Housing Assistance Application requires renewal. The proposed information collection requirement, with no appreciable changes, described below will be submitted to the Office of Management and Budget (OMB) for review after a public comment period, as required by the Paperwork Reduction Act of 1995. The Bureau is soliciting public comments on the subject proposal.

DATES: Written comments must be submitted on or before July 9, 2001.

ADDRESSES: Interested parties are invited to submit written comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to June Henkel, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW, MS–4660–MIB, Washington, DC 20240. E-mail should be sent to JuneHenkel@bia.gov. Fax: (202) 208–2648. Telephone: (202) 208–3667. (This is not a toll-free number.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instructions should be directed to June Henkel, 202–208–3667.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information is needed to establish whether an applicant is eligible to receive services under the HIP and to establish the priority order in which eligible applicants may receive services under the program.

II. Method of Collection

The housing regulations at 25 CFR part 256 contain the program eligibility and selection criteria (§§ 256.6, 256.8, 256.9, 256.10, 256.14) which prospective applicants seeking program services must demonstrate that they meet. Information collected from applicants under these regulations provides eligibility and selection data used by the local servicing housing office to establish whether an applicant is eligible to receive services. The local servicing housing office may be a tribal housing office under a Public Law 93–638, Indian Self-Determination contract or a Self-Governance annual funding agreement, or the Bureau of Indian Affairs. Additionally, the data is used by the Assistant Secretary—Indian Affairs to establish whether a request for waiver of a specific housing regulation is in the best interest of the applicant and the Federal Government.

III. Data

(1) *Title of the Collection of Information:* Department of the Interior, Bureau of Indian Affairs, Housing Assistance Application.

OMB Number: 1076–0084.

Expiration Date: September 30, 2001.

Type of Review: Renewal of a currently approved information collection.

(2) *Summary of the Collection of Information:* The collection of information provides pertinent data concerning an applicant's eligibility to receive services under the Housing Improvement Program and includes:

A. Applicant Information including: Name, Current Address, Telephone Number, Date of Birth, Tribe, Roll Number, Marital Status, Name of Spouse, Date of Birth (of spouse), Tribe (of spouse), and Roll Number (of Spouse).

B. Family Information including: Name, Date of Birth, Relationship to Applicant, and Tribe/Roll Number.

C. Income Information: Earned and Unearned Income.

D. Housing Information including: Location of the house to be repaired, constructed or purchased; Description of housing assistance for which applying; Knowledge of receipt of prior Housing Improvement Program assistance, amount, to whom and when; Ownership or rental; Availability of electricity and name of electric company; Type of sewer system; Water source; Number of bedrooms; Size of house; and, Bathroom facilities.

E. Land Information including: Land owner; Legal status of land; or Type of interest in land.

F. General Information including: Prior receipt of services under the Housing Improvement Program and description of such; Ownership of other housing and description of such, Identification of Housing and Urban Development (HUD) funded house and current status of project; Identification of other sources of housing assistance for which the applicant has applied and been denied assistance if applying for a new housing unit or purchase of an existing standard unit; and advisement and description of any severe health problem, handicap or permanent disability.

G. Applicant Certification including: Signature of Applicant and Date, and Signature of Spouse and Date.

(3) *Description of the need for the information and proposed use of the information:* Submission of this information is required in order to receive services under the Housing Improvement Program. The information is collected to determine applicant eligibility for services and applicant priority order to receive services under the program.

(4) *Description of likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information:*

Description of likely respondents: Individual members of Indian tribes who are living on or near a tribally, or by law, defined service area.

Estimated number of respondents: 3,500.

Proposed frequency of response: Annually or less frequently, depending on length of waiting list, funding availability and dynamics of service population.

(5) *Estimate of total annual reporting and record keeping burden that will result from the collection:*

Estimated time per application: The reporting burden for this applicant is estimated to average ½ hour per response, including the time for reviewing the instructions, gathering and maintaining the data, and completing and reviewing the form.

Estimated Total Annual Reporting Burden Hours: 1,750 hours.

Estimated record keeping burden per application: The record keeping burden for tribes submitting eligible applicant data and not having or receiving funds to administer the program is estimated to average ½ hour per application, including the time for reviewing the application, determining applicant eligibility and priority ranking and summarizing data for submission.

Estimated Total Record Keeping Burden: 156 hours.

Estimated Total Record Keeping Costs: $2,431 (117.5 hours × $20.69 per hour).

IV. Request for Comments

The Department of the Interior invites comment on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and,

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating, and verifying information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and, to transmit or otherwise disclose information.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record. All written comments will be available for public inspection in Room 4660 of the Main Interior Building, 1849 C Street, NW, Washington, DC, from 9:00 a.m. until 4:00 p.m., Monday through Friday, excluding legal holidays. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget control number.

Dated: April 30, 2001.

James H. McDivitt,

Deputy Assistant Secretary—Indian Affairs (Management).

[FR Doc. 01–11752 Filed 5–9–01; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930; COC–48469]

Public Land Order No. 7485; Extension of Public Land Order No. 6846; CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order extends Public Land Order No. 6846 for an additional 10-year period. This extension is necessary to continue the protection of the Wild and Scenic River values in the South Platte River. These lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: April 12, 2001.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7093, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 6846, which withdrew National Forest System lands to protect the Wild and Scenic River values in a 9-mile segment of the South Platte River corridor, is hereby extended for an additional 10-year period following its date of expiration.

2. This withdrawal will expire 10 years from the effective date of this order unless, as a result of a review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: April 12, 2001.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. 01–11739 Filed 5–9–01; 8:45 am]

BILLING CODE 3410–11–P

INTERNATIONAL TRADE COMMISSION

Investigations Nos. 731–TA–726, 727, and 729 (Review)

Polyvinyl Alcohol From China, Japan, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year reviews.

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SUMMARY: The subject five-year reviews were initiated in April 2001 to determine whether revocation of the antidumping duty orders on polyvinyl alcohol from China, Japan, and Taiwan would be likely to lead to continuation or recurrence of dumping and of material injury to a domestic industry. On May 3, 2001, the Department of Commerce published notice that it was revoking the orders "[b]ecause no domestic interested party responded to the sunset review notice of initiation by the applicable deadline" (66 FR 22145). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)), the subject reviews are terminated.

EFFECTIVE DATE: May 3, 2001.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at http://dockets.usitc.gov/eol/public

Authority: These reviews are being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

Issued: May 4, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–11845 Filed 5–9–01; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–404–408 (Final) and 731–TA–898–908 (Final)]

Hot-Rolled Steel Products From Argentina, China, India, Indonesia, Kazakhstan, Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigations Nos. 701–TA–404–408 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized imports from Argentina, India, Indonesia, South Africa, and Thailand of hot-rolled steel products, provided for in headings 7208, 7210, 7211, 7212, 7225, and 7226 of the Harmonized Tariff Schedule of the United States. Notice is also hereby given of the scheduling of the final phase of antidumping investigations Nos. 731–TA–898–908 (Final) under section 735(b) of the Act (19 U.S.C. § 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Argentina, China, India, Indonesia, Kazakhstan, Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine of hot-rolled steel products.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: April 30, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at http://dockets.usitc.gov/eol/public.

SUPPLEMENTARY INFORMATION:

Background

The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in Argentina, India, Indonesia, South Africa, and Thailand of hot-rolled steel products, and that such products from Argentina, China, India, Indonesia, Kazakhstan, Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on November 13, 2000, by Bethlehem Steel Corp. (Bethlehem, PA); Gallatin Steel Corp. (Ghent, KY); IPSCO Steel, Inc. (Lisle, IL); LTV Steel Co., Inc. (Cleveland, OH); National Steel Corp. (Mishawaka, IN); Nucor Corp. (Darlington, SC); Steel Dynamics, Inc. (Butler, IN); U.S. Steel Group (a unit of USX Corp.) (Pittsburgh, PA); Weirton Steel Corp. (Weirton, WV); and the Independent Steel Workers Union, a labor union representing the organized workers at Weirton Steel Corp.

Participation in the Investigations and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on July 5, 2001, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on July 17, 2001, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before July 11, 2001. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on July 13, 2001, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is July 11, 2001. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is July 24, 2001; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before July 24, 2001. On August 13, 2001, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before August 15, 2001, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: May 7, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–11846 Filed 5–9–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

ETA–5130 Benefit Appeals Report; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension collection of the ETA–5130 Benefit Appeals Report. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before July 9, 2001.

ADDRESSES: Jack Bright, Office of Workforce Security, Employment and Training Administration, U.S. Department of Labor, Room S–4516, 200 Constitution Avenue, NW., Washington, DC 20210, telephone number (202) 693–3214 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The ETA–5130, Benefit Appeals Report, contains information on the number of unemployment insurance appeals and the resultant decisions classified by program, appeals level, cases filed and disposed of (workflow), and decisions by level, appellant and issue. The data on this report is used by both the Regional and National Office Unemployment Insurance staff to monitor the benefit appeals process in the State Employment Security Agencies (SESAs) and to develop any needed plans for remedial action. The data is also needed for workload budgeting and to determine administrative funding. If this information were not available, developing problems might not be discovered early enough to prevent the solutions from being extremely time consuming and costly.

Nearly all States now collect, store and report this data with automated systems. Consequently, the burden hours and burden costs for operation and maintenance have been reduced accordingly.

II. Review Focus

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

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whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

Continued collection of the ETA–5130 data will provide for continuous monitoring of the SESAs appellate processes and needed data for the budgeting and administrative funding activities. The data is collected monthly so that developing backlogs of undecided appeals can be detected as early as possible.

Type of Review: Extension.
Agency: Employment and Training Administration.
Title: Benefit Appeals Report.
OMB Number: 1205–0172.
Agency Number: ETA–5130.
Affected Public: State Governments.
Total Respondents: 53.
Frequency: Monthly.
Total Responses: 636.
Average Time per Response: 1 hour.
Estimated Total Burden Hours: 636 hours.
Total Burden Cost (capital/startup): 0.
Total Burden Cost (operating/maintaining): $15,900.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 1, 2001.

Grace A. Kilbane,

Administrator, Office of Workforce Security.

[FR Doc. 01–11796 Filed 5–9–01; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL COUNCIL ON DISABILITY

Advisory Committee Meeting/ Conference Call

AGENCY: National Council on Disability (NCD).

SUMMARY: This notice sets forth the schedule of the forthcoming meeting/ conference call for a working group of NCD's advisory committee—International Watch. Notice of this meeting is required under Section 10(a)(1)(2) of the Federal Advisory Committee Act (Pub. L. 92–463).

INTERNATIONAL WATCH: The purpose of NCD's International Watch is to share information on international disability issues and to advise NCD's Foreign Policy Team on developing policy proposals that will advocate for a foreign policy that is consistent with the values and goals of the Americans with Disabilities Act.

WORK GROUP: International Convention on the Human Rights of People with Disabilities.

DATE AND TIME: May 30, 2001, 12 p.m.–1 p.m. EDT.

FOR INTERNATIONAL WATCH INFORMATION, CONTACT: Kathleen A. Blank, Attorney/ Program Specialist, NCD, 1331 F Street NW., Suite 1050, Washington, DC 20004; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax), *kblank@ncd.gov* (e-mail).

AGENCY MISSION: NCD is an independent federal agency composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

This committee is necessary to provide advice and recommendations to NCD on international disability issues.

We currently have balanced membership representing a variety of disabling conditions from across the United States.

OPEN MEETINGS/CONFERENCE CALLS: This advisory committee meeting/conference call of NCD will be open to the public. However, due to fiscal constraints and staff limitations, a limited number of additional lines will be available. Individuals can also participate in the conference call at the NCD office. Those interested in joining this conference call should contact the appropriate staff member listed above.

Records will be kept of all International Watch meetings/ conference calls and will be available after the meeting for public inspection at NCD.

Signed in Washington, DC, on May 7, 2001.

Ethel D. Briggs,

Executive Director.

[FR Doc. 01–11807 Filed 5–9–01; 8:45 am]

BILLING CODE 6820–MA–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Advanced Reactor Subcommittee Workshop on Regulatory Challenges for Future Nuclear Power Plants; Notice of Meeting

The ACRS Subcommittee on Advanced Reactors will hold a meeting on June 4–5, 2001 in the NRC Auditorium in Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

The Subcommittee will discuss matters related to regulatory challenges for future nuclear power plants. The Subcommittee meeting will be conducted as a workshop, with presentations, panel discussions, and participation by the workshop attendees. The meeting schedule is as follows:

Monday, June 4, 2001—9 a.m. to 7 p.m.

1. *Introduction*—G. Apostolakis and T. Kress: 9 a.m.–9:15 a.m.
2. *Keynote Address by Commissioner Nils Diaz:* 9:15 a.m.–10 a.m.

Break—10 a.m.–10:15 a.m.

3. *DOE Presentations*
   - Overview and Introduction to Generation IV Initiative—W. Magwood, DOE: 10:15 a.m.–10:40 a.m.
   - Generation IV Goals and Roadmap Effort—R. Versluis, DOE: 10:40 a.m.–11 a.m.
   - Near-Term Deployment Efforts—T. Miller, DOE: 11 a.m.—11:25 a.m.
   - Generation IV Concepts—R. Versluis, DOE: 11:25 a.m.–11:40 a.m.
   - Next Steps Generation III+/IV—S. Johnson, DOE: 11:40 a.m.–12 p.m.

Lunch—12 p.m–1 p.m.

4. *Generation IV Design Concepts*
   - Pebble Bed Modular Reactor—J. Muntz, Exelon: 1 p.m.–1:45 p.m.
   - International Reactor Innovative and Secure—M. Carelli, Westinghouse: 1:45 p.m.–2:30 p.m.
   - General Atomic-Gas Turbine/Modular Helium Reactor—L. Parme, General Atomics: 2:30 p.m.–3:15 p.m.

Break—3:15 p.m.–3:30 p.m.

   - General Electric-Advanced Liquid Metal Reactor and ESBWR designs—C. Boardman, General Electric: 3:30 p.m.–4:15 p.m.

5. *NRC Presentations*
   - NRC Response to Commission Direction on Evaluation of NRC Licensing Infrastructure (NRR/RES/NMSS)—M. Gamberoni, NRC–NRR: 4:15 p.m.–5:15 p.m.
   - Planned RES Activities—A. Thadani, NRC–RES: 5:15 p.m.–6 p.m.

6. *Panel Discussion on Industry and NRC Licensing Infrastructure Needed for Generation IV Reactors:* 6 p.m.–7 p.m.
   - Panelists: A. Thadani, NRC, S. Johnson, DOE, J. Muntz, Exelon, M. Carelli, Westinghouse, L. Parme, General Atomics, C. Boardman, General Electric

Tuesday, June 5, 2001–8:30 a.m. to 6:45 p.m.

1. *Introduction*—G. Apostolakis and T. Kress: 8:30 a.m.–8:45 a.m.
2. *NEI Advanced Reactors Initiatives*—Presentation by R. Simard, NEI: 8:45 a.m.–9:30 a.m.
3. *Technical Presentations*: 9:30 a.m.–4 p.m.
   - Safety Goals for Future Nuclear Power Plants—N. Todreas, MIT: 9:30 a.m.–10:30 a.m.

Break—10:30 a.m.–10:45 a.m.

   - Future Reactor Licensing by Test—A. Kadak, MIT: 10:45 a.m.–11:45 a.m.
   - NERI Project on Risk-Informed Regulation—G. Davis, Westinghouse and M. Golay, MIT: 11:45 a.m.–12:45 p.m.

Lunch—12:45 p.m.–2 p.m.

   - Advanced Safety Concepts—C. Forsberg, ORNL: 2 p.m.–3 p.m.
   - Regulatory Framework for Future Nuclear Power Plants—A. Heymer, NEI: 3 p.m.–4 p.m.

Break—4 p.m.–4:15 p.m.

4. *ACRS and Panel Discussion with Audience Participation The Most Important Regulatory Challenges for the Licensing of Future Nuclear Power Plants:* 4:15 p.m.–6:30 p.m.
   - Panelists: N. Todreas, MIT, R. Barrett, NRR, E. Lyman, NCI, R. Simard, NEI

5. *Conclusions*—Apostolakis, Kress, et al: 6:30 p.m.–6:45 p.m.

The meeting schedule and scheduled speakers is subject to change as necessary. Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Dr. Medhat M. El-Zeftawy (telephone 301–415–6889) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: May 4, 2001.

Howard J. Larson,

Special Assistant, ACRS/ACNW.

[FR Doc. 01–11754 Filed 5–9–01; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:
- Form S–3, OMB Control No. 3235–0073, SEC File No. 270–61
- Form S–8, OMB Control No. 3235–0066, SEC File No. 270–66

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Form S–3 is used by issuers to register securities pursuant to the Securities Act of 1933. The Commission uses very little of the information it collects, except on an occasional basis in the enforcement of the securities laws. The likely respondents will be companies. The information must be filed with the Commission on occasion. Form S–3 is a public document. All information provided is mandatory. Approximately 3,483 issuers file Form S–3 at an estimated 398 hours per response for a total annual burden of 1,385,934 hours.

Form S–8 is a primary registration statement used by qualified registrants to register securities issuers in connection with employee benefit plans. Form S–8 provides verification of compliance with securities law requirements and assures the public availability and dissemination of such information. The likely respondents will be companies. The information must be filed with the Commission on occasion. Form S–8 is a public document. All information provided is mandatory. Approximately 1,660 issuers file Form S–8 at an estimated 24 hours per response for a total annual burden of 39,840 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: May 3, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–11798 Filed 5–9–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27395]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

May 4, 2001.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 29, 2001, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/ or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After May 29, 2001, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Alabama Power Company et al. (70–8461)

Alabama Power Company ("Alabama"), 600 North 18th Street, Birmingham, Alabama 35291, Georgia Power Company ("Georiga"), 333 Piedmont Avenue, N.E., Atlanta, Georgia 30308, Gulf Power Company

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("Gulf"), 500 Bayfront Parkway, Pensacola, Florida 32501, Mississippi Power Company ("Mississippi"), 2992 West Beach, Gulfport, Mississippi 39501, and Savannah Electric and Power Company ("Savannah"), 600 East Bay Street, Savannah, Georgia 31401, (together, "Operating Companies") all electric public utility subsidiaries of The Southern Company, a registered holding company, have filed a post-effective amendment under sections 6(a) and 7 of the Act and rule 54 under the Act.

By order dated December 7, 1998 (HCAR No. 26949) ("December 1998 Order"), Alabama received authority ot issue $500,000,000 in preferred securities through December 31, 2005. Alabama has issued $50,000,000 in preferred securities under this authorization to date. Alabama now requests an extension of time to issue the remaining $450,000,000 in preferred securities through June 30, 2007 ("Authorization Period").

Georgia received authority in the December 1998 Order to issue $310,750,000 in preferred securities through December 31, 2005. Georgia has issued $310,750,000 in preferred securities under this authorization to date. Georgia now requests authority to issue an additional $389,250,000 for an aggregate amount of $500,000,000 in preferred securities and an extension of time to issue these securities through the Authorization Period.

By order dated January 16, 1998 (HCAR No. 26817), Gulf received authority to issue $50,000,000 in preferred securities through December 31, 2005. Gulf has issued $45,000,000 in preferred securities under this authorization to date. Gulf now requests authority to issue an additional $95,000,000 for an aggregate amount of $100,000,000 in preferred securities and an extension of time to issue these securities through the Authorization Period.

Mississippi received authority to issue $75,000,000 in preferred securities through December 31, 2005. Mississippi has not issued any of these securities to date. Mississippi now requests authority to issue an additional $25,000,000 for an aggregate of $100,000,000 in preferred securities and an extension of time to issue these securities through the Authorization Period.

Savannah currently has no authority to issue preferred securities. Savannah received authority under the December 1998 Order to issue $40,000,000 in preferred securities and has issued the total amount authorized. Savannah now requests authority to issue an additional $50,000,000 in preferred securities through the Authorization Period.

The Operating Companies will use the proceeds from the sale of the preferred securities in connection with their ongoing construction programs, to pay scheduled maturities and/or refundings of their securities, to repay short-term indebtedness to the extent outstanding and for other general corporate purposes.

National Grid Group plc, et al (70–9829)

National Grid Group plc ("National Grid"), a registered holding company, located at 15 Marylebone Road, London, NW15JD, United Kingdom, together with its direct and indirect registered holding company subsidiaries ("Intermediate Companies") National Grid (US) Holdings Limited, National Grid (US) Investments, both located at 15 Marylebone Road, London, NW15JD, United Kingdom, National Grid (Ireland) 1 Limited, National Grid (Ireland) 2 Limited, both located at 6 Avenue Pasteur, L 2310, Luxembourg, National Grid General Partnership, located on the 8th Floor of the Oliver Building, 2 Oliver Street, Boston, Massachusetts 02109, and National Grid USA, a registered holding company, a direct subsidiary of National Grid General Partnership and an indirect subsidiary of the other Intermediate Companies (collectively, "Applicants"), located at 25 Research Drive, Westborough, Massachusets 01582, have filed an application-declaration under sections 6(a) 7, 9(a), 10, 12(b) and 12(f) of the Act and rules 45(a) and 54 under the Act.

Applicants request authority for National Grid to increase the aggregate amount of convertible bonds that it may issue through May 31, 2003 ("Authorization Period") to $2 billion.[1] National Grid will continue to maintain an overall $4 billion limit on the securities it issues, excluding guaranties. The convertible bonds would be exchangeable into ordinary shares of other securities.[2] Consistent with the terms of the Prior Order, the interest rate on these debt securities would not exceed 300 basis points over that for U.S. treasury securities having comparable maturities,[3] and the maturities of these debt securities would not exceed fifty years. Applicants state that these additional bonds would be issued and sold if market conditions are favorable, and the proceeds from these sales would be used to retire existing debt and for purposes previously approved by the Commission in the Prior Order.[4]

Applicants also request authority, through the Authorization Period, for National Grid and its subsidiaries that are outside of the National Grid USA ownership chain, including National Grid Holdings Limited and its direct and indirect subsidiaries (collectively, "FUCO Subsidiaries"), to acquire the debt securities of the Intermediate Companies and National Grid USA. The intrasystem loans would be unsecured and would have short-, medium- and long-term maturities depending on how the proceeds would be used. Short-term loans would be less than one year in maturity, medium-term loans would have maturities up to five years, and long-term loans would have maturities of up to fifty years. Loans to National Grid USA from any company in the National Grid system would be at interest rates designed to parallel the effective cost of debt capital of National Grid. Applicants state that the interest rates paid by National Grid USA on these loans should not result in an increase in the cost of capital used by the National Grid USA group and that, if it is discovered that this lending rate is higher than the cost of funds National Grid USA would incur in a direct borrowing at that time from nonassociates, the interest rate applied to National Grid USA borrowings would be based on that lower cost of funds. The maturities of borrowings by the Intermediate Companies from National Grid or a FUCO Subsidiary may be short-, medium- or long-term. All of the proposed borrowings would be unsecured. The proceeds of these loans would be used to meet the short-term working capital requirements of National Grid USA and its subsidiaries.

Further, Applicants request authority for the Intermediate Companies, through the Authorization Period, to enter into currency derivatives with National Grid and the FUCO Subsidiaries. National Grid represents that these transactions will meet the criteria established by the Financial Accounting Standards Board in order to qualify for hedge-accounting treatment, or will so qualify under generally accepted accounting principles in the United Kingdom ("U.K. GAAP"). If these proposed transactions qualify for hedge accounting treatment under U.K. GAAP, but not under generally accepted accounting principles in the United States ("U.S. GAAP"), National Grid's financial statements filed in accordance with Form 20–F will contain a reconciliation of the difference between the two methods of accounting treatment. National Grid further states that no gain or loss on a hedging transaction attributable to a company outside the National Grid USA Group will be allocated to any company in the National Grid USA Group, regardless of the accounting treatment accorded to the transaction. These proposed derivative transactions are designed to facilitate the equity financing of the Intermediate Companies and accommodate foreign exchange hedging. Applicants state that losses incurred by any Intermediate Company in connection with these swaps, and the associated tax effects, would not be transferred down the Intermediate Company chain to National Grid USA, and consequently would not adversely affect National Grid USA or any of its subsidiaries.

The Commission's equity capitalization standard and all other terms of the Prior Order, with the exception of the proposed increase in the aggregate amount of convertible bonds to be issued, would continue to apply.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–11799 Filed 5–9–01; 8:45 am]

BILLING CODE 8010–01–M

[1] By order dated March 15, 2000. The Commission authorized National Grid to, among other things, issue up to $1 billion in convertible bonds through the Authorization Period, subject to the limitation that the aggregate amount at any one time outstanding of all its equity and debt securities will not exceed $4 billion. *See National Grid Group plc*, HCAR No. 27154 ("Prior Order").

[2] Applicants state that it is presently intended that the bonds would be exchangeable for ordinary shares of Energis plc, a National Grid subsidiary engaged in telecommunications in the U.K. and certain other countries.

[3] If the debt securities are issued in a non-U.S. currency, the rate would be based on the government benchmark for the related currency.

[4] Specifically, Applicants state that National Grid would use the proceeds from these sales to acquire, retire, or redeem securities issued by National Grid or its United States subsidiaries, or for necessary and urgent corporate purposes such as extending or renewing debt related to its prior acquisition of New England Electric System Merger-Related Debt, financing capital expenditures by its subsidiaries, financing the working capital requirements of its system, acquiring or funding the operations of exempt wholesale generators and foreign utility companies.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44256; File No. SR–Amex–2001–24]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the American Stock Exchange LLC Relating to Independent Director and Audit Committee Requirements

May 3, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 18, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Section 121 of the *Amex Company Guide* to clarify that domestic listed companies are required to have a sufficient number of independent directors on their board of directors to satisfy the Exchange's audit committee. The text of the proposed rule change is set forth below. New text is in italics.

* * * * *

Section 121. INDEPENDENT DIRECTORS AND AUDIT COMMITTEE

A. Independent Directors

The Exchange requires that domestic listed companies have a sufficient number of independent directors *on the company's board of directors* to satisfy the audit committee requirements set forth below. Independent directors are not officers of the company and are, in the view of the company's board of directors, free of any relationship that would interfere with the exercise of independent judgment. The following persons shall not be considered independent:

(a)–(e) No change

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Section 121A of the *Amex Company Guide* to clarify that each domestic listed company is required to have a sufficient number of independent directors on its board of directors to satisfy the audit committee requirements specified in part B of Section 121. Section 121 was amended in December 1999 to implement the recommendations contained in the February 1999 report of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees [3] which were aimed at strengthening the independence of the audit committee, making the audit committee more effective, and addressing mechanisms for accountability among the audit committee, the outside auditors, and management.[4] Section 121, particularly when analyzed in conjunction with Section 120 of the *Amex Company Guide*, currently requires the independent directors referenced therein to be members of the company's board of directors.[5] However, inquiries from several listed companies have led the Exchange to conclude that there may be some confusion among the listed company community with respect to the requirement. Accordingly, to avoid further confusion, the Exchange is proposing to amend Section 121 to clarify that the independent directors must be members of the company's board of directors.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Committee's Report is available online at www.amex.com.

[4] The audit committee requirements are being phased-in over an 18 month period for issuers that were listed on the Amex at the time the changes were adopted.

[5] Section 120 of the Amex Company Guide specifies that "each company shall utilize [its] Audit Committee *or a comparable body of the Board of Directors* for the review of potential conflict of interest situations where appropriate" (emphasis added).

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Section 6(b)(5)[6] of the Act, which requires, among other things, the Exchange's rules to be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[7] and subparagraph (f)(1) of Rule 19b–4 thereunder[8] because it constitutes as a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR–Amex–2001–24 and should be submitted by May 31, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated athority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–11801 Filed 5–9–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44260; File No. SR–DTC–2001–03]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change to Make Foreign Securities Eligible for Depository Services

May 4, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on, February 23, 2001, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow DTC to make eligible for depository services foreign securities that are presently eligible for the National Securities Clearing Corporation's ("NSCC") foreign security comparison and netting service.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to provide DTC and NSCC participants who are presently using NSCC's foreign securities clearing services the use, if applicable, of depository services at DTC for these securities. These securities are generally foreign ordinary equities that have been assigned security numbers (CINS) and NASD symbols to automate the comparison process. Most trades in foreign ordinary shares that are executed between two U.S. broker-dealers are forwarded to NASD's Automated Confirmation Transaction system and submitted as locked-in trades to NSCC.

Today, through NSCC's Foreign Securities Comparison and Netting system, foreign securities are compared and netted on a bilateral basis in a standardized and automated fashion through NSCC's over-the-counter system. Receive and deliver instructions are automatically generated by NSCC and are distributed to participants on the morning after comparison, which expedites the settlement process for non-U.S. equity transactions. Trades are netted on a bilateral participant-to-participant basis thereby reducing the number of deliveries for settlement in the local market. NSCC does not currently and will not under the proposed rule change guarantee the ultimate settlement of these transactions or the clearance cash adjustment.

Given the increase in activity over the last few years, U.S. broker-dealers have become concerned about the number of potential risk and operational issues associated with the current process, such as the lack of straight through processing ("STP") from the point of trade to settlement. It is DTC's plan to enhance the settlement part of the process and to deliver an automated approach to complete the STP process from trade to settlement. In doing so, many operational issues will be minimized or eliminated.

Today, there is a separation between the physical movement of these foreign securities and the money settlement of the trades (*i.e.*, there is no delivery versus payment ("DVP") as there is true for U.S. trades). The delivery of the securities occurs in the foreign markets and then some time later the payment is made in the U.S.

Currently, trades in these foreign securities executed in the U.S. must settle in the local market without the benefit of any of DTC's infrastructure. Therefore, U.S. based broker-dealers who trade in foreign securities in the U.S. must set up correspondent relationships in the local market. Additionally, the U.S. broker-dealers must each deal separately with the inherent inefficiencies, such as large time-zone differences, in this structure. Also, the need to set up such correspondent relationships puts smaller broker-dealers at a disadvantage because many smaller broker-dealers do not have the resources or trading volumes to justify such relationships and therefore must enlist a large broker-dealer to perform such services for their clients. As a result, trading costs for the underlying investors are increased.

DTC's plan is to open a custodial account in a local market with an agent bank or central securities depository ("CSD") (collectively "custodian") that will hold shares on DTC's behalf. DTC's participants will be able to communicate with DTC with respect to foreign securities as they do today with respect to currently eligible U.S. securities. Due to differences in local market practice from that in the U.S., the eligibility procedures for foreign securities will likely differ from those currently used by DTC for eligible U.S. securities. However, participants will be made aware of this fact and of the eligibility criteria and procedures. These securities will be "tagged" in DTC's system in order for DTC participants to readily identify them.

DTC's first such link will be with Citibank N.A., Hong Kong Branch, acting as DTC's custodian.[2] Through the custodian, a participant would move overseas inventory from its current custodian into DTC's account at DTC's foreign custodian. Upon notification from its custodian that the foreign securities are being held in its account, DTC would update the participant's securities position at DTC. Once the position is on DTC's books and records, the participant would be able to move the position by book-entry DVP if desired. In addition, other activities, such as automated customer account transfer services and stock loan, that are currently available for U.S. securities would also be available for foreign securities once they are made DTC eligible.

The DTC Risk Management Committee will review this service before DTC goes live with it. The committee will use the same due diligence template that it has used on all "outward bound" links with foreign CSDs.

The principal benefits that will attend DTC's making these foreign securities eligible for certain depository services are: (1) connecting the delivery to the settlement on a DVP basis; (2) accelerating the speed of settlement of cross-border transactions in these foreign securities; (3) eliminating most physical movements of these foreign securities; (4) reducing costs and risks to DTC participants (DTC's providing these benefits to its participants is consistent with DTC's objective of providing efficient book-entry clearance and settlement facilities while at the same time reducing risks to its participants.); and (5) making these services available to a large number of U.S. entities (*i.e.*, DTC participants and their clients and customers).

The proposed rule change is consistent with the requirements of Section 17A(b)(3)(A) and (F) of the Act and the rules and regulations thereunder applicable to DTC because the proposed rule change will reduce risks and associated costs to DTC participants. Further, the proposed rule change will be implemented and designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure safeguarding of securities and funds that are in the custody or control of DTC or for which DTC is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, in the public interest, and for the protection of investors.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

This concept was presented to the operations and planning committee of DTC and DTC Board of Directors. A number of DTC firms have voiced strong support of this project at the Board level.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in **Federal Register** or within such longer period: (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–2001–03 and should be submitted by May 31, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–11804 Filed 5–9–01 8:45 am]

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[6] 15 U.S.C. 78f(b)(5).
[7] 15 U.S.C. 78s(b)(3)(A)(i).
[8] 17 CFR 240.19b–4(f)(1).

[9] 17 CFR 200.30–3(a)(12)
[1] 15 U.S.C. 78s(b)(1).

[2] DTC will submit a proposed rule change under Section 19(b) before establishing any new link with any foreign custodian.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44257; File No. SR–NASD–2001–28]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Institute an Automated Order Delivery Service on the OTCBB

May 4, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder, notice is hereby given that on April 12, 2001, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to implement an enhancement to the OTC Bulletin Board Service ("OTCBB"). Nasdaq proposes to create an automated order delivery service ("ODS") that will enable OTCBB users to communicate electronically with one another to negotiate and confirm the execution of orders. This communication interface would offer an alternative to telephonic communication, which would increase the speed, efficiency, and quality of execution in the OTCBB. The proposed ODS would offer much of the functionality of the SelectNet service that is used for trading of Nasdaq National Market and SmallCap securities. Nasdaq states that SelectNet has proven to be a versatile and effective trading tool in those segments of the market.

The principal purpose of this enhancement is to supplement the existing capacity of market makers to consummate transactions pursuant to applicable trading rules. The ODS would enable member firms to communicate and confirm the execution terms of individual transactions electronically, just as they do by telephone today. The ODS would impose no new trading rules or obligations, but would permit market participants to comply more efficiently with existing rules and obligations, including best execution and firm quote obligations. Additionally, order executions negotiated through the ODS would automatically generate transaction reports for OTCBB issues and locked-in trades for clearance purposes.

The following paragraphs describe the history of the OTCBB, and also outline the major elements of the ODS enhancement.

Development and Operation of the OTCBB

The OTCBB is a regulated quotation service that displays real-time quotes, last-sale prices, and volume information in over-the-counter equity securities.[3] The OTCBB began operating on a pilot basis in June 1990 as part of market structure reforms designed to improve transparency in the over-the-counter equities market. The system was designed to facilitate the widespread publication of quotation and last-sale information. Since December 1993, firms have been required to report trades in all domestic OTC equity securities through the Automated Confirmation Transaction Service ("Act") within 90 seconds of the transaction.

Today, the OTCBB provides an electronic quotation medium for subscribing members to reflect market making interest in OTCBB-eligible securities. The OTCBB currently allows market makers to use an authorized Nasdaq Workstation II ("NWII") to update quotes, query positions, register in active stocks, and add or update telephone numbers. Market makers may access the service between 7:30 a.m. and 6:30 p.m. ET and may update quotes in domestic securities, foreign securities, and ADRs any time the system is in operation.[4]

Subscribing market makers can utilize the OTCBB to enter, update, and display their proprietary quotations in individual securities on a real-time basis. Such quotation entries may consist of a priced bid and/or offer, an unpriced indication of interest (including "bid wanted" or "offer wanted" indications), or a bid/offer accompanied by a modifier to reflect unsolicited customer interest. A subscribing market maker can also access the proprietary quotations that other firms have entered into the OTCBB Service along with highest bid and lowest offer (*i.e.*, an inside bid-ask calculation) in any OTCBB-eligible security with at least two market makers displaying two-aided markets. All priced quotes in domestic securities, foreign securities, and ADRs are firm; all quotes in DPPs are indicative.

Additionally, all NASD Level I members with Level 2/3 service may view OTCBB data without paying an additional charge beyond their NWII fees. However, only registered market makers are permitted to enter quotes and indications of interest.

Access to the ODS

Upon introduction, the ODS would be available to all NASD member firms that have authorized access to Nasdaq Level 2/3 through NWII terminals or through an Applications Programming Interface, and that have appropriate clearing arrangements through a registered national clearing agency. The ODS would be accessible for negotiation and confirmation of transactions in OTCBB issues during normal business hours for the OTCBB market (from 7:30 a.m. to 6:30 p.m. ET), although quotations would be required to be firm only between 9:30 a.m. and 4 p.m. During this period, the ODS would be continuously available for use by any eligible NASD market maker or order-entry firm. Registered OTCBB market makers would be unable to inhibit the receipt of ODS messages from other eligible NASD members between 9:30 a.m. and 4 p.m. ET, and orders received within a market maker's quoted price and size would be considered liability orders. Hence, an NASD member would be assured that communication can be established with a market marker during all market conditions and that transactions can be consummated without reliance on the telephone.

Use of the ODS

The ODS would provide an alternative medium for retail firms to contact market makers and for market makers to contact one another, to negotiate trades, and to confirm executions regardless of market conditions just as they do by telephone today. The establishment of the ODS would not impose any additional obligations beyond those already applicable to the market maker and NASD member in connection with telephonic transactions, such as the firm quote and best execution obligations.

Nasdaq has established some basic operational requirements for the ODS:

(i) An order entered through the ODS must be preferenced to a market maker in the security.

(ii) Principal as well as agency orders may be entered through the ODS.

(iii) All orders entered through the ODS must be priced. Therefore, it would be impermissible to enter an order only with instructions to execute "at the market" or "on the close."

(iv) An order entered through the ODS must include the security's identifier, price and size (from 100 to 999,900 shares); be designated as buy, sell, or sell short; and have a capacity indicator. All orders must be in round lots; the system will not accept odd lots.

(v) Orders entered into the ODS would be in force for a minimum of three minutes, unless the entering firm specifies another time in force or designates as a day order. The entering firm would be permitted to attempt to cancel an order after ten seconds.

(vi) A market maker receiving an order through the ODS would have three minutes to respond with an "accept" or "reject" message. Order recipients can respond with partial acceptance, as long as the order is not designated as All-Or-None. If the receiving market maker does not act within three minutes (or other time period specified by the order entry firm), the order would be automatically timed out and a notification of that result sent to the initiating firm.

(vii) The ODS would send a "pop-up" message to a market maker's NWII terminal alerting the market maker to the presence of a liability order. The market maker would then be obligated to execute the liability order up to the size of its quoted price, unless the market maker is in the process of executing another limit order at the same price.

(viii) The ODS would prohibit orders from being entered if there is no inside market in the security (*i.e.*, there are at least two market makers with two-sided quotes).

(ix) If an incoming buy (sell) order is priced below (above) the recipient's quoted bid/offer, or for an amount exceeding the recipient's displayed size, the market maker may properly reject it. The rejecting market maker can promptly communicate a counter proposal for possible acceptance by the initiating firm. This scenario illustrates the ability of a market maker to negotiate an execution by exchanging messages via the ODS.

(x) Transmission of an "accept" message would automatically create and send a "locked-in" trade to ACT for comparison and clearing. Trades confirmed through the ODS would automatically generate a printed confirmation of the execution to both parties.

(xi) ODS users would have access to the full functionality of ACT to enter corrective transactions, including cancel, error, break, no/was, inhibit, and kill (where appropriate under applicable trade reporting rules).

(xii) Participating market makers would have the capacity to scan transactions which they have executed through the ODS during the course of a trading day.

(xiii) The ODS would automatically reject messages involving ineligible market makers or initiating member firms.

As outlined above, the ODS would allow market participants to follow a few easy steps to enter, negotiate, and accept orders. To enter an order the market participant must choose buy, sell, or sell short; enter the share size; enter the security ID; designate a price; indicate whether price and/or size are negotiable; and specify the duration of the order, including (1) leave the order open for a minimum of three minutes, (2) make it a day order, or (3) leave it open until after-hours trading has ended. Market participants can respond to an order in several ways: accept the order, price improve it, decline it, counter the order, accept a portion of the order, or allow the order to expire or time out. When an order is countered, negotiations would begin and the parties would exchange messages until they produce a full or partial execution, they decline the transaction, or the order times out.

After an order is executed, the ODS would automatically confirm it to both parties to the transaction; send the trade report through Nasdaq for public dissemination; and compare, match, and send the locked-in trade to a clearing corporation. All Nasdaq order-entry or market maker subscribers would be eligible to participate in the ODS, provided that they have a clearing arrangement with an approved clearing agent.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq states that trading activity in the OTCBB grew from 41 million shares and less than 7,000 trades per day in 1995 to 323 million shares and 53,000 trades per day in 1999. In the first quarter of 2000, on average, over 1 billion shares were traded and 205,000 trades were reported each day. Nasdaq believes that there are many reasons for this increase in volume, but chief among them is the wealth of OTC information available on the Internet and the growth of online trading systems directly accessible to individual investors. The manual nature of the OTCBB, where all order delivery, communication, and negotiation between two firms regarding an OTCBB trade is done via telephone, was a drawback during these periods of explosive volume. Nasdaq believes that executions were slower and market participants had difficulty keeping abreast of telephone traffic.

Nasdaq states that the singular purpose of the ODS enhancement is to expand the communications facilities available to support the continuous, orderly operation of the OTCBB during periods of heavy trading, such as those experienced periodically during 2000. The ODS would facilitate processing of orders during fast markets, in that it would supplement the telephone capacity of market makers to interact with one another. It would, however, permit NASD members, from a functional standpoint, to continue to conduct business with one another by communicating the same basic elements of information that are needed to negotiate and confirm executions via telephone. The major difference is that electronic messages would substitute for verbal messages.

Nasdaq states that the ODS would also enable NASD members to realize certain efficiencies that are most desirable in periods of heavy trading, but unavailable respecting transactions effected via telephone. For example, consummation of a transaction through the ODS would yield a printed confirmation to both parties to the transaction and would obivate the separate entry of a trade report for an execution in an OTCBB security. Further, because orders executed through the ODS would yield locked-in trades, this feature would help reduce the volume of uncompared trades (and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] An OTC equity security generally is any equity that is not listed or traded on Nasdaq or a national securities exchange. OTCBB securities include national, regional, and foreign equity issues, warrants, units, American Depository Receipts ("ADRs"), and Direct Participation Programs ("DPPs").

[4] Quotes in DPPs may be updated twice daily: once between 8:30 and 9:30 a.m. ET and again between 12:00 and 12:30 p.m. ET.

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the attendant allocation of resources needed to resolve them) during periods in which overall market volume surges dramatically. Nasdaq believes that institution of the ODS would supplement both the communications and order processing capabilities of member firms.

The NASD Regulation Market Regulation Department anticipates that the ODS would enable it to surveil more effectively the OTCBB marketplace. Nasdaq is committed to maintaining a high level of regulation in the OTCBB trading environment. In fact, Nasdaq's market surveillance systems and staff would increase the capacity for real-time monitoring of trading on the OCTBB.

Nasdaq states that the OTCBB has made significant strides in making measurable market improvements in the past three years, including: (1) the implementation of the Eligibility Rule, which requires each OTCBB issuer to be fully registered with the SEC (or appropriate banking or insurance regulator) and be current in its filings,[5] (2) the establishment of limited trading halt authority for OTCBB securities,[6] and, (3) the upcoming launch of a Limit Order Protection pilot program, which will prohibit member firms from trading ahead of customer limit orders certain OTCBB securities.[7] Nasdaq believes that providing automated access to the OTCBB market would further Nasdaq's efforts to make the OTCBB a more efficient and orderly marketplace for investors and market participants alike.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Sections 11A and 15A of the Act.[8] Subsections (A) to (D) of Section 11A(a)(1)[9] articulate the broad findings and policy goals which Congress intended to guide the operational enhancement of the nation's securities markets. In this context, Congress underscored the importance of applying new data processing and communications techniques to assure: (1) more efficient and effective market operations; (2) economically efficient execution of securities transactions; (3) broad availability of information with respect to quotations for and transactions in securities; and (4) the optimal execution of investors' orders.[10] The NASD believes that the design and operation features of the ODS enhancement comport fully with these Congressional directives.

Nasdaq believes that the proposal is also supported by subsection (b)(6) of Section 15A of the Act.[11] Among other things, that provision requires that the NASD's rule-making initiatives be designed: (1) to promote just and equitable principles of trade; (2) to foster cooperation and coordination with persons engaged in regulating, clearing settling, processing information with respect to, and facilitating transactions in securities; (3) to perfect the mechanism of a free and open market and a national market system; and (4) to protect investors and the public interest. As described earlier, the ODS would augment the communications and order-handling capacities of market makers in OTCBB securities. The NASD views the ODS as an essential, auxiliary communications system that would enable market makers to conduct business with one another when telephonic communications are undesirable due to unusual conditions. Providing such a back-up capability promotes continuity in market operations in order to service all classes of investors. Nasdaq believes that this result is fully consistent with the above-cited portions of Section 15A(b)(6) of the Act.[12]

B. Self-Regulatory Organization's Statement on Burden of Competition

Nasdaq states that implementation of the ODS would not involve the imposition of any competitive burden. Nasdaq believes that this conclusion is supported by several factors. First, the ODS involves an enhancement of the facilities that support market making in OTCBB securities by member firms. This type of enhancement would not alter the established terms of access respecting vendors' receipt of market information for redistribution to diverse groups of end users. Second, the ODS would not pose a competitive burden upon market makers and other eligible members. By design, the ODS would be an auxiliary medium of communication that eligible firms may employ to conduct business when telephonic communication is not desirable. Accordingly, the ODS has been structured to accommodate conveyance of the same basic elements of information which firms communicate in negotiating and executing transactions via the telephone. Third, the ODS enhancement would not impose more stringent market-making obligations on participating firms. Rather, it would provide an alternative mechanism for market participants to conduct their routine business. Fourth, firms electing to utilize the ODS would need only to have clearing arrangements through a registered clearing agency that uses a continuous net settlement system, a requirement that exists today for trading of OTCBB securities.

Nasdaq believes, therefore, that no competitive burden would result from the Commission's approval of this filing.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Nasdaq consents, the Commission will:

(A) by order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington; DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD –2001–28 and should be submitted by May 31, 2001.

[5] *See* NASD Rules 6530 and 6540.
[6] *See* NASD Rule 6545.
[7] *See* NASD Rule 6541 (implementation pending).
[8] 15 U.S.C. 78k–1 and 78o–3
[9] 15 U.S.C. 78k–1(a)(1)(A) to (D).
[10] *See* 15 U.S.C. 78k–1(a)(1)(C).
[11] *See* 15 U.S.C. 78o–3(b)(6).
[12] *Id.*

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–11803 Filed 5–9–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44245; File No. SR–Phlx–2001–44]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Extending the Pilot Program for Exchange Rule 98, Emergency Committee Until July 31, 2001

May 1, 2001.

Pursuant to Sectiuon19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 12, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to extend the pilot program period for Rule 98, Emergency Committee until July 31, 2001. No changes to the existing rule language are being proposed.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 23, 1999, the Commission approved amendments to Rule 98, Emergency Committee (the "Committee"), which updated the composition of the Committee to reflect the current governance structure of the Exchange, on a 120-day pilot basis.[5] The pilot has been extended three times, most recently to April 30, 2001.[6] The pilot program is being extended again to July 31, 2001 as the Exchange considers other changes to the composition of the Committee.

The Exchange originally proposed to amend Rule 98, Emergency Committee, by updating the composition of the Committee to correspond with previous revisions to the Exchange's governance structure,[7] and by deleting a provision authorizing the Committee to take action regarding CENTRAMART, an equity order reporting system which is no longer used on the Exchange Equity Floor.

The Committee was formed in 1989[8] prior to the aforementioned changes to the Exchange's governance structure. The original proposed rule change, approved by the Commission, deleted the word "President" from the rule, as the Exchange no longer has a "President," and included the Exchange's On-Floor Vice Chairman[9] as a member of the Committee.

Thus, Rule 98 specifies the composition of the Emergency Committee to include the following individuals: the Chairman of the Board of Governors; the On-Floor vice Chairman of the Board of Governors; and the Chairmen of the Options Committee, the Floor Procedure Committee, and the Foreign Currency Options Committee.

The staff of the Commission has requested that the Exchange file the instant proposed rule change to extend the pilot program through July 31, 2001 so that the Committee will reflect the current governance structure of the Exchange and will be in place to take necessary and appropriate action to respond to extraordinary market conditions or other emergencies.[10] The extension of the pilot program will also allow the Exchange the necessary time to propose changes to the Committee's structure to meet the Commission's concerns about whether the Committee ensures that all interests of the Exchange (*e.g.*, On-Floor or Off-Floor) are adequately represented by the Committee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6[11] of the Act in general, and with Section 6(b)(5)[12] of the Act in specific, in that it is designed to perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest, by updating the composition of the Emergency Committee to reflect the

[13] 17 CFR 200.30–3(a)(12).
[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] 15 U.S.C. 78s(b)(3)(A).
[4] 17 CFR 240.19b–4(f)(6). The Exchange filed the pre-filing notice required by Rule 19b–4(f)(6) by filing a written description of the proposed rule change and the text of the proposed rule change on April 3, 2001.
[5] Securities Exchange Act Release No. 42272 (December 23, 1999), 65 FR 153 (January 3, 2000)(SR–Phlx–99–42). In the approval order, the Commission requested that the Exchange examine the operation of the Committee to ensure that the Committee is not dominated by any one Exchange interest (*e.g.*, On-Floor or Off-Floor interests). The Commission requested that the Exchange report back to the Commission on its views as to whether the Committee structure ensures that all Exchange interests are fairly represented by the Committee.
[6] Securities Exchange Act Release No. 42898 (June 5, 2000), 65 FR 36879 (June 12, 2000)(SR–Phlx–00–41), extending the pilot program until August 21, 2000; Securities Exchange Act Release No. 43169 (August 17, 2000), 65 FR 51888 (August 25, 2000)(SR–Phlx–00–76), extending the pilot program until November 17, 2000. On July 14, 2000, the Exchange filed a proposed rule change to effect the amendments on a permanent basis. SR–Phlx–00–63 (filed July 14, 2000). In SR–Phlx–00–63 the Exchange also enclosed the Exchange's views as to whether the Committee structure ensures that all Exchange interests are fairly represented by the Committee. Because the Exchange is considering changes to the Committee, the Commission expects SR–Phlx–00–63 to be withdrawn. In November, 2000, the pilot program was extended again until April 30, 2001. Securities Exchange Act Release No. 43614 (November 22, 2000), 65 FR 75332 (December 1, 2000).
[7] *See* Securities Exchange Act Release No. 38960 (August 22, 1997), 62 FR 45904 (August 29, 1997)(SR–Phlx–97–31).
[8] *See* Securities Exchange Act Release No. 26858 (May 22, 1989), 54 FR 23007 (May 30, 1989) (SR–Phlx–88–36).
[9] *See also* Exchange By-Law, Article IV, Section 4–2.
[10] Previously, the Exchange has described "extraordinary market or emergency conditions" as, among other things, a declaration of war, a presidential assassination, an electrical blackout, or events such as the 1987 market break or other highly volatile trading conditions that require intervention for the market's continued efficient operation. Letter dated March 15, 1989, from William W. Uchimoto, General Counsel, Exchange, to Sharon L. Itkin, Esquire, Commission, Division of Market Regulation
[11] 15 U.S.C. 78f.
[12] 15 U.S.C. 78f(b)(5).

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current governance structure of the Exchange, and by continuing to provide a regular procedure for the Exchange to take necessary and appropriate action to respond to extraordinary market conditions or other emergencies.[13]

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[14] and Rule 19b–4(f)(4)[15] thereunder because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which the proposed rule change was filed, or such shorter time as the Commission may designate. At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Commission finds that it is appropriate to accelerate the effective date of the proposed rule change and to permit the proposed rule change to become immediately effective because the proposal simply extends a previously approved pilot program until July 31, 2001. No changes to Rule 98 are being proposed at this time and the Commission has not received any comments on the pilot program. In addition, the Exchange appropriately filed a pre-filing notice as required by Rule 19b–4(f)(6).[16]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to the File No. SR–Phlx–2001–44 and should be submitted by May 31, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–11800 Filed 5–9–01; 8:45 am]

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[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 140.19b–4(f)(6).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44259; File No. SR–Phlx–2001–41]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Eliminating Equity Trading Floor Specialist Fees for the Execution of PACE Orders on the Opening

May 4, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 18, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx.[3] The Commission is publishing this notice to solicit comments on proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to eliminate equity trading floor specialist fees for each PACE transaction for orders entered before the opening of trading.[4] Specifically, the PACE specialist charge of $.20 per Phlx specialist trade for PACE executions would be eliminated.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis, for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to alleviate fee burdens on specialists by eliminating specialist fees for PACE trades executed by the specialist on the opening. Presently, PACE orders, including those executed on the opening, are charged a PACE specialist fee of $.20 per trade, in addition to other costs, such as Stock Clearing Corporation of Philadelphia trade processing/clearing fees and Section 31 fees.

Exchange specialists have many responsibilities, including the maintenance of fair and orderly markets. Phlx specialists provide PACE orders specific guarantees enumerated in Phlx Rule 229. The Phlx believes that the specialist's role is particularly important on the opening, where the specialist must determine the opening price while being mindful of single price openings in unlisted trading privileges securities, monitor Intermarket Trading System indications and commitments, and assess and address order imbalances. The Phlx believes that these responsibilities impose unique risks and costs on specialists. For instance, the automatic execution feature of PACE is not engaged until after the opening,[5] which allows the specialist to better control the aforementioned duties, but also imposes unique manual burdens, such as matching against orders on the opening.

Thus, the proposal would eliminate the Phlx transaction fees imposed on orders on the opening that are received through PACE and executed manually. The proposed amendment would enable the specialist to continue to provide prompt execution and participate in opening orders, without the additional burden of a transaction fee. The Exchange believes that this fee reduction should encourage specialists' efforts in attracting more order flow, which in turn should promote a more liquid market.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and with Section 6(b)(4),[7] in particular, in that they provide for the equitable allocation of reasonable dues, fees and other charges, by alleviating a financial burden on specialists. The Exchange notes that other equity fees apply only to certain market participants, and the Exchange has previously waived fees with respect to certain market participants.[8]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change, as amended, will impose any inappropriate burden on competition.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Phlx originally submitted the proposed rule change on April 2, 2001. On April 18, 2001, the Phlx submitted a new Form 19b–4, which replaces and supersedes the original filing in its entirety. *See* letter from Diana Tenenbaum, Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 17, 2001.

[4] PACE is the Philadelphia Stock Exchange's Automated Communication and Execution System. It is the Exchange's order routing, delivery, execution, and reporting system for its equity trading floor. *See* Phlx Rule 229.

[5] Telephone call between Edith Hallahan, Deputy General Counsel, Phlx, and Sonia Patton, Staff Attorney, Divisinn, Commission (May 1, 2001).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] *See* Securities Exchange Act Release No. 43343 (Sep. 26, 2000), 65 FR 59243 (Oct. 4, 2000) (SR–Phlx–00–80), regarding a waiver of all comparison and transaction charges for customers trading equity options.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and Rule 19b–4(f)(2) thereunder.[10] Accordingly, the proposal will take effect upon the filing of the proposed rule change with the Commission on April 18, 2001. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2001–41 and should be submitted by May 31, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–11802 Filed 5–9–01; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before June 11, 2001. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION: *Title:* Notice of Award/GrantCooperative Agreement Cost Sharing Proposal.

No's: 1222 and 1224.

Frequency: On Occasion.

Description of Respondents: Participating Colleges and Grants Management Office.

Annual Responses: 477.

Annual Burden: 34,191.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 01–11797 Filed 5–9–01; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management

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and Budget (OMB) in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer and at the following addresses:

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, DC 20503

(SSA) Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–4145, or by writing to him at the address listed above.

1. Report of Student Beneficiary About to Attain Age 19—0960–0274. The information collected by the Social Security Administration (SSA) on form SSA–1390 is used to determine a student's eligibility for Social Security benefits for those attaining age 19. The affected public is comprised of student beneficiaries about to attain age 19.

Number of Respondents: 50,000.
Frequency of Response: 1.
Average Burden Per Response: 5 minutes.
Estimated Annual Burden: 4,167 hours.

2. Certificate of Coverage Request Form—0960–0554. The United States (U.S.) has Social Security agreements with 18 countries. These agreements eliminate double Social Security coverage and taxation where a period of work would be subject to coverage and taxes in both countries. The individual agreements contain rules for determining the country under whose laws the period of work will be covered and to whose system taxes will be paid. The agreements further provide that upon the request of the worker or employer, the country under whose system the period of work is covered will issue a certificate of coverage. The certificate serves as proof of exemption from coverage and taxation under the system of the other country. The information collected is needed to determine if a period of work is covered by the U.S. system under an agreement and to issue a certificate of coverage. The respondents are workers and employers wishing to establish an exemption from foreign Social Security taxes.

Number of Respondents: 40,000.
Frequency of Response: 1.
Average Burden Per Response: 30 minutes.
Estimated Annual Burden: 20,000 hours.

3. Medical Report (General)—0960–0052. The information collected on form SSA–3826–F4 is used by SSA to determine the claimant's physical status prior to making a disability determination and to document the disability claims folder with the medical evidence. The respondents are physicians, hospitals, directors and medical records librarians.

Number of Respondents: 750,000.
Frequency of Response: 1.
Average Burden Per Response: 30 minutes.
Estimated Annual Burden: 375,000 hours.

4. Representative Payee Evaluation Report—0960–0069. The information on form SSA–624 is used by SSA to accurately account for the use of Social Security benefits and Supplemental Security Income payments received by representative payees on behalf of an individual. The respondents are individuals and organizations who received form SSA–623 or SSA–6230 and failed to respond, provided unacceptable responses that could not be resolved, or reported a change in custody.

Number of Respondents: 250,000.
Frequency of Response: 1.
Average Burden Per Response: 30 minutes.
Estimated Average Burden: 125,000 hours.

5.Chinese Custom Marriage Statement; Statement Regarding Marriage—0960–0086. The information collected on Forms SSA–1344 and SSA–1345 is used to determine whether the spouse/claimant is (or was) legally married to the numberholder for the purpose of paying Social Security Benefits. The respondents are individuals who were married in a Chinese custom marriage.

	SSA–1344	SSA–1345
Number of Respondents:	10	10
Frequency of Response:	1	1
Average Burden Per Response:	[1] 14	[1] 14
Estimated Annual Burden:	[2] 2.3	[2] 2.3

[1] Minutes.
[2] Hours.

6. State Agency Ticket Assignment Form—0960–NEW.

The information collected on this form will be used by SSA's contracted Program Manager (PM) to perform the task of assigning beneficiaries' tickets and monitoring the use of tickets under the Ticket to Work and Self-Sufficiency Program. The State Vocational Rehabilitation (VR) agency answers the questions and the beneficiary reviews the data and if in agreement will sign the form acknowledging their Ticket assignment. The respondents are State VR agencies.

Number of Respondents: 21.
Frequency of Response: 4,048 annually per respondent.
Average Burden Per Response: 3 minutes.
Estimated Annual Burden: 4,250 hours.

Please note that the Ticket to Work Program is being implemented in stages. The above represents the initial phase of the program with 13 participating states that includes 21 State VR agencies. As the program continues to be phased in, each initial program year will result in a large number of new tickets for the participating State VRs because existing clients will also be brought into the program.

7. Statement for Determining Continuing Eligibility, Supplemental Security Income Payment—0960–0145—Forms SSA–8202–F6 and SSA–8202–OCR–SM. SSA uses form SSA–8202–F6 to conduct low-and middle-error-profile (LEP-MEP) telephone or face-to-face redetermination (RZ) interviews with Supplemental Security Income (SSI) recipients and representative payees. The information collected during the interview is used to determine whether SSI recipients have met and continue to meet all statutory and regulatory requirements for SSI eligibility and whether they have been and are still receiving the correct payment amount. Form SSA–8202–OCR–SM (Optical Character Recognition-Self Mailer) collects information similar to that collected on Form SSA–8202–F6. However it is used exclusively in LEP RZ cases on a 6-year cycle. The respondents are recipients of SSI benefits or their representative payees.

	Respondents	Frequency response	Average burden per response (minutes)	Estimated annual burden (hours)
SSA–8202–F6	920,000	1	18	276,000
SSA–8202–OCR–SM	800,000	1	9	120,000
Total Burden				396,000

8. Statement For Determining Continuing Eligibility for Supplemental Security Income Payments—0960–0416. SSA uses form SSA–8203–BK for high-error-profile (HEP) redeterminations. The information is normally completed in field offices by personal contact (face-to-face or telephone interview) using the automated Modernized SSI Claim System (MSSICS). The paper form is used only when a systems limitation prevents the interview from being completed on MSSICS. When the paper form is used, a tear-off sheet (Pages 7 and 8 of the form) is given to recipients at the conclusion of a face-to-face interview or is mailed to recipients at the completion of the telephone interview. The tear-off includes information about how, what, when, where, and why SSI recipients report when there is a change in income, resources, or living arrangements. The respondents are recipients of title XVI SSI benefits.

Number of Respondents: 920,000.
Frequency of Response: 1.
Average Burden Per Response: 18 minutes.
Estimated Annual Burden: 276,000 hours.

9. Summary of Evidence—0960–0430. The information on Form SSA–887 is used by State Disability Determination Services (DDS) to provide claimants with a list of medical/vocational reports pertaining to their disability. The form will aid claimants in reviewing the evidence in their folders and will be used by hearing officers in preparing for and conducting hearings. The respondents are State DDSs that make disability determinations.

Number of Respondents: 49,000.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Average Burden: 12,250 hours.

10. Notice Regarding Substitution of Party Upon Death of Claimant—Reconsideration of Disability Cessation—0960–0351. The Social Security Administration uses the form SSA–770 to obtain information from substitute parties regarding their intention to pursue the appeals process for an individual who has died. The respondents are such parties.

Number of Respondents: 1,200.
Frequency of Response: 1.
Average Burden Per Response: 10 minutes.
Estimated Annual Burden: 200 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed above.

1. Internet Direct Deposit Application—0960–NEW. SSA uses Direct Deposit/Electronic Funds Transfer (DD/EFT) enrollment information received from beneficiaries to facilitate DD/EFT of their social security benefits with a financial institution. The respondents are Social Security beneficiaries who use the Internet to enroll in DD/EFT.

Number of Respondents: 3,485.
Frequency of Response: 1.
Average Burden Per Response: 10 minutes.
Estimated Average Burden: 581 hours.

2. Request To Have Supplemental Security Income Overpayment Withheld from My Social Security Benefits—0960–0549. Form SSA–730–U2 is used by SSA to confirm that a request has been made by a Social Security beneficiary for SSA to recover his/her SSI overpayment from title II benefits and that the request was made voluntarily by the beneficiary. The respondents are Social Security beneficiaries who received SSI overpayments.

Number of Respondents: 10,000.
Frequency of Response: 1.
Average Burden Per Response: 5 minutes.
Estimated Average Burden: 833 hours.

3. Farm Self-Employment Questionnaire—0960–0061. Section 211(a) of the Social Security Act requires the existence of a trade or business as a prerequisite for determining whether an individual or partnership may have "net earnings from self-employment." Form SSA–7156 elicits the information necessary to determine the existence of an agricultural trade or business and subsequent covered earnings for Social Security entitlement purposes. The respondents are applicants for Social Security benefits whose entitlement depends on whether the worker has covered earnings from self-employment as a farmer.

Number of Respondents: 47,500.
Frequency of Response: 1.
Average Burden Per Response: 10 minutes.
Estimated Average Burden: 7,917 hours.

Dated: May 4, 2001.

Frederick W. Brickenkamp,

Reports Clearance Officer.

[FR Doc. 01–11753 Filed 5–9–01; 8:45 am]
BILLING CODE 4191–02–U

DEPARTMENT OF STATE

[Public Notice 3659]

Culturally Significant Objects Imported for Exhibition Determinations; "Mies in Berlin"

DEPARTMENT: United States Department of State.

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ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985, 22 U.S.C. 2459], the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681 *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], and Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, I hereby determine that the objects to be included in the exhibit "Mies in Berlin," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects will be imported pursuant to loan agreements with foreign lenders. I also determine that the temporary exhibition or display of the exhibit objects at The Museum of Modern Art, in New York, NY, from on or about June 21, 2001, to on or about September 11, 2001, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: May 2, 2001.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 01–11821 Filed 5–9–01; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Draft Environmental Impact Statement: Evansville, IN and Henderson, KY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for the proposed I–69 corridor in the Evansville, Indiana and Henderson, Kentucky area.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Dirks, Environmental Specialist, Federal Highway Administration, 575 North Pennsylvania Street, Room 254, Indianapolis, Indiana 46204. Telephone: (317) 226–7492, Fax: (317) 226–7341, e-mail: robert. dirks@fhwa. dot.gov.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Indiana department of Transportation (INDOT), the Kentucky Transportation Cabinet (KYTC) and the Evansville Urban Transportation Study (EUTS), will prepare an EIS to determine a proposed route for the I–69 Corridor through the Evansville, Indiana-Henderson, Kentucky area, extending south from I–64 in Indiana to the Pennyrile Parkway in Kentucky. The proposed facility is anticipated to provide an interstate-type facility with two lanes in each direction (with the possibility of three lanes in each direction depending on forecasted traffic volumes) separated by a median. The study will build upon the previous Corridor 18 studies (the Feasibility Study, 1995; the Special Issues Study, 1997; and the Special Environmental Study, 2000), which identified a variety of environmental and location factors that must be considered prior to the construction of I–69 as an addition to the Interstate System. The EIS will discuss environmental, social, and economic impacts associated with the development of the proposed action.

Up to five (5) possible conceptual alternatives (including one (1) to the east and two (2) to the west of Evansville and Henderson, one (1) incorporating U.S. 41, and one (1) focusing on ITS (Intelligent Transportation Systems) strategies for existing US 41 and I–164 through Evansville and Henderson), as well as a no-build alternative, will be examined. The study will identify and consider potential impacts the project may have on natural, cultural, historic and other environmental resources. Early coordination meetings will be held with federal, state, regional and local resource agencies. An environmental "footprint" will be developed at the outset of the study, and will be made available at the initial public information meetings. These early public meetings will be held to solicit input from citizens and local officials prior to the development of detailed alternatives. A formal scoping meeting will be scheduled with the appropriate resource agencies to review the purpose and need and the conceptual alternatives to be considered. A second interagency meeting will be held to review the selection of alternatives to be retained for detailed study. A third interagency review meeting will be held to review the selected action and conceptual mitigation. Utilizing input from these agencies, input received at public meetings, and information obtained from field review, alternatives will be developed along with preliminary cost estimates for each of the alternatives. This information, along with environmental investigations, will be presented at a second series of public information meetings for review and public comment.

Following evaluation of public comments, alternatives will be refined and evaluated, a preferred alternative may be identified, and a Draft EIS will be prepared. Public hearings will then be held in accordance with all State and Federal requirements. Public notice will be given of the time and place of the public hearings. The Draft EIS will be available for public and agency review and comment. To ensure that the full range of issues related to the proposed action are addressed and that all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA contact at the address provided above.

State contacts	FHWA Division contacts
Indiana	
Steve Cecil, Deputy Commissioner of Planning and Intermodal Transp., Indiana Department of Transportation, 100 North Senate Ave., Room N755, Indianapolis, IN 46204–2249; Phone: 317–232–5535; Fax: 317–232–0238; e-mail: scecil@indot.state.in.us.	John Baxter, Division Administrator, Federal Highway Administration, 575 North Pennsylvania St., Room 254, Indianapolis, Indiana 46204; Phone: 317–226–7475; Fax: 317–226–7341; e-mail: john.baxter@fhwa.dot.gov

State contacts	FHWA Division contacts
Kentucky	
John Carr, Deputy State Highway Engineer, Kentucky Transportation Cabinet, State Office Building, Rm. 1005, 501 High Street, Frankfort, KY 40622; Phone: 502–564–3730; Fax: 502–564–2277; e-mail: jcarr@mail.kytc.state.ky.us.	Jose Sepulveda, Division Administrator, Federal Highway Administration, 330 W. Broadway, Frankfort, KY 40601; Phone: 502–223–6720; Fax: 502–223–6735; e-mail: jose.sepulveda@fhwa.dot.gov

(Catalog of Federal Domestic Assistance Program No. 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to the program).

Authority: 23 USC 315; 49 CFR 1.48.

Issued on: May 1, 2001.

Robert Dirks,

Environmental Specialist, FHWA, Indianapolis, Indiana.

[FR Doc. 01–11794 Filed 5–9–01; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Wythe County, VA

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this notice to advise the public of its intent to prepare an Environmental Impact Statement in cooperation with the Virginia Department of Transportation (VDOT) for the I–77/I–81 Improvement Project in Wythe County to address safety and capacity issues.

FOR FURTHER INFORMATION CONTACT: John Simkins, Environmental Protection Specialist, Federal Highway Administration, Post Office Box 10249, Richmond, Virginia 23240–0249, Telephone 804–775–3342.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWA), in cooperation with the Virginia Department of Transportation (VDOT), will prepare an environmental impact statement (EIS) for the I–77/I–81 Improvement Project in Wythe County. Interstates 77 and 81 currently share a common corridor for approximately nine miles from immediately east of Fort Chiswell to the Town of Wytheville. The study area's limits begin just west of I–81 exit 70 and extend east for a distance of approximately 15 miles, ending west of the I–81 exit 84. The study window's southern limits begin along I–77, approximately three miles south of the I–77/I–81 interchange. The northern limits are located near Cove Mountain, north of the I–77/I–81 separation in Wytheville.

Recognizing that the National Environmental Policy Act (NEPA) process requires the consideration of a reasonable range of alternatives that will address the purpose and need, the EIS will include a range of alternatives for study consisting of a no-build alternative as well as alternatives consisting of transportation system management strategies, mass transit, improvements to existing roadways, and/or new alignment facilities. These alternatives will be developed, screened, and carried forward for analysis in the draft EIS based on their ability to address the purpose and need that will be developed while avoiding known and sensitive resources.

The scoping process is currently underway. Scoping letters describing the proposed study and soliciting input are being sent to the appropriate Federal, State and local agencies who have expressed or are known to have an interest or legal role in this proposal. Private organizations, citizens, and interest groups also will have an opportunity to provide input into the development of the EIS and identify issues that should be addressed. No formal scoping meeting is planned at this time.

A series of public informational meetings and a public hearing will be held. Notices of public meetings or public hearings will be given through various forums providing the time and place of the meeting along with other relevant information. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are identified and taken into account, comments and input are invited from all interested parties. Comments and questions concerning the proposed action and draft EIS should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed action.)

Authority: 23 U.S.C. 315; 49 CFR 1.48

Issued on: May 3, 2001.

John Simkins,

Environmental Protection Specialist.

[FR Doc. 01–11795 Filed 5–9–01; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Annual List of Defect and Noncompliance Decisions Affecting Nonconforming Imported Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Annual list of defect and noncompliance decisions affecting nonconforming imported vehicles.

SUMMARY: This document contains a list of vehicles recalled by their manufacturers during Calendar Year 2000 (January 1, 2000 through December 31, 2000) to correct a safety-related defect or a noncompliance with an applicable Federal motor vehicle safety standard (FMVSS). The listed vehicles are those that have been decided by NHTSA to be substantially similar to vehicles imported into the United States that were not originally manufactured to conform to all applicable FMVSS. The registered importers of those nonconforming vehicles are obligated to provide their owners with notification of, and a remedy for, the defects or noncompliances for which the listed vehicles were recalled.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards (FMVSS) shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle of the same model year that was originally

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manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115. Once NHTSA decides that a nonconforming vehicle is eligible for importation, it may be imported by a person who is registered with the agency pursuant to 49 U.S.C. 30141(c). Before releasing the vehicle for use on public streets, roads, or highways, the registered importer must certify to NHTSA, pursuant to 49 U.S.C. 30146(a), that the vehicle has been brought into conformity with all applicable FMVSS.

If a vehicle originally manufactured for importation into and sale in the United States is decided to contain a defect related to motor vehicle safety, or not to comply with an applicable FMVSS, 49 U.S.C. 30147(a)(1)(A) provides that the same defect or noncompliance is deemed to exist in any nonconforming vehicle that NHTSA has decided to be substantially similar and for which a registered importer has submitted a certificate of conformity to the agency. Under 49 U.S.C. 30147(a)(1)(B), the registered importer is deemed to be the nonconforming vehicle's manufacturer for the purpose of providing notification of, and a remedy for, the defect or noncompliance.

To apprise registered importers of the vehicles for which they must conduct a notification and remedy (i.e., "recall") campaign, 49 U.S.C. 30147(a)(2) requires NHTSA to publish in the **Federal Register** notice of any defect or noncompliance decision that is made with respect to substantially similar U.S. certified vehicles. Annex A contains a list of all such decisions that were made during Calendar Year 2000. The list identifies the Recall Number that was assigned to the recall by NHTSA after the agency received the manufacturer's notification of the defect or noncompliance under 49 CFR Part 573. After December 31, 2001, NHTSA will publish a comparable list of all defect and noncompliance decisions affecting nonconforming imported vehicles that are made during the current calendar year.

Authority: 49 U.S.C. 30147(a)(2); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 7, 2001.

Marilynne Jacobs,

Director Office of Vehicle Safety, Compliance.

ANNEX A

CALENDAR YEAR 2000 RECALLS AFFECTING VEHICLES IMPORTED BY REGISTERED IMPORTERS

Make	Model	Year	Recall No.
AUDI	A6	2000	00V137000
BLUE BIRD	TC2000	1993	00V321000
BMW	323I	2000	00V048000
BMW	540I	2000	00V048000
BMW	K1200RS	1998	00V264000
BMW	K1200RS	1998	00V266000
BMW	M5	2000	00V048000
BMW	X5	2000	00V010000
BMW	X5	2001	00V261000
BMW	X5	2001	00V341000
BUICK	CENTURY	1998	99V356000
BUICK	CENTURY	1999	99V356000
BUICK	CENTURY	2000	00V143000
BUICK	CENTURY	2000	00V160000
BUICK	CENTURY	2000	00V228003
BUICK	CENTURY	2000	00V371000
BUICK	CENTURY	2001	00V228003
BUICK	CENTURY	2001	00V371000
BUICK	LESABRE	2000	00V114000
BUICK	LESABRE	2000	99V355000
BUICK	PARK AVENUE	1997	00V117000
BUICK	PARK AVENUE	1998	00V117000
BUICK	REGAL	1989	00V189000
BUICK	REGAL	1990	00V189000
BUICK	REGAL	1991	00V189000
BUICK	REGAL	1995	00V171000
BUICK	REGAL	1998	99V356000
BUICK	REGAL	1999	99V356000
BUICK	REGAL	2000	00V143000
BUICK	REGAL	2000	00V160000
BUICK	REGAL	2000	00V228003
BUICK	REGAL	2000	00V371000
BUICK	RIVIERA	1995	00V057000
CADILLAC	DEVILLE	2000	00V021000
CADILLAC	DEVILLE	2000	00V114000
CADILLAC	ESCALADE	1999	00V122000
CADILLAC	ESCALADE	1999	00V153000
CADILLAC	ESCALADE	2000	00V153000
CADILLAC	SEVILLE	2000	00V114000
CHEVROLET	BLAZER	1998	00V202000
CHEVROLET	BLAZER	2000	00V228003
CHEVROLET	BLAZER	2001	00V228003
CHEVROLET	CAVALIER	1998	00V053000
CHEVROLET	CAVALIER	2000	00V201000
CHEVROLET	CORVETTE	1997	00V111000
CHEVROLET	CORVETTE	1998	00V111000
CHEVROLET	CORVETTE	1999	00V111000
CHEVROLET	CORVETTE	2000	00V111000

CALENDAR YEAR 2000 RECALLS AFFECTING VEHICLES IMPORTED BY REGISTERED IMPORTERS—Continued

Make	Model	Year	Recall No.
CHEVROLET	EXPRESS	1999	00V085000
CHEVROLET	EXPRESS	2000	00V085000
CHEVROLET	IMPALA	2000	00V228003
CHEVROLET	IMPALA	2000	00V371000
CHEVROLET	IMPALA	2001	00V228003
CHEVROLET	IMPALA	2001	00V244000
CHEVROLET	IMPALA	2001	00V371000
CHEVROLET	LUMINA	1990	00V189000
CHEVROLET	LUMINA	1991	00V189000
CHEVROLET	MONTE CARLO	2000	00V228003
CHEVROLET	MONTE CARLO	2001	00V228003
CHEVROLET	MONTE CARLO	2001	00V244000
CHEVROLET	S10	1997	00V069000
CHEVROLET	S10	1997	00V069200
CHEVROLET	S10	1997	00V159000
CHEVROLET	S10	1998	00V159000
CHEVROLET	S10	1998	00V202000
CHEVROLET	S10	2000	00V228003
CHEVROLET	S10	2000	00V258001
CHEVROLET	S10	2001	00V228003
CHEVROLET	SILVERADO	1999	00X001000
CHEVROLET	SILVERADO	2000	00V055000
CHEVROLET	SILVERADO	2000	00X001000
CHEVROLET	SUBURBAN	1999	00V122000
CHEVROLET	SUBURBAN	2000	00V222000
CHEVROLET	SUBURBAN	2000	00V343000
CHEVROLET	SUBURBAN	2001	00V343000
CHEVROLET	TAHOE	1999	00V122000
CHEVROLET	TAHOE	2000	00V343000
CHEVROLET	TAHOE	2001	00V343000
CHEVROLET	VENTURE	2000	00V228003
CHEVROLET	VENTURE	2001	00V228003
CHRYSLER	300M	1999	00V034000
CHRYSLER	300M	2000	00V033000
CHRYSLER	300M	2000	00V034000
CHRYSLER	300M	2000	00V366000
CHRYSLER	300M	2001	00V366000
CHRYSLER	CIRRUS	2000	00V196000
CHRYSLER	CIRRUS	2000	00V366000
CHRYSLER	CONCORDE	1999	00V034000
CHRYSLER	CONCORDE	2000	00V180000
CHRYSLER	CONCORDE	2000	00V366000
CHRYSLER	LHS	1999	00V034000
CHRYSLER	LHS	2000	00V033000
CHRYSLER	LHS	2000	00V034000
CHRYSLER	LHS	2000	00V366000
CHRYSLER	PT CRUISER	2001	00V366000
CHRYSLER	SEBRING	2001	00V299002
CHRYSLER	SEBRING	2001	00V306000
CHRYSLER	SEBRING	2001	00V320002
CHRYSLER	SEBRING	2001	00V366000
DODGE	CARAVAN	1993	00V305000
DODGE	CARAVAN	1994	00V305000
DODGE	DAKOTA	1991	00V106000
DODGE	DAKOTA	1992	00V106000
DODGE	DAKOTA	1997	00V193000
DODGE	DAKOTA	1997	00V198000
DODGE	DAKOTA	1997	00V199000
DODGE	DAKOTA	1998	00V193000
DODGE	DAKOTA	1998	00V198000
DODGE	DAKOTA	1999	00V193000
DODGE	DAKOTA	1999	00V198000
DODGE	DAKOTA	2000	00V193000
DODGE	DAKOTA	2000	00V197000
DODGE	DAKOTA	2000	00V198000
DODGE	DAKOTA	2001	00V366000
DODGE	DURANGO	2001	00V366000
DODGE	GRAND CARAVAN	1993	00V305000
DODGE	GRAND CARAVAN	1994	00V305000
DODGE	INTREPID	1999	00V034000
DODGE	INTREPID	2000	00V033000
DODGE	INTREPID	2000	00V034000

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CALENDAR YEAR 2000 RECALLS AFFECTING VEHICLES IMPORTED BY REGISTERED IMPORTERS—Continued

Make	Model	Year	Recall No.
DODGE	INTREPID	2000	00V180000
DODGE	INTREPID	2000	00V366000
DODGE	INTREPID	2001	00V366000
DODGE	NEON	2000	00V194000
DODGE	NEON	2000	00V366000
DODGE	NEON	2001	00V366000
DODGE	NEON	2001	00V415000
DODGE	RAM	1994	00V135000
DODGE	RAM	1995	00V135000
DODGE	RAM	1996	00V135000
DODGE	RAM	1998	00V107000
DODGE	RAM	1999	00V107000
DODGE	RAM	2000	00V007000
DODGE	RAM	2000	00V107000
DODGE	RAM	2001	00V307000
DODGE	RAM	2001	00V366000
DODGE	STRATUS	2000	00V196000
DODGE	STRATUS	2000	00V366000
DODGE	VIPER	2000	00V366000
DODGE	VIPER	2001	00V366000
FERRARI	360 MODENA	1999	00V078000
FERRARI	360 MODENA	1999	00V098000
FERRARI	360 MODENA	1999	00V099000
FERRARI	360 MODENA	1999	00V340000
FERRARI	360 MODENA	2000	00V340000
FERRARI	360 MODENA F1	1999	00V098000
FERRARI	360 MODENA F1	1999	00V099000
FERRARI	360 MODENA F1	1999	00V340000
FERRARI	360 MODENA F1	2000	00V340000
FORD	CONTOUR	1996	00V075000
FORD	CONTOUR	1997	00V075000
FORD	CONTOUR	1998	00V075000
FORD	CONTOUR	1998	00V350000
FORD	CONTOUR	1999	00V075001
FORD	CONTOUR	1999	00V350000
FORD	CROWN VICTORIA	1996	00V157001
FORD	CROWN VICTORIA	1996	00V157002
FORD	CROWN VICTORIA	1997	00V157001
FORD	CROWN VICTORIA	1997	00V157002
FORD	CROWN VICTORIA	1998	00V157001
FORD	CROWN VICTORIA	1998	00V157002
FORD	CROWN VICTORIA	1998	00V200000
FORD	CROWN VICTORIA	1999	00V157001
FORD	CROWN VICTORIA	1999	00V157002
FORD	CROWN VICTORIA	1999	00V200000
FORD	CROWN VICTORIA	2000	00V157001
FORD	CROWN VICTORIA	2000	00V157002
FORD	CROWN VICTORIA	2000	00V200000
FORD	CROWN VICTORIA	2001	00V270000
FORD	CROWN VICTORIA	2001	00V412000
FORD	E350	1999	00V115000
FORD	E350	2000	00V115000
FORD	ECONOLINE	1999	00V115000
FORD	ECONOLINE	2000	00V115000
FORD	ESCAPE	2001	00V210001
FORD	ESCAPE	2001	00V223001
FORD	ESCAPE	2001	00V260001
FORD	ESCAPE	2001	00V277001
FORD	ESCAPE	2001	00V387002
FORD	ESCORT	2000	00V228001
FORD	EXPEDITION	1997	00V073000
FORD	EXPEDITION	1997	00V168000
FORD	EXPEDITION	1998	00V073000
FORD	EXPEDITION	1998	00V168000
FORD	EXPEDITION	1999	00V073000
FORD	EXPEDITION	2000	00V073000
FORD	EXPLORER	1995	00V402000
FORD	EXPLORER	1996	00V402000
FORD	EXPLORER	1997	00V168000
FORD	EXPLORER	1997	00V402000
FORD	EXPLORER	1998	00V168000
FORD	EXPLORER	1999	00V072000

CALENDAR YEAR 2000 RECALLS AFFECTING VEHICLES IMPORTED BY REGISTERED IMPORTERS—Continued

Make	Model	Year	Recall No.
FORD	EXPLORER	2000	00V072000
FORD	EXPLORER	2000	00V179000
FORD	EXPLORER	2000	00V228001
FORD	F150	1997	00V168000
FORD	F150	1997	00V231000
FORD	F150	1998	00V168000
FORD	F150	2000	00V228001
FORD	F150	2001	00V348000
FORD	F250	1997	00V231000
FORD	F250	2000	00V228001
FORD	FOCUS	2000	00V218000
FORD	FOCUS	2000	00V302000
FORD	FOCUS	2000	00V303000
FORD	FOCUS	2000	00V411000
FORD	MUSTANG	1994	00V349000
FORD	MUSTANG	1995	00V349000
FORD	MUSTANG	1996	00V349000
FORD	MUSTANG	1997	00V349000
FORD	MUSTANG	1998	00V349000
FORD	MUSTANG	1999	00V349000
FORD	MUSTANG	2000	00V349000
FORD	MUSTANG	2001	00V349000
FORD	MUSTANG GT	2000	00V355000
FORD	NAVIGATOR	1998	00V168000
FORD	RANGER	2000	00V228001
FORD	TAURUS	2000	00V242000
FORD	TAURUS	2001	00V240000
FORD	WINDSTAR	1996	00V168000
FORD	WINDSTAR	1997	00V168000
FORD	WINDSTAR	1998	00V168000
FORD	WINDSTAR	2000	00V020000
FORD	WINDSTAR	2000	00V164000
FORD	WINDSTAR	2000	00V228001
FORD	WINDSTAR	2001	00V270000
FORD	WINDSTAR	2001	00V412000
FREIGHTLINER	ARGOSY	2000	00V081000
FREIGHTLINER	ARGOSY	2000	00V082000
FREIGHTLINER	ARGOSY	2000	00V232002
FREIGHTLINER	CENTURY	1997	00V232002
FREIGHTLINER	CENTURY	2000	00V081000
FREIGHTLINER	CENTURY	2000	00V131004
FREIGHTLINER	CENTURY	2000	00V232002
FREIGHTLINER	STERLING	1999	00V232002
GMC	DENALI	1999	00V122000
GMC	JIMMY	2000	00V228003
GMC	SAVANA	1999	00V085000
GMC	SAVANA	2000	00V085000
GMC	SIERRA	1999	00X001000
GMC	SIERRA	2000	00V055000
GMC	SIERRA	2000	00X001000
GMC	SONOMA	1998	00V220000
GMC	SONOMA	2000	00V258001
GMC	SUBURBAN	1999	00V122000
GMC	SUBURBAN	2000	00V222000
GMC	YUKON	1999	00V122000
GMC	YUKON	2000	00V343000
GMC	YUKON	2001	00V343000
GMC	YUKON XL	2000	00V343000
GMC	YUKON XL	2001	00V343000
HONDA	ACCORD	2000	00V184000
HONDA	CBR929RR	2000	00V257000
HONDA	ODYSSEY	1999	00V119000
HONDA	ODYSSEY	1999	00V183000
HONDA	ODYSSEY	2000	00V119000
HONDA	ODYSSEY	2000	00V183000
HONDA	S2000	2000	00V016000
HONDA	S2000	2000	00V316000
HYUNDAI	ELANTRA	2000	00V259001
HYUNDAI	ELANTRA	2000	00V259002
HYUNDAI	TIBURON	1997	00V095002
INFINITI	QX4	2001	00V410000
INTERNATIONAL	2000	1999	00V176000

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CALENDAR YEAR 2000 RECALLS AFFECTING VEHICLES IMPORTED BY REGISTERED IMPORTERS—Continued

Make	Model	Year	Recall No.
INTERNATIONAL	2000	1999	00V232001
INTERNATIONAL	2000	1999	00V246105
INTERNATIONAL	2000	1999	00V246205
INTERNATIONAL	9200	1999	00V149000
INTERNATIONAL	9300	1998	00V149000
INTERNATIONAL	9300	1999	00V149000
INTERNATIONAL	9400	2000	00V149000
INTERNATIONAL	9900	2000	00V149000
JAGUAR	S–TYPE	2000	00V228004
JAGUAR	S–TYPE	2000	00V359002
JEEP	CHEROKEE	1996	00V136000
JEEP	CHEROKEE	1997	00V105000
JEEP	CHEROKEE	1997	00V136000
JEEP	CHEROKEE	1998	00V105000
JEEP	CHEROKEE	1998	00V136000
JEEP	CHEROKEE	1999	00V105000
JEEP	CHEROKEE	1999	00V136000
JEEP	CHEROKEE	2001	00V366000
JEEP	GRAND CHEROKEE	1996	00V136000
JEEP	GRAND CHEROKEE	1997	00V136000
JEEP	GRAND CHEROKEE	1998	00V136000
JEEP	GRAND CHEROKEE	1999	00V034000
JEEP	GRAND CHEROKEE	2000	00V034000
JEEP	GRAND CHEROKEE	2000	00V195000
JEEP	GRAND CHEROKEE	2001	00V366000
JEEP	WRANGLER	2001	00V366000
KAWASAKI	NINJA	2000	00V365000
KAWASAKI	NINJA	2000	00V384000
LAND ROVER	RANGE ROVER	1999	00V142001
LINCOLN	LS	2000	00V359001
LINCOLN	LS	2001	00V359001
LINCOLN	NAVIGATOR	1997	00V073000
LINCOLN	NAVIGATOR	1998	00V073000
LINCOLN	NAVIGATOR	1999	00V073000
LINCOLN	NAVIGATOR	2000	00V073000
LINCOLN	TOWN CAR	1996	00V157001
LINCOLN	TOWN CAR	1996	00V157002
LINCOLN	TOWN CAR	1997	00V157001
LINCOLN	TOWN CAR	1997	00V157002
LINCOLN	TOWN CAR	1998	00V157001
LINCOLN	TOWN CAR	1998	00V157002
LINCOLN	TOWN CAR	1998	00V200000
LINCOLN	TOWN CAR	1999	00V157001
LINCOLN	TOWN CAR	1999	00V157002
LINCOLN	TOWN CAR	1999	00V200000
LINCOLN	TOWN CAR	2000	00V157001
LINCOLN	TOWN CAR	2000	00V157002
LINCOLN	TOWN CAR	2000	00V200000
LINCOLN	TOWN CAR	2000	00V228001
LINCOLN	TOWN CAR	2000	00V368000
MACK	CH	1990	00V019003
MACK	CH	1993	00V019003
MACK	MR	1999	00V230003
MAZDA	626	1994	99V358000
MAZDA	626	1998	00V134000
MAZDA	MIATA	1995	00V004000
MAZDA	MIATA	1999	00V032000
MAZDA	MPV	2000	00V113001
MAZDA	MX6	1994	99V358000
MAZDA	PROTEGE	1995	00V118000
MAZDA	PROTEGE	1999	00V301000
MAZDA	TRIBUTE	2001	00V210002
MAZDA	TRIBUTE	2001	00V223002
MAZDA	TRIBUTE	2001	00V260002
MAZDA	TRIBUTE	2001	00V277002
MAZDA	TRIBUTE	2001	00V387001
MERCURY	COUGAR	1999	00V075001
MERCURY	COUGAR	2000	00V075001
MERCURY	GRAND MARQUIS	1996	00V157001
MERCURY	GRAND MARQUIS	1996	00V157002
MERCURY	GRAND MARQUIS	1997	00V157001
MERCURY	GRAND MARQUIS	1997	00V157002

CALENDAR YEAR 2000 RECALLS AFFECTING VEHICLES IMPORTED BY REGISTERED IMPORTERS—Continued

Make	Model	Year	Recall No.
MERCURY	GRAND MARQUIS	1998	00V157001
MERCURY	GRAND MARQUIS	1998	00V157002
MERCURY	GRAND MARQUIS	1998	00V200000
MERCURY	GRAND MARQUIS	1999	00V157001
MERCURY	GRAND MARQUIS	1999	00V157002
MERCURY	GRAND MARQUIS	1999	00V200000
MERCURY	GRAND MARQUIS	2000	00V157001
MERCURY	GRAND MARQUIS	2000	00V157002
MERCURY	GRAND MARQUIS	2000	00V200000
MERCURY	MYSTIQUE	1996	00V075000
MERCURY	MYSTIQUE	1997	00V075000
MERCURY	MYSTIQUE	1998	00V075000
MERCURY	VILLAGER	1999	00V292001
MITSUBISHI	MONTERO	1992	00V311001
NAVISTAR	2674	1999	00V022000
NISSAN	FRONTIER	2000	00V288000
NISSAN	QUEST	1999	00V292002
NISSAN	SENTRA	1996	00V063000
NISSAN	XTERRA	2000	00V288000
OLDSMOBILE	ALERO	1999	00V140000
OLDSMOBILE	ALERO	2000	00V140000
OLDSMOBILE	AURORA	1995	00V057000
OLDSMOBILE	AURORA	2001	00V114000
OLDSMOBILE	CUTLASS SUPREME	1995	00V171000
OLDSMOBILE	CUTLASS SUPREME	1996	00V171000
OLDSMOBILE	INTRIGUE	1998	00V044000
OLDSMOBILE	INTRIGUE	1999	00V044000
OLDSMOBILE	INTRIGUE	2000	00V114000
OLDSMOBILE	INTRIGUE	2000	00V228003
OLDSMOBILE	SILHOUETTE	2000	00V228003
OLDSMOBILE	SILHOUETTE	2001	00V228003
PETERBILT	320	1999	00V027000
PLYMOUTH	GRAND VOYAGER	1993	00V305000
PLYMOUTH	GRAND VOYAGER	1994	00V305000
PLYMOUTH	PROWLER	2000	00V366000
PLYMOUTH	VOYAGER	1993	00V305000
PLYMOUTH	VOYAGER	1994	00V305000
PONTIAC	BONNEVILLE	2000	00V114000
PONTIAC	GRAND AM	1999	00V140000
PONTIAC	GRAND AM	2000	00V116000
PONTIAC	GRAND AM	2000	00V140000
PONTIAC	GRAND PRIX	1989	00V189000
PONTIAC	GRAND PRIX	1991	00V189000
PONTIAC	GRAND PRIX	2000	00V228003
PONTIAC	GRAND PRIX	2001	00V228003
PONTIAC	MONTANA	2000	00V228003
PONTIAC	MONTANA	2001	00V228003
PORSCHE	911	1999	00V109000
PORSCHE	911	2000	00V109000
PORSCHE	911 CARRERA	1999	00V109000
PREVOST	H3–40	1992	00V389000
PREVOST	H3–41	1997	00V389000
PREVOST	H3–41	1998	00V389000
PREVOST	H3–45	1997	00V389000
PREVOST	H3–45	1998	00V389000
PREVOST	H3–45	1999	00V133000
PREVOST	H3–45	1999	00V389000
PREVOST	H3–45	1999	00V407001
PREVOST	H3–45	2000	00V133000
PREVOST	H3–45	2000	00V342000
PREVOST	H3–45	2000	00V389000
SUZUKI	SIDEKICK	1997	00V008000
TOYOTA	AVALON	2000	00V154000
TOYOTA	CAMRY	2000	00V154000
TOYOTA	CAMRY	2000	00V252000
TOYOTA	COROLLA	2000	00V252000
TOYOTA	ECHO	2000	00V252000
TOYOTA	ECHO	2000	00V256000
TOYOTA	SOLARA	2000	00V154000
TOYOTA	TACOMA	2000	00V252000
TOYOTA	TUNDRA	2000	00V103000
VOLKSWAGEN	EUROVAN	1993	00V039000

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CALENDAR YEAR 2000 RECALLS AFFECTING VEHICLES IMPORTED BY REGISTERED IMPORTERS—Continued

Make	Model	Year	Recall No.
VOLKSWAGEN	GOLF	2000	00V280000
VOLKSWAGEN	GOLF	2001	00V280000
VOLVO	ACL	1997	00V002002
VOLVO	S80	1999	00V238000
VOLVO	S80	2000	00V238000
VOLVO	V70	2000	00V239000
VOLVO	VN	1999	00V246106
VOLVO	WCL	1989	00V019001
VOLVO	WIA	1993	00V019001

[FR Doc. 01–11811 Filed 5–9–01; 8:45 am]
BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–9620]

RIN 2127–AH98

Federal Motor Vehicle Safety Standards; Head Restraints; Review: Effectiveness of Head Restraints in Light Trucks; Evaluation Report

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments on technical report.

SUMMARY: This notice announces NHTSA's publication of a Technical Report reviewing and evaluating its existing Safety Standard 202, Head Restraints. The report's title is The Effectiveness of Head Restraints in Light Trucks.

DATES: Comments must be received no later than September 7, 2001.

ADDRESSES: *Report:* You may obtain a copy of the report free of charge by sending a self-addressed mailing label to Publications Ordering and Distribution Services (NAD–51), National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. A summary of the report is available on the Internet for viewing on line at *www.nhtsa.dot.gov/cars/rules/regrev/evaluate/809247.html.* The full report is available on the Internet in PDF format at *www.nhtsa.dot.gov/cars/rules/regrev/evaluate/pdf/809247.pdf.*

Comments: All comments should refer to the Docket number of this notice (NHTSA–2001–9620). You may submit your comments in writing to: U. S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. You may also submit your comments electronically by logging onto the Dockets Management System website at *http://dms.dot.gov.* Click on "Help & Information" or "Help/Info" to obtain instructions for filing the document electronically.

You may call Docket Management at 202–366–9324 and visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Charles J. Kahane, Chief, Evaluation Division, NPP–22, Plans and Policy, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW., Washington, DC 20590. Telephone: 202–366–2560. FAX: 202–366–2559. E-mail: *ckahane@nhtsa.dot.gov.*

For information about NHTSA's evaluations of the effectiveness of existing regulations and programs: Visit the NHTSA web site at *http://www.nhtsa.dot.gov* and click "Regulations & Standards" underneath "Car Safety" on the home page; then click "Regulatory Evaluation" on the "Regulations & Standards" page.

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard 202 has required head restraints in front outboard positions for all cars manufactured January 1, 1969 and later, for sale in the United States. The National Highway Traffic Safety Administration extended the standard to include light trucks (pickup trucks, vans, and sport utility vehicles with Gross Vehicle Weight Rating less than 10,000 pounds) as of September 1, 1991.

NHTSA's 1982 evaluation of head restraints in passenger cars estimated a 13 percent overall reduction in injuries to drivers in rear impacts. The current evaluation, based on data from eight states (Florida, Indiana, Maryland, Missouri, North Carolina, Pennsylvania, Texas, and Utah) estimates that head restraints reduced overall injury risk in light trucks in rear impacts by a statistically significant 6 percent.

How Can I Influence NHTSA's Thinking on This Evaluation?

NHTSA welcomes public review of the technical report and invites reviewers to submit comments about the data and the statistical methods used in the analyses. NHTSA will submit to the Docket a response to the comments and, if appropriate, additional analyses that supplement or revise the technical report.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the Docket number of this document (NHTSA–2001–9318) in your comments.

Your primary comments must not be more than 15 pages long (49 CFR 553.21). However, you may attach additional documents to your primary comments. There is no limit on the length of the attachments.

Please send two paper copies of your comments to Docket Management or submit them electronically. The mailing address is U. S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. If you submit your comments electronically, log onto the Dockets Management System website at *http://dms.dot.gov* and click on "Help & Information" or "Help/Info" to obtain instructions.

We also request, but do not require you to send a copy to Marie Walz, Evaluation Division, NPP–22, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW., Washington, DC 20590 (alternatively, FAX to 202–366–5377 or e-mail to *tmorgan@nhtsa.dot.gov).* She can check if your comments have been received at the Docket and she can expedite their review by NHTSA.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NCC–01, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, SW., Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR Part 512).

In addition, send two copies from which you have deleted the claimed confidential business information to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit them electronically.

Will The Agency Consider Late Comments?

In our response, we will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

How Can I Read The Comments Submitted By Other People?

You may read the comments by visiting Docket Management in person at Room PL–401, 400 Seventh Street, SW., Washington, DC from 10 a.m. to 5 p.m., Monday through Friday.

You may also see the comments on the Internet by taking the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov*).
2. On that page, click on "search."
3. On the next page (*(http://dms.dot.gov/search/*) type in the four-digit Docket number shown at the beginning of this Notice (6545). Click on "search."
4. On the next page, which contains Docket summary information for the Docket you selected, click on the desired comments. You may also download the comments.

Authority: 49 U.S.C. 30111, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

William H. Walsh,

Associate Administrator for Plans and Policy.

[FR Doc. 01–11748 Filed 5–9–01; 8:45 am]
BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34036]

The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company

Union Pacific Railroad Company (UP) has agreed to grant overhead trackage rights to The Burlington Northern and Santa Fe Railway Company (BNSF) over UP's rail line on the Black Butte and Valley Subdivisions between Klamath Falls, OR, in the vicinity of UP's milepost 428.7 and Binney Junction (Marysville), CA, in the vicinity of UP's milepost 141.9, a distance of 285 miles. BNSF will operate its own trains with its own crews over UP's line under the trackage rights agreement.[1]

The transaction was scheduled to be consummated on or shortly after May 1, 2001.

The purpose of the trackage rights is to allow BNSF to bridge its train service while BNSF's main line is out of service for maintenance.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34036, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Yolanda Grimes Brown, The Burlington Northern and Santa Fe Railway Company, 2500 Lou Menk Drive, P.O. Box 961039, Fort Worth, TX 76161–0039.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: May 2, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–11681 Filed 5–9–01; 8:45 am]
BILLING CODE 4915–00–P

[1] On April 24, 2001, BNSF and UP filed a petition for exemption in STB Finance Docket No. 34036 (Sub-No. 1), *The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company,* wherein BNSF and UP request that the Board permit the proposed overhead trackage rights arrangement described in the present proceeding to expire on August 8, 2001. That petition will be addressed by the Board in a separate decision.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 3, 2001.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 11, 2001 to be assured of consideration.

Departmental Offices/Office of Financial Institutions Policy

OMB Number: 1505–0178.

Form Number: None.

Type of Review: Extension.

Title: Community Adjustment and Investment Program Grant Agreement.

Description: The Department of the Treasury (Treasury), as Chair of the inter-agency committee established by Executive Order No. 12916, dated May 13, 1994, is sponsoring the North American Development Bank's (NADBank) collection of financial and project performance information from NADBank grantees. Respondents will be State and Local Governments,

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Institutions of Higher Education, and Non-Profit Organizations. NADBank disburses grants using monies transferred from the Treasury. The information collected will be used to verify grantee compliance with the terms of the Grant Agreement entered into between NADBank and each grantee.

Respondents: Not-for-profit institutions, State, Local or Tribal.

Estimated Number of Respondents/ Recordkeepers: 18.

Estimated Burden Hours Per Respondent/Recordkeeper: 126 hours.

Frequency of Response: On occasion, Quarterly, Annually.

Estimated Total Reporting/ Recordkeeping Burden: 414 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 01–11742 Filed 5–9–01; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 3, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 11, 2001 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0134.
Form Number: IRS Form 1128.
Type of Review: Extension.
Title: Application to Adopt, Change, or Retain a Tax Year.

Description: Form 1128 is needed in order to process taxpayers' requests to change their tax year. All information requested is used to determine whether the application should be approved. Respondents are taxable and nontaxable entities including individuals, partnerships, corporations, estates, tax-exempt organizations and cooperatives.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms.

Estimated Number of Respondents/ Recordkeepers: 11,800.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing, copying, assembling and sending the forms to the IRS
Form 1128, Parts I and II	8 hr., 36 min	6 hr., 34 min	6 hr., 59 min.
Form 1128, Parts I and III	20 hr., 48 min	5 hr., 25 min	7 hr., 12 min.

Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 361,720 hours.
OMB Number: 1545–0200.
Form Number: IRS Form 5307.
Type of Review: Extension.
Title: Application for Determination for Adopters of Master or Prototype, Regional Prototype or Volume Submitter Plans.

Description: This form is filed by employers or plan administrators who have adopted a master or prototype plan approved by the IRS National Office or regional prototype plan approved by the IRS District Director to obtain a ruling that the plan adopted is qualified under Internal Revenue Code (IRC) sections 401(a) and 501(a). It may not be used to request a letter for multiple employer plan.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 39,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—5 hr., 15 min.
Learning about the law or the form—4 hr., 9 min.
Preparing the form—8 hr., 9 min.
Copying, assembling, and sending the form to the IRS—1 hr., 4 min.

Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 726,570 hours.
OMB Number: 1545–0704.
Form Number: IRS Form 5471 and Related Schedules.
Type of Review: Extension.

Title: Information Return of U.S. Persons with Respect to Certain Foreign Corporations.

Description: Form 5471 and related schedules are used by U.S. persons that have an interest in a foreign corporation. The form is used to report income from the foreign corporation. The form and schedules are used to satisfy the reporting requirements of sections 6035, 6038 and the regulations thereunder pertaining to the involvement of U.S. persons with certain foreign corporations.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 43,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form/schedule	Recordkeeping	Learning about the law or the form	Preparing, copying, assembling and sending the form to the IRS
5471	82 hr., 45 min	15 hr., 50 min	23 hr., 53 min.
Schedule J (5471)	3 hr., 49 min	1 hr., 29 min	1 hr., 37 min.
Schedule M (5471)	26 hr., 33 min	6 min	32 min.

Form/schedule	Recordkeeping	Learning about the law or the form	Preparing, copying, assembling and sending the form to the IRS
Schedule N (5471)	8 hr., 22 min	2 hr., 28 min	2 hr., 43 min.
Schedule O (5471)	10 hr., 45 min	24 min	35 min.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 6,665,205 hours.
OMB Number: 1545–0954.
Form Number: IRS Form 1120–ND.
Type of Review: Extension.
Title: Return for Nuclear Decommissioning Funds and Certain Related Persons.

Description: A nuclear utility files Form 1120–ND to report the income and taxes of a fund set up by the public utility to provide cash for dismantling of the nuclear power plant. The IRS uses Form 1120–ND to determine if the fund income taxes are correctly computed and if a person related to the fund or the nuclear utility must pay taxes on self-dealing.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 100.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—23 hr., 12 min.
Learning about the law or the form—3 hr., 7 min.
Preparing the form—5 hr., 30 min.
Copying, assembling, and sending the form to the IRS—32 min.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 3,235 hours.
OMB Number: 1545–1038.
Form Number: IRS Form 8703.
Type of Review: Extension.
Title: Annual Certification of a Residential Rental Project.

Description: Operators of qualified residential projects will use to certify annually that their projects meet the requirements of Internal Revenue Code (IRC) section 142(d). Operators are required to file this certification under section 142(d)(7).

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 6,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—3 hr., 49 min.
Learning about the law or the form—1 hr., 17 min.
Preparing and sending the form to the IRS—1 hr., 24 min.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 39,180 hours.
OMB Number: 1545–1189.
Form Number: IRS Form 8819.
Type of Review: Extension.
Title: Dollar Election Under Section 985.

Description: Form 8819 is filed by U.S. and foreign businesses to elect the U.S. dollar as their functional currency or as the functional currency of their controlled entities. The IRS uses Form 8819 to determine if the election is properly made.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 1,500.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—2 hr., 52 min.
Learning about the law or the form—1 hr., 17 min.
Preparing and sending the form to the IRS—1 hr., 23 min.

Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 8,340 hours.
Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 01–11822 Filed 5–9–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 01–09]

Preemption Opinion

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is publishing its response to a written request for the OCC's opinion of whether Federal law would preempt certain provisions of Ohio law that limit the ability of national banks to engage in the business of leasing automobiles. The OCC has determined that the state law provisions, as applied, would be preempted under Federal law.

FOR FURTHER INFORMATION CONTACT: MaryAnn Nash, Senior Attorney, or Mark Tenhundfeld, Assistant Director, Legislative and Regulatory Activities Division, (202) 874–5090.

SUPPLEMENTARY INFORMATION: The request for a preemption opinion was submitted by two national banks that engage in the business of motor vehicle leasing in Ohio (collectively, the Requester). As part of that business, the Requester disposes of vehicles that come off lease at the end of the lease term or as a result of early termination or the lessor's default. The Requester seeks to sell these vehicles directly to the public in order to obtain the highest price.

On November 12, 1993, the Registrar of the Ohio Bureau of Motor Vehicles (OBMV) issued a memorandum concluding that section 4517 of the Ohio Revised Code[1] prohibits the public sale of reclaimed leased vehicles. The memorandum interpreted Ohio law to permit direct sales to the public in the case of repossessed vehicles, but then concluded that vehicles reclaimed from a lessor for non-payment were not considered repossessed vehicles. As a result of this interpretation, reclaimed leased vehicles can only be sold at wholesale to persons licensed under section 4517 as "dealers."

The Requester has asked for the OCC's opinion on whether the National Bank Act would preempt section 4517 as interpreted by the OBMV. The National Bank Act authorizes national banks to engage in leasing activities consistent with the provisions of 12 CFR 23.[2] The Requester asserts that this authority includes the authority to dispose of reclaimed or off-lease vehicles in the manner that is economically most beneficial. The Requester further asserts that the OBMV's construction of Ohio

[1] Ohio Rev. Code Ann. § 4517.

[2] 12 U.S.C. 24 (Seventh) and 12 U.S.C. 24 (Tenth).

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law impairs its ability to exercise its Federally authorized power.

Section 114 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 generally requires the OCC to publish notice in the **Federal Register** requests for preemption opinions in one of the four specified areas: community reinvestment, consumer protection, fair lending, or the establishment of intrastate branches.[3] Section 114 also requires the OCC to publish any final opinion letter in which the OCC concludes that federal law preempts a state law in one of these four areas. Without expressly determining whether section 114 applied to this request, the OCC published a Notice of Request for Preemption Determination dated October 16, 2000. The OCC is publishing its response to the request as an appendix to this notice.

As is explained in greater detail in the response, the OCC agrees that national banks, as part of their authority to engage in the business of leasing automobiles under 12 U.S.C. 24 (Seventh) and 12 U.S.C. 24 (Tenth) may sell reclaimed or off-lease vehicles in the manner that is most economically beneficial. The OCC further agrees that the Ohio law, as interpreted by the OBMV, would be preempted, because it would frustrate the ability of national banks to operate their leasing businesses in an economically efficient manner consistent with safe and sound banking principles.

Dated: May 2, 2001.

John D. Hawke, Jr.,

Comptroller of the Currency.

Appendix

May 3, 2001.

Thomas A. Plant, Senior Vice President, Assistant General Counsel, National City Bank, 1900 East Ninth Street, Cleveland, Ohio 44114–3484.

Re: Request for Preemption Determination

Dear Mr. Plant:

This responds to your letter dated September 14, 2000, filed on behalf of National City Bank, Cleveland, Ohio and National City Bank of Indiana, Indianapolis, Indiana (the Banks). The Banks are wholly-owned subsidiaries of National City Corporation, a financial holding company headquartered in Cleveland, Ohio. In that letter, you request our opinion on whether Federal law would preempt certain provisions of Ohio law that limit the manner in which reclaimed leased vehicles may be sold. For the reasons discussed below, it is our opinion that Federal law would preempt those provisions.

[3] 12 U.S.C. 43.

Background

The Banks are engaged in the business of leasing automobiles. As part of the leasing business, the Banks dispose of vehicles that come off lease at the end of the lease term or as a result of early termination or the lessor's default. The Banks want to dispose of these vehicles in the manner they believe will result in the highest sales price in order to avoid or limit the losses taken on returned vehicles. The Banks assert that selling reclaimed automobiles directly to the public at auction typically yields the best price.[4]

On November 12, 1993, the Ohio Bureau of Motor Vehicles (the OBMV) issued a memorandum that effectively prohibited the public sale of reclaimed leased vehicles. The OBMV interpreted Ohio law to permit direct sales to the public only in the case of repossessed vehicles.[5] The memorandum specifically states that leased vehicles reclaimed from the lessor for non-payment are not considered repossessed vehicles. Since the issuance of that memorandum, the Banks have been required to sell their reclaimed or off-lease vehicles only at wholesale auctions to dealers licensed under Ohio law.

The Banks assert that the OBMV's construction of the Ohio law to prohibit public sales of reclaimed lease vehicles impairs their ability to exercise their leasing authority. The Banks have asked the OCC for its opinion on whether the National Bank Act preempts chapter 4517 of the Ohio Revised Code as interpreted by the OBMV.

On October 25, 2000, the OCC published a notice of your request in the **Federal Register** (Notice),[6] inviting interested parties to comment on whether federal law preempts the Ohio law. The OCC received seven comments in response to the Notice. Six commenters opined that Federal law preempts the type of state law in question. One commenter asserted that it does not. Each of the commenters who thought that federal law preempts the Ohio law cited the authority of national banks under 12 U.S.C. 24 (Seventh) to engage in leasing activities and noted that Federal law preempts state laws that purport to restrict an activity that is authorized by Federal law. Several commenters offered factual support for the assertion that selling reclaimed vehicles directly to the public generally yields a higher price.

The Ohio Department of Public Safety (OPDS) filed the only comment letter asserting that Federal law does not preempt the Ohio law. In that letter, the ODPS argued that there is no basis for preemption because the Ohio statute in question does not conflict with Federal law.

Analysis

Permissibility of the activity

It is well established that national banks are authorized to engage in the business of leasing automobiles. M&M Leasing Corporation v. Seattle First National Bank, 563 F. 2d 1377 (9th Cir. 1977). In M&M Leasing, the court determined that personal property leasing was a permissible activity for national banks because it was the functional equivalent of lending, an express power under the National Bank Act, 12 U.S.C. 24 (Seventh). Id. at 1382. In 1987, Congress specifically authorized national banks to lease personal property. 12 U.S.C. 24 (Tenth).[7] See also 12 CFR Part 23 (OCC regulation authorizing leasing for national banks and establishing requirements applicable to leasing activities conducted pursuant to 12 U.S.C. 24 (Seventh) and 12 U.S.C. 24 (Tenth)).

The authority to engage in the business of leasing includes the authority to dispose of leased property at the end of the lease. Courts have long recognized the ability of national banks to engage in the component activities of a permissible business. See Franklin Nat'l. Bank v. New York, 347 U.S. 373 (1954) (national banks may advertise bank services); Auten v. United States Nat'l. Bank, 174 U.S. 125 (1899) (national bank may borrow money); Arnold Tours, Inc. v. Camp, 472 F.2d 427 (1st Cir. 1972) (activity is permissible if it is convenient or useful to the business of banking). In these cases, the courts' holdings relied on whether the activity in question was "useful" to national banks in exercising their express powers.

In the situation you present, clearly the ability to dispose of reclaimed lease property is useful to banks engaging in leasing activities. Without the ability to dispose of reclaimed leased property, the banks could not conduct the leasing business. Thus, the issue presented by your letter is whether Federal law preempts a state law that restricts an essential aspect or component of an activity expressly authorized for a national bank.

Preemptive effect of Federal law

When the federal government acts within the sphere of authority conferred upon it by the Constitution, the Supreme Court has held that Federal law is paramount over, and thus preempts, state law. U.S. Const. art. VI, cl. 2 (the Supremacy Clause); Cohen v. Virginia, 19 U.S. (6 Wheat.) 264, 414 (1821) (Marshall, C.J.). Federal authority over national banks stems from several constitutional sources, including the Necessary and Proper Clause and the Commerce Clause of the United States Constitution. U.S. Const. art. I, § 8, cl.3, cl. 18; McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 409 (1819).

The United States Supreme Court has identified several bases for Federal preemption of state law. First, Congress may enact a statute that preempts state law. E.g., Jones v. Rath Packing Co., 430 U.S. 519 (1977). Second, a Federal statute may create a scheme of Federal regulation "so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it." Rice v. Norman Williams Co., 458 U.S. 654, 659 (1982). Third, the state law may conflict with a Federal law. See, e.g., Franklin National Bank, supra; Davis v. Elmira Savings Bank, 161 U.S. 275 (1896).

In elaborating on the concept of conflict, the Supreme Court has recognized that conflict may exist even where compliance with both Federal and state law is possible. The Barnett court recognized that—

Federal law may be in "irreconcilable conflict" with state law. Rice v. Norman Williams Co., 458 U.S. 654, 659 (1982). Compliance with both statutes, for example, may be a "physical impossibility," Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142–143 (1963); or, the state law may "*stan[d] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.*" Hines v. Davidowitz, 312 U.S. 52, 67 (1941).

Barnett Bank v. Nelson, 517 U.S. 25, 31 (1996) (emphasis added).

The Supreme Court has recognized that state law generally should not limit powers granted by Congress—

In using the word "powers," the statute chooses a legal concept that, in the context of national bank legislation, has a history. That history is one of interpreting grants of both enumerated and incidental "powers" to national banks as grants of authority not normally limited by, but rather ordinarily preempting, contrary state law.

Barnett, 517 U.S. at 32. See also Bank One v. Guttau, 190 F.3d 844, 847 (8th Cir.1999).

In determining whether a state law stands as an obstacle to a national bank's exercise of a Federally authorized power, the Supreme Court has evaluated whether a state statute interferes with the ability of a national bank to exercise that power. The Barnett Court stated that—

In defining the pre-emptive scope of statutes and regulations granting a power to national banks, these cases [i.e., national bank preemption cases] take the view that normally Congress would not want States to forbid, or to impair significantly, the exercise of a power that Congress explicitly granted. To say this is not to deprive States of the power to regulate national banks, where * * * doing so does not prevent or significantly interfere with the national bank's exercise of its powers.

Barnett, 517 U.S. at 33.

The Court has held that Federal law preempts not only state laws that purport to prohibit a national bank from engaging in an activity permissible under Federal law but also state laws that condition the exercise by a national bank of a Federally authorized activity.

[W]here Congress has not expressly conditioned the grant of 'power' upon a grant of state permission, the Court has ordinarily found that no such condition applies. In Franklin Nat. Bank, the Court made this point explicit. It held that Congress did not intend to subject national banks' power to local restrictions because the federal power-granting statute there in question contained 'no indication that Congress[so] intended * * * as it has done by express language in several other instances.'

Barnett, 517 U.S. at 34 (citations omitted; emphasis in original).

Thus, a conflict between state law and Federal law need not be complete in order for Federal law to have preemptive effect. If a state law places limits on an unrestricted grant of authority under Federal law, the state law will be preempted.[8]

Application to Ohio law

In disposing of reclaimed property, national banks, like any other businesses, will endeavor to maximize their recovery on the property by disposing of it in the manner that will bring the highest return. In the case of national banks, the ordinary motivation to maximize return and minimize loss is reinforced by the legal obligation to operate in a safe and sound manner. National banks that engage in the business of automobile leasing are required by regulation to liquidate or re-lease such property as soon as practicable. 12 CFR 23.4(c). This requirement is contained in a section of the OCC's regulations designed ensure that national banks limit their exposure by conducting their leasing businesses in a safe and sound manner. See 12 CFR Part 23. A state law that prohibits a bank from disposing of off-lease property in the way that is most economically beneficial not only limits the bank's exercise of its Federally authorized power, but also increases the bank's loss exposure in a manner that is inconsistent with safe and sound banking principles.

While the Ohio law, as interpreted by the OBMV, does not prohibit a national bank from disposing of reclaimed vehicles, it does restrict national banks from disposing of leased vehicles in one of the usual and customary ways of doing so, namely, selling directly to the public. You have represented that the Banks' experience indicates that selling reclaimed vehicles directly to the public is the best way to recover vehicle costs. The OBMV has interpreted Ohio law to prohibit lessors from selling reclaimed vehicles at non-dealer auctions.

In our opinion, to the extent it is interpreted and applied in this manner, Ohio law frustrates the Banks' ability to operate their leasing businesses in an economically efficient manner consistent with safe and sound banking principles. Applying the standards set forth in Barnett, the state law significantly interferes with the Banks' exercise of their Federal powers. Therefore, it is our opinion that Federal law preempts the Ohio statute as interpreted by the OBMV.

Our conclusions are based on the facts and representations made in your letter. Any material change in facts or circumstances could affect the conclusions stated in this letter.

Sincerely,

Julie L. Williams,

First Senior Deputy Comptroller and Chief Counsel.

[FR Doc. 01–11744 Filed 5–9–01; 8:45 am]

BILLING CODE 4810–33–P

[4] The Banks state that selling reclaimed automobiles directly to the public nets the Banks on average $1500 more per vehicle than selling the vehicles at wholesale auctions, that is auctions in which only automobile dealers participate. Arguing in support of the Banks' position, one commenter suggested that this differential is supported by an analysis of prices in the November 2000 edition of the Black Book National Auto Research Official Used Car Market Guide Monthly.

[5] The OBMV memorandum appears to interpret section 4517 of the Ohio Revised Code. That section generally provides that no person shall—

Engage in the business of offering for sale, displaying for sale, or selling at retail or wholesale used motor vehicles or assume to engage in that business, unless the person is licensed as a dealer under sections 4517.01 to 4517.45 of the Revised Code, or is a salesperson licensed under those sections and employed by a licensed used motor vehicle dealer or licensed new motor vehicle dealer."

Ohio Rev. Code Ann. § 4517.02(A)(2)(Anderson 1999).

The law provides an exception for "mortgagees selling at retail only those motor vehicles that have come into their possession by a default in the terms of the mortgage contract." Ohio Rev. Code Ann. § 4517.02(A)(2)(Anderson 1999). Ohio law provides no similar exception for reclaimed leased vehicles.

[6] 65 FR 63916 (October 25, 2000) (the Notice). As stated in the Notice, section 114 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Pub. L. 103–328, sec. 114, 108 Stat. 2338, 2366–68 (1994), codified at 12 U.S.C. 43) requires the OCC to publish notice in the **Federal Register** before issuing a final written opinion about the preemptive effect of Federal law in the areas of community reinvestment, consumer protection, fair lending, and the establishment of interstate branches. The OCC decided to publish the notice and invite comments on the issues raised in your letter without making a determination as to whether section 114 applies to your request.

[7] Your letter does not indicate on which source of authority the Banks rely in conducting the leasing activities in question.

[8] See also OCC Interpretive Letter No. 866 (Oct. 8, 1999) (opining that state law requirements that preclude national banks from soliciting trust business from customers located in states other than where the bank's main office is located would be preempted); OCC Interpretive Letter No. 749 (Sept. 13, 1996) (opining that state law requiring national banks to be licensed by the state to sell annuities would be preempted); OCC Interpretive Letter 644 (March 24, 1994) (opining that state registration and fee requirements imposed on mortgage lenders would be preempted).

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Prosthetics and Special-Disabilities Programs; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Prosthetics and Special-Disabilities Programs will be held Tuesday and Wednesday, May 22–23, 2001, at VA Headquarters, Room 230, 810 Vermont Avenue, NW., Washington, DC. The May 22 session will convene at 8 a.m. and adjourn at 4 p.m. and the May 23 session will convene at 8 a.m. and adjourn at 12 noon. The purpose of the Committee is to advise the Department on its prosthetic programs designed to provide state-of-the-art prosthetics and the associated rehabilitation research, development, and evaluation of such technology. The Committee also advises the Department on special disability programs which are defined as any program administered by the Secretary to serve veterans with spinal cord injury, blindness or vision impairment, loss of or loss of use of extremities, deafness or hearing impairment, or

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other serious incapacities in terms of daily life functions.

On the morning of May 22, the Committee will hold a joint meeting with the Veterans' Advisory Committee on Rehabilitation to discuss mutual issues and concerns. Both Committees will also receive a briefing on the current status of the rehabilitation bed issue by the Chief Consultant of the Rehabilitation Strategic Healthcare Group. At the conclusion of the joint meeting, the Advisory Committee on Prosthetics and Special-Disabilities Programs will receive briefings by the National Program Directors of the Special-Disabilities Programs regarding the status of their activities over the last six months. In the afternoon, a briefing concerning the current status of VA's Capacity Report will be presented by the newly appointed Clinical Coordinator or her designee. On the morning of May 23, the Committee will continue to receive briefings by the National Program Directors of the special disability programs, i.e., spinal cord injury, blind rehabilitation, audiology and speech pathology, and prosthetics.

The meeting is open to the public. For those wishing to attend, please contact Ms. Kathy Pessagno, Veterans Health Administration (113), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, at (202) 273–8512, prior to the meeting.

Dated: May 2, 2001.

By Direction of the Secretary.

Ventris C. Gibson,

Committee Management Officer.

[FR Doc. 01–11746 Filed 5–9–01; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 66, No. 91
Thursday, May 10, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 102

T.D. [01–36]

RIN 1515–AC80

Rules of Origin for Textile and Apparel Products

Correction

In rule document 01–10719, beginning on page 21660, in the issue of Tuesday, May 1, 2001, make the following correction:

§ 102.21 [Corrected]

On page 21664, in the table, §102.21, under the heading " HTSUS" the fourth number, "6301–6303" should read "6301–6306".

[FR Doc. C1–10719 Filed 5–9–01; 8:45 am]

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Federal Register

Thursday,
May 10, 2001

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 410, et al.

Medicare Program, Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update; Proposed Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 410, 411, 413, 424, 482, and 489

[HCFA–1163–P]

RIN 0938–AK47

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule updates the payment rates used under the prospective payment system (PPS) for skilled nursing facilities (SNFs), for fiscal year (FY) 2002, as required by statute. Annual updates to the PPS rates are required by section 1888(e) of the Social Security Act (the Act), as amended by the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA 1999), and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA 2000), relating to Medicare payments and consolidated billing for SNFs. As part of this annual update, we are rebasing and revising the routine SNF market basket to reflect 1997 total cost data (the latest available complete data on the structure of SNF costs), and modifying certain variables for some of the cost categories. In addition, we propose to implement the transition of swing-bed facilities to the SNF PPS, as required by section 1888(e)(7) of the Act.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on July 9, 2001.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1163–P, P.O. Box 8013, Baltimore, MD 21244–8013.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses: Hubert H. Humphrey Building, Room 443–G, 200 Independence Avenue, SW., Washington, DC 20201, or Health Care Financing Administration, Room C5–15–03, 7500 Security Boulevard, Baltimore, MD 21244–8150.

Comments mailed to those addresses designated for courier delivery may be delayed and could be considered late. Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Please refer to file code HCFA–1163–P on each comment. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of this document, in Room C5–12–08 of the Health Care Financing Administration, 7500 Security Boulevard, Baltimore, Maryland, Monday through Friday of each week from 8:30 a.m. to 5 p.m. Please call (410) 786–7197 to make an appointment to view comments.

FOR FURTHER INFORMATION CONTACT:

Dana Burley, (410) 786–4547 or Sheila Lambowitz, (410) 786–7605 (for information related to the case-mix classification methodology)

John Davis, (410) 786–0008 (for information related to the Wage Index)

Bill Ullman, (410) 786–5667 (for information related to consolidated billing)

Susan Burris, (410) 786–6655 (for information related to payment)

Sheila Lambowitz, (410) 786–7605 (for information related to swing-bed providers)

Bill Ullman, (410) 786–5667 or Susan Burris, (410) 786–6655 (for general information)

SUPPLEMENTARY INFORMATION:

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. The cost for each copy is $9. Please specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 (or toll free at 1–888–293–6498) or by faxing to (202) 512–2250. You can also view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

To assist readers in referencing sections contained in this document, we are providing the following table of contents.

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In addition, because of the many terms to which we refer by abbreviation in this proposed rule, we are listing these abbreviations and their corresponding terms in alphabetical order below:

ADL Activity of Daily Living
AHE Average Hourly Earnings
ARD Assessment Reference Date
BBA 1997 Balanced Budget Act of 1997, Pub. L. 105–33
BBRA 1999 Medicare, Medicaid and SCHIP Balanced Budget Refinement Act of 1999, Pub. L. 106–113
BEA (U.S.) Bureau of Economic Analysis
BIPA 2000 The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, Pub. L. 106–554
BES (U.S.) Business Expenditures Survey
BLS (U.S.) Bureau of Labor Statistics
CAH Critical Access Hospital
CFR Code of Federal Regulations
CPI Consumer Price Index
CPI–U Consumer Price Index-All Urban Consumers
CPT (Physicians') Current Procedural Terminology
DRG Diagnosis Related Group
ECI Employment Cost Index
FI Fiscal Intermediary
FR Federal Register
FY Fiscal Year
GAO General Accounting Office
HCFA Health Care Financing Administration
HCPCS HCFA Common Procedure Coding System
ICD–9–CM International Classification of Diseases, Ninth Edition, Clinical Modification
IFC Interim Final Rule with Comment Period
MDS Minimum Data Set
MEDPAR Medicare Provider Analysis and Review File
MIP Medicare Integrity Program
MSA Metropolitan Statistical Area
NECMA New England County Metropolitan Area
OIG Office of the Inspector General
OMRA Other Medicare Required Assessment
PCE Personal Care Expenditures
PPI Producer Price Index
PPS Prospective Payment System
PRM Provider Reimbursement Manual
RAI Resident Assessment Instrument
RAP Resident Assessment Protocol
RAVEN Resident Assessment Validation Entry
RUG Resource Utilization Groups
SCHIP State Children's Health Insurance Program
SNF Skilled Nursing Facility
STM Staff Time Measure

I. Background

On July 31, 2000, we published in the **Federal Register** (65 FR 46770), a final rule that set forth updates to the payment rates used under the prospective payment system (PPS) for skilled nursing facilities (SNFs), for fiscal year (FY) 2001. Annual updates to the PPS rates are required by section 1888(e) of the Social Security Act (the Act), as amended by the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA 1999) and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA 2000), relating to Medicare payments and consolidated billing for SNFs.

A. Current System for Payment of Skilled Nursing Facility Services Under Part A of the Medicare Program

Section 4432 of the Balanced Budget Act of 1997 (BBA 1997) amended section 1888 of the Act to provide for the implementation of a per diem PPS for SNFs, covering all costs (routine, ancillary, and capital) of covered SNF services furnished to beneficiaries under Part A of the Medicare program, effective for cost reporting periods beginning on or after July 1, 1998. We propose to update the per diem payment rates for SNFs, for FY 2002. Major elements of the SNF PPS include:

- *Rates.* Per diem Federal rates were established for urban and rural areas using allowable costs from FY 1995 cost reports. These rates also included an estimate of the cost of services that, before July 1, 1998, had been paid under Part B but furnished to Medicare beneficiaries in a SNF during a Part A covered stay. The rates were adjusted annually using a SNF market basket index. Rates were case-mix adjusted using a classification system (Resource Utilization Groups, version III (RUG–III)) based on beneficiary assessments (using the Minimum Data Set (MDS) 2.0). The rates were also adjusted by the hospital wage index to account for geographic variation in wages. (In section II.C of this preamble, we discuss the wage index adjustment in detail, including an examination of the feasibility of developing a wage index based on SNF-specific wage data.) At this time, data for the FY 2002 hospital wage index are not yet available; therefore, the index applied in this proposed rule is the same index used in the July 31, 2000 final rule. A correction notice was published on January 16, 2001 (66 FR 3497) that announced corrections to several of the wage factors. Additionally, as noted in the July 31, 2000 final rule (65 FR 46770), section 101 of BBRA 1999 also affects the payment rate. Finally, sections 311, 312, and 314 of BIPA 2000 affect the Part A PPS payment rates for SNFs. These new provisions are discussed in detail in section I.D. of this proposed rule.
- *Transition.* The SNF PPS includes an initial 3-year, phased transition that blended a facility-specific payment rate with the Federal case-mix adjusted rate. For each cost reporting period after a facility migrated to the new system, the facility-specific portion of the blend decreased and the Federal portion increased in 25 percentage point increments. For most facilities, the facility-specific rate was based on allowable costs from FY 1995; however, since the last year of the transition is FY 2001, all facilities will be paid at the full Federal rate by the coming fiscal year (FY 2002), for which we are now proposing updated rates. Therefore, unlike previous years, this proposed rule does not include adjustment factors related to facility-specific rates for the coming fiscal year.
- *Coverage.* Medicare's fundamental requirements for SNF coverage were not changed by BBA 1997; however, because RUG–III classification is based, in part, on the beneficiary's need for skilled nursing care and therapy, we have attempted, where possible, to coordinate claims review procedures with the outputs of beneficiary assessment and RUG–III classifying activities.
- *Consolidated Billing.* BBA 1997 included a billing provision that required a SNF to submit consolidated Medicare bills for its residents for almost all services that are covered under either Part A or Part B (the statute excluded a small list of services, primarily those of physicians and certain other types of practitioners). With the exception of physical therapy, occupational therapy, and speech-language therapy, section 313 of BIPA 2000 has now limited the scope of this

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provision to apply only to those services that are furnished during the course of a resident's covered Part A stay in the SNF, as discussed later in this proposed rule.

• *Application of the SNF PPS to SNF services furnished by swing-bed hospitals.* Section 1883 of the Act permits certain small, rural hospitals to enter into a Medicare swing-bed agreement, under which the hospital can use its beds to provide either acute or SNF care, as needed. Part A currently pays for SNF services furnished by swing-bed hospitals on a cost-related basis. Section 1888(e)(7) of the Act requires the SNF PPS to encompass these services no earlier than cost reporting periods beginning on July 1, 1999, and no later than the end of the SNF PPS transition period described in section 1888(e)(2)(E) of the Act.

B. Requirements of the Balanced Budget Act of 1997 for Updating the Prospective Payment System for Skilled Nursing Facilities

Section 1888(e)(4)(H) of the Act requires that we publish in the **Federal Register:**

1. The unadjusted Federal per diem rates to be applied to days of covered SNF services furnished during the FY.

2. The case-mix classification system to be applied with respect to these services during the FY.

3. The factors to be applied in making the area wage adjustment with respect to these services.

In the July 30, 1999 final rule (64 FR 41670), we indicated that we would announce any changes to the guidelines for Medicare level of care determinations related to modifications in the RUG–III classification structure.

Along with a number of other revisions discussed later in this preamble, this proposed rule provides the annual updates to the Federal rates as mandated by the Act.

C. The Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA 1999)

There were several provisions in BBRA 1999 that resulted in adjustments to the PPS for SNFs. The provisions were described in the final rule that we published on July 31, 2000 (65 FR 46770). In particular, section 101 provided for a temporary, 20 percent increase in the per diem adjusted payment rates for 15 specified RUG–III groups (SE3, SE2, SE1, SSC, SSB, SSA, CC2, CC1, CB2, CB1, CA2, CA1, RHC, RMC, and RMB). Section 101 also included a 4 percent across-the-board increase in the adjusted Federal per diem payment rates each year for FYs 2001 and 2002, exclusive of the 20 percent increase.

We included further information on all of the provisions of BBRA 1999 in Program Memorandums A–99–53 and A–99–61 (December 1999), and Program Memorandum AB–00–18 (March 2000).

D. The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA 2000)

The following highlights the major provisions in BIPA 2000 that result in adjustments to the PPS for SNFs:

• *Section 203—Exemption of Critical Access Hospital (CAH) Swing-beds from SNF PPS.* This provision exempts swing-beds in CAHs from section 1888(e)(7) of the Act (as enacted by section 4432(a) of BBA 1997) which applies the SNF PPS to SNF services furnished by swing-bed hospitals. Accordingly, this provision enables CAHs to be paid for their swing-bed SNF services on a reasonable cost basis. This provision is effective with cost reporting periods beginning on or after December 21, 2000, the date of the enactment of this Act. We include further information on this provision in Program Memorandum A–01–09 (January 16, 2001).

• *Section 311—Elimination of Reduction in SNF Market Basket Update in 2001.* This provision eliminates the one percent reduction reflected in the update formula for the Federal rates for FY 2001 that was required by BBA 1997. In implementing this change, this provision modifies the schedule and rates according to which Federal per diem payments are updated. For FY 2002 and FY 2003, the updates would be the market basket index increase minus 0.5 percentage points. This provision also provides a special rule that, for purposes of making payments under the SNF PPS for FY 2001, for the first half of FY 2001 (the period beginning October 1, 2000, and ending March 31, 2001), the market basket update remains at market basket minus 1, and for the second half of the fiscal year (the period beginning on April 1, 2001, and ending on September 30, 2001), the market basket update changes from market basket minus 1 to market basket plus 1.

In addition, this provision requires the General Accounting Office (GAO) to submit a report to Congress by July 1, 2002, on the adequacy of SNF payment rates. It also requires the Secretary to conduct a study of the different systems for categorizing patients in SNFs in a manner that accounts for the relative resource utilization of different patient types, and to submit a report to Congress not later than January 1, 2005.

• *Section 312—Increase in Nursing Component of PPS Federal Rate.* This provision requires the Secretary to increase by 16.66 percent the nursing component of the case-mix adjusted Federal rate specified in the July 31, 2000 final rule (65 FR 46770) for services furnished on or after April 1, 2001, and before October 1, 2002. This provision also requires the GAO to conduct an audit of SNF nursing staff ratios, and to submit a report to Congress by August 1, 2002, including a recommendation on whether the temporary 16.66 percent increase in the nursing component should be continued.

• *Section 313—Application of SNF Consolidated Billing Requirement Limited to Part A Covered Stays.* This provision repeals the consolidated billing requirement for services (other than physical therapy, occupational therapy, and speech-language therapy) furnished to those SNF residents who are in non-covered stays, effective January 1, 2001. It also directs the Secretary to monitor Part B payments for such services, in order to guard against duplicate billing and the excessive provision of services.

• *Section 314—Adjustment of Rehabilitation RUGs to Correct Anomaly in Payment Rates.* For services furnished from April 1, 2001, until the date that RUG refinements are implemented, this provision requires the Secretary to increase by 6.7 percent the adjusted Federal per diem rate for all of the following RUG–III rehabilitation groups: RUC, RUB, RUA, RVC, RVB, RVA, RHC, RHB, RHA, RMC, RMB, RMA, RLB, and RLA. This provision amends section 101(b) of BBRA 1999 and supersedes the 20 percent increase that BBRA 1999 had previously established for the RHC, RMC, and RMB rehabilitation groups, and corrects the resulting anomaly under which the payment rates for these particular groups were actually higher than the rates for some other, more intensive rehabilitation RUGs. This provision also requires the Office of Inspector General (OIG) to review whether the RUG payment structure in effect under BBRA 1999 included incentives for the delivery of inadequate care and report to the Congress by October 1, 2001.

• *Section 315—Establishment of Process for Geographic Reclassification.* This provision explicitly permits the Secretary to establish a geographic reclassification procedure that is specific to SNFs, for purposes of payment for covered SNF services under the PPS. The Secretary may not implement this procedure until the Secretary has collected data necessary to establish a SNF wage index that is based on wage data from nursing homes.

We include further information on several of these provisions in Program Memorandum A–01–08 (January 16, 2001).

E. Skilled Nursing Facility Prospective Payment—General Overview

The Medicare SNF PPS was implemented for cost reporting periods beginning on or after July 1, 1998. Under the PPS, SNFs are paid through prospective, case-mix adjusted per diem payment rates applicable to all covered SNF services. These payment rates cover all the costs of furnishing covered skilled nursing services (routine, ancillary, and capital-related costs) other than costs associated with approved educational activities. Covered SNF services include post-hospital services for which benefits are provided under Part A and all items and services that, before July 1, 1998, had been paid under Part B (other than physician and certain other services specifically excluded under BBA 1997) but furnished to Medicare beneficiaries in a SNF during a Part A covered stay. A complete discussion of these provisions appears in the May 12, 1998 interim final rule (63 FR 26252).

1. Payment Provisions—Federal Rate

The PPS uses per diem Federal payment rates based on mean SNF costs in a base year updated for inflation to the first effective period of the PPS. We developed the Federal payment rates using allowable costs from hospital-based and freestanding SNF cost reports for reporting periods beginning in FY 1995. The data used in developing the Federal rates also incorporated an estimate of the amounts that would be payable under Part B for covered SNF services furnished to individuals who were receiving Part A covered services in a SNF.

In developing the rates for the initial period, we updated costs to the first effective year of PPS (15-month period beginning July 1, 1998) using a SNF market basket index, and then standardized for the costs of facility differences in case-mix and for geographic variations in wages. Providers that received new provider exemptions from the routine cost limits were excluded from the database used to compute the Federal payment rates, as well as costs related to payments for exceptions to the routine cost limits. In accordance with the formula prescribed in BBA 1997, we set the Federal rates at a level equal to the weighted mean of freestanding costs plus 50 percent of the difference between the freestanding mean and weighted mean of all SNF costs (hospital-based and freestanding) combined. We computed and applied separately the payment rates for facilities located in urban and rural areas. In addition, we adjusted the portion of the Federal rate attributable to wage-related costs by a wage index.

The Federal rate also incorporates adjustments to account for facility case-mix, using a classification system that accounts for the relative resource utilization of different patient types. This classification system, RUG–III, utilizes beneficiary assessment data from the Minimum Data Set (MDS) completed by SNFs to assign beneficiaries to one of 44 groups. The May 12, 1998 interim final rule (63 FR 26252) included a complete and detailed description of the RUG–III classification system.

The Federal rates in this proposed rule reflect an update to the rates in the July 31, 2000 update notice (65 FR 46770) equal to the SNF market basket index minus 0.5 percent, as well as the elimination of the 1 percent reduction reflected in the update formula for the FY 2001 payment rates under section 311 of BIPA 2000. According to section 311 of BIPA 2000, for FY 2002, we will update the rate by adjusting the current rates by the SNF market basket change minus 0.5 percent.

2. Payment Provisions—Transition Period

The SNF PPS includes an initial, phased transition from a facility-specific rate (which reflects the individual facility's historical cost experience) to the Federal case-mix adjusted rate. The transition extends through the facility's first three cost reporting periods under the PPS, up to and including the one that begins in FY 2001. Accordingly, starting with cost reporting periods that begin in FY 2002, we will base payments entirely on the Federal rates.

F. Skilled Nursing Facility Market Basket Index

Section 1888(e)(5) of the Act requires the Secretary to establish a SNF market basket index that reflects changes over time in the prices of an appropriate mix of goods and services included in the covered SNF services. The SNF market basket index is used to update the Federal rates on an annual basis. We are proposing a revised and rebased SNF market basket index that consists of the most commonly used cost categories for SNF routine services, ancillary services, and capital-related expenses. A complete discussion concerning the design and application of the proposed SNF market basket index is presented in Section III.

II. Update of Payment Rates Under the Prospective Payment System for Skilled Nursing Facilities

A. Federal Prospective Payment System

This proposed rule sets forth a schedule of Federal prospective payment rates applicable to Medicare Part A SNF services beginning October 1, 2001. The schedule incorporates per diem Federal rates that provide Part A payment for all costs of services furnished to a beneficiary in a SNF during a Medicare-covered stay.

1. Costs and Services Covered by the Federal Rates

The Federal rates apply to all costs (routine, ancillary, and capital-related costs) of covered SNF services other than costs associated with approved educational activities as defined in § 413.85. Under section 1888(e)(2) of the Act, covered SNF services include post-hospital SNF services for which benefits are provided under Part A (the hospital insurance program), as well as all items and services (other than those services excluded by statute) that, before July 1, 1998, were paid under Part B (the supplementary medical insurance program) but furnished to Medicare beneficiaries in a SNF during a Part A covered stay. (These excluded service categories are discussed in greater detail in section V.B.2. of the May 12, 1998 interim final rule (63 FR 26295–97)).

2. Methodology Used for the Calculation of the Federal Rates

The proposed FY 2002 rates would reflect an update using the latest market basket index minus 0.5 percentage point. The FY 2002 market basket update factor is 2.9 percent, and subtracting 0.5 percentage points yields an update of 2.4 percent. For a complete description of the multi-step process, see the May 12, 1998 interim final rule (63 FR 26252). In accordance with section 101 of BBRA 1999 and section 314 of BIPA 2000, we have provided for a temporary increase in the per diem adjusted payment rates of 20 percent for certain specified RUGs, and 6.7 percent for certain others. These temporary increases of 20 percent and 6.7 percent for certain specified RUGs will continue until implementation of case-mix refinements, as described in section 101 of BBRA 1999 and section 314 of BIPA 2000. Also, in accordance with section 101 of BBRA 1999, we are providing a 4 percent increase in the adjusted Federal rate for FY 2002. These temporary adjustments (that is, 20

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percent, 6.7 percent, or 4 percent) are not reflected in the rate tables (Tables 1, 2, 3, 4, 5, and 6 of this proposed rule). Rather, in accordance with the statute, they are applied only after all other adjustments (wage and case-mix) have been made. Further, several provisions of BIPA 2000 affect the payment rates for SNFs, as described in the previous section.

We used the SNF market basket to adjust each per diem component of the Federal rates forward to reflect cost increases occurring between the midpoint of the Federal FY beginning October 1, 2000, and the midpoint of the Federal FY beginning October 1, 2001 and ending September 30, 2002, to which the payment rates apply. In accordance with section 311 of BIPA 2000, the payment rates are updated for FY 2002 by a factor equal to the annual market basket index percentage increase minus 0.5 percentage point. However, we note that section 311 of BIPA 2000 has also eliminated the one percent reduction in the market basket associated with the establishment of the FY 2001 payment rates. Therefore, in establishing the payment rates for FY 2002, we would update from the FY 2001 payment rates determined using the full market basket amount for that year rather than the rates as they appeared in the July 31, 2000 final rule (65 FR 46770), that were determined using the one percent reduction. As modified in this manner to reflect section 311 of BIPA 2000, the FY 2001 rates would be updated using the latest market basket minus 0.5 percentage point to determine the payment rates for FY 2002. The nursing case-mix component of the proposed rates, both urban and rural, includes the 16.66 percent increase provided by section 312 of BIPA 2000. The rates are further adjusted by a wage index budget neutrality factor, described later in this section. Tables 1 and 2 reflect the updated components of the unadjusted Federal rates (including both the market basket adjustment and the 16.66 percent increase in the nursing case-mix component).

TABLE 1.—UNADJUSTED FEDERAL RATE PER DIEM, URBAN

Rate component	Nursing—case-mix	Therapy—case-mix	Therapy—non-case-mix	Non-case-mix
Per Diem Amount	$137.89	$89.03	$11.73	$60.33

TABLE 2.—UNADJUSTED FEDERAL RATE PER DIEM, RURAL

Rate component	Nursing—case-mix	Therapy—case-mix	Therapy—non-case-mix	Non-case-mix
Per Diem Amount	$131.76	$102.67	$12.53	$61.44

B. Case-Mix Adjustment

For FY 2002, we are not proposing to modify the case-mix classification system. The payment rates set forth in this proposed rule reflect the continued use of the existing 44-group RUG–III classification system discussed in the May 12, 1998 interim final rule (63 FR 26252). Consequently, we will also maintain the add-ons to the Federal rates for specified RUG–III groups, as required by section 101 of BBRA 1999 and subsequently modified by section 314 of BIPA 2000. The case-mix adjusted payment rates are listed separately for urban and rural SNFs in Tables 3 and 4, with the corresponding case-mix index values. These tables do not reflect the add-ons (that is, 20 percent, 6.7 percent, or 4 percent) provided for in BBRA 1999 and BIPA 2000, which are applied only after all other adjustments (wage and case-mix) have been made.

TABLE 3.—CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES URBAN

RUG III category	Nursing index	Therapy index	Nursing component	Therapy component	Non-case mix therapy comp.	Non-case mix component	Total rate
RUC	1.30	2.25	179.26	200.32		60.33	439.91
RUB	0.95	2.25	131.00	200.32		60.33	391.65
RUA	0.78	2.25	107.55	200.32		60.33	368.20
RVC	1.13	1.41	155.82	125.53		60.33	341.68
RVB	1.04	1.41	143.41	125.53		60.33	329.27
RVA	0.81	1.41	111.69	125.53		60.33	297.55
RHC	1.26	0.94	173.74	83.69		60.33	317.76
RHB	1.06	0.94	146.16	83.69		60.33	290.18
RHA	0.87	0.94	119.96	83.69		60.33	263.98
RMC	1.35	0.77	186.15	68.55		60.33	315.03
RMB	1.09	0.77	150.30	68.55		60.33	279.18
RMA	0.96	0.77	132.37	68.55		60.33	261.25
RLB	1.11	0.43	153.06	38.28		60.33	251.67
RLA	0.80	0.43	110.31	38.28		60.33	208.92
SE3	1.70		234.41		11.73	60.33	306.47
SE2	1.39		191.67		11.73	60.33	263.73
SE1	1.17		161.33		11.73	60.33	233.39
SSC	1.13		155.82		11.73	60.33	227.88
SSB	1.05		144.78		11.73	60.33	216.84
SSA	1.01		139.27		11.73	60.33	211.33
CC2	1.12		154.44		11.73	60.33	226.50

TABLE 3.—CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES URBAN—Continued

RUG III category	Nursing index	Therapy index	Nursing component	Therapy component	Non-case mix therapy comp.	Non-case mix component	Total rate
CC1	0.99		136.51		11.73	60.33	208.57
CB2	0.91		125.48		11.73	60.33	197.54
CB1	0.84		115.83		11.73	60.33	187.89
CA2	0.83		114.45		11.73	60.33	186.51
CA1	0.75		103.42		11.73	60.33	175.48
IB2	0.69		95.14		11.73	60.33	167.20
IB1	0.67		92.39		11.73	60.33	164.45
IA2	0.57		78.60		11.73	60.33	150.66
IA1	0.53		73.08		11.73	60.33	145.14
BB2	0.68		93.77		11.73	60.33	165.83
BB1	0.65		89.63		11.73	60.33	161.69
BA2	0.56		77.22		11.73	60.33	149.28
BA1	0.48		66.19		11.73	60.33	138.25
PE2	0.79		108.93		11.73	60.33	180.99
PE1	0.77		106.18		11.73	60.33	178.24
PD2	0.72		99.28		11.73	60.33	171.34
PD1	0.70		96.52		11.73	60.33	168.58
PC2	0.65		89.63		11.73	60.33	161.69
PC1	0.64		88.25		11.73	60.33	160.31
PB2	0.51		70.32		11.73	60.33	142.38
PB1	0.50		68.95		11.73	60.33	141.01
PA2	0.49		67.57		11.73	60.33	139.63
PA1	0.46		63.43		11.73	60.33	135.49

TABLE 4.—CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES, RURAL

RUG III category	Nursing index	Therapy index	Nursing component	Therapy component	Non-case mix therapy comp	Non-case mix component	Total rate
RUC	1.30	2.25	171.29	231.01		61.44	463.74
RUB	0.95	2.25	125.17	231.01		61.44	417.62
RUA	0.78	2.25	102.77	231.01		61.44	395.22
RVC	1.13	1.41	148.89	144.76		61.44	355.09
RVB	1.04	1.41	137.03	144.76		61.44	343.23
RVA	0.81	1.41	106.73	144.76		61.44	312.93
RHC	1.26	0.94	166.02	96.51		61.44	323.97
RHB	1.06	0.94	139.67	96.51		61.44	297.62
RHA	0.87	0.94	114.63	96.51		61.44	272.58
RMC	1.35	0.77	177.88	79.06		61.44	318.38
RMB	1.09	0.77	143.62	79.06		61.44	284.12
RMA	0.96	0.77	126.49	79.06		61.44	266.99
RLB	1.11	0.43	146.25	44.15		61.44	251.84
RLA	0.80	0.43	105.41	44.15		61.44	211.00
SE3	1.70		223.99		12.53	61.44	297.96
SE2	1.39		183.15		12.53	61.44	257.12
SE1	1.17		154.16		12.53	61.44	228.13
SSC	1.13		148.89		12.53	61.44	222.86
SSB	1.05		138.35		12.53	61.44	212.32
SSA	1.01		133.08		12.53	61.44	207.05
CC2	1.12		147.57		12.53	61.44	221.54
CC1	0.99		130.44		12.53	61.44	204.41
CB2	0.91		119.90		12.53	61.44	193.87
CB1	0.84		110.68		12.53	61.44	184.65
CA2	0.83		109.36		12.53	61.44	183.33
CA1	0.75		98.82		12.53	61.44	172.79
IB2	0.69		90.91		12.53	61.44	164.88
IB1	0.67		88.28		12.53	61.44	162.25
IA2	0.57		75.10		12.53	61.44	149.07
IA1	0.53		69.83		12.53	61.44	143.80
BB2	0.68		89.60		12.53	61.44	163.57
BB1	0.65		85.64		12.53	61.44	159.61
BA2	0.56		73.79		12.53	61.44	147.76
BA1	0.48		63.24		12.53	61.44	137.21
PE2	0.79		104.09		12.53	61.44	178.06
PE1	0.77		101.46		12.53	61.44	175.43
PD2	0.72		94.87		12.53	61.44	168.84
PD1	0.70		92.23		12.53	61.44	166.20

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TABLE 4.—CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES, RURAL—Continued

RUG III category	Nursing index	Therapy index	Nursing component	Therapy component	Non-case mix therapy comp	Non-case mix component	Total rate
PC2	0.65		85.64		12.53	61.44	159.61
PC1	0.64		84.33		12.53	61.44	158.30
PB2	0.51		67.20		12.53	61.44	141.17
PB1	0.50		65.88		12.53	61.44	139.85
PA2	0.49		64.56		12.53	61.44	138.53
PA1	0.46		60.61		12.53	61.44	134.58

We remain committed to efforts to monitor the RUG–III classification system and to pursue refinements in SNF payment. In the proposed rule associated with the FY 2001 SNF PPS update published April 10, 2000 (65 FR 19188), we had discussed options for refinements to the RUG–III classification system to account more accurately for the services provided to medically complex patients. The refinement approaches discussed had a particular focus on ancillary services other than rehabilitation (physical, occupational, and speech-language therapy), such as prescription drugs and respiratory therapy. We described our ongoing research and analyses in this area and shared the initial results that we proposed be incorporated into the Medicare SNF PPS system effective October 1, 2000. In that proposed rule, we cautioned that the proposed RUG–III refinements were based on limited data from seven states from periods prior to the implementation of the SNF PPS (1996 and 1997). Consequently, we indicated our plan to validate the findings using more current data from a broad national sample before issuing a final rule.

As discussed in the final rule published on July 31, 2000 (65 FR 46770), we conducted the validation analyses to determine the predictive power of the proposed case-mix models in identifying variations in non-therapy ancillary costs, using national data from a current period (that is, after the implementation of the SNF PPS). Based on these analyses, we determined that the refinement models developed using the pre-PPS sample were not effective in predicting resource use in the post-PPS environment. We identified several important variations in the post-PPS volume and distribution of beneficiaries and ancillary services costs using the 1999 national data, which appear to have affected the performance of the case-mix refinement models described in the proposed rule. We noted our belief that the introduction of the PPS and consolidated billing provisions for covered Part A SNF stays may have caused changes in facility practice patterns and billing. These changes, as well as the use of the broader national data sample, likely diminished the effectiveness of the models. Accordingly, in the final rule, we indicated our decision not to proceed with the implementation of case-mix refinements for FY 2001.

However, this decision did not in any way reflect a lack of commitment to pursuing appropriate case-mix refinements, and we remain dedicated to achieving this objective as quickly as possible. While the language in section 101 of BBRA 1999 does not directly mandate that we make case-mix refinements, we believe it nonetheless reflects a clear expectation that refinements will occur, by establishing payment adjustments that will expire upon the implementation of case-mix refinements, and by characterizing those adjustments as temporary. Accordingly, we are continuing our active efforts in this area, with the expectation that we will, over the next 12 months, develop case-mix refinements.

The inability of the specific case-mix refinement models based on a pre-PPS study sample (as described in the FY 2001 proposed rule) to explain behavior adequately in the post-PPS data does not warrant the conclusion that further efforts to improve the payment system's ability to allocate payments based on expected ancillary use would be unproductive. In fact, we believe there may well be the potential to establish meaningful refinements in the short term based on the results of a deliberate, comprehensive analysis using the extensive MDS 2.0, claims, and other administrative data now available. Moreover, this research will also provide an important foundation for a longer term analysis which seeks to identify alternative classification approaches in the SNF setting. The analysis we propose to conduct will be included in the report to Congress mandated by section 311 of BIPA 2000. This section requires us to submit the report no later than January 1, 2005. This work may also support a longer term goal, supported by HCFA and MedPAC, of developing more integrated approaches for the payment and delivery system for Medicare post acute services generally.

Therefore, we are currently proceeding with efforts to develop refinements to the RUG–III system, and are in the process of initiating a research contract in this area. We plan to look broadly for alternative refinement approaches that will improve the payment system's ability to account for the variation in resources associated with SNF patients generally, as well as medically complex patients and non-therapy ancillary services more specifically. This may include further analysis to develop a non-therapy ancillary index, similar to that proposed in the FY 2001 proposed rule, as well as exploration of other potential refinement approaches that could utilize information related to service use, function, diagnosis, and co-morbidities. In exploring possible refinement approaches, it is necessary to consider the potential effect of the refinements on aggregate SNF payments, as well as on access to and quality of care. In addition, we recognize the utility of using administrative data (such as claims) in the construction of the case-mix indexes and may, as MedPAC has recommended in the past, examine the potential for using this data to accomplish the tasks we are undertaking. Such an approach would facilitate annual updates to the case-mix indexes similar to the inpatient hospital PPS. In continuing this research, we will carefully consider the comments we received pursuant to the FY 2001 proposed rule. In addition, we specifically solicit comments in this proposed rule regarding possible approaches to refining the case-mix system.

While we recognize the need to seek improvements in the payment system, we are not aware of any substantive findings that demonstrate, as has been suggested at recent MedPAC meetings, that the RUG–III system has proven to be unworkable. In fact, several recent reports indicate that quality and access do not appear to be impaired. This may be more a function of overall revenues available to SNFs under the PPS, especially considering recent increases in funding under BBRA 1999 and BIPA 2000. Even though they do not affect the current case-mix classification structure, a number of these recent payment increases are nonetheless intended to ensure that facilities continue to be paid appropriately until RUG refinements can be made. We also note that it may be premature to make assumptions regarding the effect of case-mix on provider behavior based on currently available data (which, at this point, still reflect only payments made during the transition period when SNFs received a blend of the Federal rate and facility-specific rate), since provider behavior may change significantly once payment is made under the fully case-mix adjusted Federal rates.

Further, it is worth noting that in research conducted to support the implementation of the SNF PPS, the RUG–III case-mix system was shown to predict approximately 55 percent of the overall variation in nursing and therapy staff time costs across total facility population (that includes both Medicare and Medicaid, as well as other patients). The level of variance explanation is somewhat less across the Medicare population due to its greater homogeneity. While we have not measured this directly, an examination of the 1997 staff time data focusing on patients in Medicare certified units that specialize in medically complex care or intensive rehabilitation found that RUG–III predicted 41 percent of nursing and rehabilitation staff time costs across total facility population (which includes Medicare, Medicaid, and private pay patients). We believe that it continues to be highly effective in this area. While we have found that pharmacy costs are correlated somewhat with the nursing case-mix indexes in RUG–III, it is important to note that such costs are, by and large, difficult to account for in case-mix systems because drug costs do not necessarily follow physical condition, resource use, or functional and clinical pathways.

We look forward to addressing this important issue through the study of alternative case-mix systems required under BIPA 2000, which provides an opportunity for a deliberate analytical approach to the question of how best to refine the current classification system or to redirect Medicare's payment system to produce more equitable payments for providers and best support access and quality of care for Medicare beneficiaries. Similarly, we look forward to the study required under section 545 of BIPA 2000 (required to be completed by January 1, 2005), which requires us to submit a report on the development of standard instruments for the assessment of the health and functional status of patients. We also invite comments on possible approaches to refining the current case-mix classification system, as well as on identifying and studying alternatives to the current system. With regard to the MDS 2.0, we continue to believe that the MDS is an accurate and effective assessment tool, which meets program objectives related to its major purposes of supporting quality of care and providing patient status and treatment information needed to support payment. We are currently engaged in a number of activities that support accurate completion of the MDS. These include expanded provider training, clearer definitions of certain MDS elements and coding instructions, and funding of program safeguard contractor activities to undertake auditing and verification of the MDS. We also note our concern that the OIG's recent reports related to the accuracy of the MDS contained a number of methodological limitations (as acknowledged in the reports) that limit their utility for drawing conclusions about the MDS.

However, we recognize the increased financial incentives that BIPA creates for the rehabilitation categories and the potential for upcoding under the SNF PPS to gain higher payments. In fact, the potential for inappropriate upcoding exists in any prospective payment system that uses coding of clinical information as the basis for determining payment amounts due to providers, and the SNF PPS (which bases payment amounts on the clinical information entered on the MDS) is no exception. In this context, we note that fiscal intermediaries (FIs) will continue reviewing SNF PPS bills. As with current practice, the FIs will focus on identifying instances in which inappropriate services were provided or where the beneficiary did not meet the requirements for Medicare Part A coverage in an SNF. As part of this review, the MDS and the medical record is assessed to verify that the reported information supports the RUG category billed.

We believe that the practice of FIs using a data driven approach to focus medical review efforts will help address the incentive for upcoding. Once bills have been targeted for review, the FIs will identify instances in which inappropriate services were provided or where the beneficiary did not meet the requirements for Medicare Part A coverage in a SNF. As part of this review, the medical record (which includes the MDS) is assessed to verify that the reported information supports the RUG category billed.

To lend further support to program safeguard efforts, we are in the process of awarding a contract to a Medicare Integrity Program (MIP) contractor to provide an ongoing centralized data surveillance process to assess the accuracy and reliability of MDS data particular to the health care furnished by SNFs, and payment for these services. This includes ensuring appropriate payment and payment denial decisions. The findings will produce evidence for further actions at national, regional, and State levels in addressing concerns in the areas of program integrity, beneficiary health and safety, and quality improvement. The contractor is also expected to perform monitoring and data analyses to determine if there are variations over time in the case-mix intensity, and whether those differences represent changes in actual or real case status of beneficiaries rather than changes that reflect improper provider behavior. Through the MIP contractor and the FIs, we will address instances of improper billing through recoupment of improper payments, intensified reviews, and provider education.

Further, in the context of our ongoing efforts to ensure accurate payment for appropriate care, we note a situation regarding rehabilitation therapy that is being provided in SNFs in a manner that conflicts with Medicare coverage guidelines. This issue involves providers that refuse to employ therapists who are unwilling to perform, on a routine basis, concurrent therapy. Concurrent therapy is the practice of one professional therapist treating more than one Medicare beneficiary at a time—in some cases, many more than one individual at a time.

Concurrent therapy is distinguished from group therapy, because all participants in group therapy are working on some common skill development and the ratio of participants to therapist may be no higher than 4 to 1. In addition, in the July 30, 1999 SNF PPS final rule (64 FR 41662), we specified that the minutes of group therapy received by the beneficiary may account for no more than 25 percent of the therapy (per discipline) received in a 7 day period. By contrast, a beneficiary who is receiving concurrent therapy with one or more other beneficiaries likely is not

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receiving services that relate to those needed by any of the other participants. Although each beneficiary may be receiving care that is prescribed in his individual plan of treatment, it is not being delivered according to Medicare coverage guidelines; that is, the therapy is not being provided individually, and it is unlikely that the services being delivered are at the complex skill level required for coverage by Medicare.

The Medicare SNF benefit provides coverage of therapy services only when the services are of such a level of complexity and sophistication (or the beneficiary's condition is such) that the services can be safely and effectively performed only by or under the supervision of a qualified professional therapist. Therapy services that are concurrently being delivered by one treating therapist to many beneficiaries would not appear to meet these criteria. If the therapist or therapy assistant can provide distinct services to several beneficiaries at once, then it is unlikely that the services are sufficiently complex and sophisticated to qualify for coverage under the Medicare guidelines.

We note that there have always been isolated instances in which a professional therapist has been allowed to have some overlap in the time of concluding treatment to one individual and the time of commencing the treatment of another, even to the point of briefly providing therapy concurrently in certain cases. However, the key principle here is that Medicare relies on the professional judgment of the therapist to determine when, based on the complexity of the services to be delivered and the condition of the beneficiary, it is appropriate to deliver care to more than one beneficiary at the same time. Our concern now is that in some areas of the country, concurrent therapy is becoming a standard practice rather than the exception, and is being dictated by facility management personnel rather than according to the professional judgment of the therapists involved.

We believe that it is important to heighten the SNF and therapy industries' awareness of the applicable Medicare policy in this regard. Medicare policy has not, until now, specifically addressed coverage of skilled rehabilitation therapy in situations in which a single professional therapist (or therapy assistant under the supervision of the professional therapist) simultaneously provides different treatments to multiple beneficiaries. As noted above, we have relied on the professional therapist's judgment as to when it is appropriate for an individual therapist to provide services to more than one beneficiary. We now wish to advise the providers of care of our concern about the potentially adverse effect of this practice on the quality of the therapy provided to beneficiaries in Part A SNF stays, as well as our concern about the implications of making payments in such situations. We solicit public comments regarding the scope and magnitude of this problem, and possible approaches for addressing this issue.

C. Wage Index Adjustment to Federal Rates

Section 1888(e)(4)(G)(ii) of the Act requires that we adjust the Federal rates to account for differences in area wage levels, using an appropriate wage index, as determined by the Secretary. Section 315 of BIPA 2000 authorizes the Secretary to establish a reclassification system for SNFs, similar to the hospital methodology. This reclassification system cannot be implemented until the Secretary has collected data necessary to establish an area wage index for SNFs based on wage data from such facilities. Pursuant to section 106(a) of the Social Security Act Amendments of 1994 (P.L. 103–432), the Secretary was directed to begin to collect data on employee compensation and paid hours of employment in SNFs for the purpose of constructing a SNF wage index. Since the inception of a PPS for SNFs, we have utilized hospital wage data in developing a wage index to be applied to SNFs.

The computation of the proposed wage index is similar to past years because we incorporate the latest data and methodology used to construct the hospital wage index (see the discussion in the May 12, 1998 interim final rule (63 FR 26274)). The wage index adjustment is applied to the proposed labor-related portion of the Federal rate, which is 75.374 percent of the total rate. This percentage reflects the labor-related relative importance for FY 2002. The labor-related relative importance is calculated from the SNF market basket, and approximates the labor-related portion of the total costs after taking into account historical and projected price changes between the base year and FY 2002. The price proxies that move the different cost categories in the market basket do not necessarily change at the same rate, and the relative importance captures these changes. Accordingly, the relative importance figure more closely reflects the cost share weights for FY 2002 than the base year weights from the SNF market basket.

We calculate the labor-related relative importance for FY 2002 in four steps. First, we compute the FY 2002 price index level for the total market basket and each cost category of the market basket. Second, we calculate a ratio for each cost category by dividing the FY 2002 price index level for that cost category by the total market basket price index level. Third, we determine the FY 2002 relative importance for each cost category by multiplying this ratio by the base year (FY 1997) weight. Finally, we sum the FY 2002 relative importance for each of the labor-related cost categories (that is, wages and salaries; employee benefits; nonmedical professional fees; labor-intensive services; and, capital-related) to produce the FY 2002 labor-related relative importance. Tables 5 and 6 show the Federal rates by labor-related and non-labor-related components.

TABLE 5.—CASE-MIX ADJUSTED FEDERAL RATES FOR URBAN SNFS BY LABOR AND NON-LABOR COMPONENT

RUG III category	Total rate	Labor portion	Non-labor portion
RUC	439.91	331.58	108.33
RUB	391.65	295.20	96.45
RUA	368.20	277.53	90.67
RVC	341.68	257.54	84.14
RVB	329.27	248.18	81.09
RVA	297.55	224.28	73.27
RHC	317.76	239.51	78.25
RHB	290.18	218.72	71.46
RHA	263.98	198.97	65.01
RMC	315.03	237.45	77.58
RMB	279.18	210.43	68.75
RMA	261.25	196.91	64.34
RLB	251.67	189.69	61.98
RLA	208.92	157.47	51.45
SE3	306.47	231.00	75.47
SE2	263.73	198.78	64.95
SE1	233.39	175.92	57.47
SSC	227.88	171.76	56.12
SSB	216.84	163.44	53.40
SSA	211.33	159.29	52.04
CC2	226.50	170.72	55.78
CC1	208.57	157.21	51.36
CB2	197.54	148.89	48.65
CB1	187.89	141.62	46.27
CA2	186.51	140.58	45.93
CA1	175.48	132.27	43.21
IB2	167.20	126.03	41.17
IB1	164.45	123.95	40.50
IA2	150.66	113.56	37.10
IA1	145.14	109.40	35.74
BB2	165.83	124.99	40.84
BB1	161.69	121.87	39.82
BA2	149.28	112.52	36.76
BA1	138.25	704.20	34.05
PE2	780.99	136.42	44.57
PE1	178.24	134.35	43.89
PD2	171.34	129.15	42.19
PD1	168.58	127.07	41.51
PC2	161.69	121.87	39.82
PC1	160.31	120.83	39.48
PB2	142.38	107.32	35.06
PB1	141.01	106.28	34.73

TABLE 5.—CASE-MIX ADJUSTED FEDERAL RATES FOR URBAN SNFS BY LABOR AND NON-LABOR COMPONENT—Continued

RUG III category	Total rate	Labor portion	Non-labor portion
PA2	139.63	105.24	34.39
PA1	135.49	102.12	33.37

TABLE 6.—CASE-MIX ADJUSTED FEDERAL RATES FOR RURAL SNFS BY LABOR AND NON-LABOR COMPONENT

RUG III category	Total rate	Labor portion	Non-labor portion
RUC	463.74	349.54	114.20
RUB	417.62	314.78	102.84
RUA	395.22	297.89	97.33
RVC	355.09	267.65	87.44
RVB	343.23	258.71	84.52
RVA	312.93	235.87	77.06
RHC	323.97	244.19	79.78
RHB	297.62	224.33	73.29
RHA	272.58	205.45	67.13
RMC	318.38	239.98	78.40
RMB	284.12	214.15	69.97
RMA	266.99	201.24	65.75
RLB	251.84	189.82	62.02
RLA	211.00	159.04	51.96
SE3	297.96	224.58	73.38
SE2	257.12	193.80	63.32
SE1	228.13	171.95	56.18
SSC	222.86	167.98	54.88
SSB	212.32	160.03	52.29
SSA	207.05	156.06	50.99
CC2	221.54	166.98	54.56
CC1	204.41	154.07	50.34
CB2	193.87	146.13	47.74
CB1	184.65	139.18	45.47
CA2	183.33	138.18	45.15
CA1	172.79	130.24	42.55
IB2	164.88	124.28	40.60
IB1	162.25	122.29	39.96
IA2	149.07	112.36	36.71
IA1	143.80	108.39	35.41
BB2	163.57	123.29	40.28
BB1	159.61	120.30	39.31
BA2	147.76	111.37	36.39
BA1	137.21	103.42	33.79
PE2	178.06	134.21	43.85
PE1	175.43	132.23	43.20
PD2	168.84	127.26	41.58
PD1	166.20	125.27	40.93
PC2	159.61	120.30	39.31
PC1	158.30	119.32	38.98
PB2	141.17	106.41	34.76
PB1	139.85	105.41	34.44

TABLE 6.—CASE-MIX ADJUSTED FEDERAL RATES FOR RURAL SNFS BY LABOR AND NON-LABOR COMPONENT—Continued

RUG III category	Total rate	Labor portion	Non-labor portion
PA2	138.53	104.42	34.11
PA1	134.58	101.44	33.14

Section 1888(e)(4)(G)(ii) of the Act also requires that the application of this wage index be made in a manner that does not result in aggregate payments that are greater or lesser than would otherwise be made in the absence of the wage adjustment. In this fourth PPS year (Federal rates effective October 1, 2001), we are updating the wage index applicable to SNF payments using the most recent hospital wage data and applying an adjustment to fulfill the budget neutrality requirement. This requirement will be met by multiplying each of the components of the unadjusted Federal rates by a factor equal to the ratio of the volume weighted mean wage adjustment factor (using the wage index from the previous year) to the volume weighted mean wage adjustment factor, using the wage index for the FY beginning October 1, 2001. The same volume weights are used in both the numerator and denominator and will be derived from 1997 Medicare Provider Analysis and Review File (MEDPAR) data. The wage adjustment factor used in this calculation is defined as the labor share of the rate component multiplied by the wage index plus the non-labor share. The proposed budget neutrality factor for FY 2002 is .99939.

Over the past few years, we have received many comments asking that we evaluate a SNF-specific wage index, which would be based solely on wage and hourly data from SNFs. To develop this analysis, a schedule was added to the cost report to gather wage and hourly data from each SNF. In this proposed rule we are publishing a wage index prototype based on SNF data, along with the wage index based on the hospital wage data that was used in the FY 2001 final rule published July 31, 2000 in the **Federal Register** (65 FR 46770).

The wage index computations for the SNF prototype were done in the same manner as the current wage index based on hospital data, except that SNFs use one of three cost reports to report their data: Freestanding SNFs use the HCFA–2540, Worksheet S–3; hospital-based SNFs use the HCFA–2552, Worksheet S–3; and low-volume SNF providers use the HCFA–2540-S, Worksheet S–3.

The SNF-specific wage indexes illustrated in Table 7 include the following categories of data associated with costs paid under the SNF PPS:

- Salaries and hours from freestanding and hospital-based SNFs.
- Home office costs and hours.
- Certain contract labor costs and hours.
- Wage-related costs.

Consistent with the wage index methodology used in the development of the hospital wage index, the wage indexes published here would also continue to exclude the direct and overhead costs of salaries and hours for services not paid through the SNF PPS, such as home health services, and other sub-provider components that are not subject to the PPS. In addition, as is done in computing the hospital wage index, we would phase out costs associated with graduate medical education (GME) (teaching physicians and residents). For purposes of illustrating the wage indexes shown in Table 7, the SNF wage index is based on a blend of 60 percent of an average hourly wage including the GME costs, and 40 percent of an average hourly wage excluding these costs.

Table 7 shows a side by side comparison of the wage index. Column A shows the Metropolitan Statistical Area (MSA); Column B shows the wage index, utilizing data derived from SNFs with cost reporting periods ending during FY 1998; Column C shows the wage index developed using SNF data from cost reporting periods ending during FY 1999; and Column D shows the wage index from the FY 2001 final rule, as revised by the correction notice published on January 16, 2001 (66 FR 3497).

TABLE 7.—WAGE INDEX FOR URBAN AREAS

Urban Area (Constituent Counties or County Equivalents)	Wage Index		
	SNF98	SNF99	HOSP
Col. A	Col. B	Col. C	Col. D
0040 Abilene, TX Taylor, TX	0.7354	0.8162	0.8240
0060 Aguadilla, PR Aguada, PR	0.0000	0.0000	0.4391

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TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent Counties or County Equivalents)	Wage Index		
	SNF98	SNF99	HOSP
Col. A	Col. B	Col. C	Col. D
Aguadilla, PR			
Moca, PR			
0080 Akron, OH	0.9636	1.0553	0.9736
Portage, OH			
Summit, OH			
0120 Albany, GA	0.6203	0.7460	0.9933
Dougherty, GA			
Lee, GA			
0160 Albany-Schenectady-Troy, NY	1.0860	1.0809	0.8549
Albany, NY			
Montgomery, NY			
Rensselaer, NY			
Saratoga, NY			
Schenectady, NY			
Schoharie, NY			
0200 Albuquerque, NM	0.7892	0.7980	0.9136
Bernalillo, NM			
Sandoval, NM			
Valencia, NM			
0220 Alexandria, LA	0.7849	0.6318	0.8123
Rapides, LA			
0240 Allentown-Bethlehem-Easton, PA	1.1553	1.0749	0.9925
Carbon, PA			
Lehigh, PA			
Northampton, PA			
0280 Altoona, PA	0.9559	0.9712	0.9346
Blair, PA			
0320 Amarillo, TX	0.8377	0.8338	0.8715
Potter, TX			
Randall, TX			
0380 Anchorage, AK	1.5003	1.4716	1.2793
Anchorage, AK			
0440 Ann Arbor, MI	1.0845	1.1059	1.1254
Lenawee, MI			
Livingston, MI			
Washtenaw, MI			
0450 Anniston, AL	0.7619	0.9226	0.8284
Calhoun, AL			
0460 Appleton-Oshkosh-Neenah, WI	1.0962	1.0662	0.9052
Calumet, WI			
Outagamie, WI			
Winnebago, WI			
0470 Arecibo, PR	0.0000	0.0000	0.4525
Arecibo, PR			
Camuy, PR			
Hatillo, PR			
0480 Asheville, NC	0.9090	0.9482	0.9516
Buncombe, NC			
Madison, NC			
0500 Athens, GA	0.9653	0.9264	0.9739
Clarke, GA			
Madison, GA			
Oconee, GA			
0520 Atlanta, GA	0.9733	0.9474	1.0096
Barrow, GA			
Bartow, GA			
Carroll, GA			
Cherokee, GA			
Clayton, GA			
Cobb, GA			
Coweta, GA			
De Kalb, GA			
Douglas, GA			
Fayette, GA			
Forsyth, GA			
Fulton, GA			
Gwinnett, GA			
Henry, GA			
Newton, GA			
Paulding, GA			
Pickens, GA			
Rockdale, GA			
Spalding, GA			
Walton, GA			
0560 Atlantic City-Cape May, NJ	1.1443	1.1406	1.1182
Atlantic City, NJ			
Cape May, NJ			

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent Counties or County Equivalents)	Wage Index		
	SNF98	SNF99	HOSP
Col. A	Col. B	Col. C	Col. D
0580 Auburn-Opelika, AL	0.9892	0.8857	0.8106
Lee, AL			
0600 Augusta-Aiken, GA-SC	0.7831	0.7898	0.9160
Columbia, GA			
McDuffie, GA			
Richmond, GA			
Aiken, SC			
Edgefield, SC			
0640 Austin-San Marcos, TX	0.8694	0.8826	0.9577
Bastrop, TX			
Caldwell, TX			
Hays, TX			
Travis, TX			
Williamson, TX			
0680 Bakersfield, CA	1.0005	1.0059	0.9678
Kern, CA			
0720 Baltimore, MD	1.0144	0.9797	0.9365
Anne Arundel, MD			
Baltimore, MD			
Baltimore City, MD			
Carroll, MD			
Harford, MD			
Howard, MD			
Queen Annes, MD			
0733 Bangor, ME	1.0358	0.8851	0.9561
Penobscot, ME			
0743 Barnstable-Yarmouth, MA	1.2663	1.2722	1.3839
Barnstable, MA			
0760 Baton Rouge, LA	0.7459	0.7803	0.8842
Ascension, LA			
East Baton Rouge, LA			
Livingston, LA			
West Baton Rouge, LA			
0840 Beaumont-Port Arthur, TX	0.8049	0.7895	0.8744
Hardin, TX			
Jefferson, TX			
Orange, TX			
0860 Bellingham, WA	0.9121	0.8984	1.1439
Whatcom, WA			
0870 Benton Harbor, MI	0.8766	0.9098	0.8671
Berrien, MI			
0875 Bergen-Passaic, NJ	1.3811	1.2739	1.1848
Bergen, NJ			
Passaic, NJ			
0880 Billings, MT	0.9429	0.9017	0.9585
Yellowstone, MT			
0920 Biloxi-Gulfport-Pascagoula, MS	0.8023	0.9676	0.8236
Hancock, MS			
Harrison, MS			
Jackson, MS			
0960 Binghamton, NY	0.9400	0.9231	0.8690
Broome, NY			
Tioga, NY			
1000 Birmingham, AL	0.8846	0.9155	0.8452
Blount, AL			
Jefferson, AL			
St. Clair, AL			
Shelby, AL			
1010 Bismarck, ND	0.8939	0.8745	0.7705
Burleigh, ND			
Morton, ND			
1020 Bloomington, IN	0.8272	0.9108	0.8733
Monroe, IN			
1040 Bloomington-Normal, IL	0.8547	0.9268	0.9095
McLean, IL			
1080 Boise City, ID	1.0779	0.9592	0.9006
Ada, ID			
Canyon, ID			
1123 Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH	1.2273	1.1947	1.1160
Bristol, MA			
Essex, MA			
Middlesex, MA			
Norfolk, MA			
Plymouth, MA			
Suffolk, MA			
Worcester, MA			
Hillsborough, NH			

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TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent Counties or County Equivalents)	Wage Index		
	SNF98	SNF99	HOSP
Col. A	Col. B	Col. C	Col. D
Merrimack, NH			
Rockingham, NH			
Stratford, NH			
1125 Boulder-Longmont, CO	1.1414	0.9062	0.9731
Boulder, CO			
1145 Brazoria, TX	0.7869	0.7187	0.8658
Brazoria, TX			
1150 Bremerton, WA	0.9945	0.9732	1.0975
Kitsap, WA			
1240 Brownsville-Harlingen-San Benito, TX	0.8226	0.7991	0.8722
Cameron, TX			
1260 Bryan-College Station, TX	0.8326	0.6742	0.8237
Brazos, TX			
1280 Buffalo-Niagara Falls, NY	1.0114	0.9494	0.9580
Erie, NY			
Niagara, NY			
1303 Burlington, VT	1.0690	1.0145	1.0735
Chittenden, VT			
Franklin, VT			
Grand Isle, VT			
1310 Caguas, PR	0.0000	0.0000	0.4562
Caguas, PR			
Cayey, PR			
Cidra, PR			
Gurabo, PR			
San Lorenzo, PR			
1320 Canton-Massillon, OH	0.9343	0.8839	0.8584
Carroll, OH			
Stark, OH			
1350 Casper, WY	0.7798	0.8405	0.8724
Natrona, WY			
1360 Cedar Rapids, IA	0.8652	0.9390	0.8736
Linn, IA			
1400 Champaign-Urbana, IL	0.9478	1.0588	0.9198
Champaign, IL			
1440 Charleston-North Charleston, SC	0.7764	0.7695	0.9038
Berkeley, SC			
Charleston, SC			
Dorchester, SC			
1480 Charleston, WV	0.9525	0.9975	0.9240
Kanawha, WV			
Putnam, WV			
1520 Charlotte-Gastonia-Rock Hill, NC–SC	1.0230	0.9661	0.9407
Cabarrus, NC			
Gaston, NC			
Lincoln, NC			
Mecklenburg, NC			
Rowan, NC			
Stanly, NC			
Union, NC			
York, SC			
1540 Charlottesville, VA	0.9619	0.9943	1.0789
Albemarle, VA			
Charlottesville City, VA			
Fluvanna, VA			
Greene, VA			
1560 Chattanooga, TN–GA	0.9186	0.8875	0.9833
Catoosa, GA			
Dade, GA			
Walker, GA			
Hamilton, TN			
Marion, TN			
1580 Cheyenne, WY	1.0743	0.9800	0.8308
Laramie, WY			
1600 Chicago, IL	0.9358	0.9860	1.1146
Cook, IL			
De Kalb, IL			
Du Page, IL			
Grundy, IL			
Kane, IL			
Kendall, IL			
Lake, IL			
McHenry, IL			
Will, IL			
1620 Chico-Paradise, CA	0.9238	0.9565	0.9918
Butte, CA			

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent Counties or County Equivalents)	Wage Index		
	SNF98	SNF99	HOSP
Col. A	Col. B	Col. C	Col. D
1640 Cincinnati, OH–KY–IN	0.9579	0.9615	0.9415
Dearborn, IN			
Ohio, IN			
Boone, KY			
Campbell, KY			
Gallatin, KY			
Grant, KY			
Kenton, KY			
Pendleton, KY			
Brown, OH			
Clermont, OH			
Hamilton, OH			
Warren, OH			
1660 Clarksville-Hopkinsville, TN–KY	0.7928	0.7668	0.8204
Christian, KY			
Montgomery, TN			
1680 Cleveland-Lorain-Elyria, OH	1.0330	1.0271	0.9597
Ashtabula, OH			
Geauga, OH			
Cuyahoga, OH			
Lake, OH			
Lorain, OH			
Medina, OH			
1720 Colorado Springs, CO	0.8972	0.9387	0.9697
El Paso, CO			
1740 Columbia, MO	0.9174	0.8050	0.8961
Boone, MO			
1760 Columbia, SC	0.9423	0.9195	0.9554
Lexington, SC			
Richland, SC			
1800 Columbus, GA–AL	0.7897	0.8062	0.8568
Russell, AL			
Chattanoochee, GA			
Harris, GA			
Muscogee, GA			
1840 Columbus, OH	1.0294	1.0288	0.9619
Delaware, OH			
Fairfield, OH			
Franklin, OH			
Licking, OH			
Madison, OH			
Pickaway, OH			
1880 Corpus Chnsti, TX	0.8333	0.8573	0.8726
Nueces, TX			
San Patricio, TX			
1890 Corvallis, OR	0.7759	0.8492	1.1326
Benton, OR			
1900 Cumberland, MD–WV	0.8879	0.9957	0.8369
Allegany, MD			
Mineral, WV			
1920 Dallas, TX	0.8943	0.9558	0.9913
Collin, TX			
Dallas, TX			
Denton, TX			
Ellis, TX			
Henderson, TX			
Hunt, TX			
Kaufman, TX			
Rockwall, TX			
1950 Danville, VA	0.7390	0.7589	0.8589
Danville City, VA			
Pittsylvania, VA			
1960 Davenport-Moline-Rock Island, IA–IL	0.8633	0.8694	0.8898
Scott, IA			
Henry, IL			
Rock Island, IL			
2000 Dayton-Springfield, OH	0.9102	0.9455	0.9442
Clark, OH			
Greene, OH			
Miami, OH			
Montgomery, OH			
2020 Daytona Beach, FL	0.8922	0.9231	0.9200
Flagler, FL			
Volusia, FL			
2030 Decatur, AL	0.9186	0.8669	0.8534
Lawrence, AL			
Morgan, AL			

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TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent Counties or County Equivalents)	Wage Index		
	SNF98	SNF99	HOSP
Col. A	Col. B	Col. C	Col. D
2040 Decatur, IL	0.8804	0.8322	0.8125
Macon, IL			
2080 Denver, CO	1.0833	1.0643	1.0181
Adams, CO			
Arapahoe, CO			
Denver, CO			
Douglas, CO			
Jefferson, CO			
2120 Des Moines, IA	0.9003	0.9712	0.9118
Dallas, IA			
Polk, IA			
Warren, IA			
2160 Detroit, MI	0.9798	0.9957	1.0510
Lapeer, MI			
Macomb, MI			
Monroe, MI			
Oakland, MI			
St. Clair, MI			
Wayne, MI			
2180 Dothan, AL	0.7485	0.8621	0.7943
Dale, AL			
Houston, AL			
2190 Dover, DE	1.1346	1.0334	1.0078
Kent, DE			
2200 Dubuque, IA	0.9533	1.0244	0.8746
Dubuque, IA			
2240 Duluth-Superior, MN–WI	0.9492	1.0842	1.0032
St. Louis, MN			
Douglas, WI			
2281 Dutchess County, NY	1.0745	1.1267	1.0249
Dutchess, NY			
2290 Eau Claire, WI	0.9402	0.9868	0.8790
Chippewa, WI			
Eau Claire, WI			
2320 El Paso, TX	0.7912	0.8687	0.9346
El Paso, TX			
2330 Elkhart-Goshen, IN	1.0718	0.9752	0.9145
Elkhart, IN			
2335 Elmira, NY	1.0063	1.0535	0.8546
Chemung, NY			
2340 Enid, OK	0.7874	0.7879	0.8610
Garfield, OK			
2360 Erie, PA	1.0605	1.0583	0.8985
Erie, PA			
2400 Eugene-Springfield, OR	0.8713	0.8417	1.0965
Lane, OR			
2440 Evansville-Henderson, IN–KY	0.9297	0.9342	0.8173
Posey, IN			
Vanderburgh, IN			
Warrick, IN			
Henderson, KY			
2520 Fargo-Moorhead, ND–MN	0.9621	1.0643	0.8749
Clay, MN			
Cass, ND			
2560 Fayetteville, NC	0.8495	0.8584	0.8655
Cumberland, NC			
2580 Fayetteville-Springdale-Rogers, AR	0.8193	0.8512	0.7910
Benton, AR			
Washington, AR			
2620 Flagstaff, AZ–UT	1.2591	1.0997	1.0686
Coconino, AZ			
Kane, UT			
2640 Flint, MI	0.9788	0.9726	1.1205
Genesee, MI			
2650 Florence, AL	0.9251	0.9031	0.7616
Colbert, AL			
Lauderdale, AL			
2655 Florence, SC	0.7684	0.7799	0.8777
Florence, SC			
2670 Fort Collins-Loveland, CO	0.9010	0.9680	1.0647
Larimer, CO			
2680 Ft. Lauderdale, FL	0.9681	0.9625	1.0121
Broward, FL			
2700 Fort Myers-Cape Coral, FL	0.9444	0.8951	0.9247
Lee, FL			
2710 Fort Pierce-Port St. Lucie, FL	1.0172	0.9880	0.9538
Martin, FL			
St. Lucie, FL			
2720 Fort Smith, AR–OK	0.7268	0.7499	0.8052
Crawford, AR			
Sebastian, AR			
Sequoyah, OK			
2750 Fort Walton Beach, FL	0.9440	0.9582	0.9607
Okaloosa, FL			
2760 Fort Wayne, IN	0.9082	0.9763	0.8665
Adams, IN			
Allen, IN			
De Kalb, IN			
Huntington, IN			
Wells, IN			
Whitley, IN			
2800 Forth Worth-Arlington, TX	0.8821	0.9047	0.9527
Hood, TX			
Johnson, TX			
Parker, TX			
Tarrant, TX			
2840 Fresno, CA	0.8738	0.9823	1.0104
Fresno, CA			
Madera, CA			
2880 Gadsden, AL	0.9108	0.6287	0.8423
Etowah, AL			
2900 Gainesville, FL	0.9325	1.0300	1.0074
Alachua, FL			
2920 Galveston-Texas City, TX	0.7678	0.6821	0.9918
Galveston, TX			
2960 Gary, IN	0.9827	0.9807	0.9454
Lake, IN			
Porter, IN			
2975 Glens Falls, NY	0.9560	0.9772	0.8361
Warren, NY			
Washington, NY			
2980 Goldsboro, NC	0.9370	0.8740	0.8423
Wayne, NC			
2985 Grand Forks, ND–MN	0.8816	0.9022	0.8816
Polk, MN			
Grand Forks, ND			
2995 Grand Junction, CO	0.9539	0.9156	0.9109
Mesa, CO.			
3000 Grand Rapids-Muskegon-Holland, MI	0.9715	0.9978	1.0248
Allegan, MI			
Kent, MI			
Muskegon, MI			
Ottawa, MI			
3040 Great Falls, MT	0.9712	1.0019	0.9065
Cascade, MT			
3060 Greeley, CO	0.9253	0.8880	0.9814
Weld, CO			
3080 Green Bay, WI	0.9441	1.0262	0.9225
Brown, WI			
3120 Greensboro-Winston-Salem-High Point, NC	1.0166	0.9782	0.9131
Alamance, NC			
Davidson, NC			
Davie, NC			
Forsyth, NC			
Guilford, NC			
Randolph, NC			
Stokes, NC			
Yadkin, NC			
3150 Greenville, NC	0.8844	0.9400	0.9384
Pitt, NC			
3160 Greenville-Spartanburg-Anderson, SC	0.8362	0.9622	0.9003
Anderson, SC			
Cherokee, SC			
Greenville, SC			
Pickens, SC			
Spartanburg, SC			
3180 Hagerstown, MD	0.9318	0.9153	0.9409
Washington, MD			
3200 Hamilton-Middletown, OH	0.9739	0.9532	0.9061
Butler, OH			
3240 Harrisburg-Lebanon-Carlisle, PA	1.1052	1.0753	0.9386
Cumberland, PA			
Dauphin, PA			
Lebanon, PA			

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent Counties or County Equivalents)	Wage Index		
	SNF98	SNF99	HOSP
Col. A	Col. B	Col. C	Col. D

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TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent Counties or County Equivalents)	Wage Index		
	SNF98	SNF99	HOSP
Col. A	Col. B	Col. C	Col. D
Perry, PA			
3283 Hartford, CT	1.2733	1.1675	1.1373
Hartford, CT			
Litchfield, CT			
Middlesex, CT			
Tolland, CT			
3285 Hattiesburg, MS	0.8421	0.7540	0.7490
Forrest, MS			
Lamar, MS			
3290 Hickory-Morganton-Lenoir, NC	0.9086	0.9027	0.9008
Alexander, NC			
Burke, NC			
Caldwell, NC			
Catawba, NC			
3320 Honolulu, HI	1.2242	1.2838	1.1863
Honolulu, HI			
3350 Houma, LA	0.6694	0..6749	0.8086
Lafourche, LA			
Terrebonne, LA			
3360 Houston, TX	0.8506	0.8634	0.9732
Chambers, TX			
Fort Bend, TX			
Harris, TX			
Liberty, TX			
Montgomery, TX			
Waller, TX			
3400 Huntington-Ashland, WV–KY–OH	0.7948	0.8957	0.9876
Boyd, KY			
Carter, KY			
Greenup, KY			
Lawrence, OH			
Cabell, WV			
Wayne, WV			
3440 Huntsville, AL	0.9774	0.7569	0.8932
Limestone, AL			
Madison, AL			
3480 Indianapolis, IN	0.9932	1.0128	0.9787
Boone, IN			
Hamilton, IN			
Hancock, IN			
Hendricks, IN			
Johnson, IN			
Madison, IN			
Marion, IN			
Morgan, IN			
Shelby, IN			
3500 Iowa City, IA	0.9092	0.8611	0.9657
Johnson, IA			
3520 Jackson, MI	0.9393	1.0367	0.9134
Jackson, MI			
3560 Jackson, MS	0.8731	0.9642	0.8812
Hinds, MS			
Madison, MS			
Rankin, MS			
3580 Jackson, TN	0.9437	0.8032	0.8796
Chester, TN			
Madison, TN			
3600 Jacksonville, FL	0.9566	0.9309	0.9208
Clay, FL			
Duval, FL			
Nassau, FL			
St. Johns, FL			
3605 Jacksonville, NC	0.6554	0.8257	0.7777
Onslow, NC			
3610 Jamestown, NY	0.9276	0.8990	0.7818
Chautaqua, NY			
3620 Janesville-Beloit, WI	0.8899	0.9652	0.9585
Rock, WI			
3640 Jersey City, NJ	1.2879	0.8535	1.1502
Hudson, NJ			
3660 Johnson City-Kingsport-Bristol, TN–VA	0.8853	0.8303	0.8272
Carter, TN			
Hawkins, TN			
Sullivan, TN			
Unicoi, TN			
Washington, TN			
Bristol City, VA			

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent Counties or County Equivalents)	Wage Index		
	SNF98	SNF99	HOSP
Col. A	Col. B	Col. C	Col. D
Scott, VA			
Washington, VA			
3680 Johnstown, PA	0.9877	0.9914	0.8846
Cambria, PA			
Somerset, PA			
3700 Jonesboro, AR	0.6568	0.8322	0.7832
Craighead, AR			
3710 Joplin, MO	0.8112	0.8128	0.8148
Jasper, MO			
Newton, MO			
3720 Kalamazoo-Battle Creek, MI	0.9773	0.9982	1.0453
Calhoun, MI			
Kalamazoo, MI			
Van Buren, MI			
3740 Kankakee, IL	0.8635	0.8886	0.9902
Kankakee, IL			
3760 Kansas City, KS–MO	0.9439	0.9726	0.9527
Johnson, KS			
Leavenworth, KS			
Miami, KS			
Wyandotte, KS			
Cass, MO			
Clay, MO			
Clinton, MO			
Jackson, MO			
Lafayette, MO			
Platte, MO			
Ray, MO			
3800 Kenosha, WI	1.1006	1.0354	0.9611
Kenosha, WI			
3810 Killeen-Temple, TX	0.7996	0.8280	1.0119
Bell, TX			
Coryell, TX			
3840 Knoxville, TN	0.9046	0.8712	0.8340
Anderson, TN			
Blount, TN			
Knox, TN			
Loudon, TN			
Sevier, TN			
Union, TN			
3850 Kokomo, IN	1.0415	0.8785	0.9518
Howard, IN			
Tipton, IN			
3870 La Crosse, WI–MN	0.9343	0.9838	0.9211
Houston, MN			
La Crosse, WI			
3880 Lafayette, LA	0.7373	0.7000	0.8490
Acadia, LA			
Lafayette, LA			
St. Landry, LA			
St. Martin, LA			
3920 Lafayette, IN	1.0308	0.9298	0.8834
Clinton, IN			
Tippecanoe, IN			
3960 Lake Charles, LA	0.7437	0.7102	0.7399
Calcasieu, LA			
3980 Lakeland-Winter Haven, FL	1.0545	1.0235	0.9239
Polk, FL			
4000 Lancaster, PA	1.0528	1.0114	0.9259
Lancaster, PA			
4040 Lansing-East Lansing, MI	0.9933	1.0271	0.9934
Clinton, MI			
Eaton, MI			
Ingham, MI			
4080 Laredo, TX	0.7832	0.8348	0.8168
Webb, TX			
4100 Las Cruces, NM	0.6816	0.7263	0.8658
Dona Ana, NM			
4120 Las Vegas, NV–AZ	1.0189	1.0278	1.0796
Mohave, AZ			
Clark, NV			
Nye, NV			
4150 Lawrence, KS	0.9625	0.9352	0.8190
Douglas, KS			
4200 Lawton, OK	0.6546	0.7951	0.8996
Comanche, OK			
4243 Lewiston-Auburn, ME	0.8717	0.9202	0.9036

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TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent Counties or County Equivalents)	Wage Index		
	SNF98	SNF99	HOSP
Col. A	Col. B	Col. C	Col. D
Androscoggin, ME			
4280 Lexington, KY	0.9208	0.7549	0.8866
Bourbon, KY			
Clark, KY			
Fayette, KY			
Jessamine, KY			
Madison, KY			
Scott, KY			
Woodford, KY			
4320 Lima, OH	0.8609	0.9397	0.9320
Allen, OH			
Auglaize, OH			
4360 Lincoln, NE	1.0497	1.0192	0.9626
Lancaster, NE			
4400 Little Rock-North Little Rock, AR	0.9213	0.9210	0.8906
Faulkner, AR			
Lonoke, AR			
Pulaski, AR			
Saline, AR			
4420 Longview-Marshall, TX	0.7978	0.9291	0.8922
Gregg, TX			
Harrison, TX			
Upshur, TX			
4480 Los Angeles-Long Beach, CA	1.0083	1.0129	1.1996
Los Angeles, CA			
4520 Louisville, KY–IN	0.9433	0.9206	0.9350
Clark, IN			
Floyd, IN			
Harrison, IN			
Scott, IN			
Bullitt, KY			
Jefferson, KY			
Oldham, KY			
4600 Lubbock, TX	0.7676	0.7802	0.8838
Lubbock, TX			
4640 Lynchburg, VA	0.8673	0.8209	0.8867
Amherst, VA			
Bedford City, VA			
Bedford, VA			
Campbell, VA			
Lynchburg City, VA			
4680 Macon, GA	0.8420	0.7877	0.8974
Bibb, GA			
Houston, GA			
Jones, GA			
Peach, GA			
Twiggs, GA			
4720 Madison, WI	0.9982	1.0705	1.0271
Dane, WI			
4800 Mansfield, OH	0.8294	0.9051	0.8690
Crawford, OH			
Richland, OH			
4840 Mayaguez, PR	0.0000	0.0000	0.4589
Anasco, PR			
Cabo Rojo, PR			
Hormigueros, PR			
Mayaguez, PR			
Sabana Grande, PR			
San German, PR			
4880 McAllen-Edinburg-Mission, TX	0.8136	0.7935	0.8566
Hidalgo, TX			
4890 Medford-Ashland, OR	0.9732	0.9528	1.0344
Jackson, OR			
4900 Melbourne-Titusville-Palm Bay, FL	1.0452	1.0178	0.9688
Brevard, Fl			
4920 Memphis, TN–AR–MS	0.9554	0.9919	0.8723
Crittenden, AR			
De Soto, MS			
Fayette, TN			
Shelby, TN			
Tipton, TN			
4940 Merced, CA	0.7959	0.9022	0.9646
Merced, CA			
5000 Miami, FL	0.9359	0.9577	1.0059
Dade, FL			
5015 Middlesex-Somerset-Hunterdon, NJ	1.1283	1.2052	1.1075
Hunterdon, NJ			

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent Counties or County Equivalents)	Wage Index		
	SNF98	SNF99	HOSP
Col. A	Col. B	Col. C	Col. D
Middlesex, NJ			
Somerset, NJ			
5080 Milwaukee-Waukesha, WI	1.0373	1.0397	0.9767
Milwaukee, WI			
Ozaukee, WI			
Washington, WI			
Waukesha, WI			
5120 Minneapolis-St Paul, MN–WI	1.2186	1.2375	1.1017
Anoka, MN			
Carver, MN			
Chisago, MN			
Dakota, MN			
Hennepin, MN			
Isanti, MN			
Ramsey, MN			
Scott, MN			
Sherburne, MN			
Washington, MN			
Wright, MN			
Pierce, WI			
St. Croix, WI			
5140 Missoula, MT	0.9197	0.8724	0.9274
Missoula, MT			
5160 Mobile, AL	0.8273	0.9284	0.8163
Baldwin, AL			
Mobile, AL			
5170 Modesto, CA	0.8732	0.9675	1.0396
Stanislaus, CA			
5190 Monmouth-Ocean, NJ	1.1251	1.0979	1.1278
Monmouth, NJ			
Ocean, NJ			
5200 Monroe, LA	0.7793	0.8161	0.8396
Ouachita, LA			
5240 Montgomery, AL	0.7738	0.8229	0.7653
Autauga, AL			
Elmore, AL			
Montgomery, AL			
5280 Muncie, IN	0.9597	0.9550	1.0968
Delaware, IN			
5330 Myrtle Beach, SC	0.9077	0.7922	0.8440
Horry, SC			
5345 Naples, FL	0.9628	1.0437	0.9661
Collier, FL			
5360 Nashville, TN	0.9408	0.9345	0.9490
Cheatham, TN			
Davidson, TN			
Dickson, TN			
Robertson, TN			
Rutherford, TN			
Sumner, TN			
Williamson, TN			
Wilson, TN			
5380 Nassau-Suffolk, NY	1.5592	1.5034	1.3932
Nassau, NY			
Suffolk, NY			
5483 New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2799	1.3446	1.2297
Fairfield, CT			
New Haven, CT			
5523 New London-Norwich, CT	1.2035	1.2438	1.2063
New London, CT			
5560 New Orleans, LA	0.8077	0.8436	0.9295
Jefferson, LA			
Orleans, LA			
Plaquemines, LA			
St. Bernard, LA			
St. Charles, LA			
St. James, LA			
St. John The Baptist, LA			
St. Tammany, LA			
5600 New York, NY	1.5638	1.4983	1.4651
Bronx, NY			
Kings, NY			
New York, NY			
Putnam, NY			
Queens, NY			
Richmond, NY			
Rockland, NY			

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TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent Counties or County Equivalents)	Wage Index		
	SNF98	SNF99	HOSP
Col. A	Col. B	Col. C	Col. D
Westchester, NY			
5640 Newark, NJ	1.2344	1.1704	1.1837
Essex, NJ			
Morris, NJ			
Sussex, NJ			
Union, NJ			
Warren, NJ			
5660 Newburgh, NY–PA	1.2791	1.2347	1.0847
Orange, NY			
Pike, PA			
5720 Norfolk-Virginia Beach-Newport News, VA–NC	0.8084	0.7828	0.8412
Currituck, NC			
Chesapeake City, VA			
Gloucester, VA			
Hampton City, VA			
Isle of Wight, VA			
James City, VA			
Mathews, VA			
Newport News City, VA			
Norfolk City, VA			
Poquoson City, VA			
Portsmouth City, VA			
Suffolk City, VA			
Virginia Beach City, VA			
Williamsburg City, VA			
York, VA			
5775 Oakland, CA	1.0815	1.0616	1.4983
Alameda, CA			
Contra Costa, CA			
5790 Ocala, FL	0.9967	0.7345	0.9243
Marion, FL			
5800 Odessa-Midland, TX	0.7857	0.8858	0.9205
Ector, TX			
Midland, TX			
5880 Oklahoma City, OK	0.7911	0.7955	0.8822
Canadian, OK			
Cleveland, OK			
Logan, OK			
McClain, OK			
Oklahoma, OK			
Pottawatomie, OK			
5910 Olympia, WA	0.9888	0.9548	1.0677
Thurston, WA			
5920 Omaha, NE–IA	1.0212	1.0731	0.9572
Pottawattamie, IA			
Cass, NE			
Douglas, NE			
Sarpy, NE			
Washington, NE			
5945 Orange County, CA	1.0747	1.0649	1.1467
Orange, CA			
5960 Orlando, FL	0.9445	0.9566	0.9610
Lake, FL			
Orange, FL			
Osceola, FL			
Seminole, FL			
5990 Owensboro, KY	1.0374	0.8987	0.8159
Daviess, KY			
6015 Panama City, FL	0.9224	0.9344	0.9010
Bay, FL			
6020 Parkersburg-Marietta, WV–OH	0.9779	0.9064	0.8274
Washington, OH			
Wood, WV			
6080 Pensacola, FL	0.7929	0.8519	0.8176
Escambia, FL			
Santa Rosa, FL			
6120 Peoria-Pekin, IL	0.8375	0.9017	0.8645
Peoria, IL			
Tazewell, IL			
Woodford, IL			
6160 Philadelphia, PA–NJ	1.1553	1.1460	1.0937
Burlington, NJ			
Camden, NJ			
Gloucester, NJ			
Salem, NJ			
Bucks, PA			
Chester, PA			

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent Counties or County Equivalents)	Wage Index		
	SNF98	SNF99	HOSP
Col. A	Col. B	Col. C	Col. D
Delaware, PA			
Montgomery, PA			
Philadelphia, PA			
6200 Phoenix-Mesa, AZ	1.0176	1.0219	0.9669
Maricopa, AZ			
Pinal, AZ			
6240 Pine Bluff, AR	0.6727	0.7983	0.7791
Jefferson, AR			
6280 Pittsburgh, PA	1.0937	1.0574	0.9741
Allegheny, PA			
Beaver, PA			
Butler, PA			
Fayette, PA			
Washington, PA			
Westmoreland, PA			
6323 Pittsfield, MA	1.1357	1.0739	1.0288
Berkshire, MA			
6340 Pocatello, ID	0.7864	0.7717	0.9076
Bannock, ID			
6360 Ponce, PR	0.7238	0.6854	0.5006
Guayanilla, PR			
Juana Diaz, PR			
Penuelas, PR			
Ponce, PR			
Villalba, PR			
Yauco, PR			
6403 Portland, ME	1.0594	1.0378	0.9748
Cumberland, ME			
Sagadahoc, ME			
York, ME			
6440 Portland-Vancouver, OR–WA	1.0495	1.0048	1.0910
Clackamas, OR			
Columbia, OR			
Multnomah, OR			
Washington, OR			
Yamhill, OR			
Clark, WA			
6483 Providence-Warwick-Pawtucket, RI	1.0486	1.0120	1.0864
Bristol, RI			
Kent, RI			
Newport, RI			
Providence, RI			
Washington, RI			
6520 Provo-Orem, UT	0.7640	0.9453	1.0029
Utah, UT			
6560 Pueblo, CO	0.8689	0.9305	0.8815
Pueblo, CO			
6580 Punta Gorda, FL	0.9549	0.9761	0.9613
Charlotte, FL			
6600 Racine, WI	1.1701	1.1432	0.9246
Racine, WI			
6640 Raleigh-Durham-Chapel Hill, NC	1.0767	1.0122	0.9646
Chatham, NC			
Durham, NC			
Franklin, NC			
Johnston, NC			
Orange, NC			
Wake, NC			
6660 Rapid City, SD	0.7728	0.9584	0.8865
Pennington, SD			
6680 Reading, PA	1.0531	1.1283	0.9152
Berks, PA			
6690 Redding, CA	1.1269	1.0330	1.1664
Shasta, CA			
6720 Reno, NV	1.0926	1.2112	1.0550
Washoe, NV			
6740 Richland-Kennewick-Pasco, WA	1.0241	1.0334	1.1460
Benton, WA			
Franklin, WA			
6760 Richmond-Petersburg, VA	0.7927	0.8517	0.9617
Charles City County, VA			
Chesterfield, VA			
Colonial Heights City, VA			
Dinwiddie, VA			
Goochland, VA			
Hanover, VA			
Henrico, VA			

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TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent Counties or County Equivalents)	Wage Index		
	SNF98	SNF99	HOSP
Col. A	Col. B	Col. C	Col. D
Hopewell City, VA			
New Kent, VA			
Petersburg City, VA			
Powhatan, VA			
Prince George, VA			
Richmond City, VA			
6780 Riverside-San Bernardino, CA	1.0127	1.0086	1.1239
Riverside, CA			
San Bernardino, CA			
6800 Roanoke, VA	0.7443	0.8052	0.8750
Botetourt, VA			
Roanoke, VA			
Roanoke City, VA			
Salem City, VA			
6820 Rochester, MN	1.1764	1.1235	1.1315
Olmsted, MN			
6840 Rochester, NY	1.0708	1.0488	0.9182
Genesee, NY			
Livingston, NY			
Monroe, NY			
Ontario, NY			
Orleans, NY			
Wayne, NY			
6880 Rockford, IL	0.8844	0.9617	0.8819
Boone, IL			
Ogle, IL			
Winnebago, IL			
6895 Rocky Mount, NC	0.9221	0.8247	0.8849
Edgecombe, NC			
Nash, NC			
6920 Sacramento, CA	1.0230	1.0580	1.1950
El Dorado, CA			
Placer, CA			
Sacramento, CA			
A6960 Saginaw-Bay City-Midland, MI	0.8510	0.9002	0.9575
Bay, MI			
Midland, MI			
Saginaw, MI			
6980 St. Cloud, MN	0.8480	0.9556	1.0016
Benton, MN			
Steams, MN			
7000 St. Joseph, MO	1.1074	1.0774	0.9071
Andrews, MO			
Buchanan, MO			
7040 St. Louis, MO–IL	0.8900	0.9056	0.9049
Clinton, IL			
Jersey, IL			
Madison, IL			
Monroe, IL			
St. Clair, IL			
Franklin, MO			
Jefferson, MO			
Lincoln, MO			
St. Charles, MO			
St. Louis, MO			
St. Louis City, MO			
Warren, MO			
Sullivan City, MO			
7080 Salem, OR	0.9308	0.8379	1.0189
Marion, OR			
Polk, OR			
7120 Salinas, CA	1.0856	1.1224	1.4502
Monterey, CA			
7160 Salt Lake City-Ogden, UT	0.9984	0.9405	0.9807
Davis, UT			
Salt Lake, UT			
Weber, UT			
7200 San Angelo, TX	0.8222	0.7841	0.8083
Tom Green, TX			
7240 San Antonio, TX	0.8252	0.8159	0.8580
Bexar, TX			
Comal, TX			
Guadalupe, TX			
Wilson, TX			
7320 San Diego, CA	1.0177	1.0038	1.1784
San Diego, CA			
7360 San Francisco, CA	1.1958	1.1930	1.4156

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent Counties or County Equivalents)	Wage Index		
	SNF98	SNF99	HOSP
Col. A	Col. B	Col. C	Col. D
Marin, CA			
San Francisco, CA			
San Mateo, CA			
7400 San Jose, CA	1.0787	1.1736	1.3652
Santa Clara, CA			
7440 San Juan-Bayamon, PR	0.5454	0.5070	0.4690
Aguas Buenas, PR			
Barceloneta, PR			
Bayamon, PR			
Canovanas, PR			
Carolina, PR			
Catano, PR			
Ceiba, PR			
Comerio, PR			
Corozal, PR			
Dorado, PR			
Fajardo, PR			
Florida, PR			
Guaynabo, PR			
Humacao, PR			
Juncos, PR			
Los Piedras, PR			
Loiza, PR			
Lyguillo, PR			
Manati, PR			
Morovis, PR			
Naguabo, PR			
Naranjito, PR			
Rio Grande, PR			
San Juan, PR			
Toa Alta, PR			
Toa Baja, PR			
Trujillo Alto, PR			
Vega Alta, PR			
Vega Baja, PR			
Yabucoa, PR			
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.0873	0.9472	1.0673
San Luis Obispo, CA			
7480 Santa Barbara-Santa Maria-Lompoc, CA	0.9547	1.0338	1.0597
Santa Barbara, CA			
7485 Santa Cruz-Watsonville, CA	1.1349	0.9398	1.4040
Santa Cruz, CA			
7490 Santa Fe, NM	0.8636	1.3115	1.0537
Los Alamos, NM			
Santa Fe, NM			
7500 Santa Rosa, CA	1.0368	1.1709	1.2646
Sonoma, CA			
7510 Sarasota-Bradenton, FL	1.0006	1.0294	0.9809
Manatee, FL			
Sarasota, FL			
7520 Savannah, GA	0.8804	0.7861	0.9697
Bryan, GA			
Chatham, GA			
Effingham, GA			
7560 Scranton-Wilkes-Barre-Hazleton, PA	1.0313	1.0346	0.8421
Columbia, PA			
Lackawanna, PA			
Luzerne, PA			
Wyoming, PA			
7600 Seattle-Bellevue-Everett, WA	1.1078	1.0440	1.0996
Island, WA			
King, WA			
Snohomish, WA			
7610 Sharon, PA	1.0333	0.9605	0.7928
Mercer, PA			
7620 Sheboygan, WI	1.1775	1.2892	0.8379
Sheboygan, WI			
7640 Sherman-Denison, TX	0.8663	0.8372	0.8694
Grayson, TX			
7680 Shreveport-Bossier City, LA	0.7241	0.6735	0.8750
Bossier, LA			
Caddo, LA			
Webster, LA			
7720 Sioux City, IA–NE	0.9021	0.9063	0.8473
Woodbury, IA			
Dakota, NE			
7760 Sioux Falls, SD	0.8511	0.9286	0.8790

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TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent Counties or County Equivalents)	Wage Index		
	SNF98	SNF99	HOSP
Col. A	Col. B	Col. C	Col. D
Lincoln, SD			
Minnehaha, SD			
7300 South Bend, IN	1.0075	1.0621	1.0000
St. Joseph, IN			
7840 Spokane, WA	0.9486	0.9854	1.0513
Spokane, WA			
7880 Springfield, IL	0.8276	0.9314	0.8685
Menard, IL			
Sangamon, IL			
7920 Springfield, MO	0.9289	0.9309	0.8488
Christian, MO			
Greene, MO			
Webster, MO			
8003 Springfield, MA	1.2171	1.1537	1.0637
Hampden, MA			
Hampshire, MA			
8050 State College, PA	1.0164	0.9558	0.9038
Centre, PA			
8080 Steubenville-Weirton, OH–WV	0.9182	0.9057	0.8548
Jefferson, OH			
Brooke, WV			
Hancock, WV			
8120 Stockton-Lodi, CA	0.9860	1.0313	1.0629
San Joaquin, CA			
8140 Sumter, SC	0.7762	0.8687	0.8271
Sumter, SC			
8160 Syracuse, NY	1.0121	1.0499	0.9549
Cayuga, NY			
Madison, NY			
Onondaga, NY			
Oswego, NY			
8200 Tacoma, WA	0.9407	0.9441	1.1564
Pierce, WA			
8240 Tallahassee, FL	0.9658	0.9761	0.8545
Gadsden, FL			
Leon, FL			
8280 Tampa-St. Petersburg-Clearwater, FL	1.0177	1.0025	0.8982
Hernando, FL			
Hillsborough, FL			
Pasco, FL			
Pinellas, FL			
8320 Terre Haute, IN	0.8222	0.8286	0.8304
Clay, IN			
Vermillion, IN			
Vigo, IN			
8360 Texarkana, AR-Texarkana, TX	0.8290	0.8049	0.8363
Miller, AR			
Bowie, TX			
8400 Toledo, OH	0.9963	0.9904	0.9832
Fulton, OH			
Lucas, OH			
Wood, OH			
8440 Topeka, KS	0.7969	0.8241	0.9117
Shawnee, KS			
8480 Trenton, NJ	1.1897	1.1835	1.0137
Mercer, NJ			
8520 Tucson, AZ	0.9488	0.9534	0.8794
Pima, AZ			
8560 Tulsa, OK	0.8445	0.8104	0.8454
Creek, OK			
Osage, OK			
Rogers, OK			
Tulsa, OK			
Wagoner, OK			
8600 Tuscaloosa, AL	0.8490	0.8208	0.8064
Tuscaloosa, AL			
8640 Tyler, TX	0.8607	0.8562	0.9404
Smith, TX			
8680 Utica-Rome, NY	0.9634	0.9279	0.8560
Herkimer, NY			
Oneida, NY			
8720 Vallejo-Fairfield-Napa, CA	1.1949	1.1287	1.2847
Napa, CA			
Solano, CA			
8735 Ventura, CA	1.0838	1.0338	1.1030
Ventura, CA			
8750 Victoria, TX	0.7002	0.7270	0.8154

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Area (Constituent Counties or County Equivalents)	Wage Index		
	SNF98	SNF99	HOSP
Col. A	Col. B	Col. C	Col. D
Victoria, TX			
8760 Vineland-Millville-Bridgeton, NJ	1.1806	1.1019	1.0501
Cumberland, NJ			
8780 Visalia-Tulare-Porterville, CA	0.9010	0.9027	0.9551
Tulare, CA			
8800 Waco, TX	0.8453	0.8291	0.8314
McLennan, TX			
8840 Washington, DC–MD–VA–WV	1.0430	1.0368	1.0755
District of Columbia, DC			
Calvert, MD			
Charles, MD			
Frederick, MD			
Montgomery, MD			
Prince Georges, MD			
Alexandria City, VA			
Arlington, VA			
Clarke, VA			
Culpepper, VA			
Fairfax, VA			
Fairfax City, VA			
Falls Church City, VA			
Fauquier, VA			
Fredericksburg City, VA			
King George, VA			
Loudoun, VA			
Manassas City, VA			
Manassas Park City, VA			
Prince William, VA			
Spotsylvania, VA			
Stafford, VA			
Warren, VA			
Berkeley, WV			
Jefferson, WV			
8920 Waterloo-Cedar Falls, IA	0.8201	0.8820	0.8404
Black Hawk, IA			
8940 Wausau, WI	1.1470	1.2648	0.9418
Marathon, WI			
8960 West Palm Beach-Boca Raton, FL	1.0131	0.9912	0.9682
Palm Beach, FL			
9000 Wheeling, OH–WV	0.9131	0.9078	0.7733
Belmont, OH			
Marshall, WV			
Ohio, WV			
9040 Wichita, KS	0.9211	0.9050	0.9544
Butler, KS			
Harvey, KS			
Sedgwick, KS			
9080 Wichita Falls, TX	0.7375	0.7385	0.7668
Archer, TX			
Wichita, TX			
9140 Williamsport, PA	0.9543	1.0264	0.8392
Lycoming, PA			
9160 Wilmington-Newark, DE–MD	1.0931	1.0264	1.1191
New Castle, DE			
Cecil, MD			
9200 Wilmington, NC	0.9507	0.8675	0.9402
New Hanover, NC			
Brunswick, NC			
9260 Yakima, WA	0.9038	0.8770	0.9907
Yakima, WA			
9270 Yolo, CA	1.0452	1.0260	1.0199
Yolo, CA			
9280 York, PA	1.0718	1.0923	0.9264
York, PA			
9320 Youngstown-Warren, OH	0.8731	0.8594	0.9543
Columbiana, OH			
Mahoning, OH			
Trumbull, OH			
9340 Yuba City, CA	1.0615	1.0246	1.0706
Sutter, CA			
Yuba, CA			
9360 Yuma, AZ	0.9209	0.9020	0.9529
Yuma, AZ			

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TABLE 8.—WAGE INDEX FOR RURAL AREAS

Rural area	Wage index		
	SNF98	SNF99	HOSP
Col. A	Col. B	Col. C	Col. D
Alabama	0.7724	0.8020	0.7489
Alaska	1.4132	1.3582	1.2392
Arizona	1.0111	0.9175	0.8317
Arkansas	0.6972	0.7278	0.7445
California	0.9685	0.9712	0.9861
Colorado	0.8710	0.9147	0.8968
Connecticut	1.2870	1.0540	1.1715
Delaware	1.0854	0.9338	0.9074
Florida	0.8331	0.8921	0.8919
Georgia	0.7850	0.7985	0.8329
Guam	0.0000	0.0000	0.9611
Hawaii	1.1915	1.2995	1.1059
Idaho	0.8892	0.8320	0.8678
Illinois	0.8296	0.8274	0.8160
Indiana	0.8875	0.9008	0.8602
Iowa	0.7706	0.7834	0.8030
Kansas	0.7562	0.7941	0.7605
Kentucky	0.8237	0.7905	0.7931
Louisiana	0.6699	0.7014	0.7681
Maine	0.8766	0.8908	0.8766
Maryland	0.9015	0.8780	0.8651
Massachusetts	1.1740	1.2039	1.1204
Michigan	0.9505	0.9655	0.8987
Minnesota	1.1396	1.0221	0.8881
Mississippi	0.7412	0.7885	0.7491
Missouri	0.7904	0.7898	0.7698
Montana	0.8996	0.8606	0.8688
Nebraska	0.7977	0.8182	0.8109
Nevada	0.8621	0.9222	0.9232
New Hampshire	1.1065	1.1171	0.9845
New Jersey [1]	.....	.....	.....
New Mexico	0.6834	0.8052	0.8497
New York	1.0081	0.9981	0.8499
North Carolina	0.9255	0.9028	0.8445
North Dakota	0.7649	0.7779	0.7716
Ohio	0.8895	0.8948	0.8670
Oklahoma	0.7481	0.7275	0.7491
Oregon	0.8616	0.8455	1.0132
Pennsylvania	0.9870	0.9443	0.8578
Puerto Rico	0.3897	0.3866	0.4264
Rhode Island [1]	.....	.....	.....
South Carolina	0.7941	0.8367	0.8370
South Dakota	0.7946	0.8373	0.7570
Tennessee	0.8656	0.8415	0.7838
Texas	0.7512	0.7528	0.7502
Utah	0.9492	0.8196	0.9037
Vermont	0.9914	1.0299	0.9274
Virginia	0.8157	0.8601	0.8189
Virgin Islands	0.0000	0.0000	0.6306
Washington	0.9539	0.9475	1.0434
West Virginia	0.8260	0.8668	0.8231
Wisconsin	0.9516	0.9893	0.8880
Wyoming	0.9081	0.8314	0.8817

[1] All counties within the State are classified urban.

We have drawn the following conclusions from these tables and our analysis of the wage data:

A comparison of the wage index based on hospital data with one based on SNF-specific wage data has created many significant variances, not only between the SNF wage index and the hospital wage index, but also between the two SNF wage indexes illustrated in Tables 7 and 8. While we would expect some changes from year to year, and between a wage index based on SNF data and one based on hospital data, we believe that the large quantity of significant variations raises questions as to the reliability of the SNF-specific wage data.

The following illustrates the impact of using the various wage indexes contained in Tables 7 and 8:

- When comparing the FY 1998 SNF-specific wage index to the hospital wage index, we found the number of areas that:

Increased more than 20%—15 (the highest was 44.59%)
Increased between 10–20%—53
Increased between 5–10%—49
Increased between 0–5%—64
Decreased between 0–5%—69
Decreased between 5–10%—56
Decreased between 10–20%—51
Decreased greater than 20%—12 (the largest was 37.55%)

- When comparing the FY 1999 SNF-specific wage index to the hospital wage index, we found the number of areas that:

Increased more than 20%—12 (the largest was 53.86%)
Increased between 10–20%—47
Increased between 5–10%—67
Increased between 0–5%—70
Decreased between 0–5%—56
Decreased between 5–10%—60
Decreased between 10–20%—44
Decreased greater than 20%—13 (the largest was 33.06%)

- When comparing the FY 1998 SNF-specific wage index to the FY 1999 SNF-specific wage index, we found the number of areas that:

Increased more than 20%—9 (the largest was 51.86%)
Increased between 10–20%—25
Increased between 5–10%—52
Increased between 0–5%—102
Decreased between 0–5%—110
Decreased between 5–10%—44
Decreased between 10–20%—22
Decreased greater than 20%—5 (the largest was 33.73%)

The FY 1998 and FY 1999 SNF wage index had 6 areas with no values.

For FY 1998, from a total of 13,587 freestanding providers, we eliminated 2,674 providers because they had a zero value for wages or hours. For hospital-based SNFs, of the 2,185 providers, we eliminated 160 providers for the same reason. For FY 1999, of the 12,491 freestanding providers, we eliminated 2,461 providers because they had a zero value for wages or hours. For hospital-based SNFs, of the 2,034 providers, we eliminated 132 providers for the same reason. In addition, for FY 1998, we eliminated 231 providers that had average hourly wages either below $5.00, or above the 99th percentile ($24.15). For FY 1999, we eliminated 206 providers with average hourly wages either below $5.00, or above the 99th percentile ($24.79).

There are far fewer significant changes between MSAs in the annual hospital wage index. The latest comparison of the year-to-year differences in the hospital wage index (pre-classified, pre-floor) shows only 7 areas with increases of 10 percent or more and 4 with decreases greater than 10 percent. A comparison of the FY 1998 and 1999 SNF-specific wage indexes shows 34 areas that experienced an increase of 10 percent or more and 27 areas with decreases of 10 percent or more.

We believe that any changes to the wage index adjustment under the SNF PPS should support greater precision in Medicare payments; however, as a result of the variations in the SNF-specific wage data and the large number of SNFs that are unable to provide adequate wage and hourly data, we are concerned about the reliability of the data used in establishing a SNF wage index at this time.

We continue to believe that a wage index based on hospital wage data is the best and most appropriate to use in adjusting payments to SNFs, since both hospitals and SNFs compete in the same labor markets. We invite public comment on the SNF-specific wage data; however, for the reasons discussed above we currently plan to use the updated hospital wage data when we publish the final rule. In addition, in accordance with section 315(b) of BIPA 2000, since we currently do not have reliable SNF-specific wage data, we are not proposing at this time to develop or incorporate any type of geographic reclassification system for SNFs.

D. Updates to the Federal Rates

In accordance with section 1888(e)(4)(E) of the Act and section 311 of BIPA 2000, the proposed payment rates listed here reflect an update equal to the SNF market basket minus 0.5 percentage point, which equals 2.4 percent. For each succeeding FY, we will publish the rates in the **Federal Register** before August 1 of the year preceding the affected Federal FY.

E. Relationship of RUG–III Classification System to Existing Skilled Nursing Facility Level-of-Care Criteria

As discussed in § 413.345, we include in each update of the Federal payment rates in the **Federal Register** the designation of those specific RUGs under the classification system that represent the required SNF level of care, as provided in § 409.30. This designation reflects an administrative presumption that beneficiaries who are correctly assigned to one of the upper 26 RUG–III groups in the initial 5-day, Medicare-required assessment are automatically classified as meeting the SNF level of care definition up to that point.

Those beneficiaries assigned to any of the lower 18 groups are not automatically classified as either meeting or not meeting the definition, but instead receive an individual level of care determination using the existing administrative criteria. This presumption recognizes the strong likelihood that beneficiaries assigned to one of the upper 26 groups during the immediate post-hospital period require a covered level of care, which would be significantly less likely for those beneficiaries assigned to one of the lower 18 groups.

We propose to continue the existing designation of the upper 26 RUG–III groups for purposes of this administrative presumption, consisting of the following RUG–III classifications: all groups within the Ultra High Rehabilitation category; all groups within the Very High Rehabilitation category; all groups within the High Rehabilitation category; all groups within the Medium Rehabilitation category; all groups within the Low Rehabilitation category; all groups within the Extensive Services category; all groups within the Special Care category; and, all groups within the Clinically Complex category.

F. Three-Year Transition Period

As noted previously, the rates that we now propose are for the fourth year of the SNF PPS. As a result, the PPS is no longer operating under the initial three-year transition period from facility-specific to Federal rates and, therefore, now equals 100 percent of the adjusted Federal per diem rate.

G. Example of Computation of Adjusted PPS Rates and SNF Payment

Using the XYZ SNF described in Table 9A, the following shows the adjustments made to the Federal per diem rate to compute the provider's actual per diem PPS payment. XYZ's 12-month cost reporting period begins October 1, 2001. Table 9B displays the 44 RUG–III categories and their respective add-ons, as provided in BBRA 1999 and BIPA 2000.

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TABLE 9.A.—SNF XYZ FROM ABOVE IS LOCATED IN STATE COLLEGE, PA WITH A WAGE INDEX OF 0.9038

RUG group	Labor portion	Wage index	Adjusted labor	Nonlabor portion	Adjusted rate	Percent adjustment	Medicare days	Payment
RVC	$257.54	0.9038	$232.76	$84.14	$316.90	$350.81	50	$17,541
SSC	171.76	0.9038	155.24	56.12	211.36	[3] 262.09	25	6,552
IA2	113.56	0.9038	102.64	37.10	139.74	[4] 145.33	25	3,633
Total							100	27,726

[1] From Table 5.
[2] Reflects a 10.7 percent adjustment (the 4 percent adjustment from section 101(d) of BBRA 1999 and the 6.7 percent adjustment from section 314 of BIPA 2000).
[3] Reflects a 24 percent adjustment (the 4 percent and 20 percent adjustments from sections 101(a) and (d) of BBRA 1999).
[4] Reflects the 4 percent adjustment from section 101(d) of BBRA 1999.

TABLE 9.B.—BBRA 1999 & BIPA 2000 ADD-ONS, BY RUG–III CATEGORY

RUG–III category	4% [1]	10.7% [2]	24% [3]
RUC		X	
RUB		X	
RUA		X	
RVC		X	
RVB		X	
RVA		X	
RHC		X	
RHB		X	
RHA		X	
RMC		X	
RMB		X	
RMA		X	
RLB		X	
RLA		X	
SE3			X
SE2			X
SE1			X
SSC			X
SSB			X
SSA			X
CC2			X
CC1			X
CB2			X
CB1			X
CA2			X
CA1			X
IB2	X		
IB1	X		
IA2	X		
IA1	X		
BB2	X		
BB1	X		
BA2	X		
BA1	X		
PE2	X		
PE1	X		
PD2	X		
PD1	X		
PC2	X		
PC1	X		
PB2	X		
PB1	X		
PA2	X		
PA1	X		

[1] From BBRA 1999.
[2] Includes the 4% increase from BBRA 1999 and the 6.7% increase from BIPA 2000.
[3] Includes the 4% and 20% increases from BBRA 1999.

For rates addressed in this proposed rule, we are using wage index values that are based on hospital wage data from cost reporting periods beginning in FY 1996, the same wage data as used to compute the FY 2001 wage index values for the SNF PPS. We will incorporate updated wage data in the final rule for the FY 2002 SNF PPS update. XYZ's total PPS payment will equal $27,726.

III. The Skilled Nursing Facility Market Basket Index

A. Background

Section 1888(e)(5)(A) of the Act requires the Secretary to establish a market basket index that reflects changes over time in the prices of an appropriate mix of goods and services included in the SNF PPS. Effective for cost reporting periods beginning on or after July 1, 1998, we revised and rebased our 1977 routine costs input price index and adopted a total expenses SNF input price index using data from 1992 as the base year.

The term "market basket" technically describes the mix of goods and services needed to produce SNF care, and is also commonly used to denote the input price index that includes both weights (mix of goods and services) and price factors. The term "market basket" used in this proposed rule refers to the SNF input price index.

The 1992-based SNF market basket represents routine costs, costs of ancillary services and capital-related costs. The percentage change in the market basket reflects the average change in the price of a fixed set of goods and services purchased by SNFs to furnish all services. For further background information, see the May 12, 1998 **Federal Register** (63 FR 26289).

For purposes of SNF PPS, the SNF market basket is a fixed-weight (Laspeyres type) price index. (A Laspeyres type index compares the cost of purchasing a specified group of commodities at current prices to the cost of purchasing that same group in a selected base period.) The SNF market basket is constructed in three steps. First, a base period is selected and total base period expenditure shares are estimated for mutually exclusive and exhaustive spending categories. Total costs for routine services, ancillary services, and capital are used. These proportions are called "cost" or "expenditure weights". The second step is to match each expenditure category to a price/wage variable, called a price proxy. These price proxy variables are drawn from publicly available statistical series published on a consistent schedule, preferably at least quarterly. In the final step, the price level for each spending category is multiplied by the expenditure weight for that category. The sum of these products (that is, weights multiplied by proxy index levels) for all cost categories yields the composite index level in the market basket for a given quarter or year. Repeating the third step for other quarters and years produces a time series of market basket index levels, from which rates of growth can be calculated.

The market basket is described as a fixed-weight index because it answers the question of how much more or less it would cost, at a later time, to purchase the same mix of goods and services that was purchased in the base period. The effects on total expenditures resulting from changes in the quantity or mix of goods and services purchased subsequent or prior to the base period are, by design, not considered.

As discussed in the May 12, 1998 **Federal Register** (63 FR 26252), to implement section 1888(e)(5)(A) of the Act, we have revised and rebased the market basket so the cost weights and price proxies reflected the mix of goods and services that SNFs purchase for all costs (routine, ancillary, and capital-related) encompassed by SNF PPS in fiscal year 1992.

B. Rebasing and Revising the Skilled Nursing Facility Market Basket

The terms "rebasing" and "revising", while often used interchangeably, actually denote different activities. Rebasing means shifting the base year for the structure of costs of the input price index (for example, for this proposed rule, we would shift the base year cost structure from fiscal year 1992 to fiscal year 1997). Revising means changing data sources, cost categories, and/or price proxies used in the input price index.

We are proposing to rebase and revise the SNF market basket to reflect 1997 total cost data (routine, ancillary, and capital-related). Fiscal year 1997 was selected as the new base year because 1997 is the most recent year for which relatively complete data are available. These data include settled 1997 Medicare Cost Reports as well as 1997 data from two U.S. Department of Commerce surveys: the Bureau of the Census' Business Expenditures Survey, and the Bureau of Economic Analysis' Annual Input-Output tables. Preliminary analysis of 1998 data from Medicare Cost Reports showed little change in cost shares from those in the 1997 Medicare Cost Reports.

In developing the proposed market basket, we reviewed SNF expenditure data from Medicare Cost Reports for FY 1997 for each freestanding SNF that had Medicare expenses. FY 1997 Cost Reports are those with cost reporting periods beginning after September 30, 1996 and before October 1, 1997. We maintained our policy of using data from freestanding SNFs because they reflect the actual cost structure faced by the SNF itself. By contrast, expense data for a hospital-based SNF is influenced by the allocation of overhead over the entire institution.

Data on SNF expenditures for six major expense categories (wages and salaries, employee benefits, contract labor, pharmaceuticals, capital-related, and a residual "all other") were edited and tabulated. Using these data, we then determined the proportion of total costs that each category represented. The six major categories for the revised and rebased cost categories and weights derived from SNF Medicare Cost Reports are summarized in Table 10.A.

TABLE 10.A.—1992 AND PROPOSED 1997 SKILLED NURSING FACILITY MAJOR COST CATEGORIES AND WEIGHTS FROM MEDICARE COST REPORTS

Cost categories	1992-based skilled nursing facility weights (percent)	Proposed 1997-based skilled nursing facility weights (percent)
Wages and Salaries	47.805	46.889
Employee Benefits	10.023	9.631
Contract Labor	12.852	6.478
Pharmaceuticals	2.531	3.006
Capital-related Costs	9.778	9.877
All Other Costs	17.012	24.119
Total Costs	100.000	100.000

We fully discuss the methodology for developing these weights in the Appendix. The main methodological difference between the 1992-based SNF market basket and the proposed 1997-based market basket is in the calculation of the contract labor weight. For the 1992-based market basket, we estimated this share using non-salary costs for therapy cost centers. For the proposed 1997-based index, we used the contract labor amounts for a subset of edited reports from Worksheet S–3 in the Medicare Cost Reports. We believe this new methodology provides a more accurate reflection of the share of total costs that are attributable to contract labor. The data from this worksheet were not available in the 1992 Medicare Cost Reports.

Relative weights within the six major categories were derived using relative cost shares from the Bureau of the Census' 1997 Business Expenditures Survey (BES), 1997 Medicare Cost Reports, and the Bureau of Economic Analysis' (BEA) 1997 Annual Input-Output tables. They were used to disaggregate and allocate costs within the six major categories determined from the 1997 SNF Medicare Cost Reports. The BEA Input-Output database is benchmarked at 5-year intervals and updated annually between benchmarks. We are using the annual update for 1997. The BES is updated every five years.

The capital-related portion of the proposed rebased and revised SNF PPS market basket employs the same overall methodology used to develop the capital-related portion of the 1992-based SNF market basket, described in the May 12, 1998 **Federal Register** (63 FR 26289). It is also the same methodology used for the inpatient hospital PPS capital input price index described in the **Federal Register** May 31, 1996 (61 FR 27466) and August 30, 1996 (61 FR 46196). The strength of this methodology is that it reflects the vintage nature of capital, which represents the acquisition and use of capital over time.

Our work resulted in 21 separate categories for the proposed rebased and revised SNF market basket. The 1992-based total cost SNF market basket also had 21 separate cost categories. Detailed descriptions of each cost category and respective price proxy in the proposed 1997-based SNF market basket are provided in the Appendix to this proposed rule.

As in the 1992-based SNF market basket, the proposed 1997-based SNF market basket does not include a separate cost category for professional liability insurance. Our analysis of the BEA 1997 Annual Input-Output survey indicated that the general category for insurance carriers (which includes professional liability insurance as a subset) was, at just 0.2 percent, a small share of the total costs in 1997. It has been our policy in the past not to provide detailed breakouts of cost categories unless they represent a significant portion of the providers' costs. We also reviewed data available on professional liability insurance from Worksheet S–2 of the SNF Medicare Cost Reports, but found that nearly all SNFs did not report data for malpractice premiums, paid losses, or self-insurance in 1997.

Professional liability insurance is included with other insurance paid to carriers in the all other labor-intensive services cost category. We are soliciting comments on possible data sources for professional liability insurance costs for SNFs. Recent indications are that professional liability insurance costs for SNFs are rising quickly. We are looking both for information that would be

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available for a cost weight as well as for a time-series of professional liability premiums for a constant level of coverage, similar to the data we currently collect for hospitals and physicians from a small sample of insurance carriers.

After the 21 cost weights for the proposed revised and rebased SNF market basket were developed, we selected the most appropriate wage and price proxies currently available to monitor the rate of change for each expenditure category. With three exceptions (all for the capital-related expenses cost category), the wage and price proxies are based on Bureau of Labor Statistics (BLS) data and are grouped into one of the following BLS categories:

• *Employment Cost Indexes.* Employment Cost Indexes (ECIs) measure the rate of change in employment wage rates and employer costs for employee benefits per hour worked. These indexes are fixed-weight indexes and strictly measure the change in wage rates and employee benefits per hour. They are not affected by shifts in occupation or industry mix. ECIs are superior to Average Hourly Earnings (AHEs) as price proxies for input price indexes for two reasons: (1) They measure pure price change, and (2) they are available by both occupational group and by industry.

• *Producer Price Indexes.* Producer Price Indexes (PPIs) measure price changes for goods sold in other than retail markets. PPIs were used when the purchases of goods or services were made at the wholesale level.

• *Consumer Price Indexes.* Consumer Price Indexes (CPIs) measure change in the prices of final goods and services bought by consumers. CPIs were only used when the purchases were similar to those of retail consumers rather than purchases at the wholesale level, or if no appropriate PPI was available.

The contract labor weight of 6.478 was reallocated to (1) wages and salaries, and (2) employee benefits, so that the same price proxies that we propose to use for direct labor costs are applied to contract costs. While we understand that the level of unit labor costs for contract labor can differ from the unit labor costs of a SNF employee, we feel that the rate at which these labor costs change should be similar. That is, unit contract labor costs should not grow any more or less rapidly than SNF employee labor costs. The rebased and revised cost categories, weights, and price proxies for the proposed 1997-based SNF market basket are listed in Table 10.B.

TABLE 10.B.—PROPOSED 1997-BASED SNF MARKET BASKET COST CATEGORIES, WEIGHTS, AND PRICE PROXIES

Cost category	1997-based skilled nursing facility market basket weight	Price proxy
Operating Expenses	90.123	
Compensation	62.998	
Wages and Salaries	52.263	ECI for Wages and Salaries for Private Nursing Homes.
Employee benefits	10.734	ECI for Benefits for Private Nursing Homes.
Nonmedical professional fees	2.634	ECI for Compensation for Private Professional, Technical and Specialty workers.
Utilities	2.368	
Electricity	1.420	PPI for Commercial Electric Power.
Fuels, nonhighway	0.426	PPI for Commercial Natural Gas.
Water and sewerage	0.522	CPI–U for Water and Sewarge.
Other Expenses	22.123	
Other Products	13.522	
Pharmaceuticals	3.006	PPI for Prescription Drugs.
Food	4.136	
Food, wholesale purchase	3.198	PPI for Processed Foods.
Food, retail purchase	0.937	CPI–U for Food Away From Home.
Chemicals	0.891	PPI for Industrial Chemicals.
Rubber and plastics	1.611	PPI for Rubber and Plastic Products.
Paper products	1.289	PPI for Converted Paper and Paperboard.
Miscellaneous products	2.589	PPI for Finished Goods less Food and Energy.
Other Services	8.602	
Telephone Services	0.448	CPI–U for Telephone Services.
Labor-intensive Services	4.094	ECI for Compensation for Private Service Occupations.
Non labor-intensive services	4.059	CPI–U for All Items.
Capital-related Expenses	9.877	
Total Depreciation	5.266	
Building & Fixed Equipment	3.609	Boeckh Institutional Construction Index (vintage-weighted over 23 years).
Movable Equipment	1.657	PPI for Machinery & Equipment (vintage-weighted over 10 years).
Total Interest	3.852	
Government & Nonprofit SNFs	1.890	Average Yield Municipal Bonds (Bond Buyer Index-20 bonds) (vintage-weighted over 22 years).
For-Profit SNFs	1.962	Average Yield Moody's AAA Bonds (vintage-weighted over 22 years).
Other Capital-related Expenses	0.760	CPI–U for Residential Rent.
0Total	*100.000	

*Total may not equal 100 due to rounding

In the proposed 1997-based SNF market basket, the labor-related share for FY 1997 is 73.588 percent, while the non-labor-related share is 26.412 percent. The labor-related share reflects the proportion of the average SNF's costs that vary with local area wages. This share includes wages and salaries, employee benefits, professional fees, labor-intensive services, and a 39.1 percent share of capital-related expenses, as shown in Table 10.C. By comparison, the labor-related share of the 1992-based SNF market basket was 75.888 percent. The labor-related share of the market basket is the sum of the weights for those cost categories that are influenced by the local labor market. The labor-related share is calculated from the base year, which for the proposed SNF market basket is FY 1997.

The labor-related share for capital-related expenses was estimated using a statistical analysis of individual SNF Medicare Cost Reports for 1997, similar to the analysis done on the 1992 SNF Medicare Cost Reports and explained in the May 12, 1998 **Federal Register** (63 FR 26289). The statistical analysis was necessary because the proportion of capital-related expenses related to local area wage costs cannot be directly determined from the SNF capital-related portion of the market basket. We used regression analysis with total costs per day in SNFs as the dependent variable and relevant explanatory variables for size, complexity, efficiency, age of capital, and local wage variation. To account for these factors, we used number of beds, case-mix indexes, occupancy rate, ownership, age of assets, length of stay, FTEs per bed, and wage index values based on the hospital wage index (wages and employee benefits) as independent variables. Our regression analysis indicated that the coefficient on the area wage index was 73.588, which represents the proportion of total costs that vary with local labor markets, holding constant other factors. From the operating portion of the market basket, we can specifically identify cost categories that reflect local labor markets and include them in the labor-related share. These cost categories equal 69.727, and reflect approximately 77 percent of operating costs. Thus, the labor-related share for capital-related costs is 3.861 (73.588 minus 69.727), and reflects approximately 39 percent of capital-related costs.

Capital-related expenses are determined in some proportion by local area labor costs (such as construction worker wages and building materials costs) that are reflected in the price of the capital asset. However, many other inputs that determine capital costs are not related to local area wage costs, such as equipment prices and interest rates. Thus, it is appropriate that capital-related expenses would vary less with local wages than would operating expenses for SNFs. Therefore, we are proposing to use this analysis in determining the labor-related share for SNF PPS.

All price proxies for the proposed revised and rebased SNF market basket are listed in Table 10.B and summarized in the Appendix to this proposed rule. A comparison of the yearly historical percent changes from FY 1995 through FY 2000 for the current 1992-based market basket and the proposed 1997-based market basket is shown in Table 10.D.

TABLE 10.C.—1992 AND PROPOSED 1997-BASED LABOR-RELATED SHARE

Cost category	1992-based skilled nursing facility market basket weight	Proposed 1997-based skilled nursing facility market basket weight
Wages and Salaries	54.262	52.263
Employee Benefits	12.797	10.734
Nonmedical Professional Fees	1.916	2.634
Labor-intensive Services	3.686	4.094
Capital-related	3.227	3.861
Total	75.888	73.588

TABLE 10.D.—COMPARISON OF THE 1992-BASED SKILLED NURSING FACILITY MARKET BASKET AND THE PROPOSED 1997-BASED SKILLED NURSING FACILITY MARKET BASKET, PERCENT CHANGES, 1995–2000

Fiscal years beginning October 1	1992-based skilled nursing facitlity market basket	Proposed 1997-based skilled nursing facility market basket
Historical:		
October 1994, FY 1995	2.9	3.0
October 1995, FY 1996	2.7	2.7
October 1996, FY 1997	2.4	2.4
October 1997, FY 1998	2.8	2.8
October 1998, FY 1999	3.1	3.0
October 1999, FY 2000	4.1	4.0
Historical average 1995–2000:	3.0	3.0

Released by HCFA, OACT, National Health Statistics Group.

The historical average rate of growth for 1995 through 2000 for the proposed SNF 1997-based market basket is similar to that of the 1992-based market basket. The proposed 1997-based SNF market basket provides a more current measure of the annual price increases for total care than the 1992-based SNF market basket because the cost weights reflect the structure of costs for the most recent year for which there are relatively complete data. The forecasted rates of

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growth for FY 2002 for the proposed 1997-based and current 1992-based SNF market basket are shown in Table 10.E.

TABLE 10.E.—COMPARISON OF FORECASTED CHANGE FOR THE 1992-BASED SKILLED NURSING FACILITY MARKET BASKET, AND THE PROPOSED 1997-BASED SKILLED NURSING FACILITY MARKET BASKET PERCENT CHANGE FOR FY 2002

Fiscal Year beginning October 1	1992-based skilled nursing facility market basket	1997-based skilled nursing facility market basket
October 2001, FY 2002	3.0	2.9

Source: Standard & Poor's DRI HCC, 1st QTR, 2001; @ USMARCRO/MODTREND@CISSIM/TRENDLONG0201.
Released by HCFA, OACT, National Health Statistics Group.

IV. Update Framework

A. The Need for an Update Framework

Medicare payments to SNFs are based on a predetermined national payment amount per day. Annual updates to these payments are required by section 1888(e) of the Act. These updates are usually based on the increase in the SNF market basket. For FY 2002, the update is set at market basket minus 0.5 percent. Our goal is to develop a method for analyzing and comparing expected trends in the underlying cost per day to use in establishing these updates.

The SNF market basket, or input price index, developed by HCFA's Office of the Actuary (OACT) is just one component in the SNF cost per day amount. It captures only the pure price change of inputs (labor, materials, and capital) used by the SNF to produce a constant quantity and quality of care. Other factors also contribute to the change in costs per day, which include changes in case-mix, intensity, and productivity.

Under the inpatient hospital PPS, HCFA and MedPAC use an update framework to account for these other factors and to make annual recommendations to the Congress concerning the magnitude of the update. We are currently examining these factors and exploring ways that they could be incorporated into an update framework for the SNF PPS. We are also examining some additional conceptual and data issues that must be considered when the framework is constructed and applied.

We are not proposing to apply an update framework in a recommendation to the Congress at this time. We are actively pursing development efforts aimed at producing an analytical framework which, by informing policy makers concerning the magnitude of annual updates, would support the continued appropriateness and relevance of the payment rates for services provided to beneficiaries in SNFs. To this end, we are requesting comments concerning the conceptual approach we have outlined in this proposed rule, including the utility and feasibility of this approach for SNFs. We are specifically interested in comments concerning whether certain factors should be accounted for in the framework, and suggestions concerning potential data sources and analysis to support the model. As with the existing methodology, the features of a SNF-specific update framework would need to be based on a sound policy and methodology.

B. Factors Inherent in SNF Payments per Day

In order to understand the factors that determine SNF costs per day, it is first necessary to understand the factors that determine SNF payments per day. Payments per day under SNF PPS are based on the cost and an implicit normal profit margin to the SNF in providing an efficient level of care. We have developed a methodology to identify a mutually exclusive and exhaustive set of factors included in SNF payments per day. The discussion here details a set of equations to identify these factors.

In its simplest form, the average payment per day to a SNF can be separated into a cost term and a profit term as shown in equation (1):

$$(1)\qquad \frac{\text{Payments}}{\text{Days}} = \frac{\text{Costs}}{\text{Days}} + \frac{\text{Profits}}{\text{Days}}$$

This equation can be made multiplicative by converting profit per day into a profit rate as shown in equation (2):

$$(2)\qquad \frac{\text{Payments}}{\text{Days}} = \frac{\text{Costs}}{\text{Days}} * \frac{\text{Payments}}{\text{Costs}}$$

An output price term can be introduced into the equation by multiplying and dividing through by input prices and productivity. As shown in equation (3), the term inside the brackets represents the output price, since an output price reflects the input price and profit margin adjusted for productivity:

$$(3)\qquad \frac{\text{Payments}}{\text{Days}} = \frac{\text{Costs}}{\text{Days}} * \left(\frac{\text{Payments}}{\text{Costs}} * \frac{\text{Input Prices}}{\text{Productivity}}\right) * \frac{\text{Productivity}}{\text{Input Prices}}$$

The cost per day term can be further separated by accounting for real case-mix. Under SNF PPS, Resource Utilization Groups (RUGs) are used to classify patients. Based on accurate RUG classification data, average real case-mix per day can be incorporated, as shown in equation (4):

$$(4)\qquad \frac{\text{Payments}}{\text{Days}} = \frac{\text{Costs/Days}}{\text{Real Case Mix/Days}} * \frac{\text{Real Case Mix}}{\text{Days}} * \left(\frac{\text{Payments}}{\text{Costs}} * \frac{\text{Input Prices}}{\text{Productivity}}\right) * \frac{\text{Productivity}}{\text{Input Prices}}$$

The term "real" is imperative here because only true case-mix should be measured, not case-mix caused by improper coding behavior. By rearranging the terms in equation (4), a set of mutually exclusive and exhaustive factors such as those shown in equation (5) can be identified:

$$(5)\qquad \frac{\text{Payments}}{\text{Days}} = \left(\frac{\frac{\text{Costs}}{\text{Days}}}{\text{Input Prices} * \frac{\text{Real Case Mix}}{\text{Days}}} * \text{Productivity}\right) * \frac{\text{Real Case Mix}}{\text{Days}} * \frac{1}{\text{Productivity}} * \text{Input Prices} * \frac{\text{Payments}}{\text{Costs}}$$

The term of the equation in brackets can be analyzed in two steps. First, excluding the productivity term from the equation results in case-mix adjusted real cost per day, which is input intensity per day. Second, multiplying input intensity by productivity results in case-mix adjusted real payment per day, or output intensity per day. The rationale behind this step is explained in detail in the next section.

The result of this exercise is that SNF payment per day can be determined from the following factors:

$$(6)\qquad \text{Payment Per Day} = \frac{\left(\begin{array}{c}\text{Case-Mix-Constant}\\ \text{Real Output Intensity}\\ \text{Per Day}\end{array}\right) * \left(\begin{array}{c}\text{Real Case Mix}\\ \text{Per Day}\end{array}\right) * (\text{Input Prices}) * (\text{Profit Margins})}{\text{Productivity}}$$

Thus, it holds that the change in SNF payment per day is a function of the change in these factors. In order to determine an annual update that most accurately reflects the underlying cost to the SNF of efficiently providing care, the four factors related to cost must be accounted for when an update framework is developed. A brief discussion of each factor, including specific conceptual and data issues, is provided in the next section.

C. Defining Each Factor Inherent in SNF Costs per Day

Each cost factor from equation (6) above is discussed here in detail. Because this is a basic conceptual discussion, it is likely that more detailed issues may be relevant that are not explored here.

1. Input Prices

Input prices are the pure prices of inputs used by the SNF in providing services. When we refer to inputs we are referring to costs, which have both a price and a quantity component. The price is an input price, and the quantity component reflects real inputs, or real costs. Similarly, when we refer to outputs, we are referring to payments, which also have both a price and a quantity component. The price component is the transaction output price, and the quantity component is the real output, or real payment. The real inputs include labor, capital, and materials, such as drugs. By definition, an input price reflects prices that SNFs encounter in purchasing these inputs, whereas an output price reflects the prices that buyers encounter in purchasing SNF services. We currently can measure input prices using the SNF market basket.

2. Productivity

Productivity measures the efficiency of the SNF in producing outputs. It is the amount of real outputs, or real payments, that can be produced from a given amount of real inputs, or real costs. For SNFs, these inputs are in the form of both labor and capital; thus, they represent multi-factor productivity, as not just labor productivity is reflected. The following set of equations shows how multi-factor productivity can be measured in terms of available data, such as payments, costs, and input prices:

$$\text{Productivity} = \frac{\text{Real Payments}}{\text{Real Costs}} = \frac{(\text{Payments/Output Price})}{(\text{Costs/Input Price})} = \frac{\text{Payments}}{\text{Costs}} * \frac{\text{Input Price}}{\text{Output Price}}$$

Rearranging the terms, this multi-factor productivity equation was used as the basis for incorporating an output price term in equation (3) above. This equation is the basis for understanding the relationship between input prices, output prices, profit margins, and productivity.

Equation (6) shows that productivity is divided through the equation, offsetting other factors. The theory behind this offset is that if an efficient SNF in a competitive market can produce more output with the same amount of inputs, the full increase in input costs does not have to be passed on by the provider to maintain a normal profit margin.

3. Real Case-Mix per Day

Real case-mix per day is the average overall mix of care provided by the SNF, as measured using the RUG classification system. Over time, a measure of real case-mix will change as care is given in more or less complex RUGs. Changes in the level of care within a RUG classification group would not be reflected in a case-mix measure based on RUGs, but instead should be captured in the intensity factor of equation (6).

The important distinction here is the difference between real and nominal case-mix. SNFs submit claims using the RUG classification system. The case-mix reflected by the claims is considered "nominal". However, the reported classification can reflect the true level of care provided or improper coding behavior. An example of improper coding behavior would be the upcoding, or case-mix "creep," that took place when the hospital PPS was implemented. Any change in case-mix that is not associated with the actual level of care or a true change in the level of care provided must be excluded in order to determine real case-mix. Section 1888(e)(4)(F) of the Act provides us with the statutory authority to make adjustments to the unadjusted Federal per diem rates for changes caused by case-mix creep.

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4. Case-Mix-Constant Real Output Intensity per Day

Intensity is the true underlying nature of the product or service and can take the form of output and/or input intensity. In the case of SNFs, output intensity per day is associated with real payment per day, while input intensity per day is associated with real cost per day. For example, input intensity would be associated with a therapist's hours when providing treatment, whereas output intensity would be associated with the amount of treatments a therapist provides. The underlying nature of SNF services is determined by such factors as technological capabilities, increased utilization of inputs (such as labor or drugs), site of care, and practice patterns. Because these factors can be difficult to measure, intensity per day is usually calculated as a residual after the other factors from equation (6) have been accounted for.

Accounting for output intensity associated with an efficient SNF can be more accurately analyzed using a SNF's costs rather than its payments. This analysis would also provide an alternative to developing or using a transaction output price index, which has been difficult for the Bureau of Labor Statistics (BLS) to measure for SNFs. The following series of equations shows how to use the definition of an output price as defined earlier to convert the equation for output intensity per day to reflect costs instead of payments, as used in equation (6):

$$\text{Case-Mix-Constant Real Output Intensity Per Day} = \frac{[\text{Payments/Days}]}{\text{Output Prices} * \text{Real Case Mix/Days}}$$

$$= \frac{[\text{Payments/Days}]}{\left(\frac{\text{Payments}}{\text{Costs}} * \frac{\text{Input Prices}}{\text{Productivity}}\right) * \text{Real Case Mix/Days}}$$

$$= \frac{\text{Payments/Days} * \text{Costs}}{\text{Payments} * \frac{\text{Input Prices}}{\text{Productivity}} * \text{Real Case Mix/Days}}$$

$$= \frac{\text{Payments} * [\text{Costs/Days}]}{\text{Payments} * \frac{\text{Input Prices}}{\text{Productivity}} * \text{Real Case Mix/Days}}$$

$$= \frac{[\text{Costs/Days}]}{\frac{\text{Input Prices}}{\text{Productivity}} * \text{Real Case Mix/Days}}$$

$$= \frac{[\text{Costs/Days}]}{\text{Input Prices} * \text{Real Case Mix/Days}} * \text{Productivity}$$

The last equation is identical to the term in brackets in equation (5), case-mix-constant real input intensity per day multiplied by productivity. Thus, output intensity per day can be defined in such a way that cost data from the SNF are utilized. This equation can be broken down even further to account for different types of input intensity per day. We discuss this matter more fully in the next section.

D. Applying the Factors That Affect SNF Costs per Day in an Update Framework

As discussed earlier, payments per day under SNF PPS must be updated each year. Currently, the updates are specified by legislation as the percent change in the SNF market basket for FY 2001, the percent change in the SNF market basket minus 0.5 percentage points for FY 2002 and FY 2003, and the percent change in the SNF market basket thereafter. However, it is important to understand the underlying trends in SNF costs per day for an efficient provider, especially should the change in these costs deviate from the legislated updates. The development of an update framework with a sound conceptual basis will provide this capability.

Earlier, factors inherent in SNF costs per day were identified. Changes in these factors determine the change in SNF costs per day. Fitting these factors into a framework would allow us to recommend updates each year that appropriately reflect changes in underlying costs for efficient SNFs. Accounting for each of these factors from equation (6) under SNF PPS is discussed below:

- Change in case-mix constant real output intensity per day would be accounted for in the update framework, reflecting the factors that affect not only case-mix constant real input intensity per day, but also productivity, which is determined separately. Factors that can cause changes in case-mix constant real input intensity per day include, but are not limited to, changes in site of service, changes in within-RUG case-mix, changes in practice patterns, changes in the use of inputs, and changes in technology available.
- As discussed earlier, changes in nominal case-mix are automatically included in the payment to the SNF. However, the law gives us the authority to make adjustments for case-mix change due to improper coding behavior. Therefore, the update framework should include an adjustment to convert changes in nominal case-mix per day to changes in real case-mix per day.
- Change in multi-factor productivity would be accounted for in the update framework. The availability of historical data on input prices, payments, and costs are useful in the analysis of this factor. MedPAC sets this factor as a target under hospital PPS.
- Changes in input prices for labor, material, and capital would be accounted for in the update framework. Our Office of the Actuary currently has an input price index, or market basket, for SNF services. This is the market basket referred to in the legislated updates. In an update framework, a forecast error adjustment has typically been included, to reflect that the updates are set prospectively and some degree of forecast error is inevitable. In the case of the inpatient hospital PPS, this adjustment is made on a two-year lag and only if the error exceeds a defined threshold (0.25 percentage points).

E. Current HCFA Inpatient Hospital PPS and Illustrative SNF PPS Payment Update Frameworks

Table 11 shows the payment update framework for the current inpatient hospital PPS and an illustrative update framework for the SNF PPS. Some of the factors in the inpatient hospital PPS framework are computed using the Medicare Cost Report data, while others are determined based on policy considerations. The details of calculating each factor for the inpatient hospital PPS framework can be found in the August 1, 2000 **Federal Register** (65 FR 47054) final rule that set forth updates to the payment rates used under the inpatient PPS. This design for a SNF update framework is for illustrative purposes only, as much more work needs to be done to determine the appropriate level of detail for each factor and the manner in which the factors would be developed through policy. The numbers provided for the hospital update are only intended to serve as examples of prior updates recommended for the hospital PPS.

MedPAC supports the use of this type of framework for updating payments and applies a similar framework when it proposes updates to hospital payments in its annual recommendation to Congress. The appropriateness of this framework for updating inpatient hospital payments was discussed in the Health Care Financing Review, Winter 1992, in an article entitled, "Are PPS Payments Adequate? Issues for Updating and Assessing Rates." A similar framework would be useful for analyzing updates to SNF payments.

TABLE 11.—CURRENT HCFA HOSPITAL PPS AND ILLUSTRATIVE SNF PPS PAYMENT UPDATE FRAMEWORKS

HCFA hospital PPS update	FY 2001 calculated hospital update percent change	Illustrative SNF PPS update
Percent Change in:		
HCFA PPS Hospital Market Basket	3.4	HCFA SNF Market Basket.
Forecast Error	0.0	Forecast Error.
Productivity	−0.5 to −0.4	Productivity.
Output Intensity	0.0 to −0.6	Output Intensity:
Science and Technology		Science and Technology
Practice Patterns.		
Real within-DRG Change		Real within-RUG Change.
Site of Service		Utilization of Inputs.
		Site of Service.
Case-mix Adjustment Factors:		Case-mix Adjustment Factors:
Projected Case-mix	−0.5	Nominal across-RUG Case-mix.
Real across-DRG Change	0.5	Real across-RUG Change.
Total Cost per Admission	−0.5 to −1.0	Total per Diem Cost.
Other Policy Factors:		Other Policy Factors:
Reclassification and Recalibration	0.0	None.
Total Calculated Update	2.4 to 2.9	Total Calculated Update.

Table data derived from the August 1, 2000 **Federal Register**, Medicare Program; Changes to the Hospital Inpatient Prospective Payment System and Fiscal Year 2001 Rates; Final Rule.

F. Additional Conceptual and Data Issues

Three conceptual issues specific to the SNF PPS are the relevance of a site-of-service substitution adjustment, the necessity of an adjustment for RUG reclassification, and the handling of one-time factors.

Under the inpatient hospital PPS, a site-of-service substitution factor (captured as part of intensity) was necessary because of the incentive to shift care from hospital inpatient to such other settings as hospital outpatient, SNFs, or home health agencies (HHAs). For SNF PPS, it must be determined whether incentives to shift care to these other settings will continue or whether the SNF PPS will reduce these incentives and/or create alternative incentives to shift care out of SNFs. It is not clear without additional research in this area whether changes in behavior created by the different Medicare payment systems should be reflected in a SNF update framework.

A reclassification and recalibration adjustment under the inpatient hospital PPS is necessary to account for additional changes in the case-mix factor resulting from reclassifying and recalibrating the DRG classification software. This factor is applied to the current fiscal year update, but reflects the effect of revisions in the fiscal year two years prior. MedPAC does not account for this adjustment in its update framework. Whether a RUG reclassification adjustment would be necessary in the update framework would depend on the data availability and the likelihood of revisions to RUG classifications on a periodic basis.

There is also a question about how to handle one-time factors, such as the increased costs of converting computer systems to Year 2000 (Y2K) compliance. An update framework is the appropriate mechanism to account for these items, but because of uncertainty surrounding their impact on costs, determining an appropriate adjustment amount may be difficult. MedPAC has discussed this issue in prior sessions, but was unable to agree on the exact methodology for these types of factors.

The purpose of this conceptual discussion is not to determine how the identified factors of the update framework would be measured. We do recognize, however, that it would be important to use the Medicare Cost Report (MCR) and other relevant data from SNFs to analyze the factors that would account for growth in costs per day. As was the case for the inpatient hospital PPS, we will be required to make optimal use of the MCR data as we proceed in the development of an update framework methodology.

The lack of historical case-mix data is another important issue. These data are

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currently being collected under contract but will not be available for most historical years. This factor may prove difficult to account for in a historical analysis. In addition, there is no information currently available to make the distinction between real and nominal case-mix change. There are also concerns about the BLS output price measures for SNFs, especially during the first years of publication in 1996 and 1997. Output prices are relevant for measuring productivity in a historical context. Most of these concerns were also encountered and addressed in the inpatient hospital PPS update framework.

The discussion here provides the conceptual basis for developing an update framework for SNF PPS that reflects changes in the underlying costs of efficiently providing SNF services. It is important to note that the framework does not handle distribution issues such as geographic wage variations.

Due to some variations in technical methodologies for measuring the factors of an update framework, and because of some of the data concerns mentioned earlier, implementing an update framework for SNF PPS would involve making significant policy decisions on issues similar to those for the inpatient hospital PPS update framework. We invite comments on the type of data sources to use, what other factors (if any) we should consider in an update framework, and any additional comments concerning the issues discussed in this proposed rule.

V. Consolidated Billing

The consolidated billing requirement established by section 4432(b) of BBA 1997 places the Medicare billing responsibility with the SNF for virtually all of the services that the SNF's residents receive, except for a small number of services that the law specifically identifies as being excluded from this provision. For services that are subject to this provision, the original legislation made no distinction as to whether the services were furnished during the course of a covered Part A SNF stay.

We have implemented consolidated billing only for services that are furnished during the course of a covered Part A SNF stay. We have not implemented consolidated billing for those services furnished to SNF residents who are not in a covered Part A stay (for example, residents who have exhausted their available days of coverage under the Part A SNF benefit, or who do not meet that benefit's post-hospital or level of care requirements). As explained in the final rule of July 30, 1999 (64 FR 41671), implementing the Part B aspect of the provision would entail making significant systems modifications, which have been delayed by systems constraints that arose in connection with achieving Y2K compliance.

In addition, recently enacted provisions in BIPA 2000 have also affected this aspect of consolidated billing. For services furnished on or after January 1, 2001, section 313(a) of BIPA 2000 amends section 1862(a)(18) of the Act by eliminating consolidated billing for most services furnished to SNF residents during noncovered stays. This amendment limits the application of consolidated billing to those services that are furnished during the course of a covered Part A stay, with one exception: for SNF residents in noncovered stays, the only services for which the SNF retains the Medicare billing responsibility are physical, occupational, and speech-language therapy. (The related requirements for fee schedule payment and appropriate HCFA Common Procedure Coding System (HCPCS) coding for Part B SNF services have not been repealed, and remain the law.) We propose to revise the regulations at § 411.15(p) to reflect this change.

We regard the provision of therapy services as an inherent and integral function of this type of facility, and we believe that the statutory requirement for SNFs to retain the Part B billing responsibility for these particular services reflects a number of policy considerations. First, these are services for which the SNF already has the billing responsibility under the separate Part B therapy cap provision enacted by section 4541 of BBA 1997. In addition, unlike some types of services (such as ambulance and laboratory) with which SNFs historically have had only limited billing experience, most SNFs are familiar with the procedures involved in furnishing and billing for therapy and other skilled rehabilitation services. In fact, section 1819(a)(1) of the Act describes such a facility in terms of being primarily engaged in furnishing skilled nursing or rehabilitation services to its residents. The SNF level of care definition in section 1814(a)(2)(B) of the Act defines a beneficiary's access to SNF coverage under Part A as involving the need for and receipt of "skilled nursing care * * * or other skilled rehabilitation services * * *".

Finally, since the inception of the Medicare program, section 1861(h)(3) of the Act has provided for coverage of physical, occupational, and speech-language therapy services under the Part A extended care benefit when furnished either directly by the facility, or by others under arrangements with the facility. Thus, physical, occupational, and speech-language therapy are unique among SNF services because the law has always explicitly provided for Part A coverage of them when furnished under an arrangement with an outside supplier in which the SNF performs the Medicare billing for the services.

Section 313 of BIPA 2000 also contains a number of technical and conforming changes to reflect the amendment of section 1862(a)(18) of the Act, as discussed above. Section 313(b)(1) amends section 1842(b)(6)(E) of the Act (which provides that only the SNF can receive Part B payments for services furnished to those of its residents in noncovered stays), by limiting payment to SNFs to only those situations in which the SNF elects to furnish such Part B services—either directly with its own resources, or under an arrangement with an outside supplier in which the SNF assumes the billing responsibility. We are revising the regulations at § 410.150 to reflect this change. This section of the legislation also removes the existing language in section 1842(b)(6)(E) of the Act that refers to services furnished to a resident of "* * * a part of a facility that includes a skilled nursing facility (as determined under regulations)". As explained in the May 12, 1998, SNF PPS interim final rule (63 FR 26297), BBA 1997 originally introduced this language in order to apply the consolidated billing requirement not only to the portion of a nursing home that is actually certified as a Medicare SNF, but also to any noncertified remainder:

> This avoids creating a perverse incentive for SNFs to set aside a nonparticipating section in which they could otherwise circumvent the Consolidated Billing requirement for those residents who are not in a covered Part A stay.

However, since the consolidated billing requirement has now been limited to those residents in Part A covered stays, and physical, occupational, and speech-language therapy in noncovered stays, the language that extended its applicability to the noncertified portion of a nursing home is no longer relevant. This is reflected in our proposed change to the regulation at § 411.15.

Section 313(b)(2) of BIPA 2000 amends section 1842(t) of the Act by deleting a similar reference to the noncertified portion of a nursing home. Section 1842(t) of the Act requires that Part B claims for physician services furnished to SNF residents (which are excluded from consolidated billing) must include the SNF Medicare provider number. Section 313(b)(2) of BIPA 2000 also expands this requirement to apply to Part B claims for all types of services furnished to SNF residents. For a SNF resident in a covered Part A stay, this expanded requirement would apply to claims for any type of service that is excluded from consolidated billing (and, thus, is separately billable to Part B by an outside source). For residents in a noncovered stay, it would encompass claims for all Part B services that the resident receives. We are proposing to revise the regulations at § 424.32 to reflect this change.

Section 313(b)(3) of BIPA 2000 amends the existing language in section 1866(a)(1)(H)(i)(I) of the Act by requiring compliance with section 1862(a)(18), as amended, under the terms of a SNF's Medicare provider agreement. We are proposing to revise the regulations at § 489.20 to reflect this change. Finally, section 313(d) of BIPA 2000 directs the Office of Inspector General to monitor payments for services furnished to SNF residents during noncovered stays, in order to help prevent duplicate payment or the excessive provision of services.

VI. Application of the SNF PPS to SNF Services Furnished by Swing-Bed Hospitals

A. Current System for Payment of Swing-bed Facility Services Under Part A of the Medicare Program

Section 1883 of the Act permits certain small, rural hospitals to enter into a swing-bed agreement, under which the hospital can use its beds to provide either acute or SNF care, as needed. Currently, Part A pays for SNF services furnished in Medicare swing-bed hospitals on a cost-related basis, with both calculated rate and retrospective, reasonable cost-based components. Under Medicare payment principles set forth in section 1883(a)(2)(B) of the Act and regulations at § 413.114, swing-bed facilities receive payment for two major categories of costs: routine and ancillary.

Routine costs are the costs of those services included by the provider in a daily service charge. Routine service costs include regular room, dietary, and nursing services, minor medical supplies, medical social services, psychiatric social services, and the use of certain facilities and equipment for which a separate charge is not made. Ancillary costs are costs for specialized services, such as therapy, drugs, and laboratory services, that are directly identifiable to individual patients. Capital-related costs, such as the cost of land, building, equipment, and the interest incurred in financing the acquisition of such items, are not reimbursed separately. Instead, they are incorporated into the routine and ancillary cost components of the rate.

Under Medicare rules, the reasonable cost of ancillary services is paid in full. For routine operating costs, swing-bed providers are paid a predetermined rate equal to the average reasonable routine cost of all freestanding SNFs in the census region. This pre-determined rate is based on annual cost report data, is adjusted for inflation, and is calculated on a calendar year basis. For swing-bed payment purposes, there are nine regions.

B. Requirement of the Balanced Budget Act of 1997 for Swing-Bed Facility Services To Be Paid Under the Prospective Payment System for Skilled Nursing Facilities

Section 1888(e)(7) of the Act and section 203 of BIPA 2000 confers authority on the Secretary to specify when swing-bed hospitals become subject to the SNF PPS, subject to the limitation that swing-bed hospitals cannot be paid under the SNF PPS for cost reporting periods prior to July 1, 1999, and must be paid under the SNF PPS by the end of the transition period described in section 1888(e)(2)(E) of the Act. The SNF PPS transition period ends June 30, 2002, the day immediately following the last day that any SNF could be eligible for the blended rate provisions established for the three-year transition period.

We are proposing to revise the regulations at § 413.114 to provide that swing-bed payments be made under the SNF PPS to swing-bed hospitals for cost reporting periods beginning on and after October 1, 2001, to ensure that the conversion is made within the statutory time frames. By selecting October 1, 2001 as the effective date, we can integrate the swing-bed hospitals into the SNF PPS program using the same time lines that are statutorily required for the annual SNF PPS updates.

Under BBA 1997, this conversion to the SNF PPS was intended to apply to payments to swing-bed facilities in critical access hospitals (CAHs) as well as to those facilities in rural hospitals. However, section 203 of BIPA 2000 exempted CAHs with swing-beds from the SNF PPS. Therefore, only rural hospitals with swing-beds will be subject to the SNF PPS.

Since the application of the SNF PPS to non-CAH swing-bed providers will not occur until the final portion of the SNF PPS phase-in period, those swing-bed providers are not eligible for a blended rate. Upon their PPS effective dates, all rural hospital swing-bed providers will be paid at the per diem Federal payment rate in effect for rural providers when services were delivered.

Section 4407 of BBA 1997 redefined the movement of patients from hospitals from PPS hospitals to SNFs as transfers rather then discharges. This provision applies to hospital discharges for 10 specific DRGs (014, 113, 209, 210, 211, 236, 263, 264, 429, and 483), and mandates that payment for these post-acute transfers cannot exceed the sum of 50 percent of the regular transfer payment and 50 percent of the regular DRG payment. This provision applies to all transfers from a DRG hospital to a SNF that is currently reimbursed under the SNF PPS.

Swing-bed discharges from acute to SNF-level care were specifically exempted from this provision, and swing-bed hospitals would retain their exempt status when they become subject to the SNF PPS. However, in connection with the possible reevaluation of the existing swing-bed conditions of participation discussed in the following section, and the potential for changes associated with a change in payment methodology, we plan to monitor swing-bed activity to determine whether any additional changes may be necessary. We are also mindful of the unique relationship between acute care and SNF-level services in a swing-bed facility. For this reason, we are soliciting comments on this issue, with particular emphasis on both the need for a swing-bed transfer provision and the expected impact it would have on swing-bed hospital operations. For a more detailed explanation of the policy regarding PPS hospital discharges to post-acute care providers, please see Program Memorandum A–98–26 (July, 1998).

C. Requirements of BBRA 1999 Affecting Swing-Bed Payment and Eligibility

Section 408 of BBRA 1999 modified the swing-bed provisions in section 1883(b) of the Act as follows:

- Hospitals with more than 49 and fewer than 100 beds will no longer be required to discharge beneficiaries from swing-beds within 5 days of a community SNF bed becoming available.
- Hospitals will no longer have a cap on the number of days of swing-bed services they can provide. The requirement that swing-bed days be no more than 15 percent of the total bed days was removed.

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• Hospitals will no longer be required to obtain state Certificate of Need approval for swing-beds.

By removing the per discharge restrictions on length of stay and the aggregate caps on the facility's ratio of swing-bed to acute days, these BBRA 1999 provisions give swing-bed hospitals more flexibility in determining how to use their swing-beds. Under BBRA 1999, the implementation date of these amendments is to coincide with the timeframe for the swing-bed transition to the SNF PPS schedule. We propose to revise the regulations at § 413.114 to implement this change.

Since swing-bed services are provided within an acute care facility and have historically represented short stay services, swing-bed providers have not been subject to the full set of participation requirements that apply to SNFs. Instead, they have been subject to the hospital conditions of participation, plus an abbreviated set of SNF participation requirements specified in § 482.66. It is not our intent to change the swing-bed conditions of participation at this time; however, we are aware that the BBRA 1999 amendments may encourage swing-bed facilities to make greater use of their facilities to serve beneficiaries with longer term needs, who otherwise would have been transferred to a SNF. We plan to monitor swing-bed utilization and practice patterns to determine whether changes are occurring that warrant a review of swing-bed conditions of participation. We welcome comments on the need for and nature of changes, if any, that would be most helpful in ensuring continued high quality services in swing-bed facilities.

D. Implications of Swing-Bed Facility Conversion to the SNF PPS

The SNF PPS is an outgrowth of substantial research efforts beginning in the 1970s. It is based on the recognition that differences in patient characteristics result in different levels of resource utilization. Unlike some older payment methodologies that paid a flat per diem amount, a case-mix system measures the intensity of care and services required for each patient and then translates that into a payment level.

Under the SNF PPS, payment rates are based on mean SNF costs in a base year, updated for inflation. Swing-bed routine cost reimbursement is similarly based on a precalculated average cost. However, under the current methodology, swing-beds are paid at a rate consisting of the average of the freestanding nursing facility costs within the region. In contrast, under the SNF PPS, costs are calculated using both freestanding and hospital-based SNF data.

The ability to identify differences in patient service needs is crucial to the development of a case-mix system. For the SNF PPS, we needed a sophisticated patient classification system that specifically captured resource use of individuals receiving SNF-level care. The Resource Utilization Group, version 3 (RUG–III) is a 44-group patient classification system that was designed specifically to measure SNF-level services. RUG–III establishes a hierarchy of major patient types, organized into seven major categories. Each of these categories is further differentiated by patient characteristics and service needs to yield the 44 specific patient groups used for payment. Differences in service use are shown by assigning a weight or case mix index to each RUG–III group. This weight represents the amount of nursing and rehabilitation staff time, weighted by salary level, and is standardized to reflect the relative value of each group within the 44-group system.

Detailed descriptions of the RUG–III classification methodology are included in the May 12, 1998 SNF PPS final rule (63 FR 25252). Additional information on the RUG–III system is available in the annual SNF PPS updates (64 FR 41645, July 30, 1999, and 65 FR 46770, July 31, 2000). Like the DRG system used in the inpatient hospital PPS, the RUG–III system has been automated. Program specifications, record layouts and RUG–III coding logic may be found on HCFA's web site at *www.hcfa.gov/medicaid/mds2.0/default.htm*.

All data needed to classify a Medicare beneficiary into one of the RUG–III groups is contained in the MDS 2.0. The MDS 2.0 is a resident assessment instrument used by SNFs for care planning, quality monitoring, and SNF PPS payment. As described in Section G below, we plan to use the MDS 2.0 to calculate SNF PPS payments for swing-bed services.

All providers currently subject to the SNF PPS perform periodic MDS 2.0 assessments for Medicare beneficiaries in Part A stays. Facilities then generate electronic MDS 2.0 records, and transmit each beneficiary's assessment to a designated state agency. These electronic MDS 2.0 records are then transmitted by the state agency to HCFA's data repository. For more information on MDS encoding and transmission, see HCFA's final rule mandating the transmission of MDS records (62 FR 67174, December 23, 1997) and the HCFA web site at *www.hcfa.gov/medicaid/mds2.0/default.htm*.

Under SNF PPS, providers must transmit their MDS 2.0 assessments to the appropriate state agency and receive confirmation that the MDS 2.0 record has been accepted into the state's MDS 2.0 data base before submitting a bill to the Part A FI. Billing instructions have been developed for SNFs subject to the SNF PPS. Three Program Memorandums were issued shortly after the introduction of the SNF PPS, and provide a basic understanding of the current billing requirements (Program Memorandums A–98–16 (May 1998), A–98–20 (June 1998), and A–98–26 (July 1998)). In addition, each Part A FI has developed its own SNF PPS training materials and billing instructions. HCFA staff will be working with the FIs to review these billing requirements and to identify any changes or additions needed to accommodate swing bed providers. We are soliciting comments on concerns related to billing or claims processing in swing-bed facilities.

Finally, swing-bed claims are already subject to medical review to ensure that the services provided to Medicare beneficiaries are reasonable and necessary, and meet Medicare's SNF level of care criteria. Under the SNF PPS, these reviews will be modified to verify the accuracy of the clinical data used to determine the RUG–III group billed. We will work with the appropriate contractors to finalize procedures for these swing-bed reviews, and we plan to publish specific instructions and guidelines later this year.

E. SNF PPS Rate Components

The SNF PPS methodology is discussed in detail in the regulations at 42 CFR Part 413, subpart J. As this methodology is only now being applied to swing-bed hospitals, the major components of the PPS Federal rate are summarized below.

• The nursing component includes direct nursing care and the cost of non-therapy ancillary services required by Medicare beneficiaries. This portion of the rate is case-mix adjusted using the RUG–III classification system described in detail in the May 12, 1998 SNF PPS interim final rule (63 FR 26252). Swing-bed facilities will be reimbursed under the rural facility rates as shown in Table 6.

• The therapy component includes physical, occupational, and speech-language therapy services provided to beneficiaries in a Part A stay and, like the nursing component, is case-mix adjusted. Payment varies based on the actual therapy resource minutes received by the beneficiary and reported on the MDS assessment instrument.

• The non-case-mix therapy component is a standard amount to cover the cost of therapy assessments of beneficiaries who were determined not to need continued therapy services. This payment is added to the rate for all RUG–III groups except those in the Rehabilitation category.

• The non-case-mix component is also a standard amount added to the rate for each RUG–III group to cover administrative and capital-related costs. The specific costs included in this rate component are described in the May 12, 1998 SNF PPS interim final rule (63 FR 26252).

The RUG–III system utilizes data from the MDS to determine the appropriate payment level for nursing and therapy services. Upon transition to PPS, swing-bed providers will be required to complete MDS assessments according to the same Medicare payment assessment schedule designated for SNFs: on the 5th, 14th, 30th, 60th, and 90th days of post-hospital extended care (Part A SNF) services.

In addition, the portion of the Federal rate attributable to wage-related costs is adjusted by a wage index. For swing-bed facilities, we will use the wage index applicable to the county in which the facility is located or, in the absence of a county wage index, the rural rate for the state in which the facility is located.

F. Implementation of the SNF PPS for Swing-Bed Facilities

Under section 1888(e)(7) of the Act, swing-bed providers (other than CAHs) would be subject to the SNF PPS by the end of the SNF PPS transition period described in section 1888(e)(2)(E) of the Act. However, swing-bed services are not subject to the consolidated billing requirement for services furnished to SNF residents under section 1862(a)(18) of the Act, but instead are subject to the similar bundling requirement for services furnished to hospital inpatients under section 1862(a)(14) of the Act (see section VI.J below).

G. Use of the Resident Assessment Instrument—Minimum Data Set (MDS 2.0)

Swing-bed facilities are not currently subject to the clinical MDS requirements, but will be required under the PPS to perform the Medicare-required MDS assessments.

The MDS required for payment purposes includes the MDS face sheet, Sections AA–R, and Section T. In addition, swing-bed providers, like other nursing facilities, must complete the discharge and reentry tracking forms as appropriate to track the beneficiary's movement into and out of the post-acute care facility. Swing-bed facilities that also participate in the Medicaid program may also be required, at State option, to complete Section S.

When completing the MDS, swing-bed facility staff should use the instructions in the Long Term Care RAI User's Manual. A copy of this manual is available on the HCFA web site at *www.hcfa.gov/medicaid/mds20/manform.htm* and is also available for purchase.

The types of assessments used to support SNF PPS billing are described below.

1. Regularly Scheduled Medicare Assessments

MDS assessments must be performed in accordance with a predetermined schedule based upon the start of a Medicare Part A covered stay. The assessments are due on days 5, 14, 30, 60, and 90 of the SNF Part A covered stay.

2. Readmission/Return Assessments (MDS Item A8b=5)

This MDS reason for assessment is used when a beneficiary who is receiving Part A SNF care in a swing-bed is hospitalized and then returns to the swing-bed. The assessment reference date of the Readmission/Return Assessment must be set within 5 days of the readmission, as with a regular Medicare 5-day assessment. Like the 5-day assessment, there are 3 grace days available.

3. Other Medicare-Required Assessments (OMRA)

Other Medicare-Required Assessments (OMRAs) must be performed when a beneficiary in a covered Part A stay stops receiving therapy, but continues to receive other skilled services, thus remaining eligible for Part A services. This assessment must be performed between 8 and 10 days after the cessation of all rehabilitation therapy services. It may not be used to indicate changes in the amount or frequency of service or to show reductions in the number of therapy disciplines provided. For example, an OMRA is not required to show that a beneficiary's speech-language therapy has been discontinued when the beneficiary is still receiving physical therapy. This assessment is not required if the beneficiary's Part A stay is discontinued when the therapy is stopped.

Since swing-bed facilities do not perform significant change or significant correction assessments, we have no method of recognizing changes in the beneficiary's clinical status that occur outside the regular SNF PPS assessment schedule. For this reason, we are proposing to modify the MDS 2.0 by adding a new reason for an OMRA assessment specific to swing-bed facilities. Swing-bed providers would then use this additional reason for assessment code when preparing off-cycle assessments reflecting changes in patient status that change the RUG-III group and payment rate.

H. Required Schedule for Completing the MDS

Swing-bed providers would follow the same MDS completion schedule for Medicare PPS assessments as other providers reimbursed under the SNF PPS. When performing an MDS assessment, the registered nurse coordinating the assessment would first establish the period of time that would be used to observe and assess the beneficiary. The last day of the observation period is defined as the Assessment Reference Date (ARD). The ARD is the date used to determine the timeliness of the Medicare-required MDS assessments. The assessment schedule is shown in Table 12.

The Medicare Assessment Window refers to the days on which the MDS ARD may be set in order for the assessment to be considered timely. For example, the ARD for the 5-day assessment should be set between days 1 and 5 of the beneficiary's admission to the swing-bed. Since we realize that there will be exceptional circumstances in which additional time will be needed, we have provided for grace days. MDS assessments with ARDs on a grace day would also be considered timely. The timeliness of the MDS assessments may be monitored to identify providers that routinely perform assessments during the grace period.

In addition, Medicare PPS assessments are required to be completed within 14 days of the ARD. An MDS is considered completed on the date the Assessment Coordinator indicates on the MDS in Section R(2)(b). Swing-bed providers that fail to perform assessments or that perform late assessments (ARD outside of the specified assessment window) are paid at the default rate. This default rate is equal to the rate paid for the lowest acuity level in the RUG-III system, PA1.

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TABLE 12.—ASSESSMENT SCHEDULE

Type of assessment	Assessment window days	Grace days	Payment period days
5 day	1–5	6–8	14
14 day	11–14	15–19	14
30 day	21–29	30–34	30
60 day	50–59	60–64	30
90 day	80–89	90–94	10

Each assessment would then be used to calculate a RUG–III group for payment. As shown in Table 12, the RUG–III group is used to bill Medicare for Medicare-covered days of SNF care. The days shown in the payment period column are the maximum number of covered days that can be billed using the 5, 14, 30, 60, and 90 day assessments. Swing-bed care, like care in SNFs, is covered by Medicare when the beneficiary meets the Medicare level of care and medical necessity criteria.

I. RUG–III "Grouper" Methodology and Software

RUG–III is a patient classification system that classifies beneficiaries receiving SNF care based on the amount of nursing and therapy resources needed to provide that level of care. RUG–III establishes a seven level hierarchy based on resource use. The seven levels are rehabilitative services, extensive care, special care, clinically complex, cognitive impairment, behavior, and reduced physical function. The classification system is then subdivided into 44 groups using activities of daily living (ADL) deficits, depression, and the provision of restorative nursing services as classification criteria. All data necessary to classify a patient into one of the RUG–III categories is contained on the MDS 2.0.

Swing-bed bills would be paid in the same manner as for all other providers subject to the SNF PPS. Swing-bed facilities would encode and transmit their MDS data to the appropriate State agency. The RUG–III group on the MDS would be validated by the State upon acceptance of the facility's MDS data file. The provider would bill Medicare using the validated RUG–III code. Detailed information on the RUG–III system can be found in the July 30, 1999 SNF PPS final rule published in the **Federal Register** (64 FR 41684), and on HCFA's PPS web site at *www.hcfa.gov/medicare/snfpps.htm*.

Detailed information on the RUG–III software can be found at *www.hcfa.gov/medicaid/mds20/default.htm*. These software groupers are available from many software vendors, however, we have developed the standard software grouper product, RAVEN, which is available to all providers at no cost. We also provide ongoing support for the RAVEN software, and have a Help Desk to assist providers with data transmission and other technical problems. The RAVEN software may be downloaded by accessing HCFA's web site at *www.hcfa.gov/medicaid/mds20/raven.htm*.

J. Applicability of Consolidated Billing to SNF Services Furnished in Swing-Bed Facilities

As enacted by section 4432(b) of BBA 1997, the SNF consolidated billing requirement (which places the Medicare billing responsibility for almost the entire range of Medicare-covered services with the SNF) is based on services that are furnished to SNF residents. However, a swing-bed agreement allows for the provision of SNF services to inpatients of certain small, rural hospitals. These swing-bed services are not subject to the SNF consolidated billing requirement at section 1862(a)(18) of the Act, since that provision applies to services that are furnished to residents of SNFs. Rather, these swing-bed services are subject to the hospital bundling requirement at section 1862(a)(14) of the Act, which applies to services that are furnished to inpatients of hospitals.

The hospital bundling requirement is a longstanding provision that has applied uniformly to all hospitals (including those with swing-bed agreements) and does not represent a new requirement or a change in existing procedures for these facilities. The hospital bundling provision is conceptually similar to the SNF consolidated billing requirement (since it places with the hospital the Medicare billing responsibility for virtually all services that the patient receives), and actually served as the model for the SNF consolidated billing legislation. Like SNF consolidated billing, hospital bundling specifically excludes the services of several types of practitioners (services furnished by physicians, physician assistants, nurse practitioners, clinical nurse specialists, certified nurse-midwives, clinical psychologists, and certified registered nurse anesthetists). However, unlike SNF consolidated billing, the hospital bundling provision does not provide for the additional exclusion of certain other types of services, such as dialysis or erythropoietin (EPO).

When the SNF PPS was implemented in July 1998, we received several questions concerning the relationship between SNF consolidated billing and Medicare's preadmission payment window provision, which requires that certain services furnished during the period immediately preceding an inpatient hospital admission be included in the payment for the hospital admission. The most common question is related to situations in which a SNF resident in a covered Part A SNF stay receives outpatient services from a hospital, and is subsequently admitted to that same hospital as an inpatient within three days. Both hospital and SNF providers were unsure whether the hospital outpatient services should be included on the hospital inpatient bill or were included in the SNF PPS payment. Since this issue is relevant to swing-bed patients who may require a readmission to an acute care hospital (either within the same facility or to another hospital), we are reiterating our previous clarification on this point.

Section 1886(a)(4) of the Act includes a preadmission payment window provision for hospitals. Under this provision, certain Part B services furnished by a hospital (or by an entity wholly owned or operated by the hospital) within three days before an inpatient admission to that hospital are included in the Medicare Part A payment for the hospital admission. However, we clarified the application of the payment window provisions in a final regulation published in the **Federal Register** on February 11, 1998 (63 FR 6865–66), to explain that this provision does not apply to Part A services furnished during the preadmission period by home health agencies, SNFs, and hospices. The preadmission payment window applies only to services that are "otherwise payable under Medicare Part B." Therefore, those preadmission services that are covered under the Part A SNF benefit would not be within the scope of the preadmission payment window provision.

However, services furnished on the day that a SNF resident is admitted to a hospital as an inpatient are not included in the SNF PPS payment rate. Thus, the outpatient hospital services furnished on that day would be subject to the preadmission payment window provision. In addition, services excluded from the SNF PPS under consolidated billing are considered Part B services and, when provided within three days of admission as a hospital inpatient, are subject to the preadmission payment window. Among these SNF PPS-excluded services are certain exceptionally intensive services furnished in the hospital setting: cardiac catheterization, computerized axial tomography (CT) scans, magnetic resonance imaging (MRIs), ambulatory surgery involving the use of an operating room, emergency services, radiation therapy, angiography, and certain lymphatic and venous procedures.

For a complete list of services that are reimbursed separately from the SNF PPS rate, please refer to Program Memorandums A–98–37 (November 1998, reissued as A–00–01, January 2000) and AB–00–18 (March 2000).

K. Costs Associated With Automating the MDS: Preliminary Estimates

In accordance with section 1888(e)(7) of the Act, we propose to apply the SNF PPS to swing-bed providers (other than CAHs) effective with cost reporting periods beginning on or after October 1, 2001, consistent with the statutory mandate to implement this provision by the end of the SNF PPS transition period described in section 1888(e)(2)(E) of the Act. Reimbursement under the SNF PPS is contingent upon the periodic completion of an MDS assessment, which is used to assign each beneficiary to an acuity level. Payment is then based on that acuity level. Therefore, all swing-bed providers must automate the MDS data collection and transmission process and be capable of transmitting MDS data no later than the effective date of the conversion to PPS. We anticipate that swing-bed providers will incur some incremental costs associated with automating and transmitting the MDS. Most start up costs associated with automating the MDS will be related to hardware, software, and staff training. These costs will vary with the size of each swing-bed facility, the facility's current level of computer technology, and the familiarity of staff with the MDS assessment instrument.

At the current time, a number of swing-bed hospitals also operate distinct part SNFs, and have systems in place to prepare, store, and transmit MDS assessments. We estimate that approximately 30 percent of the nation's 1,240 Medicare swing-bed providers presently have the hardware and software capability for automated MDS data collection and transmission. Other facilities may be using computers for other applications and may need to upgrade their systems to provide access to clinical and/or data entry staff within the swing-bed unit. For swing-bed hospitals that do not currently operate distinct part SNFs, we expect that a significant percentage will have either very limited capacity or no computer system at all.

Based on our experience with SNFs, we have developed this preliminary estimate of the costs a swing-bed provider can expect to incur. Costs are separated into two categories, start-up and maintenance.

- *Hardware*: We estimate total hardware costs associated with automating the MDS to be approximately $2,000 to $2,500 for a typical swing-bed provider. This amount includes the cost of a computer, communications components capable of running MDS software and transmitting MDS assessments, and a laser printer. This estimate is based on the most recent cost data available for a system that meets the specifications required by the State system. As noted earlier in this proposed rule, we expect that many swing-bed hospitals already have some computer capability and will not need to buy an entirely new system. Based on information currently available, we have no way to quantify the number of providers requiring upgrades to their existing computer systems in order to operate the MDS software. However, the cost of upgrading existing systems should be substantially less than the hardware cost estimates provided here. It is also possible that some providers may elect more sophisticated and expensive multi-user systems. However, since these systems are not generally appropriate for small facilities, are not required for SNF PPS payment purposes, we have considered this type of multi-user system to be an optional expense, and did not include it in the cost estimates. For this analysis, we assumed that all providers would purchase new hardware, and that assumption may overstate the cost estimates.

This cost estimate is based on a computer system suitable for a small business, and assumes that the facility will add applications and data files over time to support ongoing operations. We anticipate that many swing-bed hospitals will choose to purchase this type of system even though it will initially provide excess capacity, and believe that the selection is appropriate. Facilities may, of course, choose a more basic configuration at lower cost. A comparison between a small business industry standard configuration and the minimum system capable of running the necessary MDS software is shown in Table 13.A. Ongoing hardware maintenance costs for nursing homes are expected to average about $100 annually. Service contracts are also available for new PC purchases.

TABLE 13.A.—PPS COMPUTER REQUIREMENTS

Component	Small business standard	Basic MDS processing
Processor	Pentium III 933/133MH	Pentium III.
Memory	128MB sdram	32 MB.
Keyboard	Standard with PC	Standard with PC.
Monitor	17″ color monitor	14″ color monitor.
Hard Drive	20GB	100MB.
Floppy Drive	1.44MB 3.5″	1.44MB 3.5″.
Operating System	Win2000	Windows 98, NT.
Data Backup	Iomega 250MB Zip drive	Optional.
Mouse	Standard with PC	Standard with PC.
Modem	v.90 56K voice/data/fax	28.8k voice/data/fax.
Media Options	20/48X CD–Rom	Optional.
Communications software	Netscape or comparable device	Netscape or comparable device.

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TABLE 13.A.—PPS COMPUTER REQUIREMENTS—Continued

Component	Small business standard	Basic MDS processing
Applications Software	Microsoft Small Business Norton AntiVirus	Optional Anti-virus software, recommended.
Printer	Laser Printer	Laser Printer.

• *Software:* Swing-bed providers desiring only to meet the MDS data submission requirements may use RAVEN, the MDS software developed by HCFA, which is available free of charge. RAVEN allows facilities to perform the basic encoding and formatting functions, and allows users to store and retrieve MDS documents. We already provide ongoing support for the RAVEN software, and the RAVEN Help Desk will be available to swing-bed providers to resolve software or transmission problems. We expect that RAVEN will meet the needs of many small swing-bed providers.

Some facilities will choose more sophisticated software programs that can be used to meet other clinical or operational needs, such as care planning, order entry, quality assurance, or billing. There are currently over 100 vendors marketing MDS software products, and the cost of MDS software packages varies widely. Depending on the number of work stations, the level of customer support, and the scope of reporting subsystems, an MDS processing system can cost anywhere from approximately $500 to $5,000 or more per year. Generally, the higher-priced software is designed for large SNFs or multi-facility chains and would be inappropriate for a small swing-bed facility. We would expect that swing-bed facilities that choose not to use RAVEN could purchase proprietary MDS software and support services at a cost ranging from $500 to $1,200 per year. While we have considered the possibility, absent a survey of swing-bed providers, we have no way to quantify how many will elect to purchase more elaborate proprietary MDS processing systems. The extra functionality associated with these systems is not required for payment under the SNF PPS, and should be considered optional costs. However, we have included a cost range in these estimates since we do not want to discourage providers from using MDS systems for other functions, such as quality assurance.

All swing-bed providers will need a common data communications software package to transmit MDS assessments to the State. This communications package must meet our specifications related to transmission of MDS data, which represent current technology. The cost of the communications software, the anti-virus software and the most common small business suite of word processing and spread sheet computer applications is included in the cost estimate for a small business standard configuration PC system.

• *Supplies:* Supplies necessary for collection and transmission of data including diskettes, computer paper, and toner, will vary according to the size of the facility in terms of residents served and assessments required. For the average facility, supply costs should average approximately $200 per year.

• *Maintenance:* There are costs associated with normal maintenance of computer equipment, such as the replacement of disk drives or memory chips. Typically, such maintenance is provided via extended warranty agreements with the original equipment manufacturer, system reseller, or a general computer support firm. These maintenance costs are estimated to average no more than $100 per year.

L. Provider Training

We recognize our responsibility to provide initial training, as well as ongoing technical support. We are currently evaluating training options and solicit comments on training methods, vehicles, and timeframes.

VII. Provisions of the Proposed Rule

The provisions of this proposed rule are as follows:

• In § 410.150, we propose to revise paragraph (b)(14) to reflect that Part B makes payment to the SNF for its resident's services only in those situations where the SNF itself furnishes the services, either directly or under an arrangement with an outside source.

• In § 411.15, we propose to revise paragraph (p)(1) to indicate that except for physical, occupational, and speech-language therapy, consolidated billing applies only to those services that a SNF resident receives during the course of a covered Part A stay. We would also make conforming revisions in §§ 489.20(s) and 489.21(h), in the context of the requirements of the SNF provider agreement. We propose to revise paragraph (p)(2) to indicate that, for Part B services furnished to a SNF resident, the requirement to enter the SNF's Medicare provider number on the Part B claim (which previously applied only to claims for physician services) would apply to all types of Part B claims. We would also make conforming revisions in the requirements regarding claims for payment, at §§ 424.32(a)(2) and (a)(5). We would revise the wording of the existing requirement in § 424.32(a)(5) for a SNF to include appropriate HCPCS coding and its Medicare provider number on the claims that it files for its residents' services, by adding that these requirements also apply to these claims when they are filed by an outside entity. In addition, we would revise § 411.15(p)(3) to exclude from the definition of a SNF resident, for consolidated billing purposes, those individuals who reside in the noncertified portion of an institution that also contains a participating distinct part SNF.

• In accordance with section 1888(e)(2)(E) of the Act, we propose to revise § 413.114 to reimburse swing-bed services of rural hospitals (other than CAHs, which would be paid on a reasonable cost basis) under the SNF PPS described in regulations at subpart J of that part. This conversion to the SNF PPS would be effective for services furnished during cost reporting periods beginning on or after October 1, 2001. We also propose to revise paragraph (d)(1) of this section to reflect the BBRA 1999 modifications to the special requirements for swing-bed facilities with more than 49 but fewer than 100 beds (as discussed in section VI.C of this preamble), and to make a conforming revision in § 424.20(a)(2).

VIII. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), agencies are required to provide a 60-day notice in the **Federal Register** and solicit public comment when a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comments on the following issues:

• Whether the information collection is necessary and useful to carry out the proper functions of the agency;

• The accuracy of the agency's estimate of the information collection burden;

• The quality, utility, and clarity of the information to be collected; and

• Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comment on each of these issues for the information collection requirements discussed below.

§ 413.114(a)(2)—Implementing the requirement in section 1888(e)(7) of the Act for the SNF PPS to encompass swing-bed services furnished in rural hospitals will require these providers to complete MDS assessments, in accordance with the schedule prescribed in regulations at 42 CFR 413.343(b). Accordingly, we are including in this proposed rule the following discussion of the anticipated burden for rural hospitals as a result of implementing this requirement.

On December 23, 1997, we issued in the **Federal Register** a final regulation requiring Medicare-certified SNFs and Medicaid-certified nursing facilities (NFs) to encode and transmit MDS data to HCFA in electronic format (42 FR 67174). In that rule, we provided cost estimates for training staff and conducting ongoing functions related to the preparation, data entry and transmission of MDS data. The estimates presented here are based on the analysis presented in the MDS automation rule, but are updated to reflect current wage data and unique aspects of swing-bed providers. We also used 1999 claims data to calculate the number of swing-bed stays and the average length of stay. These data were used to estimate ongoing MDS-related costs.

Using the best available 1999 claims data, we identified 97,576 swing bed stays. There are currently 1,250 swing-bed facilities. The average annual number of admissions is 78 per swing-bed hospital. Using the same 1999 claims data, the average length of stay is 8.79 days. Accordingly, on average, a typical swing-bed facility would need to complete only one MDS per admission, since the PPS 5-day assessment governs payment for the first 14 days of the stay.

• *Data Entry:* Based upon our experience with SNFs, we estimate that swing-bed facilities will need to train at least one staff person to handle the data entry and MDS processing system. State agencies currently train SNF staff on these functions, and the training is generally completed in a single half-day session. Additional training materials and updates to program requirements are generally posted on the MDS web sites, and are available to staff at no cost. By distributing information electronically, and providing Help Desks for software and transmission problems, we minimize the need for staff travel, and reduce the ongoing costs associated with encoding and transmitting MDS data.

Facilities may choose among a variety of approaches to encode the MDS data in electronic format. In many SNFs, the nurses conducting the assessments input their responses directly into the computer, and the data entry time is incorporated into the MDS preparation time. In others, a data entry operator is used to input the MDS data and maintain the MDS processing system. For SNFs, the data entry function averages 15 minutes per assessment. We also expect that staff will require approximately 2 hours per month to perform system-related functions such as processing corrections, retrieving assessment information, printing copies, verifying the accuracy of the data entered into the system, and reviewing program updates and training materials.

The hourly rate for data entry was estimated at $15, and reflects the salary differentials between the two types of staff typically performing this function: RNs and data operators.

• *Electronic Transmission:* Swing-bed staff will also need training on data transmission procedures. Again, state agencies have already developed training programs in this area, and this training will be available to swing-bed personnel. Generally, a facility would send one person to a half-day training program. This individual would be responsible for handling data transmission functions, and would be expected to train other facility staff on a time-available basis. We will make the MDS transmission system available to swing-bed providers prior to the effective date of the transition to the SNF PPS, and allow staff to practice transmission procedures. We would expect that each swing-bed provider would have successfully transmitted at least one MDS data file prior to the updated SNF PPS effective date. Once the designated individual has been trained, we estimate that the MDS transmission will take approximately one hour per month.

The hourly rate of data transmission was estimated at $15, and reflects the salary differentials between the two types of staff typically performing this function: RNs and data operators.

• *MDS Coding:* Training time will vary depending on the familiarity of swing-bed staff with MDS coding procedures and the presence of a hospital-based SNF that is already subject to the SNF PPS requirements. Many swing-bed hospital employees may have prior experience in a SNF where they were trained in MDS coding procedures. In addition, in 1999, approximately 25 percent of swing-bed hospitals also had hospital-based SNF facilities, and have a pool of trained staff who can assist swing-bed employees with MDS coding procedures. Regardless of the amount of inhouse support available, we believe it is advisable for each swing-bed hospital to designate an RN to assume lead responsibility, and to ensure that this RN is fully trained. We estimate that the initial training in MDS clinical coding and SNF PPS assessment scheduling will require two days.

Based upon the experience SNFs have had in completing the MDS, we estimate that it generally takes 45 minutes to complete a comprehensive assessment. We considered reducing this estimate for swing-bed providers for two reasons. First, the requirements for comprehensive assessments which are mandated under the Omnibus Budget Reconciliation Act of 1987, Pub.L. 100–203 (OBRA 1987) are somewhat higher than those applicable to the SNF PPS assessments. Second, SNF staff generally have limited knowledge concerning the care the patient received prior to the SNF admission, and limited access to the records from the prior hospital stay. As a result, the RN in the SNF conducting a 5-day PPS assessment has to build a completely new knowledge base about the patient's condition and care needs. By contrast, in a swing-bed hospital, the staff caring for the patient have the advantages of observing the patient during the acute portion of the stay, and should have more information already available when completing the SNF PPS 5-day assessment. However, rather than reducing the time estimate, we are using the higher number to reflect the expected learning curve over the first year as staff become more familiar with and proficient in completing the MDS.

As stated above, swing-bed providers averaged 78 stays per year with an average swing-bed length of stay of slightly under 9 days. Therefore, swing-bed providers would generally complete just one SNF PPS assessment for most patients; i.e., the 5-day assessment that governs payment for the first 14 days of a stay.

Although our projections are based on the most recent available data, and indicate that swing-bed providers will generally complete only one MDS per beneficiary during the course of a swing-bed stay, we are aware that this

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utilization pattern could change. We note that the restrictions on beneficiary length of stay and the caps on the percentage of bed days that could be used for swing-bed service were eliminated by section 408 of BBRA 1999, effective with cost reporting periods beginning on and after October 1, 2002. With this added flexibility, swing-bed providers may decide to adjust their admission practices, and may serve more patients requiring longer lengths of stay. If this change occurs, swing-bed staff may be required to perform additional MDS assessments. Therefore, we plan to monitor swing-bed utilization patterns to identify any changes in provider practices and evaluate the impact of these changes on swing-bed performance under the SNF PPS. However, for the current analysis, we have used the best available historical data to project future experience.

To calculate the costs of preparing the MDS, we used 1998 Bureau of Labor Statistics nursing wage data including fringe benefits, updated to FY 2002 levels using the SNF market basket factor. The average hourly rate of $24.70 is used in the calculations shown in Table 13.B. The Aggregate Cost-Basic Option column estimates are based on October, 2000 data showing 1,250 certified swing-bed providers. The aggregate calculations assume that all providers chose either the basic or small business option. Absent a survey of all providers, we have no way to quantify the number of providers requiring upgrades to existing computer systems in order to operate the MDS software. We have assumed purchase of a new system for all providers, which may result in an overstatement of actual anticipated costs. The Basic Option-Cost/Facility Hardware estimate includes a laser printer, operating software, basic applications software, including Word 2000 and Excel 2000, and a one year service agreement and anti-virus software. The Small Business Option-Cost/Facility Hardware estimate includes a laser printer, operating software, Microsoft Office Suite applications software, anti-virus software, and a one year service agreement. The Communications Software estimate reflects the cost of Netscape or other communications software. It is assumed that swing-bed providers will use the free RAVEN software for MDS processing. This software was developed and tested by HCFA, and has been widely used by both hospital-based and freestanding SNFs during the past three years. We cannot quantify the number of providers who will choose to purchase proprietary systems, and therefore have included a cost range. We believe that the free RAVEN software, along with the associated Help Desk Services will meet the needs of most providers. The use of proprietary systems should be considered an optional cost.

TABLE 13.B.—SWING-BED RURAL HOSPITAL COST OF COMPLETING MDS

Category	Basic option-cost/facility	Small business option—cost/facility	Aggregate cost—basic option	Aggregate cost—small business option
Hardware	$1,400.00	$2,100.00	$1,750,000.00	$2,625,000.00
Comm. Software	100.00	100.00	125,000.00	125,000.00
MDS Software	0–1,200.00	0–1,200.00	0–1,500,000.00	0–1,500,000.00
Staff Training—MDS Coding	494.00	494.00	617,500.00	617,500.00
Staff Training—Entry and Transmission	240.00	240.00	300,000.00	300,000.00
Start Up Costs	2,234.00	2,934.00	2,792,500.00	3,667,500.00
MDS Preparation	1,445.00	1,445.00	216,750.00	216,750.00
MDS Entry	292.50	292.50	365,625.00	365,625.00
MDS Transmission	180.00	180.00	225,000.00	225,000.00
Supplies	200.00	200.00	250,000.00	250,000.00
Maintenance	100.00	100.00	125,000.00	125,000.00
Operating Cost	2,217.50	2,217.50	1,182,375.00	1,182,375.00
Estimated First Year Costs	4,451.50–5,551.50	5,151.50–6,351.50	3,974,875.00–5,474,875.00	4,849,875.00–6,349,875.00

§ 424.32(a)(5)—We propose to revise section 424.32(a)(5) to reflect the new statutory requirement that all Part B claims for services furnished to SNF residents must include the SNF's Medicare provider number. Because the burden associated with this additional requirement is incidental to the completion of a claim, we are unable to estimate the burden associated with this new requirement, and explicitly solicit comment. As a result of this new requirement, we will be revising the OMB clearance package for the HCFA–1500 (Common Claim Form), OMB number 0938–0008, which is currently being reviewed by OMB for re-approval.

We have submitted a copy of this proposed rule to OMB for its review of the information collection requirements in §§ 413.411(a)(2) and 424.32(a)(5). These requirements are not effective until they have been approved by OMB.

If you have any comments on any of these information collection and record keeping requirements, please mail one original and three copies within 60 days of the publication date directly to the following:

Health Care Financing Administration, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, Attn: John Burke, HCFA–1163–P.

And: Office of Information and Regulatory Affairs, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer.

IX. Regulatory Impact Analysis

We have examined the impact of this rule as required by Executive Order (EO) 12866, the Unfunded Mandate Reform Act (UMRA, Public Law 104–4), the Regulatory Flexibility Act (RFA, Public Law 96–354), and the Federalism Executive Order (EO) 13132.

Executive Order 12866 directs agencies to assess costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). This proposed rule is a major rule as defined in Title 5, United States Code, section 804(2), because we estimate its impact will be to increase the payments to SNFs by approximately $300 million in FY 2002. The update set forth in this proposed rule applies to payments in FY 2002. Accordingly, the analysis that follows describes the impact of this one year only. In accordance with the requirements of the Act, we will publish a notice for each subsequent FY that will provide for an update to the payment rates and include an associated impact analysis.

The UMRA also requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure in any year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more. This rule will have no consequential effect on State, local, or tribal governments. We believe the private sector cost of this rule falls below these thresholds as well.

Executive Order 13132 (effective November 2, 1999) establishes certain requirements that an agency must meet when it promulgates regulations that impose substantial direct compliance costs on State and local governments, preempt State law, or otherwise have Federalism implications. As stated above, this rule will have no consequential effect on State and local governments.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and governmental agencies. Most SNFs and most other providers and suppliers are small entities, either by virtue of their nonprofit status or by having revenues of $10 million or less annually. For purposes of the RFA, all States and tribal governments are not considered to be small entities, nor are intermediaries or carriers. Individuals and States are not included in the definition of a small entity.

The policies contained in this proposed rule would update the SNF PPS rates by increasing the payment rates published in the July 31, 2000 notice (65 FR 46770). While we do not believe that this will have a significant effect upon small entities overall, some individual providers may experience significant increases in payments, while others (those that are concluding their final year under the transition from facility-specific to full Federal rates) may experience significant decreases, as discussed later in this section.

In addition, section 1102(b) of the Act requires us to prepare an RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. We have examined the impact on the 1,250 swing-bed facilities that would start receiving payment under the SNF PPS effective with cost reporting periods beginning on or after October 1, 2001, and find that the payments to these facilities will increase overall. Some swing-bed facilities may receive significant increases in Medicare related payments, as described later in this section. Accordingly, the following analysis includes a specific examination of the projected impact of these provisions on small rural hospitals.

A. Background

Section 1888(e) of the Act establishes the SNF PPS for the payment of Medicare SNF services for periods beginning on or after July 1, 1998. This section specifies that the base year cost data to be used for computing the RUG–III payment rates must be from FY 1995 (that is, October 1, 1994, through September 30, 1995.) In accordance with the statute, we also incorporated a number of elements into the SNF PPS, such as case-mix classification methodology, the MDS assessment schedule, a market basket index, a wage index, and the urban and rural distinction used in the development or adjustment of the Federal rates.

This proposed rule sets forth updates of the SNF PPS rates contained in the July 31, 2000 final rule (65 FR 46770). Table 14 presents the projected effects of the policy changes in the SNF PPS from FY 2001 to FY 2002, as well as statutory changes effective for FY 2001 and FY 2002. In so doing, we estimate the effects of each policy change by estimating payments while holding all other payment variables constant. We use the best data available, but we do not attempt to predict behavioral responses to our policy changes, and we do not make adjustments for future changes in such variables as days or case-mix.

This analysis incorporates the latest estimates of growth in service use and payments under the Medicare SNF benefit based on the latest available Medicare claims data and MDS 2.0 assessment data from 1999. We plan to update this data in the final rule. We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, very susceptible to forecasting errors due to other changes in the forecasted impact time period. Some examples of such possible events are newly legislated general Medicare program funding changes by the Congress, or changes specifically related to SNFs. In addition, changes to the Medicare program may continue to be made as a result of BBA 1997, BBRA 1999, BIPA 2000 or new statutory provisions. Although these changes may not be specific to SNF PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon SNFs.

B. Impact of the Proposed Rule

The purpose of this proposed rule is not to initiate significant policy changes with regard to the SNF PPS; rather, it is to provide an update to the rates for FY 2002. We believe that the revisions and clarifications mentioned elsewhere in the preamble (for example, the update to the wage index used for adjusting the Federal rates) will have, at most, only a negligible overall effect upon the regulatory impact estimate specified in the rule. As such, these revisions will not represent an additional burden to the industry.

The aggregate increase in payments associated with this proposed rule is estimated to be $300 million. The effect of the 20 percent add-on from BBRA 1999 is $1.0 billion; however, since this add-on became effective in FY 2001, it has already been reflected in the impact analysis for last year's final rule (65 FR 46770) and, thus, does not represent a new, additional impact for the FY 2002 payment rates. There are three areas of change that produce this increase for facilities:

1. The effect of facilities being paid the full Federal rate.

2. The implementation of provisions in BIPA 2000, such as the 16.6 percent increase in the nursing component of each RUG and the elimination of the one percent reduction in the SNF market basket for FY 2001.

3. The total change in payments from FY 2001 levels to FY 2002 levels. This includes all of the previously noted changes in addition to the effect of the update to the rates.

As seen in Table 14, some of these areas are expected to result in increased aggregate payments and others are expected to tend to lower them. The breakdown of the various categories of data in the table is as follows:

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The first row of figures in the table describes the estimated effects of the various policies on all facilities. The next six rows show the effects on facilities split by hospital-based, freestanding, urban and rural categories. The remainder of the table shows the effects on urban versus rural status by census region.

The second column in the table shows the number of facilities in the impact database. The third column shows the effect of the expiration of the transition and movement to the full Federal rates for all SNFs. This change has an overall effect of lowering payments by an estimated 8.5 percent, affecting hospital-based facilities more than freestanding facilities. The main reason for such a large decrease is the BBRA 1999 provision that allowed facilities to choose the full Federal rate. When given the option to do so, an estimated 43 percent of the facilities elected to go to the full Federal rate. This meant that the only facilities left to transition to the full Federal rate are ones for which the expiration of the transition will cause a decrease in reimbursement. In contrast, those facilities receiving the full Federal rate will experience an 11.6 percent increase in payments. The overall effect, therefore, reduced reimbursement, but the effects across regions are quite variable.

The fourth column shows the projected effect of the 16.66 percent add-on to the nursing portion of the Federal rate mandated by BIPA 2000. As expected, this results in an increase in payments for all facilities; however, as seen in the table, the varying effect of the SNF PPS transition results in a distributional impact. In addition, since this increase only applies to the nursing portion of the payment rate, the effect on total expenditures is less than 16.66 percent.

The fifth column of the table shows the effect of the change in the add-on for the rehabilitation RUGs. The total impact of this change is zero percent; however, there are distributional effects of this change, as seen in the table.

The sixth column of the table shows the effect of all of the changes on the FY 2002 payments. This includes all of the previous changes, including the update to this year's payment rates by the market basket. Rebasing of the market basket index from 1992 to 1997 had little impact on the overall changes displayed in this column. It is projected that payments will increase by 2.1 percent in total, assuming facilities do not change their care delivery and billing practices in response. As can be seen from this table, the combined effects of all the changes vary widely by specific types of providers and by location. For example, freestanding facilities experience payment increases, while the effects of the transition cause decreases in payments for hospital-based providers.

TABLE 14.—PROJECTED IMPACT OF FY 2002 UPDATE TO THE SNF PPS

	Number of facilities	Transition to federal rates (percent)	Add-on to nursing rates (percent)	Add-on to rehab RUGs (percent)	Total FY 2002 change (percent)
Total	9037	−8.5	7.9	0.0	2.1
Urban	6300	−9.0	8.0	0.1	1.7
Rural	2737	−6.7	7.5	−0.5	3.2
Hospital based urban	683	−14.7	8.5	−0.8	−5.1
Freestanding urban	5617	−8.1	7.9	0.3	2.8
Hospital based rural	533	−9.7	8.2	−2.0	−1.0
Freestanding rural	2204	−6.2	7.4	−0.3	3.9
Urban by region.					
New England	630	−3.9	8.1	0.2	7.6
Middle Atlantic	877	−2.9	8.4	−1.7	7.0
South Atlantic	959	−10.5	7.7	0.8	0.5
East North Central	1232	−7.6	7.8	0.9	3.9
East South Central	212	−8.8	7.8	0.4	2.1
West North Central	469	−10.6	7.9	0.1	−0.2
West South Central	519	−19.5	8.1	0.1	−9.9
Mountain	303	−17.3	7.5	1.5	−6.7
Pacific	1070	−13.9	8.0	0.5	−3.4
Rural by region.					
New England	88	−0.9	7.5	−0.4	9.7
Middle Atlantic	144	−4.4	7.7	−1.5	4.9
South Atlantic	373	−5.3	7.5	0.1	5.4
East North Central	561	−5.1	7.4	0.0	5.4
East South Central	255	−5.1	7.9	−2.6	3.1
West North Central	581	−8.2	7.7	−1.4	0.8
West South Central	354	−14.9	7.5	0.2	−5.2
Mountain	204	−11.6	7.2	−0.1	−2.1
Pacific	151	−7.4	7.2	0.6	3.3

In accordance with section 1888(e)(7) of the Act, we propose to pay rural hospitals for SNF-level swing-bed services under the SNF PPS effective with cost report periods beginning on and after October 1, 2001. In making this proposal, we have examined the anticipated impact of this payment change on swing-bed facilities.

We analyzed data from swing-bed claims for calendar years 1996 through 1998 to determine Medicare payments made under the current swing-bed payment system. The claims data reflect the predetermined routine cost payments and the interim payment for ancillary services. While the interim payment rate for ancillary services is subject to final cost settlement, it represents a reasonable proxy for actual swing-bed payments.

We then adjusted the historical data on swing-bed payments to 2002 levels. For calendar years 1999 through 2001, we projected the average payment per day, using the 6.5 percent growth rate calculated from the most recent available data from calendar years 1997 and 1998. For 2002, we used a blended growth rate that reflects a projected increase in payment for routine services equal to the market basket of 2.4 percent, but retains the historical growth factor of 6.5 percent for ancillary payments. In 1998, the average payment per day was $205.41. The estimated swing-bed payment per day for 2002 under the existing method of reimbursement is $258.41.

We then estimated the amount that would have been paid for the same services under the SNF PPS. This estimate reflected both adjustments for geographic variation and case-mix. For the geographic adjustment, we used the average rural wage index for FY 2001 (that is, 0.8700). For case-mix, although Medicare swing-bed claims do not include all of the data elements necessary to classify patients in exactly the same way as the patients would be classified in the RUG–III system, there is enough information to assign Medicare swing-bed patients to RUG–III categories at a general level. To generate this classification, we used the MEDPAR case-mix analog described in detail in the SNF PPS interim final rule published on May 12, 1998 (63 FR 26252). As a result, we were able to estimate how the national swing-bed population would classify into RUG–III categories. We found that 69 percent of the covered days would be assigned to just two RUG–III categories (or six groups): medium rehabilitation and extensive services.

We also noted that 9 percent of the covered days were assigned to categories that are not typically associated with a Medicare level of care (impaired cognition and lower groups). We have not assumed that these claims were paid in error. Rather, we are assuming that these patients had skilled care needs other than ones that could be captured using the MEDPAR case-mix analog, and we have included these stays in our analysis.

TABLE 15.—RUG–III FREQUENCY DISTRIBUTION USING CALENDAR YEAR 1999 CLAIMS

RUG–III category level	Number of days paid	Percent of total days
Ultra High Rehab	30,618	3
Very High Rehab	33,687	4
High Rehab	76,596	9
Medium Rehab	264,614	30
Low Rehab	58,016	7
Extensive Services	288,131	33
Special Care	11,540	1
Clinically Complex	35,304	4
Impaired Cognition	4,737	1
Other	72,293	8
Totals	875,536	100

Our next step was to project the SNF PPS payments for these swing-bed services. For the purposes of this analysis, we used the calendar year frequency distribution and number of covered swing-bed days shown in Table 15. Unique nursing case-mix weights have already been developed for each level of the MEDPAR case-mix analog. These weights were used to adjust the proposed FY 2002 rural SNF PPS rates set forth in this proposed rule to determine the SNF PPS rates used in this estimate. We adjusted these rates for all BBRA and BIPA add-ons applicable for FY 2002.

Based on our analysis, the FY 2002 SNF PPS payment amount exceeds the projected payments under the current swing-bed payment system for that year in 5 of the 10 case-mix analog categories that included 79 percent of the swing bed days. In fact, for the two most common RUG-III categories, medium rehabilitation and extensive services, the projected increases are substantial: 14 percent for medium rehabilitation and 16 percent for extensive services. In addition, records in two of the categories where the projected SNF PPS rate is lower than the projected swing-bed payment amount under the present system (impaired cognition and other) group into much higher categories when using the full RUG–III algorithm.

In terms of aggregate Medicare expenditures, we estimate that the transition to SNF PPS will increase payments for SNF-level swing-bed services by 9 percent, or approximately $20 million, while the aggregate costs will be approximately $20 million in benefits and 6.32 million for completion of the MDS assessments.

Based on these estimates, we believe the financial impact on swing-bed providers will be positive, with the anticipated 9 percent payment increase serving to offset the estimated start-up costs associated with MDS completion and transmission (described in section VI.K of this proposed rule).

Finally, in accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

X. Federalism

We have reviewed this proposed rule under the threshold criteria of Executive Order 13132, Federalism, and we have determined that it does not significantly affect the rights, roles, and responsibilities of States.

List of Subjects

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 411

Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 413

Health Facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare.

42 CFR Part 482

Grant programs-health, Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 42 CFR chapter IV is proposed to be amended as follows:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

1. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

* * * * *

Subpart I—Payment of SMI Benefits

2. In § 410.150, the introductory text of paragraph (b) is republished, and paragraph (b)(14) is revised to read as follows:

§ 410.150 To whom payment is made.

* * * * *

(b) *Specific rules.* Subject to the conditions set forth in paragraph (a) of this section, Medicare Part B pays as follows:

* * * * *

(14) To an SNF for services (other than those described in § 411.15(p)(2) of this chapter) that it furnishes to a

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resident (as defined in § 411.15(p)(3) of this chapter) of the SNF who is not in a covered Part A stay.

* * * * *

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

3. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart A—General Exclusions and Exclusion of Particular Services

4. In § 411.15, paragraph (p)(1) is revised, and paragraph (p)(2) introductory text, paragraph (p)(2)(i), and paragraph (p)(3) introductory text are revised to read as follows:

§ 411.15 Particular services excluded from coverage.

* * * * *

(p) *Services furnished to SNF residents.* (1) *Basic rule.* Except as provided in paragraph (p)(2) of this section, any service furnished to a resident of an SNF during a covered Part A stay by an entity other than the SNF, unless the SNF has an arrangement (as defined in § 409.3 of this chapter) with that entity to furnish that particular service to the SNF's residents. Services subject to exclusion under this paragraph include, but are not limited to—

(i) Any physical, occupational, or speech-language therapy services, regardless of whether the services are furnished by (or under the supervision of) a physician or other health care professional, and regardless of whether the resident who receives the services is in a covered Part A stay; and

(ii) Services furnished as an incident to the professional services of a physician or other health care professional specified in paragraph (p)(2) of this section.

(2) *Exceptions.* The following services are not excluded from coverage, provided that the claim for payment includes the SNF's Medicare provider number in accordance with § 424.32(a)(5) of this chapter:

(i) Physicians' services that meet the criteria of § 415.102(a) of this chapter for payment on a fee schedule basis.

* * * * *

(3) *SNF resident defined.* For purposes of this paragraph, a beneficiary who is admitted to a Medicare-participating SNF is considered to be a resident of the SNF. Whenever the beneficiary leaves the facility, the beneficiary's status as an SNF resident for purposes of this paragraph (along with the SNF's responsibility to furnish or make arrangements for the services described in paragraph (p)(1) of this section) ends when one of the following events occurs—

* * * * *

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

5. The authority citation for part 413 is amended to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1871, 1881, 1883, 1886, and 1888 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395(f)b, 1395g, 1395l(a), (i), and (n), 1395hh, 1395rr, 1395tt, 1395ww, and 1395yy).

Subpart F—Specific Categories of Costs

6. In § 413.114:

a. Paragraph (a) is revised.

b. In paragraph (c), the heading is revised.

c. Paragraph (d)(1) introductory text is revised.

§ 413.114 Payment for posthospital SNF care furnished by a swing-bed hospital.

(a) *Purpose and basis.* This section implements section 1883 of the Act, which provides for payment for posthospital SNF care furnished by rural hospitals and CAHs having a swing-bed approval.

(1) *Services furnished in cost reporting periods beginning prior to October 1, 2001.* Posthospital SNF care furnished in general routine inpatient beds in rural hospitals and CAHs is paid in accordance with the special rules in paragraph (c) of this section for determining the reasonable cost of this care. When furnished by rural and CAH swing-bed hospitals approved after March 31, 1988 with more than 49 beds (but fewer than 100), these services must also meet the additional payment requirements set forth in paragraph (d) of this section.

(2) *Services furnished in cost reporting periods beginning on and after October 1, 2001.* Posthospital SNF care furnished in general routine inpatient beds in rural hospitals (other than CAHs) is paid in accordance with the provisions of the prospective payment system for SNFs described in subpart J of this part. Posthospital SNF care furnished in general routine inpatient beds in CAHs is paid based on reasonable cost, in accordance with the provisions of subparts A through G of this part (other than paragraphs (c) and (d) of this section).

* * * * *

(c) *Special rules for determining the reasonable cost of posthospital SNF care furnished in cost reporting periods beginning prior to October 1, 2001.*

(d) *Additional requirements*—(1) *General rule.* For services furnished in cost reporting periods beginning prior to October 1, 2001, in order for Medicare payment to be made to a swing-bed hospital with more than 49 beds (but fewer than 100), the following payment requirements must be met:

* * * * *

7. In § 413.337, paragraph (e) is added to read as follows:

§ 413.337 Methodology for calculating the prospective payment rates.

* * * * *

(e) Pursuant to section 101 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA) and revised by section 314 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), using the best available data, the Secretary will issue a new regulation with a newly refined case-mix classification system to better account for medically complex patients. Upon issuance of the new regulation, the temporary increases in payment for certain high cost patients will no longer be applicable.

* * * * *

PART 424—CONDITIONS FOR MEDICARE PAYMENT

8. The authority citation for part 424 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

9. In § 424.20(a)(2), the heading is revised to read as follows:

§ 424.20 Requirements for posthospital SNF care.

(a) * * *

(2) *Special requirement for certifications performed prior to October 1, 2001: A swing-bed hospital with more than 49 beds (but fewer than 100) that does not transfer a swing-bed patient to a SNF within 5 days of the availability date.* * * *

* * * * *

Subpart C—Claims for Payment

10. In § 424.32, the introductory text of paragraph (a) is republished, and paragraphs (a)(2) and (a)(5) are revised.

§ 424.32 Basic requirements for all claims.

(a) A claim must meet the following requirements:

* * * * *

(2) A claim for physician services, clinical psychologist services, or clinical social worker services must include appropriate diagnostic coding for those services using ICD–9–CM.

* * * * *

(5) All Part B claims for services furnished to SNF residents (whether filed by the SNF or by another entity) must include the SNF's Medicare provider number and appropriate HCPCS coding.

* * * * *

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

11. The authority citation for part 489 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Essentials of Provider Agreements

12. In § 489.20, the introductory text is republished, and the introductory text of paragraph (s) is revised.

§ 489.20 Basic commitments.

The provider agrees to the following:

* * * * *

(s) In the case of an SNF, either to furnish directly or make arrangements (as defined in § 409.3 of this chapter) for any physical, occupational, or speech-language therapy services furnished to a resident of the SNF under § 411.15(p) of this chapter (regardless of whether the resident is in a covered Part A stay), and also either to furnish directly or make arrangements for all other Medicare-covered services furnished to a resident during a covered Part A stay, except the following:

* * * * *

13. In § 489.21, the introductory text is republished, and paragraph (h) is revised to read as follows:

§ 489.21 Specific limitations on charges.

Except as specified in subpart C of this part, the provider agrees not to charge a beneficiary for any of the following:

* * * * *

(h) Items and services (other than those described in § 489.20(s)(1) through (15)) required to be furnished under § 489.20(s) to a resident of an SNF (defined in § 411.15(p) of this chapter), for which Medicare payment would be made if furnished by the SNF or by other providers or suppliers under arrangements made with them by the SNF. For this purpose, a charge by another provider or supplier for such an item or service is treated as a charge by the SNF for the item or service, and is also prohibited.

Note: This appendix will not appear in the Code of Federal Regulations.

Appendix—Technical Features of the Proposed 1997 Skilled Nursing Facility Market Basket Index

As discussed in the preamble of this proposed rule, we propose to revise and rebase the SNF market basket. This appendix describes the technical aspects of the 1997-based index that we are proposing in this rule. We present this description of the market basket in three steps:

- A synopsis of the structural differences between the 1992-and the 1997-based market baskets.
- A description of the methodology used to develop the cost category weights in the proposed 1997-based market basket.
- A description of the data sources used to measure price change for each component of the proposed 1997-based market basket, making note of the differences, if any, from the price proxies used in the 1992-based market basket.

I. Synopsis of Structural Changes Adopted in the Proposed Revised and Rebased 1997 Skilled Nursing Facility Market Basket

We are proposing just one major structural change between the current 1992-based and the proposed 1997-based SNF market baskets, which is that more recent SNF cost data would be used in the proposed revised and rebased SNF market basket.

The proposed 1997-based market basket contains cost shares for six major cost categories that were derived from an edited set of FY 1997 Medicare Cost Reports for freestanding SNFs that had Medicare expenses. FY 1997 cost reports have cost reporting periods beginning after September 30, 1996 and before October 1, 1997. The 1992-based market basket used data from the PPS–9 Medicare Cost Reports for freestanding SNFs with Medicare expenses greater than 1 percent of total expenses. PPS–9 cost reports have cost reporting periods beginning after September 30, 1991 and before October 1, 1992. Cost allocations for the proposed 1997-based SNF market basket within the six major cost categories use Medicare Cost Reports and two Department of Commerce data sources: the 1997 Business Expenditures Survey, Bureau of the Census, Economics and Statistics Administration, and the 1997 Bureau of Economic Analysis' Annual Input-Output tables.

II. Methodology for Developing the Cost Category Weights

Cost category weights for the proposed 1997-based market basket were developed in two stages. First, base weights for six main categories (wages and salaries, employee benefits, contract labor, pharmaceuticals, capital-related expenses, and a residual "all other") were derived from the SNF Medicare Cost Reports described above. The residual "all other" cost category was divided into subcategories, using U.S. Department of Commerce data sources for the nursing home industry. Relationships from the 1997 Business Expenditures Survey and data from the 1997 Annual Input-Output tables were used to allocate the all other cost category.

Below we describe the source of the main category weights and their subcategories in the proposed 1997-based market basket.

- *Wages and Salaries:* The wages and salaries cost category is derived using 1997 SNF Medicare Cost Reports. The share was determined using wages and salaries from Worksheet S–3, part II and total expenses from Worksheet B. This share represents the wage and salary share of costs for employees of the nursing home, and does not include the wages and salaries from contract labor, which is allocated to wages and salaries at a later step.
- *Employee Benefits:* The weight for employee benefits was determined using 1997 Medicare Cost Reports. The share was derived using wage-related costs from Worksheet S–3, part II.
- *Contract Labor:* The weight for the contract labor cost category was derived using 1997 Medicare Cost Reports. For the proposed 1997-based SNF market basket, we used an edited group of cost reports with data filled in for contract labor on Worksheet S–3, part II. This methodology differed from that of the 1992 SNF market basket (where we estimated contract labor costs using data from Worksheet A) since Worksheet S–3, part II, was not available in the 1992 Cost Reports. This methodology produces results that are similar to the contract labor share in the 1997 Business Expenditures Survey. Contract labor was not available in the 1992 Asset and Expenditure Survey. As explained in the preamble, contract labor costs were distributed between the wages and salaries and employee benefits cost categories, under the assumption that contract costs should move at the same rate as direct labor costs even though unit labor cost levels may be different.
- *Pharmaceuticals:* The pharmaceuticals cost weight was derived from 1997 SNF Medicare Cost Reports. This share was calculated using non-salary costs from the pharmacy and drugs charged to patients' cost centers from Worksheet A.
- *Capital-Related:* The weight for the overall capital-related expenses cost category was derived using 1997 SNF Medicare Cost Report data from Worksheet B. The subcategory and vintage weights within the overall capital-related expenses were derived using additional data sources. The methodology for deriving these weights is described below.

In determining the subcategory weights for capital, we used a combination of information from the 1997 SNF Medicare Cost Reports and the 1997 Census Business Expenditures Survey. We estimated the depreciation expense share of capital-related expenses from the SNF Medicare Cost Reports using data from edited cost reports with data completed on Worksheet G. For the 1992-based SNF market basket, we had used depreciation expenses from the 1992 Asset

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and Expenditure Survey. When we calculated the ratio of depreciation to wages from the 1997 SNF Medicare Cost Reports, the result was consistent with the ratio from the 1997 Business Expenditures Survey. The distribution between building and fixed equipment and movable equipment was determined from the 1997 Business Expenditures Survey. From these calculations, depreciation expenses (not including depreciation expenses implicit from leases) were estimated to be 33.2 percent of total capital-related expenditures in 1997.

The interest expense share of capital-related expenses was also derived from the same edited 1997 SNF Medicare Cost Reports. Interest expenses are not identifiable in the 1997 Business Expenditures Survey. We determined the split of interest expense between for-profit and not-for-profit facilities based on the distribution of long-term debt outstanding by type of SNF (for-profit or not-for-profit) from the 1997 SNF Medicare Cost Reports. Interest expense (not including interest expenses implicit from leases) was estimated to be 24.3 percent of total capital-related expenditures in 1997.

We used the 1997 Business Expenditures Survey to estimate the proportion of capital-related expenses attributable to leasing building and fixed and movable equipment. This share was estimated to be 34.9 percent of capital-related expenses in 1997. The split between fixed and movable lease expenses was directly available from the 1997 Business Expenditures Survey. We used this split, and the distribution of depreciation and interest calculated above to distribute leases among these cost categories. The remaining residual is considered to be other capital-related expenses (insurance, taxes, other). Other capital-related expenses were estimated to be 7.7 percent of total capital-related expenditures in 1997.

Table A–1 shows the capital-related expense distribution (including expenses from leases) in the proposed 1997 SNF PPS market basket and the 1992 SNF market basket.

TABLE A–1.—CAPITAL-RELATED EXPENSE DISTRIBUTION

	1992-based SNF capital-related expenses *	Proposed 1997-based SNF capital-related expenses *
Total	100.0	100.0
Depreciation	60.5	53.3
Building and Fixed Equipment	42.1	36.5
Movable equipment	18.4	16.8
Interest	32.6	39.0
Other capital-related expense	6.9	7.7

* As a percent of Total Capital-Related Expenses.

As explained in section III.B of the preamble, our methodology for determining the price change of capital-related expenses accounts for the vintage nature of capital, which is the acquisition and use of capital over time. In order to capture this vintage nature, the price proxies must be vintage-weighted. The determination of these vintage weights occurs in two steps. First, we must determine the expected useful life of capital and debt instruments in SNFs. Second, we must identify the proportion of expenditures within a cost category that are attributable to each individual year over the useful life of the relevant capital assets, or the vintage weights.

The derivation of useful life of capital is explained in detail in the May 12, 1998 interim final rule (63 FR 26252). The useful lives for the proposed 1997-based SNF market basket are the same as the 1992-based SNF market basket. The data source that was previously used to develop the useful lives of capital is no longer available and a suitable replacement has not been identified. We welcome comments on any data sources that would provide the necessary information for determining useful lives of capital and debt instruments.

Given the expected useful life of capital and debt instruments, we must determine the proportion of capital expenditures attributable to each year of the expected useful life by cost category. These proportions represent the vintage weights. We were not able to find an historical time series of capital expenditures by SNFs. Therefore, we approximated the capital expenditure patterns of SNFs over time using alternative SNF data sources. For building and fixed equipment, we used the stock of beds in nursing homes from the HCFA National Health Accounts for 1962 through 1997. We then used the change in the stock of beds each year to approximate building and fixed equipment purchases for that year. This procedure assumes that bed growth reflects the growth in capital-related costs in SNFs for building and fixed equipment. We believe this assumption is reasonable since the number of beds reflects the size of the SNF, and as the SNF adds beds, it also adds fixed capital.

For movable equipment, we used available SNF data to capture the changes in intensity of SNF services that would cause SNFs to purchase movable equipment. We estimated the change in intensity as the trend in the ratio of non-therapy ancillary costs to routine costs from the 1989 through 1997 SNF Medicare Cost Reports. We estimated this ratio for 1962 through 1988 using regression analysis. The time series of the ratio of non-therapy ancillary costs to routine costs for SNFs measures changes in intensity in SNF services, which are assumed to be associated with movable equipment purchase patterns. The assumption here is that as non-therapy ancillary costs increase compared with routine costs, the SNF caseload becomes more complex and would require more movable equipment. Again, the lack of direct movable equipment purchase data for SNFs over time required us to use alternative SNF data sources. The resulting two time series, determined from beds and the ratio of non-therapy ancillary to routine costs, reflect real capital purchases of building and fixed equipment and movable equipment over time, respectively.

To obtain nominal purchases, which are used to determine the vintage weights for interest, we converted the two real capital purchase series from 1963 through 1997 determined above to nominal capital purchase series using their respective price proxies (Boeckh institutional construction index and PPI for machinery and equipment). We then combined the two nominal series into one nominal capital purchase series for 1963 through 1997. Nominal capital purchases are needed for interest vintage weights to capture the value of the debt instrument.

Once these capital purchase time series were created for 1963 through 1997, we averaged different periods to obtain an average capital purchase pattern over time. For building and fixed equipment we averaged thirteen 23-year periods, for movable equipment we averaged twenty-six 10-year periods, and for interest we averaged fourteen 22-year periods. The vintage weight for a given year is calculated by dividing the capital purchase amount in any given year by the total amount of purchases during the expected useful life of the equipment or debt instrument. This methodology was described in full in the May 12, 1998 **Federal Register** (63 FR 26252). The resulting vintage weights for each of these cost categories are shown in Table A–2.

APPENDIX TABLE A–2.—VINTAGE WEIGHTS FOR PROPOSED 1997-BASED SNF PPS CAPITAL-RELATED PRICE PROXIES

Year	Building and fixed equipment	Movable equipment	Interest
1	0.082	0.083	0.025
2	0.086	0.088	0.028
3	0.085	0.089	0.031
4	0.083	0.090	0.034
5	0.077	0.091	0.038
6	0.069	0.097	0.042
7	0.063	0.106	0.046
8	0.060	0.111	0.049
9	0.050	0.116	0.051
10	0.040	0.128	0.051
11	0.040	.....	0.052
12	0.036	.....	0.053
13	0.030	.....	0.051
14	0.020	.....	0.050
15	0.016	.....	0.049
16	0.014	.....	0.048
17	0.012	.....	0.049
18	0.017	.....	0.050
19	0.018	.....	0.051
20	0.023	.....	0.051
21	0.025	.....	0.049
22	0.027	.....	0.051
23	0.029	.....	.....
Total	1.000	1.000	1.000

Sources: 1997 SNF Medicare Cost Reports; HCFA, National Health Accounts.

Note: Totals may not sum to 1.000 due to rounding.

• *All Other:* Subcategory weights for the All Other category were derived using information from two U.S. Department of Commerce data sources. Weights for the three utilities cost categories, as well as that for telephone services, were derived from the 1997 Business Expenditure Survey. Weights for other cost categories were derived from the 1997 Annual Input-Output tables.

III. Price Proxies Used To Measure Cost Category Growth

A. Wages and Salaries

For measuring price growth in the wages and salaries cost component of the 1997-based SNF market basket, we propose using the percentage change in the ECI for wages and salaries for private nursing homes. The ECI for wages and salaries for private nursing homes is a fixed-weight index that measures the rate of change in employee wage rates per hour worked. It measures pure price change and is not affected by shifts among occupations. Average Hourly Earnings (AHE) confounds changes in the proportion of different occupations with changes in earnings levels for a given occupation and, thus, is an inferior price proxy for our purpose. Even so, using the AHE for nursing homes has little effect on the percentage change in the overall proposed 1997 SNF market basket. If we used the AHE instead of the ECI, the average annual growth rate between 1995 and 2000 would have been higher by 0.1 percentage points per year. This difference reflects skill mix shifts that would be reflected in other factors of an update framework as conceptualized in section IV of the preamble. In addition, while the ECI is for all nursing homes, not just SNFs, 77 percent of employment in the nursing home industry in 1998 and 1999 was in SNFs. While this wage measure includes other nursing homes in addition to skilled nursing facilities, we believe it adequately reflects the wage changes occurring in SNFs. It is also the only acceptable statistical source for nursing home wages that met our criteria of reliability, timeliness, accessibility, and relevance.

B. Employee Benefits

For measuring price growth in the proposed 1997-based market basket, the percentage change in the ECI for benefits for private nursing homes is used. The ECI for benefits for private nursing homes is also a fixed-weight index that measures pure price change and is not affected by shifts in occupation. Again, we believe that the ECI for nursing homes is the most acceptable and appropriate benefit series available from reliable, timely, accessible, and relevant statistical sources.

C. All Other Expenses

• *Nonmedical professional fees:* The ECI for compensation for Private Industry Professional, Technical, and Specialty Workers is used to measure price changes in nonmedical professional fees.

• *Electricity:* For measuring price change in the electricity cost category, the PPI for Commercial Electric Power is used.

• *Fuels, nonhighway:* For measuring price change in the Fuels, Nonhighway cost category, the PPI for Commercial Natural Gas is used.

• *Water and Sewerage:* For measuring price change in the Water and Sewerage cost category, the CPI–U (Consumer Price Index for All Urban Consumers) for Water and Sewerage is used.

• *Food-wholesale purchases:* For measuring price change in the Food-wholesale purchases cost category, the PPI for Processed Foods is used.

• *Food-retail purchases:* For measuring price change in the Food-retail purchases cost category, the CPI–U for Food Away From Home is used. This reflects the use of contract food service by some SNFs.

• *Pharmaceuticals:* For measuring price change in the Pharmaceuticals cost category, the PPI for Prescription Drugs is used.

• *Chemicals:* For measuring price change in the Chemicals cost category, the PPI for Industrial Chemicals is used.

• *Rubber and Plastics:* For measuring price change in the Rubber and Plastics cost category, the PPI for Rubber and Plastic Products is used.

• *Paper Products:* For measuring price change in the Paper Products cost category, the PPI for Converted Paper and Paperboard is used.

• *Miscellaneous Products:* For measuring price change in the Miscellaneous Products cost category, the PPI for Finished Goods less Food and Energy is used. This represents a change from the 1992 SNF market basket, in which the PPI for Finished Goods is used. Both food and energy are already adequately represented in separate cost categories and should not also be reflected in this cost category.

• *Telephone Services:* The percentage change in the price of Telephone Services as measured by the CPI–U is applied to this component.

• *Labor-Intensive Services:* For measuring price change in the Labor-Intensive Services cost category, the ECI for Compensation for Private Service Occupations is used.

• *Non Labor-Intensive Services:* For measuring price change in the Non Labor-Intensive Services cost category, the CPI–U for All Items is used.

D. Capital-Related

All capital-related expense categories have the same price proxies as those used in the 1992-based SNF PPS market basket described in the May 12, 1998 **Federal Register** (63 FR 26252). The price proxies for the SNF capital-related expenses are described below:

• *Depreciation—Building and Fixed Equipment:* The Boeckh Institutional Construction Index for unit prices of fixed assets.

• *Depreciation—Movable Equipment:* The PPI for Machinery and Equipment.

• *Interest—Government and Nonprofit SNFs:* The Average Yield for Municipal Bonds from the Bond Buyer Index of 20 bonds. HCFA input price indexes, including this rebased SNF index, appropriately reflect the rate of change in the price proxy and not the level of the price proxy. While SNFs may face different interest rate levels than those included in the Bond Buyer Index, the rate of change between the two is not significantly different.

• *Interest—For-profit SNFs:* The Average Yield for Moody's AAA Corporate Bonds. Again, the proposed rebased SNF index focuses on the rate of change in this interest rate and not the level of the interest rate.

• *Other Capital-related Expenses:* The CPI–U for Residential Rent.

APPENDIX TABLE A–3.—A COMPARISON OF PRICE PROXIES USED IN THE 1992-BASED AND PROPOSED 1997-BASED SKILLED NURSING FACILITY MARKET BASKETS

Cost category	1992-based price proxy	1997-based price proxy
Wages and Salaries	ECI for Wages and Salaries for Private Nursing Homes	Same
Employee Benefits	ECI for Benefits for Private Nursing Homes	Same.

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APPENDIX TABLE A–3.—A COMPARISON OF PRICE PROXIES USED IN THE 1992-BASED AND PROPOSED 1997-BASED SKILLED NURSING FACILITY MARKET BASKETS—Continued

Cost category	1992-based price proxy	1997-based price proxy
Nonmedical professional fees	ECI for Compensation for Private Professional and Technical Workers.	Same.
Electricity	PPI for Commercial Electric Power	Same.
Fuels	PPI for Commercial Natural Gas	Same.
Water and sewerage	CPI–U for Water and Sewerage	Same.
Food—Wholesale purchases	PPI—Processed Foods	Same.
Food—Retail purchases	CPI–U—Food Away From Home	Same.
Pharmaceuticals	PPI for Prescription Drugs	Same.
Chemicals	PPI for Industrial Chemicals	Same.
Rubber and plastics	PPI for Rubber and Plastic Products	Same.
Paper products	PPI for Converted Paper and Paperboard	Same.
Miscellaneous products	PPI for Finished Goods	PPI for Finished Goods less Food and Energy.
Telephone services	CPI–U for Telephone Services	Same.
Labor-intensive services	ECI for Compensation for private service occupations	Same.
Non labor-intensive services	CPI–U for All Items	Same.
Depreciation: Building and Fixed Equipment	Boeckh Institutional Construction Index	Same.
Depreciation: Movable Equipment	PPI for Machinery and Equipment	Same.
Interest: Government and Nonprofit SNFs	Average Yield Municipal Bonds (Bond Buyer Index-20 bonds)	Same.
Interest: For-profit SNFs	Average Yield Moody's AAA Bonds	Same.
Other Capital-related Expenses	CPI–U for Residential Rent	Same.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare-Hospital Insurance Program; and No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: March 8, 2001.

Michael McMullan,

Acting Deputy Administrator, Health Care Financing Administration.

Dated: April 23, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–11560 Filed 5–9–01; 8:45 am]

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Part III

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Alaska Native-Serving and Native Hawaiian-Serving Institutions Education Grants Program for Fiscal Year 2001; Request for Proposals and Request for Stakeholder Input; Notice

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DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Alaska Native-Serving and Native Hawaiian-Serving Institutions Education Grants Program for Fiscal Year 2001; Request for Proposals and Request for Stakeholder Input

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of request for proposals and request for stakeholder input.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) is announcing the Alaska Native-Serving and Native Hawaiian-Serving Institutions Education Grants Program for Fiscal Year (FY) 2001. Proposals are hereby requested from eligible institutions as identified herein for consideration of grant awards.

By this notice, CSREES also requests stakeholder input from any interested party regarding the FY 2001 Alaska Native-Serving and Native Hawaiian-Serving Institutions Education Grants Program Request for Proposals (RFP) for use in development of any future RFPs for this program.

DATES: Proposals must be received on or before 5:00 P.M. July 6, 2001. Proposals received after this date will not be considered for funding.

Comments regarding this RFP are invited for six months from the issuance of this notice. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Hand-delivered proposals (brought in person by the applicant or through a courier service) must be delivered to the following address: Alaska Native-Serving and Native Hawaiian-Serving Institutions Education Grants Program; " Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 1307, Waterfront Centre; 800 9th Street S.W.; Washington, D.C. 20024. The telephone number is (202) 401–5048. Proposals transmitted via a facsimile (fax) machine or via e-mail will not be accepted.

Proposals submitted through the U.S. Postal Service should be sent to the following address: Alaska Native-Serving and Native Hawaiian-Serving Institutions Education Grants Program; " Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue S.W., Washington, D.C. 20250–2245.

Written stakeholder comments should be submitted by mail to: Policy and Program Liaison Staff; Office of Extramural Programs; USDA-CSREES; STOP 2299; 1400 Independence Avenue S.W.; Washington, D.C. 20250–2299; or via e-mail to: RFP-OEP@reeusda.gov. (This e-mail address is intended only for receiving stakeholder comments regarding this RFP, and not for requesting information or forms.) In your comments, please state that your are responding to the FY 2001 Alaska Native-Serving and Native Hawaiian-Serving Institutions Education Grants Program.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey L. Gilmore, Higher Education Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2251; 1400 Independence Avenue S.W.; Washington, D.C. 20250–2251; telephone: (202) 720–1973; e-mail: jgilmore@reeusda.gov.

Stakeholder Input: CSREES is requesting comments regarding this solicitation of applications from any interested party. In your comments, please include the name of the program and the fiscal year RFP to which you are responding. These comments will be considered in the development of the next RFP for the program. Such comments will be used in meeting the requirements of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998, 7 U.S.C. 7613(c). Comments should be submitted as provided in the "Addresses" and "Dates" portions of this Notice.

SUPPLEMENTARY INFORMATION:

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A. Legislative Authority

Authority for this program is contained in section 759 of Public Law 106–78, the FY 2000 "Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act" (7 U.S.C. 3242). In the FY 2001 "Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act" (Pub. L. 106–387), Congress appropriated $3,000,000 for a program of noncompetitive grants, to be awarded on an equal basis, to Alaska Native-Serving and Native Hawaiian-Serving Institutions to carry out higher education programs in the food and agricultural sciences.

B. Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.228, Alaska Native-Serving and Native Hawaiian-Serving Institutions Education Grants Program.

C. Purpose of the Program

Grants will be made to eligible institutions for the purpose of promoting and strengthening the ability of Alaska Native-Serving Institutions and Native Hawaiian-Serving Institutions to carry out higher education programs in the food and agricultural sciences. Projects funded by this program in FY 2001 must be aimed at persons enrolled in or teaching at an institution of higher education. Grant funds also may be used for other education programs that have a direct and explicit connection to higher education, such as recruitment, mentoring, and support programs for under-represented students at the high school level in order to enhance education equity and prepare them for advanced study at the collegiate level and for careers related to the food, agricultural, and natural resource systems of the United States.

The use of grant funds to plan, acquire, or construct a building or facility is not allowed under this program. With prior approval, and in accordance with the cost principles set forth in OMB Circular No. A–21, some grant funds may be used for minor alterations, renovations, or repairs deemed necessary to retrofit existing teaching spaces in order to carry out a funded project. However, requests to use grant funds for such purposes must demonstrate that such expenditures are essential to achieving the major purpose for which the grant request is made.

Note that in FY 2001, research and community development projects will not be supported.

D. Eligible Institutions

Only public or private, nonprofit Alaska Native-Serving and Native Hawaiian-Serving Institutions of higher education that meet the definitions of Alaska Native-Serving Institution or Native Hawaiian-Serving Institution established in Title III, Part A of the Higher Education Act of 1965, as amended (20 U.S.C. section 1059d.) are eligible institutions under this program. Only individual institutions, including independent branch campuses, may apply for grant awards under this program. A higher education system, foundation, or district may not apply on behalf of individual institutions. An "independent branch campus" means a unit of a 2-year or 4-year institution of higher education that is geographically apart from the main campus, is permanent in nature, offers courses for credit and programs leading to an associate or bachelor's degree, and is autonomous to the extent that it has its own faculty and administrative or supervisory organization and its own budgetary and hiring authority.

E. Demonstration or Certification of Eligibility

At the time of application, each institution will be required to demonstrate or certify that it is an eligible institution under this program.

If an institution has received a "Designation as an Eligible Institution" letter for FY 2001 funding under the Title III, Part A, Alaska Native-Serving Institutions Program or the Native Hawaiian-Serving Institutions Program from the U.S. Department of Education, the institution may submit a copy of the letter along with its application to satisfy the demonstration of eligibility requirement.

If an institution currently has a Title III, Part A grant from the U.S. Department of Education that does not end prior to September 30, 2001, the institution may submit a copy of the "Notice of Award" letter for that grant along with its application to satisfy the demonstration of eligibility requirement.

Otherwise, an institution must submit a letter, signed by the institution's "authorized organizational representative" (AOR) certifying that it meets the requirements of an Alaska Native-Serving Institution or Native Hawaiian-Serving Institution as defined in the Higher Education Act of 1965, as amended (20 U.S.C. 1059d.). The institution's AOR is defined to mean the president, or chief executive officer or other designated official of the applicant organization, who has the authority to commit the resources of the organization. The AOR must certify that:

(1) The institution, or parent institution in the case of an independent branch campus, is legally authorized by the State in which it is located to provide an educational program for which it awards an associate's or bachelor's degree, or that it is a junior or community college;

(2) The institution, or parent institution in the case of an independent branch campus, is accredited by a nationally recognized accrediting agency or association determined by the Secretary of Education to be a reliable authority as to the quality of training offered, or making reasonable progress toward such accreditation;

(3) At least 50 percent of enrolled degree students are receiving need-based assistance under Title IV of the Higher Education Act, or that a substantial percentage of students are receiving Pell Grants in comparison with the percentage of students receiving Pell Grants at all similar institutions (institution of higher education, or junior or community college);

(4) Unless waived by the Secretary of Education, the average educational and general expenditures per full-time equivalent undergraduate student are low in comparison with the average educational and general expenditures per full-time equivalent student at institutions that offer similar instruction; and

(5) For an Alaska Native-Serving Institution, at the time of application, it has an enrollment of undergraduate students that is at least 20 percent Alaska Native students (where the term "Alaska Native" has the meaning given the term in section 9308 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7938]); or

(6) For a Native Hawaiian-Serving Institution, at the time of application, it has an enrollment of undergraduate students that is at least 10 percent Native Hawaiian students (where the term "Native Hawaiian" has the meaning given the term in section 9212 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7912]).

F. Available Funds

The $3,000,000 appropriated for FY 2001, is reduced by $6,600 to reflect the 0.22 percent government-wide recission, and $119,736 is retained by the Cooperative State Research, Education, and Extension Service (CSREES) for Federal Administration costs, leaving $2,873,664 for grant awards. Of this amount, half will be awarded non-competitively to eligible institutions in Alaska ($1,436,832) and half will be awarded non-competitively to eligible institutions in Hawaii ($1,436,832). CSREES has determined that the amounts available to each State will be allocated equally to all eligible institutions that submit grant applications in response to this notice.

G. Scope of Activities To Be Funded

Institutions receiving funds under this program must use the funds for the purpose of promoting and strengthening the abilities of Alaska Native-Serving or Native Hawaiian-Serving Institutions to carry out higher education programs in the food and agricultural sciences. CSREES intends this program to address higher education needs, as determined by each institution, within a broadly defined arena of food and agricultural sciences-related disciplines.

Food and agricultural sciences higher education programs are defined to include academic programs in agriculture, food and fiber, renewable natural resources, forestry, aquaculture, veterinary medicine, family and consumer sciences, home economics, nutrition and dietetics, and other higher education activities and fields of study related to the production, processing, marketing, distribution, conservation, utilization, consumption, and development of food and agriculturally related products and services.

Grants shall be used:

(1) To support the activities of consortia of Alaska Native-Serving or Native Hawaiian-Serving Institutions to enhance educational equity for under represented students;

(2) To strengthen institutional education capacities, including libraries, curriculum, faculty, scientific instrumentation, instruction delivery systems, and student recruitment and retention, in order to respond to identified State, regional, national, or international educational needs in the food and agriculture sciences;

(3) To attract and support undergraduate and graduate students from under represented groups in order to prepare them for careers related to the food, agricultural, and natural resource systems of the United States, beginning with the mentoring of students at the high school level, and continuing with the provision of financial support for students through their attainment of a doctoral degree; or

(4) To facilitate cooperative initiatives between two or more Alaska Native-Serving or Native Hawaiian-Serving Institutions, or between Alaska Native-

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Serving or Native Hawaiian-Serving Institutions and units of State government or the private sector, to maximize the development and use of resources, such as faculty, facilities, and equipment, to improve food and agricultural sciences teaching programs.

H. Proposal Submission Limitations

Each institution may submit one application for funding.

I. Project Duration

A project proposal may request funding for a project period from 12 months up to 36 months duration (from one to three years).

J. Matching Requirement

CSREES encourages, but does not require, non-Federal matching support for this program. Documentation of matching support is neither required nor requested.

K. Number and Size of Awards

The number of grants awarded in FY 2001, and the amount of funds available to each institution in FY 2001, will depend on the number of institutions submitting grant applications in response to this notice. If all institutions currently eligible for Title III, Part A grants from the U.S. Department of Education submit acceptable applications to this program, CSREES estimates it will make 19 or 20 awards, one to each eligible institution, of $140,000 to $150,000 each. Application budgets should reflect these estimates.

L. Indirect Costs

Indirect costs are allowable costs under this program. The applicant should use the institution's approved negotiated instruction indirect cost rate (or research rate if there is no negotiated instruction rate). An institution may elect and is encouraged to request, commensurate with planned grant activities, an amount less than the full negotiated indirect cost rate.

M. Types of Proposals

An eligible institution or independent branch campus may submit a "regular grant proposal" for project activities to be undertaken principally on behalf of its own students or faculty, and to be managed primarily by its own personnel. CSREES estimates that awards for a regular grant proposal will be in the range of $140,000 to $150,000 each. Budget forms submitted with grant applications should reflect this estimate.

To facilitate inter-institutional cooperation and collaborative initiatives, two or more eligible institutions within a State may form a consortium and submit a "consortium grant proposal." In such cases, one institution is to be designated as the "lead institution." The lead institution will receive the award on behalf of all the consortium members and will be responsible for managing the grant. The other consortium members will be sub-grantees of the primary award. All consortium members must be eligible institutions under this program. A consortium grant proposal must contain a separate plan of work and a separate budget for each consortium member, as well as an overall project plan of work and overall budget from the lead institution. A consortium project will be awarded grant funds in proportion to the number of consortium members (e.g., approximately $140,000 to $150,000 times the number of institutions), and each consortium member is to receive funds on an equal basis. Budget forms should reflect these requirements and estimates.

N. Maximum Number of Grants or Sub-Grants Per Institution

Only one grant may be awarded to any single institution or eligible branch campus under the Alaska Native-Serving and Native Hawaiian-Serving Institutions Education Grants Program. This ceiling includes sub-grant awards made under a consortium arrangement (i.e., an institution may not participate as a sub-grantee on a consortium grant and also receive a regular grant on its own). Individuals may participate in multiple grant projects and may be compensated through multiple subcontracts for consultant services.

O. Proposal Evaluation

Although project grants will be awarded non-competitively, all proposed projects will be reviewed by CSREES to determine whether the project plan of work is consistent with the guidelines contained in this notice. Each proposed project also will be evaluated for its technical merit by CSREES staff and by expert educators and scientists from other Federal agencies as needed. CSREES staff will consider the following criteria and weights when evaluating the technical merit of the proposals submitted:

Potential for Advancing the Quality of Education—20 Points

This criterion is used to assess the likelihood that the project will have an impact on the quality of food and agricultural sciences higher education by promoting and strengthening institutional capacities to meet clearly delineated needs. Elements include identification of needs, justification for the project, building institutional capacity, advancing education equity, continuation plans, innovation, multidisciplinary focus, and expected products and results.

Proposed Approach—35 Points

This criterion relates to the soundness of the proposed approach and includes objectives, plan of operation, timetable, evaluation and dissemination plans, and partnerships and collaborative efforts.

Key Personnel—20 Points

This criterion relates to the adequacy of the number and qualifications of the key persons who will carry out the project.

Institutional Commitment and Resources—15 Points

This criterion relates to the institution's commitment to the project and the adequacy of institutional resources available to carry out the project.

Budget and Cost-Effectiveness—10 Points

This criterion relates to the extent to which the total budget adequately supports the project and is cost-effective. Elements considered include the necessity and reasonableness of costs to carry out project activities and achieve project objectives; the appropriateness of budget allocations between the applicant and any collaborating institution(s); the adequacy of time committed to the project by key project personnel; and the degree to which the project maximizes the use of limited resources, optimizes educational value for the dollar, achieves economies of scale, leverages additional funds, includes sound quality-control measures, and focuses expertise and activity on targeted educational areas.

P. How To Obtain Application Materials

An Application Kit containing program application materials will be made available to eligible institutions upon request. These materials include all the application and budget forms, instructions, and other relevant information needed to prepare and submit grant applications. Copies of the Application Kit may be requested from the Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, SW.; Washington, DC 20250–2245. The telephone number is (202) 401–5048. When contacting the Proposal Services Unit, please indicate that you are requesting forms for the FY 2001 Alaska Native-Serving and Native Hawaiian-Serving Institutions Education Grants Program.

Application materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and telephone number to psb@reeusda.gov that states that you wish to receive a copy of the application materials for the FY 2001 Alaska Native-Serving and Native Hawaiian-Serving Institutions Education Grants Program. The materials will then be mailed to you (not e-mailed) as quickly as possible.

Q. What To Submit

Each institution must submit the following forms, information, and documentation in an application package so that it arrives on or before the due date stated in this notice:

(1) A Form CSREES–712, "Higher Education Proposal Cover Page," must be completed in its entirety, and one copy of the form must contain the pen-and-ink signatures of the project director(s) and AOR for the applicant institution;

(2) A "Table of Contents," for ease in locating information in the application package, must be placed immediately following the proposal cover page;

(3) Documentation of eligibility, or a letter certifying eligibility signed by the AOR, for each institution that is a party to a grant application (i.e., documentation from each of the institutions participating in a consortium grant), as outlined in section E. "Demonstration or Certification of Eligibility" of this notice;

(4) A one page "Project Summary" outlining the need for the project and the plan of work, and including the name of the institution(s), project title, and project director(s);

(5) A detailed "Plan of Work" from the applicant institution (and from each of the other institutions participating in the proposal in the case of a consortium grant) limited to ten, double-spaced pages for each eligible institution that is a party to the grant application containing: (a) A general statement of the institution's long-range goals and how the proposed project aligns with those goals; (b) a statement detailing the higher education needs the project will address; (c) the objectives of the proposed project; (d) a justification for the project explaining how the proposed project will help the institution enhance its academic programs, and promote and strengthen its abilities to carry out higher education programs in the food and agricultural sciences as outlined in this notice; (e) a detailed explanation of the procedures that will be used to achieve the project objectives; (f) a description of the personnel who will conduct the project, including an outline of who will be responsible for each activity; (g) a detailed timeline showing the schedule for conducting the project; (h) the criteria and procedures to be used for tracking the progress and accomplishments of the project, including any data and methodologies that will be used to analyze the extent to which project objectives were met; (i) a list of expected project outcomes and products, including new courses, videos, CDs, other teaching materials, etc. and (j) plans for disseminating anticipated products and outcomes resulting from the project.

(6) A résumé or curriculum vita (C.V.) for each faculty member or staff person contributing significantly to the project (Form CSREES–708, "Summary Vita" may be used for this purpose);

(7) A Form CSREES–713, "Higher Education Budget" for each year of requested support, including budget forms for the lead institution and each consortium member for a consortium grant proposal;

(8) A summary budget, for multi-year and consortium projects, detailing requested support for the overall project period (use Form CSREES–713, "Higher Education Budget");

(9) A "Budget Narrative" providing detailed explanation and justification for each requested budget line item;

(10) A completed Form CSREES–663, "Current and Pending Support" for each key person who will be working on the project;

(11) A Form CSREES–1234, "National Environmental Policy Act Exclusions Form" covering planned project activities; and

(12) A Form CSREES–662, "Assurance Statement(s)" covering planned project activities.

Supplemental material such as photographs, journal reprints, brochures, and other pertinent materials deemed to be illustrative of major points of the proposal but unsuitable for inclusion in the proposal narrative itself, may be placed in an "Appendix" and attached to the end of the proposal.

R. Number of Copies to Submit

An original and six (6) copies of a proposal must be submitted. Proposals should contain all requested information when submitted. Each proposal should be typed on 8½" x 11" white paper, double-spaced, and on one side of the page only. Please note that the text of the proposal should be prepared using no type smaller than 12 point font size and one-inch margins. The entire proposal should be paginated. All copies of the proposal must be submitted in one package. Each copy of the proposal must be stapled securely in the upper left-hand corner (Do not bind).

S. Where and When To Submit

Hand-delivered proposals (brought in person by the applicant or through a courier service) must be received on or before 5 P.M. July 6, 2001, at the following address: Alaska Native-Serving and Native Hawaiian-Serving Institutions Education Grants Program; c/o Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 1307, Waterfront Centre; 800 9th Street, SW., Washington, DC 20024. The telephone number is (202) 401–5048. Proposals transmitted via a facsimile (fax) machine will not be accepted.

Proposals submitted through the U.S. Postal Service must be received on or before 5 P.M. July 6, 2001. Proposals submitted through the U.S. Postal Service should be sent to the following address: Alaska Native-Serving and Native Hawaiian-Serving Institutions Education Grants Program; c/o Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, SW., Washington, DC 20250–2245. The telephone number is (202) 401–5048.

T. Acknowledgment of Proposals

The receipt of all proposals will be acknowledged by e-mail, therefore applicants are encouraged to provide e-mail addresses, where designated, on the Form CSREES–661. The acknowledgment will contain an identifying proposal number. Once your proposal has been assigned a proposal number, please cite that number in future correspondence. If the applicant does not receive an acknowledgment within 60 days of the submission deadline, please contact the person listed in the **FOR FURTHER INFORMATION** section of this notice.

U. Intent To Submit a Proposal

For the FY 2001 competition, Form CSREES–711, "Intent to Submit a Proposal," is NOT requested or required for the Alaska Native-Serving and Native Hawaiian-Serving Institutions Education Grants Program.

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V. Applicable Regulations and Other Federal Statutes

Several other Federal statutes and regulations apply to grant proposals considered for review and to project grants awarded under this program. These include but are not limited to:

7 CFR Part 1, subpart A—USDA implementation of Freedom of Information Act

7 CRF Part 1b—USDA Implementation of the National Environmental Policy Act

7 CFR Part 3—USDA implementation of OMB Circular No. A–129 regarding debt collection

7 CFR Part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e. Circular Nos. A–21 and A–122) and incorporating provisions of 31 U.S.C. 6301–6308, as well as general policy requirements applicable to recipients of Departmental financial assistance

7 CFR Part 3017, as amended—USDA Implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)

7 CFR Part 3018—USDA Implementation of Restrictions on Lobbying

7 CFR Part 3019—USDA Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations

7 CFR Part 3052—USDA implementation of OMB Circular No. A–133, Audits of States, Local Governments, and Other Nonprofit Organizations

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR Part 15B (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR Part 401).

Done at Washington, DC, this 2nd day of May, 2001.

Colien Hefferan,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 01–11818 Filed 5–9–01; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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H.R. 132/P.L. 107–6

To designate the facility of the United States Postal Service located at 620 Jacaranda Street in Lanai City, Hawaii, as the "Goro Hokama Post Office Building". (Apr. 12, 2001; 115 Stat. 8)

H.R. 395/P.L. 107–7

To designate the facility of the United States Postal Service located at 2305 Minton Road in West Melbourne, Florida, as the "Ronald W. Reagan Post Office of West Melbourne, Florida". (Apr. 12, 2001; 115 Stat. 9)

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Title 3—

The President

Proclamation 7435 of May 8, 2001

Peace Officers Memorial Day and Police Week, 2001

By the President of the United States of America

A Proclamation

Each day, law enforcement officers encounter grave risk to protect the rights and freedoms we enjoy as Americans. Their commitment and sacrifice make our streets safer, our neighborhoods stronger, and our families more secure. Police Week provides an opportunity to recognize the selfless dedication of the brave men and women who devote their lives to protecting and serving our communities.

This Nation owes a considerable debt of gratitude to all law enforcement officers who protect the lives and property of their fellow Americans. From patrolling our highways, to investigating crime, to protecting victims' rights, these committed professionals make a valuable difference in our communities. We look to them to uphold the principle that no one is beyond the protection or reach of the law. These men and women, through their patriotic service and dedicated effort, have earned our gratitude and respect.

We pause during Police Week, and in particular on Peace Officers Memorial Day, to honor those officers who made the ultimate sacrifice while performing their sworn duty. I urge all Americans to use this occasion to pay tribute to these fallen heroes by recalling their devotion, celebrating their lives, and honoring their service.

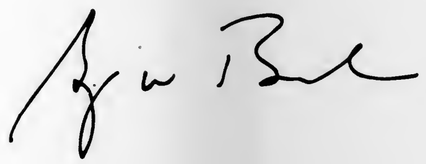
Tragically, making America safer often requires great sacrifice. According to the National Law Enforcement Officers Memorial Fund, 150 law enforcement officers lost their lives in the line of duty in 2000. Although we can never repay the debt we owe these valiant officers and their families, we pay tribute to their memory by committing ourselves to being law-abiding citizens, working to lower crime in our communities, and investing time and love in our Nation's young people.

By a joint resolution approved October 1, 1962 (76 Stat. 676), the Congress has authorized and requested the President to designate May 15 of each year as "Peace Officers Memorial Day" and the week in which it falls as "Police Week," and, by Public Law 103-322 (36 U.S.C. 136), has directed that the flag be flown at half-staff on Peace Officers Memorial Day.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 15, 2001, as Peace Officers Memorial Day and May 13 through May 19, 2001, as Police Week. I call upon all the people of the United States to observe this day with appropriate ceremonies and activities. I also call upon Governors of the United States and the Commonwealth of Puerto Rico, as well as appropriate officials of all units of government, to direct that the flag be flown at half-staff on Peace Officers Memorial Day. I also encourage all Americans to display the flag at half-staff from their homes on that day.

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IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of May, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-fifth.



[FR Doc. 01–12078
Filed 5–10–01; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7436 of May 8, 2001

National Salvation Army Week, 2001

By the President of the United States of America

A Proclamation

Since its founding in Great Britain in 1865, the Salvation Army has provided humanitarian relief and spiritual guidance to people throughout the world. Its members continue its compassionate tradition of helping wherever there is hunger, disease, destitution, and spiritual need.

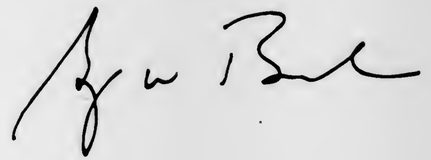
Through countless acts of service, members of the Salvation Army actively assist those who suffer in body and spirit. Their victories result in shelter for the homeless, food for the hungry, and self-sufficiency for the disabled. In more than 100 countries, speaking more than 140 languages, the Salvation Army follows Christ's call to "love your neighbor as yourself."

Members of the Salvation Army demonstrate this love in many ways. Perhaps the best-known services they provide involve meeting the needs of the homeless. However, they also offer assistance to countless other individuals seeking help. Those addicted to drugs or alcohol find a vast network of rehabilitation programs; children born into poverty discover camps and educational opportunities; and those who are ill receive care.

I commend the Salvation Army officers, soldiers, and those who support its mission for their continued dedication to helping meet the physical and spiritual needs of people across the Nation. During this week, I encourage Americans to express their appreciation for the Salvation Army's good works and to follow their example of serving a cause greater than themselves.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 14 through May 20, 2001, as National Salvation Army Week. I call upon all the people of the United States to honor the Salvation Army during that week for its faithful ministry in the United States for over 120 years.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of May, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-fifth.



[FR Doc. 01–12079
Filed 5–10–01; 8:45 am]
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Presidential Documents

Proclamation 7437 of May 9, 2001

Mother's Day, 2001

By the President of the United States of America

A Proclamation

No matter what direction life takes us, a mother's love and guidance are a tremendous blessing that help us to grow up as stable, responsible, and caring individuals. As nurturers, teachers, and protectors, mothers' unconditional affection helps their children to blossom into mature adults. In partnership with fathers, mothers play a critical role in building healthy families.

Anna M. Jarvis is credited with influencing the Congress in 1914 to establish an official Mother's Day as a tribute to her beloved mother and to all mothers. She conceived of the day as a time when children could formally demonstrate respect for their mothers and reinforce family bonds.

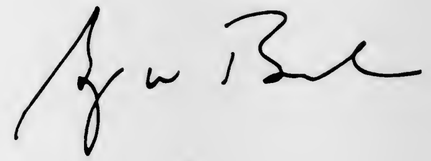
Mothers who teach us right from wrong and to love our neighbors merit our deepest gratitude and appreciation. Beyond their more traditional role in rearing children, many mothers also face responsibilities outside the home as members of the workforce. At the same time, they may be caring not only for their biological or adopted children but also for stepchildren or foster children.

Many American families are now headed solely by women, and these women shoulder enormous responsibilities. For the good of their families and our Nation, we must strive to provide support and assistance to those mothers, such as, opportunities for training and employment; early childhood education for their young ones; and safe, affordable, and high-quality childcare. But fathers must also remain committed and involved in the lives of their children. By fulfilling their financial and nurturing responsibilities, fathers help ensure the well-being of their children and ease the burden on those women who carry the primary responsibility of caring for their families.

Whatever their circumstances, mothers demonstrate daily how their devotion, strength, and wisdom make all the difference in the lives of their children. To honor mothers, the Congress, by a joint resolution approved May 8, 1914 (38 Stat. 770), has designated the second Sunday in May each year as "Mother's Day" and requested the President to call for its appropriate observance.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 13, 2001, as Mother's Day. I encourage all Americans to honor the importance of mothers and to celebrate how their love and devotion are crucial to the well-being of children, families, and our society.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of May, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-fifth.



[FR Doc. 01–12080
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Rules and Regulations

Federal Register
Vol. 66, No. 92
Friday, May 11, 2001

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 70

RIN 3150–AE95

Clarification of Decommissioning Funding Requirements; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correcting amendments.

SUMMARY: This document corrects a misreference appearing in a final rule that was published in the Federal Register on July 26, 1995 (60 FR 38235). This action is to correct this typographical error for clarity and consistency in the regulations.

DATES: Effective May 11, 2001.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 [telephone (301) 415–6219, e-mail *JMM2@nrc.gov*].

SUPPLEMENTARY INFORMATION:

Background

On July 26, 1995 (60 FR 38235), a final rule entitled "Clarification of Decommissioning Funding Requirements" was published in the Federal Register. The purpose of the final rule was to amend the regulations applicable to decommissioning funding assurance and the expiration and termination of licenses for nonreactor licensees. In that final rule, paragraph (e) of § 30.36, Expiration and termination of licensees and decommissioning of sites and separate buildings or outdoor areas," referenced § 30.35, Financial assurance and recordkeeping for decommissioning." Similarly, paragraph (e) to § 40.42, Expiration and termination of licenses and decommissioning of sites and separate or outdoor areas, referenced § 40.36, Financial assurance and recordkeeping for decommissioning. However, paragraph (e) to § 70.38, Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas, erroneously referenced § 30.35 instead of § 70.25, Financial assurance and recordkeeping for decommissioning. This typographical error needs to be corrected.

Need for Corrections

As published, the final rule entitled "Clarification of Decommissioning Funding Requirements" (60 FR 38235; July 26, 1995) contains a typographical error in § 70.38(e) which needs to be corrected.

List of Subjects in 10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendment to 10 CFR part 70.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

1. The authority citation for Part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846); sec. 193, 104 Stat. 2835 as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243).

Sections 70.1 and 70.20a(b) also issued under secs. 134, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d. Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

2. In § 70.38, the introductory text of paragraph (e) is revised to read as follows

§ 70.38 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

* * * * *

(e) Coincident with the notification required by paragraph (d) of this section, the licensee shall maintain in effect all decommissioning financial assurances established by the licensee pursuant to § 70.25 in conjunction with a license issuance or renewal or as required by this section. The amount of the financial assurance must be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established pursuant to paragraph (g)(4)(v) of this section.

* * * * *

Dated at Rockville, Maryland, this 7th day of May, 2001.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 01–11901 Filed 5–10–01; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–123–AD; Amendment 39–12226; AD 2001–10–01]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and EMB–145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and EMB–145 series airplanes. This action requires revising the FAA-approved Airplane Flight

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Manual to prohibit in-flight auxiliary power unit (APU) starts, and installing a placard on or near the APU start/stop switch panel to provide such instructions to the flight crew. This action is necessary to prevent flame backflow into the APU compartment through the eductor during in-flight APU starts, which could result in fire in the APU compartment. This action is intended to address the identified unsafe condition.

DATES: Effective May 29, 2001.

Comments for inclusion in the Rules Docket must be received on or before June 11, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–123–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via the Internet must contain "Docket No. 2001–NM–123–AD" in the subject line and need not be submitted in triplicate. Comments sent via fax or the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

Information pertaining to this amendment may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Linda M. Haynes, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30337–2748; telephone (770) 703–6091; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, recently notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–135 and EMB–145 series airplanes. The DAC advises that it has received a report of occurrences of auxiliary power unit (APU) flame backflow into the APU compartment through the exhaust eductor, during in-flight APU starts.

The airplane manufacturer (EMBRAER) has reported to the DAC and FAA that two APU fire alarms were triggered during in-flight APU starts at 30,000 feet on two airplanes. As a result, the fire sensors were replaced, but the same event occurred again in one of the airplanes. EMBRAER then inspected all APU's on the production fleet at its manufacturing facility, and found evidence of flame backflow (flames ingested back into the APU compartment) and minor damage (singed harness ties and discoloration) on four airplanes.

EMBRAER and Hamilton Sunstrand Power Systems (the APU manufacturer) further investigated the APU flame backflow events to determine the cause. Based on theoretical analysis and field data, the two manufacturers reached the following conclusions:

- The root cause is due to flames (that were generated during in-flight APU starts) being ingested into the APU compartment through the eductor.
- The event is only possible during in-flight APU start attempts at high altitudes where the fuel mixture tends to be rich. In that case, torching flames can occur when excessive fuel exits the combustor and is burned in the exhaust as the new air mixes with the hot gases.
- For APU ground starts only, none of the EMBRAER production airplanes showed burn marks. When the APU was used on approach for landing at lower altitudes (5,000 to 10,000 feet), field inspections of all affected airplanes (five airplanes with the APU model specified in the applicability of this AD) showed no burn marks.
- The probability of having a flame backflow event increases during high speeds. The APU manufacturer has found that if a large amount of pressure is present on the exhaust, the compressor may not have enough efficiency to overcome this pressure during the first stages of an in-flight APU start. In this case, the flame backflow would be diverted into the tailcone.

Even though there have been no occurrences of this flame backflow event at low altitudes, the DAC and FAA have determined that it is still possible for the flame backflow to occur. For that reason, both the DAC and FAA consider that any inflight starts of the APU could adversely affect the safety of flight.

Explanation of Relevant Foreign Airworthiness Information

The DAC issued Brazilian emergency airworthiness directive 2001–04–02, dated April 12, 2001, in order to assure the continued airworthiness of these airplanes in Brazil. The Brazilian airworthiness directive references procedures for installing the APU placard in EMBRAER Alert Service Bulletin 145–49–A017, dated April 12, 2001.

FAA's Conclusions

These airplane models are manufactured in Brazil and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent flame backflow into the APU compartment through the eductor during in-flight APU starts, which could result in fire in the APU compartment. This AD requires revising the FAA-approved Airplane Flight Manual to prohibit in-flight APU starts, and installing a placard on or near the APU start/stop switch panel to provide such instructions to the flight crew.

Differences Between the Brazilian Airworthiness Directive and This AD

Operators should note that the service bulletin referenced in the Brazilian airworthiness directive specifies installing the decal (placard) in the "pedestal panel" of the airplane, and the Brazilian airworthiness directive specifies such installation in the "main instrument panel." However, paragraph (b) of this AD specifies installing the placard "on or near the APU start/stop switch panel."

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–123–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–10–01 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–12226. Docket 2001–NM–123–AD.

Applicability: Model EMB–135 and EMB–145 series airplanes, certificated in any category, equipped with Hamilton Sundstrand Power Systems auxiliary power unit (APU) model T–62T–40C14 (APS 500R).

Compliance: Required as indicated, unless accomplished previously.

To prevent flame backflow into the APU compartment through the eductor during in-flight APU starts, which could result in fire in the APU compartment, accomplish the following:

Airplane Flight Manual (AFM) Revision

(a) Within 25 flight hours or 10 days after the effective date of this AD, whichever occurs first, accomplish the actions required by paragraphs (a)(1) and (a)(2) of this AD.

(1) Install a placard on or near the APU start/stop switch panel that reads:

"Caution: In-Flight APU Starts are Prohibited"

(2) Revise the Limitations Section of the FAA-approved AFM to include the information on the placard, as specified in paragraph (a)(1) of this AD, and to limit APU starts to ground conditions only. This may be accomplished by inserting a copy of this AD in the AFM.

Note 1: Because APU starts are prohibited in flight when an engine-driven generator is inoperative, the APU must be started on the ground in order to dispatch, and the APU must be kept operational for the entire flight.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Brazilian emergency airworthiness directive 2001–04–02, dated April 12, 2001.

Effective Date

(d) This amendment becomes effective on May 29, 2001.

Issued in Renton, Washington, on May 7, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–11899 Filed 5–10–01; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 648

[Docket No. 010410087–1087–01; I.D. 031401B]

RIN 0648–AO07

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework Adjustment 14

Republication

Editorial Note: Federal Register Rule document 01-10783 originally appeared in the issue of Tuesday, May 1, 2001 at 66 FR 21639-21648. Due to numerous errors the document is being reprinted in its entirety.

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 14 to the Atlantic Sea Scallop Fishery Management Plan (FMP). This final rule implements management measures for the 2001 and 2002 fishing years, including a days-at-sea (DAS) adjustment, a Sea Scallop Area Access Program (Area Access Program) for two areas that have been closed to scallop fishing in the Mid-Atlantic, and a 50–bu (17.62 hectoliters (hl)) possession restriction of in-shell scallops on vessels shoreward of the vessel monitoring system (VMS) demarcation line. The intent of this action is to achieve the goals and objectives of the FMP and to achieve optimum yield in the scallop fishery. In addition, NMFS publishes the Office of Management and Budget (OMB) control numbers for collection-of-information requirements contained in this final rule.

DATES: Effective May 1, 2001.

ADDRESSES: Copies of Framework Adjustment 14, its Final Supplemental Environmental Impact Statement (FSEIS), and Regulatory Impact Review (RIR) are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at http://www.nefmc.org.

Comments regarding the collection-of-information requirements contained in this final rule should be sent to Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Peter W. Christopher, Fishery Policy Analyst, 978–281–9280; fax 978–281–9135; e-mail peter.christopher@noaa.gov.

SUPPLEMENTARY INFORMATION:

Regulations implementing Amendment 7 to the FMP (64 FR 14835, March 29, 1999) redefined overfishing and revised the fishing mortality (F) reduction schedule through fishing year 2008. The reductions in F and associated sea scallop DAS schedule were intended to rebuild the sea scallop stock within 10 years. Amendment 7 also established an annual monitoring and review process to adjust management measures to meet the stock rebuilding objectives as conditions in the resource change. In addition, Amendment 7 included a measure that continued the closures of two sea scallop closed areas in the Mid-Atlantic region, known as the Hudson Canyon South and Virginia Beach Closed Areas, through March 1, 2001. These closed areas were originally implemented by interim rules (63 FR 15324, March 31, 1998; 63 FR 51862, September 29, 1998) to prevent the harvest of juvenile scallops and to allow time for scallop growth and rebuilding. Framework 14 renames the Hudson Canyon South Closed Area as the Hudson Canyon Area to avoid confusion that the "South" description may cause.

Based on information from the 29th Northeast Regional Stock Assessment Workshop (September 1999) and on the updated catch and survey data, the New England Fishery Management Council (Council) included new biological projections in its 2000 Stock Assessment and Fishery Evaluation (SAFE) Report for sea scallops (September 8, 2000) that conclude that scallop rebuilding is ahead of the rebuilding schedule specified in Amendment 7. As reported in the 2000 SAFE Report, the accelerated rebuilding has occurred primarily because of strong year classes of scallops in 1998 and 2000. The Scallop Plan Development Team (PDT), which completed the analysis in the 2000 SAFE Report, determined that DAS allocations could be increased from the Amendment 7 levels while still meeting the 2001 and 2002 F targets, provided that the Georges Bank and Southern New England multispecies closed areas remain closed to scallop fishing and that access to scallops in the Hudson Canyon and Virginia Beach Areas in the Mid-Atlantic is controlled. The PDT also recommended closing four new areas to scallop fishing to protect high concentrations of juvenile scallops.

At its January 25, 2001, meeting, the Council took final action on management measures for Framework 14. The Council recommended the following measures for fishing years 2001 and 2002: An annual DAS allocation of 120, 48, and 10 DAS for full-time, part-time, and occasional vessels, respectively; an Area Access Program for the Hudson Canyon and Virginia Beach Areas to control fishing effort, catch, and fishing mortality in these two previously closed areas; and a prohibition on the possession of more than 50 U.S. bushels (17.62 hl) of in-shell scallops inside the VMS demarcation line for vessels that fish in or transit the area south of 42°20′ N. latitude. Although the Scallop Oversight Committee supported two additional closures in Framework 14, the Council ultimately decided to recommend that no new closures (beyond the continuation of the Georges Bank and Southern New England multispecies closed areas) be implemented because such closures had the potential for unnecessary hardships on the industry and that new closures are not necessary to achieve the goals of the FMP given the improved condition of the resource.

Approved Measures

This action implements an annual DAS allocation of 120, 48, and 10 DAS for full-time, part-time, and occasional vessels, respectively, for the 2001 and 2002 fishing years. This allocation represents an increase over the DAS allocations that became effective March 1, 2001, as scheduled under Amendment 7 (i.e., 49 full-time, 19 part-time, and 4 occasional).

Framework 14 implements a system (Area Access Program) for allowing controlled scallop fishing in the Hudson Canyon and Virginia Beach Sea Scallop Access Areas, similar to programs implemented under Frameworks 11 and 13 to the FMP that allowed scallop fishing in the multispecies closed areas. Vessels are prohibited from fishing for scallops in the Sea Scallop Access Areas unless they are fishing under the Area Access Program. The intent of this access program is to derive biological, social, and economic benefits from fishing in the areas over the course of 2 years. Measures included in the Area Access Program are described below.

This action also implements a prohibition on the possession of more than 50 U.S. bu (17.62 hl) of in-shell scallops inside the VMS demarcation line for vessels that fish in or transit the area south of 42°20′ N. latitude. Without this restriction, vessels could avoid the limitations of the seven-man crew and DAS restrictions by bringing in-shell scallops shoreward of the VMS demarcation line and shucking inside the line. Because DAS stop accruing once a vessel is inside the VMS demarcation line, vessels are able to bank this saved time for future trips. This measure also may have the incidental benefit of helping to prevent possible contamination of inshore habitats caused by any large discards of scallop viscera as a result of shucking near shore. Vessels fishing north of 42°20′ N. latitude will be exempt from this restriction, provided they do not enter the area south of 42°20′ N. latitude. This exemption is intended to allow a limited fishery to continue north of 42°20 N. latitude by some vessels that have traditionally landed in-shell scallops.

Finally, this final rule corrects a reference to the stowage provisions in the regulations for Closed Area I that inadvertently references a paragraph that formerly included gear stowage provisions but is now reserved. This regulation is found at § 648.81(b)(2)(ii).

Sea Scallop Area Access Program Measures

The 2001 Area Access Program begins on May 1, 2001 and ends when the TAC is caught or when vessels have used up their allocated number of trips. The 2002 Area Access Program begins on March 1, 2002, unless the fishery is closed prior to February 28, 2002, in which case it will begin on April 1, 2002. A delay in the start date is intended to reduce possible bycatch of finfish that could occur in late winter and early spring.

The Area Access Program includes a TAC of 13.96 million lb (6,331 mt) and 0.62 million lb (283 mt) for the Hudson Canyon and Virginia Beach Sea Scallop Access Areas, respectively, for 2001, and 14.14 million lb (6,415 mt) and 0.60 million lb (273 mt) for the Hudson Canyon and Virginia Beach Sea Scallop Access Areas, respectively, for 2002. These TACs include set-asides of 2 percent and 1 percent to defray the costs of observers and research, respectively. The TACs achieve an F of 0.2 in each of the two areas.

All limited access scallop vessels, including vessels that replace vessels that hold a scallop Confirmation of Permit History, are eligible to fish for the sea scallop TAC under the Area Access Program. Full-time and part-time scallop vessels are restricted to a total of three annual trips to the Hudson Canyon and Virginia Beach Sea Scallop Access Areas. A trip to either of the areas counts as one of the allowed trips. Vessels participating in the Area Access Program are allowed to take only one of the three allocated trips before May 1 and only two of the three allocated trips before June 1. At least one trip must be started before September 1 to be eligible to fish the remainder of the allocated trips or any additional trips that may be authorized on or after October 1. This measure is meant to prevent a derby style fishery from occurring and may reduce the potential for bycatch by limiting trips in late spring when bycatch, particularly of summer flounder, could be problematic. Vessels in the occasional permit category may conduct only one trip and may fish in the area of their choice.

Participating scallop vessels are allowed to possess and land from the areas up to 17,000 lb (7,711.1 kg) of scallop meats per trip in fishing year 2001 and 18,000 lb (8,164.7 kg) of scallop meats per trip in fishing year 2002. Limits on both the amount of scallops possessed and landed and the number of trips are intended to help to control fishing mortality of scallops in the areas. These limits are also intended to increase social benefits by allowing all limited access vessels an opportunity to fish in the areas without creating a derby fishery, and to increase economic benefits by promoting an orderly fishery and reducing the possibility of market gluts that could be caused by high initial catches in these areas.

After taking into account data on the number of eligible vessels participating and on the total number of trips taken, the Administrator, Northeast Region, NMFS (Regional Administrator) may adjust the sea scallop possession limit for the Hudson Canyon and Virginia Beach Sea Scallop Access Areas any time during the season and on or after October 1 for fishing year 2001 and 2002 may allocate one or more additional trips for full-time and part-time vessels. In order for additional trips to be allocated, a sufficient amount of the sea scallop TAC must remain to warrant such an adjustment or allocation. In order for a vessel to participate in any additional Area Access Program trips allocated on or after October 1, that vessel must have started at least one Area Access Program trip prior to September 1 of the current fishing year. Vessels with occasional permits will not be allocated any additional trips.

Any trip of 10 DAS or less for a vessel fishing in the Area Access Program will count as 10 DAS. Any trip of over 10 DAS will count as the actual DAS (e.g., if a vessel used 12 DAS, 12 DAS would be deducted from its annual DAS allocation). The intended effect of the minimum 10 DAS count is to reduce the amount of days that are available to be fished in the 2001–2002 fishing years in other areas, where scallops are generally smaller, thereby reducing fishing mortality by potentially reducing the number of scallops caught under DAS.

Vessels will be allowed to use dredges or trawls when fishing in the Area Access Program. Dredge gear is required to be outfitted with a twine top with a minimum mesh size of 10 inches (25.40 cm). The purpose of increasing the minimum twine top mesh size measurement from 8 inches (20.32 cm) to 10 inches (25.40 cm) for the Area Access Program is to reduce bycatch of groundfish and other finfish. Recent research and experience from the Georges Bank and Southern New England Closed Area Sea Scallop Exemption Program demonstrate that the 10-inch (25.40 cm) mesh size may significantly reduce bycatch of certain species, especially flatfish species.

All scallop vessels fishing in the Area Access Program must have installed on board an operational VMS unit that meets the minimum performance criteria as specified in the regulations at § 648.9(b). (Vessels with occasional permits are the only limited access scallop vessels not currently required to have a VMS unit). Scallop vessels planning to fish in the Area Access Program must so declare by notifying the Regional Administrator through the VMS as described here.

Each vessel operator is required to inform NMFS of his/her intention to fish in the Sea Scallop Access Areas prior to the 25th day of the month preceding the month in question through the VMS e-mail system to facilitate placement of observers (e.g., if the vessel plans to fish in these areas in July, it would need to notify the Regional Administrator by June 25).

The following information must be reported to the Regional Administrator prior to the 25th day of the month preceding the month in question: Vessel name and permit number, owner and operator's name, owner and operator's phone numbers, the area to be fished, and the number of trips anticipated to be taken in the area in question. Vessels will be provided additional information by mail regarding all notification requirements.

Each vessel participating in the Area Access Program is required to report specific information on a daily basis through the VMS. For each day of an Area Access Program trip, a vessel must report the daily pounds (kg) of scallop

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meats kept, the area fished that day, and the Fishing Vessel Trip Report page numbers corresponding to the respective Sea Scallop Access Area trip. In addition, vessels on observed trips must provide a separate report of the daily pounds (kg) of scallop meats kept on tows that were observed.

Vessels that have declared a trip into the Area Access Program are prohibited from possessing more than 50 U.S. bu (17.62 hl) (400 lb (181.4 kg) of meats) of shell stock when outside the Sea Scallop Access Areas. This limit for shell stock (i.e., unshucked scallops) is considered part of the overall possession limit. A limit on the amount of sea scallops landed in the shell is necessary to monitor and enforce the overall meat weight possession limit requirement. Allowing vessels to retain a relatively minor amount of shell stock will help satisfy a market for large, whole scallops, yet not compromise the enforceability of the conservation intent of the possession limit.

General category permitted vessels and limited access scallop vessels fishing outside a scallop DAS are allowed to fish in the Sea Scallop Access Areas throughout the year, provided that no more than 100 lb (45.36 kg) of scallop meats are possessed on board the vessel when the vessel is in the Sea Scallop Access Areas. These vessels are prohibited from possessing in-shell scallops while inside the Sea Scallop Access Areas, except they may possess an equivalent of in-shell scallops that are necessary to provide 100 lb (45.36 kg) of scallop meats. Vessels not fishing under the Area Access Program may transit the Sea Scallop Access Areas with more than these possession limits on board, provided their gear is properly stowed according to the regulations at § 648.23(b). This measure is intended to allow an incidental catch of scallops for scallop vessels that fish for other species outside the areas and to allow for more direct transiting to and from other fishing areas.

To improve the enforceability of the Area Access Program, all limited access scallop vessels equipped with a VMS unit will be polled twice per hour, regardless of whether the vessel is enrolled in the Area Access Program or not. Also, vessels are required to stow all dredge or trawl gear while transiting to and from the Sea Scallop Access Areas and must land their scallop catch at one location for each trip.

Vessels are required to carry observers when requested. The Council has recommended, as a goal, a 10-percent observer coverage for the Hudson Canyon Sea Scallop Access Area and a 20-percent observer coverage for the Virginia Beach Sea Scallop Access Area. Observers will obtain information on catch, catch rates, and bycatch and may obtain information on gear efficiency and selectivity and on other characteristics of the fishery. The vessel owner will be responsible for paying for the cost of the observer, regardless of whether any scallops are caught on the trip. At the discretion of the Regional Administrator, scallop vessels may be allocated an additional amount of sea scallops, not to exceed a cumulative total of 127 mt or 6 mt in 2001 for the Hudson Canyon and Virginia Beach Sea Scallop Access Areas, respectively, and 128 mt or 5 mt in 2002 for the Hudson Canyon and Virginia Beach Sea Scallop Access Areas, respectively, for each trip on which an observer is taken, to help defray the cost of the observer. Additional scallops to fund observers cannot exceed 2 percent of the overall scallop TAC. A TAC set-aside of 1 percent to fund research is also included as part of the Area Access Program. This research program for the Sea Scallop Access Areas is modeled after the research program in the 2000 Georges Bank Sea Scallop Exemption Program. A Request for Proposals notice will be published in the Federal Register that will provide information on the submission process, eligibility criteria, proposal requirements and priorities, project evaluation, application deadlines and other requirements. A report of the project results must be submitted to the Council and NMFS. Successful applicants will receive grant awards to help defray the costs of the sea scallop research. Grant awards will be made consistent with the Department of Commerce's grant policy and procedures. Amounts over the trip limits for sea scallop meats to be allocated for defraying research costs shall be limited by area up to 63 mt or 3 mt in 2001 for the Hudson Canyon and Virginia Beach Sea Scallop Access Areas, respectively, and 64 mt or 3 mt in 2002 for the Hudson Canyon and Virginia Beach Sea Scallop Access Areas, respectively.

Abbreviated Rulemaking

NMFS is making these revisions to the regulations under the framework abbreviated rulemaking procedure codified at 50 CFR part 648, subpart F. This procedure requires the Council, when making specifically allowed adjustments to the FMP, to develop and analyze the actions over the span of at least two Council meetings. The Council must provide the public with advance notice of both the proposals and the analysis and with an opportunity to comment on them prior to and at a second Council meeting. Upon review of the analysis and public comment, the Council may recommend to the Regional Administrator that the measures be published as a final rule if certain conditions are met. NMFS may publish the measures as a final rule or as a proposed rule if additional public comment is determined to be needed.

Because this action was determined to have a significant impact on the human environment, the Council prepared a Draft SEIS (DSEIS) to consider a range of impacts of the proposed action and its alternatives. The public was provided the opportunity to comment on the measures contained in Framework 14, during the development of the framework, at the following meetings:

Date	Meeting
2000	
June 5–6	Scallop PDT
June 21–22	Scallop PDT
July 24–25	Scallop PDT
August 4	Scallop Oversight Committee
August 15	Scallop PDT
August 28	Scallop PDT
September 18-19	Joint Scallop Oversight Committee and Advisory Committee
September 27	Council
October 4	Scallop Oversight Committee
October 5	Scallop PDT
October 27	Scallop PDT
November 14	Council
2001	
January 22	Scallop Oversight Committee
January 25	Council

The public also was provided with the opportunity to comment on the Council's Notice of Intent to Prepare an SEIS (NOI) (65 FR 60396, October 11, 2000), and during the public comment period following the Notice of Availability (NOA) of the DSEIS (65 FR 77025, December 8, 2000, corrected in 65 FR 78484, December 15, 2000), which ended on January 24, 2001.

Documents summarizing the Council's proposed action, the draft FSEIS, and economic impacts analysis of the preferred and alternative actions, were available for public review 1 week prior to the final Council meeting on January 25, 2001, as is required under the framework adjustment process. Written and oral comments were accepted up to and during that meeting. Comments pertaining specifically to the NOI, DSEIS, and framework measures are included and responded to in the FSEIS.

NOAA codifies its OMB control numbers for information collection at 15 CFR part 902. Part 902 collects and displays the control numbers assigned to information collection requirements of NOAA by OMB pursuant to the Paperwork Reduction Act (PRA). This final rule codifies OMB control numbers for 0648–0202, 0648–0307, and 0648–0416 for § 648.58.

Under NOAA Administrative Order 205-11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere, NOAA, has delegated to the Assistant Administrator for Fisheries, NOAA (AA), the authority to sign material for publication in the **Federal Register**.

Classification

The Council prepared an FSEIS for this framework adjustment; an NOA was published on March 9, 2001 (66 FR 14141). Subsequent to the publication of the NOA on the FSEIS, NMFS received a comment letter on the FSEIS requesting that NMFS reject the environmental analysis because it failed to comply with the National Environmental Policy Act (NEPA) and the Magnuson-Stevens Fishery Conservation and Management Act. The commenter indicated that there were numerous procedural deficiencies during the FSEIS development and approval process, most notably that the Council failed to analyze the environmental impacts of Framework 14 and a range of alternatives to minimize the environmental effects before the Council took final action. The commenter also indicated that the FSEIS fails to analyze the environmental consequences of Framework 14 and a range of alternatives that would minimize the environmental impacts.

NMFS has determined, upon review of the framework, FSEIS, and upon consideration of all public comments received on the DSEIS, FSEIS, and framework measures that the Council considered an adequate analysis of the impacts and range of alternatives when it voted to submit Framework 14 to the agency for its consideration. NMFS, in making the decision to approve and implement Framework 14, also considered a broad range of alternatives in the FSEIS, which addresses measures to achieve objectives established by Amendment 7 and to achieve optimum yield. The Council is considering alternative ways to manage the resource and the fishery in its current development of Amendment 10. Many of the alternatives suggested in the comment letter on the FSEIS are more appropriate for consideration in this larger context.

The AA finds that, because public meetings held by the Council to discuss the management measures implemented by this final rule provided adequate prior notice and opportunity for public comment, further notice and opportunity to comment on this final rule is unnecessary. Therefore, the AA, under 5 U.S.C. 553(b)(B), finds good cause exists to waive prior notice and additional opportunity for public comment.

It is contrary to the public interest to delay for 30 days the effective date for the prohibition on the possession limit of more than 50 U.S. bu (17.62 hl) of in-shell scallops shoreward of the VMS demarcation line. Currently, some vessels are shucking their scallop catch inside the VMS demarcation line and thus compromising the conservation objectives of both the DAS and crew size restrictions of the FMP. To allow this activity to continue unrestricted could undermine the effects of the scallop management measures. In addition, a 30 day delay in effectiveness would delay the potential incidental benefits of reducing contamination of inshore waters that may be associated with high discards of scallop viscera from vessels shucking inshore of the VMS demarcation line. For these reasons, the AA finds, under 5 U.S.C. 553(d)(3), good cause not to delay for 30 days the effective date of this provision.

Because the annual DAS allocations implemented in this final rule are higher than the DAS allocations that went into effect on March 1, 2001, and because the Area Access Program (and associated information collection requirements as published in 15 CFR 902) allows access to areas that would otherwise be closed to scallop fishing, these measures relieve restrictions, and are therefore not subject to a 30–day delay in effectiveness under 5 U.S.C. 553(d)(1).

Also, this final rule corrects a reference to the stowage provisions in the regulations for Closed Area I that inadvertently references a paragraph that formerly included gear stowage provisions but is now reserved (§ 648.81(b)(2)(ii)). The correction to this crossreference imposes no new requirements and is not subject to the 30-day delay in effective date provisions of 5 U.S.C. 553 (d).

Because a prior notice and opportunity for public comment is not required for this rule under 5 U.S.C. 533, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

This final rule has been determined to be significant for the purposes of Executive Order 12866.

For purposes of the Congressional Review Act, this rule has been determined to be major within the meaning of 5 U.S.C. 804 (2). Because this rule establishes a regulatory program for a commercial activity related to fishing under 5 U.S.C. 808 (1), it is not subject to the Congressional Review Act 60–day delay in effective date.

This rule contains collection-of-information requirements subject to the PRA and which have been approved by OMB. The estimated response times and the OMB Control Numbers for these requirements are: 1 hour for installation of a vessel monitoring system (VMS) (0648–0416); 2 minutes for a monthly VMS declaration of an intent to fish during the next month (0648–0416); 2 minutes for notification at least 5 days prior to departure on a fishing trip (0648–0416); 10 minutes for a daily VMS catch report (0648–0416); 2 minutes for a notification of intent to leave on a fishing trip (0648–0202); and 5 seconds for VMS polling (0648–0416 and 0648–0307). The submission requirements for research proposals are cleared under OMB Control Numbers 0348–0043 and 0348–0044.

The response time estimates above include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

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Dated: April 25, 2001.

John Oliver,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR chapter IX, part 902 and 50 CFR chapter VI, part 648 are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT; OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by adding in numerical order an entry for § 648.58 with new OMB control numbers to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
. . . . .	
50 CFR	
. . . . .	
648.58	–0202, –0307, and –0416
. . . . .	

50 CFR Chapter VI

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.10, the first sentence of paragraph (b)(1), introductory text, is revised to read as follows:

§ 648.10 DAS notification requirements.

* * * * *

(b) * * *

(1) A scallop vessel issued a full-time or part-time limited access scallop permit; or issued an occasional limited access permit when fishing under the Sea Scallop Area Access Program specified under § 648.58; or a scallop vessel fishing under the small dredge program specified in § 648.51(e); or a vessel issued a limited access multispecies, monkfish, occasional scallop, or combination permit whose owner elects to provide the notifications required by paragraph (b) of this section using a VMS that meets the minimum performance criteria specified in § 648.9(b) or as modified pursuant to § 648.9(a), unless otherwise authorized or required by the Regional Administrator under paragraph (d) of this section, must have installed on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b) or as modified pursuant to § 648.9(a). * * *

* * * * *

3. In § 648.14, revise paragraphs (a)(38), (a)(39), (a)(40), and (h)(27); and add paragraphs (a)(110), (a)(111), (h)(29), (h)(30), (h)(31), (h)(32), (h)(33), (i)(8), and (i)(9) to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(38) Enter or be in the area described in § 648.81(a)(1) on a fishing vessel, except as provided in § 648.81(a)(2) and (d).

(39) Enter or be in the area described in § 648.81(b)(1) on a fishing vessel, except as provided in § 648.81(b)(2).

(40) Enter or be in the area described in § 648.81(c)(1) on a fishing vessel, except as allowed under § 648.81(c)(2) and (d).

* * * * *

(110) Fish for, possess, or land sea scallops in or from the areas described in § 648.57, except as allowed under §§ 648.52(e) and 648.58.

(111) Transit or be in the areas described in § 648.57 when fishing under a scallop DAS, except: As allowed under § 648.58; or when all scallop gear is unavailable for immediate use as defined in § 648.23(b), unless there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use.

* * * * *

(h) * * *

(27) Enter or be in the areas described in § 648.57 when fishing with scallop dredge gear under the Sea Scallop Area Access Program specified in § 648.58, with a net, net material, or any other material on the top half of the dredge with mesh size smaller than that specified in § 648.58(c)(7).

* * * * *

(29) Possess or land per trip more than 50 bu (17.62 hectoliters (hl)) of in-shell scallops, as specified in § 648.52(d), once inside the VMS Demarcation Line by a vessel that, at any time during the trip, fished in or transited any area south of 42°20′ N. Latitude, except as provided in § 648.54.

(30) Land per trip more than 100 lb (45.36 kg) of scallop meats as specified in § 648.52(e) in or from the areas described in § 648.57 when fishing under a scallop DAS but not declared into the Sea Scallop Area Access Program or when fishing outside of the scallop DAS program.

(31) Possess more than 100 lb. (45.36 kg) of scallop meats in the areas described in § 648.57 when fishing under a scallop DAS but not declared into the Sea Scallop Area Access Program or when fishing outside of the scallop DAS program, unless the vessel's fishing gear is unavailable for immediate use as defined in § 648.23(b), or, there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use.

(32) Except as allowed in § 648.52(e), land in-shell scallops in or from the areas described in § 648.57 when fishing under a scallop DAS but not declared into the Sea Scallop Area Access Program or when fishing outside of the scallop DAS program.

(33) Except as allowed in § 648.52(e), possess in-shell scallops in the areas described in § 648.57 when fishing under a scallop DAS but not declared into the Sea Scallop Area Access Program or when fishing outside of the scallop DAS program, unless the vessel's fishing gear is unavailable for immediate use as defined in § 648.23(b), or, there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use.

* * * * *

(i) * * *

(8) Possess, retain, or land per trip no more than 100 lb (45.36 kg) of shucked scallops in or from the areas described in § 648.57.

(9) Except as allowed in § 648.52(e), possess or land in-shell scallops in or from the areas described in § 648.57.

* * * * *

4. In § 648.52, the section heading and paragraphs (a) and (c) are revised, and paragraphs (d) and (e) are added to read as follows:

§ 648.52 Possession and landing limits.

(a) Except as provided in paragraph (e) of this section, owners or operators of vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10 or that have used up their DAS allocations, and vessels possessing a general scallop permit, unless exempted under the state waters exemption program described under § 648.54, are prohibited from possessing or landing per trip more than 400 lb (181.44 kg) of shucked, or 50 bu (17.62 hl) of in-shell scallops with no more than one scallop trip of 400 lb (181.44 kg) of shucked, or 50 bu (17.62 hl) of in-shell scallops, allowable in any calendar day.

* * * * *

(c) Owners or operators of vessels with a limited access scallop permit that have declared into the Sea Scallop Area Access Program as described in § 648.58 are prohibited from fishing for, possessing or landing per trip more than the sea scallop possession and landing limit specified in § 648.58(c)(6).

(d) Owners or operators of vessels issued limited access or general category scallop permits fishing in or transiting the area south of 42°20′ N. Latitude at any time during a trip are prohibited from fishing for, possessing, or landing per trip more than 50 bu (17.62 hl) of in-shell scallops shoreward of the VMS Demarcation Line, unless when fishing under the state waters exemption specified under § 648.54.

(e) Owners or operators of vessels with a general category scallop permit and vessels with a limited access scallop permit that are not fishing under a scallop DAS may land per trip no more than 100 lb (45.36 kg) of sea scallop meats in or from the areas described in § 648.57, and may possess no more than 100 lb (45.63 kg) of sea scallop meats in or from the areas described in § 648.57, unless the vessel is only transiting the areas with all fishing gear unavailable for immediate use as defined in § 648.23(b), or, there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use. No in-shell scallops from the Hudson Canyon and Virginia Beach Sea Scallop Access Areas may be landed. In-shell scallops up to 12.5 bu (4.41 hl) taken by such vessels from the Hudson Canyon and Virginia Beach Sea Scallop Access Areas may be possessed only for the purpose of shucking in order to provide no more than 100 lb of scallop meats. Any combination of scallop meats and in-shell scallops possessed by such vessels must be equivalent to no more than 100 lb (45.36 kg) of scallop meats.

5. In § 648.53, paragraph (b) is amended by revising the table to read as follows:

§ 648.53 DAS allocations.

* * * * *

(b) * * *

DAS Category	1999–2000	2000–2001	2001–2002	2002–2003	2003–2004	2004–2005	2005–2006	2006–2007	2007–2008	2008
Full-time	120	120	120	120	45	34	35	38	36	60
Part-time	48	48	48	48	18	14	14	15	17	24
Occasional	10	10	10	10	4	3	3	3	4	5

* * * * *

6. In § 648.57, the section heading and the introductory text of paragraphs (a) and (b) are revised to read as follows:

§ 648.57 Closed and regulated areas.

(a) *Hudson Canyon Sea Scallop Access Area.* Through February 28, 2003, except as provided in §§ 648.52 and 648.58, no vessel may fish for scallops in or land scallops from the area known as the Hudson Canyon Sea Scallop Access Area, and no vessel may possess scallops in the Hudson Canyon Sea Scallop Access Area, unless such vessel is only transiting the area with all fishing gear unavailable for immediate use as defined in § 648.23(b), or, there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use. The Hudson Canyon Sea Scallop Access Area (copies of a chart depicting this area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

* * * * *

(b) *Virginia Beach Sea Scallop Access Area.* Through February 28, 2003, except as provided in §§ 648.52 and 648.58, no vessel may fish for scallops in or land scallops from the area known as the Virginia Beach Sea Scallop Access Area, and no vessel may possess scallops in the Virginia Beach Sea Scallop Access Area, unless such vessel is only transiting the areas with all fishing gear unavailable for immediate use as defined in § 648.23(b), or, there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use. The Virginia Beach Sea Scallop Access Area (copies of a chart depicting this area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

* * * * *

7. Section 648.58 is revised to read as follows:

§ 648.58 Sea Scallop Area Access Program.

(a) *Eligibility.* Vessels issued a limited access scallop permit are eligible to participate in the Sea Scallop Area Access Program, and may fish in the Sea Scallop Access Areas, as described in § 648.57 of this section, for the times specified in paragraph (c)(1) of this section, when fishing under a scallop DAS, and while complying with the requirements of this section. Copies of a chart depicting these areas are available from the Regional Administrator upon request.

(b) *Sea Scallop Access Areas*—(1) *Hudson Canyon Sea Scallop Access Area.* Eligible vessels, as specified in paragraph (a) of this section, may fish for, possess, and retain sea scallops in excess of the possession limit specified in § 648.52(e) in or from in the Hudson Canyon Sea Scallop Access Area, which is the area described in § 648.57(a).

(2) *Virginia Beach Sea Scallop Access Area.* Eligible vessels, as specified in paragraph (a) of this section, may fish for, possess, and retain sea scallops in excess of the possession limit specified in § 648.52(e) in or from the Virginia Beach Sea Scallop Access Area, which is the area described in § 648.57(b).

(c) *Sea Scallop Area Access Season and Requirements.* To fish in the Sea Scallop Access Areas under the Sea Scallop Area Access Program, eligible vessels must fish during the Season specified in paragraph (c)(1) of this section and must comply with the requirements specified in paragraphs (c)(2) through (c)(4) of this section:

(1) *Season*—(i) *Fishing year 2001.* From May 1, 2001 through February 28, 2002, vessels participating in the Sea Scallop Area Access Program may fish for or possess sea scallop in or from the respective Sea Scallop Access Areas specified in § 648.57 of this section, unless access to these areas is terminated as specified in paragraph (f) of this section.

(ii) *Fishing year 2002.* From March 1, 2002, through February 28, 2003, vessels participating in the Sea Scallop Area Access Program may fish in the respective Sea Scallop Access Areas specified in § 648.57 of this section, unless access to these areas is terminated as specified in paragraph (f) of this section. Should the 2001 fishing year season be closed early, as described in paragraph (c)(1) of this section, the Sea Scallop Area Access Program season

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for fishing year 2002 will begin on April 1, 2002.

(2) *VMS.* The vessel must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10 and paragraph (h) of this section.

(3) *Declaration.* (i) Prior to the 25th day of the month preceding the month in which fishing is to take place, the vessel must submit a monthly report through the VMS e-mail messaging system of its intention to fish in the Hudson Canyon or Virginia Beach Sea Scallop Access Areas, along with the following information: Vessel name and permit number, owner and operator's name, owner and operator's phone numbers, and number of trips anticipated for each Sea Scallop Access Area in which it intends to fish. The Regional Administrator may waive a portion of this notification period for trips into the Sea Scallop Access Areas in April or May, 2001. Notification of this waiver of a portion of the notification period will be provided to the vessel through a permit holder letter issued by the Regional Administrator.

(ii) In addition to the requirements described in paragraph (c)(3)(i) of this section, and for the purpose of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the time, port of departure, and specific Sea Scallop Access Area to be fished, at least 5 working days prior to the beginning of any trip on which it declares into the Sea Scallop Area Access Program.

(iii) On the day the vessel leaves port to fish under the Sea Scallop Area Access Program, the vessel owner or operator must declare into the Program through the VMS, in accordance with instructions to be provided by the Regional Administrator prior to the vessel leaving port.

(4) *Number of trips*—(i) *Full and part-time vessels.* Full and part-time vessels are restricted to a total of three trips into the Sea Scallop Access Areas, unless otherwise authorized by the Regional Administrator as specified in paragraph (e)(2) of this section. A trip to either area counts as one trip.

(A) *Distribution of trips for the 2001 fishing year.* For fishing year 2001, full-time and part-time vessels participating in the Sea Scallop Area Access Program may start no more than two of their three allowed Area Access Program trips before June 1, 2001. To be eligible for any additional trips allocated under paragraph (e)(4) of this section, at least one trip must begin by September 1, 2001.

(B) *Distribution of trips for 2002 fishing year.* For fishing year 2002, full-time and part-time vessels participating in the Sea Scallop Area Access Program may start no more than one of their three allowed Area Access Program trips before May 1, 2002, and no more than two of their three allowed Area Access Program trips before June 1, 2002.

(ii) *Occasional scallop vessels.* Occasional vessels may fish only one trip per fishing year in 2001 and 2002 under the Sea Scallop Area Access Program. The one allowed trip may be conducted in either the Hudson Canyon or Virginia Beach Sea Scallop Access Area specified in § 648.57 of this section at any time during the season, as specified in paragraph (c)(1) of this section.

(5) *Area fished.* A vessel that has declared a trip into the Sea Scallop Area Access Program must not fish for, possess, or land scallops from outside the specific Sea Scallop Access Area fished during that trip and must not enter or exit the specific Sea Scallop Access Area fished more than once per trip. A vessel that has declared a trip into the Sea Scallop Area Access Program must not exit one Sea Scallop Access Area and transit to, or enter, the other Sea Scallop Access Area on the same trip.

(6) *Possession and landing limits*—(i) *Fishing year 2001.* Unless otherwise authorized by the Regional Administrator as specified in paragraph (e) of this section, after declaring into the Sea Scallop Area Access Program in fishing year 2001 a vessel owner or operator may fish for, possess and land up to 17,000 lb (7,711.1 kg) of scallop meats per trip, with a maximum of 400 lb (181.4 kg) of the possession limit originating from 50 bu (17.62 hl) of in-shell scallops.

(ii) *Fishing year 2002.* Unless otherwise authorized by the Regional Administrator as specified in paragraph (e) of this section, after declaring into the Sea Scallop Area Access Program in fishing year 2002, a vessel owner or operator may fish for, possess, and land up to 18,000 lb (8,164.7 kg) of scallop meats per trip, with a maximum of 400 lb (181.4 kg) of the possession limit originating from 50 bu (17.62 hl) of in-shell scallops.

(7) *Gear restrictions.* The vessel must fish with or possess scallop dredge or trawl gear only in accordance with the restrictions specified in § 648.51(a) and (b), except that the mesh size of a net, net material, or any other material on the top of a scallop dredge in use by or in possession of the vessel shall not be smaller than 10.0 inches (25.40 cm) square or diamond mesh.

(8) *Transiting.* While outside of the Sea Scallop Access Areas specified in § 648.57, all fishing gear must be unavailable for immediate use as defined in § 648.23(b), unless there is a compelling safety reason.

(9) *Off-loading restrictions.* The vessel may not off-load its sea scallop catch from a trip at more than one location per trip.

(10) *Reporting.* The owner or operator must submit reports through the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished when declared in the Sea Scallop Area Access Program, including trips accompanied by a NMFS-approved observer. The reports must be submitted in 24–hour intervals, for each day beginning at 0000 hours and ending at 2400 hours. The reports must be submitted by 0900 hours of the following day and must include the following information:

(i) Total pounds/kilograms of scallop meats kept, total number of tows and the Fishing Vessel Trip Report log page number.

(ii) [Reserved]

(d) *Accrual of DAS.* A scallop vessel that has declared a fishing trip into the Sea Scallop Area Access Program of this section shall have a minimum of 10 DAS deducted from its DAS allocation, regardless of whether the actual number of DAS used during the trip is less than 10. Trips that exceed 10 DAS will be counted as actual time.

(e) *Adjustments to possession limits and number of trips*—(1) *Adjustment process for sea scallop possession limits for Hudson Canyon and the Virginia Beach Sea Scallop Access Areas.* The Regional Administrator may adjust the sea scallop possession limit at any time during the Sea Scallop Area Access Program. This adjustment may be made if the Regional Administrator determines that such adjustment will likely allow the scallop TAC to be reached without exceeding it. Notification of this adjustment to the possession limit will be provided to the vessel through a permit holder letter issued by the Regional Administrator.

(2) *Adjustment process for number of trips for Hudson Canyon and the Virginia Beach Sea Scallop Access Areas.* On or after October 1 for fishing years 2001 and 2002, if the scallop catch in the Hudson Canyon and/or Virginia Beach Sea Scallop Access Areas is less than the scallop TACs specified for fishing years 2001 and 2002 in paragraphs (f)(1) and (f)(2) of this section, respectively, the Regional Administrator may allocate one or more additional trips for the Hudson Canyon and/or Virginia Beach Sea Scallop Access Areas for full and part-time limited access sea scallop vessels that declared into and began a trip under the Sea Scallop Area Access Program prior to September 1 for the respective fishing year. This adjustment may be made if the Regional Administrator determines that such adjustment will likely allow the scallop TAC to be reached without exceeding it. Notification of this adjustment to the trip limit will be provided to the vessel through a permit holder letter issued by the Regional Administrator. Unused trips after September 30, 2001, may not be carried over into the 2002 Sea Scallop Area Access Program. Vessels with occasional permits would not be allocated an additional trip.

(3) *Increase of possession limit to defray costs of observers*—(i) *Defraying the costs of observers.* The Regional Administrator may increase the sea scallop possession limit specified in paragraph (c)(6) of this section to defray costs of observers by areas subject to the limits specified in paragraph (e)(3)(ii) of this section and to the limit on the cumulative amount of sea scallops allocated for a vessel that has declared a fishing trip into the Sea Scallop Area Access Program with a NMFS-approved observer on board. Notification of this increase of the possession limit will be provided to the vessel through a Letter of Authorization issued by the Regional Administrator which must be kept on board the vessel. The amount of the possession limit increase will be determined by the Regional Administrator and the vessel owner will be responsible for paying the cost of the observer, regardless of whether the vessel lands or sells sea scallops on that trip.

(ii) *Observer set-aside limits on increases of possession limits by area.* The cumulative amount of scallops authorized under this part to be taken by vessels in excess of the possession limits specified in paragraph (c)(6) of this section to defray the cost of an observer shall not exceed 2-percent of the overall TAC for each Sea Scallop Access Area. The following amounts represent 2 percent of those TACs:

(A) Hudson Canyon Sea Scallop Access Area, 2001 area access program - 127 mt;

(B) Virginia Beach Sea Scallop Access Area, 2001 area access program - 6 mt;

(C) Hudson Canyon Sea Scallop Access Area, 2002 area access program - 128 mt;

(D) Virginia Beach Sea Scallop Access Area, 2002 area access program - 5 mt.

(iii) *Notification of observer set-aside limit.* NMFS shall publish notification in the **Federal Register** of the date that the Regional Administrator projects that the observer set-aside limit will be caught.

(4) *Adjustments to possession limits and/or number of trips to defray the costs of sea scallop research*—(i) *Defraying the costs of sea scallop research.* The Regional Administrator may increase the sea scallop possession limit specified in paragraph (c)(6) of this section or allow additional trips into a Sea Scallop Access Area, subject to the limits on the cumulative amount of sea scallops allocated to defray costs for sea scallop research specified in paragraph (e)(4)(ii) of this section.

(ii) *Research set-aside limits on adjustments to possession limits and number of trips by area.* The cumulative amount of scallops authorized to be taken by vessels in excess of the possession limits specified in paragraph (c)(6) of this section for purposes of defraying the cost of sea scallop research shall not exceed 1 percent of the overall TAC for each Sea Scallop Access Area. The following amounts represent 1 percent of those TACs:

(A) Hudson Canyon Sea Scallop Access Area, 2001 area access program - 63 mt;

(B) Virginia Beach Sea Scallop Access Area, 2001 area access program - 3 mt;

(C) Hudson Canyon Sea Scallop Access Area, 2002 area access program - 64 mt;

(D) Virginia Beach Sea Scallop Access Area, 2002 area access program - 3 mt.

(iii) NMFS shall publish notification in the **Federal Register** of the date that the Regional Administrator projects that the scallop research set-aside limits will be caught.

(iv) *Adjustment procedure.* (A) Determinations as to which vessel may be authorized to take more than the trip limits specified in paragraph (c)(6) of this section, or to take additional trips for the purposes of defraying sea scallop research costs, shall be made by NMFS, in cooperation with the Council. At a minimum, applicants shall submit a scallop proposal under this program and a project summary that includes: The project goals and objectives, relationship of sea scallop research to management needs or priorities identified by the Council, project design, participants other than applicant, funding needs, breakdown of costs, and the vessel(s) for which authorization is requested.

(B) NMFS will make the final determination as to what proposals are approved and which vessels are authorized to take scallops in excess of possession limits or additional trips. Authorization to increase possession limits and/or number of trips will be provided to the vessel by Letter of Authorization issued by the Regional Administrator which must be kept on board the vessel.

(v) *Project Report Procedure.* Upon completion of his/her sea scallop research, the researcher of approved projects must provide the Council with a report of his/her findings, which include:

(A) A detailed description of methods of data collection and analysis;

(B) A discussion of results and any relevant conclusions presented in a format that is understandable to a non-technical audience; and

(C) A detailed final accounting of all funds used to conduct the sea scallop research.

(f) *Termination of the Sea Scallop Area Access Program*—(1) *Fishing year 2001 area access program*—(i) *Hudson Canyon Sea Scallop Access Area.* The Hudson Canyon Sea Scallop Access Area fishery for fishing year 2001 shall be terminated as of the date the Regional Administrator projects that 6,204 mt of sea scallops (the TAC less the observer and research set-asides) will be caught by vessels fishing in the Hudson Canyon Sea Scallop Access Area described in this section. NMFS shall publish notification of the termination in the **Federal Register**.

(ii) *Virginia Beach Sea Scallop Access Area.* The Virginia Beach Sea Scallop Access Area fishery for fishing year 2001 shall be terminated as of the date the Regional Administrator projects that 277 mt of sea scallops (the TAC less the observer and research set-asides) will be caught by vessels fishing in the Virginia Beach Sea Scallop Access Area described in this section. NMFS shall publish notification of the termination in the **Federal Register**.

(2) *Fishing year 2002 area access program.* (i) Hudson Canyon Sea Scallop Access Area. The Hudson Canyon Sea Scallop Access Area fishery for fishing year 2002 shall be terminated as of the date the Regional Administrator projects that 6,287 mt of sea scallops (the TAC less the observer and research set-asides) will be caught by vessels fishing in the Hudson Canyon Sea Scallop Access Area described in this section. NMFS shall publish notification of the termination in the **Federal Register**.

(ii) *Virginia Beach Sea Scallop Access Area.* The Virginia Beach Sea Scallop Access Area fishery for fishing year 2002 shall be terminated as of the date the Regional Administrator projects that 268 mt of sea scallops (the TAC less the observer and research set-asides) will be caught by vessels fishing in the Virginia Beach Sea Scallop Access Area

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described in this section. NMFS shall publish notification of the termination in the **Federal Register**.

(g) *Transiting.* Limited access sea scallop vessels fishing under a scallop DAS that have not declared a trip into the Sea Scallop Area Access Program may not fish in the areas known as the Hudson Canyon and Virginia Beach Sea Scallop Access Areas described in § 648.57, and may not enter or be in such areas unless the vessel is transiting the area and the vessel's fishing gear is unavailable for immediate use as defined in § 648.23(b), or there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use.

(h) *VMS Polling.* For the duration of the Sea Scallop Area Access Program, as described under this section, all sea scallop limited access vessels equipped with a VMS unit will be polled twice per hour, regardless of whether the vessel is enrolled in the Sea Scallop Area Access Program.

8. In § 648.80, paragraph (h)(1) is revised to read as follows:

§ 648.80 Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(h) * * *

(1) Except as provided in paragraph (h)(2) of this section, a scallop vessel that possesses a limited access scallop permit and either a multispecies combination vessel permit or a scallop multispecies possession limit permit, and that is fishing under a scallop DAS allocated under § 648.53, may possess and land up to 300 lb (136.1 kg) of regulated species per trip, provided that the amount of cod on board does not exceed the daily cod limit specified in § 648.86(b), up to a maximum of 300 lb (136.1 kg) of cod for the entire trip, and provided the vessel has at least one standard tote on board, unless otherwise restricted by § 648.86(a)(2).

* * * * *

9. In § 648.81, the introductory text of paragraphs (a)(1), (b)(1), and (c)(1) and paragraph (b)(2)(ii) are revised to read as follows:

§ 648.81 Closed areas.

(a) * * *

(1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area I (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (a)(2) and (d) of this section:

* * * * *

(b) * * *

(1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area II (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraph (b)(2) of this section:

* * * * *

(2) * * *

(ii) The vessel's fishing gear is stowed in accordance with the provisions of § 648.23(b).

(c) * * *

(1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as the Nantucket Lightship Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (c)(2) and (d) of this section:

* * * * *

10. In § 648.86, paragraph (a)(2)(iii) is revised to read as follows:

§ 648.86 Multispecies possession restrictions.

* * * * *

(a) * * *

(2) * * *

(iii) Unless otherwise authorized by the Regional Administrator as specified in paragraph (f) of this section, scallop dredge vessels or persons owning or operating a scallop dredge vessel that is fishing under a scallop DAS allocated under § 648.53 may land or possess on board up to 300 lb (136.1 kg), of haddock, except as specified in § 648.88(c), provided that the vessel has at least one standard tote on board. This restriction does not apply to vessels issued NE multispecies Combination Vessel permits that are fishing under a multispecies DAS. Haddock on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

* * * * *

11. In § 648.88, paragraph (c) is revised to read as follows:

§ 648.88 Multispecies open access permit restrictions.

* * * * *

(c) *Scallop multispecies possession limit permit.* A vessel that has been issued a valid open access scallop multispecies possession limit permit may possess and land up to 300 lb (136.1 kg) of regulated species when fishing under a scallop DAS allocated under § 648.53, provided the vessel does not fish for, possess, or land haddock from January 1 through June 30, as specified under § 648.86(a)(2)(i), and provided the vessel has at least one standard tote on board.

* * * * *

[FR Doc. 01–10783 Filed 4–26–01; 4:30 pm]
BILLING CODE 3510–22–S

Editorial Note: Federal Register Rule document 01-10783 originally appeared in the issue of Tuesday, May 1, 2001 at 66 FR 21639-21648. Due to numerous errors the document is being reprinted in its entirety.
[FR Doc. R1–10783 Filed 5–10–01; 8:45 am]
BILLING CODE 1505–05–D

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 160

RIN 3038–AB68

Privacy of Consumer Financial Information; Correction

AGENCY: Commodity Futures Trading Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations which were published in the **Federal Register** of Friday, April 27, 2001 (66 FR 21236). The regulations related to notice requirements and restrictions on the ability of certain financial institutions to disclose nonpublic personal information about consumers to nonaffiliated third parties.

DATES: Effective on June 21, 2001.

FOR FURTHER INFORMATION CONTACT: Susan Nathan, 202–418–5120 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction require certain financial institutions to provide their consumers with notice of their privacy policies and practices, and provide that the financial institutions may not disclose nonpublic personal information about a consumer to nonaffiliated third parties unless the institution provides certain information to the consumer and the consumer has not elected to opt out of the disclosure.

Need for Correction

As published, the final regulations contain an error which may prove to be misleading and needs to be clarified.

List of Subjects in 17 CFR Part 160

Brokers, Consumer protection, Privacy, Reporting and recordkeeping requirements.

Accordingly, 17 CFR Part 160 is corrected by making the following correcting amendment:

PART 160—PRIVACY OF CONSUMER FINANCIAL INFORMATION

1. The authority citation for part 160 continues to read as follows:

Authority: U.S.C. 7g and 8a(5); 15 U.S.C. 6801 *et seq.*

2. Revise paragraph (b)(1) of § 160.18 to read as follows:

§ 160.18 Effective Date; compliance date; transition rule.

* * * * *

(b)(1) *Notice requirement for consumers who are your customers on the effective date.* By March 31, 2002, you must have provided an initial notice, as required by § 160.4, to consumers who are your customers on March 31, 2002.

Dated: May 7, 2001.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 01–11861 Filed 5–10–01; 8:45 am]
BILLING CODE 6351–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[TN–T5–2001–02; FRL–6977–6]

Clean Air Act Full Approval of Operating Permit Program; Tennessee and Memphis-Shelby County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to adverse comments, EPA is withdrawing the direct final rule published in the **Federal Register** on March 20, 2001, promulgating full approval of the operating permit programs submitted by the Tennessee Department of Environment and Conservation and the Memphis-Shelby County Health Department.

DATES: The direct final rule published on March 20, 2001, in the **Federal Register** (66 FR 15635) is withdrawn as of May 11, 2001.

ADDRESSES: The docket containing supporting information used in the development of this notice is available for inspection during normal business hours at EPA Region 4, Air & Radiation Technology Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8909. Anyone wanting to examine these documents should make an appointment by calling the person listed below at least two working days in advance.

FOR FURTHER INFORMATION CONTACT: Kim Pierce, EPA Region 4, at (404) 562–9124 or *pierce.kim@epa.gov/*.

SUPPLEMENTARY INFORMATION: On March 20, 2001, EPA published a direct final rule (66 FR 15635) and a parallel proposal (66 FR 15680) to fully approve the operating permit programs of the Tennessee Department of Environment and Conservation and the Memphis-Shelby County Health Department. The Tennessee and Memphis-Shelby County operating permit programs were submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authorities' jurisdiction. EPA granted interim approval to the Tennessee and Memphis-Shelby County operating permit programs on July 29, 1996. Tennessee and Memphis-Shelby County revised their programs to satisfy the conditions of the interim approval and the direct final rule published on March 20, 2001, would have approved those revisions along with other program changes made by Tennessee since the interim approval was granted.

The EPA stated in the March 20, 2001, action that if adverse comments were received by April 19, 2001, EPA would publish a timely withdrawal of the direct final rule. The EPA did receive adverse comments and is, therefore, withdrawing the March 20, 2001, action and informing the public that the direct final rule will not take effect on May 21, 2001. The commenter expressed concern that Tennessee is issuing operating permits that do not provide for compliance with all applicable requirements. The EPA will address the specific comments in a subsequent final action based on the parallel proposal published on March 20, 2001.

As stated in the parallel proposal, EPA will not institute a second comment period on this action. However, in response to a request from George Hays as counsel for the National Parks Conservation Association, EPA is publishing a notice in the proposed rules section of this **Federal Register** to reopen the public comment period in the March 20, 2001, proposal.

Dated: May 2, 2001.

A. Stanley Meiburg,

Acting, Regional Administrator, Region 4.

[FR Doc. 01–11910 Filed 5–10–01; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301123; FRL–6781–6]

RIN 2070–AB78

Bacillus Thuringiensis Cry3Bb1 and Cry2Ab2 Protein and the Genetic Material Necessary for its Production in Corn and Cotton; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited exemption from the requirement of a tolerance for residues of the plant-pesticides Bacillus thuringiensis Cry3Bb1 protein and the genetic material necessary for its production in corn on field corn, sweet corn, and popcorn and the plant-pesticides Bacillus thuringiensis Cry2Ab2 protein and the genetic material necessary for its production in corn on field corn, sweet corn, popcorn, or in cotton on cotton seed, cotton oil, cotton meal, cotton hay, cotton hulls, cotton forage, and cotton gin byproducts when applied/used as a plant-pesticide. Monsanto Company submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996, requesting an exemption from the requirement of a tolerance. This exemption from the requirement of a tolerance will expire on May 1, 2004.

DATES: This regulation is effective May 11, 2001. Objections and requests for hearings, identified by docket control number [OPP–301123], must be received by EPA, on or before July 10, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit IX. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301123 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Mike Mendelsohn, c/o Product Manager (PM) 90, Biopesticides and

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Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 308–8715; and e-mail address: mendelsohn.mike@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301123. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of October 10, 1997 (62 FR 52998) (FRL–5748–5), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170) announcing the filing of a pesticide tolerance petition, petition number 7F4888, by Monsanto Company, 700 Chesterfield Parkway, North, St. Louis, MO 63198. This notice included a summary of the petition prepared by the petitioner Monsanto Company. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180 be amended by establishing an exemption from the requirement of a tolerance for residues of the plant pesticides consisting of *Bacillus thuringiensis* Cry1, Cry2, and Cry3 classes of proteins and the genetic material necessary for the production of these proteins in or on all raw agricultural commodities. In August and November of 1999, Monsanto amended their petition to narrow its scope to the following Cry proteins: Cry1Ab, Cry1Ac, Cry2Aa, Cry2Ab, Cry3Aa, and Cry3Bb in or on all plant raw agricultural commodities. While this final rule is limited to particular Cry3Bb in or on corn and Cry2Ab proteins in or on corn and cotton (Cry3Bb1 and Cry2Ab2), the Agency may at future dates issue final rules for the other specified Cry protein plant-pesticides on particular plant agricultural commodities.

III. Risk Assessment

Pursuant to section 408(c)(2)(A)(i) of the FFDCA, EPA may establish or leave in effect an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance exemption is "safe." With respect to an exemption for a pesticide chemical residue, section 408(c)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance or tolerance exemption and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *" Additionally, section 408(b)(2)(D) requires that the Agency consider "available information" concerning, *inter alia*, the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

IV. Toxicological Profile

Pursuant to section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Data have been submitted demonstrating the lack of mammalian toxicity at high levels of exposure to the pure Cry3Bb1 and Cry2Ab2 proteins. These data demonstrate the safety of the products at levels well above maximum possible exposure levels that are reasonably anticipated in the crops. This is similar to the Agency position regarding toxicity and the requirement of residue data for the microbial *Bacillus thuringiensis* products from which this plant-pesticide was derived

(See 40 CFR 158.740(b)(2)(i)). For microbial products, further toxicity testing and residue data are triggered by significant acute effects in studies such as the mouse oral toxicity study, to verify the observed effects and clarify the source of these effects (Tiers II and III).

Two acute oral studies were submitted for Cry3Bb1 proteins. These studies were done with two variants of the Cry3Bb1 protein engineered with either four or five internal amino acid sequence changes to enhance activity against the corn rootworm. The acute oral toxicity data submitted support the prediction that the Cry3Bb1 protein would be non-toxic to humans. Male and female mice (10 of each) were dosed with 36, 396, or 3,780 milligrams/kilograms bodyweight (mg/kg bwt) of Cry3Bb1 protein for one variant. The mice were dosed with 38.7, 419, or 2,980 mg/kg bwt of Cry3Bb1 protein for the other variant. In one study, two animals in the high dose group died within a day of dosing. These animals both had signs of trauma probably due to dose administration (i.e., lung perforation or severe discoloration of lung, stomach, brain and small intestine). No clinical signs were observed in the surviving animals and body weight gains were recorded throughout the 14–day study for the remaining animals. Gross necropsies performed at the end of the study indicated no findings of toxicity attributed to exposure to the test substance in either study. No other mortality or clinical signs attributed to the test substance were noted during either study.

The acute oral toxicity data submitted support the prediction that the Cry2Ab2 protein would be non-toxic to humans. Male and female mice (10 of each) were dosed with 67, 359, and 1,450 mg/kg bwt of Cry2Ab2 protein. Outward clinical signs were observed and body weights recorded throughout the 14–day study. Gross necropsies performed at the end of the study indicated no findings of toxicity attributed to exposure to the test substance. No mortality or clinical signs attributed to the test substance were noted during the study. When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Sjoblad, Roy D., et al. "Toxicological Considerations for Protein Components of Biological Pesticide Products," *Regulatory Toxicology and Pharmacology* 15, 3-9 (1992)). Therefore, since no effects were shown to be caused by the plant-pesticides, even at relatively high dose levels, the Cry3Bb1 and Cry2Ab2 proteins are not considered toxic.

Further, amino acid sequence comparisons showed no similarity between Cry3Bb1 and Cry2Ab2 proteins to known toxic proteins available in public protein data bases.

Since Cry3Bb1 and Cry2Ab2 are proteins, allergenic sensitivities were considered. Current scientific knowledge suggests that common food allergens tend to be resistant to degradation by heat, acid, and proteases, may be glycosylated and present at high concentrations in the food.

Data have been submitted that demonstrate that the Cry3Bb1 protein is rapidly degraded by gastric fluid *in vitro*. In a solution of simulated gastric fluid (pH 1.2 - U.S. Pharmacopeia), complete degradation of detectable Cry3Bb1 protein occurred within 30 seconds. Insect bioassay data indicated that the protein loss insecticidal activity within 2 minutes of incubation in SGF. Incubation in simulated intestinal fluid resulted in a~59 kDa protein digestion product. A comparison of amino acid sequences of known allergens uncovered no evidence of any homology with Cry3Bb1, even at the level of 8 contiguous amino acids residues.

Data have been submitted that demonstrate that the Cry2Ab2 delta-endotoxin is rapidly degraded by gastric fluid *in vitro*. In a solution of simulated gastric fluid (pH 1.2 - U.S. Pharmacopeia), complete degradation of detectable Cry2Ab2 protein occurred within 15 seconds. Incubation in simulated intestinal fluid resulted in a ~50 kDa protein digestion product. A comparison of amino acid sequences of known allergens uncovered no evidence of any homology with Cry2Ab2, even at the level of 8 contiguous amino acids residues.

The potential for the Cry3Bb1 and Cry2Ab2 proteins to be food allergens is minimal. Regarding toxicity to the immune system, the acute oral toxicity data submitted support the prediction that the Cry3Bb1 and Cry2Ab2 proteins would be non-toxic to humans. When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Sjoblad, Roy D., et al. "Toxicological Considerations for Protein Components of Biological Pesticide Products," *Regulatory Toxicology and Pharmacology* 15, 3-9 (1992)). Therefore, since no effects were shown to be caused by the plant-pesticides, even at relatively high dose levels, the Cry3Bb1 and Cry2Ab2 proteins are not considered toxic.

V. Aggregate Exposures

Pursuant to FFDCA section 408(b)(2)(D)(vi), EPA considers available information concerning aggregate exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

The Agency has considered available information on the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue and to other related substances. These considerations include dietary exposure under the tolerance exemption and all other tolerances or exemptions in effect for the plant-pesticide chemical residue, and exposure from non-occupational sources. Exposure via the skin or inhalation is not likely since the plant-pesticide is contained within plant cells, which essentially eliminates these exposure routes or reduces these exposure routes to negligible. Oral exposure, at very low levels, may occur from ingestion of processed corn products and, potentially, drinking water. However a lack of mammalian toxicity and the digestibility of the plant-pesticides have been demonstrated. The use sites for the Cry3Bb1 and Cry2Ab2 proteins are all agricultural for control of insects. Therefore, exposure via residential or lawn use to infants and children is not expected. Even if negligible exposure should occur, the Agency concludes that such exposure would present no risk due to the lack of toxicity demonstrated for the Cry3Bb1 and Cry2Ab2 proteins.

VI. Cumulative Effects

Pursuant to FFDCA section 408(b)(2)(D)(v), EPA has considered available information on the cumulative effects of such residues and other substances that have a common mechanism of toxicity. These considerations included the cumulative effects on infants and children of such residues and other substances with a common mechanism of toxicity. Because there is no indication of mammalian toxicity to these plant-pesticides, we conclude that there are no cumulative effects for the Cry3Bb1 and Cry2Ab2 proteins.

VII. Determination of Safety for U.S. Population, Infants and Children

A. Toxicity and Allergenicity Conclusions

The data submitted and cited regarding potential health effects for the Cry3Bb1 and Cry2Ab2 proteins include the characterization of the expressed Cry3Bb1 protein in corn and the

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expressed Cry2Ab2 protein in corn and cotton, as well as the acute oral toxicity, and *in vitro* digestibility of the proteins. The results of these studies were determined applicable to evaluate human risk and the validity, completeness, and reliability of the available data from the studies were considered.

Adequate information was submitted to show that the Cry3Bb1 test material derived from microbial cultures was biochemically and, functionally similar to the protein produced by the plant-pesticide ingredients in corn. Adequate information was submitted to show that the Cry2Ab2 test material derived from microbial cultures was biochemically and, functionally similar to the protein produced by the plant-pesticide ingredients in corn and cotton. Production of microbially produced protein was chosen in order to obtain sufficient material for testing.

The acute oral toxicity data submitted supports the prediction that the Cry3Bb1 and Cry2Ab2 proteins would be non-toxic to humans. When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Sjoblad, Roy D., et al. "Toxicological Considerations for Protein Components of Biological Pesticide Products," *Regulatory Toxicology and Pharmacology* 15, 3-9 (1992)). Since no effects were shown to be caused by Cry3Bb1 and Cry2Ab2 proteins, even at relatively high dose levels (3,780 mg Cry3Bb1/kg bwt and 1,450 mg/kg bwt of Cry2Ab2 protein), the Cry3Bb1 and Cry2Ab2 proteins are not considered toxic. This is similar to the Agency position regarding toxicity and the requirement of residue data for the microbial *Bacillus thuringiensis* products from which this plant-pesticide was derived. See 40 CFR 158.740(b)(2)(i). For microbial products, further toxicity testing and residue data are triggered by significant acute effects in studies such as the mouse oral toxicity study to verify the observed effects and clarify the source of these effects (Tiers II and III).

Cry3Bb1 and Cry2Ab2 residue chemistry data were not required for a human health effects assessment of the subject plant-pesticide ingredients because of the lack of mammalian toxicity.

Both available information concerning the dietary consumption patterns of consumers (and major identifiable subgroups of consumers including infants and children); and safety factors which, in the opinion of experts qualified by scientific training and experience to evaluate the safety of food additives, are generally recognized as appropriate for the use of animal experimentation data were not evaluated. The lack of mammalian toxicity at high levels of exposure to the Cry3Bb1 and Cry2Ab2 proteins demonstrate the safety of the product at levels well above possible maximum exposure levels anticipated in the crop.

The genetic material necessary for the production of the plant-pesticides active ingredients are the nucleic acids (DNA, RNA) which comprise genetic material encoding these proteins and their regulatory regions. "Regulatory regions" are the genetic material, such as promoters, terminators, and enhancers, that control the expression of the genetic material encoding the proteins. DNA and RNA are common to all forms of plant and animal life and the Agency knows of no instance where these nucleic acids have been associated with toxic effects related to their consumption as a component of food. These ubiquitous nucleic acids, as they appear in the subject active ingredient, have been adequately characterized by the applicant. Therefore, no mammalian toxicity is anticipated from dietary exposure to the genetic material necessary for the production of the subject active plant pesticidal ingredients.

B. Infants and Children Risk Conclusions

FFDCA section 408(b)(2)(C) provides that EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDCA section 408(B)(2)(C) also provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children.

In this instance, based on all the available information, the Agency concludes that there is a finding of no toxicity for the Cry3Bb1 and Cry2Ab2 proteins and the genetic material necessary for their production. Thus, there are no threshold effects of concern and, as a result, the provision requiring an additional margin of safety does not apply. Further, the provisions of consumption patterns, special susceptibility, and cumulative effects do not apply.

C. Overall Safety Conclusion

There is a reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to the Cry3Bb1 and Cry2Ab2 proteins and the genetic material necessary for their production. This includes all anticipated dietary exposures and all other exposures for which there is reliable information.

The Agency has arrived at this conclusion because, as discussed above, no toxicity to mammals has been observed for the plant-pesticides.

VIII. Other Considerations

A. Endocrine Disruptors

The pesticidal active ingredients are proteins, derived from sources that are not known to exert an influence on the endocrine system. Therefore, the Agency is not requiring information on the endocrine effects of these plant-pesticides at this time.

B. Analytical Method(s)

Validated methods for extraction and direct ELISA analysis of Cry3Bb1 in corn grain, Cry2Ab2 in corn grain, and Cry2Ab2 in cotton seed have been submitted and found acceptable by the Agency.

C. Codex Maximum Residue Level

No Codex maximum residue levels exists for the plant-pesticides *Bacillus thuringiensis* Cry3Bb1 protein and the genetic material necessary for its production in corn and *Bacillus thuringiensis* Cry2Ab2 protein and the genetic material necessary for its production in corn or cotton.

IX. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations that govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409.

However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP-301123 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 10, 2001.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260-4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305-5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IX.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket number OPP-301123, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

X. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food

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retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XI. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the**Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 27, 2001.

Anne E. Lindsay,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.1214 is added to subpart D to read as follows:

§ 180.1214 Bacillus thuringiensis Cry3Bb1 protein and the genetic material necessary for its production in corn; exemption from the requirement of a tolerance.

Bacillus thuringiensis Cry3Bb1 protein and the genetic material necessary for its production in corn are exempt from the requirement of a tolerance when used as plant-pesticides in the food and feed commodities of field corn, sweet corn and popcorn. *Genetic material necessary for its production* means the genetic material which comprise genetic material encoding the Cry3Bb1 protein and its regulatory regions. *Regulatory regions* are the genetic material, such as promoters, terminators, and enhancers, that control the expression of the genetic material encoding the Cry3Bb1 protein.This exemption from the requirement of a tolerance will expire on May 1, 2004.

3. Section 180.1215 is added to subpart D to read as follows:

§ 180.1215 Bacillus thuringiensis Cry2Ab2 protein and the genetic material necessary for its production in corn or cotton; exemption from the requirement of a tolerance.

Bacillus thuringiensis Cry2Ab2 protein and the genetic material necessary for its production in corn or cotton are exempt from the requirement of a tolerance when used as plant-pesticides in the food and feed commodities of field corn, sweet corn, popcorn, cotton seed, cotton oil, cotton meal, cotton hay, cotton hulls, cotton forage, and cotton gin byproducts. *Genetic material necessary for its production* means the genetic material which comprise genetic material encoding the Cry2Ab2 protein and its regulatory regions. *Regulatory regions* are the genetic material, such as promoters, terminators, and enhancers, that control the expression of the genetic material encoding the Cry2Ab2 protein. This exemption from the requirement of a tolerance will expire on May 1, 2004.

[FR Doc. 01–11917 Filed 5–10–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 372

[OPPTS–400134A; FRL–6722–9]

RIN 2025–AA00

Chromite Ore from the Transvaal Region of South Africa; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting a petition to delete both chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the chromite ore processing residue (COPR) from the reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). These chemicals are currently reported as part of the category "chromium compounds" on the list of toxic chemicals in section 313(c) of EPCRA. The action is based on EPA's conclusion that this particular chromite ore from the Transvaal Region and the unreacted ore component of the COPR (in the case of this delisting decision, COPR includes the solid waste remaining after the aqueous extraction of oxidized chromite ore that has been combined with soda ash and kiln roasted at approximately 2,000 °F) meet the deletion criterion under EPCRA section 313(d)(3). By promulgating this rule, EPA is relieving facilities of their obligation to report releases of and other waste management information on chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR that occurred during the 2000 reporting year, and for activities in the future.

EFFECTIVE DATE: This rule is effective May 11, 2001.

FOR FURTHER INFORMATION CONTACT: Daniel R. Bushman, Petitions Coordinator, (202) 260–3882, e-mail: bushman.daniel@epa.gov, for specific information on this document, or for more information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Toll free: 1–800–535–0202, in Virginia and Alaska: (703) 412–9877 or Toll free TDD: 1–800–553–7672. Information concerning this notice is also available on EPA's Web site at http://www.epa.gov/tri.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this notice if you kiln roast chromite ore in the production of chromium chemicals or if you process chromite ore (e.g., metal finishers, leather tanning, etc.). Potentially affected categories and entities may include, but are not limited to:

Category	Examples of Potentially Affected Entities
Industry	SIC major group codes 10 (except 1011, 1081, and 1094), 12 (except 1241), or 20 through 39; industry codes 4911 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); 4931 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. section 6921 *et seq.*), or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis)
Federal Government	Federal facilities

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372, subpart B of Title 40 of the Code of Federal Regulations (CFR). If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Additional Information or Copies of this Document or Other Support Documents?

1. *Electronically.* You may obtain electronic copies of this document from the EPA internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the "Federal Register" listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–400134. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

II. Introduction

A. What is the Statutory Authority for this Action?

This action is being taken under EPCRA sections 313(d) and (e)(1), 42 U.S.C. 11023. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99–499).

B. What is the General Background for this Action?

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals in amounts above reporting threshold levels, to report their environmental releases of such chemicals annually. These facilities also must report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of PPA, 42 U.S.C. 13106. Section 313 of EPCRA established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. Chromium compounds (which include chromite ore) were included on the initial list. Section 313(d) authorizes EPA to add or delete chemicals from the list, and sets forth criteria for these actions. EPA has added and deleted chemicals from the original statutory list. Under section 313(e)(1), any person may petition EPA to add chemicals to or delete chemicals from the list. Pursuant to EPCRA section 313(e)(1), EPA must respond to petitions within 180 days, either by initiating a rulemaking or by publishing an explanation of why the petition is denied.

EPCRA section 313(d)(2) states that a chemical may be listed if any of the listing criteria are met. Therefore, in order to add a chemical, EPA must demonstrate that at least one criterion is met, but does not need to examine whether all other criteria are also met. Conversely, in order to remove a chemical from the list, EPA must demonstrate that none of the criteria are met.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for submitting petitions. On May 23, 1991, (56 FR 23703), EPA issued guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compounds categories. EPA has also published a statement clarifying its interpretation of the section 313(d)(2) and (3) criteria for modifying the section 313 list of toxic chemicals (59 FR 61432, November 30, 1994) (FRL–4922–2).

III. What Does this Petition and Related Past Petitions Request of the Agency?

A. What Does this Petition Request?

On January 26, 1998, EPA received a petition from Elementis Chromium LP (ECLP) (formerly American Chrome & Chemicals, Inc.) requesting that EPA delete from the chromium compounds

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category both chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR. COPR is the solid waste remaining after aqueous extraction of oxidized chromite ore that has been combined with soda ash and kiln roasted at approximately 2,000 °F. Elementis believes that the chemical and toxicological properties of chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR do not meet the statutory listing criteria of EPCRA 313(d)(2) and therefore should be removed from the reporting requirements of EPCRA section 313 and PPA section 6607. The EPCRA section 313 list of toxic chemicals includes a category listing for chromium compounds, thus, all chromium compounds are subject to the annual reporting requirements of EPCRA section 313 and PPA section 6607. This petition decision is specific to chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR from this particular process.

B. What Other Petitions for Chromium Compounds Have Been Filed?

EPA has received two other petitions requesting the deletion of certain chromium compounds. On January 8, 1990, a petition to delist chromium antimony titanium buff rutile (CATBR) from the EPCRA section 313 list of toxic chemicals was denied based on EPA's determination that CATBR is a potential carcinogen via inhalation (55 FR 650). Based on test data on chromium (III) oxide, EPA determined that CATBR, an insoluble crystalline chromium (III) compound, could be retained in the lung and taken up by cells. EPA denied this petition due to the determination that CATBR was a potential carcinogen, and that it could reasonably be anticipated to cause cancer in humans.

Since then, EPA published a statement of policy and guidance for petitions under EPCRA section 313 (56 FR 23703, May 23, 1991). In that notice, EPA set forth its policy concerning petitions to delist individual members of the metal compound categories. In response to concerns with respect to individual members of categories that do not meet the toxicity criteria of section 313, EPA has stated that it will "grant petitions on individual members providing that the petitioner establishes and EPA concludes that the intact species does not meet the criteria of section 313(d)(2), and that the metal ion will not become available at a level that can be expected to induce toxicity."

On November 22, 1991, a petition to delist Chromium (III) Oxide from the EPCRA section 313 list of chemicals was denied based on the evidence that chromium (III) oxide may be oxidized to carcinogenic chromium (VI) compounds in soil (56 FR 58859). The petition response also discussed the possibility that chromium (III) oxide is a potential carcinogen via inhalation.

IV. What is EPA's Summary of its Proposed Action?

Following a review of the petition (Ref. 1), EPA granted the petition and issued a proposed rule in the **Federal Register** of February 23, 1999 (64 FR 8774) (FRL–6030–6) proposing to delete both chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR from reporting under the EPCRA section 313 chromium compounds category. EPA's proposal was based on its preliminary conclusion that both chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR met the deletion criteria of EPCRA section 313(d)(3). With respect to deletions, EPCRA provides at section 313(d)(3) that "[a] chemical may be deleted if the Administrator determines there is not sufficient evidence to establish any of the criteria described in paragraph [(d)(2)(A)–(C)]." In the proposed rule, EPA preliminarily concluded that, while many concerns exist for the hazards associated with soluble Cr(III) compounds and all Cr(VI) compounds, these concerns do not appear to be pertinent to the chromite ore from the Transvaal Region of South Africa and the unreacted ore component of the COPR. The available data indicate that this particular chromite ore does not leach chromium of any oxidation state nor does it oxidize to produce any Cr(VI) compounds under any biotic or abiotic processes. EPA preliminarily determined that there are no human health or environmental hazard concerns for this particular chromite ore that meet the toxicity criterion of EPCRA section 313(d)(2)(A), (B), or (C). A more detailed discussion of the technical information can be found in the proposed rule and the supporting EPA technical reports (Refs. 2, 3, 4, 5, 6, and 7) and other references contained or cited in the docket.

V. What is EPA's Response to the Submitted Petition and Rationale?

A. What is EPA's Response to the Submitted Petition?

EPA is granting the ECLP petition by delisting both chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR from the reporting requirements under the EPCRA section 313 chromium compounds category. Note that this delisting does not include any of the Cr(III) or Cr(VI) compounds that are also part of the COPR. This delisting only applies to the unreacted ore component of the COPR.

B. What is EPA's Rationale for the Delisting?

EPA has concluded that the assessment set out in the proposed rule should be affirmed. The available data indicate that the chromite ore from the Transvaal Region of South Africa and the insoluble Cr(III) unreacted ore component of the COPR do not leach ionic chromium of any oxidation state nor do they oxidize to produce Cr(VI) compounds under any biotic or abiotic processes. EPA has determined that there are no human health or environmental hazard concerns for this particular chromite ore that meet the toxicity criterion of EPCRA section 313(d)(2)(A), (B), or (C). EPA believes that the deletion of this particular chromite ore and the unreacted ore component of the COPR is consistent with the Agency's published guidance on how it willreview petitions to delete members of EPCRA section 313 metal compound categories (56 FR 23703, May 23, 1991). Specifically, chromium is not available or bioavailable from this particular chromite ore or the unreacted ore component of the COPR through any biotic or abiotic processes and there is no evidence that the intact chromite ore or the unreacted ore component of the COPR causes any adverse effects that meet the EPCRA section 313(d)(2)(A), (B), or (C) toxicity criterion. EPA is therefore modifying the current chromium compounds listing to exclude both chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR. However, EPA is not removing any other Cr(III) compounds or any Cr(VI) compounds from the chromium compounds category. As EPA has previously determined, if Cr(III) is available from a chromium compound, it can be converted to Cr(VI) compounds in the environment (56 FR 58859, November 22, 1991). While EPA is delisting this specific chromite ore and the unreacted ore component of COPR from reportingunder EPCRA section 313, all other chromium compounds contained in the COPR will continue to be reportable.

VI. What are EPA's Responses to the Public Comments?

A. What Comments Did EPA Request in the Proposed Rulemaking?

EPA requested both general and specific comments in the proposal to delist both chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR from the list of toxic chemicals subject to the reporting requirements under EPCRA section 313 and PPA section 6607. EPA requested specific comments on three issues relating to chromium compounds, including: (1) Possible carcinogenicity of insoluble crystalline chromium (III) compounds via inhalation and uptake in the lung cell by phagocytosis; (2) possible indirect effects of chromium (III) competing with other cations in ligand sites in siderophore complexes; and (3) the availability of toxicity and fate information that would support excluding all chromite ores from reporting under EPCRA section 313.

B. What Comments Did EPA Receive in Support of the Proposed Rulemaking?

EPA received comments from five organizations supporting EPA's proposal to delist both chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR from the list of toxic chemicals subject to the reporting requirements under EPCRA section 313 and PPA section 6607. The five commenters are: Elementis Chromium; Exponent Environmental Group; Chemical Land Holdings Inc.; Collier, Shannon, Rill, and Scott (representing the Specialty Steel Industry of North America (SSINA)); and Occidental Chemical Corporation.

1. *Did EPA receive comments relating to EPA's finding that the carcinogenicity potential is insignificant for insoluble crystalline chromium (III) compounds that may enter lung cells via phagocytosis?* Several commenters agreed with EPA that while insoluble crystalline Cr(III) may be taken up in cells via phagocytosis, there is no evidence of carcinogenicity. One commenter provided additional literature to support this point. Another commenter noted several studies that suggest a potential for biologically available Cr(III) to oxidize to Cr(VI) in the presence of peroxy or oxygen radicals. The commenter stated that oxidation under such conditions is unlikely, however, since Cr(III) readily forms a variety of inert complexes *in vivo*. Another commenter stated that bacterial genotoxicity studies have been found to be overwhelmingly negative, and that mammalian and avian studies have also been found to be negative, concurring that Cr(III) is not carcinogenic via inhalation based on available testing and sampling data.

EPA agrees with the commenters and restates that the carcinogenicity data from the available studies of inhaled, insoluble, crystalline trivalent chromium compounds are inadequate to support listing this particular chemical under EPCRA Section 313 (Ref. 8).

2. *What comments did EPA receive relating to the possible indirect effects of Cr(III) on siderophore complexes and the availability of studies (in vivo) that address the competition of Cr(III) with other ions?* Several commenters contend that, since *in vivo* biological effects of Cr(III) are unknown and unreported, the ability of Cr(III) to inhibit the ability of cells to uptake iron *in vitro* is not relevant. Another commenter responded to the possible indirect effects of Cr(III) on siderophore complexes by referring to the binding of DNA material to Cr(III). The commenter noted, however, that Cr(III) is impermeable to cell membranes and that Cr(VI) is transported into the cell then reduced to Cr(III) before any toxic effects are observed. Thecommenter concludes that this reduction of Cr(VI) to Cr(III) should not be misinterpreted "as evidence that Cr(III) is responsible for the adverse effects of Cr(VI) * * *."

EPA notes that the commenters focused on the potential cationic exchange as a possible mechanism for carcinogenicity. In requesting comments on the possible indirect effects of Cr(III) on siderophore complexes, EPA was not necessarily implying a concern for carcinogenicity. Rather, EPA's primary concern for siderophoric ion exchange relates to environmental exposures to heavy metal cations displaced from soils that are exposed to soluble chromium ions (64 FR 8778). As was stated in the proposal, EPA has determined that there are inadequate data to determine the potential carcinogencity of Cr(III) (Ref. 8).

In addition to the direct leaching as a function of water solubility, metal ions have been found to be transported via macromolecules and siderphoric complexes. The addition of certain metal ions to contaminated soil plots or experimental samples produce equilibrium effects on the ability of these materials to "carry" the heavy metal cations. In certain studies, metals ions (specifically zinc (II) and cadmium (II)) have been found to compete for sites and exchange ions "even when only a few percentage of all surface sites were occupied" (Ref. 9).

EPA requested comment in the proposed rule to determine if releases of chromium, particularly from COPR sites, would exchange with the existing metal contaminants and thereby cause both a direct and indirect environmental release (e.g., elevated chromium levels) (Ref. 10). EPA did not receive any comments on this topic. The Agency believes, however, that the chromium in this specific chromite ore and corresponding unreacted ore portion of the COPR is neither available nor soluble and therefore these issues will have no bearing on the delisting of these two chemical compounds based on the current available information (56 FR 23703).

3. *What comments did EPA receive relating to whether all chromite ore and COPR behaves similarly to the chromite ore from the Transvaal Region of South Africa and the unreacted ore portion of the COPR remaining from the process described in the proposed rule?* EPA received comments that addressed four aspects of this topic including: conversion of Cr(III) to Cr(VI); biological activity of Cr(III); carcinogenic effects of Cr(III); and environmental fate of chromium compounds. In general, the commenters state specific known chemical characteristics for individual chemicals and apply them to the entire class. A broad structure-activity relationship (SAR) approach to justify delisting insoluble Cr(III) chemicals in general appears to be the overall goal of the approach submitted by commenters. The SAR approach examines the structure of a chemical to predict the chemical's toxicity.

Although the Agency requested comments on the "availability of toxicity and fate information that would support excluding all chromite ores from reporting under EPCRA section 313," EPA proposed to delist only the chromite ore mined in the Transvaal region of South Africa and the associated unreacted chromite ore component of the COPR. The Agency is delisting only these two chemicals. EPA's purpose for soliciting information regarding the broader class of chromite ore was to gather information to determine whether a future rulemaking including other chemicals would be appropriate.

In response to the comments received, the Agency believes that test results for a variety of Cr(III) compounds (including toxicity, oxidation, and fate) are insufficient to support any broad determinations concerning chromium compounds. The chromium compounds category listing is based on the well established toxicity of chromium. As EPA stated in its EPCRA section 313

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metals policy, the Agency will consider delisting a chemical or chemical compound if the intact metal compound is not toxic and the metal from that compound cannot become available through any abiotic or biotic process (56 FR 23703). In reviewing the four areas of concern described by commenters, including conversion of Cr(III) to Cr(VI); biological effects of Cr(III);carcinogenicity of Cr(III); and environmental fate of chromium compounds, the commenters did not submit sufficient evidence to support the delisting of all chromite ores or any other specific Cr(III) compound.

For example, commenters submitted data for chromium trioxide. Chromium trioxide is insoluble and has chemical characteristics attributed to this class of insoluble chromium compounds. However, in 1991, EPA denied a petition to delist this chemical (58 FR 58859, Nov. 22, 1991) due to availability of the Cr(III), and the potential of Cr(III) to oxidize to Cr(VI). The four individual comments and corresponding EPA responses follow.

a. *What comments did EPA receive relating to the conversion of Cr(III) to Cr(VI)?* One commenter contends that studies show that chromium oxide (the component of concern in chromite ore) does not oxidize to form hexavalent chromium under biological conditions. In addition, several commenters believe that the oxidation of Cr(III) to Cr(VI) requires relatively harsh conditions that do not occur naturally in biological systems (i.e., the presence of strong oxidants or low pH levels).

EPA disagrees with the commenters. There are environmental conditions that will oxidize Cr(III) to Cr(VI) (e.g., those used by the petitioner in the leaching studies including soil having a high manganese oxide content and low pH). The commenters did not provide adequate evidence to conclude that the findings of the petitioner could be extended to any other chromium containing compound. This delisting decision applies only to the chromite ore and the unreacted chromite ore component of COPR that were tested by the petitioner. After reviewing the petitioner's studies, EPA concluded that the chromite ore and COPR tested were both insoluble and are not biologically available. Arguments that Cr(III) does not readily oxidize in the body unless under harsh conditions is not sufficient to claim that the chromium present from other sources will not oxidize or will not pose human health or environmental hazards.

Commenters submitted no evidence to justify this conclusion for any other chromium containing compounds. There is only evidence for the specified ore and the unreacted ore portion of the COPR associated with that particular processing described previously. All other data comparisons are speculative and unsatisfactory for delisting. The Agency would, therefore, require data from similar testing (compared to that done in support of this delisting petition) on any other ore or COPR from another process in order to remove it from the EPCRA section 313 list of toxic chemicals. The particular chromite ore and the unreacted ore component of COPR discussed in this action were studied in depth. Samples were subjected to a variety of tests that provided conclusive evidence that these materials would not produce hexavalent chromium via oxidation in the environment. There was no evidence that Cr(III) was available through either abiotic or biotic processes. The petitioner based their argument on the testing data provided in the original submission.

b. *What comments did EPA receive relating to the biological activity of Cr(III)?* Several commenters suggest that the biological activity of Cr(III) compounds are not associated with adverse health effects due principally to the inability of Cr(III) to pass through cell membranes. The commenters cite the daily requirement of chromium as an essential element fornutritional health as evidence for the stability of Cr(III) in the body. The commenters reported that Cr(VI) intracellular reduction to form Cr(III), suggested to be the active toxicant in the proposed rule, would have to form via other chromium oxidation states (i.e., Cr(IV) and Cr(V)). The commenters contend that it is these highly reactive forms of chromium that are responsible for the adverse biological reactivity. Therefore, the commenters conclude that all Cr(III) compounds are biologically unreactive.

EPA agrees with the commenters that insoluble Cr(III) *in vivo* is unlikely to pass through the cellular membrane. EPA also agrees that Cr(VI) readily passes through the cell membrane, and produces a variety of potentially hazardous products following reduction to an active species other than Cr(III). EPA stated in the proposed rule that Cr(III) is an essential mineral that has not been demonstrated to have carcinogenic, genotoxic, or adverse health effects under the conditions discussed. With regard to the biological reactivity of Cr(III) compounds with hydroxy or peroxy radicals, EPA agrees that the oxidative conditions described by the commenters maynot be present in biological systems. These facts do not support delisting all Cr(III) compounds. It simply reinforces the notion that Cr(III) once in the body may not pose a hazard to human health. As stated in the response in Unit VI.B.3.a., there are other concerns for Cr(III) compounds.

c. *What comments did EPA receive relating to the carcinogenic effects of Cr(III)?* Several commenters contend that the presentation of the historical review of chromium compounds is misleading. To date, EPA has historically not ruled on the carcinogenicity of Cr(III) compounds and, as more data has become available, the Agency has determined that insoluble Cr(III) compounds (the chemical class as a whole) have not been found to becarcinogenic via inhalation. The commenters state that the overall scientific view reflects the conclusion that Cr(III) is not carcinogenic or genotoxic. They contend, however, that the presentation of the historical review on chromium compounds, while providing context, is misleading. The commenters imply that past references to potential carcinogenicity will be misinterpreted to imply some hidden potential concern for insoluble Cr(III) compounds.

EPA disagrees that the presentation of the historical treatment and concerns for Cr(III) as part of the record for the chromium compounds category is misleading. In the past, EPA has stated that there was a potential human health concern for the carcinogenic effects of Cr(III). EPA has since made the determination that there is no evidence to support a concern for thecarcinogenicity of inhaled insoluble Cr(III) compounds. There are, however, other concerns for chromium (including certain forms of Cr(III)). This delisting will also be part of that historical record and will help inform the public of those remaining concerns for the human health and environmental hazards of chromium.

In the review of the current scientific evidence, EPA has determined that there is no evidence to support a concern for carcinogenicity of inhaled insoluble Cr(III) compounds. Should new credible scientific evidence indicate that a hazard exists, the Agency would have to consider reversing this determination. If new data support the delisting of other forms of Cr(III),EPA would consider eliminating such chemicals from reporting. EPA considers the listing and delisting of chemicals a dynamic process that can change as new information is obtained. There is nothing misleading in educating the public about what had been believed and what new facts have caused a change in EPA's assessment.

d. *What comments did EPA receive relating to environmental fate of chromium compounds?* One commenter contends that it is inappropriate to compare the oxidation of soluble chromium compounds that occur naturally in the presence of manganese oxides under specified conditions with the environmental fate of chromite ore. The commenter maintains that the environmental conditions of such soils are equally likely to reduce Cr(VI) as they would oxidize Cr(III), and that this equilibrium favors Cr(III) formation (i.e., if Cr(III) ions were released by chromite ore or the processing residue, they would not pose an environmental or human health hazard under typical conditions). No references were provided by this commenter.

Several commenters agree that chromite ore does not readily oxidize under natural conditions. These commenters further elaborate on the health impacts of residues from chromite ore processing in New Jersey stating that the New Jersey residues are characteristically different from that generated by the petitioner, yet no "appreciable health effect that may be attributable to chromium" has been identified. The commenters state that in addition to health risks, ecological risks associated with the residues from chromite ore processing in New Jersey were also evaluated. The commenters contend that from the data, it is clear that chromium ions migrate from areas high in process residue to contaminate adjacent areas, and while mobile, it appearsthat much of this migratory chromium is tightly bound to the soil. However, the commenters claim that there did not appear to be a correlation between levels of chromium in the soil samples and the ability of this tightly associated metal (soil:Cr complexation) to dissociate and bind to the available biota.

Another commenter contends that residues from chromite ore processing differ substantially by noting that certain chromium remediation activities are still on-going due to the concern for the exposure to hexavalent chromium contamination from process residue fill sites. This commenter reiterates the idea suggested by the other commenters that these residues (and by inference that certain sources of chromite ore and other chromite ore process residues) are, in fact, different. The commenters state that the chromite ore and unreacted COPR discussed in the petition are not considered a risk to human health or the environment.

EPA does not believe that the commenters have provided sufficient information to conclude that other chromite ore sources or other chromite ore processing residues share the same properties as the chromite ore and unreacted ore component of COPR that are the subject of this rulemaking. EPA believes that these comments support the Agency's position that all Cr(III)compounds are not identical. With regard to chromite ore processing residues, such as the COPR that is the subject of this rulemaking, EPA notes that it contains at least three components: (1) Unreacted chromite ore (the portion that will be delisted for ore originating from the Transvaal Region); (2) Cr(III) present as a result of reduction treatment of unleached Cr(VI) (still reportable under the chromium compounds category of EPCRA section 313); and (3) the unreduced Cr(VI) from oxidized Cr(III) (also still reportable under the chromium compounds category of EPCRA section 313). Other chromite ore processing residues are also likely to contain various amounts of chromium compounds other than the unreacted ore component and thus may be sources ofenvironmentally available chromium.

EPA believes that the information discussed in the proposed rule concerning the observed oxidation of soluble Cr(III) to Cr(VI) by manganese rich soils is a concern and that such conversions can lead to environmentally available and bioavailable forms of chromium. The fact that under certain conditions this conversion may result in an equilibrium that favors the Cr(III) form does not change the fact the Cr(VI) can be produced. In addition, since the publication of the proposed rule, EPA has reviewed a study that has addressed the potential of a second pathway for the oxidation of Cr(III) to Cr(VI) in the presence of ferric salts which further supports EPA'sconcerns for the conversion of Cr(III) to Cr(VI) (Ref. 11). The Agency therefore reasserts its position that, under the appropriate conditions, Cr(III) can readily oxidize to form Cr(VI) in the environment.

The Agency agrees with the commenters that the ability of Cr(III) to be oxidized in the environment to Cr(VI) is not relevant to the consideration of whether or not to delist chromite ore from the Transvaal region of South Africa and the unreacted ore component of the COPR. However, this oxidation is irrelevant only because the petitioner conclusively demonstrated that the chromium in these compounds is unavailable for chemical reaction and therefore does not produce Cr(VI) under the oxidizing conditions. In order to extend such a determination to other chromium compounds the unavailability of the chromium and lack of oxidation would have to be clearly demonstrated for these other chromium compounds.

B. What Comments Did EPA Receive Thot Did Not Support this Proposal to Delist?

EPA did not receive any comments that were critical of its proposal to delist both chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR from the list of toxic chemicals subject to the reporting requirements under EPCRA section 313 and PPA section 6607.

VII. What is the Effective Date of this Final Rule?

This action becomes effective May 11, 2001. Thus, the last year in which facilities had to file a Toxics Release Inventory (TRI) report for both chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR was 2000, covering releases and other activities that occurred in 1999.

EPCRA section 313(d)(4) provides that "[a]ny revision" to the section 313 list of toxic chemicals shall take effect on a delayed basis. EPA interprets this delayed effective date provision to apply only to actions that add chemicals to the section 313 list. For deletions, EPA may, in its discretion, make such actions immediately effective. An immediate effective date is authorized, in these circumstances, under 5 U.S.C. section 553(d)(1) because a deletion from the section 313 list relieves a regulatory restriction.

EPA believes that where the Agency had determined, as it has with this chemical, that a chemical does not satisfy any of the criteria of section 313(d)(2)(A)–(C), no purpose is served by requiring facilities to collect data or file TRI reports for that chemical, or, therefore, by leaving that chemical on the section 313 list for any additional period of time. This construction of section 313(d)(4) is consistent with previous rules deleting chemicals from the section 313 list. For further discussion of the rationale for immediate effective dates for EPCRA section 313 delistings, see 59 FR 33205 (June 28, 1994).

VIII. What are the References Cited in this Final Rule?

1. Elementis Chromium LP. Petition to Delist Chromite Ore from SARA 313.Elementis Chromium LP (January 5, 1998).

2. USEPA. Economic Analysis of the Proposed Deletion of Chromite Ore from the EPCRA Section 313 List of Toxic

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Chemicals. OPPT/EETD/EPAB (February 1998).

3. USEPA. Preliminary Release Report Proposed Deletion of Chromite Ore from the EPCRA Section 313 Toxic Release Inventory. OPPT/EETD/CEB (March 1998).

4. USEPA. Chemistry Analysis of the Proposed Deletion of Chromite Ore from the EPCRA Section 313 Toxic Release Inventory. OPPT/EETD/ICB (February 1998).

5. USEPA. Chromite Ore Delisting Assessment of Health Hazard Concern.OPPT/RAD/SSB (May 1998).

6. USEPA. Petition to Delist Chromite Ore (Chromium Compounds Category): Ecological Hazard Assessment. OPPT/RAD/ECAB (April 1998).

7. USEPA. Environmental Fate Summary of Chromium (Cr) in Soils.OPPT/EETD/EAB (March 1998).

8. IRIS. U.S. Environmental Protection Agency's Integrated Risk Information System file pertaining to chromium (III), insoluble salts.

9. Engineering Bulletin: Technology Alternatives for the Remediation of Soils Contaminated with As, Cd, Cr, Hg, and Pb. EPA 540–S97–500.

10. Jin, X., Bailey, G.W., Yu, Y.S., and Lynch, A.T. "Kinetics of Single and Multiple Metal Ion Sorption Processes on Humic Substances." Soil Science v. 161 (1996), pp. 509–519.

11. Zhang, H. and Bartlett, R. "Light Induced Oxidation of Aqueous Chromium(III) in the Presence of Iron(III)." Environmental Science & Technology, v. 33, 1999, pp. 588–594.

IX. What are the Regulatory Assessment Requirements for this Action?

A. Executive Order 12866

This action, which exempts both chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR from the list of chemicals subject to reporting under EPCRA section 313 and PPA section 6607, eliminates an existing requirement to report and does not contain any new or modified requirements. As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), because OMB hasdetermined that the complete elimination of an existing requirement is not a "significant regulatory action" subject to review by OMB under E.O. 12866.

B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this final rule will not have a significant impact on a substantial number of small entities. This determination is based on the fact that the elimination of the existing requirement will also eliminate the corresponding burden and costs associated with that requirement. This action will not, therefore, result in any adverse economic impacts on the facilities subject to reporting under EPCRA section 313, regardless of the size of the facility.

C. Paperwork Reduction Act

The delisting of both chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the COPR from the EPCRA section 313 list of toxic chemicals will reduce the overall reporting and recordkeeping burden estimate provided for the TRI program, but this action does not require any review or approval by OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* EPA will determine the total TRI burden associated with this delisting, and will complete the required Information Collection Worksheet to adjust the total TRI burden estimate approved by OMB.

The reporting and recordkeeping burdens associated with TRI are approved by OMB under OMB No. 2070 0093 (Form R, EPA ICR No. 1363) and under OMB No. 2070 0143 (Form A, EPA ICR No. 1704). The current public reporting burden for TRI is estimated to average 52.1 hours for a Form R submitter and 34.6 hours for a Form A submitter. These estimates include the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection appears above. In addition, the OMB control number for EPA's regulations, after initial display in the final rule, are displayed on the collection instruments and are also listed in 40 CFR part 9.

D. Unfunded Mandates Reform Act and Executive Orders 13084 and 13132

Since this action involves the elimination of an existing requirement, it does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any affect on small governments as described in the Unfunded Mandates Reform Act of 1995 (P.L. 104–4). For the same reason, it is not subject to the requirement for prior consultation with Indian tribal governments as specified in Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998). Nor will this action have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

E. Executive Order 12898

Pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), the Agency must consider environmental justice related issues with regard to the potential impacts of this action on environmental and health conditions in low-income populations and minority populations. The Agency has determined that this delisting, which would eliminate the availability of the TRI information on this chemical that is made available to communities through the TRI Community Right-to-Know program, will not result in environmental justice related issues.

F. Executive Order 13045

Pursuant to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), if an action is economically significant under Executive Order 12866, the Agency must, to the extent permitted by law and consistent with the Agency's mission, identify and assess the environmental health risks and safety risks that may disproportionately affect children. Since this action is not economically significant under Executive Order 12866, this action is not subject to Executive Order 13045.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards, nor did EPA consider the use of any voluntary consensus standards. In general, EPCRA does not prescribe technical standards to be used for threshold determinations or completion of EPCRA section 313 reports. EPCRA section 313(g)(2) states that "In order to provide the information required under this section, the owner or operator of a facility may use readily available data (including monitoring data) collected pursuant to other provisions of law, or, where such data are not readily available, reasonable estimates of the amounts involved. Nothing in this section requires the monitoring or measurement of the quantities, concentration, or frequency of any toxic chemical released into the environment beyond that monitoring and measurement required under other provisions of law or regulation."

X. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register** This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: February 28, 2001.

Elaine G. Stanley,

Director, Office of Information Analysis and Access.

Therefore, 40 CFR Part 372 is amended as follows:

PART 372—[AMENDED]

1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11013 and 11028.

§ 372.65 [Amended]

2. Section 372.65(c) is amended by adding the following parenthetical to the chromium compounds listing "(except for chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the chromite ore processing residue (COPR). COPR is the solid waste remaining after aqueous extraction of oxidized chromite ore that has been combined withsoda ash and kiln roasted at approximately 2,000 °F.)."

[FR Doc. 01–11918 Filed 5–10–01; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[WO–310–1310–PB–01–24 1A]

RIN 1004–AC54

Oil and Gas Leasing; Onshore Oil and Gas Operations

AGENCY: Bureau of Land Management.

ACTION: Correcting amendment.

SUMMARY: The document contains corrections to the amendatory instructions of the final regulations on protecting Federal and Indian oil and gas resources from drainage published in the **Federal Register** on January 10, 2001, (66 FR 1883) and delayed on February 8, 2001, (66 FR 9527).

DATES: Effective April 10, 2001.

FOR FURTHER INFORMATION CONTACT: Donnie Shaw, Fluids Minerals Group, Bureau of Land Management, Mail Stop 401LS, 1849 "C" Street, NW., Washington, DC 20240; telephone (202) 452–0382 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339, between 8 a.m. and 4 p.m., Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION: We are clarifying the amendatory instructions for the current regulations under Sections 3162.2 and 3165.3. The amendment for Section 3162.2, paragraph (c), indicates that more than one entity may hold interest in a lease or own operating rights.

List of Subjects

43 CFR Part 3160

Government contracts, Hydrocarbons, Land Management Bureau, Mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

Dated: May 1, 2001.

Piet deWitt,

Acting Assistant Secretary, Land and Minerals Management.

Accordingly, the **Federal Register** issue of January 10, 2001 is corrected as follows:

1. On page 1892, in the third column, correct the amendatory instruction 12.b for § 3162.2 to read as follows:

b. Removing in paragraph (c) the phrase "the operating rights owner" and adding in its place the phrase "the lessee(s) and operating rights owner(s)"; (Note: § 3162.2(c) was redesignated as § 3162.2–1(b))

2. On page 1894, in the second column, renumber instructions 13. and 14. as 15. and 16. respectively.

[FR Doc. 01–11877 Filed 5–10–01; 8:45 am]

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Proposed Rules

Federal Register
Vol. 66, No. 92
Friday, May 11, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ103–0037; FRL–6978–1]

Revisions to the Arizona State Implementation Plan, Arizona Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Arizona Department of Environmental Quality's portion of the Arizona State Implementation Plan (SIP). These revisions concern the establishment of affirmative defenses for excess emissions due to malfunctions, startups, and shutdowns, and reporting requirements for excess emissions. We are proposing to approve the rules under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by June 11, 2001.

ADDRESSES: Mail comments to Ginger Vagenas, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Arizona Department of Environmental Quality, Air Quality Division, 3033 North Central Avenue, Phoenix, AZ 85012.

FOR FURTHER INFORMATION CONTACT: Ginger Vagenas, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, (415) 744–1252.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

This proposal addresses two rules that were adopted on February 15, 2001 and submitted on March 26, 2001 by Arizona Department of Environmental Quality: R18–2–310, Affirmative Defenses for Excess Emissions Due to Malfunctions, Startup, and Shutdown; and R18–2–310.01, Reporting Requirements.

On May 1, 2001, this rule submittal was found to meet the completeness criteria in 40 CFR part 51 appendix V.

B. Are There Other Versions of These Rules?

There are no previous versions of Rules 310 or 310.01 in the SIP, although the Arizona Department of Health Services submitted an earlier version of these rules (R9–3–309) to us on October 24, 1985. We proposed to approve Rule R9–3–309 into the SIP on September 22, 1986, but did not take final action.

C. What Is the Purpose of the Submitted Rules?

Emissions in excess of the limits that apply to a source are violations of the applicable emission limitation. State agencies must always retain the option to enforce such violations, however, under certain circumstances, an affirmative defense to enforcement proceedings based on violations of emission limits can be included in a SIP. Rule 310 establishes an affirmative defense to civil or administrative enforcement proceedings, other than a judicial action seeking injunctive relief, providing certain criteria have been met. Rule 310.01 sets out reporting requirements that the source must meet if it has emissions in excess of its limits.

II. EPA's Evaluation and Action

How Is EPA Evaluating the Rules?

In determining the approvability of a rule, EPA must evaluate the rule for consistency with the requirements of the Clean Air Act (CAA) and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). EPA's interpretation of these requirements appears in EPA policy guidance documents. EPA policy on excess emissions occurring during startup and shutdown is contained in a memorandum dated September 20, 1999, entitled "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown" (the Excess Emissions Policy). In general, the guidance document cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted rules meet Federal requirements, are fully enforceable, and strengthen or maintain the SIP.

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the Clean Air Act and the relevant policy and guidance regarding excess emissions. Under the CAA, EPA has a fundamental responsibility to ensure that SIPs provide for attainment and maintenance of the national ambient air quality standards and protection (NAAQS) of prevention of significant deterioration (PSD) increments. See, e.g., sections 110(a) and (l) of the CAA, 42 U.S.C. sections 7410(a) and (l) (EPA cannot approve a SIP revision that would interfere with attainment of a NAAQS or any other requirement of the CAA).[1] Accordingly, EPA believes that an acceptable affirmative defense provision may only apply to actions for penalties, but not to actions for injunctive relief. This restriction ensures that both state and federal authorities remain able to protect air quality standards and PSD increments. Rule 310 includes the following provisions:

[1] Pursuant to Section 110(l), EPA may not approve a SIP revision if "the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of this chapter." See also CAA section 193, 42 U.S.C. 7575, and the definitions of "emission limitation" and "emission standard" contained in CAA section 302(k), 42 U.S.C. section 7602(k).

1. All periods of excess emissions are treated as violations of the emission limitation.

2. The rule provides an affirmative defense to actions for penalties brought for excess emissions that arise during certain malfunction, startup, and shutdown episodes. There is no affirmative defense to actions for injunctive relief.

3. The rule includes criteria consistent with EPA's excess emissions policy that restrict the availability of affirmative defenses to malfunctions that are sudden, unavoidable, and unpredictable, and to excess emissions during startup and shutdown that could not have been avoided through careful planning and design. In all cases, all possible steps must have been taken to minimize excess emissions.

4. An affirmative defense is not available if during the period of excess emissions, there was an exceedence of the relevant ambient air quality standard that could be attributed to the emitting source.

5. The defendant has the burden of proof of demonstrating it has met the criteria set out in Rule 310.

Rule 310.01 requires that the owner or operator of a source must notify ADEQ within 24 hours of learning that the source has emitted pollutants in excess of its limits. A detailed written report must be submitted within 72 hours of the initial notification. In order to qualify for an affirmative defense under Rule 310, the source must comply with the requirements of Rule 310.01.

C. Public comment and final action.

Because EPA believes the submitted rule fulfills all relevant requirements, we are proposing to fully approve it as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate this rule into the federally enforceable SIP.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revisions to any state implementation plan. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This proposed action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 4, 2001.

Michael Schultz,

Acting Regional Administrator, Region IX.

[FR Doc. 01–11916 Filed 5–10–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CO–001–0054; FRL–6978–2]

Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Denver 1-Hour Ozone Redesignation to Attainment, Designation of Areas for Air Quality Planning Purposes, and Approval of Related Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On November 30, 2000, the Governor of Colorado submitted a request to redesignate the Denver-Boulder metropolitan (Denver) "transitional" ozone nonattainment area to attainment for the 1-hour ozone National Ambient Air Quality Standard (NAAQS). As part of this request, the Governor asked that EPA parallel process a proposed maintenance plan for the Denver area. In conjunction with the Governor's submittal, EPA is also proposing approval of revisions to Colorado's Regulation No. 3 "Air Contaminant Emissions Notices" and Colorado's Regulation No. 7 "Emissions of Volatile Organic Compounds" that were previously submitted by Governor

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Roy Romer, for our approval, on August 8, 1996.

In this action, EPA is proposing approval and soliciting public comment on the Denver 1-hour ozone redesignation request, the State-proposed maintenance plan, and the revisions to Regulation No. 3 and Regulation No. 7.

DATES: Written comments must be received on or before June 11, 2001.

ADDRESSES: Written comments may be mailed to:

Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following offices:

United States Environmental Protection Agency, Region VIII, Air and Radiation Program, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.

Copies of the State documents relevant to this action are available for public inspection at:

Colorado Department of Health and Environment, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80246–1530.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, Telephone number: (303) 312–6479

SUPPLEMENTARY INFORMATION:

Throughout this document wherever "we", "us", or "our" are used we mean the Environmental Protection Agency.

I. What is the purpose of this action?

With this action, we are utilizing our parallel processing procedure for consideration of several revisions to the Colorado State Implementation Plan (SIP). Parallel processing allows EPA to propose rulemaking on a SIP revision(s), and solicit public comment, at the same time the State is processing the SIP revision(s). The Colorado Air Quality Control Commission (AQCC) adopted the proposed SIP revisions, with minor technical changes that we do not consider significant, on January 11, 2001. When the Governor submits the final revisions to us for approval, we will consider any comments received and proceed with a final rulemaking action. However, should the State substantially change any of the proposed SIP revisions before the Governor submits the final versions to us, we will re-propose and again solicit public comment on these State amended SIP revisions before we take final rulemaking action. For further information regarding parallel processing, please see 40 CFR Part 51, Appendix V, section 2.3.1.

In this action, we are proposing approval of a change in the legal designation of the Denver area from nonattainment to attainment for the 1-hour ozone NAAQS (hereafter referred to as ozone NAAQS or ozone standard), we're proposing approval of the AQCC-adopted maintenance plan that is designed to keep the area in attainment for ozone for the next 13 years, and we're proposing approval of changes to AQCC Regulation No. 3 and AQCC Regulation No. 7. We also note that in his November 30, 2000, letter, the Governor asked that we parallel process a potential alternative provision for the maintenance plan that had been proposed by the Colorado Department of Transportation (CDOT). CDOT's alternative provision involved the conversion of the Santa Fe Boulevard High Occupancy Vehicle (HOV) lanes to general service lanes and the provision of funds to provide additional light rail transit cars to compensate for the loss of the HOV emission reductions. However, in a December 6, 2000, letter (that we received on December 19, 2000) from CDOT to the AQCC, CDOT withdrew its request for this alternative provision indicating that it could not guarantee light rail transit cars to replace the HOV lanes. Based on our understanding that this CDOT proposed alternative provision is moot, we are not proposing action on this alternative.

We originally designated the Denver area as nonattainment for ozone under the provisions of the 1977 CAA Amendments (see 43 FR 8962, March 3, 1978). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted (Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). Under section 107(d)(1)(C) of the Clean Air Act (CAA), EPA designated the Denver area as nonattainment for ozone because the area had been previously designated as nonattainment before November 15, 1990. The Denver area was classified under section 185A of the CAA as a "transitional" ozone nonattainment area as the area had not violated the ozone NAAQS in the years 1987, 1988, and 1989.[1]

Under the CAA, designations can be changed if sufficient data are available to warrant such changes and if certain other requirements are met. See CAA section 107(d)(3)(D). Section 107(d)(3)(E) of the CAA provides that the Administrator may not promulgate a redesignation of a nonattainment area to attainment unless:

(i) the Administrator determines that the area has attained the national ambient air quality standard;

(ii) the Administrator has fully approved the applicable implementation plan for the area under CAA section 110(k);

(iii) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(iv) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and,

(v) the State containing such area has met all requirements applicable to the area under section 110 and part D of the CAA.

Thus, before EPA can approve the redesignation request, EPA must find, among other things, that all applicable SIP elements have been fully approved. Approval of the applicable SIP elements may occur prior to final approval of the redesignation request or simultaneously with final approval of the redesignation request. EPA notes there are no outstanding SIP elements necessary for the redesignation. However, the Governor previously requested approval of revisions to Regulation No. 3 and Regulation No. 7 such that rules applicable to the Denver ozone nonattainment area remain in effect after Denver is redesignated to attainment for the 1-hour ozone standard. Therefore, EPA is also proposing approval of the revisions to Regulation No. 3 and Regulation No. 7. These revisions are described below.

II. What is the State's process to submit these materials to EPA?

Section 110(k) of the CAA addresses our actions on submissions of revisions to a SIP. The CAA requires States to observe certain procedural requirements

[1] The CAA describes areas as "transitional" if they were designated nonattainment both prior to enactment and (pursuant to CAA section 107(d)(1)(C)) at enactment, and if the area did not violate the primary ozone NAAQS in the 3-year period of 1987 through 1989. Refer to section 185A of the CAA and the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990", 57 FR 13498, April 16, 1992. See specifically 57 FR 13523–27, April 16, 1992.

in developing SIP revisions for submittal to us. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the final revisions being submitted by a State to us.

At the October 19, 2000, AQCC meeting, the Commission proposed for public comment the ozone redesignation request and maintenance plan. The AQCC held a public hearing on January 11, 2001, for considering public comment on the above SIP revisions. After accepting several minor technical corrections to the maintenance plan, the AQCC adopted the Denver 1-hour ozone redesignation request and maintenance plan on January 11, 2001.

The AQCC had previously held a public hearing on March 21, 1996, for the revisions to AQCC Regulation No. 3 "Air Contaminant Emissions Notices" (hereafter, Regulation No. 3) and AQCC Regulation No. 7 "Emissions of Volatile Organic Compounds" (hereafter, Regulation No. 7). The AQCC adopted the revisions to Regulation No. 3 and Regulation No. 7 directly after the hearing. These SIP revisions became State effective May 30, 1996, and were submitted by the Governor to us on August 8, 1996.

We have evaluated the Governor's prior submittal involving the revisions to Regulation No. 3 and Regulation No. 7 and have determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA. By operation of law under section 110(k)(1)(B) of the CAA, the Governor's August 8, 1996, submittal of the revisions to Regulation No. 3 and Regulation No. 7 became complete on February 6, 1997.

III. EPA's Evaluation of the Redesignation Request and Maintenance Plan

EPA has reviewed the State's redesignation request and maintenance plan and believes that approval of the request is warranted, consistent with the requirements of CAA section 107(d)(3)(E). The following are descriptions of how the section 107(d)(3)(E) requirements are being addressed.

(a) Brief History of the Denver Ozone Redesignation Request, Maintenance Plan, and Related SIP Submittals.

On August 8, 1996, the Governor of Colorado submitted a redesignation request and maintenance plan for the 1-hour ozone NAAQS for the Denver area along with revisions to Regulation No. 3 and Regulation No. 7 to ensure that rules applicable to the Denver nonattainment area would remain in effect after Denver was redesignated to attainment. We did not proceed with any action on the Governor's submittal as the maintenance plan had both legal and technical problems that precluded our full approval.

On July 18, 1997, EPA promulgated the new 8-hour ozone NAAQS (*see* 62 FR 38856, July 18, 1997). In conjunction with that action, President Clinton issued a memorandum to the Administrator of the Environmental Protection Agency, on July 16, 1997, entitled "Implementation of Revised Air Quality Standards for Ozone and Particulate Matter." This memorandum directed the Administrator to review current ambient air quality data and to proceed with revoking the 1-hour ozone standard for all areas that were in attainment for the 1-hour standard. On June 5, 1998, we revoked the 1-hour ozone NAAQS for the Denver area (see 63 FR 31014) as the area had the necessary ambient air quality data showing that the area was in attainment for the 1-hour NAAQS. At that time, the August 8, 1996, Denver 1-hour ozone redesignation request and maintenance plan became moot and no further action was contemplated by either the State or us.

The new 8-hour ozone NAAQS was challenged by the American Trucking Association and others. In a May 14, 1999, opinion, the U.S. Court of Appeals for the District of Columbia (D.C.) Circuit stated that although EPA could designate areas as attainment or nonattainment for the 8-hour standard, we could not "enforce" (implement) the 8-hour standard. The result of this decision was that areas like Denver found themselves with the 1-hour ozone standard revoked and an 8-hour ozone standard that could not be enforced or implemented. We petitioned the U.S. Supreme Court to review several aspects of the D.C. Circuit's opinion.[2]

To continue to protect the public's health while waiting for the Supreme Court review, we reinstated the 1-hour ozone standard on July 20, 2000, (see 65 FR 45182) for all areas of the nation in which it had been previously revoked. This action had a delayed effective date for certain areas of the nation, such as Denver, to allow these areas to proceed with redesignation requests for the 1-hour standard. The 1-hour ozone NAAQS was reinstated for the Denver area on January 16, 2001, and at that time the area returned to its legal designation of nonattainment for the 1-hour ozone standard. Based on the above Federal actions, the Denver Regional Air Quality Council (RAQC) and State prepared a revised redesignation request and maintenance plan for the 1-hour ozone standard. The AQCC proposed these ozone SIP revisions for public comment at their meeting of October 19, 2000, and they were submitted by the Governor to us on November 30, 2000. The ozone SIP revisions we received from the Governor, and the revisions adopted by the AQCC on January 11, 2001, which made minor technical corrections to the Governor's November 30, 2000, submittal, form the basis for this proposed rule.

(b) Redesignation Criterion: The Area Must Have Attained The 1-Hour Ozone NAAQS.

Section 107(d)(3)(E)(i) of the CAA states that for an area to be redesignated to attainment, the Administrator must determine that the area has attained the applicable NAAQS.

As described in 40 CFR 50.9 and 40 CFR part 50, Appendix H, the national primary ambient air quality 1-hour ozone standard is 0.12 parts per million (235 milligrams per cubic meter) for a 1-hour average concentration not to be exceeded more than once per year. Attainment of the ozone standard is not a momentary phenomenon based on short-term data. Each of the ozone ambient air quality monitors in the network are allowed to record three or fewer exceedances of the ozone standard over a continuous three-year period. 40 CFR 50.9 and 40 CFR part 50, Appendix H. If a single monitor in the ozone monitoring network records more than three expected exceedances (based on the expected exceedance calculation method in Appendix H) or actual exceedances of the standard over a three-year period then the area is in violation of the ozone NAAQS. In addition, EPA's interpretation of the CAA and EPA national policy[3] has been that an area seeking redesignation to attainment must continue to show attainment of the ozone NAAQS through the date that EPA promulgates the redesignation to attainment in the **Federal Register**.

The ozone redesignation request for the Denver area is based on an analysis of quality assured ambient air quality

[2] The Supreme Court issued an opinion on February 27, 2001, that requires EPA to revisit its policy for implementing the new 8-hour ozone NAAQS and remands the case back to the Court of Appeals for the D.C. Circuit. There is still considerable uncertainty about when or whether we will be able to implement the new 8-hour ozone NAAQS. Thus, the Supreme Court's decision is largely irrelevant to this action.

[3] Refer to EPA's September 4, 1992, John Calcagni policy memorandum entitled "Procedures for Processing Requests to Redesignate Areas to Attainment."

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monitoring data that are relevant to the redesignation request. The Denver area has not violated the 1-hour ozone standard since 1987. Ambient air quality monitoring data for consecutive calendar years 1997 through 1999 show an expected exceedance rate of less than 1.0 per year, per monitor, of the ozone NAAQS in the Denver nonattainment area. These data were collected and analyzed as required (see 40 CFR 50.9 and 40 CFR part 50, Appendix H) and have been archived by the State in EPA's Aerometric Information and Retrieval System (AIRS) national database. A preliminary analysis of data for 2000 also show continued attainment of the 1-hour ozone standard.

Further information on ozone monitoring is presented in Chapter 2, section B, "Attainment of the One-Hour Ozone NAAQS," of the State's maintenance plan and in the State's Technical Support Document (TSD). Exceedances of the 1-hour ozone standard have been measured at separate monitors in 1993, 1995, and 1998. We note, however, that the Denver area has not violated the ozone standard and continues to demonstrate attainment.

Because the Denver nonattainment area has complete quality-assured data showing no violations of the ozone NAAQS over the most recent consecutive three-calendar-year period, the Denver area has met the first requirement for redesignation; demonstration of attainment of the ozone NAAQS. EPA notes that the State of Colorado has also committed in the maintenance plan to the necessary continued operation of the ozone monitoring network in compliance with 40 CFR part 58.

(c) Redesignation Criterion: The Area Must Have Met All Applicable Requirements Under Section 110 And Part D Of The CAA

Section 107(d)(3)(E)(v) requires that, to be redesignated to attainment, an area must meet all applicable requirements under section 110 and part D of the CAA. EPA interprets section 107(d)(3)(E)(v) to mean that for a redesignation to be approved, the State must meet all requirements that applied to the subject area prior to or at the time of the submission of a complete redesignation request. Requirements of the CAA due after the submission of a complete redesignation request need not be considered in evaluating the request.

1. CAA Section 110 Requirements

On December 12, 1983, we approved revisions to Colorado's SIP as meeting the requirements of section 110(a)(2) of the CAA (see 48 FR 55284). Although section 110 of the CAA was amended in 1990, most of the changes were not substantial. Thus, we have determined that the SIP revisions approved in 1983 continue to satisfy the requirements of section 110(a)(2). For further detail, please see 48 FR 55284. In addition, we have analyzed the SIP elements that we are approving as part of this action and we have determined they comply with the relevant requirements of section 110(a)(2).

2. Part D Requirements

Before the Denver transitional ozone nonattainment area may be redesignated to attainment, the State must have fulfilled the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, whether classified or nonclassifiable. Subpart 2 of part D contains specific provisions for transitional areas.

The relevant Subpart 1 requirements are contained in sections 172(c) and 176. The General Preamble (57 FR 13498, April 16, 1992) provides EPA's interpretations of the CAA requirements for transitional ozone areas (see 57 FR 13524–26).

Under section 172(b), the applicable section 172(c) requirements, as determined by the Administrator, were due no later than three years after an area was designated as nonattainment under section 107(d) of the amended CAA (see 56 FR 56694 and 57 FR 13525). In the case of the Denver area, the due date was November 15, 1993. As the original Denver 1-hour ozone standard redesignation request and maintenance plan were not submitted by the Governor until August 8, 1996, (and the current revised redesignation request and maintenance plan were submitted on November 30, 2000) the General Preamble (57 FR 13525) provides our interpretation that the applicable requirements of CAA section 172 are 172(c)(1) (Reasonably available control technology (RACT)/Reasonably available control measures (RACM)), 172(c)(3) (emissions inventory), 172(c)(5)(new source review permitting program), and 172(c)(7)(the section 110(a)(2) air quality monitoring requirements)). It is our view that Part D requirements for an attainment demonstration, reasonable further progress (RFP), and contingency measures (CAA section 172(c)(9)) are not applicable to transitional ozone areas. See 57 FR 13525, April 16, 1992. It is also worth noting that EPA has interpreted the requirements of sections 172(c)(2) (reasonable further progress—RFP), 172(c)(6)(other measures), and 172(c)(9)(contingency measures) as being irrelevant to a redesignation request for a transitional ozone nonattainment area because they only have meaning for an area that is not attaining the standard. See EPA's September 4, 1992, John Calcagni memorandum entitled, "Procedures for Processing Requests to Redesignate Areas to Attainment", and the General Preamble, 57 FR at 13525, dated April 16, 1992. Finally, the State has not sought to exercise the options that would trigger sections 172(c)(4)(identification of certain emissions increases) and 172(c)(8)(equivalent techniques). Thus, these provisions are also not relevant to this redesignation request.

Section 176 of the CAA contains requirements related to conformity. Although EPA's regulations (see 40 CFR 51.396) require that states adopt transportation conformity provisions in their SIPs for areas designated nonattainment or subject to an EPA-approved maintenance plan, we have decided that a transportation conformity SIP is not an applicable requirement for purposes of evaluating a redesignation request under section 107(d) of the CAA. This decision is reflected in our 1996 approval of the Boston carbon monoxide redesignation. (See 61 FR 2918, January 30, 1996.)

In that action, EPA explained that its decision was based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the CAA continues to apply to areas after redesignation to attainment. Therefore, the State remains obligated to adopt the transportation conformity rules even after redesignation and would risk sanctions for failure to do so. Unlike most requirements of section 110 and part D, which are linked to the nonattainment status of an area, and are not required after redesignation of an area to attainment, the conformity requirements apply to both nonattainment and maintenance areas. Second, EPA's federal conformity rules require the performance of conformity analyses in the absence of State-adopted rules. Therefore, a delay in adopting State rules does not relieve an area from the obligation to implement conformity requirements.

Because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if State rules are not yet adopted, EPA believes

it is reasonable to view these requirements as not being applicable requirements for purposes of evaluating a redesignation request. Further information regarding transportation conformity and mobile source emission budgets are found below in section IV "Transportation Conformity".

The applicable requirements of CAA section 172 are discussed below.

A. Section 172(c)(1)—RACT/RACM

To satisfy section 172(c)(1), transitional areas (section 185A) that continued to show no violations of the 1-hour ozone standard as of December 31, 1991, must ensure, at a minimum, that any deficiencies regarding enforceability of an existing rule are corrected. While section 185A of the CAA exempts transitional areas from all subpart 2 requirements until December 31, 1991, and that exemption continues until the area is redesignated to attainment (assuming the area satisfactorily demonstrated attainment by December 31, 1991), States should be aware that in order to be redesignated to attainment such areas must correct any RACT deficiencies regarding enforceability. See 57 FR 13525, April 16, 1992.

On September 27, 1989, and on August 30, 1990, the Governor submitted revisions to Regulation No. 7 that address RACT for sources of Volatile Organic Compounds (VOC) in ozone nonattainment areas, which includes Denver. We approved these revisions on June 29, 1995 (see 60 FR 28055).

B. Section 172(c)(3)—Emissions Inventory

Section 172(c)(3) of the CAA requires a comprehensive, accurate, current inventory of all actual emissions from all sources in the Denver nonattainment area. Our interpretation of the emission inventory requirement for transitional ozone nonattainment areas is detailed in the General Preamble (57 FR 13525, April 16, 1992). We determined that an emissions inventory is specifically required under CAA section 172(c)(3) and is not tied to an area's proximity to attainment.

On August 8, 1996, the Governor submitted the original Denver 1-hour ozone redesignation request and maintenance plan. This submittal contained a 1993 attainment year inventory for the Denver ozone nonattainment area. The Governor's parallel processing submittal of the revised redesignation request and maintenance plan, dated November 30, 2000, also contains this 1993 attainment year inventory. Once EPA receives the Governor's final submittal, and we are able to approve the Denver ozone redesignation request and maintenance plan, this section 172(c)(3) requirement will be fulfilled.

C. Section 172(c)(5)—New Source Review (NSR)

The CAA requires all nonattainment areas to meet several requirements regarding NSR, including provisions to ensure that increased emissions will not result from any new or modified stationary major sources and a general offset rule. The State of Colorado has a fully-approved NSR program (59 FR 42500, August 18, 1994) that meets the requirements of CAA section 172(c)(5). The State also has a fully approved Prevention of Significant Deterioration (PSD) program (59 FR 42500, August 18, 1994) that will apply if we approve the redesignation to attainment.

D. Section 172(c)(7)—Compliance With CAA section 110(a)(2): Air Quality Monitoring Requirements

According to our interpretations presented in the General Preamble (57 FR 13525, April 16, 1992), transitional ozone nonattainment areas must meet the "applicable" air quality monitoring requirements of section 110(a)(2) of the CAA as explicitly referenced by sections 172(b) and (c) of the CAA. With respect to this requirement, the State indicates in Chapter 2, section B of the maintenance plan ("Attainment of the One-Hour Ozone NAAQS"), that ambient ozone monitoring data have been properly collected and uploaded to EPA's Aerometric Information and Retrieval System (AIRS) for the Denver area. Air quality data through 1999 are included in Chapter 2, section B of the maintenance plan and in the State's TSD. We recently polled the AIRS database and verified that the State has also uploaded additional ambient ozone data through July 31, 2000. The data in AIRS indicate that the Denver area has shown, and continues to show, attainment of the 1-hour ozone NAAQS. Information concerning ozone monitoring in Colorado is included in the Monitoring Network Review (MNR) prepared by the State and submitted to EPA. Our personnel have concurred with Colorado's annual network reviews and have agreed that the Denver ozone network remains adequate. Finally, in Chapter 3, section E, ("Monitoring Network / Verification of Continued Attainment") of the maintenance plan, the State commits to the continued operation of the ozone monitoring network, according to all applicable Federal regulations and guidelines, even after the Denver area is redesignated to attainment for the 1-hour ozone NAAQS.

(d) Redesignation Criterion: The Area Must Have A Fully Approved SIP Under Section 110(k) Of The CAA

Section 107(d)(3)(E)(ii) of the CAA states that for an area to be redesignated to attainment, it must be determined that the Administrator has fully approved the applicable implementation plan for the area under section 110(k).

Based on the approval into the SIP of provisions under the pre-1990 CAA, our prior approval of SIP revisions required under the 1990 amendments to the CAA, and our proposed approval of the maintenance plan, we have determined that Colorado will have a fully approved ozone SIP under section 110(k) for the Denver ozone nonattainment area if we approve the maintenance plan.

(e) Redesignation Criterion: The Area Must Show That The Improvement In Air Quality Is Due To Permanent And Enforceable Emissions Reductions.

Section 107(d)(3)(E)(iii) of the CAA provides that for an area to be redesignated to attainment, the Administrator must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan (Denver ozone revision as approved on December 12, 1983, see 48 FR 55284), implementation of applicable Federal air pollutant control regulations, and other permanent and enforceable reductions.

The emissions reductions of ozone precursors (VOCs and Nitrogen Oxides or NO_X) that have occurred over the past several years were achieved primarily through Federal emission control measures, CAA-required improvements to the State vehicle inspection and maintenance (I/M) program, AQCC Regulations No. 3 and No. 6, and AQCC Regulation No. 7.

The Federal Motor Vehicle Control Program (FMVCP) achieved VOC and NO_X emission reductions. In general, the FMVCP provisions require vehicle manufacturers to meet more stringent vehicle emission limitations for new vehicles in future years. These emission limitations are phased in (as a percentage of new vehicles manufactured) over a period of years. As new, lower emitting vehicles replace older, higher emitting vehicles ("fleet turnover"), emission reductions are realized for a particular area such as Denver. For example, EPA promulgated lower hydrocarbon (HC) (of which VOCs are a portion) and CO exhaust emission standards in 1991, known as Tier I standards for new motor vehicles (light-

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duty vehicles and light-duty trucks), in response to the 1990 CAA amendments. These Tier I emissions standards were phased in with 40% of the 1994 model year fleet, 80% of the 1995 model year fleet, and 100% of the 1996 model year fleet.

Colorado's Automobile Inspection and Readjustment (AIR) program is fully described in AQCC Regulation No. 11 ("Motor Vehicle Emissions Inspection Program") and has been applicable in the Denver area since 1981. The AIR program works to reduce VOC and NO_X emissions from gasoline-powered motor vehicles by requiring them to meet emission standards through periodic tailpipe tests, maintenance, and specific repairs. The AIR program was updated in 1994 to meet the requirements of the CAA amendments of 1990, and a more stringent and effective "enhanced" inspection and maintenance program began in the Denver area in 1995. The enhanced program uses a loaded-mode dynamometer test called the "I/M 240" for 1982 and newer vehicles and an idle test for 1981 and older vehicles and heavy trucks.

The State's permit rules for stationary sources, AQCC Regulation No. 3 ("Air Contaminant Emissions Notices") and AQCC Regulation No. 6 ("Standards of Performance for New Stationary Sources") control emissions from industrial facilities and cap VOC and NO_X emissions from new or modified major stationary sources.

Finally, the State has Regulation No. 7 ("Emissions of Volatile Organic Compounds") which contains RACT requirements for commercial and industrial sources of VOCs. As noted above, the State submitted substantial revisions to Regulation No. 7 in 1989 and 1990 that we approved on May 30, 1995 (see 60 FR 28055).

We have evaluated the various State and Federal control measures, the 1993 attainment year emission inventory, and the projected emissions described below, and have concluded that the improvement in air quality in the Denver nonattainment area has resulted from emission reductions that are permanent and enforceable.

(f) Redesignation Criterion: The Area Must Have A Fully Approved Maintenance Plan Under CAA Section 175A.

Section 107(d)(3)(E)(iv) of the CAA provides that for an area to be redesignated to attainment, the Administrator must have fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA.

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The maintenance plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the promulgation of the redesignation, the State must submit a revised maintenance plan that demonstrates continued attainment for the subsequent ten-year period following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for adoption and implementation, that are adequate to assure prompt correction of a violation. In addition, we issued further maintenance plan interpretations in the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (57 FR 13498, April 16, 1992), "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Supplemental" (57 FR 18070, April 28, 1992), and the EPA guidance memorandum entitled "Procedures for Processing Requests to Redesignate Areas to Attainment" from John Calcagni, Director, Air Quality Management Division, Office of Air Quality and Planning Standards, to Regional Air Division Directors, dated September 4, 1992.

In this **Federal Register** action, we are proposing approval of the State of Colorado's maintenance plan for the Denver ozone nonattainment area because we have determined, as detailed below, that the State's maintenance plan submittal meets the requirements of section 175A and is consistent with the documents referenced above. Our analysis of the pertinent maintenance plan requirements, with reference to the Governor's November 30, 2000, submittal, is provided as follows:

1. Emissions Inventories—Attainment Year and Projections

Our interpretations of the CAA section 175A maintenance plan requirements are generally provided in the General Preamble and the September 4, 1992, policy memorandum referenced above. Under our interpretations, areas seeking to redesignate to attainment for the 1-hour ozone NAAQS may demonstrate future maintenance of the ozone NAAQS either by showing that future VOC and NO_X emissions will be equal to or less than the attainment year emissions or by providing a modeling demonstration. For the Denver area, the State selected the emissions inventory approach for demonstrating maintenance of the ozone NAAQS.

The maintenance plan that the Governor submitted on November 30, 2000, included comprehensive inventories of VOC and NO_X emissions for the Denver area. These inventories include emissions from stationary point sources, area sources, non-road mobile sources, on-road mobile sources, and biogenics. The State selected 1993 as the year from which to develop the attainment year inventory and included projections for 2006 and 2013. More detailed descriptions of the 1993 attainment year inventory and the projected inventories are documented in the maintenance plan in Chapter 3, section B, ("Emission Inventories"), Appendix A, ("Emission Inventories") of the maintenance plan, and in the State's TSD. The State's submittal contains detailed emission inventory information that was prepared in accordance with EPA guidance.

A. Emission Inventory Corrections and Changes; As Adopted on January 11, 2001

At the January 11, 2001, AQCC public hearing for the Denver 1-hour ozone redesignation request and maintenance plan, the RAQC and State brought forward several minor corrections and changes for consideration by the public and AQCC. These minor corrections/changes were as follows:

1. In preparing the emission inventories, the State used mobile source gridded VMT data that had been previously developed for the Denver area's carbon monoxide redesignation request and maintenance plan. The gridded VMT data, that were originally prepared for the Urban Airshed Model (UAM), covered a larger area than the Denver 1-hour ozone nonattainment area. The ozone maintenance plan inadvertently included calculated mobile source emissions for the larger UAM modeling domain area rather than just the ozone attainment/maintenance area. The emission inventories are to be calculated to be consistent with the original nonattainment area and the attainment/maintenance area boundaries. The mobile source emission figures for 1993, 2006, and 2013 were all corrected to reflect the appropriate area in both the maintenance plan and TSD.

2. In reference to the above, the motor vehicle VOC and NO_X conformity emission budgets were corrected to reflect the emissions only for the ozone attainment/maintenance area boundaries. The corrections were done for both the maintenance plan and TSD.

3. The Denver International Airport (DIA) provided the RAQC and State updated emission estimates that reflected the projected expansion and associated growth of aircraft operations and ground support equipment at DIA. These revised estimates were incorporated into both the maintenance plan and TSD.

4. An error was discovered in the non-road emissions category. In reviewing VOC emissions that were estimated for farm equipment a figure of 9.0 tons per day of VOCs had been used in the 1993 attainment year inventory. This figure actually should have been 0.9 tons per day of VOCs. This correction was reflected in both the maintenance plan and TSD.

Summary emission figures, that include the corrections adopted at the AQCC January 11, 2001 public hearing, from the 1993 attainment year and the projected years are provided in Table III.–1 and Table III.–2 below.

TABLE III.–1—SUMMARY OF VOC EMISSIONS IN TONS PER DAY FOR DENVER

	1993	Rev. 1993 [1]	2006	Rev. 2006 [1]	2013	Rev. 2013 [1]
Point Sources	46	46	52	52	56	56
Area Sources	74	74	73	73	80	80
Non-Road Mobile Sources	67	58	40	39	40	38
On-Road Mobile Sources	124	119	89	84	77	74
Biogenics	211	211	211	211	211	211
Total	522	507	456	460	464	459

[1] These are the revised inventory figures that represent the technical corrections that were adopted by AQCC with the maintenance plan and TSD at the January 11, 2001, public hearing.

TABLE III.–2—SUMMARY OF NO_X EMISSIONS IN TONS PER DAY FOR DENVER

	1993	Rev. 1993 [1]	2006	Rev. 2006 [1]	2013	2013 [1]
Point Sources	122	122	123	123	126	126
Area Sources	7	7	10	10	11	11
Non-Road Mobile Sources	64	65	51	57	40	50
On-Road Mobile Sources	139	134	121	115	123	117
Biogenics	4	4	4	4	4	4
Total	336	332	309	309	304	308

[1] These are the revised inventory figures that represent the technical corrections that were adopted by AQCC with the maintenance plan and TSD at the January 11, 2001, public hearing.

2. Demonstration of Maintenance—Projected Inventories

As noted above, total VOC and NO_X emissions were projected by the State for 2006 and 2013. The years 2006 and 2013 were selected by the State, with EPA's concurrence, due to the immediate availability of transportation data sets from the Denver Regional Council Of Governments (DRCOG) from the work performed on the Denver carbon monoxide (CO) redesignation request and maintenance plan.

The Denver CO redesignation request and maintenance plan were submitted to us on May 10, 2000. This maintenance plan used the latest revised transportation data sets that were developed by DRCOG for the State to model the mobile source emissions. In addition, the CO maintenance plan incorporated changes to AQCC Regulation No. 11 that would initiate a Remote Sensing Device (RSD) program in 2002 and affect the cutpoints for the enhanced I/M program. Both of these I/M program revisions would also directly affect emission reductions for the ozone maintenance plan.

The RSD program is designed to evaluate 20% of the fleet in 2003, 40% of the fleet in 2004, 60% of the fleet in 2005, and 80% of the fleet in 2006. The RSD program will continue through 2013. In conjunction with the new RSD program, Regulation No. 11's enhanced I/M program will continue to apply to evaluate the remainder of the fleet and those vehicles that did not pass evaluation by the RSD program. Also, the enhanced I/M cutpoints will be tightened from the current levels of 2.0 grams per mile for hydrocarbons (HC) and 4.0 grams per mile for NO_X to 0.6 grams per mile HC and 1.5 grams per mile NO_X in 2006 and will continue through 2013. We have reviewed these State-adopted changes to Regulation No. 11 and will be proposing approval of them in a separate rulemaking action for the Denver CO redesignation request and maintenance plan. We note that the State has properly accounted for these Regulation No. 11 revisions in the projected emission inventories for 2006 and 2013 and is able to demonstrate maintenance of the 1-hour ozone standard. In the event that we are unable to approve the Regulation No. 11 revisions that were submitted by the Governor on May 10, 2000, this would not have an adverse impact on the Denver ozone maintenance plan as the current I/M program would continue and would provide greater emission reductions than the State has projected for the amended version of Regulation No. 11. In either scenario, the maintenance demonstration would still be valid.

For the ozone maintenance plan, the 1993 attainment year inventory and the projected 2006 and 2013 inventories were all prepared in accordance with EPA guidance. As stated in the maintenance plan, the projected emission inventories show a steady downward trend in both VOC and NO_X emissions. This is due mainly to more stringent motor vehicle tailpipe emission standards and additional Federal rule requirements for non-road sources of emissions. Because of this steady downward trend in emissions and because future year emissions are projected to be considerably below the 1993 attainment year levels, the State expects there will be no increases in emissions in the years between the present and 2013 that will jeopardize the demonstration of maintenance. Based on the information in the maintenance plan and the State's TSD, we agree with this conclusion.

Therefore, as the projected 2006 and 2013 inventories show that VOC and

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NO_X emissions are not estimated to exceed the 1993 attainment levels during the time period from the present through 2013, the Denver area has satisfactorily demonstrated maintenance of the 1-hour ozone NAAQS.

3. Monitoring Network and Verification of Continued Attainment

Continued attainment of the 1-hour ozone NAAQS in the Denver area depends, in part, on the State's efforts to track indicators throughout the maintenance period. This requirement is met in two sections of the Denver maintenance plan. In Chapter 2, section B and Chapter 3, section E the State commits to continue the operation of the ozone monitors in the Denver area and to annually review this monitoring network and make changes as appropriate.

Also, in Chapter 3, section F, ("Contingency Provisions"), the State commits to track mobile sources" VOC and NO_X precursor emissions (which are the largest component of the inventories) through the ongoing regional transportation planning process that is done by DRCOG. Since revisions to Denver's transportation improvement programs are prepared every two years, and must go through a transportation conformity finding, the State will use this process to periodically review progress towards meeting the Vehicle Miles Traveled (VMT) and mobile source emissions projections used in the maintenance plan. This regional transportation process is conducted by DRCOG in coordination with the RAQC, the State's Air Pollution Control Division (APCD), the AQCC, and EPA.

Based on the above, we are proposing approval of these commitments as satisfying the relevant requirements. We note that a final rulemaking approval will render the State's commitments federally enforceable.

4. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions. To meet this requirement, the State has identified appropriate contingency measures along with a schedule for the development and implementation of such measures.

As stated in Chapter 3, section F, ("Contingency Provisions") of the maintenance plan, the contingency measures for the Denver area will be triggered by a violation of the 1-hour ozone NAAQS. (However, the maintenance plan does note that an exceedance of the 1-hour ozone NAAQS may initiate a voluntary, local process by the RAQC and APCD to identify and evaluate potential contingency measures.)

The RAQC, in coordination with the APCD and AQCC, will initiate a subcommittee process to begin evaluating potential contingency measures no more than 60 days after being notified by the APCD that a violation of the 1-hour ozone NAAQS has occurred. The subcommittee will present recommendations to the RAQC within 120 days of notification and the RAQC will present recommended contingency measures to the AQCC within 180 days of notification. The AQCC will then hold a public hearing to consider the contingency measures recommended by the RAQC, along with any other contingency measures that the AQCC believes may be appropriate to effectively address the violation of the 1-hour ozone NAAQS. The necessary contingency measures will be adopted and implemented within one year after the violation occurs.

The potential contingency measures that are identified in Chapter 3, section F of the Denver ozone maintenance plan include summertime gasoline Reid Vapor Pressure (RVP) reduction, reinstatement of the enhanced I/M program in effect before January 10, 2000, enhanced I/M program changes and additions that may involve changing cutpoints and adding an evaporative controls check, reinstatement of the NSR program, restrictions on consumer and commercial coatings, restrictions on architectural surface coatings, restrictions on lawn and garden equipment use, and NO_X RACT for major sources. A more complete description of the triggering mechanism and these contingency measures can be found in Chapter 3, section F of the maintenance plan.

Based on the above, we find that the contingency measures provided in the State's Denver ozone maintenance plan are sufficient and meet the requirements of section 175A(d) of the CAA.

5. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, Colorado has committed to submit a revised maintenance plan SIP revision eight years after the approval of the redesignation. This provision for revising the maintenance plan is contained in Chapter 3, section G, ("Subsequent Maintenance Plan Revisions") of the Denver ozone maintenance plan.

IV. EPA's Evaluation of the Transportation Conformity Requirements

One key provision of our conformity regulation requires a demonstration that emissions from the transportation plan and Transportation Improvement Program are consistent with the emissions budgets in the SIP (40 CFR 93.118 and 93.124). The emissions budget is defined as the level of mobile source emissions relied upon in the attainment or maintenance demonstration to maintain compliance with the NAAQS in the nonattainment or maintenance area. The rule's requirements and EPA's policy on emissions budgets are found in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62193–96) and in the sections of the rule referenced above.

The maintenance plan (as updated on January 11, 2001) defines the motor vehicle emissions budgets in the Denver ozone attainment/maintenance area as 119 tons per day for VOCs and 134 tons per day for NO_X for all years 2002 and beyond. These figures reflect technical corrections to those of 124 tons per day for VOCs and 139 tons per day for NO_X that were previously submitted by the Governor on November 30, 2000. These budgets are equal to the attainment year (1993) mobile source emissions inventory for these pollutants and use some of the available safety margin in the years 2002 to 2013. The use of the safety margin is permitted by the conformity rule. *See* 40 CFR 93.124(a).

The State used specific inventory values for the years 2006 and 2013 to calculate and use some of the available safety margin in those years. As revised during the January 11, 2001, public hearing, in 2006 the total emissions of VOCs and NO_X are lower than the 1993 attainment year emissions inventory by 47 (was 56) tons per day and 23 (was 27) tons per day respectively. For 2006, the State added the mobile sources portion of the safety margin (35 tons per day for VOCs and 19 tons per day for NO_X) to the 2006 mobile sources emission inventories to arrive at the final budgets of 119 tons per day for VOCs and 134 tons per day for NO_X. For 2013, the State similarly allocated the safety margin to arrive at the same budgets. Although the maintenance plan does not specifically address the inventories for the other years between 2002 and 2013, the maintenance plan defines the same budgets for 2002 and all years beyond, thus evidencing the intent to apply some portion of the available safety margin in 2002 to arrive at these same budgets. We believe this is acceptable under the circumstances because we would not expect total emissions from sources other than on-road mobile sources to exceed their 1993 levels in the year 2002 or any other year before 2013. Therefore, in view of our analysis, we are proposing to approve these 1-hour ozone NAAQS VOC and NO_X budgets for the Denver area.

V. EPA's Evaluation of the Regulation No. 3 Revisions

As we noted above, the Governor of Colorado had previously submitted minor revisions to Regulation No. 3 in conjunction with the Governor's original August 8, 1996, submittal of the Denver ozone maintenance plan. Regulation No. 3, Part B, Section III.D.1.f., previously exempted gasoline stations, located in ozone attainment areas, from construction permit requirements. The revision to Regulation No. 3 that the Governor submitted on August 8, 1996, exempts gasoline stations located in ozone attainment areas from construction permit requirements, with the exception of those gasoline stations located in the Denver Metro ozone attainment maintenance area. In other words, this revision ensures that gasoline stations will remain subject to Regulation No. 3 requirements after Denver's redesignation to attainment.

We concur with this revision to Regulation No. 3 and we are proposing approval of this change.

VI. EPA's Evaluation of the Regulation No. 7 Revisions

As we noted above, the Governor of Colorado had previously submitted minor revisions to Regulation No. 7 in conjunction with the Governor's original August 8, 1996, submittal of the Denver ozone maintenance plan. Section I.A.1 of Regulation No. 7, "Applicability", previously read "The provisions of this regulation shall apply only to ozone nonattainment areas with the exception of Section V, Paragraphs VI.B.1 and 2., and Subsection VII.C., which shall apply statewide." This was revised in the Governor's August 8, 1996, submittal to read "The provisions of this regulation shall apply only to ozone nonattainment areas and the Denver Metro Attainment Maintenance Area with the exception of Section V, Paragraphs VI.B.1 and 2., and Subsection VII.C., which shall apply statewide."

We concur with this revision to Regulation No. 7 and we are proposing approval of this change. We note that additional revisions to Regulation No. 7 were also submitted with the Governor's August 8, 1996, submittal and included the addition of paragraphs A.2., A.3., and A.4. to create "de minimus" exemptions. We are not taking any action on these revisions and will not consider them with our proposed approval of the Governor's November 30, 2000, submittal.

VII. EPA's Evaluation of the Request for Revision to 40 CFR 80.27(a)(2) for RVP

Since 1991, gasoline sold in the Denver area during the summer ozone season (June 1st to September 15th for gasoline RVP) has been subject to a national Reid Vapor Pressure (RVP) limit of 7.8 psi (8.8 psi for ethanol-blended fuels) in order to reduce fuel volatility. Since the Denver area has not violated the 1-hour ozone standard since the late 1980s, the State has previously requested, and EPA has granted, waivers to allow a 9.0 psi RVP (10.0 psi for ethanol-blends) gasoline in the Denver area instead of the more stringent 7.8 psi RVP limit.

The maintenance plan that was submitted by the Governor on November 30, 2000, incorporates a gasoline RVP limit of 9.0 psi in the maintenance demonstration. Since maintenance of the 1-hour ozone NAAQS is shown for the entire maintenance time period of 1993 through 2013 with this 9.0 psi limit, the State of Colorado has requested that the 9.0 psi summertime RVP limit (10.0 psi for ethanol-blends) be made permanent for the Denver attainment/maintenance area once EPA approves the redesignation request and maintenance plan. We believe this change would be appropriate. However, separate rulemaking through our Headquarters office is necessary to revise the RVP requirements for Colorado as specified in 40 CFR 80.27(a)(2). We anticipate that our Headquarters office will pursue this rulemaking action if and when we fully approve the redesignation request and maintenance plan.

VIII. Proposed Rulemaking Action and Request for Public Comment

We are soliciting public comment on all aspects of this proposed SIP rulemaking action. As stated above, we are proposing approval of the Governor's November 30, 2000, request to redesignate the Denver 1-hour ozone NAAQS nonattainment area to attainment, the maintenance plan and the minor technical changes as adopted by the AQCC on January 11, 2001, and the August 8, 1996, revisions to Regulation No. 3 and Regulation No. 7. Send your comments in duplicate to the address listed at the front of this proposed rule. We will consider your comments in deciding our final action if your letter is received before June 11, 2001.

Administrative Requirements

(a) Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

(b) Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

(c) Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a

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regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely proposes approval of a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. In addition, redesignation of an area to attainment under sections 107(d)(3)(D) and (E) of the Clean Air Act does not impose any new requirements. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

(d) Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This action does not involve or impose any requirements that affect Indian Tribes. Thus, Executive Order 13175 does not apply to this proposed rule.

(e) Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed approval will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP proposed approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA U.S.A.*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2). Redesignation of an area to attainment under sections 107(d)(3)(D) and (E) of the Clean Air Act does not impose any new requirements. Redesignation to attainment is an action that affects the legal designation of a geographical area and does not impose any regulatory requirements. Therefore, because the Federal SIP proposed approval does not create any new requirements, I certify that the proposed approval of the redesignation request will not have a significant economic impact on a substantial number of small entities.

(f) Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed approval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes approval of pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: April 27, 2001.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 01–11915 Filed 5–10–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[TN–T5–2001–03; FRL–6977–7]

Clean Air Act Proposed Full Approval of Operating Permit Program; Tennessee and Memphis-Shelby County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of the public comment period.

SUMMARY: In response to a request from Mr. George Hays as counsel for the National Parks Conservation Association, EPA is reopening the comment period for a proposed rule published on March 20, 2001, in the **Federal Register** (66 FR 15680) for full approval of the operating permit programs submitted by the Tennessee Department of Environment and Conservation and the Memphis-Shelby County Health Department.

DATES: Written comments must be received by EPA on or before June 11, 2001.

ADDRESSES: Comments should be addressed to Ms. Kim Pierce, Regional Title V Program Manager, Air & Radiation Technology Branch, EPA Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8909.

FOR FURTHER INFORMATION CONTACT: Kim Pierce, EPA Region 4, at (404) 562–9124 or *pierce.kim@epa.gov/*.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule located in the final rules section and the proposed rule located in the proposed rules section of the **Federal Register** published on March 20, 2001.

Dated: May 3, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 01–11911 Filed 5–10–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–6958–5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA is proposing to use the Delisting Risk Assessment Software (DRAS) in the evaluation of a delisting petition. Based on waste specific information provided by the petitioner, EPA is proposing to use the DRAS to evaluate the impact of the petitioned waste on human health and the environment.

The EPA is also proposing to grant a petition submitted by Tenneco Automotive, Inc. (Tenneco) to exclude (or delist) certain solid wastes generated by its Paragould, Arkansas, facility from the lists of hazardous wastes contained in 40 CFR 261.24 and 261.31 (hereinafter all sectional references are to 40 CFR unless otherwise indicated).

Tenneco submitted the petition under sections 260.20 and 260.22(a). Section 260.20 allows any person to petition the Administrator to modify or revoke any provision of 40 CFR parts 260 through 266, 268 and 273. Section 260.22(a) specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator specific" basis from the hazardous waste lists.

The Agency bases its proposed decision to grant the petition on an evaluation of waste-specific information provided by the petitioner. This proposed decision, if finalized, would exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

If finalized, we would conclude that Tenneco's petitioned waste is nonhazardous with respect to the original listing criteria and that the stabilization process Tenneco used will substantially reduce the likelihood of migration of constituents from this waste. We would also conclude that their process minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

DATES: We will accept comments until June 25, 2001. We will stamp comments received after the close of the comment period as "late." These "late" comments may not be considered in formulating a final decision. Your requests for a hearing must reach EPA by June 11, 2001. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Please send three copies of your comments. You should send two copies to William Gallagher, Delisting Section, Multimedia Planning and Permitting Division (6PD–O), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. You should send a third copy to the Arkansas Department of Environmental Quality (ADEQ), P.O. Box 8913, Little Rock, Arkansas, 72209–8913. Identify your comments at the top with this regulatory docket number: "F–00–ARDEL–TENNECO."

You should address requests for a hearing to the Director, Carl Edlund, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Michelle Peace at (214) 665–7430.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information
  A. What action is EPA proposing?
  B. Why is EPA proposing to approve this delisting?
  C. How will Tenneco manage the waste if it is delisted?
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II. Background
  A. What is the history of the delisting program?
  B. What is a delisting petition, and what does it require of a petitioner?
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  A. What wastes did Tenneco petition EPA to delist?
  B. What is Tenneco, and how did it generate this waste?
  C. What information and analyses did Tenneco submit to support its petition?
  D. What were the results of Tenneco's analysis?
  E. How did EPA evaluate the risk of delisting this waste?
  F. What did EPA conclude about Tenneco's analysis?
  G. What other factors did EPA consider?
  H. What is EPA's evaluation of this delisting petition?
IV. Next Steps
  A. With what conditions must the petitioner comply?
  B. What happens if Tenneco violates the terms and conditions?
V. Public Comments
  A. How can I as an interested party submit comments?
  B. How may I review the docket or obtain copies of the proposed exclusions?
VI. Regulatory Impact
VII. Regulatory Flexibility Act
VIII. Paperwork Reduction Act
IX. Unfunded Mandates Reform Act
X. Executive Order 13045
XI. Executive Order 13084
XII. National Technology Transfer and Advancements Act
XIII. Executive Order 13132 Federalism

I. Overview Information

A. What Action Is EPA Proposing?

The EPA is proposing:

(1) To grant Tenneco's petition to have its stabilized sludge excluded, or delisted, from the definition of a hazardous waste; and

(2) To use a fate and transport model to evaluate the potential impact of the petitioned waste on human health and the environment. The Agency would use this model to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed.

B. Why Is EPA Proposing To Approve This Delisting?

Tenneco's petition requests a delisting for listed hazardous wastes. Tenneco does not believe that the petitioned waste meets the criteria for which EPA listed it. Tenneco also believes no additional constituents or factors could cause the waste to be hazardous. The EPA's review of this petition included consideration of the original listing criteria, and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(1)–(4). In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (a)(3). Based on this review, the EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If the EPA had found, based on this review, that the

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waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) The EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. The EPA believes that the petitioned waste does not meet these criteria. The EPA's proposed decision to delist waste from Tenneco's facility is based on the information submitted in support of today's rule, *i.e.*, descriptions of the wastes and analytical data from the Paragould facility.

C. How Will Tenneco Manage the Waste if It Is Delisted?

Tenneco currently stores the petitioned waste (stabilized sludge) generated in containment vaults on-site at its facility. If the delisting exclusion is finalized, Tenneco will dispose of the sludge in a solid waste landfill in Arkansas.

D. When Would EPA Finalize the Proposed Delisting?

RCRA section 3001(f) specifically requires EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not grant the exclusion until it addresses all timely public comments (including those at public hearings, if any) on today's proposal.

RCRA section 3010(b)(1) at 42 U.S.C. 6930(b)(1), allows rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes.

The EPA believes that this exclusion should be effective immediately upon final publication because a six-month deadline is not necessary to achieve the purpose of section 3010(b), and a later effective date would impose unnecessary hardship and expense on this petitioner. These reasons also provide good cause for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

E. How Would This Action Affect the States?

Because EPA is issuing today's exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be affected. This would exclude two categories of States: States having a dual system that includes Federal RCRA requirements and their own requirements, and States who have received authorization from EPA to make their own delisting decisions.

Here are the details: We allow states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA, 42 U.S.C. 6929. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the State. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

The EPA has also authorized some States (for example, Louisiana, Georgia, Illinois) to administer a RCRA delisting program in place of the Federal program, that is, to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States unless that State makes the rule part of its authorized program. If Tenneco transports the petitioned waste to or manages the waste in any State with delisting authorization, Tenneco must obtain delisting authorization from that State before they can manage the waste as nonhazardous in the State.

II. Background

A. What Is the History of the Delisting Program?

The EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA. The EPA has amended this list several times and published it in 40 CFR 261.31 and 261.32.

We list these wastes as hazardous because: (1) they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of Part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be hazardous.

For this reason, sections 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to prove that EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

B. What Is a Delisting Petition, and What Does It Require of a Petitioner?

A delisting petition is a request from a facility to EPA or an authorized State to exclude wastes from the list of hazardous wastes. The facility petitions the Agency because it does not consider the wastes hazardous under RCRA regulations.

In a delisting petition, the petitioner must show that wastes generated at a particular facility do not meet any of the criteria for which the waste was listed. The criteria for which EPA lists a waste are in part 261 and further explained in the background documents for the listed waste.

In addition, under section 260.22, a petitioner must prove that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and present sufficient information for EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. (See part 261 and the background documents for the listed waste.)

Generators remain obligated under RCRA to confirm whether their waste remains nonhazardous based on the hazardous waste characteristics even if EPA has "delisted" the waste.

C. What Factors Must EPA Consider in Deciding Whether To Grant a Delisting Petition?

Besides considering the criteria in section 260.22(a) and section 3001(f) of RCRA, 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents) other than those for which we listed the waste if a reasonable basis exists that these additional factors could cause the waste to be hazardous.

The EPA must also consider as hazardous waste mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. See § 261.3(a)(2)(iii) and (iv) and (c)(2)(i), called the "mixture" and "derived-from" rules, respectively. These wastes are also eligible for exclusion and remain hazardous wastes until excluded.

The "mixture" and "derived-from" rules are now final, after having been vacated, remanded, and reinstated. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the "mixture/derived from" rules and remanded them to EPA on procedural grounds. See *Shell Oil Co.* v. *EPA.*, 950 F.2d 741 (D.C. Cir. 1991). EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues. See 57 FR 7628 (March 3, 1992). These rules became final on October 30, 1992. See 57 FR 49278 (October 30, 1992). Consult these references for more information about mixtures and derived from wastes.

III. EPA's Evaluation of the Waste Information and Data

A. What Waste Did Tenneco Petition EPA To Delist?

On September 8, 2000, Tenneco petitioned the EPA to exclude from the lists of hazardous waste contained in §§ 261.31 and 261.32, stabilized sludge excavated from the Finch Road Landfill in Paragould, Arkansas. The waste falls under the classification of listed waste because of the "derived from" rule in 40 CFR 261.3. Specifically, in its petition, Tenneco requested that EPA grant an exclusion for 1,800 cubic yards of dewatered sludge resulting from its hazardous waste treatment process. The resulting waste is listed, in accordance with the "derived from" rule.

B. What Is Tenneco, and How Did It Generate This Waste?

In 1973, Monroe Auto Equipment Company (now Tenneco Automotive, Inc.) purchased a seven-acre tract of land, which included an inactive sand and gravel borrow pit. This site was approved by the State to be used as a landfill. Approximately 15,400 cubic yards of waste water treatment sludge was deposited in the borrow pit between 1973 and 1978, the sludge originated from settling ponds that were used for the treated waste water from Tenneco's Paragould manufacturing plant. In 1996, a Superfund Record of Decision (ROD) was issued pursuant to the National Oil and Hazardous Substances Pollution Contingency Plan at 40 CFR 300.430(f)(5) for the Finch Road Landfill. The ROD specified the requirements for remediation of the soil and groundwater at the site. In 1999, Tenneco submitted a petition to modify the ROD to include the excavation, treatment, and off-disposal of the waste in a Subtitle D landfill.

The Superfund removal action consisted of the excavation and segregation of the sludge; stabilizing the sludge with 10 percent lime addition; and stockpiling the stabilized sludge in an on-site lined containment cell.

The waste would not have been classified as RCRA hazardous waste in its original state because it was generated and placed in the Finch Road landfill prior to RCRA regulation. The stabilized sludge currently falls under the classification of listed waste because of the management (removal action) of the material occurred after the effective date of the rules in 1980. It is listed as F006, sludge from electroplating operations, based upon its original source. The waste code of the constituents of concern is EPA Hazardous Waste No. F006. The constituents of concern for F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed).

C. What Information and Analyses Did Tenneco Submit To Support Its Petition?

To support its petition, Tenneco submitted:

(1) historical information on past waste generation and management practices;

(2) results of the total constituent list for 40 CFR part 264, appendix IX volatiles, semivolatiles, and metals except pesticides, herbicides, and PCBs;

(3) results of the constituent list for appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract for volatiles, semivolatiles, and metals;

(4) results from total oil and grease analyses and pH measurements.

D. What Were the Results of Tenneco's Analysis?

The EPA believes that the descriptions of the Tenneco analytical characterization provide a reasonable basis to grant Tenneco's petition for an exclusion of the stabilized sludge. The EPA believes the data submitted in support of the petition show the stabilized sludge is non-hazardous. Analytical data for the stabilized sludge samples were used in the DRAS. The data summaries for detected constituents are presented in Tables I. The EPA has reviewed the sampling procedures used by Tenneco and has determined they satisfy EPA criteria for collecting representative samples of the variations in constituent concentrations in the stabilized sludge. The data submitted in support of the petition show that constituents in Tenneco's waste are presently below health-based levels used in the delisting decision-making. The EPA believes that Tenneco has successfully demonstrated that the stabilized sludge is non-hazardous.

TABLE I.—MAXIMUM TOTAL AND TCLP CONSTITUENT CONCENTRATIONS STABILIZED SLUDGE [1]

Constituent	Total constituent analyses (mg/kg)	TCLP Leachate concentration (mg/l)
Antimony	13.4	0.00335
Arsenic	21.5	0.0125
Barium	3.35	0.371
Benzene	0.008	0.050
Cadmium	0.423	0.050
cis-1,3-Dichloropropene	0.023	0.050
Ethylbenzene	0.04	0.0015
Lead	575	0.223
Mercury	0.00015	0.0006
Methyl ethyl ketone	0.076	0.00015
Nickel	7.32	0.07
Tetrachloroethylene	0.014	0.0015
Toluene	0.073	0.0015
1,1,1-Trichloroethane	0.011	0.005
Trichloroethylene	0.029	0.0015

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TABLE I.—MAXIMUM TOTAL AND TCLP CONSTITUENT CONCENTRATIONS STABILIZED SLUDGE [1]—Continued

Constituent	Total constituent analyses (mg/kg)	TCLP Leachate concentration (mg/l)
Xylenes (total)	0.22	0.0015

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

E. How Did EPA Evaluate the Risk of Delisting the Waste?

For this delisting determination, EPA used such information gathered to identify plausible exposure routes (*i.e.*, ground water, surface water, air) for hazardous constituents present in the petitioned waste. The EPA determined that disposal in a Subtitle D landfill is the most reasonable, worst-case disposal scenario for Tenneco's petitioned waste. EPA applied the Delisting Risk Assessment Software (DRAS) described in 65 FR 58015 (September 27, 2000) and 65 FR 75637 (December 4, 2000), to predict the maximum allowable concentrations of hazardous constituents that may release from the petitioned waste after disposal and determined the potential impact of the disposal of Tenneco's petitioned waste on human health and the environment. A copy of this software can be found on the world wide web at *www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dras.htm*. In assessing potential risks to ground water, EPA used the maximum estimated waste volumes and the maximum reported extract concentrations as inputs to the DRAS program to estimate the constituent concentrations in the ground water at a hypothetical receptor well down gradient from the disposal site. Using the risk level (carcinogenic risk of 10^{-5} and non-cancer hazard index of 0.1), the DRAS program can back-calculate the acceptable receptor well concentrations (referred to as compliance-point concentrations) using standard risk assessment algorithms and Agency health-based numbers. Using the maximum compliance-point concentrations and the EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP) fate and transport modeling factors, the DRAS further back-calculates the maximum permissible waste constituent concentrations not expected to exceed the compliance-point concentrations in groundwater.

The EPA believes that the EPACMTP fate and transport model represents a reasonable worst-case scenario for possible ground water contamination resulting from disposal of the petitioned waste in a landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of some reasonable worst-case scenarios resulted in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, will not pose a significant threat to human health or the environment.

The DRAS also uses the maximum estimated waste volumes and the maximum reported total concentrations to predict possible risks associated with releases of waste constituents through surface pathways (*e.g.*, volatilization or wind-blown particulate from the landfill). As in the above ground water analyses, the DRAS uses the risk level, the health-based data and standard risk assessment and exposure algorithms to predict maximum compliance-point concentrations of waste constituents at a hypothetical point of exposure. Using fate and transport equations, the DRAS uses the maximum compliance-point concentrations and back-calculates the maximum allowable waste constituent concentrations (or "delisting levels").

In most cases, because a delisted waste is no longer subject to hazardous waste control, EPA is generally unable to predict, and does not presently control, how a petitioner will manage a waste after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. The EPA does control the type of unit where the waste is disposed. The waste must be disposed in the type of unit the fate and transport model evaluates.

The EPA also considers the applicability of ground water monitoring data during the evaluation of delisting petitions. In this case, Tenneco has never directly disposed of this material in its solid waste landfill, so no representative data exists. Therefore, EPA has determined that it would be unnecessary to request ground water monitoring data.

The EPA believes that the descriptions of Tenneco's hazardous waste process and analytical characterization provide a reasonable basis to conclude that the likelihood of migration of hazardous constituents from the petitioned waste will be substantially reduced so that short-term and long-term threats to human health and the environment are minimized. Thus, EPA should grant Tenneco's petition for a one-time exclusion of the stabilized sludge.

The DRAS results which calculate the maximum allowable concentration of chemical constituents in the waste are presented in Table II. Based on the DRAS, the petitioned waste should be delisted because no constituents of concern exceed the maximum allowable concentrations.

TABLE II.—DRAS MAXIMUM ALLOWABLE CONCENTRATIONS OF CONSTITUENTS IN LEACHATE

Constituent	DRAS maximum allowable Leachate concentration (mg/l)
Antimony	15.1
Arsenic	0.274
Barium	100
Benzene	0.163

TABLE II.—DRAS MAXIMUM ALLOWABLE CONCENTRATIONS OF CONSTITUENTS IN LEACHATE—Continued

Constituent	DRAS maximum allowable Leachate concentration (mg/l)
Cadmium	1.0
Cis-1,3-Dichloropropene	93800
Ethylbenzene	55.8
Lead	5.0
Mercury	0.2
Methyl ethyl ketone	200
Nickel	827
Tetrachloroethylene	0.7
Toluene	98.5
1,1,1-Trichloroethane	23.2
Trichloroethylene	0.5
Xylenes (total)	1750

F. What Did EPA Conclude About Tenneco's Analysis?

The EPA concluded, after reviewing Tenneco's processes that no other hazardous constituents of concern, other than those for which tested, are likely to be present or formed as reaction products or by products in Tenneco's waste. In addition, on the basis of explanations and analytical data provided by Tenneco, pursuant to section 260.22, the EPA concludes that the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See §§ 261.21, 261.22, and 261.23, respectively.

G. What Other Factors Did EPA Consider?

During the evaluation of Tenneco's petition, EPA also considered the potential impact of the petitioned waste via non-ground water routes (i.e., air emission and surface runoff). With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from Tenneco's petitioned waste is unlikely. Therefore, no appreciable air releases are likely from Tenneco's waste under any likely disposal conditions. The EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from Tenneco's waste in an open landfill. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from Tenneco's stabilized sludge. A description of EPA's assessment of the potential impact of Tenneco's waste, regarding airborne dispersion of waste contaminants, is presented in the RCRA public docket for today's proposed rule, F–00–ARDEL–TENNECO.

The EPA also considered the potential impact of the petitioned waste via a surface water route. The EPA believes that containment structures at municipal solid waste landfills can effectively control surface water runoff, as the Subtitle D regulations (See 56 *FR* 50978, October 9, 1991) prohibit pollutant discharges into surface waters. Furthermore, the concentrations of any hazardous constituents dissolved in the runoff will tend to be lower than the levels in the TCLP leachate analyses reported in today's notice due to the aggressive acidic medium used for extraction in the TCLP. The EPA believes that, in general, leachate derived from the waste is unlikely to directly enter a surface water body without first traveling through the saturated subsurface where dilution and attenuation of hazardous constituents will also occur. Leachable concentrations provide a direct measure of solubility of a toxic constituent in water and are indicative of the fraction of the constituent that may be mobilized in surface water as well as ground water.

Based on the reasons discussed above, EPA believes that the contamination of surface water through runoff from the waste disposal area is very unlikely. Nevertheless, EPA evaluated the potential impacts on surface water if Tenneco's waste were released from a municipal solid waste landfill through runoff and erosion. See, the RCRA public docket for today's proposed rule for further information on the potential surface water impacts from runoff and erosion. The estimated levels of the hazardous constituents of concern in surface water would be well below health-based levels for human health, as well as below EPA Chronic Water Quality Criteria for aquatic organisms (USEPA, OWRS, 1987). The EPA, therefore, concluded that Tenneco's stabilized sludge is not a present or potential substantial hazard to human health and the environment via the surface water exposure pathway.

H. What Is EPA's Evaluation of This Delisting Petition?

The descriptions of Tenneco's hazardous waste process and analytical characterization, with the proposed verification testing requirements (as discussed later in this document), provide a reasonable basis for EPA to grant the exclusion. The data submitted in support of the petition show that constituents in the waste are below the maximum allowable leachable concentrations (see Table II). We believe Tenneco's process will substantially reduce the likelihood of migration of hazardous constituents from the petitioned waste. Tenneco's process also minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

Thus, EPA believes we should grant Tenneco an exclusion for the stabilized sludge. The EPA believes the data submitted in support of the petition show Tenneco's process can render the stabilized sludge nonhazardous.

We have reviewed the sampling procedures used by Tenneco and have determined they satisfy EPA criteria for collecting representative samples of variable constituent concentrations in the stabilized sludge. The data submitted in support of the petition show that constituents in Tenneco's waste are presently below the compliance point concentrations used in the delisting decision-making and would not pose a substantial hazard to the environment. The EPA believes that Tenneco has successfully demonstrated that the stabilized sludge is nonhazardous.

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The EPA therefore, proposes to grant a one-time exclusion to the Tenneco Automotive, in Paragould, Arkansas, for the stabilized sludge described in its petition. The EPA's decision to exclude this waste is based on descriptions of the treatment activities associated with the petitioned waste and characterization of the stabilized sludge.

If we finalize the proposed rule, the Agency will no longer regulate the petitioned waste under parts 262 through 268 and the permitting standards of part 270.

IV. Next Steps

A. With What Conditions Must the Petitioner Comply?

The petitioner, Tenneco, must comply with the requirements in 40 CFR part 261, appendix IX, Table 1. The text below gives the rationale and details of those requirements.

If the proposed exclusion is made final, it will apply only to 1,800 cubic yards of stabilized sludge. This is a one-time disposal of the sludge. We would require Tenneco to file a new delisting petition if it generates more than 1,800 cubic yards of waste. Tenneco must manage waste volumes greater than 1,800 cubic yards of stabilized sludge as hazardous until we grant a new exclusion.

If this exclusion becomes final, Tenneco's management of the wastes covered by this petition would be relieved from Subtitle C jurisdiction. Tenneco would be required to either treat, store, or dispose of the waste in an on-site facility that has a state permit, license, or is registered to manage municipal or industrial solid waste. If not, Tenneco must ensure that it delivers the waste to an off-site storage, treatment, or disposal facility that has a state permit, license, or is registered to manage municipal or industrial solid waste.

(1) Reopener Language

The purpose of this condition is to require Tenneco to disclose new or different information related to a condition at the facility or disposal of the waste if it is pertinent to the delisting. This provision will allow EPA to reevaluate the exclusion if a source provides new or additional information to the Agency. The EPA will evaluate the information on which we based the decision to see if it is still correct, or if circumstances have changed so that the information is no longer correct or would cause EPA to deny the petition if presented. This provision expressly requires Tenneco to report differing site conditions or assumptions used in the petition within 10 days of discovery. If EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions at section 268.6.

The EPA believes that we have the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. 551 (1978) *et seq.*, to reopen a delisting decision. We may reopen a delisting decision when we receive new information that calls into question the assumptions underlying the delisting.

The Agency believes a clear statement of its authority in delistings is merited in light of Agency experience. See Reynolds Metals Company at 62 FR 37694 (July 14, 1997) and 62 FR 63458 (December 1, 1997) where the delisted waste leached at greater concentrations in the environment than the concentrations predicted when conducting the TCLP, thus leading the Agency to repeal the delisting. If an immediate threat to human health and the environment presents itself, EPA will continue to address these situations case by case. Where necessary, EPA will make a good cause finding to justify emergency rulemaking. *See* APA section 553(b).

(2) Notification Requirements

In order to adequately track wastes that have been delisted, EPA is requiring that Tenneco provide a one-time notification to any State regulatory agency through which or to which the delisted waste is being carried. This notification requirement must be met if the waste is transported off-site. Tenneco must provide this notification within 60 days of commencing this activity.

B. What Happens If Tenneco Violates the Terms and Conditions?

If Tenneco violates the terms and conditions established in the exclusion, the Agency will start procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, the Agency will evaluate the need for enforcement activities on a case-by-case basis. The Agency expects Tenneco to conduct the appropriate waste analysis and comply with the criteria explained above in Condition 1 of the exclusion.

V. Public Comments

A. How Can I as an Interested Party Submit Comments?

The EPA is requesting public comments on this proposed decision. Please send three copies of your comments. Send two copies to William Gallagher, Delisting Section, Multimedia Planning and Permitting Division (6PD–O), Environmental Protection Agency (EPA), 1445 Ross Avenue, Dallas, Texas 75202. Send a third copy to the Arkansas Department of Environmental Quality, P.O. Box 8913, Little Rock, Arkansas, 72209–8913 Identify your comments at the top with this regulatory docket number: "F–00–ARDEL–TENNECO."

You should submit requests for a hearing to Carl Edlund, Director, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

B. How May I Review the Docket or Obtain Copies of the Proposed Exclusion?

You may review the RCRA regulatory docket for this proposed rule at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. It is available for viewing in the EPA Freedom of Information Act Review Room from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at fifteen cents per page for additional copies.

VI. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions.

The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from today's proposed rule, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under section (6) of Executive Order 12866.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available

for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (that is, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on a small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VIII. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

IX. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

When such a statement is required for EPA rules, under section 205 of the UMRA EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law.

Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local, or tribal governments or the private sector.

The EPA finds that today's delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, the proposed delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

X. Executive Order 13045

The Executive Order 13045 is entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XI. Executive Order 13084

Because this action does not involve any requirements that affect Indian Tribes, the requirements of section 3(b) of Executive Order 13084 do not apply.

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects that communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments.

If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to meaningful and timely input" in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XII. National Technology Transfer and Advancement Act

Under section 12(d) if the National Technology Transfer and Advancement Act, the Agency is directed to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices, etc.) developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires that Agency to provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards and thus, the Agency has no need to consider the use of voluntary consensus standards in developing this final rule.

XIII. Executive Order 13132 Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that impose substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and

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local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This action does not have federalism implication. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it affects only one facility.

Lists of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: March 12, 2001.

Carl E. Edlund,

P.E., Director, Multimedia Planning and Permitting Division, Region 6.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of Appendix IX of part 261 it is proposed to add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
Tenneco Automotive.	Paragould, AR ..	Stabilized sludge from electroplating operations, excavated from the Finch Road Landfill and currently stored in containment cells by Tenneco (EPA Hazardous Waste Nos. F006). This is a one-time exclusion for 1,800 cubic yards of stabilized sludge. This exclusion was published on May 11, 2001. (1) Reopener Language: (A) If, anytime after disposal of the delisted waste, Tenneco possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (B) If Tenneco fails to submit the information described in (2)(A) or if any other information is received from any source, the Regional Administrator or his delegate will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the Regional Administrator or his delegate determines that the reported information does require Agency action, the Regional Administrator or his delegate will notify the facility in writing of the actions the Regional Administrator or his delegate believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary. The facility shall have 10 days from the date of the Regional Administrator or his delegate's notice to present such information. (D) Following the receipt of information from the facility described in (1)(C) or (if no information is presented under (1)(C)) the initial receipt of information described in (1)(A), the Regional Administrator or his delegate will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator or his delegate's determination shall become effective immediately, unless the Regional Administrator or his delegate provides otherwise. (2) Notification Requirements: Tenneco must do following before transporting the delisted waste off-site: Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the exclusion. (A) Provide a one-time written notification to any State Regulatory Agency to which or through which they will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification if Tenneco ships the delisted waste to a different disposal facility.

[FR Doc. 01–11912 Filed 5–10–01; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 050101C]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), has received a proposal to conduct experimental fishing and has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue EFPs. Therefore, NMFS announces that the Regional Administrator proposes to issue EFPs that would allow up to four federally permitted vessels in the limited access multispecies fishery to conduct fishing operations otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The vessels would collect catch data to support the development of new trawl mesh selectivity curves for the Southern New England (SNE) yellowtail flounder fishery. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this action must be received on or before May 29, 2001.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Rhode Island EFP Proposal." Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: David M. Gouveia, Fishery Policy Analyst, (978) 281–9280, e-mail david.gouveia@noaa.gov.

SUPPLEMENTARY INFORMATION: The Rhode Island Department of Environmental Management, Division of Fish and Wildlife (applicant) submitted an application for EFPs on April 10, 2001. The EFPs will facilitate the collection of catch data that will support the development of trawl mesh selectivity curves for the SNE yellowtail flounder fishery. The applicant intends to provide the trawl mesh selectivity curves to fisheries managers as a tool for managers to match the minimum legal yellowtail flounder size with the size of yellowtail flounder retained by the appropriate mesh size.

The New England Fishery Management Council (Council) is currently developing Amendment 13 to the FMP (Amendment 13), which will include a rebuilding program associated with the overfishing definitions implemented under Amendment 9 to the FMP. As part of its November 2000 report, the Multispecies Monitoring Committee (MMC) provided management advice for the revised overfishing definitions, which serves as a guide for the development of rebuilding programs associated with the overfishing definitions. The MMC report concluded that SNE yellowtail flounder is at a low stock abundance and that fishing mortality should be as close to zero as practicable over the foreseeable future.

During the course of the development of Amendment 13, the Council has assembled a wide range of management alternatives in response to the SNE yellowtail flounder recommendations provided by the MMC. The management alternatives include: Trip limits; increases to the minimum fish and/or mesh sizes; area closures; and day-at-sea (DAS) reductions. Of the alternatives currently being considered to achieve the necessary reductions, the applicant states that the alternative for increasing minimum fish and/or mesh sizes may be more acceptable to the fishing community than widespread area closures. Implementation of large closures would likely have a severe impact on the SNE commercial fishing community, and the applicant is seeking additional information that may support the minimum fish and/or mesh size alternative.

The applicant acknowledges the studies used in the development of the current minimum fish and mesh size restrictions for the yellowtail flounder fishery, but notes that more recent studies conducted within Massachusetts and Rhode Island state waters show different results than did the earlier studies.

The applicant proposes to examine the differences between the mesh selectivity of 6-inch (15.24-cm) diamond and 6.5-inch (16.51-cm) square mesh to 6.5-inch (16.51-cm) diamond and 7-inch (17.78-cm) square mesh. To accomplish this task, an alternate tow design will be utilized for a comparison of mesh selectivity. Each net configuration will be tested with and without a 3-inch (7.62-cm) liner. The applicants will charter up to four federally permitted vessels in the limited access multispecies fishery. Participating vessels will take four half-day trips (totaling 16 trips). All trips will be completed during daylight hours and must include at least two scientific personnel. Each trip will complete six tows (three with a liner and three without). Tows will last approximately 90 minutes each.

Participating vessels would be fishing under the multispecies DAS program, and thus would be authorized to retain and sell all legal-sized groundfish and bycatch species up to the regulatory amounts for each species. The proceeds generated from the sale of the fish would help defray the cost associated with the research. The research would be conducted in areas open to commercial fishing within statistical areas 537 and 539 from the date of the issuance of the EFPs through July 31, 2001.

The applicant will select participating vessels based on their owners' or operators' knowledge of the trawl fishery for yellowtail flounder, familiarity with local fishing methodology, familiarity with the survey area, and possession of trawl gear (except netting). The applicant will provide the proper mesh configuration. Vessels would be required to comply with all conditions of the EFP, as well as all applicable regulations specified under 50 CFR part 648, including the multispecies DAS program and all applicable trip and possession limits for all species caught.

For the purposes of comparing the catch from each mesh configuration, the EFP would also exempt the vessels from the multispecies minimum mesh size restrictions specified under 50 CFR 648.80(b)(2)(i), and allow participating vessels limited use of a 3-inch (7.62-cm) trawl mesh liner. In order to obtain data

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on yellowtail flounder catch distribution, the participating vessels may be required to temporarily retain species that are less than the minimum fish size specified at 50 CFR 648.83(a)(1). No species less than the legal minimum fish size may be landed or sold.

Participating vessels would be required to fish in accordance with a sampling plan designed by the applicant, maintain logbooks documenting fishing activities, carry on-board observers trained in fish taxonomy, and allow biological information to be collected from the catches.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 7, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–11944 Filed 5–10–01; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 66, No. 92

Friday, May 11, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV01–945–610 Review]

Idaho-Eastern Oregon Potatoes; Section 610 Review

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of review and request for comments.

SUMMARY: This notice announces that the Agricultural Marketing Service (AMS) plans to review Marketing Order 945, which regulates the handling of Irish potatoes grown in certain designated counties in Idaho and Malheur County, Oregon, under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA).

DATES: Written comments on this notice must be received by July 10, 2001.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice of review. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P. O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–8938; or E-mail: *moab.docketclerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or may be viewed at *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Suite 385, Portland, Oregon 97204; telephone: (503) 326–2724; Fax: (503) 326–7440; E-mail: *Robert.Curry@usda.gov;* or George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 720–8938; E-mail: *George.Kelhart@usda.gov*.

SUPPLEMENTARY INFORMATION: Marketing Order No. 945, as amended (7 CFR part 945), regulates the handling of Irish potatoes grown in certain designated counties in Idaho and Malheur County, Oregon. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674).

AMS published in the **Federal Register** (63 FR 8014; February 18, 1999), its plan to review certain regulations, including Marketing Order No. 945, under criteria contained in section 610 of the Regulatory Flexibility Act (RFA; 5 U.S.C. 601–612). Because many AMS regulations impact small entities, AMS decided, as a matter of policy, to review certain regulations which, although they may not meet the threshold requirement under section 610 of the RFA, warrant review. The February 18 notice stated that AMS would list the regulations to be reviewed in AMS' regulatory agenda which is published in the **Federal Register** as part of the Unified Agenda. However, after further consideration, AMS has decided to announce the reviews in the **Federal Register** separate from the Unified Agenda. Accordingly, this notice and request for comments is made for Idaho-Eastern Oregon potatoes.

The purpose of the review will be to determine whether the Idaho-Eastern Oregon potato marketing order should be continued without change, amended, or rescinded (consistent with the objectives of the AMAA) to minimize the impacts on small entities. In conducting this review, AMS will consider the following factors: (1) The continued need for the marketing order; (2) the nature of complaints or comments received from the public concerning the marketing order; (3) the complexity of the marketing order; (4) the extent to which the marketing order overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the marketing order has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the marketing order.

Written comments, views, opinions, and other information regarding the potato marketing order's impact on small businesses are invited.

Dated: May 7, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–11864 Filed 5–10–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

County Line—Fourmile Project, McKean And Warren Counties, PA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, Allegheny National Forest, Bradford Ranger District will prepare an environmental impact statement (EIS) to disclose the environmental consequences of the proposed County Line—Fourmile Project, and alternatives to the proposal.

The County Line—Fourmile Project area is located just north and northeast of Sheffield, Pennsylvania within Mead and Sheffield Townships in Warren County and Hamilton Township in McKean County. The total project area is approximately 12,515 acres, with 70% National Forest System lands and 30% private land.

The Forest Service is proposing to move from the existing condition of the County Line—Fourmile project area towards the Desired Future Condition, as detailed in the Allegheny National Forest Land and Resource Management Plan. Vegetation management, wildlife habitat improvements and transportation activities are proposed to respond to the following resource management needs: (1) To restore native vegetation to improve plant and wildlife habitat diversity, and move toward the desired age class distributions of forested stands, (2) To foster sustainable forest management through harvest and reforestation projects in stands needing treatment, (3) To provide high quality hardwoods and contribute to the economic vitality of local communities, (4) To improve wildlife cover and forage conditions and the distribution of non-

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forest wildlife habitats, (5) To improve the distribution of non-forest habitats to meet the needs of wildlife species that prefer or require herbaceous openings, and (6) To provide an adequate transportation system to facilitate the activities proposed while protecting watershed values.

Proposed activities to meet the Desired Future Condition are: (1) Initiation of regeneration harvest through a shelterwood/removal cut sequence (604 acres); (2) Completion of removal cuts on stands already treated with a shelterwood (527 acres); (3) Intermediate harvest including thinning and conifer release (199 acres); (4) Reforestation treatments including herbicide application (1080 acres), site preparation (967 acres), fertilization (644 acres), and fencing (139 acres); (5) Wildlife habitat improvement including conifer/mast underplanting (219 acres), planting shrubs and mast in openings (49 acres), opening construction/maintenance and seeding (141 acres), savannah construction (6 acres), apple tree pruning and releasing shrubs (48 acres), and vernal pool construction (9 pools); (6) Transportation activities on roads to be used for the proposed timber sale including road construction (0.6 miles), road reconstruction (2.6 miles), road maintenance (22.6 miles), limestone surfacing (5.7 miles), and stone pit expansion and construction (8 acres); and (7) Resource protection activities including closing the end of Forest Road 139.3 (0.9 miles).

DATES: Comments identifying issues concerning the effects of the proposal should be postmarked on or before June 4, 2001 to receive timely consideration in the draft EIS. See **SUPPLEMENTARY INFORMATION** section for public meeting dates.

ADDRESSES: Submit written comments to: Chris Ryan, Team Leader, USDA Forest Service, 3801 Pegasus Drive, Bakersfield, CA 93308. Send electronic comments to: *r9_allegheny_nf@fs.fed.us*. See **SUPPLEMENTARY INFORMATION** section for additional information about electronic filing and public meeting addresses.

FOR FURTHER INFORMATION CONTACT: Chris Ryan, Team Leader, at 661–391–6107 or Jim Apgar, Bradford Ranger District, at 814–362–4613.

SUPPLEMENTARY INFORMATION: The information presented in this notice is included to help the reviewer determine if they are interested in or potentially affected by the proposed land management activities. The information presented in this notice is summarized. Those who wish to provide comments, or are otherwise interested in the project, are encouraged to obtain additional information from the contact identified in the **FOR FURTHER INFORMATION CONTACT** section.

Preliminary Issues

Three preliminary issues have been identified:

1. Road Management—The Forest Service will complete a Roads Analysis, which will assess the benefits, problems and risks of the current road system within the project area and identify management opportunities. This analysis may identify road issues related to the proposal.

2. Even-Aged/Uneven-Aged Management—The Forest Plan specifies the primary silvicultural system to be used in each management area. Even-aged management is the system identified for most of the Project Area. Uneven-aged management is an option considered for inclusions such as riparian areas, wet soils, or visually sensitive areas.

The interdisciplinary team will develop and analyze at least one alternative emphasizing uneven-aged management.

3. Class A Trout Fishery—The Project Area includes Fourmile Run, which is a Class A trout fishery. Maintenance of fisheries values and water quality will be important considerations for management activities in the vicinity.

Public Involvement and Public Meetings

An Open House will be held to provide information on the Roads Analysis for this project and for other projects proposed on the Bradford Ranger District. This meeting will be held at the Bradford Ranger District Office on May 14, 2001, from 2 p.m.–7 p.m.

Comments may be sent by electronic mail to *r9_allegheny_nf@fs.fed.us*. Please reference the County Line—Fourmile Project on the subject line. Also, include your name and mailing address with your comments so documents pertaining to this project may be mailed to you.

Additional information concerning the proposal can be accessed on the internet in the "Projects" section of the Allegheny National Forest website, located at www.fs.fed.us/r9/allegheny.

The draft EIS is expected to be filed with the Environmental Protection Agency and available for public review by September 2001. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

Comments received, including names and addresses of those who comment, will become part of the public record and may be subject to public disclosure. Any person may request the Agency to withhold a submission from the public record by showing how the Freedom of Information Act permits such confidentiality.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519 553 [1978]). Also, environmental objection that could be raised at the draft environmental impact statement state but that are not raised until after completion of the final environmental impact statement stage may be waived or dismissed by the courts (*City of Angoon* v. *Hodel*, 803 F.2nd 1016, 1022 [9th Cir. 1986] and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 [E.D. Wis. 1980]).

Because of the above rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments are made available to the Forest Service at a time when they can be meaningfully considered and responded to in the final environmental impact statement. Comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages, sections, or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. After the comment period ends on the draft EIS, the comments received will be analyzed and considered by the Forest Service in preparing the final EIS.

The final EIS is scheduled to be completed in March 2002. In the final EIS, the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the environmental impact statement, and applicable laws, regulations and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in a Record of Decision. That decision will be subject to appeal under 36 CFR part 215.

The responsible official is John R. Schultz, District Ranger, Allegheny National Forest, Bradford Ranger District, HC 1, Box 88, Bradford, PA 16701.

Dated: April 24, 2001.

Dale Dunshie,

Acting Forest Supervisor,

[FR Doc. 01–11866 Filed 5–10–01; 8:45 am]

BILLING CODE 3410–11–U

DEPARTMENT OF AGRICULTURE

Forest Service

Upper Middle Fork Payette River Project, Boise National Forest, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Cascade Ranger District of the Boise National Forest will prepare an environmental impact statement (EIS) for a resource management project in the Middle Fork of the Payette River. The entire project area is located within watersheds that drain directly into the Middle Fork of the Payette River or its tributaries. The project area is located 12 miles east of Cascade, Idaho, and about 100 miles north of Boise, Idaho.

The agency invites written comments and suggestions on the scope of the analysis. The agency also hereby gives notice of the environmental analysis and decision-making process that will occur on the proposal so interested and affected people are aware of how they may participate and contribute to the final decision. At this time, no public meetings to discuss the project are planned.

Proposed Action: Two primary objectives have been identified for the project: (1) Reduce current and future stand susceptibility to western spruce budworm, Douglas-fir beetle, and mountain pine beetle by moving stand densities, structures, and/or species compositions towards their historic conditions, and; (2) improve long-term stand growth to or near levels indicative of healthy, sustainable forests.

The Proposed Action would treat an estimated 881 acres in the 15,881 acre project area. Proposed activities would occur within a portion of the 67,637 acre Gold Fork/Clear Creek Management Area 53. An estimated 4.0 MMbf of timber would be harvested using ground-based (697 acres), skyline (24 acres), and helicopter (160 acres) yarding systems. The Proposed Action would employ a variety of silvicultural prescriptions including commercial thin (169 acres), improvement cut/sanitation (430 acres), seed cut shelterwood (95 acres), final removal shelterwood (147 acres), and clearcut with reserve trees (40 acres). The existing transportation system would be improved to facilitate log haul and reduce sedimentation with individual sections of 3.3 miles of road being reconstructed. An estimated 0.5 miles of specified road and 0.2 miles of temporary road would be constructed to facilitate harvest. In addition, 0.7 miles of the #409F road, currently closed year-round, would be decommissioned.

Preliminary Issues: Preliminary concerns with the Proposed Action include: (1) Potential impacts on sediment delivery to area streams; (2) potential impacts on bull trout, and; (3) potential impacts on the visual quality of the area.

Possible Alternatives to the Proposed Action: One alternative to the Proposed Action has been discussed thus far: (1) a no action alternative. Other alternatives will likely be developed as issues are identified and information received.

Decisions to be Made: The Boise National Forest Supervisor will decide the following. Should roads be built and timber harvested within the project area at this time, and if so; where within the project area, and how many miles of road should be built; and which stands should be treated and what silvicultural systems should be used? What design features and/or mitigation measures should be applied to the project? Should the decommissioning of existing roads be implemented at this time?

DATES: Written comments concerning the proposed project and analysis are encouraged and should be postmarked on or before June 11, 2001.

Schedule: Draft Environmental Impact Statement (DEIS), July 2001. Final Environmental Impact Statement (FEIS), September 2001.

ADDRESSES: Comments should be addressed to Keith Dimmett, Cascade Ranger District, P.O. Box 696, Cascade, ID 83611. Comments received in response to this request will be available for public inspection and will be released in their entirety if requested pursuant to the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Further information can be obtained from Keith Dimmett at the address mentioned above or by calling (208) 382–7430.

SUPPLEMENTARY INFORMATION: The NFMA planning for this project was initiated in the spring of 2001 with the Upper Middle Fork Payette River Ecosystem Analysis at the Watershed Scale (EAWS). A letter announcing plans to complete the EAWS and soliciting comments was mailed to interest individuals and/or groups in March of 2001.

Roughly 70 percent of the project area occurs within one of two inventoried roadless areas (IRA's). A portion of the Peace Rock IRA occupies an estimated 8,947 acres, and a section of the Stony Meadows IRA another 2,357 acres of the project area. A large portion of the project area also occurs within Management Area 43 (Peace Rock). The Proposed Action does not include any management activities within either IRA or within Management Area 43.

The Middle Fork Payette River originates within, and runs through the center of the project area. The Forest Plan discloses that that segment of the river from Railroad Pass to the Middle Fork Bridge on the #409 road is potentially eligible for inclusion in the National Wild and Scenic River system as a "wild" river. However, in June of 1991 the Forest Plan was corrected to show that this segment of the river is potentially eligible as a "recreational" river.

The comment period on the DEIS will be 45 days from the date of the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage but are not raised until after completion of the FEIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F. 2d 1016, 1002 (9th Cir., 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the DEIS 45-day comment period so that substantive comments and objections are made available to the

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Forest Service at a time when it can meaningful consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official: Anne F. Archie, Acting Forest Supervisor, Boise National Forest, 1249 South Vinnell Way, Boise, ID 83709.

Dated: May 3, 2001.

Anne F. Archie,

Acting Forest Supervisor.

[FR Doc. 01–11611 Filed 5–10–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Idaho Panhandle/Kootenai/Lolo National Forests Grizzly Bear Forest Plan Amendment; Idaho Panhandle, Kootenai and Lolo National Forests; Lincoln and Sanders Counties, MT; Boundary and Bonner Counties; Idaho; and Pend Oreille County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement to amend land and resource management plans for the Idaho Panhandle, Kootenai, and Lolo National Forests.

SUMMARY: The Forest Supervisors of the Idaho Panhandle, Kootenai and Lolo National Forests give notice of the agency's intent to prepare an environmental impact statement (EIS) in conjunction with the establishment of new management direction for the grizzly bear within the Selkirk and Cabinet/Yaak Grizzly Bear Recovery Zones. The Forest Service has identified the need to update management direction, based on new information regarding grizzly bear biology.

DATES: Comments concerning the scope of the analysis should be postmarked by June 11, 2001. The agency expects to file a draft EIS with the Environmental Protection Agency (EPA) and make it available for public, agency, and tribal government comment in the summer of 2001. A final EIS is expected to be filed in February 2002.

ADDRESSES: Send written comments to Bob Castaneda, Forest Supervisor, Kootenai National Forest, 1101 US Hwy 2 West, Libby, MT 59923.

FOR FURTHER INFORMATION CONTACT: Rob Carlin, Grizzly Bear Plan Amendment Interdisciplinary Team Leader (406) 882–4451.

Responsible Officials: Pat Aguilar, Idaho Panhandle National Forests—Acting Forest Supervisor; Bob Castaneda, Kootenai National Forests—Forest Supervisor; and Deborah Austin, Lolo National Forest—Forest Supervisor.

SUPPLEMENTARY INFORMATION: In 1998, the Selkirk/Cabinet-Yaak grizzly Bear Subcommittee recommended new access management direction to aid in the recovery of the threatened grizzly bear within the Selkirk/Cabinet-Yaak Grizzly Bear Recovery Zones. This direction was titled the "Interim Access Management Strategy". Additional information was provided in an "Interim Access Management Rule Set." This new direction is based on new information regarding grizzly bear habitat needs, including the need for core security areas. The purpose for the amendment is to update Forest Plan management direction to respond to the recommendations and new information presented by the Selkirk/Cabinet Yaak Grizzly Bear Subcommittee.

Proposed Action

The Forest Supervisors are proposing to amend their respective Forest Plans regarding Forest Plan standards and monitoring requirements that respond to the recommendations of the Interim Access Management Strategy and Interim Access Management Rule Set. The decision to be made is whether to adopt the proposed action as designed, with different requirements, or not at all.

This amendment would result in a new appendix to the Idaho Panhandle and Lolo National Forest Land and Resource Management Plans (Forest Plans). It will be an addendum to the Kootenai National Forest, Forest Plan, Appendix 8.

The Interim Access Management Strategy and Interim Access Management Rule Set comprise a set of access related guidelines developed over the past few years by the Selkirk/Cabinet-Yaak Subcommittee of the Interagency Grizzly Bear Committee (IGBC). The guidelines address the following access management parameters: (1) Habitat security, (2) core area, (3) trial use of access related to habitat quality/season, (4) motorized access route density, (5) monitoring, and (6) coordination with state wildlife agencies. The Rule Set also clearly discloses definitions of terminology related to each specific parameter. The complete text of these two documents is available on the IGBC internet website at *http://www.fs.fed.us/r1/wildlife/igbc/scy/main.htm*. Copies may also be requested by contacting Rob Carlin, ID Team Leader, at 406–882–4451.

Preliminary Issues and Alternatives

Some preliminary issues have already been identified and are listed below. These issues apply only to National Forest System lands on the units listed previously in this notice.

The interim access management strategy and rule set may affect the ability to use roads and trails, the construction of roads and trails, and the closure and decommissioning of roads and trails. This potentially influences activities such as timber harvest, recreation use, administrative management activities, and other uses associated with Forest Service roads and trails.

The interim access management strategy and rule set did not recommend standards for total and open motorized route density. Therefore, some people are concerned that the strategy and rule set do not fully address the habitat needs of grizzly bears.

Public Involvement

The first public participation efforts involving the Interim Access Management Strategy and Rule Set began in the spring and summer of 1997 with a series of seven workshops held throughout Washington, Idaho, and Montana. Nearly 300 individuals either sent letters or asked to be placed on the project mailing list. The key public concerns identified at the workshops were: (1) The need to consider habitat needs in relation to timing of road access restrictions; (2) the need to consider hunting regulations and law enforcement; and (3) the need to consider access options to provide the public a reasonable level of access to the National Forests.

The Forest Supervisors are giving notice that the Idaho Panhandle, Kootenai, and Lolo National Forests are beginning an environmental analysis and decision-making process for this proposed action so that interested or affected people can participate in the analysis and contribute to the final decision. The Forest Service is seeking comments from individuals, organizations, tribal governments, and Federal, State, and local agencies that are interested or may be affected by the proposed action. The public is invited

to help identify issues that define the range of alternatives to be considered in the environmental impact statement. The range of alternatives considered in the DEIS will be based on the issues and specific decisions to be made. Written comments identifying issues for analysis and the range of alternatives are encouraged.

Estimated Dates for Filing

The draft EIS is expected to be filed with the EPA and to be available for public review in the summer of 2001. The comment period on the draft environmental impact statement will be 90 days from the date the EPA publishes the Notice of Availability in the **Federal Register.**

The final EIS is scheduled to be completed by February 2002. In the final EIS, the Forest Service is required to respond to comments received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

The Reviewer's Obligation To Comment

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions [*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978)]. Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts [*Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)]. Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 90-day comment period so that substantive comments and objects are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the Natural Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: April 24, 2001.

Bob Castaneda,

Forest Supervisor—Kootenai National Forest.

[FR Doc. 01–11813 Filed 5–10–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Rock Springs Generation, LLC; Notice of Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact with respect to the development of a 1,020-megawatt, natural gas fired combustion turbine electric generation plant in Cecil County, Maryland, by Old Dominion Electric Cooperative and Outwater Limited Funding Partnership. RUS may provide financing for the plant to an affiliate of Old Dominion Electric Cooperative to be known as the Rock Springs Generation, LLC. The specifics of that entity have yet to be determined. The plant will be named the Rock Springs Generation Station. Rock Springs Generation, LLC, will initially own one-half of the plant (510 megawatts).

FOR FURTHER INFORMATION CONTACT: Bob Quigel, Environmental Protection Specialist, Engineering and Environmental Staff, RUS, Stop 1571, 1400 Independence Avenue, SW., Washington, DC 20250–1571, telephone (202) 720–0468, e-mail at bquigel@rus.usda.gov.

SUPPLEMENTARY INFORMATION: The plant will be located in the community of Rock Springs, in northwestern Cecil County, Maryland, at the intersection of Old Mill Road and U.S. Route 222. The plant comprises six, 170-megawatt, gas-fired General Electric Frame 7FA combustion turbines. Each combustion turbine will have a 75-foot exhaust stack. The entire plant will be situated on approximately 26 acres of the 93-acre site. No major natural gas pipeline or electric transmission line improvements will be needed beyond the proposed site boundaries. A short electric transmission line span will be constructed on a 5-acre parcel owned by Rock Springs Generation, LLC adjacent to the plant site to tie the plant to an existing 500 kilovolt transmission line located southwest of Old Mill Road.

Copies of the Finding of No Significant Impact are available from RUS at the address provided herein or from Mr. David Smith of Old Dominion Electric Cooperative, Insbrook Corporate Center, 4201 Dominion Boulevard; Glen Allen, Virginia 23060, telephone (804) 968–4045. Mr. Smith's e-mail address is dsmith@odec.com.

Dated: May 7, 2001.

Blaine D. Stockton,

Assistant Administrator, Electric Program

[FR Doc. 01–11936 Filed 5–10–01; 8:45 am]

BILLING CODE 3410–15–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: June 11, 2001.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Patrick T. Mooney (703) 603–7740.

SUPPLEMENTARY INFORMATION: On December 1, 2000 and March 23, 2001 the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (65 FR 75241 and 66 FR 16174) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

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I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Toner, Cartridges, New
7510–01–417–1220
7510–01–417–1222
7510–01–443–2121
Hat, Fleece
8415–00–NSH–0441

Services

Base Operating Services, Parks Reserve Forces Training Area, Dublin, California
Janitorial/Custodial, Federal Facilities Building, Cleveland-Hopkins International Airport, Cleveland, Ohio
Janitorial/Custodial, Naval Air Reserve Center, Minneapolis, Minnesota, Litigation Support Services, U.S. Department of Agriculture, The Animal and Plant Health Inspection Services, Agriculture Marketing Service,Minneapolis, Minnesota

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Patrick T. Mooney,

Director, Pricing and Program Operations.

[FR Doc. 01–11932 Filed 5–10–01; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

Comments Must Be Received on or Before: June 11, 2001.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Patrick T. Mooney (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information. The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Shaft, Propeller
2520–01–171–4844
NPA: Vocational Industries, Inc., Elkhorn, Wisconsin
Pallet, Wood
3990–00–NSH–0073
NPA: Goodwill Industries of South Texas, Inc., Corpus Christi, Texas

Services

Janitorial/Custodial, U.S. Federal Building, Courthouse and Post Office, Pierre, South Dakota
NPA: OAHE, Inc., Pierre, South Dakota
Transportation/Vehicle Operation Service, Brooks Air Force Base, Texas
NPA: Training, Rehabilitation & Development Institute, Inc., San Antonio, Texas

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Commodities

SuperDisk Drive
7025–01–454–8199
Apron, Laboratory
8415–00–715–0450

Patrick T. Mooney,

Director, Pricing and Program Operations.

[FR Doc. 01–11933 Filed 5–10–01; 8:45 am]

BILLING CODE 6353–01–U

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Determination of Sales at Less Than Fair Value; Honey from the People's Republic of China

EFFECTIVE DATE: May 11, 2001.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza (Inner Mongolia and Zhejiang) at (202) 482–3019, Fred Baker (Kunshan) at (202) 482–2924, Charles Rast at (202) 482–1324 or Donna Kinsella at (202) 482–0194; Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2000).

Preliminary Determination

We preliminarily determine that honey from the People's Republic of China (the PRC) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margin of sales at LTFV is shown in the "Suspension of Liquidation" section of this notice.

Case History

On October 26, 2000, the Department initiated antidumping investigations of honey from Argentina and the PRC. See Initiation of Antidumping Duty Investigations: Honey From Argentina and the People's Republic of China, 65 FR 65831–65834 (November 2, 2000) (Initiation Notice). The petitioners in these investigations are the American Honey Producers Association and the Sioux Honey Association. Since the initiation of these investigations, the following events have occurred with respect to honey from the PRC.

On November 13, 2000, the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary injury determination on imports of subject merchandise from Argentina and the PRC. On November 17, 2000, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of the subject merchandise from Argentina and the PRC (65 FR 69573).

On November 27, 2000, the Department issued Section A of its antidumping duty questionnaire to the Embassy of the PRC with a letter requesting that it forward the questionnaire to all exporters of honey who shipped subject merchandise to the United States during the period of investigation (POI) and instruct those exporters to respond to Question 1, Section A. On December 12, 2000, the Department received responses from Inner Mongolia Autonomous Region Native Produce and Animal By-Products Import and Export Corporation (Inner Mongolia), Kunshan Foreign Trading Company (Kunshan), Zhejiang Native Produce and Animal By-Products Import and Export Corporation (Zhejiang), High Hope International Group Jiangsu Foodstuffs Import and Export Corporation (High Hope), Shanghai Eswell Enterprise Company Ltd. (Shanghai Eswell), Anhui Native Produce Import and Export Corporation (Anhui), and Henan Native Produce Import and Export Corporation (Henan). Based on this information, the Department selected Inner Mongolia, Kunshan, and Zhejiang as mandatory respondents in this investigation because they represent, by volume, the three largest exporters of subject merchandise during the POI. See Memorandum to Joseph A. Spetrini, Selection of Respondents, dated December 19, 2000.

On December 19, 2000, the Department issued all sections of the antidumping duty questionnaire to Inner Mongolia, Kunshan, and Zhejiang. On January 19, 2001, we received responses to Section A of the Department's questionnaire from these three exporters as well as Section A responses from High Hope, Shanghai Eswell, Anhui, and Henan. On February 2, 2001, the Department issued supplemental Section A questionnaires to Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan. On February 23, 2001, we received responses from all seven exporters.

On February 9, 2001, Inner Mongolia, Kunshan, and Zhejiang responded to Sections C and D of the Department's questionnaire. Petitioners submitted comments on these responses on February 20, 2001. On February 13, 2001, we solicited comments from interested parties on surrogate country selection for purposes of this investigation. We received comments from petitioners and respondents Inner Mongolia, Kunshan, and Zhejiang on March 15, 2001. On February 23, 2001, the Department issued a supplemental questionnaire with respect to Sections C and D to the mandatory respondents. The Department issued a second supplemental questionnaire for Section A to the mandatory respondents on March 1, 2001. On March 16, 2001, Inner Mongolia, Kunshan, and Zhejiang responded to the supplemental questionnaire concerning Sections C and D and responded to the second supplemental questionnaire for Section A. Petitioners submitted comments on respondents' supplemental questionnaire responses (from March 16, 2001) on April 20, 2001 and April 23, 2001. OnApril 25, 2001, the mandatory respondents commented on petitioners' April 20, 2001 filing.

On March 19, 2001, we invited interested parties to provide publicly available information for valuing the factors of production. On April 4, 2001, we received comments and information from interested parties regarding valuation of the factors of production Petitioners and respondents filed rebuttal comments on April 11, 2001. On April 12, 2001, petitioners commented on respondents' April 11, 2001 filing. Respondents submitted additional comments and information on April 18, 2001. Petitioners also filed additional comments regarding the valuation of the factors of production on April 20, 2001 and April 23, 2001. On April 24, 2001, the Department requested that petitioners and respondents provide additional information and comments concerning the calculation of a surrogate value for factory overhead. See Memorandum to the File from Donna L. Kinsella (April 24, 2001). On April 27, 2001, we received responses from petitioners and respondents.

On March 29, 2001, the Department requested additional information on the export licensing system for honey in the PRC. On April 12, 2001 and April 18, 2001, all respondents provided this information.

On February 14, 2001, petitioners made a timely request for a fifty-day

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postponement of the preliminary determination pursuant to section 733(c)(1)(A) of the Act. On February 22, 2001, we postponed the preliminary determination until no later than May 4, 2001. See Honey from Argentina and the People's Republic of China: Notice of Postponement of Preliminary Antidumping Duty Determinations, 66 FR 12924 (March 1, 2001).

On February 23, 2001, the petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of honey from the PRC. On March 19, 2001, the Department requested monthly shipment data for the period February 1999 through February 2001 from Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan. On April 2, 2001, Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan responded to this request.

Period of Investigation

In accordance with section 351.204(b)(1) of the Department's regulations, the POI comprises the two most recently completed fiscal quarters as of the month in which the petition was filed. For all exporters, this is the period of January 1, 2000 through June 30, 2000.

Scope of Investigation

For purposes of this investigation, the products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to this investigation is currently classifiable under subheadings 0409.00.00, 1702.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (U.S. Customs) purposes, the Department's written description of the merchandise under investigation is dispositive.

Non-Market Economy Status for the People's Republic of China

The Department has treated the PRC as a non-market economy (NME) country in all past antidumping investigations. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China, 65 FR 33805 (May 25, 2000), and Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China, 65 FR 19873 (April 13, 2000). A designation as an NME remains in effect until it is revoked by the Department. See Section 771(18)(C) of the Act. The respondents in this investigation have not requested a revocation of the PRC's NME status. We have, therefore, preliminarily determined to continue to treat the PRC as an NME. When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs us to base the normal value (NV) on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources used to value individual factors are discussed under the "Normal Value" section, below.

Separate Rates

It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country a single rate, unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan have provided company-specific separate rate information and have stated that there is no element of government ownership or control. In their questionnaire responses, Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan state that they are independent companies "owned by all the people" and controlled by the general assembly of workers and employees. Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan further claim that they do not maintain any corporate relationship with the central, provincial, and local government in terms of production, management, and operations.

Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan have stated that their exports of subject merchandise to the United States were subject to the export licensing system governing all exports of honey from the PRC. They submitted for the record the following relevant State Council laws and regulations governing the export licensing system: "Notice on Issuing Guidelines of Quota Bidding for Exporting Commodities," "Detailed Rules on Bidding for Exporting Commodity Quotas," and "Notice of Issuing List of Commodities Subject to Export License Administration, 2001." While exports of honey from the PRC have been subject to licensing requirements for many years, during the POI of this proceeding, the export licensing system in effect was largely dictated by the terms of the Agreement Suspending the Antidumping Investigation of Honey from the PRC (the "Agreement"). See 60 FR 42521 (August 16, 1995). In October 1995, for example, the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) issued the Provisional Regulations for the Administration of Export of Honey to the United States (Provisional Regulations), which implemented the Agreement and established the process for PRC exporters to obtain the quotas necessary to export honey to the United States.

Under the terms of the Agreement, exports of PRC honey to the United States were subject to an annual limitation and a reference price at or above which all exports of honey to the United States were required to be sold. The annual limit for exports to the United States was allocated by MOFTEC to specific exporters through an open bidding process, in which the largest exporters bid first based on their historical export levels. Bid applications were processed by the China Chamber of Commerce of Importers and Exporters of Foodstuffs, Native Produce and Animal By-Products (the "Chamber"). After the largest 10 exporters bid and were allocated export volume, an open bidding process was initiated for the remaining 18 eligible exporters.[1] The total fee for the bid that the winner paid to MOFTEC for the export volume was based on the bidding prices and the quantity of the quota that the recipient won. Individual companies that had successfully bid for export limit were then notified of their respective quota allocation by the Foreign Trade Administration Department (FTA).[2]

Upon completion of the bidding process, the Chamber issued letters to each company successfully bidding for export volume, confirming that the company was eligible for an export license. This confirmation of eligibility for an export license, coupled with the notification of volume allocation from the FTA, allowed the exporter to enter into a contract for the sale of honey to the United States. The exporter then submitted to the Chamber the formal notification of volume allocation and a copy of its contract for sale of honey to the United States. The Chamber then reviewed the contract to ensure that the sale price was above the applicable reference price set by the Department.

The exporter then submitted to the Quota Licensing Board (QLB) or the Special Commissioners Office an application for an export license, including a copy of the formal notice of volume allocation from the FTA, the relevant contract for the sale of honey to the United States, and the letter of eligibility for an export license issued by the Chamber. Export licenses were issued on a shipment-specific basis, identified the price, quantity, and destination of the honey to be exported, and were valid for a period of three months from the date of issuance. After receiving an export license, the exporter would apply for a export volume certificate confirming that the exporter was authorized to export the quantity of honey covered by the sales contract. The QLB kept a running tally of the amount of export volume available to any individual exporter, and ensured that the amount of honey covered in a contract was less than or equal to that exporter's remaining export volume. The final step prior to exportation involved the submission of all relevant documents, including the export volume certificate and export license, to the PRC Customs Service, which checked the documentation before authorizing export.

The Agreement was terminated in July 2000. See Notice of Final Results of Five-Year ("Sunset") Review, Termination of Suspended Antidumping Investigation on Honey From the People's Republic of China, 65 FR 46426 (July 28, 2000). Thereafter, MOFTEC made slight modifications to the export licensing system for honey. For example, under a new regulation issued by MOFTEC in December 2000, "The Notice of Issuing List of Commodities Subject to Export License Administration, 2001 and Relevant Issues," export volume certificates are no longer required for exports of PRC honey to the United States. In the absence of a reference price issued by the Department and in an attempt to ensure that there is no dumping of Chinese honey, the Chamber, in consultation with the affected exporters, periodically establishes a minimum export price (EP) based on recent EPs. All exports of honey to the United States are required to be sold at or above this minimum EP.

The bidding process for export volume, however, remains the same as that in operation under the Agreement, and the annual limitation on exports of Chinese honey to the United States in effect at the time the Agreement was terminated remains in effect through July 2001.

The Department's separate rate test is not concerned, in general, with macroeconomic border-type controls (e.g., export licenses, quotas, and minimum EPs), particularly if these controls are imposed to prevent dumping. Rather, the test focuses on controls over the export-related investment, pricing, and output-decision-making process at the individual firm level. See Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value, 62 FR 61754, 61757 (November 19, 1997); Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 62 FR 61276, 61279 (November 17, 1997); and Honey from the People's Republic of China: Preliminary Determination of Sales at Less than Fair Value, 60 FR 14725, 14726 (March 20, 1995). In determining whether the export licensing system for Chinese honey is consistent with the application of separate rates to eligible exporters for purposes of this investigation, we believe it is appropriate to focus on the export licensing system and minimum price floor currently in effect rather than the system in effect during the POI because the system in effect during the POI was largely driven and governed by the Agreement which has since been terminated.

In the Department's preliminary determination in the original antidumping duty investigation of honey from the PRC (see Notice of Preliminary Determination of Sales at Less than Fair Value: Honey from the People's Republic of China, 60 FR 14725 (March 20, 1995)) (Preliminary Determination), the Department determined that the existence of the export licensing system and minimum price floor for exports of Chinese honey to the United States were consistent with the Department's determination to grant separate rates to certain exporters of Chinese honey. We preliminarily determine in this investigation that the export licensing system and minimum price floor for exports of Chinese honey to the United States currently in effect are nearly identical to those examined in the original investigation and as a result are also consistent with the application of separate rates to those exporters who otherwise qualify. The bidding process, as described on the record, permits independent export pricing decisions and the export volume system operates on the basis of transparent and well-defined rules. All eligible exporters are free to bid for the right to export honey according to their own business plans. Further, exporters are free to independently negotiate EPs with their customers above the minimum EP. Allocation of export limits takes place in a competitive manner and exporters compete with each other for customers in the global marketplace. Thus, the export licensing system and minimum EP currently in effect does not involve the type of de jure government control over export pricing and marketing decisions that would preclude respondents from being eligible to receive separate rates.

With respect to the claims for entitlement to separate rates put forth by Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan, as stated in the Final Determinations of Sales at Less-Than-Fair-Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) (Silicon Carbide), and Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol, 60 FR 22545 (May 8, 1995) (Furfuryl Alcohol), ownership of a company by "all the people" does not require the application of a single rate. As noted above, the Department's test for separate rates focuses on controls over export-related investment, pricing, and output decision-making process at the individual firm level. To establish whether a firm is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991), and amplified in Silicon Carbide. Under this test, the Department assigns separate rates in NME cases only if an exporter can affirmatively demonstrate the absence of both (1) de jure and (2) de facto governmental control over export activities. See Silicon Carbide and Furfuryl Alcohol.

1. Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business

[1] Only those exporters that participated in the original 1994–95 PRC honey antidumping investigation were eligible to bid, on the grounds that only those companies had demonstrated their willingness to reliably participate in the investigation.

[2] If an export subsequently realized it could not fully utilize its export volume, it could ask the Chamber to allow it to transfer the unused portion to another exporter. Likewise, if an exporter realized it could export more than its export volume, it could apply to the Chamber for unused export volume transferred by other exporters.

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and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan, have placed on the record a number of documents to demonstrate absence of de jure control, including the "Foreign Trade Law of the People's Republic of China," promulgated on May 12, 1994, the "Law of the People's Republic of China in Industrial Enterprises Owned by the Whole People," adopted on April 13, 1998 (1988 Law), the "Law of the People's Republic of China on Chinese-Foreign Cooperative Joint Ventures," and "Regulations for Transformation of Operational Mechanism of State-Owned Enterprises," effective as of July 23, 1992 (1992 Regulations).

In prior cases, the Department has analyzed the 1988 Law and 1992 Regulations and found that they establish an absence of de jure control. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China, 60 FR 54472 (October 24, 1995). We have no new information in this proceeding which would cause us to reconsider this determination.

As stated in previous cases, there is some evidence that the provisions of the above-cited 1988 Law and 1992 Regulations regarding enterprise autonomy have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. See "PRC Government Findings on Enterprise Autonomy," in Foreign Broadcast Information Service-China-93–133 (July 14, 1993). Therefore, the Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to de facto governmental control of its export functions: (1) Whether the EPs are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan assert the following: (1) They each establish their own EPs independent of the government and without the approval of a government authority; (2) they each negotiate contracts, without guidance from any governmental entities or organizations; (3) they each make their own personnel decisions including the selection of management; and (4) they each retain the proceeds of their export sales, and utilize profits according to business needs. This information supports a preliminary finding that there is a de facto absence of governmental control of the management of these exporters. The de facto impact of the regulatory provisions embodied in the above-referenced laws and regulations, including those governing the administration of the Agreement, do not constitute the degree of control of these firms which would preclude the calculation of antidumping rates based on their own, separate competitively-set prices.

Consequently, we preliminarily determine that Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan have met the criteria for the application of separate rates. We will examine this matter further at verification.

Since Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan, are the only responding producers/exporters and they do not account for all shipments of subject merchandise to the United States during the POI, we preliminarily determine, as facts available, that all other, non-responsive, producers/exporters have not met the criteria for application of separate rates. See the discussion of the PRC-wide rate below.

Margins for Cooperative Exporters Not Selected

The exporters who responded to Section A of the Department's antidumping questionnaire but were not selected as respondents in this investigation (High Hope, Shanghai Eswell, Anhui, and Henan) have applied for separate rates, and provided information for the Department to consider for this purpose. Although the Department is unable, due to administrative constraints (see Respondent Selection Memo), to calculate for each of these named parties who are exporters a rate based on their own data, these companies cooperated in providing all the information that the Department requested of them. For High Hope, Shanghai Eswell, Anhui, and Henan, we have calculated a weighted-average margin based on the rates calculated for those exporters that were selected to respond in this investigation. Companies receiving this rate are identified by name in the "Suspension of Liquidation" section of this notice.

The PRC-Wide Rate

All exporters were given the opportunity to respond to the Department's questionnaire. As explained above, we received timely responses from Inner Mongolia, Kunshan, and Zhejiang, for which we have calculated company-specific rates, and timely responses to Section A of the Department's antidumping questionnaire from High Hope, Shanghai Eswell, Anhui, and Henan for which we have assigned a margin based on the weighted-average rate of the calculated company-specific rates of Inner Mongolia, Kunshan, and Zhejiang. U.S. import statistics indicate that the total quantity and value of U.S. imports of honey from the PRC is greater than the total quantity and value of honey reported by the seven PRC producers/exporters that submitted responses in this investigation. For this reason, we preliminarily determine that some PRC exporters of honey failed to respond to our questionnaire. Consequently, we are applying a single antidumping rate—the PRC-wide rate—to all other exporters in the PRC based on our presumption that those respondents who failed to demonstrate entitlement to a separate rate constitute a single enterprise under common control by the government of the PRC. See, e.g., Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China, 65 FR 25706, 25707 (May 3, 2000) (Synthetic Indigo). The PRC-wide rate applies to all entries of subject merchandise except for entries from Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan.

Use of Facts Otherwise Available

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if that information is necessary to the determination but does not meet all of the requirements established by the Department provided that all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Section 776(a)(2)(B) of the Act requires the Department to use facts available when a party does not provide the Department with information by the established deadline or in the form and manner requested by the Department. In addition, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of that party as facts otherwise available.

PRC-Wide Rate

As explained above, the exporters comprising the single PRC-wide entity failed to respond to the Department's request for information. Pursuant to section 776(a) of the Act, in reaching our preliminary determination, we have used total facts available for the PRC-wide rate because we did not receive the data needed to calculate a margin for that entity. Also, because the exporters comprising the PRC-wide entity failed to respond to the Department's requests for information, the Department has found that the PRC-wide entity failed to cooperate to the best of its ability. Therefore, pursuant to section 776(b) of the Act, we have used an adverse inference in selecting from the facts available for the margin for that entity. As adverse facts available, we assigned the highest margin based on information in the petition, because the margins derived from the petition are higher than the calculated margins for the selected respondents.

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on "secondary information," such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 103–316, (1994) (SAA), states that "corroborate" means to determine that the information used has probative value. See SAA at 870.

The petitioners' methodology for calculating the EP and NV, in the petition, is discussed in the initiation notice. To corroborate the petitioners' EP calculations, we compared the prices in the petition to the prices submitted by respondents for the same honey product. To corroborate the petitioners' NV calculations, we compared the petitioners' factor consumption data to the data reported by the respondents, and the surrogate values for these factors in the petition to the values selected for the preliminary determination.

As discussed in the Memorandum to the file entitled Corroboration of the Petition Data for the PRC-wide entity, dated May 4, 2001, we found that the EP and factors of production information in the petition were reasonable and of probative value. As a number of the surrogate values selected from the preliminary determination differed from those used in the petition, notably the value for raw honey and ratio for factory overhead, we compared the petition margin calculations to the calculations based on the selected surrogate values wherever possible and found them to be reasonable. Therefore, we preliminarily determine that the petition information has probative value. Accordingly, we find that the highest margin from the petition, 183.80 percent, is corroborated within the meaning of section 776(c) of the Act.

Fair Value Comparisons

To determine whether sales of honey from the PRC were made in the United States at less than fair value, we compared EP to NV based on an NME analysis, as described below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs.

Export Price

We used EP methodology in accordance with section 772(a) of the Act because Inner Mongolia, Kunshan, and Zhejiang sold the subject merchandise directly to unaffiliated purchasers in the United States and because CEP methodology was not otherwise appropriate. We calculated EP based on packed FOB or, where appropriate, C & F prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for inland freight from the plant/warehouse to the port of exportation, and any insurance, brokerage and handling charges paid by Inner Mongolia, Kunshan, and Zhejiang, in the PRC. Because certain domestic factors, such as inland freight, insurance, brokerage and handling were provided by NME companies, we valued those factors using surrogate rates from India. Where appropriate, we calculated expenses which were incurred in U.S. dollars (i.e., international freight) based on the actual U.S. dollar amounts paid for such expenses. (See Memoranda from the Team to the File regarding Margin Analysis for Kunshan and Xinlong, Inner Mongolia and Sheng Li, and Zhejiang, Hubei and Hangzhou, dated May 4, 2001 (Margin Analysis Memoranda)).

Normal Value

1. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) are at a level of economic development comparable to that of the NME country; and (2) are significant producers of comparable merchandise. The Department initially determined that India, Pakistan, Indonesia, Sri Lanka, and the Philippines were the countries most comparable to the PRC in terms of overall economic development (see the January 9, 2001 memorandum, Antidumping Duty Investigation on Honey from the People's Republic of China: Nonmarket Economy Status and Surrogate Country Selection).

We have relied, where possible, on information from India, as it is the source of the most complete information and the only country from among the potential surrogate countries that produces comparable merchandise in commercial quantities. Accordingly, we have calculated NV by applying Indian values to virtually all of Inner Mongolia's, Kunshan's, and Zhejiang's factors of production. See Margin Analysis Memoranda.

2. Factors of Production

In accordance with section 773(c)(4) of the Act, we calculated NV based on factors of production as reported by Inner Mongolia and its supplier (Inner Mongolia Sheng Li Food Co. Ltd. (Sheng Li)), Kunshan and its supplier (Kunshan Xinlong Food Co. Ltd. (Xinlong)), and Zhejiang and its suppliers (Hubei Yangzijiang Apiculture Co. Ltd. (Hubei)) and Hangzhou Green Forever Apiculture (Group) Co. (Hangzhou)) for the POI. To calculate NV, the reported per-unit factor quantities were multiplied by publicly available Indian

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surrogate values (except as noted below).

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to convert them to delivered prices. When we used Indian import values to value inputs sourced domestically by the Chinese producers, we added to Indian surrogate values a surrogate freight cost calculated using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States*, 117 F. 3d 1401 (Fed. Cir. 1997). When we used non-import surrogate values for factors sourced domestically by the Chinese producers, we based freight for inputs on the actual distance from the input supplier to the site at which the input was used. For those values not contemporaneous with the POI, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's International Financial Statistics.

To value raw honey, we used an average of the highest and lowest price for raw honey given in an article published in The Tribune of India on January 3, 2000, entitled, "Apiculture, a major foreign exchange earner."

To value electricity, we used publicly available per kilowatt hour electricity charges as reported in the financial statements of seven Indian companies, as adjusted for inflation, for the period April 1, 1998 through March 31, 1999.

To value coal, we used the per kilogram rupee price, adjusted to the POI, as reported in the April 1, 1999 through March 31, 1999 Annual Report for Polychem, an Indian manufacturer.

To value water, we used publicly available water tariff rates (as of 1995–1996 for three areas in India: Chennai, Delhi, and Mumbai) reported in the second Water Utilities Data Book: Asian and Pacific Region, published by the Asian Development Bank.

We valued labor using the U.S. dollar-denominated regression-based wage rate, adjusted to the POI (i.e., US$0.80) in accordance with 19 CFR 351.408(c)(3).

To value beeswax, a raw honey by-product, we used the average per kilogram import value of beeswax into India from April 1998 to December 1998, adjusted for inflation. Because there is no information on the record at this time for another raw honey by-product, scrap honey, we are not valuing this factor for purposes of our preliminary determination. We will continue to search for an appropriate value for scrap honey, and include our findings in our final determination.

To value truck freight rates, we used freight costs, adjusted for inflation, based on Indian domestic prices of truck freight rates (for the period of October 1998 through March 1999) as published in the Economic Times, an Indian newspaper.

As a surrogate value for rail transportation, we used the average train freight rates in India for fruit juices and syrups, published in November 1999, and adjusted for inflation.

To value inland water transportation, we used the surrogate value, adjusted for inflation, for inland water freight used in the Preliminary Results of the Antidumping Duty Administrative Review: Certain Helical Spring Lock Washers from the People's Republic of China, 65 FR 5493 (September 8, 2000). This rate was reported to the Department in the August, 1993 cable from the U.S. Embassy in India.

For brokerage and handling, we used price quotes from two Indian freight forwarders in November 1999, and adjusted for inflation.

We based our calculation of factory overhead, selling, general, and administrative (SG&A) expenses on actual data reported in the 1998–1999 annual report of the Mahabaleshwar Honey Producers Cooperative Society, Ltd. (MHPC), a producer of the subject merchandise in India, as adjusted for inflation.

We valued packing materials (iron drums) on an offer for sale from an Indian manufacturer of iron drums (September 2000).

For a complete analysis of surrogate values, see Margin Analysis Memoranda.

Critical Circumstances

On February 23, 2001, petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of honey from the PRC. In accordance with 19 CFR 351.206(c)(2)(i), given that this allegation was filed at least 20 days prior to the preliminary determination, the Department must issue its preliminary critical circumstances determination no later than the preliminary determination.

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

History of Dumping or Importer Knowledge of Dumping

To determine whether there is a history of injurious dumping of the merchandise under investigation, the Department considers evidence of an existing antidumping order on honey from other countries to be sufficient. We are unaware of any antidumping order on honey from the PRC worldwide. Petitioners stated in their allegation of critical circumstances that the Preliminary Determination and the Agreement from the original investigation of honey from the PRC (1995) sufficiently establishes a history of injurious dumping in the PRC with respect to subject merchandise. The Department, however, does not consider either a preliminary determination or the existence of a suspension agreement as sufficient evidence of a history of injurious dumping of honey. Therefore, the Department must examine part (ii) of the first prong of the critical circumstances test.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling honey at less than fair value, the Department normally considers margins of 25 percent or more for EP sales sufficient to impute knowledge of dumping. (See, e.g., Preliminary Determination of Critical Circumstances: Certain Small Diameter Carbon and Alloy Steel Seamless Standard, Line and Pressure Pipe from the Czech Republic, 65 FR 33803, 33803 (May 25, 2000)). In the instant case, we have preliminarily determined that the margins for the three mandatory respondents, Inner Mongolia, Kunshan, and Zhejiang, are 44.00, 37.51, and 36.98 percent, respectively. We have preliminarily determined that the margin for each of the four cooperative respondents for which we only examined the separate rates portion of the questionnaire, (High Hope, Shanghai Eswell, Anhui, and Henan) is 39.76 percent. Furthermore, the margin preliminarily assigned to the PRC-wide entity (the remaining exporters) is 183.80 percent. Therefore, we have imputed knowledge of dumping to importers of the subject merchandise from each of the seven cooperating exporters and to the importers of subject merchandise from all other producers/exporters in the PRC.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that there was likely to be material injury by reason of dumped imports, the Department normally will look to the preliminary injury determination of the International Trade Commission (ITC). If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that there was likely to be material injury by reason of dumped imports. In this case, the ITC has found that a reasonable indication of present material injury due to dumping exists for subject imports of honey from the PRC. See Honey from the PRC, 65 FR 69573 (November 17, 2000). As a result, the Department has determined that there is a reasonable basis to believe or suspect that importers of honey from the PRC from all exporters knew or should have known that there was likely to be material injury by reason of dumped imports of the subject merchandise from the PRC.

Massive Imports

In determining whether there are "massive imports" over a "relatively short period," pursuant to section 733(e)(1)(B) of the Act, the Department normally compares the import volume of the subject merchandise for at least three months immediately preceding the filing of the petition (i.e., the "base period"), and a comparable period of at least three months following the filing of the petition (i.e., the "comparison period"). However, as stated in section 351.206(i) of the Department's regulations, if the Secretary finds that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider a time period of not less than three months from that earlier time. Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.

In this case, the petition was filed on September 29, 2000. On April 2, 2001, Inner Mongolia, Kunshan, Zhejiang, High Hope, Shanghai Eswell, Anhui, and Henan provided monthly shipment data for February 1999 through February 2001 for exports of subject merchandise to the United States. Thus, we were able to obtain exporter-specific shipment data for a period encompassing 5 months prior to and 5 months after the filing of the petition. On an exporter-specific basis, we then compared Inner Mongolia's, Kunshan's, Zhejiang's, High Hope's, Shanghai Eswell's, Anhui's, and Henan's monthly shipments from May 2000 through September 2000 to their monthly shipments from October 2000 through February 2001. Additionally, we compared the exporter-specific monthly shipments from May 1999 through September 1999 to monthly shipments from October 1999 to February 2000 to determine whether any increases between the base and comparison periods in 2000 could be attributable to others factors, including seasonal trends.

Pursuant to 19 CFR 351.206(h) we will not consider imports to be massive unless imports in the comparison period have increased by at least 15 percent over imports in the base period. We find that of the seven companies examined, imports of honey from High Hope and Zhejiang showed post-filing increases of at least 15 percent over the base period for which no other factors appear to be responsible. While imports from Inner Mongolia in the comparison period in 2000/2001 were also more than 15 percent greater than those in the base period, we also found a similar increase during the fall/winter of 1999/2000 when compared to the spring/summer base period in 1999. This leads us to conclude that the increase in imports from Inner Mongolia in the comparison period in 2000/2001 was attributable to factors other than the filing of the petition, such as seasonality. Imports from Kushan, Shanghai Eswell, Anhui, and Henan did not show an increase of more than 15 percent during the post-filing comparison period. Therefore, the Department did not find critical circumstances with respect to these exporters.

Because the PRC-wide entity failed to respond to our initial antidumping questionnaire, the Department, pursuant to section 776(a) of the Act has based its critical circumstances determination on the facts available. Further, because this entity did not act to the best of its ability to respond to the Department's questionnaires, we have, pursuant to section 776(b) of the Act, used an adverse inference in selecting from the facts available. We used U.S. Customs import statistics to determine whether there were additional imports during the base and the comparison periods not accounted for in the shipment data for the seven exporters named above. We found that there were such shipments but we were unable to distinguish the distribution of individual exporters in the data. Therefore, because we have no independent means by which to determine import levels for the PRC-wide entity, we have made an adverse inference and preliminarily determined that critical circumstances exists for the PRC-wide entity. See Memo to Richard Weible regarding Preliminary Affirmative and Negative Determinations of Critical Circumstances, May 4, 2001 (CC Memo).

In their April 2, 2001 submission, respondents argue that, when analyzing their export data, the Department must take into consideration two factors that they claim significantly influenced the recent export patterns of honey from the PRC. First, they argue that substantial uncertainty existed concerning exports of honey from the PRC during the summer of 2000 because of the Department's delay in completing an administrative review of the Agreement underway during that time period. This market confusion was then further increased by the uncertainty over the amount of quota and reference prices that could potentially apply to honey exports on and after August 1, 2000. As a result, respondents argue, exporters either ceased or significantly decreased their exports to the United States during the summer. Any subsequent increase in exports, they argue, is accordingly due to this abnormal period of suppressed exports. Second, the Department must also consider that many honey exporters export less honey during July, August, and September, they argue, because they are busy during those months purchasing and processing honey for export later in the year.

With respect to the first argument, our initial comparison of export levels in the 2000 base period and the 1999 base period shows that High Hope's and Zhejiang's exports and exports for the PRC-wide entity during the 2000 base period were not "suppressed." With respect to the second argument, a comparison of the 2000 data for July, August, and September and for October, November, and December with the 1999 data for the same months for these entities does not initially appear to support the claim that exports of honey are normally lower during those months. See CC Memo. However, we will verify the data with respect to this issue and consider these arguments further for purposes of the final determination of critical circumstances.

In summary, we find that there is a reasonable basis to believe or suspect that importers had knowledge of

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dumping and the likelihood of material injury with respect to imports of honey from the PRC, and that there have been massive imports of honey from High Hope, Zhejiang, and the PRC-wide entity over a relatively short period of time. As a result, we preliminarily determine that critical circumstances exist for imports of honey from High Hope, Zhejiang, and the PRC-wide entity, in accordance with section 733(e)(2) of the Act. Because we did not find that massive imports, within the meaning of 19 CFR 351.206(h), existed for Inner Mongolia, Kunshan, Shanghai Eswell, Anhui, and Henan, we preliminarily determine that critical circumstances do not exist for imports of honey from these companies. See CC Memo.

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determination.

Final Critical Circumstances Determination

We will make a final determination concerning critical circumstances for the PRC when we make our final determination regarding sales at LTFV in this investigation, which will be no later than 135 days after the publication of this notice in the **Federal Register**.

Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, for High Hope, Zhejiang, and the PRC-wide entity, the Department will direct the Customs Service to suspend liquidation of all entries of subject merchandise from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register**. For the remaining companies (i.e., Inner Mongolia, Kunshan, Shanghai Eswell, Anhui, and Henan), the Department will direct the Customs Service to suspend liquidation of all entries of subject merchandise from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin indicated in the chart below. This suspension of liquidation will remain in effect until further notice.

The margin in the preliminary determination is as follows:

Exporter/ manufacturer	Margin (percent)	Critical circumstances
Inner Mongolia	44.00	No.
Kunshan	37.51	No.
Zhejiang	36.98	Yes.
High Hope	39.76	Yes.
Shanghai Eswell.	39.76	No.
Anhui	39.76	No.
Henan	39.76	No.
PRC-wide Entity.	183.80	Yes.

Disclosure

The Department will disclose calculations performed within five days of this determination to the parties to the proceeding in this investigation in accordance with 19 CFR 351.224(b).

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine, before the later of 120 days after the date of this preliminary determination or 45 days after our final determination, whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. In the event that the Department receives requests for hearings from parties to more than one honey case, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Interested parties who wish to request a hearing, or participate if one is requested, must submit a written request within 30 days of the publication of this notice. Oral presentations will be limited to issues raised in the briefs. We will make our final determination no later than 75 days after the date of publication of this preliminary determination.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: May 4, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–11940 Filed 5–10–01; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–812]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey From Argentina

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 11, 2001.

FOR FURTHER INFORMATION CONTACT: Melissa Blackledge, Charlie Rast or Donna Kinsella at (202) 482–3518, (202) 482–1324 or (202) 482–0194, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2000).

Preliminary Determination

We preliminarily determine that honey from Argentina is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

On October 26, 2000, the Department initiated antidumping duty investigations of imports of honey from Argentina and the People's Republic of China (China). See Initiation of Antidumping Duty Investigations: Honey from Argentina and the People's Republic of China. 65 FR 65831–65834 (November 2, 2000) (Initiation Notice). The petitioners in these investigations are the American Honey Producers Association and the Sioux Honey Association (petitioners). Since the initiation of the investigations, the following events have occurred with respect to honey from Argentina.

On October 30, 2000, the Department requested information from the U.S. Embassy in Argentina to identify producers/exporters of subject merchandise. On November 13, 2000, the United States International Trade Commission (the Commission) notified the Department of its affirmative preliminary injury determination on imports of subject merchandise from Argentina and China. On November 17, 2000, the Commission published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Argentina (65 FR 69573).

On November 27, 2000, the Department issued Section A, Question 1 of the antidumping questionnaire to Radix, S.R.L. (Radix), HoneyMax, S.A. (HoneyMax), ConAgra Argentina, S.A. (ConAgra), Compania Europea Americana, S.A. (CEASA), Foodway, S.A. (Foodway), and Asociacion de Cooperativas Argentinas (ACA), requesting volume and value information for the POI for each exporter. We received the information requested on December 8, 2000. Based on this information, the Department selected the three largest exporters/producers by volume as respondents in this investigation. See Memorandum to Joseph A. Spetrini, Selection of Respondents, dated December 19, 2000.

On December 19, 2000, the Department issued its antidumping questionnaire to Radix, ConAgra, and ACA. We requested that respondents respond to Section A (general information, corporate structure, sales practices, and merchandise produced), Section B (home market or third-country sales), and Section C (U.S. sales) of the questionnaire.

On January 9, 2001, ConAgra informed the Department that it would not be submitting responses to Sections A, B, or C of the Department's questionnaire. ACA and Radix submitted responses to Section A of the Department's questionnaire on January 10, 2001, and January 16, 2001, respectively. ACA filed corrections to its Section A response on January 30, 2001, January 31, 2001, and February 12, 2001.

In their Section A responses, ACA and Radix indicated that they were both exporters, not producers, of honey. On January 11, 2001, the Department requested comments from interested parties on the Department's proposed methodology for selecting respondents for cost purposes in the sales below cost investigation, which was initiated by the Department on October 26, 2000. Because ACA and Radix stated that they did not produce the honey sold during the period of investigation (POI), the Department indicated in its letter that it intended to select at random 12 to 15 honey producers to serve as respondents in the sales below cost investigation and to use the selected producers' costs to derive an average country-wide cost of production for use in the investigation. Radix and ACA submitted comments on January 11, 2001, and January 18, 2001. Radix and ACA filed additional comments on January 26, 2001, and February 23, 2001, respectively. Petitioners commented on January 17, 2001, January 18, 2001, January 23, 2001, January 26, 2001, March 30, 2001, and April 11, 2001. The Argentine embassy commented on January 29, 2001. On February 23, 2001, the Department selected 12 cost respondents and issued Section D of the questionnaire to the selected honey producers.

Additional comments were submitted on behalf of the selected beekeepers on March 29, 2001, and April 9, 2001.

ACA and Radix submitted responses to sections B and C of the Department's questionnaire on February 9, 2001, and February 16, 2001, respectively. ACA filed corrections to its response on February 12, 2001, February 14, 2001, and February 20, 2001.

Petitioners submitted comments on Radix's questionnaire responses on January 26, 2001, and February 20, 2001. Petitioners commented on ACA's original questionnaire responses on January 26, 2001, and February 21, 2001. ACA responded to petitioners' February 21, 2001, filing on February 23, 2001. Petitioners submitted additional comments on February 23, 2001, and February 27, 2001.

We issued supplemental questionnaires to Radix and ACA on February 2, 2001, and February 23, 2001. Radix responded on February 16, 2001, and March 16, 2001. ACA responded on February 16, 2001, and March 26, 2001. We requested additional information from Radix on March 5, 2001 and from ACA on March 5, 2000, March 9, 2000, and March 16, 2000. Radix submitted its response on March 16, 2001. ACA filed responses on March 9, 2001, March 14, 2001, and March 16, 2001. On April 3, 2001, ACA filed corrections to its supplemental questionnaire response for Sections B through C. Petitioners submitted comments on ACA's and Radix's supplemental questionnaire responses on February 27, 2001, and March 27, 2001, respectively.

On February 14, 2001, petitioners made a timely request for a fifty-day postponement of the preliminary determination pursuant to section 733(c)(1)(A) of the Act. On February 22, 2001, we postponed the preliminary determination until no later than May 4, 2001. See Honey From Argentina and the People's Republic of China; Notice of Postponement of Preliminary Determinations in Antidumping Duty Investigations, 66 FR 12924 (March 1, 2001).

On February 23, 2001, the Department issued Section D of the Department's antidumping questionnaire to the twelve selected beekeeper respondents. After issuing several extensions to the beekeepers to the deadline for responding to Section D of the Department's questionnaire, on April 26, 2001, the Department received a letter on behalf of the twelve Argentine beekeepers, stating that they were unable to obtain usable cost information and would not be responding to the Department's Section D questionnaire. Petitioners submitted comments on April 30, 2001, regarding the failure of the beekeepers to provide responses to Section D of the Department's questionnaire. On May 1, 2001, Radix submitted a letter to the Department withdrawing from the investigation and requesting that its business proprietary data be removed from the record and returned to Radix.

Period of Investigation

The POI is July 1, 1999 through June 30, 2000. This period corresponds to the four most recent fiscal quarters prior to the filing of the petition (*i.e.*, September 2000), and is in accordance with section 351.204(b)(1) of the Department's regulations.

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Scope of Investigation

For purposes of these investigations, the products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to these investigations is currently classifiable under subheadings 0409.00.00, 1702.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (U.S. Customs) purposes, the Department's written description of the merchandise under investigation is dispositive.

Facts Available (FA)

Section 776(a) of the Act provides that "if any interested party or any other person—(A) withholds information that has been requested by the administering authority, (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title." The statute also requires that certain conditions be met before the Department may resort to the facts otherwise available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. Briefly, section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, and the Department can use the information without undue difficulties, the statute requires it to do so.

ConAgra

As noted in the "Case History" section above, the Department issued its antidumping questionnaire to ConAgra on December 19, 2000. On January 9, 2001, ConAgra informed the Department that it would not be submitting responses to Sections A, B, or C of the Department's questionnaire. ConAgra stated that, after reviewing the questionnaire in detail, it determined that it did not have sufficient available resources in Argentina to complete the questionnaire, as requested by the Department. ConAgra indicated that its books and records in Argentina are not in a format easily translatable to the computer data set required by the Department, and that the personnel necessary to convert its books and records into the Department's format is not available.

Because ConAgra failed to respond to the Department's December 19, 2000, request for information, sections 782(d) and (e) of the Act are not applicable, and the Department must resort to the use of facts available for this respondent, in accordance with section 776(a) of the Act. Moreover, we have determined that ConAgra's failure to respond to any portions of the Department's December 19, 2000, questionnaire demonstrates that the company has not cooperated to the best of its ability. Therefore, pursuant to section 776(b) of the Act, we used an adverse inference in selecting a margin from among facts otherwise available. See Memorandum from Donna Kinsella to Richard O. Weible, Honey from Argentina: Preliminary Determination of Sales at Less Than Fair Value—The Use of Facts Available for ConAgra Argentina, S.A., and the Corroboration of Secondary Information, dated May 4, 2001 (ConAgra Facts Available Memorandum).

Radix

As also noted in the "Case History" section above, on May 1, 2001, the Department received a letter from Radix stating that it would not continue to participate in the Department's investigation. Radix explained that it was unable to file any usable cost information from the Argentine beekeepers despite the extensions granted to it by the Department. Therefore, Radix decided that it would not be beneficial to it to continue participating in the investigation, and it requested that all business proprietary data be removed from the record and returned to Radix. Accordingly, for purposes of our preliminary calculations, we will not be relying on Radix's proprietary information.[1]

Because Radix withdrew from the investigation and requested that its submitted responses be removed from the record, sections 782(d) and (e) of the Act are not applicable, and the Department must resort to the use of facts available for this respondent, in accordance with section 776(a) of the Act. Moreover, we have determined that Radix's withdrawal from the investigation demonstrates that the company has not cooperated to the best of its ability. Therefore, pursuant to section 776(b) of the Act, we used an adverse inference in selecting a margin from among facts otherwise available. See Memorandum from Donna Kinsella to Richard O. Weible, Honey from Argentina: Preliminary Determination of Sales at Less Than Fair Value—The Use of Facts Available for Radix, S.R.L., and the Corroboration of Secondary Information, dated May 4, 2001 (Radix Facts Available Memorandum).

As adverse facts available for ConAgra and Radix, the Department has applied a margin rate of 60.67 percent, the highest alleged margin for Argentina in the petition. This rate is the higher of the highest margin in the petition or the highest rate calculated for a respondent in the proceeding. See Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils from Germany; 64 FR 30710, 30714 (June 8, 1999).

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on "secondary information," such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. (1994) (SAA) states that "corroborate" means to determine that the information used has probative value. See SAA at 870. In this proceeding, we considered information contained in the petition as the most appropriate record information to use to establish the dumping margins for these uncooperative respondents because, in the absence of verifiable data provided by ConAgra and Radix, the petition information is the best approximation, using an adverse inference, available to the Department of ConAgra's and Radix's pricing and selling behavior in the U.S. market. In accordance with section 776(c) of the Act, we sought to corroborate the data contained in the petition. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*e.g.*, import statistics and foreign market research reports). See Initiation Notice. For purposes of this preliminary determination, we attempted to corroborate the information in the petition with information gathered since the initiation. We compared the export price (EP) and constructed value (CV) data, which formed the basis for the highest margin in the petition, to the price and cost/expense data provided by the honey producers and export trading companies during the investigation and, to the extent practicable, found that it had probative value. (For a detailed analysis see ConAgra's and Radix's Facts Available Memoranda.)

[1] In a letter of May 3, 2001, petitioners objected to the removal of Radix's information from the record. We will be addressing this issue at a later date.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by ACA, covered by the description in the "Scope of Investigation" above, and sold in the comparison market during the POI, to be foreign like products for purposes of determining appropriate comparisons to U.S. sales.

Fair Value Comparisons

To determine whether sales of honey from Argentina to the United States were made at LTFV, we compared the EP to the constructed value (CV), as described in the "Export Price" and "Constructed Value" sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs for comparison to CV.

Export Price

We calculated EP in accordance with section 772(a) of the Act because ACA sold the merchandise directly to the first unaffiliated purchaser in the United States prior to the date of importation, and because constructed export price (CEP) methodology was not otherwise appropriate. We based EP for ACA on the C&F price to unaffiliated purchasers in the United States. We made deductions for billing adjustments and "reembolso" reimbursements, where appropriate. We also made adjustments for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign brokerage and handling, international freight, and additional shipping costs.

Normal Value

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the EP. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

Based on information submitted by the Argentine exporting trading company, we found that for the exporter the aggregate volume of home market sales of the foreign like product was less than five percent of their aggregate volume of U.S. sales of the subject merchandise during the POI. (See the December 8, 2000, Section A, Question 1, questionnaire responses from the export trading company.) Consequently, we determined that the Argentine home market was not viable.

Where the home market is determined not to be viable, section 773(a)(1)(B)(ii) of the Act directs the Department to employ the price of sales to a third country as the basis for NV if (1) such price is representative, (2) the aggregate quantity (or value) of sales to that country is at least 5 percent of the quantity (or value) of total sales to the United States, and (3) the Department does not determine that the particular market situation in that country prevents proper comparison with the EP or CEP price. In this case, we found the price of sales to Germany to be representative. Also, the volume and value of ACA's sales to Germany were found to exceed 5 percent of the volume and value of their sales to the United States. (See the December 8, 2000, February 9, 2001, and March 26, 2001, submissions of ACA). Furthermore, based on our examination of the record information, we found no reason to determine that the market situation in Germany would somehow prevent proper comparison between NV and EP price. We therefore found Germany to be the appropriate comparison market pursuant to section 773(a)(1)(B)(ii) of the Act. In deriving NV, we made certain adjustments described in the "Price to CV" section below.

ACA originally reported invoice date as the date of sale for both the U.S. and third country markets. In its questionnaire responses, ACA indicated that invoices are generated after date of shipment from the warehouse for sales in both markets. Consequently, for ACA, we have used date of shipment as the date of sale in the U.S. and third country markets.

ACA reported expenses attributable to sales to the third country market (Germany) incurred for sampling and/or testing honey in order to meet the standards of German customers. According to ACA, German customers require their purchases of honey to be free of antibiotic residuals and phenol. In its submission, these expenses were reported as direct selling expenses. For the reasons described below, we have determined to treat these expenses as indirect selling expenses for purposes of our preliminary determination.

Direct expenses are typically expenses that are incurred as a direct and unavoidable consequence of the sale (*i.e.*, in the absence of the sale these expenses would not be incurred). In other words, while indirect expenses generally consist of fixed expenses that are incurred whether or not a sale is made, direct selling expenses result from, and bear a direct relationship to, the particular sale in question. See 19 CFR 351.410(c); Oil Country Tubular Goods From Mexico; Final Results of Antidumping Duty Administrative Review, 66 FR 15832 (March 21, 2001); and Canned Pineapple Fruit From Thailand: Final Results of Antidumping Duty Administrative Review, 65 FR 77851 (December 13, 2000).

In this case, we found that the information provided by ACA with respect to sampling and/or testing honey, particularly at what point in time and on which merchandise they are conducted, is either contradictory or non-conclusive. (See the January 10, 2001,February 9, 2001, and March 26, 2001, submissions from ACA.) In fact, the evidence on the record indicates that these expenses are more properly classified as indirect selling expenses, given that they appear to be incurred whether or not a sale is made. For example, in its Section B–C questionnaire response, ACA states that the tests in question were conducted on all shipments to German customers that require particular testing results. However, in a later submission, on March 26, 2001, ACA reports that since October 1999 it has performed testing according to German standards on all

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lots of honey darker than a certain color (*i.e.*, 34 mm on the pfund scale). It is also unclear from the record evidence whether honey, which is tested but which does not meet German standards, is shipped to other markets and how the testing expenses associated with such sales have been accounted for in ACA's testing expense calculations.

As a result of contradictory and ambiguous statements made by ACA in its submissions to date, we found that the evidence of expenses in connection with sampling and/or testing honey for German customers does not unequivocally demonstrate that these expenses result from and bear a direct relationship to the sales in question within the meaning of 19 CFR 351.410(c) and the Department's practice. Rather, the evidence indicates that these expenses appear to have the characteristics of indirect selling expenses. Accordingly, for purposes of our preliminary determination, we have determined to re-classify ACA's sampling and/or testing expenses as indirect selling expenses. However, we intend to fully examine this issue at verification, and will incorporate our findings, as appropriate, in our analysis for the final determination.

ACA reported warranty expenses for certain third country and U.S. sales on a customer-specific basis. To calculate these expenses, ACA allocated the total warranty costs reimbursed to a particular customer by the total tons of honey sold to that customer during the POI. Notwithstanding ACA's ability to report warranty expenses on a customer-specific basis, we have long recognized that the nature of warranty expenses (*i.e.*, that claims made for specific sales are often made after the close of a given period of investigation or review) necessitates the use of an appropriate allocation methodology. (See, *e.g.*, Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Germany, 64 FR 30710, 30736–30738 (June 8, 1999); Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany, 61 FR 38166 (July 23, 1996); and *Koenig & Bauer-Albert, et al.* v. *United States*, 15 Fed. Supp.2d 834, 854 (CIT 1998).) We do not believe that ACA's customer-specific allocation methodology takes into account an important additional characteristic of these expenses, namely, that they are not predictable at the time of the sale. Because warranty expenses are normally incurred after the sale is made, and are not incurred until a warranty claim has been received from a customer, we believe that in cases where warranty services are provided by the producer/exporter, all sales are subject to warranty expenses. Therefore, for purposes of the preliminary determination in this case, in order to derive a per-unit warranty expense for all sales, we have recalculated ACA's warranty expenses by allocating the total reported expenses for warranty claims in each market over the total quantity of sales made by ACA in each market.

Cost of Production Analysis

Based on our analysis of the cost allegation submitted by petitioners on September 29, 2000, the Department found reasonable grounds to believe or suspect that sales of honey produced in Argentina were made at prices below the cost of production (COP), in accordance with section 773(b)(2)(A)(i) of the Act. As a result, the Department attempted to conduct an investigation to determine whether respondents made third country sales during the POI below the honey producers' COP, within the meaning of section 773(b) of the Act.

A. Calculation of COP

Because the respondent participating in this investigation is not a producer of the merchandise under investigation, we selected 12 honey producers to serve as cost respondents in the sales-below-cost investigation. As stated in the "Case History" section of this notice, the honey producers failed to respond to the Department's request for cost of production information. Because the selected honey producers did not provide necessary information regarding the cost of production of honey, we calculated COP based on the only cost data available on the record; *i.e.* cost data obtained from Argentine honey producer bi-monthly trade journal articles submitted in the petition. The Department used the average of the cost studies for March, May, July, September, November 1999, as provided in the petition, to derive an average country-wide honey producers' COP to use as the COP for the respondent.

B. Test of Third Country Market Prices

We compared the COP for ACA, as calculated above, to the company's third country market sales of the foreign like product, less any applicable movement charges, billing adjustments, and selling expenses as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard third country market sales below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(1)(A) and (B) of the Act.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of ACA's sales were at prices less than the COP, we did not disregard any below-cost sales because we determined that the below-cost sales were not made in substantial quantities. Where 20 percent or more of ACA's sales during the POI were less than the COP, we determined such sales to have been made in substantial quantities within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. Because we compared prices to average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded those below-cost sales. Because all sales were disregarded, we calculated NV based on CV.

D. Constructed Value

In accordance with section 773(e)(1) of the Act, we calculated CV based on the COP as calculated above plus the exporter's SG&A expenses and an amount for profit. In accordance with section 773(e)(2)(B)(iii) of the Act, and as facts available, we based profit on the September 1999 trade journal article.

Price to CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV pursuant to the criteria described in the "Cost of Production" section above. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act. For comparisons to EP, we made COS adjustments by deducting third country direct selling expenses and adding U.S. direct selling expenses.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP, we examine stages in the marketing process and selling functions along the chain of distribution between the exporter and the unaffiliated customer. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment pursuant to section 773(a)(7)(A) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In implementing these principles in this investigation, we examined information from ACA regarding their reported third country market and EP sales, including a description of the selling activities performed by ACA for each channel of distribution. In identifying LOT for EP and third country market sales, we considered the selling functions reflected in the starting price before any adjustments.

ACA claimed one level of trade in each market: One LOT representing sales to unaffiliated packers in the third country market; and one LOT representing sales in the U.S. market to unaffiliated importers, who resell to packers. According to ACA, because all customers in the third-country market are packers and all customers in the U.S. market are importers, the impact on ACA's pricing cannot be seen by comparing its prices at different LOTs in a single market. Instead, the difference in the LOT can be measured by the mark-up of ACA's U.S. export prices by its U.S. customers when the importers resell ACA's honey to their packer customers. ACA claimed a LOT adjustment equivalent to the estimated price differential between sales to importers and sales to packers.

In determining whether separate LOTs existed in the third country and U.S. market, we examined ACA's selling functions along the chain of distribution between ACA and its unaffiliated customers. In reviewing the chains of distribution and customer categories, we found that ACA made sales directly to unaffiliated customers in both the third country market and the U.S. market.

As indicated previously, ACA reported different categories of customers in the third country and U.S. markets, packers and importers who resell to packers, respectively. We note that while the Department considers the type of customer an important indicator in identifying differences in the LOT, the existence of different classes of customers is not sufficient to establish a difference in the LOTs. Whereas certain titles used to describe classes of customers (e.g., original equipment manufacturer, distributor, wholesaler, retailer) may actually describe LOTs, the fact that two sales were made by entities with titles suggesting different stages of the marketing process is not sufficient to establish that the two sales were made at different LOTs. (*See Antidumping Duties: Countervailing Duties*, Preamble to 19 CFR, 351, FR 27296, 27371 (May 19, 1997).)

In further analyzing ACA's LOT claims, we reviewed information available on the record regarding ACA's selling functions, in accordance with our practice. In its Section A questionnaire response, ACA stated that it performs no selling activities and offers no services in the U.S. or third-country markets. In its February 16, 2001, Section A supplemental questionnaire response, ACA stated that in addition to arranging international freight and delivery, the only selling activities it performs on third country or U.S. market sales is the provision of warranty services. ACA indicated that it performs activities relating to the arrangement of international freight and delivery for the third country and U.S. markets to a medium degree. It indicated that it performs activities relating to warranty services to a medium degree in the third country market and to a low degree in the U.S. market.

Based on the information provided by ACA, we find that the selling functions ACA provided to its reported channels of distribution in the third country and U.S. markets are the same, varying only by the degree to which warranty services were provided. We do not find the varying degree to which warranty services are provided sufficient to determine the existence of different marketing stages. Therefore, based upon this information, we have preliminarily determined that the LOT for all EP sales is the same as that for third country sales. Accordingly, because we find U.S. sales and third country sales to be at the same LOT, no LOT adjustment under section 773(a)(7)(A) of the Act is warranted.

Currency Conversions

We made currency conversions into U.S. dollars in accordance with section 773 of the Act based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) of the Act directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, see Policy Bulletin 96–1: Currency Conversions (61 FR 9434, March 8, 1996).)

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determinations.

Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, the Department will direct the Customs Service to suspend liquidation of all entries of subject merchandise from Argentina that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. This suspension-of-liquidation will remain in effect until further notice.

The margins in the preliminary determination are as follows:

HONEY FROM ARGENTINA

Producer/manufacturer/exporter	Weighted-average margin (percent)
ACA	49.93
Radix	60.67
ConAgra	60.67
All Others	49.93

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final antidumping determinations are affirmative, the ITC will determine before the latter of 120

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days after the date of this preliminary determination or 45 days after our final determinations, whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to several honey cases, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Interested parties who wish to request a hearing, or participate if one is requested, must submit a written request within 30 days of the publication of this notice. Oral presentations will be limited to issues raised in the briefs. We intend to make our final determination no later than 75 days after the date of this preliminary determination.

This determination is published pursuant to sections 733(d) and 777(i)(1) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: May 4, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–11941 Filed 5–10–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–820, A–428–830, A–475–829, A–580–847, A–583–836, A–412–822]

Notice of Postponement of Preliminary Determinations of Sales at Less Than Fair Value: Stainless Steel Bar From France, Germany, Italy, Korea, Taiwan, and the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 11, 2001.

FOR FURTHER INFORMATION CONTACT: Brian Smith (France) at (202) 482–1766; Barbara Wojcik-Betancourt (Korea) at (202) 482–0629; Brian Ledgerwood (the United Kingdom) at (202) 482–3836; Craig Matney (Germany) at (202) 482–1778; Jarrod Goldfeder (Italy) at (202) 482–0189; Blanche Ziv (Taiwan) at (202) 482–4207; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (April 2000).

POSTPONEMENT OF PRELIMINARY DETERMINATIONS: On January 24, 2001, the Department published the initiation of the antidumping duty investigations of imports of stainless steel bar from France, Germany, Italy, Korea, Taiwan, and the United Kingdom. The notice of initiation stated that we would make our preliminary determinations for these antidumping duty investigations no later than 140 days after the date of issuance of the initiation (*i.e.*, June 6, 2001). *See Notice of Initiation of Antidumping Duty Investigations: Stainless Steel Bar from France, Germany, Italy, Korea, Taiwan, and the United Kingdom*, 66 FR 7620, 7626 (January 24, 2001); and *Corrections, Notice of Initiation of Antidumping Duty Investigations: Stainless Steel Bar from France, Germany, Italy, Korea, Taiwan, and the United Kingdom*, 66 FR 14986 (March 14, 2001).

On April 27, 2001, the petitioners [1] made a timely request pursuant to 19 CFR 351.205(e) for a 50-day postponement of the preliminary determinations, or until July 26, 2001. The petitioners requested a postponement of the preliminary determinations because of the need for additional time to submit comments regarding the respondents' questionnaire responses and for the Department to analyze the respondents' data and seek additional data, if necessary, prior to the issuance of the preliminary determinations.

For the reasons identified by the petitioners, and because there are no compelling reasons to deny the request, we are postponing the preliminary determinations under section 733(c)(1) of the Act. We will make our preliminary determinations no later than July 26, 2001.

This notice is published pursuant to sections 733(f) and 777(i) of the Act.

Dated: May 7, 2001.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 01–11937 Filed 5–10–01; 8:45 am]

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[1] The petitioners are Carpenter Technology Corp., Crucible Specialty Metals, Electralloy Corp., Empire Specialty Steel Inc., Slater Steels Corp., and the United Steelworkers of America, AFL–CIO/CLC.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–063]

Certain Iron-metal Castings From India: Amended Final Results of Countervailing Duty Administrative Review in Accordance With Decision Upon Remand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amendment to final results of countervailing duty administrative review.

SUMMARY: Pursuant to remand instructions by the Court of International Trade (CIT), the Department has recalculated the countervailing duty rates for the 1990 administrative review of the countervailing duty order on certain iron-metal castings from India. The final countervailing duty rates for this administrative review period are listed below in the Final Results of Review section of this notice.

EFFECTIVE DATE: May 11, 2001.

FOR FURTHER INFORMATION CONTACT: Robert Copyak, AD/CVD Enforcement Office VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: On August 29, 1995, the Department published the final results of its administrative review of the countervailing duty order on certain iron-metal castings from India for the period January 1, 1990 through December 31, 1990. *See Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings from India*, 60 FR 44,849 (*1990 Iron-Metal Castings*). Subsequently, respondents challenged the final results before the CIT. The primary issue involved the calculation of the program rates for the subsidies provided under section 80HHC of India's Income Tax Act.

Under section 80HHC of India's Income Tax Act, exporters of iron-metal castings are eligible to claim tax exemptions based on their export profits. In *1990 Iron-Metal Castings*, the Department calculated these subsidies without adjusting for other subsidies received under India's International Price Reimbursement Scheme (IPRS) and India's Cash Compensatory Support Scheme (CCS). In *Crescent Foundry Co. Pvt. Ltd.* v. *United States*, Slip Op. 00–148 (CIT Nov. 9, 2000), the court remanded the final results of the 1990 administrative review and directed the Department to recalculate these subsidies by subtracting IPRS rebates and CCS rebates from taxable income before determining the benefit under section 80HHC. The Department's subsequent remand determination reflected the Court's instructions and was affirmed in *Crescent Foundry Co. Pvt. Ltd*, v. *United States*, Slip Op. 01–6 (CIT Jan. 24, 2001).

Final Results of Review

We recalculated the company-specific and all-other subsidy rates for the period January 1, 1990, through December 31, 1990. The amended final countervailing duty rates are as follows:

Manufacturer/exporter	Revised rates (percent)
Carnation Enterprise Pvt. Ltd	7.59
Crescent Foundry Co. Pvt. Ltd	7.59
Kajaria Castings Ltd	7.59
Kejriwal Iron & Steel Works	7.59
Nandikeshwari	7.59
Overseas	7.59
R.B. Agarwalla & Co	7.59
R.S.I	7.59
Ragunath	7.59
Serampore Industries Pvt. Ltd	7.59
Sitarem	7.59
Super Castings (India)	7.59
Tiruptati	7.59
UMA Iron & Steel Co	7.59
All-other Rate	7.59

The Department has been enjoined from issuing any liquidation instructions to the U.S. Customs Service (Customs) until the conclusion of litigation of this case. Litigation has been completed and, therefore, the Department will instruct Customs to assess countervailing duties on all appropriate entries. The Department will issue liquidation instructions directly to Customs.

This amendment to the final results of countervailing duty administrative review notice is in accordance with section 705(d) of the Tariff Act of 1930, as amended, (19 USC 1671d(d)) and section 351.210(c) of the Department's regulations. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: May 3, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–11938 Filed 5–10–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–063]

Certain Iron-Metal Castings From India: Amended Final Results of Countervailing Duty Administrative Review in Accordance With Decision Upon Remand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amendment to final results of countervailing duty administrative review.

SUMMARY: Pursuant to remand instructions by the Court of International Trade (CIT), the Department has recalculated the countervailing duty rates for the 1991 administrative review of the countervailing duty order on certain iron-metal castings from India. The final countervailing duty rates for this administrative review period are listed below in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: May 11, 2001.

FOR FURTHER INFORMATION CONTACT: Robert Copyak, AD/CVD Enforcement Office VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: On August 29, 1995, the Department published the final results of its administrative review of the countervailing duty order on certain iron-metal castings from India for the period January 1, 1991 through December 31, 1991. *See Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings from India*, 60 FR 44,843 (*1991 Iron-Metal Castings*). Subsequently, respondents challenged the final results before the CIT. The primary issue involved the calculation of the program rates for the subsidies provided under section 80HHC of India's Income Tax Act.

Under section 80HHC of India's Income Tax Act, exporters of iron-metal castings are eligible to claim tax exemptions based on their export profits. In *1991 Iron-Metal Castings*, the Department calculated these subsidies without adjusting for other subsidies received under India's International Price Reimbursement Scheme (IPRS) and India's Cash Compensatory Support Scheme (CCS). In *Kajaria Iron Castings Pvt. Ltd.* v. *United States*, Slip Op. 00–147 (CIT Nov. 9, 2000), the court remanded the final results of the 1991 administrative review and directed the Department to recalculate these subsidies by subtracting IPRS rebates and CCS rebates from taxable income before determining the benefit under section 80HHC. The Department's subsequent remand determination reflected the Court's instructions and was affirmed in *Kajaria Iron Castings Pvt.* v. *United States*, Slip Op. 01–5 (CIT Jan. 24, 2001).

Final Results of Review

We recalculated the company-specific and all-other subsidy rates for the period January 1, 1991, through December 31, 1991. The amended final countervailing duty rates are as follows:

Manufacturer/exporter	Revised rates
Calcutta Ferrous	0.93
Carnation Enterprise Pvt. Ltd	0.66
Commex	[1] 0.44
Crescent Foundry Co. Pvt. Ltd	1.18
Dinesh	0.00
Kajaria Castings Ltd.	2.56
Kejriwal Iron & Steel Works	[1] 0.40
Nandikeshwari	2.56
R.B. Agarwalla & Co.	1.73
R.S.I	4.19

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Manufacturer/exporter	Revised rates
Serampore Industries Pvt. Ltd	0.78
Super Castings (India)	23.00
Tiruptati	3.68
UMA Iron & Steel Co	1.84
All-other Rate	2.56

[1] de minimis.

The Department has been enjoined from issuing any liquidation instructions to the U.S. Customs Service (Customs) until the conclusion of litigation of this case. Litigation has been completed and, therefore, the Department will instruct Customs to assess countervailing duties on all appropriate entries. For the companies with de minimis rates, the Department will instruct Customs to liquidate without regard to countervailing duties. The Department will issue liquidation instructions directly to Customs.

This amendment to the final results of countervailing duty administrative review notice is in accordance with section 705(d) of the Tariff Act of 1930, as amended, (19 USC 1671d(d)) and section 351.210(c) of the Department's regulations. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: May 3, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–11939 Filed 5–10–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 000911256–1111–02]

RIN 0693–ZA40

Small Grants program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: On Thursday, January 11, 2001, the National Institute of Standards and Technology (NIST) announced in the **Federal Register** the availability of fiscal year 2001 funds for thirteen small grants programs. The purpose of this notice is to inform the public that under three of those programs, the Materials Science and Engineering Grants Program; the Physics Laboratory Grants Program; and the Chemical Science and Technology Laboratory Grants Program, priority will be given to proposals in the area of Nanotechnology, and a portion of the funding available for each of those programs will be allocated for awards in the area of Nanotechnology.

FOR FURTHER INFORMATION CONTACT: For the MSEL Grants Program, contact Dr. Stephen M. Hsu, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8520, Building 223, Room A 265, Gaithersburg, Maryland 20899–8520, Tel: (301) 975–6120, E-mail: *stephen.hsu@nist.gov.*

For the Physics Laboratory Grant Program contact Ms. Anita Sweigert, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8400, Gaithersburg, MD 20899–8400, Tel (301) 975–4200, E-Mail: *anita.sweigert@nist.gov.*

For the Chemical Science and Technology Laboratory Grant Program contact Dr. William F. Koch, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8300, Gaithersburg, MD 20899–8300, Tel: (301) 975–8301, E-mail: *william.koch@nist.gov.*

SUPPLEMENTARY INFORMATION: On January 11, 2001, NIST published a document in the **Federal Register** announcing the availability of fiscal year 2001 funds for (1) Precision Measurement Grants; (2) Physics Laboratory (PL) 2001 Summer Undergraduate Research Fellowships (SURF); (3) Materials Science and Engineering Laboratory (MSEL) 2001 Summer Undergraduate Research Fellowships (SURF); (4) Manufacturing Engineering Laboratory (MEL) 2001 Summer Undergraduate Research Fellowships (SURF); (5) Information Technology Laboratory (ITL) 2001 Summer Undergraduate Research Fellowships (SURF); (6) Building and Fire Research Laboratory (BFRL); 2001 Summer Undergraduate Research Fellowships (SURF); (7) Electronics and Electrical Engineering (EEEL); 2001 Summer Undergraduate Research Fellowships (SURF); (8) Materials Science and Engineering Laboratory (MSEL) Grants Program; (9) Fire Research Grants Program; (10) Physics Laboratory (PL) Grants Program; (11) Chemical Science and Technology Laboratory (CSTL) grants Program; (12) Manufacturing Engineering Laboratory (MEL) Grants program; and (13) Electronics and Electrical Engineering Laboratory (EEEL) Grants Program (66 FR 2398, January 11, 2001). On January 24, 2001, NIST published a document in the **Federal Register** making minor corrections to the earlier publication (66 FR 7627, January 24, 2001). All information and requirements as published in the January 11, 2001 publication, as corrected by the January 24, 2001 publication, remain in effect.

NIST's fiscal year 2001 appropriation included funding for an initiative in the area of Nanotechnology. The initiative funds have now been allocated to the NIST laboratories that submitted successful proposals to the Acting NIST Director. Due to a combination of the timing of NIST's appropriation, the proposal review and selection process for distribution of the funding to the NIST laboratories, and a recent decision that financial assistance is an appropriate mechanism for carrying out the Nanotechnology programs selected, NIST now informs the public that under the MSEL Grants program, the PL Grants program, and the CSTL Grants program, priority will be given to proposals in the area of Nanotechnology, and a portion of the funding available for each of those programs will be allocated for awards in the area of Nanotechnology as described below. Applications submitted to these programs prior to publication of this notice in the area of Nanotechnology will be considered for the reserved funding and for the remaining funds announced in the January 11, 2001 notice, as described below.

MSEL Grants Program

Of the approximately $2,500,000 available in fiscal year 2001, approximately $300,000 will be allocated solely for funding awards in Nanotechnology in the area of Nanotechnology. The MSEL Grants Program may fund more than one award from this allocation. From the remaining $2,200,000, other highly rated proposals in the area of Nanotechnology may be funded.

Physics Laboratory Grants Program

Of the approximately $1,400,000 available in fiscal year 2001, approximately $210,000 will be allocated solely for funding awards in Quibit decoherence and moving quantum information over larger distances. The PL Grants Program anticipates funding one award from this allocation. From the remaining $1,190,000, other highly rated proposals in the area of Nanotechnology may be funded. Funding available for the PL Grants Program will remain at approximately $1,400,00 this fiscal year.

Chemical Science and Technology Laboratory Grants Program

Of the approximately $1,000,000 available in fiscal year 2001, approximately $150,000 will be allocated solely for funding awards in Nanotechnology in the areas of Molecular Synthesis and/or Scanning-Probe Characterization. The CSTL Grants Program anticipates funding one award from this allocation. From the remaining $850,000, other highly rates proposals in the area of Nanotechnology may be funded.

Dated: May 4, 2001.

Karen H. Brown,

Deputy Director

[FR Doc. 01–11881 Filed 5–10–01; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of the Computer System Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology, DDC.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer System Security and Privacy Advisory Board (CSSPAB) will meet Tuesday, June 19, 2001, and Wednesday, June 20, 2001, from 9 a.m. until 5 p.m. and Thursday, June 21, 2001, from 9 a.m. until 4 p.m. The Advisory Board was established by the Computer Security Act of 1987 (Public Law 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal computer systems. All sessions will be open to the public. Details regarding the Board's activities are available at http://csrc.nist.gov/csspab/.

DATES: The meeting will be held on June 19, 2001, and June 20, 2001, from 9 a.m. until 5 p.m. and on June 21, 2001, from 9 a.m. until 4 p.m.

ADDRESSES: The meeting will take place at The John Marshall Law School, Main Conference Room, #1200, 315 S. Plymouth Court, Chicago, IL.

Agenda

- Welcome and Overview
- Two-Day Session on Privacy—issues critical to the national debate, including law, policy and implementation
- Updates on Recent Legislative Issues
- Update on OMB Activities
- Work Plan Review of Governance Issues
- Work Plan Review of GPEA Process
- Update on the Federal Bridge Certificate Authority (CA) and the Federal Public Key Infrastructure (PKI)
- Public Participation
- Discussion of September Baseline Security Controls Event
- Agenda Development for September 2001 meeting
- Wrap-Up

Note that agenda items may change without notice because of possible unexpected schedule conflicts of presenters.

Public Participation

The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the CSSPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930. It would be appreciated if 35 copies of written material were submitted for distribution to the Board and attendees no later than June 1, 2001. Approximately 15 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Dr. Fran Nielsen, Board Secretariat, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20999–8930, telephone: (301) 975–3669.

Dated: May 4, 2001.

Karen H. Brown,

Acting Director, NIST.

[FR Doc. 01–11884 Filed 5–10–01; 8:45 am]

BILLING CODE 3510–CN–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a closed meeting of the Judges Panel of the Malcolm Baldrige National Quality Award on Wednesday, May 30, 2001. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to Review the 2001 Baldrige Award Cycle; Discussion of Senior Examiner Training for Site Visits and Final Judging Interaction; Judges' Survey of applicants; and Judging Process Improvement. The applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence.

DATES: The meeting will convene May 30, 2001, at 11 a.m. and adjourn at 4:30 p.m. on May 30, 2001. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Chemistry Building, Room A228, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 12, 2001, that the meeting of the Judges Panel will be closed pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by Section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409. The meeting, which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code, since the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Dated: May 4, 2001.

Karen H. Brown,

Acting Director.

[FR Doc. 01–11882 Filed 5–10–01; 8:45 am]

BILLING CODE 3510–CN–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Malcolm Baldrige National Quality Award Board of Overseers

AGENCY: National Institute of Standards and Technology Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app.

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2, notice is hereby given that there will be a meeting of the Board of Overseers of the Malcolm Baldrige National Quality Award on Thursday, May 31, 2001. The Board of Overseers is composed of eleven members prominent in the field of quality management and appointed by the Secretary of Commerce, assembled to advise the Secretary of Commerce on the conduct of the Baldrige Award. The purpose of this meeting is to discuss and review information received from the National Institute of Standards and Technology with the members of the Judges Panel of the Malcolm Baldrige National Quality Award. The agenda will include: Not-for-profit Baldrige Category; Expanding "For-profit" Business Category Eligibility; 2001 Baldrige Criteria Changes and Future Criteria Evolution; E-Baldrige Update; and Key Issues from the May 30 judges' Meeting.

DATES: The meeting will convene May 31, 2001, at 8:30 a.m. and adjourn at 3 p.m. on May 31, 2001.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building Tenth Floor Conference Room, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

Dated: May 4, 2001.

Karen H. Brown,

Acting Director.

[FR Doc. 01–11883 Filed 5–10–01; 8:45 am]

BILLING CODE 3510–CN–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050701B]

Permits; Foreign Fishing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of foreign fishing application.

SUMMARY: NMFS publishes for public review and comment a summary of an application submitted by the Government of the Russian Federation requesting authorization to conduct fishing operations in the U.S. Exclusive Economic Zone (EEZ) in 2001 under provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

ADDRESSES: Comments may be submitted to NMFS, Office of Sustainable Fisheries, International Fisheries Division, 1315 East-West Highway, Silver Spring, MD 20910, or to any of the following Regional Fishery Management Councils:

Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01905; Phone (978) 465–0492; Fax (978) 465–3116;

Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South New Street, Dover, DE 19904; Phone (302) 674–2331; Fax (302) 674–4136.

FOR FURTHER INFORMATION CONTACT: Robert A. Dickinson, Office of Sustainable Fisheries, (301) 713–2276.

SUPPLEMENTARY INFORMATION: In accordance with a Memorandum of Understanding with the Secretary of State, NMFS publishes, for public review and comment, summaries of applications received by the Secretary of State requesting permits for foreign fishing vessels to fish in the U.S. EEZ under provisions of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*).

This notice concerns the receipt of an application from the Government of the Russian Federation requesting the stern trawler/processor KAPITAN GORBACHEV be authorized to receive Atlantic herring and Atlantic mackerel from U.S. vessels in joint venture operations in 2001.

Dated: May 7, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–11943 Filed 5–10–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Air Force

Air Force A–76 Initiatives Cost Comparisons and Direct Conversions (As of March 31, 2001)

The Air Force is in the process of conducting the following A–76 initiatives. Cost comparisons are public-private competitions. Direct conversions are functions that may result in a conversion to contract without public competition. These initiatives were announced and in-progress as of March 31, 2001, include the installation and state where the cost comparison or direct conversion is being performed, the total authorizations under study, public announcement date and actual or anticipated solicitation date. The following initiatives are in various stages of completion.

Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation issued or scheduled date
COST COMPARISONS					
AVON PARK	FL	RANGE OPERATIONS	38	22–Dec–99	01–Sep–01
BANN	GERMY	RANGE OPERATIONS AND MAINTENANCE.	0	19–Mar–01	TBD
BEALE	CA	BASE OPERATING SUPPORT	372	08–Sep–99	01–May–01
BOLLING	DC	SUPPLY AND TRANSPORTATION	138	01–Dec–98	12–Sep–00
CARSWELL	TX	BASE OPERATING SUPPORT	69	03–Feb–00	05–Jun–01
DAVIS MONTHAN	AZ	BASE SUPPLY	35	04–Jan–00	16–Feb–01
EDWARDS	CA	BASE OPERATING SUPPORT	435	09–Dec–98	04–May–00
EGLIN	FL	ADMINISTRATIVE SUPPORT	37	22–Sep–99	26–Sep–00
EGLIN	FL	AIRCRAFT MAINTENANCE AND SUPPLY.	319	15–Sep–00	01–Jun–01
ELMENDORF	AK	COMMUNICATIONS OPERATIONS AND MAINTENANCE.	66	05–Jan–00	08–Nov–00
ELMENDORF	AK	BASE SUPPLY	208	26–Mar–99	21–Apr–00
HANSCOM AFB	MA	CIVIL ENGINEERING	201	09–Dec–98	25–Feb–00

Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation issued or scheduled date
HANSCOM AFB	MA	EDUCATION/TRAINING AND PERSONNEL.	17	25–Nov–98	20–Apr–00
HILL AFB	UT	BASE OPERATING SUPPORT	569	30–Sep–98	30–Mar–01
HOLLOMAN AFB	NM	TEST TRACK	125	18–Nov–99	23–Jan–01
HURLBURT COM FL	FL	COMMUNICATION FUNCTIONS	50	31–Jul–98	15–Apr–01
HURLBURT COM FL	FL	ENVIRONMENTAL	7	22–Jun–00	15–May–01
HURLBURT COM FL	FL	ADMINISTRATIVE SUPPORT	33	28–Apr–99	02–Aug–01
HURLBURT COM FL	FL	HOUSING MANAGEMENT	12	08–Jun–00	01–Jun–01
KEESLER	MS	MULTIPLE SUPPORT FUNCTIONS	741	21–Sep–99	19–Dec–00
LACKLAND	TX	MULTIPLE SUPPORT FUNCTIONS	1439	26–Jan–99	09–Aug–99
LANGLEY	VA	COMMUNICATION FUNCTIONS	202	21–Mar–01	11–Jul–01
MAXWELL	AL	MULTIPLE SUPPORT FUNCTIONS	814	28–Apr–98	22–Mar–99
MAXWELL	AL	EDUCATION SERVICES	35	24–Jul–00	29–Sep–00
MULTIPLE INSTLNS		MULTIPLE SUPPORT FUNCTIONS	65	14–Jul–99	31–Aug–01
CROUGHTON	UK				
MOLESWORTH	UK				
MULTIPLE INSTLNS		COMMUNICATION FUNCTIONS	141	11–Mar–99	14–Apr–00
GENERAL MITCHELL	WI				
WESTOVER	MA				
MINN-ST PAUL	MN				
YOUNGSTOWN	OH				
WILLOW GROVE	PA				
GRISSOM	IN				
PITTSBURG	PA				
MARCH	CA				
HOMESTEAD	FL				
CARSWELL	TX				
NEW ORLEANS	LA				
MULTIPLE INSTLNS		PERSONNEL SERVICES	223	16–Jun–00	06–Jun–01
BARKSDALE	LA				
CANNON	NM				
DAVIS MONTHAN	AZ				
DYESS	TX				
ELLSWORTH	SD				
HOLLOMAN	NM				
KEFLAVIK	ICELD				
LAJES	AZO				
LANGLEY	VA				
MINOT	ND				
MOODY	GA				
MOUNTAIN HOME	ID				
NELLIS	NV				
SEYMOUR-JOHNSON	NC				
SHAW	SC				
WHITEMAN	MO				
MULTIPLE INSTLNS		TRANSIENT AIRCRAFT MAINTENANCE.	24	07–Jul–99	05–Mar–01
RAMSTEIN	GERMY				
SPANGDAHLEM	GERMY				
MULTIPLE INSTLNS		EDUCATION SERVICES	73	17–Aug–00	16–Jul–01
ANDERSEN	GUAM				
EIELSON	AK				
ELMENDORF	AK				
HICKAM	HI				
KADENA	JA				
KUNSAN	KR				
MISAWA	JA				
OSAN	KR				
YOKOTA	JA				
NEW BOSTON	NH	BASE OPERATING SUPPORT	48	03–Dec–97	21–Mar–01
NEW ORLEANS NAS	LA	BASE OPERATING SUPPORT	45	03–Feb–00	01–Jun–01
OFFUTT	NE	BASE OPERATING SUPPORT	1568	30–Sep–98	28–Feb–01
PATRICK	FL	SUPPLY AND TRANSPORTATION	43	14–May–98	18–Sep–00
PETERSON	CO	PERSONNEL SERVICES	90	05–Jan–00	16–Feb–01
RANDOLPH	TX	MULTIPLE SUPPORT FUNCTIONS	1224	14–Sep–00	10–Oct–01
ROBINS	GA	EDUCATION SERVICES	67	07–Jan–99	17–Aug–00
ROBINS	GA	ENVIRONMENTAL	49	07–Jun–00	20–May–01
ROBINS	GA	BASE SUPPLY	131	01–Apr–99	19–Dec–00
SCOTT	IL	PERSONNEL SERVICES	236	25–Jun–99	22–Mar–01
SEMBACH	GERMY	COMMUNICATION FUNCTIONS	48	18–Dec–98	28–Feb–01
SHEPPARD	TX	MULTIPLE SUPPORT FUNCTIONS	549	21–Sep–99	29–Jun–00
TRAVIS	CA	VEHICLE OPERATIONS AND MAINTENANCE.	131	15–Jul–98	24–Aug–00

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Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation issued or scheduled date
USAF ACADEMY	CO	COMMUNICATION FUNCTIONS	114	20–May–99	27–Jan–01
USAF ACADEMY	CO	SUPPLY AND TRANSPORTATION	117	08–May–98	09–May–00
USAF ACADEMY	CO	CIVIL ENGINEERING	496	01–Dec–98	24–Mar–00
VANDENBERG AFB	CA	MISSILE STORAGE & MAINTENANCE.	66	25–Oct–00	27–Apr–01
WHITEMAN	MO	UTILITIES PLANT	11	18–Aug–99	01–Jun–00
		DIRECT CONVERSIONS			
BOLLING	DC	EDUCATION/TRAINING AND PERSONNEL.	12	01–May–00	13–Apr–01
COLUMBUS	MS	SURVIVAL EQUIPMENT	29	18–Apr–00	15–Apr–01
HICKAM	HI	COMMUNICATIONS OPERATIONS AND MAINTENANCE.	48	07–Nov–00	18–May–01
HICKAM	HI	FURNISHINGS MANAGEMENT	11	27–Jun–00	06–Jul–01
HOLLOMAN AFB	NM	MILITARY FAMILY HOUSING MAINTENANCE.	66	12–May–97	09–Nov–00
LANGLEY	VA	COMMUNICATIONS ADMINISTRATION AND INFORMATION FUNCTION.	13	31–Jan–00	02–Apr–01
LANGLEY	VA	COMMUNICATION FUNCTIONS	8	23–Mar–99	11–Jul–01
LANGLEY	VA	DATA PROCESSING EQUIPMENT OPERATIONS.	15	04–Nov–99	02–Apr–01
MCGUIRE	NJ	FURNISHINGS MANAGEMENT	2	14–May–99	13–Oct–00
MULTIPLE INSTLNS		ENVIRONMENTAL	49	27–Sep–00	20–Jul–01
BARKSDALE	LA				
CANNON	NM				
DAVIS MONTHAN	AZ				
ELLSWORTH	SD				
HOLLOMAN	NM				
LANGLEY	VA				
MINOT	ND				
MOODY	GA				
MOUNTAIN HOME	ID				
NELLIS	NV				
SEYMOUR-JOHNSON	SC				
WHITEMAN	MO				
MULTIPLE INSTLNS		ADMINISTRATIVE SUPPORT	67	08–Aug–00	17–Jul–01
ANDERSEN	GUAM				
EIELSON	AK				
ELMENDORF	AK				
HICKAM	HI				
KADENA	JA				
KUNSAN	KR				
MISAWA	JA				
OSAN	KR				
YOKOTA	JA				
OFFUTT	NE	SOFTWARE PROGRAMMING	10	09–Mar–01	30–Apr–02
OFFUTT	NE	SOFTWARE PROGRAMMING	9	09–Mar–01	30–Apr–02
OFFUTT	NE	SOFTWARE PROGRAMMING	10	09–Mar–01	30–Apr–02
OFFUTT	NE	COMMUNICATION FUNCTIONS	13	17–Nov–00	29–Jun–01
RAF FELTWELL	UK	PRECISION MEASUREMENT EQUIPMENT LABORATORY (PMEL).	76	08–Jan–01	24–Aug–01
ROBINS	GA	AIRFIELD MANAGEMENT	10	06–Jun–00	24–May–01
ROBINS	GA	PROTECTIVE COATING	8	18–Jan–00	15–May–01
SCHRIEVER	CO	FOOD SERVICES	18	02–Sep–99	02–Mar–01
SCOTT	IL	FURNISHINGS MANAGEMENT	3	18–Sep–00	22–Feb–02
SCOTT	IL	ADMINISTRATIVE SWITCHBOARD	85	05–Aug–99	16–Mar–01
SHAW	SC	RAILROAD TRANSPORTATION SERVICES.	2	02–Oct–00	29–Jan–01
SHAW	SC	COMMUNICATION FUNCTIONS	3	18–May–99	19–Apr–01
TINKER	OK	SOFTWARE PROGRAMMING	67	08–May–00	01–Jun–01
TINKER	OK	COMMUNICATION FUNCTIONS	70	08–Jan–01	03–Oct–01
VANDENBERG AFB	CA	AIR TRAFFIC CONTROL	8	09–Mar–01	01–Dec–01
VANDENBERG AFB	CA	BASE WEATHER OBSERVING	10	02–Mar–01	01–Dec–01

Janet A. Long,
Air Force Federal Register Liaison Officer.
[FR Doc. 01–11868 Filed 5–10–01; 8:45 am]
BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Air Force

Federal Advisory Committee for the End-to-End Review of the U.S. Nuclear Command and Control System

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of forthcoming meetings of the Federal Advisory Committee for the End-to-End Review of the U.S. Nuclear Command and Control System (NCSS). The purpose of these meetings is to conduct a comprehensive and independent review of the NCCS positive measures to assure authorized use of nuclear weapons when directed by the President while assuring against unauthorized or inadvertent use. This meeting will be closed to the public.

DATES: June 5–7, 2001.

ADDRESSES: Department of Energy, Room GA257, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Mr. William L. Jones, U.S. Nuclear Command and Control System Support Staff (NSS), Skyline 3, 5201 Leesburg Pike, Suite 500, Falls Church, Virginia 22041, (703) 681–8681.

Janet A. Long,
Air Force Federal Register Liaison Officer.
[FR Doc. 01–11867 Filed 5–10–01; 8:45 am]
BILLING CODE 5001–05–U

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 10, 2001.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 7, 2001.

John Tressler,
Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.
Title: Moving Reading/English Language Arts Standards to the Classroom Study: The Impact of Systemic, Standards-based Reform on Instruction.
Frequency: One Time.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 2,320
Burden Hours: 1,986
Abstract: The purpose of Moving Standards Reading is to understand the relationship between state-initiated standards-based reforms and student achievement. The study will assess the impact of grade 4 reading/English language arts content standards and instructional supports on teachers' classroom instructional practices. It will also assess the relationship between instruction aligned with standards and grade 4 student achievement on state-administered reading/English language arts assessments. The study is to be conducted in 4 states, 100 districts, and 400 schools. The results of the study will highlight the features of effective standards-based reform policies and practices. The results are also expected to inform future federal programs and state, district, and school policy development and implementation.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO_IMG_Issues@ed.gov* or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address Jackie.Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–11860 Filed 5–10–01; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 11, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

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SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 7, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Report of Children with Disabilities Unilaterally Removed or Suspended/Expelled for More Than 10 Days.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 58

Burden Hours: 149,350

Abstract: This package provides instructions and a form for States to report the number of children and youth and the number of acts involving students served under the Individuals with Disabilities Education Act (IDEA) involving a unilateral removal by school personnel or long-term suspension/expulsion. The form satisfies reporting requirements and is used by the Office of Special Education Programs (OSEP) to monitor State Educational Agencies (SEAs) and for Congressional reporting.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila.Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–11853 Filed 5–10–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 11, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 7, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Part B, Individuals with Disabilities Education Act (IDEA) Implementation of FAPE Requirements (SC).

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 58

Burden Hours: 149,350

Abstract: This package provides instructions and forms necessary for States to report the settings in which children with disabilities served under IDEA–B receive special education and related services. The form satisfies reporting requirements and is used by Office of Special Education Programs (OSEP) to monitor State Educational Agencies (SEAs) and for Congressional reporting.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila.Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–11854 Filed 5–10–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 11, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4)Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 7, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Report of Children with Disabilities Receiving Special Education under Part B of the Individuals with Disabilities Education Act (IDEA).

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 58

Burden Hours: 30,682

Abstract: This package provides instructions and a form necessary for States to report the number of children with disabilities served under IDEA–B that receive special education and related services. It serves as the basis for distributing federal assistance, monitoring, implementing, and Congressional reporting.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 MarylandAvenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO_IMG_Issues@ed.gov* or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila.Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–11855 Filed 5–10–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 11, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 7, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: Consolidated Data Collection on Students with Disabilities.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting ond Recordkeeping Hour Burden:

Responses: 58

Burden Hours: 18,312

Abstract: This package provides a file layout for States to use in reporting district and school level data on students receiving services under the

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Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act, as amended. If used by States, it will meet the reporting requirements of the Office of Special Education Programs, the Office for Civil Rights (for students with disabilities only) and the National Center on Education Statistics (for students with disabilities only).

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO_IMG_Issues@ed.gov* or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–11856 Filed 5–10–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 11, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 7, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Report of Children with Disabilities Exiting Special Education During the School Year.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 58.

Burden Hours: 53,244.

Abstract: This package provides instructions and a form necessary for States to report the number of students aged 14 and older served under the Individuals with Disabilities Education Act, Part B (IDEA–B) exiting special education. The form satisfies reporting requirements and is used by the Office of Special Education Programs (OSEP) to monitor State Education Agenices (SEAs) and for Congressional reporting.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO_IMG_Issues@ed.gov* or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–11857 Filed 5–10–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 11, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 7, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Report of Early Intervention Services on Individualized Family Service Plans (IFSPs) Provided to Infants, Toddlers and Their Families in Accordance with Part C and Report of Number and Type of Personnel Employed and Contracted to Provide Early Intervention Services.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 57.

Burden Hours: 5,187.

Abstract: This package provides instructions and forms necessary for States to report, by race and ethnicity, the number of infants and toddlers with disabilities and their families receiving different types of Part C services, and the number of personnel employed and contracted to provide services for infants and toddlers with disabilities and their families. Data are obtained from state and local service agencies and are used to assess and monitor the implementation of the Individuals with Disabilities Education Act (IDEA) and for Congressional reporting.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO_IMG_Issues@ed.gov* or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–11858 Filed 5–10–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 11, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 7, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Personnel Employed to Provide Special Education and Related Services for Children with Disabilities.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 58

Burden Hours: 7,685

Abstract: This package provides instructions and a form necessary for States to report Personnel serving children with disabilities served under Individuals with Disabilities Education Act, Part B (IDEA-B). This form satisfies reporting requirements and is used by the Office of Special Education Programs (OSEP) for monitoring, implementing IDEA, and Congressional reporting.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO_IMG_Issues@ed.gov* or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila.Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–11859 Filed 5–10–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

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DATES: Interested persons are invited to submit comments on or before June 11, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4)Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 7, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Report of Infants and Toddlers Receiving Early Intervention Services and of Program Settings Where Services are Provided in Accordance with Part C, and Report on Infants and Toddlers Exiting Part C.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 57
Burden Hours: 5,472

Abstract: This package provides instructions and forms necessary for States to report, by race and ethnicity, the number of infants and toddlers with disabilities who: (a) are served under the Individuals withDisabilities Education Act (IDEA), Part C; (b) are served in different program settings; and (c) exit Part C because of program completion and for other reasons. Data are obtained from state and local service agencies and are used to assess and monitor the implementation of IDEA and for Congressional reporting.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila.Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–11852 Filed 5–10–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Bonneville Power Administration

Santiam-Bethel Transmission Line Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of floodplain and wetlands involvement.

SUMMARY: This notice announces BPA's proposal to rebuild a 17-mile portion of the Santiam-Chemawa single-circuit 230-kilovolt (kV) line as a double-circuit 230-kV line in the existing right-of-way in floodplains and wetlands located in Marion and Linn Counties, Oregon. The purpose of the project is to prevent overloads on the Santiam-Chemawa 230-kV line. In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements, BPA will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands. The assessment will be included in the environmental assessment being prepared for the proposed project in accordance with the requirements of the National Environmental Policy Act. A floodplain statement of findings will be included in any finding of no significant impact that may be issued following the completion of the environmental assessment.

DATES: Comments are due to the address below no later than May 29, 2001.

ADDRESSES: Submit comments to Communications, Bonneville Power Administration—KC–7, P.O. Box 12999, Portland, Oregon, 97212. Internet address: *comment@bpa.gov.*

FOR FURTHER INFORMATION CONTACT: Leslie Kelleher, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon, 97208–3621; telephone number 503–230–7692; fax number 503–230–5699.

SUPPLEMENTARY INFORMATION: The BPA Santiam-Bethel transmission line rebuild would cross the 100-year floodplain of North Santiam River (T9S, R1E, Section 22) and a tributary to the Pudding River (T7S, R2W, Section 25); a total of 14 wetlands were identified within the cleared right-of-way.

Maps and further information are available from BPA at the address above.

Issued in Portland, Oregon, on May 4, 2001.

Thomas C. McKinney,

NEPA Compliance Officer.

[FR Doc. 01–11926 Filed 5–10–01; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–401–000]

Columbia Gas Transmission Corporation; Notice of Tariff Filing

May 7, 2001.

Take notice that on May 2, 2001, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, original and revised tariff sheets, listed on Appendix A to the filing, bearing a proposed effective date of June 1, 2001. Columbia states that Sheet No. 30B is being filed pro forma. These tariff sheets are being filed to initiate new firm lateral-only transportation service under new Rate Schedule FTS–LAT.

Columbia states that it is proposing to establish Rate Schedule FTS–LAT to provide for firm transportation service on lateral facilities newly constructed for the benefit of a customer or customers. The rate schedule and tariff sheets being filed establish a tariff framework that will enable Columbia to construct and provide transportation service on discrete lateral facilities at incremental rates as requested by customers. The incremental rates for transportation service on a discrete lateral facilities when constructed will be filed and administered under the rate schedule framework proposed herein, including for Columbia's proposed Marcus Hook Lateral in a related certificate filing. Service on the new incrementally priced lateral facilities under Rate Schedule FTS–LAT will not include service under existing Columbia transportation rate schedules. Rate Schedule FTS–LAT is closely modeled after a similar lateral-only type service previously authorized by the Commission.

Columbia is also making conforming changes to its tariff to reflect the addition of this new rate schedule in its tariff.

Columbia states that copies of this filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11890 Filed 5–10–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1363–000]

Coral Energy Management, LLC; Notice of Issuance of Order

May 7, 2001.

Coral Energy Management, LLC (Coral) submitted for filing a rate schedule under which Coral will engage in wholesale electric power and energy transactions at market-based rates. Coral also requested waiver of various Commission regulations. In particular, Coral requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Coral.

On April 17, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Coral should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Coral is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant,and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Coral's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 17, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11885 Filed 5–10–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP01–180–000, CP01–181–000 and CP01–182–000]

Cypress Natural Gas Company, L.L.C.; Notice of Applications

May 7, 2001.

Take notice that on April 25, 2001, Cypress Natural Gas Company, L.L.C. (Cypress), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed applications pursuant to Section 7(c) of the Natural Gas Act. In Docket No. CP01–180–000, Cypress seeks a certificate of public convenience and necessity authorizing it to construct, install and operate pipeline, compression, and metering facilities, as well as acquire certain pipeline facilities. In Docket No. CP01–181–000, Cypress seeks a blanket certificate pursuant to 18 CFR Part 284, Subpart G of the Commission's Regulations for self-implementing transportation authority. In Docket No. CP01–182–000, Cypress seeks a certificate of public convenience and necessity to construct and operate natural gas pipeline facilities under Part 157, Subpart E of the Commission's Regulations. Cypress' proposals are more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Cypress proposes in Docket No. CP01–180–000 to construct and operate 166 miles of 24-inch pipeline from an interconnection with the facilities of Southern Natural Gas Company

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(Southern) in Chatham County, Georgia to an interconnection with the facilities of Florida Gas Transmission Company in Clay County, Georgia. In addition, Cypress proposes to construct and operate at 13,000 horsepower compressor station and four metering stations. Cypress states that the capacity of the proposed pipeline is 310,000 Mcf per day. Further, Cypress seeks authorization to acquire an undivided interest in 310,000 Mcf per day of capacity on Southern's existing pipeline between Elba Island, Georgia and the proposed interconnection between Southern and Cypress in Chatham County, Georgia. Cypress states that the estimated cost of the proposed facilities is approximately $236.1 million and when the cost of acquiring the interest in Southern's facilities is included, the estimated cost is approximately $241.7 million. Cypress states that the project will be financed with equity contributions from its parent, Southern.

Cypress proposes to provide open access firm and interruptible service under Rate Schedules FT and IT, respectively. Cypress will offer both negotiated and recourse rates. Cypress designed its recourse rate using the straight fixed-variable method. Cypress states that its firm rate is designed to recover all fixed costs, less $500,000 which will be allocated to interruptible transportation service, through the monthly reservation charge. Cypress states that variable costs, except compressor power costs and gas lost and unaccounted for, will be recovered through the commodity charge. According to Cypress, compressor power costs and gas lost and unaccounted for are to be recovered through a fuel retention percentage of 0.5%. Cypress has also included a *pro forma* FERC Gas Tariff.

Cypress asserts that its project will provide a new source of supply—regasified liquefied natural gas (LMG) from the reactivated Southern LNG terminal at Elba Island, Georgia—to markets in south Georgia and north Florida, including new gas-fired electric generation. Further, Cypress states that its proposal is consistent with the Commission's statement of policy on certification of new interstate natural gas pipeline facilities. Cypress requests a preliminary determination on non-environmental issues by October 1, 2001, and final certificate authorization by August 1, 2002. Cypress states that this will allow construction to be completed by its proposed in-service date of June 1, 2003.

Any questions regarding the application should be directed to Patricia S. Francis, Senior Counsel, Cypress Natural Gas Company, L.L.C., P.O. Box 2563, Birmingham, Alabama 35202–2563 at 205–325–7696.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before May 29, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

David P. Boergers,

Secretary.

[FR Doc. 01–11865 Filed 5–10–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–402–000]

Destin Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

May 7, 2001.

Take notice that on May 2, 2001 Destin Pipeline Company, L.L.C. (Destin) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Third Revised Sheet No. 65 with a proposed effective date of June 1, 2001.

Destin states that the filing is being made to clarify Section 8.3 of Destin's General Terms and Conditions (force majeure provision) to the effect that a force majeure declaration by a shipper does not excuse such shipper from the payment of any applicable reservation charges during the period of the force majeure.

Destin states that a copy of this filing has been served upon is customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11887 Filed 5–10–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1169–000]

Nicor Energy, L.L.C; Notice of Issuance of Order

May 7, 2001.

Nicor Energy, L.L.C. (Nicor) submitted for filing a rate schedule under which Nicor will engage in wholesale electric power and energy transactions at market-based rates. Nicor also requested waiver of various Commission regulations. In particular, Nicor requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Nicor.

On April 17, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Nicor should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Nicor is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Nicor's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 17, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11886 Filed 5–10–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–403–000]

OkTex Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

May 7, 2001.

Take notice that on May 2, 2001, OkTex Pipeline Company (OkTex), filed revised tariff sheets in compliance with the Commission's directives in Order No. 587–M.

OkTex states that the tariff sheets reflect the changes to OkTex's tariff that result from the Gas Industry Standards Board's (GISB) consensus standards that were adopted by the Commission in its November 30, 2000 Order No. 587–M in Docket No. RM96–1–015. OkTex will implement the GISB consensus standards for May 1, 2001 business, and that the revised tariff sheets therefore reflect an effective date of May 1, 2001.

OkTex states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11888 Filed 5–10–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–404–000]

Overthrust Pipeline Company; Notice of Tariff Filing

May 7, 2001.

Take notice that on May 3, 2001, Overthrust Pipeline Company (Overthrust) tendered for filing of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective June 4, 2001:

Seventh Revised Sheet No. 1

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Third Revised Sheet No. 11
Second Revised Sheets No. 13 and 14
Original Sheet No. 15
Third Revised Sheet No. 20
Second Revised Sheet No. 22
Tenth Revised Sheet No. 30
Original Sheet Nos. 78F to 78I

Overthrust states that the tendered tariff sheets revise Overthrust's FERC Gas Tariff to implement provisions permitting Overthrust and its shippers to negotiate mutually acceptable rates as provided by the Commission's Policy Statement issued January 31, 1996, in Docket No. RM95–6 (the Policy Statement). Overthrust's negotiated-rate option would apply to its open-access services under Rate Schedules FT and IT. In the Policy Statement, the Commission stated, among other things, that it would allow pipelines to implement a negotiated/recourse-rate program. Under such a program, the pipeline's existing tariff rates would constitute its recourse rates. With the implementation of this service, a shipper that voluntarily elects not to take transportation service under the recourse rate may negotiate with Overthrust for a rate that is not limited by the stated tariff rates.

Overthrust states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reverence Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11891 Filed 5–10–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–400–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

May 7, 2001.

Take notice that on May 1, 2001, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A certain tariff sheets to reflect various minor cleanup changes and clarifications. GTN requests that these tariff sheets become effective June 1, 2001.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 38.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11889 Filed 5–10–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–626–003]

Transwestern Pipeline Company; Notice of Compliance Filing

May 7, 2001.

Take notice that on April 13, 2001, Transwestern Pipeline Company (Transwestern) filed a letter to comply with the Commission's March 14, 2001, order in this proceeding.[1] The letter explain's (1) Why its proposed netting and trading proposal relies on dollar values as opposed to volumetric trades, (2) whether imbalances on its system could be netted and traded on a volumetric basis, and (3) how existing Section 27.1(e) of Transwestern's tariff, which provides for the make up of imbalances on an in-kind basis, would operate with Transwestern's proposed new tariff language.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before May 14, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11894 Filed 5–10–01; 8:45 am]

BILLING CODE 6717–01–M

[1] 94 FERC ¶ 61,249 (2001).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP96–129–014 and RP91–54–014]

Trunkline Gas Company; Notice of Compliance Filing

May 7, 2001.

Take notice that on April 23, 2001, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, to become effective May 1, 2001.

Trunkline states that this filing is being filed to implement the terms of the January 29, 2001 Stipulation and Agreement in Docket No. RP96–129–000 and RP91–54–000 (Not Consolidated) (Settlement). The Settlement has been approved by the Commission's Order Approving Settlement issued April 12, 2001.[1]

Trunkline states that copies of the filing are being served on all jurisdictional customers, interested state regulatory agencies and parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc/fed/us/online/rims. htm (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www/ferc/fed/us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11892 Filed 5–10–01; 8:45 am]

BILLING CODE 6717–01–M

[1] 95 FERC ¶ 61,049 (2001).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–318–001]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

May 7, 2001.

Take notice that on May 3, 2001, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing its response to the Commission's Order On Filings In Compliance With Order No. 587–M, issued Arpil 26, 2001 in Docket No. RM96–1–015.

Williston Basin states that it believes it has already complied with the Commission's Order since Williston Basin adopted by reference in its March 30, 2001 compliance filing in Docket No. RP01–318–000 GISB's revised Standard 5.3.30 by listing such standard under the Capacity Release section of Subsection 47.2 of Seventh Revised Sheet No. 371.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–11893 Filed 5–10–01; 8:45 am]

BILLING DATE 6717–01–M

DEPARTMENT OF ENERGY

Southwestern Power Administration

Integrated System Rate Schedules

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of proposed extension.

SUMMARY: Southwestern Power Administration's (Southwestern's) current Integrated System Rate Schedules P–98D, NFTS–98D and EE–98 expire September 30, 2001. Southwestern's Administrator has prepared Current and Revised Fiscal Year (FY) 2001 Power Repayment Studies for the Integrated System which show the need for a rate adjustment of $1,876,231 (1.8 percent increase) in annual revenues. It is proposed that this rate adjustment will be deferred in accordance with Southwestern's rate adjustment threshold and that an extension of the aforementioned rate schedules from October 1, 2001 to September 30, 2002, will be sent to the Deputy Secretary of Energy for interim approval.

DATES: Written comments are due on or before June 11, 2001.

ADDRESSES: Written comments should be submitted to the Administrator, Southwestern Power Administration, U.S. Department of Energy, One West Third Street, Tulsa, Oklahoma 74103.

FOR FURTHER INFORMATION CONTACT: Forrest E. Reeves,Assistant Administrator,Office of Corporate Operations,Southwestern Power Administration,Department of Energy,One West Third Street,Tulsa, Oklahoma 74103,(918) 595–6696, *reeves@swpa.gov*

SUPPLEMENTARY INFORMATION:

a. Decision

Following DOE Order Number RA 6120.2, Southwestern's Administrator prepared a FY 2001 Current Power Repayment Study (PRS) using the existing Integrated System rate schedules. The Current PRS showed that current revenues were insufficient to meet repayment criteria. The FY 2001 Revised PRS indicates that an increase in annual revenues of $1,876,231, or 1.8 percent would satisfy cost recovery requirements.

Southwestern generally defers an indicated rate adjustment that falls within Southwestern's plus-or-minus two percent rate adjustment threshold. The threshold was developed to minimize Southwestern's costs while still maintaining adequate rates and is consistent with cost recovery criteria within DOE Order Number RA 6120.2 regarding rate adjustment plans. As a result of the benefits of reduced Federal expense and rate stability obtained by a rate adjustment deferral, Southwestern's Administrator is proposing to extend the current Integrated System Rate Schedules (P–98D, NFTS–98D and EE–98). The rate schedules are to be effective for a one-year period beginning

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October 1, 2001, and extending through September 30, 2002.

Following review of the written comments (absent any substantive reasons to do otherwise), the Administrator will submit the rate extension proposal for the Integrated System to the Deputy Secretary of Energy for confirmation and interim approval.

b. Rationale for the Decision

The Integrated System's FY 2000 (last year's) PRS concluded that the annual revenues needed to be increased by 0.4 percent. At that time, it was determined prudent to defer the increase in accordance with the established threshold and the current rate schedule was continued for one year. It once again seems prudent to defer this potential rate adjustment in accordance with Southwestern's rate adjustment threshold and re-evaluate the ability of the existing rate to provide sufficient revenues to satisfy costs projected in the FY 2002 (next year's) PRS. In accordance with 10 CFR Sections 903.22(h) and 903.23(a)(3), the Deputy Secretary may extend existing rates on an interim basis beyond the period specified by the FERC.

The current rate schedules for the Integrated System were confirmed and approved by the FERC on a final basis on April 29, 1998, for a period that is to end September 30, 2001. Since initial FERC approval, specific provisions within rate schedules P–98A and NFTS–98 have been revised to address issues that have arisen from restructuring of the electric industry. Rate schedules were redesignated 98B, 98C and 98D with each revision. All subsequent revisions of the Integrated System rate schedules through 98C have been approved by FERC. Rate schedules P–98D and NFTS–98D are currently under FERC review for final approval. These revisions had no impacts on the initially established revenue requirements for Southwestern's Integrated System. In addition, no change was made to the expiration date, September 30, 2001. Consequently, the net result of the revenue requirements projected in the FY1997 Integrated System Power Repayment Studies, which provided the basis for the existing rate schedules, is not changed.

c. Background

The U.S. Department of Energy was created by an Act of the U.S. Congress, Department of Energy Organization Act, Pub. L. 95–91, dated August 4, 1977, and Southwestern's power marketing activities were transferred from the Department of the Interior to the Department of Energy, effective October 1, 1977.

Southwestern markets power from 24 multiple-purpose reservoir projects with power facilities constructed and operated by the U.S. Army Corps of Engineers (Corps). These projects are located in the States of Arkansas, Missouri, Oklahoma and Texas. Southwestern's marketing area includes these states plus Kansas and Louisiana. Southwestern's Integrated System is comprised of 22 of these projects interconnected through Southwestern's transmission system and exchange agreements with other utilities. The other two projects (Sam Rayburn and Robert Douglas Willis) are not interconnected with Southwestern's Integrated System. Their power is marketed under contracts through which two customers purchase the entire power output of each of the projects at the dams.

d. Availability of Information

Opportunity is presented for customers and interested parties to receive copies of the study data for the Integrated System. If you desire a copy of this information, please submit your request to: Mr. James W. Sherwood, Division Director, Division of Rates and Repayment, Office of Corporate Operations, One West Third Street, Tulsa, OK 74103, call (918) 595–6673 or e-mail *sherwood@swpa.gov*.

Dated: April 26, 2001.

Michael A. Deihl,

Administrator.

[FR Doc. 01–11929 Filed 5–10–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Southwestern Power Administration

Proposed Sam Rayburn and Robert D. Willis Project Power Rate Changes

AGENCY: Southwestern Power Administration, (DOE).

ACTION: Notice of opportunities for public review and comment

SUMMARY: The Administrator, Southwestern Power Administration (Southwestern), has prepared Current and Revised 2001 Power Repayment Studies (PRS) for the Sam Rayburn Dam (Rayburn) and Robert D. Willis (Willis) projects that demonstrate the need for an adjustment in annual revenues required to meet cost recovery criteria for each project. The PRS for Rayburn indicates the need for an annual revenue decrease of $90,504. This decrease results from a decrease in projected replacements. The PRS for the Willis project indicates the need for an annual revenue increase of $12,816. The Willis increase results from an increase in the annual estimates for Operations and Maintenance costs of the Corps of Engineers. The Administrator has developed proposed rate schedules for the Rayburn and Willis projects to assure recovery of the required costs. The proposed rate adjustment for the Rayburn project would decrease annual revenues from $2,168,136 to $2,077,632 or 4.2 percent. The proposed Willis rate adjustment increases annual revenues approximately 3.8 percent from $337,932 to $350,748. Both rate changes will be effective October 1, 2001.

DATES: A Public Information Forum has been scheduled for June 14, 2001, in Tulsa Oklahoma. A Public Comment Forum will be held July 18, 2001, in Tulsa, Oklahoma. Written comments are due on or before August 9, 2001. Southwestern is conducting a 90 day public notice and comment period (10 CFR 903.14(d)) to process both the Rayburn and Willis rate adjustments at the same time.

ADDRESSES: Written comments should be submitted to the Administrator, Southwestern Power Administration, U.S. Department of Energy, One West Third Street, Tulsa, Oklahoma 74103.

FOR FURTHER INFORMATION CONTACT: Mr. Forrest E. Reeves,Assistant Administrator,Office of Corporate Operations,Southwestern Power Administration,U.S. Department of Energy,One West Third Street,Tulsa, Oklahoma 74103,(918) 595–6696.

SUPPLEMENTARY INFORMATION:

a. Background

The U.S. Department of Energy was created by an Act of the U.S. Congress, Department of Energy Organization Act, Pub. L. 95–91, dated August 4, 1977, and Southwestern's power marketing activities were transferred from the Department of the Interior to the Department of Energy, effective October 1, 1977.

Southwestern markets power from 24 multiple-purpose reservoir projects with power facilities constructed and operated by the U.S. Army Corps of Engineers. These projects are located in the states of Arkansas, Missouri, Oklahoma and Texas. Southwestern's marketing area includes these states plus Kansas and Louisiana. Of the total, 22 projects comprise an Integrated System and are interconnected through Southwestern's transmission system and exchange agreements with other utilities. The Rayburn project, located in eastern Texas, is not interconnected

with Southwestern's Integrated System hydraulically, electrically, or financially. Instead, the power produced by the Rayburn project is marketed by Southwestern as an isolated project under a contract through which the customer purchases the entire power output of the project at the dam. The Willis project, located on the Neches River downstream from the Rayburn, consists of two 4,000 kilowatt hydroelectric generating units. It, like the Rayburn project, is marketed as an isolated project under a contract through which the customer receives the entire output of the project for a period of 50 years as a result of funding the construction of the hydroelectric facilities at the project. A separate PRS is prepared for each project based on its isolated project determination.

b. Decision and Rationale

Following Department of Energy Order Number RA 6120.2, the Administrator, Southwestern, prepared a Current PRS for the Rayburn project using the existing annual rate of $2,168,136. The study indicates that by maintaining the current rate, surpluses would result in FY 2018, the year the project investment is due, and in the 50th year of the study. This is primarily the result of reduced estimated replacement investment. The Revised PRS indicates that by decreasing revenues $90,504 (4.2 percent) annually, repayment criteria would continue to be met.

The Current PRS for the Willis project indicates that by maintaining the current rate, a revenue deficit is shown for the project. This is primarily a result of an increase in the Corps of Engineers estimated Operations and Maintenance costs. The Revised PRS for the Willis project shows that an increase of $12,816 (3.8 percent) annually will be sufficient to satisfy repayment criteria. This increase would change annual revenues produced by the Willis Project from $337,932 to $350,748 and satisfy the present financial criteria for repayment of the project.

c. Availability of Information

Opportunity is presented for customers and interested parties to receive copies of the studies and proposed rate schedule for the Rayburn and Willis projects. If you desire a copy of the Repayment Study Data Package for these projects, please submit your request to: Mr. James W. Sherwood, Director, Division of Rates and Repayment, One West Third Street, Tulsa, OK 74103, (918) 595–6673 or e-mail *sherwood@swpa.gov*.

A Public Information Forum is scheduled to be held at 1:30 p.m., central daylight time (C.D.T.) Thursday, June 14, 2001, in Southwestern's offices, room 1600, Williams Center Tower 1, One West Third Street, Tulsa, Oklahoma. The Forum is to explain to customers and interested parties the proposed rates and supporting studies. The Forum will be conducted by a chairperson who will be responsible for orderly procedure. Questions concerning the rates, studies and information presented at the forum may be submitted from interested persons and will be answered, to the extent possible, at the forum. Questions not answered at the Forum will be answered in writing, except the questions involving voluminous data contained in Southwestern's records may best be answered by consultation and review of pertinent records at Southwestern's offices. Persons interested in attending the Public Information Forum should indicate in writing by 4 p.m., C.D.T., Friday, June 8, 2001, their intent to appear at such Forum. Accordingly, if no one so indicates their intent to attend, no such Forum will be held.

A Public Comment Forum is scheduled to be held at 1:30 p.m., C.D.T., Thursday, July 18, 2001, at the same location established for the Public Information Forum. At the Public Comment Forum, interested persons may submit written comments or make oral presentations of their views and comments. This forum will also be conducted by a chairperson who will be responsible for orderly procedure. Southwestern's representatives will be present, and they and the chairperson may ask questions of speakers. The chairperson may allow others to speak if time permits. Persons interested in attending or speaking at the Public Comment Forum should indicate in writing by 4 p.m., C.D.T., Friday, July 13, 2001, their intent to appear at such Forum. Accordingly, if no one so indicates their intent to attend, no such Forum will be held.

A transcript of each Forum will be made. Copies of the transcripts may be obtained from the transcribing service. Copies of all documents introduced will be available from Southwestern upon request, for a fee. Written comments on the proposed rates for the Rayburn and Willis projects are due on or before 90 days from publication of this notice in the **Federal Register**. Written comments should be submitted to the Administrator, Southwestern Power Administration, U. S. Department of Energy, One West Third Street, Tulsa, Oklahoma 74103.

Following review of the oral and written comments, the Administrator will submit the rate proposals and the Power Repayment Studies for the Rayburn and Willis projects, in support of the proposed rates, to the Deputy Secretary of Energy for confirmation and approval on an interim basis and then to the Federal Energy Regulatory Commission (FERC) for confirmation and approval on a final basis. The FERC will allow the public an additional opportunity to provide written comments on the proposed rate adjustments before making a final decision.

Dated: April 27, 2001.

George C. Grisaffe,

Acting Administrator.

[FR Doc. 01–11928 Filed 5–10–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Post-2004 Resource Pool-Loveland Area Projects

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed allocation.

SUMMARY: Western Area Power Administration (Western), a Federal power marketing agency of the Department of Energy (DOE), announces its Post-2004 Resource Pool Proposed Allocation of Power developed under the requirements of Subpart C—Power Marketing Initiative of the Energy Planning and Management Program (Program) Final Rule, 10 CFR part 905.

Western's call for applications was published in the **Federal Register** at 65 FR 12987, March 10, 2000. Applications for power were accepted at Western's Rocky Mountain Customer Service Region until close of business September 6, 2000. Review of those applications resulted in the Proposed Allocation of Power published in this notice.

DATES: The comment period on the Proposed Allocation of Power begins today and ends September 10, 2001. To be assured of consideration, Western must receive all written comments by the end of the comment period. Western will hold public information forums about the proposed allocations on August 2, 7, and 9, 2001, at the following locations and times:

1. August 2, 2001, information forum begins at 10 a.m. in Westminster, Colorado.

2. August 7, 2001, information forum begins at 10 a.m. in Casper, Wyoming.

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3. August 9, 2001, information forum begins at 10 a.m. in Topeka, Kansas.

ADDRESSES: Send written comments about these proposed allocations to: Mr. Joel K. Bladow, Regional Manager, Rocky Mountain Customer Service Region, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003. Comments may also be faxed to 970–461–7213 or e-mailed to POST2004LAP@WAPA.GOV. All documentation developed or retained by Western for the purpose of developing the proposed allocations is available for inspection and copying at the Rocky Mountain Customer Service Region Office, at 5555 East Crossroads Boulevard, Loveland, CO 80538–8986.

Public information forums will be held at:

1. Fairfield Inn, 12080 Melody Drive, Westminster, Colorado.
2. Holiday Inn Casper, 300 West "F" Street, Casper, Wyoming.
3. Capitol Plaza Hotel, 1717 SW Topeka Boulevard, Topeka, Kansas.

FOR FURTHER INFORMATION CONTACT: Ron Steinbach, Power Marketing Manager, 970–461–7322; David Holland, Project Manager, 970–461–7505; or Susan Steshyn, Public Utilities Specialist, 970–461–7237. Written requests for information should be sent to Rocky Mountain Customer Service Region, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003, faxed to 970–461–7213, or e-mailed to POST2004LAP@WAPA.GOV.

SUPPLEMENTARY INFORMATION: Western published Final Post-2004 Resource Pool Allocation Procedures on August 29, 2000, at 65 FR 52419, to implement Subpart C—Power Marketing Initiative of the Program's Final Rule, 10 CFR part 905, published at 60 FR 54151. The Program, developed in part to implement section 114 of the Energy Policy Act of 1992, became effective on November 20, 1995. The goal of the Program is to require planning and efficient electric energy use by Western's long-term firm power customers and to extend Western's firm power resource commitments. One aspect of the Program is to establish project-specific power resource pools and allocate power from these pools to new preference customers. Those final procedures, in conjunction with the Post-1989 Marketing Plan (51 FR 4012, January 31, 1986), establish the framework for allocating power from the resource pool established for the Loveland Area Projects (LAP). Only comments relevant to the proposed allocations will be accepted during the comment period. After all public comments have been thoroughly considered, Western will prepare and publish the Final Allocations of Power in the **Federal Register**.

I. Amount of Pool Resources

Western will allocate up to 4 percent of the LAP long-term firm hydroelectric resource available as of October 1, 2004, as firm power. Current hydrologic studies indicate that about 28 megawatts (MW) capacity and 44 Gigawatthours (GWh) of energy will be available for the summer season. Approximately 24 MW capacity and 35 GWh of energy will be available for the winter season. Firm power means firm capacity and associated energy allocated by Western and subject to the terms and conditions specified in Western's long-term firm power electric service contracts.

II. Proposed Allocation of Power

Written comments on the Proposed Allocation of Power must be received at the address above by close of business on September 10, 2001. Western will respond to comments received on the Proposed Allocation of Power and publish the final allocations after the end of the comment period.

Western received 40 applications for the Post-2004 LAP resource pool. Applicants requested total allocations of 1,900 GWh in the summer season and 1,700 GWh in the winter season. Proposed seasonal capacity allocations for all allottees are based on the proposed seasonal energy data shown in the following tables and is calculated from the LAP seasonal plant factors of 36.7 percent in the summer season and 33.4 percent in the winter season. Initial review of the applications indicated that 6 of the 40 applicants did not meet the minimum allocation qualifications published at 65 FR 52419. Review of data from the remaining 34 applicants resulted in 25 proposed allocations of the Post-2004 LAP resource pool.

The proposed allocations for Native American allottees are shown in this table.

Native American allottees	Proposed post-2004 power allocation			
	Summer kilowatthours	Winter kilowatthours	Summer kilowatts	Winter kilowatts
Iowa Tribe of Kansas and Nebraska	1,986,640	1,722,043	1,232	1,180
Kickapoo Tribe in Kansas	2,760,701	2,323,337	1,713	1,592
Prairie Band Potawatomi Nation	5,536,170	4,458,846	3,435	3,056
Sac and Fox Nation of Missouri	2,690,754	2,289,904	1,669	1,570
Wind River Reservation (Eastern Shoshone and Northern Arapaho Tribes)	1,828,963	1,718,007	1,135	1,178

Facilities that represented non Native American load on the reservations were not considered as eligible for the allocation process. Native American facilities that were completed or substantially near completion on the application due date were considered eligible load. The Native American seasonal energy data was adjusted to account for those eligibility factors prior to the allocation process.

Native American allottees received a Western hydropower benefit totaling 65 percent of eligible load in both the summer and winter season based on the adjusted seasonal energy data submitted. The 65 percent Western hydropower benefit is inclusive of current service received through serving utilities and future service that will be received by serving utilities as a result of this allocation process.

Based on the applications submitted by the Northern Arapaho and the Eastern Shoshone tribes, Western could not differentiate between each tribe's load. The data from each tribe was used to propose an allocation for the Wind River Reservation instead of each tribe. The 65 percent Western hydropower benefit for the Wind River Reservation includes an estimated allocation from Western's Salt Lake City Area Integrated Projects resource pool and the Western service currently received from the Reservation's serving utility.

After proposed allocations were made to Native American allottees, utility and nonutility proposed allocations were allotted based on a pro-rata share of the remaining resource pool and application of the minimum and maximum allocation criteria to that pro-rata share. The proposed allocations for utility and nonutility allottees are listed here.

Utility and nonutility allottees	Proposed post-2004 power allocation			
	Summer kilowatthours	Winter kilowatthours	Summer kilowatts	Winter kilowatts
City of Chapman, KS	257,680	169,378	160	116
City of Elwood, KS	169,562	145,528	105	100
City of Eudora, KS	998,125	691,651	619	474
City of Fountain, CO	3,785,880	2,872,807	2,349	1,969
City of Garden City, KS	3,785,880	2,872,807	2,349	1,969
City of Goodland, KS	1,588,254	1,230,315	985	843
City of Horton, KS	441,108	317,470	273	218
City of Hugoton, KS	753,878	637,494	468	437
City of Johnson City, KS	446,670	340,573	277	233
City of Meade, KS	504,527	316,964	313	217
City of Minneapolis, KS	544,660	343,822	338	236
City of Troy, KS	195,112	152,529	121	105
Doniphan Electric Cooperative Association, Inc., KS	467,191	389,080	290	267
Fort Carson, CO	3,188,774	2,678,064	1,978	1,836
Kaw Valley Electric, KS	3,334,693	2,486,473	2,069	1,704
Midwest Energy, Inc., KS	3,785,880	2,872,807	2,349	1,969
Nemaha-Marshall Electric Cooperative Association, Inc., KS	1,145,788	984,083	711	674
Regional Transportation District, Denver, CO	331,820	291,245	206	200
Sunflower Electric Power Corporation, KS	3,785,880	2,872,807	2,349	1,969
Yellowstone National Park, WY	224,113	146,018	139	100

The proposed allocations shown in the tables above are based on the LAP marketable resource available at this time. If the LAP marketable resource is adjusted in the future, all allocations will be adjusted accordingly.

III. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–621 (Act), requires Federal agencies to perform a regulatory flexibility analysis if a proposed regulation is likely to have a significant economic impact on a substantial number of small entities. Western has determined that (1) this rulemaking relates to services offered by Western, and, therefore, is not a rule within the purview of the Act, and (2) the impacts of an allocation from Western would not cause an adverse economic impact on a substantial number of such entities. The requirements of this Act can be waived if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. By the execution of this **Federal Register** notice, Western's Administrator certifies that no significant economic impact on a substantial number of small entities will occur.

IV. Review Under the Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, Western has received approval from the Office of Management and Budget (OMB) to collect customer information in this rule, under control number 1910–1200.

V. Review Under the National Environmental Policy Act

Western has completed an environmental impact statement on the Program, pursuant to the National Environmental Policy Act of 1969 (NEPA). The Record of Decision was published in the **Federal Register** on October 12, 1995 (60 FR 53181). Western's NEPA review assured all environmental effects related to these procedures have been analyzed.

VI. Determination Under Executive Order 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by OMB is required.

Dated: April 30, 2001.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 01–11927 Filed 5–10–01; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6617–8]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or www.epa.gov/oeca/of.

Weekly receipt of Environmental Impact Statements

Filed April 30, 2001 Through May 04, 2001

Pursuant to 40 CFR 1506.9.

EIS No. 010151, Draft EIS, AFS, IL, Midewin National Tallgrass Prairie, Proposed Land and Resource Management Plan, Implementation, Prairie Plan Development, Will County, IL, Comment Period Ends: September 06, 2001, Contact: Renee Thakali (815) 423–6370.

EIS No. 010152, Final EIS, USA, Programmatic EIS—Transportable Treatment Systems for Non-Stockpile Chemical Warfare Material (CWM), To Destroy Non-Stockpile in order to Protect Human, Health, Safety and the Environment, To Comply with the International Treaty, Nationwide, Wait Period Ends: June 11, 2001, Contact: John Gieseking (410) 436–8737.

EIS No. 010153, Draft Supplement, BLM, MT, Zortman and Landusky Mines Reclamation Plan, Modifications and Mine Life Extensions, Updated Information To Analyze Additional Reclamation Alternatives, Approval of Mine

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Operation, Mine Reclamation and COE Section 404 Permits, Little Rocky Mountains, Phillip County, MT, Comment Period Ends: July 09, 2001, Contact: Scott Haight (406)538–1930.

EIS No. 010154, Draft EIS, DOI, NV, Reno Clay Plant Project, Construct and Operate an Open-Pit Clay Mine and Ore Processing Facility, Plan of Operations, Oil-Dri Corporation of Nevada, Hungry Valley, Washoe County, NV, Comment Period Ends: July 10, 2001, Contact: Terri Knutson (775) 885–6156.

EIS No. 010155, Draft EIS, COE, NJ, Great Egg Harbor Inlet to Townsends Inlet, Storm Damage Reduction for Ocean City and Ludlam Island Utilizing Beachfill to Construct a Protective Berm and Dune, City of Ocean City, Strathmere (Township of Upper), City of Sea Isle City, Cape May County, NJ, Comment Period Ends: June 25, 2001, Contact: Steven Allen (215) 656–6559.

EIS No. 010156, Final EIS, JUS, AZ, Pinal County Private Detention Facility, Development and Operation of a Pre-Trail Detention Facility, Pinal County, AZ, Wait Period Ends: June 11, 2001, Contact: Charles Coburn (202) 307–9045.

EIS No. 010157, Draft EIS, BOP, CA, Fresno Federal Correctional Facility Development, Orange Cove, Fresno County, CA, Comment Period Ends: June 25, 2001, Contact: David J. Dorworth (202) 514–6470.

EIS No. 010158, Draft EIS, FHW, PA, Pennsylvania Turnpike/Interstate 95 Interchange Project, Pennsylvania Turnpike (I–276) and I–95 in Bucks County, PA Connection with Proposed Interstate Improvements Extending east into Burlington County, NJ, Funding, Buck County, PA and Burlington County, NJ, Comment Period Ends: July 02, 2001, Contact: James A. Cheatham (717) 221–3461.

EIS No. 010159, Draft Supplement, DOE, NV, Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste, Construction, Operation, Monitoring and Eventually Closing a Geologic Repository at Yuma Mountain, Update and Additional Information, Nye County, NV, Comment Period Ends: June 25, 2001, Contact: Jane R. Summerson (702) 794–1493.

EIS No. 010160, Final EIS, FHW, CO, South I–25 and US 85 Corridors Improvements, CO–470 to Castle Rock, Funding, Douglas County, CO, Wait Period Ends: June 11, 2001, Contact: Scott Sands (303) 969–6730.

EIS No. 010161, Draft EIS, USA, CO, Pueblo Chemical Depot, Destruction of Chemical Munitions, Design, Construction, Operation and Closure of a Facility, Pueblo County, CO, Comment Period Ends: June 25, 2001, Contact: Penny Robitaille (410) 436–4178.

EIS No. 010162, Draft EIS, DOD, AL, Assembled Chemical Weapons Destruction Technologies at One or More Sites, Design, Construction and Operation of One or More Pilot Test Facilities, Anniston Army Depot, AL; Pine Bluff Arsenal, AR; Blue Grass Army Depot, KY and Pueblo Chemical Depot, CO, Comment Period Ends: June 25, 2001, Contact: Jon Ware (410) 436–2210.

EIS No. 010163, Final EIS, AFS, WY, State of Wyoming School Section 16 T. 12N., R.83W., 6th P.M., Issuing a Forest Road Special-Use-Permit for Access, Medicine Bow-Routt National Forests, Brush Creek/Hayden Ranger District, Carbon County, WY, Wait Period Ends: June 11, 2001, Contact: Lynn Johnson 307–745–2300

Dated: May 8, 2001.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 01–11954 Filed 5–10–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6617–9]

Environmental Impacts Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental ReviewProcess (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements(EISs) was published in FR datedApril 14, 2000 (65 FR 20157) .

Draft EISs

ERP No. DA–FAA–F51040–IN Rating EC2 , IndianapolisInternational Airport Master Plan Development, UpdatedInformation to Construct a Midfield Terminal, Midfield Interchange, and Associated Developments, Airport Layout Plan Approval,Funding and Section 404 Permit, Marion County, IN

Summary: EPA continues to express concerns relating to the mitigation being provided for compensatory forested wetlands.

ERP No. DS–FTA–K40130–CA Rating LO , Los Angeles Eastside Corridor Transportation Improvement,Updated Information for Light Rail Transit (LRT) BuildAlternative and the Three Transition Options, Extending from Union Station to Beverly and Atlantic Boulevards in EastLos Angeles, via Alameda St., 1st. Street, Indiana St., 3rd Street, and Beverly Boulevard, Los Angeles County, CA

Summary: EPA found that the document adequately discussed the environmental impacts of the proposed project.

Final EISs

ERP No. F–FHW–G40151–TX, US–190 Corridor from FM2657 to the East City Limits of Copperas Cove,Transportation Improvements, Major Investment Study,Coryell and Lampasas Counties, TX

Summary: EPA has completed its review of the Final EIS and has no objection to the selection of the preferred alternative.

ERP No. F–NOA–A91066–00, Tilefish FisheryManagement Plan (FMP), (Lopholatilus Chamaeleonticep),To Prevent Overfishing and to Rebuild the Resource of Tilefish,Located along the Atlantic Ocean

Summary: EPA had environmental concerns about the proposed regulations and the sufficiency of the information in the document. EPA's concerns included the adequacy of the mitigation measures and the impacts of trawling on Tilefish EFH.

ERP No. F–NOA–K91008–00, Pelagic Fisheries of the Western Pacific Region, Fishery Management Plan,To Analyze Longline Fisheries, Commercial Troll and Recreational Troll Fisheries, Commercial PelagicHandliner and Commercial Pole and Line Skipjack Fishery,Hawaii, American Samoa, Guam and Commonwealth of the Northern Mariana Island

Summary: EPA reviewed the FEIS and found that the document adequately addresses the issues raised in our comment letter on the DEIS.

ERP No. F–FHW–H40168–MO, New MississippiRiver Crossing, Relocated I–70 and I–64 Connector, Funding,COE Section 404 and 10 Permits, NPDES Permit, St. Louis County, MO

Summary: EPA has no objections to this project as proposed.

Dated: May 8, 2001.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 01–11955 Filed 5–10–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6977–4]

Science Advisory Board; Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given several committees/subcommittees of the US EPA Science Advisory Board (SAB) will meet on the dates and times noted below. All times noted are Eastern Standard Time. All meetings are open to the public; however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—where appropriate, information concerning availability of documents from the relevant Program Office is included below.

1. NATA Review Panel Conference Call—May 14, 2001

It was recently announced in the **Federal Register** (66 FR 20802, April 25, 2001) that the National-Scale Air Toxics Assessment (NATA) Review Panel (hereafter, "NATA Review Panel") of the USEPA Science Advisory Board's (SAB) Executive Committee (EC) will conduct a public conference call on Monday, May 14, 2001 from 11 a.m. to 1 p.m. (Eastern Standard Time). The call will be hosted out of the EPA Science Advisory Board Conference Room (Room 6013), Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20004. Interested members of the public may attend in person or connect to the conference by phone. The original purpose of the call was to provide Panel Members with the opportunity to reach closure on their draft report. The Panel Members conducted a technical editing work session (non-Federal Advisory Committee Act (FACA) meeting) on April 24, 2001(see also 66 FR 9846, February 12, 2001). In the April 24, 2001 meeting, the Panel Members determined that they need more time to continue edits and will not have a public draft report available until after May 14, 2001. They elected to continue the May 14, 2001 conference call as a technical editing work session (non-FACA) meeting, in which the public could listen in, but where no comments would be solicited on the draft report, since it is still in preparation. The NATA Panel then scheduled a public conference call for May 25, 2001 from 10 a.m. to 12 noon, in which public comments could be made. See below for details of the review, to request any supplemental materials from the Agency or ask questions on materials already received from the Agency.

2. EC/NATA Review Panel Conference Call—May 25, 2001

On May 25, 2001, the NATA Review Panel will discuss its draft report in review of the EPA Document entitled "*National-Scale Air Toxics Assessment for 1996*," EPA–453/R–01–003, dated January, 2001 and supporting appendices. The conference call will take place from 10 a.m. to 12 noon (Eastern Standard Time). The call will be hosted out of the EPA Science Advisory Board Conference Room (Room 6013), Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20004. Interested members of the public may attend in person or connect to the conference by phone.

The document being reviewed represents an initial national-scale assessment of the potential health risks associated with inhalation exposures to 32 air toxics identified as priority pollutants by the Agency's Integrated Urban Air Toxics Strategy, plus diesel emissions. More information about the previous meetings can be found in 66 FR 9846, February 12, 2001, and 66 FR 20802, April 25, 2001. The NATA Review Panel is commenting on the charge questions which were outlined in the above FR notice and pertain to appropriateness of the overall approach, including the data, models, and methods used, and the ways these elements have been integrated, as well as to suggest ways to improve these approaches for subsequent national-scale assessments.

Providing Public Comments—We anticipate that the revised public draft of the NATA Report will be available to the public and the Agency on the SAB website (www.epa.sab.gov/sab) approximately one week prior to the May 25th meeting. The NATA Review Panel will accept oral or written public comments at the May 25, 2001 conference call, and is asking participants to focus on three aspects of the SAB NATA Panel's draft report, namely: (1) Has the NATA Review Panel adequately responded to the questions posed in the charge?; (2) Are any statements or responses made in the draft unclear?; and, (3) Are there any technical errors? Oral and written public comments were previously accepted at the March 20–21, 2001 meeting in review of this topic and new comments should be duplicative of these earlier comments.

For Further Information—To obtain information concerning this conference call, please contact Dr. K. Jack Kooyoomjian, Designated Federal Officer (DFO) (see contact information below). To obtain information about how to participate in this conference call, please contact Ms. Betty Fortune (see contact information below). A draft agenda for the teleconference will be posted on the SAB website (www.epa.gov/sab) approximately one week prior to the conference call. The draft report, once it becomes a consensus draft will also be posted on the SAB website. It is anticipated that this will be posted around May 21, 2001.

Availability of Review Materials—All the Agency OAQPS NATA-related review and informational materials, including the NATA Report, the Appendices, all briefing and presentation materials previously provided to the SAB were mentioned in earlier **Federal Register** notices (see above) and may be obtained on the web at the following URL site: http://www.epa.gov/ttn/uatw/sab/sabrev.html.

Alternately, a copy of the review document (*National-Scale Air Toxics Assessment for 1996*, EPA–453/R–01–003, dated January, 2001) and supporting appendices can be obtained from Ms. Barbara Miles at U.S. EPA, OAQPS/ESD/REAG (MD–13), Research Triangle Park, NC 27711; telephone (919) 541–5648; facsimile (919) 541–0840; e-mail *miles.barbara@epa.gov*. Please provide the title and the EPA number for the document, as well as your name and address. The document will be dispensed in CD ROM format unless the requestor requires a paper copy. Internet users may also download a copy from EPA's National Center for Environmental Assessment's (NCEA) website (*http://www.epa.gov/nata/*).

Following the May 25, 2001 conference call meeting, the NATA Review Panel plans to revise its draft report and forward it to the SAB Executive Committee for final review and approval, prior to transmittal to the Agency. This review will be announced in a subsequent **Federal Register** notice.

For Further Information—Members of the public desiring additional information about the meeting should contact Dr. K. Jack Kooyoomjian, Designated Federal Officer (DFO), Environmental Models Subcommittee, National-Scale Air Toxics Assessment Review Panel, US EPA Science Advisory Board (1400A), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (FedEx address: US EPA Science Advisory Board, Suite 6450, 1200 Pennsylvania Avenue, NW.,

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Washington, DC 20004); telephone/voice mail at (202) 564–4557; fax at (202) 501–0582; or via e-mail at *kooyoomjian.jack@epa.gov*. The draft agenda will be available approximately one week prior to the meetings on the SAB website (*http://www.epa.gov/sab*) or from Ms. Betty Fortune at (202) 564–4534; fax: (202) 501–0582; or e-mail at: *fortune.betty@epa.gov*.

Providing Public Comments—Members of the public who wish to make a brief oral presentation at the May 25th meeting must contact Dr. Kooyoomjian in writing (by letter, fax, or e-mail—see previously stated information) no later than 12 noon Eastern Time, Friday, May 18, 2001 in order to be included on the Agenda. Written statements will be accepted in the SAB Staff office up until two business days following the meeting (by close of business, May 29, 2001).

3. Ecological Processes and Effects Committee (EPEC)—Teleconference Meeting June 1, 2001

The Ecological Processes and Effects Committee's STAR Water and Watersheds (WW) Review Panel will meet by conference call from 1 to 3 p.m. Eastern time on Friday, June 1, 2001. Members of the public wishing to call-in to the teleconference must make arrangements with Ms. Mary Winston by noon the Tuesday *before* the meeting. Instructions about how to participate in the conference call can be obtained by calling Ms. Mary Winston, Management Assistant, at (202) 564–4538, or via e-mail at: *winston.mary@epa.gov*.

Purpose of the Meeting—The purpose of the conference call meeting is to allow the STAR WW Review Panel to complete discussion of the Agency's Science to Achieve Results (STAR) Water and Watersheds Program. The STAR WW Program was the subject of a public meeting of the Committee on April 20, 2001. Additional details on the background and charge for the review of the STAR WW Program were provided in 66 FR 15433–15434, dated March 19, 2001.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes. For conference call meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total, unless otherwise stated. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until two business days following the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file formats: WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

General Information—Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on our Website (http://www.epa.gov/sab) and in The FY2000 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact the appropriate DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: May 7, 2001.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 01–11914 Filed 5–10–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of New Exposure Draft Reporting Corrections of Errors and Changes in Accountng—Amendment of SFFAS 7, Accounting for Revenue and Other Financing Sources

Board Action: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October, 1999, notice is hereby given that the Federal Accounting Standards Advisory Board has published a new exposure draft, *Reporting Corrections of Errors and Changes in Accounting Principles—Amendment to SFFAS 7, Accounting for Revenue and Other Financing Sources.*

A summary of the proposed Statement follows: On May 11, 2001, the Federal Accounting Standards Advisory Board (FASAB) released for public comment an exposure draft (ED) to amend Statement of Federal Financial Accounting Standards (SFFAS) 7, Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting. The Chairman of the Federal Accounting Standards Advisory Board announced that the FASAB has issued an exposure draft of a proposed standard amending the reporting requirements for errors, discovered in the current year, that would have materially affected prior year financial statements. The current standard requires that adjustments be recognized as a change in cumulative results of operations (rather than as an element of net results of operations for the period) and that prior period financial statements not be restated for prior period adjustments recognized in the current period. The proposed amendment requires that when material errors are discovered in prior year financial statements, all statements presented must be restated to correct the error. The primary reason for proposing the amendment is to allow reporting entities to present comparative statements. The exposure draft, entitled Reporting Corrections of Errors and Changes in Accounting Principles, Amendment of SFFAS 7, Accounting for Revenue and Other Financing Sources, will be out for comment until June 11, 2001. The proposed amendment of SFFAS No. 7 would be effective for periods beginning after September 30, 2001.

The exposure draft will be mailed to FASAB's mailing list subscribers. Additionally, it is available on FASAB's home page *http://www.financenet.gov/fasab.htm*. Copies can be obtained by contacting FASAB at (202) 512–7350, or *palmer@fasab.gov*. For further information call Andrea Palmer (202) 512–7360.

Written comments are requested by June 11, 2001, and should be sent to: Wendy M. Comes, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street, NW., Suite 6814, Mail Stop 6K17V, Washington, DC 20548.

For Further Information, Contact: Wendy Comes, Executive Director, 441 G St., NW., Room 6814, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463.

Dated: May 8, 2001

Lucy Lomax,

Assistant Executive Director.

[FR Doc. 01–11935 Filed 5–10–01; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection system described below.

Type of Review: Renewal of a currently approved collection.

Title: Extensions of Credit to Executive Officers, Unsafe and Unsound Practices.

OMB Number: 3064–0108.

Annual Burden:

Estimated annual number of respondents: 4,000
Estimated number of responses: 8,000
Estimated time per response: 1 hour
Total annual burden hours: 8,000 hours

Expiration Date of OMB Clearance: June 30, 2001.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

FDIC Contact: Tamara R. Manly, (202) 898–7453, Office of the Executive Secretary, Room F–4058, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before June 11, 2001 to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collection of information, may be obtained by calling or writing the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The information collection and recordkeeping requirements are mandated by statute and take the form of (1) a report by executive officers of insured nonmember banks to their boards of directors within 10 days of incurring any indebtedness to any other bank in an amount in excess of the amount the insured nonmember bank could lend to the officer, and (2) a report from insured nonmember banks, included with their reports of condition filed with the FDIC, on any extensions of credit made by the bank to its executive officers since the bank filed its last report of condition.

Dated: May 7, 2001.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 01–11862 Filed 5–10–01; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:22 a.m. on Tuesday, May 8, 2001, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's supervisory activities.

In calling the meeting, the Board determined, on motion of Director John M. Reich (Appointive), seconded by Director Ellen S. Seidman (Director, Office of Thrift Supervision), concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: May 8, 2001.

Federal Deposit Insurance Corporation

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 01–12033 Filed 5–9–01; 12:17 pm]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 4, 2001.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

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1. Promistar Financial Corporation, Johnstown, Pennsylvania; to acquire 100 percent of the voting shares of, and merge with FNH Corporation, Herminie, Pennsylvania, and thereby indirectly acquire voting shares of First National Bank of Herminie, Herminie, Pennsylvania.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Porter Bancorp, Inc., Shepherdsville, Kentucky; to acquire 100 percent of the voting shares of USAccess Holdings, Inc., Louisville, Kentucky. USAccess Holdings, Inc., Louisville, Kentucky, has applied to become a bank holding company by acquiring at least 66 percent of the voting shares of USAccess Bank, Inc., Louisville, Kentucky.

In connection with this application, USAccess Holdings, Inc., Louisville, Kentucky, and Porter Bancorp, Inc., Sheperdsville, Kentucky have applied to acquire 100 percent of the voting shares of Interim Henry County Bank, Inc., Pleasureville, Kentucky.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. FlatIrons Bank Holding Company, Loveland, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of FlatIrons Bank, Boulder, Colorado.

Board of Governors of the Federal Reserve System, May 7, 2001.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 01–11872 Filed 5–10–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 7, 2001.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Ottawa Bancshares, Inc., Salina, Kansas; to acquire 100 percent of the voting shares of Admire Bancshares, Inc., Emporia, Kansas, and thereby indirectly acquire Admire Bank, Emporia, Kansas.

Board of Governors of the Federal Reserve System, May 8, 2001.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 01–11934 Filed 5–10–00; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 4, 2001.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Republic Bancorp, Inc., Owosso, Michigan; to acquire NetBank, Inc., Alpharetta, Georgia, and thereby indirectly acquire NetBank, Alpharetta, Georgia, and NetBank Partners, LLC, Alpharetta, Georgia, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y, and in management consulting and counseling activities, pursuant to § 225.28(b)(9)(i)(A)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, May 7, 2001.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 01–11873 Filed 5–10–01; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01097]

Reducing the Impact of Arthritis and Other Rheumatic Conditions; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program for Reducing the Impact of Arthritis and Other Rheumatic Conditions. This program addresses the "Healthy People 2010" focus area of Arthritis, Osteoporosis, and Chronic Back Conditions.

The purpose of the program is to further implement the National Arthritis Action Plan: A Public Health Strategy at the state level by building, developing, enhancing, implementing, and evaluating arthritis control and prevention programs. This arthritis program emphasizes State-based

leadership, coordination, and establishment or enhancement of State Health Department capacity to lead efforts to reduce the burden of arthritis within the State. Programmatic efforts should focus on persons affected by arthritis, i.e., persons already experiencing the symptoms of arthritis, their families, and others treating or providing services for persons with arthritis. By targeting persons affected by arthritis, prevention strategies are secondary and tertiary, focusing on prevention of disability and improving quality of life. Primary prevention activities, while worthy, will not be supported in this cooperative agreement.

B. Eligible Applicants

Assistance will be provided only to the health departments of States or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. The following states are not eligible to apply for funding under this announcement: Alabama, California, Georgia, Florida, Illinois, Minnesota, Missouri, and Utah. These States are currently funded to perform these activities and implement demonstration projects as State Planning Programs under Program Announcement 99074.

Eligibility is limited to State health departments because they are the only organizations capable of reducing the burden of Arthritis on a State-wide basis.

Note: Title 2 of the United States Code, Chapter 26,Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

C. Availability of Funds

Approximately $2.4 million is available in FY 2001 to fund approximately 18 to 24 awards. There will be two levels of activities for this announcement (see below for definitions). Approximately two to six awards will be for the Establishment Level I Program and approximately 16 to 20 awards will be for the Enhanced Establishment Level II Program. It is expected that the average award will be $100,000 ranging from $90,000 to $120,000. It is expected that the awards will begin on or about September 30, 2001, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds. Funds will be provided for a Level 1 and Level 2 Program.

Level 1—Establishment Program objective: is to assist States to establish the basic public health foundation to lead the development and the coordination of a state arthritis program among State Health Departments and other agencies. This includes the formulation of linkages and partnerships dedicated to the development and implementation of a State Plan for Arthritis and the implementation of one or more intervention activities in year two. Applicants eligible for Level 1 funding are those 21 States and Territories not currently receiving CDC funding for arthritis activities. Please refer to Attachment I for a listing of these States.

Level 2—Enhanced Establishment Program: Objective is to build on existing capacity and resources for States currently funded by CDC at level 1. States will be expected to have a current State Plan for Arthritis. Key activities will be to expand and maintain partnerships as appropriate, improve surveillance activities, implement one or more interventions, and coordinate arthritis activities within the State.

Eligible applicants for Level 2 funding are those 30 Establishment States which received CDC funding under program announcement 99074 "Reducing the Burden of Arthritis and Other Rheumatic Conditions."

Applicants may apply for Level 1-Establishment Program or Level 2-Enhanced Establishment Program, but not both.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1A. or 1B. (Recipient Activities), as appropriate, and CDC will be responsible for the activities listed under 2. (CDC Activities).

1A. Recipient Activities Level 1—Establishment Programs

a. *Staffing:* Establish a full-time arthritis program manager to oversee arthritis program activities and to promote an arthritis program within the State.

b. *Partnerships:* Establish an advisory group or coalition to guide, review, and provide direction for the State in all activities directed at reducing the burden of arthritis.

The advisory group, at a minimum, should include the local chapter(s) of the Arthritis Foundation. In addition, the state should consider the following as members of the advisory board or coalition:

(1) Individuals with expertise in arthritis;

(2) Agencies/organizations with activities relevant to arthritis, resources for arthritis activities, and access to target populations (*e.g.*, Area Agencies on Aging, Medicaid/Medicare, managed care organizations, American Association of Retired Persons, senior centers, and faith communities); and

(3) Persons with arthritis or family members of persons with arthritis. As appropriate, States should establish internal workgroups with other components of State government that are directly or indirectly involved in some aspect of arthritis control and prevention.

c. *Surveillance:* Define and monitor the burden of arthritis using the Behavioral Risk Factor Surveillance System (BRFSS) and other state-based data that contain information on arthritis. By the end of year two, States are encouraged to issue a State of Arthritis Report using, at a minimum, 2001 BRFSS arthritis data. Arthritis data will be collected by all states in calendar year 2001 through the BRFSS.

d. *State Plan:* Develop a State Plan for Arthritis that outlines a proposed framework for activities to reduce the burden of arthritis. This document should be planned with partners and include activities to be implemented by the partners. The plan should not address health department activities only.

e. *Interventions:* During year two, implement one or more strategies consistent with the Public Health Framework for Arthritis (Attachment II) with a focus on the immediate effects. Therefore, activities should be implemented with a focus on one or both of the following areas:

(1) *Self Management Interventions:* Broaden the reach of evidence-based self management programs, *e.g.*, the Arthritis Self Help Course (ASHC), the promotion of physical activity in individuals with arthritis using land/water-based exercise programs such as People with Arthritis Can Exercise® (PACE) and the Arthritis Foundation Aquatics Program. Applicants may consider other programs for which the applicant determined to be beneficial and effective in reducing the burden of arthritis.

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(2) *Health Communications Campaigns:* Develop or utilize health communications interventions that will increase/enhance knowledge and beliefs necessary for appropriate management of arthritis. Communications strategies should be designed to increase self management beliefs and behaviors and to increase the belief that self management is an important part of arthritis management. The communications activity can be targeted to people with arthritis and their families, the general public, or health professionals. CDC developed health communication material promoting physical activity may be used. A summary of this material will be posted at *www.cdc.gov/nccdphp/arthritis/index.htm.* Physician education efforts, while worthy, will not be considered as part of this activity.

1B. Recipient Activities Level 2—Enhanced Establishment Programs

a. *Staffing:* Establish a full time arthritis program manager to oversee arthritis program activities and to promote an arthritis program within the State.

b. *Interventions:* Implement one or more strategies from the State Plan that is consistent with the Public Health Framework for Arthritis (Attachment II) with a focus on the immediate effects as outlined in this framework. Therefore, activities should be implemented with a focus on one or both of the following areas:

(1) *Self Management Interventions:* Broaden the reach of evidence-based self management programs, e.g., the ASHC; the promotion of physical activity in individuals with arthritis using land/water-based exercise programs such as People with Arthritis Can Exercise" (PACE) and the Arthritis Foundation Aquatics Program. Applicant may consider other programs for which the applicant determined to be beneficial and effective in reducing the burden of arthritis.

(2) *Health Communications Campaigns:* Develop or utilize health communications interventions that will increase/enhance knowledge and beliefs necessary for appropriate management of arthritis. Communications strategies should be designed to increase self management beliefs and behaviors and to increase the belief that self-management is an important part of arthritis management. The communications activity can be targeted to people with arthritis and their families, the general public, and health professionals. CDC developed health communication material promoting physical activity may be used. A summary of this material will be posted at www.cdc.gov/nccdphp/arthritis/index.htm. Physician education efforts, while worthy, will not be considered as part of this activity.

c. *Partnerships:* Strengthen alliances among current partners. Coordinate or ensure the coordination of activities in the State Plan with other relevant programs, organizations, and groups. Coordinate and collaborate with other entities to maximize the effectiveness, impact, and support for these activities and reduce the potential for unnecessary duplication of effort. States are encouraged to creatively explore other linkage mechanisms and partnership opportunities.

d. *Surveillance:* Manage, analyze, interpret and disseminate State-based arthritis surveillance data and findings. By the end of year, two states are encouraged to issue a State of Arthritis Report using at a minimum, 2001 BRFSS data. Arthritis data was collected by all states in 2001 through the BRFSS. As appropriate, States should expand the existing arthritis surveillance system by examining the availability and/or use of other state-based data sources to supplement the BRFSS. Other data sources may include but are not limited to data from outpatient/ambulatory care settings, managed care organizations, and follow back surveys of BRFSS respondents. Pharmacy data may also prove useful to better define the burden of arthritis within the State.

2. CDC Activities

a. Provide consultation and technical assistance to plan, implement, and evaluate each component of the program.

b. Provide current information on the status of national efforts as they relate to the implementation of recipient activities.

c. As needed, provide technical assistance in the coordination of surveillance efforts and the use of other data systems to measure and characterize the burden of arthritis; provide standard analyses of BRFSS data for states; and provide data for national level comparisons.

d. Facilitate communication among arthritis programs, other government agencies and others involved in arthritis control and prevention efforts.

E. Content (All Applicants)

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The main body (narrative) of the application should be no more than 25 pages. The total number of pages should not exceed 60 pages including appendices. The abstract, budget narrative, and federal forms are not included in the page limits. The narrative must be typewritten, double spaced, printed on one side, with 12 point Times New Roman font on 8.5 by 11 inch paper, and with one inch margins. All graphics, maps, overlays, etc., should be in black and white and meet the above criteria. Your application must be submitted UNSTAPLED and UNBOUND.

Abstract

A one-page, single-spaced, typed abstract must be submitted with the application. The heading should include the title of the program, organization, name and address of the project director, telephone number, facsimile number, and e-mail address. The abstract should clearly state which level of activities the applicant is applying for: Level 1—Establishment Program or Level 2—Enhanced Establishment Program. The abstract should briefly list major program elements and activities. A table of contents that provides page numbers for each section should follow the abstract.

Budget

The budget should be reasonable, clearly justified, and consistent with the intended use of the cooperative agreement funds. The applicant must include a detailed budget justification. Budgets should include travel for one Arthritis Program staff to attend a two day meeting in Atlanta. Proposed sub-contracts should identify the name of the contractor, if known; describe the services to be performed; provide an itemized budget and justification for the estimated costs of the contract; specify the period of performance; and describe the method of selection. If indirect costs are requested, a copy of the current Indirect Cost Rate Agreement should be included.

F. Submission and Deadline

Application

Submit an original and two copies of CDC 0.1246. Forms are available in the application kit and at the following Internet address: *http://forms.psc.gov/.* On or before July 1, 2001, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement. Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the independent review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late Applications: Applications which do not meet the criteria in 1. or 2. above will be returned to the applicant.

G. Evaluation Criteria (100 Points for Each Level)

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

Level 1—Establishment Programs

1. Need/Current Status (15 Points)

The extent to which the applicant describes the burden of arthritis in the state, identifies what data sources are being used, the barriers the State currently faces in developing and implementing a program for arthritis, and identifies specific needs and resources available for arthritis activities.

2. Work Plan (Total 85 Points)

The extent to which the work plan includes objectives for each of the following areas: Staffing, partnership, surveillance, state plan, and interventions. For each proposed objective, the extent to which there is a description of methods, a time-line for completion, identification of program staff responsible for its achievement, and process evaluation measures. The extent to which all activities are realistic and feasible.

a. Staffing (25 Points)

The degree to which the proposed staff have the relevant background, qualifications, and experience. Specifically, the applicant should:

(1) (15 points) Describe the proposed or existing health department staff's role in promoting an arthritis program within the State, their specific responsibilities, and their level of effort and time. The degree of staff coordination between relevant programs within the state health department; the degree to which the organizational structure supports staff's ability to conduct proposed activities. An organizational chart, job descriptions, and resumes if available, should be included.

(2) (10 points) Include a plan to expedite filling of all positions and provide assurances that such positions will be authorized to be filled by the applicant's personnel system within a reasonable time after receiving funding. If all positions are filled, this criterion will be considered met.

b. Partnerships (20 Points)

(1) (10 points) The extent to which the applicant has included plans for partnerships with the local chapter(s) of the Arthritis Foundation, state and local agencies, federal agencies, and others with an interest in arthritis.If partnerships have been developed, the extent to which the applicant describes the process of development, provides evidence of a viable, ongoing partnership by including copies of agendas for all partnership meetings held for calender years 1999 and 2000.

(2) (10 points) The extent to which letters of support describe the nature and extent of involvement by outside partners.

c. Surveillance (20 Points)

The extent to which the applicant describes plans to monitor the burden of arthritis within the State using BRFSS data as a minimum. The extent to which the applicant describes future surveillance plans including data to be collected and its programmatic application. The extent to which the applicant provides a plan for the development and dissemination of a State of Arthritis Report.

d. State Plan (10 Points)

The extent to which the applicant describes the process of engaging relevant partners and developing a state arthritis plan. If a state plan has been developed, the extent to which the applicant describes the process of development and provides agendas for planning meetings and the executive summary of the state plan.

e. Interventions (10 Points)

The extent to which the process for selecting the intervention to be implemented in Year two is clearly described and justified. If an existing state plan or partnership has already provided guidance for choice of intervention, the extent to which the applicant describes the target population(s), rationale, and evaluation strategy.

3. Budget (Not Scored)

The extent to which the applicant provides a detailed budget and narrative justification consistent with stated objectives and planned program activities.

Level 2—Enhanced Establishment Program

1. Background/Current Status (15 Points)

The extent to which the applicant adequately describes the burden of arthritis within the State including the definition and data sources used. The extent to which the applicant describes barriers the State currently faces in further developing and implementing programs for the control of arthritis. The extent to which the funds will fill the gaps in the State's arthritis activities.

2. Work Plan (Total 85 Points)

The extent to which the work plan includes objectives for each of the following areas: staffing, partnership, surveillance, and interventions. For each proposed objective, the extent to which there is a description of methods, a time-line for completion, identification of the program staff responsible for its achievement, and process evaluation measures. The extent to which all activities are realistic and feasible.

a. Staffing and Management (25 Points)

The degree to which the existing or proposed staff have the relevant background, qualifications, and experience. Specifically, the applicant should:

(1) (15 points) Describe the existing or proposed health department staff role in promoting an arthritis program within the State; their specific responsibilities, and their level of effort and time. The degree of staff coordination between relevant programs within the state health department; the degree to which the organizational structure supports staff's ability to conduct proposed activities. An organizational chart, job descriptions, and resumes if available, should be included.

(2) (10 points) Describe the plan to expedite filling of all positions and provide assurances that such positions will be authorized to be filled by the applicant's personnel system within a reasonable time after receiving funding. If all positions are filled, this criterion will be considered met.

b. Partnerships (20 Points)

(1) (10 points) The extent to which the applicant describes the roles of advisory groups, partnerships, or coalition in the development and implementation of activities in the State Plan for Arthritis. The extent to which letters of support describe the nature and extent of involvement by outside partners.

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(2) (10 points) The extent to which the applicant has shown that partnerships have been ongoing and viable and have included copies of the following: (1) Agendas for all partnership meetings for calendar years 1999 and 2000; and (2) the executive summary and table of contents from the State Plan for Arthritis.

c. Surveillance (15 Points)

The extent to which the applicant describes the status of existing state-based arthritis surveillance. The extent to which the applicant describes future surveillance plans including data to be collected, the rationale for its selection and its programmatic application.

d. Interventions (25 Points)

The extent to which the applicant describes the proposed intervention(s) activity, the rationale for selection, the target population, the appropriateness of the intervention for the target population, and the implementation and evaluation strategies.

3. Budget (Not Scored)

The extent to which the applicant provides a detailed budget and narrative justification consistent with stated objectives and planned program activities.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semi-annual progress reports.
2. Financial status report, no more than 90 days after the end of the budget period;
3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment III in the application kit.

AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) and 317 of the Public Health Service Act, [42 U.S.C. section 241(a) and 247(b)], as amended. The Catalog of Federal Domestic Assistance number is 93.945.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov Click on "Funding" then "Grants and Cooperative Agreements". Should you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:

Michelle Copeland, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Program Announcement 01097, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: (770) 488–2686,E-mail address: stc8@cdc.gov

For program technical assistance, contact: Sakeena Smith, MPH, Senior Project Officer, Arthritis Program, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, Mailstop K–45, Atlanta, GA 30341, Telephone number: (770) 488–5440, E-mail address: SSmith1@cdc.gov

Dated: May 7, 2001.

Henry S. Cassell III,

Acting Director, Procurement and Grants Office,Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–11896 Filed 5–10–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97E–0465]

Determination of Regulatory Review Period for Purposes of Patent Extension; Baycol

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Baycol and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Regulatory Policy Staff (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued) FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Baycol (cerivastatin sodium). Baycol is indicated as an adjunct to diet for the reduction of elevated total and LDL cholesterol levels in patients with primary hypercholesterolemia and mixed dyslipidemia (Frederickson Types IIa and IIb) when the response to dietary restriction of saturated fat and cholesterol and other nonpharmacological measures alone has been inadequate. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Baycol (U.S. Patent No. 5,006,530) from Bayer Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated September 9, 1998, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Baycol represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Baycol is 2,262 days. Of this time, 1,896 days occurred during the testing phase of the regulatory review period, while 366 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective: April 19, 1991. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on April 19, 1991.

2. The date the application was initially submitted with respect to the human drug product under section 505 of the act: June 26, 1996. FDA has verified the applicant's claim that the new drug application (NDA) for Baycol (NDA 20–740) was initially submitted on June 26, 1996.

3. The date the application was approved: June 26, 1997. FDA has verified the applicant's claim that NDA 20–740 was approved on June 26, 1997.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 890 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (address above) written comments and ask for a redetermination by July 10, 2001. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 7, 2001. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 7, 2001.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 01–11961 Filed 5–10–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0177]

Draft Guidance for Industry on Immunotoxicology Evaluation of Investigational New Drugs; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Immunotoxicology Evaluation of Investigational New Drugs." This draft guidance provides recommendations for sponsors of investigational new drugs (INDs) on the parameters that should be routinely assessed in toxicology studies to determine effects on immune function, when additional specific immunotoxicity studies should be conducted, and when additional mechanistic information could better evaluate a given effect on the immune system.

DATES: Submit written comments on the draft guidance by August 9, 2001. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Joseph J. DeGeorge, Center for Drug Evaluation and Research (HFD–24), Food and Drug Administration, 5600 Fishers Lane,Rockville, MD 20857, 301–594–5476.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Immunotoxicology Evaluation of Investigational New Drugs." The immune system consists of a diffuse and complex set of cells and organs that have complicated interactions with each other and with other physiological systems. These complexities make the detection and evaluation of drug-induced immunotoxicity in animal models difficult. Immunotoxicologic findings could suggest the need for additional followup studies, particularly if the observed adverse effects are serious. The objective of these followup studies would be to investigate the nature and mechanism of the immunotoxic effects. Immunotoxicity findings could lead to modifications in proposed clinical trials or could be included in the investigator's brochure or product label. Rarely, immunotoxicity findings could indicate that a drug is unsafe for some types of clinical investigations or certain indications.

For the safety assessment of INDs, specific immunotoxicity testing should be conducted when drugs are to be administered by inhalation or topically. Specific immunotoxicity studies should also be considered for safety assessment purposes when: (1) The drug has the potential to elicit an anti-drug immune response; (2) use of the drug during pregnancy is likely; (3) there is an absence of immunotoxicity findings in the toxicology studies, but there is significant accumulation or retention of the drug in immune system tissues; or (4) the drug will be used to treat an immune-deficiency disease such as the human immunodeficiency virus (HIV). In most other instances, specific immunotoxicity studies are generally not needed to support initial clinical trials or continued development.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115; 65 FR 56468, September 19, 2000). The

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draft guidance represents the agency's current thinking on immunotoxicology evaluation of INDs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: May 4, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–11879 Filed 5–10–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–10040]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, Health and Human Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New collection; *Title of Information Collection:* NMEP Regional Survey of Medicare Beneficiaries; *Form No.:* HCFA–10040 (OMB# 0938–NEW); *Use:* HCFA is proposing to conduct a survey by selecting 2,000 Medicare beneficiaries per HCFA region from HCFA's administrative databases with oversampling for underserved populations as a part of the continuous assessment on the knowledge and understanding of the Medicare program and the NMEP/Medicare+Choice outreach and educational efforts to systematically quantify current knowledge and awareness and to assess future direction; *Frequency:* On occasion; *Affected Public:* Individuals or households, Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 20,000; *Total Annual Responses:* 20,000; *Total Annual Hours:* 5,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 2, 2001.

John P. Burke III,

Reports Clearance Officer, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–11869 Filed 5–10–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

HRSA AIDS Advisory Committee; Notice of Meeting; Correction

In **Federal Register** Document 01–10229 appearing on page 20820 in the issue for Wednesday, April 25, 2001, the location of the meeting scheduled on June 4, 2001, from 8:30 a.m.–5 p.m. has changed. This meeting will be held at: Holiday Inn Select (Conference Plaza),130 Claremont Avenue,Decatur, Georgia 30030,Telephone: 800–225–6079.

Dated: May 7, 2001.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 01–11880 Filed 5–10–01; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–34]

Notice of Submission of Proposed Information Collection to OMB; Annual Lead-Based Paint Activity Report

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 11, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0090) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department. This Notice also lists the following information:

Title of Proposal: Annual Lead-Based Paint Activity Report.

OMB Approval Number: 2577–0090.

Form Numbers: HUD–52850.

Description of the Need for the Information and Its Proposed Use: Public housing agencies (PHAs) and Tribally Designation Housing Entities (TDHEs) are requried to maintain records on tenant notificaiton, testing and abatement activities. These agencies are also required to provide tenants and purchasers a copy of all positive lead-based paint test results. HUD needs the information to assure statutory and regulatory compliance with the Lead-Based Paint Poisoning Prevention Act (LBPPPA). HUD reports the information to Congress as required by statute.

Respondents: Individual or households, State, Local or Tribal Government

Frequency of Submission: Annually.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting Burden	3,100		1		1		3,100

Total Estimated Burden Hours: 3,100.

Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 4, 2001.

Donna L. Eden,

Director, Office of Investment Strategies, Policy and Management.

[FR Doc. 01–11958 Filed 5–10–01; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–35]

Notice of Submission of Proposed Information Collection to OMB; Economic Opportunities for Low- and Very Low-Income Persons

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 11, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2529–0043) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Economic Opportunities for Low- and Very Low-Income Persons.

OMB Approval Number: 2529–0043.

Form Numbers: HUD–60002 and Form HUD–958.

Description of the Need for the Information and Its Proposed Use: This information collection will facilitate the collection of Section 3 information to assess the impact of HUD-assisted activities on enhancing the employment opportunities for lower income persons and the use of businesses that employ low-income persons.

Respondents: Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.

Frequency of Submission: Annually.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting Burden	58,593		1		2		117,186

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Total Estimated Burden Hours: 117,186.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 7, 2001.

Donna L. Eden,

Director, Office of Investment Strategies, Policy and Management.

[FR Doc. 01–11959 Filed 5–10–01; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4644–N–19]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, room 7266, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: COE: Ms. Shirley Middleswarth, Army Corps of Engineers, Management & Disposal Division, 441 G Street, Washington, DC 20314–1000; (202) 761–7425; DOT: Mr. Rugene Spruill, Space Management, SVC–140, Transportation Administrative Service Center, Department of Transportation, 400 7th Street, SW Room 2310, Washington, DC 20590; (202) 366–4246; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; INTERIOR: Ms. Linda Tribby, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW, Washington, DC 20240; (202) 606–3139; NAVY: Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: May 3, 2001.

John D. Garrity,

Director, Office of Speciol Needs Assistance Programs.

Title V, Federal Surplus Property Program Federal Register Report for 5/11/01

Suitable/Available Properties

Buildings (by State)

Alabama

Federal Bldg.
301 Third Ave.
Cullman Co: AL 35055–
Landholding Agency: GSA
Property Number: 54200120005
Status: Excess
Comment: 30,887 sq. ft., 2-story, most recent use—office
GSA Number: 4–G–AL–769

California

Bldg. 01290
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200120090
Status: Excess
Comment: 460 sq. ft., most recent use—garage, off-site use only

South Dakota

Residence, Tract 102
Oahe Dam Project
915 South Garfield Ave.
Pierre Co: Hughes SD 57501–
Landholding Agency: COE
Property Number: 31200120004
Status: Excess
Comment: 1008 sq. ft., wood frame, attached two-car garage, off-site use only

Residence, Tract 105
Oahe Dam Project

916 South Arthur
Pierre Co: Hughes SD 57501–
Landholding Agency: COE
Property Number: 31200120005
Status: Excess
Comment: 1008 sq. ft., wood frame, no garage, off-site use only

Residence, Tract 113
Oahe Dam Project
1005 South Garfield
Pierre Co: Hughes SD 57501–
Landholding Agency: COE
Property Number: 31200120006
Status: Excess
Comment: 1232 sq. ft., wood frame, attached one-car garage, off-site use only

Residence, Tract 119
Oahe Dam Project
1013 Memory Lane
Pierre Co: Hughes SD 57501–
Landholding Agency: COE
Property Number: 31200120007
Status: Excess
Comment: 936 sq. ft., wood frame, attached two-car garage, off-site use only

Residence, Tract 123
Oahe Dam Project
1001 South Garfield
Pierre Co: Hughes SD 57501–
Landholding Agency: COE
Property Number: 31200120008
Status: Excess
Comment: 816 sq. ft., wood frame, attached two-car garage, off-site use only

Residence, Tract 124
Oahe Dam Project
1009 South Primrose Lane
Pierre Co: Hughes SD 57501–
Landholding Agency: COE
Property Number: 31200120009
Status: Excess
Comment: 996 sq. ft., wood frame, attached one-car port, off-site use only

Residence, Tract 132
Oahe Dam Project
2401 E. Reen
Pierre Co: Hughes SD 57501–
Landholding Agency: COE
Property Number: 31200120010
Status: Excess
Comment: 1536 sq. ft., wood frame, attached two-car garage, off-site use only

Residence, Tract 200
Oahe Dam Project
1013 South Cleveland
Pierre Co: Hughes SD 57501–
Landholding Agency: COE
Property Number: 31200120011
Status: Excess
Comment: 960 sq. ft., wood frame, attached 2½ car garage, off-site use only

Washington

Bldg. 31
440 Yule Road
Yakima Co: WA 98908–
Landholding Agency: Interior
Property Number: 61200120019
Status: Excess
Comment: 1065 sq. ft., needs rehab, presence of lead paint, most recent use—residence, off-site use only

Bldg. 37
474 Camp 4 Road
Yakima Co: WA 98908–
Landholding Agency: Interior
Property Number: 61200120020
Status: Excess
Comment: 932 sq. ft., needs rehab, presence of lead paint, most recent use—residence, off-site use only

Bldg. 38
476 Camp 4 Road
Yakima Co: WA 98908–
Landholding Agency: Interior
Property Number: 61200120021
Status: Excess
Comment: 1152 sq. ft., needs rehab, presence of lead paint, most recent use—residence, off-site use only

Unsuitable Properties

Buildings (by State)

Alaska

Barracks
LORAN Station
Sitkinak Island Co: AK
Landholding Agency: DOT
Property Number: 87200120007
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Floodway; Extensive deterioration

Incinerator Bldg.
LORAN Station
Sitkinak Island Co: AK
Landholding Agency: DOT
Property Number: 87200120008
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Floodway; Extensive deterioration

Signal/Power Bldg.
LORAN Station
Sitkinak Island Co: AK
Landholding Agency: DOT
Property Number: 87200120009
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Floodway; Extensive deterioration

Transmitter Bldg.
LORAN Station
Sitkinak Island Co: AK
Landholding Agency: DOT
Property Number: 87299120010
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Floodway; Extensive deterioration

Waste Water Treatment Bldg.
LORAN Station
Sitkinak Island Co: AK
Landholding Agency: DOT
Property Number: 87299120011
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Floodway; Extensive deterioration

California

Bldg. 01289
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200120089
Status: Excess
Reason: Extensive deterioration

Bldg. PM1529
Point Mugu, Naval Base
Oxnard Co: Ventura CA 93042–5001
Landholding Agency: Navy
Property Number: 77200120094
Status: Unutilized
Reason: Extensive deterioration

Bldg. PM1606
Point Mugu, Naval Base
Oxnard Co: Ventura CA 93042–5001
Landholding Agency: Navy
Property Number: 77200120095
Status: Unutilized
Reason: Extensive deterioration

Guam

Bldg. 123
U.S. Naval Forces
Marianas Co: Comm. Annex GU 96540–0051
Landholding Agency: Navy
Property Number: 77200120091
Status: Unutilized
Reason: Secured Area

Bldg. 124
U.S. Naval Forces
Marianas Co: Comm. Annex GU 96540–0051
Landholding Agency: Navy
Property Number: 77200120092
Status: Unutilized
Reason: Secured Area

Bldg. 135
U.S. Naval Forces
Marianas Co: Comm. Annex GU 96540–0051
Landholding Agency: Navy
Property Number: 77200120093
Status: Unutilized
Reason: Secured Area

Missouri

Privy/Nemo Park
Pomme de Terre Lake
Hermitage Co: MO 65668–
Landholding Agency: COE
Property Number: 31200120001
Status: Excess
Reason: Extensive deterioration.

Privy No. 1/Bolivar Park
Pomme de Terre Lake
Hermitage Co: MO 65668–
Landholding Agency: COE
Property Number: 31200120002
Status: Excess
Reason: Extensive deterioration.

Privy No. 2/Bolivar Park
Pomme de Terre Lake
Hermitage Co: MO 65668–
Landholding Agency: Coe
Property Number: 31200120003
Status: Excess
Reason: Extensive deterioration

[FR Doc. 01–11527 Filed 5–10–01; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Final Environmental Assessment of Take of Nesting American Peregrine Falcons in the Contiguous United States and Alaska for Falconry

AGENCY: Fish and Wildlife Service, Interior.

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ACTION: Notice of availability.

SUMMARY: This notice is to announce the availability of a Final Environmental Assessment and a Finding of No Significant Impact of take of nestling American Peregrine Falcons (*Falco peregrinus anatum*) for falconry. We published the Draft Environmental Assessment in July 2000. We considered 352 comments in revising the assessment. After completion of the Final Environmental Assessment, we also produced a Finding of No Significant Impact for the action.

ADDRESSES: The documents are available from the Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 634, Arlington, Virginia 22203–1610. They also are available on the Division of Migratory Bird Management web pages at http://migratorybirds.fws.gov.

FOR FURTHER INFORMATION CONTACT: Dr. George T. Allen, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, at 703/358–1714.

SUPPLEMENTARY INFORMATION: In the draft Environmental Assessment, we considered six alternatives for take of nestling American peregrine falcons (*Falco peregrinus anatum*) in the western United States and Alaska. We received 352 electronic or written comment letters on the draft Environmental Assessment. Seventeen were from State or Federal agencies; 335 were from individuals and organizations. Fifteen agency responses favored allowing take of nestlings, and 2 responses were neutral. Of the individual and organization comments received, 21 opposed take of nestlings and 314 supported allowing take. We modified the Environmental Assessment to respond to concerns expressed by agencies, organizations, and individuals.

Having reviewed the comments on the draft, our preferred alternative is to allow take of up to 5% of the American peregrine falcon nestlings produced in the States west of 100° longitude, at the discretion of each State. These States include Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. We believe that a conservative level of take is appropriate for a species recently removed from the List of Endangered and Threatened Wildlife and Plants, and will have no discernible effect on the American peregrine falcon population in the western United States.

Dated: May 1, 2001.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 01–11960 Filed 5–10–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for Deer Canyon Park Preserve in the City of Anaheim, Orange County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the City of Anaheim (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10 (a) 1 (B) of the Endangered Species Act of 1973, as amended. The proposed permit would authorize the incidental take of the federally threatened coastal California gnatcatcher (*Polioptila californica californica*) in Deer Canyon Park Preserve, in the City of Anaheim, Orange County, California. Take would occur through the permanent loss of 1.39 acres of coastal sage scrub habitat during facility development and fuel management. The Applicant seeks a permit for a period of 30 years.

We request comments from the public on the permit application, which is available for review. The application also includes a Habitat Conservation Plan (HCP). The HCP describes the proposed project and the measures that the Applicant would undertake to minimize and mitigate take of coastal California gnatcatcher. We also request comments on our preliminary determination that the HCP qualifies as a "low-effect" habitat conservation HCP, eligible for a categorical exclusion under the National Environmental Policy Act (NEPA).

DATES: Written comments should be received on or before June 11, 2001.

ADDRESSES: Written comments should be addressed to the Field Supervisor, Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. Comments may be sent by facsimile to telephone (760) 431–9624.

FOR FURTHER INFORMATION CONTACT: Karen Evans, Division Chief, Los Angeles and Orange Counties, at the above address or call (760) 431–9440.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of the documents for review by calling the Service's Carlsbad Fish and Wildlife Office at the above referenced telephone number. Documents also are available for public inspection, by appointment, during normal business hours at the above address.

Background

Section 9 of the Endangered Species Act, and its implementing regulations, prohibit the "take" of fish or wildlife species listed as endangered or threatened species. Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). Harm may include significant habitat modification where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering [50 CFR 17.3(c)]. The Service may, under certain circumstances, issue permits to authorize take of endangered or threatened wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered or threatened species are found at 50 CFR 17.22 and 17.32.

Under the proposed action, improvement of park facilities and fire management activities would directly impact the coastal California gnatcatcher by removing 1.39 acres of coastal sage scrub vegetation utilized by coastal California gnatcatchers. The Deer Canyon Park Preserve totals approximately 130 acres. The Applicant's HCP describes consideration of alternatives to the action and provisions for minimization and mitigation of impacts.

The HCP is further designed to assure that this action does not reduce the potential for survival and recovery of the coastal California gnatcatcher in the wild, as mandated by requirements of 50 CFR Part 17.22(b)(1)(iii).

The HCP proposes the following measures to minimize the impacts of the project on coastal California gnatcatchers: (1) Fuel modification and clearing of coastal sage scrub will be conducted outside the gnatcatcher breeding season. If it is necessary to clear coastal sage scrub during the breeding season, surveys by a qualified biologist must demonstrate that gnatcatchers are not nesting or rearing chicks in the affected area; (2) a project monitor will be present during all clearing activities to make sure no birds or nests are directly harmed or destroyed; (3) construction limits will be fenced or flagged prior to construction activities to avoid inadvertent disturbance of areas outside the construction zone; (4) the proper use and disposal of oil and gasoline will be enforced; and (5) all trash associated with construction activities will be properly contained and disposed.

To mitigate for the permanent loss of occupied habitat due to the proposed activities, the Applicant proposes to revegetate 6.0 acres of non-native grassland in Deer Canyon Park Preserve with coastal sage scrub vegetation. The revegetated area would connect patches of fragmented coastal sage scrub that lie to the north and south. A restoration HCP will be developed that includes performance criteria, such as percent cover by native and non-native plants, native plant diversity, and evidence of natural reproduction, which must be met. The restoration plan must be reviewed and approved by the U.S. Fish and Wildlife Service.

The HCP considered the following alternatives: (1) The proposed project; (2) use of a mitigation fee; (3) redesign of the project; and (4) no project or no action alternative.

The proposed project involves the issuance of a permit under section 10(a)(1)(B) of the Act to authorize the incidental take of the threatened coastal California gnatcatcher during facilities improvement and fire management activity. The project impacts 1.39 acres of coastal sage scrub occupied by the coastal California gnatcatcher. Mitigation for the project is the revegetation of 6.0 acres of non-native grassland with coastal sage scrub vegetation.

The use of a mitigation fee to compensate for the loss of coastal sage scrub, as outlined in the Central and Coastal Orange County Natural Community Conservation Plan (NCCP), is not authorized for this project because Deer Canyon Park Preserve is designated as an Existing Use Area, and the in-lieu fee mitigation program is not available to mitigate for take of gnatcatchers within Existing Use Areas unless specifically authorized by the U.S. Fish and Wildlife Service and California Department of Fish and Game.

Under the redesign alternative, the applicant would redesign the project to further reduce impacts to coastal sage scrub vegetation. The applicant states that it is not possible to further redesign the project and meet project goals.

Under the No Project alternative the project would not occur. Therefore an incidental take permit would not be required and the Applicant would abandon the proposed project.

The Service has determined that the HCP qualifies as a "Low Effect" Habitat Conservation Plan as defined by the Fish and Wildlife Service's Habitat Conservation Planning Handbook (November 1996). Our determination that a habitat conservation plan qualifies as a low-effect plan is based on the following three criteria: (1) Implementation of a plan would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of a plan would result in minor or negligible effects on other environmental values or resources; and (3) impacts of a plan, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to environmental values or resources which would be considered significant.

The Service therefore has made a preliminary determination that approval of the HCP qualifies as a categorical exclusion under NEPA, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). Based on this preliminary determination, we do not intend to prepare further NEPA documentation. The Service will consider public comments in making its final determination on whether to prepare such additional documentation.

This notice is provided pursuant to section 10(a) of the Endangered Species Act and Service regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6). The Service will evaluate the permit application, the HCP, and the associated documents and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Endangered Species Act. If we determine that the requirements are met, we will issue a permit for the incidental take of the coastal California gnatcatcher. A final decision on permit issuance will be made no sooner than 30 days from the date of this notice.

Dated: April 23, 2001.

Jill Parker,

Acting Deputy Manager, California/Nevada Operations Office, Fish and Wildlife Service, Sacramento, California.

[FR Doc. 01–11897 Filed 5–10–01; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–1990–EX]

Notice of Availability for the Oil-Dri Corporation of Nevada's Reno Clay Plant Project Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Department of the Interior.

COOPERATING AGENCIES: U.S. Bureau of Indian Affairs, Reno-Sparks Indian Colony, and Washoe County, Nevada.

ACTION: Notice of availability of a draft environmental impact statement (EIS) for the Oil-Dri Corporation of Nevada Reno Clay Plant Project, notice of public meeting, and initiation of a 60-day public comment period.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) and 40 CFR 1500–1508 Council on Environmental Quality Regulations (CEQ), and 43 CFR 3809 Surface Management Regulations, notice is given that the Bureau of Land Management (BLM) Carson City Field Office has prepared, with the assistance of a third-party consultant, a Draft EIS on the proposed Reno Clay Plant Project, and has made the document available for public and agency review.

DATES: Written comments on the Draft EIS must be submitted or postmarked to the BLM no later than July 10, 2001. Written comments may also be presented at a public open house that is scheduled for May 30, 2001, from 5 pm to 7 pm, at the BLM Nevada State Office, 1340 Financial Boulevard, Reno, NV.

ADDRESSES: Written comments on the Draft EIS should be addressed to: Bureau of Land Management, Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701, Attn: Terri Knutson, Oil-Dri EIS Project Manager. Comments may also be sent via electronic mail to the following address: *tknutson@nv.blm.gov* or via fax: (775) 885–6147. A limited number of copies of the Draft EIS may be obtained at the above BLM Field Office in Carson City, NV. In addition, the Draft EIS is available on the internet via the Carson City Field Office Home Page at: *www.nv.blm.gov/carson*.

Comments, including names and addresses of respondents, will be available for public review at the above address during regular business hours (7:30 a.m.–5 p.m.), Monday through Friday, except holidays, and may be published as part of the EIS. Individual respondents may request

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confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. However, we will not consider anonymous comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Terri Knutson, Oil-Dri EIS Project Manager, Bureau of Land Management, 5665 Morgan Mill Road, Carson City, NV 89701, (775) 885–6156.

SUPPLEMENTARY INFORMATION: Oil-Dri Corporation of Nevada (Oil-Dri) has submitted a Plan of Operations for the construction, operation, and reclamation of a mining operation and processing facility located approximately ten miles north of the Reno/Sparks area in Hungry Valley, Washoe County, Nevada. The proposed mining operation, known as the Reno Clay Plant Project, would be located on 305 acres of public and 40 acres of private land and would result in the development of two open pit mine areas, construction of a processing facility, construction and/or upgrade of haul and access roads, and continued exploration activities. Construction is scheduled to begin in the Fall of 2001 and continue for approximately 20 years.

The Draft EIS analyzes the environmental impacts associated with the proposed mining and processing facilities, two access alternatives, and the no action alternative. Issues analyzed include geology, minerals, paleontology, air resources, aesthetics (visual & noise), water resources, soils, vegetation, range resources, wildlife, special status species, land use, access, recreation, cultural resources, Native American Religious Concerns, social & economic resources, and Environmental Justice.

A copy of the Draft EIS has been sent to all individuals, agencies, and groups who have expressed interest in the project or as mandated by regulation or policy. A limited number of copies are available upon request from the BLM at the address listed above. In addition, the document is available on the Carson City Field Office Home Page at the address above.

Public participation has occurred throughout the EIS process. A Notice of Intent to Prepare an EIS was published in the **Federal Register** on July 22, 2000 (Pages 43779–43780) and the 30-day public scoping period was initiated. A public open house was held in Reno on August 8, 2000 and additional presentations were made to three Washoe County Citizen Advisory Boards and to a community meeting at the Reno-Sparks Indian Colony.

To assist the BLM in identifying and considering issues and concerns on the proposed action and alternatives, comments on the Draft EIS should be as specific as possible. Comments should also refer to specific pages or chapters in the document. After the comment period ends, all comments will be analyzed and considered by the BLM in preparing the Final EIS.

Dated: April 23, 2001.

John Singlaub,

Manager, Carson City Field Office.

[FR Doc. 01–10912 Filed 5–10–01; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–090–1990EX–01]

Notice of Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of a Draft Supplemental Environmental Impact Statement (EIS) for Reclamation of the Zortman and Landusky Mines in Phillips County, Montana. This is a supplement to the 1996 Final EIS on Reclamation Plan Modifications and Mine Life Extensions at the Zortman and Landusky Mines. The Draft Supplemental EIS addresses 12 reclamation alternatives, six for the Zortman Mine and six for the Landusky Mine. The BLM and Montana Department of Environmental Quality (DEQ) are co-lead agencies for the preparation of the Supplemental EIS. The Environmental Protection Agency and the Fort Belknap Indian Community Council are participating agencies.

DATES: The comment period on the Draft Supplemental EIS will end on July 9, 2001.

ADDRESSES: Address all written comments to Zortman/Landusky Mine Reclamation Plan SEIS, c/o Bureau of Land Management, Lewistown Field Office, P.O. Box 1160, Lewistown, MT 59457–1160. Comments may also be sent electronically to: *ZLReclamation_EIS@blm.gov*. Please include your name and complete mailing address on all comments.

FOR FURTHER INFORMATION CONTACT: Scott Haight, 406–538–1930.

SUPPLEMENTARY INFORMATION: This EIS is a draft supplement to the March 1996 Final EIS Zortman and Landusky Mines Reclamation Plan Modifications and Mine Life Extensions. With the bankruptcy of the mines' operator, Zortman Mining, Inc., the BLM and DEQ are overseeing reclamation at the mines. The Draft Supplemental EIS has been prepared to analyze additional reclamation alternatives developed by the agencies that may constitute a substantial change from those presented in the 1996 Final EIS. The Draft Supplemental EIS presents 12 reclamation plans, six for reclamation of the Zortman Mine and six for reclamation of the Landusky Mine. The reclamation plans were developed based upon public scoping comments and through consultation with the Fort Belknap government and the Environmental Protection Agency. The Draft Supplemental EIS discloses the environmental consequences of each alternative. Alternative Z6 is identified in the Draft Supplemental EIS as the DEQ and BLM preferred reclamation alternative for the Zortman Mine, and Alternative L4 is identified as the preferred reclamation alternative for the Landusky Mine. The identification of the preferred alternatives does not constitute an agency decision but is intended to help focus public comment on the alternatives more likely to be selected.

Authority: Sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332).

Dated: May 1, 2001.

Bruce W. Reed,

Field Manager, Bureau of Land Management.

[FR Doc. 01–11875 Filed 5–10–01; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–360–01–1430–EU; CACA–37660]

Notice of Realty Action, Noncompetitive Sale of Public Lands in Trinity County, California for Community Purposes, Case File CACA–37660

AGENCY: Bureau of Land Management, Department of the Interior, Redding Field Office, Redding, CA.

ACTION: Notice of segregation and sale of public land.

SUMMARY: The following public lands have been found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at not less than the estimated fair market value of $135,000.00. The land will not be offered for sale until at least 60 days after the date of this notice.

Mount Diablo Meridian

T.33N., R.9W.,
Section 5, Lots 21, 55.
Section 6, Lots 6, 7, 11, 13, 18, 19, and Lots 23&24 of the SE.
Section 7, Lot 44.
Containing 131.61 Acres more or less.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered by direct sale for community purposes to Trinity County and the Weaverville Fire District, consistent with 43 CFR 2711.3–3(a)(1). It has been determined that the public lands in Section 5, Lots 21, 55, Section 6 Lots 6, 7, 11, 13, 18, 19 contain no known mineral values; therefore, mineral interests may be conveyed simultaneously. Section 6, Lots 23&24 of the SE and Section 7 Lot 44, do contain a significant mineral interest value for cobble and small boulder size placer tailings, a royalty of ten percent of the gross Fair Market Value of the free on board cobbles, boulders, sand and gravel after processing and prior to incurring transportation costs shall be reserved to the United States. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests not reserved to the United States.

The land are not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest.

The patent, when issued, will be subject to the following terms, conditions and reservations:

1. A right-of-way for ditches and canals constructed by the authority of the United States.

2. Third party rights

3. Protective covenant to protect an historic ditch and cultural site.

4. Section 6, Lots 23&24 of the SE and Section 7 Lot 44, do contain a significant mineral interest value for cobble and small boulder size placer tailings, a royalty of ten percent of the gross Fair Market Value of the free on board cobbles, boulders, sand and gravel after processing and prior to incurring transportation costs shall be reserved to the United States.

5. The patent will contain a hold harmless clause to protect the United States liability arising from local use of the land.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Redding Field Office, 355 Hemsted Dr., Redding, California, 96002.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit written comments regarding the proposed sale to Charles M. Schultz, Field Office Manager, Redding Field Office, Bureau of Land Management, 355 Hemsted Dr., Redding, CA 96002. In the absence of timely objections, this proposal shall become the final determination of the department of the Interior.

Dated: April 26, 2001.

Michael Truden,

Acting Field Office Manager.

[FR Doc. 01–11876 Filed 5–10–01; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP(OJP)–1313]

Notice of Availability of the Record of Decision for the Final Environmental Impact Statement, Center for Domestic Preparedness, Fort McClellan, Anniston, Alabama

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of availability of record of decision.

SUMMARY: The Department of Justice, Office of Justice Programs, has prepared a Record of Decision (ROD) for the Final Environmental Impact Statement for the Center for Domestic Preparedness located at Fort McClellan, Anniston, Alabama. This ROD is a statement of the decision made, the background of the project, other alternatives considered, the basis for the decision, the preferable alternative, measures to minimize environmental harm, and public involvement in the decision-making process.

DATES: The ROD will become effective upon signature by the Assistant Attorney General, Office of Justice Programs.

ADDRESSES: Copies of the ROD for the Final Environmental Impact Statement, Center for Domestic Preparedness, Fort McClellan, Alabama, have been provided to the following locations for public review:

1. United States Department of Justice, Office of Justice Programs, Office of the General Counsel, Room 5411, 810 Seventh Street, NW., Washington, DC 20531.

2. The Center for Domestic Preparedness, P.O. Box 5100, 61 Parliament Rd., Ft. McClellan, Anniston, AL 36205.

3. Anniston-Calhoun County Public Library, 108 East Tenth Street, Anniston, AL 36202.

4. Jacksonville Public Library, 200 Pelham Road, North Jacksonville, AL 36205.

5. Cole Library, Jacksonville State University, 700 Pelham Road, North Jacksonville, AL 36265–1602.

6. Oxford Public Library, 213 Chocclocco Street, Oxford, AL 36203.

7. Talladega Public Library, 202 East South Street, Talladega, AL 35160.

FOR FURTHER INFORMATION CONTACT: For copies of the ROD or additional information, please contact: L.Z. Johnson, Director, Center for Domestic Preparedness, P.O. Box 5100, Fort McClellan, Anniston, AL 36205, (256) 847–2000.

Dated: April 27, 2001.

Alexa Verveer,

Deputy Assistant Attorney General.

[FR Doc. 01–11808 Filed 5–10–01; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rages and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

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The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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Massachusetts
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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 3rd Day of May 2001.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 01–11633 Filed 5–10–01; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

Notice of Reinstatement of Milwaukee Fence Co.

AGENCY: Office of Federal Contract Compliance Programs, Department of Labor.

ACTION: Notice of reinstatement, Milwaukee Fence Co.

SUMMARY: This notice advises that Milwaukee Fence Co., has been reinstated as an eligible bidder on Federal and federally assisted construction contracts and subcontracts. For further information, contact Harold M. Bush, Acting Deputy Assistant Secretary for Federal Contact Compliance, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–3325, Washington, DC 20210 (202) 693–1072.

SUPPLEMENTARY INFORMATION: Milwaukee Fence Co., Milwaukee, Wisconsin, is as of this date, reinstated as an eligible bidder on Federal and federally assisted construction contracts and subconstracts.

Signed at Washington, DC this 4th day of May, 2001.

Harold M. Busch,

Acting Deputy Assistant Secretary for Federal Contract Compliance.

[FR Doc. 01–11908 Filed 5–10–01; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Labor Research Advisory Council; Notice of Meetings and Agenda

The Spring meetings of committees of the Labor Research Advisory Council will be held on June 4, 5, and 6, 2001. All of the meetings will be held in the Conference Center, of the Postal Square Building (PSB), 2 Massachusetts Avenue, NE., Washington, DC.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members. The schedule and agenda of the meetings are as follows:

Monday, June 4, 2001

9:30 a.m.—Committee on Productivity, Technology and Growth—Meeting Room 9

1. Possible measurement bias in aggregate productivity measures: Update of Gullickson-Harper paper
2. Developments in industry productivity studies
3. Status of the 2000–10 projections
4. Topics for the next meeting

Committee on Foreign Labor Statistics

1. Update on activities of the Division of International Technical Cooperation
2. Preliminary report on development of hourly compensation measures for additional countries
3. Topics for the next meeting

1:30 p.m.—Committee on Employment and Unemployment Statistics—Meeting Room 9

1. Latest results from National Longitudinal Survey of Youth (NLSY)97 and NLSY79 surveys
2. Current Population Survey (CPS) topics:
   a. Data on union membership
   b. Update on the CPS–CES gap, based on latest information from 2000 Census
   c. Discussion of issues related to measuring labor force activity of the prison population
3. Developments in the Local Area Unemployment Statistics and Mass Layoff Statistics programs
4. Topics for the next meeting

Tuesday, June 5, 2001

1:30 p.m.—Committee on Compensation and Working Conditions—Meeting Room 9

1. Welcome, Introductions

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2. Update on data for the Federal white-collar pay setting process
3. Employee Benefits Survey: status and data availability
4. Data on working conditions from BLS
5. Bonuses, lump-sum payments, and other forms of variable pay
6. Topics for the next meeting

Wednesday, June 6, 2001

9:30 a.m.—Committee on Prices and Living Conditions—Meeting Room 9

1. Update on program developments
   a. Consumer Price Index
   b. International Price Indexes
   c. Producer Price Indexes
2. Topics for the next meeting

1:30 p.m.—Committee on Occupational Safety and Health Statistics—Meeting Room 9

1. Report on worker and case circumstances data from the 1999 Survey of Occupational Injuries and Illnesses
2. Discussion of changes to the Survey of Occupational Injuries and Illnesses resulting from the revision of the OSHA record keeping rule
3. Report on the status of the Survey of Respirator Use and Practices
4. Update on the introduction of the North American Industry Classification System into the Survey of Occupational Injuries and Illnesses and the Census of Fatal Occupational injuries
5. Proposed FY 2002 budget
6. Topics for the next meeting

The meetings are open to the public. Persons planning to attend these meetings as observers may want to contact Wilhelmina Abner on 202–691–5970.

Signed at Washington, DC this 30th day of April, 2001.

Katharine G. Abraham,

Commissioner.

[FR Doc. 01–11907 Filed 5–10–01; 8:45 am]

BILLING CODE 4510–24–P

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

The United States Institute for Environmental Conflict Resolution

National Environmental Policy Act Pilot Projects; Comment Request; Announcement of Workshop

AGENCY: Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, U.S. Institute for Environmental Conflict Resolution.

ACTION: Meeting notice and request for public comment.

SUMMARY: At the request of U.S. Senators Max Baucus, Mike Crapo, Harry Reid, and Craig Thomas, the U.S. Institute for Environmental Conflict Resolution is exploring how pilot projects can be used to determine how collaboration, consensus building, and appropriate dispute resolution processes can improve the implementation of the National Environmental Policy Act (NEPA) in the context of federal lands and natural resource management issues. In the past months, the U.S. Institute, with the assistance of the Meridian Institute, has sought input from a diverse group of individuals representing environmental organizations, resource users, federal, state and local governments, tribes, participants in local and regional collaborative processes, and NEPA experts. The purpose of these individual conversations was to learn more about (1) What specific concerns or issues should be addressed by pilot projects, (2) what parameters should define the pilot projects initiative, (3) what criteria should be used to select pilot projects, (4) what institutional mechanisms would be needed to assure project oversight, implementation, and evaluation, and (5) how to maximize the likelihood that positive lessons learned from the pilots can be mainstreamed and begin to influence the implementation of NEPA in the future.

A number of perceived problems with both NEPA implementation and collaborative processes were identified through these early conversations. Among the reported problems with NEPA implementation were:

- Inconsistent implementation of NEPA's statutory requirements, implementing regulations and agency guidelines;
- Inadequate coordination among federal agencies with overlapping jurisdictions and inadequate intergovernmental coordination with state agencies;
- Overemphasis on NEPA documentation and litigation protection, rather than sounder strategic planning and decision-making;
- Inefficient and duplicative processes; and
- Inadequate attention to realizing the goals laid out in Section 101 of NEPA.

The issues relating to collaborative processes and conflict resolution can be placed into four organizational contexts:

- Interagency collaboration,
- Intergovernmental collaboration,
- Governmentally organized multi-stakeholder collaboration, and
- Privately organized collaborative processes.

Across these contexts, various problems were raised, such as:

- A lack of guidance on options for agencies and inconsistent approaches to collaboration resulting in confusion;
- The resource intensive nature of such processes and inadequate process funding;
- Lack of clarity on stakeholder roles and responsibilities, and inadequate stakeholder guidance;.
- Maintaining balanced stakeholder representation; and
- Overemphasis on process of collaboration as an end itself and inadequate attention to planning outcomes, decision-making, and implementation.

The U.S. Institute proposes that pilot projects may be useful in addressing the perceived challenges of NEPA implementation and providing clearer guidance regarding the use of collaborative processes in NEPA implementation to agencies, state and local governments, tribes and non-governmental interests with respect to public lands and natural resources management issues. Specifically, pilot projects could:

- Clearly distinguish problems and concerns related to NEPA and the manner in which NEPA is being implemented from concerns about other environmental statutes and/or broader societal concerns;
- Demonstrate innovative and practical solutions to clearly delineated NEPA implementation problems; and
- Provide information about the conditions under which collaborative problem solving, consensus-building, and dispute resolution processes can improve implementation of NEPA.

There are differing views regarding the effectiveness of NEPA implementation, reflecting legitimate underlying differences in values and perspectives about the nature and extent of the environmental impacts of proposed projects and how these impacts can best be avoided or mitigated. Most would agree, however, there is room for improvement in the application of NEPA procedures and in the achievement of its substantive objectives articulated in Section 101. Collaborative processes and conflict resolution strategies often involve or implicate NEPA review and analysis activities. Well-managed and highly visible pilot projects may bring to light important lessons for better integrating effective collaboration into NEPA activities and improving the quality and durability of management decisions informed by NEPA analyses.

The U.S. Institute recommends four basic features for a pilot projects initiative. First, there must be a sufficient number of pilot projects from which to draw reliable lessons across the four different contexts of collaborative processes (i.e., interagency, intergovernmental, governmentally organized, and privately organized) and across a spectrum of agencies that have responsibility for lands and natural resource management issues.

Second, it is important not to "reinvent the wheel." The use of collaboration and dispute resolution on environmental issues, of which NEPA implementation is a subset, is not new. For this reason, the pilot projects under this initiative should be oriented less toward introducing a new concept or approach and more toward solving specific problems regarding the use of collaboration and dispute resolution in NEPA implementation. At the same time, the initiative should include research and a retrospective analysis of past and present NEPA projects involving collaborative and dispute resolution processes, in parallel with current projects in the pilot program.

Third, pilot projects are not enough in and of themselves. Evaluation of the results of the pilot projects is essential in order to learn from both the successes and the failures. Articulating the criteria for assessing the outcomes of these pilot projects will be central to such an initiative. Dissemination of the results of the evaluations is essential to ensure that the lessons learned from these pilot projects are broadly understood and utilized.

Finally, a transparent, open, and public process must be designed and managed to build consensus on the desired outcomes for this pilot projects initiative in relation to NEPA implementation in connection with federal lands and natural resource management issues. The interviews conducted thus far, along with this request for public comment, are a step toward laying the initial foundation for such a process.

The U.S. Institute would like comments on how it can assure a balanced and effective approach to developing and managing such pilot projects. The U.S. Institute seeks written public comment and direct input at two public workshops on the approach it proposes to take to the NEPA pilot projects initiative. Based on the comments received from this notice and the public workshops, in addition to the feedback from earlier meetings and interviews, the U.S. Institute will provide a report and recommendations to the Senators for their consideration. The supplemental information below provides greater detail on the preliminary concepts under consideration.

Based on the interviews conducted thus far and a review of the literature, the supplemental information provides a review of the perceived problems with NEPA implementation and collaborative processes, as well as the preliminary recommendations for the design of a pilot projects initiative to address the request of the Senators.

DATES: Comments must be submitted on or before June 25, 2001. The public workshops will be held in Denver, Colorado on June 8, 2001 and Washington, DC on June 14, 2001. A balanced set of stakeholder representatives will be invited to attend the workshops, which will also be open to the public. An opportunity will be provided for public comment. The meetings will begin at 8:30 a.m. and conclude at approximately 4 p.m. Members of the public who wish to attend one of the meetings are requested to contact the Meridian Institute (see **ADDRESSES** section) by June 1, 2001 so that a sufficient number of materials can be prepared and directions to the facility can be provided. Space may be limited, thus a RSVP is strongly encouraged.

ADDRESSES: Direct comments to: Meridian Institute, Attn. Tutti Tischler, P.O. Box 1829, Dillon, Colorado, 80435. Fax: 970–513–8348, e-mail: ttischler@merid.org by no later than June 25, 2001.

The meeting locations are:

June 8, 2001—Embassy Suites at Denver Airport, Conference Center, 4444 North Havana, Denver, CO

June 14, 2001—GSA National Capitol Region Training Center, Rooms A & B, 490 L'Enfant Plaza, Suite 3207, Washington, D.C.

If you are interested in attending either public workshop, please contact Ms. Tutti Tischler by June 1, 2001, Meridian Institute, P.O. Box 1828, Dillon, Colorado 80435, phone: 970–513–8340 ext. 252, fax: 970–513–8348, or e-mail: ttischler@merid.org. Ms. Tischler can provide directions to both meeting locations.

FOR FURTHER INFORMATION CONTACT: Logistical Information: Tutti Tischler, Meridian Institute, P.O. Box 1828, Dillon, Colorado 80435, phone: 970–513–8340 ext. 252, fax: 970–513–8348, or e-mail: ttischler@merid.org for directions to either meeting location and other related information.

Substantive Information: Sarah Palmer, U.S. Institute for Environmental Conflict Resolution, 110 South Church Avenue, Suite 3350, Tucson, Arizona 85701, fax: 520–670–5530, phone: 520–670–5299, e-mail: palmer@ecr.gov

SUPPLEMENTARY INFORMATION:

I. Overview

A. The Senators' Request

At the request of U.S. Senators Max Baucus, Mike Crapo, Harry Reid, and Craig Thomas, the U.S. Institute for Environmental Conflict Resolution is exploring how pilot projects can be used to determine how collaboration, consensus building, and appropriate dispute resolution processes can improve the implementation of the National Environmental Policy Act (NEPA). The Senators have asked specifically about the potential application of collaborative approaches to NEPA activities in the context of natural resources management and public lands issues. In order to respond to this request, and at the suggestion of the Senators, the U.S. Institute is seeking input from those with interest and experience in NEPA review activities and collaborative processes.

B. The U.S. Institute for Environmental Conflict Resolution

Congress established the U.S. Institute in 1998 in the Environmental Policy and Conflict Resolution Act (Pub. L. 105–156). The Institute's primary purpose is to assist parties in resolving environmental, natural resource, and public lands conflicts. It was also charged with assisting in achieving the substantive goals of NEPA laid out in Section 101. The U.S. Institute is part of the Morris K. Udall Foundation, an independent federal agency of the executive branch located in Tucson, Arizona and overseen by a board of trustees appointed by the President. The U.S. Institute serves as an impartial, non-partisan institution providing professional expertise, services, and resources to all parties involved in such disputes, regardless of who initiates or pays for assistance. The U.S. Institute helps parties determine whether collaborative problem solving is appropriate for specific environmental conflicts, how and when to bring all the parties to the table, and whether a third-party facilitator or mediator might be helpful in assisting the parties in their efforts to reach consensus or to resolve the conflict.

C. Background and Context of the NEPA Pilot Projects Initiative

This project builds on the results of a workshop co-sponsored by the Institute for Environment and Natural Resources

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at the University of Wyoming and the O'Connor Center for the Rocky Mountain West at the University of Montana in March of 1999 and reported on in "Reclaiming NEPA's Potential: Can Collaborative Processes Improve Environmental Decision Making?" The workshop focused on the potential for improving NEPA through the use of collaborative processes.

Chief among the important questions raised at this workshop were:

- How can both national and local interests be properly considered and appropriately balanced through collaborative NEPA processes?
- To what extent may multi-stakeholder collaborative groups participate in NEPA reviews and affect natural resource management decisions?
- When should cooperating agency status be granted to state and local governments and how can such cooperation be managed most fairly and productively?
- How can collaborative processes be used to improve the implementation of NEPA and in particular help achieve the substantive goals stated in Section 101?

In 1995, coinciding with the twenty-fifth anniversary of the passage of NEPA, the Council on Environmental Quality (CEQ) undertook a study of the effectiveness of NEPA implementation. This report, which refers to NEPA as a "framework for collaboration," focused on five critical areas within which improvements could be made to the implementation of NEPA, including:

- Strategic planning—the extent to which agencies integrate NEPA goals into their internal planning processes at an early stage;
- Public information and input—the extent to which an agency provides information to and takes into account the views of the surrounding community and other interested members of the public during its planning and decision-making processes;
- Interagency coordination—how well and how early agencies share information and integrate planning responsibilities with other agencies;
- Interdisciplinary place-based approach to decision making that focuses the knowledge and values from a variety of sources on a specific place; and
- Science-based and flexible management approaches once projects are approved.

This current effort is guided by an interest in soliciting broad-based and balanced feedback on a pilot projects initiative, designing a well-managed and transparent project, and providing timely and useful information. Based on the Senators' request and with the assistance of the Meridian Institute, the U.S. Institute is seeking input from those with interest and experience in NEPA review activities and multi-stakeholder collaborative processes. To date, the U.S. Institute and Meridian staff have conducted approximately fifty interviews with individuals representing a diversity of interests and perspectives on this initiative.

D. Working Definitions

For the purpose of this draft document, the following working definitions will be used:

Collaboration and Collaborative Processes involve people who represent diverse interests, perspectives, and institutions that agree to work together to identify problems, share information, and, where possible, develop mutually acceptable solutions. Collaborative processes frequently take place prior to a formal decision being made by the responsible institution. The term collaboratives is sometimes used to refer to privately organized rather than governmentally organized collaborative processes.

Consensus-Building Processes constitute a form of collaboration that explicitly includes the goal of reaching a consensus agreement on policy matters, environmental conflicts, or other issues in controversy. Consensus is often, although not always, defined as "no dissent." Consensus building processes often, although not always, involve the assistance of a neutral convenor, facilitator, or mediator.

Dispute Resolution Processes aim to resolve specific and definable disputes over formal agency decisions that have been or are about to be made. The parties to a dispute resolution process are typically entities that can be granted standing to participate in the dispute resolution process. Under this definition, litigation is a form of dispute resolution process. The terms *appropriate* or *alternative dispute resolution* refer to non-adversarial processes that take place in advance of or in conjunction with formal litigation usually involving a neutral mediator to assist the parties in their negotiations.

Non-governmental interests refer broadly to non-governmental organizations (NGOs), such as national environmental groups, local citizens groups, and other public interest oriented groups, as well as companies, associations, and organizations representing commercial and private sector interests. Given the focus on federal lands and natural resource management issues in this document, non-governmental interests also include resource users such as ranchers, loggers, timber companies, miners, mining companies, oil and gas companies, etc.

Stakeholders refers to the individuals, organizations, and institutions that have a stake in the outcome of a decision because they are either directly affected by the decision or have the power to influence or block the decision.

II. Findings From Preliminary Research and Interviews

A. Introduction

Based on a review of currently available literature and the results of the interviews described above, a number of challenges appear to be associated with NEPA implementation, as well as with the use of collaborative processes initiated in conjunction with NEPA implementation (whether the collaborative process is before or early in a NEPA process or, alternatively, after the NEPA process has begun and actual or potential disputes have emerged). The challenges with both NEPA implementation and collaborative approaches, which are reviewed below, should be considered as the basis for focusing the pilot projects.

B. Reported Problems Related to NEPA Implementation

Some of the stakeholders interviewed expressed concern about whether the Senators who initiated the request or the U.S. Institute believe "NEPA is broken and needs to be fixed" and, if so, whether there is a belief that the use of collaboration and dispute resolution is the way to fix the problem. It is important to point out that almost without exception the stakeholder representatives interviewed indicated they do not believe there is a problem with the statute itself, but many felt there are concerns with how the statute is being implemented.

The interviews also evidenced concerns about the underlying authority and standards for agency decisions contained in other environmental statutes. In some cases the criticisms initially leveled at the NEPA process were found to be based primarily on concerns with requirements of other substantive laws. In the case of federal lands and natural resource management issues, the statutes that intersect with NEPA include but are not limited to the Endangered Species Act (ESA), the Federal Lands Policy and Management Act (FLPMA), the National Forest Management Act (NFMA), and the Clean Water Act (CWA).

Since the focus of this effort is on the use of collaborative processes and appropriate dispute resolution in NEPA implementation, it will be important to clearly distinguish between perceived problems and concerns with the authority and standards of decision making contained in other statutes, and perceived problems and concerns with how agencies are fulfilling their NEPA duties and obligations. While this will be a challenge when identifying criteria for selecting pilot projects, it will be even more of a challenge in evaluating the effectiveness of the pilot projects and translating any new insights from the pilots to concrete suggestions for improving NEPA implementation.

Some stakeholders have suggested that the U.S. Institute undertake a systematic retrospective analysis of collaboration and NEPA implementation to help inform the development of clearly delineated problem statements with respect to the pilot projects initiative. The U.S. Institute agrees with the need to have clearly delineated problem statements that can be used to develop criteria for selecting and evaluating pilot projects. However, it appears that there is sufficient clarity regarding problems reported with NEPA implementation to proceed with the development of a pilot initiative, which would include a systematic retrospective analysis in parallel with the pilot projects.

From its interviews and a preliminary review of the literature, the U.S. Institute has compiled the following list of perceived problems with NEPA implementation.

1. Inconsistent NEPA Implementation. Inconsistent implementation and interpretation by lead federal agencies of the statutory requirements of NEPA and the CEQ implementing regulations and guidelines.

2. Efficiency and Effectiveness. How to "streamline" NEPA implementation by making it more efficient, less time consuming, and equally, if not more, effective.

3. Inappropriate Timing of Interagency or Intergovernmental Coordination. Many times a lead agency consults with other agencies with overlapping regulatory authority after alternatives have been identified and publicly discussed with stakeholders, only to find that one or more of the alternatives under consideration is unacceptable to the agency with overlapping jurisdiction.

4. Overemphasis on Documentation with Insufficient Attention to Planning and Decision Making. There is an excessive focus on NEPA documentation and efforts to make NEPA documents "litigation proof" rather than using NEPA to improve strategic planning and decision-making.

5. Inadequate Attention to Section 101. CEQ's regulations for implementing the procedural provisions of NEPA (40 CFR 1502.2(d)) states that an environmental impact statement:

> Shall state how alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of the Act and other environmental laws and policies.

Section 101 of the Act includes the declaration of environmental policy that is the cornerstone of NEPA. Section 102(1) of the statute directs that,

> To the fullest extent possible the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act.

Some stakeholders believe there has been inadequate attention paid to the requirements of NEPA and its implementing regulations.

C. Reported Problems Associated With But Not Limited to NEPA Implementation

Both the interviews and the NEPA-related literature cite two additional issues that influence the NEPA implementation process but are not exclusive to that process. The first is information management and use of technical information. The second issue is the role of the Federal Advisory Committee Act in the NEPA process.

1. Information and Information Technology Related Problems

The quality of NEPA analysis depends in large part on the quality of information that is available to and considered by decision-makers and the general public. As a consequence, a number of reported information and information technology related problems may warrant consideration in the design of pilot projects. These include:

a. Lack of Baseline Data. The lack of high quality baseline environmental data, especially for land management agencies, that can be periodically updated and used as the basis for NEPA analysis, often results in the re-creation of high quality data on a case-by-case basis.

b. Insufficient Utilization of Information Technology. Information technology, especially decision-support tools and geographic information systems are not widely available or are under-utilized.

c. Excessive Data Demands. Guidance is needed on how to identify what data would be useful in improving the quality of the decision. While thorough documentation and requests for additional information are often warranted, excessive data generation and reporting can overwhelm the ability of decision makers and the public to understand the key points.

2. The Federal Advisory Committee Act (FACA)

Federal agencies have the option of utilizing citizen advisory committees and work groups to advise agencies during the NEPA process. However, many report real and perceived limitations to the use of a federal advisory committee.

a. Limitations and Perceptions. Most federal agencies are limited in the number of advisory committees they can establish. In addition, there is a widespread perception that the FACA can be an impediment to undertaking governmentally organized multi-stakeholder collaboration. These real and perceived limitations can create incentives to circumvent the requirement to establish an official advisory committee when in reality a FACA-chartered committee may be the best course of action.

b. Advisory vs. Decisional. Federal advisory committees advise agencies on specific issues. There is a need for clearer guidance about how to ensure governmentally organized multi-stakeholder collaboration processes maintain this advisory role and yet, where appropriate, strive to achieve a consensus that includes commitments from the sponsoring agency (akin to what takes place in a regulatory negotiation).

D. Reported Problems Associated With Collaborative Processes and Dispute Resolution

From the literature surveyed and the interviews conducted, the U.S. Institute and Meridian Institute staff identified a number of perceived problems with the use of collaborative and appropriate dispute resolution processes. It was apparent from the interviews that it is useful to distinguish between among four types of collaborative processes based on their organizational context:

- Interagency collaboration and coordination involving affected agencies within the federal government;
- Intergovernmental collaboration and coordination involving the lead federal agency and affected agencies from other levels of government, including tribal, state, and local government;
- Governmentally organized multi-stakeholder collaboration that is initiated and organized by the lead federal agency, or a cooperating governmental agency, and involves

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representatives of affected non-governmental interests; and

• Privately organized collaborative processes that are initiated, organized, and conducted by non-governmental interests who have a stake in the outcome of agency decisions where there is limited or no direct involvement of the lead federal agency.

While specific issues and concerns were raised within each of these contexts, there were several cross-cutting problems reported, including:

1. Problems That Arise When Initiating Collaborative Processes

a. Lack of Guidance for Deciding How to Collaborate. Agencies lack guidance on whether and how to engage in multi-stakeholder collaborative processes, separate one-on-one consultations with stakeholder representatives, or standard public participation techniques. In some cases, such processes are initiated after an agency decision has already been made, for example, which undermines the efficacy of the collaboration.

b. Inadequate Stakeholder Representation. Lead agencies often do not involve all government agencies and/or non-governmental interests that have a stake in the outcome of the collaborative process. There is a lack of awareness and practical guidance for determining the major stakeholders who need to be represented in a collaborative process.

c. Lack of Resources. Agencies have limited financial and personnel resources to undertake and organize a multi-stakeholder collaboration. Similarly, the lack of financial and personnel resources may limit some stakeholder groups from effectively participating in multi-stakeholder collaboration.

d. Involving Nationally Oriented Groups in Locally Oriented Processes. Where locally oriented, federally organized multi-stakeholder collaborative processes include issues that are of a broader national interest, it is difficult to involve national groups directly in the collaborative process.

2. Problems That Arise During Collaborative Processes

a. Roles and Responsibilities of Agency Representatives. Lack of clarity regarding the decisionmaking roles, responsibilities, and authority of agency representatives who are "at the table" in relation to those who are at "higher" levels. This is especially problematic in locally oriented processes that require decisions to be made at the regional and/or national levels.

b. Maintaining Balanced Stakeholder Representation. It can be difficult to maintain balanced involvement of all major stakeholder interests throughout the course of the collaborative process. There is a need for guidance on how to handle instances where stakeholder representatives participate in a collaborative process until they feel their interests are not being fully satisfied and then pullout and resort to traditional adversarial strategies.

c. Length of Time Needed to Complete Multi-Stakeholder Collaboration. The time it takes to complete multi-stakeholder collaborative processes, especially consensus-based processes.

d. Goal Confusion. In some cases, the process of collaboration itself may develop into the primary goal of the participants rather than focusing on improved and informed decisions and designing a process that will effectively achieve this end.

3. Problems That Arise When Agency Decisions Are Made

a. Unrealistic Stakeholder Expectations. Nongovernmental stakeholders can be disappointed if the decision making framework is not specified. When non-governmental stakeholders participate in collaborative processes or assisted negotiations, sometimes the decision rules within the group are not clarified at the outset and the legal duties and obligations of the agency representatives for specific decisions or actions are not fully understood.

b. Inconsistent Decisions. Sometimes agency decision makers choose courses of action different from those arrived at by consensus in a collaborative process or by assisted negotiation in a conflict resolution process. The value of such participatory processes can be undermined. Guidance is needed to minimize this occurrence by assuring consistent communication within agencies during their participation.

c. Implementation Challenges. Recommendations from collaborative processes or conflict resolution processes may not always take into account their feasibility or resource requirements. Institutional structures may not exist or be limited to assure appropriate follow-through and monitoring to ensure implementation. Mechanisms for assuring the practicality of implementation requirements should be developed.

4. Problems Associated With Privately Organized Collaborative Processes

In addition to the cross-cutting issues raised in the sections above, there are some specific concerns reported regarding privately organized multi-stakeholder collaborations. Some examples of issues that may need to be addressed include:

• What should agency personnel do when the process explicitly excludes certain stakeholder interests?

• How should they respond when there is clear evidence of an attempt to include representation of all stakeholder interests but not everyone chooses to participate?

• What should the agency do when the process includes a balanced representation of the diverse stakeholders that have an interest in the issues being discussed?

• Should federal agency staff participate in such processes if they are requested to do so and, if so, to what degree?

• Should the results of privately convened collaborative processes be given special weight or consideration by agencies and, if so, how and under what conditions?

III. The Potential Value of Pilot Projects

The results of the interviews and the preliminary review of the literature indicate there is some dissatisfaction with how agencies are implementing NEPA. These concerns are reflected in the list of reported problems outlined above. At the same time, many of the concerns that are attributed to NEPA implementation reflect broader concerns about the role of the federal government in public lands and natural resource management issues and with environmental decision-making in general.

Notwithstanding Congress' declaration more than 30 years ago of a national environmental policy in Section 101 of NEPA, it is clear the value conflicts that underlie environmental issues remain pronounced. Collaborative problem solving, consensus building, and dispute resolution processes have been used to address these value conflicts in a variety of situations since the mid-1970s. While these processes have been utilized in increasingly sophisticated ways and in a wide variety of circumstances by virtually every federal agency, as is evident from the problem statements outlined above, there is still much that can be learned about how to more effectively utilize these processes.

Undertaking a carefully designed pilot projects program will permit the U.S. Institute and those who have an interest in improving the quality of federal agency NEPA analyses and decision-making processes on public lands and natural resource management issues to:

• Clearly distinguish problems and concerns related to NEPA and the manner in which NEPA is being implemented from concerns about other environmental statutes and/or broader societal concerns;

• Demonstrate innovative and practical solutions to clearly delineated NEPA implementation problems; and

• Learn more about the conditions under which collaborative problem solving, consensus-building, and dispute resolution processes can improve implementation of NEPA.

There are differing views regarding the effectiveness of NEPA implementation, reflecting legitimate underlying differences in values and perspectives about the nature and extent of the environmental impacts of proposed projects and how these impacts can best be avoided or mitigated. Most would agree, however, there is room for improvement in the application of NEPA procedures and in the achievement of its substantive objectives articulated in Section 101. Collaborative processes and conflict resolution strategies often involve or implicate NEPA review and analysis activities. Well-managed and highly visible pilot projects may bring to light important lessons for better integrating effective collaboration into NEPA activities and improving the quality and durability of management decisions informed by NEPA analyses.

As indicated by the interviews and preliminary review of the literature, pilot projects could yield important insights into possible improvements in NEPA implementation and guidance with respect to:

• CEQ regulations and implementing NEPA;

• Federal agency regulations;

• Tribal, state, and local government guidance; and

• NGO guidelines and practices for participating in NEPA implementation.

IV. Designing a Pilot Projects Initiative

A. Challenges

The design and implementation of a pilot projects initiative raises a number of challenges, including how to best:

• Ensure that all interests will be fairly represented in the selection, evaluation, and analysis of such projects,

• Identify and respond to potential institutional barriers,

• Address concerns on the one hand that this initiative might lead to unanticipated changes in NEPA implementation, and on the other, that reform of NEPA implementation may not be forthcoming, and

• Manage the projects with appropriate public oversight.

To address these challenges, the U.S. Institute recommends establishing some fundamental conditions for undertaking a pilot projects initiative, identifying a set of criteria for selecting the pilot projects, and establishing a separate set of criteria for evaluating the results of the pilot projects.

B. Basic Features of a Pilot Projects Initiative

The U.S. Institute recommends four basic features for a pilot projects initiative. First, there must be a sufficient number of pilot projects from which to draw reliable lessons across the four different types of collaborative processes (i.e., interagency, intergovernmental, governmentally organized, and privately organized) and across a spectrum of agencies that have responsibility for federal lands and natural resource management issues.

Second, it is important not to "reinvent the wheel." The use of collaboration and dispute resolution on environmental issues, of which NEPA implementation is a subset, is not new. For this reason, the pilot projects under this initiative should be oriented less toward introducing a new concept or approach and more toward solving specific problems regarding the use of collaboration and dispute resolution in NEPA implementation. At the same time, the initiative would include research and a retrospective analysis of past and present NEPA projects involving collaborative and dispute resolution processes, in parallel with current projects in the pilot program, in order to broaden the information gained.

Third, pilot projects are not enough in and of themselves. Evaluation of the results of the pilot projects is essential in order to learn from both the successes and the failures. Articulating the criteria for assessing the outcomes of these pilot projects will be central to such an initiative. Dissemination of the results of the evaluations is essential to ensure that the lessons learned from these pilot projects are broadly understood and utilized.

Finally, a transparent, open, and public process is needed to build consensus regarding the desired outcomes of this pilot projects initiative in relation to NEPA implementation on federal lands and natural resource management issues. The interviews conducted thus far along with this request for public comment are a step toward laying the initial foundation for such a process.

C. Input Sought on How To Interpret the Suggestion of the Senators To Focus on Federal Lands and Natural Resource Management Issues

The U.S. Institute seeks input on how broadly or narrowly it should interpret the suggestion from the Senators to focus on "federal lands and natural resource management" issues. This question should be considered in light of the work to "streamline" NEPA implementation in several agencies such as the Federal Highway Administration as well as in specific situations such as the U.S.D.A. Forest Service's and the Department of the Interior's National Fire Plan. There are concerns that NEPA streamlining efforts should seek to retain NEPA's effectiveness and at the same time improve its efficiency. Streamlining efforts will likely require a significant level of collaboration and dispute resolution planning to meet these ends. The need for effective collaboration, particularly interagency and intergovernmental collaboration, may be even more significant in instances where efforts are being made to streamline NEPA implementation.

The U.S. Institute would value input on how broadly this initiative should define its focus on federal lands and natural resource management issues. The strictest interpretation might limit the focus to NEPA reviews conducted by land management agencies such as the U.S.D.A. Forest Service, Bureau of Land Management, and National Park Service. Alternatively, a broader focus would include federal agencies whose mission includes, but not exclusively, the management of a natural resource, e.g., military reserves, or the mitigation of impacts on natural resources, e.g., transportation projects, airport expansions. It might also include opportunities to work with tribal governments with resource management issues impacting tribal lands and adjacent federal or state lands.

D. The U.S. Institute's Role

The U.S. Institute proposes to serve as the lead agency for the purpose of administering the NEPA Pilot Projects Initiative consistent with its mission to assist with the implementation of the provisions of Section 101 of NEPA. This role would include:

• Providing program administration and oversight;

• Making the final decisions on the criteria for selecting the pilot projects;

• Selecting the pilot projects;

• Collaborating with participating agencies as necessary and appropriate to select and oversee neutral third party service providers such as conveners,

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facilitators, fact-finders, trainers, mediators, etc.;

• Identifying the criteria by which to evaluate the outcome of the pilot projects;

• Selecting and overseeing the work of independent evaluators;

• Reporting on the lessons that are learned from a retrospective analysis and prospective pilot projects; and

• Establishing and managing a federal advisory committee that will be used to provide input on all of the above.

Several commenters strongly recommended the use of a federal advisory committee to help guide the U.S. Institute on these matters to assure transparency and build trust in the NEPA pilot projects initiative. The U.S. Institute proposes to form a federal advisory committee made up of a balanced but manageable number of individuals representing organizations that have an interest in the initiative.

E. Criteria for Selecting Pilot Projects

A preliminary list of the criteria the U.S. Institute proposes to use in selecting the pilot projects is as follows:

• Geographic balance (while it is expected that a majority of projects will be drawn from the Western U.S., an attempt should be made to select projects from the entire nation);

• Diversity of agency participation from lead federal agencies, states, counties, and tribes;

• Diversity of the federal lands and natural resource management issues to be addressed;

• Balance of projects across the four different categories of collaboration (i.e., interagency, intergovernmental, governmentally organized multi-stakeholder, and privately organized multi-stakeholder) as well as projects that employ dispute resolution processes;

• Projects of local, state, regional, and national scale representing the spectrum of issues that are the focus of the NEPA analysis and collaborative process;

• Projects that are occurring at a variety of different stages in the NEPA review and decision-making process (where a range of collaborative and dispute resolution processes could or are occurring).

In addition, the U.S. Institute is considering giving priority to pilot projects that:

• Are explicitly designed to address one or more of the NEPA implementation and/or collaborative process problems identified above;

• Have a genuine potential for success (e.g., for collaborative processes, decisions have not been predetermined, adequate incentives exist for collaboration or dispute resolution, etc.); and

• Emphasize innovative approaches to the integration of the substantive aspirations of Section 101 of NEPA with the implementing procedures of Section 102.

The U.S. Institute encourages comments on this list.

F. Evaluation and Reporting

In order to have value, the proposed NEPA pilots project initiative must include both an evaluation component and a reporting component. The evaluation component will include evaluations of the results and outcomes of the pilot projects by independent and professionally qualified evaluators. A concerted effort will be made with the guidance of the federal advisory committee to establish agreed upon criteria for assessing the efficacy and effectiveness of the pilot projects. At the conclusion of the initiative, the U.S. Institute will report on lessons learned, taking into consideration the findings of the independent evaluations and the retrospective analysis of the research, and make recommendations for changes, if any, that might be made to existing NEPA policies, guidelines or regulations.

As noted above, the U.S. Institute proposes to establish a federal advisory committee to advise the Institute on critical components of the NEPA pilot projects initiative, including the criteria for conducting evaluations of the pilot projects and how to best select and oversee the independent evaluators. The proposed role for the advisory committee includes the review and interpretation of the evaluation results and the identification of what it sees as key findings that the U.S. Institute should consider.

V. Conclusion

In order to explore the proposal for pilot projects more fully, the U.S. Institute is holding two public workshops which will be facilitated by the Meridian Institute. The workshops are scheduled for June 8, 2001 in Denver, Colorado and June 14, 2001 in Washington, DC Representatives of resource user groups, environmental organizations, academia, state, local, and tribal governments, and federal agencies are being invited in order to participate in a balanced and constructive discussion on this initiative. These participants will not act as a committee and there will not be any attempt to seek a group recommendation on any issue. Additional seats will be available for members of the public, who will be given limited time on the agenda to provide comments.

If you would like to attend the workshop, please contact the Meridian Institute (see **ADDRESSES** section) by June 1, 2001 so that it can determine the amount of interest and prepare sufficient materials.

Based on the input provided at this workshop and any written comments received, as well as the information summarized in this document, the U.S. Institute will prepare formal recommendations to the Senators on a NEPA pilot projects initiative. Further development of such an initiative relies on the feedback of the public, interested stakeholders, and the Senators who requested the information.

Public Comments Solicited

The U.S. Institute will take into consideration any comments and additional information received on or prior to the close of the 45-day comment period.

Selected References

National Environmental Policy Act 42 U.S.C. 4321–4337.

Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act. 40 CFR 1500–1508 (1992).

"The National Environmental Policy Act. A Study of its Effectiveness After Twenty-five Years." January, 1997. Executive Office of the President, Council on Environmental Quality.

"Reclaiming NEPA's Potential: Can Collaborative Processes Improve Environmental Decision Making?" March 1999. Workshop Proceedings. Co-sponsored by the Institute for Environment and Natural Resources at the University of Wyoming and the O'Connor Center for the Rocky Mountain West at the University of Montana.

Bingham, Gail and Lee M. Langstaff. "Alternative Dispute Resolution in the NEPA Process". Resolve Center for Environmental and Public Policy Dispute Resolution. http://www.resolv.org/Resources/pubs/default.htm

Caldwell, Lynton H. 1998. "The National Environmental Policy Act. An Agenda for the Future." Indiana University Press. 210 pp.

Miller, Anne Norton. 2000. "NEPA Where are we? Where are we going? " Environmental Practice. 2(4): 275–279.

Authority: 20 U.S.C. 5601–5609.

Dated: May 7, 2001.

Christopher L. Helms,

Executive Director, Morris K. Udoll Foundation.

[FR Doc. 01–11898 Filed 5–10–01; 8:45 am]

BILLING CODE 6820–FN–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before June 25, 2001. Once the appraisal of the records is completed,NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to *records.mgt@nara.gov*. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: *records.mgt@ nara.gov*.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Food Safety and Inspection Service (N1–462–01–2, 15 items, 12 temporary items). Working papers, including drafts and reference materials, relating to the preparation of plans and reports stemming from the Government Performance and Results Act. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of strategic plans, annual performance plans, and annual performance reports.

2. Department of Agriculture, Forest Service (N1–95–01–1, 3 items, 3 temporary items). Records relating to agency Y2K activities, including risk assessments, the testing and modification of automated systems, briefings, and training. Electronic copies of documents created using electronic mail and word processing are included.

3. Department of the Army, Army-wide (N1–AU–01–17, 1 item, 1 temporary item). Master file of the Central Issue Facility System, an electronic information system containing information concerning the receipt, storage, issue, exchange, and turn-in of clothing and equipment at installations.

4. Department of the Army, Agency-wide (N1–AU–00–39, 2 items, 2 temporary items). Master file and outputs of the Hazardous Substance Management System, an electronic information system used to support and facilitate the tracking and reporting of hazardous materials at installations. The system includes such data as quantities of hazardous chemicals and information concerning their location, handling, storage, disposal, release, and transfer. Copies of reports generated by this system that pertain to the release of hazardous material are sent to the Environmental Protection Agency (EPA) and incorporated into an EPA system that was previously approved for permanent retention.

5. Department of Defense, Defense Logistics Agency (N1–361–01–2, 1 item, 1 temporary item). The Safety and Health Information Reporting System, an electronic information system consisting of employee exposure records used to produce an occupational safety and health log and summary. Included are reports on hazards, accident investigations, and surveys and inspections. Records are proposed for retention for 30 years, as required by 29 CFR 1910.

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6. Department of Energy, Agency-wide (N1–434–01–2, 5 items, 5 temporary items). Records provided by manufacturers containing safety information concerning hazardous chemicals and records relating to the inventorying and integrity testing of sealed radioactive sources. Electronic copies of documents created using electronic mail and word processing are included. Recordkeeping copies of these files are proposed for a 75-year retention period.

7. Department of Energy, Agency-wide (N1–434–01–3, 8 items, 7 temporary items). Records relating to spent nuclear fuels. Included are records pertaining to such matters as safety at installations, air sampling, planning, project reviews, and transfers of nuclear material. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of files relating to offsite storage facilities and final repositories for spent nuclear fuels are proposed for permanent retention.

8. Department of Energy, Agency-wide (N1–434–01–4, 4 items, 4 temporary items). Records relating to identifying and avoiding conflicts of interest by employees and consultants involved in technology transfer activities. Included are such records as annual certifications, correspondence, evaluation forms, review and approval forms, and mitigation plans. Also included are electronic copies of documents created using electronic mail and word processing.

9. Department of Health and Human Services, National Institutes of Health (N1–443–00–4, 1 item, 1 temporary item). Records relating to agency advisory committees. Records consist of an electronically maintained directory that includes for each committee information concerning its organization, functions, and membership. This information is also available in paper records that were previously approved for permanent retention.

10. Department of Labor, Office of the Assistant Secretary for Policy (N1–174–01–1, 5 items, 5 temporary items). Records relating to surveys to assess customer satisfaction with the Department of Labor web site. Included are surveys completed on-line by the public, master files, electronic and paper outputs, and system documentation.

11. Environmental Protection Agency, Office of Prevention (N1–412–01–2, 3 items, 2 temporary items). Paper records that have been microfilmed relating to new chemical registrations under Section 5 of the Toxic Substances Control Act. Also included are electronic copies of documents created using electronic mail and word processing. Microfilm copies and paper records that have not been filmed, consisting of such documents as pre-manufacture notices, chemical submissions and supporting data, and test data documenting health and environmental effects are proposed for permanent retention.

Dated: May 2, 2001.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 01–11863 Filed 5–10–01; 8:45 am]

BILLING CODE 7515–01–U

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date/Time: Wednesday, May 30, 2001, 8:30 a.m. to 5 p.m.

Place: NSF, 4201 Wilson Boulevard, Room 530, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Jorn Larsen-Basse, Program Director, Surface Engineering and Material Design, Division of Civil and Mechanical Systems, National Science Foundation, 4201 Wilson Blvd. Room 545, Arlington, VA 22230, (703) 292–8360.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY '01 Surface Engineering and Material Design Review Panel as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: May 8, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–11920 Filed 5–10–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis MRI Panel in Civil and Mechanical Systems (1205).

Date/Time: June 4–5, 2001 8 a.m. to 5 p.m.

Place: NSF, 4201 Wilson Boulevard, Room 530, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Richard Fragaszy, Program Director, Geomechanics and Geotechnical Systems, Division of Civil and Mechanical Systems, Room 545, (703) 292–8360.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY '00 Mechanics and Structures of Materials and Surface Engineering and Material Design Review Panel as part of the selection process for awards.

Reason for Closing: The proposal being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 8, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–11922 Filed 5–10–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date/Time: June 1, 2001, 8 a.m. to 5 p.m.

Place: NSF, 4021 Wilson Boulevard, Room 380, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Miriam Heller, Program Director, Information Technology and Infrastructure Systems, Division of Civil and Mechanical Systems, National Science Foundation, 4201 Wilson Blvd., Room 545, Arlington, VA 22230 (703) 292–8360.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY' 00 Mechanics and Structures of Materials and Surface Engineering and Material Design Review Panel as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries and personnel information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: May 8, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–11924 Filed 5–10–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Human Resource Development (#1199).

Date/Time: May 24 and 25, 2001 from 8:30 a.m. to 5 p.m.

Place: National Science Foundation, Stafford Place I—4201 Wilson Boulevard, Room 830, and Stafford Place II—Conference Center, 4121 Wilson Boulevard, Rooms 517, 565, 575, 585, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Marilyn Suiter, Program Director, Human Resource Development Division, Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Telephone: (703) 292–5121.

Purpose of Meeting: To provide advice and recommendations concerning nominations submitted to NSF for financial support.

Agenda: To review and evaluate the Presidential Awards for Excellence in Science, Mathematics, & Engineering Mentoring nominations as part of the selection process for awards.

Reason for Closing: The nominations being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the nominations. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 8, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–11925 Filed 5–10–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings:

Name: Special Emphasis Panel in Materials Research (DMR) #1203.

Dates/Times: May 29 and 30, 2001; 7:30 a.m.–9 p.m., May 31, 2001; 7:30 a.m.–3 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 375, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Ulrich Strom, Program Director, Materials Research Science and Engineering Centers, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 292–4938.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Review and evaluate proposals as part of the selection process to determine finalists for support for the FY Nanoscale Science and Engineering Centers (NSEC) Competition.

Reason for Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: May 8, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–11923 Filed 5–10–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Social, Behavioral, and Economic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Social, Behavioral, and Economic Sciences (1171)

Date/Time: May 31, 2001; 9 a.m.–5 p.m., June 1, 2001; 9 a.m.–12:15 p.m.

Place: NSF, 4201 Wilson Blvd., Rm 1235, Arlington, VA

Type of Meeting: Open.

Contact Person: Dr. Kenneth M. Brown, Executive Secretary; Directorate for Social, Behavioral, and Economic Sciences, NSF, Suite 905; 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–8741.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation on major goals and policies pertaining to SBE programs and activities.

Agenda: Discussions on issues, role and future direction of the NSF Directorate for Social, Behavioral and Economic Sciences.

Note: Visitors from outside of NSF should call (703) 292–8700 to arrange for a visitor's badge in order to facilitate getting into the building.

Dated: May 8, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–11919 Filed 5–10–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Social, Behavioral, and Economic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Social, Behavioral, and Economic Sciences (1171) Subcommittee for Human Subjects.

Date/Time: June 12, 2001, 8:30 a.m.–5 p.m. and June 13, 2001; 8:30 a.m.–1 p.m.

Place: National Science Foundation, Room 970, 4021 Wilson Boulevard, Arlington, VA.

Contact Person: Dr. Stuart Plattner, Division of Behavioral and Cognitive Sciences, NSF, Suite 995; 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–8740.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation on issues related to the use of human subjects in social and behavioral research.

Type of Meeting: Open (Members of the public who wish to attend should arrange access ahead of time with the contact person listed below).

Agenda: Discussions addressing the following topics:

Foreign Institutional Review Boards (IRBs)
Training (for principal investigators, research personnel, IRBs)
Consent (forms, signing, group/individual, students as research subjects)
Ethnography/oral history; "ethical proofreading"
Confidential/privacy
Secondary subjects/secondary data; linking data
Expanding the "exempt" category
Deception
Subpart "D" of the Common Rule
Research on the World Wide Web
Data archiving

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Dated: May 8, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–11921 Filed 5–10–01; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 39—Licenses and Radiation Safety Requirements for Well Logging.

2. *Current OMB approval number:* 3150–0130.

3. *How often the collection is required:* Applications for new licenses and amendments may be submitted at any time. Applications for renewal are submitted every 10 years. Reports are submitted as events occur.

4. *Who is required or asked to report:* Applicants for and holders of specific licenses authorizing the use of licensed radioactive material in well logging.

5. *The number of annual respondents:* 126 (36 NRC licensees and 90 Agreement State licensees).

6. *The number of hours needed annually to complete the requirement or request:* 27,352 hours. The NRC licensees total burden is 7,815 hours (113 reporting hrs and 7,702 recordkeeping hrs). The Agreement State licensees total burden is 19,537 hours (282 reporting hrs and 19,255 recordkeeping hrs). The average burden per response for both NRC licensees and Agreement State licensees is 19 hours.

7. *Abstract:* 10 CFR part 39 establishes radiation safety requirements for the use of radioactive material in well logging operations. The information in the applications, reports, and records is used by the NRC staff to ensure that the health and safety of the public is protected and that licensee possession and use of source and 3 byproduct material is in compliance with license and regulatory requirements.

Submit, by July 10, 2001 comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: http://www.nrc.gov/NRC/PUBLIC/OMB/index.html. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at *bjs1@nrc.gov.*

Dated at Rockville, Maryland, this 7th day of May 2001.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–11902 Filed 5–10–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 34—Licenses for Radiography and Radiation Safety Requirements for Radiographic Operations.

2. *Current OMB approval number:* 3150–0007.

3. *How often the collection is required:* Applications for new licenses and amendments may be submitted at any time. Applications for renewal are submitted every 10 years. Reports are submitted as events occur.

4. *Who is required or asked to report:* Applicants for and holders of specific licenses authorizing the use of licensed radioactive material for radiography.

5. *The number of annual respondents:* 364 (104 NRC licensees and 260 Agreement State licensees).

6. *The number of hours needed annually to complete the requirement or request:* 139,644 hours. The NRC licensees total burden is 39,990 hours (87 reporting hrs plus 39,903 recordkeeping hrs); The Agreement State licensees total burden is 99,654 hours (218 reporting hrs plus 99,436 recordkeeping hrs). The average burden per response for both NRC licensees and Agreement State licensees is 256 hours.

7. *Abstract:* 10 CFR part 34 establishes radiation safety requirements for the use of radioactive material in industrial radiography. The information in the applications, reports and records is used by the NRC staff to ensure that the health and safety of the public is protected and that licensee possession and use of source and byproduct material is in compliance with license and regulatory requirements.

Submit, by July 10, 2001, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: *http://www.nrc.gov/NRC/PUBLIC/OMB/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at *bjs1@nrc.gov.*

Dated at Rockville, Maryland, this 7th day of May 2001.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–11904 Filed 5–10–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–3073]

Notice of Consideration of Amendment Request for Cushing Refinery Site, Cushing, Oklahoma and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to Materials License SNM–1999. The Kerr-McGee Corporation's (Kerr-McGee or the licensee) has requested to have a portion of the property released, for unrestricted use, from the Cushing Refinery Site (Cushing) License. This action is taken in response to Kerr-McGee's license amendment request, dated November 10, 2000, and supplemented by letter dated January 19, 2001. The licensee requested that the portion of site blocks 116, 117, 124, and 125 south of Skull Creek be released for unrestricted use and removed from the license. The area that is being considered for release from the license encompasses a sediment pond located in Unaffected Area 2 (UA–2). This sediment pond is normally used as a collection area for sediments generated during treatment of water removed from Pit 5. A routine discharge of treated wastewater to Skull Creek in June 1998, resulted in the inadvertent release of some of the pond sediment not releasable under the licensee's discharge permit. Although Skull Creek was radiologically decontaminated in 1991, it is located within a radiologically affected area. Therefore, sediments removed from Skull Creek and placed into UA–2 Sediment Pond had a potential of containing licensed material. The proposed boundary of the licensed area is shown in Figure 1, "Cushing, Oklahoma Refinery Site, Proposed Licensed Site", of the January 19, 2001, letter.

If the NRC approves the license amendment, the approval will be documented in a license amendment to NRC's license SNM–1999. However, before approving the proposed license amendment, NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations.

NRC hereby provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings", of NRC's rules of practice for domestic licensing proceedings in 10 CFR Part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to: Secretary, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 a.m. and 4:15 p.m. Federal workdays; or

2. By mail, telegram, or facsimile addressed to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR § 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Kerr-McGee Corporation, Kerr-McGee Center, P.O. Box 25851, Oklahoma City, Oklahoma, 73125, Attention: Mr. Jeff Lux, and;

2. The NRC staff, by delivery to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 a.m. and 4:15 p.m. Federal workdays, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

In addition to meeting other applicable requirements of 10 CFR Part 2 of NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstance establishing that the request for a hearing is timely in accordance with § 2.1205(d).

For Further Information:

The application for the license amendment and supporting documentation are available for inspection on NRC's Public Electronic Reading Room at http://www.nrc.gov/NRC/ADAMS/index.html. Questions with respect to this action should be referred to Mr. Stewart Brown, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6605; Fax: (301) 415–5397; Internet: SWB1@NRC.GOV.

Dated at Rockville, Maryland, this 2nd day of May 2001.

For the Nuclear Regulatory Commission.

Stewart W. Brown,

Project Manager, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01–11903 Filed 5–10–01; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Revised

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on May 10–11, 2001, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The notice of this meeting was previously published in the **Federal Register** on Thursday, April 19, 2001 (66 FR 20168).

Thursday, May 10, 2001

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.–10:20 A.M.: Final Review of the License Renewal Application for Arkansas Nuclear One (ANO), Unit 1 (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Entergy Operations, Inc. regarding the license renewal application for ANO, Unit 1 and the associated staff's Safety Evaluation Report.

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10:30 A.M.–12:30 P.M.: Members Attendance at the Commission Meeting on the Office of Nuclear Regulatory Research Programs and Performance (Open)—Drs. Powers and Wallis are scheduled to participate in this meeting which will be held in the Commissioners' Conference Room, One White Flint North. Other members will be attending this meeting as observers.

1:30 P.M.–3 P.M.: Risk-Based Performance Indicators (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the staff's draft document entitled,'Risk-Based Performance Indicators: Results of Phase 1 Development," and related matters.

3:15 P.M.–4:15 P.M.: Discussion of South Texas Project Nuclear Operating Company (STPNOC) Exemption Request (Open)—The Committee will discuss the South Texas Project Nuclear Operating Company Exemption Request.

4:15 P.M.–7 P.M.: Discussion of Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting, as well as a proposed ACRS report on Management Directive 6.4 associated with the revised Generic Safety Issue Process.

Friday, May 11, 2001

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.–10 A.M.: Discussion of Topics for Meeting with the NRC Commissioners (Open)—The Committee will discuss topics scheduled for its meeting with the NRC Commissioners.

10:30 A.M.–12:30 P.M.: Meeting with the NRC Commissioners (Open)—The Committee will meet with the NRC Commissioners, Commissioners' Conference Room, One White Flint North to discuss: Proposed framework for risk-informed changes to 10 CFR Part 50; South Texas Project Exemption Request; Issues Associated with Thermal-Hydraulic Codes; Status Report on Steam Generator Tube Integrity Issues; and Status of ACRS Activities Associated with License Renewal.

1:30 P.M.–2:30 P.M.: Discussion of General Design Criteria (Open)—The Committee will hear a presentation by and hold discussions with Mr. Sorensen, ACRS Senior Fellow, regarding his views on risk-informing the General Design Criteria that are included in Appendix A to 10 CFR Part 50.

2:30 P.M.–3:15 P.M.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS.

3:30 P.M.–3:45 P.M.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

3:45 P.M.–4 P.M.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 11, 2000 (65 FR 60476). In accordance with these procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. James E. Lyons, ACRS, five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting Mr. James E. Lyons prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with Mr. James E. Lyons if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting Mr. James E. Lyons (telephone 301–415–7371), between 7:30 a.m. and 4:15 p.m., EDT.

ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or viewing on the internet at http://www.nrc.gov/ACRSACNW.

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., EDT, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: May 2, 2001.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 01–11942 Filed 5–10–01; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24973; File No. 812–12386]

Allstate Life Insurance Company, et al.

May 7, 2001.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Applicant for an order under Section 6(c) of the Investment Company Act of 1940 (the "1940 Act") granting exemptions from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder to permit the recapture of credits applied to contributions made under certain deferred variable annuity contracts.

Applicants: Allstate Life Insurance Company ("Allstate Life"), Allstate Life Insurance Company Separate Account A ("Allstate Life Separate Account"), Allstate Life Insurance Company of New York ("Allstate Life of New York"), Allstate Life Insurance Company of New York Separate Account A ("Allstate Life of New York Separate Account"), Glenbrook Life & Annuity Company ("Glenbrook"), Glenbrook Life & Annuity Company Variable Annuity Account, Glenbrook Life Multi-Manager Variable Account, Glenbrook Life & Annuity Company Separate Account A ("Glenbrook Separate Account A"), Glenbrook scudder Variable Account (A), Lincoln Benefit Life Company ("Lincoln Benefit"), Lincoln Benefit Life Variable Annuity Account ("Lincoln Separate Account"), Northbrook Life Insurance Company ("Northbrook"), Allstate Distributors, LLC, ("Allstate Distributors"), ALFS, Inc. ("ALFS") (collectively "Applicants").

Summary of Application: Applicants seek an order under Section 6(c) of the 1940 Act to the extent necessary to permit under specified circumstances the recapture of credits applied to contributions made (i) under certain deferred variable annuity contracts and certificates (the "Contracts" or, individually, the "Contract") described herein that Lincoln Benefit, Glenbrook, and Allstate Life will issue through the Lincoln Separate Account, Glenbrook Separate Account A, and the Allstate Life Separate Account, respectively, and (ii) under other deferred variable annuity contracts and certificates ("Future Contracts") that Allstate Life, Allstate Life of New York, Glenbrook, Lincoln Benefit and Northbrook (the "Insurance Company Applicants") may in the future issue through their respective separate accounts named as applicants above (the "Separate Account Applicants") or through other separate accounts that they may establish in the future (the "Future Accounts"), which contracts will be substantially similar in all material respects to the Contracts. Applicants request that the order being sought extend to any other National Association of Securities Dealers, Inc. ("NASD") member broker-dealer controlling or controlled by, or under common control with, Allstate Life whether existing or created in the future that serves as a distributor or principal underwriter for Contracts or Future Contracts offered through the Separate Account Applicants or any Future Account ("Affiliated Broker-Dealer(s)").

Filing Date: The Application was filed on December 26, 2000, and amended on May 3, 2001.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, in person or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 1, 2001, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Lincoln Benefit Life Company, 2940 South Eighty-fourth Street, Lincoln, Nebraska 68506, Attn: Carol S. Watson, Esq.; copies to Joan E. Boros, Esq., Jorden Burt LLP, 1025 Thomas Jefferson Street, NW., Suite 400E Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Patrick Scott, Attorney, or Lorna MacLeod, Branch Chief, Office of Insurance Products, Divisions of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 ((202) 942–8090).

Applicant's Representations

1. Allstate Life is a stock life insurance company organized under the laws of the State of Illinois. The Allstate Life Separate Account is a segregated asset account of Allstate Life, which is registered with the Commission as a unit investment trust under the 1940 Act. Allstate Life serves as depositor of the Allstate Life Separate Account.

2. Allstate Life of New York is a stock life insurance company organized under the laws of the State of New York. The Allstate Life of New York Separate Account is a segregated asset account of Allstate Life of New York, which is registered with the Commission as a unit investment trust under the 1940 Act. Allstate Life of New York serves as depositor of the Allstate Life of New York Separate Account.

3. Glenbrook is a stock life insurance company organized under the laws of the State of Illinois, and re-domesticated under the laws of the State of Arizona in 1998. Glenbrook Life & Annuity Company Variable Annuity Account, Glenbrook Life Multi-Manager Variable Account, Glenbrook Separate Account A, Glenbrook Scudder Variable Account (A), and Allstate Life of New York Separate Account A (the "Glenbrook Separate Accounts") are segregated asset accounts of Glenbrook, which are registered with the Commission as unit investment trusts under the 1940 Act. Glenbrook serves as depositor of the Glenbrook Separate Accounts.

4. Lincoln Benefit is a stock life insurance company organized under the laws of the State of Nebraska. The Lincoln Separate Account is a segregated asset account of Lincoln Benefit, which is registered with the Commission as unit investment trust under the 1940 Act. Lincoln Benefit serves as depositor of the Lincoln Separate Account.

5. Northbrook is a stock life insurance company organized under the laws of the State of Illinois in 1978.

6. Allstate Distributors is an affiliate of Lincoln Benefit and serves as distributor of certain deferred variable annuity contracts, including certain Contracts, issued by the Insurance Company Applicants through the Separate Account Applicants. Allstate Distributors is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 (the "1934 Act") and is a member of the National Association of Securities Dealers ("NASD"). The Contracts issued by Allstate Life will be offered through registered representatives of broker-dealers, which are registered under the 1934 Act and members of the NASD, that have selling agreements with Allstate Distributors.

7. ALFS is an affiliate of Lincoln Benefit and serves as distributor of certain deferred variable annuity contracts, including certain Contracts, issued by the Insurance Company Applicants through the Separate Account Applicants. ALFS is registered with the Commission as a broker-dealer under the 1934 Act, and is a member of the NASD. The Contracts (other than the Contracts issued by Allstate Life) will be offered through registered representatives of broker-dealers, which are registered under the 1934 Act and members of the NASD, that have selling agreements with ALFS.

8. All of the Insurance Company Applicants, Allstate Distributors, and ALFS are direct or indirect wholly-owned subsidiaries of Allstate Insurance Company.

9. The variable portions of the Contracts issued by Lincoln Benefit, Glenbrook, and Allstate Life are registered under the Securities Act of 1933 (the "1933 Act"). The variable portion of Future Contracts also will be registered under the 1933 Act. That portion of the assets of each Separate Account Applicant that is equal to the reserves and other contract liabilities with respect to Contracts is not chargeable with liabilities arising out of any other business of the corresponding Insurance Company Applicant. Any income, gains or losses, realized or unrealized, from assets allocated to a Separate Account Applicant will be, in accordance with such Account's

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Contracts, credited to or charged against such Separate Account Applicant, without regard to other income, gains or losses of the corresponding Insurance Company Applicant.

10. Each of the Separate Accounts Applicants are divided into multiple subaccounts; each subaccount invests in shares of a corresponding portfolio ("Portfolio"), that serves as an investment option under Contracts issued through the separate account.

11. Each time Lincoln Benefit receives a Purchase Payment from an owner of a Lincoln Benefit Contract, it will add to the owner's contract value a Credit Enhancement of 4% of the Purchase Payment amount. Lincoln Benefit will allocate Credit Enhancements among the available Portfolios, according to the allocation instructions in effect for the Purchase Payments. Lincoln Benefit will fund Credit Enhancements from its general account assets.

12. The Lincoln Benefit Contract provides for various surrender options, annuity benefits and annuity payout options, as well as transfer privileges among Sub-accounts, dollar cost averaging, and other features. The Lincoln Benefit Contract contains the following charges: (i) A contingent deferred sales charge as a percentage of Purchase Payments surrendered, which is 8% in year one, 7% in years two and three, 6% in years four and five, 5% in year six, 4% in year seven, 3% in year eight, and 0% thereafter; (ii) a $35 annual administrative charge (which is waived if total Purchase Payments exceed $50,000; (iii) a mortality and expense risk fee of 1.30% annually; (iv) an administrative charge of 0.10% annually; and (v) a transfer fee of $10 per transfer with certain exceptions, which currently is being waived. Lincoln Benefit also deducts any applicable state or local premium taxes up to 4.0%, depending on the owner's state of residence or the state in which the Contract was sold. In addition, assets invested in the Sub-accounts are charged with the operating expenses of the Portfolios.

13. Each time Glenbrook receives a Purchase Payment from an owner of a Glenbrook Contract, it will add to the owner's contract value a Credit Enhancement. There are two Credit Enhancement options available under the Glenbrook Contract:

- Under option 1, Glenbrook will add to the owner's contract value a Credit Enhancement equal to 4% of the Purchase Payment amount.
- Under option 2, Glenbrook will add to the owner's contract value a Credit Enhancement equal to 2% of the Purchase Payment amount. In addition, on every 5th contract anniversary during the accumulation phase, Glenbrook will add to the owner's contract value a Credit Enhancement equal to 2% of the owner's contract value as of such contract anniversary.

Glenbrook will allocate Credit Enhancements among the available Portfolios, according to the allocation instructions in effect for the Purchase Payments. Glenbrook will fund Credit Enhancements from its general account assets.

14. The Glenbrook Contract provides for various surrender options, annuity benefits and annuity payout options, as well as transfer privileges among Sub-accounts, dollar cost averaging, and other features. The Contract contains the following charges: (i) A withdrawal charge as a percentage of Purchase Payment surrendered, which is 8% in years one and two, 7% in years three and four, 6% in year five, 5% in year six, 4% in year seven, 3% in year eight, and 0% thereafter; (ii) a $35 annual administrative charge (which is waived if total Purchase Payments exceed $50,000); (iii) a mortality and expense risk fee of 1.40% annually; and (iv) a transfer fee of $10 on transfers in excess of twelve in any Contract year, which currently is being waived. Glenbrook also deducts any applicable state or local premium taxes up to 4.0%, depending on the owner's state of residence or the state in which the Contract was sold. In addition, assets invested in the Sub-accounts are charged with the annual operating expenses of the Portfolios.

15. Each time Allstate Life receives a Purchase Payment from an owner of an Allstate Life Contract, it will add to the owner's contract value a Credit Enhancement of 4% of the Purchase Payment amount. Allstate Life will allocate Credit Enhancements among the available Portfolios, according to the allocation instructions in effect for the Purchase Payments. Allstate Life will fund Credit Enhancements from its general account assets.

16. The Allstate Life Contract provides for various surrender options, annuity benefits and annuity payout options, as well as transfer privileges among Sub-accounts, dollar cost averaging, and other features. The Contract contains the following charges: (i) A withdrawal charge as a percentage of Purchase Payments surrendered, which is 8% in years one, two, and three, 7% in year four, 6% in year five, 5% in year six, 4% in year seven, 3% in year eight, and 0% thereafter; (ii) a mortality and expense risk fee of 1.60% annually; and (iii) a transfer fee of .50% of the amount transferred on transfers in excess of twelve within a calendar year. (The Allstate Life Contract does not assess an annual contract maintenance charge or annual administrative fees.) Allstate Life also deducts any applicable state or local premium taxes up to 4.0%, depending on the owner's state of residence or the state in which the Contract was sold. In addition, assets invested in the Sub-accounts are charged with the annual operating expenses of the Portfolios.

17. Each Insurance Company Applicant will recapture Credit Enhancements if the owner returns the Contract for a refund during the free look period. The free look period is 20 days or such longer period as may be required under state law. The Insurance Company Applicants will not seek to recapture Credit Enhancements under any other circumstance.

18. The free look period is the period during which an owner may return a Contract after it has been delivered and receive a full refund of the contract value, less any Credit Enhancements. No other charges will apply to the refund, but the owner bears the investment risk from the time of purchase until he or she returns the Contract. The owner also will bear any expenses charged with respect to the Credit Enhancement amount incurred prior to return of the Contract, e.g., any mortality and expense risk charge. The refund amount may be more or less than the Purchase Payment the owner made, unless state insurance law requires that the full amount of the Purchase Payment be refunded.

19. Applicants seek relief pursuant to Section 6(c) from Sections 2(a)(32) and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder to the extent necessary (i) to permit Lincoln Benefit, Glenbrook, and Allstate Life to recapture an amount equal to the Credit Enhancements when an owner returns a Contract or Future Contract for a refund during the "free look" period, in which case the issuing Insurance Company Applicant will recover the amount of any Credit Enhancement applicable to such contribution, and (ii) to permit all of the Insurance Company Applicants to recapture Credit Enhancements under Future Contracts Insurance Company Applicants may issue through the Separate Accounts Applicants or through Future Accounts that contain Credit Enhancement features, including recapture provisions, that are substantially similar in all material respects to the Contracts. Applicants also request that the order being sought extend to any Affiliated Broker-Dealer that serves as a distributor or principal underwriter for Contracts or Future Contracts offered through the Separate Account Applicants or any Future Account.

Applicants' Legal Analysis

1. Section 6(c) the 1940 Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the 1940 Act and the rules promulgated thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants represent that it is not administratively feasible to track the Credit Enhancement amount in the Sub-accounts after the Credit Enhancement is applied. Accordingly, the asset-based charges applicable to the Sub-accounts will be assessed against the entire amounts held in the Sub-accounts, including the Credit Enhancement amount, during the "free look" period. As a result, during such period, the aggregate asset-based charges assessed against an owner's annuity account value will be higher than those that would be charged if the owner's contract value did not include the Credit Enhancements.

3. Subsection (i) of Section 27 provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for any registered separate account funding variable insurance contracts or a sponsoring insurance company of such account to sell a contract funded by the registered separate account unless, among other things, such contract is a redeemable security. Section 2(a)(32) defines "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

4. Applicants submit that the Credit Enhancement recapture provisions of the Contracts would not deprive an owner of his or her proportionate share of the issuer's current net assets. Applicants state that an owner's interest in the Credit Enhancement amount allocated to his or her contract value upon receipt of an initial Purchase Payment is not vested until the applicable free-look period has expired without return of the Contract. Until the free look period has expired and any Credit Enhancement amount is vested, Applicants submit that the issuing Insurance Company Applicant retains the right and interest in the Credit Enhancement amount, although not in the earnings attributable to that amount. Thus, Applicants argue that when an Insurance Company Applicant recaptures any Credit Enhancement, it is merely retrieving its own assets, and the owner has not been deprived of a proportionate share of the Separate Account's assets.

5. In addition, Applicants state that permitting an owner to retain a Credit Enhancement under a contract upon the exercise of the free look period would not only be unfair, but would also encourage individuals to purchase a Contract with no intention of keeping it, but simply to return it for a quick profit.

6. Applicants state that the Credit Enhancement will be attractive to and in the interest of investors because it will permit owners to put either 102% (under Credit Enhancement option 2 of Glenbrook's Contracts) or 104% (under Lincoln's and Allstate Life's Contracts and Credit Enhancement option 1 of Glenbrook's Contract) of their Purchase Payments to work for them in the selected Sub-accounts. In addition, the owner will retain any earnings attributable to the Credit Enhancement, as well as the principal amount of the Credit Enhancement if he or she does not cancel the Contract.

7. Applicants submit that the provisions for recapture of any Credit Enhancement under the Contracts do not, and any such Future Contract provisions will not, violate Section 2(a)(32) and 27(i)(2)(A) of the 1940 Act. Nevertheless, to avoid any uncertainties, Applicants request an exemption from those Sections, to the extent deemed necessary, to permit the recapture of any Credit Enhancements under the circumstances described herein with respect to the Contracts and any Future Contracts, without the loss of the relief from Section 27 provided by Section 27(i).

8. Section 22(c) of the 1940 Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company, whether or not members of any securities association, to the same extent, covering the same subject matter, and for the accomplishment of the same ends as are prescribed in Section 22(a). Rule 22c–1 thereunder prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

9. Arguably, the recapture of a Credit Enhancement might be viewed as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the Separate Account. Applicants contend, however, that recapture does not involve either of the evils that Rule 22c–1 was intended to eliminate or reduce, namely: (i) The dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption or repurchase at a price above it, and (ii) other unfair results including speculative trading practices. To effect a recapture of a Credit Enhancement the issuing Insurance Company Applicant will redeem an owner's interest in a Sub-account at a price determined on the basis of current net asset value of the Sub-account. The amount recaptured will equal the amount of the Credit Enhancements paid out of its general account assets. Although the owner will be entitled to retain any investment gain attributable to the Credit Enhancement, the amount of such gain will be determined on the basis of the current net asset value of the relevant Sub-accounts. Thus, no dilution will occur upon the recapture of the Credit Enhancement. Applicants also submit that the second harm that Rule 22c–1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Credit. However, to avoid any uncertainty as to full compliance with the 1940 Act, Applicants request an exemption from the provisions of Rule 22c–1 to the extent deemed necessary to permit them to recapture the Credit Enhancements

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under the Contracts and Future Contracts.

10. Applicants submit that their request for an order, which applies to Future Accounts established by the Insurance Company Applicants, and Future Contracts that are substantially similar in all material respects to the Contracts described herein, is appropriate in the public interest. Applicants state that such an order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications in the future, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Applicants state that requiring them to file additional Applications would impair their ability effectively to take advantage of business opportunities as they arise, and that investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the 1940 Act that has not already been addressed in this Application.

Conclusion

Applicants submit that their exemptive request meets the standards set out in Section 6(c) of the 1940 Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act, and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–11895 Filed 5–10–01; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before June 11, 2001. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Financing Eligibility Statement-Social Disadvantaged-Economic Disadvantaged.

No's: 1941A, 1941B, 1941C.

Frequency: On Occasion.

Description of Respondents: SBA Businesses seeking financing from Specialized Small Business Investment Companies (SSBIC).

Annual Responses: 293.

Annual Burden: 586.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 01–11930 Filed 5–10–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before June 11, 2001. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Portfolio Financing Report.

No: 1031.

Frequency: On Occasion.

Description of Respondents: SBA Business Investment Companies.

Annual Responses: 293.

Annual Burden: 586.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 01–11931 Filed 5–10–01; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3670]

Notice of Meeting of the Cultural Property AdvisoryCommittee

ACTION: Notice.

The Cultural Property Advisory Committee will meet on Wednesday, June 13, 2001, from approximately 9 a.m. to 5 p.m., and on Thursday, June 14, from approximately 9 a.m. to 5 p.m., at the Department of State, Annex 44, Room 800–A, 301 4th St., SW., Washington, DC. During its meeting the Committee will review the proposal to extend the Memorandum of Understanding between the Government of the United States of America and the Government of Peru concerning the Imposition of Import Restrictions on Archaeological Material from the Prehispanic Cultures and Certain Ethnological Material from the Colonial Period of Peru. The Committee's responsibilities are carried out in accordance with the provisions of the Convention on Cultural PropertyImplementation Act 19 U.S.C. 2601 *et seq.*). A copy of the Act, the subject Memorandum of Understanding, and related information may be found at this web site: http://exchanges.state.gov/education/culprop.

During its meeting on June 13, the Committee will hold an open session, 9:15–10:45 a.m. to receive public comment on the proposal to extend the Memorandum of Understanding. The Committee also invites written comment, and requests that both oral and written comments be limited to the proposal to extend the US-Peru Memorandum of Understanding. Other portions of the meeting on June 13 and 14 will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h). Written comments may be sent to Cultural Property, Department of State, Annex 44, 301 4th Street, SW., Rm. 247, Washington, DC 20547; or faxed to (202) 619–5177. Persons wishing to attend the open portion of the meeting on June 13, must notify the Cultural Property Office, (202) 619–6612, no later than 3 p.m., Friday, June 8, 2001, to arrange for admission. Seating is limited.

Dated: May 8, 2001.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 01–12051 Filed 5–10–01; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Notice Number 3610]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 9:30 a.m. on Thursday, May 24, 2001, in Room 2415, at U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC, 20593–0001. The purpose of this meeting will be to finalize preparations for the 74th Session of the Maritime Safety Committee, and associated bodies of the International Maritime Organization (IMO), which is scheduled for May 30—June 8, 2001, at IMO Headquarters in London. At this meeting, papers received and the draft U.S. positions will be discussed.

Among other things, the items of particular interest are:

—Large passenger ship safety

—Adoption of amendments to the International Convention for the Safety of Life at Sea (SOLAS)

—Bulk carrier safety

—Implementation of the revised International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW)

—Piracy and armed robbery against ships

—Reports of seven subcommittees: Training and watchkeeping, Stability, loadlines and fishing vessel safety, Radiocommunications and search and rescue, Fire protection, Bulk liquids and gases, Flag State implementation and Ship design and equipment.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Mr. Joseph J. Angelo, Commandant (G–MS), U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Room 1218, Washington, DC 20593–0001 or by calling (202) 267–2970.

Dated: May 2, 2001.

Stephen Miller,

Executive Secretary, Shipping Coordinating Committee U.S. Department of State.

[FR Doc. 01–11956 Filed 5–10–01; 8:45 am]

BILLING CODE 4710–07–P

TENNESSEE VALLEY AUTHORITY

Privacy Act of 1974; Computer Matching Program

AGENCY: Tennessee Valley Authority.

ACTION: Notice of computer matching program.

SUMMARY: Pursuant to the Privacy Act of 1974 5 U.S.C. 552(a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), and the Computer Matching and Privacy Protection Amendments of 1990 (Pub. L. 101–508), and the Office of Management and Budget's Guidelines on the Conduct of Matching Programs, notice is hereby given that the Tennessee Valley Authority (TVA) proposes to conduct a computer match program. The program will match United States Department of Labor (DOL), Office of Workers' Compensation Program (OWCP) records against records of claims paid under TVA self-insured medical and pharmacy plans. This information will be used to identify individuals who may have received improper duplicate medical reimbursements under a TVA self-insured medical plan and the Federal Employees' Compensation Act (FECA). No action will be taken based on the results of the match alone; rather, TVA and/or OWCP will evaluate the results of the match and other relevant information to help identify and/or recover any erroneous payments to either individuals or medical providers.

EFFECTIVE DATE: This proposed action will become effective June 11, 2001, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to Wilma H. McCauley, Privacy Act Officer, TVA, 1101 Market Street (EB 5B), Chattanooga, Tennessee 37402. As a convenience to commenters, TVA will accept public comments transmitted by facsimile at (423) 751–3400 or e-mail at whmccauley@tva.gov. Receipt of FAX or e-mail transmittals will not be acknowledged.

FOR FURTHER INFORMATION CONTACT: W. H. McCauley, TVA Privacy Act Officer, (423) 751–2523.

SUPPLEMENTARY INFORMATION: TVA and OWCP intend to conduct a computer matching program for the purposes stated below. This notice meets the publication requirements under subsection (e)(912) of the Privacy Act of 1974, as amended. A copy of the computer matching agreements and a copy of this notice have been transmitted to the Office of Management and Budget, the U.S. House of Representatives, and the U.S. Senate.

Set forth below is a description of the matching program.

Report of Computer Matching Program Between TVA and OWCP

A. Participating Agencies

TVA is the recipient agency and will coordinate the computer matches with records provided by OWCP and the administrator of the TVA self-insured medical plan for the purpose of the match.

B. Purposes of the Match

The computer matching program involves the U.S. Department of Labor (DOL), Office of Workers' Compensation Programs (OWCP), and the Tennessee Valley Authority (TVA), Office of the Inspector General (OIG). The purpose of the matching program is: To match medical claims paid under the Federal Employees' Compensation Act (FECA), 5 U.S.C. (8101 *et seq.*, with claims paid under TVA self-insured medical and pharmacy plans. This information will be used to identify individuals who may have received improper duplicate medical reimbursements under TVA self-insured medical and pharmacy plans and FECA. No action will be taken based on the results of the match alone; rather, TVA and/or OWCP will evaluate the results of the match and other relevant information to help identify and/or recover any erroneous payments to either individuals or medical providers.

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C. Authority for Conducting Matching Program.

The authority for undertaking this match is found in FECA, 5 U.S.C. (8101 *et seq.*; the Tennessee Valley Authority Act, 16 U.S.C. (831 *et seq.*; and the Inspector General Act, 5 U.S.C. App.

D. Categories of Individuals and Identification of Records to be Matched.

The DOL system of records published as DOL/GOVT–1, Office of Workers' Compensation Programs, Federal Employees' Compensation File, 58 FR 49548, 49556, September 23, 1993, amended 59 FR 47361, September 15, 1994. OWCP's file contains relevant data for approximately 2300 individuals who are receiving workers' compensation benefits based on their TVA employment.

The TVA system of records published as TVA–9, Medical Records System, 55 FR 34816, 34823, August 24, 1990. TVA receives data for approximately 16,000 TVA employees who file claims, or who have claims filed on their behalf, for medical plan reimbursement. Records from the match will be included in TVA–31, OIG Investigative Records.

E. Inclusive Dates of the Matching Program

This program will begin 40 days after a copy of this agreement is sent to Congress. The match initially will cover the period January 1, 1998 to December 31, 2000. Thereafter, it will be conducted periodically for 18 months and may be renewed for another 12 months.

Jacklyn J. Stephenson,

Senior Manager, Enterprise Operations, Information Services.

[FR Doc. 01–11870 Filed 5–10–01; 8:45 am]

BILLING CODE 8120–08–U

TENNESSEE VALLEY AUTHORITY

Privacy Act of 1974; Computer Matching Program

AGENCY: Tennessee Valley Authority.

ACTION: Notice of computer matching program.

SUMMARY: Pursuant to the Privacy Act of 1974 5 U.S.C. 552(a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), and the Computer Matching and Privacy Protection Amendments of 1990 (Pub. L. 101–508), and the Office of Management and Budget's Guidelines on the Conduct of Matching Programs, notice is hereby given that the Tennessee Valley Authority (TVA) proposes to conduct a computer match program. The program will match United States Department of Labor (DOL), Office of Workers' Compensation Programs (OWCP) records against wages reported to the Tennessee Department of Labor and Workforce Development (TDLWD) to identify individuals receiving both wage replacement benefits and earning wages. This information will be used to identify individuals receiving workers' compensation benefits who have not reported their employment and to assist OWCP in determining the individuals appropriate level of benefits.

EFFECTIVE DATE: This proposed action will become effective June 11, 2001 and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget (OMB) or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to Wilma H. McCauley, Privacy Act Officer, TVA, 1101 Market Street (EB 5B), Chattanooga, Tennessee 37402. As a convenience to commenters, TVA will accept public comments transmitted by facsimile at (423) 751–3400 or e-mail at *whmccauley@tva.gov*. Receipt of FAX or e-mail transmittals will not be acknowledged.

FOR FURTHER INFORMATION CONTACT: W. H. McCauley, TVA Privacy Act Officer, (423) 751–2523.

SUPPLEMENTARY INFORMATION: TVA, OWCP, and the TDLWD intend to conduct a computer matching program for the purposes stated below. This notice meets the publication requirements under subsection (e)(912) of the Privacy Act of 1974, as amended. A copy of the computer matching agreements and a copy of this notice have been transmitted to the OMB, the U.S. House of Representatives, and the U.S. Senate.

Set forth below is a description of the matching program.

Report of Computer Matching Program Between TVA, OWCP, and TDLWD

A. Participating Agencies

TVA is the recipient agency and will coordinate the computer matches with records provided by OWCP and TDLWD for the purpose of the match.

B. Purposes of the Match

The computer matching program involves the U.S. Department of Labor (DOL), Office of Workers' Compensation Programs (OWCP), the Tennessee Valley Authority (TVA), Office of the Inspector General (OIG), and the Tennessee Department of Labor and Workforce Development. The purpose of the matching program is:

To compare beneficiaries receiving (1) workers' compensation benefits under the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 *et seq.*, and (2) wages reported to TDLWD. The match will identify beneficiaries receiving for the same period both (1) wage replacement compensation for disability under the FECA and (2) wages from employment. The information will be used to assist OWCP in determining whether the individual who did not correctly report their employment are receiving the appropriate level of benefits.

C. Authority for Conducting Matching Program

The authority for undertaking this match is found in FECA, 5 U.S.C. 8101 *et seq.*; the Tennessee Valley Authority Act, 16 U.S.C. 831 *et seq.*; and the Inspector General Act, 5 U.S.C. App.

D. Categories of Individuals and Identification of Records To Be Matched

The DOL system of records is published as DOL/GOVT–1, Office of Workers' Compensation Programs, Federal Employees' Compensation File, 58 FR 49548, 49556, September 23, 1993, amended 59 FR 47361, September 15, 1994. OWCP's file contains relevant data for approximately 2300 individuals who are receiving workers' compensation benefits based on their TVA employment. Records from TDLWD will be included in TVA–31, OIG Investigative Records.

E. Inclusive Dates of the Matching Program

This program will begin 40 days after a copy of this agreement is sent to Congress. The match initially will cover the period January 1, 1998, to December 31, 2000. Thereafter, it will be conducted periodically for 18 months and may be renewed for another 12 months.

Jacklyn J. Stephenson,

Senior Manager, Enterprise Operations, Information Services.

[FR Doc. 01–11871 Filed 5–10–01; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Heber Valley Historic Railroad Authority

[Docket Number FRA–2000–7413]

The Heber Valley Historic Railroad Authority seeks a waiver of compliance with the *Inspection and Maintenance Standards for Steam Locomotives*, 49 CFR part 230, published November 17, 1999. Section 230.3(c) of the standards requires steam locomotives having flue tubes replaced prior to September 25, 1995, have a *one thousand four hundred seventy-two service day inspection* (49 CFR 230.17) performed prior to being allowed to operate under the requirements of part 230. The Heber Valley Historic Railroad Authority seeks this waiver for one locomotive number 618 which had the flue tubes replaced and was returned to service May 13, 1995, one hundred-fifty-five days prior to the cut off date published in part 230.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2000–7413) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room Pl–401, Washington, DC, 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at: *http://dms.dot.gov*.

Issued in Washington, DC on May 7, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator forSafety Standards and Program Development.

[FR Doc. 01–11952 Filed 5–10–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 219 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Indiana Northeastern Railroad Company

[Docket Number FRA–2001–9014]

The Indiana Northeastern Railroad Company (IN) seeks a permanent waiver of compliance, docket number FRA–2001–9014, from the requirements of the Control of Alcohol and Drug Use, 49 CFR Part 219, Subpart G, which requires the railroad to have a random alcohol and drug testing program. In seeks a waiver for total relief from the requirement to have a random alcohol and drug testing program because of the serious financial burdens the costs of both the training and the hours involved to implement this program will place on the railroad operation as a small entity.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2001–9014) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC. 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

Issued in Washington, DC on May 7, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards, and Program Development.

[FR Doc. 01–11947 Filed 5–10–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

North Star Rail

[Docket Number FRA–2001–8961]

The North Star Rail seeks a waiver of compliance with the *Inspection and Maintenance Standards for Steam Locomotives*, 49 CFR part 230, published November 17, 1999. Section 230.3(c) of the standards requires steam locomotives having flue tubes replaced prior to September 25, 1995, have a *one thousand four hundred seventy-two service day inspection* (49 CFR 230.17) performed prior to being allowed to operate under the requirements. North Star Rail seeks this waiver for one locomotive number 261 which was built in 1944. The railroad's records indicate the locomotive was overhauled and had the flue tubes replaced in 1993. Since the overhaul the locomotive has operated under steam a total of 240 days. North Star Rail states that the locomotive is stored year round indoors in a modern shop facility.

Interested parties are invited to participate in these proceedings by

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submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings, since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2001–8961) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI-401, Washington, DC., 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC. on May 7, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 01–11953 Filed 5–10–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Docket No. FRA–2001–9020

Applicant: Canadian National/Illinois Central, Mr. L.W. Winn, Manager-Signal & Communications, 2921 Horn Lake Road, Memphis, Tennessee 38109.

The Illinois Central Railroad seeks approval of the proposed discontinuance and removal of the automatic block signal system, on the single main track of the Gulf Division, between milepost 394.7 and milepost 397.5, on the Memphis Subdivision, and between milepost 397.5 and milepost 398.2, on the Grenada Subdivision, near Memphis, Tennessee.

The reason given for the proposed changes is that the signal system is no longer necessary, because the signal system is located wholly within the Memphis Terminal Yard Limits, where all movements must be coordinated with the person in charge of the yard.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on May 7, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator forSafety Standards and Program Development.

[FR Doc. 01–11948 Filed 5–10–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No. FRA–2001–9021

Applicant: Canadian National/Illinois Central, Mr. L.W. Winn, Manager-Signal & Communications, 2921 Horn Lake Road, Memphis, Tennessee 38109.

The Illinois Central Railroad seeks approval of the proposed discontinuance and removal of the power-operated switch and associated signal arrangement, at milepost 362.5, on the Gulf Division, Baton Rouge Subdivision, near Baton Rouge, Louisiana.

The reason given for the proposed changes is that the switch and signal arrangement is no longer necessary, because it is within yard limits where all movements must be coordinated with the person in charge of the yard, at Baton Rouge, Louisiana.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on May 7, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator forSafety Standards and Program Development.

[FR Doc. 01–11949 Filed 5–10–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No. FRA–2001–9022

Applicant: Canadian National/Illinois Central, Mr. L.W. Winn, Manager-Signal & Communications, 2921 Horn Lake Road, Memphis, Tennessee 38109.

The Illinois Central Railroad seeks approval of the discontinuance and removal of the existing signal arrangement, consisting of two signals, at milepost 148.6, on the Gulf Division, Central Subdivision, near Natchez, Mississippi.

The reason given for the proposed changes is that the signal arrangement is no longer necessary, because it is within yard limits where all movements must be coordinated with the person in charge of the yard at Natchez, Mississippi.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on May 7, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator forSafety Standards and Program Development.

[FR Doc. 01–11950 Filed 5–10–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No. FRA–2001–9238

Applicants: Peninsula Corridor Joint Powers Board

Mr. Darrell J. Maxey, P.E., Chief Engineer, 1250 San Carlos Avenue, P.O. Box 3006, San Carlos, California 94070–1306

Mr. David Obedoza, Manager of Signals, 1250 San Carlos Avenue, P.O. Box 3006, San Carlos, California 94070–1306

The Peninsula Corridor Joint Powers Board seeks approval of the proposed modification of the automatic block signal system, on the two main tracks, near milepost 31.9, on the Peninsula Division, at Palo Alto, California, consisting of the removal of the electric lock from the hand-operated switch, on Main Track 2, of the north crossover.

The reason given for the proposed changes is to eliminate facilities no longer needed in present day operation; the electric lock is no longer necessary due to the previous removal of the Permanente Branch Line.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on May 7, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator forSafety Standards and Program Development.

[FR Doc. 01–11951 Filed 5–10–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket No NHTSA–2001–9423]

National Survey of Speeding, Driving While Distracted, and Other Unsafe Driving Behaviors

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice and request for comments on data collection.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) plays a central role in the national effort to reduce motor vehicle related traffic injuries and deaths. Speeding has been implicated as a cause of about a third of all fatal crashes. The contributions of driving while distracted, fatigued and aggressive driving to motor vehicle crashes are thought to be substantial, however, estimates are not available. The most recent survey data collected by NHTSA on unsafe driving behaviors was administered in 1997. Since that time there have been various changes in the driving environment including an extraordinary increase in the use of wireless phones in vehicles. The purpose of this study is to gather information on driver behavior with respect to speeding, driving while distracted, aggressive driving, and fatigue. The survey will also collect data on the conditions under which these behaviors typically occur as well as the public's views toward various unsafe driving behaviors and countermeasures they would support. To acquire these data, two surveys of about 15 minutes in length will each be developed and administered to two separate national probability samples of 2,000 persons. As required by the Paperwork Reduction Act of 1995, NHTSA invites the general public and Federal Agencies to comment on the need for the proposed data collection, the types of questions respondents should be asked, ways to enhance the quality of the collection, and ways to minimize the burden on respondents.

DATES: Written comments must be submitted on or before July 10, 2001.

ADDRESSES: Direct all written comments to US DOT, Docket Management Facility, Docket Operations, PL–401, Docket # NHTSA–2001–9423, 400 7th Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Paul J. Tremont, Ph.D., Project Officer, Office of Research and Traffic Records (NTS–31), Washington, DC 20590, e-mail *ptremont@nhtsa.dot.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing for a 60-day period to allow the public and affected agencies sufficient time to comment on the proposed collection of information.

The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methods and assumptions;

(iii) How to enhance the quality, utility, and clarity of the information;

(iv) How to minimize the burden of the information collection on those being asked to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection methods or other forms of information technology, (*e.g.*, permitting electronic response submissions).

In response to these requirements, NHTSA asks for public comment on the following collection of information:

National Survey of Speeding, Driving While Distracted, Aggressive Driving and other Unsafe Driving Behaviors

Type of Request: New information collection requirement.

OMB Clearance Number: None.

Form Number: This collection uses no standard forms.

Requested Approval Expiration date: June 30, 2002.

Summary of the Collection of Information

The National Highway Traffic Safety Administration (NHTSA) plays a key role in the national effort to reduce motor vehicle related traffic injuries and deaths. Last year more than 38,000 deaths and several million injuries occurred as a direct result of motor vehicle crashes. There is strong evidence to suggest that most of these crashes are caused by human errors, such as speeding, aggressive driving, driver distraction and fatigue, and are thus avoidable.

The proposed survey, to be administered in the 3rd quarter of 2001, will gather data on the nature and extent of these problem-driving behaviors with the objective of providing the basis for the development of countermeasures to them. Data will be collected on topics covered in the 1997 Speeding & Unsafe Driving survey, and also will include questions on distracted, aggressive and fatigue-related driving. Question areas will cover characteristics of drivers who perform these various unsafe driving actions, and the situations accompanying unsafe actions. Data will also be acquired on distractions drivers are subject to, including wireless phones, the situations that lead to these distractions, and the way they are managed while driving.

In order to include measurement of all topic areas of interest in a thorough manner while keeping the interview length to a level to avoid respondent fatigue and data degradation, two separate surveys will be administered. The survey topics will be divided such that most of the speed and aggressive driving items will be included in version 1, while most of the distracted driver and fatigue items will be included in version 2. General attitudinal items concerning problem driving overall and respondent characteristics will appear on both survey versions.

These surveys will be administered by telephone to separate national probability samples of the driving age public (age 16 and older as of their last birthday). Participation by respondents is completely voluntary. To keep interview time to about 15–20 minutes, and to minimize errors, surveys will be conducted using computer assisted interviewing. A Spanish-language questionnaire administered by bi-lingual interviewers will be used to ensure Spanish-speaking respondents are included in the sample. All respondents' answers will remain anonymous and completely confidential. Participant names are not collected during the interview and the telephone number used to reach the respondent is separated from the data record prior to its entry into the analytical database.

Description of the Need for and Proposed Use of the Information

More than 38,000 persons were fatally injured in motor vehicle crashes in 2000, and up to 1/3 of these fatalities are associated with to excessive speeds. While the number of speeding-related and alcohol-related crashes have dropped slightly since the mid-1990's (National Center for Statistics and Analysis), the number of fatal crashes attributed to non-speeding and non-alcohol related causes have increased. These other causes include driver-controlled behaviors such as driving while fatigued, aggressive driving, and distracted driving (including cell phone use, talking to others in the vehicle, eating, and reading). NHTSA is committed to the development of effective programs to reduce the incidence of these crashes

While alcohol-related driving is studied by numerous sources, relatively little is known about the public's attitudes and behaviors with respect to those other driver-controlled factors. In order for NHTSA to properly plan and evaluate programs directed at reducing crashes, and to provide information to support states, localities and law enforcement agencies, it needs to understand the public's current beliefs and behaviors.

The findings from these proposed collections will assist NHTSA in identifying the extent of the problem, the public's perceptions of the dangers of these various problem-driving actions and potential acceptance of various strategies to reduce related fatalities. NHTSA will use the findings to help focus current programs and activities to achieve the greatest benefit, to develop new programs to decrease the likelihood of drivers engaging in these problem-driving behaviors, and to provide informational support to states, and localities that will aid them in their efforts to reduce problem-driving related crashes and injuries.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)

Under these proposed collections, telephone interviews averaging approximately 15 minutes in length will be administered to two separate randomly selected samples of 2,000 persons of the general driving age public age 16 and older. The respondent samples would be selected from all 50 states, plus the District of Columbia. Interviews would be conducted with persons at residential phone numbers selected using a modified random-digit-dialing methodology. No more than one respondent per household would be selected, and each sample member would complete just one interview. Businesses are ineligible for the sample and would not be interviewed.

Estimate of the Total Annual Reporting and Record Keeping Burden Resulting from the Collection of Information

NHTSA estimates that respondents in the sample would require an average of 15 minutes to complete the telephone interview. Thus, estimated reporting burden on the general public would total 1,000 hours for the proposed surveys. The respondents would not incur any reporting or record keeping cost from the information collection.

Rose A. McMurray,

Associate Administrator, Office of Traffic Safety Programs.

[FR Doc. 01–11945 Filed 5–10–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Theft Prevention Standard; General Motors

AGENCY: National Highway Traffic Safety Administration (NHTSA) Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the petition of General Motors Corporation (GM) for an exemption of a high-theft line, the Chevrolet Venture, from the parts-marking requirements of the Federal Motor Vehicle Theft Prevention Standard. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard.

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: In a petition dated October 5, 2000, General Motors Corporation (GM), requested an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541) for the Chevrolet Venture vehicle line beginning withMY 2002. The petition is pursuant to 49 CFR part 543, Exemption From Vehicle Theft Prevention Standard, which provides for exemptions based on the installation of an antitheft device as standard equipment on a vehicle line.

Section 33106(b)(2)(D) of Title 49, United States Code, authorized the Secretary of Transportation to grant an exemption from the parts marking requirements for not more than one additional line of a manufacturer for MYs 1997—2000. However, it does not address the contingency of what to do after model year 2000 in the absence of a decision under Section 33103(d). 49 U.S.C. § 33103(d)(3) states that the number of lines for which the agency can grant an exemption is to be decided after the Attorney General completes a review of the effectiveness of antitheft devices and finds that antitheft devices are an effective substitute for parts marking. The Attorney General has not yet made a finding and has not decided the number of lines, if any, for which the agency will be authorized to grant an exemption. Upon consultation with the Department of Justice, we determined that the appropriate reading of Section 33103(d) is that the National Highway Traffic Safety Administration (NHTSA) may continue to grant parts-marking exemptions for not more than one additional model line each year, as specified for model years 1997–2000 by 49 U.S.C. 33106(b)(2)(C). This is the level contemplated by the Act for the period before the Attorney General's decision. The final decision on whether to continue granting exemptions will be made by the Attorney General at the conclusion of the review pursuant to section 330103(d)(3).

GM's submission is considered a complete petition as required by 49 CFR part 543.7, in that it met the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

In its petition, GM provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for that vehicle line. GM will install its PASS-Key III antitheft device as standard equipment on its MY 2002 Chevrolet Venture vehicle line. GM stated that the PASS-Key III device provides the same kind of functionality as the PASS-Key and PASS-Key II devices, which have been the basis for exemptions previously granted to GM. However, the PASS-Key III device uses more advanced technology than the PASS-Key II device and provides new features and refinements.

Specifically, the PASS-Key III device uses a transponder embedded in the head of the key which is excited by a coil surrounding the key cylinder. The transponder in the key then emits a modulated signal at a specified radio frequency. The identity of the key is a unique code within the modulated signal. The key cylinder coil receives and sends the modulated signal to the

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decoder. When the decoder module recognizes a valid key code, it sends an encoded message to the Powertrain Control Module (PCM) to enable fuel flow and starter operation. If an invalid key is detected, the PASS-Key III decoder module will transmit a different password to the PCM to disable fuel flow and starter operation.

The PASS-Key III device has the potential for over four trillion unique electrical key codes. GM believes that the sheer volume of these codes is a highly effective deterrent to the common intruder. The PASS-Key III device is designed to shut down for three to four minutes if an invalid key is detected, preventing further attempts to start the vehicle during that shutdown.

GM states that the design and assembly process of the PASS-Key III device and components are validated for a vehicle life of 10 years and 150,000 miles of performance. In order to ensure the reliability and durability of the device, GM conducted tests, based on its own specified standards. GM provided a detailed list of the tests conducted. GM stated its belief that the device is reliable and durable since it complied with the specified requirements for each test.

GM compared the PASS-Key III device proposed for the Chevrolet Venture line with its first generation PASS-Key device, which the agency has determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements. GM stated that its PASS-Key III device is activated when the owner/operator turns off the ignition of the vehicle and removes the key. According to GM, no other intentional action is necessary to achieve protection of the vehicle other than removing the key from the ignition.

GM stated that the theft rates, as reported by the National Crime Information Center, are lower for GM models equipped with PASS-Key-like devices which have been granted exemptions from the parts-marking requirements than theft rates for similar, earlier models that have been parts-marked. Therefore, GM concludes that the PASS-Key-like devices are more effective in deterring motor vehicle theft than the parts-marking requirements of 49 CFR part 541.

Further, GM states that the PASS-Key III device has been designed to significantly enhance the functionality and theft protection provided by earlier generations of PASS-Key devices. Based on the performance of PASS-Key and PASS-Key II devices on other GM models, and the advanced technology utilized in the PASS-Key III device, GM believes that the PASS-Key III device will be more effective in deterring theft than the parts-marking requirements of 49 CFR part 541.

GM also stated that as with previous PASS-Key devices, the PASS-Key III device will not provide any visible or audible indication of unauthorized entry. However, based on comparison of the reduction in theft rates of Chevrolet Corvettes using a passive antitheft device and an audible/visible alarm with the reduction in theft rates for the Chevrolet Camaro and Pontiac Firebird models equipped with a passive antitheft device without an alarm, GM believes that an alarm or similar attention attracting device is not necessary and does not compromise the antitheft performance of these systems.

The agency notes that the reason that the vehicle lines whose theft data GM cites in support of its petition received only a partial exemption from parts-marking was that the agency did not believe that the antitheft devices on these vehicles (PASS-Key and PASS-Key II) by itself would be as effective as parts-marking in deterring theft because it lacked an alarm system. On that basis, it decided to require GM to mark the vehicle's most interchangeable parts (the engine and transmission), as a supplement to the antitheft device. Like those earlier antitheft devices GM used, the device on which this petition is based also lacks an alarm system. Accordingly, it cannot perform one of the functions listed in 49 CFR part 543.6(a)(3), that is, it cannot call attention to unauthorized attempts to enter or move the vehicle.

After deciding those petitions, however, the agency obtained theft data that show declining theft rates for GM vehicles equipped with either version of the PASS-Key device. Based on that data, it concluded that the lack of a visible or audible alarm had not prevented the antitheft device from being effective protection against theft and granted three GM petitions for full exemptions for car lines equipped with the PASS-Key II device. The agency granted in full the petition for the Buick Riviera and Oldsmobile Aurora car lines beginning with model year 1995, (see 58 FR 44874, August 25, 1993); the Chevrolet Lumina and Buick Regal car lines beginning with model year 1996, (see 60 FR 25938, May 15, 1995); and, the petition for the Cadillac Seville car line beginning with model year 1998, (see 62 FR 20058, April 24, 1997). In all three of those instances, the agency concluded that a full exemption was warranted because PASS-Key II had shown itself as likely as parts-marking to be effective protection against theft despite the absence of a visible or audible alarm.

The agency concludes that, given the similarities between the PASS-Key III device and the earlier PASS-Key devices (PASS-Key and PASS-Key II), it is reasonable to assume that PASS-Key III device, like those devices, will be as effective as parts-marking in deterring theft. The agency believes that the device will provide the other types of performance listed in 49 CFR 543.6(a)(3): promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 U.S.C. 33106 and 49 CFR 543.6(a)(4) and (5), the agency finds that GM has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information GM provided about its antitheft device, some of which includes confidential information describing reliability and functional tests conducted by GM for the antitheft device and its components. GM requested confidential treatment for some of the information and attachments submitted in support of its petition. In a letter to GM dated January 2, 2001, the agency granted the petitioner's request for confidential treatment of these materials.

For the foregoing reasons, the agency hereby grants in full GM's petition for exemption for the MY 2002 Chevrolet Venture vehicle line from the parts-marking requirements of 49 CFR part 541.

If GM decides not to use the exemption for this line, it must notify the agency formally, and thereafter must mark the line fully as required by 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if GM wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. § 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be de minimis. The agency wishes to minimize the administrative burden which § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as de minimis, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: May 7, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety, Performance Standards.

[FR Doc. 01–11946 Filed 5–10–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34037]

General Railway Corporation d/b/a Iowa Northwestern Railroad Corporation—Operation Exemption—Line of Dickinson Osceola Railroad Association

General Railway Corporation d/b/a Iowa Northwestern Railroad Corporation (GRC), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to operate approximately 37.21 miles of rail line currently owned by Dickinson Osceola Railroad Association (DORA). The rail line to be operated extends between milepost 79.34, at a point west of Superior, IA, and the end of the line at approximately milepost 116.55, a point west of Allendorf, IA, in Dickinson and Osceola Counties, IA. GRC states that, on April 2, 2001, an agreement was reached between it and DORA, wherein DORA designated GRC as operator of the line. GRC further states that ownership of the line is expected to be transferred to GRC from DORA in the near future. GRC certifies that its projected revenues will not exceed those that would qualify it as a Class III rail carrier and its revenues are not projected to exceed $5 million.[1]

The transaction was scheduled to be consummated on or shortly after May 2, 2001 (7 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34037, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on John Larkin, General Railway Corporation, 4814 Douglas St., Omaha, NE 68132.

Board decisions and notices are available on our website at www.stb.dot.gov.

Decided: May 4, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–11825 Filed 5–10–01; 8:45 am]

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[1] *See Dickinson Osceola Railroad Association—Acquisition and Operation Exemption—Union Pacific Railroad Company*, STB Finance Docket No. 34008 (STB served Mar. 5, 2001).

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 588X)]

CSX Transportation, Inc.—Abandonment Exemption—in Polk and McMinn Counties, TN

On April 23, 2001, CSX Transportation, Inc. (CSXT), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 43.47-mile portion of its line of railroad in the Southern Region, Atlanta Division, Etowah Old Line Subdivision, between milepost OKX 339.00 in Etowah and milepost OKX 382.47 in Copperhill, in McMinn and Polk Counties, TN. The line traverses U.S. Postal Service Zip Codes 37317, 37325, 37326, 37331, 37333, 37369, and 37391.

The line does not contain federally granted rights-of-way. Any documentation in CSXT's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by August 10, 2001.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by the filing fee, which currently is set at $1,000. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than May 31, 2001. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–55 (Sub-No. 588X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Natalie S. Rosenberg, 500 Water Street, Jacksonville, FL 32202. Replies to the CSXT petition are due on or before May 31, 2001.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at www.stb.dot.gov.

Decided: May 4, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–11824 Filed 5–10–01; 8:45 am]

BILLING CODE 4915–00–P

Corrections

Federal Register
Vol. 66, No. 92
Friday, May 11, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 18–2001]

Foreign-Trade Zone 33—Pittsburgh, Pennsylvania, Application for Subzone, Sony Technology Center—Pittsburgh (Television Manufacturing Facilities) Mount Pleasant, Pennsylvania

Correction

In notice document 01–10860, appearing on page 21740, in the issue of May 1, 2001, make the following correction:

In the third column, in the second complete paragraph, in the 11th line, "July 2, 2001" should read "July 16, 2001."

[FR Doc. C1–10860 Filed 5–10–01; 8:45 am]

BILLING CODE 1505–01–D

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 160

Privacy of Consumer Financial Information

Correction

In rule document 01–10398 beginning on page 21236 in the issue of Friday, April 27, 2001, make the following correction:

§160.18 [Corrected]

On page 21261, in the second column, in § 160.18(a), last line, "June 21, 2001" should read "March 31, 2001".

[FR Doc. C1–10398 Filed 5–10–01; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 15

[USCG 1999-6224]

RIN 2115-AF23

Licensing and Manning for Officers of Towing Vessels

Correction

In rule document 01–10284 beginning on page 20931 in the issue of Thursday, April 26, 2001, make the following correction:

On page 20931, in the third column, in the first line, "October 7, 2000" should read "October 27, 2000."

[FR Doc. C1–10284 Filed 5–10–01; 8:45 am]

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Federal Register

Friday,
May 11, 2001

Part II

Federal Reserve System

12 CFR Parts 223 and 250
Transactions Between Banks and Their Affiliates; Proposed Rule
Applicability of Section 23A of the Federal Reserve Act to the Purchase of Securities From Certain Affiliates; Final Rule Loans and Extensions of Credit Made by a Member Bank to a Third Party; Final Rule
Application of Sections 23A and 23B of the Federal Reserve Act to Derivative Transactions With Affiliates and Intraday Extensions of Credit to Affiliates; Interim Rule

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FEDERAL RESERVE SYSTEM

12 CFR Part 223

[Regulation W; Docket No. R–1103]

Transactions Between Banks and Their Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is proposing a new rule (Regulation W) to implement comprehensively sections 23A and 23B of the Federal Reserve Act. The proposed rule would combine statutory restrictions on transactions between a bank and its affiliates with numerous existing and proposed Board interpretations and exemptions in an effort to simplify compliance with sections 23A and 23B.

DATES: Comments must be submitted on or before August 15, 2001.

ADDRESSES: Comments should refer to Docket No. R–1103 and should be sent to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551 (or mailed electronically to regs.comments@federalreserve.gov). Comments addressed to Ms. Johnson also may be delivered to the Board's mail room between the hours of 8:45 a.m. and 5:15 p.m. weekdays and, outside of those hours, to the Board's security control room. Both the mail room and the security control room are accessible from the Eccles Building courtyard entrance, located on 20th Street, NW., between Constitution Avenue and C Street, NW. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in section 261.14 of the Board's Rules Regarding Availability of Information (12 CFR 261.14).

FOR FURTHER INFORMATION CONTACT: Pamela G. Nardolilli, Senior Counsel (202/452–3289), or Mark E. Van Der Weide, Counsel (202/452–2263), Legal Division; or Michael G. Martinson, Associate Director (202/452–3640), or Molly S. Wassom, Associate Director (202/452–2305), Division of Banking Supervision and Regulation; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Introduction

Sections 23A and 23B of the Federal Reserve Act are two of the most important statutory protections against a bank suffering losses because of its transactions with affiliates and, correspondingly, are two of the most effective means of limiting the ability of a bank to transfer to its affiliates the subsidy arising from the bank's access to the Federal safety net. Although sections 23A and 23B of the Federal Reserve Act each explicitly grant the Board broad authority to issue regulations to administer the section,[1] the Board has never issued a regulation fully implementing either section. Instead, banks seeking guidance on how to comply with sections 23A and 23B have relied on a series of Board interpretations and informal staff guidance. Banks have increasingly sought guidance from the Board on section 23A issues in recent years as a result of the increasing scope of activities conducted by modern financial holding companies and the growing complexities of the U.S. financial markets.

The Board now believes that adoption of a comprehensive regulation implementing sections 23A and 23B would be appropriate for several reasons. First, the new regulatory framework established by the Gramm-Leach-Bliley Act ("GLB Act")[2] emphasizes the importance of sections 23A and 23B as a means to protect banks from losses in connection with the newly authorized affiliates under the GLB Act. In addition, the GLB Act amended section 23A in several important respects and requires the Board to address by rule under section 23A the credit exposure arising from derivative transactions and intraday credit extensions.

Moreover, the Board believes that adoption of a comprehensive regulation would simplify the interpretation and application of sections 23A and 23B, ensure that the statute is consistently interpreted and applied, and minimize burden to the extent consistent with the statute's goals. Finally, issuing a proposed regulation would allow the public an opportunity to comment on Board and staff interpretations of sections 23A and 23B, many of which were adopted without the benefit of a public comment process.

The proposed regulation would supersede outdated Board and staff interpretations concerning sections 23A and 23B and would incorporate other existing interpretations. In addition, the regulation would incorporate the results of the Board's earlier proposals to clarify the scope of the attribution rule, expand the section 23A(d)(6) exemption for purchases of readily marketable assets, and, consistent with the GLB Act, extend the coverage of section 23A to subsidiaries of a bank engaged in activities that the bank cannot conduct directly.[3] Finally, the proposed regulation would answer questions that have arisen frequently in the Board's administration of the statutory provisions and in their enforcement by each of the Federal banking agencies.

The Board emphasizes that Regulation W is a proposed rule and expects to make changes to the rule to reflect public comments as appropriate. Until Regulation W is finalized, all previously issued valid Board interpretations and staff opinions regarding sections 23A and 23B will remain in full force and effect. After the Board issues the regulation in final form, any Board interpretations or staff opinions on the statute that are inconsistent with the regulation will be deemed superseded by the rule.

Background

As noted above, sections 23A and 23B of the Federal Reserve Act are designed to limit the risks to a bank (and the Federal deposit insurance funds) from transactions between the bank and its affiliates and to limit the ability of a bank to transfer to its affiliates the subsidy arising from the bank's access to the Federal safety net. Section 23A achieves these goals in three major ways. First, it limits a bank's "covered transactions" with any single "affiliate" to no more than 10 percent of the bank's capital and surplus, and transactions with all affiliates combined to no more than 20 percent of capital and surplus. "Covered transactions" include purchases of assets from an affiliate, extensions of credit to an affiliate, investments in securities issued by an affiliate, guarantees on behalf of an affiliate, and certain other transactions that expose the bank to an affiliate's credit or investment risk. A bank's "affiliates" include, among other companies, any companies that control the bank, any companies under common control with the bank, and certain investment funds that are advised by the bank or an affiliate of the bank.

Second, the statute requires all transactions between a bank and its affiliates to be on terms and conditions that are consistent with safe and sound banking practices, and prohibits a bank from purchasing low-quality assets from its affiliates. Finally, the statute requires that a bank's extensions of credit to affiliates and guarantees on behalf of affiliates be appropriately secured by a statutorily defined amount of collateral.

Section 23B protects a bank by requiring that certain transactions between the bank and its affiliates occur on market terms; that is, on terms and under circumstances that are substantially the same, or at least as favorable to the bank, as those prevailing at the time for comparable transactions with unaffiliated companies. Section 23B applies this restriction to any covered transaction (as defined in section 23A) with an affiliate as well as certain other transactions, such as the sale of securities or other assets to an affiliate and the payment of money or furnishing of services to an affiliate.

Section 23A originally was enacted as part of the Banking Act of 1933 and applied only to banks that were members of the Federal Reserve System ("member banks"). Since 1933, Congress has amended the statute several times, including a comprehensive revision in 1982.[4] Congress also amended the Federal Deposit Insurance Act in 1966 to extend section 23A to cover insured nonmember banks.[5] In 1989, Congress further extended the coverage of section 23A to insured savings associations.[6] Congress enacted section 23B of the Federal Reserve Act as part of the Competitive Equality Banking Act of 1987,[7] and has subsequently expanded its scope to cover the same set of depository institutions as are covered by section 23A. Consequently, sections 23A and 23B now apply to all insured depository institutions and uninsured member banks.

As part of its comprehensive revision of section 23A in 1982, Congress amended the statute to exempt transactions between a bank and its subsidiaries.[8] In 1982, a subsidiary of a bank generally was permitted to engage only in activities that its parent bank could conduct. Since 1982, however, some subsidiaries of banks have begun to engage in activities impermissible to the banks themselves.[9] In 1997, to address these subsidiaries, the Board issued for comment a proposal to extend sections 23A and 23B to transactions between a bank and a subsidiary of the bank engaged in activities not permissible for the bank to engage in directly.[10] Consistent with this proposal, the GLB Act recently amended the Federal Reserve Act so that sections 23A and 23B would apply to transactions between a bank and its "financial subsidiaries." Section 23A, as amended by the GLB Act, defines a financial subsidiary as any subsidiary of a bank that would be a financial subsidiary of a national bank under section 5136A of the Revised Statutes of the United States.[11] This statutory provision defines a financial subsidiary of a national bank as a subsidiary of an insured depository institution that engages in activities that are not permissible for a national bank to engage in directly (unless a national bank is authorized by the express terms of a Federal statute (other than the GLB Act) to own or control the subsidiary). The GLB Act provides that a financial subsidiary of a bank is considered an "affiliate" of the bank for purposes of sections 23A and 23B and requires, with certain limited exceptions, that any covered transactions between a bank and its financial subsidiaries comply with the same quantitative, collateral, and other restrictions imposed by sections 23A and 23B on other affiliates.

The GLB Act also establishes certain special rules for financial subsidiaries. For example, the GLB Act extends the restrictions of sections 23A and 23B to investments by a bank's affiliate in securities issued by any financial subsidiary of the bank. The GLB Act also authorizes the Board to extend sections 23A and 23B to loans and other extensions of credit made by a bank's other affiliates to any financial subsidiary of the bank, if the Board determines that such action is necessary or appropriate to prevent evasions of the Federal Reserve Act or the GLB Act. Finally, the GLB Act provides that the 10 percent restriction on covered transactions with any individual affiliate does not apply to transactions between a bank and any individual financial subsidiary of the bank.[12] The proposed regulation addresses these provisions of the GLB Act.

In addition, the GLB Act requires the Board to adopt, by May 12, 2001, final rules to address as a covered transaction the credit exposure arising out of derivative transactions between banks and their affiliates and intraday extensions of credit by banks to their affiliates.[13] Concurrently with proposed Regulation W, the Board is issuing interim final rules that address these credit exposures to affiliates as covered transactions under section 23A, in accordance with this statutory requirement, by requiring banks to adopt policies and procedures to manage the credit exposures. The interim final rules also require banks to ensure that their intraday extensions of credit to an affiliate and their derivative transactions with affiliates comply with the market terms requirement of section 23B.

The proposed Regulation W sets forth a more comprehensive proposal on the treatment of intraday extensions of credit under section 23A than is contained in the interim final rules and includes a detailed request for comment on the appropriate treatment of credit exposure arising from bank-affiliate derivative transactions under section 23A. If, after further analysis and review of the comments received on this regulation and the interim final rule on derivatives, the Board believes that additional measures are needed to address credit exposure on derivative transactions under section 23A, the Board will develop a specific proposal and seek comment on that proposal.

Explanation of Proposed Rule

I. Format of Regulation

The proposed Regulation W seeks to provide users with a single, comprehensive reference tool for complying with and analyzing issues arising under sections 23A and 23B. Accordingly, the regulation includes Board interpretations of the sections and also restates the statutory definitions, restrictions, and exemptions. Although including the statutory language lengthens the text of the regulation, the Board believes that eliminating the need to cross-reference the statute should make understanding and using the regulation easier.

The regulation first sets forth, in subpart B, the principal restrictions and requirements imposed by section 23A. Next, in subpart C, the regulation discusses the appropriate valuation and timing principles for covered

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[1] 12 U.S.C. 371c(f), 371c–1(e).

[2] Pub. L. No. 106–102, 113 Stat. 1338 (1999).

[3] *See* 63 FR 32766, June 16, 1998; 62 FR 37744, July 15, 1997.

[4] Garn-St Germain Depository Institutions Act of 1982, Pub. L. No. 97–320, § 410, 96 Stat. 1515 (1982) (codified at 12 U.S.C. 371c).

[5] Pub. L. No. 89–485, § 12(c), 80 Stat. 242 (1966) (codified at 12 U.S.C. 1828(j)).

[6] Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101–73, § 301, 103 Stat. 342 (1989) (codified at 12 U.S.C. 1468) ("FIRREA").

[7] Pub. L. No. 100–86, § 102, 101 Stat. 552, 564 (1987) (codified at 12 U.S.C. 371c–1).

[8] Section 23A excludes from the definition of "affiliate" most subsidiaries of a bank. *See* 12 U.S.C. 371c(b)(2)(A).

[9] *See* 12 U.S.C. 24a, 1464(c)(4)(B), and 1831a; 12 CFR 5.39 and 362.4.

[10] 62 FR 37744, July 15, 1997.

[11] *See* 12 U.S.C. 24a.

[12] Covered transactions between a bank and any of its financial subsidiaries would count toward the bank's 20 percent limit for covered transactions with all affiliates in the aggregate.

[13] GLB Act section 121(e)(3) (codified at 12 U.S.C. 371c(f)(3)).

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transactions. Subpart D discusses the appropriate treatment under section 23A for transactions with financial subsidiaries, bank-affiliate derivative transactions, and certain bank-affiliate merger and acquisition transactions. Subpart E sets forth available exemptions from certain of the restrictions and requirements of section 23A. Subpart F lays out the operative provisions of section 23B. Subpart G discusses the application of the statutory provisions and rule to U.S. branches and agencies of foreign banks. Subpart H provides a comprehensive glossary of the terms used in the regulation and sections 23A and 23B.

The proposed regulation also includes examples illustrating how several of the rule's provisions would apply in particular circumstances. The examples included in the rule are considered part of the rule and compliance with an example, to the extent applicable, would constitute compliance with the rule. Each example included in the rule illustrates only the scope and application of the particular topic addressed by the example and does not illustrate any other topic or issue that may arise under the rule.

The Board requests comment on the proposed format of the regulation, including the Board's decision to restate and reorganize the statutory provisions and include examples in the rule. The Board also requests comment on whether additional examples should be added to the rule and, if so, in what areas. In addition, the Board requests comment on whether there are additional methods for making the regulation more user-friendly or for reducing unnecessary regulatory burden.

II. Scope of Regulation

As proposed, Regulation W applies to all "banks." As noted above, although sections 23A and 23B apply by their terms only to member banks, the Federal Deposit Insurance Act subjects insured nonmember banks to the restrictions of sections 23A and 23B as if they were member banks. Referring to banks (rather than member banks) should clarify the scope of the regulation for the reader. By using the defined term "bank," the Board does not intend to expand the scope of sections 23A and 23B beyond member banks and insured nonmember banks. [14]

The Home Owners' Loan Act ("HOLA") also subjects insured savings associations to sections 23A and 23B as if they were member banks. HOLA imposes several restrictions on transactions between an insured savings association and certain of its affiliates that are not contained in section 23A [15] and provides the Office of Thrift Supervision ("OTS") with authority to impose additional restrictions on transactions between an insured savings association and its affiliates.[16] In light of the stricter regulatory regime governing transactions between an insured savings association and its affiliates and in light of a request by the OTS that the proposed Regulation W not specifically cover such institutions, the proposed rule does not apply by its terms to savings associations. The Board notes, however, that because insured savings associations are subject to sections 23A and 23B as if they were member banks, any parallel regulation adopted by the OTS to govern transactions with affiliates must be at least as strict on insured savings associations as Regulation W is on banks.

III. General Provisions of Section 23A—Subpart B

Subpart B of the proposed regulation sets forth the principal restrictions of section 23A. These restrictions include:

(i) the quantitative limits on covered transactions by a bank with any individual affiliate and all affiliates in the aggregate;

(ii) the requirement that all transactions with an affiliate be on terms and conditions that are consistent with safe and sound banking practices;

(iii) the collateral requirements for extensions of credit and similar transactions with an affiliate;

(iv) the prohibition on the purchase of low-quality assets from an affiliate; and

(v) the attribution rule, which provides that any transaction with any person that is not an affiliate will be considered a transaction with an affiliate to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that affiliate.

Subpart B also incorporates previous Board and staff interpretations of these provisions. In addition, the subpart includes a few new interpretations of the statute's quantitative limits, collateral requirements, and attribution rule. These clarifications of the statute are discussed below.

A. Quantitative Limits—223.2 and 223.3

Section 23A(a)(1) provides that a bank may engage in a covered transaction with an affiliate only if, upon consummation of the proposed transaction, the aggregate amount of the bank's covered transactions (i) with any single affiliate would not exceed 10 percent of the bank's capital stock and surplus and (ii) with all affiliates would not exceed 20 percent of the bank's capital stock and surplus.[17] Sections 223.2 and 223.3 of the proposed regulation set forth these quantitative limits. The quantitative limits of Regulation W (consistent with section 23A) only prohibit a bank from engaging in a new covered transaction if the bank would be in excess of the 10 or 20 percent thresholds after consummation of the new transaction. The regulation (consistent with section 23A) generally does not require a bank to unwind existing covered transactions if the bank exceeds the 10 or 20 percent limits because its capital declined or a pre-existing covered transaction increased in value.

Section 23A(a)(1)(A) states that a bank "may engage in a covered transaction with an affiliate only if * * * in the case of any affiliate," the aggregate amount of covered transactions of the bank will not exceed 10 percent of the capital stock and surplus of the bank. Regulation W makes clear that this limitation prevents a bank from engaging in a new covered transaction with an affiliate if the aggregate amount of covered transactions between the bank and any affiliate (not only the particular affiliate with which the bank proposes to engage in the new covered transaction) would be in excess of 10 percent of the bank's capital stock and surplus after consummation of the new transaction. This interpretation of the section is consistent with the statutory language and would have the salutary effect of encouraging banks with covered transactions in excess of the 10 percent threshold with any affiliate to reduce those transactions before expanding the scope or extent of the bank's relationships with other affiliates.

B. Collateral Requirements—223.5

Section 223.5 of the proposed regulation sets forth the collateral requirements established by section

[14] The regulation implements sections 23A and 23B of the Federal Reserve Act. The regulation does not contain or implement statutory or regulatory restrictions on transactions between banks and their affiliates that may be applicable under other provisions of law, including that may apply to banks subject to prompt corrective action under section 38 of the Federal Deposit Insurance act (12 U.S.C. 1831o).

[15] HOLA prohibits an insured savings association from (i) making loans or extending credit to any affiliate unless that affiliate is engaged solely in activities that the Board has determined to be permissible under section 4(c) of the Bank Holding Company Act (12 U.S.C. 1843(c)); and (ii) purchasing or investing in shares issued by an affiliate other than a subsidiary of the savings association.

[16] 12 U.S.C. 1468(a)(4).

[17] 12 U.S.C. 371c(a)(1).

23A(c) for loans and extensions of credit to an affiliate, and guarantees, acceptances, and letters of credit issued on behalf of an affiliate (collectively, "credit transactions"). As a general matter, section 23A requires any credit transaction by a bank with an affiliate to be secured with a statutorily prescribed amount of collateral. The required collateral varies from 100 percent of the value of the credit extended (when the collateral is a deposit account or U.S. government securities) to 130 percent of the credit extended (when the collateral is stock, leases, or certain other "real or personal property").[18]

1. *Deposit account as collateral—223.5(b)(1)(iv).* Under section 23A(c)(1)(A)(iv), a bank may satisfy the collateral requirements of the statute by securing a credit transaction with an affiliate with a segregated, earmarked deposit account maintained with the bank in an amount equal to 100 percent of the credit extended. The proposed regulation clarifies that to satisfy the statute's "earmarked" requirement, the account must exist for the sole purpose of securing the credit extended and be so identified.

2. *Ineligible collateral—223.5(c).* The purpose of section 23A's collateral requirements is to ensure that banks that engage in credit transactions with an affiliate have legal recourse, in the event of affiliate default, to tangible assets with a value at least equal to the amount of the credit extended. The statute recognizes that certain types of assets are not appropriate to serve as collateral for credit transactions with an affiliate. In particular, the statute provides that low-quality assets and securities issued by an affiliate are not eligible collateral for such covered transactions.[19]

In light of the purposes of section 23A, the Board believes that intangible assets (as defined by generally accepted accounting principles ("GAAP"))—including mortgage servicing assets and other servicing assets—are not acceptable collateral to secure credit transactions with an affiliate. Intangible assets are particularly hard to value, and a bank may have significant difficulty in collecting and selling such assets in a reasonable period of time. For these reasons, Board staff opined in 1987 that mortgage servicing rights may not be used to satisfy the collateral requirements of section 23A.[20] The Board believes that these reasons continue to justify the exclusion of mortgage servicing assets, as well as other intangible assets, from the types of collateral eligible to satisfy the requirements of section 23A. The Board seeks comment on whether banks should be permitted to use any particular types of intangible assets to meet section 23A's collateral requirements.

In addition, the Board does not consider guarantees and letters of credit to be eligible collateral for section 23A purposes. These agreements are not balance sheet assets under GAAP and, accordingly, would not constitute "real or personal property" under section 23A. Moreover, section 23A(c) requires that credit transactions be "secured" by collateral. A credit transaction between a bank and an affiliate supported only by a guarantee or letter of credit from a third party would not appear to meet the statutory requirement that the credit transaction be secured by collateral.

As noted above, section 23A prohibits a bank from accepting securities issued by an affiliate as collateral for an extension of credit to an affiliate. The Board also proposes to clarify that securities issued by the bank itself are not eligible collateral to secure a credit transaction with an affiliate. If the bank were forced to foreclose on such a credit transaction, the bank may be unwilling to liquidate its own securities promptly to recover on the credit transaction because the sale might depress the price of the bank's outstanding securities or result in a change in control of the bank. In addition, to the extent that a bank is unable or unwilling to sell its own securities acquired through foreclosure, the transaction may result in a reduction in the bank's capital, thereby offsetting any potential benefit provided by the collateral. The Board seeks comment on whether this exclusion should apply to debt and equity securities issued by the bank or whether the exclusion should apply only to bank-issued equity securities.

3. *Perfection and priority required—223.5(d).* To ensure that the bank has good access to the assets serving as collateral for its transactions with affiliates, the proposed regulation also provides that a bank's security interest in any collateral required by section 23A must be perfected in accordance with applicable law. This requirement is consistent with court decisions on the issue [21] and ensures that the bank has the legal right to realize on the collateral in case of default, including one resulting from the affiliate's insolvency, liquidation, or similar circumstances.

For similar reasons, the proposed regulation requires that a bank either must obtain a first priority security interest in the required collateral or must deduct from the amount of collateral obtained by the bank the lesser of (i) the amount of any security interests in the collateral that are senior to that obtained by the bank or (ii) the amount of any credits secured by the collateral that are senior to that of the bank. For example, if a bank lends $100 to an affiliate and takes as collateral a second lien on a parcel of real estate worth $200, the arrangement would only satisfy the collateral requirements of section 23A if the affiliate owed the holder of the first lien $70 or less (a credit transaction secured by real estate must be secured at 130 percent of the amount of the transaction).

4. *Undrawn portion of an extension of credit—223.5(g).* Section 23A requires that the "amount" of an extension of credit be secured by the statutorily prescribed levels of collateral. Board staff traditionally has advised that a bank that provides a line of credit to an affiliate must secure the full amount of the line of credit throughout the life of the credit. That is, staff has not viewed section 23A as permitting a bank to satisfy the collateral requirements of section 23A by securing only the portion of a credit line that has been drawn down by the affiliate. The Board acknowledges that this treatment may be too strict for some lines of credit. Accordingly, the regulation provides that the collateral requirements of section 23A do not apply to the undrawn portion of an extension of credit to an affiliate so long as the bank does not have any legal obligation to advance additional funds under the credit facility until the affiliate has posted the amount of collateral required by the statute with respect to the entire drawn portion of the extension of credit.[22] In such credit arrangements, securing the undrawn portion of the credit line is unnecessary from a safety and soundness perspective because the affiliate can never require the bank to advance additional funds without posting the additional collateral required by section 23A. If a bank voluntarily advanced additional funds under such a credit arrangement without obtaining the additional collateral required under section 23A to secure the entire drawn amount (despite

[18] 12 U.S.C. 371c(c)(1).

[19] 12 U.S.C. 371c(c)(3) and (4).

[20] *See* Letter dated Aug. 31, 1987, from Michael Bradfield, General Counsel of the Board, to Gail Runnfeldt.

[21] *See Fitzpatrick* v. *FDIC*, 765 F.2d 569 (6th Cir. 1985).

[22] This proposed treatment would not apply to guarantees, acceptances, and letters of credit issued on behalf of an affiliate, which must be fully collateralized at inception.

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its lack of legal obligation to make such an advance), the Board would view this action as a violation of the collateral requirements of the statute.

C. Prohibition on the Purchase of Low-Quality Assets—223.6

Section 223.6 of the proposed regulation restates the statute's general prohibition on a bank purchasing low-quality assets from an affiliate.[23] This section also provides an exception to the general prohibition, which is based on a long-standing staff interpretation.[24] The exception allows a bank that purchased a loan participation from an affiliate to renew its participation in the loan, or provide additional funding under the existing participation, even if the underlying loan has become a low-quality asset, so long as certain criteria are met. These renewals or additional credit extensions may enable both the affiliate and the participating bank to avoid or minimize potential losses. It would be inconsistent with the purposes of section 23A to bar a participating bank from using sound banking judgment to take the necessary steps (consistent with the criteria established in the rule) to protect itself from harm in such a situation.

The exception is available only if the underlying loan was not a low-quality asset at the time the bank purchased its participation, and the proposed transaction does not increase the bank's proportional share of the credit facility. The transaction also must be approved by the bank's board of directors, and the bank must provide its appropriate Federal banking agency with 20 days' prior notice of the transaction. The notice requirement represents an additional condition to the exception that is not contained in the staff's outstanding interpretive letter on the exception. The Board proposes to add this condition at the request of a Federal banking agency that expressed an interest in monitoring these transactions.

The Board believes that this exception allows banks appropriate flexibility to resolve problems associated with a troubled loan participation.

D. Attribution Rule—223.7

Section 23A(a)(2) provides that any transaction between a bank and a third party is deemed to be a transaction with an affiliate to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that affiliate.[25] For example, a bank's loan to a customer for the purpose of purchasing securities from the inventory of a broker-dealer affiliate of the bank would be a covered transaction under section 23A. This "attribution rule" was included in section 23A to prevent a bank from evading the restrictions in the section by using intermediaries and to limit the exposure that a bank has to customers of affiliates of the bank. Section 223.7 of the proposed regulation restates this provision and provides interpretive guidance and exemptions on the following topics.

1. *Agency and riskless principal transactions—223.7(b)(1) and (2).* In June 1998, the Board proposed several exemptions for covered transactions between a bank and its securities affiliates (the "1998 Proposal").[26] In the 1998 Proposal, the Board proposed to exempt from section 23A loans by a bank to an unaffiliated customer who uses the proceeds to purchase securities through a broker-dealer affiliate of the bank that is acting solely in an agency or riskless-principal capacity. The Board is adopting an expanded form of this exemption in a separate final rule issued concurrently with Regulation W. The exemptive aspects of the final rule also are contained in Regulation W, and the Board asks for further comment on the exemption. In particular, the Board asks whether the riskless principal exemption should be expanded to cover purchases of assets other than securities.

2. *Preexisting Lines of Credit—223.7(b)(3).* In the 1998 Proposal, the Board also proposed an exemption from section 23A for extensions of credit by a bank to an unaffiliated customer that uses the credit to purchase securities underwritten by or held in the inventory of a broker-dealer affiliate of the bank when that extension of credit was made pursuant to a preexisting line of credit (the "Preexisting Line of Credit Exemption"). The Board is adopting this exemption substantially as proposed in another separate final rule issued concurrently with Regulation W. The exemption is also included in Regulation W, thus allowing an opportunity for further comment on the exemption.

3. *General Purpose Credit Cards—223.7(b)(4).* Section 23A's attribution rule, by its terms, would cover an extension of credit by a bank to a nonaffiliate where the proceeds of the extension of credit are used by the nonaffiliate to purchase products or services from an affiliate of the bank. Regulation W would exempt such an extension of credit from the attribution rule if the extension is made pursuant to a general purpose credit card issued by the bank to the nonaffiliate. The regulation defines a general purpose credit card as a credit card issued by a bank, if (i) the card may be used to buy products or services from a nonaffiliate of the bank, (ii) the card is widely accepted by merchants that are not affiliates of the bank, and (iii) less than 25 percent of the aggregate amount of products and services purchased with the card by all cardholders are products or services purchased from affiliates of the bank (*see* § 223.26(n)). In these circumstances, the funding benefit received by the affiliate from the unaffiliated borrower's use of the general purpose credit card is likely to be minimal, and a bank's decision to issue a general purpose credit card (and make loans pursuant to such credit card) to an unaffiliated borrower likely would be based on independent credit standards unrelated to any possible affiliate transaction. Extensions of credit to unaffiliated borrowers pursuant to special purpose credit cards (that is, credit cards that may only be used or are substantially used to buy goods or services from affiliates of the bank), however, would continue to be subject to the attribution rule because the affiliate would be a significant and intended beneficiary of the bank's credit extensions pursuant to the cards.

IV. Valuation and Timing Principles Under Section 23A—Subpart C

Subpart C of the proposed regulation sets forth the rules that banks must use to calculate the value of covered transactions for purposes of determining compliance with the quantitative limits and collateral requirements of section 23A. This subpart also sets forth several rules that banks must employ to determine when a transaction becomes or ceases to be a covered transaction. Although most of these valuation and timing rules are consistent with previous advice given by Board staff on these issues, certain of the principles represent new positions. The rules are discussed below.

A. Credit Transactions—223.8

The regulation provides generally that a credit transaction initially must be valued at the amount of funds provided by the bank to, or on behalf of, the affiliate plus any additional amount that the bank could be required to provide to, or on behalf of, the affiliate. For example, a $100 term loan is a $100 covered transaction, a $300 revolving credit facility is a $300 covered transaction (regardless of how much of the facility the affiliate has drawn down), and a guarantee backstopping a $500 debt issuance of the affiliate is a $500 covered transaction.

The regulation also would make clear that a bank has entered into a credit transaction with an affiliate at the time *during the day* that the bank becomes legally obligated to make the extension of credit to, or issue the guarantee, acceptance, or letter of credit on behalf of, an affiliate. This timing rule represents a departure from the industry practice of complying with section 23A only with respect to overnight positions. The rule is consistent, however, with the regulation's proposal to incorporate intraday credit extensions into section 23A, as described below. This timing rule also clarifies that a covered transaction occurs at the moment that the bank executes a legally valid, binding, and enforceable credit agreement or guarantee document, and does not occur only when a bank funds a credit facility or makes payment on a guarantee.

Under section 23A and the proposed regulation, a bank has made an extension of credit to an affiliate if the bank purchases from a third party a loan previously made to an affiliate of the bank. The regulation refers to this type of transaction as an "indirect" credit transaction. In these circumstances, the bank must value the credit transaction at the price paid by the bank for the loan plus any additional amount that the bank could be required to provide to, or on behalf of, the affiliate under the terms of the credit agreement.

For example, if a bank pays a third party $90 for a $100 term loan that the third party previously made to an affiliate of the bank (because, for example, the loan was at a fixed rate and has declined in value due to a rise in the general level of interest rates), the covered transaction amount is $90 rather than $100. The lower covered transaction amount reflects the fact that the bank's maximum loss on the transaction is $90 rather than the original principal amount of the loan. If a bank pays a third party $70 for a $100 line of credit to an affiliate of which $70 had been drawn down by the affiliate, the covered transaction amount would be $100 (the $70 purchase price paid by the bank for the credit plus the remaining $30 that the bank could be required to lend under the credit line). For these indirect credit transactions, the regulation deems a bank to engage in a covered transaction at the moment during the day that the bank acquires the credit transaction from the third party.

Although a bank's purchase of, or investment in, a debt security issued by an affiliate is considered an "extension of credit" under the regulation, these transactions are not valued like other extensions of credit. The valuation rules for purchases of, and investments in, the debt securities of an affiliate are set forth in section 223.10 of the rule, which is discussed in Part IV.C. below.

Banks sometimes lend money to, or issue guarantees on behalf of, unaffiliated companies that later become affiliates of the bank. The regulation provides that credit transactions with a nonaffiliate become covered transactions at the time that the nonaffiliate becomes an affiliate of the bank. The Board does not believe that section 23A should be read to prevent the affiliation or to require that the indebtedness be reduced to meet the applicable section 23A quantitative limits before the affiliation occurs or thereafter. The bank must ensure, however, that any such credit transaction satisfies the collateral requirements of section 23A promptly after the nonaffiliate becomes an affiliate. The bank also must include the amount of any such transaction in the aggregate amount of its covered transactions for purposes of determining whether any *future* covered transactions would comply with the quantitative limits of section 23A.

In cases where the bank entered into the credit transaction with the nonaffiliate *in contemplation of* the nonaffiliate becoming an affiliate of the bank, however, there is an additional requirement. In such cases, the bank must, at or prior to the time the nonaffiliate becomes an affiliate, reduce the aggregate amount of its covered transactions with affiliates if necessary so as not to exceed the quantitative limits of section 23A. The regulation provides an example of how section 23A applies in these circumstances.

B. Asset Purchases—223.9

Regulation W provides that a purchase of assets by a bank from an affiliate initially must be valued at the total amount of consideration given by the bank in exchange for the asset. This consideration can take any form, and the regulation makes clear that it would include an assumption of liabilities by the bank.[27] The regulation also indicates that an asset purchase remains a covered transaction for a bank for as long as the bank holds the asset, and that the value of the covered transaction after the purchase may be reduced to reflect amortization or depreciation of the asset, to the extent that such reductions are consistent with GAAP and are reflected on the bank's financial statements.[28]

In contrast with credit transactions, an asset purchase from a nonaffiliate that later becomes an affiliate generally does not become a covered transaction for the purchasing bank. However, as set forth in the proposed rule, if a bank purchases assets from a nonaffiliate in contemplation of the nonaffiliate becoming an affiliate of the bank, the asset purchase becomes a covered transaction at the time the nonaffiliate becomes an affiliate. In addition, the bank must ensure that the aggregate amount of the bank's covered transactions (including any such asset purchase from the nonaffiliate) would not exceed the quantitative limits of section 23A at the time that the nonaffiliate becomes an affiliate.

The regulation provides several examples designed to assist banks in valuing purchases of assets from an affiliate.

C. Purchases of and Investments in Securities Issued by an Affiliate—223.10

Section 23A includes as a covered transaction a bank's purchase of, or investment in, securities issued by an affiliate. Regulation W would require a bank to value a purchase of, or investment in, securities issued by an affiliate (other than a financial subsidiary, which is subject to special rules under the GLB Act) at the greater of the bank's purchase price or carrying value of the securities.[29] Under the rule, a bank that pays no consideration in exchange for affiliate securities must nevertheless value the covered transaction at no less than the bank's carrying value for the securities.[30] In addition, under the rule, if the bank's carrying value of the affiliate securities increased or decreased after the bank's initial investment (due to profits or losses at the affiliate), the amount of the bank's covered transaction would increase or decrease to reflect the bank's changing financial exposure to the

[23] 12 U.S.C. 371c(a)(3). Section 23A does not prohibit an affiliate from donating a low-quality asset to a bank, so long as a bank provides no consideration for the asset.

[24] *See* Letter dated Aug. 10, 1984, from Michael Bradfield, General Counsel of the Board, to Margie Goris.

[25] 12 U.S.C. 371c(a)(2).

[26] 63 FR 32766, June 11, 1998, and 63 FR 32768, June 11, 1998.

[27] The purchase by a bank of a security issued by an affiliate is addressed in Part IV.C. below, and the purchase by a bank of any other note or obligation of an affiliate is addressed in Part IV.A. above.

[28] The Board also has determined to treat certain bank-affiliate merger and acquisition transactions as constructive asset purchases. These transactions are discussed in Part V.A. below.

[29] The valuation rule for investments in securities issued by a financial subsidiary is discussed in Part V.B.2. below.

[30] Carrying value refers to the amount at which the securities are carried on the GAAP financial statements of the bank.

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affiliate, but could not decline below the amount paid by the bank for the securities.

The Board believes several considerations support the approach contained in the proposed regulation. First, the approach is generally consistent with GAAP, which would require the bank to reflect its investment in securities issued by an affiliate at carrying value throughout the life of the investment, even if the bank paid no consideration for the securities.

Second, the definition of covered transaction in section 23A includes both a "purchase of" and an "investment in" securities issued by an affiliate. Accordingly, the statute by its terms appears to cover situations where a bank purchases securities of an affiliate and situations where a bank receives affiliate securities and pays no consideration. If the rule permitted banks to value these transactions only at purchase price, the "investment in" language of the statute would be rendered superfluous. The Board believes, moreover, that the statute's "investment in" language indicates that Congress was concerned with a bank's continuing exposure to an affiliate through an ongoing investment in securities issued by the affiliate. The best way to give effect to this concern and the "investments in" prong of the statutory definition is to base the value of a bank's investment in the securities of an affiliate on the bank's actual financial exposure to the investment (as reflected on the bank's GAAP financial statements), even if the bank paid nothing to acquire the securities.

Third, amendments to section 23A made by the GLB Act indicate that the value of an investment in the securities of an affiliate under section 23A should reflect increases (or decreases) in the value of the securities caused by earnings (or losses) at the affiliate. In particular, the GLB Act defines a financial subsidiary of a bank as an affiliate of the bank, but specifically provides that the section 23A value of a bank's investment in the securities of a financial subsidiary does *not* include retained earnings of the subsidiary. The negative implication from this provision is that the section 23A value of a bank's investment in *other* affiliates *includes* the affiliates' retained earnings, which would be reflected in the bank's carrying value of the investment under the proposed valuation rule.

Finally, this valuation rule is consistent with the purposes of section 23A—limiting the financial exposure of banks to their affiliates and promoting safety and soundness. The proposed rule would require a bank to revalue upwards the amount of an investment in affiliate securities only when the bank's exposure to the financial condition of the affiliate has increased (as reflected on the bank's financial statements) and the bank's capital has increased to reflect the higher value of the investment. In these circumstances, the valuation rule merely reflects the bank's greater financial exposure to the affiliate and promotes safety and soundness by reducing the bank's ability to engage in additional transactions with an affiliate as the bank's exposure to that affiliate increases.

As noted above, the proposed rule provides that the section 23A value of a bank's investment in affiliate securities can be no less than the amount paid by the bank for the securities, even if the carrying value of the securities declines below that amount. The Board believes that this approach, although not consistent with GAAP, is reasonable because it establishes as a floor the amount of funds actually paid by the bank for the affiliate securities. Using the bank's purchase price for the securities as a floor for valuing the covered transaction also limits the ability of a bank to provide additional funding to an affiliate as the affiliate approaches insolvency. If the regulation were to value investments in securities issued by an affiliate strictly at carrying value, then the bank could lend more funds to the affiliate as the affiliate's financial condition worsened, because the carrying value of the affiliate's securities also would decline and thereby increase the bank's ability to provide additional funding under section 23A. This type of increasing support for an affiliate in distress is precisely what section 23A was intended to restrict.

The regulation provides several examples designed to assist banks in valuing purchases of and investments in the securities of an affiliate.

D. Posting Securities Issued by an Affiliate as Collateral—223.11

Section 23A defines as a covered transaction a bank's acceptance of securities issued by an affiliate as collateral for a loan or extension of credit to any person or company.[31] This type of covered transaction has two classes: one in which the only collateral for the loan is affiliate securities; and another in which the loan is secured by a combination of affiliate securities and other collateral. Section 23A does not explain how these different types of covered transactions should be valued for purposes of determining compliance with the quantitative limits of the statute.

As a general rule, Regulation W would value covered transactions of the first class, where the credit extension is secured exclusively by affiliate securities, at the full amount of the extension of credit. This approach reflects the difficulty of measuring the actual value of typically untraded and illiquid affiliate securities, and conservatively assumes that the value of the securities is equal to the full value of the loan that the securities collateralize. This position also reflects the traditional advice given by Board staff on this issue. Regulation W proposes an exception to the general rule where the affiliate securities held as collateral have a ready market. In that case, the transaction may be valued at the fair market value of the affiliate securities. The exception grants relief from staff's traditional position in those circumstances where the value of the affiliate securities is independently verifiable by reference to transactions occurring in a liquid market.[32]

Regulation W would value covered transactions of the second class, where the credit extension is secured by affiliate securities and other collateral, at the *lesser* of (i) the total value of the extension of credit minus the fair market value of the other collateral and (ii) the fair market value of the affiliate securities (if the securities have a ready market). Until 1999, staff advised banks to value this class of covered transactions at the total amount of the extension of credit. In January 1999, the staff modified its position on mixed collateral loans to permit banks to value these transactions in a manner similar to the proposed rule.[33]

The Board believes that in situations in which a loan is secured by securities of an affiliate and other collateral, it is reasonable to reflect the fair market value of the other collateral in determining whether, and to what extent, the loan should count towards the bank's section 23A quantitative limits. Under the proposed method of calculation for mixed-collateral loans, if a loan is fully secured by nonaffiliate collateral with a fair market value that equals or exceeds the loan amount, then the loan would not be included in the bank's quantitative limits for purposes of section 23A. If the loan is not fully secured by other collateral, then the maximum amount that the bank must count against its quantitative limits is the difference between the full amount of the loan and the fair market value of the nonaffiliate collateral. This methodology takes account of the bank's reliance on the value of nonaffiliate collateral in a loan transaction, while also recognizing that a portion of the loan may be supported by securities issued by an affiliate.

The approach taken in Regulation W, however, is different from that of the 1999 interpretation in two respects. First, although the 1999 interpretation allows banks to use the fair market value of the affiliate securities as an upper limit on the value of the transaction regardless of the liquidity of the affiliate securities, the regulation only would allow banks to use the value of the affiliate securities as an upper limit if the affiliate securities have a ready market. If the affiliate securities do not have a ready market, a bank could understate the market value of the securities in order to shrink the size of the covered transaction. Second, the regulation's ready market requirement would replace an implicit condition of the 1999 interpretation that only a small amount of the total collateral could be affiliate securities. The valuation rule in Regulation W would apply regardless of the amount of affiliate collateral.

The Board also notes that, under section 23A, a loan that is secured with any amount of an affiliate's securities must be consistent with safe and sound banking practices.[34]

V. Other Considerations under Section 23A—Subpart D

Subpart D of the proposed rule would provide guidance to banks on three issues under section 23A: (i) merger and acquisition transactions between a bank and an affiliate; (ii) financial subsidiaries of a bank; and (iii) derivative transactions between a bank and an affiliate.

A. Bank-affiliate Merger and Acquisition Transactions—223.12

Section 23A includes a purchase of assets from an affiliate and the purchase of, or investment in, securities issued by an affiliate within the definition of covered transaction. In the past, the Board has been required to apply these provisions to transactions where a bank directly or indirectly acquires an affiliate. There are three principal methods by which a bank acquires an affiliate. The first method is where a bank (or one of its subsidiaries that is not treated as an affiliate of the bank under section 23A (an "operations subsidiary")) directly purchases or otherwise acquires the affiliate's assets and assumes the affiliate's liabilities. In this case, the transaction is treated as a purchase of assets, and the covered transaction amount is equal to the amount paid by the bank for the affiliate's assets plus the amount of any liabilities assumed by the bank in the transaction.

The second method is where a bank (or its operations subsidiary) acquires an affiliate by merger. Because a merger with an affiliate generally results in the bank acquiring all the assets of the affiliate and assuming all the liabilities of the affiliate, this transaction is effectively equivalent to the purchase and assumption transaction described in the previous paragraph. Accordingly, the merger transaction also is treated as a purchase of assets, and the covered transaction amount is again equal to the amount paid by the bank for the affiliate's assets (if any) plus the amount of any liabilities assumed by the bank in the transaction.

The third method involves the contribution or sale of an affiliate's shares by the affiliate's parent to the bank (or its operations subsidiary). The Board previously has treated these transactions as a purchase of assets covered by section 23A where the bank paid consideration for the shares or the affiliate whose shares were contributed to the bank had liabilities to any affiliate of the bank.[35]

The proposed rule does not alter the treatment of the first two types of transaction described above. The proposed rule does provide, however, a new treatment, which is consistent with the structure of section 23A, for the third type of transaction. The rule provides that the acquisition by a bank of securities issued by a company that was an affiliate of the bank before the acquisition is treated as a purchase of the assets of the company if (i) as a result of the transaction, the company becomes a subsidiary of the bank and ceases to be an affiliate of the bank; and (ii) the company has liabilities, or the bank gives cash or any other consideration in exchange for the securities. The rule also provides that such transactions must be valued initially at the sum of (i) the total amount of consideration given by the bank in exchange for the securities; and (ii) the total liabilities of the company whose securities have been acquired by the bank through the contribution or purchase. In effect, the rule requires banks to treat these sorts of share donations and purchases in the same manner as if the bank had purchased the assets of the transferred company at a purchase price equal to the liabilities of the transferred company (plus any separate consideration paid by the bank for the shares).

This treatment for affiliate share transfers would be consistent with the approach that section 23A takes on subsidiaries of banks and with economic and marketplace realities. Section 23A treats banks and their operations subsidiaries as a single unit. Transactions between a bank and its operations subsidiaries are not treated as covered transactions between a bank and an affiliate under section 23A; rather, they are treated as transactions entirely inside the bank. Similarly, a transaction between a bank's operations subsidiary and an affiliate of the bank is treated as a covered transaction between the bank itself and an affiliate under section 23A. Ignoring the separate corporate form of subsidiaries of banks and treating the assets and liabilities of subsidiaries of banks as assets and liabilities of the bank itself is, therefore, consistent with the structure of section 23A. Accordingly, under section 23A, these share transfers in which an affiliate of a bank becomes a subsidiary of the bank are properly viewed as a purchase of an affiliate's assets and an assumption of an affiliate's liabilities by the bank.

[31] 12 U.S.C. 371c(b)(7)(D). This covered transaction only arises when the bank's loan is to a nonaffiliate. Under section 23A, the securities issued by an affiliate are not acceptable collateral for a loan or extension of credit *to* any affiliate. *See* 12 U.S.C. 371c(c)(4). Moreover, if the proceeds of a loan that is secured by an affiliate's securities are transferred to an affiliate by the third party borrower (for example, to purchase assets or securities from the inventory of an affiliate), the loan should be treated as a loan to the affiliate. The loan must then be secured with collateral in an amount and of a type that meets the requirements of section 23A for loans by a bank to an affiliate.

[32] In either case, the transaction must comply with section 23B; that is, the bank must obtain the same amount of affiliate securities as collateral on the credit extension that the bank would obtain if the collateral were not affiliate securities.

[33] *See* Letter dated January 21, 1999, from J. Virgil Mattingly, General Counsel of the Board, to Bruce Moland. This letter set forth an opinion of Board staff that, for purposes of applying the quantitative limits in section 23A, such mixed-collateral loans should be valued at the lesser of (1) the total amount of the loan less the fair market value of nonaffiliate collateral (if any), or (2) the fair market value of the affiliate's securities that are used as collateral.

[34] 12 U.S.C. 371c(a)(4).

[35] *See, e.g.*, Letter dated June 11, 1999, from Robert deV. Frierson, Associate Secretary of the Board, to Mr. Robert L. Anderson. Some institutions have argued that this treatment is too strict and that a covered transaction should be deemed to occur in connection with a share contribution only if there is a net transfer of value from the bank to the affiliate (that is, if the liabilities of the transferred company exceed the value of the assets of the company). In many internal reorganizations, the Board has found that the value of the assets of the transferred company was uncertain. In addition, the transactions often were motivated by funding problems at the transferred affiliate and by a desire to use the bank's resources to alleviate those funding needs. Soon after consummating such reorganizations, bank funds typically were used to pay down liabilities that the transferred company had to the parent holding company of the bank.

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The proposed treatment for affiliate share transfers is also consistent with the Board's supervisory experience. The Board has found that banks often operate their consolidated organizations—because of capital requirements, financial reporting requirements, and reputational risk concerns—as if the assets and liabilities of subsidiaries were actually assets and liabilities of the bank itself. Banks often attempt to shore up their subsidiaries in times of financial stress, despite the limited liability inhering in the corporate form. Accordingly, the Board proposes to treat the assets and liabilities of a subsidiary of a bank as assets and liabilities of the bank itself for purposes of section 23A.[36]

The proposed rule only imposes asset purchase treatment on affiliate share transfers where the company whose shares are being transferred to the bank was an affiliate of the bank before the transfer. If the transferred company were not an affiliate prior to transfer, it would not be appropriate to treat the share transfer as a purchase of the assets *of an affiliate*. Similarly, the rule only requires asset purchase treatment for share transfers where the transferred company becomes a subsidiary and not an affiliate of the bank through the transfer. If the company were not a subsidiary of the bank after the transfer (because, for example, the bank acquired less than 25 percent of a class of voting securities of the company) or if the company were an affiliate of the bank after the transfer (because, for example, the bank's holding company continued to own 25 percent or more of a class of voting securities of the company or because the company became a financial subsidiary of the bank after the transfer), the Board does not believe it would be appropriate to treat the liabilities of the company as the liabilities of the bank for purposes of section 23A. In those circumstances, section 23A would not treat the bank and the transferred company as a single unit.

The Board solicits comment on whether this method of treating affiliate share transfers is appropriate.

The Board notes that it has granted numerous section 23A exemptions, on a case-by-case basis, for transactions involving the transfer (by merger, purchase and assumption transaction, or otherwise) by a holding company of one of its nonbank subsidiaries to a subsidiary bank.[37] The Board typically has approved such exemptions only if certain conditions are met, including (i) the transfer of the affiliate must be the result of a one-time corporate reorganization, (ii) the entity transferring the shares to the bank must provide certain assurances concerning the quality of the assets being transferred, (iii) the disinterested directors of the bank must approve the transaction in advance, (iv) the transfer must not include any low-quality assets, and (v) the bank's appropriate Federal banking agency and the Federal Deposit Insurance Corporation must inform the Board that they have no objection to the transaction. Banks may continue to apply to the Board for such case-by-case exemptions.

The proposed regulation also contains a regulatory exemption for certain merger and acquisition transactions that result in the transfer of an affiliate to a bank. Section 223.12(d) of the regulation provides an exemption from the requirements of section 23A (other than the safety and soundness requirement) for transactions in which, for example, a bank holding company acquires the stock of an unaffiliated company and, immediately after consummation of the acquisition, transfers the shares of the acquired company to the holding company's subsidiary bank. Although these transactions technically would be subject to the asset purchase treatment discussed in this section—and the bank would be required to value the covered transaction at the total amount of the liabilities of the acquired company (plus any consideration paid by the bank for the company)—the Board believes that it would be inappropriate to treat this transaction as a covered transaction. If the bank had acquired the unaffiliated company directly, there would be no covered transaction, and the mere fact that the bank's holding company owned the target company for a moment in time does not change the fundamental nature of the transaction.

Accordingly, the regulation exempts these "step" transactions as long as certain conditions are met. First, the bank must acquire the target company immediately after the company becomes an affiliate (by being acquired by the bank's holding company, for example). To the extent that the bank acquires the target company some time after the company becomes an affiliate, the transaction looks less like a single transaction in which the bank acquires the target company and more like two separate transactions, the latter of which involves the bank acquiring assets from an affiliate. Second, the bank must acquire the entire ownership position in the target company that its holding company acquired. If the bank were to acquire less than all the shares or assets of the target company that its holding company acquired, the transaction again would not, in effect, involve the purchase of the company by the bank. Finally, the entire transaction must comply with the market terms requirement of section 23B.

B. Financial Subsidiaries—223.13

As noted above, the GLB Act amended section 23A to treat a financial subsidiary of a bank as an affiliate of the bank and to establish several special rules that apply to transactions with financial subsidiaries. The proposed regulation combines all of the special rules that apply to transactions with financial subsidiaries in a single section.

1. *Applicability of the 10 percent quantitative limit to transactions with a financial subsidiary—223.13(a).* First, consistent with the GLB Act, the regulation provides that the 10 percent quantitative limit in section 23A does not apply with respect to covered transactions between a bank and any individual financial subsidiary of the bank. Accordingly, a bank's aggregate amount of covered transactions with any individual financial subsidiary may exceed 10 percent of the bank's capital stock and surplus. A bank's covered transactions with its financial subsidiaries, however, are subject to the statutory and regulatory 20 percent quantitative limit. Thus, a bank may not engage in a covered transaction with any affiliate (including a financial subsidiary) if the bank's aggregate amount of covered transactions with all affiliates (including financial subsidiaries) would exceed 20 percent of the bank's capital stock and surplus.

2. *Valuation of investments in the securities of a financial subsidiary—223.13(b).* Because financial subsidiaries of a bank are considered affiliates of the bank for purposes of section 23A, purchases of and investments in the securities of a financial subsidiary are covered transactions under the statute. The GLB Act provides that a bank's investment in its financial subsidiary, for purposes of section 23A, shall not include the retained earnings of the financial subsidiary.[38] In light of this statutory provision, the regulation contains a special valuation rule for investments in the securities of a financial subsidiary. Such investments must be valued at the greater of (i) the price paid by the bank for the securities; and (ii) the carrying value of the securities on the financial statements of the bank (determined in accordance with GAAP but without reflecting the bank's pro rata share of any earnings retained or losses incurred by the financial subsidiary after the bank's acquisition of the securities).[39]

This valuation rule differs from the general "investment in the securities of an affiliate" valuation rule only in that the financial subsidiary rule requires, consistent with the GLB Act, that the carrying value of the investment be computed without consideration of the retained earnings or losses of the financial subsidiary since the time of the bank's investment. As a result of this rule, the covered transaction amount for a bank's investment in the securities of its financial subsidiary would not increase except in the event that the bank made an additional capital contribution to the subsidiary or purchased additional securities of the subsidiary.

The regulation provides several examples designed to assist banks in valuing purchases of and investments in securities issued by a financial subsidiary.

3. *Anti-evasion rules—223.13(c).* Section 23A generally applies only to transactions between a bank and an affiliate of the bank and transactions between a bank and a third party where some benefit of the transactions accrues to an affiliate of the bank. The statute generally does not apply to transactions between two affiliates. The GLB Act establishes two special anti-evasion rules, however, that govern transactions between a financial subsidiary of a bank and another affiliate of the bank.[40] First, the GLB Act provides that any purchase of, or investment in, the securities of a bank's financial subsidiary by an affiliate of the bank will be deemed to be a purchase of, or investment in, such securities by the bank itself. Second, the GLB Act authorizes the Board to deem a loan or other extension of credit made by a bank's affiliate to any financial subsidiary of the bank to be an extension of credit by the bank to the financial subsidiary, if the Board determines that such action is necessary or appropriate to prevent evasions of the Federal Reserve Act or the GLB Act.

The proposed regulation incorporates both of these provisions.[41] The regulation also exercises the Board's authority under the second anti-evasion rule by stating that an extension of credit to a financial subsidiary of a bank by an affiliate of the bank would be treated as an extension of credit by the bank itself to the financial subsidiary if the extension of credit is treated as regulatory capital of the financial subsidiary. An example of the kind of credit extension covered by this provision would be a subordinated loan to a financial subsidiary that is a securities broker-dealer where the loan is treated as capital of the subsidiary under the SEC's net capital rules. The Board believes that such treatment is appropriate in these circumstances because the extension of credit by the affiliate has a similar effect on the subsidiary's regulatory capital as an equity investment by the affiliate, which is treated as a covered transaction by the terms of the GLB Act (as described above).

The Board may find certain other extensions of credit by an affiliate to a financial subsidiary to be covered transactions under section 23A on a case-by-case basis. The Board seeks comment on the appropriateness of considering other classes of credit extensions by an affiliate to a financial subsidiary as extensions of credit by the bank to the financial subsidiary.

C. Derivative Transactions—223.14

As noted above, the GLB Act requires the Board to address as covered transactions under section 23A credit exposure arising out of derivative transactions between banks and their affiliates.

Determining the appropriate treatment for derivative transactions under section 23A is a complex and important endeavor. In light of the complexities of the subject matter and in light of the May 12, 2001, statutory schedule in the GLB Act, the Board is taking two steps to address credit exposure on bank-affiliate derivative transactions under sections 23A and 23B. First, the Board is publishing an interim rule, concurrently with Regulation W, that (i) requires, under section 23A as amended by the GLB Act, that a bank establish and maintain policies and procedures reasonably designed to manage the credit exposure arising from the bank's derivative transactions with affiliates and (ii) clarifies that bank-affiliate derivative transactions are subject to the market terms requirement of section 23B. The policies and procedures must at a minimum provide for monitoring and controlling the credit exposure arising from the bank's derivative transactions with each affiliate, and all affiliates in the aggregate, and ensuring that the bank's derivative transactions with affiliates comply with section 23B.

The second step that the Board is taking to address the credit exposure arising from bank-affiliate derivative transactions under section 23A is contained in this section of the preamble to Regulation W. This section sets forth a set of questions regarding the appropriate treatment of these transactions under section 23A. In connection with the interim rule and proposed Regulation W, the Board solicits public comment on the most appropriate treatment under section 23A of the credit exposure arising from bank-affiliate derivative transactions.

In deciding how to address under section 23A credit exposure arising from derivative transactions, the initial question to be answered is how to define the term "derivative transaction." The Board's interim rule on bank-affiliate derivatives defines the term by reference to the definition of "derivative contract" in the capital guidelines of the Federal banking agencies ("Capital Guidelines").[42] The definition contained in the Capital Guidelines covers swaps, forwards, options, and other similar contracts on an interest rate, currency, equity, or commodity. The interim rule supplements the definition contained in the Capital Guidelines by also including "any similar derivative contract, including credit derivative contracts." This supplementation recognizes that derivative instruments evolve in response to the needs of the financial marketplace.

Other options would include defining derivative transaction by reference to the definition of "qualified financial contract" or "swap agreement" in the

[36] Affiliate share transfers to a bank often are functionally equivalent to transactions in which a bank directly acquires the assets and assumes the liabilities of an affiliate, because a bank can usually merge the newly acquired subsidiary into itself. As noted above, in a direct acquisition of assets and assumption of liabilities, the covered transaction amount would be equal to the total amount of liabilities assumed by the bank.

[37] *See, e.g., Travelers Group Inc. and Citicorp*, 84 Federal Reserve Bulletin 985, 1013–14 (1998) and Letter dated November 14, 1996, from William W. Wiles, Secretary of the Board, to John Byam.

[38] GLB Act section 121(b)(1) (codified at 12 U.S.C. 371c(e)(3)(B)).

[39] The regulation also makes clear that if a financial subsidiary is consolidated with its parent bank under GAAP, the carrying value of the bank's investment in the financial subsidiary shall be determined based on parent-only financial statements of the bank.

[40] GLB Act section 121(b)(1) (codified at 12 U.S.C. 371c(e)(4)).

[41] The proposed regulation also provides an exception to the anti-evasion rules for transactions between a bank's financial subsidiary and another affiliate if the other affiliate is itself a bank or savings association subject to section 23A. In that event, the anti-evasion rules are not needed because the transaction will count as a covered transaction for the affiliated bank or savings association. Without this exception, the same transaction would double count as a covered transaction both for the parent bank of the financial subsidiary and for the other affiliated institution.

[42] 12 CFR part 225, appendix A.III.E.1.a–d.

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Federal Deposit Insurance Act[43] or to borrow from definitions contained in the Bankruptcy Code. Another option would involve taking a broad, functional approach that defines a derivative transaction as "a bilateral contract the value of which derives from the value of some underlying security, financial instrument, rate, index, event, commodity, or other asset or indicator." Although such a broad definition may be somewhat overinclusive and more ambiguous in scope than a targeted definition, it also may provide the Board with more flexibility in responding to market trends.

The remainder of this section seeks comment on a set of questions regarding how the Board should address bank-affiliate derivative transactions under section 23A.

First, the Board notes that some derivative transactions—like deep in-the-money options or swaps with an exchange of principal on different dates—are the functional equivalent of a loan, which is an explicit type of covered transaction under section 23A. Although the Board is not aware that banks and their affiliates are entering into these types of derivative transactions, the Board expects that it may need to address these derivatives separately from the other types of derivatives because of their functional equivalence to an existing type of covered transaction under the statute. In this regard, the Board solicits comment on how to determine when a derivative transaction is (or contains an aspect that is) the functional equivalent of a loan by a bank to an affiliate. The Board believes that it may be appropriate to treat such a derivative transaction (or the relevant part of the transaction that functions as a loan) as a loan from the bank to the affiliate for purposes of section 23A.

The Board requests comment on whether and how Regulation W should provide additional guidance for banks on identifying derivative transactions that are, or have aspects that are, the functional equivalent of a loan. The Board understands that the Internal Revenue Service has adopted a regulation that requires financial institutions, for tax purposes, to recharacterize as loans portions of certain swap and other derivative transactions based on the significance of any nonperiodic payments provided for under the terms of the transaction.[44] The Board requests comment on whether the standards used by the Internal Revenue Service to determine the inherent loan elements of a swap transaction also would be appropriate for the Board to use for section 23A purposes. The Board also solicits comment on whether the regulation should treat the entirety of a bank-affiliate derivative transaction as a loan under section 23A if any portion of the transaction is the functional equivalent of a loan or should impose loan treatment only on that portion of the transaction that functions as a loan.

The Board also asks for public comment on whether Regulation W should provide a separate treatment for any other specific types of derivatives. In particular, the Board seeks comment on whether a credit derivative between a bank and an affiliate in which the bank provides credit protection to the affiliate with respect to the affiliate's assets should be treated as a covered transaction and made subject to all the requirements of section 23A. Such a credit derivative generates risks for the bank that closely resemble the risks incurred by a bank when it purchases assets from an affiliate. The Board notes that a credit derivative transaction between a bank and an unaffiliated company that references the obligations of an affiliate of the bank and is the functional equivalent of a guarantee by the bank on behalf of the affiliate is a guarantee by the bank on behalf of an affiliate for purposes of section 23A.

Second, the Board asks whether banks should be required to adopt any specific policies and procedures with respect to their derivative transactions with affiliates. These policies and procedures might include provisions that require a bank to adopt the following "best practices": (i) entering into a legally enforceable bilateral netting agreement with each of its affiliated derivatives counterparties; (ii) revaluing its derivative transactions with affiliates on a daily basis; and (iii) collateralizing its net mark-to-market credit exposure on derivative transactions with affiliates. The Board asks for comment on the appropriateness of requiring these types of policies and procedures and on whether additional policies or procedures should be required to ensure that a bank's derivative transactions with affiliates are conducted safely and soundly.

Third, the Board solicits comment on whether banks should be required to disclose to Federal bank supervisors or the public, on a quarterly or other periodic basis, their net credit exposure to affiliates on derivative transactions. The Board solicits comment on the types of disclosures that banks reasonably could be required to provide with respect to their derivative transactions with affiliates in order to assist the Federal banking agencies in monitoring and supervising such transactions.

Fourth, the Board invites comment on whether any final rule addressing bank-affiliate derivatives should impose a quantitative limit on the aggregate amount of a bank's net credit exposure on such transactions. The rule could require that the aggregate amount of a bank's net credit exposure on derivative transactions with affiliates not exceed some percentage of the capital stock and surplus of the bank, unless the bank obtains the prior approval of its appropriate Federal banking agency. Such a separate limit for derivatives would be in addition to the general 20 percent limit for covered transactions with all affiliates under section 23A. The Board asks for comment on whether 10 percent of the bank's capital stock and surplus would be an appropriate size for a separate cap on net derivatives credit exposure that a bank has to affiliates. Instead of establishing a separate limit, the rule could require that a bank incorporate its net credit exposure arising from derivative transactions with affiliates into its overall section 23A quantitative limits. The Board seeks comment on the appropriateness of either of these alternatives.

Fifth, the Board asks whether banks should be required to collateralize their net derivatives credit exposure to affiliates in accordance with the collateral requirements of section 23A.

Finally, in the event that the Board were to impose a quantitative limit on bank-affiliate derivative transactions (whether by establishing a separate limit for derivatives or by requiring banks to include derivatives in their overall section 23A limits), the Board seeks comment on how banks should be required to determine the amount of their derivative transactions with affiliates. One valuation option would be to require banks to value a derivative transaction with an affiliate at the current exposure of the bank to the affiliate on the transaction. Under this option, the amount of a bank's section 23A exposure to an affiliate on a derivative transaction would be based on the mark-to-market value of the transaction for the bank. If the mark-to-market value of the transaction were positive, then the current exposure would be that mark-to-market value. If the mark-to-market value were zero or negative, the current exposure would be zero. The Board specifically asks for comment on whether these mark-to-market values should be adjusted to reflect counterparty credit quality.

[43] *See* 12 U.S.C. 1821(e)(8)(D)(i) and (vi).

[44] 26 CFR 1.446–3.

Another valuation option would require banks to value a derivative transaction with an affiliate at the current exposure of the bank to the affiliate on the transaction *plus* an estimate of the bank's potential future exposure ("PFE") to the affiliate on the transaction. This is the approach to measuring derivatives exposure that most banks take with third parties and that the Federal banking agencies have taken in the Capital Guidelines.[45] The Board seeks comment on whether banks should be required to include an estimate of PFE when determining the amount of their credit exposure on bank-affiliate derivative transactions and, if so, how banks should be required to calculate PFE.

PFE could be measured in a wide variety of ways. The Capital Guidelines provide one possible methodology. Under the Capital Guidelines, a bank calculates its PFE by multiplying the notional principal amount of the derivative transaction times a conversion factor specified in the Guidelines that varies depending upon the remaining maturity of the derivative transaction and the nature of the asset underlying the derivative transaction. This methodology has the benefits of being easy to calculate and of being a method that is already employed by banks for regulatory capital purposes and, consequently, eliminates the burden that would attend a requirement for a different calculation method. The methodology has the drawback of being rather insensitive to gradations of risk and rather conservative in its estimates of PFE. Another possible PFE computation methodology would be to permit banks with sophisticated internal models to use those models to calculate their PFE on bank-affiliate derivative transactions. The Board also seeks comment on whether the appropriate time horizon for estimating PFE on a derivative transaction is the remaining maturity of the transaction or some shorter "close-out" period.

The Board also invites comment on whether and how banks should be allowed to take into account credit risk mitigators such as collateral in determining the amount of their derivative transactions with affiliates. Under section 23A, transactions *fully* secured by cash on deposit or U.S. government or agency securities are generally exempt from the requirements of the statute. Outside of this exemption, the statute does not allow banks to reduce the amount of a covered transaction by securing the transaction with collateral or obtaining a third-party guarantee of the transaction. Transactions secured by municipal securities, corporate debt or equity securities, or real estate, for example, are treated the same as unsecured transactions for purposes of the quantitative limits of the statute.

The Board solicits comment on whether Regulation W should provide banks with partial credit for partially securing derivative transactions with affiliates. The Board also solicits comment on what types of collateral the regulation should recognize for the purpose of reducing the section 23A credit exposure of a bank to its affiliates on derivative transactions. As noted, the only types of collateral that have an impact on a bank's quantitative limits under the terms of section 23A are cash on deposit and U.S. government and agency securities. The Board could use this same limited list of collateral with respect to bank-affiliate derivative transactions. The Board seeks comment on whether it should expand the list of collateral acceptable for reducing the section 23A amount of these transactions and, if so, what kinds of other collateral should be acceptable as credit risk mitigators for the transactions, and what haircuts should apply to any added collateral types.

The Board also solicits the public's view on how, if the general 10 and 20 percent quantitative limits of section 23A are applied to bank-affiliate derivative transactions, increased credit exposure of the bank to an affiliate on a pre-existing derivative transaction should be treated. For example, a bank could be required promptly to unwind existing derivatives or other covered transactions or otherwise promptly reduce the amount of its exposure to affiliates in order to restore itself to compliance with the quantitative limits of section 23A in the event that the credit exposure on a derivative transaction causes the bank to exceed the limits. Alternatively, a bank could be allowed to retain existing derivative transactions and only be required to cease engaging in new covered transactions until the bank's aggregate amount of covered transactions falls below the statute's quantitative limits.

If the Board were to determine that bank-affiliate derivative transactions are subject to some sort of quantitative limit under section 23A, the Board would have to address the question of whether and how to recognize netting agreements. The Board solicits comment on whether it should recognize bilateral netting agreements when computing the amount of a bank's derivatives credit exposure to an affiliate and, if so, whether the principles set forth in the Capital Guidelines are appropriate minimum requirements for determining what is a qualifying netting agreement.[46]

In addition, the Board solicits comment on how often a bank should mark to market its derivative transactions with affiliates. The Board requests information on how often banks mark to market their derivative transactions with third parties and on the potential burden and benefits of requiring banks to mark to market their derivative transactions with affiliates on a daily basis.

As a more general matter, the Board invites comment on whether it is necessary or appropriate to grandfather existing derivative transactions between banks and their affiliates. The Board understands that, depending on the approach ultimately taken on bank-affiliate derivatives, bringing existing derivative transactions into compliance with Regulation W may require expensive and time-consuming adjustments to positions or renegotiation of agreements and, if existing exposures are above any quantitative limits established by Regulation W, may prevent banks from engaging in future derivative transactions with affiliates.

The Board will analyze comments on this proposal and the concurrently issued interim final rule on derivative transactions. If, based on that analysis, the Board believes additional measures are needed in this area, the Board will issue a detailed proposed rule for public comment.

VI. Exemptions—Subpart E

Section 23A specifies several types of transaction that are exempt from the statute's quantitative and collateral requirements and other types of transaction that are exempt from the statute's quantitative, collateral, and low-quality asset requirements.[47] The proposed regulation sets forth the statutory exemptions, clarifies certain of these exemptions, and exempts several additional types of transactions. The clarifications and additional exemptions are discussed below.

A. Sister-Bank Exemption—223.15(a) and (b)

Section 23A(d)(1) exempts any transaction between a member bank and a "bank" if the member bank controls 80 percent or more of the voting securities of the bank, the bank controls 80 percent or more of the voting securities of the member bank, or a company controls 80 percent or more of the

[45] *See, e.g.*, 12 CFR part 225, appendix A.III.E.2.

[46] *See, e.g.*, 12 CFR part 225, appendix A.III.E.3.

[47] 12 U.S.C. 371c(d).

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voting securities of both the member bank and the bank.[48] Section 23A states that the term "bank" includes "any State bank, national bank, banking association, and trust company," and other federal law provides that an insured savings association should be treated as a "bank" for purposes of the sister-bank exemption.[49] Section 23A also provides the Board with authority to issue definitions consistent with the section as may be necessary to carry out the purposes of the section and to prevent evasions thereof.[50]

Regulation W proposes to clarify that the sister-bank exemption generally applies only to transactions between a bank (as defined in the regulation to mean a member bank or an insured nonmember bank), on the one hand, and an insured depository institution, on the other hand. Such an interpretation is consistent with the legislative intent behind the sister-bank exemption, which was to permit the flow of funds from one insured depository institution to another insured depository institution. In this regard, the Board notes that, under the cross-guarantee provisions of the Federal Deposit Insurance Act, an insured depository institution is generally liable for any loss incurred by the FDIC in connection with the default of a commonly controlled insured depository institution.[51] Without such an interpretation of the sister-bank exemption, a bank would be able to engage in unlimited covered transactions with certain uninsured depository affiliates. Permitting a bank to provide an unlimited amount of funding to an uninsured depository affiliate would contravene one of the principal purposes of the statute-protecting the deposit insurance funds from loss.[52]

B. Purchases of Loans on a Nonrecourse Basis—223.15(c)

Under section 23A(d)(6), a bank may purchase loans on a nonrecourse basis from an affiliated "bank" exempt from section 23A, even if the transaction does not qualify for the sister-bank exemption under section 23A(d)(1). The proposed rule clarifies that the scope of this exemption parallels that of the sister-bank exemption by stating that this exemption applies to a bank's purchase of a loan on a nonrecourse basis from an affiliated insured depository institution.

Section 23A(d)(6) also exempts the purchase from an affiliate of assets that have a readily identifiable market quotation. This exemption is set forth separately in the regulation for purposes of clarity and is discussed in detail below.

C. Correspondent Banking—223.16(a)

Section 23A exempts from its quantitative limits and collateral requirements any deposit by a bank in an affiliated bank or affiliated foreign bank that is made in the ordinary course of correspondent business, subject to any restrictions that the Board may impose.[53] The proposed rule provides that such deposits must represent ongoing, working balances maintained by the bank in the ordinary course of conducting the correspondent business. An occasional deposit in an affiliated institution would not be in the ordinary course of correspondent business. The proposed rule also indicates that correspondent deposits in an affiliated insured savings association are exempt if they otherwise meet the requirements of the exemption.

D. Fully Secured Credit Transactions—223.16(c)

Section 23A exempts any credit transaction by a bank with an affiliate that is fully secured by obligations issued or guaranteed by the United States or its agencies or by a "segregated, earmarked" deposit account.[54] The proposed rule clarifies that a deposit account meets the "segregated, earmarked" requirement only if the account exists for the sole purpose of securing the extension of credit and is so identified. This requirement would parallel the provision in section 223.5(b)(1)(iv) of the rule relating to which deposits count toward the collateral requirements of section 23A. Thus, if an earmarked deposit is sufficient to fully secure the transaction, then the transaction is exempt under this section; if the deposit represents less than full security, then the amount of the deposit counts toward the required collateral under section 223.5(b).

E. Purchases of Assets with Readily Identifiable Market Quotes—223.16(e)(1)

Section 23A(d)(6) exempts the purchase of assets from an affiliate if the assets have a "readily identifiable and publicly available market quotation" and are purchased at their current market quotation.[55] The Board generally has limited the availability of this exemption (the "(d)(6) exemption") to purchases of U.S. Treasury securities, securities issued by a U.S. government agency, and assets with market prices that are recorded in widely disseminated publications such as newspapers with a national circulation. Because only exchange-traded assets are recorded in such publications, the test ensures that the qualifying assets are traded actively enough to have a true "market quotation" and that examiners can verify that the assets are purchased at their current market quotation. Regulation W codifies this Board interpretation of the (d)(6) exemption and clarifies that the exemption applies to a bank's purchase of assets having a readily identifiable and publicly available market quotation if the assets are purchased at *or below* the asset's current market quotation.

F. Purchases of Securities with a Ready Market From a Securities Affiliate—223.16(e)(2)

The Board proposed in its 1998 Proposal to exempt from section 23A the purchase by a bank of certain types of securities from a securities affiliate.[56] The Board has determined to adopt a somewhat revised form of this expanded (d)(6) exemption in a separate final rule being issued concurrently with Regulation W. Regulation W also contains this exemption, and the Board seeks further comment on the scope and conditions of the exemption. In particular, the Board solicits the views of the public on (i) whether the exemption should be limited to purchases from registered U.S. securities broker-dealers; (ii) whether it would be appropriate to use independent dealer quotations to establish a market price for a security under the exemption; and (iii) whether it would be appropriate to allow a bank to use the exemption to purchase asset-backed securities issued by an affiliate of the bank or to purchase securities issued by a mutual fund advised by the bank or an affiliate of the bank.

G. Purchasing Municipal Securities—223.16(f)

The Board also proposes to exempt a bank's purchase of municipal securities from an affiliate, if the purchase meets a revised and somewhat shorter version of the requirements applicable to the expanded (d)(6) exemption contained in section 223.16(e)(2) of the proposed rule.[57] First, as in the expanded (d)(6) exemption, the bank must purchase the municipal securities from a broker-dealer affiliate that is registered with the SEC. Second, also as in the expanded (d)(6) exemption, the municipal securities must be eligible for purchase by a State member bank and the bank must report the transaction as a securities purchase in its Call Report. Third, the municipal securities must either be rated by a nationally recognized statistical rating organization or must be part of an issue of securities that does not exceed $25 million in size. Finally, the price for the securities purchased must be (i) quoted routinely on an unaffiliated electronic service that provides indicative data from real-time financial networks, (ii) verified by reference to two or more actual independent dealer quotes on the securities to be purchased or securities that are comparable to the securities to be purchased, or (iii) in the case of securities purchased during the underwriting period, verified by reference to the price indicated in the syndicate manager's written summary of the underwriting.[58] Under any of the three pricing options, the bank must purchase the municipal securities at or below the quoted or verified price.

The Board believes that this streamlined set of requirements for purchases of municipal securities is appropriate because municipal obligations generally have a lower default risk than the other instruments whose quotations would be difficult to obtain, such as emerging market and high yield debt. In addition, these relaxed requirements are consistent with the expressed desire of Congress to support local communities' use of municipal securities to help meet their financing needs.

H. Purchases of Assets by De Novo Banks—223.16(h)

The proposed rule would exempt a purchase of assets by a newly chartered bank from an affiliate if the appropriate Federal banking agency for the bank approved the transfer. This exemption would allow companies to charter a *de novo* bank and to transfer assets to the bank from its affiliates outside the restrictions of section 23A.[59] Currently, if a company (usually a bank holding company) establishes a credit card bank or a trust company, the newly chartered institution cannot acquire a critical mass of assets from an affiliate because of the quantitative limits and other requirements of section 23A. The Board has received many comments that these restrictions are burdensome and unnecessary because the chartering authority for the new bank reviews the transaction (and, in the case of a bank holding company, the Board also reviews the transaction) to ensure that the transfer does not result in any safety or soundness problems. For this reason, the Board has proposed the exemption.

I. Transactions Approved Under the Bank Merger Act—223.16(i)

The Board previously has exempted from section 23A any merger or consolidation transaction between affiliated insured depository institutions if the transaction has been approved by the appropriate Federal banking agency pursuant to the Bank Merger Act.[60] The proposed rule includes this exemption.

J. Purchases of Extensions of Credit—223.16(j)

Section 23A includes as a covered transaction a purchase of assets from an affiliate, except such purchases of real and personal property as may be specifically exempted by the Board by order or regulation.[61] In 1979, the Board issued a formal interpretation that exempted a bank's purchase of a mortgage note or participation therein from a mortgage banking affiliate, provided that the bank's commitment to purchase is (i) obtained by the affiliate within the context of each proposed loan, (ii) obtained prior to the affiliate's commitment to make each loan, and (iii) based upon the bank's independent evaluation of the creditworthiness of each mortgagor (the "250.250 exemption").[62] Although this interpretation did not impose a strict dollar limit on the amount of an affiliate's mortgage loans that a bank could purchase under the exemption, the interpretation cautioned that the purpose of the exemption was to allow a bank to take advantage of an investment opportunity and not to provide all the working capital needed by an affiliate.

By 1995, some bank holding companies were using the 250.250 exemption extensively to fund their lending affiliates. In these cases, banks were providing all or nearly all of their affiliates' funding needs. In response, staff indicated in an interpretive letter that the 250.250 exemption was not available if the dollar amount of the bank's purchases from the affiliate represented more than 50 percent of the total dollar amount of loans originated by the affiliate.[63] Staff reasoned that, in these circumstances, the asset purchases look less like the bank taking advantage of an investment opportunity brought to it by the affiliate and more like the bank providing an ongoing funding mechanism for the affiliate. Staff intended that this restriction would require the affiliate to have alternative funding sources and reduce the pressure on the bank to purchase the affiliate's extensions of credit.

The proposed rule incorporates the 250.250 exemption and formally expands the exemption to cover the purchase of any type of loan or extension of credit from an affiliate. Regulation W also includes staff's 50 percent test and another test designed to ensure that the bank is not a principal ongoing funding source for the affiliate. In particular, the rule provides that the 250.250 exemption is unavailable if (i) the amount of the bank's total purchases from the affiliate, when aggregated with all other assets purchased from the affiliate by affiliated banks and insured savings associations, represents more than 50 percent of the credit portfolio of the affiliate; or (ii) the bank and its affiliated banks and insured savings associations provide substantial, ongoing funding to the affiliate. The Board recognizes that the "substantial, ongoing funding" condition may create some uncertainty for banks, but believes that the condition would provide examiners with additional flexibility to stop arrangements in which a bank provides a significant amount of

[48] The sister-bank exemption in section 23A does not allow a bank to avoid any restrictions on sister-bank transactions that may apply to the bank under the prompt corrective action framework set forth in section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o) and regulations adopted thereunder by the bank's appropriate Federal bankings agency.

[49] 12 U.S.C. 371c(b)(5), 1468(a)(2).

[50] 12 U.S.C. 371c(f)(1).

[51] *See* 12 U.S.C. 1815(e).

[52] As noted above, a bank and its operations subsidiaries are considered a single unit for purposes of section 23A. Accordingly, under the statute and the proposed regulation, transactions between a bank (or its operations subsidiary) and the operations subsidiary of a sister insured depository institution generally are exempt under the sister-bank exemption.

[53] 12 U.S.C. 371c(d)(2).

[54] 12 U.S.C. 371c(d)(4).

[55] 12 U.S.C. 371c(d)(6).

[56] 63 FR 32768, June 11, 1998.

[57] The regulation defines municipal securities by reference to section 3(a)(29) of the Securities Exchange Act, which defines municipal securities as direct obligations of, or obligations guaranteed as to principal or interest by, a State or agency, instrumentality, or political subdivision thereof, and certain tax-exempt industrial development bonds. 17 U.S.C. 78c(a)(29).

[58] Under the Municipal Securities Rulemaking Board's Rule G–11, the syndicate manager for a municipal bond underwriting is required to send a written summary to all members of the syndicate. The summary discloses the aggregate par values and prices of bonds sold from the syndicate account.

[59] The Board also would not consider such transfers to be subject to the requirements of section 23B.

[60] 12 CFR 241.

[61] 12 U.S.C. 371c(b)(7)(C).

[62] 12 CFR 250.250.

[63] *See* Letter dated April 24, 1995, from J. Virgil Mattingly, General Counsel of the Board, to William F. Kroener, III; *see also* Letter dated January 21, 1987, from Michael Bradfield, General Counsel of the Board, to Jeffrey C. Gerrish.

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funding to an affiliated lending company but does not provide a majority of the affiliate's working capital. The Board seeks comment on whether the regulation should contain staff's 50 percent test or the "substantial, ongoing funding" test.

The Board also seeks comment on whether the rule should limit the amount of assets that a bank may purchase from an affiliate pursuant to the 250.250 exemption to some percentage of the *bank*'s total assets. The Board recently reviewed a case where a nonbanking company proposed to charter a bank for the sole purpose of purchasing loans or leases from the nonbanking company. In these circumstances, a bank's credit underwriting process may be compromised as a result of the complete dependence of the bank on the affiliate for asset growth. Prohibiting a bank from using the 250.250 exemption to accumulate a substantial percentage of its assets may help prevent such compromises.

The Board notes that the 250.250 exemption only applies to the initial purchase of assets by the bank and not any covered transaction that may result from the bank's ongoing holding of the asset purchased. For example, if a bank purchases from the selling affiliate a loan originated by the selling affiliate to a second affiliate, the exemption may exempt the bank's purchase of the loan, but it would not exempt the ongoing extension of credit by the bank to the second affiliate that results from the purchase.

To qualify for this exemption, a bank must independently review the creditworthiness of each obligor prior to committing to purchase each loan. The Board does not believe that a bank can satisfy this requirement by simply having its affiliates use the bank's underwriting standards or the underwriting standards of the Federal National Mortgage Association or any other government agency or government-sponsored enterprise. The bank must itself review and approve each loan prior to giving a purchase commitment to its affiliate. Consistent with the Board's published interpretation on this exemption, the bank also must not make a legally enforceable blanket advance commitment to purchase a stipulated amount of loans from the affiliate.

K. Intraday Extensions of Credit—223.16(k)

As noted above, the GLB Act requires the Board to "address as covered transactions credit exposure arising out of * * * intraday extensions of credit" by banks to their affiliates. Banks regularly provide transaction accounts to their affiliates in conjunction with providing payment and securities clearing services. As in the case of unaffiliated commercial customers, these accounts are subject to overdrafts during the day that are repaid in the ordinary course of business. The Board has not to date ruled on whether these or other types of intraday credit extensions are covered transactions under section 23A or are subject to the market terms requirement of section 23B. Industry practice does not treat an intraday credit extension as subject to sections 23A or 23B unless the extension remains outstanding at the end of the day.[64]

Existing business practices indicate that the potential risk reduction benefits afforded by full application of the requirements of section 23A to intraday credit exposures may not justify the costs to banking organizations of implementing these requirements at this time. Intraday overdrafts and other forms of intraday credit extensions are generally not used as a means of funding or otherwise providing financial support for an affiliate. Rather, these credit extensions typically facilitate the settlement of transactions between an affiliate and its customers when there are mismatches between the timing of funds sent and received during the business day. Although some risk exists that such intraday credit extensions could turn into overnight funding of an affiliate, this risk may be sufficiently remote that the strict collateral and other requirements of section 23A would not be warranted for the intraday credit exposure. Moreover, mandating that banks collateralize intraday exposures could require banks to measure exposures across multiple accounts, offices, and systems on a global basis and to adjust collateral holdings in real time throughout the day. The Board seeks comment on whether banks currently have these capabilities and, if not, whether they would be costly to implement.

Regulation W would provide that an intraday extension of credit is not subject to the quantitative limits or collateral requirements of section 23A if the credit extension arises in connection with the performance by a bank, in the ordinary course of business, of securities clearing and settlement transactions or payment transactions (for example, wire transfers, check clearing, and ACH transactions) on behalf of an affiliate, and the bank (i) has no reason to believe that the affiliate will have difficulty repaying the extension of credit in the ordinary course of business; (ii) establishes limits on the net amount of intraday credit that the bank may extend to affiliates; and (iii) establishes and maintains policies and procedures for assessing affiliate credit quality, monitoring each affiliate's compliance with the established limits, reviewing intraday credit extensions to an affiliate in the event of the affiliate's violation of the limits, and ensuring that intraday credit received by each affiliate complies with section 23B. The bank also must maintain records and supporting information that are sufficient to enable the appropriate Federal banking agency for the bank to review the position limits and required policies and procedures.

Intraday extensions of credit by a bank to an affiliate that do not meet the conditions set forth above would be subject to the quantitative, collateral, and other requirements of section 23A. All intraday extensions of credit by a bank to an affiliate, including those that meet the conditions set forth above, would be subject to the market terms requirement of section 23B.

Under Regulation W, all intraday credit extensions (on a worldwide basis) that exist at the end of the bank's business day in the United States would become subject to section 23A at that time. The Board requests comment on whether the regulation should adopt a different rule for determining when an "intraday" exposure become an "overnight" exposure. In particular, the regulation could provide that an "intraday" exposure becomes an "overnight" exposure at the end of the bank's business day in the local jurisdiction in which the credit was extended.[65]

The Board may adopt a different approach to intraday credit under section 23A if it finds that banks are not implementing satisfactory controls to measure, monitor, and limit intraday credit extensions to affiliates. The Board requests comment on prudent risk management measures for intraday credit exposures.

The Board also requests comment on whether the Board should find that other types of intraday credit, not related to payment transactions or securities clearing and settlement

[64] The text of section 23A in no way suggests that a transaction must extend overnight to qualify as an extension of credit.

[65] If the Board were to take this approach, the regulation may also have to require that a bank not transfer any intraday credit extensions to other jurisdictions. Such a requirement may be necessary to prevent a bank from cycling its "intraday" transactions around the world to prevent them from ever becoming "overnight" exposures.

transactions effected through an affiliate's transaction accounts at the bank, should be exempt from the quantitative limits and collateral requirements of section 23A. In particular, the Board understands that some credit card banks issue special purpose credit cards that customers may use only at affiliates of the bank. These banks extend credit on an intraday basis to their credit card customers to enable the customers to purchase goods or services from the banks' affiliates. At the end of the day, however, many of these banks sell their credit card receivables to a third party or to another affiliate to prevent the extensions of credit from becoming overnight credits subject to section 23A.[66] These intraday credit extensions would be covered transactions subject to all the requirements of section 23A under Regulation W.[67]

Finally, the Board requests comment on how long a transition period banks need to put the necessary policies and procedures in place in order to take advantage of the exemption for intraday credit extensions.

VII. General Provisions of Section 23B–Subpart F

Subpart F of the proposed regulation sets forth the principal restrictions of section 23B. These include (i) the requirement that certain transactions between a bank and its affiliates be on terms and circumstances that are substantially the same as those prevailing at the time for comparable transactions with nonaffiliates; (ii) the restriction on a bank's purchase as fiduciary of assets from an affiliate; (iii) the restriction on a bank's purchase, during the existence of an underwriting syndicate, of any security if a principal underwriter of the security is an affiliate; and (iv) the prohibition on a bank's or its affiliate's publishing an advertisement or entering into an agreement stating that the bank will be responsible for the obligation of its affiliates. For the most part, subpart F restates the operative provisions of section 23B, and these provisions are not discussed below. The remainder of this section highlights four areas in which Regulation W provides additional guidance on section 23B.

[66] Other credit card banks avoid section 23A by securing their receivables with a segregated, earmarked deposit account.

[67] Under section 23A and the proposed rule, an extension of credit by a bank to a third party where the proceeds of the transaction are used for the benefit of, or transferred to, an affiliate of the bank is a covered transaction between the bank and the affiliate. 12 U.S.C. 371c(a)(2).

A. Transactions Exempt from Section 23B–223.19(a)(1)

The market terms requirement of section 23B applies to, among other transactions, any "covered transaction" between a bank and an affiliate.[68] Section 23B(d)(3) makes clear that the term "covered transaction" in section 23B has the same meaning as the term "covered transaction" in section 23A, but does not include any transaction that is exempt under section 23A(d)-for example, transactions between sister banks, transactions fully secured by a deposit account or U.S. government securities, and purchases of assets from an affiliate at a readily identifiable and publicly available market quotation. The regulation also excludes from section 23B any covered transaction that is exempt from section 23A under section 223.17(h) or (i) of Regulation W (that is, asset purchases by a *de novo* bank and transactions approved as part of a bank merger). The Board is proposing to exclude from section 23B this additional set of transactions because, in each case, the appropriate Federal banking agency for the bank involved in the transaction would be expected to ensure that the terms of the transaction are not unfavorable to the bank.

B. Purchases of Securities for Which an Affiliate is the Principal Underwriter–223.20(b)

The GLB Act amended section 23B in one respect. Since its passage in 1987, section 23B(b)(1)(B) has prohibited a bank, whether acting as principal or fiduciary, from purchasing securities during the existence of an underwriting or selling syndicate if a principal underwriter of the securities is an affiliate of the bank.[69] Prior to the GLB Act, a bank could escape this prohibition only if a majority of the *outside* directors of the bank approved the securities purchase before the securities were initially offered to the public.[70] The GLB Act permits a bank to purchase securities during an underwriting conducted by an affiliate if the following two conditions are met. First, a majority of the directors of the bank (with no distinction drawn between inside and outside directors) must approve the securities purchase before the securities were initially offered to the public. Second, such approval must be based on a determination that the purchase would be a sound investment for the bank irrespective of the fact that an affiliate of the bank is a principal underwriter of the securities.[71] The proposed regulation incorporates this new standard and clarifies that if a bank proposes to make such a securities purchase in a fiduciary capacity, then the directors of the bank must base their approval on a determination that the purchase is a sound investment for the person on whose behalf the bank is acting as fiduciary.

Obviously, a bank may satisfy this director approval requirement by obtaining specific prior director approval of each securities acquisition otherwise prohibited by section 23B(b)(1)(B). The regulation clarifies, however, that a bank also may satisfy this director approval requirement if a majority of the directors of the bank approve appropriate standards for the bank's acquisition of securities otherwise prohibited by section 23B(b)(1)(B) and each such acquisition meets the standards adopted by the directors. In addition, a majority of the bank's directors must periodically review such acquisitions to ensure that they meet the standards and must periodically review the standards to ensure they meet the "sound investment" criterion of section 23B. The appropriate period of time between reviews would vary depending on the scope and nature of the bank's program, but such reviews should be conducted by the directors at least annually. Prior to the passage of the GLB Act, Board staff informally allowed banks, based on the legislative history of section 23B, to meet the director approval requirement in this fashion, and there is no indication that Congress in the GLB Act intended to alter the procedures that a bank could use to obtain the requisite director approval.[72]

For these reasons, the proposed regulation would codify staff's preexisting approach to the director approval requirement. The Board seeks comment on whether this approach remains appropriate in light of the amendment made to section 23B by the GLB Act.

[68] 12 U.S.C. 371c–1(a)(2)(A).

[69] 12 U.S.C. 371c–1(b)(1)(B).

[70] Many smaller banking organizations had difficulty meeting this standard because most or all of their banks' directors were officers or employees of the banks or affiliates of the banks.

[71] GLB Act section 738 (codified at 12 U.S.C. 371c–1(b)(2)).

[72] The Conference Report accompanying the Competitive Equality Banking Act of 1987 stated that the prior approval requirement of section 23B(b)(2) could be met "by the establishment in advance of specific standards by the outside directors for such acquisitions. If the outside directors establish such standards, they must regularly review acquisitions to assure that the standards have been followed, and they must periodically review the standards to assure that they continue to be appropriate in light of market and other conditions." H.R. Conf. Rep. No. 100–261, at 133 (1987).

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C. The Definition of Affiliate Under Section 23B–223.24(c)

Section 23B(d)(1) states that the term "affiliate" under section 23B has the meaning given to such term in section 23A except that the term "affiliate" under section 23B does not include a "bank," as defined in section 23A.[73] Other federal law provides that an insured savings association should be treated as a "bank" for purposes of section 23B.[74] As in the case of the sister-bank exemption, Regulation W proposes to clarify that the only companies that qualify for the "bank" exception to section 23B's definition of affiliate are *insured* banks and *insured* savings associations. Without such an interpretation, a bank would be able to engage in transactions with certain uninsured depository affiliates on terms and conditions that were highly unfavorable to the bank. Entering into these kinds of transactions would not be consistent with bank safety and soundness and would contravene one of the goals of section 23B—protecting the deposit insurance funds.

D. The Advertising Restriction–223.21

Section 23B(c), the "advertising restriction," prohibits a bank from publishing any advertisement or entering into any agreement stating or suggesting that the bank shall in any way be responsible for the obligations of its affiliates.[75] Read literally, this provision appears to prohibit a bank from issuing a guarantee or letter of credit on behalf of an affiliate. Because section 23A includes as a covered transaction the issuance by a bank of a guarantee or letter of credit on behalf of its affiliates, Board staff traditionally has read the advertising restriction of section 23B in light of section 23A. That is, the Board does not believe that section 23B(c) prohibits a bank from issuing a guarantee, acceptance, or letter of credit on behalf of an affiliate to the extent permitted under section 23A.[76] The regulation contains this clarification.

VIII. Application of Sections 23A and 23B to U.S. Branches and Agencies of Foreign Banks-Subpart G

Subpart G discusses the application of sections 23A and 23B to U.S. branches and agencies of foreign banks. As noted above, sections 23A and 23B apply by their terms only to member banks of the Federal Reserve System, and other federal banking laws have made insured nonmember banks and insured savings associations subject to the sections. Federal banking law generally does not subject the U.S. branches and agencies of foreign banks to sections 23A and 23B.

Section 114(b)(4) of the GLB Act grants the Board authority to impose restrictions or requirements on relationships or transactions between a branch, agency, or commercial lending company of a foreign bank in the United States and any affiliate in the United States of such foreign bank. The Board may impose such prudential limits if the Board finds that the limits are appropriate to prevent an evasion of certain Federal banking laws, avoid a significant risk to the safety and soundness of depository institutions or any Federal deposit insurance fund, or avoid other adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

The Board has for years imposed certain of the requirements of sections 23A and 23B on transactions between a U.S. branch or agency of a foreign bank and its U.S. affiliates engaged in underwriting and dealing in bank-ineligible securities ("section 20 affiliates").[77] The Board also recently applied sections 23A and 23B to transactions between a U.S. branch or agency of a foreign bank and affiliates conducting merchant banking activities under the GLB Act and portfolio companies held under that authority.[78]

The proposed regulation would fully apply sections 23A and 23B to covered transactions between a U.S. branch or agency of a foreign bank and any affiliate of such foreign bank *directly* engaged in the United States in the following financial activities newly authorized under the GLB Act: (i) insurance underwriting pursuant to section 4(k)(4)(B) of the BHC Act; (ii) securities underwriting and dealing pursuant to section 4(k)(4)(E) of the BHC Act; (iii) merchant banking investment activities pursuant to section 4(k)(4)(H) of the BHC Act; or (iv) insurance company investment activities pursuant to section 4(k)(4)(I) of the BHC Act.[79]

The regulation also would apply these restrictions to transactions between a U.S. branch or agency of a foreign bank and any subsidiary of an affiliate directly engaged in the four activities set forth above (regardless of whether the subsidiary itself engages in any of the four activities).[80] In addition, the regulation would apply sections 23A and 23B to transactions between a U.S. branch or agency of a foreign bank and any portfolio company controlled by the foreign bank under the GLB Act's merchant banking or insurance company investment authorities. The regulation would *not* apply sections 23A or 23B to transactions between a U.S. branch or agency and any other type of affiliate (e.g., foreign affiliates or U.S. affiliates engaged in nonbanking activities under section 4(c)(8) of the BHC Act), or to transactions between the foreign bank's non-U.S. offices and its U.S. affiliates.

Applying the restrictions of sections 23A and 23B to transactions between the U.S. branches and agencies of foreign banks and the indicated U.S. affiliates may help to ensure maintenance of a competitive playing field between U.S. banks and foreign banks operating in the United States. The issue of competitive equity arises most strongly in connection with those activities that a U.S. bank cannot engage in directly or through an operations subsidiary. A U.S. bank may affiliate itself with a company engaged in the newly authorized financial activities listed above only if the company is a holding company affiliate of the bank or, in some cases, a financial subsidiary of the bank.[81] In either case, covered transactions between the U.S. bank and the company would be subject to sections 23A and 23B. Without Regulation W's extension of the scope of these statutory provisions, a foreign bank's U.S. branch or agency could fund and engage in transactions with these types of affiliates more freely than could a U.S. bank. To the extent that a foreign bank's U.S. branches and agencies are able to fund these types of U.S. affiliates outside of the restrictions of sections 23A and 23B, the affiliates are able to compete for business in the United States with a potential advantage not available to the affiliates of U.S. banks.

The Board does not believe that it is appropriate or necessary at this time to impose the requirements of sections 23A and 23B on transactions between a foreign bank's U.S. branch or agency and its U.S. affiliates that are engaged only in activities that were permissible for bank holding companies before the passage of the GLB Act (other than section 20 affiliates). The Board recognizes the hardship this might impose on foreign banks conducting such activities in the United States under previous law. Moreover, most of these activities may be conducted by a U.S. bank directly (or in an operations subsidiary) and, hence, may be funded by a U.S. bank in a manner that is not subject to sections 23A and 23B.

The potential scope, nature, and risk of transactions and relationships between U.S. branches and agencies of foreign banks and their affiliates engaged in the United States in insurance underwriting, full-scope securities underwriting and dealing, merchant banking, and insurance company investment is unclear at this time. At least until the Board acquires more information and supervisory experience regarding these transactions and relationships, applying sections 23A and 23B may help ensure competitive equity between foreign banks and U.S. banking organizations in the funding of certain of their U.S. nonbank operations.

The regulation also provides that the Board may add to the list of affiliates of a foreign bank that are subject to the restrictions of sections 23A and 23B. The Board intends generally to use this reserved authority to ensure competitive equity between foreign banks and U.S. banks with respect to affiliates engaged in the United States in new activities that the Board may authorize for financial holding companies.

The Board also has considered the issue of how to calculate the capital stock and surplus of a foreign bank's U.S. branch or agency for purposes of section 23A. In light of the fact that foreign banks do not separately capitalize their U.S. branches or agencies, the regulation defines the capital stock and surplus of such branches and agencies by reference to the capital of the foreign bank as calculated under its home country capital standards. This definition is consistent with the approach recently adopted by the Board in its merchant banking rule,[82] and represents a relaxation from the Board's current position with respect to foreign banks that operate section 20 companies in the United States.[83]

IX. Definitions—Subpart H

Subpart H of Regulation W sets forth definitions of the terms used in sections 23A and 23B and in the proposed rule. Terms that are defined in the regulation as they are defined in the statute generally are not discussed below. Terms that the Board proposes to define or clarify for purposes of the regulation are discussed below.

A. Definition of Affiliate—223.24

1. *Investment funds advised by the bank or a bank affiliate—223.24(a)(6).* Section 23A includes as an affiliate any company that is sponsored and advised by the bank or any of its affiliates.[84] Section 23A also includes as an affiliate any investment company for which the bank or its affiliate serves as an investment advisor, as defined in the Investment Company Act of 1940 ("1940 Act").[85] The proposed regulation sets forth these definitions and also includes as an affiliate any investment fund—even if not an investment company for purposes of the 1940 Act—for which the bank or an affiliate of the bank serves as an investment advisor, if the bank or an affiliate of the bank owns or controls more than 5 percent of any class of voting securities of the fund.

Most investment funds that are advised by a bank (or an affiliate of a bank) are affiliates of the bank under section 23A because the funds either are investment companies under the 1940 Act or are sponsored by the bank (or an affiliate of the bank).[86] In other instances, however, the bank or its affiliate may advise but not sponsor an investment fund that is not an investment company under the 1940 Act. Although such a fund would not fit within the statutory definition of affiliate, section 23A also authorizes the Board to determine, by regulation or order, that any company is an affiliate of a bank if the company has "a relationship with the member bank or any subsidiary or affiliate of the member bank, such that covered transactions by the member bank or its subsidiary with that company may be affected by the relationship to the detriment of the member bank or its subsidiary."[87]

The Board believes that the advisory relationship of a bank or affiliate with an investment fund presents the same potential for conflicts of interest regardless of whether the fund is or is not treated as an investment company for purposes of the 1940 Act.[88] An investment fund typically escapes from the definition of investment company under the 1940 Act because it (i) sells interests only to a limited number of investors or only to sophisticated investors; or (ii) invests primarily in financial instruments that are not securities.[89] The Board does not believe that the private nature or investment strategy of a fund should have a substantial effect on the fund's affiliate status under section 23A because these factors do not alter the conflicts of interest presented in the advisory relationship between the bank or its affiliate and the fund.[90]

The Board seeks comment on the appropriateness of treating investment funds as affiliates of a bank under

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[73] 12 U.S.C. 371c–1(d)(1).

[74] 12 U.S.C. 1468(a)(2)(B).

[75] 12 U.S.C. 371c–1(c).

[76] The Board also believes that if a bank and its affiliate enter into a joint undertaking with a third party, the contract among the parties should make clear that the bank is only responsible for its obligations under the contract.

[77] The Board's Operating Standards for section 20 affiliates require (i) any intraday extensions of credit by a U.S. branch or agency of a foreign bank to its section 20 affiliates to comply with the market terms requirement of section 23B; (ii) any extensions of credit by a U.S. branch or agency of a foreign bank to its section 20 affiliates and any purchase by such branch or agency of securities for which a section 20 affiliate is the principal underwriter to comply with sections 23A and 23B; and (iii) a U.S. branch or agency of a foreign bank to refrain from advertising or suggesting that it is responsible for the obligations of a section 20 affiliate, consistent with section 23B(c). *See* 12 CFR 225.200; 62 FR 45295, Aug. 27, 1997.

[78] *See* 12 CFR 225.176(b)(6); 66 FR 8466, Jan. 21, 2001.

[79] *See* 12 U.S.C. 1843(k)(4)(B), (E), (H), and (I).

[80] The regulation covers subsidiaries of affiliates directly engaged in the four activities in order to prevent evasion. If these subsidiaries were not covered, the U.S. branch of a foreign bank could fund the foreign bank's U.S. insurance underwriter outside the scope of sections 23A and 23B by, for example, lending money to a subsidiary of the underwriter and having the subsidiary dividend or on-lend the loan proceeds to the underwriter.

[81] Regulation W, consistent with the merchant banking rule, would impose sections 23A and 23B on a covered transaction between a U.S. branch or agency of a foreign bank and its U.S. merchant banking affiliate only to the extent the proceeds of the covered transaction are used for the purpose of funding the affiliate's merchant banking activities.

[82] See 66 FR 8466, 8482, Jan. 31, 2001.

[83] The Board's position on section 20 companies requires U.S. branches and agencies of foreign banks whose home country supervisor has not adopted capital standards consistent with the Basle Accord to calculate their section 23A capital stock and surplus by reference to the capital of the foreign bank parent as calculated under standards applicable to U.S. banking organizations. See 62 FR 45304, Aug. 27, 1997.

[84] 12 U.S.C. 371c(b)(1)(D)(i).

[85] 12 U.S.C. 371c(b)(1)(D)(ii).

[86] Such a fund often is required to register under the Commodity Exchange Act, and a bank affiliate often registers as the fund's commodity pool operator (thereby sponsoring the fund) and commodity trading advisor (thereby advising the fund). *See* 7 U.S.C. 1a(4) (defining commodity pool operator); 7 U.S.C. 1a(5)(B)(i) (defining commodity trading advisor). Banks and trust companies are excluded from the definition of commodity trading advisor under the Commodity Exchange Act and, in certain circumstances, may be excluded from the definition of commodity pool operator. *See* 7 CFR 4.5.

[87] 12 U.S.C. 371c(b)(1)(E).

[88] In fact, a bank may face greater risk from the conflicts of interest arising from its relationships with an investment fund that is not registered as an investment company under the 1940 Act than with a registered investment company because the 1940 Act restricts transactions between a registered investment company and entities affiliated with the company's investment adviser.

[89] The term "investment company" in the 1940 Act does not include a company that is owned by qualified persons or by no more than 100 persons, provided that the company does not engage in a public offering of its securities. *See* 15 U.S.C. 80a–3(c)(1), (7). The term also generally does not include investment funds that are engaged primarily in investing in financial instruments other than securities. *See* 15 U.S.C. 80a–3(a)(1).

[90] The Board also believes that investment funds organized outside the United States for which a bank or affiliate serves as investment advisor are affiliates of the bank for purposes of section 23A. *See* Letter dated July 24, 1990, from J. Virgil Mattingly, General Counsel of the Board, to Anne B. McMillen. The term "investment company" in the 1940 Act does include investment funds organized under the laws of a non-U.S. jurisdiction.

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section 23A if the bank or its affiliate serves as investment advisor to the fund and owns more than 5 percent of any class of voting securities of the fund. The Board particularly seeks comment on whether such investment funds should be treated as affiliates only if the advising bank or affiliate owns more than 5 percent of a class of voting securities of the fund.

The Board is considering adding to the definition of "affiliate" any company controlled by an investment fund that is an affiliate of the bank. The conflicts of interest that exist between a bank and any investment fund that it or its affiliate advises also would appear to exist between the bank and a portfolio company controlled by such a fund. The Board invites public comment on this issue.

2. *Financial subsidiaries—223.24(a)(8); 223.26.* Section 23A defines an affiliate of a bank to include any company that controls the bank and any company that is under common control with the bank. Since 1982, however, section 23A has excluded from the definition of affiliate any subsidiary of the bank (other than a bank subsidiary) unless the Board determines by regulation or order that the subsidiary should be considered an affiliate.[91] In 1997, the Board issued for comment a proposal to extend section 23A to covered transactions between a bank and a subsidiary of the bank engaged in activities not permissible for the bank to engage in directly.[92]

Consistent with this proposal, the GLB Act recently amended section 23A to cover transactions between a bank and its "financial subsidiaries." The GLB Act defines a financial subsidiary as any subsidiary of a bank that would be a financial subsidiary of a national bank under section 5136A of the Revised Statutes of the United States. Section 5136A of the Revised Statutes, in turn, defines a financial subsidiary of a national bank as any company that is controlled by one or more insured depository institutions, other than a subsidiary that (i) engages solely in activities that national banks are permitted to engage in directly (and subject to the same terms and conditions as apply to national banks) or (ii) a national bank is specifically authorized by the express terms of a federal statute (other than section 5136A), and not by implication or interpretation, to control.[93] The GLB Act provides that a financial subsidiary of a bank is considered an affiliate of the bank for purposes of section 23A.

Regulation W specifically provides, consistent with the GLB Act, that a financial subsidiary of a bank is an affiliate of the bank. The proposed regulation includes a definition of financial subsidiary that is identical to the definition of financial subsidiary set forth in section 23A, as amended by the GLB Act. The Board notes that many state banks have authority to engage directly in activities that would not be permissible for a national bank and seeks comment on how the definition of financial subsidiary should be applied to subsidiaries of state banks, including general insurance agency subsidiaries and real estate investment and development subsidiaries.

The definition of financial subsidiary in section 23A and Regulation W would cover some subsidiaries of banks that are engaged only in agency activities. The Board invites public comment on the appropriateness of exempting such subsidiaries from the definition of financial subsidiary in the regulation.

Regulation W also provides that any subsidiary of a bank's financial subsidiary will be considered a financial subsidiary of the bank, even if the subsidiary would not otherwise qualify as a financial subsidiary. The Board believes that treating such companies as financial subsidiaries is consistent with the anti-evasion provisions that the GLB Act added to section 23A and will help prevent banks from avoiding the special restrictions that the GLB Act placed on a bank's transactions with its financial subsidiaries.

3. *Companies held under merchant banking or insurance company investment authority—223.24(a)(9).* The GLB Act amended the BHC Act to permit bank holding companies and foreign banks that qualify as financial holding companies to engage in merchant banking and insurance company investment activities.[94] If a financial holding company owns or controls more than 25 percent of a class of voting shares of a company under the merchant banking or insurance company investment authority, the company is an affiliate of any bank controlled by the financial holding company by operation of the statutory definitions contained in section 23A. The GLB Act also added paragraph (b)(11) to section 23A, which creates a rebuttable presumption that a company is an affiliate of a bank for purposes of section 23A if the bank is affiliated with a financial holding company and the financial holding company owns or controls 15 percent or more of the equity capital of the company pursuant to the financial holding company's merchant banking or insurance company investment authority.[95] The proposed regulation includes within the definition of "affiliate" any company subject to this rebuttable presumption. The regulation also provides a definition of equity capital, identifies three situations or "safe harbors" where the statute's presumption of control would be deemed to be rebutted, and clarifies the application of the presumption to private equity funds.

The statute does not provide a definition of equity capital. The regulation defines equity capital roughly in accordance with the GAAP definition of stockholders' equity. Equity capital includes a company's perpetual preferred stock, common stock, capital surplus, retained earnings, and accumulated other comprehensive income, less treasury stock. The definition of equity capital also makes clear that any other account of the company that constitutes equity should be included in the company's equity capital. Accordingly, the Board retains its authority on a case-by-case basis to require a holding company to treat a subordinated debt investment in a company as equity capital of the company for purposes of applying the presumption of control. The Board asks for comment on whether the proposed definition of equity capital is appropriate.

The regulation also provides three specific regulatory safe harbors from the statute's presumption of affiliate status. These safe harbors apply in situations where the holding company owns or controls more than 15 percent of the total equity of the company under the merchant banking or insurance company investment authority (thereby triggering the statutory presumption) and less than 25 percent of any class of voting securities of the company (thereby not meeting the statutory definition of control). The three situations are substantially identical to those listed in the Board's merchant banking regulation.[96]

The first exemption applies where no director, officer, or employee of the holding company serves as a director of the company. The second exemption applies where an independent third party controls a greater percentage of the equity capital of the company than is controlled by the holding company, and no more than one officer or employee of the holding company serves as a director of the company. The third exemption applies where an independent third party controls more than 50 percent of the voting shares of the company, and officers and employees of the holding company do not constitute a majority of the directors of the company.

For purposes of these safe harbors, the rule provides that the term "holding company" includes any subsidiary of the holding company, including any subsidiary depository institution of the holding company. Accordingly, if a director of a subsidiary bank or nonbank subsidiary of a financial holding company also serves as a director of a portfolio company, the first safe harbor, for example, would be unavailable.

These safe harbors do not require Board review or approval. Moreover, the safe harbors are not intended to be a complete list of circumstances in which the presumption may be rebutted. The regulation also provides, consistent with the GLB Act, that a bank or company may rebut the presumption of affiliation with respect to a company by presenting information to the Board that demonstrates, to the Board's satisfaction, that the holding company does not control the portfolio company.

A financial holding company generally is considered to own or control only those shares or other ownership interests that are owned or controlled by itself or by a subsidiary of the holding company. The rule clarifies that, for purposes of applying the presumption of affiliation described above, a financial holding company that has an investment in a private equity fund (as defined in the Board's merchant banking rule) will not be considered indirectly to own the equity capital of a company in which the fund has invested unless the financial holding company controls the private equity fund (as described in the Board's merchant banking rule).[97]

4. *Certain joint venture companies—223.24(b)(1)(iii).* As noted above, under the terms of section 23A, subsidiaries of a bank generally are not treated as affiliates of the bank, even if they would otherwise qualify as affiliates.[98] The statute contains two specific exceptions to this general rule: financial subsidiaries of a bank and bank subsidiaries of a bank are treated as affiliates of the parent bank. The statute also provides that the Board may determine that other subsidiaries of a bank should be treated as affiliates if covered transactions between the bank and the subsidiary may be affected by the relationship between the companies to the detriment of the bank.[99]

Pursuant to this authority, the Board proposes to determine that two additional classes of subsidiaries of a bank should be treated as affiliates. First, the proposed regulation provides that any subsidiary of a bank in which an affiliate of the bank directly owns or controls 25 percent or more of any class of voting securities would be considered an affiliate of the bank. For example, a joint venture company that is 50 percent owned by a bank holding company and 50 percent owned by one of its subsidiary banks, would be treated as an affiliate of the bank. In such circumstances, although the joint venture company qualifies as a subsidiary of the bank under section 23A because the bank owns more than 25 percent of the company's voting stock, the holding company's substantial direct interest in the company creates the potential for conflicts of interest that may endanger the bank.

This proposed treatment of certain bank-affiliate joint ventures as affiliates does not apply to joint ventures between a bank and affiliated banks or insured savings associations. For example, if two affiliated banks each own 50 percent of the stock of a company, the company would continue to qualify as a subsidiary and not an affiliate of each bank (despite the fact that an affiliate of each bank owned more than 25 percent of a class of voting securities of the company). Such a special rule for joint ventures between a bank and affiliated banks or insured savings associations is consistent with the purpose behind the sister-bank and affiliated-bank exemptions contained in section 23A. The Board does not believe that transactions between a bank and a company that is wholly owned by the bank and its affiliated banks and insured savings associations generally pose material risks to the safety and soundness of the shareholding institutions or to the Federal deposit insurance funds. The Board would retain authority to treat such joint ventures as affiliates under section 23A on a case-by-case basis.

5. *Employee benefit plans—223.24(b)(1)(iv).* The second proposed regulatory exception to the general rule that subsidiaries of a bank are not treated as affiliates of the bank relates to employee benefit plans. Board staff traditionally has taken the position that most employee stock option plans, trusts, or similar entities that exist to benefit shareholders, members, officers, directors, or employees of a bank or its affiliates ("ESOPs") should be treated as affiliates of the bank for purposes of sections 23A and 23B. In most cases, the ESOP's share ownership or the interlocking management between the ESOP and its associated bank or bank holding company exceeds the statutory thresholds for determining that a company is an affiliate. Some institutions have argued, however, that ESOPs should be considered subsidiaries of the bank and therefore exempt from coverage.

The Board believes that the relationship between a bank and its or its affiliates' ESOP warrants coverage by sections 23A and 23B. In the past, banks have made unsecured loans to such ESOPs or have guaranteed loans to such ESOPs that were made by a third party. These ESOPs, however, generally have no means to repay the loans other than with funds provided by the bank. In addition, the issuance of holding company shares to an ESOP that is funded by a bank loan could be used as a vehicle by the bank to provide funds to its parent holding company when the bank is unable to pay dividends or is otherwise restricted in providing funds to its holding company. Accordingly, the proposed rule provides that a bank or bank affiliate's ESOP cannot avoid classification as an affiliate of the bank by also qualifying as a subsidiary of the bank.

The Board asks for comment on whether other subsidiaries of a bank should be treated as affiliates of the bank under section 23A.

The Board notes that Regulation W also defines as an affiliate of a bank any partnership for which the bank or any affiliate of the bank serves as a general partner or for which the bank or any affiliate of the bank causes an officer or

[91] *See* 12 U.S.C. 371c(b)(2)(A).
[92] 62 FR 37744, July 15, 1997.
[93] 12 U.S.C. 24a(g)(3).
[94] GLB Act section 103(a); 12 U.S.C. 1843(k)(4)(H) and (I).
[95] GLB Act section 121(b)(2). As noted above, this rebuttable presumption applies only if the affiliated financial holding company owns or controls 15 percent or more of the company's equity capital under the new merchant banking or insurance company investment authorities. The Board notes, however, that under existing Board precedents a bank holding company may not own any shares of a company in reliance on sections 4(c)(6) or 4(c)(7) of the BHC Act where the holding company owns or controls, in the aggregate under a combination of authorities, more than 5 percent of any class of voting securities of the company.
[96] *See* 12 CFR 225.176(b)(2) and (3).
[97] *See* 12 CFR 225.176(b)(5).
[98] *See* 12 U.S.C. 371c(b)(1)(A) and (b)(2)(A). Section 23A defines a subsidiary of a specified company as a company that is controlled by the specified company. Under the statute, a company controls another company if the first company owns or controls 25 percent or more of a class of voting securities of the other company, controls the election of a majority of the directors of the other company, or exercises a controlling influence over the policies of the other company. 12 U.S.C. 371c(b)(3) and (4).
[99] 12 U.S.C. 371c(b)(2)(A).

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employee of the bank or affiliate to serve as a general partner.

B. Definition of Covered Transaction—223.25

The restrictions of section 23A do not apply to every transaction between a bank and its affiliates. The section only applies to "covered transactions" between a bank and its affiliates. The statute defines a covered transaction as (i) an extension of credit to an affiliate; (ii) a purchase of or investment in securities issued by an affiliate; (iii) a purchase of assets from an affiliate; (iv) the acceptance of securities issued by an affiliate as collateral for an extension of credit to any person; and (v) the issuance of a guarantee, acceptance, or letter of credit on behalf of an affiliate.[100] Among the transactions that generally are not subject to section 23A are dividends paid by a bank to its holding company, sales of assets by a bank to an affiliate, an affiliate's purchase of securities issued by a bank, and many service contracts between a bank and an affiliate. This section discusses several interpretive issues that have arisen in determining whether transactions between a bank and an affiliate are covered transactions for purposes of section 23A.

1. *Confirmation of a letter of credit issued by an affiliate.* Section 23A(b)(7)(E) includes as a covered transaction the issuance of a letter of credit by a bank on behalf of an affiliate. The proposed regulation clarifies that the confirmation of a letter of credit issued by an affiliate is a covered transaction. When a bank confirms a letter of credit, it assumes the risk of the underlying transaction to the same extent as if it had issued the letter of credit.

2. *Credit enhancements supporting a securities underwriting.* The Board has confirmed previously that section 23A's definition of guarantee would not include a bank's issuance of a guarantee in support of securities issued by a third party and underwritten by a securities affiliate of the bank.[101] Such a credit enhancement would not be issued "on behalf of" the affiliate. In addition, although the guarantee does provide some benefit to the affiliate (by facilitating the underwriting), this benefit is indirect. Accordingly, the proceeds of the guarantee would not be transferred to the affiliate for purposes of the attribution rule of section 23A.[102] Of course, section 23B would apply to the transaction and, where an affiliate was issuer as well as underwriter, the transaction would be covered by section 23A because the credit enhancement would be on behalf of the affiliate.

3. *Cross-guarantee agreements and cross-affiliate netting arrangements.* In addition, Board staff has confirmed previously that a cross-guarantee agreement among a bank, an affiliate, and a nonaffiliate in which the nonaffiliate may use the bank's assets to satisfy the obligations of a defaulting affiliate is a guarantee for purposes of section 23A.[103] The Board believes that such cross-guarantee arrangements among banks and their affiliates should be subject to the quantitative limits and collateral requirements of section 23A.

Similarly, the Board understands that some banks have entered into or are contemplating entering into cross-affiliate netting arrangements. These are arrangements among a bank, one or more affiliates of the bank, and one or more nonaffiliates of the bank, where a nonaffiliate is permitted to net obligations of an affiliate of the bank to the nonaffiliate when settling the nonaffiliate's obligations to the bank. These arrangements also would include agreements where a bank is required to add the obligations of an affiliate of the bank to a nonaffiliate when determining the bank's obligations to the nonaffiliate.

Cross-affiliate netting arrangements expose a bank to the credit risk of its affiliates. Under these agreements, a bank may become obligated effectively to make good on the obligations of its affiliates. The exposure of a bank to its affiliates in such an arrangement resembles closely the exposure of a bank when it issues a guarantee on behalf of an affiliate or extends credit to an affiliate. Accordingly, the Board believes that cross-affiliate netting arrangements are credit transactions under section 23A. Accordingly, the quantitative limits of section 23A would prohibit a bank from entering into a cross-affiliate netting arrangement to the extent that the netting arrangement does not cap the potential exposure of the bank to the participating affiliate(s).

The Board asks for comment on whether alternative treatments of cross-guarantees or cross-affiliate netting arrangements under section 23A would be appropriate.

4. *Keepwell agreements.* Banks have asked for guidance on the question of whether a "keepwell" agreement should be considered a guarantee for purposes of section 23A. In a keepwell agreement between a bank and an affiliate, the bank typically commits to maintain the capital levels or solvency of the affiliate. The credit risk incurred by the bank in entering into such a keepwell agreement is similar to the credit risk incurred by a bank in connection with issuing a guarantee on behalf of an affiliate. Accordingly, keepwell agreements generally should be treated as guarantees for purposes of section 23A and, if unlimited in amount, would be prohibited by the quantitative limits of section 23A.

5. *Securitization vehicles.* The Board seeks comment on whether additional clarification is necessary in the area of securitizations. In the securitization process, a bank segregates certain of its or its customer's assets into a relatively homogenous pool and then transfers the pool to a bankruptcy-remote special purpose entity ("SPE"). The SPE, all of whose voting securities are generally held by a party other than the bank or the bank's customer, then issues securities to investors. The asset-backed securities issued by the SPE often receive some form of credit enhancement from the bank, the bank's customer, or a third-party guarantor. The Board requests comment on the question of whether such SPEs should in any circumstances be deemed to be affiliates of the bank involved in the securitization and, if so, what transactions between the bank and the SPE should be considered covered transactions under section 23A.

6. *Loans and extensions of credit.* Although section 23A includes a "loan or extension of credit" as a covered transaction, the statute does not define these terms. The proposed regulation defines "extension of credit" to mean an extension or renewal of a loan, a grant of a line of credit, or an extension of credit in any manner whatsoever, including on an intraday basis. The regulation also provides a nonexhaustive list of transactions that the Board deems to be extensions of credit, including an advance by means of an overdraft, cash item, or otherwise; a lease that is the functional equivalent of an extension of credit; a purchase of a note or other obligation, including commercial paper or other debt securities; and any increase in the amount of, extension of the maturity of, or adjustment in the interest rate term or other material term of an extension of credit.[104] A floating-rate loan does not become a new covered transaction whenever there is a change in the relevant index (for example, LIBOR or the bank's prime rate) from which the loan's interest rate is calculated. If the bank and the borrower, however, amend the loan agreement to change the interest rate term from "LIBOR plus 100 basis points" to "LIBOR plus 150 basis points," the parties have engaged in a new covered transaction.

As noted, the regulation proposes to clarify that a bank's purchase of a note or debt security, including commercial paper, issued by an affiliate is a loan or extension of credit by the bank to the affiliate for purposes of section 23A.[105] The Board is aware that some banks have purchased or have proposed to purchase the commercial paper of their holding companies, and have done so or proposed to do so without collateralizing the purchase. These banks have argued that a purchase of commercial paper is a "purchase of or investment in securities issued by an affiliate" for purposes of section 23A, and that such a purchase cannot also then be an "extension of credit" for purposes of section 23A and its collateral requirements.

Although the Board is aware that section 23A's definition of covered transaction separately includes a bank's purchase of securities issued by an affiliate and a bank's extension of credit to an affiliate, the fact that a holder of debt securities expects repayment of principal upon maturity makes debt securities closely resemble loans for purposes of section 23A and the statute's objective of protecting the bank. Therefore, Regulation W provides that a bank that buys debt securities issued by an affiliate has made an extension of credit to an affiliate under section 23A and must collateralize the transaction in accordance with the section 23A collateral requirements applicable to extensions of credit.[106]

The Board seeks comment on whether the rule should permit banks in certain circumstances to purchase debt securities issued by an affiliate without satisfying the collateral requirements of section 23A. In particular, the Board seeks comment on whether it should require section 23A collateralization in circumstances where a bank purchases an affiliate's debt securities (i) from a third party in a *bona fide* secondary market transaction; or (ii) pursuant to a registered public offering document or a private placement memorandum in an offering in which the affiliate receives significant participation from third parties. In these circumstances, the risk that a bank's purchase of an affiliate's debt securities is designed to shore up an ailing affiliate may be reduced. Moreover, in both of these situations, the purchase of affiliate debt securities would be subject to the quantitative limits of section 23A and the market terms requirement of section 23B.

The Board asks for comment on whether other aspects of the definition of extension of credit are in need of clarification.

C. Other Definitions—223.26

1. *Bank—223.26(c).* Regulation W applies to all "banks." As discussed above, sections 23A and 23B apply by their terms to member banks of the Federal Reserve System, and the Federal Deposit Insurance Act subjects insured nonmember banks to the restrictions of sections 23A and 23B as if they were member banks. Accordingly, the proposed rule defines the term "bank" to include any "member bank," as defined in section 1 of the Federal Reserve Act, and any "insured bank" other than an "insured branch," as such terms are defined in section 3 of the Federal Deposit Insurance Act.[107]

The definition of bank in the regulation also states that most subsidiaries of a bank are to be treated as the bank itself for purposes of sections 23A and 23B. The only subsidiaries of a bank that are excluded from this treatment are financial subsidiaries, depository institution subsidiaries, certain joint venture subsidiaries, and ESOPs—companies that are deemed affiliates of the bank under the regulation. This treatment of subsidiaries reflects the fact that the statute typically does not distinguish between a member bank and its subsidiaries, and all of the significant restrictions of the statute apply to actions taken by a member bank "and its subsidiaries." The Board believes that defining the term "bank" as described above and using the term "bank" wherever the statute says "member bank and its subsidiaries" makes the regulation shorter and easier to understand while also reminding banks that certain subsidiaries of a bank should not be treated as part of the bank for purposes of the statute.

2. *Capital stock and surplus—223.26(d).* Under section 23A, the quantitative limits on covered transactions are based on the "capital stock and surplus" of the bank.[108] The proposed regulation includes a definition of capital stock and surplus that the Board previously adopted as an interpretation of section 23A.[109] Capital stock and surplus is defined as the sum of the bank's tier 1 capital and tier 2 capital and the balance of the bank's allowance for loan and lease losses not included in its tier 2 capital. This definition employs familiar concepts contained in the Federal banking agencies' capital adequacy guidelines,[110] and is consistent with the loans-to-one-borrower limits applicable to national banks [111] and the Board's Regulation O, which limits lending to a bank's insiders. [112] Use of a common definition across these rules should reduce compliance burden. The Board requests comment, however, on whether the balance of a bank's allowance for loan and lease losses not included in its tier 2 capital should be included in section 23A's "capital stock and surplus."

The National Bank Act requires a national bank, "in determining compliance with applicable capital standards," to deduct from its capital the aggregate amount of any outstanding equity investments, including retained earnings, of the bank in all its financial subsidiaries.[113] The Federal Deposit Insurance Act imposes the same capital deduction requirement on insured state banks that establish financial subsidiaries.[114] In determining compliance with the quantitative limits of section 23A, a bank is required by statute to include in its covered transactions any equity investments (excluding retained earnings) of the bank in its financial subsidiaries. It would be unfair to compel a bank to include such investments in its covered transaction amount (the numerator of the fraction in section 23A's quantitative limits) but to exclude such investments from capital (the

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[100] 12 U.S.C. 371c(b)(7).

[101] 62 FR 45295 Aug. 27, 1997.

[102] *See* 12 U.S.C. 371c(a)(2).

[103] *See* Letter dated Aug. 6, 1993, from J. Virgil Mattingly, General Counsel fo the Board, to Richard Lasner.

[104] A floating-rate loan does not become a new covered transactinn whenever there is a change in the relevant index (for example, LIBOR or the bank's prime rate) from which the loan's interest rate is calculated. If the bank and the borrower, however, amend the loan agreement to change the interest rate term from "LIBOR plus 100 basis points" to "LIBOR plus 150 basis points," the parties have engaged in a new covered transaction.

[105] This position is consistent with the Board's long-standing view that a purchase of an affiliate's note represents an extension of credit to the affiliate under section 23A. *See* 37 *Federal Reserve Bulletin* 960 (1951).

[106] As discussed above, however, the regulation requires a bank to value purchases of the debt securities of an affiliate, for purposes of computing compliance with the quantitative limits and collateral requirements of section 23A, in accordance with the valuation principles for purchases of debt securities and not those for extensions of credit.

[107] The carve-out for insured branches is explicitly reqtiired by the Federal Deposit Insurance Act, which provides that a foreign bank should not be treated as a member bank under section 23A solely because the foreign bank has an insured branch. 12 U.S.C. 1828(j)(3)(A).

[108] 12 U.S.C. 371c(a)(1).

[109] 12 CFR 250.242.

[110] *See, e.g.*, 12 CFR part 225, appendix A.

[111] 12 CFR 32.2(b).

[112] 12 CFR 215.2(i); *see also* 61 FR 19805, May 3, 1996.

[113] 12 U.S.C. 24a(c)(1).

[114] 12 U.S.C. 1831w(a)(2).

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denominator of the fraction). Accordingly, a bank with a financial subsidiary may add back to its section 23A "capital stock and surplus" the amount of any investment in a financial subsidiary that counts as a covered transaction and is required to be deducted from the bank's capital for regulatory capital purposes.

3. *Control—223.26(f).* Section 23A provides that a company or shareholder shall be deemed to have control over another company if, among other things, such company or shareholder controls in any manner the election of a majority of the "directors or trustees" of the other company.[115] Regulation W expands this prong of the control definition to conform it to the control definition contained in the Board's Regulation Y by adding that control also exists when a company or shareholder controls the election of a majority of the "general partners (or individuals exercising similar functions)" of another company. This expansion of the control definition is intended to ensure that banks understand that a company or shareholder would be deemed to control another company (including a partnership, limited liability company, or other similar organization) if the company or shareholder controlled the election of a majority of the principal policymakers of such other company.

In addition, the regulation includes two additional presumptions of control that are similar to presumptions contained in Regulation Y. First, a company will be deemed to control securities, assets, or other ownership interests controlled by any subsidiary of the company.[116] Second, a company that controls securities (including options and warrants) that are convertible, at the option of the holder or owner, into other securities, will be deemed to control the other securities.[117]

4. *Low-quality asset—223.26(q).* Two provisions of section 23A restrict a bank's ability to engage in transactions with affiliates that involve low-quality assets. First, the statute prohibits a bank from purchasing a low-quality asset from an affiliate unless the bank performed an independent credit evaluation and committed itself to purchase the asset prior to the asset's acquisition by the affiliate.[118] Second, the statute prohibits a bank from counting a low-quality asset toward section 23A's collateral requirements for a credit transaction with an affiliate.[119]

For purposes of these provisions, section 23A defines a low-quality asset to include (i) an asset classified as "substandard," "doubtful," or "loss" or treated as "other loans especially mentioned" in the most recent report of examination or inspection by a Federal or State supervisory agency (a "classified asset"); (ii) an asset in nonaccrual status; (iii) an asset on which payments are more than thirty days past due; or (iv) an asset whose terms have been renegotiated or compromised due to the deteriorating financial condition of the obligor.[120] The Board notes that any asset meeting one of the above four criteria, including securities and real property, is a low-quality asset.[121]

The regulation broadens the definition of low-quality asset in three ways. First, the regulation provides that an asset identified by examiners as an "other transfer risk problem" ("OTRP") is a low-quality asset. Such assets represent credits to countries that are not complying with their external debt-service obligations, but are taking positive steps to restore debt service through economic adjustment measures, generally as part of an International Monetary Fund program. Although OTRP assets are not considered classified assets, examiners are instructed to consider such assets in their assessment of a bank's asset quality and capital adequacy.[122] The Board asks for comment on the appropriateness of treating OTRP assets as low-quality assets under section 23A.

Second, the regulation reflects the increasing use by financial institutions of their own internal asset classification systems. A recent Board study of the 50 largest U.S. banks demonstrated that all use internal loan classifications, and a substantial proportion of such institutions have relatively advanced internal rating systems.[123] Although there is considerable variance in how large banks rate performing assets, the banks generally use the same categories employed by the Federal banking agencies for rating classified assets.

Because examinations may be twelve months apart—eighteen months for smaller banks—these internal classification systems may cause a bank to regrade an asset long before its next examination. Accordingly, the Board is proposing to include within the definition of low-quality asset not only assets classified during the last examination but also assets classified by the affiliate's internal classification system (or assets that received an internal rating that is substantially equivalent to classified in such an internal system). These assets generally have been renegotiated or compromised because the borrower is in financial distress and, thus, typically would meet the fourth prong of the statutory definition of low-quality asset. Moreover, the purchase of such assets by a bank raises safety and soundness concerns.

The Board has some concern that this interpretation may induce companies to avoid or defer reclassification of an asset in order to allow its sale to an affiliated bank, but believes that such evasions can be addressed through the examination process. The Board expects companies with internal rating systems to use the systems consistently over time and over similar classes of assets and will view as an evasion of section 23A any company's deferral or alteration of an asset's rating to facilitate sale of the asset to an affiliated bank.

Finally, the proposed rule defines low-quality asset to include foreclosed property designated "other real estate owned," until it is reviewed by an examiner and receives a favorable classification. In the Board's experience, such property is often of such poor quality that its ownership poses the same risk to the bank as a low-quality loan that was purchased or taken as collateral.

5. *Securities—223.26(w).* Section 23A defines "securities" to mean "stocks, bonds, debentures, notes, or other similar obligations."[124] In light of the ambiguous nature of this definition, the Board generally has looked to the securities laws for guidance in determining which financial instruments should be considered securities for purposes of section 23A. In light of the similarities between commercial paper and debentures and notes and the countervailing fact that the Securities Exchange Act of 1934 excludes some forms of commercial paper from its definition of security,[125] the proposed regulation clarifies that commercial paper is a security for purposes of section 23A. Accordingly, as discussed in more detail above, when a bank purchases commercial paper issued by an affiliate, the bank makes an extension of credit to the affiliate (which must be secured in accordance with section 23A's collateral requirements) and purchases securities issued by the affiliate for purposes of section 23A.

6. *Voting securities—223.26(aa).* Section 23A uses both the terms "voting shares" and "voting securities." To remove any ambiguity and to provide additional guidance to banks, the proposed regulation replaces all statutory uses of the term "voting shares" with the term "voting securities" and defines "voting securities" to have the same meaning as "voting securities" in Regulation Y.[126]

[115] 12 U.S.C. 371c(b)(3)(A)(ii).

[116] *See* 12 CFR 225.2(e)(2)(i).

[117] *See* 12 CFR 225.31(d)(1)(i).

[118] 12 U.S.C. 371c(a)(3).

[119] 12 U.S.C. 371c(c)(3).

[120] 12 U.S.C. 371c(b)(10).

[121] The Federal banking agencies generally consider non-investment grade securities to be classified assets. *See, e.g.*, "Uniform Agreement on the Classification of Assets and Appraisal of Securities Held by Banks" (May 7, 1979); *Federal Reserve Commercial Bank Examination Manual* § 2020.1. The Board also notes that assets identified by examiners through the Shared National Credit and International Country Exposure Review Committee processes should be considered classified assets for purposes of section 23A.

[122] *See Federal Reserve Commercial Bank Examination Manual* § 7040.1.

[123] William F. Treacy & Mark S. Carey, *Credit Risk Rating at Large U.S. Banks*, 84 *Federal Reserve Bulletin* 897 (1998).

[124] 12 U.S.C. 371c(b)(9).

[125] *See* 15 U.S.C. 78c(a)(10).

[126] *See* 12 CFR 225.2(q).

Regulatory Flexibility Act

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a)), the Board must publish an initial regulatory flexibility analysis with this rulemaking. Sections 23A and 23B of the Federal Reserve Act limit transactions between a bank and its affiliates and authorize the Board to issue regulations as may be necessary to administer and carry out the purposes of the sections. The proposed rule would comprehensively implement these sections of the Federal Reserve Act. The rule would simplify for banks the task of complying with the sections and would help ensure that the sections are consistently interpreted and applied by the Federal banking agencies and the banking industry. A description of the reasons why action by the Board is being considered and a statement of the objectives of, and legal basis for, the proposed rule are contained in the supplementary material provided above.

The proposed rule would apply to all banks regardless of their size. Although the rule potentially affects all banks, the regulation mainly codifies existing practice. The Board specifically seeks comment on the likely burden that the proposed rule would impose on banks.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Board has reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the proposed rule.

Solicitation of Comments Regarding Use of "Plain Language"

Section 722 of the GLB Act requires the Board to use "plain language" in all proposed and final rules published after January 1, 2000. The Board invites comments about how to make the proposed rule easier to understand, including answers to the following questions:

(1) Has the Board organized the material in an effective manner? If not, how could the material be better organized?

(2) Are the terms of the rule clearly stated? If not, how could the terms be more clearly stated?

(3) Does the rule contain technical language or jargon that is unclear? If so, which language requires clarification?

(4) Would a different format (with respect to grouping and order of sections and use of headings) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

(5) Would increasing the number of sections (and making each section shorter) clarify the rule? If so, which portions of the rule should be changed in this respect?

(6) What additional changes would make the rule easier to understand?

List of Subjects in 12 CFR Part 223

Banks, Banking, Federal Reserve System.

For the reasons set out in the preamble, title 12, chapter II of the Code of Federal Regulations is proposed to be amended by adding a new part 223 to read as follows:

PART 223—TRANSACTIONS BETWEEN BANKS AND THEIR AFFILIATES (REGULATION W)

Subpart A Introduction

Sec.
223.1 Authority, purpose, and scope.

Subpart B—General Provisions of Section 23A

223.2 What is the maximum amount of covered transactions that a bank may enter into with any single affiliate?
223.3 What is the maximum amount of covered transactions that a bank may enter into with all affiliates?
223.4 What safety and soundness requirement applies to covered transactions?
223.5 What are the collateral requirements for a credit transaction with an affiliate?
223.6 May a bank purchase a low-quality asset from an affiliate?
223.7 What transactions by a bank with any person are treated as transactions with an affiliate?

Subpart C—Valuation and Timing Principles Under Section 23A

223.8 What valuation and timing principles apply to credit transactions?
223.9 What valuation and timing principles apply to asset purchases?
223.10 What valuation and timing principles apply to purchases of and investments in securities issued by an affiliate?
223.11 What valuation principles apply to extensions of credit secured by affiliate securities?

Subpart D—Other Considerations Under Section 23A

223.12 How does section 23A apply to a bank's acquisition of an affiliate that becomes a subsidiary of the bank after the acquisition?
223.13 What rules apply to financial subsidiaries of a bank?
223.14 What rules apply to derivative contracts? [Reserved]

Subpart E—Exemptions From the Provisions of Section 23A

223.15 What covered transactions between a bank and an insured depository institution are exempt from the quantitative limits and collateral requirements?
223.16 What covered transactions are exempt from the quantitative limits, collateral requirements, and low-quality asset prohibition?
223.17 What are the standards under which the Board may grant additional exemptions from the requirements of section 23A?

Subpart F—General Provisions of Section 23B

223.18 What is the market terms requirement of section 23B?
223.19 What transactions with affiliates or others must comply with section 23B's market terms requirement?
223.20 What asset purchases are prohibited by section 23B?
223.21 What advertisements and statements are prohibited by section 23B?
223.22 What are the standards under which the Board may grant exemptions from the requirements of section 23B?

Subpart G—Application of Sections 23A and 23B to U.S. Branches and Agencies of Foreign Banks

223.23 How do sections 23A and 23B apply to U.S. branches and agencies of foreign banks?

Subpart H—Definitions of Terms

223.24 What is an "affiliate" for purposes of sections 23A and 23B?
223.25 What transactions with affiliates are covered by section 23A?
223.26 What are the meanings of the other terms used in sections 23A and 23B?

Authority: 12 U.S.C. 371c(b)(1) (E) and (f), 371c–1(e), 1828(j), 1468.

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Subpart A—Introduction

§ 223.1 Authority, purpose, and scope.

(a) *Authority.* The Board of Governors of the Federal Reserve System (Board) has issued this part (Regulation W) under the authority of sections 23A(f)(1) and 23B(e) of the Federal Reserve Act (12 U.S.C. 371c(f)(1), 371c–1(e)).

(b) *Purpose.* Sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c, 371c–1) establish certain quantitative limits and other prudential requirements for loans, purchases of assets, and certain other transactions between a bank and its affiliates. This Regulation W implements sections 23A and 23B by defining terms used in those sections, explaining the requirements of the sections, and exempting certain transactions from certain of the requirements.

(c) *Scope.* Sections 23A and 23B apply by their terms to "member banks"—that is, national banks, State banks, trust companies, and other institutions that are members of the Federal Reserve System. The Federal Deposit Insurance Act (12 U.S.C. 1828(j)) subjects insured nonmember banks to sections 23A and 23B as if they were member banks. Accordingly, this Regulation W applies to member banks and insured nonmember banks, and uses the term "banks" to describe the companies that are subject to its provisions. This regulation implements sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c, 371c–1); it does not contain every statutory or regulatory restriction on transactions between banks and their affiliates, including those that may apply to banks subject to prompt corrective action under section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o).

Subpart B—General Provisions of Section 23A

§ 223.2 What is the maximum amount of covered transactions that a bank may enter into with any single affiliate?

A bank may not engage in a covered transaction with an affiliate if the aggregate amount of the bank's covered transactions with any affiliate would exceed 10 percent of the capital stock and surplus of the bank.

§ 223.3 What is the maximum amount of covered transactions that a bank may enter into with all affiliates?

A bank may not engage in a covered transaction with any affiliate if the aggregate amount of the bank's covered transactions with all affiliates would exceed 20 percent of the capital stock and surplus of the bank.

§ 223.4 What safety and soundness requirement applies to covered transactions?

A bank may not engage in any covered transaction, including any covered transaction exempt under this regulation, unless the transaction is on terms and conditions that are consistent with safe and sound banking practices.

§ 223.5 What are the collateral requirements for a credit transaction with an affiliate?

(a) *Collateral required for extensions of credit and certain other covered transactions.* A bank must ensure that each of its credit transactions with an affiliate is secured by the amount of collateral required by paragraph (b) of this section at the time of the transaction.

(b) *Amount of collateral required.* A credit transaction described in paragraph (a) of this section must be secured by collateral having a market value equal to at least:

(1) 100 percent of the amount of the transaction, if the collateral is:

(i) Obligations of the United States or its agencies;

(ii) Obligations fully guaranteed by the United States or its agencies as to principal and interest;

(iii) Notes, drafts, bills of exchange, or bankers' acceptances that are eligible for rediscount or purchase by a Federal Reserve Bank; or

(iv) A segregated, earmarked deposit account with the bank that is for the sole purpose of securing the transaction and is so identified;

(2) 110 percent of the amount of the transaction, if the collateral is obligations of any State or political subdivision of any State;

(3) 120 percent of the amount of the transaction, if the collateral is other debt instruments, including loans and other receivables; or

(4) 130 percent of the amount of the transaction, if the collateral is stock, leases, or other real or personal property.

(c) *Ineligible collateral.* The following items are not eligible collateral for purposes of this section:

(1) Low-quality assets;

(2) Securities issued by any affiliate or the bank;

(3) Intangible assets, including servicing assets; and

(4) Guarantees and letters of credit.

(d) *Perfection and priority requirements for collateral.* (1) A bank must maintain a security interest in collateral required by this section that is perfected and enforceable under applicable law, including in the event of default resulting from insolvency, liquidation, or similar circumstances.

(2) A bank either must obtain a first priority security interest in collateral required by this section or must deduct from the value of collateral obtained by the bank the lesser of:

(i) The amount of any security interest in the collateral that is senior to that of the bank; or

(ii) The amount of any credit secured by the collateral that is senior to that of the bank.

(e) *Replacement requirement for retired or amortized collateral.* A bank must replace any required collateral that subsequently is retired or amortized with additional eligible collateral as needed to keep the percentage of the collateral value relative to the amount of the outstanding credit transaction equal to the minimum percentage required at the inception of the transaction.

(f) *Inapplicability of the collateral requirements to certain acceptances.* The collateral requirements of this section do not apply to an acceptance that already is fully secured either by attached documents or by other property that is involved in the transaction and has an ascertainable market value.

(g) *Inapplicability of the collateral requirements to the undrawn portion of certain extensions of credit.* The collateral requirements of this section do not apply to the undrawn portion of an extension of credit to an affiliate so long as the bank does not have any legal obligation to advance additional funds under the extension of credit until the affiliate posts the amount of collateral required by paragraph (b) of this section with respect to the entire drawn portion of the extension of credit.

§ 223.6 May a bank purchase a low-quality asset from an affiliate?

(a) *In general.* A bank may not purchase a low-quality asset from an affiliate unless the bank, pursuant to an independent credit evaluation, committed itself to purchase the asset prior to the time the asset was acquired by the affiliate.

(b) *Exemption for renewals of loan participations involving problem loans.* The prohibition contained in paragraph (a) of this section does not apply to the renewal of, or extension of additional credit with respect to, a bank's participation in a loan to a nonaffiliate that was originated by an affiliated depository institution if:

(1) The loan was not a low-quality asset at the time the bank purchased its participation;

(2) The renewal or extension of additional credit is approved by the board of directors of the participating bank as necessary to protect the bank's investment by enhancing the ultimate collection of the original indebtedness;

(3) The participating bank's share of the renewal or additional extension of credit does not exceed its proportional share of the original transaction; and

(4) The participating bank provides its appropriate Federal banking agency with 20 days' prior notice of the proposed renewal or additional extension of credit.

§ 223.7 What transactions by a bank with any person are treated as transactions with an affiliate?

(a) *In general.* A bank must treat any of its transactions with any person as a transaction with an affiliate to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, an affiliate.

(b) *Exemptions.* Notwithstanding paragraph (a) of this section, the following transactions are not subject to the quantitative limits of §§ 223.2 and 223.3 or the collateral requirements of § 223.5. The transactions are, however, subject to the safety and soundness requirement of § 223.4, the prohibition on the purchase of a low-quality asset of § 223.6, and the market terms requirement and other provisions of subpart F of this part.

(1) *Certain riskless principal transactions.* An extension of credit by a bank to a nonaffiliate, if:

(i) The proceeds of the extension of credit are used to purchase a security through a securities affiliate of the bank, and the securities affiliate is acting exclusively as a riskless principal for the nonaffiliate in the transaction;

(ii) The security purchased by the nonaffiliate is not issued or underwritten by, or sold out of the inventory of, any affiliate of the bank; and

(iii) Any riskless principal mark-up or other compensation received by the affiliate from the proceeds of the extension of credit meets the market terms standard set forth in paragraph (b)(2) of this section.

(2) *Brokerage commissions, agency fees, and riskless principal mark-ups.* An affiliate's retention of a portion of the proceeds of an extension of credit described in paragraph (b)(1) of this section or in 12 CFR 250.243 as a brokerage commission, agency fee, or riskless principal mark-up, if that commission, fee, or mark-up is substantially the same as, or lower than, those prevailing at the same time for comparable transactions with or involving other nonaffiliates, in accordance with the market terms requirement of § 223.18.

(3) *Preexisting lines of credit.* An extension of credit by a bank to a nonaffiliate, if:

(i) The proceeds of the extension of credit are used to purchase a security from or through a securities affiliate of the bank; and

(ii) The extension of credit is made pursuant to, and consistent with any conditions imposed in, a preexisting line of credit that was not established in contemplation of the purchase of securities from or through an affiliate of the bank.

(4) *General purpose credit card transactions.* An extension of credit by a bank to a nonaffiliate, if:

(i) The proceeds of the extension of credit are used by the nonaffiliate to purchase a product or service from an affiliate of the bank; and

(ii) The extension of credit is made pursuant to, and consistent with any conditions imposed in, a general purpose credit card issued by the bank to the nonaffiliate.

Subpart C—Valuation and Timing Principles under Section 23A

§ 223.8 What valuation and timing principles apply to credit transactions?

(a) *Valuation.* (1) *Initial valuation of direct credit transactions.* Except as provided in paragraph (a)(2) or (3) of this section, a credit transaction with an affiliate initially must be valued at the sum of:

(i) The amount provided to, or on behalf of, the affiliate in the transaction; and

(ii) Any additional amount that the bank could be required to provide to, or on behalf of, the affiliate under the terms of the transaction.

(2) *Initial valuation of indirect credit transactions.* If a bank acquires a credit transaction with an affiliate, the covered transaction initially must be valued at the sum of:

(i) The total amount of consideration given (including liabilities assumed) by the bank in exchange for the credit transaction; and

(ii) Any additional amount that the bank could be required to provide to, or on behalf of, the affiliate under the terms of the transaction.

(3) *Debt securities.* The valuation principles of paragraphs (a)(1) and (2) of this section do not apply to a bank's purchase of or investment in a debt security issued by an affiliate, which is governed by § 223.10.

(b) *Timing.* (1) *In general.* A bank engages in a credit transaction with an affiliate:

(i) At the time during the day that the bank becomes legally obligated to make an extension of credit to, issue a guarantee, acceptance, or letter of credit on behalf of, or confirm a letter of credit issued by, an affiliate; and

(ii) At the time during the day that the bank acquires an extension of credit to, or guarantee, acceptance, or letter of credit issued on behalf of, an affiliate.

(2) *Credit transactions by a bank with a nonaffiliate that becomes an affiliate of the bank.* (i) *In general.* A credit transaction with a nonaffiliate becomes a covered transaction at the time that the nonaffiliate becomes an affiliate of the bank. The bank must ensure that any such credit transaction complies with the collateral requirements of § 223.5 promptly after the nonaffiliate becomes an affiliate. The bank also must treat the amount of any such credit transaction as part of the aggregate amount of the bank's covered transactions for purposes of determining compliance with the quantitative limits of §§ 223.2 and 223.3 in connection with any future covered transactions. Except as described in paragraph (b)(2)(ii) of this section, the bank is not required to reduce the amount of its covered transactions with any affiliate because the nonaffiliate has become an affiliate.

(ii) *Credit transactions by a bank with a nonaffiliate in contemplation of the nonaffiliate becoming an affiliate of the bank.* In addition to the provisions of paragraph (b)(2)(i) of this section, if a bank engages in a credit transaction with a nonaffiliate in contemplation of the nonaffiliate becoming an affiliate of the bank, the bank must ensure that the aggregate amount of the bank's covered transactions (including any such transaction with the nonaffiliate) would not exceed the quantitative limits of §§ 223.2 or 223.3 at the time the nonaffiliate becomes an affiliate.

(iii) *Example.* A bank with capital stock and surplus of $1,000 and no outstanding covered transactions makes a $120 unsecured loan to a nonaffiliate. Several years later, the bank's holding company purchases all the stock of the nonaffiliate, thereby making the nonaffiliate an affiliate of the bank. Promptly after the time of the stock acquisition, the bank must ensure that the loan is in compliance with the collateral requirements of section 23A of the Federal Reserve Act (12 U.S.C. 371c). The bank will not be in violation of the quantitative limits of section 23A at the time of the stock acquisition (unless the loan was made by the bank in contemplation of the nonaffiliate becoming an affiliate). The bank will, however, be prohibited from engaging in any additional covered transactions until such time as the value of the loan

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transaction falls below 10 percent of the bank's capital stock and surplus.

§ 223.9 What valuation and timing principles apply to asset purchases?

(a) *Valuation.* (1) *In general.* Unless the transaction is described in § 223.12, a purchase of an asset (other than a security issued by an affiliate or a note or obligation of an affiliate) by a bank from an affiliate must be valued initially at the total amount of consideration given (including liabilities assumed) by the bank in exchange for the asset. The value of the covered transaction after the purchase may be reduced to reflect amortization or depreciation of the asset, to the extent that such reductions are consistent with GAAP.

(2) *Examples of the valuation of asset purchases.* The following are examples of how to value a bank's purchase of an asset from an affiliate.

(i) *Cash purchase of assets.* A bank purchases a pool of loans from an affiliate for $10 million. The bank initially must value the covered transaction at $10 million. Going forward, if the borrowers on the loans pay down $6 million of the principal amount of the loans, the bank may value the covered transaction at $4 million.

(ii) *Purchase of assets through an assumption of liabilities.* An affiliate of a bank contributes real property with a fair market value of $200,000 to the bank. The bank pays the affiliate no cash for the property, but assumes a $50,000 mortgage on the property. The bank has engaged in a covered transaction with the affiliate and initially must value the transaction at $50,000. Going forward, if the bank retains the real property but pays off the mortgage, the bank must continue to value the covered transaction at $50,000.

(b) *Timing.* (1) *In general.* A purchase of an asset remains a covered transaction for a bank for as long as the bank holds the asset.

(2) *Asset purchases by a bank from a nonaffiliate in contemplation of the nonaffiliate becoming an affiliate of the bank.* If a bank purchases assets from a nonaffiliate in contemplation of the nonaffiliate becoming an affiliate of the bank, the asset purchase becomes a covered transaction at the time that the nonaffiliate becomes an affiliate of the bank. In addition, the bank must ensure that the aggregate amount of the bank's covered transactions (including any such transaction with the nonaffiliate) would not exceed the quantitative limits of §§ 223.2 or 223.3 at the time the nonaffiliate becomes an affiliate.

§ 223.10 What valuation and timing principles apply to purchases of and investments in securities issued by an affiliate?

(a) *Valuation.* (1) *In general.* Except as provided in paragraph (b) of § 223.13 with respect to securities issued by a financial subsidiary, a bank's purchase of or investment in a security issued by an affiliate must be valued at the greater of:

(i) The total amount of consideration given (including liabilities assumed) by the bank in exchange for the security, reduced to reflect amortization of the security to the extent consistent with GAAP; or

(ii) The carrying value of the security on the financial statements of the bank, determined in accordance with GAAP.

(2) *Examples of the valuation of purchases of and investments in the securities of an affiliate (other than a financial subsidiary).* The following are examples of how to value a bank's purchase of or investment in securities issued by an affiliate (other than a financial subsidiary). Examples of how to value a bank's purchase of or investment in securities issued by a financial subsidiary are provided in paragraph (b)(3) of § 223.13.

(i) *Purchase of the debt securities of an affiliate that is not a financial subsidiary.* The parent holding company of a bank owns 100 percent of the shares of a mortgage company. The bank purchases debt securities issued by the mortgage company for $600. The initial carrying value of the securities on the bank's GAAP financial statements is $600. The bank initially must value the investment at $600.

(ii) *Purchase of the shares of an affiliate that is not a financial subsidiary.* The parent holding company of a bank owns 51 percent of the shares of a mortgage company. The bank purchases an additional 30 percent of the shares of the mortgage company from a third party for $100. The initial carrying value of the shares on the bank's GAAP financial statements is $100. The bank initially must value the investment at $100. Going forward, if the bank's carrying value of the shares declines to $40, the bank must continue to value the investment at $100.

(iii) *Contribution of the shares of an affiliate that is not a financial subsidiary.* The parent holding company of a bank owns 100 percent of the shares of a mortgage company and contributes 30 percent of the shares to the bank. The bank gives no consideration in exchange for the shares. If the initial carrying value of the shares on the bank's GAAP financial statements is $300, then the bank initially must value the investment at $300. Going forward, if the bank's carrying value of the shares increases to $500, the bank must value the investment at $500.

(b) *Timing.* A purchase of or investment in a security issued by an affiliate remains a covered transaction for a bank for as long as the bank holds the security.

§ 223.11 What valuation principles apply to extensions of credit secured by affiliate securities?

(a) *Valuation of extensions of credit secured exclusively by affiliate securities.* An extension of credit by a bank to a nonaffiliate secured exclusively by securities issued by an affiliate of the bank must be valued at the lesser of:

(1) The total value of the extension of credit; or

(2) The fair market value of the affiliate's securities that are pledged as collateral, if such securities meet the market quotation standard contained in paragraph (e)(1) of § 223.16 or the standards set forth in paragraphs (e)(2)(i) and (v) of § 223.16.

(b) *Valuation of extensions of credit secured by affiliate securities and other collateral.* An extension of credit by a bank to a nonaffiliate secured in part by securities issued by an affiliate of the bank and in part by other collateral must be valued at the lesser of:

(1) The total value of the extension of credit less the fair market value of the nonaffiliate collateral; or

(2) The fair market value of the affiliate's securities that are pledged as collateral, if such securities meet the market quotation standard contained in paragraph (e)(1) of § 223.16 or the standards set forth in paragraphs (e)(2)(i) and (v) of § 223.16.

Subpart D—Other Considerations Under Section 23A

§ 223.12 How does section 23A apply to a bank's acquisition of an affiliate that becomes a subsidiary of the bank after the acquisition?

(a) *Certain acquisitions by a bank of securities issued by an affiliate are treated as a purchase of assets from an affiliate.* A bank's acquisition of a security issued by a company that was an affiliate of the bank before the acquisition is treated as a purchase of the assets of an affiliate, if:

(1) As a result of the transaction, the company becomes a subsidiary of the bank and ceases to be an affiliate of the bank; and

(2) The company has liabilities, or the bank gives cash or any other consideration in exchange for the security.

(b) *Valuation.* A transaction described in paragraph (a) of this section but not exempt under paragraph (d) of this section must be valued initially at the sum of:

(1) The total amount of consideration given by the bank in exchange for the security; and

(2) The total liabilities of the company whose securities have been acquired by the bank, as of the time of the acquisition.

(c) *Valuation example.* The parent holding company of a bank contributes between 25 and 100 percent of the voting shares of a mortgage company to the bank. The bank gives no consideration in exchange for the shares. The mortgage company has total assets of $300,000 and total liabilities of $100,000. As a result of the transaction, the mortgage company becomes a subsidiary of the bank and ceases to be an affiliate of the bank. The transaction is treated as a purchase of the assets of the mortgage company by the bank from an affiliate under paragraph (a) of this section. The bank initially must value the transaction at $100,000, the total amount of the liabilities of the mortgage company.

(d) *Exemption for step transactions.* A transaction described in paragraph (a) of this section is not subject to the provisions of subpart B of this part (other than the safety and soundness requirement of § 223.4) if:

(1) The bank acquires the securities issued by the company immediately after the company becomes an affiliate of the bank;

(2) The bank acquires all the securities of the company that were transferred in connection with the transaction that made the company an affiliate of the bank; and

(3) The acquisition complies with the market terms requirement of § 223.18.

§ 223.13 What rules apply to financial subsidiaries of a bank?

(a) *Exemption from the 10 percent limit for covered transactions between a bank and a single financial subsidiary.* The 10 percent quantitative limit contained in § 223.2 does not apply with respect to covered transactions between a bank and a financial subsidiary of the bank. The 20 percent quantitative limit contained in § 223.3 does apply to such transactions.

(b) *Valuation of purchases of or investments in the securities of a financial subsidiary.* (1) *General rule.* A bank's purchase of or investment in a security issued by a financial subsidiary must be valued at the greater of:

(i) The total amount of consideration given (including liabilities assumed) by the bank in exchange for the security, reduced to reflect amortization of the security to the extent consistent with GAAP; and

(ii) The carrying value of the security on the financial statements of the bank, determined in accordance with GAAP but without reflecting the bank's pro rata portion of any earnings retained or losses incurred by the financial subsidiary after the bank's acquisition of the security.

(2) *Carrying value of an investment in a consolidated financial subsidiary.* If a financial subsidiary is consolidated with its parent bank under GAAP, the carrying value of the bank's investment in securities issued by the financial subsidiary shall be equal to the carrying value of the securities on parent-only financial statements of the bank, determined in accordance with GAAP but without reflecting the bank's pro rata portion of any earnings retained or losses incurred by the financial subsidiary after the bank's acquisition of the securities.

(3) *Examples of the valuation of purchases of and investments in the securities of a financial subsidiary.* The following are examples of how a bank must value its purchase of or investment in the securities of a financial subsidiary. Each example involves a securities underwriter that becomes a financial subsidiary of the bank after the transactions described below.

(i) *Initial valuation.* (A) *Direct acquisition by a bank.* A bank pays $500 to acquire 100 percent of the shares of a securities underwriter. The initial carrying value of the shares on the bank's parent-only GAAP financial statements is $500. The bank initially must value the investment at $500.

(B) *Contribution of a financial subsidiary to a bank.* The parent holding company of a bank acquires 100 percent of the shares of a securities underwriter in a transaction valued at $500, and immediately contributes the shares to the bank. The bank gives no consideration in exchange for the shares. The bank initially must value the investment at the carrying value of the shares on the bank's parent-only GAAP financial statements. If the parent holding company's acquisition of the securities underwriter was accounted for as a purchase, the bank's initial carrying value of the shares would be $500. Alternatively, if the parent holding company's acquisition of the securities underwriter was accounted for as a pooling-of-interests, the bank's initial carrying value of the shares would equal the book value of the underwriter prior to the acquisition, which may be less than $500.

(ii) *Carrying value not adjusted for earnings and losses of the financial subsidiary.* A bank and its parent holding company engage in the transaction described in paragraph (b)(3)(i)(B) of this section, and the bank initially values the investment at $500. In the following year, the securities underwriter earns $25 in profit, which is added to its retained earnings. The bank's carrying value of the shares of the underwriter is not adjusted for purposes of this part, and the bank must continue to value the investment at $500. If, however, the bank contributes $100 of additional capital to the securities underwriter, the bank must value the investment at $600.

(c) *Treatment of an affiliate's investments in, and extensions of credit to, a financial subsidiary of a bank.* (1) *Investments.* Any purchase of, or investment in, the securities of a financial subsidiary of a bank by an affiliate of the bank (other than an affiliate that is itself a bank or an insured savings association) will be treated as a purchase of or investment in such securities by the bank.

(2) *Extensions of credit.* Any extension of credit to a financial subsidiary of a bank by an affiliate of the bank (other than an affiliate that is itself a bank or an insured savings association) will be treated as an extension of credit by the bank to the financial subsidiary, if the Board determines, by regulation or order, that such treatment is necessary or appropriate to prevent evasions of the Federal Reserve Act or the Gramm-Leach-Bliley Act.

(3) *An extension of credit that is treated as regulatory capital of the financial subsidiary.* The Board has determined, under the authority of paragraph (c)(2) of this section, that any extension of credit to a financial subsidiary of a bank by an affiliate of the bank (other than an affiliate that is itself a bank or an insured savings association) will be treated as an extension of credit by the bank to the financial subsidiary if the extension of credit is treated as capital of the financial subsidiary under any Federal or State law, regulation, or interpretation applicable to the subsidiary.

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§ 223.14 What rules apply to derivative contracts? [Reserved]

Subpart E—Exemptions From the Provisions of Section 23A

§ 223.15 What covered transactions between a bank and an insured depository institution are exempt from the quantitative limits and collateral requirements?

The following transactions are not subject to the quantitative limits of §§ 223.2 and 223.3 or the collateral requirements of § 223.5. The transactions are, however, subject to the safety and soundness requirement of § 223.4 and the prohibition on the purchase of a low-quality asset of § 223.6.

(a) *Parent institution/subsidiary institution transactions.* Transactions with an insured depository institution if the bank controls 80 percent or more of the voting securities of the insured depository institution or the insured depository institution controls 80 percent or more of the voting securities of the bank;

(b) *Transactions between a bank and an insured depository institution owned by the same holding company.* Transactions with an insured depository institution if the same company controls 80 percent or more of the voting securities of the bank and the insured depository institution; and

(c) *Certain loan purchases from an affiliated insured depository institution.* Purchasing a loan on a nonrecourse basis from an affiliated insured depository institution.

§ 223.16 What covered transactions are exempt from the quantitative limits, collateral requirements, and low-quality asset prohibition?

The following transactions are not subject to the quantitative limits of §§ 223.2 and 223.3, the collateral requirements of § 223.5, or the prohibition on the purchase of a low-quality asset of § 223.6. The transactions are, however, subject to the safety and soundness requirement of § 223.4.

(a) *Making correspondent banking deposits.* Making a deposit in an affiliated depository institution or affiliated foreign bank that represents an ongoing, working balance maintained in the ordinary course of correspondent business;

(b) *Giving credit for uncollected items.* Giving immediate credit to an affiliate for uncollected items received in the ordinary course of business;

(c) *Transactions secured by cash or U.S. government securities.* Engaging in a credit transaction with an affiliate that is fully secured by:

(1) Obligations of the United States or its agencies;

(2) Obligations fully guaranteed by the United States or its agencies as to principal and interest; or

(3) A segregated, earmarked deposit account with the bank that is for the sole purpose of securing the credit transaction and is identified as such;

(d) *Purchasing securities of a servicing affiliate.* Purchasing a security issued by any company engaged solely in providing services described in section 4(c)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(1));

(e) *Purchasing certain liquid assets.* (1) Purchasing an asset (other than a security issued by an affiliate) having a readily identifiable and publicly available market quotation and purchased at or below the asset's current market quotation. An asset has a readily identifiable and publicly available market quotation if:

(i) The asset's price is quoted routinely in a widely disseminated news source; or

(ii) The asset is an obligation of the United States or its agencies or an obligation fully guaranteed by the United States or its agencies as to principal and interest; or

(2) Purchasing a security from a securities affiliate, if:

(i) The security has a "ready market," as defined in 17 CFR 240.15c3–1(c)(11)(i);

(ii) The security is eligible for a State member bank to purchase directly, subject to the same terms and conditions that govern the investment activities of a State member bank, and the bank records the transaction as a purchase of a security for purposes of the bank Call Report, consistent with the requirements for a State member bank;

(iii) The security is not a low-quality asset;

(iv) The bank does not purchase the security during an underwriting, or within 30 days of an underwriting, if an affiliate is an underwriter of the security, unless the security is purchased as part of an issue of obligations of, or obligations fully guaranteed as to principal and interest by, the United States or its agencies;

(v) The security's price is quoted routinely on an unaffiliated electronic service that provides indicative data from real-time financial networks, provided that:

(A) The price paid by the bank is at or below the current market quotation for the security; and

(B) The size of the transaction executed by the bank does not cast material doubt on the appropriateness of relying on the current market quotation for the security; and

(vi) The security is not issued by an affiliate, unless the security is an obligation fully guaranteed by the United States or its agencies as to principal and interest.

(f) *Purchasing municipal securities.* Purchasing a municipal security from a securities affiliate if:

(1) The security is rated by a nationally recognized statistical rating agency or is part of an issue of securities that does not exceed $25 million;

(2) The security is eligible for purchase by a State member bank, subject to the same terms and conditions that govern the investment activities of a State member bank, and the bank records the transaction as a purchase of a security for purposes of the bank Call Report, consistent with the requirements for a State member bank; and

(3)(i) The security's price is quoted routinely on an unaffiliated electronic service that provides indicative data from real-time financial networks, provided that:

(A) The price paid by the bank is at or below the current market quotation for the security; and

(B) The size of the transaction executed by the bank does not cast material doubt on the appropriateness of relying on the current market quotation for the security; or

(ii) The price paid for the security can be verified by reference to two or more actual, current price quotes from unaffiliated broker-dealers on the exact security to be purchased or a security comparable to the security to be purchased, where:

(A) The price quotes obtained from the unaffiliated broker-dealers are based on a transaction similar in size to the transaction that is actually executed; and

(B) The price paid is no higher than the average of the price quotes; or

(iii) The price paid for the security can be verified by reference to the written summary provided by the syndicate manager to syndicate members that discloses the aggregate par values and prices of all bonds sold from the syndicate account, if the bank:

(A) Purchases the municipal security during the underwriting period;

(B) Obtains a copy of the summary from its securities affiliate and retains the summary for three years; and

(C) Purchases the municipal security at a price that is at or below that indicated in the summary;

(g) *Purchasing an extension of credit subject to a repurchase agreement.*

Purchasing from an affiliate an extension of credit that was originated by the bank and sold to the affiliate subject to a repurchase agreement or with recourse;

(h) *Asset purchases by a de novo bank.* The purchase of an asset from an affiliate by a de novo bank, if the appropriate Federal banking agency for the bank has approved the asset purchase in writing in connection with its review of the formation of the bank;

(i) *Transactions approved under the Bank Merger Act.* Any merger or consolidation between a bank and an affiliated insured depository institution, or any acquisition of assets or assumption of deposit liabilities by a bank from an affiliated insured depository institution, if the transaction has been approved by the responsible Federal banking agency pursuant to the Bank Merger Act (12 U.S.C. 1828(c));

(j) *Purchasing an extension of credit from an affiliate.* Purchasing an extension of credit from an affiliate, if:

(1) The bank makes an independent evaluation of the creditworthiness of the borrower prior to the affiliate making or committing to make the extension of credit;

(2) The bank commits to purchase the extension of credit prior to the affiliate making or committing to make the extension of credit;

(3) The bank does not make a blanket advance commitment to purchase extensions of credit from the affiliate;

(4) The dollar amount of the bank's total accumulated purchases from the affiliate, when aggregated with all other assets purchased from the affiliate by banks and insured savings associations that are affiliates of the bank, does not represent more than 50 percent of the dollar amount of extensions of credit originated by the affiliate; and

(5) The bank and its affiliated banks and insured savings associations do not provide substantial, ongoing funding to the affiliate through this exemption.

(k) *Certain intraday extensions of credit.* (1) *In general.* An intraday extension of credit that arises in connection with the performance by a bank, in the ordinary course of business, of securities clearing and settlement transactions or payment transactions on behalf of an affiliate and effected through one or more accounts that the affiliate holds with the bank, if the bank:

(i) Has no reason to believe that the affiliate will have difficulty repaying the extension of credit in the ordinary course of business;

(ii) Establishes and maintains prudent limits on the net amount of intraday credit that the bank may extend to each affiliate, and all affiliates in the aggregate, and integrates these limits into the bank's overall credit risk exposure limits and systems;

(iii) Establishes and maintains policies, procedures, and systems reasonably designed to:

(A) Assess the credit quality of each affiliate that obtains an intraday extension of credit from the bank and determine each such affiliate's ability to repay such credit extensions;

(B) Periodically monitor each such affiliate's compliance with the established limits during the business day;

(C) Review an affiliate's intraday extensions of credit in the event of the affiliate's violation of the established limits; and

(D) Ensure that any intraday extension of credit received by an affiliate complies with the market terms requirement of § 223.18;

(iv) Maintains records and supporting information that are sufficient to enable the appropriate Federal banking agency to review the position limits and the policies, procedures, and systems described in paragraph (k)(1)(iii) of this section; and

(v) Treats any such extension of credit (regardless of jurisdiction) that exists at the end of the bank's business day in the United States, as a nonexempt covered transaction as of the end of the bank's business day in the United States (assuming no other exemption applies to the transaction at such time).

(2) *Definition of "payment transactions".* For purposes of this paragraph (k), "*payment transactions*" means transactions undertaken for the purpose of transferring funds to another account of the affiliate or to a third party and includes funds transfers, ACH transactions, check transactions, and other similar transactions.

§ 223.17 What are the standards under which the Board may grant additional exemptions from the requirements of section 23A?

(a) *The standards.* The Board may, at its discretion, by regulation or order, exempt transactions or relationships from the requirements of section 23A of the Federal Reserve Act (12 U.S.C. 371c) and subpart B of this Regulation W if it finds such exemptions to be in the public interest and consistent with the purposes of section 23A.

(b) *Procedure.* A bank may request an exemption from the requirements of section 23A and subpart B of this Regulation W by submitting a written request to the General Counsel of the Board.

Subpart F—General Provisions of Section 23B

§ 223.18 What is the market terms requirement of section 23B?

A bank may not engage in a transaction described in § 223.19 unless the transaction is:

(a) On terms and under circumstances, including credit standards, that are substantially the same, or at least as favorable to the bank, as those prevailing at the time for comparable transactions with or involving nonaffiliates; or

(b) In the absence of comparable transactions, on terms and under circumstances, including credit standards, that in good faith would be offered to, or would apply to, nonaffiliates.

§ 223.19 What transactions with affiliates or others must comply with section 23B's market terms requirement?

(a) The market terms requirement of § 223.18 applies to the following transactions:

(1) Any covered transaction with an affiliate, unless the transaction is:

(i) Exempt under § 223.15 or paragraphs (a) through (e)(1) or (g) through (i) of § 223.16; and

(ii) Consistent with the safety and soundness requirement of § 223.4;

(2) The sale of a security or other asset to an affiliate, including an asset subject to an agreement to repurchase;

(3) The payment of money or the furnishing of a service to an affiliate under contract, lease, or otherwise;

(4) Any transaction in which an affiliate acts as an agent or broker or receives a fee for its services to the bank or to any other person; and

(5) Any transaction or series of transactions with a nonaffiliate, if an affiliate:

(i) Has a financial interest in the nonaffiliate; or

(ii) Is a participant in the transaction or series of transactions.

(b) For the purpose of this section, any transaction by a bank with any person will be deemed to be a transaction with an affiliate of the bank if any of the proceeds of the transaction are used for the benefit of, or transferred to, the affiliate.

§ 223.20 What asset purchases are prohibited by section 23B?

(a) *Fiduciary purchases of assets from an affiliate.* A bank may not purchase as fiduciary any security or other asset from any affiliate unless the purchase is permitted:

(1) Under the instrument creating the fiduciary relationship;

(2) By court order; or

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(3) By law of the jurisdiction governing the fiduciary relationship.

(b) *Purchase of a security underwritten by an affiliate.* (1) A bank, whether acting as principal or fiduciary, may not knowingly purchase or otherwise acquire, during the existence of any underwriting or selling syndicate, any security if a principal underwriter of that security is an affiliate of the bank.

(2) Paragraph (b)(1) of this section does not apply if the purchase or acquisition of the security has been approved, before the security is initially offered for sale to the public, by a majority of the directors of the bank based on a determination that the purchase is a sound investment for the bank, or for the person on whose behalf the bank is acting as fiduciary, as the case may be, irrespective of the fact that an affiliate of the bank is a principal underwriter of the security.

(3) The approval requirement of paragraph (b)(2) of this section may be met if:

(i) A majority of the directors of the bank approves standards for the bank's acquisitions of securities described in paragraph (b)(1) of this section, based on the determination set forth in paragraph (b)(2) of this section;

(ii) Each acquisition described in paragraph (b)(1) of this section meets the standards; and

(iii) A majority of the directors of the bank periodically reviews acquisitions described in paragraph (b)(1) of this section to ensure that they meet the standards and periodically reviews the standards to ensure that they continue to meet the criterion set forth in paragraph (b)(2) of this section.

(c) *Special definitions.* For purposes of this section:

(1) *Principal underwriter* means any underwriter who, in connection with a primary distribution of securities:

(i) Is in privity of contract with the issuer or an affiliated person of the issuer;

(ii) Acting alone or in concert with one or more other persons, initiates or directs the formation of an underwriting syndicate; or

(iii) Is allowed a rate of gross commission, spread, or other profit greater than the rate allowed another underwriter participating in the distribution.

(2) *Security* has the same meaning as in section 3(a)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(10)).

§ 223.21 What advertisements and statements are prohibited by section 23B?

(a) *In general.* A bank and its affiliates may not publish any advertisement or enter into any agreement stating or suggesting that the bank will in any way be responsible for the obligations of its affiliates.

(b) *Guarantees, acceptances, and letters of credit subject to section 23A.* Paragraph (a) of this section does not prohibit a bank from issuing a guarantee, acceptance, or letter of credit on behalf of an affiliate to the extent otherwise permitted under this Regulation W.

§ 223.22 What are the standards under which the Board may grant exemptions from the requirements of section 23B?

The Board may prescribe regulations to exempt transactions or relationships from the requirements of section 23B of the Federal Reserve Act (12 U.S.C. 371c–1) and subpart F of this Regulation W if it finds such exemptions to be in the public interest and consistent with the purposes of section 23B.

Subpart G—Application of Sections 23A and 23B to U.S. Branches and Agencies of Foreign Banks

§ 223.23 How do sections 23A and 23B apply to U.S. branches and agencies of foreign banks?

(a) *Applicability of sections 23A and 23B to foreign banks engaged in underwriting insurance, underwriting or dealing in securities, merchant banking, or insurance company investment in the United States.* Sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 371c–1) and the provisions of this Regulation W apply to transactions between each U.S. branch, agency, or commercial lending company of a foreign bank and:

(1) Any affiliate of the foreign bank directly engaged in the United States in any of the following activities:

(i) Insurance underwriting pursuant to section 4(k)(4)(B) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(B));

(ii) Securities underwriting, dealing, or market making pursuant to section 4(k)(4)(E) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(E));

(iii) Merchant banking activities pursuant to section 4(k)(4)(H) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H)) (but only to the extent that the proceeds of the transaction are used for the purpose of funding the affiliate's merchant banking activities);

(iv) Insurance company investment activities pursuant to section 4(k)(4)(I) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(I)); or

(v) Any other activity designated by the Board;

(2) Any subsidiary of an affiliate described in paragraph (a)(1) of this section; and

(3) Any portfolio company (as defined in 12 CFR 225.177(c)) that the foreign bank or affiliate controls (for purposes of 12 CFR 225.173(d)(4)) and any company that would be an affiliate of the branch, agency, or commercial lending company of the foreign bank under paragraph (a)(9) of § 223.24 if the branch, agency, or commercial lending company were a bank.

(b) *Method of applying sections 23A and 23B to foreign banks.* (1) *In general.* Sections 23A and 23B of the Federal Reserve Act and the provisions of this Regulation W will apply to transactions described in paragraph (a) of this section in the same manner and to the same extent as if the branch, agency, or commercial lending company of the foreign bank were a bank and the companies described in paragraphs (a)(1) through (3) of this section were affiliates of the branch, agency, or commercial lending company.

(2) *Attribution rule.* Sections 23A and 23B of the Federal Reserve Act and the provisions of this Regulation W will apply to transactions between each U.S. branch, agency, or commercial lending company of a foreign bank and any person to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, a company described in paragraphs (a)(1) through (3) of this section.

(3) *Capital stock and surplus.* For purposes of §§ 223.2 and 223.3, the "*capital stock and surplus*" of a U.S. branch, agency, or commercial lending company of a foreign bank will be determined by reference to the capital of the foreign bank as calculated under its home country capital standards.

Subpart H—Definitions of Terms

§ 223.24 What is an "affiliate" for purposes of sections 23A and 23B?

(a) For purposes of this part and except as provided in paragraphs (b) and (c) of this section, "*affiliate*" with respect to a bank means:

(1) *Parent companies.* Any company that controls the bank;

(2) *Companies under common ownership by a parent company.* Any company, including any subsidiary of the bank, that is controlled by a company that controls the bank;

(3) *Companies under other common ownership.* Any company, including any subsidiary of the bank, that is controlled, directly or indirectly, by trust or otherwise, by or for the benefit of shareholders who beneficially or otherwise control, directly or indirectly, by trust or otherwise, the bank or any company that controls the bank;

(4) *Companies with interlocking directorates.* Any company in which a majority of its directors or trustees (or individuals exercising similar functions) constitute a majority of the persons holding any such office with the bank or any company that controls the bank;

(5) *Sponsored and advised companies.* Any company, including a real estate investment trust, that is sponsored and advised on a contractual basis by the bank or an affiliate of the bank;

(6) *Investment companies.* (i) Any investment company for which the bank or any affiliate of the bank serves as an investment adviser, as defined in section 2(a)(20) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(20)); and

(ii) Any other investment fund for which the bank or any affiliate of the bank serves as an investment advisor, if the bank or any affiliate of the bank owns or controls more than 5 percent of any class of voting shares or similar interests in the fund;

(7) *Depository institution subsidiaries.* A depository institution that is a subsidiary of the bank;

(8) *Financial subsidiaries.* A financial subsidiary of the bank;

(9) *Companies held under merchant banking or insurance company investment authority.* (i) *In general.* Any company in which a holding company that controls the bank (or a holding company that is controlled by shareholders that control the bank) owns or controls, directly or indirectly, or acting through one or more other persons, 15 percent or more of the equity capital pursuant to section 4(k)(4)(H) or (I) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H) or (I)).

(ii) *General exemption.* A company may avoid affiliate status under paragraph (a)(9)(i) of this section if the holding company presents information to the Board that demonstrates, to the Board's satisfaction, that the holding company does not control the company.

(iii) *Specific exemptions.* A company also may avoid affiliate status under paragraph (a)(9)(i) of this section if:

(A) No director, officer, or employee of the holding company serves as a director, trustee, or general partner (or individual exercising similar functions) of the company;

(B) A person that is not affiliated or associated with the holding company owns or controls a greater percentage of the equity capital of the company than is owned or controlled by the holding company, and no more than one officer or employee of the holding company serves as a director or trustee (or individual exercising similar functions) of the company; or

(C) A person that is not affiliated or associated with the holding company owns or controls more than 50 percent of the voting shares of the company, and officers and employees of the holding company do not constitute a majority of the directors or trustees (or individuals exercising similar functions) of the company.

(iv) *Application of rule to private equity funds.* A holding company will not be deemed to own or control the equity capital of a company for purposes of paragraph (a)(9)(i) of this section solely by virtue of an investment made by the holding company in a private equity fund (as defined in 12 CFR 225.173(a)) that owns or controls the equity capital of the company unless the holding company controls the private equity fund (as described in 12 CFR 225.173(d)(4)).

(v) *Definition of "holding company".* For purposes of this paragraph (a)(9), "*holding company*" means the holding company and all of its subsidiaries (including any subsidiary depository institution of the holding company);

(10) *Partnerships for which the bank or an affiliate serves as general partner.* Any partnership for which the bank or any affiliate of the bank serves as a general partner or for which the bank or any affiliate of the bank causes any officer or employee of the bank or affiliate to serve as a general partner; and

(11) *Other companies.* Any company that the Board determines by regulation or order to have a relationship with the bank, or any affiliate of the bank, such that covered transactions by the bank with that company may be affected by the relationship to the detriment of the bank.

(b) "*Affiliate*" with respect to a bank does *not* include:

(1) *Subsidiaries.* Any company that is a subsidiary of the bank, other than:

(i) A depository institution;

(ii) A financial subsidiary;

(iii) A subsidiary in which any affiliate or affiliates of the bank (other than a bank or insured savings association) directly owns or controls 25 percent or more of any class of voting securities;

(iv) An employee stock option plan, trust, or similar organization that exists for the benefit of the shareholders, partners, members, or employees of the bank or any of its affiliates; and

(v) Any other company determined to be an affiliate under paragraph (a)(11) of this section;

(2) *Bank premises.* Any company engaged solely in holding premises of the bank;

(3) *Safe deposit.* Any company engaged solely in conducting a safe deposit business;

(4) *Government securities.* Any company engaged solely in holding obligations of the United States or its agencies or obligations fully guaranteed by the United States or its agencies as to principal and interest; and

(5) *Companies held DPC.* Any company where control results from the exercise of rights arising out of a bona fide debt previously contracted. This exclusion from the definition of "affiliate" applies only for the period of time specifically authorized under applicable State or Federal law or regulation or, in the absence of such law or regulation, for a period of two years from the date of the exercise of such rights. The Board may authorize, upon application and for good cause shown, extensions of time for not more than one year at a time, but such extensions in the aggregate will not exceed three years.

(c) For purposes of subpart F of this part, "affiliate" with respect to a bank also does *not* include any insured depository institution.

§ 223.25 What transactions with affiliates are covered by section 23A?

For purposes of this part, a "*covered transaction*" with respect to an affiliate of a bank means:

(a) An extension of credit to the affiliate;

(b) A purchase of, or an investment in, a security issued by the affiliate;

(c) A purchase of an asset from the affiliate, including an asset subject to recourse or an agreement to repurchase, except such purchases of real and personal property as may be specifically exempted by the Board by order or regulation;

(d) The acceptance of a security issued by the affiliate as collateral for an extension of credit to any person or company; and

(e) The issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit, on behalf of the affiliate, and a confirmation of a letter of credit issued by the affiliate.

§ 223.26 What are the meanings of the other terms used in sections 23A and 23B?

For purposes of this part:

(a) *Aggregate amount of covered transactions* means the amount of the covered transaction about to be engaged in added to the current amount of all outstanding covered transactions.

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(b) *Appropriate Federal banking agency* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(c) *Bank.* (1) *In general. Bank* means:

(i) Any member bank, as defined in section 1 of the Federal Reserve Act (12 U.S.C. 221); and

(ii) Any insured bank that is not an insured branch, as such terms are defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(2) *Subsidiaries of banks.* For purposes of paragraph (c)(1) of this section, a subsidiary of a bank (other than a subsidiary described in paragraphs (b)(1)(i) through (v) of § 223.24) is treated as the bank.

(d) *Capital stock and surplus* means the sum of:

(1) A bank's tier 1 and tier 2 capital under the risk-based capital guidelines of the appropriate Federal banking agency, based on the bank's most recent consolidated Report of Condition and Income filed under 12 U.S.C. 1817(a)(3); and

(2) The balance of a bank's allowance for loan and lease losses not included in its tier 2 capital under the risk-based capital guidelines of the appropriate Federal banking agency, based on the bank's most recent consolidated Report of Condition and Income filed under 12 U.S.C. 1817(a)(3).

(e) *Company* means a corporation, partnership, limited liability company, business trust, association, or similar organization and, unless specifically excluded, includes a bank and a depository institution.

(f) *Control.* (1) *In general. Control* by a company or shareholder over another company means that:

(i) The company or shareholder, directly or indirectly, or acting through one or more other persons, owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other company;

(ii) The company or shareholder controls in any manner the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the other company; or

(iii) The Board determines, after notice and opportunity for hearing, that the company or shareholder, directly or indirectly, exercises a controlling influence over the management or policies of the other company.

(2) *Ownership or control of shares as fiduciary.* Notwithstanding any other provision of this Regulation W, no company will be deemed to control another company by virtue of its ownership or control of shares in a fiduciary capacity, except as provided in paragraph (a)(3) of § 223.24 or if the company owning or controlling the shares is a business trust.

(3) *Ownership or control of shares by subsidiary.* A company will be deemed to control securities, assets, or other ownership interests owned or controlled, directly or indirectly, by any subsidiary (including a bank) of the company.

(4) *Ownership or control of convertible securities.* A company that owns or controls securities (including options and warrants) that are convertible, at the option of the holder or owner, into other securities, controls the other securities.

(g) *Credit transaction* with an affiliate means:

(1) An extension of credit to the affiliate; and

(2) An issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit, on behalf of the affiliate and a confirmation of a letter of credit issued by the affiliate.

(h) *Depository institution* means a State bank, national bank, banking association, or trust company, or an insured savings association.

(i) *Equity capital* means:

(1) With respect to a corporation, perpetual preferred stock, common stock, capital surplus, retained earnings, and accumulated other comprehensive income, less treasury stock, plus any other account that constitutes equity of the corporation; and

(2) With respect to a partnership, limited liability company, or other company, equity accounts similar to those described in paragraph (i)(1) of this section.

(j) *Extension of credit* means an extension or renewal of a loan, a grant of a line of credit, or an extension of credit in any manner whatsoever, including on an intraday basis. An extension of credit includes, without limitation:

(1) An advance by means of an overdraft, cash item, or otherwise;

(2) A lease that is the functional equivalent of an extension of credit;

(3) A purchase of a note or other obligation, including commercial paper or other debt securities (which is deemed an extension of credit to the obligor); and

(4) Any increase in the amount of, extension of the maturity of, or adjustment to the interest rate term or other material term of, an extension of credit.

(k) *Financial subsidiary* means:

(1) Any subsidiary of a bank that would be a financial subsidiary of a national bank under section 5136A of the Revised Statutes of the United States (12 U.S.C. 24a); and

(2) Any subsidiary of a company described in paragraph (k)(1) of this section.

(l) *Foreign bank* and an *agency, branch,* or *commercial lending company* of a foreign bank have the same meanings as in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(m) *GAAP* means U.S. generally accepted accounting principles.

(n) *General purpose credit card* means a credit card issued by a bank if:

(1) The card may be used to purchase products or services from nonaffiliates of the bank;

(2) The card is widely accepted by merchants that are not affiliates of the bank for the purchase of products or services; and

(3) Less than 25 percent of the aggregate amount of products and services purchased with the card by all cardholders are purchases of products or services from an affiliate of the bank.

(o) *Insured depository institution* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), but (except for purposes of § 223.16(i)) does not include any branch or agency of a foreign bank or any commercial lending company owned or controlled by a foreign bank.

(p) *Insured savings association* means a savings association (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) the deposits of which are insured by the Federal Deposit Insurance Corporation.

(q) *Low-quality asset* means:

(1) An asset (including a security) classified as "substandard," "doubtful," or "loss" or treated as "other assets especially mentioned" or "other transfer risk problems" either in the most recent report of examination or inspection of an affiliate prepared by either a Federal or State supervisory agency or in any internal classification system used by the bank or the affiliate (including an asset that receives a rating that is substantially equivalent to classified in the internal system of the bank or affiliate);

(2) An asset in a nonaccrual status;

(3) An asset on which principal or interest payments are more than thirty days past due;

(4) An asset whose terms have been renegotiated or compromised due to the deteriorating financial condition of the obligor; and

(5) A foreclosed asset designated as "other real estate owned" that has not yet been reviewed in an examination or inspection.

(r) *Municipal securities* has the same meaning as in section 3(a)(29) of the Securities Exchange Act of 1934 (17 U.S.C. 78c(a)(29)).

(s) *Nonaffiliate* with respect to a bank means any person that is not an affiliate of the bank.

(t) *Payment transactions* is defined in § 223.16(k)(2).

(u) *Principal underwriter* is defined in § 223.20(c)(1).

(v) *Purchase of assets* means the acquisition of an asset in exchange for cash or any other consideration, including an assumption of liabilities.

(w) *Securities* means stocks, bonds, debentures, notes, or similar obligations (including commercial paper).

(x) *Securities affiliate* means a broker or dealer that is an affiliate of the bank and is registered with the Securities and Exchange Commission.

(y) *State bank* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(z) *Subsidiary* with respect to a specified company means a company that is controlled by the specified company.

(aa) *Voting securities* has the same meaning as the term "voting securities" found in 12 CFR 225.2(q).

By order of the Board of Governors of the Federal Reserve System, May 3, 2001.

Jennifer J. Johnson,

Secretary of the Board.

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FEDERAL RESERVE SYSTEM

12 CFR Part 250

[Miscellaneous Interpretations; Docket R–1015]

Applicability of Section 23A of the Federal Reserve Act to the Purchase of Securities From Certain Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: Section 23A of the Federal Reserve Act restricts the ability of a member bank to fund its affiliates through asset purchases, loans, or certain other transactions ("covered transactions"). The Board is adopting an interpretation that would expand the types of asset purchases that are eligible for the exemption in section 23A(d)(6), which exempts the purchase from an affiliate of an asset that has a readily identifiable and publicly available market quotation. This interpretation would expand the ability of an insured depository institution to purchase securities from its registered broker-dealer affiliates, while ensuring that the transactions are conducted in a manner that is consistent with safe and sound banking practices.

EFFECTIVE DATE: June 11, 2001.

FOR FURTHER INFORMATION CONTACT: Pamela G. Nardolilli, Senior Counsel (202/452–3289), or Mark E. Van Der Weide, Counsel (202/452–2263), Legal Division; or Molly S. Wassom, Associate Director, Division of Banking Supervision and Regulation (202/452–2305), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

The Board is adopting an interpretation of section 23A(d)(6) of the Federal Reserve Act to expand the types of securities that an insured depository institution ("depository institution") can purchase on an exempt basis from a registered broker-dealer affiliate.[1] Section 23A of the Federal Reserve Act, originally enacted as part of the Banking Act of 1933, is designed to prevent the misuse of a member bank's resources through "non-arm's length" transactions with its affiliates. Section 23A limits covered transactions between a member bank and an affiliate to 10 percent of the bank's capital stock and surplus, and limits the aggregate amount of all transactions between a member bank and all of its affiliates to 20 percent of capital stock and surplus. The purchase of assets by a bank from its affiliates is included in the definition of covered transaction and is subject to the statute's quantitative limits.

Section 23A also contains several exemptions from the statute's quantitative limits and collateral requirements. One exemption is contained in section 23A(d)(6), which exempts from the statute's quantitative limits a purchase of an asset that has "a readily identifiable and publicly available market quotation" ("(d)(6) exemption").[2] In the past, institutions have been advised that the (d)(6) exemption was available only for the purchase of assets, the price of which was recorded in a widely disseminated publication that was readily available to the general public. Such assets included obligations of the United States, securities traded on exchanges, foreign exchange, certain mutual fund shares, and precious metals. Other marketable assets could not meet this standard.

In 1997, the Board removed certain prohibitions on transactions between a bank and its section 20 affiliates ("section 20 firewalls"). Because of the changes to the section 20 firewalls, the Board received several requests from organizations ("Petitioners") regarding the interpretation of the (d)(6) exemption as it related to the purchase of assets from section 20 affiliates. Several Petitioners stated that, although the removal of the firewall was welcomed, section 23A continued to limit certain transactions with section 20 affiliates. Petitioners argued that certain prohibited transactions do not raise significant safety and soundness issues and that the prohibition impeded the efficient operations of the insured depository institution and the section 20 affiliate. In particular, Petitioners were concerned about the ability of an insured depository institution to purchase securities under the (d)(6) exemption because of the Board's narrow reading of the exemption, which prevented the purchase of otherwise marketable assets.

Summary of Comments and Description of the Rule

Because of Petitioners' requests, the Board proposed to expand the ability of a bank to purchase from a registered broker-dealer affiliate securities that, although not so widely traded as to warrant the inclusion of their prices in publications of general circulation, are actively traded and whose prices can be verified by independent reliable sources ("1998 Proposal"). Under the 1998 Proposal, a purchase of securities by an insured depository institution from its broker-dealer affiliate would meet the (d)(6) exemption if the transaction met the following criteria:

(1) The broker-dealer from which the securities were purchased was registered with the Securities and Exchange Commission ("SEC");

(2) The securities had a "ready market," as defined by the SEC in its regulation codified at 17 CFR 240.15c3–1(c)(11)(i);

(3) The securities had received an investment grade rating from a nationally recognized statistical rating organization ("NRSRO"), and no NRSRO had stated that the rating was under review for a possible downgrade to below investment grade;

(4) The securities were not purchased during an underwriting or within 30 days of an underwriting if an affiliate was an underwriter of the security;

(5) The price paid for the securities could be verified by

(i) A widely disseminated news source;

(ii) An electronic service that provided indicative data from real-time financial networks; or

(iii) Two or more actual independent dealer quotes on the exact securities to be purchased, where the price paid was not higher than the average of the price quotes obtained from the unaffiliated broker-dealers; and

(6) The securities were not issued by an affiliate, unless the securities were obligations of the United States or fully guaranteed by the United States or its agencies as to principal and interest.

The Board received thirteen comments on the proposed interpretation: nine from banks and bank holding companies, three from trade associations and one from a clearing house. In addition, comments were received from eight Federal Reserve Banks. Commenters generally supported the Board's proposed interpretation. The commenters concurred with the Board that a broader interpretation of the (d)(6) exemption, as proposed, would promote operational efficiencies in a banking organization while still ensuring that transactions are conducted in a safe and sound manner.

Although the commenters uniformly supported the Board's proposal to expand its interpretation of the (d)(6) exemption, a number of commenters expressed concerns about the specific qualifying criteria proposed by the Board. The commenters' views regarding each of the criteria and the Board's response are discussed below.

(1) The Securities Must Be Purchased From a Broker-Dealer Registered With the SEC

In order for a purchase of securities to meet the expanded (d)(6) exemption, the Board proposed that the purchase of securities must be from a broker-dealer registered with the SEC.

One commenter specifically supported the Board's proposed requirement that the broker-dealer affiliate be registered with the SEC. Several other commenters, however, urged the Board to loosen the requirement. One commenter argued that the Board should allow depository institutions to buy securities under the exemption from broker-dealers registered with foreign authorities. Several other commenters argued that there is no reason to limit the exemption to broker-dealers. These commenters expressed the view that non-broker-dealers may hold securities that would qualify under the terms of the 1998 Proposal, and these commenters argued that there is no policy reason for prohibiting these non-broker-dealer affiliates from using the proposed interpretation.

Broker-dealers that are registered with the SEC are subject to supervision and examination by the SEC and are required by SEC regulations to keep and maintain detailed records concerning each securities transaction conducted by the broker-dealer. In addition, SEC-registered broker-dealers have experience in determining whether a security has a "ready market" under SEC regulations, as described below. The Board believes that these factors will help ensure that banks satisfy the requirements of the expanded exemption and will assist the Federal banking agencies in monitoring such compliance.

The Board does not believe it is appropriate at this time to expand the exemption to include securities purchases from foreign broker-dealers because such entities may be subject to different levels of supervision and regulation and because of the increased difficulties associated with monitoring compliance by foreign entities. An insured depository institution can, however, request that the Board exempt securities purchases from a foreign broker-dealer, and the Board would consider these requests on a case-by-case basis in light of all the facts and circumstances.

In addition, although the proposed expanded (d)(6) exemption is limited to purchases from registered broker-dealers, the Board notes that a purchase of securities or other assets from other types of affiliates would continue to be exempt under section 23A(d)(6) if the price of the asset is routinely quoted in a widely disseminated news source and the asset was purchased at or below its current market price. The Board, in any event, expects to evaluate the continued need for the requirement as insured depository institutions and the Board gain experience with this expanded exemption.

(2) The Securities Must Have a "Ready Market" as Defined by the SEC

The 1998 Proposal provided that, in order to meet the expanded (d)(6) exemption, the assets must have a "ready market," as defined by the SEC.[3]

Based on public comments, the Board considered various alternative marketability definitions. Some commenters noted that the Office of the Comptroller of the Currency ("OCC") defines "marketable" under its Investment Securities regulations to include those securities that can be sold with reasonable promptness at a price that corresponds reasonably to fair value.[4] The commenters submitted that banks would be comfortable with this alternative definition of "ready market."

One commenter argued that the SEC's "ready market" concept was not appropriate for the (d)(6) exemption. The commenter contended that the SEC's "ready market" concept is used in the context of determining the liquidity of a broker-dealer's portfolio, and the commenter argued that the concept of liquidity is not analogous to the question raised in the context of the (d)(6) exemption as to whether the security was purchased at a fair market price. The commenter argued that a more appropriate standard is set forth in the "fair market price" definition in National Association of Securities Dealers ("NASD") Rule 2730. The commenter noted that the NASD's "fair market price" definition is one with which broker-dealers are already familiar.

In the proposed interpretation, the Board employed the "ready market" test because it believed that this definition would help ensure that a ready, competitive market exists for the securities that the bank purchases. Under the SEC's net capital rules, a registered broker-dealer must deduct 100 percent of the carrying value of securities and certain other assets if there is not a "ready market" for the assets. The purpose of the "ready market" test is to identify securities with a liquid market to ensure that a broker-dealer promptly can sell a security and receive its value. The types of securities that meet this definition include obligations of the United States and its agencies, as well as many asset-backed, corporate debt, and sovereign debt securities. It is a standard understood by SEC-registered broker-dealers and monitored by the SEC, and if the bank is unsure of the status of a security, it can determine the status by asking how the security is treated by the broker-dealer affiliate for its own capital purposes.

The Board believes that the "ready market" test provides the best standard that is well understood by the banking and securities industries. Because a broker-dealer must adjust its capital daily—and therefore must confirm daily that its assets meet the "ready market" definition—the liquidity of purchased securities is confirmed by an independent standard on a regular basis. The Board believes that the "ready market" standard provides more specific guidance to banks than either the OCC's "marketable" definition or NASD Rule 2730.

In addition, the Board does not believe that NASD Rule 2730 is appropriate for the exemption because the rule is concerned primarily with the price at which a security is bought. The Board disagrees with commenters who stated that only price, not liquidity, is critical under the (d)(6) exemption. The (d)(6) exemption, by its terms, applies only to assets with a "market" quotation. The Board believes that inherent in the concept of a market quotation is the idea that the asset can be bought and sold on a regular basis. Moreover, this proposal deals primarily with assets that are too thinly traded to warrant listing of their price in a widely disseminated publication, and this criterion helps support the validity of the market quote mechanism discussed below. In addition, section 23A requires

[1] 12 U.S.C. 371c(d)(6). By its terms, section 23A only applies to member banks. The Federal Deposit Insurance Act extends the coverage of section 23A to all FDIC-insured nonmember banks. 12 U.S.C. 1828(j). The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 applies section 23A to FDIC—insured savings associations. 12 U.S.C. 1468.

[2] 12 U.S.C. 371c(d)(6). Although such asset purchases are exempt from the quantitative restrictions of section 23A, the (d)(6) exemption requires that the bank's purchase be consistent with safe and sound banking practices. 12 U.S.C. 371c(a)(4).

[3] 17 CFR 240.15c3–1(c)(11)(i). The SEC defines a ready market as including a recognized established securities market: (i) In which there exist independent *bona fide* offers to buy and sell so that a price reasonably related to the last sales price or current *bona fide* competitive bid and offer quotations can be determined for a particular security almost instantaneously; and (ii) where payment will be received in settlement of a sale at such price within a relatively short time conforming to trade custom.

[4] 12 CFR 1.2(f)(4).

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that all covered transactions, whether or not they meet an exemption, be on terms and conditions that are consistent with safe and sound banking practices. The Board believes that it would be inconsistent with safe and sound banking practices to allow a depository institution to purchase from an affiliate unlimited amounts of a security for which no "ready market" exists.

(3) The Securities Must Be Eligible for Purchase by a State Member Bank and Must Not Be Low-Quality Assets

In the 1998 Proposal, the Board proposed that a purchase of a security would be eligible for the expanded (d)(6) exemption only if the security were rated investment grade by a nationally recognized statistical rating organization ("NRSRO"). In light of comments received on the proposal, however, the Board now proposes replacing the investment-grade requirement with requirements that the security be eligible for direct purchase by a State member bank under section 9 of the Federal Reserve Act, as determined by the Board,[5] and that the security not be a low-quality asset (as defined in section 23A).

The Board received one comment supporting the Board's proposed requirement that the security being purchased under the expanded (d)(6) exemption have an investment grade rating from an NRSRO. The commenter argued that this requirement would help ensure bank safety and soundness. Approximately ten commenters, however, opposed or proposed modifications to this requirement. Several commenters argued that this condition is unnecessary and overly restrictive, especially in light of the protections afforded by the Board's other proposed criteria. One commenter noted that the focus of the (d)(6) exemption is liquidity and market information, and the commenter argued that a security can have substantial liquidity and be the subject of significant market information even if it is not investment grade. Several commenters also contended that section 23A separately addresses the question of depository institution purchases of low-quality assets from affiliates, and they contended that there is no statutory basis for importing the investment grade requirement into the (d)(6) exemption.

Other commenters proposed alternative standards. Some of them argued that non-rated securities could satisfy the Board's concerns, provided that the purchasing depository institution conducts an independent evaluation of the security. Another commenter noted that the OCC's regulations allow national banks to purchase securities that are rated investment grade or, if not rated, are the "credit equivalent" of a security rated investment grade. Two commenters also argued that the Board's proposed requirement of an investment grade rating is superfluous given the OCC's restrictions on what types of securities national banks can purchase. Several commenters also argued that, at a minimum, the investment grade rating requirement should be expanded to include high yield securities traded on the NASD's Fixed Income Pricing System ("FIPS"), because the NASD carefully reviews a security's volume and pricing, and the issuer's name recognition and research following, before approving a security for FIPS quotation.

The Board originally proposed that a security must be rated by an NRSRO because it believed that such a rating ensured the marketability of a security and that the security would not be the equivalent of a "low-quality asset," the purchase of which is prohibited by section 23A. In light of the comments, however, the Board has decided to eliminate the requirement that a security receive an investment grade rating from an NRSRO. Instead, the security will be eligible for the expanded (d)(6) exemption if it is eligible for purchase by a State member bank under section 9 of the Federal Reserve Act and is not a low-quality asset, as defined by section 23A.[6]

Section 9 of the Federal Reserve Act permits a State member bank to purchase securities that a national bank may own pursuant to paragraph 7 of section 5136 of the Revised Statutes.[7] This provision permits the purchase of a variety of securities, including obligations of State and local governments and asset-backed and corporate debt securities, that may not be rated. State member banks can purchase unrated corporate debt securities and asset-backed securities, however, only if the securities generally are the credit equivalent of a security rated investment grade.[8] Moreover, a State member bank's purchases of corporate debt securities of any one obligor are limited to 10 percent of the bank's capital and surplus; and purchases of asset-backed securities, except certain highly rated mortgage-backed securities, are limited to 25 percent of capital and surplus.[9] Institutions using this exemption would be subject to the restrictions described above and all other terms and conditions that govern the investment activities of State member banks.

The Board believes that the statutory and other restrictions placed on a State member bank's ownership of securities also are appropriate limits on the securities eligible for this interpretation of the (d)(6) exemption. The Board further believes that the purchase must be recorded by the insured depository institution as a security purchased, and not as a loan, pursuant to the instructions of the Call Report.

The Board also proposes to restrict the availability of this interpretation of the (d)(6) exemption to purchases of assets that are not low-quality assets (as defined in section 23A). Because of the inherent volatility of low-quality assets and section 23A's special concern with respect to purchases of low-quality assets, it is inappropriate to allow banks to purchase an unlimited amount of low-quality assets from an affiliate pursuant to this interpretation.

These two replacement requirements should increase the types of securities eligible for purchase under the new (d)(6) exemption, as compared with the investment grade requirement, while ensuring that purchases are consistent with section 23A's injunction that covered transactions, even exempt covered transactions, must be consistent with safe and sound banking practices.

(4) No Purchases During an Underwriting Period and for Thirty Days Thereafter

The Board's proposed interpretation would disqualify from the expanded (d)(6) exemption an insured depository institution's purchase of a security from an affiliate during the underwriting period for the security and for 30 days thereafter. Approximately 11 commenters expressed opposition to this criterion. The commenters believed that a 30-day underwriting exclusion is unnecessary. The commenters believed that the proposed restriction was based on misperceptions on the part of the Board about pricing volatility and conflicts of interest in the underwriting of securities.

Several commenters also argued that the Board's concerns regarding potential conflicts of interest between

[5] 12 U.S.C. 335.

[6] 12 U.S.C. 335.

[7] 12 U.S.C. 24(7).

[8] *See* 12 CFR 1.1(e). State member banks also are permitted to invest up to 5 percent of their capital and surplus in securities that may not be the credit equivalent of investment-grade securities, but only if the bank concludes that the obligors will be able to satisfy their obligations under the securities and that the securities may be sold with reasonable promptness at a price that corresponds reasonably to their fair value. *See* 12 CFR 1.3(i).

[9] *See* 12 CFR 1.3.

underwriting affiliates and depository institutions were unfounded. Commenters argued that the Board had not identified any conflicts and could not demonstrate that conflicts were sufficiently serious to require the proposed 30-day underwriting exclusion.

A number of commenters argued that the Board's proposed limitation could not be supported by the language of section 23A, which does not contain any restriction on purchases of securities during an underwriting period. Commenters also noted that section 23B does contain a provision that prohibits a depository institution from purchasing securities during the existence of any underwriting or selling syndicate if a principal underwriter of the securities is an affiliate of the depository institution. The prohibition in section 23B, however, contains an exception if the purchase or acquisition of securities has been approved by a majority of the directors of a depository institution before such securities are initially offered for sale to the public. The commenters contended that, if the Board decides to adopt the proposed restriction, the Board also should add a similar exception for purchases receiving prior director approval.

A number of commenters argued that, at a minimum, the 30-day waiting period after the underwriting should not be required. Some commenters argued that the 30-day buffer should be deleted, if in no other circumstances, in those situations in which an affiliate has been able to sell all of its allotted securities to third parties during the underwriting. Commenters also urged the Board to eliminate the 30-day waiting period for investment-grade securities.

Two commenters noted that, in the preamble to the proposed exemption, the Board stated that the proposed 30-day underwriting exclusion applies to bank-ineligible securities. The commenters noted, however, that the text of the proposed rule would appear to cover all securities, eligible and ineligible. The commenters urged the Board to clarify that the restriction would apply only to bank-ineligible securities.

The Board proposes to maintain the 30-Day Restriction in its final rule with one exception, because of uncertain market values of securities during and shortly after an underwriting period and because of the conflicts of interest that may arise during and after an underwriting period, especially if an affiliate has difficulty selling its allotment.

The Board believes that the 30-Day Restriction should not apply to purchases of obligations of, or obligations fully guaranteed as to principal and interest by, the United States or its agencies. The markets for these instruments generally do not require substantial market stabilization by the underwriters, and therefore it is less likely that the risks of stabilization efforts could be transferred from the securities affiliate to the depository institution.

The Board also has reviewed the restriction imposed by section 23B and its relationship to the (d)(6) exemption. As noted above, the requirements of section 23B are in addition to the requirements of section 23A. Section 23B requires the approval of a majority of the insured depository institution's directors prior to the purchase of securities for which an affiliate is a principal underwriter. Even with the directors' vote, however, the insured depository institution's purchase would be subject to the quantitative limits of section 23A. If the securities are exempt under (d)(6), however, there is no quantitative limit imposed on the insured depository institution. The Board believes that given the expansion of the types of securities that insured depository institutions can purchase under this interpretation of the (d)(6) exemption, a vote of the directors is not sufficient protection to the insured depository institution if it is permitted to purchase unlimited amounts of a security before it has even been offered for sale to the public.

(5) Price Verification Methods

Several commenters concurred with the Board's requirement for the verification of the price of each security purchased by a depository institution from an affiliated broker-dealer. At least two commenters supported the Board's inclusion of three alternative price verification methods—(1) A widely disseminated news source; (2) an electronic service that provides indicative data from real-time financial networks; and (3) two independent dealer quotes on the exact security purchased. These commenters believed use of the two independent dealer quotes would ensure that the securities in question are readily marketable and have a price that is verifiable, which may not be the case if only one price quote were obtained.

Approximately ten commenters expressed concerns about the price verification methods proposed by the Board. One commenter suggested the Board eliminate the detailed requirements for price verification. The commenter suggested that these price verification conditions are redundant in light of the "ready market" condition discussed above.

Several commenters argued that, in addition to indicative data from real-time networks, the Board should permit the use of pricing matrices proposed by the bank or its affiliate, which the commenters claimed are widely used by dealers and institutional investors and relied upon in setting prices for actual trades. The commenters noted that matrices are updated daily and are based on actual trades and dealer marks-to-market involving securities having substantially similar characteristics. The commenters stated that, so long as a security meets the credit, liquidity, and other criteria of the proposed rule, a depository institution is as assured of obtaining the security at fair market value when using a matrix as the institution is when using any of the other pricing verification methods proposed by the Board.

A number of commenters suggested that, with respect to the third proposed method of verification (verification by two independent dealer bids on the same security), the Board also should permit verification by independent bids on closely *comparable* securities. The commenters argued that requiring quotes on the exact security purchased was needlessly burdensome. Several commenters also contended that permitting quotes on comparable securities would recognize that, as a practical matter, it is often difficult to get quotes on the particular security being purchased.

One commenter argued that there should be a mechanism that allows Board staff to evaluate the use of comparable securities on a case-by-case basis. Such a procedure, the commenter noted, would allow depository institutions to present the comparability question in the context of a specific security. Another commenter suggested that the Board adopt a method by which Board staff may consider the permissibility of new dependable pricing mechanisms as they become available. The commenter noted that rapid developments and enhancements of information systems may produce equally dependable price verification methods in the future, which, the commenter argued, should then be included in the scope of the interpretation.

The 1998 Proposal included a price verification test because of the statutory requirement that the asset have a "readily identifiable and publicly available market quotation" and the Board's belief that the proposed criteria would meet the statutory requirement. Prior to publication of the proposal, the

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Board reviewed the use of matrices and the use of comparable securities and did not believe that those price verification methods would meet the statutory standard that the quotation be "publicly available." In addition, the Board believed that the value of a security should be independently determined and not by a method that was subject to manipulation by the insured depository institution or its affiliated broker-dealer.

The Board has reviewed its position in light of the comments received on the 1998 Proposal and further analysis of the reliability of various pricing methodologies set forth in the 1998 Proposal. The Board continues to believe that the use of matrices and comparable securities to determine the price of a security may indicate a lack of liquidity in the market for that security, and the purchase of unlimited amounts of such a security from an affiliate raises safety and soundness concerns. Moreover, if a securities purchase could meet the (d)(6) exemption by the use of a matrix or comparable securities, the limitations Congress imposed in the (d)(6) exemption would be meaningless because an insured depository institution could always develop a price for a security using its own methodology. The Board believes that the use of third-party networks helps ensure that a market for the security exists and that the price the insured depository institution pays for the security is a fair market price.

Moreover, the Board has concluded that it would not be appropriate to use independent dealer quotations to establish a market price for a security under the expanded (d)(6) exemption. The Board also is concerned that a security that is not quoted routinely in a widely disseminated news source or a third-party electronic financial network may not trade in a sufficiently liquid market to justify allowing an insured depository institution to purchase unlimited amounts of such security from an affiliate.[10]

The exemption also provides that a depository institution that is taking advantage of the new (d)(6) exemption must pay a price for the relevant security that is no higher than the current market quotation for the security and must ensure that the size of the transaction executed by the depository institution does not cast material doubt on the appropriateness of relying on the current market quotation for the security.

The Board agrees with commenters that there should be procedures in place for the Board to review new dependable market pricing mechanisms as they become available. The Board will continue to assess the appropriateness of new methodologies.

(6) The Securities Must Not Be Issued by an Affiliate

Finally, the proposed interpretation provided that the exemption would not apply to securities issued by an affiliate unless those securities were backed by a guarantee of the U.S. government.

Several commenters specifically supported the Board's decision to exclude from the (d)(6) exemption those securities issued by an affiliate, including asset-backed securities issued by an affiliate and shares of a mutual fund advised by the depository institution or affiliate, unless such securities are guaranteed by the United States government. One commenter noted that inclusion of these securities within the interpretation could lead to potential self-dealing and could double capital exposure from the underwriting activity of the affiliate and the treatment of the security as an asset of the depository institution.

Two commenters argued that advised mutual funds should not be treated like other affiliates under section 23A. The commenters argued that, because a mutual fund's profits do not accrue to its advisor but to the fund's investors, there is little risk that a depository institution's purchase of shares of an advised mutual fund could contribute to the unlimited funding of the affiliated fund. The commenters noted that certain mutual fund shares are permissible investments for national banks under the OCC's regulations, mutual fund share prices are subject to comprehensive regulation under the Investment Company Act, and mutual fund share prices are published daily in *The Wall Street Journal*. The commenters contended that, in light of these facts, there is no justification for a blanket prohibition on depository institution purchases of affiliated mutual fund shares under the (d)(6) exemption.

Several commenters requested that the Board confirm that the sale of asset-backed securities, where the underlying assets were on the depository institution's books immediately prior to the securities offering, would be outside the scope of section 23A. The commenters argued that the Board's proposal should not be interpreted to extend section 23A limits to the investments of insured depository institutions in a securitization of their own loans or other assets merely because the securitization is underwritten or traded by their affiliated broker-dealer.

The proposed regulation prohibits the applicability of the (d)(6) exemption to most affiliate-issued securities because a contrary determination would permit a bank to acquire an unlimited credit exposure to an affiliate in contradiction to the purposes of section 23A. In addition, if a purchase of assets *from* an affiliate is also a purchase *of* affiliate-issued securities (if, for example, a bank purchases securities issued by one affiliate from the inventory of another affiliate), the bank has engaged in two types of covered transaction. Although the (d)(6) exemption may apply to the one-time asset purchase component of the transaction, it should not apply to exempt the ongoing investment in securities issued by an affiliate.

The Board continues to believe that safety and soundness requires restrictions on a bank's ability to purchase securities issued by an affiliate. Such restrictions help prevent a bank from acquiring an unlimited credit exposure to its affiliates, and are consistent with other provisions of section 23A, which limit the bank's ability to lend to an affiliate or accept the affiliate's securities as collateral.

In light of the comments, the Board will continue to review the appropriateness of making the purchase of affiliate-issued asset-backed securities and affiliate-advised mutual funds eligible for the (d)(6) exemption.

(7) Document Retention

Five commenters expressed concerns about the Board's proposed requirement that pricing information be retained in the insured depository institution's files for five years. One commenter requested that the Board change the requirement to allow documents to be retained only for two years. The commenter noted that depository institutions are examined every one or two years and, accordingly, it does not make sense to require retention of documents beyond an examination cycle.

Another commenter requested that Board staff consult and work with market participants regarding what information can be made available without imposing an undue administrative burden. Other commenters requested that the Board clarify that the requirement applies to documentation concerning the actual price paid; the commenters believed that a simple notation of the price paid and source of price verification should be sufficient. The commenters argued that otherwise this requirement would be overly burdensome for depository institutions, especially in light of the fact that historical pricing data are available from other sources.

The Board proposed a five-year standard because it believed that it would provide examiners a basis to review how the exemption was applied over time by insured depository institutions. The Board has determined to shorten the period of time necessary for the insured depository institution to retain the price verification information to two years. The Board concurs with the commenters that this period of time is consistent with the exam schedules of the institutions in question and that further information retention is not necessary in order to ensure compliance with the law. The Board does not believe that the documentation requirements are substantial, and insured depository institutions should contact their primary regulators to determine what documentation is required. At a minimum, however, the Board believes that an institution's records should clearly show the security purchased, the seller, price and date of purchase, and evidence of the method used to determine the price.

(8) Other Issues

Failure to meet the conditions for availability of this interpretation of the (d)(6) exemption does not prevent an insured depository institution from purchasing securities or other assets. A depository institution, of course, can continue to buy securities and other assets from an affiliate subject to the quantitative limits of section 23A and can buy such securities and other assets from unaffiliated parties without any section 23A limit, so long as the purchase is otherwise authorized by law. In addition, this interpretation of the (d)(6) exemption does not interfere with the ability of a depository institution to purchase securities and other assets from affiliates pursuant to the (d)(6) exemption so long as the prices of such assets are recorded in a widely disseminated publication that is readily available to the general public.

Regulatory Flexibility Act

The Board certifies that adoption of this final rule is not expected to have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most small bank holding companies and insured depository institutions do not have registered broker-dealer affiliates. For this reason, most small bank holding companies would not be affected by this final rule. In addition, the rule would expand the types of transactions that an insured depository institution may engage in with its broker-dealer affiliates. Accordingly, the rule does not impose more burdensome requirements on depository institutions, their holding companies, or their affiliates than are currently applicable.

Administrative Procedure Act

Subject to certain exceptions, 12 U.S.C. 4801(b)(1) provides that new regulations and amendments to regulations prescribed by a Federal banking agency that impose additional reporting, disclosure, or other new requirements on an insured depository institution must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form. This rule is not subject to this delayed effective date requirement because the rule imposes no new requirements on existing operations of depository institutions. The rule only exempts transactions that were previously subject to the restrictions of section 23A.

Paperwork Reduction Act

The Board has determined that the final rule does not involve the collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

List of Subjects in 12 CFR Part 250

Banks, banking, Federal Reserve System.

For the reasons set forth in the preamble, the Board amends 12 CFR part 250 as follows:

PART 250—MISCELLANEOUS INTERPRETATIONS

1. The authority citation for part 250 continues to read as follows:

Authority: 12 U.S.C. 78, 248(i) and 371c(f).

2. Section 250.246 is added to read as follows:

§ 250.246 Applicability of section 23A of the Federal Reserve Act to the purchase of a security by an insured depository institution from an affiliate.

(a) The purchase of a security by an insured depository institution from an affiliate that is a broker-dealer registered with the Securities and Exchange Commission is exempt from section 23A of the Federal Reserve Act (12 U.S.C. 371c) under paragraph (d)(6) of that statute if:

(1) The security has a "ready market," as defined in 17 CFR 240.15c3–1(c)(11)(i);

(2) The security is eligible for a State member bank to purchase directly, subject to the same terms and conditions that govern the investment activities of a State member bank, and the institution records the transaction as a purchase of securities for purposes of the bank Call report, consistent with the requirements for a State member bank;

(3) The security is not a low-quality asset;

(4) The security is not purchased during an underwriting, or within 30 days of an underwriting, if an affiliate is an underwriter of the security, unless the security is purchased as part of an issue of obligations of, or obligations fully guaranteed as to principal and interest by, the United States or its agencies;

(5) The security's price is quoted routinely on an unaffiliated electronic service that provides indicative data from real-time financial networks, provided that:

(i) The price paid by the insured depository institution is at or below the current market quotation for the security; and

(ii) The size of the transaction executed by the insured depository institution does not cast material doubt on the appropriateness of relying on the current market quotation for the security; and

(6) The security is not issued by an affiliate, unless the security is an obligation fully guaranteed by the United States or its agencies as to principal and interest.

(b) The purchase of the security must comply with paragraph (a)(4) of section 23A, which requires that any covered transactions between an insured depository institution and an affiliate be on terms and conditions that are consistent with safe and sound banking practices.

By order of the Board of Governors of the Federal Reserve System, May 3, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–11609 Filed 5–10–01; 8:45 am]

BILLING CODE 6210–01–P

[10] The final (d)(6) interpretation also does not include the "widely disseminated news source" pricing option because the old (d)(6) exemption remains as a separate, stand-alone exemption.

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FEDERAL RESERVE SYSTEM

12 CFR Part 250

[Miscellaneous Interpretations; Docket R–1016]

Applicability of Section 23A of the Federal Reserve Act to Loans and Extensions of Credit Made by a Member Bank to a Third Party

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: Section 23A of the Federal Reserve Act restricts the ability of a member bank to fund its affiliates through investments, loans, asset acquisitions, or certain other transactions ("covered transactions"). Section 23A deems transactions between a member bank and a nonaffiliated third party as covered transactions between the bank and its affiliate to the extent that proceeds of the transactions are used for the benefit of or transferred to the affiliate. The Board is adopting an interpretation and exemptions from section 23A for certain loans made by an insured depository institution ("depository institution") to customers who use the loan proceeds to purchase a security or other asset through an affiliate of the depository institution acting exclusively as a broker or riskless principal in the transaction.

First, the Board is adopting an interpretation confirming that section 23A does not apply to extensions of credit by an insured depository institution to customers that use the loan proceeds to purchase a security or other asset through an affiliate of the depository institution, so long as the affiliate is acting exclusively as a broker in the transaction, and the affiliate retains no portion of the loan proceeds. The Board also is exempting from section 23A that portion of a loan to a third party that an affiliate retains as a market-rate brokerage commission or agency fee.

In addition, the Board is adopting an exemption from section 23A for extensions of credit by an insured depository institution to customers that use the loan proceeds to purchase a security issued by third parties through a broker-dealer affiliate of the institution that is acting as riskless principal in the securities transaction. Finally, the Board is adopting an exemption for extensions of credit by an insured depository institution to customers that use the credit to purchase securities from a broker-dealer affiliate of the institution when that extension of credit was made pursuant to a preexisting line of credit not entered into in contemplation of the purchase of securities from an affiliate of the depository institution.

EFFECTIVE DATE: June 11, 2001.

FOR FURTHER INFORMATION CONTACT: Pamela G. Nardolilli, Senior Counsel (202/452–3289), or Mark E. Van Der Weide, Counsel (202/452–2263), Legal Division; or Molly S. Wassom, Associate Director (202/452–2305), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20051.

SUPPLEMENTARY INFORMATION:

Background

Section 23A of the Federal Reserve Act, originally enacted as part of the Banking Act of 1933, is designed to prevent the misuse of a member bank's resources through "non-arm's length" transactions with its affiliates.[1] To achieve this purpose, section 23A establishes both quantitative limits and qualitative restrictions on transactions by a member bank with its affiliates. The statute limits "covered transactions" between a member bank and any single affiliate to no more than 10 percent of the bank's capital and surplus and limits aggregate covered transactions with all affiliates to no more than 20 percent of the bank's capital and surplus.[2] Covered transactions include extensions of credit, investments, and certain other transactions that expose the member bank to the credit risk of an affiliate. Section 23A also requires that credit exposures to an affiliate be secured by collateral, the amount of which is statutorily defined.[3]

In addition to regulating direct transactions between a bank and its affiliates, section 23A deems any transaction by a member bank with any person to be a transaction with an affiliate to the extent that the proceeds of the transaction are "used for the benefit of, or transferred to," that affiliate.[4] This provision of the statute, commonly referred to as the "attribution rule," is designed to prevent an evasion of the quantitative limits and collateral requirements of section 23A through the use of a third party that serves as a conduit for the flow of funds from the bank to its affiliates.[5] The Board and its staff have taken the position that section 23A applies to loans made by a bank to a third party, where the proceeds of the loans are used to purchase various types of assets from the bank's affiliate.[6]

Section 23A also gives the Board authority to grant exemptions from the statute's restrictions. Specifically, the statute permits the Board to exempt transactions or relationships, by regulation or by order, if such exemptions are "in the public interest and consistent with the purposes of this section."[7]

In August 1997, the Board adopted Operating Standards governing the activities of section 20 subsidiaries.[8] Operating Standard #6 allows a bank to extend credit to a customer to purchase securities from a section 20 affiliate during the underwriting period for the securities, pursuant to a preexisting line of credit not entered into in contemplation of the purchase of affiliate-underwritten securities. In adopting Operating Standard #6, the Board stated that it would consider whether an exemption from section 23A for transactions permitted under the Operating Standard would be appropriate.

Proposal

On June 10, 1998, the Board proposed two exemptions from the quantitative limitations and collateral restrictions of section 23A for loans made by an insured depository institution, the proceeds of which are used to buy securities from a registered broker-dealer affiliate of the depository institution.[9] The first exemption proposed by the Board applied to loans made by a depository institution to its customers for the purpose of purchasing third-party securities through a registered broker-dealer affiliate of the institution that is acting as broker or riskless principal [10] in the securities transaction ("Broker/Riskless Principal Exemption"). As proposed, the exemption was applicable even if the broker-dealer affiliate of the depository institution retained part of the loan proceeds as a brokerage commission or, in the case of a riskless principal transaction, a mark-up for effecting the securities transaction.

The second proposed exemption applied to extensions of credit by a depository institution to a customer made pursuant to a preexisting line of credit, the proceeds of which were used to purchase securities underwritten or sold as principal by a registered broker-dealer affiliate of the institution ("Preexisting Line of Credit Exemption"). The proposal also required that the line of credit not have been entered into in contemplation of the purchase of securities from an affiliate and that either the line of credit be unrestricted or the extension of credit be clearly consistent with any restrictions imposed under the line.[11]

Summary of Comments and Final Rule

The Board received approximately 14 comments on the proposed exemptions. The commenters included ten banks or bank holding companies, and four trade associations that represent the banking industry. The Board also received seven comments from the Federal Reserve Banks. The commenters overwhelmingly supported the goals of the Board's proposals, which they believed would provide benefits to both consumers and depository institutions without raising the types of concerns that section 23A was intended to address, but many commenters argued that the Board should achieve its goals through alternative means.

Broker/Riskless Principal Exemption

Commenters generally agreed with the position taken in the Board's proposal that loans by an insured depository institution to a third party to purchase securities through a broker-dealer affiliate of the depository institution that is acting exclusively in a brokerage or riskless principal capacity should not be within the ambit of section 23A. Many commenters, however, argued that the Board should not adopt an exemption to section 23A that applies only to broker-dealers and securities. These commenters contended that a better course of action would be for the Board to issue an *interpretation* broader in scope than the proposed exemption. The interpretation suggested by the commenters would confirm that in no case is a loan from a depository institution to a third party subject to section 23A when the third party purchases assets through a bank affiliate acting exclusively as broker or agent for the third party (regardless of the affiliate's retention of brokerage or agency fees).

The commenters argued that adoption of a specific exemption for securities brokerage transactions involving broker-dealer affiliates implies that, absent a grant of exemption, the Board considers brokerage or agency transactions involving other types of affiliates and assets to be covered by section 23A. The commenters contended that, if an affiliate is acting only as broker or agent in a transaction, the affiliate does not receive a "benefit" from the transaction, and the transaction cannot be viewed as fitting within section 23A. One commenter, however, found support for the Board's decision to issue an exemption for riskless principal transactions, noting that there could be disagreement as to whether riskless principal transactions should be viewed as within the scope of section 23A.

The exemption from section 23A proposed by the Board would have applied when an insured depository institution lends to its customers for the purpose of purchasing third-party securities through a registered broker-dealer affiliate acting solely as broker or riskless principal in a securities transaction with the customer. The Board believed that the exemption would be consistent with the purposes of section 23A because of the negligible risk that loans made pursuant to the exemption would be used as a source of funding from an insured depository institution to its broker-dealer affiliate. As proposed, the exemption only would have been available when the securities being sold were not in the inventory of the broker-dealer. Accordingly, the loan proceeds, although initially transferred to the affiliate to purchase the securities, would be transferred in turn (minus a brokerage fee or riskless principal mark-up) to the seller of the securities, which would not be an affiliate of the depository institution.

The Board concurs with the commenters that extensions of credit by a depository institution to customers to purchase third-party securities and assets through an affiliate of the depository institution that is acting exclusively in a brokerage or agency capacity fall outside of the reach of section 23A to the extent that the affiliate retains no part of the loan proceeds. Accordingly, rather than issuing the proposed exemption from section 23A to cover certain types of brokerage transactions, the Board is issuing a broader *interpretation*, as requested by the commenters. The interpretation confirms that section 23A does not apply when a depository institution's borrower uses loan proceeds to enter into agency transactions with an affiliate of the depository institution so long as the securities or other assets being purchased by the borrower are not issued by, or sold from the inventory of, any affiliate of the depository institution and to the extent that no affiliate retains any portion of the loan proceeds.

A somewhat different analysis under section 23A is required, however, when an affiliate retains a portion of a depository institution's loan to a third party as a brokerage commission or agency fee. The portion of the loan used by the borrower to pay the affiliate's commission or fee would be subject to section 23A because that transaction fee represents the proceeds of a loan retained and used for the benefit of an affiliate under the attribution rule.

In accordance with its original proposal, the Board has determined to *exempt* from section 23A that portion of a loan from a depository institution to an unaffiliated customer that is retained by an affiliate of the institution as a market-rate brokerage fee or agency commission; that is, a fee or commission no greater than that prevailing at the same time for comparable agency transactions entered into by the affiliate with persons who are neither affiliates nor borrowers from an affiliated depository institution, as required by section 23B of the Federal Reserve Act (12 U.S.C. 371c–1). The Board expects that such transaction fees will be nominal amounts and will represent a small percentage of the overall agency transaction and, accordingly, believes that these fees present little opportunity for a depository institution to benefit its broker-dealer affiliate.

Finally, a loan from a depository institution to a customer who engages in a riskless principal trade through a broker-dealer affiliate of the depository institution would be covered transactions under section 23A. Riskless principal trades—although the functional equivalent of securities brokerage transactions—involve the purchase of a security by the depository institution's broker-dealer affiliate.

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[1] 12 U.S.C. 371c. Although section 23A originally applied only to member banks, Congress has since applied the section to insured nonmember banks and insured savings associations in the same manner as it applies to member banks. *See* 12 U.S.C. 1828(j); 12 U.S.C. 1468.

[2] "Capital and surplus" has been defined by the Board as tier 1 and tier 2 capital plus the balance of an institution's allowance for loan and lease losses not included in tier 2 capital. 12 CFR 250.242.

[3] 12 U.S.C. 371c(c).

[4] 12 U.S.C. 371c(a)(2). Section 23A defines an affiliate to include, among other things, "any company that controls the member bank and any other company that is controlled by the company that controls the member bank." 12 U.S.C. 371c(b)(1).

[5] *See* A Discussion of Amendments to Section 23A of the Federal Reserve Act Proposed by the Board of Governors of the Federal Reserve System 36 n.1 (September 1981).

[6] *See, e.g.*, Letter from General Counsel of the Board to Ms. Charla Jackson (August 26, 1996) (crop-production loan to farmer who leases farm land from a bank's affiliate is covered by section 23A).

[7] 12 U.S.C. 371c(f)(2).

[8] 12 CFR 225.200.

[9] 63 FR 32,766 (1998).

[10] "Riskless principal" is the term used in the securities business to refer to a transaction in which a broker-dealer, after receiving an order to buy (or sell) a security for a customer, purchases (or sells) the security for its own account to offset a contemporaneous sale to (or purchase from) the customer. *See, e.g.*, 12 CFR 225.28(b)(7)(ii); *The Bank of New York Company, Inc.*, 82 Federal Reserve Bulletin 748 (1996).

[11] For example, if the customer had a preexisting line of credit limited to purchases of rated securities, then the bank would continue to be prohibited from lending to purchase unrated securities underwritten by an affiliate.

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Accordingly, the broker-dealer retains the loan proceeds at least for some moment in time.[12] As noted in the proposing release, there is negligible risk that loans made by a depository institution to borrowers to engage in riskless principal trades through a broker-dealer affiliate of the depository institution would be used to fund the broker-dealer. For this reason, the Board believes that it is appropriate to adopt the proposed *exemption* from section 23A to cover riskless principal securities transactions engaged in by depository institution borrowers through broker-dealer affiliates of the depository institution.[13] This grant of exemption is applicable even if the broker-dealer retains a portion of the loan proceeds as a market-rate mark-up for executing the riskless principal securities trade.

Preexisting Line of Credit Exemption

Approximately a dozen commenters offered specific comments on the proposed preexisting line of credit exemption. A majority of these commenters supported the Board's proposed exemption and concurred with the Board's view that exempting an extension of credit pursuant to a preexisting credit line from section 23A would not raise safety and soundness concerns.

Several commenters expressed concern about the requirement that the credit line be "preexisting." The commenters urged the Board to adopt other safeguards in lieu of the "preexisting" requirement. For example, one commenter argued that the Board should only require that banks conduct independent credit analyses before granting credit. Other commenters offered alternative standards.

The Board is adopting the exemption for preexisting lines of credit substantially as proposed. As noted above, the exemption applies to extensions of credit by a depository institution made pursuant to a preexisting line of credit, the proceeds of which are used to buy securities underwritten or held as principal by a registered broker-dealer affiliate of the depository institution. Under the exemption, extensions of credit must be made by a depository institution pursuant to a preexisting line of credit that was not entered into in contemplation of the purchase of securities by the borrower from an affiliate of the institution, and the extension of credit must be consistent with any restrictions imposed by the line. The Board believes that the "preexisting" and other requirements for such lines of credit are important safeguards to ensure that the credit was not extended by the depository institution for the purpose of inducing a borrower to purchase securities from or issued by an affiliate.

Several of the commenters that opposed the requirement that the line of credit be "preexisting" argued that, if, despite their objections, the Board decided to use a "preexisting" requirement as part of this exemption, the Board should adopt a safe harbor. These commenters urged the adoption of a five-day safe harbor, in which the credit line would meet the "preexisting" requirement if the line were established at least five days prior to the customer's securities transaction with the bank's broker-dealer affiliate.

The Board does not regard as necessary or appropriate a five-day safe harbor for determining whether a line of credit is truly "preexisting." The Board intends that this exemption be used in good faith by depository institutions. As noted in the proposing release, in determining whether the exemption is being used in good faith, examiners will consider the timing of the line of credit. In addition, examiners will consider the conditions imposed on the credit line and whether the line of credit has been used for purposes other than the purchase of securities from an affiliate. The Board will issue additional examiner guidance regarding the "preexisting" requirement should such guidance prove necessary.

Some commenters objected that the proposed Preexisting Line of Credit Exemption was not necessary to cover a borrower's purchases of bank-eligible securities from an affiliate, which the commenters apparently believed fall outside the purview of section 23A. The attribution rule of section 23A does not, however, distinguish between bank-eligible and bank-ineligible securities: A loan from a depository institution, the proceeds of which are used by the borrower to buy securities underwritten or held as principal by an affiliate of the depository institution, would be covered by section 23A regardless of whether the securities purchased are bank-eligible or bank-ineligible. To avoid having the loan covered by the quantitative limits of section 23A, the loan would need to qualify for an exemption under the statute—either the Preexisting Line of Credit Exemption being adopted by the Board today or some other exemption (*e.g.*, the exemption in section 23A(d)(4) for obligations fully secured by deposit accounts or U.S. government obligations).

At the request of one commenter, the Board also is clarifying that the Preexisting Line of Credit Exemption may not be used in circumstances in which the line has been merely pre-approved. Accordingly, for an extension of credit to qualify for this exemption, the credit line must be, in fact, "preexisting" and not merely "preapproved."

Regulatory Flexibility Act

The Board certifies that adoption of these rules is not expected to have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the Board's action creates exemptions and clarifies certain interpretations under section 23A of the Federal Reserve Act. Accordingly, the Board's action does not impose more burdensome requirements on depository institutions, their holding companies, or their affiliates than are currently applicable.

Administrative Procedure Act

Subject to certain exceptions, 12 U.S.C. 4801(b)(1) provides that new regulations and amendments to regulations prescribed by a Federal banking agency that impose additional reporting, disclosure, or other new requirements on an insured depository institution must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form. These rules are not subject to this delayed effective date requirement because the rules impose no new requirements on existing operations of depository institutions. The rules only exempt transactions that were previously subject to the restrictions of section 23A.

Paperwork Reduction Act

The Board has determined that the rules do not involve the collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

List of Subjects in 12 CFR Part 250

Banks, banking, Federal Reserve System.

For the reasons set forth in the preamble, the Board amends 12 CFR part 250 as follows:

PART 50—MISCELLANEOUS INTERPRETATIONS

1. The authority citation for part 250 continues to read as follows:

Authority: 12 U.S.C. 78, 248(i) and 371c(f).

2. Section 250.243 is added to read as follows:

§ 250.243 Applicability of section 23A of the Federal Reserve Act to loans and extensions of credit by an insured depository institution to a nonaffiliate to enable the nonaffiliate to purchase an asset through an affiliate of the institution that is acting exclusively in an agency or brokerage capacity in the transaction.

(a) The attribution rule of section 23A of the Federal Reserve Act (12 U.S.C. 371c) provides that "a transaction by a member bank with any person shall be deemed to be a transaction with an affiliate to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that affiliate."[1] The Board has considered the question of whether a loan or extension of credit by an insured depository institution ("depository institution") to an unaffiliated borrower who uses the proceeds of the transaction to purchase an asset through an affiliate of the institution that is acting exclusively as an agent or broker in the transaction should be subject to the attribution rule because of the limited benefit that the affiliate receives when it acts only as an agent or broker in the transaction. The Board believes that a loan by a depository institution to an unaffiliated borrower who uses the proceeds of the loan to purchase an asset through an affiliate of the institution that is acting exclusively in an agency or brokerage capacity is not covered by section 23A if the affiliate retains no portion of the loan proceeds as a fee or commission for its services.

(b) A somewhat different analysis is required when the affiliate acting as agent or broker in the transaction retains a portion of the loan proceeds as a fee or commission. In such a case, the portion of the loan not retained by the affiliate as a fee or commission would be outside the coverage of section 23A. On the other hand, the portion of the loan retained by the affiliate as a fee or commission would be subject to section 23A because it represents proceeds of a loan by a depository institution to a third party that are transferred to, and used for the benefit of, an affiliate of the institution. The Board hereby grants an exemption from section 23A for such fees and commissions.

(c) The Board notes that this interpretation would not apply if the securities or other assets purchased by the third-party borrower through the affiliate of the depository institution were issued or underwritten by, or sold out of the inventory of, another affiliate of the depository institution. In such a case, proceeds of the loan from the depository institution would be transferred to, and used for the benefit of, the affiliate that issued, underwrote, or sold the asset on a principal basis to the third party.

(d) The Board also notes that the transactions described above (including the loan to the third-party borrower and any fee or commission paid to the affiliate of the depository institution out of the loan proceeds) would be subject to the market terms requirement of section 23B, which applies to "any transaction in which an affiliate acts as an agent or broker or receives a fee for its services to the bank or any other person."[2]

3. Section 250.244 is added to read as follows:

§ 250.244 Exemption from section 23A of the Federal Reserve Act for certain loans and extensions of credit by an insured depository institution to a nonaffiliate to enable the nonaffiliate to purchase securities through a registered broker-dealer affiliate of the institution that is acting exclusively as riskless principal in the securities transaction.

(a) A loan or extension of credit by an insured depository institution ("depository institution") to any person other than an affiliate of such depository institution is exempted from section 23A of the Federal Reserve Act (12 U.S.C. 371c) if—

(1) The loan or extension of credit is on terms that are consistent with safe and sound banking practices; and

(2) The proceeds of the loan or extension of credit are used to purchase a security through an affiliate of the depository institution that is a broker-dealer registered with the Securities and Exchange Commission, where

(i) The affiliate is acting exclusively as a riskless principal in the securities transaction; and

(ii) The security is not issued or underwritten by, or sold out of the inventory of, any affiliate of the depository institution.

(b) This grant of exemption is applicable to a loan or extension of credit covered by paragraph (a) of this section even if a portion of the proceeds of the loan or extension of credit is used by the borrower to pay a riskless principal mark-up to the affiliate, provided that the mark-up is substantially the same as, or lower than, those prevailing at the same time for comparable transactions with or involving other nonaffiliated companies, in accordance with section 23B of the Federal Reserve Act (12 U.S.C. 371c–1).

4. Section 250.245 is added to read as follows:

§ 250.245 Exemption from section 23A of the Federal Reserve Act for certain loans and extensions of credit by an insured depository institution to a nonaffiliate made pursuant to a preexisting line of credit.

Section 23A of the Federal Reserve Act (12 U.S.C. 371c) shall not apply to an extension of credit by an insured depository institution ("depository institution") to any person other than an affiliate of such depository institution if—

(a) The proceeds of the loan or extension of credit are used to purchase a security from or through an affiliate of the depository institution that is a broker-dealer registered with the Securities and Exchange Commission; and

(b) The loan or extension of credit is made pursuant to, and consistent with any conditions imposed in, a preexisting line of credit that was not established in contemplation of the purchase of securities from or through an affiliate of the depository institution.

By order of the Board of Governors of the Federal Reserve System, May 3, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–11607 Filed 5–10–01; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 250

[Miscellaneous Interpretations; Docket No. R–1104]

Application of Sections 23A and 23B of the Federal Reserve Act to Derivative Transactions With Affiliates and Intraday Extensions of Credit to Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

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[12] For this reason, riskless principal trades involve risks that are different from securities brokerage transactions. *See, e.g.*, Exchange Act Rel. No. 33,743, *reprinted in* [1993–1994] Fed. Sec. L. Rep. (CCH) 85,326 (March 9, 1984).

[13] As in the proposed rule, the final rule would make clear that the exemption for riskless principal transactions would not apply if the broker-dealer affiliate sold securities to the third-party borrower out of its own inventory or out of the inventory of another affiliate of the depository institution. This condition is not intended to make the exemption unavailable when the broker-dealer affiliate sells as principal to the third-party borrower a security that it purchased immediately prior to the sale in order to effect the riskless principal transaction requested by the borrower, so long as the broker-dealer affiliate did not purchase the security from another affiliate of the depository institution.

[1] 12 U.S.C. 371c(a)(2).

[2] 12 U.S.C. 371c–1(a)(2)(D).

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ACTION: Interim rules with request for public comments.

SUMMARY: The Board of Governors of the Federal Reserve System is adopting on an interim basis rules to address the application of sections 23A and 23B of the Federal Reserve Act to credit exposure arising out of derivative transactions between an insured depository institution and its affiliates and intraday extensions of credit by an insured depository institution to its affiliates. The rules require institutions to adopt policies and procedures reasonably designed to monitor, manage, and control credit exposures arising out of the transactions and clarify that the transactions are subject to section 23B.

DATES: The interim rules are effective January 1, 2002. Comments must be submitted on or before August 15, 2001.

ADDRESSES: Comments should refer to Docket No. R–1104 and should be sent to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551 (or mailed electronically to regs.comments@federalreserve.gov). Comments addressed to Ms. Johnson also may be delivered to the Board's mail room between the hours of 8:45 a.m. and 5:15 p.m. weekdays and, outside of those hours, to the Board's security control room. Both the mail room and the security control room are accessible from the Eccles Building courtyard entrance, located on 20th Street, NW., between Constitution Avenue and C Street, NW. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Pamela G. Nardolilli, Senior Counsel (202/452–3289), or Mark E. Van Der Weide, Counsel (202/452–2263), Legal Division; Michael G. Martinson, Associate Director (202/452–3640), or Heidi W. Richards, Assistant Director (202/452–2598), Division of Banking Supervision and Regulation; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

Sections 23A and 23B of the Federal Reserve Act are intended to limit the risks to an insured depository institution ("institution") from transactions with its affiliates.[1] Sections 23A and 23B also limit the ability of an institution to transfer to its affiliates the subsidy arising from the institution's access to the Federal safety net.

Section 23A achieves these goals in three major ways. First, it limits the aggregate amount of an insured depository institution's "covered transactions" with any single affiliate (other than a financial subsidiary of the institution) to no more than 10 percent of the institution's capital and surplus, and the aggregate amount of covered transactions with all affiliates combined (including financial subsidiaries of the institution) to no more than 20 percent of the institution's capital and surplus. Covered transactions include purchases of assets from an affiliate, extensions of credit to an affiliate, guarantees issued on behalf of an affiliate, and certain other transactions that expose an institution to an affiliate's credit or investment risk.

Second, the statute requires all covered transactions between an insured depository institution and its affiliates to be on terms and conditions that are consistent with safe and sound banking practices, and prohibits an institution from purchasing low-quality assets from its affiliates. Finally, the statute requires that an insured depository institution's extensions of credit to affiliates and guarantees issued on behalf of affiliates be appropriately secured by a statutorily defined amount of collateral.

Section 23B protects an insured depository institution by requiring that transactions between the institution and its affiliates be on market terms; that is, on terms and under circumstances that are substantially the same, or at least as favorable to the institution, as those prevailing at the time for comparable transactions with *unaffiliated* companies. The market terms requirement of section 23B applies to any covered transaction (as defined in section 23A) with an affiliate as well as a broad range of other transactions, such as a sale of securities or other assets to an affiliate and a contract for the payment of money or furnishing of services to an affiliate.

The Gramm-Leach-Bliley Act ("GLB Act") requires the Board to adopt, by May 12, 2001, final rules under section 23A to "address as covered transactions credit exposure arising out of derivative transactions between [insured depository institutions] and their affiliates and intraday extensions of credit by [insured depository institutions] to their affiliates."[2] The Board is adopting the interim final rules explained below pursuant to the amendments to section 23A contained in the GLB Act.

Explanation of Interim Rules

A. Derivative Transactions

Derivative transactions between an insured depository institution and its affiliates generally arise either from the risk management needs of the institution or the affiliate. Transactions arising from the bank's needs typically arise when an institution enters into a swap or other derivative contract with a customer but chooses not to hedge directly the market risk generated by the derivative contract or is unable to hedge the risk directly because the institution is not authorized to hold the hedging asset. In order to manage the market risk, the institution may have an affiliate acquire the hedging asset. The institution would then do a "bridging" derivative transaction between itself and the affiliate maintaining the hedge.

Other derivative transactions between an insured depository institution and its affiliate are affiliate-driven. An institution's affiliate may enter into an interest-rate or foreign-exchange derivative with the institution in order to accomplish the asset-liability management goals of the affiliate. For example, an institution's holding company may hold a substantial amount of floating-rate assets but issue fixed-rate debt securities to obtain cheaper funding. The holding company may then enter into a fixed-to-floating interest-rate swap with its subsidiary insured depository institution to reduce the holding company's interest-rate risk.

Insured depository institutions and their affiliates that seek to enter into derivative transactions for hedging (or risk-taking) purposes could enter into the desired derivatives with unaffiliated companies. Institutions and their affiliates often choose to use each other as their derivative counterparties, however, in order to maximize the profits of and manage risks within the consolidated financial group.

The Board believes that derivative transactions between an insured depository institution and an affiliate are subject to section 23B under the express terms of the statute.[3] The Board has not ruled on the question of whether derivative transactions between an insured depository institution and its affiliates are covered transactions under section 23A.

Derivative transactions between an insured depository institution and an affiliate resemble section 23A covered transactions in many respects. Such transactions may expose institutions to the credit risk of their affiliates. Although the typical institution-affiliate derivative transaction does not create current credit exposure for the institution at the inception of the transaction, an institution may incur current credit exposure to an affiliate during the term of a derivative transaction and nearly always faces some amount of potential future exposure on such a transaction. The credit exposure on a derivative transaction with an affiliate poses a risk to the safety and soundness of the bank that is similar in many respects to the risk posed by a loan to an affiliate, and may be more volatile and indeterminate than the credit exposure created by a loan.

Determining the appropriate treatment for derivative transactions under section 23A is a complex and important endeavor. In light of the complexities of the subject matter and in light of the May 12, 2001, statutory schedule in the GLB Act, the Board is taking the following two steps to address institution-affiliate derivative transactions under sections 23A and 23B. First, the Board is publishing this interim rule, which (i) requires, under section 23A as amended by the GLB Act, that an institution establish and maintain policies and procedures reasonably designed to manage the credit exposure arising from the institution's derivative transactions with affiliates and (ii) clarifies that institution-affiliate derivative transactions are subject to the market terms requirement of section 23B. The policies and procedures must at a minimum provide for monitoring and controlling the credit exposure arising from the institution's derivative transactions with each affiliate, and all affiliates in the aggregate, and ensuring that the institution's derivative transactions with affiliates comply with section 23B. In addition, the interim rule defines the term "derivative transaction" to mean any derivative contract covered by the Board's capital adequacy guidelines (which includes most interest-rate, currency, equity, and commodity derivative contracts) and any similar derivative contract, including credit derivative contracts.

Second, the Board has included provisions in the proposed Regulation W issued concurrently with this interim rule to address further the credit exposure associated with derivative transactions. Regulation W proposes a set of questions on measures in addition to those contained in this interim rule that could be applied to institution-affiliate derivative transactions under section 23A. In connection with this interim rule and proposed Regulation W, the Board solicits public comment on the most appropriate treatment under section 23A of the credit exposure arising from derivative transactions.

As noted above, regardless of how the Board ultimately decides to address credit exposure on derivative transactions between an institution and an affiliate under section 23A, these transactions are subject to the market terms requirement of section 23B. Accordingly, each institution should have in place credit limits on its derivatives exposure to affiliates that are at least as strict as the credit limits the institution imposes on unaffiliated companies that are engaged in similar businesses and are substantially equivalent in size and credit quality. Similarly, each institution should monitor derivatives exposure to affiliates in a manner that is at least as rigorous as it uses to monitor derivatives exposure to comparable unaffiliated companies. In addition, each institution should price, and require collateral in, derivative transactions with affiliates in a way that is at least as favorable to the institution as the way the institution would price, or require collateral in, a derivative transaction with comparable unaffiliated counterparties.

Although the Board continues to explore and analyze the complex issue of how best to address institution-affiliate derivative transactions under section 23A, the Board has not made a determination at this time that the credit exposure arising from such derivatives ought to be made subject to all the requirements of section 23A. The Board continues to collect information regarding the derivatives practices of insured depository institutions and asks for additional data on such practices in order to assist the Board in determining whether the approach set forth in the interim rule would suffice to prevent institutions from incurring material credit exposure to affiliates on derivative transactions. It appears that several of the larger insured depository institutions that participate in the derivatives markets increasingly manage credit risk arising from derivatives exposure to financial institutions by requiring such counterparties to post collateral. The Board understands that these institutions generally require full collateralization of their current credit exposure (*i.e.*, positive net mark-to-market values recalculated daily based on the previous day's exposures) on derivative transactions with financial institutions above a relatively small threshold amount.

The Board requests information regarding (i) how institutions currently measure, monitor, and limit derivatives credit exposure to unaffiliated companies; (ii) whether institutions include an estimate of potential future exposure in their measurement of credit exposure to unaffiliated derivatives counterparties and, if so, how institutions estimate potential future exposure on a derivative transaction; (iii) in what circumstances and to what extent institutions require unaffiliated counterparties to post collateral to secure derivatives credit exposure; (iv) what types of collateral institutions accept to secure derivatives credit exposure (and what haircuts are used for the various collateral types); (v) how often institutions mark to market (and require additional collateral with respect to) their derivative transactions with unaffiliated counterparties; (vi) how institutions price derivative transactions with unaffiliated counterparties; and (vii) how large the uncollateralized derivatives credit exposures are that institutions have to unaffiliated companies.

After a more complete review and analysis of the credit risk mitigation practices of insured depository institutions participating in the derivatives markets and of the public comments received on this interim rule and Regulation W, the Board may decide to subject credit exposure on institution-affiliate derivatives to some or all of the requirements of section 23A.

B. Intraday Extensions of Credit

As noted above, the GLB Act requires the Board to address as covered transactions under section 23A the credit exposure arising from intraday extensions of credit by insured depository institutions to their affiliates. Depository institutions regularly provide transaction accounts to their affiliates in conjunction with providing

[1] Section 23A originally was enacted as part of the Banking Act of 1933 and applied only to banks that were members of the Federal Reserve System. Congress amended the Federal Deposit Insurance Act in 1966 to extend section 23A to insured nonmember banks. 12 U.S.C. 1828(j). In 1989, Congress further extended the coverage of section 23A to insured savings associations. 12 U.S.C. 1468. Congress enacted section 23B of the Federal Reserve Act as part of the Competitive Equality Banking Act of 1987, and has subsequently expanded its scope to cover the same set of depository institutions as are covered by section 23A.

[2] GLB Act section 121(b)(3) (codified at 12 U.S.C. 371c(f)(3).

[3] In addition to applying to covered transactions as defined in section 28A, the market terms requirement of section 23B applies broadly to, among other things, "[t]he payment of money or the furnishing of services to an affiliate under contract, lease, or otherwise." 12 U.S.C. 371c–1(a)(2)(C). Institution-affiliate derivatives generally involve a contract or agreement to pay money to the affiliate or furnish risk management services to the affiliate.

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payment and securities clearing services. As in the case of unaffiliated commercial customers, these accounts are occasionally subject to overdrafts during the day that are repaid in the ordinary course of business. The Board has not to date ruled on whether these or other types of intraday credit extensions are covered transactions under section 23A or are subject to the market terms requirement of section 23B.

Existing business practices indicate that the potential risk reduction benefits afforded by full application of the requirements of section 23A to intraday credit exposures may not justify the costs to banking organizations of implementing these requirements at this time. Intraday overdrafts and other forms of intraday credit extensions are generally not used as a means of funding or otherwise providing financial support for an affiliate. Rather, these credit extensions typically facilitate the settlement of transactions between an affiliate and its customers when there are mismatches between the timing of funds sent and received during the business day. Although some risk exists that such intraday credit extensions could turn into overnight funding of an affiliate, this risk may be sufficiently remote that application of the strict collateral and other requirements of section 23A would not be warranted for the intraday credit exposure. Moreover, mandating that banks collateralize intraday exposures could require banks to measure exposures across multiple accounts, offices, and systems on a global basis and to adjust collateral holdings in real time throughout the day. The Board is concerned that few banks currently have these capabilities and that they would be very costly to implement.

As with institution-affiliate derivative transactions, the Board is taking a two-step approach to addressing intraday credit extensions by an institution to an affiliate under sections 23A and 23B. First, the Board is publishing this interim final rule. The interim rule (i) requires, under section 23A, that institutions establish and maintain policies and procedures reasonably designed to manage the credit exposure arising from the institution's intraday extensions of credit to affiliates and (ii) clarifies that intraday extensions of credit by an insured depository institution to an affiliate are subject to the market terms requirement of section 23B. The policies and procedures must at a minimum provide for monitoring and controlling the institution's intraday credit exposure to each affiliate, and all affiliates in the aggregate, and ensuring that the institution's intraday credit extensions to affiliates comply with section 23B.

Second, the Board has proposed in Regulation W an alternative approach that would subject certain intraday credit extensions to section 23A. The Board specifically invites public comment on whether the Board's final rule on intraday credit extensions under section 23A should reflect the approach taken in this interim rule, the approach set forth in proposed Regulation W, an approach that more fully subjects intraday credits to section 23A, or another approach.

C. Delayed Effective Date

The GLB Act authorizes the Board to delay the effective date of its final rule under section 23A on derivative transactions and intraday credit extensions "for such period as the Board deems necessary or appropriate to permit banks to conform their activities to the requirements of the final rule without undue hardship."[4] Pursuant to this authority, the Board has determined to delay the effective date of these interim final rules until January 1, 2002, to allow institutions an appropriate amount of time to put in place the policies and procedures required by the rules. The delayed effective date also will provide the Board with an opportunity to revise the interim rules to reflect public comments as necessary.

Regulatory Flexibility Act

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a)), the Board must publish an initial regulatory flexibility analysis with this rulemaking. The rules implement provisions of section 121 of the GLB Act that require the Board to adopt final rules under section 23A of the Federal Reserve Act to address as a covered transaction the credit exposure arising out of derivative transactions between insured depository institutions and their affiliates and intraday extensions of credit by institutions to their affiliates.

The interim rules require insured depository institutions to establish and maintain policies and procedures regarding their derivative transactions with affiliates and intraday credit extensions to affiliates. The policies and procedures required by the rules are necessary to ensure that institutions conduct these activities in a safe and sound manner and to enable the Board to execute properly its supervisory function. These requirements apply to all insured depository institutions, regardless of size, engaged in these activities. The Board believes that institutions that engage in these activities, in most cases, already have policies and procedures in place to manage the risks of these activities.

The Board specifically seeks comment on the likely burden that the interim rules will impose on insured depository institutions that engage in derivative transactions with affiliates or extend credit on an intraday basis to affiliates.

Administrative Procedure Act

The provisions of these rules are effective on January 1, 2002, on an interim basis. Pursuant to 5 U.S.C. 553, the Board finds that it is impracticable to issue these rules in proposed form and that there is good cause to issue these rules as interim final rules due to the fact that the GLB Act requires the Board to adopt final rules addressing the credit exposure arising from derivative transactions between institutions and affiliates and intraday extensions of credit from institutions to affiliates by May 12, 2001. The Board is seeking public comment on all aspects of the interim rules and will amend the rules as appropriate after reviewing the comments.

Subject to certain exceptions, 12 U.S.C. 4802(b)(1) provides that new regulations and amendments to regulations prescribed by a Federal banking agency that impose additional reporting, disclosure, or other new requirements on an insured depository institution must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form. In accordance with this provision of the Administrative Procedure Act, these interim rules do not become effective until January 1, 2002.

Paperwork Reduction Act

The Board has determined that the interim rules do not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Plain Language

Section 722 of the GLB Act requires the Board to use "plain language" in all proposed and final rules published after January 1, 2000. In light of this requirement, the Board has sought to present its interim rules in a simple and straightforward manner. The Board invites comments on whether there are additional steps the Board could take to make the rules easier to understand.

List of Subjects in 12 CFR Part 250

Federal Reserve System.

[4] 12 U.S.C. 371c(f)(3)(B).

For the reasons set out in the preamble, the Board amends 12 CFR part 250 as follows:

PART 250—MISCELLANEOUS INTERPRETATIONS

1. The authority citation for part 250 is revised to read as follows:

Authority: 12 U.S.C. 78, 248(i), 371c(f) and 371c–1(e).

2. Section 250.247 is added to read as follows:

§ 250.247 Application of sections 23A and 23B of the Federal Reserve Act to derivative transactions between insured depository institutions and their affiliates.

(a) Derivative transactions between an insured depository institution and its affiliates are subject to the market terms requirement of section 23B(a)(1) of the Federal Reserve Act (12 U.S.C. 371c–1(a)(1)).

(b) An insured depository institution must establish and maintain policies and procedures reasonably designed to manage the credit exposure arising from its derivative transactions with affiliates in a safe and sound manner. The policies and procedures must at a minimum provide for:

(1) Monitoring and controlling the credit exposure arising from the institution's derivative transactions with each affiliate and all affiliates in the aggregate; and

(2) Ensuring that the institution's derivative transactions with affiliates comply with section 23B.

(c) For purposes of this regulation, derivative transactions include any derivative contract listed in paragraphs A. III. E. 1. a. through d. of appendix A to 12 CFR part 225 and any similar derivative contract, including credit derivative contracts.

3. Section 250.248 is added to read as follows:

§ 250.248 Application of sections 23A and 23B of the Federal Reserve Act to intraday extensions of credit by insured depository institutions to their affiliates.

(a) Intraday extensions of credit by an insured depository institution to its affiliates are subject to the market terms requirement of section 23B(a)(1) of the Federal Reserve Act (12 U.S.C. 371c–1(a)(1)).

(b) An insured depository institution must establish and maintain policies and procedures reasonably designed to manage the credit exposure arising from its intraday extensions of credit to affiliates in a safe and sound manner. The policies and procedures must at a minimum provide for:

(1) Monitoring and controlling the credit exposure arising from the institution's intraday extensions of credit to each affiliate and all affiliates in the aggregate; and

(2) Ensuring that the institution's intraday extensions of credit to affiliates comply with section 23B.

By order of the Board of Governors of the Federal Reserve System, May 3, 2001.

Dated: May 3, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–11608 Filed 5–10–01; 8:45 am]

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Part III

Department of Housing and Urban Development

Notice of Funding Availability: Tribal Colleges and Universities Program; Fiscal Year 2001

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4674–N–01]

Notice of Funding Availability: Tribal Colleges and Universities Program; Fiscal Year 2001

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Funding Availability (NOFA).

SUMMARY: *Purpose of the Program.* To assist Tribal colleges and universities to build, expand, renovate, and equip their own facilities.

Available Funds. Approximately $3 million.

Eligible Applicants: Only tribal colleges and universities that meet the definition of a TCU established in Title V of the 1998 Amendments to the Higher Education Act of 1965 (Pub. L. 105–244; enacted October 7, 1998)

Application Deadline. August 3, 2001.

Match. None.

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget, under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2528–0215. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

I. Application Due Date, Application Kits, Further Information, and Technical Assistance

Application Due Date. Your completed application is due on or before 12 midnight, Eastern time, on August 3, 2001 at HUD Headquarters.

Applications Submission Procedures. *Mailed Applications.* Your application will be considered timely filed if your application is postmarked on or before 12:00 midnight on the application due date and received by the designated HUD address on or within ten (10) days of the application due date.

Applications Sent by Overnight/ Express Mail Delivery. If your application is sent by overnight delivery or express mail, your application will be timely filed if it is received before or on the application due date, or when you submit documentary evidence that your application was placed in transit with the overnight delivery/express mail service by no later than the application due date.

Hand Carried Applications. If your application is required to be submitted to HUD Headquarters, and you arrange for the application to be hand carried, hand carried applications delivered before and on the application due date must be brought to the specified location at HUD Headquarters and room number between the hours of 8:45 am to 5:15 pm, Eastern time. Applications hand carried on the application due date will be accepted in the South Lobby of the HUD Headquarters Building at the address below from 5:15 pm until 12 midnight, Eastern time. This deadline date is firm. Please make appropriate arrangements to arrive at the HUD Headquarters Building before 12 midnight, Eastern time, on the application due date.

Address for Submitting Applications. Your completed application consists of an original signed application and two copies of the application. Submit your completed application to the following address: Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7251, Washington, DC, 20410. When submitting your application, please refer to TCUP and include your name, mailing address (including zip code) and telephone number (including area code).

HUD will accept only one application per TCU campus for this program. If your institution has multiple campuses, each one may submit a separate application. If your institution submits more than one application, per campus, HUD will ask you to identify which application you want evaluated. Only one application will be evaluated. If you do not respond within the stipulated cure period (see Section VI below), all of your applications will be disqualified. You should take this policy into account and take steps to ensure that multiple applications are not submitted.

For Application Kits. For an application kit and any supplemental material, you should call the SuperNOFA Information Center at 1–800–HUD–8929. If you have a hearing or speech impairment, please call the Center's TTY number at 1–800–HUD–2209. When requesting an application kit, you should refer to TCUP and provide your name and address (including zip code) and telephone number (including area code). You may also access the application on the Internet through the HUD web site at www.hud.gov.

For Further Information and Technical Assistance. You may contact Jane Karadbil of HUD's Office of University Partnerships at 202–708–1537, extension 5918 or Sherone Ivey of the Office of Native American Programs at 202–401–7914, extension 4200. If you have a hearing or speech impairment, you may access this number via TTY by calling the Federal Information Relay Service toll-free at 1–800–877–8339. You may also write to Ms. Karadbil via email at *Jane_R._Karadbil@hud.gov* and Ms. Ivey at *Sherone_E._Ivey@hud.gov.*

Satellite Broadcast. HUD will hold an information broadcast via satellite for potential applicants to learn more about the program and preparation of the application. For more information about the date and time of the broadcast, you should consult the HUD web site at http://www.hud.gov.

II. Amount Allocated

Approximately $3 million in FY 2001 funds is being made available under this NOFA for TCUP.

The maximum grant period is 24 months. The performance period will commence on the effective date of the grant agreement.

The maximum amount to be requested and awarded is $400,000. Since the Statement of Work and other facets of the technical review are assessed in the context of the proposed budget and grant request, and in the interest of fairness to all applicants, if you submit an application requesting more than $400,000 in HUD funds, the application will be ruled ineligible. HUD reserves the right to make awards for less than the maximum amount or less than the amount requested in your application.

III. Program Description; Eligible Applicants; Eligible Activities

(A) *Program Description.* The purpose of TCUP is to assist TCUs to build, expand, renovate, and equip their own facilities, especially those facilities that are used by or available to the larger community.

(B) *Eligible Applicants.* Only if your institution is a nonprofit institution of higher education and meets the statutory definition of a TCU in Title V of the 1998 Amendments to the Higher Education Act of 1965 (P.L. 105–244) are you eligible to apply. If you are one of several campuses of the same institution, you may apply separately from the other campuses as long as your campus has a separate administrative structure and budget from the other campuses.

(C) *Eligible Activities.* Each activity you propose for funding must meet one of the following national objectives:

(a) Benefit low- and moderate-income persons;

(b) Aid in the prevention or elimination of slums or blight; or

(c) Meet other community development needs having a particular urgency and other financial resources are not available to meet such needs.

You may not use any of your grant for public services, as defined in 24 CFR 570.201(e). You may use no more than 20 percent of your grant for planning and administrative activities, as defined in 24 CFR 570.206. Grant funds can only be used to build, expand, renovate, and equip facilities owned by your institution. Long-term leases of property (*i.e.*, at least five years in duration) are considered an acceptable form of ownership under this program. Equipment can include, but is not limited to, computers, furniture, books, etc.

While community-wide use of your facility is permissible, the facility must be predominantly for the use of your institution (*i.e.*, it must be used by your institution at least 51% of the time). The facility to be assisted must be for some activity or activities that your institution normally provides, as opposed to activities undertaken by other entities using your facility. Buildings in which your institution undertakes activities are eligible for assistance even if they do not serve those enrolled in your institution. A few examples are provided to show eligible uses of the grant. If your institution operates a small business assistance center, renovation of the facility in which the center is located would be an eligible grant activity, because the center is part of your institution even though it is not serving enrolled students. Conversely, if your institution rents space to another entity that operates a small business assistance center, renovation of the facility in which that center is located would not be an eligible grant activity, unless the space is used by your institution at least 51% of the time. As another example, you could build a new gymnasium solely for your students or propose to offer some physical education classes or other activities in the evening to the larger community. But if you proposed to build a new gymnasium, with the majority of the activities for non-students, or with the activities being primarily run by an outside entity, that would be an ineligible activity.

While you may choose to apply for a grant for any kind of college or university facility, facilities that will be used by or available to the larger community (as long as the use is still predominantly for your institution, as noted above) are eligible to receive extra points where the larger community has participated in the planning and implementation of this project. For example, in order to get these points, you could request a grant to rehabilitate a student union building that would also serve as a community meeting facility, with the community helping to plan the renovations and also helping to operate additional activities. As another example, you could expand a facility currently serving as a small business assistance center where current and potential small business owners helped design the expansion. As a third example, you could equip a computer lab where the larger community helped you identify the equipment needs and will also help in implementing workshops, etc. If you are proposing work on a facility that is solely for your institution (*e.g.*, a dormitory or administration building), you can only get these points if you involve the community in the planning and implementation of the project. See Rating Factor 3 for more details. You should call Jane Karadbil or Sherone Ivey at the above numbers if you have any questions about the eligibility of any activities you may propose.

(D) *Other Requirements.* (1) *Leveraging.* Although a match is not required to qualify for funding, if you claim leveraging from any source, including your own institution, you must provide letters or other documentation evidencing the extent and firmness of commitments of leveraging from other Federal (*e.g.*, Americorps Programs), State, local, and/ or private sources (including the applicant's own resources). These letters or documents must be dated no earlier than the date of this published NOFA. Potential sources of leveraging assistance include your own institution (for both direct and indirect costs), tribes, the Indian housing authorities, financial institutions and private businesses, foundations, and faith-based institutions.

(2) *Federal Requirements.* If awarded a grant, you must comply with all Federal requirements, including the following:

(a) If your TCU is a part or instrumentality of a tribe, you must comply with the Indian Civil Rights Act (25 U.S.C. 1301 *et seq.*), but if your TCU is not a part or instrumentality of a tribe, you must comply with the Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations at 24 CFR part 100 *et seq.*, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1, and Section 109 of the Housing and Community Development Act of 1974, as amended, with respect to nondiscrimination on the basis of age, sex, religion, or disability and implementing regulations at 24 CFR part 6;

(b) The Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations at 24 CFR part 146, prohibiting discrimination on the basis of age;

(c) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8, prohibiting discrimination against handicapped individuals;

(d) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135, requiring that economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, be given to low- and very low-income persons and to businesses that provide economic opportunities for these persons;

(e) The disclosure requirements and prohibitions of 31 U.S.C. 1352 and implementing regulations at 24 CFR part 87;

(f) The requirements for funding competitions established by the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3531 *et seq.*).

(g) Nondiscrimination provisions of Section 109 and Labor standards of section 110 of the Housing and Community Development Act of 1974 (HCDA 1974)(42 U.S.C. 5301 *et seq.*), referenced at 24 CFR 570.602 and 570.603, respectively. However, in accordance with HCDA 1974 section 107(e)(2), the Secretary waives the provisions of HCDA 1974 section 109 and 110 with respect to this program for grants to a TCU that is a part of a tribe, *i.e.*, a TCU that is legally a department or other part of the tribal government, but not a TCU that is established under tribal law as an entity separate from the tribal government. If your TCU is not a part of a tribe, the nondiscrimination provisions and labor standards of HCDA section 109 and 110 apply to activities under the grant to your TCU.

(4) *OMB Circulars.* Your grant will be governed by the provisions of 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals and other Nonprofit Organizations), A–21 (Cost Principles for Education Institutions), and A–133 (Audits of States, Local Governments, and Non-Profit Organizations). The application kit contains a detailed explanation of what these costs are. You can access the OMB circulars at the White House website at http://www.whitehouse.gov/OMB/circulars.

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IV. Application Selection Process

HUD will conduct two types of review: a threshold review to determine applicant eligibility; and a technical review to rate the application based on the rating factors in this section.

(A) *Threshold Factors for Funding Consideration.* Under this threshold review, your application can only be rated if it is in compliance with the requirements of this NOFA and the following additional standards are met:

(1) You must be an eligible TCU;

(2) Your application requests a Federal grant of $400,000 or less over the two-year grant period;

(3) There is only one application from your institution or a campus of your institution;

(4) At least one of the activities in your application is eligible.

In addition you must meet the following Civil Rights threshold requirements.

If you, the applicant, (1) have been charged with a systemic violation of the Fair Housing Act by the Secretary alleging ongoing discrimination;

(2) Are a defendant in a Fair Housing Act lawsuit by the Department of Justice alleging an ongoing pattern or practice of discrimination; or

(3) Have received a letter of noncompliance findings under Title VI, Section 504 or Section 109 , HUD will not rate or rank your application under this NOFA if the charge, lawsuit, or letter of findings has not been resolved to the satisfaction of the Department before the application deadline stated in this NOFA. HUD's decision regarding whether a charge, lawsuit, or letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken to address allegations of ongoing discrimination in the policies or practices involved in the charge, lawsuit, or letter of findings.

(B) *Factors Used to Evaluate and Rate Applications.* The factors for rating and ranking applicants, and maximum points for each factor, are provided below. The maximum number of points for this program is 100. HUD has five standard factors and several subfactors that it uses for evaluating almost all of its programs. However, because of tribal sovereignty issues and because this is the first year of the Tribal Colleges and Universities Program, not all of these factors and subfactors are being used. If this program is funded again next year, HUD will determine the extent to which these standard factors and sub-factors will be applied to this program.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (20 points)

This factor addresses the extent to which you have the organizational resources necessary to successfully implement the proposed activities in a timely manner. In rating this factor, HUD will consider the extent to which your application demonstrates the knowledge and experience of the overall project director and staff, including the day-to-day program manager, consultants, and contractors in planning and managing the kinds of programs for which funding is being requested. More points will be awarded for this factor where the experience belongs to members of the TCU staff than where it belongs to consultants, contractors, and other staff outside your institution. In addition, more points will be awarded where the experience belongs to people who will actually work on your proposed project. Experience will be judged in terms of recent, relevant, and successful experience of your staff to undertake activities in:

(a) Developing and equipping facilities for your institution; and

(b) Working with your community on the planning and implementation of projects.

Rating Factor 2: Need/Extent of the Problem (10 points)

This factor addresses the extent to which there is a need for funding the proposed program activities and an indication of the importance of meeting this need. In responding to this factor, you will be evaluated on the extent to which you document the level of need for the proposed activities and the importance of meeting the need. You should use statistics and analyses contained in one or more data sources that are sound and reliable. To the extent possible, the data you use should be specific to the area where the proposed activities will be carried out.

Rating Factor 3: Soundness of Approach (60 points)

This factor addresses the quality and cost-effectiveness of your proposed work plan and the commitment of your institution to sustain the proposed activities.

(1) *Quality of the Work Plan* (50 Points)

(a) *Specific services and/or activities* (15 Points). Specifically, HUD will consider the extent to which your proposed activities will:

(i) Meet an identified important need; and

(ii) Relate to and not duplicate other activities in the target area.

(b) *Community Involvement* (10 points) HUD will consider the extent to which you have involved the community in all stages of the proposed project.

(c) *Work Plan Impact* (15 Points). HUD will consider the feasibility of success of your program, the measurable objectives, and how timely your products will be delivered. Specifically, HUD will examine the extent to which:

(i) The project you propose can be completed within the two year grant period; and

(ii) The objectives are measurable (*e.g.*, the number of classrooms added, the number of additional clients that can be helped in an expanded small business assistance center), result in measurable improvement to the community (*e.g.*, fifty more people receiving computer literacy training, twenty more small businesses started, etc.), and how well you demonstrate that these objectives will be achieved by your proposed management plan and team and will result directly from your activities.

(d) *Involvement of the Faculty and Students* (10 points). The extent to which your application proposes to use students and faculty, as part of their coursework, for project activities. HUD's goal is to encourage students and faculty to be able to use this grant to enhance their education experience and assist their community at the same time.

(2) *Institutionalization of Project Activities* (10 points). The extent to which your project will result in the kinds of proposed activities being sustained by becoming part of the mission of your institution. In reviewing this subfactor, HUD will consider the extent to which program activities relate to your institution's mission, benefit students because they are part of a service learning program at your institution, and are reflected in the curriculum. HUD will look at your monetary and non-monetary commitments to faculty and staff continuing work in the target area or other similar areas and to your longer term commitment (five years after the start of the grant) of hard dollars to similar work.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses your ability to secure community resources, which can be combined with HUD program funds to achieve program objectives.

In evaluating this factor, HUD will consider the extent to which you have established partnerships with other entities to secure additional resources to increase the effectiveness of the proposed activities. Resources may include funding or in-kind contributions, such as services or equipment. Resources may be provided by governmental entities, *e.g.*, the Tribe, the Federal government (BIA, HHS, Education), etc., public or private nonprofit organizations, for-profit private organizations, or other entities. You may also establish partnerships with other program funding recipients to coordinate the use of resources in the target area.

You may count overhead and other institutional costs (*e.g.*, salaries) that are waived as leveraging. However, higher points will be awarded if you secure leveraging resources from sources outside your institution.

You must provide letters or other documentation showing the extent and firmness of commitments of leveraged funds (including your own resources) in order for these resources to count in determining points under this factor. Commitment letters must state a dollar amount in order to earn points for this factor. If your application does not include evidence of leveraging, it will receive zero (0) points for this Factor.

(C) *Selections.* In order to be funded, you must receive a minimum score of 70 points. HUD will fund applications in rank order, until it has awarded all available funds. If two or more applications have the same number of points, the application with the most points for Factor 3, Soundness of Approach, shall be selected. If there is still a tie, the application with the most points for Factor 1, Capacity, shall be selected.

After all application selections have been made, HUD may require that you participate in negotiations to determine the specific terms of the Statement of Work and the grant budget. In cases where HUD cannot successfully complete negotiations, or you fail to provide HUD with requested information, an award will not be made. In such instances, HUD may elect to offer an award to the next highest ranking applicant, and proceed with negotiations with that applicant.

HUD will not fund specific proposed activities that do not meet one of the national objectives referenced in Section IIIC above. In addition, HUD reserves the right to fund less than the full amount requested in your application if any of your proposed activities is not eligible for funding under the statute creating this program.

V. Application Submission Requirements

You should include an original and two copies of the items listed below. In order to be able to recycle paper, please do not submit applications in bound form. Binder clips or loose leaf binders are acceptable. Also, please do not use colored paper. Please note the page limits for some of the items listed below and do not exceed them.

Your application must contain the items listed in this section. These items include the standard forms, certifications, and assurances found in Appendix A of this NOFA. The remaining application items that are forms (*i.e.*, excluding such items as narratives), referred to as the "non-standard forms," can be found as Appendix B of this NOFA. The items are as follows:

(A) *SF–424*, Application for Federal Assistance.

(B) *HUD–424*, Federal Assistance Funding Matrix.

(C) *Application Checklist.*

(D) *Transmittal Letter*, signed by the Chief Executive Officer of your institution or his or her designee. If someone else in your institution signs this letter, your application must include an official designation of signing authority to that person.

(E) *Abstract/Executive Summary* (one page limit) describing the goals and activities of the project.

(F) *Narrative Statement Addressing the Factors for Award.* (50 page limit, including tables, and maps, but not including any letters of commitment and budget forms)

(1) The Statement of Work incorporates all activities to be funded in your application and details how your proposed work will be accomplished. (Please note that although submitting pages in excess of the page limit will not disqualify your application, HUD will not consider the information on any excess pages, which may result in a lower score or failure to meet a threshold.) For each proposed activity, your Statement of Work must:

(a) Present a step-by-step breakdown of the major activities for which you seek funding (*e.g.*, rehabilitation of a business development center, construction of new classrooms), identify the primary persons (as described in addressing Rating Factor 1) involved in carrying out the activity and accountable for the deliverables, and delineate the major tasks involved in carrying it out. You should also describe how each activity meets one of the national objectives referenced in Section IIIC above.

(b) Indicate the sequence in which tasks are to be performed, noting areas of work that must be performed simultaneously. The sequence, duration, and the products to be delivered should be presented in six month intervals, up to 24 months.

(c) Identify the specific numbers of quantifiable intermediate and end products and objectives (e.g., the number of classrooms added, the number of additional clients that can be helped in an expanded small business assistance center, etc.) you aim to deliver by the end of the grant period as a result of the work performed.

(d) Provide a description of how any proposed new construction or renovation of existing facilities will comply with the accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (24 CFR part 8.21).

(2) The budget presentation should be consistent with the Statement of Work and include:

(a) A budget by activity, using Form HUD–30006 included in the application kit and Appendix B of this NOFA. This form separates the Federal and non-Federal costs of each program activity. Particular attention should be paid to accurately estimating costs; determining the necessity for and reasonableness of costs; and correctly computing all budget items and totals.

(b) A narrative statement of how you arrived at your costs, for any line item over $5,000. Indirect costs must be substantiated and the rate must have been approved by the cognizant Federal agency. If you are proposing to undertake rehabilitation of residential, commercial, or industrial structures or acquisition, construction, or installation of public facilities and improvements, you must submit reasonable costs supplied by a *qualified* entity other than your institution (*e.g.*, an architect, engineer, construction firm, etc.).

(3) Your narrative statement addressing the factors for award should address each of the four factors for award. (Please note that although submitting pages in excess of the page limit will not disqualify your application, HUD will not consider the information on any excess pages, which may result in a lower score or failure to meet a threshold.)

In addressing Factor 4, for each leveraging source, cash or in-kind, you must submit a letter, dated no earlier than the date of this NOFA, from the provider on the provider's letterhead that addresses the following:

- The dollar amount or dollar value of the in-kind goods and/or services committed. For each leveraging source, the dollar amount in the commitment letter must be consistent with the dollar amount you indicated in the Budget;
- How the leveraging amount is to be used;

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- The date the leveraging amount will be made available;
- Any terms and conditions affecting the commitment, other than receipt of a HUD TCUP Grant; and
- The signature of the appropriate executive officer authorized to commit the funds and/or goods and/or services. (See the application kit and Appendix B for a sample commitment letter.)

(G) *Certifications.*

(1) SF–424B, Assurances for Non-Construction Programs or SF–424D, Assurances-Construction Programs, depending on the activities you propose to undertake.

(2) HUD–50071, Certification of Payments to Influence Certain Federal Transactions;

(3) SF–LLL, Disclosure of Lobbying Activities (if applicable);

(4) HUD–2880, Applicant/Recipient Disclosure/Update Form;

(5) HUD–50070, Certification of Drug-Free Workplace;

(6) HUD–2992, Certification Regarding Debarment and Suspension.

(H) *Acknowledgment of Receipt of Applications (HUD–2993).* If you wish to confirm that HUD received your application, please complete this form. This form is optional.

(I) *Client Comment and Suggestions (HUD–2994).* If you wish to offer comments on the TCUP NOFA, please complete this form. This form is optional.

You may not submit appendices or general support letters or resumes. If you submit letters of leveraging commitment, they must be included in your response to Factor 4. If you submit other documentation, it must be included with the pertinent factor responses (taking note of the page limit).

VI. Corrections to Deficient Applications

After the application due date, HUD may not, consistent with its regulations in 24 CFR part 4, subpart B, consider any unsolicited information you, the applicant, may want to provide. HUD may contact you, however, to clarify an item in your application or to correct technical deficiencies. You should note, however, that HUD may not seek clarification of items or responses that improve the substantive quality of your response to any rating factors. In order not to unreasonably exclude applications from being rated and ranked, HUD may, however, contact applicants to ensure proper completion of the application and will do so on a uniform basis for all applicants. *Examples* of curable (correctable) technical deficiencies include your failure to submit the proper certifications or your failure to submit an application that contains an original signature by an authorized official. In each case, HUD will notify you in writing by describing the clarification or technical deficiency. HUD will notify applicants by facsimile or by mail, return receipt requested. You must submit clarifications or corrections of technical deficiencies in accordance with the information provided by HUD within 14 calendar days of the date of receipt of the HUD notification. If your deficiency is not corrected within this time period, HUD will reject your application as incomplete, and it will not be considered for funding.

VII. Environmental Requirements

Environmental Impact. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk in Room 10276 of the HUD Headquarters Building.

Environmental Review. Certain eligible activities under this NOFA are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and are not subject to review under related laws, in accordance with 24 CFR 50.19 (b)(1), (b)(3), (b)(12), or (b)(14). Selection for award does not constitute approval of any proposed sites. If the TCUP application proposes the use of grant funds to assist any non-exempt activities, following selection for award, HUD will perform an environmental review of activities proposed for assistance under the program, in accordance with 24 CFR part 50. The results of the environmental review may require that your proposed activities be modified or that your proposed sites be rejected. You are particularly cautioned not to undertake or commit funds for acquisition or development of proposed properties prior to HUD approval of specific properties or areas. Your application constitutes an assurance that your institution will assist HUD to comply with part 50; will supply HUD with all available and relevant information to perform an environmental review for each proposed property; will carry out mitigating measures required by HUD or select alternate property; and will not acquire, rehabilitate, convert, lease, repair, or construct property and not commit or expend HUD or local funds for these program activities with respect to any eligible property until HUD approval of the property is received. In supplying HUD with environmental information, you should use the same guidance as provided in the HUD Handbook entitled "Field Environmental Review Processing for HUD Colonias Initiative Grants" issued January 27, 1999.

VIII. Other Matters

(A) *Executive Order 13132, Federalism.* Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating policies that have federalism implications and either impose substantial direct compliance costs on State and local governments and are not required by statute, or preempt State law, unless the relevant requirements of section 6 of the Executive Order are met. This NOFA does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

(B) *Prohibition Against Lobbying Activities.* You, the applicant, are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991, 31 U.S.C. 1352 (the Byrd Amendment), which prohibits recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. You are required to certify, using the certification found at Appendix A to 24 CFR part 87, that you will not, and have not, used appropriated funds for any prohibited lobbying activities. In addition, you must disclose, using Standard Form LLL, "Disclosure of Lobbying Activities," any funds, other than Federally appropriated funds, that will be or have been used to influence Federal employees, members of Congress, and congressional staff regarding specific grants or contracts. Tribes and tribally designated housing entities (TDHEs) established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but tribes and TDHEs established under State law are not excluded from the statute's coverage.

(C) *Section 102 of the HUD Reform Act; Documentation and Public Access Requirements.* Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (HUD Reform Act) and the regulations codified in 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 apply to assistance awarded under this SuperNOFA as follows:

(1) *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this SuperNOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations in 24 CFR part 15.

(2) *Disclosures.* HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this SuperNOFA. Update reports (update information also reported on Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 5.

(3) *Publication of Recipients of HUD Funding.* HUD's regulations at 24 CFR 4.7 provide that HUD will publish a notice in the **Federal Register** on at least a quarterly basis to notify the public of all decisions made by the Department to provide:

(i) Assistance subject to section 102(a) of the HUD Reform Act; or

(ii) Assistance that is provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.

(D) *Section 103 HUD Reform Act.* HUD's regulations implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified in 24 CFR part 4, subpart B, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by the regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Ethics Law Division at (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, the employee should contact the appropriate field office counsel, or Headquarters counsel for the program to which the question pertains.

(F) *Catalogue of Federal Domestic Assistance.*

The Catalogue of Federal Domestic Assistance number is: 14.519.

IX. Authority

This program was approved by the Congress under the CDBG appropriation for Fiscal Year 2001, as part of the FY 2001 HUD Appropriations Act (Public Law 106–377). TCUP is being implemented through this NOFA and the policies governing its operation are contained herein.

Dated: May 7, 2001.

Mel Martinez,

Secretary.

Appendix A

The standard forms, which follow, are required for your TCUP application.

Appendix B

The non-standard forms, which follow, are required for your TCUP application.

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Appendix A

Application for Federal Assistance

OMB Approval No. 0348-0043

1. Type of Submission Application ☐ Construction ☐ Non-Construction Pre-application ☐ Construction ☐ Non-Construction	2. Date Submitted (mm/dd/yyyy)	Applicant Identifier
	3. Date Received by State (mm/dd/yyyy)	State Application Identifier
	4. Date Received by Federal Agency (mm/dd/yyyy)	Federal Identifier

5. Applicant Information

Legal Name	Organizational Unit
Address (give city, county, State, and zip code)	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. Employer Identification Number (EIN) (xx-yyyyyyy)

7. Type of Applicant (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Inter-municipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N Nonprofit
O Public Housing Agency
P. Other (Specify)

8. Type of Application:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify)

9. Name of Federal Agency

10. Catalog of Federal Domestic Assistance Number (xx-yyy)
Title:

11. Descriptive Title of Applicant's Project

12. Areas Affected by Project (cities, counties, States, etc.)

13. Proposed Project		14. Congressional Districts of	
Start Date (mm/dd/yyyy)	Ending Date (mm/dd/yyyy)	a. Applicant	b. Project

15. Estimated Funding

Complete form HUD-424-M, Funding Matrix

16. Is Application Subject to Review by State Executive Order 12372 Process?
a. Yes This pre-application/application was made available to the State Executive Order 12372 Process for review on:
Date (mm/dd/yyyy)_____
b. No ☐ Program is not covered by E.O. 12372
or ☐ Program has not been selected by State for review.

17. Is the Applicant Delinquent on Any Federal Debt?
☐ Yes If "Yes," attach an explanation ☐ No

18. To the best of my knowledge and belief, all data in this application/pre-application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative	b. Title	c. Telephone Number (Include Area Code)
d. Signature of Authorized Representative		e. Date Signed (mm/dd/yyyy)

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form SF-424 (7/97)
Prescribed by OMB Circular A-102

Appendix A

Instructions for the SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043, Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency .

This is a standard form used by applicants as a required face sheet for pre-applications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item Entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For pre-applications, use a separate sheet to provide a summary description of this project.

Item Entry

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. **Use form HUD-4243-M, Funding Matrix.** Amount requested or to be contribut during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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form SF-424 (7/97)
Prescribed by OMB Circular A-102

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Appendix A
OMB Approval (pending)

Federal Assistance Funding Matrix

The applicant must provide the funding matrix shown below, listing each program for which Federal funding is being requested, and complete the certifications.

Program*	Applicant Share	Federal Share	State Share	Local	Other	Program Income	Total
Grand Totals							

* For FHIPs, show both initiative and component

Instructions for the HUD-424-M

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

This form is to be used by applicants requesting funding from the Department of Housing and Urban Development for application submissions for Federal assistance.

Enter the following information:

Program: The HUD funding program you are applying under.

Applicant Share: Enter the amount of funds or cash equivalent of in-kind contributions you are contributing to your project or program of activities.

Federal Share: Enter the amount of HUD funds you are requesting with your application.

State Share: Enter the amount of funds or cash equivalent of in-kind services the State is contributing to your project or program of activities.

Local Share: Enter the amount of funds or cash equivalent of in-kind services your local government is contributing to your project or program of activities.

Other: Enter the amount of other sources of private, non-profit, or other funds or cash equivalent of in-kind services being contributed to your project or program of activities.

Program Income: Enter the amount of program income you expect to generate and contribute to this program over the life of your award.

Total: Please total all columns and fill in the amounts.

Appendix A

Assurances—Non-Construction Programs

OMB Approval No. 0348-0040

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Please do not return your completed form to the Office of Management and Budget; send it to the address provided by the sponsoring agency.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.O. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 36701 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a and 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (e) evaluation of flood hazards in flood plains in accordance with EO 11988; (e) assurance of

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project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the national Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984 or OMB Circular No. A-133, Audits of Institutions of Higher Learning and other Non-profit Institutions.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official	Title
Applicant Organization	Date Submitted

Appendix A

Assurances — Construction Programs

OMB Approval No. 0348-0042

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Please do not return your completed form to the Office of Management and Budget; send it to the address provided by the sponsoring agency.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Awarding Agency. Further, certain federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project.

4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.

5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.

6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

10. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibit discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 93-255), as amended, relating to non-discrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other non-discrimination Statute(s) which may apply to the application.

11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

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13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a and 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and preservation of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

19. Will comply with all applicable requirements of all other Federal laws, Executive Orders, regulations and policies governing this program.

Signature of Authorized Certifying Official	Title
Applicant Organization	Date Submitted

Appendix A

Certification of Payments to Influence Federal Transactions

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Applicant Name

Program/Activity Receiving Federal Grant Funding

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

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Disclosure of Lobbying Activities

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse side for Instructions and Public Reporting burden statement)

1. Type of Federal Action	2. Status of Federal Action	3. Report Type
☐ a. contract ☐ b. grant ☐ c. cooperative agreement ☐ d. loan ☐ e. loan guarantee ☐ f. loan insurance	☐ a. bid/offer/application ☐ b. initial award ☐ c. post-award	☐ a. initial filing ☐ b. material change **For Material Change Only** year (yyyy) _____ quarter _____ date of last report (mm/dd/yyyy) _____

4. Name and Address of Reporting Entity	5. If Reporting Entity in No. 4 is Subawardee, enter Name and Address of Prime
☐ Prime ☐ Subawardee Tier _____, if known: Congressional District, if known	Congressional District, if known
6. Federal Department/Agency	7. Federal Program Name/Description CFDA Number, if applicable _____
8. Federal Action Number, if known	9. Award Amount, if known $
10a. Name and Address of Lobbying Registrant (if individual, last name, first name, MI)	b. Individuals Performing Services (including address if different from No. 10a.) (last name, first name, MI)

(attach continuation sheet(s) if necessary)

11. Amount of Payment (check all that apply)	13. Type of Payment (check all that apply)
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other (specify) _____
12. Form of Payment (check all that apply) ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11

(attach continuation sheet(s) if necessary)

15. Continuation sheets attached ☐ Yes ☐ No

16. Information requested through this form is authorized by Sec.319, Pub. L. 101-121, 103 Stat. 750, as amended by sec. 10; Pub. L. 104-65, Stat. 700 (31 U.S.C. 1352). This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature _____

Print Name _____

Title _____

Telephone No. _____

Date (mm/dd/yyyy) _____

Federal Use Only:

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Standard Form-LLL (7/97)

Appendix A

Instructions for Completion of SF-LLL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient, Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal Identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box (es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box (es). Check all boxes that apply. If other, specify nature.
14. Provide specific and detailed description of the services that the lobbist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just the time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a continuation sheet(s) are attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public Reporting Burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Please do not return your completed form to the Office of Management and Budget; send it to the address provided by the sponsoring agency.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

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Appendix A

Applicant/Recipient Disclosure/Update Report

U.S. Department of Housing and Urban Development

OMB Approval No. 2510-0011 (exp. 3/31/2003)

Instructions. (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 2.)

Applicant/Recipient Information Indicate whether this is an Initial Report ☐ or an Update Report ☐

1. Applicant/Recipient Name, Address, and Phone (include area code):

( ) -

2. Social Security Number or Employer ID Number:

- -

3. HUD Program Name

4. Amount of HUD Assistance Requested/Received

5. State the name and location (street address, City and State) of the project or activity:

Part I Threshold Determinations

1. Are you applying for assistance for a specific project or activity? These terms do not include formula grants, such as public housing operating subsidy or CDBG block grants. (For further information see 24 CFR Sec. 4.3).
☐ Yes ☐ No

2. Have you received or do you expect to receive assistance within the jurisdiction of the Department (HUD), involving the project or activity in this application, in excess of $200,000 during this fiscal year (Oct. 1 - Sep. 30)? For further information, see 24 CFR Sec. 4.9
☐ Yes ☐ No.

If you answered **"No"** to either question 1 or 2, **Stop!** You do not need to complete the remainder of this form.
However, you must sign the certification at the end of the report.

Part II Other Government Assistance Provided or Requested / Expected Sources and Use of Funds.

Such assistance includes, but is not limited to, any grant, loan, subsidy, guarantee, insurance, payment, credit, or tax benefit.

Department/State/Local Agency Name and Address	Type of Assistance	Amount Requested/Provided	Expected Uses of the Funds

(**Note**: Use Additional pages if necessary.)

Part III Interested Parties. You must disclose:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

Alphabetical list of all persons with a reportable financial interest in the project or activity (For individuals, give the last name first)	Social Security No. or Employee ID No.	Type of Participation in Project/Activity	Financial Interest in Project/Activity ($ and %)

(**Note**: Use Additional pages if necessary.)

Certification

Warning: If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosures of information, including intentional non-disclosure, is subject to civil money penalty not to exceed $10,000 for each violation.
I certify that this information is true and complete.

Signature:	Date: (mm/dd/yyyy)
X	

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Public reporting burden for this collection of information is estimated to average 2.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless that collection displays a valid OMB control number.

Privacy Act Statement. Except for Social Security Numbers (SSNs) and Employer Identification Numbers (EINs), the Department of Housing and Urban Development (HUD) is authorized to collect all the information required by this form under section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3531. Disclosure of SSNs and EINs is optional. The SSN or EIN is used as a unique identifier. The information you provide will enable HUD to carry out its responsibilities under Sections 102(b), (c), and (d) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, approved December 15, 1989. These provisions will help ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. They will also help ensure that HUD assistance for a specific housing project under Section 102(d) is not more than is necessary to make the project feasible after taking account of other government assistance. HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the disclosure reports, but in no case for a period generally less than three years. All reports, both initial reports and update reports, will be made available in accordance with the Freedom of Information Act (5 U.S.C. §552) and HUD's implementing regulations at 24 CFR Part 15. HUD will use the information in evaluating individual assistance applications and in performing internal administrative analyses to assist in the management of specific HUD programs. The information will also be used in making the determination under Section 102(d) whether HUD assistance for a specific housing project is more than is necessary to make the project feasible after taking account of other government assistance. You must provide all the required information. Failure to provide any required information may delay the processing of your application, and may result in sanctions and penalties, including imposition of the administrative and civil money penalties specified under 24 CFR §4.38.

Note: This form only covers assistance made available by the Department. States and units of general local government that carry out responsibilities under Sections 102(b) and (c) of the Reform Act must develop their own procedures for complying with the Act.

Instructions

Overview.

A. Coverage. You must complete this report if:
(1) You are applying for assistance from HUD for a specific project or activity **and** you have received, or expect to receive, assistance from HUD in excess of $200,000 during the during the fiscal year;
(2) You are updating a prior report as discussed below; or
(3) You are submitting an application for assistance to an entity other than HUD, a State or local government if the application is required by statute or regulation to be submitted to HUD for approval or for any other purpose.

B. Update reports (filed by "Recipients" of HUD Assistance):
General. All recipients of covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

Line-by-Line Instructions.

Applicant/Recipient Information.
All applicants for HUD competitive assistance, must complete the information required in blocks 1-5 of form HUD-2880:

1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered.
2. Entry of the applicant/recipient's SSN or EIN, as appropriate, is optional.
3. Applicants enter the HUD program name under which the assistance is being requested.
4. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. NOTE: In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.
5. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.

Part I. Threshold Determinations - Applicants Only

Part I contains information to help the applicant determine whether the remainder of the form must be completed. **Recipients filing Update Reports should not complete this Part.**

If the answer to ***either*** questions 1 or 2 is No, the applicant need not complete Parts II and III of the report, but must sign the certification at the end of the form.

Part II. Other Government Assistance and Expected Sources and Uses of Funds.

A. Other Government Assistance. This Part is to be completed by both applicants and recipients for assistance and recipients filing update reports. Applicants and recipients must report any other government assistance involved in the project or activity for which assistance is sought. Applicants and recipients must report any other government assistance involved in the project or activity. Other government assistance is defined in note 4 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the assistance will be forthcoming.

Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

The following information must be provided:

1. Enter the name and address, city, State, and zip code of the government agency making the assistance available.
2. State the type of other government assistance (e.g., loan, grant, loan insurance).
3. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is sought (applicants) or has been provided (recipients).
4. Uses of funds. Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as "total structure" to include a number of structural costs, such as roof, elevators, exterior masonry, etc.

B. Non-Government Assistance. Note that the applicant and recipient disclosure report must specify all expected sources and uses of funds - both from HUD ***and any other source*** - that have been or are to be, made available for the project or activity. Non-government sources of

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funds typically include (but are not limited to) foundations and private contributors.

Part III. Interested Parties.

This Part is to be completed by both applicants and recipients filing update reports. Applicants must provide information on:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

Note: A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest.

The information required below must be provided.

1. Enter the full names and addresses. If the person is an entity, the listing must include the full name and address of the entity as well as the CEO. Please list all names alphabetically.
2. Entry of the Social Security Number (SSN) or Employee Identification Number (EIN), as appropriate, for each person listed is optional.
3. Enter the type of participation in the project or activity for each person listed: i.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).
4. Enter the financial interest in the project or activity for each person listed. The interest must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

Note that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, and on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required.

Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

Notes:

1. All citations are to 24 CFR Part 4, which was published in the Federal Register. [April 1, 1996, at 63 Fed. Reg. 14448.]
2. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Fed. Acquisition Regulation (FAR) (48 CFR Chapter 1).
3. See 24 CFR §4.9 for detailed guidance on how the threshold is calculated.
4. "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.
5. For the purpose of this form and 24 CFR Part 4, "person" means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.

Appendix A

Certification for a Drug-Free Workplace

U.S. Department of Housing and Urban Development

Applicant Name

Program/Activity Receiving Federal Grant Funding

Acting on behalf of the above named Applicant as its Authorized Official, I make the following certifications and agreements to the Department of Housing and Urban Development (HUD) regarding the sites listed below:

I certify that the above named Applicant will or will continue to provide a drug-free workplace by:

a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Applicant's workplace and specifying the actions that will be taken against employees for violation of such prohibition.

b. Establishing an on-going drug-free awareness program to inform employees ---

(1) The dangers of drug abuse in the workplace;

(2) The Applicant's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

c. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph a.;

d. Notifying the employee in the statement required by paragraph a. that, as a condition of employment under the grant, the employee will ---

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

e. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph d.(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federalagency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

f. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph d.(2), with respect to any employee who is so convicted ---

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs a. thru f.

2. Sites for Work Performance. The Applicant shall list (on separate pages) the site(s) for the performance of work done in connection with the HUD funding of the program/activity shown above: Place of Performance shall include the street address, city, county, State, and zip code. Identify each sheet with the Applicant name and address and the program/activity receiving grant funding.)

Check here ☐ if there are workplaces on file that are not identified on the attached sheets.

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

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Signature X	Date

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Certification Regarding Debarment and Suspension

U.S. Department of Housing and Urban Development

Certification A: Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief that its principals;

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal debarment or agency;

b. Have not within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Certification (A)

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was place when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of these regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines this eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph (6) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

Appendix A

Certification B: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Certification (B)

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of these regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph (5) of these instructions, if a participant in a lower covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies including suspension and/or debarment.

Applicant	Date
Signature of Authorized Certifying Official	Title

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Appendix A

Acknowledgment of Application Receipt

U.S. Department of Housing and Urban Development

Type or clearly print the Applicant's name and full address in the space below.

(fold line)

Type or clearly print the following information:

Name of the Federal Program to which the applicant is applying: _____

To Be Completed by HUD

☐ HUD received your application by the deadline and will consider it for funding. In accordance with Section 103 of the Department of Housing and Urban Development Reform Act of 1989, no information will be released by HUD regarding the relative standing of any applicant until funding announcements are made. However, you may be contacted by HUD after initial screening to permit you to correct certain application deficiencies.

☐ HUD did not receive your application by the deadline; therefore, your application will not receive further consideration. Your application is:

- ☐ Enclosed
- ☐ Being sent under separate cover

Processor's Name _____

Date of Receipt _____

form **HUD-2993** (2/99)

Appendix A

Client Comments and Suggestions

U.S. Department of Housing and Urban Development

You are our Client! Your comments and suggestions, please!

The Department of Housing and Urban Development in preparing this Notice of Funding Availability and application forms, has tried to produce a more user friendly, customer driven funding process. Please let us have your comments and recommendations for improvements to this document. You may leave this form attached to your application, or feel free to detach the form and return it to:

The Department of Housing and Urban Development
Office of Grants Management and Compliance
Room 2182
451 7th Street, SW
Washington, DC 20410

Please Provide Comments on HUD's Efforts:

The NOFA (insert title) _____

is: (please check one)

(a) ☐ is clear and easily understandable

(b) ☐ better than before, but still needs improvement (please specify)

(c) other (please specify)

The application form (insert title) _____

is: (please check one)

(a) ☐ is acceptable given the volume of information required by statute and the volume of information required for accountability in selecting and funding projects.

(b) ☐ is simpler and more user-friendly than before, but still needs work (please specify).

(c) other comments (please specify)

Name & Organization (Optional):

Are additional pages attached? ☐ Yes ☐ No

form **HUD-2994** (2/2001)

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Appendix B

Budget - Tribal College and Universities Program

U.S. Department of Housing and Urban Development
Office of Policy Research and Development

OMB Approval No. 2528-0215
(exp. 7/31/2001)

Applicant should duplicate this page as necessary

The information collection requirements contained in this notice of funding availability and application kit will be used to rate applications, determine eligibility, and establish grant amounts for the Tribal Colleges and Universities Program (TCUP). Total reporting burden for collection of this information is estimated to average 80 hours. This include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The information submitted in response to the notice of funding availability for TCUP is subject to the disclosure requirements of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989, U.S.C. 3545). The agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

	Activity #1 Name: Cost Item	Grant Request	Leveraged Funds*	Total Cost
1.	Administrative and legal expenses			
2.	Land, structures, rights-of-way, appraisals, etc.			
3.	Relocation expenses and payments			
4.	Architectural and engineering fees			
5.	Other architectural and engineering fees			
6.	Project inspection fees			
7.	Site work			
8.	Demolition and removal			
9.	Construction			
10.	Equipment			
11.	Miscellaneous			
12.	Total Activity # 1 Cost			

	Activity #2 Name:			
1.	Administrative and legal expenses			
2.	Land, structures, rights-of-way, appraisals, etc.			
3.	Relocation expenses and payments			
4.	Architectural and engineering fees			
5.	Other architectural and engineering fees			
6.	Project inspection fees			
7.	Site work			
8.	Demolition and removal			
9.	Construction			
10.	Equipment			
11.	Miscellaneous			
12.	Total Activity # 2 Cost			

*Letters of leveraging costs must accompany the application in order for leveraged funds to be accepted.

Appendix B

	Activity #3 Name: Cost Item	Grant Request	Leveraged Funds*	Total Cost
1.	Administrative and legal expenses			
2.	Land, structures, rights-of-way, appraisals, etc.			
3.	Relocation expenses and payments			
4.	Architectural and engineering fees			
5.	Other architectural and engineering fees			
6.	Project inspection fees			
7.	Site work			
8.	Demolition and removal			
9.	Construction			
10.	Equipment			
11.	Miscellaneous			
12.	Total Activity # 2 Cost			

	Activity #4 Name: Planning and Administration			
1.	Direct Labor			
2.	Fringe Benefit			
3.	Materials			
4.	Travel			
5.	Equipment			
6.	Consultants			
7.	Subcontracts			
8.	Other Direct Costs			
9.	Indirect Costs			
10.	Total Activity Cost #3			
	Grand Totals (all pages)			

*Letters of leveraging costs must accompany the application in order for leveraged funds to be accepted.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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H.R. 132/P.L. 107–6
To designate the facility of the United States Postal Service located at 620 Jacaranda Street in Lanai City, Hawaii, as the "Goro Hokama Post Office Building". (Apr. 12, 2001; 115 Stat. 8)

H.R. 395/P.L. 107–7
To designate the facility of the United States Postal Service located at 2305 Minton Road in West Melbourne, Florida, as the "Ronald W. Reagan Post Office of West Melbourne, Florida". (Apr. 12, 2001; 115 Stat. 9)

Last List March 21, 2001

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